



TENTATIVE:
SUBJECT TO
REVISION

TOWN OF PALM BEACH

Town Manager's Office

TOWN COUNCIL MEETING DEVELOPMENT REVIEW

TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD

AGENDA

OCTOBER 14, 2015

9:30 AM

Welcome!

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

I. CALL TO ORDER AND ROLL CALL

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

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. COMMENTS OF MAYOR GAIL L. CONIGLIO

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

VI. APPROVAL OF AGENDA

VII. DEVELOPMENT REVIEWS

A. Time Extensions and Waivers

1. Request for Waiver of Section 42-199, Hours of Construction Work at The Esplanade, Suite 234, Cooklyn Palm Beach, (Per Letter Dated September 30, 2015 from James M. Crowley, Esquire)

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

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B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. Consideration of a Construction Management Agreement for Redevelopment of the Testa's site (Site Plan Review #13-2014 with Special Exceptions and Variances (Modified), **221 & 231 Royal Poinciana Way, 214 & 216 Sunset Avenue**, all previously approved) [Attorney: Francis X. J. Lynch]
Deferred from the June 10, 2015, July 15, 2015, and August 11, 2015, Town Council Meetings
John S. Page, Director of Planning, Zoning, and Building
- b. **SPECIAL EXCEPTION #26-2015 WITH SITE PLAN REVIEW AND VARIANCE** The application of Four Seasons Resort Palm Beach; relative to property commonly known as **2800 So. Ocean Blvd.**, described as lengthy legal description on file; located in the R-D(2) Zoning District. The Applicant is requesting a Special Exception with Site Plan Modification to the hotel site to improve its guest facilities in terms of aesthetics, functionality, guest amenities and life safety standards. 1. The proposed modifications can be categorized into three categories. **West Garden Improvements:** Modifications to the site plan: a) New service vehicle entry from South Ocean Blvd. at the north side of the property; b) increase green space park area including a yoga trellis to the front of the property; c) relocate tennis court (one existing tennis court will be eliminated) to the south to create service drive at the north side of the property. **Remodel Lobby Level Interiors:** The interiors will be updated by relocating the Lobby Bar, adding a Show kitchen in the Dining Room and improving the Dining Terrace area. d) Renovate reception and lobby sitting area to open up the floor plan; e) new guest retail shop; f) Renovate and downsize Guest Lounge (Living Room) to accommodate new retail shop; g) reconfigure Guest Lounge exterior hardscape; h) reconfigure dining room bar areas to reduce the size to accommodate a wider pool deck; i) new show kitchen in dining room; j) reconfigure Terrace Dining Area and add permanent roof structure to replace awning and add balcony extension above. **Pool Deck Improvements:** The pool deck will have an enlarged pool and a new secondary pool will be built that is sized in order to meet the current needs of the guests. Many rooms are proposed to have direct access to the pool deck with extended balconies and stairs. Ocean Views from the property will be improved by removing the existing obstructive concrete planters on the pool deck. Additionally, the existing Atlantic Bar and Grill (ABG) will be replaced with a new structure that has increased restroom capacity and improved kitchen and bar equipment. Service access to the new ABG will be from previous approval which was never built). The dune vegetation will be infilled and new growth will be encouraged. Relocate spa pool from the northeast corner of the pool deck to the northeast corner of the enlarged primary pool; extend terrace suite balconies (west building pool side) extend area in garage Mezzanine level consisting of 1,350 sq. ft. for added "back of house" space; j) create new Mezzanine level access from pool deck; k) add six temporary cabanas to the pool deck area as follows: (2) 74 sq. ft.; (2) 100 sq.

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ft.; and (2) 225 sq. ft.; I)infill dune landscaping and increase dune area. 2. In order to construct the Yoga Trellis, a variance is being requested to increase the lot coverage to 38.9% in lieu of the 38.7% existing and the 22% maximum allowed for 5 story building in the R-D(2) Zoning District. [Attorney: Maura Ziska, Esq.]

Deferred from the September 9, 2015, Town Council Meeting

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

c. **MODIFIED SPECIAL EXCEPTION #27-2015 WITH SITE PLAN REVIEW AND VARIANCES**

The application of Il Sogno, LLC; relative to property commonly known as **1520 S. Ocean Blvd.**, described as lengthy legal description on file; located in the R-A/B-A Zoning Districts. The Applicant seeks Special Exception approval to construct a pedestrian access tunnel beneath South Ocean Blvd. connecting property owned by the applicant on the east side of South Ocean Blvd. and on the west side of South Ocean Blvd. including providing electric, gas, water and other utility services to a beach house on the east side of South Ocean Blvd. This proposal will require partial closure of South Ocean Blvd. to excavate and construct tunnel and utilities under the road. Applicant seeks Special Exception approval to construct a one story 500 sq. ft. beach house intended for the use of family and guests, without sleeping quarters, but with electric, gas, water, telephone and other utility services, on property it owns on the east side of South Ocean Blvd with the main residence located immediately to the west of the subject property on the west side of South Ocean Blvd. Applicant seeks Site Plan Review approval of the beach house and tunnel as required for all special exceptions in the R-A Zoning District. Variances are requested to construct a beach house, beach access stairs, a beach tunnel and stairs to that tunnel on land south of Southern Blvd. without a proper ocean bulkhead with a setback from the designated Ocean bulkhead line of ranging from 52.5 feet to 90.0 feet, in lieu of 150 foot minimum required by code; and, to construct tunnel stairs on the west side of South Ocean Blvd with the front yard setback of 8 feet, in lieu of 35 feet required by code. Applicant seeks to construct a seawall west of the Town's official Bulkhead Line (ranging from 5.9 feet to 80.1875 feet west of said bulkhead line), in lieu of on the bulkhead line as required by code. [Attorney: Francis X. J. Lynch]

[Architectural Commission Recommendation: Applicant requested deferral to the October 28th meeting. Carried 7-0]

Deferred from the September 9, 2015, Town Council Meeting

Request for Deferral to the November 12, 2015, Town Council Meeting Per Letter Dated September 18, 2015, from Francis X.J. Lynch.

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

- d. **VARIANCE #25-2015** The application of Cushing Investments LLC (Richard True); relative to property commonly known as **449 Australian Ave.**, described as lengthy legal description on file; located in the R-C Zoning District. The Applicant is requesting to construct a new 4,042 sq. ft. two-story residence on a lot with a width of 50 ft. in lieu of the 75 ft. minimum required and a lot area of 7,000

sq. ft. in lieu of the 10,000 sq. ft. minimum required. [Attorney: Maura Ziska, Esq.]

Deferred from the September 9, 2015, Town Council Meeting

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

2. New Business

- a. **SPECIAL EXCEPTION #29-2015 WITH VARIANCE** The application of Keith Frankel; relative to property commonly known as **1900 S. Ocean Blvd.**, described as lengthy legal description on file; located in the R-AA Zoning District. The Applicant is requesting a Special Exception approval to construct a 500 sq. ft. beach cabana on an ocean parcel across the street from the main residence which is located in the R-AA Zoning District (previously approved as Special Exception #3-2014 with Variance but expired). A variance is requested to allow the beach cabana to have a setback of 26.83 feet from the designated ocean bulkhead line established in Chapter 62 on lieu of the 150 foot minimum setback required (previously approved as Special Exception #3-2014 with Variance but expired). [Attorney: Maura Ziska, Esq.]

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

- b. **VARIANCE #26-2015** The application of Roberto and Joanne de Guardiola; relative to property commonly known as **12 Lagomar Rd.**, described as lengthy legal description on file; located in the R-A Zoning District. The Applicant is requesting variances to construct a tennis court and associated required perimeter fence with a 6.25 street side yard setback in lieu of the 35 foot minimum required and a 5.5 foot front yard setback in lieu of the 35 foot minimum required, and, to construct a 10 foot high fence around the tennis court in the front yard and street side yard setback in lieu of the 6 foot maximum allowed. [Attorney: Maura Ziska, Esq.]
[Architectural Commission Recommendation: Applicant requested deferral to the October 28th meeting. Carried 7-0]

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Request for Deferral to the November 12, 2015, Town Council Meeting Per Letter Dated August 31, 2015, Maura A. Ziska.

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

- c. **VARIANCE #27-2015** The application of Nicholas Somers, Manager of Via Del Mar, LLC (Owner of 204 Via Del Mar) and Robert and Linnette Miller (owner of 210 Via Del Mar); relative to property commonly known as **204 Via Del Mar and 210 Via Del Mar**, described as lengthy legal descriptions on file; located in the R-A Zoning District. The applicant is proposing a lot split which requires the following variances: to allow a lot coverage for 210 Via Del Mar to be 29% in lieu of the 25% minimum required; to allow an east side yard setback of 5 feet in lieu of the 15 foot minimum required; and, to allow a front yard landscaped open space of 37% in lieu of the 45% minimum required. [Attorney: Maura Ziska, Esq.]
[Landmark Commission Recommendation: Implementation of the variances will not cause negative architectural impacts to the landmark property and only 210 Via Del Mar is landmarked. Carried 7-0]

3. Other

- a. Request for Fine Reconsideration (Construction Time Allotment):
330 Island Road

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Deferred from the September 9, 2015, Town Council Meeting

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

VIII. ORDINANCES

A. Second Reading

1. **ORDINANCE NO. 24-2015** An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning; Article VIII, Supplementary District Regulations, By Creating Section 134-1734 Regulating Playground Equipment And Prohibiting Tree Houses; By Creating Section 134-1735 Regulating Basketball Goals; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

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

B. First Reading

1. **ORDINANCE NO. 25-2015** An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning; Article I, In General, Section 134-2 To Modify The Definition Of Supplemental Parking; Section 134-38 By Creating A Fee For Administrative Approval Of A Parking Exception And Supplemental Off-Site Parking; Section 134-2175 By Providing Clarification And Cross Referencing Of Relevant Sections Of The Code; Section 134-2176 Providing An Exception In The C-WADistrict To Allow A Percentage Of Unused Off-Street Parking Within A Parking Garage To Be Shared With Other Commercial Uses In That District; Section 134-2177 Providing Regulations To Allow Administrative Approval Of Off-Site Supplemental Shared Parking; Section 134-2178 By Providing Clarification Of When Collective Use Is Permitted; Section 134-2182 By Modifying The Existing Regulations For Off-Site Supplemental Shared Parking To Eliminate A Scriveners Error Referencing The C-PC Zoning District, Cross Reference Appropriate Sections Of The Code, Allow An Administrative Approval For Supplemental Off-Site Parking And An Appeal Process For The Revocation Of Said Approval; Section 134-2183 Creating A Sunset Provision For The Modification Of The Definition For Supplemental Parking And Administrative Approval Of Off-Site Supplemental Parking; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

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Deferred from the September 9, 2015, Town Council Meeting

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

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:** All back-up material for the items listed on the agenda are posted to the Town's website and emailed to all Stay Informed subscribers on the Friday before the Town Council meeting. To access the back-up materials and/or subscribe to the Stay Informed list, please visit the Town's website (townofpalmbeach.com).

PROCEDURES FOR PUBLIC PARTICIPATION

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

PUBLIC HEARINGS:

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

COMMUNICATIONS FROM CITIZENS:

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

OTHER AGENDA ITEMS:

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

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

TOWN OF PALM BEACH

Town Council Meeting Development Review on: October 14, 2015

Section of Agenda

Time Extensions

Agenda Title

Request for Waiver of Section 42-199, Hours of Construction Work at The Esplanade, Suite 234, Cooklyn Palm Beach, (Per Letter Dated September 30, 2015 from James M. Crowley, Esquire)

Presenter

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

Supporting Documents

- [Memorandum Dated October 2, 2015 from John S. Page](#)
- [Letter Dated September 30, 2015 from James M. Cowley](#)
- [Letter Dated October 1, 2015 from James M. Crowley](#)
- [Construction Schedule](#)
- [Letter Dated September 30, 2015 from Robin L. Miller](#)
- [Letter Dated September 30, 2015, from Laurel Baker](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: October 14, 2015

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

Re: Request for Waiver of Section 42-199, Hours of Construction Work at 150 Worth Avenue, The Esplanade, Suite 234, Cooklyn Palm Beach

Date: October 2, 2015

STAFF RECOMMENDATION

Staff recommends that the Town Council consider a request to allow construction work to occur in the Worth Avenue Zoning District following the annual cut-off date of October 31 (after which all work is prohibited during the “season” until May 1).

GENERAL INFORMATION

Town Code disallows construction work in the C-WA Zoning District between the months of November through April. Cooklyn received Special Exception approval from the Town Council on July 15th this year. As outlined within the attached seasonal extension request letter of September 30 from attorney James Crowley, the restaurant is attempting to open in time to capture as much of the upcoming 2015-2016 season as possible.

Staff would like to share the following concerns with the Town Council:

- No building permit has been issued as of October 2 (date of this Memo). It should be noted, however, that an initial demolition permit was issued in July and “finaled” in August.
- The seasonal time extension request letter of September 30 was received prior to the submittal of building plans.
- It is reported to PZB that complete building plans should be delivered to Town Hall at any time, yet we await a complete set of construction plans/permit application at date of this Memo.
- The Building Official begins to closely scrutinize incoming building permit applications in late September each year in order to determine if adequate time exists for project completion no later than October 31. Permits are not issued for projects that will most definitely extend into the prohibited Worth Avenue work season.

- A second, attached letter from attorney Crowley, dated October 1, indicates that all work will be complete by January 20, with all inspections being completed by January 29.
- A completion date by end of January would extend nearly three months into the six month time prohibition.

The applicant has outlined an opinion that the project will be non-intrusive, and is expected to present this reasoning to the Council on October 14. If the Town Council opts to approve the request, then staff would suggest that the following conditions be placed on such approval:

- Work hours be allowed from 8:00 am to 5:00 pm Mondays through Fridays only.
- No work be allowed on weekends or Town recognized holidays.
- All deliveries be made during permissible working hours/days, utilizing the Esplanade parking garage in lieu of any public right-of-way.
- All construction “staging” be conducted utilizing the Esplanade parking garage in lieu of any public right-of-way.
- No construction workers shall congregate or loiter on Worth Avenue.
- No exterior work be allowed after November 1 with the exception of installing doors and glass, as well as stucco finish and paint (per request letter).
- Any verified complaints from neighbors may revoke extended work authorization.
- Submission of an affidavit that all property owners, businesses and residents (Condominium Association if a condominium) within a 200’ radius of the subject property have been notified of this request by mail at least 10 days prior to the scheduled hearing date. Attorney or contractor must provide a copy of this affidavit and a copy of the notice to the Building Official no later than 5 days prior to the scheduled hearing date.

As a side note, a supportive letter from the Worth Avenue Association (attached) was submitted with attorney Crowley’s original request letter.

SPECIAL CONSIDERATIONS

If granted, it is further recommended that the Council specify a firm completion date. If not completed by said date, the owners must voluntarily stop all work, and shall not recommence any further construction work until or unless additional Town Council authorization to proceed is secured, or until the seasonal work restriction expires (April 30).

Attachments

cc: James Crowley, Attorney for applicant
 Scott Sloane, Contractor
 Yvonne Jones, Esplanade
 Bill Bucklew, Building Official
 Paul Castro, Zoning Administrator
 Nick Caristo, Code Enforcement
 John C. Randolph, Town Attorney



September 30, 2015

VIA HAND DELIVERY

Bill Bucklew, Building Official
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RECEIVED
SEP 30 2015
TOWN OF PALM BEACH
DPB DEPT

**Re: Request for Waiver from Section 42-199: Construction on Worth Avenue
after November 1**

Dear Mr. Bucklew:

As you know from our recent discussions, we represent Cooklyn Palm Beach, LLC ("Cooklyn"), a restaurant that has received special exception site plan approval from the Town Council to operate at The Esplanade, Suite 234. The purpose of this letter is to request a Waiver from Section 42-199 of the Town Code to allow Cooklyn to complete the interior buildout of the restaurant space after November 1, 2015.

It is important to note at the outset that a demolition permit has been issued by the Town and that most of the demolition work at this space has been completed. Also, because of the layout of the Esplanade building, there will be minimal interference to Worth Avenue should construction continue after November 1. Suite 234 is located in the southeast corner of the Esplanade's second floor, and thus the construction will not be visible from the street or neighboring properties. There will be no staging of work or parking of construction vehicles on Worth Avenue, as all work can be staged in the internal parking garage and delivered to Suite 234 through an existing service elevator. No exterior work is proposed after November 1 except for the installation of doors and glass, which will be set into previously-installed frames, as well as stucco finish and paint work. No work is proposed for the main façade of the Esplanade that fronts on Worth Avenue, and no work will be done on legal holidays.

As you know, this space has always been occupied by restaurants, and thus the proposed renovations are minor in nature and will not cause a negative impact to Worth Avenue, the surrounding businesses, or neighboring properties. In accordance with Town procedures, we have requested an approval letter from the Worth Avenue Association, which is attached hereto. Our contractor, Scott Sloane, has prepared a proposed construction schedule, which we will be sending by separate letter.

Bill Bucklew, Building Official

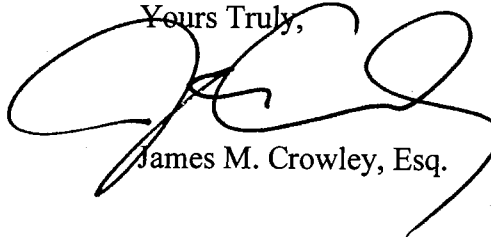
September 30, 2015

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We respectfully ask that you schedule this request for the October 14, 2015 Town Council agenda. It is very important to Cooklyn, the retail tenants at the Esplanade, and the entire Avenue that this work be finished so that the restaurant can open for the remainder of the 2015-2016 Season. We will be sending out the requisite notice to surrounding property owners at least 10 days prior to the October Town Council meeting.

I sincerely appreciate the time you and Mr. Page have given us thus far.

Yours Truly,

A handwritten signature in black ink, appearing to be "JMC", written over the typed name "James M. Crowley, Esq.".

James M. Crowley, Esq.

JMC/op

cc: John Page, Planning, Director of Planning, Zoning and Building
Tom Bradford, Town Manager
Robert Moore
Scott Sloane
Greg Trautman
Yvonne Jones

WPB_ACTIVE 6782321.2

October 1, 2015

VIA EMAIL

Bill Bucklew, Building Official
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

**Re: Cooklyn Palm Beach - Request for Waiver from Section 42-199:
Construction on Worth Avenue after November 1**

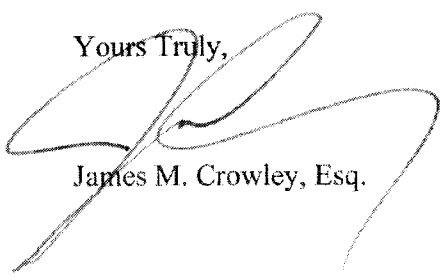
Dear Mr. Bucklew:

Mr. Page asked that I follow up on my letter from yesterday regarding our waiver request for construction at the Esplanade, Suite 234. We have sent a construction schedule to Mr. Page outlining the details of the work to be done.

As noted on the construction schedule, all work will be complete by January 20, 2016 and all final inspections will take place by January 29th. As I mentioned in yesterday's waiver request, the majority of the work will take place in the interior of Suite 234 and none of the work will be visible from the street. Having said that, doors and glass are being delivered on December 17 and the process of installing these doors and windows will take until January 7th. Other than that work, and some exterior painting and stucco finish, all work will take place in the interior of Suite 234.

Please let me know if you have any further questions.

Yours Truly,

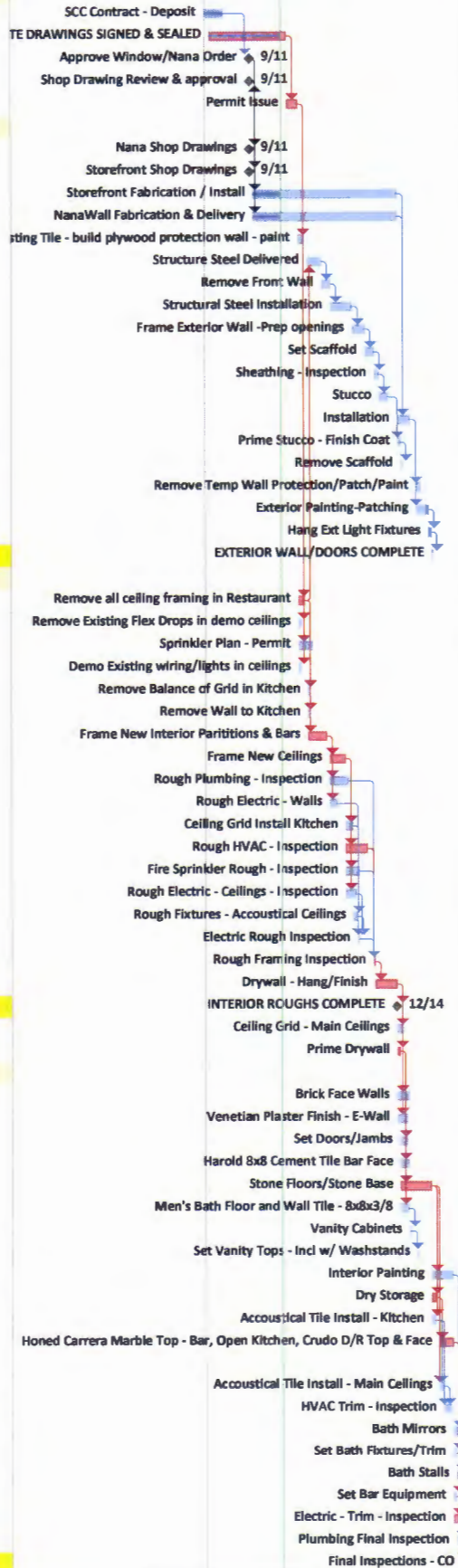

James M. Crowley, Esq.

JMC/lc

cc: John Page, Director of Planning, Zoning and Building

WPB_ACTIVE 6783665.1

ID	Task Name	Duration	Start	Finish	Predecessors	April	May	June	July	August	September	October	November	December	January
						M	E	B	M	E	B	M	E	B	M
Resource Names: 1000 - Gen Conditions															
2	SCC Contract - Deposit	8 day:	8/14/15	8/25/15											
3	COMPLETE DRAWINGS SIGNED & SEALED	7.2 wk	8/17/15	10/5/15											
5	Approve Window/Nana Order	0 day:	9/11/15	9/11/15	2										
21	Shop Drawing Review & approval	0 day:	9/11/15	9/11/15	19,20										
4	Permit Issue	5 day:	10/6/15	10/12/15	3										
Resource Names: 3000 - Ext Walls															
19	Nana Shop Drawings	0 wks	9/11/15	9/11/15	5										
20	Storefront Shop Drawings	0 wks	9/11/15	9/11/15	5										
22	Storefront Fabrication / Install	13 wk	9/14/15	12/15/15	21										
23	NanaWall Fabrication & Delivery	13 wk	9/14/15	12/15/15	21										
7	Cover Existing Tile - build plywood protection wall	4 day:	10/13/15	10/16/15	4										
13	Structure Steel Delivered	7 day:	10/19/15	10/27/15	8										
14	Remove Front Wall	4 day:	10/28/15	11/2/15	13										
15	Structural Steel Installation	10 da	11/3/15	11/16/15	14										
28	Frame Exterior Wall - Prep openings	6 day:	11/17/15	11/24/15	15										
33	Set Scaffold	2 day:	11/25/15	11/30/15	28										
34	Sheathing - Inspection	3 day:	12/1/15	12/3/15	33										
35	Stucco	4 day:	12/4/15	12/9/15	34										
24	Installation	6 day:	12/16/15	12/23/15	23,22										
55	Prime Stucco - Finish Coat	2 day:	12/16/15	12/17/15	35FS+4 days										
36	Remove Scaffold	1 day	12/18/15	12/18/15	55										
11	Remove Temp Wall Protection/Patch/Paint	3 day:	12/28/15	12/30/15	24										
56	Exterior Painting-Patching	4 day:	12/28/15	1/4/16	24										
80	Hang Ext Light Fixtures	2 day:	1/5/16	1/6/16	56										
81	EXTERIOR WALL/DOORS COMPLETE	1 day	1/7/16	1/7/16	80										
Resource Names: 6000 - Roughs															
8	Remove all ceiling framing in Restaurant	4 day:	10/13/15	10/16/15	4										
69	Remove Existing Flex Drops in demo ceilings	2 day:	10/13/15	10/14/15	4										
73	Sprinkler Plan - Permit	7 day:	10/13/15	10/21/15	4										
76	Demo Existing wiring/lights in ceilings	2 day:	10/13/15	10/14/15	4										
9	Remove Balance of Grid in Kitchen	1 day	10/19/15	10/19/15	8										
10	Remove Wall to Kitchen	1 day	10/19/15	10/19/15	8										
26	Frame New Interior Partitions & Bars	10 da	10/19/15	10/30/15	8										
27	Frame New Ceilings	8 day:	11/2/15	11/11/15	26										
64	Rough Plumbing - Inspection	10 da	11/2/15	11/13/15	26										
77	Rough Electric - Walls	1 wk	11/2/15	11/6/15	26										
47	Ceiling Grid Install Kitchen	3 day:	11/12/15	11/16/15	27										
70	Rough HVAC - Inspection	10 da	11/12/15	11/25/15	27										
74	Fire Sprinkler Rough - Inspection	7 day:	11/12/15	11/20/15	27										
78	Rough Electric - Ceilings - Inspection	1 wk	11/12/15	11/18/15	27										
82	Rough Fixtures - Acoustical Ceilings	3 day:	11/17/15	11/19/15	47										
83	Electric Rough Inspection	1 day	11/20/15	11/20/15	77,78,82										
29	Rough Framing Inspection	1 day	11/30/15	11/30/15	64,70,83,74										
30	Drywall - Hang/Finish	10 da	12/1/15	12/14/15	29										
31	INTERIOR ROUGHS COMPLETE	0 day:	12/14/15	12/14/15	30										
48	Ceiling Grid - Main Ceilings	4 day:	12/15/15	12/18/15	30										
54	Prime Drywall	2 day:	12/15/15	12/16/15	30										
Resource Names: 9000 - Finishes															
17	Brick Face Walls	6 day:	12/15/15	12/22/15	30										
37	Venetian Plaster Finish - E-Wall	5 day:	12/15/15	12/21/15	30										
39	Set Doors/Jambs	3 day:	12/17/15	12/21/15	54										
42	Harold 8x8 Cement Tile Bar Face	4 day:	12/17/15	12/22/15	54										
43	Stone Floors/Stone Base	2 wks	12/17/15	1/5/16	54										
44	Men's Bath Floor and Wall Tile - 8x8x3/8	4 day:	12/17/15	12/22/15	54										
61	Vanity Cabinets	1 day	12/23/15	12/23/15	44										
45	Set Vanity Tops - Incl w/ Washstands	1 day	12/28/15	12/28/15	61										
57	Interior Painting	10 da	1/6/16	1/19/16	43										
62	Dry Storage	3 day:	1/6/16	1/8/16	43										
49	Acoustical Tile Install - Kitchen	3 day:	1/6/16	1/8/16	43										
41	Honed Carrera Marble Top - Bar, Open Kitchen, Crudo D/R Top & Face	7 days	1/11/16	1/19/16	62										
50	Acoustical Tile Install - Main Ceilings	3 day:	1/11/16	1/13/16	43,49										
71	HVAC Trim - Inspection	3 day:	1/14/16	1/18/16	49,50										
52	Bath Mirrors	7 day:	1/20/16	1/28/16	57										
65	Set Bath Fixtures/Trim	2 day:	1/20/16	1/21/16	57										
59	Bath Stalls	2 day:	1/22/16	1/25/16	65										
66	Set Bar Equipment	2 day:	1/20/16	1/21/16	41										
79	Electric - Trim - Inspection	3 day:	1/20/16	1/22/16	41										
67	Plumbing Final Inspection	2 day:	1/22/16	1/25/16	65,66										
84	Final Inspections - CO	5 day:	1/25/16	1/29/16	79										



WA
WORTH AVENUE
PALM BEACH Since 1938

September 30, 2015

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

RE: Cooklyn Palm Beach, The Esplanade

Dear Town Council Members:

On behalf of the Board of Directors of Worth Avenue Association, I submit our sincere request to the Town Council to grant flexibility with the Town's construction deadlines for Cooklyn Palm Beach.

Although it is unfortunate that the restaurant will not be open at the very beginning of the season, we still feel that the health and well-being of the entire shopping center will be impacted negatively if the restaurant is not permitted to continue its interior work (only) beyond the November 1st deadline, giving it a chance to open early in the height of the season.

It is our understanding that only interior work will take place after November 1st and that there will be no impact on balconies, sidewalks or obvious signs of construction that will be seen by visitors to the center. Nor will there be any negative impact to adjacent tenants during this time.

The Worth Avenue Association requests however, that there be no construction trucks or associated worker/laborer traffic permitted to be parked on the Avenue during that time. Since the center has its own parking facility, this should represent no problem whatsoever for the restaurant.

Thank you for your consideration of this very important addition to our beloved Avenue.

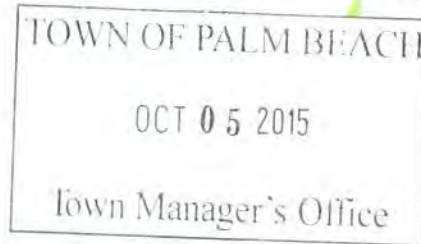
Respectfully,



Robin L. Miller
General Manager

September 30, 2015

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



RE: Cooklyn

Worth Avenue's revitalization has made a tremendous difference these past two years. Residents are rightly proud of the work undertaken by the merchants in partnership with the town. Visitors are in awe of the inviting street.

With the addition of Cooklyn to the Esplanade, there will be a full complement of goods and services to cater to every taste. The restaurant's arrival in Palm Beach is testimony to the town's magnetism.

The chamber encourages approval of the extension requested to ensure that residents and visitors alike will be able to fully enjoy this eclectic addition to the Avenue. With construction limited to the interior, there will be no interruption to the comforts and conveniences afforded the center.

Sincerely,

Laurel Baker

executive committee

dale hedrick, president
hedrick brothers construction
ray celedinas, vice-president
celedinas insurance
ava van de water, vice-president
brown harris stevens
kirk beerthuis, treasurer
bar a bank
laurel baker, secretary
palm beach chamber of commerce

board of directors

margrit bessenroth
wilder margrit
carrie bradburn
capehart photography
dr. earl campazzi
east caribbean med
roger everingham
the colony palm beach
kevin lamb, esq.
james foster
john maus
maus & hoffman
jill staudt
palm beach daily news
michele wilde
the breaker palm beach
james a. ponce
historian

laurel baker
executive director
sandy coto
member at large director

TOWN OF PALM BEACH

Town Council Meeting Development Review on: October 14, 2015

Section of Agenda

Development Review - Old Business

Agenda Title

Consideration of a Construction Management Agreement for Redevelopment of the Testa's site (Site Plan Review #13-2014 with Special Exceptions and Variances (Modified), **221 & 231 Royal Poinciana Way, 214 & 216 Sunset Avenue**, all previously approved) [Attorney: Francis X. J. Lynch]
Deferred from the June 10, 2015, July 15, 2015, and August 11, 2015, Town Council Meetings

Presenter

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

Supporting Documents

- [Memorandum Dated October 1, 2015, from John S. Page](#)
- [Construction Management Agreement](#)
- [Summary Project Schedule](#)
- [Proposed Site Logistics & Equipment Access Plan](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: October 14, 2015

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

Re: Proposed Construction Management Agreement- Site Plan Review No. 13-2014 with Special Exceptions and Variances (Testa's)

Date: October 1, 2015

STAFF RECOMMENDATION

Staff recommends that the Town Council consider the proposed Construction Management Agreement with the modifications proposed by Staff in add/delete format (copy attached).

GENERAL INFORMATION

The Town Council conditionally approved the Special Exception with Variances portion of the subject zoning application at its April 15, 2015 meeting. As part of the approval, the Council included a condition that the applicant enter into a Construction Management Agreement with the Town outlining conditions for control of construction activity, a construction time line, and remedies for violation of the Agreement. On June 10, 2015, the Town Council approved the remaining Site Plan Review portion of the application. The Construction Management Agreement has been deferred several times, leading up to its consideration in October.

Applicant has provided Staff with a Draft Agreement for internal review. Staff proposed modifications to the proposed Agreement (copy attached) are in add/delete format. Staff changes are intended to address issues related to the construction of the project that may be disruptive to the neighborhood. The draft Agreement includes construction schedule deadlines, lighting restrictions, provisions for erosion control, hours of construction, limitations on material and equipment deliveries, noise requirements, dust control, excavation procedures, dewatering, concrete pour requirements, construction parking requirements and remedies for violation of those conditions. The applicant has agreed to all modifications except the "Remedies for Violation" language. Applicant believes the penalties for violation of the proposed Agreement are too stringent and will be prepared to address this issue at the meeting.

The property owner's proposed Summary Project Schedule and Site Logistics and Equipment Access Plan, which are part of the Agreement, are also attached for your consideration. The proposed construction time line is thirty months from beginning to completion, and if approved,

cannot be extended without Council approval. The construction proposal in the Site Logistics and Equipment Access Plan includes a request for the closure of the sidewalk on the south side of Sunset Avenue, and relocation of the existing Royal Poinciana Way sidewalk further south into the right-of-way (currently on-street parking spaces and curb cuts). Though not identified in the Plan, the applicant has also discussed with Staff a possible traffic lane closure at some point during the construction process. It should be noted that the Planning, Zoning and Building Department is extremely concerned about the logistics of deliveries and staging of construction material and equipment, and the possible negative impacts during construction. All of these issues need to be discussed and resolved by the Town Council.

If you have any questions regarding the proposed Agreement or its attachments, please contact Paul Castro, Zoning Administrator at 227-6406.

TOWN ATTORNEY REVIEW

The draft “Construction Management Agreement” with attachments have been reviewed by Town Attorney John C. Randolph for legal form and sufficiency.

Attachments

cc: Jay Boodheshwar, Deputy Town Manager
Veronica B. Close, Asst. Director, Planning, Zoning & Building
Paul Castro, Zoning Administrator
Kirk Blouin, Director of Public Safety
Paul Brazil, Public Works Director
Bill Bucklew, Building Official
Tim Pompos, Fire Marshal
Frank Lynch
zf & pf

This instrument prepared by
and return to:

Francis X. J. Lynch, Esquire
Breton, Lynch, Eubanks & Suarez-Murias, P.A.
605 North Olive Avenue, 2nd Floor
West Palm Beach, FL 33401

CONSTRUCTION MANAGEMENT AGREEMENT

THIS CONSTRUCTION MANAGEMENT AGREEMENT is made and entered into this ____ day of _____, 2015, by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 ("Town") and T3 FAMILY INVESTMENTS, LLC, a Florida limited liability company, 439 Worth Avenue, Palm Beach, Florida 33480 ("Owner"), which terms will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH:

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

WHEREAS, the Property Land is owned by the Owner in fee simple;

WHEREAS, the Property Land is not at this time encumbered by a mortgage or other financing;

WHEREAS, the Property Land is zoned C-TS, Commercial Town Serving and commercial and residential uses are allowable uses within such zoning category;

WHEREAS, the Town Council on May 13, 2015, conditionally approved the following Special Exceptions:

1. special exception approval to allow residential tenancy above the first floor, as required by Section 134-1109(a)(3) for six (6) condominium units,
2. special exception approval to allow two (2) stories, as required by Section 134-1113(8)(c),
3. special exception to allow Testa's Restaurant to occupy over 3,000 square feet gross leasable area and 152 seats, as required by Section 134-1109(a)(11) and
4. special exception to allow outdoor seating for 60 of the 152 seats outdoors for Testa's Restaurant, as required by Section 134-1109(a)(11) and 134-1111(a),

~~subject to the conditions set forth herein and the approval of this Agreement, and on the basis of the specific findings of the Town Council that the approval of the Special Exceptions, in compliance with said conditions, will not be adverse to the public interest and upon a finding of the Town Council that the applicable provisions of the Town Code governing the use of the Land and special exceptions have been met (the "Special Exceptions");~~

WHEREAS, the Town Council on May 13, 2015, approved the following Variances:

1. Variance 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 134-2179(a).
- ~~1. variance to allow landscaped open space, building lot coverage and building length to be determined by the improvements below grade rather than as required in Section 134-1164,~~
2. Variance to allow a total of 86 off-street parking spaces in lieu of the required 140 off street parking spaces as required by Section 134-2175.
3. Variance to allow a maximum building length of 250.9 feet in lieu of the maximum allowed 150 feet allowed per Section 134-1113(10)(b).
4. Variance to allow for a landscaped open space of 12.2% in lieu of the minimum 25% required by Section 134-1113(11)(b).
5. Variance to allow a two (2) story building to be 106,642 square feet in lieu of the maximum allowed 15,000 square feet as required by Section 134-1113(12)(b).
6. Variance to allow lot coverage of 81.2% in lieu of 70.0%, as maximum permitted by Code Section 134-1113(9)(b).

WHEREAS, subject to the a condition of approval of the special exceptions and variances set forth herein and the approval of this Agreement is that the Owner enter into a Construction Management Agreement, and on the basis of the specific finding of the Town Council that the approval of the Special Exceptions and Variances are in compliance with said condition and will not be adverse to the public interest, and upon a findings of the Town Council that the applicable provisions of the Town Code governing the use of the Property Land and the Special exceptions and Variances have been met ~~(the "Variances")~~;

WHEREAS, the Town Council approved on June 10, 2015 the Site Plan Review portion of the application, subject to the ~~condition set forth herein and the~~ approval of this Agreement, and on the basis of the specific finding of the Town Council that the approval of the Site Plan Review, is in compliance with said conditions, will not be adverse to the public interest, and upon a finding by the town Council that the applicable provisions of the Town Code governing the use of the Property Land and site plans have been met;

WHEREAS, in approving the Site Plan Review, Special Exceptions and Variances, the conditions ~~of the approval reflected~~ in this Construction Management Agreement ~~herein~~ are imposed in order to ~~regulate the use~~, mitigate any adverse impacts of the ~~use~~ redevelopment of the Property, as well as to insure that said ~~use~~ demolition and construction shall not be adverse to the public interest ~~and the surrounding property owners; and~~

~~WHEREAS, all the representations made herein are true and accurate and the granting of the Special Exceptions, Variances and Site Plan Review are conditioned upon the representations made herein and all of the conditions herein imposed.~~

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

REPRESENTATION OF OWNERSHIP

Owner owns unencumbered fee simple title to the Property Land. Owner has full right to enter into this Agreement and to bind the Property Land and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Property Land in accordance with the terms and conditions of this Agreement. No consent to execution, delivery and performance hereunder is required from any person, entity, 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 Land is subject.

ARTICLE III

COMMERCIAL AND ACCESSORY OFFICE USES

The use of the Property Land shall be for commercial and residential uses in compliance with all of the information and exhibits included in the application, not inconsistent with the terms and conditions set forth herein, set forth in the application submitted to the Town for Site Plan Review No. 13-2014 with Special Exceptions and Variances, as amended, (the "Application") approved by Town Council on May 13, 2015 (hereinafter referred to as the "Approval"). Any usages not specifically set forth in the Approval are excluded from the Town's approval of the Plan pursuant to that provision of the Town Code which provides that no

subsequent deviation may be made from the application as approved by the Town Council except upon new application to and approval by the Town Council. Any additional uses of the Property Land shall be subject to the approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Architectural Review Commission ("ARCOM") of the Town, Palm Beach County, the State of Florida, the United States Government and/or any agencies under any of the foregoing governmental authorities.

ARTICLE IV

CONDITIONS

The Property Land is approved for a building of 106,642 gross square feet with two (2) stories above ground, containing 63,680 square feet, including first floor commercial space of 18,080 square feet and six (6) residential units on the second floor, one (1) level of underground parking containing 42,962 square feet including eighty-six (86) parking spaces and the square footages and configurations as shown on sheets 1 through 32 prepared by Dailey Janssen Architects, P.A., sheets L-1 through L-4 prepared by Parker-Yannette, sheets 1 of 2 and 2 of 2 prepared by Keshavarz & Associates and the boundary survey sheet 1 of 1 prepared by Keshavarz & Associates, all of which are part of a package stamp dated June 26, 2015 and made part of the approval of this application. In addition, attached added sheets 12 and 13 prepared by Dailey Janssen Architects, P.A., stamp dated June 29, 2015. (hereinafter the "Plan").

ARTICLE V

CONSTRUCTION

The Owner shall follow the Schedule of Construction as set forth in Exhibit B ("Schedule") attached hereto. The completion date in said Schedule may only be modified with the consent of the Town Council. The dates within the schedule may be modified with the consent of the Building Official provided that construction does not exceed the maximum number of days allowed by the Town Council as provided for in the attached Schedule. The Town shall use its best efforts to expedite review and issuing of the building permit and/or any modifications to the building permit. Such modifications shall be monitored and approved by the Building Official. The Owner's construction personnel shall provide to the Town's Building Official a progress report on the Schedule on the 1st business day of each month starting at the beginning of demolition of the Property.

The construction is approved subject to the following conditions:

1. The Owner's general contractor shall schedule and attend a pre-construction meeting with all of the subcontractors and Town Staff prior to the issuance of a demolition permit or a building permit.
2. The Owner's general contractor shall designate two project managers who can be contacted by the Town with respect to any issues involved with the construction. The

Owner shall meet with the Town and all abutting property owners prior to beginning construction and provide the Town and abutting property owners with the contact information of the two project managers for the construction project. The contact information shall include the names, cell phone numbers and identification pictures of the two project managers. Should the project managers or their contact information change, the Owner shall provide the new contact information to the Town and abutting property owners. At least one of those project managers shall be on the Property at all times when construction work is being done on the Property.

3. Owner may be required to hire a resident inspector if deemed necessary by the Building Official per Section 109.3.7 of the Code of Ordinances.
4. A construction status report shall be delivered by Owner's contractor to the Town on the first business day of each month starting subsequent to the commencement of construction evidenced by the issuance of a building permit by Town, showing the anticipated completion times for each phase of construction and the current stage of completion for each phase. A monthly meeting shall be held with attendees from Owner's, Contractor and Sub-contractors, Public Works and the Planning, Zoning and Building Department to review the status.
5. Rodent extermination shall be completed prior to the start of demolition by a Florida licensed and bonded exterminator. A written report shall be provided on the extermination to the Town.
 - i. Removal of debris on an every other day basis shall be required of the contractor. Prior to the issuance of a demolition or construction permit the contractor shall provide the Town with an acceptable plan that identifies the staging area for debris accumulated on the Property. Said plan shall provide detailed information on how the contractor will screen the debris staging area from the neighboring property owners and street.
 - ii. Dust control shall be as prescribed by the Town Code of Ordinances as set forth in Section 42-164 . Water spray suppression shall be provided by the contractor, as deemed necessary by the Building Official . ~~Dust control shall be as prescribed by the Town Code of Ordinances. As deemed necessary by the Building Official, property line screening, netting and water spray suppression shall be provided by the contractor.~~
6. Any security lighting shall be shielded so that it shines downward and does not produce any light or glare which would adversely affect surrounding property owners. Such lighting shall be the minimum necessary to allow security surveillance of the Property.
7. Occupancy of right-of-way, erosion control, on-Property, and off-site parking and Property site utilization shall be according to plans prepared by Owner and approved by the Town.

8. Hours of construction shall be governed by Section 42-199 of Town's Code of Ordinances. No construction activity shall be allowed on Saturdays from December through April (except as allowed by Town Code), on Sundays, or on town observed holidays. Hours may be modified by special approval by the Town Council.
9. De-watering shall be accomplished by wellpoint only to a point where it is discharged into Town storm sewer system. Turbidity shall be monitored at the discharge from the site to where it enters the Town storm sewer system and where it discharges from Town facilities to the Lake Worth Lagoon, on a weekly basis and reported in writing to the Town Public Works Department on a weekly basis. Fees for the de-water discharge to Town storm sewer system shall be based on the total of \$0.21 per thousand gallons discharged plus a fee for clean out of the wet well to the pump station before and after completion of the de-watering activities plus any clean out of Town storm sewer system between the site and the pump station which may be required upon the completion of the de-watering.

Work hours on the Property site during the de-watering phase are limited to the construction hours regulated in Section 42-199 of the Code unless otherwise approved by the Town Council. Emergency access to the de-watering pumps as may be required by Town personnel or by Owner's contractor shall only be limited to purposes necessary to continue the operation or discontinue the operation of the de-watering until such time as normal work hours resume.

At such time as may be required by Town, suspension of the de-watering operation may be required. Access shall be provided to de-watering facilities for Town personnel on a 24-hour-a-day basis in the event that suspension of the de-watering is required. Suspension of the de-watering operation may be required under conditions, such as when Town storm sewer system has reached capacity, turbidity limits have been exceeded at the point of discharge to the Lake Worth Lagoon, or for any other reason as so determined by Town.

10. Excavated material shall be removed from the Property site in a condition or in such a manner that water, soil, sediments or etc. are not tracked onto Town rights-of-way.
11. Owner or its contractor shall develop a traffic plan for the removal of excavated material which minimizes impacts to Town. Excavated material shall only be removed from the Property site from Monday through Friday during the hours of 8 AM through 5 PM from May 1 through November 30. No excavation is to take place between December 1 and May 1. The excavation traffic control plan shall be prepared by the contractor with approvals required from Town of Palm Beach Police Department, Fire Rescue, Planning Building and Zoning Department and Public Works Department prior to commencement of work.
12. Owner shall be required to obtain Town Council approval for any concrete pours which exceed the hours allowed for construction or which require a continuous pour

of more than four hours. Prior to being considered by the Town Council, Owner shall provide a minimum 20 days written notice to all property owners and tenants within 300 feet of the Property and to those residential owners and tenants which either abut or are adjacent to the concrete truck route. In addition, as part of any approval for concrete pour, the contractor shall develop a traffic plan which is acceptable to the Town of Palm Beach Police, Fire Rescue, Planning, Zoning and Building and Public Works Departments prior to commencement of work.

Twenty days prior to the commencement of any concrete pour outside the hours allowed for construction or which requires a continuous pour of more than four hours, Owner shall provide written notice to all property owns and tenants within 300 feet of the Property. In addition, all residential property owners and tenants which either abut or are adjacent to the concrete truck route shall be provided written notice twenty days prior to commencement of the concrete pour. The notice shall be approved by the Director of the Planning, Zoning and Building Department before it is mailed and shall state the date(s) and time(s) of the concrete pour(s), and any impact to traffic, traffic detours, parking, etc., which might occur during those periods.

On the immediate Sunday and Thursday prior to the concrete pour for the foundation mat, Owner shall place a quarter page advertisement in the Palm Beach Daily News that provides notice of the dates and times of the proposed activity including the procedure, any impacts Town determines may occur to traffic, and showing any detour routes which may be required. Said notice shall be reviewed and approved by the Director of the Planning, Zoning and Building Director prior to its publication. Storage and delivery area plans shall be submitted and approved by the Town prior to the issuance of a building permit.

The Property shall be fenced and screened from view by an eight foot high green mesh fence. All construction deliveries shall be conducted on the Property and not in the public rights-of-way, unless prior approval from the Town's Police and Public Works Departments are obtained. In addition, prior approval shall also be required from the Town Police department to bring in large deliveries that may block the street or access into the Property.

~~Owner shall be required to obtain Town Council approval for any concrete pours which exceed the hours allowed for construction or which require a continuous pour of more than four hours. Prior to being considered by the Town Council, Owner shall provide a minimum 20 days written notice to all property owners and tenants within 300 feet of the Lane and to those residential owners and tenants which either abut or are adjacent to the concrete truck route. In addition, as part of any approval for concrete pour, the contractor shall develop a traffic plan which is acceptable to the Town of Palm Beach Police, Fire Rescue, Planning, Zoning and Building and Public Works Departments prior to commencement of work.~~

~~—Twenty days prior to the commencement of any concrete pour outside the hours allowed for construction or which requires a continuous pour of more than four hours,~~

~~Owner shall provide written notice to all property owners and tenants within 300 feet of the subject property. In addition, all residential property owners and tenants which either abut or are adjacent to the concrete truck route shall be provided written notice twenty days prior to commencement of the concrete pour. The notice shall be approved by the Director of the Planning, Zoning and Building Department before it is mailed and shall state the date(s) and time(s) of the concrete pour(s), and any impact to traffic, traffic detours, parking, etc., which might occur during those periods.~~

13. Construction trailers shall only be for Owner's general contractor and subcontractors. No trailers shall be allowed on the Property site for sales staff unless previously approved by the Town Council.
14. If valid noise, odor, dust control or other complaints are reported to the Town, the Town may order a cessation or modification of construction activities on the Property (for that portion of the work only that caused the valid noise, odor, dust control or other complaints, allowing the rest of the work to continue), until such time as the Town is satisfied that such complaints have been resolved. Upon receipt of a complaint which the Director of Planning, Zoning, and Building believes may be valid and prior to making a determination on the complaint, the Director shall notify Owner's project manager in writing and Owner shall provide a written response to the complaint within three days of the project managers receiving the Director's notification. A final determination shall be made within three (3) days of Owner's response to the Director. Owner shall have the right to appeal the Director's determination to the Town Council at the next scheduled Council meeting and that portion of the work subject to the complaint shall continue to be prohibited during the pendency of the appeal. If the appeal is granted in favor of the Owner, any time lost by not allowing construction during the appeal will be added to the end of the Schedule and will not be counted towards a violation of the time to complete the construction.

~~If valid noise, odor, dust control, erosion control or other complaints are reported to Town, Town may order a cessation or modification of construction activities at the site, until such time as the Town is satisfied that such complaints have been resolved. Upon receipt of a complaint which the Director of the Planning, Zoning and Building Department determines to be valid, the Director shall notify Owner and provide the opportunity for Owner to respond to the complaint prior to making a determination on the complaint. Owner shall have the right to appeal the Director's determination to the Town Council at the next scheduled meeting provided ten days notice is given in writing to the property owners within 300 feet of the subject property. The amount of time involved in delays relating to cessation of construction activity may be added onto the completion date of this Agreement.~~

ARTICLE VI

ASSIGNMENT

Owner may assign this Agreement as to its interests in the Property Land at its sole discretion. Prior to such assignment, Owner shall notify Town in writing of the pending assignment.

ARTICLE VII

VOLUNTARY AGREEMENT

The terms and conditions set forth in the Approval and this Agreement are agreed to voluntarily by Owner. Owner agrees to be bound by the, and Owner waives any legal objection it might otherwise have to said terms and conditions or parts thereof.

ARTICLE VIII

REMEDIES FOR VIOLATION

1. If the Owner fails to complete the construction in the maximum number of days allowed by the Code of Ordinances, the Owner shall pay to the Town a liquidated amount of \$2,000.00 per day for each calendar day past the maximum number of days allowed. An extension of the completion date shall be granted in the event of an "act of God" which would shut down the project for a period of time. An "Act of God" as defined in this Agreement is a tropical depression, named tropical storm, or a hurricane that impacts the Town of Palm Beach.
2. In addition to the above, for violations of any of the other conditions of this Agreement, Owner shall pay the Town a liquidated amount of \$2,000.00 for each day that any of the conditions of this Agreement are violated and which shall increase to \$5,000.00 per day after the fifth (5th) day of such violation.
3. All outstanding amounts imposed under this provision shall be paid by the Owner prior to the issuance of a certificate of occupancy for any building or structure on the Property.

In addition to the above, the Town and Owner 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 in the Code of Ordinances through the Building Inspector, ~~Code Inspector~~, Code Enforcement Officer, and Code Enforcement ~~b~~Board; (b) Town may initiate action to revoke the business tax receipt pursuant to applicable provisions of Town Code; (c) all remedies otherwise offered in the Town's Code of Ordinances; and (d) injunction, specific performance, and any and all other equitable relief through the civil courts in and for Palm Beach

County or the State of Florida. In the event 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, if it prevails, prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees either before or as a result of litigation, including appeals.

ARTICLE IX

PROVISIONS TO RUN WITH LAND/RECORDING

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

ARTICLE X

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 XI

EFFECTIVE DATE

The Effective Date of this Agreement shall be the day upon which Owner records this Agreement in the Official Records of Palm Beach County, Florida.

ARTICLE XII

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.

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: _____
MICHAEL PUCILLO
President Town Council

By: _____
THOMAS G. BRADFORD
Town Manager

T3 FAMILY INVESTMENTS, LLC

By: _____
DAVID FRISBIE, as Manager

RECOMMEND APPROVAL

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY

By: _____
PAUL CASTRO
Zoning Administrator

By: _____
JOHN C. RANDOLPH
Town Attorney

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, 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 did not take an oath.

NOTARY PUBLIC

My commission expires:

AFFIX NOTARY SEAL

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by MICHAEL PUCILLO, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. She is personally known to me and did not take an oath.

NOTARY PUBLIC

My commission expires:

AFFIX NOTARY SEAL

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by THOMAS G. BRADFORD, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. She is personally known to me and did not take an oath.

NOTARY PUBLIC

My commission expires:

AFFIX NOTARY SEAL

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by DAVID FRISBIE, as Manager of T3 FAMILY INVESTMENTS, a Florida limited liability company, on behalf of the corporation, who is personally known to me or produced _____ as identification and did not take an oath.

NOTARY PUBLIC

My commission expires:

AFFIX NOTARY SEAL

EXHIBIT A

LEGAL DESCRIPTION

Lots 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62, FLORAL PARK, according to the plat thereof recorded in Plat Book 2, Page 6, of the Public Records of Palm Beach County, Florida.

AND

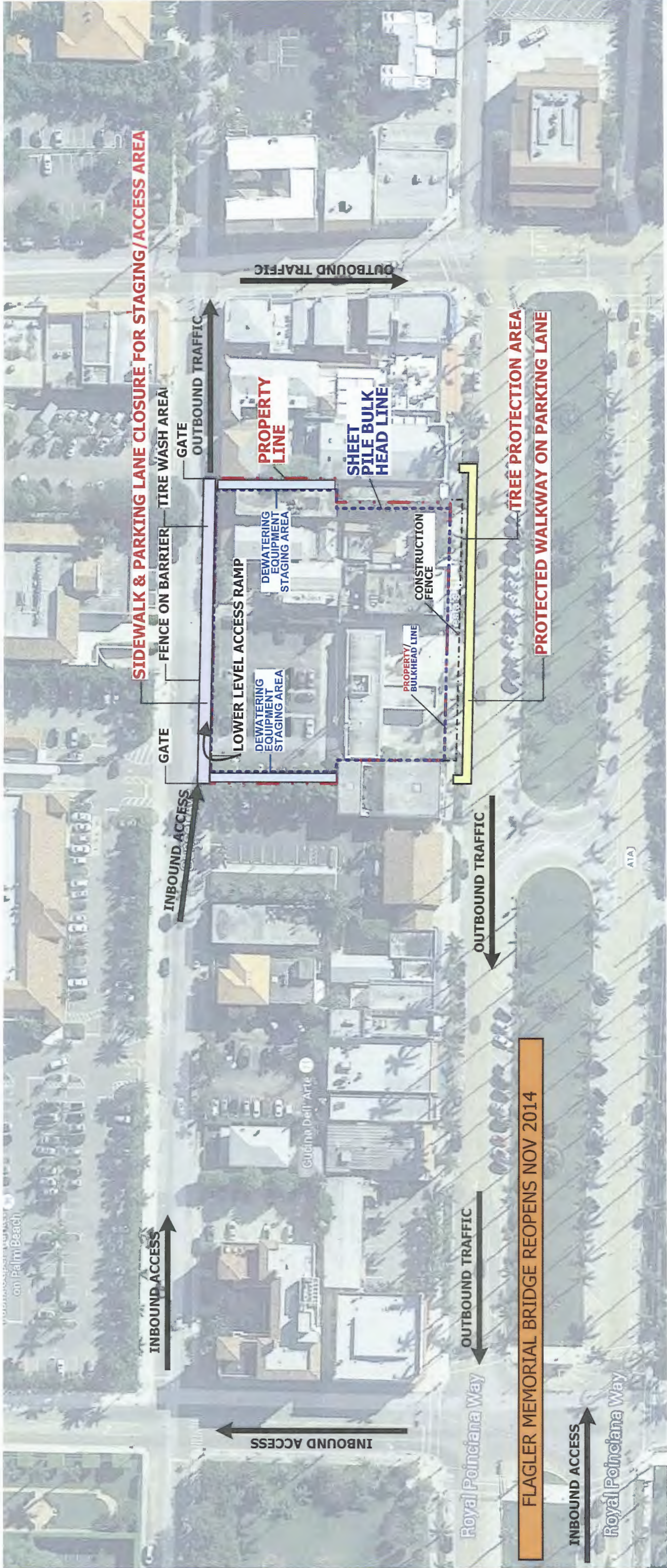
Lots 23, 24, 25, 26, 27, 28, 29, 30, 31 and the West 7.1 feet of Lot 32, FLORAL PARK ADDITION NO. 1, according to the Plat thereof recorded in Plat Book 5, Page 28, of the Public Records of Palm Beach County, Florida.

TESTA'S PALM BEACH

TESTA'S PALM BEACH – PROPOSED SITE LOGISTICS & EQUIPMENT ACCESS PLAN

216 SUNSET AVE, 214 AVE, 231 ROYAL POINCIANA WAY, 221 ROYAL POINCIANA WAY

PALM BEACH, FLORIDA, 33480



TOWN OF PALM BEACH

Town Council Meeting Development Review on: October 14, 2015

Section of Agenda

Development Review - Old Business

Agenda Title

MODIFIED SPECIAL EXCEPTION #27-2015 WITH SITE PLAN REVIEW AND VARIANCES The application of Il Sogno, LLC; relative to property commonly known as **1520 S. Ocean Blvd.**, described as lengthy legal description on file; located in the R-A/B-A Zoning Districts. The Applicant seeks Special Exception approval to construct a pedestrian access tunnel beneath South Ocean Blvd. connecting property owned by the applicant on the east side of South Ocean Blvd. and on the west side of South Ocean Blvd. including providing electric, gas, water and other utility services to a beach house on the east side of South Ocean Blvd. This proposal will require partial closure of South Ocean Blvd. to excavate and construct tunnel and utilities under the road. Applicant seeks Special Exception approval to construct a one story 500 sq. ft. beach house intended for the use of family and guests, without sleeping quarters, but with electric, gas, water, telephone and other utility services, on property it owns on the east side of South Ocean Blvd with the main residence located immediately to the west of the subject property on the west side of South Ocean Blvd. Applicant seeks Site Plan Review approval of the beach house and tunnel as required for all special exceptions in the R-A Zoning District. Variances are requested to construct a beach house, beach access stairs, a beach tunnel and stairs to that tunnel on land south of Southern Blvd. without a proper ocean bulkhead with a setback from the designated Ocean bulkhead line of ranging from 52.5 feet to 90.0 feet, in lieu of 150 foot minimum required by code; and, to construct tunnel stairs on the west side of South Ocean Blvd with the front yard setback of 8 feet, in lieu of 35 feet required by code. Applicant seeks to construct a seawall west of the Town's official Bulkhead Line (ranging from 5.9 feet to 80.1875 feet west of said bulkhead line), in lieu of on the bulkhead line as required by code.
[Attorney: Francis X. J. Lynch]
[Architectural Commission Recommendation: Applicant requested deferral to the October 28th meeting. Carried 7-0]

Deferred from the September 9, 2015, Town Council Meeting
Request for Deferral to the November 12, 2015, Town Council Meeting Per Letter Dated September 18, 2015, from Francis X.J. Lynch.

Presenter

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

Supporting Documents

- [Letter Dated September 18, 2015, 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

September 18, 2015

VIA E-MAIL

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

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

Dear Paul:

With regard to the above, this letter shall serve as our request to defer the application from the October 14, 2015 town council meeting to the November 12, 2015 meeting due to the fact that ARCOM has deferred this matter to the October 28, 2015 meeting.

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

Sincerely,



FRANCIS X. J. LYNCH

FXJL/kh

TOWN OF PALM BEACH

Town Council Meeting Development Review on: October 14, 2015

Section of Agenda

Development Review - Old Business

Agenda Title

VARIANCE #25-2015 The application of Cushing Investments LLC (Richard True); relative to property commonly known as **449 Australian Ave.**, described as lengthy legal description on file; located in the R-C Zoning District. The Applicant is requesting to construct a new 4,042 sq. ft. two-story residence on a lot with a width of 50 ft. in lieu of the 75 ft. minimum required and a lot area of 7,000 sq. ft. in lieu of the 10,000 sq. ft. minimum required. [Attorney: Maura Ziska, Esq.]

Deferred from the September 9, 2015, Town Council Meeting

Presenter

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

Supporting Documents

- [Letter Dated October 7, 2015, from Reginald G. Stambaugh, P.A.](#)

REGINALD G. STAMBAUGH, P.A.

Attorney At Law
500 Pacific Grove Drive, Suite Six
West Palm Beach, Florida 33401

Telephone (561) 573-9733
Reg@StambaughPA.com

Reginald G. Stambaugh

Board Certified Real Estate Attorney
Also Licensed to Practice in Tennessee

October 7, 2015

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

Via Email Only

Re: 449 Australian Avenue, Palm Beach, FL
Variance # 25-2015 and ARCOM # B-96-2015

Dear Mayor Coniglio, Members of the Town Council and Members of ARCOM:

I represent the Steward family, owners of 441 Australian Avenue, which is adjacent to the above referenced property. This letter is in regards to the variance application number 25-2015 and ARCOM application number B-96-2015 regarding 449 Australian Avenue, Palm Beach, Florida.

Based on my meeting with Mr. Richard True and my client's review of the applications and plans submitted to the Town of Palm Beach, my client endorses the applications and plans without hesitation or reservation. Mr. Richard True has a strong track record of building quality homes in Palm Beach and Palm Beach County, and my client believes this new residence will be no exception and they look forward to having this new residence enhance the neighborhood.

Respectfully,

REGINALD G. STAMBAUGH, P.A.



cc: client

TOWN OF PALM BEACH

Town Council Meeting Development Review on: October 14, 2015

Section of Agenda

Development Review - New Business

Agenda Title

VARIANCE #26-2015 The application of Roberto and Joanne de Guardiola; relative to property commonly known as **12 Lagomar Rd.**, described as lengthy legal description on file; located in the R-A Zoning District. The Applicant is requesting variances to construct a tennis court and associated required perimeter fence with a 6.25 street side yard setback in lieu of the 35 foot minimum required and a 5.5 foot front yard setback in lieu of the 35 foot minimum required, and, to construct a 10 foot high fence around the tennis court in the front yard and street side yard setback in lieu of the 6 foot maximum allowed. [Attorney: Maura Ziska, Esq.]

[Architectural Commission Recommendation: Applicant requested deferral to the October 28th meeting. Carried 7-0]

Request for Deferral to the November 12, 2015, Town Council Meeting Per Letter Dated August 31, 2015, Maura A. Ziska.

Presenter

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

Supporting Documents

- [Letter Dated August 31, 2015, 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

August 31, 2015

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

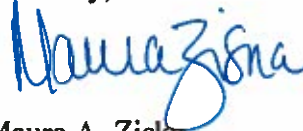
RE: Variance 26-2015 – 12 Lagomar Road, Palm Beach, Florida

Dear Mayor and Town Council:

Please defer the above referenced matter from the **October 14, 2015** Town Council agenda to the **November 12, 2015** Town Council agenda. The reason for the deferral is due to property owners' travel schedule and inability to attend the October meeting.

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

Sincerely,



Maura A. Ziska

MAZ/jch

cc: Paul Castro
Architect

00029394.DOC

TOWN OF PALM BEACH

Town Council Meeting Development Review on: October 14, 2015

Section of Agenda

Development Review - Other

Agenda Title

Request for Fine Reconsideration (Construction Time Allotment): 330
Island Road

Deferred from the September 9, 2015, Town Council Meeting

Presenter

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

Supporting Documents

- [Memorandum dated September 30, 2015 from John S. Page](#)
- [Letter dated August 27, 2015 from Guy Rabideau](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: October 14, 2015

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

Re: Request for Fine Reconsideration (Construction Time Allotment)
330 Island Road

Date: September 30, 2015

STAFF RECOMMENDATION

Staff recommends that the Town Council review and act upon the request of Attorney Guy Rabideau, for owners of 330 Island Road (E.A.T., L.L.C.), to reconsider the Council's previously imposed fine of \$855/day for construction work exceeding the permissible time allotment, commencing November 27, 2014, until time of completion.

GENERAL INFORMATION

The following bulleted points will assist the Council in understanding several critical facts related to the present request for "fine adjustment:"

- The owners of the landmarked home at 330 Island Road began an extensive "rebuild" of the structure via building permit issued 11/29/11.
- Per the Building Code, the project was given a 30-month completion window (5/28/14).
- Per request from owner's architect at the Council meeting of 4/9/14, an approximate 7+ month time extension was approved with no late fee owed during the extension window, yet conditioned upon a daily fine of \$855/day due to the Town thereafter the extension if not complete.
- The last of all Town-required inspections was conducted and "passed" on 9/29/15. The structure is now complete and ready for occupancy.
- Town Code requires payment of the Council-imposed fine prior to the time PZB issues a Certificate of Completion.
- As of the date of final inspection/completion (9/29/15), the late fine of \$855/day amounts to \$262,485.

Per Mr. Rabideau's attachments, he believes the late fine is onerous, and asks that the Council "reconsider" the amount of fine owed to the Town.

SPECIAL CONSIDERATIONS

The Town Council has sole authority to leave the fine unchanged, adjust it downward to any amount it so chooses, or eliminate the fine altogether. The late fine was imposed upon the project by the Town Council, not the Code Enforcement Board, so the decision to adjust the fine lies entirely with the Council. The late fee of .10cents per square foot (\$855/day) is specifically provided for in Town Code. It should be noted that no party associated with the construction project at 330 Island Road expressed previous objection to the Council imposed daily fine.

Attachment

cc: Guy Rabideau, Esq.
 Gene Pandula, Architect
 John Finnell, J.W. Finnell Construction
 Bill Bucklew, Building Official
 John C. Randolph, Town Attorney

RABIDEAU LAW

PALM BEACH - TORONTO

RECEIVED

AUG 28 2015

TOWN OF PALM BEACH
PZB DEPARTMENT

Guy Rabideau, Esq.

direct: 561.402.7411

grabideau@rabideau-law.com

Florida Bar Board Certified in Real Estate Law

August 27, 2015

Via e-mail: ipage@townofpalmbeach.com &

Via hand delivery

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

Re: Milan E.A.T., L.L.C.
Property: 330 Island Road, Palm Beach, Florida 33480

Dear Mr. Page:

In connection with the above referenced Property, I represent the owner, Milan E.A.T., L.L.C. As you are aware, I have requested to be on the September 2015 agenda to request that Town Council reconsider the Fee, described below, that Town Council approved in connection with the construction work performed at the Property. The following is the detailed background on the construction at the Property:

The house at 330 Island Road was designed in the Monterey style of architecture by master architect Maurice Fatio in 1939. Monterey was an eclectic style that was popular in the United States from 1925 until 1955, and was adopted from the Spanish Colonial architecture of Northern California. The most distinguishing characteristic of the style is a second-story balcony which is usually cantilevered and covered under the principal roof of the house. Monterey examples in Palm Beach often display English Colonial or French Creole details rather than Spanish ornamentation. In this case, Fatio applied Georgian Revival elements to create an attractive, yet understated waterfront home. Three Historic Site Surveys were performed in Palm Beach in the years 1997, 2004, and 2010. These surveys took an inventory of the built environment of the Town for historic preservation purposes and made evaluations of structures over fifty years old. In all three surveys, the home at 330 Island Road was identified as being "Potentially Eligible for Local Registration".

In June 2011, the current owner, whose principal is Arthur Minerof and who strongly supports historic preservation, acquired the Property. Mr. Minerof then voluntarily submitted the Property to be designated a landmark, which the LPC approved in December, 2011 and Town Council confirmed in January, 2012. Both votes were unanimous for designation. The owner submitted renovation plans to the LPC during the pendency of the landmark designation approval process, which were approved in November, 2011. A subsequent presentation to LPC was made in February, 2012, which was approved.

The permit for construction was pulled in late November, 2011, and per Town Code, the construction was given 30 months for completion. The house was below the FEMA flood elevation. Even though not required by the Town for a landmarked structure, Mr. Minerof took into account the Property's location on the lake and the elevation of surrounding properties, and decided to raise the structure to bring it into compliance with current elevation standards.

Elevating the house, which is a relatively uncommon undertaking here in the Town, significantly extended the construction time for the home. Issues connected with elevating the home included:

- Specialized work, limited number of qualified firms to perform all of the related activities.
- Soil conditions and water table (affected by unique tides and rainfall) caused the work to proceed slowly.
- Soil conditions and water table caused method of raising of structure to be modified from lifting from below foundation to lifting from intermediate beam system inserted through ground floor windows and connected to secondary beam system below foundation.
- After the home was suspended, it was discovered that the 1939 foundation plan pile locations were inaccurate, requiring new foundation pile layout to be designed and grade beam system re-engineered.
- Deterioration of original grade beam system and concrete floor slabs was discovered from the underside, requiring a repair protocol to be developed and an engineering re-evaluation.
- Grade beam system repairs initiated, process is very lineal allowing for a limited amount of work to be accomplished at a time in order to maintain the structural integrity of the suspended home.

In addition to the delays caused by the elevation process, several further delays occurred because of discovered unknown conditions (beyond those normally expected) requiring substantive corrective activities, including:

- Water damaged wood framing and sheathing.

- Un-supported brick gable end at east side of original structure.
- Un-supported fireplace chimney off-set at west side of original structure.
- Lack of wall framing / support at living room north bay window.
- Lack of wall framing / support at library west bay window.
- Replacement of entire exterior brick wall finish.
- Required additional Certificate of Approval applications / presentations / approvals for modified scope of work for some of above and related time “delays” for same.

At the Town Council meeting on April 9, 2014, the Town Council granted an extension of time for the scheduled completion of construction per Town Code Chapter 18, Section 242-105.4.1.6 (the “Extension”), which Extension extended the timeframe to complete construction to no later than November 26, 2014 (the “Deadline”). Also included in the Extension was the provision that if completion of construction had not occurred by the Deadline, then the owner would be liable for a fee of \$855 per day (the “Fee”) until the construction was completed.

Unfortunately, unknown conditions continued to be discovered which pushed the completion well past the Deadline. Renovation of a landmark designated home is never expected to be easy, but the series of problems encountered with this home were well beyond the norm. The Fee, which has grown to significant and onerous levels, is now due by the owner to the Town.

On behalf of the owner, I request that Town Council reconsider the Fee that was imposed in connection with the completion of construction for the Property. Reconsideration of this fee is justified because:

- Raising of buildings in the Town is not typical for the scope of work of construction.
- Allowable time frames for construction activities to do take into account (when raising a building) the time and effort required to accomplish that activity - they contemplate “standard” new construction or renovation activities.
- Continual updating of building codes, especially in regard to structural and hurricane / wind loading requirements, has caused the retrofitting of historic resources to become more complex, especially when continued incremental reviews and approvals are required by applicable commissions.
- With new flood elevation requirements, especially relative to historic resources, raising of buildings well may become more appropriate and frequent, and, issues noted above will be required to be addressed on a larger scale. This may be a good case study for developing a future methodology.

- Such a high fee on a homeowner of a landmark designated house, who is merely attempting to do the best job possible with respect to retaining its historic character will discourage future homeowners from protecting other historic homes in the Town, particularly those that need to be benefited by the expensive and time consuming process of elevating the home.

Thank you in advance for your consideration of this matter.

Sincerely,


Guy Rabideau

TOWN OF PALM BEACH

Town Council Meeting Development Review on: October 14, 2015

Section of Agenda

Ordinances - Second Reading

Agenda Title

ORDINANCE NO. 24-2015 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning; Article VIII, Supplementary District Regulations, By Creating Section 134-1734 Regulating Playground Equipment And Prohibiting Tree Houses; By Creating Section 134-1735 Regulating Basketball Goals; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Presenter

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

Supporting Documents

- [Memorandum dated October 2, 2015 from John S. Page](#)
- [Ordinance No. 24-2015](#)

TOWN OF PALM BEACH

Information for and Town Council Meeting on: October 14, 2015

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

Re: Proposed Modifications and Changes to Chapter 134, Zoning, Regulating Playground Equipment, Tree Houses and Basketball Goals
Ordinance No. 24-2015

Date: October 2, 2015

STAFF RECOMMENDATION

Staff recommends that the Town Council consider second reading of Ordinance No. 24-2015, amending the Zoning Ordinance to regulate playground equipment and basketball goals in residential zoning districts and prohibit tree houses. The Town Council approved this Ordinance on first reading at your meeting on September 9, 2015.

PLANNING AND ZONING COMMISSION RECOMMENDATION

The Planning and Zoning Commission, at its June 16, 2015 meeting, considered Staff proposed changes regulating playground equipment and basketball goals and prohibiting tree houses. After deliberating, the Commission unanimously recommended proposed Zoning Code modifications which were more restrictive than Staff's recommendation.

GENERAL INFORMATION

The Town Council, at its July 15, 2015 meeting, considered both the Planning and Zoning Commission's recommendations and Staff's recommendations related to playground equipment, basketball goals and tree houses. After deliberation, the Town Council directed Staff to draft an ordinance for Local Planning Agency and Town Council consideration based on Staff's recommended changes and further specified that the Commission's recommendation related to hours of use of the basketball goals be incorporated into the proposed changes.

The attached Ordinance treats playground equipment differently than other accessory structures. The proposed changes would allow said equipment (provided it is not enclosed) to be setback a minimum of fifteen feet from a street side or street rear property line provided it is completely screened from the street by a hedge, wall or combination of wall and other landscape material. Play equipment would not be allowed in a front yard setback. In addition, the proposal would

limit the maximum height of the equipment to fifteen feet from adjacent grade. Tree houses are currently prohibited based on building code and zoning code restrictions and the proposed language continues that prohibition.

The proposed Ordinance also allows one basketball goal on a property and allows it in the front, street side or street rear setback provided that the goal is at least fifteen feet from a street property line and 10 feet from a side or rear property line. The proposed Ordinance also allows use of a basketball goal only between the hours of 9:00 a.m. and 8:00 p.m. (the same hours conditionally approved in a previous zoning application). In addition, if the Town receives three valid written complaints from any neighbor within 200 feet, the basketball goal will be required to be removed. An appeal provision is being recommended. The administrative appeal would be heard by the Town Council. If a revocation of the basketball goal occurs and an owner loses an appeal or decides not to appeal the revocation, a property owner could still apply for a special exception for a basketball backboard. The special exception approval process would be heard by the Town Council which may place mitigating conditions on an approval.

The proposed changes in attached Ordinance No. 24-2015 are in add/delete format. If you have any questions about any of the attached information, please contact Paul Castro, Zoning Administrator, at 227-6406.

TOWN ATTORNEY REVIEW

Ordinance No. 24-2015 was approved by Town Attorney John C. Randolph for legal form and sufficiency.

Attachment

PBE:jsp:pc

cc: Planning and Zoning Commission
Jay Boodheshwar, Deputy Town Manager
John C. Randolph, Town Attorney
Veronica B. Close, AICP, Asst. Director, Planning, Zoning and Building
Paul W. Castro, AICP, Zoning Administrator
John Lingdren, AICP, Planning Administrator
zf

ORDINANCE NO. 24-2015

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 134, ZONING; ARTICLE VIII, SUPPLEMENTARY DISTRICT REGULATIONS, BY CREATING SECTION 134-1734 REGULATING PLAYGROUND EQUIPMENT AND PROHIBITING TREE HOUSES AND BY CREATING SECTION 134-1735 BY CREATING REGULATIONS FOR BASKETBALL GOALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, after a public hearing pursuant to notice required by law, the Planning and Zoning Commission considered all testimony and made a recommendation on proposed changes to the Code of Ordinances related to playground equipment, tree houses and basketball goals;

WHEREAS, after public hearing pursuant to notice required by law, the Local Planning Agency considered the Planning and Zoning Commission's recommendation and all testimony; and,

WHEREAS, after public hearing pursuant to notice as required by law, the Town Council does hereby find, determine, and declare that the public health, safety, morals and general welfare of the citizens of the Town of Palm Beach require that the aforesaid Chapter 134, Zoning, of the Code of Ordinances, be amended as hereinafter set forth.

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

Section 1. Amend Article VIII, SUPPLEMENTARY DISTRICT REGULATIONS, by creating Section 134-1734, to read as follows:

Sec. 134-1734. Playground equipment.

Playground equipment shall only be allowed in residential zoning districts. Playground equipment, including but not limited to, slides, swing sets and tether balls shall not be allowed in a required front yard setback. Said equipment shall be allowed in all residential districts with a minimum side and rear yard setback of 10 feet and a street side yard and street rear yard setback of 15 feet. Said equipment shall not exceed a maximum height of 15 feet above existing grade. Said equipment shall be completely screened from a street with either a hedge, wall or other combination of wall or other landscape material. Tree houses are specifically prohibited.

Section 2. Amend Article V I, SUPPLEMENTARY DISTRICT REGULATIONS, by creating Section 134-1735, to read as follows:

Sec. 134-1735. Basketball goals.

Basketball goals shall only be allowed in residential zoning districts. One basketball goal shall be allowed on a property provided that it is setback a minimum of 15 feet from a front, street side or street rear property line and 10 feet from a side or rear property line. In addition, said goal shall be restricted to be used only from 9:00 a.m. to 8:00 p.m. If the town receives three or more valid written noise complaints from a property owner within 200 feet of the property in which the basketball goal is located within a 12 month period, as determined by the Code Enforcement Division of the Public Safety Department, said basketball goal shall be removed no later than 30 days after written notice by the Town. If three legitimate complaints are verified, said basketball goal shall be removed unless approved by special exception approval by the town council. Any decision by the staff to remove the basketball goal may be appealed to the Town Council based on Sec. 134-141 through 134-145 of the Code. In the event of the filing of an appeal or upon the filing of an application for special exception within thirty (30) days of the decision of the administrative official, the requirement to remove the basketball goal shall be stayed until final determination by the Town Council in regard to the appeal or the application for special exception.

Section 3. Severability.

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

Section 4. Repeal of Ordinances in Conflict.

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

Section 5. Codification.

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

Section 6. Effective Date.

This Ordinance shall take effect 31 days subsequent to its passage on second and final reading.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 9th day of September 2015, and for second and final reading on this 14th day of October 2015.

Gail L. Coniglio, Mayor

Michael J. Pucillo, Town Council President

Richard M. Kleid, Council President Pro Tem

Danielle H. Moore, Town Council Member

ATTEST:

Penelope D. Townsend, Town Council Member

Susan A. Owens, MMC, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting Development Review on: October 14, 2015

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 25-2015 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning; Article I, In General, Section 134-2 To Modify The Definition Of Supplemental Parking; Section 134-38 By Creating A Fee For Administrative Approval Of A Parking Exception And Supplemental Off-Site Parking; Section 134-2175 By Providing Clarification And Cross Referencing Of Relevant Sections Of The Code; Section 134-2176 Providing An Exception In The C-WADistrict To Allow A Percentage Of Unused Off-Street Parking Within A Parking Garage To Be Shared With Other Commercial Uses In That District; Section 134-2177 Providing Regulations To Allow Administrative Approval Of Off-Site Supplemental Shared Parking; Section 134-2178 By Providing Clarification Of When Collective Use Is Permitted; Section 134-2182 By Modifying The Existing Regulations For Off-Site Supplemental Shared Parking To Eliminate A Scriveners Error Referencing The C-PC Zoning District, Cross Reference Appropriate Sections Of The Code, Allow An Administrative Approval For Supplemental Off-Site Parking And An Appeal Process For The Revocation Of Said Approval; Section 134-2183 Creating A Sunset Provision For The Modification Of The Definition For Supplemental Parking And Administrative Approval Of Off-Site Supplemental Parking; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.
Deferred from the September 9, 2015, Town Council Meeting

Presenter

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

Supporting Documents

- [Memorandum dated October 1, 2015 from John S. Page](#)
- [Ordinance No. 25-2015](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: October 14, 2015

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

Re: Shared Parking Amendments to Zoning Code
Ordinance No. 25-2015

Date: September 30, 2015

STAFF RECOMMENDATION

Staff recommends that the Town Council review Ordinance No. 25-2015 (Shared Parking), containing revisions as directed by the Council in September, and to then consider approving the Ordinance upon its first reading.

GENERAL INFORMATION

The Town Council considered first reading approval of the Ordinance during its September 9, 2015 meeting. Council members voiced favorable opinion of easing off-street parking regulations in a manner that would allow businesses to share their parking lots subject to specified safeguards, yet further directed staff to:

1. Amend the automatic “sunset” provision from five years to two years.
2. Include provisions for allowing parking garages on Worth Avenue to share parking. Staff has newly proposed that the number of required spaces within garages in the C-WA zoning district may be reduced by 15% in order to provide shared parking for other commercial uses in the same district (15% was derived from an American Planning Association publication titled Parking Management Best Practices: Making Efficient Use of Parking Resources).
3. Include a “legal stay” provision to apply if and when staff administratively revokes a shared parking agreement, provided the owner thereafter submits an appeal or a special exception request to the Town Council within 30 days of the revocation.
4. Publish a public notice in a local newspaper announcing the receipt and intention of implementing shared parking before approval occurs. The PZB Director will continue to make an administrative decision regarding the shared parking, but must be prepared to defend that decision if an objecting party appeals (at no fee) the Director’s decision to the Town Council.
5. Clarify that the recommended \$500 shared parking request to staff be charged at time of initial submittal, and each year thereafter at time of annual renewal.

6. Consult with the Chair of the Planning & Zoning Commission to identify intended changes and to solicit feedback.

Staff has drafted and incorporated all Council directives (changes appear in “red”) and has coordinated same with Town Attorney Randolph. Ms. Markin, Planning & Zoning Commission Chair, has been informed of the Council’s actions. She voiced agreement with all changes with one exception. She disfavours the inclusion of any “legal stay” provision, expressing her opinion that staff revocation would not occur unless there was valid reason to do so, and that revocation of a shared parking agreement, if and when such occurs, should be immediate with no “stay” that would prolong the problem(s) warranting the revocation.

SPECIAL CONSIDERATIONS

The proposed Ordinance has been reviewed by the Town Attorney and approved for legal form and sufficiency.

Attachment

cc: John C. Randolph, Town Attorney
Planning & Zoning Commissioners

ORDINANCE NO. 25-2015

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 134, ZONING; ARTICLE I, IN GENERAL, SECTION 134-2 TO MODIFY THE DEFINITION OF SUPPLEMENTAL PARKING; SECTION 134-38 BY CREATING A FEE FOR ADMINISTRATIVE APPROVAL OF A PARKING EXCEPTION AND SUPPLEMENTAL OFF-SITE PARKING; SECTION 134-2175 BY PROVIDING CLARIFICATION AND CROSS REFERENCING OF RELEVANT SECTIONS OF THE CODE; SECTION 134-2176 PROVIDING AN EXCEPTION IN THE C-WA DISTRICT TO ALLOW A PERCENTAGE OF UNUSED OFF-STREET PARKING WITHIN A PARKING GARAGE TO BE SHARED WITH OTHER COMMERCIAL USES IN THAT DISTRICT; SECTION 134-2177 PROVIDING REGULATIONS TO ALLOW ADMINISTRATIVE APPROVAL OF OFF-SITE SUPPLEMENTAL SHARED PARKING; SECTION 134-2178 BY PROVIDING CLARIFICATION OF WHEN COLLECTIVE USE IS PERMITTED; SECTION 134-2182 BY MODIFYING THE EXISTING REGULATIONS FOR OFF-SITE SUPPLEMENTAL SHARED PARKING TO ELIMINATE A SCRIVENERS ERROR REFERENCING THE C-PC ZONING DISTRICT, CROSS REFERENCE APPROPRIATE SECTIONS OF THE CODE, ALLOW AN ADMINISTRATIVE APPROVAL FOR SUPPLEMENTAL OFF-SITE PARKING AND AN APPEAL PROCESS FOR THE REVOCATION OF SAID APPROVAL; SECTION 134-2183 CREATING A SUNSET PROVISION FOR THE MODIFICATION OF THE DEFINITION FOR SUPPLEMENTAL PARKING AND ADMINISTRATIVE APPROVAL OF OFF-SITE SUPPLEMENTAL PARKING; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, after a public hearing pursuant to notice required by law, the Planning and Zoning Commission considered all testimony and recommended the following changes to the Code of Ordinances;

WHEREAS, after public hearing pursuant to notice required by law, the Local Planning Agency considered the Planning and Zoning Commission's Record and Report and all testimony and recommended that the Town Council adopt the subject Ordinance; and,

WHEREAS, after public hearing pursuant to notice as required by law, the Town Council does hereby find, determine, and declare that the public health, safety, morals and general welfare of the citizens of the Town of Palm Beach require that the aforesaid Chapter 134, Zoning, of the Code of Ordinances, be amended as hereinafter set forth.

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

Section 1. Amend Article I, IN GENERAL, Section 134-2, Definitions and rules of construction , to read as follows:

Sec. 134-2. Definitions and rules of construction.

...

Parking, supplemental means those parking facilities provided as an administrative approval or special exception use and which are in addition to existing on-site required parking or property that has deficient parking as set forth in the schedule of off-street parking requirements. Supplemental parking cannot be used in the calculation of required off-street parking to develop or redevelop property, or to expand or intensify an existing or proposed use. This definition shall sunset on November 15, 2017, and revert back to the previous definition of supplemental parking if the Town Council does not extend this provision.

Section 2. Amend Article II, ADMINISTRATION, Section 134-38, Filing fees for rezoning, special exception use, variance, appeal or other zoning matters requiring public hearing, to read as follows:

Sec. 134-38. Filing fees for rezoning, special exception use, variance or other matters requiring public hearing or a zoning permit or fee.

...

(17) Administrative supplemental shared parking and exception application and annual renewal fee.....500.00

Section 3. Amend Article IX, OFF-STREET PARKING AND LOADING, Section 134-2175, Number of parking spaces required--Generally, to read as follows:

Sec. 134-2175. - Number of parking spaces required—Generally.

(a) Under this division, the following shall be provided:

- (1) At the time of the erection of any building or structure, minimum off-street parking facilities shall be required with adequate provisions for ingress and egress, in accordance with sections 134-2172 through 134-2174 and the schedule of off-street parking requirements, as prescribed in section 134-2176.
- (2) At the time any building or structure is enlarged or increased in capacity by adding dwelling units, guestrooms, floor area or seats, minimum off-street parking facilities with adequate provisions for ingress and egress shall be required, in accordance with section 134-2 and Sections 134-2172 through 134-2174 and the schedule of off-street parking requirements, as prescribed in section 134-2176.

- (3) Except as provided in subsection (f), at the time any use or occupancy of an existing building is changed to a new use or occupancy having differing off-street parking requirements, the parking requirement for the new use or occupancy shall be computed on the basis of the schedule of off-street parking requirements in ~~the~~ section 134-2176. This requirement shall be compared to the requirements of the existing use or occupancy, and, if the total number of spaces required under the new use or occupancy exceeds that of the existing use or occupancy, the difference shall constitute that number of additional off-street parking spaces to be provided, with adequate provisions for ingress and egress, in accordance with sections 134-2172 and the schedule of off-street parking requirements as prescribed in section 134-2176.

(b) Except as provided in subsection (f), a use, building or structure, lawfully in existence at the effective date of this division, which shall be made nonconforming on the effective date of the ordinance from which this division derives or any applicable amendment thereto, may be continued even though off-street parking may not be provided in full compliance with this division, but the degree of nonconformity due to a deficiency in providing the required off-street parking spaces may not be increased, either by reducing the number of parking spaces which are provided on the effective date of the ordinance from which this chapter is derived or by changing the use or occupancy of an existing building to a use or occupancy which increases the requirement for off-street parking. For existing buildings or establishments therein which are nonconforming with respect to the current parking requirements, and which involve only those uses requiring one space per 200 or 250 square of gross leasable area, whichever is applicable, and which may be required under this chapter to provide additional parking spaces as a result of a change in use, such establishments shall be required only to provide that number of spaces over and above the number of spaces that would have been required at one space per 200 or 250 square feet of floor area gross leasable area, whichever is applicable.

(c) Continued availability of required number of off-street parking spaces. After providing for the proper number of required off-street parking spaces so as to permit a principal use of property to be established as set forth in the schedule of off-street parking contained in section 134-2176, such required off-street parking shall continue to be available in undiminished number for sole use as an integral part of the continuance of the principal use(s) unless meeting the shared parking as provided for in sections 134-2177, 134-2178 and 134-2182. If for any reason such required off-street parking is not available at all times in connection with the principal use, such principal use shall be discontinued until such time as the proper number of required off-street parking spaces shall again be made available for use in connection with the principal use.

(d) The principle of equivalency for evaluating off-street parking in existing uses is as follows:

- (1) Definition of principle of equivalency as applied to the schedule of off-street parking requirements. The principal of equivalency, as it relates to the schedule of

off-street parking requirements, shall be defined as an automobile parking space required by section 134-2176 for establishing an inventory of automobile parking spaces for a conforming or nonconforming use of an existing building, or structure or use, for the purpose of determining the net off-street parking requirement for the establishment of a proposed new use to be permitted in the building, or structure or use.

- (2) In evaluating off-street parking ~~in~~ for existing uses, the principle of equivalency shall be applied when the use or occupancy of an existing building is being changed to a new use or occupancy having a differing off-street parking requirement for the purpose of establishing compliance with this chapter.
- (3) The following floor area equivalencies may be used as a minimum guide in the application of the schedule of off-street parking requirements:
 - a. One permanent seat equals six square feet of floor area in seating areas of occupancies requiring seating.
 - b. One moveable seat equals 15 square feet of floor area in seating areas of occupancies requiring seating.
 - c. The remainder of areas external to actual seating areas shall provide required parking according to the schedule of applicable parking requirements.
 - d. One school student equals 20 square feet of floor area.
- (e) For the purpose of this section, a landmarked commercially zoned building is exempt from providing additional required off-street parking if increased occupancy or use is created by interior building improvements which create more gross leasable area. However, all other provisions of subsections (a) through (d) apply.
- (f) In the 200 Block of Peruvian Avenue and Bradley Place in the C-TS zoning district, existing buildings or establishments therein which are nonconforming with respect to the current parking requirements, and which involve only those uses requiring one space per 200 or 250 square feet of gross leasable area, whichever is applicable, shall not be required to provide additional parking spaces as a result of a change from a use which alters the parking ratio from one space per 250 square feet to a use which requires one space for every 200 square feet of gross leasable area.

Section 4. Amend Article IX, OFF-STREET PARKING AND LOADING, Section 134-2176, Same-Schedule,, to read as follows:

The schedule of off-street parking required by this division shall be as follows”

<i>Use</i>	<i>Spaces Required Per Unit</i>
(1)....	
(15) <u>Required off-street parking exception for commercial parking garages in the C-WA zoning district</u>	<u>Number of required parking spaces attributed to uses on a commercial property within a parking garage in the C-WA district may be reduced by a maximum of 15% in order to provide off-site supplemental parking for other off-site commercial uses in the same zoning district. The application can only be approved if the property owner provides evidence satisfactory to the Town at the time of application and on an annual renewal basis that said parking exception will not negatively impact the parking of all on-site uses. Those off-site commercial uses in the C-WA district that are allowed to share the parking garage shall not be allowed to use said shared parking as a basis to develop or redevelop property, or expand or intensify the use of property. (See Footnote 1 for requirements in granting an exception).</u>

Footnote 1: An off-street parking exception application may be approved or denied by the Director of Planning, Zoning and Building or designee after 15 days of a legal notice being published in a newspaper of general circulation in Palm Beach or West Palm Beach with a summary of the request for such off-street parking exception. Said notice shall be paid by

the applicant and shall not be part of the application fee. Any approval or denial of an application for an exception to the off-street parking requirements in subsection (15) of this section may be appealed to the Town Council based on Sec. 134-141 through 134-145 of the Code. There shall be no fee associated with this type of an administrative appeal.

Section 5. Amend Article IX, OFF-STREET PARKING AND LOADING, Section 134-2177, Location of parking spaces, to read as follows:

Sec. 134-2177. Location of parking spaces.

Parking spaces for all uses or structures which are provided as required parking in conformance with the schedule of off-street parking and other applicable sections shall be located on the same lot and shall have the same district classification as the principal use or structure they are intended to serve, except as specifically excepted as follows:

- (1) The town council may permit, as a special exception, the establishment of such required off-street parking facilities for commercial uses within 500 feet of the premises, as measured along the nearest public or permanent private pedestrian walkway they are intended to serve when:
 - a. Practical difficulties prevent the placing of the facilities on the same lot as the premises they are designed to serve;
 - b. The proposed location is located within the same zoning district as the principal use it is designated to serve;
 - c. The owner of the parking area shall enter into a written agreement with the town, with enforcement running ~~to~~ with the town, providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the building which the parking area serves so long as the facilities are required; and
 - d. The owner agrees to bear the expense of recording the agreement and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.
- (2) The director of planning, zoning and building or designee town council may administratively approve or deny permit, ~~as a special exception~~, the establishment of supplemental off-street facilities which are in addition to the existing off-street parking to those facilities required in accordance with the schedule of off-street parking for a permitted or approved special exception use. Such supplemental off-street parking facilities may be permitted for new development or redevelopment only after the required parking for the principal use involved has been provided in full at current standards as contained in the schedule, or for existing development, if the supplemental parking is in addition to the existing or non-existing required

parking and is not used as a basis to develop or redevelop property, or expand or intensify the use of property. Said supplemental parking may only be approved or denied 15 days after a legal notice has been published in a newspaper of general circulation in Palm Beach or West Palm Beach with a brief summary of the request for administrative off-site supplemental shared parking approval. Said legal notice shall be at the expense of the applicant and not be part of the application fee. Any approval or denial of an application for administrative off-site supplemental shared parking may be appealed to the Town Council based on Sec. 134-141 through 134-145 of the Code. There shall be no fee associated with this type of an administrative appeal.

This additional parking may be supplemental parking located no more than 1,500 feet from the off-site supplemental shared parking lot on the same lot, or supplemental off-site parking located on a directly adjoining lot or a lot which would be directly adjoining except for the location of a street or public way; provided, however, that the town does not receive three or more valid complaints, as determined by the director of planning, zoning and building or designee, from three different property owners or tenants within 300 feet of the parking filed with the town within a 12 month period. If there are three valid written complaints about noise, light or congestion within that time frame, the supplemental, off-site parking shall be terminated. Said termination of the shared parking shall occur no later than 30 days after written notice by the Town. Any termination of administrative off-site supplemental shared parking may be appealed to the Town Council based on Sec. 134-141 through 134-145 of the Code. Subsequent to termination, the commercial tenant or property owner can apply for a special exception to seek approval of the shared parking which may be granted by the town council if it can be demonstrated that the shared parking meets all other provisions for special exceptions as set forth in sections 134-227 through 134-233, are complied with and, further, that the granting of such supplemental on-site or supplemental off-site parking is not construed as permission shall not be allowed to expand, enlarge, alter, renovate, or modify the intensification of use of a structure except in accordance with the requirements of this chapter. In the event of the filing of an appeal or upon the filing of an application for special exception within thirty (30) days of the decision of the administrative official, the requirement to eliminate the off-site supplemental shared parking shall be stayed until final determination is made by the Town Council in regard to the appeal or the application for special exception.

- (3) The town council may permit, as a special exception, the establishment of required off-street parking facilities for commercial uses in zoning districts differing from the district of the principal uses ~~of~~ or structures they are intended to serve if the following conditions are met:
 - a. The owner of the parking area shall enter into a written agreement with the town with enforcement running to the town providing that the land comprising the parking area shall never be disposed of except in

conjunction with the sale of the buildings with which the parking area serves so long as the facilities are required.

- b. The owner of the parking area shall agree to bear the expense of recording the agreement, and agrees that the agreement shall bind ~~his~~ the heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.
- c. The parking area shall have been used as a parking area for the entirety of each of the five calendar years immediately preceding the application for special exception.
- d. The parking area shall abut the property on which is situated the principal structure for which it is to furnish the required off-street parking.
- e. The provisions for special exceptions as set forth in sections 134-227 through 134-233 are complied with.
- f. The said parking area shall be located at ground level or below ground level and shall not be located within any structure above ground.

Section 6. Amend Article IX, OFF-STREET PARKING AND LOADING, Section 134-2178, Collective use, to read as follows:

Sec. 134-2178. - Collective use.

As provided for in this division, ~~Two~~ two or more owners or operators of buildings or uses of the same type of zoning classification requiring off-street parking facilities may make collective provision for such facilities, provided that the total of such parking spaces, when combined or used together, shall not be less than the sum of the requirements computed separately, and provided that the combined facility is compatible with the zoning uses being served.

Section 7. Amend Article IX, OFF-STREET PARKING AND LOADING, Section 134-2182, Shared Parking in the C-TS, C-WA and C-OPI commercial zoning districts, to read as follows:

Sec. 134-2182. Shared parking in C-TS, C-WA and C-OPI commercial zoning districts

(a) ~~Special exception.~~ Although there is no entitlement to shared parking, arrangements for shared parking may be allowed in the C-TS, C-WA and C-OPI commercial zoning districts, subject to administrative review and approval or review and approval of a special exception as set forth under sections 134-227 through 134-233 of the Code and under the circumstances provided in this section.

(b) *On-site shared parking.* When a new use is proposed to occupy existing floor space and the new use would require a greater number of parking spaces than required by the former use, the new use may request sharing of on-site parking to meet the town's off-street parking requirements subject to the review and approval of a special exception as set forth under sections 134-227 through 134-233 and under the circumstances as follows:

- (1) A traffic planner or traffic engineer clearly establishes to the town council, at the applicant's expense, that:
 - a. All uses utilizing the existing parking facilities will primarily utilize these parking spaces at different times of the day, week, month or year;
 - b. The sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities; and
 - c. The available parking will be adequate to serve the needs of the proposed use.
- (2) If the ~~building official~~ director of planning, zoning and building department determines that professional advice and/or consultation is required to review the applicant's parking findings, the expense of such professional advice shall be borne by the applicant.
- (3) The applicant provides to the town, at the applicant's expense, a recorded three-party agreement, including the town as one of the parties, with enforcement running ~~to~~ with the town, guaranteeing the continuing availability of the shared parking spaces during the period of operation of the applicant's use. The term of the agreement shall approximate the life of the building or use for which the shared parking spaces fulfill the town's off-street parking requirement. If the shared parking ever ceases to be available or becomes inadequate due to a change in the uses' respective schedules of operation that results in conflicting or overlapping usage, the proposed use shall be required to obtain a new occupancy permit and provide proof that sufficient parking will be provided or shall be required to immediately reduce the intensity of the use served to the extent that it will be conforming to the town's off-street parking requirements.

(c) *Supplemental off-site shared parking.* A commercial use may make available to another existing commercial use the former's required or supplemental parking spaces for use by patrons or employees if the following conditions are met:

- (1) Administrative supplemental off-site shared parking shall only be allowed by permit and may only be approved 15 days after a legal notice has been published in a newspaper of general circulation in Palm Beach or West Palm Beach with a brief summary of the request for administrative off-site supplemental shared parking approval. Said legal notice shall be at the expense of the applicant and not be part of the application fee. Any

approval or denial of an application for administrative off-site supplemental shared parking may be appealed to the Town Council based on Sec. 134-141 through 134-145 of the Code. There shall be no fee related to this type of an administrative appeal.

and Said supplemental off-site shared parking shall be terminated if three or more valid complaints, as determined by the director of planning, zoning and building or designee, from different property owners within 300 feet of the parking are filed in writing with the town within a 12 month period. Said termination of the shared parking approval shall be required no later than 30 days after written notice by the Town. Any termination of administrative off-site supplemental shared parking may be appealed to the Town Council based on Sec. 134-141 through 134-145 of the Code. Subsequent to the notice to terminate the administrative approval for shared parking, the commercial tenant or property owner can apply for a special exception to seek approval of the shared parking which may be granted by the town council if it can be demonstrated that the shared parking meets all provisions for special exceptions as set forth in sections 134-227 through 134-233. In the event of the filing of an appeal or upon the filing of an application for special exception within thirty (30) days of the decision of the administrative official, the requirement to eliminate the off-site supplemental shared parking shall be stayed until final determination is made by the Town Council in regard to the appeal or the application for special exception.

- (2) Granting of such supplemental off-site shared parking shall not be granted to expand, enlarge or intensify an existing use or proposed use, or the development or redevelopment of a property or structure.
- (3) The applicant establishes to the satisfaction of the town staff, at the applicant's expense, that all other establishments using the existing parking spaces will primarily utilize these spaces at different times of the day, week, month or year from that of the applicant's use, and that the sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities.
- (4) The owner of the parking lot shall enter into a written agreement with the town which identifies the number of shared parking spaces, the hours the shared parking will be used by other businesses, and the location of the shared parking within the parking lot. Said agreement shall have the applicant acknowledge that all parties sharing parking shall not have overlapping or conflicting hours of operation. In addition, as part of the written agreement, the supplemental shared parking lot owner shall be required to obtain a business tax receipt and annually provide the town with an inventory of those businesses and the number of spaces the

businesses are individually using in the supplemental parking lot at the time of renewal of the business tax receipt.

- (5) Supplemental off-site shared parking shall be only for uses no more than 1,500 feet from the off-site supplemental shared parking lot.
- (6) The applicant shall provide evidence which shall prove to the satisfaction of the town that the supplemental off-site shared parking use shall not cause over uses or parking congestion of the shared parking lot, or increase noise, light or traffic impacts upon neighboring residential districts.

~~(c) — *Supplemental off-site shared parking.* A conforming use may lease to another existing conforming use the former's required or supplemental parking spaces for use by patrons or employees of the latter, provided:~~

- ~~(1) — The area to be used for off-site shared parking shall be in the C-TS, C-WA, C-PC or C-OPI zoning district, and, except for shared parking within a parking garage or underground/underbuilding parking area, any area used for off-site shared parking shall be accessible only to and used by parking attendants and shall have controlled access in the form of gates or other barriers acceptable to the town that can be accessed and used only by parking attendants.~~
- ~~(2) — Off-site shared parking shall be located no more than 500 feet from the use the off-site shared parking is intended to serve.~~
- ~~(3) — The applicant shall provide evidence which shall prove to the satisfaction of the town council that the off-site shared parking use shall not increase noise, light or traffic impacts upon neighboring residential districts.~~
- ~~(4) — A traffic planner or traffic engineer establishes to the satisfaction of the town council, at the applicant's expense, that all other establishments using the existing parking spaces will primarily utilize these spaces at different times of the day, week, month or year from that of the applicant's use, and that the sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities.~~
- ~~(5) — If the director of planning, zoning and building department should determine that professional advice and/or consultant is required to review the applicant's parking findings, the expense of such professional advice shall be borne by the applicant pursuant to sections 134-171 and 134-172~~
- ~~(6) — Off-site shared parking shall only be supplemental, and such parking shall not be used to meet required parking for new construction or expansion or addition to existing floor area.~~

- (7) ~~The town may impose such additional conditions that it deems necessary to minimize noise, light and traffic impacts upon neighboring residential districts.~~
- (8) ~~The approval shall initially be limited to a period of six months, whereupon a subsequent review shall be made at a public hearing of the town council at which the interim approval may be renewed, modified or revoked.~~

Section 8. Amend Article IX, OFF-STREET PARKING AND LOADING, Creating Section 134-2183, Sunset provision, to read as follows:

Sec 134- 2183. Sunset provision.

The provisions for supplemental off-site shared parking in sections 134-2, 134-38, 134-2177 and 134-2182 of the Code shall sunset on **November 15, 2017** and revert back to the previous provisions in these sections of the Code unless the Town Council extends such provisions.

Section 9. Severability.

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

Section 10. Repeal of Ordinances in Conflict.

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

Section 11. Codification.

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

Section 12. Effective Date.

This Ordinance shall take effect 31 days subsequent to its passage on second and final reading.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 14th day of October 2015, and for second and final reading on this _____ day of _____ 2015.

Gail L. Coniglio, Mayor

Michael J. Pucillo, Town Council President

Richard M. Kleid, Council President Pro Tem

Danielle H. Moore, Town Council Member

ATTEST:

Penelope D. Townsend, Town Council Member

Susan A. Owens, MMC, Town Clerk

Robert N. Wildrick, Town Council Member