



TENTATIVE:
SUBJECT TO
REVISION

TOWN OF PALM BEACH

Town Manager's Office

TOWN COUNCIL MEETING DEVELOPMENT REVIEW

TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD

AGENDA

FEBRUARY 10, 2016

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

Mayor Gail L. Coniglio
Richard M. Kleid
Bobbie Lindsay
Danielle H. Moore
Michael J. Pucillo
Margaret A. Zeidman

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. RECOGNITIONS

IV. COMMENTS OF MAYOR GAIL L. CONIGLIO

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

VII. APPROVAL OF AGENDA

VIII. RESOLUTIONS

- A. **RESOLUTION NO. 26-2016** 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 all or Portions of Property Known as 100 North County, 118 North County, and 207 Royal Poinciana Way, Meet the Criteria Set Forth in Ordinance No. 2-84, Also

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Known As Chapter 54, Article IV Of The Code of Ordinances of The Town of Palm Beach; And Designating Said Property As A Town of Palm Beach Landmark Pursuant To Ordinance No. 2-84, Also Known As Chapter 54, Article IV of The Code Of Ordinances Of The Town Of Palm Beach.

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

IX. DEVELOPMENT REVIEWS

A. Time Extensions and Waivers

1. Request for Six Month Time Extension, Variance No. 31-2014, 230 Park Avenue

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

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. **SITE PLAN REVIEW #8-2015 WITH VARIANCE** The application of 201 Debra Lane, LLC (Juan M. Naveja Diebold, Manager); relative to property commonly known as **201 Debra Ln.**, described as lengthy legal description on file; located in the R-B Zoning Districts. The Applicant seeks Site Plan approval to construct a 3,814 square foot two story home on a platted lot that is 98.55 feet deep in lieu of the 100 foot minimum required and 91.61 foot wide in lieu of the 100 foot minimum required. A variance is requested to permit installation of a pool in the street side yard with a setback of 6.25 feet in lieu of the 15 foot minimum required. [Attorney: M. Timothy Hanlon] [Architectural Commission Recommendation: Deferred the project to the February 24, 2016 meeting. Carried 7-0] *Deferred from the December 9, 2015, and January 13, 2016, Town Council Meetings*

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Request for Deferral to the March 9, 2016, Town Council Meeting Per Letter Dated January 29, 2016, from M. Timothy Hanlon.

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

- b. **MODIFIED SPECIAL EXCEPTION #27-2015 WITH SITE PLAN REVIEW AND VARIANCES** The application of Il Sogno, LLC; relative to property commonly known as **1520 S. Ocean Blvd.**, described as lengthy legal description on file; located in the R-A/B-A Zoning Districts. Consideration of proposed Construction Management Agreement related to the conditional approval of a portion of the subject application. [Attorney: Francis X. J. Lynch] **Request for Deferral to the March 9, 2016, Town Council Meeting Per Letter Dated January 29, 2016, from Francis X.J. Lynch.**

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

- c. **SPECIAL EXCEPTION #33-2015 WITH SITE PLAN REVIEW AND VARIANCES** The application of Robert and Denise Benedickson; relative to property commonly known as **222 Seaspray Ave.**, described as lengthy legal description on file; located in the R-B Zoning District. The Applicant is requesting a Special Exception with Site Plan Review approval to demolish an existing 2,444 square foot

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residence with a 800 square foot garage and build it back in the same location with a proposed total square footage of 3,802 on a non-conforming platted lot which is 50 feet in width in lieu of the 100 foot minimum required and 6,125 square feet in area in lieu of the 10,000 minimum required in the R-B Zoning District. The following variances are being requested: to allow a west side yard setback of 11.33 feet in lieu of the 12.5 foot minimum required in the R-B Zoning District for a one story section of the house; to allow a west side yard setback of 8.33 feet in lieu of the 12.5 foot minimum required for the proposed covered entry for the front door; to allow an east side yard setback of 9.67 feet in lieu of the 15 foot minimum required for the proposed second story of the house; and to allow a lot coverage to be 31% in lieu of the 30% maximum allowed; to allow a cubic content ratio to be 6.11 in lieu of the 4.38 maximum allowed.

[Attorney: Maura Ziska, Esq.]

[Architectural Commission Recommendation: Deferred the project to the January 27th meeting. Carried 7-0]

Request for Deferral to the March 9, 2016, Town Council Meeting Per Letter Dated January 22, 2016, from Maura A. Ziska.

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

2. New Business

- a. **SPECIAL EXCEPTION #04-2016 WITH SITE PLAN REVIEW** The application of Denis P. Coleman and Annabelle G. Coleman; relative to property commonly known as **608 Island Dr.**, described as lengthy legal description on file; located in the R-B Zoning District. The Applicant is requesting a Special Exception with Site Plan Review to allow the construction of a 7,815 sq. ft. two-story single family residence on a portion of a platted lot which is 95 feet in width in lieu of the 100 foot minimum required in the R-B Zoning District. [Attorney: Maura Ziska, Esq.]

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

X. ORDINANCES

A. Second Reading

1. **ORDINANCE NO. 31-2015** An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning; Article I, In General; Section 134-2, Definitions And Rules Of Construction, So As To Amend The Definitions Of *Sign Institutional, Sign Menu And Sign Official Traffic*; Further Amending Chapter 134, At Article XI, Signs, So As To Amend And Restate Article XI In Its Entirety As Set Forth In Exhibit "A" Attached Hereto; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

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

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XI. ANY OTHER MATTERS

- A. Planning and Zoning Commission Record and Report: Proposed Modifications and Changes to Chapter 134, Zoning

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

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- B. Receive and consider the Receiver's Initial Report, prepared by Palm House Court-appointed Receiver Cary Glickstein for the Circuit Court of the 15th Judicial Circuit, in and for Palm Beach County, Florida.

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

XII. ADJOURNMENT

PLEASE TAKE NOTE:

- Note 1:** No written materials received after 5:00 p.m. on the Thursday immediately prior to a monthly Town Council meeting will be included in the back-up binders distributed to the Mayor and Town Council in preparation for that meeting. Written materials received after 5:00 p.m. on Thursday will be separately distributed to the Mayor and Town Council; however, depending upon the length of the materials, the time of submittal, and other circumstances, the Mayor and Town Council may not be able to read and consider such late submittals prior to acting upon the policy matter(s) which they address.
- Note 2:** The progress of this meeting may be monitored by visiting the Town's website (townofpalmbeach.com) and clicking on "Meeting Audio" in the left column. If you have questions regarding that feature, please contact the Office of Information Systems (561) 227-6315. The audio recording of the meeting will appear within 24 hours after the conclusion of the meeting.
- Note 3:** If a person decides to appeal any decision made by this Council with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings. For such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.
- Note 4:** Disabled persons who need an accommodation in order to participate in the Town Council Meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.
- Note 5:** Items listed on the Consent Agenda will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that any item (s) be moved to the Regular Agenda and individually considered.
- Note 6:** 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, 2016

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 26-2016 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 all or Portions of Property Known as 100 North County, 118 North County, and 207 Royal Poinciana Way, Meet the Criteria Set Forth in Ordinance No. 2-84, Also Known As Chapter 54, Article IV Of The Code of Ordinances of The Town of Palm Beach; And Designating Said Property As A Town of Palm Beach Landmark Pursuant To Ordinance No. 2-84, Also Known As Chapter 54, Article IV of The Code Of Ordinances Of The Town Of Palm Beach.

Presenter

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

Supporting Documents

- [Memorandum dated January 27, 2016 from John S. Page, Director of Planning, Zoning and Building](#)
- [Resolution No. 26-2016](#)
- [Landmark Designation Report](#)
- [Excerpt from Landmarks Preservation Commission Meeting Minutes Dated January 20, 2016](#)
- [Landmark Designation Procedure](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2016

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

Re: Landmark Designations

100 North County Road: entire building (now Evelyn & Arthur)

118 North County Road: entire building (now Classic Collections)

207 Royal Poinciana Way: façade only (now Nick & Johnnie's)

Resolution No. 26-2016

Date: January 27, 2016

STAFF RECOMMENDATION

Staff recommends ratification of the following properties as Town landmarks:

100 North County Road, entire building.

118 North County Road, entire building.

207 Royal Poinciana Way, façade only.

LANDMARKS PRESERVATION COMMISSION RECOMMENDATION

The Landmarks Preservation Commission conducted a public hearing on January 20, 2016, during which it was voted 6 aye/1 nay to recommend to the Town Council that the properties identified above be designated as local landmarks.

Property owner Vesenaz, Inc. owns three contiguous parcels of commercial property that front on Royal Poinciana Way, North County Road, and Sunset Avenue. Together, these three parcels, each with its own parcel control number, contain multiple buildings. Nine individual buildings/addresses exist within these three parcels. The Commission reviewed the merits of all buildings/addresses, and determined that several individual buildings and/or facades were historically “contributing,” while others were considered “noncontributing.” The attached Designation Report contains details about each of the separate buildings located therein.

Lengthy deliberation occurred. Sometimes referred to as the “book-ends,” the two Art-Moderne style buildings flanking the block on North County Road (corners at Royal Poinciana Way & Sunset Avenue) were recommended for landmarking (entire buildings). Also recommended for landmarking, façade only, was the building at 207 Royal Poinciana Way. All other buildings contained within the three parcels were considered non-contributing and were not included in the recommendation for landmarking.

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

Each of the three recommended buildings, 100 North County Road, 118 North County Road, and 207 Royal Poinciana Way (façade only), meet the following two criteria for landmarking per Town Code:

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.

In addition, 100 North County Road and 118 North County Road (the "book-ends") meet a third criteria:

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

Please be aware of two notes. 1). Several buildings contained within these three parcel control numbers (106 North County Road, 108-110 North County Road, 112 North County Road, 114 North County Road, 208-210 Sunset Avenue, & 212 Sunset Avenue) were deemed non-contributing. Although they are not recommended for landmarking, future building changes will be reviewed by the Landmarks Preservation Commission, not ARCOM, to ensure that they do not adversely affect the historical essence of buildings that are so designated. 2) As contained within the attached Resolution and as captured within the Commission's approval motion, it was further recommended that any future building demolition applications, including those buildings considered non-contributing, be accompanied by new building design plans.

OWNER CONSENT

Owner Vesenaz, Inc., was represented by attorney Guy Rabideau at the Commission meeting. Mr. Rabideau supported landmarking the facades only at 100 North County Road and also at 118 North County Road, arguing that all other structures within the three combined parcel control numbers were non-contributing.

TOWN ATTORNEY REVIEW

Please be advised that the Town Attorney has reviewed Resolution No. 26-2016 relating to this designation, and has approved it as to legal form and sufficiency.

Attachments

cc: John C. Randolph, Town Attorney
John Lindgren, Planning Administrator
Guy Rabideau, Attorney of Owner
Murphy & Stillings, Town Consultants
Landmarks Preservation Commissioners

RESOLUTION NO. 26-2016

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 BUILDINGS KNOWN AS 100 NORTH COUNTY ROAD AND 118 NORTH COUNTY ROAD, AND THE BUILDING FAÇADE AT 207 ROYAL POINCIANA WAY MEET 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 BUILDINGS AS TOWN OF PALM BEACH LANDMARKS PURSUANT TO ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

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

WHEREAS, the Town Council does hereby find and determine that the buildings described herein meet 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 buildings hereinafter described in Section 3 of this Resolution, being designated as landmarks are hereby ratified, approved and confirmed.

Section 3. The landmarks herein designated, pursuant to the provisions of Ordinance No. 2-84, and the provisions of the Town Code described herein, are known as **100 North County Road, 118 North County Road and 207 Royal Poinciana Way** and the properties to be landmarked are legally described as follows:

Floral Park Sly 32.06 Ft of E 19 Ft of LT 65, & Lts 68-73 (less E 15 Ft N County Road R/W).

This legal description includes multiple buildings. The building façade at 207 Royal Poinciana Way and the entire building at 100 North County Road are hereby landmarked.

The buildings at 106 North County Road, and 108-110 North County Road are non-contributing and therefore are exempted from landmarking.

Floral Park Lts 63, 64, Lt 65 (less Sly 32.06 Ft of E 19 ft), Lts 66 & 67 (less E 15 ft. N County Road R/W).

This legal description includes multiple buildings. The entire building at 118 North County Road is hereby landmarked. The buildings at 112 North County Road, 114 North County Road, 208-210 Sunset Avenue, and 212 Sunset Avenue are non-contributing and therefore are exempted from landmarking.

Section 4. Any future building demolition applications within Palm Beach County property control numbers 50434322310000652, 50434322310000630, and 50434322320000351 must be accompanied by new building design plans.

Section 5. The Town Clerk is hereby ordered to furnish the property owner of the

landmarked property a copy of this Resolution.

Section 6. Within thirty (30) days from the date of this Resolution, the Landmarks Preservation Commission shall cause to be filed in the Office of the Recorder of Deeds in and for Palm Beach County, Florida, a certificate that the above-described property comprises a landmark, as defined in and subject to the provisions of Ordinance No. 2-84 and the Code of Ordinances of the Town of Palm Beach, Florida.

PASSED AND ADOPTED in a regular adjourned session of Town Council of the Town of Palm Beach this 10TH day of February, 2016.

Gail L. Coniglio, Mayor

Town Council President

Council President Pro Tem

Town Council Member

ATTEST:

Town Council Member

Susan A. Owens, MMC, Town Clerk

Town Council Member

207 Royal Poinciana Way & 212 Sunset Avenue



DESIGNATION REPORT

November 18, 2015

Landmark Preservation Commission

Palm Beach, Florida

DESIGNATION REPORT

207 Royal Poinciana Way and 212 Sunset Avenue

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Report produced by Murphy Stillings, LLC

I. General Information

Location:	207 Royal Poinciana Way, Palm Beach Includes: 207 Royal Poinciana Way 100 North County Road 106 North County Road 108-110 North County Road Road
	212 Sunset Avenue, Palm Beach Includes: 212 Sunset Avenue 208-210 Sunset Avenue 112 North County Road 114 North County Road 118 North County Road
Date of Construction:	207 Royal Poinciana Way: circa 1923-1928, altered 1941 212 Sunset Avenue: circa 1927-1957 altered 1941
First Owner:	John T. (J.T.) Havens
Architect:	Bruce Kitchell William Manly King John Volk
Present Owner:	Vesenaz, Inc
Present Use:	Commercial
Present Zoning:	CTS
Palm Beach County Tax Folio Numbers:	50434322310000652 50434322310000630 50434322320000351

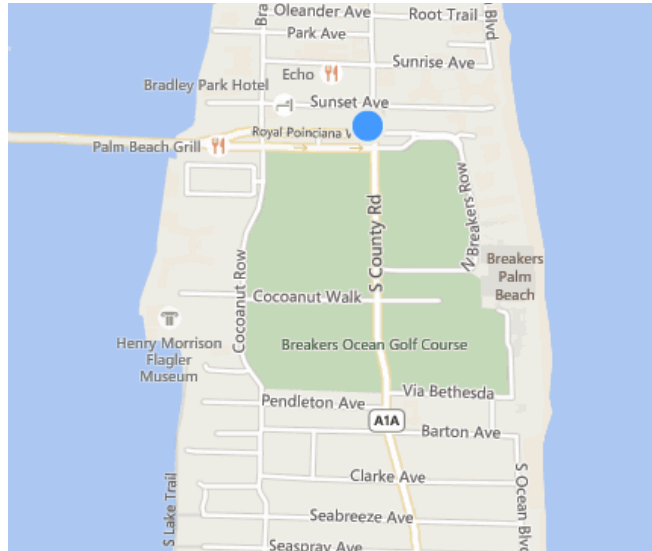
Current Legal Description: 207 Royal Poinciana Way: Floral Park Sly
32.06 Ft of E 19 Ft of LT 65, & Lts 68-73
(less E 15 Ft N County Road R/W)

212 Sunset Avenue: Floral Park Lts 63, 64,
Lt 65 (less Sly 32.06 Ft of E 19 ft), Lts 66 &
67 (less E 15 ft. N County Road R/W)

Parcel West of 207 Royal Poinciana Way:
Floral Park Add No 1, East 19 Ft of Lt 35

II. Location Map

207 Royal Poinciana Way and 212 Sunset Avenue



BLUE – 207 Royal Poinciana Way, PCN# 50-43-43-22-31-000-0652

RED – 212 Sunset Avenue, PCN# 50-43-43-22-31-000-0630

YELLOW – PCN #50-43-43-22-32-000-0351

III. Historical Information

The subject properties, as defined by the Palm Beach County Property Appraiser's Office, include three Property Control Numbers. The three properties, under a single ownership, contain a total of ten structures. The properties are located along North County Road between Royal Poinciana Way and Sunset Avenue with structures facing Royal Poinciana Way, North County Road and Sunset Avenue.

207 Royal Poinciana Way and 212 Sunset Avenue are located at the eastern end of the historic commercial area of the Town of Palm Beach. This area initially developed in relationship to Henry Flagler's FEC Railway extension into Palm Beach in the late nineteenth and early twentieth centuries.¹ The properties are located within the Floral Park subdivision, which was platted in 1912 as Palm Beach's first subdivision.

During the early twentieth century, Floral Park had scattered mixed uses with dwellings, stores, hotels, restaurants, offices and municipal buildings.² The area along Main Street and North County Road became the hub of civic and commercial activity while large and small picturesque "cottages" of seasonal residents lined the north and south sides of Sunset Avenue from the lake to the ocean.³ Two early buildings on the eastern end of Floral Park were the Adelaide Hotel and Restaurant on the west side of North County Road between Main Street and Sunset Avenue and the building housing Mrs. Winter's Pantry on the southwest corner of North County Road and Sunset Avenue. Although the area was experiencing development, a 1913 Palm Beach Daily News article featuring a party at Mrs. Winter's Pantry referred to the location of the restaurant as "in the jungle."⁴

¹ In April of 1894, Flagler's FEC Railroad reached West Palm Beach and in 1895 the first railroad bridge was completed over Lake Worth linking the mainland to Palm Beach. This bridge, which had its eastern terminus just south of the Flagler's grand Royal Poinciana Hotel, allowed scores of wealthy visitors to be transported directly to the island. Flagler's railroad also attracted settlers by the thousands.

² The town hall, the post office and the jail were all located along Main Street.

³ By 1920, there were approximately forty "cottages" of seasonal residents located on Sunset Avenue. Nearly every cottage had a name and there was a separate section in the City Directory for the named cottages in Palm Beach. Early photographs of Sunset Avenue show the street with large and small picturesque frame dwellings. All of the early cottages built prior to 1920 have been demolished and replaced with commercial buildings, new homes and large apartment and condominium buildings.

⁴ Palm Beach Daily News, 23 February 1913.

As the result of the fighting in Europe during World War I, domestic tourism increased and by the end of the war, Palm Beach had become one of the most important places in America to spend the winter season. Flagler's railroad and the grand Royal Poinciana and Breakers hotels helped to attract wealthy tourists, many who soon became winter residents. As new estates were built and subdivisions developed, Floral Park continued as the important center of town. By the 1920s, Palm Beach and much of South Florida were experiencing a land boom and Floral Park witnessed a significant increase in development. John Thomas (J.T.) Havens purchased the east end of Floral Park along Main Street, North County Road and Sunset Avenue, which today comprises most sections of the buildings at 207 Royal Poinciana Way and 212 Sunset Avenue.⁵ J.T. Havens was an early resident of Palm Beach with a house on Root Trail and in addition to being a real estate developer, Havens was a member of the Palm Beach Town Council, President of the Palm Beach Chamber of Commerce, inventor of the Afro-mobile, and owner of several businesses in town including the Garden Theater on Main Street.⁶

In circa 1923, Havens hired builder W.C. Warner to construct a one-story building fronting Main Street at what is today the restaurant at 207 Royal Poinciana Way.⁷ This building originally had three storefronts housing three different tenants with the addresses 205, 207 and 209 Main Street. The first tenants were a real estate office, a silversmith shop and a book and antique store. With the growing number of winter residents, Havens recognized the need for a commercial office building in this section of town so in 1924 he hired Bruce Kitchell, a skilled Palm Beach architect, to design the Exchange Building on the northwest corner of what was then Palm Beach Avenue and

⁵ Royal Poinciana Way was originally named Main Street and County Road was named Palm Beach Avenue from 1921-1937. The addresses of the buildings along Royal Poinciana Way, North County Road and Sunset Avenue have changed over time. Today *207 Royal Poinciana Way* includes 207 Royal Poinciana Way, 100, 106, and 108-110 N. County Road and *212 Sunset Avenue* includes 212 and 208-210 Sunset Avenue and 112, 114 and 118 N. County Road.

⁶ J.T. Havens was born December 16, 1880. It is not clear when he moved to Palm Beach but he was living in Palm Beach on Root Trail before 1916 according to his Civilian Draft Registration. In addition to the Garden Theater at 211 Royal Poinciana Way, J.T. Havens owned the Poinciana Garage near the foot of the Flagler Bridge and a Bicycle Shop on Pine Walk at the Breakers. The Afro-mobile was a bicycle-wheelchair used by residents and tourists in the early twentieth century and served as a taxi before the automobile became popular. The Afro-mobiles were most often pedaled by African Americans and thereby received their name.

⁷ This building was previously dated at 1927 and attributed to William Manly King, however the 1924 Sanborn Maps, Town of Palm Beach Building Permits and a 1925 article from the [Palm Beach Daily News](#) indicate that this building was constructed in 1923. Bruce Kitchell was likely the architect for this building due to the way he connected the Exchange Building to this recently constructed building as well as his working relationship with J.T. Havens.

Main Street.⁸ This two story Mediterranean Revival style building, which was constructed by Chalker & Lund, was adjacent to 205-209 Main Street and Kitchell united the two buildings by extending the barrel-tile covered pent roof from 205-209 Main Street along the first story of the Exchange Building.⁹ The Exchange Building was a success from its opening and early tenants included realtors, financial brokers, retail shops and residential space.¹⁰



1928 Photo of North County Road, Looking North
Exchange Building on the Left
Courtesy of the Palm Beach Historical Society

When J.T. Havens hired Bruce Kitchell to design the Exchange Building, he also had him design an “arcade of shops” that would continue along Palm Beach Avenue to Sunset Avenue and west on Sunset to the end of his

⁸ Chalker and Lund, prominent builders from West Palm Beach, were the contractors who built the Exchange Building. They worked with Bruce Kitchell on several later projects in Palm Beach and West Palm Beach.

⁹ The buildings abutted each other and the connection was seamless.

¹⁰ Palm Beach Post, 28 June 1925, “In the Exchange Building there are many important firms such as Munds & Winslow, the brokers; Boardman & Hull, brokers and real estate operators; Hunter & Dodley, Jesse L. Livermore, and the Associated Companies of the United States bond, abstract and finance companies.”

holdings.¹¹ The buildings were designed to be a continuation in architectural detail of the Exchange Building and to be completed in units as J.T. Havens could afford to have them built.¹² Building permits indicate that one store was built in 1927 on Floral Park lot 67 and three stores were built in 1928 on Floral Park lots 68, 69 and 70, filling in much of the block along the west side of Palm Beach Avenue. Early tenants of these buildings included a clothing store, a gift shop, a cigar store and a jeweler. Approximately ten years later, in 1937, J.T. Havens hired William Manly King to design the last building along the west side of Palm Beach Avenue completing the full block of shops.¹³

By the late 1920s, Michelle Testa had outgrown his small restaurant in the Garden Theater, so in 1929, Testa combined the shops at 205 and 207 Main Street, redesigned the interiors, and turned them into Testa's Restaurant. Newspaper articles from the time indicate it was a successful venture. The storefront at 209 Main Street remained separate and housed a Japanese Bazaar for a number of years.



Photograph of Testa's Restaurant at 207 Royal Poinciana Way
Courtesy of Testa's Restaurant

¹¹ J.T. Haven's holdings ended in the first lot along Sunset Avenue. He did not own 208, 210 or 212 Sunset Avenue.

¹² Palm Beach Post, 28 June 1925, "Palm Beach Avenue."

¹³ This is most likely the building/storefront at 112 North County Road.

The first building associated with the address 212 Sunset Avenue was the Colonial Inn in 1929. This building remained the Colonial Inn until 1940 when it was purchased by Granville G. Rogers and renamed the Rogers Hotel. The building at 210 Sunset Avenue, which housed a women's clothing shop, was also listed for the first time in 1929. In 1935, the building at 208 Sunset Avenue is listed for the first time and originally housed a liquor store, though shortly after became a grocery. That same year, 210 Sunset Avenue, which had sat vacant for several years, opened as the Patio Marguery Restaurant, a very popular restaurant with members of the "cottage and hotel colonies" often dining and entertaining there.¹⁴

A significant milestone for the area took place in 1938 when the 1902 railroad bridge was replaced with the new Flagler Memorial Bridge to provide automobile traffic to and from West Palm Beach. The landscaped medians and south thoroughfare were also constructed at this time and the name of the street was changed from Main Street to Royal Poinciana Way "in tribute to the old hotel and the grounds where the tree is prevalent."¹⁵ These new developments helped the Floral Park area to again become a major "gateway" to Palm Beach.¹⁶

Traffic increased significantly with the opening of the Flagler Memorial Bridge, so in 1941 County Road was widened to accommodate the additional traffic flowing from Royal Poinciana Way.¹⁷ This work mainly affected the buildings along the west side of North County Road and consequently, to accommodate the increased width of the road, J.T. Havens hired John Volk to redesign the facades of the buildings along this stretch of North County Road from Royal Poinciana Way to Sunset Avenue.¹⁸ At the Exchange Building, Volk stripped the exterior of its ornamentation, removed the arcade on the first floor, and redesigned the structure into an Art

¹⁴ Patio Marguery was originally located on Worth Avenue.

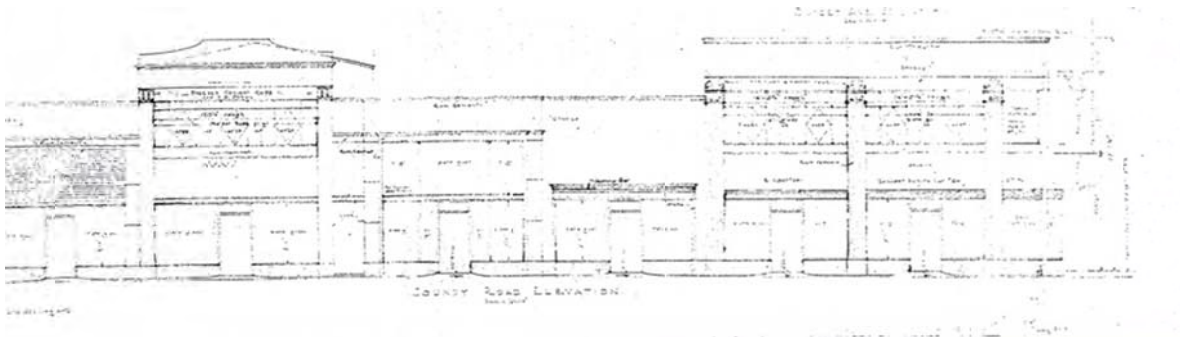
¹⁵ "What's in a Name." *Palm Beach Post-Times*. 27 May 1938.

¹⁶ The 1902 railroad bridge was demolished in 1937. Prior to construction of the Flagler Memorial Bridge, the only bridge providing automobile traffic to Palm Beach was the Royal Park Bridge built in 1911.

¹⁷ Palm Beach Avenue was also changed to County Road, which had been its name prior to 1921. For many years there had been discussion about widening County Road. As early as 1918, J.T. Havens had offered to give the Town a strip of land on Main Street and County Road for the purpose of widening the street, but it was not accepted.

¹⁸ This also included the part of the Exchange Building along Royal Poinciana Way on the northwest corner of Royal Poinciana Way and North County Road as well as the portion of the building along Sunset Avenue on the southwest corner of Sunset Avenue and North County Road.

Moderne style building.¹⁹ Volk anchored the building at the north end of the block on the southwest corner of North County Road and Sunset Avenue with a similar Art Moderne style remodel and then redesigned the storefront facades of the remaining buildings along the west side of the 100 block of North County Road in a variety of commercial vernacular styles. Although this work significantly altered the exterior of the buildings along this block of North County Road, much of the interiors likely remained unchanged except for the storefronts.²⁰



Drawing of buildings on North County Road by John Volk, 1941

At the conclusion of World War II, tourism quickly rebounded and many businesses in the Floral Park area thrived. Housing development also increased dramatically as service men and women from around the country relocated to Palm Beach and surrounding South Florida communities. The shops along North County Road housed mostly high-end women and men's clothing stores with little tenant turnover. In 1946, Testa's moved out of the building at 205-207 Royal Poinciana Way and into their new building at 221 Royal Poinciana Way. The Dutch Kitchen Restaurant moved into the former Testa's space in 1949 and expanded the restaurant to occupy what had originally been all three storefronts at 205, 207 and 209 Main Street.²¹ This building later housed other popular restaurants including Lyon Nickels

¹⁹ In 1936, John Volk completed a very similar project for the Hatch's Department Store in West Palm Beach on the northwest corner of Clematis Street and Olive Avenue. There he combined two Beaux Arts style buildings from the early 1900's, stripped them of their exterior ornamentation and wrapped them in an Art Moderne façade. This work was featured in a number of important articles and was the impetus for the Art Moderne style to dominate commercial architecture in West Palm Beach for nearly two decades.

²⁰ City Directory research indicates that most of the retail shops remained in their space and operating during the alterations of the facades. The work likely took place after the winter season to accommodate the shop owners.

²¹ This building originally had three storefronts at 205, 207 and 209 Main Street. Testa's combined 205 and 207 to make a restaurant. The Dutch Kitchen then expanded the restaurant to also include 209 Main Street.

Cafeteria, Peter Dinkel's, Chuck and Harold's and currently Nick and Johnnies.

Sunset Avenue was also undergoing redevelopment in the 1940s and 1950s. Patio Marguery closed its doors at 208 Sunset Avenue in 1944. Three years later the Lafayette Market at 210 Sunset Avenue was looking to expand and merged with 208 Sunset Avenue, creating one shop listed as 208-210 Sunset Avenue. The Roger's Hotel at 212 Sunset Avenue went out of business in 1950 and two years later the building was demolished. A new building housing Trosby's warehouse was constructed on this site in 1957 in a simple commercial vernacular style.²² The building at 208-210 Sunset Avenue returned to being separate shops and was significantly altered to its current appearance during a redesign of the building in 1980. 212 Sunset Avenue was also significantly altered during the 1970s and 1980s to its current design. All three stores became clothing shops and remain as clothing shops today.

IV. Architectural Information

The subject properties are located along North County Road between Royal Poinciana Way and Sunset Avenue including structures facing Royal Poinciana Way, North County Road and Sunset Avenue. The buildings were constructed with a variety of architectural styles, including Mediterranean Revival, Art Moderne, and commercial vernacular.

Mediterranean Revival style architecture is an eclectic style incorporating architectural elements derived from the area around the Mediterranean Sea, especially Italy and Spain, but buildings may also have North African and Moorish influences. Like the Mission Revival, Mediterranean Revival style buildings are found most frequently in states like Florida that have a Spanish Colonial heritage. Its use gained national popularity after the Pan-American Exhibition held in San Diego in 1915. In Palm Beach, the style was first popularized in 1919 by Addison Mizner's design for the Everglades Club followed by his residential design of the Stotesbury's estate El Mirasol. Other architects followed on this style and transformed it with variations of their own. The popularity of the style soared in the 1920s and remained a

²² Arthur Weeks designed this new building at 212 Sunset Avenue in 1957. It was later significantly altered to its current design.

pervasive influence on building design in Palm Beach until World War II. Buildings of this style are often decorated with ornate cast-stone columns, pilasters and window surrounds. Arched openings, balconies, asymmetrical massing and windows of varying sizes and shapes are also common features. In addition, stone or stucco facades, decorative wrought ironwork, tile floors, pecky cypress ceilings and clay barrel tile roofs are typical features of Mediterranean Revival style buildings.

207 Royal Poinciana Way is a Mediterranean Revival style building, built circa 1923 by W.C. Warner for J.T. Havens. The rectangular building has a rough stucco exterior. A pent roof, surfaced with barrel tile, extends from the roofline of the main (south) façade of the building. A second barrel tile pent roof, also located on the main façade, is supported by decorative roof brackets and pecky cypress outriggers. A canvas awning is located between the barrel tile roof elements to provide additional shade for a patio.



207 Royal Poinciana Way – South Facade

The most significant architectural feature on the main façade is a colonnaded arcade with decorative column capitals containing sliding glass doors and pointed arched windows with vertically divided lights. Originally constructed with multiple storefronts, the main façade has a pair of two wood and glass doors with transom lights recessed behind the colonnade.



207 Royal Poinciana Way – South Façade Colonnade



207 Royal Poinciana Way – Colonnade Looking East

To the west of 207 Royal Poinciana Way is a narrow parcel of land that has its own parcel control number. This property has a façade facing Royal Poinciana Way, however, while there is some roofing material sheltering the space behind the façade it is not an enclosed space. It is open to the elements and serves as a storage and staging area for the restaurant located at 207 Royal Poinciana Way. The façade was designed by Philip Steel and constructed in 1981. It took Mediterranean Revival design cues from 207 Royal Poinciana Way to the east. It is surfaced with stucco and extends the pent barrel tile roof from 207 Royal Poinciana Way to the east. The façade contains an arched wood door and two pointed arched window openings.



Façade to the West of 207 Royal Poinciana Way

100 North County Road and 118 North County Road were designed by John Volk in the Art Moderne style in 1941. J.T. Havens had commissioned Volk to redesign all of the buildings along North County Road between Royal Poinciana Way and Sunset Avenue due to the roadway being widened. The original buildings had been designed by Bruce Kitchell and William Manly King between 1924 and 1937. Volk designed both of the corner buildings in

the Art Moderne style, unifying the block, while the buildings between have with differing commercial vernacular designs and break the block up into smaller elements.



100 Block of North County Road, Looking Southwest

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

The two corner buildings, 100 North County Road and 118 North County Road are of the same design achieving a unified block. These two-story, Art Moderne buildings are surfaced with stucco. The flat roofs have parapets and are finished with built-up roofing. The corners at the intersections are curved and contain curved storefront displays. Other storefronts have angled entrances. The fenestration of the storefronts consists of fixed metal windows. Exterior details include two-story concrete fluted pilasters with capitals inspired by the Art Deco style and a stucco cornice at the top of the parapet.



100 North County Road

100 North County Road has two smaller bays, which allow access to second floor offices. A rear staircase at 118 North County Road leads to a second floor residence with a balcony containing a decorative iron railing and column. Barrel tile shed roofs and bay window storefronts were added to the north facade of 118 North County Road, facing Sunset Avenue, in 1981. This work was completed at the same time as alterations to 208-210 Sunset Avenue and was likely an attempt to unify the designs.



118 North County Road

Four additional buildings (106 North County Road, 108-110 North County Road, 112 North County Road, and 114 North County Road) are located between 100 North County Road and 118 North County Road. Volk redesigned these buildings as a part of the same architectural commission in 1941; however, he varied the commercial vernacular design of each building. A via is located behind the buildings allowing pedestrian access to additional tenant spaces. Commercial vernacular architecture does not adhere to a particular school of design and generally utilizes locally available materials and traditions. Commercial vernacular structures are typically rectangular in plan with one or two-stories, flat roofs with parapets, storefront windows, and minimal architectural detailing.

106 North County Road is a one-story stucco commercial building with a barrel tile shed roof with a cornice below. A recessed ridged sign panel is located above the glazed storefront with central entrance.



106 North County Road

108-110 North County Road is a two-story commercial building with a gabled pediment and pilasters with capitals of a similar design as the corner buildings at 100 North County Road and 118 North County Road. The second floor has large fixed windows located above a fluted band with scalloped trim. The south end of the first floor has a passageway leading to a via to the west and the north end has an angled storefront. To the north is a stairway leading to the second floor with a small arched window above.



108-110 North County Road

112 North County Road is a one-story stucco commercial structure with a flat roof, scored pilasters, cornices, and a parapet. The large glazed storefront reaches to the parapet and has a centrally located entry door.



112 North County Road

114 North County Road is a one-story stucco commercial building with a flat roof, cornice and parapet. The glazed storefront has a recessed center entrance.



114 North County Road

208-210 Sunset Avenue appears to have been built around an older structure constructed circa 1929. The apex of a gabled roof with wood louvers is visible coming out of the barrel tile hip roof. Over the years the building's design has been significantly altered with its current design by Phillip Steel being constructed in 1980. Arches, stucco banding and columns are located on the main façade. A wide archway allows access to the via to the south.



208-210 Sunset Avenue

212 Sunset Avenue was constructed in 1957. Originally designed by Arthur Weeks as a very basic rectangular building with exposed block as the exterior surface and a flat roof. The building was significantly altered in 1976 and again in 1982 to its current design. A barrel tile hip roof was installed, the exterior was surfaced with stucco and the fenestration was altered to include the addition of arched windows and doors.



212 Sunset Avenue

V. Architect Biographies

Bruce P. Kitchell

Among local architects, few were as prolific as Bruce Kitchell. During the “Golden Age” of Palm Beach architecture, Kitchell was known for his fanciful compositions and his strong sense of composition.

Born in Trenton, New Jersey in 1879, Kitchell studied architecture at Columbia University and the Newark Technical Institute. His design ideology however was forged during his seven-year tenure in the Newark, N.J. office of Jeremiah O’Rourke. O’Rourke was born and formally trained in Ireland and was a specialist in Roman Catholic Church design. In July 1902, Bruce Kitchell received conditional certification #175-A and in August 1912, he received permanent New Jersey architectural registration #665-C. From 1906 to 1919, Kitchell practiced architecture in Newark under his own name.

Bruce Kitchell moved to Florida in 1919, and on November 28, 1919 from an address in West Palm Beach, he applied for Florida architectural licensure. He was granted Florida licensure #AR0000137 on September 20, 1920, one of the first to hold this professional certification.

Kitchell’s architecture is typified by his desire to remain true to any style he worked in, his strong sense of proportion and an excellent eye for detailed ornamentation. Kitchell’s Palm Beach commissions included the Exchange Building, the Biltmore Apartments and the commercial composition from 120-132 North County Road as well as residences for Amy Phipps, Otto Kahn, and Percy J. Williams. Kitchell’s biggest projects were the Farmer’s Bank and Trust Company on Clematis Street in West Palm Beach and Firth at Biltmore Forest, North Carolina, for Mrs. Mary Stuart Webb Vanderbilt. Kitchell collaborated with Addison Mizner on Mizner’s design for Riverside Baptist Church in Jacksonville, and he was selected as President Roosevelt’s “New Deal” architect for West Palm Beach.

In 1923, he met with architects William Manly King, W.B. Eckler, Henry Stephen Harvey, O.J. Williams and Agnes Ballard at Addison Mizner’s Ocean Boulevard house to form a Society of Architects. He was later very involved in the American Institute of Architects. Kitchell’s first wife, Anna, died in 1944. He married his second wife, Mae, in 1945. Kitchell’s own home was at the foot of the Southern Bridge in West Palm Beach, and later

served as the headquarters of the local United Daughters of the Confederacy. It was razed to provide additional parking for the Greek Orthodox Church. Bruce Kitchell died in West Palm Beach on April 6, 1949, at age 70.

William Manly King

William Manly King was born in Macon, Mississippi in 1886. He studied architecture and engineering at the Georgia School of Technology before beginning his professional practice in Birmingham, Alabama. Impressed with south Florida during a visit in 1920, King and his wife moved to West Palm Beach in 1921 and King established his architecture office in the Seward Building. He became the consulting architect for Northwood Construction Company, builders of the flourishing Northwood subdivision in West Palm Beach. He was appointed Palm Beach County School Board architect in 1922 and at one time was credited with 90% of the public schools in Palm Beach County. A few of these still standing include the original Palm Beach High School complex (1922-1924), the Old Palm Beach Junior College (1927), Palm Beach Junior High (1929) and Pahokee High School (1928). From the 1920s until World War II, King was awarded a number of commissions to design city halls, fire stations and other governmental structures throughout Palm Beach County. Known to be flexible and creative with many architectural styles, William Manly King moved easily from the Mediterranean Revival style to the more modern Art Deco style. Many of his buildings showed his mastery of the Art Deco motif, including the National Guard Armory (now the Armory Art Center) in West Palm Beach (1939). The socially prominent King participated in numerous civic associations. He belonged to the Architects Club organized by Addison Mizner where local architects shared views and discussed problems and solutions. He was also affiliated with the Kiwanis Club, the Chamber of Commerce and was vice president of the Florida State Association of Architects.

John L. Volk

John Volk has been called the last of the "original" Palm Beach architects. He was one of an elite group of early 1920s architects, which included Addison Mizner, Maurice Fatio, and Marion Sims Wyeth who developed the architectural styles of the island that came to be known as the "Palm Beach Style". His designs included the Royal Poinciana Playhouse, conversion of the Four Arts Gallery, the Florida Capital Building on Royal Palm Way and several shops on Worth Avenue including the Everglades Colonnade.

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

Volk designed more than 1000 houses, theaters, clubs, shops, and other buildings and lived in Palm Beach from 1925 to his death in 1984. He designed homes for some of the wealthiest and most powerful people in America over his 58-year career in Palm Beach including Colonel Robert McCormack, William Paley, George Vanderbilt, Nicholas DuPont, Henry Ford II, Herbert Pulitzer, Matthew Mellon, George Storer, Horace Dodge II, and John S. Phipps

Included in the designs of John Volk are some of the most prominent buildings in the Palm Beach area including the First National Bank, the Royal Poinciana Plaza, the center section of the Town Hall, the Beach Club, Good Samaritan Hospital, and the golf terrace and orange gardens of the Everglades Club. He also extensively modified and rebuilt the Bath and Tennis Club after a major hurricane.

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

VI. Statement of Significance

207 Royal Poinciana Way and 100-118 North County Road were developed by J.T. Havens from the early 1920s to the early 1940s and represent significant commercial development in Palm Beach's historic downtown during important years of the Town's growth. Architecturally, 207 Royal Poinciana Way is a good representation of early 1920's Mediterranean Revival design popularized in Palm Beach during the Land Boom, and 100 and 118 North County Road are good examples of Art Moderne architecture as designed by John Volk, one of Palm Beach's premier architects from the 1920s to the 1980s.

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 the criteria which relate to this property and justification for designation:

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

The buildings which occupy the addresses 207 Royal Poinciana Way, 100 N. County Road, 106 North County Road, 108-110 N. County Road, 112 North County Road, 114 North County Road and 118 North County Road are historically significant through their associations with the commerce and developmental patterns of the Town of Palm Beach.

207 Royal Poinciana Way was constructed in 1923 as 205, 207 and 209 Main Street for owner J.T. Havens who leased the three stores to businesses catering to the growing number of tourists and seasonal residents. Two stores were combined and the interiors redesigned to become Testa’s Restaurant from 1929-1946. Three years later the restaurant expanded to occupy the original three stores and has continued as a prominent Palm Beach restaurant in this location ever since. As such, 207 Royal Poinciana Way reflects the broad cultural, economic and social history of the Town of Palm Beach.

100 N. County Road was designed by Bruce Kitchell for owner J.T. Havens in 1924 as the Exchange Building to house the growing business needs for the historic commercial section of town. This building has housed noted retail and professional businesses for over ninety years on a historically central corner in town and thus reflects the broad economic history of the Town of Palm Beach.

106 -118 North County Road were buildings constructed from 1927 – 1937 for owner J.T Havens to house shops catering to the winter residents and tourists in the historic commercial district of town. This was and continues to be a vibrant area of town and a successful development with many of the shops and businesses remaining in their locations for numerous years.

Therefore, the buildings at 106-118 North County Road reflect the broad economic history of the Town of Palm Beach.

(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.”

207 Royal Poinciana Way is a good example of commercial Mediterranean Revival architecture that was popularized during the 1920s Boom Time Era in Palm Beach. The building embodies distinctive Mediterranean Revival characteristics including stucco façades, barrel tile roofing, pecky cypress outriggers, and a colonnaded arcade with decorative column capitals.

100 North County Road and *118 North County Road* are good examples of commercial Art Moderne architecture and are noteworthy examples of this style in Palm Beach. The designs are representative of the Art Moderne style in with their simple geometric forms and simplicity in decorative details which include flat roofs, smooth stucco surfaces, curved corners, and fluted pilasters with capitals.

(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 North County Road and *118 North County Road* are very good representations of the design work of the architect John L. Volk.²³ John Volk has always been recognized as one of the most important architects to practice in the Town of Palm Beach. Unlike other talented architects who developed or refined specific styles, John Volk understood and perfected many varying architectural styles from Mediterranean Revival to contemporary designs.

²³ While 106-114 North County Road were also designed by John Volk they are not examples of his most notable works.

VIII. Selected Bibliography

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EXCERPT FROM LANDMARKS PRESERVATION COMMISSION MEETING OF
JANUARY 20, 2016

Item 2: 207 Royal Poinciana Way & 212 Sunset Ave.

Owner: Vesenaz, Inc.

Call for disclosure of ex parte communication: None

Ms. Murphy presented the designation report. Ms. Stillings reviewed the architecture of each of the buildings in the designation report stating the criteria each one met: 207 Royal Poinciana Way meets criteria 1 and 3; 100 North County Rd. meets criteria 1, 3 and 4; 106 North County Rd. meets criterion 1; 108-110 North County Rd. meets criterion 1; 112 North County Rd. meets criterion 1; 114 North County Rd. meets criterion 1; 116 North County Rd meets criterion 1; 118 North County Rd. meets criteria 1, 3 and 4; 208-210 and 212 Sunset met none of the criteria.

Motion made by Mrs. Lorentzen and seconded by Mr. Zukov that the designation report become part of the record. Motion carried 6-1 with Ms. Hufty dissenting.

Mr. Guy Rabideau, attorney for the owner of the properties, stated there has been a lot of change on these properties over the years. The two properties that have not had any significant changes are the 100 North County Rd. and 118 North County Rd buildings. Mr. Rabideau said the owner would be comfortable having the facades of these two buildings landmarked. The owner is not in favor of having the entire buildings landmarked, and feels it will hamper the economic viability of the two buildings. Mr. Rabideau referred to the buildings along North County Rd. between 100 and 118, stating those were all significantly changed in the 1980's and they have no particular beauty or architectural significance. Mr. Rabideau said the owner does not believe they meet the criteria for land marking designation. The owner also does not believe 207 Royal Poinciana Way meets the criteria to be landmarked. Mr. Rabideau provided a proposed resolution based on a previous resolution the owner received from the Commission some time ago for the designation of another building.

Commissioner Comments: There was a lengthy discussion among the Commissioners on which buildings they felt should be designated based on the criteria provided in the designation report, Mr. Rabideau's statement and Staff input.

At this time, Chairman Cooney turned the meeting over to Vice Chairman Gannon.

Motion made by Mr. Cooney and seconded by Ms. Hufty that this resolution approving this landmark designation is passed and adopted subject to the understanding that the two story buildings known as 100 North County Rd. and 118 North County Rd. are contributing as well as the façade at 207 Royal Poinciana Way, the other structures located on the Palm Beach County Property Appraiser parcels commonly known as 207 Royal Poinciana Way and 212 Sunset Ave. are non-contributing and should be considered as such in any future application before the Landmarks Preservation Commission relating to Certificates of Appropriateness. Those non-contributing structures are the facades of 106 North County Rd.; 108-110 North County Rd.; 112 North County Rd; 114 North County

Rd. and 116 North County Rd.; as well as the entire buildings at 208 Sunset; 210 Sunset and 212 Sunset. There is nothing intended in the adoption of this resolution which would preclude the modification of such non-contributing building elements. Future review by the Landmarks Preservation Commission is necessary to ensure that the contributing features are not adversely affected by the modification of non-contributing building elements. Further, with regards to the buildings at 106 North County Rd.; 108-110 North County Rd.; 112 North County Rd.; 114 North County Rd.; and 116 North County Rd. any demolition request must be accompanied by new building plans. Motion carried 6-1 with Mr. Strawbridge dissenting.

After a short break, Mr. Cooney said that a matter was brought to his attention that the motion for 207 Royal Poinciana Way and 212 Sunset Ave. did not make any mention of the little alley to the west of 207 Royal Poinciana Way. Mr. Cooney reached Town Attorney, John Randolph by phone to make him aware of the need to amend the motion to include the alley. Mr. Cooney stated that Mr. Randolph was fine with reopening the motion.

Motion made by Mr. Gannon and seconded by Ms. Hufty to reopen the motion. Motion carried with all in favor.

At this time, Chairman Cooney again turned the meeting over to Vice Chairman Gannon.

Motion made by Mr. Cooney and seconded by Ms. Hufty that this resolution approving this landmark designation is passed and adopted subject to the understanding that the two story buildings known as 100 North County Rd. and 118 North County Rd. are contributing as well as the façade at 207 Royal Poinciana Way, the other structures located on the Palm Beach County Property Appraiser, parcels 207 Royal Poinciana Way and 212 Sunset Ave. are non-contributing and should be considered as such in any future application before the Landmarks Preservation Commission relating to Certificates of Appropriateness. Those non-contributing structures are the facades of 106 North County Rd.; 108-110 North County Rd.; 112 North County Rd.; 114 North County Rd. and 116 North County Rd.; as well as the entire buildings at 208 Sunset; 210 Sunset and 212 Sunset. There is nothing intended in the adoption of this resolution which would preclude the modification of such non-contributing building elements. Future review by the Landmarks Preservation Commission is necessary to ensure that the contributing features are not adversely affected by the modification of non-contributing building elements. Further, with regards to the buildings at 106 North County Rd.; 108-110 North County Rd.; 112 North County Rd.; 114 North County Rd.; and 116 North County Rd. any demolition request must be accompanied by new building plans. The parcel in the designation report known as Parcel Control Number 50-43-43-22-32-000-0351 is non-contributing. Motion carried 6-1 with Mr. Strawbridge dissenting.

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, 2016

Section of Agenda

Time Extensions

Agenda Title

Request for Six Month Time Extension, Variance No. 31-2014, 230 Park Avenue

Presenter

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

Supporting Documents

- [Memorandum dated January 28, 2016, John S. Page, Director of Planning, Zoning and Building](#)
- [Letter from Rabbi Moshe Scheiner dated January 11, 2016](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2016

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

Re: Request for Six Month Time Extension, Variance No. 31-2014, 230 Park Avenue

Date: January 28, 2016

STAFF RECOMMENDATION

Staff recommends that the Town Council approve a six month time extension of Variance No. 31-2014 in order to provide the applicant time to obtain Architectural Commission approval of the project.

GENERAL INFORMATION

On April 10, 2013, Rabbi Moshe Scheiner, the applicant, was granted a Variance (Variance #11-2013) to eliminate the required one car garage to create living space as part of the proposed renovation of the existing house. That application expired on April 9, 2014. On July 16, 2014, he was granted approval of the same variance request. The property owner had one year from approval to commence the project by obtaining Architectural Commission (ARCOM) approval.

On July 15, 2015, at the request of the applicant, the Town Council granted an eight month time extension for the project in lieu of the one year requested "due to unforeseen circumstances." The project extension allowed applicant until January 13, 2016 to obtain ARCOM approval. During that time frame he did not apply for approval of the project to ARCOM. Rather, on January 11, 2016, Rabbi Scheiner submitted a letter (copy attached) requesting another time extension of six months. The explanation for the delay in his letter is that Palm Beach Orthodox Synagogue was looking into purchasing an alternate residence, yet was not successful. As such, the Rabbi is now looking to go back to renovation of the house using the variance granted in 2014 but he needs more time. Staff's recommendation is that the Council extend the approval one last time for six months. During that time frame he will be required to obtain ARCOM approval of the project or it will expire. If approved, the property owner will have until July 15, 2016, to obtain ARCOM approval.

If you have any questions please contact Paul Castro at 227-6406.

Attachment

cc: Jay Boodheshwar, Deputy Town Manager
John C. Randolph, Town Attorney
Veronica B. Close, Asst. Director, Planning, Zoning & Building
Susan Owens, Town Clerk
Paul W. Castro, AICP, Zoning Administrator
pf & zf



RABBI

Moshe E. Scheiner

PRESIDENT

Barbara T. R. Zimet

VICE PRESIDENTS

David Feinberg

Abe Haruvi

TREASURER

Eileen Berman

FINANCIAL SECRETARY

Christopher Popik

Recording Secretary

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Dr. Edward Steinberg

Murray Steinfeld

Armond Waxman

Dr. Eric Weiner

January 11, 2016

Dear Mr. Castro,

My wife and I would like to request a six month extension on variance 31-2014 for our home at 230 Park Avenue, Palm Beach that expires on Wednesday, January 13, 2016. Palm Beach Synagogue was looking into purchasing a Rabbi's residence, but unfortunately the sale has fallen through. We will need to go back to renovation on our home. We would greatly appreciate if you can extend it for us.

Respectfully yours,

Rabbi Moshe Scheiner

RECEIVED

JAN 11 2016

**TOWN OF PALM BEACH
PERMIT**

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2016

Section of Agenda

Development Review - Old Business

Agenda Title

SITE PLAN REVIEW #8-2015 WITH VARIANCE The application of 201 Debra Lane, LLC (Juan M. Naveja Diebold, Manager); relative to property commonly known as **201 Debra Ln.**, described as lengthy legal description on file; located in the R-B Zoning Districts. The Applicant seeks Site Plan approval to construct a 3,814 square foot two story home on a platted lot that is 98.55 feet deep in lieu of the 100 foot minimum required and 91.61 foot wide in lieu of the 100 foot minimum required. A variance is requested to permit installation of a pool in the street side yard with a setback of 6.25 feet in lieu of the 15 foot minimum required.

[Attorney: M. Timothy Hanlon]

[Architectural Commission Recommendation: Deferred the project to the February 24, 2016 meeting. Carried 7-0]

Deferred from the December 9, 2015, and January 13, 2016, Town Council Meetings

**Request for Deferral to the March 9, 2016, Town Council Meeting
Per Letter Dated January 29, 2016, from M. Timothy Hanlon.**

Presenter

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

Supporting Documents

- [Letter Dated January 29, 2016, from M. Timothy Hanlon](#)

LAW OFFICES
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BRUCE A. McALLISTER
CATHERINE KENT
DAVID R. MAASS

RAYMOND C. ALLEY (1893-1975)
HAROLD G. MAASS (1923-2006)
KAREN S. MARX (1964-1994)

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

January 29, 2016

Sent Via Email and U.S. Mail

Paul Castro
Town of Palm Beach
360 South County Road
P.O. Box 2029
Palm Beach, FL 33480

Re: SPR #8-2015
201 Debra Lane

Dear Paul:

Because the Architectural Commission deferred this matter to its February meeting, on behalf of the property owners, we hereby request a deferral of SPR #8-2015 until the March 9, 2016 Town Council Meeting.

If you have any questions, please contact me.

Sincerely,



M. Timothy Hanlon

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2016

Section of Agenda

Development Review - Old Business

Agenda Title

MODIFIED SPECIAL EXCEPTION #27-2015 WITH SITE PLAN REVIEW AND VARIANCES The application of Il Sogno, LLC; relative to property commonly known as **1520 S. Ocean Blvd.**, described as lengthy legal description on file; located in the R-A/B-A Zoning Districts. Consideration of proposed Construction Management Agreement related to the conditional approval of a portion of the subject application. [Attorney: Francis X. J. Lynch]
Request for Deferral to the March 9, 2016, Town Council Meeting Per Letter Dated January 29, 2016, from Francis X.J. Lynch.

Presenter

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

Supporting Documents

- [Letter Dated January 29, 2016, from Francis X.J. Lynch](#)

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

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

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

605 North Olive Avenue, 2nd Floor
West Palm Beach, FL 33401
Phone: (561) 721-4000
Facsimile: (561) 721-4001

January 29, 2016

VIA E-MAIL

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

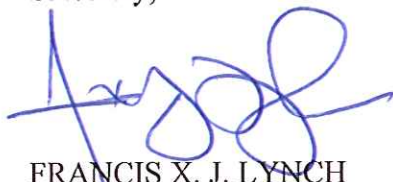
Re: 1520 South Ocean Boulevard
Modified Special Exception #27-2015 with Site Plan Review and Variances

Dear Paul:

With regard to the above, this letter shall serve as our request to defer this matter from the February 10, 2016 town council meeting to the March 9, 2016 meeting.

Should you have any questions or comments, please feel free to contact me.

Sincerely,



FRANCIS X. J. LYNCH

FXJL/kh

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2016

Section of Agenda

Development Review - Old Business

Agenda Title

SPECIAL EXCEPTION #33-2015 WITH SITE PLAN REVIEW

AND VARIANCES The application of Robert and Denise Benedickson; relative to property commonly known as **222 Seaspray Ave.**, described as lengthy legal description on file; located in the R-B Zoning District. The Applicant is requesting a Special Exception with Site Plan Review approval to demolish an existing 2,444 square foot residence with a 800 square foot garage and build it back in the same location with a proposed total square footage of 3,802 on a non-conforming platted lot which is 50 feet in width in lieu of the 100 foot minimum required and 6,125 square feet in area in lieu of the 10,000 minimum required in the R-B Zoning District. The following variances are being requested: to allow a west side yard setback of 11.33 feet in lieu of the 12.5 foot minimum required in the R-B Zoning District for a one story section of the house; to allow a west side yard setback of 8.33 feet in lieu of the 12.5 foot minimum required for the proposed covered entry for the front door; to allow an east side yard setback of 9.67 feet in lieu of the 15 foot minimum required for the proposed second story of the house; and to allow a lot coverage to be 31% in lieu of the 30% maximum allowed; to allow a cubic content ratio to be 6.11 in lieu of the 4.38 maximum allowed. [Attorney: Maura Ziska, Esq.]

[Architectural Commission Recommendation: Deferred the project to the January 27th meeting. Carried 7-0]

**Request for Deferral to the March 9, 2016, Town Council Meeting
Per Letter Dated January 22, 2016, from Maura A. Ziska.**

Presenter

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

Supporting Documents

- [Letter Dated January 22, 2016, from Maura A. Ziska](#)

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Murvin S. Rosen, Counsel*

*Also admitted in New York

*Also admitted in Michigan

Esperanté

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

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA FACSIMILE: 561-838-5411

January 22, 2016

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

RE: Special Exception 33-2015 – 222 Seaspray Avenue, Palm Beach, Florida

Dear Mayor and Town Council:

Please defer the above referenced matter from the February 10, 2016 Town Council agenda to the March 9, 2016 Town Council agenda. The reason for the deferral is to allow the architect time to revise the plans.

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

Sincerely,



Maura A. Ziska

MAZ/jch

cc: Paul Castro

Architect

00030798.DOC

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2016

Section of Agenda

Ordinances - Second Reading

Agenda Title

ORDINANCE NO. 31-2015 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning; Article I, In General; Section 134-2, Definitions And Rules Of Construction, So As To Amend The Definitions Of *Sign Institutional, Sign Menu And Sign Official Traffic*; Further Amending Chapter 134, At Article XI, Signs, So As To Amend And Restate Article XI In Its Entirety As Set Forth In Exhibit “A” Attached Hereto; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Presenter

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

Supporting Documents

- [Ordinance No. 31-2015](#)

ORDINANCE NO. 31-2015

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 134, ZONING; ARTICLE I, IN GENERAL; SECTION 134-2, DEFINITIONS AND RULES OF CONSTRUCTION, SO AS TO AMEND THE DEFINITIONS OF *SIGN INSTITUTIONAL*, *SIGN MENU* AND *SIGN OFFICIAL TRAFFIC*; FURTHER AMENDING CHAPTER 134, AT ARTICLE XI, SIGNS, SO AS TO AMEND AND RESTATE ARTICLE XI IN ITS ENTIRETY AS SET FORTH IN EXHIBIT "A" ATTACHED HERETO; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

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

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 134, Zoning; Article I, in General; Section 134-2, Definitions and Rules of Construction, to amend the following definitions to read as follows:

Sec. 134-2. Definitions and Rules of Construction.

Sign, institutional means a sign for building identification of schools, colleges, museums, libraries, houses of worship, or other institutions of a similar public or semipublic nature.

Sign, menu means a restaurant or take-out food establishment wall or pedestal mounted sign which identifies the menu and prices within said establishment.

Sign, official traffic means a sign placed or erected by a municipal, county, state, or federal governmental agency as a regulatory, aid-to-traffic or informational sign, in connection with control of vehicular or pedestrian traffic over a bridge, roadway, pathway or sidewalk.

Section 2. The Code of Ordinances of the Town of Palm Beach is hereby amended Chapter 134, Zoning; Article XI, Signs, so as to amend and restate said Article XI in its entirety as set forth in Exhibit "A" attached hereto.

Section 3. Severability.

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

Section 4. Repeal of Ordinances in Conflict.

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

Section 5. Codification.

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

Section 6. Effective Date.

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

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 13th day of January, 2016, and for second and final reading on this 10th day of February, 2016.

Gail L. Coniglio, Mayor

Town Council President

Council President Pro Tem

Town Council Member

ATTEST:

Town Council Member

Susan A. Owens, MMC, Town Clerk

Town Council Member

EXHIBIT “A” TO ORDINANCE NO. 31-2015

CHAPTER 134 ZONING

ARTICLE XI. – SIGNS

DIVISION 1. - GENERALLY

Sec. 134-2371. – Statement of findings and purpose.

The Town Council has found that Palm Beach is internationally known and has become a worldwide synonym for beauty, quality and value and that a proliferation of signs without regulations as to size, location and material detracts from such beauty, can become a visual blight. Signs, particularly if placed in rights-of-way, can create distractions for drivers impacting the safety and welfare of pedestrians and drivers and further create an aesthetically unpleasant atmosphere.

The Town Council has found that the Town’s Code of Ordinances is required to regulate signs as provided by Section 163.3202(2)(f), Florida Statutes. The Town Council does not wish to censor speech but does wish to provide for the public welfare by regulating signage in the Town in a manner that enhances the aesthetics of the community, reduces visual pollution, provides clear information and minimizes distractions to drivers in the interest of traffic safety.

The Town deems the following standards to be the least restrictive measures on free speech necessary to advance the Town’s interest in aesthetic appeal and traffic safety. This ordinance serves a significant government interest, is unrelated to the suppression of free expression, and leaves open ample alternative channels of communication by adopting reasonable and appropriate time, place and manner regulations.

Sec. 134-2372. - Compliance; substitution, and severability.

(1) Compliance. Signs may be erected and maintained only as authorized and when in compliance with the provisions of this article and other applicable Town ordinances. All signs are subject to the Florida Building Code and Fire Prevention Code. Signs that are not specifically permitted by this division are prohibited.

(2) Substitution of noncommercial for commercial messages. Notwithstanding any provision in this division to the contrary, to the extent that any permitted sign could be construed as a sign containing commercial message, a noncommercial sign shall be permitted to the same extent. The noncommercial message may occupy the entire sign area, or any portion thereof, and may substitute for or be combined with any commercial message. The sign message may be changed as frequently as desired by the sign’s owner, provided it is not a prohibited sign and continues to comply with the requirements of this division.

(3) Severability. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this division is declared or held invalid or unconstitutional by any court of competent jurisdiction, such declaration shall be deemed separate, distinct, and independent, and shall not affect the validity of any other part, section, subsection, sentence, phrase, clause term, or word. Severability shall be applied to the sign regulations in this division even if the result would be to allow less speech in the Town, whether by subjecting currently exempt signs to permitting or by some other means. The Town specifically intends that severability shall be applied so that any prohibited sign shall continue to be prohibited irrespective of whether another sign prohibition is declared invalid or unconstitutional.

Sec. 134-2373. - General regulations and definitions applicable to permitted signs.

Under this article, the following shall apply to all signs:

(1) Signs of all types addressed herein are defined in Section 134-2 of this code. All signs visible from a public or private roadway and/or sidewalk shall be classified as signs regardless of whether they are freestanding or attached or painted to or on or in the principal building they are accessory to.

(2) “Commercial message” means any lettering, wording, reading matter, illustration, logo, logogram, symbol, emblem, insignia, trademark, symbol, poster, picture, character or other representation with or without letters or numerals that directly or indirectly names, advertises or calls attention to a business product or business service (whether for profit or not for profit) or other commercial activity, including fund raising for not for profit or charitable entities.

(3) “Non-commercial message” means any message that is not a commercial message.

(4) In all cases, signs shall be constructed of durable materials, maintained in good condition, and not allowed to become dilapidated.

(5) No sign other than an official traffic sign erected by the Town, Palm Beach County, the State of Florida, the United States government and/or any agency thereof shall be erected within the right-of-way lines of any street or public way, nor shall any sign or banner be hung on, from, or beneath any canopy, awning or marquee.

(6) All signs, except nameplates and identification signs for single-family dwellings, shall have the name of the manufacturer or producer in small but legible letters.

(7) Provided that such signs are otherwise in compliance with this article, a permit and review by the architectural review commission process or landmarks preservation commission process (if applicable) shall not be required for the erection, alteration, or maintenance of the following types of temporary signs:

(a) identification of sale or rental signs for single family dwellings, two family dwellings and multi-family dwellings permitted in R or commercial districts;

- (b) temporary political signs or other temporary noncommercial signs in R or commercial districts;
- (c) development signs;
- (d) artisan signs;
- (e) menu signs in commercial districts; or
- (f) temporary display signs in commercial districts.

(8) A permit and review by the architectural review commission process for architectural and aesthetic review, or landmarks preservation commission process (if applicable), shall be required for the erection, alteration, reconstruction, painting or producing by artificial light of any other sign within the Town.

(9) No sign shall be permitted within any district for any purpose which is flashing or which has any animation or movement associated with it.

(10) No sign, including numerals, lettering, illustrations, logos or characters, shall be painted or installed on any awning visible from public or private streets.

(11) In residential districts, no lettering, illustrations, logos or characters visible from public or private streets shall be painted on or attached to any structure except as otherwise provided in division 2 of this article.

(12) No banner signs of any kind, including but not limited to those produced on cloth, paper or fabric, shall be permitted. This section shall not prohibit the display of flags. Flags shall be defined as "a piece of fabric or other flexible material solely containing distinctive colors, patterns, standards, words or emblems that convey a non-commercial message or symbol of a non-commercial organization or entity including, but not limited to, political jurisdictions such as the United States of America." Portable, removable flags, as permitted herein, shall be limited to three per property and shall be no larger than the maximum dimensions permitted under this section. Flags of a size larger than those which may be accommodated on a flagpole of a height which exceeds 40 percent above the building height limit of the zoning district in which it is located may be allowed on properties of five acres or greater in size pursuant to a special exception provided the location of the flag shall be on a flagpole set back at least 120 feet from any lot line and provided further that no flag or banner shall be in excess of 216 square feet.

The maximum dimensions of any flag permitted under this section shall be proportional to the flagpole height according to the following limitations:

<i>Pole Height (ft.)</i>	<i>Maximum Flag Size (sq. ft.)</i>
Up to 25 ft.	24 sq. ft.
25 to 30 ft.	40 sq. ft.
30 to 35 ft.	48 sq. ft.
35 to 40 ft.	60 sq. ft.
40 to 50 ft.	96 sq. ft.
50 to 60 ft.	150 sq. ft.
70 ft.	216 sq. ft.

For flag sizes or flagpole heights not found in the foregoing chart, the hoist side of the flag shall not exceed 20 percent of the vertical height of the flagpole. Further, flag dimensions as specified in this section shall not exceed a ratio in height to width of two to one or one to two.

(13) Strip lighting of any nature, including neon tubing, fluorescent lights, or other similar strip lighting devices, shall not be used to outline any building, fence, wall or any other structure. In addition, strobe or flash lighting and/or neon lighting which draws attention to a tenant space, building or structure is not permitted. Any lighted or illuminated sign shall not be permitted or erected until such illuminated sign has been approved as a special exception use in conformity with sections 14-227 through section 134-233, except that this shall not apply to low-level illuminated sign, less than 30 inches in height, indicating only the street number and location of entrance and exist drives of a parking area.

(14) No sign shall be permitted on any premises, improved or unimproved, except as relating to that property and as permitted by division 2 or 3 of this article or as otherwise allowed in this code.

(15) Supporting structures for any sign shall not be included in determining the square foot area of the sign, provided that such supporting structure shall not exceed the maximum allowable sign area and shall not carry any lettering.

DIVISION 2. - RESIDENTIAL DISTRICTS

Sec. 134-2401. - Scope of division.

The following types of nonadvertising or noncommercial signs of a stationary and permanent or temporary nature in this division are permitted in all residential districts.

Sec. 134-2402. - Nameplates and identification signs.

(1) Signs indicating the name or address of the occupant or designating an access drive to the property may be permitted in conjunction with a single-family dwelling, provided

that they shall not be larger than one square foot in area. Only two such signs per lot or main building shall be permitted.

(2) For multifamily dwellings and buildings other than single-family dwellings, an entrance and/or exit sign as an aid to traffic designating access drives between the private property and the public street may be permitted, provided that each sign shall be located on privately owned property and each sign shall be no larger than one square foot in area and not extending over 30 inches in height above the yard ground level. Additionally, for multifamily dwellings and buildings other than single-family dwellings, a single yard identification sign not exceeding six square feet in area or exceeding six feet in height above the lot grade or closer than ten feet to the front or street side lot line and indicating only the name and address of the building and the name of the management may be displayed in the yard area, provided that on a corner or through lot two such signs (one facing each street) shall be permitted. In addition to the permitted yard signs, one sign for each street frontage may be installed flat against the main wall of the building, each such sign not exceeding 20 square feet in area

Sec. 134-2403. - Sale or rental signs in R-AA, R-A and R-B districts.

Signs pertaining to the sale, lease or rental of property or buildings shall be permitted in single-family dwelling R-AA, R-A and R-B residential districts, subject to the following conditions and restrictions:

(1) The sign shall read either "open," "for rent," or "for sale," and may include the name of the persons affecting the sale or rental and the telephone number of the owner or agent relative to the premises upon which the sign is located.

(2) The face surface of such sign shall not be larger than 40 square inches.

(3) The supporting member shall be installed into the ground to provide that the top of the face of such sign shall not be more than four feet above the finished grade of the ground.

(4) All such signs shall be lettered professionally, but such signs shall not be required to be submitted to the Town's architectural commission for approval and no permit shall be required for the installation or erection of such signs. Color of the signs shall be a white background with black, block letters thereon.

(5) Only one such sign shall be permitted on any one premises. Where the property abuts a waterway or golf course, no signs may be placed or erected to be visible from such waterway or golf course.

(6) Such sign shall not be erected or placed closer than five feet to the front property line, and such sign may be placed parallel or perpendicular to the front property line. Signs must be placed only upon the property being offered for sale or lease.

(7) Nothing contained in this section shall be construed as prohibiting the same wording from being on both the front and back of the sign.

(8) Where such sign is suspended from an arm of the support, such arm shall not exceed a length of 16 inches.

(9) All such signs shall be erected on a temporary basis.

(10) Such signs shall be kept in good repair and shall not be illuminated or constructed of a reflective material and shall not contain any flags, streamers, moveable items or like devices.

(11) Any such sign shall be removed within five days from the date a binding agreement is entered into for the sale, lease or rental of the property or immediately upon the removal of the property from the market, whichever occurs first.

(12) Any Town enforcement officer may cause to be removed any such sign not conforming with this section.

Sec. 134-2404. - Sale or rental signs in R-C, R-D(1), R-D(2) and PUD districts.

In the R-C, R-D(1), R-D(2) and PUD zoning districts, signs advertising the sale or rental of the premises upon which they are erected by the owner or broker or any other person interested in the sale or rental of such premises, and signs bearing the word "sold" or "rented" with the name of the persons affecting the sale or rental may be erected or maintained, provided:

(1) The size of any such sign is not in excess of two square feet;

(2) Not more than one sign is placed upon any property unless such property fronts upon more than one street, in which event two signs may be erected, one on each frontage; and

(3) Such sign shall be removed within one week after the premises have been sold or rented.

Sec. 134-2405. - Institutional signs.

Institutional signs identifying schools, colleges, houses of worship, libraries, museums or other institutions of a similar public or semipublic nature may be erected and maintained, provided:

(1) The size of any such sign is not in excess of six square feet; and

(2) Not more than one such sign is placed on a property unless such property fronts upon more than one street, in which event two such signs may be erected, one on each frontage.

Sec. 134-2406. - Development signs in R-AA, R-A and R-B districts.

In R-AA, R-A and R-B zoning districts, signs advertising the sale or development of the premises upon which they are erected, when erected in connection with the development of

single-family dwelling premises by a builder, contractor, developer or other persons interested in such sale or development, may be erected and maintained, provided:

(1) No sign shall be erected until a building permit for construction on the site has been issued by the Town. The sign shall indicate only the name and telephone number of the builder, contractor or developer.

(2) The size of any sign is not in excess of 40 square inches. Color of the sign shall be a white background with black, block letters thereon.

(3) No more than one sign is placed upon any property unless such property fronts upon more than one street, in which event one such sign may be erected on each frontage.

(4) Any such sign shall be removed by the developer, builder or contractor within three days of the completion or abandonment of the project.

(5) No sign shall be placed closer than five feet to the front or street side lot line.

(6) The supporting member shall be installed into the ground to provide that the top of the face of such sign shall not be more than four feet above the finished grade of the ground.

(7) All such signs shall be lettered professionally, but such signs shall not be required to be submitted to the Town's architectural commission for approval, and no permit shall be required for the installation or erection of such signs.

(8) Where the property abuts a waterway or golf course, no signs may be placed or erected to be visible from such waterway or golf course.

(9) Such sign may be so erected or placed that its center is parallel or perpendicular to the front property line.

(10) Nothing contained in this section shall be construed as prohibiting the same wording from being on both the front and back of sign.

(11) Where such sign is suspended from an arm of the support, such arm shall not exceed a length of 16 inches.

(12) All such signs shall be erected on a temporary basis.

(13) Such sign shall be kept in good repair and shall not be illuminated or constructed of a reflective material and shall not contain any flags, streamers, moveable items or like devices.

(14) Any Town enforcement officer may cause to be removed any such sign not conforming with this section.

Sec. 134-2407. - Development signs in R-C, R-D(1), R-D(2) and PUD districts.

In R-C, R-D(1), R-D(2) and PUD zoning districts, signs advertising the sale or development of the premises upon which they are erected, when erected in connection with the development of the premises by a builder, contractor, developer, or other persons interested in such sale or development, may be erected and maintained, provided:

- (1) No sign shall be erected until a building permit for construction on the sign has been issued by the Town.
- (2) The size of any sign is not in excess of 20 square feet.
- (3) No more than one sign is placed upon any property unless such property fronts upon more than one street, in which event one such sign may be erected on each frontage.
- (4) Any such sign shall be removed by the developer within 15 days of the completion or abandonment of the project.
- (5) No sign shall be placed closer than ten feet to the front or street side lot line.

Sec. 134-2408. – Artisan’s signs

Signs of mechanics, painters, and other artisans may be erected and maintained during the period such persons are performing work on the premises on which such signs are erected, provided:

- (1) Only one sign for each artisan is displayed.
- (2) The size thereof is not in excess of six square feet.
- (3) No sign shall be closer than ten feet to the front or street side lot line.
- (4) Such signs are removed within one week after completion or abandonment of the work.
- (5) Artisans' signs shall not be permitted in R-AA, R-A and R-B districts.

Sec. 134-2409. - Temporary political signs and temporary noncommercial signs.

Temporary political signs pertaining to specific elections urging the election or opposition of any candidate seeking any political office or urging the passage or defeat of any ballot measure and other temporary noncommercial signs endorsing, objecting or otherwise relating to a particular issue or communicating a noncommercial message or idea are permitted subject to the following restrictions:

(1) Maximum size: No sign shall exceed a maximum of four square feet in area and shall be limited to two sides only. There shall be no triangular or multi-sided signs allowed.

(2) Maximum number:

- (a) For political signs, not more than one sign per candidate or ballot measure shall be placed upon any property.
- (b) For other temporary noncommercial signs, not more than one sign per issue, idea or message shall be placed upon any property.
- (c) Altogether there shall be no more than three temporary two sided signs on any one property. However, more than one message may be placed on any one side of a sign.

(3) Location: Only on lots where the property owner has given permission. The placing of temporary signs anywhere on public property is prohibited. Temporary signs located on public property shall be deemed to be public property and shall be summarily removed by the Town.

(4) Minimum setbacks: From lot line of another: Ten feet. From the front property line or from a street: Five feet.

(5) Maximum height: Four feet, including supports for the sign.

(6) Time limit:

- (a) Political signs permitted pursuant to this section shall not be placed prior to 30 days of the election to which they are related and shall be removed within 48 hours after the day of the final election to which they apply. In the case where there is a primary election, signs shall be allowed 30 days prior to the primary election. This time limit also applies to candidates who do not have an opponent in the primary. Signs may continue to be displayed between the primary election and the final election.
- (b) Other temporary noncommercial signs permitted pursuant to this section shall be allowed only during the times when temporary political signs are allowed.

(7) Illegally placed: Temporary signs shall be removed by the owner or individual responsible for the illegal placement. In the event of failure to do so, the signs may be removed by the Town.

DIVISION 3. - COMMERCIAL DISTRICTS

Sec. 134-2435. Scope of division.

The following types of signs of a stationary and permanent or temporary nature are permitted in commercial districts.

Sec. 134-2436. - Signs in vias and the entrances to vias.

For the purpose of article XI, division 3 of Chapter 134, via frontage of a business is considered street frontage for regulating the size and number of business identification signs. Building identification signs are not allowed in vias.

Sec. 134-2437. - Building identification and business identification signs.

(1) Building Identification: One building identification sign (which must have the word "building" in it) may be placed on the front of each wall of a building which fronts onto a street, provided the building identification sign is installed flat against such wall and does not exceed 20 square feet in area.

(2) Individual Business Identification: Individual business identification signs are allowed for each ground floor business fronting on a street or via. Each such sign shall not exceed 20 square feet in area and shall be installed flat against the street or via front, street or via side wall, or street or via rear wall of a building or in a ground floor window or door. In addition, if a ground floor licensed business's parking and main entrance is on the back or side of a building not fronting a street, said business shall be allowed one business identification sign installed flat against the face of the building's wall where the business is located. No business identification sign shall exceed 15 feet in height and shall not be situated above the first floor ceiling of the building, whichever is lower.

(3) Business Directory Sign for Building with a Via or Arcade: Business directory signs shall be allowed for buildings which contain or abut a via. One business directory sign facing each direction of an entrance to a via is permitted. Said business directory sign shall not exceed a maximum of six square feet in area. In addition, each business within a business directory sign shall be allowed only one identification line on the directory sign with no logo. The lettering on the business directory sign shall not exceed a height of one and one-quarter inches for the business and shall be in the same font as the other business identification signs on the directory. Except, however, lettering on the business directory sign identifying the via and its address shall not exceed a height of three inches and may be of a different font than the businesses lettering on said sign. Such sign shall be flat wall mounted.

In addition, one business directory sign identifying the upper floor businesses is permitted on a multi-story building on the interior of a via where the stairs to the upper floor(s) in the building open onto the via. A business directory sign for upper floor businesses on said building shall not exceed four square feet in area and shall meet the same lettering requirements

as the business directory sign requirements for the entrances to a via. The business directory sign shall only identify the names of the businesses in the via. The business directory sign may also include the name of the via and the via address. The business directory sign shall be flat wall mounted.

(4) Individual Business Identification Signs Within a Via: A licensed business on the first floor within a via shall be allowed one hanging business identification sign within the via and perpendicular to the building. The hanging sign within a via shall be mounted on the wall of the building fronting the via. A hanging business identification sign shall not be above the first floor of the building it is attached to, shall have a minimum of eight feet of clearance, and shall be calculated as part of the maximum business identification sign area allowed. In addition said hanging business identification signs shall have only the name of the business.

(5) Business identification signs and building identification signs shall require architectural review commission and landmarks preservation commission approval(if applicable).

Sec. 134-2438. - Size of sign.

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

Building Street Frontage or Building First Floor Tenant Main Entrance and Parking Frontage per Ground Floor Individual Business Sign Space (in feet)	Maximum Gross Surface Area for Business Identification Signs (in feet)
Less than 18	10
18 and over	20

Note: This permitted gross surface sign area per individual business may be in the form of one sign or composed of a group of smaller signs that advertise any licensed individual business with the building, provided their aggregate area does not exceed that area contained in the schedule. The gross surface area of any signs on a building shall not, however, exceed 20 square feet. In addition, any hanging sign, as allowed in section 134-2437, shall not exceed two square feet in area.

Sec. 134-2439. - Permitted lettering, logos.

Business identification signs permitted under this division shall consist of lettering which specifies only the name of the establishment as identified in the business tax receipt and state

registration, a logo as provided for below and/or the nature of the business. Logos shall be allowed, provided that such logo will fit within a box no more than 12 inches square. Not more than one such logo shall be permitted on the street frontage of each business establishment, and the area of such logo shall be counted toward the maximum allowable gross area of sign.

Sec. 134-2440. - Window and door business identification signs.

Any individual business within a building shall be allowed business identification signs in merchandise display area windows and/or entry doors on the first floor; however, such window display and/or door signs shall count towards the allowable total sign area for individual business in a building, as calculated under section 134-2438.

Sec. 134-2441. - Height of signs.

(a) No building identification sign shall be higher than the building on which it is attached, nor shall any sign be located over or upon the roof of any building.

(b) No individual business identification sign on a one-story building shall be located higher than the building on which it is attached, nor shall any sign be located over or upon the roof of any building.

(c) Except for signs proposed on a facade of an existing building where the original architecture predicated that they be located higher, no individual business identification sign on a multistory building shall be located higher than the first floor elevation of the building or 15 feet, whichever is lower.

Sec. 134-2442. - Residential uses.

Signs for residential uses located within a commercial district shall comply with division 2 of this article.

Sec. 134-2443. - Sale or rental signs.

Signs advertising the sale or rental of the premises upon which they are erected shall comply with sections 134-2403 and 134-2404.

Sec. 134-2444. - Aid-to-traffic signs.

In addition to other sections of this division, noncommercial, aid-to-traffic signs may be erected on private property designated access drives and parking areas, provided that each such sign shall not be larger than two square feet in area. Only one sign shall be permitted for each access drive serving a parking area.

Sec. 134-2445. - Temporary display signs.

In addition to other sections of this division, one temporary display sign to advertise a special sale or event to occur on the premises, not to exceed two square feet in area for each 18 linear feet of building frontage for each licensed business, shall be permitted in the merchandise display area of a store during the period from April 1 to October 31. No such temporary sign may be affixed or taped to windows or doors, but shall be placed on a free standing device such as an easel. Such signs may not be erected earlier than 15 days prior to the special event to which they are related and must be taken down within 24 hours after such event. Not more than one sign per special sale or event shall be displayed at any one time.

Sec. 134-2446. - Development signs.

In the C-TS, C-WA, C-OPI, C-PC and C-B zoning districts, signs advertising the sale or development of the premises upon which they are erected, when erected in connection with the development of the premises by a builder, contractor, developer, or other persons interested in such sale or development, may be erected and maintained provided:

- (1) No sign shall be erected until a building permit for construction on the site has been issued by the Town.
- (2) The size of any sign is not in excess of ten square feet.
- (3) No more than one sign is placed upon any property unless such property fronts upon more than one street, in which event one such sign may be erected on each frontage.
- (4) Any such sign shall be removed by the developer within 15 days of the issuance of a certificate of occupancy or abandonment of the project.
- (5) No sign shall be placed closer than five feet to the front or street side lot line.

Sec. 134-2447. - Temporary political signs and temporary noncommercial signs.

Temporary political signs urging the election or opposition of any candidate seeking any political office or urging the passage or defeat of any ballot measure and other temporary noncommercial signs endorsing, objecting or otherwise relating to a particular issue or communicating a noncommercial message or idea are permitted subject to the following restrictions:

- (1) Maximum size: No sign shall exceed a maximum of four square feet in area and shall be limited to two sides only. There shall be no triangular or multi-sided signs allowed.
- (2) Maximum number:
 - (a) For political signs, not more than one sign per candidate or ballot measure shall be placed upon any property.

- (b) For other temporary noncommercial signs, not more than one sign per issue, idea or message shall be placed upon any property.
- (c) Altogether there shall be no more than three temporary two sided signs on any one property. However, more than one message may be placed on any one side of a sign.

(3) Location: Only on lots or in stores where the property owner has given permission. The placing of temporary signs anywhere on public property is prohibited. Temporary signs located on public property shall be deemed to be public property and shall be summarily removed by the Town.

(4) Minimum setbacks on lots: From lot line of another: Ten feet. From the front property line or from a street: Five feet.

(5) Maximum height: Four feet, including supports for the sign.

(6) Store front locations: As an alternative to placing temporary signs on commercial lots meeting minimum setbacks, temporary signs may be placed in the merchandise display area windows on the first floor of zero lot line stores not capable of meeting setback criteria or in cases where there are multiple tenants of a commercial plaza or building. The total temporary signs allowed, including temporary display signs, shall not exceed two square feet in area for each 18 linear feet of building frontage for each licensed business.

(7) Time limit:

- (a) Political signs permitted pursuant to this section shall not be placed prior to 30 days of the election to which they are related and shall be removed within 48 hours after the day of the election to which they apply. In the case where there is a primary election, signs shall be allowed 30 days prior to the primary election. This time limit also applies to candidates who do not have an opponent in the primary. Signs may continue to be displayed between the primary election and the final election.
- (b) Other temporary noncommercial signs permitted pursuant to this section shall be allowed only during the times when temporary political signs are allowed.

(8) Illegally placed: Temporary political signs shall be removed by the owner or individual responsible for the illegal placement. In the event of failure to do so, the signs may be removed by the Town.

Sec. 134-2448. - Menu signs.

One menu sign shall be allowed at the front entrance of a restaurant or merchant retail take-out food establishment. Said menu sign shall not be further than four feet from the front entrance of the restaurant or take-out food establishment nor exceed two square feet in area. In addition, a pedestal menu sign shall not impede pedestrian movement.

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TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2016

Section of Agenda

Any Other Matters

Agenda Title

Planning and Zoning Commission Record and Report: Proposed Modifications and Changes to Chapter 134, Zoning

Presenter

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

Supporting Documents

- [Memorandum dated January 28, 2016, from John S. Page, Director of Planning, Zoning and Building](#)
- [Exhibit A: Planning and Zoning Commission Record and Report](#)
- [Study Item List](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2016

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

Re: Planning and Zoning Commission Record and Report: Proposed Modifications and Changes to Chapter 134, Zoning

Date: January 28, 2016

STAFF RECOMMENDATION

Staff recommends that the Town Council consider the Planning and Zoning Commission Recommendation and Report (EXHIBIT A) and provide further direction on possible amendments to the Zoning Ordinance. Study items appear in "BOLD" print, and are numbered in accordance with the 14 ongoing Code review assignments directed by the Town Council to the Commission in October and January (Study Item List attached). Newly proposed text is in add/delete format for ease of identification. Staff recommendations follow recommendations from the Commission.

The Commission requests that the Council provide further direction regarding Study Item #7 (side yard setbacks). See further explanation in EXHIBIT A.

PLANNING AND ZONING COMMISSION RECOMMENDATION

The Planning and Zoning Commission, at its December 15, 2015 and January 19, 2015 meetings, recommended approval of proposed Zoning Code modifications as identified below. The Commission also requested that the Town Council provide them with guidance on Study Item # 7 as identified in EXHIBIT A.

GENERAL INFORMATION

Nine of the Council's fourteen assigned study items have been considered to date at meetings on November 17, 2015, December 15, 2015 and January 19, 2016. The Commission instructed Staff to draft the attached recommendations for consideration by the Town Council. Staff is requesting that the Council consider the proposed changes in the Record and Report identified in EXHIBIT A, and provide direction for drafting an ordinance for subsequent Town Council action. The Commission will continue to meet and consider the remainder of the Council directed Study Items in the following months. If you have any questions about the changes please contact Paul Castro at 227-6406.

cc: Planning and Zoning Commission
Thomas G. Bradford, Town Manager
Jay Boodeshwar, Deputy Town Manager
John C. Randolph, Town Attorney
Paul W. Castro, AICP, Zoning Administrator

EXHIBIT A: PLANNING AND ZONING COMMISSION RECORD AND REPORT

1. Eliminate site plan review, special exception and variance approval requirements for building new single-family homes on nonconforming lots (make this an administrative task). Note: The intent is to eliminate the requirement for Council approval of new homes on nonconforming lots unless there are variances required (setbacks, lot coverage, landscape open space, height).

Recommendation:

The Commission recommended the following changes by a vote of 7-0. Staff concurs with the proposed changes.

DIVISION 4. - LAND

Sec. 134-446. - Development and redevelopment of nonconforming residential lots.

(a) Vacant land located in any zoning district which does not conform to the minimum requirements of lot dimension or lot area as required by the schedule of lot, yard and bulk regulations for the district as given in article VI of this chapter may be developed or redeveloped ~~as allowed in subsections (b) and (c)~~ provided that multi-family residential use and single-family residential use does not exceed the maximum density and all lot, yard and bulk requirements allowed for the site, as identified in Chapter 134 and the Future Land Use Element in the Town's Comprehensive Plan. Development of a single-family residential dwelling unit on a vacant residentially zoned lot which has existed in the same configuration for a minimum of 30 years is allowed subject to subsection (b) or (c), whichever is relevant.

(b) The development or redevelopment of land which does not conform to the lot, yard and bulk requirements of (excluding lot dimension or lot area requirements) in the R-C, R-D(1), R-D(2), C-TS, C-WA, C-OPI, C-PC, C-B and PUD zoning districts shall be subject to an application to the town council for a variance.

(c) The development or redevelopment of land which does not conform to the lot, yard and bulk requirements of (excluding lot dimension or lot area requirements) in the R-AA, R-A and R-B zoning districts shall be subject to an application to the town council for variance, special exception and/or site plan review as provided for in subsections 134-793(b), 134-843(b) and 134-893(b).

Sec. 134-793. - Lot, yard and area requirements—Generally.

(a) *Schedule of regulations.* In the R-AA large estate residential district, the schedule of lot, yard and area requirements is as given in this section.

(b) *Existing building lots.* A single-family structure may be constructed on any existing nonconforming lot at the time of adoption of the ordinance from which this section derives in the R-AA zoning district if the lot is less than the minimum area and/or dimension required for

building lots in this district provided that the single-family structure and accessory structure(s) meet all other zoning regulations ~~that a special exception with site plan review would be required for an unplatted lot and site plan review would be required for a platted lot. In addition, all new construction must comply with all other provisions of the schedule of lot, yard and bulk requirements in subsection (a) of this section and provided, further, that the owner of such lot shall not own any adjacent vacant land which would create a conforming lot if the vacant land were was combined with the lot deficient in area.~~

Sec. 134-843. - Lot, yard and area requirements—Generally.

(a) *Schedule of regulations.* In the R-A estate residential district, the schedule of lot, yard and area requirements is as given in this section.

...

(b) *Existing building lots.* A single-family structure may be constructed on any existing nonconforming lot at the time of adoption of the ordinance from which this section derives in the R-A zoning district if the lot is less than the minimum area and/or dimension required for building lots in this district provided that the single-family structure and accessory structure(s) meet all other zoning regulations ~~that a special exception with site plan review would be required for an unplatted lot and site plan review would be required for a platted lot. In addition, all new construction must comply with all other provisions of the schedule of lot, yard and bulk requirements in subsection (a) of this section and provided, further, that the owner of such lot shall not own any adjacent vacant land which would create a conforming lot if the vacant land were was combined with the lot deficient in area.~~

Sec. 134-893. - Lot, yard and area requirements—Generally.

(a) *Schedule of regulations.* In the R-B low density residential district, the schedule of lot, yard and area requirements is as given in this section.

...

(b) *Existing building lots.* A single-family structure may be constructed on any existing nonconforming lot at the time of adoption of the ordinance from which this section derives in the R-B zoning district if the lot is less than the minimum area and/or dimension required for building lots in this district provided that the single-family structure and accessory structure(s) meet all other zoning regulations ~~that a special exception with site plan review would be required for an unplatted lot and site plan review would be required for a platted lot. In addition, all new construction must comply with all other provisions of the schedule of lot, yard and bulk requirements in subsection (a) of this section and provided, further, that the owner of such lot shall not own any adjacent vacant land which would create a conforming lot if the vacant land were was combined with the lot deficient in area.~~

2. Provide more coverage for solar panels on roofs if panels cannot be seen.

Recommendation:

The Commission recommended that the Town Council make no changes to the regulations for solar panels by a vote of 7-0. Current zoning regulations allow for 30% coverage on a roof if said solar panels are not visible from a street. Staff recommends that the Council consider whether the percentage of coverage should be increased if solar panels are not visible from the

street. The Commission did not recommend a change as members were concerned that any increase in the percentage of solar panel coverage on a roof might adversely impact an abutting neighbor with sunlight glare or aesthetics from a backyard or second floor balcony or window.

3. Clarify that “masonry” walls are required around generators in required setbacks and review generator “siting” requirements.

Recommendation:

The Commission recommended the following changes by a vote of 7-0. Staff concurs with the proposed changes.

Sec. 134-1729. - Generators and swimming pool equipment.

Except for generators serving a public purpose and owned and operated by the town or temporary generators used during or after a natural disaster such as a tropical storm or hurricane event, and which are therefore exempt from these regulations, portable or permanent generators temporarily or permanently placed on the ground, on a stand or on a trailer, shall not be placed in the required front, street side or street rear yard setbacks; provided, however, not more than one such generator shall be placed in any given required side or rear yard setback.

- (1) One portable or permanent generator with an output of not more than 60 KW shall be allowed in a required side or rear yard setback provided said generator meets the following conditions:
 - a. The generator is set back a minimum of five feet from the property line.
 - b. The generator shall not, at any time or for any purpose, exceed the maximum decibels allowed at the property line as set forth in section 42-228.
 - c. The highest point on the generator shall not exceed a maximum of seven feet above the neighboring property owner's grade or zero datum as defined in the appropriate definition of building height in section 134-2.
 - d. The generator is screened from the neighboring property owners by a concrete block masonry finished wing wall (three-sided wall), at least four feet high or the same height as the generator (including the height of the exhaust muffler), whichever is greater.
 - e. The generator's exhaust is, as much as practically feasible, vented upwards or directed away from neighboring properties.
 - f. The generator shall be used only during periods of power outages or for periodic testing and necessary maintenance operation and shall not be used to sell power back to a power company or for use by power customers during periods of peak demand.
 - g. The generator shall be operated for routine testing and maintenance purposes not

more than one time in any seven-day period and no test shall exceed 30 minutes. Testing of emergency generators is permitted Monday through Thursday only (excluding holidays), between the hours of 11:00 a.m. and 12:00 p.m. or 2:00 pm. and 3:00 p.m.

- h. Testing may be conducted when the unit is being repaired, provided that such testing period shall not exceed 30 minutes and shall be conducted only between the hours of 10:00 a.m. and 5:00 p.m. Monday through Saturday, excluding holidays.
 - i. Generators are not permitted on the roof of a building.
- (2) A portable or permanent generator may be permanently or temporarily placed on the ground, on a stand, or on a trailer outside of required yard setback areas; provided, however, said generator meets the following conditions:
 - a. If the generator's output capability is greater than 60KW, it shall be placed on the property only in conformance with the setback requirements applicable to a principal structure.
 - b. The generator shall not, at any time or for any purpose, exceed the maximum decibels allowed at the property line as set forth in section 42-228.
 - c. If the generator's output capacity is greater than 100 KW, it shall be subject to site plan review as defined in sections 134-326-134-330 and shall be housed in an enclosed building with landscaping as approved by the architectural commission or landmarks preservation commission, whichever is appropriate.
 - d. If the generator is greater than 60KW and is 100KW or less, and is visible from a street or public way, it shall be screened from the neighboring properties by a concrete block masonry finished wing wall (three-sided wall), at least four feet high or the same height as the generator (including the height of the exhaust muffler), whichever is greater.
 - e. If the generator is 60KW or less and is visible from a street or public way, its location shall be subject to approval by the architectural commission or landmarks preservation commission, as applicable. Intervening landscape material shall not be considered when determining a generator's visibility.
 - f. The generator's exhaust is, as much as practically feasible, vented upwards or directed away from neighboring properties.
 - g. The generator shall be used only during periods of power outages, periods of power reductions resulting from the exercise of utility load control programs or for periodic testing and necessary maintenance operation and shall not be used to sell power back to a power company.
 - h. The generator shall be operated for routine testing and maintenance purposes not more than one time in any seven-day period and no test shall exceed 30 minutes.

Testing of emergency generators is permitted Monday through Thursday only (excluding holidays), between the hours of 11:00 a.m. and 12:00 p.m. or 2:00 p.m. and 3:00 p.m.

- i. Testing may be conducted when the unit is being repaired, provided that such testing period shall not exceed 30 minutes and shall be conducted only between the hours of 10:00 a.m. and 5:00 p.m. Monday through Saturday, excluding holidays.
 - j. Generators are not permitted on the roof of a building.
- (3) Notwithstanding subsection (a), the director or designee may grant a waiver allowing a generator with an output capability in excess of 60KW to be located within a required side or rear yard setback, provided the applicant submits to the town a site plan and evidence or testimony substantiating each of the following conditions:
- a. The output of a 60 KW or less generator is incapable of providing enough electricity for the basic necessity of occupying a building and/or protecting interiors or possessions in a building from the damaging effects of prolonged loss of power.
 - b. The proposed location is not merely for the convenience or preference of the applicant, but that there is no other location outside of the required setbacks that will provide for safe placement of the generator.
 - c. The proposed location represents the minimum intrusion into the required setback(s) necessary to safely accommodate the generator.
- (4) If an administrative waiver is not granted pursuant to subsection (c) the applicant may appeal the administrative decision to the town council pursuant to sections 134-131-134-145.

In addition, swimming pool pumps and filters shall be allowed in a required side or rear yard provided said equipment is placed no closer than five feet from the side or rear property line and is enclosed in a pump house not exceeding a height of four feet. However, any lot that fronts on two or more streets shall be allowed to place one swimming pool filter and pump in a required street side and/or street rear yard setback provided that said swimming pool filter and pump, in combination with a pool heater and/or air conditioning unit does not exceed three pieces of said equipment; is set back a minimum of 25 from the street side or street rear property line; and, is screened from view from the neighboring property owner by a five-foot high wall and from the street by a minimum five foot high wall and three-foot high hedge.

4. Modify the nonconforming building/structure provisions, and related code sections, to clarify that vacant property cannot be divided from abutting land in the same ownership when a property split would create or increase nonconformities to a building or structure.

Recommendation:

The Commission recommended the changes below not be adopted by a vote of 7-0. The proposed changes would have prevented a property owner from selling an abutting conforming piece of vacant land if in doing so, it would render the house on abutting property (under the same ownership) nonconforming or more nonconforming to the Code.

The Commission believes Staff recommended changes would be too onerous. Members concurred that if a property owner had an adjacent vacant lot that had never been used for zoning compliance to build new or added improvements to a structure on an adjacent lot, said owner should be allowed to split the property. They also believe that if a property owner had ever used the vacant lot to achieve compliance with all zoning area and setback requirements that the owner should not be allowed split the property (the Code already addresses this scenario).

Staff recommends that the Council consider this matter and determine if a change is warranted.

Sec. 134-386 - Continuation; definition; intent.

(a) A use lawfully in existence at the effective date of the ordinance from which this chapter is derived, which shall be made nonconforming at the passage of this chapter or any applicable amendment thereto, may be continued except as otherwise provided in this article.

(b) A use is, for the purposes of this chapter, a nonconforming use if the use or any physical characteristics of the use are not in full compliance with all regulations of the zoning district in which it is situated.

(c) The intent of this division is that, by the provisions of this chapter or by amendments that may be adopted, there may exist uses and characteristics of use which were lawful before this chapter was adopted or amended and which would be prohibited, regulated or restricted under the terms of this chapter or amendments thereto. It is the intent of this chapter to permit these nonconforming uses to continue until they are voluntarily removed, removed by abandonment, or otherwise removed as required by this chapter, but not to encourage their survival.

(d) It is further the intent of this chapter that nonconforming uses shall not be created, enlarged upon, expanded, intensified or extended, or be used as grounds for adding other uses prohibited elsewhere in the same district.

Sec. 134-416. - Continuation; definition; intent.

(a) A building or structure, lawfully in existence at the effective date of the ordinance from which this chapter is derived, which shall be made nonconforming at the passage of this chapter

or any applicable amendment thereto, may be continued except as otherwise provided in this article.

(b) A building or structure is, for the purposes of this chapter, nonconforming if the building or structure or any physical characteristics thereof is not in full compliance with all regulations of the zoning district in which it is situated.

(c) The intent of this division is 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.

(d) It is further the intent of this chapter that 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.

(e) It is further the intent of this chapter that if a nonconforming building or structure becomes conforming, or more conforming, by adding adjacent vacant land, that said land cannot be thereafter divided or split from the land where the building or structure is located unless all aspects of the lot, yard and bulk requirement as set forth in the zoning district are met.

Sec. 134-417. - Extension or expansion.

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 determined by cubic footage, in preparation for any proposed enlargement, expansion, or extension of a building or structure.

Sec. 134-418. - Conversion to conforming building or structure.

For any building or structure or part thereof, in which a nonconformity of the building or structure or part thereof is removed, altered, changed or replaced by a conforming building or structure, the terminated nonconformity shall not thereafter be resumed or re-created, nor shall any additional nonconformity be permitted.

Sec. 134-446. - Development and redevelopment of nonconforming residential lots.

(a) Vacant land located in any zoning district which does not conform to the minimum requirements of lot dimension or lot area as required by the schedule of lot, yard and bulk regulations for the district as given in article VI of this chapter may be developed or redeveloped

as allowed in subsections (b) and (c) provided that multi-family residential use and single-family residential use does not exceed the maximum density and all lot, yard and bulk requirements allowed for the site, as identified in Chapter 134 and the fFuture lLand uUse eElement in the tTown's cComprehensive pPlan. Development of a single-family residential dwelling unit on a vacant residentially zoned lot which has existed in the same configuration for a minimum of 30 years is allowed subject to subsection (b) or (c), whichever is relevant.

(b) The development or redevelopment of land which does not conform to the lot, yard and bulk requirements (excluding lot dimension or lot area requirements) in the R-C, R-D(1), R-D(2), C-TS, C-WA, C-OPI, C-PC, C-B and PUD zoning districts shall be subject to an application to the town council for a variance.

This language is now consistent with recommended changes to Study Item #1.

(c) The development or redevelopment of land which does not conform to the lot, yard and bulk requirements (excluding lot dimension or lot area requirements) in the R-AA, R-A and R-B zoning districts shall be subject to an application to the town council for variance, special exception and/or site plan review as provided for in subsections 134-793(b), 134-843(b) and 134-893(b).

This language is now consistent with recommended changes to Study Item #1.

R-AA ZONING DISTRICT

Sec. 134-793. - Lot, yard and area requirements—Generally.

(a) *Schedule of regulations.* In the R-AA large estate residential district, the schedule of lot, yard and area requirements is as given in this section.

(1) ...

...

(12)...

(b) *Existing building lots.* A single-family structure may be constructed on any existing nonconforming lot at the time of adoption of the ordinance from which this section derives in the R-AA zoning district if the lot is less than the minimum area and/or dimension required for building lots in this district provided that the single-family structure and any accessory structure(s) meets all other zoning regulations ~~that a special exception with site plan review would be required for an unplatted lot and site plan review would be required for a platted lot. In addition, all new construction must comply with all other provisions of the schedule of lot, yard and bulk requirements in subsection (a) of this section and provided, further, that the owner of such lot shall not own any adjacent vacant land which would create a conforming lot if the vacant land were was combined with the lot deficient with any of lot yard and bulk requirements as setforth in (a) (1) through (12) of this section of the Code in area.~~

This language is now consistent with recommended changes to Study Item #1.

R-A ZONING DISTRICT

Sec. 134-843. - Lot, yard and area requirements—Generally.

(a) *Schedule of regulations.* In the R-A estate residential district, the schedule of lot, yard and area requirements is as given in this section:

(1).....

....

(12)...

(b) *Existing building lots.* A single-family structure may be constructed on any existing nonconforming lot at the time of adoption of the ordinance from which this section derives in the R-A zoning district if the lot is less than the minimum area and/or dimension required for building lots in this district provided that the single-family structure and any accessory structure(s) meets all other zoning regulations ~~that a special exception with site plan review would be required for an unplatted lot and site plan review would be required for a platted lot. In addition, all new construction must comply with all other provisions of the schedule of lot, yard and bulk requirements in subsection (a) of this section~~ and provided, further, that the owner of such lot shall not own any adjacent vacant land which would create a conforming lot if the vacant land ~~were~~ was combined with the lot deficient with any of lot yard and bulk requirements as setforth in (a) (1) through (12) of this section of the Code in area.

This language is now consistent with recommended changes to Study Item #1.

R-B ZONING DISTRICT

Sec. 134-893. - Lot, yard and area requirements—Generally.

(a) *Schedule of regulations.* In the R-B low density residential district, the schedule of lot, yard and area requirements is as given in this section:

(1).....

....

(12)...

(b) *Existing building lots.* A single-family structure may be constructed on any existing nonconforming lot at the time of adoption of the ordinance from which this section derives in the R-A zoning district if the lot is less than the minimum area and/or dimension required for building lots in this district provided that the single-family structure and any accessory structure(s) meets all other zoning regulations ~~that a special exception with site plan review would be required for an unplatted lot and site plan review would be required for a platted lot. In addition, all new construction must comply with all other provisions of the schedule of lot, yard and bulk requirements in subsection (a) of this section~~ and provided, further, that the owner of such lot shall not own any adjacent vacant land which would create a conforming lot if the vacant land ~~were~~ was combined with the lot deficient with any of lot yard and bulk requirements as setforth in (a) (1) through (12) of this section of the Code in area.

This language is now consistent with recommended changes to Study Item #1.

5. Modify the 50% cubic footage demolition provision to include clarifying language that demolition which cumulatively exceeds 50% has to meet all Code provisions.

Recommendation:

The Commission recommended the following changes by a vote of 7-0. Staff concurs with the proposed changes.

Sec. 134-419. - Enlargement, extension, reconstruction or alteration.

No nonconforming building or structure shall be enlarged, extended, reconstructed or structurally altered except, as provided for in sections 134-416, 134-417 and 134-418, or when required to do so by law as follows

(1) *Voluntary demolition, restoration and reconstruction.* A nonconforming building and/or structure may be restored as before, enlarged, extended or partially demolished and reconstructed provided that such demolition, restoration, enlargement, extension or expansion does not exceed 50 percent of its existing cubic footage within five years of passing a final inspection for the work being done, and provided that the demolition, restoration, enlargement, extension or reconstruction of the building and/or structure does not exceed the floor area, gross leasable area and/or cubic footage which existed prior to the demolition, restoration, enlargement, extension, or reconstruction. All demolition, restoration, enlargement, extension or reconstruction shall be completed within the time schedule set forth in the construction schedule section 105.4.1.6 of the Florida Building Code as amended in section 18-242. In the event such demolition, restoration, enlargement, extension or reconstruction is not completed within the time frame required by the building code, construction shall cease and shall not resume until the town council decides the remedy for noncompliance, and review and approves a completion schedule.

(2) *Alteration and repairs.* Normal maintenance and repair and incidental alteration of a nonconforming building or structure is permitted, provided it does not increase the area, volume or size. A building used for single-family or multi-family residential purposes may be altered in any way to improve interior livability; provided, however, that no alterations shall be made which would increase the number of dwelling units. Single-family dwellings may be added onto or partially demolished in accordance with sections 134-794, 134-844, 134-894, 134-1005 and 134-1060.

(3) *Minimum flood elevation.* A nonconforming building may be raised to meet the minimum town flood elevation provided:

a. That the height as measured from the raised finished floor to the bottom of the top chord of the roof framing member for a pitched roof and the ceiling of a flat roof does not get any taller.

b. That the overall height as measured from the raised finished floor elevation to the top of the roof for pitched roof, and top of the ceiling and parapet for a flat roof.

c. The building footprint within the required setbacks is no larger; and is no closer to the

property line than it was prior to being raised.

d. That any new additions meeting existing lot, yard and bulk regulations.

6. Review sign lighting requirements to specify when lighting may be allowed and when prohibited, including necessary approval process (Town Council, ARCOM and/or administrative).

Recommendation:

The Commission recommended the following changes by a vote of 7-0. Staff concurs with the proposed changes.

Sec. 134-2372. - General regulations applicable to permitted signs.

Under this chapter, the following shall apply to all permitted signs:

(1)...

...

(9) Strip lighting of any nature, including neon tubing, light emitting diode (LED), fluorescent lights, or other similar strip lighting devices, shall not be used to outline any building, fence, wall or any other structure. In addition, strobe or flash lighting and/or neon lighting which draws attention to a tenant space, building or structure is not permitted. Any internally lighted or illuminated sign, lettering or back-lit sign shall not be permitted or erected ~~until~~ unless such illuminated sign has been approved as a special exception use in conformity with sections 14-227 through 134-233, ~~except that~~ This shall not apply to front-lit signs or low-level illuminated sign, less than 30 inches in height, indicating only the street number and location of entrance and exit drives of a parking area.

7. Review varying side yard setback requirements on smaller lots (especially in mid-town and R-C District neighborhoods) for consistency and appropriateness.

Recommendation:

The Commission is reluctant to studying a possible change to the zoning code that would ease side yard setback requirements, however the Commission will proceed forward to study this issue in greater depth, following further staff analysis, if the Town Council reaffirms its intent to do so. Motion carried unanimously. Extensive discussion about side yard setbacks on small lots, including Mid-town neighborhoods and the R-B/R-C zoning district regulations occurred. Generally speaking, Commissioners expressed their desire to preserve and maintain the existing charm and character of existing neighborhoods. It was expressed that narrower side yard setbacks would allow larger homes to be built, perhaps even enticing demolition of existing homes that would be replaced with larger structures. Easing setbacks may inadvertently change the character of existing neighborhoods, leading the Commission to the conclusion that owners wanting to deviate from the code should continue to seek variance approval as opposed to

amending the code in a fashion that allows all owners to build closer to lot lines.

11. Review swimming pool setbacks to determine if changes should be recommended. Based on Commission discussion, consider possible changes to the regulations for cooling towers to ensure they are not obtrusive.

The Commission recommended that the Town Council make no changes to the setback requirements for swimming pools by a vote of 7-0. However, the Commission did recommend that the swimming pool section of the Code be modified to ensure that the hedge requirement on the outside of the required six foot high wall be maintained to be at least six feet. Staff concurs with the proposed change. The proposed change is as follows:

Sec. 134-1757. - Swimming pools.

A swimming pool, not to be enclosed by a structure other than a fence as required or permitted by this Code, may be constructed within every yard area, except the required front yard as prescribed by this chapter. However, no part of the pool structure may protrude more than six inches above the finished ground level, and the pool walls shall be at least ten feet from the side and rear lot lines and 15 feet from the street side and street rear lot lines. A swimming pool in the required street side or street rear yard shall be screened by a continuous hedge six feet in height at the time of planting, located adjacent to and exterior of a solid wall six feet in height and maintained at a minimum of said height. Said hedge shall be located between the street and adjacent to and exterior of a solid wall six feet in height. In the percentage of coverage of a lot by buildings, swimming pools shall not be counted in such computation.

Sec. 134-1728. - Air conditioning and swimming pool heating equipment.

(a) No portion of any air conditioning and/or swimming pool equipment shall be located closer than five feet from a side or rear property line. In addition, such air conditioning or swimming pool equipment within ten feet from the side or rear property line shall be completely screened with a wall as high as said equipment from the neighboring property. Except as provided for in subsection (b) of this section, air conditioning and/or swimming pool equipment, in excess of two units or more than four feet in height, as measured above the natural grade or minimum flood elevation, whichever is greater, or occupying more than 25 square feet in total area, shall be considered an enclosed accessory structure and shall be constructed, erected or placed in compliance with all the provisions of the ordinance applicable thereto.

(b) In the R-AA, R-A and R-B zoning districts, where setbacks for principal structures are increased based on a larger lot width, the air conditioning and/or swimming pool equipment which are in excess of number, height and area restrictions identified in subsection a of this section shall only be required to meet the minimum yard setback requirements for an enclosed accessory structure on a minimum size lot in that district.

(c) Cooling towers shall be required to meet the same minimum yard setback requirements as the principal structure-, and shall be screened from the neighbors and/or a street by a three sided, concrete block masonry finished wall at least as high as said cooling tower. If the required wall is higher than the Code allows in a setback in order to screen the cooling tower from the neighbors and/or a street, said wall shall also meet the minimum yard setback requirement as the principal structure.

(d) No air conditioning or swimming pool equipment shall be allowed in a front yard setback.

(e) Any house that fronts on two or more streets shall be allowed to place air conditioning (excluding cooling towers) and/or swimming pool equipment in each required street side or street rear yard setback provided that the combination of said equipment does not exceed two in each of said setbacks; are not more than four feet in height above the natural grade or the minimum flood elevation, whichever is greater, occupy no more than 25 square feet in total area; and are setback a minimum of 20 feet from the street side or street rear property line and are screened from view by a wall as high as said equipment and three foot high hedge outside said wall.

12. Review possible changes that would allow parapets as architectural features on homes with pitched roofs, and related building height calculations.

Recommendation:

The Commission recommended the following changes by a vote of 7-0. Staff concurs with the proposed changes.

Sec. 134-793. - Lot, yard and area requirements—Generally.

(a) *Schedule of regulations.* In the R-AA large estate residential district, the schedule of lot, yard and area requirements is as given in this section.

(1)...

...

(10) *Height and overall height.*

a. The maximum building height is 30 feet, not to exceed two stories.

b. Maximum overall height of a building shall be the maximum allowable building height, as defined in section 134-2, plus five feet for a flat roof and ten feet for all other roof styles.

~~When a parapet is used above the maximum building height, as defined in section 134-2, the building overall height will be calculated based on the flat roof style identified above.~~ Parapet walls extending above the maximum allowable building height shall have appropriate architectural treatment.

Sec. 134-843. - Lot, yard and area requirements—Generally.

(a) *Schedule of regulations.* In the R-A estate residential district, the schedule of lot, yard and area requirements is as given in this section.

(1)...

...

(10) *Height and overall height.*

a. The maximum building height is 30 feet, not to exceed two stories.

b. Maximum overall height of a building shall be the maximum allowable building height, as defined in section 134-2, plus five feet for a flat roof and ten feet for all other roof styles. ~~When a parapet is used above the maximum building height, as defined in section 134-2, the building overall height will be calculated based on the flat roof style identified above.~~ Parapet walls extending above the maximum allowable building height shall have appropriate architectural treatment.

Sec. 134-893. - Lot, yard and area requirements—Generally.

(a) *Schedule of regulations.* In the R-B low density residential district, the schedule of lot, yard and area requirements is as given in this section.

(1)...

...

(10) *Height and overall height.*

a. The maximum building height is 30 feet, not to exceed two stories.

b. Maximum overall height of a building shall be the maximum allowable building height, as defined in section 134-2, plus five feet for a flat roof and ten feet for all other roof styles. ~~When a parapet is used above the maximum building height, as defined in section 134-2, the building overall height will be calculated based on the flat roof style identified above.~~ Parapet walls extending above the maximum allowable building height shall have appropriate architectural treatment.

Sec. 134-948. - Lot, yard and area requirements—Generally.

In the R-C medium density residential district, the schedule of lot, yard and area requirements is as given in this section:

(1)...

...

(8) *Height and overall height.*

a. For single-family uses, the maximum building height is two stories, not to exceed 23½ feet.

b. For two-family uses, the maximum building height is two stories, not to exceed 23½ feet.

c. For townhouses, the maximum building height is two stories, not to exceed 23½ feet.

d. For multifamily uses, the maximum building height of a one or two-story building is 23½ feet; See special exception provisions in sections 134-227 through 134-233, section 134-952, and article III of this chapter.

e. Maximum overall height of a building shall be the maximum allowable building height, as defined in section 134-2, plus three feet for a flat roof and eight feet for all other roof styles. ~~When a parapet is used above the maximum building height, as defined in section 134-2, the building overall height will be calculated based on the flat roof style identified above.~~ Parapet

walls extending above the maximum allowable building height shall have appropriate architectural treatment.

Sec. 134-1004. - Lot, yard and area requirements—Generally.

In the R-D(1) moderate density residential district, the schedule of lot, yard and area requirements is as given in this section:

(1)...

...

(8) *Height and overall height.*

- a. For single-family uses, the maximum building height is two stories or 25 feet.
- b. For two-family uses, the maximum building height is two stories or 25 feet.
- c. For townhouses, the maximum building height is two stories or 25 feet.
- d. For multifamily uses, the maximum building height of two-story buildings is 25 feet; the maximum building height of three-story buildings is 35 feet. In this district, the maximum building height for multifamily uses is three stories, with provision for a special exception for up to five stories. See special exception provisions in sections 134-227 through 134-233, section 134-1008, and article III of this chapter.
- e. Maximum overall height of a building shall be the maximum allowable building height, as defined in section 134-2, plus five feet for a flat roof and ten feet for all other roof styles. ~~When a parapet is used above the maximum building height, as defined in section 134-2, the building overall height will be calculated based on the flat roof style identified above.~~ Parapet walls extending above the maximum allowable building height shall have appropriate architectural treatment.

Sec. 134-1060. - Lot, yard and area requirements—Generally.

In the R-D(2) high density residential district, the schedule of lot, yard and area requirements is as given in this section:

(1)...

...

(8) *Height and overall height.*

- a. For single-family uses, the maximum building height is two stories or 25 feet.
- b. For two-family uses, the maximum building height is two stories or 25 feet.
- c. For townhouses, the maximum building height is two stories or 25 feet.
- d. For multifamily uses, the maximum building height of two-story buildings is 25 feet; the maximum building height of three-story buildings is 35 feet. In this district, the maximum building height for multifamily uses is three stories, with provision for a special exception for up

to five stories. See special exception provisions in sections 134-227 through 134-233, section 134-1063, and article III of this chapter.

e. For timesharing uses, the maximum building height is three stories or 35 feet.

f. For hotels, the maximum building height is three stories or 35 feet.

g. Maximum overall height of a building shall be the maximum allowable building height, as defined in section 134-2, plus five feet for a flat roof and ten feet for all other roof styles. ~~When a parapet is used above the maximum building height, as defined in section 134-2, the building overall height will be calculated based on the flat roof style identified above.~~ Parapet walls extending above the maximum allowable building height shall have appropriate architectural treatment.

STUDY ITEM LIST

1. Eliminate site plan review, special exception and variance approval requirements for building new single-family homes on nonconforming lots (make this an administrative task).
Note: The intent is to eliminate the requirement for Council approval of new homes on nonconforming lots unless there are variances required (setbacks, lot coverage, landscape open space, height).
2. Provide more coverage for solar panels on roofs if panels cannot be seen.
3. Clarify that “masonry” walls are required around generators in required setbacks and review generator “siting” requirements.
4. Modify the nonconforming building/structure provisions, and related code sections, to clarify that vacant property cannot be divided from abutting land in the same ownership when a property split would create or increase nonconformities to a building or structure.
5. Modify the 50% cubic footage demolition provision to include clarifying language that demolition which cumulatively exceeds 50% has to meet all Code provisions.
6. Review sign lighting requirements to specify when lighting may be allowed and when prohibited, including necessary approval process (Town Council, ARCOM, and/or administrative).
7. Review varying side yard setback requirements on smaller lots (especially in mid-town and R-C District neighborhoods) for consistency and appropriateness.
8. Study the point of measurement requirements to determine if the measurement of height, overall height, building height plane, and cubic content ratio (R-B District) should be measured from the natural grade of a lot rather than the highest street elevation in front of a lot.
9. Review language governing maximum linear building dimensions and lot coverage to prevent same from applying to underground structures (in sub-basements not visible aboveground).
10. Review minimum landscaped open space requirements, clarifying how same is to be calculated when “greenspace” exists above underground structures.
11. Review swimming pool setbacks to determine if changes should be recommended.
12. Review possible changes that would allow parapets as architectural features on homes with pitched roofs, and related building height calculations.
13. Review the existing schedule of off-street parking spaces for various land use types to determine if adjustments should be made to the minimum number of required spaces.

14. Study potential revisions to the Zoning Code to require transformers for underground electric utilities to be screened.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: February 10, 2016

Section of Agenda

Any Other Matters

Agenda Title

Palm House Court-Appointed Receiver: Cary Glickstein
Receiver's Initial Report

Presenter

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

Supporting Documents

- [Memorandum dated February 3, 2016 from John S. Page, Director of Planning, Zoning and Building](#)
- [Receiver's Initial Report - Palm House](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2016

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

Re: Palm House Court-Appointed Receiver: Cary Glickstein
Receiver's Initial Report

Date: February 3, 2016

STAFF RECOMMENDATION

Staff recommends that the Town Council receive and consider the attached Receiver's Initial Report relative to the Palm House (160 Royal Palm Way), prepared and filed in the Circuit Court of the 15th Judicial Circuit, in and for Palm Beach County, Florida, prepared by Mr. Cary Glickstein.

GENERAL INFORMATION

A myriad of troubles led the Court to appoint Mr. Cary Glickstein as the "Receiver" for the Palm House in July of 2015. In summary, the Receiver's scope of authority was to resolve the impasse with the Town over construction non-conformities in order to achieve project completion, and to facilitate the closing of any suitable investor or lender financing. As contained within the attached Report, the Receiver has performed extensive work to fully assess the project's history, current status, and future completion needs.

The Receiver's Project Comments, pages 9 -14, are particularly telling. Although he believes the project has highly desirable and unique attributes, he estimates that total costs to achieve completion may exceed \$100,000,000. Mr. Glickstein identifies the various elements of his cost estimate, noting that the project is plagued with self-inflicted and avoidable completion problems. He outlines his opinion that the various project parties have accused each other of misrepresentations, misappropriation, malfeasance, etc., leading him to believe that no bona fide capital source will seriously consider financing to complete the project unless and until there is a change in the ownership dynamics. Readers are cautioned to read the full report to understand the various factors and assumptions utilized by the Receiver.

A significant move forward was achieved on January 13, 2016, when the Town Council approved a revised site plan and special exception application, prepared by the Receiver, establishing a clear path forward for correcting and completing approved plans. His concern,

however, regarding the need to secure financing, is sobering. The project's future remains uncertain.

Although Town Attorney Randolph did not prepare or oversee the Receiver's Initial Report in any way, he has been provided a copy of the filing and will be present to answer any questions the Council may ask.

Attachment

cc: John C. Randolph, Town Attorney
Cary Glickstein, Property Receiver

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL
CIRCUIT, IN AND FOR PALM BEACH COUNTY,
FLORIDA.

CIVIL DIVISION

CASE NO. 502014CA014846XXXXMB AG

RYAN BLACK,

Plaintiff,

v.

GERRY MATTHEWS and PALM HOUSE, LLC,
a Delaware limited liability company,

Defendants.

_____/

PALM HOUSE, LLC, a Delaware limited liability
company, and 160 ROYAL PALM, a Florida
corporation,

Defendant/Counter-Plaintiffs,

v.

RYAN BLACK,

Plaintiff/Counter-Defendant.

_____/

RECEIVER'S INITIAL REPORT

The Receiver, Cary Glickstein, files his Initial Receiver's Report ("Report") and states:

Introduction

1. In December 2014, Plaintiff, Ryan Black, a member and former managing member of Palm House, LLC, a Delaware limited liability company ("Palm House LLC") commenced this action seeking a corporate dissolution of Palm House LLC and, on February 10, 2015, filed a Verified Motion for Appointment of Receiver.

2. With the agreement of all parties, the Court granted the motion for appointment of a receiver and stayed litigation in this action.

3. On July 16, 2015, the Court entered an Amended Agreed Order on Plaintiff's Motion for Appointment of Receiver ("the Receivership Order").

4. Pursuant to the Receivership Order, Cary Glickstein was appointed as the Receiver for the partially constructed hotel condominium property owned by defendant/counterplaintiff, 160 Royal Palm, LLC, a Florida limited liability company (the "Owner") located at 160 Royal Palm Way Palm Beach, Florida (the Property or the 'Project').

5. Pursuant to the Receivership Order, the Receiver filed an Oath of Receiver which was filed with this Court on of July 22, 2015.

6. Pursuant to the Receivership Order, the Receiver filed an Initial Inventory for the Project on August 17, 2015.

7. This Report is based upon the Receiver's:

a. Inspections of the Property, including all hotel rooms, proposed amenity areas, common areas, lower level parking and equipment areas;

b. Interviews with involved principals and their legal counsel;

c. Interviews with Project subcontractors and suppliers;

d. Reviews of court pleadings, on-site records, including, without limitation, construction plans and specifications, interior specifications, and subcontractor documentation; and

e. Review of official records provided by the Town of Palm Beach (the "Town") relating to the Property.

8. This Report includes:

- I. Summary of Receiver's activities;
- II. Summary of Receiver's cash receipts and disbursements from July 16, 2015 (the date upon which the Palm House Operating Account was funded), to January 15, 2016;
- III. Receiver's comments.

I. Summary of Receiver's Activities

9. The Receiver's activities have included the following:

- a. Commencing prior to the Receiver's appointment, the Receiver conducted initial interviews with Robert Matthews, as agent for Gerry Matthews, on behalf of the Owner (as confirmed by legal counsel to the Owner), Ryan Black, on behalf of the Owner, Joseph Walsh, on behalf of Palm House Hotel, LLLP, a Florida limited liability partnership, as a creditor (collectively, the "Parties"), and the Parties' respective legal counsel;
- b. Initiated and/or coordinated, attended and participated in numerous and on-going meetings and discussions with representatives of the Parties, their counsel, and their agents, which have included on-site meetings to inspect the property, occasionally with agents of the Receiver, and for review of on-site construction plans and specifications to gain an understanding of development approvals, construction permits, construction status, construction means and methods, construction inspections, subcontractor/supplier information, including contracts, performance, and accounts payable, relationship of the Parties to development/construction process/status, and to secure all on-site records, both physical and electronic for the Project;
- c. Obtained possession of the Property and secured on-site assets, including all perimeter security fencing, re-keyed with a locksmith all front entry doors, and installed "No

Trespassing” signage at all access Project points. For cost savings purposes, securing the Property was limited to front and side access points. While there is a masonry wall along the rear of the Property impeding access from the rear, there remain several doors without glazing and locking devices that hinders complete perimeter security of the Property;

d. Notified all Parties, and their respective counsel, there would be no access to the Property of any kind without the Receiver’s consent and without the Receiver opening the entry doors for any site visit and re-locking the doors after on-site verification that no on-site assets had been moved or removed from the Property;

e. Attended or made the Property open and available for nineteen (19) on-site meetings with prospective investors/lenders coordinated by the Parties or their respective legal counsel, through the Receiver, for the purpose of touring and evaluating the Property for prospective investment or construction financing; and re-inspected and re-secured after all meetings;

f. Attended meetings with representatives of the Project’s electrical contractor of record (CEI, LLC) to better understand safety issues with current, in-place electrical improvements and to determine means, methods and costs to facilitate elimination of unsafe conditions; and thereafter retained CEI LLC to perform safety checks prior to electrical power restoration;

g. Participated in discussions with FP&L and the City of West Palm Beach (water supplier for the Town of Palm Beach) regarding substantial arrearages and required steps to restore electrical and water service to the Property, including discussions with the plumbing contractor of record and the Owner’s former construction manager, Nick Laudano, regarding improper water and electrical service connections. The Receiver determined and reported to the

Parties and/or their counsel that in place water meter connections appeared to be illegal because previously working water services for fire detection check valve(s) and fire sprinkler service meters had been improperly diverted to the general water service meter when the general water service was terminated for non-payment. Disconnection of water service to fire-suppression meters eliminates water service for fire detection valves or fire sprinkler services for the Property. Current arrearages for these three water meters are approximately \$46,000, which amount remains unpaid and is owed to the City of West Palm Beach;

h. Coordinated, attended and participated in numerous and on-going meetings and discussions with representatives of the Town of Palm Beach (the “Town”) Planning and Zoning Department, Building Department, and the Town’s attorneys regarding property conditions, pending litigation, development approvals, construction permits, notices of non-compliance, and Town protocols and procedural requirements for re-starting construction, completing construction and obtaining a certificate of occupancy for the Project;

i. Facilitated preparation of a narrative and photographic Initial Inventory of all primary interior and exterior areas of the improvements constructed on the Property and the vast, diverse, and largely disorganized personal property located throughout the improvements as is, where is, within the improvements, which was filed with the Court on August 17, 2015;

j. Retained design and land use professionals, David Miller, AIA, of David Miller and Associates, P.A. (architect), Robert Moore (former Town of Palm Beach chief building official), Broad and Cassel/Jacqueline Miller, Esq. (local and formerly-engaged legal counsel) and Wallace Surveying (surveyor) initially to identify and investigate, based on file data and Town staff walkthroughs of the Property, and ultimately develop, a proposed resolution for each of the fifteen (15) items the Town identified as nonconforming construction, forming the basis

for the Town's prosecution of code enforcement action against the Property. These efforts cumulated in a report entitled "Recommendations for Completion of the Palm House" that identified the items of nonconforming construction with recommendations, as to each item, for a resolution acceptable to the Town. Those initial efforts furnished by the above design and land use professionals were ultimately utilized and further developed to assist the Receiver in making application for, with the Court's approval, and ultimately obtaining required governmental approvals to recommence construction and complete the Project, based on the foregoing Recommendations for Completion of the Palm House, dated November 20, 2015 (the "Completion Recommendations");

k. Retained the services of general contracting company, McGowan Builders (a hotel-experienced general contracting company) to prepare a written construction hard costs estimate ("Construction Estimate") and construction completion schedule, based on the Completion Recommendations, to assist the Parties' efforts in sourcing investor/lender completion funding, all of which has been provided to the Parties or their counsel;

l. Participated in discussions with prospective investors/lenders regarding the status of the Project who were referred by the Parties or their respective legal counsel, including the only issuer of a confidential loan term sheet for completion financing, provided to the Receiver through Robert Matthews, that has since expired without additional interest from the prospective lender;

m. Worked with Town staff and Town attorney to obtain Town Council approval of temporary abatement of assessed and accruing (at two thousand dollars (\$2,000.00) per day) fines against the Property through January 15, 2016, as reflected in the Minutes of Regular Town Council Meeting of October 15, 2015, and attached hereto as **Exhibit A**;

n. Worked with the Town's attorneys and the Parties' respective legal counsel on a joint motion to remove from trial docket pending litigation between the Owner and Town regarding assessed and accruing fines that represented an obstacle for completion financing;

o. Facilitated preparation of a zoning application (the "Zoning Application") that was filed with the Court, executed by the Receiver and submitted to the Town, seeking approval to resume construction, which included a summary of Town approvals relating to the Property dating back to 1970, and detailed plans and explanation for fifteen (15) items described in the Completion Recommendations representing both: (i) non-approved and partially constructed improvements that would be removed, and (ii) other non-approved, circulation-related improvements that could remain in place;

p. Facilitated, through the Receiver's counsel, a motion and Court order, dated December 9, 2015, approving the Receiver's execution and prosecution of the Zoning Application;

q. Facilitated and attended Town Council meeting to obtain approval of the Zoning Application to resume construction, which was unanimously approved by the Town Counsel on January 13, 2016, and codified in the Development Order ("Development Order"), dated January 27, 2016, and attached hereto as **Exhibit B**; and

r. Facilitated with Town staff and Town attorney the proposed Third Amendment to the Declaration of Use Agreement, which the Receiver anticipates will be in the form or substantially similar in form to **Exhibit C**, attached hereto, which must be executed by the Owner or, with the Court's approval, by the Receiver, and which will memorialize all approved Project plans, including the changes set forth in the Development Order, and incorporate by reference all prior development approvals, including, building plans, landscape plans, civil

engineering plans, between the Town and the Owner establishing requirements for completing the Project and obtaining a Certificate of Occupancy from the Town.

II. Summary of Cash Receipts and Disbursements

10. Consistent with the Receivership Order, the Receiver has maintained a separate system of office records, and books and accounts specific to the Receivership to which the Parties, or their respective agents and other representatives, have had and continue to have reasonable access, including the Receiver's records, accounts and books, vouchers, files and all other materials pertaining to the Receiver's operation of the Property. All such records have been kept safe, available and separate from any records not having to do with the operation of the Property. Based on those records, the Receiver's cash receipts and disbursements from the commencement of the Receivership as of January 15, 2016, are set forth below:

Cash Receipts (as of 1/15/16):

	\$150,000.00 (07/24/2015)
	<u>75,000.00 (11/13/2015)</u>
Total Receipts:	\$225,000.00

Cash Disbursements (as of 1/15/16):

Advanced Insurance Underwriters:	\$ 5,743.81	(general liability insurance)
Broad and Cassel, P.A.:	13,054.81	(land-use attorney @\$450/hour)
Camilucci Signs:	1,007.00	(security signage)
Cary Glickstein:	81,495.00	(receiver fee @\$450/hour)
CEI LLC:	2,625.00	(electrical/safety repairs)
David Miller and Associates, P.A.:	22,174.19	(architect fees)
FP&L:	19,649.32	(arrearage and current billing)
Gregg H. Glickstein, P.A.:	13,980.00	(receiver's counsel @\$275/hour)
McGowan Builders:	32,715.00	(construction estimate)
Palm Beach Community Bank:	122.86	(bank fees)
Robert L. Moore Consulting:	1,125.00	(building official consultant)
Studio B2 Photography:	2,473.00	(inventory photography and report)
Town of Palm Beach:	4,500.00	(zoning application fee)
Wallace Surveying:	2,425.00	(zoning application survey)
Wilson-Rowan Locksmith Co.:	<u>319.59</u>	(re-key all front entry doors)
Total Disbursements:	\$203,409.58	

Palm House Operating Account

Balance (as of 1/15/16):	\$ 21,590.42
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III. Receiver's Project Comments

11. The Property has highly desirable and unique attributes. First, its location, within the Town of Palm Beach, with its domestic and international appeal and name recognition, is one of the most sought after locations and enjoys some of the highest property values in the world. The Property's address on Royal Palm Way, in close proximity to the ocean and marquee shopping, dining and recreation areas, is a highly desirable attribute to potential investors and lenders and end users, whether they are potential hotel patrons or condominium purchasers. Secondly, supply constraints resulting from a dearth of hotel-zoned properties within the Town, suitable for either re-development or new development opportunities, should provide long-term value support for the Project and underlying Property values, as well as price/value insulation from fickle demands of tourists and other end users that can adversely impact less desirable and exclusive locations. Consequently, whether as a hotel in a resort area with few hotels and the likelihood of fewer, if any, to be added to existing hotel room inventories, or as condominiums purchased for investment or primary/vacation residences, the Project should remain highly desirable to investors, lenders and end users/purchasers, alike. Thirdly, the Town is currently supportive of seeing the Project, as currently approved pursuant to the attached Development Order, completed as soon as possible and would, in the opinion of the Receiver, remain cooperative and supportive toward that objective, subject, perhaps, to different Property ownership dynamics.

12. The Receiver has over thirty (30) years experience in various areas of real estate development, construction, operations and sales, and is currently a member in good standing of The Florida Bar, a state-certified General Contractor, state-licensed Realtor, and principal owner of a long-standing real estate development, construction and sales company that has successfully

completed numerous construction and development projects of equal or greater scope and complexity than the Palm House Project, and, accordingly, such experience bears on the Receiver's opinions expressed herein.

13. While there were other related issues within the Receiver's scope of authority, the Receiver's pre-appointment understanding of the primary purpose for the Receivership was to: (i) resolve the impasse with the Town over construction non-conformities, in order to create clarity toward Project completion and issuance of a certificate of occupancy, to enable potential investors and lenders to underwrite the capital requirements of the Project; and (ii) facilitate the closing of any suitable investor or lender financing to be sourced by/among the Parties.

14. With respect to those objectives, the Receiver spent substantial time conducting on-site, self-examination of construction conditions, interviews with the Parties' representatives familiar with the Property, discussions with current and former Town staff familiar with the Property, conducting on-site and telephone interviews with project subcontractors and suppliers, conducted on-site meetings with construction and design professionals, and participated in discussions with potential investors/lenders, sourced by and through the Parties or their respective attorneys, or the Receiver.

15. As noted above, the Receiver's Project analysis included a review of prior approvals dating back to 1970. Until 2012, the hotel had a successful operating history as a complimentary, in-town, family-owned and operated hotel, insofar as to the Town's records reflect, and appeared to be in full compliance with all Town Ordinances.

16. Based on the Receiver's investigation of the Project prior to and after the Receiver's appointment, and based upon documents provided by the Town's staff and its attorneys, in or about July 2012 the Town of Palm Beach advised the Owner that it had made "unauthorized

structural changes” to the Project during construction and that these changes were “in significant non-compliance with the conditions of the Declaration of Use Agreement dated July 30, 2007” (letter from John Page, Town Director of Planning and Zoning, to Maura Ziska, Esq., dated July 10, 2012, and attached hereto as **Exhibit D**).

17. Approximately one year later, the Town began imposing a two thousand dollar (\$2,000) per day fine against the Property (memorandum from John Page of July 29, 2015, attached hereto as **Exhibit E**).

18. Prior to the Receiver’s appointment, it was the Receiver’s understanding that the Parties agreed to the Receiver’s appointment for the Property because pending litigation among the Parties (and others) relating to the Project and/or its principals inhibited prospective new or additional financing to complete the Project. This belief by the Parties is consistent with the Receiver’s pre-appointment and post-appointment experience regarding the Project.

19. Based on the Receiver’s involvement in the preparation of the Initial Inventory, the process of developing the Completion Recommendations and preparation of the Zoning Application, in the Receiver’s opinion, the extent (quantity and materiality) of the known construction deviations from the approved development plans and building permits for the Project is distressing. It is the Receiver’s further opinion that such nonconforming construction, and the resulting fines imposed by the Town, will remain a focal point of the Receiver’s post-appointment duties and an intractable obstacle to securing required completion financing to complete the Project.

20. The Receiver estimates total costs to complete the Project may exceed \$100,000,000.00, which estimate is based on myriad assumptions and conditions, and is comprised of the following components:

a. Approximately \$29,000,000.00 in alleged senior purchase-money mortgage debt and an alleged \$36,000,000.00 in subordinate construction debt encumbering the Property;

b. Approximately \$15,000,000.00 in construction hard costs, based on McGowan Builders' construction estimate;

c. An approximate range of \$5,000,000.00 - \$8,000,000.00 for furniture, fixtures and equipment (FF&E); an approximate range of \$1,000,000.00 - \$2,000,000.00 for operation, supplies and equipment (OS&E); and approximately \$2,000,000.00 for soft costs, pre-opening, and working capital costs based on: (i) Project completion as "a first-class, 5-star, condominium-hotel," as set forth in the Receivership Order, (ii) the finish specifications/information prepared by Gordon Campbell Grey and Hersh Bender Associates for the Project (which may or may not be complete or accurate), and (iii) information provided by HVS, an internationally recognized hotel consultant, in its HVS Hotel Development Cost Survey 2014/2015. The Receiver notes a "5-star" ranking category, which is based upon operation, function, service and the constructed environment, is exceptionally difficult to achieve, evidenced by the fact there are only three "5-star" ranked hotels in Palm Beach County;

d. Approximately \$10,000,000.00 for finance costs, based on an estimated blended interest rate of 10% per annum (lower rate on re-financing and higher rate on completion funding), subject to actual loan amount, interest rate, closing costs, term and duration; and

e. Approximately \$4,500,000.00 for yet-to-be determined amounts required to satisfy or otherwise discharge preexisting *bona fide* subcontractor, trade, and supplier payables, which consist of, in the Receiver's opinion, in declining order in confidence level: (i)

approximately \$1,060,000.00 for alleged claims of lien and alleged unpaid invoices for in-place work, materials, and/or services provided; (ii) approximately \$400,000.00 for alleged special-ordered flooring materials stored with supplier; and (iii) approximately \$3,060,000.00 for project management/contractor fees, none of which have been legally verified, nor is there any verification of other possible contractor-related claims.

21. In over thirty years of various real estate development and construction experiences covering a wide spectrum of disciplines, asset classes and operations, the Receiver has not been involved with a project with more significant self-inflicted and avoidable (as distinguished from unforeseen and/or unavoidable) project completion problems. Those problems and the resulting fines imposed by the Town, coupled with substantial, perhaps crippling debt allegedly encumbering the Property, each of which or any combination of which present considerable obstacles toward Project completion.

22. Attempting to view the Project as a prospective financing source and without passing judgment, it is also the Receiver's opinion that given the business relationship between and among the various Parties, which are matters of public record, including without limitation, accusations of misrepresentations, misappropriation, malfeasance, and other claims of misconduct, as variously alleged in pending litigation, no *bona fide* capital source will seriously consider, much less provide, financing required for completion of the Project. In the Receiver's view, such financing will not become available for completion of the Project unless and until there is a change in the ownership dynamics of the Property. This Receivership is for the Property, not the Property Owner.

23. The Receiver has not engaged any consultants or property appraisers to assess current or future valuations of the Property or to produce market or feasibility studies (as a

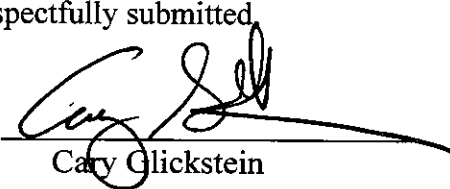
completed, operating hotel, hotel-condominium or condominium asset). Accordingly, the Receiver expresses no opinion regarding valuation or economic viability of the Property/Project upon its completion.

23. The Receiver has accomplished as much as the Receiver for the Project can reasonably expect to achieve to date relative to securing the Property, rendering the Property reasonably safe from previous unauthorized and improper improvements, and creating clarity with, and support from, the Town for resuming construction for the Project and what will be required to obtain a certificate of occupancy, as provided in the Receivership Order and Development Order.

24. Obtaining funding to complete the Project is not the Receiver's responsibility under the Receivership Order. However, obtaining such funding is essential to the continued viability of the Receivership. Until there is financing or, at least, a willingness or dialog and process to affect lender-acceptable changes within the Property's ownership entity to allow for a credible financing opportunity, the Receiver does not envision how the Project progresses without further physical and credibility deterioration. With such changes, and without opining on the Project's value and/or viability upon completion, the Project could reclaim its potential for successfully monetizing all the attributes the Property possesses. Without such changes, there may be less reason to continue the Receivership, which, in any event, will require additional funding than what remains in the Palm House Operating Account as of the date of this Report to continue.

Respectfully submitted,

By:

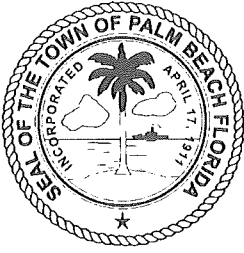

Cary Glickstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was emailed to Alan M. Burger, Esq., McDonald Hopkins LLC, 505 S. Flagler Drive, Suite 300, West Palm Beach, FL 33401; aburger@mcdonaldhopkins.com; mrose@mcdonaldhopkins.com; C. Brooks Ricca, Jr., Esq., C. Brooks Ricca, Jr. & Associates, P.A., The Barristers Building, Suite 200, 1615 Forum Place, West Palm Beach, FL 33401; bricca@riccalawyers.com; lkendrick@riccalawyers.com; Adam T. Rabin, Esq., Phoebe J. Eckstein, Esq. McCabe Rabin, P.A., 1601 Forum Place, Suite 505, West Palm Beach, FL 33401; arabin@mccaberabin.com; peckstein@mccaberabin.com; e-filing@mccaberabin.com; Alexander L. Domb, Esq., Alexander L. Domb, P.A., 11190 Polo Club Road, Suite I, Wellington, FL 33414; alec@adllaw.org; michelle@aldlaw.org; and Henry B. Handler, Esq., Weiss, Handler & Cornwell, P.A., One Boca Place, Suite 218-A, 2255 Glades Road, Boca Raton, FL 33431; hbh@weissandhandlerpa.com on February 1, 2016.

GREGG H. GLICKSTEIN, P.A.
54 S.W. Boca Raton Boulevard
Boca Raton, Florida 33432
Telephone: (561) 361-9600
Facsimile: (561) 361-9770
Email: ghgpa@bellsouth.net

By: /s/Gregg H. Glickstein
Gregg H. Glickstein, Esquire
Florida Bar No.: 444250



TOWN OF PALM BEACH

Office of the Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON TUESDAY, OCTOBER 13, 2015

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Tuesday, October 13, 2015, at 9:32 a.m., in the Town Council Chambers. On roll call, all of the elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Owens gave the invocation. Council President Pucillo led the Pledge of Allegiance.

III. PRESENTATIONS

A. 2016 Election Update *Susan Bucher, Palm Beach County Supervisor of Elections*

Susan Bucher spoke regarding her office's ability to conduct the 2016 Town of Palm Beach election in light of the Presidential Preference Primary.

Discussion ensued regarding purchasing additional equipment to conduct a February election, the County Supervisor of Election's (SOE) responsibilities regarding municipal elections, the undergrounding referendum, ballot deadlines, election costs, not being able to find anyone to tabulate the Town's ballot results, the SOE providing voting booths, changes to terms of office, the SOE providing manual tabulators, liability and litigation potential, other county SOEs running multiple elections, and having the SOE work with the Town to contain costs.

B. Planning and Zoning Commission Presentations by Applicants

The following applicants provided presentations to the Town Council:

Michael L. Ainslie
Peter Broberg
Alan S. Golboro
Bruce M. Langmaid

EXHIBIT

A

Les Evans, 135 Seminole Ave., spoke regarding the assessment area boundaries, how the property owners would be billed, and piggybacking onto this Project.

Motion was made by Council Member Moore, and seconded by Council Member Townsend, to amend the assessment process to include maintenance costs. On roll call, the motion carried unanimously.

B. New Business

1. Consideration of Abatement of Daily Fee Accruing under Declaration of Use Agreement in Light of Receivership; Palm House Hotel; 160 Royal Palm, LLC v. Town of Palm Beach, Case No.: 502012CA023613 XXXXMB AA (15th Judicial Circuit in and for Palm Beach County)

TIME CERTAIN: 11:00 AM

John C. Randolph, Town Attorney and Cary Glickstein, Receiver

Cary Glickstein, Receiver for the Palm House, provided a summary of the receivership and what the fall out would be if the Project is not completed.

Attorney Joanne O'Connor provided additional information regarding the litigation.

Alec Dom, representing the mortgage holder KKPFB Financial, provided further information regarding the history of the Project and advocated for an abatement of the daily fee accruing.

Discussion ensued regarding abating the fee temporarily, concerns regarding ownership of the property, the lack of honesty regarding the project for the last five years, the fees being the result of a broken contractual arrangement, negotiating abatement of the fees for a stay, how long the abatement should be, having the Receiver at tomorrow's court hearing and in support of a stay, and other entities fines continuing to run.

Motion was made by Council President Pro Tem Kleid to approve a four month abatement of the daily fee accruing, effective October 14, 2015. Motion died for lack of a second.

Motion was made by Council President Pro Tem Kleid, seconded by Council President Pucillo, to approve a 90 day abatement of the daily fee accruing, effective October 14, 2015. On roll call, the motion passed unanimously.

2. Coastal Update

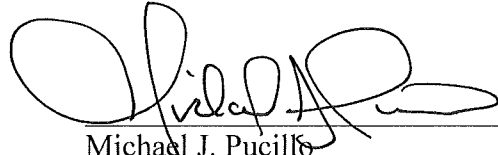
- a. Shoreline Condition Update

1 **XIV. ANY OTHER MATTERS** – None

2
3 **XV. ADJOURNMENT**

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5 There being no further business, the October 13, 2015, regular Town Council meeting
6 was adjourned at 4:52 p.m.
7

8
9 APPROVED:

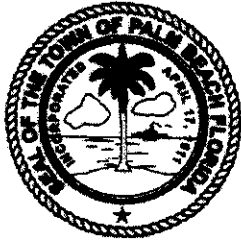
10
11 
12
13 Michael J. Pucillo
14 Town Council President
15
16

17 ATTEST:

18
19 
20
21 Susan A. Owens, MPA, MMC
22 Town Clerk
23

24 11/10/15
25 Date





TOWN OF PALM BEACH

Planning, Zoning & Building Department

January 27, 2016

Ms. Jacqueline S. Miller, Esq.
Broad and Cassel
One North Clematis Street
Suite 500
West Palm Beach, FL 33401

Subject: Site Plan Review #1-2016 with Special Exception, 160 Royal Palm Way

Dear Ms. Miller:

The Town Council, at its January 13, 2016 meeting, conditionally approved the above referenced application. The approval identifies removal of unauthorized improvements as identified below and modifies the previously approved site plan to comport with previous approvals with exception of minor changes to improve service areas and access to those areas via stairs and elevators. The site plan modifications that were approved are as follows:

- Completion of partially constructed stair and elevator from basement to second floor dining area (not the third floor as stated in the application) on North side of the hotel building and construction of new access stairs from the basement kitchen area to the first floor lobby dining room.
- Construct new stairs, elevator and dining area on the second floor dining room.
- Construct redesigned mezzanine dining room stairs.

The following unauthorized changes are required to be restored as follows:

- Demolish partially constructed elevator extension to roof top above second floor dining room and lobby area to the "Sunset" deck.
- Complete construction of Function Room and pool area consistent with plans previously approved by the Town.
- Demolish partially constructed bathrooms on west side of Function Room and complete construction in area immediately adjacent to the southeast corner of the Function Room per plans previously approved by the Town.
- Demolish partially constructed walkway, stairs and elevator access to roof above Function Room;
- Demolish approximately 1,140 square feet of office space in area and restore as previously approved service corridor and laundry space.
- Demolish partially constructed enclosures of portions of the basement garage on both east and west side of the Property and restore 5 required off street parking spaces.
- Restore guest room area on third floor which was converted to private dining overlooking the second floor dining room.

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480
Telephone: (561)838-5430 • Facsimile (561)835-4621
E-Mail: pzbt@townofpalmbeach.com • Website: www.townofpalmbeach.com



Recycled Paper

EXHIBIT

B

exhibitsticker.com

- Demolish partially constructed wall in sub-basement parking area which was built to expand the sub-basement Function Room kitchen and restore the required parking.
- Construct opening on the east side of the Function Room wall which was going to be an unauthorized stage.
- Remove infill framing at exterior walkways on east elevation (installed subsequent to staff's identification of non-approved construction).
- 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.
- There will be no reduction of condo-hotel units. The condo-hotel units remain at 79 units.

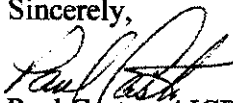
Please be advised that there are no modifications to previous conditions of approval identified in the Declaration of Use Agreements for the subject property. All conditions of approval in the previous Declaration of Use Agreement, as amended, remain in effect. A modification to the previous Agreement is required as a condition of approval in order to reference the approved floor plans and elevations in this application as well as the previously approved landscape plans and paving and drainage plans. In addition, the contact person in the Agreement for the property owner needs to be updated as part of the amendment. Please provide a draft of the proposed Amendment (Third Amendment to the Declaration of Use Agreement) for our review. Building permit revisions cannot be issued until this document has been executed by all parties, recorded, and a certified copy provided to the Town.

The conditional approval is identified on sheet drawings CS-1, SP-1, SP-2, A-1.0 through A-9.0, A-10.1 and A-10.2, stamp dated December 7, 2015, prepared by David Miller & Associates, P.A., and made part of the approval of the application.

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

If you have any question, please contact me at 227-6406.

Sincerely,

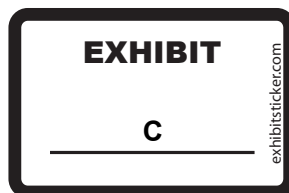

Paul Castro, AICP
Zoning Administrator

cc: John S. Page, Director, Planning, Zoning & Building
Veronica B. Close, Asst. Director, Planning, Zoning & Building
Bill Bucklew, Building Official
John Lindgren, Planning Administrator
Cary Glickstein, Receiver
John C. Randolph, Town Attorney
zf & pf

Prepared by and return to:
Jacqueline S. Miller, Esquire
Broad and Cassel
One North Clematis Street, Suite 500
West Palm Beach, FL 33401
(561) 832-3300

THIRD AMENDMENT TO DECLARATION OF USE AGREEMENT
by
THE TOWN OF PALM BEACH
and
160 ROYAL PALM

Dated _____, 2016



THIRD AMENDMENT OF DECLARATION OF USE AGREEMENT

THIS THIRD AMENDMENT TO DECLARATION OF USE AGREEMENT ("Amendment") is made and entered into this ____ day of ____, 2016 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter the "Town"); and Cary Glickstein as Receiver for 160 Royal Palm Way, West Palm Beach, Florida 33480 (hereinafter the "Receiver"), which terms "Town" and "Receiver" will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

W I T N E S S E T H:

WHEREAS, the Town and 160 ROYAL PALM LLC, formerly known as ROYAL 160, LLC, (hereinafter the "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 (hereafter 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 Town Council on January 9, 2013 granted approval of Site Plan Review #3-2013 with Special Exception and Variances which amended Site Plan Review No. 2-2007 with Special Exception and Variances and Site Plan Review #6-2012 with Special Exception and Variance;

WHEREAS, on January 13, 2016, the Town Council granted the Receiver approval of Site Plan # 1-2016 with Special Exception;

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

WHEREAS, the Town made specific findings that the Receiver, or the applicant, met all applicable provisions of the Town Code governing site plan review and special exceptions;

WHEREAS, in approving the Site Plan Review #1-2016 with Special Exceptions, 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 Site Plan 1-2016 with Special Exception 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 Receiver as 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 [***]**

Receiver 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, nor the consummation of the transactions contemplated hereby will violate any restriction, court order or agreement to which Receiver 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 Exception and Variances, as amended and approved by the Town Council

on July 11, 2012 and August 15, 2012, and as amended by Site Plan Review # 3-2013 with Special Exception and Variance, as amended and approved by the Town Council on January 9, 2013, and as amended by Site Plan Review 1-2016 with Special Exception (hereinafter collectively referred to as the "Approvals"). The Town's approval of the Site Plan # 1-2016 with Special Exception 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 # 2016 with Special Exceptions and are required to be met as conditions of the continued operation of the Hotel.

- Demolish partially constructed elevator extension to roof top above second floor dining room and lobby area to the "Sunset" deck.
- Complete construction of Function Room and pool area consistent with plans previously approved by the Town.
- Demolish partially constructed bathrooms on west side of Function Room and complete construction in area immediately adjacent to the southeast corner of the Function Room per plans previously approved by the Town.
- Demolish partially constructed walkway, stairs and elevator access to roof above Function Room;
- Demolish approximately 1,140 square feet of office space in area and restore as previously approved service corridor and laundry space.
- Demolish partially constructed enclosures of portions of the basement garage on both east and west side of the Property and restore 5 required off street parking spaces.
- Restore guest room area on third floor which was converted to private dining over-looking the second floor dining room.
- Demolish partially constructed wall in sub-basement parking area which was built to expand the sub-basement Function Room kitchen and restore the required parking.
- Construct opening on the east side of the Function Room wall which was going to be an unauthorized stage.
- Remove infill framing at exterior walkways on east elevation (installed subsequent to staff's identification of non-approved construction.)
- 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.
- There will be no reduction of condo-hotel units. The condo-hotel units remain at 70 units.

There are no modifications to previous conditions of approval identified in the Declaration of Use Agreements for the subject property. All conditions of approval in the previous Declaration of Use Agreement, as amended, remain in effect. Previously approved plans for landscaping and drainage remain in place.

ARTICLE V
PROVISIONS FOR NOTICE

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

To the Town Manager:

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

To the Receiver:

Cary Glickstein as Receiver
for 160 Royal Palm Way
1118 Waterway Lane
Delray Beach, FL 33483

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 Receiver **[OR 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 and Amendment to the Agreement as record in Official Records Book 25694, Page 633, and Second Amendment to the Agreement as recorded in official Records Books 26251, Page 0078 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 Official Records Book 25694, Page 633, of the Public Records of the Palm Beach County, and Official Records Book 26251, Page 0078, remain in full force and effect.

ARTICLE X

MISCELLANEOUS

Wherever the word "laws" appears in this Amendment, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities. The Agreement and 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 the Agreement and this Amendment and to exhibits attached hereto, which exhibits are by this reference made a part hereof. This Amendment shall be binding upon the parties hereto and upon their successors, assigns, heirs and personal representatives. In the event of the invalidity of any provision of this Amendment, same shall be deemed stricken herefrom and this Amendment shall continue in full force and effect as if such invalid provision were never a part hereof. This Amendment 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 written.

Signed, sealed and delivered
in the presence of:

TOWN OF PALM BEACH,

By: _____
Gail Coniglio

By: _____
Michael Pucillo
Town Council

By: _____
Peter Elwell
Town Manager

By: _____
Carry Glickstein,
as Receiver for 160 Royal Palm Way,
and not individually

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this day of __ day of _____, 2016, by Gail Coniglo, the 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.

Signature of Notary Public

Printed Name of Notary Public

Commission No.: _____

Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this day of __ day of _____, 2016, by Michael Pucillo, the President 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.

Signature of Notary Public

Printed Name of Notary Public

Commission No.: _____

Commission Expires: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this day of ____ day of ____, 2016, by Peter B. 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.

Signature of Notary Public

Printed Name of Notary Public

Commission No.: _____

Commission Expires: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this day of ____ day of ____, 2016, by Cary Glickstein, as Receiver of 160 Royal Palm Way. He is personally known to me or has produced _____ as identification.

Signature of Notary Public

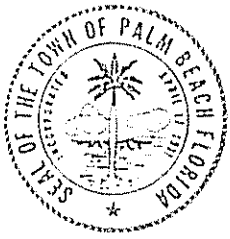
Printed Name of Notary Public

Commission No.: _____

Commission Expires: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
TOWN OF PALM BEACH

By: _____



TOWN OF PALM BEACH

Planning, Zoning & Building Department

July 10, 2012

VIA US MAIL AND EMAIL: mziska@floridawills.com

Maura Ziska, Esquire
Kochman & Ziska, PLC
222 Lakeview Avenue
Suite 1500
West Palm Beach, Florida 33401

RE: 160 Royal Palm LLC -- 160 Royal Palm Way, Palm Beach
("Palm House Project")

Dear Maura:

This is in response to your email of today's date notifying the Town of your client's intent to rely upon House Bill 503 as a basis for a two year extension to complete the hotel.

Well prior to today's date, you and your client were advised that unauthorized structural changes had been made at the hotel, which changes were in significant non-compliance with the conditions of the Declaration of Use Agreement dated July 30, 2007. Indeed, the Town initiated formal enforcement proceedings by requiring that your client comply with said conditions which require that any changes from the approved plans be approved by Town Council. In recognition of your client's non-compliance, in making unauthorized changes, you have moved forward with applications to ARCOM and the Town Council to request approval of said changes. Unless and until these changes are authorized by Town Council, your client remains in significant non-compliance with the Declaration of Use Agreement.

On the basis of the above, the Town does not recognize the extension you have addressed in your email of today's date and your client will be required to complete improvements on the date indicated in the Declaration of Use Agreement.

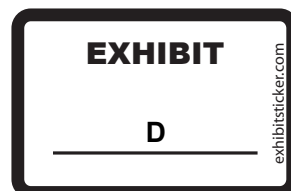
Please ask your client to govern itself accordingly.

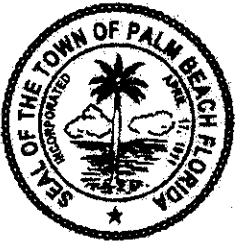
Sincerely,

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

JSP:cmd

cc: John C. Randolph, Town Attorney
pf





TOWN OF PALM BEACH

MEMORANDUM

TO: File

FROM: John Page *JP*

DATE: July 29, 2015

RE: Palm House: 160 Royal Palm Way

On or about July 30, 2007, the Town entered into a Declaration of Use Agreement with 160 Royal Palm, LLC to govern 160 Royal Palm's construction of a hotel at 160 Royal Palm Way in the Town ("the Hotel"). As thereafter amended on November 5, 2012, the Declaration of Use Agreement required 160 Royal Palm to complete construction of the Hotel by February 14, 2013.

The Remedies section of the Declaration of Use Agreement provides that upon determination by the Director of the Town's Planning, Zoning & Building Department that a violation exists and upon written notice, 160 Royal Palm shall pay a liquidated damage of \$2,000 per day for each day that a violation exists. 160 Royal Palm failed to complete construction of the Hotel by February 14, 2013. After determining that the failure to timely complete construction constituted a violation, I provided 160 Royal Palm written notice of the violation and the accrual of the \$2,000 per day fine on February 22, 2013.

Construction of the Hotel has to date not been completed and the fines under the Declaration of Use Agreements remain unpaid in full and continue. As of July 31, 2015, the fine is \$1,794,000, calculated by counting the number of calendar days that have elapsed beginning February 15, 2013 to July 31, 2015.

CLERK'S CERTIFICATE

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

I, Susan Owens, HEREBY CERTIFY THAT I am the duly qualified and acting Clerk of the Town of Palm Beach, Florida; that the above and foregoing is a true and correct copy of a Document the original of which is on file in the Office of the Town Clerk of the Town of Palm Beach, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Town, this 29 day of July A.D. 2015

TOWN SEAL

Susan A. Owens
SUSAN OWENS
TOWN CLERK

EXHIBIT

E

exhibitsticker.com