



TOWN OF PALM BEACH

Town Manager's Office

TOWN COUNCIL MEETING DEVELOPMENT REVIEW

TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD

AGENDA

FEBRUARY 12, 2014

9:30 AM

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

I. CALL TO ORDER AND ROLL CALL

Mayor Gail L. Coniglio
William J. Diamond
Richard M. Kleid
Michael J. Pucillo
Penelope D. Townsend
Robert N. Wildrick

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. COMMENTS OF MAYOR GAIL L. CONIGLIO

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

(Another opportunity will be offered immediately after the lunch break, if a lunch break is taken.)

VI. APPROVAL OF AGENDA

VII. PUBLIC HEARINGS

- A. RESOLUTION NO. 25-2014 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 315 Tangier Avenue Meets the

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Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.

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

- B. RESOLUTION NO. 26-2014 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 267 Atlantic Avenue Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.

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

VIII. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of ARCOM Decision #B-008-2014, 225 Indian Road, Per Letter dated January 23, 2014, from Maura Ziska, Esq.

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

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

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

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

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

Deferred from the June 12, 2013, Town Council Meeting

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

- b. **MODIFIED SITE PLAN REVIEW #1-2014 (WITH VARIANCE)**
The application of The 2000 Condominium Assn., Inc. at Sloan's Curve; relative to property commonly known as **2000 South Ocean Blvd.**; described as North and South Building at The 2000 CONDOMINIUM AT SLOAN'S CURVE, a Condominium, according to the Declaration of Condominium recorded in ORB 3645, Page 1027, Public Records of Palm Beach County, Florida; located in the PUD-B Zoning District. The applicant is requesting a Site Plan Review to install two generators, both 600 KW in size, that are proposed to be located in the northwest corner of the north garage and on the west side of the south garage, both part of the 2000 Condominium at Sloan's Curve PUD. A variance is being requested to relocate a drive aisle in the south garage with a width of 18.66 feet in lieu of the 25 foot minimum required and the 17.9 foot existing drive aisle width in the area of the proposed generator location. [Attorney: Maura Ziska]

Deferred from the January 15, 2014, Town Council Meeting

John S. Page Director of Planning, Zoning & Building

2. New Business

- a. **SITE PLAN REVIEW #2-2014 WITH SPECIAL EXCEPTION**
The application of Ambassador Hotel Co-Op (Bill Whitehead, Manager); relative to property commonly known as **2730 South Ocean Blvd.**; described as AMBASSADOR HOTEL CO-OP APTS INC COMMON AREA A/K/A 23-44-43, N 216 FT OF S 385 FT OF N 3000 FT OF FRAC SEC LYG BET ELY RWLI OF SR A-1-A & ATLANTIC OCEAN; located in the R-D (2) Zoning District. The applicant is requesting a Site Plan Review to renovate the exterior walkways of the West Building by increasing the width of the walkways by 16 inches (717.6 sq. ft. total) and upgrading the railing using glass barriers. The new railing will be continued to the pool deck. In addition, the façade of the West Building will be improved providing for more articulation and architectural features incorporating Moderno elements. The height of the West Building is currently 44.9 feet (existing nonconforming) and is proposed to be increased to 49.9 feet. (62.6 feet maximum allowed) (Sec. 134-229, Sec. 134-1060(8)(d) and Sec. 134-1064). The lot coverage of the West Building totals just 5.6% of the overall lot coverage of the site (27.47%) and would increase to 5.22% of overall lot coverage with the proposed renovations. [Attorney: Neil M. Schiller]

John S. Page Director of Planning, Zoning & Building

- b. **VARIANCE #6-2014** The application of Roger A. Lawson and Melanie K. Lawson; relative to property commonly known as

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114 Clarke Avenue; described as Lot 9 and the East 9 feet of Lot 11 of PRIMAVERA ESTATES (Ocean Section), according to the plat thereof as recorded in Plat Book 6, Page 82 of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a variance to allow a 379 square foot carport/awning addition to the south side of the residence that would result in 34.9% of lot coverage in lieu of the 30% maximum allowed and the 32.8% existing. [Attorney: Maura Ziska]

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

John S. Page Director of Planning, Zoning & Building

- c. **VARIANCE #7-2014** The application of 225 Indian Road, LLC (David Frisbie, Manager); relative to property commonly known as **225 Indian Road**; described as Lengthy legal description on file; located in the R-B Zoning District. The applicant is requesting approval to build a new 12,171 square foot two story residence with the following variances being requested: 1) to have a point of measurement for building height of 9 feet National Geodetic Vertical Datum (NGVD) in lieu of the 7.5 feet NGVD maximum allowed for lots abutting a low street. 2) to have a point of measurement for cubic content ratio (CCR) of 9 feet National Geodetic Vertical Datum (NGVD) in lieu of the 7.5 feet NGVD maximum allowed for lots abutting a low street. 3) to have an overall height of 33.2 feet in lieu of the 30 foot maximum allowed as measured from 7.5 NGVD. 4) to allow a parapet on the gable ends on a pitched roof 6.7 feet above the maximum overall height which is permitted for a flat roof and parapet system of the point of measurement variance is granted. [Attorney: Maura Ziska]

[ARCOM Recommendation: Defer the variance requests to the February 26, 2014 ARCOM Meeting]

Request for Withdrawal from the February 12, 2014, Town Council Meeting Per Letter Dated February 4, 2014, from Maura Ziska.

John S. Page Director of Planning, Zoning & Building

- d. **VARIANCE #8-2014** The application of 219 Indian Road, LLC (David Frisbie, Manager); relative to property commonly known as **219 Indian Road**; described as Lengthy legal description on file; located in the R-B Zoning District. The applicant is requesting approval to build a new 11,447 square foot two story residence with the following variances being requested: 1) to have a point of measurement for building height of 9 feet National Geodetic Vertical Datum (NGVD) in lieu of the 7.5 feet NGVD maximum allowed for lots abutting a low street. 2) to have a point of measurement for cubic content ratio (CCR) of 9 feet National Geodetic Vertical Datum (NGVD) in lieu of the 7.5

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feet NGVD maximum allowed for lots abutting a low street. 3) to have an overall height of 33.2 feet in lieu of the 30 foot maximum allowed as measured from 7.5 NGVD. 4) to allow a parapet on the gable ends on a pitched roof 6.7 feet above the maximum overall height which is permitted for a flat roof and parapet system of the point of measurement variance is granted. [Attorney: Maura Ziska]

[ARCOM Recommendation: Defer the variance requests to the February 26, 2014 ARCOM Meeting]

Request for Withdrawal from the February 12, 2014, Town Council Meeting, Per Letter Dated February 4, 2014, from Maura A. Ziska.

John S. Page Director of Planning, Zoning & Building

C. Other

1. Items Related to The Breakers Hotel Planned Unit Development (PUD)

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(1) Application by The Breakers Palm Beach, Inc., to amend the PUD-A (Breakers Hotel and Beach Club) by Adding a 4,559 (4,190 net) square foot, Second Floor Addition above the Beach Club Restaurant with an Associated Elevator.

RESOLUTION NO. 11-2014 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending Resolution 70-10, The Breakers Planned Unit Development (PUD-A), By Adding 4,559 Square Feet Of Accessory Hotel Space To The Beach Club For Construction Of Fitness Center Facility.

(2) **SPECIAL EXCEPTION #1-2014 WITH SITE PLAN REVIEW** The application of The Breakers Palm Beach, Inc.; relative to property commonly known as 1 South County Road; described as All of that plat of Breakers Row Plat No. 1 Re-Plat, recorded in Plat Book 46, Pages 188 through 190, Public Records of Palm Beach County; located in the PUD-A Zoning District. The applicant is requesting approval for construction projects involving accessory hotel uses including the following: The construction of a handicapped beach access structure (ramp) south of the main hotel seawall. This ramp is a replacement for a similar structure which was destroyed by a hurricane. The replacement of the existing 1,588 sq. ft. pavilion on the second floor (Ocean Terrace) of the Beach Club with a 4,559 sq. ft. structure (4,190 sq. ft. under air condition) to be used for a proposed relocated fitness center. The fitness center is currently on the first floor of the Beach Club. Existing spa functions on the first floor will be expanded into that space. The second story fitness center addition will be no higher than the existing pavilion on the Ocean Terrace, which it will replace. Improvements associated with the Beach Club are a proposed new elevator, a relocated building entrance on the north side of the building, and renovation of the courtyard on the east side of the building. Except for the new

elevator and the courtyard renovations, the changes to the beach club building will take place within the foot print (foundation) of the existing building. No variances are requested. [Attorney: James M. Crowley]

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

2. Consideration of Zoning Study Items

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

3. Instructing Town Staff to obtain a proposal from the Town's Landmarks consultants to place the entire five acre area on Royal Poinciana Way and Sunset Ave that make up the PUD-5 area on the National Register of Historic Places and designate it as a Historic District. The Staff should further explore the extent to which property owners will be eligible for Federal Tax Incentives equivalent to 20% income tax credits, and local real estate tax abatements on qualified restoration of properties within the District.

Michael J. Pucillo, Town Councilmember

IX. ANY OTHER MATTERS

X. ADJOURNMENT

PLEASE TAKE NOTE:

Note 1: No written materials received after 5:00 p.m. on the Thursday immediately prior to a monthly Town Council meeting will be included in the back-up binders distributed to the Mayor and Town Council in preparation for that meeting. Written materials received after 5:00 p.m. on Thursday will be separately distributed to the Mayor and Town Council; however, depending upon the length of the materials, the time of submittal, and other circumstances, the Mayor and Town Council may not be able to read and consider such late submittals prior to acting upon the policy matter(s) which they address.

Note 2: The progress of this meeting may be monitored by visiting the Town's website (townofpalmbeach.com) and clicking on "Meeting Audio" in the left column. If you have questions regarding that feature, please contact the Office of Information Systems (561) 227-6315. The audio recording of the meeting will appear within 24 hours after the conclusion of the meeting.

Note 3: If a person decides to appeal any decision made by this Council with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings. For such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Note 4: Disabled persons who need an accommodation in order to participate in the Town Council Meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.

Note 5: Items listed on the Consent Agenda will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that any item (s) be moved to the Regular Agenda and individually considered.

Note 6: A summary of the actions taken at Town Council meetings can be viewed on the

Town's website after 5 p.m. on the Friday following the Town Council meeting.

PROCEDURES FOR PUBLIC PARTICIPATION

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

PUBLIC HEARINGS:

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

COMMUNICATIONS FROM CITIZENS:

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

OTHER AGENDA ITEMS:

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

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

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 12, 2014

Section of Agenda

Public Hearings

Agenda Title

RESOLUTION NO. 25-2014 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 315 Tangier Avenue Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.

Presenter

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

Supporting Documents

- [Memorandum dated January 29, 2014 from John S. Page, Director of Planning, Zoning and Building](#)
- [Resolution No. 25-2014](#)
- [Designation Report for 315 Tangier Avenue](#)
- [Excerpt from the Minutes of the Landmarks Preservation Commission meeting of January 16, 2014](#)
- [Applicable Code](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 12, 2014

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Landmark Designation of 315 Tangier Avenue
Resolution No. 25 – 2014

Date: January 29, 2014

STAFF RECOMMENDATION

Staff recommends ratification of the property known as 315 Tangier Avenue as a Town landmark.

LANDMARKS PRESERVATION COMMISSION RECOMMENDATION

At the Public Hearing for Designation held during the January 16, 2014 meeting of the Landmarks Preservation Commission, the Commission voted unanimously to recommend to the Town Council that the above mentioned property be designated as a landmark. In accordance with Section 54-164 (a) (11) of Chapter 54 of the Town of Palm Beach Code of Ordinances, the Town Council shall hold a public hearing within ninety (90) days of the final decision of the Landmarks Commission to consider ratification of the Commission's recommendation.

GENERAL INFORMATION

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

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

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

Landmark Designation of 315 Tangier Avenue

Resolution No. 25 - 2014

January 29, 2014

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OWNER CONSENT

Please be advised that the property owners support the landmark designation of his property.

FUNDING/FISCAL IMPACT

No direct funding is needed for this action.

COMPREHENSIVE PLAN

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

TOWN ATTORNEY REVIEW

Please be advised that the Town Attorney has reviewed Resolution No. 25 - 2014 relating to 315 Tangier Avenue, and has approved it as to legal form and sufficiency.

attachments

JSP:cmd

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

RESOLUTION NO. 25 - 2014

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY KNOWN AS 315 TANGIER AVENUE MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH; AND DESIGNATING SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

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

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

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

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

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

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

Section 3. The landmark herein designated, pursuant to the provisions of Ordinance No. 2-84, and the provisions of the Town Code described herein, is known as **315 Tangier Avenue** and the property to be landmarked is legally described as follows:

THE EAST 84 FEET OF LOT 1A, TANGIER ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 12, PAGE 16, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA

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

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

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this _____ day of _____ 2014.

Gail L. Coniglio, Mayor

, Town Council President

, President Pro Tem

, Town Council Member

ATTEST:

, Town Council Member

Susan A. Owens, MMC, Town Clerk

, Town Council Member

315 Tangier Avenue



DESIGNATION REPORT

January 16, 2014

Landmark Preservation Commission

Palm Beach, Florida

DESIGNATION REPORT

315 Tangier Avenue

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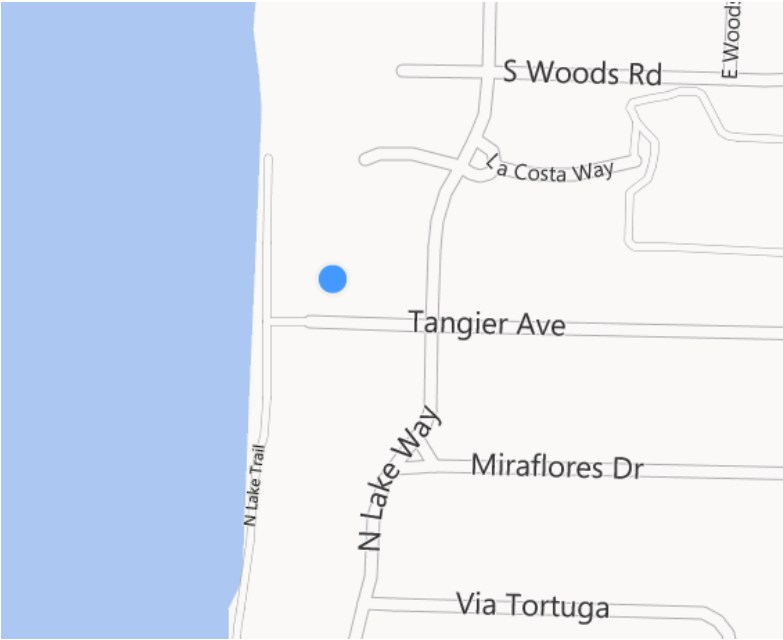
Report produced by Murphy Stillings, LLC

I. General Information

Location:	315 Tangier Avenue Palm Beach, Florida
Date of Construction:	1939
First Owner:	Palm Beach Modern Homes, Inc.
Architect:	John L. Volk
Builder/Contractor:	Arnold Construction Company
Present Owner:	Robin Remick and Brian Wille
Present Use:	Residential
Present Zoning:	R-B
Palm Beach County Tax Folio Number:	50-43-43-14-01-000-0011
Current Legal Description:	Tangier Estates East 84 Feet of Lot 1-A

II. Location Map

315 Tangier Avenue



III. Architectural Information

The residence at 315 Tangier Avenue is a very good example of the Neo-Classical Revival style of architecture as interpreted by John L. Volk in 1939. Neo-Classical Revival style architecture refers to a style based on forms following classical principles of design from Greek and Roman architecture and later developed by Andrea Palladio during the Italian Renaissance. John Volk's design of 315 Tangier Avenue is a variant of the style that is sometimes called Southern Colonial. Southern Colonial houses originated from the Southern plantations in the 18th and 19th century. They embody a fusion of Neo-Classical Revival with Early Colonial.



The design of 315 Tangier Avenue is representative of the Neo-Classical Revival style in its classical details and symmetrically balanced form. The main façade's two-story full-façade porch is the most prominent feature of Volk's design. The porch is supported by five columns supporting a shed roof. The columns have Corinthian capitals with non-fluted shafts supporting an entablature containing dentil molding. A second-story balcony embellished with an ornate wrought iron railing and carved brackets below is located within the porch. The main façade of the brick fronted residence is divided into four bays with vertical 6/6 and 8/8 double-hung sash windows and multi-light French doors. The windows and doors are framed by colonial shutters. The entrance is located in the second bay with a classical surround and transom above the door.



Detail of Porch Columns, Entablature & Railing



Entrance

The central block of the residence has a side facing gable roof surfaced with composition shingles. While the main façade is surfaced with brick, the remaining facades are surfaced with horizontal wood siding. A two-story, two-car garage wing, located on the west side of the home, is set back significantly from the front plane of the residence. Four bow windows, one in each of the library, living room, dining room and loggia, are on the side and rear facades. The interior of the residence centers around a curving staircase – a Volk signature.



Garage Wing



Bow Window on West Facade

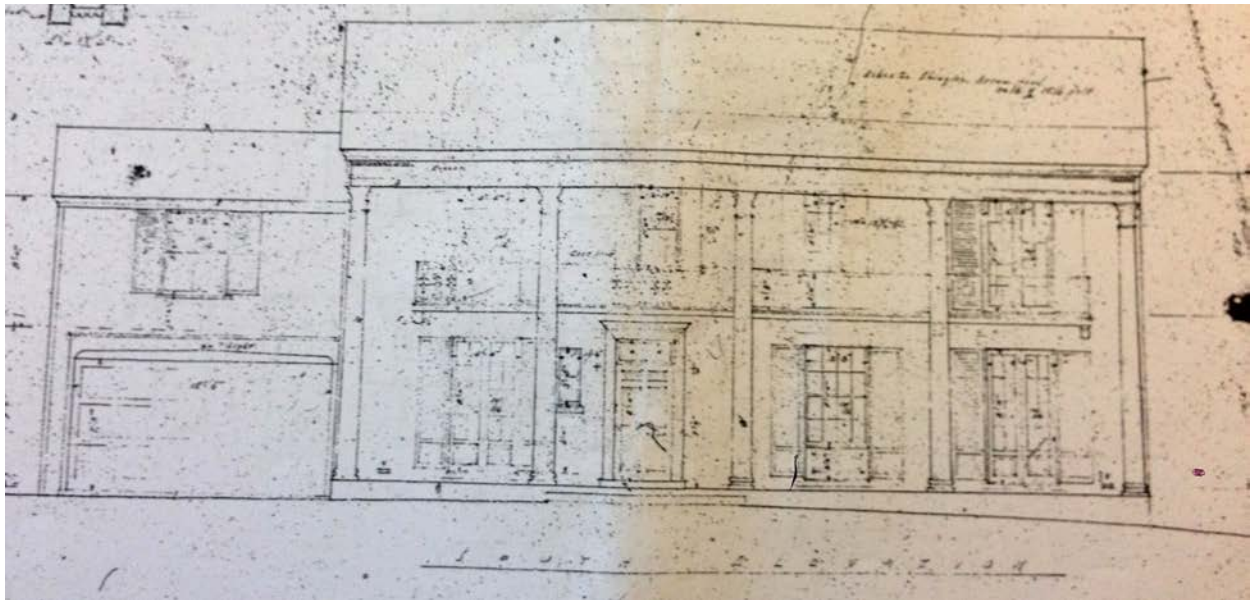
From its construction in 1939 until 2005, there were only minor alterations done to the residence. These included upgrading the electrical and plumbing, installation of air conditioning, replacing the asbestos roof shingles with composition shingles, and installation of a patio and pool.¹

¹ Town of Palm Beach Building Permits.

In 2004, the property was purchased by Lee Bierly and Christopher Drake. The owners' interior design firm of Bierly-Drake Associates oversaw the renovation of the property and the construction of an addition to the rear of the residence in 2005. The 144 square foot addition consisted of a family room, breakfast area and covered terrace.² In 2007, the Preservation Foundation of Palm Beach awarded 315 Tangier Avenue The Ballinger Award. The Ballinger Award is bestowed every year to an outstanding restoration or new building that best exemplifies the tradition of Palm Beach architecture. As stated in the Ballinger Award ceremony presentation, "The restoration carefully recreated the spirit of Volk's original interiors and exteriors. It intentionally focused on thorough repairs and changed none of the essential features of the building's design."³

IV. Historical Information

The house at 315 Tangier Avenue was designed by John L. Volk and built by the Arnold Construction Company of West Palm Beach for Palm Beach Modern Homes, Inc. The first residents of the home were Mr. and Mrs. Ross M. Koen, who lived in the home for seven years. The residence was then purchased by the Quakenbush's who lived there for twenty-two years, from 1948-1970.



Original Architectural Drawing by John L. Volk

² Town of Palm Beach Building Permits.

³ Ballinger Award Presentation Notes 2007 in the Preservation Foundation of Palm Beach, 315 Tangier Avenue file.

The great expectations of the Florida Land Boom were conclusively ended by the 1929 stock market crash and the Great Depression. Palm Beach had established itself as a leading American resort and its development continued but without some of the magnificent excesses of the earlier era.⁴ The desire for changes in architectural design reflected the shifting economic times, resulting in buildings with cleaner lines and greater symmetry. Neo-Classical Revival, British Colonial, and Regency style homes were introduced and often used instead of the Mediterranean style designs so popular in the 1920s. Volk's design for 315 Tangier Avenue reflects this change in the architectural development of Palm Beach.

John Volk's design for 315 Tangier Avenue is a unique residence in Palm Beach. The design was inspired by the plantation home "Tara" made famous in the 1939 film *Gone with the Wind*. Prior to designing the residence, Volk had visited the movie set to see his friend Leslie Howard, who played the character Ashley Wilkes.⁵ The Southern Colonial design of 315 Tangier Avenue is reminiscent of the plantation home in the 1939 Academy Award winning movie. Lillian Jane Volk had stated that the residence's design was different than John Volk's other designs on Palm Beach, noting that there was only home with a similar design on the island.⁶

V. Architects Biography

John L. Volk

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

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

⁴ Polly Anne Earl, Palm Beach Architecture: An Architectural Legacy, New York: Rizzoli International Publications, p. 18.

⁵ "Southern Charmer," Palm Beach Daily News 9 December 2007 and confirmed by Lory Volk of the John L. Volk Foundation.

⁶ "Southern Charms," Palm Beach Daily News 6 March 2009. The residence Mrs. Volk spoke of being similar in design was 1102 North Ocean Boulevard, which was landmarked in 1990.

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

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

VI. Statement of Significance

The residence at 315 Tangier Avenue is a very good example of the Neo-Classical Revival style of architecture as interpreted by John L. Volk in the Town of Palm Beach during the late 1930s. This Neo-Classical residence was a departure from the large estates of the Boom years of the 1920s and reflects the changing times and styles of the 1930s.

VII. Criteria For Designation

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

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

The design of 315 Tangier Avenue by John Volk in 1939 is representative of the Neo-Classical Revival style in its classical details and symmetrically balanced form. Volk's design inspiration, "Tara" from the 1939 movie *Gone with the Wind*, is evident in the residence's architecture, in particular, the two-story porch with full height columns.

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

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

VIII. Selected Bibliography

Curl, Donald. Palm Beach County: An Illustrated History. Northridge, California: Windsor Publications, Inc. 1985.

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

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

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

Preservation Foundation of Palm Beach, 315 Tangier Avenue file.

“Southern Charmer,” Palm Beach Daily News 9 December 2007.

“Southern Charms,” Palm Beach Daily News 6 March 2009.

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

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

Town of Palm Beach. Building Permits, 1939 – present.

West Palm Beach City Directories. Asheville, NC: Florida-Piedmont Directory Company, 1938-1989.

IX. Florida Master Site File Form



HISTORICAL STRUCTURE FORM

Electronic Version 1.1.0

Site # PB04410
 Recorder # Jane S. Day
 Field Date 11/1/2010
 Form Date 12/9/2010
 Form No 201011
 Form No = Field Date (YYYYMM)

First Site Form Recorded for this Site? NO

GENERAL INFORMATION

Site Name (address if none) Mary Ford, House Multiple Listing (DHR only) _____
 Other Names _____ >> _____
 Survey or Project Name Palm Beach Historic Sites Survey, Phase V Survey# _____
 National Register Category Building(s)

LOCATION & IDENTIFICATION

Address _____

Street No.	Direction	Street Name	Street Type	Direction Suffix
<u>315</u>		<u>Tangier</u>	<u>Avenue</u>	

 Cross Streets (nearest/ between) North Lake Way & North Lake Trail
 City / Town (within 3 miles) Town of Palm Beach In Current City Limits? YES
 County Palm Beach Tax Parcel #(s) 50-43-43-14-01-000-0011
 Subdivision Name Tangier Estates Block _____ Lot 1-A
 Ownership Private Individual
 Name of Public Tract (e.g., park) _____
 Route to (especially if no street address) On the north side of Tangier Avenue between North Lake Way and North Lake Trail

MAPPING

USGS 7.5' Map Name _____ Publication Date _____ >> PALM BEACH;1986
 Township: _____ Range: _____ Section: _____ 1/4 section: _____ >> 43S ;43E ;14;UNSP
 Irregular Section Name: _____
 Landgrant _____
 UTM: Zone _____ Easting _____ Northing _____
 Plat or Other Map (map's name, location) _____

DESCRIPTION

Style Neo-Classical Revival Other Style _____
 Exterior Plan Irregular Other Exterior Plan _____
 Number of Stories 2
 Structural System(s) _____ >> Masonry - General
 Other Structural System(s) _____
 Foundation Type(s) _____ >> Continuous
 Other Foundation Types _____
 Foundation Material(s) _____ >> Concrete Block
 Other Foundation Material(s) _____
 Exterior Fabric(s) _____ >> Brick
 Other Exterior Fabric(s) wood
 Roof Type(s) _____ >> Gable
 Other Roof Type(s) _____
 Roof Material(s) _____ >> Composition shingles
 Other Roof Material(s) _____
 Roof Secondary Structure(s) (dormers etc) _____ >> _____
 Other Roof Secondary Structure(s) _____
 Number of Chimneys 1
 Chimney Material Brick
 Other Chimney Material(s) stucco on exterior
 Chimney Location(s) central

HISTORICAL STRUCTURE FORM

8PB04410

DESCRIPTION (continued)

Window Descriptions 6/6, 8/8 DHS, French doors, fixed

Main Entrance Description (stylistic details) on the south facade under the 2nd floor balcony with a transom above

Porches: #open 1 #closed 0 #incised 1 Location(s) entry - s, 2nd floor balcony - s

Porch Roof Type(s) Flat

Exterior Ornament decorative metal railings, classical columns, shutters

Interior Plan Unknown

Other Interior Plan _____

Condition Good

Structure Surroundings

Commercial: NONE of this category

Residential: ALL this category

Institutional: NONE of this category

Undeveloped: NONE of this category

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

Archaeological Remains (describe): none observed

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

Narrative Description (optional) _____

HISTORY

Construction year 1939

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

Builder (last name first): Arnold Construction

Changes in Locations or Conditions

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

Structure Use History

Use _____ Year Use Started _____ Year Use Ended _____ >> Private residence; 1939;

Other Structure Uses _____

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

RESEARCH METHODS

Research Methods _____ >> Examine local property records

Other research methods _____

SURVEYOR'S EVALUATION OF SITE

Potentially Eligible for a Local Register? YES

Name of Local Register if Eligible Town of Palm Beach Landmark

Individually Eligible for National Register? INSUFF. INFO

Potential Contributor to NR District? NO

Area(s) of historical significance _____

>> Community planning & development

Other Historical Associations _____

Explanation of Evaluation (required) This is a fine example of the Neo-Classical Revival style by John Volk. It is worthy of local designation.

HISTORICAL STRUCTURE FORM

8PB04410

DOCUMENTATION (Photos, Plans, etc.)

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

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

RECORDER INFORMATION

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

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

Cultural Resource Type: <u>SS</u> Electronic Form Used: <u>8110</u> Form Type Code: <u>NORM</u> Form Quality Ranking: <u>NEW</u> Form Status Code: <u>SCAT</u> Supplement Information Status: <u>NO SUPPLEMENT</u> Supplement File Status: <u>NO SUPPLEMENT FILE</u> Form Comments: _____ _____ _____	SHPO's Evaluation of Resource _____ Date _____ FMSF Staffer: _____ Computer Entry Date: <u>7/5/2004</u>
--	---

REQUIRED PAPER ATTACHMENTS

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

EXCERPT FROM THE MINUTES OF THE LANDMARKS PRESERVATION COMMISSION
MEETING OF JANUARY 16, 2014

Item 2: 315 Tangier Avenue

Owner: Robin A. Remick & Brian C. Wille

Mrs. Delp verified that proof of publication and proper legal service were achieved with regard to this hearing.

PRESENTATION BY: Emily Stillings, Murphy Stillings LLC, Staff Historic Preservation Consultants

Ms. Stillings testified to the architect, architecture and history relative to this 1939 residence designed by John Volk in the Neo-Classical Revival style, which won the Preservation Foundation's Ballinger award in 2007. She stated that this residence meets the following criteria for designation:

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

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

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

MOTION SECONDED BY MS. TOWNSEND.

MOTION CARRIED UNANIMOUSLY.

Commission comments were very enthusiastically in support of the designation of this property.

MOTION BY MR. FELDKAMP THAT THE PROPERTY AT 315 TANGIER AVENUE BE RECOMMENDED TO THE TOWN COUNCIL FOR DESIGNATION AS A LANDMARK OF THE TOWN OF PALM BEACH, AND THAT THE CRITERIA, AS PRESENTED, BE MADE PART OF THE RECORD.

MOTION SECONDED BY MRS. ALBARRAN.

MOTION CARRIED UNANIMOUSLY.

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

ARTICLE IV. - DESIGNATION PROCEDURE

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

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

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

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

Sec. 54-165. - Voluntary restrictive covenants.

Secs. 54-166—54-195. - Reserved.

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

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

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

(Code 1982, § 16-38)

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

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

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

(Code 1982, §§ 16-38.1, 16-39)

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

The commission has the power to:

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

(Code 1982, § 16-42)

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

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

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

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

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

(Code 1982, § 16-43)

Sec. 54-165. - Voluntary restrictive covenants.

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

(Code 1982, § 16-48)

Secs. 54-166—54-195. - Reserved.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 12, 2014

Section of Agenda

Public Hearings

Agenda Title

RESOLUTION NO. 26-2014 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 267 Atlantic Avenue Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.

Presenter

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

Supporting Documents

- [Memorandum dated January 29, 2014 from John S. Page, Director of Planning, Zoning and Building](#)
- [Resolution No. 26-2014](#)
- [Designation Report for 267 Atlantic Avenue](#)
- [Excerpt from the Minutes of the Landmarks Preservation Commission meeting of January 16, 2014](#)
- [Applicable Code](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 12, 2014

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Landmark Designation of 267 Atlantic Avenue
Resolution No. 26 – 2014

Date: January 29, 2014

STAFF RECOMMENDATION

Staff recommends ratification of the property known as 267 Atlantic Avenue as a Town landmark.

LANDMARKS PRESERVATION COMMISSION RECOMMENDATION

At the Public Hearing for Designation held during the January 16, 2014 meeting of the Landmarks Preservation Commission, the Commission, by a 6-1 vote, voted to recommend to the Town Council that the above mentioned property be designated as a landmark. In accordance with Section 54-164 (a) (11) of Chapter 54 of the Town of Palm Beach Code of Ordinances, the Town Council shall hold a public hearing within ninety (90) days of the final decision of the Landmarks Commission to consider ratification of the Commission's recommendation.

GENERAL INFORMATION

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

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

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

Landmark Designation of 267 Atlantic Avenue

Resolution No. 26 - 2014

January 29, 2014

Page 2

OWNER CONSENT

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

FUNDING/FISCAL IMPACT

No direct funding is needed for this action.

COMPREHENSIVE PLAN

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

TOWN ATTORNEY REVIEW

Please be advised that the Town Attorney has reviewed Resolution No. 26 - 2014 relating to 267 Atlantic Avenue, and has approved it as to legal form and sufficiency.

attachments

JSP:cmd

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

RESOLUTION NO. 26 - 2014

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY KNOWN AS 267 ATLANTIC AVENUE MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH; AND DESIGNATING SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

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

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

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

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

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

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

Section 3. The landmark herein designated, pursuant to the provisions of Ordinance No. 2-84, and the provisions of the Town Code described herein, is known as **267 Atlantic Avenue** and the property to be landmarked is legally described as follows:

LOTS 73 AND 74 (LESS THE SOUTH 5 FEET THEREOF) ORANGE GROVE PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 5, PAGE 97, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

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

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

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this _____ day of _____ 2014.

Gail L. Coniglio, Mayor

, Town Council President

, President Pro Tem

, Town Council Member

ATTEST:

, Town Council Member

Susan A. Owens, MMC, Town Clerk

, Town Council Member

267 Atlantic Avenue



DESIGNATION REPORT

January 16, 2013

Landmark Preservation Commission

Palm Beach, Florida

DESIGNATION REPORT

267 Atlantic Avenue

Table of Contents

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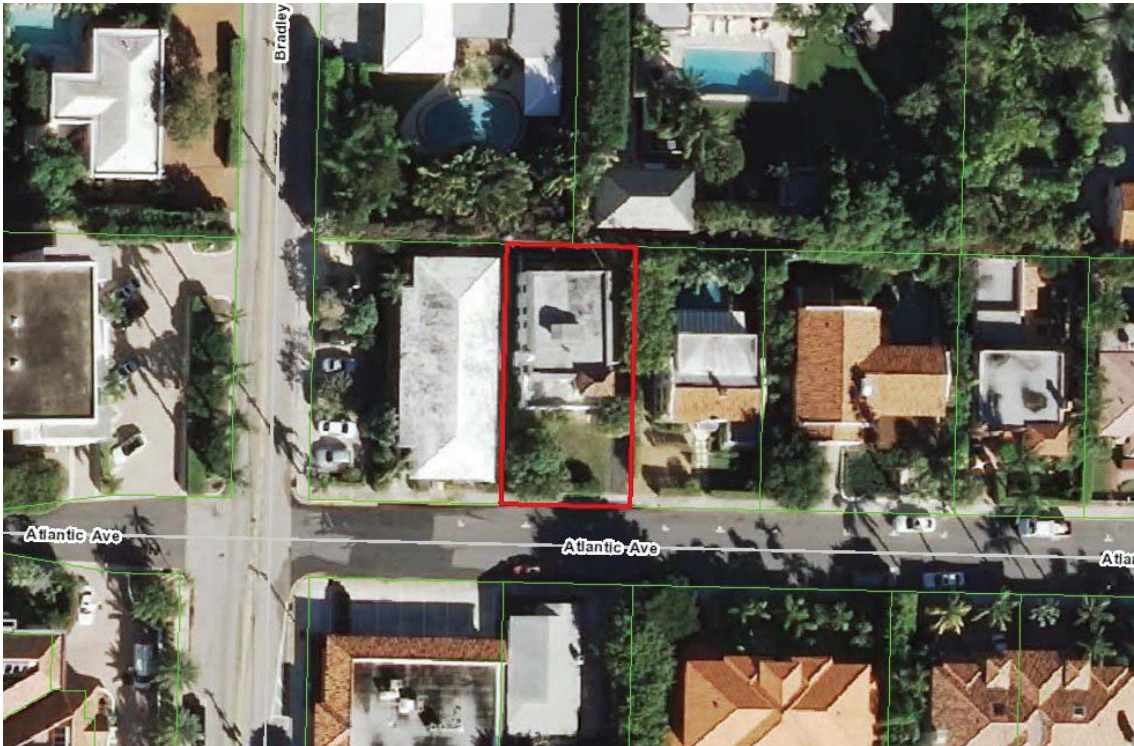
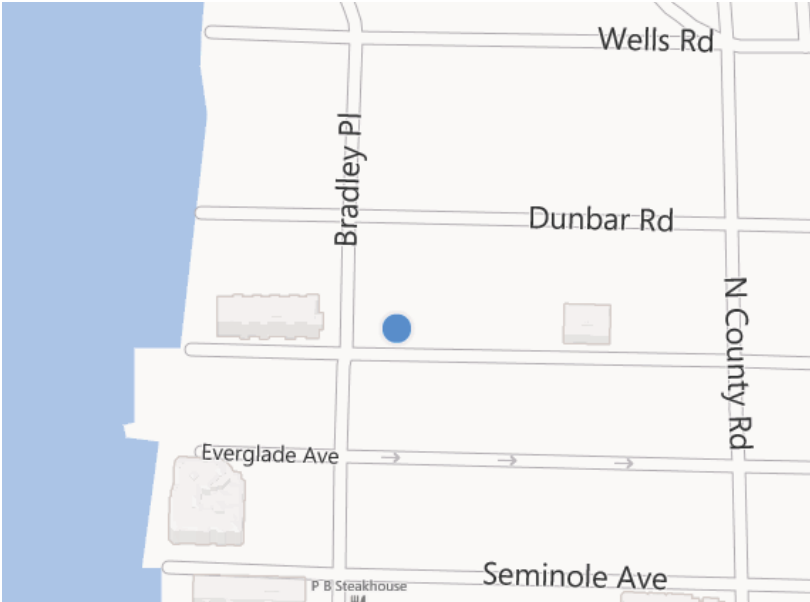
Report produced by Murphy Stillings, LLC

I. General Information

Historic Name:	Villa Van
Location:	267 Atlantic Avenue Palm Beach, Florida
Date of Construction:	1923 - 1924
First Owner:	Elwood B. Voorhees
Architect:	None Listed; Likely Builder Designed and Constructed
Builder/Contractor:	Theodore Eissfeldt
Present Owner:	Virginia E. Dadey
Present Use:	Multi-Family Residential
Present Zoning:	RC
Palm Beach County Tax Folio Number:	50-43-43-15-03-000-0730
Current Legal Description:	Orange Grove Park Lots 73 & 74

II. Location Map

267 Atlantic Avenue



III. Architectural Information

The house at 267 Atlantic Avenue in the Orange Grove Park subdivision was constructed by Theodore Eissfeldt in 1923-1924 during the Palm Beach Land and Housing Boom. The house's two-story tower with ornate cast stone door surrounds and medallions, clay barrel tile roof and rough stucco are traditional features of the Mediterranean Revival style while the parapet on the foremost façade of the front porch is more evocative of the Mission Revival style. These forms and features, however, cover what was originally a wood shingled frame house.

Today the house at 267 Atlantic Avenue is a two-story wood frame structure covered with rough stucco. The first story features an enclosed porch with large fixed arched windows and a medallion in the center of the Mission style parapet. On the second story, the tower extends outward from the plane of the building and includes a door leading out to the deck with a decorative cast stone surround and cast stone medallions above. The roof of the tower is covered with red clay barrel tiles while the pent roof to the west is covered with composition shingles. The roofline reflects the Mediterranean Revival style with narrow overhanging eaves and carved wooden brackets. Currently there is a varied fenestration of fixed, casement and double-hung windows on both the first and second stories. There is also a brick chimney on the west exterior wall of the house.



Tower

The house is currently undergoing renovation and when the stucco was removed from the front wall of the main dwelling a wall of wood shingles was exposed. Further investigation revealed additional areas of wood shingles and provided evidence that this house was originally a frame dwelling covered with wood shingles. It is not clear what the original style of the house was. The main block of the house has a boxy shape that suggests the form of an American Foursquare but there have been numerous alterations so it is difficult to verify a particular style. The existing framing indicates that the entrance to the original residence was offset to the east with a grouping of three double-hung windows to the west. There was a large arched opening on the front portion of the east wall where a door was later installed. The size is similar to the arches on the front façade of the porch and suggests that there was a one-story screened porch with arches at the entry and it may have spanned the full width of the house with a footprint similar to the existing porch.



Shingle Siding from Original Design and Fireplace Mantel

In 1928, a fire broke out at 267 Atlantic Avenue and caused significant damage. Charred wood framing from the fire still exists in portions of the house. On December 31, 1928, builder William Steinert took out a permit to “Rebuild residence destroyed by fire” and it was at this time that the house was transformed from a shingle clad frame dwelling to a Mediterranean Revival style house with Mission Revival detailing. By 1928, the Mediterranean Revival style was extremely popular in Palm Beach and it appears that the owners chose to rebuild their house in a style that had

become more fashionable. They also likely wanted their house to be more fireproof and chose to have the house covered in stucco rather than wood shingles. When the house was reconstructed after the fire the tower feature was added, the overhanging eaves and carved brackets installed, a full width screened porch built and many of the windows and doors replaced. The main portion of the current roof is flat but in the center there is a gabled structure enclosing a large house fan. This fan was likely in the attic of a hip or gable roof.



Main Façade Showing Gable Roof Over Fan

In 1973, the house at 267 Atlantic Avenue was altered again. In November of that year a variance was given to allow the single family dwelling to be converted into a two-family dwelling. Shortly thereafter the front porch was enclosed, various windows and doors were replaced, the rear porch was demolished and rear stairs were added. When the front porch was enclosed the original entryway was altered to provide two separate entries into the dwelling. There were also numerous interior alterations and partitions added to create a two-family dwelling. The only original interior decorative feature that remains is the ornate fireplace mantel along the west wall. The current owner plans to renovate the house in its current style and convert the building back to a single-family dwelling.

Architectural Styles

Many of the early cottages built in Palm Beach at the turn of the twentieth century were frame dwellings covered with various styles of wood shingles. Two of these still standing are Sea Gull Cottage and Duck's Nest. Many bungalows and other styles of frame houses constructed in Palm Beach in the early twentieth century were also covered with shingles, but unfortunately most of these have been demolished and few shingle clad frame dwell remain in Palm Beach.¹

Mediterranean Revival style architecture is an eclectic style incorporating architectural elements derived from the area around the Mediterranean Sea, especially Italy and Spain. The style is found most frequently in states that have a Spanish Colonial heritage, but its use gained national popularity after the Pan-American Exhibition held in San Diego in 1915. In Palm Beach, the style was first popularized in 1919 by Addison Mizner's design for the Everglades Club. The popularity of the style soared in the 1920s and remained a pervasive influence on building design until World War II.

The Mission Revival Style derived its name from the California masonry tradition in architecture established by Franciscan missionaries. The style became popular when it was used for the California Building at the Columbian Exposition in Chicago in 1893. By 1915, its use was widespread, and like the Mediterranean Revival style, was found most frequently in states with a Spanish Colonial heritage but oftentimes on a smaller scale.

III. Historical Information

The house at 267 Atlantic Avenue, originally known as Villa Van, was built in 1923-1924 for approximately \$5000 for Elwood B. (E.B) Voorhees of Atlantic City, New Jersey. E.B. Voorhees is only listed as living at 267 Atlantic Avenue in 1925 but Sarah "Van" Voorhees lived at Villa Van from 1924 until the mid 1930s. Prior to moving into Villa Van, Mrs. Sarah Voorhees lived at the Orange Grove Inn just a few buildings to the west on the northwest corner of Atlantic Avenue and Bradley Place. There is not

¹ Barbara D. Hoffstot, *Landmark Architecture of Palm Beach*, Third Edition, 1991. See section "In Memoriam" of the many shingle clad dwellings that have been demolished. See also Virginia & Lee McAlester, *A Field Guide to American Houses*. (New York: Alfred A. Knopf, 1988) Shingle Style, and why the Shingle Style does not apply to all shingle clad dwellings.

much know about the original owner Elwood B. Voorhees but newspaper articles from 1919 - 1921 report a number of transactions involving land he was selling in Floral Park, Orange Grove Park, and along the Lake Trail, indicating he was an early land dealer in Palm Beach.

In 1937, Villa Van was purchased by John and Marion Dewey. The Dewey's had moved to Palm Beach in the early 1920s from Canada. John Dewey received his dental license in 1921 and by 1923 he had a dental practice in West Palm Beach in the Newberry Pharmacy building. In 1926, he moved his practice to Clematis Street into the newly completed Comeau Building as one of the original tenants. During World War II, the Dewey's rented rooms to workers in need of housing and John Dewey traveled by ferry to his office in West Palm Beach as gas was strictly rationed. And on weekends during the War the family took in Royal Air Force sergeant pilots who were training at the British Flying Training School (BFTS #5) at Riddle Field near Clewiston.² These pilots liked to visit Palm Beach on the weekends and the Dewey's, being of English decent, welcomed them into their home.³ In 1950, the Dewey's left Atlantic Avenue and moved one block north into their newly built house at 257 Dunbar Road. Michael Kaften purchased 267 Atlantic Avenue and lived there from 1952 until 1963. At this time the house was no longer listed as Villa Van. Between 1964 and 1970 various people resided in the house. In 1971 and 1972, the house was listed as vacant. In 1973, the owner, Barbara McLean Knaster, converted the residence into a two-family dwelling. It was likely rented thereafter and over the years fell into great disrepair.

V. Architects Biography

² In 1941, British Prime Minister Winston Churchill made an urgent appeal to the United States to provide pilot training for defense against a superior German air power. The Royal Air Force Cadets were unable to train in England because of horrible weather conditions and Nazis shooting them down. President Franklin Roosevelt responded by implementing the Lend Lease Act, which called for the construction of six British Flying Training Schools, including #5 at Riddle Field near Clewiston, Florida. More than 1,700 Royal Air Force Cadets trained there and more than 1,300 Cadets earned their wings at Riddle Field and returned to England to fight the Nazis. The present-day Airglades Airport was built after the war over the runways of Riddle Field.

³ Telephone conversation on December 9, 2013, with Jack Dewey, son of John and Marion Dewey. Jack moved into the house when he was four years old and lived there until he was seventeen. He had very fond memories of living at 267 Atlantic Avenue and provided the information about his family's heritage, his father's dental practice and Palm Beach and his family during the War years. Jack, his son Brian and numerous relatives all became dentists and he and his son continue to have a dental practice in West Palm Beach.

There is no architect listed on the Palm Beach building permit for 267 Atlantic Avenue and therefore, like many Palm Beach buildings constructed in the early twentieth century, it was most likely designed and built by the listed contractor Theodore Eissfeldt.

In the 1920 City Directory, Theodore Eissfeldt was listed as an architect. Following that, he was listed as a contractor for many years, working in Palm Beach, Lake Worth and West Palm Beach. Some of his Palm Beach commissions included 305 Seabreeze Avenue in 1923 and 409 Seabreeze Avenue and 337 Brazillian Avenue in 1924.⁴ In 1925, Eissfeldt began the construction of thirty homes in West Palm Beach's Northwood Hills neighborhood, including his own home at 3815 Eastview Avenue. In 1926, he is listed in the City Directory as President of High Mound Construction Company. By 1932, Eissfeldt was president of Northwood Millworks, Inc., and from 1935-1942 he was president of Northwood Builder's Supply Company.

William Steinert, the builder listed on the December 31, 1928 "Rebuilding residence destroyed by fire" building permit is not listed in any of the 1920s City Directories and no information has been found about him.

VI. Statement of Significance

The house at 267 Atlantic Avenue is an interesting example of a Mediterranean and Mission Revival style residence originally constructed as a wood shingle covered frame dwelling during the Palm Beach Land Boom of the 1920s. It's rebuilding and altered style occurred after a fire destroyed part of the house in 1928.

VII. Criteria For Designation

⁴ The house at 337 Brazillian Avenue is currently Under Consideration for Landmark designation. Eissfeldt was a prolific builder in West Palm Beach. City of Palm Beach building permits have him listed as the builder for 701 Kanuga Drive (1921), 501 30th Street (1922), 415 30th Street, 419 30th Street and 412 33rd Street (1923), 4210 Washington Road and 2700 Broadway (1924), 338-340 Central Drive, 445 Roseland Drive, 3306, 3310, 3315, 3319, 3402, 3412, 3416, 3504, 3506, 3512, 3706, 3718, 3801, 3805, Greenwood Avenue, 3916 Westview, 953 29th Street, 824 32nd Street, 820, 822, 823 33rd Street, 825 34th Street, 800 35th Street, 505 36th Street, 937, 940, 941, 944, 947, 948, 952, 953, 956, 957, 960, 962, 964, 965, 969 and 970 39th Court and 3511 and 3815 Eastview (1925).

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

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

The house at 267 Atlantic Avenue was constructed during the Florida Boom Time Era of the 1920s. It was a time of significant population growth in Palm Beach and many houses of varying sizes and styles were built to fulfill the growing demand. The original owner, Elwood B. Voorhees, was an early land dealer in Palm Beach and was active in land sales in the Floral Park and Orange Grove Park subdivisions. The Dewey family, who owned the dwelling from 1937-1950, responded to the growing housing demands during World War II by renting rooms to workers in need of lodging and hosting Royal Air Force sergeant pilots on the weekends. In addition, the Dewey family has had a dental practice in West Palm Beach serving clients in Palm Beach and the surrounding area for over ninety years. Also a reflection of the economic times, in 1973, the single-family dwelling was converted to a two-family dwelling reflecting the increasing demand for multi-family residences in the neighborhood.

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

The house at 267 Atlantic Avenue is a good example of Mediterranean and Mission Revival style architecture popularized in Palm Beach during the Land Boom of the 1920s. The building embodies distinctive Mediterranean Revival characteristics including a tower feature with a clay barrel tile roof and ornate cast stone door surrounds and medallions, slight overhanging eaves with carved brackets, arched openings and a Mission style parapet. The house also has remnants of its original style as a shingle clad frame dwelling. These features present a specimen inherently valuable for study and thereby fulfill criterion (3) of the Town of Palm Beach Landmarks Preservation Ordinance.

VIII. Selected Bibliography

Curl, Donald W. Palm Beach County: An Illustrated History. Northridge, California: Windsor Publications, Inc., 1987.

Dewey, Jack. Telephone Conversation regarding remembrances from living at 267 Atlantic Road. December 9, 2012.

The Historical Society of Palm Beach County. Files with information on Theodore Eissfeldt, Elwood B. Voorhees, Orange Grove Park Subdivision, and Northwood Hills.

Hoffstot, Barbara D. Landmark Architecture of Palm Beach. Third Edition. Pittsburgh, Pennsylvania: Pittsburgh History & Landmark's Foundation. 1991

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

The Palm Beach Daily News and Palm Beach Post. Archived Articles

Preservation Foundation of Palm Beach. 267 Atlantic Avenue file; Information on Theodore Eissfeldt.

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

Town of Palm Beach. Building Permits, 1923– 2013.

West Palm Beach City Directories. Asheville, NC: Florida-Piedmont Directory Company, 1918-1973.

West Palm Beach Historic Preservation Staff. Northwood Hills Expanded Nomination Documentation.

IX. Florida Master Site File Form



HISTORICAL STRUCTURE FORM

Electronic Version 1.1.0

Site # PB06310
 Recorder # Jane S. Day
 Field Date 7/20/2010
 Form Date 9/16/2010
 Form No 201007
 Form No = Field Date (YYYYMM)

First Site Form Recorded for this Site? NO

GENERAL INFORMATION

Site Name (address if none) Paolo Bergmann Trust, House Multiple Listing (DHR only) _____
 Other Names _____ >> _____
 Survey or Project Name Palm Beach Historic Sites Survey, Phase V Survey# _____
 National Register Category Building(s)

LOCATION & IDENTIFICATION

Address

Street No.	Direction	Street Name	Street Type	Direction Suffix
<u>267</u>		<u>Atlantic</u>	<u>Avenue</u>	

Cross Streets (nearest between) Bradley Place & North County Rd
 City / Town (within 3 miles) Town of Palm Beach In Current City Limits? YES
 County Palm Beach Tax Parcel #(s) 50-43-43-15-03-000-0730
 Subdivision Name Orange Grove Park Block _____ Lot 73, 74
 Ownership Private Individual
 Name of Public Tract (e.g., park) _____
 Route to (especially if no street address) On the north side of Atlantic Avenue between Bradley Place and North County Rd

MAPPING

USGS 7.5' Map Name _____ Publication Date _____ >> PALM BEACH;1946
 Township: _____ Range: _____ Section: _____ 1/4 section: _____ >> 43S ;43E ;15;UNSP
 Irregular Section Name: _____
 Landgrant _____
 UTM: Zone _____ Easting _____ Northing _____
 Plat or Other Map (map's name, location) _____

DESCRIPTION

Style Mediterranean Revival Other Style _____
 Exterior Plan Irregular Other Exterior Plan _____
 Number of Stories 2
 Structural System(s) _____ >> Wood frame
 Other Structural System(s) Hollow clay tile
 Foundation Type(s) _____ >> Unspecified by recorder
 Other Foundation Types _____
 Foundation Material(s) _____ >> Unspecified
 Other Foundation Material(s) _____
 Exterior Fabric(s) _____ >> Stucco
 Other Exterior Fabric(s) _____
 Roof Type(s) _____ >> Flat
 Other Roof Type(s) hip on porch
 Roof Material(s) _____ >> Flat tile
 Other Roof Material(s) spanish tile on porch
 Roof Secondary Structure(s) (dormers etc) _____ >> _____
 Other Roof Secondary Structure(s) _____
 Number of Chimneys 1
 Chimney Material Brick
 Other Chimney Material(s) stucco on exterior
 Chimney Location(s) west exterior wall

Page 1 of 3

HISTORICAL STRUCTURE FORM

8PB06310

DESCRIPTION (continued)

Window Descriptions casement, fixed

Main Entrance Description (stylistic details) On the south facade with aluminum awning above

Porches: #open _____ #closed 1 #incised _____ Location(s) enclosed front entry - s

Porch Roof Type(s) flat

Exterior Ornament cast stone, exposed rafters, parapet, medallion

Interior Plan Unknown

Other Interior Plan _____

Condition Good

Structure Surroundings

Commercial: NONE of this category

Residential: ALL this category

Institutional: NONE of this category

Undeveloped: NONE of this category

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

Archaeological Remains (describe): none observed

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

Narrative Description (optional) _____

HISTORY

Construction year 1923

Architect (last name first): unknown

Builder (last name first): Eissfeldt, Theodore

Changes in Locations or Conditions

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

Structure Use History

Use _____ Year Use Started _____ Year Use Ended _____ >> Private residence; 1923;

Other Structure Uses _____

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

RESEARCH METHODS

Research Methods _____ >> Examine local property records

Other research methods _____

SURVEYOR'S EVALUATION OF SITE

Potentially Eligible for a Local Register? INSUFF. INFO

Name of Local Register if Eligible Town of Palm Beach Landmark

Individually Eligible for National Register? INSUFF. INFO

Potential Contributor to NR District? NO

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

Other Historical Associations _____

Explanation of Evaluation (required) This is a good example of the Mediterranean Revival style built in the 1920s. It is worthy of further study.

HISTORICAL STRUCTURE FORM

8PB06310

DOCUMENTATION (Photos, Plans, etc.)

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

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

RECORDER INFORMATION

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

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

Cultural Resource Type: <u>SS</u> Electronic Form Used: <u>8110</u> Form Type Code: <u>NCRM</u> Form Quality Ranking: <u>NEW</u> Form Status Code: <u>SCAT</u>	SHPO's Evaluation of Resource _____ Date _____
Supplement Information Status: <u>NO SUPPLEMENT</u> Supplement File Status: <u>NO SUPPLEMENT FILE</u>	FMSF Staffer: _____ Computer Entry Date: <u>7/25/2004</u>
Form Comments: _____ _____ _____	

REQUIRED PAPER ATTACHMENTS

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

EXCERPT FROM THE MINUTES OF THE LANDMARKS PRESERVATION COMMISSION
MEETING OF JANUARY 16, 2014

VIII. DESIGNATION HEARINGS:(10:46:04 a.m.)

Item 1: 267 Atlantic Avenue

Owner: Virginia E. Dadey

PRESENTATION BY: Janet Murphy, Murphy Stillings LLC, Staff Historic Preservation Consultant

Ms. Murphy testified to the architecture and history relative to this 1923/24 structure, Villa Van, designed in the Mediterranean Revival and Mission styles, which began as a single family dwelling, was converted to a two-family dwelling in 1973, and is now planned to revert to its original intent as a single family dwelling by the new owner. She stated that this property meets the following criteria for designation as a landmark of the Town of Palm Beach:

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

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

Ms. Murphy stated that the owner had brought this property forward for designation.

Mrs. Delp confirmed that proof of publication and proper legal service were achieved with regard to this hearing.

As Mrs. Albarran is the architect for the renovations of this property, she declared her continuing conflict and left the dais. (*Mr. Killian now voting*)

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

MOTION SECONDED BY MS. FAIRFAX.

MOTION CARRIED UNANIMOUSLY.

Most members offered comments in support of the designation. Mr. Feldkamp expressed his concerns about this property; stated that he will vote against the designation, though with full recognition that the designation will pass. He stated, "I do want the project to pass, and be designated. I just want the record to show that it's not a "slam dunk". Ms. Fairfax felt it was important for the commission to go on record for supporting a renovated project that started its life as one style and reflects the cultural shift at a certain time...there is an abundance of charm from the street...it reflects well on us as a commission that we wouldn't draw such a hard line and recognize that some of its drawbacks are part of its charm."

MOTION BY MR. STRAWBRIDGE THAT 267 ATLANTIC AVENUE BE RECOMMENDED TO THE TOWN COUNCIL FOR DESIGNATION AS A LANDMARK OF THE TOWN OF PALM BEACH, AND THAT THE CRITERIA, AS PRESENTED, BE MADE A PART OF THE RECORD.

MOTION SECONDED BY MS. TOWNSEND AND MS. FAIRFAX SIMULTANEOUSLY.

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

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

ARTICLE IV. - DESIGNATION PROCEDURE

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

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

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

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

Sec. 54-165. - Voluntary restrictive covenants.

Secs. 54-166—54-195. - Reserved.

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

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

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

(Code 1982, § 16-38)

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

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

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

(Code 1982, §§ 16-38.1, 16-39)

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

The commission has the power to:

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

(Code 1982, § 16-42)

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

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

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

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

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

(Code 1982, § 16-43)

Sec. 54-165. - Voluntary restrictive covenants.

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

(Code 1982, § 16-48)

Secs. 54-166—54-195. - Reserved.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 12, 2014

Section of Agenda

Appeals

Agenda Title

Appeal of ARCOM Decision #B-008-2014, 225 Indian Road, Per Letter dated January 23, 2014, from Maura Ziska, Esq.

Presenter

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

Supporting Documents

- [Memorandum dated January 29, 2014 from John S. Page](#)
- [Letter Dated January 23, 2014 from Maura Ziska](#)
- [ARCOM Presentation/Demolition Report from Roger Janssen](#)
- [Letter Dated January 14, 2014 from Maura Ziska](#)
- [Minutes of the Architectural Meeting January 22, 2014](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 12, 2014

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: ARCOM Appeal (B-008-2014)
Home Demolition
225 Indian Road

Date: January 29, 2014

STAFF RECOMMENDATION

Staff recommends that the Town Council consider and rule upon the appeal of David Frisbie, objecting to ARCOM's decision of January 22, 2014, deferring a decision upon the owner's request for demolition. The owner requests that the Town Council overrule ARCOM, thereby authorizing demolition to occur as soon as Town Code allows.

GENERAL INFORMATION

An existing home now occupies the property at 225 Indian Road. David Frisbie recently acquired the non-landmarked home with the intention of demolishing and building new. His application for demolition was heard by ARCOM on January 22 of this year. The subject appeal is specific only to "demolition" (not to proposed new architecture).

In order to provide the Council with a full understanding of the owners intent and the ARCOM action that occurred, some explanation of the January 22 ARCOM meeting is necessary. The Commission was faced with two back-to-back requests for "Demolition and New Residence" at 219 Indian Road and 225 Indian Road. The two abutting lots are both owned by members of the Frisbie family. Although the lots will remain legally separate from one another, it was announced that their collective intention is to create a family compound. As originally submitted to ARCOM, the two newly proposed homes were nearly identical to one another in appearance in the Cape Dutch architectural style and both required multiple variances. The applicant requested deferral of the proposed new home at 225 Indian Road prior to the ARCOM meeting. Per the applicant's attorney, the reason for the deferral is to allow for design revisions.

ARCOM first considered the application for demolition and new construction at 219 Indian Road (not the subject of this appeal). Demolition of the existing home was approved. There was considerable debate, however, relative to architecture of the proposed new home, which would eventually require Town Council approval of four variances relative to point of measurement for

height, point of measurement for cubic content ratio, overall height, and height of parapet on a pitched roof. There were letters of support and opposition to the new home. Several immediately abutting owners to the east side of the proposed home were present and spoke emphatically about their opposition, fearing that the home would loom over their properties and diminish neighborhood character. Commissioners themselves expressed concerns about the home's size, massing, and architectural details, leading to a final outcome of deferral until the month of February. During debate, the Zoning Administrator was also asked to explain the owners' intention of altering the shared property line separating the two parcels. He noted that it is proposed to enlarge one lot while diminishing the other, yet noted that no new lots were being created, that both satisfy area and width requirements, and that the proposed lot line alteration was legal.

Immediately following the contentious debate described above, the request for demolition at 225 Indian Road (the subject of this appeal) was introduced. The required demolition materials and application were in order and were presented by architect Roger Janssen. Several Commissioners voiced their reluctance to approve demolition of the existing two-story home, noting its beauty and the surrounding area. There was brief discussion and concern regarding the status of the property line to be relocated separating the two parcels as well as the anticipated large size of the new home (note once again that the owner requested deferral of new construction at the site until the February meeting). A motion to approve demolition failed 2-5. Commissioners then acted to defer further consideration of demolition until their February meeting.

Attorney Maura Ziska for David Frisbie, filed the attached letter of appeal to staff the following day. The appellant argues that ARCOM deviated from the criteria set forth in Town Code governing demolition, and requests that the Town Council approve demolition of the home at 225 Indian Road.

SPECIAL CONSIDERATIONS

ARCOM has been faced with demolition requests that members felt uncomfortable approving at both the December 2013 and the January 2014 meetings. In each instance, there was reluctance to approve destruction of homes that individual members believe fit nicely into the collective culture of Palm Beach. Staff is now in process of reviewing established Town procedures for securing demolition approvals, and will likely present alternative proposals to the Commission for feedback in February. It is not yet known what, if any, policy and/or ordinance changes to the process will require Town Council consideration.

Attachments

cc: Maura Ziska
John C. Randolph, Town Attorney
ARCOM Members

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, Counsel*

*Also admitted in New York

*Also admitted in Michigan

Esperanté

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

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA FACSIMILE AND EMAIL

January 23, 2014

Susan Owens, Town Clerk
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Notice of Appeal
Property Owner: 225 Indian Road, LLC
Arcom Review # B-008-2014
Property Address: 225 Indian Road, Palm Beach, FL

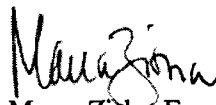
Dear Ms. Owens:

On behalf of David Frisbie, the Manager of 225 Indian Road, LLC, who is the property owner of 225 Indian Road, this notice of appeal is filed requesting the Town Council to approve the demolition of the existing residence that was presented to the Architectural Review Commission ("Arcom") on January 22, 2014 and deferred until the February meeting. The Arcom application for demolition was complete and included the report, the landscape plan, the survey, and photographs, as required. The house is not landmarked. After very little discussion, the reasons given by the commissioners were: "house is lovely" "crying shame to demolish house" "we are here to express our opinions about values of properties" "majority of commissioners don't believe the house should be demolished". None of the above reasons are legal grounds to deny or defer a request for demolition.

The basis for the appeal is that Arcom deviated from the criteria set forth in Section 18-205 of the Town of Palm Beach Code by not approving the proposed demolition which in essence is a denial of demolition of a residence that is NOT landmarked.

Based on the foregoing, the property owner respectfully requests the Town Council to approve the demolition that was presented to Arcom on January 22, 2014. Please place this matter on the February 12, 2014 Town Council agenda. Please call me if you have any questions with the foregoing. Thank you.

Sincerely yours,



Maura Ziska, Esq.

cc: David Frisbie, Manager of 225 Indian Road, LLC
Peter Elwell, Town Manager
John C. Randolph, Esq., Town Attorney
John Page, Director, Planning Zoning & Building

B-008-2014
ARCOM PRESENTATION
DEMOLITION OF EXISTING 2-STORY RESIDENCE

225 INDIAN ROAD

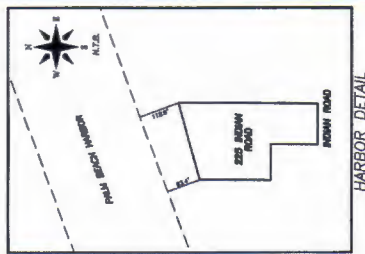
DAILEY JANSSEN ARCHITECTS, P.A.
& PARKER YANNETTE DESIGN GROUP, INC.

B-008 - 2013

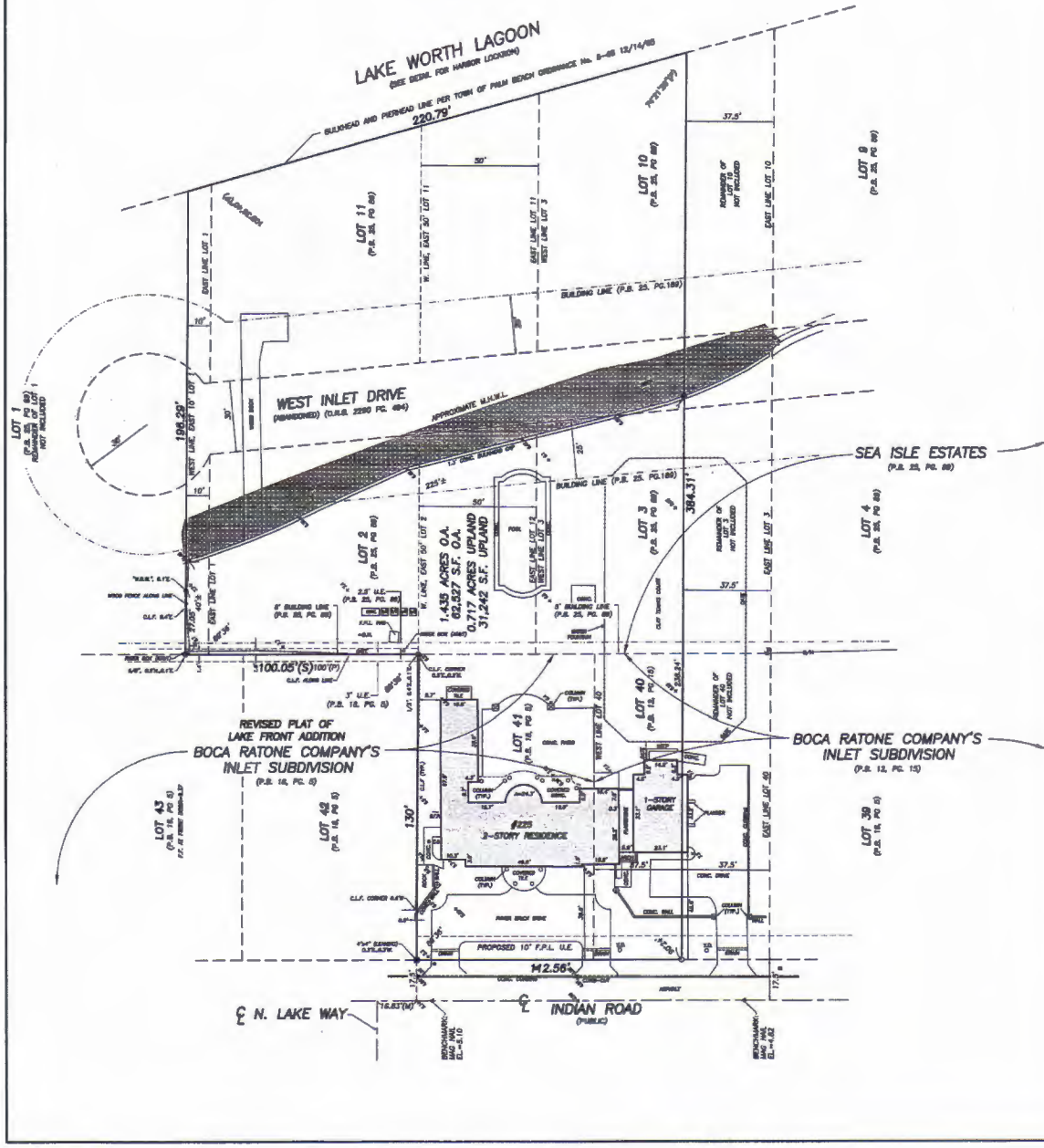
Demolition Report for
225 Indian Road, Palm Beach, Florida

The property has an existing 7,643 s.f. two story, single family residence and detached garage. The house was built in 1937 by Burnup and Sims, is concrete block construction with a concrete tile roof. The original owner was Burnup and Sims. The architect was Edgar S. Wortman. A Cabana was added in 1982. A detached garage was added in 2005 which is concrete block construction with concrete tile roofing. The structures exhibit no important architectural features and are not historically significant. The Applicant would like to demolish the existing residence, detached garage, hardscape and landscape in order to construct a new residence.

225 INDIAN ROAD
DEMOLITION REPORT



BOUNDARY SURVEY FOR:	
225 INDIAN ROAD LLC, A FLORIDA LIMITED LIABILITY COMPANY	
DATE	05-10-2017
BY	C.E.
CHECKED BY	C.E.
PROJECT NO.	1000-1000-1000
SHEET	1 OF 2



225 INDIAN ROAD SURVEY





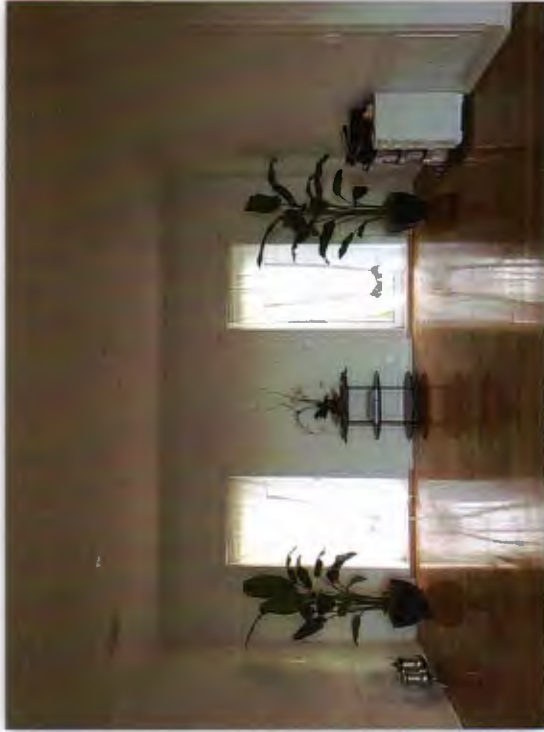
225 INDIAN ROAD
EXISTING STRUCTURE TO BE DEMOLISHED



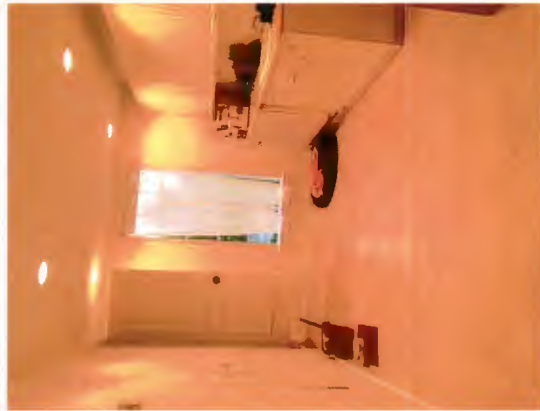
225 INDIAN ROAD
EXISTING STRUCTURE TO BE DEMOLISHED



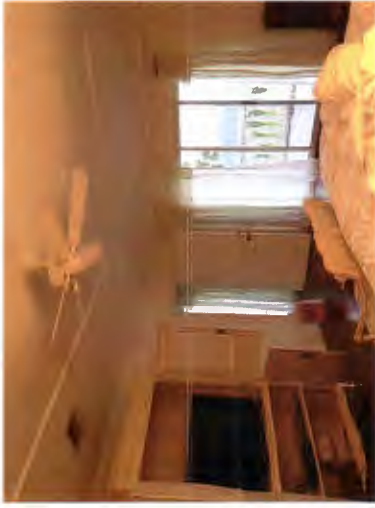
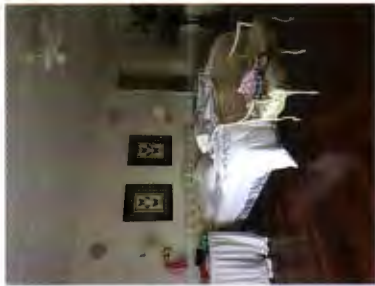
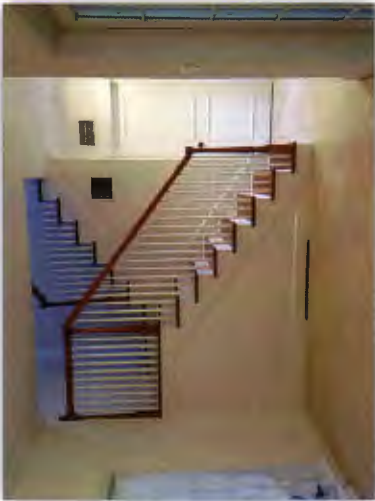
225 INDIAN ROAD
EXISTING STRUCTURE TO BE DEMOLISHED



225 INDIAN ROAD
EXISTING STRUCTURE TO BE DEMOLISHED



225 INDIAN ROAD
EXISTING STRUCTURE TO BE DEMOLISHED



225 INDIAN ROAD
EXISTING STRUCTURE TO BE DEMOLISHED



225 Indian Road - South Side

Palm Beach, Florida



225 Indian Road - West Side

Palm Beach, Florida



225 Indian Road - North Side

Palm Beach, Florida



225 Indian Road - East Side Side

Palm Beach, Florida

Existing weeds/po to remain

Existing weeds/po to be removed

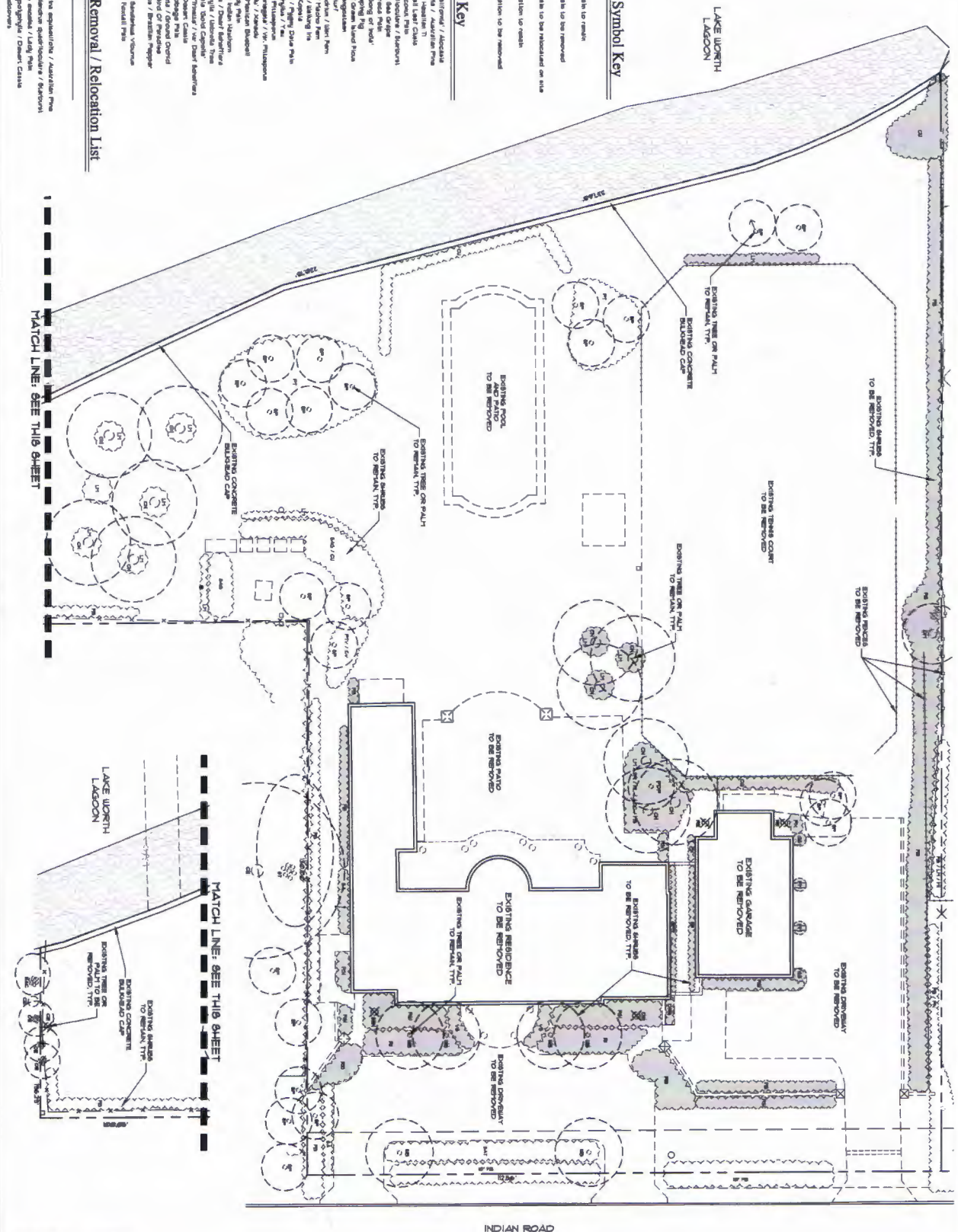
Existing weeds/po to be relocated on site

Existing vegetation to remain

Existing vegetation to be removed

[illegible]

	STTL	QTL	NAME
REPROVAL6			
CE	1		Casuarina equisetifolia / Australian Pine
CD	1		Cratogeomys pallidicollis / Shrewsfoot
FE	2		Peripha exocela / Lady Palm
REN	1		Perce polynésie / Desert Cassia
Vertical strains and grandparents			



VARIANCE • 7-2014
ARCOM • B-008-2014

225 INDIAN ROAD
PALM BEACH, FLORIDA

EXISTING PLANT RELOCATION AND REMOVAL PLAN

PARKER-YANKEE
design group, inc.

LANDSCAPE ARCHITECTS
PLANNERS • CONSULTANTS
625 South U.S. Highway One
Suite 310
Naples, Florida 34117
Telephone: (239) 747-5069
Fax: (239) 747-2043
E-mail: info@lpa-c.com
License: RL-C-0000297

DRAWN BY: CCY/KDC/AN
 JOB NO.: 13-24
 SCALE: 1" = 10'-0"
 FILED BY: JTB hof/en 03

7-1

CHASSIS & TRANSMISSION
L1000
JANUARY 8, 2004

B-GENT

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, Counsel*

*Also admitted in New York

*Also admitted in Michigan

Esperanté

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

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA E-MAIL

January 14, 2014

Cindy Delp, ARCOM Secretary
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: B-008-2014 - 225 Indian Road

Dear Cindy:

Please *defer* the Architecture and Landscape portion of the above referenced matter from the January 22, 2014 ARCOM agenda to the February 26, 2014 ARCOM agenda. The reason for the deferral is to allow for design revisions. *We will proceed* with requesting demolition of the above referenced matter at the January 22, 2014 ARCOM meeting. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,


Maura A. Ziska

MAZ/jch
Cc: John Lindgren
Roger Janssen
00021895

B - 007 - 2014 Demolition and New Residence

ARCOM TO MAKE RECOMMENDATION RELATIVE TO VARIANCE(S)

Address: 219 Indian Road

Applicant: 219 Indian Road, LLC

Architect: Roger Janssen, Dailey Janssen Architects

Project Description: Demolition of existing residence; Construction of new 11,447 sq. ft. two-story residence with pool, hardscape and landscape Building and Trim Color-White; Roof-Red Cement Tile

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

ARCHITECTURAL PRESENTATION BY: Roger Janssen, Dailey Janssen Architects
LANDSCAPE PRESENTATION BY: Chuck Yannette, Parker Yannette Design Group

ATTORNEY PRESENT: Maura Ziska for the applicant

OTHERS WHO TESTIFIED: Robert Holuba (1500 Lake Court), James Zahringer (215 Indian Rd.), Tony Dowell (101 Indian Rd.), Anita Pollak (1610 N. Ocean Blvd.), Suzanne Frisbie (relative of applicant), and Madeleine Zahringer (215 Indian Rd.)

Mr. Janssen provided the demolition report for this one-story 1953 residence designed by Emily and Harold Obst. Mr. Yannette stated that 3 Coconut Palms and a Ponytail Palm will be retained.

MOTION BY MRS. VANNECK FOR APPROVAL OF THE DEMOLITION.

MOTION SECONDED BY MR. ZUKOV.

MOTION CARRIED UNANIMOUSLY.

Ms. Ziska discussed the variances requested for point of measurement and overall height.

Mr. Janssen presented the project in accordance with the submitted plans and as described above. It should be noted that a model of the home was brought to the meeting. Design elements include: Two-story residence with Dutch Colonial details, (2) 1.5 story garage structures with guest suites above; pool in rear; one-story open entry pavilion with man gate; driveway gates to motor court; blend of brown and red roof tiles; mahogany windows/doors; covered entry portico; 1st fl windows-15 lites; 2nd fl windows-12 lites; and, long one story pergola in rear. Mr. Janssen presented several alternate designs on the Elmo projector: (1) different gable ends on 3 front buildings so distinguished from main house; (2) reduced rear glazing; (3) revision to Dutch gable; and (4) change to windows at entry court 2nd floor.

Under commission comments: The alternates you presented are preferable to that shown on plans; very glassy rear facade; gable ends need more study; odd that this custom home shares many of the same details in your spec house; issue with gigantic casement windows....a bit commercial; particularly offensive is the large gable to the rear that has a porch in it; in general, a really greedy house as to size, scale and mass which pushes the envelope of what it's supposed to be; extremely massive for the neighborhood and the width of the lot; rear is too glassy; you forgot the whimsy in this style; tweak the details; very large on the lot; too much glass; do not like the style; may be OK for South Africa, not for Palm Beach; looks so heavy and serious; so massive and unwelcoming; the style is determined by the client and the architect; you're taking land from the property next door; need to see effects of this project on other properties; the north elevation is acceptable for lots of glass, but not the south elevation; had telephone calls from people in the north end who feel like they are under attack; it is a quiet residential area...it feels like a flip...to maximize financial benefit; I am here to protect the town and that's what I'm going to do; the

225 Indian Road
appears on
following
pages

style is not foreign to Palm Beach; defend the choice of style; cannot support the north facade as it is too glassy...more massing needed there; as for the amount of house on the land, we can't go there.

Ms. Ziska testified that there are 15 letters of support from the neighborhood relative to this project. A bit later, she clarified that the house will be built for Robert Frisbie and his family.

Mr. Castro testified that the project requires variances for overall height and point of measurement in order to build the home. The house cannot be built by right. Variance relief is necessary. All of these requirements were placed into the code to eliminate the "mc mansions" in Palm Beach. He acknowledged that FEMA will eventually be raising the finished floor to 9 feet, as stated by the applicant.

**MOTION BY MR. SAMMONS FOR DEFERRAL OF THE PROJECT
(ARCHITECTURE).**

MOTION SECONDED BY MR. HOMES.

Mr. Lindgren read letters into the record relative to this project and the next project for 225 Indian Road: Letter of support from Arthur G. Kallop (1570 N. Ocean Blvd.); Letter of support from Jane E. Cole (303 Arabian Rd.); and, Identical letters of support from: Adam Jackson (167 E. Inlet), David Ferguson (300 Indian Rd.), Jerry and Barbara Pearlman (202 Indian Rd.), Dan and Julie Leever (350 Indian Rd.), Michael and Elizabeth Chu (233 Arabian Rd.), Patrick and Lillian Carney (1348 N. Lake Way), Richard True (119 E. Inlet Dr.), Steven Apple (1575 N. Ocean Blvd.), Sean and Anne Miller (304 Indian Rd.), Suzanne and Bob Wright (400 Arabian Rd.), and, Keith and Linda Beaty (395 Caribbean Rd.).

He also read two letters in opposition to the project: From Elaine Flynn (201 Indian Rd.), and Francis L. Fraenkel (220 Indian Road).

Robert Holuba, 1500 Lake Court, offered comments relative to the request for variance and the stated unique hardship. He discussed the risks of Palm Beach properties with regard to rising oceans and sinking coastlines. Ultimately, he maintained that there is nothing unique about this owner's hardship.

James Zahringer, 215 Indian Road, expressed his concerns regarding the siting of the proposed home which is 15'2" away from his property line, and will tower over his home and peer into his bedrooms, peer into their pool area, create shade, and change their way of life. He stated that all of the immediate neighbors are incredibly concerned about this project. "This is a disaster for Indian Road." A bit later, Mr. Zahringer added that this project is stacked on one side of the property to help the other house they are proposing. He asked that the project be denied.

Tony Dowell, 101 E. Inlet Drive, commented that the project is massive and overwhelming.

Anita Pollak, 1610 N. Ocean Boulevard, expressed her concerns about the side panels of this house overpowering her home and looking right down into her property. She was likewise concerned regarding water run-off from this property. "That house just doesn't fit in. It not only looks architecturally bad, but it's going to be damaging to me and certainly my neighbor too."

Suzanne Frisbie, sister-in-law of the applicant, spoke on behalf of the family. She stated that they took measures to be respectful to the neighbors in the design. She confirmed that this home is for

Robert Frisbie and his family, and that it is their dream (David and Suzanne Frisbie) to live in the house next door.

Madeleine Zahringer, 215 Indian Road, offered additional comments in keeping with the earlier comments of her husband. She asked that the members come to the site.

MOTION CARRIED UNANIMOUSLY.

MOTION BY MRS. VANNECK TO DEFER THE VARIANCE REQUEST TO NEXT MONTH.

MOTION SECONDED BY MR. SAMMONS.

MOTION CARRIED UNANIMOUSLY.

As for the landscaping, Mrs. Vanneck advised that the level of salt tolerance is not where it needs to be. As such, she asked that the plant selection be revised. There was no further review of the landscaping.

B - 008 - 2014 Demolition and New Residence

ARCOM TO MAKE RECOMMENDATION RELATIVE TO VARIANCE(S)

Address: 225 Indian Road

Applicant: 225 Indian Road, LLC

Architect: Roger P. Janssen, Dailey Janssen Architects

Project Description: Demolition of existing residence; Construction of new 12,106 sq. ft. two-story residence with pool, hardscape and landscape

Please be advised that the applicant requests approval of the demolition only at the January meeting, but has requested deferral of the remainder of the project to the February meeting.

Call for disclosure of ex parte communication: There was no call for ex parte communication relative to this project.

ARCHITECTURAL PRESENTATION BY: Roger Janssen, Dailey Janssen Architects

Prior to any presentation and prior to the item being read into the record...

MOTION BY MR. ZUKOV TO APPROVE THE DEMOLITION.

MOTION SECONDED BY MR. HOMES.

(There was no vote on this motion at this time.)

Chairman Vila acknowledged Mr. Gruss. Mr. Gruss cautioned, in light of the fact that these two properties are closely connected, that it might not be prudent to demolish this property at this point in time. The applicant and other ARCOM members responded that that information does not matter in the review of this request. Chairman Vila read the project description into the record. Mr. Gruss reverted to his previous point maintaining that as is stands right now, the other lot is unbuildable. Chairman Vila responded that the family owns the two parcels and they are able to move the lot line. It was suggested that a lot of time was just spent on a lot that does not exist.

Mr. Castro noted, for the record, that the two lots exist as platted property. The Town allows, by unity of title, property owners to purchase pieces of other properties to make their lots

conforming. Two conforming lots will be created, and at the time the applicant moves forward to the permitting stage, he will be required to unify the existing lot and the additional piece.

Mr. Janssen proceeded with the demolition report for this existing 1937 two-story residence.

Mr. Small commented that he is very familiar with the property and has visited it approximately 50 times. He stated that this is one of the most significant reasons that the subject of demolition approval needs to be addressed. This is a lovely property...a beautiful two-story home. "To me, it's a crying shame to demolish the home...and we have been advised that we have nothing legally to do, but I think it is incumbent on us to at least find out what we can do."

MOTION BY MR. ZUKOV TO APPROVE THE DEMOLITION WITH THE USUAL CAVEATS.

MOTION SECONDED BY MRS. VANNECK TO MOVE THIS ALONG, NOTING THAT SHE AGREES WITH WHAT HAS BEEN SAID ABOUT THE EXISTING HOUSE. UPON ROLL CALL, MOTION FAILED 2-5, WITH ONLY THE MAKER AND SECONDER SUPPORTING THE MOTION.

Ms. Ziska stated that, legally, ARCOM cannot deny a demolition.

MOTION BY MR. HOMES TO DEFER THE ENTIRE PROJECT, INCLUDING DEMOLITION.

**MOTION SECONDED BY MRS. VANNECK.
MOTION CARRIED UNANIMOUSLY.**

Mr. Knowles called attention to the size of the two proposed homes, as depicted in the footprint plans shown by Mr. Janssen.

Mr. Page commented that the demolition procedure and questions are timely and difficult. In the past, the Town Attorney has stated that we cannot compel a property owner to continue to preserve a home if it has not been legally landmarked, and that the commission is obligated to approve demolition subject to anything you might require in the way of preserving existing landscaping. He assured the members that Mr. Randolph will attend the next meeting. Mr. Page reminded Mr. Vila that the ARCOM meeting must be adjourned today by 4:00 p.m. to allow for a special Town Council meeting at 4:30 p.m.

Chairman Vila recessed the meeting at 1:55 p.m. for lunch, with a time to resume at 2:30 p.m.

When the meeting reconvened all members who were present before the lunch break returned to the meeting except for Mr. Ives.

C. **MINOR PROJECTS - OLD BUSINESS:** None

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 12, 2014

Section of Agenda

Development Review - Old Business

Agenda Title

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

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

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

Deferred from the June 12, 2013, Town Council Meeting

Presenter

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

Supporting Documents

- [Memorandum dated January 30, 2014 from John S. Page](#)
- [Memorandum from John Page dated March 27, 2013](#)
- [Memorandum from John Page dated May 30, 2013](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 12, 2014

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Reconsideration of Del Frisco's Appeal of Administrative Decision and Special Exception No. 9-2013, Deferred from the June 12, 2013 Town Council meeting

Date: January 30, 2014

STAFF RECOMMENDATION

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

HISORY OF TOWN COUNCIL ACTIONS

November 15, 2012

- Initial Special Exception (restaurant) and Variance (parking) request.
- Special Exception approved / Variance denied.
- Action allowed a restaurant, subject to compliance with all parking regulations.

April 10, 2013

- Appeal of two Staff determinations regarding opening time (6:00 pm) and Sunday brunch restriction.
- Action allowed doors to open at 5:00 p.m. / brunch operations deferred.

June 12, 2013

- Appeal of Staff determination regarding Sunday brunch restriction.
- Related request for Special Exception modification to allow Sunday brunch.
- All matters deferred until February 12, 2014 (following several months of operation).

A more detailed explanation of this history follows below.

GENERAL INFORMATION

On November 15, 2012, the Town Council conditionally approved a portion of Del Frisco's application to operate a 7,732 square foot restaurant (Special Exception #20-2012 with Variance). While the Council approved the Special Exception portion, it denied the variance request to eliminate the 57 additional off-street parking spaces required based on the proposed seating. The Council advised Staff to work with the applicant on the number of seats allowed and to resolve parking calculation discrepancies using the 1979 Agreement and the Parking Cure Plan. The Council advised the applicant that approval only allowed the restaurant to operate with the amount of seating and hours of operation as approved by Staff. Council conditions of approval follow:

1. The restaurant shall have no live music.
2. The restaurant hours shall be from 11:00 a.m. to 10:00 p.m. Monday through Wednesday and 11:00 a.m. to midnight Thursday through Saturday. No lunch will be served on Sunday with dinner hours from 5:00 p.m. to 11:00 p.m.
3. The restaurant shall have a priority reservation concept which will give preference to Town residents.
4. The restaurant shall not have a "happy hour" concept.
5. The applicant shall store all refuse in odor proof containers to be removed and dumped once a day in the existing Plaza dumpster. There will be no outside dumpsters or garbage containers of any kind at the restaurant site (as provided for in the application).
6. The applicant's employees will park on the northeast side of the Plaza property, directly north of the Theater (as provided for in the application).
7. The applicant shall return to the Town Council six months after the restaurant is open to demonstrate Town-serving.
8. The restaurant shall provide valet service for lunch and dinner.

Staff's final determination on the parking issue was based on meetings with both the applicant's and property owner's representatives, review of conditional approval items, Zoning Code requirements, the approved Parking Cure Plan, and the 1979 Agreement (as amended). Based on off-street parking requirements for the Plaza, Staff determined the restaurant could only be open after 6:00 p.m. with the proposed 218 seats. The restaurant could not open at 5:00 p.m. for dinner or be open for brunch.

The applicant appealed Staff's administrative decision. The appeal was heard by the Town Council on April 10, 2013 (See attached memorandum and backup from John page dated March 27, 2013). After hearing all testimony, the Council approved the portion of the appeal allowing Del Frisco's Restaurant to open for dinner at 5:00 p.m. with the 218 approved seats. The Council, however, deferred the appeal of Staff's determination that there was a deficiency in off-street parking during the morning and afternoon hours and could not be open for Saturday brunch. The appeal was deferred until such time as Del Frisco's applied for a zoning request to modify the previous zoning approval to be open for Sunday brunch.

The applicant subsequently filed the zoning request to be open for Sunday brunch. On June 12, 2013, the Town Council considered both the appeal of an administrative decision regarding Staff's determination that there was not enough parking in Royal Poinciana Plaza for Del

Frisko's Restaurant to be open for Saturday and Sunday lunch/brunch service and the Special Exception (Special Exception No. 9-2013) to allow the Restaurant to be open for Sunday brunch (See attached memorandum from John Page dated May 30, 2013). The backup for this memorandum is the same as the April 10th backup and therefore is not included in this attachment. After hearing all testimony on the appeal and Special Exception application, the Council deferred the requests to the February 12, 2014 meeting.

The appeal and application were deferred to the February Council meeting to provide the applicant time to 1) resolve all code enforcement issues in the Plaza at that time; 2) establish a record of restaurant operations and off-street parking/valet operations; and 3) create an opportunity for the Council to judge compliance with all other assertions made by the applicant during the approval process. As a condition of approval, the applicant is required to demonstrate Town-serving compliance to the Town Council six months after opening. That issue will on the March 12, 2014 Council meeting agenda for consideration.

The code enforcement issues that were outstanding in June of last year have been resolved. Staff is unaware of any complaints regarding the operation of the restaurant. There have been issues related to the off-street parking and valet operations. Code Enforcement has received complaints regarding obstruction of traffic entering the Plaza by the valet operation. There have been situations wherein the queue at the valet stand has blocked traffic flow into the Plaza. In addition, the valets have been blocking parking spaces with cones in areas not designated for valet parking. Rachel Houston, Parking/Code Enforcement Manager, will be at the meeting to answer any questions you may have on the parking situation.

Council review should also include the following assertions made by the applicant during the earlier approval process:

- No bands, live music, drink specials or happy hours.
- Del Friscos' will not advertise on radio, television or regional newspapers. Media advertising will be limited to Town-serving publications such as the Palm Beach Daily News and Island hotel guests predominately by word of mouth. In addition, exposure shall be through participation in civic and charitable organizations, personal contact with Island hotels and businesses, and occasional advertising in Island publications.
- Menu will be developed unique to only the Palm Beach restaurant.
- Employee uniforms will be unique to Palm Beach restaurant only.
- There will be no request for a particular corporate exterior color, building form, signage or lighting.
- All employees will park in the most remote, underutilized part of the Plaza parking lot.
- Refuse will be collected and retained within the restaurant overnight thereby eliminating outside odor impacts and rodent attraction.
- No impacts on the Palm Beach Towers residents.
- Provide residents of the Town with special reservation consideration.

Attachments

cc: John Randolph, Town Attorney
Paul Castro, Zoning Administrator
John Little
Harvey Oyer
Pf
Zf

TOWN OF PALM BEACH

Information for Town Council Meeting on: April 10, 2013

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

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

Date: March 27, 2013

STAFF RECOMMENDATION

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

GENERAL INFORMATION

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

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

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

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

SPECIFICS OF THE APPEAL

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

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

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

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

Attachments

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

RECEIVED

MAR 22 2013

**TOWN OF PALM BEACH
PZB DEPT**

March 22, 2013

VIA HAND DELIVERY

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

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

Dear Mayor and Members of the Town Council:

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

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

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

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

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

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

BACKGROUND

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

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

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

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

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

ARGUMENT

I. The 1979 Agreement and Parking at the Plaza

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

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

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

A. Theater Matinees

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

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

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

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

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

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

II. *Daytime Parking Space Requirements at the Plaza During Weekends*

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

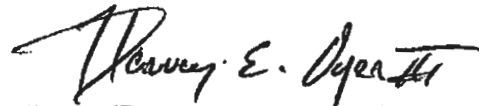
When Florida law is applied to the 1979 Agreement, two things are clear - - the Applicant should not be required to account for office parking after 5:00 p.m. or on Saturdays and Sundays. This is truly one of those occasions when the law and common sense and reason are completely in step. With this correct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

Thank you for your consideration of this matter.

Sincerely,



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



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

Enclosure(s)

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

JWL/all

WPB_ACTIVE 5445380.1

EXHIBIT A



TOWN OF PALM BEACH

Planning, Zoning & Building Department

January 14, 2013

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

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

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

Dear Sirs:

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

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

Town staff offers the following responses to your communication:

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

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

Weekday daytime parking space requirements:

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

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

Weekend daytime parking space requirements:

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

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

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

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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "John Page".

John Page, Director

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

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

RECEIVED

DEC 07 2012

**TOWN OF PALM BEACH
PZB DEPT**

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

December 6, 2012

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

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

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

Gentlemen:

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

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

I. THE 1979 AGREEMENT AND PARKING AT THE PLAZA

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

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

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

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

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

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

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

A. Theater Matinees

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

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

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

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

C. Summary of Impact of These Provisions

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

II. HIBEL BUILDING PARKING SPACES

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

III. REVISED CURE PLAN FOR PARKING DUE TO FDOT TAKING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Additional Parking Required by Del Frisco's Grille as Determined by Staff (Principle of Equivalency) 57 spaces

Applying the contractual restrictions of the 1979 Agreement to daytime uses, and based on a total of 728 spaces determined by Staff using the then proposed cure plan, the daytime shortfall is reduced to 30 spaces

When the 7 parking spaces at the Hibel are considered, the daytime shortfall is further reduced to 23 spaces

When the revised cure plan filed with the Town which adds 11 parking spaces is considered, the daytime shortfall is further reduced to 12 spaces

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

Conclusion

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

Sincerely,


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


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

cc: John C. Randolph, Esq.

Little, John

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

John,

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

Paul

From: "Little, John" <J.Little@gunster.com>
To: "PCastro@TownofPalmBeach.com" <PCastro@TownofPalmBeach.com>, "JPape@TownofPalmBeach.com" <JPape@TownofPalmBeach.com>
Cc: "Randolph@Jones-foster.com" <Randolph@Jones-foster.com>, "Harvey E. Oyer, III" <HOyer@shulls.com>, "Lackey, Anne" <ALackey@gunster.com>
Date: 11/08/2012 03:10 PM
Subject: Office/retail calculations

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

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

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



GUNSTER

FLORIDA'S LAW FIRM FOR BUSINESS

John W. Little, III | Shareholder
Eminent Domain and Property Rights
Business Litigation
777 South Flagler Drive, Suite 500 East
West Palm Beach, FL 33401
P 561-650-0701 F 561-671-2491
jlittle@gunster.com
gunster.com | [View my bio](#)

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

act	svc	340 ROYAL POINCIANA WAY 1C PALM BEACH FL 33480		975	FAITH PECHTER	SALON W AND SPA ESSENTIALS	
act	oth	340 ROYAL POINCIANA WAY 2C PALM BEACH FL 33480	1	800	ANGELO'S OF PALM BEACH INC	ANGELO'S OF PALM BEACH INC	Jeweler
cls	fin	340 ROYAL POINCIANA WAY 300 PALM BEACH FL 33480		5020	SUNTRUST SOUTH FLORIDA NA	SUNTRUST SOUTH FLORIDA NA	SEZ4-92
fls	svc	340 ROYAL POINCIANA WAY 301 PALM BEACH FL 33480		5500	FOX COSMETICS INC	THE BABOR INSTITUT	
act	rfe	340 ROYAL POINCIANA WAY 302 PALM BEACH FL 33480		4750	NRT NEW YORK LLC	THE CORCORAN GROUP	
cls	oth	340 ROYAL POINCIANA WAY 303 PALM BEACH FL 33480		5000	BABOR COSMETICS AMERICA CORP	BABOR COSMETICS AMERICA CORP	Administrative offices
act	oth	340 ROYAL POINCIANA WAY 305 PALM BEACH FL 33480		3998	ESKO PROPERTIES INC	SIDNEY KOHL COMPANY	Administrative offices
act	oth	340 ROYAL POINCIANA WAY 306 PALM BEACH FL 33480	2-Jan	5820	INNKEEPERS USA TRUST	INNKEEPERS USA TRUST	Administrative offices
act	oth	340 ROYAL POINCIANA WAY 307 PALM BEACH FL 33480		1600	GO FIGURE PALM BEACH LLC	GO FIGURE BARRE STUDIO	Health studio
act	med	340 ROYAL POINCIANA WAY 309 PALM BEACH FL 33480		1325	EDGARDO ARTURO GRANDE DMD PA	THE ANAYA CLINIC	

39,500

act	rd	340 ROYAL POINCIANA WAY 310 PALM BEACH FL 33480		1408	ROYAL PET GROOMING INC	ROYAL PET GROOMING
act	re	340 ROYAL POINCIANA WAY 311 PALM BEACH FL 33480		2000	TKC OF PALM BEACH LLC	MIRSKY VALORE
his	rd	340 ROYAL POINCIANA WAY 312 PALM BEACH FL 33480		1870	BRANDON PALM BEACH INC	BRANDON OF PALM BEACH ISLAND
act	rd	340 ROYAL POINCIANA WAY 312A PALM BEACH FL 33480		3950	BETH ANN BARBER	TONTOS
act	lre	340 ROYAL POINCIANA WAY 313 PALM BEACH FL 33480	124	2600	TODJAY'S PALM BEACH INC	TODJAY'S ORIGINAL GOURMET DELI
act	sec	340 ROYAL POINCIANA WAY 314 PALM BEACH FL 33480		300	HAIR AND NAILS BOUTIQUE INC	HAIR AND NAILS BOUTIQUE INC
act	med	340 ROYAL POINCIANA WAY 315 PALM BEACH FL 33480		1617	JFK INTERNAL MEDICINE FACULTY PRACTICE LLC	ISLAND MEDICAL CARE
act	med	340 ROYAL POINCIANA WAY 316 PALM BEACH FL 33480		1617	JFK INTERNAL MEDICINE FACULTY PRACTICE LLC	ISLAND MEDICAL CARE
act	oth	340 ROYAL POINCIANA WAY 316 PALM BEACH FL 33480		8800	THE STERLING ORGANIZATION LLC	THE STERLING ORGANIZATION LLC
act	rd	340 ROYAL POINCIANA WAY 317 PALM BEACH FL 33480		1229	HOME OFFICE TRANSPORT LLC	THE UPS STORE

real estate

flowers

43 spaces

property mgmt

17,574

act	sve	340 ROYAL POINCIANA WAY 327A PALM BEACH FL 33480		300	PLAZA HAIR & NAILS	PLAZA HAIR & NAILS
his	rl	340 ROYAL POINCIANA WAY 328 PALM BEACH FL 33480		2500	PALM BEACH COUTURE DESIGNS INC	DESIGNER TO YOU
act	rl	340 ROYAL POINCIANA WAY 329 PALM BEACH FL 33480		5125	SBZZ OF PALM BEACH LTD	BROWN HARRIS STEVENS OF PALM BEACH
act	rl	340 ROYAL POINCIANA WAY 330 PALM BEACH FL 33480		1700	COUTURE AND MORE INC	COUTURE AND MORE
act	rl	340 ROYAL POINCIANA WAY 332A PALM BEACH FL 33480		764	LAVANDE PB INC	HOUSE OF LAVANDE
his	sve	340 ROYAL POINCIANA WAY 332B PALM BEACH FL 33480		1000	MCPHERSON- BARRETT PHOTOGRAPHY	MCPHERSON- BARRETT PHOTOGRAPHY
act	pro	340 ROYAL POINCIANA WAY 332B PALM BEACH FL 33480		850	PARASUTRA	PARASUTRA
act	oth	340 ROYAL POINCIANA WAY 333 PALM BEACH FL 33480		1887	VIKING SPORT CRUISERS - FLORIDA INC	VIKING SPORT CRUISERS
act	lbe	340 ROYAL POINCIANA WAY 336 PALM BEACH FL 33480	164	6515	HILLSTONE RESTAURANT GROUP INC	PALM BEACH GRILL
act	rl	340 ROYAL POINCIANA WAY 337 PALM BEACH FL 33480	2	900	SOTHEBY'S INTERNATIONAL REALTY INC	SOTHEBY'S INTERNATIONAL REALTY INC

SEP-13-2008

V12-2008

YOGA
UNCLASSIFIED
PROFESSION
Administrative
offices

SEP-4-1998

59

15,026

act	svc	340 ROYAL POINCIANA WAY 337A PALM BEACH FL 33480	1	1900	EDWARD INC	EDWARD INC
act	svc	340 ROYAL POINCIANA WAY 339A PALM BEACH FL 33480	2	500	ADVANCED MENTAL HEALTH CARE INC	ADVANCED MENTAL HEALTH CARE INC
act	pro	340 ROYAL POINCIANA WAY 339B PALM BEACH FL 33480		500	SUSAN LEE LCSW PSYCHOTHERAPIST	SUSAN LEE LCSW PSYCHOTHERAPIS T
cls	oth	340 ROYAL POINCIANA WAY 339C PALM BEACH FL 33480		250	BARBARA M ROGERS	BARBARA M ROGERS
his	pro	340 ROYAL POINCIANA WAY 339D PALM BEACH FL 33480	2	350	W DAN ROWLANDS	F.L.R.S.T.
his	pro	340 ROYAL POINCIANA WAY 339F PALM BEACH FL 33480	2	200	340 ROYAL POINCIANA LLC	340 ROYAL POINCIANA LLC
act	pro	340 ROYAL POINCIANA WAY 339J PALM BEACH FL 33480		450	MURPHY REID LLP	MURPHY REID LLP
act	rie	340 ROYAL POINCIANA WAY 341 PALM BEACH FL 33480	2	4100	SOTHEBY'S INTERNATIONAL REALTY REFERRAL COMPANY LLC	SOTHEBY'S INTERNATIONAL REALTY REFERRAL COMPANY LLC
cls	oth	340 ROYAL POINCIANA WAY 345 PALM BEACH FL 33480		1200	ALPS RESOURCES BANKERS INC	ALPS RESOURCES BANKERS INC
act	oth	340 ROYAL POINCIANA WAY 3C PALM BEACH FL 33480	1	1800	TREE OF LIFE FOUNDATION INTERNATIONAL INC	TREE OF LIFE FOUNDATION INTERNATIONAL INC

Financial consultant

10,250

cls	rd	340 ROYAL POINCIANA WAY 318 PALM BEACH FL 33480		3500	BRANDON OF OKEECHOBEE LLC	SOHO LIVING	
act	oth	340 ROYAL POINCIANA WAY 320 PALM BEACH FL 33480		1400	JUST FOR YOU. EXERCISE & RESOURCE CENTRE. INC	JFY EXERCISE PALM BEACH	Health studio
act	pro	340 ROYAL POINCIANA WAY 321 PALM BEACH FL 33480		12256	ALLEY MAASS ROGERS & LINDSAY PA	ALLEY MAASS ROGERS & LINDSAY PA	
act	oth	340 ROYAL POINCIANA WAY 322 PALM BEACH FL 33480		12270	DOUGLAS ELLMAN FLORIDA LLC	DOUGLAS ELLMAN FLORIDA LLC	
act	med	340 ROYAL POINCIANA WAY 322B PALM BEACH FL 33480		1200	BOCA NURSING SERVICES INC	BOCA NURSING SERVICES INC	
act	oth	340 ROYAL POINCIANA WAY 326 PALM BEACH FL 33480		1400	SEATEW REALTY INC	SEATEW REALTY INC	
act	oth	340 ROYAL POINCIANA WAY 325A PALM BEACH FL 33480		740	THE FITNESS EDGE INC	THE FITNESS EDGE	Health studio
act	svc	340 ROYAL POINCIANA WAY 325B PALM BEACH FL 33480		825	A STUDIO DAY SPA CORP	A STUDIO DAY SPA CORP	
act	oth	340 ROYAL POINCIANA WAY 325 PALM BEACH FL 33480	2-lan	1800	ROYAL POINCIANA PLAZA	ROYAL POINCIANA PLAZA	property mgmt
act	oth	340 ROYAL POINCIANA WAY 326B PALM BEACH FL 33480		900	HOL ORIGINAL LLC	HOL ORIGINAL LLC	Administrative offices

25,941

act	rie	840 ROYAL POINCIANA WAY 4C PALM BEACH FL 33480	1		1000	HALL REAL ESTATE PA	HALL REAL ESTATE PA
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115081

104,349 #61A

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

28,888

The following information was taken from AS400 BTR records

HIS	Dining Rm	17280 70 ROYAL POINCIANA PLZ	10000 THE POINCIANA CLUB	189
HIS	Nightclub WITH dances	17300 70 ROYAL POINCIANA PLZ	10000 THE POINCIANA CLUB INC	226
HIS	Theater	17250 70 ROYAL POINCIANA PLZ	27500 PTG FLORIDA INC	878
HIS	Club Dining over 40	35904 70 ROYAL POINCIANA PLZ A	THE POINCIANA CLUB INC	330
HIS	Nightclub WITH dances	35905 70 ROYAL POINCIANA PLZ A	THE POINCIANA CLUB INC	
HIS	Merchant	37763 150 ROYAL POINCIANA PLZ	3000 DTY INC	
HIS	Restaurant over 40	35776 338 ROYAL POINCIANA PLZ	JE ME SOUMIENS INC	130

3,000 #16 LA



POINCIANA CLUB DINING ROOM Closed 1993?
THE POINCIANA CLUB INC
ROYAL POINCIANA PLAYHOUSE Closed 2004
JACQUELINE OF PALM BEACH SE17-85
JACQUELINE OF PALM BEACH

DESIGNERS TO YOU

HAVANA 336

SE34-85

2. The second part of the document focuses on the role of communication in achieving organizational goals. It highlights the importance of clear and concise communication, both internally and externally. The text discusses various communication channels, such as email, meetings, and reports, and provides tips for effective communication. It also mentions the need for active listening and feedback to ensure that all stakeholders are aligned and working towards the same objectives.

HIS	Dining Rm	17280	70 ROYAL POINCIANA PLZ	225	10000 THE POINCIANA CLUB	POINCIANA CLUB DINING ROOM
HIS	Nightclub WITH	17300	70 ROYAL POINCIANA PLZ	10000	THE POINCIANA CLUB	THE POINCIANA CLUB INC
HIS	Theater	17250	70 ROYAL POINCIANA PLZ	878	27588 PFG FLORIDA INC	ROYAL POINCIANA PLAYHOUSE
HIS	Club Dining ave	35804	70 ROYAL POINCIANA PLZ A	330	THE POINCIANA CLUB	JACQUELINE OF PALM BEACH
HIS	Nightclub WITH	35805	70 ROYAL POINCIANA PLZ A		THE POINCIANA CLUB	JACQUELINE OF PALM BEACH
HIS	Merchant	37783	150 ROYAL POINCIANA PLZ	1	3000 DTY INC	DESIGNERS TO YOU
HIS	Restaurant over	35778	338 ROYAL POINCIANA PLZ	130	JE ME SOUVIENS INC	HAVANA 338

Commercial/	141,187 @ GLA @ 1:300 =	471
Office/Retail		175
Theatre	878 seats @ 1 per ⁵ seats =	219
Poinciana Club	189 seats @ 1 per 3 seats	
	\$ 1 per 300 sq feet of house	= 74
TooJay's	"	= 43
P.O. Grill	"	= 59
McCarty's	"	= 59



Closed 1993?

Closed 2004
SE17-95

SE#4-95

EXHIBIT B

March 8, 2013

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

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

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

Gentlemen:

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

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

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

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

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

A. *Parking Requirement for Evening Uses at the Plaza*

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

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

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

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

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

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

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

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

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

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

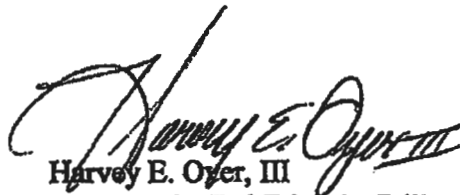
John S. Page
Paul W. Castro
March 8, 2013
Page 4

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

Sincerely,



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



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

cc: John C. Randolph, Esq.

WPB_ACTIVE 5426677.2

EXHIBIT C

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

John and Harvey:

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

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

1.

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

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

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

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

EXHIBIT D

79 042635

219 MAR 13 PM 4:25

AGREEMENT

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

WITNESSETH:

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

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

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

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

25.60

Relinquished
THIS INSTRUMENT WAS PREPARED BY
ELLYN L. MIDDLETON
Attorney at Law
200 SOUTH AVENUE, PALM BEACH, FLORIDA 33480

- PALM BEACH REC 3023 PAGE 380 -

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

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

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

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

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

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

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

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

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

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

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

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

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

D. It will not require any retail shop in Royal Poinciana Plaza by lease or otherwise to maintain evening hours of operation and will prohibit all but 10% of total square footage of said retail shops from remaining open after 8:00 p.m.

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

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

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

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

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

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

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

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

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

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

TOWN OF PALM BEACH

By: George R. Frost, Town Manager

CORPORATE SEAL

PRINCETINA PROPERTIES, LTD.

By: James E. Canine (U.S.)
General Partner

George R. Frost
TOWN ATTORNEY

Grace T. Peters
As to Partnership

STATE OF FLORIDA

COUNTY OF PALM BEACH

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

Witness my hand and official seal this 15th day of March 1979.

John P. Canine
Notary Public in and for the State and County aforesaid

My Commission Expires: AS LATER
BY COMMISSION EXPIRES JAN. 1 1982
BONDED THIS GENERAL BY JUDICIAL

STATE OF FLORIDA)
) SS
COUNTY OF PALM BEACH)

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

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



Blaise C. Petersen
Notary Public in and for the
State and County aforesaid

My Commission Expires:

Notary Public, State of Florida at Large
My Commission Expires Dec. 22, 1979
Bonded by American Fidelity & Guaranty Co.

PALM BEACH REC 3023 PAGE 386

DESCRIPTION

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

Commencing at the intersection of the northerly right-of-way line of White Hall Way with the westerly right-of-way line of Coconut Row, as said streets are described in deed recorded in Deed Book 814, page 477 and subsequent pages, public records of Palm Beach County, Florida; thence northerly along the said westerly right-of-way line of Coconut Row, a distance of 444.76 feet to the beginning of a curve concave to the east having a radius of 329.60 feet and a central angle of $23^{\circ}-53'-30''$; thence northerly along the arc of said curve, a distance of 137.44 feet, to the tangent to said curve; thence northerly along said tangent, a distance of 59.52 feet to the point of beginning of the herein described south line; thence westerly making an angle from south-west to west of $26^{\circ}-14'-30''$, a distance of 227.26 feet; thence northerly at right angles, a distance of 25 feet; thence westerly at right angles, a distance of 293.43 feet to the beginning of a curve to the northeast, having a radius of 65.03 feet and a central angle of $85^{\circ}-42'-19''$, a distance of 97.28 feet; thence northwesterly, a distance of 33.90 feet, more or less, to the southeast corner of a parcel of land described in Deed Book 1011, page 226, Public Records of Palm Beach County, Florida, said southeast corner is located in the arc of a curve concentric with the last herein described curve, and having a radius of 90.03 feet and a central angle of $102^{\circ}-55'-30''$ and 4.19 feet southerly from a point of reverse curve; thence northerly along the arc of the just described curve, a distance of 4.19 feet to the point of reverse curvature, of a curve concave to the west, having a radius of 513.29 feet and a central angle of $15^{\circ}-35'-20''$; thence northerly along the arc of said reverse curvature, a distance of 97.62 feet to a point in a line parallel with and 481.2 feet southerly from (measured at right angles to) the southerly right-of-way line of Royal Poinciana Way, said line also being described in Deed Book 1011, page 226, Public Records of Palm Beach County, Florida; thence westerly along said parallel line, a distance of 191.06 feet, more or less, to the Waters of Lake Worth and the end of the herein described southerly line.

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

PALM BEACH REC 3023 PAGE 387

Record Certified
Palm Beach County, Fla.
John B. Smith
Palm Beach Clerk

EXHIBIT "A"

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 12, 2013

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

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

Date: May 30, 2013

STAFF RECOMMENDATION

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

GENERAL INFORMATION

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

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

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

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

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

Attachments

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

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 12, 2014

Section of Agenda

Development Review - New Business

Agenda Title

SITE PLAN REVIEW #2-2014 WITH SPECIAL EXCEPTION The application of Ambassador Hotel Co-Op (Bill Whitehead, Manager); relative to property commonly known as **2730 South Ocean Blvd.**; described as AMBASSADOR HOTEL CO-OP APTS INC COMMON AREA A/K/A 23-44-43, N 216 FT OF S 385 FT OF N 3000 FT OF FRAC SEC LYG BET ELY R/WLI OF SR A-1-A & ATLANTIC OCEAN; located in the R-D (2) Zoning District. The applicant is requesting a Site Plan Review to renovate the exterior walkways of the West Building by increasing the width of the walkways by 16 inches (717.6 sq. ft. total) and upgrading the railing using glass barriers. The new railing will be continued to the pool deck. In addition, the façade of the West Building will be improved providing for more articulation and architectural features incorporating Moderno elements. The height of the West Building is currently 44.9 feet (existing nonconforming) and is proposed to be increased to 49.9 feet. (62.6 feet maximum allowed) (Sec. 134-229, Sec. 134-1060(8)(d) and Sec. 134-1064). The lot coverage of the West Building totals just 5.6% of the overall lot coverage of the site (27.47%) and would increase to 5.22% of overall lot coverage with the proposed renovations. [Attorney: Neil M. Schiller]

Presenter

John S. Page Director of Planning, Zoning & Building

Supporting Documents

- [Letter Dated January 13, 2014, from Citizens' Association of Palm Beach](#)



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Ex Officio Director

E. James Ryan

January 13, 2014

To: Mayor Gail Coniglio and Palm Beach Town Council
From: Lew Crampton, Chairman-Citizens' Association
Re: Pending Special exception-Zoning Case #2-2014-February 12-2014

Please note that the Citizens' Association supports the Special Exception Request. The Association has had long relationship with the Ambassador Hotel Cooperative Apartments Corp. and will continue in the future. It is our opinion that the changes the Ambassador Hotel property will be complimentary to the neighbors.

Respectfully

Lew Crampton
Chairman

BankUnited Building, 2875 South Ocean Boulevard, Suite 200 • Palm Beach, FL 33480

Phone — 561-655-5466 • Email: Directors@CitizensAssociationofPalmBeach.org

Website: CitizensAssociationofPalmBeach.org

Member Buildings

2500

2770

2774

3200

Ambassador Hotel

Beach Point

Carlton Place

Carlyle House

Chateau Chantilly

Chateau Cheverny

Chateau Rambouillet

Claridges

Cove

Dorchester

Edgewater House

Enclave

Halcyon

Hampton

La Palma

Oasis

Ocean Cay

Palm Worth

Palmbeacher

Patrician

President

Regency

Stratford

Sutton Place

Tower Vallandry

Tres Vidas

Villa Rideau

Villa Slerin

White House I

White House III

Nonmember Buildings that have Residents who are Members

Ambassador II

Harbour House

Ibis Isle Homes

Meridian

Reef

Royal Saxon

2000

2600

2780

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 12, 2014

Section of Agenda

Development Review - New Business

Agenda Title

VARIANCE #7-2014 The application of 225 Indian Road, LLC (David Frisbie, Manager); relative to property commonly known as **225 Indian Road**; described as Lengthy legal description on file; located in the R-B Zoning District. The applicant is requesting approval to build a new 12,171 square foot two story residence with the following variances being requested: 1) to have a point of measurement for building height of 9 feet National Geodetic Vertical Datum (NGVD) in lieu of the 7.5 feet NGVD maximum allowed for lots abutting a low street. 2) to have a point of measurement for cubic content ratio (CCR) of 9 feet National Geodetic Vertical Datum (NGVD) in lieu of the 7.5 feet NGVD maximum allowed for lots abutting a low street. 3) to have an overall height of 33.2 feet in lieu of the 30 foot maximum allowed as measured from 7.5 NGVD. 4) to allow a parapet on the gable ends on a pitched roof 6.7 feet above the maximum overall height which is permitted for a flat roof and parapet system of the point of measurement variance is granted. [Attorney: Maura Ziska]

[ARCOM Recommendation: Defer the variance requests to the February 26, 2014 ARCOM Meeting]

Request for Withdrawal from the February 12, 2014, Town Council Meeting Per Letter Dated February 4, 2014, from Maura Ziska.

Presenter

John S. Page Director of Planning, Zoning & Building

Supporting Documents

- [Letter Dated February 4, 2014, from Maura A. Ziska](#)
- [Letter Dated January 7, 2014, from Suzanne and Bob Wright](#)
- [Letter Dated January 15, 2014, from Michael and Elizabeth Chu](#)
- [Letter Dated January 19, 2014, from Steven Apple](#)
- [Letter Dated January 19, 2014, from Sean and Anna Miller](#)

- [Letter Dated January 19, 2014, from Jerry and Barbara Pearlman](#)
- [Letter Dated January 20, 2014, from Patrick and Lillian Carney](#)
- [Letter Dated January 20, 2014, from Adam Jackson](#)
- [Letter Dated January 20, 2014, from David L. Ferguson](#)
- [Letter Dated January 20, 2014, from Robert C. Boomhower Trust](#)
- [Letter Dated January 20, 2014, from Richard True](#)
- [Letter Dated January 21, 2014, from Keith and Linda Beaty](#)
- [Letter Dated January 21, 2014, from Arthur George Kallop](#)
- [Letter Dated January 21, 2014, from Dan and Julie Leever](#)
- [Letter Dated January 20, 2014, from Bryson L. Cook](#)

KOCHMAN & ZISKA PLC**Ronald S. Kochman*****Maura A. Ziska****Marvin S. Rosen, Counsel***

*Also admitted in New York
*Also admitted in Michigan

Esperanté**222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401****Telephone: (561) 802-8960****Facsimile: (561) 802-8995****VIA FACSIMILE: 561-838-5411****February 4, 2014**

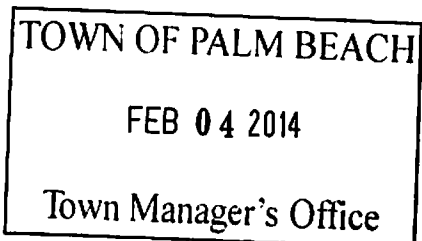
**Mayor and Town Council
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480**

RE: Variance #7-2014; 225 Indian Road, Palm Beach, Florida**Dear Mayor and Town Council:**

**Please withdraw the above referenced matter from the TOWN COUNCIL agenda.
Please call me if you have any questions or comments with the foregoing. Thank you.**

Sincerely,**Maura A. Ziska****/maz**

**cc: David Frisbie
Roger Janssen
Paul Castro
00022226**



January 7, 2014

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

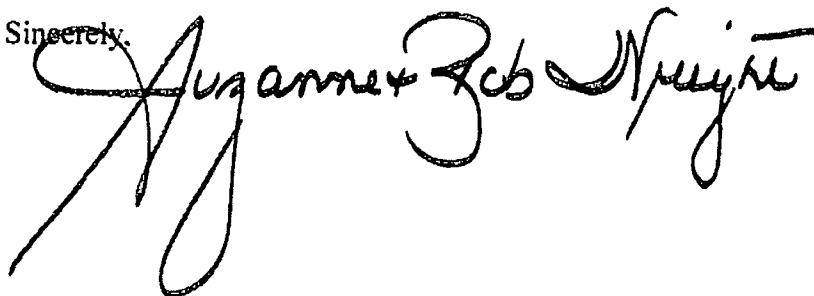
RE: Arcom Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida
Arcom Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, Florida

Dear Mayor Coniglio, Members of the Town Council and Members of the Architectural Review Commission:

I live at the property located at 400 Arabian Rd in Palm Beach. My neighbors, the Frisbie family, (located at 219 Indian Road and 225 Indian Road) are planning to build new two story homes on their properties. We/I have reviewed their plans for the proposed houses and fully support the projects and have no objections. Their previous homes at 350, 999 and 1000 Indian Road contributed positively to the collective aesthetic the neighborhood aims to encourage and uphold, and we/I are/am confident these homes will, in a similar fashion, help to enhance the Indian Road processional – visible from both inland and inlet. Hopefully, you and your staff will agree with me and will approve the proposed projects and any zoning relief they may require.

Thank you for your consideration.

Sincerely,



**Michael & Elizabeth Chu
233 Arabian Road
Palm Beach, Florida 33480**

January 15, 2014

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

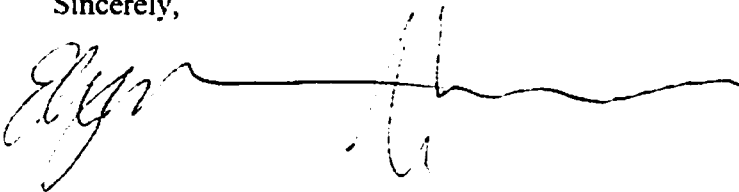
RE: Arcom Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida
Arcom Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, Florida

Dear Mayor Coniglio, Members of the Town Council and Members of the Architectural Review Commission:

I live at the property located at 233 Arabian Road in Palm Beach. My neighbors, the Frisbie family, (located at 219 Indian Road and 225 Indian Road) are planning to build new two story homes on their properties. We have reviewed their plans for the proposed houses and fully support the projects and have no objections. Their previous homes at 350, 999 and 1000 Indian Road contributed positively to the collective aesthetic the neighborhood aims to encourage and uphold, and we are confident these homes will, in a similar fashion, help to enhance the Indian Road processional – visible from both inland and inlet. Hopefully, you and your staff will agree with me and will approve the proposed projects and any zoning relief they may require.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'Michael & Elizabeth Chu', followed by a long horizontal line.

**Steven Apple
1575 North Ocean Boulevard
Palm Beach, Florida**

January 19, 2014

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

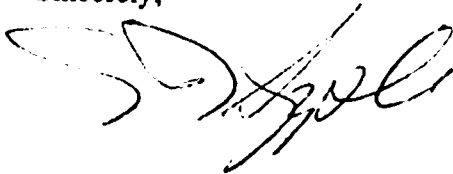
**RE: Arcom Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida
Arcom Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, Florida**

Dear Mayor Coniglio, Members of the Town Council and Members of the Architectural Review Commission:

I own the property located at 1575 North Ocean Boulevard in Palm Beach. My neighbors, the Frisbie family, (located at 219 Indian Road and 225 Indian Road) are planning to build new two story homes on their properties. I have reviewed their plans for the proposed houses and fully support the projects and have no objections. Their previous homes at 350, 999 and 1000 Indian Road contributed positively to the collective aesthetic the neighborhood aims to encourage and uphold, and I am confident these homes will, in a similar fashion, help to enhance the Indian Road processional – visible from both inland and inlet. Hopefully, you and your staff will agree with me and will approve the proposed projects and any zoning relief they may require.

Thank you for your consideration.

Sincerely,



Note: Mr. Apple also owns 1570 N. Ocean Way which is located at the corner of Indian Road + N. Ocean Way.

**Sean & Anna Miller
304 Indian Road
Palm Beach, Florida**

January 19, 2014

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

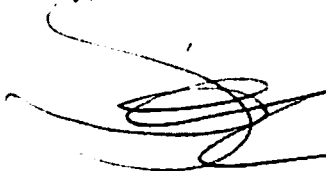
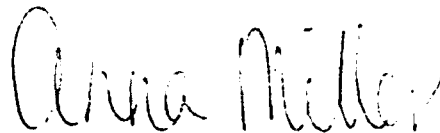
RE: Arcom Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida
Arcom Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, Florida

Dear Mayor Coniglio, Members of the Town Council and Members of the Architectural Review Commission:

We live at the property located at 304 Indian Road in Palm Beach. My neighbors, the Frisbie family, (located at 219 Indian Road and 225 Indian Road) are planning to build new two story homes on their properties. We have reviewed their plans for the proposed houses and fully support the projects and have no objections. Their previous homes at 350, 999 and 1000 Indian Road contributed positively to the collective aesthetic the neighborhood aims to encourage and uphold, and we are confident these homes will, in a similar fashion, help to enhance the Indian Road processional – visible from both inland and inlet. Hopefully, you and your staff will agree with me and will approve the proposed projects and any zoning relief they may require.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be "Sean Miller", with a long horizontal line extending to the right.A handwritten signature in black ink, appearing to be "Anna Miller", written in a cursive style.

Jerry & Barbara Pearlman
202 Indian Road
Palm Beach, Florida 33480

Phone: (561) 863-4332
Fax: (561) 863-4331
Cell: (847) 899-7379
e-mail: jerry@pearlmanoffice.com

January 19, 2014

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

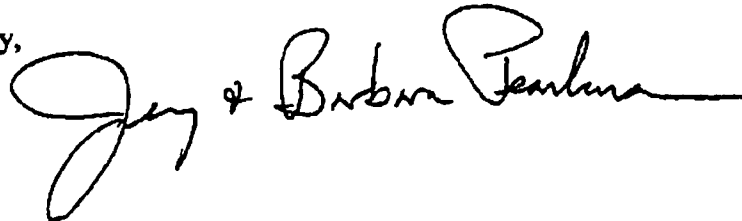
RE: Arcorn Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida
Arcorn Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, Florida

Dear Mayor Coniglio, Members of the Town Council and Members of the Architectural Review Commission:

We live at the property located at 202 Indian Road in Palm Beach. My neighbors, the Frisbie family, (located at 219 Indian Road and 225 Indian Road) are planning to build new two story homes on their properties. We have reviewed their plans for the proposed houses and fully support the projects and have no objections. Their previous homes at 350, 999 and 1000 Indian Road contributed positively to the collective aesthetic the neighborhood aims to encourage and uphold, and we are confident these homes will, in a similar fashion, help to enhance Indian Road—both as viewed from the street and the inlet. We hope that you and the Town staff will approve the proposed projects and any zoning relief they may require.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry & Barbara Pearlman". The signature is fluid and cursive, with the first names being more prominent and the last name following in a similar style.

***Patrick & Lillian Carney
1348 North Lake Way
Palm Beach, FL 33480***

January 20, 2014

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

RE: Arcom Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida
Arcom Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, Florida

Dear Mayor Coniglio, Members of the Town Council and Members of the Architectural Review Commission:

I live at the property located at 1348 North Lake Way in Palm Beach. My neighbors, the Frisbie family, (located at 219 Indian Road and 225 Indian Road) are planning to build new two story homes on their properties. We/I have reviewed their plans for the proposed houses and fully support the projects and have no objections. Their previous homes at 350, 999 and 1000 Indian Road contributed positively to the collective aesthetic the neighborhood aims to encourage and uphold, and we/I are/am confident these homes will, in a similar fashion, help to enhance the Indian Road processional – visible from both inland and inlet. Hopefully, you and your staff will agree with me and will approve the proposed projects and any zoning relief they may require.

Thank you for your consideration.

Sincerely,



Patrick & Lillian Carney

Note: Pat Carney owns 1695 N. Ocean Way
which is located at The east end of
Indian Rd.

January 20, 2014

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

RE: Arcom Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida
Arcom Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, Florida

Dear Mayor Coniglio, Members of the Town Council and Members of the Architectural Review Commission:

I own the property located at 167 East Inlet Drive in Palm Beach. My neighbors, the Frisbie family, (located at 219 Indian Road and 225 Indian Road) are planning to build new two story homes on their properties. We/I have reviewed their plans for the proposed houses and fully support the projects and have no objections. Their previous homes at 350, 999 and 1000 Indian Road contributed positively to the collective aesthetic the neighborhood aims to encourage and uphold, and we/I are/am confident these homes will, in a similar fashion, help to enhance the Indian Road processional – visible from both inland and inlet. Hopefully, you and your staff will agree with me and will approve the proposed projects and any zoning relief they may require.

Thank you for your consideration.

Sincerely,

Adam Jackson

Mgmr., Ajax Equity LLC

A handwritten signature in black ink, appearing to be 'Adam Jackson', written over the typed name.

January 20, 2014

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

RE: Arcom Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida
Arcom Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, Florida

Dear Mayor Coniglio, Members of the Town Council and Members of the Architectural Review Commission:

I own the property located at 300 Indian in Palm Beach. My neighbors, the Frisbie family, (located at 219 Indian Road and 225 Indian Road) are planning to build new two story homes on their properties. We/I have reviewed their plans for the proposed houses and fully support the projects and have no objections. Their previous homes at 350, 999 and 1000 Indian Road contributed positively to the collective aesthetic the neighborhood aims to encourage and uphold, and we/I are/am confident these homes will, in a similar fashion, help to enhance the Indian Road processional – visible from both inland and inlet. Hopefully, you and your staff will agree with me and will approve the proposed projects and any zoning relief they may require.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'David L. Ferguson', with a long horizontal line extending to the right.

David L. Ferguson
130 West 12th Street 8C
New York, NY 10011
646.530.1784

**Robert C. Boomhower Trust
303 Arabian Road
Palm Beach, Florida**

January 20, 2014

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

RE: Arcom Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida
Arcom Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, Florida

Dear Mayor Coniglio, Members of the Town Council and Members of the Architectural Review Commission:

I became the Trustee of the property located at 303 Arabian Road in Palm Beach when Charlie Boomhower died on October 12, 2013. Charlie's neighbors, the Frisbie family, (located at 219 Indian Road and 225 Indian Road) are planning to build new two story homes on their properties.

Charlie was dear friends of the Frisbies and spoke fondly of them on many occasions. Now that I am tasked with selling Charlie's home on Arabian Road, it seems that the Frisbie projects have only enhanced property values in the North End.

I have reviewed their plans for the proposed houses and fully support the projects and have no objections. Their previous homes at 350, 999 and 1000 Indian Road contributed positively to the collective aesthetic the neighborhood aims to encourage and uphold, and I am confident these homes will, in a similar fashion, help to enhance the Indian Road processional – visible from both inland and inlet. Hopefully, you and your staff will agree with me and will approve the proposed projects and any zoning relief they may require.

Thank you for your consideration.

Sincerely,


Janet E. Cole

**Richard True
119 East Inlet Drive
Palm Beach, Florida**

January 20, 2014

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

RE: Arcom Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida
Arcom Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, Florida

Dear Mayor Coniglio, Members of the Town Council and Members of the Architectural Review Commission:

I own the property located at 119 East Inlet Drive in Palm Beach. My neighbors, the Frisbie family, (located at 219 Indian Road and 225 Indian Road) are planning to build new two story homes on their properties. I have reviewed their plans for the proposed houses and fully support the projects and have no objections. Their previous homes at 350, 999 and 1000 Indian Road contributed positively to the collective aesthetic the neighborhood aims to encourage and uphold, and I am confident these homes will, in a similar fashion, help to enhance the Indian Road processional – visible from both inland and inlet. Hopefully, you and your staff will agree with me and will approve the proposed projects and any zoning relief they may require.

Thank you for your consideration.

Sincerely,



KEITH AND LINDA BEATY
395 CARIBBEAN ROAD
PALM BEACH, FL 33480

January 21, 2014

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

RE: Arcom Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida
Arcom Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, Florida

Dear Mayor Coniglio, Members of the Town Council and Members of the
Architectural Review Commission:

I live at the property located at 395 Caribbean Road in Palm Beach. My neighbors, the Frisbie family, (located at 219 Indian Road and 225 Indian Road) are planning to build new two story homes on their properties. We/I have reviewed their plans for the proposed houses and fully support the projects and have no objections. Their previous homes at 350, 999 and 1000 Indian Road contributed positively to the collective aesthetic the neighborhood aims to encourage and uphold, and we/I are/am confident these homes will, in a similar fashion, help to enhance the Indian Road processional - visible from both inland and inlet. Hopefully, you and your staff will agree with me and will approve the proposed projects and any zoning relief they may require.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith D. Beaty", with a long horizontal flourish extending to the right.

Keith D. Beaty

**Arthur George Kallop
1570 North Ocean Boulevard
Palm Beach, FL 33480**

January 21, 2014

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

RE: Arcom Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida

Arcom Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, FL 33480

Dear Ladies and Gentlemen:

My wife and I are constructing a new home at 1570 North Ocean Boulevard (corner of Arabian Road) that was submitted for review by ARCOM last April and approved last May. Our home is a classic southern plantation style home inspired by the great Mississippi river plantation home, "Oak Alley." I have both a Bachelors Degree and Masters Degree in Architecture from Princeton University, having also studied architecture at Cambridge University, England as part of my Masters Degree Program. While I never practiced architecture as a career, I have studied and travelled extensively to further pursue my interests in architecture and design.

I have reviewed the Frisbie family plans for 219 and 225 Indian Road, and think they would be fine additions to the area. Both houses feature the Cape Dutch architectural style so typical of the great wine estates of South Africa. I visited South Africa just two years ago and toured a number of the great wine estate houses including the magnificent, Groot Constantia near Cape Town. I can say with confidence that the Frisbies' design is an excellent example of this architectural style and we would welcome it to our neighborhood.

We also admire the Frisbie's architectural composition where smaller architectural elements face the streetscape leading to the main residence facing the inlet. It creates a very nice "scale" when viewed from the street that is very much in keeping with our area of the north end.

I support the Frisbie's designs completely, and hope that you will find them acceptable.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arthur George Kallop', with a large, stylized initial 'A' and 'K'.

January 21, 2014

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

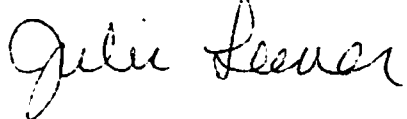
RE: Arcom Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida
Arcom Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, Florida

Dear Mayor Coniglio, Members of the Town Council and Members of the Architectural Review Commission:

I live at the property located at 350 Indian Road in Palm Beach. My neighbors, the Frisbie family, (located at 219 Indian Road and 225 Indian Road) are planning to build new two story homes on their properties. We/I have reviewed their plans for the proposed houses and fully support the projects and have no objections. Their previous homes at 350, 999 and 1000 Indian Road contributed positively to the collective aesthetic the neighborhood aims to encourage and uphold, and we/I are/am confident these homes will, in a similar fashion, help to enhance the Indian Road processional – visible from both inland and inlet. Hopefully, you and your staff will agree with me and will approve the proposed projects and any zoning relief they may require.

Thank you for your consideration.

Sincerely,

131 E. Inlet Drive
Palm Beach, FL 33480
410-244-7522

January 20, 2014

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

RE: Arcom Number B-007-2014 and Variance Number 8-2014
219 Indian Road, Palm Beach, Florida
Arcom Number B-008-2014 and Variance Number 7-2014
225 Indian Road, Palm Beach, Florida

Dear Mayor Coniglio, Members of the Town Council and Members of the Architectural Review Commission:

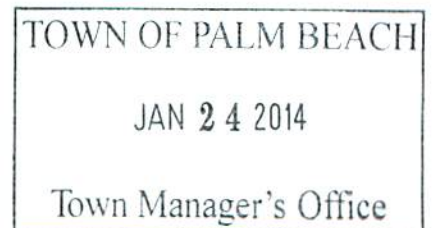
I live at the property located at 131 East Inlet Drive in Palm Beach. My neighbors, the Frisbie family, (located at 219 Indian Road and 225 Indian Road) are planning to build new two story homes on their properties. We/I have reviewed their plans for the proposed houses and fully support the projects and have no objections. Their previous homes at 350, 999 and 1000 Indian Road contributed positively to the collective aesthetic the neighborhood aims to encourage and uphold, and we/I are/am confident these homes will, in a similar fashion, help to enhance the Indian Road processional – visible from both inland and inlet. Hopefully, you and your staff will agree with me and will approve the proposed projects and any zoning relief they may require.

Thank you for your consideration.

Sincerely,


Bryson L. Cook

BLC/dh
7502469/26



TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 12, 2014

Section of Agenda

Development Review - New Business

Agenda Title

VARIANCE #8-2014 The application of 219 Indian Road, LLC (David Frisbie, Manager); relative to property commonly known as **219 Indian Road**; described as Lengthy legal description on file; located in the R-B Zoning District. The applicant is requesting approval to build a new 11,447 square foot two story residence with the following variances being requested: 1) to have a point of measurement for building height of 9 feet National Geodetic Vertical Datum (NGVD) in lieu of the 7.5 feet NGVD maximum allowed for lots abutting a low street. 2) to have a point of measurement for cubic content ratio (CCR) of 9 feet National Geodetic Vertical Datum (NGVD) in lieu of the 7.5 feet NGVD maximum allowed for lots abutting a low street. 3) to have an overall height of 33.2 feet in lieu of the 30 foot maximum allowed as measured from 7.5 NGVD. 4) to allow a parapet on the gable ends on a pitched roof 6.7 feet above the maximum overall height which is permitted for a flat roof and parapet system of the point of measurement variance is granted. [Attorney: Maura Ziska]

[ARCOM Recommendation: Defer the variance requests to the February 26, 2014 ARCOM Meeting]

Request for Withdrawal from the February 12, 2014, Town Council Meeting, Per Letter Dated February 4, 2014, from Maura A. Ziska.

Presenter

John S. Page Director of Planning, Zoning & Building

Supporting Documents

- [Letter Dated February 4, 2014, from Maura A. Ziska.](#)

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska
Marvin S. Rosen, Counsel*

*Also admitted in New York
*Also admitted in Michigan

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

Telephone: (561) 802-8960
Facsimile: (561) 802-8995

VIA FACSIMILE: 561-838-5411

February 4, 2014

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

RE: Variance #8-2014; 219 Indian Road, Palm Beach, Florida

Dear Mayor and Town Council:

Please **withdraw** the above referenced matter from the **TOWN COUNCIL** agenda.
Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,



Maura A. Ziska

/maz

cc: David Frisbie
Roger Janssen
Paul Castro
00022225

TOWN OF PALM BEACH

FEB 04 2014

Town Manager's Office

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 12, 2014

Section of Agenda

Development Review - Other

Agenda Title

Items Related to The Breakers Hotel Planned Unit Development (PUD)

(1) Application by The Breakers Palm Beach, Inc., to amend the PUD-A (Breakers Hotel and Beach Club) by Adding a 4,559 (4,190 net) square foot, Second Floor Addition above the Beach Club Restaurant with an Associated Elevator.

RESOLUTION NO. 11-2014 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending Resolution 70-10, The Breakers Planned Unit Development (PUD-A), By Adding 4,559 Square Feet Of Accessory Hotel Space To The Beach Club For Construction Of Fitness Center Facility.

(2) SPECIAL EXCEPTION #1-2014 WITH SITE PLAN REVIEW

The application of The Breakers Palm Beach, Inc.; relative to property commonly known as 1 South County Road; described as All of that plat of Breakers Row Plat No. 1 Re-Plat, recorded in Plat Book 46, Pages 188 through 190, Public Records of Palm Beach County; located in the PUD-A Zoning District. The applicant is requesting approval for construction projects involving accessory hotel uses including the following: The construction of a handicapped beach access structure (ramp) south of the main hotel seawall. This ramp is a replacement for a similar structure which was destroyed by a hurricane. The replacement of the existing 1,588 sq. ft. pavilion on the second floor (Ocean Terrace) of the Beach Club with a 4,559 sq. ft. structure (4,190 sq. ft. under air condition) to be used for a proposed relocated fitness center. The fitness center is currently on the first floor of the Beach Club. Existing spa functions on the first floor will be expanded into that space. The second story fitness center addition will be no higher than the existing pavilion on the Ocean Terrace, which it will replace. Improvements associated with the Beach Club are a proposed new elevator, a relocated building entrance on the north side of the building, and renovation of the courtyard on the east side

of the building. Except for the new elevator and the courtyard renovations, the changes to the beach club building will take place within the foot print (foundation) of the existing building. No variances are requested. [Attorney: James M. Crowley]

Presenter

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

Supporting Documents

- [Memorandum dated January 30, 2014 from John S. Page](#)
- [Planning and Zoning Commission Record and Report](#)
- [Resolution No. 1-98](#)
- [Resolution No. 3-00](#)
- [Resolution No. 4-05](#)
- [Resolution 11-2014](#)
- [Breakers PUD-A Application](#)
- [Breakers PUD-A Parking Statement](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 12, 2014

To: Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Application by The Breakers Palm Beach, Inc., to amend the PUD-A (Breakers Hotel and Beach Club) by Adding a 4,559 (4,190 net) square foot, Second Floor Addition above the Beach Club Restaurant with an Associated Elevator
[Resolution No. 11-2014]

Date: January 30, 2014

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the proposed PUD-A Amendment with related Resolution No. 11-2014 adding a 4,559 square foot (4,190 net square feet) addition for a fitness facility, and make a determination whether 11,621 square feet of preserved development rights within the PUD-A identified in Resolution No. 1-98 is still valid. In addition, if the Council determines that the Breakers Palm Beach, Inc. has retained preserved development rights, Staff recommends that the 4,190 net square feet of additional area be deducted from that total.

PLANNING AND ZONING COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends that the Town Council approve the proposed PUD-A Amendment. In addition, the Commission recommends that the Town Council recognize the continued validity of the 11,621 square feet of preserved development rights within the PUD-A, but deduct the new square footage for construction of the fitness facility and any future improvements from that square footage. The Commission's actions and votes on the Breaker PUD-A amendment are also provided in the attached Planning and Zoning Commission Record and Report for your information.

GENERAL INFORMATION

In 1998, the Town Council approved Resolution No. 1-98 (copy attached) which allowed for the demolition of the Starlight Ballroom and Beach Club facilities north of the pool/beach cabanas and the construction of new Beach Club facilities, including a new Starlight

Ballroom and associated basement kitchen and storage facilities. The approval was a net decrease of 11,621 square feet, however, the Breakers Hotel preserved the development rights of the 11,621 square feet of accessory hotel space within the PUD for some future date. Since that time, the Town has approved 42,687 square feet of new development within the PUD.

In 2000 (Resolution No 3-00 attached) The Breakers received PUD Amendment approval from the Town Council to, among other things, construct a new 31,692 square foot golf and tennis club facility (including 7,682 square feet of covered terrace), a new 150 seat restaurant, ten tennis courts, redesign its golf course and create 80 associated off-street parking spaces on the west side of South County Road.

In 2005 (Resolution No. 4-05 attached) The Breakers received PUD Amendment approval to, among other things, rebuild 20 beach cabanas, add a beach bar and grill with 136 seats, create two swimming pools and jacuzzis, construct a 778 square foot pavilion and a 2,535 square foot locker and restroom building. A reduction of 16 parking spaces in the cabana area was allowed.

The Breakers is now requesting approval to amend the PUD-A (The Breakers Hotel Beach Club) by demolishing a 1,588 square foot open loggia and terrace above the Beach Club Restaurant and replacing it with a 4,559 square foot fitness center addition and elevator (application attached). Staff believes that the improvements authorized in 2000 and 2005 have consumed the 11,621 square feet of development rights that were preserved in 1998, but also that the proposed additions can be easily accommodated and can be approved. The additions are intended to recreate a larger Hotel and Club Fitness Center amenity, yet do not create new membership or hotel rooms or generate additional automobile trips on the surrounding roadways. In addition, based on the certified analysis by DKS Associates, the Breakers PUD-A has 164 more off-street parking spaces than is required. The proposed addition requires the use of only 22 of those surplus off-street parking spaces within the PUD and therefore adequate off-street parking for the proposed addition exists at this time.

On January 21, 2014, the Planning and Zoning Commission considered the proposed application. The Commission recommended approval of the amendment to allow the fitness center addition, however, differed from Staff's position on the 11,621 square feet of questionable preserved development rights. The Commission's position was that since the preserved development rights were never addressed in subsequent PUD amendment applications or associated Resolutions, that the Breakers Hotel should keep those preserved rights, but deduct the newly proposed square footage (4,109 net square feet) from the 11,621 square feet.

Staff recommends that the Town Council approve Resolution No. 11-2014, which amends the PUD-A by adding the 4,190 net square foot fitness facility. Further, the Town Council should clarify whether or not all of the 1998 development rights (11,621 square feet), have

been consumed by subsequent building approvals, or whether a balance of 7,512 square feet (11,621 sq.ft. minus 4,109 sq.ft.) will continue to exist.

TOWN ATTORNEY REVIEW

Resolution No. 11-2014 was approved by Town Attorney John C. Randolph for legal form and sufficiency.

Attachments

cc: Thomas G. Bradford, Deputy Town Manager
John C. Randolph, Town Attorney
Susan Owens, Town Clerk
Paul W. Castro, AICP, Zoning Administrator
James Crowley, Esquire
Pf
Zf



**PLANNING AND ZONING COMMISSION
RECORD AND REPORT
TOWN HALL – COUNCIL CHAMBERS – SECOND FLOOR
360 S COUNTY ROAD, PALM BEACH
TUESDAY, JANUARY 21, 2014, 08:30 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 (tape or CD) of the meeting by contacting Debby Morakis, Secretary to the Planning & Zoning Commission at (561) 227-6411. 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 AND ROLL CALL (09:30:41 a.m.)

Chair Rose called the meeting to order at 9:30 a.m. On roll call, Commission Members present were:

C. Tanner Rose, Chair

Martin Klein, Vice-Chair

Floyd Wideman, Member

Lewis Crampton, Member (left meeting at 11:15 a.m.)

Bobbie Lindsay Buck, Member

Bruce Langmaid, Member

Alan S. Golboro, Member

Thomas Greenbaum, Alternate Member (left meeting at 11:18 a.m.)

Kevin Kenny, Alternate Member

Danielle H. Moore, Alternate Member

Staff Members present were:

John Page, Director of Planning, Zoning, Building

Paul Castro, Zoning Administrator

Debby Morakis, Secretary to the Planning & Zoning Commission

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Ms. Morakis led the Commission with the invocation and Pledge of Allegiance.

III. APPROVAL OF THE AGENDA (09:32:17 a.m.)

Chair Rose identified changes to the agenda postponing the presentations of Mr. Mouzon and Ms. Day and called for a motion to approve the agenda as amended.

MOTION BY MR. KLEIN TO APPROVE THE AMENDED AGENDA.

MOTION SECONDED BY MR. CRAMPTON.

MOTION CARRIED UNANIMOUSLY WITHOUT BENEFIT OF A ROLL CALL VOTE.

IV. OATH OF OFFICE FOR NEW MEMBER (09:33:43 a.m.)

Ms. Morakis administered the Oath of Office to Ms. Moore, who will serve as an Alternate Member.

V. COMMENTS FROM THE PUBLIC ON ANY ITEM NOT ON THE AGENDA (9:34:00 a.m.)

There were no comments heard from the public at this time.

VI. APPROVAL OF OCTOBER 15, 2013 PLANNING AND ZONING COMMISSION MINUTES (09:35:18 a.m.)

**MOTION BY MR. WIDEMAN TO APPROVE THE MINUTES OF THE OCTOBER 15, 2013 PLANNING & ZONING COMMISSION MEETING.
MOTION SECONDED BY MR. KLEIN.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.**

VII. CONSIDERATION OF PUD-A AMENDMENT BY THE BREAKERS PALM BEACH, INC. (09:36:07 a.m.)

Chair Rose and Mr. Golboro declared ex-parte communication.

James M. Crowley, Attorney with the firm of Gunster Yoakley addressed the Commission on behalf of The Breakers Palm Beach, Inc., introducing Paul Leone and Alex Gilmurray from The Breakers; Jim Norquest, Planner; Steven L. Polio, Architect; and, Chad Gruber, Engineer, all here with him today. Mr. Crowley explained the proposed project, demonstrating with a power point several renderings and photos of the existing conditions and the proposed new fitness center. The applicant is proposing to amend the Breaker's PUD adding 4,190 square feet to construct a new fitness center to be used by the Breaker's members and guests only. The existing fitness center will be relocated to the expanded area where the Ocean Terrace is. Mr. Crowley explained that amendments to the PUD have been done by Resolution in the past and explained previous projects that were completed as a result of Resolution 1-98 and Resolution 4-05. Mr. Crowley noted that the current application did include an error in the parking statement, but, explained that sufficient parking (164 spaces) already exist to accommodate the proposed expansion. Mr. Crowley explained that the current application would exceed the 20,000 limitation in the PUD Agreement.

Chair Rose called for comments from the Commission. Paul Castro, Zoning Administrator, explained Staff's recommendation stating there would be no traffic impact to the surrounding roadway segments. Mr. Castro stated there was an issue in 1998 when the Starlight Ballroom and Beach Club were built; the Breakers had to reduce the size in order to retain the development rights. Subsequent and through several different Resolutions, there have been more than 40,000 square feet added and staff believes they have used the development rights. Mr. Castro stated that staff has no objections and a discussion occurred with comments being heard from Mr. Crampton regarding the vested rights. Mr. Wideman complimented the Breakers on their presentation and stated that he felt it would be a fine addition to the Breakers. Mr. Golboro stated that he did not see any structural engineer sign-off. John Page, Director of Planning, Zoning and Building

Department stated that would be taken care of when the permit application was submitted.

Mr. Klein echoed the comments of Mr. Wideman complimenting the project, and added that he would not be comfortable with passing a resolution one way or another without addressing the issue of the 11,000 square feet. Mr. Castro requested the Commission make a recommendation to Council one way or another and explained that it was a separate issue that came up during review of the PUD Amendment. Mr. Castro explained that the Breaker's believes they have the vested right to build 11,621 sq. ft. and staff believes the Breakers have built over 40,000 sq. ft. of additions since the resolution in 1998, adding that it may have been missed or was an oversight in the past. Mr. Castro again requested the Commission make a recommendation to Council, one way or another, so that there would be no question in the future for staff or the applicant as to what the Breakers has the right to build. Discussion continued with comments heard from Messrs. Klein and Crampton. Mr. Rose stated that he felt it was a documentation issue. Mr. Crowley added that he felt Council had approved previous projects as presented and that the resolutions were never amended. Mr. Crowley answered questions and Mr. Castro added that an elevator would be installed to provide handicapped access to the tower feature. Ms. Buck thanked the Breakers for their presentation and stated that she had no problem with the expansion of the fitness center.

Town Attorney John Randolph added that Mr. Crowley had attempted to meet with him and Mr. Castro but that meeting did not happen due to his schedule. Mr. Randolph stated, therefore, that he had no legal opinion to offer the Commission as to whether staff or the applicant was correct and advised the Commission that if they were prepared to make a recommendation regarding this they should do so. Mr. Randolph added that the Commission could act on this application or defer to Council if they felt they did not have enough information. Ms. Buck added that she felt that was what the Commission should do. Mr. Wideman stated that he felt the application was complete and should be approved and that the two issues should not be combined; adding that he felt the Commission could make a second recommendation. Mr. Castro stated that staff agreed and recommended approval of the project. Discussion continued and it was determined that two motions would be made.

MOTION BY MR. KLEIN TO APPROVE THE PUD AMENDMENT AS PRESENTED.

MOTION SECONDED BY MR. WIDEMAN.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

Chair Rose called for a second motion related to the square footage. Mr. Klein stated, "The Breakers takes the view that it had preserved 11,000 plus square feet. The Town would like some clarity and takes the view that because of various actions subsequent to that the 11,000 square feet has been utilized more than enough and that through some inadvertence that was never clarified. The Breakers is asking for 4,000 sq. ft. which has been approved, the question is do we want to deduct that 4,000 from the 11000 leaving a net of 7,000 odd square feet which the Breakers still feels is preserved and which the Town still feels may not be preserved. Do I get it? (All agreed). I understand the

Breakers' view is they are willing to go along with the deduction of the 4,000 odd square feet, leaving a net of 7,000 square feet. If that is the case I make a motion incorporating all of that."

MOTION BY MR. KLEIN AS STATED ABOVE.

MOTION SECONDED BY CRAMPTON.

Mrs. Buck asked if staff was of the opinion that the Commission should recommend to take this deduction. Mr. Castro stated that staff felt that the Breakers had already used all of it explaining that the motion on the floor was to reduce the 4,190 sq. ft. from 11,621 sq. ft. and that would be a benchmark than could be reduced in the future. Discussion continued. Chair Rose restated the motion that with regard to the present amendment to the PUD-A, the 11,000 will be reduced by the amount of square footage that is being utilized in the PUD-A, and the difference would be preserved for future use.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

VIII. [Ordinance No. 1-2014](#) (09:48:13 a.m.)

[An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning; Article X, On-Street Parking Permits; Division 2, Residential Districts; Section 134-2296, Issuance Of Special Parking Permits Upon Application, To Include A New Subparagraph \(D\) To Provide For The Issuance Of Temporary Group Permits; Amending Division 3, Residential Districts Adjacent To Commercial Districts; Section 134-2328, Temporary Group Permits, To Provide For An Application Fee; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.](#)

Tom Bradford, Deputy Town Manager, addressed the Commission and explained the proposed ordinance. After a very brief discussion, it was determined that the Ordinances would be voted on separately.

MOTION BY MR. WIDEMAN TO APPROVE ORDINANCE NO. 1-2014 AS PRESENTED.

MOTION SECONDED BY MR. KLEIN.

A brief discussion ensued with questions heard from Mrs. Buck who asked about the requirement that a resident obtain 2 visitor parking permits prior to getting a temporary permit. Mr. Bradford explained the program.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

IX. [Ordinance No. 2-2014](#) (09:56:25 a.m.)

[An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning; Article X, On-Street Parking Permits; Division 2, Residential Districts; Section 134-2293, Designation Of Controlled Parking Residential Areas, To Delete Section 134-2293 In Its Entirety ; Amending Division 2, Residential Districts; Section 134- 2295, Procedures For Determining Controlled Parking Residential Areas, To Require Website Maps And Proper Display Of Permits; Providing For Severability;](#)

Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Mr. Bradford explained this was a housekeeping item that would eliminate a redundant section in the code and update the section that requires the Town Clerk keep a map to also require the Clerk to keep a map on the Town's website.

MOTION BY MR. KLEIN TO APPROVE ORDINANCE NO. 2-2014 AS PRESENTED.

MOTION SECONDED BY MR. WIDEMAN.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

X. Ordinance No. 3-2014 (09:58:18 a.m.)

An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning; Article X, On-Street Parking Permits; Division 2, Residential Districts; Section 134-2301, Penalties, To Clarify The Penalty For Illegal Parking And Providing For The Issuance Of Citations For All Other Violations Of This Division ; Amending Division 3, Residential Districts Adjacent To Commercial Districts; Section 134-2234, Establishing A Fine For Illegal Parking And Providing For The Issuance Of Citations For All Other Violations Of This Division; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Mr. Bradford explained the proposed Ordinance and described instances where the Town received complaints from citizens who alleged that workers on the Avenue were in possession of visitor's parking permits. Mr. Bradford explained that a parking citation could be imposed upon the non-resident but there was no mechanism in the Code that would allow action against the resident. Discussion ensued and Mr. Bradford addressed questions from the Commission. Raychel Houston, Parking and Code Enforcement, addressed the Commission, further explained the situation and the difficulty encountered with parking enforcement. After further comments and questions from the Commission members, the following motion was made:

MOTION BY MR. KLEIN TO APPROVE ORDINANCE NO. 3-2014.

MOTION SECONDED BY MR. WIDEMAN.

MOTION PASSED 5-2 WITH MRS. BUCK AND MR. GOLBORO OPPOSED.

XI. CONSIDERATION OF THE STUDY ITEM REPORT (10:27:14 a.m.)

Paul Castro, Zoning Administrator addressed several study items that staff would like direction on.

Study Item 1. Third story issues related to access, and use of attic space within single family homes.

Mr. Castro explained the problems encountered with attic spaces and described the proposed definitions and language changes.

For the record, Mr. Crampton left the meeting at 11:15 a.m. Mr. Greenbaum left the meeting at 11:18 a.m.

Attorney Randolph suggested a provision might be added that would allow the Town access for a future inspection. Mr. Castro noted that would be similar to a kitchen agreement and not a practical solution. Discussion continued and Mrs. Buck made suggestion on how “attic” should be redefined: as non-habitable space within a roof system of a building with less than 7 feet of headroom and used only for storage, mechanical or access to rooftop; removing the pull down stairs, and, allowing no more than one electrical outlet. Mr. Castro commented about rooftop access and the current provisions in the code regarding ceiling heights and windows. Discussion continued. Mr. Castro stated that staff would bring both the proposed language and the Commission’s concerns to Council.

MOTION BY MRS. BUCK THAT “ATTIC” IS DEFINED AS SUGGESTED, REMOVING PULL DOWN STAIRS AND NO MORE THAN ONE ELECTRICAL OUTLET, WITH CONFORMING CHANGES THROUGHOUT.

MOTION SECONDED BY MR. KLEIN.

Ms. Morakis noted for the record that Messrs. Crampton and Greenbaum left the meeting so Mr. Kenny would vote.

MOTION CARRIED 5-2 WITH MESSRS. LANGMAID AND GOLBORO OPPOSED.

Study Item 2. Study allowing signs in certain situations where a commercial tenant space does not front a street and the parking for the tenant space is not fronting a street.

Mr. Castro explained that signs are only allowed for businesses that front on a street. Certain spaces where tenants do not front on a street are not permitted signage. Staff would like to allow more flexibility for those tenants. Mr. Castro described the situation that exists at both the rear of 2875 S. Ocean Blvd. and 230 Royal Palm Way. After a brief discussion, the following motion was made: Motion by Mr. Wideman to approve Study Item 2. This motion failed for lack of second and discussion continued.

MOTION BY MR. GOLBORO TO ADOPT THE LANGUAGE CHANGES PROPOSED IN STUDY ITEM 2.

MOTION SECONDED BY MR. KLEIN.

MOTION CARRIED 7-0 AFTER ROLL CALL VOTE.

Study Item 3. Study the content regulations for business signs.

Mr. Castro stated this was an effort to provide additional language to allow signs that match only the dba names registered with the State of Florida.

MOTION BY MR. WIDEMAN TO ADOPT THE ZONING CODE LANGUAGE CHANGES PROPOSED IN STUDY ITEM 3.

MOTION SECONDED BY MR. KLEIN.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

Chair Rose suggested minor grammatical changes and they were agreed to by Mr. Castro.

Study Item 4. Study the definition of “lot” as it relates to lots fronting on the Atlantic Ocean.

Mr. Castro demonstrated with a drawing that identified the mean high water line, the bulkhead line, and, the bulkhead/seawall line along with several aerial photographs to describe the proposed language changes. Mr. Castro stated that this could be considered a Bert Harris issue. Attorney Randolph explained the Bert Harris Act and added that any issues could be handled on a case by case basis. Comments were heard from Commission Members and Attorney Randolph advised the Commission that if it felt this was a good ordinance change it should recommend approval to Council, and should leave it to Council to consider any potential Bert Harris threat. Mr. Castro explained this affects approximately 7 or 8 properties or possibly a few more, but did not affect properties on the beach side of the beach area zoning district. Comments were heard from Mr. Golboro regarding taxation and assessed valuation; and, Mr. Klein added that he felt the proposal was a wise change and would support it.

MOTION BY MR. WIDEMAN TO APPROVE ZONING LANGUAGE CHANGES PROPOSED IN STUDY ITEM 4.

MOTION SECONDED BY MR. KLEIN.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

Study Item 5. Modify the notice provisions for code amendments, special exceptions or variances which increase the density over what exists on a property.

Mr. Castro explained this proposal would be moving existing language to the correct location in the code and adds another provision that would require a 1,000 foot notice for a special exception or variance which would increase the density.

MOTION BY MR. WIDEMAN TO APPROVE ZONING LANGUAGE CHANGES PROPOSED IN STUDY ITEM 5.

MOTION SECONDED BY MR. KLEIN.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

Study Item 6. Study creating separate zoning regulations for a veterinarian use or animal boarding facilities.

Mr. Castro explained how a veterinarian office would have more of an impact than a medical office due to animal boarding, walking, pedestrian and traffic, etc. Mr. Castro explained the proposed changes that would make a veterinarians office a special exception use no matter the size, allowing the use within two districts in the Town and prohibiting it in the other districts. Comments were heard from Mr. Wideman and Mrs. Buck who asked about the prohibition on Royal Palm Way. Mr. Castro stated that staff felt it was not consistent with existing uses in the area. Chair Rose stated that he felt a veterinarian office on Royal Palm Way would be out of place. Mr. Wideman agreed it should be prohibited there and added there was no outdoor space available there to walk a dog.

MOTION BY MR. GOLBORO TO APPROVE ZONING LANGUAGE CHANGES PROPOSED IN STUDY ITEM 6.

MOTION SECONDED BY MR. WIDEMAN.

MOTION CARRIED 6-1 WITH MRS. BUCK OPPOSED.

Study Item 7. Clarify in the definition of “building height for construction east of the Coastal Construction Control Line” that the point of measurement can be the highest crown of road if that elevation is higher than the minimum bottom of grade beam required by the State plus 2 feet.

Mr. Castro explained the current code requirement and read the proposed language changes that would allow a project to be built at the crown of the road without a variance. Mr. Castro projected drawings of several locations in Town to provide examples to the Commission. A discussion ensued with comments heard from Mr. Golboro who stated for drainage reasons he preferred to require a variance; Mrs. Buck expressed her concerns about flooding and drainage. Mr. Klein expressed his concern regarding requiring variances and asked what the genesis for this proposal was. Mr. Castro stated that someone had come in and asked why they were required to build at the crown of road and lose a foot. Mr. Golboro stated that roads were currently being milled; he felt this was minor now but it should be the right of Council to make one house higher than the next. Mr. Rose suggested language changes eliminating the word “either” since three items were involved. Discussion continued briefly. Mr. Klein stated that he would move to support this with concerns to be addressed at another time.

MOTION BY MR. KLEIN TO ADOPT ZONING LANGUAGE CHANGES PROPOSED IN STUDY ITEM 7.

MOTION SECONDED BY MR. WIDEMAN.

MOTION CARRIED 5-2 WITH MRS. BUCK AND MR. GOLBORO OPPOSED.

Mr. Castro explained that Staff would provide the draft Record and Report to Council as backup for this Council item and Chair Rose offered to review the Commission’s proposed language changes.

XII. COMMENTS OF THE PLANNING AND ZONING COMMISSION AND PLANNING, ZONING AND BUILDING DIRECTOR (12:27:39 a.m.)

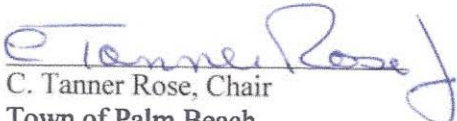
Mr. Page explained there would be an upcoming referendum on the PUD-5 zoning changes scheduled for March 25 and noted that the presentations scheduled for Steve Mouzon and Jane Day would be postponed until after the results of the referendum. Mr. Page explained to the Commission that Council has decided to not have the Commission further review the parking and traffic plan prepared in 2006.

Attorney Randolph address the Commission advising of the public records request received regarding the PUD-5. Attorney Randolph also explained the procedure the Commissioners should use to forward any Town related emails to a Town email address to allow ease in retrieval of Town related documents. Mr. Page stated that he would follow up with Spencer Wilson to determine how best this could be handled. Attorney Randolph explained that a challenge had been filed regarding Ordinance 5-2013 and that this was scheduled for an administrative hearing on February 24. The Town filed a motion for continuance until after the March 25 referendum. The administrative hearing officer postponed the matter until after May 1.

Chair Rose noted there would not be a meeting of the Planning & Zoning Commission in February.

XIII. ADJOURNMENT (12:36:28 a.m.)
MOTION TO ADJOURN AT 12:36 P.M.

Respectfully Submitted,


C. Tanner Rose, Chair
Town of Palm Beach
Planning & Zoning Commission


Martin I. Klein, Vice Chair
Town of Palm Beach
Planning & Zoning Commission

RESOLUTION 1- 98

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION 1-97, THE BREAKERS PUD, BY MODIFYING THE TERMS FOR THE LEASE OF THE PINEWALK TRANSFER STATION; BY EXTENDING THE DATE FOR RENEGOTIATION ON THE TRANSFER OF DEVELOPMENT RIGHTS FOR THE BREAKER PUD; BY PROVIDING A REQUIRED OFF-STREET PARKING FACILITY TEMPORARILY WITHIN PRIORITY AREA NO. 1, PHASE 1A OF THE PUD; BY APPROVING A REQUIREMENT FOR A PARKING STRUCTURE AT A FUTURE DATE; BY ELIMINATING THE REQUIREMENTS TO CLOSE THE PINEWALK AND ELIMINATE THE ASSOCIATED TRAFFIC SIGNAL; BY ELIMINATING THE REQUIREMENT TO PAVE SEVENTY PARKING SPACES ALONG THE PINEWALK ENTRANCE; BY APPROVING THE REQUEST TO POSTPONE THE CONSTRUCTION OF TWO HUNDRED PARKING SPACES; AND BY MODIFYING AND EXPANDING THE HOTEL FACILITIES

WHEREAS, Flagler System, Inc. did submit an application for tentative approval together with supporting documentation for Planned Unit Development for the property commonly referred to as "The Breakers" on October 30, 1970; and

WHEREAS, The Zoning Commission and the Town Council of the Town of Palm Beach, subsequent to review and public hearing did by Resolution 6-71, as amended by Resolutions 9-72, 13-74, 10-81, 17-90, 6-92, and 1-97 grant tentative approval of said application, subject to certain conditions; and

WHEREAS, The Town and Flagler System, Inc., entered into a binding Agreement on September 8, 1983 wherein Flagler Systems, Inc., accepted the Town's conditions governing the development of "The Breakers" Planned Unit Development, and said Agreement was revised by the Town and Flagler System, Inc., on June 18, 1996, on January 22, 1990, and on February 19, 1992, pursuant to the terms of Resolution No. 6-92; and,

WHEREAS, Flagler System, Inc. has been reorganized and the corporate name of the company now controlling "The Breakers" Planned Unit Development is The Breakers Palm Beach, Inc.; and,

WHEREAS, on September 5, 1997, The Breakers Palm Beach, Inc., did submit an application for tentative approval of the modifications of the Planned Unit Development; and,

WHEREAS, on November 18, 1997 and December 4, 1997, the Zoning Commission and on January 6, 1998 and January 26, 1998 the Town Council of the Town of Palm Beach did review and hold public hearings on the application for tentative approval of the modifications of the Planned Unit Development: and,

WHEREAS, The Town Council, in accordance with Section 7.33 of Ordinance 2-74, as amended, does make the following findings:

1. The Planned Unit Development Plan, as submitted with the modifications thereto, is consistent with the statement of general objectives of a Planned Unit Development as set forth in Section 7.10 of the Ordinance.
2. The Planned Unit Development, as submitted with the modifications thereto, is consistent with the Comprehensive Plan, as long as the conditions hereinafter set forth are met.
3. The Planned Unit Development, as submitted with modifications thereto, does include an adequate amount of open space located in a satisfactory manner, as long as the applicant meets the open space set forth in the Resolution.
4. The Planned Unit Development, as submitted with modifications thereto, makes adequate provisions for public services, provides adequate control over vehicular traffic and enhances the amenities of light and air, recreational and visual enjoyment, but is further subject to certain conditions hereinafter set forth.
5. The Planned Unit Development, as submitted with modifications thereto, is not adverse to the neighborhood in which it is located.
6. The Planned Unit Development, as submitted with modifications thereto, includes sufficient terms and conditions to protect the interests of the public in the development of the plan over a period of years.
7. The Breakers Hotel as referenced in the exhibits attached hereto is a historically and architecturally significant building and provision for its west facade preservation shall be subject to the control of the Landmarks Preservation Commission, the Town Council and any other commission or board of the Town having jurisdiction over same, such control not to be inconsistent with the Planned Unit Development Plan approval as evidenced by this Resolution.

WHEREAS, the Town Council, after deliberation and evaluation of the recommendations of the Zoning Commission and the comments received from interested parties at the aforementioned public hearings, does find the Planned Unit Development Plan, as amended with the modifications thereto, to be in the best interest of the Town subject to the conditions hereinafter set forth.

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

Section 1. That the amendments to the Planned Unit Development submitted by the Breakers Palm Beach, Inc., in September 1997, be granted tentative approval subject to the conditions set forth therein not in conflict with this Resolution, in addition to those specified below:

A. AMENDMENTS TO PREVIOUS MODIFICATIONS

MODIFICATION #1

Coffee Shop

NO CHANGE

MODIFICATION #2

Tennis Court Lighting

NO CHANGE

MODIFICATION #3

Additional Retail Space

NO CHANGE

MODIFICATION #4

New Tennis Facility

NO CHANGE

MODIFICATION #5

Maintenance of Golf Course Green Space

NO CHANGE

MODIFICATION #6

Lease of Pine Walk Transfer Station

The Town and the Breakers Palm Beach, Inc. have agreed that the Town shall be given an extension of the existing lease from the Breakers Palm Beach, Inc. until December 31, 2012, for the Town's waste transfer station currently located on Development Priority No. 8 (Phase 5) within the Breakers PUD, as shown in the Red Book Drawing No. 5. The terms of said lease shall be the same as contained in the present lease, and further, said lease may not be canceled prior to December 31, 2012 without the approval of the Town of Palm Beach. Prior to December 31, 2001, the Town shall study alternative locations not on the Breakers Hotel property for the transfer station, and the Breakers shall study alternative locations on the Breakers Hotel property for the relocation of the twenty-four dwelling units currently approved for Development Priority No. 8 (Phase 5). Prior to December 31, 2001, the Town and the Breakers shall discuss their respective studies.

MODIFICATION #7

Requirement for Renegotiation

The applicant and the Town agree to renegotiate the following items:

- a. The possible transfer to other areas in the Planned Unit Development (PUD) of development rights pertaining the Phase 1a of the PUD involving the lands at the southeast corner of Royal Poinciana Way and Cocoanut Row, as set forth in The Breakers, Proposed Planned Unit Development Revised June 9, 1981 (hereinafter the "Red Book"), at Drawing No.5. by no later than the 2011-2012 Zoning Season (which is the designated start date of construction for that Phase in the PUD Agreement); or no later than during the Zoning Season immediately prior to the intended undertaking of development of Phase 1a, whichever comes first. The Breakers shall give the Town written notice of its intention to commence development of Phase 1a at least six months prior to said Zoning Season.

Phase 1a (Priority 1) Area may be used to temporarily locate 250 of the required permanent off-street parking spaces for employee parking at the northwest corner of the PUD in the Phase 1a (Priority 1) Area. If the Phase 1a (Priority 1) Area is developed, these 250 required off-street parking spaces shall be relocated to an area within the Breakers PUD that is acceptable to the Town.

- b. The transfer to other areas in the PUD of development rights pertaining to Phase 5 (Priority 8) of the PUD involving the lands at the west end of Pine Walk off Cocoanut Row as set forth in the Red Book at Drawing No.5 shall occur no later than the 2011-2012 Zoning Season (which is the designated start date of construction for that Phase in the PUD Agreement).
- c. The following conditions relating to the drainage improvements for the Breakers PUD have been completed:

The timing of construction and the fair apportionment of the costs of the drainage improvements at the main entrance to the Hotel on County Road specified in the Planning Criteria and the Appendices at Page 47 under Priority 4 (Phase 11). The renegotiation of said timing in accordance with the schedule set forth in Exhibit A attached hereto. Provided however, that no later than July 1, 1992, the applicant will commence construction of the interim drainage improvements reflected on Exhibit B attached hereto, and shall complete said improvements no later than October 31, 1992. It is recognized that this interim drainage improvement will accommodate runoff from the hotel property as well as other Town property. As a result, the costs associated with this interim improvement will be apportioned fairly between Flagler Systems and the Town. Flagler System shall pay all interim

drainage improvement costs provided, however, that a credit shall be given to Flagler System by the Town toward the Flagler System's share of the costs of the long term drainage improvements. Provided, however, that no cost sharing of the costs of the interim improvements shall commence until the review and approval by the Town of the costs apportionment formula to be completed by the end of March, 1992 (see Exhibit A).

MODIFICATION #8

Postponement of Certain Road and Parking Improvements

The Town agrees to allow the applicant to postpone implementation of the following parking and road improvements associated with the development of Phase 11 until the impacts of development indicate that such improvements are needed.

- a. Widen County Road on east side to provide left and right turn lanes on County Road at Breakers entrance, and upgrade the signal.
- b. Widen Breakers entrance road to four lanes and remove parking.
- c. Add parking (+200 spaces) at Phases 8-9

MODIFICATION #9

Demolition and Reconstruction of the Starlight Ballroom Addition and Beach Club

The demolition of the existing Starlight Ballroom and Beach Club facilities north of the horseshoe cabanas and construction of new Beach Club facilities, Starlight Ballroom, and Starlight Basement Kitchen and Storage Area, as identified on the Breakers Master Plan, revised November 4, 1997 and generally described as follows:

The new Beach Club facilities will consist of approximately 20,000 square feet with a 400-seat indoor/outdoor dining room, fitness center, beauty salon, massage/treatment rooms, steam, sauna, two Jacuzzis, three pools, men's and ladies' lockers, outdoor loggia and 13 pool deck cabanas.

The new Starlight Ballroom will consist of 15,000 square feet of ballroom area and 8,000 square feet of pre-function area. There will also be a service basement of approximately 13,500 square feet for storage and kitchen support facilities for a total facility of 36,500 square feet. The proposed modifications will result in a net decrease of 11,621 square feet of accessory hotel space. The development rights to these 11,621 square feet shall be retained in the PUD for future use assignment by further amendment to the PUD.

MODIFICATION #10

Requirement for Additional Off-street Parking Spaces

Based on the Starlight Ballroom and Beach Club facility improvements, an additional 106 off-street parking spaces shall be provided over and above the 1,021 spaces required (of which 877 have been built) in the 1981 approval, raising the number of required off-street parking spaces associated with the hotel operation to 1,127.

250 of these required off-street parking spaces may be temporarily located in a paved parking lot on the northwest corner of the PUD in the Phase 1a (Priority 1) Area. If the Phase 1a (Priority 1) Area is developed, these 250 required off-street parking spaces shall be relocated to an area within the Breakers PUD that is acceptable to the Town.

MODIFICATION #11

On-site Parking and Traffic Circulation Management

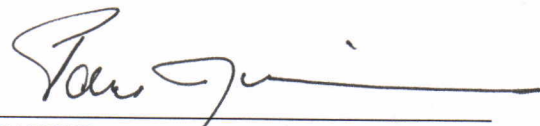
On-site parking and traffic circulation shall be conducted in accordance with the document prepared by DKS Associates, entitled Parking and Traffic Management Program for The Breakers Hotel, dated February, 1998, and attached hereto, and subject to all the conditions of approval of the Site Plan Review No. 1-98, approved February 9, 1998.

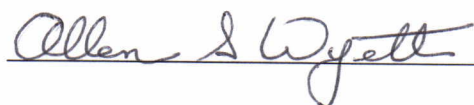
B. RESOLUTIONS 9-72, 13-74, 10-81, 17-90, 6-92, AND 1-97 SHALL REMAIN IN FULL FORCE AND EFFECT EXCEPT AS MODIFIED BY PREVIOUS AMENDMENTS AND MODIFICATIONS AND BY THE PROVISIONS OF THIS RESOLUTION.

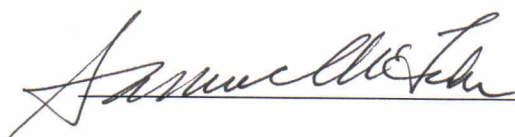
Section 2. The modifications submitted on September 5, 1997 by the Breakers Palm Beach, Inc., and reflected herein will become effective (i.e. not tentative) only if, as and when The Breakers Palm Beach, Inc., indicates its acceptance thereof and an agreement documenting that acceptance is entered into between the Town of Palm Beach and The Breakers Palm Beach, Inc. incorporating said conditions.

Section 3. The Town Clerk is hereby directed to furnish a certified copy of this Resolution, by certified mail to the applicant, and applicant shall within forty-five (45) days after receiving said certified copy notify the Town Council of the acceptance of, or refusal to accept all of said conditions as provided in Section 7.33(b) of Ordinance 2-74, as amended, and further subject to the provisions of Section 7.33(d).

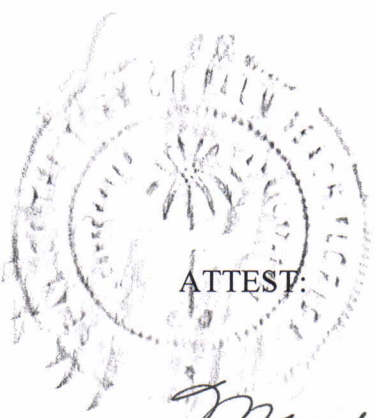
Section 4. PASSED AND ADOPTED in regular, adjourned session assembled on first reading this 9th day of February, 1998.


MAYOR



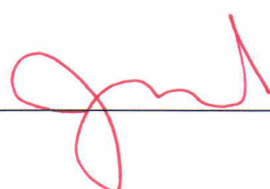


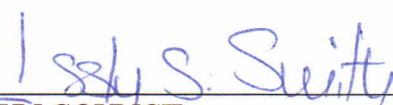




ATTEST:

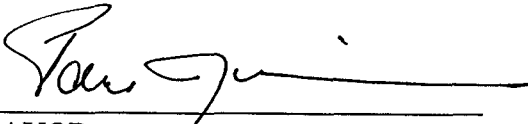

TOWN CLERK

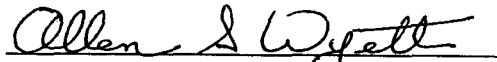


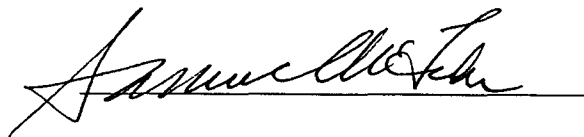

TOWN COUNCIL

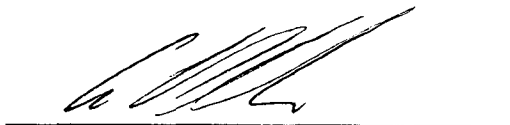
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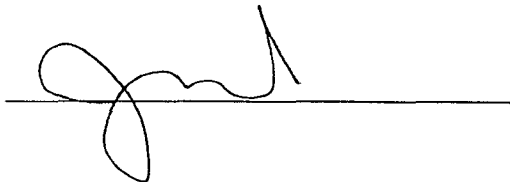
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MAYOR

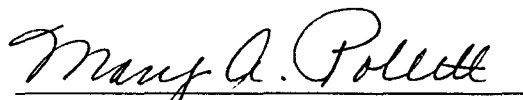


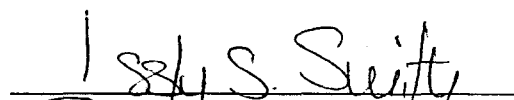






ATTEST:


TOWN CLERK


TOWN COUNCIL

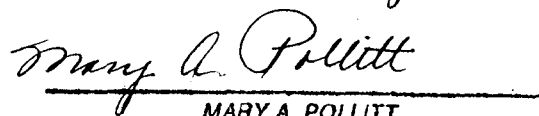
CLERK'S CERTIFICATE

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

I, MARY A. POLLITT, HEREBY CERTIFY THAT I am the duly qualified and acting Clerk of the Town of Palm Beach, Florida; that the above and foregoing is a true and correct copy of a Document the original of which is on file in the Office of the Town Clerk of the Town of Palm Beach, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Town, this 13th day of February A.D. 1998

TOWN SEAL


MARY A. POLLITT
TOWN CLERK

RES01~1.WPD

**Parking and Traffic
Management Program
for
The Breakers Hotel**

February, 1998

RECEIVED

FEB 6 1998

TOWN OF PALM BEACH
PLANNING & ZONING

The Breakers Hotel currently implements a parking and traffic management program when medium to large events are scheduled at the hotel. This program addresses the expected use of pick-up / drop-off facilities, valet parking operations and parking areas and establishes procedures and personnel requirements for these events. The key components of the program for managing parking and traffic at the hotel during events involve:

- (1) Anticipating and planning for the number of visitors and guests that will need to access the hotel and park on site,
- (2) Deploying the personnel, traffic control, and directional signage to direct visitors and guests to the appropriate locations for drop-off / pick-up functions and valet operations,
- (3) Implementing standard procedures to be followed by hotel personnel during the pre-event and post-event periods, and
- (4) Monitoring traffic and parking conditions at the hotel during these periods and making adjustments to the traffic / parking management procedures if and when necessary.

With the proposed change to the Starlight Ballroom space and the addition of a new secondary pick-up / drop-off facility on Pine Walk, the parking and traffic management program is being refined and updated to reflect these changes. The major components of this updated traffic / parking management program for the hotel are described below:

- Planning for a major event at the hotel starts with discussions with the event organizers to determine their anticipated size, schedule, needs, and preferences. From these discussions sufficient information is obtained so that decisions can be made regarding traffic / parking management activities. These discussions occur at the time of booking, well in advance of the actual event date. This allows sufficient time to coordinate traffic / parking management activities with other meetings / events occurring at the hotel.

DKS Associates

- The hotel utilizes a predictive model which identifies pick-up / drop-off and valet parking needs based upon the number of attendees, the type of event, and schedule. The model was originally developed to serve as a general guideline for event planning at hotels, but has been modified based upon actual event experience at the Breakers Hotel. The model results predict the traffic and parking conditions expected for various types and sizes of events and represent design conditions. The model results deal with a specific type and size of event and could be combined if more than one major event were to be scheduled at the Breakers Hotel during the same time period. The other transportation needs at the hotel are related to room occupancies and are not addressed in this model. These needs are taken into consideration when evaluating parking space and valet parking personnel needs.
- Attendance at events by hotel guests, the use of alternative travel modes (e.g. limousine service) and auto occupancy rates vary with the size and type of events. For example, during the peak season between October, 1997 and May, 1998 the Breakers Hotel and Resort will host 15 balls and 51 major social events in its banquet facilities. The average event will attract approximately 375 persons. The 15 balls will range in size between 275 and 600 persons. Ten of the 15 balls will have 500 or fewer attendees. Of the other 51 social events, 43 of these events (84%) will have 500 or fewer attendees and none will exceed 700 attendees. The graph attached to this program shows event attendance during this period. A large event (85th percentile) will have approximately 550 persons in attendance, while the maximum attendance at a Town social event (100th percentile) is anticipated to be 900 persons. The model parameters and results for a future large event (550 persons) and possible peak event (900 persons) are listed below:

Large Event

Input Parameters:

Event Type - Reception / Banquet
Attendance - 550 persons
Start Time - 7:00 PM
Finish Time - 11:00 PM

Output Results:

Peak Visitor Arrivals -	220 persons / 15 min
Vehicle Occupancy -	2.0 persons / vehicle
Peak Drop-offs (no parking) -	20 veh / 15 min
Peak Pick-ups (no parking) -	25 veh / 15 min
Valet Parkers -	250 vehicles
Peak Valet Drop -offs -	90 veh / 15 min
Peak Valet Pick-ups -	125 veh / 15 min
Valet Personnel -	12 @ 5:30 - 7:30 PM 17 @ 10:00 - 12:00 PM

Possible Peak Event

Input Parameters:

Event Type - Reception / Banquet
Attendance - 900 persons
Start Time - 7:00 PM
Finish Time - 11:00 PM

Output Results:

Peak Visitor Arrivals -	300 persons / 15 min
Vehicle Occupancy -	2.0 persons / vehicle
Peak Drop-offs (no parking) -	30 veh / 15 min
Peak Pick-ups (no parking) -	50 veh / 15 min
Valet Parkers -	400 vehicles
Peak Valet Drop -offs -	120 veh / 15 min
Peak Valet Pick-ups -	200 veh / 15 min
Valet Personnel -	18 @ 5:30 - 7:30 PM 27 @ 10:00 - 12:00 PM

DKS Associates

The 1000 persons is the maximum number of persons that the new Starlight Ballroom can accommodate, but in reality, the actual peak number of guests is expected to be 900.

- As a practical matter, the hotel does not schedule more than one major event (for over 275 people) at the same time on the same day. However, multiple meetings or smaller events (for less than 275 people) are scheduled on the same day with overlapping time periods of operation. The maximum number of guests on site at any time when these multiple events are scheduled is less than 700 people. The transportation needs for a multiple event day would be determined by combining the model results for two different events based upon their different starting times.
- On days when a major event is scheduled at the hotel, employees are notified to car pool and use remote parking west of County Road to make available as many parking spaces east of County Road as possible. To facilitate such employee parking, the Hotel is preparing to add 250 public spaces in the northwest corner of the PUD at Coconut Row and Royal Poinciana. Incentives are provided to employees who do not utilize prime parking spaces on event days so that they make available as many prime parking spaces as possible to guests and visitors. The proximity of these prime parking spaces to the valet operations reduces the time needed for personnel to valet vehicles. For normal valet operations at the hotel, it is assumed that each valet activity requires approximately 2 minutes of service time.
- The provision of a secondary location for pick-up / drop-off functions and valet operations to serve the Starlight Ballroom provides the flexibility to use either or both locations depending upon the amount of activity at the hotel and the preferences of the organizers. The primary drop-off / pick-up functions and valet operations will remain at the Main Entrance in front of the hotel. The majority of event organizers will continue to prefer this location for arrivals and entry to the meeting /banquet rooms. A new driveway connection is proposed between the Main Entrance and the South Parking Area to permit utilization of the parking spaces in both the Main Lot and South Parking Area without any need to drive cars back onto County Road to be parked at the Hotel. At no time would valet vehicles be driven out of either the Main Entrance or the Pine Walk Entrance onto County Road to be parked in other areas. This connection will be located between the croquet field and the golf course.
- Self parking for major events is limited to the parking spaces along the Main Entrance. Visitors desiring self parking can use these spaces when they enter or after they drop-off passengers. Similarly, these visitors can exit the hotel directly from the self parking spaces or they can circulate to pick-up passengers. Once the self parking spaces are filled, signs are posted indicating " Valet Parking Only " and all guests are directed to the valet parking drop-off in front of the hotel.
- During most events limousines and taxis drop-off and pick-up guests in front of the hotel. They enter the Main Entrance from County Road and proceed directly to the front of the hotel and then exit back out the Main Entrance. The limousine service offered by the hotel uses vehicles that are stationed at the traffic circle in front of the hotel and are available on an on-call basis.

DKS Associates

- The future distribution of parking spaces at the hotel is shown on the attached exhibit and is summarized below:

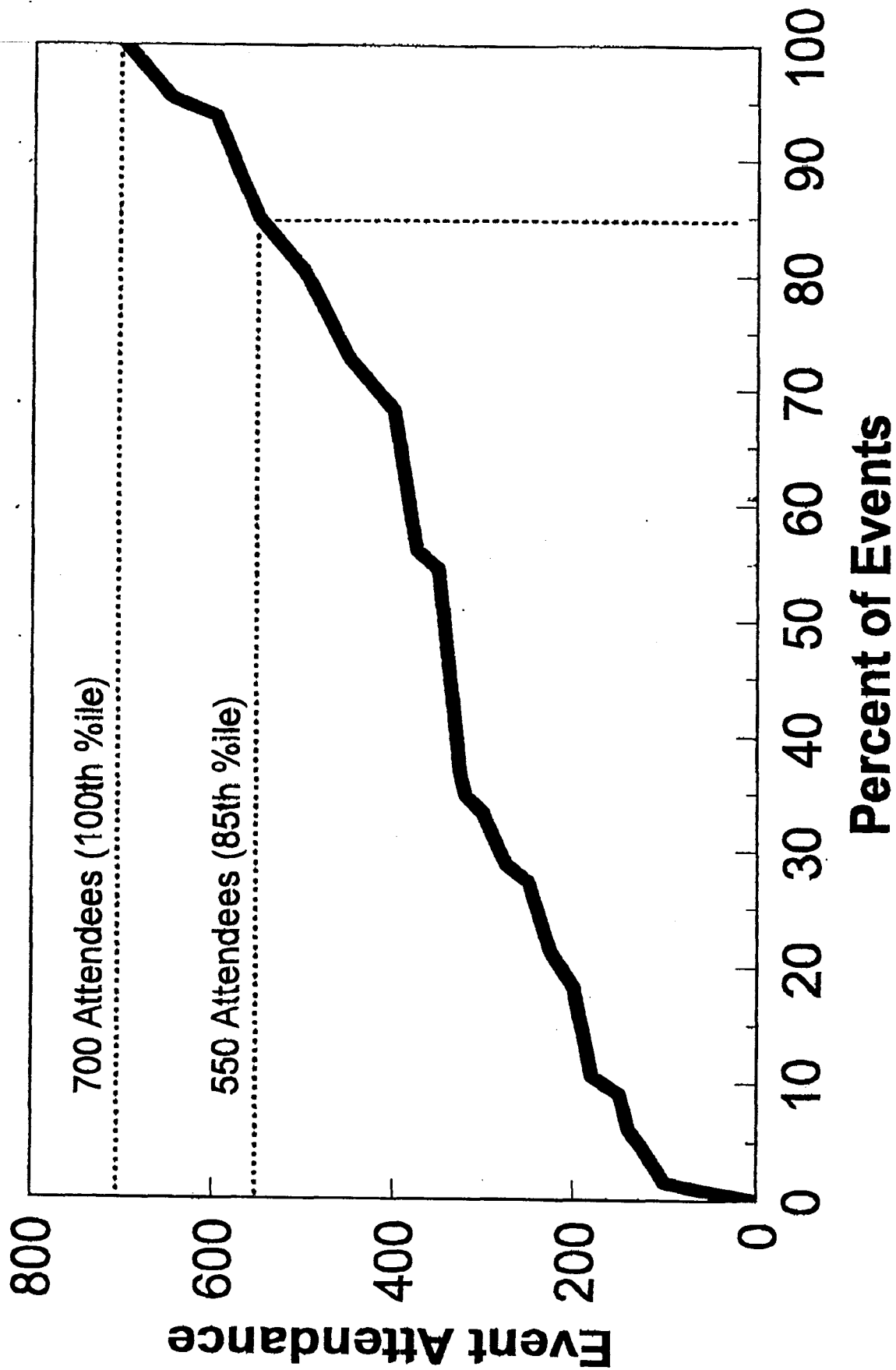
East of County Road	<u>Striped Spaces</u>	<u>Valet Spaces</u>	<u>Other Spaces</u> ¹
Breakers Row	26	24	0
Main Lot	618	6	0
Main Entrance	82	26	0
South Parking Area	<u>192</u>	<u>85</u>	<u>40</u>
	918	141	40
West of County Road	<u>Striped Spaces</u>	<u>Valet Spaces</u>	<u>Other Spaces</u> ¹
Employee Lot	250	0	0
Tennis Club	38	0	0
Pine Walk	<u>0</u>	<u>0</u>	<u>90</u>
	288	0	90
TOTAL	1206	141	130

1 - Other spaces are permanent parking spaces along Pine Walk that are not paved or striped

- The South Parking Area will have approximately 192 striped parking spaces, 85 valet parking spaces and 40 other spaces used by employees. If and when the valet parking requirements for an event exceed the available capacity in the large parking lot north of the Main Entrance, cars could be driven through the new connection to the South Parking Area to utilize the 317 available spaces. At no time would valet vehicles be driven out of either the Main Entrance or the Pine Walk Entrance onto County Road to be parked in other areas. If used entirely for valet parking, the capacity of the 192 striped spaces in the South Parking Area could be increased by approximately 20% (approximately 38 spaces).
- The transportation requirements associated with most events scheduled for the Starlight Ballroom (which will have less than 550 attendees) can be accommodated in the South Parking Area if the organizers want to have their own exclusive point of entry and parking. The 192 striped parking spaces and 85 valet parking spaces located in the South Parking Area would be sufficient for the valet parking operations associated with events of this size. In addition, the drop-off / pick-up functions (taxis and limousines) representing less than 25 vehicles in 15 minutes could be accommodated in this same area.
- During the arrival period for a peak event (e.g. over 700 guests), the Main Entrance could be converted to one-way inbound operation with the return outbound traffic routed to the north access driveway along North Breakers Row linking to Royal Poinciana Way. This one-way operation is intended to prevent congested traffic conditions on County Road at the Main Entrance during the highest traffic periods by eliminating exiting traffic at this location. The westbound (exiting) traffic will involve minor traffic volumes and will not impact traffic operations. The Main Entrance would be converted back to two-way operation after the peak arrival period.
- The parking and traffic management plan for the hotel is intended to have the flexibility to respond to the specific needs of an event or same-day multiple events. However, in planning for and managing traffic / parking activities during events, these established procedures are followed so that traffic congestion and parking delays are prevented.

BREAKERS HOTEL & RESORT

Balls And Social Functions



RESOLUTION 1- 98

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION 1-97, THE BREAKERS PUD, BY MODIFYING THE TERMS FOR THE LEASE OF THE PINEWALK TRANSFER STATION; BY EXTENDING THE DATE FOR RENEGOTIATION ON THE TRANSFER OF DEVELOPMENT RIGHTS FOR THE BREAKER PUD; BY PROVIDING A REQUIRED OFF-STREET PARKING FACILITY TEMPORARILY WITHIN PRIORITY AREA NO. 1, PHASE 1A OF THE PUD; BY APPROVING A REQUIREMENT FOR A PARKING STRUCTURE AT A FUTURE DATE; BY ELIMINATING THE REQUIREMENTS TO CLOSE THE PINEWALK AND ELIMINATE THE ASSOCIATED TRAFFIC SIGNAL; BY ELIMINATING THE REQUIREMENT TO PAVE SEVENTY PARKING SPACES ALONG THE PINEWALK ENTRANCE; BY APPROVING THE REQUEST TO POSTPONE THE CONSTRUCTION OF TWO HUNDRED PARKING SPACES; AND BY MODIFYING AND EXPANDING THE HOTEL FACILITIES

WHEREAS, Flagler System, Inc. did submit an application for tentative approval together with supporting documentation for Planned Unit Development for the property commonly referred to as "The Breakers" on October 30, 1970; and

WHEREAS, The Zoning Commission and the Town Council of the Town of Palm Beach, subsequent to review and public hearing did by Resolution 6-71, as amended by Resolutions 9-72, 13-74, 10-81, 17-90, 6-92, and 1-97 grant tentative approval of said application, subject to certain conditions; and

WHEREAS, The Town and Flagler System, Inc., entered into a binding Agreement on September 8, 1983 wherein Flagler Systems, Inc., accepted the Town's conditions governing the development of "The Breakers" Planned Unit Development, and said Agreement was revised by the Town and Flagler System, Inc., on June 18, 1996, on January 22, 1990, and on February 19, 1992, pursuant to the terms of Resolution No. 6-92; and,

WHEREAS, Flagler System, Inc. has been reorganized and the corporate name of the company now controlling "The Breakers" Planned Unit Development is The Breakers Palm Beach, Inc.; and,

WHEREAS, on September 5, 1997, The Breakers Palm Beach, Inc., did submit an application for tentative approval of the modifications of the Planned Unit Development; and,

WHEREAS, on November 18, 1997 and December 4, 1997, the Zoning Commission and on January 6, 1998 and January 26, 1998 the Town Council of the Town of Palm Beach did review and hold public hearings on the application for tentative approval of the modifications of the Planned Unit Development: and,

WHEREAS, The Town Council, in accordance with Section 7.33 of Ordinance 2-74, as amended, does make the following findings:

1. The Planned Unit Development Plan, as submitted with the modifications thereto, is consistent with the statement of general objectives of a Planned Unit Development as set forth in Section 7.10 of the Ordinance.
2. The Planned Unit Development, as submitted with the modifications thereto, is consistent with the Comprehensive Plan, as long as the conditions hereinafter set forth are met.
3. The Planned Unit Development, as submitted with modifications thereto, does include an adequate amount of open space located in a satisfactory manner, as long as the applicant meets the open space set forth in the Resolution.
4. The Planned Unit Development, as submitted with modifications thereto, makes adequate provisions for public services, provides adequate control over vehicular traffic and enhances the amenities of light and air, recreational and visual enjoyment, but is further subject to certain conditions hereinafter set forth.
5. The Planned Unit Development, as submitted with modifications thereto, is not adverse to the neighborhood in which it is located.
6. The Planned Unit Development, as submitted with modifications thereto, includes sufficient terms and conditions to protect the interests of the public in the development of the plan over a period of years.
7. The Breakers Hotel as referenced in the exhibits attached hereto is a historically and architecturally significant building and provision for its west facade preservation shall be subject to the control of the Landmarks Preservation Commission, the Town Council and any other commission or board of the Town having jurisdiction over same, such control not to be inconsistent with the Planned Unit Development Plan approval as evidenced by this Resolution.

WHEREAS, the Town Council, after deliberation and evaluation of the recommendations of the Zoning Commission and the comments received from interested parties at the aforementioned public hearings, does find the Planned Unit Development Plan, as amended with the modifications thereto, to be in the best interest of the Town subject to the conditions hereinafter set forth.

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

Section 1. That the amendments to the Planned Unit Development submitted by the Breakers Palm Beach, Inc., in September 1997, be granted tentative approval subject to the conditions set forth therein not in conflict with this Resolution, in addition to those specified below:

A. AMENDMENTS TO PREVIOUS MODIFICATIONS

MODIFICATION #1

Coffee Shop

NO CHANGE

MODIFICATION #2

Tennis Court Lighting

NO CHANGE

MODIFICATION #3

Additional Retail Space

NO CHANGE

MODIFICATION #4

New Tennis Facility

NO CHANGE

MODIFICATION #5

Maintenance of Golf Course Green Space

NO CHANGE

MODIFICATION #6

Lease of Pine Walk Transfer Station

The Town and the Breakers Palm Beach, Inc. have agreed that the Town shall be given an extension of the existing lease from the Breakers Palm Beach, Inc. until December 31, 2012, for the Town's waste transfer station currently located on Development Priority No. 8 (Phase 5) within the Breakers PUD, as shown in the Red Book Drawing No. 5. The terms of said lease shall be the same as contained in the present lease, and further, said lease may not be canceled prior to December 31, 2012 without the approval of the Town of Palm Beach. Prior to December 31, 2001, the Town shall study alternative locations not on the Breakers Hotel property for the transfer station, and the Breakers shall study alternative locations on the Breakers Hotel property for the relocation of the twenty-four dwelling units currently approved for Development Priority No. 8 (Phase 5). Prior to December 31, 2001, the Town and the Breakers shall discuss their respective studies.

MODIFICATION #7
Requirement for Renegotiation

The applicant and the Town agree to renegotiate the following items:

- a. The possible transfer to other areas in the Planned Unit Development (PUD) of development rights pertaining the Phase 1a of the PUD involving the lands at the southeast corner of Royal Poinciana Way and Cocoanut Row, as set forth in The Breakers, Proposed Planned Unit Development Revised June 9, 1981 (hereinafter the "Red Book"), at Drawing No.5. by no later than the 2011-2012 Zoning Season (which is the designated start date of construction for that Phase in the PUD Agreement); or no later than during the Zoning Season immediately prior to the intended undertaking of development of Phase 1a, whichever comes first. The Breakers shall give the Town written notice of its intention to commence development of Phase 1a at least six months prior to said Zoning Season.

Phase 1a (Priority 1) Area may be used to temporarily locate 250 of the required permanent off-street parking spaces for employee parking at the northwest corner of the PUD in the Phase 1a (Priority 1) Area. If the Phase 1a (Priority 1) Area is developed, these 250 required off-street parking spaces shall be relocated to an area within the Breakers PUD that is acceptable to the Town.

- b. The transfer to other areas in the PUD of development rights pertaining to Phase 5 (Priority 8) of the PUD involving the lands at the west end of Pine Walk off Cocoanut Row as set forth in the Red Book at Drawing No.5 shall occur no later than the 2011-2012 Zoning Season (which is the designated start date of construction for that Phase in the PUD Agreement).
- c. The following conditions relating to the drainage improvements for the Breakers PUD have been completed:

The timing of construction and the fair apportionment of the costs of the drainage improvements at the main entrance to the Hotel on County Road specified in the Planning Criteria and the Appendices at Page 47 under Priority 4 (Phase 11). The renegotiation of said timing in accordance with the schedule set forth in Exhibit A attached hereto. Provided however, that no later than July 1, 1992, the applicant will commence construction of the interim drainage improvements reflected on Exhibit B attached hereto, and shall complete said improvements no later than October 31, 1992. It is recognized that this interim drainage improvement will accommodate runoff from the hotel property as well as other Town property. As a result, the costs associated with this interim improvement will be apportioned fairly between Flagler Systems and the Town. Flagler System shall pay all interim

drainage improvement costs provided, however, that a credit shall be given to Flagler System by the Town toward the Flagler System's share of the costs of the long term drainage improvements. Provided, however, that no cost sharing of the costs of the interim improvements shall commence until the review and approval by the Town of the costs apportionment formula to be completed by the end of March, 1992 (see Exhibit A).

MODIFICATION #8

Postponement of Certain Road and Parking Improvements

The Town agrees to allow the applicant to postpone implementation of the following parking and road improvements associated with the development of Phase 11 until the impacts of development indicate that such improvements are needed.

- a. Widen County Road on east side to provide left and right turn lanes on County Road at Breakers entrance, and upgrade the signal.
- b. Widen Breakers entrance road to four lanes and remove parking.
- c. Add parking (+200 spaces) at Phases 8-9

MODIFICATION #9

Demolition and Reconstruction of the Starlight Ballroom Addition and Beach Club

The demolition of the existing Starlight Ballroom and Beach Club facilities north of the horseshoe cabanas and construction of new Beach Club facilities, Starlight Ballroom, and Starlight Basement Kitchen and Storage Area, as identified on the Breakers Master Plan, revised November 4, 1997 and generally described as follows:

The new Beach Club facilities will consist of approximately 20,000 square feet with a 400-seat indoor/outdoor dining room, fitness center, beauty salon, massage/treatment rooms, steam, sauna, two Jacuzzis, three pools, men's and ladies' lockers, outdoor loggia and 13 pool deck cabanas.

The new Starlight Ballroom will consist of 15,000 square feet of ballroom area and 8,000 square feet of pre-function area. There will also be a service basement of approximately 13,500 square feet for storage and kitchen support facilities for a total facility of 36,500 square feet. The proposed modifications will result in a net decrease of 11,621 square feet of accessory hotel space. The development rights to these 11,621 square feet shall be retained in the PUD for future use assignment by further amendment to the PUD.

MODIFICATION #10

Requirement for Additional Off-street Parking Spaces

Based on the Starlight Ballroom and Beach Club facility improvements, an additional 106 off-street parking spaces shall be provided over and above the 1,021 spaces required (of which 877 have been built) in the 1981 approval, raising the number of required off-street parking spaces associated with the hotel operation to 1,127.

250 of these required off-street parking spaces may be temporarily located in a paved parking lot on the northwest corner of the PUD in the Phase 1a (Priority 1) Area. If the Phase 1a (Priority 1) Area is developed, these 250 required off-street parking spaces shall be relocated to an area within the Breakers PUD that is acceptable to the Town.

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On-site Parking and Traffic Circulation Management

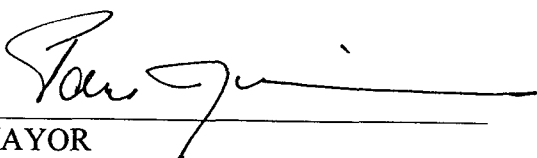
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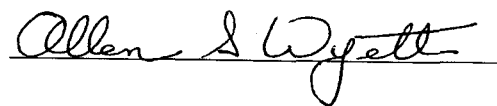
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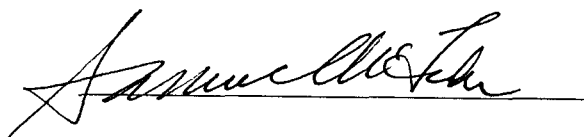
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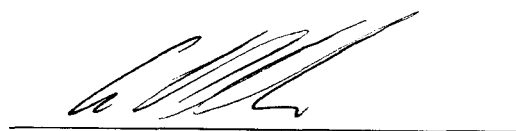
Section 3. The Town Clerk is hereby directed to furnish a certified copy of this Resolution, by certified mail to the applicant, and applicant shall within forty-five (45) days after receiving said certified copy notify the Town Council of the acceptance of, or refusal to accept all of said conditions as provided in Section 7.33(b) of Ordinance 2-74, as amended, and further subject to the provisions of Section 7.33(d).

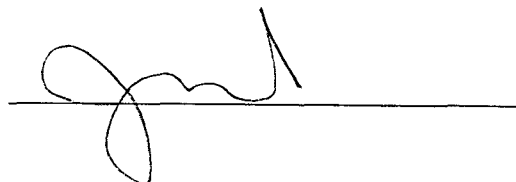
Section 4. PASSED AND ADOPTED in regular, adjourned session assembled on first reading this 9th day of February, 1998.


MAYOR

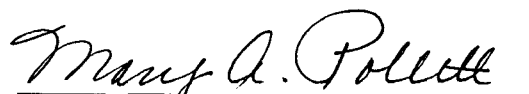


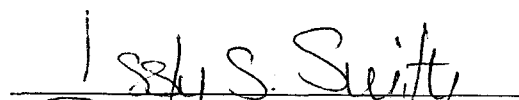






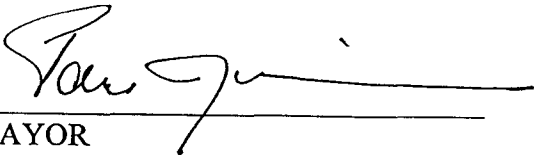
ATTEST:

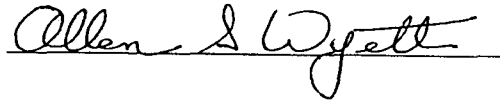

TOWN CLERK

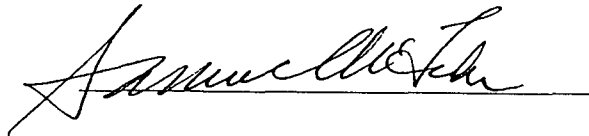

TOWN COUNCIL

RES01~1.WPD

Section 4. PASSED AND ADOPTED in regular, adjourned session assembled on first reading this 9th day of February, 1998.


MAYOR



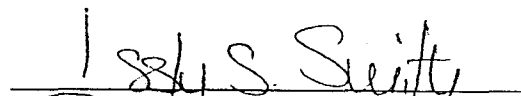






ATTEST:


TOWN CLERK


TOWN COUNCIL

CLERK'S CERTIFICATE

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

I, MARY A. POLLITT, HEREBY CERTIFY THAT I am the duly qualified and acting Clerk of the Town of Palm Beach, Florida; that the above and foregoing is a true and correct copy of a Document the original of which is on file in the Office of the Town Clerk of the Town of Palm Beach, Florida.

RES01~1.WPD

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Town, this 13th day of February A.D. 1998

TOWN SEAL


MARY A. POLLITT
TOWN CLERK

**Parking and Traffic
Management Program
for
The Breakers Hotel**

RECEIVED

FEB 6 1998

TOWN OF PALM BEACH
BUILDING & ZONING

February, 1998

The Breakers Hotel currently implements a parking and traffic management program when medium to large events are scheduled at the hotel. This program addresses the expected use of pick-up / drop-off facilities, valet parking operations and parking areas and establishes procedures and personnel requirements for these events. The key components of the program for managing parking and traffic at the hotel during events involve:

- (1) Anticipating and planning for the number of visitors and guests that will need to access the hotel and park on site,
- (2) Deploying the personnel, traffic control, and directional signage to direct visitors and guests to the appropriate locations for drop-off / pick-up functions and valet operations,
- (3) Implementing standard procedures to be followed by hotel personnel during the pre-event and post-event periods, and
- (4) Monitoring traffic and parking conditions at the hotel during these periods and making adjustments to the traffic / parking management procedures if and when necessary.

With the proposed change to the Starlight Ballroom space and the addition of a new secondary pick-up / drop-off facility on Pine Walk, the parking and traffic management program is being refined and updated to reflect these changes. The major components of this updated traffic / parking management program for the hotel are described below:

- Planning for a major event at the hotel starts with discussions with the event organizers to determine their anticipated size, schedule, needs, and preferences. From these discussions sufficient information is obtained so that decisions can be made regarding traffic / parking management activities. These discussions occur at the time of booking, well in advance of the actual event date. This allows sufficient time to coordinate traffic / parking management activities with other meetings / events occurring at the hotel.

DKS Associates

- The hotel utilizes a predictive model which identifies pick-up / drop-off and valet parking needs based upon the number of attendees, the type of event, and schedule. The model was originally developed to serve as a general guideline for event planning at hotels, but has been modified based upon actual event experience at the Breakers Hotel. The model results predict the traffic and parking conditions expected for various types and sizes of events and represent design conditions. The model results deal with a specific type and size of event and could be combined if more than one major event were to be scheduled at the Breakers Hotel during the same time period. The other transportation needs at the hotel are related to room occupancies and are not addressed in this model. These needs are taken into consideration when evaluating parking space and valet parking personnel needs.
- Attendance at events by hotel guests, the use of alternative travel modes (e.g. limousine service) and auto occupancy rates vary with the size and type of events. For example, during the peak season between October, 1997 and May, 1998 the Breakers Hotel and Resort will host 15 balls and 51 major social events in its banquet facilities. The average event will attract approximately 375 persons. The 15 balls will range in size between 275 and 600 persons. Ten of the 15 balls will have 500 or fewer attendees. Of the other 51 social events, 43 of these events (84%) will have 500 or fewer attendees and none will exceed 700 attendees. The graph attached to this program shows event attendance during this period. A large event (85th percentile) will have approximately 550 persons in attendance, while the maximum attendance at a Town social event (100th percentile) is anticipated to be 900 persons. The model parameters and results for a future large event (550 persons) and possible peak event (900 persons) are listed below:

Large Event

Input Parameters:

Event Type - Reception / Banquet
Attendance - 550 persons
Start Time - 7:00 PM
Finish Time - 11:00 PM

Output Results:

Peak Visitor Arrivals -	220 persons / 15 min
Vehicle Occupancy -	2.0 persons / vehicle
Peak Drop-offs (no parking) -	20 veh / 15 min
Peak Pick-ups (no parking) -	25 veh / 15 min
Valet Parkers -	250 vehicles
Peak Valet Drop -offs -	90 veh / 15 min
Peak Valet Pick-ups -	125 veh / 15 min
Valet Personnel -	12 @ 5:30 - 7:30 PM 17 @ 10:00 - 12:00 PM

Possible Peak Event

Input Parameters:

Event Type - Reception / Banquet
Attendance - 900 persons
Start Time - 7:00 PM
Finish Time - 11:00 PM

Output Results:

Peak Visitor Arrivals -	300 persons / 15 min
Vehicle Occupancy -	2.0 persons / vehicle
Peak Drop-offs (no parking) -	30 veh / 15 min
Peak Pick-ups (no parking) -	50 veh / 15 min
Valet Parkers -	400 vehicles
Peak Valet Drop -offs -	120 veh / 15 min
Peak Valet Pick-ups -	200 veh / 15 min
Valet Personnel -	18 @ 5:30 - 7:30 PM 27 @ 10:00 - 12:00 PM

DKS Associates

The 1000 persons is the maximum number of persons that the new Starlight Ballroom can accommodate, but in reality, the actual peak number of guests is expected to be 900.

- As a practical matter, the hotel does not schedule more than one major event (for over 275 people) at the same time on the same day. However, multiple meetings or smaller events (for less than 275 people) are scheduled on the same day with overlapping time periods of operation. The maximum number of guests on site at any time when these multiple events are scheduled is less than 700 people. The transportation needs for a multiple event day would be determined by combining the model results for two different events based upon their different starting times.
- On days when a major event is scheduled at the hotel, employees are notified to car pool and use remote parking west of County Road to make available as many parking spaces east of County Road as possible. To facilitate such employee parking, the Hotel is preparing to add 250 public spaces in the northwest corner of the PUD at Coconut Row and Royal Poinclana. Incentives are provided to employees who do not utilize prime parking spaces on event days so that they make available as many prime parking spaces as possible to guests and visitors. The proximity of these prime parking spaces to the valet operations reduces the time needed for personnel to valet vehicles. For normal valet operations at the hotel, it is assumed that each valet activity requires approximately 2 minutes of service time.
- The provision of a secondary location for pick-up / drop-off functions and valet operations to serve the Starlight Ballroom provides the flexibility to use either or both locations depending upon the amount of activity at the hotel and the preferences of the organizers. The primary drop-off / pick-up functions and valet operations will remain at the Main Entrance in front of the hotel. The majority of event organizers will continue to prefer this location for arrivals and entry to the meeting /banquet rooms. A new driveway connection is proposed between the Main Entrance and the South Parking Area to permit utilization of the parking spaces in both the Main Lot and South Parking Area without any need to drive cars back onto County Road to be parked at the Hotel. At no time would valet vehicles be driven out of either the Main Entrance or the Pine Walk Entrance onto County Road to be parked in other areas. This connection will be located between the croquet field and the golf course.
- Self parking for major events is limited to the parking spaces along the Main Entrance. Visitors desiring self parking can use these spaces when they enter or after they drop-off passengers. Similarly, these visitors can exit the hotel directly from the self parking spaces or they can circulate to pick-up passengers. Once the self parking spaces are filled, signs are posted indicating " Valet Parking Only " and all guests are directed to the valet parking drop-off in front of the hotel.
- During most events limousines and taxis drop-off and pick-up guests in front of the hotel. They enter the Main Entrance from County Road and proceed directly to the front of the hotel and then exit back out the Main Entrance. The limousine service offered by the hotel uses vehicles that are stationed at the traffic circle in front of the hotel and are available on an on-call basis.

DKS Associates

- The future distribution of parking spaces at the hotel is shown on the attached exhibit and is summarized below:

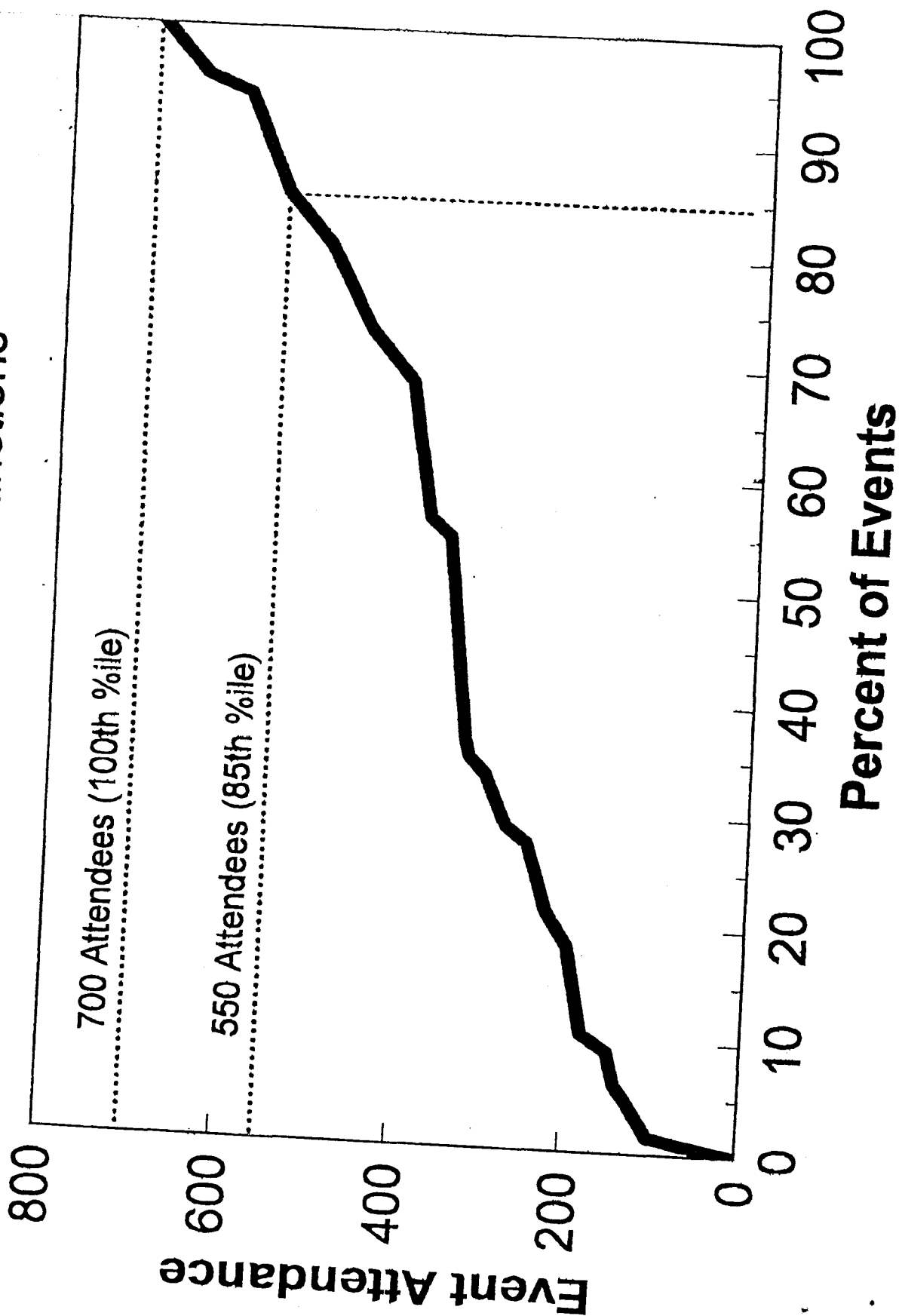
East of County Road	<u>Striped Spaces</u>	<u>Valet Spaces</u>	<u>Other Spaces</u> ¹
Breakers Row	26	24	0
Main Lot	618	6	0
Main Entrance	82	26	0
South Parking Area	<u>192</u>	<u>85</u>	<u>40</u>
	918	141	40
West of County Road	<u>Striped Spaces</u>	<u>Valet Spaces</u>	<u>Other Spaces</u> ¹
Employee Lot	250	0	0
Tennis Club	38	0	0
Pine Walk	<u>0</u>	<u>0</u>	<u>90</u>
	288	0	90
TOTAL	1206	141	130

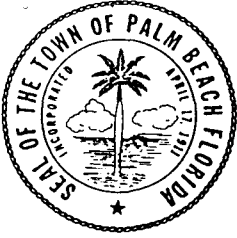
1 - Other spaces are permanent parking spaces along Pine Walk that are not paved or striped

- The South Parking Area will have approximately 192 striped parking spaces, 85 valet parking spaces and 40 other spaces used by employees. If and when the valet parking requirements for an event exceed the available capacity in the large parking lot north of the Main Entrance, cars could be driven through the new connection to the South Parking Area to utilize the 317 available spaces. At no time would valet vehicles be driven out of either the Main Entrance or the Pine Walk Entrance onto County Road to be parked in other areas. If used entirely for valet parking, the capacity of the 192 striped spaces in the South Parking Area could be increased by approximately 20% (approximately 38 spaces).
- The transportation requirements associated with most events scheduled for the Starlight Ballroom (which will have less than 550 attendees) can be accommodated in the South Parking Area if the organizers want to have their own exclusive point of entry and parking. The 192 striped parking spaces and 85 valet parking spaces located in the South Parking Area would be sufficient for the valet parking operations associated with events of this size. In addition, the drop-off / pick-up functions (taxis and limousines) representing less than 25 vehicles in 15 minutes could be accommodated in this same area.
- During the arrival period for a peak event (e.g. over 700 guests), the Main Entrance could be converted to one-way inbound operation with the return outbound traffic routed to the north access driveway along North Breakers Row linking to Royal Poinciana Way. This one-way operation is intended to prevent congested traffic conditions on County Road at the Main Entrance during the highest traffic periods by eliminating exiting traffic at this location. The westbound (exiting) traffic will involve minor traffic volumes and will not impact traffic operations. The Main Entrance would be converted back to two-way operation after the peak arrival period.
- The parking and traffic management plan for the hotel is intended to have the flexibility to respond to the specific needs of an event or same-day multiple events. However, in planning for and managing traffic / parking activities during events, these established procedures are followed so that traffic congestion and parking delays are prevented.

BREAKERS HOTEL & RESORT

Balls And Social Functions





TOWN OF PALM BEACH

Office of the Town Clerk

February 13, 1998

Mr. James R. Brindell
Gunster Yoakley Valdes-Fauli & Stewart, P.A.
151 Royal Palm Way
Palm Beach, FL 33480

Dear Mr. Brindell:

Enclosed is a copy of Resolution 1-98 that was passed and adopted at the February 10, 1998, Town Council meeting.

Section three (3) on page six (6) of the resolution states a certified copy of the resolution must be provided to The Breakers, and The Breakers shall within forty-five (45) days after receiving said certified copy notify the Town Council of the acceptance of, or refusal to accept all of said conditions as provided in Section 7.33(b) of Ordinance 2-74, as amended, and further subject to the provisions of Section 7.33(d).

As stated under Modification #11 on page six (6) of the resolution, a copy of the Parking and Traffic Management Program for The Breakers Hotel, dated February, 1998 is enclosed.

If I can be of any further assistance, please do not hesitate to call.

Sincerely,

Mary A. Pollitt
Town Clerk

MAP/dk
enc.

cc: Paul Leone, General Manager, The Breakers Hotel
Paul Castro, Zoning Administrator

P 224 067 775

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

TOWN CLERK

Sent to **Mr. James R. Brindell**
~~Gunter Yoakley Valdes-Fauli~~
 Street & Number
& Stewart, P.A.

Post Office, State, & ZIP Code
151 Royal Palm Wy, Palm Bch

Postage **\$ FL 33480 72**

Certified Fee **1.35**

Special Delivery Fee

Restricted Delivery Fee

Return Receipt Showing to Whom & Date Delivered **1.10**

Return Receipt Showing to Whom, Date, & Addressee's Address

TOTAL Postage & Fees \$ 3.23

Postmark or Date

Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services (*See front*).

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier (*no extra charge*).
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make an inquiry.

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery
(Extra charge) (Extra charge)

3. Article Addressed to:

Mr. James R. Brindell
Gunster Yoakley Valdes-Fauli &
Stewart, P.A.
151 Royal Palm Way, Palm Bch,
FL 33480

4. Article Number

P 724 067 775

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt
for Merchandise

Always obtain signature of addressee
or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

8/17/98

8. Addressee's Address (ONLY if
requested and fee paid)

204

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



**PENALTY FOR PRIVATE
USE, \$300**

**RETURN
TO**



Print Sender's name, address, and ZIP Code in the space below.

TOWN CLERK

TOWN OF PALM BEACH

360 SOUTH COUNTY ROAD

P. O. BOX 2029

PALM BEACH, FL 33480-05



RESOLUTION NO. 3-00

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION 1-98, THE BREAKERS PUD, BY MODIFYING THE PUD MASTER PLAN TO REDESIGN THE GOLF COURSE AND INCLUDE A GOLF AND TENNIS CLUB HOUSE WITH RELATED FACILITIES, WEST OF SOUTH COUNTY ROAD.

WHEREAS, Flagler System, Inc. did submit an application for tentative approval together with supporting documentation for Planned Unit Development for the property commonly referred to as "The Breakers" on October 30, 1970; and

WHEREAS, The Zoning Commission and the Town Council of the Town of Palm Beach, subsequent to review and public hearing did by Resolution 6-71, as amended by Resolutions 9-72, 13-74, 10-81, 17-90, 6-92, 1-97 and 1-98 grant tentative approval of said application, subject to certain conditions; and

WHEREAS, The Town and Flagler System, Inc., entered into a binding Agreement on September 8, 1983 wherein Flagler Systems, Inc., accepted the Town's conditions governing the development of "The Breakers" Planned Unit Development, and said Agreement was revised by the Town and Flagler System, Inc., on June 18, 1996, on January 22, 1990, and on February 19, 1992, pursuant to the terms of Resolution No. 6-92; and,

WHEREAS, Flagler System, Inc. has been reorganized and the corporate name of the company now controlling "The Breakers" Planned Unit Development is The Breakers Palm Beach, Inc.; and,

WHEREAS, on August 3, 1999, The Breakers Palm Beach, Inc., did submit an application for tentative approval of the modifications of the Planned Unit Development; and,

WHEREAS, on November 16, 1999 and December 2, 1999, the Zoning Commission and on January 6, and January 11, 2000 the Town Council of the Town of Palm Beach, did review and hold public hearings on the application for tentative approval of the modifications of the Planned Unit Development; and,

WHEREAS, The Town Council, in accordance with Section 134-533 of Chapter 134, Zoning, of the Code of Ordinances, as amended, does make the following findings:

1. The Planned Unit Development Plan, as submitted with the modifications thereto, is consistent with the statement of general objectives of a Planned Unit Development as set forth in Section 134-476 of the Ordinance.

2. The Planned Unit Development, as submitted with the modifications thereto, is consistent with the Comprehensive Plan, as long as the conditions hereinafter set forth are met.
3. The Planned Unit Development, as submitted with modifications thereto, does include an adequate amount of open space located in a satisfactory manner, as long as the applicant meets the open space set forth in the Resolution.
4. The Planned Unit Development, as submitted with modifications thereto, makes adequate provisions for public services, provides adequate control over vehicular traffic and enhances the amenities of light and air, recreational and visual enjoyment, but is further subject to certain conditions hereinafter set forth.
5. The Planned Unit Development, as submitted with modifications thereto, is not adverse to the neighborhood in which it is located.
6. The Planned Unit Development, as submitted with modifications thereto, includes sufficient terms and conditions to protect the interests of the public in the development of the plan over a period of years.
7. The Breakers Hotel as referenced in the exhibits attached hereto is a historically and architecturally significant building and provision for its west facade preservation shall be subject to the control of the Landmarks Preservation Commission, the Town Council and any other commission or board of the Town having jurisdiction over same, such control not to be inconsistent with the Planned Unit Development Plan approval as evidenced by this Resolution.

WHEREAS, the Town Council, after deliberation and evaluation of the recommendations of the Zoning Commission and the comments received from interested parties at the aforementioned public hearings, does find the Planned Unit Development Plan, as amended with the modifications thereto, to be in the best interest of the Town subject to the conditions hereinafter set forth.

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

Section 1. That the amendments to the Planned Unit Development submitted by the Breakers Palm Beach, Inc., on August 3, 1999, be granted tentative approval subject to the conditions set forth therein not in conflict with this Resolution, in addition to those specified below:

A. AMENDMENTS TO PREVIOUS MODIFICATIONS

MODIFICATION #1

Coffee Shop

NO CHANGE

MODIFICATION #2
Tennis Court Lighting
NO CHANGE

MODIFICATION #3
Additional Retail Space
NO CHANGE

MODIFICATION #4
New Tennis Facility
DELETE (to be replaced by Modification #10)

MODIFICATION #5
Maintenance of Golf Course Green Space is amended to read:

The applicant agrees to maintain the golf course as green space through the year 2025, or for so long as the property is zoned Planned Unit Development, whichever is greater.

MODIFICATION #6
Lease of Pine Walk Transfer Station is amended to read:

The Town and the Breakers Palm Beach, Inc. have agreed that the Town shall be given an extension of the existing lease from the Breakers Palm Beach, Inc. until December 31, 2025, for the Town's waste transfer station currently located on Development Priority No. 8 (Phase 5) within the Breakers PUD, as shown in the Red Book Drawing No. 5. The terms of said lease shall be the same as contained in the present lease, and further, said lease may not be canceled prior to December 31, 2025 without the approval of the Town of Palm Beach. The Town shall retain all debris within the transfer station site and shall consult with the Breakers for the purpose of developing and installing landscaping to screen the site and the equipment thereon completely from the adjacent golf course areas.

MODIFICATION #7
Requirement for Renegotiation is amended to read:

- a. The applicant and the Town agree to negotiate the possible transfer to other areas in the Planned Unit Development (PUD), with increased building heights, the development rights pertaining to all of the undeveloped phases of development, as set forth in The Breakers, Proposed Planned Unit Development Revised June 9, 1981 (hereinafter the "Red Book"), at Drawing No.5. during the 2000-2001 Zoning Season.

Phase 1a (Priority 1) Area may be used to temporarily locate 250 of the required permanent off-street parking spaces for employee parking at the northwest corner of the PUD in the Phase 1a (Priority1) Area. If the Phase 1a (Priority 1) Area is developed, these 250 required off-street parking spaces

shall be relocated to an area within the Breakers PUD that is acceptable to the Town.

- b. The following conditions relating to the drainage improvements for the Breakers PUD have been completed:

The timing of construction and the fair apportionment of the costs of the drainage improvements at the main entrance to the Hotel on County Road specified in the Planning Criteria and the Appendices at Page 47 under Priority 4 (Phase 11) and the renegotiation of said timing in accordance with the schedule set forth in Exhibit A attached hereto have been completed. Provided however, that no later than July 1, 1992, the applicant will commence construction of the interim drainage improvements reflected on Exhibit B attached hereto, and shall complete said improvements no later than October 31, 1992. It is recognized that this interim drainage improvement will accommodate runoff from the hotel property as well as other Town property. As a result, the costs associated with this interim improvement will be apportioned fairly between Flagler Systems and the Town. Flagler System shall pay all interim drainage improvement costs provided, however, that a credit shall be given to Flagler System by the Town toward the Flagler System's share of the costs of the long term drainage improvements. Provided, however, that no cost sharing of the costs of the interim improvements shall commence until the review and approval by the Town of the costs apportionment formula to be completed by the end of March, 1992 (see Exhibit A).

MODIFICATION #8

Road and Parking Improvements

NO CHANGE

MODIFICATION #9

Starlight Ballroom Addition and Beach Club

NO CHANGE

MODIFICATION #10

Golf and Tennis Clubhouse with Related Facilities

The construction of the new Golf and Tennis Clubhouse, as depicted on the site plan drawing prepared by Blakely & Associates, sheet L-1, stamp dated February 4, 2000, and drawings prepared by Wimberly, Allison, Tong and Goo, entitled The Breakers Golf and Tennis Club, Sheet Nos. A2 through A11, stamp dated January 28, 2000, and the modification and re-ordering of the golf course holes as depicted on the plan prepared by Cornish, Silva & Mungeam, Inc., entitled The Breakers Golf Club *Palm Beach, Florida* Route Plan, dated January 28, 2000, are hereby approved as revised pursuant to the public hearings. Sheet Nos. A-2, A-3 and A-4 (Floor Plans) and the golf course drawing may be changed slightly to address final construction design and building code requirements.

The new Golf and Tennis Club facilities will consist of approximately 31,692 square feet of enclosed area, 7,682 square feet of covered terraces, 1,175 square feet of porte cochere with 150 dining seats, 10 tennis courts (including five lighted courts), an 18-hole golf course, other accessory facilities and 80 parking spaces. An off-duty police officer shall be employed by the Breakers at major events at the golf course for traffic control on County Road. Valet parking shall be provided between November 15 and April 30 of each year at the Golf and Tennis Club. The cart path for golf hole number 7 shall be routed along the north side of the hole.

MODIFICATION #11

Development Commencement Dates

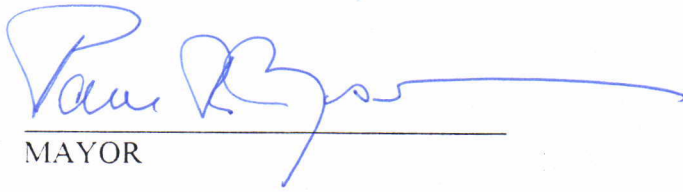
The commencement dates for undertaking the remaining development Phase (Priority) Areas are hereby made uniform at December 31, 2025: Phase 1(Priority 1) - 38 units, Phase 3 (Priority 2) - 40 units, Phase 4 (Priority 7) - 24 units, Phase 5 (Priority 8) - 24 units, Phases 6 and 7 (Priority 9) - 63 units, and Phases 8 and 9 (Priority 6) - 62 units.

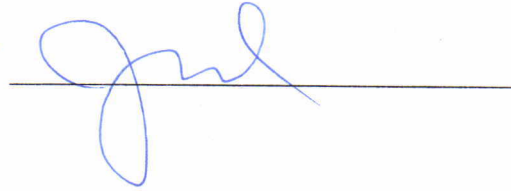
B. RESOLUTIONS 9-72, 13-74, 10-81, 17-90, 6-92, 1-97 AND 1-98 SHALL REMAIN IN FULL FORCE AND EFFECT EXCEPT AS MODIFIED BY PREVIOUS AMENDMENTS AND MODIFICATIONS AND BY THE PROVISIONS OF THIS RESOLUTION.

Section 2. The modifications submitted on August 3, 1999 by the Breakers Palm Beach, Inc., and reflected herein will become effective (i.e. not tentative) only if, as and when The Breakers Palm Beach, Inc., indicates its acceptance thereof and an agreement documenting that acceptance is entered into between the Town of Palm Beach and The Breakers Palm Beach, Inc. incorporating said conditions.

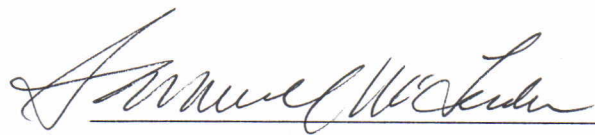
Section 3. The Town Clerk is hereby directed to furnish a certified copy of this Resolution, by certified mail to the applicant, and applicant shall within forty-five (45) days after receiving said certified copy notify the Town Council of the acceptance of, or refusal to accept all of said conditions as provided in Section 134-533(c) of Chapter 134, as amended, and further subject to the provisions of Section 134-533(d).

Section 4. PASSED AND ADOPTED in regular, adjourned session assembled on this 7th day of February, 2000.

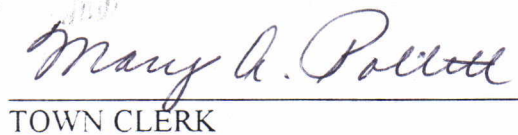

MAYOR







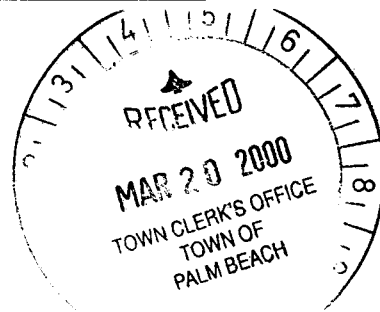
ATTEST:



TOWN CLERK


TOWN COUNCIL



GUNSTER, YOAKLEY, VALDES-FAULI & STEWART, P.A.
ATTORNEYS AT LAW



Our File Number: 01446.00198
Writer's Direct Dial Number: (561) 650-0511
Writer's E-Mail Address: jbrindell@gunster.com

March 20, 2000

VIA FAX AND HAND DELIVERY

Mayor Lesly Smith
Town of Palm Beach
360 S. County Road
P.O. Box 2029
Palm Beach, FL 33480

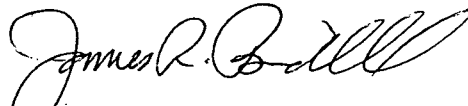
RECEIVED
MAR 20 2000
TOWN OF PALM BEACH
PZB DEPT.

Re Breakers Hotel Resolution ³1-00

Dear Mayor Smith:

This is to inform you on behalf of Breakers Palm Beach, Inc. that it accepts the conditions of approval set forth in Resolution 3-00.

Sincerely yours,


James R. Brindell

JRB:lw/486827.1

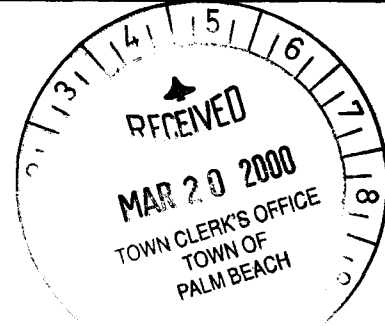
cc: Paul Leone
Robert Moore
Paul Castro

Phillips Point
777 South Flagler Drive, Suite 500 East • West Palm Beach, FL 33401-6194
(561) 655-1980 Fax: (561) 655-5677 e-mail: clientservices@gunster.com
<http://www.gunster.com>

FORT LAUDERDALE • MIAMI • PALM BEACH • STUART • TALLAHASSEE • VERO BEACH • WEST PALM BEACH



GUNSTER, YOAKLEY, VALDES-FAULI & STEWART, P.A.
ATTORNEYS AT LAW



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Mayor Lesly Smith
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Palm Beach, FL 33480

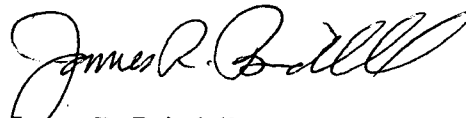
RECEIVED
MAR 20 2000
TOWN OF PALM BEACH
PZB DEPT.

Re Breakers Hotel Resolution ³ 1-00

Dear Mayor Smith:

This is to inform you on behalf of Breakers Palm Beach, Inc. that it accepts the conditions of approval set forth in Resolution 3-00.

Sincerely yours,

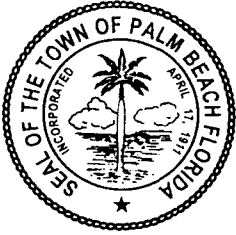

James R. Brindell

JRB:lw/486827.1

cc: Paul Leone
Robert Moore
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FORT LAUDERDALE • MIAMI • PALM BEACH • STUART • TALLAHASSEE • VERO BEACH • WEST PALM BEACH



TOWN OF PALM BEACH

Office of The Town Clerk

March 2, 2000

Mr. James R. Brindell
Gunster Yoakley Valdes-Fauli & Stewart, P.A.
151 Royal Palm Way
Palm Beach, FL 33480

Dear Mr. Brindell:

Enclosed is a copy of Resolution 3-00 that was passed and adopted at the February 7, 2000 Town Council meeting.

Section three (3) on page five (5) of the resolution states a certified copy of the resolution must be provided to The Breakers, and The Breakers shall within forty-five (45) days after receiving said certified copy notify the Town Council of the acceptance of, or refusal to accept all of said conditions as provided in Section 7.33(b) of Ordinance 2-74, as amended, and further subject to the provisions of Section 7.33(d).

If I can be of any further assistance, please do not hesitate to call.

Sincerely,

Mary A. Pollitt
Town Clerk

MAP/dk
enc.

cc: Paul Leone, General Manager, The Breakers Hotel
Paul Castro, Zoning Administrator

RESOLUTION NO. 3-00

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION 1-98, THE BREAKERS PUD, BY MODIFYING THE PUD MASTER PLAN TO REDESIGN THE GOLF COURSE AND INCLUDE A GOLF AND TENNIS CLUB HOUSE WITH RELATED FACILITIES, WEST OF SOUTH COUNTY ROAD.

WHEREAS, Flagler System, Inc. did submit an application for tentative approval together with supporting documentation for Planned Unit Development for the property commonly referred to as "The Breakers" on October 30, 1970; and

WHEREAS, The Zoning Commission and the Town Council of the Town of Palm Beach, subsequent to review and public hearing did by Resolution 6-71, as amended by Resolutions 9-72, 13-74, 10-81, 17-90, 6-92, 1-97 and 1-98 grant tentative approval of said application, subject to certain conditions; and

WHEREAS, The Town and Flagler System, Inc., entered into a binding Agreement on September 8, 1983 wherein Flagler Systems, Inc., accepted the Town's conditions governing the development of "The Breakers" Planned Unit Development, and said Agreement was revised by the Town and Flagler System, Inc., on June 18, 1996, on January 22, 1990, and on February 19, 1992, pursuant to the terms of Resolution No. 6-92; and,

WHEREAS, Flagler System, Inc. has been reorganized and the corporate name of the company now controlling "The Breakers" Planned Unit Development is The Breakers Palm Beach, Inc.; and,

WHEREAS, on August 3, 1999, The Breakers Palm Beach, Inc., did submit an application for tentative approval of the modifications of the Planned Unit Development; and,

WHEREAS, on November 16, 1999 and December 2, 1999, the Zoning Commission and on January 6, and January 11, 2000 the Town Council of the Town of Palm Beach, did review and hold public hearings on the application for tentative approval of the modifications of the Planned Unit Development; and,

WHEREAS, The Town Council, in accordance with Section 134-533 of Chapter 134, Zoning, of the Code of Ordinances, as amended, does make the following findings:

1. The Planned Unit Development Plan, as submitted with the modifications thereto, is consistent with the statement of general objectives of a Planned Unit Development as set forth in Section 134-476 of the Ordinance.

CLERK'S CERTIFICATE

STATE OF FLORIDA)
COUNTY OF PALM BEACH) ss:
TOWN OF PALM BEACH)
I, MARY A. POLLITT, HEREBY CERTIFY THAT I am a duly qualified
and acting Clerk of the Town of Palm Beach, Florida, and the above and
foregoing is a true and correct copy of a Document the original of which is
on file in the Office of the Town Clerk of the Town of Palm Beach,
Florida.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed
the official seal of said Town, this 20th day of March A.D. 2000
TOWN SEAL

MARY A. POLLITT
TOWN CLERK

STATE OF FLORIDA)
COUNTY OF PALM BEACH) ss:
TOWN OF PALM BEACH)
I, MARY A. POLLITT, HEREBY CERTIFY THAT I am a duly qualified
and acting Clerk of the Town of Palm Beach, Florida, and the above and
foregoing is a true and correct copy of a Document the original of which is
on file in the Office of the Town Clerk of the Town of Palm Beach,
Florida.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed
the official seal of said Town, this 20th day of March A.D. 2000
TOWN SEAL

MARY A. POLLITT
TOWN CLERK

2. The Planned Unit Development, as submitted with the modifications thereto, is consistent with the Comprehensive Plan, as long as the conditions hereinafter set forth are met.
3. The Planned Unit Development, as submitted with modifications thereto, does include an adequate amount of open space located in a satisfactory manner, as long as the applicant meets the open space set forth in the Resolution.
4. The Planned Unit Development, as submitted with modifications thereto, makes adequate provisions for public services, provides adequate control over vehicular traffic and enhances the amenities of light and air, recreational and visual enjoyment, but is further subject to certain conditions hereinafter set forth.
5. The Planned Unit Development, as submitted with modifications thereto, is not adverse to the neighborhood in which it is located.
6. The Planned Unit Development, as submitted with modifications thereto, includes sufficient terms and conditions to protect the interests of the public in the development of the plan over a period of years.
7. The Breakers Hotel as referenced in the exhibits attached hereto is a historically and architecturally significant building and provision for its west facade preservation shall be subject to the control of the Landmarks Preservation Commission, the Town Council and any other commission or board of the Town having jurisdiction over same, such control not to be inconsistent with the Planned Unit Development Plan approval as evidenced by this Resolution.

WHEREAS, the Town Council, after deliberation and evaluation of the recommendations of the Zoning Commission and the comments received from interested parties at the aforementioned public hearings, does find the Planned Unit Development Plan, as amended with the modifications thereto, to be in the best interest of the Town subject to the conditions hereinafter set forth.

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

Section 1. That the amendments to the Planned Unit Development submitted by the Breakers Palm Beach, Inc., on August 3, 1999, be granted tentative approval subject to the conditions set forth therein not in conflict with this Resolution, in addition to those specified below:

A. AMENDMENTS TO PREVIOUS MODIFICATIONS

MODIFICATION #1

Coffee Shop
NO CHANGE

CLERK'S CERTIFICATE

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

I, MARY A. POLLITT, HEREBY CERTIFY THAT I am the duly qualified and acting Clerk of the Town of Palm Beach, Florida; that the above and foregoing is a true and correct copy of a Document the original of which is on file in the Office of the Town Clerk of the Town of Palm Beach, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Town, this 2nd day of March A.D. 2000

TOWN SEAL

Mary A. Pollitt

MARY A. POLLITT
TOWN CLERK

MODIFICATION #2
Tennis Court Lighting
NO CHANGE

MODIFICATION #3
Additional Retail Space
NO CHANGE

MODIFICATION #4
New Tennis Facility
DELETE (to be replaced by Modification #10)

MODIFICATION #5
Maintenance of Golf Course Green Space is amended to read:

The applicant agrees to maintain the golf course as green space through the year 2025, or for so long as the property is zoned Planned Unit Development, whichever is greater.

MODIFICATION #6
Lease of Pine Walk Transfer Station is amended to read:

The Town and the Breakers Palm Beach, Inc. have agreed that the Town shall be given an extension of the existing lease from the Breakers Palm Beach, Inc. until December 31, 2025, for the Town's waste transfer station currently located on Development Priority No. 8 (Phase 5) within the Breakers PUD, as shown in the Red Book Drawing No. 5. The terms of said lease shall be the same as contained in the present lease, and further, said lease may not be canceled prior to December 31, 2025 without the approval of the Town of Palm Beach. The Town shall retain all debris within the transfer station site and shall consult with the Breakers for the purpose of developing and installing landscaping to screen the site and the equipment thereon completely from the adjacent golf course areas.

MODIFICATION #7
Requirement for Renegotiation is amended to read:

- a. The applicant and the Town agree to negotiate the possible transfer to other areas in the Planned Unit Development (PUD), with increased building heights, the development rights pertaining to all of the undeveloped phases of development, as set forth in The Breakers, Proposed Planned Unit Development Revised June 9, 1981 (hereinafter the "Red Book"), at Drawing No.5. during the 2000-2001 Zoning Season.

Phase 1a (Priority 1) Area may be used to temporarily locate 250 of the required permanent off-street parking spaces for employee parking at the northwest corner of the PUD in the Phase 1a (Priority1) Area. If the Phase 1a (Priority 1) Area is developed, these 250 required off-street parking spaces

3

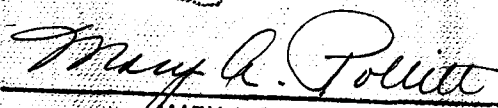
CLERK'S CERTIFICATE

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

I, MARY A. POLLITT, HEREBY CERTIFY THAT I am the duly qualified and acting Clerk of the Town of Palm Beach, Florida; that the above and foregoing is a true and correct copy of a Document the original of which is on file in the Office of the Town Clerk of the Town of Palm Beach, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Town, this 12th day of March A.D. 2000

TOWN SEAL


MARY A. POLLITT
TOWN CLERK

shall be relocated to an area within the Breakers PUD that is acceptable to the Town.

- b. The following conditions relating to the drainage improvements for the Breakers PUD have been completed:

The timing of construction and the fair apportionment of the costs of the drainage improvements at the main entrance to the Hotel on County Road specified in the Planning Criteria and the Appendices at Page 47 under Priority 4 (Phase 11) and the renegotiation of said timing in accordance with the schedule set forth in Exhibit A attached hereto have been completed. Provided however, that no later than July 1, 1992, the applicant will commence construction of the interim drainage improvements reflected on Exhibit B attached hereto, and shall complete said improvements no later than October 31, 1992. It is recognized that this interim drainage improvement will accommodate runoff from the hotel property as well as other Town property. As a result, the costs associated with this interim improvement will be apportioned fairly between Flagler Systems and the Town. Flagler System shall pay all interim drainage improvement costs provided, however, that a credit shall be given to Flagler System by the Town toward the Flagler System's share of the costs of the long term drainage improvements. Provided, however, that no cost sharing of the costs of the interim improvements shall commence until the review and approval by the Town of the costs apportionment formula to be completed by the end of March, 1992 (see Exhibit A).

MODIFICATION #8

Road and Parking Improvements

NO CHANGE

MODIFICATION #9

Starlight Ballroom Addition and Beach Club

NO CHANGE

MODIFICATION #10

Golf and Tennis Clubhouse with Related Facilities

The construction of the new Golf and Tennis Clubhouse, as depicted on the site plan drawing prepared by Blakely & Associates, sheet L-1, stamp dated February 4, 2000, and drawings prepared by Wimberly, Allison, Tong and Goo, entitled The Breakers Golf and Tennis Club, Sheet Nos. A2 through A11, stamp dated January 28, 2000, and the modification and re-ordering of the golf course holes as depicted on the plan prepared by Cornish, Silva & Mungeam, Inc., entitled The Breakers Golf Club *Palm Beach, Florida* Route Plan, dated January 28, 2000, are hereby approved as revised pursuant to the public hearings. Sheet Nos. A-2, A-3 and A-4 (Floor Plans) and the golf course drawing may be changed slightly to address final construction design and building code requirements.

4

CLERK'S CERTIFICATE

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

I, MARY A. POLLITT, HEREBY CERTIFY THAT I am the duly qualified and acting Clerk of the Town of Palm Beach, Florida; that the above and foregoing is a true and correct copy of a Document the original of which is on file in the Office of the Town Clerk of the Town of Palm Beach, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Town, this 2nd day of March A.D. 2000

TOWN SEAL


MARY A. POLLITT
TOWN CLERK

The new Golf and Tennis Club facilities will consist of approximately 31,692 square feet of enclosed area, 7,682 square feet of covered terraces, 1,175 square feet of porte cochere with 150 dining seats, 10 tennis courts (including five lighted courts), an 18-hole golf course, other accessory facilities and 80 parking spaces. An off-duty police officer shall be employed by the Breakers at major events at the golf course for traffic control on County Road. Valet parking shall be provided between November 15 and April 30 of each year at the Golf and Tennis Club. The cart path for golf hole number 7 shall be routed along the north side of the hole.

MODIFICATION #11

Development Commencement Dates

The commencement dates for undertaking the remaining development Phase (Priority) Areas are hereby made uniform at December 31, 2025: Phase 1 (Priority 1) - 38 units, Phase 3 (Priority 2) - 40 units, Phase 4 (Priority 7) - 24 units, Phase 5 (Priority 8) - 24 units, Phases 6 and 7 (Priority 9) - 63 units, and Phases 8 and 9 (Priority 6) - 62 units.

B. RESOLUTIONS 9-72, 13-74, 10-81, 17-90, 6-92, 1-97 AND 1-98 SHALL REMAIN IN FULL FORCE AND EFFECT EXCEPT AS MODIFIED BY PREVIOUS AMENDMENTS AND MODIFICATIONS AND BY THE PROVISIONS OF THIS RESOLUTION.

Section 2. The modifications submitted on August 3, 1999 by the Breakers Palm Beach, Inc., and reflected herein will become effective (i.e. not tentative) only if, as and when The Breakers Palm Beach, Inc., indicates its acceptance thereof and an agreement documenting that acceptance is entered into between the Town of Palm Beach and The Breakers Palm Beach, Inc. incorporating said conditions.

Section 3. The Town Clerk is hereby directed to furnish a certified copy of this Resolution, by certified mail to the applicant, and applicant shall within forty-five (45) days after receiving said certified copy notify the Town Council of the acceptance of, or refusal to accept all of said conditions as provided in Section 134-533(c) of Chapter 134, as amended, and further subject to the provisions of Section 134-533(d).

5

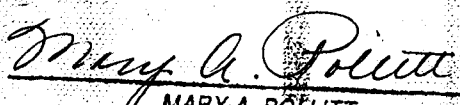
CLERK'S CERTIFICATE

STATE OF FLORIDA)
COUNTY OF PALM BEACH) ss.
TOWN OF PALM BEACH)

I, MARY A. POLLITT, HEREBY CERTIFY THAT I am the duly qualified and acting Clerk of the Town of Palm Beach, Florida; that the above and foregoing is a true and correct copy of a Document the original of which is on file in the Office of the Town Clerk of the Town of Palm Beach, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Town, this 2nd day of March A.D. 19 2000

TOWN SEAL


MARY A. POLLITT
TOWN CLERK

Section 4. PASSED AND ADOPTED in regular, adjourned session assembled on this 7th day of February, 2000.

Paul R. Bjo
MAYOR

Paul

Paul

Arnold W. L.

ATTEST:

Mary A. Pollitt
TOWN CLERK

Isabel S. Switty
TOWN COUNCIL

CLERK'S CERTIFICATE

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

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Town, this 2nd day of March A.D. 2000

TOWN SEAL

Mary A. Pollitt
MARY A. POLLITT
TOWN CLERK

SEND TO: (For use by the Post Office)
3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery
(Extra charge) (Extra charge)

3. Article Addressed to:

Mr. James R. Brindell
Gunster Yoakley Valdes-Fauli &
Stewart, P.A.
151 Royal Palm Way
Palm Beach, FL 33480

4. Article Number

Z 317 401 556

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt
for Merchandise

Always obtain signature of addressee
or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

8. Addressee's Address (ONLY if
requested and fee paid)

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS



SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below.

- Complete Items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



**PENALTY FOR PRIVATE
USE, \$300**

**RETURN
TO**



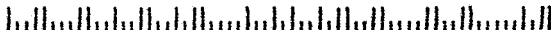
Print Sender's name, address, and ZIP Code in the space below.

Mary A. Pollitt, Town Clerk

Town of Palm Beach

360 So. County Road

222



Z 317 401 556

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to **Mr. James R. Brindell**

Gunter Yoakley Valdes-Fauli &
Street & Number
Stewart, P.A.

Post Office, State, & ZIP Code

151 Royal Palm Way, Palm Beach

Postage

\$ - 50 FL 33480

Certified Fee

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Special Delivery Fee

Restricted Delivery Fee

Return Receipt Showing to Whom & Date Delivered

1.25

Return Receipt Showing to Whom Date, & Addressee's Address

TOTAL Postage & Fees

\$ 3.20

Postmark or Date

223

PS Form 3800, April 1995

TOWN CLERK

Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services (See front).

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier *(no extra charge)*.

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make an inquiry.

224
102595-99-M-0079

RESOLUTION NO. 4-05

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION No. 3-00, THE BREAKERS PUD, BY MODIFYING THE PUD MASTER PLAN TO REDESIGN THE BEACH CLUB CABANAS AND RELATED FACILITIES, EAST OF SOUTH COUNTY ROAD.

WHEREAS, Flagler System, Inc. did submit an application for tentative approval together with supporting documentation for Planned Unit Development for the property commonly referred to as "The Breakers" on October 30, 1970; and

WHEREAS, The Zoning Commission and the Town Council of the Town of Palm Beach, subsequent to review and public hearing did by Resolution 6-71, as amended by Resolutions 9-72, 13-74, 10-81, 17-90, 6-92, 1-97, 1-98, and 3-00 grant tentative approval of said application, subject to certain conditions; and

WHEREAS, The Town and Flagler System, Inc., entered into a binding Agreement on September 8, 1983, wherein Flagler Systems, Inc., accepted the Town's conditions governing the development of "The Breakers" Planned Unit Development, and said Agreement was revised by the Town and Flagler System, Inc., on June 18, 1986, on January 22, 1990, on February 19, 1992, on April 12, 2000, and on February 15, 2005, pursuant to the terms of Resolution No. 4-05; and

WHEREAS, Flagler System, Inc. has been reorganized and the corporate name of the company now controlling "The Breakers" Planned Unit Development is The Breakers Palm Beach, Inc.; and

WHEREAS, on July 27, 2004, The Breakers Palm Beach, Inc., did submit an application for tentative approval of the modifications of the Planned Unit Development; and

WHEREAS, on December 1, 2004, the Planning and Zoning Commission and on January 5, 2005, and February 15, 2005 the Town Council of the Town of Palm Beach, did review and hold public hearings on the application for tentative approval of the modifications of the Planned Unit Development; and

WHEREAS, The Town Council; in accordance with Section 134-533 of Chapter 134, Zoning, of the Code of Ordinances, as amended, does make the following findings:

1. The Planned Unit Development Plan, as submitted with the modifications thereto, is consistent with the statement of general objectives of a Planned Unit Development as set forth in Section 134-476 of the Ordinance.

2. The Planned Unit Development, as submitted with the modifications thereto, is consistent with the Comprehensive Plan, as long as the conditions hereinafter set forth are met.
3. The Planned Unit Development, as submitted with modifications thereto, does include an adequate amount of open space located in a satisfactory manner, as long as the applicant meets the open space set forth in the Resolution.
4. The Planned Unit Development, as submitted with modifications thereto, makes adequate provisions for public services, provides adequate control over vehicular traffic and enhances the amenities of light and air, recreational and visual enjoyment, but is further subject to certain conditions hereinafter set forth.
5. The Planned Unit Development, as submitted with modifications thereto, is not adverse to the neighborhood in which it is located.
6. The Planned Unit Development, as submitted with modifications thereto, includes sufficient terms and conditions to protect the interests of the public in the development of the plan over a period of years.
7. The Breakers Hotel as referenced in the exhibits attached hereto is a historically and architecturally significant building and provision for its west facade preservation shall be subject to the control of the Landmarks Preservation Commission, the Town Council and any other commission or board of the Town having jurisdiction over same, such control not to be inconsistent with the Planned Unit Development Plan approval as evidenced by this Resolution.

WHEREAS, the Town Council, after deliberation and evaluation of the recommendations of the Planning and Zoning Commission and the comments received from interested parties at the aforementioned public hearings, does find the Planned Unit Development Plan, as amended with the modifications thereto, to be in the best interest of the Town subject to the conditions hereinafter set forth.

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

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

Section 2. That the amendments to the Planned Unit Development submitted by the Breakers Palm Beach, Inc., on July 27, 2004, be granted tentative approval subject to the conditions set forth therein not in conflict with this Resolution, in addition to those specified below:

A. AMENDMENTS TO PREVIOUS MODIFICATIONS

MODIFICATION #1

Coffee Shop
NO CHANGE

MODIFICATION #2

Tennis Court Lighting
NO CHANGE

MODIFICATION #3

Additional Retail Space
NO CHANGE

MODIFICATION #4

New Tennis Facility
DELETE (to be replaced by Modification #10)

MODIFICATION #5

Maintenance of Golf Course Green Space is amended to read:

The applicant agrees to maintain the golf course as green space through the year 2025, or for so long as the property is zoned Planned Unit Development, whichever is greater.

NO CHANGE

MODIFICATION #6

Lease of Pine Walk Transfer Station is amended to read:

The Town and the Breakers Palm Beach, Inc. have agreed that the Town shall be given an extension of the existing lease from the Breakers Palm Beach, Inc. until December 31, 2025, for the Town's waste transfer station currently located on Development Priority No. 8 (Phase 5) within the Breakers PUD, as shown in the Red Book Drawing No. 5. The terms of said lease shall be the same as contained in the present lease, and further, said lease may not be canceled prior to December 31, 2025 without the approval of the Town of Palm Beach. The Town shall retain all debris within the transfer station site and shall consult with the Breakers for the purpose of developing and installing landscaping to screen the site and the equipment thereon completely from the adjacent golf course areas.

NO CHANGE

MODIFICATION #7

Requirement for Renegotiation is amended to read:

- a. The applicant and the Town agree to negotiate the possible transfer to other areas in the Planned Unit Development (PUD), with increased building heights, the development rights pertaining to all of the undeveloped phases of development, as set forth in The Breakers, Proposed Planned Unit Development Revised June 9,

1981 (hereinafter the "Red Book"), at Drawing No. 5. during the 2000-2001 Zoning Season.

Phase 1a (Priority 1) Area may be used to temporarily locate 250 of the required permanent off-street parking spaces for employee parking at the northwest corner of the PUD in the Phase 1a (Priority 1) Area. If the Phase 1a (Priority 1) Area is developed, these 250 required off-street parking spaces shall be relocated to an area within the Breakers PUD that is acceptable to the Town.

b. THE FOLLOWING CONDITIONS RELATING TO THE DRAINAGE IMPROVEMENTS FOR THE BREAKERS PUD HAVE BEEN COMPLETED:

The timing of construction and the fair apportionment of the costs of the drainage improvements at the main entrance to the Hotel on County Road specified in the Planning Criteria and the Appendices at Page 47 under Priority 4 (Phase 11) and the renegotiation of said timing in accordance with the schedule set forth in Exhibit A attached hereto have been completed. Provided, however, that no later than July 1, 1992, the applicant will commence construction of the interim drainage improvements reflected on Exhibit B attached hereto, and shall complete said improvements no later than October 31, 1992. It is recognized that this interim drainage improvement will accommodate runoff from the hotel property as well as other Town property. As a result, the costs associated with this interim improvement will be apportioned fairly between the Flagler System and the Town. The Flagler System, shall pay all interim drainage improvement costs provided, however, that a credit shall be given to the Flagler System by the Town toward the Flagler System's share of the costs of the long term drainage improvements. Provided, however, that no cost sharing of the costs of the interim improvements shall commence until the review and approval by the Town of the costs apportionment formula to be completed by the end of March, 1992 (see Exhibit A).

NO CHANGE - COMPLETED

MODIFICATION #8

Road and Parking Improvements

NO CHANGE

MODIFICATION #9

Starlight Ballroom Addition and Beach Club

NO CHANGE

MODIFICATION #10

Golf and Tennis Clubhouse with Related Facilities

The construction of the new Golf and Tennis Clubhouse, as depicted on the site plan drawing prepared by Blakely & Associates, sheet L-1, stamp dated February 4, 2000, and drawings prepared by Wimberly, Allison, Tong and Goo, entitled The Breakers Golf and Tennis Club, Sheet Nos. A2 through A11, stamp dated January 28, 2000, and the modification and re-ordering of the golf course holes as depicted on the plan prepared by Cornish, Silva & Mungeam, Inc., entitled The Breakers Golf Club *Palm Beach, Florida* Route Plan, dated January 28, 2000, are hereby approved as revised pursuant to the public hearings. Sheet Nos. A-2, A-3 and A-4 (Floor Plans) and the golf course drawing may be changed slightly to address final construction design and building code requirements.

The new Golf and Tennis Club facilities will consist of approximately 31,692 square feet of enclosed area, 7,682 square feet of covered terraces, 1,175 square feet of porte cochere with 150 dining seats, 10 tennis courts (including five lighted courts), an 18-hole golf course, other accessory facilities and 80 parking spaces. A special duty police officer shall be paid for by The Breakers at major events at the golf course for traffic control on County Road. Valet parking shall be provided between November 15 and April 30 of each year at the Golf and Tennis Club. The cart path for golf hole number 7 shall be routed along the north side of the hole.

ONLY CHANGES ARE THE REFERENCE FROM POLICE OFFICER TO SPECIAL DUTY POLICE OFFICER WORKING MAJOR EVENTS AND A CHANGE IN LANGUAGE FROM EMPLOYMENT BY THE BREAKERS TO PAID FOR BY THE BREAKERS

MODIFICATION #11

Development Commencement Dates

The commencement dates for undertaking the remaining development Phase (Priority) Areas are hereby made uniform at December 31, 2025: Phase 1 (Priority 1) - 38 units, Phase 3 (Priority 2) - 40 units, Phase 4 (Priority 7) - 24 units, Phase 5 (Priority 8) - 24 units, Phases 6 and 7 (Priority 9) - 63 units, and Phases 8 and 9 (Priority 6) - 62 units.

NO CHANGE

MODIFICATION #12

Cabanas and Related Facilities

The construction of the new cabanas, beach bar and grill, pools, jacuzzis, pavilion, lockers, restrooms, and laundry as depicted on the site plan prepared by WATG entitled "Site Plan", Sheet No. A-1.00 dated January 3, 2005, is hereby approved as revised pursuant to the public hearings. Sheet No. A-1.00 may be changed slightly to address final construction design and building code requirements.

The new cabana facilities shall consist of 20 cabanas, a beach bar and grill

with 136 seats, two pools, several jacuzzis, a pavilion with approximately 778 square feet, a locker and restroom building of approximately 2,535 square feet, a laundry of approximately 2,113 square feet, and a reduction of 16 parking spaces in cabana area. However, the ultimate development program for the cabana area as shown on the existing Master Plan remains unchanged; i.e., 80 hotel suites, or 40 multi-family units, and 40 cabanas.

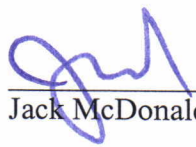
The cabana pool equipment shall be enclosed and landscaped, and the sound from said equipment shall be minimized to comply with the Town's noise ordinance. No construction traffic shall use Flagler Drive. Construction traffic shall be permitted to use Via Bethesda only in the event that a piece of equipment or construction material cannot reasonably access the construction site through the County Road entrance to the Beach Club and then only as approved in advance on a case-by-case basis by the Town's Department of Planning, Zoning, and Building.

- B. RESOLUTIONS 9-72, 13-74, 10-81, 17-90, 6-92, 1-97, 1-98, AND 3-00 SHALL REMAIN IN FULL FORCE AND EFFECT EXCEPT AS MODIFIED BY PREVIOUS AMENDMENTS AND MODIFICATIONS AND BY THE PROVISIONS OF THIS RESOLUTION.

Section 3. The modifications submitted on July 27, 2004, by the Breakers Palm Beach, Inc., and reflected herein will become effective (i.e. not tentative) only if, as and when The Breakers Palm Beach, Inc., indicates its acceptance thereof and an agreement documenting that acceptance is entered into between the Town of Palm Beach and The Breakers Palm Beach, Inc. incorporating said conditions.

Section 4. The Town Clerk is hereby directed to furnish a certified copy of this Resolution, by certified mail to the applicant, and applicant shall within forty-five (45) days after receiving said certified copy notify the Town Council of the acceptance of, or refusal to accept all of said conditions as provided in Section 134-533(c) of Chapter 134, as amended, and further subject to the provisions of Section 134-533(d).

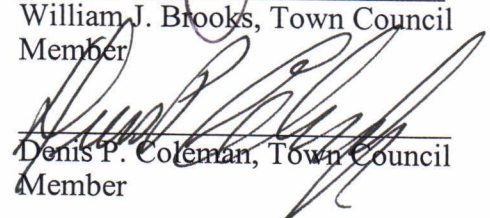
PASSED AND ADOPTED in regular, adjourned session assembled on this 15TH day of FEBRUARY, 2005.



Jack McDonald, Mayor



William J. Brooks, Town Council
Member



Denis P. Coleman, Town Council
Member



ATTEST:

Mary A. Pollitt
Mary A. Pollitt, Town Clerk

Norman P. Goldblum
Norman P. Goldblum, Town Council
Member

Richard M. Kleid
Richard M. Kleid, Town Council
Member

Allen S. Wyett
Allen S. Wyett, Town Council
Member

RESOLUTION NO. 11-2014

A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending Resolution 70-10, The Breakers Planned Unit Development (PUD-A), By Adding 4,559 Square Feet Of Accessory Hotel Space To The Beach Club For Construction Of Fitness Center Facility

WHEREAS, Flagler System, Inc. did submit an application for tentative approval together with supporting documentation for Planned Unit Development for the property commonly referred to as "The Breakers" on October 30, 1970; and

WHEREAS, The Zoning Commission and the Town Council of the Town of Palm Beach, subsequent to review and public hearing did by Resolution 6-71, as amended by Resolutions 9-72, 13-74, 10-81, 17-90, 6-92, 1-97, 1-98, 3-00, 10-01, 04-05, and 70-10 grant tentative approval of said application, subject to certain conditions; and

WHEREAS, The Town and Flagler System, Inc., entered into a binding Agreement on September 8, 1983, wherein Flagler Systems, Inc., accepted the Town's conditions governing the development of "The Breakers" Planned Unit Development, and said Agreement was revised by the Town and Flagler System, Inc., on June 18, 1986, on January 22, 1990, on February 19, 1992, on April 12, 2000, and on February 15, 2005, pursuant to the terms of Resolution No. 04-05; and

WHEREAS, Flagler System, Inc. has been reorganized and the corporate name of the company now controlling "The Breakers" Planned Unit Development is The Breakers Palm Beach, Inc.; and

WHEREAS, on December 13, 2013, The Breakers Palm Beach, Inc., did submit an application for tentative approval of the modifications of the Planned Unit Development; and

WHEREAS, on January 21, 2014, the Planning and Zoning Commission and on February 12, 2014, the Town Council of the Town of Palm Beach, did review and hold public hearings on the application for tentative approval of the modifications of the Planned Unit Development; and

WHEREAS, The Town Council; in accordance with Section 134-533 of Chapter 134, Zoning, of the Code of Ordinances, as amended, does make the following findings:

1. The Planned Unit Development Plan, as submitted with the modifications thereto, is consistent with the statement of general objectives of a Planned Unit Development as set forth in Section 134-476 of the Ordinance.
2. The Planned Unit Development, as submitted with the modifications thereto, is consistent with the Comprehensive Plan, as long as the conditions hereinafter set forth are met.
3. The Planned Unit Development, as submitted with modifications thereto, does include an adequate amount of open space located in a satisfactory manner.

4. The Planned Unit Development, as submitted with modifications thereto, makes adequate provisions for public services, provides adequate control over vehicular traffic and enhances the amenities of light and air, recreational and visual enjoyment, but is further subject to certain conditions hereinafter set forth.
5. The Planned Unit Development, as submitted with modifications thereto, is not adverse to the neighborhood in which it is located.
6. The Planned Unit Development, as submitted with modifications thereto, includes sufficient terms and conditions to protect the interests of the public in the development of the plan over a period of years.
7. The Breakers Hotel as referenced in the exhibits attached hereto is a historically and architecturally significant building and provision for its west facade preservation shall be subject to the control of the Landmarks Preservation Commission, the Town Council and any other commission or board of the Town having jurisdiction over same, such control not to be inconsistent with the Planned Unit Development Plan approval as evidenced by this Resolution

WHEREAS, the Town Council, after deliberation and evaluation of the recommendations of the Planning and Zoning Commission and the comments received from interested parties at the aforementioned public hearings, does find the Planned Unit Development Plan, as amended with the modifications thereto, to be in the best interest of the Town subject to the conditions hereinafter set forth.

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

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

Section 2. That the amendments to the Planned Unit Development submitted by the Breakers Palm Beach, Inc., on December 13, 2013, be granted tentative approval subject to the conditions set forth therein not in conflict with this Resolution, in addition to those specified below:

A. AMENDMENTS TO PREVIOUS MODIFICATIONS

MODIFICATION #1

Coffee Shop
NO CHANGE

MODIFICATION #2

Tennis Court Lighting
NO CHANGE

MODIFICATION #3

Additional Retail Space

NO CHANGE

MODIFICATION #4

New Tennis Facility

DELETED BY RESOLUTION NO. 3-00

MODIFICATION #5

Maintenance of Golf Course Green Space

NO CHANGE

MODIFICATION #6

Lease of Pine Walk Transfer Station is amended to read:

NO CHANGE

MODIFICATION #7

Requirement for Renegotiation is amended to read:

NO CHANGE

MODIFICATION #8

Road and Parking Improvements

NO CHANGE

MODIFICATION #9

Starlight Ballroom Addition and Beach Club

A fitness center facility consisting of approximately 4,559 square feet (gross) and 4,190 square feet (net) will be constructed as a second story addition to the Beach Club, above the existing spa facility. Resolution 1-98, which authorized construction of the existing Beach Club facilities, acknowledged and preserved development rights for 11,621 square feet of accessory hotel space and provided that this accessory hotel space would be retained in the PUD. Approximately 4,190 square feet of hotel space will now be allocated to the Beach Club for construction of the fitness center.

The current allocation of approximately 4,190 square feet to the fitness center facility will result in 7,431 preserved square feet of accessory hotel space. The development rights to these 7,431 square feet shall be retained in the PUD for future use assignment by further amendment to the PUD.

MODIFICATION #10

Golf and Tennis Clubhouse with Related Facilities

NO CHANGE

MODIFICATION #11

Development Commencement Dates

NO CHANGE

MODIFICATION #12
Cabanas and Related Facilities
NO CHANGE

- B. RESOLUTIONS 6-71, 9-72, 13-74, 10-81, 17-90, 6-92, 1-97, 1-98, 3-00, 10-01, 04-05 and 70-10 SHALL REMAIN IN FULL FORCE AND EFFECT EXCEPT AS MODIFIED BY PREVIOUS AMENDMENTS AND MODIFICATIONS AND BY THE PROVISIONS OF THIS RESOLUTION.

Section 3. The modifications submitted on December 13, 2013, by the Breakers Palm Beach, Inc., and reflected herein will become effective (i.e. not tentative) only if, as and when The Breakers Palm Beach, Inc., indicates its acceptance thereof and an agreement documenting that acceptance is entered into between the Town of Palm Beach and The Breakers Palm Beach, Inc. incorporating said conditions.

Section 4. The Town Clerk is hereby directed to furnish a certified copy of this Resolution, by certified mail to the applicant, and applicant shall within forty-five (45) days after receiving said certified copy notify the Town Council of the acceptance of, or refusal to accept all of said conditions as provided in Section 134-533(c) of Chapter 134, as amended, and further subject to the provisions of Section 134-533(d).

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this ____ day of _____ 2014.

Gail L. Coniglio, Mayor

, Town Council President

, President Pro Tem

, Town Council Member

ATTEST: _____
, Town Council Member

Susan A. Owens, MMC, Town Clerk

, Town Council Member

Application for Amendment to The Breakers Planned Unit Development

**Town of Palm Beach
2013/2014 Zoning Season**

Submitted by: James M. Crowley, Esq.
Gunster
777 South Flagler Drive
Suite 500E
West Palm Beach, FL 33401
(561) 655-1980

Applicant: The Breakers Palm Beach, Inc.
One South County Road
Palm Beach, FL 33480

Table of Contents

<u>Tab</u>	<u>Description</u>
A.	Consultant Team
B.	Town of Palm Beach Application
C.	Description of the Fitness Center Project
D.	Description of the Proposed PUD Amendment
E.	Traffic Information
F.	Parking Information
G.	Concurrency Information

Attachments

- | | | |
|---|---|------------------|
| • | Beach Club/Fitness Center Plans
And Renderings | Peacock & Lewis |
| • | Survey | Timothy M. Smith |

The Breakers PUD Amendment

Consultant Team

Applicant and Property owner: **The Breakers Palm Beach, Inc.**
One South County Road
Palm Beach, FL 33480
(561) 659-8430 phone
(561) 659-8418 fax
Alex.gilmurray@thebreakers.com
Contact: Alex Gilmurray

Legal and Approvals Coordination: **Gunster**
Phillips Point, Suite 500E
777 South Flagler Drive
West Palm Beach, FL 33401
(561) 655-1980 phone
(561) 655-5677 fax
Jcrowley@gunster.com
Jnorquest@gunster.com
Contact: James M. Crowley, Esquire
James K. Norquest, AICP

Architect: **Peacock and Lewis Architects & Planners, Inc., AIA**
Golden Bear Plaza-Eastern Tower
Suite 402
11770 US Highway One
North Palm Beach, FL 33408
Steve@peacockandlewis.com
Contact: Steven L. Pollio

Surveyor: **Timothy M. Smith Land Surveying, Inc.**
4546 Cambridge Street
West Palm Beach, FL 34115
Phone: (561) 602-8160
Fax: (561) 792-9157
Tmsland@comcast.net
Contact: Timothy M. Smith

Civil Engineering:

Gruber Consulting Engineers, Inc.

2465 Mercer Avenue

Suite 206

West Palm Beach, FL 33401-7450

(561) 312-2041 phone

(561) 537-7229 fax

chad@gruberengineers.com

Contact: Chad M. Gruber

Coastal Engineering:

Isiminger & Stubbs Engineering, Inc.

649 US Highway 1, Suite 9

North Palm Beach, FL 33408

(561) 881-0003 phone

(561) 881-8123 fax

dstubbs@coastal-engineers.com

Contact: Darwin C. Stubbs

Traffic:

DKS Associates, Inc.

12000 N. Dale Mabry Highway, Suite 112

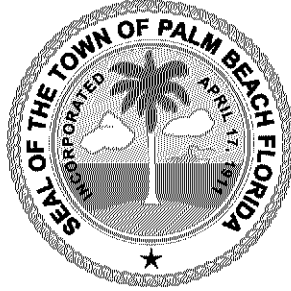
Tampa, FL 33618-3311

(813) 962-5959 phone

(813) 962-5744 fax

bcj@dksassociates.com

Contact: Brian Johnson



REQUEST FOR PLANNED UNIT DEVELOPMENT MODIFICATION

1. Date: **December 13, 2013**
2. Name and Palm Beach address of property owner or resident:
1 South County Road, Palm Beach, FL 33480
3. Address of affected property (if different):
Not applicable
4. Telephone number (s) and mailing address where applicant can be contacted if questions should arise:
Alex Gilmurray, Chief Financial Officer, The Breakers Palm Beach, One South County Road, Palm Beach, FL 33480 and James Crowley, Esq., Gunster, 777 South Flagler Drive, Suite 500E, West Palm Beach, FL 33401
5. Is this is a request for change of zoning district?
Yes _____ If yes, please answer questions numbered 7 through 13.
No **X**
6. Is this a request for a change of Ordinance language or new regulation?
Yes _____ If yes, please answer questions numbered 14 through 16.
No **X**
7. Is this a request for a PUD or PUD amendment?
Yes **X**
No _____
8. Is this a request for a Comprehensive Plan Amendment?
Yes _____
No **X**
9. Zoning classification of all adjacent properties: **North: C-TS and R-A; East: Atlantic Ocean; South: R-B; West: R-B, C-TS, C-PC**

10. Legal description of property: All of that plat of Breakers Row Plat No. 1 Re-Plat, recorded in Plat Book 46, Pages 188 through 190, Public Records of Palm Beach County.

11. Include a survey of area proposed for rezoning and use change or PUD or PUD Amendment; show dimensions of affected area, structures on property, adjacent streets, with north arrow and property lines.
attached

12. State briefly the reasons for the proposed change of zoning district or land use designation, PUD or PUD Amendment:

The Breakers intends to relocate and enlarge the fitness center at the Beach Club. It will be relocated from the first floor of the existing spa to a new structure on the second floor above the Beach Club restaurant. The building square footage will increase beyond the square footage approved by Resolution 1-98. The building footprint remains unchanged.

13. If this is a PUD or PUD Amendment, describe the proposed PUD or PUD Amendment:
An expansion of the Beach Club which was approved under Resolution 1-98. The expansion will be approximately 4,559 square feet (gross) and 4,190 square feet (net). The net number represents air-conditioned space. Resolution 1-98 preserved development rights for 11,621 square feet of accessory hotel space and retained this accessory space within the PUD. The Breakers is proposing to utilize a portion of the remaining accessory hotel space for construction of the fitness center facility.

The following questions are related to proposed changes of ordinance language or new regulation.

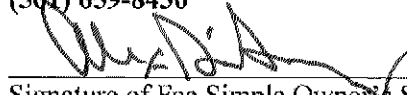
14. Town Ordinance, Section, paragraph, etc. numbers related to the application: _____
Not applicable

15. State language which is proposed for change, strike over proposed deletions and underline proposed additions to text:
Not applicable

Attach additional sheets if necessary. Separate forms must be submitted for each individual text item.

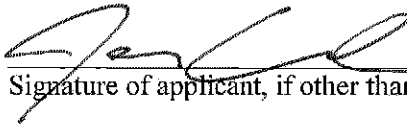
16. State briefly the reasons for proposal:
Not applicable

The Breakers of Palm Beach, Inc.
By: Alex Gilmurray, Chief Financial Officer
(561) 659-8430



Signature of Fee Simple Owner's Signature

James M. Crowley, Esq.
Attorney for The Breakers of Palm Beach, Inc.
(561) 650-0633



Signature of applicant, if other than fee simple owner

DESCRIPTION OF THE FITNESS CENTER PROJECT

The Breakers prides itself on the unrivaled service it offers to its members and guests, and aspires to offer world class amenities to enhance the experience of these patrons during their visits to the Property. Millions of dollars have been invested in the physical plant over the past 20 years, including but not limited to the following:

- Reconstruction of all 540 guest rooms
- Restoration of public area ceilings and fire protection for the historic public areas
- Enhanced storm protection
- Property drainage improvements including drainage of South County Road in front of The Breakers property
- New retail shops and restaurant renovations
- Construction of the Ponce de Leon Ballroom and Beach Club projects
- Renovation of the Ocean Golf Course and construction of the new golf and tennis clubhouse
- Redesign of the Hotel's main entrance and construction of a south side porte cochere
- Redevelopment of the five acre beach area in the southeast corner of the PUD

The existing fitness center, which totals approximately 1,400 square feet and is located adjacent to the Breakers' spa and pool deck areas, provides an opportunity for visitors to keep up an active lifestyle while also finding the time to relax and unwind. However, as the population in general has become more and more conscious of health and nutritional wellness, there has been an increase in demand for fitness center capacity at hotels across the United States. In addition, many fitness centers at these facilities have become more "state of the art" in recent years, and typically offer a combination of advanced technology and scenic beauty in order to enhance the experience of the patron.

In keeping with these recent trends, the Breakers is proposing to (1) relocate its existing fitness center from the ground floor of the existing spa to the second floor terrace above the Beach Club restaurant, and (2) expand the total area of the fitness center to keep up with the demand for health and wellness programs and facilities. The fitness center will be constructed at the current location of the Ocean Terrace, directly above the existing Beach Club restaurant. The Ocean Terrace contains a roofed but open air pavilion and is used for gatherings, receptions, etc. Major reconstruction of the building will not be required because the building was designed and constructed such that additional second story structures could be added. The building footprint will not change.

The fitness center will be expanded from 1,400 square feet to approximately 4,559 square feet (gross)/4,190 square feet (net). The "net" square footage is the air-conditioned space, and the "gross" square footage represents everything within the exterior walls. It will provide guests and members with a stunning view of the Atlantic Ocean and state of the art equipment to match the existing amenities at the hotel. The vast majority of people using the fitness center will be guests of the hotel, and thus there will be minimal, if any, effect on parking or traffic. Indeed, almost all of the 'traffic' generated by the fitness center will be pedestrians coming from the

hotel to the spa and fitness center area. In addition, the proposed second story will be no higher than the existing pavilion and will not be visible from off site. Thus it will have no negative effect on surrounding properties.

The Breakers is constantly searching for innovative ways to maximize the experience of its guests. In these times, many hotel guests are demanding a first class fitness experience as a crucial element of their vacation plans. The existing fitness center facility does not provide adequate space or atmosphere to meet the lofty standards that have been set by other amenities at the Breakers.

DESCRIPTION OF THE PROPOSED PUD AMENDMENT

The Breakers is one of four PUDs in the Town of Palm Beach, and is designated “PUD-A”. The Breakers is regulated by a series of development orders (resolutions and special exceptions) which have been approved through the years of its existence. Proposed physical changes to the property require PUD amendments if the project would significantly change an existing approval.

The existing Beach Club, which is an accessory use to the main hotel, was constructed after the approval of Resolution 1-98. The fitness center expansion and relocation project requires a PUD amendment because Resolution 1-98 contained a specific square footage limitation in MODIFICATION #9:

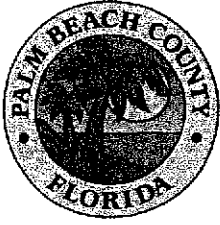
“The new Beach Club will consist of approximately 20,000 square feet...”

Since the new fitness center on the second floor terrace will add approximately 4,559 (gross) square feet to the building, a new PUD development order is required. The “gross” square footage includes exterior wall thicknesses while the “net” square footage is air-conditioned space.

It should be noted that the Beach Club structure which was built in 1998 replaced earlier hotel accessory uses and in fact represented a decrease in accessory square footage at the time. The Breakers never had any intention of permanently giving up this ‘lost’ building area. This fact is reflected in language in MODIFICATION #9 of Resolution 1-98 which says:

“The proposed modifications will result in a net decrease of 11,621 square feet of accessory hotel space. The development rights to these 11,621 square feet shall be retained in the PUD for future use assignment by further amendment to the PUD.”

The ‘extra’ 11,621 square feet of accessory hotel space has not been allocated and is still available. Thus, this application represents the ‘re-activation’ of some of the 11,621 square feet of accessory hotel space which were preserved in Resolution 1-98.



**Department of Engineering
and Public Works**

P.O. Box 21229
West Palm Beach, FL 33416-1229
(561) 684-4000
FAX: (561) 684-4050
www.pbcgov.com

**Palm Beach County
Board of County
Commissioners**

Steven L. Abrams, Mayor
Priscilla A. Taylor, Vice Mayor
Hal R. Valeche
Paulette Burdick
Shelley Vana
Mary Lou Berger
Jess R. Santamaria

County Administrator

Robert Weisman

"An Equal Opportunity
Affirmative Action Employer"

December 12, 2013

Mr. Paul Castro
Zoning & Building Department
Town of Palm Beach
P.O. Box 2029
Palm Beach, FL 33480

**RE: Breakers Hotel – Spa/Fitness Area Renovation
PBC Project#: 131203
TRAFFIC PERFORMANCE STANDARDS REVIEW**

Dear Paul:

The Palm Beach County Traffic Division has reviewed the traffic statement for the proposed renovation project entitled; **Breakers Hotel – Spa/Fitness Area Renovation**, pursuant to the Traffic Performance Standards in Article 12 of the Palm Beach County Land Development Code. The project, which involves reconstructions in the private golf club and the hotel's private beach areas is summarized as follows:

Location: Breakers Hotel, East side of County Road, South of Royal Poinciana Way.
Municipality: Palm Beach
PCN#: 50-43-43-22-24-004-0000
Existing Uses: 540 Rooms and 68 Suits Hotel
Proposed Uses: No additions to Rooms or Suites – Renovation of Spa/Fitness facilities for Hotel Guests only
New Daily Trips: None
New PH Trips: None
Build-out Year: 2015

Based on our review, the Traffic Division has determined that the proposed renovation project does not involve additions to the hotel rooms, employees, or increase in memberships to the private club; therefore, no new trips are expected to be generated by the proposed redevelopment project. Hence, we have concluded, the project meets the Traffic Performance Standards of Palm Beach County. No building permits are to be issued by the Town, after the build-out date, specified above. The County traffic concurrency approval is subject to the Project Aggregation Rules set forth in the Traffic Performance Standards Ordinance.

If you have any questions regarding this determination, please contact me at 684-4030, or send me an e-mail to matefi@pbcgov.org

Sincerely,

Masoud Atefi, MSCE
TPS Administrator, Municipalities - Traffic Division

MA:saf
cc: Brian C. Johnson - DKS & Associates

File: General - TPS - Mun - Traffic Study Review
F:\TRAFFIC\ma\Admin\Approvals\2013\131203.doc

DKS Associates

12000 N. Dale Mabry Hwy. Suite 112
Tampa, Florida 33618-3311

(813) 962-5959
Fax: (813) 962-5744

Traffic . Transportation . Engineering . Planning

November 26, 2013

Masoud Atefi, MSCE
TPS Administrator, Municipalities
Palm Beach County Engineering—Traffic Division
2300 North Jog Rd
West Palm Beach, FL 33411

Re: The Breakers Hotel—Beach Club Spa/Fitness Area Renovation, Town of Palm Beach
PCN # 50-43-43-22-24-004-0000

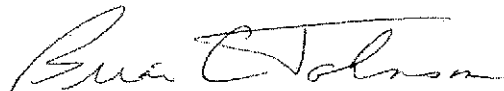
Dear Masoud:

The Breakers Hotel is seeking to amend its PUD in order to renovate the Beach Club Spa/Fitness area of the resort. Completion of the project is anticipated by the end of 2014. As a result of the proposal there will be an increase of 4,000 sf in floor area devoted to these support facilities. All of the proposed facilities involved in the renovation are provided for the exclusive use of guests at the Breakers or members of the Golf Club. The proposal will not involve any increase in the number of hotel rooms or public meeting space. Therefore it is our determination that the proposal will not result in any net increase in traffic. The attached Traffic Statement summarizes these findings.

Attached to this letter you will find a check for \$150.00 to cover the review fee. We would appreciate your review of this information to see if you concur. If so, we would appreciate you providing the Town of Palm Beach with a letter indicating the project meets the Traffic Performance Standards of Palm Beach County.

Please call if you have any questions.

Sincerely,



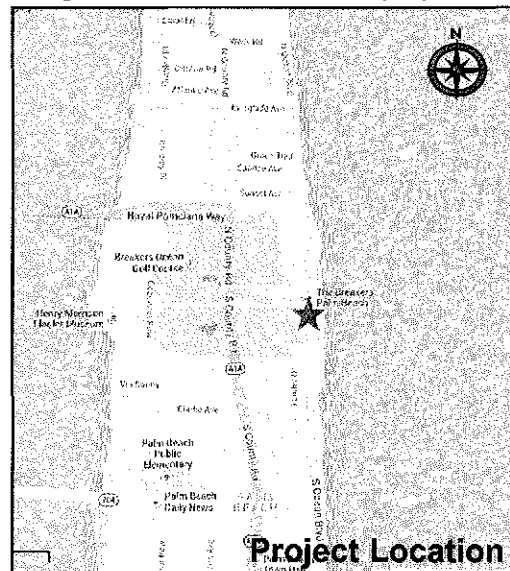
Brian C. Johnson, PTP
Senior Transportation Engineer

cc: Jim Norquest--Gunster, Yoakley
Cynthia Adams—The Breakers Palm Beach, Inc.

TRAFFIC STATEMENT

The Breakers Resort--Beach Club Spa/Fitness Center Renovation

DKS has prepared this estimate of new vehicle trips associated with the proposed renovation of a portion of the Breakers Resort in the Town of Palm Beach Florida. The Breakers is a 540 room (plus 68 suites) resort hotel located on 140 acres. Recreational amenities such as a golf course, tennis courts, beach access, and spa and fitness center are part of the existing resort. The renovation area is located just to the south of the main hotel structure. The figure below identifies the project location.



12/12/13

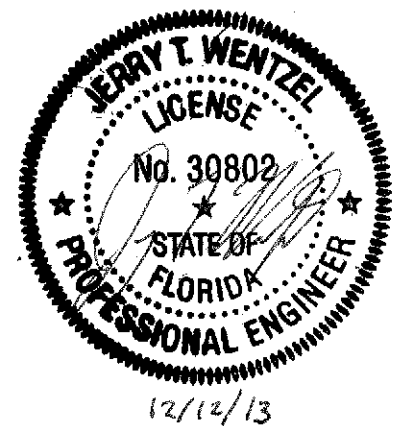
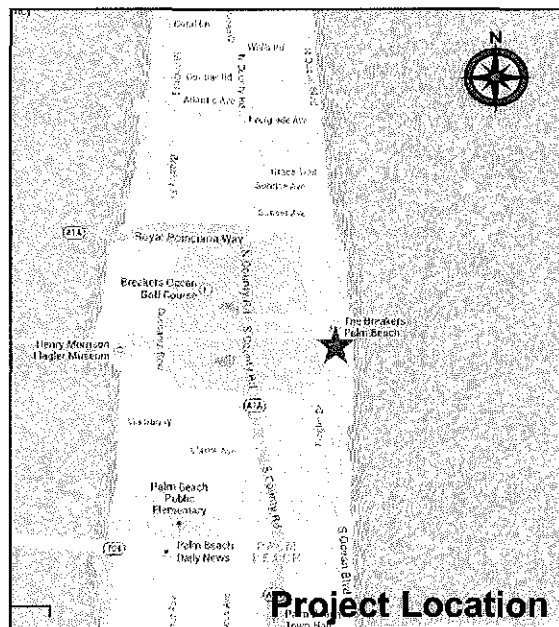
The renovation involves a portion of the existing Beach Club Spa/Ocean Terrace Fitness Center. As a result of the remodeling, a second floor pavilion area of 4,975 sf will be converted to enclosed floor area to be occupied by the Ocean Terrace Fitness Center. The 1,400 sf floor area currently occupied by the Ocean Fitness Center will be incorporated into expanded Spa facilities.

According to the ITE Report *Trip Generation*, 9th Edition, these types of facilities are considered to be part of the normal supporting services/amenities of a resort hotel. As such they are not considered to be a significant factor in the number of vehicle trips generated by the Breakers Resort. The proposal will not involve any increase in the number of hotel rooms or public meeting space. The Spa and Fitness Center are provided for the exclusive use of hotel guests and Golf Club members. Vehicle and pedestrian access to the expanded facilities will be entirely through existing facilities. Therefore, it is our determination that the proposal will not result in any net increase in daily or peak hour traffic volumes. As a result, the proposal meets the transportation concurrency requirements of the Town of Palm Beach (Sec-30-111) and Palm Beach County (Land Development Code, Article 12).

PARKING STATEMENT

The Breakers Resort--Beach Club Spa/Fitness Center Renovation

DKS has prepared this estimate of parking demand associated with the proposed renovation of a portion of the Breakers Resort in the Town of Palm Beach Florida. The Breakers is a 540 room (plus 68 suites) resort hotel located on 140 acres. Recreational amenities such as a golf course, tennis courts, beach access, and spa and fitness center are part of the existing resort. The renovation area is located just to the south of the main hotel structure. The figure below identifies the project location.



The renovation involves a portion of the existing Beach Club Spa/Ocean Terrace Fitness Center. As a result of the remodeling, a second floor pavilion area of 4,975 sf will be converted to enclosed floor area to be occupied by the Ocean Terrace Fitness Center. The 1,400 sf first floor area currently occupied by the Ocean Terrace Fitness Center will be incorporated into expanded Beach Club Spa facilities.

The Town of Palm Beach Parking Code requires parking for hotels on the basis of number of rooms, plus assembly area, plus restaurant seating plus floor area of accessory commercial and service uses. The proposal will not involve any increase in the number of hotel rooms, public meeting space, restaurant seating or commercial space. The Spa and Fitness Center is considered part of the normal amenities for this type of resort hotel. These facilities are provided for the exclusive use of hotel guests and Golf Club members. In addition, the peak time of daily activity patterns for the Spa and Fitness Center typically vary from those of the other uses (e.g. restaurants) in a way that does not impact the overall peak parking demands. Therefore, it is our opinion that no additional parking spaces will be required by the Town Code for the project.

A preliminary review of the development program was also performed using the procedures and characteristics of the Urban Land Institute Shared Parking Study (2nd Edition). This study identifies guest rooms, restaurant space and meeting space as the major determinants of resort hotel parking demand. None of these are being changed by this proposal. When considered as part of a mixed use development, the expected capture rate and time of day patterns of the Spa and Fitness Center will result in no increase to the peak parking demands at the resort. Therefore the ULI data confirms a determination of no increase in parking demands from the renovation project.

Based upon the Town of Palm Beach Resolution 1-98 the Breakers PUD is required to provide 1127 parking spaces. Since 1998 only two modifications have been made affecting the requirement for parking within the PUD. A new Golf and Tennis Clubhouse was approved in 2000 (Resolution 3-00) with the requirement for 80 spaces. Resolution 4-05 in 2005 provided for a reduction of 16 parking spaces. Thus the current PUD parking requirement is for a total of 1291 spaces. An inventory conducted by the Breakers indicates 1355 parking spaces are currently provided on the PUD site. Thus, according to the Town code, sufficient parking is provided.

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Gruber Consulting Engineers, Inc.

Chad M. Gruber
Professional Engineer

**The Breakers Palm Beach
1 South County Road
Palm Beach, Florida**

Concurrency Management Statements

December, 2013

Chad M. Gruber, P.E.
Florida License No. 57466
Certificate of Authorization No. 28190

INTRODUCTION

The proposed project is located at the beach club on the ocean south of the main hotel. It will consist of the addition of an enclosed fitness center on the roof above the existing spa, in an area which is currently open roof except for an existing open-sided pavilion. The building footprint will not be expanded.

The attached statements have been prepared to address the sections of the Town of Palm Beach's Code of Ordinances relating to concurrency management. The sections covered in these statements appear in the Code of Ordinances under Article III, Sections 30-112 through 30-115.

A) SANITARY SEWER (per Article III, Section 30-112)

The scope of the proposed project includes the construction of a new second floor exercise facility. Because the facility will only be utilized by guests and members of the club and no additional guest rooms are planned for construction at this time, it is our opinion that any additional site impacts will be minimal and the current level of service is sufficient to accommodate the proposed exercise facility addition.

B) SOLID WASTE (per Article III, Section 30-113)

The proposed exercise facility is being constructed as an upgrade to an existing exercise facility and the exercise facility represents a very small percentage of the total amount of solid waste generated by the property. It is our opinion that the proposed exercise facility will not result in a significant increase in solid waste and that the current level of service is sufficient.

C) DRAINAGE (per Article III, Section 30-114)

Per Article III, Section 30-114(4) of the Town of Palm Beach Code of Ordinances, the level of service standard for drainage is the retention of the first two inches of rainfall from a storm event. The proposed exercise facility will be constructed above an existing one-story structure. The Breakers Palm Beach is currently served by an onsite drainage system that meets the requirements of the Code of Ordinances. Being that the facility will be constructed above an existing structure, the proposed work will not result in any significant increase in stormwater runoff and it is our opinion that the current level of service is sufficient.

D) POTABLE WATER (per Article III, Section 30-115)

A typical development in the Town of Palm Beach will consume potable water for both irrigation and domestic use. Because the proposed exercise facility will be constructed above an existing one story structure, it will not result in a net increase or decrease in irrigated area. As mentioned in the sanitary sewer statement in above, the facility will only be utilized by guests and members of the club and no additional guest rooms are planned for construction at this time. It is our opinion that any additional site impacts will be minimal and the current level of service is sufficient to accommodate the proposed exercise facility addition.





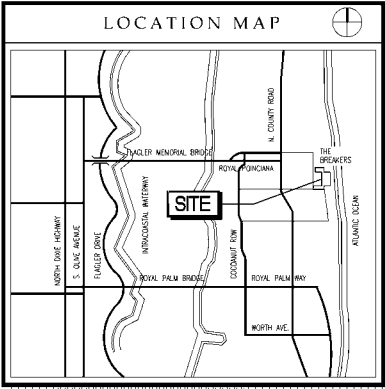




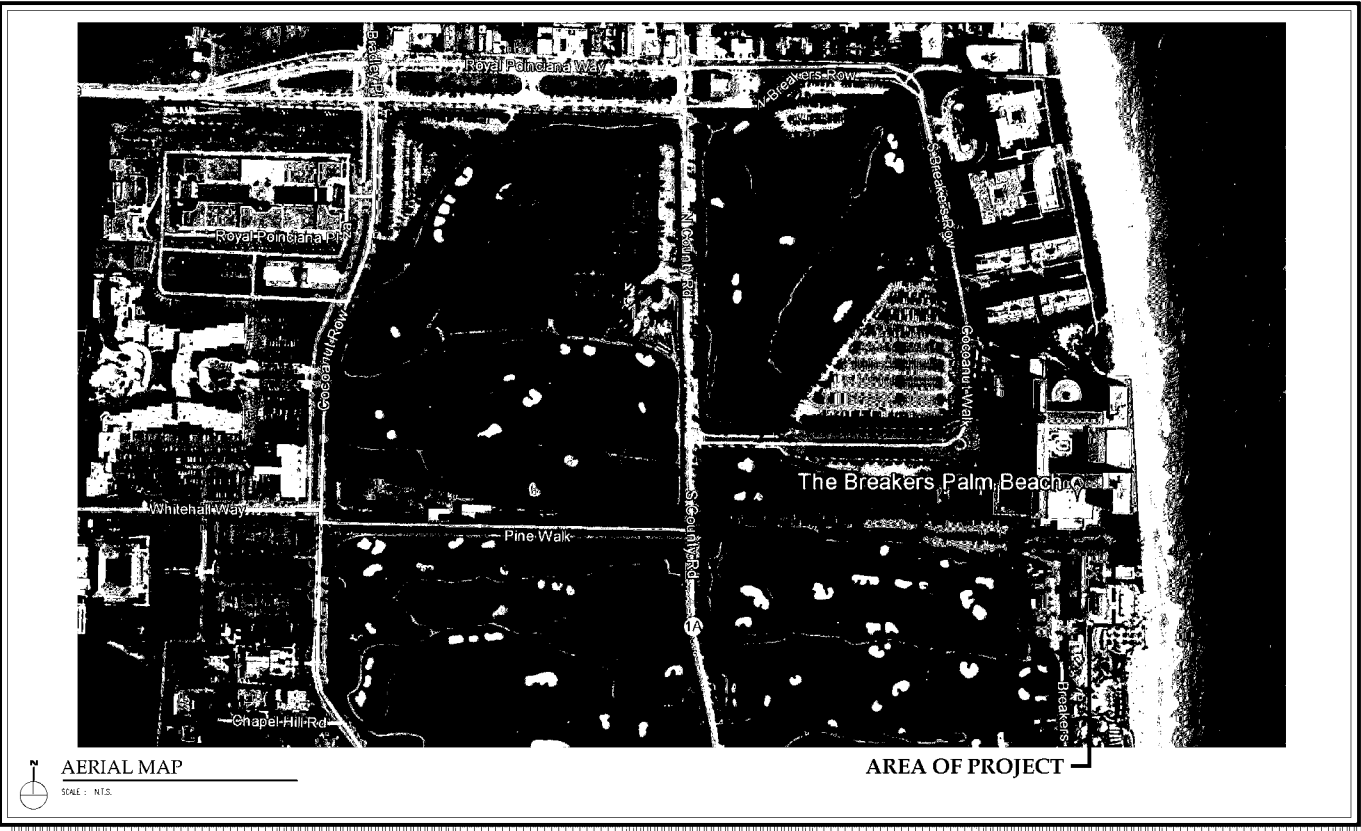
THE BREAKERS

Palm Beach, Florida

OCEAN TERRACE FITNESS ADDITON



PROJECT TEAM	
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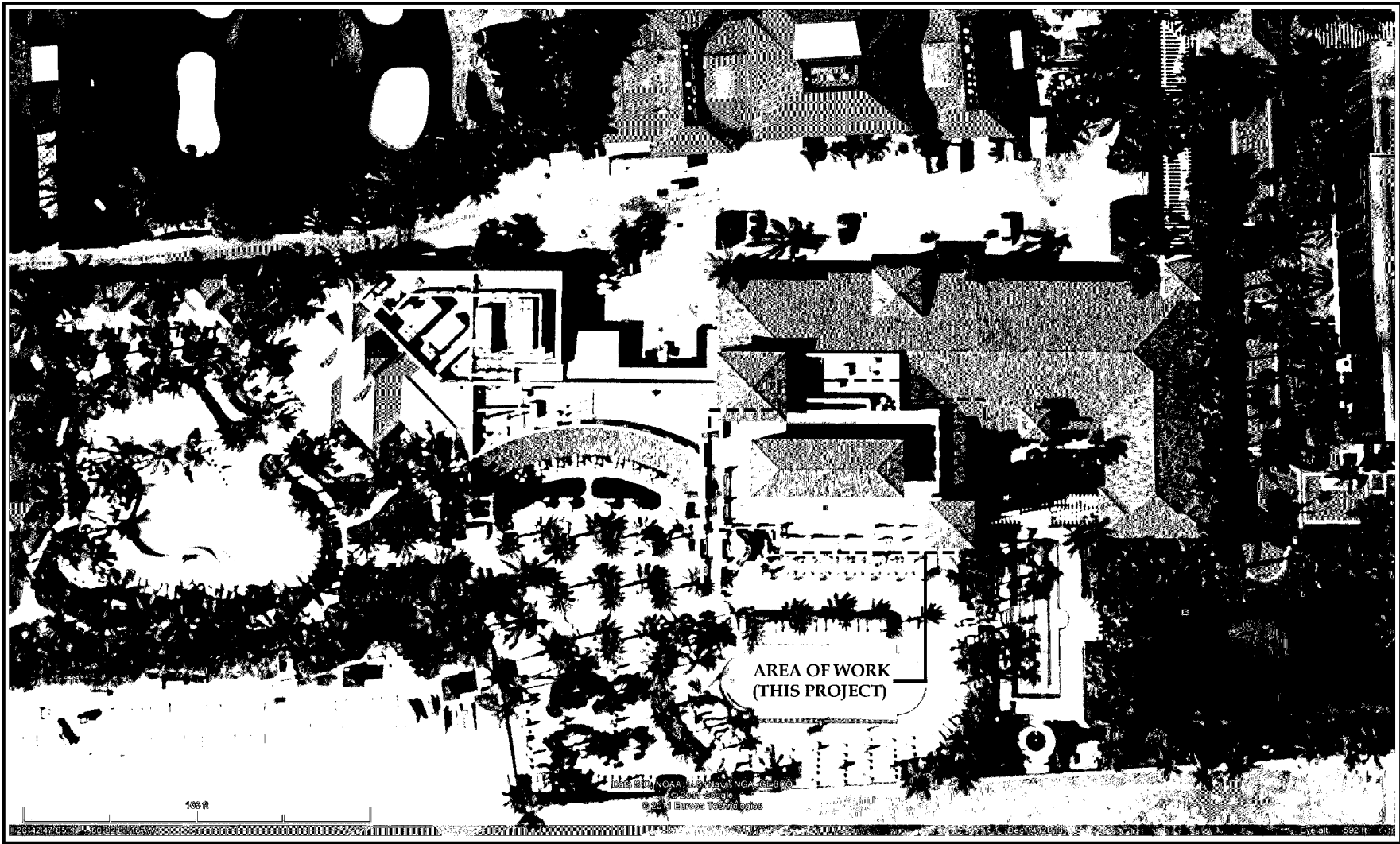
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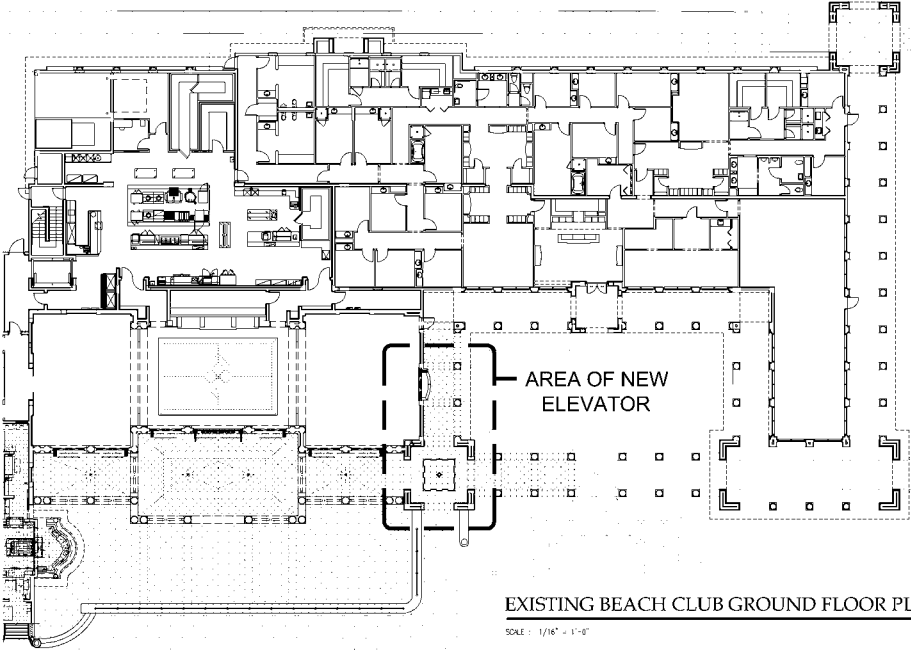
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PARTIAL AERIAL SITE PLAN

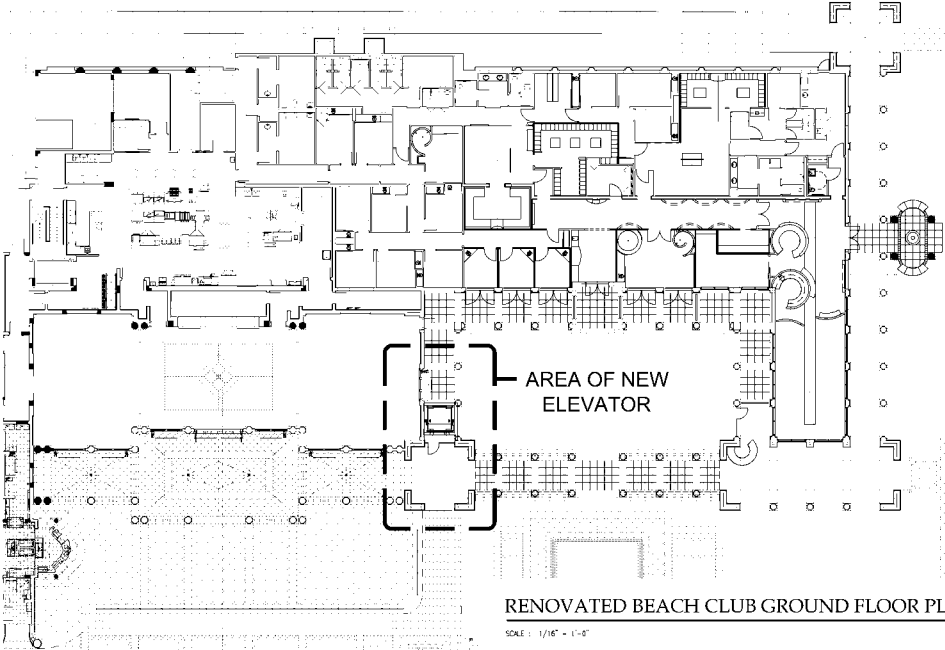
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Architect: PEACOCK & LEWIS, ARCHITECTS AND PLANNERS, LLC
Project: THE BREAKERS PALM BEACH
Drawing: EXISTING AND RENOVATED BEACH CLUB GROUND FLOOR PLAN
Scale: 1/16" = 1'-0"



EXISTING BEACH CLUB GROUND FLOOR PLAN

SCALE: 1/16" = 1'-0"



RENOVATED BEACH CLUB GROUND FLOOR PLAN

SCALE: 1/16" = 1'-0"



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EXISTING AND
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A-101

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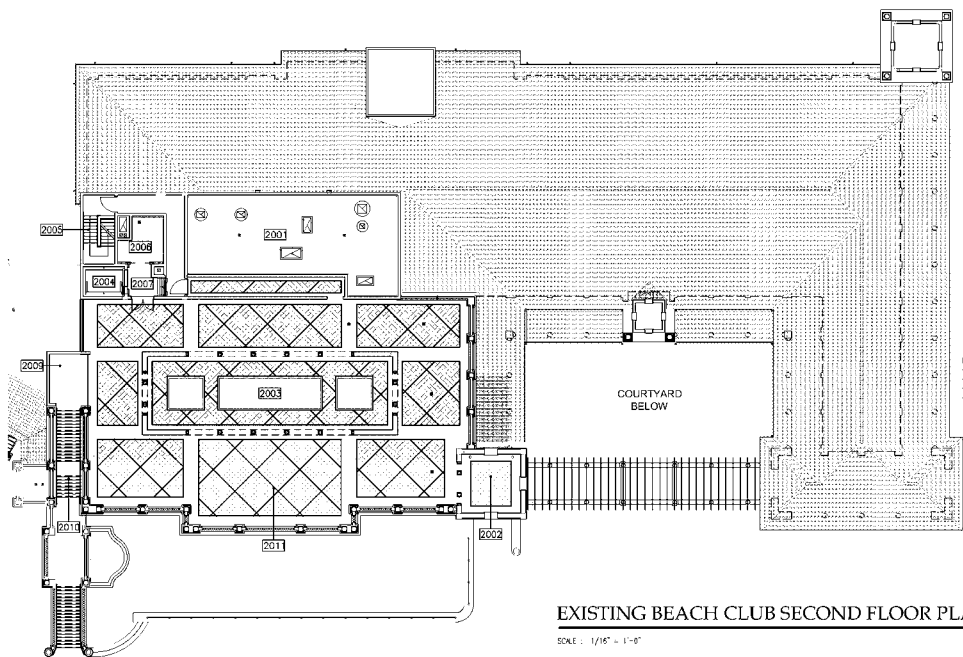
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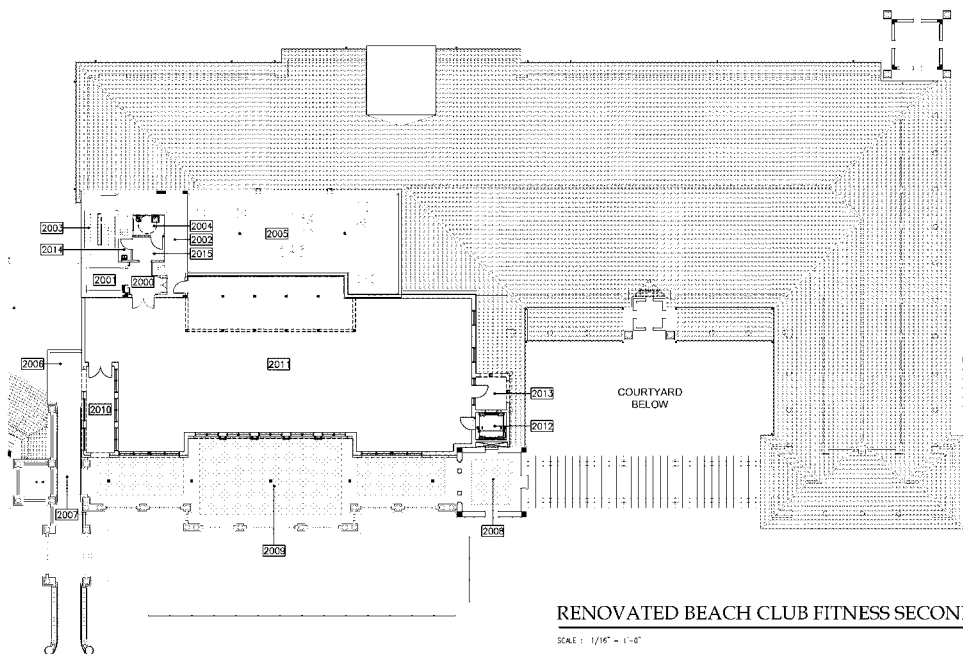
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EXISTING BEACH CLUB SECOND FLOOR PLAN

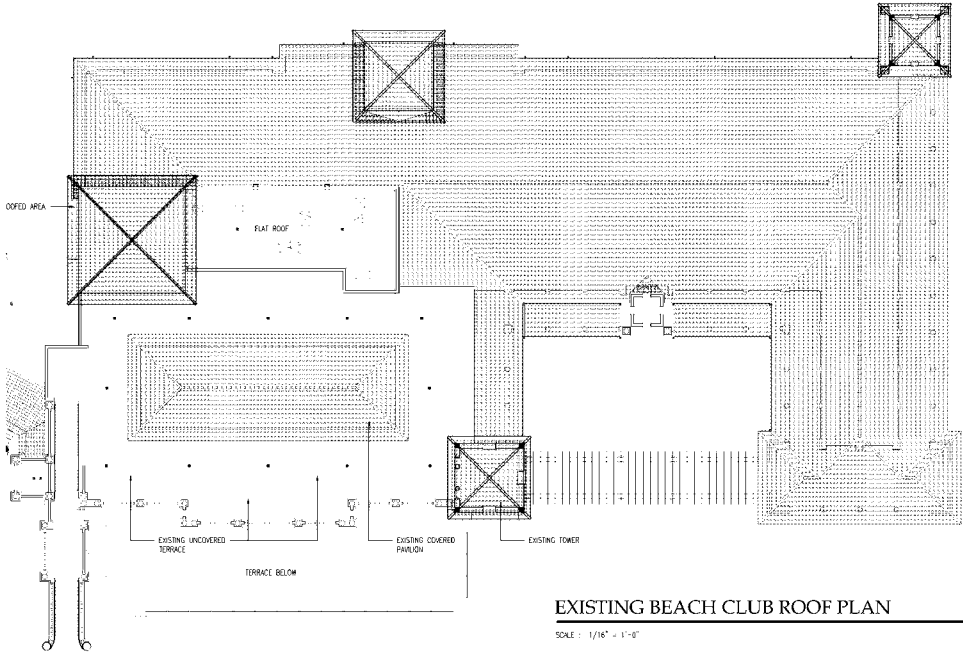
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RENOVATED BEACH CLUB FITNESS SECOND FLOOR PLAN

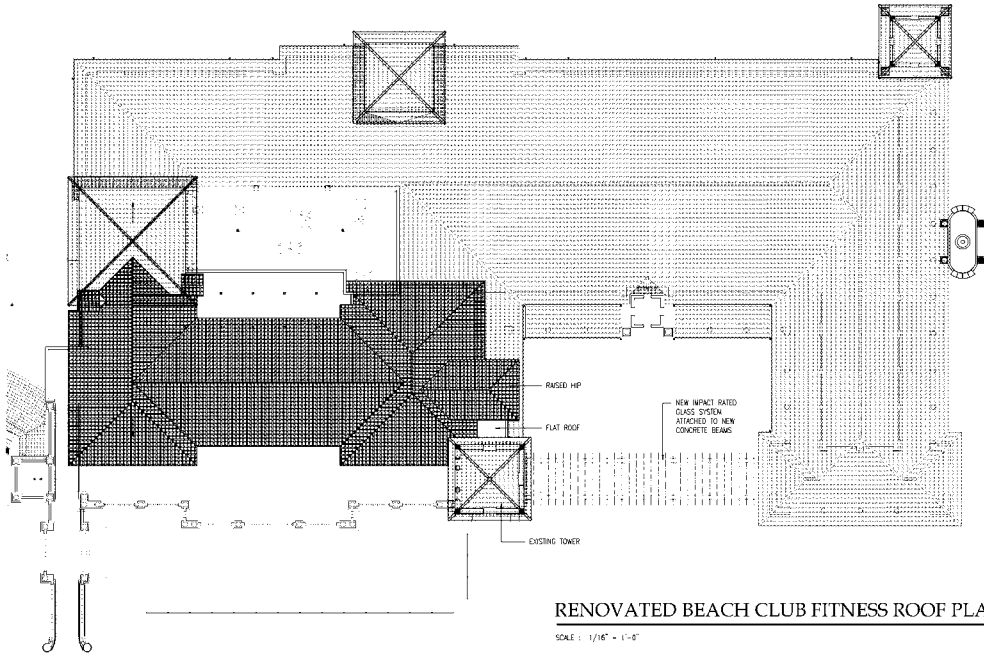
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EXISTING BEACH CLUB ROOF PLAN

SCALE : 1/16" = 1'-0"



RENOVATED BEACH CLUB FITNESS ROOF PLAN

SCALE : 1/16" = 1'-0"



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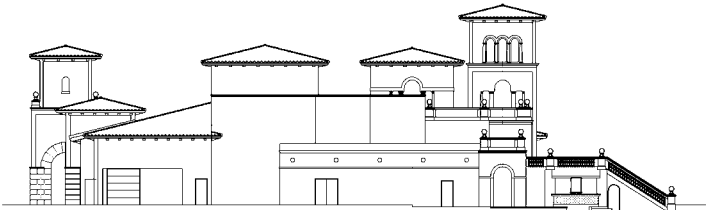
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ROOM LEGEND

No.	ROOM NAME
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2001	ELEVATOR
2002	CORRIDOR (EXIST.)
2003	EXIT STAIR (EXIST.)
2004	UNISEX TOILET
2005	ROOF
2006	STAIR LANDING
2007	STAIR
2008	TOWER
2009	UNCOVERED TERRACE
2010	COVERED TERRACE
2011	NEW FITNESS
2012	ELEVATOR
2013	COVERED ENTRY
2014	MAINTENANCE CLOSET
2015	VESTIBULE



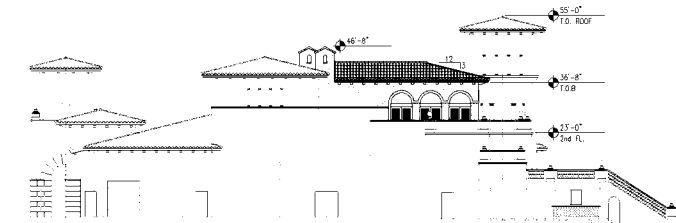
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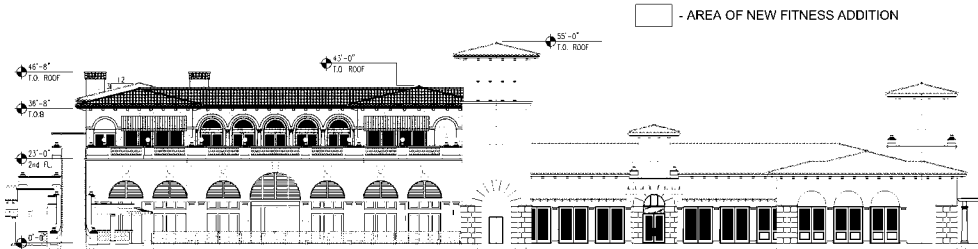
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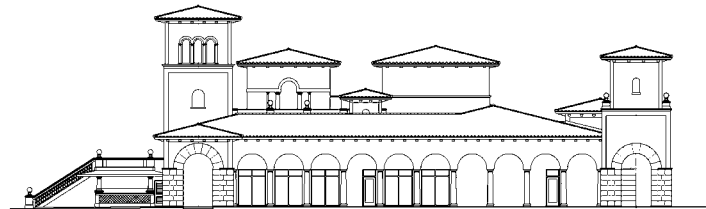
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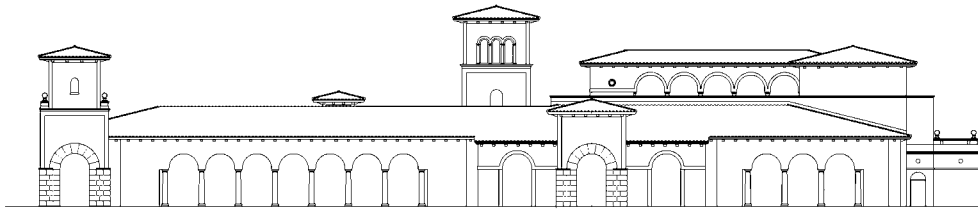
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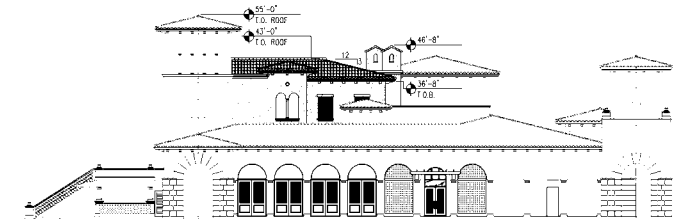
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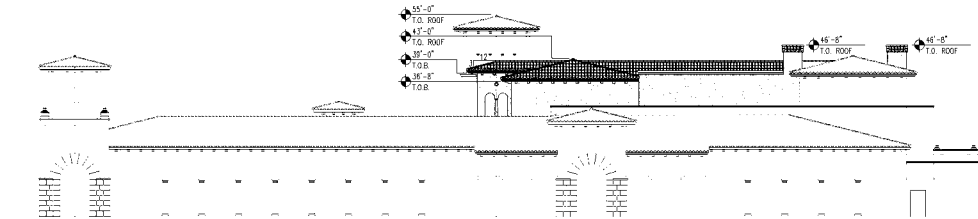
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RENOVATED NORTH ELEVATION (WITH NEW FITNESS)

SCALE : 1/16" = 1'-0"



RENOVATED BEACH CLUB WEST ELEVATION (WITH NEW FITNESS)

SCALE : 1/16" = 1'-0"



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EXISTING AND
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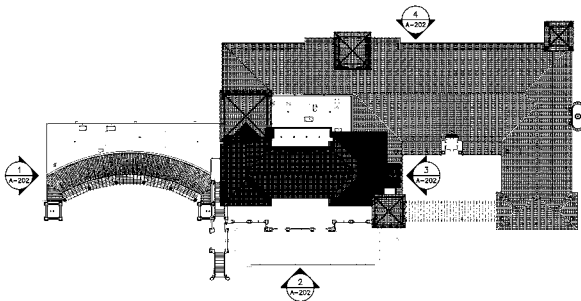
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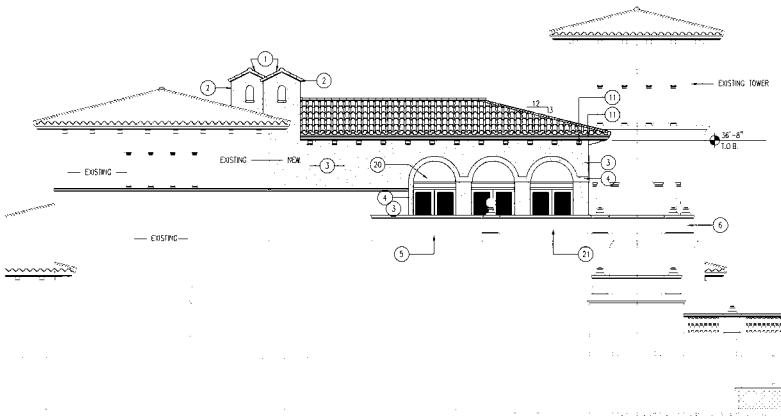
KEY NOTES - ELEVATIONS

1. CLAY BARREL TILE TO MATCH EXISTING
2. ARTIFICIAL CHIMNEY
3. TEXTURED STUCCO FINISH TO MATCH EXISTING
4. 1" SMOOTH STUCCO BAND
5. NEW MANGROVE FIXED WINDOWS (IMPACT RATED)
6. EXISTING PRECAST BALUSTRADE TO REMAIN
7. FIXED AWNING
8. AUTOMATED ROLL DOWN AWNING
9. MANGROVE GLASS TRANSOM (IMPACT RATED)
10. HALF ROUND PRECAST COLUMNS
11. PAINTED CEDAR FASCIA WITH COPPER DRIP
12. PAINTED CEDAR OUTLOOKERS TO MATCH EXISTING
13. NEW CLAY TILE OVER NEW SECTION OF TRUSSES
14. PAINTED CEDAR TRELLIS MOUNTED TO WALL
15. NEW MASONRY (SCREEN WALL) WITH PRECAST CONCRETE CAP
16. PRECAST SILL
17. PRECAST COLUMN
18. 6" STUCCO HEADER
19. PRECAST CROWN
20. TILE IN RECESSED ARCHED TRANSOM OVER WINDOWS
21. NEW FORCED ALUMINUM PAULING
22. NEW PRECAST COLUMNS TO MATCH EXISTING TRELLIS
23. NEW TRELLIS TO MATCH EXISTING
24. DECORATIVE MOSAIC WALL TILE
25. NEW ELEVATOR DOOR BEYOND

ELEVATION KEY PLAN

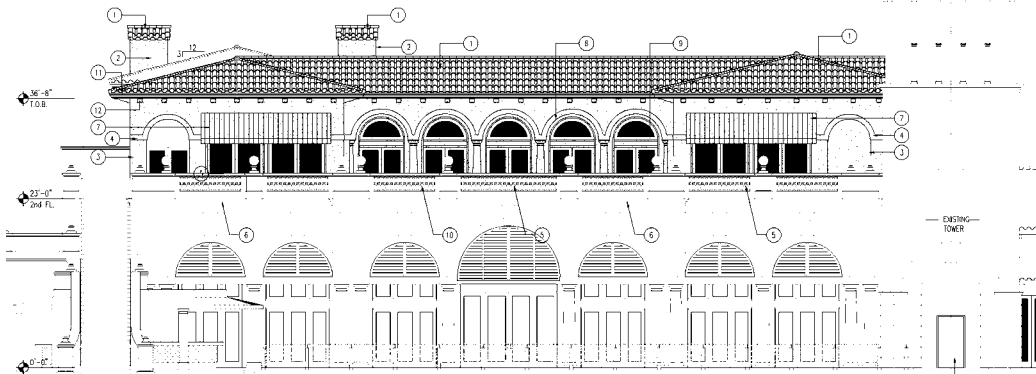
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AREA OF NEW FITNESS ADDITION



RENOVATED BEACH CLUB FITNESS SOUTH ELEVATION

SCALE : 1/8" = 1'-0"



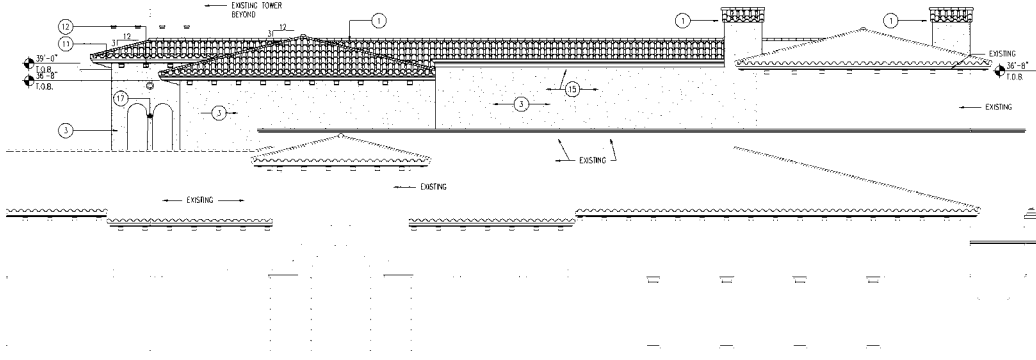
RENOVATED BEACH CLUB FITNESS EAST ELEVATION

SCALE : 1/8" = 1'-0"



RENOVATED BEACH CLUB FITNESS NORTH ELEVATION

SCALE : 1/8" = 1'-0"



RENOVATED BEACH CLUB FITNESS WEST ELEVATION

SCALE : 1/8" = 1'-0"



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SHEET TITLE: ELEVATIONS - FITNESS

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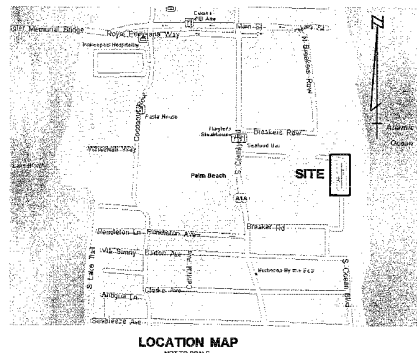
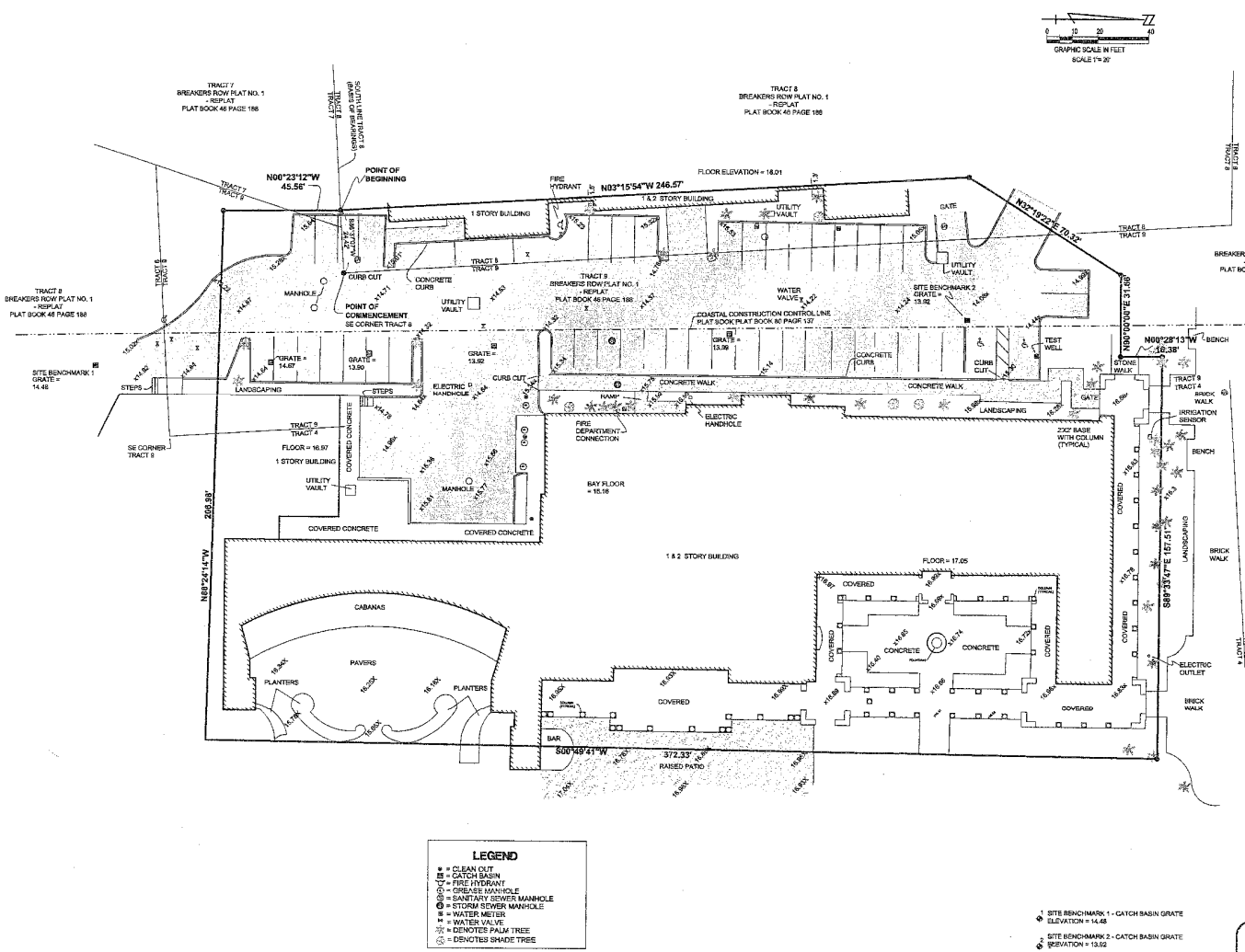
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CD: -- ARCH SHEETS



LEGAL DESCRIPTION

BEING A PORTION OF TRACTS 4, 7, 8 AND 9, BREAKERS ROW PLAT NO. 1 - REPLAT, PLAT BOOK 46, PAGES 186 THROUGH 190, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT 8, RUN THENCE SOUTH 86°37'00\"/>

- SURVEYOR'S NOTES**
- 1 - THE SURVEY DEPICTED HEREIN IS CLASSIFIED AS A BOUNDARY SURVEY.
 - 2 - THE CONTROL SURVEY FOR THE SURVEY DEPICTED HEREON MEETS OR EXCEEDS A LINEAR CLOSURE OF 1 FOOT IN 10,000 FEET. THE EXPECTED USE OF SAID SURVEY IS FOR HIGH RISK COMMERCIAL.
 - 3 - UNDERGROUND APPARENT USE WAS NOT LOCATED BY THIS SURVEY.
 - 4 - TIMOTHY M. SMITH LAND SURVEYING, INC., LICENSED BUSINESS NUMBER LB-8865.
 - 5 - NO SEARCH OF THE PUBLIC RECORDS WAS MADE BY TIMOTHY M. SMITH LAND SURVEYING, INC.
 - 6 - SURVEY MAP AND COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF PROFESSIONAL SURVEYOR AND MAPPER TIMOTHY M. SMITH, FLORIDA CERTIFICATE NO. LB 054876.
 - 7 - ADDITIONS OR DELETIONS TO SURVEY MAP BY ANY OTHER THAN THE SIGNING PARTY IS PROHIBITED WITHOUT THE WRITTEN CONSENT OF THE SIGNING PARTY.
 - 8 - ALL COMPUTED DATA OR PLOTTED FEATURES DEPICTED ON THIS SURVEY MAP ARE SUPPORTED BY ACCURATE SURVEY MEASUREMENTS MADE BY THE SURVEYOR.
 - 9 - BEARINGS SHOWN HEREON ARE REFERENCED TO THE SOUTH LINE OF TRACT 6, PLAT OF BREAKERS ROW PLAT NO. 1 - REPLAT, PLAT BOOK 46, PAGES 186 THROUGH 190, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, HAVING A BEARING OF SOUTH 86°27'00\"/>
 - 10 - THE SURVEYOR HAS REVIEWED THE ABSTRACT LETTER PREPARED BY ROBERT M. GRAHAM DATED DECEMBER 10, 2013 AND ALL EASEMENTS CONTAINED THEREIN HAVE BEEN PLOTTED HEREON. THE ABSTRACT REVEALED NO EASEMENTS AFFECTING THE SUBJECT PROPERTY.
 - 11 - ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 AND ARE BASED ON A PALM BEACH COUNTY ENGINEERING DEPARTMENT BENCHMARK "BRCMGRN" WITH A PUBLISHED ELEVATION OF 17.34'.

- LEGEND**
- CLEAN CUT
 - CATCH BASIN
 - GREASE MANHOLE
 - FIRE HYDRANT
 - SANITARY SEWER MANHOLE
 - STORM SEWER MANHOLE
 - WATER METER
 - WATER VALVE
 - DENOTES PALM TREE
 - DENOTES SHADY TREE

STREET ADDRESS: ONE SOUTH COUNTY ROAD
OWNER: THE BREAKERS PALM BEACH, INC.

- 1 SITE BENCHMARK 1 - CATCH BASIN GRATE
ELEVATION = 14.48
- 2 SITE BENCHMARK 2 - CATCH BASIN GRATE
ELEVATION = 13.32

TIMOTHY M. SMITH
LAND SURVEYING, INC.
4548 CAMDEN DRIVE
WEST PALM BEACH, FL 33416
(561) 860-7100
LB 8086



BOUNDARY SURVEY
THE BREAKERS PALM BEACH

SHEET 1 OF 1
SCALE: 1"=20'
DATE: NOV 2013
DRAWN BY: BRANDY
FIELD BOOK: NA
DATE SURVEY: 10-25-2013

PARKING STATEMENT

The Breakers Resort--Beach Club Spa/Fitness Center Renovation

DKS has prepared this estimate of parking demand associated with the proposed renovation of a portion of the Breakers Resort in the Town of Palm Beach Florida. The Breakers is a 540 room (plus 68 suites) resort hotel located on 140 acres. Recreational amenities such as a golf course, tennis courts, beach access, and spa and fitness center are part of the existing resort. The renovation area is located just to the south of the main hotel structure. The figure below identifies the project location.



1/9/14

The renovation involves a portion of the existing Beach Club Spa/Ocean Terrace Fitness Center. As a result of the remodeling, a second floor pavilion area of 4,975 sf will be converted to enclosed floor area to be occupied by the Ocean Terrace Fitness Center. The 1,400 sf first floor area currently occupied by the Ocean Terrace Fitness Center will be incorporated into expanded Beach Club Spa facilities.

The Town of Palm Beach Parking Code requires parking for hotels on the basis of number of rooms, plus assembly area, plus restaurant seating plus floor area of accessory commercial and service uses. The proposal will not involve any increase in the number of hotel rooms, public meeting space, restaurant seating or commercial space. The Spa and Fitness Center is considered part of the normal amenities for this type of resort hotel. These facilities are provided for the exclusive use of hotel guests and Golf Club members. In addition, the peak time of daily activity patterns for the Spa and Fitness Center typically vary from those of the other uses (e.g. restaurants) in a way that does not impact the overall peak parking demands. Therefore, it is our opinion that no additional parking spaces will be required by the Town Code for the project.

A preliminary review of the development program was also performed using the procedures and characteristics of the Urban Land Institute Shared Parking Study (2nd Edition). This study identifies guest rooms, restaurant space and meeting space as the major determinants of resort hotel parking demand. None of these are being changed by this proposal. When considered as part of a mixed use development, the expected capture rate and time of day patterns of the Spa and Fitness Center will result in no increase to the peak parking demands at the resort. Therefore the ULI data confirms a determination of no increase in parking demands from the renovation project.

Based upon the Town of Palm Beach Resolution 1-98 the Breakers PUD is required to provide 1127 parking spaces. Since 1998 only two modifications have been made affecting the requirement for parking within the PUD. A new Golf and Tennis Clubhouse was approved in 2000 (Resolution 3-00) with the requirement for 80 spaces. Resolution 4-05 in 2005 provided for a reduction of 16 parking spaces. Thus the current PUD parking requirement is for a total of 1191 spaces. An inventory conducted by the Breakers indicates 1355 parking spaces are currently provided on the PUD site. Thus, according to the Town code, sufficient parking is provided.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 12, 2014

Section of Agenda

Development Review - Other

Agenda Title

Consideration of Zoning Study Items

Presenter

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

Supporting Documents

- [Memorandum from John Page dated January 30, 2014](#)
- [Planning and Zoning Commission Record and Report](#)
- [Memorandum from Thomas G. Bradford dated December 17, 2013](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 12, 2014

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Consideration of Zoning Study Items

Date: January 30, 2014

STAFF RECOMMENDATION

Staff recommends that the Town Council take the following actions:

- 1) Approve proposed changes to the Code and direct Staff to draft an Ordinance with the changes.
- 2) Direct Staff to schedule Ordinance Nos. 1-2014, 2-2014 and 3-2014 for first readings.

PLANNING AND ZONING COMMISSION RECOMMENDATION:

The Planning and Zoning Commission, at its January 21, 2014 meeting, recommended approval of all proposed changes in the study items identified below in strikethrough/underline format, with the exception of changes to Study Item Numbers 1 and 7. The changes to Study Item 1 identified in ***bold italics*** strikethrough are substantive and allow for permanent stairs and unlimited electric outlets in attic space. The change to Item7, which is in the same format, is only grammatical and removes the word “either” from the existing language.

In addition, the Commission recommended approval of the proposed attached Ordinances (Ordinance Nos. 1-2014, 2-2014 and 3-2014) which modify the on-street parking regulations in Chapter 134, Zoning. Those Ordinances are part of the attached memorandum from Tom Bradford, Deputy Town Manager.

The Commission’s actions and votes on the Study Items are also provided in the attached Planning and Zoning Commission Record and Report for your information.

GENERAL INFORMATION

On January 21, 2014, the Planning and Zoning Commission considered seven Study Items. Each item is identified and contains a short explanation of its purpose, with proposed changes to the relevant section(s) of the Code in add/delete format. The Planning and Zoning Commission’s recommended changes to Study Items 1 and 7 are in ***bold italics*** for your consideration.

An additional zoning item regarding proposed changes to the on-street parking regulations is also included as an attachment. There is a memorandum from Tom Bradford, Deputy Town

Manager, which explains the purpose of the proposed changes to the on-street parking regulations in Chapter 134, Zoning, with related Ordinance Nos. 1-2014, 2-2014 and 3-2014.

If you have any questions on the Study Items below, please contact Paul Castro at 227-6406. If you have any questions on the on-street parking Ordinances, please contact Tom Bradford at 838-5410.

STUDY ITEM 1. Third story issues related to access, and use of attic space within single-family homes.

PURPOSE:

The Town's Comprehensive Plan allows only a maximum of two stories for single-family homes in all residential zoning districts. Architects increasingly attempt to create attics with head room, including access and finishes that can be easily converted into habitable space (calling them attics in single-family homes). This in effect is creating three story homes. The Zoning Code contains varied setbacks for one and two story portions of homes. There are situations where architects are attempting to design one story elements with habitable second floor attics encroaching into the two story setback. In order to meet the intent of the Comprehensive Plan and the Zoning Code, changes are necessary to ensure that second and third stories, where not permitted, are not built using loop holes in the Zoning Code. Staff recommends the following changes in Chapter 134, Zoning, to clear up this issue:

RELEVANT CODE SECTIONS WITH PROPOSED CHANGES:

Sec. 134-2. Definitions and rules of construction:

Attic means non-habitable, unfinished space within the roof system of a building or structure ~~accessed with only pull-down stairs~~, less than seven (7) feet of head room, ~~no more than one electrical outlet~~, and used only for storage, mechanical or machinery use.

Habitable space means space in or on a structure used or intended to be used for occupancy, for living, sleeping, ~~lounging~~, eating, cooking or recreation. Finished or unfinished floors above the maximum number of stories allowed containing seven feet or more of head room, ~~more than one electrical outlet, and/or stationary stairs~~ shall be considered habitable space. Bathrooms, toilet compartments, ~~e~~Closets, hallways, storage rooms, ~~unfinished~~ attics, machinery rooms, mechanical equipment rooms, utility space and similar areas shall ~~are not be~~ considered habitable space.

Story means that portion of a building, other than an attic, included between the surface of any floor and the surface of the next floor above it or, if there is no floor above it, the space between such floor and the ceiling next above it. Habitable space, ~~accessible~~ open patios, accessible roof decks not used exclusively for mechanical equipment, observation decks and/or similar areas located above the first or second story shall be considered a story for the purpose of this definition. ~~Roofs of buildings used as habitable space shall be considered as a story of a building.~~

STUDY ITEM 2. Study allowing signs in certain situations where a commercial tenant space does not front a street and the parking for the tenant space is not fronting a street.

PURPOSE:

The Town has several commercial buildings, particularly on Royal Palm Way, where the off-street parking for the building is in the back. Although tenant spaces front the street, main entrances are sometimes at the back. Current Zoning Code provisions only allow business identification signs on the front, street side and street rear of buildings. The proposal is to change the sign regulations to allow business identification signs on the back or side of buildings when the main entrance and off-street parking are on the back of side of buildings.

RELEVANT CODE SECTIONS WITH PROPOSED CHANGES:

Sec. 134-2. Definitions and rules of construction.

Sign, individual business means a flat wall-mounted identification sign permitted for each individually town-licensed business with street or parking lot frontage and having direct ground level walk-in access from a public or private roadway, ~~or~~ sidewalk, or parking lot in a commercially zoned district.

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, individual business signs which are installed flat against the street front, ~~or~~ street side wall or street rear wall of a building are permitted for each licensed business in a building in accordance with this division. In addition, if a ground floor licensed business's parking and main entrance is on the back or side of a building, said business shall be allowed one business identification sign installed flat against the face of the building's wall where the business is located. Said sign shall not exceed 15 feet in height nor situated above the first floor ceiling of the building, whichever is lower. 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 eight 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.

Sec. 134-2437. Size of sign.

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

Building Street Frontage <u>or Building first floor tenant main entrance and parking frontage</u> Per Ground Floor Individual Business Sign Space (in feet)	Maximum Gross Surface Area for Business Signs (in feet)
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~~ that 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 section 134-2436, shall not exceed two square feet in area.

STUDY ITEM 3: Study the content regulations for business signs.

PURPOSE:

Businesses frequently ask for or install signage which has an email address, phone number, or name that does not match the state or town business tax receipt DBA (Doing Business As). Staff believes the name and nature of the business should be allowed on a business identification sign, but does not believe it is necessary to have an email address or telephone number on a sign. Staff is requesting direction as it relates to what type of content is allowed on business signs. The suggested language change is as follows:

RELEVANT CODE SECTIONS WITH PROPOSED CHANGES:

Sec. 134-2. Definitions and rules of construction.

Sign, individual business means a flat wall-mounted identification sign permitted for each individually town-licensed business with street or parking lot frontage and having direct ground level walk-in access from a public or private roadway, ~~or~~ sidewalk, or parking lot in a commercially zoned district.

Sec. 134-2438. Permitted lettering, logos.

Signs permitted under this division shall consist of lettering which specifies only the name of the establishment as identified in the business tax receipt and State registration, a logo as provided for below and/or the nature of the business. Logos shall be allowed, provided that such logo will fit within a box no more than 12 inches square. Not more than one such logo shall

be permitted on the street frontage of each business establishment, and the area of such logo shall be counted toward the maximum allowable gross area of sign.

STUDY ITEM 4: Study the definition of “lot” as it relates to lots fronting on the Atlantic Ocean.

PURPOSE:

Town staff has historically calculated the lot, yard and bulk requirements based on existing seawall locations of a lot along the Atlantic Ocean. Recently a property owner questioned that interpretation. The Zoning Code defines the east lot line for lots abutting the Atlantic Ocean as the mean high water line or the Bulkhead Line, whichever is furthest west. The definition in Section 134-2 is as follows:

Lot means a parcel of land, vacant or occupied. For the purpose of this chapter, the word "lot" shall be taken to mean any number of contiguous lots of record or unplatted parcels of land or portions thereof not separated by a street or public way, upon which one or more principal structures for a single use are erected or are to be erected. **When the lot is situated immediately adjacent to the ocean front, for the purpose of this chapter, the east lot line shall be the town's bulkhead line as provided in chapter 62 of this Code or the mean high water line, whichever is most westerly.** When the lot is situated immediately adjacent to the waters of Lake Worth, the west lot line shall be the existing bulkhead wall or mean high water line, whichever is most easterly...

In almost all cases, the designated bulkhead line or the mean high water line is east of an existing bulkhead. In those situations, the property owners on the Ocean are allowed to use the entire lot (including a dune or beach) to calculate zoning requirements. The result allows much larger homes on smaller buildable portions of a lot, as defined in the Town's Code. The proposal is to clarify that the definition of lot is for the purpose of calculating zoning regulations, including the lot, yard and bulk requirements for construction on a lot, and that on the Atlantic Ocean, the east lot line shall be the Bulkhead Line, existing bulkhead wall (as is the case on Lake Worth), or the mean high water line, whichever is furthest west. That is the buildable area of the upland area of a lot, not including the beach.

RELEVANT CODE SECTIONS:

Sec. 134-2. Definitions and rules of construction

Lot means, for the purpose of calculating zoning regulations, a parcel of land, vacant or occupied. For the purpose of this chapter, the word "lot" shall be taken to mean any number of contiguous lots of record or unplatted parcels of land or portions thereof not separated by a street or public way, upon which one or more principal structures for a single use are erected or are to be erected. When the lot is situated immediately adjacent to the ocean front, for the purpose of this chapter, the east lot line shall be the town's bulkhead line as provided in chapter 62 of this Code, the existing bulkhead wall, or the mean high water line, whichever is most westerly. When the lot is situated immediately adjacent to the waters of Lake Worth, the west lot line shall

be the existing bulkhead wall or mean high water line, whichever is most easterly...

STUDY ITEM 5. Modify the notice provisions for code amendments, special exceptions or variances which increase the density over what exists on a property.

PURPOSE:

The existing hearing procedures related to special exceptions and variances in Sec. 134-172(c) of the Zoning Code require 1,000 foot property owner notice for zoning and comprehensive plan amendments that create increased densities or intensities. That provision is in the wrong section of the Code. The 1,000 foot notice provision for zoning and comprehensive plan amendments should be in Sec. 134-261 related to “amendments.” The proposed change moves that provision to the correct location of the Code.

Another proposed change is to require a similar notice provision for variances that would increase density above what the underlying zoning district allows. There are very limited cases where a property owner can ask for a variance to allow more dwelling units than the zoning district allows. Those occur only when the density that is being proposed does not exceed the maximum density allowed in the underlying Comprehensive Plan’s future land use designation of the property. Staff recommends that when variances increase density, the legal notice provision be 1,000 feet from the subject property, similar to zoning or comprehensive plan amendments which increase residential density.

RELEVANT CODE SECTIONS WITH PROPOSED CHANGES:

Sec. 134-172. - Hearing procedure.

(a) Applications for special exceptions or variances shall be accompanied by proper exhibits which shall be timely filed and shall include plans, documents and other materials to adequately depict and support the request. At a minimum, all applications for a variance shall include a plot plan identifying the following information: Location of structure(s), lot size, setbacks, percent of lot coverage, percent landscaped open space (front yard and total lot), and finished topographical elevations. In addition, if historic/specimen trees are located on the subject property, a signed and sealed survey with all pertinent information including the location of historic/specimen trees is required and a detailed written explanation of how said trees shall be protected by barricading shall accompany said application. Upon receipt of the application for a special exception or variance, the procedures in this section shall be undertaken.

(b) The director of planning, zoning and building or designee shall examine all applications requesting rezoning, special exception uses, dimensional variances or other matters requiring a public hearing to determine if they meet the requirements of this chapter, and that the action or approval requested is properly allowable by the town council under this chapter and if so shall prepare a report setting forth his recommendations. If the director or designee determines the application fails to meet the provisions of this chapter, he may schedule a pre-application conference and request modifications as may be required to bring the application within the provisions of this chapter.

(c) After completion of subsection (b), a copy of such application shall be mailed to the owners of the property and the property immediately adjacent thereto and across the street therefrom and to all property owners within 300 feet from any part of the subject property at the address shown on the county property appraiser's tax records, together with a notice from the director or designee advising the time of the hearing on such application before the town council. If a comprehensive plan amendment or zoning change variance is being requested that exceeds the maximum density allowed in the zoning district but is allowed based on the maximum density allowed by the Future Land Use designation on the property or intensity, the notification distance shall increase to 1,000 feet. Such list of property owners, together with a notification map, shall be provided by the applicant along with addressed and properly stamped envelopes and shall be certified by the applicant as being true and accurate.

(d) The director or designee shall also cause to be published in a newspaper of general circulation in Palm Beach or West Palm Beach a brief summary of such application and the date of the hearing, directed "to all to whom it may concern"; such notice to be published on two separate days not less than seven days apart, the first to be at least ten days before the meeting of the town council to consider such application. The cost of such publication shall be borne by the applicant.

(e) No application shall be heard less than ten days after the first publication of the notice and 15 days after the mailing to property owners directly affected as provided in this section, and all applications will be heard at regular meetings of the town council unless otherwise ordered by the town council in accordance with sections 134-141, 134-142, 134-201 and 134-226.

(f) An initial deferral requests received by the town more than seven days prior to scheduled town council hearing date may be granted for one month only or the next succeeding regular town council meeting, if that should occur on a different date. Any deferred action request received seven days or less from the scheduled meeting date shall be made in person at the town council meeting at the time the action item appears on the agenda. The applicant must explain or justify the request, which the town council may approve or deny. A second request for deferral shall be made in person at the town council meeting at the time the item appears on the agenda. The applicant must explain or justify the request, which the town council may approve or deny. A third request for deferral shall be denied unless the applicant can demonstrate to the town council that a compelling reason exists. Any deferral which is required due to a case being deferred by the architectural commission or landmark preservation commission shall be an exception to the regulation above. In no case shall a deferral exceed six months.

(g) An application request seeking substantially the same relief cannot be accepted for consideration after it has been denied by the town council until after 12 months have elapsed from the date of denial.

(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 approval, whichever is appropriate, or the submission of a building permit application if said commission's approval is not required.

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 this Code or said special exception or variance shall expire.

(i) A request for a time extension from any of the requirements in subsection (h) may be granted or denied by the town council for just cause. Said time extension request shall be submitted in writing to the planning, zoning and building department at least one month prior to the expiration date or said special exception or variance approval shall expire.

Sec. 134-261. Town council actions; submission to planning and zoning commission for recommendations and report; hearings.

(a) The town council may from time to time on its own motion or on petition, signed by the fee simple property owner of the property involved or authorized designee, agent or representative of the owner by power of attorney filed with the director of the planning, zoning and building department or designee, amend, supplement, change, modify or repeal the regulations, restrictions or district boundaries established in this chapter.

(b) Any proposed amendment, supplement, change, modification or repeal shall first be submitted to the director of planning, zoning and building or his designee, who shall submit it to the planning and zoning commission for its recommendations and report. Upon the filing of the recommendations and report by the planning and zoning commission, the town council shall proceed to hold a public hearing in relation thereto, giving at least 15 days' notice of the time and place of such hearing in a newspaper having a general circulation in the town, and by posting the notice on the official bulletin board of the town hall. If a proposed comprehensive plan amendment, zoning text amendment or zoning change increases the allowable density or intensity, a notice identifying such amendments or changes shall be mailed to all property owners within 1,000 feet from any part of the subject property at the address shown on the county property appraiser's tax records, advising of the day and time of the hearing on such application before the town council. Said notice shall be mailed at least fifteen days prior to the date for town council consideration of the proposed amendment(s) or zoning change(s).

(c) If an adverse report is given by the planning and zoning commission or if a protest against such proposed amendment, supplement, change, modification or repeal shall be presented in writing to the town clerk, duly signed and acknowledged by the owners of 20 percent or more, either of the area of the lots included in such proposed change or of those immediately adjacent in the area thereof extending 500 feet therefrom, such amendment shall not become effective except by the favorable vote of three-fifths of all the members of the town council. In the event of a tie vote, the mayor shall cast the deciding vote, which shall constitute the three-fifth's requirement of the town council stated herein.

(d) The planning and zoning commission shall hear applications to rezone property and/or to amend, supplement, change, modify or repeal any article, division or section of this chapter within 60 days of the application being deemed complete by the director of the planning, zoning and building department or designee. Any proposed amendment to change property from one zoning district to another zoning district shall require the favorable vote of at least four

members of the town council. A public hearing on the application shall then be held by the town council after public notice of the hearing is given in accordance with law.

STUDY ITEM 6. Study creating separate zoning regulations for a veterinarian use or animal boarding facilities.

PURPOSE:

A veterinarian office with a boarding facility was recently proposed in the Town. The Zoning Code classifies that type of use as a medical office, which is permitted in every commercial zoning district, in most cases above the first floor. While the use does provide medical care for animals, a veterinarian office is usually more intensive than a medical office. A veterinarian office typically grooms and boards animals, dispenses medication and sells animal supplies. This type of use could negatively impact surrounding residential and commercial uses if not properly regulated. The proposal below would prohibit a veterinarian office in the Worth Avenue District (currently only allowed above the first floor at this time), and the C-B and C-OPI Districts (Royal Palm Way).

The proposal would allow this use only above the first floor as a separate special exception use category in the C-TS Zoning District, and as a special exception use category on the first or second floor in the C-PC Zoning District (Royal Poinciana Plaza). Since a veterinarian office is already permitted on the first or second floor under the generic permitted use category of “business and professional offices/services and executive office suites” in the C-PC district, Staff believes that this proposal would not be considered “further development opportunities” in the 1979 Agreement.

As a Special Exception use, a veterinarian office within the C-TS and C-PC Zoning District would require Town Council approval of a zoning application at a quasi-judicial hearing. The veterinarian use would be required to meet all of the special exception criteria addressing possible negative impacts of that use. The special exception criteria, as identified below, address refuse, noise, odor, internal traffic circulation, external traffic, lighting and parking.

RELEVANT CODE SECTIONS WITH PROPOSED CHANGES:

Sec. 134-2. Definitions and rules of construction.

Office, veterinarian means an establishment which provides medical and surgical care for animals, and may provide overnight facilities.

C-TS, Commercial Town-Serving DISTRICT.

Sec. 134-1108. Permitted Uses.

Enumerated maximum gross leasable area. The permitted uses in the C-TS town-serving commercial district, with a maximum of 3,000 square feet gross leasable area (GLA), are as follows:

(2) Offices, executive office suites, professional services, business services, excluding veterinarian offices, and securities and financial brokerage and trust companies above the first floor,

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 commercial town-serving district are as follows:

(15) Veterinarian offices above the first floor.

C-WA, COMMERCIAL WORTH AVENUE DISTRICT.

Sec. 134-1157. Permitted uses.

Enumerated maximum gross leasable area. The permitted uses in the C-WA Worth Avenue commercial district, with a maximum of 4,000 square feet gross leasable area (GLA), are as follows:

(28) Offices and professional and business services, including banks and financial institutions, and executive offices above the first floor, excluding veterinarian offices.

C-OPI OFFICE, PROFESSIONAL AND INSTITUTIONAL DISTRICT.

Sec. 134-1207. Permitted uses.

The permitted uses in the C-OPI office, professional and institutional district are as follows:

(1) Offices and professional and business services and executive offices, excluding veterinarian offices.

C-PC, PLANNED CENTER DISTRICT.

Sec. 134-1257. Permitted uses.

(a) The permitted uses in the C-PC planned center district are as follows:

c. Business and professional offices/services and executive office suites, excluding veterinarian offices.

Sec. 134-1259. 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-PC planned center district are as follows:

(14) Veterinarian offices.

C-B, COMMERCIAL DISTRICT.

Sec. 134-1302. Permitted Uses.

(b) The permitted uses in the C-B commercial district are as follows:

(1) Business and professional offices/services and executive office suites, excluding veterinarians.

Sec. 134-229. Requirements for granting.

The requirements for granting a special exception use under this chapter are as follows:

- (1) The use is a permitted special exception use as set forth in article VI of this chapter.
- (2) The use is so designed, located and proposed to be operated that the public health, safety, welfare and morals will be protected.
- (3) The use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.
- (4) The use will be compatible with adjoining development and the intended purpose of the district in which it is to be located.
- (5) The use will comply with yard, other open space, and any special requirements set out in article VI for the particular use involved.
- (6) The use will comply with all elements of the comprehensive plan.
- (7) The use not result in substantial economic, noise, glare, or odor impacts on adjoining properties and properties generally in the district.
- (8) Adequate ingress and egress to property and proposed structures thereon and off-street parking and loading areas will be provided where required, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
- (9) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, and economic impact shall be compatible and in harmony with properties in the district.
- (10) Location, availability and compatibility of utility service for the use shall be satisfactory to ensure health and safety.
- (11) Refuse and service areas for the use shall not adversely affect automotive and pedestrian safety and convenience, traffic flow and control, or access in case of fire or catastrophe.
- (12) In all districts except the C-OPI district, and also with the exception of hotel, motel and timeshare uses, the proposed special exception use will not attract the principal portion of its customers/clients from off-island locations. The applicant shall submit evidence satisfactory to the town council that not less than 50 percent of the customers of the proposed use will be town persons. Evidence submitted in support of this contention shall include credible data or information suitable for review by the town to determine the credibility and the appropriateness of the applicant's conclusion. The submittal shall include a description of the types of information used and the methodology employed to arrive at the conclusion. Information used shall include, but shall not be limited to, lists of

customer/client addresses or certification thereof by an independent certified public accountant approved by the town, market studies prepared by independent professional firms, or data from similar operations under the control of the applicant. The town may in the future require the applicant to demonstrate to the satisfaction of the town council that the special exception use is continuing to be town-serving.

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

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

STUDY ITEM 7. Clarify in the definition of “building height for construction east of the Coastal Construction Control Line” that the point of measurement can be the highest crown of road if that elevation is higher than the minimum bottom of grade beam required by the State plus 2 feet.

PURPOSE:

When building east or partially east of the Coastal Construction Control Line, the “point of measurement” is the minimum bottom of grade beam elevation as required by the State plus 2 feet, or the highest first floor elevation of an abutting neighbor’s house. However, there are some cases where the highest crown of the road in front of the lot is higher than that point of measurement. The measurement should be taken from the minimum bottom of grade beam elevation as required by the State plus 2 feet, the highest crown of road in front of the lot, or the highest first floor elevation of an abutting principal building, whichever is higher. The proposal is to revise the definition of “building height” for construction east of the Coastal Construction Control Line to address this issue.

RELEVANT CODE SECTIONS WITH PROPOSED CHANGES:

Building, height of, (applicable to lots or portions of lots east of the State of Florida Coastal Construction Control Line (CCCL)) means the vertical distance from the point of measurement for height to the bottom of the top chord of the roof framing member where it intersects the plane of the outside face of the exterior wall for pitched roofs (excluding dormer windows in non-habitable space). For flat roofs the measurement is from the point of measurement for height to the point where the ceiling meets the exterior wall. The point of measurement for height in all zoning districts for buildings either east or partially east of the CCCL shall ~~either~~ be the minimum bottom of grade beam elevation as established by the Florida Building Code plus two feet, the highest crown of road in front of the lot, or the highest first floor elevation of an abutting principal building, whichever is highest, provided the following conditions are met:

(1) The proposed principal building can be no closer to the bulkhead line than the average setback of the closest principal buildings on the north and south side of the subject lot, provided the required rear setback is met;

(2) The proposed principal building can be no closer to the front property line than the average front setback of the closest principal buildings on the north and south side of the subject lot, provided the required front setback is met; and

(3) The proposed building can be no taller than five feet above the average height of the principal buildings on the north and south side of the subject property provided the overall height does not exceed the maximum overall height allowed. For the purpose of constructing additions that do not exceed 800 square feet onto an existing structure on a lot, the point of measurement for height shall be the top of the lowest floor slab on the existing structure provided that said addition(s) meet the minimum requirements as established in the Florida Building Code for construction east or partially east of the CCCL.

cc: Thomas G. Bradford, Deputy Town Manager
John C. Randolph, Town Attorney
Susan Owens, Town Clerk
Paul W. Castro, AICP, Zoning Administrator
Zf



**PLANNING AND ZONING COMMISSION
RECORD AND REPORT
TOWN HALL – COUNCIL CHAMBERS – SECOND FLOOR
360 S COUNTY ROAD, PALM BEACH
TUESDAY, JANUARY 21, 2014, 08:30 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 (tape or CD) of the meeting by contacting Debby Morakis, Secretary to the Planning & Zoning Commission at (561) 227-6411. 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 AND ROLL CALL (09:30:41 a.m.)

Chair Rose called the meeting to order at 9:30 a.m. On roll call, Commission Members present were:

C. Tanner Rose, Chair

Martin Klein, Vice-Chair

Floyd Wideman, Member

Lewis Crampton, Member (left meeting at 11:15 a.m.)

Bobbie Lindsay Buck, Member

Bruce Langmaid, Member

Alan S. Golboro, Member

Thomas Greenbaum, Alternate Member (left meeting at 11:18 a.m.)

Kevin Kenny, Alternate Member

Danielle H. Moore, Alternate Member

Staff Members present were:

John Page, Director of Planning, Zoning, Building

Paul Castro, Zoning Administrator

Debby Morakis, Secretary to the Planning & Zoning Commission

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Ms. Morakis led the Commission with the invocation and Pledge of Allegiance.

III. APPROVAL OF THE AGENDA (09:32:17 a.m.)

Chair Rose identified changes to the agenda postponing the presentations of Mr. Mouzon and Ms. Day and called for a motion to approve the agenda as amended.

MOTION BY MR. KLEIN TO APPROVE THE AMENDED AGENDA.

MOTION SECONDED BY MR. CRAMPTON.

MOTION CARRIED UNANIMOUSLY WITHOUT BENEFIT OF A ROLL CALL VOTE.

IV. OATH OF OFFICE FOR NEW MEMBER (09:33:43 a.m.)

Ms. Morakis administered the Oath of Office to Ms. Moore, who will serve as an Alternate Member.

V. COMMENTS FROM THE PUBLIC ON ANY ITEM NOT ON THE AGENDA (9:34:00 a.m.)

There were no comments heard from the public at this time.

VI. APPROVAL OF OCTOBER 15, 2013 PLANNING AND ZONING COMMISSION MINUTES (09:35:18 a.m.)

**MOTION BY MR. WIDEMAN TO APPROVE THE MINUTES OF THE OCTOBER 15, 2013 PLANNING & ZONING COMMISSION MEETING.
MOTION SECONDED BY MR. KLEIN.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.**

VII. CONSIDERATION OF PUD-A AMENDMENT BY THE BREAKERS PALM BEACH, INC. (09:36:07 a.m.)

Chair Rose and Mr. Golboro declared ex-parte communication.

James M. Crowley, Attorney with the firm of Gunster Yoakley addressed the Commission on behalf of The Breakers Palm Beach, Inc., introducing Paul Leone and Alex Gilmurray from The Breakers; Jim Norquest, Planner; Steven L. Polio, Architect; and, Chad Gruber, Engineer, all here with him today. Mr. Crowley explained the proposed project, demonstrating with a power point several renderings and photos of the existing conditions and the proposed new fitness center. The applicant is proposing to amend the Breaker's PUD adding 4,190 square feet to construct a new fitness center to be used by the Breaker's members and guests only. The existing fitness center will be relocated to the expanded area where the Ocean Terrace is. Mr. Crowley explained that amendments to the PUD have been done by Resolution in the past and explained previous projects that were completed as a result of Resolution 1-98 and Resolution 4-05. Mr. Crowley noted that the current application did include an error in the parking statement, but, explained that sufficient parking (164 spaces) already exist to accommodate the proposed expansion. Mr. Crowley explained that the current application would exceed the 20,000 limitation in the PUD Agreement.

Chair Rose called for comments from the Commission. Paul Castro, Zoning Administrator, explained Staff's recommendation stating there would be no traffic impact to the surrounding roadway segments. Mr. Castro stated there was an issue in 1998 when the Starlight Ballroom and Beach Club were built; the Breakers had to reduce the size in order to retain the development rights. Subsequent and through several different Resolutions, there have been more than 40,000 square feet added and staff believes they have used the development rights. Mr. Castro stated that staff has no objections and a discussion occurred with comments being heard from Mr. Crampton regarding the vested rights. Mr. Wideman complimented the Breakers on their presentation and stated that he felt it would be a fine addition to the Breakers. Mr. Golboro stated that he did not see any structural engineer sign-off. John Page, Director of Planning, Zoning and Building

Department stated that would be taken care of when the permit application was submitted.

Mr. Klein echoed the comments of Mr. Wideman complimenting the project, and added that he would not be comfortable with passing a resolution one way or another without addressing the issue of the 11,000 square feet. Mr. Castro requested the Commission make a recommendation to Council one way or another and explained that it was a separate issue that came up during review of the PUD Amendment. Mr. Castro explained that the Breaker's believes they have the vested right to build 11,621 sq. ft. and staff believes the Breakers have built over 40,000 sq. ft. of additions since the resolution in 1998, adding that it may have been missed or was an oversight in the past. Mr. Castro again requested the Commission make a recommendation to Council, one way or another, so that there would be no question in the future for staff or the applicant as to what the Breakers has the right to build. Discussion continued with comments heard from Messrs. Klein and Crampton. Mr. Rose stated that he felt it was a documentation issue. Mr. Crowley added that he felt Council had approved previous projects as presented and that the resolutions were never amended. Mr. Crowley answered questions and Mr. Castro added that an elevator would be installed to provide handicapped access to the tower feature. Ms. Buck thanked the Breakers for their presentation and stated that she had no problem with the expansion of the fitness center.

Town Attorney John Randolph added that Mr. Crowley had attempted to meet with him and Mr. Castro but that meeting did not happen due to his schedule. Mr. Randolph stated, therefore, that he had no legal opinion to offer the Commission as to whether staff or the applicant was correct and advised the Commission that if they were prepared to make a recommendation regarding this they should do so. Mr. Randolph added that the Commission could act on this application or defer to Council if they felt they did not have enough information. Ms. Buck added that she felt that was what the Commission should do. Mr. Wideman stated that he felt the application was complete and should be approved and that the two issues should not be combined; adding that he felt the Commission could make a second recommendation. Mr. Castro stated that staff agreed and recommended approval of the project. Discussion continued and it was determined that two motions would be made.

MOTION BY MR. KLEIN TO APPROVE THE PUD AMENDMENT AS PRESENTED.

MOTION SECONDED BY MR. WIDEMAN.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

Chair Rose called for a second motion related to the square footage. Mr. Klein stated, "The Breakers takes the view that it had preserved 11,000 plus square feet. The Town would like some clarity and takes the view that because of various actions subsequent to that the 11,000 square feet has been utilized more than enough and that through some inadvertence that was never clarified. The Breakers is asking for 4,000 sq. ft. which has been approved, the question is do we want to deduct that 4,000 from the 11000 leaving a net of 7,000 odd square feet which the Breakers still feels is preserved and which the Town still feels may not be preserved. Do I get it? (All agreed). I understand the

Breakers' view is they are willing to go along with the deduction of the 4,000 odd square feet, leaving a net of 7,000 square feet. If that is the case I make a motion incorporating all of that."

MOTION BY MR. KLEIN AS STATED ABOVE.

MOTION SECONDED BY CRAMPTON.

Mrs. Buck asked if staff was of the opinion that the Commission should recommend to take this deduction. Mr. Castro stated that staff felt that the Breakers had already used all of it explaining that the motion on the floor was to reduce the 4,190 sq. ft. from 11,621 sq. ft. and that would be a benchmark than could be reduced in the future. Discussion continued. Chair Rose restated the motion that with regard to the present amendment to the PUD-A, the 11,000 will be reduced by the amount of square footage that is being utilized in the PUD-A, and the difference would be preserved for future use.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

VIII. Ordinance No. 1-2014 (09:48:13 a.m.)

An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning; Article X, On-Street Parking Permits; Division 2, Residential Districts; Section 134-2296, Issuance Of Special Parking Permits Upon Application, To Include A New Subparagraph (D) To Provide For The Issuance Of Temporary Group Permits; Amending Division 3, Residential Districts Adjacent To Commercial Districts; Section 134-2328, Temporary Group Permits, To Provide For An Application Fee; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Tom Bradford, Deputy Town Manager, addressed the Commission and explained the proposed ordinance. After a very brief discussion, it was determined that the Ordinances would be voted on separately.

MOTION BY MR. WIDEMAN TO APPROVE ORDINANCE NO. 1-2014 AS PRESENTED.

MOTION SECONDED BY MR. KLEIN.

A brief discussion ensued with questions heard from Mrs. Buck who asked about the requirement that a resident obtain 2 visitor parking permits prior to getting a temporary permit. Mr. Bradford explained the program.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

IX. Ordinance No. 2-2014 (09:56:25 a.m.)

An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning; Article X, On-Street Parking Permits; Division 2, Residential Districts; Section 134-2293, Designation Of Controlled Parking Residential Areas, To Delete Section 134-2293 In Its Entirety ; Amending Division 2, Residential Districts; Section 134- 2295, Procedures For Determining Controlled Parking Residential Areas, To Require Website Maps And Proper Display Of Permits; Providing For Severability;

Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Mr. Bradford explained this was a housekeeping item that would eliminate a redundant section in the code and update the section that requires the Town Clerk keep a map to also require the Clerk to keep a map on the Town's website.

MOTION BY MR. KLEIN TO APPROVE ORDINANCE NO. 2-2014 AS PRESENTED.

MOTION SECONDED BY MR. WIDEMAN.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

X. Ordinance No. 3-2014 (09:58:18 a.m.)

An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning; Article X, On-Street Parking Permits; Division 2, Residential Districts; Section 134-2301, Penalties, To Clarify The Penalty For Illegal Parking And Providing For The Issuance Of Citations For All Other Violations Of This Division ; Amending Division 3, Residential Districts Adjacent To Commercial Districts; Section 134-2234, Establishing A Fine For Illegal Parking And Providing For The Issuance Of Citations For All Other Violations Of This Division; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Mr. Bradford explained the proposed Ordinance and described instances where the Town received complaints from citizens who alleged that workers on the Avenue were in possession of visitor's parking permits. Mr. Bradford explained that a parking citation could be imposed upon the non-resident but there was no mechanism in the Code that would allow action against the resident. Discussion ensued and Mr. Bradford addressed questions from the Commission. Raychel Houston, Parking and Code Enforcement, addressed the Commission, further explained the situation and the difficulty encountered with parking enforcement. After further comments and questions from the Commission members, the following motion was made:

MOTION BY MR. KLEIN TO APPROVE ORDINANCE NO. 3-2014.

MOTION SECONDED BY MR. WIDEMAN.

MOTION PASSED 5-2 WITH MRS. BUCK AND MR. GOLBORO OPPOSED.

XI. CONSIDERATION OF THE STUDY ITEM REPORT (10:27:14 a.m.)

Paul Castro, Zoning Administrator addressed several study items that staff would like direction on.

Study Item 1. Third story issues related to access, and use of attic space within single family homes.

Mr. Castro explained the problems encountered with attic spaces and described the proposed definitions and language changes.

For the record, Mr. Crampton left the meeting at 11:15 a.m. Mr. Greenbaum left the meeting at 11:18 a.m.

Attorney Randolph suggested a provision might be added that would allow the Town access for a future inspection. Mr. Castro noted that would be similar to a kitchen agreement and not a practical solution. Discussion continued and Mrs. Buck made suggestion on how “attic” should be redefined: as non-habitable space within a roof system of a building with less than 7 feet of headroom and used only for storage, mechanical or access to rooftop; removing the pull down stairs, and, allowing no more than one electrical outlet. Mr. Castro commented about rooftop access and the current provisions in the code regarding ceiling heights and windows. Discussion continued. Mr. Castro stated that staff would bring both the proposed language and the Commission’s concerns to Council.

MOTION BY MRS. BUCK THAT “ATTIC” IS DEFINED AS SUGGESTED, REMOVING PULL DOWN STAIRS AND NO MORE THAN ONE ELECTRICAL OUTLET, WITH CONFORMING CHANGES THROUGHOUT.

MOTION SECONDED BY MR. KLEIN.

Ms. Morakis noted for the record that Messrs. Crampton and Greenbaum left the meeting so Mr. Kenny would vote.

MOTION CARRIED 5-2 WITH MESSRS. LANGMAID AND GOLBORO OPPOSED.

Study Item 2. Study allowing signs in certain situations where a commercial tenant space does not front a street and the parking for the tenant space is not fronting a street.

Mr. Castro explained that signs are only allowed for businesses that front on a street. Certain spaces where tenants do not front on a street are not permitted signage. Staff would like to allow more flexibility for those tenants. Mr. Castro described the situation that exists at both the rear of 2875 S. Ocean Blvd. and 230 Royal Palm Way. After a brief discussion, the following motion was made: Motion by Mr. Wideman to approve Study Item 2. This motion failed for lack of second and discussion continued.

MOTION BY MR. GOLBORO TO ADOPT THE LANGUAGE CHANGES PROPOSED IN STUDY ITEM 2.

MOTION SECONDED BY MR. KLEIN.

MOTION CARRIED 7-0 AFTER ROLL CALL VOTE.

Study Item 3. Study the content regulations for business signs.

Mr. Castro stated this was an effort to provide additional language to allow signs that match only the dba names registered with the State of Florida.

MOTION BY MR. WIDEMAN TO ADOPT THE ZONING CODE LANGUAGE CHANGES PROPOSED IN STUDY ITEM 3.

MOTION SECONDED BY MR. KLEIN.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

Chair Rose suggested minor grammatical changes and they were agreed to by Mr. Castro.

Study Item 4. Study the definition of “lot” as it relates to lots fronting on the Atlantic Ocean.

Mr. Castro demonstrated with a drawing that identified the mean high water line, the bulkhead line, and, the bulkhead/seawall line along with several aerial photographs to describe the proposed language changes. Mr. Castro stated that this could be considered a Bert Harris issue. Attorney Randolph explained the Bert Harris Act and added that any issues could be handled on a case by case basis. Comments were heard from Commission Members and Attorney Randolph advised the Commission that if it felt this was a good ordinance change it should recommend approval to Council, and should leave it to Council to consider any potential Bert Harris threat. Mr. Castro explained this affects approximately 7 or 8 properties or possibly a few more, but did not affect properties on the beach side of the beach area zoning district. Comments were heard from Mr. Golboro regarding taxation and assessed valuation; and, Mr. Klein added that he felt the proposal was a wise change and would support it.

MOTION BY MR. WIDEMAN TO APPROVE ZONING LANGUAGE CHANGES PROPOSED IN STUDY ITEM 4.

MOTION SECONDED BY MR. KLEIN.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

Study Item 5. Modify the notice provisions for code amendments, special exceptions or variances which increase the density over what exists on a property.

Mr. Castro explained this proposal would be moving existing language to the correct location in the code and adds another provision that would require a 1,000 foot notice for a special exception or variance which would increase the density.

MOTION BY MR. WIDEMAN TO APPROVE ZONING LANGUAGE CHANGES PROPOSED IN STUDY ITEM 5.

MOTION SECONDED BY MR. KLEIN.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

Study Item 6. Study creating separate zoning regulations for a veterinarian use or animal boarding facilities.

Mr. Castro explained how a veterinarian office would have more of an impact than a medical office due to animal boarding, walking, pedestrian and traffic, etc. Mr. Castro explained the proposed changes that would make a veterinarians office a special exception use no matter the size, allowing the use within two districts in the Town and prohibiting it in the other districts. Comments were heard from Mr. Wideman and Mrs. Buck who asked about the prohibition on Royal Palm Way. Mr. Castro stated that staff felt it was not consistent with existing uses in the area. Chair Rose stated that he felt a veterinarian office on Royal Palm Way would be out of place. Mr. Wideman agreed it should be prohibited there and added there was no outdoor space available there to walk a dog.

MOTION BY MR. GOLBORO TO APPROVE ZONING LANGUAGE CHANGES PROPOSED IN STUDY ITEM 6.

MOTION SECONDED BY MR. WIDEMAN.

MOTION CARRIED 6-1 WITH MRS. BUCK OPPOSED.

Study Item 7. Clarify in the definition of “building height for construction east of the Coastal Construction Control Line” that the point of measurement can be the highest crown of road if that elevation is higher than the minimum bottom of grade beam required by the State plus 2 feet.

Mr. Castro explained the current code requirement and read the proposed language changes that would allow a project to be built at the crown of the road without a variance. Mr. Castro projected drawings of several locations in Town to provide examples to the Commission. A discussion ensued with comments heard from Mr. Golboro who stated for drainage reasons he preferred to require a variance; Mrs. Buck expressed her concerns about flooding and drainage. Mr. Klein expressed his concern regarding requiring variances and asked what the genesis for this proposal was. Mr. Castro stated that someone had come in and asked why they were required to build at the crown of road and lose a foot. Mr. Golboro stated that roads were currently being milled; he felt this was minor now but it should be the right of Council to make one house higher than the next. Mr. Rose suggested language changes eliminating the word “either” since three items were involved. Discussion continued briefly. Mr. Klein stated that he would move to support this with concerns to be addressed at another time.

MOTION BY MR. KLEIN TO ADOPT ZONING LANGUAGE CHANGES PROPOSED IN STUDY ITEM 7.

MOTION SECONDED BY MR. WIDEMAN.

MOTION CARRIED 5-2 WITH MRS. BUCK AND MR. GOLBORO OPPOSED.

Mr. Castro explained that Staff would provide the draft Record and Report to Council as backup for this Council item and Chair Rose offered to review the Commission’s proposed language changes.

XII. COMMENTS OF THE PLANNING AND ZONING COMMISSION AND PLANNING, ZONING AND BUILDING DIRECTOR (12:27:39 a.m.)

Mr. Page explained there would be an upcoming referendum on the PUD-5 zoning changes scheduled for March 25 and noted that the presentations scheduled for Steve Mouzon and Jane Day would be postponed until after the results of the referendum. Mr. Page explained to the Commission that Council has decided to not have the Commission further review the parking and traffic plan prepared in 2006.

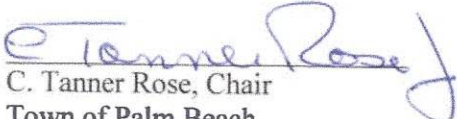
Attorney Randolph address the Commission advising of the public records request received regarding the PUD-5. Attorney Randolph also explained the procedure the Commissioners should use to forward any Town related emails to a Town email address to allow ease in retrieval of Town related documents. Mr. Page stated that he would follow up with Spencer Wilson to determine how best this could be handled. Attorney Randolph explained that a challenge had been filed regarding Ordinance 5-2013 and that this was scheduled for an administrative hearing on February 24. The Town filed a motion for continuance until after the March 25 referendum. The administrative hearing officer postponed the matter until after May 1.

Chair Rose noted there would not be a meeting of the Planning & Zoning Commission in February.

XIII. ADJOURNMENT (12:36:28 a.m.)

MOTION TO ADJOURN AT 12:36 P.M.

Respectfully Submitted,


C. Tanner Rose, Chair
Town of Palm Beach
Planning & Zoning Commission


Martin I. Klein, Vice Chair
Town of Palm Beach
Planning & Zoning Commission

Memo

To: Planning and Zoning Commission
From: Thomas G. Bradford, Deputy Town Manager
CC: John Page, Director of Planning, Zoning and Building Department
Paul Castro, Zoning Administrator
John C. Randolph, Town Attorney
Date: 12/17/2013
Re: Proposed Ordinances Amending the Residential Permit Parking Provisions in Chapter 134, Zoning

During the latter half of calendar 2013 Town staff made a number of recommendations to the Ordinances, Rules and Standards (ORS) Committee of the Town Council regarding changes to the provisions of Chapter 134, Zoning, pertaining to the two residential permit parking programs operated by the Town to protect the residential character of affected neighborhoods. As these proposed changes impact Chapter 134 they must be reviewed by the Planning and Zoning Commission for a recommendation to the Town Council.

Review of Proposed Amendments to Chapter 134, Zoning, Town Code of Ordinances, Amending Sections 134-2296 and 134-2328 (b) to Provide for Temporary Group Permits and an Application Fee -

Town staff presented to ORS and the ORS Committee recommended approval of a temporary group permit within the residential permit parking areas in Town modeled after the program initiated in Gainesville, Florida because, among other reasons, the residential permit parking areas in Town modeled after the program initiated in Arlington County, Virginia have a provision for temporary group permits, but the Gainesville areas do not. Therefore, the ordinance to accomplish this change is considered a housekeeping item to ensure equity and continuity between the two existing permit parking programs operated by the Town.

The temporary group permit concept is a useful tool for times when a resident needs to access more on-street parking than they can secure for daily use through the resident permit parking program to accommodate a special activity at their home during a time of day when resident permit parking is in effect. Administrative safeguards have been put into effect per Town Council directive that only allows those residents that have purchased two (2) visitor residential parking permits to apply for temporary group permits on a first come, first serve basis for the days and times desired. The ordinance also places limitations on the maximum number of parking spaces one can secure not to exceed 50% of the on-street spaces in the area. The ordinance allows for the establishment of a fee to be set by resolution. However, per Town Council direction, there is no fee for the temporary group permit. This ordinance is attached hereto for your review as Exhibit A.

Review of Proposed Amendments to Chapter 134, Zoning, Town Code of Ordinances, Amending Sections 134-2293 and 134-2295 (b) to Eliminate Redundancy and Require Placement of the Residential Permit Parking Map to the Town's Website in addition to the Town Clerk's Office –

Section 134-2293 reads as follows:

"Sec. 134-2293. - Designation of controlled parking residential areas.

Upon approval of the town manager and after following the procedures set forth in section 134-2294, the chief of police, through his authorized representative in the police department, is authorized to designate controlled parking residential areas by appropriate signs and the recording thereof on an appropriate town map or plat in which the parking of vehicles may be restricted on public streets at certain times during the day only to vehicles bearing a valid residential parking permit issued pursuant to this division. This authority shall be in addition to any other authority of the town to regulate the times and conditions of motor vehicle parking on public streets."

Section 134-2295 (b) reads as follows:

"(b)

When the town manager finds the criteria to designate have been met in a controlled parking residential area, he shall cause the regulation to be recorded upon an appropriate map of the town and retained permanently in the office of the town clerk. In addition, the town manager shall cause parking signs to be erected upon public streets in the area, indicating the times, locations and conditions upon which parking shall be by permit only. When an area has been approved, designated and posted as a controlled parking residential area, it shall be unlawful and a violation of this division to park a commuter vehicle in an area restricted to decal parking only without having a valid residential parking permit affixed on the left rear bumper of the vehicle."

These two code sections appear to be redundant. They both give instructions for staff to follow after an area has been designated. Section 134-2293 is in contravention with current practice. Only the Town Manager can cause signs to be erected upon public streets. It appears that Section 134-2293 can be deleted in its entirety. The draft ordinance deletes 134-2293.

In addition, 134-2295 (b) should be rewritten at this time to require the Town Clerk to also keep the required residential parking area map on the Town's web site. It should also be amended to accommodate the fact that we now have visitor permits which are not affixed to the vehicle, but rather it is a hanging tag one places on the rearview mirror of the vehicle. If ORS concurs, 134-2295(b) can be rewritten as follows:

"(b)

When the town manager finds the criteria to designate have been met in a controlled parking residential area, he shall cause the regulation to be recorded upon an appropriate map of the town and retained permanently in the office of the town clerk. The Town Clerk shall also keep the residential area parking map, or reasonable facsimile thereof, in an appropriate location on the Town's website. In addition, the town manager shall cause parking signs to be erected upon public streets in

the area, indicating the times, locations and conditions upon which parking shall be by permit only. When an area has been approved, designated and posted as a controlled parking residential area, it shall be unlawful and a violation of this division to park a commuter vehicle in an area restricted to ~~decal~~ residential parking permit only without having a valid residential parking permit affixed on the left rear bumper of the vehicle or, in the case of a residential visitor parking permit, appropriately displayed within the vehicle."

The draft ordinance providing for these changes is attached hereto as Exhibit B.

Review of Proposed Amendments to Chapter 134, Zoning, Town Code of Ordinances, Amending Sections 134-2301 and 134-2334 to Clarify Penalties for Illegal Parking , Providing for Citations and Establishing Fines –

The Code Enforcement Division of the Police Department has requested that fines be imposed on those persons violating the provisions of the residential permit parking programs found in Chapter 134. Please see the attached memorandum from Raychel Houston in this regard marked as Exhibit C. To provide the fines requested and approved by the ORS Committee, staff has prepared the attached ordinance for your review marked as Exhibit D.

Should you have any questions in regard to these matters, please feel free to ask staff to address the same.

TGB/

ORDINANCE NO. 1-2014

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 134, ZONING; ARTICLE X, ON-STREET PARKING PERMITS; DIVISION 2, RESIDENTIAL DISTRICTS; SECTION 134-2296, ISSUANCE OF SPECIAL PARKING PERMITS UPON APPLICATION, TO INCLUDE A NEW SUBPARAGRAPH (d) TO PROVIDE FOR THE ISSUANCE OF TEMPORARY GROUP PERMITS; AMENDING DIVISION 3, RESIDENTIAL DISTRICTS ADJACENT TO COMMERCIAL DISTRICTS; SECTION 134-2328, TEMPORARY GROUP PERMITS, TO PROVIDE FOR AN APPLICATION 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 134, Zoning; Article X, On-Street Parking Permits; Division 2, Residential Districts; Section 134-2296, to read as follows:

Sec. 134-2296. Issuance of special parking permits upon application.

(a) Following the official designation of a controlled parking residential area, the finance department shall issue appropriate residential parking permits. Upon application a permit shall be issued only to the owner or operator of a motor vehicle who resides in the controlled parking residential area in which he resides.

(b) The application for a permit shall contain the name of such owner or operator of the motor vehicle; residential address; and the motor vehicle's make, model and registration number. The motor vehicle's registration may, at the discretion of the finance department, be required to be presented at the time of making the application in order to verify the contents thereof. If the vehicle is registered at an address other than the

local residence, the applicant shall provide other sufficient proof, acceptable to the finance department, showing residency within the controlled residential parking area. The permit shall be valid for a fiscal year, as defined in section 134-2292, and shall be renewed for each successive fiscal year. A fee, as determined by resolution of the town council shall be charged for the annual permit and shall be payable at the finance department. After the initial permit has been issued, any renewal shall be affixed to the vehicle no later than October 15 of the applicable current year.

(c) Visitor/service permits. Upon application by such owner, up to two visitor/service permits may be issued, which permits may be used by such owner for the sole purpose of providing parking on a temporary basis to service vehicles which are conducting work at such owner's premises or for visitors of such owner's residence. The permits shall be used only for the period of time during which business is to be conducted by the service vehicles or for the duration of stay of a visitor to the residence for which the permit is issued.

The application for a visitor/service permit or permits shall be filed by such owner. The permit or permits shall be valid for a fiscal year as defined in section 134-2292 and may be renewed each successive fiscal year. A fee, as determined by resolution of the town council shall be charged for each visitor/service permit and shall be payable at the finance department. These permits shall not be affixed to the vehicle, but shall be placed in a clearly visible place on the inside of the visitor's or service vehicle observable through the front windshield of the vehicle. The permits shall be valid only for the period of time during which the service vehicle is conducting work at the premises or for the period of time a visitor is at the premises.

(d) Temporary group permits. A temporary group permit may be issued on application of any resident of the district for only one day and for no more than four (4) hours on that day upon a showing by the applicant that during the hours for which the permits are to be issued his or her residence will be used for an assemblage of persons in a way consistent with its residential character and other provisions of law and that such visitors would not be able to park their vehicles without violating the law. However such permits for such an assemblage of persons shall only be issued upon a finding of the facts stated in this section and a further finding that the issuance of such permits will not impair public safety during the time of their validity, and in this connection such permits may be limited as to the streets or portions of streets on which they shall be

valid. Finally, the number of such permits issued shall not at any time exceed 50 percent of the number of spaces available in the area in which they are valid.

The application for a temporary group permit shall be filed by the resident seeking the permit. A fee as determined by resolution of the Town Council shall be charged for each temporary group permit. The permits shall not be affixed to the vehicle, but shall be placed in a clearly visible place on the inside of the visitor's vehicle observable through the front windshield of the vehicle.

Section 2. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 134, Zoning; Article X, On-Street Parking Permits; Division 3, Residential Districts Adjacent to Commercial Districts; Section 134-2328, to read as follows:

Sec. 134-2328. Temporary group permits.

Under this division, on application of any resident of the district, permits, to be valid for only one day and for no more than four hours on that day, may be issued upon a showing by the applicant that during the hours for which the permits are to be issued his residence will be used for an assemblage of persons in a way consistent with its residential character and other provisions of law, and that such visitors would not be able to park their vehicles without violating the law. However, such permits for such an assemblage of persons shall only be issued upon a finding of the facts stated in this section and a further finding that the issuance of such permits will not impair public safety during the time of their validity, and in this connection such permits may be limited as to the streets or portions of streets on which they shall be valid. Finally, the number of such permits issued shall not at any time exceed 50 percent of the number of spaces available in the area in which they are valid.

The application for a temporary group permit shall be filed by the resident seeking the permit. A fee as determined by resolution of the Town Council shall be charged for each temporary group permit. The permits shall not be affixed to the vehicle, but shall be placed in a clearly visible place on the inside of the visitor's vehicle observable through the front windshield of the vehicle.

Section 3. 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 4. 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 5. Codification.

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

Section 6. Effective Date.

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

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this ___ day of _____, 201_, and for second and final reading on this ___ day of _____, 201_.

Gail L. Coniglio, Mayor

David A. Rosow, Town Council President

Robert N. Wildrick,
Town Council President Pro Tem

William J. Diamond, Town Council Member

EXHIBIT A

ATTEST:

Richard M. Kleid, Town Council Member

Cheryl Somers, Acting Town Clerk

Michael J. Pucillo, Town Council Member

ORDINANCE NO. 2-2014

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 134, ZONING; ARTICLE X, ON-STREET PARKING PERMITS; DIVISION 2, RESIDENTIAL DISTRICTS; SECTION 134-2293, DESIGNATION OF CONTROLLED PARKING RESIDENTIAL AREAS, TO DELETE SECTION 134-2293 IN ITS ENTIRETY ; AMENDING DIVISION 2, RESIDENTIAL DISTRICTS; SECTION 134- 2295, PROCEDURES FOR DETERMINING CONTROLLED PARKING RESIDENTIAL AREAS, TO REQUIRE WEBSITE MAPS AND PROPER DISPLAY OF PERMITS; 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 134, Zoning; Article X, On-Street Parking Permits; Division 2, Residential Districts; Section 134-2293, to delete Section 134-2293 in its entirety as follows:

~~"Sec. 134-2293. Designation of controlled parking residential areas.~~

~~Upon approval of the town manager and after following the procedures set forth in section 134-2294, the chief of police, through his authorized representative in the police department, is authorized to designate controlled parking residential areas by appropriate signs and the recording thereof on an appropriate town map or plat in which the parking of vehicles may be restricted on public streets at certain times during the day only to vehicles bearing a valid residential parking permit issued pursuant to this division. This authority shall be in addition to any other authority of the town to regulate the times and conditions of motor vehicle parking on public streets."~~

Section 2. The Code of Ordinances of the Town of Palm Beach is hereby

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amended at Chapter 134, Zoning; Article X, On-Street Parking Permits; Division 2, Residential Districts; Section 134-2295, to read as follows:

"Sec. 134-2295. Procedure for determining controlled parking residential areas.

- (a) In order to determine whether a particular area should be designated as a controlled parking residential area, the town council can request or the town manager may conduct, upon his own initiative or upon a petition of a majority of the households on a proposed residential block addressed to the town manager, a study to determine if the proposed area meets the criteria set forth in section 134-2294. Following the study, the town manager shall determine whether to designate the proposed area under consideration as a controlled parking residential area or to remove the designation of a previously established controlled parking residential area. The town council may also request the town manager to designate an area as a controlled parking residential area based upon a study previously conducted, if the criteria set forth in section 134-2294 are met.
- (b) When the town manager finds the criteria to designate have been met in a controlled parking residential area, he shall cause the regulation to be recorded upon an appropriate map of the town and retained permanently in the office of the town clerk. The Town Clerk shall also keep an updated residential area parking map, or reasonable facsimile thereof, in an appropriate location on the Town's website. In addition, the town manager shall cause parking signs to be erected upon public streets in the area, indicating the times, locations and conditions upon which parking shall be by permit only. When an area has been approved, designated and posted as a controlled parking residential area, it shall be unlawful and a violation of this division to park a commuter vehicle in an area restricted to ~~decal~~ residential permit parking only without having a valid residential parking permit affixed on the left rear bumper of the vehicle, or in the case of a residential visitor parking permit, appropriately displayed within the vehicle."

Section 3. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such

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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 4. 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 5. Codification.

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

Section 6. Effective Date.

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

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this ____ day of _____, 2014, and for second and final reading on this _____ day of _____, 2014.

Gail L. Coniglio, Mayor

David A. Rosow, Town Council President

Robert N. Wildrick, Council President Pro Tem

William J. Diamond, Town Council Member

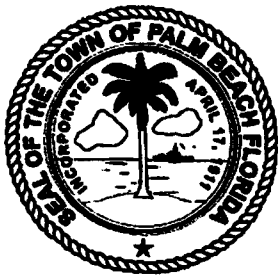
ATTEST:

Richard M. Kleid, Town Council Member

Susan A. Owens, MMC, Town Clerk

Michael J. Pucillo, Town Council Member

Ordinance No. _____



TOWN OF PALM BEACH POLICE DEPARTMENT

DEDICATED TO EXCELLENCE



To: Tom Bradford, Deputy Town Manager
 From: Raychel Houston, Parking/Code Enforcement Manager *RH*
 Re: Residential Parking Permits
 Date: July 3, 2013

In January, 2013 I received a complaint from a resident that he observed several vehicles with visitor parking permits being parked on Coconut Row and the 400 block of Australian Ave. and watched the vehicle drivers walk to the Chesterfield Hotel or toward Worth Ave. where he believed they worked. He was able to give me vehicle descriptions and the visitor permit number. I subsequently received another complaint from a resident who advised there was a pickup truck parked on his street ever day and he watched the male driver walk to S. County Road. The resident actually followed the driver one day and saw him enter a construction site in the 300 block of S. County Road where he was working. Contact was made with each of these permit holders and they were advised of the complaint and the fact the visitor permits could be revoked if they were being used in violation of the intent of the ordinance. The residents were apologetic and contacted the individuals who had their permits and brought them to the police department to verify they had them back in their possession. These permits were not revoked but the residents were warned that any further violations would result in revocation and not being able to obtain any visitor permits in the future.

Just recently, it was discovered that a merchant on Worth Ave. had obtained a visitor parking permit from a resident in the 300 block of Chilean Ave. and had given it to an employee to park their vehicle on that street. The merchant was uncooperative and I was only able to get the permit back by having a parking enforcement officer issue a citation to the vehicle and when the individual brought the citation and the permit into the police department to contest the citation, I kept the permit.

There are other instances where residential parking permits have been obtained in violation of the ordinance by office employees of what was once a residential building converted to office space. We are currently dealing with a situation where a resident who had a visitor permit moved and left the permit with another resident on the street. Finance has requested that permit be returned but to date, it has not been.

The Town's residential permit parking is modeled after ones existing in Arlington, VA and Gainesville, FL. In reviewing the codes of those cities, I found that Arlington has a fine of \$50 for any substantiated violation of their residential permit parking restrictions and Gainesville's code authorizes the revocation of the permit and the inability to purchase another one for a year as well as a "reinstatement fee" set by the City Commission.

Residential Parking Permits**July 3, 2013****Page 2**

Our Town code authorizes the finance department to revoke the residential parking permit of any permittee found to be in violation of this division and requires them, upon written notification, to surrender the permit to the finance department. Failure to surrender a revoked residential parking permit constitutes a violation that is punishable "in the manner provided for illegal parking and his vehicle may be towed and stored at his expense".

Staff would like to have the ability to assess a fine for a confirmed violation of the residential parking permit ordinance in addition to revocation of the permit. At the present time, we only have the ability to issue citations to the individual using the permit if the resident does not surrender the permit to the finance department. This fine would be assessed against the resident as opposed to the individual using the permit. If the fine is not paid, the case would be heard at the Code Enforcement Board and the property found in violation. Fines assessed under the Town code are either a Class I, II or III. Here are the fines for each:

Class I violations:	First offense\$75.00
	Second offense125.00
	Third offense250.00
	Fourth and subsequent offense500.00
Class II violations:	First offense\$125.00
	Second offense250.00
	Third offense400.00
	Fourth and subsequent offense500.00
Class III violations:	First offense\$250.00
	Second and subsequent offense500.00

ORDINANCE NO. 3-2014

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 134, ZONING; ARTICLE X, ON-STREET PARKING PERMITS; DIVISION 2, RESIDENTIAL DISTRICTS; SECTION 134-2301, PENALTIES, TO CLARIFY THE PENALTY FOR ILLEGAL PARKING AND PROVIDING FOR THE ISSUANCE OF CITATIONS FOR ALL OTHER VIOLATIONS OF THIS DIVISION; AMENDING DIVISION 3, RESIDENTIAL DISTRICTS ADJACENT TO COMMERCIAL DISTRICTS; SECTION 134-2234, ESTABLISHING A FINE FOR ILLEGAL PARKING AND PROVIDING FOR THE ISSUANCE OF CITATIONS FOR ALL OTHER VIOLATIONS OF THIS DIVISION; 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 134, Zoning; Article X, On-Street Parking Permits; Division 2, Residential Districts; Section 134-2298, to read as follows:

Sec. 134-2298. ~~False representation~~ Unlawful acts.

~~It shall constitute a violation of this division for any person to falsely represent himself as eligible for a residential parking permit or to furnish any false information in an application to the finance department in order to obtain a residential parking permit.~~

Under this division, it shall be unlawful for any person to:

- (1) Represent that he is entitled to a permit under this division when he is not so entitled.
- (2) Fail to surrender a permit to which he is no longer entitled.
- (3) Park a vehicle displaying such a permit at any time when the holder of such permit is not entitled to hold it.

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- (4) Park a vehicle without a properly displayed and valid residential parking permit issued pursuant to this division.
- (5) Park a vehicle displaying a counterfeit residential parking permit.
- (6) Modify or alter in any way a current or previously issued residential parking permit.
- (7) Give to another person or sell to another person a residential parking permit. Temporarily providing a visitor permit to a person legally entitled to use such under this division shall not be construed as being unlawful.
- (8) Provide a residential parking permit to any person or vehicle not legally entitled to possess or display such permit.

Section 2. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 134, Zoning; Article X, On-Street Parking Permits; Division 2, Residential Districts; Section 134-2301, to read as follows:

"Sec. 134-2301. Penalties.

~~Whoever violates this division shall be penalized pursuant to section 1-14,~~
and Any person illegally parked that violates the provisions of Sec. 134-2298 (3), (4) or (5) pursuant to this division shall be fined in the manner provided for illegal parking and, in the discretion of the Police Department, if applicable, the person may be required to surrender their permit and not be allowed to reapply for one year. In addition, his vehicle may be towed and stored at his expense.

Any person that violates the provisions of Sec. 134-2298 (1), (2), (6), (7) or (8) of this division shall be issued a citation pursuant to the provisions of Sec. 2-439 of the code of ordinances, subject to a code enforcement board hearing pursuant to Sec. 2-429 of the code of ordinances. In addition, in the discretion of the Police Department, if applicable, the person may be required to surrender their permit and not be allowed to reapply for one year."

Section 3. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 134, Zoning; Article X, On-Street Parking Permits; Division 3, Residential Districts Adjacent to Commercial Districts; Section 134-2334, to read as follows:

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"Sec. 134-2334. Unlawful acts.

Under this division, it shall be unlawful for any person to:

- (1) Represent that he is entitled to a permit under this division when he is not so entitled.
- (2) Fail to surrender a permit to which he is no longer entitled.
- (3) Park a vehicle displaying such a permit at any time when the holder of such permit is not entitled to hold it.
- (4) Park a vehicle without a properly displayed and valid residential parking permit issued pursuant to this division.
- (5) Park a vehicle displaying a counterfeit residential parking permit.
- (6) Modify or alter in any way a current or previously issued residential parking permit.
- (7) Give to another person or sell to another person a residential parking permit. Temporarily providing a visitor permit to a person legally entitled to use such under this division shall not be construed as being unlawful.
- (8) Provide a residential parking permit to any person or vehicle not legally entitled to possess or display such permit.

Section 4. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 134, Zoning; Article X, On-Street Parking Permits; Division 3, Residential Districts Adjacent to Commercial Districts; a new Section 134-2335, to read as

"Sec. 134-2335. Penalties.

Any person that violates the provisions of Sec. 134-2334 (3), (4) or (5) pursuant to this division shall be fined in the manner provided for illegal parking and, in the discretion of the Police Department, if applicable, the person may be required to surrender their permit and not be allowed to reapply for one year. In addition, his vehicle may be towed and stored at his expense.

Any person that violates the provisions of Sec. 134-2334 (1), (2), (6), (7) or (8) of this division shall be issued a citation pursuant to the provisions of Sec. 2-439 of the code of ordinances, subject to a code enforcement board hearing pursuant to Sec. 2-429 of the code of ordinances. In addition, in the discretion of the Police Department, if applicable, the person may be required to surrender their permit and not be allowed to reapply for one year."

Section 5. 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 6. 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 7. Codification.

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

Section 8. Effective Date.

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

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this ____ day of _____, 2014, and for second and final reading on this _____ day of _____, 2014.

Gail L. Coniglio, Mayor

David A. Rosow, Town Council President

Robert N. Wildrick, Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Ordinance No. _____

Richard M. Kleid, Town Council Member

Susan A. Owens, MMC, Town Clerk

Michael J. Pucillo, Town Council Member

Ordinance No. _____