



TOWN OF PALM BEACH

PLANNING, ZONING, & BUILDING DEPARTMENT

TOWN COUNCIL MEETING DEVELOPMENT REVIEW

AGENDA

Meeting to be Held Electronically

Click Here to Participate:

<https://zoom.us/j/94899086535>

FEBRUARY 10, 2021

9:30 AM

Welcome

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

Gail L. Coniglio, Mayor
Margaret A. Zeidman, President
Bobbie Lindsay, President Pro Tem
Julie Araskog
Lew Crampton
Danielle H. Moore

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. COMMENTS OF MAYOR GAIL L. CONIGLIO

IV. COMMENTS OF TOWN COUNCIL MEMBERS

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

VI. APPROVAL OF AGENDA

VII. RESOLUTIONS

- A. Resolution No. 014-2021 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 100 El Bravo Way Meets The Criteria Set Forth In Ordinance No. 2-84, Also Known As Chapter 54, Article IV Of The Code Of Ordinances Of The Town Of Palm Beach; And Designating Said Property As A Town Of Palm Beach Landmark Pursuant To Ordinance No. 2-84, Also Known As Chapter 54, Article IV Of The Code Of Ordinances Of The Town Of Palm Beach. Pg. 15
- B. Resolution No. 017-2021 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 127 Root Trail 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. Pg. 45

VIII. DEVELOPMENT REVIEWS

A. Appeals

1. ARCOM Appeals of B-063-2020 160 Royal Palm Way Pg. 71

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. **Z-20-00289 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: C-B Commercial The application of LR PALM HOUSE LLC (IAN LIVINGSTON, EXECUTIVE CHAIRMAN), applicant, relative to property located at **160 ROYAL PALM WAY**, legal description on file, is described below. The Town Council conditionally approved the Special Exceptions, Site Plan Review and Variances at the January 13, 2021 meeting. This application reflects additional variances to approve the remaining proposed elements related to the hotel and water feature, retaining walls to the south and east that will screen the hotel from residential properties, and to screen the staff service bar, pool restroom, and storage pantry. Following is a list of the proposed variance requests: 1) Section 134-1669: A variance for the height of the Pg. 137

screening walls located at the southeast corner of the property and along the south property line behind the water feature, restroom building, staff service bar and pantry (and including the gate to service the transformer) to have a height ranging from 12.25 feet to 18.5' from the lowest grade in lieu of the 7 foot maximum height allowed; 2) Section 134-1308(7): A variance for a rear yard setback for the water feature to be 12.5 feet in lieu of the 15 foot minimum required in the C-B Zoning District; 3) Section 134-1308(7): A variance for a rear yard setback for the new pool restroom building to be 10 feet in lieu of the 15 foot minimum required in the C-B Zoning District. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause architectural impact to the subject property. Carried 7-0.] [The Architectural Review Commission approved the project, while deferring the vehicular gate. Carried 7-0.]

- b. **Z-20-00269 VARIANCES** Zoning District: R-B Low Density Residential The application of John Criddle and Franny Frisbie, Applicant, relative to property located at **143 REEF RD**, legal description on file, is described below. The applicant is proposing to construct a new 597 square foot one story garage to the west of the existing residence. The following variances are being requested: 1. Section 134-893(7): The applicant is requesting a variance for a west side yard setback of 5 feet in lieu of the 12.5 foot minimum required for a one story building. 2. Section 134-893(6): The applicant is requesting a variance for an angle of vision of 105 degrees in lieu of the 100 degrees maximum allowed. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause architectural impact to the subject property. Carried 4-3.] [The Architectural Review Commission approved the project as presented. Carried 7-0.]

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- c. **Z-20-00293 SITE PLAN REVIEW WITH VARIANCE(S)** Zoning District: R-C Medium Density Residential The application of Elaine Hirsch, Applicant, relative to property located at **130 SUNRISE AVE, SUITE: PH 1**, legal description on file, is described below. A site plan modification with variances to allow a 365 square foot fixed awning over the terrace on the seventh floor of a seven story condominium building. The following variances are being requested: 1. Section 134-948(8): To allow the awning at a height of 61.5 feet in lieu of the 23 1/2 foot maximum height allowed in the R-C Zoning District. Section 134-948(8): To allow the awning at an overall height of 63.66 feet in lieu of the 26 1/2 foot maximum height allowed in the R-C Zoning District. Section 134-948(8): To allow the awning on the existing

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seventh floor penthouse of a seven story building in lieu of the two story building maximum allowed in the R-C Zoning District.

Section 134-948(6): To allow a west side yard setback of 50.1

feet in lieu of the 61.5 foot minimum required. Section 134-948(7): To allow a rear street yard setback of 106.5 feet in lieu of the 123.16 foot minimum required. [Applicant's Representative:

Maura Ziska Esq] [The Architectural Review Commission deferred the project to the February 24, 2021 meeting. Carried 7-0.]

Request for Deferral to the March 3, 2021 Meeting Per Letter from Maura Ziska

- d. **Z-20-00299 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: R A Estate Residential The application of 1015 SOUTH OCEAN LLC (MAURA ZISKA, MANAGER), applicant, relative to property located at **1015 S OCEAN BLVD**, legal description on file, is described below. 1) Section 134 840: Special Exception with Site Plan Review to allow the construction of an 11,031 square foot two story residence on a non conforming lot that is 97.97 feet in depth in lieu of the 150 foot minimum required In the R A Zoning District. 2) Section 134 843(a)(5): A request for a variance to allow a front setback of 16 feet 7.5 inches in lieu of the 35 foot minimum required in the R A Zoning District. 3) Section 134 843(a)(9): A request for a variance to allow a rear setback of 2 feet 7 inches in lieu of the 15 foot minimum required in the R A Zoning District. 4) Section 134 843(a)(6)b: A request for a variance to allow an Angle of Vision of 133.74 degrees in lieu of the 120 degrees maximum allowed in the R A Zoning District. 5) Section 134 843(a)(7): A request for a variance to have a building height plane setback ranging as close to the front property line as 16.8 feet (one story element) to 29.25 feet (two story element) in lieu of the minimum 35 foot (one story element) to 47.6 foot (two-story element) minimum required by Code in the R-A Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to the February 24, 2021 meeting. Carried 7-0.] **Request for Deferral to the March 3, 2021 Meeting Per Letter from Maura Ziska**

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- e. **Z-20-00306 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of EDITH F. SCHAEFFER TRUST (EDITH F. SCHAEFFER, TRUSTEE), applicant, relative to property located at **1118 N LAKE WAY**, legal description on file, is described below. Section 134 417: The applicant is proposing to construct a 3, 153 square foot, second floor addition onto an existing one story home which will result in a demolition in excess of 50% of its cubic volume. The following variances are being requested: 1) Section 134 843(7): a 9.9 foot south side yard setback in lieu of the 15 foot minimum required In the R B Zoning District; 2) Section 134 843(7): a 10.29 foot north side yard setback in lieu of the 15 foot minimum required in the R B Zoning

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District. 3) Section 134 895(1): A chimney on the south side of the house with a height of 27.27 feet in lieu of the 19.5 foot maximum allowed. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 6-1.] [The Architectural Review Commission approved the project as presented with a condition related to the truck logistics plan. Carried 7-0.]

- f. **Z-20-00307 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: R-B Low Density Residential The application of JOHN MENDELL & MARA RAPHAEL, applicant, relative to property located at **250 QUEENS LN**, legal description on file, is described below. 1) Section 134 229; Section 134 329 and Section 134 893(b): Special Exception with Site Plan Review to allow the renovation of an existing one story residence by demolishing more than 50% cubic on a lot with a width of 77 feet in lieu of the 100 foot minimum required; a depth of 94 feet in lieu of the 100 foot minimum required; and an area of 7,238 square feet in lieu of the 10,000 square foot minimum required in the R B Zoning District. Additionally, the applicant is proposing to construct a 409 square foot one story master bedroom addition and add a cabana and swimming pool. The following variances are being requested: 2) Section 134 893(7): to allow a west side yard setback for the addition and to allow the house to remain non conforming with both having a setback of 5.3 feet in lieu of the 12.5 foot minimum required. 3) Section 134 893(12): to allow the non conforming landscape open space to remain at 28.5% in lieu of the 45% minimum required. 4) Section 134 1757: to allow a swimming pool with a 5.2 foot rear yard setback in lieu of the 10 foot minimum required. 5) Section 134 2179: To eliminate the requirement for the two car garage that is required for a demolition of more than 50% cubic footage of a house on a lot over 75 feet wide. [Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause architectural impact to the subject property. Carried 7-0.] [The Architectural Review Commission approved the project as presented. Carried 7-0.]

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- g. **Z-20-00308 VARIANCE(S)** Zoning District: R-C Medium Density Residential The application of SAMUEL LEHRMAN REVOCABLE TRUST U/A/D/ JUNE 19, 2008 (SAMUEL LEHRMAN, TRUSTEE), applicant, relative to property located at **355 HIBISCUS AVE**, legal description on file, is described below. 1) Section 134 1729(1): A request for a variance to allow a 38 KW generator to be placed in the street side yard setback (Australian Avenue) at 5.6 feet in lieu of the 25 foot minimum required on a corner lot. 2) Section 134 1667: A request for a

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variance for the required wing wall for the generator located in the street side yard setback with a height of 8.58 feet above the crown of the road (on Australian Avenue) in lieu of the 6 foot maximum allowed. 3) Section 134 1667: A request for a variance for the required wing wall for the generator located in the rear yard setback at a height of 8.46 feet above the neighboring property owner's grade to the east in lieu of the 6 foot maximum allowed. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause architectural impact to the subject property. Carried 5-2.] [The Architectural Review Commission approved the project as presented with a condition relating to the landscape. Carried 5-2.]

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- h. **Z-20-00310 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: R-A Estate Residential The application of 310 MEDITERRANEAN RD LLC (JOHN SHAW, MANAGER), applicant, relative to property located at **310 MEDITERRANEAN RD**, legal description on file, is described below. Sections 134-229, 134 329, and 134 843(b): Special Exception and Site Plan Review to allow the renovation of a two story, single family house, including raising the existing house to 7.0 ft NAVD and demolishing more than 50% of the house by cubic square footage, on a non conforming lot, comprised of a portion of platted lots, which is 113.5 feet in depth in lieu of the 150 foot depth required in the R A Zoning District. In connection with the renovation, the following variances are being requested: 1) Section 134 843(a)(5): Request for redevelopment of a single family home with a front yard setback of 26.0 feet in lieu of the 35 foot minimum required. 2) Section 134 1757: Request for installation of a swimming pool with a rear setback of 4.0 feet in lieu of the 10 foot minimum requirement. 3) Section 134 843(a)(7): Request for redevelopment of the house with a building height plane setback ranging from 26.0 to 32.35 feet in lieu of the range of 30.5 to 43.0 feet minimum required. [Applicant's Representative: David E. Klein Esq] [The Architectural Review Commission deferred the project to the February 24, 2021 meeting. Carried 7-0.] **Request for Deferral to the March 3, 2021 Meeting Per Letter Dated January 29, 2021 from David Klein**

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- i. **Z-20-00311 SPECIAL EXCEPTION WITH VARIANCE(S)** Zoning District: C-TS Town Serving Commercial The application of Bricktop's Palm Beach, applicant, relative to property located at **375 S COUNTY RD**, legal description on file, is described below. Section 134 1109 (14): Modification to previously approved Special Exception with Site Plan Review is being requested for Bricktop's restaurant to add

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40 outdoor seats for lunch and dinner in the north courtyard adjacent to the existing restaurant. The additional seating will increase the seating from 150 indoor and patio seats to 190 seats. The current approval allows 52 seats of the 150 seats to be outside on the south patio. Section 134 2176: a variance is being requested to provide zero (0) on site parking spaces in lieu of the 13 parking spaces that are required for the additional 40 outdoor seats. [Applicant's Representative: Maura Ziska Esq]

- j. **Z-20-00318 REPLAT** Zoning District: R-AA Large Estate Residential The application of BLOSSOM WAY HOLDINGS LLC (GERALD A. BEESON, MANAGER), applicant, relative to property located at **1265 S OCEAN BLVD**, legal description on file, is described below. An application to replat lots 1 through 6 and lot 10 of the Blossom Estate Subdivision, 60 Blossom Way, and 1290 S Ocean Blvd into 2 (two) buildable lots. The proposed replat will abandon in total the Blossom Way right-of-way; abandon the current beach access and dedicate a new 8-ft wide beach access along the north side of the proposed replat; terminate the Limited Access Easement along the east side of S Ocean Blvd which provides access to all of the Blossom Estate platted properties via Blossom Way; and incorporate 60 Blossom Way and 1290 S Ocean Blvd properties into the new Lots 1 and 2 of Blossom Estate subdivision. [Applicant's Representative: Maura Ziska Esq]

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2. New Business

- a. **Z-20-00313 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of MATTHEW AND ALEXANDRA MURPHY, applicant, relative to property located at **113 ATLANTIC AVE**, legal description on file, is described below. Section 134 893(b)(13): Request for a variance to allow the construction of a 210 square foot awning on the east side of the existing residence and a 644 square foot awning on the west side of the existing residence which will result in a cubic content ratio of 4.499 cubic feet in lieu of 3.998 existing and the 4.148 maximum allowed. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to the February 24, 2021 meeting. Carried 7-0.] **Request for Deferral to the March 3, 2021 Meeting Per Letter from Maura Ziska**

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- b. **Z-20-00314 SITE PLAN REVIEW** Zoning District: R-B Low Density Residential The application of CASTELO, MANUEL J., Applicants, relative to property located at **1464 N OCEAN BLVD**, legal description on file, is described below. Section 134 893: Site Plan Review to allow the construction of a 4,140 square foot two story, single family residence on a non conforming platted lot

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which is 9,770 in area in lieu of the 10,000 square foot minimum required in the R-B Zoning District and 90 feet in width in lieu of the 100 foot minimum width required In the R-B Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to the February 24, 2021 meeting. Carried 7-0.] **Request for Deferral to the March 3, 2021 Meeting Per Letter from Maura Ziska**

- c. **Z-20-00315 VARIANCE(S)** Zoning District: R-C Medium Density Residential The application of MARTIN V. KATZ AS TRUSTEE OF THE BRAZILIAN PB LAND TRUST DATED OCTOBER 14, 2020, Applicant, relative to property located at **237/239 BRAZILIAN AVE**, legal description on file, is described below. The applicant recently purchased the duplex located at 235/237 Brazilian Avenue and desires to combine the 2 units into one single family residence. The landscaped open space requirement for a single family residence in the R-C Zoning District is 45%. The existing (previously approved) landscaped open space is 30%. The applicant is requesting to keep the landscaped open space "as is" and is requesting the following variances: Section 134-948(11): A request for a variance to allow the landscaped open space to be 30% in lieu of the 45% minimum required when combining the two units from a duplex to a single family residence. Section 134-948(11): A request for a variance to allow the perimeter landscaped open space to be 33% in lieu of the 50% of the 45% minimum required when combining the two units from a duplex to a single family residence. [Applicant's Representative: Maura Ziska Esq]

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- d. **Z-20-00316 VARIANCE(S)** Zoning District: R-AA Large Estate Residential The application of ROBERT A. MERRIL, Applicant, relative to property located at **500 REGENTS PARK**, legal description on file, is described below. The applicant is undertaking the renovation of a landmark home and raising the finished floor of the residence and appurtenances to 9.0 feet NAVD, adding pergolas to the rear of the residence, and adding a bay window to the north of the residence. The following variances are being requested in order to raise the house above the minimum flood elevation and add three additions as follows: 1)Section 134-793 (7): a building height plane of 33.3 feet in lieu of the 40.7 minimum required; 2) Section 134-793(8): a north side yard setback for the 286 square foot pergola to be 11 feet In lieu of the 30 foot minimum required; 3) Section 134-793(8): a south side yard setback for the 276 square foot pergola to be 11.66 feet in lieu of the 30 foot minimum required; 4) Section 134-793(8): a north side yard setback for the 17.5 square foot bay window to be 28 feet in lieu of the 30 foot minimum required; 5) Section 134-793(11): a lot coverage of 41.3% in lieu of the 38%

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existing and the 25% maximum allowed to add the 2 pergolas to the rear of the house; 6) Section 134-1667: a height of the retaining wall/fence combination in the front yard setback of 9.7 feet in lieu of the 6 foot maximum allowed; 7) Section 134-1668: a height of the two piers to be 14.4 feet in lieu of the 8 foot maximum allowed; 8) Section 134-1667: to allow the piers in the front to not have a continuous 3 foot tall hedge in front of it. [Applicant's Representative: Maura Ziska Esq] [Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause architectural impact to the subject landmarked property. Carried 7-0.] [The Landmarks Preservation Commission approved the project as presented. Carried 7-0.]

e. **Z-20-00317 SPECIAL EXCEPTION WITH SITE PLAN** Pg. 304

REVIEW Zoning District: R-A Estate Residential The application of 1063 N OCEAN BLVD LLC (KEVIN DIETERICH, MANAGER), Owner, relative to property located at **1063 N OCEAN BLVD**, legal description on file, is described below. The applicant is proposing a new 18,918 square foot, two story house on a nonconforming lot in the R-A zoning district. Special exception and site plan reviews are required pursuant to Section 134- 843(b) of the Town Code because the project is being proposed on a non platted lot with a minimum lot width of approximately 118.87' in lieu of the 125' width required in the R-A zoning district. [Applicant's Representative: James Crowley Esq] [The Architectural Review Commission approved the project as presented. Carried 5-2.]

f. **Z-20-00319 SITE PLAN REVIEW WITH** Pg. 312

VARIANCE(S) Zoning District: R-C Medium Density Residential The application of AUSTRALIAN OF PALM BEACH CONDOMINIUM (RICK HALLETT, MANAGER), Applicant, relative to property located at **429 AUSTRALIAN AVE**, legal description on file, is described below. The applicant condominium is requesting a modification to their site plan to eliminate 400 square feet of landscaped open space from the northeast corner of their parking lot. The condominium sold a 20 foot by 20 foot parcel to their neighbor to the north so the neighbor could have room to install a generator. This results in two (2) variances being requested: 1) A variance to allow landscaped open space to be 27.1 % in lieu of the 28.3% existing and the 35% minimum required In the R C Zoning District. 2) A variance for an east side yard setback to the new property line of 6.8 feet in lieu of the 20 foot minimum required for multi family use in the R-C Zoning District. [Applicant's Representative: Maura Ziska Esq]

g. **Z-20-00320 VARIANCE(S)** Zoning District: R-A Estate Pg. 315

Residential The application of THE LAKESIDE TRUST, DATED NOVEMBER 19, 2020 (PATRICK C. EMANS, TRUSTEE), Applicants, relative to property located at **8 S LAKE TRL**, legal description on file, is described below. Section 134 843(8): The applicant is requesting approval to demolish the existing 442 square foot dining room and construct a new 458 square foot dining room in the same general location with a 9.5 foot south side yard setback in lieu of the 15 foot minimum required in the R-A Zoning District. Section 134 843(5): The applicant is requesting approval to replace the flat roof of the north accessory building to a pitched roof. This will result in adding height to the building in the front yard setback. A variance is being requested to increase the height in the setback resulting in a front yard setback of 25.7 feet in lieu of the 35 foot minimum required in the R-A Zoning District. [Applicant's Representative: Maura Ziska Esq] [Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause architectural impact to the subject landmarked property. Carried 7-0.] [The Landmarks Preservation Commission approved the project as presented. Carried 7-0.]

- h. **Z-20-00321 VARIANCE(S)** Zoning District: R-C Medium Density Residential The application of BROOKER DAVID E & CATHERINE E, Applicants, relative to property located at **127 ROOT TRL**, legal description on file, is described below. The applicant is undertaking a major renovation project on Root Trail that includes a proposed 2,351.05 two story addition with basement, car lift and loggia. The following variances are being requested in order to build the additions: 1) Section 134-948(5): a front yard setback of 1.1 feet in lieu of the 25 foot minimum required in the R-C Zoning District; 2) Section 134-948(6): a west side yard setback of 4.5 feet in lieu of the 10 foot minimum required in the R-C Zoning District; 3) Section 134-948(6): an east side yard setback of 1.1 feet in lieu of the 10 foot minimum required in the R-C Zoning District; 4) Section 134-948(7): a rear yard setback of 3 feet in lieu of the 15 foot minimum required in the R-C Zoning District; 5) Section 134-948(9): a lot coverage of 49.24% in lieu of the 30% maximum allowed in the R-C Zoning District; 6) Section 134-948(11): a landscaped open space of 40.79% in lieu of the 45% minimum required in the R-C Zoning District; 7) Section 134-1728: allow two air conditioning units with a west side yard setback of 1.75 feet in lieu of the 5 foot minimum required; 8) Section 134-1668: to allow a sliding driveway gate with a 0.67 foot setback from the edge of pavement in lieu of the 18 foot minimum required. 9) Section 134-1757: to allow a 3.5 foot rear yard setback for the proposed swimming pool in lieu of the 10 foot minimum required; 10) Section 134-1757: to allow a 4 foot east side yard setback for the proposed swimming pool in lieu of the 10 foot minimum required [Applicant's Representative:

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Maura Ziska Esq] [Landmarks Preservation Commission
Recommendation: Implementation of the proposed variances will
not cause architectural impact to the subject landmarked
property. Carried 7-0.] [The Landmarks Preservation
Commission approved the project as presented. Carried 7-0.]

- i. **Z-20-00322 SPECIAL EXCEPTION** Zoning District: C-TS Pg. 328
Town Serving Commercial The application of FIRST HORIZON
BANK (DEBRA L. VASILOPOULOS, MARKET
PRESIDENT), Applicant, relative to property located at **180
ROYAL PALM WAY**, legal description on file, is described
below. Section 134 1109(b): A special exception request for
approval to use the subject building totaling 12,940 square feet as
a bank (FIRST HORIZON BANK). The subject tenant space
was most recently used as an IberiaBank branch office with it's
customers and clients being more than 50% town persons in
satisfaction of the requirements of Section 134-229(12).
[Applicant's Representative: Peter Broberg]
- j. **Z-20-00323 VARIANCE(S)** Zoning District: R-A Estate Pg. 331
Residential The application of DESRUISSEAU LAND
TRUST U/A/D 12/6/19 (ANN DESRUISSEAU AND
WILLIAM W. ATTERBURY, CO-TRUSTEES), Applicant,
relative to property located at **800 S COUNTY RD**, legal
description on file, is described below. Without waiving any
previous zoning approvals, the applicant is requesting to demolish
and rebuild (replicate) the existing landmarked residence in
generally the same location. The project includes raising the
finished floor elevation of all of the new and existing structures to
9.0 feet NAVD. The proposed new two story residence will be
19,812.69 square feet, with a 3,398 square foot guest house
located at the northwest corner of the property. The plan also
includes relocation of an existing 225 square foot cabana and
relocation of the 145 square foot 2 story generator building. The
following variances are being requested: 1) 134-843(8): a north
side yard setback ranging from 5.29 feet to 5.75 feet for the new
reconstructed guest house wing (previously referred to as the
boat house) in lieu of the 30 foot minimum required; 2) 134-
843(8): a rear yard setback of 0 feet in lieu of the 15 foot
minimum required for the new reconstructed guest house wing; 3)
134-843(8): a rear yard setback ranging of 0 feet in lieu of the 15
foot minimum required for the new reconstructed main house; 4)
134-843(8): a north side yard setback of 21.13 to 21.67 feet for
the 2 story generator building in lieu of the 30 foot minimum
required; 5) 134-843(10): a height in the main residence and
guest house to be 26.56 in lieu of the 25 foot maximum allowed;
6) Section 134-843(8): a south side yard setback for the main
house addition ranging from 10.79 feet to 15.1 feet in lieu of the

30 foot minimum required. The previously granted variances in Z-20-00261 for the accessory buildings and structures not associated with the main house, guest house wing and generator building remain unchanged and in effect and valid. [Applicant's Representative: Maura Ziska Esq] [The Landmarks Preservation Commission deferred the project to the February 17, 2021 meeting. Carried 7-0.] **Request for Withdrawal Per Letter from Maura Ziska**

IX. ORDINANCES

A. Second Reading

1. ORDINANCE 01-2021 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, As Follows: At Article I, In General, Section 134-2, Amending The Definition Of Supplemental Parking To Allow Supplemental Off-Site Shared Parking In Underground Garages Without The Requirement Of First Meeting All On-Site Required Parking; At Article VI, District Regulations, Sections 134-1107, 134-1157 And 134-1207, Permitted Uses, In The C-TS, C-WA And C-OPI Commercial Zoning District To Allow Supplemental Off-Site Shared Parking In An Underground Parking Garage As A Permitted Use Provided That Said Parking Does Not Exceed 50 Percent Of The Parking Inventory In An Underground Garage And Providing A Sunsetting Provision For Said Use In Those Districts On March 13, 2024, Unless Extended Or Modified By The Town Council; At Article VI, District Regulations, Sections 134-1109, 134-1159 And 134-1209, Special Exception Uses To Cross Reference The Supplemental Parking Regulations In Sections 134-2177 And 134-2182, At Article IX, Off-Street Parking And Loading; Section 134-2177 Location Of Parking Spaces, And Section 134-2182, Location Of Parking Spaces, By Allowing Off-Site Supplemental Parking In An Underground Parking Garage As A Permitted Use In The C-TS, C-WA And C-OPI Zoning Districts And Sunsetting The Provisions In This Ordinance On March 13, 2024, Unless Extended Or Modified By The Town Council; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

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X. ANY OTHER MATTERS

- A. ARCOM's Request to Consider Demolitions
- B. Discussion on Landmark Incentives
- C. Discussion on Permitted Uses versus Special Exception Uses
- D. Discussion on Outdoor Seating Regulations

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XI. ADJOURNMENT

PLEASE TAKE NOTE:

- Note 1:** Please submit written comments/materials to council@townofpalmbeach.com or in person to the Town Clerk's Office, located at Town Hall, 360 South County Road. No written materials received after 3:30 p.m. on the Wednesday 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 3:30 p.m. on Wednesday 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 Technology (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:** All back-up material for the items listed on the agenda are posted to the Town's website and emailed to all Stay Informed subscribers on the Friday before the Town Council meeting. To access the back-up materials and/or subscribe to the Stay Informed list, please visit the Town's website (townofpalmbeach.com).

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 10, 2021

Section of Agenda Resolutions

Agenda Title

Resolution No. 014-2021 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 100 El Bravo Way Meets The Criteria Set Forth In Ordinance No. 2-84, Also Known As Chapter 54, Article IV Of The Code Of Ordinances Of The Town Of Palm Beach; And Designating Said Property As A Town Of Palm Beach Landmark Pursuant To Ordinance No. 2-84, Also Known As Chapter 54, Article IV Of The Code Of Ordinances Of The Town Of Palm Beach.

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated January 26, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▣ **Resolution No. 014-2021**
- ▣ **100 El Bravo Way Designation Report**
- ▣ **Excerpt from the January 20, 2021 Landmarks Preservation Commission Meeting Minutes**
- ▣ **Landmark Designation Procedure**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

From: Wayne Bergman, Director of Planning, Zoning & Building

Re: Landmark Designation of 100 El Bravo Way

Date: January 26, 2021

STAFF RECOMMENDATION

Staff recommends ratification of the property known as 100 El Bravo Way as a Town Landmark.

LANDMARKS PRESERVATION COMMISSION RECOMMENDATION

At the Public Hearing for Designation held January 20, 2021 meeting of the Landmarks Preservation Commission, the Commission voted (7-0) 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 craftsmanship, 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. |

OWNER CONSENT

The property owners, Golden Crate LLC, were properly notified of the hearing before the Landmarks Preservation Commission. The owners are fully supported the designation.

TOWN ATTORNEY REVIEW

Please be advised that the Town Attorney has reviewed Resolution No. 014-2021 relating to 100 El Bravo Way and has approved it as to legal form and sufficiency.

Attachments

cc: Murphy Stillings, LLC

RESOLUTION NO. 014-2021

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 100 EL BRAVO WAY MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH; AND DESIGNATING SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

WHEREAS, pursuant to the provisions of Ordinance No. 2-84, (Chapter 54, Article IV, Code of Ordinances of the Town of Palm Beach) the Landmarks Preservation Commission of the Town of Palm Beach held a public hearing and recommended to the Town Council that certain landmarked 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 amended, pursuant to the provisions of Ordinance No. 2-84, and the provisions of the Town Code described herein, is known as **100 El Bravo Way** and the property to be landmarked is legally described as follows:

El Bravo Park Lot 2

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 adoption 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 described above and 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 ____th day of _____, 2021.

Gail L. Coniglio, Mayor

ATTEST:

Queenester Nieves, CMC, Town Clerk

Page 2 of 2

100 El Bravo Way



DESIGNATION REPORT

January 20, 2021

Landmark Preservation Commission

Palm Beach, Florida

DESIGNATION REPORT

100 El Bravo Way

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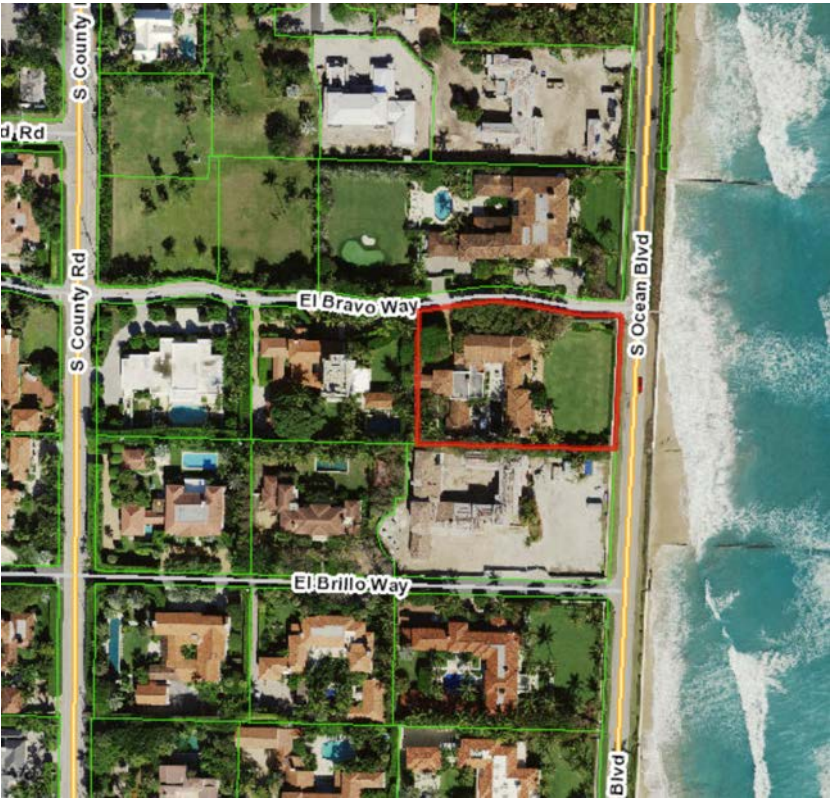
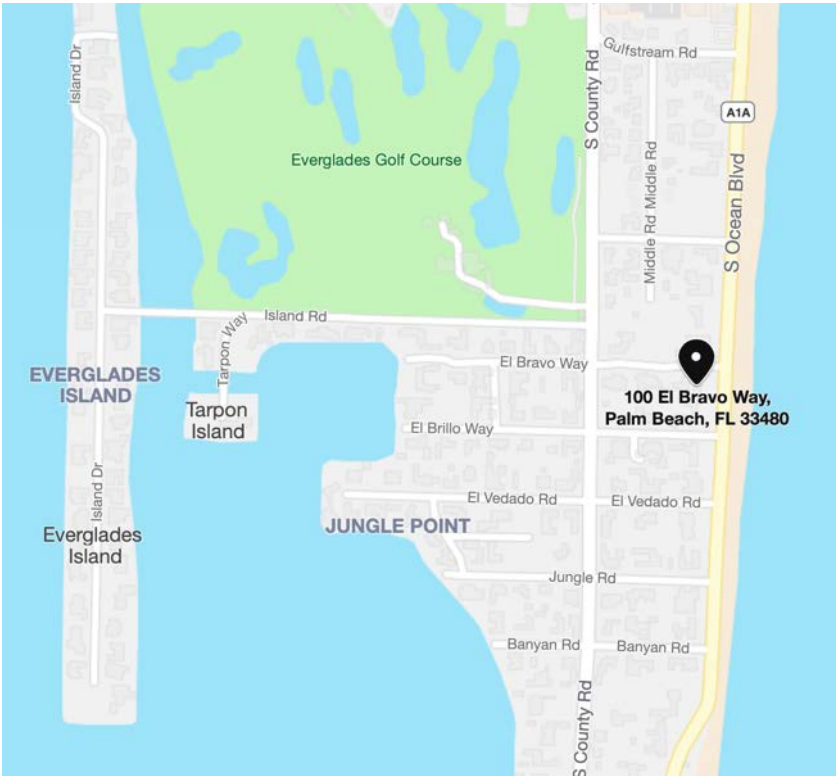
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Report produced by Murphy Stillings, LLC

I. General Information

Location:	100 El Bravo Way Palm Beach, Florida
Date of Construction:	1922-23 1930 - additions
First Owner:	Mr. and Mrs. George Dobyne
Architect:	Marion Sims Wyeth, 1922-1923 Howard Major, 1930 additions
Builder/Contractor:	H.R. Corwin
Present Owner:	Golden Crate LLC
Present Use:	Residential
Present Zoning:	R-A
Palm Beach County Tax Folio Number:	50-43-43-27-05-000-0020
Current Legal Description:	El Bravo Park Lot 2

II. Location Map



III. Architectural Information

The Mediterranean Revival style estate located at 100 El Bravo Way was designed by Marion Sims Wyeth in 1922 and was constructed by H. R. Corwin for Mr. and Mrs. George A. Dobyne in 1923. Constructed during the early part of Palm Beach's 1920s Boom Time Era and known as Casa Beata, the residence sits prominently on a large corner lot at the intersection of South County Road and El Bravo Way in Palm Beach's exclusive Estate Section.



Northeast Corner

Image by K&AA, 10/13/20

Provided by Kirchoff and Associates

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

floors, pecky cypress ceilings and clay barrel tile roofs are typical features of Mediterranean Revival style buildings.

100 El Bravo Way was constructed of hollow clay tile and wood framing surfaced with stucco. The residence features several roof types, which is characteristic of the Mediterranean Revival style. The roofs are covered with barrel tiles and detailed with exposed rafter tails. Wyeth designed the residence in a “U” shape around a courtyard with a servant/garage wing that extended to the west. Over the years alterations and additions have been made to the residence to meet the changing needs of homeowners.

Early additions to the residence by Howard Major in 1930 included a second floor addition on the north façade, a small addition to extend the living room to the south, a two-story service area addition at the west end of the residence, and a detached pool pavilion. In the early 2000s, Major’s pool pavilion was removed, and two additions were constructed that extended the wings of the U-shape to the south. The eastern addition is two-stories and faces South Ocean Boulevard and the southern addition is a one-story loggia. In November 2020, the Landmark Preservation Commission approved plans to renovate the residence, remove the eastern wing that was constructed in the early 2000s, construct additions that are in keeping with the scale and design of the original residence and return some of the original design features of the residence.



East Facade

Image by K&AA, 10/13/20

Provided by Kirchoff and Associates

100 El Bravo Way portrays a simplified elegance and its use of minimal ornamentation, especially compared to other Mediterranean Revival designs, is an important characteristic of the residence. In Barbara Hoffstot's book *Landmark Architecture of Palm Beach* she states, "The absolute simplicity of this house emphasizes the very subtle details."¹ The main entrance to the residence is located on the north façade facing El Bravo Way. The entrance is highlighted by an arched opening which is in contrast to the rectangularity of the other elements of this facade. The arched entranceway is framed by a cast stone surround that was added during renovations that took place in the early 2000s.² A pair of recessed wood doors are located within the archway. Above the archway is a glazed wall niche that was not original to the residence. Additional ornamentation on the north façade includes the pair of balconies above the entrance with decorative metal railings, a wooden balcony, a metal railing at the east end of the second floor, and the column located between a pair of windows.



East Façade

Image by K&AA, 10/13/20

Provided by Kirchoff and Associates

¹ Barbara D. Hoffstot, *Landmark Architecture of Palm Beach*, pg. 255.

² Wyeth's 1922 design for the entrance included a rusticated surround but it was not constructed.

The east façade of the residence faces South Ocean Boulevard. The northern portion of the east façade is the original residence and features important features of Wyeth's design such as the stair tower and a wooden balcony. The southern portion was constructed in the early 2000s. In November 2020, the Landmark Preservation Commission approved replacing the two-story addition at the southern end of the east façade with a one-story addition that will complement Wyeth's design and be in scale with the original residence.



East Facade

Image by K&AA, 10/13/20

Provided by Kirchoff and Associates

An important feature of many Mediterranean Revival style estates is their outdoor spaces and Wyeth was well known for the loggias and courtyards he created. At the rear of this U-shaped house is a courtyard which continues to be an important feature of the residence. The courtyard is accessed through a cloistered loggia on the north side of the courtyard. The loggia was enclosed with French doors and arched transom windows during the 1980s.

In addition to the changes to the residence described previously, additional changes to 100 El Bravo Way occurred over the years. In 1928 a swimming pool was installed. The 1930 Howard Major design included the installation of wood doors at the entry where there had previously been a wood gate, removal of iron grills at several of the windows, and the removal of a small barrel tile pent roof with lantern that was located to the east of the entryway. During the 1980s, alterations designed by Belford Shumate renovated the interior, installed air conditioning, enclosed the courtyard loggia and replaced the trefoil windows at the east end of the north façade with rectangular windows due to structural issues. The additions

constructed in the early 2000s were designed by Smith and Moore Architects and included a large renovation of the residence that provided structural stabilization; installation of the cast stone surround at the main entrance; removal of a chimney and installation of French doors with arched transoms on the east facade; and replacement of windows, doors, and balcony railings. While the structure has undergone changes during its almost 100 years, Wyeth's original design is still evident, the alterations and additions by Howard Major have achieved historic significance in their own right, and the upcoming alterations and additions will restore the character and scale of Wyeth's original design.

IV. Historical Information

By World War I, Henry Flagler had established Palm Beach as the winter capital of American high society. During the early years, most visitors stayed at Flagler's grand Royal Poinciana or Breaker's Hotel. However, by the 1920s, many seasonal visitors built or purchased houses for the winter season and the ensuing building boom radically changed the face of the small community with grand estates, fine commercial corridors and numerous platted subdivisions.

El Bravo Park was originally a 27-acre ocean to lake property with 700 feet fronting both the ocean and the lake. Frank H. Clement, a prominent Palm Beach winter resident and engineer of national reputation, purchased the property with the intention of creating his own estate. However, by 1920, he "responded to the demand for villa sites" and began making significant road, underground and landscape improvements.³ Newspaper articles in the early 1920s praised the high standards set for El Bravo Park, calling it a 'bright jewel in a brilliant setting'. Divided into only 36 lots and two streets (El Bravo Way and El Brillo Way), each lot was not offered for sale but rather "available for purchase" under conditions that required the owner to construct "a house of a type to correspond with the general scheme of the fine improvements."⁴ In 1921, Addison Mizner and Marion Sims Wyeth were the first two architects to design villas in El Bravo Park. Both houses were designed in the Mediterranean Revival style that had become the style most in vogue for new Palm Beach architecture in the 1920s.

In 1922, Mr. and Mrs. George A. Dobyne of Beverly Farms, Massachusetts, commissioned Marion Sims Wyeth to construct a residence at 100 El Bravo Way,

³ Palm Beach Post, March 25, 1920, "Frank H. Clement to Spend \$175,000 in Developing Lake-To-Ocean Tract."

⁴ Palm Beach Post, February 20, 1921, "El Bravo, Palm Beach Development Is Bright Jewel in Brilliant Setting."

which they named “Casa Beata”. The building permit was issued in December of 1922 and the construction took place in 1923 by H. R. Corwin.⁵



El Bravo Elevation (North Facade)
Reflects 1923 Residence

Image from the Historical Society of Palm Beach County and provided by Kirchoff and Associates

The Dobyne's began spending the winter in Palm Beach at the Royal Poinciana Hotel and were prominent members of the Palm Beach winter colony. George A. Dobyne was the grandson of James Bell, a Shakespearian actor, and while he studied under the actor Richard Mansfield he did not act professionally. Rather he followed his father into the shoe machinery business and is credited with inventions in the line.⁶ He married Martha Craven who was a professional actress with the Augustin Daly Company.⁷ The Dobyne's were very active in the social life in Palm Beach and especially in the arts. The Dobyne's together with their daughter and son-in-law, Mr. and Mrs. John Charles Thomas, founded and sponsored the Romany Chorus and Orchestra in the late 1920s.

⁵ Town of Palm Beach Building Permits, 100 El Bravo Way

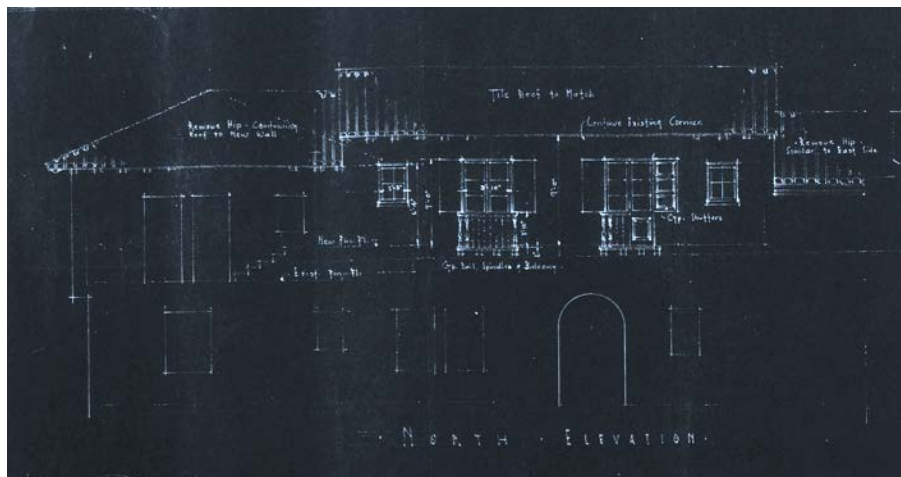
⁶ Palm Beach Post, April 12, 1947, "George Dobyne Services Wait Arrival of Son"

⁷ Palm Beach Post, January 25, 1955, "Prominent Resort Member Succumbs"

The Romanies, as they were known, dressed in gypsy-like clothing, sang and performed for audiences on the island from 1930 to 1942. The troupe was comprised of 70 vocalists and an orchestra. They drew large audiences and considered themselves a “tribe” with the credo “One for all and all for Romany” and all for “the promotion of artistic culture in this community.” The preformed at Whitehall, The Everglades Club, The Bath and Tennis Club, and other locations in Palm Beach and West Palm Beach.⁸

The Dobyne's home was the scene of many social gatherings in the Town. Rehearsals, board meetings and parties for The Romany Chorus were often hosted by the Dobnye's at the residence. They also held other gatherings such as a yearly field day on the ocean front lawn, and after the swimming pool was constructed a "bathing beauty contest" was held in 1929. An article in the *Palm Beach Daily News* on March 29, 1930, stated that Casa Beata means "'happy house' and all who have ever congregated under the Dobyne's hospitable roof will bear witness that the house is well named".⁹

The 1930s was a period of transition in the Town of Palm Beach. The building boom of the 1920s had ended and the Island was experiencing a period of economic instability, including a building slowdown that lasted until after World War II. The architecture in Palm Beach was also transitioning during the 1930s and less elaborate styles of architecture were being explored. The changing architectural preferences of the time as well as his own architectural philosophy may have influenced Howard Major's 1930 design for alterations and additions to the residence.



North Façade Addition
by Howard Major, 1933

⁸ Palm Beach Daily News, November 30, 2019, “Palm Beach History: Islanders Had a Deep Romance with the Romanies”

⁹ Palm Beach Daily News, March 29, 1930, "Beauty Qualities of the Resort Taken into Consideration as Names Are Chosen for Homes"

The Dobnye's lived in the residence until 1941 when they sold the residence to Dr. and Mrs. Norman Ditman. The Ditman's were from New York where Dr. Ditman had a distinguished medical career. In 1908, he authored a treatise on preventative medicine entitled *Home Hygiene and Prevention of Disease*, and he was a proponent of many public health initiatives. The Ditman's began wintering in Palm Beach in 1936 and while Dr. Ditman had planned to spend his winters in retirement, due to the wartime conditions he decided to continue his practice of medicine in the area. The Ditman's were active in the Palm Beach social scene and were members of the Everglades Club and the Bath and Tennis Club.¹⁰

In 1969, Mr. and Mrs. George Steele purchased 100 El Bravo Way. Mr. Steele had an interesting and varied life. After graduating from Yale, School of Fine Arts as an architecture student, he opened his own architecture firm on Madison Avenue and designed numerous residences in New York and New England before giving up architecture to pursue a career as an impressionist and abstract painter. In 1952, he converted to Catholicism and joined a monastery for a period of time before marrying in 1962. His wife, Martha, was also an artist and the Steele's held events at their 100 El Bravo Way home to showcase their art with all of the proceeds from the sale of the artwork going to charity.¹¹ The Steele's passed away in 1979 and following their deaths 100 El Bravo Way was purchased by Samuel and Victoria Newhouse in 1980.

The Newhouse's were part of the American publishing, broadcasting and media empire that his father, Samuel Newhouse Sr., began, Advanced Publications. In 1975, Samuel Newhouse took over as chairman of Conde Nast and continued in that role for 40 years.¹² In 1980, the Newhouse's commissioned Belford Shoumate to design renovations, restorations and repairs to 100 El Bravo Way.

In 2000, the Newhouse's sold the property and over the past 20 years there have been four owners. The Tropin's who owned the property from 2003-2015 carried out several large additions and made alterations to the residence that were designed by Smith and Moore Architects. The property was purchased by Golden Crate LLC in 2020. They are planning to restore much of the original structure, remove later additions, and construct additions compatible in design and scale with the historic structure.

¹⁰ Palm Beach Post, December 16, 1944, "Dr. Ditman Dies Suddenly at Palm Beach Residence"

¹¹ Palm Beach Daily News, May 3, 1979, "Artist George Steele, 76, Dies of Carbon Monoxide Poisoning"

¹² Forbes, March 20, 2017, "2017 Billionaires Net Worth, #109 Samuel Irving Newhouse, Jr."

V. Architects Biographies

Marion Sims Wyeth

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

Wyeth was born in 1889 in New York, a son of Florence Nightingale Sims and Dr. John Allan Wyeth. Dr. Wyeth was a Civil War poet, surgical pioneer, and founder of New York's Polyclinic Hospital, the first postgraduate medical school in the United States. Marion's grandfather, Dr. James Marion Sims, founded the field of gynecology and the first woman's hospital in history. Marion Sims Wyeth began his architectural studies at Princeton University and completed his classic training at the École des Beaux-Arts in Paris in 1914. At the time, the École was considered the one of the finest schools in the world. It was a style of education based on studying the classics, mostly Roman architecture. After completing school, Wyeth served as secretary to the U.S. Ambassador in Rome. Upon his return to New York, Wyeth became associated with the architectural offices of Bertram Grosvenor Goodhue and later with Carrere and Hastings, the firm that designed Whitehall for Henry Flagler.

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

The socially popular Wyeth was a prolific craftsman and more than 100 of his designs have graced the Island, including eight built on El Brillo Way. Some of his well-known Palm Beach designs include Qui Si Sana, Casa Juanita, Hogarcito, Casa de Los Arcos, Vita Serena, Southwood and the Bethesda by the Sea rectory. His largest and most impressive project was Cielito Lindo, a 45,000-square-foot Spanish Moorish-Revival-style mansion built for James Donohue and Jessie Woolworth Donohue in 1927. In 1946-1947, it was sold to developers, who split

the property and created five houses. And while Joseph Urban is credited with Mar-a-Lago, Wyeth's association with the project was essential for its original design and completion. Wyeth also had an impressive list of prominent works outside of Palm Beach. Some of these include Good Samaritan Hospital and the Norton Gallery of Art in West Palm Beach, the Governor's Mansion in Tallahassee, and Doris Duke's Shangri La in Honolulu.

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

Howard Major

Howard Brougham Major (1882–1974) was born in New York, the grandson of a lithographer and the son of a printer's artist. Major studied at the Pratt Institute and the New York Atelier of Beaux-Arts. As the chief draftsman for architect Charles Alonzo Rich, he designed a building at Dartmouth College and country houses for Long Island socialites. He opened his own firm on Fifth Avenue and married Katherine Clark (1899-1958) in 1920, with whom he traveled overseas during most of 1920 and 1921. In 1923 he joined Addison Mizner's firm and began his Palm Beach career by designing Spanish style houses for Nelson Odman and Richard Cowell in Palm Beach, and Howard Whitney in Gulfstream.

Although Major started his Florida career in the Spanish style, he soon became disenchanted with the results and opened his own architectural office. In a 1926 article for Architectural Forum entitled "A Theory Relating to Spanish and Italian Houses in Florida," he suggested that other styles of architecture were more appropriate to the Florida climate and the "national character." Major also was the author of a book entitled Domestic Architecture of the Early American Republic: The Greek Revival. He favored the Greek Revival style and was also a proponent of the British Colonial style and all its variants, including the Monterey style.

In Palm Beach Howard Major is best known for designing "Major Alley," a small complex of six Bermuda style town homes constructed on Peruvian Avenue in 1925. These homes are currently listed as Landmarks of the Town of Palm Beach. He also completed a home for Charles Merrill called "Merrill's Landing" that has been demolished. After the Depression, Major's more subdued style became more popular when showplaces may have been considered in poor taste. Some examples

of Major's residential work that are protected by the Palm Beach Landmarks Preservation Commission, include Major Alley at 417 Peruvian Away, 235 Banyan Road, 234 El Bravo Way, 124 Via Bethesda, 745 Hi-Mount Road, 270 Queens Lane, 135 El Vedado Road, 224 and 228 Phipps Plaza, and 421 Peruvian Avenue. In 1929, Major renovated one of the earliest Palm Beach houses to be landmarked, the Vicarage on North Lake Way built in 1897, and the Majors lived there for many years.

Besides his work in Palm Beach, Howard Major did projects in Hobe Sound and Gulfstream, Florida. In Naples he laid out the development of Port Royal and designed the "Church of Trinity-by-the-Sea." In Nassau, Bahamas, Major designed the Porcupine Club and residences for Arthur Vining Davis and Edward Lynch.

The following excerpt from Gene Pandula's "Architects on Architects Talk" provides additional insight into the architectural career of Howard Major:

"Like Addison Mizner, architect Howard Major designed country homes on Long Island, N.Y., in the early days of his career before opening shop in Palm Beach. Major began working for Mizner's Worth Avenue office in 1923 and moved to Palm Beach two years later. The two could not have been more different in their professional approach and preferences. Mizner learned architectural design through an apprenticeship; Major gained a formal education in architecture in New York. Mizner was known for having a pet monkey and a more freewheeling design process. Though Mizner's design of The Everglades Club and other projects made Mediterranean Revival style the dominant style in Palm Beach, Major carved out a successful career designing homes in the Greek Revival, Georgian and British Colonial styles.

Major was a cerebral person. He did research. He formed theses and opinion and his practice was rigorous in putting these ideas forward. Major's book, The Domestic Architecture of the Early American Republic: The Greek Revival, was published in 1926. He believed very strongly that America had a style of architecture. Major had two reasons for writing the book. One was to bring to light the fallacy of the impression that the 19th century was devoid of artistic expression. And the second was to place before the public irrefutable evidence that Greek Revival is America's national expression in architecture — the classic revival of the Greece and Rome styles perhaps more accurately called the federal style. Major didn't use the latter label because he didn't want to confuse people.

*Though Major also designed Mediterranean Revival style houses in Palm Beach, he was the first to criticize it. The style became popular in Palm Beach but he believed it was not being refined for the United States from its origins. And he bases those comments on travels to Cuba, to Spain, to Portugal and other locales where he was very studious about crafting articles about essentially Spanish architecture. He claims it was not a simple matter for the Anglo-Saxon to assimilate to this form of architecture. Major even had a series of eight articles published in The Palm Beach Post dissecting Mediterranean Revival style that were designed to prod his cohorts into better design. He wanted architectural restraint.*¹³

VI. Statement of Significance:

The residence at 100 El Bravo Way is significant as a good example of the work of two of Palm Beach's most important architects Marion Sims Wyeth and Howard Major. The Mediterranean Revival style home is representative of the 1920s Boom Time Era in Palm Beach as interpreted by Wyeth and the Great Depression Era as renovated by Major. The residence is also significant as it exemplifies the early development occurring in the Estate Section of Palm Beach during the early 1920s, the changing architectural preferences of the 1930s, as well as the cultural and social history of the Town.

VII. Criteria for Designation

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

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

100 El Bravo Way reflects the cultural, economic and social history of the Town of Palm Beach during the 1920s and 1930s. Constructed during the early years of the

¹³ Rogers, David. "Howard Major 'Rigorous' in Putting Idea Forward, Pandula says in Architect's Talk." Palm Beach Daily News. 22 January 2011.

1920s Land Boom and renovated during the Great Depression Era the residence exemplifies these important and changing times in Palm Beach's history. The home was also the location for many well publicized social gatherings.

(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.”

100 El Bravo Way is a good example of the Mediterranean Revival style popularized in Palm Beach during the Boom Time Era of the 1920s and still recognized as the Palm Beach style. The house embodies distinctive characteristics of the Mediterranean Revival style, and it is valuable as an example how an architectural style was interpreted by one of Palm Beach's most prominent architects, Wyeth, in the early 1920s and then renovated by another important architect, Major, following the land bust and during the Great Depression.

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

100 El Bravo Way was designed by Marion Sims Wyeth, one of Palm Beach's most important architects, in 1922. Wyeth's influential career spanned more than fifty years and he is recognized as one of the creators of the Mediterranean Revival “Palm Beach” style. The residence's prime location on the corner of South Ocean Boulevard and El Bravo Way in Palm Beach's Estate Section enhances its value as one of Wyeth's notable works.

The residence is also representative of design work of Howard Major. Howard Major was one of the premier architects in Palm Beach. He was known for breaking away from the Mediterranean Revival style and promoting through both his writings and designs other styles that he believed were more appropriate for the south Florida climate and his Palm Beach clientele. His additions and renovation for 100 El Bravo Way was his interpretation of the Mediterranean Revival style for this residence in 1930.

VIII. Bibliography

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--- Palm Beach County: An Illustrated History. Northridge, California: Windsor Publications, Inc., 1987.

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Sanborn Insurance Map of Palm Beach. New York: Sanborn Map Co., 1919 and 1924 updated to 1946

Town of Palm Beach. Building Permits and Microfiche Records 1919– 2020.

West Palm Beach City Directories. Palm Beach Section, 1916-1975

IX. Florida Master Site File Form

Page 1

☐ Original
☒ Update



HISTORICAL STRUCTURE FORM FLORIDA MASTER SITE FILE Version 5.0 3/19

Shaded Fields represent the minimum acceptable level of documentation.
Consult the *Guide to Historical Structure Forms* for detailed instructions.

Site#8 **PB06500**
Field Date 12-11-2019
Form Date 9-28-2020
Recorder # MAS

Site Name(s) (address if none) 100 El Bravo WAY Multiple Listing (DHR only) _____
Survey Project Name Palm Beach Historical Site Survey Survey # (DHR only) _____
National Register Category (please check one) ☒ building ☐ structure ☐ district ☐ site ☐ object
Ownership: ☐ private-profit ☐ private-nonprofit ☒ private-individual ☐ private-nonspecific ☐ city ☐ county ☐ state ☐ federal ☐ Native American ☐ foreign ☐ unknown

LOCATION & MAPPING

Street Number 100 Direction _____ Street Name El Bravo Street Type Way Suffix Direction _____
Address: _____
Cross Streets (nearest / between) _____
USGS 7.5 Map Name PALM BEACH USGS Date 1986 Plat or Other Map _____
City / Town (within 3 miles) Palm Beach In City Limits? ☒ yes ☐ no ☐ unknown County Palm Beach
Township 43S Range 43E Section 27 1/4 section: ☐ NW ☐ SW ☐ SE ☐ NE Irregular-name: _____
Tax Parcel # 50434327050000020 Landgrant _____
Subdivision Name EL BRAVO PARK Block 000 Lot 0020
UTM Coordinates: Zone ☐ 16 ☐ 17 Easting Northing
Other Coordinates: X: _____ Y: _____ Coordinate System & Datum _____
Name of Public Tract (e.g., park) _____

HISTORY

Construction Year: 1922 ☐ approximately ☐ year listed or earlier ☐ year listed or later
Original Use Private Residence (House/Cottage/Ca From (year): 1922 To (year): 2020
Current Use Private Residence (House/Cottage/Ca From (year): 1922 To (year): 2020
Other Use _____ From (year): _____ To (year): _____
Moves: ☐ yes ☒ no ☐ unknown Date: _____ Original address _____
Alterations: ☒ yes ☐ no ☐ unknown Date: _____ Nature windows
Additions: ☐ yes ☒ no ☐ unknown Date: _____ Nature likely side addition
Architect (last name first): Wyeth, Marion Sims Builder (last name first): _____
Ownership History (especially original owner, dates, profession, etc.)
EL SUENO LLC

Is the Resource Affected by a Local Preservation Ordinance? ☐ yes ☒ no ☐ unknown Describe _____

DESCRIPTION

Style Mediterranean Revival Exterior Plan Irregular Number of Stories 1-2
Exterior Fabric(s) 1. Stucco 2. _____ 3. _____
Roof Type(s) 1. Hip 2. Gable 3. _____
Roof Material(s) 1. Barrel tile 2. _____ 3. _____
Roof secondary strucs. (dormers etc.) 1. _____ 2. _____

Windows (types, materials, etc.)

divided wood replacement French doors, some fanlights & keystones, small divided

Distinguishing Architectural Features (exterior or interior ornaments)

wide chimney, multiple hip masses w overhang, balconies (some w stone brackets)

Ancillary Features / Outbuildings (record outbuildings, major landscape features; use continuation sheet if needed.)

faces water, corner lot, masonry privacy wall, semicircular drive

DHR USE ONLY

OFFICIAL EVALUATION

DHR USE ONLY

NR List Date _____

☐ Owner Objection

SHPO – Appears to meet criteria for NR listing: ☐ yes ☐ no ☐ insufficient info Date _____ Init. _____
KEEPER – Determined eligible: ☐ yes ☐ no Date _____
NR Criteria for Evaluation: ☐ a ☐ b ☐ c ☐ d (see *National Register Bulletin* 15, p. 2)

DESCRIPTION (continued)

Chimney: No. 1 Chimney Material(s): 1. Stucco 2. _____ 3. _____
 Structural System(s): 1. Wood frame 2. _____ 3. _____
 Foundation Type(s): 1. Continuous 2. _____
 Foundation Material(s): 1. Concrete, Generic 2. _____

Main Entrance (stylistic details)

obscured, deeply recessed

Porch Descriptions (types, locations, roof types, etc.)

stone surround, masonry steps w statues

Condition (overall resource condition): ☐ excellent ☒ good ☐ fair ☐ deteriorated ☐ ruinous

Narrative Description of Resource

This 1922 Mediterranean Revival style building is in good condition. It was designed by Marion Sims Wyeth in 1922 and was altered by Howard Major in 1928.

Archaeological Remains _____ ☐ Check if Archaeological Form Completed

RESEARCH METHODS (select all that apply)

☒ FMSF record search (sites/surveys) ☐ library research ☐ building permits ☒ Sanborn maps
☐ FL State Archives/photo collection ☐ city directory ☐ occupant/owner interview ☒ plat maps
☒ property appraiser / tax records ☐ newspaper files ☐ neighbor interview ☐ Public Lands Survey (DEP)
☒ cultural resource survey (CRAS) ☐ historic photos ☐ interior inspection ☐ HABS/HAER record search
☒ other methods (describe) Town Staff

Bibliographic References (give FMSF manuscript # if relevant, use continuation sheet if needed)

OPINION OF RESOURCE SIGNIFICANCE

Appears to meet the criteria for National Register listing individually? ☐ yes ☐ no ☒ insufficient information

Appears to meet the criteria for National Register listing as part of a district? ☒ yes ☐ no ☐ insufficient information

Explanation of Evaluation (required, whether significant or not; use separate sheet if needed)

More information is needed to determine individual eligibility; it does meet district criteria based on its architectural features and association within the Town of Palm Beach.

Area(s) of Historical Significance (see *National Register Bulletin 15*, p. 8 for categories: e.g. "architecture", "ethnic heritage", "community planning & development", etc.)

1. Community planning & developm 3. _____ 5. _____
 2. _____ 4. _____ 6. _____

DOCUMENTATION

Accessible Documentation Not Filed with the Site File - including field notes, analysis notes, photos, plans and other important documents

1) Document type _____ Maintaining organization _____
 Document description _____ File or accession #'s _____
 2) Document type _____ Maintaining organization _____
 Document description _____ File or accession #'s _____

RECORDER INFORMATION

Recorder Name Patricia Davenport-Jacobs

Affiliation Environmental Services, Inc.

Recorder Contact Information 7220 Financial Way, Suite 100, Jacksonville, FL 32256/9044702200/pdavenport
 (address / phone / fax / e-mail)

Required Attachments

❶ USGS 7.5' MAP WITH STRUCTURE LOCATION CLEARLY INDICATED

❷ LARGE SCALE STREET, PLAT OR PARCEL MAP (available from most property appraiser web sites)

❸ PHOTO OF MAIN FACADE, DIGITAL IMAGE FILE

When submitting an image, it must be included in digital AND hard copy format (plain paper grayscale acceptable). Digital image must be at least 1600 x 1200 pixels, 24-bit color, jpeg or tiff.

I. DESIGNATION HEARINGS

Item 1: 100 El Bravo Way

Owner: Golden Crate LLC

Call for disclosure of ex parte communication: Disclosure by Mses. Coleman and Damgard.

Mr. Silvin asked for confirmation on proof of publication. Ms. Churney provided confirmation.

Emily Stillings, MurphyStillings, LLC, testified to the architecture and history for this Mediterranean Revival style home. Ms. Stillings pointed out the design features of this residence. Ms. Stillings testified that the building met the following criteria for designation as a landmark:

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 of the study of a period, style, method of construction or use of indigenous materials or craftsmanship; and,

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

Mr. Silvin inquired why the home did not meet criteria number 2. Ms. Stillings responded.

Motion made by Mr. Segraves and second by Ms. Patterson to make the designation report for 100 El Bravo Way part of the record. Motion carried unanimously.

Mr. Silvin called for any public comment on the designation. There were no comments heard at this time.

Many of the Commissioners were thankful that the owners recommended the residence for landmarked status and were very supportive of the designation.

Motion made by Ms. Patterson and seconded by Ms. Albarran that 100 El Bravo Way be recommended to the Town Council for designation as a landmark of the Town of Palm Beach, and that the criteria 1, 3 and 4, as presented, be made a part of the record. 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 10, 2021

Section of Agenda Resolutions

Agenda Title

Resolution No. 017-2021 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 127 Root Trail 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

ATTACHMENTS:

- ▣ **Memorandum Dated January 26, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▣ **Resolution No. 017-2021**
- ▣ **127 Root Trail Designation Report**
- ▣ **Excerpt from the January 20, 2021 Landmarks Preservation Commission Meeting Minutes**
- ▣ **Landmark Designation Procedure**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

From: Wayne Bergman, Director of Planning, Zoning & Building

Re: Landmark Designation of 127 Root Trail

Date: January 26, 2021

STAFF RECOMMENDATION

Staff recommends ratification of the property known as 127 Root Trail as a Town Landmark.

LANDMARKS PRESERVATION COMMISSION RECOMMENDATION

At the Public Hearing for Designation held January 20, 2021 meeting of the Landmarks Preservation Commission, the Commission voted (7-0) 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 craftsmanship, and, |

OWNER CONSENT

The property owners, Catherine and David Brooker, were properly notified of the hearing before the Landmarks Preservation Commission. The owners are fully supported the designation.

TOWN ATTORNEY REVIEW

Please be advised that the Town Attorney has reviewed Resolution No. 017-2021 relating to 127 Root Trail and has approved it as to legal form and sufficiency.

Attachments

cc: Murphy Stillings, LLC

RESOLUTION NO. 017-2021

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 127 ROOT TRAIL 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 a public hearing and recommended to the Town Council that certain landmarked 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 amended, pursuant to the provisions of Ordinance No. 2-84, and the provisions of the Town Code described herein, is known as **127 Root Trail** and the property to be landmarked is legally described as follows:

**Ocean Park H.W. Robbins Addition SLY 1.2 Feet of West 10.4 Feet Of Lot 4 & SLY
1.7 Feet of East 10 Feet of Lot 5 & Roots Subdivision PB1P22 West 12 Feet of Lot 2 &
East 38 Feet of Lot 3**

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 adoption 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 described above and 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 ____th day of _____, 2021.

Gail L. Coniglio, Mayor

ATTEST:

Queenester Nieves, CMC, Town Clerk

127 Root Trail



DESIGNATION REPORT

January 20, 2021

Landmark Preservation Commission

Palm Beach, Florida

DESIGNATION REPORT

127 Root Trail

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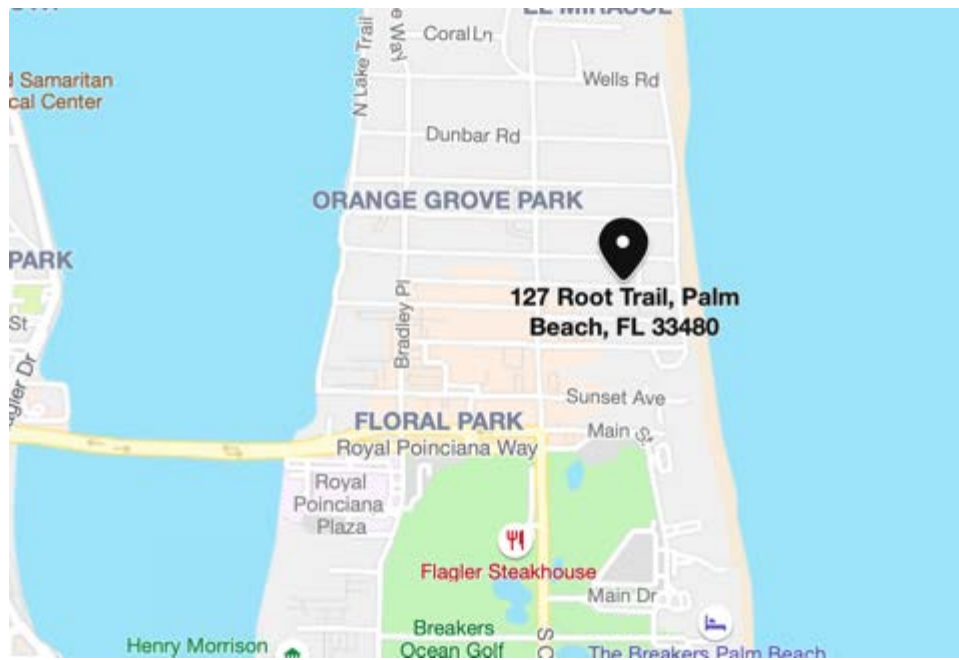
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Report produced by MurphyStillings, LLC

I. General Information

Location:	127 Root Trail Palm Beach, Florida
Date of Construction:	ca. 1905
Architect:	No Architect Listed; Likely Builder Designed & Constructed
Present Owner:	Catherine and David Brooker
Present Use:	Residential
Present Zoning:	R B
Palm Beach County Tax Folio Number:	50-43-43-14-10-003-0042
Current Legal Description:	Ocean Park H.W. Robbins Addition SLY 1.2 Feet of West 10.4 Feet Of Lot 4 & SLY 1.7 Feet of East 10 Feet of Lot 5 & Roots Subdivision PB1P22 West 12 Feet of Lot 2 & East 38 Feet of Lot 3

II. Location Map



III. Architectural Information

The house located at 127 Root Trail is a two-story Frame Vernacular dwelling built circa 1905 during the Pioneer Era in Palm Beach.¹ It is located on the north side of Root Trail between North Ocean Boulevard and North County Road. Root Trail is a narrow one-way street running west to east with beach access at the eastern terminus.

Frame Vernacular buildings represent the most typical method of construction used by South Florida's early pioneers. This form of architecture does not adhere to a particular school of design and generally utilizes locally available materials. Frame Vernacular dwellings are simple wood frame buildings which are the product of the builder's experience and response to the environment. The buildings are typically rectangular and rest on piers. Some early buildings feature vertical board and batten siding or shingles. Wood double-hung sash windows are typical and ornamentation is sparse, including wood shingles, overhanging eaves, rafter tails, corner boards, porch columns and vents in the gable ends.

127 Root Trail is a two-bay wide, L-shaped frame dwelling covered with coursed wood shingles and resting on masonry piers. The first story front façade of the main block features the front entry offset to the west and a two-over-two double-hung sash window east of this entry. All windows in the dwelling, except for the stained-glass window, are currently two-over-two double-hung sash. A three-rise



¹ Palm Beach Post Then and Now: Palm Beach Panorama. Palm Beach Post, March 24, 1996. This article includes a 1905 photo where this house is likely shown in the background

brick staircase leads to the front entry featuring a wood-paneled door. The second story front facade has a pair of windows centered on the façade and above these windows is a small rectangular stained-glass window in the gabled end. The south facing wing of the dwelling features a secondary entry door and single windows on the first and second story.

The east and west façades include four windows symmetrically placed on the first and second stories. The rear, or north façade, features one window on both the first and second stories, a rear entry door, a small porch, a vent in the gable end and a flat roof extension with an overhanging eave and rafter tails. Additional ornamentation consists of simple wood window surrounds, corner boards and a wood cornice over the front entry. The intersecting gable roofs are covered with composition shingles.

127 Root Trail has not had any significant additions or alterations in its approximate 115 year history, although there is speculation that there may have originally been a front porch.² There have been repairs to the dwelling and the roofing material was replaced at least once, but the dwelling is mostly in its original condition.

IV. Historical Information

The houses on Root Trail are distinctive in Palm Beach as they are the oldest remaining collection of dwellings from the Pioneer Era. Root Trail is a narrow block-long street with mostly small frame vernacular cottages built side by side on small lots often very close to the street. It is a unique enclave historically known for its resident artists.

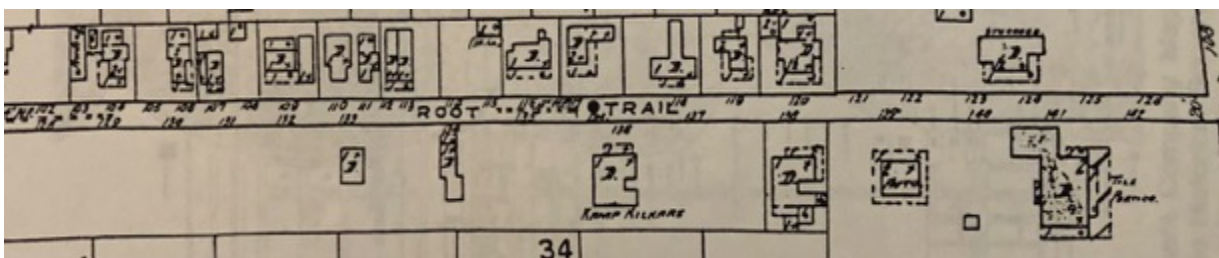
127 Root Trail was built circa 1905.³ The date is presumed from a 1905 photograph of Root Trail where this house appears to exist east of the women and dwelling in the forefront. The house may actually have an earlier date or later date, but it was built prior to 1919 as it is shown on the 1919 Sanborn Insurance Map. House names were very popular in Palm Beach in the early years and City Directory research suggests that 127 Root Trail was named De La Mar.

² Ibid

³ Ibid



Root's Subdivision, which originally consisted of 18 lots on the north side of Root Trail, is one of the oldest subdivisions in Palm Beach. The first recorded transaction in Root's Subdivision took place in 1903 when Palm Beach was still part of Dade County and eight years prior to the Town of Palm Beach being incorporated. Root's Subdivision and Root Trail were both named for Enoch Root, an early Pioneer of Palm Beach.⁴ Enoch Root was an artist and many of the houses on Root Trail were historically owned or rented by artists. The houses are unpretentious and have Pioneer Era Florida charm not found in other areas of Palm Beach.



1919 Sanborn Insurance Map

⁴ Records of the Clerk of the County Court indicate Enoch Root was involved in the initial transactions on Root Trail and The Lake Worth Pioneer Association Records indicate Root Trail was named after Enoch Root. A May 2, 1988, Palm Beach Post Newspaper Article, "Root Trail: A Neighborhood Unto Itself," quotes a resident stating that Root Trail was named after Root's Pineapple Farm., however there is no evidence supporting this claim.



Historical Photograph of Root Trail by E.W. Hazard – Circa 1905
Palm Beach Panorama, published by the Henry Morrison Flagler Museum

It is not clear when the configuration of the Root Subdivision Lots 2 and 3 changed but when the O’Sullivan’s purchased the property from Alice Carr in the 1930s the lot description was Roots Subdivision West 12 feet of Lot 2 and East 38 feet of Lot 3.⁵ Annie C. O’Sullivan, who also owned the property next door at 135 Root Trail, lived on Root Trail from the 1930s until her death in 1973. Annie O’Sullivan moved to Palm Beach in 1919 and was one of the earliest members of the Palm Beach Chamber of Commerce. She served on the alter guild of Bethesda-by-the-Sea Episcopal Church, was president of the Palm Beach High School PTA and was a member of the Daughters of the Confederacy and Daughters of the American Revolution. Werner Nordhoff purchased the house from the O’Sullivan’s in 1974 before selling it to Tod Draz in 1978. Tod Draz was a famous fashion illustrator who restored and decorated 127 Root Trail as well as 131 and 133 Root Trail which were smaller buildings on the property. At this time the houses were known as the Three Bears with 127 Root Trail known as Papa Bear.⁶

127 Root Trail was purchased in 2020 by the current owners, Catherine and David Brooker. The Brookers are planning additions and alterations to the dwelling that include adding front and back porches, a two-story, two-bay wide front gabled wing closely matching the current main block of the dwelling. This addition will change the house from an L-shape to a U-shape. The windows, doors, foundation, roof and mechanical systems will all be updated to meet current building code standards.

⁵ The current property description is Ocean Park H.W. Robbins Addition SLY 1.2 Feet of West 10.4 Feet Of Lot 4 & SLY 1.7 Feet of East 10 Feet of Lot 5 & Roots Subdivision PB1P22 West 12 Feet of Lot 2 & East 38 Feet of Lot 3; This adds a small 1.2 feet of Lot 4 and 1.7 feet of Lot 5 in the rear that is located in the Ocean Park H.W. Robbins Addition.

⁶ The small house west of 127 Root Trail was Mama Bear and the house in the rear was Baby Bear. Both houses have since been demolished.

Enoch Root

Born in Canaan, Connecticut, Enoch Root moved to Moline, Illinois, at the age of fourteen. Five years later he traveled to Europe to spend two years studying art. Upon returning to America he spent two years with his brothers as a gold miner in Colorado. In 1862, Root enlisted in the Third Colorado Infantry and was promoted to Captain of Company H, 68th Regiment, U.S. Infantry. He stayed active in service until the end of the Civil War.

In 1867, Root enrolled in the Chicago Academy of Design, became a student of Conrad Dehi, for a year and then went back to Europe for more study and travel. He returned to America in 1873 and that August married Victoria Adelaide Ward in Providence, Rhode Island. They settled in Chicago and Root started an art school in the Art Institute Building. He closed the school when the Academy of Design reopened, and Root became affiliated with the academy, serving in several capacities, including Secretary and President.

Enoch and Victoria wintered in Palm Beach starting in 1889 and in 1892 they purchased a tract of land extending from the lake to the ocean along the present day Oleander Way and Root Trail. They built a house for themselves and this became their permanent home, residing there except for short summer visits to Chicago and Connecticut.⁷ Later they built cottages for artists on their property and laid out Root Trail.⁸

Enoch Root did not appear to exhibit professionally in Palm Beach, however he was an early and possibly founding member of the Palm Beach County Art Club. In 1911, Enoch was elected to the first Palm Beach Town Council. Enoch was a founding member of the Lake Worth Pioneer Association, open to those who settled in Palm Beach prior to 1893. He was also an active member of the Palm Beach Property Owner's Association, the Masons and the Grand Army of the Republic (G.A.R.). Enoch also served as a Palm Beach Postmaster and Justice of the Peace in the early 1900s. Victoria was a member of the Guild of Bethesda-by-the-Sea Episcopal Church, a group of notable Society women integral in fundraising for the church.

⁷ It is not clear whether their house was on the ocean or the lake side of their property. The William Gray Warden Residence National Register Nomination states that the site of the current Warden house formerly contained one of the first houses in Palm Beach which was owned by the late Enoch Root. The 1919 Sanborn Map shows a larger frame house with some smaller frame buildings on the site of the Warden house, which is at the eastern end of Root Trail fronting the ocean.

⁸ Francis Gilmor, "History of Palm Beach County Art Club One of Fascinating Chapters in the Annals of the City," Palm Beach Times 17 February 1924.

Victoria Root passed away July 27, 1914. Shortly after Enoch suffered a stroke and was cared for by his sister-in-law, Mary E.L. Root, who had previously moved to Palm Beach. Enoch died on June 27, 1915 and both he and Victoria are buried in Woodlawn Cemetery in West Palm Beach. Part of the Root's property was sold to artist Daisy Erb, who created an artist's colony.⁹

V. Architects Biography

No Architect is listed for 127 Root Trail. This frame vernacular building was likely designed and constructed by a local builder.

VI. Statement of Significance

The house at 127 Root Trail is significant as a very good example of a Pioneer Era Frame Vernacular dwelling located on a street renowned for its early 1900's buildings. While its style is widespread in South Florida, its scarcity in the Town of Palm Beach and its location on Root Trail in the early Root's Subdivision increases the properties significance as an historic resource.

VII. Criteria For Designation

Section 16-38A of the Town of Palm Beach Landmark's Preservation Ordinance #2-84 outlines the criteria for designation of a landmark or landmark site and suggests that at least one criterion must be met to justify the designation. Listed below are criteria which relate to this property and justification for designation:

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

127 Root Trail is an important dwelling on Root Trail, a street of mostly early Frame Vernacular houses. The lots it sits on were part of the early Root's Subdivision named for early, civically active artist pioneers of Palm Beach, Enoch and Victoria Root. The unique character of the dwelling exemplifies the early history of the Town of Palm Beach and the Pioneer Era of the architecture. Annie O'Sullivan, an early and active resident of Palm Beach, owned the house for forty years and Tod Draz, a famous fashion illustrator,

⁹ Palm Beach Post, 7 January 1921.

restored and decorated the house in the 1980s when Root Trail was again an enclave for artists.

(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.”

127 Root Trail is a very good example of the Frame Vernacular style of architecture that is representative of the development in South Florida from the late nineteenth century to the early twentieth century. Frame vernacular architecture does not adhere to academic guidelines and is noted for its simplicity and modest origins. The dwelling’s wood double-hung sash windows, coursed wood shingles, rafter tails, corner boards, gabled roofs and masonry piers are all noteworthy features of Frame Vernacular houses.

While the Frame Vernacular style of construction is perhaps one of the most prominent residential design styles in early South Florida, its scarcity in the Town of Palm Beach makes the existence of 127 Root Trail very significant. The high level of the integrity of the dwelling along with its unique location on Root Trail sets it apart from a Town known for opulence and grandeur.¹⁰

¹⁰ Jane Day, 145 Root Trail Landmark Designation Report, 20 November 1996.

VIII. Selected Bibliography

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IX. Florida Master Site File Form

Page 1

☐ Original
☒ Update



HISTORICAL STRUCTURE FORM FLORIDA MASTER SITE FILE Version 5.0 3/19

Shaded Fields represent the minimum acceptable level of documentation.
Consult the Guide to Historical Structure Forms for detailed instructions.

Site#8 **PB06657**
Field Date 12-6-2019
Form Date 9-4-2020
Recorder # MAP

Site Name(s) (address if none) 127 Root Trail Multiple Listing (DHR only) _____
Survey Project Name Palm Beach Historical Site Survey Survey # (DHR only) _____
National Register Category (please check one) ☒ building ☐ structure ☐ district ☐ site ☐ object
Ownership: ☐ private-profit ☐ private-nonprofit ☒ private-individual ☐ private-nonspecific ☐ city ☐ county ☐ state ☐ federal ☐ Native American ☐ foreign ☐ unknown

LOCATION & MAPPING

Address: 127 Root Trail
Cross Streets (nearest / between) _____
USGS 7.5 Map Name PALM BEACH USGS Date 1986 Plat or Other Map _____
City / Town (within 3 miles) Palm Beach In City Limits? ☒ yes ☐ no ☐ unknown County Palm Beach
Township 43S Range 43E Section 14 1/4 section: ☐ NW ☐ SW ☐ SE ☐ NE Irregular-name: _____
Tax Parcel # 50434314100030042 Landgrant _____
Subdivision Name _____ Block 003 Lot 0042
UTM Coordinates: Zone ☐ 16 ☐ 17 Easting Northing
Other Coordinates: X: _____ Y: _____ Coordinate System & Datum _____
Name of Public Tract (e.g., park) _____

HISTORY

Construction Year: 1900 ☐ approximately ☒ year listed or earlier ☐ year listed or later
Original Use Private Residence (House/Cottage/Ca From (year): 1900 To (year): 2020
Current Use Private Residence (House/Cottage/Ca From (year): 1900 To (year): 2020
Other Use _____ From (year): _____ To (year): _____
Moves: ☐ yes ☒ no ☐ unknown Date: _____ Original address _____
Alterations: ☐ yes ☐ no ☒ unknown Date: _____ Nature _____
Additions: ☐ yes ☐ no ☒ unknown Date: _____ Nature _____
Architect (last name first): _____ Builder (last name first): _____
Ownership History (especially original owner, dates, profession, etc.)
WHITE MICHELE C

Is the Resource Affected by a Local Preservation Ordinance? ☐ yes ☒ no ☐ unknown Describe _____

DESCRIPTION

Style Frame Vernacular Exterior Plan Rectangular Number of Stories 2
Exterior Fabric(s) 1. Shingles-wood 2. _____ 3. _____
Roof Type(s) 1. Gable 2. _____ 3. _____
Roof Material(s) 1. Asphalt shingles 2. _____ 3. _____
Roof secondary strucs. (dormers etc.) 1. _____ 2. _____
Windows (types, materials, etc.)
single & paired 2/2 wood sash windows, decorative single pane awning
Distinguishing Architectural Features (exterior or interior ornaments)
steep and narrow structure, wood shingle exterior, steep pitch front facing gable roof, central entry
Ancillary Features / Outbuildings (record outbuildings, major landscape features; use continuation sheet if needed.)
mature vegetation, single drive

DHR USE ONLY

OFFICIAL EVALUATION

DHR USE ONLY

NR List Date ☐ Owner Objection	SHPO - Appears to meet criteria for NR listing: ☐ yes ☐ no ☐ insufficient info Date _____ Init. _____ KEEPER - Determined eligible: ☐ yes ☐ no Date _____ NR Criteria for Evaluation: ☐ a ☐ b ☐ c ☐ d (see National Register Bulletin 15, p. 2)
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HISTORICAL STRUCTURE FORM

Site #8 PB06657

DESCRIPTION (continued)

Chimney: No. 0 Chimney Material(s): 1. _____ 2. _____
 Structural System(s): 1. Wood frame 2. _____ 3. _____
 Foundation Type(s): 1. Piers 2. _____
 Foundation Material(s): 1. Obscured 2. _____
 Main Entrance (stylistic details)

centrally located multi panel entry behind screen door

Porch Descriptions (types, locations, roof types, etc.)

no porch, masonry steps and landing

Condition (overall resource condition): ☐ excellent ☒ good ☐ fair ☐ deteriorated ☐ ruinous

Narrative Description of Resource

This 1900 Frame Vernacular style building is in good condition. Three buildings are located on this parcel, including PB06659 and an unseen building.

Archaeological Remains _____ ☐ Check if Archaeological Form Completed

RESEARCH METHODS (select all that apply)

- | | | | |
|--|---|---|--|
| ☒ FMSF record search (sites/surveys) | ☐ library research | ☐ building permits | ☒ Sanborn maps |
| ☐ FL State Archives/photo collection | ☐ city directory | ☐ occupant/owner interview | ☒ plat maps |
| ☒ property appraiser / tax records | ☐ newspaper files | ☐ neighbor interview | ☐ Public Lands Survey (DEP) |
| ☒ cultural resource survey (CRAS) | ☐ historic photos | ☐ interior inspection | ☐ HABS/HAER record search |
| ☒ other methods (describe) <u>Town Staff</u> | | | |

Bibliographic References (give FMSF manuscript # if relevant, use continuation sheet if needed)

OPINION OF RESOURCE SIGNIFICANCE

Appears to meet the criteria for National Register listing individually? ☐ yes ☐ no ☒ insufficient informationAppears to meet the criteria for National Register listing as part of a district? ☒ yes ☐ no ☐ insufficient information

Explanation of Evaluation (required, whether significant or not; use separate sheet if needed)

This building may meet criteria for individual listing, but more research regarding any alterations would be needed to determine individual eligibility. It meets district criteria based on its architectural features and association within the Town.

Area(s) of Historical Significance (see National Register Bulletin 15, p. 8 for categories: e.g. "architecture", "ethnic heritage", "community planning & development", etc.)

1. Community planning & developm 3. _____ 5. _____
 2. Architecture 4. _____ 6. _____

DOCUMENTATION

Accessible Documentation Not Filed with the Site File - including field notes, analysis notes, photos, plans and other important documents

1) Document type _____ Maintaining organization _____
 Document description _____ File or accession #'s _____
 2) Document type _____ Maintaining organization _____
 Document description _____ File or accession #'s _____

RECORDER INFORMATION

Recorder Name Patricia Davenport-Jacobs Affiliation Environmental Services, Inc.
 Recorder Contact Information 7220 Financial Way, Suite 100, Jacksonville, FL 32256/9044702200/pdavenport
 (address / phone / fax / e-mail)

Required Attachments

① USGS 7.5' MAP WITH STRUCTURE LOCATION CLEARLY INDICATED

② LARGE SCALE STREET, PLAT OR PARCEL MAP (available from most property appraiser web sites)

③ PHOTO OF MAIN FACADE, DIGITAL IMAGE FILE

When submitting an image, it must be included in digital AND hard copy format (plain paper grayscale acceptable).
 Digital image must be at least 1600 x 1200 pixels, 24-bit color, jpeg or tiff.

I. DESIGNATION HEARINGS

Item 2: 127 Root Trail

Owner: Catherine and David Brooker

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

Patrick Segraves declared a conflict of interest for the project and left the meeting. It was noted that Ms. Metzger would be voting in his absence.

Mr. Silvin asked for confirmation on proof of publication. Ms. Churney provided confirmation.

Janet Murphy, MurphyStillings, LLC, testified to the architecture and history for this two-story Frame Vernacular home. Ms. Murphy pointed out the design features of this residence. Ms. Murphy testified that the building met the following criteria for designation as a landmark:

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 of the study of a period, style, method of construction or use of indigenous materials or craftsmanship;

Motion made by Ms. Patterson and second by Ms. Metzger to make the designation report for 127 Root Trail part of the record. Motion carried unanimously.

Mr. Silvin called for any public comment on the designation. There were no comments heard at this time.

Many of the Commissioners were thankful the owners were saving the residence, appreciated that they offered it for landmarked status and were very supportive of the designation.

Motion made by Ms. Patterson and seconded by Ms. Albarran that 127 Root Trail be recommended to the Town Council for designation as a landmark of the Town of Palm Beach, and that the criteria 1 and 3, as presented, be made a part of the record. 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 10, 2021

Section of Agenda

Appeals

Agenda Title

ARCOM Appeals of B-063-2020 160 Royal Palm Way

Presenter

ATTACHMENTS:

- ❑ **Memorandum Dated November 24, 2020 from Wayne Bergman, Director of Planning, Zoning and Building**
- ❑ **Letter Dated November 6, 2020 from Donald J. Lunny, Jr., Esq.**
- ❑ **Letter Dated November 9, 2020 from John Eubanks**
- ❑ **Letter Dated December 2, 2020 from Donald J. Lunny, Jr., Esq.**
- ❑ **Email Dated December 3, 2020 from John Eubanks**
- ❑ **Letter Dated January 5, 2020 from Donald J. Lunny Jr., Esq.**
- ❑ **Email Dated January 5, 2020 from John Eubanks**

TOWN OF PALM BEACH

Information for Town Council Meeting on: December 9, 2020

To: Mayor and Town Council

From: Wayne Bergman, Director of Planning, Zoning & Building



Cc: Kirk Blouin, Town Manager

Re: 160 Royal Palm Way – Palm House Hotel. Appeal of Arcom Decision to Approve Additions and Modifications

Date: November 24, 2020

GENERAL INFORMATION

Property owner LR Palm House LLC made an application to Arcom earlier this year to add additions and to modify the existing hotel at 160 Royal Palm Way. The matter was heard at the October 28, 2020 Arcom meeting and was approved, with the exception of the landscape plan, service gate and building paint color, which were scheduled to return to Arcom in November. During the meeting, Attorneys Donald J. Lunny, Jr., representing the owner of 133 Brazilian Ave., and John R. Eubanks, Jr., representing owners at 140, 141 and 149 Brazilian Ave., spoke in opposition to the project. Please see the partial minutes of the Arcom meeting that summarize the discussion and approval.

The appeal of the Arcom decision was filed by Attorney Lunny on November 6, 2020. Attorney Eubanks filed a “joinder” in the appeal of the Arcom decision on November 9, 2020. The filing of the appeal was in compliance with Town Code 18-177, which allows appeals from Arcom decisions to be filed within ten (10) calendar days of the meeting at which the decision of the Commission is rendered.

Attached:

Chapter 18, Section 18-177 – Appeals and Review

Attorney Lunny Appeal Packet, with Cover Letter dated November 6, 2020 Dated November 6, 2020

Attorney Eubanks Joinder Packet, with Letter Dated November 9, 2020

Partial Minutes from the October 28, 2020 Arcom Meeting

Sec. 18-177. - Appeals and review.

An applicant or any interested party may file an appeal to the town council on any ruling by the architectural commission or the director of the planning, zoning and building department or his/her designee made pursuant to this article. The appeal shall take the form of a letter addressed to the town clerk. In the case of an appeal from the architectural commission, the appeals shall be filed or made within ten calendar days of the date of the meeting at which the decision of the commission is rendered. In the case of an appeal from the decision of the director of planning, zoning and building, the appeal shall be filed or made within ten calendar days of the date the director of the planning, zoning and building department or his or her designee renders the decision in writing. Appeals shall set forth the alleged inconsistency or nonconformity with procedures or criteria set forth in this article or standards set forth in or pursuant to this Code. The town council shall decide an appeal within 45 days of the filing of such appeal unless an extension of time is consented to by the applicant, and such filing shall suspend any building permit issued pursuant to the ruling of the architectural commission or director of the planning, zoning and building department or his/her designee until the town council has decided the appeal. The town council may review any decision of the architectural commission or the director of the planning, zoning and building department and its disposition of the matter shall be final. In addition to appeals, the town council shall consider major projects as defined in the ARCOM Project Designation Manual at the next regularly scheduled town council meeting, subsequent to the meeting of the commission. The disposition of such matters by the town council shall be final. Appeals filed pursuant to this section shall be based on the record of the proceedings below and shall not be presented de novo. The time allotted for presentation of an appeal shall be determined by the town council president.

(Ord. No. 11-2015, § 1(Att.), 4-15-15)



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(561) 241-3113
(561) 241-3226 Facsimile

www.brinkleymorgan.com

Please reply to Fort Lauderdale

November 6, 2020

Queenester Nieves
Town Clerk
Town of Palm Beach
360 S. County Road
Palm Beach, FL. 33480

Via Federal Express

Re: The Palm House Hotel
160 Royal Palm Way,
Palm Beach, Florida 33480

Dear Town Clerk Nieves:

This Firm Represents Virginia C. Simmons, individually and as Trustee of the Virginia C. Simmons Revocable Trust U/A/D May 4, 2018, the owner of single-family residential property having a street address of 133 Brazilian Avenue, Palm Beach, Florida. Because our client continues to be very concerned with aspects of proposed Palm House Hotel that will likely increase activity and noise in the rear and east of the Hotel, and expand buildings and structures that are already non-conforming, our client is reluctantly constrained to continue to take steps to preserve various positions to challenge such development's approval. Our client hopes that with the changes requested in this correspondence, the Application can be made more acceptable to her and the other adjacent single-family properties which will be affected by the proposed development.

Since the October 28, 2020 Town Architectural Commission ("ARCOM") Meeting was so close in time to the Town's consideration of the proposed development's variances and special exceptions, Part 1 of this letter is an Appeal of the ARCOM October 28, 2020 Decision, Part 2 of this letter is directed towards the Town Commission's November 13, 2020 consideration of the development's variances and special exceptions; Part 3 of this letter is directed at the proposed Third Amendment to Declaration of Use Agreement; and Part 4 of this letter is directed to some remaining aspects of the Site Plan.

Correspondence to Mr. Nieves
Town of Palm Beach Town Clerk
Re: The Palm House Hotel
November 6, 2020
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Part 1.
Appeal of 10/28/2020 ARCOM Decision for Major Project
Application No. B-063-2020 REV 2

Please consider Part 1 of this letter an Appeal of ARCOM's October 28, 2020 decision ("ARCOM Decision") with respect to The Palm House Hotel ("Applicant") Application No. B-063-2020 REV 2 ("Application"). We have enclosed a Trust Account Check made payable to the Town of Palm Beach for the required fee for this Appeal. While the Town has the video recordings of the September 25, 2020 ARCOM Meeting and the October 28, 2020 ARCOM Meeting, Application No. B-063-2020, Application No. B-063-2020 REV 2, our correspondence dated September 23, 2020, and our correspondence of October 26, 2020, it is our view that such entire record of the proceedings may not be needed by the Town Commission for purposes of the Appeal, and so unless the Town Commission otherwise requires such full record, or we direct you to prepare same; we think the Exhibits included in this Part should be sufficient for the Appeal's purposes.

The reasons for the Appeal are as follows:

1. This proposed development should not be reviewed in a "piecemeal fashion."

The ARCOM Decision results in the development being considered in a "piecemeal fashion," and thus the Town Commission's review of the Application will also be "piecemeal" in nature. Specifically, ARCOM has not approved the Application's landscape plans, and is requiring the proposed landscape plans along the southern and east property lines to be returned to ARCOM for further review. Our client raised concerns with the overall feasibility of the Application's landscape plans at the initial ARCOM hearing of September 25, 2020 and asked that the landscape plans be reviewed. When the application was revised and presented to ARCOM on October 28, 2020, our client pointed out that the landscape plans detailing the proposed landscape buffer and screening (See Exhibit 1, Application Plan Sheet A-121) was not drawn to scale. Further, in light of the Survey included with the initial application (see Exhibit "2") the Applicant did not own enough land South and East of the Hotel improvements and within its Property to accommodate the proposed plantings. (See Exhibit "3", Application Plan Sheet A-122). Thus, the Application's illustrated landscape buffers and screening in these areas is not feasible. We believe that this observation motivated ARCOM to require the proposed landscape buffers and screening to be re-evaluated and brought back to ARCOM for consideration.



Landscape buffers and screening are very important to both improve aesthetics and reduce adverse secondary effects that arise from locating a highly intense commercial development adjacent to single-family residential homes. Indeed Sec. 134-129(5) of the Town's Code provides that for a Site Plan to be approved:

"...the [t]own [c]ouncil shall make a finding that the approval of the site plan ... will not adversely affect the public interest and certify that the specific zoning requirements governing the individual use have ...been met and that further, satisfactory provision and an arrangement has ...been made concerning the following matters, where applicable....

(5) Proposed screens and buffers to preserve internal and external harmony and compatibility with uses inside and outside the property's boundaries.
..."

Further, a Project's proposed landscape buffers and screening are often considered in determining whether to grant various development orders such as the variances and special exceptions that are also requested for the overall Project.

We would encourage the Town Commission to vacate the ARCOM Decision, and remand the Application to ARCOM, so that when ARCOM's review of the Application is *entirely* complete, the Town Commission can then consider the Project instead of addressing this important major development in a piecemeal fashion.

2. ARCOM erred in approving the new full-service bar and restroom building.

The Application proposes a new full-service bar and restroom building which is located contiguous to and West of the expanded Function Room. (See Exhibit "4", Application Plan Sheet 1-104). Prior approved plans showed chemical storage and pool equipment area where this new full-service bar and restroom building are proposed (see Plan Sheets A-200 and A201, attached as Composite Exhibit "5"). The Exhibit "4" Application Plan Sheet No. A-104 clearly shows that this Bar/Restroom building is located within the rear yard setback area established by the CB Zoning District regulations. Therefore, its proposed location is contrary to the Town's Code.

Additionally, the expanded Function Room building is non-conforming to the Town's regulations, any addition or expansion of the Function Room must comply with the Town Code's rear yard setback requirements. In relevant part, Subsection 134-416(d) of the Town's Code states as follows:

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“(d) It is further the intent that, by the provisions of this chapter or by amendments that may be adopted, there may exist buildings or structures which were lawful before this chapter was adopted or amended, but which would be prohibited, regulated or restricted under the terms of this chapter or future amendments thereto. It is the intent of this chapter to permit these nonconforming buildings and structures to exist until they are voluntarily removed, removed by abandonment, or otherwise removed as required by this chapter, but not to encourage their survival. Such nonconforming buildings and structures are allowed to be enlarged, expanded or extended, provided that said enlargement, expansion or extension meets all of the lot yard and bulk regulations for the zoning district in which the building or structure is located and provided that said enlargement, expansion or extension is not used as grounds for adding other buildings or structures prohibited elsewhere, in the same district.” (Emph. Suppl).

Further, Sec. 134-417 of the Town’s Code states as follows:

“A building or structure which is nonconforming with any of the lot, yard and bulk, regulations may be enlarged, expanded or extended to occupy a greater area of land provided that the enlargement, expansion or extension complies with all lot, yard and bulk regulations for the zoning district in which the building or structure is located. This section shall not apply to a building or structure which is demolished by more than 50 percent, as provided for in section 134-419(1), in preparation for any proposed enlargement, expansion, or extension of a building or structure.”

In approving the location of the Bar/Restroom Building, it is our client’s contention that ARCOM did not *satisfy* Sec. 18-205 (a) (9) of the Town’s Code which indicates that in order for ARCOM to approve a proposed project, it must determine that:

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

Thus, the ARCOM Decision to approve this new Full-Service Bar and Restroom Building should be REVERSED on Appeal.

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3. ARCOM erred in approving other structures in the rear yard setback area.

Other aspects of the proposed development's structure are also in the rear yard setback, such as the pool water fountain feature and the expansion of the Function Room to enclose more interior space.

There was no Town Staff Report prepared for the ARCOM hearing, however, our client learned at the October 28, 2020 ARCOM hearing; that the currently proposed fountain is *smaller* than what was previously approved, and provided this remains the case, our client will no longer object to same; however, if this is not the case, our client will continue to object to same.

Similarly, our client requested that significant efforts to sound-proof the Function Room's enclosed space be included in the Town's approval, and upon receiving a confirmation that this will be required *and provided*, our client will not object to the increase in the Function Room's enclosed space as also being an expansion to a nonconforming building that is prohibited by the Town's Code. The rationale for not objecting to the increase in the Function Room's enclosed space is that, hopefully, the resulting *indoor* activity will become very noise controlled.

Wherefore, our client would respectfully request that the Town Commission reverse or vacate the ARCOM Decision, and remand the Application to ARCOM for proceedings consistent with any instructions in the Town Commission's ruling if any, and further, our client would request any other relief the Town Commission may determine proper and appropriate.

Part 2. Comment on the Requested Variances and Special Exceptions

1. The Variances should be denied because they are "Self Created."

Our review of the Town's variance law would cause an objective reader to doubt whether sufficient grounds for granting a variance are present in this case. The Palm Beach County Property Appraiser records discloses that the applicant, LR Palm House LLC, a Delaware Limited Liability Company, obtained a Debtor in Possession Deed to the site on May 15, 2019, which is *after* the 2016 Town conditional development approvals. A copy of the Deed is attached as Exhibit "6".

The Exhibit "2" Application Survey prepared by Wallace Surveying Corporation discloses that The Palm House Hotel property is uniformly rectangular, having a 300' x



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200' dimension. Thus, the real property on which The Palm House Hotel sits has no irregular contours or shape which would support a variance request. Moreover, the dimensions of the Applicant's Property *more than satisfies* the C-B Zoning District's minimum lot area, lot width, and lot depth requirements (See Sec. 134-1308 (1), (2), (3) Town Code).

Given that the Applicant acquired the development *after* the 2016 Town approvals, and given that the Applicant's real property is not irregular and more than satisfies the Town's C-B District minimum dimensional requirements, any claimed "hardship" for the requested Variances should be viewed as "*self-created*" in as much as a *developed site* was acquired by the Applicant simply put, Application results from the Applicant's desire to change things. A "self-created" hardship cannot be the basis for granting a Zoning Variance. The Variances should be denied.

2. The Town's Zoning Regulations do not authorize the Town Commission to grant a Special Exception for the Palm House Hotel.

The Application states that Special Exceptions are needed for the Site Plan to be approved. Our review of the Town's Special Exception law would cause an objective reader to doubt whether the Town Commission can grant Special Exceptions in this case. Sec. 134-229 (1) of the Town Code reads as follows:

"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."

The Town's C-B District Regulations define the applicable Special Exception Use in Section 134-1304 (a) (5) as follows:

- (a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-B commercial district are as follows:
 - (5) Hotels at a maximum of 26 units per acre.

Our review of the Application's Survey discloses that The Palm House Hotel property is rectangularly shaped, with dimensions of 300.00' X 200.00 feet. Thus, the Applicant's Property is 60,000 SF in area, or $(60,000 \div 43,560 =) 1.376$ acres in size. The CB Zoning District regulations *as applied to the Applicant's Property* limit the Town Council's authority to grant a Special Exception to a Hotel having a maximum of 36 units. Since

the Applicant's hotel is not a listed special exception use in the Town's CB Zoning District's regulations, the requested Special Exceptions cannot be granted.

PART III

The Draft 3rd Amendment to Declaration is not sufficient to mitigate potential adverse secondary effects of the Hotel.

1. In 2012, the historical digest received by our client for the zoning application discloses that the Town Commission conditioned its approval of the development orders it then granted to indicate in Condition 4 that *"The pool deck area shall be allowed only background music and light live music with the speaker system directed to the North. There shall be no music on the abutting grass area."* The Amendment to Declaration of Use Agreement recorded in Official Records Book 25694 at page 0633 indicates in Article IV, Paragraph 3 that there will be *no events* on the pool deck, the grass area will remain *"passive,"* and music on the pool deck will be only background or light live music with the speaker system directed to the North. (See Exhibit "7" for the Amendment to Declaration of Use Agreement). The proposed, draft Third Amendment to Declaration and Use Agreement indicates that *"Pre-function events will be allowed on both the pool deck and the grass area"*. While the proposed Third Amendment does not allow music in the grass area, it has no restrictions whatsoever on other forms of amplified sound. Our client would request that the Third Amendment be revised in this regard to:
 - a. Add the words *"noise controlled, passive"* before the words *"pre-function events"* for the grass area;
 - b. Prohibit such *"pre-function events"* on the pool deck;
 - c. Restrict the hours of noise controlled, passive pre-function events in the grass area to reasonable hours (from 10:00 am to 7:00 pm.)
 - d. State that there will be no *outdoor* music (live or recorded), no *outdoor* live entertainment, and no *outdoor* amplified sound permitted anywhere on the Land, with the exception of *background* live or *background* recorded music which will be permitted on the pool deck from 9:am to 7:00 PM. "Background live or recorded music" is defined music having a low enough volume that normal conversation can be held over the music. Background live music shall have speakers for same directed to the North.
2. The Applicant has represented to ARCOM that there will be no rooftop guest access to the Hotel or the Function Room; however, these restrictions have been *removed* from the proposed Third Amendment to Declaration of Use Agreement. Once removed, they will

no longer be considered a restriction or condition of Project approval. The Declaration of Use Agreement should clearly state: *"No hotel guests, or other social or leisure activity or entertainment of any kind will be permitted on the roofs of the hotel, the function room, or other accessory buildings"*.

3. Generally, the Declaration of Use Agreement refers to a "function area" and our client would request the more precise term "Function Room" be used instead.

Part IV. Other Site Plan Comment

1. Our client objects to the Function Service Building and Bar/Restroom Building.

- A. The Application now includes a "Function Service Building" which is contiguous to a portion of the East building face of the Function Room. (See Exhibit "4," Plan Sheet A-104) Our client objects to this expansion to the Function Building, as it increases the activity of the Site along the East property line. The Function Service Building's supportive activities (especially activities related to cleanup and removal of Function Room Events) will likely be after dark, and both noise and vehicle light will be caused by loading area activities (from vehicles turning in the loading area shown on the Site Plan, or being used to transport equipment, furnishings, food, and beverages into either the Function Room or Function Service Building).
- B. Our client has objected to the Function Room Bar/Restroom Facility Section 1 of this letter as being an expansion to a nonconforming building. We were informed by ARCOM that "use issues" were within the Town Commission's purview. Additional reasons supporting our client's objection to these areas are set forth herein.

The Hotel is currently a non-conforming use, and Sec. 134-387 of the Town's Code provides:

"Sec. 134-387. - Extension or expansion.

No nonconforming use shall be enlarged, increased, intensified, substituted or extended to occupy a greater area than it occupied at the effective date of adoption or amendment of this chapter, except as may be granted by variance under section 134-201. No such nonconforming use shall be relocated in whole or in part to any portion of a lot or parcel except the location occupied by such use at the effective date of adoption or amendment of this chapter."

The Town should not allow the nonconforming use to expand by granting Variances for the Function Service Building or the Function Room Full-Service Bar and Restroom Building, since the hardships are "self-created."



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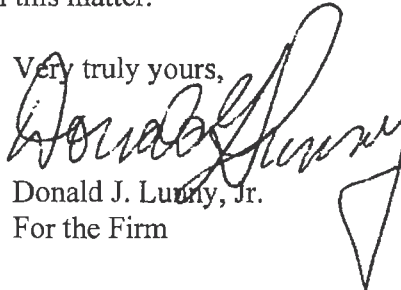
2. Our client shares the Zoning Administrator's concerns as expressed in the Town Staff's 11/2/2020 Staff Report.

- A. The Function Room Seats should remain restricted to 150 dining room seats. Granting additional seating, and removing dining room seating as requested, increases the intensity of the non-conforming use in the rear and eastern portion of the Property. As stated above, our client is very concerned with additional improvements and activity in these areas of the Property.
- B. The more than doubling of outside seating is problematic, as again, this increases the intensity of an existing non-conforming use. Our client would request that the amount of outside seating not exceed prior approvals. In view of the above, our client would request that the Town Commission not approve the Full-Service Bar and Restroom Building, not approve the Function Service Building, and limit outdoor seating as suggested. Additionally, our client would request whatever other relief the Town Commission may deem proper.
- C. Our clients comment in support of Staff's concerning the Declaration and the so called "Pre-function" events are set forth in Part III of this letter above.

Conclusion

Please ensure that a copy of this correspondence and its Exhibits are given promptly to the Mayor and Members of the Town Commission. We wish to thank the Town for its consideration of this matter. Finally, we reserve the right to raise additional objections and legal and factual arguments in connection with these matters should it become appropriate to do so as we continue to learn about and participate in this matter.

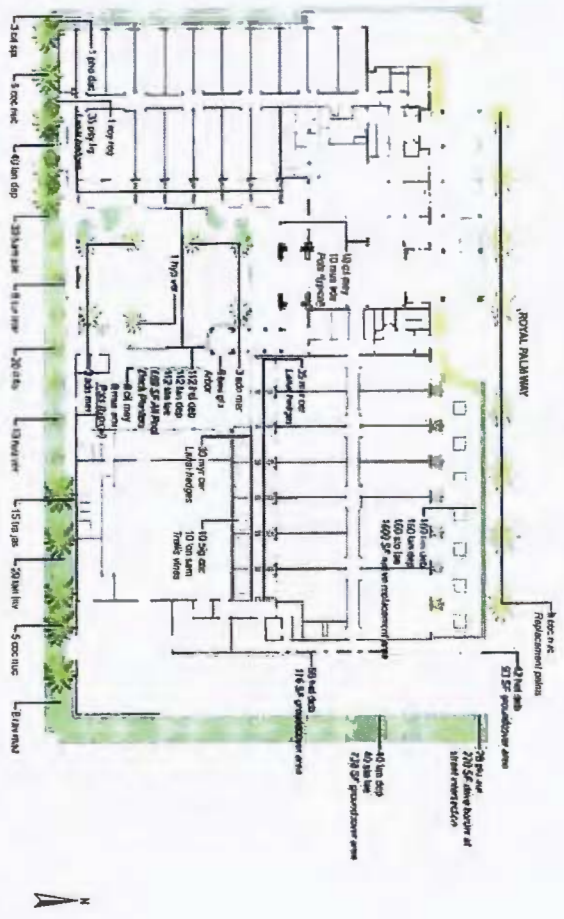
Very truly yours,



Donald J. Lunny, Jr.
For the Firm

Cc w/encl: (Via E-mail):
Mr. Wayne Berman;
John C. Randolph, Esq.
Maura Ziska, Esq.

- Area (sq) Landscape Designation
- 7,477 Front Yard (East Side)
 - 472 E. Entry Planting Area
 - 173 W. Entry Planting Area
 - 723 E. Property Line Planting Strip
 - 828 E. Property Line Planting Strip
 - 520 E. Property Line Planting Strip
 - 116 New Plaza - East Drive (R)
 - 1,897 S. Property Line Planting Strip
 - 973 East Lawn
 - 809 Front Yard Planting
 - 413 E. Entry Planting Area
 - 119 E. Lateral Hedges (Hedges)
 - 85 E. Lateral Hedges (Hedges)
 - 65 View Area for Trucks
- 8,819 sq' TOTAL LANDSCAPE AREA



OVERALL SOUTH ELEVATION - WITH PROPOSED LANDSCAPE SCREENING



LANDSCAPE PLANTING PLAN

A121

The Palm House Hotel

100' Round Plaza Plan



EXHIBIT 1

COOPER CARR

License N° A4580968 | B-625-2020
OCTOBER 2011, 2020 | 12-20-2019



PLANT SCHEDULE

PALMS

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Ad mer	6	<i>Adonidia merillii</i>	Christmas Palm	25 gallon	5' clear trunk, single	As shown	Non-Native	8' feet	4' feet	25' feet	8' feet	Pool deck planting
Coc nuc	18	<i>Coccothrinax nucifera</i>	Coconut Palm	B&B	10' clear trunk, single	As shown	Non-Native	15' feet	8' feet	60' feet	20' feet	Street planting replacement palms
Hyd ver	14	<i>Hyophorthe verschaffeltii</i>	Spindle Palm	25 gallon	5' clear trunk, single	As shown	Non-Native	7' feet	3' feet	25' feet	8' feet	Pool deck planting
Pho dec	1	<i>Phoenix decussata</i>	Dale Palm	B&B	8' clear trunk, single	As shown	Non-Native	12' feet	4' feet	70' feet	20' feet	Perimeter plantings
Rav mad	8	<i>Ravenea madagascariensis</i>	Traveler's Palm	25 gallon	3' clear trunk, multi-stem	As shown	Non-Native	6' feet	4' feet	30' feet	18' feet	South border screen planting
Roy reg	1	<i>Roystonia regia</i>	Royal Palm	B&B	10' clear trunk, single	As shown	Native	15' feet	8' feet	60' feet	20' feet	Perimeter plantings

TREES

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Cil spi	3	<i>Citharexylum spicatum</i>	Fiddlewood	3 gallon	24"	As shown	Native or Non-Native	24 inches	18 inches	20 feet	15 feet	Perimeter plantings
Gym luc	3	<i>Gymnanthes lucida</i>	Crochwood	3 gallon	24"	As shown	Native	24 inches	18 inches	20 feet	15 feet	Perimeter plantings

SHRUBS

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Cit mey	18	<i>Citrus x meyeri</i>	Meyer Lemon	2 quart	12"	As shown	Non-Native	12 inches	8 inches	6 feet	3 feet	For use in pots at pool deck
Hart pal	30	<i>Hamelia patens 'Compacta'</i>	Dwarf Firebush	3 gallon	18"	24" O.C.	Native	18 inches	12 inches	4 feet	3 feet	Perimeter plantings
Ill flo	20	<i>Illicium floridanum</i>	Florida Anise	3 gallon	24"	36" O.C.	Native	24 inches	18 inches	12 feet	8 feet	Perimeter plantings
Lan inv	20	<i>Lantana involucrata</i>	Wild Sage	1 gallon	12"	36" O.C.	Native	12 inches	6 inches	4 feet	3 feet	Pool deck plantings
Mus acu	18	<i>Musa acuminata 'Dwarf Cavendish'</i>	Dwarf Banana	1 gallon	12"	As shown	Non-Native	12 inches	8 inches	6 feet	4 feet	For use in pots at pool deck
Myr cer	65	<i>Myrcia caribaea</i>	Wax Myrtle	1 gallon	12"	24" O.C.	Native	12 inches	8 inches	6 feet	3 feet	Lanal hedges
Piu eur	28	<i>Plumbago auriculata 'Imperial Blue'</i>	Blue Plumbago	1 gallon	12"	48" O.C.	Non-Native	12 inches	8 inches	6 feet	8 feet	Perimeter plantings
Psy lg	35	<i>Psychotria ligustrifolia</i>	Bahama Coffee	1 gallon	12"	24" O.C.	Native	12 inches	8 inches	4 feet	4 feet	Pool deck plantings and Lanal hedges
Sur mar	8	<i>Suriana maritima</i>	Bay Cedar	3 gallon	18"	As shown	Native	18 inches	12 inches	10 feet	8 feet	Perimeter plantings

VINES

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Big cap	10	<i>Bignonia capreolata</i>	Crossvine	1 gallon	12"	12" O.C.	Native	NA	NA	NA	NA	Trellis planting
Bou gla	6	<i>Bougainvillea glabra</i>	Bougainvillea	1 gallon	12"	12" O.C.	Non-Native	NA	NA	NA	NA	Trellis planting
Lon sem	10	<i>Lonicera sempervirens</i>	Coral Honeysuckle	1 gallon	12"	12" O.C.	Native	NA	NA	NA	NA	Trellis planting
Tra jas	15	<i>Trachospermum jasminoides</i>	Star Jasmine	1 gallon	12"	12" O.C.	Non-Native	NA	NA	NA	NA	South border screen plant

PERENNIALS AND GROUNDCOVERS

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Hel deb	370	<i>Helianthus debilis</i>	Beach Sunflower	1 gallon	6"	24" O.C.	Native	6 inches	6 inches	18 inches	18 inches	For use in groundcover areas
Lan dep	352	<i>Lantana depressa</i>	Weeping Lantana	1 gallon	8"	24" O.C.	Native	8 inches	6 inches	24 inches	48 inches	For use in groundcover areas
Sto lae	312	<i>Stokesia laevis</i>	Sticks Aster	1 gallon	6"	24" O.C.	Native	6 inches	5 inches	18 inches	18 inches	For use in groundcover areas

NATIVE PLANT CALCULATIONS

Landscape Designation	Area (SF)	Native Area (SF)	Plants designated for Native Area
Front Yard (East Side)	2472	1600 - 64%	Hel deb, Lan dep & Sto lae
New Planter - East Drive (A)	93	93 - 100%	Hel deb
New Planter - East Drive (B)	116	116 - 100%	Hel deb
S. Property Line Planting Strip	1697	1018 - 60%	Roy reg, Cit spi, Gym luc, Ham pal, Ill flo, Lan inv, Sur mar, Lan dep
Pool Deck Plantings	689	689 - 100%	Hel deb, Lan dep & Sto lae
W. Lantal Hedges (dividers)	133	133 - 100%	Psy lg
E. Lantal Hedges (dividers)	119	119 - 100%	Myr cer
E. Lantal Southern Hedges	65	65 - 100%	Myr cer
Vine Area for Trellis	65	65 - 100%	Big cap & Lon sem
Total Native Area	3918 SF		
Total Native Area (3918 SF) is 44% of Total Landscape Area (8815 SF) *see Planting Plan for total landscape area tabulation			

LANDSCAPE PLANTING SCHEDULE

A122

The Palm House Hotel

160 Royal Palm Trn

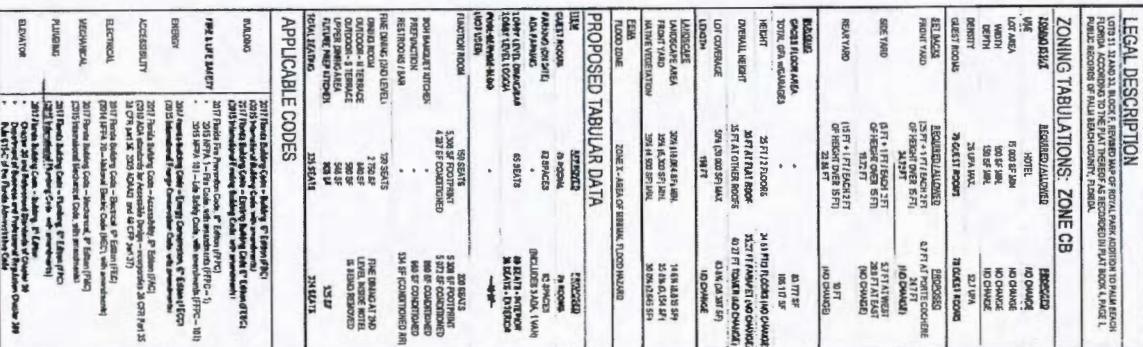


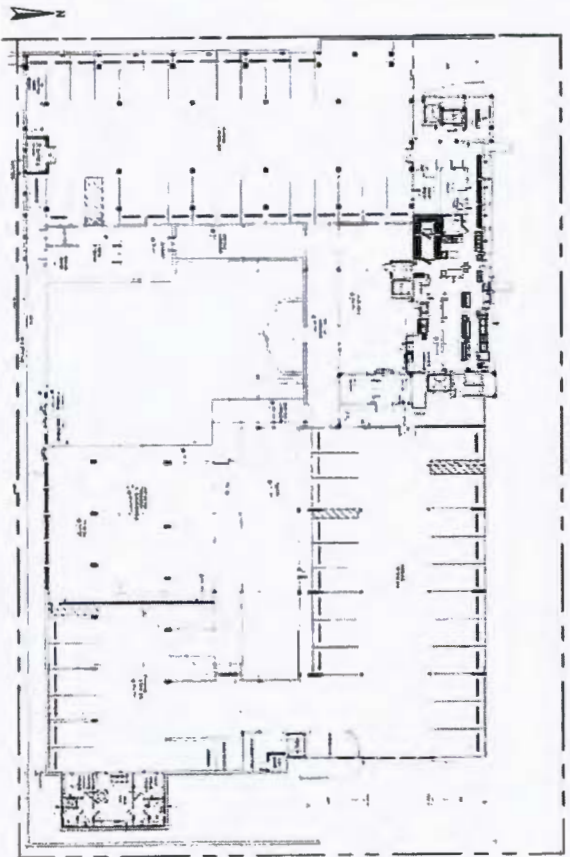
EXHIBIT 3



COOPER CARR

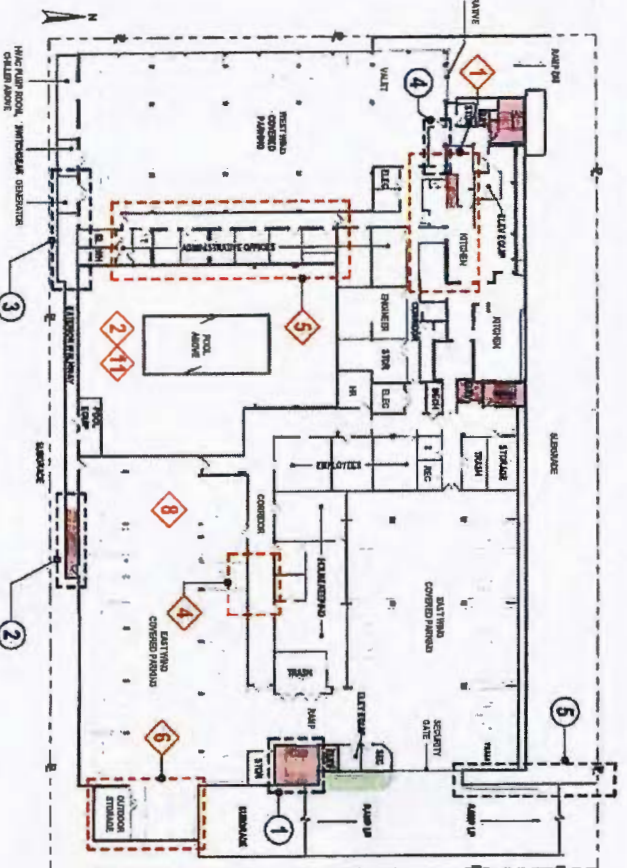
License No. AA260005
OCTOBER 2011 2012





LOWER LEVEL FLOOR PLAN - APPROVED
(SPR SE 011-2016 PREPARED BY DAVID MILLER & ASSOCIATES, P.A.)

NON-CONFORMING DEFICIENCIES	PROPOSED CORRECTIONS
1 Demolish partially constructed elevator extension to roof-top above second floor dining room & lobby to the "Sunset" deck.	1 Demolish elevator shaft extension to the roof-top deck. Patch roof to match existing. No assembly space at rooftop.
2 Complete construction of Function Room and Pool area consistent with plans previously approved by the Town of Palm Beach.	2 Construct new pool, pool deck and amenities as designed on the proposed improvement plans, for Town of Palm Beach approval.
4 Demolish partially constructed walkway, stairs and elevator access to roof above Function Room.	4 Demolish elevator shaft, elevated stair and walkway. Patch roof to match existing. No assembly space at rooftop.
5 Demolish approximately 1,140 SF of office space in area and restore previously approved service corridor and Laundry space.	5 Retain 1,140 square foot of new office space for hotel staff and administration.
6 Demolish partially constructed enclosure of portions of the Basement Garage on both east and west side of the property and restore 5 required off-street parking spaces.	6 Demolition to restore required parking spaces. Retain small area inaccessible for parking as outdoor storage.
8 Demolish partially constructed wall in basement parking area which was built to separate the Basement Function Room (Kitchen and restrooms) required parking.	8 Demolition to restore required parking spaces.
11 Eliminate two pool area structures and relocate pool structure which includes service bar to previously approved location. The pool area will be retained as previously approved.	11 Demolish noncompliant pool area structures. Construct new pool support structures as designed on the proposed improvement plans, for Town of Palm Beach approval.



LOWER LEVEL FLOOR PLAN - PROPOSED

PROPOSED IMPROVEMENTS
1 Extend open-air stair to basement for fire safety egress from basement and parking.
2 Extend retaining wall and exterior walkway near south property line for fire safety egress and allow for staff access to the pool deck.
3 Replace existing 2500W, 480V/277V natural gas generator in this site, capacity and location. Construct metal enclosure for required fire separation from parking and egress path at time of installation.
4 Enclose portion of parking area to provide the separated egress path from southwest portion of parking and mechanical spaces.
5 Construct new exterior retaining wall, stair and walkway for improved fire safety egress path to public way (Royal Palm Way).

LOWER LEVEL FLOOR PLAN

A200

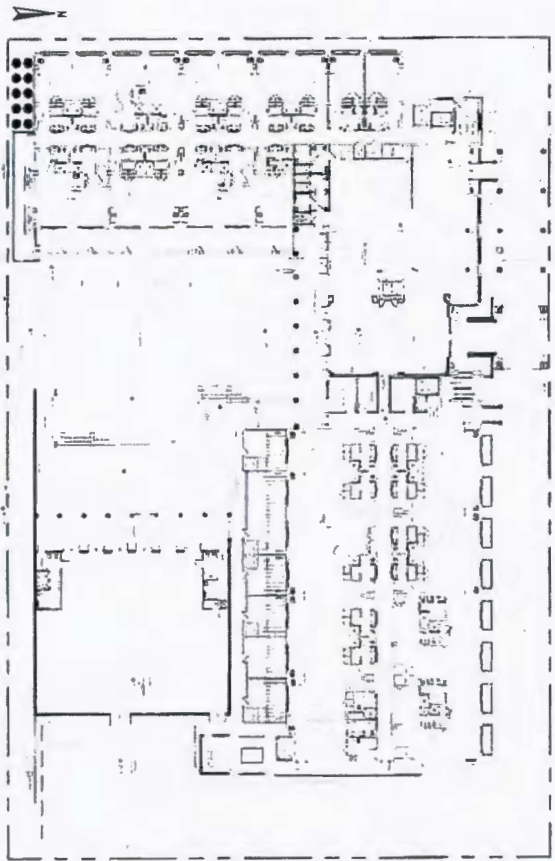
The Palm House Hotel
100 Royal Palm II, n



EXHIBIT 5

COOPER CARR

1000 N. Anderson Ave. Suite 200
Ocala, FL 34401 | 352-343-8889



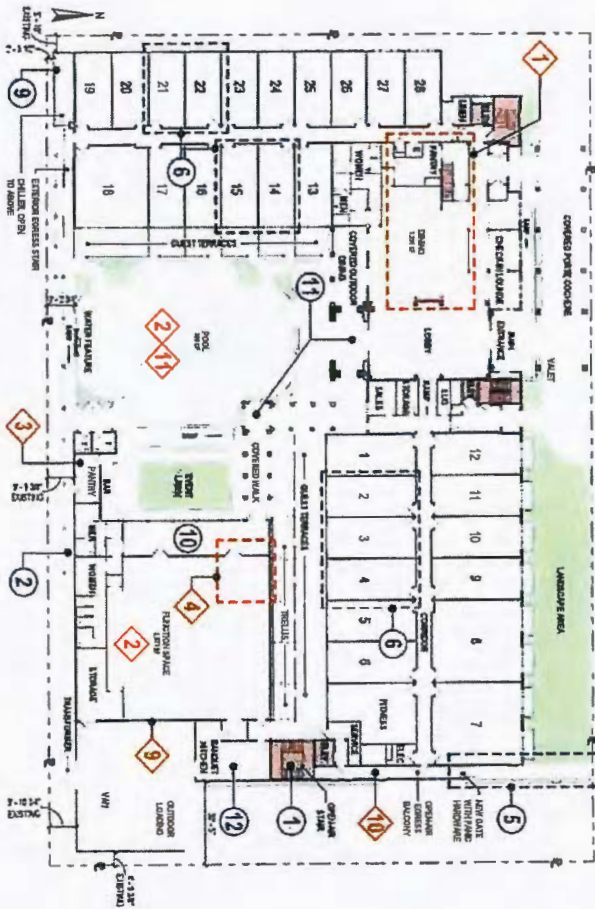
FIRST LEVEL FLOOR PLAN - APPROVED
(SPR SE 001-2016 PREPARED BY DAVID MILLER & ASSOCIATES, PA)

NON-CONFORMING DEFICIENCIES		PROPOSED CORRECTIONS	
1	Demolish partially constructed elevator extension to rooftop above second floor dining room & lobby to the "Sunset" deck.	1	Demolish elevator shaft extension to the north roof deck. Patch roof to match existing. No assembly space at rooftop.
2	Complete construction of Function Room and Pool area consistent with plans previously approved by the Town of Palm Beach.	2	Construct new pool, pool deck and amenities as designed on the proposed improvement plans, for Town of Palm Beach approval. Complete construction of Function Room.
3	Demolish partially constructed balconies on west side of Function Room and complete construction in new immediately adjacent to the Southwest corner of the Function Room.	3	Demolish bathroom building and construct new single-use toilets for pool, pool service pantry and life service bar adjacent to new event level.
4	Demolish partially constructed walkway, stairs and elevator access to roof above Function Room.	4	Demolish elevator shaft, elevator shaft and walkway. Patch roof to match existing. No assembly space at rooftop.
9	Construct opening on the east side of the Function Room wall which was going to be an unauthorized stage.	9	Install opening at east side of Function Room and finish to match adjacent exterior walls.
10	Remove full framing at exterior walkways on east elevation.	10	Enclose existing, partially complete open-well egress balcony with new exterior walls and railings.
11	Eliminate two pool area structures and relocate pool structure which includes service bar to previously approved location. The pool area will be restored as previously approved.	11	Demolish noncompliant pool area structures. Construct new pool support structures as designed on the proposed improvement plans.

FIRST LEVEL FLOOR PLAN

A201.A

The Palm House Hotel
1600 Road Palm B'n



FIRST LEVEL FLOOR PLAN - PROPOSED

PROPOSED IMPROVEMENTS	
1	Extend existing open-air stair to basement for improved fire safety egress from basement spaces and parking.
2	Extend existing wall and exterior walkway near south property line for fire safety egress and allow for stair access to the pool deck.
3	Construct new exterior relating walk, stair and walkway for improved fire safety egress path to public way (Royal Palm Way).
4	Convert existing guest rooms as shown on the proposed improved plans to provide 130 beds total.
5	Extend existing wall and exterior walkway near south property line for fire safety egress and allow for stair access to the pool deck.
6	Construct new exterior relating walk, stair and walkway for improved fire safety egress path to public way (Royal Palm Way).
9	Replace existing roller, construct new screen walls to height of new equipment.
10	Enclose existing open-air covered walkway at Function Room to create conditioned circulation.
11	Reconfigure exterior terrace facing new proposed pool deck. Provide covered walkway from hotel lobby to Function Room.
12	Enclose area with new exterior walls and roof for new banquet prep kitchen adjacent to Function Room.

Exhibit "5"
Cont



COOPER CARRY
LAW FIRM
OCTOBER 2017, 2018



Donald J. Lunny, Jr., Esq.
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Please reply to Fort Lauderdale

November 6, 2020

Queenester Nieves
Town Clerk
Town of Palm Beach
360 S. County Road
Palm Beach, FL. 33480

Via Federal Express

Re: The Palm House Hotel
160 Royal Palm Way,
Palm Beach, Florida 33480

Dear Town Clerk Nieves:

This Firm Represents Virginia C. Simmons, individually and as Trustee of the Virginia C. Simmons Revocable Trust U/A/D May 4, 2018, the owner of single-family residential property having a street address of 133 Brazilian Avenue, Palm Beach, Florida. Because our client continues to be very concerned with aspects of proposed Palm House Hotel that will likely increase activity and noise in the rear and east of the Hotel, and expand buildings and structures that are already non-conforming, our client is reluctantly constrained to continue to take steps to preserve various positions to challenge such development's approval. Our client hopes that with the changes requested in this correspondence, the Application can be made more acceptable to her and the other adjacent single-family properties which will be affected by the proposed development.

Since the October 28, 2020 Town Architectural Commission ("ARCOM") Meeting was so close in time to the Town's consideration of the proposed development's variances and special exceptions, Part 1 of this letter is an Appeal of the ARCOM October 28, 2020 Decision, Part 2 of this letter is directed towards the Town Commission's November 13, 2020 consideration of the development's variances and special exceptions; Part 3 of this letter is directed at the proposed Third Amendment to Declaration of Use Agreement; and Part 4 of this letter is directed to some remaining aspects of the Site Plan.

Part 1.
Appeal of 10/28/2020 ARCOM Decision for Major Project
Application No. B-063-2020 REV 2

Please consider Part 1 of this letter an Appeal of ARCOM's October 28, 2020 decision ("ARCOM Decision") with respect to The Palm House Hotel ("Applicant") Application No. B-063-2020 REV 2 ("Application"). We have enclosed a Trust Account Check made payable to the Town of Palm Beach for the required fee for this Appeal. While the Town has the video recordings of the September 25, 2020 ARCOM Meeting and the October 28, 2020 ARCOM Meeting, Application No. B-063-2020, Application No. B-063-2020 REV 2, our correspondence dated September 23, 2020, and our correspondence of October 26, 2020, it is our view that such entire record of the proceedings may not be needed by the Town Commission for purposes of the Appeal, and so unless the Town Commission otherwise requires such full record, or we direct you to prepare same; we think the Exhibits included in this Part should be sufficient for the Appeal's purposes.

The reasons for the Appeal are as follows:

1. This proposed development should not be reviewed in a "piecemeal fashion."

The ARCOM Decision results in the development being considered in a "piecemeal fashion," and thus the Town Commission's review of the Application will also be "piecemeal" in nature. Specifically, ARCOM has not approved the Application's landscape plans, and is requiring the proposed landscape plans along the southern and east property lines to be returned to ARCOM for further review. Our client raised concerns with the overall feasibility of the Application's landscape plans at the initial ARCOM hearing of September 25, 2020 and asked that the landscape plans be reviewed. When the application was revised and presented to ARCOM on October 28, 2020, our client pointed out that the landscape plans detailing the proposed landscape buffer and screening (See Exhibit 1, Application Plan Sheet A-121) was not drawn to scale. Further, in light of the Survey included with the initial application (see Exhibit "2") the Applicant did not own enough land South and East of the Hotel improvements and within its Property to accommodate the proposed plantings. (See Exhibit "3", Application Plan Sheet A-122). Thus, the Application's illustrated landscape buffers and screening in these areas is not feasible. We believe that this observation motivated ARCOM to require the proposed landscape buffers and screening to be re-evaluated and brought back to ARCOM for consideration.

Landscape buffers and screening are very important to both improve aesthetics and reduce adverse secondary effects that arise from locating a highly intense commercial development adjacent to single-family residential homes. Indeed Sec. 134-129(5) of the Town's Code provides that for a Site Plan to be approved:

"...the [t]own [c]ouncil shall make a finding that the approval of the site plan ... will not adversely affect the public interest and certify that the specific zoning requirements governing the individual use have ...been met and that further, satisfactory provision and an arrangement has ...been made concerning the following matters, where applicable....

(5) Proposed screens and buffers to preserve internal and external harmony and compatibility with uses inside and outside the property's boundaries.
..."

Further, a Project's proposed landscape buffers and screening are often considered in determining whether to grant various development orders such as the variances and special exceptions that are also requested for the overall Project.

We would encourage the Town Commission to vacate the ARCOM Decision, and remand the Application to ARCOM, so that when ARCOM's review of the Application is *entirely* complete, the Town Commission can then consider the Project instead of addressing this important major development in a piecemeal fashion.

2. ARCOM erred in approving the new full-service bar and restroom building.

The Application proposes a new full-service bar and restroom building which is located contiguous to and West of the expanded Function Room. (See Exhibit "4", Application Plan Sheet 1-104). Prior approved plans showed chemical storage and pool equipment area where this new full-service bar and restroom building are proposed (see Plan Sheets A-200 and A201, attached as Composite Exhibit "5"). The Exhibit "4" Application Plan Sheet No. A-104 clearly shows that this Bar/Restroom building is located within the rear yard setback area established by the CB Zoning District regulations. Therefore, its proposed location is contrary to the Town's Code.

Additionally, the expanded Function Room building is non-conforming to the Town's regulations, any addition or expansion of the Function Rom must comply with the Town Code's rear yard setback requirements. In relevant part, Subsection 134-416(d) of the Town's Code states as follows:

“(d) It is further the intent that, by the provisions of this chapter or by amendments that may be adopted, there may exist buildings or structures which were lawful before this chapter was adopted or amended, but which would be prohibited, regulated or restricted under the terms of this chapter or future amendments thereto. It is the intent of this chapter to permit these nonconforming buildings and structures to exist until they are voluntarily removed, removed by abandonment, or otherwise removed as required by this chapter, but not to encourage their survival. Such nonconforming buildings and structures are allowed to be enlarged, expanded or extended, provided that said enlargement, expansion or extension meets all of the lot yard and bulk regulations for the zoning district in which the building or structure is located and provided that said enlargement, expansion or extension is not used as grounds for adding other buildings or structures prohibited elsewhere, in the same district.” (Emph. Suppl).

Further, Sec. 134-417 of the Town’s Code states as follows:

“A building or structure which is nonconforming with any of the lot, yard and bulk, regulations may be enlarged, expanded or extended to occupy a greater area of land provided that the enlargement, expansion or extension complies with all lot, yard and bulk regulations for the zoning district in which the building or structure is located. This section shall not apply to a building or structure which is demolished by more than 50 percent, as provided for in section 134-419(1), in preparation for any proposed enlargement, expansion, or extension of a building or structure.”

In approving the location of the Bar/Restroom Building, it is our client’s contention that ARCOM did not *satisfy* Sec. 18-205 (a) (9) of the Town’s Code which indicates that in order for ARCOM to approve a proposed project, it must determine that:

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

Thus, the ARCOM Decision to approve this new Full-Service Bar and Restroom Building should be REVERSED on Appeal.

3. ARCOM erred in approving other structures in the rear yard setback area.

Other aspects of the proposed development's structure are also in the rear yard setback, such as the pool water fountain feature and the expansion of the Function Room to enclose more interior space.

There was no Town Staff Report prepared for the ARCOM hearing, however, our client learned at the October 28, 2020 ARCOM hearing; that the currently proposed fountain is *smaller* than what was previously approved, and provided this remains the case, our client will no longer object to same; however, if this is not the case, our client will continue to object to same.

Similarly, our client requested that significant efforts to sound-proof the Function Room's enclosed space be included in the Town's approval, and upon receiving a confirmation that this will be required *and provided*, our client will not object to the increase in the Function Room's enclosed space as also being an expansion to a nonconforming building that is prohibited by the Town's Code. The rationale for not objecting to the increase in the Function Room's enclosed space is that, hopefully, the resulting *indoor* activity will become very noise controlled.

Wherefore, our client would respectfully request that the Town Commission reverse or vacate the ARCOM Decision, and remand the Application to ARCOM for proceedings consistent with any instructions in the Town Commission's ruling if any, and further, our client would request any other relief the Town Commission may determine proper and appropriate.

Part 2. Comment on the Requested Variances and Special Exceptions

1. The Variances should be denied because they are "Self Created."

Our review of the Town's variance law would cause an objective reader to doubt whether sufficient grounds for granting a variance are present in this case. The Palm Beach County Property Appraiser records discloses that the applicant, LR Palm House LLC, a Delaware Limited Liability Company, obtained a Debtor in Possession Deed to the site on May 15, 2019, which is *after* the 2016 Town conditional development approvals. A copy of the Deed is attached as Exhibit "6".

The Exhibit "2" Application Survey prepared by Wallace Surveying Corporation discloses that The Palm House Hotel property is uniformly rectangular, having a 300' x

200' dimension. Thus, the real property on which The Palm House Hotel sits has no irregular contours or shape which would support a variance request. Moreover, the dimensions of the Applicant's Property *more than satisfies* the C-B Zoning District's minimum lot area, lot width, and lot depth requirements (*See* Sec. 134-1308 (1), (2), (3) Town Code).

Given that the Applicant acquired the development *after* the 2016 Town approvals, and given that the Applicant's real property is not irregular and more than satisfies the Town's C-B District minimum dimensional requirements, any claimed "hardship" for the requested Variances should be viewed as "*self-created*" in as much as a *developed site* was acquired by the Applicant simply put, Application results from the Applicant's desire to change things. A "self-created" hardship cannot be the basis for granting a Zoning Variance. The Variances should be denied.

2. The Town's Zoning Regulations do not authorize the Town Commission to grant a Special Exception for the Palm House Hotel.

The Application states that Special Exceptions are needed for the Site Plan to be approved. Our review of the Town's Special Exception law would cause an objective reader to doubt whether the Town Commission can grant Special Exceptions in this case. Sec. 134-229 (1) of the Town Code reads as follows:

"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."

The Town's C-B District Regulations define the applicable Special Exception Use in Section 134-1304 (a) (5) as follows:

- (a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-B commercial district are as follows:
 - (5) Hotels at a maximum of 26 units per acre.

Our review of the Application's Survey discloses that The Palm House Hotel property is rectangularly shaped, with dimensions of 300.00' X 200.00 feet. Thus, the Applicant's Property is 60,000 SF in area, or $(60,000 \div 43,560 =) 1.376$ acres in size. The CB Zoning District regulations *as applied to the Applicant's Property* limit the Town Council's authority to grant a Special Exception to a Hotel having a maximum of 36 units. Since

the Applicant's hotel is not a listed special exception use in the Town's CB Zoning District's regulations, the requested Special Exceptions cannot be granted.

PART III

The Draft 3rd Amendment to Declaration is not sufficient to mitigate potential adverse secondary effects of the Hotel.

1. In 2012, the historical digest received by our client for the zoning application discloses that the Town Commission conditioned its approval of the development orders it then granted to indicate in Condition 4 that *"The pool deck area shall be allowed only background music and light live music with the speaker system directed to the North. There shall be no music on the abutting grass area."* The Amendment to Declaration of Use Agreement recorded in Official Records Book 25694 at page 0633 indicates in Article IV, Paragraph 3 that there will be *no events* on the pool deck, the grass area will remain *"passive,"* and music on the pool deck will be only background or light live music with the speaker system directed to the North. (See Exhibit "7" for the Amendment to Declaration of Use Agreement). The proposed, draft Third Amendment to Declaration and Use Agreement indicates that *"Pre-function events will be allowed on both the pool deck and the grass area"*. While the proposed Third Amendment does not allow music in the grass area, it has no restrictions whatsoever on other forms of amplified sound. Our client would request that the Third Amendment be revised in this regard to:
 - a. Add the words *"noise controlled, passive"* before the words *"pre-function events"* for the grass area;
 - b. Prohibit such *"pre-function events"* on the pool deck;
 - c. Restrict the hours of noise controlled, passive pre-function events in the grass area to reasonable hours (from 10:00 am to 7:00 pm.)
 - d. State that there will be no *outdoor* music (live or recorded), no *outdoor* live entertainment, and no *outdoor* amplified sound permitted anywhere on the Land, with the exception of *background* live or *background* recorded music which will be permitted on the pool deck from 9:am to 7:00 PM. "Background live or recorded music" is defined music having a low enough volume that normal conversation can be held over the music. Background live music shall have speakers for same directed to the North.
2. The Applicant has represented to ARCOM that there will be no rooftop guest access to the Hotel or the Function Room; however, these restrictions have been *removed* from the proposed Third Amendment to Declaration of Use Agreement. Once removed, they will

no longer be considered a restriction or condition of Project approval. The Declaration of Use Agreement should clearly state: *“No hotel guests, or other social or leisure activity or entertainment of any kind will be permitted on the roofs of the hotel, the function room, or other accessory buildings”*.

3. Generally, the Declaration of Use Agreement refers to a “function area” and our client would request the more precise term “Function Room” be used instead.

Part IV. Other Site Plan Comment

1. Our client objects to the Function Service Building and Bar/Restroom Building.

- A. The Application now includes a “Function Service Building” which is contiguous to a portion of the East building face of the Function Room. (See Exhibit “4,” Plan Sheet A-104) Our client objects to this expansion to the Function Building, as it increases the activity of the Site along the East property line. The Function Service Building’s supportive activities (especially activities related to cleanup and removal of Function Room Events) will likely be after dark, and both noise and vehicle light will be caused by loading area activities (from vehicles turning in the loading area shown on the Site Plan, or being used to transport equipment, furnishings, food, and beverages into either the Function Room or Function Service Building).
- B. Our client has objected to the Function Room Bar/Restroom Facility Section 1 of this letter as being an expansion to a nonconforming building. We were informed by ARCOM that “use issues” were within the Town Commission’s purview. Additional reasons supporting our client’s objection to these areas are set forth herein.

The Hotel is currently a non-conforming *use*, and Sec. 134-387 of the Town’s Code provides:

“Sec. 134-387. - Extension or expansion.

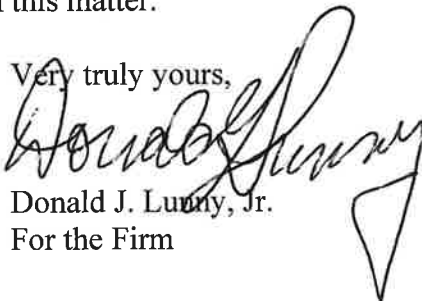
No nonconforming use shall be enlarged, increased, intensified, substituted or extended to occupy a greater area than it occupied at the effective date of adoption or amendment of this chapter, except as may be granted by variance under section 134-201. No such nonconforming use shall be relocated in whole or in part to any portion of a lot or parcel except the location occupied by such use at the effective date of adoption or amendment of this chapter.”

The Town should not allow the nonconforming use to expand by granting Variances for the Function Service Building or the Function Room Full-Service Bar and Restroom Building, since the hardships are “self-created.”

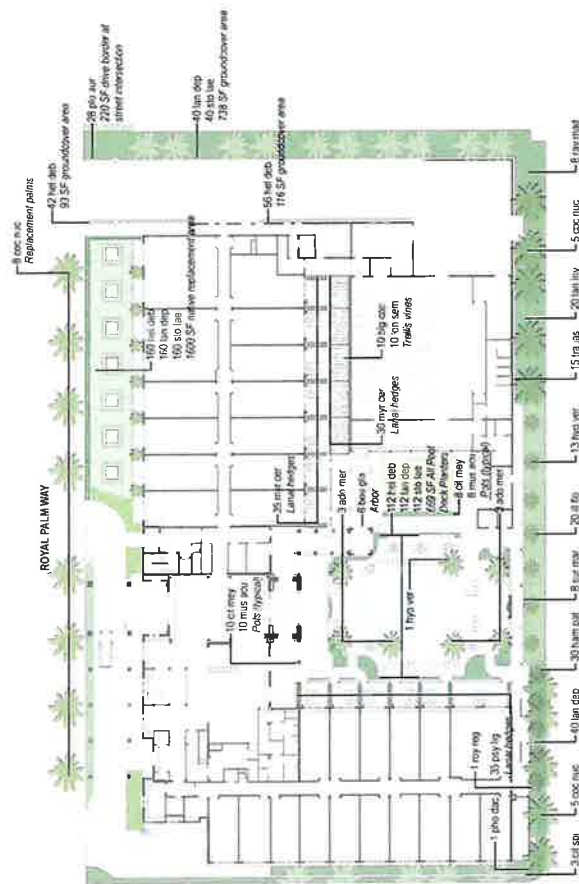
2. Our client shares the Zoning Administrator's concerns as expressed in the Town Staff's 11/2/2020 Staff Report.
- A. The Function Room Seats should remain restricted to 150 dining room seats. Granting additional seating, and removing dining room seating as requested, increases the intensity of the non-conforming use in the rear and eastern portion of the Property. As stated above, our client is very concerned with additional improvements and activity in these areas of the Property.
 - B. The more than doubling of outside seating is problematic, as again, this increases the intensity of an existing non-conforming use. Our client would request that the amount of outside seating not exceed prior approvals. In view of the above, our client would request that the Town Commission not approve the Full-Service Bar and Restroom Building, not approve the Function Service Building, and limit outdoor seating as suggested. Additionally, our client would request whatever other relief the Town Commission may deem proper.
 - C. Our clients comment in support of Staff's concerning the Declaration and the so called "Pre-function" events are set forth in Part III of this letter above.

Conclusion

Please ensure that a copy of this correspondence and its Exhibits are given promptly to the Mayor and Members of the Town Commission. We wish to thank the Town for its consideration of this matter. Finally, we reserve the right to raise additional objections and legal and factual arguments in connection with these matters should it become appropriate to do so as we continue to learn about and participate in this matter.

Very truly yours,

Donald J. Lunny, Jr.
For the Firm

Cc w/encl: (Via E-mail):
Mr. Wayne Berman;
John C. Randolph, Esq.
Maura Ziska, Esq.



Area (SF)	Landscape Designation
2,472	Front Yard (East Side)
412	Perimeter
97	Entry Planting Area
173	Entry Planting Area
723	W. Entry Planting Area
956	E. Entry Planting Area
93	New Planter - East Drive (A)
115	New Planter - East Drive (B)
1,597	S. Entry Planting Area
1,597	S. Entry Planting Area
669	Pool Deck Planters
133	W. Lane Hedges (dividers)
119	E. Lane Hedges (dividers)
85	E. Lane Southern Hedges
85	Vine Area for Trellis
8,815	TOTAL LANDSCAPE AREA



OVERALL SOUTH ELEVATION - WITH PROPOSED LANDSCAPE SCREENING

LANDSCAPE PLANTING PLAN

The Palm House Hotel
160 Royal Palm Way



EXHIBIT 1



COOPER CARRY
License N° A-2000466 | P-05-2020
OCTOBER 28TH, 2020 | 7-38-0029



PLANT SCHEDULE

PALMS

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Ado mer	6	<i>Adontia neri</i>	Christmas Palm	25 gallon	5' clear trunk, single	As shown	Non-Native	8 feet	4 feet	25 feet	8 feet	Pool deck planting
Coc nuc	18	<i>Cocos nucifera</i>	Coconut Palm	B&B	10' clear trunk, single	As shown	Non-Native	15 feet	8 feet	60 feet	20 feet	Street planting replacement palms
Hyd ver	14	<i>Hyophorbe verschaffeltii</i>	Spindle Palm	25 gallon	5' clear trunk, single	As shown	Non-Native	7 feet	3 feet	25 feet	8 feet	Pool deck planting
Pho dec	1	<i>Phoenix dactylifera</i>	Date Palm	B&B	8' clear trunk, single	As shown	Non-Native	12 feet	4 feet	70 feet	20 feet	Perimeter plantings
Rav mad	8	<i>Ravenea madagascariensis</i>	Traveler's Palm	25 gallon	3' clear trunk, multi-stem	As shown	Non-Native	6 feet	4 feet	30 feet	18 feet	South border screen planting
Roy reg	1	<i>Roystonea regia</i>	Royal Palm	B&B	10' clear trunk, single	As shown	Native	15 feet	8 feet	60 feet	20 feet	Perimeter plantings

TREES

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Cit spi	3	<i>Citharexylum spinosum</i>	Fiddlewood	3 gallon	24"	As shown	Native	24 inches	18 inches	20 feet	15 feet	Perimeter plantings
Gym luc	3	<i>Gymnanthes lucida</i>	Crabwood	3 gallon	24"	As shown	Native	24 inches	18 inches	20 feet	15 feet	Perimeter plantings

SHRUBS

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Cit mey	18	<i>Citrus x meyeri</i>	Meyer Lemon	2 quart	12"	As shown	Non-Native	12 inches	8 inches	6 feet	3 feet	For use in pots at pool deck
Ham pat	30	<i>Hamelia patens 'Compacta'</i>	Dwarf Firebush	3 gallon	18"	24" O.C.	Native	18 inches	12 inches	4 feet	3 feet	Perimeter plantings
Ill flo	20	<i>Illicium floridanum</i>	Florida Anise	3 gallon	24"	36" O.C.	Native	24 inches	18 inches	12 feet	8 feet	Perimeter plantings
Lan inv	20	<i>Lantana involucrata</i>	Wild Sage	1 gallon	12"	36" O.C.	Native	12 inches	6 inches	4 feet	3 feet	Pool deck planters
Mus acu	18	<i>Musa acuminata 'Dwarf Cavendish'</i>	Dwarf Banana	1 gallon	12"	As shown	Non-Native	12 inches	8 inches	6 feet	4 feet	For use in pots at pool deck
Myr cer	65	<i>Myrica cerifera</i>	Wax Myrtle	1 gallon	12"	24" O.C.	Native	12 inches	8 inches	6 feet	3 feet	Lanai hedges
Plu aur	28	<i>Plumbago auriculata 'Imperial Blue'</i>	Blue Plumbago	1 gallon	12"	48" O.C.	Non-Native	12 inches	8 inches	6 feet	8 feet	Perimeter plantings
Psy lig	35	<i>Psychotria ligustrifolia</i>	Bahama Coffee	1 gallon	12"	24" O.C.	Native	12 inches	8 inches	4 feet	4 feet	Pool deck planters and Lanai hedges
Sur mar	8	<i>Suriana maritima</i>	Bay Cedar	3 gallon	18"	As shown	Native	18 inches	12 inches	10 feet	8 feet	Perimeter plantings

VINES

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Big cap	10	<i>Bignonia capreolata</i>	Crossvine	1 gallon	12"	12" O.C.	Native	NA	NA	NA	NA	Trellis planting
Bou gla	6	<i>Bougainvillea glabra</i>	Bougainvillea	1 gallon	12"	12" O.C.	Non-Native	NA	NA	NA	NA	Trellis planting
Lon sem	10	<i>Lonicera sempervirens</i>	Coral Honeysuckle	1 gallon	12"	12" O.C.	Native	NA	NA	NA	NA	Trellis planting
Tra jas	15	<i>Trachelospermum jasminoides</i>	Star Jasmine	1 gallon	12"	12" O.C.	Non-Native	NA	NA	NA	NA	South border screen plant

PERENNIALS AND GROUNDCOVERS

Key	Qty	Botanical Name	Common Name	Root	Size	Spacing	Native or Non-Native	Height at Planting	Spread at Planting	Height at Maturity	Spread at Maturity	Remarks
Hel deb	370	<i>Helianthus debilis</i>	Beach Sunflower	1 gallon	6"	24" O.C.	Native	6 inches	6 inches	18 inches	18 inches	For use in groundcover areas
Lan dep	352	<i>Lantana depressa</i>	Weeping Lantana	1 gallon	8"	24" O.C.	Native	8 inches	6 inches	24 inches	48 inches	For use in groundcover areas
Sto lae	312	<i>Stokesia laevis</i>	Stokes Aster	1 gallon	6"	24" O.C.	Native	6 inches	6 inches	18 inches	18 inches	For use in groundcover areas

NATIVE PLANT CALCULATIONS

Landscape Designation	Area (SF)	Native Area (SF)	Plants designated for Native Area
Front Yard (East Side)	2472	1600 - 64%	Hel deb, Lan dep & Sto lae
New Planter - East Drive (A)	93	93 - 100%	Hel deb
New Planter - East Drive (B)	116	116 - 100%	Hel deb
S. Property Line Planting Strip	1697	1018 - 60%	Roy reg, Cit spi, Gym luc, Ham pat, Ill flo, Lan inv, Sur mar, Lan dep
Pool Deck Planters	669	669 - 100%	Hel deb, Lan dep & Sto lae
W. Lanai Hedges (dividers)	133	133 - 100%	Psy lig
E. Lanai Hedges (dividers)	119	119 - 100%	Myr cer
E. Lanai Southern Hedges	85	85 - 100%	Myr cer
Vine Area for Trellis	85	85 - 100%	Big cap & Lon sem
Total Native Area		3918 SF	

Total Native Area (3918 SF) is 44% of Total Landscape Area (8815 SF)*see Planting Plan for total landscape area tabulation

LANDSCAPE PLANTING SCHEDULE



The Palm House Hotel
160 Royal Palm Way



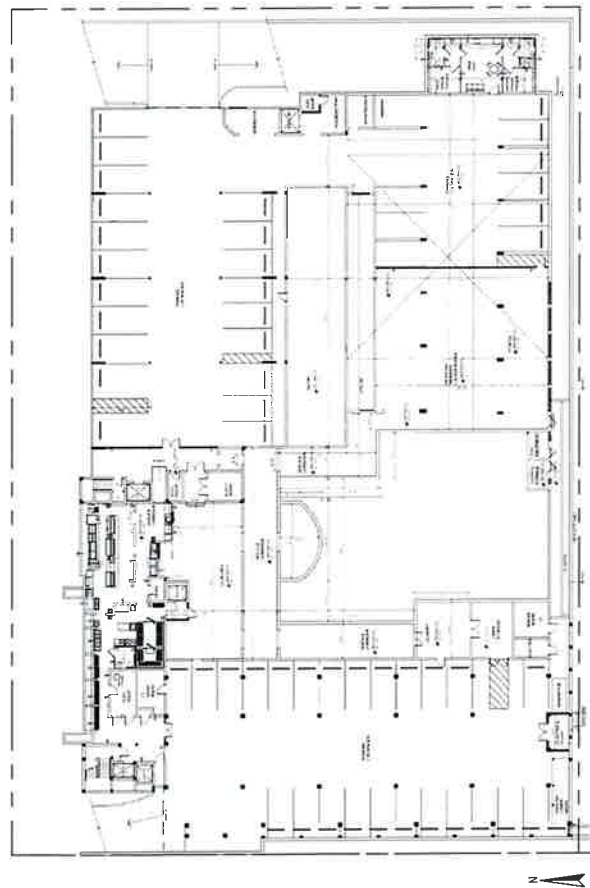
EXHIBIT 3

COOPER CARRY

License No. AL20000456
October 30th, 2020 12:50:00PM

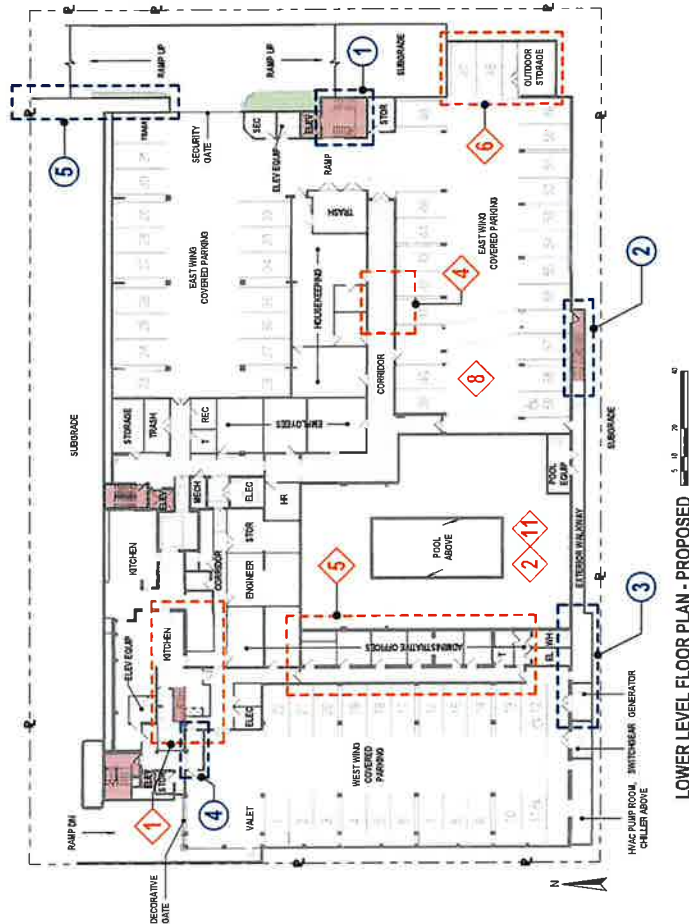
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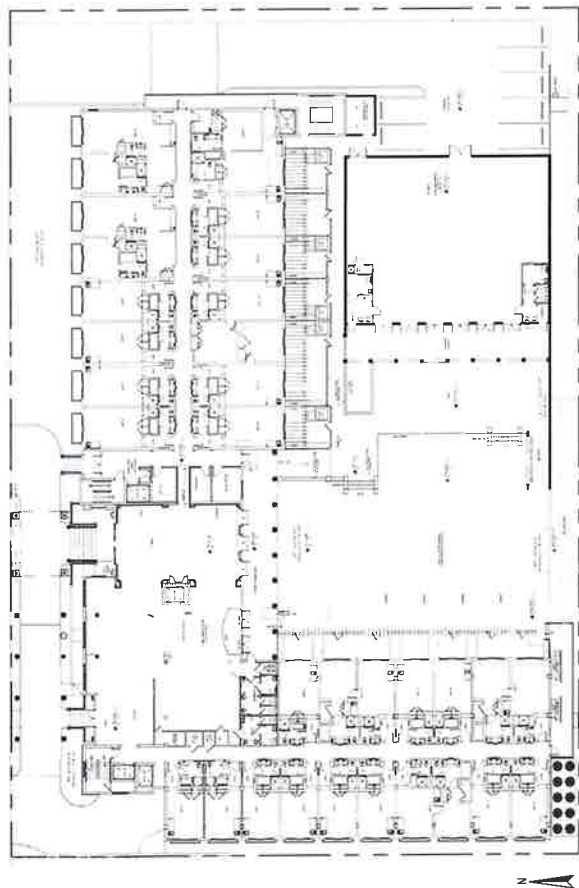
LOWER LEVEL FLOOR PLAN - APPROVED
(SPR SE 001-2016 PREPARED BY DAVID MILLER & ASSOCIATES, P.A.)

NON-CONFORMING DEFICIENCIES	PROPOSED CORRECTIONS
1 Demolish partially constructed elevator extension to rooftop above second floor dining room & lobby to the "Sunset" deck.	1 Demolish elevator shaft extension to the north roof deck. Patch roof to match existing. No assembly space at rooftop.
2 Complete construction of Function Room and Pool area consistent with plans previously approved by the Town of Palm Beach.	2 Construct new pool, pool deck and amenities as designed on the proposed improvement plans, for Town of Palm Beach approval.
4 Demolish partially constructed walkway, stairs and elevator access to roof above Function Room.	4 Demolish elevator shaft, elevated stair and walkway. Patch roof to match existing. No assembly space at rooftop.
5 Demolish approximately 1,140 SF of office space in area and restore previously approved service corridor and laundry space.	5 Retain 1,140 square foot of new office space for hotel staff and administration.
6 Demolish partially constructed enclosure of portions of the Basement Garage on both east and west side of the property and restore 5 required off-sheet parking spaces.	6 Demolition to restore required parking spaces. Retain small area inaccessible for parking as outdoor storage.
8 Demolish partially constructed wall in basement parking area which was built to expand the basement Function Room Kitchen and restore required parking.	8 Demolition to restore required parking spaces.
11 Eliminate two pool area structures and relocate pool structure which includes service bar to previously approved location. The pool area will be restored as previously approved.	11 Demolish noncompliant pool area structures. Construct new pool support structures as designed on the proposed improvement plans, for Town of Palm Beach approval.



LOWER LEVEL FLOOR PLAN - PROPOSED

PROPOSED IMPROVEMENTS
1 Extend open-air stair to basement for life safety egress from basement and parking.
2 Extend retaining wall and exterior walkway near south property line for life safety egress and allow for staff access to the pool deck.
3 Replace existing 250KW 480/277 volt natural gas generator in like size, capacity and location. Construct raised enclosure for required fire separation from parking and egress path of travel overhead.
4 Enclose portion of parking area to provide fire separated egress path from southwest portion of parking and mechanical spaces.
5 Construct new exterior retaining walls, stair and walkway for improved life safety egress path to public way (Royal Palm Way).



FIRST LEVEL FLOOR PLAN - APPROVED
(SPR SE 001-2016 PREPARED BY DAVID MILLER & ASSOCIATES, P.A.)

NON-CONFORMING DEFICIENCIES	PROPOSED CORRECTIONS
1 Demolish partially constructed elevator extension to rooftop above second floor dining room & lobby to the "Sunset" Deck.	1 Demolish elevator shaft extension to the north roof deck. Patch roof to match existing. No assembly space at rooftop.
2 Complete construction of Function Room and Pool area consistent with plans previously approved by the Town of Palm Beach.	2 Construct new pool, pool deck and amenities as designed on the proposed improvement plans, for Town of Palm Beach approval. Complete construction of Function Room.
3 Demolish partially constructed bathrooms on west side of Function Room and complete construction in area immediately adjacent to the Southwest corner of the Function Room.	3 Demolish bathroom building and construct new single-use toilets for pool, pool service party and full-service bar adjacent to new event lawn.
4 Demolish partially constructed walkway, stairs and elevator access to roof above Function Room.	4 Demolish elevator shaft, elevated stair and walkway. Patch roof to match existing. No assembly space at rooftop.
9 Construct opening on the east side of the Function Room wall which was going to be an unauthorized stage.	9 Infill opening at east side of Function Room and finish to match adjacent exterior walls.
10 Remove infill framing at exterior walkways on east elevation.	10 Enclose existing, partially complete open-air egress balcony with new exterior walls and railings.
11 Eliminate two pool area structures and relocate pool structure which includes service bar to previously approved location. The pool area will be restored as previously approved.	11 Demolish noncompliant pool area structures. Construct new pool support structures as designed on the proposed improvement plans.

FIRST LEVEL FLOOR PLAN

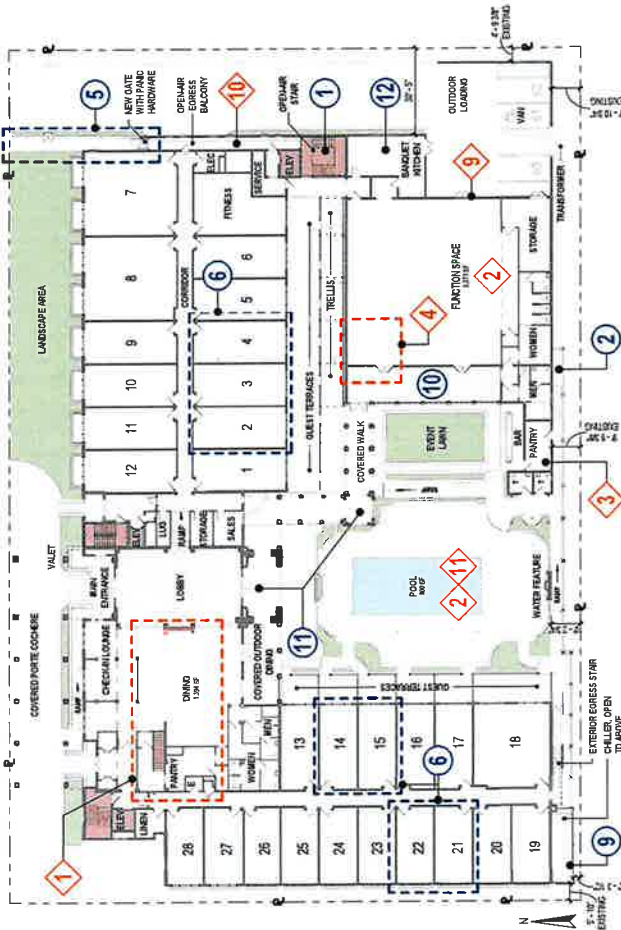
A201.A



The Palm House Hotel
160 Royal Palm Way



COOPER CARRY
License No. A32606966 | P-603-2020
OCTOBER 28TH 2020 | 7:20-60389



FIRST LEVEL FLOOR PLAN - PROPOSED

PROPOSED IMPROVEMENTS		
1 Extend existing open-air stair to basement for improved life safety egress from basement spaces and parking.	9	Replace existing chiller, construct new screen walls to height of new equipment.
2 Extend retaining wall and exterior walkway near south property line for life safety egress and allow for staff access to the pool deck.	10	Enclose existing open-air covered walkway at Function Room to create conditioned prefunction.
5 Construct new exterior retaining walls, stair and walkway for improved life safety egress path to public way (Royal Palm Way).	11	Reconfigure exterior facade facing new proposed pool deck. Provide covered walkway from Hotel Lobby to Function Room.
6 Convert existing guest rooms as shown on the proposed improved plans to provide 79 keys total.	12	Enclose area with new exterior walls and roof for new banquet prep kitchen adjacent to Function Room.

(Exhibit "5")
Cont

Prepared by, Record and Return To:
Marcia H. Langley, Esq.
Greenberg Traurig, P.A.
5100 Town Center Circle, Suite 400
Boca Raton, FL 33486

Property Tax Folio No.: 50-43-43-23-05-026-0310

306354332 AMK

DEBTOR-IN-POSSESSION DEED

THIS DEBTOR-IN-POSSESSION DEED is made on May 15, 2019, by **160 ROYAL PALM LLC**, a Florida limited liability company (the "Grantor"), whose address is 1118 Waterway Lane, Delray Beach, FL 33483, and **LR PALM HOUSE LLC**, a Delaware limited liability company (the "Grantee"), whose address is 185 W. Broadway, Suite 101, Jackson, WY 83001.

(Whenever used herein the terms "Grantor" and "Grantee" shall be construed to include all parties to this instrument and their successors and assigns and shall include singular, plural, masculine, feminine, or neuter as required by context.)

WITNESSETH:

Grantor, for and in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, remise and quit-claim to Grantee forever, all the right, title, interest, claim and demand which Grantor has in and to the following described land and all improvements located thereon, situated in Palm Beach County, Florida (the "Property"):

Lots 31, 32, and 33, Block F, Revised Map of Royal Park Addition to Palm Beach, Florida, according to the Plat thereof, as recorded in Plat Book 4, Page 1, of the Public Records of Palm Beach County, Florida;

TO HAVE AND TO HOLD the same together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, IN Aequity and claim whatsoever of Grantor, either in law or equity, to the use and benefit of Grantee forever.

SUBJECT TO taxes for the year 2019 and thereafter not yet due and payable, and all matters of record in the Official Records of Palm Beach County, Florida, without reimposing same.

This Debtor-in-Possession Deed is being executed in accordance with the Order: (I) *Granting Expedited Motion Seeking Approval of Procedures for Amended Sale Process and* (II) *Scheduling Final Hearing to Consider Approval of Sale of Assets Free and Clear of Liens, Claims and Encumbrances* (the "Procedures Order") (Document No. 619) and *Order Approving*

Sale of Assets to LR U.S. Hotels Holdings LLC Free and Clear of All Liens, Claims and Encumbrances (the "Sale Order") (Document No. 651) entered on March 12, 2019 in Case 18-19441-EPK in the United States Bankruptcy Court for the Southern District of Florida, West Palm Beach Division. The Grantee is a wholly-owned assignee of LR U.S. Hotels Holdings LLC. Pursuant to paragraph 9 of the Sale Order, the Grantor has satisfied the requirements under 11 U.S.C. § 363(f) for transferring the Property. The undersigned signatory for Grantor is executing this Debtor-in-Possession Deed solely as the court appointed manager of Grantor, and not individually.

IN WITNESS WHEREOF, Grantor has executed this Debtor-in-Possession Deed as of the date above.

Signed, sealed and delivered in the presence of:

Print Name: Marcia L. [Signature]
Print Name: DOLORES COTT

GRANTOR:

160 ROYAL PALM, LLC, a Florida limited liability company

By: [Signature]
Cary D. Glickstein, Manager

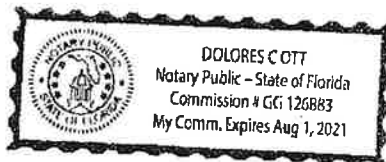
STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 14th day of May, 2019, by Cary D. Glickstein, as Manager of 160 ROYAL PALM, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or produced FL DRIVER'S LICENSE for identification.

[NOTARIAL SEAL]

Notary: [Signature]
Print Name: DOLORES COTT
Notary Public, State of Florida
My commission expires: _____

ACTIVE 42404854v1





CFN 20130005174
OR BK 25694 PG 0633
RECORDED 01/04/2013 12:30:48
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0633 - 641; (9pgs)

Prepared by and return to:
Maura Ziska
Kochman & Ziska, PLC
222 Lakeview Ave., Suite 1500
West Palm Beach, FL 33401

AMENDMENT TO DECLARATION OF USE AGREEMENT
by
THE TOWN OF PALM BEACH
and
160 ROYAL PALM LLC (F/K/A ROYAL 160, LLC)

Dated: December, 2012

AMENDMENT OF DECLARATION OF USE AGREEMENT

THIS AMENDMENT TO DECLARATION OF USE AGREEMENT ("Amendment") is made and entered into this 28th day of December, 2012 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter the "Town"); and 160 ROYAL PALM LLC, formerly known as ROYAL 160, LLC, 160 Royal Palm Way, Palm Beach, Florida 33480 hereinafter the ("Owner"), which terms "Town" and "Owner" will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH:

WHEREAS, the Town and Owner heretofore entered into a Declaration of Use Agreement made on July 30, 2007 and recorded in Official Records Book 21987, Page 499, of the Public Records of Palm Beach County ("Agreement");

WHEREAS the land described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as "Land") is located within the municipal limits of the Town;

WHEREAS, title to all of the Land is held by the Owner;

WHEREAS, the Palm House Hotel (hereinafter referred to as the "Hotel") is located and operated on the Land at 160 Royal Palm Way in the Town;

WHEREAS, the Town Council on July 11, 2012, approved the special exception portion of the Site Plan Review #6-2012 with Special Exceptions and Variances, which allowed the new Owner to operate the Hotel subject to a condition that the south perimeter landscaping having to be completely installed by September 30, 2012;

WHEREAS, the Town Council on August 15, 2012 granted conditional approval of Site Plan Review #6-2012 with Special Exception and Variances which amended Site Plan Review No. 2-2007 with Special Exceptions and Variances on the Land;

WHEREAS, the conditions of approval are set forth herein and the approval of this Agreement on the basis of the Owner's application and the testimony on behalf of the Owner;

WHEREAS, the Town made specific findings that the Owner met all applicable provisions of the Town Code governing site plan review, special exceptions, and variance requests;

WHEREAS, in approving the amendment to the Site Plan Review with Special Exceptions and Variances, the conditions of approval reflected herein are imposed in order to regulate the use, mitigate any adverse impacts of the use, and insure that said use shall not be adverse to the public interest;

WHEREAS, all of the representations made herein are true and accurate and the approval of the amended Site Plan with Special Exception and Variances are conditioned upon the representations made herein and all of the conditions herein imposed; and,

WHEREAS, in granting the approval, the Town Council relied upon the oral and written representations of the property Owner/applicant both on the record and as part of the application process.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and in consideration of other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed that the Agreement is hereby amended and modified as follows:

ARTICLE I **RECITALS**

The recitals set forth above are true and correct and are incorporated herein and made a part hereof.

ARTICLE II **REPRESENTATION OF OWNERSHIP**

Owner has full right to enter into this amendment to the 2007 Agreement and to bind the Land, Hotel and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Hotel and Land in accordance with the terms and conditions of this Agreement. No consent to execution, delivery and performance hereunder is required from any person, partner, limited partner, creditor, investor, judicial or administrative body, governmental authority or other party other than any such consent which already has been unconditionally given or referenced herein. Neither the execution of this Amendment to the 2007 Agreement, nor the consummation of the transactions contemplated hereby will violate any restriction, court order or agreement to which Owner or the Land are subject.

ARTICLE III **CONDOMINIUM HOTEL USES**

The use of the Land shall be for hotel uses and accessory uses in compliance with all of the information and exhibits not inconsistent with the terms and conditions set forth herein, set forth in the application submitted to the TOWN for Site Plan Review No. 2-2007 with Special Exception and Variances, as amended and approved by Town Council on May 7, 2007, and as amended by Site Plan Review #6-2012 with Special Exceptions and Variances, as amended and approved by the Town Council on July 11, 2012 and August 15, 2012(hereinafter referred to as the "Approval"). The Town's approval of the Application is subject to that provision of the Town Code which provides that no subsequent deviation may be made from the application as approved by the Town Council except upon new application to and approval by the Town Council. Any additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Architectural Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under any of the foregoing governmental authorities.

ARTICLE IV
ADDITIONAL CONDITIONS OF APPROVAL

The following new conditions are imposed as conditions of granting approval of the Site Plan Review with Special Exceptions and Variances and are required to be met as conditions of the continued operation of the Hotel.

1. The proposed 14 foot tall parapet wall between the proposed function room and the proposed employee pool service building shall have a water feature that runs the length of the wall. Said water feature shall be operational between the hours of 9:00 a.m. and midnight (12:00 a.m.).
2. The employee pool service building shall be only for the use of the Hotel staff and will not be used by Hotel guests to order or consume food and/or beverages. There shall be no chairs for hotel guests at the employee pool service building.
3. There shall be no events in the pool deck and grass area between the pool deck and Function Room. Those areas shall remain passive. The pool deck area shall be allowed only background music and light live music with the speaker system directed towards the hotel to the north. There shall be no music played on the abutting grass area. The pool deck hours and hours for music shall be as identified in the Agreement.
4. The air conditioning equipment on the roof of the Function Room shall be screened from the neighbors by a solid parapet wall on the three exterior sides.
5. Except for emergencies, the Function Room elevator and stairwells shall not be accessible to the sundeck from 7:00 p.m. to 9:00 a.m. so as not to allow hotel guests and employees on the Function Room roof during those hours. Fire-rescue accessibility shall be provided by knox-boxes and an elevator override system. The access points to the stairs leading to the sun deck on the Function Room shall be designed to be completely isolated from the ground floor with a full door and other separation to ensure that when they are locked there is no access to the sundeck.
6. Additional landscape material to completely screen the back of the Hotel from the neighbors shall be required and maintained on the south perimeter of the subject property in perpetuity. The landscaping of the entire property shall be approved by the Architectural Commission.
7. All construction must be completed by February 14, 2013 with the exception of the function room, spa/fitness area and second floor dining room above the lobby which shall be required to only have the shells (drywall, all life safety features, minimum electric and floor slab) completed by February 14, 2013. Any elements of the Hotel or Land not completed by February 14, 2013, including the function room, spa/fitness area and second floor dining room shall be required to obtain new approvals and permits.

ARTICLE V
PROVISIONS FOR NOTICE

For the issuance of any notice regarding the terms of the Agreement and this Amendment, notice shall be provided.

To the Town Manager:

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

To the Owner:

c/o Glenn F. Straub,
160 Royal Palm Way
Palm Beach, FL 33480

ARTICLE VI
PROVISIONS TO RUN WITH LAND/RECORDING

This Amendment shall run with the Land and shall be binding upon the Owner and its respective legal representatives and successors and assigns. This Amendment shall be recorded by the Owner in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto. This Amendment shall be superior to any mortgages on the Land and shall be recorded prior to the recording of any such mortgages.

ARTICLE VII
ENTIRE AGREEMENT

This Amendment, as identified herein, only represents the modifications to the Agreement, as recorded in Official Records Book 21987, Page 499, of the Public Records of Palm Beach between the parties and may not be amended except by written agreement executed by both parties. All other provisions and conditions in the Agreement, as recorded in Official Records Book 21987, Page 499, of the Public Records of Palm Beach County, remain in full force and effect.

ARTICLE VIII
MISCELLANEOUS

Wherever the word "laws" appears in this Agreement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities. This Amendment may not be amended except by written instrument signed by all parties hereto. Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All references to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs and subparagraphs of this Agreement and to exhibits attached hereto, which exhibits are by this

reference made a part hereof. This Agreement shall be binding upon the parties hereto and upon their successors and assigns. In the event of the invalidity of any provision of this Agreement, same shall be deemed stricken herefrom and this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above.

Signed, sealed and delivered
In the presence of:

Boyle-Gordon
Karen Temme

Boyle-Gordon
Karen Temme

Boyle-Gordon
Karen Temme

Maria Zisna
Cane Hole

TOWN OF PALM BEACH

By: Gail L. Coniglio
Gail Coniglio

By: David Rosow
David Rosow, President
Town Council

By: Peter Elwell
Peter Elwell
Town Manager

160 ROYAL PALM LLC

By: [Signature] MANAGER
Its: Manager/Member

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 21 day of December 2012, by Gail Coniglio, Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. She is personally known to me ~~or has produced~~ as identification.



(SEAL)

Patricia Gayle-Gordon

Notary Public-State of Florida
Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 21 day of December 2012, by David Rosow, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me ~~or has produced~~ as identification.



(SEAL)

Patricia Gayle-Gordon

Notary Public-State of Florida
Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 28th day of December, 2012, by Peter Elwell, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me ~~or has produced~~ as identification.



(SEAL)

Patricia Gayle-Gordon

Notary Public-State of Florida
Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 5 day of November, 2012, by Glenn F. Straub on behalf of the company. He is personally known to me or has produced as identification.



(SEAL)

Maura Ziska

Notary Public-State of Florida
Commission Number: _____

RECOMMEND APPROVAL:

11/13/12
Paul Castro
Paul Castro, AICP
Zoning Administrator

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

John C. Randolph
John C. Randolph
Town Attorney

Exhibit "A"

Legal Description of the Land:

Being Lots 31, 32 and 33, Block F, Royal Park Addition, a subdivision in the Town of Palm Beach, Palm Beach County, Florida, as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida.

This is not a certified copy

SNIFFEN & SPELLMAN, P.A.

Sender's Direct Line: (561) 721-4002
Email: jeubanks@sniffenlaw.com

Via E-mail

November 9, 2020

Queenester Nieves,
Town Clerk, Town of Palm Beach
360 South County Road
Palm Beach, Florida 33408

**Re: Joinder in Appeal of the October 28, 2020 ARCOM Decision in favor of
160 Royal Palm Way, Palm House Hotel (Application B-063-2020) ("Application")**

Dear Town Clerk:

Our office represents Thomas O. McCarthy, who resides at 140 Brazilian Avenue, as well as Timothy and Gayle DeVries, the owners of 141 and 149 Brazilian Avenue which back up to the Palm House Hotel ("Hotel") located at 160 Royal Palm Way. In that capacity, we are in receipt of a copy of that correspondence dated November 6, 2020 submitted by Donald Lunny, Jr., Esq. on behalf of his client the Simmons Trust, the owner of 133 Brazilian Avenue which includes an Appeal of the Architectural Commission ("ARCOM") approval of the approval of Application B-063-2020 ("Simmons Appeal").

Please be advised that our office, on behalf of our clients, hereby joins in the Simmons Appeal and adopts the issues and arguments set forth therein, along with any and all exhibits attached thereto. In addition our office incorporates any and all documents submitted by LR Palm House LLC ("Applicant") in support of its Application as well as any and all other public records regarding the Application in the possession of the Town of Palm Beach ("Town"). We would further add the following arguments.

A. Consideration of Appeal is Premature

In addition to the issues raised in the Simmons Appeal that the proposed development at the Hotel is being reviewed in a "piecemeal fashion,"¹ we would note that under the present circumstances an appeal would appear to be premature until the decision regarding the Applicant's Landscape Plan has been addressed and approved by ARCOM. As set forth in that correspondence from our office to the Town Council of today's date (a copy of which is attached as Exhibit "A") under the Town Code the Applicant cannot obtain a Special Exception with Site Plan until such time as a recommendation and approval of the Site Plan is complete. A Site Plan is required to have not only the location of the buildings, but also consider the location of screening of the property, along with a landscaping plan, including types, sizes, and locations of vegetation and decorative shrubbery, and showing provisions for irrigation and maintenance. *See*, Section 134-327(b)(4) and (11) The Town has tasked ARCOM with the obligation to review applications for Site Plan approval and make a recommendation, including any landscaping plan. As such, until such recommendation of a landscaping plan has been completed, any required Site Plan is incomplete for consideration by the Town Council. Therefore, ARCOM's decision as to the

¹ Such a "piecemeal fashion" review would further require any party opposing the Site Plan approval to file two separate Appeals, pay two separate fees for doing so, and pay for counsel to appear at two separate hearings.

REPLY TO:

605 NORTH OLIVE AVENUE, 2ND FLOOR
WEST PALM BEACH, FL • 33401
PHONE: 561.721.4000
FAX: 561.721.4001

TC Dev Review Backup 2-10-2021

WWW.SNIFFENLAW.COM

123 NORTH MONROE STREET
TALLAHASSEE, FL • 32301
PHONE: 850.205.1096
FAX: 850.205.3004

115 of 448

Application is not final (and therefore not appealable) until it has considered and made a recommendation on all parts of the Site Plan, including the Landscape Plan. This is especially true in the present case given the potential inability to install the landscape where indicated, which may well cause the need to make further changes in the Site Plan itself. As a result, in the present case ARCOM should be permitted to review and make recommendations as to the proposed Landscape Plan, prior to our clients or Mr. Lunny's clients being required to address or argue any appeal. Therefore, we would request that this Appeal be deferred until the consideration of the Landscape Plan is complete and there is a final Site Plan to be appealed.

B. ARCOM Erred in Approving New Non-Complying Buildings and Uses

In addition to being premature, our clients further assert that ARCOM's decision to approve all of the proposed buildings, structures and architecture within the Application was in error, in that several of the new buildings constitute the expansion of a non-conforming use and/or structure. As noted in the Simmons Appeal, under Section 18-305(a)(9) of the Code, ARCOM is required to ensure that the "proposed development is in conformity with the standards of this Code and other applicable ordinances insofar as the **location and appearance of the buildings and structures are involved.**" (emphasis added) In the present case, at least two structures were permitted to be constructed and located on the Site Plan in violation of the Town Code, namely the new full-service bar and single use outdoor restroom area and the new Function Room Prep-Kitchen, which is part of and housed in the "Function Services Building" to be attached to the east side of the Function Room.

The new full service bar and single use restroom building² will be placed in the rear setback area in contradiction to the Town Code. As such, it constitutes the expansion of a non-conforming structure under Section 134-416(d) and Section 134-417 of the Town Code, which does not permit such an expansion unless it meets all of the lot, yard and bulk regulations. The new full service bar and single use restrooms, however, extend into an area not previously occupied under the 2016 Approved Plans and will be located in the rear yard setback. Adding a new use such as a full service bar and single use restrooms to the pool deck further constitutes the improper expansion of a non-conforming use in the form of the Hotel itself, which is not a permitted (or even special exception) use as it has 79 rooms on only 1.377 acres which equates to only 36 permitted rooms. *See*, Section 134-1304(a)(4);³ *see also*, Section 134-387 and 134-386(d).⁴ As

² While the Applicant has stated under oath that there previously existed a bar in the pool deck area, such is not the case. Instead, the Survey attached to the Applicant's initial presentation clearly shows a "Pool Service Station" with Storage and Equipment Rooms Below. Similarly, within is presentation, the Applicant has referred to the area as a "new single use toilets for the pool, pool service pantry and full service bar adjacent to new event lawn." (emphasis added) Nowhere in the Site Plan Review of Section Exception #1-2016 is there mention of an outdoor full service (indicating the inclusion of alcohol and hard liquor) bar area or single use toilets, nor do such items appear on the 2016 Approved Plans by the Town Council.

³ Hotels are only permitted in the C-B Commercial district as a special exception "at a maximum rate of 26 units per acre." As such, today the Hotel could only be permitted as a variance.

⁴ Under Section 134-387 "non-conforming uses shall not be enlarged upon, expanded, intensified or extended, or to be used as grounds for adding other uses prohibited elsewhere in the same district." Similarly, under Section 134-387 states "[n]o nonconforming use shall be enlarged, increased, intensified, substituted or extended to occupy a greater area than it occupied ... except as may be granted by a variance under section 134-201."

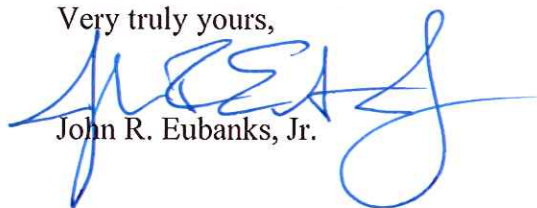
such, the approval and location of the new full service bar and single use restroom building was in error and should be reversed.

Similarly, the proposal to create a new Function Services Building (including a Function Room Prep-Kitchen), which is attached to and will become part of the Function Room, also constitutes the expansion of the non-conforming Function Room, which is located in the rear yard set back. Likewise, again, the creation of a new Function Service Room Pre-Kitchen constitutes the expansion of the non-conforming use of the Hotel. Therefore, ARCOM's decision to allow and approve of the location of such a new building, should be reversed as it would be in violation of the Town Code.

In light of the above, ARCOM's decision was not only legally improper, for failure to comply with the essential elements of the Town Code, but also not supported by competent, substantial evidence. Instead, the only evidence presented was by the Appellants that the above buildings and uses were improper expansions under the Town Code. As such, ARCOM's decision should be reversed.

Wherefore, as set forth herein and in the Simmons Appeal, our clients respectfully request that the Town Council reverse or vacate ARCOM's decision and remand the Application for further proceedings in accordance with the Town Council's ruling and instructions.

Very truly yours,



John R. Eubanks, Jr.

cc: Wayne Bergman, Director Planning, Zoning & Building
John Randolph, Esquire, Town Attorney
Kelly Churney, Administrative Specialist
Mayor and Town Council
Tim and Gayle DeVries
Thomas O. McCarthy

SNIFFEN & SPELLMAN, P.A.

Sender's Direct Line: (561) 721-4002
Email: jeubanks@sniffenlaw.com

Via E-mail

Mayor and Town Council
c/o Maggie Zeidman, President
Town Council of the Town of Palm Beach
360 South County Road
Palm Beach, Florida 33408

Re: Consideration of Zoning Application for 160 Royal Palm Way, Palm House Hotel (Zoning Application Z-20-00289) by Town Council is Premature

Dear Mayor and Town Council Members:

Our office represents Thomas O. McCarthy, who resides at 140 Brazilian Avenue, as well as Timothy and Gayle DeVries, the owners of 141 and 149 Brazilian Avenue which back up to the Palm House Hotel. In that capacity, we understand that the Town Council is scheduled to consider Zoning Application Z-20-00289 ("Application") by LR Palm House LLC ("Applicant") for the Palm House Hotel at its November 13, 2020 meeting. Please be advised that it is our clients' position that any such consideration would be premature given that ARCOM did not approve the Applicant's Landscape Plan at its October 28, 2020 meeting.¹

As you are aware, the Application includes a Special Exception **with Site Plan Review**, along with requests for a number of variances. Because the hotel is at best a special exception use² under Section 134-1304 (a)(5) of the Code, any special exception **"require[s] a site plan review** as provided in article III of this chapter." As a result, the Council cannot approve the Special Exception in the Application without having a proper, completed Site Plan at the time of approval.

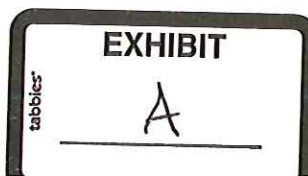
Under Section 134-326 of the Town Code "[t]he **primary purpose of the site plan review process is to examine for potential adverse impact on the adjacent area, neighborhood or town**, those uses having characteristics as possessing the potential for negative impact **and to ensure such uses are located, sited and designed that they result in a positive contribution to the area, neighborhood and town.**" (emphasis added) To do so, under Section 134-327(b) of the Code all Site Plan reviews must include a series of detailed filings, including, but not limited to, not only architectural elevations and buildings under subsection (b)(9), but also the location of **"all screens and buffers"** under subsection (b)(4)(f) and under subsection (b)(11) a **"[l]andscaping plan, including types, sizes and locations of vegetation and decorative shrubbery, and showing provisions for irrigation and maintenance."** (emphasis added) The Town has tasked ARCOM (or Landmarks if the structures are historic) with the obligation to review applications for a Site Plan approval, including any Landscape Plans, and make a recommendation to the Town

¹ There is also a pending appeal of ARCOM's October 28, 2020 decision, to which our clients have are filing a joinder, which would likewise make it premature for the Town Council to consider the Application.

² The hotel is a non-conforming use as it has 79 rooms on only 1.377 acres of property (as shown on the Survey submitted by the Applicant) which would only allow for 36 rooms, or less than half of the existing rooms on the property under Section 134-1304(a) (5) which allows for a hotel use "at a maximum of 26 units per acre."

REPLY TO:

605 NORTH OLIVE AVENUE, 2ND FLOOR
WEST PALM BEACH, FL • 33401
P.L.C. Dev Review Backup 2-10-2021
FAX: 561.721.4001



123 NORTH MONROE STREET
TALLAHASSEE, FL • 32301
PHONE: 850.118.0148
FAX: 850.205.3004

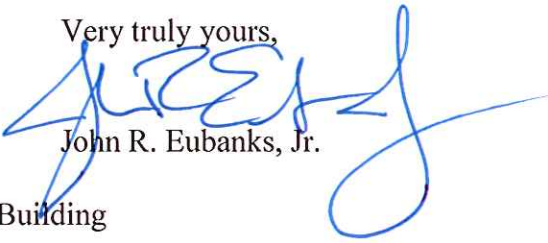
Council prior to any final approval of the Site Plan required for a Special Exception with Site Plan.

In the present case, while ARCOM considered the Site Plan of the Applicant and made a positive recommendation on the bulk of the architectural drawings and elevations, it specifically did not approve the Landscaping Plan presented by the Applicant. To the contrary, after both our firm on behalf of Mr. McCarthy and the DeVries, as well as Donald Lunny, Esq. on behalf of the Simmons (the owners of 133 Brazilian Ave.) raised significant issues of the ability of the Applicant to actually implement its proposed Landscape Plan, which included tall trees and "lush native plantings," in an easement as small as 2.5 feet, the issue was deferred for further consideration to the November 29, 2020 ARCOM Meeting.³ As a result, absent a demonstration that the proposed Landscape Plan is designed to protect the surrounding neighbors and is actually feasible, the Site Plan application is incomplete and does not meet the standards or purpose of Section 134-326. This will be especially true if there in fact is not enough room for landscaping and the Applicant has to relocate its proposed landscape to inside its own property within its Site Plan.

Therefore, until such time as ARCOM has been presented with, approved and recommended a Landscape Plan (a mandatory element of a Site Plan) which it confirms can actually be installed it would be improper for the Town Council to move forward with the consideration of the Special Exception with Site Plan. To the extent the Town Council nevertheless considers the Special Exception without ARCOM's further investigation and Site Plan approval, outside of opening the Town to a due process and failure to follow the essential requirements of the law argument, it will have established a dangerous precedent that any applicant can merely design a landscape plan that looks good on paper, but may not work in the real world, and yet take it directly to the Town Council for a Special Exception with Site Plan approval.

In light of the above, our clients request that the Town Council defer any consideration of the Application at its November 13, 2020 meeting.

Very truly yours,


John R. Eubanks, Jr.

cc: Wayne Bergman, Director Planning, Zoning & Building
John Randolph, Esquire, Town Attorney
Kelly Churney, Administrative Specialist
Town Clerk, Town of Palm Beach
Tim and Gayle DeVries
Thomas O. McCarthy

³ The Applicant's Survey by Wallace Surveying dated 2/5/2014 included in the record shows that the property line between the Hotel and its neighbors is located in the middle of a 5 foot utility easement for gas and water as well as an easement of 2.5 ft. (or less than a yard stick) to the south of the property line for sewer and transmission lines. As a result, there is little if any room for landscaping. An expanded copy of the Survey as well as pictures of the limited area available for landscaping are attached hereto as Exhibit "A" and Composite Exhibit "B" respectively.



EXHIBIT

tabbles

Camp B









Donald J. Lunny, Jr., Esq.
donald.lunny@brinkleymorgan.com

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Please reply to Fort Lauderdale

December 2, 2020

Queenester Nieves
Town Clerk
Town of Palm Beach
360 S. County Road
Palm Beach, FL. 33480

Via E-Mail

Wayne Bergman, MCP, LEED-AP
Director
Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480

Re: Request for Continuance, Extension of Time, and
Confirmation of Hearing Schedule
Simmons Appeal of October 28, 2020 ARCOM Decision
The Palm House Hotel
160 Royal Palm Way,
Palm Beach, Florida 33480

Dear Mr. Nieves and Mr. Bergman:

As you may recall, this Firm Represents Virginia C. Simmons, individually and as Trustee of the Virginia C. Simmons Revocable Trust U/A/D May 4, 2018, the owner of single-family residential property having a street address of 133 Brazilian Avenue, Palm Beach, Florida.

In accordance with Mr. Bergman's E-mail to me of November 10, 2020, our client's Appeal of the October 28, 2020 Town Architectural Commission ("ARCOM") Meeting is presently scheduled for the Town Commission's consideration at its Meeting of December 9, 2020. I write to advise the Town that my client has been engaged in productive settlement discussions with the Applicant which are not yet fully completed, however, these settlement discussions have resulted in some revisions to the Site Plan and some additional variance and special exception requests that will need to be presented to ARCOM at its Meeting of December 18, 2020. As you may recall, the Applicant was scheduled to return to ARCOM on December 18, 2020 for a supplemental Landscape Plans review.

The Applicant has advised that after Mr. Bergman's E-Mail to me of November 10, 2020, the Applicant requested the Town to schedule its Site Plan, Variances, and Special Exception for consideration by the Town Commission on January 13, 2021 (with the desire that the Project in its entirety would be reviewed by ARCOM prior to any Town Commission Review). Thus, the Applicant is of the view that its Site Plan, Variances, and Special Exceptions will not be heard by the Town Commission on December 9, 2020 as was previously the schedule.

Correspondence to Mr. Nieves
Town of Palm Beach Town Clerk
Re: The Palm House Hotel
December 2, 2020
Page 2 of 2

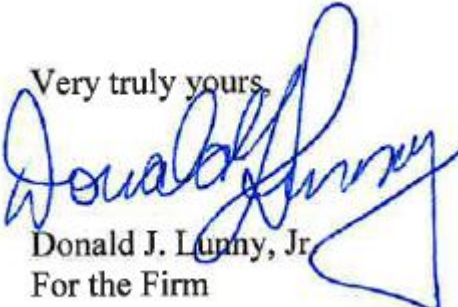
In order to have an efficient hearing schedule for The Palm House Hotel Project, and in order to allow the productive settlement effort to continue, my client is requesting an extension of time for the hearing on its Appeal of the ARCOM Meeting of October 28, 2020 and its objections to the Variances and Special Exceptions needed for the Project to whatever is the date the Town Commission considers the Project Site Plan, Special Exceptions, and Variances. It is everyone's understanding that this date is presently scheduled for January 13, 2021. In accordance with Sec. 18-177, this will advise that the Applicant has consented to this continuance and extension of time for my client's Appeal of the ARCOM decision. I have sent Maura Ziska, Esq. a copy of this letter by E-mail below.

It is my understanding that Mr. Eubanks will be submitting to you both a similar letter requesting a continuance or extension for his client's Appeal of the October 28, 2020 ARCOM Decision (also previously scheduled for December 9, 2020 as per Mr. Bergman's November 10, 2020 E-Mail).

I would respectfully request that the Town confirm for Maura Ziska, Esq., John Eubanks, Esq., and me that the hearing schedule has been changed as has been requested.

If Settlement can be achieved, the Appeal will be withdrawn, my client will be able to indicate to the Town her support for most aspects of the Project *as revised*, and will be able to indicate to the Town her lack of objection to the remaining aspects of the Project *as revised*.

Thank you both for your consideration of this important matter.

Very truly yours,

Donald J. Lunny, Jr.
For the Firm

cc. Maura Ziska, Esq. Counsel for the Applicant
John Eubanks, Esq.
John "Skip" Randolph, Esq. Town Attorney

From: [John Eubanks Jr](#)
To: [Wayne Bergman](#); [Donald Lunny](#); [Queenester Nieves](#)
Cc: [John \(Skip\) C. Randolph](#); [Maura Ziska](#); [Legal](#); [Town Attorney](#); [Paul Castro](#); [Kelly Churney](#); [Laura Groves van Onna](#); [Bradley Falco](#)
Subject: RE: Request for Extension of Time and Continuance : Simmons Appeal of ARCOM Decision of October 28, 2020 and Request for Confirmation of Hearing Schedule The Palm House Hotel
Date: Thursday, December 03, 2020 10:36:41 AM
Attachments: [160 Royal Palm Way - Deferral to January \(00045601xB6458\).pdf](#)

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Wayne:

As a follow up to Mr. Lunny's letter, our office would also request a deferral of the consideration of its Appeal of the ARCOM Decision of October 28, 2020 from the December 9, 2020 Town Council Meeting to the January 13, 2020 meeting in light of productive ongoing settlement negotiations. As noted by Mr. Lunny, the Applicant has agreed to this continuance. By separate letter dated November 23, 2020, the Applicant has already requested that consideration of the Application be deferred to the January 13, 2020 Town Council meeting, a copy of which is attached.

Thank you.

John R Eubanks, Jr.

SNIFFEN & SPELLMAN, P.A.

605 North Olive Avenue, 2nd Floor
West Palm Beach, Florida 33401
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Website: www.sniffenlaw.com / Twitter: @Sniffenlaw

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From: Wayne Bergman [mailto:wbergman@TownOfPalmBeach.com]

Sent: Thursday, December 03, 2020 9:28 AM

To: Donald Lunny <Donald.Lunny@brinkleymorgan.com>; Queenester Nieves <qnieves@TownOfPalmBeach.com>

Cc: John (Skip) C. Randolph <JRandolph@jonesfoster.com>; Maura Ziska <MZiska@floridawills.com>; John Eubanks Jr <jeubanks@sniffenlaw.com>; Legal <Legal@TownOfPalmBeach.com>; Town Attorney <townattorney@TownOfPalmBeach.com>; Paul Castro <PCastro@TownofPalmBeach.com>; Kelly Churney <KChurney@TownofPalmBeach.com>; Laura Groves van Onna <lvanonna@TownOfPalmBeach.com>; Bradley Falco <bfalco@TownOfPalmBeach.com>

Subject: RE: Request for Extension of Time and Continuance : Simmons Appeal of ARCOM Decision of October 28, 2020 and Request for Confirmation of Hearing Schedule The Palm House Hotel

Don – assuming you want your cake and also the ability to eat it, is the request to defer BOTH the joined appeals AND the Special Exception / Site Plan / Variance applications to the January 13, 2021 Town Council meeting? Is your request for additional time limited to the proposed meeting schedule, or would you need to amend your request to a certain length of time?

Please further confirm that the changes to the Special Exceptions / Site Plan / Variances will be presented at this month's Arcom meeting, scheduled for December 17 and 18, 2020. Maura Ziska is to return at that meeting to present the landscape plan, security gate and paint color, as these three items were deferred at the October Arcom meeting..

This seems like a great path to resolution. Please let me know what Town staff can do to assist beyond the rescheduling of the meetings.

Thank you.

Wayne Bergman, MCP, LEED-AP
Director
Town of Palm Beach

Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6426
www.townofpalmbeach.com

[P.S. Your exterior project may require ARCOM approvals. Click here for more info.](#)

From: Donald Lunny <Donald.Lunny@brinkleymorgan.com>
Sent: Wednesday, December 02, 2020 5:03 PM
To: Wayne Bergman <wbergman@TownOfPalmBeach.com>; Queenester Nieves <gnieves@TownOfPalmBeach.com>
Cc: John (Skip) C. Randolph <JRandolph@jonesfoster.com>; Maura Ziska <MZiska@floridawills.com>; John Eubanks Jr <jeubanks@sniffenlaw.com>
Subject: Request for Extension of Time and Continuance : Simmons Appeal of ARCOM Decision of October 28, 2020 and Request for Confirmation of Hearing Schedule The Palm House Hotel
Importance: High

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Dear Mr. Nieves and Mr. Bergman.

Please see the attached correspondence. You should be receiving similar correspondence from the other Appellant soon.

Please note that the adjustments to the hearing schedule have been agreed to amongst the parties, and we all ask that the same be confirmed.

Please also note that I've spoken to Mr. Randolph this morning and have advised him that this request would likely be made today, and he indicated that a letter request to the Town should be sufficient for this purpose. I have copied him with the letter and this E-mail.

If there is anything further that is needed, please let me, Ms. Ziska, and Mr. Eubanks all know.

Thank you.

DONALD J. LUNNY, JR. | PARTNER
Board Certified City, County & Local Government Lawyer

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501 North Federal Highway, Lake Park, FL 33403

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donald.lunny@brinkleymorgan.com | www.brinkleymorgan.com



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KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

Esperanté
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401
Telephone 561-802-8960
Facsimile 561-802-8995

*also admitted in NY

VIA EMAIL

November 23, 2020

Paul Castro
Kelly Churney
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Z-20-00289
160 Royal Palm Way, Palm Beach, Florida

Dear Paul and Kelly:

Please **defer** the above referenced matter from the **December 9, 2020** Town Council meeting to the **January 13, 2021** Town Council meeting. Thank you.

Sincerely,

Maura Ziska

Maura A. Ziska

maz/jc
cc: Client

A Florida Professional Limited Liability Company Including Professional Associations



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donald.lunny@brinkleymorgan.com

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Boca Raton, FL 33431
(561) 241-3113
(561) 241-3226 Facsimile

www.brinkleymorgan.com

Please reply to Fort Lauderdale

January 5, 2020

Queenester Nieves
Town Clerk
Town of Palm Beach
360 S. County Road
Palm Beach, FL. 33480

Via E-Mail

Wayne Bergman, MCP, LEED-AP
Director
Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480

Re: Request for Continuance, Extension of Time, and
Confirmation of Hearing Schedule
Simmons Appeal of October 28, 2020 ARCOM Decision
The Palm House Hotel
160 Royal Palm Way,
Palm Beach, Florida 33480

Dear Mr. Nieves and Mr. Bergman:

As you may recall, this Firm Represents Virginia C. Simmons, individually and as Trustee of the Virginia C. Simmons Revocable Trust U/A/D May 4, 2018, the owner of single-family residential property having a street address of 133 Brazilian Avenue, Palm Beach, Florida.

As you may know, while the Town's ARCOM Commission approved the revised plans for The Palm House Hotel which are part of the Settlement by and between the parties (the "Revised Plans"), it was unable to approve all of the variances and special exceptions that need to be approved for such Revised Plans since Town Staff advised that some of them were not advertised for the last ARCOM Meeting. Thus, The Palm House Hotel will be returning to ARCOM at its January 2021 Meeting for ARCOM's recommendations on these last few matters. It is hoped that if ARCOM recommends approval of these last few variances and special exceptions, the Town Council will be able to consider the Revised Plans, necessary variances and special exceptions, and Declaration of Use Agreement at its February 2021 Meeting (which I believe is February 10, 2021).

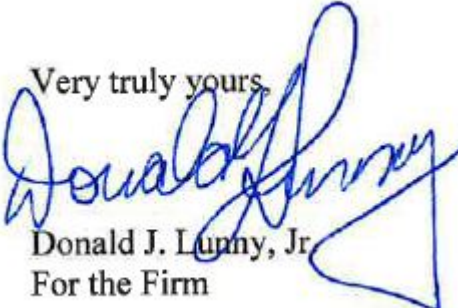
You may remember when we previously thought the Town Council would be able to consider all aspects of the Palm House Hotel Project on January 13, 2021, we asked that the Town Schedule our client's Appeal of the ARCOM decision for January 13, 2021, with the thought that if the Town Council approved all aspects of the Project that have been revised as part of the Settlement, the Appeal would be withdrawn. Given that it does not look at if all aspects of the Project will be considered by the Town

Correspondence to Mr. Nieves
Town of Palm Beach Town Clerk
Re: The Palm House Hotel
January 5, 2021
Page 2 of 2

Council until February 10, 2021, our client is requesting an extension of time for the hearing on its Appeal of the ARCOM Meeting of October 28, 2020 and its objections to the Variances and Special Exceptions needed for the Project to February 10, 2021 (the Town Council's February Development Review Meeting). **The Applicant has agreed to this extension.** Again, if the Town Council approved the Project as revised for the Settlement, the Appeal will be withdrawn.

It is my understanding that Mr. Eubanks will be submitting to you both a similar letter requesting a continuance or extension for his client's Appeal of the October 28, 2020 ARCOM Decision.

Thank you both for your consideration of this important matter.

Very truly yours,

Donald J. Lunny, Jr.
For the Firm

cc. Maura Ziska, Esq. Counsel for the Applicant
John Eubanks, Esq.
John "Skip" Randolph, Esq. Town Attorney

From: [John Eubanks Jr](#)
To: [Donald Lunny](#); [Wayne Bergman](#); [Queenester Nieves](#)
Cc: [Maura Ziska](#); [John \(Skip\) C. Randolph](#); [Kelly Churney](#)
Subject: RE: Simmons, Virginia/Zoning Matter - The Palm Hotel:
Date: Tuesday, January 05, 2021 1:44:33 PM

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Wayne:

As a follow up to Mr. Lunny's letter, on behalf of our clients Tim and Gayle DeVries the owners of 141 and 149 Brazilian Avenue, our office would also request a deferral of the consideration of its Appeal of the ARCOM Decision of October 28, 2020 from the January 13, 2021 Town Council Meeting to the February 10, 2021 meeting. Despite the parties' efforts, ARCOM was unable to consider and make recommendations on all of the variances and special exceptions, the remainder of which will need to be taken up at this month's ARCOM meeting. Hopefully, after ARCOM's consideration and recommendation the parties will be able to move forward with finalizing their Settlement and the Appeal will be withdrawn.

As noted by Mr. Lunny the Applicant has agreed to this extension. As always, please do not hesitate to contact me if you require any additional information. Thank you.

John R Eubanks, Jr.

SNIFFEN & SPELLMAN, P.A.

605 North Olive Avenue, 2nd Floor
West Palm Beach, Florida 33401
T (561) 721-4000 / F (561) 721-4001 / D (561) 721-4002
E-mail: jeubanks@sniffenlaw.com
Website: www.sniffenlaw.com / Twitter: @Sniffenlaw

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From: Donald Lunny [mailto:Donald.Lunny@brinkleymorgan.com]
Sent: Tuesday, January 05, 2021 1:16 PM
To: Wayne Bergman <wbergman@townofpalmbeach.com>; Queenester Nieves <qnieves@townofpalmbeach.com>
Cc: John Eubanks Jr <jeubanks@sniffenlaw.com>; Maura Ziska <MZiska@floridawills.com>; John (Skip) C. Randolph <JRandolph@jonesfoster.com>; Kelly Churney <KChurney@TownofPalmBeach.com>
Subject: Simmons, Virginia/Zoning Matter - The Palm Hotel:

Dear Mr. Bergman and Mr. Nieves:

Please see the attached letter which asks that our client's Appeal of the ARCOM decision be continued from the January 13, 2021 Town Council Meeting and extended to the February 10, 2021 Town Council Meeting. The reason for the extension a change to the overall project hearing schedule caused by the need to go back to ARCOM for some additional advertised variances and special exceptions needed to approve the revised Project as per the Settlement between the parties. The Applicant has agreed to this request. Please let me know if there is anything else you need.

(Skip: you are being copied to be kept in the loop). Thank you all.

DONALD J. LUNNY, JR. | PARTNER

Board Certified City, County & Local Government Lawyer

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donald.lunny@brinkleymorgan.com | www.brinkleymorgan.com



Donald J. Lunny, Jr.

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TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00289 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S) Zoning District: C-B Commercial The application of LR PALM HOUSE LLC (IAN LIVINGSTON, EXECUTIVE CHAIRMAN), applicant, relative to property located at **160 ROYAL PALM WAY**, legal description on file, is described below. The Town Council conditionally approved the Special Exceptions, Site Plan Review and Variances at the January 13, 2021 meeting. This application reflects additional variances to approve the remaining proposed elements related to the hotel and water feature, retaining walls to the south and east that will screen the hotel from residential properties, and to screen the staff service bar, pool restroom, and storage pantry. Following is a list of the proposed variance requests: 1) Section 134-1669: A variance for the height of the screening walls located at the southeast corner of the property and along the south property line behind the water feature, restroom building, staff service bar and pantry (and including the gate to service the transformer) to have a height ranging from 12.25 feet to 18.5' from the lowest grade in lieu of the 7 foot maximum height allowed; 2) Section 134-1308(7): A variance for a rear yard setback for the water feature to be 12.5 feet in lieu of the 15 foot minimum required in the C-B Zoning District; 3) Section 134-1308(7): A variance for a rear yard setback for the new pool restroom building to be 10 feet in lieu of the 15 foot minimum required in the C-B Zoning District. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause architectural impact to the subject property. Carried 7-0.] [The Architectural Review Commission approved the project, while deferring the vehicular gate. Carried 7-0.]

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▣ **Comments from the Development Review Committee**
- ▣ **Email from Donald Lunny on behalf of Virginia Simmons**
- ▣ **Email from John Eubanks, Jr. on behalf of Tim and Gayle DeVries**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00289 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARI/**
160 ROYAL PALM WAY

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

Section 134-1304 (5): Request to modify Site Plan Review# 1-2016 with Special Exception to change the approved use from condo-hotel to hotel; modify the previously approved site plan; and amend the conditions of approval in the Declaration of Use Agreement, as identified in the proposed Third Amendment to the Declaration of Use which Is Exhibit "F") of this application. The proposed site modifications being requested as follows: Section 134-1304(5): The existing Palm House hotel is located at 160 Royal Palm Way, Palm Beach, Florida. It is currently vacant and construction is partially completed. The structure is three stories with a partially enclosed basement containing parking and back-of-house functions. The hotel is 84,495 gross square feet in total. There is an East and West guest wing, and these wings are connected by a central core containing the Main Entrance and other partially completed public functions. A separate conference and events "Function Room" and partial pool deck was also constructed at the south east portion of the property. Section 134-227, 326 & 329 1729(2)(c): (Site Plan Review) The new owner/applicant is proposing new work for the hotel which includes the following site plan modifications: 1) Completion and conversion of guest rooms for a total of 79 keys. Two new presidential suites will be constructed within the building core, each with private outdoor balconies. 2) Completion of the Lower Level for back-of-house, administrative and housekeeping functions for the hotel. The interior modifications for the lower level includes renovation of partially completed areas including kitchen, food storage, housekeeping, staff areas and hotel administrative offices. The Owner is requesting an additional 148 SF to provide a new service stair form the Lower Level to support the Pool Area. Additional areas for renovation include spaces for MEP infrastructure such as electrical, hot water, and elevator systems. The proposed modifications remove all Hotel Guest program areas from the Lower Level.

The Lower Level renovation includes restoration of parking area for 60 parking spaces including three accessible parking spaces. Two parking spaces which includes a Van Accessible parking space is located behind the existing function room. All parking will be Valet only per the Declaration of Use Amendment Three. Total on-site parking provided is 62 spaces. 3) A new pool deck will be constructed adjacent to the existing Function Room, with various amenities that include chaise lounges and outdoor seating, shade umbrellas, toilets, a towel / concierge stand, open-air bar with enclosed pantry behind, water features, lush native plantings, and Event Lawn to be used as a pre-function space, or for small wedding and / or overflow sun bathing; 4) The first level lobby and public spaces will be completed to include fine dining and lobby bar, with 88 indoor seats as well as 36 outdoor seating facing the new pool deck. The second floor dining that was previously approved has been eliminated to make room for the reconfigured hotel suites which include the new presidential suites; 5) The Function Room construction will be completed and the seating plan in the Function Room is being revised to add 50 more seats for a total of 200 seats (the total overall number of seats throughout the hotel that was previously approved is being reduced from 336 to 324); 6) A small 556 square foot banquet prep kitchen is proposed to be constructed adjacent to and on the east side of the existing Function Room. 7) Replace a 250 KW generator in the basement with the same size that exists today. Other exterior improvements will include new third floor railings, re-painting, new exterior floor finishes, trellises and a covered walkway leading to the existing Function Room. Fenestration requiring replacement will be replaced with similar windows and doors. Addition of a small

61

square foot pool service building; enclosing the 679 square foot function room pre-function space on the west side of the Function Room; addition of 588 square foot restroom for Function Room, addition of 556 square foot prep kitchen for Function Room and addition of 148 square foot stairwell to access Function Room prep kitchen.

The following is a list of the proposed special exceptions and variances being requested for the hotel project: 1) Section 134-226 & 229: A special exception request to modify the approved special exception by converting from a condominium hotel to hotel use and make the site modifications and change to the conditions of approval as identified in this application. 2) Section 134-1305: A special exception request to allow 36 seats for outdoor dining on the first floor on the north side of the pool deck; and

3) Section 134-1308(9): A variance for lot coverage to be 63.5% in lieu of the 62.8% existing and the 50% maximum allowed in the C-B Zoning District; 4) Section 134-1308(8): A variance for the addition of railings and solid wall on the east facade of the hotel above the second floor where only a two story building is allowed in the C-B Zoning District; 5) Section 134-1308(8): A variance for the addition of railings and solid wall on the east facade of the hotel with a height of 31.83 feet in lieu of the 25 foot maximum allowed; 6) Section 134-1669: A variance for the height of the screen walls located at the southeast corner of the property and along the south property line to be 15.85 feet tall in lieu of the 7 foot maximum height allowed from the neighbor's grade; 7) Section 134-1308(8): A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with a height of 33.58 feet in lieu of the 25 foot maximum allowed in the C-B Zoning District; 8) Section 134-1308(8): A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with an overall height of 39.33 feet in lieu of the 35 foot maximum allowed in the C-B Zoning District; 9) Section 134-1669: A variance for the height of the wall along the rear property line to be 8.5 feet in lieu of the 7 foot maximum allowed from the neighbor's grade; 10) Section 134-1669: A variance for the height of the wall enclosing the existing chiller at the south west corner of the property to be 12 feet tall in lieu of the 7 foot maximum allowed from the neighbor's grade; 11) Section 134-1308(7): A variance for a rear yard setback for the chiller to be 2.25 feet in lieu of the 15 foot minimum required in the C-B Zoning District; 12) Section 134-1308(6): A variance for a west side yard setback for the chiller to be 5.8 feet in lieu of the 10 foot minimum required in the C-B Zoning District; 13) Section 134-1308(7): A variance for a rear yard setback for the water feature to be 12.5 feet in lieu of the 15 foot minimum required in the C-B Zoning District:

14) Section 134-1308(7): A variance for a rear yard setback for the new pool restrooms building to be 10 feet in lieu of the 15 foot minimum required in the C-B Zoning District.

APPLICATION REVISION FOR FEB 10, 2021 TC HEARING:

The Town Council conditionally approved the Special Exceptions and Site Plan Review and Variances at the January 13, 2021 meeting. This application reflects additional variances to approve the remaining proposed elements related to the hotel and water feature, retaining walls to the south and east that will screen the hotel from residential properties, and to screen the staff service bar, pool restroom and storage pantry. Following

Page Two

is a list of the proposed variance requests: 1. Section 134-1669: A variance for the height of the screening walls located at the southeast corner of the property and along the south property line behind the water feature, restroom building, staff service bar and pantry (and including the gate to service the transformer) to have a height ranging from 12.25 feet to 18.5 feet from the lowest grade in lieu of the 7 foot maximum height allowed; 2. Section 134-1308(7): A variance for a rear yard setback for the water feature to be 12.5 feet in lieu of the 15 foot minimum required in the C-B Zoning District; 3. Section 134-1308(7): A variance for a rear yard setback for the new pool restroom building to be 10 feet in lieu of the 15 foot minimum required in the C-B Zoning District.

ADDRESS: 160 ROYAL PALM WAY

OWNER: 160 ROYAL PALM LLC

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-23-05-026-0310

ZONING DISTRICT: C-B Commercial

LEGAL DESCRIPTION: ROYAL PARK ADD LTS 31 TO 33 INC
BLK F

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 8/21/20

APPLICATION NO.: Z-20-00289 **APPLICATION TYPE:** SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)
ADDRESS: 160 ROYAL PALM WAY **TENANT:**THE PALM HOUSE



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 8/21/20

DESCRIPTION:

Section 134-1304 (5): Request to modify Site Plan Review# 1-2016 with Special Exception to change the approved use from condo-hotel to hotel; modify the previously approved site plan; and amend the conditions of approval in the Declaration of Use Agreement, as identified in the proposed Third Amendment to the Declaration of Use which is Exhibit "F" of this application. The proposed site modifications being requested as follows: Section 134-1304(5): The existing Palm House hotel is located at 160 Royal Palm Way, Palm Beach, Florida. It is currently vacant and construction is partially completed. The structure is three stories with a partially enclosed basement containing parking and back-of-house functions. The hotel is 84,495 gross square feet in total. There is an East and West guest wing, and these wings are connected by a central core containing the Main Entrance and other partially completed public functions. A separate conference and events "Function Room" and partial pool deck was also constructed at the south east portion of the property. Section 134-227, 326 & 329 1729(2)(c): (Site Plan Review) The new owner/applicant is proposing new work for the hotel which includes the following site plan modifications: 1) Completion and conversion of guest rooms for a total of 79 keys. Two new presidential suites will be constructed within the building core, each with private outdoor balconies. 2) Completion of the Lower Level for back-of-house, administrative and housekeeping functions for the hotel. The interior modifications for the lower level includes renovation of partially completed areas including kitchen, food storage, housekeeping, staff areas and hotel administrative offices. The Owner is requesting an additional 148 SF to provide a new service stair from the Lower Level to support the Pool Area. Additional areas for renovation include spaces for MEP infrastructure such as electrical, hot water, and elevator systems. The proposed modifications remove all Hotel Guest program areas from the Lower Level. The Lower Level renovation includes restoration of parking area for 60 parking spaces including three accessible parking spaces. Two parking spaces which includes a Van Accessible parking space is located behind the existing function room. All parking will be Valet only per the Declaration of Use Amendment Three. Total on-site parking provided is 62 spaces. 3) A new pool deck will be constructed adjacent to the existing Function Room, with various amenities that include chaise lounges and outdoor seating, shade umbrellas, toilets, a towel / concierge stand, open-air bar with enclosed pantry behind, water features, lush native plantings, and Event Lawn to be used as a pre-function space, or for small wedding and / or overflow sun bathing; 4) The first level lobby and public spaces will be completed to include fine dining and lobby bar, with 88 indoor seats as well as 36 outdoor seating facing the new pool deck. The second floor dining that was previously approved has been eliminated to make room for the reconfigured hotel suites which include the new presidential suites; 5) The Function Room construction will be completed and the seating plan in the Function Room is being revised to add 50 more seats for a total of 200 seats (the total overall number of seats throughout the hotel that was previously approved is being reduced from 336 to 324); 6) A small 556 square foot banquet prep kitchen is proposed to be constructed adjacent to and on the east side of the existing Function Room. 7) Replace a 250 KW generator in the basement with the same size that exists today. Other exterior improvements will include new third floor railings, re-painting, new exterior floor finishes, trellises and a covered walkway leading to the existing Function Room. Fenestration requiring replacement will be replaced with similar windows and doors. Addition of a small 61 square foot pool service building; enclosing the 679 square foot function room pre-function space on the west side of the Function Room; addition of 588 square foot restroom for Function Room, addition of 556 square foot prep kitchen for Function Room and addition of 148 square foot stairwell to access Function Room prep kitchen.

The following is a list of the proposed special exceptions and variances being requested for the hotel project: 1) Section 134-226 & 229: A special exception request to modify the approved special exception by converting from a condominium hotel to hotel use and make the site modifications and change to the conditions of approval as identified in this application. 2) Section 134-1305: A special exception request to allow 36 seats for outdoor dining on the first floor on the north side of the pool deck; and 3) Section 134-1308(9): A variance for lot coverage to be 63.5% in lieu of the 62.8% existing and the 50% maximum allowed in the C-B Zoning District; 4) Section 134-1308(8): A variance for the addition of railings and solid wall on the east facade of the hotel above the second floor where only a two story building is allowed in the C-B Zoning District; 5) Section 134-1308(8): A variance for the addition of railings and solid wall on the east facade of the hotel with a height of 31.83 feet in lieu of the 25 foot maximum allowed; 6) Section 134-1669: A variance for the height of the screen walls located at the southeast corner of the property and along the south property line to be 15.85 feet tall in lieu of the 7 foot maximum height allowed from the neighbor's grade; 7) Section 134-1308(8): A variance for the two story open air addition on the



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 8/21/20

south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with a height of 33.58 feet in lieu of the 25 foot maximum allowed in the C-B Zoning District; 8) Section 134-1308(8): A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with an overall height of 39.33 feet in lieu of the 35 foot maximum allowed in the C-B Zoning District; 9) Section 134-1669: A variance for the height of the wall along the rear property line to be 8.5 feet in lieu of the 7 foot maximum allowed from the neighbor's grade; 10) Section 134-1669: A variance for the height of the wall enclosing the existing chiller at the south west corner of the property to be 12 feet tall in lieu of the 7 foot maximum allowed from the neighbor's grade; 11) Section 134-1308(7): A variance for a rear yard setback for the chiller to be 2.25 feet in lieu of the 15 foot minimum required in the C-B Zoning District; 12) Section 134-1308(6): A variance for a west side yard setback for the chiller to be 5.8 feet in lieu of the 10 foot minimum required in the C-B Zoning District; 13) Section 134-1308(7): A variance for a rear yard setback for the water feature to be 12.5 feet in lieu of the 15 foot minimum required in the C-B Zoning District; 14) Section 134-1308(7): A variance for a rear yard setback for the new pool restrooms building to be 10 feet in lieu of the 15 foot minimum required in the C-B Zoning District.

APPLICATION REVISION FOR FEB 10, 2021 TC HEARING:

The Town Council conditionally approved the Special Exceptions and Site Plan Review and Variances at the January 13, 2021 meeting. This application reflects additional variances to approve the remaining proposed elements related to the hotel and water feature, retaining walls to the south and east that will screen the hotel from residential properties, and to screen the staff service bar, pool restroom and storage pantry. Following is a list of the proposed variance requests: 1. Section 134-1669: A variance for the height of the screening walls located at the southeast corner of the property and along the south property line behind the water feature, restroom building, staff service bar and pantry (and including the gate to service the transformer) to have a height ranging from 12.25 feet to 18.5 feet from the lowest grade in lieu of the 7 foot maximum height allowed; 2. Section 134-1308(7): A variance for a rear yard setback for the water feature to be 12.5 feet in lieu of the 15 foot minimum required in the C-B Zoning District; 3. Section 134-1308(7): A variance for a rear yard setback for the new pool restroom building to be 10 feet in lieu of the 15 foot minimum required in the C-B Zoning District.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	8/28/2020	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	1/13/2021	A Stormwater management system designed to treat the initial 2-inches of stormwater runoff from the site will need to be developed for the proposed improvements.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	11/3/2020	. This use is not in conflict with the adopted fire code. There will be code concerns going forward since the building has a lot of fire code violations left in place from the previous construction work. This building was fully sprinkled and is required to remain protected with a sprinkler system. The code requires this system to be restored as soon as they begin their work. We agreed with the court appointed legal representative to hold off on fines in order to get the legal concerns resolved. This is a building that needs to restore the designed life safety features that were built into the building and are required to be maintained throughout the life of the building.
PZB - PLANNING AND ARCHITECTURAL REVIEW			No Comment



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 8/21/20

PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	8/28/2020	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	11/2/2020	The conversion from a cond-hotel to a more transient hotel use may lessen the parking demand for the hotel. In addition, many of the proposed changes to the hotel are related to function. The east enclosure of the open balcony walkways; the new prep kitchen to the rear of the Function Room; and the covered walkway changes from the hotel lobby to the Function Room are intended to improve the use of the hotel. The basement kitchen and service area improvements and the loss of the basement spa are also improvements to help with the function of the hotel operation. There are also necessary changes required to the Declaration of Use Agreement related to the loss of the third floor deck and second floor dining area above the lobby and the loss of stairs and elevator at the Function Room. However, there is concern by Staff about some of the other modifications to the Declaration of Use Agreement. Other proposed modifications would allow an additional 50 seats in the Function Room, from 150 seats to 200 seats. While they are eliminating dining room seats, the additional seats being requested in the Function Room may create more impact to the valet and parking operation for the hotel. This space, unlike the dining room seating, will generate more traffic during events being held in the Function Room as visitors will be coming and leaving around the same time. The intent of the existing Agreement is to open the business for a period of time to evaluate how the Function Room would operate and access any impact prior to consideration of the additional seating. In addition, the applicant is proposing to more than double the outside seating in the new pool deck area (16 approved seats to 36 seats). This, coupled with request for extended outdoor hours for service is a concern. Lastly, the request to change the Agreement to allow for later hours in the Function Room and the use of the outdoor pool deck and lawn area in front of the Function Room for pre-function events (no hours mentioned) is also a concern for staff as it may also impact the neighbors to the south. Staff requests that the Council address these concerns with the applicant and return with a modified Agreement for Council consideration. Lastly, staff recommends a Construction Management Agreement, similar to the previous Agreement for the subject property, with a construction schedule and defined completion date to monitor and ensure completion on time.

From: [Donald Lunny](#)
To: [Wayne Bergman](#); [Paul Castro](#); [Kelly Churney](#)
Cc: [Maura Ziska](#); [Mark Banfield](#); ["John Eubanks Jr"](#)
Subject: The Palm House Hotel
Date: Tuesday, January 26, 2021 8:54:29 AM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Mr. Bergman and Mr. Castro and Ms. Churney:

As you know, I represent Virginia Simmons, as Trustee, the Owner of the single family residential property having a street address of 133 Brazilian Avenue.

Consistent with the Settlement reached between the Hotel Site Owner and my client, I write to express her support for ARCOM's approval of the submissions and requests that are on ARCOM's Agenda tomorrow as Agenda Item VII D. 1. which submissions and requests are made for the purposes of implementing the Settlement between the parties.

Please note that I will need to be given "presenter" status for that portion of the ARCOM hearing which is devoted to the referenced Agenda Item.

I would ask that this e-mail be sent to the ARCOM Members.

Respectfully,

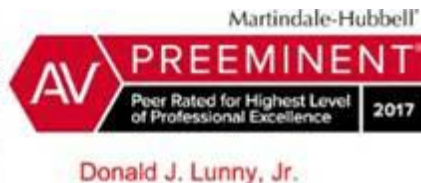
DONALD J. LUNNY, JR. | PARTNER

100 SE Third Ave., 23rd Floor, Ft. Lauderdale, FL 33394
Main: 954.522.2200 | Fax: 954.522.9123

2255 Glades Road, Suite 414E, Boca Raton, FL 33431
Main: 561.241.3113 | Fax: 561.241.3226

501 North Federal Highway, Lake Park, FL 33403
Main: 561.863.5400 | Fax: 561.863.3420

donald.lunny@brinkleymorgan.com



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From: [John Eubanks Jr](#)
To: [Wayne Bergman](#); [Paul Castro](#); [Kelly Churney](#)
Cc: [Maura Ziska](#); [Mark Banfield](#); "[Donald Lunny](#)"
Subject: 160 Royal Palm Way- Palm House Hotel
Date: Tuesday, January 26, 2021 12:32:31 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Mr. Bergman, Mr. Castro and Ms. Churney:

As you know, our office represents Tim and Gayle DeVries the owners of their home at 141 Brazilian and the lot at 149 Brazilian Avenue, located directly behind the Palm House Hotel. In that capacity, and consistent with the Settlement reached between the Applicant and the DeVries, as well as Mr. Lunny's clients the Simmons, our client supports the submissions and requests which will be before ARCOM tomorrow, which are being made as part of the implementation of the Settlement between the parties.

As in the past, I would request "presenter" status for that portion of the ARCOM hearing involving the Palm House Hotel consideration for further explanation, as needed. In the meantime, I would request that this e-mail be forward to the ARCOM Chairman and its Members.

Thank you,

John R Eubanks, Jr.

SNIFFEN & SPELLMAN, P.A.

605 North Olive Avenue, 2nd Floor
West Palm Beach, Florida 33401
T (561) 721-4000 / F (561) 721-4001 / D (561) 721-4002
E-mail: jeubanks@sniffenlaw.com
Website: www.sniffenlaw.com / Twitter: @Sniffenlaw

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DISCLAIMER: Pursuant to Circular 230 issued by the United States Treasury Department and relating to practice before the Internal Revenue Service, any comment or opinion in this communication relating to a federal tax issue is not intended to be used, and cannot be used, by a taxpayer for the purpose of avoiding tax-related penalties that may be imposed on the taxpayer.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00269 VARIANCES Zoning District: R-B Low Density Residential The application of John Criddle and Franny Frisbie, Applicant, relative to property located at **143 REEF RD**, legal description on file, is described below. The applicant is proposing to construct a new 597 square foot one story garage to the west of the existing residence. The following variances are being requested: 1. Section 134-893(7): The applicant is requesting a variance for a west side yard setback of 5 feet in lieu of the 12.5 foot minimum required for a one story building. 2. Section 134-893(6): The applicant is requesting a variance for an angle of vision of 105 degrees in lieu of the 100 degrees maximum allowed. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause architectural impact to the subject property. Carried 4-3.] [The Architectural Review Commission approved the project as presented. Carried 7-0.]

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▣ **Comments from the Development Review Committee**
- ▣ **Email Dated August 25, 2020 from David Lambert**
- ▣ **Email Dated August 25, 2020 from Maureen and Don Kandziora**
- ▣ **Email Dated August 25, 2020 from Jack Cooney**
- ▣ **Email Dated August 24, 2020 from Sean Bresnan**
- ▣ **Email Dated August 26, 2020 from Anne Metzger**
- ▣ **Letter Dated August 25, 2020 from John Eubanks**
- ▣ **Letter Dated September 4, 2020 from John Eubanks**
- ▣ **Exhibits to accompany John Eubanks Letter Dated September 4, 2020**
- ▣ **Email Dated September 8, 2020 from Anne and Bill Metzger**

▢ **Email from John Eubanks, Jr. on behalf of Gayle Peterson**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00269 VARIANCE(S)**
143 REEF RD

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

The applicant is proposing to construct a new 597 square foot one story garage to the west of the existing residence. The following variances are being requested: 1. Section 134-893(7): The applicant is requesting a variance for a west side yard setback of 5 feet in lieu of the 12.5 foot minimum required for a one story building.

2. Section 134-893(6): The applicant is requesting a variance for an angle of vision of 105 degrees in lieu of the 100 degrees maximum allowed.

ADDRESS: 143 REEF RD

OWNER: CRIDDLE JOHN K

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-42-34-08-000-0450

ZONING DISTRICT: R-B Low Density Residential

LEGAL DESCRIPTION: NORTH SHORE ADD TO PALM BEACH LT 45

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 7/24/20

APPLICATION NO.: Z-20-00269 **APPLICATION TYPE:** VARIANCE(S)

ADDRESS: 143 REEF RD

DESCRIPTION:

The applicant is proposing to construct a new 597 square foot one story garage to the west of the existing residence. The following variances are being requested: 1. Section 134-893(7): The applicant is requesting a variance for a west side yard setback of 5 feet in lieu of the 12.5 foot minimum required for a one story building.
2. Section 134-893(6): The applicant is requesting a variance for an angle of vision of 105 degrees in lieu of the 100 degrees maximum allowed.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	7/29/2020	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	8/28/2020	Driveway opening needs to conform to Public Works standards. Coordination between Landscape Architect and Stormwater Engineer not provided. Town's stormwater level of service is being meet.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	7/30/2020	There are no fire code concerns with this proposed project.
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	7/29/2020	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	7/29/2020	The applicant is required to demonstrate the hardship for the variances being requested.

From: [DAVID G LAMBERT](#)
To: [Kelly Churney](#)
Subject: 143 Reef Road
Date: Tuesday, August 25, 2020 5:28:20 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Members of ARCOM and Town Council:

We write this email in support of the renovation plans submitted for 143 Reef Road, which will be heard at today's meeting (Wednesday). We are neighbors on Esplanade thrilled to have another young family move to the north end. Their request for a 2-car garage seems fair and practical. After all, new construction on the island always includes a 2-car garage, at the very minimum. The 2-car garage, as its designed incorporates lovely and tall landscaping to the west and actually helps to balance out the front facade of the existing home. Not to mention, the 2-car garage gets rid of the unsightly garbage receptacles that are visible from the street as you walk by. Their new landscape plan also looks like a great improvement and we love their desire to implement native species in the majority of the garden. The room addition to the north also seems reasonable and after reviewing their interior plans, they really improve the functionality of the home.

Thank you for considering to grant approval to their plans today. Take care and stay well.

Kindly,

David Lambert
200 Esplanade Way
Palm Beach, Fl 33480

From: [Raihle, Maureen](#)
To: [Kelly Churney](#)
Cc: [Donald Kandziora](#)
Subject: Letter of Support for our neighbors
Date: Tuesday, August 25, 2020 5:12:31 PM

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Dear Town Council and Members of ARCOM:

We hope this email finds everyone well. We are writing to support the plans submitted for the proposed renovation on 143 Reef Road (our westerly neighbors). We have personally met the family and believe them to be great new stewards for the property. They deeply care about our community and our neighbors. We can appreciate their need and therefore request for a 2-car, 1-story garage. Their intentions to honor the existing structure with thoughtful enhancements to the facade, landscape, and hardscape are very much in keeping with the overall aesthetic of our block. Please consider granting approval to their plans. Thank you and stay safe.

Kindly,
Maureen Raihle Kandziora
Don Kandziora

135 Reef Road
Palm Beach FL 33480

Maureen Raihle, CPWA®, CEPA
Managing Director, Wealth Manager
First Republic Investment Management
First Republic Private Wealth Management

155 North Wacker Drive, Suite 4250, Chicago, IL 60606

241 Royal Palm Way, Palm Beach, FL 33480
Office: (561) 803-1090 | Fax: (561) 803-1000

Registered Representative of First Republic Securities Company, LLC



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From: [Jack Cooney](#)
To: [Kelly Churney](#)
Subject: 143 Reed Road
Date: Tuesday, August 25, 2020 6:25:40 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Members of ARCOM and Town Council:

We write this email in support of the renovation plans submitted for 143 Reef Road. As fellow North End residents, we are thrilled to welcome a young, year-round family with long-standing community ties to the neighborhood. We personally know the applicants and trust in their ability to tastefully improve the aesthetics and function of an outdated home that fits with the charm and character of the street. We understand the difficulty of not having a garage and respect their desire to create a more beautiful front facade instead of having vehicles, equipment, garbage cans and other “stuff” laying in plain sight for all to see. While it was probably easier to scrape the structure and build new, this applicant has chosen to undertake the more "life disruptive" process of renovating a home while living in it, and meanwhile preserving a traditional North End 1-story cottage that is becoming increasingly rare.

Thank you for considering the approval of their plans and thank you for your leadership.

Jack & Nikki Cooney
140 Seagate Rd

Jack Cooney
303.517.4484

From: [Sean P. Bresnan](#)
To: [Kelly Churney](#)
Subject: 143 Reef Road - ARCOM
Date: Monday, August 24, 2020 3:03:04 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Town Council and ARCOM Board Members:

I am writing to show support for the plans submitted for 143 Reef Road to be considered at the August 26th ARCOM hearing. We appreciate the applicants thoughtful effort to revitalize a 1950s cottage, especially at a time when most of these homes in the north end have been razed. The applicants request for a 2-car garage, arguably a necessity today, makes perfect sense for the protection of their vehicles, safety and security of bikes/equipment, etc. While closer in proximity to the property line, their plan for a hedge screening that matches their western neighbor's south hedge seems like a very reasonable offset.

Please consider approving this applicant's request.

Sincerely,
Sean Bresnan
236 Esplanade Way

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From: [Anne Metzger](#)
To: msmall@smallawpalmbeach.com; RNG@garrisonarch.com; alexives@hotmail.com; amginny@aol.com; [John David Corey](#); betsyshiverick@gmail.com; catlinkt@gmail.com; dan.floersheimer@icloud.com; edward.cooney@gmail.com; info@fairfaxandsammons.com
Cc: [Wayne Bergman](#); [Kelly Churney](#)
Subject: Concerns re: 143 Reef Road - ARCOM meeting Today
Date: Wednesday, August 26, 2020 7:57:10 AM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Members of the Architectural Commission,

This letter is in regard to the proposed plans for 143 Reef Road that you are considering today.

We live one block to the north on Esplanade Way and are very familiar with the subject property. We walk our dog on Reef Road almost every day.

In our opinion, the proposed plans for the house need to be scaled back. The two car garage will look very squeezed so close to the west property line.

We are concerned that this will set an undesirable precedent in our neighborhood.

In addition, the front door looks out of scale for the house.

Please ask for the plans to be restudied.

Thank you,
Anne and Bill Metzger
277 Esplanade Way
Palm Beach

SNIFFEN & SPELLMAN, P.A.

Sender's Direct Line: (561) 721-4002
Sender's Email: jeubanks@sniffenlaw.com

August 25, 2019

Via E-mail

Architectural Commission
c/o Michael Small, Chair
Town Council of the Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

**Re: Objection to Application No. B-045-2020 for Proposed Garage at
143 Reef Road**

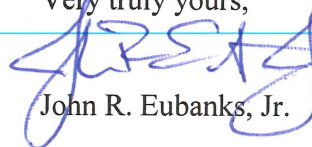
Dear Mr. Small:

Our office was hired this afternoon by Gayle P. Petersen, the owner of 151 Reef Road. Ms. Peterson's home lies immediately to the west of 143 Reef Road. In that capacity please be advised that Ms. Petersen objects to the two car garage proposed by the Applicant, along with the potential variance needed to approve the same.

In direct conflict with the Applicant's representations, the house at 143 Reef Road was built with a one car garage, which was later converted to living space. As a result, there is no hardship which would support a variance.

At the same time, the proposed garage would reduce the normal side yard setback and greenspace in half, change the appearance of the residence from the street, increase the massing next to Ms. Petersen's home, and impinge upon her privacy. Moreover, the Application is nothing more than the same proposal set forth in former Variance #11-2011, which was soundly rejected by the Town Council in July of 2011, resulting in its withdrawal at that time. A copy of the objections from the surrounding neighbors in July 2011, along with a copy of the withdrawal is attached hereto.

Very truly yours,



John R. Eubanks, Jr.

cc: ARCOM Committee Members
Wayne Bergman, Acting Director Planning, Zoning & Building
Kelly Churney, Administrative Specialist
Town Clerk, Town of Palm Beach

REPLY TO:

605 NORTH OLIVE AVENUE, 2ND FLOOR
WEST PALM BEACH, FL • 33401
PHONE: 561.721.4000
FAX: 561.721.4001

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WWW.SNIFFENLAW.COM

123 NORTH MONROE STREET
TALLAHASSEE, FL • 32301
PHONE: 850.205.1996
FAX: 850.205.3004

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July 1, 2011

RECEIVED

JUL - 6 2011

TOWN OF PALM BEACH
PZB DEPT

Town of Palm Beach

Zoning & Building Department

360 S. County Road

Palm Beach, Florida 33480

Re: 143 Reef Road *Variance # 11-2011*

To Whom it May Concern:

We have been residents of 144 Reef Road for 16 years, the home directly across the street from 143 Reef. We both have also been residents of the town of Palm Beach for 50 years, our entire lives. We are submitting this notice to preserve the ambiance on the north end. Reef Road is a quiet street with an Island appeal. Most of the residents like it that way and moved here because they hope to keep it this way. We understand a petition to build a two car garage has been filed. Our concerns are as follows:

The house is being rented and they are not the owners.

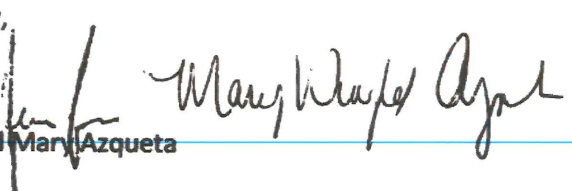
Why do they have to expand to a garage that is so large, the house originally had a one car garage.

The disruption to the safety of the families on the street and the disturbance of peace is overwhelming.

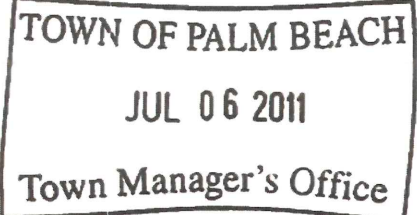
It would seem that the appropriate size garage for this street would be a one car garage, considering the size of the home and property, fitting in with the rest of the street, and the north end.

Thank you for your consideration in this matter.

Sincerely,


Jesse and Mary Azqueta

Paul Gingras, DMD
153 Reef Road
Palm Beach, FL 33480



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

30 June 2011

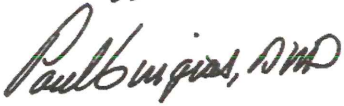
Dear Members of the Town Council:

My wife and I live at 153 Reef Road and we received a notice of a request for a zoning variance for a property located at 143 Reef Road. We have three concerns regarding the request.

1. The application lists the property owners as David and Sarah Hruda. We are not sure Mr. and Mrs. Hruda own the property. We have been repeatedly told that someone else owns the property. The Town needs to determine who the owners are before proceeding with the application.
2. Under Exhibit A- Request For Variance, item 4, the applicant states that the residence was built without a garage. This house was originally built with a one car garage. This garage was later converted to a living space by a previous owner. A check with the Building Department will confirm this.
3. The addition of a two car garage would reduce the normal side yard setback by half which would change the appearance of the residence by reducing the greenspace surrounding it. This would set a bad precedent for the R-B zoning in this neighborhood. A one car garage addition would impose less on the normal setback.

We are opposed to a two car garage addition and we are not opposed to a one car garage addition.

Sincerely,

 
Paul and Sally Gingras

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: 561-835-4621

July 21, 2011

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

RE: Variance #11-2011/249/143 Reef Road, Palm Beach

Dear Mayor and Town Council:

Please **withdraw** the above referenced matter from the August 10, 2011 Town Council agenda. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely yours,



Maura A. Ziska

MAZ/mr

cc: Paul Castro

Pat Seagraves

00011412

SNIFFEN & SPELLMAN, P.A.

Sender's Direct Line: (561) 721-4002
Email: jeubanks@sniffenlaw.com

September 4, 2020

Via E-mail

Mayor and Town Council
c/o Maggie Zeidman, President
Town Council of the Town of Palm Beach
360 South County Road
Palm Beach, Florida 33408

**Re: Lack of Hardship to Support Variances in Application No. Z-20-00269
("Present Application") for New 2 Car Garage on West Side of 143 Reef Road**

Dear Mayor and Town Council Members:

Our office represents Gayle P. Petersen, as Trustee of the Gayle P. Petersen Revocable Trust, ("Petersen"), the owner of 151 Reef Road located directly west of and abutting 143 Reef Road ("Property"). Ms. Petersen objects to the variances sought by John K. Criddle ("Owner")¹ to construct a new two car garage on the west side of the Property near her master bedroom and bathroom. The garage would reduce the protections of the side yard setback on the Property from 12.5 feet to 5 feet, impose the mass of a new garage close to her bedroom, subject her to additional noise, light and odors, and impinge upon her privacy, all without the requisite hardship needed for a variance. As a result, the Present Application should be denied.

I. Background

A. Original House Included a Garage Which was Converted to Living Space

The house at 143 Reef Road was built in 1951. The original plans included an enclosed one car garage. In 1972 the garage was converted into a bedroom and bathroom. The plans and approval for the conversion by the Building Department are attached as Exhibit "B." As such, at the time there was a conscious decision to trade garage space for living space on the Property, ostensibly to comply with the setbacks in the Town Code.

Nevertheless, the Owner now seeks to have his cake and eat it too by keeping the former garage living space and designing a two car garage (and rear BBQ area) which is too large for the lot. It requires two variances, including a massive 60% reduction in the west side yard set back. In doing so the Owner is forcing Ms. Petersen to bear burden of the new garage, because the Owner **"would like to have a 2 car garage to park their cars, and store their bicycles."** (emphasis added)

¹ The Present Application includes references to both John Criddle and Frances Frisbie. The owner of the Property, however, is only Mr. Criddle. See, Warranty Deed recorded on June 2, 2020 in the Public Records of Palm Beach County, a copy of which is attached as Exhibit "A." The ownership of the Property by just Mr. Criddle (and the lack of a homestead filing) begs the question as to his long term goals with the property. Mr. Criddle has indicated to Ms. Peterson that his plan is to upgrade and flip the house in order to make money to purchase a larger home in the future.

REPLY TO:

605 NORTH OLIVE AVENUE, 2ND FLOOR
WEST PALM BEACH, FL • 33401
PHONE: 561.721.4000
FAX: 561.721.4001

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123 NORTH MONROE STREET
TALLAHASSEE, FL • 32301
PHONE: 850.205.1006
FAX: 850.205.3004

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To the extent the Owner “would like” a two car garage it could easily be constructed without the need for any variances. By merely sliding the new garage to the east and incorporating the former garage (which is 9 feet 6 inches in width) area into the new garage design, there would be no need for a 7.5 foot reduction in the west side yard set back.² In the alternative, as several ARCOM members, neighbors, and Ms. Petersen have suggested, the Owner could build a smaller one car garage. The Owner has refused to consider such options, despite the fact either would comply with the Town Code, preserve the side setback, and not impose upon Ms. Petersen.

B. Prior Attempt for Variances for a Two Car Garage and Withdrawal of Application

In May of 2011, an application (“Prior Application”)³ was filed by Maura Ziska seeking a variance to construct a two car garage at the Property with a 6.25 feet wide side yard setback in lieu of the 12.5 feet required and an angle of vision variance of 112 degrees in lieu of the 100 degrees allowed under the Code.⁴ The proposed two car garage was 20’ 6” in width, 24’ 4” in depth. The design included a new chimney and a BBQ area attached to the rear of the garage. *See*, Exhibit “D,” pages A-1, A-2, A-3, SP-1.

In support of the Prior Application, Ms. Ziska argued that the hardship supporting the variances included, but was not limited to, that: i) the residence was **built without a garage**; ii) the applicant would **“like to have” a 2 car garage to park their cars, and store their bicycles**, recreational equipment and vehicles; iii) because of the configuration of the house the only place to put the garage was on the west side of the house and iv) the garage “would only **slightly encroach** into the setback” and “was minimal **for a one story structure.**”⁵

Several nearby neighbors, including Jesse and Mary Azqueta, Anne and Bill Metzger, Paul and Sally Gingras, and Ms. Petersen all objected to the Prior Application and the reduction of the side yard setbacks.⁶ Ms. Ziska requested a deferral of the Prior Application in an effort to come to a consensus with the neighbors.⁷ She could not. As a result, the Prior Application was withdrawn by letter July 21, 2011, which withdrawal was accepted by the Town on August 10, 2011.⁸

² It would also eliminate the need for any angle of vision variance.

³ A copy of the Prior Application is attached hereto as Exhibit “C.”

⁴ A copy of the applicable portions of the Site Plan and Elevations for the Prior Application is attached as Exhibit “D.”

⁵ Ms. Ziska indicated, under oath, at the August 26, 2020 ARCOM Meeting, that the Prior Application objected to by the neighbors was for a **two story garage**. The Plans show that not to be true and the Prior Application clearly sought a taller garage which was still **“a one story structure.”** More importantly, the objections filed to the Prior Application were not based upon the height of the proposed garage but upon its encroachment into the side yard setback and adverse effects on Ms. Petersen. The Zoom recording of the August ARCOM meeting for the Present Application can be found beginning at 3:45:49 which is incorporated herein by reference.

⁶ A copy of the objections to the Prior Application are attached hereto as Exhibit “E.” Mr. Hanlon notes in his objection for Ms. Petersen that Ms. Ziska may have a conflict since she represented Ms. Petersen in the purchase of her home.

⁷ A copy of the request for the Deferral is attached as Exhibit “F.”

⁸ A copy of the letter by Ms. Ziska requesting the withdrawal and the confirmation of the withdrawal by Mr. Castro are attached hereto as Composite Exhibit “G.”

C. Present Application Is a Revamp of the Prior Withdrawn Application

The Present Application⁹ is seeking essentially the same variances as the Prior Application which was withdrawn, namely a (now larger) variance from the west side yard setback of 5 feet in lieu of the 12.5 foot minimum under the Town's Code and a variance for an angle of vision for 105 degrees in lieu of the 100 degrees maximum allowed per the Code. The proposed two car garage is 20 feet 10 inches in width, and 21 feet 2 inches in depth. The new design also includes a new chimney (with a slightly altered design from the Prior Application) and, again, includes a BBQ grill and bar area on the backside of the proposed garage. See, Exhibit "I," pages A-2.01, A-2.02, A-2.03, A-2.4, SP-1.01, and Sp-1.02.

As with the Prior Application, Ms. Ziska has indicated that the hardship by the Owner includes, but is not limited to, that: i) the **residence was built without a garage**; ii) the applicant **"would like to have" a 2 car garage to park their cars, and store their bicycles**, and recreational vehicles and equipment; iii) because of the configuration of the house the only place to put the garage was on the west side of the house; iv) the garage **"would slightly encroach into the setback;"** and v) **other properties in the area have garages and nonconforming setbacks** because they were built prior to the current zoning restrictions.¹⁰ Again, neighbors, including Ms. Petersen, have objected to the variances requested.¹¹

Regardless of the desires of the Owner, the Present Application simply does not meet the standards required for the approval of a variance under Section 134-201 of the Town Code and the case law thereon. As such, the Present Application should be denied.

II. Inability to Meet Variance Standards

A. Variances Are Direct Violations of the Code

Far too often used as an "innocent" tool to allow a specific project to slide by and be approved, a variance is nothing more than a Town sanctioned violation of the Town Code. Approving unsupported variances undermines the protections of the Code which are designed to maintain the character of the Town. As such, a variance should not be granted except in the most extreme circumstances in which the Code would not allow for virtually any use at all of the property. This is not one of those circumstances.

While homeowners often claim they have a "property right" to build on their lot, there simply is no "property right" for a variances in violation of the Town Code. Nor can a variance be based upon the "wish," "like," or "desire" of an owner to "upgrade" the home, make it more "modern" and "livable" or become their "forever home." Desires and wishes do not support a variance.

⁹ The Present Application and applicable Site Plan and Elevations are attached as Exhibits "H" and "I" respectively.

¹⁰ While both the Prior and Present Applications include references to changes in the Town Code which require a two car garage for new construction, the lack of a two car garage on the Property is clearly a prior non-conforming permitted use and as such cannot be the basis for any claim of a "hardship."

¹¹ A copy of the correspondence against the variances is attached as Exhibit "J."

Neighboring property owners, however, “have a right to rely on existing zoning conditions and they have a right to a continuation of these conditions in the absence of a showing that the variance is proper.” *Thompson v. Planning Com. of Jacksonville*, 464 So. 2d 1231 (Fla. 1st DCA 1985); *see also, Allapattah Cmty. Asso. v. Miami*, 379 So. 2d 387 (Fla. 3d DCA 1980). As such, often it is the “property rights” of neighbors, such as Ms. Petersen, which get trampled by the approval of an unsupported variance.

B. Owner’s Claimed “Hardship” Falls Short of Variance Standards
1. Insufficient Factual Basis for “Hardship” in Light of Original Garage

In the Present Application the Owner has indicated that “**the hardship** which runs with the land is **that the residence was built without a garage** and the zoning code has changed...” *See*, Present Application, Section III and Exhibit “A,” Criteria 4. (emphasis added) Such a statement is demonstrably incorrect. Therefore, it would be impossible for the Town to grant a variance based on the assertion that the “hardship” is that the residence was built without a garage when it was built with a garage, which was later intentionally converted into living space. As a result, the Owner has failed to meet the requirements of item III of the Application and Criteria 4 in Exhibit “A” of the Application. For this reason alone the Application must be denied.

In addition, the desire of the Owner to keep the old garage living space while adding a new two car garage that requires a 60% side yard variance cannot create a “hardship” either, especially in light of alternate designs available without a variance. Moving the proposed garage to the east and incorporating the old garage would not require a variance.¹² Likewise, a one car garage could easily meet the Town Code setbacks. The failure to build within the confines of the Town Code when it is clearly possible further dictates the denial of the Present Application.¹³

2. Insufficient Unnecessary and Undue “Hardship”

Section 134-201 of the Town Code is clear that only variances that “will result in **unnecessary and undue hardship**” can be granted (emphasis added). The Court’s are also clear that an applicant for a variance must demonstrate a “unique hardship” to qualify for a variance. *Bernard v. Town of Palm Beach*, 569 So. 2d 853 (Fla. 4th DCA 1990) (citing, *Nance v. Town of Indialantic*, 419 So. 2d 1041 (Fla. 1982)). By definition, a “**hardship**” **may not be found unless no reasonable use can be made of the property without the variance**; or, stated otherwise, “**the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.**” *Bernard* at 854 (citing, *Town of Indialantic v. Nance*, 485 So. 2d 1318, 1320 (Fla. 5th DCA); *see also Thompson v. Planning Comm’n*, 464 So. 2d 1231, 1237 (Fla. 1st DCA 1985)(emphasis added).

In the case of *Bernard v. Town of Palm Beach*, 569 So. 2d 853 (Fla. 4th DCA 1990) the

¹² The ability to use an alternate design with no variance(s) negates the Owner meeting the standards of Section 134-201(a)(5) of the Town Code that the variance sought is the minimum variance that will make possible the reasonable use of the land, building or structure, since the “minimum variance” would be no variance.

¹³ *See, Indialantic v. Nance*, 400 So. 2d 37, 40-41 (Fla. 5th DCA 1981)(existence of a viable alternate plan demonstrated a lack of hardship); *Auerbach v. City of Miami*, 929 So. 2d 693, 694 (Fla. 3d DCA 2006).

desire to construct a 35 to 40 foot master bedroom, bath and den above an existing southern portion of the house resulting in a rear setback of 5 feet instead of 15 feet was not a “hardship.”¹⁴ The house could continue to be used for its purpose, albeit with a smaller bedroom and bathroom.

So too here, the claim that the Owner “would like to have” a two car garage to store its cars, equipment and bicycles does not constitute a showing that no reasonable use can be made of the Property without it. To the contrary the house can continue to be used as it has been for over 38 years since the prior garage was converted to a bedroom in 1972. Or, if the Owners “would like to have” a two car garage, it can incorporate the former garage in its design and stay within the parameters of the Code. Therefore, the Applicant cannot meet the requisite unnecessary and undue hardship needed for a variance, leaving the Present Application to be denied.

3. Any “Hardship” Would be Self-Imposed

Even if the lack of a legally recognized hardship could be overlooked (which it cannot) any “hardship” alleged by the Owner would clearly be self-imposed. The courts have consistently found that a hardship must arise from circumstances **peculiar to the realty alone, unrelated to** the conduct or to **the self-originated expectations of any of its owners or buyers.**¹⁵ See, *Maturo v. Coral Gables*, 619 So. 2d 455 (Fla. 3d DCA 1993); *City of Coral Gables v. Geary*, 383 So. 2d 1127 (Fla. 3d DCA 1980).

As a result, situations in which purchasers **are fully aware of the shape and size of a lot, but still design a building which is too large for the lot, constitutes a self-created hardship.** *Thompson v. Planning Com. of Jacksonville*, 464 So. 2d 1231, 1237 (Fla. 1st DCA 1985); see also, *Namon v. State Dept. of Environ. Reg.*, 559 So. 2d 504 (Fla. 3d DCA 1990). In the present case, the Owner was (or should have been) fully aware of the Property’s size, location and set backs, yet designed a two car garage which was too large and encroached on the required side yard setbacks next to Ms. Petersen. Such a choice represents a self-centered, self-created “hardship” which cannot support the variances sought. As such, the Present Application must be denied.

4. Property Restrictions Are Not Unique

In addition to the above, there can be no “hardship” in the present case in light of the fact that several of the nearby homes admittedly share the same difficulties as the Property. Under Section 134-201(a)(1) of the Code an applicant must demonstrate that “special conditions and circumstances exist which are peculiar to the land, structure or building involved **which are not applicable to other land lands, structure or buildings in the same zoning.**” (emphasis added)

As a result, “a prerequisite to the granting of a hardship zoning variance is the presence of

¹⁴ See also, *Herrera v. Miami*, 600 So. 2d 561, 562 (Fla. 3d DCA 1992) (reversing approval of a variance where there is no finding that “it is virtually impossible to use the land as it is presently zoned.”); *Auerbach v. City of Miami*, 929 So. 2d 693, 694 (Fla. 3d DCA 2006) (“Florida courts have held that a legal hardship will be found to exist only in those cases where the property is **virtually unusable...**”)(citing to *Mauro v. City of Coral Gables*, 619 So. 2d 455, 456 (Fla. 3d DCA 1993)).

¹⁵ Here, there is no peculiarity at all as to the size or shape of the Property.

an exceptional and unique hardship to the individual landowner; **unique to that parcel and not shared by other property owners in the area.**" *Indialantic v. Nance*, 400 So. 2d 37, 40 (Fla. 5th DCA 1981)(emphasis added). Therefore, as is the case here, where an applicant's lot has a similar size, shape and topography and is subject to the same zoning requirements, including the height, set-back, and landscaping, restrictions, the restrictions are common difficulties and cannot establish the unique hardship required to support the proposed variances.¹⁶

In the Present Application Ms. Ziska admits that the present house is "nonconforming to today's code" and further admits that "many properties and residences in the area have garages and non-conforming setbacks as the residences were built before the current zoning restrictions were in place."¹⁷ Moreover, the lots in the area are the same general shape and size. As such, the limitations on the Property are shared by other lands, structures and buildings in the same zoning district and cannot be the basis for a hardship. The Present Application therefore must be denied.

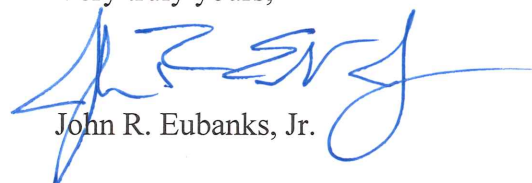
III. Conclusion

The circumstances in the Present Application simply do not factually or legally support the requisite "hardship" for a variance under the Town Code or the case law. The argument that the original house did not have a garage when it did cannot be used as the basis for a hardship. The home can reasonably continue to be used as it has been since 1972 without a two car garage. In the alternative, the plans can be modified to construct a two car garage without a variance.

The Owner's situation is not unique. Many other homes in the area have the same shape, size and issues. Therefore, any "hardship" is clearly self-imposed by the Owner by designing too large of a garage on too small of a lot, despite knowing the shape and size limitation of the Property. Under the circumstances, Ms. Petersen should be allowed to rely upon the protections in the Town Code and not be forced bear the burden of the Owner's desire for a two car garage which requires a 60% side yard set back reduction next to her master bedroom and bathroom.

The Application should be denied.

Very truly yours,



John R. Eubanks, Jr.

cc: Wayne Bergman, Director Planning, Zoning & Building
Paul Castro, Zoning Manager
John C. Randolph, Esq.
Kelly Churney, Administrative Specialist
Town Clerk, Town of Palm Beach

¹⁶ Likewise, a variance application **cannot rely upon previously approved variances in the jurisdiction.** *See, City of Jacksonville v. Taylor*, 721 So. 2d 1212 (Fla 1st DCA 1998); *see also, Herrera v. City of Miami*, 600 So. 2d 561, 563 (Fla 3d DCA 1992)("on review of an administrative grant of a zoning variance, **the standard is not whether variances have been granted to similarly-situated applicants in the community...**") (emphasis added)

¹⁷ Again, the mere fact that the Property may be non-conforming and grandfathered is not the basis for a variance.



CFN 20200188192

THIS INSTRUMENT PREPARED BY AND RETURN TO:

Maura Ziska, Esq
Kochman & Ziska, PLC
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401
Our File No.: 1803-21

OR BK 31464 PG 0655
RECORDED 06/02/2020 12:06:22
AMT 1,850,000.00
Doc Stamp 12,950.00
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pg 0655 - 656; (2pgs)

Property Appraisers Parcel Identification (Folio) Number: 50-43-42-34-08-000-0450

SPACE ABOVE THIS LINE FOR RECORDING DATA

WARRANTY DEED

THIS WARRANTY DEED, made the 29th day of May, 2020 by Sean Heyniger, a married man, whose post office address is 3140 Washington Rd, West Palm Beach, FL 33401 herein called the Grantor, to John K Criddle whose post office address is 143 Reef Road, Palm Beach, FL 33480, hereinafter called the Grantee:

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH that the Grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee all that certain land situate in Palm Beach County, State of Florida, viz.:

Lot 45 of PLAT OF NORTH SHORE ADDITION TO PALM BEACH, according to the Plat thereof as recorded in Plat Book 10, Page 62, of the Public Records of Palm Beach County, Florida.

Subject to easements, restrictions and reservations of record and taxes for the year 2020 and thereafter.

This property does not constitute the homestead of the Grantor nor is it contiguous to the homestead of Grantor who reside on lands other than the lands described herein. The Grantor's address is: 3140 Washington Rd, West palm Beach, FL 33401

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND, the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2019.

EXHIBIT A

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Christine Belsky
Witness #1 Signature

Christine Belsky
Witness #1 Printed Name

Kristina Neville
Witness #2 Signature

Kristina Neville
Witness #2 Printed Name

Sean Heyniger
Sean Heyniger

State of Florida

County of Palm Beach

The foregoing instrument was acknowledged before me this 29th day of May, 2020, by Sean Heyniger who has/have appeared by ☒ physical presence or ☐ online notarization and has produced _____ as identification and ☐ did ☐ did not take an oath.

SEAL

My commission expires:



Kristina Neville
Notary Public

Printed Notary Name

Permit No. 80172

Palm Beach, Florida, August 9, 1972

TO THE BUILDING INSPECTOR
OF PALM BEACH, FLORIDA

The undersigned requests that you grant a building permit to

D. Wendell, Owner

TO CONSTRUCT Alter garage to bedroom and shower

in accordance with plans and specifications submitted with this application.

Located on Lot 45 Subdivision N. Shore

On 143 Reef Road Street, Between N. Lake Way and N. Lake Way

ZONING DISTRICT R-B

Occupancy Classification Single Family Dwelling Size of Addition NO Addition

Construction Classification Existing

Roofing Material Existing

Owner's Name D. Wendell

Builder's Name owner by Frank Johns

Architect and/or Engineer Herman Fernau Architect

Approximate Cost \$ 5,000 Height Story

Now, therefore, in consideration of this permit, the owner and builder agree to undertake said work in full compliance with Ordinances of the Town of Palm Beach, Florida, and further agree that no work shall be undertaken prior to securing a building permit, issued by the building inspector.

Signed:


Applicant

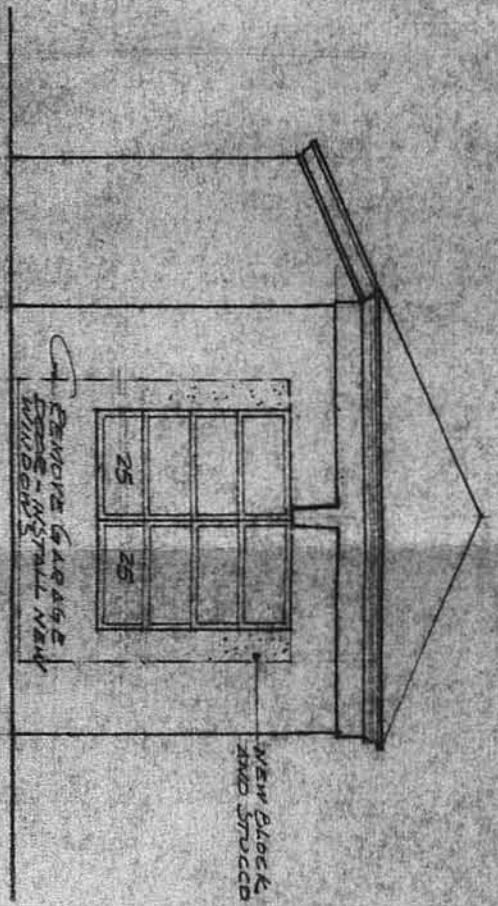
The Building Inspector's notes, as shown on the approved plans, will be adhered to.

The granting of this building permit is subject to the following special conditions pertaining thereto, as directed by the building inspector:

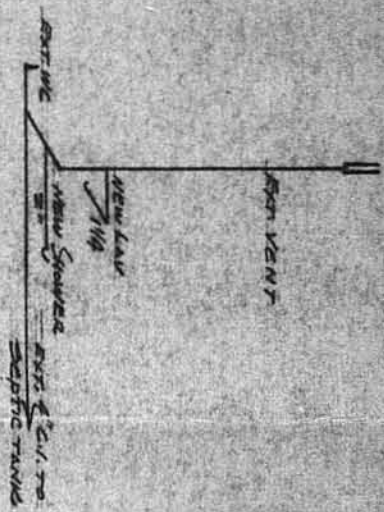
This work is being done on an hourly wage basis, no contract is involved

On behalf of the owner and builder, I agree to the terms of said special conditions.


Applicant



PLOMBING ISOMETRIC



ELEVATION

1/4\"/>

APPROVED

AS NOTED AND SUBJECT TO ALL THE CODE OF BUILDING AND ZONING ORDINANCES THAT MAY NOT BE CLEARLY EXHIBITED HEREIN

THIS 4TH DAY OF AUG 1972

Alfred E. O'Brien

SENIOR BUILDING OFFICIAL

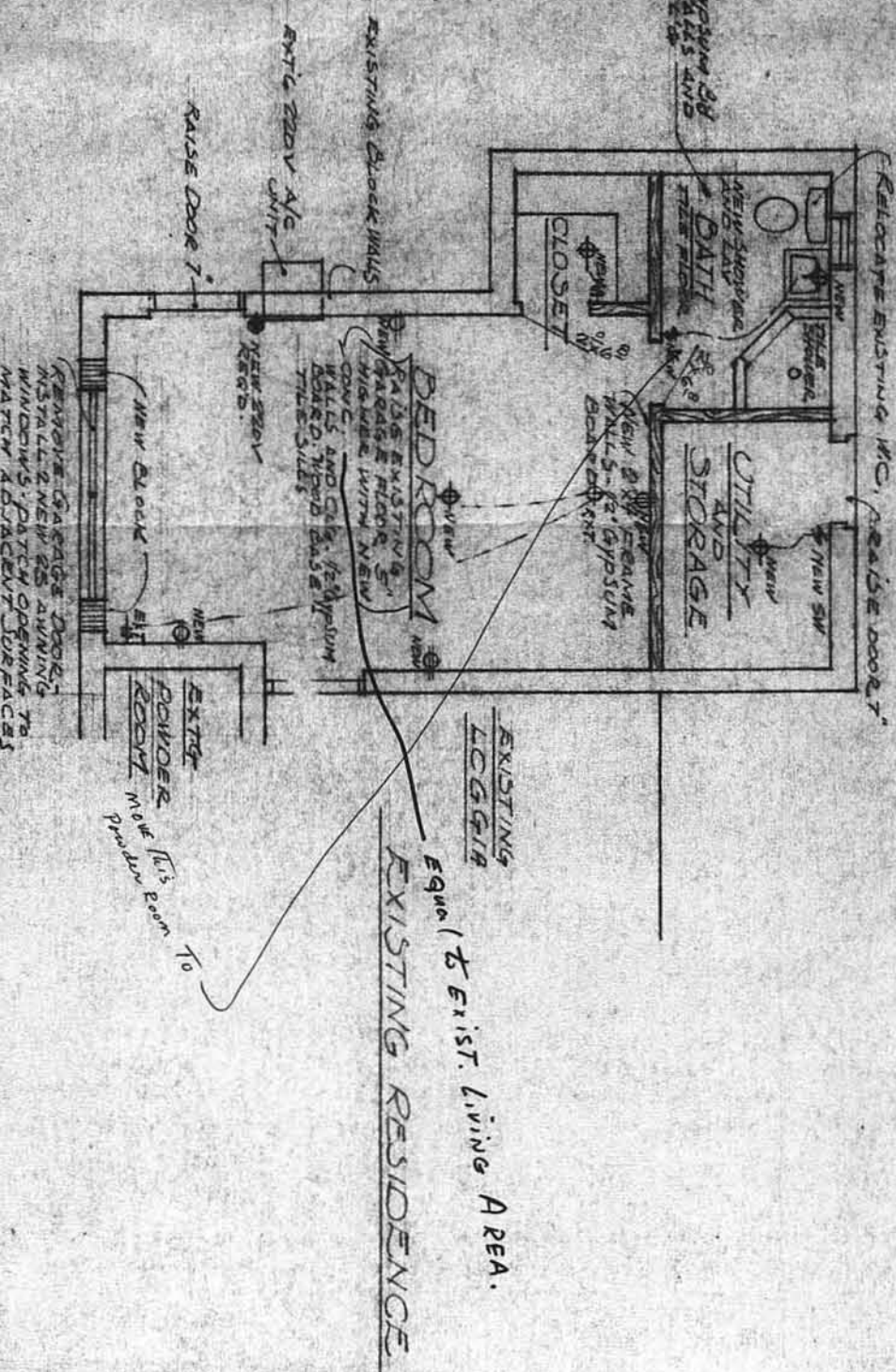
PLANS RECEIVED AND CORRECTIONS NOTED AND CONDITIONS ARE HEREBY ACKNOWLEDGED

Anthony C. Howard

THIS DAY OF 19

Office 644
80172

NO CHANGES TO BE MADE FROM ORIGINAL PLANS FILED WITH THIS APPLICATION, WITHOUT BEING APPROVED BY BUILDING INSPECTOR



FLOOR PLAN

1/4\"/>

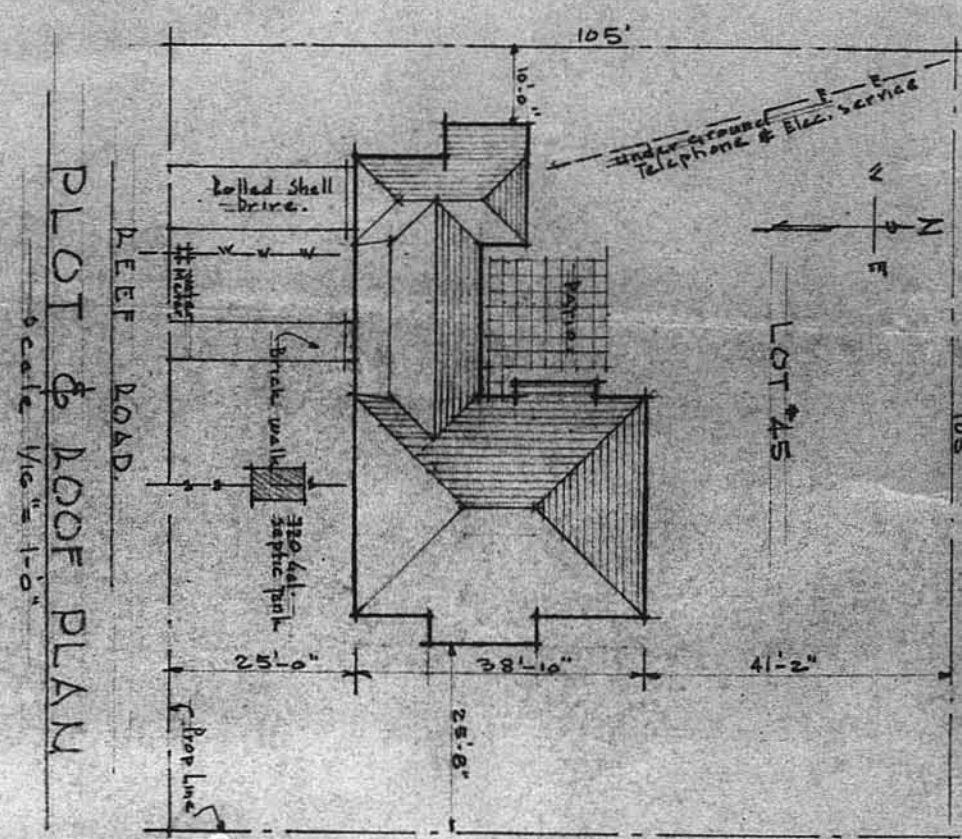
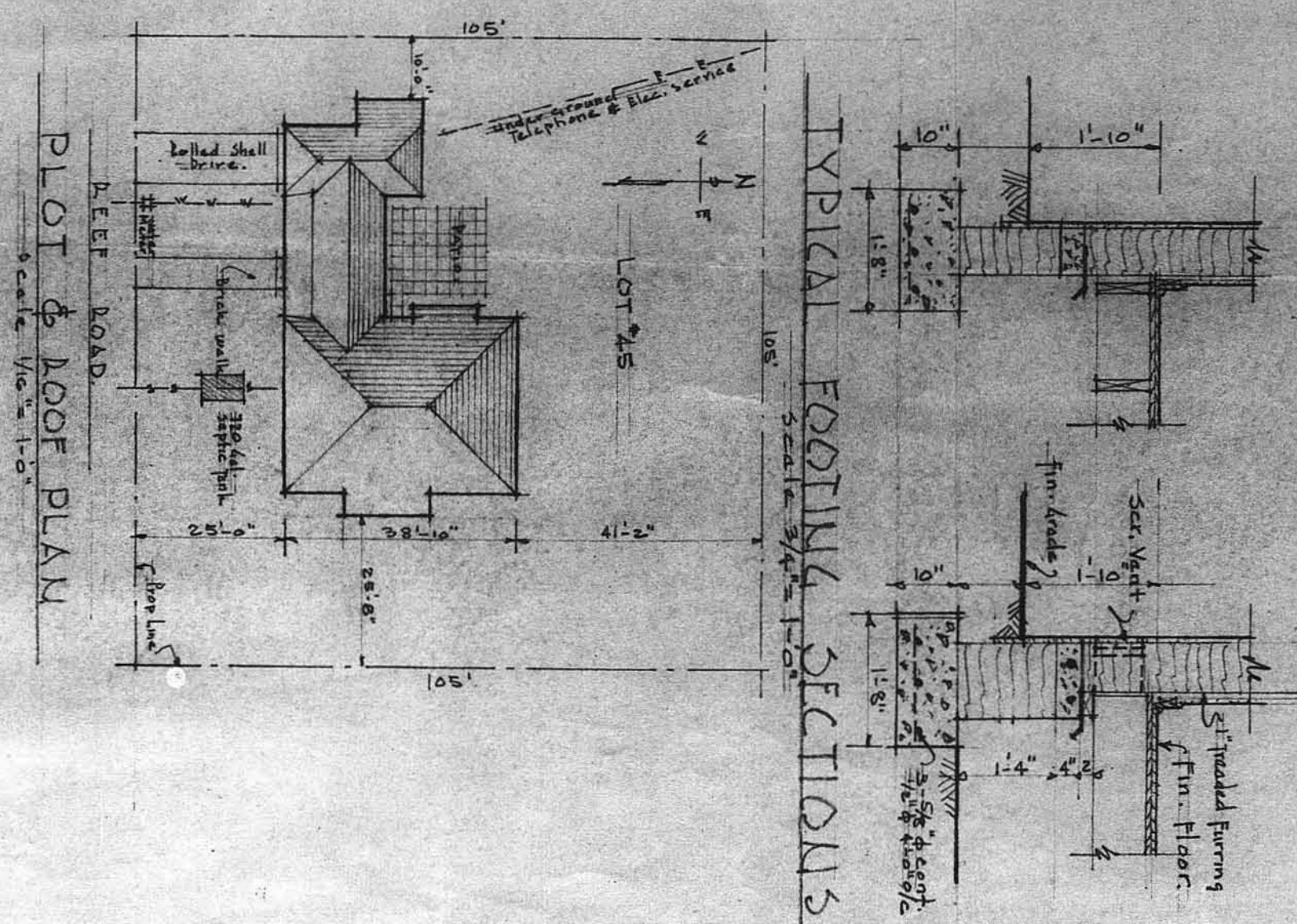
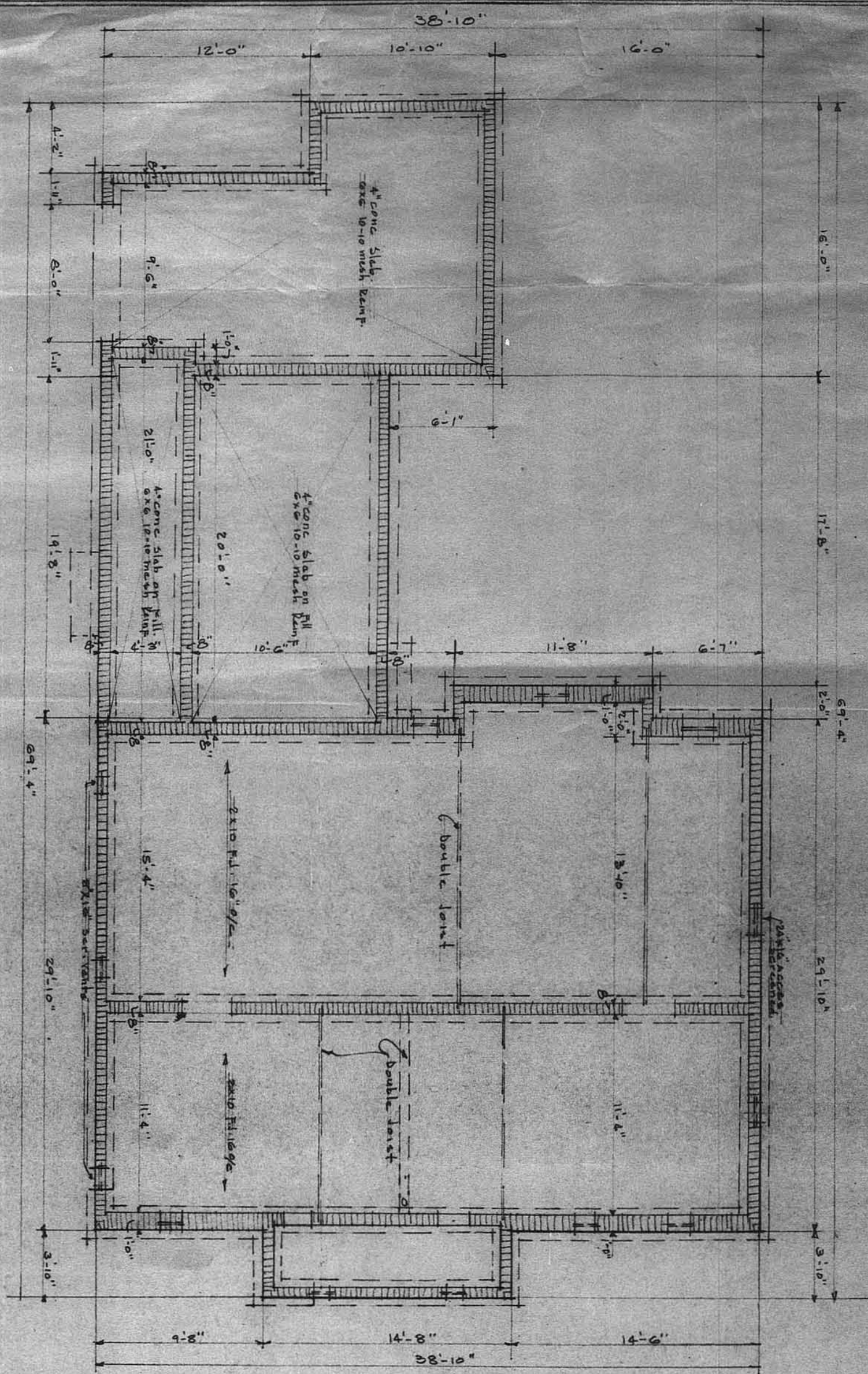
ALTERATIONS FOR JANE WENDEL

DATE	BY	REVISIONS
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8-2-72	EDW	3
8-2-72	EDW	4
8-2-72	EDW	5
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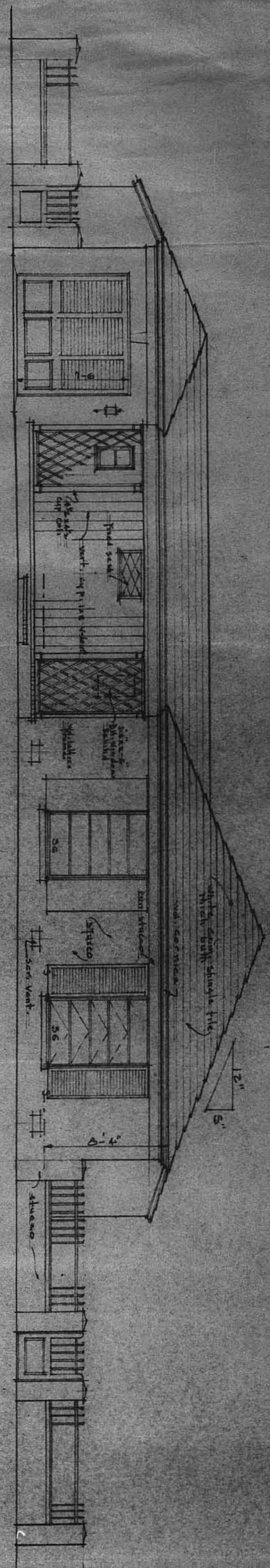
file 45
148 Reg



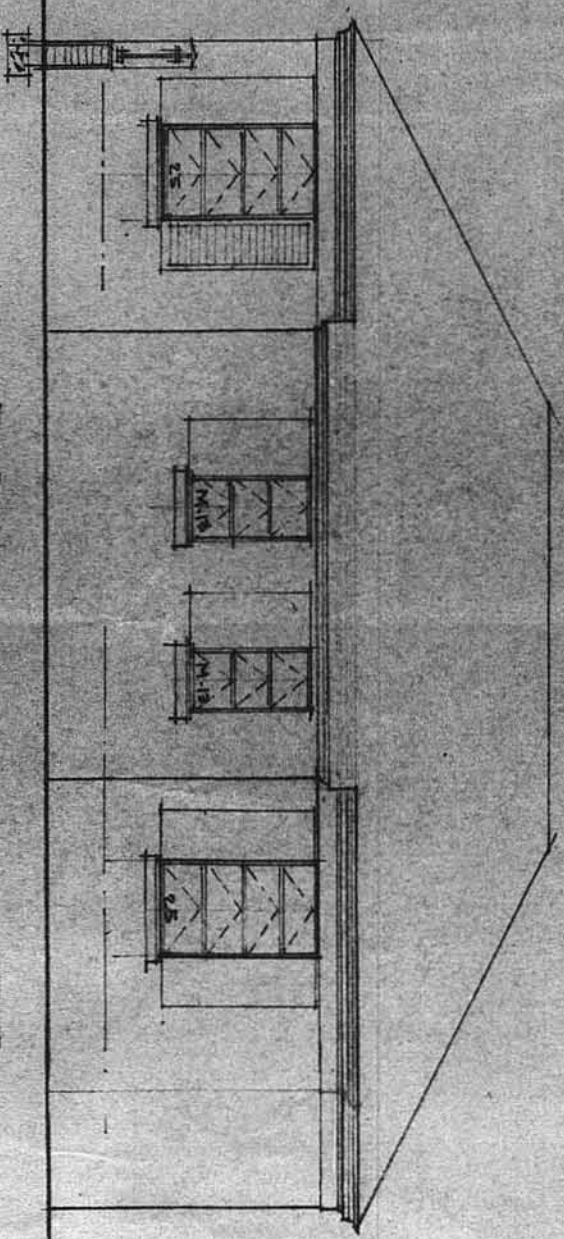
Anthony C. Howard



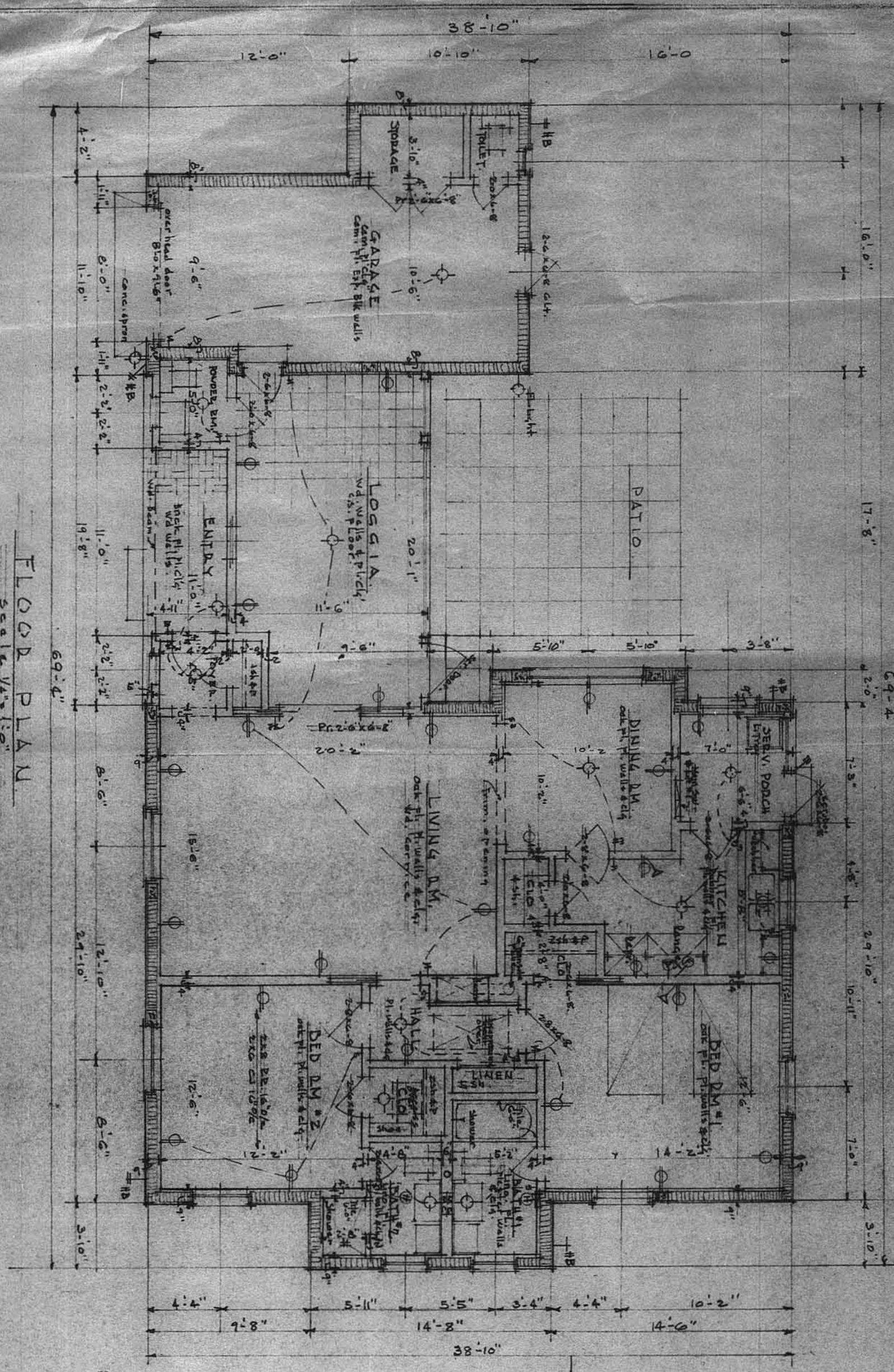
FOUNDATION & PLOT PLAN		DATE 2.12.22	SCALE 1" = 10'
HOUSE #2 FOR E. L. DODDY JR. DEEP BEACH LOT #15 PALM BEACH, FLA.		DATE 26 Jan 55	SCALE 1" = 10'
OWNER AND PROJECTMAN CALER AND PLOCKELMAN PALM BEACH, FLA.		DATE 1	SCALE 1" = 10'
DRAWING BY ARCHITECT		DATE	SCALE
REVISIONS		DATE	SCALE



SOUTH ELEVATION



EAST ELEVATION

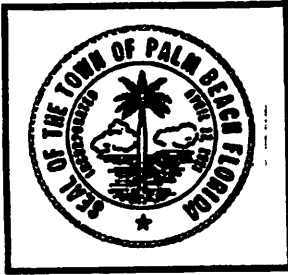


FLOOR PLAN

FLOOR PLAN & ELEVATIONS			
HOUSE #2 FOR			
J. J. RODDY JR.			
1111 ROAD LOT #15			
JAN 1955			
DESIGNED BY	CAIR AND PLOCKMAN	DATE	29 JUN 51
DRAWN BY	J. J. RODDY JR.	SCALE	1/4" = 1'-0"
ARCHITECT	2		

5

417



**ZONING APPLICATION
TOWN OF PALM BEACH**

Variance # 11-2011

(Zoning Case Number)

This application includes requests for:

- ☐ Site Plan Review
☐ Special Exception
☒ Variance

TO BE HEARD BY THE TOWN COUNCIL ON JULY 13, 2011, AFTER 9:30 A.M., IN THE TOWN OF PALM BEACH COUNCIL CHAMBERS, LOCATED ON THE 2ND FLOOR, 360 SO. COUNTY ROAD, PALM BEACH. Pursuant to the Town Zoning Code of Ordinances, Sections 134-172 (Special Exceptions and Variances) and/or 134-328 (Site Plan Review), this application is being sent to all property owners within 300' of the location of the subject zoning application. A copy of this application along with all exhibits such as large drawings and other supporting documents that are not attached to this application are available for inspection at the Town's Planning, Zoning & Building Department, 360 S. County Rd., south entrance, weekdays between the hours of 8:30 a.m. and 4:30 p.m.

All interested persons may appear and be heard at said Public Hearing and may likewise submit written statements prior to and at said Public Hearing. If any person decides to appeal any decision made by the Town Council with respect to this matter, he/she will need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based.

I. **Subject Address:** 143 Reef Road

Zoning District R-B

Fee Simple Property Owner's Name: David and Sarah Hruda

Legal Description: Lot 45 of NORTH SHORE ADDITION TO PALM BEACH, according to the Plat thereof as recorded in Plat Book 20, Page 62, of the Public Records of Palm Beach County, Florida.

Name and address of person who can receive service of process for purposes of litigation in Palm Beach County: Maura Ziska, Esquire, 222 Lakeview Avenue, Suite 1500, West Palm Beach, FL 33401

II. **DESCRIPTION OF THE REQUEST TO BE HEARD BY TOWN COUNCIL, citing applicable Town Zoning Code Section Number(s):**

A. **Applicable Zoning Code Section Number(s):**

1. **Section 134-201 Findings Prior to Authorization.**
2. **Section 134-893 (7) Side yard.**
3. **Section 134-893 (6) Angle of Vision.**

RECEIVED

MAY 20 2011

**TOWN OF PALM BEACH
PZB DEPT**

EXHIBIT C

5/14/2010

Variance # 11-2011
Zoning Case Number

B. Description of request by Zoning Section Number(s):

A request for a variance to construct a two car garage with (i) a 6.25 foot west side yard setback in lieu of the 12.5 feet required in the R-B Zoning District; and (ii) an angle of vision of 112 degrees in lieu of the 100 degrees allowed in the R-B Zoning District.

III. APPLICATIONS CONTAINING VARIANCES

If the application contains requests for variances, please respond to the questions below, and complete Exhibit A (Findings for authorizing a variance as stated in the Town's Zoning Code at Section 134-201).

- a. **Applicant should provide a brief description of the special conditions which when subjected to a literal enforcement of the provisions of the zoning ordinance will result in unnecessary and undue **HARDSHIP**. This explanation should be a summary of information provided in Exhibit A.**

The hardship, which runs with the land, is that the residence was built without a garage and the zoning code has changed since that time requiring a two-car garage for single family residence construction. The applicant would like to make their house conforming and provide a place for their automobiles and recreational equipment and vehicles. Because of the existing configuration of the house, the only location for the garage is on the west side of the house and would slightly encroach into the setback.

- b. **Applicant should address how granting of a variance for these special conditions will not be contrary to the public's interest.**

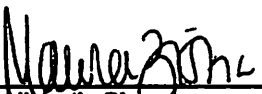
The granting of the variance will not be contrary to the public's interest as the proposed garage will shield the cars and bikes from the street where they are currently out in plain view.

IV. SITE HISTORY

Please provide a detailed history in chronological order of all zoning-related requests processed on or after January 1, 1970 applicable to this property.

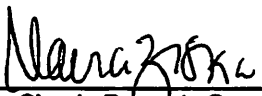
None.

Respectfully submitted,



Applicant's Signature

Maura A. Ziska, Atty. For David and Sarah Hruda
(561) 802-8960
(Typed name & telephone #)



Fee Simple Property Owner's Signature
(or his/her duly authorized attorney)

Maura A. Ziska, Atty. for David and Sarah Hruda
(561) 802-8960
(Typed name & telephone #)

EXHIBIT A - REQUEST FOR VARIANCE

CRITERIA FOR AUTHORIZING A VARIANCE

The Town Council must find the application in conformance with a number of criteria. Please address each of the criteria completely in order to provide the Council with sufficient information to make a determination on your application.

1. List the special conditions and circumstances peculiar to the land, structure or building which are not applicable to other lands, structures or buildings in the same zoning district.

The existing house is nonconforming to today's code by not having a two car garage. Although it is grandfathered, the Applicant would like to have a two car garage to park their cars and store their bicycles.

2. Indicate how the special conditions and circumstances do not result from the actions of the applicant.

The applicant was not the cause of the special conditions of the property or residence as the non-conformity of not having a garage existed prior to the applicant owning the property.

3. Demonstrate that the granting of the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.

The granting of the variance will not confer on the applicant a special privilege that is denied to the neighboring properties as many properties and residences in the area have garages and non-conforming setbacks as the residences were built before the current zoning restrictions were in place.

4. Demonstrate how literal interpretation of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.

The hardship, which runs with the land, is that the residence was built without a garage and the zoning code has changed since that time requiring a two-car garage for single family residence construction. The applicant would like to make their house conforming and provide a place for their automobiles and recreational equipment and vehicles. Because of the existing configuration of the house, the only location for the garage is on the west side of the house and would slightly encroach into the setback.

5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Since the structure will be covering an existing driveway and not greenspace, it will not be detrimental to the landscaping or drainage. The non-conforming setback is minimal for a one story structure that is screened from the neighbor with landscaping.

6. Show how the granting of the variance will be in harmony with the general intent and purpose of this chapter, and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

The granting of the variances will be in harmony with the general intent and purpose of this ordinance and will not be injurious to the neighborhood since the current code would require a two car garage and it will improve the aesthetics of the site.

5/14/2010

EXHIBIT "B"

PARKING STATEMENT

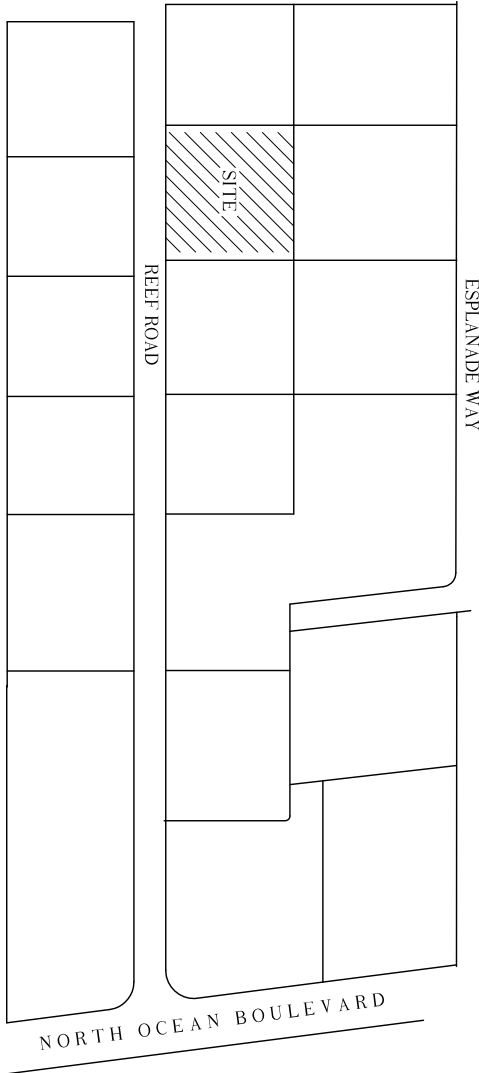
143 Reef Road

Variance #11-2011

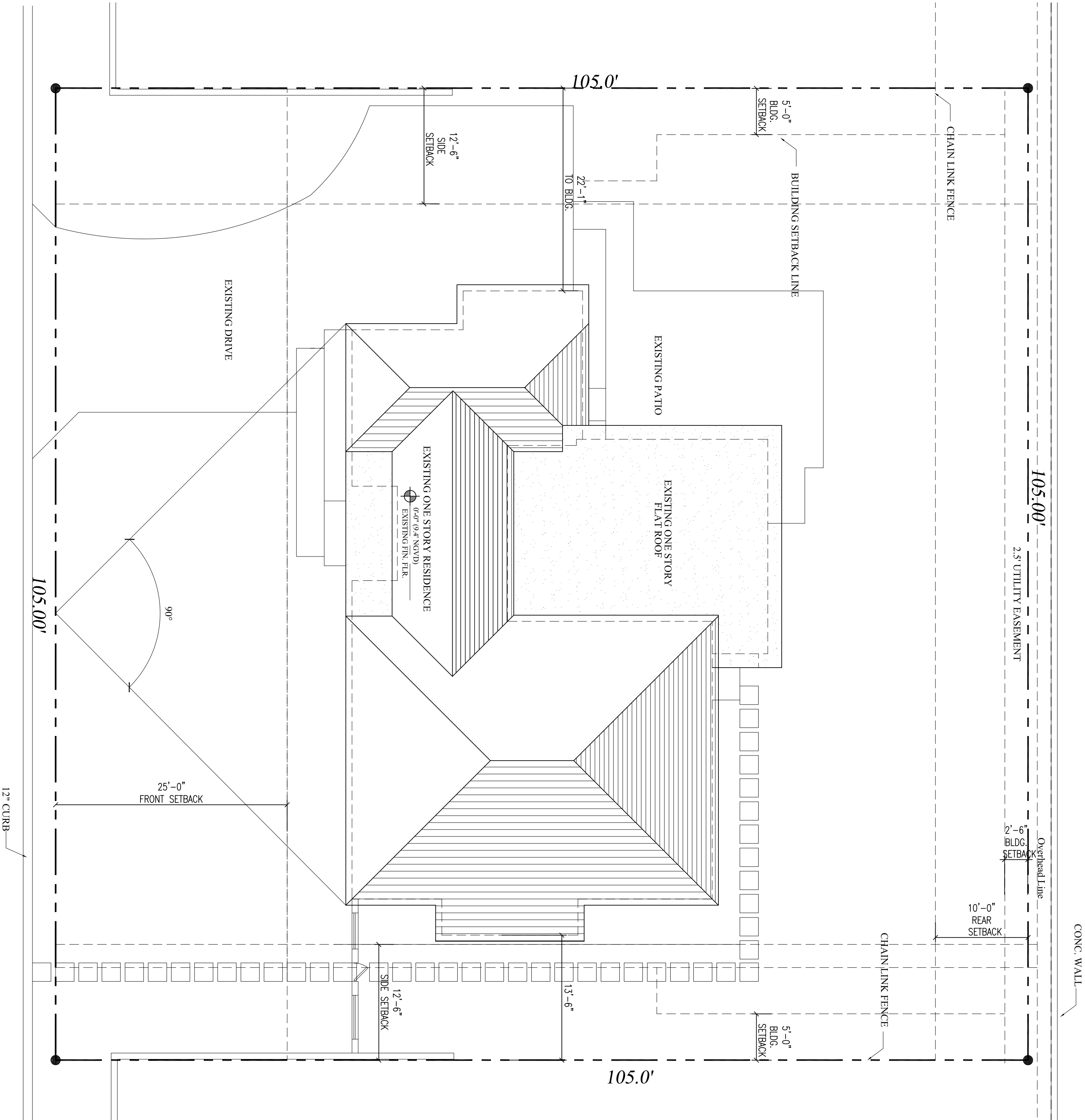
All construction vehicles will either park on the property or permitted parking on the right of way as allowed by the town.

SITE DATA	
SITE CALCULATIONS	R-8
SITE AREA	11,025 SQ. FT.
LOT COVERAGE	2,427 SQ. FT.
BUILDING FOOTPRINT	2,427 SQ. FT.
LANDSCAPE AREA	6,712 SQ. FT.
DRIVE, DECK AND OTHER IMPROVEMENTS AREAS	1,368 SQ. FT.
TOTAL	11,025 SQ. FT.
FLOOR AREA	EXISTING
TOTAL A.C.	2,427 SQ. FT.
CUBIC CONTENT RATIO	2.17 EXISTING
CR - MAX (exclusive dimensions) / (w (to size)	3.97 ALLOWED
BUILDING HEIGHT	9'0"
ANGLE OF VISION	(applicable to R-8, R-9 and R-10 zoning districts only)
CROWN OF ROAD - 7.73' NGVD	

SITE CALCULATIONS- RB Zoning District	
REQUIREMENTS	REQUIRED
LOT AREA	MIN. 10,000 SF
LOT WIDTH	100 FT
LOT DEPTH	100 FT
FRONT YARD SETBACK	25' @ 1-STORY
ANGLE OF VISION	100 DEG.
SIDE YARD SETBACK	12.5' @ 1-STORY
REAR YARD SETBACK	10' @ 1-STORY
BUILDING HEIGHT	14.0' @ BOTTL/TOP CHORD
LOT COVERAGE	40% MAX. 1-STORY
LANDSCAPED OPEN SPACE	45% MIN. (4,981 SF)
LANDSCAPED FRONT YARD	40% MIN.



LOCATION MAP



EXISTING SITE PLAN

SHEET NUMBER	ESP-1
DATE	05/19/11
JOB #	00000

REVISIONS	

A. A. # 001345
A. R. # 10,181

PROPOSED GARAGE ADDITION FOR

HRUDA RESIDENCE

143 REEF ROAD

PALM BEACH, FLORIDA 33480

SKA

SKA ARCHITECT + PLANNER

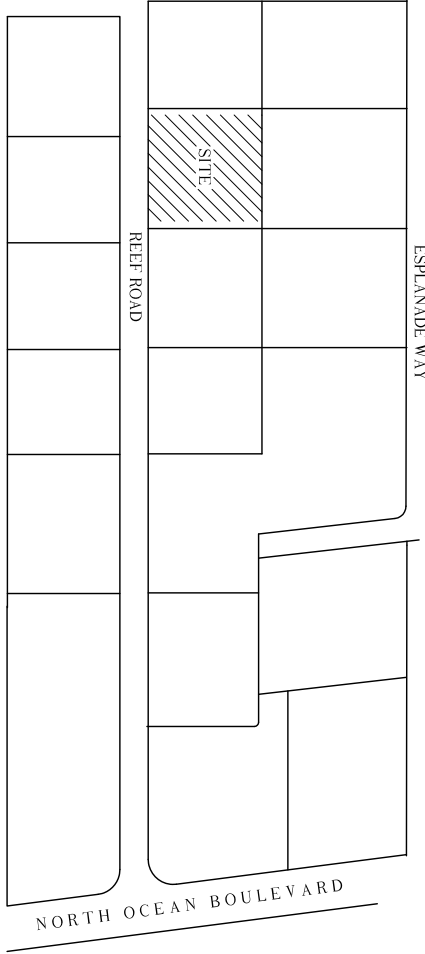
OFFICE (561) 655-1116

FAX (561) 832-7828

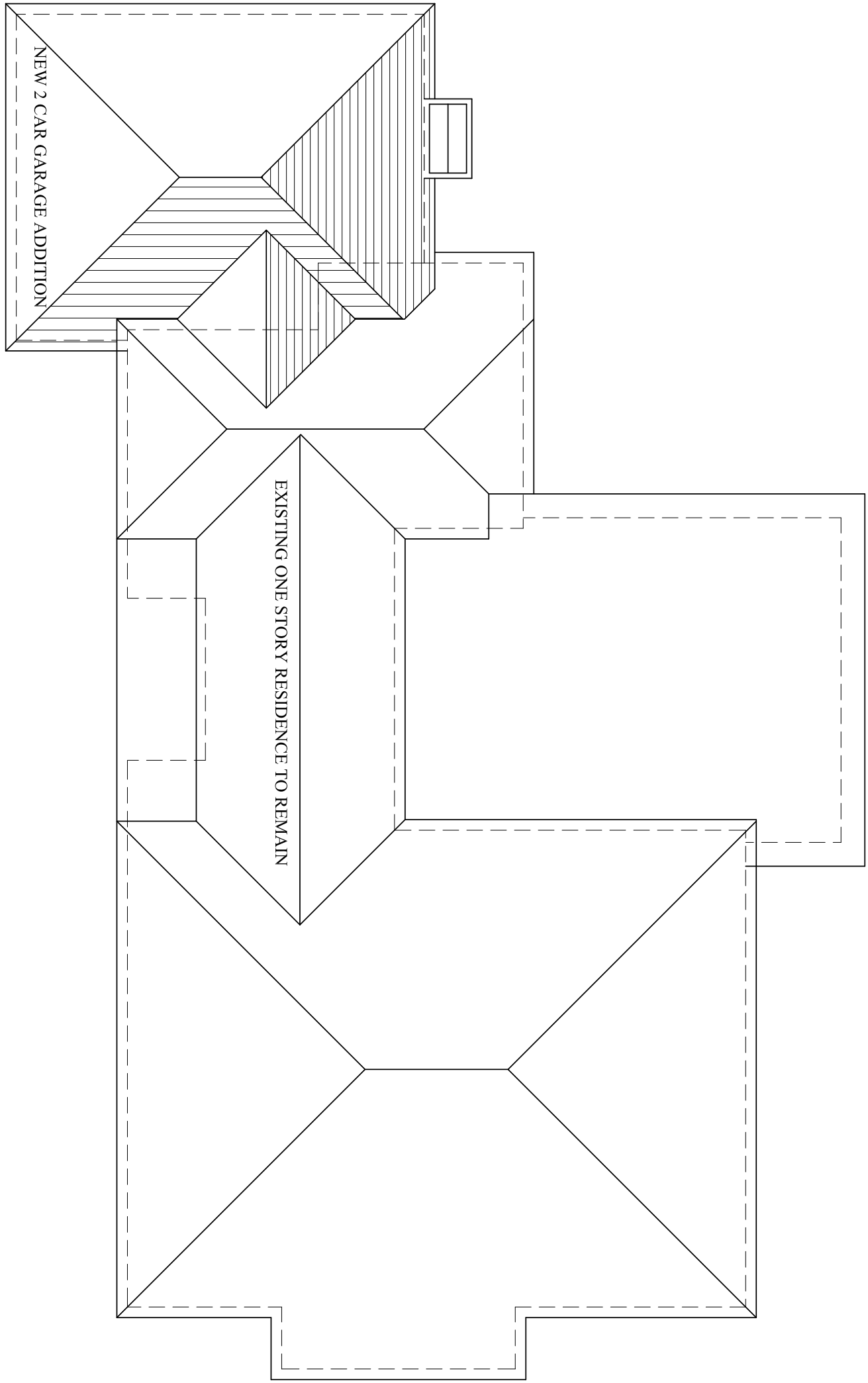
324 ROYAL PALM WAY, SUITE 211, PALM BEACH, FL 33408

SITE DATA	
REQUIREMENTS	REQUIRED
LOT AREA	MIN. 10,000 SF
LOT WIDTH	100 FT
LOT DEPTH	100 FT
FRONT YARD SETBACK	25' @ 1-STORY
ANGLE OF VISION	100 DEG.
SIDE YARD SETBACK	12.5' @ 1-STORY
REAR YARD SETBACK	10' @ 1-STORY
BUILDING HEIGHT	14.0' @ BOT./TOP CHORD
LOT COVERAGE	40% MAX. 1-STORY
LANDSCAPED OPEN SPACE	45% MIN. (4,961 sf)
LANDSCAPED FRONT YARD	40% MIN.
10' FENESTER LANDSCAPE	50% MIN. (2,480.5 sf)
CUBIC CONTENT RATIO	2.59 NEW
BUILDING VOLUME	90' Existing
ANGLE OF VISION	100' New
CROWN OF ROAD - 7.75' ROAD WIDE SIDE	(applicable to R/L B.C. and 150' Existing)

SITE CALCULATIONS- RB Zoning District	
REQUIREMENTS	REQUIRED
LOT AREA	MIN. 10,000 SF
LOT WIDTH	100 FT
LOT DEPTH	100 FT
FRONT YARD SETBACK	25' @ 1-STORY
ANGLE OF VISION	100 DEG.
SIDE YARD SETBACK	12.5' @ 1-STORY
REAR YARD SETBACK	10' @ 1-STORY
BUILDING HEIGHT	14.0' @ BOT./TOP CHORD
LOT COVERAGE	40% MAX. 1-STORY
LANDSCAPED OPEN SPACE	45% MIN. (4,961 sf)
LANDSCAPED FRONT YARD	40% MIN.
10' FENESTER LANDSCAPE	50% MIN. (2,480.5 sf)

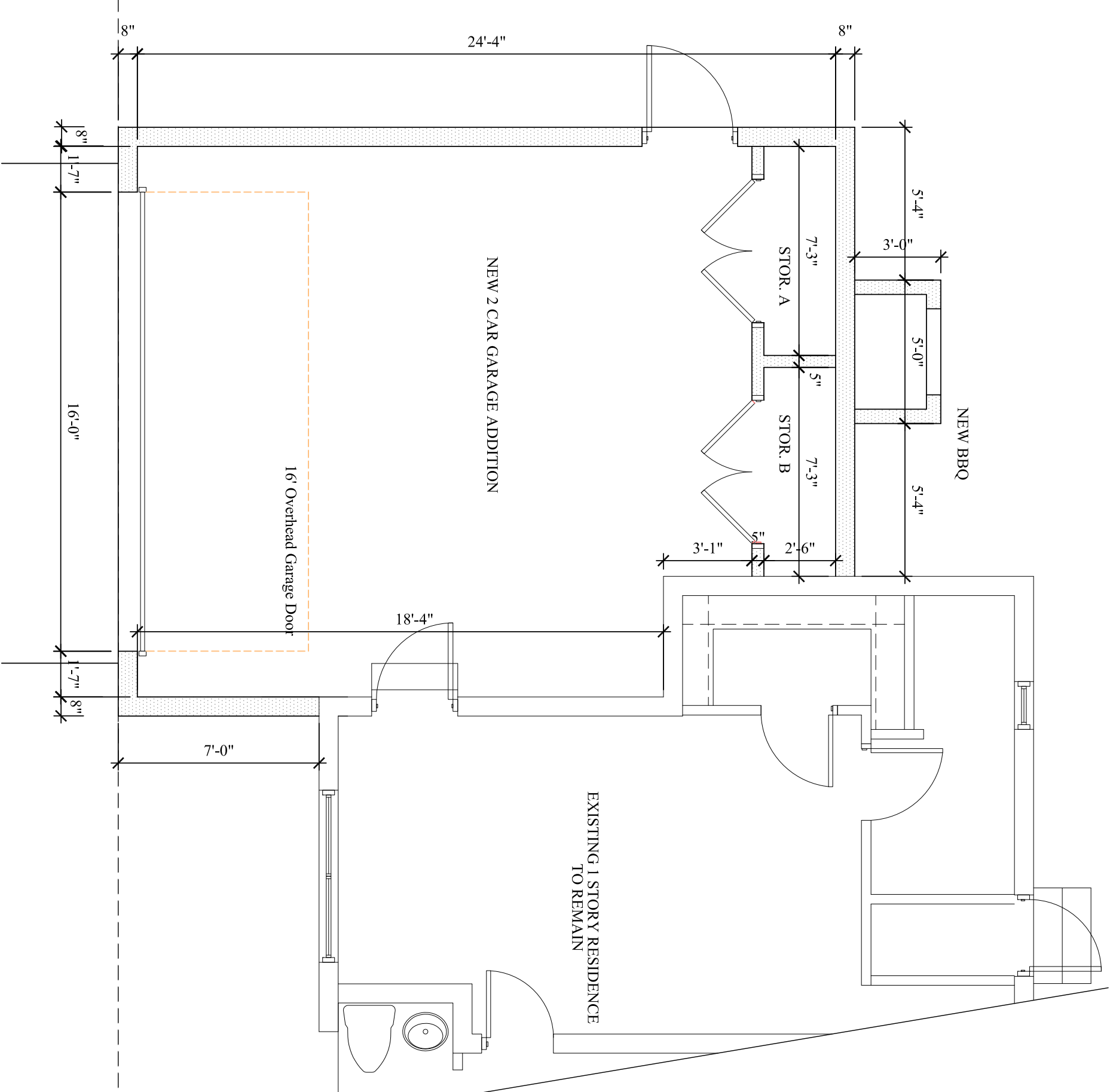


LOCATION MAP



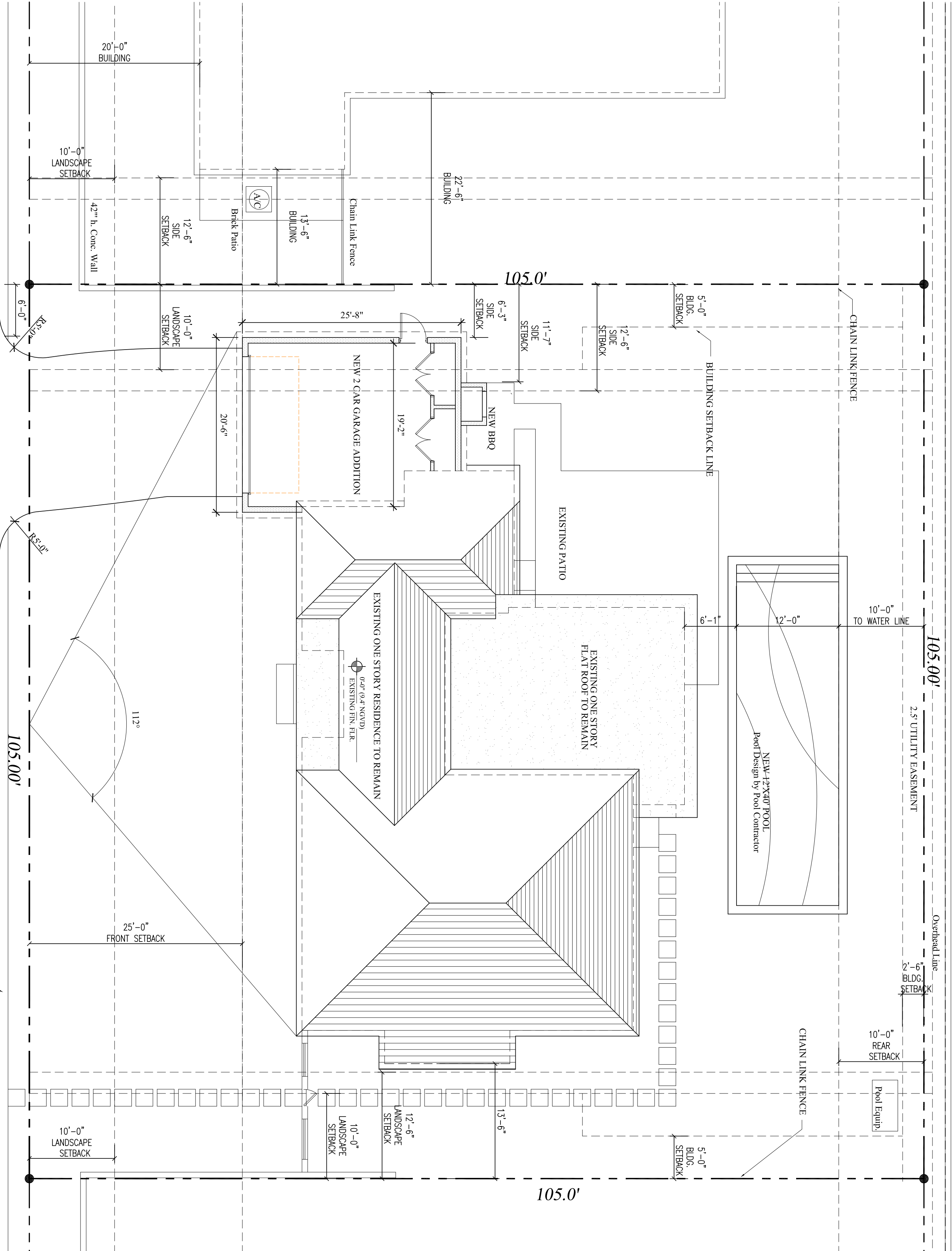
PROPOSED ROOF PLAN

SCALE: 1/8"=1'-0"



PROPOSED GARAGE ADDITION

SCALE: 1/4"=1'-0"



PROPOSED SITE PLAN

REEF ROAD



SHEET NUMBER	SP-1
DATE	05/19/11
JOB #	00000

REVISIONS	

A. A. # 001345
A. R. # 10,181

PROPOSED GARAGE ADDITION FOR
HRUDA RESIDENCE

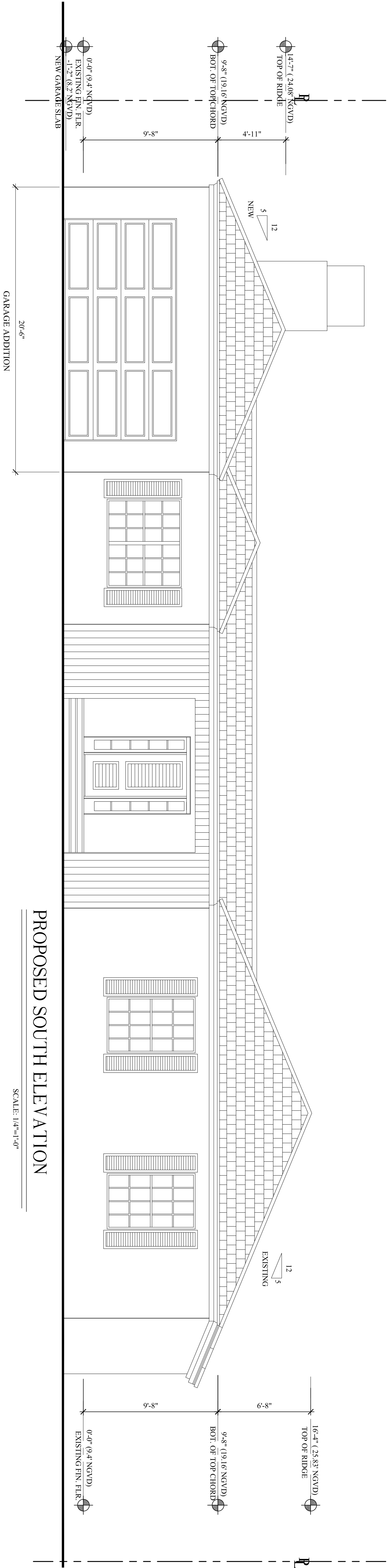
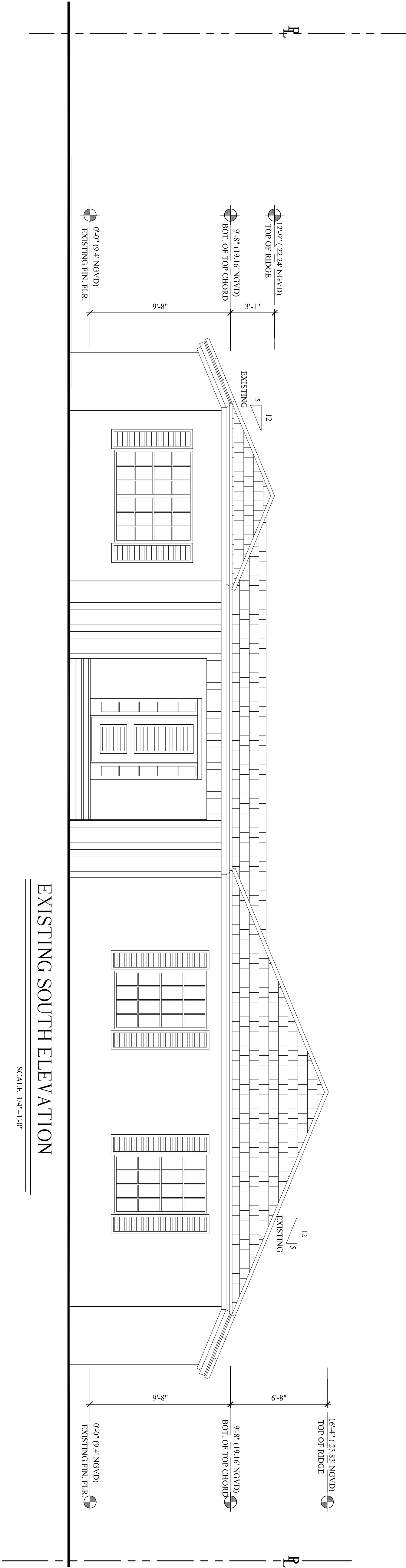
143 REEF ROAD
PALM BEACH, FLORIDA 33480

SKA

SKA ARCHITECT + PLANNER

OFFICE (561) 655-1116 FAX (561) 832-7828

324 ROYAL PALM WAY, SUITE 211, PALM BEACH, FL 33408



EXTERIOR ELEVATIONS

VAR 11-2011 143 REEF ROAD
Scale: 1/4" = 1'-0"

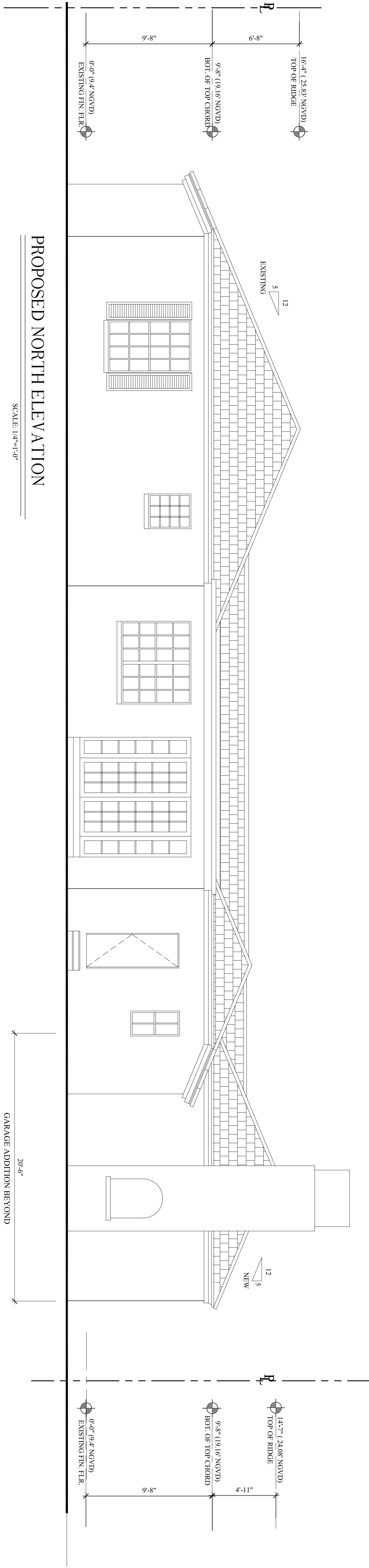
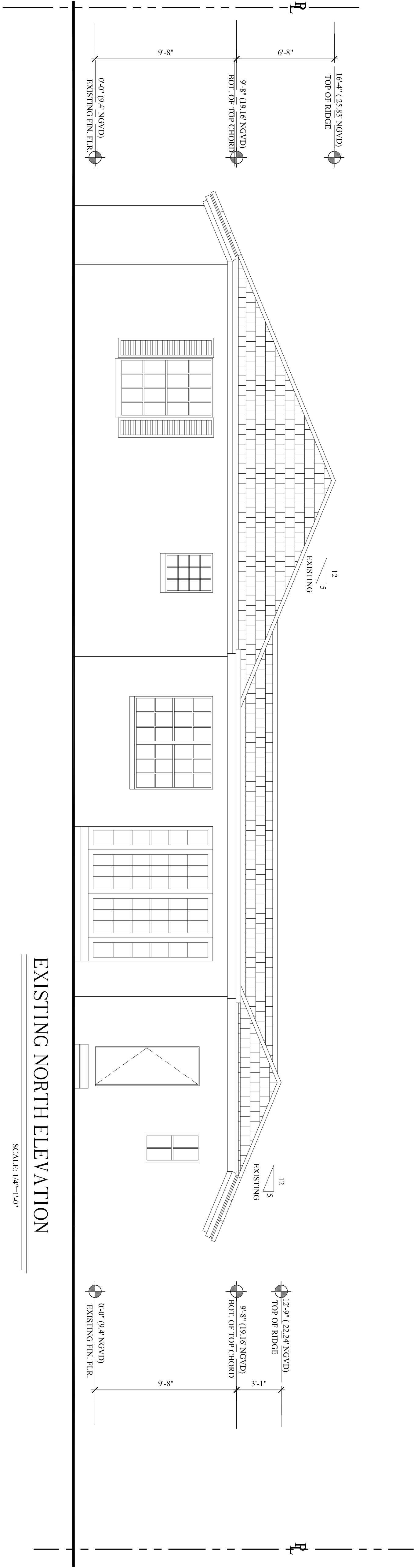
SHEET NUMBER: A-1	
DATE: 05/19/11	JOB # 00000

REVISIONS:	
△	
△	
△	
△	

A. A. # 001345 A. R. # 10,181	
----------------------------------	--

PROPOSED GARAGE ADDITION FOR
HRUDA RESIDENCE
143 REEF ROAD
PALM BEACH, FLORIDA 33480

SKA
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OFFICE (561) 655-1116 FAX (561) 832-7828
324 ROYAL PALM WAY, SUITE 211, PALM BEACH, FL. 33408
183 of 448



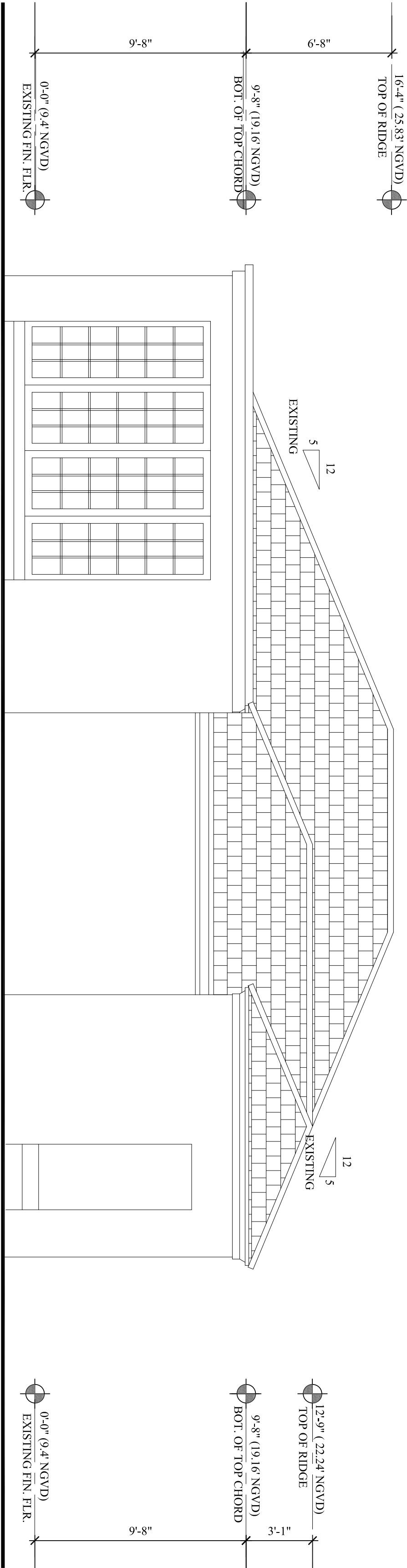
PROPOSED GARAGE ADDITION FOR
HRUDA RESIDENCE
143 REEF ROAD
PALM BEACH, FLORIDA 33480

A. A. # 001345
A. R. # 10.181

REVISIONS:
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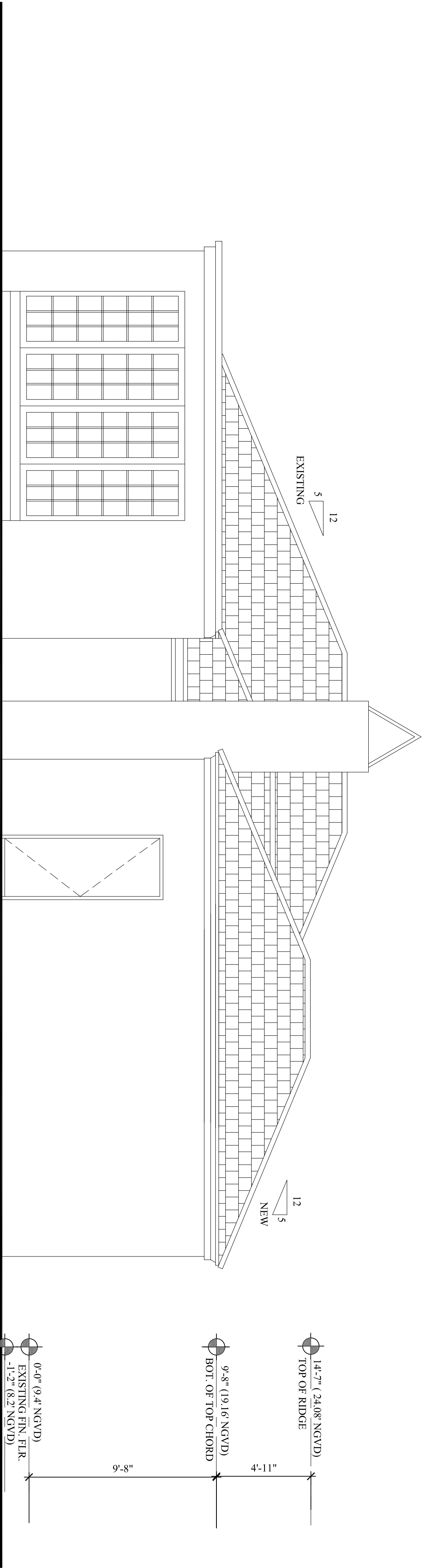
SHEET NUMBER:
A-2
DATE: 05/19/11
JOB #: 00000

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324 ROYAL PALM WAY, SUITE 211, PALM BEACH, FL. 33408
184 of 448



EXISTING WEST ELEVATION

SCALE: 1/4"=1'-0"



PROPOSED WEST ELEVATION

SCALE: 1/4"=1'-0"

GARAGE ADDITION

PROPOSED GARAGE ADDITION FOR
HRUDA RESIDENCE

143 REEF ROAD
PALM BEACH, FLORIDA 33480

A. A. # 001345
A. R. # 10,181

REVISIONS:

△
△
△
△

SHEET NUMBER:

A-3

DATE: 05/19/11

JOB # 00000

VAR 11-2011 143 REEF ROAD
Scale: 1/4" = 1'-0"

EXTERIOR ELEVATIONS

LAW OFFICES
ALLEY, MAASS, ROGERS & LINDSAY, P.A.

340 ROYAL POINCIANA WAY, SUITE 321

POST OFFICE BOX 431

PALM BEACH, FLORIDA 33480-0431

(561) 659-1770

FACSIMILE (561) 833-2261

DOYLE ROGERS
ALAN LINDSAY
PAUL B. ERICKSON
DAVID H. BAKER
WILLIAM W. ATTERBURY III
LOUIS L. HAMBY III
ROBB R. MAASS
M. TIMOTHY HANLON
WARREN D. HAYES, SR.
STUART J. HAFT
BRUCE A. McALLISTER

RAYMOND C. ALLEY (1893-1975)
HAROLD G. MAASS (1923-2006)
DWIGHT A. MILLER (1945-2010)
KAREN S. MARX (1964-1994)

EDWARD D. LEWIS (OF COUNSEL)

CAROL S. WAXLER
1331 SE OCEAN BOULEVARD
STUART, FLORIDA 34996
P (772) 287-4404
F (772) 287-4044

July 8, 2011

**VIA E-MAIL &
REGULAR MAIL**

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

RECEIVED

By MORAKIS at 4:11 pm, Jul 08, 2011

**Re: Variance #11-2011
143 Reef Road**

Dear Mayor Coniglio and Members of Town Council:

This firm has been retained to represent Mrs. Gayle Petersen, who lives at 151 Reef Road. Mrs. Petersen lives immediately west of the property located at 143 Reef Road, which is the subject of Variance Application #11-2011 to be considered by you at your June 13, 2011 meeting.

Mrs. Petersen vehemently objects to the application because her bedroom is located at the point on her property closest to the proposed construction of the two car garage. Mrs. Petersen has suffered from sleep deprivation for the last several years due to the long term illness of her husband Raymond, and both the construction and completed garage would cause further noise and interruption to her attempts to sleep and could result in additional negative health issues.

Legally, there is no legal hardship presented in the application or applicable to this property. This lot is very similar to most of the other properties on Reef Road, and the owners were certainly aware (or should have been aware) of these size limitations when they purchased the property. In addition, a reasonable use of the property already exists and under applicable case law no variance should be granted. Mrs. Ziska acknowledges that no garage is currently required because the property is "grandfathered." Furthermore, the application states that the applicant "would like" a two car garage, but no hardship exists and a reasonable use of the property has existed for numerous years.

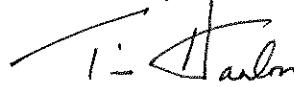
In addition, it is odd that Mrs. Petersen was approached by Sean Heiniger, a former owner of this property (he deeded the property to the Hrudas in 2004), who requested Mrs. Petersen's consent to the variance to accommodate Mr. Heiniger and his children. Mr. Heiniger is neither the property owner nor the applicant, and we respectfully request that you inquire about this inconsistency.

Interestingly, Mrs. Ziska represented Mrs. Petersen in her purchase of 151 Reef Road and she appears to have a conflict of interest in this matter.

For all of the reasons described above, on behalf of Mrs. Petersen, we respectfully request that you deny Variance Application #11-2011.

If you have any questions, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Timothy Hanlon". The signature is stylized with a large, sweeping initial "M" and a cursive "Hanlon".

M. Timothy Hanlon

MTH/cmm

cc: Mrs. Gayle Petersen

From: Anne metzger <amet44@aol.com>
Subject: **143 Reef Road**
Date: July 8, 2011 7:57:31 AM EDT
To: annegm44@gmail.com
Cc: Anne metzger <amet44@aol.com>, Bill Metzger <JWMETZGER@aol.com>



July 8th, 2001

To the Members of the Town Council:

We live at 277 Esplanade Way and were noticed about the proposed changes to the house at 143 Reef Road, which is in our neighborhood. The requested variance would allow the standard 12.5-foot setback to be reduced by 50%, resulting in a 6.25-foot setback. We believe this would be too narrow a set back and would compromise privacy in the neighborhood. Additionally, we are concerned about the precedent that might be established by allowing structures to be built so close to adjoining neighbors' property.

Thank you,

Anne Metzger
Bill Metzger

Anne and Bill Metzger

RECEIVED
JUL - 8 2011
TOWN OF PALM BEACH
PZB DEPT

July 1, 2011

RECEIVED

JUL - 6 2011

TOWN OF PALM BEACH
PZB DEPT

Town of Palm Beach

Zoning & Building Department

360 S. County Road

Palm Beach, Florida 33480

Re: 143 Reef Road *Variance # 11-2011*

To Whom it May Concern:

We have been residents of 144 Reef Road for 16 years, the home directly across the street from 143 Reef. We both have also been residents of the town of Palm Beach for 50 years, our entire lives. We are submitting this notice to preserve the ambiance on the north end. Reef Road is a quiet street with an Island appeal. Most of the residents like it that way and moved here because they hope to keep it this way. We understand a petition to build a two car garage has been filed. Our concerns are as follows:

The house is being rented and they are not the owners.

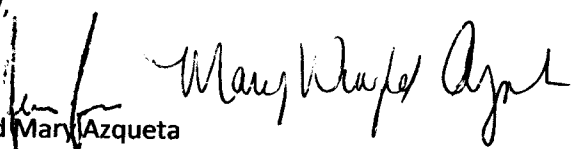
Why do they have to expand to a garage that is so large, the house originally had a one car garage.

The disruption to the safety of the families on the street and the disturbance of peace is overwhelming.

It would seem that the appropriate size garage for this street would be a one car garage, considering the size of the home and property, fitting in with the rest of the street, and the north end.

Thank you for your consideration in this matter.

Sincerely,


Jesse and Mary Azqueta

Paul Gingras, DMD
153 Reef Road
Palm Beach, FL 33480

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

30 June 2011

Dear Members of the Town Council:

My wife and I live at 153 Reef Road and we received a notice of a request for a zoning variance for a property located at 143 Reef Road. We have three concerns regarding the request.

1. The application lists the property owners as David and Sarah Hruda. We are not sure Mr. and Mrs. Hruda own the property. We have been repeatedly told that someone else owns the property. The Town needs to determine who the owners are before proceeding with the application.
2. Under Exhibit A- Request For Variance, item 4, the applicant states that the residence was built without a garage. This house was originally built with a one car garage. This garage was later converted to a living space by a previous owner. A check with the Building Department will confirm this.
3. The addition of a two car garage would reduce the normal side yard setback by half which would change the appearance of the residence by reducing the greenspace surrounding it. This would set a bad precedent for the R-B zoning in this neighborhood. A one car garage addition would impose less on the normal setback.

We are opposed to a two car garage addition and we are not opposed to a one car garage addition.

Sincerely,

Paul and Sally Gingras

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

July 11, 2011

VIA FACSIMILE: 561-835-4621

RECEIVED

By Deborah A. Morakis at 5:09 pm, Jul 11, 2011

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

RE: Variance #11/2011/ 143 Reef Road, Palm Beach

Dear Mayor and Town Council:

On behalf of the property owner, I would like to request a deferral of the above-referenced matter from the July 13, 2011 until the August 10, 2011 Town Council meeting. The reason for the deferral is so the applicant can have time to work out issues with the neighbors.

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

Sincerely yours,


Maura A. Ziska

MAZ/mr

cc: Paul Castro

00011258

EXHIBIT F

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: 561-835-4621

July 21, 2011

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

RE: Variance #11-2011/249/143 Reef Road, Palm Beach

Dear Mayor and Town Council:

Please **withdraw** the above referenced matter from the August 10, 2011 Town Council agenda. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely yours,



Maura A. Ziska

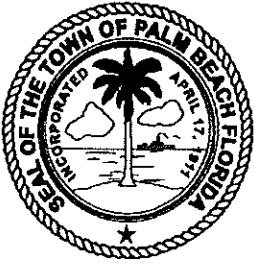
MAZ/mr

cc: Paul Castro

Pat Seagraves

00011412

EXHIBIT G



TOWN OF PALM BEACH

Planning, Zoning & Building Department

July 25, 2011

Ms. Maura Ziska, Esq.
222 Lakeview Avenue
Suite 1500
West Palm Beach, FL 33401

Subject: Variance #11-2011, 143 Reef Road

Dear Ms. Ziska:

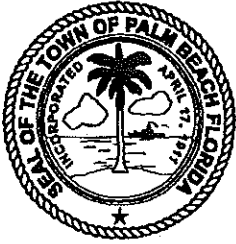
The Town Council, at its July 13, 2011 meeting, deferred the subject application at your client's request. The Town has subsequently received your client's request to withdraw the subject application. The Town Council will consider that request at the August 10, 2011 Council meeting.

If you have any questions, please feel free to contact me at 227-6406,

Sincerely,

Paul Castro, AICP
Zoning Administrator

cc: John S. Page, Director, Planning, Zoning & Building
Jeff Taylor, Building Official
John Lindgren, Planning Administrator
zf & pf



TOWN OF PALM BEACH

Planning, Zoning & Building Department

August 23, 2011

Ms. Maura Ziska, Esq.
222 Lakeview Avenue
Suite 1500
West Palm Beach, FL 33401

Subject: Variance #11-2011, 143 Reef Road

Dear Ms. Ziska:

The Town Council, at its August 10, 2011 meeting, accepted your client's request to withdraw the subject application. If you have any questions, please feel free to contact me at 227-6406.

Sincerely,

Paul Castro, AICP
Zoning Administrator

cc: John S. Page, Director, Planning, Zoning & Building
Jeff Taylor, Building Official
John Lindgren, Planning Administrator
zf & pf

ZONING APPLICATION
TOWN OF PALM BEACH



Z-20-00269
(Zoning Case Number)

This application includes requests for:

- ☐ Site Plan Review
- ☐ Special Exception
- ☒ Variance

TO BE HEARD BY THE TOWN COUNCIL ON SEPTEMBER 9, 2020 AFTER 9:30 A.M., IN THE TOWN OF PALM BEACH COUNCIL CHAMBERS LOCATED ON THE 2ND FLOOR, 360 SO. COUNTY ROAD, PALM BEACH. Pursuant to the Town Zoning Code of Ordinances, Sections 134-172 (Special Exceptions and Variances) and/or 134-328 (Site Plan Review), this application is being sent to all property owners within 300' of the location of the subject zoning application. A copy of this application along with all exhibits such as large drawings and other supporting documents that are not attached to this application are available for inspection at the Town's Planning, Zoning & Building Department, 360 S. County Rd., east entrance, weekdays between the hours of 8:30 a.m. and 4:30 p.m.

All interested persons may appear and be heard at said Public Hearing and may likewise submit written statements prior to and at said Public Hearing. If any person decides to appeal any decision made by the Town Council with respect to this matter, he/she will need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based.

I. SUBJECT ADDRESS: 143 Reef Road Zoning District: R-B

Fee Simple Property Owner's Name: John K. Criddle

Legal Description: Lot 45, Plat of North Shore Addition to Palm Beach, according to the Plat thereof, recorded in Plat Book 20, Page 63, as recorded in Public Records in and for Palm Beach County, Florida.

Name and address of person who can receive service of process for purposes of litigation in Palm Beach County: Maura Ziska, Esq. 222 Lakeview Ave, Suite 1500 West Palm Beach, FL 33401

Applicant Name: John Criddle and Franny Frisbie

Contact phone: c/o Maura Ziska 561-802-8960

II. **DESCRIPTION OF THE REQUEST TO BE HEARD BY TOWN COUNCIL, citing applicable Town Zoning Code Section Number(s):**

A. Applicable Zoning Code Section Number(s):

1. Section 134-201. Findings prior to authorization.
2. Section 134-893. Lot, yard and area requirements – Generally. (7) Side yard; and (6) Angle of Vision.

Z-20-00269

Zoning Case Number

B. Description of request by Zoning Section Number(s):

The applicant is proposing to construct a new 597 square foot one story garage to the west of the existing residence. The following variances are being requested:

- 1. Section 134-893(7): The applicant is requesting a variance for a west side yard setback of 5 feet in lieu of the 12.5 foot minimum required for a one story building.**
- 2. Section 134-893(6): The applicant is requesting a variance for an angle of vision of 105 degrees in lieu of the 100 degrees maximum allowed.**

III. APPLICATIONS CONTAINING VARIANCES

If the application contains requests for variances, please respond to the questions below, and complete **Exhibit A** (Findings for authorizing a variance as stated in the Town's Zoning Code at Section 134-201).

a. Applicant should provide a brief description of the special conditions which when subjected to a literal enforcement of the provisions of the zoning ordinance will result in unnecessary and undue **HARDSHIP**. This explanation should be a summary of information provided in Exhibit A.

The hardship, which runs with the land, is that the residence was built without a garage and the zoning code has changed since that time requiring a two-car garage for single family residences. The applicant would like to make their house conforming and provide a place for their automobiles and bicycles. Because of the existing configuration of the house, the only location for the garage is on the west side of the house and would slightly encroach into the setback.

b. Applicant should address how granting of a variance for these special conditions will not be contrary to the public's interest.

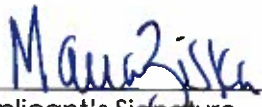
The variances being requested will not be contrary to the public's interest as the proposed garage will hide the cars and bikes from the street where they are currently out in plain view.

IV. SITE HISTORY

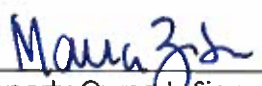
Please provide a detailed history in chronological order of all zoning-related requests processed on or after January 1, 1970 applicable to this property.

08/10/2011 – Variance #11-2011 – Requests variances to construct a two car garage with a 6.25 feet West side yard setback in lieu of the 12.5 feet required; and an angle of vision of 112 degrees in lieu of the 100 degrees allowed. WITHDRAWN per letter dated July 21, 2011.

Respectfully submitted,


Applicant's Signature

Maura Ziska, Attorney for John Criddle
Typed name & telephone # 561-802-8960


Property Owner's Signature
(or his/her duly authorized attorney)

Maura Ziska, Attorney for John Criddle
Typed name & telephone # 561-802-890

EXHIBIT A - REQUEST FOR VARIANCE

CRITERIA FOR AUTHORIZING A VARIANCE

The Town Council must find the application in conformance with a number of criteria. Please address each of the criteria completely in order to provide the Council with sufficient information to make a determination on your application.

1. List the special conditions and circumstances peculiar to the land, structure or building which are not applicable to other lands, structures or buildings in the same zoning district.

The existing house is nonconforming to today's code by not having a two car garage. The Applicant would like to have a garage to park their cars and store their bicycles.

2. Indicate how the special conditions and circumstances do not result from the actions of the applicant.

The applicant was not the cause of the special conditions of the property or residence as the non-conforming lack of garage existed prior to the applicant owning the property.

3. Demonstrate that the granting of the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.

The granting of the variance will not confer on the applicant a special privilege that is denied to the neighboring properties as many properties and residences in the area have garages and non-conforming setbacks as the residences were built before the current zoning restrictions were in place.

4. Demonstrate how literal interpretation of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.

The hardship, which runs with the land, is that the residence was built without a garage and the zoning code has changed since that time requiring a two-car garage for single family residence construction. The applicant would like to make their house conforming and provide a place for their automobiles and recreational equipment and vehicles. Because of the existing configuration of the house, the only location for the garage is on the west side of the house and would slightly encroach into the setback.

5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Since the structure will be covering an existing driveway and not greenspace, it will not be detrimental to the landscaping or drainage. The non-conforming setback is minimal for a one story structure that is screened from the neighbor with landscaping.

6. Show how the granting of the variance will be in harmony with the general intent and purpose of this chapter, and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

The granting of the variances will be not be injurious to the neighborhood since the code today would require a two car garage and it will improve the aesthetics of the site.

Z-20-00269

Zoning Case Number

EXHIBIT B - PARKING STATEMENT

Please provide a detailed parking statement which includes details of all available off-street parking, including information regarding the number of parking spaces designated for service use (for example: lawn service, pool service, etc), staff/employee use, etc.

COMMERCIAL PROPERTIES MUST:

PROVIDE NUMBER OF OFF-STREET PARKING SPACES AVAILABLE
FOR EMPLOYEES ON THE SUBJECT PROPERTY: _____

PROVIDE NUMBER OF EMPLOYEES/STAFF PER SHIFT: _____

INDICATE LOCATION WHERE EMPLOYEES PARK OFF SITE: _____

All construction vehicles and/or visitors will park on site or in the permitted right of way.

PROPOSED ALTERATIONS AND ADDITIONS AT:

143 REEF ROAD

TOWN OF PALM BEACH

B-045-2020; ARCOM: 26 AUGUST, 2020

PALM BEACH COUNTY, FLORIDA

Z-20-00269 TOWN COUNCIL: SEPT 9, 2020



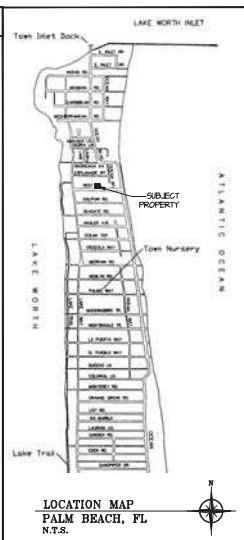
SCOPE OF WORK:		
1-	ALTERATIONS AND ADDITIONS TO EXISTING	
2-	HISTORY RESIDENCE	
3-	NEW HARDSCAPE	
4-	NEW LANDSCAPE	
5-	CIVIL, STORM WATER MANAGEMENT PLAN	
LOT INFORMATION:		
PROPERTY ADDRESS: 143 REEF ROAD, PALM BEACH, FL 33401		
ZONING DATA: RS		
FLOOD: ACHF AND LINE 5, FLOOD: 100/500FT		

ZONING TABULATION			
ZONING DISTRICT	REQUIRED/ALLOWED	EXISTING	PROPOSED
RS	RS	RS	RS
LOT AREA	10,000 SF MIN.	11,025 SF	-
LOT FRONT	100' MIN.	100'-0"	-
LOT DEPTH	100' MIN.	100'-0"	-
LANDSCAPE			
FRONT YARD SETBACK	10' STORY: 25'-0"	10' STORY: 30'-0"	10' STORY: 25'-0"
REAR YARD SETBACK	10' STORY: 30'-0"	10' STORY: 30'-0"	10' STORY: 30'-0"
SIDE YARD SETBACK	10' STORY: 30'-0"	10' STORY: 30'-0"	10' STORY: 30'-0"
ANGLE OF VISION	10' STORY: 10'-0"	10' STORY: 10'-0"	10' STORY: 10'-0"
MAX. BUILDING HEIGHT	10' STORY: 10'-0"	10' STORY: 10'-0"	10' STORY: 10'-0"
MAX. OVERALL HEIGHT	10' STORY: 10'-0"	10' STORY: 10'-0"	10' STORY: 10'-0"
CUBIC CONTENT	10' STORY: 10'-0"	10' STORY: 10'-0"	10' STORY: 10'-0"
LOT COVERAGE	10' STORY: 10'-0"	10' STORY: 10'-0"	10' STORY: 10'-0"
LANDSCAPE OPEN SPACE	10' STORY: 10'-0"	10' STORY: 10'-0"	10' STORY: 10'-0"
REQUIRED FRONT YARD LANDSCAPE OPEN SPACE	10' STORY: 10'-0"	10' STORY: 10'-0"	10' STORY: 10'-0"

STYLE AND DESCRIPTION:	
STYLE:	EXISTING
DESCRIPTION:	
NUMBER OF STORIES:	ONE
ROOF MATERIAL:	CEMENT TILE
CEILING:	YES
FRAME:	NO
COLORS:	
EXTERIOR:	BENJAMIN MOORE CHANTILLY LACE OC-65
INTERIOR:	WHITE
ROOF:	WHITE
TRIM:	BENJAMIN MOORE DOVE KINGS OC-65
SHUTTERS:	BENJAMIN MOORE JAMES RIVER GRAY AC-25
HANDICAPS:	WHITE ALUMINUM

INDEX OF DRAWINGS

- A-0.00 COVER SHEET
- A-0.01 LARGE SCALE SITE PLAN
- SP-1.01 EXISTING SITE PLAN
- SP-1.02 PROPOSED SITE PLAN
- A-1.01 EXISTING FLOOR PLAN
- D-1.01 DEMOLITION PLAN - GROUND
- A-1.02 PROPOSED FLOOR PLAN
- A-1.03 EXISTING ROOF PLAN
- D-1.02 DEMOLITION PLAN - ROOF
- A-1.04 PROPOSED ROOF PLAN
- A-2.01 EXSITING & PROPOSED ELEVATIONS
- A-2.02 EXSITING & PROPOSED ELEVATIONS
- A-2.03 EXSITING & PROPOSED ELEVATIONS
- A-2.04 EXSITING & PROPOSED ELEVATIONS
- A-2.05 SITE SECTION
- A-2.06 DETAIL SHEET
- A-2.07 DETAIL SHEET
- A-2.08 DETAIL SHEET
- A-0.02 STREETScape Drawings/ NEIGHBORHOOD
- L-1-L-12 LANDSCAPE PLANS
- C-1 SITE GRADING & DRAINAGE PLAN
- EC-1 EROSION CONTROL PLAN
- A-0.03 CCR PLAN
- SURVEY



LOCATION MAP
PALM BEACH, FL
N.T.S.

CONSULTANTS AND ENGINEERS:

				CIVIL ENGINEER:		LANDSCAPE ARCHITECT:		SURVEYOR:		JOB NUMBER:	
				ORDER CONSULTING ENGINEERS, INC.		ENVIRONMENTAL DESIGN GROUP		WALLACE SURVEYING CORP.		20-108	
				2475 HENRIER AVE. SUITE 305		194 NORTH COUNTY ROAD		5555 VILLAGE BOULEVARD		ARCOM APPROVAL	
				WEST PALM BEACH, FL 33401		SUITE 204-B, PALM BEACH, FL		WEST PALM BEACH, FL 33401		TC APPROVAL	
				561-912-2041		561-852-4600		561-640-4951		ISSUED FOR PERMIT	
										ISSUED FOR CONSTRUCTION	

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D.J.A. DAILEY JANSSEN ARCHITECTS
LICENSE #A40001974
400 CLEMENTS STREET, SUITE 300
WEST PALM BEACH, FLORIDA, 33411
TEL: 561-653-1177

Proposed Alterations and Additions
143 REEF ROAD
TOWN OF PALM BEACH

DATE: 08/26/2020
DRAWN BY: J. JANSSEN
CHECKED BY: J. JANSSEN
SCALE: 1/8" = 1'-0"

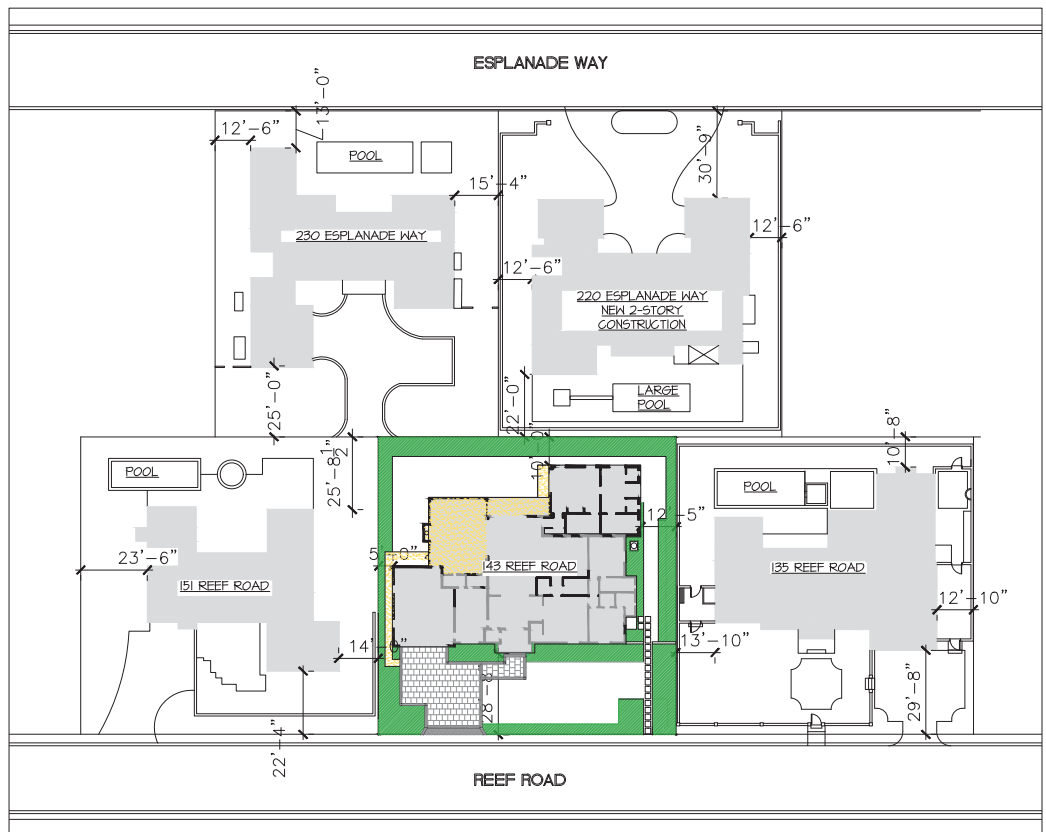
Job No.
20-108

Sheet

143 REEF ROAD
Palm Beach, FL 33401

Drawing No.

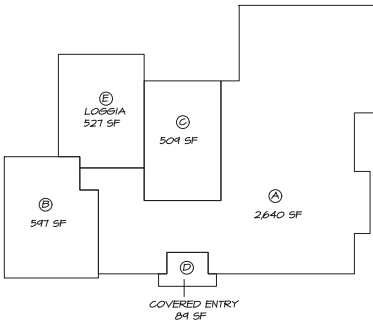
A-0.00



1 NEIGHBORHOOD SITE PLAN
SCALE: 1" = 20'-0"

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DJA DAILEY JANSSEN ARCHITECTS 400 CLEMENTS STREET, SUITE 300 WEST PALM BEACH, FLORIDA, 33411 TEL: 561.853.1177	
Proposed Alterations and Additions 143 REEF ROAD FOUR BEACH CORRECTION	
SHEET NO. 20-100 DATE: 01.13.2020 DRAWN BY: [Name] CHECKED BY: [Name]	JOB NO. 20-100 SHEET NO. 1 OF 22 DRAWING NO. A-0.01



CUBIC CONTENT RATIO DATA FOR R-B DISTRICT - PROPOSED			
LOT SIZE, 10340 SF	SQ. FT. AREA	HEIGHT	CUBIC FEET VALUE
A- ENCLOSED ONE STORY	2640 SF	8'-0"	21120 CF
B- ENCLOSED ONE STORY	547 SF	8'-0"	4376 CF
C- ENCLOSED ONE STORY	504 SF	8'-0"	4032 CF
TOTAL ENCLOSED			39528 CF
D- COVERED UNENCLOSED ENTRY	84 SF	8'-0"	672 CF
E- COVERED UNENCLOSED LOBBY	527 SF	8'-0"	4216 CF
TOTAL UNENCLOSED			4888 CF
CALCULATIONS ARE TAKEN FROM 6.5' NAVD TO THE BOTTOM OF THE TOP CURB.			
* Building height of application only in R-B district means the vertical distance from the top of the floor slab (including garage) 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.			
MAX. ALLOWABLE CGR = 150' / (26000-1000) * 100000' X 0.01			
= 3.41 OR 4888 CF			
PROPOSED TOTAL ENCLOSED AREA OF CGR = 4808 CF OF 4888 CF ALLOW			
TOTAL ALLOWABLE FOR UNENCLOSED COVERED = 5.0% OF CG OR 245' CF MAX ALLOWED			

CUBIC CONTENT - PROPOSED

ZONING TABULATION			
EXISTING	PROPOSED	EXISTING	PROPOSED
USE	USE	USE	USE
LOT AREA	10340 SF MIN.	10340 SF	-
LOT FRONT	100' MIN.	100'-0"	-
LOT DEPTH	100' MIN.	100'-0"	-
SETBACKS	10' MIN.	10'-0"	-
FRONT YARD SETBACK	30' MIN. 20'-0"	30' MIN. 20'-0"	30' MIN. 20'-0"
REAR YARD SETBACK	30' MIN. 20'-0"	30' MIN. 20'-0"	30' MIN. 20'-0"
ANGLE OF VISION	10' MIN. 10'-0"	100'	100'
MAX. BUILDING HEIGHT	35' MIN. 20'-0"	35'-0"	35'-0"
MAX. OVERALL HEIGHT	35' MIN. 20'-0"	35'-0"	35'-0"
CUBIC CONTENT	345 GZR	2544 CF	4808 CF
LOT COVERAGE	48% OF ALLOWED	27%	48% OF ALLOWED
LOT COVERAGE	ONE STORY 40%	27%	48% OF ALLOWED
LANDSCAPE OPEN SPACE	40% MIN.	SEE LA DMS	-
REAR YARD SETBACK	30' MIN.	SEE LA DMS	-
LANDSCAPE OPEN SPACE	40% MIN.	SEE LA DMS	-

STYLE AND DESCRIPTION

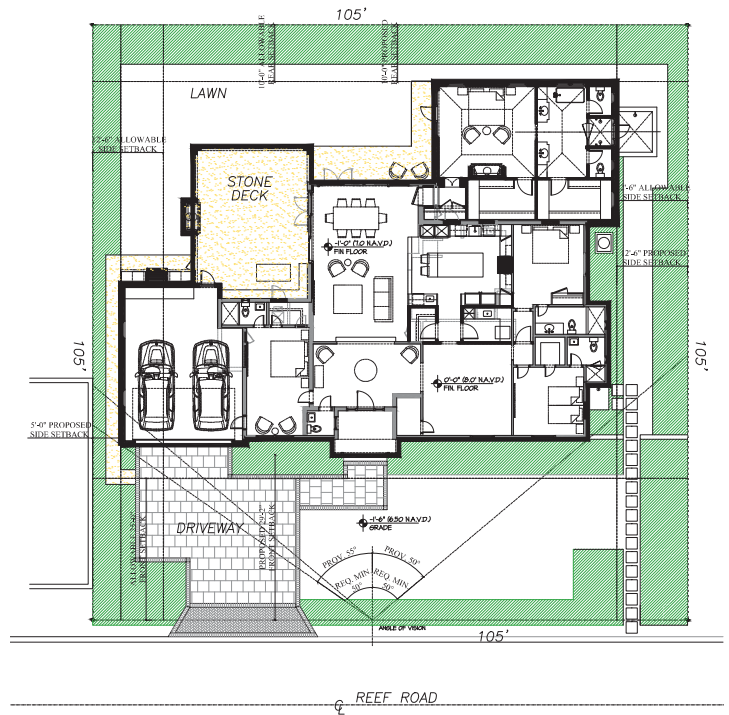
STYLE	EXISTING
DESCRIPTION	ONE
NUMBER OF STORIES	CEMENT TILE
ROOF MATERIAL	YES
FRAME	NO
COLORS	BENJAMIN MOORE CHANTILLY LACE OG-65
BUILDINGS	BENJAMIN MOORE CHANTILLY LACE OG-65
ROOF	WHITE - CEMENT TILE
TRIM	BENJAMIN MOORE COVE HING OG-10
SHUTTERS	BENJAMIN MOORE JAMES RIVER GRAY AC-25
WINDOVS	WHITE ALUMINUM

SITE DATA

Side Setback:
5'-0" vs 12'-6" allowable

Angle of vision
105° vs 100° allowable

VARIANCES



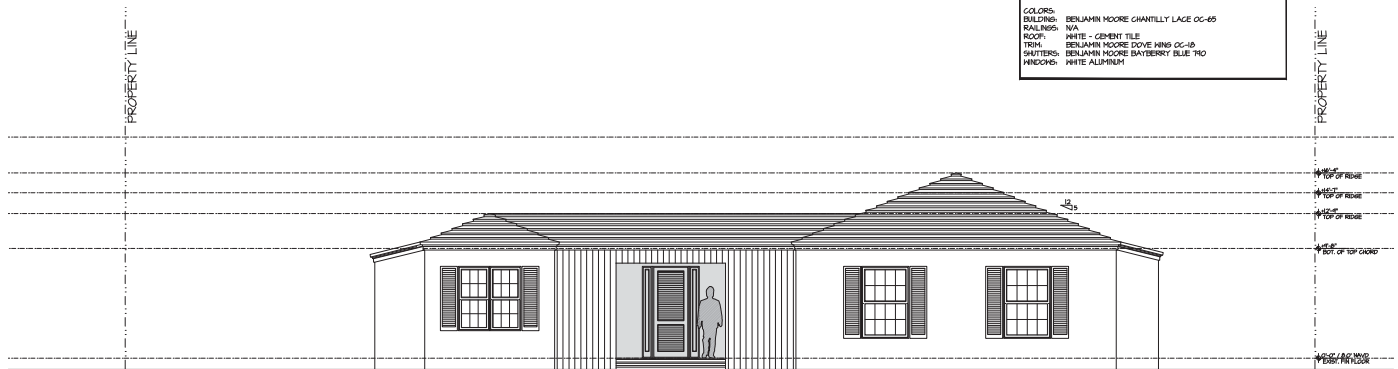
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DJA DAILEY JANSSEN ARCHITECTS
400 CLEMENTS STREET, SUITE 200
WEST PALM BEACH, FLORIDA, 33411
TEL: 561.853.1177
FAX: 561.853.1177

143 REEF ROAD
PROPOSED Alterations and Additions
TYPE OF PLAN: BOUNDARY

DATE: 10-10-2020
JOB NO.: 20-100
SHEET: 1 OF 1
DRAWING NO.: SP-1.02

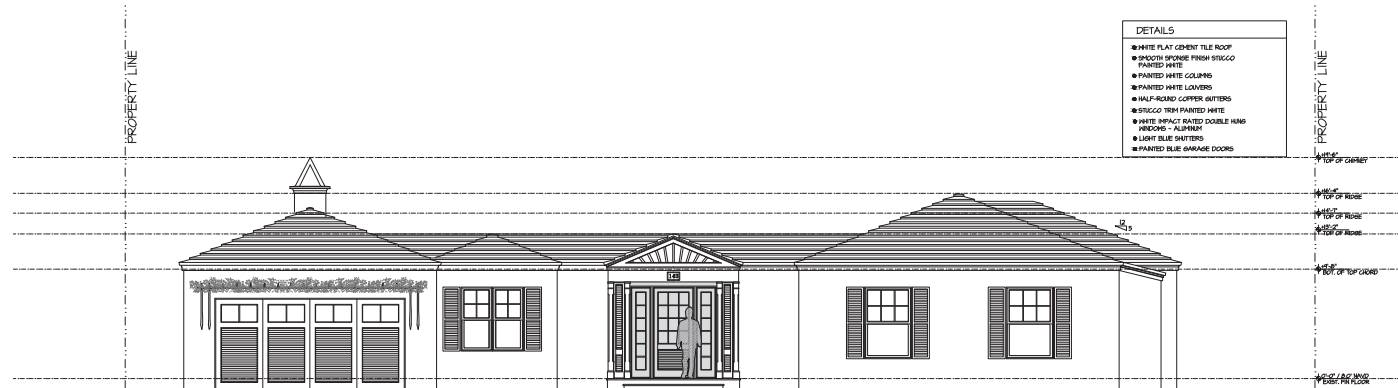
STYLE AND DESCRIPTION:	
STYLE:	EXISTING
DESCRIPTION:	
NUMBER OF STORIES:	ONE
ROOF MATERIAL:	CEMENT TILE
CBS:	YES
FRAME:	NO
COLORS:	
BUILDING:	BENJAMIN MOORE CHANTILLY LACE OC-65
RAILINGS:	WA
ROOF:	WHITE - CEMENT TILE
TRIM:	BENJAMIN MOORE DOVE KING OC-10
SHUTTERS:	BENJAMIN MOORE BAYBERRY BLUE PB-10
WINDOWS:	WHITE ALUMINUM



EXISTING FRONT (SOUTH) ELEVATION

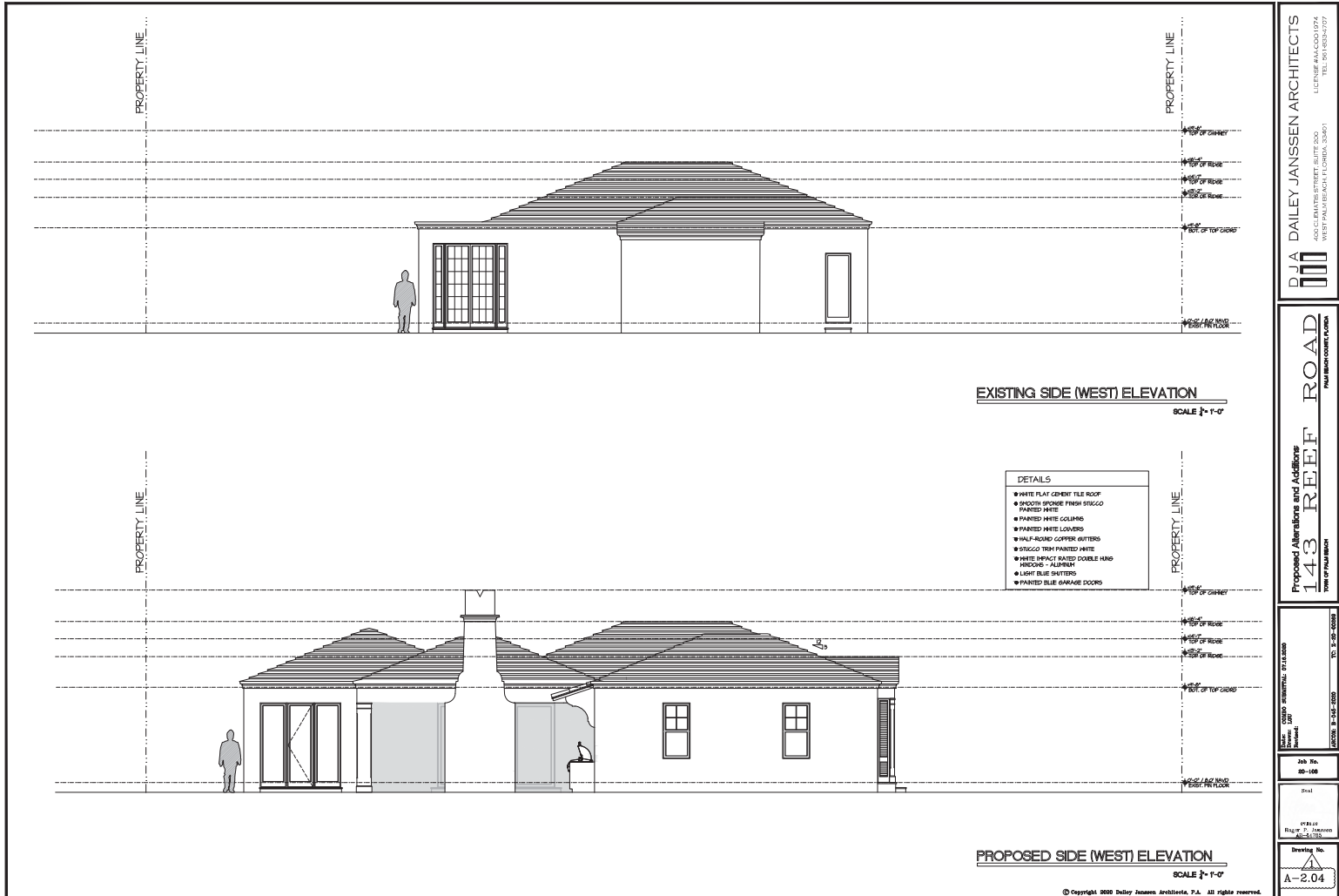
SCALE 1/4" = 1'-0"

DETAILS
• WHITE PLAT GEMENT TILE ROOF
• SMOOTH SPONGE FINISH STUCCO PAINTED WHITE
• PAINTED WHITE COLUMNS
• PAINTED WHITE LOUVERS
• HALF-ROUND COPPER GUTTERS
• STUCCO TRIM PAINTED WHITE
• WHITE IMPACT RATED DOUBLE HUNG WINDOWS - ALUMINUM
• LIGHT BLUE SHUTTERS
• PAINTED BLUE GARAGE DOORS



PROPOSED FRONT (SOUTH) ELEVATION

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SNIFFEN & SPELLMAN, P.A.

Sender's Direct Line: (561) 721-4002
Sender's Email: jeubanks@sniffenlaw.com

August 25, 2019

Via E-mail

Architectural Commission
c/o Michael Small, Chair
Town Council of the Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

**Re: Objection to Application No. B-045-2020 for Proposed Garage at
143 Reef Road**

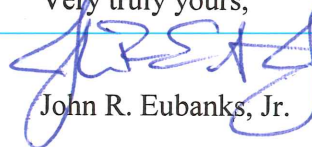
Dear Mr. Small:

Our office was hired this afternoon by Gayle P. Petersen, the owner of 151 Reef Road. Ms. Peterson's home lies immediately to the west of 143 Reef Road. In that capacity please be advised that Ms. Petersen objects to the two car garage proposed by the Applicant, along with the potential variance needed to approve the same.

In direct conflict with the Applicant's representations, the house at 143 Reef Road was built with a one car garage, which was later converted to living space. As a result, there is no hardship which would support a variance.

At the same time, the proposed garage would reduce the normal side yard setback and greenspace in half, change the appearance of the residence from the street, increase the massing next to Ms. Petersen's home, and impinge upon her privacy. Moreover, the Application is nothing more than the same proposal set forth in former Variance #11-2011, which was soundly rejected by the Town Council in July of 2011, resulting in its withdrawal at that time. A copy of the objections from the surrounding neighbors in July 2011, along with a copy of the withdrawal is attached hereto.

Very truly yours,



John R. Eubanks, Jr.

cc: ARCOM Committee Members
Wayne Bergman, Acting Director Planning, Zoning & Building
Kelly Churney, Administrative Specialist
Town Clerk, Town of Palm Beach

EXHIBIT J

REPLY TO:

605 NORTH OLIVE AVENUE, 2ND FLOOR
WEST PALM BEACH, FL • 33401
PHONE: 561.721.4000
FAX: 561.721.4001

TC Dev Review Backup 2-10-2021

WWW.SNIFFENLAW.COM

123 NORTH MONROE STREET
TALLAHASSEE, FL • 32301
PHONE: 850.205.1996
FAX: 850.205.3004

207 of 448

July 1, 2011

RECEIVED

JUL - 6 2011

TOWN OF PALM BEACH
PZB DEPT

Town of Palm Beach

Zoning & Building Department

360 S. County Road

Palm Beach, Florida 33480

Re: 143 Reef Road *Variance # 11-2011*

To Whom it May Concern:

We have been residents of 144 Reef Road for 16 years, the home directly across the street from 143 Reef. We both have also been residents of the town of Palm Beach for 50 years, our entire lives. We are submitting this notice to preserve the ambiance on the north end. Reef Road is a quiet street with an Island appeal. Most of the residents like it that way and moved here because they hope to keep it this way. We understand a petition to build a two car garage has been filed. Our concerns are as follows:

The house is being rented and they are not the owners.

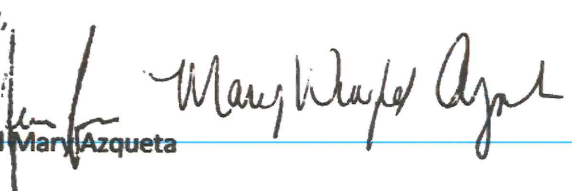
Why do they have to expand to a garage that is so large, the house originally had a one car garage.

The disruption to the safety of the families on the street and the disturbance of peace is overwhelming.

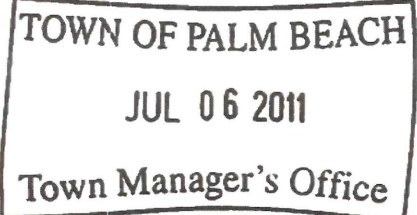
It would seem that the appropriate size garage for this street would be a one car garage, considering the size of the home and property, fitting in with the rest of the street, and the north end.

Thank you for your consideration in this matter.

Sincerely,


Jesse and Mary Azqueta

Paul Gingras, DMD
153 Reef Road
Palm Beach, FL 33480



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

30 June 2011

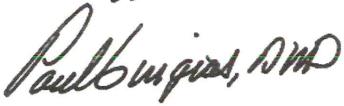
Dear Members of the Town Council:

My wife and I live at 153 Reef Road and we received a notice of a request for a zoning variance for a property located at 143 Reef Road. We have three concerns regarding the request.

1. The application lists the property owners as David and Sarah Hruda. We are not sure Mr. and Mrs. Hruda own the property. We have been repeatedly told that someone else owns the property. The Town needs to determine who the owners are before proceeding with the application.
2. Under Exhibit A- Request For Variance, item 4, the applicant states that the residence was built without a garage. This house was originally built with a one car garage. This garage was later converted to a living space by a previous owner. A check with the Building Department will confirm this.
3. The addition of a two car garage would reduce the normal side yard setback by half which would change the appearance of the residence by reducing the greenspace surrounding it. This would set a bad precedent for the R-B zoning in this neighborhood. A one car garage addition would impose less on the normal setback.

We are opposed to a two car garage addition and we are not opposed to a one car garage addition.

Sincerely,

 
Paul and Sally Gingras

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: 561-835-4621

July 21, 2011

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

RE: Variance #11-2011/249/143 Reef Road, Palm Beach

Dear Mayor and Town Council:

Please **withdraw** the above referenced matter from the August 10, 2011 Town Council agenda. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely yours,



Maura A. Ziska

MAZ/mr

cc: Paul Castro

Pat Seagraves

00011412

From: [Anne Metzger](#)
To: msmall@smallawpalmbeach.com; RNG@garrisonarch.com; alexives@hotmail.com; amginny@aol.com; [John David Corey](#); betsyshiverick@gmail.com; catlinkt@gmail.com; dan.floersheimer@icloud.com; edward.cooney@gmail.com; info@fairfaxandsammons.com
Cc: [Wayne Bergman](#); [Kelly Churney](#)
Subject: Concerns re: 143 Reef Road - ARCOM meeting Today
Date: Wednesday, August 26, 2020 7:57:10 AM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Members of the Architectural Commission,

This letter is in regard to the proposed plans for 143 Reef Road that you are considering today.

We live one block to the north on Esplanade Way and are very familiar with the subject property. We walk our dog on Reef Road almost every day.

In our opinion, the proposed plans for the house need to be scaled back. The two car garage will look very squeezed so close to the west property line.

We are concerned that this will set an undesirable precedent in our neighborhood.

In addition, the front door looks out of scale for the house.

Please ask for the plans to be restudied.

Thank you,
Anne and Bill Metzger
277 Esplanade Way
Palm Beach

From: [Antonette Fabrizi](#) on behalf of [Town Council](#)
To: [Town Council & Mayor](#)
Cc: [Pat Gayle-Gordon](#); [Queenester Nieves](#); [Wayne Bergman](#); [Kelly Churney](#); [Paul Castro](#); [Kirk Blouin](#); [Jay Boodheshwar](#)
Subject: Fw: 143 Reef Road
Date: Tuesday, September 08, 2020 12:30:44 PM

From: jwmetzger <jwmetzger@aol.com>
Sent: Tuesday, September 8, 2020 10:11 AM
To: Town Council
Subject: 143 Reef Road

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Members of the Town Council and Mayor,

This letter is in regard to the proposed plans for 143 Reef Road.

We live one block to the north on Esplanade Way and are very familiar with the subject property in that block of Reef Road. We very often walk our dog on Reef Road.

In our opinion, the house as proposed with the reduced setback would be too close to the property line with the adjoining neighbor and would set a precedent for our neighborhood that we do not support.

The proposed plans for the house need to be scaled back. The two car garage will look very squished so close to the west property line and the neighbor's house and yard.

Please deny the request for the side yard variance and suggest the plans be restudied.

Thank you,
Anne and Bill Metzger
277 Esplanade Way
Palm Beach

From: [John Eubanks Jr](#)
To: [Wayne Bergman](#); [Kelly Churney](#); [Paul Castro](#)
Cc: [Maura Ziska](#)
Subject: 143 Reef Road - Application for Variance(s) and Proposed Site Plan with No Variances
Date: Tuesday, January 26, 2021 12:32:05 PM
Attachments: [9-4-20 Letter to Town Council.pdf](#)
[8. 14P-20108\(1 GARAGE\)-A-1.02 PROPOSED GROUND - NO VARIANCE.PDF](#)

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Mr. Bergman, Mr. Castro and Ms. Churney:

Our office represents Gayle Peterson, the owner of 151 Reef Road directly west of and adjacent to 143 Reef Road. As set forth in our prior correspondence dated September 4, 2020 (a copy of which, without exhibits, is attached hereto) Ms. Peterson continues to believe that the Applicant does not meet the requisite standards and hardship needed for a variance for its proposed garage whether designed as the previous 2 car garage (at 20 feet in width) or now a 1 ½ car garage (at 16 feet 10 inches). As such, she continues to oppose Plan A of the presentation sheets (Sheet A-1.02a) which requires a variance for a reduced 9 foot setback in the side yard between her property and the Applicant's.

However, it appears that in the Applicant's Plans there is also a Plan B (Sheet A-1.02b) (attached hereto) which requires no variances as to the side yard setback or angle of vision. At the same time, it incorporates a generator and apparent AC Units in the side yard. To the extent there are no variances required for the garage and the AC and generator meet the proper Code Standards (i.e. for setbacks in the RB Zoning District and screening walls), Ms. Peterson would accept that arrangement. Thank you.

In the meantime, will you please do me the favor of forwarding this e-mail along to the ARCOM Chair and Members? Thank you.

John R Eubanks, Jr.

SNIFFEN & SPELLMAN, P.A.

605 North Olive Avenue, 2nd Floor
West Palm Beach, Florida 33401
T (561) 721-4000 / F (561) 721-4001 / D (561) 721-4002
E-mail: jeubanks@sniffenlaw.com
Website: www.sniffenlaw.com / Twitter: @Sniffenlaw

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SNIFFEN & SPELLMAN, P.A.

Sender's Direct Line: (561) 721-4002
Email: jeubanks@sniffenlaw.com

September 4, 2020

Via E-mail

Mayor and Town Council
c/o Maggie Zeidman, President
Town Council of the Town of Palm Beach
360 South County Road
Palm Beach, Florida 33408

**Re: Lack of Hardship to Support Variances in Application No. Z-20-00269
("Present Application") for New 2 Car Garage on West Side of 143 Reef Road**

Dear Mayor and Town Council Members:

Our office represents Gayle P. Petersen, as Trustee of the Gayle P. Petersen Revocable Trust, ("Petersen"), the owner of 151 Reef Road located directly west of and abutting 143 Reef Road ("Property"). Ms. Petersen objects to the variances sought by John K. Criddle ("Owner")¹ to construct a new two car garage on the west side of the Property near her master bedroom and bathroom. The garage would reduce the protections of the side yard setback on the Property from 12.5 feet to 5 feet, impose the mass of a new garage close to her bedroom, subject her to additional noise, light and odors, and impinge upon her privacy, all without the requisite hardship needed for a variance. As a result, the Present Application should be denied.

I. Background

A. Original House Included a Garage Which was Converted to Living Space

The house at 143 Reef Road was built in 1951. The original plans included an enclosed one car garage. In 1972 the garage was converted into a bedroom and bathroom. The plans and approval for the conversion by the Building Department are attached as Exhibit "B." As such, at the time there was a conscious decision to trade garage space for living space on the Property, ostensibly to comply with the setbacks in the Town Code.

Nevertheless, the Owner now seeks to have his cake and eat it too by keeping the former garage living space and designing a two car garage (and rear BBQ area) which is too large for the lot. It requires two variances, including a massive 60% reduction in the west side yard set back. In doing so the Owner is forcing Ms. Petersen to bear burden of the new garage, because the Owner "**would like to have** a 2 car garage to park their cars, and store their bicycles." (emphasis added)

¹ The Present Application includes references to both John Criddle and Frances Frisbie. The owner of the Property, however, is only Mr. Criddle. See, Warranty Deed recorded on June 2, 2020 in the Public Records of Palm Beach County, a copy of which is attached as Exhibit "A." The ownership of the Property by just Mr. Criddle (and the lack of a homestead filing) begs the question as to his long term goals with the property. Mr. Criddle has indicated to Ms. Peterson that his plan is to upgrade and flip the house in order to make money to purchase a larger home in the future.

REPLY TO:

605 NORTH OLIVE AVENUE, 2ND FLOOR
WEST PALM BEACH, FL • 33401
PHONE: 561.721.4000
FAX: 561.721.4001

TC Dev Review Backup 2-10-2021

WWW.SNIFFENLAW.COM

123 NORTH MONROE STREET
TALLAHASSEE, FL • 32301
PHONE: 850.205.1006
FAX: 850.205.3004

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To the extent the Owner “would like” a two car garage it could easily be constructed without the need for any variances. By merely sliding the new garage to the east and incorporating the former garage (which is 9 feet 6 inches in width) area into the new garage design, there would be no need for a 7.5 foot reduction in the west side yard set back.² In the alternative, as several ARCOM members, neighbors, and Ms. Petersen have suggested, the Owner could build a smaller one car garage. The Owner has refused to consider such options, despite the fact either would comply with the Town Code, preserve the side setback, and not impose upon Ms. Petersen.

B. Prior Attempt for Variances for a Two Car Garage and Withdrawal of Application

In May of 2011, an application (“Prior Application”)³ was filed by Maura Ziska seeking a variance to construct a two car garage at the Property with a 6.25 feet wide side yard setback in lieu of the 12.5 feet required and an angle of vision variance of 112 degrees in lieu of the 100 degrees allowed under the Code.⁴ The proposed two car garage was 20’ 6” in width, 24’ 4” in depth. The design included a new chimney and a BBQ area attached to the rear of the garage. *See*, Exhibit “D,” pages A-1, A-2, A-3, SP-1.

In support of the Prior Application, Ms. Ziska argued that the hardship supporting the variances included, but was not limited to, that: i) the residence was **built without a garage**; ii) the applicant would **“like to have” a 2 car garage to park their cars, and store their bicycles**, recreational equipment and vehicles; iii) because of the configuration of the house the only place to put the garage was on the west side of the house and iv) the garage “would only **slightly encroach** into the setback” and “was minimal **for a one story structure.**”⁵

Several nearby neighbors, including Jesse and Mary Azqueta, Anne and Bill Metzger, Paul and Sally Gingras, and Ms. Petersen all objected to the Prior Application and the reduction of the side yard setbacks.⁶ Ms. Ziska requested a deferral of the Prior Application in an effort to come to a consensus with the neighbors.⁷ She could not. As a result, the Prior Application was withdrawn by letter July 21, 2011, which withdrawal was accepted by the Town on August 10, 2011.⁸

² It would also eliminate the need for any angle of vision variance.

³ A copy of the Prior Application is attached hereto as Exhibit “C.”

⁴ A copy of the applicable portions of the Site Plan and Elevations for the Prior Application is attached as Exhibit “D.”

⁵ Ms. Ziska indicated, under oath, at the August 26, 2020 ARCOM Meeting, that the Prior Application objected to by the neighbors was for a **two story garage**. The Plans show that not to be true and the Prior Application clearly sought a taller garage which was still **“a one story structure.”** More importantly, the objections filed to the Prior Application were not based upon the height of the proposed garage but upon its encroachment into the side yard setback and adverse effects on Ms. Petersen. The Zoom recording of the August ARCOM meeting for the Present Application can be found beginning at 3:45:49 which is incorporated herein by reference.

⁶ A copy of the objections to the Prior Application are attached hereto as Exhibit “E.” Mr. Hanlon notes in his objection for Ms. Petersen that Ms. Ziska may have a conflict since she represented Ms. Petersen in the purchase of her home.

⁷ A copy of the request for the Deferral is attached as Exhibit “F.”

⁸ A copy of the letter by Ms. Ziska requesting the withdrawal and the confirmation of the withdrawal by Mr. Castro are attached hereto as Composite Exhibit “G.”

C. Present Application Is a Revamp of the Prior Withdrawn Application

The Present Application⁹ is seeking essentially the same variances as the Prior Application which was withdrawn, namely a (now larger) variance from the west side yard setback of 5 feet in lieu of the 12.5 foot minimum under the Town's Code and a variance for an angle of vision for 105 degrees in lieu of the 100 degrees maximum allowed per the Code. The proposed two car garage is 20 feet 10 inches in width, and 21 feet 2 inches in depth. The new design also includes a new chimney (with a slightly altered design from the Prior Application) and, again, includes a BBQ grill and bar area on the backside of the proposed garage. See, Exhibit "I," pages A-2.01, A-2.02, A-2.03, A-2.4, SP-1.01, and Sp-1.02.

As with the Prior Application, Ms. Ziska has indicated that the hardship by the Owner includes, but is not limited to, that: i) the **residence was built without a garage**; ii) the applicant **"would like to have" a 2 car garage to park their cars, and store their bicycles**, and recreational vehicles and equipment; iii) because of the configuration of the house the only place to put the garage was on the west side of the house; iv) the garage **"would slightly encroach into the setback;"** and v) **other properties in the area have garages and nonconforming setbacks** because they were built prior to the current zoning restrictions.¹⁰ Again, neighbors, including Ms. Petersen, have objected to the variances requested.¹¹

Regardless of the desires of the Owner, the Present Application simply does not meet the standards required for the approval of a variance under Section 134-201 of the Town Code and the case law thereon. As such, the Present Application should be denied.

II. Inability to Meet Variance Standards

A. Variances Are Direct Violations of the Code

Far too often used as an "innocent" tool to allow a specific project to slide by and be approved, a variance is nothing more than a Town sanctioned violation of the Town Code. Approving unsupported variances undermines the protections of the Code which are designed to maintain the character of the Town. As such, a variance should not be granted except in the most extreme circumstances in which the Code would not allow for virtually any use at all of the property. This is not one of those circumstances.

While homeowners often claim they have a "property right" to build on their lot, there simply is no "property right" for a variances in violation of the Town Code. Nor can a variance be based upon the "wish," "like," or "desire" of an owner to "upgrade" the home, make it more "modern" and "livable" or become their "forever home." Desires and wishes do not support a variance.

⁹ The Present Application and applicable Site Plan and Elevations are attached as Exhibits "H" and "I" respectively.

¹⁰ While both the Prior and Present Applications include references to changes in the Town Code which require a two car garage for new construction, the lack of a two car garage on the Property is clearly a prior non-conforming permitted use and as such cannot be the basis for any claim of a "hardship."

¹¹ A copy of the correspondence against the variances is attached as Exhibit "J."

Neighboring property owners, however, “have a right to rely on existing zoning conditions and they have a right to a continuation of these conditions in the absence of a showing that the variance is proper.” *Thompson v. Planning Com. of Jacksonville*, 464 So. 2d 1231 (Fla. 1st DCA 1985); *see also, Allapattah Cmty. Asso. v. Miami*, 379 So. 2d 387 (Fla. 3d DCA 1980). As such, often it is the “property rights” of neighbors, such as Ms. Petersen, which get trampled by the approval of an unsupported variance.

B. Owner’s Claimed “Hardship” Falls Short of Variance Standards
1. Insufficient Factual Basis for “Hardship” in Light of Original Garage

In the Present Application the Owner has indicated that “**the hardship** which runs with the land is **that the residence was built without a garage** and the zoning code has changed...” *See*, Present Application, Section III and Exhibit “A,” Criteria 4. (emphasis added) Such a statement is demonstrably incorrect. Therefore, it would be impossible for the Town to grant a variance based on the assertion that the “hardship” is that the residence was built without a garage when it was built with a garage, which was later intentionally converted into living space. As a result, the Owner has failed to meet the requirements of item III of the Application and Criteria 4 in Exhibit “A” of the Application. For this reason alone the Application must be denied.

In addition, the desire of the Owner to keep the old garage living space while adding a new two car garage that requires a 60% side yard variance cannot create a “hardship” either, especially in light of alternate designs available without a variance. Moving the proposed garage to the east and incorporating the old garage would not require a variance.¹² Likewise, a one car garage could easily meet the Town Code setbacks. The failure to build within the confines of the Town Code when it is clearly possible further dictates the denial of the Present Application.¹³

2. Insufficient Unnecessary and Undue “Hardship”

Section 134-201 of the Town Code is clear that only variances that “will result in **unnecessary and undue hardship**” can be granted (emphasis added). The Court’s are also clear that an applicant for a variance must demonstrate a “unique hardship” to qualify for a variance. *Bernard v. Town of Palm Beach*, 569 So. 2d 853 (Fla. 4th DCA 1990) (citing, *Nance v. Town of Indialantic*, 419 So. 2d 1041 (Fla. 1982)). By definition, a “**hardship**” **may not be found unless no reasonable use can be made of the property without the variance**; or, stated otherwise, “**the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.**” *Bernard* at 854 (citing, *Town of Indialantic v. Nance*, 485 So. 2d 1318, 1320 (Fla. 5th DCA); *see also Thompson v. Planning Comm’n*, 464 So. 2d 1231, 1237 (Fla. 1st DCA 1985)(emphasis added).

In the case of *Bernard v. Town of Palm Beach*, 569 So. 2d 853 (Fla. 4th DCA 1990) the

¹² The ability to use an alternate design with no variance(s) negates the Owner meeting the standards of Section 134-201(a)(5) of the Town Code that the variance sought is the minimum variance that will make possible the reasonable use of the land, building or structure, since the “minimum variance” would be no variance.

¹³ *See, Indialantic v. Nance*, 400 So. 2d 37, 40-41 (Fla. 5th DCA 1981)(existence of a viable alternate plan demonstrated a lack of hardship); *Auerbach v. City of Miami*, 929 So. 2d 693, 694 (Fla. 3d DCA 2006).

desire to construct a 35 to 40 foot master bedroom, bath and den above an existing southern portion of the house resulting in a rear setback of 5 feet instead of 15 feet was not a “hardship.”¹⁴ The house could continue to be used for its purpose, albeit with a smaller bedroom and bathroom.

So too here, the claim that the Owner “would like to have” a two car garage to store its cars, equipment and bicycles does not constitute a showing that no reasonable use can be made of the Property without it. To the contrary the house can continue to be used as it has been for over 38 years since the prior garage was converted to a bedroom in 1972. Or, if the Owners “would like to have” a two car garage, it can incorporate the former garage in its design and stay within the parameters of the Code. Therefore, the Applicant cannot meet the requisite unnecessary and undue hardship needed for a variance, leaving the Present Application to be denied.

3. Any “Hardship” Would be Self-Imposed

Even if the lack of a legally recognized hardship could be overlooked (which it cannot) any “hardship” alleged by the Owner would clearly be self-imposed. The courts have consistently found that a hardship must arise from circumstances **peculiar to the realty alone, unrelated to** the conduct or to **the self-originated expectations of any of its owners or buyers.**¹⁵ See, *Maturo v. Coral Gables*, 619 So. 2d 455 (Fla. 3d DCA 1993); *City of Coral Gables v. Geary*, 383 So. 2d 1127 (Fla. 3d DCA 1980).

As a result, situations in which purchasers **are fully aware of the shape and size of a lot, but still design a building which is too large for the lot, constitutes a self-created hardship.** *Thompson v. Planning Com. of Jacksonville*, 464 So. 2d 1231, 1237 (Fla. 1st DCA 1985); see also, *Namon v. State Dept. of Environ. Reg.*, 559 So. 2d 504 (Fla. 3d DCA 1990). In the present case, the Owner was (or should have been) fully aware of the Property’s size, location and set backs, yet designed a two car garage which was too large and encroached on the required side yard setbacks next to Ms. Petersen. Such a choice represents a self-centered, self-created “hardship” which cannot support the variances sought. As such, the Present Application must be denied.

4. Property Restrictions Are Not Unique

In addition to the above, there can be no “hardship” in the present case in light of the fact that several of the nearby homes admittedly share the same difficulties as the Property. Under Section 134-201(a)(1) of the Code an applicant must demonstrate that “special conditions and circumstances exist which are peculiar to the land, structure or building involved **which are not applicable to other land lands, structure or buildings in the same zoning.**” (emphasis added)

As a result, “a prerequisite to the granting of a hardship zoning variance is the presence of

¹⁴ See also, *Herrera v. Miami*, 600 So. 2d 561, 562 (Fla. 3d DCA 1992) (reversing approval of a variance where there is no finding that “it is virtually impossible to use the land as it is presently zoned.”); *Auerbach v. City of Miami*, 929 So. 2d 693, 694 (Fla. 3d DCA 2006) (“Florida courts have held that a legal hardship will be found to exist only in those cases where the property is **virtually unusable...**”)(citing to *Mauro v. City of Coral Gables*, 619 So. 2d 455,456 (Fla. 3d DCA 1993)).

¹⁵ Here, there is no peculiarity at all as to the size or shape of the Property.

an exceptional and unique hardship to the individual landowner; **unique to that parcel and not shared by other property owners in the area.**" *Indialantic v. Nance*, 400 So. 2d 37, 40 (Fla. 5th DCA 1981)(emphasis added). Therefore, as is the case here, where an applicant's lot has a similar size, shape and topography and is subject to the same zoning requirements, including the height, set-back, and landscaping, restrictions, the restrictions are common difficulties and cannot establish the unique hardship required to support the proposed variances.¹⁶

In the Present Application Ms. Ziska admits that the present house is "nonconforming to today's code" and further admits that "many properties and residences in the area have garages and non-conforming setbacks as the residences were built before the current zoning restrictions were in place."¹⁷ Moreover, the lots in the area are the same general shape and size. As such, the limitations on the Property are shared by other lands, structures and buildings in the same zoning district and cannot be the basis for a hardship. The Present Application therefore must be denied.

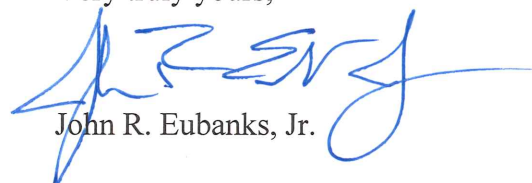
III. Conclusion

The circumstances in the Present Application simply do not factually or legally support the requisite "hardship" for a variance under the Town Code or the case law. The argument that the original house did not have a garage when it did cannot be used as the basis for a hardship. The home can reasonably continue to be used as it has been since 1972 without a two car garage. In the alternative, the plans can be modified to construct a two car garage without a variance.

The Owner's situation is not unique. Many other homes in the area have the same shape, size and issues. Therefore, any "hardship" is clearly self-imposed by the Owner by designing too large of a garage on too small of a lot, despite knowing the shape and size limitation of the Property. Under the circumstances, Ms. Petersen should be allowed to rely upon the protections in the Town Code and not be forced bear the burden of the Owner's desire for a two car garage which requires a 60% side yard set back reduction next to her master bedroom and bathroom.

The Application should be denied.

Very truly yours,



John R. Eubanks, Jr.

cc: Wayne Bergman, Director Planning, Zoning & Building
Paul Castro, Zoning Manager
John C. Randolph, Esq.
Kelly Churney, Administrative Specialist
Town Clerk, Town of Palm Beach

¹⁶ Likewise, a variance application **cannot rely upon previously approved variances in the jurisdiction.** *See, City of Jacksonville v. Taylor*, 721 So. 2d 1212 (Fla 1st DCA 1998); *see also, Herrera v. City of Miami*, 600 So. 2d 561, 563 (Fla 3d DCA 1992)("on review of an administrative grant of a zoning variance, **the standard is not whether variances have been granted to similarly-situated applicants in the community...**") (emphasis added)

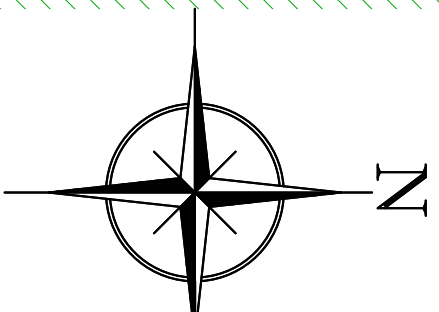
¹⁷ Again, the mere fact that the Property may be non-conforming and grandfathered is not the basis for a variance.



DOOR / WINDOW LEGEND	
	WINDOW TAG
	DOOR TAG
	EXIST. EXTERIOR WALL TO REMAIN
	NEW WINDOW/DOOR
	NEW WALL EXISTING WITH NEW WALL TO MATCH IN SIZE AND APPEARANCE

WALL LEGEND	
	NEW WALL, DOORS, WINDOWS, CABINETS, FIXTURES TO BE REMOVED
	EXISTING WALLS TO REMAIN
	NEW WALL/DOOR/NEW REINFORCED FRAME WALL W/ WOOD FRAMING & GYPSUM BOARD
	NEW INTERIOR NON-BEARING PARTITION, LEVEL 5' SOLID INSULATION TYPICAL

- GENERAL NOTES**
1. REFER TO STRUCTURAL DRAWINGS FOR FILLER, JOIST, CEILING LOCATIONS AND OTHER STRUCTURAL ELEMENTS NOT SHOWN ON ARCHITECTURAL DRAWINGS.
 2. MASONRY OPENINGS ARE DIMENSIONED TO CENTERLINES, E.G., TO SUPPLIER.
 3. REFER TO WINDOW AND DOOR DETAILS AND MANUFACTURER SHOP DRAWINGS FOR ALL NECESSARY FINISH DETAILS, 2" TYPICAL WALL.
 4. E.G., TO COORDINATE FINAL PLUMBING AND ELECTRICAL LOCATION WITH APPROVED SHOP DRAWINGS OF CABINETS.
 5. ALL INTERIOR PARTITIONS TO HAVE SOUND INSULATION REFER TO SPECIFICATIONS FOR TYPE AND MANUFACTURER.
 6. REFER TO INTERIOR DESIGN DRAWINGS FOR ALL PLUMBING FIXTURE AND FITTING LOCATIONS.
 7. REFER TO SHOP DRAWINGS FOR ALL FINISH LOCATIONS AND LAYOUT OF BUILT-IN CABINETRY AND APPLIANCES.
 8. REFER TO INTERIOR DRAWINGS FOR ALL INTERIOR FINISH, CEILING, BEAM, AND SOFFIT LOCATIONS, E.G., TO COORDINATE CEILING DETAILS AND NECESSARY MECHANICAL, ELECTRICAL, AND PLUMBING DRAWINGS.
 9. ALL DIMENSIONS SHOWN ARE "X" VERIFY IN FIELD.
 10. REFER TO LANDSCAPE DWGS. FOR LANDSCAPE AND LANDSCAPE ILL. REFER TO CIVIL DWGS. FOR SITE GRADING AND DRAINAGE.



PROPOSED PLAN B
SCALE 1/4" = 1'-0"

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TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00293 SITE PLAN REVIEW WITH VARIANCE(S) Zoning District: R-C Medium Density Residential The application of Elaine Hirsch, Applicant, relative to property located at **130 SUNRISE AVE, SUITE: PH 1**, legal description on file, is described below. A site plan modification with variances to allow a 365 square foot fixed awning over the terrace on the seventh floor of a seven story condominium building. The following variances are being requested: 1. Section 134-948(8): To allow the awning at a height of 61.5 feet in lieu of the 23 1/2 foot maximum height allowed in the R-C Zoning District. Section 134-948(8): To allow the awning at an overall height of 63.66 feet in lieu of the 26 1/2 foot maximum height allowed in the R-C Zoning District. Section 134-948(8): To allow the awning on the existing seventh floor penthouse of a seven story building in lieu of the two story building maximum allowed in the R-C Zoning District. Section 134-948(6): To allow a west side yard setback of 50.1 feet in lieu of the 61.5 foot minimum required. Section 134-948(7): To allow a rear street yard setback of 106.5 feet in lieu of the 123.16 foot minimum required. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to the February 24, 2021 meeting. Carried 7-0.] **Request for Deferral to the March 3, 2021 Meeting Per Letter from Maura Ziska**

Presenter

ATTACHMENTS:

- ❑ **Letter Dated February 1, 2021 from Maura Ziska**

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

*also admitted in NY

Esperanté
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401
Telephone 561-802-8960
Facsimile 561-802-8995

VIA EMAIL

February 1, 2021

Paul Castro
Kelly Churney
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Z-20-00293
130 Sunrise Avenue, PH 1, Palm Beach, Florida

Dear Paul and Kelly:

Please **defer** the above referenced matter from the **February 10, 2021** Town Council meeting to the **March 3, 2021** Town Council meeting. Thank you.

Sincerely,

Maura Ziska

Maura A. Ziska

maz/jc
cc: Client

A Florida Professional Limited Liability Company Including Professional Associations

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00299 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S) Zoning District: R A Estate Residential The application of 1015 SOUTH OCEAN LLC (MAURA ZISKA, MANAGER), applicant, relative to property located at **1015 S OCEAN BLVD**, legal description on file, is described below. 1) Section 134 840: Special Exception with Site Plan Review to allow the construction of an 11,031 square foot two story residence on a non conforming lot that is 97.97 feet in depth in lieu of the 150 foot minimum required In the R A Zoning District. 2) Section 134 843(a)(5): A request for a variance to allow a front setback of 16 feet 7.5 inches in lieu of the 35 foot minimum required in the R A Zoning District. 3) Section 134 843(a)(9): A request for a variance to allow a rear setback of 2 feet 7 inches in lieu of the 15 foot minimum required in the R A Zoning District. 4) Section 134 843(a)(6)b: A request for a variance to allow an Angle of Vision of 133.74 degrees in lieu of the 120 degrees maximum allowed in the R A Zoning District. 5) Section 134 843(a)(7): A request for a variance to have a building height plane setback ranging as close to the front property line as 16.8 feet (one story element) to 29.25 feet (two story element) in lieu of the minimum 35 foot (one story element) to 47.6 foot (two-story element) minimum required by Code in the R-A Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to the February 24, 2021 meeting. Carried 7-0.] **Request for Deferral to the March 3, 2021 Meeting Per Letter from Maura Ziska**

Presenter

ATTACHMENTS:

- ❑ **Letter Dated February 1, 2021 from Maura Ziska**
- ❑ **Email Dated November 20, 2020 from Joyce Vaughn**

- ▣ **Letter Dated December 8, 2020 from 195 Phesten Associates Palm Beach LLC**
- ▣ **Letter Dated December 8, 2020 from 1047 South Ocean Boulevard Trust**
- ▣ **Letter Dated December 8, 2020 from Mary Stephania Conrad**
- ▣ **Letter Dated December 8, 2020 from Lionel and Simone Vickar**

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

*also admitted in NY

Esperanté
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401
Telephone 561-802-8960
Facsimile 561-802-8995

VIA EMAIL

February 1, 2021

Paul Castro
Kelly Churney
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Z-20-00299
1015 South Ocean Boulevard, Palm Beach, Florida

Dear Paul and Kelly:

Please **defer** the above referenced matter from the **February 10, 2021** Town Council meeting to the **March 3, 2021** Town Council meeting. Thank you.

Sincerely,

Maura Ziska

Maura A. Ziska

maz/jc
cc: Client

A Florida Professional Limited Liability Company Including Professional Associations

From: [Aly Serrano](#) on behalf of [Town Council](#)
To: [Town Council & Mayor](#)
Cc: [Wayne Bergman](#); [Kelly Churney](#)
Subject: FW: 1015 South Ocean Blvd LLC
Date: Friday, November 20, 2020 1:36:24 PM

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

From: Joyce Vaughn <clojoy@icloud.com>
Sent: Friday, November 20, 2020 12:43 PM
To: John Lindgren <JLindgren@Termed.TownOfPalmBeach.com>
Cc: Town Council <TCouncil@TownofPalmBeach.com>
Subject: 1015 South Ocean Blvd LLC

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Thank you for the latest notice of a zoning Application.

I can't say I am delighted to receive yet another notice of disruption in my neighborhood. I already feel like I live in the middle of a construction site, banging, crashing, noise from every direction, trucks in and out, the beepers of the equipment on the site, the yelling and loud voices of the construction crew yelling to each other from the roof tops. It's outrageous. I don't think the Town gives a hoot about anyone lucky enough to live next door.

I guess it's progress. But I don't know how much more I can tolerate. After living happily here since 1981, Guess I shall have to sell my house and pass on the experience.

Joyce Vaughn
112 Algoma Road

195 PHESTEN ASSOCIATES PALM BEACH LLC
977 SOUTH OCEAN BOULEVARD
PALM BEACH, FLORIDA 33480

VIA EMAIL: kchurney@townofpalmbeach.com

December 8, 2020

Mayor Coniglio, 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: Z-20-00299 and Arcom Number B-073-2020
1015 South Ocean Boulevard, Palm Beach, Florida

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

I live at 977 South Ocean Boulevard in Palm Beach. My neighbor, 1015 South Ocean LLC, is designing a new home on their property to the South of me and have filed plans with the Town for this new home. I have reviewed their plans for the proposed house and fully support the project and have no objection whatsoever to any variances they are seeking. I believe that the proposed house will be a fine improvement to both my neighbor's property and our neighborhood. Hopefully, you and your staff will agree with me and will approve the proposed project.

Thank you for your consideration.

Sincerely,



1047 SOUTH OCEAN BOULEVARD TRUST
1047 SOUTH OCEAN BOULEVARD
PALM BEACH, FLORIDA 33480

VIA EMAIL: kchurney@townofpalmbeach.com

December 8, 2020

Mayor Coniglio, 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: Z-20-00299 and Arcom Number B-073-2020
1015 South Ocean Boulevard, Palm Beach, Florida

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

I live at 1047 South Ocean Boulevard in Palm Beach. My neighbor, 1015 South Ocean LLC, is designing a new home on their property to the North of me and have filed plans with the Town for this new home. I have reviewed their plans for the proposed house and fully support the project and have no objection whatsoever to any variances they are seeking. I believe that the proposed house will be a fine improvement to both my neighbor's property and our neighborhood. Hopefully, you and your staff will agree with me and will approve the proposed project.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Zito, Trustee".

MARY STEPHANIA CONRAD
995 SOUTH OCEAN BOULEVARD
PALM BEACH, FLORIDA 33480

VIA EMAIL: kchurney@townofpalmbeach.com

December 8, 2020

Mayor Coniglio, 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: Z-20-00299 and Arcom Number B-073-2020
1015 South Ocean Boulevard, Palm Beach, Florida

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

I live at 995 South Ocean Boulevard in Palm Beach. My neighbor, 1015 South Ocean LLC, is designing a new home on their property directly to the South of me and have filed plans with the Town for this new home. I have reviewed their plans for the proposed house and fully support the project and have no objection whatsoever to any variances they are seeking. I believe that the proposed house will be a fine improvement to both my neighbor's property and our neighborhood. Hopefully, you and your staff will agree with me and will approve the proposed project.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Stephanía Conrad". The signature is fluid and cursive, with the first name "Mary" and last name "Conrad" being the most legible parts.

LIONEL K. VICKAR AND SIMONE D. VICKAR
1045 SOUTH OCEAN BOULEVARD
PALM BEACH, FLORIDA 33480

VIA EMAIL: kchurnev@townofpalmbeach.com

December 8, 2020

Mayor Coniglio, 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: Z-20-00299 and Arcom Number B-073-2020
1015 South Ocean Boulevard, Palm Beach, Florida

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

We live at 1045 South Ocean Boulevard in Palm Beach. Our neighbor, 1015 South Ocean LLC , is designing a new home on their property to the North of us and have filed plans with the Town for this new home. We have reviewed their plans for the proposed house and fully support the project and have no objection whatsoever to any variances they are seeking. We believe that the proposed house will be a fine improvement to both my neighbor's property and our neighborhood. Hopefully, you and your staff will agree with us and will approve the proposed project.

Thank you for your consideration.

Sincerely,

Handwritten signature of Simone D. Vickar in cursive script.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00306 VARIANCE(S) Zoning District: R-B Low Density Residential The application of EDITH F. SCHAEFFER TRUST (EDITH F. SCHAEFFER, TRUSTEE), applicant, relative to property located at **1118 N LAKE WAY**, legal description on file, is described below. Section 134 417: The applicant is proposing to construct a 3, 153 square foot, second floor addition onto an existing one story home which will result in a demolition in excess of 50% of its cubic volume. The following variances are being requested: 1) Section 134 843(7): a 9.9 foot south side yard setback in lieu of the 15 foot minimum required In the R B Zoning District; 2) Section 134 843(7): a 10.29 foot north side yard setback in lieu of the 15 foot minimum required in the R B Zoning District. 3) Section 134 895(1): A chimney on the south side of the house with a height of 27.27 feet in lieu of the 19.5 foot maximum allowed. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 6-1.] [The Architectural Review Commission approved the project as presented with a condition related to the truck logistics plan. Carried 7-0.]

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▣ **Comments from the Development Review Committee**
- ▣ **Letter Dated December 17, 2020 from Harvey Oyer, III on behalf of 1110 North Lake Way LLC**
- ▣ **Letter Dated January 12, 2021 from Harvey Oyer, III on behalf of 1110 North Lake Way LLC**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00306 VARIANCE(S)**
1118 N LAKE WAY

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

Section 134-417: The applicant is proposing to construct a 3, 153 square foot, second floor addition onto an existing one-story home and which will result in a demolition in excess of 50% of its cubic volume. The following variances are being requested:

1. Section 134-843(7): a 9.9 foot south side yard setback in lieu of the 15 foot minimum required In the R-B Zoning District;
2. Section 134-843(7): a 10.29 foot north side yard setback in lieu of the 15 foot minimum required in the R-B Zoning District.
3. Section 134-895(1): A chimney on the south side of the house with a height of 27.27 feet in lieu of the 19.5 foot maximum allowed;

ADDRESS: 1118 N LAKE WAY

OWNER: SCHAEFFER EDITH F TR

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-03-11-000-0381

ZONING DISTRICT: R-B Low Density Residential

LEGAL DESCRIPTION: EL ENCANTO PL 2 LT 38 (LESS S 7 FT), 6
FT STRIP LYG N & ADJ TO LT 38 & 20 FT
ABNDED RD LYG E & ADJ THERETO

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT
Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 11/3/20

APPLICATION NO.: Z-20-00306 **APPLICATION TYPE:** VARIANCE(S)

ADDRESS: 1118 N LAKE WAY

DESCRIPTION:

Section 134-417: The applicant is proposing to construct a 3, 153 square foot, second floor addition onto an existing one-story home and which will result in a demolition in excess of 50% of its cubic volume. The following variances are being requested:

1. Section 134-843(7): a 9.9 foot south side yard setback in lieu of the 15 foot minimum required in the R-B Zoning District;
2. Section 134-843(7): a 10.29 foot north side yard setback in lieu of the 15 foot minimum required in the R-B Zoning District.
3. Section 134-895(1): A chimney on the south side of the house with a height of 27.27 feet in lieu of the 19.5 foot maximum allowed;

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	11/18/2020	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	1/4/2021	No Comment.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	11/17/2020	There are no fire code concerns with the proposed project
PZB - PLANNING AND ARCHITECTURAL REVIEW	Laura Groves Van Onna, Historic Preservation Planner	1/4/2021	This proposed project was approved (7-0) by the Architectural Commission (ARCOM) on 12/18/2020 as Application B-082-2020 with the condition that the truck logistics plan be revised to use County Road instead of N Lake Way. The Commission found that implementation of the proposed variance will not cause negative architectural impact to the property (6-1).
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	11/18/2020	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	11/20/2020	The applicant needs to demonstrate to the satisfaction of the Town Council that there is a hardship related to granting of the proposed variances.

December 17, 2020

VIA E-MAIL

Town of Palm Beach Architectural Commission
360 South County Road
Palm Beach, FL 33480
Attn: ARCOM Members

Re: 1118 North Lake Way (f/k/a 1120 North Lake Way) – Zoning Case No. 20-00306; Item E-9 (New Business) on December 18, 2020 ARCOM Agenda

Dear ARCOM Members:

Our firm represents 1110 North Lake Way LLC, the owner of 1110 North Lake Way, which is immediately adjacent to the property requesting three variances from the Town Code of Ordinances (“Code”) under Zoning Case No. 20-00306 (“Applicant”). Our client’s home is located on the south side of the Applicant’s property and is the closest structure to the south side yard setback variance request. As such, our client is an “Affected Party” under the law.

I would like to share with you our client’s concerns and objection to the requested variance for the south side yard setback. I would like to make clear that our client is not objecting to the Applicant’s proposed architecture. The Applicant has hired a skilled architect who has, no doubt, designed a nice addition/renovation. Our objection is that the Applicant’s existing structure already violates the Code -required side setbacks and, as such, is a non-conforming structure. The Applicant’s proposal is to expand and dramatically increase this non-conformity, which is specifically prohibited by the Code. Moreover, the Applicant has failed to establish a hardship that would justify the granting of the requested variance.

The proposed second story addition is only a few feet from my client’s existing master bedroom and, if constructed, amounts to an unwarranted invasion of privacy and a diminution in the value of my client’s property.

Sec. 134-387 of the Code provides, in part, that “No nonconforming use shall be enlarged, increased, intensified, substituted or extended to occupy a greater area than it occupied at the effective date of adoption or amendment of this chapter . . .” The portion of the proposed second story addition that encroaches into the 15 foot minimum side yard setback increases the non-conformity expressly prohibited by this Sec. 134-387.

The criteria for the granting of variances is found in Sec. 134-201 of the Code. In order to grant a variance, the Town must make findings of facts, on the record, that all variance standards have been met through the establishment of facts, including:

(1) Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

(2) The special conditions and circumstances do not result from the actions of the applicant.

(3) Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in this same zoning district.

(4) Literal interpretation of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.

(5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

(6) The grant of the variance will . . . not be injurious to the area involved or otherwise detrimental to the public welfare.

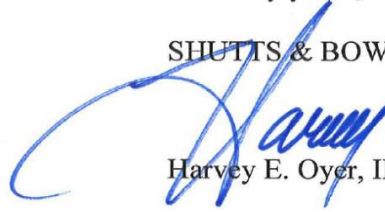
The Applicant has failed to establish any facts or justifications to support the granting of this variance. There are no legitimate hardships stated in the Applicant's zoning application. In fact, the zoning application is completely void of any justifications under the variance criteria. The justifications cited by the Applicant are that the existing house was built in "1976 and needs to be brought up to today's living standards", "is in need of an upgrade", has "design challenges", and "that the house was built in 1976 and is non-conforming to today's code as the existing south side yard setback is 9.9 feet." Of course, none of these statements by the Applicant establishes any fact to support a hardship. The reality is that the Applicant simply wants a larger house. If there is a hardship, it is entirely self-created by the Applicant. There is no unique hardship on the land. There is no special condition or circumstance peculiar to the land or structure which are not applicable to other land or structures in the same zoning district. There is evidence that granting the variance would be injurious to my client. There is no demonstration that the requested variance is necessary to make reasonable use of the land because it has been used perfectly well for the last 44 years, so much so that the Applicant recently paid \$12.6 million to use it.

For these reasons, I respectfully request that you recommend denial of the south side yard setback variance request.

Thank you for your consideration in this matter and for your service to the Town. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

SHUTTS & BOWEN LLP

A handwritten signature in blue ink, appearing to read 'Harvey', is written over the firm name.

Harvey E. Oyer, III, Esq.

HEO/ias

cc: Wayne Bergman
Paul Castro
Laura Groves van Onna
Kelly Churney

January 12, 2021

VIA E-MAIL

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

Re: 1118 North Lake Way (f/k/a 1120 North Lake Way) – Zoning Case No. 20-00306; Item 2c (New Business) on January 13, 2021 Town Council Agenda

Dear Mayor and Town Council:

Our firm represents 1110 North Lake Way LLC, the owner of 1110 North Lake Way, which is immediately adjacent to the property requesting three variances from the Town Code of Ordinances (“Code”) under Zoning Case No. 20-00306 (“Applicant”). Our client’s home is located on the south side of the Applicant’s property and is the closest structure to the south side yard setback variance request. As such, our client is an “Affected Party” under the law.

I would like to share with you our client’s concerns and objection to the requested variance for the south side yard setback. I would like to make clear that our client is not objecting to the Applicant’s proposed architecture. The Applicant has hired a skilled architect who has, no doubt, designed a nice addition/renovation. Our objection is that the Applicant’s existing structure already violates the Code -required side setbacks and, as such, is a non-conforming structure. The Applicant’s proposal is to expand and dramatically increase this non-conformity, which is specifically prohibited by the Code. Moreover, the Applicant has failed to establish a hardship that would justify the granting of the requested variance.

The proposed second story addition is only a few feet from my client’s existing master bedroom and, if constructed, amounts to an unwarranted invasion of privacy and a diminution in the value of my client’s property.

Sec. 134-387 of the Code provides, in part, that “No nonconforming use shall be enlarged, increased, intensified, substituted or extended to occupy a greater area than it occupied at the effective date of adoption or amendment of this chapter . . .” The portion of the proposed second story addition that encroaches into the 15 foot minimum side yard setback increases the non-conformity expressly prohibited by this Sec. 134-387.

The criteria for the granting of variances is found in Sec. 134-201 of the Code. In order to grant a variance, the Town must make findings of facts, on the record, that all variance standards have been met through the establishment of facts, including:

(1) Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

(2) The special conditions and circumstances do not result from the actions of the applicant.

(3) Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in this same zoning district.

(4) Literal interpretation of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.

(5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

(6) The grant of the variance will . . . not be injurious to the area involved or otherwise detrimental to the public welfare.

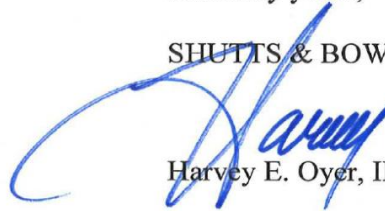
The Applicant has failed to establish any facts or justifications to support the granting of this variance. There are no legitimate hardships stated in the Applicant's zoning application. In fact, the zoning application is completely void of any justifications under the variance criteria. The justifications cited by the Applicant are that the existing house was built in "1976 and needs to be brought up to today's living standards", "is in need of an upgrade", has "design challenges", and "that the house was built in 1976 and is non-conforming to today's code as the existing south side yard setback is 9.9 feet." Of course, none of these statements by the Applicant establishes any fact to support a hardship. The reality is that the Applicant simply wants a larger house. If there is a hardship, it is entirely self-created by the Applicant. There is no unique hardship on the land. There is no special condition or circumstance peculiar to the land or structure which are not applicable to other land or structures in the same zoning district. There is evidence that granting the variance would be injurious to my client. There is no demonstration that the requested variance is necessary to make reasonable use of the land because it has been used perfectly well for the last 44 years, so much so that the Applicant recently paid \$12.6 million to use it.

For these reasons, I respectfully request that you deny the south side yard setback variance request.

Thank you for your consideration in this matter and for your service to the Town. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

SHUTTS & BOWEN LLP

A handwritten signature in blue ink, appearing to read 'Harvey', is written over the printed name.

Harvey E. Oyer, III, Esq.

HEO/ias

cc: Wayne Bergman
Paul Castro
Laura Groves van Onna
Kelly Churney

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00307 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S) Zoning District: R-B Low Density Residential The application of JOHN MENDELL & MARA RAPHAEL, applicant, relative to property located at **250 QUEENS LN**, legal description on file, is described below. 1) Section 134 229; Section 134 329 and Section 134 893(b): Special Exception with Site Plan Review to allow the renovation of an existing one story residence by demolishing more than 50% cubic on a lot with a width of 77 feet in lieu of the 100 foot minimum required; a depth of 94 feet in lieu of the 100 foot minimum required; and an area of 7,238 square feet in lieu of the 10,000 square foot minimum required in the R B Zoning District. Additionally, the applicant is proposing to construct a 409 square foot one story master bedroom addition and add a cabana and swimming pool. The following variances are being requested: 2) Section 134 893(7): to allow a west side yard setback for the addition and to allow the house to remain non conforming with both having a setback of 5.3 feet in lieu of the 12.5 foot minimum required. 3) Section 134 893(12): to allow the non conforming landscape open space to remain at 28.5% in lieu of the 45% minimum required. 4) Section 134 1757: to allow a swimming pool with a 5.2 foot rear yard setback in lieu of the 10 foot minimum required. 5) Section 134 2179: To eliminate the requirement for the two car garage that is required for a demolition of more than 50% cubic footage of a house on a lot over 75 feet wide. [Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause architectural impact to the subject property. Carried 7-0.] [The Architectural Review Commission approved the project as presented. Carried 7-0.]

Presenter

ATTACHMENTS:

Memorandum Dated January 28, 2021 from Wayne Bergman, Director

- ▣ **of Planning, Zoning and Building**
- ▣ **Comments from the Development Review Committee**
- ▣ **Letter Dated December 5, 2020 from Gary C. Little**
- ▣ **Letter Dated January 21, 2021 from Christopher and Kristen Vila**
- ▣ **Letter Dated January 21, 2021 from Larry and Katie Alexander**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00307 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARI/**
250 QUEENS LN

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

- 1) Section 134-229; Section 134-329 and Section 134-893(b): Special Exception with Site Plan Review to allow the renovation of an existing one story residence by demolishing more than 50% cubic on a lot with a width of 77 feet in lieu of the 100 foot minimum required, a depth of 94 feet in lieu of the 100 foot minimum required, and an area of 7,238 square feet in lieu of the 10,000 square foot minimum required in the R-B Zoning District. Additionally, the applicant is proposing to construct a 409 square foot one story master bedroom addition and add a cabana and swimming pool that will require the following variances to be requested: 2) Section 134-893(7): to allow a west side yard setback for the addition and to allow the house to remain non-conforming with both having a setback of 5.3 feet in lieu of the 12.5 foot minimum required in the R-B Zoning District. 3) Section 134-893(12): to allow the non-conforming landscape open space to remain at 28.5% in lieu of the 45% minimum required.
- 4) Section 134-1757: to allow a swimming pool with a 5.2 foot rear yard setback in lieu of the 10 foot minimum required.
- 5) Section 134-2179: To eliminate the requirement for the two car garage that is required for a demolition of more than 50% cubic footage of a house on a lot over 75 feet wide.

ADDRESS: 250 QUEENS LN

OWNER: 250 QUEENS LANE LLC

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-03-12-000-0810

ZONING DISTRICT: R-B Low Density Residential

LEGAL DESCRIPTION: PALM BEACH SHORES - PALM BEACH LTS 81 TO
83 INC & W 17 FT OF LT 84

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Page Two

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 11/3/20

APPLICATION NO.: Z-20-00307 **APPLICATION TYPE:** SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)

ADDRESS: 250 QUEENS LN

DESCRIPTION:

1) Section 134-229; Section 134-329 and Section 134-893(b): Special Exception with Site Plan Review to allow the renovation of an existing one story residence by demolishing more than 50% cubic on a lot with a width of 77 feet in lieu of the 100 foot minimum required, a depth of 94 feet in lieu of the 100 foot minimum required, and an area of 7,238 square feet in lieu of the 10,000 square foot minimum required in the R-B Zoning District. Additionally, the applicant is proposing to construct a 409 square foot one story master bedroom addition and add a cabana and swimming pool that will require the following variances to be requested: 2) Section 134-893(7): to allow a west side yard setback for the addition and to allow the house to remain non-conforming with both having a setback of 5.3 feet in lieu of the 12.5 foot minimum required in the R-B Zoning District. 3) Section 134-893(12): to allow the non-conforming landscape open space to remain at 28.5% in lieu of the 45% minimum required. 4) Section 134-1757: to allow a swimming pool with a 5.2 foot rear yard setback in lieu of the 10 foot minimum required. 5) Section 134-2179: To eliminate the requirement for the two car garage that is required for a demolition of more than 50% cubic footage of a house on a lot over 75 feet wide.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	11/18/2020	No Comment
PUBLIC WORKS DEPARTMENT			No Comment
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	11/18/2020	there are no fire code concerns with the proposed project
PZB - PLANNING AND ARCHITECTURAL REVIEW	Laura Groves Van Onna, Historic Preservation Planner	1/4/2021	This proposed project is on the tentative agenda for the regularly scheduled Architectural Commission (ARCOM) meeting on 01/27/2021 as Application B-081-2020. A motion carried at the December ARCOM meeting to defer the project to the January meeting in order to address comments from Commissioners related to variances, hardscape, landscape, and fenestration.
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	11/18/2020	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	11/25/2020	The proposed renovation of this nonconforming, one-story home will require the demolition of more than 50% cubic footage. As such, the house has to either conform to today's code or obtain variances for the nonconforming aspects. The house will remain a one-story house with additions on the back of the house that necessitate the removal of more than half of the back of the house. The applicant needs to demonstrate a hardship for the granting of the variances to the satisfaction of the Town Council.

Gary C. Little
255 Colonial Lane
Palm Beach, Florida 33480

RECEIVED

DEC 09 2020

Town of Palm Beach
PZB Dept

December 5, 2020

The Town of Palm Beach
Planning, Zoning and Building Department
360 South County Road
Palm Beach, Florida 33480

RE: 2-20-00307

Subject Address 250 Queens Lane

Dear Sir or Madam:

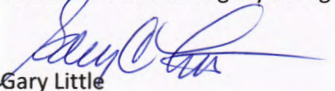
I live at 255 Colonial Lane. My back yard backs up to 250 Queens Lane. Both back yards are very small now and sound privacy barely exists now. I find that the addition of more square footage, 4th bedroom and bath and a pool this is only 5 feet from the property line to be more invasive to privacy.

I have lived in my house for around 25 years and have followed the zoning laws out of respect for my neighbors and followed setbacks. When I built my pool, I built it 10 from my property line.

The application claims the residence at 250 Queens Lane was built in 1968 and is in need of being brought up to today's living standards. I just lived through 250 Queens Lane being completely renovated in 2019 with a new kitchen, new bathrooms, flooring and impact windows.

I feel that this Special Exception will cause substantial injury to the value of other properties in the neighborhood. If this Special Exception is allowed, I think the owner of 250 Queens Lane should build a concrete wall across the rear of the property at the highest height allowed by Palm Beach Code.

Thanks for considering my thoughts.



Gary Little
255 Colonial Lane

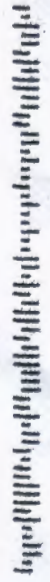
LITTLE
355 Colonial Lane
Palm Beach, FL 33480

The Town of Palm Beach
Planning, Zoning & Building Dept.
360 South County Road
Palm Beach, FL 33480

WEST PALM BCH FL 334
7 DEC 2020 PM 2 L



33480-673560



CHRISTOPHER AND KRISTEN VILA
269 QUEENS LANE
PALM BEACH, FLORIDA 33480

VIA EMAIL: kchurney@townofpalmbeach.com

January 21, 2021

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

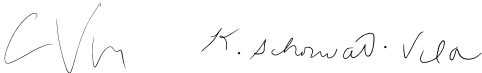
RE: Z-20-00307 and Arcom Number B-081-2020
250 Queens Lane, Palm Beach, Florida

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

We live at 269 Queens Lane in Palm Beach. Our neighbors, Mara Raphael and John Mendell, are renovating their one story home across the street and to the east of us and have filed plans with the Town for this renovation/addition. We have reviewed their plans for the proposed renovation and support the project and have no objection to any variances they are seeking. We believe that the proposed renovation will be a fine improvement to both my neighbor's property and our neighborhood. Hopefully, you and your staff will agree and will approve the proposed project.

Thank you for your consideration.

Sincerely,

Handwritten signatures of Christopher and Kristen Vila. The signature on the left is 'C Vila' and the signature on the right is 'K. Schward Vila'.

Chris and Kristen Vila

LARRY B. AND KATIE ALEXANDER, JR.
214 QUEENS LANE
PALM BEACH, FLORIDA 33480

VIA EMAIL: kchurney@townofpalmbeach.com

January 21, 2021

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

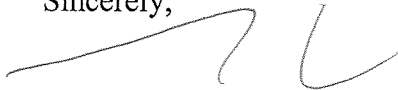
RE: Z-20-00307 and Arcom Number B-081-2020
250 Queens Lane, Palm Beach, Florida

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

We live at 214 Queens Lane in Palm Beach. Our neighbors, Mara Raphael and John Mendell, are renovating their one story home to the west of us and have filed plans with the Town for this renovation/addition. We have reviewed their plans for the proposed renovation and fully support the project and have no objection whatsoever to any variances they are seeking. We believe that the proposed renovation will be a fine improvement to both my neighbor's property and our neighborhood. Hopefully, you and your staff will agree with us and will approve the proposed project.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ben Alexander', with a stylized flourish at the end.

Ben Alexander

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00308 VARIANCE(S) Zoning District: R-C Medium Density Residential The application of SAMUEL LEHRMAN REVOCABLE TRUST U/A/D/ JUNE 19, 2008 (SAMUEL LEHRMAN, TRUSTEE), applicant, relative to property located at **355 HIBISCUS AVE**, legal description on file, is described below. 1) Section 134 1729(1): A request for a variance to allow a 38 KW generator to be placed in the street side yard setback (Australian Avenue) at 5.6 feet in lieu of the 25 foot minimum required on a corner lot. 2) Section 134 1667: A request for a variance for the required wing wall for the generator located in the street side yard setback with a height of 8.58 feet above the crown of the road (on Australian Avenue) in lieu of the 6 foot maximum allowed. 3) Section 134 1667: A request for a variance for the required wing wall for the generator located in the rear yard setback at a height of 8.46 feet above the neighboring property owner's grade to the east in lieu of the 6 foot maximum allowed. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause architectural impact to the subject property. Carried 5-2.] [The Architectural Review Commission approved the project as presented with a condition relating to the landscape. Carried 5-2.]

-

Presenter

ATTACHMENTS:

- ❑ **Memorandum Dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ❑ **Comments from the Development Review Committee**

TOWN OF PALM BEACH

Information for Town Council Meeting on: January 13, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00308 VARIANCE(S)**
355 HIBISCUS AVE

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

1. Section 134-1729(1): A request for a variance to allow a 38 KW generator to be placed in the street side yard setback (Australian Avenue) at 5.6 feet in lieu of the 25 foot minimum required on a corner lot.
- 2) Section 134-1667: A request for a variance for the required wing wall for the generator located in the street side yard setback with a height of 8.58 feet above the crown of the road (on Australian Avenue) in lieu of the 6 feet allowed.
- 3) Section 134-1667: A request for a variance for the required wing wall for the generator located in the rear yard setback at a height of 8.46 feet above the neighboring property owner's grade to the east in lieu of the 6 feet allowed.

ADDRESS: 355 HIBISCUS AVE

OWNER: LEHRMAN SAMUEL TR

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-23-05-007-0011

ZONING DISTRICT: R-C Medium Density Residential

LEGAL DESCRIPTION: ROYAL PARK ADD N 68.67 FT OF LTS 1
& 2 BLK 7

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT
Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 11/2/20

APPLICATION NO.: Z-20-00308 **APPLICATION TYPE:** VARIANCE(S)

ADDRESS: 355 HIBISCUS AVE

DESCRIPTION:

1. Section 134-1729(1): A request for a variance to allow a 38 KW generator to be placed in the street side yard setback (Australian Avenue) at 5.6 feet in lieu of the 25 foot minimum required on a corner lot.
2) Section 134-1667: A request for a variance for the required wing wall for the generator located in the street side yard setback with a height of 8.58 feet above the crown of the road (on Australian Avenue) in lieu of the 6 feet allowed.
3) Section 134-1667: A request for a variance for the required wing wall for the generator located in the rear yard setback at a height of 8.46 feet above the neighboring property owner's grade to the east in lieu of the 6 feet allowed.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	1/4/2021	No comments regarding the variance request. The stormwater management system installed in 2012 will need to be recertified as part of the permit requirements. Any modifications to accommodate the improvements will need to be captured, appropriately.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	11/18/2020	There are no fire code concerns with the proposed project
PZB - PLANNING AND ARCHITECTURAL REVIEW	Laura Groves Van Onna, Historic Preservation Planner	1/5/2021	This proposed project is on the tentative agenda for the regularly scheduled Architectural Commission (ARCOM) meeting on 01/27/2021 as Application A-072-2020. A motion carried at the December ARCOM meeting to defer the project to the January meeting at the request of staff due to lack of presentation submittal by the applicant.
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	1/4/2021	The applicant is required to demonstrate to the satisfaction of the Town Council that a hardship exists in order to grant the variances being requested for the proposed generator.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00310 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S) Zoning District: R-A Estate Residential The application of 310 MEDITERRANEAN RD LLC (JOHN SHAW, MANAGER), applicant, relative to property located at **310 MEDITERRANEAN RD**, legal description on file, is described below. Sections 134-229, 134 329, and 134 843(b): Special Exception and Site Plan Review to allow the renovation of a two story, single family house, including raising the existing house to 7.0 ft NAVD and demolishing more than 50% of the house by cubic square footage, on a non conforming lot, comprised of a portion of platted lots, which is 113.5 feet in depth in lieu of the 150 foot depth required in the R A Zoning District. In connection with the renovation, the following variances are being requested: 1) Section 134 843(a)(5): Request for redevelopment of a single family home with a front yard setback of 26.0 feet in lieu of the 35 foot minimum required. 2) Section 134 1757: Request for installation of a swimming pool with a rear setback of 4.0 feet in lieu of the 10 foot minimum requirement. 3) Section 134 843(a)(7): Request for redevelopment of the house with a building height plane setback ranging from 26.0 to 32.35 feet in lieu of the range of 30.5 to 43.0 feet minimum required. [Applicant's Representative: David E. Klein Esq] [The Architectural Review Commission deferred the project to the February 24, 2021 meeting. Carried 7-0.] **Request for Deferral to the March 3, 2021 Meeting Per Letter Dated January 29, 2021 from David Klein**

-

Presenter

ATTACHMENTS:

- ❑ **Letter Dated January 29, 2021 from David E. Klein**
- ❑ **Memorandum Dated January 4, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ❑ **Comments from the Development Review Committee**



*David E. Klein, Esq.
direct: 561.402.7412
dklein@rabideau-law.com
Florida Bar Board Certified in Real Estate Law*

January 29, 2021

Via E-Mail – pcastro@townofpalmbeach.com

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

Re: Property: 310 Mediterranean Road
Owner: 310 Mediterranean Rd, LLC
Variance #Z-20-00310

Dear Mr. Castro:

In connection with the above-referenced matter, I request that the variance matter that is scheduled to appear before Town Council on February 10, 2021 be deferred to the following Town Council Meeting occurring on March 3, 2021.

The matter will be heard at ARCOM on February 24, 2021 due to a deferral by ARCOM.

Please let me know if you have any questions.

Sincerely,

David E. Klein

cc: Kelly Churney, via e-mail kchurney@townofpalmbeach.com

TOWN OF PALM BEACH

Information for Town Council Meeting on: January 13, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00310 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIATION OF 310 MEDITERRANEAN RD**

Date: January 04, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

Sections 134, 229, 134-329, and 134-843(b): Special Exception and Site Plan Review to allow the renovation of a two-story, single family house, including raising the existing house to 7.0 NAVD and demolishing more than 50% of the house by cubic square footage, on a non-conforming lot, comprised of a portion of platted lots, which is 113.5 feet in depth in lieu of the 150-foot depth required in the R-A Zoning District. In connection with the renovation, the following variances are being requested:

1. Section 134-843(a)(5): Request for redevelopment of a single-family home with a front yard setback of 26.0 feet in lieu of the 35-foot minimum required in R-A Zoning District.
2. Section 134-1757: Request for installation of a swimming pool with a rear setback of 4.0 feet in lieu of the 10-foot minimum requirement.
3. Section 134-843(a)(7): Request for redevelopment of the house with a building height plane setback ranging from 26.0 to 32.35 feet in lieu of the range of 30.5 to 43.0 feet minimum required in R-A Zoning District.

ADDRESS: 310 MEDITERRANEAN RD

OWNER: 310 MEDITERRANEAN RD LLC

OWNER'S REPRESENTATIVE: RABIDEAU LAW PA

PROPERTY CONTROL NO.: 50-43-42-34-03-000-0932

ZONING DISTRICT: R-A Estate Residential

LEGAL DESCRIPTION: BOCA RATON CO LAKE FRONT ADD SLY
111.50 FT OF LT 93, LOT 106 & LOT 113 (LESS E
40 FT)

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Page Two

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 11/3/20

APPLICATION NO.: Z-20-00310 **APPLICATION TYPE:** SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)

ADDRESS: 310 MEDITERRANEAN RD

DESCRIPTION:

Sections 134, 229, 134-329, and 134-843(b): Special Exception and Site Plan Review to allow the renovation of a two-story, single family house, including raising the existing house to 7.0 NAVD and demolishing more than 50% of the house by cubic square footage, on a non-conforming lot, comprised of a portion of platted lots, which is 113.5 feet in depth in lieu of the 150-foot depth required in the R-A Zoning District. In connection with the renovation, the following variances are being requested:

1. Section 134-843(a)(5): Request for redevelopment of a single-family home with a front yard setback of 26.0 feet in lieu of the 35-foot minimum required in R-A Zoning District.
2. Section 134-1757: Request for installation of a swimming pool with a rear setback of 4.0 feet in lieu of the 10-foot minimum requirement.
3. Section 134-843(a)(7): Request for redevelopment of the house with a building height plane setback ranging from 26.0 to 32.35 feet in lieu of the range of 30.5 to 43.0 feet minimum required in R-A Zoning District.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	11/18/2020	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	1/4/2021	Stormwater Management Level of Service in accordance with Section 86-95 has not been obtained based upon the plans and calculations provided.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	11/17/2020	there are no fire code concerns with the proposed project
PZB - PLANNING AND ARCHITECTURAL REVIEW	Laura Groves Van Onna, Historic Preservation Planner	1/5/2021	This proposed project is on the tentative agenda for the regularly scheduled Architectural Commission (ARCOM) meeting on 01/27/2021 as Application B-083-2020. A motion carried at the December ARCOM meeting to defer the project to the January meeting in order to address comments from Commissioners related to variances, scale, massing, and hardscape.
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	11/18/2020	No Comment



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 11/3/20

PZB - ZONING

Paul Castro, Zoning
Administrator

11/20/2020

As part of the site plan review, the Zoning Manager recommends that the Town Council deny the request to expand the backyard by adding what the applicant is calling a "dock" across most of the seawall and over Lake Worth in the backyard. I do not believe this to be a dock but an attempt to increase the area of the backyard by building over the Conservation Zoning District. Staff is seeing more of this type of development and I will continue to recommend denial of these types of requests. I would also recommend taking another look at the definition of "dock" and the regulations related to building west of the Bulkhead Line on Lake Worth within the Town of Palm Beach.

As for the other variances, staff recommends you consider whether there is a hardship to demolish more than 50% of the cubic footage of the existing nonconforming house..

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00311 SPECIAL EXCEPTION WITH VARIANCE(S) Zoning District: C-TS Town Serving Commercial The application of Bricktop's Palm Beach, applicant, relative to property located at **375 S COUNTY RD**, legal description on file, is described below. Section 134 1109 (14): Modification to previously approved Special Exception with Site Plan Review is being requested for Bricktop's restaurant to add 40 outdoor seats for lunch and dinner in the north courtyard adjacent to the existing restaurant. The additional seating will increase the seating from 150 indoor and patio seats to 190 seats. The current approval allows 52 seats of the 150 seats to be outside on the south patio. Section 134 2176: a variance is being requested to provide zero (0) on site parking spaces in lieu of the 13 parking spaces that are required for the additional 40 outdoor seats. [Applicant's Representative: Maura Ziska Esq]

Presenter

ATTACHMENTS:

- **Memorandum Dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- **Comments from the Development Review Committee**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00311 SPECIAL EXCEPTION WITH VARIANCE(S)**
375 S COUNTY RD

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

Section 134-1109 (14): Modification to previously approved Special Exception with Site Plan Review is being requested for Bricktop's restaurant to add 40 outdoor seats for lunch and dinner in the north courtyard adjacent to the existing restaurant. The additional seating will increase the seating from 150 indoor and patio seats to 190 seats. The current approval allows 52 seats of the 150 seats to be outside on the south patio.

Section 134-2176: a variance is being requested to provide zero (0) on-site parking spaces in lieu of the 13 parking spaces that would be required for the additional 40 outdoor seats.

ADDRESS: 375 S COUNTY RD

OWNER: THREE SEVENTY FIVE SOUTH

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-23-05-009-0010

ZONING DISTRICT: C-TS Town-Serving Commercial

LEGAL DESCRIPTION: ROYAL PARK ADD LT 1 (LESS TRGLR PAR S
COUNTY RD R/W), LTS 2 THRU 4, LT 66 (LESS
PERUVIAN COURT COND) & LTS 67 THRU 69
BLK 9

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT
Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 11/18/20

APPLICATION NO.: Z-20-00311 **APPLICATION TYPE:** SPECIAL EXCEPTION WITH VARIANCE(S)

ADDRESS: 375 S COUNTY RD **TENANT:**BRICKTOPS

DESCRIPTION:

Section 134-1109 (14): Modification to previously approved Special Exception with Site Plan Review is being requested for Bricktop's restaurant to add 40 outdoor seats for lunch and dinner in the north courtyard adjacent to the existing restaurant. The additional seating will increase the seating from 150 indoor and patio seats to 190 seats. The current approval allows 52 seats of the 150 seats to be outside on the south patio.

Section 134-2176: a variance is being requested to provide zero (0) on-site parking spaces in lieu of the 13 parking spaces that would be required for the additional 40 outdoor seats.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	11/23/2020	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	11/24/2020	No Comments.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	11/24/2020	They will need to ensure exit aisle are designed in for proper exiting from the spaces. The first drawing that was submitted needed some work to ensure proper space for exits.
PZB - PLANNING AND ARCHITECTURAL REVIEW	Laura Groves Van Onna, Historic Preservation Planner	11/25/2020	This proposed project was previously approved by staff on 01/28/2020 as ARCOM Staff Approval Application A-20-00870. Upon initial review, the project as proposed entails slight revision to the seating plan for outdoor dining, which appears to be in effort to improve circulation. Staff does not see immediate issue with the revised plan.
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	11/23/2020	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	11/23/2020	The changes to the courtyard and seating were previously staff approved and the project is under construction. Staff determined that the staff approval required Town Council zoning approval of a special exception with site plan review. In addition, with the proposed new 40 outdoor seats, a variance is also required for the 13 off-street parking spaces required for the additional seating. The applicant is required to demonstrate to the satisfaction of the Town Council that there is a hardship for the parking variance.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00318 REPLAT Zoning District: R-AA Large Estate Residential The application of BLOSSOM WAY HOLDINGS LLC (GERALD A. BEESON, MANAGER), applicant, relative to property located at **1265 S OCEAN BLVD**, legal description on file, is described below. An application to replat lots 1 through 6 and lot 10 of the Blossom Estate Subdivision, 60 Blossom Way, and 1290 S Ocean Blvd into 2 (two) buildable lots. The proposed replat will abandon in total the Blossom Way right-of-way; abandon the current beach access and dedicate a new 8-ft wide beach access along the north side of the proposed replat; terminate the Limited Access Easement along the east side of S Ocean Blvd which provides access to all of the Blossom Estate platted properties via Blossom Way; and incorporate 60 Blossom Way and 1290 S Ocean Blvd properties into the new Lots 1 and 2 of Blossom Estate subdivision. [Applicant's Representative: Maura Ziska Esq]

Presenter

ATTACHMENTS:

- ❑ **Memorandum Dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ❑ **Comments from the Development Review Committee**
- ❑ **Letter Dated December 11, 2020 from Maura Ziska**
- ❑ **Replat No. 2 - The Blossom Estate**
- ❑ **Survey for The Blossom Estate**
- ❑ **New Repat for The Blossom Estate**
- ❑ **Developer's Agreement for Blossom Estate**

TOWN OF PALM BEACH

Information for Town Council Meeting on: January 13, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00318**
1265 S OCEAN BLVD

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

An application to replat lots 1 through 6 and lot 10 of the Blossom Estate Subdivision, 60 Blossom Way, and 1290 S Ocean Blvd into 2 (two) buildable lots. The proposed replat will abandon in total the Blossom Way right-of-way; abandon the current beach access and dedicate a new 8-ft wide beach access along the north side of the proposed replat; terminate the Limited Access Easement along the east side of S Ocean Blvd which provides access to all of the Blossom Estate platted properties via Blossom Way; and incorporate 60 Blossom Way and 1290 S Ocean Blvd properties into the new Lots 1 and 2 of Blossom Estate subdivision.

ADDRESS: 1265 S OCEAN BLVD

OWNER: BLOSSOM WAY HOLDINGS LLC

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-44-02-10-000-0010

ZONING DISTRICT: R-AA Large Estate Residential

LEGAL DESCRIPTION: BLOSSOM ESTATE REPL LTS 1 THRU 4 &
2-44-43, N 292 FT OF S 1092 FT OF GOV LT 1 LYG
E OF & ADJ TO S OCEAN BLVD

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 12/14/20

APPLICATION NO.: Z-20-00318 **APPLICATION TYPE:**

ADDRESS: 1265 S OCEAN BLVD

DESCRIPTION:

An application to replat lots 1 through 6 and lot 10 of the Blossom Estate Subdivision, 60 Blossom Way, and 1290 S Ocean Blvd into 2 (two) buildable lots. The proposed replat will abandon in total the Blossom Way right-of-way; abandon the current beach access and dedicate a new 8-ft wide beach access along the north side of the proposed replat; terminate the Limited Access Easement along the east side of S Ocean Blvd which provides access to all of the Blossom Estate platted properties via Blossom Way; and incorporate 60 Blossom Way and 1290 S Ocean Blvd properties into the new Lots 1 and 2 of Blossom Estate subdivision.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	1/5/2021	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	1/6/2021	A Bond (surety) for the removal and replacement of public utilities affected by the Replat will be needed. In addition to the standard providers, FDOT has an existing inlet on Blossom Way. Phase 2S undergrounding for this area has been designed and is under construction. Requests to service the development of Lot 1 and Lot 2, included easements to provide services, will need to be worked out directly with the utility providers. Town of Palm Beach Bulkhead Line needs to be shown, Ordinance 32-2 Does MHWL Elevation need to be included? Does Coastal FDEP Monument existing within Lot 1 needs to be included? Easement Access along the northern limits of Lot 1 needs to mirror original plat, specifically the language. Work with Robert Weber, Coastal Program Manager regarding the width of the beach access. Provide a 10-foot by 20-foot easement adjacent to S. Ocean Blvd for parking an occasional Town vehicle for beach monitoring.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	1/6/2021	The planned lot platting is not a concern with the fire codes. Any proposed buildings will need to comply with NFPA1 chapter 18 Fire Department Access and Water supply.
PZB - PLANNING AND ARCHITECTURAL REVIEW	Laura Groves Van Onna, Historic Preservation Planner	1/5/2021	No Comment
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	1/5/2021	No Comment



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 12/14/20

PZB - ZONING

Paul Castro, Zoning
Administrator

1/6/2021

The Town currently does not have all of the required information in order to have the plat considered for approval by the Town Council. We are missing written authorization from all property owners within the subdivision and letters of consent from all of the utilities regarding easements. The Town's consulting surveyor is also in the process of peer review of the proposed replat. To date, that is not complete. If these are completed by the date of the Council meeting the proposed replat can be considered by the Town Council.

The Staff's main concern is the Town's continued beach access through the proposed relocated beach access easement from South Ocean Boulevard to the beach. The current language on the face of the proposed replat does not provide that access and staff is recommending that the applicant change the easement dedication language to the same language that exists on the existing beach access easement. The Town also needs a developer's agreement that clearly identifies all infrastructure improvements that need to be made based on the proposed replat and the timing of demolition of all existing structures on the subject property that become noncompliant to the Zoning Code as a result of the replat. Any necessary infrastructure changes related to utilities and road demolition need to be secured by an irrevocable letter of credit equal to 135% of the estimated cost of the proposed subdivision improvements to secure the cost of construction (demolition) of the improvements per Sec. 110-37 of the Code. At this time, the town has no information from the applicant on what improvements have to be made in order to complete the subdivision, such as the estimated cost of demolition of the roadway and buildings or the movement of any utilities, if necessary.

DEC 14 2020

Town of Palm Beach
PZB Dept

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

Amy D. Bahl
*Also admitted in New York

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

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

VIA HAND DELIVERY

December 11, 2020

Paul Castro
Planning Zoning & Building
360 South County Road
Palm Beach, FL 33480

RE: RePlat No. 2 of The Blossom Estate Subdivision

Dear Mr. Castro:

I represent Blossom Way Holdings, LLC, Lungomare LLC and CPPB Holdings LLC (now also known as Blossom Way Holdings, LLC through merger), ("Owner") who collectively owns Lots 1, 2, 3, 4, 5, 6 and 10 in The Blossom Estate Subdivision. The Owner is requesting to replat the Subdivision, which will require Town Council approval. I am requesting this matter be placed on the January 13, 2021 Town Council Agenda. I have enclosed a check in the amount of \$4,000.00 for the filing fee for a Replat.

To give a brief history, The Blossom Estate Subdivision was originally platted in 1982 dividing the property into ten (10) parcels for future development. In 1986, there was a replat of Blossom Estate (see attached copies of plat, replat and proposed replat no. 2). My client currently owns 7 of the 10 lots of the subdivision. My client also purchased 60 Blossom Way, which was not part of The Blossom Estate Subdivision, but adjacent and to the east of Lot 6. My client also purchased 1290 South Ocean Boulevard, which was not part of The Blossom Estate Subdivision, but adjacent and to the south of Lots 3 and 4. This parcel has already been annexed to the Blossom properties by a Unity of Title Agreement. It is now the desire of my client to combine all of the properties owned on the east side of South Ocean Boulevard into only two (2) buildable lots. The proposed replat will accomplish:

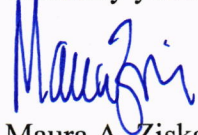
- Abandon in total Blossom Way right of way; thus the only access to the properties on the east side of South Ocean Boulevard would be via South Ocean Boulevard;
- Abandon the current (previously relocated) beach access and dedicate a new 8 foot wide beach access along the north side of the proposed replat
- Terminate the Limited Access Easement along the east side of South Ocean Boulevard that mandated access to the platted properties via Blossom Way;

- Combine and incorporate the 60 Blossom Way and 1290 South Ocean Boulevard properties into the new Lots 1 and 2 of Blossom Estate subdivision.

I hereby submit 20 copies of the survey and proposed Replat No. 2 of The Blossom Estate Subdivision. I will be submitting the utility company consents, HOA consent and the two remaining owner's consents under separate cover.

Please call me if you have any questions with the foregoing or require any additional information.

Sincerely yours,



Maura A. Ziska

/maz

Attachments

cc: Client
Wayne Bergman
John C. Randolph, Esq.





REPLAT NO. 2 OF THE BLOSSOM ESTATE

BEING A REPLAT OF LOTS 1 THROUGH 6 AND THE PRIVATE ROAD KNOWN AS BLOSSOM WAY, ACCORDING TO THE REPLAT OF THE BLOSSOM ESTATE AS RECORDED IN PLAT BOOK 54, PAGE 127, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, TOGETHER WITH A PORTION OF UNPLATTED LAND, ALL LYING IN SECTION 02, TOWNSHIP 44 SOUTH, RANGE 43 EAST, TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA.



EXPLANATION AND DESCRIPTION

NOTICE: ALL OF THE INTERESTS IN THE BLOSSOM ESTATE, A FLORIDA LIMITED LIABILITY COMPANY, CHOP AND ITS COMPANY SEAL TO BE AFFIXED HERETO BY AND WITH THE AUTHORITY OF ITS BOARD OF DIRECTORS THIS DAY OF _____, 2021.

DESCRIPTION

THAT PORTION OF THE BLOSSOM ESTATE, A FLORIDA LIMITED LIABILITY COMPANY, CHOP AND ITS COMPANY SEAL TO BE AFFIXED HERETO BY AND WITH THE AUTHORITY OF ITS BOARD OF DIRECTORS THIS DAY OF _____, 2021.

COMMISSION EXPENSES

THE ABOVE-NAMED COMPANY HAS CAUSED THESE PRESENTS TO BE SIGNED BY ITS BOARD OF DIRECTORS THIS DAY OF _____, 2021.

IN WITNESS WHEREOF, THE ABOVE-NAMED COMPANY HAS CAUSED THESE PRESENTS TO BE SIGNED BY ITS BOARD OF DIRECTORS THIS DAY OF _____, 2021.

NOTARIAL PUBLIC STATE OF FLORIDA COUNTY OF PALM BEACH

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NOTARIAL PUBLIC STATE OF FLORIDA COUNTY OF PALM BEACH

SHEET 1 OF 3

IN WITNESS WHEREOF, THE ABOVE-NAMED COMPANY HAS CAUSED THESE PRESENTS TO BE SIGNED BY ITS BOARD OF DIRECTORS THIS DAY OF _____, 2021.

BY _____

PRINTED NAME, TITLE _____

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REPLAT NO. 2 OF THE BLOSSOM ESTATE

SHEET 1 OF 3

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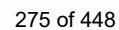
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NOTARIAL PUBLIC STATE OF FLORIDA COUNTY OF PALM BEACH



LEGEND

A	= ARC LENGTH
AC	= AIR CONDITIONING
AE	= ACCESS EASEMENT
AKA	= ALSO KNOWN AS
B.F.P.	= BACKFLOW PREVENTER
BLDG.	= BUILDING
B.O.C.	= BACK OF CURB
B.O.W.	= BACK OF WALK
(C)	= CALCULATED
CATV	= CABLE ANTENNA TELEVISION
CB.S.	= CHORD BEARING
C.B.S.	= CONCRETE BLOCK STRUCTURE
C.C.C.L.	= COASTAL CONSTRUCTION CONTROL LINE
CH	= CHORD
C.I.F.	= CHAIN LINK FENCE
C.I.R.P.	= CORRUGATED METAL PIPE
CMC.	= CONCRETE
CONC.	= CONCRETE
(D)	= DESCRIPTION DATUM
DB	= DEED BOOK
DE	= DRAINAGE EASEMENT
DH	= DRILL HOLE
DW	= DRIVEWAY
ELEV.	= ELEVATION
ENC.	= ENCROACHMENT
EOP	= EDGE OF PAVEMENT
EOW	= EDGE OF WATER
ESMT	= EASEMENT
FEE	= FINISH FLOOR ELEVATION
FND	= FOUND
GUY ANCHOR	= GUY ANCHOR
GA.M	= GAS METER
GM	= GAS METER
INV.	= INVERT
I.T.V.C.D.	= INTERNAL TREAT WATER CONTROL DISTRICT
L.A.E.	= LIMITED ACCESS EASEMENT
LB	= LICENSE BOARD
L.W.D.	= LAKE WORTH DRAINAGE DISTRICT
(M)	= FIELD MEASUREMENT
M.H.W.	= MEAN HIGH WATER LINE
M.L.W.Y.	= MEAN LOW WATER LINE
N.A.V.D.	= NORTH AMERICAN VERTICAL DATUM
N.G.V.D.	= NATIONAL GEODETIC VERTICAL DATUM
N.P.B.C.I.D.	= NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT
N.T.S.	= NOT TO SCALE
OA	= OVERALL
OD	= OUTSIDE DIAMETER
OH	= ORIENTED UTILITY LINE
P	= PLANTER
R.B.	= RECORD BOOK
(P)	= FLAT DATUM
P.B.	= PLAT BOOK
P.B.C.	= PALM BEACH COUNTY
P.C.	= POINT OF CURVATURE
P.C.C.	= POINT OF COMPOUND CURVATURE
P.C.P.	= PERMANENT CONTROL POINT
P.G.	= PAGE
P.I.	= POINT OF INTERSECTION
P.O.B.	= POINT OF BEGINNING
P.O.C.	= POINT OF COMMENCEMENT
P.O.R.	= POINT OF REVERSE CURVATURE
P.R.M.	= PERMANENT REFERENCE MONUMENT
PROP.	= PROPOSED
P.T.	= POINT OF TENACITY
P.U.M.T	= PAVEMENT
(R)	= RADIAL
R	= RANGE
R.EE	= REE
R.P.B.	= ROAD PLAT BOOK
S	= SLOPE
S.B	= SOIL BORING
SEC	= SECTION
S.F.	= SQUARE FEET
S.F.W.M.D.	= SOUTH FLORIDA WATER MANAGEMENT DISTRICT
S.I.R.W.C.D.	= SOUTH INDIAN RIVER WATER CONTROL DISTRICT
S.M.H.	= SANITARY MANHOLE
S.N.	= STATE ROAD
STY	= STORY
SW	= SIDEWALK
T.O.C.	= TOP OF CURB
T.O.B	= TOP OF BLANK
TYP	= TYPE
U.C	= UNDER CONSTRUCTION
UC	= UTILITY EASEMENT
UNECD	= UNRECORDED
W.C.	= WITNESS CORNER
W.M.E.	= WATER MANAGEMENT EASEMENT
W.M.T.	= WATER MANAGEMENT TRACT
WM.T.	= WATER MANAGEMENT TRACT
X	= BASELINE
Y	= CENTRAL ANGLE/ELETA
Z	= CENTRAL ANGLE/ELETA
Δ	= CONCRETE MONUMENT FOUND (AS NOTED)
□	= CONCRETE MONUMENT SET (LB #4569)
○	= ROD & CAP FOUND (AS NOTED)
●	= 3/8" ROD & CAP SET (LB #4569)
○	= IRON PIPE FOUND (AS NOTED)
○	= IRON ROD FOUND (AS NOTED)
▲	= NAIL FOUND
●	= NAIL & DISK FOUND (AS NOTED)
●	= MAG NAIL & DISK SET (LB #4569)
○	= PROBE LINE
○	= FIRE HYDRANT
○	= WATER METER
○	= WATER VALVE
○	= LIGHT POLE

**BOUNDARY AND TIDAL WATER SURVEY FOR:
PBH, LLC, A DELAWARE
LIMITED LIABILITY COMPANY**

This survey is made specifically and only for the following parties for the purpose of combining the previously surveyed separate parcels described herein into one overall parcel for platting application

PBH, LLC, a Delaware limited liability company
First American Title Insurance Company
Kochman & Ziska, PLC, as title agent

The undersigned surveyor assumes no responsibility or liability for any other purpose or to any other party other than stated above

PROPERTY ADDRESS:
11265 South Ocean Boulevard
Palm Beach, FL 33480

LEGAL DESCRIPTION:

LOTS 1 THROUGH 6 OF THE REPLAT OF THE BLOSSOM ESTATE AS RECORDED IN PLAT BOOK 54, PAGE 127, ACCORDING TO SAID PLAT OF THE REPLAT OF THE BLOSSOM ESTATE, AS RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, AND LYING IN SECTION 02, TOWNSHIP 44 SOUTH, RANGE 43 EAST, TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH:

THAT PORTION OF THE FOLLOWING DESCRIBED PROPERTY WHICH LIES EAST OF THE EASTERLY RIGHT-OF-WAY LINE OF SOUTH OCEAN BOULEVARD: SITUATE IN GOVERNMENT LOT 1, SECTION 2, TOWNSHIP 44 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BOUNDED ON THE SOUTH BY THE NORTHERLY LINE OF LAND CONVEYED BY C. W. BINGHAM TO FRANCES P. BOLTON BY DEED DATED MAY 22, 1919, FILED MARCH 6, 1920 AND RECORDED MARCH 20, 1920 IN DEED BOOK 131 AT PAGE 83 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA;

ON THE NORTH BY A LINE TWO HUNDRED AND NINETY-TWO (292) FEET NORTH FROM AND PARALLEL TO THE SAIL
NORTHERLY LINE OF LAND CONVEYED BY C.W. BINGHAM TO FRANCES P. BOLTON;
ON THE WEST BY LAKE WORTH;

TOGETHER WITH:

BEING A TRACT OF LAND SITUATED IN LOT NO. 1, SECTION 2, TOWNSHIP 44 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN SECTION 35, TOWNSHIP 43 SOUTH, RANGE 4 E ASH WHERE THE CENTERLINE OF STATE ROAD 80 AS SOUTHERLY BOUNDARY MEETS THE CENTERLINE OF SAID ROAD 4-1-4, ALSO KNOWN AS OCEAN BOULEVARD, SAID POINT OF BEING DESIGNATED AS STATION 95+60.00 AND SHOW ON THE RIGHT-OF-WAY MAP FOR SAID ROAD 4-1-4, BEING 187.32 FEET FROM THE CORNER OF SAID ROAD 4-1-4 TO THE POINT OF BEGINNING; THENCE S 87° 38' 54" E ALONG THE CENTERLINE OF SAID ROAD 4-1-4, A DISTANCE OF 54.08 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF SECTION 2, TOWNSHIP 43 SOUTH, RANGE 4 E ASH; THENCE CONTINUE SOUTHERLY ALONG THE SAME COURSE FOR A DISTANCE OF 373.45 FEET TO A POINT; THENCE DEFLECTING TO THE LEFT 8° 10' AND CONTINUE ALONG THE CENTERLINE OF SAID STATE ROAD 4-1-4 FOR A DISTANCE OF 10.00 FEET TO THE CORNER OF SAID SECTION 35, TOWNSHIP 43 SOUTH, RANGE 4 E ASH; THENCE S 87° 38' 54" E ALONG THE CENTERLINE OF SECTION 35, TOWNSHIP 43 SOUTH, RANGE 4 E ASH NORTHEASTERLY FOR A DISTANCE OF 10.00 FEET TO THE CORNER OF SAID SECTION 34, TOWNSHIP 43 SOUTH, RANGE 4 E ASH; THENCE S 87° 38' 54" E ALONG THE CENTERLINE OF SECTION 34, TOWNSHIP 43 SOUTH, RANGE 4 E ASH NORTHEASTERLY LOT 1 HAVING A BEARING OF S 88° 38' 54" E, PARALLEL TO, AND 646 FEET SOUTH OF SAID NORTH LINE OF GOVERNMENT LOT 1 HAVING A BEARING OF S 88° 38' 54" E, FOR A DISTANCE OF 361.97 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL:

[illegible]

CONTAINING IN ALL 19.722 ACRES, MORE OR LESS.

NOTES

1. All information regarding representations, adjointers, and other documents that might affect the quality of the file to track shown hereon was gained from the file search report file number 1002-50194-128 issued by First American Title Insurance Company, dated December 21, 2020. This office has made no search of the Public Records.
2. Elevations shown hereon, if any, are in feet and decimal parts thereof and are based on NAVD-88. The expected accuracy of the elevations shown hereon is 0.03' for the hard surface elevations and 0.1' for the soft surface elevations. Elevations shown hereon are U.S. survey feet unless otherwise noted.
3. Description furnished by client or client's agent.
4. Unless presented in digital form with electronic seal and electronic signature this survey must bear the signature and the original raised seal of a Florida licensed surveyor or mapper this drawing, sketch, plat or map is for informational purposes only and is not valid.
5. This survey cannot be transferred or assigned without the specific written permission of Wallace Surveying Corporation. This survey is not transferable by Owners Affidavit of Survey or similar instrument.
6. Except as shown, underground and overhead improvements are not located. Underground foundations not located.
7. The survey sketch shown hereon does not necessarily contain all of the information obtained or developed by the undersigned surveyor in his field work, office work or research.
8. No responsibility is assumed by this surveyor for the construction of improvements, from building ties shown on this survey.
9. Revisions shown hereon do not represent a "survey update" unless otherwise noted.
10. All dates shown within the evisors block hereon are for interoffice filing use only and in no way affect the date of the field survey stated herein.
11. In some instances, graphic representations have been exaggerated to more clearly illustrate the relationships between physical improvements and/or lot lines. In all cases, dimensions shown shall control the location of the improvements over scaled positions.
12. It is a violation of Rule 65.117 of the Florida Administrative Code to alter this survey without the express prior written consent of the Surveyor. Additions and/or deletions made to the face of this survey will make this survey invalid.
13. The ownership of fences, perimeter walls and/or hedges shown hereon are not known and thus are not listed as encroachments. Fences, hedges and/or perimeter walls are shown in their relative position to the boundary.
14. The expected horizontal accuracy of the information shown hereon is +/- 0.10'.
15. Elevations shown thus:
XX.XX = hard surface
XX.X = soft surface.
16. THIS TOTAL WATER SURVEY SHOWN HEREON WAS ESTABLISHED BY EXTENDING THE ELEVATION SHOWN AT MEAN HIGH WATER INTERPOLATION POINT NO. 100842.
17. THIS TOTAL WATER SURVEY COMPLETS WITH CHAPTER 177, PART II, FLORIDA STATUTES.

CERTIFICATION:

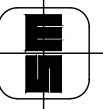
HEREBY ATTEST that the survey shown hereon meets the Standards of Practice set forth by the Florida Board of Professional Surveyors and Mappers adopted in Rule 5J-17, Florida Administrative Code pursuant to Section 472.027, Florida Statutes, effective September 1, 1981.

DATE OF LAST FIELD SURVEY: 01/19/2021

BOUNDARY AND TIDAL WATER SURVEY FOR:

PBH, LLC,

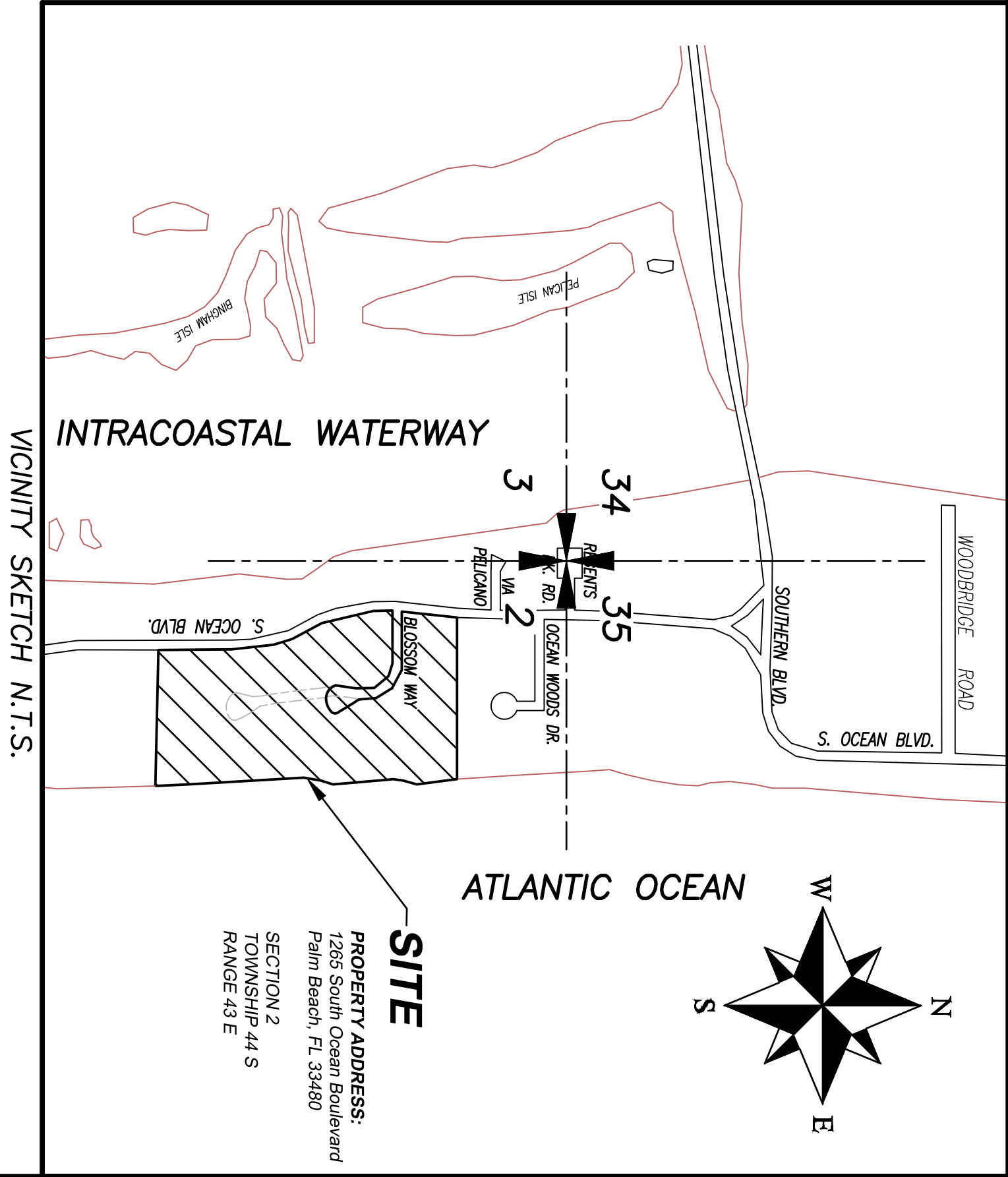
A DELAWARE LIMITED LIABILITY COMPANY



WALLACE
SURVEYING
CORP., LICENSED BUSINESS # 45660

Craig L. Wallace
Professional Surveyor and Mapper
Florida Certificate No. 3357

FIELD: J.C.	JOB NO.: 86-1063.99	F.B. PB300 PG. 44
OFFICE: S.W.	DATE: 01/19/21	DWG. NO. 86-1063.26
CKD: C.W.	REF: 86-1063-25 DWG	SHEET 1 OF 3



BLOSSOM ESTATE REPLAT NO. 2

BEING A REPLAT OF LOTS 1 THROUGH 6 AND THE PRIVATE ROAD KNOWN AS BLOSSOM WAY, ACCORDING TO THE REPLAT OF THE BLOSSOM ESTATE AS RECORDED IN PLAT BOOK 54, PAGE 127, PUBLIC RECORDS OF PALM BEACH COUNTY FLORIDA, TOGETHER WITH A PORTION OF UNPLATTED LAND, ALL LYING IN SECTION 2, TOWNSHIP 44 SOUTH, RANGE 43 EAST, TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA.

DEDICATION AND RESERVATION

KNOW ALL MEN BY THESE PRESENTS THAT PROVIDENCIA PARTNERS LLC, A DELAWARE LIMITED LIABILITY COMPANY, CPPB HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY, BLOSSOM WAY HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY & BLOSSOM ESTATES HOMEOWNERS ASSOCIATION, INC. A FLORIDA CORPORATION NOT FOR PROFIT, OWNERS OF THE LAND SHOWN HEREON AS BLOSSOM ESTATE REPLAT NO. 2 BEING A REPLAT OF LOTS 1 THROUGH 6 AND THE PRIVATE ROAD KNOWN AS BLOSSOM WAY, ACCORDING TO THE REPLAT OF THE BLOSSOM ESTATE AS RECORDED IN PLAT BOOK 54, PAGE 127, PUBLIC RECORDS OF PALM BEACH COUNTY FLORIDA, TOGETHER WITH A PORTION OF UNPLATTED LAND, ALL LYING IN SECTION 2, TOWNSHIP 44 SOUTH, RANGE 43 EAST, TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

DESCRIPTION

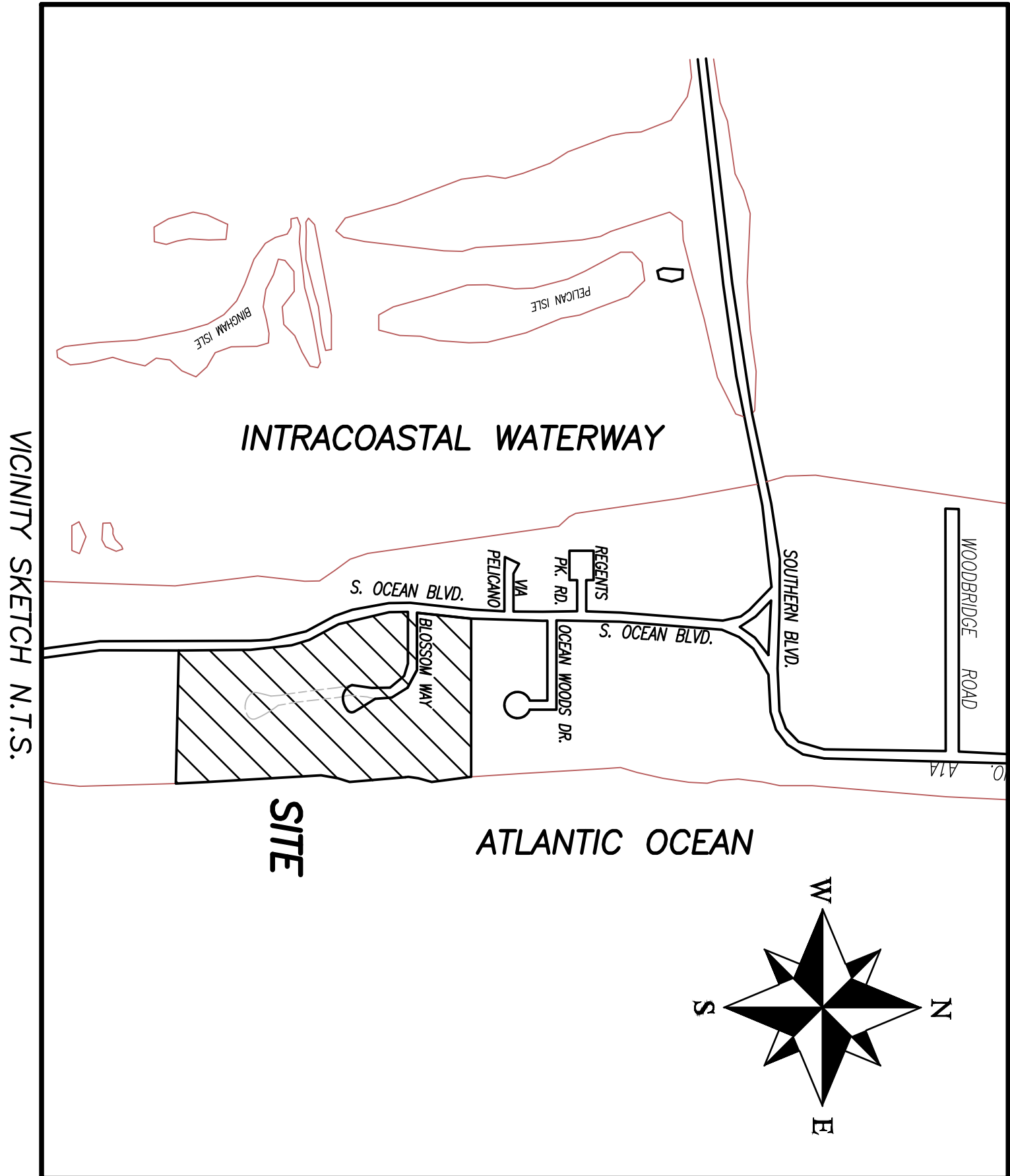
THAT PORTION OF THE FOLLOWING DESCRIBED PROPERTY WHICH LIES EAST OF THE EASTERLY RIGHT-OF-WAY LINE OF SOUTHERN BLVD. AND SOUTH OF THE EASTERLY RIGHT-OF-WAY LINE OF WOODBRIDGE ROAD, SECTION 2, TOWNSHIP 44 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BOUND ON THE SOUTH BY THE NORTHERLY LINE OF LAND CONVEYED BY C.W. BINGHAM TO FRANCES P. BOLTON BY DEED DATED MAY 22, 1919, FILED MARCH 6, 1920 AND RECORDED MARCH 20, 1920 IN DEED BOOK 131 AT PAGE 89 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, ON THE EAST BY THE ATLANTIC OCEAN, ON THE NORTH BY A LINE 649 FEET SOUTH FROM AND PARALLEL TO THE NORTH LINE OF SAID GOVERNMENT LOT 1,

CONTAINING IN ALL 19.722 ACRES, MORE OR LESS.

THE UNDERSIGNED HAVE CAUSED THE SAME TO BE SURVEYED AND PLATTED AS SHOWN HEREON AND DO HEREBY DEDICATE OR RESERVE AS FOLLOWS:

BEACH ACCESS EASEMENT - THE BEACH ACCESS EASEMENT AS SHOWN HEREON IS HEREBY DEDICATED IN PERPETUITY TO THE BLOSSOM ESTATES HOMEOWNERS ASSOCIATION, INC., ITS SUCCESSOR AND ASSIGNS, FOR PEDESTRIAN ACCESS TO THE ATLANTIC OCEAN AND IS THE PERPETUAL MAINTENANCE OBLIGATION OF SAID ASSOCIATION, ITS SUCCESSORS OR ASSIGNS. THE BEACH ACCESS EASEMENT IS ALSO DEDICATED FOR PEDESTRIAN ACCESS TO THE TOWN OF PALM BEACH AND THE STATE OF FLORIDA FOR MONITORING TURTLE NESTING AND BEACH RE-NOURISHMENT.



VICINITY SKETCH N.T.S.

IN WITNESS WHEREOF, THE ABOVE-NAMED COMPANY HAS CAUSED THESE PRESENTS TO BE SIGNED BY ITS _____ THIS ____ DAY OF _____, 2021.

PROVIDENCIA PARTNERS LLC,
A DELAWARE LIMITED LIABILITY COMPANY

WITNESS: _____ BY: _____

PRINTED NAME

PRINTED NAME, TITLE

WITNESS: _____

PRINTED NAME

ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME BY MEANS OF ____ PHYSICAL PRESENCE OR ____ ONLINE NOTARIZATION, THIS ____ DAY OF _____, 2021, BY _____ AS _____ FOR PROVIDENCIA PARTNERS LLC, ON BEHALF OF THE COMPANY, WHO IS ____ PERSONALLY KNOWN TO ME OR HAS PRODUCED _____ (TYPE OF IDENTIFICATION) AS IDENTIFICATION.

MY COMMISSION EXPIRES: _____

MY COMMISSION NO.: _____

NOTARY STAMP

SIGNATURE OF NOTARY PUBLIC _____

PRINTED NAME OF NOTARY PUBLIC _____

IN WITNESS WHEREOF, THE ABOVE-NAMED COMPANY HAS CAUSED THESE PRESENTS TO BE SIGNED BY ITS _____ THIS ____ DAY OF _____, 2021.

BLOSSOM WAY HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY,
SUCCESSOR BY MERGER TO CPPB HOLDINGS LLC,
A DELAWARE LIMITED LIABILITY COMPANY

WITNESS: _____ BY: _____

PRINTED NAME

PRINTED NAME, TITLE

WITNESS: _____

PRINTED NAME

ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME BY MEANS OF ____ PHYSICAL PRESENCE OR ____ ONLINE NOTARIZATION, THIS ____ DAY OF _____, 2021, BY _____ AS _____ FOR BLOSSOM WAY HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY, SUCCESSOR BY MERGER TO CPPB HOLDINGS LLC, ON BEHALF OF THE COMPANY, WHO IS ____ PERSONALLY KNOWN TO ME OR HAS PRODUCED _____ (TYPE OF IDENTIFICATION) AS IDENTIFICATION.

MY COMMISSION EXPIRES: _____

MY COMMISSION NO.: _____

NOTARY STAMP

SIGNATURE OF NOTARY PUBLIC _____

PRINTED NAME OF NOTARY PUBLIC _____

IN WITNESS WHEREOF, THE ABOVE-NAMED COMPANY HAS CAUSED THESE PRESENTS TO BE SIGNED BY ITS _____ THIS ____ DAY OF _____, 2021.

BLOSSOM WAY HOLDINGS LLC,
A DELAWARE LIMITED LIABILITY COMPANY

WITNESS: _____ BY: _____

PRINTED NAME

PRINTED NAME, TITLE

WITNESS: _____

PRINTED NAME

ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME BY MEANS OF ____ PHYSICAL PRESENCE OR ____ ONLINE NOTARIZATION, THIS ____ DAY OF _____, 2021, BY _____ AS _____ FOR BLOSSOM WAY HOLDINGS LLC, ON BEHALF OF THE COMPANY, WHO IS ____ PERSONALLY KNOWN TO ME OR HAS PRODUCED _____ (TYPE OF IDENTIFICATION) AS IDENTIFICATION.

MY COMMISSION EXPIRES: _____

MY COMMISSION NO.: _____

NOTARY STAMP

SIGNATURE OF NOTARY PUBLIC _____

PRINTED NAME OF NOTARY PUBLIC _____

IN WITNESS WHEREOF, THE ABOVE-NAMED CORPORATION HAS CAUSED THESE PRESENTS TO BE SIGNED BY ITS _____ DIRECTORS THIS ____ DAY OF _____, 2021.

BLOSSOM ESTATES HOMEOWNERS ASSOCIATION, INC.,
A FLORIDA CORPORATION NOT FOR PROFIT

WITNESS: _____ BY: _____

PRINTED NAME

PRINTED NAME, TITLE

WITNESS: _____

PRINTED NAME

ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF PALM BEACH

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME BY MEANS OF ____ PHYSICAL PRESENCE OR ____ ONLINE NOTARIZATION, THIS ____ DAY OF _____, 2021, BY _____ AS _____ FOR BLOSSOM ESTATES HOMEOWNERS ASSOCIATION, INC., ON BEHALF OF THE CORPORATION, WHO IS ____ PERSONALLY KNOWN TO ME OR HAS PRODUCED _____ (TYPE OF IDENTIFICATION) AS IDENTIFICATION.

MY COMMISSION EXPIRES: _____

MY COMMISSION NO.: _____

NOTARY STAMP

SIGNATURE OF NOTARY PUBLIC _____

PRINTED NAME OF NOTARY PUBLIC _____

BLOSSOM ESTATES
HOMEOWNERS
ASSOCIATION, INC.
SEAL

**BLOSSOM ESTATE
REPLAT NO. 2**

WALLACE SURVEYING
5555 VILLAGE BOULEVARD, WEST PALM BEACH, FLORIDA 33407 • (561) 464-4531
CORP. LICENSE NUMBER 7 009

FIELD:	JOB NO.: 86-1063.99	F.B.	P.G.
OFFICE: S.W.	DATE: JANUARY 2021	DWG. NO. 86-1063-25	
CWD: C.W.	REF: 86-1063.DWG	SHEET	1 OF 3

THIS INSTRUMENT PREPARED BY:
SEAN WALLACE IN THE OFFICE OF
WALLACE SURVEYING CORPORATION
5553 VILLAGE BOULEVARD,
WEST PALM BEACH, FLORIDA 33407

BLOSSOM ESTATE REPLAT NO. 2

BEING A REPLAT OF LOTS 1 THROUGH 6 AND THE PRIVATE ROAD KNOWN AS BLOSSOM WAY, ACCORDING TO THE REPLAT OF THE BLOSSOM ESTATE AS RECORDED IN PLAT BOOK 54, PAGE 127, PUBLIC RECORDS OF PALM BEACH COUNTY FLORIDA, TOGETHER WITH A PORTION OF UNPLATTED LAND, ALL LYING IN SECTION 2, TOWNSHIP 44 SOUTH, RANGE 43 EAST, TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA.

HOMEOWNERS ASSOCIATION ACCEPTANCE

STATE OF FLORIDA
COUNTY OF PALM BEACH

THE BLOSSOM ESTATES HOMEOWNERS ASSOCIATION, INC., A FLORIDA CORPORATION NOT FOR PROFIT, HEREBY ACCEPTS THE DEDICATION AND RESERVATION AS SAID AND SHOWN HEREON, AND HEREBY ACCEPTS ITS MAINTENANCE OBLIGATIONS FOR SAME AS STATED HEREON, DATED THIS ____ DAY OF ____, 2021.

BLOSSOM ESTATES OWNERS ASSOCIATION, INC.
A FLORIDA CORPORATION NOT FOR PROFIT.

WITNESS: _____

BY: _____

PRINTED NAME _____

PRINTED NAME, TITLE _____

WITNESS: _____

PRINTED NAME _____

ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF PALM BEACH

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME BY MEANS OF __, PHYSICAL PRESENCE OR __, ONLINE NOTARIZATION, THIS __ DAY OF __, ON BEHALF OF THE COMPANY WHO IS __, PERSONALLY KNOWN TO ME OR HAS PRODUCED _____ (TYPE OF IDENTIFICATION AS IDENTIFICATION).

MY COMMISSION EXPIRES: _____

MY COMMISSION NO.: _____

NOTARY STAMP

SIGNATURE OF NOTARY PUBLIC

PRINTED NAME OF NOTARY PUBLIC

MORTGAGEE'S JOINDER AND CONSENT

STATE OF _____
COUNTY OF _____

THE UNDERSIGNED HEREBY CERTIFIES THAT IT IS THE HOLDER OF TWO MORTGAGES UPON THE PROPERTY DESCRIBED HEREON AND DOES HEREBY JOIN IN AND CONSENT TO THE DEDICATION OF THE LAND DESCRIBED IN SAID DEDICATION BY THE OWNER THEREOF AND AGREES THAT ITS MORTGAGES WHICH ARE RECORDED IN OFFICIAL RECORDS BOOK 31980, PAGE 440, AND OFFICIAL RECORDS BOOK 31988, PAGE 1988, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, SHALL BE SUBORDINATED TO THE DEDICATION SHOWN HEREON.

IN WITNESS WHEREOF, THE SAID CORPORATION HAS CAUSED THESE PRESENTS TO SIGNED BY ITS ____ THIS ____ DAY OF ____, 2021.

CITIBANK, N.A.

WITNESS: _____

BY: _____

PRINTED NAME _____

PRINTED NAME, TITLE _____

WITNESS: _____

PRINTED NAME _____

ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____

BEFORE ME PERSONALLY APPEARED _____ WHO IS PERSONALLY KNOWN TO ME, OR HAS PRODUCED _____ AS IDENTIFICATION, AND WHO EXECUTED THE FOREGOING INSTRUMENT AS SUCH INSTRUMENT AS SUCH OFFICER OF SAID CORPORATION, AND THAT SAID INSTRUMENT IS THE FREE ACT AND DEED OF SAID CORPORATION.

WITNESS MY HAND AND OFFICAL SEAL THIS ____ DAY OF ____, 2021.

MY COMMISSION EXPIRES: _____

MY COMMISSION NO.: _____

NOTARY STAMP

SIGNATURE OF NOTARY PUBLIC

PRINTED NAME OF NOTARY PUBLIC

MORTGAGEE'S JOINDER AND CONSENT

STATE OF _____
COUNTY OF _____

THE UNDERSIGNED HEREBY CERTIFIES THAT IT IS THE HOLDER OF A CERTAIN MORTGAGES UPON THE PROPERTY DESCRIBED HEREON AND DOES HEREBY JOIN IN AND CONSENT TO THE DEDICATION OF THE LAND DESCRIBED IN SAID DEDICATION BY THE OWNER THEREOF AND AGREES THAT ITS MORTGAGES WHICH ARE RECORDED IN OFFICIAL RECORDS BOOK 2882, PAGE 1089, AND OFFICIAL RECORDS BOOK 28408, PAGE 40, AS MODIFIED BY OFFICIAL RECORDS BOOK 31150, PAGE 417, ALL OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, SHALL BE SUBORDINATED TO THE DEDICATION SHOWN HEREON.

IN WITNESS WHEREOF, THE SAID CORPORATION HAS CAUSED THESE PRESENTS TO SIGNED BY ITS ____ THIS ____ DAY OF ____, 2021.

JPMORGAN CHASE BANK, N.A.

WITNESS: _____

BY: _____

PRINTED NAME _____

PRINTED NAME, TITLE _____

WITNESS: _____

PRINTED NAME _____

ACKNOWLEDGEMENT

STATE OF ILLINOIS
COUNTY OF _____

BEFORE ME PERSONALLY APPEARED _____ WHO IS PERSONALLY KNOWN TO ME, OR HAS PRODUCED _____ AS IDENTIFICATION, AND WHO EXECUTED THE FOREGOING INSTRUMENT AS SUCH OFFICER OF SAID CORPORATION, AND THAT SAID INSTRUMENT IS THE FREE ACT AND DEED OF SAID CORPORATION.

WITNESS MY HAND AND OFFICIAL SEAL THIS ____ DAY OF ____, 2021.

MY COMMISSION EXPIRES: _____

MY COMMISSION NO.: _____

NOTARY STAMP

SIGNATURE OF NOTARY PUBLIC

PRINTED NAME OF NOTARY PUBLIC

TITLE CERTIFICATION

I, MAURA ZISKA, ESQ., A DULY LICENSED ATTORNEY IN THE STATE OF FLORIDA DO HEREBY CERTIFY THAT I HAVE EXAMINED THE TITLE TO THE HEREON DESCRIBED PROPERTY; THAT I FIND THAT THE TITLE TO THE PROPERTY IS VESTED TO THE OWNERS LISTED WITHIN THE DEDICATION; THAT THE CURRENT TAXES HAVE BEEN PAID; THAT ALL MORTGAGES NOT SATISFIED OR RELEASED OF RECORD NOR OTHERWISE TERMINATED BY LAW ARE SHOWN HEREON; AND THAT THERE ARE ENCUMBRANCES OF RECORD, BUT THOSE ENCUMBRANCES DO NOT PROHIBIT THE SUBDIVISION CREATED BY THIS PLAT.

DATED THIS ____ DAY OF ____, 2021.

MAURA ZISKA, ESQ., ATTORNEY AT LAW
LICENSED IN THE STATE OF FLORIDA

TOWN OF PALM BEACH APPROVAL

THE PLAT AS SHOWN HEREON HAS BEEN APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, FLORIDA AND THE TOWN DOES HEREBY FORMALLY ACCEPT THE OFFERS TO DEDICATE CONTAINED ON THE PLAT THIS DAY ____ OF ____, 2021.

KIRK BLOUIN, TOWN MANAGER

REVIEWING SURVEYOR

ON BEHALF OF THE TOWN OF PALM BEACH, THE UNDERSIGNED, A LICENSED PROFESSIONAL SURVEYOR AND MAPPER, HAS REVIEWED THIS PLAT FOR CONFORMITY TO CHAPTER 177, PART 1, FLORIDA STATUTES AS REQUIRED BY SECTION 177.091 (1), FLORIDA STATUTES.

DATE: _____

BY: _____

GARY M. RAYMAN, P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA LICENSE NO. 2833

SURVEYOR AND MAPPER CERTIFICATE

THIS IS TO CERTIFY THAT THE PLAT SHOWN HEREON IS A TRUE AND CORRECT REPRESENTATION OF SURVEY MADE UNDER MY RESPONSIBLE DIRECTION AND SUPERVISION, THAT SAID SURVEY IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF; THAT PERMANENT REFERENCE MONUMENTS (P.R.M.'S.), AND MONUMENTS, ACCORDING TO SECTION 177.091(9), FLORIDA STATUTES, HAVE BEEN PLACED AS REQUIRED BY LAW, AND, FURTHER, THAT THE SURVEY DATA COMPLIES WITH ALL THE REQUIREMENTS OF CHAPTER 177, PART 1, FLORIDA STATUTES AS AMENDED, AND THE ORDINANCES OF THE TOWN OF PALM BEACH, FLORIDA.

GARY L. WALLACE, P.S.M.
PROFESSIONAL SURVEYOR & MAPPER
FLORIDA CERTIFICATION NO. 3357
VILLAGE OF PALM BEACH, FLORIDA
LICENSED BUSINESS NUMBER 4589
5553 VILLAGE BOULEVARD
WEST PALM BEACH, FL 33407

SURVEYOR'S NOTES:

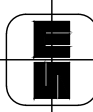
- ALL BEARINGS SHOWN HEREON ARE RELATIVE TO THE NORTH LINE OF LOT 6 OF THE REPLAT OF THE BLOSSOM ESTATE AS RECORDED IN PLAT BOOK 54, PAGE 127, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, AND IS ASSUMED TO BEAR (NOT BE) 88.3824° WEST.
- ALL OTHER BEARINGS ARE RELATIVE THERE TO.
- ALL DISTANCES SHOWN HEREON SHALL BE AS REQUIRED BY THE CURRENT BUILDING AND ZONING REGULATIONS OF THE TOWN OF PALM BEACH.
- NO BUILDING OR ANY KIND OF CONSTRUCTION OR TREES OR SHRUBS SHALL BE PLACED ON ANY EASEMENT WITHOUT PRIOR WRITTEN CONSENT OF ALL EASEMENT BENEFICIARIES AND APPLICABLE TOWN OF PALM BEACH APPROVALS OR PERMITS AS REQUIRED FOR SUCH ENCROACHMENTS.
- IN THOSE CASES WHERE EASEMENTS OF DIFFERENT TYPES CROSS OR OTHERWISE COMCIDE, DRAINAGE EASEMENTS SHALL HAVE FIRST PRIORITY, UTILITY EASEMENTS SHALL BE SUBORDINATE TO THESE WITH THEIR PRIORITIES BEING DETERMINED BY USE RIGHTS GRANTED.
- ALL EASEMENTS SHALL HAVE SECOND PRIORITY. ACCESS EASEMENTS SHALL HAVE THIRD PRIORITY, AND ALL OTHER EASEMENTS SHALL BE SUBORDINATE TO THESE WITH THEIR PRIORITIES BEING DETERMINED BY USE RIGHTS GRANTED.
- THE GRAPHIC FORM IS THE OFFICIAL DEPICTION OF THE SUBDIVIDED LANDS DESCRIBED HEREIN AND WILL, IN NO CIRCUMSTANCES BE SUPERSEDED IN AUTHORITY BY ANY OTHER GRAPHIC OR DIGITAL FORM OF THE PLAT. THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.
- ALL RECORDED INFORMATION REFERS TO THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.
- EXISTING RECORDED EASEMENTS SHOWN HEREON ARE SHOWN FOR INFORMATIONAL PURPOSES ONLY AND ARE NOT PART OF THIS PLAT.
- PER 2019 FLORIDA STATUTES CHAPTER 177.10(12), THE APPROVAL OF A REPLAT BY THE GOVERNING BODY OF A LOCAL GOVERNMENT, WHICH ENCUMBERS LANDS EMBRACED IN ALL OR PART OF A PRIOR PLAT FILED OF PUBLIC RECORD PRIOR TO THE REPLAT, SHALL BE CONSIDERED AS A "REPLAT". AUTOMATICALLY AND SIMULTANEOUSLY VACATE AND ANNUL ALL OF THE PER 2019 FLORIDA STATUTES, CHAPTER 177, SECTION 09(1)(2) ALL PLATTED UTILITY EASEMENTS SHALL ALSO BE EASEMENTS FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES, PROVIDED, HOWEVER, NO SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES SHALL INTERFERE WITH THE FACILITIES AND SERVICES OF AN ELECTRIC, TELEPHONE, GAS, OR OTHER PUBLIC UTILITY. IN THE EVENT A CABLE TELEVISION COMPANY DAMAGES THE FACILITIES OF A PUBLIC UTILITY, IT SHALL BE SOLELY RESPONSIBLE FOR THE DAMAGES.

SHEET 2 OF 3

TOWN SEAL:

REVIEWING SURVEYORS SEAL:

BLOSSOM ESTATE
REPLAT NO. 2

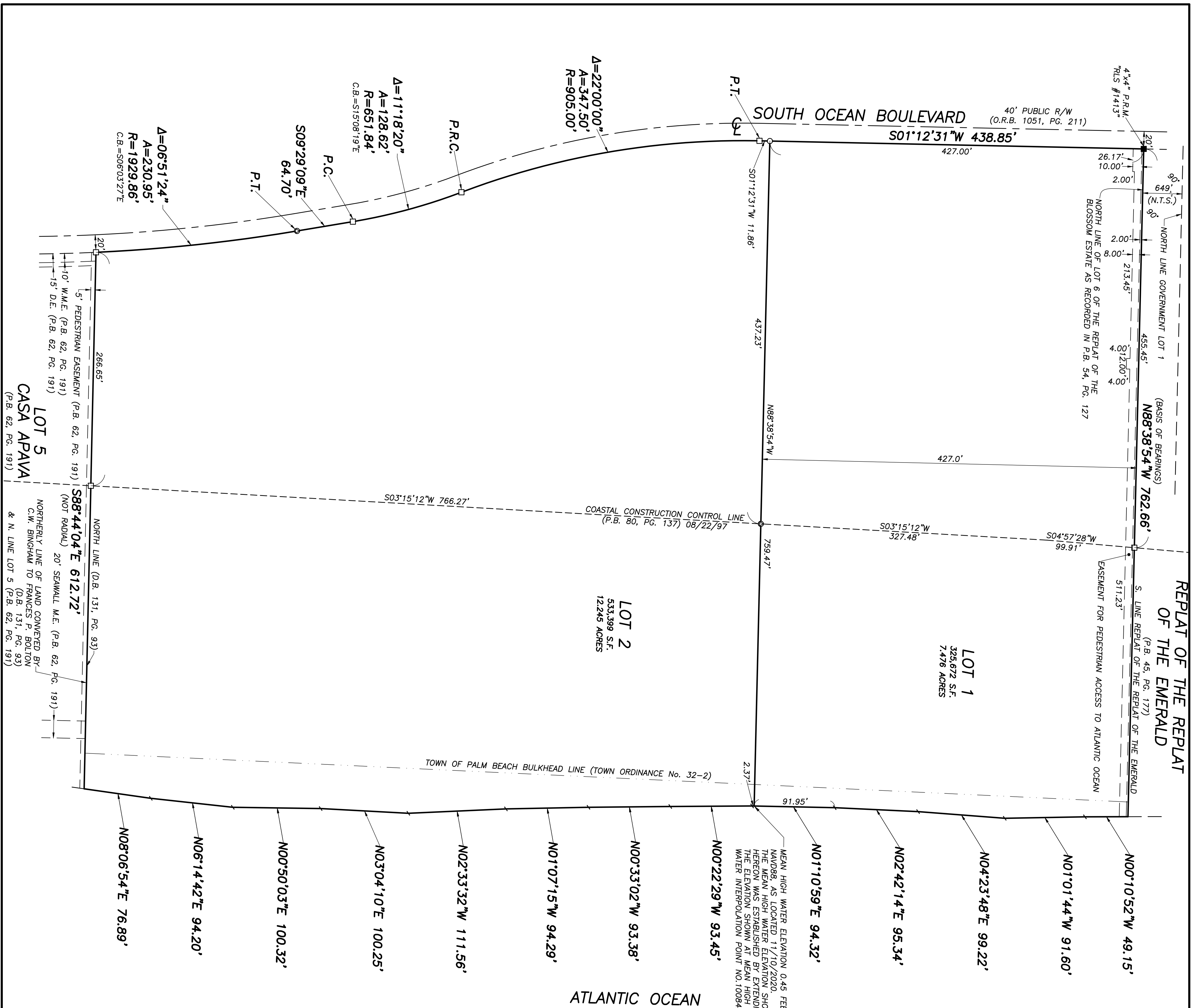


5553 VILLAGE BOULEVARD, WEST PALM BEACH, FLORIDA 33407
OFFICE: (561) 844-4531

FIELD: _____ JOB NO.: 86-1063.39 F.B. _____ PG. _____

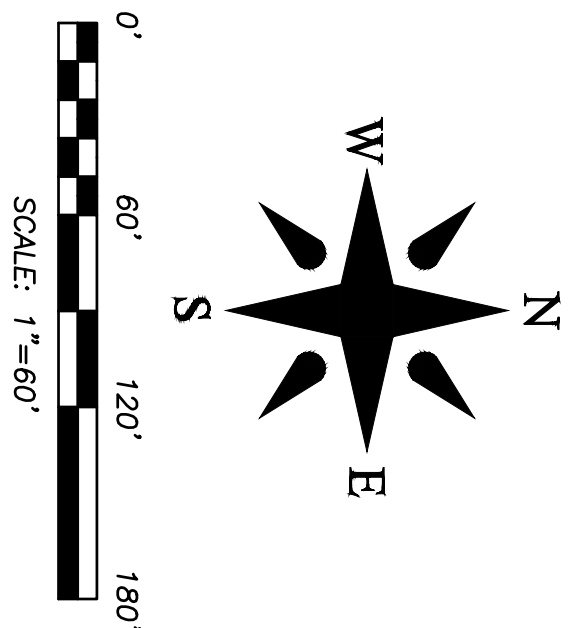
OFFICE: R.C.S./W. DATE: JANUARY 2021 DWG. NO. 86-1063-25

CWD: C.W. REF: 86-1063.DWG SHEET 2 OF 3



**BLOSSOM ESTATE
REPLAT NO. 2**

SHEET 3 OF 3



==	CONCRETE MONUMENT FOUND (AS NOTED)	
==	"4.4" CONCRETE MONUMENT WITH DISK STAMPED	
==	"P.R.M. LB #4569"	
==	SET 5/8" IRON ROD & CAP STAMPED "WALLACE LB #4569"	
==	FOUND IRON ROD AND CAP (AS NOTED)	
==	SET MAG NAIL & DISK STAMPED "P.R.M. LB #4569"	
==	SET MAG NAIL & DISK STAMPED "WALLACE LB #4569"	
==	ALSO KNOWN AS	
==	CENTREFRUE	
==	DEED BOOK	
==	EASEMENT	
==	NON-ACCESS EASEMENT	
==	NOT TO SCALE	
==	LICENSED BUSINESS	
==	MEASURE	
==	MAINTENANCE EASEMENT	
==	OFFICIAL RECORDS BOOK	
==	OFFSET	
==	PLAY BOOK	
==	PALM BEACH COUNTY	
==	POINT OF COMPOUND CURVATURE	
==	PAGE	
==	POINT OF BEGINNING	
==	POINT OF REVERSE CURVATURE	
==	PERMANENT REFERENCE MONUMENT	
==	POINT OF TANGENCY	
==	ROAD PLAY BOOK	
==	RIGHT-OF-WAY	
==	STATE ROAD	
==	UTILITY EASEMENT	
==	WITNESS CORNER	

A	ARC (LENGTH)
=	=
R	RADIUS
=	=
Δ	CENTRAL ANGLE
=	=
C.B.	CHORD BEARING

ABBREVIATIONS & SYMBOLS



BLOSSOM ESTATE

REPLAT NO. 2



WALLACE SURVEYING

CORP. LICENSE NUMBER # 4549
5533 WILDER BOUTIQUE, WEST PALM BEACH, FLORIDA 33407 (561) 840-4551

FIELD	JOB NO. 86-1063-399	F.B.	P.G.
OFFICE: R.C./S.W.	DATE: JANUARY 2021	DWG. NO. 86-1063-25	
KCD, C.W.	REF: 86-1063-DWG	SHEET 3 OF 3	

DEVELOPER'S AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2021, by and between Blossom Way Holdings LLC (hereinafter referred to as "Owner") and the Town of Palm Beach (hereinafter referred to as "Town").

RECITALS:

1. **Submission of Replat No. 2.**

The Owner has submitted a proposed replat entitled REPLAT NO. 2 OF THE BLOSSOM ESTATE being a plat of a parcel of land in the Town and County of Palm Beach, State of Florida, more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"), and has requested that the Town approve said plat for the purpose of recording, conditioned upon the compliance by the Owner with the following terms and provisions.

2. **Demolition/Construction.**

Upon the approval of said replat for recording, the Owner agrees to complete the "Demolition of Improvements" required to be made in said subdivision on or before _____. For purposes of this Agreement, the Demolition of Improvements required to be made include the following work, together with all normal and required appurtenances as reflected on the approved development plans entitled: REPLAT NO. 2 OF THE BLOSSOM ESTATE, prepared by Wallace Surveying Corp. (the "Site Development Plans"), dated _____:

- (a) demolition of residence and all accessory structures located at 70 Blossom Way, Palm Beach, Florida;
- (b) demolition of the residence and all accessory structures located at 10 Blossom Way, Palm Beach, Florida;
- (c) demolition of the Blossom Way Right of Way;
- (d) re-grading and reshaping of Property for compliance with the drainage requirement of the Town.
- (e) removal of existing utility infrastructure (including, but not limited to, water, sewer, drainage, electrical, gas and communications) within the Property in accordance with the requirements of the Town.

3. **Letter of Credit.**

(a) To secure the performance of the Owner's obligation to perform said Demolition, the Owner agrees to provide a clear irrevocable Letter of Credit satisfactory to the Town in the amount of _____ (which is 135% of the estimated contract price of the demolition of the above structures, and to further provide for the payment of any engineering costs, legal fees, and any and all appropriate and contingent costs incurred by the Town in the event of default of the performance by the Owner and his undertakings under the provisions of Paragraph 2 above to the extent deemed necessary by the Town to fulfill the Demolition.

(b) Prior to this Agreement becoming effective the aforesaid Letter of Credit in the amount of _____ shall be delivered to and approved by the Town.

3. **Successors and Assigns.**

The provisions of this Agreement are deemed to be covenants which shall run with and bind the Property and all subsequent owners thereof. All references herein to Owner shall be deemed to include the current owner of the Property and each and every subsequent heir, assignee, successor, and subsequent owner of all or any portion of the Property.

IN WITNESS WHEREOF the parties have executed and entered into this Agreement as of the date set forth above.

Signed, sealed and delivered in the presence of:

OWNER:

BLOSSOM WAY HOLDINGS LLC
a Delaware Limited Liability Company

Witness

BY: _____
Name: Gerald Beeson
Title: Authorized Signatory

Print Name

Witness

Print Name

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2021, by _____, the _____ of _____, a _____, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

TOWN:

TOWN OF PALM BEACH

Witness

Print Name

Witness

Print Name

By _____
Kirk Blouin, Town Manager

ATTEST:

Queenester Nieves, Town Clerk

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

John C. Randolph, Town Attorney

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

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2021, by KIRK BLOUIN and QUEENESTER NIEVES, the Town Manager and Town Clerk of the TOWN OF PALM BEACH, a municipal corporation existing under the laws of the State of Florida, on behalf of the corporation, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

EXHIBIT "A" - LEGAL DESCRIPTION

THAT PORTION OF THE FOLLOWING DESCRIBED PROPERTY WHICH LIES EAST OF THE EASTERLY RIGHT-OF-WAY LINE OF SOUTH OCEAN BOULEVARD: SITUATE IN GOVERNMENT LOT 1, SECTION 2, TOWNSHIP 44 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BOUNDED ON THE SOUTH BY THE NORTHERLY LINE OF LAND CONVEYED BY C.W. BINGHAM TO FRANCES P. BOLTON BY DEED DATED MAY 22, 1919, FILED MARCH 6, 1920 AND RECORDED MARCH 20, 1920 IN DEED BOOK 131 AT PAGE 93 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; ON THE EAST BY THE ATLANTIC OCEAN; ON THE NORTH BY A LINE 649 FEET SOUTH FROM AND PARALLEL TO THE NORTH LINE OF SAID GOVERNMENT LOT 1.

CONTAINING IN ALL 19.722 ACRES, MORE OR LESS.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00313 VARIANCE(S) Zoning District: R-B Low Density Residential The application of MATTHEW AND ALEXANDRA MURPHY, applicant, relative to property located at **113 ATLANTIC AVE**, legal description on file, is described below. Section 134 893(b)(13): Request for a variance to allow the construction of a 210 square foot awning on the east side of the existing residence and a 644 square foot awning on the west side of the existing residence which will result in a cubic content ratio of 4.499 cubic feet in lieu of 3.998 existing and the 4.148 maximum allowed. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to the February 24, 2021 meeting. Carried 7-0.] **Request for Deferral to the March 3, 2021 Meeting Per Letter from Maura Ziska**

Presenter

ATTACHMENTS:

- ❑ **Letter Dated February 1, 2021 from Maura Ziska**

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

*also admitted in NY

Esperanté
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401
Telephone 561-802-8960
Facsimile 561-802-8995

VIA EMAIL

February 1, 2021

Paul Castro
Kelly Churney
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Z-20-00313
113 Atlantic Avenue, Palm Beach, Florida

Dear Paul and Kelly:

Please **defer** the above referenced matter from the **February 10, 2021** Town Council meeting to the **March 3, 2021** Town Council meeting. Thank you.

Sincerely,

Maura Ziska

Maura A. Ziska

maz/jc
cc: Client

A Florida Professional Limited Liability Company Including Professional Associations

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00314 SITE PLAN REVIEW Zoning District: R-B Low Density Residential The application of CASTELO, MANUEL J., Applicants, relative to property located at **1464 N OCEAN BLVD**, legal description on file, is described below. Section 134 893: Site Plan Review to allow the construction of a 4,140 square foot two story, single family residence on a non conforming platted lot which is 9,770 in area in lieu of the 10,000 square foot minimum required in the R-B Zoning District and 90 feet in width in lieu of the 100 foot minimum width required In the R-B Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to the February 24, 2021 meeting. Carried 7-0.] **Request for Deferral to the March 3, 2021 Meeting Per Letter from Maura Ziska**

Presenter

ATTACHMENTS:

- ❑ **Letter Dated February 1, 2021 from Maura Ziska**
- ❑ **Email Dated January 25, 2021 from John C. Dotterrer**

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

*also admitted in NY

Esperanté
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401
Telephone 561-802-8960
Facsimile 561-802-8995

VIA EMAIL

February 1, 2021

Paul Castro
Kelly Churney
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Z-20-00314
1464 North Ocean Boulevard, Palm Beach, Florida

Dear Paul and Kelly:

Please **defer** the above referenced matter from the **February 10, 2021** Town Council meeting to the **March 3, 2021** Town Council meeting. Thank you.

Sincerely,

Maura Ziska

Maura A. Ziska

maz/jc
cc: Client

A Florida Professional Limited Liability Company Including Professional Associations

From: [John C. Dotterrer](#)
To: [Kelly Churney](#); [Wayne Bergman](#)
Cc: [MJ Castelo](#); [Patrick Seagraves](#); [Dustin](#); [Maura Ziska](#)
Subject: LETTER IN SUPPORT - 1464 N. Ocean Blvd; ARCOM Meeting Jan 27, 2021; Council Meeting Feb. 10, 2021
Date: Monday, January 25, 2021 2:47:39 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Ms. Churney, please distribute this Letter of Support for 1464 N. Ocean Blvd. , ARCOM Case # B-004-2021; Council Zoning Case # Z-20-00314 to Architectural Review Commission Members, staff, and Town Council.

Dear Mr. Chairman and Members of the Architectural Review Commission,

I reside at 1470 North Ocean Blvd., contiguous to and adjoining the Applicant subject property to the north.

With a few minor adjustments to the plans from those last displayed on the Town's DRA web page (add gutters connected to the on-site water retention system; pool equipment behind pool west "water wall"; delete generator; remove sabals from north side), to which the Owner, Architect and Landscape Architect have confirmed their agreement, I wholeheartedly write in SUPPORT of the proposed project.

This property faces North Ocean Boulevard, and while it is sited on a block of 5 other contiguous properties which contain original low height structures, the Owners and their Architect, Mr. Seagraves performed a fine work blending this Monterey with the existing neighborhood context. They have been sensitive to the neighbors and surrounding homes to create a proposal that will be in harmony and not excessively dissimilar. 18-205. The height and roof line have been kept modest for a North Ocean Boulevard residence.

I would like to add that the Owner-Applicants - Mr. and Mrs. Castelo approached their design in the right and a polite manner by contacting and conversing with neighbors in advance, listening and incorporating their input

before submittal to the Town. This practice should be encouraged, and somehow communicated to applicants so that applications may come to ARCOM pre-vetted , shortening and simplifying the review and hearing process.

I commend the Application as modified with the above listed adjustments, which I expect Applicant's Architect will announce at the January 27 meeting, and I support its first round approval as thereby so submitted.

Best Wishes,

John C. Dotterrer
1470 N Ocean Blvd.
Palm Beach, FL 33480

561 475 9500
jdotterrer@hotmail.com

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS ATTORNEY PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE IMMEDIATELY NOTIFY ME BY TELEPHONE AND PERMANENTLY DELETE THE ORIGINAL AND ANY COPY OF THIS E-MAIL AND DESTROY ANY PRINTOUT THEREOF.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - New Business

Agenda Title

Z- 20-00315 VARIANCE(S) Zoning District: R-C Medium Density Residential The application of MARTIN V. KATZ AS TRUSTEE OF THE BRAZILIAN PB LAND TRUST DATED OCTOBER 14, 2020, Applicant, relative to property located at **237/239 BRAZILIAN AVE**, legal description on file, is described below. The applicant recently purchased the duplex located at 235/237 Brazilian Avenue and desires to combine the 2 units into one single family residence. The landscaped open space requirement for a single family residence in the R-C Zoning District is 45%. The existing (previously approved) landscaped open space is 30%. The applicant is requesting to keep the landscaped open space "as is" and is requesting the following variances: Section 134-948(11): A request for a variance to allow the landscaped open space to be 30% in lieu of the 45% minimum required when combining the two units from a duplex to a single family residence. Section 134-948(11): A request for a variance to allow the perimeter landscaped open space to be 33% in lieu of the 50% of the 45% minimum required when combining the two units from a duplex to a single family residence.
[Applicant's Representative: Maura Ziska Esq]

Presenter

ATTACHMENTS:

- ❑ **Memorandum Dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ❑ **Comments from the Development Review Committee**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00315 VARIANCE(S)**
237 BRAZILIAN AVE

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

The applicant recently purchased the duplex located at 235/237 Brazilian Avenue and desires to combine the 2 units into one single family residence. The landscaped open space requirement for a single family residence in the R-C Zoning District is 45%. The existing (previously approved) landscaped open space is 30%. The applicant would like to keep the landscaped open space "as is" and is requesting the following variances: Section 134-948(11): A request for a variance to allow the landscaped open space to be 30% in lieu of the 45% minimum required when combining the two units from a duplex to a single family residence. Section 134-948(11): A request for a variance to allow the perimeter landscaped open space to be 33% in lieu of the 50% of the 45% minimum required when combining the two units from a duplex to a single family residence.

ADDRESS: 237 BRAZILIAN AVE

OWNER: 237 BRAZILIAN AVE LLC

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-23-05-025-0030

ZONING DISTRICT: R-C Medium Density Residential

LEGAL DESCRIPTION: ROYAL PARK ADD LT 3 BLK E

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 12/7/20

APPLICATION NO.: Z-20-00315 **APPLICATION TYPE:** VARIANCE(S)

ADDRESS: 237 BRAZILIAN AVE

DESCRIPTION:

The applicant recently purchased the duplex located at 235/237 Brazilian Avenue and desires to combine the 2 units into one single family residence. The landscaped open space requirement for a single family residence in the R-C Zoning District is 45%. The existing (previously approved) landscaped open space is 30%. The applicant would like to keep the landscaped open space "as is" and is requesting the following variances: Section 134-948(11): A request for a variance to allow the landscaped open space to be 30% in lieu of the 45% minimum required when combining the two units from a duplex to a single family residence. Section 134-948(11): A request for a variance to allow the perimeter landscaped open space to be 33% in lieu of the 50% of the 45% minimum required when combining the two units from a duplex to a single family residence.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	1/29/2021	No Comment.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	12/28/2020	There are no fire code concerns with the proposed project.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	12/28/2020	There are no provisions in the fire code to prohibit the combination of single living spaces. This renovation will most likely trigger the town ordinance that requires providing fire protection in the space.
PZB - PLANNING AND ARCHITECTURAL REVIEW	Laura Groves Van Onna, Historic Preservation Planner	1/29/2021	A proposed project was on the tentative agenda for the regularly scheduled Architectural Commission (ARCOM) meeting on 02/24/2021 as Application B-014-2021; however, it has subsequently been withdrawn. It does not appear that there is any proposed exterior work associated with this zoning application. Please note that all proposed changes to exterior would be subject to design review.
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	12/28/2020	This new two-family residential development is already nonconforming to the minimum landscape open space requirement. By converting to a single-family home it will become more nonconforming and a variance is required. The applicant is required to demonstrate to the satisfaction of the Town Council that there is a hardship in order to approve the variance.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00316 VARIANCE(S) Zoning District: R-AA Large Estate

Residential The application of ROBERT A. MERRIL, Applicant, relative to property located at **500 REGENTS PARK**, legal description on file, is described below. The applicant is undertaking the renovation of a landmark home and raising the finished floor of the residence and appurtenances to 9.0 feet NAVD, adding pergolas to the rear of the residence, and adding a bay window to the north of the residence. The following variances are being requested in order to raise the house above the minimum flood elevation and add three additions as follows: 1) Section 134-793 (7): a building height plane of 33.3 feet in lieu of the 40.7 minimum required; 2) Section 134-793(8): a north side yard setback for the 286 square foot pergola to be 11 feet In lieu of the 30 foot minimum required; 3) Section 134-793(8): a south side yard setback for the 276 square foot pergola to be 11.66 feet in lieu of the 30 foot minimum required; 4) Section 134-793(8): a north side yard setback for the 17.5 square foot bay window to be 28 feet in lieu of the 30 foot minimum required; 5) Section 134-793(11): a lot coverage of 41.3% in lieu of the 38% existing and the 25% maximum allowed to add the 2 pergolas to the rear of the house; 6) Section 134-1667: a height of the retaining wall/fence combination in the front yard setback of 9.7 feet in lieu of the 6 foot maximum allowed; 7) Section 134-1668: a height of the two piers to be 14.4 feet in lieu of the 8 foot maximum allowed; 8) Section 134-1667: to allow the piers in the front to not have a continuous 3 foot tall hedge in front of it. [Applicant's Representative: Maura Ziska Esq] [Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause architectural impact to the subject landmarked property. Carried 7-0.] [The Landmarks Preservation Commission approved the project as presented. Carried 7-0.]

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▣ **Comments from the Development Review Committee**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00316 VARIANCE(S)**
500 REGENTS PARK

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

The applicant is undertaking the renovation of a landmark home and raising the finished floor of the residence and appurtenances to 9.0 feet NAVD, adding pergolas to the rear of the residence, and adding a bay window to the north of the residence. The following variances are being requested in order to raise the house above the minimum flood elevation and add three additions as follows: 1) Section 134-793 (7): a building height plane of 33.3 feet in lieu of the 40.7 minimum required; 2) Section 134-793(8): a north side yard setback for the 286 square foot pergola to be 11 feet In lieu of the 30 foot minimum required; 3) Section 134-793(8): a south side yard setback for the 276 square foot pergola to be

11.66 feet in lieu of the 30 foot minimum required; 4) Section 134-793(8): a north side yard setback for the 17.5 square foot bay window to be 28 feet in lieu of the 30 foot minimum required; 5) Section 134-793(11): a lot coverage of 41.3% in lieu of the 38% existing and the 25% maximum allowed to add the 2 pergolas to the rear of the house; 6) Section 134-1667: a height of the retaining wall/fence combination in the front yard setback of 9.7 feet in lieu of the 6 foot maximum allowed; 7) Section 134-1668: a height of the two piers to be 14.4 feet in lieu of the 8 foot maximum allowed; 8) Section 134-1667: to allow the piers in the front to not have a continuous 3 foot tall hedge in front of it.

ADDRESS: 500 REGENTS PARK

OWNER: LOUIS EDDY J

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-35-07-000-0030

ZONING DISTRICT: R-AA Large Estate Residential

LEGAL DESCRIPTION: REGENTS PARK LT 3

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Page Two

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT
Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 12/7/20

APPLICATION NO.: Z-20-00316 **APPLICATION TYPE:** VARIANCE(S)

ADDRESS: 500 REGENTS PARK

DESCRIPTION:

The applicant is undertaking the renovation of a landmark home and raising the finished floor of the residence and appurtenances to 9.0 feet NAVD, adding pergolas to the rear of the residence, and adding a bay window to the north of the residence. The following variances are being requested in order to raise the house above the minimum flood elevation and add three additions as follows: 1) Section 134-793 (7): a building height plane of 33.3 feet in lieu of the 40.7 minimum required; 2) Section 134-793(8): a north side yard setback for the 286 square foot pergola to be 11 feet in lieu of the 30 foot minimum required; 3) Section 134-793(8): a south side yard setback for the 276 square foot pergola to be 11.66 feet in lieu of the 30 foot minimum required; 4) Section 134-793(8): a north side yard setback for the 17.5 square foot bay window to be 28 feet in lieu of the 30 foot minimum required; 5) Section 134-793(11): a lot coverage of 41.3% in lieu of the 38% existing and the 25% maximum allowed to add the 2 pergolas to the rear of the house; 6) Section 134-1667: a height of the retaining wall/fence combination in the front yard setback of 9.7 feet in lieu of the 6 foot maximum allowed; 7) Section 134-1668: a height of the two piers to be 14.4 feet in lieu of the 8 foot maximum allowed; 8) Section 134-1667: to allow the piers in the front to not have a continuous 3 foot tall hedge in front of it.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	2/1/2021	No comment: Town's stormwater level of service is being meet for the proposed improvement area, based upon calculations provided. No improvements depicted on entry road.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	12/28/2020	There are no fire code concerns with the proposed project.
PZB - PLANNING AND ARCHITECTURAL REVIEW	Laura Groves Van Onna, Historic Preservation Planner	1/29/2021	This proposed project was approved (7-0) by the Landmarks Preservation Commission (LPC) on 01/20/2020 as Application for Certificate of Appropriateness (COA) #002-2021 with the condition that the neck of the columns align with the base of the entablature. The Commission found that implementation of the proposed variances will not cause negative architectural impact to the subject Landmarked property (7-0).
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	12/28/2020	The applicant is required to demonstrate a hardship for all of the variances to the satisfaction of the Town Council.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00317 SPECIAL EXCEPTION WITH SITE PLAN REVIEW Zoning District: R-A Estate Residential The application of 1063 N OCEAN BLVD LLC (KEVIN DIETERICH, MANAGER), Owner, relative to property located at **1063 N OCEAN BLVD**, legal description on file, is described below. The applicant is proposing a new 18,918 square foot, two story house on a nonconforming lot in the R-A zoning district. Special exception and site plan reviews are required pursuant to Section 134- 843(b) of the Town Code because the project is being proposed on a non platted lot with a minimum lot width of approximately 118.87' in lieu of the 125' width required in the R-A zoning district. [Applicant's Representative: James Crowley Esq] [The Architectural Review Commission approved the project as presented. Carried 5-2.]

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▣ **Comments from the Development Review Committee**
- ▣ **Letter Dated January 26, 2021 from Alan J. Ciklin on behalf of 1071 N. Ocean Blvd.**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00317 SPECIAL EXCEPTION WITH SITE PLAN REVIEW**
1063 N OCEAN BLVD

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

The applicant is proposing a new 18,918 square foot, two-story house on a nonconforming lot in the R-A zoning district. Special exception and site plan reviews are required pursuant to Section 134-843(b) of the Town Code because the project is being proposed on a non-platted lot with a minimum lot width of approximately 118.87' in lieu of the 125' minimum width required in the R-A zoning district.

ADDRESS: 1063 N OCEAN BLVD

OWNER: 1063 N OCEAN BLVD LLC

OWNER'S REPRESENTATIVE: JAMES M CROWLEY ATTORNEY

PROPERTY CONTROL NO.: 50-43-43-02-00-001-0031

ZONING DISTRICT: R-A Estate Residential

LEGAL DESCRIPTION: 2/3-43-43, S 118.59 FT OF N 900 FT OF GOV LT 1
SEC 2 & S 118.59 FT OF N 503 FT OF GOV LT 4
SEC 3 LYG W OF & ADJ THERETO E OF OCEAN
BLVD

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT
Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 12/7/20

APPLICATION NO.: Z-20-00317 **APPLICATION TYPE:** SPECIAL EXCEPTION WITH SITE PLAN REVIEW

ADDRESS: 1063 N OCEAN BLVD

DESCRIPTION:

The applicant is proposing a new 18,918 square foot, two-story house on a nonconforming lot in the R-A zoning district. Special exception and site plan reviews are required pursuant to Section 134-843(b) of the Town Code because the project is being proposed on a non-platted lot with a minimum lot width of approximately 118.87' in lieu of the 125' minimum width required in the R-A zoning district.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	2/1/2021	No Comment. Town's stormwater level of service is being meet, based upon calculations provided.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	12/28/2020	There are no fire codes to prohibit the project. However the town ordinance will require the house to have fire protection with a sprinkler system.
PZB - PLANNING AND ARCHITECTURAL REVIEW	Laura Groves Van Onna, Historic Preservation Planner	1/29/2021	This proposed project was approved (5-2) by the Architectural Commission (ARCOM) on 01/27/2021 as Application B-007-2021.
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	12/28/2020	With the exception of the nonconforming lot size, the house meets all of the other lot, yard and area requirements in the Zoning Code. I have no comments.

Ciklin Lubitz

ATTORNEYS AT LAW

515 N. Flagler Drive, 20th Floor, West Palm Beach, FL 33401

O.561.832.5900 | F.561.833.4209

www.ciklinlubitz.com

Bruce G. Alexander, P.A.
Jerald S. Beer, P.A.
John D. Boykin, P.A.

Jonathan B. Butler, P.A.
Richard R. Chaves, P.A.
Alan J. Ciklin, P.A.

Robert L. Crane, P.A.
Ronald E. Crescenzo, P.A.
Jeffrey M. Garber, P.A.

Gregory S. Kino, P.A.
Charles A. Lubitz, P.A.*
Jason S. Mankoff

Leeza D. Newman
Dean Vegosen, P.L.*
Gary Walk, P.A.

Kevin D. Wilkinson, P.A.*

**Designates Of Counsel*

January 26, 2021

VIA E-MAIL

Town of Palm Beach ARCOM
Town of Palm Beach Council Members

Re: ARCOM Item VII E 7/1063 N. Ocean Boulevard

Dear ARCOM and Town Council Members:

I represent the owner, Reiwa LLC, of the adjacent property at 1071 N. Ocean Boulevard. My client has serious concerns about this project. Upon receipt of the original notice, I reached out to the Applicant, and after receiving the proposed plans, I provided a detailed list of concerns on January 13th. The list of concerns is attached. I requested a response to the list of concerns but I was informed last week that the only modification would be to the landscape plan. None of the concerns have been addressed by the Applicant.

The concerns and opposition to the proposed development are based on Section 18-205, Criteria for Building Permit of the ARCOM standards and more specifically Section (6) e-h. Our objections are as follows:

- The development is proposed on a non-conforming lot. In lieu of the required 125 feet in width, the subject property is 118.87 feet. There is a higher burden on the property owner in developing a smaller lot. In fact, the total square footage of the proposed house has been increased from the existing 13,550 square feet to 18,918 square feet (which includes the basement), an increase of approximately 40%. The air-conditioned space has increased from 10,239 square feet to 16,338 square feet, an increase of about 60%.
- The landscape screening and buffering along the north property line is inadequate for the height and massing of the proposed house. It appears as if the existing site wall is to remain but the grade is being raised. The proposed landscaping is insufficient and needs to be increased in density, and the wall should be increased in height to the maximum allowed.

- The setback along the northerly property line is inadequate to protect my client's property from the excessive massing of the proposed house. The setback is shown as 15 feet 6 inches while the setback from the southerly property line is 19 feet 11 inches and borders a beach access easement. Moving the house to the south appears to be a logical alternative.
- Massing of this proposed house is a major concern and, as previously mentioned, Section (6) e-h requires compliance with the following criteria:

The proposed building or structure is not excessively dissimilar in relation to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features:

- a. Height of building or height of roof.
- b. Other significant design features including, but not limited to, materials or quality or architectural design.
- c. Architectural compatibility.
- d. Arrangement of the components of the structure.
- e. Appearance of mass from the street or from any perspective visible to the public or adjoining property owners.
- f. Diversity of design that is complimentary with size and massing of adjacent properties.
- g. Design features that will avoid the appearance of mass through improper proportions.
- h. Design elements that protect the privacy of neighboring property.

The proposed house has 132 feet of two-story structure and 160 feet 8 inches of total structure along the shared property line. The height of the current structure is being increased from 44 feet 3 inches to 48 feet with a finished floor elevation of 18 feet. For context, my client's house is 45.32 feet in height with a 15.85 finished floor elevation. In addition, the proposed two-story portion of the structure is now eastward of the existing house.

- Design elements are required to protect the privacy of neighboring properties, but this proposal includes what appears to be a terrace area within the 15-foot northerly setback along with a fountain or similar feature. Both noise and privacy are concerns.
- The existing seawall is 14.97 feet in height and is proposed to be increased to 16.5 feet. The increase in grade that corresponds to the seawall exceeds that of my client's property at 1071 N. Ocean Boulevard and the house to the south at 1055 N. Ocean Boulevard. This increase in grade exposes both neighboring properties to excess runoff and flooding, and does not coordinate with, and breaks from, the seawall that runs along both properties.

In conclusion, the proposed development of 1063 N. Ocean Boulevard does not meet the required criteria of Section 18-205. The proposed development is not in harmony with the

neighboring properties. The proposed structure is excessively dissimilar in the height of the building. The appearance of the mass along the northerly property line is overwhelming and excessively dissimilar and the massing is not compatible or “complimentary” with 1071 N. Ocean Boulevard. The design features increase rather than avoid the appearance of mass and do not protect the privacy of neighboring properties.

The criteria are not met, and the application should be “disapproved”.

Sincerely,

s/s/Alan J. Ciklin
Alan J. Ciklin

AJC/cmm

Attachment

cc: Client (via e-mail)

There are several areas of concern related to the proposed property at 1063 North Boulevard as it relates to the property at 1071 North Ocean Boulevard.

They are as follows-

Screening, Height, Setback, Massing and maintenance of screening during construction and through landscaping after completion.

Screening -

The proposed project does not provide adequate screening or privacy to the adjacent property. The submission drawings do not provide for screening and privacy via a new site wall or landscape screening. The existing site wall does not and will not address any privacy or screening along the north property line.

The proposed landscape plan does not address the screening for sound, privacy, or to visually screen the proposed massing of the structure. The landscape plans and site walls need to be addressed in order to provide the greatest visual and sound screening. The landscape plan should provide for planting of various heights and densities along the north property line that will provide a full visual screening and buffer to the adjacent property. The existing sea grape trees do not provide any screening. The adjacent owner has maintained and recently added landscape material to further screen the property at 1063, after the owner of 1063 opened walls facing north and added windows looking onto 1071's property.

Setback -

The proposed structure provides for only the minimum setback plus 6" along the north property line. At 15'-6" the structure does not protect the privacy of the neighboring property.

The arrangement of the structure is dissimilar from the surrounding properties. The proposed setback does not provide for any privacy for the adjacent neighbor. The largest setback (19' 11") has been provided along the south property line which abuts an open easement. The hardscape area outside of the family room appears to be a proposed area for gathering within the setback area. There is a fountain along the northern portion of the hardscape area which will create noise for the adjacent property.

The area closest to the neighbor, and within the setback does not provide for privacy to the neighbor.

The setback along the north property line should be increased to address and protect the privacy of the neighbor. The hardscape area outside of the family room should be removed.

Massing -

The proposed project consists of 132' of two stories of massing along the northern portion of the site.

The appearance of mass from the adjacent neighbor is significantly larger than the existing house and of similar houses in the area, and the second floor is pushed eastward beyond the existing two-story structure. The second floor is pushed eastward beyond the existing two-story structure. The overall massing is significantly larger in height and length on the property and along the northern portion of the site. The proposed design pushes the greatest mass against the adjacent property. The southern portion of the structure is designed with consideration of setback and massing. The eastward and northern setbacks should be addressed to consider the massing in relation to the neighbor.

Height -

The proposed building height is significantly higher than the existing structure and that of the adjacent neighbor. The massing of the structure along with its height does not provide for privacy for the neighbor and encroaches visually upon the property. The height of the grading and structure are not compatible or in consideration of the adjacent property. The overall height and the overall grading height should be revised to address the massing issues created by the proposed project. The proposed grading and raised seawall are not coordinated in the submission drawings to retain the water and drainage. The proposed grading and height are not in relation to the character or structures of the neighboring property, properties in the area, and properties on small non-conforming lots in the RA district.

Screening during construction and after completion -

The proposed project should be fully screened by silt fencing and visual screening though the entirety of the construction. The site should be maintained to protect the adjacent neighbor from any cut and fill that is kept on site, runoff, and debris. After construction, the property owner should agree to maintain landscape of various heights and landscape species to create a full buffer of visual screening. The landscape plan should be revised to address screening and provided for review.

Sight Lines

It appears that the landscaping facing the road has palm trees that will present sight line and safety issues for the owners and guests leaving 1071. The plans submitted by 1063 do not provide a sight line analysis.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00319 SITE PLAN REVIEW WITH VARIANCE(S) Zoning District: R-C Medium Density Residential The application of AUSTRALIAN OF PALM BEACH CONDOMINIUM (RICK HALLETT, MANAGER), Applicant, relative to property located at **429 AUSTRALIAN AVE**, legal description on file, is described below. The applicant condominium is requesting a modification to their site plan to eliminate 400 square feet of landscaped open space from the northeast corner of their parking lot. The condominium sold a 20 foot by 20 foot parcel to their neighbor to the north so the neighbor could have room to install a generator. This results in two (2) variances being requested: 1) A variance to allow landscaped open space to be 27.1 % in lieu of the 28.3% existing and the 35% minimum required In the R C Zoning District. 2) A variance for an east side yard setback to the new property line of 6.8 feet in lieu of the 20 foot minimum required for multi family use in the R-C Zoning District. [Applicant's Representative: Maura Ziska Esq]

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▣ **Comments from the Development Review Committee**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00319 SITE PLAN REVIEW WITH VARIANCE(S)**
429 AUSTRALIAN AVE

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

The applicant condominium is requesting a modification to their site plan to eliminate 400 square feet of landscaped open space from the northeast corner of their parking lot. The condominium sold a 20 foot by 20 foot parcel to their neighbor to the north so the neighbor could have room to install a generator. This resulted in two (2) variances being required: 1) A variance to allow landscaped open space to be 27.1 % in lieu of the 28.3% existing and the 35% minimum required in the R-C Zoning District. 2) A variance for an east side yard setback to the new property line of 6.8 feet in lieu of the 20 foot minimum required for multi-family use in the R-C Zoning District.

ADDRESS: 429 AUSTRALIAN AVE

OWNER: AUSTRALIAN OF PALM BEACH COND

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-27-43-000-0000

ZONING DISTRICT: R-C Medium Density Residential

LEGAL DESCRIPTION:

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 12/7/20

APPLICATION NO.: Z-20-00319 **APPLICATION TYPE:** SITE PLAN REVIEW WITH VARIANCE(S)

ADDRESS: 429 AUSTRALIAN AVE

DESCRIPTION:

The applicant condominium is requesting a modification to their site plan to eliminate 400 square feet of landscaped open space from the northeast corner of their parking lot. The condominium sold a 20 foot by 20 foot parcel to their neighbor to the north so the neighbor could have room to install a generator. This resulted in two (2) variances being required: 1) A variance to allow landscaped open space to be 27.1 % in lieu of the 28.3% existing and the 35% minimum required in the R-C Zoning District. 2) A variance for an east side yard setback to the new property line of 6.8 feet in lieu of the 20 foot minimum required for multi-family use in the R-C Zoning District.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	2/1/2021	No Comment.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	12/28/2020	There are no fire code concerns with the proposed project.
PZB - PLANNING AND ARCHITECTURAL REVIEW	Laura Groves Van Onna, Historic Preservation Planner	1/29/2021	It does not appear that there is any proposed exterior work associated with this zoning application. Please note that all proposed changes to exterior would be subject to design review.
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PZB - ZONING			No Comment

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00320 VARIANCE(S) Zoning District: R-A Estate Residential The application of THE LAKESIDE TRUST, DATED NOVEMBER 19, 2020 (PATRICK C. EMANS, TRUSTEE), Applicants, relative to property located at **8 S LAKE TRL**, legal description on file, is described below. Section 134 843(8): The applicant is requesting approval to demolish the existing 442 square foot dining room and construct a new 458 square foot dining room in the same general location with a 9.5 foot south side yard setback in lieu of the 15 foot minimum required in the R-A Zoning District. Section 134 843(5): The applicant is requesting approval to replace the flat roof of the north accessory building to a pitched roof. This will result in adding height to the building in the front yard setback. A variance is being requested to increase the height in the setback resulting in a front yard setback of 25.7 feet in lieu of the 35 foot minimum required in the R-A Zoning District. [Applicant's Representative: Maura Ziska Esq] [Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause architectural impact to the subject landmarked property. Carried 7-0.] [The Landmarks Preservation Commission approved the project as presented. Carried 7-0.]

Presenter

ATTACHMENTS:

- **Memorandum Dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- **Comments from the Development Review Committee**
- **Email Dated January 21, 2021 from Thomas Pournaras**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00320 VARIANCE(S)**
8 S LAKE TRL

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

Section 134-843(8): The applicant is requesting approval to demolish the existing 442 square foot dining room and construct a new 458 square foot dining room in the same general location with a 9.5 foot south side yard setback in lieu of the 15 foot minimum required in the R-A Zoning District.

Section 134-843(5): The applicant is requesting approval to replace the flat roof of the north accessory building to a pitched roof. This will result in adding height to the building in the front yard setback. A variance is being requested to increase the height in the setback resulting in a front yard setback of 25.7 feet in lieu of the 35 foot minimum required in the R-A Zoning District.

ADDRESS: 8 S LAKE TRL

OWNER: OLD KAPOK LLC

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-22-03-000-0031

ZONING DISTRICT: R-A Estate Residential

LEGAL DESCRIPTION: PRIMAVERA ESTS (LAKE FRONT) LT C (LESS E
327.60 FT)

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 12/7/20

APPLICATION NO.: Z-20-00320 **APPLICATION TYPE:** VARIANCE(S)

ADDRESS: 8 S LAKE TRL

DESCRIPTION:

Section 134-843(8): The applicant is requesting approval to demolish the existing 442 square foot dining room and construct a new 458 square foot dining room in the same general location with a 9.5 foot south side yard setback in lieu of the 15 foot minimum required in the R-A Zoning District.
Section 134-843(5): The applicant is requesting approval to replace the flat roof of the north accessory building to a pitched roof. This will result in adding height to the building in the front yard setback. A variance is being requested to increase the height in the setback resulting in a front yard setback of 25.7 feet in lieu of the 35 foot minimum required in the R-A Zoning District.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	2/1/2021	No Comment.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	12/28/2020	There are no fire code concerns with the proposed project.
PZB - PLANNING AND ARCHITECTURAL REVIEW	Laura Groves Van Onna, Historic Preservation Planner	1/29/2021	This proposed project was approved (7-0) by the Landmarks Preservation Commission (LPC) on 01/20/2020 as Application for Certificate of Appropriateness (COA) #004-2021. The Commission found that implementation of the proposed variances will not cause negative architectural impact to the subject Landmarked property (7-0).
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	12/28/2020	The applicant is required to demonstrate to the satisfaction of the Town Council that there is a hardship related to the variances being requested in this application.

From: [thomas.pournaras](#)
To: [Kelly Churney](#)
Cc: [Pellicci, Paul MD](#); [Anne metzger](#)
Subject: 8 South Lake Trail
Date: Thursday, January 21, 2021 6:46:35 AM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

My name is Tom Pournaras and my wife Cottie and I live at 409 Antigua Lane. We are once again responding to a (new) proposed alteration to the landmarked property at 8 South Lake trail. .

This time we have no objection. In fact we are enthusiastic about the changes! It seems like the applicant wants to make the residence in harmony with the neighborhood.

However, the last time we requested that the private road between Antigua and Primavera not be used. Although it was included in the ruling, it was never enforced. There were cars going up and down all day, parking as well, and also on Antigua. In addition, the trucks damaged the private access road, and it still has not been fixed adequately. Also bushes were damaged. (I repaired mine myself).

I respectfully request that you make the private platted way off limits for the construction vehicles and supervisors, and that you require escrow for any repair to the road or property, bushes, etc. that will be damaged if the trucks go down that road. I noticed that there was nothing filled out under Exhibit B- Parking statement. I request that you make the workers park ONLY on the property under construction, which can be accessed from Primavera.

Thank you for your consideration with regard to this matter.

Sincerely,

Thomas and Kathryn Pournaras

Hello, Kelly,
Kindly distribute our letter below to the members of the Landmarks Preservation Commission
as soon as possible,
Thank you very much

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00321 VARIANCE(S) Zoning District: R-C Medium Density Residential The application of BROOKER DAVID E & CATHERINE E, Applicants, relative to property located at **127 ROOT TRL**, legal description on file, is described below. The applicant is undertaking a major renovation project on Root Trail that includes a proposed 2,351.05 two story addition with basement, car lift and loggia. The following variances are being requested in order to build the additions: 1) Section 134-948(5): a front yard setback of 1.1 feet in lieu of the 25 foot minimum required in the R-C Zoning District; 2) Section 134-948(6): a west side yard setback of 4.5 feet in lieu of the 10 foot minimum required in the R-C Zoning District; 3) Section 134-948(6): an east side yard setback of 1.1 feet in lieu of the 10 foot minimum required in the R-C Zoning District; 4) Section 134-948(7): a rear yard setback of 3 feet in lieu of the 15 foot minimum required in the R-C Zoning District; 5) Section 134-948(9): a lot coverage of 49.24% in lieu of the 30% maximum allowed in the R-C Zoning District; 6) Section 134-948(11): a landscaped open space of 40.79% in lieu of the 45% minimum required in the R-C Zoning District; 7) Section 134-1728: allow two air conditioning units with a west side yard setback of 1.75 feet in lieu of the 5 foot minimum required; 8) Section 134-1668: to allow a sliding driveway gate with a 0.67 foot setback from the edge of pavement in lieu of the 18 foot minimum required. 9) Section 134-1757: to allow a 3.5 foot rear yard setback for the proposed swimming pool in lieu of the 10 foot minimum required; 10) Section 134-1757: to allow a 4 foot east side yard setback for the proposed swimming pool in lieu of the 10 foot minimum required [Applicant's Representative: Maura Ziska Esq] [Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause architectural impact to the subject landmarked property. Carried 7-0.] [The Landmarks Preservation Commission approved the project as presented. Carried 7-0.]

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▣ **Comments from the Development Review Committee**
- ▣ **Email Dated January 19, 2021 from James Held**
- ▣ **Email Dated January 19, 2021 from Penelope Irwin**
- ▣ **Email Dated January 18, 2021 from Marion Lipper**
- ▣ **Email Dated January 16, 2021 from William McHenry**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00321 VARIANCE(S)**
127 ROOT TRL

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

The applicant is undertaking a major renovation project on Root Trail that will include a 2,351.05 two story addition with basement, car lift and loggia. The following variances are being requested in order to build the additions: 1) Section 134-948(5): a front yard setback of 1.1 feet in lieu of the 25 foot minimum required in the R-C Zoning District; 2) Section 134-948(6): a west side yard setback of 4.5 feet in lieu of the 10 foot minimum required in the R-C Zoning District; 3) Section 134-948(6): an east side yard setback of 1.1 feet in lieu of the 10 foot minimum required in the R-C Zoning District; 4) Section 134-948(7): a rear yard setback of 3 feet in lieu of the 15 foot minimum required in the R-C Zoning District; 5) Section 134-948(9): a lot coverage of 49.24% in lieu of the 30% maximum allowed in the R-C Zoning District; 6) Section 134-948(11): a landscaped open space of 40.79% in lieu of the 45% minimum required in the R-C Zoning District; 7) Section 134-1728: allow two air conditioning units with a west side yard setback of 1.75 feet in lieu of the 5 foot minimum required; 8) Section 134-1668: to allow a sliding driveway gate with a 0.67 foot setback from the edge of pavement in lieu of the 18 foot minimum required. 9) Section 134-1757: to allow a 3.5 foot rear yard setback for the proposed swimming pool in lieu of the 10 foot minimum required; 10) Section 134-1757: to allow a 4 foot east side yard setback for the proposed swimming pool in lieu of the 10 foot minimum required

ADDRESS: 127 ROOT TRL

OWNER: BROOKER DAVID E & CATHERINE E

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-14-10-003-0042

ZONING DISTRICT: R-C Medium Density Residential

LEGAL DESCRIPTION: OCEAN PARK, H W ROBBINS ADDN SLY 1.2 FT
OF W 10.4 FT OF LT 4 & SLY 1.7 FT OF E 10 FT OF
LT 5 & ROOTS SUB PB1P22 W 12 FT OF
LT 2 & E 38 FT OF LT 3

Page Two

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT
Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 12/7/20

APPLICATION NO.: Z-20-00321 **APPLICATION TYPE:** VARIANCE(S)

ADDRESS: 127 ROOT TRL

DESCRIPTION:

The applicant is undertaking a major renovation project on Root Trail that will include a 2,351.05 two story addition with basement, car lift and loggia. The following variances are being requested in order to build the additions: 1) Section 134-948(5): a front yard setback of 1.1 feet in lieu of the 25 foot minimum required in the R-C Zoning District; 2) Section 134-948(6): a west side yard setback of 4.5 feet in lieu of the 10 foot minimum required in the R-C Zoning District; 3) Section 134-948(6): an east side yard setback of 1.1 feet in lieu of the 10 foot minimum required in the R-C Zoning District; 4) Section 134-948(7): a rear yard setback of 3 feet in lieu of the 15 foot minimum required in the R-C Zoning District; 5) Section 134-948(9): a lot coverage of 49.24% in lieu of the 30% maximum allowed in the R-C Zoning District; 6) Section 134-948(11): a landscaped open space of 40.79% in lieu of the 45% minimum required in the R-C Zoning District; 7) Section 134-1728: allow two air conditioning units with a west side yard setback of 1.75 feet in lieu of the 5 foot minimum required; 8) Section 134-1668: to allow a sliding driveway gate with a 0.67 foot setback from the edge of pavement in lieu of the 18 foot minimum required. 9) Section 134-1757: to allow a 3.5 foot rear yard setback for the proposed swimming pool in lieu of the 10 foot minimum required; 10) Section 134-1757: to allow a 4 foot east side yard setback for the proposed swimming pool in lieu of the 10 foot minimum required

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	2/1/2021	Proposed improvement within rear easement need to be properly vetted; consent from all utility providers and an Easement Installation and Removal Agreement may be required. The easement may need to be required to be abandoned to support construction of a proposed pool / improvements. Confirm Undergrounding Utility easement location. Town's stormwater level of service is being meet, based upon calculations provided.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	12/28/2020	There are no fire code concerns with the proposed project.
PZB - PLANNING AND ARCHITECTURAL REVIEW	Laura Groves Van Onna, Historic Preservation Planner	1/29/2021	This proposed project was approved (7-0) by the Landmarks Preservation Commission (LPC) on 01/20/2020 as Application for Certificate of Appropriateness (COA) #005-2021 with the condition that wood shingles are used for siding. The Commission found that implementation of the proposed variances will not cause negative architectural impact to the subject Landmarked property (7-0).
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	12/28/2020	The applicant needs to demonstrate to the satisfaction of the Town Council that there is a hardship for all of the variances being requested in this application.

From: [james held](#)
To: [Kelly Churney](#)
Cc: [Amanda Skier](#); [Paul Castro](#); brookerce@gmail.com
Subject: 127 Root Trail
Date: Tuesday, January 19, 2021 1:06:22 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Members of The Landmarks Preservation Commission,

We are long time-residents of Palm Beach and owners of several cottages on Root Trail.

We have reviewed the renovation/addition plans for 127 Root Trail and support the project including the requests for variances.

The design preserves the special historic character of the neighborhood and also incorporates energy conservation with solar shingles, good green space and a generally pleasing design.

As owners of a historically significant house in Washington, D.C., the Brooker's understand the importance of Preservation in our Town and have demonstrated that by voluntarily offering the property be placed under Landmark status.

Please approve.

Sincerely,

Kenn Karakul
James Held

From: [Penelope Irwin](#)
To: [Kelly Churney](#)
Cc: askier@palmbeachpreservation.org; [Paul Castro](#); [Cathy Brooker](#)
Subject: 127 Root Trail / Letter of Support - Landmarks Preservation Commission
Date: Tuesday, January 19, 2021 1:52:25 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Members of The Landmarks Preservation Commission;

We have had the opportunity to review plans for the proposed renovation and addition project at 127 Root Trail. We are Root Trail residents and own two homes on the west end of Root Trail. We are thrilled the Brooker's are undertaking a restoration of the main structure on the property and that they have come up with a design that preserves the special, historic character of Root Trail while at the same time incorporating innovative solutions such as solar shingles and a car lift. We find the harmony of preservation and modern living very exciting for our street.

We understand that the design requires a number of variances, and have no issues with any of them. The design presented for 127 Root Trail improves upon the lot occupancy, green space and overall appearance of what existed there previously, so we do hope that the Landmarks Preservation Commission and the Town will approve the variances given the special context of this lovely street.

When completed, we believe, this home will ensure that a historic structure on Root Trail will still be standing for many decades to come. By voluntarily offering that the house be placed under Landmark consideration, the Brooker's have also assured us and the Town that it will remain a significant, contributing structure on the street.

Thank you in advance for approving this project.

Best regards,
Alison Irwin
Penelope Irwin

--
Penelope Irwin
917.742.5541

From: [Paul Castro](#)
To: [Kelly Churney](#); [Bradley Falco](#)
Subject: FW: 127 Root Trail
Date: Tuesday, January 19, 2021 4:06:22 PM

[For the file.](#)

From: marion lipper <marionlipper@yahoo.com>
Sent: Monday, January 18, 2021 11:56 AM
To: Paul Castro <PCastro@TownofPalmBeach.com>
Subject: 127 Root Trail

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Mr. Castro

My name is Marion Lipper and I live at 122 Seminole Ave. My property backs-up to the Brooker's property at 127 Root Trail. Recently I viewed the Brooker's plans for new developments on their existing land. I want you to know that I am in favor of their plans. Root Trail has always been a charming place and the Brookers plans will embellish the street even more to the benefit preservation, all the neighbors, and the town of Palm Beach itself.

Sincerely

Marion Lipper

122 Seminole Ave.

From: [Paul Castro](#)
To: [Bradley Falco](#); [Kelly Churney](#)
Subject: FW: Brooker application 227 Root Trail
Date: Tuesday, January 19, 2021 2:53:56 PM

For the files.

Thank you,

Paul Castro, AICP
Zoning Manager

360 South County Road
Palm Beach, FL 33480
(561)227-6406
pcastro@townofpalmbeach.com

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

From: William McHenry <wsmchenry@aol.com>
Sent: Saturday, January 16, 2021 2:34 PM
To: Paul Castro <PCastro@TownofPalmBeach.com>
Subject: Re: Brooker application 227 Root Trail

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

>
>
> Dear Paul Castro
>
>
> We are supporting the Brooker application for 227 Root Trail case #005-202. We have reviewed the plans for the property and house and think they will be a welcome addition to the neighborhood. Especially the way they are retaining the historic nature of Root Trail.
>
> Sincerely,
>
> William and Sheila McHenry
> 126 Root Trail

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00322 SPECIAL EXCEPTION Zoning District: C-TS Town Serving Commercial The application of FIRST HORIZON BANK (DEBRA L. VASILOPOULOS, MARKET PRESIDENT), Applicant, relative to property located at **180 ROYAL PALM WAY**, legal description on file, is described below. Section 134 1109(b): A special exception request for approval to use the subject building totaling 12,940 square feet as a bank (FIRST HORIZON BANK). The subject tenant space was most recently used as an IberiaBank branch office with it's customers and clients being more than 50% town persons in satisfaction of the requirements of Section 134-229(12). [Applicant's Representative: Peter Broberg]

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▣ **Comments from the Development Review Committee**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00322 SPECIAL EXCEPTION**
180 ROYAL PALM WAY

Date: January 28, 2021

BACKGROUND

An application has been received for the following project:

REQUEST:

Section 134-1109(b): A special exception request for approval to use the subject building totaling 12,940 square feet as a bank (FIRST HORIZON BANK). The subject tenant space was most recently used as an IberiaBank branch office with it's customers and clients being more than 50% townpersons in satisfaction of the requirements of Section 134-229(12).

ADDRESS: 180 ROYAL PALM WAY

OWNER: PEMS PARTNERSHIP LTD

OWNER'S REPRESENTATIVE: COE & BROBERG LLP

PROPERTY CONTROL NO.: 50-43-43-23-05-026-0340

ZONING DISTRICT: C-TS Town-Serving Commercial

LEGAL DESCRIPTION: ROYAL PARK ADD LT 34 BLK F

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT
Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 12/7/20

APPLICATION NO.: Z-20-00322 **APPLICATION TYPE:** SPECIAL EXCEPTION

ADDRESS: 180 ROYAL PALM WAY **TENANT:**HORIZON BANK

DESCRIPTION:

Section 134-1109(b): A special exception request for approval to use the subject building totaling 12,940 square feet as a bank (FIRST HORIZON BANK). The subject tenant space was most recently used as an IberiaBank branch office with it's customers and clients being more than 50% townpersons in satisfaction of the requirements of Section 134-229(12).

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	2/1/2021	No Comment.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	12/28/2020	There are no fire code concerns with the proposed project.
PZB - PLANNING AND ARCHITECTURAL REVIEW	Laura Groves Van Onna, Historic Preservation Planner	1/29/2021	It does not appear that there is any proposed exterior work associated with this zoning application. Please note that all proposed changes to exterior would be subject to design review.
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	1/4/2021	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	12/28/2020	As a special exception, the new bank is required to demonstrate to the Town Council how it will be town-serving to the community.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00323 VARIANCE(S) Zoning District: R-A Estate Residential The application of DESRUISSEAUX LAND TRUST U/A/D 12/6/19 (ANN DESRUISSEAUX AND WILLIAM W. ATTERBURY, CO-TRUSTEES), Applicant, relative to property located at **800 S COUNTY RD**, legal description on file, is described below. Without waiving any previous zoning approvals, the applicant is requesting to demolish and rebuild (replicate) the existing landmarked residence in generally the same location. The project includes raising the finished floor elevation of all of the new and existing structures to 9.0 feet NAVD. The proposed new two story residence will be 19,812.69 square feet, with a 3,398 square foot guest house located at the northwest corner of the property. The plan also includes relocation of an existing 225 square foot cabana and relocation of the 145 square foot 2 story generator building. The following variances are being requested: 1) 134-843(8): a north side yard setback ranging from 5.29 feet to 5.75 feet for the new reconstructed guest house wing (previously referred to as the boat house) in lieu of the 30 foot minimum required; 2) 134-843(8): a rear yard setback of 0 feet in lieu of the 15 foot minimum required for the new reconstructed guest house wing; 3) 134-843(8): a rear yard setback ranging of 0 feet in lieu of the 15 foot minimum required for the new reconstructed main house; 4) 134-843(8): a north side yard setback of 21.13 to 21.67 feet for the 2 story generator building in lieu of the 30 foot minimum required; 5) 134-843(10): a height in the main residence and guest house to be 26.56 in lieu of the 25 foot maximum allowed; 6) Section 134-843(8): a south side yard setback for the main house addition ranging from 10.79 feet to 15.1 feet in lieu of the 30 foot minimum required. The previously granted variances in Z-20-00261 for the accessory buildings and structures not associated with the main house, guest house wing and generator building remain unchanged and in effect and valid. [Applicant's Representative: Maura Ziska Esq] [The Landmarks Preservation Commission deferred the project to the February 17, 2021 meeting. Carried 7-0.] **Request for Withdrawal Per Letter from Maura Ziska**

Presenter

ATTACHMENTS:

- ▣ **Letter Dated February 1, 2021 from Maura Ziska**

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Amy D. Bahl

*Also admitted in New York

Esperanté

222 Lakeview Avenue, Suite 1500

West Palm Beach, Florida 33401

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA EMAIL

February 1, 2021

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

RE: Z-20-00323 and COA-009-2021; 800 South County Road, Palm Beach, Florida

All:

Please **withdraw** the above referenced project from the January 20, 2021 **LPC** agenda and the February 10, 2021 **TOWN COUNCIL** agenda. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,

Maura A. Ziska

Maura A. Ziska

MZ/jc

cc: Paul Castro
John Lindgren
Kelly Churney
Kathleen Ruderman

46535

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Ordinances - Second Reading

Agenda Title

ORDINANCE 01-2021 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, As Follows: At Article I, In General, Section 134-2, Amending The Definition Of Supplemental Parking To Allow Supplemental Off-Site Shared Parking In Underground Garages Without The Requirement Of First Meeting All On-Site Required Parking; At Article VI, District Regulations, Sections 134-1107, 134-1157 And 134-1207, Permitted Uses, In The C-TS, C-WA And C-OPI Commercial Zoning District To Allow Supplemental Off-Site Shared Parking In An Underground Parking Garage As A Permitted Use Provided That Said Parking Does Not Exceed 50 Percent Of The Parking Inventory In An Underground Garage And Providing A Sunsetting Provision For Said Use In Those Districts On March 13, 2024, Unless Extended Or Modified By The Town Council; At Article VI, District Regulations, Sections 134-1109, 134-1159 And 134-1209, Special Exception Uses To Cross Reference The Supplemental Parking Regulations In Sections 134-2177 And 134-2182, At Article IX, Off-Street Parking And Loading; Section 134-2177 Location Of Parking Spaces, And Section 134-2182, Location Of Parking Spaces, By Allowing Off-Site Supplemental Parking In An Underground Parking Garage As A Permitted Use In The C-TS, C-WA And C-OPI Zoning Districts And Sunsetting The Provisions In This Ordinance On March 13, 2024, Unless Extended Or Modified By The Town Council; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Presenter

ATTACHMENTS:

- ▣ **Memorandum dated January 28, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▣ **Ordinance No. 01-2021**

TOWN OF PALM BEACH

Information for Local Planning Agency and Town Council meeting on:
February 10, 2021

To: Town Council

From: Wayne Bergman, Planning, Zoning and Building Director

Re: Consideration of Proposed Zoning Text Amendments regarding Off-Site Supplemental Off-Street Parking in the C-TS, C-WA and C-OPI Commercial Zoning Districts of the Code of Ordinances.
Ordinance No. 01-2021

Date: January 28, 2021

STAFF RECOMMENDATION

Staff recommends the Town Council approve attached Ordinance No. 01-2021 on second reading.

PLANNING AND ZONING COMMISSION RECOMMENDATION

The Planning and Zoning Commission, at its on June 16, 2020, July 21, 2020 and August 18, 2020 meetings, considered and unanimously recommended approval of the proposed Zoning Code modifications as outlined in Ordinance No. 01-2021. The exception is that they recommended that the supplemental off-site parking be limited to a maximum 33% of an underground parking garage capacity and not the 50% the Town Council is proposing.

BACKGROUND

The Town Council authorized staff to work with the Planning and Zoning Commission to review existing zoning requirements related to supplemental off-site shared parking to provide more flexibility to utilize existing parking lots.

Staff worked on proposed modifications to Chapter 134, Zoning, to address this zoning issue and presented them to the Planning and Zoning Commission at meetings on June 16, 2020, July 21, 2020 and August 18, 2020. The Commission, after lengthy discussion, made a recommendation to the Town Council to allow supplemental off-site shared parking within underground parking garages as a permitted use in the C-TS, C-WA and C-OPI Commercial Zoning Districts. The proviso was that said parking could not exceed 33 percent of the parking inventory within the underground garage; and that the provision would sunset three years after effective date of the ordinance unless the Council decided to extend or modify these zoning changes. The thought was to proceed cautiously and re-evaluate three years after implementation.

The Town Council considered these proposed zoning changes at its October 14, 2020 Council meeting and after discussion referred this issue to the Business and Administrative Committee to

evaluate. On November 3, 2020, the Committee met, and after deliberation on the matter, concluded that the Planning and Zoning Commission's recommendation was a cautious but a positive step to take advantage of some of the underutilized parking inventory throughout the Town. The Committee recommended approval of the Planning and Zoning Commissions recommendation and direct staff to draft an ordinance for Town Council consideration.

The Town Council, at its, December 8, 2020 meeting considered the Business and Administrative Committee's recommended draft ordinance that incorporated the Planning and Zoning Commission recommendations for off-site, supplemental off-street parking. The Town Council direct Staff to proceed with the adoption process of that draft ordinance with one change. The Town Council changed the maximum limit for off-site supplemental parking from 33% of an underground garage's capacity in the C-TS, C-WA and C-OPI Commercial Zoning District to 50% of its capacity. In addition, the Town Council directed Staff to annually bring the adopted regulations back to the Town Council to reevaluate the effectiveness of the changes. The specific changes to the Code are identified in add/delete format in attached Ordinance No. 01-2021.

TOWN ATTORNEY REVIEW

Ordinance No. 01-2021 has been approved by Town Attorney John C. Randolph for legal form and sufficiency.

cc: Kirk Blouin, Town Manager
Jay Boodheshwar, Deputy Town Manager
James Murphy, Asst. Director of Planning, Zoning and Building
John C. Randolph, Town Attorney
Paul Castro, Zoning Manager

ORDINANCE NO. 01-2021

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, AS FOLLOWS: AT ARTICLE I, IN GENERAL, SECTION 134-2, AMENDING THE DEFINITION OF SUPPLEMENTAL PARKING TO ALLOW SUPPLEMENTAL OFF-SITE SHARED PARKING IN UNDERGROUND GARAGES WITHOUT THE REQUIREMENT OF FIRST MEETING ALL ON-SITE REQUIRED PARKING; AT ARTICLE VI, DISTRICT REGULATIONS, SECTIONS 134-1107, 134-1157 AND 134-1207, PERMITTED USES, IN THE C-TS, C-WA AND C-OPI COMMERCIAL ZONING DISTRICTS TO ALLOW SUPPLEMENTAL OFF-SITE SHARED PARKING IN AN UNDERGROUND PARKING GARAGE AS A PERMITTED USE PROVIDED THAT SAID PARKING DOES NOT EXCEED 50 PERCENT OF THE PARKING INVENTORY IN AN UNDERGROUND GARAGE AND PROVIDING A SUNSETTING PROVISION FOR SAID USE IN THOSE DISTRICTS ON MARCH 13, 2024, UNLESS EXTENDED OR MODIFIED BY THE TOWN COUNCIL; AT ARTICLE VI, DISTRICT REGULATIONS, SECTIONS 134-1109, 134-1159 AND 134-1209, SPECIAL EXCEPTION USES TO CROSS REFERENCE THE SUPPLEMENTAL PARKING REGULATIONS IN SECTIONS 134-2177 AND 134-2182, AT ARTICLE IX, OFF-STREET PARKING AND LOADING; SECTION 134-2177 LOCATION OF PARKING SPACES, AND SECTION 134-2182, LOCATION OF PARKING SPACES, BY ALLOWING OFF-SITE SUPPLEMENTAL PARKING IN AN UNDERGROUND PARKING GARAGE AS A PERMITTED USE IN THE C-TS, C-WA AND C-OPI ZONING DISTRICTS AND SUNSETTING THE PROVISIONS IN THIS ORDINANCE ON MARCH 13, 2024, UNLESS EXTENDED OR MODIFIED BY THE TOWN COUNCIL; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, after public hearings pursuant to notice required by law, the Planning and Zoning Commission considered all testimony and recommended modification to the Code of Ordinances; and

WHEREAS, after public hearing pursuant to notice required by law, the Town Council considered the Planning and Zoning Commission's Record and Report and all evidence and testimony and as the Local Planning Agency recommended that the Town Council adopt the subject Ordinance; and

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

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

Section 1. Article I, IN GENERAL, Sec. 134-2. Definitions and rules of construction is hereby amended to read as follows:

Sec. 134-2. Definitions and rules of construction.

...

Parking, supplemental means those parking facilities provided as a permitted or special exception and which are in addition to existing required parking as set forth in the schedule of off-street parking requirements. Supplemental off-site parking in an underground garage that is a permitted use in the C-TS, C-WA and C-OPI zoning districts is not required to be parking that is in addition to what is required in the schedule of off-street parking requirements in the Code.

Section 2. Article VI, DISTRICT REGULATIONS, Section 134-1107, Permitted uses, in the C-TS zoning district is hereby amended to read as follows:

Sec. 134-1107. - Permitted uses.

- (a) Enumeration; 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:

- (1) ...

- ...

- (10) Supplemental off-site shared parking within an underground parking garage to not exceeding 50 percent of the garage parking inventory. This use will sunset on March 13, 2024, unless extended or modified by town council.

Section 3. Article VI, DISTRICT REGULATIONS, Section 134-1109, Special exception uses, in the C-TS zoning district is hereby amended to read as follows:

Sec. 134-1109. - Special exception uses.

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

- (1) ...

- ...

- (7) Supplemental parking per Secs. 134-2177 and 134-2182.

- ...

Section 4. Article VI, DISTRICT REGULATIONS, Section 134-1157, Permitted uses, in the C-WA zoning district is hereby amended to read as follows:

Sec. 134-1157. - Permitted uses.

- (a) Enumeration; 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:

(1) ...

...

(32) Supplemental off-site shared parking within an underground parking garage to not exceed 50 percent of the garage inventory. This use will sunset on March 13, 2024, unless extended or modified by town council.

...

Section 5. Article VI, DISTRICT REGULATIONS, Section 134-1159, Special exception uses, in the C-WA Worth Avenue commercial zoning district is hereby amended to read as follows:

Sec. 134-1159. - Special exception uses.

- (a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-WA Worth Avenue district are as follows:

(1) ...

...

(6) Supplemental parking per Secs. 134-2177 and 134-2182.

...

Section 6. Article VI, DISTRICT REGULATIONS, Section 134-1207 Permitted uses., in the C-OPI, Office, Professional and Institutional district is hereby amended to read as follows:

Sec. 134-1207 Permitted uses.

The permitted uses in the C-OPI office, professional and institutional district are as follows:

(1) ...

...

(8) Supplemental off-site shared parking within an underground parking garage to not exceed 50 percent of the garage parking inventory. This use will sunset on March 13, 2024, unless extended or modified by town council.

Section 7. Article VI, DISTRICT REGULATIONS, Section 134-1209, Special exception uses, in the C-OPI Office Professional and Institutional commercial zoning district is hereby amended to read as follows:

Sec. 134-1209. - Special exception uses.

The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-OPI office professional and institutional district are as follows:

- (1) ...
- ...
- (5) Supplemental parking per Secs. 134-2177 and 134-2182.
- ...

Section 8. Article VI, DISTRICT REGULATIONS, Section 134-1259, Special exception uses in the C-PC Planned Center commercial district is hereby amended to read as follows:

Sec. 134-1259. - Special exception uses.

(a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-PC planned center district are as follows:

- (1)...
- ...
- (5) Supplemental parking per Secs. 134-2177 and 134-2182.
- ...

Section 9. Article IX, OFF-STREET PARKING AND LOADING [14], Sec. 134-2177, Location of parking spaces is hereby amended to read as follows:

Sec. 134-2177. Location of parking spaces.

Parking spaces for all uses or structures which are provided as required parking in conformance with the schedule of off-street parking and other applicable sections shall be located on the same lot and shall have the same district classification as the principal use or structure they are intended to serve, except as specifically excepted as follows:

- (1) The town council may permit, as a special exception, the establishment of such required off-street parking facilities for commercial uses within 500 feet of the premises, as measured along the nearest public or permanent private pedestrian walkway they are intended to serve when:
 - a. Practical difficulties prevent the placing of the facilities on the same lot as the premises they are designed to serve;
 - b. The proposed location is located within the same zoning district as the principal use it is designated to serve;

- c. The owner of the parking area shall enter into a written agreement with the town, with enforcement running to the town, providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the building which the parking area serves so long as the facilities are required; and
- d. The owner agrees to bear the expense of recording the agreement and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.

(2) The town council may permit, as a special exception, the establishment of supplemental off-street facilities which are in addition to those facilities required in accordance with the schedule of off-street parking for a permitted or approved special exception use. Such supplemental off-street parking facilities may be permitted only after the required parking for the principal use involved has been provided in full at current standards as contained in the schedule. This additional parking may be supplemental parking located on the same lot or supplemental off-site parking located on a directly adjoining lot or a lot which would be directly adjoining except for the location of a street or public way; provided, however, that all other provisions for special exceptions as set forth in sections 134-227 through 134-233 are complied with and, further, that the granting of such supplemental on-site or supplemental off-site parking is not construed as permission to expand, enlarge, alter, renovate, or modify the use of structure except in accordance with the requirements of this chapter. The exception is that supplemental off-site shared parking within an underground parking garage is exempt from this section of the Code.

(3) The town council may permit, as a special exception, the establishment of required off-street parking facilities for commercial uses in zoning districts differing from the district of the principal uses of structures they are intended to serve if the following conditions are met:

- a. The owner of the parking area shall enter into a written agreement with the town with enforcement running to the town providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the buildings with which the parking area serves so long as the facilities are required.
- b. The owner of the parking area shall agree to bear the expense of recording the agreement, and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.
- c. The parking area shall have been used as a parking area for the entirety of each of the five calendar years immediately preceding the application for special exception.
- d. The parking area shall abut the property on which is situated the principal structure for which it is to furnish the required off-street parking.
- e. The provisions for special exceptions as set forth in sections 134-227 through 134-233 are complied with.
- f. The said parking area shall be located at ground level or below ground level and shall not be located within any structure above ground.

Section 10. Article IX, OFF-STREET PARKING AND LOADING [14], Sec. 134-2182, Location of parking spaces, is hereby amended to read as follows:

Sec. 134-2182. - Shared parking in C-TS, C-WA and C-OPI commercial zoning districts.

(a) Off-site supplemental shared parking within an underground garage is permitted by right in the C-TS, C-WA and C-OPI zoning districts without the requirement of first providing all required parking. However, said shared parking shall not exceed 50 per cent of the existing parking inventory in said underground garage.

(b) Special exception. Although there is no entitlement to shared parking, arrangements for shared parking may be allowed in the CT-S, C-WA and C-OPI commercial zoning districts, subject to the review and approval of a special exception as set forth under sections 134-227 through 134-233 and under the circumstances provided in this section.

(~~b~~c) On-site shared parking. When a new use is proposed to occupy existing floor space and the new use would require a greater number of parking spaces than required by the former use, the new use may request sharing of on-site parking to meet the town's off-street parking requirements, provided:

- (1) A traffic planner or traffic engineer clearly establishes to the town council, at the applicant's expense, that:
 - a. All uses utilizing the existing parking facilities will primarily utilize these parking spaces at different times of the day, week, month or year;
 - b. The sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities; and
 - c. The available parking will be adequate to serve the needs of the proposed use.
- (2) If the building official determines that professional advice and/or consultation is required to review the applicant's parking findings, the expense of such professional advice shall be borne by the applicant.
- (3) The applicant provides to the town, at the applicant's expense, a recorded three-party agreement, including the town as one of the parties, with enforcement running to the town, guaranteeing the continuing availability of the shared parking spaces during the period of operation of the applicant's use. The term of the agreement shall approximate the life of the building or use for which the shared parking spaces fulfill the town's off-street parking requirement. If the shared parking ever ceases to be available or becomes inadequate due to a change in the uses' respective schedules of operation that results in conflicting or overlapping usage, the proposed use shall be required to obtain a new occupancy permit and provide proof that sufficient parking will be provided or shall be required to immediately reduce the intensity of the use served to the extent that it will be conforming to the town's off-street parking requirements.

(ed)Supplemental off-site shared parking. With the exception of underground shared parking that is a permitted use in the C-TS, C-WA and C-OPI zoning district, A a conforming use may lease to another existing conforming use the former's required or supplemental parking spaces for use by patrons or employees of the latter, provided:

- (1) The area to be used for off-site shared parking shall be in the C-TS, C-WA, C-PC or C-OPI zoning district, and, except for shared parking within a parking garage or underground/underbuilding parking area, any area used for off-site shared parking shall be accessible only to and used by parking attendants and shall have controlled access in the form of gates or other barriers acceptable to the town that can be accessed and used only by parking attendants.
- (2) Off-site shared parking shall be located no more than 500 feet from the use the off-site shared parking is intended to serve.
- (3) The applicant shall provide evidence which shall prove to the satisfaction of the town council that the off-site shared parking use shall not increase noise, light or traffic impacts upon neighboring residential districts.
- (4) A traffic planner or traffic engineer establishes to the satisfaction of the town council, at the applicant's expense, that all other establishments using the existing parking spaces will primarily utilize these spaces at different times of the day, week, month or year from that of the applicant's use, and that the sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities.
- (5) If the director of planning, zoning and building department should determine that professional advice and/or consultant is required to review the applicant's parking findings, the expense of such professional advice shall be borne by the applicant pursuant to sections 134-171 and 134-172.
- (6) Off-site shared parking shall only be supplemental, and such parking shall not be used to meet required parking for new construction or expansion or addition to existing floor area.
- (7) The town may impose such additional conditions that it deems necessary to minimize noise, light and traffic impacts upon neighboring residential districts.
- (8) The approval shall initially be limited to a period of six months, whereupon a subsequent review shall be made at a public hearing of the town council at which the interim approval may be renewed, modified or revoked.
- (9) The provisions in Sec. 134-2177 and 134 2182 related to supplemental off-site shared parking in an underground garage as a permitted use in the C-WA, C-TS and C-OPI zoning district will sunset on March 13, 2024 unless extended or modified by the town council.

Section 11. 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 12. 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 13. Codification.

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

Section 14. Effective Date.

This Ordinance shall take effect thirty-one days after its adoption, 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 13th day of January, 2021, second reading and final adoption on this 10th day of February, 2021.

Gail L. Coniglio, Mayor

Margret A. Zeidman, Town Council President

Bobbie Lindsay, Council President Pro Tem

Julie Araskog, Town Council Member

ATTEST:

Danielle H. Moore, Town Council Member

Queenester Nieves, Town Clerk

Lewis S.W. Crampton, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Any Other Matters

Agenda Title

ARCOM's Request to Consider Demolitions

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated January 27, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▣ **Email Dated February 3, 2021 from Michael Small**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director of Planning, Zoning & Building

Cc: Kirk Blouin, Town Manager & James Murphy, Asst. Director of PZB

Re: Demolitions - Continued

Date: January 27, 2021

GENERAL INFORMATION

During your meeting of October 14, 2020, Architectural Review Commission (ARCOM) Chairman Michael Small made a presentation in which he asked the Council to consider an earlier ARCOM unanimous-approved motion to allow ARCOM to refer a request for demolition of a structure, of which ARCOM considered to be architecturally or historically significant, to the Landmarks Preservation Commission (LPC) for their review, and to defer the demolition application for up to 60 days to allow LPC to consider Landmarking the subject structure. The goal of this request would be to allow the Landmarks Preservation Commission to evaluate each building slated for demolition on whether it should be Landmarked, and if so, to proceed with the Landmark designation process, which would preserve the historic building. ARCOM's request was supported by the LPC Chairman and by the Executive Director of the Preservation Foundation of Palm Beach.

Prior to the October 14, 2020 Town Council meeting, Skip Randolph provided the Council with backup from similar discussions held in 2008, 2014 and 2017. At each of those past meetings, no action was taken by the Council to revise the code or mandate the historic review of buildings slated for demolition.

The Council voted at the October, 2020 meeting to defer the discussion to their December 9, 2020 meeting. During that meeting, staff recommended, and the Town Council voted, to defer the discussion to the February, 2021 meeting. This deferral would allow the Town to receive the Ten-Year Historic Site Survey, which at the time was substantially complete but in a draft form. The purpose of this deferral was to review the results of the final survey and to understand the potential number of new buildings that could be considered for possible Landmark designation.

The final version of the survey was received in early January, 2021. This new survey, which includes a comprehensive report, states that the survey included 2,240 potential historic resources, of which 1,721 resources were recorded as part of the survey. This record list includes 819 new

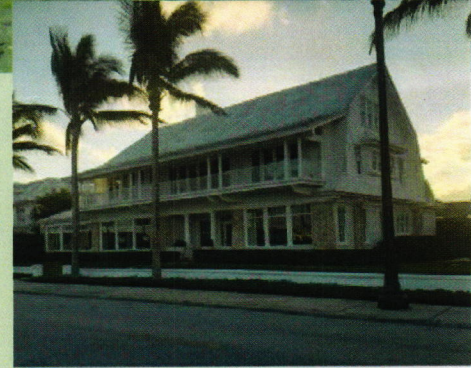
historic resources never surveyed before. The list further details 120 resources that may be eligible for listing on the National Register of Historic Places, or which may qualify as a future Town Landmarked resource. Please keep in mind, this list is one firm's opinion of the potential, and the number of actual buildings worthy of Landmark designation could be different.

Staff understands that the Town Council is concerned with the request of Arcom, to automatically review buildings that are proposed to be demolished. Currently, all buildings that are requested to be demolished by their owners must be approved by Arcom. This possible LPC review would be a diminishment of a property right currently enjoyed by Town property owners. However, with the new survey information, and knowing that 120 possible new Landmarked buildings are available to review, a suggestion is to increase the number of buildings that are reviewed annually over the next several years by the Landmarks Preservation Commission for possible designation as Landmarked buildings. This would assist in the historic preservation of Town assets and partially meet with the proposed intent of Arcom's request – an increased review of possible Landmark candidates.

With the Town Council's support and approval, the annual budget for the study of the possible buildings to receive Landmark designation (now set at about \$50,000 per year, which allows the study of about 10 buildings per year) could be increased to permit more homes and buildings to be reviewed.

Attached – Executive Summary from the Town of Palm Beach Historic Site Survey, Dec. 2020

Town of Palm Beach Historic Site Survey



ENVIRONMENTAL
SERVICES, INC.

A TIG Dev Review Backup 2-10-2021

Town of Palm Beach

Historic Site Survey

Prepared for
the Town of Palm Beach

Meghan Powell, Historian
Meagan Scott, Preservation Planner
Patricia Davenport-Jacobs, MFA HP

HK197107
December 2020

patricia davenport-jacobs

Patricia Davenport-Jacobs
Historic Preservation Group Manager

Gary K. Howalt

Gary K. Howalt, PWS
Principal/Department Manager



**ENVIRONMENTAL
SERVICES, INC.**

A Terracon COMPANY

Environmental Services, Inc., A Terracon Company
8001 Baymeadows Way, Suite 1
Jacksonville, FL 32256 (904)470-2200

EXECUTIVE SUMMARY

Environmental Services Inc., A Terracon Company (ESI), of Jacksonville, Florida, conducted a comprehensive pedestrian survey of historic structures in the Town of Palm Beach, Florida from November 2019 – June 2020. Funding for this survey and subsequent reporting was provided by the Town. The purpose of this survey was to provide Palm Beach with a comprehensive recordation of all structures in the town constructed in or prior to 1979 and a survey report detailing the findings. Data gathered during the survey will support a better preservation plan and identify geographic areas of interest that have retained integrity and possess significance for potential National Register districts, along with eligible local Landmark designations and districts, and aid in planning for future development.

The objectives of the survey were to conduct a comprehensive pedestrian survey and record the architectural resources for the Florida Master Site File (FMSF) utilizing the Historic Structure Form and assess their eligibility for listing in the *National Register of Historic Places* (NRHP) or locally, either individually and/or as part of a district. The architectural survey consisted of pedestrian investigation to field verify all architectural resources within the project area constructed up to 1979. Data from the Palm Beach County Property Appraiser and the Florida Master Site File (FMSF) was collected and cross referenced to ensure the accuracy of information and the correlation with respective buildings and developments. Research conducted at local and state repositories focused on historical context and developmental progression of the Town.

Initially, ESI determined that an approximate 2,134 parcels had the potential to contain historic structures in the Town of Palm Beach. Of those parcels, 128 were constructed between 1971-1979, and were also observed as part of the initial research phase and windshield survey per the Town of Palm Beach's project scope. A total of 2,240 historic resources were surveyed and 1,721 recorded during the survey; of those resources, 902 had been previously recorded and 819 had never before been recorded. The architectural survey resulted in the identification and evaluation of three (3) National Register Districts and nine (9) individually listed resources in the NRHP. Additionally, ESI recommends further investigation into nine (9) other geographical areas of interest with potential for local or National Register historic district designations, and approximately 120 resources that may be eligible for individual listing in the NRHP. ESI has also identified additional structures that have the potential to be locally designated.

This survey did not include exhaustive research on every resource, and as such the Florida Master Site File (FMSF) form does not represent the totality of information about each recorded resource. Additionally, it should be noted that the recorded FMSF forms and associated data are the consultant's opinion based upon field inspection and use of the respective National Register and local-level criteria for determining a structure's integrity and significance. For each form recorded with this survey, further research could yield more information on its architectural style, historical significance, and eligibility.

All work was intended to comply with Section 106 of the *National Historic Preservation Act* (NHPA) of 1966 (as amended) as implemented by 36 CFR 800 (Protection of Historic Properties), Chapter 267 F.S. and the minimum field methods, data analysis, and reporting standards embodied in the Florida Division of Historic Resources' (FDHR) *Historic Compliance Review Program* (Chapter 1A-46 *Florida Administrative Code*). All work also conformed to the professional guidelines set forth in the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 4416).

An electronic copy of project GIS data layers showing all surveyed resources is included with the final deliverables to the Town of Palm Beach and the Florida Department of State, Division of Historical Resources. Final deliverables include both new and updated FMSF forms, maps, images, and all other associated data; a hardcopy and digital copy of this report, including a resource inventory and Survey Log Sheet.

An inventory of resources can be found in **Appendix A** of this report; and the Survey Log Sheet can be found in **Appendix B**. A list of demolished and overbuilt structures is included in **Appendix C**. A map of the survey area showing all associated data can be found in **Appendix D**, and a list of the Town of Palm Beach's locally designated Landmarks is in **Appendix E**. The recently Local Historic Conservation District Ordinance is included in **Appendix F**. Appendix F includes details related to historic conservation districts and *historically significant buildings*. Included in **Appendix G** are resources that have been identified as eligible for listing in the NRHP, as determined by State Historic Preservation Offices (SHPO).

ACKNOWLEDGEMENTS

This publication has been financed, in whole, with funds provided by the Town of Palm Beach. This survey and subsequent report would not have been possible without essential feedback from Town staff concerning the historic context as well as oversight on the recordation of historic resources with the FMSF. The consultant and authors would like to thank Wayne Bergman, Acting Director of the Town; former Planning Manager John Lindgren; former Director of the Planning, Zoning, and Building Department Josh Martin; Historic Preservation Planner Laura Groves van Onna; the Palm Beach Landmarks Preservation Commission; the Preservation Foundation of Palm Beach and Director of Education, Aimee Sunny; Town of Palm Beach consultants Murphey Stillings, LLC; and the Palm Beach County Historical Society. The team would also like to thank Virginia Savage McAlester, author of *A Field Guide to American Houses*, and Barbara Hoffstot, author of *Landmark Architecture of Palm Beach*, preservationist extraordinaire.

Lastly, ESI would like to express our warm gratitude to the residents of the Town of Palm Beach that were a part of this survey. They permitted photographs and answered questions to the best of their knowledge. ESI hopes this survey will continue to provide helpful information for future historic preservation and survey work in Palm Beach.

From: [Micheal Small](#)
To: [Kelly Churney](#)
Subject: Fwd: Request for Consideration of an Amendment to the Demolition Ordinance...
Date: Wednesday, February 03, 2021 2:37:41 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Good Afternoon Kelly
Please be good enough to email a copy of this communication to ARCOM members.
Thank you
Michael Small

Sent from my iPhone

Begin forwarded message:

From: Micheal Small <msmall@smallawpalmbeach.com>
Date: February 3, 2021 at 2:35:04 PM EST
To: gconiglio@townofpalmbeach.com, mzeidman@townofpalmbeach.com, blindsay@townofpalmbeach.com, dmoore@townofpalmbeach.com, lcrampton@townofpalmbeach.com, jaraskog@townofpalmbeach.com, kblouin@townofpalmbeach.com, JBoodheshwar@TownofPalmBeach.com, wbergman@townofpalmbeach.com, jrandolph@jonesfoster.com
Subject: Request for Consideration of an Amendment to the Demolition Ordinance...

Request for Consideration of an Amendment to the Demolition Ordinance
Good Day:

My name is Michael Small.I am writing to you in advance of your February 10,2021 Development Review Meeting, as Chairman and in behalf of the Architectural Review Commission of the Town of Palm Beach in support of the unanimous request of ARCOM to minimally revise the Town Ordinance Permitting the Demolition of Structures.(Sec18-206)

You will recall that I previously appeared before you in person in support of this request.

The Ordinance creating ARCOM(Sec18-146) describes the Town as a place of beauty and quality.The Town Council creates ARCOM in the Ordinance and directs ARCOM to preserve and protect that beauty and quality. The ordinance provides criteria for ARCOM 's role and discretion as a "gatekeeper "in considering new construction, alterations, modifications, restorations,landscape and hardscape.But when the ordinance concludes with the section on demolition or the destruction of structures,there are no guidelines for the exercise of discretion,except limited discretion in considering the retention of landscaping.The ordinance, simply read, mandates that any demolition request for a structure which is not landmarked or on a list to be considered for land marking shall be approved. The criteria is ministerial at best.There is no recognition nor

reference to either architecturally or historically significant structures. So, one has to ask himself/herself, whether ARCOM is fulfilling its charge and mandate as a "gatekeeper" to preserve and protect beauty and quality by allowing for the destruction of that very beauty and quality. Whether this is a big problem, depends somewhat on your perspective. Given that 90% to 95% of all demolition requests heard annually by ARCOM are not deemed to be architecturally or historically significant, there may still be 2 or 3 structures per year that are worthy of consideration as being architecturally or historically significant.

For me, the destruction and loss of just one architecturally or historically significant structure is too much.

The current request being presented to you, unanimously supported by all 10 members of ARCOM, if approved, is minimal, but would at least create a safety net and allow ARCOM to defer the requested demolition of a structure deemed to be architecturally or historically significant for up to 60 days, referring it to the Landmarks Preservation Commission (LPC) to be considered for landmarking. As you recall, this request was supported by both Rene Silvin, the LPC Chair and Amanda Skier, the Director of the Preservation Foundation of Palm Beach. We respect and appreciate their support.

We urge your support for this minimal request - it is a start and it is a needed safe guard.

Thank You

Michael Small,
ARCOM Chairman

Sent from my iPhone

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Any Other Matters

Agenda Title

Discussion on Landmark Incentives

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated January 28, 2021 from Laura Groves van Onna, Historic Preservation Planner**
- ▣ **Town of Palm Beach Code of Ordinances (Chapter 134, Article II, Division 4, Subdivision IV)**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Laura Groves van Onna, Historic Preservation Planner, PZB

Cc: Kirk Blouin, Town Manager
Wayne Bergman, Director of PZB

Re: Incentives for Landmarks

Date: January 28, 2021

EXECUTIVE SUMMARY

This memo serves as an update in efforts to further incentivize Landmarks, as requested by Town Council. On October 14, 2020, staff recommended that Town Council review the information contained herein under Background regarding incentives for Landmarks, consider, discuss, and provide guidance on next steps. Town Council responded in support of and encouraged exploring more incentives for Landmarked properties. Staff has since worked internally, with assistance from the Preservation Foundation of Palm Beach, to identify the most efficient and effective way at present to further incentivize Landmarks. Please see Discussion.

BACKGROUND

Staff had received expressions of interest from the Landmarks Preservation Commission and the Preservation Foundation of Palm Beach in assessing current benefits available to Landmarked properties and what capacity exists to further incentivize Landmarks.

Please see below for a list of current benefits available at Local, State, and Federal levels:

- Tax Abatement for Ten Years – ad valorem tax exemption based on the cost of rehabilitation project(s).
- Florida Building Code and FEMA Exemption – substantial improvements are exempt from the need to elevate buildings in large renovations.
- Landmark Plaque to place on exterior wall.
- Expedited plan review and permitting of Landmark projects.
- Florida Building Code Equivalency Program – allows historic buildings to deviate slightly from prescriptive building code requirements.
- Certified Local Government (CLG) Grants and Assistance Program.
- Florida Coastal Partnerships Initiative – grants and funding to improve disaster-prone historic resources.

- Florida Mitigation Assistance Program – funding through the State of Florida and FEMA for retrofitting historic properties to become less prone to flooding.
- Federal Historic Preservation Tax Incentives Program – 20% rehabilitation tax credit for a building that is individually listed in the National Register of Historic Places or that is a contributor to a historic district listed in the National Register of Historic Places.

At present, Local benefits that the Town of Palm Beach has to offer include: 1) tax abatement for ten years; 2) Florida Building Code and FEMA exemption; 3) a Landmark plaque; 4) expedited plan review and permitting of Landmark projects; and 5) references to State grants, funding and Federal tax incentives. Incentives for Landmarked properties provided by the Town have the potential to be expanded upon.

Speaking with representatives from the Preservation Foundation, the Commission Chair, and fellow staff, it is apparent that the greatest potential benefit to owners of Landmarked properties would be some form of relief from the Code of Ordinances as it relates to zoning. For example, when reviewing an application for rehabilitation of a Landmarked property that would normally require a variance, we could consider providing relief from that requirement – with conditions. These conditions might include that the proposed project must a) protect, contribute to, and not detract from the historic character of the property; b) meet the Secretary of the Interior’s Standards for Rehabilitation; c) be considered for potential impacts on neighbors; and d) not exceed certain limits, perhaps customized to certain property types. Further research and discussion regarding these limits could take place.

Staff sought direction from the Town Council on October 14, 2020 with regard to next steps in consideration of incentives for Landmarked properties. The goal was to assess the comfort level of the Town Council with regard to any proposed zoning relief that could be applied to Landmarked properties as a further incentive to owners. Staff also emphasized the collective gain inherent in further incentivizing Landmarks. This could be a win for an individual property owner and for the Town as a whole by encouraging preservation, enhancement, and promotion of the character that defines Palm Beach.

DISCUSSION

Upon receiving support of and encouragement toward exploring more incentives for Landmarked properties from Town Council on October 14, 2020, staff worked internally, with assistance from the Preservation Foundation of Palm Beach, to identify the most efficient and effective way at present to further incentivize Landmarks. We identified a portion of the Code of Ordinances that already exists regarding Dimensional Waivers ([Chapter 134, Article II, Division 4, Subdivision IV](#)) – for Landmarked and non-Landmarked properties – that has great potential to benefit property owners but is seldom utilized.

Staff is currently in the process of considering revisions to this portion of the Code that would optimize its appeal and relief to property owners. Once these Dimensional Waivers can be refined, subject to approval by Town Council, an important next step will be to properly promote not just these but all benefits currently available to owners of Landmarked properties, and their representatives. For example, the Planning, Zoning & Building Department has started to host workshops for owner representatives, and would like to continue this practice

in order to retain open communication regarding relevant updates to regulations and procedures and to promote incentives like this.

Subdivision IV. - Dimensional Waivers

Sec. 134-234. - Dimensional waiver described.

Waivers providing for relief from the strict application of certain of the dimensional requirements of the zoning code are available for the following situations:

- (1) Additions to, or renovation of existing single-family development constructed prior to 1980. These waivers will be reviewed and approved or denied administratively by the director of the planning, zoning and building department.
- (2) Modifications to landmarked structures or properties. These waivers will be reviewed and approved or denied by the landmarks preservation commission and ratified by the town council.

(Ord. No. 8-07, § 2, 5-8-07)

Sec. 134-235. - General conditions applicable to all dimensional waivers.

- (a) Approval of the waiver will not compromise traffic safety.
- (b) Approval of the waiver will not compromise fire safety.
- (c) There shall be no objection of any abutting property owner(s).

(Ord. No. 8-07, § 2, 5-8-07; Ord. No. 26-10, § 11, 12-15-10)

Editor's note— Ord. No. 8-07, § 2, adopted May 8, 2007, enacted provisions intended for use as subsections 1. and 2. To preserve the style of this Code, and at the discretion of the editor, said provisions have been redesignated as subsections (a) and (b).

Sec. 134-236. - Dimensional waivers for existing single-family development constructed prior to 1980, and which have not been landmarked.

(a) *Specific conditions for approval of a waiver of required minimum side yard setback.*

- (1) For a single-story structure, the resulting side yard setback is not less than any existing nonconforming side yard setback of the principal structure located on property immediately abutting the side yard for which the waiver is requested.
- (2) For a two-story structure, the resulting side yard setback is not less than:
 - a. Any existing nonconforming side yard setback of the single-story principal structure located on property immediately abutting the side yard for which the waiver is requested, plus two and one-half feet; or
 - b. Any existing nonconforming side yard setback of any two-story principal structure located on property immediately abutting the side yard for

which the waiver is requested.

(3) In no event shall the side yard be less than seven and one-half feet in the R-B district and not less than ten feet in any other residential district.

(b) *Specific conditions for approval of a waiver of required minimum rear yard setback.*

(1) For a single-story structure, the resulting rear yard setback is not less than any existing nonconforming rear yard setback of the principal structure located on property immediately abutting the rear yard for which the waiver is requested.

(2) For a two-story structure, the resulting rear yard setback is not less than:

- a. Any existing nonconforming rear yard setback of any single-story principal structure located on property immediately abutting the rear yard for which the waiver is requested, plus five feet; or
- b. Any existing nonconforming rear yard setback of any two-story principal structure located on property immediately abutting the rear yard for which the waiver is requested.

(3) In no event shall the rear yard be less than seven and one-half feet in the R-B district and not less than ten feet in any other residential district.

(c) *Specific conditions for approval of a waiver of minimum front yard setback for entry features.*

(1) The waiver shall be only for a single-story entry feature which meets the following conditions:

- a. Such feature shall not exceed 25 percent of the total dimension of the building wall from which such entry feature projects (measured parallel to said building wall) but shall not be required to be less than ten feet wide.
 - b. The measurement of the projection from the building wall shall not be more than the width of the entry feature.
- (2) The resulting front yard setback is not less than the lesser of any existing nonconforming front yard setback of the principal structures located on property immediately abutting either side of the property for which the waiver is requested. In no case, however, shall the front yard setback be less than 20 feet.

(d) *Notice to abutting property owners; review by director.*

- (1) Abutting property owners shall be notified by certified mail to their respective addresses, as shown on the county property appraiser's tax records, not less than 15 calendar days prior to a decision by the director to approve or deny an application for a dimensional waiver.
- (2) Said notification shall describe the nature and extent of the requested waiver, the location of the property for which the waiver is requested, and the date by which the application will be acted upon by the director.
- (3) The director or his/her designee shall approve, approve with modifications or deny the application for a waiver within 30 days of receipt of the application and shall notify the applicant and abutting property owner(s) in writing by certified mail within seven days of the decision.
- (4) The applicant or abutting property owner(s) shall have 30 days, from the date of the issuance of the certified letter notifying the applicant of the director's decision, to file an appeal with the town council as set forth under sections 134-141—134-145.
- (5) Effective date of approval of a waiver. The approval of a waiver by the director or his/her designee shall become effective upon the expiration of

the appeal period as outlined in section 134-145.

(Ord. No. 8-07, § 2, 5-8-07)

Editor's note—Ord. No. 8-07, § 2, adopted May 8, 2007, enacted provisions intended for use as subsections 1.—4. To preserve the style of this Code, and at the discretion of the editor, said provisions have been redesignated as subsections (a)—(d).

Sec. 134-237. - Dimensional waivers for landmark properties.

The purpose and intent of this section is to provide owners of landmark properties and structures with flexibility in the rehabilitation, expansion, and redevelopment of buildings and structures within the town. This Code establishes general standards for the location, design, scale, and massing of buildings and structures which do not always fit the unique conditions and circumstances of a built-out community that includes many buildings of distinctive individual and cumulative design and character. This section establishes substantive criteria for the review and approval of development on landmarked properties when the property owner desires to use conditional dimensional waivers to the strict application of the underlying zoning district regulations.

(1) *Application of dimensional waivers for landmark properties.* The dimensional waivers of this section may be applied to applications that seek to deviate from the strict application of the underlying zoning district regulations, except that these standards shall not be applied in commercial zoning districts. The dimensional waivers of this section shall be applied in addition to the standards for approval of certificates of appropriateness that are set out in chapter 54. It is not the intent of this section that the consideration of a dimensional waiver supercedes the criteria for granting a certificate of appropriateness.

(2) *Description of conditional dimensional waivers available for landmark structures.* The landmark preservation commission may apply the following conditional dimensional waivers in the alternative to the strict application of the underlying zoning district regulations:

- a. *Reduced setbacks for expansion of landmark buildings.* Reduced side and rear yard setbacks may be approved for the expansion of landmark buildings, or the addition of permissible new buildings, on a lot which contains a landmark building if all of the following are demonstrated:
 1. The setback does not violate any of the following conditions:

Front: Reduction can be up to 90 percent of underlying zoning district requirement; provided, however that the front yard setback shall not be less than the lesser of the existing front yard setbacks of the principal structures on the lots immediately abutting the side property lines of the lot for which the waiver is being requested.

Side: Reduction can be up to 65 percent of underlying zoning district requirement; provided, however, that the side yard setback shall not be less than five feet.

Side street: Reduction can be up to 65 percent of underlying zoning district requirement.

Rear: Reduction does not result in a rear yard setback of less than seven and one-half feet.

Rear street: Reduction does not result in a rear street yard setback of less than 20 feet.

2. The proposed portion of building or structure between the required setback and the reduced setback does not compromise the historic character of the landmark building, due to one or more of the following:

A. The architecture and design of the additional building or structure between the required setback and the reduced setback:

- i. Is complimentary to the architecture of the landmark building, while neither replicating the architecture nor fundamentally departing from it;

- ii. Is such that the additional building or structure appears subordinate to those parts of the landmark building that materially contribute to its landmark status;

- iii. Does not block public views of those parts of the landmarked building that materially contribute to its landmark status; and
- iv. Allows for future removal of the additional building or structure and restoration of the landmark building to its existing design.

B. The volume and footprint of the portion of the building or structure between the required setback and the reduced setback is de minimus, and the character of the proposed building or structure does not tend to distract the eye from the principal landmark building.

C. The portion of the additional building or structure between the required setback and the reduced setback is completely screened from view from public rights-of-way by existing topography, existing walls, and/or existing landscaping that do not interfere with the historic character of the landmark building.

D. Reasonable alternative designs that are permitted by the strict requirements of the underlying zoning district and result in the same cubic content ratio would detract from the landmark character of the building.

b. *Reduced setbacks for restoration/replacement of documented portion of a landmark building that has been destroyed.* A reduction of up to 100 percent of any required setback may be approved if it is demonstrated that the proposed development between the required setback and the reduced setback area enhances the historic character of the landmark building by restoring or replacing a portion of the original building or structure that had been destroyed or demolished.

c. *Increasing maximum height of driveway gates.* An increase in the maximum height of driveway gates may be approved if it is demonstrated that:

1. The proposed driveway gates will restore or replace gates that contribute to the character of landmark building;
2. The proposed driveway gates are located no closer to the street than the original driveway gates; and
3. The proposed driveway gates will not compromise traffic safety.

d. *Decreasing minimum setback of driveway gates.* A decrease in the minimum setback of driveway gates may be approved if it is demonstrated that:

1. The proposed driveway gates will restore or replace gates that contribute to the character of landmark building;
 2. The proposed driveway gates are located no closer to the street than the original driveway gates; and
 3. The proposed driveway gates are designed and located in such a manner that they will not compromise traffic safety.
- e. *Decreasing landscaped open space for restoration or renovation of nonconforming landmark buildings.* A decrease in the minimum landscaped open space may be approved in order to permit landmark buildings that do not conform to the minimum landscaped open space requirements to be renovated, reconstructed, or restored, in order to either preserve the building as it existed when it was landmark; or in conjunction with restoration that involves the application of subsection b.
- f. *Decreasing landscaped open space for expansion of landmarked buildings which are used for an important public purpose.* A decrease of up to 15 percent of the minimum required landscaped open space may be approved if it is demonstrated that:
1. The reduction is necessary to permit the necessary expansion of a landmark building which serves an important public purpose; and
 2. Reasonable alternative designs that are otherwise permitted by the strict requirements of the underlying zoning district, and which would result in the same cubic content ratio, would detract from the landmark character of the building.
- (3) *Landmarks preservation commission action; town council ratification of commission action on applications involving dimensional waivers.*
- a. *Decisions to be placed on town council consent agenda.* Decisions of the landmark preservation commission to approve, approve with conditions, or deny applications for development approval involving dimensional waivers shall be placed on the consent agenda of the first available meeting of the town council after the decision.
 - b. *Removal of decisions from consent agenda.* Decisions that are placed on the town council consent agenda pursuant to subsection a., may be removed from the consent agenda and placed on the regular agenda at the request of a member of the town council.

(Ord. No. 8-07, § 2, 5-8-07)

Secs. 134-238—134-260. - Reserved.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Any Other Matters

Agenda Title

Discussion on Permitted Uses versus Special Exception Uses

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated January 27, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director of Planning, Zoning & Building



Cc: Kirk Blouin, Town Manager & James Murphy, Asst. Director of PZB

Re: Permitted Uses vs. Special Exception Uses

Date: January 27, 2021

DISCUSSION:

The Town zoning code describes and recognizes two types of principal uses – permitted and special exception. A permitted use is one which is allowed by right under the code in a specific zoning district. A special exception use is a use that must be approved by the Town Council and only if the applicant meets or agrees to comply with a number of defined conditions.

Permitted uses are allowed by right and are easily approved by staff. Each Town zoning district includes the list of permitted uses, which are always the main and foremost uses within a district. There is generally no time or trouble involved in reviewing or approving permitted uses. There is no requirement to notice neighbors of new permitted uses or legal changes to permitted uses.

Special exception uses, however, can be time consuming and must start with an application to the Town Council. Every special exception use must comply with the Town regulations for special exceptions, which help minimize impacts to neighbors, to traffic flow and to parking, along with complying with other similar items. The regulations also demand compliance with the Comprehensive Plan and with other Town Codes. All special exception uses require notice to neighbors and must be approved at a public meeting.

This brief review of the two main types of uses is prompted by the recent opening of a new bar at 380 S. County Road. This new bar is located in the C-TS zoning district and is just under 3,000 sq ft in size. As such, the use is a permitted use (permitted by right), based upon today's code. If the floor area of this bar was above 3,000 sq ft in size, the use would be a special exception, subject to Town Council review approval, which would also include notice to neighbors.

I have heard comments from Commissions and Council Members questioning how the bar received approval since the Town Council did not review and approve it. The answer is it did

not require Town Council approval, nor did the bar require notice to neighbors, as it is permitted by right.

Staff was recently questioned as to how this new bar worked its way through staff review. Here is the basic timeline of 380 S. County Road project, to date, with backup attached:

9/11/19	Architect Dan Kahan approaches the Town with a “pop up” Wine Bar at 380 S. County Rd.
9/18/19	Josh Martin approves the use of the Wine Bar, as it is permitted by right under the code.
12/18/19	Permit application is made for interior and exterior renovations to the building.
1/6/20	Arcom staff approval granted by Josh Martin for first floor to be converted to a Wine Bar.
1/22/20	Permit B-19-82652 is issued. Seven revisions follow the issuance of this permit, all of which are approved.
1/23/20	Arcom staff approval granted by Josh Martin for a patio on the north side of the building.
2/5/20	Request made for Administrative Outdoor Seating and Administrative Site Plan Review.
2/7/20	Arcom staff approval granted by Josh Martin for outdoor seating on the new patio.
10/1/20	Business Tax Receipt is issued for the Wine Bar.
11/19/20	Kimley Horn approaches Paul Castro – the use will become a restaurant.
12/18/20	Arcom staff approval granted by Laura Groves Van Onna for small door signs.

I have also attached the zoning code text for the permitted and special exception uses for the Town’s commercial districts. The Town Council at any time can review the various uses and determine if the opening of a bar or restaurant should be a permitted use or a special exception use in any district in the future.

Attached: Backup to the 380 S. County Road bar approvals
Zoning text for the C-TS & C-WA

Wayne Bergman

From: Daniel Kahan <DanielKahan@smithmoorearchitects.com>
Sent: Wednesday, September 11, 2019 11:17 AM
To: Joshua Martin; Wayne Bergman
Subject: 380 South County Rd

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Josh and Wayne,

When Josh is back, I'd like to setup a meeting at 380 South County to discuss the possible pop-up wine bar function we discussed with Josh at the last meeting. There are some existing conditions relating to building and life safety that we'll need interpretations on, and I think being there will be the most efficient way of determining what is needed.

We'd like to do this as soon as possible, so please let me know your availability next week.

Thanks,
Dan

Daniel Kahan

Wayne Bergman

From: Joshua Martin
Sent: Wednesday, September 18, 2019 1:36 PM
To: Daniel Kahan
Cc: Wayne Bergman; Joshua Martin
Subject: RE: 380 S. County

Also, I confirmed your zoning Dan—APPROVED!

Josh Martin, AICP, CNU-A
Director

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6401
Mobile: 843-247-2057
www.townofpalmbeach.com

From: Joshua Martin <jmartin@TownOfPalmBeach.com>
Sent: Wednesday, September 18, 2019 1:23 PM
To: Daniel Kahan <DanielKahan@smithmoorearchitects.com>
Cc: Wayne Bergman <wbergman@TownOfPalmBeach.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>
Subject: RE: 380 S. County

Dan:

Thanks again for your time today.

Wayne: Do you have any thoughts on below—I am not well versed in the Florida code on when a kitchen becomes a kitchen for a wine bar---can you help us out?

Thanks so much.

Respectfully,
Josh

Josh Martin, AICP, CNU-A
Director

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6401
Mobile: 843-247-2057
www.townofpalmbeach.com

From: Daniel Kahan <DanielKahan@smithmoorearchitects.com>
Sent: Wednesday, September 18, 2019 10:16 AM
To: Joshua Martin <jmartin@TownOfPalmBeach.com>
Subject: 380 S. County

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Josh,

Thanks for the time yesterday. I think it was really productive. We're going to move forward with initial ideas for the building and the build-out. I wanted to get a general idea on where the line is between needing grease trap and kitchen exhaust. Who do you suggest I reach out to, and what do you think the best method of approach would be?

Thanks again,
Dan

Daniel Kahan
Principal Architect and Designer
Partner

SMITH AND MOORE ARCHITECTS, INC.
1500 South Olive Avenue,
West Palm Beach, FL 33401

t: 561.835.1888, ext: 112
f: 561.832.7015
www.smithmoorearchitects.com

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Wayne Bergman

From: Michelle Sentmanat
Sent: Thursday, January 23, 2020 12:45 PM
To: Wayne Bergman; msandtheman@gmail.com; Joshua Martin; robertcastellano93@gmail.com; Daniel Kahan; Buck Evans; JOE HUGHES
Cc: Andres Quintana; Brian Thomas; Martin Deloach
Subject: RE: 380 S County Rd Bar

Good afternoon,

I have a new staff approval which has been approved by Josh Martin on 1/22/2020 that I have processed under A-20-00859. This approval is for the following:

STAFF APPROVAL - IN CONJUNCTION WITH THE CONVERSION OF THE FIRST FLOOR OF THE EXISTING BUILDING TO A WINE BAR, WE ARE REQUESTING THAT THE SMALL LANDSCAPED AREA AT THE NORTHEAST CORNER OF THE BUILDING BE CONVERTED TO HARDSCAPE WITH 6 OUTDOOR SEATS. THESE SEATS WILL BE DEDUCTED FROM THE PROPOSED INTERIOR SEATING COUNT. ADDITIONAL LANDSCAPED OPEN SPACE WILL BE ADDED IN OTHER AREAS OF THE PROPERTY TO OFFSET THE LOSS.

At this time there is a fee due of \$200.00.

Thank you.

Michelle Sentmanat
Senior Development Permit Technician

Town of Palm Beach
Planning, Zoning & Building Department
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6413
www.townofpalmbeach.com

From: Wayne Bergman <wbergman@TownOfPalmBeach.com>
Sent: Monday, January 13, 2020 3:08 PM
To: msandtheman@gmail.com; Joshua Martin <jmartin@TownOfPalmBeach.com>; robertcastellano93@gmail.com; Daniel Kahan <DanielKahan@smithmoorearchitects.com>; Buck Evans <buckevanscbo@gmail.com>; JOE HUGHES <joeh@evanshughesinspections.com>
Cc: Andres Quintana <AQuintana@TownofPalmBeach.com>; Brian Thomas <BThomas@TownofPalmBeach.com>; Michelle Sentmanat <MSentmanat@TownofPalmBeach.com>; Martin Deloach <MDeLoach@TownofPalmBeach.com>
Subject: RE: 380 S County Rd Bar

The permit and revised plans are back in. The outdoor seating has been removed and the window and door changes have been approved. The revised plan pages have not been reviewed or stamped by the private provider. I do not see handicapped accessibility called out at the bar or at tables. Then Fire Marshal has reviewed the revisions and has conditionally approved the plans with the need for shop drawings on the sprinkler and fire alarm system.

Please pick up the revisions and have the private provider stamp the pages. Thank you.

Wayne Bergman, MCP, LEED-AP
Asst. Director

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6426
Mobile: 561-232-7406
www.townofpalmbeach.com

From: Wayne Bergman

Sent: Thursday, January 02, 2020 3:20 PM

To: 'msandtheman@gmail.com' <msandtheman@gmail.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; 'robertcastellano93@gmail.com' <robertcastellano93@gmail.com>; 'Daniel Kahan' <DanielKahan@smithmoorearchitects.com>

Cc: Andres Quintana <AQuintana@TownofPalmBeach.com>; Brian Thomas <BThomas@TownofPalmBeach.com>; Michelle Sentmanat <MSentmanat@TownofPalmBeach.com>; Martin Deloach <MDeLoach@TownofPalmBeach.com>

Subject: RE: 380 S County Rd Bar

Today's comments and the comments before Christmas.

Wayne Bergman, MCP, LEED-AP
Asst. Director

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6426
Mobile: 561-232-7406
www.townofpalmbeach.com

From: Wayne Bergman

Sent: Thursday, January 02, 2020 3:06 PM

To: 'msandtheman@gmail.com' <msandtheman@gmail.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; 'robertcastellano93@gmail.com' <robertcastellano93@gmail.com>; 'Daniel Kahan' <DanielKahan@smithmoorearchitects.com>

Cc: Andres Quintana <AQuintana@TownofPalmBeach.com>; Brian Thomas <BThomas@TownofPalmBeach.com>; Michelle Sentmanat <MSentmanat@TownofPalmBeach.com>; Martin Deloach <MDeLoach@TownofPalmBeach.com>

Subject: 380 S County Rd Bar

All - The plans were resubmitted today with nothing different from the last submittal. They plans and permit application are once again being returned. The permit currently is on hold.

- There should be an Arcom approval, in the form of a staff approval, for changing the north window to a double door. Also for the front entry door, sidelites and transom change out. These alterations do affect the view of the building. No staff approval application was made. If Josh Martin decides a staff approval is not required, he will let us know.
- The outdoor seating is still listed on the two plan sets. I have not seen a revised plan that was submitted to Debbie and Paul. If such a plan exists, it needs to be part of the permit application set.

- Not one of the Fire Marshal's numerous comments were addressed.

Please resolve these issues and resubmit. Thank you.

Wayne Bergman, MCP, LEED-AP
Asst. Director

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6426
Mobile: 561-232-7406
www.townofpalmbeach.com

RECEIVED

FEB 05 2020

Town of Palm Beach
PZB Dept



Town of Palm Beach
ZONING DIVISION
360 South County Road
Palm Beach, FL 33480
561-227-6406

APPLICATION FOR ADMINISTRATIVE APPROVAL OF OUTDOOR SEATING

Section A. Required Application Information

1. Provide scaled, detailed and dimensioned floor plan and site plan (both inside and outside).
2. Provide a filing fee of \$200.00. There is an annual renewal fee of \$50 due at the time of the renewal of the business tax receipt.
3. Attach a detailed description of the outdoor seating as Exhibit A. Please note that the detailed description should address and meet all requirements in Section B or the application will be denied.

Applicant: 380 S County LLC Property Owner: 380 S County LLC
Name of Business: Le Bar a Vin AED Liqueurs LLC
Address: 380 S County LLC Zoning District: _____
Number of seats requested: 6
Signature of Applicant or Duly Authorized Representative _____
Signature of Applicant or Duly Authorized Representative _____
214 264 1826 214 264 1826
Type Name and Phone Number Type Name and Phone Number

Section B. Conditions of Administrative Approval for Outdoor Seating (To be completed by Staff)

The following standards and criteria shall be part of the application which shall be used by the Director in reviewing and approving an outdoor seating application. The applicant shall meet all of the following criteria in order to be granted administrative approval:

Meets Does Not
Code Meet Code

- | | | | |
|-------|-------|-----|--|
| _____ | _____ | (a) | Outdoor seating is restricted to the area abutting the boundary lines of the property on which the business owned by the applicant is located. |
| _____ | _____ | (b) | Outdoor seating shall not be allowed where the tables and chairs would be placed within five (5) feet of bus stops, taxi stands, sight triangles or other structures or areas determined by the Director to require clearance for the public. |
| _____ | _____ | (c) | No tables or chairs shall be allowed within five (5) feet of a pedestrian crosswalk. |
| _____ | _____ | (d) | Outdoor seating shall be located in such a manner that a minimum five (5) foot wide unobstructed pedestrian path is maintained at all times. |
| _____ | _____ | (e) | No objects shall be permitted around the perimeter of an outdoor seating area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the use of the pedestrian path. |
| _____ | _____ | (f) | Establishments with outdoor seating adjacent to or abutting a residential use shall close outdoor seating service at 12:00 midnight. |
| _____ | _____ | (g) | All outdoor seating shall have a minimum thirty (30) foot setback from a residential use's property line and shall be properly buffered and screened by a six foot high wall between the outdoor seating and an abutting residential use to avoid noise, litter, light and odor impacts. When there is a street between the residential use and the outdoor use, said screening shall not be required. |
| _____ | _____ | (h) | No establishment shall play or cause to be played any music in the open air, nor shall any singing be allowed. |
| _____ | _____ | (i) | All kitchen equipment used to service the outdoor seating shall be located within the kitchen of the primary dining facility. |
| _____ | _____ | (j) | Outdoor seating shall comply with any regulation relating to noise and lighting. |
| _____ | _____ | (k) | Areas associated with the outdoor seating portion of the restaurant shall not count toward any maximum square footage limitation. |
| _____ | _____ | (l) | Outdoor seating able to be seen from the public right-of-way shall be taken inside after close of business. |
| _____ | _____ | (m) | Outdoor seating shall be counted toward the inside seating capacity of a restaurant or dining room. |

Wayne Bergman

From: Paul Castro
Sent: Tuesday, August 18, 2020 9:21 AM
To: Debby Moody
Cc: Wayne Bergman
Subject: RE: Town of Palm Beach Business Tax Receipt AED Liquor LLC LE BAR A VIN

Debby,

Preliminary. This license is for a restaurant on the second floor and they are on the first floor and first floor only. In addition, they were to be a wine bar and not a restaurant. I need a further discussion with Wayne before we get back to the applicant.

Thank you,

Paul Castro, AICP

Zoning Manager

360 South County Road
Palm Beach, FL 33480
(561)227-6406
pcastro@townofpalmbeach.com

From: Debby Moody <DMoody@TownofPalmBeach.com>
Sent: Tuesday, August 18, 2020 8:56 AM
To: Paul Castro <PCastro@TownofPalmBeach.com>
Subject: FW: Town of Palm Beach Business Tax Receipt AED Liquor LLC LE BAR A VIN

Paul
Attached is an APP for BTR for seating at Le Bar A Vin.
You had already signed off on the 400sf merchant selling wine, apparel, etc. Now they want to have 53 seats for food service and alcohol service.

Are you OK with this?

Debby Moody, MBTO
Business Services Supervisor

Town of Palm Beach
Planning, Zoning & Building Department
360 S County Rd., PO Box 2029
Palm Beach, FL 33480
Phone: 561-227-6411
Fax: 561-835-4621

From: Amanda Hessein <Amanda@rutledge-ecenia.com>
Sent: Friday, August 14, 2020 11:42 AM
To: Debby Moody <DMoody@TownofPalmBeach.com>
Cc: Maggie Schultz <Maggie@rutledge-ecenia.com>
Subject: RE: Town of Palm Beach Business Tax Receipt AED Liquor LLC

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Good morning Debby,

As a follow-up to our previous communications below for AED Liquor LLC's business tax receipts with the Town of Palm Beach, please find attached the second Business Tax Receipt Application for AED Liquor LLC d/b/a Le Bar A Vin for their on-site dining. The number of seats for their food service license are 53 seats. I have also attached the DBPR licenses for the food service and alcoholic beverage license for the subject property to accompany the business tax receipt application, as well as the seating diagram for the restaurant/bar.

Please advise next steps for the issuance of the business tax receipt for the property. Thank you!

Sincerely,

Amanda Hessein, Esq.
Rutledge Ecenia, P.A.
119 S. Monroe Street, Suite 202
Tallahassee, FL 32301
850-681-6788
amanda@rutledge-ecenia.com

Rutledge | Ecenia

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From: Debby Moody <DMoody@TownofPalmBeach.com>
Sent: Monday, July 27, 2020 11:40 AM
To: Amanda Hessein <Amanda@rutledge-ecenia.com>
Cc: Maggie Schultz <Maggie@rutledge-ecenia.com>
Subject: RE: Town of Palm Beach Business Tax Receipt AED Liquor LLC

Please include number of seats along with seating diagram. Once I know the number of seats and date of opening I will be able to calculate the fees due.

Debby Moody, MBTO
Business Services Supervisor

Town of Palm Beach
Planning, Zoning & Building Department

360 S County Rd., PO Box 2029
Palm Beach, FL 33480
Phone: 561-227-6411
Fax: 561

From: Amanda Hessein [<mailto:Amanda@rutledge-ecenia.com>]
Sent: Monday, July 27, 2020 11:27 AM
To: Debby Moody <DMoody@TownofPalmBeach.com>
Cc: Maggie Schultz <Maggie@rutledge-ecenia.com>
Subject: RE: Town of Palm Beach Business Tax Receipt AED Liquor LLC

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Hi Debby,

May you please send us another Business Tax Receipt application for the Town of Palm Beach as the location does offer onsite dining; we will indicate the number of seats on the application as reflected on the property's state license.

Thank you,

Amanda Hessein, Esq.
Rutledge Ecenia, P.A.
119 S. Monroe Street, Suite 202
Tallahassee, FL 32301
850-681-6788
amanda@rutledge-ecenia.com

Rutledge | Ecenia

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From: Debby Moody <DMoody@TownofPalmBeach.com>
Sent: Monday, July 27, 2020 10:27 AM
To: Amanda Hessein <Amanda@rutledge-ecenia.com>
Cc: Maggie Schultz <Maggie@rutledge-ecenia.com>
Subject: RE: Town of Palm Beach Business Tax Receipt AED Liquor LLC

Attached is the business tax receipt for AED Liquor LLC. It is for a nightclub. If there operation includes dining then a separate application must be submitted indicating the number of seats.

Debby Moody, MBTO

Business Services Supervisor

Town of Palm Beach
Planning, Zoning & Building Department
360 S County Rd., PO Box 2029
Palm Beach, FL 33480
Phone: 561-227-6411
Fax: 561

From: Amanda Hessein [<mailto:Amanda@rutledge-ecenia.com>]
Sent: Monday, July 27, 2020 9:37 AM
To: Debby Moody <DMoody@TownofPalmBeach.com>
Cc: Maggie Schultz <Maggie@rutledge-ecenia.com>
Subject: Fwd: Town of Palm Beach Business Tax Receipt

*******Note:** This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity. *****

Good morning Ms. Moody,

Please see below the alcoholic beverage license and permanent food service license issued to AED Liquor LLC for the subject property address 380 South County Road, Palm Beach, FL 33480 to complete the business tax license processing and issuance of the Town of Palm Beach Business Tax Receipt:

Retail Beverage	<u>AED LIQUOR LLC</u>	Primary	BEV6000268 4COP	Current, Active 03/31/2021
-----------------	------------------------------	---------	--------------------	-------------------------------

License Location Address*: 380 SOUTH COUNTY ROAD PALM BEACH, FL 33480
Main Address*: 380 SOUTH COUNTY ROAD PALM BEACH, FL 33480

Permanent Food Service	<u>AED LIQUOR LLC</u>	Primary	SEA6022323 Seating	Current, Active 12/01/2020
---------------------------	------------------------------	---------	-----------------------	-------------------------------

License Location Address*: 380 S COUNTY RD PALM BEACH, FL 33480
Main Address*: 380 S COUNTY RD PALM BEACH, FL 33480
Mailing Address*: 380 S COUNTY RD PALM BEACH, FL 33480

Please kindly confirm receipt and advise if you are able to provide a scanned copy of the issued business tax receipt for the business.

Thank you,

Amanda Hessein, Esq.
Rutledge Ecenia, P.A.
119 S. Monroe Street, Suite 202
Tallahassee, FL 32301
850-681-6788
amanda@rutledge-ecenia.com

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From: Debby Moody <DMoody@TownofPalmBeach.com>
Sent: Monday, July 27, 2020 8:33:45 AM
To: Amanda Hessein <Amanda@rutledge-ecenia.com>
Cc: Maggie Schultz <Maggie@rutledge-ecenia.com>
Subject: RE: Town of Palm Beach Business Tax Receipt

The application form and payment for the 2020 fiscal year have been received. Please provide a copy of the State licenses from the DBPR.

Debby Moody, MBTO
Business Services Supervisor

Town of Palm Beach
Planning, Zoning & Building Department
360 S County Rd., PO Box 2029
Palm Beach, FL 33480
Phone: 561-227-6411
Fax: 561

From: Amanda Hessein [<mailto:Amanda@rutledge-ecenia.com>]
Sent: Friday, July 24, 2020 5:12 PM
To: Debby Moody <DMoody@TownofPalmBeach.com>
Cc: Maggie Schultz <Maggie@rutledge-ecenia.com>
Subject: Town of Palm Beach Business Tax Receipt

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Good evening Ms. Moody,

Our client is a new restaurant located in your jurisdiction and is in need of obtaining the requisite Town of Palm Beach Business Tax Receipt(s). Our client's business is a restaurant located at 380 South County Road, Palm Beach, FL 33480; the business has received the appropriate permanent food service license and permanent alcoholic beverage license from the Department of Business and Professional Regulation.

In anticipation of the opening of the property, please advise the application required to be submitted as well as the fee and any required supporting documentation for issuance of the local business tax receipt for the subject property.

Thank you for your assistance. Please contact me with any questions.

Sincerely,

Amanda Hessein, Esq.
Rutledge Ecenia, P.A.
119 S. Monroe Street, Suite 202
Tallahassee, FL 32301
850-681-6788
amanda@rutledge-ecenia.com

Rutledge | Ecenia

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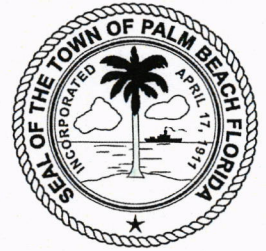
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Town of Palm Beach

Planning, Zoning & Building Department



BUSINESS TAX RECEIPT

Attached hereto is your Town of Palm Beach Business Tax Receipt
for the business tax year: 2020/2021

PLEASE NOTE THAT THIS BUSINESS TAX RECEIPT WILL EXPIRE ON
September 30, 2021

Pursuant to the Town of Palm Beach Code of Ordinances, Section 114-40, "All business tax receipts shall be posted at the designated place of business so that they may be visible to patrons of such place of business"

Town of Palm Beach, P.O. Box 2029, Palm Beach, FL 33480 Business Tax Office (561) 227-6411

10% PENALTY DUE OCTOBER 1
15% PENALTY DUE NOVEMBER 1
20% PENALTY DUE DECEMBER 1
25% PENALTY DUE JANUARY 1

Town of Palm Beach

BUSINESS TAX RECEIPT
FISCAL YEAR: 2020/2021
RECEIPT EXPIRES SEPTEMBER 30, 2021

FOR BUSINESS LOCATED AT: 380 S COUNTY RD
CLASSIFICATION: NightClub - Without Dance Floor
SQ.FT. OCCUPIED: 2150 # UNITS:
CONDITION:

UNIT TYPE:

BUSINESS TAX PAYER: ANN DESRUISSEAU
BUSINESS NAME: LE BAR A VIN
CORPORATE NAME: AED LIQUOR LLC
MAILING ADDRESS: 380 S COUNTY RD
PALM BEACH, FL 33480

TOWN RECEIPTS #: 00960157

BUSINESS TAX: \$ 837.00

ISSUE DATE : 10/1/20

COMMENTS: WINE BAR ONLY

108 TOTAL SEATS MAXIMUM.
CLASSIFIED AS NIGHTCLUB FOR
FEE PURPOSES ONLY. WINE
BAR ONLY

CANNOT BE RESTAURANT
BECAUSE NO HOOD



Town of Palm Beach
PO Box 2029
360 South County Road
Palm Beach, FL 33480
Email: btr@townofpalmbeach.com
(561) 227 - 6411

RECEIVED

SEP 24 2020 VIA email

TOWN OF PALM BEACH
PZB DEPARTMENT

APPLICATION FOR PALM BEACH LOCAL BUSINESS TAX RECEIPT

PLEASE LEAVE NO SPACES BLANK Effective 1/1/2007, in the State of Florida, the term "Occupational License" was replaced with "Business Tax Receipt"

EVIDENCE OF REGISTRATION WITH THE STATE OF FLORIDA, DIVISION OF CORPORATIONS OF YOUR LEGAL BUSINESS NAME AND FICTITIOUS NAME REGISTRATIONS MUST ACCOMPANY THIS APPLICATION. If you are doing business in a name other than your Legal Corporate name OR if your legal first AND last name are not included in your business name, then you must file a fictitious name registration with the Department of State. (www.sunbiz.org)

NOTE: NEW BUSINESSES OR CHANGE OF LOCATION ADDRESS MUST PROVIDE A DETAILED FLOOR PLAN AND COMPLETE PARKING STATEMENT

WHEN DO YOU PLAN TO OPEN: October 1, 2020

LEGAL BUSINESS NAME: AED Liquor LLC

Must provide evidence of registration with State of Florida, Division of Corporations (www.sunbiz.org)

BUSINESS TYPE: Inc. Corp., LLC, PA, Other ☒ Sole Proprietor

DBA NAME: Le Bar A Vin

Must provide evidence of registration of Fictitious Name with State of Florida, Division of Corporations (www.sunbiz.org)

NATURE OF BUSINESS: Restaurant with onsite food service seating and alcoholic beverage service.

BUSINESS DESCRIPTION/DESCRIBE ALL ACTIVITIES THAT WILL TAKE PLACE AT THIS LOCATION. Alcoholic beverage license and food service license.
Attach separate sheet if necessary. If you are a retail business, tell us what you sell, if you are an office use, tell us what you do

BUSINESS ADDRESS: 380 South County Road, Palm Beach, FL 33480

SUITE #:

MAILING ADDRESS (IF DIFFERENT) Same as business address.

BUSINESS PHONE () TBD

BUSINESS FAX ()

CELL PHONE # ()

EMAIL ADDRESS: anndesr@yahoo.com [or Maggie Schultz: Maggie@rutledge-ccenia.com re: BTR application]

WEBSITE:

*FEDERAL TAX ID# 84-3181768

FL SALES TAX #

60-8017935613-9

SQUARE FOOTAGE OCCUPIED (Gross Leasable Space): 2,150 sq. ft.

WHAT FLOOR? 1 FL ☒ 2ND FL ☐ 3RD FL ☐ other ☐

PROPERTY OWNER / LANDLORD'S NAME & PHONE #: 380 South County, LLC (561) 515-3003

PREVIOUS TENANT: TD Bank

PROPERTY CONTROL NUMBER: 50-43- 43 - 23 - 05 - 010 - 0280

APPLICANT NAME: AED Liquor, LLC

FIRST NAME

FULL MIDDLE NAME

LAST NAME

DATE OF BIRTH (MM/DD/YY): N/A

HOME ADDRESS: N/A- see business address above.

CITY, ST, ZIP

PHONE: () 214-264-1826

POSITION WITH THE BUSINESS: (Owner, Officer, Licensee, etc) Owner

DATE OF HIRE N/A

EMAIL ADDRESS: anndesr@yahoo.com

CERTIFICATION/LICENSE # Food Service: SEA6022323

CERTIFICATION EXP. DATE 12/01/2020

(Please include a copy of your certification/license: i.e. Brokers/RE Sales License, CRD#, Cosmetologist license #, etc)

LIST ALL CORPORATE OFFICERS / DIRECTORS & REGISTERED AGENT: USE SEPARATE SHEET IF NECESSARY.

1.	FIRST NAME	MIDDLE INITIAL	LAST NAME	DATE OF BIRTH	ADDRESS
1.	Ann	Des	Ruisseaux	12/27/1970	1090 N. Ocean Blvd., Palm Beach, FL 33480
2.	FIRST NAME	MIDDLE INITIAL	LAST NAME	DATE OF BIRTH	ADDRESS
3.	FIRST NAME	MIDDLE INITIAL	LAST NAME	DATE OF BIRTH	ADDRESS

INCOMPLETE OR MISLEADING APPLICATIONS WILL BE REJECTED. ALL LINES MUST BE COMPLETE. IF NOT APPLICABLE, PLEASE INDICATE WITH N/A
* Required by State Statute FS205.

I CERTIFY THAT THE INFORMATION GIVEN IN THIS APPLICATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I AGREE TO COMPLY WITH ALL TOWN ORDINANCES COVERING THE OCCUPATION/PROFESSION/BUSINESS DESCRIBED HEREIN:

DATE: 08/13/20

SIGNATURE OF APPLICANT:

OFFICE USE ONLY: APPROVALS:

PERTINENT DATA TO JUSTIFY BUSINESS CLASSIFICATION:

BUSINESS CATEGORY: BAR

CODE:

FEE:

BUSINESS TAX RECEIPT #

CUSTOMER #:

PAID BY:

ACTIVITY #

NOTES:

Rev. 04/20/2017 DM

TC-Dev Review Backup 2-10-2021

384 of 448

BEV6000268 3/31/20

Cannot be Hotclub / cannot be restaurant (alcohol)

Footnotes:

--- (4) ---

Cross reference— *Businesses, ch. 22.*

Sec. 134-1106. - Purpose and limitations.

The purposes of the C-TS town-serving commercial district are to:

- (1) Create, preserve and enhance areas of attractive, small-scale, retail, personal and professional/business services to be developed either as a unit or in individual parcels, providing for the frequently recurring needs of townpersons.
- (2) Enhance the general character of the district and its compatibility with its residential surroundings, and, therefore, signs are limited to those accessory to businesses conducted on the premises, including the number, area and types; retail drive-in facilities are not permitted, and, in order to maintain the town-serving nature of the district, limitations on gross leasable floor (GLA) area are imposed.

(Ord. No. 2-74, schedule B, 3-26-74; Ord. No. 3-77, § 2, 3-29-77; Ord. No. 5-78, §§ 10, 15, 3-31-78; Ord. No. 7-79, §§ 2, 5, 7, 3-30-79; Ord. No. 4-80, § 3, 3-31-80; Ord. No. 6-81, § 2(a)—(d), (g), (h), 3-31-81; Ord. No. 7-82, § 3(a)—(d), 3-31-82; Ord. No. 2-83, § 3(c), 2-23-83; Ord. No. 1-84, § 2(f)—(h), 3-1-84; Ord. No. 1-85, § 2(g)—(k), 2-11-85; Ord. No. 1-86, § 2(b), (c), 2-10-86; Ord. No. 1-87, § 2(c)—(f), 2-9-87; Ord. No. 2-88, § 1, 2-8-88; Ord. No. 1-89, § 2(a), 2-6-89; Ord. No. 1-90, § 2(f)—(i), 2-5-90; Ord. No. 1-91, § 2(b), 4-23-91; Ord. No. 1-92, § 2, 2-3-92; Ord. No. 6-93, § 2(a)1—7, 2-9-93)

Sec. 134-1107. - Permitted uses.

(a) *Enumeration; 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:

- (1) Retail and service establishments, such as restaurants, excluding formula restaurants as defined in section 134-2 and bars/lounges, hardware stores, food stores, clothing stores, drugstores, barbershops beauty salons and jewelry stores.
- (2) Offices, executive office suites, professional services, business services, excluding veterinarian offices, and securities and financial brokerage and trust companies above the first floor.
- (3) Offices, professional services, business services and securities and financial brokerage and trust companies in the 200 block of Peruvian Avenue and Bradley Place.
- (4) Nonprofit cultural centers.
- (5) Professional and studio type schools.
- (6) Storage facility related to a permitted or special exception use in the district provided said use meets all additional conditions in section 134-1760 of this chapter.
- (7) Essential services.
- (8) Public parks.
- (9) Residence(s) above the first floor.

(b) *Regulation of existing nonconforming commercial uses.* Any existing uses contained on the list of permitted uses shown in subsection (a) of this section which contain more than 3,000 square feet of gross leasable area (GLA)

shall be classified as existing nonconforming uses under article VI of this chapter pertaining to nonconforming uses. However, all future changes of use shall be limited to those uses listed as permitted uses on the list contained in this section with a maximum gross leasable area of 3,000 square feet, and if a change of use is contemplated from one general commercial category (retail and services; office, professional and business services; or banks and financial institutions) to another, wherein the new use will involve a gross leasable area exceeding 3,000 square feet, the contemplated new use shall be subject to prior approval of a special exception application by the town council before the change is made (refer to sections 134-227 through 134-233 pertaining to special exception uses). In effect, this will allow any existing use over 3,000 square feet, in a district with a 3,000 square footage limitation, to continue operating at its existing scale or to change to another use within the same general commercial category without town council approval. For example, if a ladies apparel store of 8,000 square feet exists in the C-TS district and the owner wishes to change to an antique store of the same size or subdivide into two 4,000-square-foot offices, the owner would need to apply for and obtain approval of a special exception from the town council. No existing commercial use which is subject to the 3,000 square feet maximum gross leasable area (GLA) regulation may occupy additional space within 1,500 feet of the existing businesses, which distance shall be measured along the public sidewalk, if such new space to be occupied will increase the total gross leasable area (GLA) to more than 3,000 square feet.

(Ord. No. 2-74, schedule B, 3-26-74; Ord. No. 3-77, § 2, 3-29-77; Ord. No. 5-78, §§ 10, 15, 3-31-78; Ord. No. 7-79, §§ 2, 5, 7, 3-30-79; Ord. No. 4-80, § 3, 3-31-80; Ord. No. 6-81, § 2(a)—(d), (g), (h), 3-31-81; Ord. No. 7-82, § 3(a)—(d), 3-31-82; Ord. No. 2-83, § 3(c), 2-23-83; Ord. No. 1-84, § 2(f)—(h), 3-1-84; Ord. No. 1-85, § 2(g)—(k), 2-11-85; Ord. No. 1-86, § 2(b), (c), 2-10-86; Ord. No. 1-87, § 2(c)—(f), 2-9-87; Ord. No. 2-88, § 1, 2-8-88; Ord. No. 1-89, § 2(a), 2-6-89; Ord. No. 1-90, § 2(f)—(i), 2-5-90; Ord. No. 1-91, § 2(b), 4-23-91; Ord. No. 1-92, § 2, 2-3-92; Ord. No. 6-93, § 2(a)1—7, 2-9-93; Ord. No. 1-96, § 4, 2-5-96; Ord. No. 1-98, § 5, 2-9-98; Ord. No. 1-02, § 9, 3-12-02; Ord. No. 1-04, §§ 17, 22, 3-9-04; Ord. No. 1-05, § 2, 3-8-05; Ord. No. 4-08, § 8, 4-7-08; Ord. No. 5-2011, § 3, 3-9-11; Ord. No. 2-2011, § 3, 7-13-11; Ord. No. 7-2014, § 5, 5-14-14; Ord. No. 13-2015, § 1, 5-13-15; Ord. No. 8-2017, § 1, 4-12-17; Ord. No. 17-2019, § 5, 6-12-19)

Editor's note— Ord. No. 7-2014, § 5, adopted May 14, 2014, set out provisions amending subsection 134-1108(a)(2). To correct a scrivener's error, and at the editor's discretion, these provisions have been included as amending subsection 134-1107(a)(2).

Sec. 134-1108. - Accessory uses.

The accessory uses in the C-TS town-serving commercial district are as follows:

- (1) Off-street parking and loading.
- (2) Signs.
- (3) Accessory uses customarily incident to the permitted or approved special exception uses.
- (4) Administrative approval of outdoor seating for dining purposes, subject to the standards and criteria contained in sections 134-2104 through 134-2108, supplemental district regulations.

(Ord. No. 2-74, schedule B, 3-26-74; Ord. No. 3-77, § 2, 3-29-77; Ord. No. 5-78, §§ 10, 15, 3-31-78; Ord. No. 7-79, §§ 2, 5, 7, 3-30-79; Ord. No. 4-80, § 3, 3-31-80; Ord. No. 6-81, § 2(a)—(d), (g), (h), 3-31-81; Ord. No. 7-82, § 3(a)—(d), 3-31-82; Ord. No. 2-83, § 3(c), 2-23-83; Ord. No. 1-84, § 2(f)—(h), 3-1-84; Ord. No. 1-85, § 2(g)—(k), 2-11-85; Ord. No. 1-86, § 2(b), (c), 2-10-86; Ord. No. 1-87, § 2(c)—(f), 2-9-87; Ord. No. 2-88, § 1, 2-8-88; Ord. No. 1-89, § 2(a), 2-6-89; Ord. No. 1-90, § 2(f)—(i), 2-5-90; Ord. No. 1-91, § 2(b), 4-23-91; Ord. No. 1-92, § 2, 2-3-92; Ord. No. 6-93, § 2(a)1—7, 2-9-93; Ord. No. 5-09, § 5, 4-15-09)

Sec. 134-1109. - Special exception uses.

- (a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-TS town-serving commercial district are as follows:
- (1) Public or private parking lots or storage garages.
 - (2) Auto rental lots.
 - (3) Private social, swimming, golf, tennis and yacht clubs.
 - (4) Service stations.
 - (5) Public structures/uses.
 - (6) Essential services related to town-owned municipal buildings and structures.
 - (7) Supplemental parking.
 - (8) Public or private academic schools.
 - (9) Drive-in business service facilities.
 - (10) Churches, synagogues or other houses of worship.
 - (11) Permitted uses, or uses not specifically enumerated under permitted uses in section 134-1107 but having traffic, patronage and intensity of use characteristics similar to those uses cited therein, which are greater than 3,000 square feet gross leasable area.
 - (12) Banks and financial institutions, excluding securities or financial brokerage and trust companies.
 - (13) Roof-deck automobile parking.
 - (14) Outdoor seating in conjunction with permitted restaurants where administrative approval is not being requested. See section 134-1111 for additional conditions.
 - (15) Veterinarian offices above the first floor.
 - (16) Museums occupying building of unique value as designated historical landmarks, as determined by the landmarks preservation commission and the town council.
 - (17) Nightclubs.
 - (18) Except as provided for in subsection 134-1107(3), offices (excluding executive office suites), professional services, business services and securities or financial brokerage and trust companies on the first floor provided that there are at least 50 percent existing office uses on all floors of the building in which the office use is proposed and more than 50 percent existing office uses on the first floor within 300 feet of the proposed office use within the same zoning district.
 - (19) Private parks.
 - (20) Medical marijuana treatment centers and medical marijuana dispensaries are prohibited, however, should state law preempt said prohibition, said uses shall be permitted subject to the requirements in sections 134-2113 through 134-2114 of this chapter.
 - (21) Outdoor promotional events. See section 134-2115 for additional conditions and criteria.
- (b) An owner or tenant of a property, located within the C-TS district, which property has received approval of a special exception after March 31, 1980, shall be required to obtain approval by the town council under the provisions of section 134-229 prior to being granted a new business tax receipt. This subsection shall not apply to renewal of an existing business tax receipt.

(Ord. No. 2-74, schedule B, 3-26-74; Ord. No. 3-77, § 2, 3-29-77; Ord. No. 5-78, §§ 10, 15, 3-31-78; Ord. No. 7-79, §§ 2, 5, 7, 3-30-79; Ord. No. 4-80, § 3, 3-31-80; Ord. No. 6-81, § 2(a)—(d), (g), (h), 3-31-81; Ord. No. 7-82, § 3(a)—(d), 3-31-82; Ord. No. 2-83, § 3(c), 2-23-83; Ord. No. 1-84, § 2(f)—(h), 3-1-84; Ord. No. 1-85, § 2(g)—(k), 2-11-85; Ord. No. 1-86, § 2(b), (c), 2-10-86; Ord.

No. 1-87, § 2(c)—(f), 2-9-87; Ord. No. 2-88, § 1, 2-8-88; Ord. No. 1-89, § 2(a), 2-6-89; Ord. No. 1-90, § 2(f)—(i), 2-5-90; Ord. No. 1-91, § 2(b), 4-23-91; Ord. No. 1-92, § 2, 2-3-92; Ord. No. 6-93, § 2(a)1—7, 2-9-93; Ord. No. 1-96, § 3, 2-5-96; Ord. No. 1-98, § 5, 2-9-98; Ord. No. 1-02, § 8, 3-12-02; Ord. No. 1-03, § 2, 3-11-03; Ord. No. 1-04, § 28, 3-9-04; Ord. No. 1-07, § 3, 4-10-07; Ord. No. 5-09, § 6, 4-15-09; Ord. No. 5-2011, § 4, 3-9-11; Ord. No. 2-2011, § 4, 7-13-11; Ord. No. 3-2012, § 4, 4-11-12; Ord. No. 7-2014, § 5, 5-14-14; Ord. No. 13-2015, § 2, 5-13-15; Ord. No. 24-2016, § 2, 1-11-17; Ord. No. 30-2017, § 2, 1-10-18; Ord. No. 02-2019, § 9, 3-19-19; Ord. No. 17-2019, § 6, 6-12-19)

Editor's note— Ord. No. 13-2015, § 2, adopted May 13, 2015, set out provisions intended for use as subsection 134-1109(a) (15). To maintain the current subsection 134-1109(a)(15) as added by Ord. No. 7-2014, § 5, adopted May 14, 2014, and at the editor's discretion, these provisions have been included herein as subsection 134-1109(a)(19).

Sec. 134-1110. - Accessory structures.

- (a) *Generally.* Enclosed accessory structures in the C-TS town-serving commercial district shall comply with front and side yard requirements for the principal structure to which they are accessory and shall be not closer to any rear property line than ten feet.
- (b) *Dish antennas.* A dish antenna shall be an accessory structure and shall be constructed, erected or placed in compliance with all of the provisions of this chapter applicable to accessory structures. Dish antennas shall not exceed three meters in diameter. Only one dish antenna that exceeds one meter in diameter shall be permitted on each building. Such dish antenna which exceeds one meter in diameter shall not be attached to a building; shall not be closer than ten feet to any side or rear property line; shall not exceed 12 feet in height above the average grade; and, shall not be located in a required front yard, street side yard or rear street yard setback. Each residential unit or commercial tenant space shall not be limited as to the number of dish antennas of one meter or less in diameter and said antenna(s) may be attached or unattached to a building. If said dish antenna(s) is unattached, said antenna(s) shall not exceed 12 feet in height above the average grade; shall be located no closer than ten feet to any side or rear lot line; and, shall not be located in a required front yard, street side yard or rear street yard setback. All attached and unattached dish antennas in this commercial zoning district shall be screened from public view, and private and public streets and ways; be neutral in color; and, to the maximum extent possible, compatible with the surrounding neighborhood appearance and character. In addition, no form of lettering, advertising or identification shall be allowed on any such antenna or its framework (other than the manufacturer's small identification plate). Note: One meter in the metric system of measurement equals 39.37 inches or 3.28 feet.

(Ord. No. 2-74, § 5.51, 3-26-74; Ord. No. 3-76, § 3, 3-23-76; Ord. No. 5-78, § 11, 3-31-78; Ord. No. 7-79, § 11, 3-30-79; Ord. No. 4-80, § 4, 3-31-80; Ord. No. 7-82, § 4(i), (k), 3-31-82; Ord. No. 1-84, § 3(h), 3-1-84; Ord. No. 1-85, § 3(e), 2-11-85; Ord. No. 1-86, § 3(d), 2-10-86; Ord. No. 1-87, § 3(e), 2-9-87; Ord. No. 1-90, § 3(g), 2-5-90; Ord. No. 1-92, § 3(e), 2-3-92; Ord. No. 1-93, § 3(g), 2-8-93; Ord. No. 1-94, § 3(c), 2-7-94; Ord. No. 1-95, § 1(b), 1-23-95; Ord. No. 1-97, § 5, 2-17-97; Ord. No. 1-99, § 10, 4-5-99)

Sec. 134-1111. - Special exception for stands, seated dining areas and open counters for eating and drinking.

- (a) No stands or open counters and no open seating arrangement (except as otherwise provided in article VIII, division 14), whether or not at tables, intended for feeding or the dispensing of food or drink whether or not for profit or for any other similar purposes for the sale of commodities to the public shall be erected or permitted anywhere in the town unless they are contained within a building. However, in the C-TS town-serving commercial district, the town council may permit, as a special exception, the serving of food and beverages to seated patrons

in outdoor open air areas which are operated as a part of a restaurant contained within a building, provided approval of such special exception does not increase the allowable capacity. The following are conditions to the approval of any such special exception:

- (1) Open air dining areas must be properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.
- (2) Area associated with the outdoor portion of the restaurant will not count toward any maximum square footage limitations associated with the town-serving aspects of this chapter.
- (b) In the C-TS town-serving commercial district, the town council may permit, as a special exception, extra outdoor patron seating, over and above the inside seating capacity, as part of a take-out food business contained within a building provided the following conditions are met:
 - (1) The take-out food business inside tenant space does not exceed 2,000 square feet.
 - (2) Open air dining areas are properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.
 - (3) The area associated with the outdoor seating of the take-out food business will not count toward any maximum square footage limitations associated with the town-serving aspects of this chapter.
 - (4) Area associated with the outdoor seating cannot encroach into the required ten-foot unobstructed, pedestrian sidewalk.
 - (5) The amount of outdoor seating can not exceed eight seats, nor can it extend beyond any property line of the take-out business tenant space.

(Ord. No. 2-74, § 6.61, 3-26-74; Ord. No. 3-77, § 14, 3-29-77; Ord. No. 1-89, 4(f), 2-6-89; Ord. No. 1-04, § 15, 3-9-04; Ord. No. 5-09, § 7, 4-15-09)

Sec. 134-1112. - Commercial uses; site plan approval for new buildings, new building additions or changes in permitted uses over certain floor area.

All applications for new buildings or for new building additions or for changes in a permitted use in section 134-1107 which involve more than 2,000 square feet of building floor area of buildings in the C-TS town-serving commercial district shall require a site plan approval in accordance with article III of this chapter. No certificate of occupancy shall be issued for any building, unless all facilities included in the site plan have been provided in accordance therewith. The maximum dimension of any structure or group of attached structures shall not exceed 150 feet.

(Ord. No. 2-74, § 6.55, 3-26-74; Ord. No. 5-78, § 12, 3-31-78; Ord. No. 7-79, § 14, 3-30-79; Ord. No. 4-80, § 6, 3-31-80; Ord. No. 7-82, § 5(d), 3-31-82; Ord. No. 1-85, § 4(h), 2-11-85)

Sec. 134-1113. - Lot, yard and area requirements—Generally.

In the C-TS town-serving commercial district, the schedule of lot, yard and area requirements is as given in this section:

- (1) *Lot area.* The minimum lot area is 4,000 square feet.
- (2) *Lot width.* The minimum lot width is 30 feet.
- (3) *Lot depth.* The minimum lot depth is 90 feet.
- (4) *Density.* A single dwelling unit, or multiple dwelling units not to exceed six dwelling units per gross acre. See article III of this chapter for site plan review requirements.
- (5) *Front yard.*

Partial Code

DIVISION 9. - C-WA WORTH AVENUE DISTRICT

Footnotes:

-- (5) --

Cross reference— *Businesses, ch. 22.*

Sec. 134-1156. - Purpose.

The purpose of the C-WA Worth Avenue district is to preserve and enhance an area of unique quality and character oriented to pedestrian comparison shopping and providing a wide range of retail and service establishments, to be developed whether as a unit or as individual parcels, serving the shortterm and longterm needs of townpersons. Drive-in retail facilities are not permitted. Further it shall be the intent of this district to enhance the town-serving character of the area through use of limitations on maximum gross leasable area (GLA), thereby reducing the problems of parking and traffic congestion determined to result from establishments of a region-serving scale.

(Ord. No. 2-74, schedule B, 3-26-74; Ord. No. 3-77, § 2, 3-29-77; Ord. No. 5-78, §§ 10, 15, 3-31-78; Ord. No. 7-79, §§ 2, 5, 7, 3-30-79; Ord. No. 4-80, § 3, 3-31-80; Ord. No. 6-81, § 2(a)—(d), (g), (h), 3-31-81; Ord. No. 7-82, § 3(a)—(d), 3-31-82; Ord. No. 2-83, § 3(c), 2-23-83; Ord. No. 1-84, § 2(f)—(h), 3-1-84; Ord. No. 1-85, § 2(g)—(k), 2-11-85; Ord. No. 1-86, § 2(b), (c), 2-10-86; Ord. No. 1-87, § 2(c)—(f), 2-9-87; Ord. No. 2-88, § 1, 2-8-88; Ord. No. 1-89, § 2(a), 2-6-89; Ord. No. 1-90, § 2(f)—(i), 2-5-90; Ord. No. 1-91, § 2(b), 4-23-91; Ord. No. 1-92, § 2, 2-3-92; Ord. No. 6-93, § 2(a)1—7, 2-9-93; Ord. No. 1-05, § 1, 3-8-05)

Sec. 134-1157. - Permitted uses.

(a) *Enumeration; maximum gross leasable area.* The permitted uses in the C-WA Worth Avenue commercial district, with a maximum of 4,000 square feet of gross leasable area (GLA), are as follows:

- (1) Antiques.
- (2) Apparel and accessories.
- (3) Art galleries.
- (4) Art services.
- (5) Bed and bath boutiques.
- (6) Cards/gifts.
- (7) Crafts.
- (8) Drugstore/pharmacy.
- (9) Fabrics.
- (10) Flowers/florist.
- (11) Furniture.
- (12) Hair styling/beauty salon.
- (13) Interior decorating sales/services.
- (14) Jewelry.
- (15) Kitchenwares.

(16) Luggage/leather goods.

(17) News/books.

(18) Optical goods.

(19) Perfumery.

(20) Photographic services/studios.

(21) Shoes.

(22) Retail specialty foods, including incidental sale of prepared foods for takeout.

(23) Stationery.

(24) Essential services.

(25) Tobacconist.

(26) Toys.

(27) TV and electronic items.

(28) Offices and professional and business services, including banks and financial institutions, and executive offices above the first floor, excluding veterinarian offices.

(29) Storage facility related to a permitted or special exception use in the district provided said use meets all additional conditions in section 134-1760 of this chapter.

(30) Residence(s) above the first floor.

(31) Combinations of the uses in subsections (a)(1) through (28) of this section.

(b) *Regulation of existing nonconforming commercial uses.* Any existing uses contained on the list of permitted uses shown in subsection (a) of this section which contain more than 4,000 square feet of gross leasable area (GLA) shall be classified as existing nonconforming uses under article VI of this chapter pertaining to nonconforming uses. However, all future changes of use shall be limited to those uses listed as permitted uses on the list contained in this section with a maximum gross leasable area of 4,000 square feet, and if a change of use is contemplated from one general commercial category (retail and services; office, professional and business services; or banks and financial institutions) to another, wherein the new use will involve a gross leasable area exceeding 4,000 square feet, the contemplated new use shall be subject to prior approval of a special exception application by the town council before the change is made (refer to sections 134-227 through 134-233 pertaining to special exception uses). In effect, this will allow any existing use over 4,000 square feet, in a district with a 4,000 square footage limitation, to continue operating at its existing scale or to change to another use within the same general commercial category without town council approval. For example, if a ladies apparel store of 10,000 square feet exists in the C-WA district and the owner wishes to change to an antique store of the same size or subdivide into two 5,000 square-foot offices, the owner would need to apply for and obtain approval of a special exception from the town council. No existing commercial use which is subject to the 4,000 square feet maximum gross leasable area (GLA) regulation may occupy additional space within 1,500 feet of the existing businesses, which distance shall be measured along the public sidewalk, if such new space to be occupied will increase the total gross leasable area (GLA) to more than 4,000 square feet.

(Ord. No. 2-74, schedule B, 3-26-74; Ord. No. 3-77, § 2, 3-29-77; Ord. No. 5-78, §§ 10, 15, 3-31-78; Ord. No. 7-79, §§ 2, 5, 7, 3-30-79; Ord. No. 4-80, § 3, 3-31-80; Ord. No. 6-81, § 2(a)—(d), (g), (h), 3-31-81; Ord. No. 7-82, § 3(a)—(d), 3-31-82; Ord. No. 2-83, § 3(c), 2-23-83; Ord. No. 1-84, § 2(f)—(h), 3-1-84; Ord. No. 1-85, § 2(g)—(k), 2-11-85; Ord. No. 1-86, § 2(b), (c), 2-10-86; Ord. No. 1-87, § 2(c)—(f), 2-9-87; Ord. No. 2-88, § 1, 2-8-88; Ord. No. 1-89, § 2(a), 2-6-89; Ord. No. 1-90, § 2(f)—(i), 2-5-90; Ord. No.

1-91, § 2(b), 4-23-91; Ord. No. 1-92, § 2, 2-3-92; Ord. No. 6-93, § 2(a)1—7, 2-9-93; Ord. No. 1-02, § 11, 3-12-02; Ord. No. 1-04, §§ 18, 23, 3-9-04; Ord. No. 1-05, § 3, 3-8-05; Ord. No. 2-2011, § 5, 7-13-11; Ord. No. 7-2014, § 6, 5-14-14; Ord. No. 8-2017, § 2, 4-12-17; Ord. No. 17-2019, § 7, 6-12-19)

Sec. 134-1158. - Accessory uses.

The accessory uses in the C-WA Worth Avenue district are as follows:

- (1) Off-street parking and loading.
- (2) Signs.
- (3) Accessory uses customarily incident to the permitted or approved special exception uses.
- (4) Administrative approval of outdoor seating for dining purposes, subject to the standards and criteria contained in sections 134-2104 through 134-2108, supplemental district regulations.

(Ord. No. 2-74, schedule B, 3-26-74; Ord. No. 3-77, § 2, 3-29-77; Ord. No. 5-78, §§ 10, 15, 3-31-78; Ord. No. 7-79, §§ 2, 5, 7, 3-30-79; Ord. No. 4-80, § 3, 3-31-80; Ord. No. 6-81, § 2(a)—(d), (g), (h), 3-31-81; Ord. No. 7-82, § 3(a)—(d), 3-31-82; Ord. No. 2-83, § 3(c), 2-23-83; Ord. No. 1-84, § 2(f)—(h), 3-1-84; Ord. No. 1-85, § 2(g)—(k), 2-11-85; Ord. No. 1-86, § 2(b), (c), 2-10-86; Ord. No. 1-87, § 2(c)—(f), 2-9-87; Ord. No. 2-88, § 1, 2-8-88; Ord. No. 1-89, § 2(a), 2-6-89; Ord. No. 1-90, § 2(f)—(i), 2-5-90; Ord. No. 1-91, § 2(b), 4-23-91; Ord. No. 1-92, § 2, 2-3-92; Ord. No. 6-93, § 2(a)1—7, 2-9-93; Ord. No. 5-09, § 8, 4-15-09)

Sec. 134-1159. - Special exception uses.

- (a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-WA Worth Avenue district are as follows:

- (1) Pay parking.
- (2) Public or private parking or storage garages.
- (3) Private social, swimming, tennis or yacht clubs.
- (4) Public structures/uses.
- (5) Essential services related to town-owned municipal buildings and structures.
- (6) Supplemental parking.
- (7) Restaurants, nightclubs, lounges/bars, excluding formula restaurants as defined in section 134-2.
- (8) Museums and nonprofit cultural centers.
- (9) Permitted uses cited under permitted uses in section 134-1157 which contain greater than 4,000 square feet GLA gross leasable area.
- (10) Uses not specifically enumerated under permitted uses in section 134-1157 but having traffic, patronage and intensity of use characteristics similar to those uses cited therein.
- (11) Outdoor promotional events. See section 134-2115 for additional conditions and criteria.
- (12) Roof deck automobile parking.
- (13) Outdoor seating in conjunction with permitted restaurants where administrative approval is not being requested. See section 134-1161 for additional conditions.

- (b) An owner or tenant of a property, located within the C-WA district, which property has received approval of a special exception after March 31, 1980, shall be required to obtain approval by the town council under the provisions of section 134-229 prior to being granted a new business tax receipt. This subsection shall not apply to renewal of an existing business tax receipt.

(Ord. No. 2-74, schedule B, 3-26-74; Ord. No. 3-77, § 2, 3-29-77; Ord. No. 5-78, §§ 10, 15, 3-31-78; Ord. No. 7-79, §§ 2, 5, 7, 3-30-79; Ord. No. 4-80, § 3, 3-31-80; Ord. No. 6-81, § 2(a)—(d), (g), (h), 3-31-81; Ord. No. 7-82, § 3(a)—(d), 3-31-82; Ord. No. 2-83, § 3(c), 2-23-83; Ord. No. 1-84, § 2(f)—(h), 3-1-84; Ord. No. 1-85, § 2(g)—(k), 2-11-85; Ord. No. 1-86, § 2(b), (c), 2-10-86; Ord. No. 1-87, § 2(c)—(f), 2-9-87; Ord. No. 2-88, § 1, 2-8-88; Ord. No. 1-89, § 2(a), 2-6-89; Ord. No. 1-90, § 2(f)—(i), 2-5-90; Ord. No. 1-91, § 2(b), 4-23-91; Ord. No. 1-92, § 2, 2-3-92; Ord. No. 6-93, § 2(a)1—7, 2-9-93; Ord. No. 1-94, § 2(b)(5), 2-7-94; Ord. No. 1-96, § 17, 2-5-96; Ord. No. 2-98, § 3, 2-27-98; Ord. No. 1-02, § 10, 3-12-02; Ord. No. 1-03, § 3, 3-11-03; Ord. No. 1-04, § 29, 3-9-04; Ord. No. 4-08, § 9, 4-7-08; Ord. No. 5-09, § 9, 4-15-09; Ord. No. 2-2011, § 6, 7-13-11; Ord. No. 3-2012, § 5, 4-11-12; Ord. No. 10-2012, § 4, 9-11-12; Ord. No. 30-2017, § 3, 1-10-18; Ord. No. 02-2019, § 10, 3-19-19; Ord. No. 17-2019, § 8, 6-12-19)

Sec. 134-1160. - Accessory structures.

- (a) *Generally.* Enclosed accessory structures in the C-WA Worth Avenue district shall comply with front and side yard requirements for the principal structure to which they are accessory and shall be not closer to any rear property line than ten feet.
- (b) *Dish antennas.* A dish antenna shall be an accessory structure and shall be constructed, erected or placed in compliance with all of the provisions of this chapter applicable to accessory structures. Dish antennas shall not exceed three meters in diameter. Only one dish antenna that exceeds one meter in diameter shall be permitted on each building. Such dish antenna which exceeds one meter in diameter shall not be attached to a building; shall not be closer than ten feet to any side or rear property line; shall not exceed 12 feet in height above the average grade; and, shall not be located in a required front yard, street side yard or rear street yard setback. Each residential unit or commercial tenant space shall not be limited as to the number of dish antennas of one meter or less in diameter and said antenna(s) may be attached or unattached to a building. If said dish antenna(s) is unattached, said antenna(s) shall not exceed 12 feet in height above the average grade; shall be located no closer than ten feet to any side or rear lot line; and, shall not be located in a required front yard, street side yard or rear street yard setback. All attached and unattached dish antennas in this commercial zoning district shall be screened from public view, and private and public streets and ways; be neutral in color; and, to the maximum extent possible, compatible with the surrounding neighborhood appearance and character. In addition, no form of lettering, advertising or identification shall be allowed on any such antenna or its framework (other than the manufacturer's small identification plate). Note: One meter in the metric system of measurement equals 39.37 inches or 3.28 feet.

(Ord. No. 2-74, § 5.51, 3-26-74; Ord. No. 3-76, § 3, 3-23-76; Ord. No. 5-78, § 11, 3-31-78; Ord. No. 7-79, § 11, 3-30-79; Ord. No. 4-80, § 4, 3-31-80; Ord. No. 7-82, § 4(i), (k), 3-31-82; Ord. No. 1-84, § 3(h), 3-1-84; Ord. No. 1-85, § 3(e), 2-11-85; Ord. No. 1-86, § 3(d), 2-10-86; Ord. No. 1-87, § 3(e), 2-9-87; Ord. No. 1-90, § 3(g), 2-5-90; Ord. No. 1-92, § 3(e), 2-3-92; Ord. No. 1-93, § 3(g), 2-8-93; Ord. No. 1-94, § 3(c), 2-7-94; Ord. No. 1-95, § 1(b), 1-23-95; Ord. No. 1-97, § 5, 2-17-97; Ord. No. 1-99, § 10, 4-5-99)

Sec. 134-1161. - Stands, seated dining areas and open counters for eating and drinking.

- (a) No stands or open counters and no open seating arrangement (except as provided for in article VIII, division 14), whether or not at tables, intended for feeding or the dispensing of food or drink whether or not for profit or for any other similar purposes for the sale of commodities to the public shall be erected or permitted anywhere in the town unless they are contained within a building. However, in the C-WA Worth Avenue zoning district, the town council may permit, as a special exception, the serving of food and beverages to seated patrons in outdoor open air areas which are operated as a part of a restaurant contained within a building, provided approval of such special exception shall not increase the allowable capacity. The following are conditions to the approval of any such special exception:

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2021

Section of Agenda

Any Other Matters

Agenda Title

Discussion on Outdoor Seating Regulations

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated January 27, 2021 from Wayne Bergman, Director of Planning, Zoning and Building**

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

To: Mayor and Town Council

From: Wayne Bergman, Director of Planning, Zoning & Building

Cc: Kirk Blouin, Town Manager & James Murphy, Asst. Director of PZB

Re: Possible Outdoor Seating Regulations

Date: January 27, 2021

DISCUSSION:

Since the Town Council approved the Covid-19 Outdoor Seating program, PZB staff has been reviewing the current outdoor seating requirements found in today's code. Currently the Town has outdoor seating regulations that would prohibit many of the current outdoor seating arrangements that have been approved by Town staff – on a temporarily basis only - under the Covid-19 program. The Town codes on outdoor seating are found in Chapter 134, Sections 134-1111, 134-1161, and 134-2104 through 2109. These current regulations do allow for very limited outdoor seating and provide restrictions on the size of outdoor seating areas, the number of total outdoor seats, the minimum width of public sidewalks [with tables and chairs placed outside], and required, although undefined, buffers to contain noise, odors, light and litter. There are differing regulations for outdoor seating in the C-TS and C-WA zoning districts. There are some minor differences in the regulations between the Town Council special exception approval and staff approvals for outdoor seating (yes – staff can approve outdoor seating at this time).

The pandemic has driven the proliferation of outdoor seating. Knowing that the outdoor seating has been well received by the community over the past year, and with the outdoor seating concept embraced by the restaurant owners, staff expects to receive many new applications for permanent outdoor seating, especially as the pandemic recedes and the temporary seating approvals start to expire. Outdoor dining is a positive draw to the Town's retail businesses, which is a commercial sector that had some difficulties even before the onset of the pandemic.

Outdoor seating can currently be approved in three ways:

1. The most common way of approval comes under our emergency Covid-19 policy. Based upon Town Council approval, staff currently has the ability to approve temporary outdoor seating for local restaurants under our Covid-19 program. The criteria is basically to maintain the minimum handicapped aisle width (can be reduced to 36" in some cases) and space the tables & chairs to allow for social distancing

between parties. If the seating is within public ROW's, a deposit is required to cover any damage and the Town is named on the restaurant's GL insurance policy as an additional insured party. The policy is to allow restaurants to take approved indoor seating and place some of that capacity outdoors (no extra seating is allowed).

2. The second way to approve outdoor seating is by special exception granted by the Town Council. This allows for permanent outdoor seating and new seats if the special exception criteria are met and if approved by the Council.
3. The third way to approve outdoor seating is by way of Administrative Approval. This allows the director of PZB to approve outdoor seating. The criteria is found in 134-2106. It is not clear how often this was used in the past, as the prescriptive criteria appears difficult to meet.

Some key, general questions at this time for the Council to possibly consider are:

- Does the Council support the expansion of the outdoor seating on a more permanent basis?
- Do the current regulations provide for the manner and type of outdoor seating that the Town Council would like to see?
- Should the existing code regulations be updated?
- Is there an interest in developing an outdoor seating permit program ("sidewalk café") that would approve the outdoor seating on an annual basis, with annual permits issued to compliant restaurants and which would allow for the generation of new fees?

Depending on the Council's response to the general questions listed above, if directed, staff could prepare revised regulations and come back with an ordinance for possible adoption, after a review and recommendation from the Planning & Zoning Commission.

Some matters to consider if moving forward with a review and possible revision to the outdoor seating codes:

- While the matter is under review, do we want to declare a moratorium on new outdoor seating applications, or declare a "zoning in progress"?
- What are the Florida DOT rules on outdoor seating along their roadways?
- Do we want revise the distance that outdoor seating must be from property lines or neighboring businesses?
- Can outdoor seating be located on neighboring properties, or if located along public sidewalks, can the seating be located adjacent to other businesses?
- Do we revise the distance required between the outdoor seating area and bus stops, taxi or valet stands, sight triangles and crosswalks?
- Do we want to set a minimum handicapped access distance between the tables / chairs and any other projections, curbs, or other accessible conditions, that would be greater than 36"?

- Do we revise times for permitted outdoor seating?
- Do we revise the outdoor seating area, recognizing that some restaurants have more area (indoors and outdoors) than others? One size does not fit all.
- Do we want some buffering between the outdoor seating and other businesses and uses?
- Do we want detectable, physical barriers (railings, planters, hanging rope, etc.) to be placed between the public walkway and the tables / chairs? If so, should there be a maximum and minimum height of the barriers? Type of material?
- Should outdoor music be permitted?
- Can the outdoor seating remain outside 24/7?
- How to buffer or limit lighting and noise?
- Do we want to specify the type and/or quality of the tables and chairs?
- Will umbrellas be permitted?
- What about seating under awnings? Minimum height distance?
- What about additional signage placed outside or on the umbrellas, tables or chairs?
- Should a safety or traffic review be conducted as part of the approval process?
- How can the sidewalk or public spaces be maintained and cleaned if covered by tables and chairs during daytime hours?
- More issues to come, we are certain.

This review, if deemed necessary, could take some time. We expect that we will receive more permanent outdoor seating requests this season, as businesses that tried the temporary outdoor seating, approved under our Covid-19 policy, will want to continue and perhaps expand the outdoor seating.

Attached to assist in this discussion / review are current codes for the City of Lake Worth and the City of Miami (examples to use as a comparison to existing Palm Beach regulations) and an excellent example of outdoor seating regulations from Alexandria, VA – King Street.

Attached: Town Code Sections referenced above
 Code from Lake Worth and Miami
 King Street Outdoor Dining Design Guidelines, Alexandria, VA

Sec. 134-1111. - Special exception for stands, seated dining areas and open counters for eating and drinking.

- (a) No stands or open counters and no open seating arrangement (except as otherwise provided in article VIII, division 14), whether or not at tables, intended for feeding or the dispensing of food or drink whether or not for profit or for any other similar purposes for the sale of commodities to the public shall be erected or permitted anywhere in the town unless they are contained within a building. However, in the C-TS town-serving commercial district, the town council may permit, as a special exception, the serving of food and beverages to seated patrons in outdoor open air areas which are operated as a part of a restaurant contained within a building, provided approval of such special exception does not increase the allowable capacity. The following are conditions to the approval of any such special exception:
 - (1) Open air dining areas must be properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.
 - (2) Area associated with the outdoor portion of the restaurant will not count toward any maximum square footage limitations associated with the town-serving aspects of this chapter.
- (b) In the C-TS town-serving commercial district, the town council may permit, as a special exception, extra outdoor patron seating, over and above the inside seating capacity, as part of a take-out food business contained within a building provided the following conditions are met:
 - (1) The take-out food business inside tenant space does not exceed 2,000 square feet.
 - (2) Open air dining areas are properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.
 - (3) The area associated with the outdoor seating of the take-out food business will not count toward any maximum square footage limitations associated with the town-serving aspects of this chapter.
 - (4) Area associated with the outdoor seating cannot encroach into the required ten-foot unobstructed, pedestrian sidewalk.
 - (5) The amount of outdoor seating can not exceed eight seats, nor can it extend beyond any property line of the take-out business tenant space.

(Ord. No. 2-74, § 6.61, 3-26-74; Ord. No. 3-77, § 14, 3-29-77; Ord. No. 1-89, 4(f), 2-6-89; Ord. No. 1-04, § 15, 3-9-04; Ord. No. 5-09, § 7, 4-15-09)

Sec. 134-1161. - Stands, seated dining areas and open counters for eating and drinking.

(a) No stands or open counters and no open seating arrangement (except as provided for in article VIII, division 14), whether or not at tables, intended for feeding or the dispensing of food or drink whether or not for profit or for any other similar purposes for the sale of commodities to the public shall be erected or permitted anywhere in the town unless they are contained within a building. However, in the C-WA Worth Avenue zoning district, the town council may permit, as a special exception, the serving of food and beverages to seated patrons in outdoor open air areas which are operated as a part of a restaurant contained within a building, provided approval of such special exception shall not increase the allowable capacity. The following are conditions to the approval of any such special exception:

- (1) Open air dining areas must be properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.
- (2) Area associated with the outdoor portion of the restaurant shall not count toward any maximum square footage limitations associated with the town-serving aspects of this chapter.

(Ord. No. 2-74, § 6.61, 3-26-74; Ord. No. 3-77, § 14, 3-29-77; Ord. No. 1-89, § 4(f), 2-6-89; Ord. No. 1-04, § 16, 3-9-04; Ord. No. 5-09, § 10, 4-15-09)

DIVISION 14. - ADMINISTRATIVE APPROVAL OF OUTDOOR SEATING

Sec. 134-2104. - Requirements and fee.

- (a) It shall be unlawful for any person to provide outdoor seating without either approval by the town as provided by this article or approval under sections 134-226 through 134-230.
Administrative approval of outdoor seating shall be permitted only within the C-TS, C-WA, C-OPI, C-B and R-D(2) zoning districts as accessory uses subject to the standards and criteria set forth in sections 134-2105 through 134-2108.
- (b) There shall be a fee for the initial application establishing outdoor seating. A renewal fee shall be established and included in the annual business tax receipt.

(Ord. No. 5-09, § 1, 4-15-09)

Sec. 134-2105. - Application.

Application to operate outdoor seating with administrative review shall be made to the director of the planning, zoning and building department or his or her designee (individually or collectively referred to in this chapter as "director"). The application shall on a form provided by the director.

(Ord. No. 5-09, § 1, 4-15-09)

Sec. 134-2106. - Standards and criteria for application review.

The following standards and criteria shall be part of part of the application which shall be used by the director in reviewing and approving an outdoor seating application. The applicant shall meet all of the following criteria in order to be granted administrative approval:

- (1) Outdoor seating is restricted to the area abutting the boundary lines of the property on which the business owned by the applicant is located.
- (2) Outdoor seating shall not be allowed where the tables and chairs would be placed within five feet of bus stops, taxi stands, sight triangles or other structures or areas determined by the director to require clearance for the public.
- (3) No tables or chairs shall be allowed within five feet of a pedestrian crosswalk.
- (4) Outdoor seating shall be located in such a manner that a minimum five-foot-wide unobstructed pedestrian path is maintained at all times.
- (5) No objects shall be permitted around the perimeter of an outdoor seating area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the use of the pedestrian path.
- (6) Establishments with outdoor seating adjacent to or abutting a residential use shall close

outdoor seating service at 12:00 midnight.

- (7) All outdoor seating shall have a minimum 30-foot setback from a residential use's property line and shall be properly buffered and screened by a six-foot-high wall between the outdoor seating and an abutting residential use to avoid noise, litter, light and odor impacts. When there is a street between the residential use and the outdoor said screening shall not be required.
- (8) No establishment shall play or cause to be played any music in the open air, nor shall any singing be allowed.
- (9) All kitchen equipment used to service the outdoor seating shall be located within the kitchen of the primary dining facility.
- (10) Outdoor seating shall comply with any regulation relating to noise and lighting.
- (11) Areas associated with the outdoor seating portion of the restaurant shall not count toward any maximum square footage limitations.
- (12) Outdoor seating able to be seen from the public right-of-way shall be taken inside after close of business.
- (13) Outdoor seating shall be counted toward the inside seating capacity of a restaurant or dining room.

(Ord. No. 5-09, § 1, 4-15-09)

Sec. 134-2107. - Conditions specific to outdoor seating on public rights-of-way.

- (a) The permit may be suspended by the director of planning, zoning and building when an ordinance or resolution is adopted by the town council providing for an event necessitating that the sidewalk be clear for a period of time.
- (b) The director may require the temporary removal of sidewalk seating when street, sidewalk or utility repairs necessitate such action.
- (c) If found to be necessary for the protection of the health, safety and welfare of the public, the departments of public works, police and fire-rescue or other emergency service providers may require the applicant to immediately remove or relocate all or parts of the sidewalk seating and, if necessary, the town may remove or relocate same in emergency situations.
- (d) The town and its officers and employees shall not be responsible for sidewalk seating components relocated during emergencies.
- (e) No tables and chairs nor other parts of the outdoor seating located within the public right-of-way shall be attached, chained or in any manner affixed to any tree, post, sign or other fixtures, curb or sidewalk within or near the permitted area.
- (f) Damage to the public sidewalk or any public structure as a result of the outdoor seating operation shall be the responsibility of the property owner.

(Ord. No. 5-09, § 1, 4-15-09)

Sec. 134-2108. - Denial, revocation or suspension of approval.

If the code enforcement board has found an operator or owner to be in violation of any provision of this Code related to outdoor seating on two or more occasions, the director may deny, revoke or suspend approval for any outdoor seating authorized by the town.

(Ord. No. 5-09, § 1, 4-15-09)

Sec. 134-2109. - Appeal of denial, revocation or suspension by the director of planning, zoning and building department.

The town council shall hear any appeal of a denial, revocation or suspension of outdoor seating by the director pursuant to sections 134-141 through 134-145.

(Ord. No. 5-09, § 1, 4-15-09)

Footnotes:

--- (3) ---

Editor's note— Ord. No. 2010-08, § 1, adopted April 20, 2010, amended COMMUNICATION FACILITIES IN THE RIGHTS-OF-WAY IV, in its entirety to read as herein set out. Former Art. IV, §§ 19-50—19-59, pertained to the same subject matter and derived from Ord. No. 2009-15, § 1, adopted Oct. 20, 2009.

Sec. 19-50. - Permit required.

Operating a sidewalk cafe on public sidewalks shall be unlawful without first obtaining a permit from the public services department and paying the fee thereof in accordance with the provisions and requirements of this article. A sidewalk cafe, permitted and operated in accordance with this article, shall not be an obstruction of a sidewalk as provided in section 19-11 of this Code.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13)

Sec. 19-51. - Definitions.

The following words when used in this article, shall, for the purposes of this article, have the following meanings:

Bar shall mean an establishment which can operate until 2:00 a.m., where alcoholic beverages are licensed to be sold, consumed or distributed on the premises.

Menu board shall mean a board allowing for the posting of a restaurant's complete menu and fabricated in such a manner so as not to constitute a form of general advertising or establishment identification.

Operator means the person or entity that operates the food or beverage service establishment and also operates the sidewalk cafe. The term "operator" shall include the owner of the food or beverage service establishment if the owner is also the operator of such establishment.

Overhanging encroachment shall mean any awning, canopy, portable umbrella, or other appurtenances whether permanently or semi-permanently affixed to the premises, or otherwise extending over the outdoor seating area, utilized in connection with a sidewalk cafe which is partially extending over the right-of-way.

Permittee means the business owner who has applied for and receives a permit to operate a sidewalk cafe under the terms and provisions of this article.

Restaurant shall mean a place or location kept, used, or held out to the public to be a place where meals or foodstuffs are prepared and served for profit, to the general public.

Sidewalk shall mean that portion of public property lying adjacent to or within the public right-of-way paved and used for pedestrian travel.

Sidewalk cafe means any group of tables, chairs or other seating fixtures and all related appurtenances maintained within the public sidewalk and intended for the purpose of consumption of food or beverage by patrons, when such is located, directly abutting, adjacent and contiguous to an adjacent bar or restaurant, as defined in section 23.02.03.00 of the zoning code, having the same operator.

Sidewalk cafe components shall mean means those non-permanent fixtures, furnishings and components associated with the operation of a sidewalk cafe, which shall include, but is not limited to, tables, chairs or other seating fixtures, umbrella, heaters, fans, bussing stations, plants and/or planters, menu boards, equipment, decor, fences, barricades or other sidewalk cafe furniture, appurtenances or accessories maintained within the public sidewalk and intended for the purpose of consumption of food or beverage by patrons, when such is located adjacent to a food or beverage service establishment having the same operator.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13)

Sec. 19-52. - Permit requirements, fees and renewals; FDOT rights-of-way.

- (a) *Permit requirements.* A permit to operate a sidewalk café shall only be issued to a legally licensed and operating restaurant who wishes to provide seating for its patrons, on the sidewalk, that is immediately adjacent to the subject restaurant.
- (b) *Permit fees.* The permit fee and annual permit renewal fee, business tax receipt and use and occupancy certificate fees for establishing and maintaining a sidewalk café shall be determined by the city commission and set forth by resolution or ordinance as required by law. The permit fee and annual permit renewal fee shall include the city's fee and any rent due under a FDOT right-of-way lease. No fee shall be prorated or refunded.
- (c) *Permit validity; renewals.* Permits shall be valid from October 1 to September 30, unless revoked or suspended earlier. The city shall begin to process renewal permit applications on July 1 of each year. To renew a permit, the operator shall complete the application procedure set forth under this article and pay all applicable fees and taxes. The operator shall apply for and secure the renewal permit on or before September 30 of each year. The failure to renew a permit on or before September 30 shall result in a penalty of twenty-five (25) percent of the renewal fee and may be cited as a violation of this article. If a permit is not timely renewed or a renewal application is denied, the operator shall not operate the sidewalk café.
- (d) *FDOT right-of-way.*
 - (1) *City lease.* If the sidewalk cafe operates in whole or in part on any right-of-way owned or maintained by the Florida Department of Transportation (FDOT) and such right-of-way is leased to the city, the applicant shall be required to abide by and be subject to all terms and conditions of such lease which may include, but are not limited to, the following:
 1. Payment of rent plus applicable taxes.
 2. Indemnification and insurance requirements.
 3. Maintenance of right-of-way requirement.
 4. Termination provision, even if prior to expiration of sidewalk café permit.
 5. Periodic governmental inspections.
 6. Waiver of legal rights, monetary claims, and damages of any sort for the loss of occupancy of the leased property.
 7. Prohibition of any portable or temporary advertising signs in leased right-of-way.

It is the responsibility of each applicant to review any applicable lease and to be fully apprised of all the terms and conditions of such lease. Applicants may request a copy of any applicable lease from the office of the city clerk.

- (2) *Application documentation.* In addition to complying with all other applicable provisions of this article, before a sidewalk café permit may be issued, the applicant shall provide the city with all requested documents required for compliance with the subject lease or as otherwise required by the city.
- (3) *Termination; waiver of damages.* By accepting a permit issued under this article, the permittee agrees to and acknowledges the following: If the subject lease is terminated for any reason, the permit shall be simultaneously revoked; and the permittee waives any claim for damages due to such termination and revocation. A revocation pursuant to this subsection is not appealable to the city commission.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13; Ord. No. 2015-15, § 2, 10-20-15)

Sec. 19-53. - Permit application.

- (a) *Application.* A completed application for a permit to establish a sidewalk cafe shall be submitted to the building division of the department for community sustainability on a form provided by the city for initial intake. Such application will be forwarded to other city departments for review. After such review, the public services department director or his/her designee will issue an approval or denial of the submitted permit application.
- (b) *Submission requirements.* Prior to submission, the applicant must have obtained a business tax receipt for the business entity requesting the sidewalk cafe from the city and must have an approved occupancy certificate for the building.
- (c) *Processing requirements.* To be processed an application for sidewalk cafe permit shall include, but not be limited to, the following information:
 - (1) Name and address of the applicant;
 - (2) The written consent of the property owner;
 - (3) A copy of a valid business tax receipt and use and occupancy certificate, or proof of concurrent application to operate a restaurant adjacent to the sidewalk area in which the sidewalk cafe is to be located;
 - (4) Proof of a valid certificate of occupancy for the building adjacent to where the proposed sidewalk cafe is to be located;
 - (5) A copy of current liability insurance, listing both the City of Lake Worth and the Florida Department of Transportation as additional named insureds with coverage limits listed in subsection 19-56(b) of this article and all necessary endorsements;
 - (6) A seating plan (minimum scale of one-fourth inch equals one foot (¼"=1')) showing the layout, arrangement, aisle widths, access to adjacent buildings and overall dimensions of the existing or proposed sidewalk cafe area and adjacent private property including the structures located thereon,

proposed location, size and number of all sidewalk cafe components and any other appurtenances to be located within the boundaries of the sidewalk cafe. The seating plan must depict the method used to demarcate the proposed sidewalk cafe area;

- (7) A survey no older than two (2) years, or if older than two (2) years the accuracy of the survey must be confirmed;
 - (8) Photographs, drawings, or manufacturers' brochures, fully describing the appearance, and physical features of all sidewalk cafe components or other objects relating to the sidewalk cafe;
 - (9) A plan for the maintenance and clearing of the sidewalk cafe area after closing. The plan must include receptacles for cigarette disposal;
 - (10) Any permits or approvals required from any other governmental agency necessary to operate a sidewalk cafe;
 - (11) Proof of notification to adjacent business owners of the applicant's intent to establish outdoor cafe seating;
 - (12) Such additional information as the public services department director or his/her designee may reasonably require as needed to determine compliance with the provisions of this division.
- (d) *Permit application fee.* Completed applications shall be accompanied by all applicable fees. No fee shall be prorated or refunded. Once approved, a permit fee and an annual permit renewal fee each year thereafter, shall be required to obtain a sidewalk cafe permit.
- (e) *Fees and taxes to be obtained.* Upon confirmation of the sidewalk cafe application approval, the applicant shall obtain a separate business tax receipt for the sidewalk cafe operation. Issuance of the business tax receipt and use and occupancy certificate shall serve as the final component of the sidewalk cafe application process. All outstanding city fees and taxes required by law relative to the business establishment with which the proposed sidewalk cafe is associated and the property on which the establishment is located shall be paid in full and all required city licenses shall be current prior to approval of a sidewalk cafe permit.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13; Ord. No. 2015-15, § 3, 10-20-15)

Sec. 19-54. - Application review.

- (a) A completed application shall be reviewed by the following departments: public services, planning and zoning, fire, police, risk management and such other departments as required by the city in accordance with the standards and criteria for application review provided in this article.
- (b) Within thirty (30) days of receipt of a completed application, the public services department director or his/her designee shall issue a letter of intent to approve or deny the permit.
- (c) The letter of intent shall serve as a temporary sidewalk cafe permit. Within seven (7) days of issuance of the letter of intent, a final inspection of the sidewalk cafe area will be conducted by the code compliance division prior to issuance of the sidewalk cafe permit.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13)

Sec. 19-55. - Standards and criteria for application review.

The following standards and criteria shall be used in reviewing the application:

- (a) Sidewalk cafes are restricted to the sidewalk area abutting the boundary lines of the property on which the bar or restaurant owned and/or operated by the applicant is located.
- (b) Permits will not be approved where an application indicates that sidewalk cafe components would be placed within six (6) feet of bus stops, taxi stands, site triangles or other structures or areas as determined by the director or designee to require clearance for the public.
- (c) No sidewalk cafe components will be permitted within six (6) feet of a pedestrian crosswalk.
- (d) Sidewalk cafes shall be located as follows:
 - (1) The sidewalk cafe shall not be located within six (6) feet of the sidewalk area beginning at the back of the curb projected as a straight line between city blocks and shall not include sidewalk bulbs or ADA ramps in the calculation. In areas where the six-foot setback does not provide sufficient clearance for ADA compliance, a minimum ADA clearance past the six-foot line must be maintained.
 - (2) A clear, uninterrupted and unobstructed pathway of at least forty-two (42) inches must exist at all times as a pedestrian path in front of or through each sidewalk cafe. In areas where in-ground or above-ground planters are present, the area of such planters shall not be included in the calculation of the requisite forty-two (42) inches.
 - (3) In areas of congested pedestrian activity, the director or designee shall be authorized to require a wider pedestrian path than that provided herein as circumstances dictate.
- (e) No objects shall be permitted around the perimeter of a sidewalk area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the use of the pedestrian path of sidewalk as described in subsections (d)(1) and (2) above.
- (f) Tables, chairs, umbrellas and any other objects provided as part of the sidewalk cafe shall be of quality design materials and workmanship; both to ensure the safety and convenience of patrons and be compatible with use in the immediate vicinity of the proposed sidewalk cafe.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13)

Sec. 19-56. - Liability and insurance.

- (a) Prior to the issuance of a business tax receipt the applicant shall furnish the city with a signed statement that the permittee shall hold harmless the city, its officers, employees and the Florida Department of Transportation and shall indemnify the city, its officers, employees and the Florida Department of Transportation for claims of damages to property or injury to persons which may be occasioned by any activity carried out under the terms of the business tax receipt and approved sidewalk cafe permit. The statement shall also include that the permittee shall be responsible, shall indemnify and shall hold the city harmless for performance of and payment for any environmental remediation that may be necessary, as determined by the Florida Department of Transportation, as a result of permittee's use of the area of the sidewalk cafe.
- (b) Permittee shall furnish and maintain public liability, food products liability, liquor liability, and property

damage insurance for the benefit of city and the Florida Department of Transportation insuring and indemnifying city and the Florida Department of Transportation from all claims and damage to property or bodily injury, including death, which may arise from operations under the business tax receipt or in connection therewith. Such insurance shall provide coverage of not less than one million dollars (\$1,000,000.00) for bodily injury or death to any one (1) person or any number of persons in any one (1) occurrence and property damage, respectively, per occurrence, or a combined coverage of not less than two million dollars (\$2,000,000.00). Such insurance shall be without prejudice to coverage otherwise existing therein and shall name as additional insureds the Florida Department of Transportation, its officers and employees, as well as the city, its officers and employees, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the business tax receipt period without forty-five (45) days' written notice to the risk manager at the address shown on the business tax receipt.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13)

Sec. 19-57. - Conditions of sidewalk cafes permits.

- (a) No objects shall be permitted around the perimeter of a sidewalk area occupied by sidewalk cafe components which would have the effect of forming a physical or visual barrier discouraging the use of the pedestrian path of sidewalk as described in subsections (d)(1) and (2) above.
- (b) All sidewalk cafe components utilized as part of the sidewalk cafe shall be of quality design materials and workmanship; both to ensure the safety and convenience of patrons and be compatible with use in the immediate vicinity of the proposed sidewalk cafe.
- (c) No other use of the area devoted to the sidewalk cafe shall be permitted, except normal use as a public sidewalk, during the hours that the sidewalk cafe is not operated.
- (d) Approval of sidewalk cafes shall be limited to bars and restaurants in the downtown zoning district.
- (e) A sidewalk cafe permit may be suspended by the director when an ordinance or resolution is adopted by the city commission providing for an event necessitating that the sidewalk be clear for a period of time.
- (f) The director or designee may require the temporary removal of sidewalk cafes when street, sidewalk or utility repairs necessitate such action.
- (g) All sidewalk cafe components and any other objects provided in connection with a sidewalk cafe shall be removed from the sidewalk area when the permittee's restaurant is closed to the public.
- (h) If found to be necessary for the protection of the health, safety and welfare of the public, the department of public services, police and fire department or emergency service providers may require the permittee to immediately remove or relocate all or parts of the sidewalk cafe and/or all sidewalk cafe components, and if necessary, the city may remove or relocate same in emergency situations.
- (i) The city and its officers and employees shall not be responsible for sidewalk cafe components relocated during emergencies.
- (j) The sidewalk cafe permit shall be specifically limited to the area shown on the exhibit attached to the application and made a part of the permit. The subject sidewalk cafe shall not exceed its delineated area and must not spillover to adjacent areas and the curbside.

- (k) The permittee shall take such actions necessary to ensure its use of the sidewalk in no way interferes with sidewalk users or limits their passage.
- (l) All sidewalk components provided within a sidewalk cafe shall be maintained in a clean and attractive appearance, shall be in good repair at all times, and shall be maintained in accordance with the plan submitted by the applicant and approved by the director.
- (m) The sidewalk area covered by the permit shall be maintained in a neat and orderly appearance at all times and the area shall be cleared of all debris and hazardous obstructions, on a periodic basis during the day and again at the close of each business day in compliance with the plan submitted in accordance with section 19-53 and approved by the director or designee. Permittee is prohibited from sweeping or hosing the sidewalk debris, or otherwise allowing such debris into any Florida Department of Transportation drainage system or the city's stormwater conveyance system and roadway.
- (n) The permittee is prohibited from using any petroleum products or hazardous or otherwise regulated materials in conjunction with the use, cleaning, and/or maintenance of the sidewalk cafe.
- (o) The serving and consumption of alcoholic beverages as part of the operation of a sidewalk cafe shall be separately permitted subject to applicable regulations of other governmental entities.
- (p) Overhanging encroachments with a vertical clearance of at least nine (9) feet for pedestrians shall be permitted over the sidewalk cafe area during the operation of the sidewalk cafe, if permitted in accordance with the provisions of the Code and are subject to and must comply with Chapter 14-43, Florida Administrative Code.
- (q) No advertising signs or business identification signs shall be permitted on the sidewalk other than menu boards which have been approved by the director.
- (r) No tables and chairs sidewalk cafe components, nor other parts appurtenances of sidewalk cafes shall be attached, chained or in any manner affixed or penetrate to any tree, post, sign or other fixture, curb or sidewalk within or near the permitted area, and shall be readily removable without damage to the surface of the sidewalk.
- (s) No tables, chairs, umbrellas sidewalk cafe components or any part of a sidewalk cafe shall be permitted within the six-foot area beginning at the back of the curb.
- (t) Permittee shall be required to comply with any regulation relating to noise in the sidewalk cafe area.
- (u) The sidewalk cafe permit covers only the public sidewalk and/or right-of-way. Tables and chairs on private property will be governed by other applicable regulations.
- (v) Permittee shall be required to provide two (2) smokers' cigarette butt urns, such as model number 83CSL-0603 manufactured by Smokers' Outpost, or comparable urns by another manufacturer. This requirement shall apply to all new and previously issued sidewalk cafe permits. Placement of the urns must be approved by the building department.
- (w) All sidewalk cafe permits are subject to periodic inspections by the city to insure compliance with this article.
- (x) All sidewalk cafe permits are subject to the discontinuance due to the expiration or revocation of any and all utility permits and access permits that have been issued to the city.

Editor's note— Ord. No. 2013-43, § 2, adopted September 17, 2013, repealed and reenacted sections 19-57—19-59 in their entirety to read as herein set out. Formerly, sections 19-57—19-59 pertained to form and conditions of business tax receipt, denial, revocation or suspension of business tax receipt; removal and storage fees; emergencies, and appeals, respectively, and derived from Ord. No. 2010-08, § 1, adopted April 20, 2010.

Sec. 19-58. - Business tax receipt; sidewalk cafes.

All business tax receipts issued under this article shall be issued on a form provided by the department for community sustainability. In addition to naming the permittee and any other information deemed appropriate by the department, a business tax receipt issued under this article shall contain the following conditions:

- (a) Each business tax receipt shall be effective for one (1) year, subject to annual renewal.
- (b) The business tax receipt shall be personal to the permittee only and shall not be transferable in any manner.

(Ord. No. 2013-43, § 2, 9-17-13)

Note— See editor's note at section 19-57.

Sec. 19-59. - Denial, revocation or suspension of sidewalk cafe permit; removal and storage fees; emergencies.

- (a) The city may deny, revoke or suspend a sidewalk cafe permit for any sidewalk cafe authorized in the city if it is found that:
 - (1) Any required business or health permit has been suspended, revoked or canceled;
 - (2) The permittee does not have insurance which is correct and effective in the minimum amount described above;
 - (3) Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal of a sidewalk cafe. Such decision shall be based upon finding of the city that the minimum pedestrian path is insufficient under existing circumstances and represents a danger to health, safety or general welfare of pedestrians or vehicular traffic;
 - (4) The permittee has failed to correct violations of this article or conditions of his permit within three (3) days of receipt of the notice of same delivered in writing to the permittee by registered mail, return receipt requested, to the last address provided by the permittee to the city or the permittee has failed to pay all violation fines imposed under the provisions of this section;
 - (5) The permittee has received two (2) notices of violation within a six-month period, whether corrected or not; or
 - (6) Sidewalk cafe components may be removed by the city and a reasonable fee charged for labor, transportation and storage should the permittee fail to remove said items within thirty-six (36) hours of receipt of the final notice to do so for any reason provided for under this article.
- (b) Upon denial, revocation or suspension, city shall provide notice of such action to the applicant or the permittee in writing, stating the action which has been taken and the reason therefor. If the action of the city is based on subsection (a)(2) or (3) of this section, the action shall be effective twenty-four (24) hours

after the city's postmarked date of mailing of notice to permittee. Otherwise, such notice shall become effective within ten (10) days after the city's postmarked date of mailing of such notice to the permittee unless appealed to the city commission.

- (c) In addition to the remedies provided in this section, the following civil penalties will be imposed upon the issuance of a written notice to the permittee as follows:

For a first violation the violator shall receive a written warning.

For a second violation, the fine shall be one hundred dollars (\$100.00).

For third or subsequent violation, the fine is five hundred dollars (\$500.00).

- (i) The city cashier shall accept designated fines and issue receipts therefor. The city shall provide a notice of violation form for notifying alleged violators to appear and answer to charges of violations.
- (ii) Payment shall be made, either by mail or in person, to the city cashier within thirty (30) days of the notice of penalty being issued. If a person follows this procedure, s/he shall be deemed to have admitted the infraction and to have waived his/her right to a hearing on the issue of commission of the infraction.

(Ord. No. 2013-43, § 2, 9-17-13)

Note— See editor's note at section 19-57.

Sec. 19-59.5. - Appeals.

- (a) An appeal shall be initiated within ten (10) days of the city's postmarked date of mailing of the denial, revocation or suspension of a sidewalk cafe permit by filing a written notice of appeal with the city manager.
- (b) The city manager shall place the appeal on the next available regular city commission agenda. At the hearing upon appeal, the city commission shall hear and determine the appeal, and the decision of the city commission shall be final and effective immediately.
- (c) The filing of a notice of appeal by a permittee shall not stay an order by the code enforcement special magistrate to remove a sidewalk cafe components. Sidewalk cafe components shall be removed immediately as set out above, pending disposition of the appeal and final decision of the city commission.

(Ord. No. 2013-43, § 2, 9-17-13)

Editor's note— Ord. No. 2013-43, § 2, adopted September 17, 2013, enacted provisions intended for use as section 19-60. Inasmuch as there are already provisions so designated, and at the discretion of the editor, said provisions have been redesignated as section 19-59.5.

Footnotes:

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Editor's note— Ord. No. 13123, § 2, adopted Jan. 14, 2010, renumbered article VI, §§ 54-221—54-230 as §§ 54-222—54-231 and added a new § 54-221 as set out herein. The historical notation has been retained with the amended provisions for reference purposes.

Sec. 54-221. - Statement of purpose.

- (a) The primary function of sidewalks is for pedestrian movement and sidewalk cafes shall not interfere with their use.
- (b) Sidewalk cafes will be ADA compliant.
- (c) A safe, secure and comfortable environment will be maintained for pedestrians using the public right-of-way.
- (d) A sidewalk cafe shall enhance the vitality of the street environment.
- (e) A sidewalk cafe shall be compatible with adjacent streetscape elements in terms of design and construction.

(Ord. No. 13123, § 2, 1-14-10)

Sec. 54-222. - Permit required.

Operating a sidewalk cafe on city sidewalks shall be unlawful without a permit. No person shall conduct business as herein defined without first obtaining a permit from the director of the department of resilience and public works and paying the fee therefor to the director of finance or his/her designee. It shall be unlawful for any person to operate a sidewalk cafe on any sidewalk within the city except as provided by this article.

(Ord. No. 9848, § 1, 6-14-84; Code 1980, § 54-108; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13676, § 2, 4-27-17; Ord. No. 13792, § 1, 10-11-18)

Sec. 54-223. - Definitions.

As used in this article:

Cafe zones means any public sidewalk area within the city that complies with the requirements of article VI of this chapter.

Director means the director of the department of resilience and public works.

Food establishment means an establishment serving prepared food to be consumed on or off premises.

Permit means a grant of authority by the city to operate a sidewalk cafe, subject to compliance, as a condition precedent to the initial issuance of such permit and any renewals thereof with all requirements, conditions or criteria set forth in this article for the issuance and maintenance of a sidewalk cafe permit. A permit shall be valid for a maximum of one year in duration and shall be renewable on an annual basis upon full compliance with all application requirements.

Permittee means the recipient of a sidewalk cafe permit under the terms and provisions of this article.

Sidewalk means that portion of the street between the curb lines or the lateral lines of a non-driving lane separated by curb or bollards and the adjacent property lines where a five-foot minimum clearance is available to and intended for use by pedestrians.

Sidewalk cafe means the placing, locating, or permitting of the placing or locating of outdoor furniture, including but not limited to, chairs and tables within the sidewalk area adjacent to a business licensed to operate as a restaurant or take-out food establishment.

State road shall mean those roadways that are part of the state highway system under the jurisdiction of the Florida Department of Transportation.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10217, § 1, 1-8-87; Ord. No. 10693, § 1, 1-11-90; Ord. No. 10854, § 1, 3-14-91; Ord. No. 11053, § 2, 3-25-93; Code 1980, § 54-109; Ord. No. 13087, § 2, 9-10-09; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13792, § 1, 10-11-18)

Sec. 54-224. - Fees and security deposit.

- (a) A non-refundable application fee of \$175.00 and initial inspection fee of \$10.00 shall accompany the sidewalk cafe application.
- (b) The fee for an annual permit for establishing or maintaining a sidewalk cafe shall be \$11.50 per square foot of usable sidewalk area, as determined by the department of resilience and public works. The sidewalk cafe permit year shall begin on October 1 and end on September 30. The fee for any sidewalk cafe permitted during the permit year shall be prorated on a monthly basis to the end of the current permit year. The full annual permit fee shall be due and payable on or before October 1. Payment received more than ten calendar days after the due date shall be charged a late fee of ten percent of the payment amount due. Failure to make a required payment within 30 calendar days of the due date shall constitute a basis for and result in immediate license suspension and forfeiture to any right and interest to the security deposit or performance bond.
- (c) Failed permit inspections are subject to a reinspection fee of \$95.00.
- (d) Security deposit. Upon issuance of the permit, the permittee shall provide a security deposit in an amount sufficient to secure one-quarter of the permit fee. All documentation, including the form of the security deposit, shall be subject to the approval of the city attorney as to form and correctness. In the event the permittee fails to make an annual payment within 30 days of the date due, the permittee shall forfeit any right and interest to the security deposit, whichever may be applicable, and the entire amount of the security deposit shall be retained by the city or its designee. The permittee shall have no recourse against this retention by the city when payment by the permittee is untimely.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10217, § 1, 1-8-87; Ord. No. 10658, § 3, 10-12-89; Ord. No. 10693, § 1, 1-11-90; Ord. No. 10854, § 1, 3-14-91; Ord. No. 11053, § 2, 3-25-93; Code 1980, § 54-111; Ord. No. 11280, § 2, 7-13-95; Ord. No. 12228, § 1, 5-9-02; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13195, § 5, 9-27-10; Ord. No. 13467, § 2, 6-12-14; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13682, §§ 2—5, 5-25-17; Ord. No. 13792, § 1, 10-11-18)

Editor's note— Ord. No. 13585, § 2, adopted January 14, 2016, changed the title of section 54-224 from "Permit fee" to "Fees and security deposit." The historical notation has been preserved for reference purposes.

Sections 2—5 of Ord. No. 13682, adopted May 25, 2017, state the following: "Section 2. The sidewalk café permit fees imposed by Section 54-224(b) of the City Code, the annual permit of \$11.50 per square foot of useable sidewalk area,

and Section 54- 224(d) of the City Code, the required security deposit, are hereby waived for downtown sidewalk cafés located in the area bounded by the west side by Northwest/Southwest 1st Avenue on the west, by the north side of Northwest/Northeast 1st Street on the north, Biscayne Boulevard on the east, and by the south side of Southwest/Southeast 1st Street on the south, as further described in Exhibit "A".

Section 3. The waiver period for eligible sidewalk cafés, as described in Section 2 above, shall be during the remainder of the construction of the Project until the City and any other public agencies that have jurisdiction over the Project, as applicable, have determined that the Project has achieved substantial completion in the area described in Section 2. This Ordinance will automatically sunset once that date of substantial completion is confirmed by the Public Works Director.

Section 4. This waiver only applies to sidewalk café permit fees imposed by Sections 54-224(b) and Section 54-224(d) of the City Code.

Section 5. This Ordinance does not waive sidewalk café fees imposed by Section 54-224(a) of the City Code, the non-refundable application fee of \$175.00 and the initial inspection fee of \$10.00, the sidewalk café fees imposed by Section 54-224(c) of the City Code, the failed permit inspection fee, or any other fees including but not limited to payment of the BTR, payment of the CU, any related inspections, or any similar requirements, or fees."

Sec. 54-225. - Permit application.

- (a) Application for a permit to operate a sidewalk cafe shall be made at the department of resilience and public works in a form deemed appropriate by the director. Such application shall include, but not be limited, to the following information:
 - (1) Name and address of the applicant;
 - (2) A copy of a valid business license to operate a restaurant or a take-out food establishment adjacent to the sidewalk area which is the subject of the application;
 - (3) A copy of current liability insurance;
 - (4) A current survey (certified if required by other agencies having jurisdiction over the area) of the sidewalk area including adjacent roadway and property lines.
 - (5) A drawing (minimum scale of one-fourth inch equals one foot) showing the layout and dimensions of the existing sidewalk area and adjacent private property, proposed location, size and number of all outdoor furniture, including but not limited to, tables, chairs, umbrellas, location of doorways, location of trees, parking meters, bus shelters, sidewalk benches, trash receptacles, glare screens, menu boards, heaters, fans, planters and any other sidewalk obstruction either existing or proposed within the pedestrian area;
 - (6) Photographs, drawings, or manufacturers' brochures fully describing the appearance of all proposed tables, chairs, umbrellas, or other objects related to the sidewalk cafe; and
 - (7) Photograph of subject street right-of-way where sidewalk cafe is proposed.
- (b) Applications shall be reviewed by the following departments: resilience and public works; planning and zoning, neighborhood enhancements team, risk management and finance. Building department review is required for lighting, electrical connections, fans, and heaters.
- (c) Within 30 days of receipt of a completed application, the director shall approve or deny the permit.
- (d) Reserved.
- (e) The applicant shall provide proof of necessary insurance prior to receiving the permit.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10854, § 1, 3-14-91; Code 1980, § 54-112; Ord. No. 13087, § 2, 9-10-09; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13195, § 5, 9-27-10; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13792, § 1, 10-11-18)

Sec. 54-226. - Permit requirements.

- (a) No person shall establish a sidewalk cafe on any public street or sidewalk unless such person has obtained a valid permit to operate that sidewalk cafe in such a manner pursuant to this article.
- (b) Permits shall be issued only to validly licensed restaurants or food establishments that wish to provide tables and chairs on the sidewalk(s) adjacent to their businesses for use by the general public.
- (c) In the Coconut Grove central commercial district, permits shall be issued to sidewalk cafes in conjunction with "food establishments" and validly licensed restaurants, provided the establishment provides required off-street parking at a rate of one parking space per 100 square feet for the sidewalk cafe area or pays a mitigation fee in lieu thereof, as described in section 35-224 herein, in addition to other required off-street parking and the sidewalk cafe permit fee. For purposes of this article, references to specific districts are solely for purposes of delineating affected geographic areas subject to this section and shall not convey any rights under the Miami 21 Code, the zoning ordinance of the City of Miami, Florida ("Miami 21 Code"), as amended or superseded.
- (d) No sidewalk cafe permit shall be issued by the city within any state road right-of-way in the absence of an approval from the Florida Department of Transportation.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 11053, § 2, 3-25-93; Code 1980, § 54-113; Ord. No. 13087, § 2, 9-10-09; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13467, § 2, 6-12-14; Ord. No. 13585, § 2, 1-14-16)

Sec. 54-227. - Standards and criteria for application review.

The following standards and criteria shall be used in reviewing the drawing required in section 54-225(a)(5):

- (1) Sidewalk cafes are restricted to the sidewalk frontage of the licensed restaurant or food service establishment to which the permit is issued; or within the contiguous sidewalk frontage of the building where the licensed restaurant or food service establishment is located, provided that written approval is supplied by the building owner and any affected lessee.
- (2) Permits will not be issued where the tables and chairs would be placed within five feet of bus stops, taxistands, or counter service windows.
- (3) No tables and chairs will be permitted within five feet of a pedestrian crosswalk.
- (4) The area to be considered shall have sidewalks which are nine feet in width or greater, not including the curb. Subject to written approval of the property owner, a warrant issued in accordance with the Miami 21 Code and approval of the director of the resilience and public works department, or his/her designee, a portion of the required nine feet of width may be provided on an Americans with Disabilities Act ("ADA") compliant sidewalk located on private property abutting the right-of-way line. All regulations stated in this article, except the permit fee, shall be applicable to any areas of private property included in the sidewalk permit application.
- (5) Sidewalk cafes shall be located in such a manner that a minimum five-foot-wide clear pedestrian path is maintained at all times. In areas of congested pedestrian activity, the director is authorized to require a wider pedestrian path, as circumstances dictate. The pedestrian path zone surrounding the sidewalk cafe

area shall not be encumbered in any way by the placement of menu boards, planters, or bicycles affixed or leaned against the sidewalk cafe enclosure. Menu boards will be allowed within the sidewalk cafe footprint and shall have no advertising other than the menu and restaurant information.

- (6) Objects used to form a physical barrier around the sidewalk cafe perimeter shall be permitted. All physical barriers shall have a two-foot clear path every 25 feet and shall not be more than 36 inches in height. Items placed along the perimeter of a sidewalk cafe shall not be located within street intersection visibility triangles. Proposed material and design shall be approved by the resilience and public works department. Glare screens shall not be permanently attached to the sidewalk, shall not be more than 36 inches in height, and shall be removed during non-business hours. Endorsements/advertising are not permitted on enclosures, umbrellas, tableware, and covers, except for the name and/or logo of the restaurant.
- (7) Tables, chairs, umbrellas and any other objects provided with the sidewalk cafe shall be of quality design, materials, and technique; both to ensure the safety and convenience of users, and to enhance the visual and aesthetic quality of the urban environment. Design, materials, and colors shall be harmonious with an urban environment so as to reduce visual clutter and enhance aesthetics. Landscape maintenance must be done on a regular basis to ensure the health of plant materials.
- (8) Awnings, umbrellas and other decorative material shall be fire retardant pressure treated, or manufactured of fire resistive material.
- (9) No portion of any object placed in the sidewalk cafe shall extend into the five-foot pedestrian path.
- (10) In certain areas within city where streetscape enhancements have been installed changes are not permitted to the sidewalk paving and must not be damaged by enclosures, signage, etc. Sidewalk cafe owner shall preserve and protect all existing trees and plantings in the public right-of-way to the satisfaction of the resilience and public works department and replace, entirely at the applicant's expense, any trees that are damaged as a result of the sidewalk cafe. Trees shall not be used to support wires or to place any signs, screws, nails, staple, ropes, brackets, banding or other hardware.
- (11) Sidewalk cafe furnishings and fixtures, including any required bar unit, servers' work station, or greeting stations shall be portable and shall not be permanently attached to the wall of the abutting building, the sidewalk, or screen. Bus stations shall not be permitted.
- (12) Umbrella height must be 84 inches above the sidewalk (highest point of the sidewalk if not level).
- (13) A greeting station can be located closer to the sidewalk, but shall remain within the confines of the sidewalk cafe footprint and a clear path maintained for an unobstructed access to the main entrance, and along the pedestrian clear path area.
- (14) Planters may be placed within the sidewalk cafe but must be secured to ensure that they do not move on un-level sidewalk. If planters are on wheels they must be locked.
- (15) Umbrellas and screens may be supported by a socket in the sidewalk. The resilience and public works department must approve the coring and capping method in advance and holes must be filled or capped when not in use.
- (16) Lighting, fans and heaters are optional items. Light levels shall be low and directed towards the sidewalk cafe rather than towards the street. Lighting, fans and heaters shall comply with established standards and criteria and with all applicable codes.

- (17) All portions of the sidewalk cafe that are located on private property not within the public right-of-way

shall comply with City of Miami zoning regulations.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10217, § 1, 1-8-87; Ord. No. 10693, § 1, 1-11-90; Ord. No. 10854, § 1, 3-14-91; Code 1980, § 54-114; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13676, § 2, 4-27-17; Ord. No. 13792, § 1, 10-11-18)

Sec. 54-228. - Indemnification and insurance.

- (a) Applicant agrees to indemnify, defend, and hold harmless the city, its officials, employees, agents, and, if applicable, its instrumentalities and each of them from and against all loss, cost, penalties, fines, damages, claims of any nature, including expenses and attorney's fees, and any and all liabilities by reason of injury to or death of any person, damage to, destruction, or loss to any property including the city, its instrumentalities, officials, employees, and agents arising out of or in connection with the performance or non-performance of the services contemplated by this permit/agreement which is directly or indirectly caused, in whole or in part, by any act, omission, default, liability, or negligence, whether active or passive of the applicant, its employees, agents, servants, or contractors, unless such act or omission is solely caused by the city, its instrumentalities, officials, employees, and agents. The applicant further agrees to indemnify, defend, and hold harmless the city, its instrumentalities, officials, employees, and agents against all liabilities which may be asserted by an employee or former employee of the applicant or any of its contractors as provided above for which the applicant's liability to such employee or former employee would otherwise be limited to payments under workers' compensation or similar laws. In addition, the applicant understands and agrees that except where caused by the negligence or misconduct of the city, its instrumentalities, officials, employees, or agents, the city shall not be liable for any loss, injury, or damage to any personal property or equipment of the applicant, its employees, agents, contractors, business licensees, or invitees placed on city property and its instrumentalities and shall be at the sole risk of the applicant thereof. The applicant shall ensure that adequate safety precautions are in effect at all times during the term of the permit. It shall be a further condition precedent to the issuance of any such permit for placement of such sidewalk cafe in the public right-of-way that the permit holder(s) is/are jointly and severally responsible, at each permit holder's sole expense, for any damages regarding restoring the public right-of-way to its original condition before installation of facilities. The indemnification shall survive termination of this permit/agreement.

Prior to the issuance of any such permit, the applicant shall submit to the city a certificate of insurance with respect to commercial general liability with limits of at least \$500,000.00 per occurrence, \$1,000,000.00 policy aggregate, and any endorsements thereto, including, but not limited to, premises and operations liability, personal and advertising injury, products and completed operations, and liquor liability. The certificate must reflect primary and noncontributory language and list the city as an additional insured on all third-party liability policies including liquor. The insurance herein required shall remain in full force and effect at all times during the entire term of the permit. Additionally, all such insurance shall be subject to review and approval by the city's risk management department.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "A-" as to management and no less than Class "V" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick New Jersey, or its equivalent subject to the approval of the city's risk management department. Companies not meeting the above rating

requirements shall submit proof of reinsurance from qualifying insurers having or exceeding the required rating criteria.

The registrant/applicant shall provide 30 days prior written notice of cancellation to the city for any reason other than non-payment of premium in which ten days' notice shall apply.

- (b) Applicant shall furnish the city with a certificate of insurance substantially in accordance to the insurance requirements contained in Exhibit A, available at the department of resilience and public works. It is understood and agreed that all coverage provided by the applicant shall be primary and non-contributory, and its insurance shall have no right of recovery or subrogation against the city and if applicable, any of its instrumentalities. The department of resilience and public works may modify the insurance requirements, if warranted.

(Ord. No. 9848, § 1, 6-14-84; Code 1980, § 54-115; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13792, § 1, 10-11-18; Ord. No. 13918, § 2, 9-24-20)

Editor's note— Ord. No. 13585, § 2, adopted January 14, 2016, changed the title of section 54-228 from "Liability and insurance" to "Indemnification and insurance." The historical notation has been preserved for reference purposes.

Sec. 54-229. - Form and conditions of permit.

The permit shall be issued on a form deemed suitable by the director. In addition to naming the permittee and any other information deemed appropriate by the director, the permit shall contain the following conditions:

- (1) Each permit shall be effective for one year, starting October 1st and ending September 30th, subject to annual renewal. Fees for the initial year shall be prorated on a monthly basis. Permits are subject to annual renewals and applications shall be received by the department prior to October 1st.
- (2) The permit issued shall be personal to the permittee only and shall not be transferable in any manner.
- (3) The permit may be suspended by the director when necessary to clear sidewalk areas for a "community or special event" authorized by a permit issued by the police department.
- (4) The director may require the temporary removal of sidewalk cafes when street, sidewalk, or utility repairs necessitate such action.
- (5) The department of resilience and public works or the police department may immediately remove or relocate all or parts of the sidewalk cafe in emergency situations.
- (6) The city and its officers and employees shall not be responsible for sidewalk cafe components relocated during emergencies.
- (7) The permit shall be specifically limited to the area shown on the "exhibit" attached to and made part of the permit.
- (8) The permittee shall use positive action to assure that its use of the sidewalk in no way interferes with or embarrasses sidewalk users or limits their free unobstructed passage.
- (9) The sidewalk cafe shall be opened for use by the general public and such use shall not be restricted to patrons of the permittee.
- (10) Permittees holding a local business tax receipt or certificate of use limited to take-out food shall not be permitted to provide table service in the sidewalk cafe. However, this shall not relieve the permittee of the responsibility to maintain the sidewalk cafe as required in this section.

- (11) Tables, chairs, umbrellas, and any other objects provided with a sidewalk cafe shall be maintained with a clean attractive appearance and shall be in good repair at all times.
- (12) The sidewalk area covered by the permit shall be maintained in a neat and orderly appearance at all times and the area shall be cleared of all debris on a periodic basis during the day, and again at the close of each business day.
- (13) No advertising signs or business identification signs shall be permitted in the public right-of-way; this shall not prohibit the use of umbrellas, glare screens, or menu boards carrying restaurant logotypes. Size and location of menu boards shall be approved by city.
- (14) No tables and chairs nor any other parts of sidewalk cafes shall be attached, chained, or in any manner affixed to any tree, post, sign, or other fixtures, curb or sidewalk within or near the permitted area. No additional outdoor seating authorized herein shall be used for calculating seating requirements pertaining to location of, applications for, or issuance of a liquor license for any establishment or be used as the basis for computing required seating for restaurants and dining rooms or as grounds for claiming exemption from such requirements under the provisions of any city ordinance or state law.
- (15) Except as provided in section 54-227, the permit covers only the public sidewalk. Tables and chairs on private property will be governed by other applicable regulations. The permit shall include a reference to the applicant complying with all requirements for sidewalk cafes set forth in article VI of this Code. Where an applicant that is already legally operating a sidewalk cafe at a leased location submits a lease executed prior to March 1, 2016, the owner consent requirement stated herein shall not apply until such time as the current term of such lease ends.
- (16) The permittee shall notify the director of resilience and public works, in writing, when operation of the sidewalk cafe begins. Said notice shall be delivered to the director within 24 hours of such commencement.
- (17) The issuance of a sidewalk cafe permit does not grant or infer vested rights to use of the sidewalk area by the permittee. The city retains the right to deny the issuance of a permit or the renewal of a permit.
- (18) No entertainment or sound speakers shall be placed within or adjacent to the right-of-way in a manner which causes persons to accumulate and obstruct the pedestrian path. Entertainment and sound speakers shall comply with the city's noise regulations.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10217, § 1, 1-8-87; Ord. No. 10693, § 1, 1-1-90; Code 1980, § 54-116; Ord. No. 12885, § 1, 2-8-07; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13792, § 1, 10-11-18)

Sec. 54-230. - Denial, revocation or suspension of permit; removal and storage fees; emergencies.

- (a) The director may deny, revoke, or suspend a permit for any sidewalk cafe authorized in the city if it is found that:
 - (1) Any necessary business or health permit has been suspended, revoked, or cancelled.
 - (2) The permittee does not have insurance which is correct and effective in the minimum amount described in section 54-228, or has failed to make a quarterly permit fee payment when due.
 - (3) Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal of sidewalk cafe. Such decision shall be based upon findings of director that the minimum five-foot pedestrian path is insufficient under existing circumstances and represents a danger to the health, safety, or general welfare of pedestrians or vehicular traffic.

- (4) The permittee has failed to correct violations of this article or conditions of his/her permit within three days of receipt of the director's notice of same delivered in writing to the permittee.
- (5) The permittee has failed to take positive actions to prohibit violations from recurring.
- (6) The permittee has failed to make modifications within three days of receipt of the director's notice of same delivered in writing to the permittee.
- (7) Tables, chairs and other vestiges of said sidewalk cafe in the right-of-way may be removed by the department of resilience and public works, and a reasonable fee charged for labor, transportation, and storage, should the permittee fail to remove said items within 36 hours of receipt of the director's final notice to do so for any reason provided for under this article. If the final notice is sent based on subsection (a)(2) or (3) of this section, the removal action shall become effective upon the receipt of such notice and the permittee shall have four hours to remove said items or to, within that time, request, in writing, a meeting with the department of resilience and public works director to contest the final notice. The fees incurred by the department of resilience and public works and/or other agents of the city who implement the removal shall be billed to the violator and if the fees remain unpaid for 30 days, shall be imposed as a municipal lien against the real and personal property of the violator and shall be recorded in the public records of Miami-Dade County, and may be foreclosed by the city as such, pursuant to F.S. § 166.021. In addition, the city may utilize the code enforcement procedures set forth in chapter 2, article X, to address any violations.
- (b) Upon denial or revocation, the director shall give notice of such action to the applicant or the permittee in writing stating the action which has been taken and the reason thereof. If the action of the director is based on subsection (a)(2) or (3) of this section, the action shall be effective upon giving such notice to the permittee. Otherwise, such notice shall become effective within ten days unless appealed to the city commission.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10693, § 1, 1-11-90; Code 1980, § 54-117; Ord. No. 11280, § 2, 7-13-95; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13676, § 2, 4-27-17; Ord. No. 13792, § 1, 10-11-18)

Sec. 54-231. - Appeals.

- (a) Appeals shall be initiated within ten days of a permit denial or revocation by filing a written notice of appeal with the city manager, and a copy of same delivered the same day to the director. Any revocation effective immediately may also be appealed to the city commission by such filing within ten days.
- (b) The city manager shall place the appeal on the first non-planning and zoning city commission agenda for which proper notice can be given and shall notify the director of resilience and public works thereof. At the hearing upon appeal, the city commission shall hear and determine the appeal, and the decision of the city commission shall be final and effective immediately.
- (c) The filing of a notice of appeal by a permittee shall not stay an order by the director to remove a sidewalk cafe or parts thereof. Vestiges of the sidewalk cafe shall be removed immediately, as set out in section 54-230, pending disposition of the appeal and final decision of the city commission.
- (d) A permit which has been suspended or revoked pursuant to section 54-230(a)(1), (2) or (4) may be reinstated by the director of the department of resilience and public works at such time as the permittee has demonstrated that the violation has been corrected to the satisfaction of the department of public works.
- (e) A new permit shall not be issued or an existing permit shall not be reinstated for a minimum period of six

months after said issuance or reinstatement has been denied by the director of resilience and public works, or in the event of an appeal, by the city commission.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10693, § 1, 1-11-90; Code 1980, § 54-118; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13792, § 1, 10-11-18)

Sec. 54-232. - Enforcement.

Enforcement shall be as proscribed by Chapter 2, Article X, Code Enforcement, and any other remedies as provided by law.

(Ord. No. 13123, § 2, 1-14-10)

Secs. 54-233—54-260. - Reserved.



King Street Outdoor Dining Design Guidelines

City of Alexandria

Approved by Board of Architectural Review

January 2006



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Purpose

These Guidelines provide standards for the use of outdoor dining areas along King Street and adjoining streets in order to maintain a quality appearance in keeping with the Street's historic character.

The City of Alexandria permits outdoor dining along King Street and adjoining streets in Old Town through an administrative permitting process authorized by Section 6-800 of the City of Alexandria Zoning Ordinance. As per Section 6-805(O)(4), the design of each outdoor dining area must "comply with any Board of Architectural Review approved design guidelines." This document contains the guidelines of furniture and fixtures considered acceptable within the architectural and cultural framework of Old Town's main commercial corridor.

Central to the process of permitting outdoor dining along one of the nation's most historic streets is the necessity of ensuring that furniture and other items placed along the street will complement the overall character of the street and not detract from the district's architectural heritage. These Design Guidelines provide standards for the use of outdoor dining areas in order to enhance the historic character, visual quality and pedestrian safety of the area.

These guidelines apply to all outdoor dining areas that receive City approval through powers granted by Section 6-800 of the Zoning Ordinance. Failure to comply with these guidelines constitutes a violation of the City Zoning Ordinance.

Background

The City of Alexandria is pleased to offer restaurants along King Street the option of utilizing the public sidewalk as outdoor dining areas. Outdoor dining gives restaurant patrons an amenity that has become an increasingly popular feature within the Washington area.

While the City has encouraged the use of outdoor dining arrangements, restaurant operators must be mindful of two important considerations: the safety and flow of pedestrian traffic, and the visual appropriateness within Old Town's historic district.

These Design Guidelines are intended to ensure that restaurants use the public sidewalk for outdoor dining in a way that is safe for pedestrians and appropriate for the historic district.

Application Procedure

Outdoor dining is permitted along King Street and adjoining streets through an administrative approval process authorized by Section 6-800 of the City Zoning Ordinance. This administrative process saves time and expense by pre-establishing standards that must be followed for all outdoor dining set-ups.

To apply, a restaurant owner needs to complete the following.

- **Application Form:** A brief form with basic information about the restaurant and proposed number of seats
- **Site Plan:** A plan showing the proposed outdoor dining area with measurements (including a representation showing that at least 5 feet of unobstructed sidewalk space will remain for pedestrians).
- **Photos or Drawing of Furniture:** Photos or other graphic representation (including color and material) of furniture and umbrellas, needed for the City to verify that the proposed furniture conforms to these Design Guidelines.

For forms, information or questions, contact the Department of Planning and Zoning at 703.838.4666 or visit in person at City Hall, 301 King Street, Room 2100.

Elements of a Quality Outdoor Seating Area



Chapter I: Barriers

Dining area barriers (fences, gates, ropes etc.) are visually appealing and help to separate the dining area from the sidewalk. All barrier material must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint.

Barriers are required in the following instances:

a) Required for Leading Edge of All Dining Areas:

A detectable barrier is required for the leading edge of all outdoor dining areas to ensure that visually impaired pedestrians using canes can detect the dining area safely. The *leading edge*, illustrated at left, is defined as the section of a dining area that is at or near a perpendicular angle to the building wall and/or curb line.

b) Required for Full Perimeter of Some Dining Areas:

Areas: A detectable barrier is required for the full perimeter (with the exception of access openings) when the outdoor seating area extends more than 3 feet into the public right of way. The perimeter includes both the leading edge and parallel edge.

Restaurants which do not serve alcohol and whose outdoor seating area extends less than 3 feet into the public right-of-way are not required to enclose the full perimeter of the seating area, but may do so on an optional basis.

c) Required for Full Perimeter of All Outdoor Dining Areas Serving Alcohol:

State law requires that outdoor dining areas where alcohol is served or consumed must enclose the area, with only one opening to the sidewalk for access.

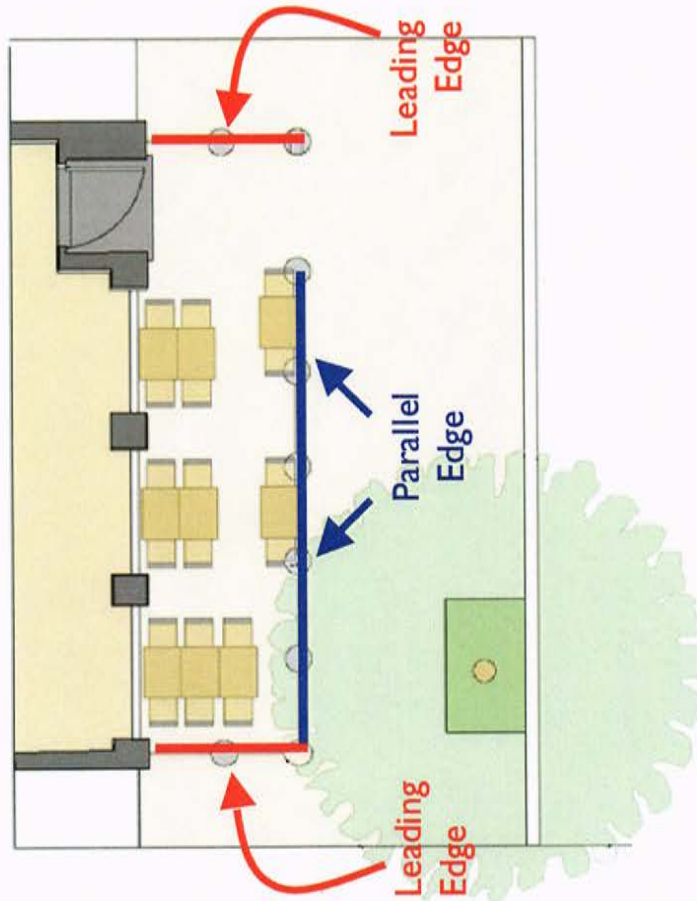


FIGURE 1
Illustration of leading edge and parallel edge of barrier

1.1 Barrier Designs

A wide variety of styles and designs are permissible for outdoor dining area barriers:

Sectional Fencing: Sectional fencing (generally defined as rigid fence segments that can be placed together to create a unified fencing appearance) is a desirable solution for outdoor seating areas using barriers. Such fencing is portable, but cannot be easily shifted by patrons or pedestrians, as can less rigid forms of enclosures.

Sectional fencing must be of metal (aluminum, steel, iron, or similar) or of wood construction and must be of a dark color (either painted or stained).



FIGURE 2
Acceptable sectional fencing design

1.1 Barrier Designs

Rope or Chain Rails: Rope or chain-type barriers (generally defined as enclosures composed of a rope or chain suspended by vertical elements such as stanchions) are permitted if they meet the following guidelines:

- **Rope/Chain Diameter:** The rope or chain must have a minimum diameter of 1 inch, in order to maintain detectability by the visually impaired.
- **Posts:** Vertical support posts (stanchions, bollards, etc.) must be constructed of wood or metal (aluminum, steel, iron, or similar).
- **Stanchion Base Must Not Be A Tripping Hazard:** If a stanchion or other vertical supporting device is attached to a base, that base must be flat and must measure no more than one-half ($\frac{1}{2}$) of an inch above the sidewalk surface. No domed stanchion bases are permitted.

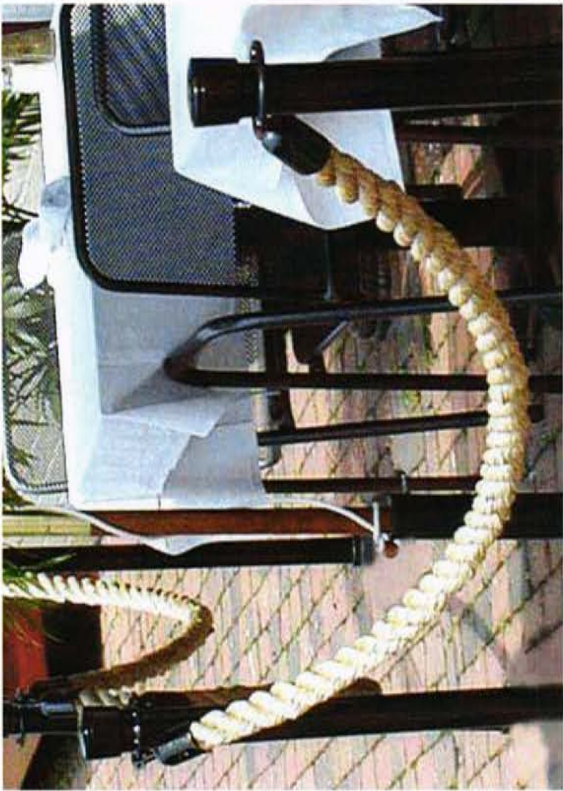


FIGURE 3
Rope or chain barrier must have a minimum diameter of 1 inch

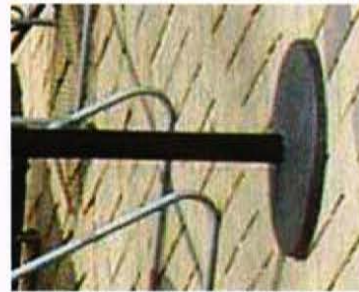


FIGURE 4
Stanchion base must be flat and no more than 1/2" above sidewalk surface



FIGURE 5
Domed stanchion bases are not permitted

1.1 Barrier Designs

Freestanding: Any barrier (whether sectional fencing or rail-type) must be freestanding, without any permanent or temporary attachments to buildings, sidewalks or other infrastructure.



FIGURE 6
Acceptable sectional fencing design: freestanding

1.1 Barrier Designs

Prohibited Barrier Styles:

- **Fabric Inserts:** Fabric inserts (whether natural or synthetic fabric) of any size are not permitted to be used as part of a barrier.
- **Chain-link and Other Fencing:** The use of chain-link, cyclone fencing, chicken wire or similar appurtenances is prohibited. Materials not specifically manufactured for fencing or pedestrian control (including but not limited to buckets, food containers, tires, tree stumps, vehicle parts, pallets, etc.) and not expressly permitted elsewhere in these Guidelines may not be used as components of a barrier.

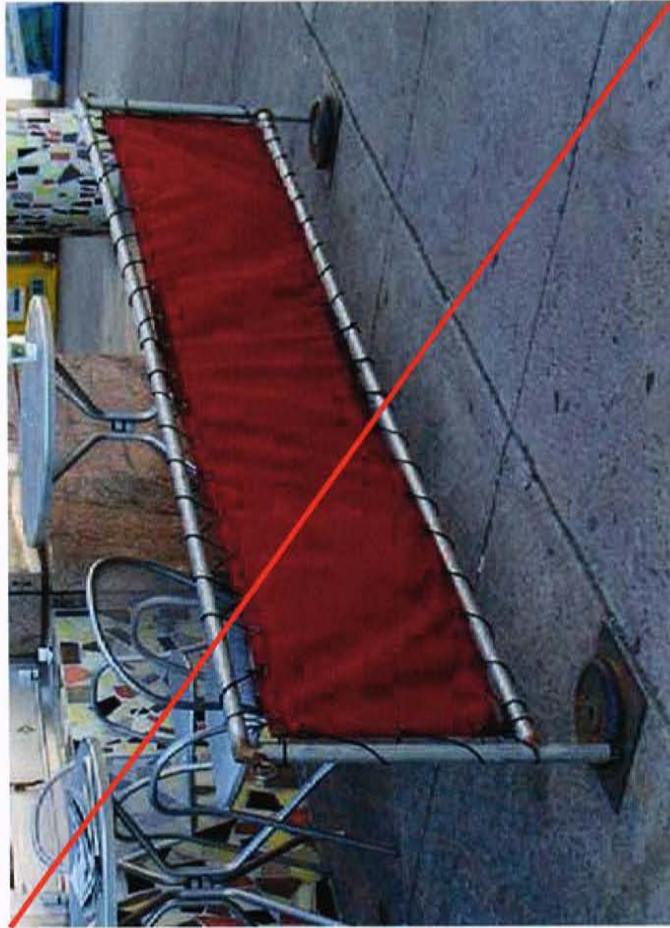


FIGURE 7
Fabric inserts are not permitted to be used as part of a barrier

1.2 Barrier Measurements

To ensure their effectiveness as pedestrian control devices and their detectability for persons with visual impairments, barriers must meet the following measurement guidelines:

Height: The highest point of a barrier (such as a stanchion) must measure at least 36 inches in height, with the exception of planters.

“Open” Appearance: Fences or other perimeter enclosures with a height of between 36” and 50” must be at least 50 percent open (see-through) in order to maintain visibility of street level activity. Any enclosure with a height over 50” must be at least 80 percent open (see-through).

Maximum Distance from Ground: All barriers must be detectable to visually impaired pedestrians who employ a cane for guidance. Therefore the bottom of barriers must be no greater than 27 inches above the sidewalk surface.

- **How to Measure Rope/Chain Distance from Ground:** In the case of a rope or chain enclosure, the rope/chain must not exceed 27 inches in height when measured 12 inches or more away from a vertical post (stanchion, bollard or other such support).

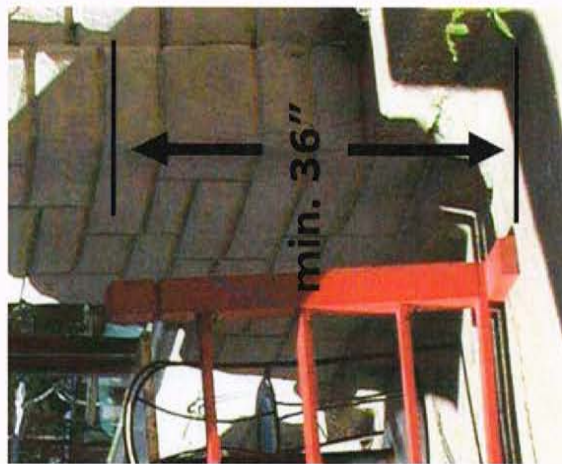


FIGURE 8
Sectional fencing
barrier height must be
at least 36"

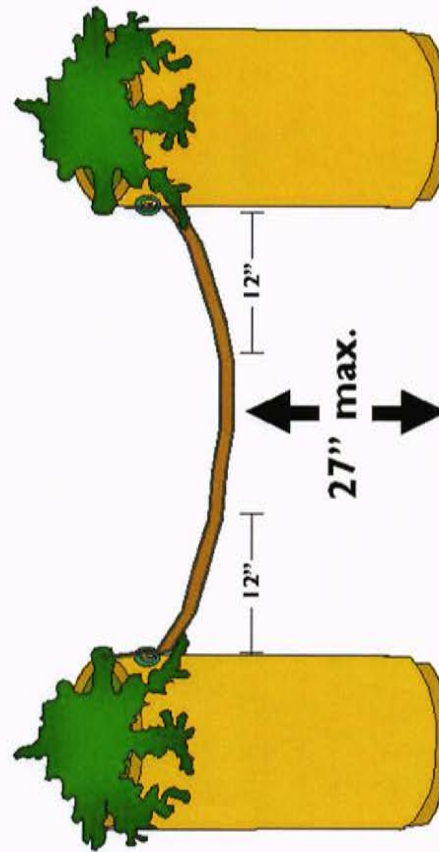


FIGURE 9
How to measure rope/chain distance from ground

1.3 Access Openings

Minimum Access Width: Any access opening within the barrier must measure no less than 44 inches in width.

Location: Access openings should be placed in a location that will not create confusion for visually impaired pedestrians.

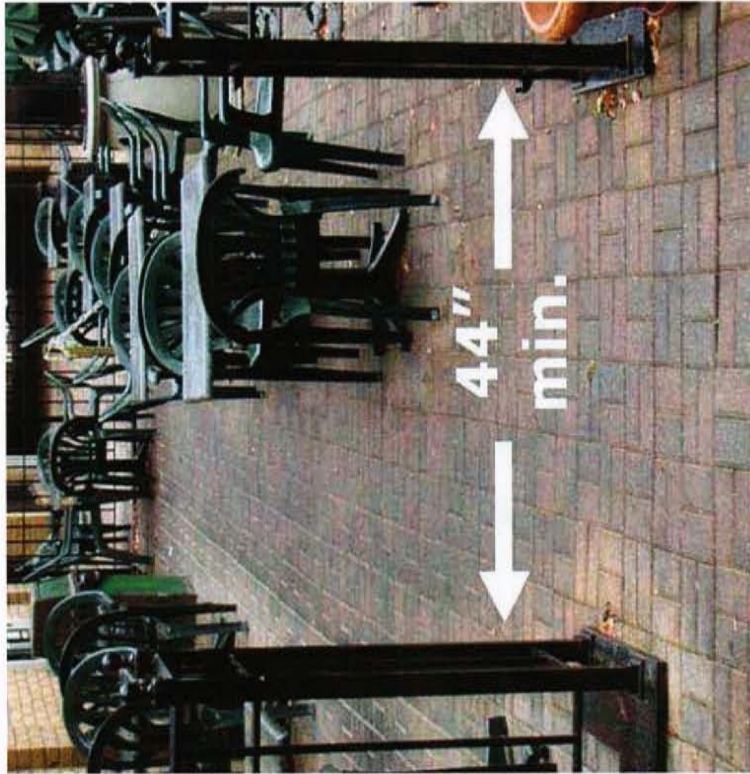


FIGURE 10
Minimum access width is 44 inches



FIGURE 11
*Acceptable planter design
and material*



FIGURE 12
*Height of plants
may not exceed 8'*

1.4 Planters

Planters may be used in addition to or in place of other barrier designs. In addition, planters may be used in situations where no barrier is required (for example, where the outdoor dining area does not extend more than three feet into the sidewalk) in order to provide added visual interest and create a more attractive and welcoming atmosphere.

Planters and the plants contained within them must meet the following requirements:

Maximum Height of Planters: Planters may not exceed a height of 36 inches above the level of the sidewalk. (This pertains only to planters, not the plants contained therein.)

Maximum Height of Plants: Plants (whether live or artificial) may not exceed a height of 108 inches (8 feet) above the level of the sidewalk.

I.4 Planters

Planted Material: All planters must have plants contained within them. If the plants within a planter die, the plants must be replaced or the planter removed from the public right-of-way. Artificial plants; empty planters; or planters with only bare dirt, mulch, straw, woodchips or similar material are not permitted.

Seasonal, thematic planter displays are encouraged.



FIGURES 13, 14 and 15
Acceptable planter design and material

Chapter 2: Furniture and Fixtures

King Street's retail liveliness depends on maintaining an attractive and high-quality atmosphere. As stated in the *King Street Retail Strategy*, "The quality of the streetscape is vitally important to King Street's retail ambience...The streetscape and the defining adjacent buildings are the most significant overall elements in providing a dynamic visual environment."

Outdoor dining furniture becomes a prominent part of the streetscape when used in the front of buildings, and such furniture needs to uphold the high standards applied to buildings and other improvements in Old Town.

A wide range of furniture styles, colors and materials are permitted. All furniture and fixtures must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint. All furniture and fixtures must be maintained in a clean condition at all times. All furniture and fixtures must be durable and of sufficiently sturdy construction as not to blow over with normal winds.

To ensure a quality visual appearance in keeping with the historic context of King Street's architecture, the conditions on the following pages apply to furniture (tables and chairs).



2.1 Types of Furniture

Prohibited Furniture: All furniture other than tables, chairs and umbrellas is prohibited. This includes but is not limited to serving stations, bar counters, shelves, racks, sofas, televisions, trash receptacles, heaters and torches.

Freestanding: Furniture and fixtures must not be secured to trees, lampposts, street signs, hydrants, or any other street infrastructure by means of ropes, chains or any other such devices, whether during restaurant operating hours or at times when the restaurant is closed.

Other furniture or equipment
not permitted



FIGURE 16
Furniture other than tables, chairs and umbrellas is not permitted

2.2 Tables

Tables need to be functional, not only for patrons, but also for pedestrians, given the limited space available for outdoor dining on many Old Town sidewalks.

Outdoor dining furniture must also contribute to the overall atmosphere of Old Town's commercial district and be complementary in both appearance and quality.

Color: Tables may be colored or of a natural unpainted material (i.e., wood, metal etc.). Tables are not permitted to be white plastic or of any fluorescent or other strikingly bright or vivid color.

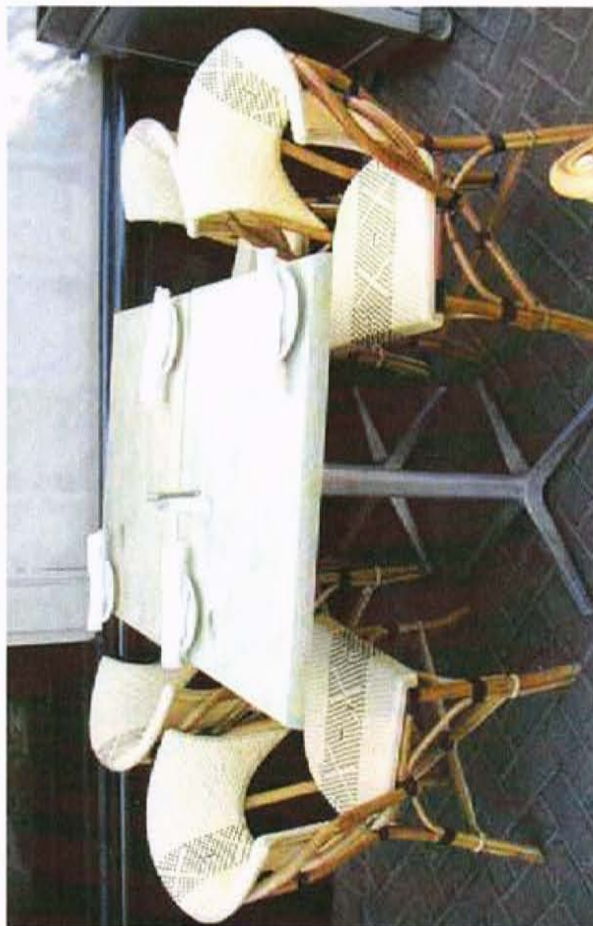


FIGURE 17
Furniture may be of dark color or natural unpainted material



FIGURE 18
No white or fluorescent furniture is permitted

2.2 Tables

Size and Shape: The size and shape of tables strongly affects the functionality of an outdoor dining area. Due to Old Town's narrow sidewalks, restaurants should strive for space-efficient layouts and furniture configuration.

Square or Rectangular Tables Preferred:

Square or rectangular tables are strongly recommended for use in Old Town's outdoor dining areas.

- **Better Fit:** Square or rectangular tables may fit flush against a building's wall and can permit more usable surface area for patrons while at the same time leaving more space available for pedestrians.
- **More Flexibility:** Square or rectangular tables are more flexible for use in outdoor dining areas. Such tables may be combined to seat larger parties much more effectively than can round tables.

Smaller Tables Preferred: Smaller tables work better than larger tables and are more efficient and flexible. Although optimal table size varies by each restaurant's specific outdoor dining layout, smaller tables are preferred.

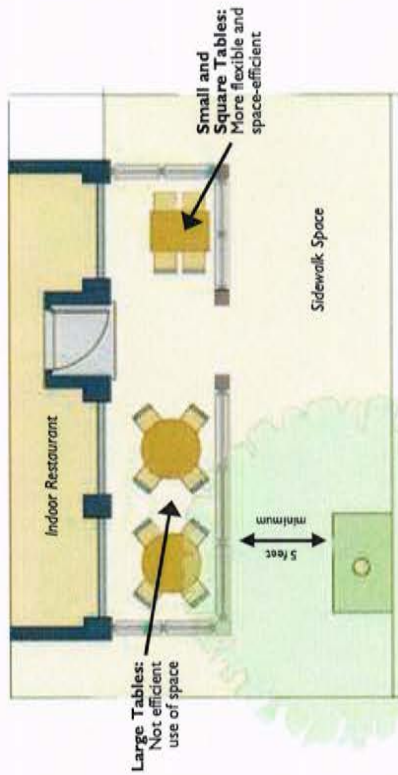


FIGURE 19
Efficient furniture layout - smaller furniture works better on King Street



FIGURES 20 and 21
Smaller bistro-style tables are more efficient for use along King Street

2.3 Chairs

Chairs, like other outdoor dining elements, must contribute to the overall atmosphere of Old Town's commercial district and must be complementary in both appearance and quality.

Color: Chairs may be colored or of a natural unpainted material (i.e., wood, metal etc.). Chairs are not permitted to be white plastic or of any fluorescent or other strikingly bright or vivid color.

Upholstery: Upholstered chairs are permitted. Upholstery is not permitted to be of any fluorescent or other strikingly bright or vivid color.

Matching: All chairs used within a particular establishment's outdoor seating area must match each other by being of visually similar design, construction and color.



FIGURE 22
Chairs used in an outdoor dining area must match each other



FIGURE 23
No white plastic or fluorescent furniture is permitted



FIGURE 24
Furniture may be of dark color or natural unpainted material

2.4 Umbrellas

Umbrellas can add a welcoming feel to outdoor dining areas and provide shelter from the elements, making their use desirable for outdoor dining applications. Appropriately designed and sized umbrellas are permitted for use under this outdoor dining program. Umbrellas must be free of advertisements and contained within the outdoor dining area, and the lowest dimension of an extended umbrella must be at least 7 feet above the sidewalk surface. All umbrellas must comply with the following conditions.

Contained Within the Outdoor Seating Area:

To ensure effective pedestrian flow, all parts of any umbrella (including the fabric and supporting ribs) must be contained entirely within the outdoor seating area.

Minimum Height for Sidewalk Clearance:

When extended, the umbrella must measure at least 7 feet above the surface of the outdoor dining area in order to provide adequate circulation space below. This measurement must include not only the umbrella frame and panels, but also any decorative borders such as fringes, tassels, or other such ornamentation.

Maximum Height: Any part of an umbrella used in an outdoor seating area may not exceed a height of 120" (10 feet) above the level of the sidewalk, in order to avoid causing an undue visual obstruction of other businesses.



FIGURE 25
Acceptable umbrella design

2.4 Umbrellas

Colors: Umbrellas must blend appropriately with the surrounding built environment. Therefore, umbrella fabric is not permitted to be of any fluorescent or other strikingly bright or vivid color. Umbrella covers must be of one solid color.

Size and Shape: The size and shape of an umbrella strongly affects its functionality within a constrained space such as an outdoor dining area. Due to the narrow measurements of most restaurants' outdoor dining areas, restaurants using umbrellas should strive for space-efficient umbrella designs.

Square or Rectangular Umbrellas Preferred: Square or rectangular umbrellas, as opposed to round or octagonal umbrellas, are strongly recommended for use in Old Town's outdoor dining areas.

Market-Style Umbrellas Preferred: Market-style umbrellas – those designed specifically for patio or outdoor restaurant use – are preferred for outdoor dining purposes.

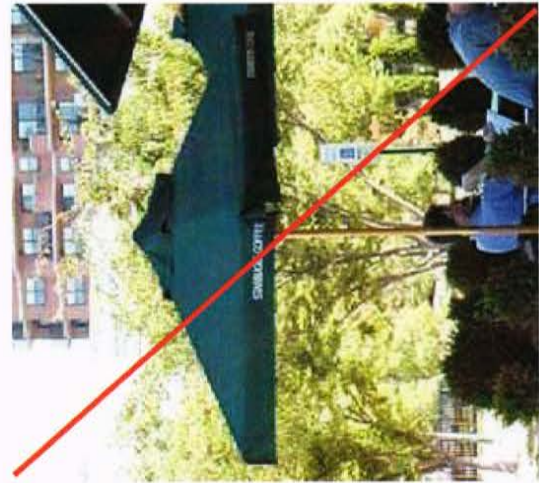
Material: Umbrella fabric must be of a material suitable for outdoor use, and must be canvas-type. No plastic fabrics, plastic/vinyl-laminated fabrics, or any type of rigid materials are permitted for use as umbrellas within an outdoor seating area.



FIGURE 26
Acceptable umbrella design: Solid color, space-efficient, market-style, canvas material

2.4 Umbrellas

Signage or Wording Prohibited: Umbrellas must not contain signage for the restaurant or for any other entity in the form of wording, logos, drawings, pictorial or photographic representations, or any other likewise identifying characteristic.



FIGURES 27 and 28
Signage on umbrellas
not permitted

2.5 Sidewalk Coverings

The floor of outdoor seating areas should be uncovered sidewalk material as to provide continuity with the adjacent public right-of-way. Floor coverings or raised platforms may not be used within outdoor dining areas.

Prohibited Sidewalk Coverings:

- **Carpet:** Prohibited sidewalk coverings include carpet or other flooring material constructed of fabric, canvas, wool, tile, linoleum, nylon, vinyl, or any covering that is intended to resemble turf.
- **Platforms:** Raised decks, platforms, or other such surfaces are not permitted within outdoor dining areas.



FIGURE 29
Outdoor dining areas should be uncovered sidewalk material

2.6 Circulation Room

As established in the Outdoor Dining Ordinance, all outdoor dining areas must leave at least 5 feet of unobstructed pedestrian space. This 5 feet of pedestrian space must be clear of obstructions caused by trees, tree wells, posts, hydrants, or any other infrastructure. In addition, no part of an outdoor dining area (including plants) may extend into the 5-foot-unobstructed zone.

If a perimeter enclosure is used, adequate space must be provided within the enclosed outdoor dining area to permit movement of patrons and waitstaff. Waitstaff may not serve patrons from beyond the perimeter enclosure.

2.7 Signage

Signage is permitted within outside dining areas only with a valid City permit. No extra or additional signage is permitted solely as a result of an establishment's participation in this outdoor dining program.

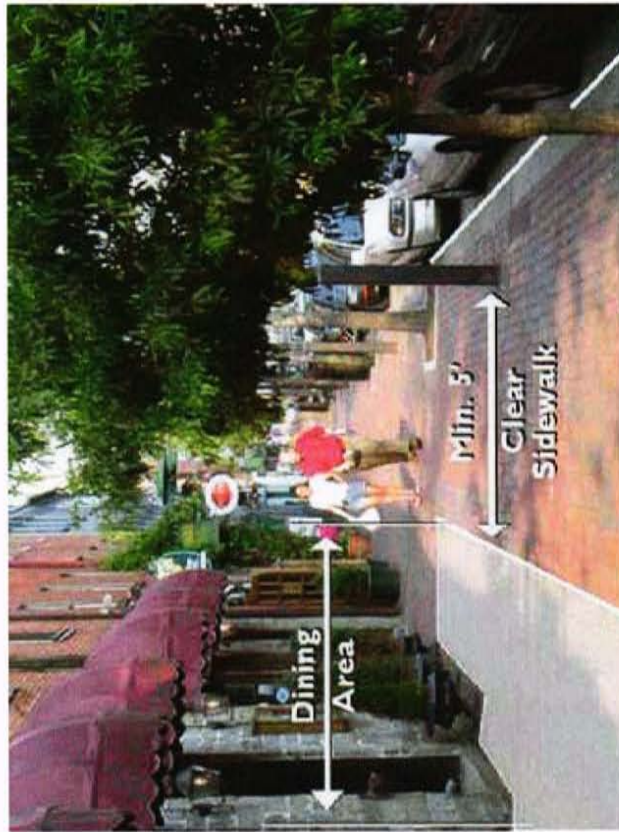


FIGURE 30
Outdoor dining areas must leave at least 5 feet of unobstructed pedestrian space

2.8 Setback from Other Businesses

Restaurants need to be mindful of adjoining businesses when using outdoor dining areas, making sure that neighboring businesses remain visible to pedestrians and motorists.

A restaurant may be required to adjust the outdoor seating area's layout, dimensions or distance from the property line (2 feet or more) to ensure that this visibility is maintained.



FIGURE 31
Neighboring businesses must remain visible to pedestrians and motorists