



TOWN OF PALM BEACH

Town Manager's Office

TOWN COUNCIL MEETING

**TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD**

AGENDA

WEDNESDAY, OCTOBER 13, 2010

9:30 AM

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

The progress of this meeting may be monitored by visiting the Town's website (www.townofpalmbeach.com) and selecting "Your Government" and then selecting "Live Meeting Audio." 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 under "Agendas, Minutes, and Audio."

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.

- I. CALL TO ORDER AND ROLL CALL
- II. INVOCATION AND PLEDGE OF ALLEGIANCE
- III. COMMENTS OF MAYOR JACK McDONALD
- IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

V. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE
(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

VI. APPROVAL OF AGENDA

VII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours of Construction Work, at 255 Worth Avenue (Vineyard Vines) (Per Letter Dated September 24, 2010, From Maura A. Ziska).

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C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business – Less than 15 Minutes

None

2. New Business – Less than 15 Minutes

- a. **SITE PLAN REVIEW #9-2010 WITH SPECIAL EXCEPTION AND VARIANCE** The application of RP/RS Royal Palm Way, LLC; relative to property commonly known as **324 Royal Palm Way**; described as Lots 44 and 45, Block D, Revised Map of ROYAL PARK ADDITION to the Town of Palm Beach, Florida, according to the plat thereof as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida; located in the C-OPI Zoning District. The applicant is requesting a Site Plan Review to: (i) construct 1,411 square foot roof terrace on the third floor of the existing building; and (ii) construct twenty (20) carport parking space awnings to provide covered parking on the south side of the existing parking lot. Special Exception request is to allow a roof terrace which would create a third story addition onto an existing partial three story commercial building in the C-OPI Zoning District; a Variance is being requested to allow lot coverage for the carport/awnings to be 39% in lieu of the 29% existing and the 25% maximum allowed in the C-OPI Zoning

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District. [Attorney: Maura A. Ziska]

[ARCOM Recommendation: Approval of the variances will not cause negative impacts. Carried 7-0.]

- b. **SPECIAL EXCEPTION #16-2010** The application of 375 South County Road LLC, dba Café Milano; relative to property commonly known as **375 South County Road**; described as ROYAL PARK ADD LT 1 (LESS TRGLR PAR S COUNTY RD R/W), LTS 2 THRY 4, LT 66 (LESS PERUVIAN COURT COND) & LTS 67 THRU 69 BLOCK 9; located in the C-TS Zoning District. The applicant is requesting a Special Exception to allow a new restaurant to open in the 5,458 square foot space formerly occupied by Amici's Restaurant. The applicant proposes to meet all previous conditions of approval.
[Attorney: Peter S. Broberg]
- c. **SPECIAL EXCEPTION #17-2010** The application of Ember Group LLC.; relative to property commonly known as **350 South County Road**; described as Lots 11 through 17, Block 7, of REVISED MAP OF ROYAL PARK ADDITION TO PALM BEACH, FLORIDA according to the Plat thereof recorded in Plat Book 4, Page 1, of the Public Records of Palm Beach County, Florida; located in the C-TS Zoning District. The applicant is requesting a Special Exception to allow a restaurant with a floor area of 4,980 square feet. The restaurant is being proposed in the former space of the "Beach House Bistro", "Island Palm" and "Galaxy Grill" restaurants. Town Council approval and a finding that the proposed use is town-serving is required. The applicant is proposing to operate a restaurant "Ember Group LLC" which will serve world cuisine in a casually sophisticated setting. The restaurant will follow the applicable conditions of the prior restaurants' approvals and the request is to operate under the previous approvals for seating, with a total of 154 seats proposed.
[Attorney: Maura A. Ziska]
- d. **SPECIAL EXCEPTION #18-2010** The application of Amici Market, LLC; relative to property commonly known as **155 North County Road**; described as THE NORTH 70.5 FEET OF LOT 13, SUNRISE AVENUE ADDITION TO PALM BEACH LESS THE WEST 10 FEET THEREOF, ACCORDING TO THE PLAT ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA AND RECORDED IN PLAT BOOK 7, PAGE 62; TOGETHER WITH AN EASEMENT OVER THE EAST 15 FEET OF THE SOUTH 95.98 FEET OF SAID LOT 13; located in the C-TS Zoning District. The applicant is requesting Special Exception

approval to operate a Town-serving specialty food market with limited accessory seating (6 seats) in a 5,980 square foot building, exceeding the 2,000 square foot limitation, which is proposing to be Town-serving. [Attorney: James R. Brindell]

- e. **VARIANCE #18-2010** The application of Kevin and Francesca McGann; relative to property commonly known as **180 E. Inlet Drive**; described as Lot 21 of SEA ISLE ESTATES, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Bok 25, Page 89; located in the R-B Zoning District. The applicant is requesting a variance to allow construction of a 550 square foot second story addition for a bedroom and bathroom with an east side yard setback of 11.31 feet in lieu of the 15 foot minimum required in the R-B Zoning District. [Attorney: Maura A. Ziska]

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3. Old Business – More than 15 Minutes

None

4. New Business – More than 15 Minutes

None

D. Other

1. Consideration of Utilizing Hold Harmless Agreements, Allowing For Interior Remodeling Projects to Proceed Forward at Owner's Risk, Prior to Certain Town Council Approvals.
[John Page, Director of Planning, Zoning, and Building]

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VIII. ANY OTHER MATTERS

IX. ADJOURNMENT

PLEASE TAKE NOTE:

- Note 1:** 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 2:** 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 3:** 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 4:** A summary of the actions taken at Town Council meetings can be viewed on the Town's website after 5 p.m. on the Friday following the Town Council meeting.

PROCEDURES FOR PUBLIC PARTICIPATION

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

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

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

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

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

TOWN OF PALM BEACH

Town Council Meeting on: October 13, 2010

Section of Agenda

Time Extensions

Agenda Title

Request for Waiver of Section 42-199, Hours of Construction Work, at 255 Worth Avenue (Vineyard Vines)(Per Letter Dated September 24, 2010, From Maura A. Ziska).

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated October 1, 2010, from John Page
- Draft for Scope of Work
- Letter dated September 24, 2010, from Maura A. Ziska

TOWN OF PALM BEACH

Information for Town Council Meeting on: October 13, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Waiver of Section 42-199
255 Worth Avenue

Date: October 1, 2010

STAFF RECOMMENDATION

Staff recommends approval of an extension of the hours for construction work until December 15, 2010, for 255 Worth Avenue, within the C-WA Zoning District. Construction work on Worth Avenue is restricted from November through April. Approval should be conditioned as follows:

- Work hours are from 8:00 am to 5:00 pm with quiet work only.
- No work allowed on Saturdays, Sundays or Town of Palm Beach legal holidays.
- Approval of the Worth Avenue Merchants Association.
- Provision of a construction schedule to the satisfaction of the Building Official.
- All windows shall be screened per Town Ordinance 22-58.
- All deliveries will be made between the hours of 8:00 AM and 10:00 AM.
- No construction related parking will be allowed on Worth Avenue.
- No workers shall congregate or loiter on Worth Avenue.
- Exterior work on Worth Avenue will take place only from 8:00 AM to 10:00 AM, a right of way permit is required for use of the sidewalk.
- Tenant must apply for a business tax receipt before any permit will be issued.
- Any verified complaints from neighbors may revoke this extension of hours.
- Subject to an affidavit that all property owners, businesses and residents (Condominium Association if a condominium) within a 200 foot radius of the subject property have been notified of this request prior to 10 days of the scheduled hearing date.
- Contractor will provide a copy of the affidavit and a copy of the notice to the Building Official no later than 5 days prior to the scheduled hearing date.
- Recovering of existing awnings may require Architectural Commission approval.

GENERAL INFORMATION

The space in question was formerly occupied by Coach. Vineyard Vines, the new retail tenant, wishes to perform a minor renovation to prepare for the season. Work mostly entails installation of new electrical fixtures, painting inside and outside, installation of some cabinetry and new carpeting. A proposed scope of work is attached. The tenant has indicated that a more extensive

remodeling is scheduled for next summer, and is planned to comply with all Town ordinances. As of this date no permit application has been made.

Attachments

JP/jlt

cc: Jeff Taylor, Building Official
Paul W. Castro, Zoning Administrator
H. Paul Brazil, Public Works Director
Raychel Houston, Code Enforcement

Draft for Scope of Work

Vineyard Vines - Worth Avenue, Temporary Occupancy

Exterior:

1. Repaint storefront and rear of store maintaining the existing white color.
2. Replace existing awnings with new navy blue awnings over both windows and door.
3. Add storefront sign in accordance with local requirements.
4. Paint trim of glass door navy blue. Paint trim of windows navy blue

Mechanical/Electrical:

1. Reuse HVAC equipment and electrical service, maintenance and bring to working order.
2. Add to sales floor lighting and show window lighting as necessary.
3. Relocate electrical and IT service to new cash wrap location
4. Add necessary security cameras and sound system, and TV
5. Add new lighting to new fitting room area
6. Add new lighting to the new cash wrap location

Construction:

1. Reuse existing restroom.... Maintenance...
2. Install VV stockroom shelving, and managers desk and equipment
3. Reconfigure and recess the existing rear wall to facilitate a new cash wrap and a minimum of two fitting room with the potential of a third fitting room.
4. Demo and remove Coach fixturing currently in the store.
5. Install surface mounted wall standards to recessed display areas
6. Install "found object" fixtures to feature areas
7. Re key all doors

Fixtures:

1. Provide and install new cash wrap
2. Provide and install new fixture package
3. Provide and install hardware and shelving

Finishes:

1. Provide and install new carpet over existing marble tile
2. Repaint entire sales floor walls and ceiling
3. Repaint interior of the store front trim and front glass door trim
4. Provide mirrors of sales floor and install
5. Cleaning existing glass
6. Fitting room doors, hardware and stools, and carpeting....

September 24, 2010

Jeff Taylor, Building Official
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Waiver of Section 42-199/Vineyard Vines/255 Worth Ave., Palm Beach

Dear Mr. Taylor:

I represent the Vineyard Vines retail store and on their behalf would like to appear before the October 13, 2010 Town Council meeting to request a waiver from Section 42-199 of the Town of Palm Beach Code to extend construction work on Worth Avenue from November 1, 2010 to December 15, 2010 (weekdays only).

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

Sincerely yours,

Maura A. Ziska

MAZ/mr
Cc: Greg Leopold

TOWN OF PALM BEACH

Town Council Meeting on: October 13, 2010

Section of Agenda

New Business - < 15 Minutes

Agenda Title

SITE PLAN REVIEW #9-2010 WITH SPECIAL EXCEPTION AND VARIANCE

The application of RP/RS Royal Palm Way, LLC; relative to property commonly known as **324 Royal Palm Way**; described as Lots 44 and 45, Block D, Revised Map of ROYAL PARK ADDITION to the Town of Palm Beach, Florida, according to the plat thereof as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida; located in the C-OPI Zoning District. The applicant is requesting a Site Plan Review to: (i) construct 1,411 square foot roof terrace on the third floor of the existing building; and (ii) construct twenty (20) carport parking space awnings to provide covered parking on the south side of the existing parking lot. Special Exception request is to allow a roof terrace which would create a third story addition onto an existing partial three story commercial building in the C-OPI Zoning District; a Variance is being requested to allow lot coverage for the carport/awnings to be 39% in lieu of the 29% existing and the 25% maximum allowed in the C-OPI Zoning District. [Attorney: Maura A. Ziska] [ARCOM Recommendation: Approval of the variances will not cause negative impacts. Carried 7-0.]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Email dated October 7, 2010, from Pamela J. Henderson

From: Pam Henderson [mailto:phenderson@rcca.org]
Sent: Thursday, October 07, 2010 9:00 AM
To: council@townofpalmbeach.com
Cc: Maura Ziska
Subject: FW: 324 Royal Palm Way #9-2010

We've reviewed the notification regarding 324 Royal Palm Way and wish to provide our support for the awning plans.

Pam

Pamela J. Henderson, Executive Director
Rehabilitation Center for Children and Adults
300 Royal Palm Way, Palm Beach FL 33480
(561) 655-7266 x 11 Fax: (561) 655-3269
phenderson@rcca.org www.rcca.org

The information contained in this transmission is privileged and confidential and only for the use of the intended recipient. Any unauthorized review, use, disclosure, dissemination or copying is prohibited. If you receive this transmission in error, please notify us immediately by telephone (561) 655-7266 and destroy the original message. Thank you.

TOWN OF PALM BEACH

Town Council Meeting on: October 13, 2010

Section of Agenda

New Business - < 15 Minutes

Agenda Title

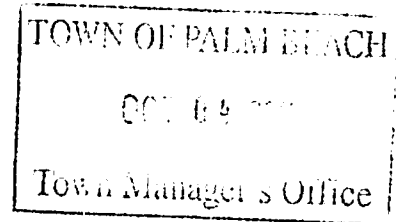
VARIANCE #18-2010 The application of Kevin and Francesca McGann; relative to property commonly known as **180 E. Inlet Drive**; described as Lot 21 of SEA ISLE ESTATES, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Bok 25, Page 89; located in the R-B Zoning District. The applicant is requesting a variance to allow construction of a 550 square foot second story addition for a bedroom and bathroom with an east side yard setback of 11.31 feet in lieu of the 15 foot minimum required in the R-B Zoning District. [Attorney: Maura A. Ziska]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter dated September 30, 2010, from Mark M. Rowan



September 30, 2010

Mayor and Town Council and
Members of the Architectural Review Commission
TOWN OF PALM BEACH
360 S. County Rd.
Palm Beach, FL 33480

Re: Variance # 18-2010
180 E. Inlet Dr.

Dear Mayor, Town Council Members and ARCOM Members:

I reside at 174 E. Inlet Dr. in Palm Beach. The above referenced variance is being requested from the Town by Mr. and Mrs. Kevin McGann, neighbors immediately West, and adjacent to my home. The McGanns have two great young kids and would like more room in their home. I wholeheartedly support their request. Kevin and Frankie McGann have been very neighborly in showing me the proposed architectural modifications they propose, and I hope that the Town of Palm Beach embraces my year-round neighbor's request for improving their home, our neighborhood, and our Town. Thank you for your anticipated cooperation with the McGann's request.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark M. Rowan".

Mark M. Rowan

174 E. Inlet Dr.
Palm Beach, FL 33480

561-881-5597

Cc: Maura A. Ziska, Esq.

[Faint, illegible text, likely a carbon copy or bleed-through from another page.]

TOWN OF PALM BEACH

Town Council Meeting on: October 13, 2010

Section of Agenda

Development Review - Other

Agenda Title

Consideration of Utilizing Hold Harmless Agreements, Allowing for Interior Remodeling Projects to Proceed Forward at Owner's Risk, Prior to Certain Town Council Approvals.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated October 4, 2010, from John Page

TOWN OF PALM BEACH

Information for Town Council Meeting on: October 13, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John Page, Planning, Zoning & Building Director

Re: Policy Decision: Use of Hold Harmless Agreements

Date: October 4, 2010

STAFF RECOMMENDATION

It is recommended that the Town Council give consideration to the use of Hold Harmless Agreements, as a means of expediting building improvements to existing commercial structures prior to certain Town Council approvals.

GENERAL INFORMATION

Building projects, particularly existing structures that are wholly or partially remodeled, continue to abound in Palm Beach. For the fiscal year that just ended in September, it is estimated that over 100 “commercial alteration” permits were issued authorizing such work. Existing Zoning Ordinance regulations require that certain projects must receive Town Council approval. Examples include: banks; nightclubs; hotels; timeshares; group homes; houses of worship; and all new businesses over 2,000 sq. ft. in size.

In many cases, especially when “like” businesses are being converted to “like” businesses (retail to retail, office to office, restaurant to restaurant, etc.), Town Council approval, although necessary, is viewed by the applicant as a time impediment. Existing procedures require some applicants (those that require special exception and/or site plan review) to delay the start of remodeling until such time that the Town Council meets in regular monthly session and approves the use. Depending upon time of application, the “wait” for Town Council action can exceed 50+ days.

The relatively poor state of the business economy in the State has prompted many communities to seek new ways to be user-friendly. The Planning, Zoning & Building Department agrees with such philosophy, but must be careful to implement new policies in a manner found acceptable to the Council. The ongoing effort to open a new restaurant at 350 South County Road serves as an excellent case-in-point. The existing structure has been used as a variety of restaurants over the years. The new proprietors are eager to complete renovations and open their doors to the public as soon as possible. They submitted building plans to the Town in the month of September, yet Town Council consideration of their Special Exception request could not be scheduled until

October 13. Delays of this sort can be quite aggravating to applicants, sometimes prompting questions about what can be done to shortcut the approval process. In the case of 350 South County Road, staff agreed that a demolition permit could be issued if the applicant accepted all risk with no guarantee that the Town Council would rule favorably upon their Special Exception. A Hold Harmless Agreement was executed allowing the proprietors to commence demolition work at their own risk. A related Hold Harmless Agreement that would allow building improvements to commence is now in process.

When used properly, a Hold Harmless Agreement can be an excellent tool for both private business and the Town. Such Agreements, if properly executed, would allow the Planning, Zoning & Building Department to issue demolition and/or building permits and applicants would be allowed to commence work before Town Council consideration. Further, such an Agreement would exempt the Town from any and all liability if for any reason a Special Exception application is denied by the Town Council. An option of this sort, completely voluntary on the applicant's behalf, will allow many new commercial ventures to proceed forward at relative speed at no risk to the Town.

It is important that the Town be consistent when applying such a tool. As such, it is suggested that a standard Hold Harmless Agreement be prepared by the Town Attorney for use in such instances. If the applicant is not the building owner, then both the owner as well as the new tenant should be a party to the Agreement. Should the Town Council agree with this philosophy, it should be stressed that this option be limited to the alteration of existing commercial structures in their present configuration only. This tool should not apply to construction of new buildings, to additions onto existing buildings, to administrative appeals when building alterations are at issue, to parking lots or other related hardscape improvements, or to any building project requiring variance approvals from the Town Council. Finally, under no circumstances will any business be allowed to open and operate in its new space unless and until they have received Town Council approval of the applicable Special Exception application.

cc: Paul Castro, Zoning Administrator
John C. Randolph, Town Attorney

RESOLUTION NO. 118-10**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, OPPOSING THE PROPOSED PALM BEACH COUNTY CHARTER AMENDMENT THAT WOULD EXPAND THE AUTHORITY OF THE COUNTY'S ETHICS COMMISSION AND THE COUNTY'S INSPECTOR GENERAL.**

WHEREAS, the Palm Beach County Board of County Commissioners has placed on the November 2 ballot a proposal to amend the County Charter to expand the role of the County's Ethics Commission and the County's Inspector General; and

WHEREAS, that expanded role will be applicable in the Town of Palm Beach if the referendum is approved by a majority of Palm Beach County voters and by a majority of voters in the Town of Palm Beach; and

WHEREAS, that expanded role would include empowering the County's Ethics Commission and the County's Inspector General to have independent authority to unilaterally investigate and act upon matters involving Town of Palm Beach elected officials, citizen board and commission members, and employees; and

WHEREAS, the County Commission would have the authority to unilaterally create the rules relating to the expanded independent authority that would be exercised by the County's Ethics Commission and the County's Inspector General within the Town of Palm Beach, and the County Commission would have the authority to unilaterally change those rules in the future; and

WHEREAS, the Town of Palm Beach currently achieves enforcement of ethical conduct through the Town Council's Ethics Committee, the Town's Ethics Hotline, the Town's extensive and intensive internal audit processes, the Town's retention (when necessary) of independent professionals to investigate alleged wrongdoing and assist the Town in taking corrective action, and through other means; and

WHEREAS, the Town's taxpayers would have to pay to Palm Beach County an annual fee established by Palm Beach County and preliminary estimates of the amount of that annual fee range from \$50,000 to \$130,000, or even higher; and

WHEREAS, the Town's taxpayers already contribute over \$58,000,000 annually to the County's operating budget, for which the Town receives little direct service in return.

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

Section 1. All Town of Palm Beach voters are urged to carefully consider the costs and benefits of this proposed County Charter amendment before voting on this referendum in the November 2, 2010, general election.

PASSED AND ADOPTED IN REGULAR, ADJOURNED SESSION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH ASSEMBLED THIS 13th DAY OF OCTOBER 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

From: "Maura Ziska" <MZiska@floridawills.com>
To: <council@townofpalmbeach.com>
Date: 10/08/2010 11:45 AM
Subject: FW: buccan

Please see attached restaurant concept information for the proposed restaurant at 350 So. County Road. Tx Maura

Maura A. Ziska, Esq.
Kochman & Ziska PLC
222 Lakeview Avenue, Suite 1500
West Palm Beach, FL 33401
561-802-8960 (telephone)
561-802-8995 (fax)

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

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

From: piper quinn [mailto:piperquinn@bellsouth.net]
Sent: Thursday, October 07, 2010 10:32 AM
To: Maura Ziska
Subject: buccan

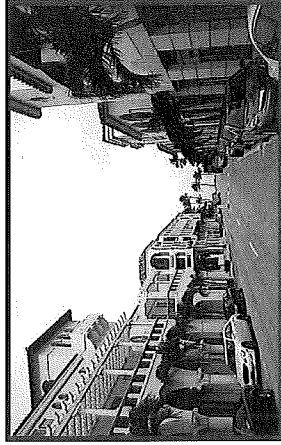


Buccan PPT[2].pptx

buccan

350 South County Road | Palm Beach

The Name



A *buccan* is a native South American and Caribbean name for a wooden framework or hurdle on which meat was roasted or smoked over a fire, similar to the original meaning of a barbecue. The French changed this to *boucan* and called the French hunters who used these frames to cook and on the island of Hispaniola *boucaniers*. Additionally, a *boucan* is a naturally burning bed of surface coal....certain exposed seams of coal can catch fire due to lightning or a forest fire and then smolder for decades, perhaps for centuries. būcan, the restaurant is a confluence of all of these elements.

būcan

Concept



As consumers become more food savvy, they seek superior ingredients and preparation, and want these qualities in an informal, unaffected atmosphere. Stylish, thoughtful culinary experiences at a local, neighborhood level are becoming more and more in demand.

būccan is primarily a high-end bistro of sorts that offers a menu of world cuisine designed with Chef Clay Conley's singular flair. The restaurant is designed with the "foodie" in mind, appealing to a sophisticated consumer that has already experienced a broad range of dining experiences. These target customers are looking for food and beverage tastes that are fresh and innovative, yet approachable.

The predominant mark of **būccan**'s menu is an array of small plates – designed to provide an adventurous food experience. Although a local's haven, a frequently changing menu of bright, fresh, inventive preparations also will brand **būccan** as a destination. The menu is designed and priced to encourage a strong regular clientele. **būccan** will use only the freshest ingredients sourced from local farmers and artisans, and will feature organic produce, meats and sustainable fish as often as possible.

By developing a menu of distinctive, addictive flavors frequently refreshed in small-plate presentations, **būccan** is uniquely positioned to develop a broad guest base. For customers who prefer to explore boldly, the menu offers a broad range of taste and flavor profiles served in portion sizes that allow several to be enjoyed. For the aspirant, the small plate style and price point allows a more modest budget to enjoy the **būccan** experience on a regular basis. This breadth of appeal, combined with the flexibility the format offers (lunch, light dinner, full dinner, drinks and appetizers, just drinks, after-dinner drinks and desserts, etc.) ensures a dynamic, vibrant restaurant with energy and charm.

būccan

Design Intent



būccan's design looks to take a minimal approach to develop a timeless, distinctive atmosphere at the **350 South County Road** location that will be vintage Palm Beach in style. By simply removing dated treatments such as the suspended ceiling and certain drop soffits, and restoring the plaster and moldings, the plan looks to provide a simple, clean back drop to the "functional" décor of būccan, utilizing the visually interesting working elements described below. būccan makes use of smart lighting, paint, local art, and new and used FF&E to create a distinctive environment with a significant amount of character.

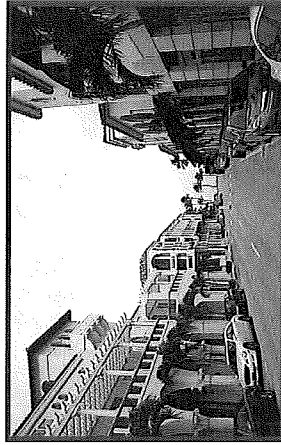
būccan's open kitchen is a primary décor element, with a wood burning oven and grill being warm focal points. The combined use of proper lighting, tile and organic materials will contribute to a rich, inviting feel.

Seating is a combination of banquettes, "common table" and regular seating. Tables have simple wood & copper tops, large enough to accommodate būccan's unique array of serving vessels. The lounge area is furnished with vintage couches and chairs surrounding cocktail tables large enough to accommodate regular dinner service for those looking to share plates in a more casual setting.

The lounge is a destination in itself, with a uniquely focused bar menu, specialty cocktails and a lively atmosphere. By conforming to the existing millwork, the back bar will be designed to look as if it were the original bar, while also providing a compelling, illuminated decor element with glass shelving, mirrors and an artful use of light.

būccan

Town Serving



With the emergence of the newly renovated Worth Avenue and midtown areas, the partners at buccan intend to bring fresh food, exceptional service and value to a busier and more beautiful part of Palm Beach. Our town serving business model intends to keep residents, town employees and seasonal visitors coming back several times during the course of a week and throughout the year. As local owners, we're proud to be a part of this renaissance of Palm Beach and we hope the community embraces our efforts.

buccan

Menu Selections

RAW

Steak Tartare | truffle vinaigrette, grilled bread, crispy egg yolk

Japanese Hamachi Tiradito | Peruvian chilies, ginger-soy, yuzu, crispy lotus root

Florida Lobster Salad | coconut & carrot vinaigrette, heart of palm, grapefruit, avocado

Spicy Tuna Tartare | cucumber, nori, avocado, chilies

Local Grouper Ceviche | habanero, tostones, mojo de ajo

Swank Farms Baby Romaine | french feta, cucumber, red onion, red wine vinaigrette

Cesar Salad | parmesan, buttermilk, garlic croutons

Italian Style Iceburg Salad

Shaved Asparagus Salad | parmesan cream, crispy fontina polenta

SMALL

Deep Creek Lamb Bastilla | harissa, raita

Everglades Buffalo Style Frog Legs | roquefort cream, celery salad

Softshell Crab Pitas | lamb basmati, cilantro hummus, curry aioli, cucumber salad

Sweetbread & Mushroom Springrolls | minted pea aioli, Paradise Farms pea shoots

Crispy Calamari | cherry pepper butter, garlic aioli

Teena's Pride Heirloom Tomatoes | housemade buratta, Swank Farms basil, Fernando Pensato olive oil

Shrimp Stuffed Chicken Wings | lemongrass glaze

Local Sardines | pickled ramp vinaigrette

buccan

Menu Selections

WOOD GRILLED

Octopus | tahini vinaigrette, olives, fresh garbanzo beans, mint

Shortrib | Korean marinade, kimchee vegetables, sesame glaze

Porcini Mushrooms | Iroquois corn polenta, toasted garlic & rosemary, shaved parmesan

Maine Lobster Tacos | brandade, local cherry tomatoes, avocado, aji panca

Wood Rotisserie Chicken | natural jus, local root vegetables

Confit Duck Cassoulet | giant Peruvian white beans, sausage, breadcrumbs

Wood Grilled Wild Salmon | mustard glaze, sauerkraut, caraway,

Brick Oven Roasted Maine Lobster "Oscar"

EMBER ROASTED

Mission Figs | gorgonzola dolce, jamon Serrano, shaved fennel

Deep Creek Lamb Faluka | feta cheese, roasted peppers, spices

Margarita Pizza | homemade mozzarella, fresh basil, garlic, tomato

Wild Mushroom Flatbread | truffled ricotta, sherried onions, gruyere

PEI Mussels | saffron mustard broth, grilled bread, tapenade

Goat's Cheese Dumplings "AL Forno" | ratatouille, basil, parmesan

Roman Style Shrimp Tart | caramelized onions, fontina, scampi sauce, local basil

Shucked Sebastian Inlet Clam Pizza | oregano, parmesan, extra virgin olive

buccan

Menu Selections

PASTA

Squid Ink Orrechiette | Turks & Caicos conch, Italian sausage, local basil, Calabrese chilies

Fettucine Carbonara | Hobbs bacon, peas, parmesan, egg yolk

Shrimp Dumplings | Fudge Farms pork belly, brussel sprouts, soy glaze, katsuobushi

Ricotta Gnocchi | bolognese

Zellwood Corn Ravioli | Maine crabmeat, bacon, sherry glaze

LARGE

Brick Oven Roasted Paella | local seafood, Bomba rice

Woodgrilled 4 Arrows Ranch Ribeye Of Beef | wild mushroom glaze, crispy potato cakes

Whole Roasted Key West Snapper | caramelized fennel puree, Provencal vinaigrette

Key West Shrimp | white beans, Swank Farms escarole, tomato, chilies, garlic, toast

12 oz Angus Burger | brioche, bacon, Grafton Village cheddar, cornichon

buccan

Clay Conley



At the age of 36, Chef Clay Conley has more than two decades of experience in the kitchen. A native of rural Maine, he got his first taste of the business at age 12, volunteering to work in the kitchen of a local restaurant. Passionately pursuing his calling, Conley eventually becoming a protégé of renowned chef Todd English at Olives restaurant in Boston. Working with the celebrity chef for almost a decade at various temples of haute cuisine, including Washington DC, Las Vegas, and Tokyo, Conley eventually becoming the culinary director for all 18 of English's restaurants at age 29.

With English, Conley worked with the finest ingredients from all over the world, and honed a style that balances the robust flavors of his New England childhood with the sophistication of Asian cuisine and the rustic allure of the Mediterranean. Subsequent international travels to Europe, South America, the Caribbean, and Asia broadened his exposure to world cuisines, especially in Japan, where he became inspired with the elegance of food preparation and the culinary traditions. In 2005, he was tapped by Mandarin Oriental, Miami, to helm the kitchen at its signature restaurant, Azul, where he brought the ingredients and techniques of his global experience together in his eclectic and innovative menu. The revered critic John Mariani has described his dishes there as "brilliant," "dazzling," and "glorious." Under Conley's leadership, Azul received numerous awards and was featured in a multitude of high-profile national and international publications, such as *Zagat*, *Gourmet*, and *Robb Report*, where in 2007 the magazine named Azul one of America's finest restaurants. Azul was the multiple recipient of the AAA Five Diamond Award, the Mobil Four Star Award and is regarded as the number one dining destination in Miami. Conley also brought added notoriety through his StarChef's "Rising Star Chef" award and also his guest appearances on leading television programs like *The Today Show* and *Fox and Friends*.

buccan

FW: Use of Hold Harmless Agreements

John Eubanks

to:

clerk@townofpalmbeach.com

10/12/2010 05:12 PM

Show Details

See below message. For some reason this came back the first time.

John R. Eubanks, Jr.

Breton, Lynch, Eubanks & Suarez-Murias, P.A.

1209 N. Olive Avenue

West Palm Beach, FL 33401

Telephone: 561-721-4000

Facsimile: 561-721-4001

Direct Dial: 561-721-4002

Email: jeubanks@blesmlaw.com

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From: John Eubanks

Sent: Tuesday, October 12, 2010 4:43 PM

To: 'jmacdonald@townofpalmbeach.com'; 'drosow@townofpalmbeach.com'; 'rwildrick@townofpalmbeach.com'; 'gconiglio@townofpalmbeach.com'; 'wdiamond@townofpalmbeach.com'; 'rkleid@townofpalmbeach.com'

Cc: 'jpage@townofpalmbeach.com'; 'pcastro@townofpalmbeach.com'; 'tclerk@townofpalmbeach.com'; 'pelwell@townofpalmbeach.com'; 'Randolph, John C.'; 'PBTOWERS@aol.com'

Subject: Use of Hold Harmless Agreements

Please see attached correspondence in response to Staff's Recommendation of the use of "Hold Harmless Agreements." I would request that this correspondence be included in the public record for tomorrow's consideration of this matter.

John R. Eubanks, Jr.

Breton, Lynch, Eubanks & Suarez-Murias, P.A.

1209 N. Olive Avenue

West Palm Beach, FL 33401

Telephone: 561-721-4000

Facsimile: 561-721-4001

Direct Dial: 561-721-4002

Email: jeubanks@blesmlaw.com

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

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

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

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

October 12, 2010

Via E-mail and U. S. Mail

Honorable Jack McDonald, Mayor and
Town Council of Town of Palm Beach
360 South County Road
Palm Beach, Florida 33408

Re: Bad Policy Decision: Use of Hold Harmless Agreements

Dear Mayor and Town Council:

I read with shock the Staff Recommendation by John Page via Peter Elwell that "the Town Council give consideration to the use of "Hold Harmless Agreements" as a means of expediting building improvements to existing commercial structures prior to certain Town Council approval." The cited justification given by Staff for the adoption of such a "Policy" is that: a) approvals "while necessary [are] viewed *by the applicant* as a time impediment" (emphasis added); b) the terms of the Town Code may potentially cause "some *applicants* (those that require special exception or site plan review) to delay the start of remodeling," causing c) *applicants* to question "what can be done to *shortcut the approval process*." (emphasis added). As a result, Staff proposes the use of "Hold Harmless Agreements" which it believes "will allow many new commercial ventures to proceed forward at relative speed *at no risk to the Town*." (emphasis added).

While focusing almost entirely on the desires of "applicants" for an expedited system, Staff totally ignores the terms of the Town Code, as well as the rights of surrounding neighbors. Staff further neglects several major pitfalls which would in fact expose the Town (and even Staff) to substantial liability. Instead, a closer review of Staff's proposal reveals that the potential use of a "Hold Harmless Agreement" especially in any situation in which an applicant is required to obtain a variance or special exception¹ would: a) be in direct violation of the Town Code; b) violate the due process rights of neighboring property owners, and c) expose the Town (as well as individual staff members) to significant liability. Clearly, such a Policy should not be adopted.

I. Use of Hold Harmless Agreement Would Be In Direct Violation of Town Code

As a preliminary matter, any use of a "Hold Harmless Agreement" involving circumstances

¹ It is clear that the subject of Staff's memo of October 4, 2010 is in fact directed at just such applicants. See, e.g., "Existing procedures require some applicants (those that require special exception and/or site plan review) to delay the start of remodeling..."

requiring a variance or special exception would be in direct violation of the express terms of the Town Code.

Section 134-86 of the Code provides that:

To ensure compliance with this chapter, no person shall erect, alter or convert any structure of building or part thereof or alter the use of any land until a building permit has been issued by the building official.

Therefore, no action or alteration of a property can commence without a building permit.

The building official, however, cannot issue a building permit for any use which requires a variance or special exception without an express written order from the Town Council.

Section 134-36 (b) of the Code provides that:

Building permits for a variance from the requirements of this chapter and for such special exception uses as may be enumerated in this chapter *shall be issued only upon written order of the town council.* (emphasis added).

As such, the building official does not have the power, right, or authority to issue any building permit for a project which would require a variance or special exception prior to the issuance of a written order of the Town Council granting such variance or special exception. Consequently, any building permit issued prior to a written order of the Town Council, even if based upon a "Hold Harmless Agreement" would be on its face improper, void and a legal nullity.²

Such a conclusion is inescapable given that special exception and variances may *only* be permitted by express authorization by the Town Council.³ As a result, as with any policy in direct conflict with the protections of the Town Code, the Hold Harmless Policy urged by Staff should not be adopted.

² Not only would any building permit be void, but in fact, the issuance of a building permit without written approval of the Town Council could subject the building official to personal liability, as set forth further below.

³ For example, Section 134-227 provides that:

Special exception uses ... shall be permitted *only* upon authorization by the town council, provided that such uses shall be found by the town council to comply with the requirements in this subdivision and other applicable requirements set forth in this chapter. (emphasis added).

II. Use of Hold Harmless Policy Would Violate Due Process Rights of Neighbors

Adoption of the proposed Policy by Staff would further be in direct violation of the due process rights of neighboring property owners, as set forth in the Town Code. By allowing an applicant whose project requires a special exception or variance to move forward with demolition or construction under a "Hold Harmless Agreement," any neighboring property owner would be denied the due process rights notice and an opportunity to be heard (and appealed if necessary)⁴ prior to any work being performed on a neighboring property.

Section 134-172 sets forth a detailed process which binds any applicant for a variance or special exception. This process includes exacting standards of: a) what an applicant must file; b) a review by staff of whether the application is complete; c) the mailing of a copy of the application to all property owners within 300 feet; d) notice of any date of hearing to surrounding property owners; e) notice to the public at large through the publication of notice in a newspaper of general circulation; and finally, an examination of f) whether the application meets all of the elements of Section 134-201 (as to variances) or Section 134-229 (as to special exceptions). If even one of these steps is skipped or a required element is missing, the application cannot be granted, but must be denied or deferred.

As such, Section 134-172 outlines the minimum due process rights of notice and an opportunity to be heard of surrounding property owners.⁵ Furthermore, adjacent neighbors are entitled to such minimum due process before the issuance of any building or demolition permit for a project requiring a variance or special exception. The case law is full of examples reversing the quasi-judicial decisions of municipalities who have violated such basic minimum due process of neighboring property owners. Consequently, clearly the Town should not adopt a Policy which would be in direct violation of neighboring property owners' due process rights.

III. "Hold Harmless" Policy Could Result In Liability Of Both the Town and Staff

While Staff (focusing only on the point of view of an applicant) argues that its Policy would be "at no risk to the Town," purportedly because the applicant will have voluntarily agreed to the process, they overlook both the liability of the Town to third parties, as well as the potential liability of individual Staff members. As noted above, under the express terms of the Code, any building

⁴ In fact an appeal to the Town Council would stay any work on the premises under Section 134-144 of the Town Code.

⁵ Staff's proposed Policy further gives rise to serious due process concerns of a shift in power from the Town Council elected by the voters to Staff. Under Staff's proposal, only they would hold the ability to "bless" some projects to proceed in advance under a "Hold Harmless Agreement" while delaying other projects. Unlike the Town Council the citizens of the Town cannot vote out Staff if they dislike their policies or practices.

permit for a project requiring a variance or special exception cannot be issued prior to a written order by the Town Council granting the required variance or special exception. As a result, any Policy (such as that proposed by Staff) which would allow the issuance of permits prior to the Town Council's consideration or granting of a special exception or variance could result in the personal liability of the Town Staff for acting outside the scope of their employment.

For example, even outside of the applicable case law, while Section 134-37 of the Code relieves any officer or employee from personal liability for any acts taken in the discharge of his duties, any release of liability is limited to actions in support of (not contrary to) the Code. As a result, "[a]ny suit brought against any officer or employee because of such act performed by him *in the enforcement of any section of this chapter* shall be defended by the town until the final termination of the proceedings." By definition, the enforcement of the Policy urged by Staff would be *in violation of* and not in the enforcement of any section of the Code. Consequently, Staff would not be protected from claims of individual liability from third parties, such as neighboring property owners. As a result, the Town should not adopt a Policy which could potentially expose its own Staff to such liability.

Likewise, the adoption of any "Hold Harmless" Policy could leave the Town exposed to liability and lawsuits from third parties, such as neighboring property owners, or even commercial lenders. Once again, by attempting to "shortcut the approval process," which would be in direct violation of the Town Code, Staff is exposing the Town to lawsuits from any litigious neighboring property owner(s) who may disagree with the decision to permit preliminary work to move forward without the proper notice and opportunity to be heard and the necessary Town Council approval. As a result, Staff's proposed Policy should not be adopted.

Furthermore, although Staff will no doubt claim that its proposed Policy would only permit such "Hold Harmless Agreements" in the event that they are signed by either the owner of a property, as well as any occupant/lessee (ostensibly to avoid a potential claim should the variance or special exception at issue not be granted) such a Policy would not protect the Town from claims by lenders or lienors of the property. The Testa property is a prime example of the possibility of such claims.

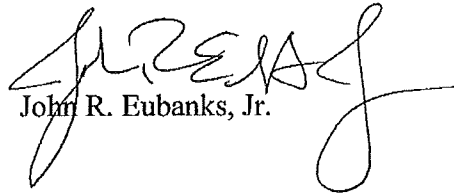
Had the Town entered into a "Hold Harmless Agreement" with Testa's to permit any work to be done prior to the issuance of an applicable variance or special exception, and Testa's thereafter ran out of money prior to the completion of their application and approval process, any first, second or third mortgagor (or any other lienor for that matter) could very well argue that the Town must now grant the variance or special exception or the Town will have participated in the deterioration of its collateral to its detriment. Again, even the possibility of such liability dictates against the adoption of the Policy proposed by Staff.

Mayor and Town Council
October 12, 2010
Page 5

IV. Conclusion

In the end, while proposed as a potential solution to "shortcut the approval process" for the benefit of applicants requiring Town Council approval, the Policy urged by Staff would be: a) in direct violation of the Town Code; b) violate the due process rights of neighboring property owners; and c) expose the Town (as well as individual staff members) to significant liability. Common sense dictates that the Town not adopt such a Policy.

Very truly yours,



John R. Eubanks, Jr.

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

W. ANTHONY DOWELL
101 EAST INLET DRIVE
(Neighbors name and address)
Palm Beach, Florida 33480

VIA FACSIMILE: 561-838-5411

(Date) 09-28-2010

Mayor and Town Council and
Members of the Architectural Review Commission
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Variance Number 18-2010
180 E. Inlet Drive, Palm Beach, Florida

Dear Mr. Mayor, Town Council members and ARCOM members:

I reside at 101 EAST INLET DRIVE in Palm Beach. My neighbor to the (south, north) east or west), Mr. and Mrs. McGann is planning to renovate their existing home at 180 E. Inlet Drive and wish to add square footage to accommodate their growing family. I have reviewed the plans for the proposed renovation and fully support their addition and other architectural changes. I would also support any relief they might need from the Town in order to get their project approved. I believe that the newly renovated residence will be a fine improvement to both my neighbor's property and our neighborhood. Hopefully, you and your staff will agree with me and will approve the proposed project.

Thank you for your consideration and please call me if you have any questions.

561 845-0345

Sincerely,

W. Anthony Dowell
Neighbor

cc: Maura A. Ziska, Esq. (Via facsimile: 561-802-8995)