



TOWN OF PALM BEACH

Town Manager's Office

TOWN COUNCIL MEETING DEVELOPMENT REVIEW

TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD

AGENDA

NOVEMBER 12, 2014

9:30 AM

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

I. CALL TO ORDER AND ROLL CALL

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

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

VI. APPROVAL OF AGENDA

VII. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of Landmarks Preservation Commission Decision, COA-026-2014, 105 Clarendon Avenue (per Letter Dated October 24, 2014, from Maura Ziska)

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

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B. Time Extensions and Waivers

1. Request for Extension of Time Schedule for Completion of Construction per Town Code Chapter 18, Section 242-105.4.1.6 - 1480 North Lake Way

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

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. **SITE PLAN REVIEW #8-2014 WITH VARIANCE (MODIFIED)**

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The application of Coral Beach Corporation; relative to property commonly known as **160 Seaview Avenue**; described as Lot 4 and the West 65' of Lot 5, THE EAST PLAZA, Plat Book 16, Page 78, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is proposing to build a 7,092 square foot (5,788 square feet enclosed) two-story home. Site Plan Review is requested to allow a single family home to be built on two (2) existing non-conforming platted lots with depths of 99.07 feet in lieu of 100 feet required. Variances requested are for a point of measurement variance for building height at 13.5 feet National Geodetic Vertical Datum (NGVD) in lieu of the 11.68 feet NVGD allowed; a point of measurement variance to allow for overall building height at 13.5 feet NGVD in lieu of the 11.68 feet NGVD maximum allowed; a point of measurement for cubic content ratio to be at 14.5 feet NGVD (proposed finished first floor) in lieu of the 11.68 feet NVGD maximum allowed; and, to allow the proposed house which is primarily designed with a flat roof to be constructed with an overall building height of 30 feet in lieu of the 25 foot maximum allowed. [Attorney: Francis X. J. Lynch]

[Architectural Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject property. Carried 5-2, Mrs. Vanneck and Ms. Grace dissenting.]

Request for Deferral to the December 10, 2014, Town Council Meeting Per Letter Dated November 5, 2014 from Francis X.J. Lynch

Deferred from the August 13, 2014, September 10, 2014, and October 15, 2014, Town Council Meetings

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

- #### b. **SITE PLAN REVIEW #13-2014 WITH SPECIAL EXCEPTIONS AND VARIANCES (MODIFIED)**
- The application of T3 Family Investment, LLC; relative to property commonly known as **221 & 231 Royal Poinciana Way, Sunset Avenue, 214 Sunset Avenue, 216 Sunset Avenue**; described as Lengthy Legal Description on file; located in the C-TS Zoning District. The applicant is requesting site plan approval to

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construct a two (2) story 73,214 square foot mixed commercial and residential use condominium development with 47,331 square foot sub-basement with 100 underground parking spaces totaling 120,545 square feet, 26,204 square feet of commercial space on the first floor and six (6) residential units on the second floor.

Special exception approvals requested are as follows:

1. to allow residential tenancy above the first floor, as required by Section 1109(a)(3) for six (6) condominium units;
2. to allow two (2) stories as required by Section 134-1113 (8)(c);
3. to allow Testa's Restaurant to occupy 3,000 square feet of gross leasable area as required by Section 134-1109 (a)(11);
4. to allow outdoor seating for 60 outdoor seats for Testa's Restaurant as required by Section 134-1109(1)(11) and 134-1111(a).

Variances being requested are as follows:

- a. to allow underground parking facilities in sub-basement to extend on the south, west, north and east sides, into required setbacks. Proposed setbacks from property line range from 0.0 feet on the east, 4.2 feet on the south, 1.2 feet on the west and 4.1 feet on the north, all in lieu of the minimum 5 feet as required in Section 134-2179(a);
- b. to allow portions of the underground parking sub-basement to be paved for walkways and equipment pads in lieu of being landscaped as required in Section 1324-2179(a);
- c. to allow a total of 100 off-street parking spaces in lieu of the required 178 off street parking spaces as required by Section 134-2175;
- d. to allow parking stall width to be 8.5 feet in lieu of the 9.0 feet minimum required by Section 1324-2172 due to accommodate structural columns required for the sub-basement;
- e. to allow one (1) loading bay in lieu of two (2) minimum required for the proposed 120,525 square foot building required by Section 134-2211(a);
- f. to allow for the location of a loading zone in a required front yard, contrary to Code Section 134-2211(b);
- g. to allow a building with a building height in excess of 15 feet (actual building height 30.0 feet) with front yard setbacks of 3.25 feet on Royal Poinciana Way and 3.75 feet on Sunset Avenue in lieu of 12.5 foot minimum as

- required by Code Section 134-1113(5)(d) in lieu of 12.5 foot minimum as required by Code Section 134-1113(5)(d);
- h. to allow a building with a building height in excess of 15 feet (actual building height 30.0 feet) with side yard setbacks of 0 feet on the west side and 0 feet on the east side in lieu of 12.5 foot minimum required by Code Section 134-1113(6)(b);
 - i. to allow for the construction of a structure providing for a proposed pedestrian walkway total width of 3 feet of the required 5.0 feet on Royal Poinciana Way and 9 feet on Sunset Avenue in lieu of 5 foot minimum required on the applicant's property of the total 10 feet of required sidewalk width, as required by Code Section 134-1113(5)(c);
 - j. to allow a building height of 30.0 feet in lieu of the maximum allowed 25.0 feet as required by Section 134-1113(8)(b). The request is to have the increase in height at six specific locations over the entrances to the Via and on interior of Via;
 - k. to allow an overall building height of 39.0 feet in lieu of the maximum allowed 35.0 feet as required by Section 134-1113(8)(d). The request is to obtain an increase in height at six specific locations;
 - l. to allow a maximum building length of 251.75 feet in lieu of the maximum allowed 150 feet allowed per Section 134-1113(10)(b);
 - m. to allow for a landscaped open space of 7.4% in lieu of the minimum 25% required by Section 134-1113(11)(b);
 - n. to allow front yard landscaped open space of 14.1% along Royal Poinciana Way and 33.9% along Sunset Avenue in lieu of the minimum 35% required by Section 134-1113(11)(c);
 - o. to allow a two (2) story building to be 120,525 square feet in lieu of the maximum allowed 15,000 square feet as required by Section 134-1113(12)(b);
 - p. to allow a sign with a height of 18.75 feet in lieu of the first floor elevation of the building or 15 feet, whichever is lower, as required by Code Section 134-2440 (c).
 - q. to allow a lot coverage of 89.5% in lieu of 70% maximum allowed by Code Section 134.1113(9)(b).

[Attorney: Francis X. J. Lynch]

[Architectural Commission Recommendation: Deferred the project to the November 14, 2014 ARCOM meeting.]

Request for Deferral to the December 10, 2014, Town Council Meeting Per Letter Dated October 29, 2014, from Francis X.J. Lynch

Deferred from the October 15, 2014, Town Council Meeting

- c. **SPECIAL EXCEPTION #13-2014 WITH SITE PLAN REVIEW AND VARIANCES** The application of Town of Palm Beach, Peter B. Elwell, Town Manager; relative to property commonly known as **2345 South Ocean Blvd.**; described as Lengthy legal description on file; located in the R-B Zoning District. A Special Exception with Site Plan Review is being requested to modify the Par 3 Golf Course parking lot, seating and hours of operation of the Club House restaurant and proposed addition of a new patio deck. The proposed modification is to widen the north side of the parking lot by approximately eighteen (18) feet, create tandem parking in that area of the lot and add additional parking on the south side of the lot. The request also modifies the parking vehicular circulation by creating one way drive aisle. The proposal would create twenty-six (26) additional parking spaces to the parking lot and allow valet parking in designated areas. In addition, the club house restaurant hours are proposed to change from 7:00 am – 10:00 pm to 7:00 am – Midnight with the proposed additional seventeen (17) more seats on the second floor outside verandas (total of 167 seats). In addition, request is to also add a 1,837 square foot patio on the south side of the clubhouse to allow the restaurant and golf course to host golf outings and other special events; install spot lights facing east to light the dune line and ocean surf, outside of turtle nesting season. Variances are requested to allow tandem parking for the valet parking area, which is not permitted by Code. The Code requires that off-street parking be arranged so that a vehicle does not have to be moved in order to move another vehicle; and, to allow three (3) parking spaces in the required front yard setback, which is not permitted by Code. [Representative: Jay Boodheshwar]

Please note that the Town Council has acted upon all proposed elements of the application with the exception of spot lights. ARCOM, on October 22, 2014, reviewed the proposed wall-mounted spot lights aimed to the east and recommended against their installation.

Deferred from the July 16, 2014, and September 10, 2014 Town Council Meetings

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

- d. **SPECIAL EXCEPTION #17-2014 WITH SITE PLAN REVIEW AND VARIANCES** The application of Palm Beach Country Club; relative to property commonly known as **228 Country Club Road**; described as Lots 13 and 14, LESS the North 4 feet of MARK RAFALSKY TRACT, Palm Beach, Florida, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County in Plat Book 11, Page 51; located in the R-B Zoning District. The applicant

is requesting special exception with site plan approval to allow the construction of a tennis court adjacent to the existing two tennis courts owned by the Palm Beach Country Club and relocate an awning to center it between the existing tennis court and the proposed new court. The following variances are being requested to construct the proposed tennis court: to allow a tennis court with a front yard setback of 3 feet in lieu of the 25 foot minimum required; to allow a 10 foot tall chain link fence in the front yard in excess of the 6 foot maximum allowed; to allow landscaped open space to be 15% in lieu of the 43% existing and the 45% minimum required in the R-B Zoning District; to allow landscaped open space in the front yard to be 39% in lieu of the 40% minimum required in the R-B Zoning District; to allow 42% of landscaped open space in the 10 foot perimeter of the property in lieu of the 50% minimum required; and, to not provide the required plantings to sight screen the tennis court on the north and south side of the property as required by Code. [Attorney: Maura Ziska]
[Architectural Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject property. Carried 7-0.]

Request for Withdrawal Per Letter Dated November 6, 2014, from Maura A. Ziska

Deferred from the October 15, 2014, Town Council Meeting

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

- e. **SPECIAL EXCEPTION #20-2014** The application of Henry Harris III, Manager; relative to property commonly known as **214 El Brillo Way**; described as Lot 27, SUPPLEMENTARY PLAT OF EL BRAVO PARK, a subdivision according to the plat thereof recorded at Plat Book 9, Page 9, in the Public Records of Palm Beach County, Florida; located in the R-A Zoning District. The applicant is requesting special exception approval to allow two sliding gates (one at each entrance) on El Brillo Way (which is a dead end street) with an 8.5 foot setback from the street pavement in lieu of the 18 foot minimum required on a dead end street. [Attorney: Maura Ziska]

Request for Deferral to the December 10, 2014, Town Council Meeting Per Letter Dated October 31, 2014, from Maura A. Ziska

Deferred from the October 15, 2014, Town Council Meeting

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

- f. **SPECIAL EXCEPTION #25-2014** The application of 150 Worth Restaurant Associates, LLC dba Worth Avenue Kitchen; relative to property commonly known as **150 Worth Avenue, Suite 234**; described as Lengthy legal description on file; located in the C-WA Zoning District. The applicant is requesting special exception approval to allow a new

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restaurant at 150 Worth Avenue, Suite 234, called Worth Avenue Kitchen, which will replace GiGi's Tap and Table Restaurant (formerly Cha Cha's). The new restaurant will occupy the same square footage (5,243) and have the same number of seats (151) as the prior restaurant uses at this location. The applicant agrees to be bound by all existing conditions of approval. A special exception is also requested for 14 seats outside the restaurant to be operated by and as part of the restaurant. [Attorney: James. M. Crowley]
Deferred from the October 15, 2014, Town Council Meeting
John S. Page, Director of Planning, Zoning, and Building

- g. **VARIANCE #43-2014** The application of Jungle Road, LLC (H. William Perry, Manager); relative to property commonly known as **120 Jungle Road**; described as Lengthy legal description on file; located in the R-A Zoning District. The Applicant is proposing to enclose a third floor balcony off the existing tower on the residence. The following variances are being requested: a building height plane setback of 51.3 feet in lieu of the 66.5 required building height plane setback for the tower element; and, a tower element to be 4.4% of the gross floor area of the residence in lieu of the 3.1% existing and the 1% maximum allowed in the R-A Zoning District. [Attorney: Maura Ziska] [Architectural Commission Recommendation: Deferred the project to the November 14, 2014 ARCOM meeting.]
Request for Deferral to the December 10, 2014, Town Council Meeting Per Letter Dated November 5, 2014, from Maura A. Ziska
Deferred from the September 10, 2014, and October 15, 2014, Town Council Meetings
John S. Page, Director of Planning, Zoning, and Building

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- h. **VARIANCE #49-2014** The application of David and Jeanne Daniel; relative to property commonly known as **322 Seaspray Avenue**; described as Lots 393 and 395 of Poinciana Park, an addition to the Town of Palm Beach, according to the plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida in Plat Book 6, Page 86; located in the R-B Zoning District. The applicant is proposing to demolish a 147 sq. ft. one-story portion of the rear of the house and construct a 487 square foot first floor and 305 square foot second floor addition (totaling 792 square feet) on the rear of the house for a master bedroom/bath expansion (2nd floor) and kitchen/family room expansion (1st floor) and to demolish and rebuild an existing 436 sq. ft. one story cabana in the same location. The following variances are being requested: a lot coverage of 37.55% in lieu of the 31.1% existing and the 30% maximum allowed in the R-B Zoning District; a cubic content ratio (CCR) of 6.43 in lieu of the 4.99 existing and 4.39

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maximum allowed; a west side yard setback of 2.1 feet in lieu of the 2.1 foot setback existing and the 12.5 foot minimum required in the R-B Zoning District for a one story structure (to rebuild the cabana); a rear yard setback of 3.5 feet in lieu of the 2.7 foot existing setback and the 10 foot minimum required in the R-B Zoning District for a one story structure (to rebuild the cabana); a west side yard setback of 7.9 feet in lieu of the 12.5 feet minimum required for the one story portion of the addition; a west side yard setback of 9.5 feet in lieu of the 15 foot minimum required for the two story portion of the addition; an east side yard setback of 5.1 feet in lieu of the 12.5 feet minimum required for the one story portion of the addition; an east side yard setback of 7.9 feet in lieu of the 15 foot minimum required for the two story portion of the addition. [Attorney: Maura Ziska]

[Landmark Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject property. Carried 7-0.]

Request for Deferral to the December 10, 2014, Town Council Meeting Per Letter Dated November 3, 2014 from Maura A. Ziska.

*Deferred from the October 15, 2014, Town Council Meeting
John S. Page, Director of Planning, Zoning, and Building*

- i. **VARIANCE #50-2014** The application of E. Burke Ross, Jr.; relative to property commonly known as **172 South Ocean Boulevard**; described as Lots 5 and 6 of PRIMAVERA ESTATES (OCEAN SECTION), according to the Plat thereof as recorded in Plat Book 6, Page 82, of the Public Records of Palm Beach County, Florida, EXCEPTING therefrom the South 32.66 feet of Lot 6; located in the R-B Zoning District. The applicant is proposing to demolish a 1,219 square foot one story structure and construct in a reduced footprint a 2,731 square foot addition for a total net addition of 1,512 square feet at the west end of the residence. The following variances are being requested to build the proposed addition: a side yard setback of 15 feet (from the alley) in lieu of the 30 foot minimum required for a lot in excess of 20,000 square feet and over 200 feet wide in the R-B Zoning District; a cubic content ratio (CCR) of 4.92 in lieu of the 4.60 existing and 3.7 maximum allowed in the R-B Zoning District; a rear yard setback of 5 feet in lieu of the 15 foot minimum required for a second story addition (the first floor has an existing 5 foot rear yard setback; and, a lot coverage variance to allow 28% in lieu of the 28.1% existing and 25% maximum allowed for a lot in excess of 20,000 square feet in the R-B Zoning District (a reduction of .1%). [Attorney: Maura Ziska]

[Landmark Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject landmark property. Carried 7-0.]

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Request for Deferral to the December 10, 2014, Town Council Meeting Per Letter Dated November 3, 2014, from Maura A. Ziska

Deferred from the October 15, 2014, Town Council Meeting

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

2. New Business

a. SPECIAL EXCEPTION #26-2014 WITH SITE PLAN REVIEW

The application of Palm Beach County (Palm Beach County Capital Improvement Division, Miradieu Auboura); relative to property commonly known as **2882 S. Ocean Blvd.**; described as 2882 S. Ocean Blvd.; described as Lengthy legal description on file; located in the C-TS Zoning District.

Requests approval of a Site Plan application and a Special Exception application to allow the following:

a. replacement of existing 755 square foot public restroom structure (built in 1979) with an expanded 1,360 square foot restroom and life guard break room/storage structure;

b. expansion of the western ingress/egress point from 20 feet to 25 feet to allow for two-circulation (currently one-way circulation);

c. additional recreational amenities including:

1. a future proposed children's playground with up to 1,500 square feet of shade canopies;

2. additional benches, trash receptacles and showers; and,

3. outdoor shower at center beach cross over.

d. temporary structures during the construction of the replacement structure which is estimated to take 12 to 15 months:

1. one (1) temporary contractor portable restroom;

2. three (3) temporary public portable restrooms;

3. one (1) temporary construction and lifeguard operation trailer;

4. one (1) temporary contractor storage trailer for the storage of construction materials;

5. one (1) temporary lifeguard storage trailer for the storage of lifeguard equipment; and

6. temporary construction barrier fencing.

7. add gates to the entrance and exit.

[Attorney: Denise M. Nieman]

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

- b. **VARIANCE #52-2014** The application of Stuart Kapp, Manager of North County Oceanview, LLC; relative to property commonly known as **589 North County Road**; described as The North 150 feet of that part of the South 263.8 feet of Governmental Lot 2, in Section 11, Township 43 South, Range 43 East, lying East of the County Road, a public street in the Town of Palm Beach, Florida, as now laid out and in use, together with the littoral rights appertaining thereto; located in the R-AA Zoning District. Requests a variance to construct a 220 square foot one story cabana with a 10 foot south side yard setback in lieu of the 30 foot minimum required in the R-AA zoning district. [Attorney: Maura Ziska]

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

- c. **VARIANCE #53-2014** The application of Ronald Alvarez and Alice Ruth; relative to property commonly known as **210 Orange Grove Road**; described as The East 62.5 feet of Lot 33 and the West 60 feet of Lot 34, NEW SIEARS TRACT, according to the plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 16, Page 86; located in the R-B Zoning District. A variance is requested to convert a two-car garage into a family room that was done by a prior owner without zoning approval and without a building permit. If the above variance is granted, the applicant requests the following: the applicant is proposing to construct a 712 square foot one story, one-car garage addition. The following variances are being requested to build the proposed addition: to allow the construction of a one car garage in lieu of the required two car garage for a lot in the R-B Zoning District; a rear yard setback of 6.4 feet in lieu of the 10 foot minimum setback required in the R-B Zoning District; a side yard setback of 5 feet in lieu of the 12.5 foot minimum setback required in the R-B Zoning District. [Attorney: Maura Ziska]

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[Architectural Commission Recommendation: Implementation of the proposed variance to enclose the garage will not negatively impact the architecture of the house. Carried 6-1 (Mrs. Vanneck dissenting). The proposed new two car garage which requires variances can be designed in an architecturally suitable manner on another portion of the subject property and conform to the zoning code without the need for the variances. Carried 7-0]

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

- d. **VARIANCE #54-2014** The application of Thomas Maier; relative to property commonly known as **102 Jungle Road**; described as A part of Government Lot 2, Section 26, Township 43, Range 43 East less the right-of-way for Ocean Blvd. and Jungle Road; located in the R-A Zoning District. Variances are requested to allow for expansion of the raised terrace with a front yard setback of 22.9 feet in lieu of the 35 foot minimum required for a lot in the R-A District; to install a 292.4 square foot awning over the proposed raised terrace with a front yard setback of 24 feet in lieu of the 35 foot minimum required; to add a balcony to the second story with a front yard (north) setback of 26.9 feet in lieu of the 33 foot minimum required; and, to maintain the existing non-conforming lot coverage. The request is for a variance for lot coverage with the changes of 28.4% in lieu of the existing 28.4% and the 25% maximum allowed by code. [Attorney: David E. Klein] [Landmark Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject landmark property. Carried 7-0]
- John S. Page, Director of Planning, Zoning, and Building*

D. Other

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|---|----------|
| 1. Proposed Declaration of Use Agreement for Chez L'Epicier Restaurant, 288 South County Road, Special Exception #22-2014 with Site Plan Review | Page 98 |
| <i>John S. Page, Director of Planning, Zoning, and Building</i> | |
| 2. Proposed Declaration of Use Agreement for Bethesda by the Sea Episcopal Church-Special Exception #24-2014 with Site Plan Review- 141 South County Road | Page 110 |
| <i>John S. Page, Director of Planning, Zoning, and Building</i> | |
| 3. Palm House Update | Page 123 |
| <i>John S. Page, Director of Planning, Zoning, and Building</i> | |

VIII. ORDINANCES

IX. ANY OTHER MATTERS

X. ADJOURNMENT

PLEASE TAKE NOTE:

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

- Note 2:** The progress of this meeting may be monitored by visiting the Town's website (townofpalmbeach.com) and clicking on "Meeting Audio" in the left column. If you have questions regarding that feature, please contact the Office of Information Systems (561) 227-6315. The audio recording of the meeting will appear within 24 hours after the conclusion of the meeting.
- Note 3:** If a person decides to appeal any decision made by this Council with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings. For such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.
- Note 4:** Disabled persons who need an accommodation in order to participate in the Town Council Meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.
- Note 5:** Items listed on the Consent Agenda will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that any item (s) be moved to the Regular Agenda and individually considered.
- Note 6:** A summary of the actions taken at Town Council meetings can be viewed on the Town's website after 5 p.m. on the Friday following the Town Council meeting.

PROCEDURES FOR PUBLIC PARTICIPATION

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

PUBLIC HEARINGS:

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

COMMUNICATIONS FROM CITIZENS:

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

OTHER AGENDA ITEMS:

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

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

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Appeals

Agenda Title

Appeal of Landmarks Preservation Commission Decision, COA-026-2014, 105 Clarendon Avenue (per Letter Dated October 24, 2014, from Maura Ziska)

Presenter

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

Supporting Documents

- [Memorandum Dated October 30, 2014 from John S. Page](#)
- [Letter Dated October 24, 2014 from Maura Ziska](#)
- [Letter Dated October 27, 2014 from Maura Ziska](#)
- [Letter Dated October 22, 2013 from John Lindgren](#)
- [Letter Dated March 4, 2014 from John Lindgren](#)
- [Letter Dated August 7, 2014 from John Lindgren](#)
- [Letter Dated October 6, 2014 from John Lindgren](#)
- [Letter Dated November 5, from William O. Cooley](#)
- [E-mail Dated November 5, 2014, from John C. Randolph, Town Attorney](#)
- [Landmarks Preservation Commission Minutes of September 17, 2014](#)
- [Landmarks Preservation Minutes of October 16, 2014](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 12, 2014

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Appeal of Landmarks Preservation Commission Decision, COA-026-2014, 105 Clarendon Avenue (per Letter Dated October 24, 2014 from Maura Ziska)

Date: October 30, 2014

STAFF RECOMMENDATION

Staff recommends that the Town Council consider and rule upon the appeal of Charles Schumacher, the owner of 105 Clarendon Avenue, objecting to the decision of the Landmarks Preservation Commission made on October 16, 2014 to reconsider its action from the previous month, regarding an approved Certificate of Appropriateness (COA) at the subject property.

GENERAL INFORMATION

The single family home at 105 Clarendon Avenue was designated as a local landmark in March of 1990. Public records indicate that Mr. Schumacher became the titleholder in August, 2013.

The Landmarks Preservation Commission has considered and approved a number of applications to alter the home following the Schumacher purchase last year. A brief history follows:

- October 16, 2013: The Commission approved COA-047-2013 after hearing an architectural presentation from Harold Smith, Taylor Smith and Kristin Kellog of Smith and Moore Architects. The project description included within the COA reads as such.... *“Request approval for restoration, rehabilitation, addition to historic structure, interior and exterior demolition, and landscape/hardscape which is further described as: Restoration of building exterior stonework; replacement of all windows and exterior doors; foundation restoration; restoration of interior floors, walls and ceilings; kitchen and bath renovation; 2-story addition on west side of main block of house; enclosure of existing west loggia and second floor addition above; addition of a first floor loggia on the west side of the main block of house; loggia addition on east side of house; landscape and hardscape changes, and other associated changes as presented.”* The project was approved with the exception of an east facing portico (loggia) which was deferred due to Commission concerns. Commissioners and the architect noted that the project was very large in scope, requiring considerable time and expense to restore the original beauty.

- February 19, 2014: The Commission approved a second COA (#003-2014). The loggia that was deferred several months earlier was eliminated. It was noted that construction commenced following the October approval and that several structural concerns had been discovered including the roof structure above the eastern portion of the house. Approval included roof replacement, cast stone replacement, window and door modifications, railing reconfiguration, replacement of garage doors, and interior reconfigurations.
- July 21, 2014. The Commission approved a third COA (#026-2014). Architect Harold Smith testified that the contractor informed him of a partial collapse that occurred at the southwest corner of the main living block of the home attributable to extensive termite damage and deterioration. The following excerpt appears on the Certificate: *“The collapse affected the first floor and some of the second floor and elevator shaft. For safety reasons, there is a need to rebuild the wall at the new loggia and rebuild the entire south wall up to the southeast corner of the house. The stair must also be re-built. While they will try to save as much as possible at the house, some floor joists are rotted, some stud bottoms are rotted, concrete floors need to be replaced, and wood rot abounds. On the east façade, the collapse came up to the edge of the front door. John Rossi, contractor, explained the collapse in greater detail.”* Mr. Smith assured the Commission that the front façade would be replaced in exact fashion.

The issue of wall collapses (intentional or not) continued into August, and accelerated in September. In August, contractor John Rossi posted a video on his Facebook page depicting deliberate wall demolition. The video prompted staff to carefully review approved COA plans, comparing them to the Facebook videos to determine if a violation had occurred. Staff subsequently determined that the wall being filmed was actually part of a former loggia that was approved for reconstruction. The project scope had not been violated. During the week of September 1, a portion of the front facing east façade was destroyed. Staff “red-tagged” the property stopping all further work until it could be determined what had occurred. The contractor reported to the architect and to staff that a front portion of the façade had collapsed when adjacent hollow tile wall sections at replacement window sites were being cut. Confirmation of the facts became difficult to discern because of additional Facebook videos posted by the contractor calling his performance into question. All videos were provided to staff by Commissioner Cooley (not the applicant).

In addition to stopping work, staff directed that additional structural engineering plans be prepared identifying structural integrity issues for the remainder of the home. The owner employed a structural engineer as directed. The owner, architect, contractor, private provider and structural engineer attended the September 17, 2014 Landmarks Preservation Commission to address the status of deliberate demolition vs. accidental collapse. An excerpt from the Minutes of that meeting is attached for review.

Together, Architect Harold Smith and Structural Engineer Albert Gargiulo reviewed the project history and spoke of the deterioration that had been uncovered while working, including wood framing in deplorable condition; termite damage; water damage; rotting wood; weak hollow clay tile, and spalling. They showed photographs of damage and spoke of concerns for worker safety. Mr. Gargiulo reported that the house is clad with hollow clay block which is not acting as a

structural element, bringing its ability to withstand hurricane force winds and to provide safe shelter into question. Commissioners, many of which had visited the site prior to the September 17 meeting, generally concurred, noting that the original structure could not be salvaged. A motion to allow the restoration to continue, in accordance with newly presented demolition plans that called for nearly total building replication, was approved 6 -1.

It should be noted that the controversial John Rossi videos were not shown during the September 17 meeting. A suggestion to view them was quickly dismissed by Commission consensus. Staff lifted the Stop Work Order following the meeting, and work re-commenced. Because more than half of the cubic volume of the house was lost due to roof removal, Town Code requires that the renovated structure must comply with all current zoning regulations.

Zoning Administrator Paul Castro attended the October 16, 2014 Commission meeting to provide an update to the Commission regarding the cubic content/zoning compliance issue. He explained that three variances are now required (west side yard setback, north street rear yard setback, building height), and will be considered by the Town Council in December. If approved in December, remaining walls (now braced) at the home will be demolished. Due to this delay, it will be necessary for the applicant to request a waiver to continue the demolition process during the three-month window when demolitions are prohibited without Council approval (December – February). Chair Bill Cooley indicated that he felt some of the demolition had been deliberate, and that the Commission’s approval action at its previous meeting on September 17 might not have occurred if the Rossi videos had been shown. He asked that the September action be reconsidered for that reason. Motion to reconsider, properly made, carried 4-3, and it was determined that the issue would appear on the November 19 Agenda, following proper notice requirements.

SPECIAL CONSIDERATIONS

Town Code Section 54-41 (Historical Preservation) allows for appeals as follows: “The applicant or any interested party may file an appeal to the town council on any ruling by the commission or the building official made pursuant to this chapter.”

Owner Shumacher and Attorney Maura Ziska filed a timely appeal of the Commission’s action to “reconsider” the COA approval in September. The Notice of Appeal dated October 24, 2014, is attached, asking the Town Council to overturn the reconsideration. They contend that the September approval was based on substantial and competent evidence, and that introducing internet social media is not competent evidence as to the structural condition of the home. Please note that a further communication (technical objection) from the attorney on October 27, 2014, also attached, contends that the motion for reconsideration was contrary to Robert’s Rules of Order because it was not made on the day of the original approval motion. Town Attorney Randolph disagrees with that assertion, noting that a motion to reconsider must be made at the meeting during which the original motion was made, or at the next successive meeting.

Though not directly related to this appeal, the owner employed the Private Provider firm of Tew & Taylor to oversee all required inspections at the site prior to the time wall collapses occurred.

A separate audit of their records is now being conducted by the Planning, Zoning & Building Department. Town Attorney Randolph has advised staff that the two issues, private provider inspections and reconsideration, are independent from one another.

Attachments

cc: Maura Ziska, Owner's Attorney
Harold Smith, Owner's Architect
John C. Randolph, Town Attorney
Landmarks Preservation Commissioners

KOCHMAN & ZISKA PLC

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

*Also admitted in New York
*Also admitted in Michigan

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

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

VIA HAND-DELIVERY

October 24, 2014

John Page
Director of Planning Zoning and Building Department
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Notice of Appeal
Property Owner: 105 Clarendon Road Revocable Trust
Landmarks # COA 26-2014
Property Address: 105 Clarendon Avenue, Palm Beach, FL

Dear Mr. Page:

On behalf of the 105 Clarendon Road Revocable Trust and Charles Schumacher, the beneficial owner of 105 Clarendon Avenue ("Owner"), this notice of appeal is being filed to request the Town Council to overturn the Landmark Preservation Commission's action at its October 16, 2014 meeting to reconsider a vote that passed at the September 17, 2014 commission meeting relative to the above referenced property.

At the September 17, 2014, Landmarks Preservation Commission ("Commission") had requested the Owner's representatives make a presentation and give an update on the renovation and an event that occurred when a 20 foot long wall collapsed at the site in early September. There was no application for certificate of appropriateness pending, however, the architect and structural engineer made a lengthy presentation and submitted engineering reports and photographs evidencing the poor condition of the home. Evidence and testimony were provided by the architect and engineer that although some of remaining walls of the house were trying to be saved, the current structural condition was so poor that it was necessary that the walls be taken down and rebuilt to ensure the future structural soundness of the home. Prior to the September 17th Commission hearing, 6 of the 7 voting members toured the site and had an opportunity to view and inspect the condition of the structure first hand. After testimony was heard, the Commission took a vote to allow the project to continue with the removal and rebuilding of the walls that are in disrepair. The vote passed 6-1 with Mr. Cooley dissenting. There was commentary by Mr. Cooley that he had seen video footage on internet social media that would indicate the walls were removed intentionally.

John Page
October 24, 2014
Page 2

At the October 16, 2014 Commission hearing, Mr. Cooley again brought up the internet social media videos and urged the commissioners to watch the videos. After discussion and without an attorney for the homeowner or the Town attorney being present, the Commission voted 4-3 to reconsider the matter to include watching the social media videos.

The basis for the appeal is that the Commission deviated from the criteria set forth in Section 54-125 of the Town of Palm Beach Code by attempting to reconsider their decision in September to allow the demolition of certain walls that were in disrepair. The decision at the September Commission hearing was based on substantial and competent evidence. Introducing internet social media is not competent evidence as to the structural condition of the home. There was substantial testimony, evidence, and site visits by the commissioners to support the conclusion that certain walls are in disrepair and not able to be saved. Allowing the use of selective videos from social media that were not created by the Owner or his design professionals in this quasi-judicial forum is inappropriate and not relevant to a decision determining the condition and structural integrity of a 100 year old residence. Allowing the reconsideration of irrelevant evidence taken from the internet does not have any bearing on the condition of the structure and is only an attempt to punish, belittle and embarrass the builder. The conclusion will be the same whether the internet social videos are viewed or not... that the walls are to be rebuilt in their same location.

Based on the foregoing, the Owner respectfully requests the Town Council to overrule the decision of the Commission to reconsider a matter and allow the original decision made at their September meeting to stand. Please place this matter on the November 12, 2014 Town Council agenda. Please call me if you have any questions with the foregoing. Thank you.

Sincerely yours,



Maura Ziska, Esq.

Enclosure (appeal fee check in amount of \$320)

cc: Peter Elwell, Town Manager
John C. Randolph, Esq., Town Attorney
Susan Owens, Town Clerk

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, Counsel*

*Also admitted in New York

*Also admitted in Michigan

Esperanté

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

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA EMAIL DELIVERY

October 27, 2014

John Page
Director of Planning Zoning and Building Department
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Notice of Appeal
Property Owner: 105 Clarendon Road Revocable Trust
Landmarks # COA 26-2014
Property Address: 105 Clarendon Avenue, Palm Beach, FL

Dear Mr. Page:

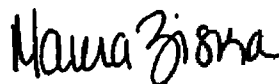
Further the Notice of Appeal that was submitted on Friday, October 24, 2014, in reference to the above matter, I wish to supplement the appeal with a technical objection. The Town Council follows Robert's Rules of Order (See Section 2-86 of the Town of Palm Beach Code of Ordinances). Pursuant to Robert's Rules of Order, a motion for reconsideration must be made on the day the original motion is made. Section 36 of Robert's Rules of Order states:

36. Reconsider. This motion is peculiar in that the making of the motion has a higher rank than its consideration, and for a certain time prevents anything being done as the result of the vote it is proposed to reconsider. *It can be made only on the day the vote to be reconsidered was taken, or on the next succeeding day, a legal holiday or a recess not being counted as a day.* (emphasis added).

As such, the motion made by Mr. Cooley at the October 16, 2014 Landmarks Preservation Commission hearing was out of order. The motion for reconsideration must be overruled by the Town Council on a technical violation.

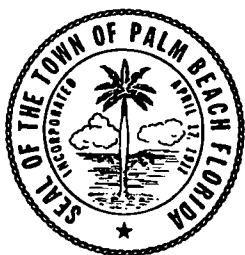
Please call me if you have any questions with the foregoing. Thank you.

Sincerely yours,



Maura Ziska, Esq.

cc: Peter Elwell, Town Manager
John C. Randolph, Esq., Town Attorney
Susan Owens, Town Clerk



TOWN OF PALM BEACH

Planning, Zoning & Building Department

October 22, 2013

105 Clarendon Road Revocable Trust
222 Lakeview Avenue, Suite 1500
West Palm Beach, FL 33401

SUBJECT: Certificate of Appropriateness #047-2013 (partial)
Subject Address: 105 Clarendon Avenue, Palm Beach

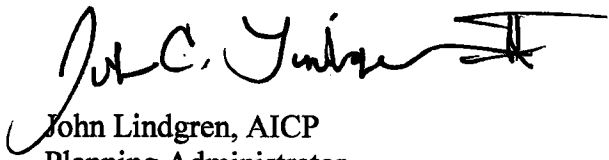
Ladies and Gentlemen,

As you have made application for a Certificate of Appropriateness, and the Landmarks Preservation Commission has partially approved your application as outlined at its meeting of October 16, 2013, please find the requested Certificate of Appropriateness enclosed.

This Certificate expires October 16, 2014, one year from date of approval. By copy of this letter and Certificate of Appropriateness, designated Town Staff is notified of this approval.

This LPC approval constitutes approval relating to the Landmarks Ordinance only, and does not relieve the owner from obtaining additional Town approvals as may be required, and/or required permits.

Sincerely,

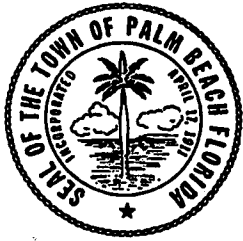


John Lindgren, AICP
Planning Administrator

JL:cmd

Enclosure

cc: Smith and Moore Architects, Inc.
William Bucklew, Acting Building Official
pf



CERTIFICATE OF APPROPRIATENESS

105 Clarendon Road Revocable Trust
222 Lakeview Avenue, Suite 1500
West Palm Beach, FL 33401

Certificate of Appropriateness #047-2013 (partial)

LPC Meeting Date: October 16, 2013

RE: Subject Address: 105 Clarendon Avenue

At the Public Hearing of the Landmarks Preservation Commission held October 16, 2013, the request for Certificate of Appropriateness was partially approved as follows: Project Description: Request approval for restoration, rehabilitation, addition to historic structure, interior and exterior demolition, and landscape/hardscape which is further described as: Restoration of building exterior stonework; replacement of all windows and exterior doors; foundation restoration; restoration of interior floors, walls and ceilings; kitchen and bath renovations; 2-story addition on west side of main block of house; enclosure of existing west loggia and second floor addition above; addition of a first floor loggia on the west side of the main block of house; loggia addition on east side of house; landscape and hardscape changes, and other associated changes as presented. *Please be advised that this is a tax abatement project.*

ARCHITECTURAL PRESENTATION BY: Harold Smith, Taylor Smith, and Kristin Kellogg, Smith and Moore Architects

LANDSCAPE PRESENTATION BY: Keith Williams, Nievera Williams Design

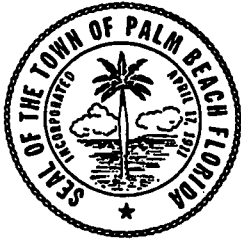
OTHERS WHO TESTIFIED: Lawrence Moens, Resident and Realtor

The Smith and Moore team presented this tax abatement project in accordance with the submitted plans and as described above. It should be noted that a model of the house was presented. Harold Smith explained that this property has recently been purchased and it is the intention of the new owner to restore the home and construct several additions to the home to facilitate modern living and to accommodate the family. The property has been poorly maintained and is in need of attention. Mr. Smith explained that the new owner, in purchasing this home, has dedicated his resources to a huge project, which will take considerable time and expense to restore the house back to its original beauty. Ms. Kellogg reviewed original floor plans and elevations, as well as historical photos. Current photos emphasize the existing deterioration and water damage present. Taylor Smith discussed areas scheduled for demolition: the 1970's additions to the second floor west terrace along the courtyard, the small playhouse, most of the existing courtyard wall to the west, and the existing pool. The staff wing will remain largely unchanged. Mr. Smith reviewed the proposed changes/additions in greater detail. Proposed exterior colors include a roof replacement in variegated red antique clay barrel tile; Mizner green on the doors and windows, off-white/cream for the body of the house, and cast stone to match existing.

As for landscape/hardscape, Mr. Williams stated that the landscape/hardscape scope of work is limited at this time to the east lawn, pool area and the courtyard area as it relates to the proposed new loggia. Most landscaping will be retained on the east side of the property, but exotics and invasives will be removed. Additional landscape material will be added as presented. A large Seagrape tree will be relocated. The pool and some terraces on the east side will be reconfigured, and the courtyard paving will be changed. The new pool and fountain, with cast stone coping, will run north/south and will be centered on the new loggia and library. To the west, the curved wall and fountain will be retained, but some other walls will be removed. Off the dining room, a garden and fountain are proposed. At the courtyard to the west, paving will be decreased, Date Palms will be added, and a fountain will be retained. Cast stone is the main hardscape material.

Under commission comments, the project was very well received and complimented for a thorough presentation, but there was significant concern regarding the new loggia (referred to as a portico) on the east elevation. Since the east elevation, where the loggia is proposed, is the principal facade, and the project is a tax abatement project which requires adherence to stricter standards, commission members voiced their serious concerns. This issue was discussed for a considerable length of time. Some additional concerns/comments: Issue with the tiny roof on the proposed west loggia; the need for paint color analysis on the house and trim work; concern regarding the proposed gallery and altering public rooms; there are other design opportunities for an outdoor loggia; the LPC has a duty to uphold certain standards for tax abatement projects; the owner has the option to abandon the tax abatement, and perhaps thereby change the review standard; recommend re-study, rather than ask the owner to abandon the tax abatement; and, we are trying to be of service to property owners, and do not want to be obstructionists, but we have to maintain our integrity.

LANDMARK PRESERVATION COMMISSION
Palm Beach, Florida



CERTIFICATE OF APPROPRIATENESS

Lawrence Moens testified that he is a resident, and was the realtor who sold the house to the new owners. He explained that it is challenging to sell "white elephant" large Mediterranean homes and then try to adapt them to today's living. In his opinion, the proposed loggia on the east facade is the best change being proposed because it will allow the owners to connect to the ocean on the first floor level, but more importantly, at the master bedroom level. He stated that the house was in major disrepair. As such, he was happy that this owner was willing to take on the project and enhance the neighborhood and the Town. Mr. Moens regarded the addition of the loggia as a correction to what he views as an original design mistake for the house not relating well to the ocean. He maintained that the LPC needs to be flexible to the needs of the people living in landmarks today, or it will be very difficult for him to sell landmarks in the future. Later in the meeting, Mr. Moens offered additional comments and invited members to the house (on an individual basis) to fully appreciate the conditions there. He stressed the importance of the benefit of the tax abatement to the new owners, especially since they are undertaking such a large project at this home.

Mr. Strawbridge stressed the role of the LPC to preserve the Town's iconic buildings.

**MOTION BY MR. STRAWBRIDGE TO DEFER TO THE NEXT MEETING.
MOTION SECONDED BY MS. MURPHY.
(THERE WAS NO VOTE ON THIS MOTION.)**

Harold Smith asked for an approval, excepting the loggia on the east elevation, so the project can get started. The east elevation could be deferred, or could return as a separate project in the future.

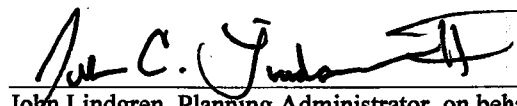
**SUBSTITUTE MOTION BY MR. FELDKAMP FOR APPROVAL OF THE PROJECT AT 105 CLARENDON AVENUE, AS PRESENTED, WITH THE EXCEPTION THAT THAT EAST PORTICO (LOGGIA) WILL BE DEFERRED TO THE NOVEMBER MEETING.
CLARIFICATION BY MR. FELDKAMP THAT HIS MOTION IS FOR THE ARCHITECTURAL PORTION OF THE PROJECT, AS PRESENTED, WITH THE EXCEPTION OF THE EAST PORTICO WHICH WILL COME BACK AT THE NOVEMBER MEETING.
MOTION SECONDED BY MS. MURPHY.
MOTION CARRIED UNANIMOUSLY.**

The commission gave further consideration to the landscape/hardscape portion of the project.

**MOTION BY MR. FELDKAMP FOR APPROVAL OF THE LANDSCAPE AT 105 CLARENDON AVENUE AS PRESENTED.
MOTION SECONDED BY MS. FAIRFAX.
MOTION CARRIED UNANIMOUSLY.**

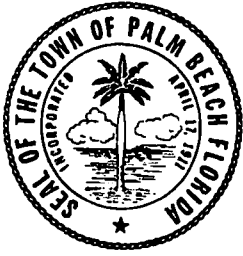
Approval is made with the proviso that all changes meet all Codes of the Town of Palm Beach including, but not limited to the Building Code.

The property owner is advised that a building permit for the approved work must be obtained on or before October 16, 2014, at which time this Certificate of Appropriateness will expire if work has not commenced.


John Lindgren, Planning Administrator, on behalf of
LANDMARKS PRESERVATION COMMISSION

cmd

**LANDMARK PRESERVATION COMMISSION
Palm Beach, Florida**



TOWN OF PALM BEACH

Planning, Zoning & Building Department

March 4, 2014

105 Clarendon Road Revocable Trust
222 Lakeview Avenue, Ste. 1500
West Palm Beach, FL 33401

SUBJECT: Certificate of Appropriateness #003-2014
Subject Address: 105 Clarendon Avenue, Palm Beach

Ladies and Gentlemen,

As you have made application for a Certificate of Appropriateness, and the Landmarks Preservation Commission has approved your application as outlined at its meeting of February 19, 2014, please find the requested Certificate of Appropriateness enclosed.

This Certificate expires February 19, 2015, one year from date of approval. By copy of this letter and Certificate of Appropriateness, designated Town Staff is notified of this approval.

This LPC approval constitutes approval relating to the Landmarks Ordinance only, and does not relieve the owner from obtaining additional Town approvals as may be required, and/or required permits.

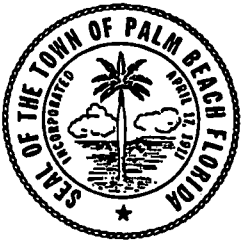
Sincerely,

John Lindgren, AICP
Planning Administrator

JL:cmd

Enclosure

cc: Smith and Moore Architects, Inc.
William Bucklew, Building Official
pf



CERTIFICATE OF APPROPRIATENESS

105 Clarendon Road Revocable Trust
222 Lakeview Avenue, Ste. 1500
West Palm Beach, FL 33401

Certificate of Appropriateness #003-2014

LPC Meeting Date: February 19, 2014

RE: Subject Address: 105 Clarendon Avenue

At the Public Hearing of the Landmarks Preservation Commission held on January 16, 2014 and February 19, 2014, the request for Certificate of Appropriateness was approved as follows: Request approval for reconstruction which is further described as: Demolition and reconstruction of garage section of residence. Demolition and reconstruction of main section of roof. *Please be advised that this is a tax abatement project.*

January Meeting:

Taylor Smith stated that LPC approval was obtained in October for door and window replacements, a new barrel tile roof, and a two story addition to the west side of the home. During the construction which commenced thereafter, two areas of structural concern were uncovered: (1) the roof structure above the eastern portion of the house (reconstruction proposed which would not affect the exterior appearance of the house) and (2) partial reconstruction of the westernmost two story portion of the house required (includes 2006 garage addition and an original two story section of the house). Other project elements include: Replacement of cast stone due to significant cracking and spalling; raise floor level and beam height (at 2nd fl.) of roof; add original window back on second floor level; add barrel tile and wood canopy over French doors; reconfiguration of railing; replace garage doors; and, interior modifications to reconfigure interior spaces.

Under commission comments: Sensible response to help the house get back to a livable condition; changes sensitive to original house; glad to see east portico (loggia) eliminated; and, please document original conditions with photos and provide to Town.

It was noted that on plan sheet A6, two second story windows are shown at the master bedroom that some members thought were eliminated. Mr. Smith responded that the east portico (loggia) was eliminated, but not these two windows in the master bedroom. Specifically, the owner agreed to eliminate the east portico on the premise that the two windows would remain. While Mr. Smith stated that they were under the impression that only the addition of the east portico (loggia) was deferred for re-study, the commission was of the opinion that this portion of the facade, as well as the east portico (loggia) addition were deferred for re-study. Some members commented that the windows are acceptable as this is the ocean facade, but the decorative panels are at issue.

MOTION BY MR. FELDKAMP TO APPROVE CERTIFICATE OF APPROPRIATENESS #003-2014, AS PRESENTED, WITH THE EXCEPTION OF THE RE-STUDY OF THE WINDOWS AT THE EAST FACADE. WE REQUEST DEFERRAL OF THOSE ISSUES, AND WITH THE UNDERSTANDING THAT THE TWO ADDITIONAL WINDOWS IN THE MASTER BEDROOM ARE ACCEPTABLE.

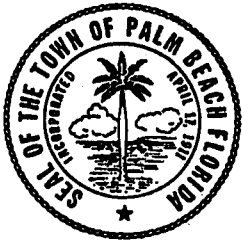
MOTION SECONDED BY MR. STRAWBRIDGE.

MOTION CARRIED UNANIMOUSLY.

February Meeting:

ARCHITECTURAL PRESENTATION BY: Harold Smith, Smith and Moore Architects, Inc.

Mr. Smith stated that the windows in question have been re-studied since the last meeting. The new proposal is for taller windows with lites that are more in proportion with the other windows of that elevation. He reiterated that the owner requests these windows for additional exposure to the ocean from the master bedroom.



CERTIFICATE OF APPROPRIATENESS

MOTION BY MRS. ALBARRAN FOR APPROVAL OF THE PROJECT AS PRESENTED, WITH NO ADDING OF THE TOP BAND, AND ELONGATING THE WINDOWS.

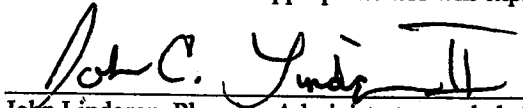
(IT WAS CLARIFIED THAT THE APPROVED OPTION WAS "OPTION A", AS SUBMITTED.)

MOTION SECONDED BY MR. FELDKAMP.

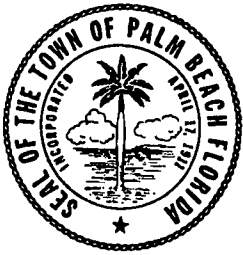
MOTION CARRIED UNANIMOUSLY.

Approval is made with the proviso that all changes meet all Codes of the Town of Palm Beach including, but not limited to the Building Code.

The property owner is advised that a building permit for the approved work must be obtained on or before February 19, 2015, at which time this Certificate of Appropriateness will expire if work has not commenced.


John Lindgren, Planning Administrator, on behalf of
LANDMARKS PRESERVATION COMMISSION

cmd



TOWN OF PALM BEACH

Planning, Zoning & Building Department

August 7, 2014

105 Clarendon Road Revocable Trust
222 Lakeview Avenue, Ste. 1500
West Palm Beach, FL 33401

SUBJECT: Certificate of Appropriateness #026-2014
Subject Address: 105 Clarendon Avenue, Palm Beach

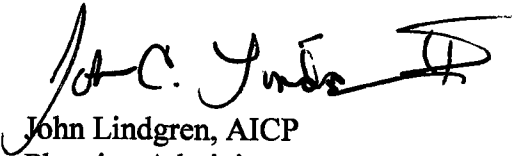
Ladies and Gentlemen,

As you have made application for a Certificate of Appropriateness, and the Landmarks Preservation Commission has approved your application as outlined at its meeting of July 21, 2014, please find the requested Certificate of Appropriateness enclosed.

This Certificate expires July 21, 2015, one year from date of approval. By copy of this letter and Certificate of Appropriateness, designated Town Staff is notified of this approval.

This LPC approval constitutes approval relating to the Landmarks Ordinance only, and does not relieve the owner from obtaining additional Town approvals as may be required, and/or required permits.

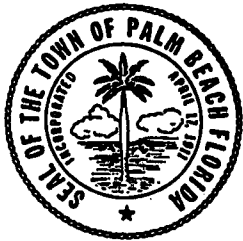
Sincerely,


John Lindgren, AICP
Planning Administrator

JL:cmd

Enclosure

cc: Smith and Moore Architects, Inc., Harold Smith
William C. Bucklew, Building Official
pf



CERTIFICATE OF APPROPRIATENESS

105 Clarendon Road Revocable Trust
222 Lakeview Avenue, Ste. 1500
West Palm Beach, FL 33401

Certificate of Appropriateness #026 - 2014

LPC Meeting Date: July 21, 2014

RE: Subject Address: 105 Clarendon Avenue

At the Public Hearings of the Landmarks Preservation Commission held on July 21, 2014, the request for Certificate of Appropriateness was approved as follows: Approval for reconstruction which is further described as: Changes to previous approvals, including replacement of double-hung windows with casement windows; extension of living space above the garage; floor plan modifications; and other associated changes as presented. *Please be advised that this is a tax abatement project.*

ARCHITECTURAL PRESENTATION BY: Harold Smith, Smith and Moore Architects
OTHERS WHO TESTIFIED: John Rossi, Contractor, Robert Roddy

Mr. Smith confirmed that after the application was submitted for additional work, the contractor informed him of a partial collapse and structural problems. He distributed supplemental plan sheets to be added to the mini-sets. The collapse took place at the southwest corner of the main living block of the house. That area experienced horrible termite damage and deterioration. Mr. Smith began his presentation by providing an entire review of the previous requests for changes and corresponding approvals by the LPC for this property.

Today's request includes: Add platform in basement for theatre seating; replace wall due to inadequate footer; add loggia-facing bar with folding windows above; change location of kitchen appliances; more substantial interior changes on the second floor; add 275 sq. ft. of interior space to the guest room wing; assorted window changes – change double hungs to casements; and differentiate the added 9 ft. 8 in. at second floor, above garage, by bringing the wall in 16 inches.

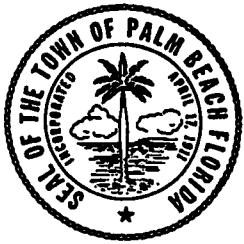
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Emily Stillings, Staff Historic Preservation Consultant, noted that this is a tax abatement project. Due to the changes since the original tax abatement application was submitted, she had informed Mr. Smith that he would have to submit an updated pre-construction application. With tax abatements, the interior is also subject to LPC review. The public rooms need to be restored to the pre-collapse condition. Ms. Stillings opined that changing double hung windows to casements at this house is not appropriate and does not meet the Secretary of the Interior's Standards which are applicable in cases of tax abatement. Keeping the double hung windows is preferable.

Mr. Smith defended his choice for casement windows because the use of the space has changed in the north wing from staff area to family living area. This inspired a discussion relative to this issue and the suggestion that the windows be removed from the tax abatement request. Ms. Stillings responded that such a deletion gets very complicated, but the owner could decide to forego the tax abatement altogether. The Commission's comments indicated that they would like to accommodate the owner's request in consideration of the large restoration/renovation that the owner has undertaken, along with the corresponding expenses for same.

Mr. Smith assured the Commission that the front facade will go back exactly the way it was.

Mr. Randolph advised that if the Commission elects to approve the project as presented, with the casement windows, as the owner wants, the owner assumes any risk related to the tax abatement.



CERTIFICATE OF APPROPRIATENESS

MOTION BY MR. GANNON FOR APPROVAL AS PRESENTED.

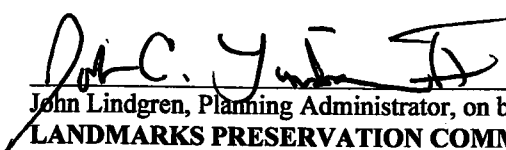
MOTION SECONDED BY MS. HUFTY.

MOTION CARRIED UNANIMOUSLY.

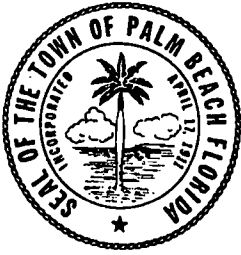
IT WAS CLARIFIED THAT THE APPROVAL INCLUDED OPTION "A" WITH THE RECESS.

Approval is made with the proviso that all changes meet all Codes of the Town of Palm Beach including, but not limited to the Building Code.

The property owner is advised that a building permit for the approved work must be obtained on or before July 21, 2015, at which time this Certificate of Appropriateness will expire if work has not commenced.


John Lindgren, Planning Administrator, on behalf of
LANDMARKS PRESERVATION COMMISSION

cmd



TOWN OF PALM BEACH

Planning, Zoning & Building Department

October 6, 2014

105 Clarendon Road Revocable Trust
222 Lakeview Avenue, Ste. 1500
West Palm Beach, FL 33401

SUBJECT: Certificate of Appropriateness #026-2014 (as amended)
Subject Address: 105 Clarendon Avenue, Palm Beach

Ladies and Gentlemen,

As you have made application for a Certificate of Appropriateness, and the Landmarks Preservation Commission has approved your application as outlined at its meeting of July 21, 2014 (and further approved modifications at its meeting of September 17, 2014), please find the requested **amended** Certificate of Appropriateness enclosed.

This Certificate expires July 21, 2015, one year from date of approval. By copy of this letter and **amended** Certificate of Appropriateness, designated Town Staff is notified of this approval.

This LPC approval constitutes approval relating to the Landmarks Ordinance only, and does not relieve the owner from obtaining additional Town approvals as may be required, and/or required permits.

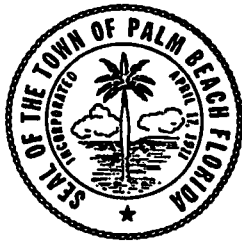
Sincerely,

John Lindgren, AICP
Planning Administrator

JL:cmd

Enclosure

cc: Smith and Moore Architects, Inc., Harold Smith
William C. Bucklew, Building Official
pf



CERTIFICATE OF APPROPRIATENESS

105 Clarendon Road Revocable Trust
222 Lakeview Avenue, Ste. 1500
West Palm Beach, FL 33401

Certificate of Appropriateness #026 - 2014 (amended)

LPC Meeting Dates: July 21, 2014
September 17, 2014

RE: Subject Address: 105 Clarendon Avenue

At the Public Hearings of the Landmarks Preservation Commission held on July 21, 2014 and September 17, 2014, the request for Certificate of Appropriateness was approved as follows: Approval for reconstruction which is further described as: Changes to previous approvals, including replacement of double-hung windows with casement windows; extension of living space above the garage; floor plan modifications; and other associated changes as presented. *Please be advised that this is a tax abatement project.*

July 21, 2014 Landmarks Preservation Commission Meeting

ARCHITECTURAL PRESENTATION BY: Harold Smith, Smith and Moore Architects

OTHERS WHO TESTIFIED: John Rossi, Contractor, Robert Roddy

Mr. Smith confirmed that after the application was submitted for additional work, the contractor informed him of a partial collapse and structural problems. He distributed supplemental plan sheets to be added to the mini-sets. The collapse took place at the southwest corner of the main living block of the house. That area experienced horrible termite damage and deterioration. Mr. Smith began his presentation by providing an entire review of the previous requests for changes and corresponding approvals by the LPC for this property.

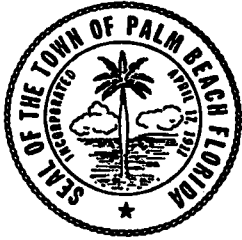
Today's request includes: Add platform in basement for theatre seating; replace wall due to inadequate footer; add loggia-facing bar with folding windows above; change location of kitchen appliances; more substantial interior changes on the second floor; add 275 sq. ft. of interior space to the guest room wing; assorted window changes – change double hungs to casements; and, differentiate the added 9 ft. 8 in. at second floor, above garage, by bringing the wall in 16 inches.

The collapse affected the first floor and some of the second floor and elevator shaft. For safety reasons, there is a need to rebuild the wall at the new loggia and rebuild the entire south wall up to the southeast corner of the house. The stair must also be re-built. While they will try to save as much as possible at the house, some floor joists are rotted, some stud bottoms are rotted, concrete floors need to be replaced, and wood rot abounds. On the east facade, the collapse came up to the edge of the front door. John Rossi, contractor, explained the collapse in greater detail.

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CERTIFICATE OF APPROPRIATENESS

Mr. Randolph advised that if the Commission elects to approve the project as presented, with the casement windows, as the owner wants, the owner assumes any risk related to the tax abatement.

MOTION BY MR. GANNON FOR APPROVAL AS PRESENTED.

MOTION SECONDED BY MS. HUFTY.

MOTION CARRIED UNANIMOUSLY.

IT WAS CLARIFIED THAT THE APPROVAL INCLUDED OPTION "A" WITH THE RECESS.

Approval is made with the proviso that all changes meet all Codes of the Town of Palm Beach including, but not limited to the Building Code.

September 17, 2014 Landmarks Preservation Commission Meeting

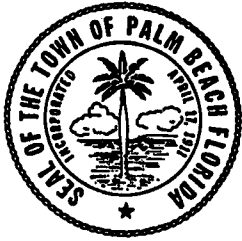
ARCHITECTURAL PRESENTATION BY: Harold Smith, Smith and Moore Architects

OTHERS WHO TESTIFIED: Albert Gargiulo, Structural Engineer

Mr. Cooley asked Mr. Page to provide the same brief history/update, related to this property, as was presented to the Town Council at their meeting last week: The LPC had approved a Certificate of Appropriateness in October, 2013 for extensive restoration, rehabilitation, addition and well-defined interior and exterior demolition. The owner opted to employ a private provider, rather than Town inspectors, to perform construction inspections. Demolition progressed beyond the parameters of the LPC approval. The owner's representative returned to the LPC on July 21, 2014 to report that a wall had collapsed at the site. The LPC allowed work to progress at that time, based upon the testimony. More recently, however, during the week of 9/1/2014, a portion of the front-facing east facade was eliminated. Staff red-tagged the property, stopping all work. On September 5, 2014, the site was visited by the Building Official, John Lindgren, Mr. Cooley, the contractor, the architect, and the structural engineer. The contractor reported that there had been another collapse when adjacent work was performed. Due to heightened concerns about structural conditions, staff directed that additional structural engineering plans be prepared and presented to address stability of the rest of the home. Staff also directed that remaining walls be braced to prevent further damage. The contractor has documented construction progress via Internet postings. A recent posting raises serious questions about the accuracy of statements made at the 9/5/2014 inspection about deliberate demolition vs. accidental collapse. The owner's representatives will appear today to address the issues and concerns. The Stop Work order will remain in effect until the LPC and the Building Official allow work to resume. Staff is continuing to confer with the Town attorney, historic preservation consultants and other professionals in order to best address the situation. Additional enforcement action will be taken as needed. Staff has begun developing improved procedures to prevent such a situation from occurring again at this site or at any other.

Mr. Cooley reported that the owner's representatives had been invited, in writing, to this meeting, and he welcomed them. He explained that staff is concerned that walls have been taken down which were not referenced on the demo plans. Perhaps more than 50% of the structure has been removed, which may trigger other code considerations.

Architect Harold Smith, Smith and Moore Architects, stated that he was here with the property owner, Mr. Chuck Schumacher, Maura Ziska, Mr. Schumacher's attorney, Albert Gargiulo, Structural Engineer, John Rossi, the contractor, Beverly Tew of Tew and Taylor, private provider, and others. He distributed copies of the engineer's report and a color coded floor plan, and reviewed the history of previous LPC approvals. Mr. Smith listed some of the deterioration and bad conditions uncovered at the site during the interior demolition. One of the LPC approvals allowed the addition of windows on the east elevation at the master bedroom, and it is that east elevation which has brought them here today. He elaborated on the first wall collapse, showed progressive photos of the structure from July, August, and September, and then continued with the circumstances which resulted in the contractor making the decision to remove that portion of the east facade, without necessary approvals, because of concern for worker safety. After the 9/5/2014 meeting at the site where all parties were present, the structural engineer fully inspected the site and instructed the contractor to provide temporary shoring and bracing for the remaining unreinforced walls. The job was red-tagged and no other work was permitted. Mr. Smith elaborated further on the deterioration found at the site: wood framing in deplorable condition; termite damage; water damage; rotting wood; hollow clay tile was just a veneer; and, spalling. Mr. Smith showed photos of the existing conditions. He outlined certain parts of the home which he and the structural engineer believe can be saved, i.e., loggia connecting kitchen wing with tennis



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pavilion, and tennis pavilion and rear staff quarters and laundry area. Both Mr. Smith and Mr. Gargiulo believe that the remainder of the hollow clay tile walls and structural wood framing, along with their foundations, should be removed and reconstructed with reinforced concrete masonry to prevent unsafe conditions in this oceanfront home with direct exposure to storm winds.

Mr. Smith, at the request of Mr. Schumacher, showed photos of the quality workmanship which has been performed at 874 South County Road, the guest house of 105 Clarendon, which the Schumachers are using as their residence now. 874 S. County Road is not landmarked, but has been restored and remodeled. It serves as an example to the quality of workmanship to which the contractor and owner are committed.

Mr. Gargiulo, Structural Engineer, reviewed the condition of the remaining portions of the house. He referred to his report, and noted that the house is clad with hollow clay block which is not acting as a structural element. He stressed the fact that the structure must be able to withstand hurricane force winds and provide safe shelter under habitable conditions; the structure has to represent a true replica of the original structure; and, he recommended reconstruction using new exterior reinforcing masonry resting on a new foundation, with the intent that the final product is a true replica of the original. Safety is paramount.

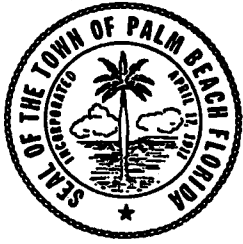
Commission Comments: Had you been able to "peel the onion away" initially, you would have arrived at the same conclusion; thank you to the Schumachers for taking the time and spending the money to attempt to restore this home; having visited the house many times over the years, the owners had always complained about water leaks...it is impossible to preserve this house in my professional opinion; you never really had a chance to salvage this house; the whole thing is a procedural issue that was not handled well; we are governed by ordinances...there is a 50% demolition threshold that puts this into a different category; would like to see the Town have a set of architects and engineers go over this engineer's findings, verify them, and report back to the LPC, at a cost to the property owner; need a complete set of plans given to Mr. Castro for zoning review; and, there should be an audit of Tew and Taylor to see how this could have come this far without anyone reporting this to the town; now we have no choice...handled poorly if this was obvious from the beginning;...

Mr. Page discussed Four Winds, 1768 South Ocean Boulevard, as precedence for this type of situation. 456 Worth Avenue was also discussed as having been handled so much better. Janet Murphy, Staff Historic Preservation Consultant, stated that she has spoken with the State Historic Preservation Office relative to 105 Clarendon Avenue. The State's response to a situation where unexpected demolition occurs during construction is that this produces an adverse effect to the landmark and it is required that the structure be reconstructed in accordance with the Secretary of the Interior's Standards.

Commission Comments (continued): Unfortunate the way this happened; raises questions about procedure, about the independent inspections contracted by the owner, especially when this is a tax abatement project and demolition is involved; concern about materials removal plans, now required, not being monitored; there are several other instances of reconstruction in the town; it is important that this be reconstructed, and that the owner is committed to it; it would be a shame to have to adjust its current design in order to comply with today's zoning; we would have been at the same place, no matter what, but now we should help expedite this, and clear the path to reconstruction; there is no way to save the building, so why spend money on architects and engineers to do all this...I'm concerned about the walls that are standing up...with any kind of wind, it will all be down...safety is the issue...do something quickly; there should have been studies, but even a layman can see that this cannot be saved...why wait another month for additional reports?; the LPC would be on very weak footing to authorize anything additional to happen to that house until we have the reports and have the plans looked at by Mr. Castro, and the audit.

Mr. Randolph stated that this is effectively a request to amend the Certificate of Appropriateness to allow the demolition that has occurred without your approval, and to allow additional demolition. The LPC could accept the report given today and allow those amendments, or could require the additional information.

There was discussion relative to the issue that more than a 50% demolition appears to have occurred, and this may trigger zoning issues. Mr. Castro stated that when you demolish more than 50% of a non-conforming structure, that structure has to comply with all code requirements based upon the non-conforming section of the code. Staff will have to analyze how the structure is non-conforming. It appears that at least the rear part of the building is non-conforming as to the rear street yard setback of 35 feet. Height may also be an issue. If variances are needed, the earliest agenda for Town Council review of the variances is at the December Town



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Council meeting. At this time, they could shore up the building and start to re-build some walls, but they could not do work that could involve variances. Mr. Smith stated that he will work closely with Mr. Castro to see what variances might be needed.

MOTION BY MR. GANNON TO ALLOW THE PROJECT TO CONTINUE TO GO FORWARD, AS AMENDED PER THE STRUCTURAL ENGINEER'S REPORT, AND FOR MR. CASTRO AND THE ARCHITECT, HAROLD SMITH, TO WORK TOGETHER SO THIS PROJECT CONTINUES, AND THAT THIS WOULD AMEND THE CERTIFICATE OF APPROPRIATENESS.

MOTION SECONDED BY MR. ZUKOV.

Under discussion, Mr. Castro reminded that the motion is fine, but the continuing work cannot involve possible variances.

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

The Commission requested that an update be provided from the applicant and from staff at the next meeting.

The property owner is advised that a building permit for the approved work must be obtained on or before July 21, 2015, at which time this Certificate of Appropriateness will expire if work has not commenced.

John Lindgren, Planning Administrator, on behalf of
LANDMARKS PRESERVATION COMMISSION

cmd



Fw: Letter regarding Ziska appeal of 105 Clarendon action by Landmarks

Peter B Elwell to: Patricia Gayle-Gordon

11/05/2014 12:19 PM

Cc: Anne Boyles, Cheryl Kleen

----- Forwarded by Peter B Elwell/PalmBeach on 11/05/2014 12:18 PM -----

From: "Bill Cooly" <cool3003@bellsouth.net>
To: <pelwell@townofpalmbeach.com>
Date: 11/05/2014 12:12 PM
Subject: FW: Letter regarding Ziska appeal of 105 Clarendon action by Landmarks

Peter,

Sorry, I left an "I" out of your name and it bounced back. My computer blew up and I had to start from scratch with names in my phone book. Sorry.

Bill C

From: Bill Cooly [mailto:cool3003@bellsouth.net]
Sent: Wednesday, November 5, 2014 10:16 AM
To: 'Robert Wildrick'; 'WJD'; 'kleid561@aol.com'; 'mpucillo@bermandevalerio.com'; 'penelope.d.townsend@gmail.com'
Cc: 'pewell@townofpalmbeach.com'; 'jrandolph@jonesforster.com'; 'JPage@TownofPalmBeach.com'; 'jlindgren@townofpalmbeach.com'; 'sowens@townofpalmbeach.com'; 'kblouin@townofpalmbeach.com'; 'rhouston@townofpalmbeac.com'
Subject: FW: Letter regarding Ziska appeal of 105 Clarendon action by Landmarks

Mayor and Members of the Town Council,

Attached is a letter in response to Ms. Maura Ziska, Esq., notice of appeal of the Landmarks Preservation Commission motion to reconsider the matter of 105 Clarendon Avenue. I am sending this letter, without attachments, as the size of the total file may be rejected by some computers.

I will send another file, containing the letter and the attachments.

Thank you for your consideration.



William O. Cooley Scan1711.pdf

WILLIAM O. COOLEY
171 EL PUEBLO WAY
PALM BEACH, FLORIDA 33480

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

November 5, 2014

RE: Notice of Appeal
105 Clarendon Avenue, Palm Beach, FL

Dear Mayor and Members of the Palm Beach Town Council,

I am writing this letter as Chairman of the Landmarks Preservation Commission, asking that the Town Council **deny** the request of Ms. Maura Ziska, Esq., (on behalf of the property owner, 105 Clarendon Road (sic) Revocable Trust) to overrule the September 17, 2014 decision of the Landmarks Preservation Commission. The Commission's decision was to reconsider the matter of sanctions for willfully destroying a portion of a Landmarked structure without Landmarks Preservation Commission approval.

This appeal should be denied and this matter should be sent back to the Landmarks Preservation Commission for the following reasons:

1. The motion was duly made, seconded and passed by the Landmarks Preservation Commission after a lengthy discussion on procedures and methods that led to the demolition of that certain portion of the east wall. As the Town Council is aware, the motion to reconsider must be made by a party on the prevailing side of the motion being reconsidered and must be made at the same or next meeting of the body. If a motion to reconsider this matter was going to be made, it must have been made at the October meeting. The Town Attorney left written comments with John Page, Director of Planning, Zoning and Building, among which were that if the matter was reconsidered, that no further discussion of the matter be held at the October meeting but all discussion be held off until the November meeting. We followed those directions to the letter and no discussion of the matter was conducted after the motion to reconsider had passed.
2. The 105 Clarendon Avenue matter will be back in front of the Landmarks Preservation Commission at its November meeting. At the November meeting the applicant will be requesting three (3) variances necessary for the project to proceed that were necessitated by the demolition by the contractor of more than fifty percent (50%) of the structure at 105 Clarendon Avenue. This matter, and the report from our staff on the "Audit of Tew and Taylor" (the privately hired inspectors), will be discussed at the November meeting and it is appropriate that the entire matter is discussed at this meeting.

3. Six of Seven voting members of the Landmarks Preservation Commission were heavily lobbied prior to the vote of September 17, 2014, and were provided information individually that was not available to the Commission as a whole. When I asked for "ex parte communications" at the September 17 hearing, I was shocked to hear all of the voting members, except the Chairman, had been lobbied by the attorney, architect, engineer and contractor. Ms. Ziska sets forth that fact in her October 24th letter in which she states: "Prior to the September 17th Commission hearing, 6 of the 7 voting members toured the site and had an opportunity to view and inspect the condition of the structure first hand." For the record, the one member that did not visit the site immediately prior to the September 17th meeting was the Chairman. This contact of these commission members prior to a hearing and vote on this issue is tantamount to lobbying a jury right before a trial. It is a practice that should be discouraged going forward when votes of this type are involved.

I might add, that because of the constraints placed on me (and all other officials) by the Florida Government in the Sunshine Law, I was unable to tell the other commission members of the existence of these video tapes. When the commission voted on this matter in September, while six commissioners had been lobbied by Ms. Ziska, Esq., I was not able to contact them and let them know of the videos' existence. It was only after the September meeting that the existence of these videos was made public at the Town Council meeting in October.

4. Ms. Ziska, Esq., incorrectly states in her letter that "...a 20 foot long wall collapsed...." The wall did not collapse according to the video clip posted on Facebook by the "contractor" Mr. Rossi. While shooting a video sequence of the wall in question which was dated August 29, (which appeared to be structurally sound), he narrates on the video, **"THIS WALL IS COMING DOWN TODAY...CHUCK, COME BY THIS AFTERNOON AND THIS WALL WILL BE GONE."** The wall did not collapse; it appears to have been intentionally taken down in violation of Town Ordinances.
5. The video tapes, posted by Mr. Rossi, give a chilling narrative of the apparent wanton destruction of this historic structure, seeming admissions by Mr. Rossi of violations of Town of Palm Beach ordinances, and his ridicule of the Town's Landmark procedures. **All of Mr. Rossi's videos should be viewed by every Town Council member and every Landmarks Preservation Commission member before the respective bodies vote on the matter.**
6. The testimony given to the Landmarks Preservation Commission on September 17th, may have been honest and in the best judgment of the architect and engineer, but it was based on erroneous information given to the architect and engineer by Mr. Rossi.

The questions involved in this matter have nothing to do with personalities. This is about Town of Palm Beach Ordinances, procedure, and willful and wanton acts that fly in the face of orderly landmark renovations.

Page 3.

This question is about whether or not the Town of Palm Beach will reward violations of our ordinances on one hand, while at the same time penalizing those architects and builders who do follow the rules and ordinances of the Town. In many instances architects have discovered wood rot or termite damage that could not be repaired. Those architects came back to the staff or the Landmarks Preservation Commission and explained the problem and received permission for a modification in their Certificate of Appropriateness and were allowed to proceed. That is what should have done in this case.

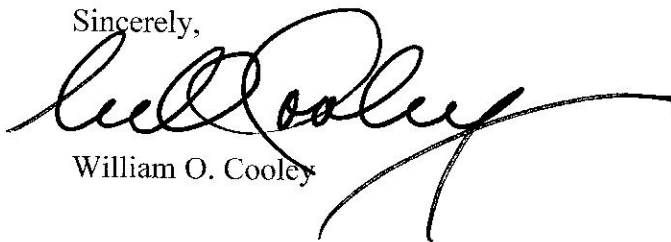
This is not a question of personalities, it is a question of procedure and the law. If we are to disregard the actions that led to the tearing down of this section of this Landmarked structure, then we are sending a message to all contractors and all architects that Palm Beach Ordinances do not have to be followed.

In addition to the Landmarks Preservation Commission considering this matter once again, the matter should be referred to the Code Compliance Board for additional review. Florida Statute 162.09 (2) (a) provides a fine structure that may be considered by that Commission.

Some who do not want these video clips viewed by the commission may want to bring up the question of Res Judicata. This applies in cases where there has been a final judgment and no appeal or reconsideration is available. If this matter had not been reconsidered at the October meeting, it would have been final and Res Judicata would have attached. The matter was timely reconsidered, passed by a majority of commission members, and is properly before the Landmarks Preservation Commission at its next meeting.

The appeal of Ms. Ziska, Esq. should be denied. This matter, along with the Tew and Taylor Audit, and the request for three variances, should properly be back in front of the Landmarks Preservation Commission at its November meeting.

Sincerely,



William O. Cooley

Cc: Peter Elwell, Town Manager
John Randolph, Esq., Town Attorney
John Page, Director Planning, Zoning and Building
John Lindgren, Director of Planning
Susan Owens, Town Clerk
Kirk Blouin, Public Safety Director
Raychel Houston, Code Enforcement Manager

(See next page for attachment log)

Attachments: Five of 22 video clips taken by Mr. Rossi at Landmarked Via Serena at 105 Clarendon Avenue, which were posted on his Facebook account between April 22 and August 29.

These are numbered from the flash drive given to the Planning, Zoning and Building staff. The title/subject line given for each of the Facebook posts/videos taken from original posting is underlined.

1. April 22: Video #10 (First of Facebook posts).
"Demolition of my new project."
2. August 6: Video #11
"Two thirds of the house has been removed just the front façade showing."
3. August 6: Video #12
"Universal Studios Palm Beach"
4. August 6: Video #13
"Every day is a new adventure."
5. August 29: Video (no number – video was given to PBZ staff)
"This wall is coming down today."

From: Peter B Elwell/PalmBeach
To:
Cc: John Page/PalmBeach@PalmBeach, Anne Boyles/PalmBeach@PalmBeach, Thomas G. Bradford/PalmBeach@PalmBeach, Jay Boodheshwar/PalmBeach@PalmBeach
Date: 11/05/2014 05:12 PM
Subject: Fw: 105 Clarendon

c: M&TC (FYI)

----- Forwarded by Peter B Elwell/PalmBeach on 11/05/2014 05:11 PM -----

From: "Randolph, John C." <JRandolph@jonesfoster.com>
To: "PElwell@townofpalmbeach.com" <PElwell@townofpalmbeach.com>
Date: 11/05/2014 04:47 PM
Subject: 105 Clarendon

Peter,

I have been copied in an email from Bill Cooley where he requests that the Town include certain videos in the Town Council backup for the appeal which has been filed of the Landmarks Commission's decision to reconsider the 105 Clarendon matter. He further asked the Mayor and members of the Town Council to review the posted videos.

This is a reminder that an appeal from the decision of the Landmarks Preservation Commission is based on the record of the proceedings below and shall not be presented de novo. (See Section 54-41.) I do not believe these videos were part of the record below. I previously advised the Council in regard to this matter on previous appeals, the most recent of which was heard at last month's Town Council meeting. I encourage the Council to abide by this provision and consider only the record of the proceedings below when considering this appeal.

Please share this email with the Mayor and Town Council so they do not run afoul of this provision.

Thank you.

JOHN C. RANDOLPH

John C. Randolph Attorney
Direct Dial: 561.650.0458 | Fax: 561.650.5300 | 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

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LANDMARKS PRESERVATION COMMISSION MINUTES
SEPTEMBER 17, 2014

VII. COA-026-2014, 105 CLARENDON AVENUE, PRESENTATION REGARDING STATUS OF
(A) RENOVATION AND PARTIAL HOME DEMOLITION: (09:37:40 a.m.)

Mr. Cooley asked Mr. Page to provide the same brief history/update, related to this property, as was presented to the Town Council at their meeting last week: The LPC had approved a Certificate of Appropriateness in October, 2013 for extensive restoration, rehabilitation, addition and well-defined interior and exterior demolition. The owner opted to employ a private provider, rather than Town inspectors, to perform construction inspections. Demolition progressed beyond the parameters of the LPC approval. The owner's representative returned to the LPC on July 21, 2014 to report that a wall had collapsed at the site. The LPC allowed work to progress at that time, based upon the testimony. More recently, however, during the week of 9/1/2014, a portion of the front-facing east facade was eliminated. Staff red-tagged the property, stopping all work. On September 5, 2014, the site was visited by the Building Official, John Lindgren, Mr. Cooley, the contractor, the architect, and the structural engineer. The contractor reported that there had been another collapse when adjacent work was performed. Due to heightened concerns about structural conditions, staff directed that additional structural engineering plans be prepared and presented to address stability of the rest of the home. Staff also directed that remaining walls be braced to prevent further damage. The contractor has documented construction progress via Internet postings. A recent posting raises serious questions about the accuracy of statements made at the 9/5/2014 inspection about deliberate demolition vs. accidental collapse. The owner's representatives will appear today to address the issues and concerns. The Stop Work order will remain in effect until the LPC and the Building Official allow work to resume. Staff is continuing to confer with the Town attorney, historic preservation consultants and other professionals in order to best address the situation. Additional enforcement action will be taken as needed. Staff has begun developing improved procedures to prevent such a situation from occurring again at this site or at any other.

Call for disclosure of ex parte communication: Disclosures by all members, excepting Mr. Silvin.

Mr. Cooley reported that the owner's representatives had been invited, in writing, to this meeting, and he welcomed them. He explained that staff is concerned that walls have been taken down which were not referenced on the demo plans. Perhaps more than 50% of the structure has been removed, which may trigger other code considerations.

Architect Harold Smith, Smith and Moore Architects, stated that he was here with the property owner, Mr. Chuck Schumacher, Maura Ziska, Mr. Schumacher's attorney, Albert Gargiulo, Structural Engineer, John Rossi, the contractor, Beverly Tew of Tew and Taylor, private provider, and others. He distributed copies of the engineer's report and a color coded floor plan, and reviewed the history of previous LPC approvals. Mr. Smith listed some of the deterioration and bad conditions uncovered at the site during the interior demolition. One of the LPC approvals allowed the addition of windows on the east elevation at the master bedroom, and it is that east elevation which has brought them here today. He elaborated on the first wall collapse, showed progressive photos of the structure from July, August, and September, and then continued with the circumstances which resulted in the contractor making the decision to remove that portion of the east facade, without necessary approvals, because of concern for worker safety. After the 9/5/2014 meeting at the site where all parties were present, the structural engineer fully inspected the site and instructed the contractor to provide temporary shoring and bracing for the remaining unreinforced walls. The job was red-tagged and no other work was permitted. Mr. Smith elaborated further on the deterioration found at the site: wood framing in deplorable condition; termite damage;

water damage; rotting wood; hollow clay tile was just a veneer; and, spalling. Mr. Smith showed photos of the existing conditions. He outlined certain parts of the home which he and the structural engineer believe can be saved, i.e., loggia connecting kitchen wing with tennis pavilion, and tennis pavilion and rear staff quarters and laundry area. Both Mr. Smith and Mr. Gargiulo believe that the remainder of the hollow clay tile walls and structural wood framing, along with their foundations, should be removed and reconstructed with reinforced concrete masonry to prevent unsafe conditions in this oceanfront home with direct exposure to storm winds.

Mr. Smith, at the request of Mr. Schumacher, showed photos of the quality workmanship which has been performed at 874 South County Road, the guest house of 105 Clarendon, which the Schumachers are using as their residence now. 874 S. County Road is not landmarked, but has been restored and remodeled. It serves as an example to the quality of workmanship to which the contractor and owner are committed.

Mr. Gargiulo, Structural Engineer, reviewed the condition of the remaining portions of the house. He referred to his report, and noted that the house is clad with hollow clay block which is not acting as a structural element. He stressed the fact that the structure must be able to withstand hurricane force winds and provide safe shelter under habitable conditions; the structure has to represent a true replica of the original structure; and, he recommended reconstruction using new exterior reinforcing masonry resting on a new foundation, with the intent that the final product is a true replica of the original. Safety is paramount.

Commission Comments: Had you been able to "peel the onion away" initially, you would have arrived at the same conclusion; thank you to the Schumachers for taking the time and spending the money to attempt to restore this home; having visited the house many times over the years, the owners had always complained about water leaks...it is impossible to preserve this house in my professional opinion; you never really had a chance to salvage this house; the whole thing is a procedural issue that was not handled well; we are governed by ordinances...there is a 50% demolition threshold that puts this into a different category; would like to see the Town have a set of architects and engineers go over this engineer's findings, verify them, and report back to the LPC, at a cost to the property owner; need a complete set of plans given to Mr. Castro for zoning review; and, there should be an audit of Tew and Taylor to see how this could have come this far without anyone reporting this to the town; now we have no choice...handled poorly if this was obvious from the beginning;...

Mr. Page discussed Four Winds, 1768 South Ocean Boulevard, as precedence for this type of situation. 456 Worth Avenue was also discussed as having been handled so much better.

Janet Murphy, Staff Historic Preservation Consultant, stated that she has spoken with the State Historic Preservation Office relative to 105 Clarendon Avenue. The State's response to a situation where unexpected demolition occurs during construction is that this produces an adverse effect to the landmark and it is required that the structure be reconstructed in accordance with the Secretary of the Interior's Standards.

Commission Comments (continued): Unfortunate the way this happened; raises questions about procedure, about the independent inspections contracted by the owner, especially when this is a tax abatement project and demolition is involved; concern about materials removal plans, now required, not being monitored; there are several other instances of reconstruction in the town; it is important that this be reconstructed, and that the owner is committed to it; it would be a shame to have to adjust its current design in order to comply with today's zoning; we would have been at the same place, no matter what, but now we should help expedite this, and clear the path to reconstruction; there is no way to save the

building, so why spend money on architects and engineers to do all this...I'm concerned about the walls that are standing up...with any kind of wind, it will all be down...safety is the issue...do something quickly; there should have been studies, but even a layman can see that this cannot be saved...why wait another month for additional reports?; the LPC would be on very weak footing to authorize anything additional to happen to that house until we have the reports and have the plans looked at by Mr. Castro, and the audit.

Mr. Randolph stated that this is effectively a request to amend the Certificate of Appropriateness to allow the demolition that has occurred without your approval, and to allow additional demolition. The LPC could accept the report given today and allow those amendments, or could require the additional information.

There was discussion relative to the issue that more than a 50% demolition appears to have occurred, and this may trigger zoning issues. Mr. Castro stated that when you demolish more than 50% of a non-conforming structure, that structure has to comply with all code requirements based upon the non-conforming section of the code. Staff will have to analyze how the structure is non-conforming. It appears that at least the rear part of the building is non-conforming as to the rear street yard setback of 35 feet. Height may also be an issue. If variances are needed, the earliest agenda for Town Council review of the variances is at the December Town Council meeting. At this time, they could shore up the building and start to re-build some walls, but they could not do work that could involve variances. Mr. Smith stated that he will work closely with Mr. Castro to see what variances might be needed.

MOTION BY MR. GANNON TO ALLOW THE PROJECT TO CONTINUE TO GO FORWARD, AS AMENDED PER THE STRUCTURAL ENGINEER'S REPORT, AND FOR MR. CASTRO AND THE ARCHITECT, HAROLD SMITH, TO WORK TOGETHER SO THIS PROJECT CONTINUES, AND THAT THIS WOULD AMEND THE CERTIFICATE OF APPROPRIATENESS.

MOTION SECONDED BY MR. ZUKOV.

Under discussion, Mr. Castro reminded that the motion is fine, but the continuing work cannot involve possible variances.

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

The Commission requested that an update be provided from the applicant and from staff at the next meeting.

MOTION BY MRS. LORENTZEN FOR AN AUDIT OF TEW AND TAYLOR.
MOTION SECONDED BY MR. COOLEY.

Concern was expressed about how the Town can monitor/oversee the use of independent inspectors, especially on a tax abatement landmark project, and the fact that no Town employee may have checked on these jobsites for a very long period of time. Mr. Page responded that staff is considering ways to bolster the review and inspections that the town completes, in an effort to prevent this from happening again. He outlined a suggested new procedure in this regard to apply only to landmarked buildings.

MOTION CARRIED 4-3, WITH MRS. ALBARRAN, MR. GANNON AND MR. ZUKOV OPPOSED.

EXCERPT FROM THE MINUTES OF THE OCTOBER 16, 2014 MEETING

OF THE LANDMARKS PRESERVATION COMMISSION

B. COA-026-2014, 105 CLARENDON AVENUE, UPDATE RELATIVE TO STATUS OF PROJECT:

Harold Smith, Smith and Moore Architects, stated that at last month's meeting, he was instructed to meet with Paul Castro, Zoning Administrator, in order to determine the number and nature of the variances required to allow reconstruction of the majority of the home, and then to return to the LPC with a progress report. It was determined that variances would be needed for the west side yard setback, the north street rear yard setback and for building height. Since the LPC agreed that the owner should be allowed to demolish the areas of the house outlined, a revised demolition plan has been submitted to the Building Department for review. That application has been held up until the Town Council reviews the variance requests at their December meeting. Due to the delay, it will be necessary for the applicant to request a waiver to continue the demolition process after the demolition deadline of December 1. Mr. Castro has assigned a zoning case number for the Town Council review of the variances and the demolition waiver, and the LPC will see the plans for reconstruction next month. Construction of the basement and the family room are ongoing. Mr. Smith added that the property owner, Mr. Schumacher, has requested that revisions be made to the tax abatement application "in hopes that under the hardship circumstances of having to renovate most of the structure due to the deterioration of materials over time, that this Commission, the Town Council and Palm Beach County will be sympathetic to the tremendous financial effort he is pouring into the project."

Paul Castro, Zoning Administrator, testified that the project has been stopped until the necessary three variances are secured. He stated that he understood that the LPC had wanted the applicant to proceed forward, but due to the circumstances, the applicant has to go to the Town Council for permission to proceed.

Mr. Cooley asked for an update relative to the requested Tew and Taylor audit. Mr. Page responded that the audit is ongoing and is being performed by the Building Official. He anticipated that it would be available at the November LPC meeting.

Mr. Cooley stated that at the last meeting there was a 6-1 vote to allow the applicant to continue to work. He maintained that fines should have been levied, or a stop work order issued because he had seen the film clips that were posted online of the progression of the demolition, demolition which he felt was done purposefully. Mr. Cooley requested that those clips from the online postings be played at this time. Mr. Cooney questioned why this was necessary, since the LPC handled the issue last month. Some other members stated they were likewise interested in seeing the online clips.

Mr. Page, having anticipated that seeing the clips might come up today, consulted with Mr. Randolph prior to his leaving the meeting today. These are Mr. Randolph's written comments which Mr. Page read into the record:

"You have advised me that Mr. Cooley may wish to display to the members of the Landmarks Commission certain video Facebook images relating to the property at 105 Clarendon. I have concerns regarding this proposal and recommend against it. Except for the status report moving forward, this matter is closed, as it was acted on and approved by the Commission at its last meeting. Additionally, if I recall correctly, Mr. Cooley offered to show these videos at the last meeting, and the Commission

declined the invitation to view them. Secondly, and importantly, there is the matter of due process as it relates to the property owner. The basic elements of due process require notice and an opportunity to be heard. In the event these videos are displayed, absent notice to the property owner and affording the property owner an opportunity to comment, the property owner may have a legitimate claim of violation of due process. It may be argued that the property owner was noticed in regard to the requirement to present a status report. Indeed, the owner should have a reasonable expectation that they are to address the status of this matter going forward from the last meeting, but I am concerned that the property owner did not have an expectation that he would be required to address matters that occurred prior to the Commission's approval at its last meeting, issues which presumably were already addressed or could have been addressed. If Mr. Cooley has videos of activities which may have taken place since your last meeting, those may be relevant to the status report. Otherwise, unless the full Commission feels that activities which took place prior to the Commission's approval at its last meeting are relevant to their discussion, I do not believe that the videos should be displayed, particularly absent notice to the property owner, so as to allow the opportunity for the property owner to respond to any allegations which may be made."

Mr. Cooley suggested that there be a motion to reconsider the matter to allow the matter to be opened up again, placed on the agenda at the next meeting, and that the property owner be informed that the video clips will be shown. No one from the public commented relative to this issue. Mr. Cooley asked whether there was a motion to reconsider.

**MOTION BY MR. SILVIN TO RECONSIDER THIS MATTER.
MOTION SECONDED BY MS. HUFTY.**

Mr. Page read additional comments from Mr. Randolph as follows:

"If, for any reason, there is a motion to reconsider the previous action of the Commission, made by someone who is on the prevailing side of the motion, and said motion is passed, there shall be no further discussion of this matter at this meeting, but the matter should be re-noticed to the next meeting giving the property owner and other related parties the opportunity to be heard."

MOTION CARRIED 4-3, WITH MESSRS. COONEY, GANNON AND ZUKOV OPPOSED.

Mr. Smith stated, on behalf of the property owner, that the property owner objects to showing these videos and objects to the motion to reconsider.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Time Extensions

Agenda Title

Request for Extension of Time Schedule for Completion of Construction per Town Code Chapter 18, Section 242-105.4.1.6 - 1480 North Lake Way

Presenter

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

Supporting Documents

- [Memorandum Dated November 3, 2014 from John S. Page](#)
- [Letter Dated October 28, 2014 from Lawrence Moens](#)
- [Letter Dated October 31, 2013 from Maura Ziska](#)
- [E-Mail Dated October 31, 2014 from Philip Modenos](#)
- [Memorandum Dated February 25, 2014 from John S. Page](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 12, 2014

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Extension of Time Schedule for Completion of Construction per Town Code
Chapter 18, Section 242-105.4.1.6
1480 North Lake Way

Date: November 3, 2014

STAFF RECOMMENDATION

Staff recommends that the Town Council consider an extension of the Code-specified time limit for construction, including a daily fee for late completion, for the project at 1480 North Lake Way (new single family home).

GENERAL INFORMATION

A new single family home is nearly completion at this address. The original permit approving construction (home over 10,000 square feet) was issued on March 25, 2011 and was given a time for completion per the schedule in the Town Code of Ordinances of 36 months (March 25, 2014). A request for a 6-9 month time extension was presented to the Town Council for consideration in March this year (applicable materials attached). The Council approved the time extension request, imposing a completion date of December 1.

Lawrence Moens, present owner of the home, and attorney Maura Ziska, have submitted a second time extension request (also attached). An unanticipated change in contractors occurred in August causing a delay in completion. They now ask for a second time extension, indicating that the home will be completed by December 23, 2014. A tentative work schedule identifying all remaining work, together with a timeline for doing so, is also attached. Mr. Moens has indicated to Town staff that he intends to submit approval/consent for this latest time extension from 100% of all owners within 200 feet of his property prior to the Town Council meeting of November 12. If unable to do so, the Town Council will be obligated to hold-over consideration of the time extension to next month's December Town Council meeting in order for the prescribed advance notification of meeting date to occur (25 days).

SPECIAL CONSIDERATIONS

Town Code allows the Council to impose a fee as established by resolution for each day of the extension beyond the 36 month term imposed. The fee established is 10 cents per square foot with a minimum of \$500 per day. From the Town's record plans, the project square footage is 10,604 square feet. The applicable fee thus becomes \$1,060 per day. If the Council opts to impose such a fee, it accrues on a daily basis until this Department issues a Certificate of Occupancy.

The option of imposing a \$1,060 daily fee was outlined in the back-up Memo addressing this issue in March of this year when the previous time extension was approved. The Council opted to allow an 8+ month extension with no fee provision. If indeed, the Council approves this second time extension, regardless of its intended short duration, strong consideration should be given to imposing the daily fee for each day of work beyond December 1 (the previously established Council completion deadline), continuing forward through final completion. Time extension fees of this sort prove helpful in motivating all private parties to achieve completion as quickly as possible.

Attachments

cc: Lawrence Moens, Owner
Maura Ziska, Owner's Attorney
John C. Randolph, Town Attorney
Bill Bucklew, Building Official



LAWRENCE A. MOENS ASSOCIATES, INC.

"SPECIALIZING IN PALM BEACH'S FINEST RESIDENCES"

245 SUNRISE AVENUE, PALM BEACH, FLORIDA 33480 • (561) 655-5510/FAX (561) 655-6744

RECEIVED

October 28, 2014

OCT 30 2014

TOWN OF PALM BEACH
PZB DEPT

Mayor Gail Coniglio
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

RE: 1480 North Lake Way
Palm Beach, Florida

Dear Gail,

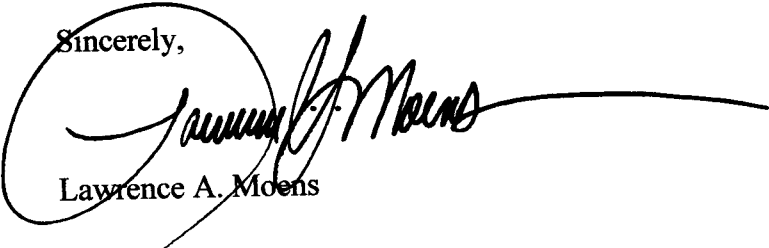
I am writing this letter to each of you to ask for your help. This past August, the contractor for my new home pulled off the job without notice to me (see the attached email and letter).

It took three and one half weeks to replace their company with another contractor. I was on schedule; however this change required new permits from the town causing a slight delay. I respectfully request that you add this three and one half week extension request to your upcoming November 12th meeting.

I have added additional crew to the job and hope to obtain at least a temporary C.O. by Friday, December 19th and completion before the Christmas Holiday.

Thank you all in advance for your understanding and help with this matter.

Sincerely,


Lawrence A. Moens

Cc: Skip Randolph, Town Attorney
John Page, Director of Planning, Zoning and Building

NOTICE: Re: 1480 N Lake Way

From: Linda Manfre <linda.manfre@magellangroup.net>
To: Lawrence Moens
Cc: Amanda Mackey <moens2@earthlink.net>
Subject: NOTICE: Re: 1480 N Lake Way
Date: Aug 8, 2014 4:31 PM
Attachments: 08-08-2014.pdf

COPY

Linda Manfre
Magellan Group Investments LLC
11 S Swinton Avenue
Delray Beach, FL 33444
561-266-0845 x117
561-266-0847 Fax
954-263-7345 Cell

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

From: Scanner Magellan
Sent: Friday, August 08, 2014 4:21 AM
To: Linda Manfre
Subject: Magellan Group Scanned Document

Image data in PDF format has been attached to this email.

Fair Dinkum Construction
11 S Swinton Avenue
Delray Beach, FL 33444
561-266-0845

August 8, 2014

Mr. Lawrence Moens
1480 N. Lake Way
Palm Beach, FL 33480

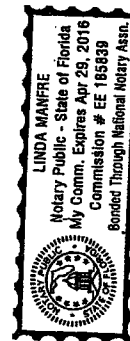
Dear Mr. Moens:

This letter is to inform you that as of end of business day today, Fair Dinkum Construction Company will no longer perform any construction work on your property at 1480 N. Lake Way, Palm Beach, due to recent events.

Our General Contractor, Chris Lapinski, will gladly sign a "change of contractor" form for your use in hiring a new general contractor.

Sincerely,

Robert G. Fessler
Owner



Linda MAMFRE

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, Counsel*

*Also admitted in New York

*Also admitted in Michigan

Esperanté

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

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

October 31, 2013

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

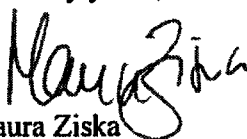
**RE: Waiver of Section 42-199/ Lawrence A. Moens
1480 North Lake Way, Palm Beach, Florida**

Dear Mr. Page:

I represent Lawrence A. Moens, the Owner of 1480 North Lake Way. On his behalf, I would like to appear before the November 12, 2014 Town Council meeting to request an Extension of Allowed Construction Time Per Town Code 18-105.4.1.6. We are requesting to allow construction on the subject property through December 23, 2014. The reason for the request and delay in finishing construction is due to the previous contractor abandoning the job site.

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

Sincerely yours,


Maura Ziska

/maz
00020731



FW: 1480 Schedule

Maura Ziska

to:

JPage@TownofPalmBeach.com

10/29/2014 09:42 AM

Cc:

Courtney Hudak

Hide Details

From: Maura Ziska <MZiska@floridawills.com>

To: "JPage@TownofPalmBeach.com" <JPage@TownofPalmBeach.com>

Cc: Courtney Hudak <CHudak@floridawills.com>

History: This message has been replied to.

JP: See below construction schedule for 1480 North Lake Way. Thanks. Maura

Maura A. Ziska, Esq.

Kochman & Ziska PLC

222 Lakeview Avenue, Suite 1500

West Palm Beach, FL 33401

561-802-8960 (telephone)

561-802-8995 (fax)

This electronic message transmission contains information from the law firm of Kochman & Ziska PLC which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

From: philipgcs@aol.com [<mailto:philipgcs@aol.com>]

Sent: Tuesday, October 28, 2014 5:30 PM

To: Maura Ziska

Cc: johnrossi4000@comcast.net; chudak@floridawill.com; moens@earthlink.com

Subject: Fwd: 1480 Schedule

Maura,

The following is a tentative schedule to complete 1480 N Lake Way.

Week of November 3

Trim electric 3 weeks to complete

Trim low voltage and alarm

Template all counter tops

Continue Cabinet installation

Start Driveway installation

Week of November 10

Stucco front site wall

Finish all hardscape and Driveway

Finish Cabinet installation

Continue flooring and tile in cabanas and guest house

Continue electric and low voltage trim

Trim drainage and driveway drains

Week of November 17

Begin Counter top installation

Begin tile backsplashes

Install entry Gates and gate operators

Finish Grading

Begin Landscaping Irrigation and Sod

Week of November 24

Temporary Power Release inspection
Complete counter top installation
Install Appliances
Begin swimming pool finish and final

Week of December 1

Install gas lights and final gas
Trim plumbing fixtures at counter top areas
Install front door
Install windows in new front entry enclosed area

Week of December 8

Install drywall in new entry area
Final Plumbing Inspection
Final Gas Inspection
Final Pool Inspection

Week of December 15

Install wood floors in new enclosed entry area
Trim electric and HVAC in new entry area
Paint final, trim new entry area
Final Drainage and Site work inspections

Week of December 22

Final Electric inspection
Final HVAC inspection
Final Building Inspection

Week of December 29

Punch Out

We of course will redouble our efforts to do better than this but there are certain lead time items like the front door and windows for the new enclosed entry way we can not accelerate. We also have a meeting later this week with FPL to coordinate removal of the two power poles and transferring power to the new on grade transformer. They can be unreliable but we are going to try to nail them down to a schedule at this weeks meeting. Please let me know if you need anything else. There are many more items required to finish this project but for this schedules purpose I tried to only focus on Critical Path items.

Best Regards,
Philip Modenos

TOWN OF PALM BEACH

Information for Town Council Meeting on: March 12, 2014

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Extension of Time Schedule for Completion of Construction per Town Code
Chapter 18, Section 242-105.4.1.6
1480 N Lake Way

Date: February 25, 2014

STAFF RECOMMENDATION

Staff recommends that the Town Council consider an extension of the Code-specified time limit for construction for the project located at 1480 North Lake Way (new single family home).

GENERAL INFORMATION

The applicant is requesting an extension of the time limit (permit B-11-14923) for the construction of a new single family residence over 10,000 square feet. The permit was issued on March 25, 2011 and was given a time for completion per the schedule in the Town Code of Ordinances of 36 months.

This limit imposes a completion date for the construction of March 25, 2014. See attachments from the owner's attorney and the contractor outlining their plan to complete.

As outlined within the Code, the Council may impose conditions on the extension which may include the implementation of mitigation measures deemed appropriate by the Council and imposition of a fee as established by resolution for each day of the extension beyond the 36 month term imposed. The fee established is 10 cents per square foot with a minimum of \$500.00/per day. From the Town's record drawings, the project square footage is 10,604 square feet. This means that the maximum fee that the Council could opt to impose is \$1,060.00 per day (which would accrue until the Planning, Zoning and Building Department issues a Certificate of Occupancy).

Attachments

JP/wcb

cc: Maura Ziska, Attorney for applicant
Chris Lapinski, Fair Dinkum Construction
Paul W. Castro, Zoning Administrator
H. Paul Brazil, Public Works Director
Raychel Houston, Code Enforcement Unit

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, *Counsel**

*Also admitted in New York

*Also admitted in Michigan

Esperanté

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

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA HAND DELIVERY

February 20, 2014

Mr. Bill Bucklew, Building Official
Town of Palm Beach
360 S County Road
Palm Beach, FL 33480

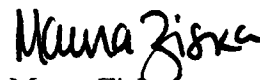
Re: Extension for construction time frame / 1480 North Lake Way, Palm Beach, FL

Dear Bill,

Enclosed please find the request for a waiver of the time schedule for completion of construction by the owner of 1480 North Lake Way, Palm Beach, Florida. Also enclosed is a letter from Fair Dinkum Construction explaining the reason for the delay and proposed completion date. I have also included the Notice Affidavit for sending the notification to the surrounding property owners'.

Please place this request on the March 12, 2014 Town Council agenda.

Respectfully,


Maura Ziska

/maz

00022444

RECEIVED
FEB 20 2014
TOWN OF PALM BEACH
PZB DEPT

Fair Dinkum Construction
11 S Swinton Avenue
Delray Beach, FL 33444
561-266-0845

February 20, 2014

Maura A. Ziska, Esq.
Kochman & Ziska PLC
222 Lakeview Avenue, Suite 1500
West Palm Beach, FL 33401

Dear Ms. Ziska:

Below is an explanation for the necessity of granting an extension permit on the construction of the property at 1480 N. Lake Way, Palm Beach.

1. The existing permit was originally issued to the Wilson's (former owners). When they decided to sell the house the construction was stopped for months until the sale was finalized with 1480 N Lake Way LLC (Fessler/Moens). There were changes made to the architectural plans after the sale and so additional permits needed to be obtained. A few months later, Mr. Moens decided to purchase the home for himself. He made his own personal changes and so once again, the construction was stalled until the new architectural plans were drawn up and approved. Since Mr. Moens purchased the lot next to 1480, changes were made to the landscape and the hardscape. In addition plans and approvals are being submitted for an additional guest building, which has been approved by ARCOM, but we are waiting for final revisions for the guesthouse. So between the changes of ownership and the architectural changes and the additional lot we have lost many months of construction time.
2. I believe the project could be completed in 6 months once the building permits and all selections are made. I would prefer to ask for an extension of 9 months to be on the safe side as there are many decisions still left to be made. Below is a list of items that need to be addressed:
 - a. Cabinets and hardware for the kitchen, laundry, bath and guest house cabinets, wet bar etc. The cabinet company is going to take at least 4 months to complete.
 - b. Ceilings and wall finishes.
 - c. Plans and permits for site work gates, walls, driveway landscaping.
 - d. Any other changes that will be made in the near future will also require additional permits.

- e. Mitigation negotiations: As soon as approvals for site walls and gates are obtained, we will install them with Street Scape Landscaping, keeping in accordance with Palm Beach Standards.
- f. There is also a delay at the site due to the archeological findings on the property and the scheduling with said archeologist.

If I can be of any help or if you need further explanations, please contact me at 561-309-4084. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Lapinski". The signature is fluid and cursive, with the first name "Chris" and last name "Lapinski" clearly distinguishable.

Chris Lapinski
General Contractor



NOTICE AFFIDAVIT

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME THIS DAY PERSONALLY APPEARED Maura Ziska
WHO BEING DULY SWORN, DISPOSES AND SAYS THAT:

1. He/she is the owner, or the owner's authorized agent, of the real property legally described in the Architectural Commission Application.
2. The accompanying Property Owners List is, to the best of his/her knowledge, a complete and accurate list of all property owners' mailing addresses and property control numbers post dated no later than 10 days prior to the hearing at which the subject application will be heard, and as recorded in the latest official tax rolls for the subject property and all other properties within two hundred (200) feet of the real property.
3. A copy of the letter notifying the surrounding property were sent as required.

Sworn to and subscribed before me this 19th day of February, 2014.

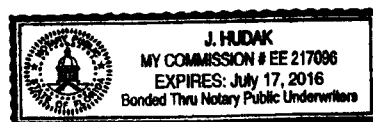
by Maura Ziska who is personally known to me or who has
produced _____ as identification and who did (did not) take an oath.
(Type of identification)

J. Hudak
(Signature of Notary)

J. Hudak
(Printed Name of Notary)

Maura Ziska
(Applicant's Signature)

Maura Ziska
(Printed name of Applicant)



KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, *Counsel**

*Also admitted in New York

*Also admitted in Michigan

Esperanté

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

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

February 19, 2014

To Whom It May Concern:

A waiver of Town Ordinance 18-242, Section 105.4.1.6, agreed maximum time schedule for completion of construction, is being requested by 1480 N. Lake Way, Palm Beach, Florida allowing extra time to complete construction.

This matter will be presented to the Palm Beach Town Council at the regularly scheduled meeting on March 12, 2014. Any concerns regarding this matter should be expressed at this meeting and/or submitted to the Town's Planning, Zoning & Building Department in advance of the Town Council meeting.

Respectfully,



Maura Ziska

MAZ/jch

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Development Review - Old Business

Agenda Title

SITE PLAN REVIEW #8-2014 WITH VARIANCE (MODIFIED)

The application of Coral Beach Corporation; relative to property commonly known as **160 Seaview Avenue**; described as Lot 4 and the West 65' of Lot 5, THE EAST PLAZA, Plat Book 16, Page 78, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is proposing to build a 7,092 square foot (5,788 square feet enclosed) two-story home. Site Plan Review is requested to allow a single family home to be built on two (2) existing non-conforming platted lots with depths of 99.07 feet in lieu of 100 feet required. Variances requested are for a point of measurement variance for building height at 13.5 feet National Geodetic Vertical Datum (NGVD) in lieu of the 11.68 feet NVGD allowed; a point of measurement variance to allow for overall building height at 13.5 feet NGVD in lieu of the 11.68 feet NGVD maximum allowed; a point of measurement for cubic content ratio to be at 14.5 feet NGVD (proposed finished first floor) in lieu of the 11.68 feet NVGD maximum allowed; and, to allow the proposed house which is primarily designed with a flat roof to be constructed with an overall building height of 30 feet in lieu of the 25 foot maximum allowed.

[Attorney: Francis X. J. Lynch]

[Architectural Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject property. Carried 5-2, Mrs. Vanneck and Ms. Grace dissenting.]

Request for Deferral to the December 10, 2014, Town Council Meeting Per Letter Dated November 5, 2014 from Francis X.J. Lynch
Deferred from the August 13, 2014, September 10, 2014, and October 15, 2014, Town Council Meetings

Presenter

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

Supporting Documents

- [Letter Dated October 10, 2014, from John Beach](#)
- [Letter Dated November 5, 2014, from Francis X.J. Lynch](#)
- [E-mail Dated November 5, 2014, from Francis X.J. Lynch](#)

8431 Wesley Stinnett Blvd.
Chesapeake Beach, MD 20732
October 10, 2014

RECEIVED

OCT 17 2014

TOWN OF PALM BEACH
PZB DEPT

Town of Palm Beach
Planning Zoning and Building Dept.
360 South County Road
P.O. Box 2029
Palm Beach, FL 33480

Re:Site Plan Review #08-2014 w/ variances

Dear Town Council,

My sister Nancy Bhargava and myself, John Beach own the adjacent house, 140-Sea View Ave. next to 160-Sea View Ave. We both object to the proposed house to be built at 160-Sea View Ave. My sister and I have inherited our house that was built by our grandmother in 1939. It has been in the family since 1939.

The ocean block of Sea View Ave. is an example of the "Classic Palm Beach Style". Most of the houses were built around the 1930s. They are one and two story houses, 3-5 bedrooms, with or without attached garages. Our house was designed by Lester Geisler.

The proposed house for 160-Sea View should not be built. It does not fit in with the predominant "Classic" style of existing houses. If the proposed house is built, it will degrade the "Classic Palm Beach" style.

The originally proposed house for 160-Sea View Ave. looked like a minimum security prison. It should be built in the estate section of Palm Beach, where there are larger building lots.

Sincerely Yours,

John Beach

John Beach

Copy: Bob Vila

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

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

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

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

November 5, 2014

VIA E-MAIL

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

Re: Coral Beach Corporation
160 Seaview Avenue
SPR 08-2014

Dear Paul:

With regard to the above, Coral Beach Corporation would like to defer this application to the December 10, 2014, Town Council meeting.

Thank you for your assistance in this matter. Should you have any questions or comments in this regard, please feel free to contact me.

Sincerely,



FRANCIS X. J. LYNCH

FXJL/kh



Fw: Site Plan Review # 08-2014 With Variances / 160 Seaview Avenue

Gail Coniglio to: Peter B Elwell

11/05/2014 05:29 PM

Sent by Cheryl Kleen

Co Patricia Gayle-Gordon

Peter-

I looks like this was sent to each of them individually.

Cheryl

----- Forwarded by Cheryl Kleen/PalmBeach on 11/05/2014 05:28 PM -----

From: Francis Lynch <flynch@blesmlaw.com>
To: "mayor@townofpalmbeach.com" <mayor@townofpalmbeach.com>
Date: 11/05/2014 10:15 AM
Subject: RE: Site Plan Review # 08-2014 With Variances / 160 Seaview Avenue

To follow up on my previous communication to you with regard to the above, the attachment to this email contains the following:

1. the elevations of the properties to the east of the subject (to the west is the First National in Palm Beach property),
2. a survey of the subject property confirming said elevations,
3. photographs of the properties to the east along with a rendering of the proposed structure, all reflecting the finished floor elevation at the front door of each,
4. a streetscape setting for the respective heights of the properties, including the proposed structure, in relation to one another and
5. an excerpt of the minutes of the 10/22/14 ARCOM meeting reflecting the members comments adverse to the suggested reduction in elevation of the proposed improvements on the subject property.

As the foregoing indicates, there is a natural grade of the property, from its highest elevation east of the subject property, gradually sloping downward as one heads west along Seaview Avenue. This situation exists not only on the lots but also on the roadbed of Seaview Avenue, which also slopes downward from a high point east of the subject property to its lowest point west of the subject property. Finally, this condition is also reflected in the finished floor elevations on the houses located to the east.

The natural grade of the property and its relationship to the grade of the street exists and is not created by the applicant.

I would appreciate the opportunity to discuss this matter with you.

Thank you!

Frank

Francis X. J. Lynch, Esq.
Breton, Lynch, Eubanks & Suarez- Murias, P. A.
605 North Olive Avenue, 2nd Floor
West Palm Beach, FL 33401
(561) 721-4000 main line
(561) 721-4004 direct line
(561) 721-4001 fax
flynch@blesmlaw.com

PLEASE NOTE OUR NEW ADDRESS EFFECTIVE 10/06/14

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.

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From: Francis Lynch

Sent: Thursday, October 09, 2014 8:55 AM

To: 'gconiglio@townofpalmbeach.com'

Subject: Site Plan Review # 08-2014 With Variances / 160 Seaview Avenue

Dear Gail:

I am contacting you on behalf of my client, Coral Beach Corporation, the owner of the above-referenced property, which has filed the zoning application indicated above. This application is to be heard at the 10/15/14 Town Council meeting.

The property is located in the middle of the south side of the ocean block of Seaview Avenue. Adjacent to the south of the property is the parking lot for First National in Palm Beach. The property is zoned R-B.

We are seeking the Site Plan Approval to allow a single family residence to be built on a lot with a depth of less than 100 feet. I am enclosing an enlarged copy of the survey of the subject property with the lot dimensions highlighted in pink. I am also enclosing a copy of the plat, as recorded, along with an enlargement of same with the depth also highlighted in pink. The lots were platted in 1936 with original lot depths of 99.07 feet. That lot depth continues to exist today and is the basis for the site plan review request. The lot is approximately 13,870 square feet in area (well in excess of the 10,000 square feet required by the code) and has a lot width of 140 feet (again, well in excess of the 100 foot minimum required by the code). No other zoning approvals are being sought related to lot dimension or setbacks.

We are also seeking four (4) variances, three (3) of which are related and the hardship is the same. These requests are as follow:

1. a point of measurement variance to allow for a building height of 13.5 feet National Geodetic Vertical Datum (N.G.V.D.) in lieu of 11.68 feet N.G.V.D. allowed,
2. a point of measurement variance to allow for an overall building height of 13.5 feet N.G.V.D. in lieu of 11.68 feet allowed and
3. a point of measurement for Cubic Content Ratio (CCR) to be at 14.5 feet N.G.V.D (proposed finished first floor) in lieu of the 11.68 feet N.G.V.D. foot maximum allowed.

The hardship for the foregoing requests is found in the definitions set forth in the zoning ordinance for the

terms "building height" and "overall building height", each of which commences the point of measurement from a point 18 inches above the highest street elevation adjacent to the property. In this particular instance, the highest street elevation adjacent to the property is 10.18 feet N.G.V.D. This is reflected on the attached survey and highlighted in yellow. 18 inches above that point would be 11.68 feet N.G.V.D. Hardship exists because the height of the subject property in the area of the building envelop (the area within the various setbacks), which height is again highlighted in yellow, ranges from 13.4 feet to 15.0 feet N.G.V.D., or from approximately 3.2 feet to almost 5 feet above the highest point of the street adjacent to the subject property. This, absent a variance, significantly reduces the building height and overall building height at which a structure can be built. This hardship is the result of a coral ridge that runs along the property from east to west and is not a result of the actions of the applicant. Other properties on the south side of Seaview Avenue are similarly affected.

As to the CCR variance, CCR is calculated using "building height as stated in the definition of the term" and, again, is measured using the highest elevation of the adjacent road, which, as previously indicated, is at least 3.2 feet below the current lot elevation. It is this height that once again creates the hardship related to CCR, is not a result of the applicant's actions and other properties on the south side of the street are similarly affected.

The final variance seeks to construct a residence containing both flat and pitched roof elements. The flat roofed areas consist primarily of balcony areas above a first floor living area. Mr. Castro has interpreted the proposed plans such that, when calculating balcony areas as flat roof, more than 50% of the roof is a flat roof, and, therefore, we are subject to the code provisions regarding flat roofs rather than pitched roofs. This interpretation is significant in that the maximum allowable height for a flat roof is 25 feet, while the maximum height for a pitched roof is 30 feet. The areas of flat roof are actually one story elements and their height is actually lower than the pitched roof elements of the house. The height of the pitched roof elements conform to the overall building height elements of the code. Further, the height of the proposed structure is consistent with that of other properties on the street.

If you would like to discuss this application in greater detail or have any questions or comments, please feel free to contact me.

Sincerely,
Frank Lynch

Francis X. J. Lynch, Esq.
Breton, Lynch, Eubanks & Suarez- Murias, P. A.
605 North Olive Avenue, 2nd Floor
West Palm Beach, FL 33401
(561) 721-4000 main line
(561) 721-4004 direct line
(561) 721-4001 fax
flynch@blesmlaw.com

***PLEASE NOTE OUR NEW ADDRESS EFFECTIVE
10/06/14***

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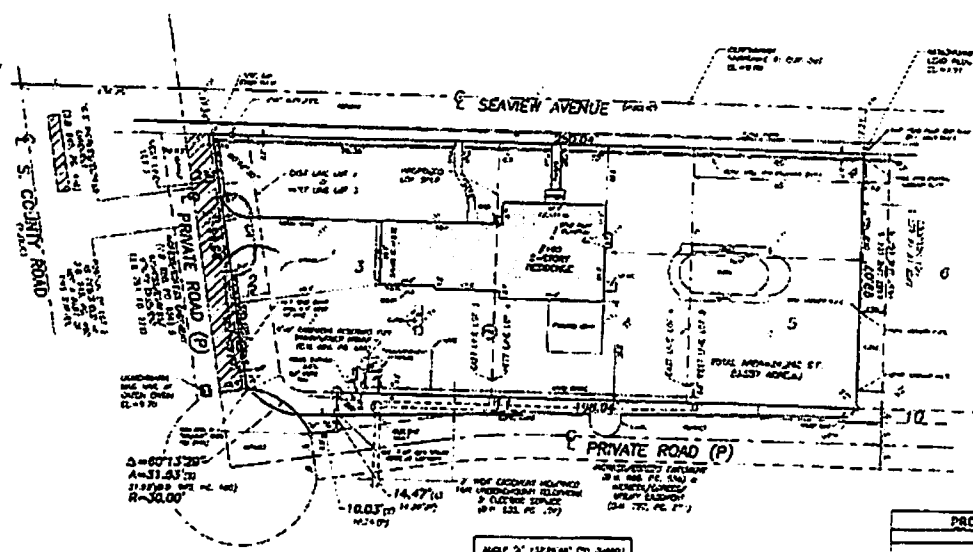
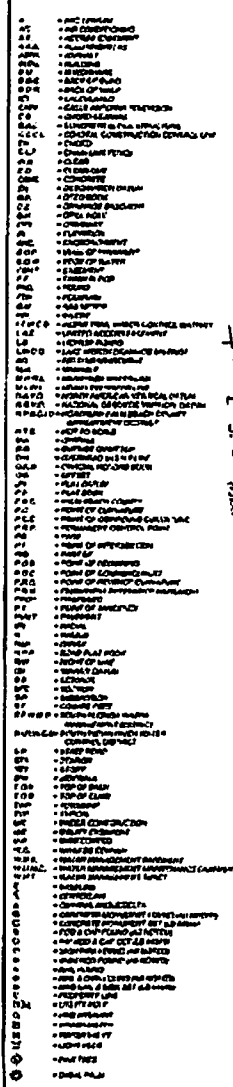
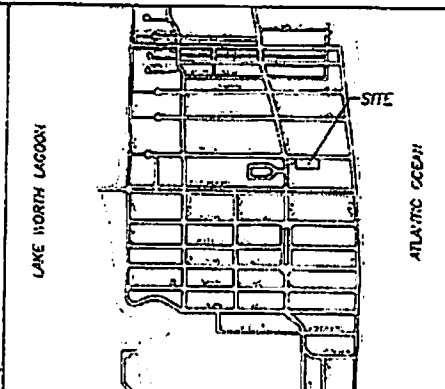


201411050946.pdf

PROPERTY ELEVATIONS

	160 SEAVIEW (Subject)	140 SEAVIEW	136 SEAVIEW	126 SEAVIEW
HIGHEST ELEVATION ADJACENT PROPERTY	10.18	10.17	10.27	10.74
NATURAL GROUND ELEVATION AT FRONT OF HOUSE	14.80	13.80	13.90	15.20
FINISHED FLOOR AT FRONT DOOR	14.50 (proposed)	14.07	16.14	17.56

BOUNDARY SURVEY FOR: 160 SEAVIEW AVENUE



PROPERTY ELEVATIONS			
	150000	160000	170000
1. 1st floor elevation at main door	10.0	10.0	10.0
2. 2nd floor elevation	11.0	11.0	11.0
3. 3rd floor elevation	12.0	12.0	12.0
4. 4th floor elevation	13.0	13.0	13.0
5. 5th floor elevation	14.0	14.0	14.0
6. 6th floor elevation	15.0	15.0	15.0
7. 7th floor elevation	16.0	16.0	16.0
8. 8th floor elevation	17.0	17.0	17.0

[illegible][illegible]

THE UNIVERSITY OF CHICAGO

FORNOST Adm. Of
Adm. Of
Adm. Of

[illegible]

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2000

12. MEMORANDUM

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FD

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DATE 11-14-2008 BY 60322

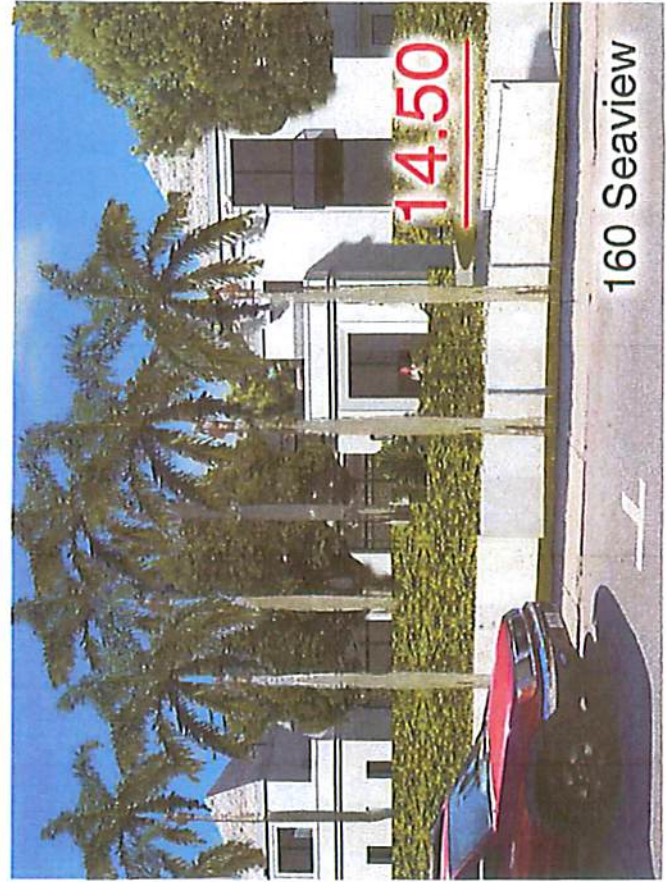
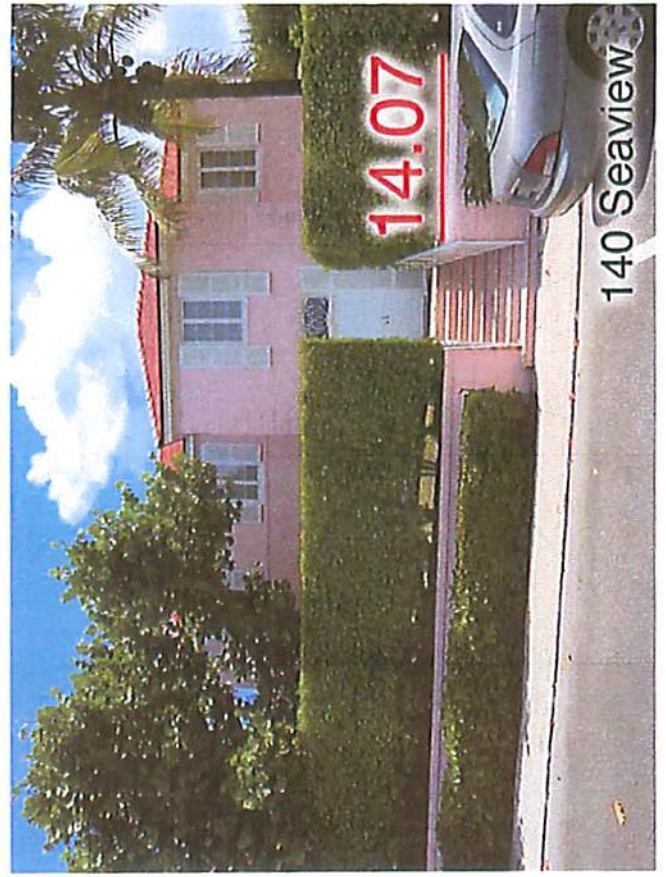
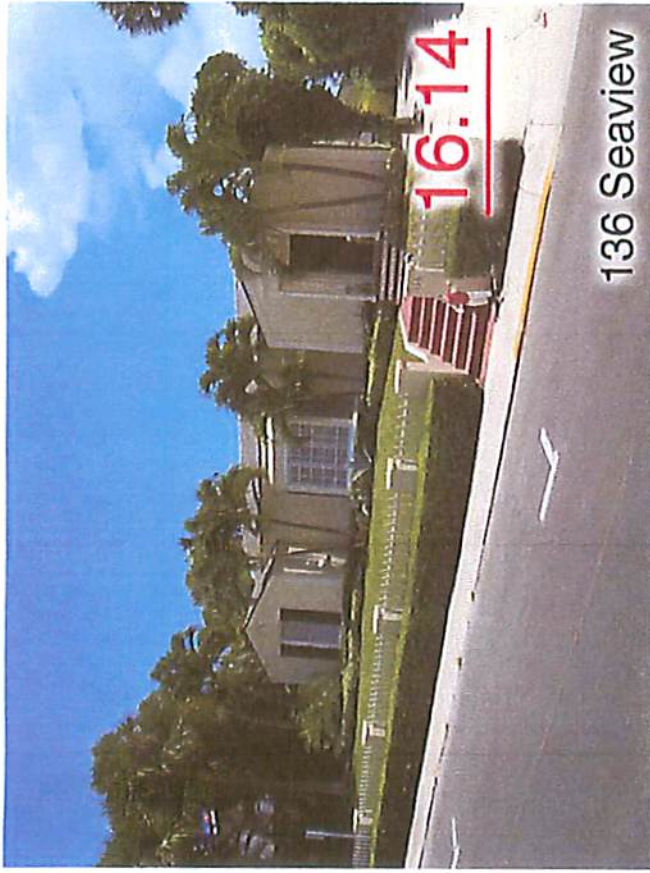
BOUNDARY SURVEY FOR:

160 SEVENTH AVENUE

160 SEAVIEW AVENUE

REPLACEMENT SURVEYORS
Call for a free brochure, and find out how to become a replacement surveyor.

1.2.2	12.2	12.2	12.2
1.2.3	12.3	12.3	12.3
1.2.4	12.4	12.4	12.4





126 Seaview



136

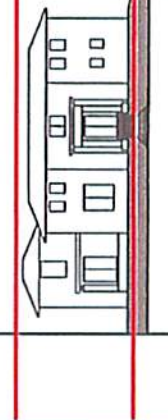


140

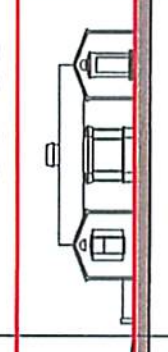


160 Site

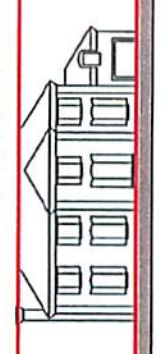
Roof 38.43



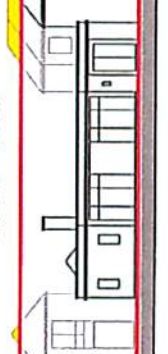
Floor 17.56



16.14



14.07



14.50

43.50

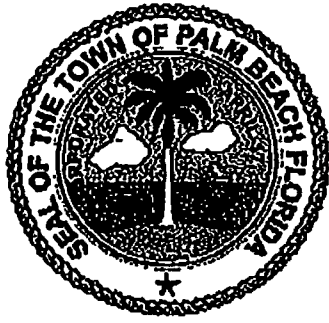
Cubic Content

7.18

Var. #39-2013 (6.22 to 7.18)

3.96 w/ variance

4.73 w/out variance



TOWN OF PALM BEACH

**TENTATIVE AGENDA:
SUBJECT TO REVISION**

**ARCHITECTURAL COMMISSION
360 SOUTH COUNTY ROAD
2ND FLOOR, TOWN COUNCIL CHAMBERS**

OCTOBER 22, 2014

B - 090 - 2014 New Residence

ARCOM TO MAKE RECOMMENDATION RELATIVE TO VARIANCE(S)

Address: 160 Seaview Avenue

Applicant: Coral Beach Corporation

Architect: Ralph Cantin AIA

Project Description: New 2-story residence with white exterior stucco, white flat concrete roof tiles, dark grey windows and doors, with final landscape and hardscape.

At the July meeting, a motion carried to defer (to the August meeting) to "re-study the design, siting, massing and landscaping, and look to Classic architects in the town, like Shoumate and Major, and Major Alley came to mind, and even what Mr. Sammons did with a house on Clarke Avenue a few years ago." At the August meeting, a motion carried to defer (to September) for re-study. At the September meeting, a motion carried that implementation of the proposed variances will not cause negative architectural impacts to the subject property. A second motion carried to defer the architecture (the wall and window colors) and the landscape to next month to see a sample of the material and most importantly, for color added to the landscaping. The applicant was advised to bring material samples.

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

ARCHITECTURAL PRESENTATION BY: Ralph Cantin, Architect, and Joe Brennan, Design Architect

LANDSCAPE PRESENTATION BY: John Lang, Lang Design Group

ATTORNEY PRESENT: Frank Lynch, for the applicant

Mr. Cantin stated that the Town Council had requested more justification for the hardship at this property, as they consider the variance requests. A soil test has been requested to determine if the property sits on a coral ridge, but that testing is not yet completed. Mr. Cantin's unofficial recommendation is to lower the building 13" or 14", by removing 13-14 inches of grade entirely, to eliminate some of the variances. A retaining wall will be necessary in the back. The originally proposed green roof concept has been abandoned in favor of some decorative pots.

Joe Brennan compared the size and height of this proposed house to the house of the neighbor who ardently objects to this project. He continued with the requested information relative to colors and materials: mahogany windows (stripped, bleached and stained grey); Benjamin Moore "Simply White" for the stucco, leaded coated copper for the metal details, and Dominican Coral Stone.

Attorney Frank Lynch addressed the variances which were deferred by the Town Council.

Mr. Cantin provided a brief review of the plans and elevations. Mr. Lang continued with the revised landscape/hardscape plans showing the addition of fuchsia and white to the landscape in response to the commission's request for more color last month. He noted, however, that other properties on the street have little to no color other than green.

Commission Comments: Rather drastic to lower the entire site instead of just lowering the house; no lighting plan submitted; we need to follow our ordinance...this house is too dissimilar in style to the neighborhood...cannot support it.

Mr. Lindgren read an e-mail and a letter into the record: 10/14/2014 e-mail from Nancy Bhargava, 140 Seaview Avenue, objecting to the project, and a letter received 10/15/2014 from John Beach, 140 Seaview Avenue, objecting to the project.

Commission Comments: You should have shown the whole block...I don't see the dissimilarity at all...you've gone a long way...consider approval as presented; still somewhat massive, but the addition of color helps the mass; like the colors and the landscaping...it will be an addition to the block...in favor of approving...absurd to take inches out of the ground; there is a drop ceiling here...you could be more creative with the HVAC and not have to do that...lack of shade at windows; evolution of house has gone in a positive direction; "the whole business of dissimilarity promotes similarity, and if we wanted to live in a town with tract houses and total similarity, then we wouldn't be living in this town."; details elegant...materials are first rate; having to reduce the existing elevation seems like an unnecessary expense and effort.

MOTION BY MR. GARRISON TO APPROVE THE ARCHITECTURE AS PRESENTED INCLUDING THE LATEST LANDSCAPING PLAN WITH THE COLOR, AND COME BACK WITH THE LANDSCAPE LIGHTING.

MOTION SECONDED BY MR. SAMMONS.

MOTION CARRIED 4-3, WITH MRS. VANNECK, MR. KNOWLES AND MR. GRUSS OPPOSED.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Development Review - Old Business

Agenda Title

SITE PLAN REVIEW #13-2014 WITH SPECIAL EXCEPTIONS AND VARIANCES (MODIFIED)

The application of T3 Family Investment, LLC; relative to property commonly known as **221 & 231 Royal Poinciana Way, Sunset Avenue, 214 Sunset Avenue, 216 Sunset Avenue**; described as Lengthy Legal Description on file; located in the C-TS Zoning District. The applicant is requesting site plan approval to construct a two (2) story 73,214 square foot mixed commercial and residential use condominium development with 47,331 square foot sub-basement with 100 underground parking spaces totaling 120,545 square feet, 26,204 square feet of commercial space on the first floor and six (6) residential units on the second floor.

Special exception approvals requested are as follows:

1. to allow residential tenancy above the first floor, as required by Section 1109(a)(3) for six (6) condominium units;
2. to allow two (2) stories as required by Section 134-1113(8)(c);
3. to allow Testa's Restaurant to occupy 3,000 square feet of gross leasable area as required by Section 134-1109 (a)(11);
4. to allow outdoor seating for 60 outdoor seats for Testa's Restaurant as required by Section 134-1109(1)(11) and 134-1111(a).

Variances being requested are as follows:

- a. to allow underground parking facilities in sub-basement to extend on the south, west, north and east sides, into required setbacks. Proposed setbacks from property line range from 0.0 feet on the east, 4.2 feet on the south, 1.2 feet on the west and 4.1 feet on the north, all in lieu of the minimum 5 feet as required in Section 134-2179(a);
- b. to allow portions of the underground parking sub-basement to be paved for walkways and equipment pads in lieu of being landscaped as required in Section 1324-2179(a);
- c. to allow a total of 100 off-street parking spaces in lieu of the required

- 178 off street parking spaces as required by Section 134-2175;
- d. to allow parking stall width to be 8.5 feet in lieu of the 9.0 feet minimum required by Section 1324-2172 due to accommodate structural columns required for the sub-basement;
 - e. to allow one (1) loading bay in lieu of two (2) minimum required for the proposed 120,525 square foot building required by Section 134-2211(a);
 - f. to allow for the location of a loading zone in a required front yard, contrary to Code Section 134-2211(b);
 - g. to allow a building with a building height in excess of 15 feet (actual building height 30.0 feet) with front yard setbacks of 3.25 feet on Royal Poinciana Way and 3.75 feet on Sunset Avenue in lieu of 12.5 foot minimum as required by Code Section 134-1113(5)(d) in lieu of 12.5 foot minimum as required by Code Section 134-1113(5)(d);
 - h. to allow a building with a building height in excess of 15 feet (actual building height 30.0 feet) with side yard setbacks of 0 feet on the west side and 0 feet on the east side in lieu of 12.5 foot minimum required by Code Section 134-1113(6)(b);
 - i. to allow for the construction of a structure providing for a proposed pedestrian walkway total width of 3 feet of the required 5.0 feet on Royal Poinciana Way and 9 feet on Sunset Avenue in lieu of 5 foot minimum required on the applicant's property of the total 10 feet of required sidewalk width, as required by Code Section 134-1113(5)(c);
 - j. to allow a building height of 30.0 feet in lieu of the maximum allowed 25.0 feet as required by Section 134-1113(8)(b). The request is to have the increase in height at six specific locations over the entrances to the Via and on interior of Via;
 - k. to allow an overall building height of 39.0 feet in lieu of the maximum allowed 35.0 feet as required by Section 134-1113(8)(d). The request is to obtain an increase in height at six specific locations;
 - l. to allow a maximum building length of 251.75 feet in lieu of the maximum allowed 150 feet allowed per Section 134-1113(10)(b);
 - m. to allow for a landscaped open space of 7.4% in lieu of the minimum 25% required by Section 134-1113(11)(b);
 - n. to allow front yard landscaped open space of 14.1% along Royal Poinciana Way and 33.9% along Sunset Avenue in lieu of the minimum 35% required by Section 134-1113(11)(c);
 - o. to allow a two (2) story building to be 120,525 square feet in lieu of the maximum allowed 15,000 square feet as required by Section 134-1113(12)(b);
 - p. to allow a sign with a height of 18.75 feet in lieu of the first floor

elevation of the building or 15 feet, whichever is lower, as required by Code Section 134-2440 (c).

- q. to allow a lot coverage of 89.5% in lieu of 70% maximum allowed by Code Section 134.1113(9)(b).

[Attorney: Francis X. J. Lynch]

[Architectural Commission Recommendation: Deferred the project to the November 14, 2014 ARCOM meeting.]

Request for Deferral to the December 10, 2014, Town Council

Meeting Per Letter Dated October 29, 2014, from Francis X.J. Lynch

Deferred from the October 15, 2014, Town Council Meeting

Presenter

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

Supporting Documents

- [Letter Dated October 29, 2014, from Francis X.J. Lynch](#)

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

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

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

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

October 29, 2014

VIA E-MAIL

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

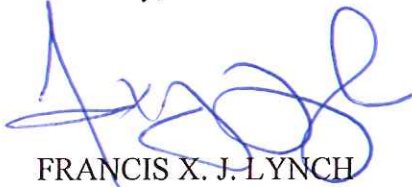
Re: T3 Family Investments LLC
Site Plan Review 13-2014 w/Special Exceptions and Variances

Dear Paul:

With regard to the above, T3 Family Investments would like to defer this application to the December 10, 2014, Town Council meeting. The basis for this request is that ARCOM has deferred this matter to its next meeting and has not made its recommendation to Town Council.

Thank you for your assistance in this matter. Should you have any questions or comments in this regard, please feel free to contact me.

Sincerely,



FRANCIS X. J. LYNCH

FXJL/kh

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Development Review - Old Business

Agenda Title

SPECIAL EXCEPTION #13-2014 WITH SITE PLAN REVIEW

AND VARIANCES The application of Town of Palm Beach, Peter B. Elwell, Town Manager; relative to property commonly known as **2345 South Ocean Blvd.**; described as Lengthy legal description on file; located in the R-B Zoning District. A Special Exception with Site Plan Review is being requested to modify the Par 3 Golf Course parking lot, seating and hours of operation of the Club House restaurant and proposed addition of a new patio deck. The proposed modification is to widen the north side of the parking lot by approximately eighteen (18) feet, create tandem parking in that area of the lot and add additional parking on the south side of the lot. The request also modifies the parking vehicular circulation by creating one way drive aisle. The proposal would create twenty-six (26) additional parking spaces to the parking lot and allow valet parking in designated areas. In addition, the club house restaurant hours are proposed to change from 7:00 am – 10:00 pm to 7:00 am – Midnight with the proposed additional seventeen (17) more seats on the second floor outside verandas (total of 167 seats). In addition, request is to also add a 1,837 square foot patio on the south side of the clubhouse to allow the restaurant and golf course to host golf outings and other special events; install spot lights facing east to light the dune line and ocean surf, outside of turtle nesting season. Variances are requested to allow tandem parking for the valet parking area, which is not permitted by Code. The Code requires that off-street parking be arranged so that a vehicle does not have to be moved in order to move another vehicle; and, to allow three (3) parking spaces in the required front yard setback, which is not permitted by Code. [Representative: Jay Boodheshwar]

Please note that the Town Council has acted upon all proposed elements of the application with the exception of spot lights.

ARCOM, on October 22, 2014, reviewed the proposed wall-mounted spot lights aimed to the east and recommended against their installation.

Deferred from the July 16, 2014, and September 10, 2014 Town Council

Meetings

Presenter

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

Supporting Documents

- [E-mail Dated October 28, 2014, from Terence Dewis](#)

----- Forwarded by Lisa Walkowich/PalmBeach on 10/29/2014 08:36 AM -----

From: Terencedewis <terencedewis@aol.com>
To: "recreation@townofpalmbeach.com" <recreation@townofpalmbeach.com>,
Date: 10/28/2014 10:50 PM
Subject: Par 3 lighting

Dear Mr Boodheshwar:

As a resident who lives on the golf course at Tres Vidas to the North and as a big fan of dinning at the club house I would like to lend my support for lighting up part of the golf course at night.... I will leave the ascetics to the folks who have knowledge of tasteful landscape lighting but I do hope something is none to enhance the nighttime beauty.

Let me know who I should send letters of support to at the city, I also have neighbors here at Tres Vidas who also are very supportive

Sincerely
Terry Dewis

Sent from my iPhone

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Development Review - Old Business

Agenda Title

SPECIAL EXCEPTION #17-2014 WITH SITE PLAN REVIEW

AND VARIANCES The application of Palm Beach Country Club; relative to property commonly known as **228 Country Club Road**; described as Lots 13 and 14, LESS the North 4 feet of MARK RAFALSKY TRACT, Palm Beach, Florida, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County in Plat Book 11, Page 51; located in the R-B Zoning District. The applicant is requesting special exception with site plan approval to allow the construction of a tennis court adjacent to the existing two tennis courts owned by the Palm Beach Country Club and relocate an awning to center it between the existing tennis court and the proposed new court. The following variances are being requested to construct the proposed tennis court: to allow a tennis court with a front yard setback of 3 feet in lieu of the 25 foot minimum required; to allow a 10 foot tall chain link fence in the front yard in excess of the 6 foot maximum allowed; to allow landscaped open space to be 15% in lieu of the 43% existing and the 45% minimum required in the R-B Zoning District; to allow landscaped open space in the front yard to be 39% in lieu of the 40% minimum required in the R-B Zoning District; to allow 42% of landscaped open space in the 10 foot perimeter of the property in lieu of the 50% minimum required; and, to not provide the required plantings to sight screen the tennis court on the north and south side of the property as required by Code. [Attorney: Maura Ziska]

[Architectural Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject property. Carried 7-0.]

Request for Withdrawal Per Letter Dated November 6, 2014, from Maura A. Ziska

Deferred from the October 15, 2014, Town Council Meeting

Presenter

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

Supporting Documents

- [Letter Dated November 6, 2014, from Maura A. Ziska](#)

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, Counsel•

*Also admitted in New York

•Also admitted in Michigan

Esperanté

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

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA FACSIMILE: 561-838-5411

November 6, 2014

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

RE: Special Exception 17-2014; 228 Country Club Drive, Palm Beach, Florida

Dear Mayor and Town Council:

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

Sincerely,



Maura A. Ziska

/maz

cc: Steven Bielsky
Paul Castro
00025827

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Development Review - Old Business

Agenda Title

SPECIAL EXCEPTION #20-2014 The application of Henry Harris III, Manager; relative to property commonly known as **214 El Brillo Way**; described as Lot 27, SUPPLEMENTARY PLAT OF EL BRAVO PARK, a subdivision according to the plat thereof recorded at Plat Book 9, Page 9, in the Public Records of Palm Beach County, Florida; located in the R-A Zoning District. The applicant is requesting special exception approval to allow two sliding gates (one at each entrance) on El Brillo Way (which is a dead end street) with an 8.5 foot setback from the street pavement in lieu of the 18 foot minimum required on a dead end street. [Attorney: Maura Ziska]

Request for Deferral to the December 10, 2014, Town Council Meeting Per Letter Dated October 31, 2014, from Maura A. Ziska
Deferred from the October 15, 2014, Town Council Meeting

Presenter

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

Supporting Documents

- [Letter Dated October 31, 2014, from Maura A. Ziska](#)

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

*Also admitted in New York

*Also admitted in Michigan

Esperanté**222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401****Telephone: (561) 802-8960****Facsimile: (561) 802-8995****VIA FACSIMILE: 561-838-5411****October 31, 2014****Mayor and Town Council
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480****RE: Special Exception 20-2014 – 214 El Brillo, Palm Beach, Florida****Dear Mayor and Town Council:**

Please defer the above referenced matter from the November 12, 2014 Town Council agenda to the December 10, 2014 Town Council agenda. The reason for the deferral is to allow the applicant to meet with the neighbor to discuss the plans. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,**Maura A. Ziska****MAZ/jch****cc: Paul Castro
Andres Paradelo
00025743**

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Development Review - Old Business

Agenda Title

VARIANCE #43-2014 The application of Jungle Road, LLC (H. William Perry, Manager); relative to property commonly known as **120 Jungle Road**; described as Lengthy legal description on file; located in the R-A Zoning District. The Applicant is proposing to enclose a third floor balcony off the existing tower on the residence. The following variances are being requested: a building height plane setback of 51.3 feet in lieu of the 66.5 required building height plane setback for the tower element; and, a tower element to be 4.4% of the gross floor area of the residence in lieu of the 3.1% existing and the 1% maximum allowed in the R-A Zoning District. [Attorney: Maura Ziska]
[Architectural Commission Recommendation: Deferred the project to the November 14, 2014 ARCOM meeting.]

Request for Deferral to the December 10, 2014, Town Council Meeting Per Letter Dated November 5, 2014, from Maura A. Ziska
Deferred from the September 10, 2014, and October 15, 2014, Town Council Meetings

Presenter

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

Supporting Documents

- [Letter Dated November 5, 2014, from Maura A. Ziska](#)

KOCHMAN & ZISKA PLC

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

*Also admitted in New York
• Also admitted in Michigan

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222 Lakeview Avenue, Suite 1500
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Telephone: (561) 802-8960
Facsimile: (561) 802-8995

VIA FACSIMILE: 561-838-5411

November 5, 2014

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

RE: Variance 43-2014 – 120 Jungle Road, Palm Beach, Florida

Dear Mayor and Town Council:

Please defer the above referenced matter from the **November 12, 2014** Town Council agenda to the **December 10, 2014** Town Council agenda. Allow the architect to make changes per ARCOM recommendations. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,



Maura A. Ziska

MAZ/jch
cc: Paul Castro
client
00025797

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Development Review - Old Business

Agenda Title

VARIANCE #49-2014 The application of David and Jeanne Daniel; relative to property commonly known as **322 Seaspray Avenue**; described as Lots 393 and 395 of Poinciana Park, an addition to the Town of Palm Beach, according to the plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida in Plat Book 6, Page 86; located in the R-B Zoning District. The applicant is proposing to demolish a 147 sq. ft. one-story portion of the rear of the house and construct a 487 square foot first floor and 305 square foot second floor addition (totaling 792 square feet) on the rear of the house for a master bedroom/bath expansion (2nd floor) and kitchen/family room expansion (1st floor) and to demolish and rebuild an existing 436 sq. ft. one story cabana in the same location. The following variances are being requested: a lot coverage of 37.55% in lieu of the 31.1% existing and the 30% maximum allowed in the R-B Zoning District; a cubic content ratio (CCR) of 6.43 in lieu of the 4.99 existing and 4.39 maximum allowed; a west side yard setback of 2.1 feet in lieu of the 2.1 foot setback existing and the 12.5 foot minimum required in the R-B Zoning District for a one story structure (to rebuild the cabana); a rear yard setback of 3.5 feet in lieu of the 2.7 foot existing setback and the 10 foot minimum required in the R-B Zoning District for a one story structure (to rebuild the cabana); a west side yard setback of 7.9 feet in lieu of the 12.5 feet minimum required for the one story portion of the addition; a west side yard setback of 9.5 feet in lieu of the 15 foot minimum required for the two story portion of the addition; an east side yard setback of 5.1 feet in lieu of the 12.5 feet minimum required for the one story portion of the addition; an east side yard setback of 7.9 feet in lieu of the 15 foot minimum required for the two story portion of the addition. [Attorney: Maura Ziska]
[Landmark Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject property. Carried 7-0.]

Request for Deferral to the December 10, 2014, Town Council

Meeting Per Letter Dated November 3, 2014 from Maura A. Ziska.
Deferred from the October 15, 2014, Town Council Meeting

Presenter

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

Supporting Documents

- [Letter Dated October 9, 2014, from Ethel Kinszle](#)
- [Letter Dated November 3, 2014, from Maura A. Ziska](#)
- [E-mail Dated November 4, 2014, from Leslie A. Shaw](#)

October 9 2014

243 SEASPRAY AVENUE
PALM BEACH, FLORIDA 33480

Variance # 49-2014

Landmark C.O.A. # 39-2014

To the Town Council and Landmarks
Commission:

It is with great pleasure that I write
this letter supporting Mr. Pandele's
proposals regarding the house at
322 Seaspay Avenue. It is refreshing
to find someone willing to restore
a hundred year old house. As it has
been proven around the neighborhood,
these houses turn out to be charming.

Sincerely
Zihzi Kinszle

TOWN OF PALM BEACH

OCT 20 2014

Town Manager's Office

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, Counsel*

*Also admitted in New York

*Also admitted in Michigan

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VIA FACSIMILE: 561-838-5411

November 3, 2014

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

RE: Variance 49-2014 – 322 Seaspray Avenue, Palm Beach, Florida

Dear Mayor and Town Council:

Please defer the above referenced matter from the November 12, 2014 Town Council agenda to the December 10, 2014 Town Council agenda. The reason for the deferral is to allow the applicant and architect to revise the plans. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,



Maura A. Ziska

MAZ/jch

cc: Paul Castro
Mr. & Mrs. Daniels
Gene Pandula
00025751



Fw: Varance 49-2014 - 322 Seaspray Avenue

Cheryl Kleen to: Peter B Elwell, jrandolph

Cc: Anne Boyles, Patricia Gayle-Gordon

11/05/2014 06:05 AM

----- Forwarded by Cheryl Kleen/PalmBeach on 11/05/2014 06:04 AM -----

From: Leslie Shaw <lshaw318@gmail.com>
To: council@townofpalmbeach.com, mayor@townofpalmbeach.com
Cc: John Page <JPage@TownofPalmBeach.com>, Paul Castro <pcastro@townofpalmbeach.com>, Maura Ziska <mziska@floridawills.com>
Date: 11/04/2014 06:11 PM
Subject: Varance 49-2014 - 322 Seaspray Avenue

Dear Mayor and Town Council Members.

For the past 35 years, Doris and I have lived at 318 Seaspray Avenue and abut the applicant's property on their east side. This is a Landmark home and we believe that any change to the exterior must conform with its current style and proportions. The original plan did not do that and we are surprised that Landmark gave their approval.

We have had 2 meetings with Ms. Maura Ziska, the applicant's attorney and Mr. Gene Pandula their architect, to review the plans for the house and landscaping. At our first meeting we expressed our objection to the mass of the second floor as it did not follow the symmetry of the front of this bungalow style home. From a personal point, with almost no set-back between our properties, it blocked the light and air from our bedroom and bath. We were also concerned about the wall between our properties and the condition of the landscaping.

At our second meeting, this past Friday, they presented a revised plan that has addressed these issues. While we would like to see a further reduction on the southern expansion to help reduce the nonconformity in lot coverage and CCR, we can support the draft plans presented to us.

As they have asked for a deferral to the December meeting, we will have time to review the final building plans, including the landscape and drainage plans.

Respectfully,

Leslie A Shaw

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Development Review - Old Business

Agenda Title

VARIANCE #50-2014 The application of E. Burke Ross, Jr.; relative to property commonly known as **172 South Ocean Boulevard**; described as Lots 5 and 6 of PRIMAVERA ESTATES (OCEAN SECTION), according to the Plat thereof as recorded in Plat Book 6, Page 82, of the Public Records of Palm Beach County, Florida, EXCEPTING therefrom the South 32.66 feet of Lot 6; located in the R-B Zoning District. The applicant is proposing to demolish a 1,219 square foot one story structure and construct in a reduced footprint a 2,731 square foot addition for a total net addition of 1,512 square feet at the west end of the residence. The following variances are being requested to build the proposed addition: a side yard setback of 15 feet (from the alley) in lieu of the 30 foot minimum required for a lot in excess of 20,000 square feet and over 200 feet wide in the R-B Zoning District; a cubic content ratio (CCR) of 4.92 in lieu of the 4.60 existing and 3.7 maximum allowed in the R-B Zoning District; a rear yard setback of 5 feet in lieu of the 15 foot minimum required for a second story addition (the first floor has an existing 5 foot rear yard setback; and, a lot coverage variance to allow 28% in lieu of the 28.1% existing and 25% maximum allowed for a lot in excess of 20,000 square feet in the R-B Zoning District (a reduction of .1%). [Attorney: Maura Ziska]

[Landmark Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject landmark property. Carried 7-0.]

Request for Deferral to the December 10, 2014, Town Council Meeting Per Letter Dated November 3, 2014, from Maura A. Ziska
Deferred from the October 15, 2014, Town Council Meeting

Presenter

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

Supporting Documents

- [Letter Dated November 3, 2014, from Maura A. Ziska](#)

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

Marvin S. Rosen, Counsel*

*Also admitted in New York

*Also admitted in Michigan

Esperanté

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

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA FACSIMILE: 561-838-5411

November 3, 2014

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

RE: Variance 50-2014 – 172 S County Road, Palm Beach, Florida

Dear Mayor and Town Council:

Please defer the above referenced matter from the November 12, 2014 Town Council agenda to the **December 10, 2014** Town Council agenda. The reason for the deferral is to allow the applicant additional time to meet with the neighbor to discuss the plans. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,



Maura A. Ziska

MAZ/jch

cc: Paul Castro
Client
R. Saladrigas
00025754

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Development Review - New Business

Agenda Title

VARIANCE #53-2014 The application of Ronald Alvarez and Alice Ruth; relative to property commonly known as **210 Orange Grove Road**; described as The East 62.5 feet of Lot 33 and the West 60 feet of Lot 34, NEW SIEARS TRACT, according to the plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 16, Page 86; located in the R-B Zoning District. A variance is requested to convert a two-car garage into a family room that was done by a prior owner without zoning approval and without a building permit. If the above variance is granted, the applicant requests the following: the applicant is proposing to construct a 712 square foot one story, one-car garage addition. The following variances are being requested to build the proposed addition: to allow the construction of a one car garage in lieu of the required two car garage for a lot in the R-B Zoning District; a rear yard setback of 6.4 feet in lieu of the 10 foot minimum setback required in the R-B Zoning District; a side yard setback of 5 feet in lieu of the 12.5 foot minimum setback required in the R-B Zoning District. [Attorney: Maura Ziska]

[Architectural Commission Recommendation: Implementation of the proposed variance to enclose the garage will not negatively impact the architecture of the house. Carried 6-1 (Mrs. Vanneck dissenting). The proposed new two car garage which requires variances can be designed in an architecturally suitable manner on another portion of the subject property and conform to the zoning code without the need for the variances. Carried 7-0]

Presenter

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

Supporting Documents

- [Letter Dated September 29, 2014, from Rosemarie Leonhardt](#)

218 Orange Grove Road
Palm Beach, Florida 33480
September 29, 2014

Mr. John Lindgren, AICP
Town of Palm Beach
Planning, Zoning and Building Department
360 South County Road
Palm Beach, Florida 33480

RECEIVED

SEP 30 2014

TOWN OF PALM BEACH
PZB DEPT.

Dear Mr. Lindgren:

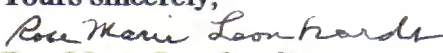
Thank you for the letters of notification of the proposed variances to build a two car garage at 210 Orange Grove Road.

Our home, next door, at 218 Orange Grove Road will be affected in a most negative way should this project be approved. If approved, we shall have this looming structure so close to our property line that one might lean over and touch the building. The proposal is to provide a 5 foot side yard setback instead of the 12.5 foot minimum setback required by the zoning code. According to the plans, the building will also have a 2 foot overhang, bringing the structure to 3 feet from the property line. This garage would certainly be quite a robust structure for us to look at, every day, as the "view" from our loggia, patio, pool, garden, and second floor sun room.

The proposal to build this garage, where indicated on the plans, is not a necessity. There are options. The original plans (1938/39) on file in the Planning, Zoning and Building Department show the house was built with a two car garage, incorporated into the main structure. Reestablish the original garage location and the zoning code should be met. The oversized lot also presents other opportunities for a garage or a family room where it will conform to the zoning code. Ultimately, the situation is not a hardship for the applicant, but would certainly be a hardship for us, their neighbors, as we would be left with diminished property value. We need the integrity of the code to be maintained to protect our property value. Aesthetics and property value are important concerns for any home owner.

The zoning code standards and principals of Palm Beach are set for the benefit of all residents. It's one of the reasons we love this town. We have lived here for 34 years and are thankful for the efforts made by the Town, over the years, in this regard.

We wish our new neighbors happiness in their new home. We have not yet met them, as major reconstruction work is still ongoing, but look forward to giving them a warm, friendly, Orange Grove Road welcome.

Yours sincerely,

RoseMarie Leonhardt
(Mrs. Walter W. Leonhardt)

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Development Review - Other

Agenda Title

Proposed Declaration of Use Agreement for Chez L'Epicier Restaurant, 288 South County Road, Special Exception #22-2014 with Site Plan Review

Presenter

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

Supporting Documents

- [Memorandum Dated October 31, 2014 from John S. Page](#)
- [Declaration of Use Agreement](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 12, 2014

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Proposed Declaration of Use Agreement and Construction Agreement for Chez L'Epicier Restaurant, 288 South County Road, Special Exception #22-2014 with Site Plan Review

Date: October 31, 2014

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the Declaration of Use Agreement.

GENERAL INFORMATION

The Town Council, at its October 15, 2014 meeting, conditionally approved the Special Exception portion of the application for a new restaurant at 288 South County Road. The Council denied the Site Plan Review portion of the application to move the front door to the corner of the building at the intersection of South County Road and Royal Palm Way. There were two conditions of approval. The first is that the applicant come back to the November 2015 Town Council meeting to demonstrate that the restaurant is meeting the Town-serving requirements: Secondly, the applicant and owner of the subject property are required to modify the existing Declaration of Use Agreement by adding the approved hours of operation. The proposed Agreement is attached for your review. Staff and applicant believe the document is complete and in acceptable form. The hours of operation are as follows:

1. The restaurant will be open on Wednesday through Sunday 3 p.m. until Midnight.
2. Brunch will be served Saturday and Sunday from 10:30 a.m.
3. There may be occasional special events during the week at lunch time or an occasional special dinner event on a Monday or Tuesday night, not to last past Midnight.

Staff recommends that the Council approve the proposed Agreement. If you have any questions about this issue please contact Paul Castro, Zoning Administrator at 227-6406.

TOWN ATTORNEY REVIEW

The draft Amendment to the Declaration of Use Agreement was approved by Town Attorney John C. Randolph for legal form and sufficiency.

Attachment

cc: Thomas Bradford, Deputy Town Manager
Susan A. Owens, Town Clerk
Bill Bucklew, Acting Building Official
Kirk Blouin, Captain, Police Department
Raychel Houston, Code Enforcement
zf & pf

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

AMENDMENT TO DECLARATION OF USE AGREEMENT
by
THE TOWN OF PALM BEACH
and
THOMAS CAMPANIELLO
and
CHEZ L'EPICIER

Dated: November, 2014

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AMENDMENT OF DECLARATION OF USE AGREEMENT

THIS AMENDMENT TO DECLARATION OF USE AGREEMENT ("Amendment") is made and entered into this ____ day of October, 2014 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter the "Town"), THOMAS CAMPANIELLO, 225 East 57th Street New York, New York 10022 (hereinafter the "Owner") and CHEZ L'EPICIER (hereinafter the "Restaurant") which terms "Town", "Owner" and "Restaurant" will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

W I T N E S S E T H:

WHEREAS, the Town and Owner heretofore entered into a Declaration of Use Agreement made on May 26, 2009 and recorded in Official Records Book 23257, Page 94, of the Public Records of Palm Beach County; and

WHEREAS, the Town Council on October 15, 2014 granted approval of Special Exception # 22-2014 with Site Plan Review to allow a new restaurant "Chez L'Epicier" to open at the premises known as 288 South County Road and also known as 290 South County Road.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed as follows:

ARTICLE I

RECITALS

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

ARTICLE II

HOURS OF OPERATION

The following hours of operation are imposed as conditions of granting approval of the Special Exception and are required to be met as conditions of the operation of the restaurant.

1. The restaurant will be open on Wednesday through Sunday 3 p.m. until Midnight.
2. Brunch will be served Saturday and Sunday from 10:30 a.m.
3. There may be occasional special events during the week at lunch time or an occasional special dinner event on a Monday or Tuesday night, not to last past Midnight.

ARTICLE III

PROVISIONS FOR NOTICE

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

To the Town Manager:

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

To the Owner:

Thomas Campaniello
225 East 57th Street
New York, NY 10022

To the Restaurant:

Veronique Deneault
c/o Chez L'Epicier
288 South County Road
Palm Beach, FL 33480

ARTICLE IV

REMEDIES FOR VIOLATION

1. Upon determination by the Director of Planning, Zoning and Building Department of a violation of any of the terms or conditions of this agreement or any other provision in the Town Code of Ordinances, and upon notice in writing from the Town to Owner or Owner's representative of said violation(s) and the date by which said violations(s) shall be corrected, owner or owner's successor or assigns shall pay to the Town a liquidated amount of \$2,000 per violation. Said liquidated amount shall accrue on a per day basis for each day a violation of this agreement exists. In addition, in the event a violation remains uncorrected beyond the date noticed for correction by the Director of the Planning, Zoning and Building Department, this Agreement may be reconsidered by the Town Council at a future meeting upon thirty days notification to the owner. The Town Council may, upon a finding of violation, alter this agreement or rescind the approval of the use.

In the event owner disputes the determination of the Director of Planning, Zoning and Building Department of the violation of the conditions of this agreement, or in the event the owner disputes any code violation, owner may appeal the determination of the Director of the Planning, Zoning and Building Department to the Town Council, said appeal to be filed no later than fifteen (15) days of the written notice of violation.

2. In addition to the above, the Town shall have all remedies available at law and equity in order to enforce the terms of this Agreement including but not limited to (a) the Town's code enforcement procedures; (b) all remedies otherwise offered in the Town's Code of Ordinances; and (c) injunction, specific performance, and any and all other equitable relief through the civil

courts in and for Palm Beach County for the State of Florida. In the event the Town is required to seek injunctive relief, it shall not be required to post bond and it shall not be required to demonstrate irreparable harm or injury to secure an injunction to enforce the terms of this Agreement. Additionally, in the event of any breach, default or non performance of this Agreement, or any of its covenants, agreements, terms or conditions, the Town shall be entitled to recover its costs, expenses and reasonable attorney's fees insofar as the Town prevails, either before or as a result of litigation, including appeals.

ARTICLE V

PROVISIONS TO RUN WITH LAND/RECORDING

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

ARTICLE VI

ENTIRE AGREEMENT

This Amendment represents the entire agreement between the parties as to the subject matter set forth in this Amendment and may not be amended except by written agreement executed by both parties. All previous provisions of the Declaration of Use recorded in Official Records Book 23257, Page 94, of the Public Records of Palm Beach County remain intact.

ARTICLE VI

MISCELLANEOUS

Wherever the word "laws" appears in this Agreement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities. This Amendment may not be amended except by written instrument signed by all parties hereto. Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All references to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs and subparagraphs of this Agreement and to exhibits attached hereto, which exhibits are by this reference made a part hereof. This Agreement shall be binding upon the parties hereto and upon their successors and assigns. In the event of the invalidity of any provision of this Agreement, same shall be deemed stricken herefrom and this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

Except as modified by this Amendment, all the terms and conditions of the aforesaid Declaration remain in full force and effect.

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

Signed, sealed and delivered
In the presence of:

TOWN OF PALM BEACH:

By: _____
Gail Coniglio

By: _____
Robert Wildrick, President
Town Council

By: _____
Peter Elwell
Town Manager

OWNER:

Thomas Campaniello

RESTAURANT:
CHEZ L'EPICIER

Veronique Deneault

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

John C. Randolph
Town Attorney

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Gail Coniglio, Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. She is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public-State of Florida
Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Robert Wildrick, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public-State of Florida
Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Peter Elwell, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public-State of Florida
Commission Number: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Thomas Campaniello. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public-State of _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Laurent Godbout. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public-State of _____
Commission Number: _____
Commission Number: _____

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Development Review - Other

Agenda Title

Proposed Declaration of Use Agreement for Bethesda by the Sea
Episcopal Church-Special Exception #24-2014 with Site Plan Review-
141 South County Road

Presenter

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

Supporting Documents

- [Memorandum Dated October 31, 2014 from John S. Page](#)
- [Declaration of Use Agreement](#)

TOWN OF PALM BEACH

Information for Town Council Meetings on: November 12, 2014

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Proposed Declaration of Use Agreement for Bethesda by the Sea Episcopal Church-
Special Exception #24-2014 with Site Plan Review- 141 South County Road

Date: October 31, 2014

STAFF RECOMMENDATION

Staff recommends that the Town Council address the hours and frequency of use of the outdoor alter area in the Bethesda by the Sea Church Declaration of Use Agreement. In addition, staff recommends the language in the Agreement, as modified by Staff, be approved which addresses the simultaneous use of the outdoor alter area and other uses in the Church.

GENERAL INFORMATION

The Town Council, at its October 15, 2014 meeting, conditionally approved the Special Exception and Site Plan Review application to add an outdoor alter and seating area in the garden of the Church property. The condition of approval was that the applicant work with staff on a draft Declaration of Use Agreement outlining conditions for the use of outdoor alter area.

Staff and the applicant have been working on the Agreement and have attempted to resolve any differences in the proposed document. However, differences remain unresolved. The applicant wants to be able to use the outdoor alter area on Sundays and religious holidays, when Church attendance is at its peak use. The proposed Agreement, as originally drafted, does not address the simultaneous use of meeting rooms within the Church when the outdoor alter area is being used. The Church has very limited off-street parking, and on-street parking conditions are heavy when the Church is being used. For that reason, staff does not recommend that any activity be allowed in the sanctuary or meeting rooms in the Church when the outdoor alter area is in use. The draft Agreement has been modified by staff to address this issue. In addition, there currently are no conditions in the draft Agreement which address the hours and frequency of use of the outside alter area. Staff recommends that the Council modify the proposed Agreement further by creating conditions which control when and how often the outside alter can be used so that it does not negatively impact the neighbors.

The proposed modifications to the applicant's Agreement are incorporated in add/delete format in the attached draft Agreement. These are changes Staff believes are required in

order to ensure that the outdoor alter area has minimal impact to neighboring property owners.

TOWN ATTORNEY REVIEW

The proposed Declaration of Use Agreement was approved by Town Attorney Randolph for legal form and sufficiency.

ATTACHMENTS

cc: Thomas Bradford, Deputy Town Manager
Kirk Blouin, Director of Public Safety
Susan A. Owens, Town Clerk
zf & pf

DECLARATION OF USE AGREEMENT
by
THE TOWN OF PALM BEACH
and
CHURCH OF BETHESDA BY THE SEA, INC.

November 2014

Prepared by and return to:
Harvey E. Oyer III, Esq.
Shutts & Bowen LLP
Okeechobee Blvd., Suite 1500
West Palm Beach, FL 33401
(561) 650-8517

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DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2014 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, whose address is 360 South County Road, Palm Beach, Florida 33480 (hereinafter called the "Town"); and CHURCH OF BETHESDA BY THE SEA, INC., a Florida non-profit corporation, whose address is 141 South County Road, Palm Beach, Florida 33480 (hereinafter called "Owner"), which terms "Town" and "Owner" will include and bind the successors and assigns of the parties, wherever the context so requires.

WITNESSETH:

WHEREAS, the land described in Exhibit "A" attached hereto and all improvements located thereon (hereinafter referred to as the "Property") is located within the municipal limits of the Town; and

WHEREAS, title to the Property is held by Owner; and

WHEREAS, the Property is located in the R-B zoning district; and

WHEREAS, the use of the Property for church purposes is a special exception use in the R-B zoning district and all necessary approvals have been granted by the Town for the Owner to use the Property for church purposes; and

WHEREAS, the Town Council approved Special Exception No. 24-2014 with Site Plan Review on October 15, 2014 (collectively hereinafter referred to as the "Site Plan"), which approved the modification of the existing outdoor altar area within the Cluett Garden section of the Property to add a permanent altar, benches, decorative railing, gate, and two tables for flower arrangements, subject to the conditions set forth herein and the approval of this Agreement, and on the basis of the Owner's application, the testimony on behalf of the Owner, and the specific finding of the Town Council that the approval of the Site Plan is in compliance with said conditions and upon a finding of the Town Council that the applicable provisions of the Town Code governing the use of the Property and the Site Plan criteria have been met; and

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

WHEREAS, all of the representations made herein are true and accurate and the approval of the Site Plan is conditioned upon the representations made herein and all of the conditions herein imposed.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by both parties, the parties agree as follows:

ARTICLE I RECITALS

The Recitals set forth above are true and correct and are incorporated herein and made a part hereof by this reference.

ARTICLE II REPRESENTATION OF OWNERSHIP

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

ARTICLE III CHURCH USE

The use of the Property shall be for church and religious purposes in compliance with all of the information and exhibits, and not inconsistent with the terms and conditions set forth herein, as set forth in the application submitted to the Town in the Site Plan as approved by Town Council on October 15, 2014 (hereinafter referred to as the "Approval"). The Approval is subject to that provision of the Town Code which provides that no subsequent deviation may be made from the application as approved by the Town Council except upon an application to and approval by the Town Council. Any additional or different uses of the Property than permitted by the Approval shall be subject to approval by the applicable governmental authority including, but not limited to, the Town Council of the Town and the Landmarks Preservation Commission of the Town.

ARTICLE IV CONDITIONS

1. Owner shall not allow the performance of funeral services or wedding services simultaneously at both the outdoor altar area and the main sanctuary of the church.

2. ~~Other than on Sunday mornings and the Christian Holy Days (Christmas Eve, Christmas, Palm Sunday through Easter, All Saints Day, Pentecost, and Epiphany),~~ Owner shall not allow religious services to be conducted simultaneously at both the outdoor altar area and the

main sanctuary of the church. In addition, Owner shall not allow the meeting rooms of the Church to be used simultaneously with the use of the outdoor altar area.

3. For all use of the outdoor altar, Owner shall adhere to the Town's noise ordinances.

ARTICLE V VOLUNTARY AGREEMENT

Owner agrees to be bound by the terms and conditions in this Agreement, and Owner waives any legal objection it might otherwise have to said terms and conditions or parts thereof.

ARTICLE VI REMEDIES FOR VIOLATION

1. Upon determination by the Director of the Planning, Zoning and Building Department ("Director") of a violation of any of the terms or conditions of this Agreement or any other provision in the Town Code of Ordinances, and upon notice in writing from the Town to Owner or Owner's representative of said violation(s) and the date by which said violations(s) shall be corrected, Owner or Owner's successor or assigns shall pay to the Town a liquidated amount of \$2,000 per violation. Said liquidated amount shall accrue on a per day basis for each day a violation of this Agreement exists. In addition, in the event a violation remains uncorrected beyond the date noticed for correction by the Director, this Agreement may be reconsidered by the Town Council at a future meeting upon thirty (30) days notification to the Owner. The Town Council may, upon a finding of violation, alter this Agreement or rescind the approval of the use.

2. In the event Owner disputes the determination of the Director of the violation of the conditions of this Agreement, or in the event the Owner disputes any code violation, Owner may appeal the determination of the Director to the Town Council, said appeal to be filed no later than fifteen (15) days after the written notice of determination by the Director.

3. In addition to the above, the Town shall have all remedies available at law and equity in order to enforce the terms of this Agreement including but not limited to (a) the Town's code enforcement procedures; (b) all remedies otherwise offered in the Town's Code of Ordinances; and (c) injunction, specific performance, and any and all other equitable relief through the civil courts in and for Palm Beach County for the State of Florida. In the event the Town is required to seek injunctive relief, it shall not be required to post bond and it shall not be required to demonstrate irreparable harm or injury to secure an injunction to enforce the terms of this Agreement. Additionally, in the event of any breach, default or non performance of this Agreement, or any of its covenants, agreements, terms or conditions, the Town shall be entitled to recover its costs, expenses and reasonable attorney's fees insofar as the Town prevails, either before or as a result of litigation, including appeals.

ARTICLE VII
PROVISIONS TO RUN WITH PROPERTY/RECORDING

This Agreement shall run with the Property and shall be binding upon the Owner and its successors and assigns. This Agreement shall be recorded by the Town in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto.

ARTICLE VIII
ENTIRE AGREEMENT

This Agreement represents the entire agreement between the parties as to its subject matter and it may not be amended except by written agreement executed by both parties.

ARTICLE IX
EFFECTIVE DATE

The Effective Date of this Agreement shall be the day upon which this Agreement is executed by the last party to sign the Agreement.

ARTICLE X
MISCELLANEOUS

Wherever the word “laws” appears in this Agreement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities.

This Agreement may not be amended except by written instrument signed by all parties hereto.

Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All references to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs and subparagraphs of this Agreement and to exhibits attached hereto, which exhibits are by this reference made a part hereof.

In the event of the invalidity of any provision of this Agreement, same shall be deemed stricken herefrom and this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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

Signed, sealed and delivered
in the presence of:

TOWN OF PALM BEACH

By: _____
Gail Coniglio, Mayor

By: _____
Robert Wildrick, President
Town Council

By: _____
Peter B. Elwell
Town Manager

CHURCH OF BETHESDA BY THE SEA,
INC.

By: _____
Name: _____
Its: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2014, by Gail Coniglio, the Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. She is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2014, by Robert Wildrick, the President of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2014, by Peter B. Elwell, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2014, by _____, the _____ of Church of Bethesda by the Sea, Inc. a Florida non-profit corporation, who is personally known to me or produced _____ as identification and did not take an oath.

Signature of Notary Public

Printed Name of Notary Public

Commission Expires: _____

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

By: _____
John C. Randolph, Esquire

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 1 through 8, **E.G. Pendleton Tract**, a subdivision in the Town of Palm Beach, Florida, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 10, Page 67.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 12, 2014

Section of Agenda

Development Review - Other

Agenda Title

Palm House Update

Presenter

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

Supporting Documents

- [Memorandum Dated November 3, 2014 from John S. Page](#)
- [Letter Dated October 31, 2014 from John S. Page](#)
- [Letter Dated November 4, 2014 from Robert Walton](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 12, 2014

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Palm House Update

Date: November 3, 2014

STAFF RECOMMENDATION

Staff recommends that the Town Council be advised of this updated status report relative to the Palm House construction project at 160 Royal Palm Way.

GENERAL INFORMATION

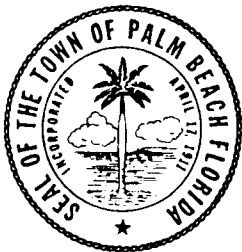
The Town Council is well familiar with the history of the Palm House conversion project, still in process after seven years of construction activity. The following facts are listed to recap several “current” issues of importance:

1. The most recent Palm House zoning application requesting further changes to the site, which collectively intensified the use, were denied on October 13, 2014. Five alterations that would not result in intensification (pool reconfiguration, front door design, awning installation, east elevation corridor enclosure, and paint color) were deferred.
2. The daily fee for construction activity extending beyond the targeted completion date of February 14, 2013 amounts to \$1,272,000 (on date certain of 11/12/14). That daily fee has been challenged as a matter of law in the pending case of Royal Palm, LLC vs. Town of Palm Beach, filed in December, 2012.
3. The issues of ownership and control have long followed this project. As recently as the week of October 20, a civil complaint filed in circuit court regarding ownership resulted in chains and padlocks at the site (stopping all work). It has been reported in the local press that ownership is now controlled by Gerry Matthews (brother of original 2007 investor Bob Matthews).
4. The local press (Shiny Sheet) has also reported that foreclosure proceedings have been filed. At issue is a \$27.5 million mortgage owed to Glenn Straub. The Town is not a party to such action.

5. The Planning, Zoning & Building Department received email from Architect Raphael A. Rodriguez on 10/29/14 announcing his resignation from the project.
6. The Planning, Zoning & Building Department, via certified letter dated October 31, 2014, has notified the principal parties that the Hotel must remove all improvements that have not been authorized by the Council or approved by that Department. The letter (attached) also speaks to other potential legal remedies that may follow.
7. Staff from Planning, Zoning & Building worked closely with Code Enforcement personnel to coordinate corrective actions. A letter from the Police Department (attached) has also been mailed citing the Hotel for violation of Town Code (construction work that has proceeded beyond the Town-granted scope of approval). That citation calls for all unauthorized work to be removed from the premises.

Attachments

cc: John C. Randolph, Town Attorney
William Bucklew, Building Official
Paul Castro, Zoning Administrator
Ann-Marie Taylor, Police Department
Greg Kino, Palm House Attorney



TOWN OF PALM BEACH

Planning, Zoning & Building Department

October 31, 2014

Greg Kino, Esq.
515 N. Flagler Drive
20th Floor
West Palm Beach, FL 33401

CERTIFIED MAIL
7012 3460 0003 6170 8600

Rey Rubio
Qualifier, MEP Construction Group Inc.
2951 SW 1st Street
Miami, FL 33135

CERTIFIED MAIL
7012 3460 0003 6170 8617

Leslie Evans, Esq.
Registered Agent
160 Royal Palm, LLC
214 Brazilian Avenue, #200
Palm Beach, FL 33480

CERTIFIED MAIL
7012 3460 0003 6170 8631

Dear Parties:

The Palm Beach Town Council considered your most recent zoning application for special exception, site plan and variance approvals on October 13, 2014. Following all presentations and testimony, the Council deferred consideration of five specific site plan elements (pool, awning, front door, east elevation corridor enclosure, and building color), and denied the remainder of your application.

As a result of application denial, and because work has been conducted on the premises extending beyond the scope of previous Town approvals (see my letter of March 18, 2014 attached), this matter has been referred to Code Enforcement.

It is required that the Hotel physically remove all improvements that have not been authorized by the Town Council and/or permitted by this Department. Failure to comply with this requirement to the satisfaction of this Department may result in a stop work order on the entire project, revocation of permits, and/or other remedies available to the Town to assure full compliance.

It is important that this project proceed in accordance with all permits and approvals granted to date. No Certificate of Occupancy will be issued unless and until the project is shown to be in full compliance with all permit requirements, the Declaration of Use Agreement, and all conditions related to the approvals of this project.

Finally, this Department requests that it be immediately advised as to the anticipated date of completion of the project.

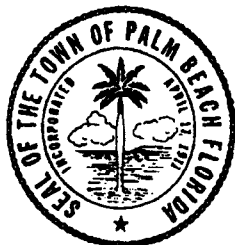
Sincerely,

A handwritten signature in black ink, appearing to read "John Page". The signature is fluid and cursive, with the first name "John" and last name "Page" clearly distinguishable.

John Page, Director

Attachment

cc: Peter B. Elwell, Town Manager
John C. Randolph, Town Attorney
Bill Bucklew, Building Official
Paul Castro, Zoning Administrator
Ann-Marie Taylor, Police Captain
Raychel Houston, Parking/Code Enforcement Manager



TOWN OF PALM BEACH

Planning, Zoning & Building Department

March 18, 2014

Glenn Straub
160 Royal Palm Way
Palm Beach, FL 33480

CERTIFIED MAIL
7009 2820 0001 6156 9507

Alan I. Armour II Esq.
1645 Palm Beach Lakes Boulevard
Suite 1200
West Palm Beach, FL 33401

CERTIFIED MAIL
7009 2820 0001 6156 9514

Leslie Evans, Esq.
214 Brazilian Avenue
#200
Palm Beach, FL 33480

CERTIFIED MAIL
7009 2820 0001 6156 9521

Nicholas Laudano, CFO
New Haven Contracting South, Inc.
638 Shore Drive
Boynton Beach, FL 33435

CERTIFIED MAIL
7009 2820 0001 6156 9538

Marissa Bacarella, Qualifier
New Haven Contracting South, Inc.
638 Shore Drive
Boynton Beach, FL 33435

CERTIFIED MAIL
7009 2820 0001 6156 9545

Marissa Bacarella, Qualifier
22159 Palms Way, Apartment 203
Boca Raton, FL 33433

CERTIFIED MAIL
7009 2820 0001 6156 9552

RE: Permissible Construction
160 Royal Palm Way

Dear Principal Parties:

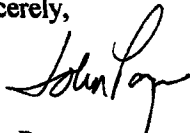
Mr. Nick Laudano attended a meeting in Town Hall with the Town's Building Official, Zoning Administrator, Planning Administrator and I on March 12, 2014. Although I was encouraged with his news that there is new management at the site and that the Palm House is committed to being open for business by November 1st of this year, I am very concerned about his announcement of additional, intended changes at the property.

Renovation of the Palm House, now over six years in progress, has extended far beyond permissible time limits per the Town's Code of Ordinances, and began accruing a fee of \$2,000 per day on February 15, 2013 that will continue tolling until time of project completion. Both a Declaration of Use Agreement and a Construction Management Agreement, previously approved by the Palm House and the Town, obligate the project to be completed in conformance with Town approvals.

Any construction that deviates from prior Town approved plans is prohibited and must be stopped immediately. Staff members from this Department will be inspecting the site in order to thoroughly assess the project's current status.

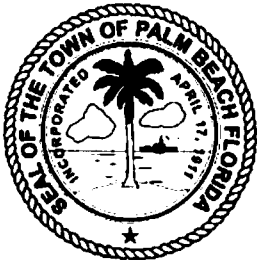
Mr. Laudano spoke of anticipated, additional site plan changes that would include exterior doors, the pool/courtyard area, parking, and interior circulation. Again, I stress that no changes to approved plans are permissible until or unless additional ARCOM and/or Town Council authorizations are secured and the appropriate building permits are issued. Intended revisions should be submitted to this Department, as prescribed by Town policy, as soon as possible in order to achieve your intended completion date.

Sincerely,



John Page
Director

cc: Skip Randolph, Town Attorney
Scott Hawkins, Town Attorney's Office
Peter B. Elwell, Town Manager
Bill Bucklew, Building Official
Paul Castro, Zoning Administrator
John Lindgren, Planning Administrator



TOWN OF PALM BEACH POLICE DEPARTMENT

DEDICATED TO EXCELLENCE



November 4, 2014

160 Royal Palm LLC
160 Royal Palm Way
Palm Beach, FL 33480

CERTIFIED MAIL
9314 8699 0430 0007 7763 22

160 Royal Palm LLC
Attn: Leslie R. Evans, Registered Agent
214 Brazilian Ave., # 200
Palm Beach, FL 33480

CERTIFIED MAIL
9314 8699 0430 0007 7764 14

NOTICE OF CODE VIOLATION AND HEARING

160 Royal Palm Way, Palm Beach

Case # CE 14-1212

Property Control Number: 50-43-43-23-05-026-0310

Dear Property Owner(s),

The Town Council, at its January 9, 2013 meeting, conditionally approved Site Plan # 3-2013 with special exception and variance. As a condition of granting the site plan review, special exception and variance, you entered into a second Amendment to the Declaration of Use Agreement with the Town which specified that no subsequent deviation could be made from the application as approved by the Town Council except upon new application and approval.

It has been brought to the attention of this office that construction on the property has gone beyond the scope of your approved site plan review with special exception and variance and building permits. Your request for modification of the approved site plan review with special exception and additional variances and proposed third amendment to the Declaration of Use was denied by the Town Council at a special meeting on October 13, 2014.

According to the Town of Palm Beach Code of Ordinances, Chapter 134, Section 134-326 (b), 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 and failure to comply with any of the requirements of grants of variances or exceptions is a violation of Chapter 134, Section 134-7 of the Code. Furthermore, violation of the Declaration of Use Agreement also constitutes a violation of Section 134-226 of the Town of Palm Beach Code of Ordinances.

Please remove all work which was done beyond the scope of your approved variances and building permits by **December 12, 2014**.

160 Royal Palm LLC
November 4, 2014
Page 2

Should compliance with the Town Ordinances not be met within this time frame, you are hereby notified there will be a public hearing before the Code Enforcement Board on **December 18, 2014 at 2:00 p.m.** in the second floor Town Council Chambers at Town Hall, 360 S. County Road, Palm Beach.

If you decide not to be present, the hearing will be held in your absence. If you are found in violation of the Town Code, the Code Enforcement Board has the power by law to levy fines up to Two Hundred Fifty (\$250.00) Dollars a day against you and your property for every day any violation continues beyond the date set in the order for compliance. An administrative fee of One Hundred Fifty (\$150.00) Dollars for the cost of the hearing may be assessed to you should your case be heard.

If you have any questions, please do not hesitate to call me at (561) 227-6423. Your immediate attention to this matter is appreciated.

Sincerely,



Robert Walton
Lead Code Enforcement Officer

cc: Code Enforcement File
Property File