

TOWN OF PALM BEACH

Town Manager's Office

TENTATIVE -
SUBJECT TO
REVISION

TOWN COUNCIL MEETING

TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD

AGENDA

WEDNESDAY, JANUARY 9, 2013

9:30 AM

For information regarding procedures for monitoring or participating in Town Council Meetings, please refer to the end of this agenda.

I. CALL TO ORDER AND ROLL CALL

Mayor Gail L. Coniglio
David A. Rosow, President
Robert N. Wildrick, President Pro Tem
William J. Diamond
Richard M. Kleid
Michael J. Pucillo

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. COMMENTS OF MAYOR GAIL L. CONIGLIO

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

V. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE

(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

VI. APPROVAL OF AGENDA

VII. PUBLIC HEARINGS

- A. RESOLUTION NO. 4-2013 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 159 Australian Avenue Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach. [John Page, Director of Planning, Zoning and Building]

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VIII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions & Waivers

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. **VARIANCE #31-2012** The application of Fred Latsko; relative to property commonly known as **320 Polmer Park Road**; described as Lot 8 of POLMER PARK, according to the Plat thereof, as recorded in Plat Book 27, Page 53 of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a variance to build a one-story accessory pool cabana containing 520 sq. ft. which will result in a lot coverage of 35.98% in lieu of 32.67% existing and 30% maximum allowed. The proposed pool cabana would also result in a landscaped open area of 34.66% in lieu of 37.98% existing and 45% minimum required.
[Attorney: M. Timothy Hanlon]
[ARCOM Recommendation: Motion to recommend approval of the variance failed 3-2 as there were not enough members present to obtain the four affirmative votes necessary.]
Deferred from the December 12, 2012, Town Council Meeting.

2. New Business

- a. **MODIFIED VARIANCE #30-2012** The application of James D. Berwind; relative to property commonly known as **320 Island Road**; described as Lot 1 and Lot 2 and the East 15 feet of Lot 3, ISLAND ROAD DEVELOPMENT ADDITION to the Town of Palm Beach, according to the Plat thereof, as recorded in Plat Book 18, Page 35 of the Public Records of Palm Beach County, Florida; located in the R-A Zoning District. The applicant is requesting variances to have a swimming pool 4.25 feet from the mean high water line in lieu of the 10 foot minimum required, and, to have a portion of the front wall at a height of 8 feet in lieu of the 6 foot maximum allowed.
[Attorney: Maura A. Ziska]
- b. **SPECIAL EXCEPTION #1-2013 WITH SITE PLAN REVIEW** The application of JP Morgan Chase Bank NA; relative to property commonly known as **411 South County Road**; described as Lengthy legal description on file; located in the C-TS/C-WA Zoning Districts. The applicant is requesting site plan approval for an automatic teller machine to be installed in the existing drive-in service facility, modification of a portion of the remote teller building for the purpose of adding to and modifying the existing pneumatic tube equipment and relocating and adding safety bollards. The proposal would eliminate the windows, teller drawer and awning from the remote teller building. The building will not be used for bank employees. Services will be provided to drive-up teller customers by employees inside the main bank building via audio/video connections. A special exception is requested to modify the previous approval of the drive-in service facility in the C-WA zoning district for the purpose of adding an automatic teller machine.
[Attorney: Noreen S. Dreyer]
- c. **SPECIAL EXCEPTION #2-2013 WITH VARIANCES** The application of Rami Yoram Weisfisch and Pnina Apolonia Weisfisch; relative to property commonly known as **280 North Ocean Blvd.**; described as The North 65 feet of Lots 37 and 37A, the South 65 feet of Lots 36 and 36A, except that part of Lot 36 lying West of the line projected due North with East line of Lot 38, ADAMS ADDITION TO THE TOWN OF PALM BEACH, according to the Plat thereof, as recorded in Plat Book 7, Page 68, Public

Records of Palm Beach County, Florida; located in the R-B/B-A Zoning District. The applicant is requesting a special exception to construct a 323.9 square foot beach cabana on property across the street from the main residence, which is in the R-B Zoning District. Variances are requested to construct a beach cabana and swimming pool with an 8.08 foot west side yard setback in lieu of the 10 foot minimum setback required; to construct a 422.5 square foot loggia addition to the west side of the house that will have a 9.94 foot side yard setback from the property line in lieu of the 15 foot setback required; to construct two (2) loggia additions totaling 609 square feet (MOL) that will increase the cubic content ratio to 4.37 in lieu of the 4.32 existing and 3.76 maximum allowed. [Attorney: Maura A. Ziska]

[Landmarks Preservation Commission Recommendation: Implementation of the variance will not cause negative architectural impact to the subject property. Carried 6-0.]

- d. **SPECIAL EXCEPTION #4-2013 WITH SITE PLAN REVIEW MODIFICATION** The application of Bethesda-By-The-Sea Episcopal Church; relative to property commonly known as **141 South County Road**; described as PENDLETON TR E G LTS 1 THRU 8; located in the R-B Zoning District. The applicant is requesting to modify a special exception use and site plan approval to enclose an existing “tea house” in the center of the property and add an ADA approved access ramp. [Attorney: Maura A. Ziska]
- e. **VARIANCE #1-2013** The application of Lisa Hedley (contract purchaser); relative to property commonly known as **173 E. Inlet Dr.**; described as Lot 23 SEA ISLE ESTATES, according to the Plat thereof as recorded in the Plat Book 25, Page 89, Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a variance to allow the proposed swimming pool with a front yard setback of 12.5 feet in lieu of the 25 foot minimum required. [Attorney: Maura A. Ziska]
- f. **VARIANCE #2-2013** The application of 700 North Lake LLC, James Goldrick, Manager; relative to property commonly known as **324 Cherry Lane**; described as Lot 11, CHERRY LANE, according to the Plat thereof as recorded in the Plat Book 23, Page 75, Public Records of

Palm Beach County, Florida, except that part of Lot 11 described as follows: Beginning at a point in the S line of Lot 11, 40 ft westerly from the SE corner of Lot 11, thence E 40 ft to the SE corner of Lot 11, thence run N 80 ft to a point in the E line of Lot 11, thence run Westerly at right angles from the E line of Lot 11 to a point 16 ft from said East line of Lot 11, then run Southwesterly to a point and the place of beginning; located in the R-B Zoning District. The applicant is requesting a variance to allow accessory structures (perimeter fence, site lighting, gates and associated operating equipment) to be built on a parcel of land that has no principal residence as required by Code. [Attorney: Maura A. Ziska]

- g. **VARIANCE #3-2013** The application of Gregory S. Kino, Esq.; relative to property commonly known as **400 Arabian Road**; described as Lot C and a portion of Lot D, LAKE FRONT ADDITION TO BOCA RATONE COMPANY'S INLET SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 18, Page 5, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a variance to allow the installation of four triple-pile dolphin piles associated with an existing dock that will be 49 feet from the bulkhead in lieu of the 6 foot maximum allowed. [Attorney: Gregory S. Kino]

- h. **VARIANCE #4-2013** The application of Virginia L. Mortara; relative to property commonly known as **319 El Vedado Road**; described as Lot 52 and the West 25 feet of Lot 53, REVISED PLAT OF JUNGLE POINT ADDITION TO THE TOWN OF PALM BEACH, according to the plat thereof as recorded in Plat Book 18, Page 21, of the Public Records of Palm Beach County, Florida; located in the R-A Zoning District. The applicant is requesting variances to allow construction of a 30 foot by 6 foot marginal dock located 10 feet from the West side yard property line in lieu of the 25 foot minimum set back required; to allow a 30 foot by 6 foot marginal dock located 10 feet from the Northern neighbor's South side property line in lieu of the 25 foot minimum set back required; to allow a vessel to be docked at the proposed dock, which vessel would extend beyond the Applicant's North neighbor's side property line, but not the Applicant's side property line. [Attorney: M. Daniel Logan]

- i. **VARIANCE #5-2013** The application of 101 Indian Road, LLC, Robert G. Fessler, Manager/Member; relative to property commonly known as **101 Indian Road**; described as Lengthy legal description in file; located in the R-A Zoning District. The proposal is to build a new, two story house with the following variances being requested: to allow the south side yard setback for the proposed residence to be 15 feet in lieu of the 30 foot minimum required for lots in excess of 60,000 square feet; to allow a north side yard setback for the proposed residence to be 25.67 feet in lieu of the 30 foot minimum required; to allow the proposed residence to be 25 feet from the Town Bulkhead Line in lieu of the 51.6 foot minimum required when calculating the average of the houses to the north and south's setback from the Town Bulkhead Line; to allow the overall building height to be 52.33 feet NGVD in lieu of the 48.39 maximum allowed when comparing the heights of the houses to the north and south.

[Attorney: Maura A. Ziska]

[ARCOM Recommendation: ARCOM motion to recommend approval of the variance failed 3-2 as there were not enough members present to obtain the four affirmative votes necessary.]

Request for Deferral to the February 13, 2013, Town Council Meeting, Per Letter Dated December 26, 2012, from Maura A. Ziska.

- j. **VARIANCE #6-2013** The application of Allan W. Kauffman and Susan M. Kauffman; relative to property commonly known as **159 Australian Avenue**; described as Lot 41 and the West one-half (w ½) of Lot 42, Block H, REVISED MAP OF ROYAL PARK ADDITION TO PALM BEACH, according to the Plat thereof as recorded in the Plat Book 4, Page 1, Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting variances to demolish a non-conforming two story garage and rebuild a slightly larger garage in the same location. The plan also includes a proposed loggia/covered walkway to connect the garage to the main house. There is also proposed to be two additions to the main house to expand the master bedroom on the 1st floor and guest bedroom on the 2nd floor. The proposed additions would require the following variances to be requested: a west side yard setback of 4.4 feet in lieu of the 15 foot minimum required and 4.4 feet existing; a rear yard setback of 4.25 feet in lieu of the 15 foot minimum required

and 2.2 feet existing; to allow a loggia addition with a cubic content ratio of 4.3 in lieu of the 4.0 maximum allowed and the 3.67 existing. A variance is being requested to allow four (4) air conditioning units in the rear yard in lieu of the maximum of two allowed and to modify a previously approved variance for a carport to replace it with a new, larger carport with the same 8.79 foot setback in lieu of 12.5 foot minimum required and a pitched roof instead of the existing flat roof carport. The new roof would add 3 feet of height in the setback. [Attorney: Maura A. Ziska]
[Landmarks Preservation Commission Recommendation: Implementation of the proposed variance will not cause negative architectural impact to the subject property. Carried 7-0.]

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- k. **SITE PLAN REVIEW #1-2013** The application of James M. Crowley, Esq. or John W. Little, III, Esq. on behalf of Sterling Palm Beach LLC; relative to property commonly known as **340 Royal Poinciana Way**; described as Lengthy legal description on file; located in the C-PC Zoning District. The applicant is requesting a site plan review modification to the Royal Poinciana Plaza parking lot due to the realignment of the new Flagler Memorial Bridge. The Florida Department of Transportation has condemned 8,388 square feet of the Plaza's property for the realignment. The request is to restripe the Plaza, specifically the remaining portion of the northwest side of the property, to capture as many off-street parking spaces as possible of those which were lost. The redesign will result in 208 parking spaces in the northwest portion of the Royal Poinciana Plaza.
[Attorneys: James M. Crowley, John W. Little]
TIME CERTAIN: 2 PM

- l. **SITE PLAN REVIEW #2-2013 WITH VARIANCE**
The application of John D. Corey; relative to property commonly known as **327 Barton Avenue**; described as Lot 5-F, Primavera Estates, Middle Section, according to the Plat thereof, as recorded in the Plat Book 7, Page 39, Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting Site Plan Review to allow the construction of 2,949 square foot two-story single family residence on a non-conforming platted lot which is 75 feet in width in lieu of the 100 foot minimum required, 85.29/87.09 in depth in lieu of the 100 foot minimum required and 6,463 square feet in area in lieu

of the 10,000 square foot minimum required. A variance is requested to allow construction of a new residence on a lot that is 75 feet in width to have a one-car garage in lieu of the two-car garage required for lots in excess of 75 feet in width. [Attorney: Maura A. Ziska]

- m. **SITE PLAN REVIEW #3-2013 WITH SPECIAL EXCEPTION AND VARIANCE** The application of 160 Royal Palm LLC (Glenn F. Straub, Manager); relative to property commonly known as **160 Royal Palm Way**; Being all of Lots 31, 32 and 33, Block F, ROYAL PARK ADDITION to the Town of Palm Beach, Florida, according to the plat thereof as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida; located in the C-B Zoning District. The applicant is requesting a modification to the site plan and special exception from the approved zoning application Site Plan Review #6-2012 with Special Exception and Variances which requires approval from the Town Council. The following is a list of the proposed changes to the approved hotel plan and use: eliminate the roof top sundeck on the proposed Function Room and create a similar roof top sundeck on the roof top of the hotel above the lobby. The same approved restrictions would apply to the new sundeck. Proposal is also requesting modification of the stairs to the spa; modification of the doors and roof the proposed Function Room and elimination of stairs to the roof of the Function Room; relocation of the air conditioning units on top of the Function Room to planter area on the east side, middle portion of the property; modification to the shape of the water wall on the south side of the pool area. A variance is requested to allow a roof top sundeck on the third floor above the lobby of the non-conforming hotel where only two stories is allowed under today's Zoning Code. [Attorney: Maura A. Ziska]

D. Other

1. Sterling Organization's Update Regarding Lease of Royal Poinciana Plaza Playhouse.
[Adam Munder, Vice President, Business Development, Sterling Organization]
TIME CERTAIN: 2 PM

IX. ANY OTHER MATTERS

X. ADJOURNMENT

PLEASE TAKE NOTE:

- 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.
- The progress of this meeting may be monitored by visiting the Town's website (www.townofpalmbeach.com) and selecting "Your Government" and then selecting "Audio (Live and Archived)." 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.
- 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.
- 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.
- 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.
- A summary of the actions taken at Town Council meetings can be viewed on the Town's website after 5 p.m. on the Friday following the Town Council meeting.

PROCEDURES FOR PUBLIC PARTICIPATION

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

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

COMMUNICATIONS FROM CITIZENS: Any citizen is entitled to be heard concerning any matter under the section entitled "Communications from Citizens," subject to the three minute limitation.

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

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

TOWN OF PALM BEACH

Town Council Meeting on: January 9, 2013

Section of Agenda

Public Hearings

Agenda Title

RESOLUTION NO. 4-2013 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 159 Australian Avenue Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated December 20, 2012, from John S. Page, Director of Planning, Zoning and Building
- Resolution No. 4-2013
- Designation Report for 159 Australian Avenue
- Excerpt from the Minutes of the Landmarks Preservation Commission meeting of December 19, 2012
- Code of Ordinances

TOWN OF PALM BEACH

Information for Town Council Meeting on: January 9, 2013

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Landmark Designation of 159 Australian Avenue
Resolution No. 4 – 2013

Date: December 20, 2012

STAFF RECOMMENDATION

Staff recommends ratification of the property known as 159 Australian Avenue as a Town landmark.

LANDMARKS PRESERVATION COMMISSION RECOMMENDATION

At the Public Hearing for Designation held during the December 19, 2012 meeting of the Landmarks Preservation Commission, the Commission voted to recommend to the Town Council that the above mentioned property be designated as a landmark. In accordance with Section 54-164 (11) of Chapter 54 of the Town of Palm Beach Code of Ordinances, the Town Council shall hold a public hearing within ninety (90) days of the final decision of the Landmarks Commission to consider ratification of the Commission's recommendation.

GENERAL INFORMATION

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

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

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

Landmark Designation of 159 Australian Avenue

Resolution No. 4- 2013

December 20, 2012

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OWNER CONSENT

Please be advised that the property owner of 159 Australian Avenue supports the landmark designation of the property.

FUNDING/FISCAL IMPACT

No direct funding is needed for this action.

COMPREHENSIVE PLAN

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

TOWN ATTORNEY REVIEW

Please be advised that the Town Attorney has reviewed Resolution No. 4 - 2013 relating to 159 Australian Avenue, and has approved it as to legal form and sufficiency.

attachments

JSP:cmd

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

RESOLUTION NO. 4 - 2013

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY KNOWN AS 159 AUSTRALIAN AVENUE MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH; AND DESIGNATING SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE IV OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

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

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

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

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

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

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

Section 3. The landmark herein designated, pursuant to the provisions of Ordinance No. 2-84, and the provisions of the Town Code described herein, is known as **159 Australian Avenue** and the property to be landmarked is legally described as follows:

LOT 41 AND THE WEST ONE-HALF (W ½) OF LOT 42, BLOCK H, REVISED MAP OF ROYAL PARK ADDITION TO PALM BEACH, FLORIDA, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 4, PAGE 1, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA

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

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

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 9th day of January, 2013.

Gail L. Coniglio, Mayor

David A. Rosow, Town Council President

Robert N. Wildrick, Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Susan A. Owens, MMC, Town Clerk

Michael J. Pucillo, Town Council Member

159 Australian Avenue



DESIGNATION REPORT

Wednesday, December 19, 2012

Landmark Preservation Commission

Palm Beach, Florida

DESIGNATION REPORT

159 Australian Avenue

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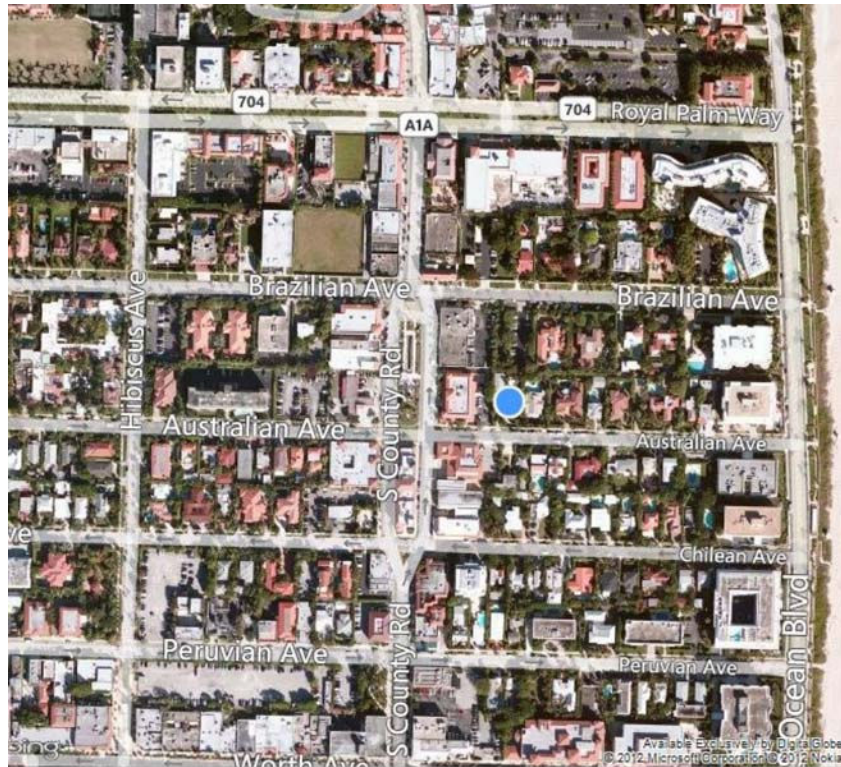
Report produced by Murphy Stillings, LLC

I. General Information

Location:	159 Australian Avenue Palm Beach, Florida
Date of Construction:	1920
First Owner:	Delwin M. Shepley
Architect:	Not Listed; Likely Contractor Designed and Built
Builder/Contractor:	Wesley A. Rhodehamel
Present Owner:	Allan and Susan Kauffman, TR
Present Use:	Residential
Present Zoning:	R B
Palm Beach County Tax Folio Number:	50-43-43-23-05-028-0410
Current Legal Description:	Royal Park Addition Lot 41 & W ½ of Lot 42 Block H

II. Location Map

159 Australian Avenue



III. Architectural Information

The house at 159 Australian Avenue is a good example of the Bungalow style of architecture that was popular throughout the United States from approximately 1905 - 1930. Built in 1920 of frame construction and covered with stucco, the house is one-and-a half stories in height with broad overhanging eaves. Though the house has had a few additions and alterations, 159 Australian Avenue retains its architectural integrity and features elements which are defining characteristics of the Bungalow style.

The most common features of the Bungalow style are low-pitched, gable roofs with unenclosed eave overhangs and exposed roof rafters or brackets. Other identifying features are beams or braces under the gables, full or partial porches supported by square columns, dormers and contiguous bands of windows. At 159 Australian Avenue, the main house is covered with a low-pitched side-gable roof punctuated with front-gabled dormers on both the front and rear slopes. These wide dormers break the large expanse of the roof line and emphasize the horizontal feeling that is typical of most Bungalow designs. Both the main roof and the dormers have wide overhanging eaves with carved brackets, triangular knee braces, and attic vents. They are also both covered with asphalt shingles.



The massing and fenestration of 159 Australian Avenue are irregular. There are many original wood windows with rope sash cords in either 9/1 or 6/1 double-hung sash glazing. Those on the first floor front façade are 9/1 double-hung sash arranged in a ribbon of four windows. The front dormer has four 6/1 double-hung sash windows; a pair in the center and one on each side. All four windows have

louvered Bahamian shutters. The east and west façades have original 6/1 and 9/1 double-hung wood sash windows as well as replacement metal awning windows toward the rear where there have been alterations. In addition, the east façade has 8-light casement windows flanking the exterior stepped chimney that pierces the wide overhanging eave. On the first floor of the rear there are modern sliding glass doors and a fully glazed rear entry door, both which are replacement features. The rear dormer has a ribbon of three 6/1 double hung sash wood windows which would have provided cross ventilation with the windows in the front dormer before the era of air conditioning. These windows are covered with Bahamian shutters, while most of the wood windows on the first floor have electric roll down hurricane shutters that were installed in 1993.¹



The porch on the Bungalow at 159 Australian Avenue is a one-bay wide entry porch on the southwest corner of the residence. On the front façade the porch entry is formed as a very wide stucco archway. The walls on either side project out from the house and have a stucco band creating the look of low piers topped with broad columns, which is a typical feature of Bungalow style houses. The porch is accessed from the south by three stairs that are flanked by walls with a curved stone top. The west side of the porch has a wide arched opening with a pilaster on the north end and is covered by the dwellings overhanging eaves and a porte cochere which extends from the west side of the house. The porte cochere has wide eaves with carved brackets resembling those on the house and garage

¹ Lindley Hoffman, Architect, Plans for Alterations to Existing House at 159 Australian Avenue. March 15, 1993.

apartment, but the narrow 6" x 6" chamfered wood posts indicate this is a later addition, and in fact it was added in 1993.² Columns on bungalows are typically short, square upper columns that sit atop more massive piers.



The front porch of 159 Australian Avenue originally extended the full width of the house with the entry stairs centered in the porch.³ When the porch was enclosed in 1993 the center stairs were removed and built several feet to the west where they exist today. The original open arch on the east façade of the porch was enclosed and 9/1 double-hung sash wood windows were installed to match those on the façade. The arch was removed and electric roll down shutters were added. The original ribbon of four 9/1 double-hung wood sash windows were re-installed on the façade to retain the original appearance of the house.⁴ The current entry to the house is a 6-panel wood door flanked by divided sidelights. The roof of the house extends over the entry and creates the porch roof.

On the northwest corner of the property is a two-story, two-bay wide by four-bay deep garage apartment. Like the house, the garage apartment is a frame structure covered with stucco, has wide overhanging eaves with the same carved brackets and knee braces as the main house. It also has irregular fenestration of 4/1 and 6/1

² Lindley Hoffman, Architect, Plans for Alterations to Existing House at 159 Australian Avenue. March 15, 1993

³ Sanborn Fire Insurance Map, 1926

⁴ Lindley Hoffman, Architect, Plans for Alterations to Existing House at 159 Australian Avenue. March 15, 1993

double-hung sash wood windows, ribbons of wood casement windows and wood paneled entry doors. The windows have mostly colonial-style metal shutters, though the ribbon of windows has electric roll down hurricane shutters. The garage doors on the front façade were replaced with modern overhead garage doors in 1999.⁵ Other than that alteration and the addition of shutters, the garage apartment appears to have most of its original exterior features intact.

Bungalow Style

The Bungalow or Craftsman-style house was the dominant style of smaller houses built throughout the United States during the early decades of the twentieth century. The Bungalow design originated as shelter for British travelers in India during the eighteenth and nineteenth centuries.⁶ By the time it reached the United States in the late-nineteenth century, the Bungalow had gained design features from both Japanese architecture and the English Arts and Crafts movement. Techniques of Japanese construction exhibited at late-nineteenth century American expositions, particularly the extensive display of structural members, became integral parts of Bungalow designs.⁷

The American version of the Craftsman-type Bungalow originated in Southern California primarily through the work of the Greene Brothers, and many landmark examples are still found there. Central to the Bungalow's popularity was the idea that simplicity and artistry could work together and still be an affordable home. The style's popularity spread quickly throughout the United States when plans were published in pattern books and popular magazines such as *House Beautiful*, *Good Housekeeping*, *Ladies Home Journal*, *Bungalow Magazine* and *The Craftsman*.⁸ Between 1910 and 1926 Bungalows became the most popular style of middle class architecture in south Florida. In addition, companies such as Sears, Montgomery Ward, Alladin and others began offering pre-fabricated "Mail Order Houses," many of which were offered in the Bungalow style.⁹

⁵ Town of Palm Beach, Permit No. 8031652. May 14, 1999.

⁶ The term "Bungalow" was inspired by the British Colonial experience in India at the turn of the century. Derived from either the Hindu name "Bania" that was used to describe a house built for the English Civil Service by native Indian labor," or the Indian word "Bangle" which was a small thatched hut that the English adapted with wide, covered verandas and an open floor plan to facilitate cross ventilation and protection in the hot dusty Indian climate. Despite which derivation the word "Bungalow" comes from, the inspiration of the style is from India.

⁷ Paul Duchscherer, *The Bungalow* (New York: Penguin Studio, 1995).

⁸ Virginia and Lee McAlester. *A Field Guide to American Houses* (New York: Alfred A. Knopf, 1984). P. 454

⁹ Katherine Cole Stevenson and H. Ward Jandl, *House by Mail* (New York: John Wiley & Sons, 1986).

IV. Historical Information

The early 1920s was a period of tremendous growth in the Town of Palm Beach. The Island had become the winter resort of America's most influential families and the building boom was radically changing the face of the small community. While Addison Mizner and a few other prominent Palm Beach architects were designing Mediterranean Revival style estates along the ocean and lake, demand for hotels, apartments and smaller residences grew. Many of these smaller homes were built in the Shingle or Bungalow style. By 1920 Ocean Boulevard was completed and motorists from the north were driving down to enjoy the popular winter resort town. Private residences such as 159 Australian Avenue were constructed as part of E.N. "Cap" Dimick's development called Royal Park. Dimick, who was the first mayor of the Town of Palm Beach, supplied streets, lighting, water mains, electricity and telephones to the area.¹⁰

The 1921 City Directory is the first time the house at 159 Australian Avenue is listed in a city directory.¹¹ At that time there were only seven other residences on Australian Avenue between the ocean and the lake. A review of the 1924 Sanborn Fire Insurance Map shows 159 Australian Avenue as a one-and-a-half-story frame structure with a full front porch, a two-story frame rear garage apartment, and a one-story small frame outbuilding that no longer exists. The Palm Beach Town Hall, which is just one block to the west, had not yet been constructed.

On January 19, 1920, Delwin Mitchel Shepley contracted West Palm Beach builder Wesley A. Rhodehamel to build a house and garage at 159 Australian Avenue for \$5500.¹² Delwin and Alice Shepley and their son Raymond began to spend winters in Palm Beach in 1917, about the same time Delwin's father Joseph T. Shepley began spending his winters in Lantana.¹³ The Shepleys moved permanently to Palm Beach and into the house at 159 Australian Avenue in 1920. Raymond started school in 1921, the year Palm Beach Public School opened.¹⁴ The Shepleys lived in the house until 1932 when they moved to 124 Churchill Road in West Palm Beach.¹⁵ It is likely that the Shepleys rented out their house on Australian Avenue because between 1932 and 1937 various occupants are listed as living in the house. However, in 1938, the year Delwin passed away at the age of

¹⁰ "Town of Palm Beach Historic Sites Survey," 1997. P. 17.

¹¹ West Palm Beach City Directory, 1921.

¹² Town of Palm Beach Building Permit No. 7520.

¹³ "Raymond Shepley Obituary," The Palm Beach Post 5 July 2012.

¹⁴ Ibid.

¹⁵ "22,000 in Building Projects Announced," The Palm Beach Post 25 May 1932.

66, the house is listed in the City Directory as “Shepholm” with Alice J. Shepley as the occupant.

Delwin Shepley was born in 1872 in West Groton, Massachusetts, but after high school his family moved to Newport, Vermont where he worked in his father’s pulp mill.¹⁶ He married Alice J. Raymond in 1898 and settled in Sheldon Springs, Vermont where he and his father founded a pulp mill company. Of Delwin and Alice’s three sons, Raymond was the only one to survive childhood. Raymond Shepley graduated from Palm Beach High School in 1932 and Georgia Tech in 1937, marrying Elizabeth “Betty” Hines Little of West Palm Beach that same year. After serving in the Army during World War II, Raymond returned to Palm Beach County and was active in several churches and hereditary societies. Some of these included Sons of the American Revolution, Order of Colonial Wars, Society of Mayflower Descendants, Crown of Charlemagne, Jamestowne Society, Huguenot Society, Society of Descendants of Colonial Clergy, and several others, indicating his relatives were early descendants of the United States.¹⁷

In 1940, the house is still listed as “Shepholm” but Theodore and Gladys Cuyler are listed as the occupants. The Cuyler’s lived there until 1947 and then for three years the house and garage apartment became rental property. The house sat vacant from 1951 until it was purchased by A. Parker Bryant in 1957, and it remained in his family until 2011, when the current owners, Allan and Susan Kauffman, bought the house. A. Parker Bryant was responsible for the 1966 addition where a new bath was added, the master bedroom had an addition, the kitchen was remodeled, and central air conditioning was installed.¹⁸ All of the work took place on the first floor rear where it was not visible from the street. The architect for this project was D.B.Scoville of West Palm Beach and the contractor was Lee Wolfhagen. A. Parker Bryant was a very prominent Palm Beach Realtor from the 1930s to the 1980s. He and his wife were avid tennis players and part of “Palm Beach Society.” They were members of both the Everglades Club and the Bath and Tennis Club, and they were often mentioned in the Palm Beach Daily News entertaining at those clubs.¹⁹ A. Parker Bryant was also a proponent of historic preservation and served on the Town’s Landmarks Preservation Commission in the early 1980s.

¹⁶ “Delwin M. Shepley Dies at Home Here.”The Palm Beach Post, June 17, 1938.

¹⁷ Raymond Shepley Obituary.

¹⁸ Town of Palm Beach Building Permits No.66666.

¹⁹ Archives Research in the Palm Beach Daily News, Numerous Articles from 1930s to 1980s.

V. Architects Biography

There is no architect listed on the Building Permit for 159 Australian Avenue and therefore, like many of the more modest Palm Beach houses built in the 1920s, it was most likely designed and built by the listed contractor Wesley A. Rhodehamel. There is little information on Wesley A. Rhodehamel other than he was from Indianapolis, Indiana and in 1920 his office was located at 124 N. Olive Avenue and he lived at 306 Vallette Way, both in West Palm Beach. The house at 306 Vallette Way is currently part of the Mango Promenade Historic District, which is known for its early Bungalow style houses.

VI. Statement of Significance

The house at 159 Australian Avenue is a good example of the Bungalow style of architecture that was popular in the United States during the early decades of the twentieth century. Because of the wide spread popularity of this style, this house not only “embodies distinguishing characteristics of an architectural type,” fulfilling criteria (3), but also fulfills criteria (1) because it reflects a broad national trend.

VII. Criteria For Designation

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

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

Coming out of California and the Craftsman movement of the early twentieth century, the Bungalow style of architecture enjoyed widespread popularity throughout the United States. Variations of the style were built in Palm Beach during the early years of the Island’s history. This house is a good example of that national trend and as such deserves protection under criterion (1) of the Landmarks Preservation Ordinance.

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

The house at 159 Brazilian Avenue is a good example of the Bungalow style of architecture. It features distinguishing characteristics of the style that are unique to this site and make it valuable for study. These characteristics include the low-pitched side gable roof, wide eave overhangs, carved brackets, triangular knee braces under the gables, a front porch, dormers and contiguous bands of windows. Bungalows are an important fabric to the Town of Palm Beach but they are one of Palm Beach’s fastest disappearing styles. 159 Australian Avenue fulfills criterion (3) of the Town of Palm Beach Landmarks Preservation Ordinance.

VIII. Selected Bibliography

Architecture of Palm Beach File, The Historical Society of Palm Beach County.

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From Wilderness to Metropolis: The History and Architecture of Dade County (1825-1940). Second Edition. Metropolitan Dade County, Historic Preservation Division, 1992.

Hoffstot, Barbara D. Landmark Architecture of Palm Beach. Revised Edition. Pittsburgh, Pennsylvania: Ober Park Associates, Inc., 1980.

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

The Palm Beach Daily News. Archived Articles Online

The Palm Beach Post. Obituaries for Joe Shepley (11/8/1926), Delwin Shepley (6/17/1938) and Raymond Shepley (7/5/2012).

Sanborn Insurance Map of Palm Beach. New York: Sanborn Map Co., 1919 and 1926. City of West Palm Beach Public Library, Florida Room.

Town of Palm Beach. Building Permits, 1920 – 1999.

West Palm Beach City Directories. Asheville, NC: Florida-Piedmont Directory Company, 1918-1966.



HISTORICAL STRUCTURE FORM

Electronic Version 1.1.0

Site # PB06318
Recorder # Jane S. Day
Field Date 9/29/2010
Form Date 10/3/2010
Form No 201009
Form No = Field Date (YYYYMM)

First Site Form Recorded for this Site? NO

GENERAL INFORMATION

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

LOCATION & IDENTIFICATION

Address

Street No.	Direction	Street Name	Street Type	Direction Suffix
<u>159</u>		<u>Australian</u>	<u>Avenue</u>	

Cross Streets (nearest between) South Ocean Blvd. & South County Rd
City / Town (within 3 miles) Town of Palm Beach In Current City Limits? YES
County Palm Beach Tax Parcel #(s) 50-43-43-23-05-028-0410
Subdivision Name Royal Park Addition Block B Lot 41,42
Ownership Private Individual
Name of Public Tract (e.g., park) _____
Route to (especially if no street address) On the north side of Australian Avenue between South County Road and South Ocean Boulevard.

MAPPING

USGS 7.5' Map Name _____ Publication Date _____ >> PALM BEACH/1946
Township: _____ Range: _____ Section: _____ 1/4 section: _____ >> 43S ; 43E ; 23; UNSP
Irregular Section Name: _____
Landgrant _____
UTM: Zone _____ Easting _____ Northing _____
Plat or Other Map (map's name, location) _____

DESCRIPTION

Style Bungalow Other Style _____
Exterior Plan Irregular Other Exterior Plan _____
Number of Stories 1.5
Structural System(s) _____ >> Wood frame
Other Structural System(s) _____
Foundation Type(s) _____ >> Unspecified by recorder
Other Foundation Types _____
Foundation Material(s) _____ >> Unspecified
Other Foundation Material(s) _____
Exterior Fabric(s) _____ >> Stucco
Other Exterior Fabric(s) _____
Roof Type(s) _____ >> Gable
Other Roof Type(s) _____
Roof Material(s) _____ >> Composition shingles
Other Roof Material(s) _____
Roof Secondary Structure(s) (dormers etc) _____ >> Gable dormer
Other Roof Secondary Structure(s) _____
Number of Chimneys 1
Chimney Material Brick
Other Chimney Material(s) stucco on exterior
Chimney Location(s) east

HISTORICAL STRUCTURE FORM

8PB06318

DESCRIPTION (continued)

Window Descriptions 6/1, 9/1 DHS, fixed

Main Entrance Description (stylistic details) On the south facade with fixed sidelights through an entry porch

Porches: #open #closed #incised 1 Location(s) entry - SW

Porch Roof Type(s) incised under the main roof of the house

Exterior Ornament exposed rafters, Bahamian shutters, attic vents, knee braces

Interior Plan Unknown

Other Interior Plan

Condition Excellent

Structure Surroundings

Commercial: NONE of this category

Residential: MOSTLY this category

Institutional: SOME of this category

Undeveloped: NONE of this category

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

Archaeological Remains (describe): none observed

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

Narrative Description (optional) There is a porte cochere to the west and an outbuilding beyond

HISTORY

Construction year 1920

Architect (last name first): unknown

Builder (last name first): Rhodehamely

Changes in Locations or Conditions

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

Structure Use History

Use Year Use Started Year Use Ended >> Private residence; 1920;

Other Structure Uses

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

RESEARCH METHODS

Research Methods >> Examine local property records

Other research methods

SURVEYOR'S EVALUATION OF SITE

Potentially Eligible for a Local Register? NO

Name of Local Register if Eligible Town of Palm Beach Landmark

Individually Eligible for National Register? NO

Potential Contributor to NR District? NO

Area(s) of historical significance

>> Community planning & development

Other Historical Associations

Explanation of Evaluation (required) This Bungalow has been altered.

HISTORICAL STRUCTURE FORM

8PB06318

DOCUMENTATION (Photos, Plans, etc.)

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

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

RECORDER INFORMATION

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

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

Cultural Resource Type: <u>SS</u> Electronic Form Used: <u>5110</u> Form Type Code: <u>NORM</u> Form Quality Ranking: <u>NEW</u> Form Status Code: <u>SCAT</u> Supplement Information Status: <u>NO SUPPLEMENT</u> Supplement File Status: <u>NO SUPPLEMENT FILE</u> Form Comments: _____ _____ _____	SHPO's Evaluation of Resource Date: _____ FMSF Staffer: _____ Computer Entry Date: <u>6/7/2004</u>
--	--

REQUIRED PAPER ATTACHMENTS

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

EXCERPT FROM THE MINUTES OF THE LANDMARKS PRESERVATION COMMISSION
MEETING OF DECEMBER 19, 2012

VIII. DESIGNATION HEARINGS:

Item 1: 159 Australian Avenue

Owner: Allan & Susan Kauffman TR Titl Hldrs

Kauffman Susan M & Kauffman Susan M TR

Kauffman Allan W & Kauffman Allan W TR

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

DESIGNATION REPORT PRESENTATION BY: Janet Murphy, Murphy Stillings, LLC

Ms. Murphy testified to the architecture, architectural history, and architect for this 1920 Bungalow style residence pursuant to the information in the Designation Report for 159 Australian Avenue. She testified that this property meets the following criteria for landmark designation:

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

Section 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.

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

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

MOTION SECONDED BY MR. SANCHEZ.

MOTION CARRIED UNANIMOUSLY.

Commission members offered their thanks and appreciation to the property owners, who were present in the audience, for their support of the landmark designation.

MOTION BY MR. FELDKAMP THAT 159 AUSTRALIAN AVENUE BE RECOMMENDED TO THE TOWN COUNCIL FOR DESIGNATION AS A LANDMARK OF THE TOWN OF PALM BEACH, AND THAT THE CRITERIA, AS PRESENTED, BE MADE A PART OF THE RECORD.

MOTION SECONDED BY MS. MARSHALL.

MOTION CARRIED UNANIMOUSLY.

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

ARTICLE IV. - DESIGNATION PROCEDURE

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

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

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

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

Sec. 54-165. - Voluntary restrictive covenants.

Secs. 54-166—54-195. - Reserved.

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

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

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

(Code 1982, § 16-38)

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

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

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

(Code 1982, §§ 16-38.1, 16-39)

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

The commission has the power to:

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

(Code 1982, § 16-42)

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

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

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

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

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

(Code 1982, § 16-43)

Sec. 54-165. - Voluntary restrictive covenants.

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

(Code 1982, § 16-48)

Secs. 54-166—54-195. - Reserved.

TOWN OF PALM BEACH

Town Council Meeting on: January 9, 2013

Section of Agenda

New Business - < 15 Minutes

Agenda Title

VARIANCE #4-2013 The application of Virginia L. Mortara; relative to property commonly known as **319 El Vedado Road**; described as Lot 52 and the West 25 feet of Lot 53, REVISED PLAT OF JUNGLE POINT ADDITION TO THE TOWN OF PALM BEACH, according to the plat thereof as recorded in Plat Book 18, Page 21, of the Public Records of Palm Beach County, Florida; located in the R-A Zoning District. The applicant is requesting variances to allow construction of a 30 foot by 6 foot marginal dock located 10 feet from the West side yard property line in lieu of the 25 foot minimum set back required; to allow a 30 foot by 6 foot marginal dock located 10 feet from the Northern neighbor's South side property line in lieu of the 25 foot minimum set back required; to allow a vessel to be docked at the proposed dock, which vessel would extend beyond the Applicant's North neighbor's side property line, but not the Applicant's side property line. [Attorney: M. Daniel Logan]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter dated December 27, 2012, from John F. Cunningham

JAN 03 2013 PL

Town Manager

MEMBERS OF PALM BEACH TOWN COUNCIL 12/27/12

COMMENTS ON ZONING VARIANCE #42013

JOHN F. CUMMINGHAM ABUTTER WITHIN 300'

HEARING DATE 1/09/2013

GENTLEMEN;

GENERAL COMMENT

I RESIDE AT 353 EL BRILLO WAY, ON THE LAKE ON THE NORTH SIDE OF EL BRILLO.

THIS PROPOSED VARIANCE DOES NOT IMPACT MY LAKE VIEWS NOR DOES IT IMPACT THE NAVIGATIONAL ASPECT OF MY OWN DOCK WHICH IS APPROXIMATELY 225' NORTH OF THE PROPOSED DOCK AT 319 EL VEDADO.

I DO HAVE CONCERNS ON THE AESTHETIC LOOK OF A DOCK IN THIS LOCATION, ITS IMPACT ON THE "LOOK" OF THE TARPON COVE, ITS SIZE + SCALE AND NEGATIVE IMPACT FOR DOCKING AND NAVIGATION ON ITS ABUTTERS AT 358 EL BRILLO AND 335 EL VEDADO.

TARPON COVE, WHERE THIS DOCK IS REQUESTED, HAS ELEGANT HOMES ON ITS WATERFRONT AND WAS BUILT 70-80 YEARS AGO - WITH THE EXCEPTION

OF OUR HOME BUILT IN 1989 AND NEW CONSTRUCTION UNDER WAY AT 320 ISLAND DRIVE,

IT IS A CLASSIC AND TRADITIONAL PALM BEACH AREA - IT IS NOT A "BOCA RATON" OR "FT LAUDERDALE" CANAL AREA - WHERE HOUSES ARE BLOCKED BY DOCKS AND DOCKS STRETCH END TO END TO END.

THIS VARIANCE REQUEST TO SET ASIDE THE TOWN'S 25' SETBACK IS THE CLASSIC REASON WHY WE HAVE A 25' SETBACK REGULATION - IE TO PROTECT NEIGHBORS VIEWS AND BOATING SAFETY. THE GRANTING OF THIS EASEMENT WOULD CREATE 180' OF LINEAR DOCK SPACE - WITHIN 250' OF LINEAR SEAWALL - A CLASSIC "BOCA RATON" OR FT LAUDERDALE LOOK.

② GENERAL BOAT MOVEMENT/NAVIGATIONAL ISSUES

THERE^{IS} CURRENTLY A 36' HINKLEY PICNIC BOAT DOCKED AT 335 EL VEDADO AND ALTHOUGH THERE IS CURRENTLY NO LIFT ON THE 112' DOCK AT 358 EL BRILLO, A LIFT WAS PERMITTED IN THE PAST WHICH WOULD FURTHER COMPLICATE DOCKING

IN A CONGESTED BOAT AREA.

358 EL BRILLO FREQUENTLY HAS VISITING BOATS OF 23-25' LENGTH AT THEIR DOCK. AS OUTLINED IN APPENDIX (A) THIS, AS PROPOSED, IS A VERY CROWDED DOCK SITUATION, - ALMOST INACCESSIBLE TO A NEW DOCK AT 319 EL VEDADO.

358 EL VEDADO COULD NO LONGER MOVE ITS BOAT THROUGH ITS LIFT ~~IN~~ IN AN EMERGENCY SITUATION - WITHOUT STRIKING THE PROPOSED NEW DOCK OR LIFT OR BOAT.

THE REQUESTED DOCK ITSELF

THE 319 EL VEDADO "50' OF LAKEFRONT" IS EXTREMELY SMALL TO SUPPORT A LARGE 30' X 6' DOCK WHICH IS NORMALLY FOUND ON A LARGE PROPERTY WITH 150' OF FRONTAGE.

THE WATER DEPTH AT MEAN LOW TIDE AT THIS DOCK IS ONLY 18" TO 20" AND THE DOCK AREA IS IN A SHALLOW PORTION OF THE COVE WHERE ~~SILT~~ ^{CONTINUES} TO BUILD UP - PARTLY DUE TO THE NEW PUMPING STATION AT THE END OF EL BRILLO WAY

THE DOCK PLANS ON THE REQUESTED 319 ELIPADO VARIANCE DO NOT SHOW THE WATERSIDE ELEVATION WHERE A 7' RETAINING WALL SITS ON TOP OF THE 4' SEAWALL AND RETAINS THE REAR GRAD LEVEL APPX 10' ABOVE ML WATER LEVEL - ONLY 18' OF THE 50' WATER FRONT ON THE WEST SIDE HAS A FINISHED GRADE CLOSE TO SEAWALL HEIGHT. A LARGE SPECIMAN FIGUS/BANYAN TREE WOULD NEED TO BE REMOVED TO CREATE STEPS DOWN FROM THE HOUSE FIRST FLOOR LEVEL TO DOCK LEVEL.

IF THERE IS A BOAT LIFT EVER ANTICIPATED ^{HERE} (AS MOST PALM BEACH DOCKS REQUIRE), THIS WOULD EXTEND THE DOCK/LIFT 14'-16' INTO THE LAKE FURTHER MITIGATING DOCKAGE AND RESTRICTING VIEWS FROM 358 E/ BRILLO TO THE WEST.

(AS AN ASIDE BECAUSE OF THE SQUARE GRADE ISSUES, LANDSCAPE, STAIR, TREE REMOVAL IT SURPRISES ME THAT THIS HAS NOT HAD ARCOM REVIEW FOR A DETAILED REVIEW AND FULL ELEVATIONS)

SUMMARY

MY PERSONAL CONCERN ON THIS VARIANCE

PRECEDENT
IS THE PRECEDENT SETTING OF AN
APPROVAL WERE ON OTHER "SHORT
FRONTAGE" PROPERTIES - WHICH WILL TRY TO
GET A DOCK AND WE END UP WITH A
BOCA, FT LAUDERDALE LOOK. THERE ARE
TWO HERE IN TARPON COUP, ^{AND} ONE AT END
OF JUNGLE RD

VARIANCE REPORT COMMENTS BY SECTION

PAGE 2 PART III

THIS APPLICATION SHOULD CONTAIN A
FULL SITE PLAN REVIEW BECAUSE IT
CAUSES CHANGES AND IMPACT TO CURRENT
ARCOM APPROVED LANDSCAPE PLANS, TREE
REMOVAL, NEW STEPS (15) DOWN 10' FROM
FINISHED GRADE TO DECK. ETC

PAGE 3 SECTION B

1 - I WOULD NOT CONCUR. THIS DOCK
DOES INTERFERE WITH ADJACENT
NEIGHBORS USE AND ENJOYMENT OF
THEIR DOCKS AND IMPACTS THE VIEW
OF 358 EL BRILLO WAY. ALTHOUGH
NAVIGATION WILL NOT BE HARMED IN
THE INTERCOASTAL ITSELF, IT WILL BE
IN THIS DOCKING AREA.

2. I DO NOT BELIEVE THAT FLORIDA DEPT OF ENVIRONMENTAL PROTECTION AND ARMY CORP OF ENGINEERS HAVE APPROVAL RIGHTS IN PALM BEACH FOR DOCKAGE - THEY MIGHT HAVE DISAPPROVAL BUT THEIR OPINION IS ONLY CONSIDERED BUT NOT FINAL.

EXHIBIT D.

SECTION 1 PART 3

358 E1 BRILL IS THE PROPERTY WITH PRIMARY INFRINGEMENT OF VIEWING LINES AND BOAT NAVIGATION

SECTION 3 PART 1

THIS IS NOT "UNIQUE" TO PALM BEACH - THE JANE SMITH PROPERTY ON ISLAND DRIVE IS SIMILAR WITH NO DOCK. I KNOW OF NO 30' X 6' DOCKS APPROVED IN THE LAST 50 YEARS WITH ONLY 50' OF FRONTAGE ON THE LAKE.

PLEASE IDENTIFY "SIMILARLY SITUATED PROPERTY OWNERS IN THE SAME ZONING DISTRICT" THAT WERE ABLE TO CONSTRUCT SIMILAR DOCKS

SECTION 5

PART 2

I DO NOT CONCUR

A 6' X 30' size is NOT MINIMUM
REQUIRED. I HAVE A 48" X 30'
DOCK AND WORKS FINE. TARPON
ISLAND HAS A 5' X 15' DOCK AND
SEEMS TO WORK FINE

SECTION 6

PART 1 - THIS VARIANCE WILL

ADVERSELY AFFECT APPLICANTS
NEIGHBORS VIEWS AND CURRENT USE
OF THEIR DOCKS, IT WILL INTERFERE
WITH DOCKING EASE OF ALL THREE
DOCKS

PART 3

DOCKING A VESSEL will INTERFERE
WITH USE AND ENJOYMENT OF
NEIGHBORING DOCKS, BOAT TRAFFIC
AND PREEMPTORY VIEWING RIGHTS
OF 358 E/ BRILL.

SUBMITTED

12/28/12

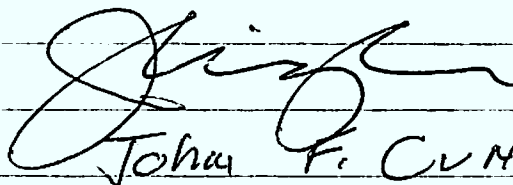
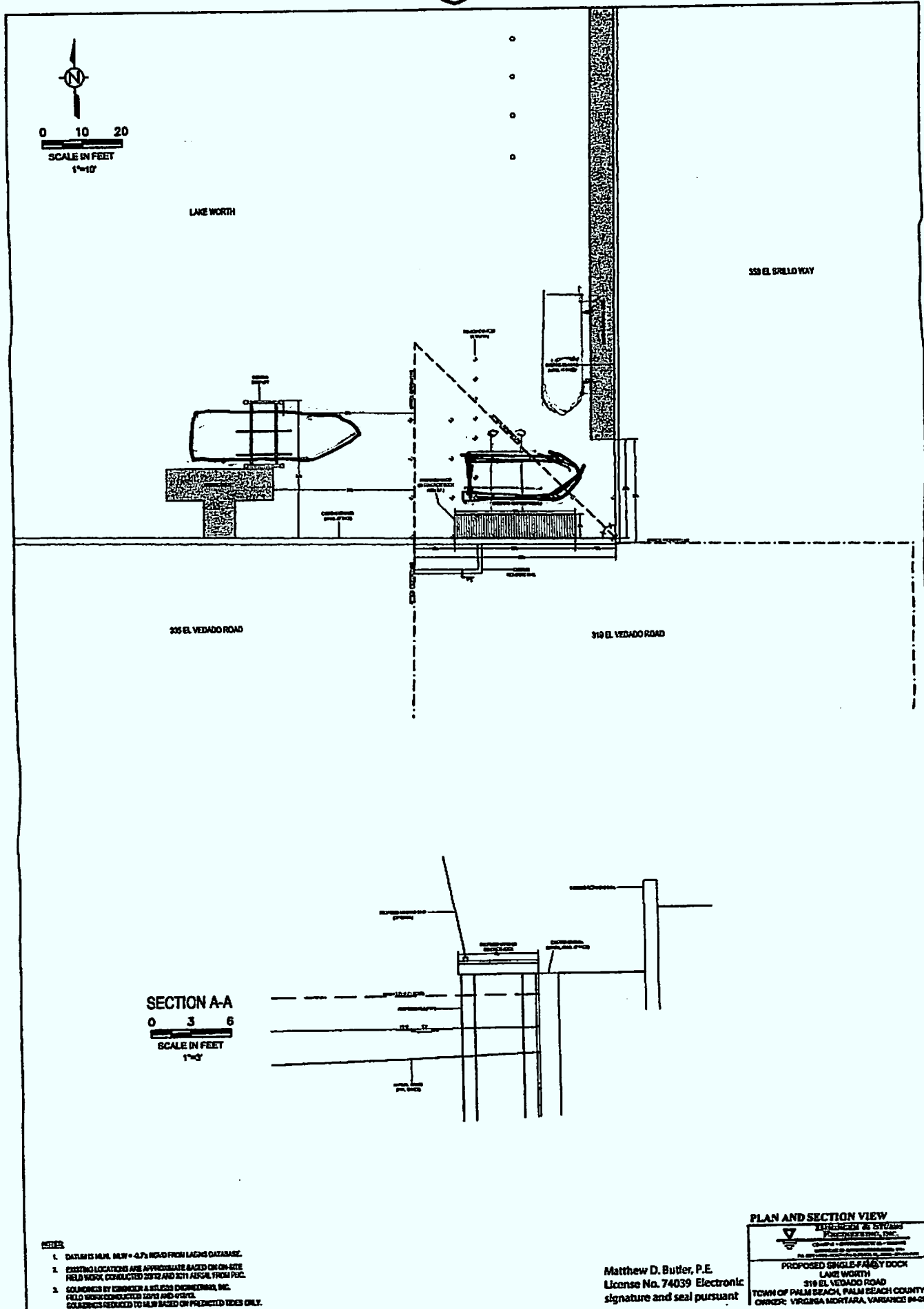

John F. CUNNINGHAM

EXHIBIT (A)



TOWN OF PALM BEACH

Town Council Meeting on: January 9, 2013

Section of Agenda

New Business - < 15 Minutes

Agenda Title

VARIANCE #5-2013 The application of 101 Indian Road, LLC, Robert G. Fessler, Manager/Member; relative to property commonly known as **101 Indian Road**; described as Lengthy legal description in file; located in the R-A Zoning District. The proposal is to build a new, two story house with the following variances being requested: to allow the south side yard setback for the proposed residence to be 15 feet in lieu of the 30 foot minimum required for lots in excess of 60,000 square feet; to allow a north side yard setback for the proposed residence to be 25.67 feet in lieu of the 30 foot minimum required; to allow the proposed residence to be 25 feet from the Town Bulkhead Line in lieu of the 51.6 foot minimum required when calculating the average of the houses to the north and south's setback from the Town Bulkhead Line; to allow the overall building height to be 52.33 feet NGVD in lieu of the 48.39 maximum allowed when comparing the heights of the houses to the north and south. [Attorney: Maura A. Ziska] [ARCOM Recommendation: ARCOM motion to recommend approval of the variance failed 3-2 as there were not enough members present to obtain the four affirmative votes necessary.] **Request for Deferral to the February 13, 2013, Town Council Meeting, Per Letter Dated December 26, 2012, from Maura A. Ziska.**

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter Dated December 19, 2012, from Francis X. J. Lynch
- Letter Dated December 19, 2012, from Ann and Michael Small
- Letter Dated December 26, 2012 from Maura A. Ziska

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

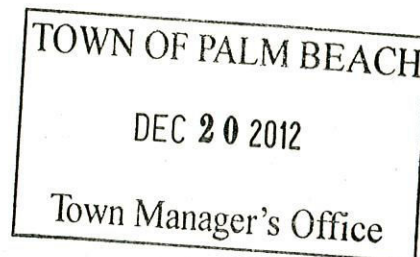
Peter L. Breton
Francis X. J. Lynch
John R. Eubanks, Jr.
Marta M. Suarez-Murias
Robert J. Sniffen – Of Counsel
Ronald Witkowski – Of Counsel

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Sender's Direct Line: (561) 721-4005
E-Mail: msuarez-murias@blesmlaw.com

1209 North Olive Avenue
West Palm Beach, FL 33401-3515
Phone: (561) 721-4000
Facsimile: (561) 721-4001

December 19, 2012

Honorable Gail L. Coniglio
Mr. David A. Rossow
Mr. Robert N. Wildrick
Mr. William J. Diamond
Mr. Richard M. Kleid
Mr. Michael J. Pucillo
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480



Re: 101 Indian Road
Variance #5-2013

Dear Madame Mayor and Gentlemen of the Town Council:

Please be advised that this firm represents 1695 NOW, LLC, the owner of the property located at 1695 North Ocean Way, immediately south of the public beach access that separates my client's property from that of the Applicant.

The applicant has provided my client with a copy of the application as filed, architectural plans as submitted and has met with my client on the site on a number of occasions.

Based on this, 1695 NOW, LLC, has no objection to the application and plans as filed, and asks that town council approve the variances requested without qualification or condition.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "FXJL", with a large, stylized flourish.

FRANCIS X. J. LYNCH

FXJL/kh

*Ann & Michael Small
156 East Inlet Drive
Palm Beach, Florida 33480
561-844-2606*

TOWN OF PALM BEACH

DEC 19 2012 

Town Manager's Office

December 19, 2012

Architectural Commission
360 South County Road
2nd Floor, Town Council Chambers
Palm Beach, Florida 33480

HAND DELIVERED

Re: 101 Indian Road
Major Project - New Business
#B-093-2012

**DECEMBER 21, 2012
PUBLIC HEARINGS**

Dear Mr. Chairman and Members:

I am writing to you as a resident/neighbor living at 156 East Inlet Drive for approximately 42 years, within 110 feet of the 101 Indian Road property, previously owned by the Robert Rich family for many years. We welcome our new owners to the neighborhood and wish them well with this very important and significant project.

Having said that, however, we want to make known our very serious concerns with any potential adverse impact by the demolition and construction at the 101 Indian Road property, which backs up and borders East Inlet Drive. Even before the notices went out on the proposed demolition and construction, we wrote to the Town of Palm Beach Building and Zoning Department on November 7, 2012 to make them aware of the concerns of the diverse population of our street. We have young children as well as elderly, all of whom use our quiet one way street for walking, bike riding, skateboarding, going to the beach, etc.

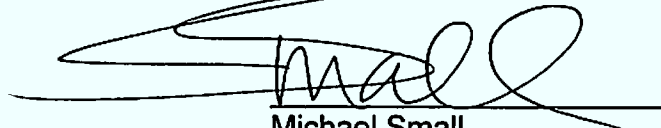
We specifically request that all approvals be subject to and conditioned upon no demolition and construction access from and unto East Inlet Drive. There is ample street frontage on North Ocean Way and Indian Road, on this large piece of property to accommodate all demolition and construction access and activity on site; not to mention there is a very substantial vacant lot located immediately adjacent and to the South of the 101 Indian Road property for which arrangements should be considered for a temporary interim use incidental to the construction, if needed.

We are also concerned, after a review of the plans, that the plans depict two (2) separate access driveways on East Inlet Drive and one main driveway on Indian Road.

Historically, the Rich property did have one access driveway on Indian Road and one access driveway on East Inlet which was less frequently used. We respectfully object and request that consideration be given to limiting access to East Inlet drive to one access driveway.

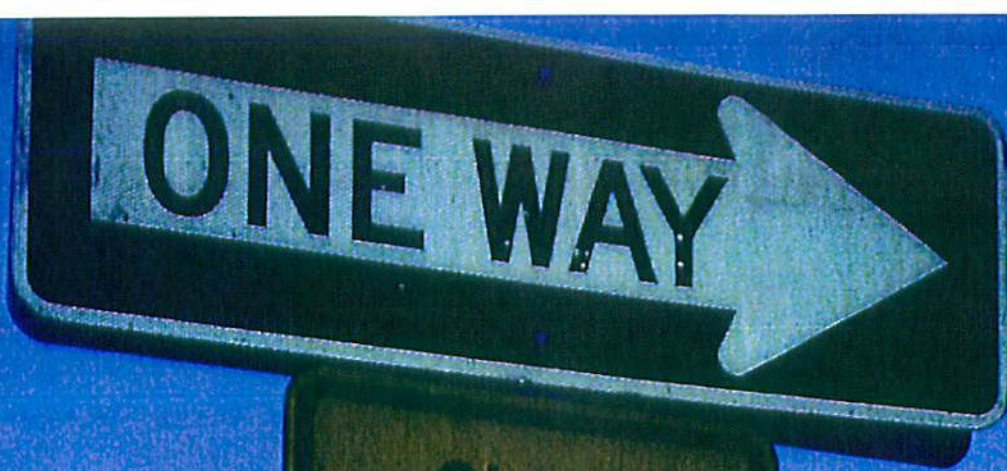
We would like to attend the December 21, 2012 meeting and the January 9, 2013 Town Council Meeting. We thank you for your consideration.

Very Truly Yours,



Michael Small

cc: Mayor Gail Coniglio
Town Council Members
ARCOM Members
Building Planning and Zoning Department
Maura Ziska, Esquire

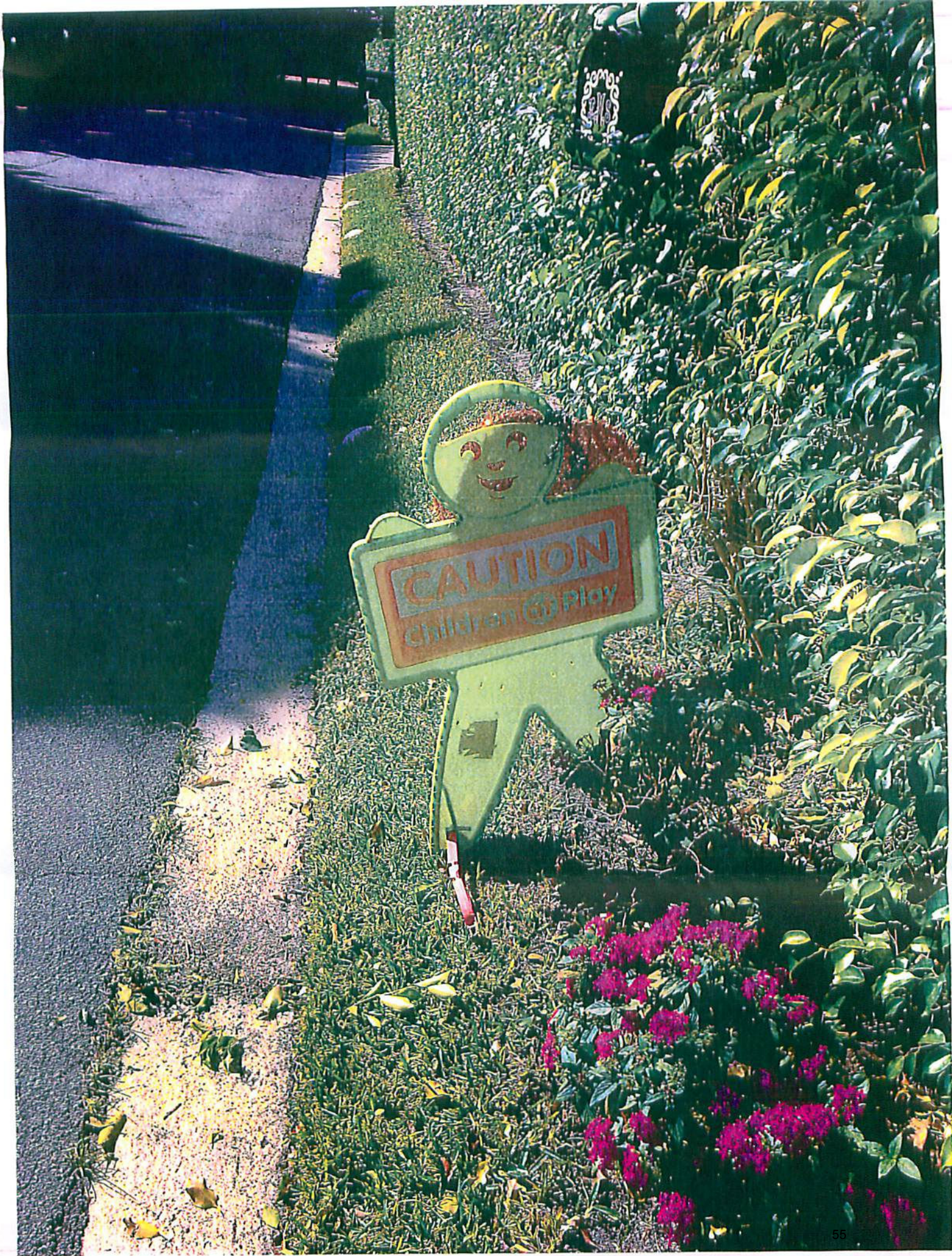


E INLET DR











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

*Also admitted in New York

*Also admitted in Michigan

Esplanade

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

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA FACSIMILE: 561-838-5411

December 26, 2012

Mayor and Town Council
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480**RE: Variance # 5-2013 – 101 Indian Road, Palm Beach, Florida**

Dear Mayor and Town Council:

Please defer the above referenced matter from the **January 9, 2012** Town Council agenda to the **February 13, 2013** Town Council agenda. The reason for the deferral is because ARCOM deferred the architectural portion of the project to their January meeting. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,

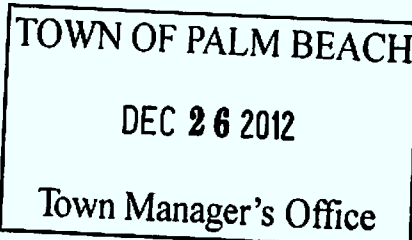


Maura A. Ziska

MAZ/jch

cc: Paul Castro
Harold Smith
client

00016947



TOWN OF PALM BEACH

Town Council Meeting on: January 9, 2013

Section of Agenda

New Business - < 15 Minutes

Agenda Title

SITE PLAN REVIEW #1-2013 The application of James M. Crowley, Esq. or John W. Little, III, Esq. on behalf of Sterling Palm Beach LLC; relative to property commonly known as **340 Royal Poinciana Way**; described as Lengthy legal description on file; located in the C-PC Zoning District. The applicant is requesting a site plan review modification to the Royal Poinciana Plaza parking lot due to the realignment of the new Flagler Memorial Bridge. The Florida Department of Transportation has condemned 8,388 square feet of the Plaza's property for the realignment. The request is to restripe the Plaza, specifically the remaining portion of the northwest side of the property, to capture as many off-street parking spaces as possible of those which were lost. The redesign will result in 208 parking spaces in the northwest portion of the Royal Poinciana Plaza. [Attorneys: James M. Crowley, John W. Little]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter Dated December 21, 2012, from John R. Eubanks, Jr.
- E-mail Dated December 28, 2012, from John R. Eubanks, Jr.
- Letter dated January 3, 2013, from John R. Eubanks, Jr.
- Letter dated January 3, 2013, from John W. Little, III
- Undated Letter from William O. Cooley

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

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E-Mail: jeubanks@blesmlaw.com

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West Palm Beach, FL 33401-3515
Phone: (561) 721-4000
Facsimile: (561) 721-4001

December 21, 2012

Via E-mail and U.S. Mail

John C. "Skip" Randolph, Esq.
Jones, Foster, Johnston & Stubbs, P.A.
505 S. Flagler Drive
Suite 1100
West Palm Beach, FL 33405

**Re: Request for Deferral of Consideration of Application for Site Plan Approval
(#1-2013) by Sterling Palm Beach LLC and Sidney Spiegel, Trustee
Due to Inadequate Notice**

Dear Skip:

As you know, the Palm Beach Towers Condominium ("Towers") and its 277 Unit Owners are the only residential property owners directly adjacent to the Royal Poinciana Plaza ("Plaza"). As a result, the residents of the Towers were recently included within the required mailing of the Zoning Application (Site Plan #1-2013)(the "Application") submitted on behalf of Sterling Palm Beach LLC ("Sterling") and Sidney Spiegel, Trustee ("Spiegel") for a modification of the parking at the Royal Poinciana Plaza ("Plaza"). Unfortunately, on its face, the Notice provided to the Unit Owners of the Towers is insufficient. As a result, the Towers would respectfully request that the matter be removed from the Agenda for the Town Council meeting on January 9, 2013 and deferred for consideration until such time as proper notice has been given.

Although the Application on its face seeks "a site plan review modification to the Royal Poinciana Plaza parking lot due to the realignment of the new Flagler Memorial Bridge" which will "restripe the Plaza", allow "208 parking spaces in the northwest portion" of the Plaza, and include "a number of tandem parking spaces", nowhere within the information or documentation provided to the Towers or its Unit Owners is a copy of any plan, survey or diagram depicting either the present parking within the Plaza or the newly proposed parking site plan. As a result, it is impossible to perform a meaningful review of the Application when the very site plan approval it seeks is nowhere to be found in the documents provided.

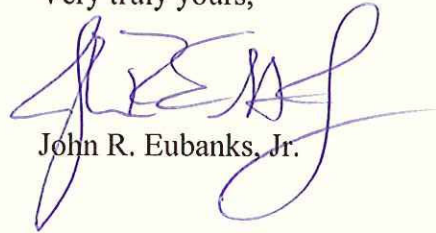
As you know the case law on the issue of improper notice is clear. Any required notice, such as that required under Section 134-328 of the Town Code for Site Plan Approval, must adequately inform those entitled to receive the notice as to the exact changes proposed. As a result, the notice must be clear and unambiguous and readily intelligible to the intended reader, an average citizen at large, who is presumed to lack technical knowledge of a zoning expert. Clearly, providing only the

John C. "Skip" Randolph, Esq.
December 21, 2012
page -2-

written portion of a site plan for the modification of at least "208 parking spaces" in the northwest portion of the Plaza without providing even one diagram of the present conditions and/or proposed changes does not meet this standard.

As a result, the Towers would request that the issue be removed from the Agenda for the January 9, 2013 Town Council meeting and not be considered until such time as residents within the Notice area have (at a minimum) been provided with copies of the plans, surveys or diagrams demonstrating the present existing parking and modification(s) proposed by the Application. Absent such documentation, the Towers and its Unit Owners will have been denied their due process rights.

Very truly yours,

A handwritten signature in blue ink, appearing to read "John R. Eubanks, Jr.", with a large, stylized flourish extending from the end of the signature.

cc: Mayor and Town Council Members
Peter Elwell, Town Manager
Paul Castro, Zoning Administrator
Town Clerk, Town of Palm Beach
John Grosskopf, General Manager Palm Beach Towers
Henry Goldsmith, President of Board of Palm Beach Towers Condominium Association, Inc.



FW: Deferral of Site Plan Application (#1-2013) Due to Inadequate Notice

John Eubanks to: 'gconiglio@townofpalmbeach.com',
'drosow@townofpalmbeach.com', 'David Rosow', 'dar@rosow.com',
"jrandolph@jones-foster.com", "JPage@TownofPalmBeach.com",
Cc: "PElwell@townofpalmbeach.com",
"PCastro@TownofPalmBeach.com",
12/28/2012 02:24 PM

2 attachments



John R. Eubanks Jr. (jeubanks@blesmlaw.com).vcf John R. Eubanks Jr. (jeubanks@blesmlaw.com).vcf

Dear Mayor and Town Council:

Skip Randolph responded to my letter of December 21, 2012, with an e-mail dated December 26th. He indicated that "[t]o the best of my information, the notice send out in regard to this matter was clear and unambiguous" thereby leaving open the distinct possibility that notice may have been deficient and he just was not aware of the situation.

As you can see from my reply to him, clearly the information provided was not adequate. I noticed today, however, that Skip did not copy you all on his response to me, and therefore you were not included in my "reply to all," response back to him.

Skip's response is very troubling to the Towers. On its face, the written Application which was provided to the 277 Unit Owners of the Towers seeks "to restripe the Plaza" to allow "208 parking spaces in the northwest portion" including "a number of tandem parking spaces" without ever providing the Unit Owners with a diagram of the current or proposed parking plan.

Imagine if the written portion of the Application was the only information provided to you regarding the Application. Your first reaction would be that there is no possible way to make an informed decision without seeing a parking plan, survey, diagram, or other representation as to where exactly the spaces will be located, how the proposed stacking or "tandem" parking is supposed to work, and whether there would be sufficient access to make such a proposal even feasible. Nevertheless, this is the exact situation which the Unit Owners of the Towers face.

What makes it worse is that the Application refers to visual information and diagrams included "in the site plan package" which were not provided to the Towers' Unit Owners, leaving them to question whether information is purposefully being kept from them. To add insult to injury, the Unit Owners are being told by Skip's response that just the written portions of the Application alone, without any visual representations, are sufficiently "clear and unambiguous" when obviously they are not.

As a result, the Towers would once again request that the issue be stricken from the Agenda and deferred until proper notice, which includes adequate visual references, has been provided to all of those within the notice area including the Unit Owners of the Towers.

John R. Eubanks, Jr.
Breton, Lynch, Eubanks & Suarez-Murias, P.A.

1209 N. Olive Avenue
West Palm Beach, FL 33401
Telephone: 561-721-4000
Facsimile: 561-721-4001
Direct Dial: 561-721-4002
Email: jeubanks@blesmlaw.com

In celebration of the holidays, our office will be closed as of 5PM, Friday, December 21 through Tuesday, January 1. All of our attorneys and staff will have access to email and voicemail during this time to address all matters, as needed.

Thank you for entrusting us with your legal matters during the past year. We look forward to continuing to earn that trust in the upcoming year!

Best wishes to all for a happy holiday season and a happy, healthy and prosperous New Year

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

The information contained in this electronic mail transmission may be attorney/client privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect at 561-721-4000. Thank you.

-----Original Message-----

From: John Eubanks
Sent: Wednesday, December 26, 2012 4:26 PM
To: Randolph, John C.
Cc: PELwell@townofpalmbeach.com; JPage@TownofPalmBeach.com;
PCastro@TownofPalmBeach.com; SOWens@TownofPalmBeach.com
Subject: Re: Deferral of Site Plan Application Due to Inadequate Notice

Skip:

It is impossible to be clear and unambiguous without a diagram of the proposed parking. You tell me exactly how many spaces there will be, where precisely they will be located, how they will be stacked, and how the access will work without a survey or diagram. You can't and neither can my clients. Furthermore, it is clear that the Applicant has such diagrams available and merely chose not to send a copy to residents and owners within the notice area as there is a reference to such diagrams within the Application. As a matter of law the Notice is improper and will no doubt be found deficient upon appeal. This is from the same party which provided over 75 pages of information to me during on the last Del Frisco's hearing in total violation of the Town's regulations, policies and procedures.

Frankly, my client and I are growing weary of the Town allowing incomplete and improper Applications to come before the Town without

the proper documentation in the public records. As a result the Towers would once again request that the issue be deferred until proper notice is given.

Sent from my iPhone

On Dec 26, 2012, at 1:48 PM, "Randolph, John C." <JRandolph@jonesfoster.com> wrote:

> John,
>
> I received your letter of December 21, 2012. To the best of my
> information, the notice sent out in regard to this matter was clear
> and unambiguous. As a result, unless I receive information from
> staff to the contrary, this item will remain on the agenda as noted.
>
> JOHN C. RANDOLPH
>
>
> [cid:image001.jpg@01CDE36E.065146F0]
>
> John C. Randolph Attorney
> Direct Dial: 561.650.0458 | Fax: 561.650.5300 |
> jrandolph@jonesfoster.com
> <mailto:jrandolph@jonesfoster.com>
>
> Jones, Foster, Johnston & Stubbs, P.A.
> Flagler Center Tower, 505 South Flagler Drive, Suite 1100, West Palm
> Beach, Florida 33401
> 561-659-3000 | www.jonesfoster.com<http://www.jonesfoster.com/>
>
> U.S. Treasury Regulation Circular 230 requires us to advise you that
> written communications issued by us are not intended to be and
> cannot be relied upon to avoid penalties that may be imposed by the
> Internal Revenue Service.
>
> Incoming emails are filtered which may delay receipt. This email is
> personal to the named recipient(s) and may be privileged and
> confidential. If you are not the intended recipient, you received
> this in error. If so, any review, dissemination, or copying of this
> email is prohibited. Please immediately notify us by email and
> delete the original message.
>
>
>
> From: John Eubanks [mailto:jeubanks@blesmlaw.com]
> Sent: Friday, December 21, 2012 12:03 PM
> To: Randolph, John C.
> Cc: 'gconiglio@townofpalmbeach.com'; 'drosow@townofpalmbeach.com';
> 'dar@rosow.com'
> '; 'rwildrick@townofpalmbeach.com'; 'rkleid@townofpalmbeach.com';
> 'wdiamond@townofpalmbeach.com'
> '; 'mpucillo@bermandevalerio.com'; 'mpucillo@townofpalmbeach.com';
> 'kleid561@aol.com'
> '; 'JPage@TownofPalmBeach.com'; 'PElwell@townofpalmbeach.com';
> 'PCastro@TownofPalmBeach.com'
> '; 'CDelp@TownofPalmBeach.com'; 'clerk@townofpalmbeach.com'
> Subject: Deferral of Site Plan Application Due to Inadequate Notice
>
> Please see correspondence of today's date. Thank you.

>
>
> John R. Eubanks, Jr.
> Breton, Lynch, Eubanks & Suarez-Murias, P.A.
> 1209 N. Olive Avenue
> West Palm Beach, FL 33401
> Telephone: 561-721-4000
> Facsimile: 561-721-4001
> Direct Dial: 561-721-4002
> Email: jeubanks@blesmlaw.com<mailto:jeubanks@blesmlaw.com>
> In celebration of the holidays, our office will be closed as of 5PM,
> Friday, December 21 through Tuesday, January 1. All of our attorneys
> and staff will have access to email and voicemail during this time
> to address all matters, as needed.
> Thank you for entrusting us with your legal matters during the past
> year. We look forward to continuing to earn that trust in the
> upcoming year!
> Best wishes to all for a happy holiday season and a happy, healthy
> and prosperous New Year
> Tax Advice Disclosure: To ensure compliance with requirements
> imposed by the IRS under Circular 230, we inform you that any U.S.
> federal tax advice contained in this communication (including any
> attachments), unless otherwise specifically stated, was not intended
> or written to be used, and cannot be used, for the purpose of (1)
> avoiding penalties under the Internal Revenue Code or (2) promoting,
> marketing or recommending to another party any matters addressed
> herein.
>
> The information contained in this electronic mail transmission may
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> communication is strictly prohibited. If you have received this
> communication in error, please notify us immediately by telephone
> collect at 561-721-4000. Thank you.
>
>
>
> _____
>
>
> <image001.jpg>
> <12-21-12 Letter to John Randolph.pdf>
> <John R. Eubanks Jr. (jeubanks@blesmlaw.com).vcf>

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

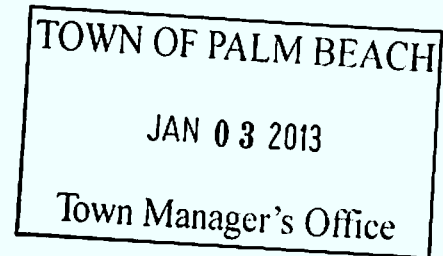
Peter L. Breton
Francis X. J. Lynch
John R. Eubanks, Jr.
Marta M. Suarez-Murias
Robert J. Sniffen - Of Counsel

www.blesmlaw.com
Sender's Direct Line: (561) 721-4002
E-Mail: jeubanks@blesmlaw.com

1209 North Olive Avenue
West Palm Beach, FL 33401-3515
Phone: (561) 721-4000
Facsimile: (561) 721-4001

January 3, 2013

Via E-mail and Hand Delivery
Honorable Gail Coniglio, Mayor, and
Town Council of Town of Palm Beach
360 South County Road
Palm Beach, Florida 33408



**Re: Application for Site Plan Approval (#1-2013) ("Application") by
Sterling Palm Beach LLC and Sidney Spiegel, Trustee ("Applicants")**

Dear Mayor and Town Council:

The Palm Beach Towers and its 277 Unit Owners are the only real property owners directly adjacent to the Royal Poinciana Plaza ("Plaza"). As such, they were included within the required mailing of the Application for the modification of the parking at the Royal Poinciana Plaza ("Plaza"). Given the lack of proper notice of the Application, the matter must be deferred for consideration until such time as proper notice has been given. Furthermore, even if the Town could legally consider the Application, it would have to be denied as presented.

I. Failure to Provide Legally Sufficient Notice

On its face, the Application seeks "a site plan review modification to the Royal Poinciana Plaza parking lot" which will "restripe the Plaza" to allow "208 parking spaces in the northwest portion" of the Plaza which include "a number of tandem parking spaces". Incredibly, neither the Towers or its Unit Owners were provided with a copy of any parking plan, survey, diagram or other visual representation depicting the present parking situation¹ in the Plaza or the newly proposed parking site plan despite the fact that such information was clearly included in the site plan application package.

Pursuant to Section 134-328 of the Town Code, "a *copy of such application* for site plan review *must be mailed* to the owners of property ... within 300 feet." (emphasis added). In conjunction with Section 134-328, the Town has adopted the TOWN OF PALM BEACH ZONING

¹ At this point, absent a Staff and/or third party count of the actual number of parking spaces physically present at the Plaza, the only "competent and substantial evidence" before the Town on the issue has come from the testimony and report (which is confirmed in the report attached hereto as Exhibit "A") from Tim Frank, the former Town Planning Administrator, in which he confirmed that there are presently 656 parking spaces in the Plaza, and William Cooley that there are 659 parking spaces. As a result, the Application should not be considered in a vacuum as there is no way to know exactly how many spaces total there would be in the Plaza even if the Application was granted, since the Application speaks only to the restriping of the northwest corner of the Plaza.

APPLICATION CHECKLIST to make sure that any application is complete and proper notice is given to interested parties. The Town's Checklist includes:

TWENTY (20) TYPED sets of the Zoning Application (including a location map which clearly shows the subject property ... and **MUST includes a parking statement**), reduced plans (maximum size 11x17) including existing floor plan and elevations with plans stapled to applications. **ALL PLANS MUST INCLUDE ZONING CASE NUMBER** (emphasis in original).

A copy of the Town's Checklist for the Application (certified as complete on November 6, 2012) is attached hereto as Exhibit "B." As a result, clearly the Town Staff had in its possession a parking statement *and reduced plans* showing the proposed parking contained within the Application. Given that such plans are to be "stapled to applications" they were required to be provided as part of the "copy of such application" mailed to surrounding property owners. As a result, the "Notice" provided to the Towers and its Unit Owners, which failed to contain such reduced parking plans, is legally deficient and in direct violation of the Town's Code.² Consequently, any consideration of the Application by the Town Council without proper notice would be reversible error.

In addition to the failure to meet the requirements of the Town Code, the "Notice" provided to the Towers and its Unit Owners is deficient under the applicable case law. The case law is clear that notice must adequately inform those required to receive the notice as to the exact changes proposed. As a result, the notice must be clear and unambiguous and readily intelligible to the intended reader, *an average citizen at-large*, who is presumed to lack the technical knowledge of a zoning expert. Clearly, providing only the written portion of a site plan for the modification of 208 parking spaces without providing a parking plan, survey, or other visual representation of the proposed changes does not meet this standard. As a result, the Notice provided to the Towers and its Unit Owners is legally deficient under the applicable case law and the Town Council would be committing reversible error if it considers the Application prior to proper notice being given.

II. Application Is Premature and Lacking an Indispensable Party

In addition to the lack of proper Notice, consideration of the Application would further be improper given that the Application is premature and may not be considered by the Town Council unless, at a minimum, the Town is a signing party to the Application. Within the Application, Sterling and Spiegel admit that:

² Any argument by the Applicants and/or the Town Staff that copies of such plans were "too large or cumbersome" to be provided to those within the Notice area are demonstrably false given that the Town Staff signed off on the receipt of reduced copies of such plans as part of the Checklist as far back as November 6, 2012. As a result, providing copies of such reduced plans to the Towers and its Unit Owners would have been no more difficult than providing any other page of the Application. The failure to provide crucial information which was available in a readily accessible format constitutes a lack of notice to the Towers and its Unit Owners.

As illustrated on Sheet 1 of the application site plan package³, the applicant is *proposing that the Town allow twelve (12) of the parking spaces along the north boundary of the Poinciana Plaza property to encroach three (3) feet onto the Town's remainder property*, two (2) feet of which will be for vehicular overhang. (emphasis added).

As a result, the Application is premature, as it contains a condition precedent which has not been met, namely that the Town must give up, sell, or otherwise abandon valuable real property rights.⁴

Over the years, the Town has established a pattern of being a signing party to any application which directly involves the Town's/taxpayer's real property rights, and for good reason. Absent the issue being resolved, or the Town being included as a party, the Town may very well find itself subject to a series of unintended consequences, which may or may not also affect the pending eminent domain lawsuit.

In the present case, the Applicants are requesting the Town Council to "approve" an Application which includes an unresolved encroachment onto three (3) feet of the Town's real property. As a result, in order to obtain the relief requested in the Application, the Town must: a) sell the property in question; b) lease the property in question; c) abandon the property in question; or d) create an easement over the property in question in favor of Sterling/Spiegel.

Clearly, all such alternatives should be fully explored and a decision made by the Town Council (or the Town should be made a co-applicant such that it can control or even withdraw its portion of the application) prior to considering, much less potentially approving, an Application which would lock the Town into a course of action which it may not wish to take. For example, selling or abandoning the property could create undesirable tax consequences, the reduction in the required "green space" of the Town, or even the elimination of valuable space which could be used as part of a bike path extension under the new Flagler Memorial Bridge. Similarly, leasing or providing an easement over the property could make the Town subject to every claim or lawsuit even remotely involving the twelve (12) spaces which encroach on the Town's property. If the Town approves the Application first *and then* finds out that none of the options are in the best interest of the Town and its taxpayers, it would not be able to reverse its approval or it would open itself to a lawsuit by the Applicants.

³ Again, this statement in the written portion of the Application demonstrates that there are various sheets and copies attached to the site plan which were not provided to the Towers and its Unit Owners even in reduced format. Consequently, "a copy of such application" was not provided to those in the notice area in violation of Section 134-328 of the Town Code.

⁴ The mere request for the Town to sell, abandon, lease or provide an easement over the taxpayers' property for the sole benefit of the Applicants to obtain twelve (12) additional parking spaces begs the question of why the Town should be in the business of considering an encroachment onto the taxpayers' property for the benefit of one property owner, especially when such encroachments could have negative consequences for the Town. Query also, whether any encroachment would even be possible as it would constitute a change in the use of the Town's property.

As a result, the Application should be deferred until such time as the Town has made an informed decision on how to best deal with the requested encroachment (if at all), or at a minimum has been made a signing party to the Application. In the alternative, the Application must be denied as premature.

III. Tandem Parking is Not Permitted by Town Code Without a Variance

Even if all the above deficiencies could be overlooked, which they cannot, the Application must be denied (or at a minimum deferred) given that in its present form, it is in direct violation of the Town Code. On its face, the Application includes tandem parking without seeking the required variance for such parking.

As stated within "Exhibit "B -Site Plan Review" to the Application, the "revised parking layout seeks ... the use of a number of tandem parking spaces." Tandem parking spaces involve placing one vehicle directly behind another such that the vehicle in the back cannot be moved without moving the vehicle in the front or to the side being moved. Such parking is expressly prohibited within the Town's Code. Section 134-2172 of the Town Code requires that any "parking plan must be so arranged that *each automobile may be placed and removed from the parking space assigned thereto and taken to and from the property without the necessity of moving any other automobile to complete the maneuver.*"(emphasis added).⁵

Notably, nowhere within the Application do the Applicants apply for a variance⁶ in order to utilize the tandem parking referenced within the Application.⁷ As a result, the Application is legally deficient as it is in direct contradiction and violation of the Town Code and must be denied. Approval of the Application without such a variance would constitute reversible error.

IV. Prior Site Plan Approvals Were Abandoned or Have Expired

In an apparent attempt to get around the need for a variance under the Town Code, the

⁵ While tandem parking is permitted under Section 134-2237 of the Code for parking with a full time attendant, such provisions only apply "For a public or private parking lot *which is to be operated as the principal and sole use on the parcel of land ...*" (emphasis added). Clearly, the Plaza is not operated as a parking lot as its principal and sole use of the land. As a result, tandem parking is not permitted in the Plaza without a variance. In addition, nowhere in the Code is triple stacked parking permitted. As a result, to the extent that the Applicants attempt to utilize any triple stacked parking, a variance (which is not included in the Application) would be required.

⁶ In fact, within the Application, the Applicants respond to Section V of the Application, regarding the basis for any undue hardship as "Not Applicable."

⁷ While the Applicants cite "the realignment of the new Flagler Memorial Bridge" as the reason for the proposed Site Plan, such reason *does not excuse the need to obtain a variance*, but merely forms the basis of a claim of "hardship" to support such a variance. As a result, failure to obtain a variance constitutes reversible error.

Applicants appear to rely upon a series of prior site plans which have expired and/or have been abandoned.⁸ As a result, any reliance by the Town on such prior site plans would be reversible error.

In the past, the Applicants have argued that they can bootstrap their way into additional parking within the Plaza without a variance by creating a parking "cure plan" which relies upon tandem and triple stacked parking included within Special Exception #21-95 for Variance and Site Plan prepared by the Lawrence Group in 1995 ("1995 Lawrence Plan") as purportedly "modified" by Site Plan Review #5-99 with Variances, also created by the Lawrence Group ("1999 Lawrence Plan").⁹ Both the 1995 and 1999 Lawrence Plans, however, have expired and/or have been abandoned.

Under the Town Code, work authorized by the Town Council under a site plan, special exception or variance must be commenced within twelve (12) months of the date of approval or it becomes "null and void" and must also be completed within a set time period or it expires.¹⁰ Similarly, the discontinuance of the use of a site plan, special exception, or variance intentionally (for a period of one year) or unintentionally (for a period of more than two years) results in the abandonment and immediate termination of the applicable approval.¹¹ Under these standards, both of the Lawrence Plans have expired and/or have been abandoned. As such, both plans are null and void and may not form the basis for any approval of the present Application. Consequently, reliance on either plan to grant a potential approval of the Application would constitute reversible error.

A. Expiration of 1995 Lawrence Plan

The 1995 Lawrence Plan sought Site Plan Approval, along with variances for tandem parking and a landscape reduction, in order to purportedly increase the number of parking spaces available in the Plaza to 749.¹² While the Lawrence Plan was approved by the Town Council at its September 12, 1995 meeting, the parking restriping was never completed. Nowhere in the Town Records is there a copy of any building permit issued which specifically includes the restriping of the Plaza

⁸ Once again, nowhere within the written portion of the Application is there even any mention of reliance on any prior site plan(s) for parking in the Plaza. As such, any attempt to rely on a prior site plan(s) which appears on documents not provided to those property owners within the notice area constitutes yet another violation of the due process rights of the Towers and its Unit Owners.

⁹ Notably both the 1995 Lawrence Plan and 1999 Lawrence Plan included a variance due to the existence of tandem and/or triple stacked parking while the present Application does not.

¹⁰ See, e.g., Town Code Sections 134-330, 134-172.

¹¹ See, e.g., Town Code Section 134-228.

¹² Notably, both the 1995 and 1999 Lawrence Plans included a large number of parking spaces located on the Town's property (identified as Parcel 100 in the FDOT eminent domain case), as further set forth in my letter of November 6, 2012, which is incorporated by reference herein. For example, the 1999 Lawrence Plan, a copy of which is attached hereto as Exhibit "C" includes some 24 parking spaces located within the Town's property.

under the 1995 Lawrence Plan. To the contrary, both the Building Permit Application and the Building Permit issued under the 1995 Lawrence Plan were only for "new curbs and Turfstone blocks in parking area."¹³ Even assuming that the parking restriping was included in the permits issued, there are no Town records demonstrating any inspection reports at all, much less final approvals, of any restriping under the 1995 Lawrence Plan.

As a result, in accordance with the Town Code (as well as the approval letter provided to the Applicant)¹⁴ after twelve months (i.e. September of 1996) any restriping approval under the Lawrence Plan expired and became "null and void." There is also no evidence, much less competent and substantial evidence, that any restriping ever took place under the 1995 Lawrence Plan. Instead, that aerial by the Palm Beach County Property Appraiser in January of 1999¹⁵ demonstrates that no tandem parking spaces existed within the Plaza over two years later.

Given that the 1995 Lawrence Plan expired and the restriping thereunder was never implemented, at no time has there ever physically been 749 parking spaces located at the Plaza.¹⁶ As such, the Applicants cannot claim that there were ever 749 parking spaces "permitted" under the 1995 Lawrence Plan as the basis for the number of parking spaces that they are "entitled to" under any "cure plan." More importantly, because the 1995 Lawrence Plan parking approval became "null and void," as a matter of law, it can not be utilized as the basis for any future parking plan, including the 1999 Lawrence Plan.

B. Expiration or Abandonment of 1999 Lawrence Plan

As a preliminary matter, given that the 1995 Lawrence Plan expired and was therefore void, the 1999 Site Plan which was heavily based on the 1995 Lawrence Plan¹⁷ is likewise void. As a result, any reliance by the Town on the 1999 Lawrence Plan would be reversible error.

¹³ A copy of the Building Permit Application and Permit issued under 1995 Lawrence Plan, as well as the extension of such permits, is attached hereto as Composite Exhibit "D."

¹⁴ A copy of the correspondence to the Applicant advising of the approval of the 1995 Lawrence Plan but warning that failure to act would result in such approval lapsing is attached as Exhibit "E."

¹⁵ A copy of the 1999 Aerial by the Palm Beach County Property Appraiser, along with an expanded view of the Plaza's parking area is attached hereto as Composite Exhibit "F." While somewhat fuzzy, it is clear from the 1999 aerial that there is no tandem parking in the Plaza.

¹⁶ Instead, as demonstrated by the Survey on behalf of Sterling (a copy of which along with an expanded view of the Surveyor's notes and northwest corner of the Plaza attached as composite Exhibit "G") demonstrates, in 2008, when Sterling entered into its Long Term Lease, there were only 579 parking spaces at the Plaza.

¹⁷ On its face, the Zoning Application for the 1999 Lawrence Plan which is attached hereto as Exhibit "H" relies heavily on the 1995 Lawrence Plan. For example, within Exhibit "B", the Applicant admits that its application is only "seeking a modification [of the 1995 Lawrence Plan] to the northwest portion of the parking lot."

Even if this fatal flaw of reliance on a void prior site plan could somehow be overlooked, the 1999 Lawrence Plan either expired and/or was abandoned by the owners of the Plaza. The 1999 Lawrence Plan focused on the northwest corner of the Plaza and included a request for triple stacked parking as well as a reduction in the width of parking spaces and the drive aisles in order to purportedly provide 120 valet parking spaces.¹⁸ Although approved in March of 1999 with a Building Permit issued in October of 1999, the 1999 Lawrence Plan was never actually completed in accordance with the Plan. Noticeably, the Notice of Commencement for the work actually performed by the contractor lacks any reference to restriping.¹⁹ Furthermore, the Town's own Inspection Reports for the 1999 Lawrence Plan²⁰ demonstrates that while there were initial inspections under the permit, as of the last entry on December 15, 1999 the changes to the Plaza parking never passed final inspection. As such, any approval for tandem or triple stacked parking has expired and become "null and void." There is no competent, much less substantial, evidence for the Town to rule otherwise. Consequently, any approval of the Application which relies upon the 1999 Lawrence Plan would be reversible error.

Even if the Applicants could somehow, at this late date, provide documentation that restriping was completed in accordance with the 1999 Lawrence Plan, the approval for the site plan and variance upon which any tandem or triple stacked parking was permitted has long since been abandoned. The undisputed evidence, demonstrates that for a period of at least eight (8) years, no tandem parking has existed at the northwest corner of the Plaza.²¹ As a result, either: a) the owner of the Plaza, "undid" and covered over any attempt at tandem or triple stacked parking;²² or b) no such tandem or triple stacked parking ever existed.

To the extent that the owner of the Plaza covered over any prior attempt at creating tandem or triple stacked parking, it intentionally abandoned the site plan approval and the variance thereunder after one year. To the extent that the owner never completed the restriping of the Plaza in accordance with the 1999 Lawrence Plan, as demonstrated by the Town's inspection records, any approval was "null and void." Under either scenario, any prior approval for tandem or triple stacked

¹⁸ Once again, such purported spaces included some 24 "illegal" spaces located on the Towns' property.

¹⁹ A copy of the Notice of Commencement is attached hereto as Exhibit "I."

²⁰ A copy of the Inspection Reports is attached hereto as Exhibit "J."

²¹ See, copies of the 2002, 2005-2010 aerials from the Palm Beach Count Property Appraiser attached hereto as Composite Exhibit "K" as well as the survey on behalf of Sterling dated March 2008 attached as Composite Exhibit "F" and finally the FDOT aerial of the parcels "taken" as part of the construction on the new Flagler Memorial Bridge attached as Exhibit "L."

²² A closer review of portions of the northwest portion of the Plaza demonstrate areas which appear to have been restriped into tandem parking and then returned to the original parking scheme, but are not in compliance with the 1999 Lawrence Plan.

parking no longer exists.²³ As a result, the Applicants must seek a variance for any proposed tandem parking, but have failed to do so. Consequently, approving the Application in reliance upon either the 1995 or 1999 Lawrence Plan without requiring a variance would be reversible error.

C. Code Enforcement Cases Demonstrate Expiration of Prior Site Plan(s)

The actions and statements of both the Town Staff and the Applicants are also consistent with the expiration of the prior site plan(s). For example, in Code Enforcement Case #08-2566,²⁴ the Town cited the Applicants for restriping a portion of the Plaza without obtaining the required Site Plan Approval pursuant to Section 134-326(b) of the Town Code. Within the Code Enforcement hearing, counsel for the Applicants indicated that "they are dealing with a plan that was approved back when Houstons was approved that shows *tandem parking which does not work today.*" (emphasis added). Mr. Castro also noted that "the original parking plan showed a substantial amount more parking than what is there today because of the stacking situation." He further indicated that "[s]ometime later [after 1999], and Staff does not know when, the property was re-slurried, the blacktop was done hiding the revised striping, and they went back to the striping that was previously there."

The mere need for a new Site Plan (as opposed to relying on the 1999 Lawrence Plan) coupled with the statements that tandem parking does not work today, and the admission that the Applicants had abandoned any attempt to comply with the 1999 Site Plan, all demonstrate that any prior site plan(s) which included tandem parking have long since expired. As a result, the Applicants must seek a variance for any future tandem parking. Approving the Application in reliance upon either the 1995 or 1999 Lawrence Plan without requiring a variance would be reversible error.

V. Tandem Parking Does not Work as a Practical Matter

Leaving aside the fact that any prior approvals or site plan(s) have all since expired, as admitted by counsel for the Applicants in 2008 that as a practical matter, tandem and/or triple stacked parking in the Plaza "does not work today." Tandem and triple stacked parking presently

²³ The expiration or abandonment of the underlying variance begs the question of how did Staff allow triple stack parking (which is not allowed anywhere in the Code) on the south portion of the Plaza in 2010 without any application for either a Site Plan or variance since there was no legal basis for the same? In addition, leaving aside the legality of such restriping, the restriping of the south portion of the Plaza more than made up for any spaces which the Applicants may claim they have "lost" to the FDOT as a result of the new Flagler Memorial Bridge. For example, the parking survey performed on behalf of Sterling in 2008 (included as part of Composite Exhibit "G"). demonstrates the existence of 579 parking spaces, while the on-the-ground count by Tim Frank of the triple stacked parking on the south side of the Plaza, which was done in late 2010, verifies an increase to 656 which more than makes up for the "35 spaces" which the Applicants have claimed they "lost" to the new bridge construction.

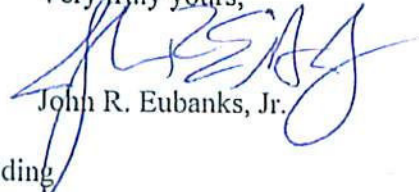
²⁴ A copy of the minutes of the October 16, 2008 Code Enforcement Board is attached hereto as Exhibit "M."

(and illegally)²⁵ exists on the south side of the Plaza. As demonstrated within the attached pictures²⁶ the average reduced parking space size proposed is about the size of a Chevy Volt. As a result, cars such as a Mercedes S Class or Porsche Panamera do not fit within the proposed dimensions. Similarly, popular SUVs (such as Jeeps, Tahoes, Suburbans, and Expeditions) and 1/2 ton pickup trucks hang over the parking spaces by two feet or more. As a result, it is impossible to park another vehicle behind or in front of such vehicles, thereby negating the effect of any tandem or triple stacked parking. Likewise, to the extent that one triple stacked car is parked in a "middle" space with cars parked next to it, it is impossible to get out of the space without also moving one or more other vehicles. Finally, tandem or triple stacked parking in portions of the lot where there is a hard curb on one end and a Royal Palm tree on the other end (much as would exist on the northwest corner as well) make it impossible to actually utilize all of the spaces in such rows. As such, the Applicants should not be able to "count" parking spaces which are unusable. Instead, the Application should be deferred or denied until such time as a better solution to these issues is found.

VI. "Further Development Possibilities" Under the 1979 Agreement

On top of all of the above is the potential that any approval of the Application would provide the Applicants with "further development opportunities" which would terminate the 1979 Agreement. In order to avoid even the possibility of such a termination, clearly any potential approval by the Town should include an Affidavit executed by both the Applicants, which is specific to the Application, that any approval is not a "further development possibility" and in no way negates the terms of the 1979 Agreement.

Very truly yours,


John R. Eubanks, Jr.

cc: John Page, Director of Planning, Zoning and Building
Peter Elwell, Town Manager
Paul Castro, Zoning Administrator
John C. "Skip" Randolph, Esq.
Town Clerk, Town of Palm Beach
John Grosskopf, General Manager Palm Beach Towers
Henry Goldsmith, President of Board of Palm Beach Towers Condominium Association, Inc.

²⁵ Given that the Lawrence Plan and the 1999 Site Plan have expired or have been abandoned, there was no basis for the Town Staff to permit the restriping of the south side of the Plaza parking lot without applying for a new Site Plan as well as seeking a variance in light of the inclusion of triple stacked parking. As such, the triple stacked parking on the south side of the Plaza was improperly granted and should be removed.

²⁶ See, Composite Exhibit "N."

EXHIBIT "A"

ProTechnik

Management and Consulting Services

January 3, 2013

Honorable Gail Coniglio and
Town Council of Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Re: Parking Space Evaluation at the Royal Poinciana Plaza

Dear Mayor and Town Council:

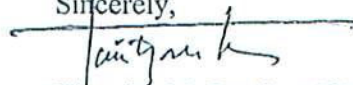
To further confirm my prior testimony, while there is no basis for doing so in the Town Code, in its most recent parking study provided to the Town, DKS Associates divided the parking lot at the Plaza into seven zones (A through G) to come up with a total of 729 parking spaces presently existing at the Plaza. The below chart, based upon my actual field counts of existing conditions, demonstrates that there are only 656 parking spaces at the Plaza. To clarify the differences in my count and that provided by DKS, I have also divided the parking lot into zones A through G for ease of reference.

Numerical Comparison of Parking Counts at Royal Poinciana Plaza

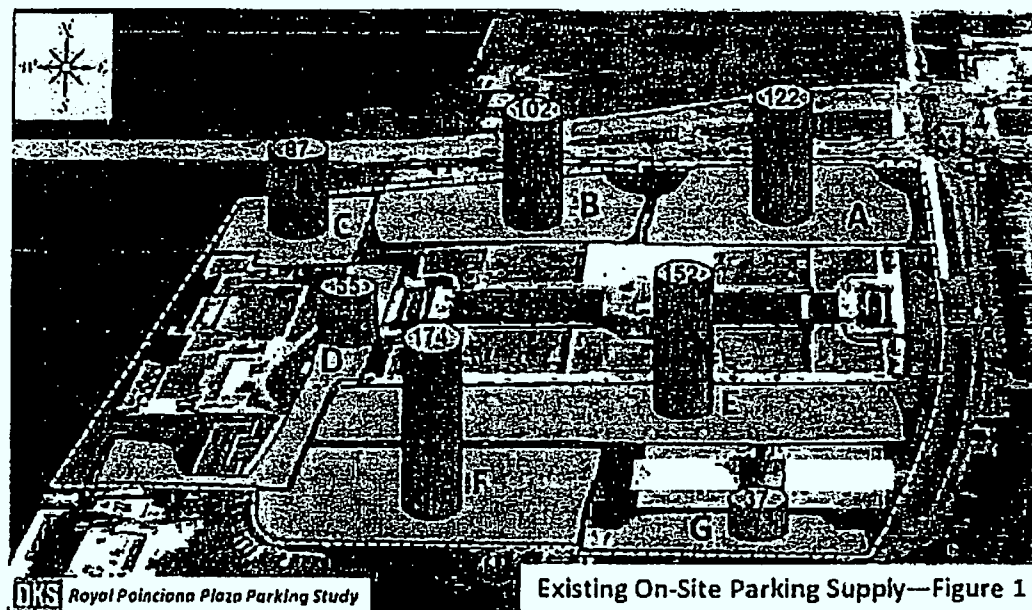
Area	DKS Associates Count	Field Count	Difference
A	122	121	-1
B	102	84	-18
C	87	61	-26
D	55	39	-16
E	152	143	-9
F	174	174	0
G	37	34	-3
Total	<u>729</u>	<u>656</u>	

Please feel free to contact me should you have any questions and/or concerns about this data.

Sincerely,



Timothy M. Frank, AICP



Parking occupancy levels in the sub-areas varied throughout the day reflecting the individual patterns of the different land uses of the site. Figures 2 through 6 show the typical patterns of occupancy observed during the weekday surveys.

EXHIBIT "B"

11/6/12 Site Plan Review #1-2013
Zoning Application/Case#

340 Royal Palm Drive
Property Address

TOWN OF PALM BEACH ZONING APPLICATION CHECKLIST

INSTRUCTIONS TO APPLICANT: Create a file folder labeled with the application number (See Zoning Application Procedures) and address. Label: VAR 65-2002 300 Main Street (Example) STAFF FILE

Contents:

- ☒ Copy of checklist prepared by staff (electronic and on disc)
- ☒ Original TYPED Zoning Application (including a location map which clearly shows the subject property, displays a North arrow, indicates nearby cross streets, and indicates house numbers of the properties shown. MUST include parking statement). (electronic and on disc)
- ☒ TWENTY (20) TYPED sets of the Zoning Application (including a location map which clearly shows the subject property, displays a North arrow, indicates nearby cross streets, indicates house numbers of properties shown and MUST include a parking statement), reduced plans (maximum size 11 x 17) including existing floor plan and elevations with plans stapled to applications. ALL PLANS MUST INCLUDE ZONING CASE NUMBER
- ☒ Two full-sized sets of signed & sealed plans including street location (and include on disc)
- ☒ Full-sized existing floor plans & elevations (and include on disc)
- ☒ One full-sized set of signed and sealed paving and ~~drainage~~ plans (and include on disc)
- ☒ One current survey (abstracted), including any historic trees (include on disc)
- ☒ Original NOTICE AFFIDAVIT (include on disc)
- ☒ One tax map identifying 300' radius and subject property (include on disc)
- ☒ List of all property owners within 300' radius (include on disc)
- ☒ Sample envelope (see instructions) (include on disc)
- ☒ Mailing envelopes to property owners (see instructions)
- ☐ Original/copy of letters from other agencies (include on disc)
 - ☐ Dept. Environmental Protection
 - ☐ Traffic Concurrence
 - ☐ Army Corps of Engineers
 - ☐ Other
- ☐ Copy of any associated correspondence (include on disc)
- ☒ CD labeled and containing files as indicated on attached instructions and as indicated above

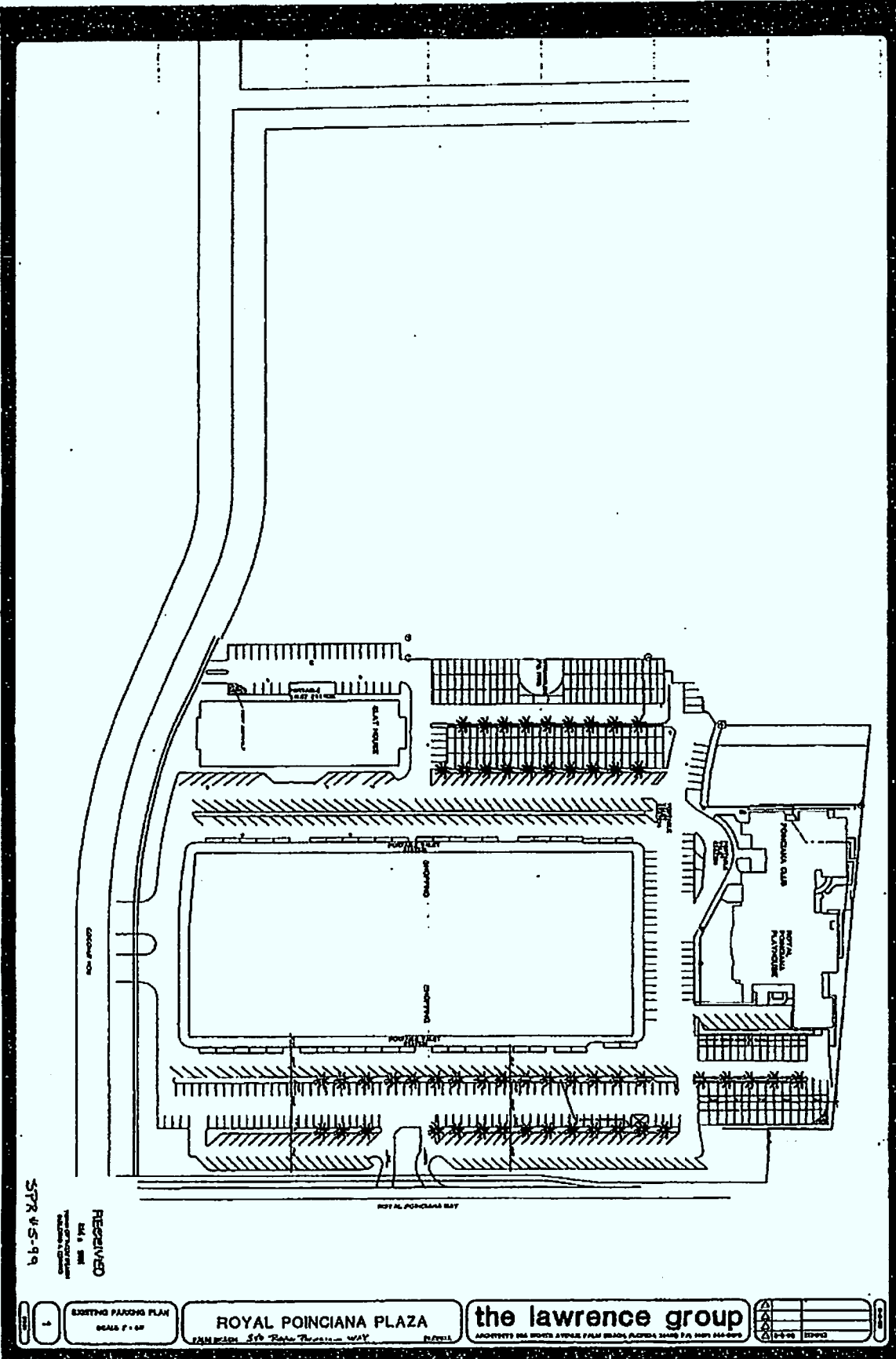
Note: If the Zoning Administrator has told you that your project must be referred to ARCOM or the Landmarks Preservation Commission prior to your Town Council hearing, you are required to submit the ARCOM or LPC application package including the ARCOM/LPC application, one full size set of signed & sealed plans, and the appropriate ARCOM/LPC filing fee. This must be submitted at the same time as you submit for your variance, special exception or site plan review. Be sure to use the correct COMBO NOTICE.

- ☐ Copy of ARCOM/LPC Notice (if applicable) (include on disc)

FEE: \$3,000
[Signature]
TOWN STAFF

11/6/12
DATE

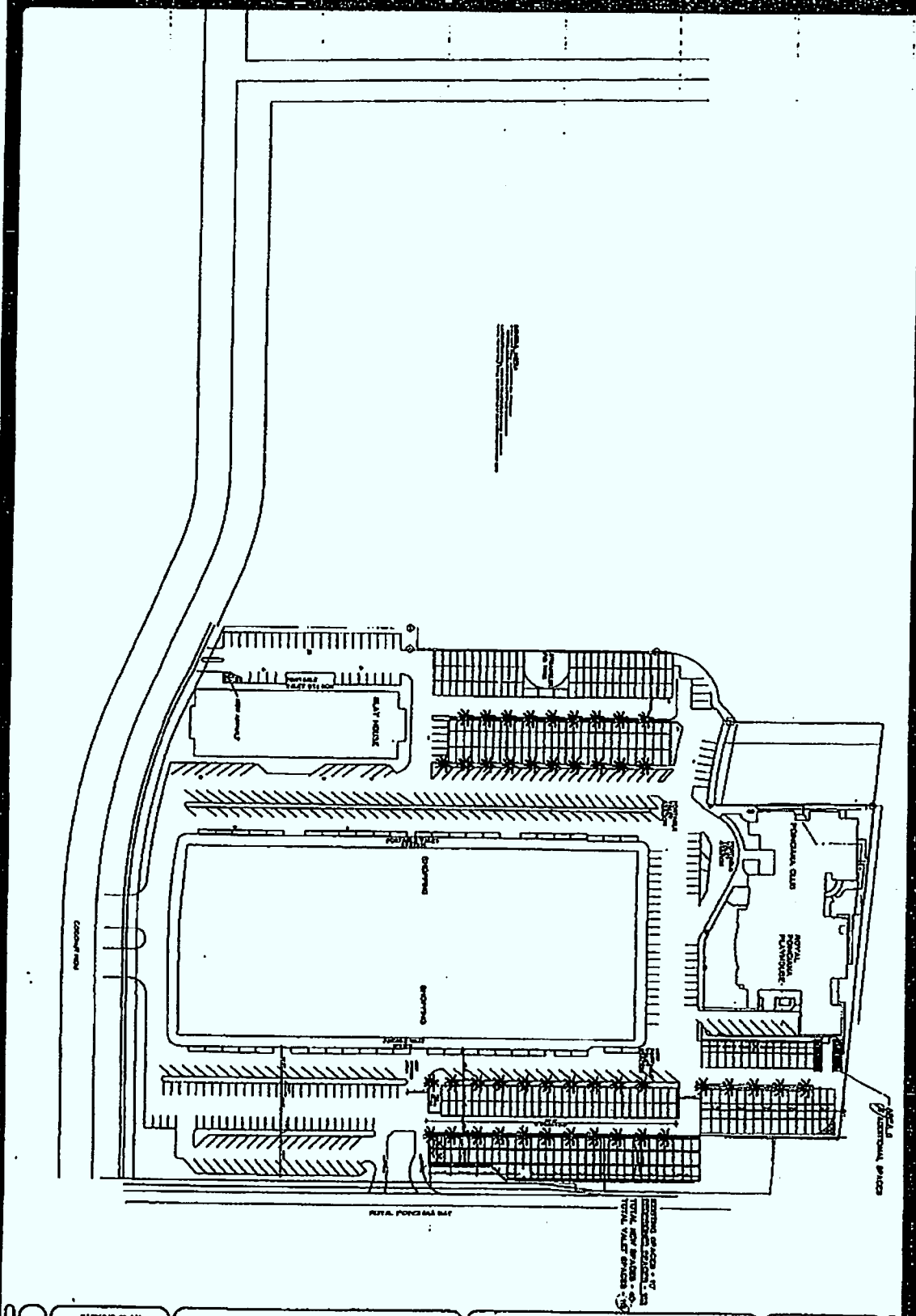
EXHIBIT "C"



SPR #5-99

RECEIVED
MAY 1999
PLANNING DEPARTMENT
PALM BEACH, FLORIDA

1	EXISTING PARKING PLAN	ROYAL POINCIANA PLAZA	the lawrence group	
	SCALE 1" = 50'	PREPARED BY: <i>the lawrence group</i>	ARCHITECTS: 1001 NORTH AVENUE, PALM BEACH, FLORIDA 33480 P.O. BOX 1444-0000	



PLAN

1

PARKING PLAN

SCALE: 1" = 50'

ROYAL POINCIANA PLAZA

PLAN

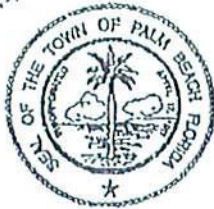
the lawrence group

ARCHITECTS ONE NORTH STREET, PALM BEACH, FLORIDA 33480 TEL 561-833-1000

DATE: 10-1-83

BY: [Signature]

EXHIBIT "D"



TOWN OF PALM BEACH

PERMIT NO. 8005092 - 1
ISSUED ON 12/01/1995

is granted in accordance with plans and specifications,
submitted with the permit application, for property legally
described herein, to:



RAAEN, DONALD D
CURBWORKS INC
2461 PORT WEST BLV
WEST PALM BEACH, FL 33407

Location:
ROYAL POINCIANA PLZ
Suite #:

Phone: 407/845-9788 Cert: W/CGC-16828 VRU #: 32641

Permit Type and Purpose:

Building / Subsidiary / Private Drives, Parking Lots, De
NEW CURBS AND TURFSTONE BLOCKS IN PARKING AREA

Owner of Record:
SPIEGEL SIDNEY TR # 31520371
ROYAL POINCIANA PLZ
PO BOX 11
PALM BEACH FL, 334800011

Tenant Name:

Legal Description: 50-43-43-22-00-001-0050

22-43-43, TH PT OF GOV LT 1 LYG S OF S LI OF ROYAL POINCIANA WAY & W OF & A

C-PC Zoning District Landmark: N
Flood Zone, 0' Base floor elevation, 0' Exist. or Prop.

Value: \$27,500 Fee: \$618.75 Chk #: Rec #:

- 1) Final inspection required, however, if final inspection is not requested, permit holder assumes all liability and penalty.
- 2) Work must progress to avoid "90 Day Viol" Code requirement. Permit fee is not refundable after 90 days.
- 3) NOTICE: In Addition to the requirements of this permit, THERE MAY BE ADDITIONAL RESTRICTIONS APPLICABLE TO THIS PROPERTY THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY AND THERE MAY BE ADDITIONAL PERMITS REQUIRED FROM OTHER GOVERNMENTAL ENTITIES SUCH AS WATER MANAGEMENT DISTRICTS, STATE AGENCIES, OR FEDERAL AGENCIES.

****WARNING TO OWNER** YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOU PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.**

In consideration of this permit, the Owner and Builder agree to undertake said work in full compliance with Ordinances of the Town of Palm Beach, agree no work will be undertaken prior to securing a permit, agree the Construction Inspector's notes on the reviewed plans will be followed, and further agree that THE ISSUANCE OF THIS PERMIT IS CONDITIONED UPON COMPLIANCE WITH ANY APPROVALS GRANTED BY THE TOWN COUNCIL, LANDMARKS PRESERVATION COMMISSION, AND/OR ARCHITECTURAL COMMISSION, AND THAT ANY MISREPRESENTATION OF FACTS PERTAINING TO REQUIRED PERMIT INFORMATION AND/OR THE REQUIRED DESIGN PROFESSIONAL'S PLANS SHALL BE CONSIDERED PRIMA-FACIE EVIDENCE AND BE CAUSE FOR PERMIT REVOCATION. Other Conditions stated below are accepted upon issuance of permit.

Variance #: 21-95 COA #: ARCOM #:
Conditions: OWNER LISTED AS POINCIANA MGMT INC ON PERMIT

8005092 12/01/95

Curbworks, Inc.

2461 Port West Blvd,
West Palm Beach, FL 33407
(407) 846-9788

✓ CWD
✓ HSA
PF

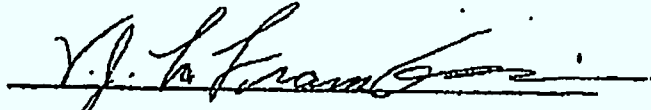
June 6, 1996

Town of Palm Beach
Planning and Zoning Department
360 South County Road
Palm Beach, FL 33480

Re: Permit #8005092
Royal Poinciana Plaza
Palm Beach, Florida

We would like this permit transferred to Fisher-Clark Construction Company at your earliest convenience.

Thank you


V.J. LA FRAMBOISE, PRESIDENT

VAR 21-95

BUILDING PERMIT APPLICATION

Folio # _____

Date 11-06-95 TO THE BUILDING INSPECTOR OF PALM BEACH, FLORIDA, the undersigned requests that you grant a building permit to

CUREWORKS, INC. 2461 PORT WEST BLVD. W PALM BEACH FL 33407 (407) 845-9788
Contractor Name & Address Telephone #

State Cert./Registration # CGC016828 Town Registration # 32641

TO CONSTRUCT New curbs and Turfstone blocks in parking area.

In accordance with plans and specifications submitted with this application.

TOTAL Sq. ft. PROPOSED FOR NEW CONSTRUCTION, ADDITION, RENOVATION, AND REMODEL 1700 S.F.

LOCATED AT 350 ROYAL POINCIANA DR Apt. # _____ Owned by: Poinciana Management, Inc.
(Street Address) Address: 350 Royal Poinciana Way #302
Palm Beach, FL 33480

LEGAL DESCRIPTION: 050-43-43-22-00-001-0050

Fee Simple Titleholder's Name & Address Sidney Spiegel, PO Box 11, Palm Beach, FL
(if other than owner) Owner's Agent of Record and Address

N/A N/A
Mortgage Lender's Name & Address Tenant Name & mailing address

The Lawrence Group
205 North Ave., Palm Beach, FL N/A
Architect and/or Engineer Name & Address Bonding Company Name & Address

Proposed Roof Material N/A Existing N/A

Construction Value/
Contract Amount \$ 27,500.00 Permit Fee 75 Radon Gas Surcharge
\$ 618 \$ _____
check # 2757

In consideration of this permit, the owner and builder agree to undertake said work in full compliance with Ordinances of the Town of Palm Beach, Florida, and further agree that no work will be undertaken prior to securing a permit. The Building Inspector's notes, as shown on the approved plans, will be adhered to. I understand that a separate permit must be secured for electrical work, plumbing, signs, wells, pool, AC, etc., and that construction related parking must be on site and off of the public street. I certify that the foregoing is accurate.

Signature of CONTRACTOR:
TOWN OF PALM BEACH
PLUMBING & ZONING date 11-06-95
*Must be qualifier or have written authorization attached to application.

Signature of OWNER OR AGENT:
T. J. LaFrance date 11-06-95

NOTARY as to Contractor
My Commission Expires: NOV 11 1995
HOLLY A. GUFFY
Notary Public, State of Florida
My comm. expires Feb. 1, 1996
No. CC176047

NOTARY as to Owner
My Commission Expires: NOV 11 1995
HOLLY A. GUFFY
Notary Public, State of Florida
My comm. expires Feb. 1, 1996
No. CC176047

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

TO BE COMPLETED ONLY BY PERMIT APPLICANTS WHO HAVE REGISTERED THEIR
PALM BEACH COUNTYWIDE LICENSE WITH THE TOWN FOR A FEE OF \$ 2.00.

TRADE NAME: CURBWORKS, INC.

NAME OF QUALIFIER: DONALD RAAEN

BUSINESS PHONE: (407) 845-9788

CERTIFICATION ISSUED BY: STATE OF FL X OR COUNTY

CERTIFICATION # CG C016828 CERTIFICATION EXP, DATE 8-31-96

GENERAL LIABILITY INSURANCE CARRIER: THE TRAVELERS INSURANCE CO.

GENERAL LIABILITY INSURANCE EFFECTIVE DATES 6-07-95 TO 6-07-96

GENERAL LIABILITY INSURANCE LIMIT: \$ 1,000,000

WORKERS' COMPENSATION INSURANCE CARRIER: EMPLOYERS SELF INSURANCE CO.

WORKERS' COMP. INSURANCE EFFECTIVE DATES: 4-01-95 TO 4-01-96

WORKERS' COMP. EXEMPTION EFFECTIVE DATES: TO

Poinciana Plaza

Curbworks, Inc.

2481 Port West Blvd.
West Palm Beach, FL 33407
(407) 846-9788
FAX (407) 845-6917

ATTN: HARRY ACKERMAN

TOWN OF PALM BEACH PLANNING, ZONING & BUILDING DEPT.
P.O. BOX # 2029
360 SOUTH COUNTY ROAD
PALM BEACH FL 33480
DECEMBER 12, 1995

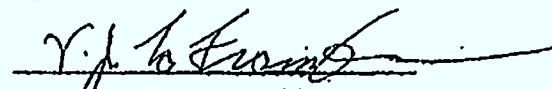
REFERENCE: PERMIT # 8005092-1 ISSUED 12-01-95

Dear Mr. Ackerman:

Due to the heavy congestion in all parking areas of the property during tourist season, we would request extending the above mentioned permit to the starting date of APRIL of 1996.

Thank you for your time and consideration.

Sincerely,


V.J. LA FRAMBOISE, PRES.

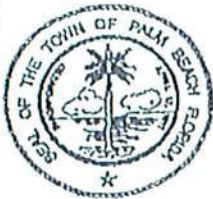
cc: POINCIANA MANAGEMENT

WORK MUST COMMENCE BY APRIL 30, 1996
AND CONTINUE UNINTERRUPTED AS
PER TOWN AMENDMENT ~~103-6~~ 103-6
TOWN OF PALM BEACH
BUILDING & ZONING

RECEIVED

DEC 15 1995





TOWN OF PALM BEACH



PERMIT NO. 8005092 - 2
ISSUED ON 6/07/1996

is granted in accordance with plans and specifications,
submitted with the permit application, for property legally
described herein, to:

CLARK, BARRY A
FISHER CLARK CONSTRUCTION INC
3600 INVESTMENT LN 101
WEST PALM BEACHES, FL 33404

Location:
ROYAL POINCIANA PLZ
Suite #:

Phone: 407/848-9822 Cert: W/CGC-2840 VRU #: 5013

Permit Type and Purpose:

Building / Subsidiary / Private Drives, Parking Lots, De
TRANSFER PERMIT, NEW CURBS & TURFSTONE BLOCKS IN
PARKING AREA

Owner of Record:

SPIEGEL SIDNEY TR # 31520371
ROYAL POINCIANA PLZ
PO BOX 11
PALM BEACH FL, 334800011

Tenant Name:

Legal Description: 50-43-43-22-00-001-0050

22-43-43, TH PT OF GOV LT 1 LYG S OF S LI OF ROYAL POINCIANA WAY & W OF & A

C-PC Zoning District
Flood Zone,

Landmark: N

0' Base floor elevation,

0' Exist. or Prop.

Value:

Fee: \$40.00

1) Field inspection required; however, if field inspection is not required, permit holder assumes full liability and penalty.

2) Work must progress to avoid "90 Day Wait" Code requirement. Permit Fee is not refundable after 30 days.

3) NOTICE: In addition to the requirements of this permit, THERE MAY BE ADDITIONAL RESTRICTIONS APPLICABLE TO THIS PROPERTY THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY, AND THERE MAY BE ADDITIONAL PERMITS REQUIRED FROM OTHER GOVERNMENTAL ENTITIES SUCH AS WATER MANAGEMENT DISTRICTS, STATE AGENCIES, OR FEDERAL AGENCIES.

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In consideration of this permit, the Owner and Builder agree to undertake said work in full compliance with Ordinances of the Town of Palm Beach, agree no work will be undertaken prior to securing a permit, agree the Construction Inspector's notes on the reviewed plans will be followed, and further agree that THE ISSUANCE OF THIS PERMIT IS CONDITIONED UPON COMPLIANCE WITH ANY APPROVALS GRANTED BY THE TOWN COUNCIL, LANDMARKS PRESERVATION COMMISSION, AND/OR ARCHITECTURAL COMMISSION, AND THAT ANY MISREPRESENTATION OF FACTS PERTAINING TO REQUIRED PERMIT INFORMATION AND/OR THE REQUIRED DESIGN PROFESSIONAL'S PLANS SHALL BE CONSIDERED PRIMA-FACIE EVIDENCE AND BE CAUSE FOR PERMIT REVOCATION. Other Conditions stated below are accepted upon issuance of permit.

Variance #: 21-95

COA #:

ARCOM #:

Conditions:

BUILDING PERMIT APPLICATION

Folio # _____

Date 6/6 19 96 TO THE BUILDING INSPECTOR OF PALM BEACH, FLORIDA, the undersigned requests that you grant a building permit to

FISHER CLARK CONSTRUCTION INC
Contractor Name & Address

407-848-9822
Telephone #

State Cert./Registration 1.C6C 002840 Town Registration # 5013

TO CONSTRUCT NEW CURBS AND TRESTLE BLOCKS IN PARKING AREA. in accordance with plans and specifications submitted with this application.

TOTAL Sq.ft. PROPOSED FOR NEW CONSTRUCTION, ADDITION, RENOVATION, AND REMODEL _____

LOCATED AT _____ Apt. # _____ Owned by: SPIEGEL SONG
(Street Address) Address: ROYAL PENSACOLA RD

LEGAL DESCRIPTION: _____ Block 11
Palm Beach # 33480

Fee Simple Titleholder's Name & Address _____ Owner's Agent of Record and Address _____
(if other than owner)

Mortgage Lender's Name & Address _____ Tenant Name & mailing address _____

Architect and/or Engineer Name & Address _____ Bonding Company Name & Address _____

Proposed Roof Material _____ Existing _____

Construction Value/ Permit Fee 00 Radon Gas Surcharge
Contract Amount \$ _____ \$ 40 \$ _____

In consideration of this permit, the owner and builder agree to undertake said work in full compliance with Ordinances of the Town of Palm Beach, Florida, and further agree that no work will be undertaken prior to securing a permit. The Building Inspector's notes, as shown on the approved plans, will be adhered to. I understand that a separate permit must be secured for electrical work, plumbing, signs, wells, pool, AC, etc., and that construction related parking must be on site and off of the public street. I certify that the foregoing is accurate.

Signature of CONTRACTOR: X. B. Clark date 6/6/96 Signature of OWNER OR AGENT: X. B. Clark date 6/6/96
*Must be qualified or have written authentication attached to application.

NOTARY as to Contractor My Commission Expires: _____ NOTARY as to Owner or Agent My Commission Expires: _____

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

Curbworks, Inc.

2461 Port West Blvd.
West Palm Beach, FL 33407
(407) 846-9788

✓ CND
✓ H/A
PF

June 6, 1986

Town of Palm Beach
Planning and Zoning Department
360 South County Road
Palm Beach, FL 33480

Re: Permit #8005092
Royal Polyclana Plaza
Palm Beach, Florida

We would like this permit transferred to Fisher-Clark Construction Company at your earliest convenience.

Thank you

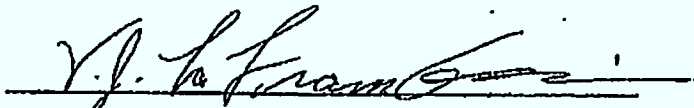
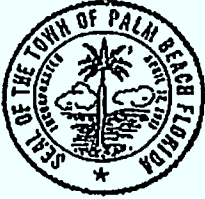

V.J. LA FRAMBOISE, PRESIDENT

EXHIBIT "E"



TOWN OF PALM BEACH

Planning, Zoning & Building Department

September 20, 1995

Mr. Sidney Spiegel
Poinciana Management, Inc.
P.O. Box 11
Palm Beach, Fl. 33480

RE: Special Exception 21-95 with Site Plan and two Zoning
Variances at Royal Poinciana Plaza

Dear Mr. Spiegel: . . .

The Town Council at the regularly scheduled meeting of September 12, 1995 conditionally approved the subject Special Exception, Site Plan and two Zoning Variance applications. The approval was granted to redesign the parking lot to provide an additional 64 parking spaces (749 total). The spaces are to be provided through two controlled attendant parking areas with mobile valet stations as shown on the sheet plans 1 through 3, prepared by the Lawrence group and which are a part of this application. In addition, the approval was also granted to reconfigure the southeast and north entrance to the Plaza to improve traffic circulation. All of these changes required variances to allow attendant parking with three in lieu of the allowed two tandem parking spaces and a small reduction the landscape area.

The conditions of approval are as follows:

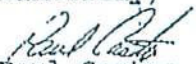
1. Tenant and owner parking shall be limited and controlled to use the Royal Poinciana Plaza's furthest north row of parking spaces along Royal Poinciana Way;
2. The valet parking service shall be controlled by the Plaza management as a unified parking plan for the Plaza;
3. There shall be no assigned parking spaces in the Poinciana Plaza. Those existing assigned parking spaces that have been provided by the Plaza to specific tenants and customers shall be discontinued as those leases expire; and,
4. The north entrance to the Plaza from Royal Poinciana Way shall be reconstructed concurrently with the improvements to the other areas of the parking lot and shall be landscaped to provide a more aesthetic appearance.

This Town Council action constitutes zoning approval only and does not relieve the owner and or applicant from obtaining additional Town approvals as may be required, such as Architectural approval and necessary construction permits. -

This matter will be placed on the Architectural Commission's meeting on September 27, 1995. A representative should be at that meeting for the purpose of making a presentation to the Commission.

The work authorized under the Special Exception, Site Plan and Variance approvals must be commenced or implemented within one year from the date of approval or said approval will expire.

Sincerely,


Paul Castro, AICP
Zoning Administrator

PWC/po

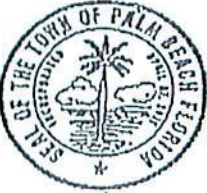
CC: Robert J. Doney, Town Manager
Robert L. Moore, Director of Planning, Zoning and Building
Mary Pollitt, Town Clerk
Harry P. Ackerman, Chief Building Inspector
pf

EXHIBIT "F"



COMPOSITE EXHIBIT "G"

EXHIBIT "H"



TOWN OF PALM BEACH

Planning, Zoning & Building Department

ZONING APPLICATION

SITE PLAN REVIEW #5-99 WITH VARIANCES

Page I of 8

TO BE HEARD BY THE TOWN COUNCIL ON MARCH 9, 1999, NO EARLIER THAN AFTER THE LUNCH RECESS, IN THE TOWN COUNCIL CHAMBERS, TOWN HALL, 360 S. COUNTY ROAD. Pursuant to Section 134-172 the Town Zoning Ordinance, this application is being sent to all property owners within 200' of the subject zoning application. Exhibits such as large drawings and other supporting documents that are not attached to this application are on file at the Town's Planning, Zoning & Building Department, 360 S. County Rd., south entrance, for public view. All correspondence received by the Town relating to this matter will be available for public review beginning on the Friday prior to the Town Council Meeting.

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

Subject

Address: 340 Royal Poinciana Way, #336

Zoning

District C-PC

Fee Simple Property Owner's Name Poinciana Management, Inc. d/b/a Royal Poinciana Plaza

Legal Description See attached Exhibit A

Name of person who can receive service of process for purposes of litigation in Palm Beach County
Doyle Rogers and M. Timothy Hanlon, c/o Alley, Maass, Rogers & Lindsay, PA
321 Royal Poinciana Plaza, P.O. Box 431, Palm Beach, FL 33480

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

A. Applicable Zoning Code Section Number(s):

1. Section 134-326 through 327 (Site Plan Review)
2. Section 134-201 (Findings prior to Authorization - Variances)
3. Section 134-2237 (Tandem Parking)
4. Section 134-2172 (Size of Spaces and Access)
5. Section 134-2171 (Drive Isle Width)

Zoning Application Type and Number: Site Plan Review #5-99 with Variances
Page 2 of 8

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

This request for Site Plan Review (Section 134-327 through 134-329) and 3 Variances (Section 134-201) are for the purpose of redesigning the parking lot on the northwest corner of the plaza for two and three tandem (attendant) parking space rows as set forth on the modified plan prepared by the Lawrence Group which is a part of this application. This plan can provide 120 valet parking spaces in the northwest portion of the plaza. The Variances are for the purpose of permitting a portion of the parking spaces to be three tandem in lieu of two tandem parking spaces allowed by the Code plus additional Variance to provide parking spaces with a width of 8.5' in lieu of 9' required (Section 134-2172) and Variance for drive isle width (Section 134-2171) of 24' 6" in lieu of 25' required in order to retain the existing Royal Palm Trees with the new parking configuration.

APPLICANT'S STATED REASONS WHY SUCH APPLICATION SHOULD BE APPROVED:

The Royal Poinclana Plaza (C-PC Zone) originally complied with all requirements for parking. The parking plan was modified by Special Exception #21-95 with Variance and Site Plan Review granted by the Town Council on September 12, 1995 allowing three tandem (attendant) parking spaces in lieu of two permitted and to allow elimination of some landscaping all as set forth on a drawing for a plan of the plaza prepared by the Lawrence Group.

The Town Council, at its regularly scheduled meeting of January 14, 1999 conditionally approved Special Exception #34-98, Palm Beach Grill, which is a new restaurant tenant for the space formally occupied by Au-Bar (night club use). One of the conditions for approval was the modification of the current parking plan by the owner of the Royal Poinclana Plaza to provide not less than 120 valet parking spaces in the northwest portion of the plaza. The Town Council requires construction of this modified valet parking area prior to the opening and operation of the Palm Beach Grill.

This proposed application is the only method by which the Plaza can alleviate the parking congestion which the Town Council anticipates after the opening and operation of the Palm Beach Grill and is in accordance with the motion passed by the Council on January 14, 1999 for conditional approval of Special Exception #34-98 (Palm Beach Grill).

APPLICANT'S RESPONSE TO ITEMS FOR SITE PLAN REVIEW Section 134-327 are set forth on Exhibit B attached hereto.

Zoning Application Type and Number: Site Plan Review 5-99 with Variances
Page 3 of 8

APPLICANT'S STATED REASON why the approval of said variance(s) will not be contrary to the public's interest and where owing to special conditions, a literal enforcement of the provisions of the zoning ordinance will result in unnecessary and undue **HARDSHIP**.

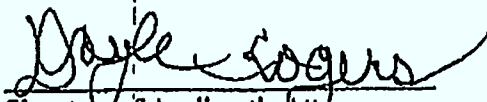
This valet parking plan will be in the public's best interest since it will provide adequate and convenient parking for tenants and their guests.

The plaza ownership is under a hardship for which there is no solution — the popularity (or unpopularity) of the tenants in the plaza. If the restaurants, theater and other businesses do not prosper then the traffic and parking will present no problem. Hopefully, most will prosper but it is not probable that all will be prosperous during the same period of time (for example: Dempsey's is closed and Poinciana Club is limited to membership). The traffic flow and parking for the Palm Beach Grill is unknown. The parking in the Plaza is limited to the area now designated for parking, however, there are few commercial areas in the Town of Palm Beach which offer as much "on site" parking for tenants and customers.

This application responds on Exhibit C-1, C-2 and C-3 to the items set forth in Section 134-201 for each variance which the Council must find prior to authorizing the 3 Variances requested.

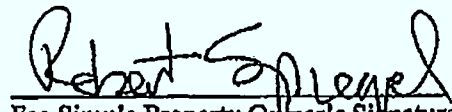
Respectfully submitted,

Poinciana Management, Inc. d/b/a
Royal Poinciana Plaza



Signature of Applicant's Attorney
February 4, 1999

Doyle Rogers
(typed name & telephone #)
(561) 659-1770



Fee Simple Property Owner's Signature
(Or his/her duly authorized attorney)
February 4, 1999

Robert Spiegel, its President
(typed name & telephone #)
(561) 832-8502

LAND

A parcel of land in Section 22, Township 43 south, Range 43 East, Palm Beach County, Florida, bounded as follows: On the North by the southerly right-of-way line of Royal Poinciana Way; on the East by the westerly right-of-way line of Coconut Row; on the West by the waters of Lake Worth; and on the South by the following described line:

Commencing at the intersection of the northerly right-of-way line of White Hall Way with the westerly right-of-way line of Coconut Row, said streets are described in deed recorded in Deed Book 814, Page 447 and subsequent pages, Public Records of Palm Beach County, Florida; thence northerly along the said westerly right-of-way line of Coconut Row, a distance of 444.76 feet to the beginning of a curve concave to the east having a radius of 329.60 feet and a central angle of 23 53'30"; thence northerly along the arc of said curve, a distance of 137.44 feet to the tangent of said curve; thence northerly along said tangent, a distance of 59.62 to the point of beginning of the herein-described south line; thence westerly making an angle from northwest to west of 66 14'30", a distance of 227.26 feet; thence northerly at right angles, a distance of 26.00 feet; thence westerly at right angles, a distance of 293.43 feet to the beginning of curve to the northeast, having a radius of 65.03 feet and a central angle of 85 42'43", a distance of 97.28 feet; thence northwesterly, a distance of 33.90 feet, more or less, to the southeast corner of a parcel of land described in Deed Book 1011, Page 226, Public Records of Palm Beach County, Florida, said southeast corner is located in the arc of a curve concentric with the last herein-described curve, and having a radius of 90.03 feet and a central angle of 102 55'30", and is 4.19 feet southerly from a point of reverse curve; thence northerly along the arc of the just-described curve, a distance of 4.19 feet to the point of reverse curvature of a curve concave to the west, having a radius of 513.29 feet and a central angle of 15 35'22"; then northerly along the arc of said reverse curvature, a distance of 97.62 feet to a point in a line parallel with and 461.20 feet southerly from (measured at right angles to) the southerly right-of-way line of Royal Poinciana Way, said line also being described in Deed Book 1011, Page 226, Palm Beach County, Florida; thence westerly along said parallel line, a distance of 191.06 feet, more or less, to the waters of Lake Worth, and the end of the herein-described southerly line.

Excepting, however, so much of a nearly-rectangular area of land together with riparian or littoral rights appurtenant or incident thereto, as is included in the foregoing-described parcel of land, and which nearly-rectangular area of land has a southerly boundary of 208.44 feet, and easterly boundary of 71.20 feet, a northerly boundary of 190.74 feet plus 12.08 feet on two different courses coinciding with the south line of the east approach of Flagler Memorial Bridge, and having a westerly boundary of 71.88 feet coinciding with the west face of an existing concrete bulkhead within the waters of Lake Worth, and all as such nearly-rectangular area of land and riparian and littoral rights appurtenant or incident thereto are more particularly described and were conveyed in deed of Florida East Coast Hotel Company of the Town of Palm Beach dated September 11, 1939, and recorded in Deed Book 592, Page 470 of the Public Records of Palm Beach County, Florida.

EXHIBIT A

EXHIBIT B
SECTION 134-327
SITE PLAN APPLICATION

- 1) The ownership and control of the applicant's property is vested in Poinciana Management, Inc. d/b/a Royal Poinciana Plaza.
- 2) The property is a self-contained mixed commercial use center and the only property in the Town of Palm Beach zoned C-PC. Mixed uses include professional offices, bank, stock brokerage firm, corporate offices, restaurant, theater, club, real estate brokerage offices, veterinarian, doctor's office, dentist's office, spa, beauty salon, travel agency, retail shops, art gallery, and other Town serving businesses.
- 3) See Site Plan prepared by The Lawrence Group which is made a part of this application.
- 4-14) Please refer to the Site Plan of the Royal Poinciana Plaza prepared by The Lawrence Group for these items if pertinent to this application. However, this Site Plan Review is solely for the purpose of seeking a modification to the northwest portion of the parking lot to provide 120 valet parking spaces. The original Site Plan Review and the modification thereof in 1995 would respond to these items which are not covered by the current Site Plan.

EXHIBIT C-1
SECTION 134-201 (VARIANCES)
FINDINGS PRIOR TO AUTHORIZATION
OF DECREASE IN REQUIRED
WIDTH OF PARKING SPACES

- 1) Special conditions and circumstances exist which are peculiar to the Royal Poinciana Plaza which is the only property in town designated as C-PC zoning district.
- 2) The special conditions and circumstances do not result from the actions of the applicant but from the anticipated increase in traffic flow (determined by the Town Council) to be caused by a new tenant in a location which has been used as a restaurant since the initial opening of the Royal Poinciana Plaza.
- 3) Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in this same zoning district, since there is no other property in the C-PC zoning district.
- 4) The Royal Poinciana Plaza is the only property in the Town of Palm Beach in the C-PC zoning district but denial of this Variance would work unnecessary and undue hardship on the applicant and prevent it from complying with the decision of the Town Council.
- 5) The variance requested is the minimum variance that will make possible the reasonable use of the northwest parking area for valet parking spaces in accordance with the decision of the Town Council.
- 6) This item is not applicable.
- 7) The grant of this Variance for the redesign of the northwest area of the parking lot of the Royal Poinciana Plaza will be in harmony with the general intent and purpose of this chapter and the decision of the Town Council on January 14, 1999 and such Variance will not be injurious to the area, involved or otherwise detrimental to the public welfare.

**EXHIBIT C-2
SECTION 134-201 (VARIANCES)
FINDINGS PRIOR TO AUTHORIZATION
OF DECREASE IN REQUIRED
DRIVE ISLE WIDTH**

- 1) Special conditions and circumstances exist which are peculiar to the Royal Poinciana Plaza which is the only property in town designated as C-PC zoning district.
- 2) The special conditions and circumstances do not result from the actions of the applicant but from the anticipated increase in traffic flow (determined by the Town Council) to be caused by a new tenant in a location which has been used as a restaurant since the initial opening of the Royal Poinciana Plaza.
- 3) Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in this same zoning district, since there is no other property in the C-PC zoning district.
- 4) The Royal Poinciana Plaza is the only property in the Town of Palm Beach in the C-PC zoning district but denial of this Variance would work unnecessary and undue hardship on the applicant and prevent it from complying with the decision of the Town Council.
- 5) The variance requested is the minimum variance that will make possible the reasonable use of the northwest parking area for valet parking spaces in accordance with the decision of the Town Council.
- 6) This item is not applicable.
- 7) The grant of this Variance for the redesign of the northwest area of the parking lot of the Royal Poinciana Plaza will be in harmony with the general intent and purpose of this chapter and the decision of the Town Council on January 14, 1999 and such Variance will not be injurious to the area, involved or otherwise detrimental to the public welfare.

EXHIBIT C-3
SECTION 134-201 (VARIANCES)
FINDINGS PRIOR TO AUTHORIZATION
OF THREE TANDEM PARKING IN
LIEU OF TWO TANDEM PARKING

- 1) Special conditions and circumstances exist which are peculiar to the Royal Poinciana Plaza which is the only property in town designated as C-PC zoning district.
- 2) The special conditions and circumstances do not result from the actions of the applicant but from the anticipated increase in traffic flow (determined by the Town Council) to be caused by a new tenant in a location which has been used as a restaurant since the initial opening of the Royal Poinciana Plaza.
- 3) Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in this same zoning district, since there is no other property in the C-PC zoning district.
- 4) The Royal Poinciana Plaza is the only property in the Town of Palm Beach in the C-PC zoning district but denial of this Variance would work unnecessary and undue hardship on the applicant and prevent it from complying with the decision of the Town Council.
- 5) The variance requested is the minimum variance that will make possible the reasonable use of the northwest parking area for valet parking spaces in accordance with the decision of the Town Council.
- 6) This item is not applicable.
- 7) The grant of this Variance for the redesign of the northwest area of the parking lot of the Royal Poinciana Plaza will be in harmony with the general intent and purpose of this chapter and the decision of the Town Council on January 14, 1999 and such Variance will not be injurious to the area, involved or otherwise detrimental to the public welfare.

EXHIBIT "I"

Sec 30-1999 03:57 PM 99-394665
ORB 11375 Pg 1585
1001 0100 0100 0100 0100 0100 0100 0100 0100 0100

Name:

Address:

This instrument prepared by: Brian Billingham

Address: 1301 E. St. Joseph Ave, Stuart, FL 34994

Property Appraiser's Parcel ID No(s): 50434322000010050

Permit No. _____

NOTICE OF COMMENCEMENT
(required under Florida Statute Section 713.13)

Tax Folio No. 50434322000010050

STATE OF FLORIDA, COUNTY OF PALM BEACH, TOWN OF PALM BEACH

THE UNDERSIGNED hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713 of the Florida Statutes that the following information is provided in the Notice of Commencement.

1. Description of Property (give legal description and STREET ADDRESS): 340 ROYAL POINCIANA WAY, PALM BEACH, FL 33480
"SEE ATTACHED"

2. General Description of Improvement: PARKING LOT MODIFICATION

3. OWNER NAME & ADDRESS: ROBERT SPIEGEL, P.O. BOX 11, PALM BEACH, FL 33480

Owner's Interest in Property

Name & Address of Fee Simple Titleholder (if other than owner)

4. CONTRACTOR NAME & ADDRESS, Phone & Fax #: THE BCS GROUP INC., 1301 E. ST. JOSEPH AVE, STUART, FL 34994
5. Surety Name & Address (if any, as per Fla. Stat. Sec. 713.23, Payment Bond): 561-252-3146 FAX: 561-252-8087

Amount of Bond \$

N/A

6. Lender Name, Address, Phone & Fax #

N/A

7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Florida Statutes Section 713.13(1)(A)7. Provide Name, Address, Phone & Fax #

8. In addition to him/herself, Owner designates _____ of _____ to receive a copy of the Lienor's Notice as provided in Section 713.13(a)(b) Florida Statutes. Provide Phone # and Fax #.

9. Expiration Date of Notice of Commencement: SEP. 30, 2000 (the expiration date is one year from the date of recording unless a different date is specified).

Sworn to and subscribed before me the 30 day of Sept. 1999 by Robert Spiegel (who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

Notary Signature

Owner Signature

Printed Name

Printed Name

My Commission expires:

STATE OF FLORIDA
COUNTY OF PALM BEACH

EXHIBIT "J"

PZB15

File Edit View Communication Actions Window Help

PZB15 Town of Palm Beach - Permit System Inq 1/02/13
 DONTA Permit Master File Maintenance 12:19:57
 Per #: 8035160 - 1 ----- Review Permit ----- Date 10/18/1999
 Stat: HCN History - Typ: ORG Original Pnt: PRT Printed Mast
 Type: B Building Lev: 05 Structures Code: 053 Site Work Ins: INC Inspection

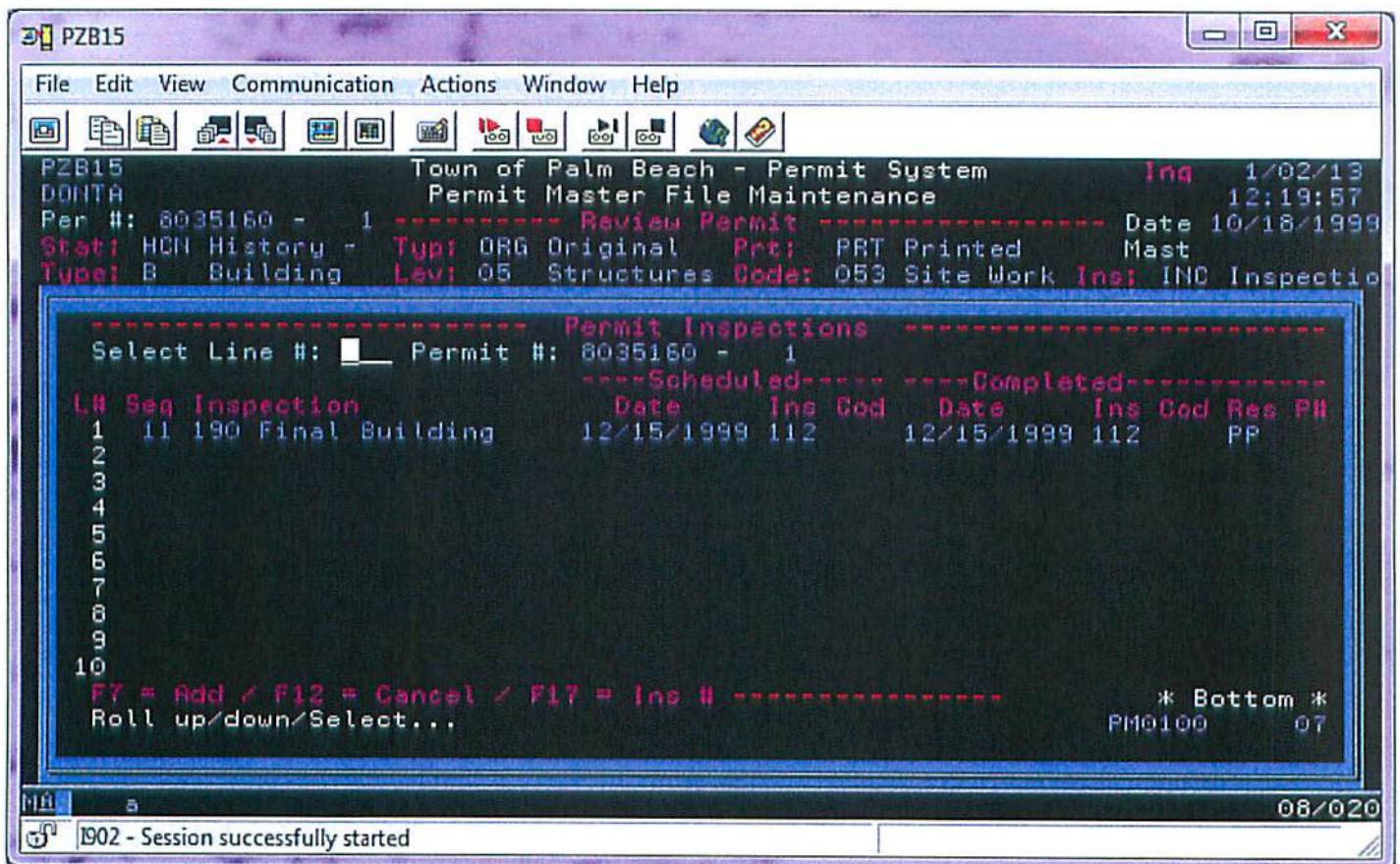
----- Permit Inspections -----
 Select Line #: Permit #: 8035160 - 1

		----Scheduled----			----Completed-----		
LN	Seq	Inspection	Date	Ins Cod	Date	Ins Cod	Res PH
1	1	102 Form	10/20/1999	112	10/20/1999	112	F
2	2	102 Form	10/22/1999	112	10/22/1999	112	PP
3	3	102 Form	10/29/1999	111	10/29/1999	115	F
4	4	102 Form	11/01/1999	112	11/01/1999	112	PP
5	5	102 Form	11/04/1999	111	11/04/1999	111	P
6	6	390 Final Electric (NO	11/30/1999	109	11/30/1999	109	P
7	7	190 Final Building	12/02/1999	111	12/02/1999	111	PP
8	8	190 Final Building	12/13/1999	112	12/13/1999	112	CC
9	9	193 FINAL - STRUCTURE	12/14/1999	111	12/14/1999	112	CC
10	10	190 Final Building	12/14/1999	111	12/14/1999	112	CC

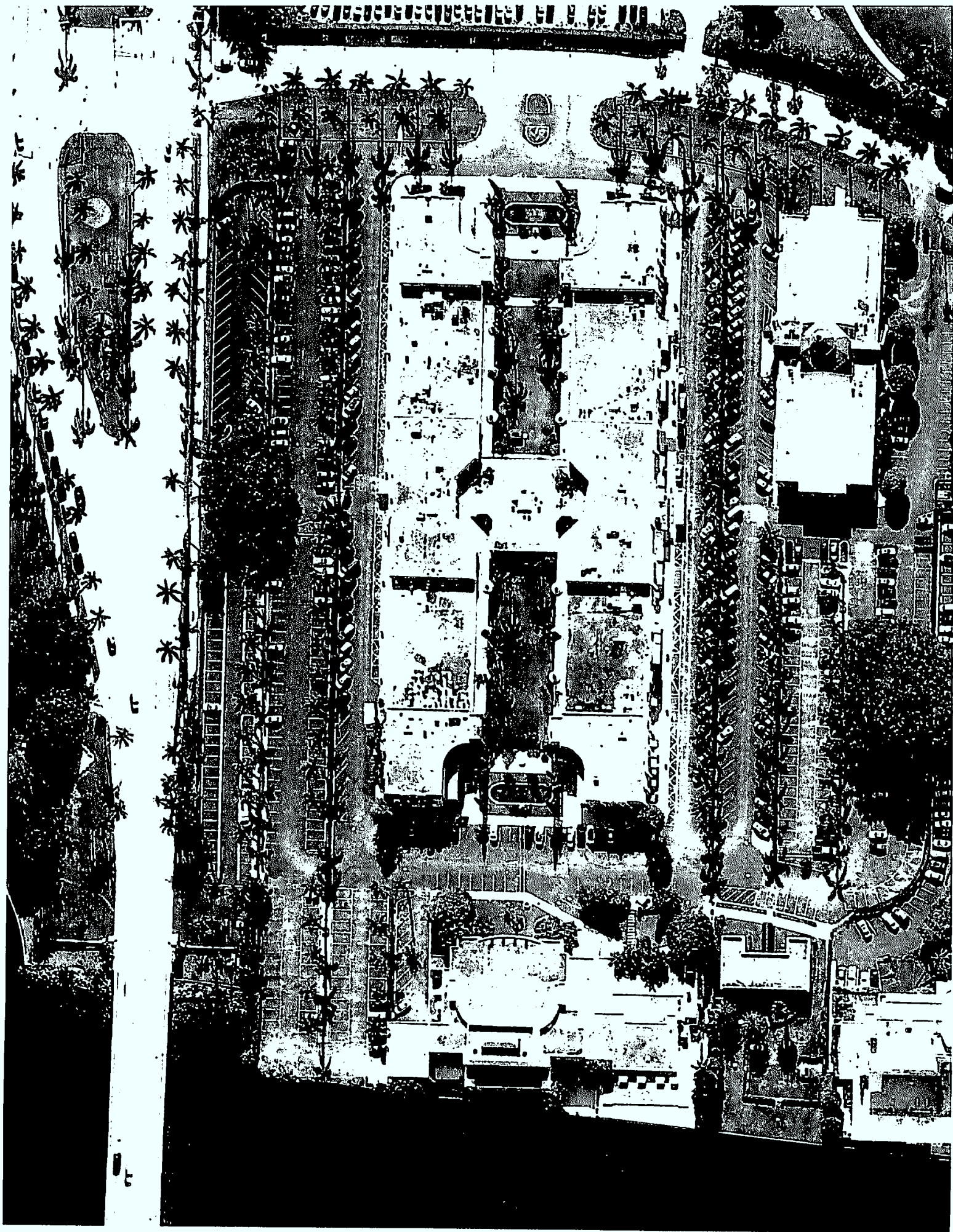
F7 = Add / F12 = Cancel / F17 = Ins # ----- More...
 Roll up/down/Select... PM0100 07

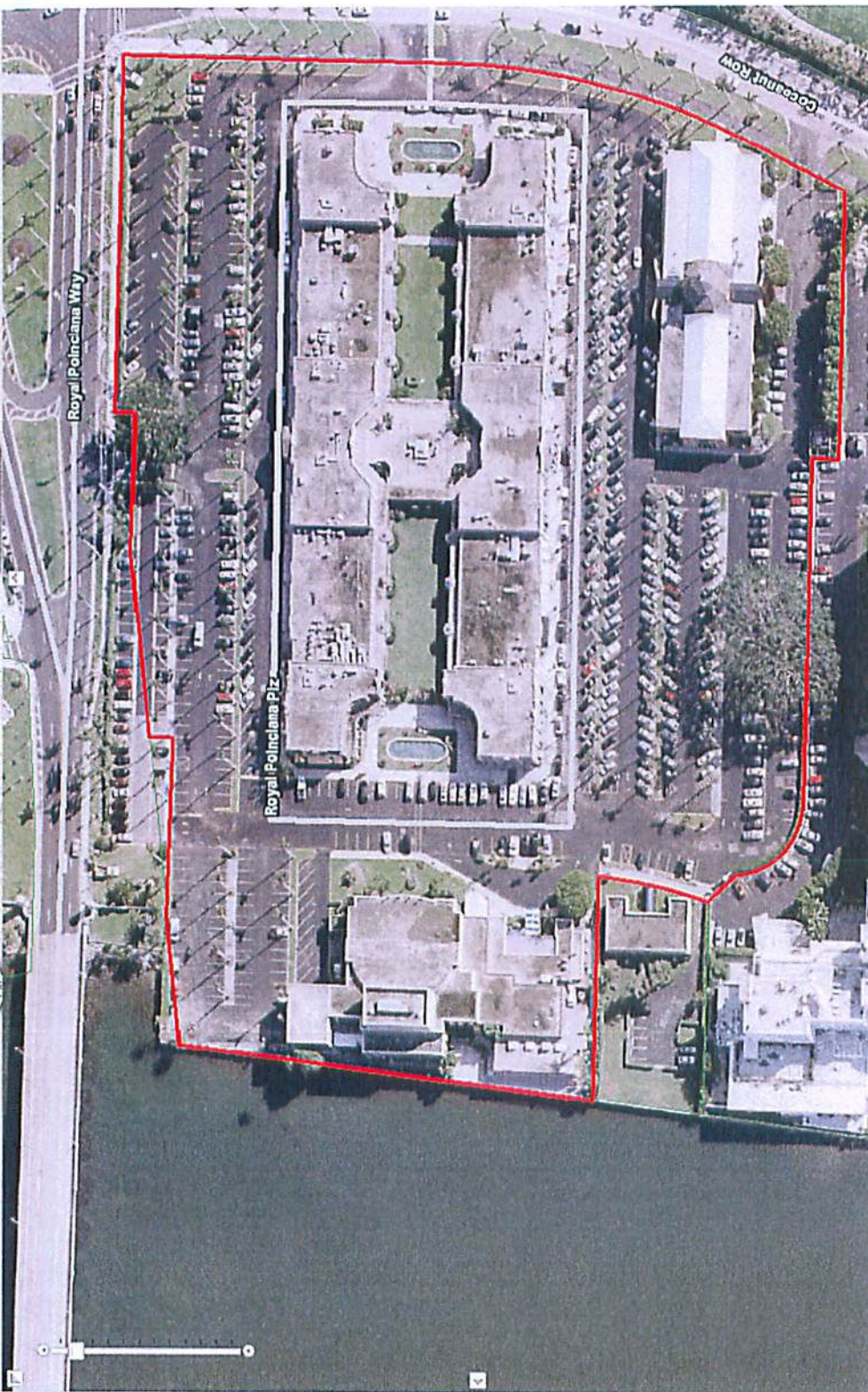
08/020

1902 - Session successfully started



COMPOSITE EXHIBIT "K"





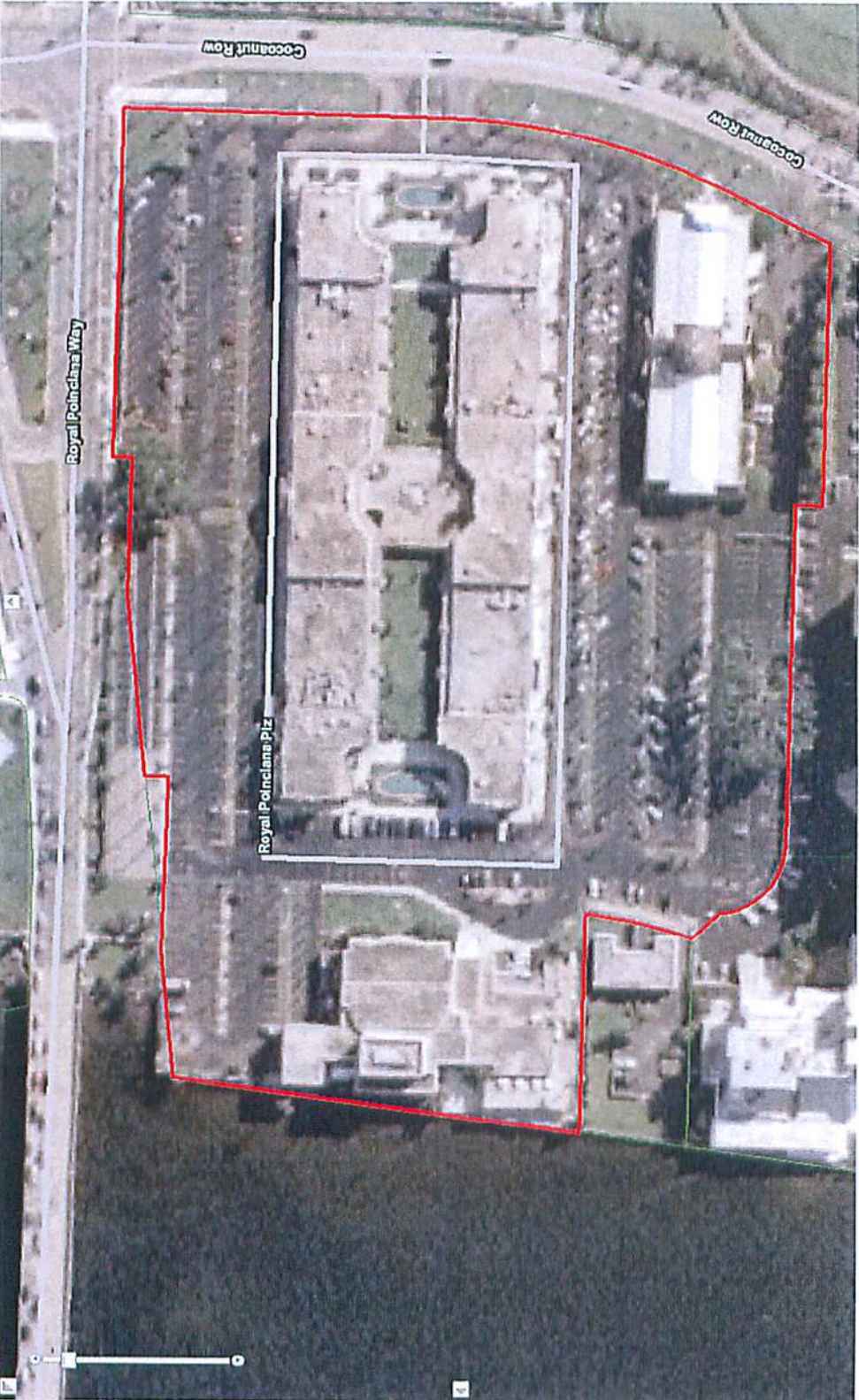
Search

Tools

Layers

Some layers are only available at certain heights, their check box will activate when they become available.

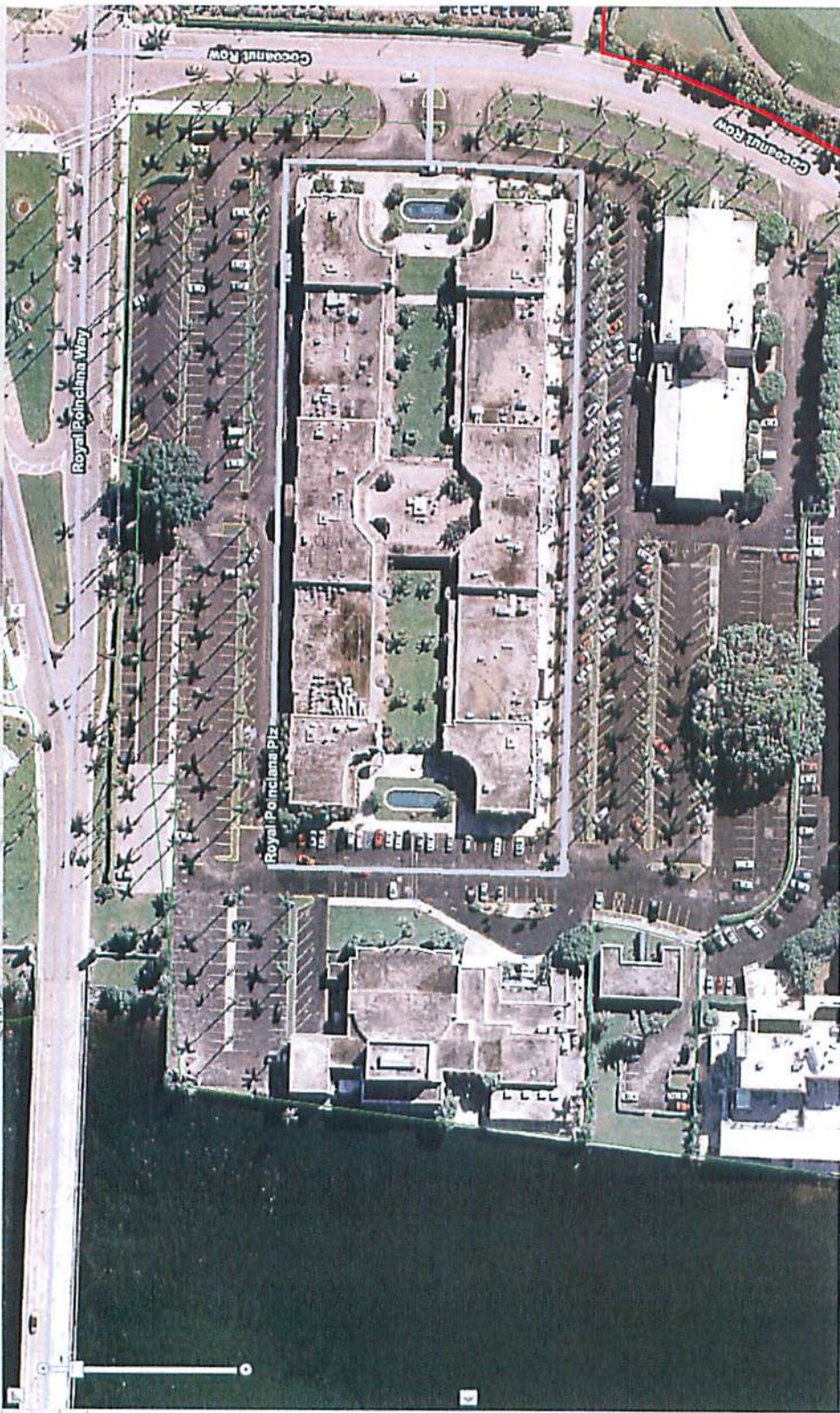
- ☐ Parcel Labels
- ☐ Sales
- ☐ Homestead
- ☐ Property Use
- ☒ Roads
- ☒ Road Names
- ☐ Aerials2011
- Flight Dates: Dec. 2010, 0.5ft pixel
- ☐ Aerials2009
- Flight Dates: Jan. 2009, 0.5ft pixel
- ☐ Aerials2008
- Flight Dates: Feb. 2008, 2.0ft pixel
- ☐ Aerials2007
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- ☐ Aerials2006
- Flight Dates: Jan. 2006, 2.0ft pixel
- ☒ Aerials2005
- Flight Dates: Jan. 2005, 0.5ft pixel
- ☐ Aerials2004
- Flight Dates: Feb. 2004, 2.0ft pixel



Search
Tools
Layers

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- ☐ Parcel Labels
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- ☐ Aerials2008
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- ☐ Aerials2007
Light Dates: Feb. 2007, 0.5ft pixel
- ☒ Aerials2006
Light Dates: Jan. 2006, 2.0ft pixel
- ☐ Aerials2005
Light Dates: Jan. 2005, 0.5ft pixel
- ☐ Aerials2004
Light Dates: Feb. 2004, 2.0ft pixel



Search

Tools

Layers

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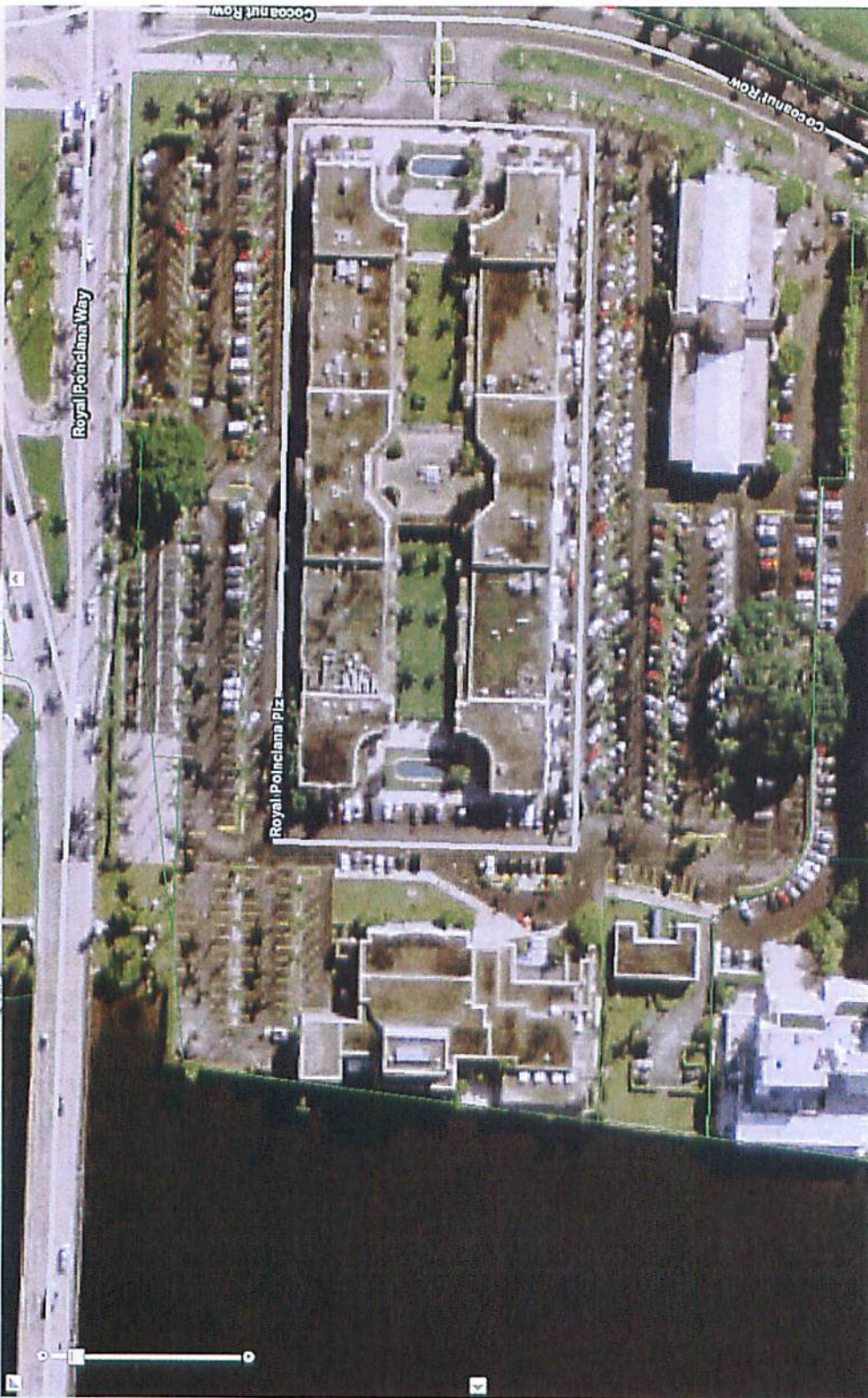
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Flight Dates: Feb. 2007, 0.5ft pixel
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- ☐ Aerials2005
Flight Dates: Jan. 2005, 0.5ft pixel
- ☐ Aerials2004
Flight Dates: Feb. 2004, 2.0ft pixel



Property Appraiser
Gary R. Nikolis, CFA
Palm Beach County

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[PAPA Home](#)



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- ☐ Aerials2006
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- ☐ Aerials2005
Flight Dates: Jan. 2003, 0.5ft pixel
- ☐ Aerials2004
Flight Dates: Feb. 2004, 2.0ft pixel



Property Appraiser

Gary R. Nikolits CFA
Palm Beach County

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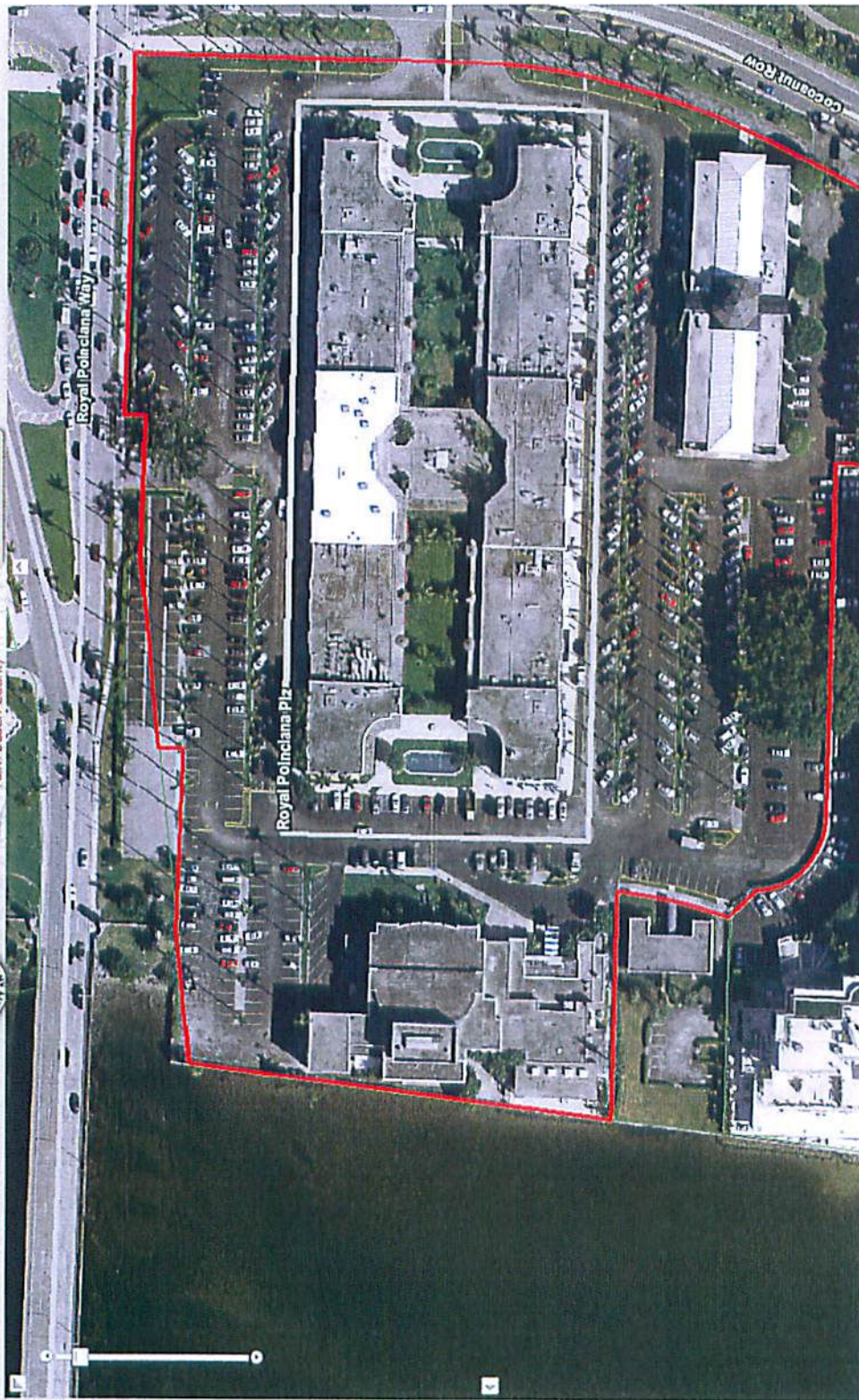
Tools

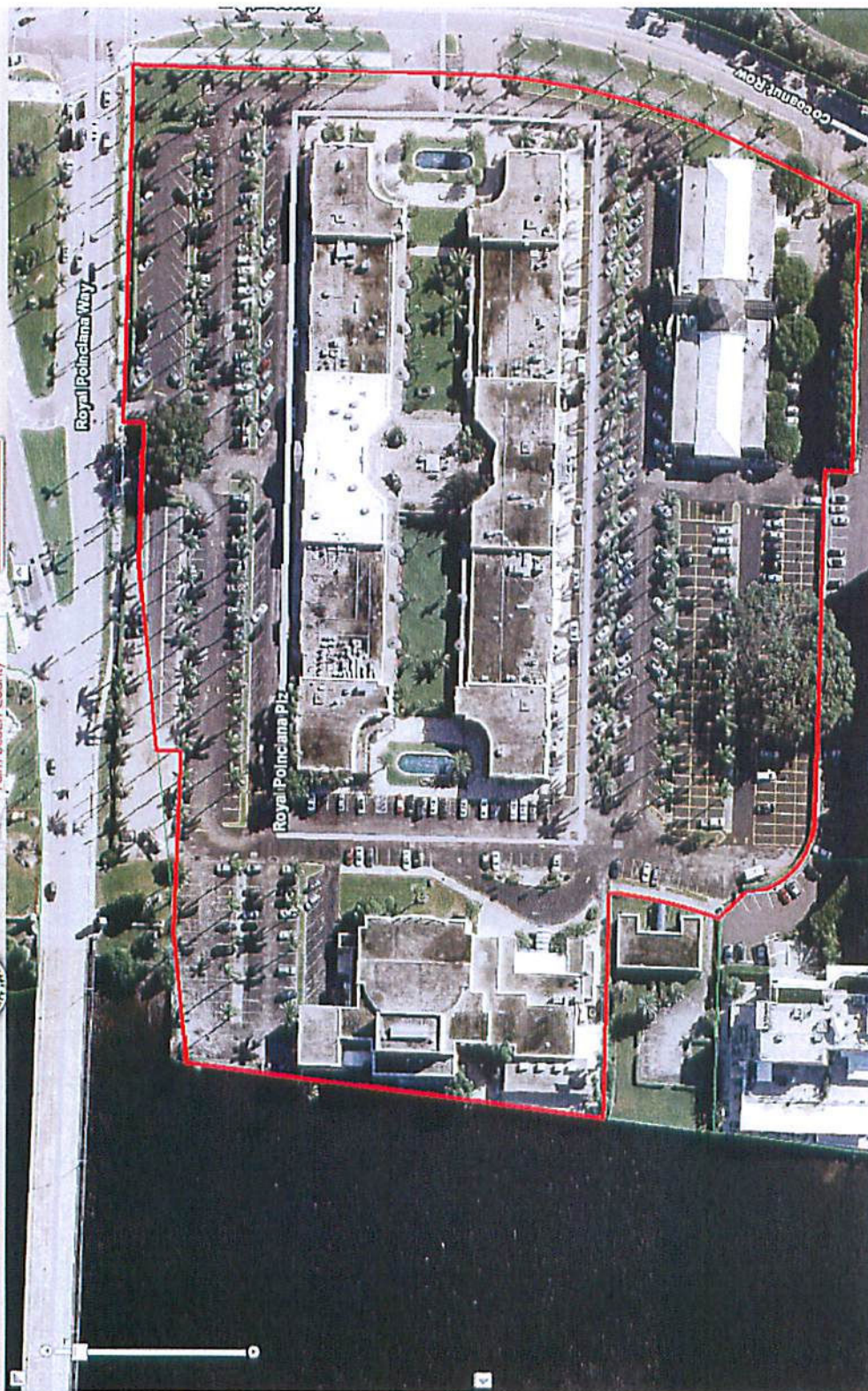
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- ☐ Aerials2005
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 Flight Dates: Jan. 2006, 2.0ft pixel

☐ Aerials 2005
 Flight Dates: Jan. 2005, 0.5ft pixel

☐ Aerials 2004
 Flight Dates: Feb. 2004, 2.0ft pixel

EXHIBIT "L"



EXHIBIT "M"

were any approved air conditioning companies other than Cassidy, who she was not satisfied with, working in the building and she was told Absolute Air Conditioning was presently working in an apartment, A 622. She obtained the telephone number and scheduled the work. There was no address for the company on their paperwork and she wanted to make sure they were licensed. She checked and the license was for someone named Martinez in Miami. Mr. Fried asked who was going to have to get the permit and Mr. Walton said whoever it was would have to be a licensed contractor. Mr. Orav said she had to find someone who would do that because the system is already installed. Mr. Walton said he spoke to Mr. Taylor and they were going to contact one of the contractors that works in the Town and see if one of them would assist Ms. Orav.

Ms. Van Buren asked what coming into compliance would entail and Mr. Walton said it required obtaining a permit and all required inspections. The contractor would obtain the permit and then contact the Town to do the inspection.

MOTION BY MR. FRIED TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS NO ADMINISTRATIVE COSTS AND TO GIVE HER UNTIL NOVEMBER 14, 2008 TO COMPLY
SECONDED BY MS. GREENBERG
MOTION PASSED UNANIMOUSLY

- N. Case # 08-2565, 211 Jungle Road, H. Martin Sprock III
Violation of Chapter 42, Section 42-87 of the Town of Palm Beach Code of Ordinances, appurtenances such as driveways to be maintained in good condition and Chapter 42, Section 42-86, any condition constituting a fire hazard not permitted and properties to be maintained in good order

Lead Code Enforcement Officer Robert Walton presented the facts of the case and said the electrical violation has been corrected. Mr. Walton said he got a letter from Ernest Bourne, a friend of the owner, who told him they had applied for permits for a new fence to go around the property. The driveway is now covered with fencing and cannot be repaired until after the fence is completed. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and they be given until November 14, 2008 to come into compliance. If the fence is not finished by that time, Mr. Walton said he will bring the case back to the Board and ask for additional time.

MOTION BY MR. OCHSTEIN TO FIND THE VIOLATOR IN NON-COMPLIANCE, ASSESS ADMINISTRATIVE COSTS IN THE AMOUNT OF \$150.00 AND TO GIVE THEM UNTIL NOVEMBER 14, 2008 TO COME INTO COMPLIANCE
SECONDED BY MR. KOEPPLE
MOTION PASSED UNANIMOUSLY

- O. Case # 08-2566, 340 Royal Poinciana Way, Sidney Spiegel Tr # 31520371 and The Sterling Organization

Violation of Chapter 134, Section 134-326 (b) of the Town of Palm Beach Code of Ordinances, an application for site plan review must be filed and approved by the Town Council prior to the altering of the use of any land

Lead Code Enforcement Officer Robert Walton presented the facts of the case and said the parking area and driveway at the Royal Poinciana Plaza were re-stripped without prior approval. The Town recommends a finding of non-compliance, administrative costs in the amount of \$150.00 and to have Mr. Castro recommend a date for compliance.

Paul Castro, Zoning Administrator, said this case was in front of the Town Council at their last meeting because the property owner requested some variances for parking. They were also at Council the previous month with some variances for parking and at that time, Staff recommended they re-stripe the parking lot to the plan that was approved in 1999 when the Palm Beach Grill became a tenant on the property.

Subsequent to that first meeting, Staff decided that because of one of the conditions placed on the owner, they would request they hold that previous site plan reconfiguration in abeyance until they knew more about what is going to happen on the property. The property owner came to the Council with a proposed master plan they will show to the Council in November. There are also some issues related to employee parking and timed parking that would create other issues and problems for the tenants and visitors if they re-stripped it to the previous plan. Staff requested they leave the parking configuration the way it is at this point in time and address the issue in the future when the master plan comes in front of the Council and ultimately, either the Architectural Commission or the Landmark Commission. He is requesting the Board give the property owner and the Town some time to determine what is going to happen to the property.

In response to Mr. Hoffman's question about whether it should continue in its existing condition until the Town approves the site plan, Mr. Castro said the Council wanted to provide some 2 hour parking on the south side of the main building and they wanted the property owner to take out all of the designated parking on the property and then provide employee parking on the south side and the north side of the property to free up the interior parking for their customers and clients. In re-stripping it the way it was before, it was anticipated there was going to be tandem parking, a substantial amount of stacked parking that was to serve, not only the Poinciana Theater, but what was then the Poinciana Club, next to the theater, and both are vacant at this time. If both of those were operating today, they would say yes, definitely recreate that and the valet parking stations. Since both of those are vacant and the Town is going to be looking at conceptual master plans and the ultimate redevelopment of the property, they thought it was premature to make the property owner come back in and re-stripe the parking lot, until they know what is going to happen with the property. Mr. Castro said the Town Council will be considering a master plan concept in November and actually are showing it to residents now. He is not sure of the property owner's timing relative to the land development or bringing land development plans in front of the Town. He would

Code Enforcement Board Meeting Minutes 10/16/08

anticipate six months or maybe a year to get everything in the works. Mr. Hoffman asked if he was asking for a postponement until Council approval as a time frame and Mr. Castro said that was correct.

Maura Ziska was present and said she represented the property owner and the person in control of the property. She asked if it would be proper to dismiss this case and bring it back at a later date since it has been 10 years since the violation occurred. At the Town Council meeting, the Town Council withdrew their condition to re-stripe the parking lot, acknowledging it is not appropriate at this time. They are dealing with a plan that was approved back when Houstons was approved that shows the tandem parking which does not work today.

Mr. Castro said it had not been 10 years since the violation occurred since they had to re-stripe it in 1999. He said we do not know at what point in time, from 1999 to 2007/2008, that they re-striped the parking lot. It appears the parking lot was re-shurried and re-striped without Town permission and that is a condition that was created, not by the property owner who is in control of the property now, but Mr. Spiegel. Mr. Castro said he is not sure the case should be withdrawn but maybe just postponed. The original parking plan showed a substantial amount more parking than what is there today because of the stacking situation. Staff felt it was premature at this time to make them redesign a parking lot with the tandem parking being mostly employee parking as was shown to the Council just last week. He said the case should not be completely withdrawn because it was done in violation of the Code.

Mr. Koeppel asked when the striping was done and Mr. Castro said it was after 1999. Sometime later, and Staff does not know when, the property was re-shurried, the blacktop was done, hiding the revised striping, and they went back to the striping that was previously there. He is assuming this was done after the theater and the

Poinciana Club closed. Mr. Koeppel asked if Staff had recommended at some point it should be re-striped as it had been in previous years. Mr. Castro said either that or a plan which might be more relevant, based on what master plan might come in front of the Council. Staff thought it was premature to spend the money to re-stripe it, knowing it does not work with the new re-striping and thought it would be better to wait for the Town to understand what the property owner wants to do. He thinks the master plan will be significantly different than the parking layout that is there today or the layout that was originally approved in 1999. Mr. Koeppel asked if the Town knows when this specific violation occurred and Mr. Castro said they did not, they just knew it did occur. Mr. Koeppel commented this was apparently something that was not going to get resolved for a substantial amount of time and Mr. Castro concurred. Mr. Koeppel said he agreed with Ms. Ziska that it did not seem prudent to keep this on the calendar when they are not sure when the violation occurred or what the resolution is going to be. Mr. Ballentine said he essentially agreed with that and asked Mr. Walton what the downside was of doing nothing. Mr. Walton said as long as the Poinciana Club or the theater did not reopen, the parking issue was fine. Mr. Castro said the club and the theater could not reopen without coming to Town

Code Enforcement Board Meeting Minutes 10/16/08

Council because their approvals had lapsed. Mr. Randolph commented that nothing was going to happen on this property and if the Board decided to dismiss the case, it should be without prejudice or the case could be deferred until Council resolved the plan. Mr. Fried said this was a legal issue, to a certain extent, because what he saw here was a violation of the Code, plain and simple. He said he does not know what the relationship is between Mr. Spiegel and this new group but one would assume it was during Mr. Spiegel's clear ownership of the property, that the re-slurring and re-lining of the parking lot took place, which was done without a permit. Mr. Fried said it should be treated as a simple violation. Mr. Walton said they were not cited for not having a permit. They were cited under the zoning chapter, 134 for not getting site plan review for the changes to the parking lot. Mr. Walton said when the parking lot was re-slurred, they put the lines back to the 1960 parking approval, not the 1999 approved plan. Mr. Castro said the re-striping incorporated parts of both plans and is a hodge-podge right now. They re-striped part of it that they felt needed to be re-striped, based on all of the vacancies and some of it was left the way it was. Mr. Castro said if worse comes to worse, they will have to re-stripe it and they have already agreed to do that. They were going to pull a building permit to re-stripe it the way it was, to the 1999 layout, and Staff told them to hold off until they could go to Council because based on the parking plan they provided Staff, which was one of their conditions of approval, Staff felt the 1999 parking plan would not work. Council agreed with Staff because the plan they showed to Council showed some parking which would have been in some valet parking areas for employees which just would not have worked. In an attempt to help resolve the short term problem they agreed to leave the parking lot the way it is and in the long term, address the parking issue, the number of spaces and how it is redesigned with the master plan, if it does move forward. If it does not move forward, they will re-stripe it the way it was, the 1999 layout. Mr. Randolph asked if it would help for the Board to hear Staff's original recommendation with regard to this. Mr. Hoffman said Staff's recommendation was administrative costs in the amount of \$150.00 and a time frame recommended by Mr. Castro for compliance. Mr. Randolph said these were the two things before the Board and since Council has said they do not want them to do anything about this until the plan is resolved, they should dismiss without prejudice until the matter is resolved.

MOTION BY MR. KOEPEL TO DISMISS THE CASE WITHOUT PREJUDICE

SECONDED BY MR. BALLENTINE

MOTION PASSED UNANIMOUSLY

- P. Case # 08-2567, Vin De Mario, # 323, New Palm
Violation of Chapter 22, Section 22-57 and Section 22-58 of the Town of Palm Beach Code of Ordinances, windows of vacant buildings which can be viewed from the public streets to be screened

Lead Code Enforcement Officer Robert Walton presented the facts of the case and said when he inspected the property today, paper had been placed on the windows.

**COMPOSITE
EXHIBIT "N"**















January 3, 2013

Via Electronic Mail

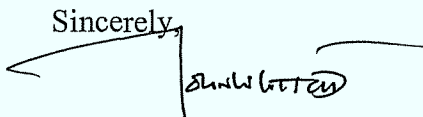
Paul W. Castro
Zoning Administrator
Town of Palm Beach
360 South County Road
Palm Beach, FL 33408

Re: Application for Site Plan Review # 1-2013

Dear Paul:

As a follow-up to our previous conversations, this letter will confirm that our client, Sterling Palm Beach, LLC ("Sterling"), is willing to provide the necessary insurance and indemnity protections in favor of the Town with respect to the twelve proposed parking spaces, a small portion of which would overhang the Town's remainder property following the taking. In addition, Sterling is willing to consider any other reasonable conditions or requirements in order to utilize that space, including without limitation rental or purchase of that property. Please let me know if we can provide any additional information in advance of next week's Town Council meeting.

Sincerely,



John W. Little, III

cc: John S. Page
John C. Randolph, Esq.
Brian Kosoy, Manager

William O. Cooley
8 Windsor Court
Palm Beach, Florida 33480

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

RE: "Cure Plan" parking layout for Royal Poinciana Plaza

Dear Mayor and Town Council,

After counting the existing parking spots at the Royal Poinciana Plaza for a third time I wish to report that there are 665 spaces without the seven spaces behind the Hibel Building. This is a number much smaller than that represented by the developer's lawyers.

Their representations of 742 spaces, or 748 spaces, are grossly in error.

You are being asked to approve a so called "cure plan" and not being expected to look at the entire parking situation at the Plaza. In fact, many of the spaces in the 665 spaces that I counted are under size – both in width and length and the drive isles are narrower than allowed.

I might add that your staff has counted the existing spaces and has come up with basically the same number, give or take one or two.

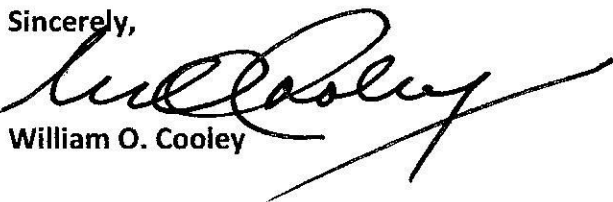
Before any action is taken on this "cure plan" an accurate site plan should be presented to the council showing the number of spaces, the length and width of the space and the width of the drive isles for the entire Plaza.

This triple stacked parking, that is being proposed, is not allowed under current ordinance and will lead to a mess.

Over the weekend, I will be sending/delivering more information on this subject.

Thank you for your consideration.

Sincerely,



William O. Cooley