# TOWN OF PALM BEACH

Town Manager's Office

TENTATIVE - SUBJECT TO REVISION

**TOWN COUNCIL MEETING**

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

**AGENDA**

**WEDNESDAY, OCTOBER 12, 2011**

**9:30 AM**

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

I. CALL TO ORDER AND ROLL CALL

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

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. COMMENTS OF MAYOR GAIL L. CONIGLIO

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

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

Post Office Box 2029 * 360 South County Road * Palm Beach, Florida 33480
Telephone (561) 838-5410 * Facsimile (561) 838-5411 * townmanager@townofpalmbeach.com

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 150 Worth Avenue, Units 115A and 115B (The Esplanade) (Per Letter Dated September 21, 2011, from Bob Waskiewicz). Page 8

2. Request for Waiver of Section 42-199, Hours of Construction Work, at 235-C Worth Avenue (Per Letter Dated September 29, 2011, from Jason Ball). Page 16

3. Request for Waiver of Section 42-199, Hours of Construction Work, at 351/347 Worth Avenue (Everglades Club) (Per Letter Dated September 9, 2011, from Maura A. Ziska). Page 21

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. **SPECIAL EXCEPTION #25-2011** The application of Johnny Meier, President, FEDCO, Inc.; relative to property commonly known as **2875 So. Ocean Blvd.;** described as lengthy legal description on file; located in the C-TS Zoning District. The applicant requests a special exception approval pursuant to Condition #2 in the original approval in 1980 to construct the existing building in the subject property (Special Exception #25-1980). The condition requires any retail applicant to contain Town Council approval for any use other than office and professional services. This request is to allow Fedco to operate a retail pharmacy in suite 103 of the first floor of the subject property containing 1,879 square feet. Site Plan Review approval is requested to convert approximately 1,879 sq. ft. of existing rentable floor area in suite 103 of the first floor to allow Fedco to operate a retail pharmacy. [Representative: Johnny Meier] Page 32

(1) Declaration of Use Agreement

***Request for Deferral to the November 10, 2011,***

***Town Council Meeting Per Memorandum Dated September 30, 2011, from John S. Page, Director, Planning, Zoning, and Building Department.***

b. **VARIANCE #21-2011** The application of Robert Holuba relative to property commonly known as **1500 Lake Court;** described Lot B, LAKE FRONT ADDITION TO BOCA RATONE COMPANY'S INLET SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 18, Page 5, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant requests a variance to allow the addition of a "T" shaped dock with an outside length of 34 feet with two wood mooring pile clusters that will be 62 feet from the bulkhead in lieu of the 6 foot maximum allowed and the installation of two inside boat lifts associated with an existing 6 foot marginal dock. [Attorney: Gregory S. Kino]
***Deferred from the October 12, 2011, Town Council Meeting.***

c. **VARIANCE #23-2011** The application of Stephen & Anne Marie Haymes; relative to property commonly known as **146 Seminole Avenue**; described as The West 40 feet of Lot 9, all of Lot 10, and the East 10 feet of Lot 3, OCEAN PARK H.W. ROBBINS ADDITION TO PALM BEACH, according to the plat thereof, recorded in Plat Book 6, Page 78, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant requests a variance to construct a second story addition that would enclose a 169 square foot balcony and would result in a cubic content ratio of 4.32 in lieu of the 4.3 existing and the 3.98 maximum allowed in the R-B Zoning District. [Attorney: Maura A. Ziska]
[ARCOM Recommendation: Implementation of the proposed variance will not cause negative architectural impacts to the subject property. Carried 7-0.]
***Deferred from the September 14, 2011, and October 12, 2011, Town Council Meetings (Special Circumstances).***

2. New Business

a. **VARIANCE #25-2011** The application of 11 Vita Serena LLC (Jeffrey and Marsha Perelman); relative to property commonly known as **181 Clarendon Avenue**; described as Lot 11, VITA SERENA according to the plat thereof, recorded in Plat Book 9, Page 59, of the Public Records of

Page 34

Palm Beach County, Florida; located in the R-A Zoning District. The applicant requests a variance to construct a 357.75 square foot loggia addition to the rear of their house. The variances requested for the loggia addition are as follows: rear yard setback of 12.5 feet in lieu of the 15 foot minimum required in the R-A Zoning District; lot coverage of 29.47 % in lieu of the 27.55 % existing and the 25 % maximum allowed in the R-A Zoning District. [Attorney: Maura A. Ziska]
[Landmark Preservation Commission Recommendation: Implementation of the proposed variance will not cause negative architectural impacts to the subject landmark property. Carried 7-0.]

b. **VARIANCE #26-2011** The application of Grier and Kristy Pressly; relative to property commonly known as **242 Seaspray Avenue**; described as Lots 421 and 423, POINCIANA PARK 2nd Addition, according to the plat thereof, recorded in Plat Book 6, Page 86, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant requests a variance to construct a 161 square foot addition to add a front porch onto their house. The variances being requested for the addition are as follows: cubic content ratio of 4.62 in lieu of the 4.39 existing and maximum allowed in the R-B Zoning District; front yard setback of 22.3 feet in lieu of the 25 foot minimum allowed in the R-B Zoning District; lot coverage of 38.2 % in lieu of the 36 % existing and the 30 % maximum allowed in the R-B Zoning District; East side yard setback of 4.2 feet in lieu of the 12.5 foot minimum required in the R-B Zoning District.
[Attorney: Maura A. Ziska]
[ARCOM Recommendation: Implementation of the proposed variance will not cause negative architectural impacts to the subject property. Carried 7-0.]



c. **VARIANCE #27-2011** The application Lee Kellogg Sadrian and Cynthia Kellogg; relative to property commonly known as **17 Middle Road**; described as Lots 33 and 34, SINGER ADDITION to the Town of Palm Beach, according to the plat thereof, recorded in Plat Book 8, Page 81, of the Public Records of Palm Beach County, Florida.; located in the R-A Zoning District. The applicant requests a variance to construct a 687 square foot two story garage to replace an existing garage which is proposed to be converted into living space on the property. In order to

construct the proposed addition, a variance is requested to have a side yard setback of 5.2 feet in lieu of the 15 foot minimum required in the R-A Zoning District.
[Attorney: Maura A. Ziska]
[ARCOM Recommendation: Implementation of the proposed variance will not cause negative architectural impacts to the subject property. Carried 6-1.]



d. **SPECIAL EXCEPTION #29-2011 WITH VARIANCE** The application of Thomas Moloney and Jan S. Moloney; relative to property commonly known as **1170 North Ocean Blvd.**; described as Lots 6 and 7, and the North 15 feet of Lots 9 and 10, Replat of part of EL ENCANTO, according to the plat thereof as recorded in Plat Book 18, Page 95, Public Records of Palm Beach County, Florida; located in the R-A Zoning District. The applicant requests a variance to construct a 440 square foot beach cabana on property across the street from the main residence, which is in the R-B Zoning District. Variances are requested to construct a beach cabana with a dimension of 24 feet by 20 feet in lieu of the 10 feet by 20 feet maximum allowed and with an area of 440 square feet in lieu of the 200 square foot maximum allowed in the Beach Area District. [Attorney: Maura A. Ziska]

e. **SPECIAL EXCEPTION #30-2011** The application of New Bradley House, LTD and Paramount Church, Inc.; relative to property commonly known as **290 Sunset Avenue and 139 No. County Road**; described as The East 10 feet of Lot 30 and all of Lots 31-37 inclusive, FLORAL PARK, a subdivision in the Town of Palm Beach, Florida, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach, Florida, in Plat Book 2, Page 6 AND Lots 164 through 172 less the West 15 feet of Lots 166 through 172, inclusive, FLORAL PARK, a subdivision in the Town of Palm Beach, Florida, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach, Florida, in Plat Book 2 Page 6.; located in the C-TS Zoning District. The applicant requests a special exception use to allow the operation of a 3,500 square foot gross leasable area restaurant "Trevini Ristorante" with 106 seats (28 of those outdoors) in the Bradley House hotel building and courtyard area. Since the proposed restaurant is in excess of 3,000 square feet, a finding of town serving is required. The applicant is proposing to abide by all conditions of

approval of the previous restaurant. Special exceptions are requested to allow 28 of the indoor seats to be outside in the courtyard and to locate 30 off-site shared supplemental parking spaces at the Paramount Church parking lot located at 139 North County Road. [Attorney: Maura A. Ziska]

D. Other

1. Request to Study a Proposal Which Would Allow Property Owners to Split Joined Condominiums into the Original Number of Units. Page 52

VIII. ANY OTHER MATTERS

IX. ADJOURNMENT

## PLEASE TAKE NOTE:

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

- The progress of this meeting may be monitored by visiting the Town's website (www.townofpalmbeach.com) and selecting "Your Government" and then selecting "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."

- If a person decides to appeal any decision made by this Council with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings. For such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

- Disabled persons who need an accommodation in order to participate in the Town Council Meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.

- Items listed on the Consent Agenda will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that any item(s) be moved to the Regular Agenda and individually considered.

- A summary of the actions taken at Town Council meetings can be viewed on the Town's website after 5 p.m. on the Friday following the Town Council meeting.

### PROCEDURES FOR PUBLIC PARTICIPATION

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

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

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

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

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

# TOWN OF PALM BEACH

## Town Council Meeting on: October 12, 2011

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Section of Agenda

Time Extensions

Agenda Title

Request for Waiver of Section 42-199, Hours of Construction Work, at 150 Worth Avenue, Units 115A and 115B (The Esplanade) (Per Letter Dated September 21, 2011, from Bob Waskiewicz).

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page Dated September 29, 2011
- Letter from Bob Waskiewicz Dated September 21, 2011
- Letter from Sherry Frankel Dated September 15, 2011
- Letter from Sherry Frankel Dated September 26, 2011
- 150 Worth Avenue Schedule

# TOWN OF PALM BEACH

## Information for Town Council Meeting on: October 12, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Waiver of Town Code Section 42-199, work in the C-WA Zone
150 Worth Ave. Units 115A and 115B (The Esplanade)

Date: September 29, 2011

**STAFF RECOMMENDATION**

Staff recommends approval of an extension of the hours for construction work for 150 Worth Avenue, within the C-WA Zoning District with the following conditions:

- Interior work is allowed 8:00 AM to 8:00 PM Monday through Friday, 8:00 AM to 6:00 PM on Saturdays, and no work is allowed Sundays and Town recognized holidays.
- Approval of the Worth Avenue Merchants Association.
- All parking, material delivery and material staging will be in the parking under the building.
- No loading or unloading, parking or material staging is to take place on Worth Avenue.
- All building permits shall be obtained before starting any work.
- No exterior work will be performed on Worth Avenue during this extension of working hours. All windows shall be screened as required by Town Ordinance.
- Workers shall not congregate nor loiter on Worth Avenue.
- Any verified complaints from neighbors will 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 10 days prior to the scheduled hearing date.
- No work shall be performed on Sundays or town recognized holidays.
- 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.
- Work shall be complete by November 23, 2011.

**GENERAL INFORMATION**

The Town received a letter from Bob Waskiewicz with Fine Line Construction requesting an extension of working time until November 23, 2011 and an extension of working hours from 8:00 AM to 8:00 PM. These adjoining retail shops are located on the first floor of the Esplanade

and face Worth Avenue. Custom millwork ordered from Italy is delaying the completion of this project so extra working hours are desired. All work scheduled is interior finish work.

Staff believes granting extended construction hours under the conditions listed will not be overly offensive to the residents or inhabitants of the town and qualifies for an exception as provided in Town Code 42-199(c).

Attachments

JP/jlt

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

September 21, 2011

To whom it may concern:

A waiver of Town Ordinance 42-199, Hours of Construction, is being requested by 150 Worth Avenue, Suite 115A and 115B to complete with construction with extended work hours of 8:00am to 8:00pm. This waiver is requested from October 12, 2011 until November 23, 2011. We are requesting this waiver on behalf of our client, Hublot and Panerai jewelry stores in order for them to be able to be open for business for the 2011 season. The custom millwork is being shipped from Italy and will not arrive until the second week of November, so a time extension is also in request.

This matter will be presented to the Palm Beach Town Council at the regularly scheduled meeting on October 12, 2011. Any concerns regarding this matter should be expressed at this meeting.

This notice is required to be postmarked no later than 10 days prior to the regularly scheduled meeting.

Please feel free to contact me with any questions or concerns regarding this matter.

Sincerely,

Bob Waskiewicz
President

# Worth Avenue Association

P.O. Box 2126, Palm Beach, FL 33480
Phone: 561-659-6909 Fax: 561-659-9898
WWW.WORTH-AVENUE.COM
Email: info@worth-avenue.com

*Quality - Integrity - Service*

September 15, 2011

Erica Massengale
Fine Line Construction
3071 North Dixie Highway
Pompano Beach, FL 33064

RE: Panerai and Hublot
150 Worth Avenue

Dear Erica:

The Worth Avenue Association has reviewed your request for interior buildout approval at 150 Worth Avenue, Suite 115.

Since the project will not involve any exterior space remodeling, the Association does not object to your construction time frame extension to November 23rd.l

Kind regards,

Sherry Frankel, Pres.

Sherry Frankel, President

# Worth Avenue Association

P.O. Box 2126, Palm Beach, FL 33480
Phone: 561-659-6909 Fax: 561-659-9898
WWW.WORTH-AVENUE.COM
Email: info@worth-avenue.com
*Quality - Integrity - Service*


September 26, 2011

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

RE: 150 Worth Avenue
Panerai & Hublot

Dear Town Council:

On behalf of the Worth Avenue Association, Inc. Board of Directors, this letter will serve to notify the Town of Palm Beach that the Worth Avenue Association does not object to the extension of time for construction modifications/improvements in process at 150 Worth Avenue (Panerai & Hublot). Interior construction is expected to reach beyond November 1st, therefore the request to extend construction hours until 8 p.m. is found to be reasonable.

It should be agreed however, that construction personnel parking and construction vendor parking will be strictly prohibited on Worth Avenue at any time during the construction process.

Yours truly,

THE WORTH AVENUE ASSOCIATION, INC.

By: _____
Sherry Frankel, President

2 BUILDING MAP
NOT TO SCALE




1 SITE AREA MAP
NOT TO SCALE

# SP-1

| | |
|---|---|
| project no.: | 11094 |
| date: | 08/04/11 |
| drawn by: | LA/AG |
| checked by: | KMS |

| | |
|---|---|
| sheet title: | SITE PLAN |
| file name: | HP-LS-1.DWG |

revisions:

TENANT IMPROVEMENTS FOR:
HUBLOT & PANERAI
ESPLANADE - SUITE #115A & #115B
150 WORTH AVENUE
PALM BEACH, FLORIDA 33480

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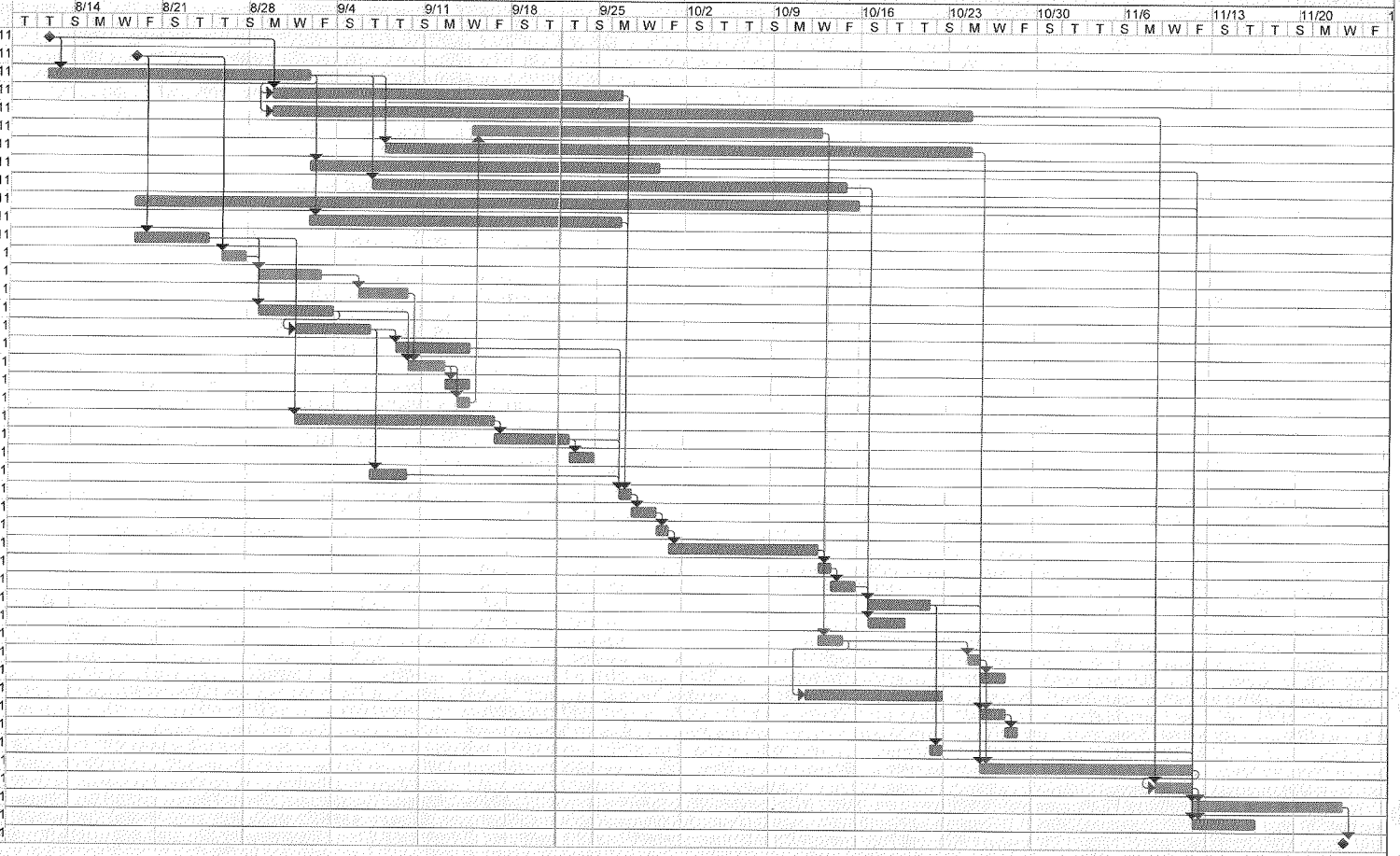
GLIDDEN • SPINA & PARTNERS
ARCHITECTURE • INTERIOR DESIGN, INC
PHONE: 561.684.6844 • FAX: 561.684.5594 • E-MAIL: info@gsp-architects.com
1401 FORUM WAY, SUITE 100 · WEST PALM BEACH, FLORIDA 33401
FL License: AA26001602
Kelly K. Spina AA13419 Stefanie Jobe Gliddon III AA26556

# Hublot & Panerai
## Worth Ave - Palm Beach, FL

| ID | Task Name | Start | Finish |
|---|---|---|---|
| 1 | Lighting Submittals | Fri 8/12/11 | Fri 8/12/11 |
| 2 | Permit Issue | Fri 8/19/11 | Fri 8/19/11 |
| 3 | Project Submittals | Fri 8/12/11 | Thu 9/1/11 |
| 4 | Estimated Recessed Lighting Lead | Tue 8/30/11 | Mon 9/26/11 |
| 5 | Estimated Cabinet Lighting Leads | Tue 8/30/11 | Mon 10/24/11 |
| 6 | Storefront Lead | Thu 9/15/11 | Wed 10/12/11 |
| 7 | Signage Lead | Thu 9/8/11 | Mon 10/24/11 |
| 8 | Door & HW Lead | Fri 9/2/11 | Thu 9/29/11 |
| 9 | Estimated Tile Flooring Lead | Wed 9/7/11 | Fri 10/14/11 |
| 10 | Estimated Carpet Flooring Lead | Fri 8/19/11 | Sat 10/15/11 |
| 11 | Mechanical Lead | Fri 9/2/11 | Mon 9/26/11 |
| 12 | Interior Demo | Fri 8/19/11 | Wed 8/24/11 |
| 13 | Exterior Barricade | Fri 8/26/11 | Sat 8/27/11 |
| 14 | Exterior Demo | Mon 8/29/11 | Fri 9/2/11 |
| 15 | Concrete Form, Inspect | Tue 9/6/11 | Fri 9/9/11 |
| 16 | Slab Trench & Rough | Mon 8/29/11 | Sat 9/3/11 |
| 17 | Steel Framing - Walls | Thu 9/1/11 | Tue 9/6/11 |
| 18 | Electrical Wall Rough | Fri 9/9/11 | Wed 9/14/11 |
| 19 | Pour Concrete | Sat 9/10/11 | Mon 9/12/11 |
| 20 | Install Storefront Steel | Tue 9/13/11 | Wed 9/14/11 |
| 21 | Measure & Order Storefront | Wed 9/14/11 | Wed 9/14/11 |
| 22 | Mechanical Rough | Thu 9/1/11 | Fri 9/16/11 |
| 23 | Frame Ceilings | Sat 9/17/11 | Thu 9/22/11 |
| 24 | Fire Sprinkler | Fri 9/23/11 | Sat 9/24/11 |
| 25 | Plumbing top-out | Wed 9/7/11 | Fri 9/9/11 |
| 26 | Framing Inspection | Tue 9/27/11 | Tue 9/27/11 |
| 27 | Hang Drywall | Wed 9/28/11 | Thu 9/29/11 |
| 28 | Screw Inspection | Fri 9/30/11 | Fri 9/30/11 |
| 29 | Finish Gypsum and Plaster | Sat 10/1/11 | Wed 10/12/11 |
| 30 | Prime Walls & Frames | Thu 10/13/11 | Thu 10/13/11 |
| 31 | Geiling Grid | Fri 10/14/11 | Sat 10/15/11 |
| 32 | Flooring | Mon 10/17/11 | Fri 10/21/11 |
| 33 | Above Ceiling | Mon 10/17/11 | Wed 10/19/11 |
| 34 | Storefront Install | Thu 10/13/11 | Fri 10/14/11 |
| 35 | Install Glass | Tue 10/25/11 | Tue 10/25/11 |
| 36 | Install Wallcover | Wed 10/26/11 | Thu 10/27/11 |
| 37 | Install Façade Stone & Stucco | Wed 10/12/11 | Sat 10/22/11 |
| 38 | Install SS Cladding | Wed 10/26/11 | Thu 10/27/11 |
| 39 | Install Signage | Fri 10/28/11 | Fri 10/28/11 |
| 40 | Install Plumbing Fixtures | Sat 10/22/11 | Sat 10/22/11 |
| 41 | Install Furniture | Wed 10/26/11 | Fri 11/11/11 |
| 42 | Trip MEP's | Wed 11/9/11 | Fri 11/11/11 |
| 43 | Final Inspections | Sat 11/12/11 | Wed 11/23/11 |
| 44 | Punch Out | Sat 11/12/11 | Wed 11/16/11 |
| 45 | CO | Wed 11/23/11 | Wed 11/23/11 |




Baseline Schedule Date: 8/26/11
Page #: 1 of 1

**FINE LINE CONSTRUCTION CONTRACTORS, INC.**
**3071 N. DIXIE HWY. POMPANO BEACH, FL**

Scheduled By: BM
Checked By: BW

# TOWN OF PALM BEACH

## Town Council Meeting on: October 12, 2011

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Section of Agenda

Time Extensions

Agenda Title

Request for Waiver of Section 42-199, Hours of Construction Work, at 235-C Worth Avenue (Per Letter Dated September 29, 2011, from Jason Ball).

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page Dated September 29, 2011
- Letter from Jason Ball Dated September 29, 2011
- Letter from Jason Ball Dated September 29, 2011

# TOWN OF PALM BEACH

Information for Town Council Meeting on: October 12, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Waiver of Town Code Section 42-199, work in the C-WA Zone
225C Worth Avenue (Brooks Brothers)

Date: September 29, 2011

## STAFF RECOMMENDATION

Staff recommends approval of an extension of the hours for construction work for 225C Worth Avenue, within the C-WA Zoning District with the following conditions:

- Interior work is allowed 8:00 AM to 6:00 PM Monday through Saturday, and no work is allowed Sundays and Town recognized holidays.
- Approval of the Worth Avenue Merchants Association.
- All parking, material delivery and material staging will be from the Apollo parking lot.
- No loading or unloading, parking or material staging is to take place on Worth Avenue.
- All building permits shall be obtained before starting any work.
- No exterior work will be performed on Worth Avenue during this extension of working hours. All windows shall be screened as required by Town Ordinance.
- Workers shall not loiter on Worth Avenue.
- Any verified complaints from neighbors will 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 10 days prior to 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.
- Work shall be complete by November 15, 2011.

## GENERAL INFORMATION

The Town received a letter from Jason Ball, Tom Rectenwald Construction, on September 29, 2011 requesting a waiver of construction hours. This work is a complete renovation of the Brooks Brothers store. A permit was issued for work at this address on June 10, 2011. Delivery of custom millwork is scheduled for October 5, 2011. This cabinetry is required to be installed prior to the installation of the flooring material. The contractor hopes to meet the October 31 deadline for completion, but would like to request a small extension of time in case there is a further minor delay in progress. All work is interior finish work.

Staff believes granting extended construction hours under the conditions listed will not be overly offensive to the residents or inhabitants of the town and qualifies for an exception as provided in Town Code 42-199(c).

ATTACHMENTS

JP/jlt

cc: Jeff Taylor, Acting Building Official
Paul W. Castro, Zoning Administrator
H. Paul Brazil, Public Works Director
Robert Walton, Code Enforcement Unit

TOM RECTENWALD CONSTRUCTION, INC.
330A Perry Highway - Harmony, PA 16037
Phone: 724-452-8801 | Fax: 724-452-8802 | Website: www.tomrectenwald.com

GENERAL CONTRACTORS SINCE 1980

September 29, 2011

Palm Beach Planning, Zoning and Building Department
360 S. County Road
Palm Beach, FL 33480
(561) 838-5400
(561) 835- 4621

To whom it may concern:

This letter is being sent to request a waiver of Town Ordinance 42-199, Hours of construction by Tom Rectenwald Construction, Inc. Due to unforeseen delays beyond our control there is a possibility that we may need to work during the first two weeks of November to ensure a high quality store open to the public on Worth Avenue for the holiday season. As such we are requesting an extension from November 1st 2011 to November 15th 2011 to continue and finish our construction between the hours of 7 AM to 5 PM Monday through Friday.

Sincerely,

Jason Ball
Assistant Project Manager
Tom Rectenwald Construction Inc
724-452-8801
jball@trcgc.net

TOM RECTENWALD CONSTRUCTION, INC.
330A Perry Highway - Harmony, PA 16037
Phone: 724-452-8801 | Fax: 724-452-8802 | Website: www.tomrectenwald.com

GENERAL CONTRACTORS SINCE 1980

September 29, 2011

Palm Beach Planning, Zoning and Building Department
360 S. County Road
Palm Beach, FL 33480
(561) 838-5400
(561) 835- 4621

To whom it may concern:

Below is a list of items that could potentially be delayed by conditions out of our control and their potential dates of completion:

10/31- 11/3: Installing bathroom accessories, misc. stock room items, non- sales floor fixtures
11/1- 11/10: Install wood flooring
11/7-11/11: Install stock room shelving
11/10: City inspections
11/14- 11/15: Final cleaning of store
11/10- 11/14: Punch list items- final corrections and modifications to store to meet city inspectors and Brooks Brothers requests
11/15: Turn over to store and store opening

Sincerely,

Jason Ball
Tom Rectenwald Construction, Inc.
724-452-8801
jball@trcgc.net

# TOWN OF PALM BEACH

## Town Council Meeting on: October 12, 2011

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Section of Agenda

Time Extensions

Agenda Title

Request for Waiver of Section 42-199, Hours of Construction Work, at 351/347 Worth Avenue (Everglades Club) (Per Letter Dated September 9, 2011, from Maura A. Ziska).

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page Dated September 29, 2011
- Letter From Maura Ziska Dated September 9, 2011
- Letter From Maura Ziska Dated September 29, 2011
- Letter dated October 3, 2011, from Brent Colby

# TOWN OF PALM BEACH

## Information for Town Council Meeting on: October 12, 2011

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Extension of Work Hours – 351/347 Worth Avenue (Everglades Club)

Date: September 29, 2011

**STAFF RECOMMENDATION**

Staff recommends approval of an extension of the hours for construction work from December 1, 2011 until May 1, 2012 for 351/347 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 until 9:00 AM.
- No work allowed on Saturdays, Sundays or Town of Palm Beach legal holidays.
- Approval of the Worth Avenue Merchants Association.
- 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.
- No exterior work will be allowed on Worth Avenue.
- 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 10 days prior to 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.

**GENERAL INFORMATION**

The building in question is the dormitory building owned by the Everglades Club. Last year the applicant requested a waiver until May 1, 2012. This Department asked that the Club request only one year's waiver at a time. This request is the follow-up waiver for work during the 2011-2012 season. The work proposed for this season includes interior renovation work. The only exterior work proposed during this time is waterproofing, stucco, and painting. We are suggesting the same restrictions imposed last year, with the exception of allowing the exterior waterproofing, painting, and stucco work only on Cocoanut Row. No complaints were received

last year. Structural repairs and interior demolition on this building were completed last year.

Attachments

JP/jlt

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

# KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

Marvin S. Rosen, *Counsel* •

*Also admitted in New York
• Also admitted in Michigan

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

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


September 9, 2011

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

***RE: Waiver of Section 42-199/Everglades Club 351/347 Worth Ave., Palm Beach***

Dear Mr. Taylor:

I represent the Everglades Club and on their behalf would like to appear before the October 12, 2011 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 December 1, 2011 to May 1, 2012. All work will be interior and the work largely consists of interior framing, rough plumbing, mechanical, and electrical, drywall hanging an finishing, trim carpentry etc. The work during season will not include weekends or holidays and all workers and deliveries will access the site via Peruvian or Cocoanut Row. The workers will park at the Everglades Club.

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

Sincerely yours,

Maura Ziska

Maura A. Ziska

/maz
cc: Scott Lese

00011713

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

Marvin S. Rosen, *Counsel*•

*Also admitted in New York
•Also admitted in Michigan

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

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

**VIA HAND DELIVERY:**

September 29, 2011

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

Re: ***Everglades Club/Requesting a Waiver of Section 42-199***

Dear Jeff:

Enclosed please find the following items for submittal regarding the above mentioned request:

1. Letter requesting the Waiver;
2. Consent letter from the Worth Avenue Merchant's Association;
3. Notarized Affidavit; and
4. Construction Hours

If you have any questions concerning the above, please call.

Sincerely,

Maura Ziska

MAZ/mr
Enclosures
Cc: John Page

00011908

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

September 9, 2011

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

***RE: Waiver of Section 42-199/Everglades Club 351/347 Worth Ave., Palm Beach***

Dear Mr. Taylor:

I represent the Everglades Club and on their behalf would like to appear before the October 12, 2011 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 December 1, 2011 to May 1, 2012. All work will be interior and the work largely consists of interior framing, rough plumbing, mechanical, and electrical, drywall hanging an finishing, trim carpentry etc. The work during season will not include weekends or holidays and all workers and deliveries will access the site via Peruvian or Cocoanut Row. The workers will park at the Everglades Club.

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

Sincerely yours,

Maura Ziska

Maura A. Ziska

/maz
cc: Scott Lese

00011713

# Worth Avenue Association

P.O. Box 2126, Palm Beach, FL 33480
Phone: 561-659-6909 Fax: 561-659-9898
WWW.WORTH-AVENUE.COM
Email: info@worth-avenue.com

*Quality - Integrity - Service*

September 6, 2011

Maura A. Ziska
222 Lakeview Avenue
Suite 1500
West Palm Beach, FL 33401

RE: Everglades Club – Extended construction term

Ms. Ziska:

We have received your request on behalf of the Everglades Club to extend construction time for this project from December 1st through May 1st.

It is understood that construction will take place during weekdays only, and that no construction truck/personnel parking will be permitted on Worth Avenue at any time during the project. With those items agreed to, the Worth Avenue Association has no objection to the project.

Kind regards,

Sherry Frankel
President

THE EVERGLADES CLUB
351 WORTH AVE APARTMENT PROJECT PRELIMINARY SCHEDUAL*

*BASED ON TENANT/OWNER EXECUTED CONTRACT NO LATER THAN 12/1/10. WORK SCHEDULE AS FOLLOWS: MONDAY THRU FRIDAY, 9:00 AM - 3:00 PM. PROJECT ACCESS THRU BACK ALLEYWAY TO COCOANUT ROW. DEMOLITION MATERIAL TO BE LOADED IN A SMALL TRUCK IN BACK ALLEYWAY AND TRANSPORTED TO DUMPSTER LOCATED IN MAIN CLUB PARKING LOT OF THE EVERGLADES CLUB. ALL CONSTRUCTION VEHICLE WILL PARK IN THE MAIN PARKING LOT OF THE EVERGLADES CLUB. ALL OFFICIAL TOWN HOLIDAYS SHALL BE OBSERVED. LIMITED WORK HOURS ABOVE ARE TO BE FOLLOWED FROM NOVEMBER 1ST THRU MAY 1ST. ALL INSPECTIONS ARE INCLUDED IN THIS SCHEDULE.

| START DATE | STOP DATE | ACTIVITY |
|---|---|---|
| 12-1-10 | 1-3-11 | Demolition permit application, submission and issuance. |
| 1-3-11 | 2-28-11 | Complete interior demolition. |
| 2-28-11 | 4-15-11 | Final architectural and Structural modification interior plan design process. |
| 4-15-11 | 5-16-11 | Project permit application, submission and issuance. |
| 5-16-11 | | Structural modification - including but not limited to foundation, exterior walls, |
| | | interior load bearing walls, columns and floor joist, exterior windows, roof and |
| | 9-15-11 | MEP modifications. |
| 8-22-11 | 9-23-11 | Main entry construction. Via Parigi rear alley area. |
| 9-15-11 | 10-14-11 | Exterior waterproofing, stucco, painting and awning installation (if applicable). |
| 9-15-11 | 10-28-11 | MEP main distribution modification. DWV/water system/Main electrical/fire sprink. |
| 10-3-11 | 1-27-12 | Interior framing |
| 11-7-11 | 1-13-12 | MEP rough-in. |
| 1-3-12 | 1-27-12 | Draft/fire stopping. |
| 1-30-12 | 2-7-12 | Insulation/Sound-proofing/vapor bar. installation. |
| 2-8-12 | 2-8-12 | Drywall delivery A.M. ROW permit required. Load thru balc. windows on Worth Ave. |
| 2-9-12 | 3-2-12 | Drywall/Tile backer installation. |
| 3-5-12 | 4-6-12 | Drywall tape/finish. |
| 4-9-12 | 4-9-12 | Interior construction clean. |
| 4-10-12 | 5-9-12 | Interior trim/doors. Paint grade only. |
| 5-10-12 | 5-12-12 | Interior construction clean. |
| 5-14-12 | 6-9-12 | Interior Prime/first coat finish paint. |
| 6-11-12 | 8-24-12 | Interior finishes. Tile/Marble - wood flooring - Stain grade trim/doors. |
| 7-5-12 | 8-29-12 | Interior finishes. Kitchen/bath cabinets and millwork. |
| 8-30-12 | 8-31-12 | Interior construction clean. |
| 8-31-12 | 9-29-12 | Interior finishes. Second finish coat paint/faux finish/wallpaper |
| 9-15-12 | 9-21-12 | Interior finishes. Set counter tops - fixtures - hardware |
| 9-15-12 | 9-29-12 | Interior finishes. MEP trim out |
| 10-1-12 | 10-2-12 | HVAC start up. |
| 10-3-12 | 10-4-12 | Interior construction clean. |
| 10-5-12 | 10-16-12 | Install Carpet. |
| 10-17-12 | 10-26-12 | Install window treatments/blinds. |
| 10-29-12 | 10-31-12 | Final Clean. |
| | | |

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

September 27, 2011

To Whom It May Concern:

A waiver of Town Ordinance 42-199, is being requested by the Everglades Club located at 351/347 Worth Avenue, Palm Beach, Florida to extend the length of time for construction work on Worth Avenue. This waiver is requested from December 1, 2011 until May 1, 2012 .

This matter will be presented to the Palm Beach Town Council at the regularly scheduled meeting on October 12, 2011. Any concerns regarding this matter should be expressed at this meeting.

This notice is required to be postmarked no later than 10 days prior to the regularly scheduled meeting.

Please contact me if you have any questions regarding the foregoing.

Respectfully,

Maura Ziska

MAZ/mr

00011714

# NOTICE AFFIDAVIT

**STATE OF FLORIDA**
**COUNTY OF PALM BEACH**

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

1. He/she is the owner, or the owner's authorized agent, of the real property legally described in the request for Waiver of Section 42-199.

2. All properties within two hundred (200) feet of the real property as described in the Request for Waiver of Section 42-199 have been notified using Property Appraiser labels.

3. A copy of the Notification Letter is attached.

Sworn to and subscribed before me this 28th day of Sept, 2011.

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

Michele Raucci
(Signature of Notary)

Maura Ziska
(Applicant's Signature)

Michele Raucci
(Printed Name of Notary)

Maura Ziska
(Printed Name of Applicant)

MICHELE RAUCCI
MY COMMISSION # DD 939519
EXPIRES: November 17, 2013
Bonded Thru Notary Public Underwriters

# THE VILLAS INC.

TOWN OF PALM BEACH
OCT 06 2011
Town Manager's Office

October 3, 2011

Maura Ziska
Kochman & Ziska
222 Lakeview Avenue Suite 1500
West Palm Beach, FL 33401

Dear Ms. Ziska

I have received your letter concerning the waiver of Town Ordinance 42-199 requested by the Everglades Club located at 351/347 Worth Avenue in Palm Beach. The Villas, Inc. located at 425 Worth Avenue has no objection to this request.

If you have any questions, please contact me at 561.655.7050

Sincerely,

Brent Colby
Manager

Cc: The Everglades Club
Palm Beach Town Council

425 Worth Avenue • Palm Beach, Florida 33480
Telephone: 561-655-7050 • Fax: 561-833-7022

# TOWN OF PALM BEACH

## Town Council Meeting on: October 12, 2011

Section of Agenda

Old Business - < 15 Minutes

Agenda Title

**SPECIAL EXCEPTION #25-2011** The application of Johnny Meier, President, FEDCO, Inc.; relative to property commonly known as **2875 So. Ocean Blvd**.; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant requests a special exception approval pursuant to Condition #2 in the original approval in 1980 to construct the existing building in the subject property (Special Exception #25-1980). The condition requires any retail applicant to contain Town Council approval for any use other than office and professional services. This request is to allow Fedco to operate a retail pharmacy in suite 103 of the first floor of the subject property containing 1,879 square feet. Site Plan Review approval is requested to convert approximately 1,879 sq. ft. of existing rentable floor area in suite 103 of the first floor to allow Fedco to operate a retail pharmacy. [Representative: Johnny Meier]
(1) Declaration of Use Agreement.
***Request for Deferral to the November 10, 2011, Town Council Meeting Per Memorandum Dated September 30, 2011, from John S. Page, Director, Planning, Zoning and Building Department.***

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page dated September 30, 2011

# TOWN OF PALM BEACH

Information for Town Council Meetings on: October 12, 2011

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To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Special Exception No. 25-2011, Declaration of Use Agreement for Fedco Pharmacy, 2875 South Ocean Boulevard

Date: September 30, 2011

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## STAFF RECOMMENDATION

Staff recommends that the Town Council defer consideration of the proposed Declaration of Use Agreement for Fedco Pharmacy to the November 10, 2011 Council meeting.

## GENERAL INFORMATION

The Town Council, at its September 14, 2011 meeting, conditionally approved the Fedco pharmacy application (Special Exception No. 25-2011) to operate a retail pharmacy at 2875 South Ocean Boulevard. A condition of approval was that the applicant draft a Declaration of Use Agreement which would limit the retail product line of the pharmacy. The applicant was also required to return to the October 12, 2011 Town Council meeting for consideration of the Agreement. Despite staff direction to the applicant regarding timely submission of a Draft Agreement for review purposes, no Agreement has been received to date. Therefore, staff recommends that this issue be deferred to the November 10, 2011 meeting to provide the applicant and staff time to work on the proposed Agreement.

cc: Peter B. Elwell, Town Manager
John C. Randolph, Town Attorney
Susan A. Owens, Town Clerk
Veronica B. Close, AICP, Asst. Director, Planning, Zoning and Building
Paul W. Castro, AICP, Zoning Administrator
zf

# TOWN OF PALM BEACH

## Town Council Meeting on: October 12, 2011

Section of Agenda

New Business - < 15 Minutes

Agenda Title

**VARIANCE #25-2011** The application of 11 Vita Serena LLC (Jeffrey and Marsha Perelman); relative to property commonly known as **181 Clarendon Avenue**; described as Lot 11, VITA SERENA according to the plat thereof, recorded in Plat Book 9, Page 59, of the Public Records of Palm Beach County, Florida; located in the R-A Zoning District. The applicant requests a variance to construct a 357.75 square foot loggia addition to the rear of their house. The variances requested for the loggia addition are as follows: rear yard setback of 12.5 feet in lieu of the 15 foot minimum required in the R-A Zoning District; lot coverage of 29.47 % in lieu of the 27.55 % existing and the 25 % maximum allowed in the R-A Zoning District. [Attorney: Maura A. Ziska]
[Landmark Preservation Commission Recommendation: Implementation of the proposed variance will not cause negative architectural impacts to the subject landmark property. Carried 7-0.]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Email dated September 4, 2011, from Golda Edinburg
- Email dated September 4, 2011, from Thelma Kanter

Zonal Case #25-2011
goldaedinburg
to:

09/04/2011 03:21 PM
Show Details

Attn: Mayor and Town Counsel

This is to inform you that I object to the plan for a Pharmacy at 2875 S. Ocean Blvd.

Golda Edinburg
2840 S. Ocean Ave. # 413
Palm Beach , Fl 33480

cc:Paul Castro

Zonal case #25-2011
Tkanter
to:

09/04/2011 12:22 PM
Cc:
tkanter
Show Details

Re:Zonal case #25-2011

I strongly object to the granting of permission for a pharmacy at 2875 S, Ocean Blvd. There are already two such pharmacies within a mile of this address.

Thelma Kanter
2840 S.Ocean Blve. Apt. 112.

cc,Paul Castro

# TOWN OF PALM BEACH

## Town Council Meeting on: October 12, 2011

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Section of Agenda

New Business - < 15 Minutes

Agenda Title

**VARIANCE #26-2011** The application of Grier and Kristy Pressly; relative to property commonly known as **242 Seaspray Avenue**; described as Lots 421 and 423, POINCIANA PARK 2nd Addition, according to the plat thereof, recorded in Plat Book 6, Page 86, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant requests a variance to construct a 161 square foot addition to add a front porch onto their house. The variances being requested for the addition are as follows: cubic content ratio of 4.62 in lieu of the 4.39 existing and maximum allowed in the R-B Zoning District; front yard setback of 22.3 feet in lieu of the 25 foot minimum allowed in the R-B Zoning District; lot coverage of 38.2 % in lieu of the 36 % existing and the 30 % maximum allowed in the R-B Zoning District; East side yard setback of 4.2 feet in lieu of the 12.5 foot minimum required in the R-B Zoning District. [Attorney: Maura A. Ziska] [ARCOM Recommendation: Implementation of the proposed variance will not cause negative architectural impacts to the subject property. Carried 7-0.]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter dated August 25, 2011, from Ethel Kinsella
- Letters dated August 25, 2011, from neighbors
- Letters dated September 27,2011, from neighbors

Ethel Kinsella
243 Seaspray Ave.
Palm Beach, FL 33480

**VIA FACSIMILE: 561-838-5411**

August 25, 2011

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

RE: Variance Number 26-2011
242 Seaspray Avenue, Palm Beach, Florida

Dear Madam Mayor and Town Council members:

I reside at 243 Seaspray Avenue in Palm Beach. My neighbor to the south, Mr. and Mrs. Pressly, are wishing to add a front porch addition to their home which would require four variances. I have reviewed the plans for the new front porch and have no objection to their plan and think it is a nice and tasteful addition. Hopefully, you and your staff will agree with me and will approve their variance requests.

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

Sincerely,

Ethel Kinsella

Ethel Kinsella

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

Mr. and Mrs. Richard Di Filippo
215 Seaspray Ave.
Palm Beach, FL 33480

VIA FACSIMILE: 561-838-5411

August 25, 2011

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

RE: **Variance Number 26-2011**
**242 Seaspray Avenue, Palm Beach, Florida**

Dear Madam Mayor and Town Council members:

I reside at 215 Seaspray Avenue in Palm Beach. My neighbor on the block, Mr. and Mrs. Pressly, are wishing to add a front porch addition to their home which would require four variances. I have reviewed the plans for the new front porch and have no objection to their plan and think it is a nice and tasteful addition. Hopefully, you and your staff will agree with me and will approve their variance requests.

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

Sincerely,

Richard Di Filippo

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

Mr. and Mrs. Ronald Fick
230 Seaspray Ave.
Palm Beach, FL 33480

VIA FACSIMILE: 561-838-5411

August 25, 2011

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

RE: Variance Number 26-2011
242 Seaspray Avenue, Palm Beach, Florida

Dear Madam Mayor and Town Council members:

I reside at 230 Seaspray Avenue in Palm Beach. My neighbor, Mr. and Mrs. Pressly, are wishing to add a front porch addition to their home which would require four variances. I have reviewed the plans for the new front porch and have no objection to their plan and think it is a nice and tasteful addition. Hopefully, you and your staff will agree with me and will approve their variance requests.

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

Sincerely,

Ronald L. Fick

Ronald L. Fick, Esq.

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

**Margaret Isard**
**238 Seaspray Avenue**
**Palm Beach, FL 33480**

**VIA FACSIMILE: 561-838-5411**

August 25, 2011

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

**RE: Variance Number 26-2011**
**242 Seaspray Avenue, Palm Beach, Florida**

Dear Madam Mayor and Town Council members:

I reside at 238 Seaspray Avenue in Palm Beach. My neighbor to the west, Mr. and Mrs. Pressly, are wishing to add a front porch addition to their home which would require four variances. I have reviewed the plans for the new front porch and have no objection to their plan and think it is a nice and tasteful addition. Hopefully, you and your staff will agree with me and will approve their variance requests.

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

Sincerely,

Margaret Isard

Margaret Isard

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

**Mr. and Mrs. Scott Murray**
**359 Seaspray Avenue**
**Palm Beach, FL 33480**

VIA FACSIMILE: 561-838-5411

August 25, 2011

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

RE: Variance Number 26-2011
242 Seaspray Avenue, Palm Beach, Florida

Dear Madam Mayor and Town Council members:

I reside at 359 Seaspray Avenue on the corner of Cocoanut and Seaspray Avenue in Palm Beach. My neighbor on the block, Mr. and Mrs. Pressly, are wishing to add a front porch addition to their home which would require four variances. I have reviewed the plans for the new front porch and have no objection to their plan and think it is a nice and tasteful addition. Hopefully, you and your staff will agree with me and will approve their variance requests.

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

Sincerely,

Scott Murray

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

Mr. and Mrs. George Klein
130 Seaspray Ave.
Palm Beach, FL 33480

VIA FACSIMILE: 561-838-5411

August 25, 2011

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

RE: Variance Number 26-2011
242 Seaspray Avenue, Palm Beach, Florida

Dear Madam Mayor and Town Council members:

I reside at 130 Seaspray Avenue in Palm Beach. My neighbor on the block, Mr. and Mrs. Pressly, are wishing to add a front porch addition to their home which would require four variances. I have reviewed the plans for the new front porch and have no objection to their plan and think it is a nice and tasteful addition. Hopefully, you and your staff will agree with me and will approve their variance requests.

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

Sincerely, Laura Klein

Laura Klein

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

**Mr. and Mrs. M.H. Whetsell, Jr.**
**142 Seaspray Ave.**
**Palm Beach, FL 33480**

**VIA FACSIMILE: 561-838-5411**

August 25, 2011

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

RE: Variance Number 26-2011
242 Seaspray Avenue, Palm Beach, Florida

Dear Madam Mayor and Town Council members:

I reside at 142 Seaspray Avenue in Palm Beach. My neighbor on the block, Mr. and Mrs. Pressly, are wishing to add a front porch addition to their home which would require four variances. I have reviewed the plans for the new front porch and have no objection to their plan and think it is a nice and tasteful addition. Hopefully, you and your staff will agree with me and will approve their variance requests.

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

Sincerely,

Sherrill Whetsell

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

Mr. Oliver Quinn
210 Seaspray Ave.
Palm Beach, FL 33480

**VIA FACSIMILE: 561-838-5411**

September 27, 2011

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

RE: Variance Number 26-2011
242 Seaspray Avenue, Palm Beach, Florida

Dear Madam Mayor and Town Council members:

I reside at 210 Seaspray Avenue in Palm Beach. My neighbor on the street, Mr. and Mrs. Pressly, are wishing to add a front porch addition to their home which would require four variances. I have reviewed the plans for the new front porch and have no objection to their plan and think it is a nice and tasteful addition. Hopefully, you and your staff will agree with me and will approve their variance requests.

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

Sincerely,

Piper Quinn

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

Mr. & Mrs. R. Michael Strickland
145 Seaspray Ave.
Palm Beach, FL 33480

**VIA FACSIMILE: 561-838-5411**

September 27, 2011

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

RE: Variance Number 26-2011
242 Seaspray Avenue, Palm Beach, Florida

Dear Madam Mayor and Town Council members:

I reside at 145 Seaspray Avenue in Palm Beach. My neighbor on the street, Mr. and Mrs. Pressly, are wishing to add a front porch addition to their home which would require four variances. I have reviewed the plans for the new front porch and have no objection to their plan and think it is a nice and tasteful addition. Hopefully, you and your staff will agree with me and will approve their variance requests.

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

Sincerely,

R. Michael Strickland

Michael and Sue Strickland

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

Mr. & Mrs. David Pressly
202 Seaspray Ave.
Palm Beach, FL 33480

**VIA FACSIMILE: 561-838-5411**

September 27, 2011

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

RE: Variance Number 26-2011
242 Seaspray Avenue, Palm Beach, Florida

Dear Madam Mayor and Town Council members:

I reside at 202 Seaspray Avenue in Palm Beach. My neighbor on the street, Mr. and Mrs. Pressly, are wishing to add a front porch addition to their home which would require four variances. I have reviewed the plans for the new front porch and have no objection to their plan and think it is a nice and tasteful addition. Hopefully, you and your staff will agree with me and will approve their variance requests.

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

Sincerely,

David and Mary Pressly

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

**Mr. & Mrs. James G. Pressly**
**133 Seaspray Ave.**
**Palm Beach, FL 33480**

**VIA FACSIMILE: 561-838-5411**

September 27, 2011

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

RE: Variance Number 26-2011
242 Seaspray Avenue, Palm Beach, Florida

Dear Madam Mayor and Town Council members:

I reside at 133 Seaspray Avenue in Palm Beach. My neighbor on the street, Mr. and Mrs. Pressly, are wishing to add a front porch addition to their home which would require four variances. I have reviewed the plans for the new front porch and have no objection to their plan and think it is a nice and tasteful addition. Hopefully, you and your staff will agree with me and will approve their variance requests.

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

Sincerely,

Katie Pressly

Jamie and Katie Pressly

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

# TOWN OF PALM BEACH

## Town Council Meeting on: October 12, 2011

Section of Agenda

New Business - < 15 Minutes

Agenda Title

**SPECIAL EXCEPTION #29-2011 WITH VARIANCE** The application of Thomas Moloney and Jan S. Moloney; relative to property commonly known as **1170 North Ocean Blvd**.; described asLots 6 and 7, and the North 15 feet of Lots 9 and 10, Replat of part of EL ENCANTO, according to the plat thereof as recorded in Plat Book 18, Page 95, Public Records of Palm Beach County, Florida; located in the R-A Zoning District. The applicant requests a variance to construct a 440 square foot beach cabana on property across the street from the main residence, which is in the R-B Zoning District. Variances are requested to construct a beach cabana with a dimension of 24 feet by 20 feet in lieu of the 10 feet by 20 feet maximum allowed and with an area of 440 square feet in lieu of the 200 square foot maximum allowed in the Beach Area District. [Attorney: Maura A. Ziska]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter dated September 22, 2011, from William C. Brown
- Letter dated September 28, 2011, from Tim Givens

September 22, 2011

To Mayor Coniglio and Members of the Town Council,

I'm writing to support the Zoning Application for a Special Exceptions Variance submitted by our direct neighbors, Tom and Jan Moloney, owners of 1170 N. Ocean Blvd.

I have received and read their application and reviewed their plans as well. Having done so, my support centers on these three observations:

1. Their request preserves the ocean vistas as desired and prescribed by the Town. In fact, it improves the ocean vistas by moving the cabana away from the top of our street, La Puerta, and placing it at the south end of their beachfront property. This will also improve the vista for neighbors using the La Puerta beach access and picnic area.

2. As a longtime property owner and tax payer, it seems overly restrictive to limit a property owner to building on as little as 4% of a taxable property, or even 9% as requested here. If the proposed building meets the Town's criteria regarding open-land vistas, and meets the design criteria as judged by ARCOM, and meets the setback criteria determined by the State – then the owner's 'right to property use' should not need to be restricted further.

3. Two hundred square feet is a reasonable size for use as a storage shed for beach equipment, but not a reasonable size for use as a family cabana. As guests in their existing cabana, we've noticed there is virtually no extra room to sit inside out of the sun. Adjoining neighbors with larger cabanas have a far better opportunity for family use and enjoyment.

Sincerely,

William C. Brown
1171 North Ocean Way
Palm Beach, FL 33480

cc. Maura Ziska

Tim Givens
278 La Puerta Way
Palm Beach, Florida 33480

September 28, 2011

Mayor Coniglio and Town Council Members
360 South County Road
Palm Beach, Florida 33480

My name is Tim Givens and I live at 278 La Puerta Way. My family and I are regular users of the beach access area adjoining the property at 1170 North Ocean Boulevard, and participate in maintaining that area.

I have read the variance report, and discussed the plans with the architect Pat Seagraves, and the Moloneys. I feel the proposed cabana design, relocation and size are appropriate and will enhance the quality of this large ocean front parcel.

This request has my full support.

Regards,

Tim Givens

# TOWN OF PALM BEACH

## Town Council Meeting on: October 12, 2011

Section of Agenda

Development Review - Other

Agenda Title

Request to Study a Proposal Which Would Allow Property Owners to Split Joined Condominiums into the Original Number of Units.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page dated September 30, 2011
- Letter from Erin Deady dated August 26, 2011
- Memorandum from John Page dated March 28, 2007
- Memorandum from John Page dated May 28, 2008

# TOWN OF PALM BEACH

Information for Town Council Meetings on: October 12, 2011

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To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Request to Study a Proposal Which Would Allow Property Owners to Split Joined Condominiums into the Original Number of Units

Date: September 30, 2011

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## STAFF RECOMMENDATION

Staff recommends that the Town Council provide staff direction on whether to study a proposal which would allow combined condominium units to be split back to their original number.

## GENERAL INFORMATION

The Zoning Code allows submittal of privately initiated comprehensive plan and zoning text amendment proposals for consideration by the Town Council before a formal submittal and study is to be conducted. The purpose of this process is to allow the Council to decide whether the idea has some merit before expending Town staff resources and time to study the proposal. It also gives the prospective applicant the opportunity to state the case for study prior to submitting an application and paying the application fee (in this case $8,000).

On August 26, 2011, Erin Deady submitted a request that the Council consider studying a proposal to amend the Comprehensive Plan so that condominium units which had been previously joined together by Unity of Title Agreements could be split back to the original number of units under certain circumstances (see attached letter). It must be noted that property owners are not allowed to split joined condominiums back into their original number if they do not meet parking and density requirements (whether a Unity of Title Agreement exists or not). It is unclear from the attached letter whether Attorney Deady is requesting the Town to initiate the study or if she is seeking guidance on submitting her own application. After contacting Ms. Deady, she advised staff that she is seeking direction whether the Council would entertain such a proposal before submitting a privately initiated application.

## BACKGROUND

As background, in 2007 Mr. Ronald Kolins, Esq., appealed an administrative decision that his client could not split a condominium unit back into three units in the Palm Beach Hotel. The Town Council upheld staff's determination based on the facts presented in that case. The Council meeting memorandum is attached. The appellant was not allowed to split the condominium.

In 2008, Erin Deady's clients, Owen and Marjorie Larkin, appealed a similar staff administrative decision. Her client had purchased a condominium unit that had a Unity of Title Agreement combining two units (one above the other). She appealed the decision that her client could not sever a Unity of Title Agreement and obtain a building permit to change one residential condominium unit back into two units. Staff had determined that because of noncompliance with density allowed in the Comprehensive Plan that the property owner could not request approval to split the units. The split would have been inconsistent with the Local Government Comprehensive Planning and Land Development Regulation Act (Florida Statute 3161(5)) and the Town's Comprehensive Plan. The Council meeting memorandum is attached. After hearing all testimony, the Town Council upheld staff's determination and denied the appeal. The appellant was not allowed to split the condominium.

At about that same time in 2008, Staff solicited direction from the Town Council for study items for the 2008-2009 Zoning Season. One of the proposed Zoning Season items was a staff proposal for comprehensive plan and zoning text amendments which would have allowed combined condominium units to be split, even if they exceeded the density allowed in the future land use designation and zoning district. The Council informed staff that they did not want to make changes to the comprehensive plan or zoning code to allow the splitting of condominium units.

If Town Council decides to pursue a Town initiated study or consider an application by Ms. Deady for such changes as explained in her request, there are a substantial number of instances where condominium or coop owners could split their units back to the original density. Staff's preliminary research indicates that at least 55 Unity of Title Agreements combining 114 condominium units into 55 condominium units have occurred since 1996. There are also many other situations in Town, including 16 units in the Palm Beach Hotel and Palm Beach Towers, where condominiums have been joined without Unity of Title Agreements which could also be split back into 35 units.

Attachments

cc: Peter B. Elwell, Town Manager
John C. Randolph, Town Attorney
Susan A. Owens, Town Clerk
Veronica B. Close, AICP, Asst. Director, Planning, Zoning and Building
Paul W. Castro, AICP, Zoning Administrator

LEWIS LONGMAN & WALKER | P.A.

ATTORNEYS AT LAW

RECEIVED

AUG 3 0 2011

TOWN OF PALM BEACH
PZB DEPT

August 26, 2011

Paul Castro, Zoning Administrator
Town of Palm Beach
Planning, Zoning & Building Department
360 South County Road, East Entrance
Palm Beach, FL 33480

**RE: Town of Palm Beach – Comp Plan Amendment**

Dear Mr. Castro:

Please consider this correspondence as a request to initiate an amendment to the Town of Palm Beach's Comprehensive Plan pursuant to Section 163.xxx(2)(a), F.S. The purpose of this proposed amendment is to address existing Comprehensive Plan language and its relation to severing unities of title. In furtherance of prior, and recent, discussions concerning severing unities of title, we believe that the Town has an opportunity to make a minor amendment to the Comprehensive Plan that would provide clear authority for the Town to sever unities of title under certain circumstances.

In terms of background, there are unities of title for condominium units that exist within the Town's boundaries that have been joined over the years. As properties change ownership, the original circumstances that made the joining of the units attractive may no longer exist. New property owners' goals, or just the sheer economic circumstances of a property owner over time, may make severing those units beneficial. No new physical density or intensity results on the ground, it becomes simply an exercise in accounting. A limiting factor appears to be parking requirements thus rendering the site "incompatible" or "inconsistent" with certain principles in the Comprehensive Plan. In some scenarios, this might be a significant constraint, in others it may be de minis. However, until the Town takes a closer look at the issue, a blanket prohibition on the practice of severing the unities of title appears to exist.

We believe that the Town should authorize severing unities of title under circumstances that do not result in significant impacts to a site or its surroundings. We believe that a narrowly tailored solution exists and we would like to explore potential approaches to that solution upon the Town's review of the extent of the issue.

For your information, I am attaching some very preliminary suggestions on how the concept could be addressed in the existing Comprehensive Plan. We used a precedent from the Palm Beach County Comprehensive Plan (see attached) whereby the County recognized the size of existing lots at the time they were designated but required a different minimum lot size for newly created lots. Policy 1.3-d in the attachment also provides some guidance allowing the subdivision of lots under certain circumstances if the **original** number of units so designated is not exceeded. This is only meant to frame the issue for discussion, recognizing that other issues may have to also be addressed in the Comprehensive Plan (such as parking) or in the Code of Ordinances.

We respectfully request that the Town support moving forward with the process of investigating this issue to culminate in an appropriate amendment to the Comprehensive Plan.

If you have any further questions, please do not hesitate to contact Peter Broberg or myself.

Sincerely,

Erin L. Deady, Esquire

ELD/as

Enclosures

I:\Client Documents\Larkin\3664-001\Corr\Comp Plan Request 082211.doc

## Potential Text Amendments to Town of Palm Beach Comprehensive Plan

1) Text Amendment Option A: Amend Future Land Use Element Policy 7.2 as follows:

The Town shall prohibit replacement or expansion of uses found to be incompatible or inconsistent with the range and land uses identified on the Town's Future Land Use Map and Official Zoning Map. In making an incompatibility or inconsistency determination under this Policy, the Town shall not consider the re-establishment of a unit that was previously developed and lawfully existed to be the replacement or expansion of a use or an increase in density or intensity.

2) Text Amendment Option B: Amend Future Land Use Element Policy 7.2 as follows:

The Town shall prohibit replacement or expansion of uses found to be incompatible or inconsistent with the range and land uses identified on the Town's Future Land Use Map and Official Zoning Map. In making an incompatibility or inconsistency determination under this Policy, the Town shall not consider the severing of a unity of title as an increase in density.

3) Text Amendment Option C: Amend Future Land Use Element Policy 2.2.3 as follows:

Multi-Family High Density – Intended to accommodate residential development at a maximum density of 13 dwelling units per gross Palm Beach acre (40,000 square feet) and, under limited circumstances, a maximum height of five stories.

Appropriate uses include single-family, two-family, townhouses and multi-family dwellings; residential PUDs as set forth in Policy 11.1.2; mixed-use PUD's as set forth in Policy 11.1.3; hotel and motel uses up to 26 rooms per gross Palm Beach acre (40,000 square feet) and associated accessory commercial uses (hotel and motel rooms are considered to be equivalent to 0.5 dwelling units); timesharing uses up to nine units per gross Palm Beach acre (40,000 square feet); public uses and facilities; public and private schools; private group uses; group homes and foster care facilities; and essential services.

This future land use category shall recognize the density of all lots as they existed on the date of the designation of the lot as Multi-Family High Density, whether or not such density is greater than allowed by the existing land use designation.

# TOWN OF PALM BEACH
## Information for Town Council Meeting on: April 10, 2007

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Veronica B. Close, Director of Planning, Zoning & Bldg.

Re: Appeal by Richard Heise of an Administrative Decision Not to allow Property Owner the Opportunity to Sever the Unity of Title which allowed Appellant to join Three Units into One, 235 Sunrise Avenue

Date: March 28, 2007

**RECOMMENDATION:**

Staff recommends that the Town Council uphold the administrative decision by Staff that the appellant cannot request to sever a unity of title to change one residential unit back into three residential units which would be inconsistent with the Local Government Comprehensive Planning and Land Development Regulation Act (Florida Statute 163.3161(5) and the Town's Comprehensive Plan.

Background

On November 5, 2005, Mr. Richard Heise entered into a unity of title agreement as a requirement to obtain building permits to provide opening in the walls between three condominium units to create one unit. Mr. Richard Heise is appealing Staff's determination that the owner of the subject condominium residential unit cannot eliminate the unity of title which combined three units. The existing condominium unit located in the Palm Beach Hotel. Mr. Ronald Kolins, attorney for the appellant, has requested the appeal in his letter, dated December 21, 2006 (copy attached). The appeal was deferred at the request of the appellant to the April 10, 2007 Council meeting.

Mr. Kolins outlines several conclusions on Page 2 of his letter in support of his client's appeal. The first is based on a conversation he had with Paul Castro, Zoning Administrator. Mr. Castro did meet with Mr. Kolins but his recollection of that conversation differs. Mr. Castro advised Mr. Kolins that placing doorways or openings between units were considered unifying units and in those cases a unity of title is required to combine units or create doorways between units. In response to the remaining portion of Mr. Kolin's letter, Staff offers the following explanation and justification for the administrative determination.

On April 8, 2003, Mr. Alan Heise, the property owner, was cited for construction/demolition without required building permits. The property owner had opened the walls between the three units to connect them. On August 3, 2004, Mr. Richard Heise, as the new owner, was cited for the same violation. The property owner was instructed by the Code Compliance Division that building permits were required for the work completed and the work in progress. When the property owner's representative came in to apply for building permits, he was instructed that the property owner would be required to enter into a unity of title agreement in order to obtain the required building permits to join the units. At that time, Mr. Castro's recollection of the situation was that Mr. Flynn, who was processing the paper work for Mr. Richard Heise, met with Mr. Castro on processing a unity of title agreement. Mr. Flynn was instructed that upon entering into the unity of title the owner would not be

able to divide the larger unit back to its original three smaller units because of density and parking issues. Mr. Flynn told Mr. Castro at that time that the owner wanted to complete the work on combining the units and that the owner had no intention of attempting to divide the property in the future.

Analysis

The justification for staff's administrative decision not to allow the appellant to be able to ask for the severance of the unity of title is as follows:

The Palm Beach Hotel property is located on 1.98 Palm Beach acres. Notwithstanding the restaurant, two ballrooms and various commercial tenant spaces, there are currently approximately 295 residential condominium units on the property based on the Palm Beach County Property Appraiser's records. Of those residential units, there are 93 residential dwelling units that have been combined with other units which reduces the number to 202 dwelling units on the subject property. The existing residential density on the subject hotel property is 102 residential dwelling units per Palm Beach acre.

The Local Government Comprehensive Planning and Land Development Regulation Act requires municipalities to comply with the goals, objectives and policies in their adopted comprehensive plans. Florida Statute (F.S).163.3161(5) states, "it is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with the comprehensive plan, or element or portion thereof, prepared and adopted in conformity to this act". Since the definition of "development", as contained in F.S. 380.04(b), also includes "an increase in the number of dwelling units in a structure" the Town cannot allow an increase in density above the maximum allowed in the Town's comprehensive plan.

In this case, a severance of the unity of title to create more residential density in the Palm Beach Hotel building would be a blatant inconsistency with the Town's Comprehensive Plan and Chapter 134, Zoning. Policy 2.3.3 of the Town's Comprehensive Plan Future Land Use Element, (copy attached) states, "...only one residential unit may be located above the ground floor or up to a maximum density of six dwelling units per Palm Beach acre, whichever is greater". This severance would clearly far exceed the maximum allowed for the underlying future land use designation of the subject property. In addition, it would also far exceed the maximum density allowed in the C-TS zoning district (6 du/acre). Therefore, in order to be in compliance Florida Statutes, the Town's Comprehensive Plan and development regulations, staff advised the appellant's attorney, Mr. Kolins, that his client could not ask for a variance to the maximum density provided for in the Town's Comprehensive Plan.

Therefore, Staff recommends that the Council uphold the administrative decision that the appellant cannot ask to sever a unity of title in contravention to Florida Statutes, the Town's Comprehensive Plan and Zoning regulations.

If you have any questions, please do not hesitate to contact Paul Castro, Zoning Administrator, at 227-6406.

Attachments

cc: John C. Randolph, Town Attorney
Paul W. Castro, Zoning Administrator
Susan Eichhorn, Town Clerk
zf

# TOWN OF PALM BEACH
Information for Town Council Meeting on: June 9, 2008

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Appeal by Owen and Marjorie Larkin of an Administrative Decision Not to Allow Them to Sever Unity of Title Agreement and Obtain a Building Permit to Split One Condominium Dwelling Unit into Two Units, 315 South Lake Drive

Date: May 28, 2008

## STAFF RECOMMENDATION

Staff recommends that the Town Council uphold the administrative decision by Staff that the appellant cannot sever a Unity of Title Agreement and obtain a building permit to change one residential unit back into two residential units which would be inconsistent with the Local Government Comprehensive Planning and Land Development Regulation Act (Florida Statute 3161(5) and the Town's Comprehensive Plan.

## BACKGROUND

On August 21, 2001 a previous owner (Bette Berry) obtained a building permit to combine a fifth floor unit (5-A) with an above penthouse unit (PH-A) located at 315 South Lake Drive. The building permit was to install an elevator to combine both units. In order to obtain a permit at that time the Town required a Unity of Title Agreement. Subsequently, in 2004, the same owner was issued a building permit to remove the elevator and install stairs in the unit.

The unit has changed ownership twice since 2004. The most recent owners, Owen and Marjorie Larkin purchased the unit in February 2008. On May 8, 2008, they requested to sever the Unity of Title Agreement and also obtain a building permit to split the two units by removing the stairs and closing the floor/ceiling opening between the 5th floor and penthouse floor. Staff advised Mr. and Mrs. Larkin that the Unity of Title could not be released and denied a building permit to split the units. On May 22, 2008, Mr. Jonathan Commander, attorney for Owen and Marjorie Larkin, filed an appeal of an administrative decision not to allow the severance of the Unity of Title Agreement and issue a building permit to remove the stairs and close the ceiling between the first and second floor of a two story condominium unit.

## ANALYSIS

The justification for Staff's administrative decision not to allow the appellant to be able to ask for the severance of the Unity of Title or a building permit to split the condominium unit is as follows:

The condominium unit is part of a multi-family development located on 1.45 Palm Beach acres. There are currently 32 residential condominium units on the property. The existing residential density on the subject property is 22 residential dwelling units per Palm Beach acre. The maximum density allowed in the Multi-Family High Density Residential future land use designation and R-D(2) zoning district in which the property is located is a maximum of 13 dwelling units per Palm Beach acre.

The Local Government Comprehensive Planning and Land Development Regulation Act requires municipalities to comply with the goals, objectives and policies in their adopted comprehensive plans. Florida Statute (F.S).163.3161(5) states, "it is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with the comprehensive plan, or element or portion thereof, prepared and adopted in conformity to this act". Since the definition of "development", as contained in F.S. 380.04(b), also includes "an increase in the number of dwelling units in a structure" the Town cannot allow an increase in density above the maximum allowed in the Town's Comprehensive Plan.

In this case, a severance of the Unity of Title to create more residential density in the subject property would be a stark inconsistency with the Town's Comprehensive Plan and Chapter 134, Zoning. This severance would clearly far exceed the maximum allowed for the underlying future land use designation of the subject property (see attached excerpts from the Plan). In addition, it would also far exceed the maximum 13 dwelling units per acre allowed in the R-D(2) zoning district (see excerpt from the Zoning Code). Therefore, in order to be in compliance with Florida Statutes, the Town's Comprehensive Plan and development regulations, Staff advised the appellant's attorney, Mr. Jonathan Commander, that his client could not ask for a variance to the maximum density provided for in the Town's Comprehensive Plan. Staff advised Mr. Commander that while he could appeal the administrative decision, a similar appeal of an administrative decision had been upheld by the Town Council against Mr. Richard Heise in 2007.

In Mr. Commander's letter, dated May 22, 2008 (copy attached), he makes several points in support of his client's appeal. Staff addresses each argument below in the numerical order in which they are provided in his appeal letter.

1. The challenge to the Department of Community Affairs (DCA) that Mr. Commander references regarding Palm Beach County and the Cheney Ranch is not germane to this case. Mr. and Mrs. Larkin's appeal is related to a request to allow more density than the future land use designation in the comprehensive plan allows. The case cited was not a challenge to DCA in which the County allowed more density through zoning than the future land use designation allowed. It was a challenge to Palm Beach County's approval to transmit a comprehensive plan amendment to DCA which changed the future land use designation of the Cheney Ranch property to a category which allowed more density than the existing future land use designation at that time (from 1 dwelling unit per acre to 9 dwelling units per acre). Staff verified this information by contacting Dean Bunton, the case attorney for DCA, and Jane West, Esq., the attorney for one of the neighboring property owners in that challenge.

2. While the property appraiser's records are for taxing purposes only and have no bearing on Town comprehensive plan and zoning issues, both 5-A and PH-A are identified as one unit, under one property control number in the property appraiser's records (property control record attached). In addition, the Town's records identify both 5-A and PH-A in one property record and one unit. As far as the condominium records, they have no relevance in this appeal.

3. The Town cannot base land use decisions on economic grounds or on the grounds that by allowing two units it might generate more taxable value and thus more revenue for the Town. That would be an argument in every comprehensive plan or zoning request which increased density or development rights.

4. The appellant states that this is a hardship for his client. Hardship is not relevant in this appeal of the administrative decision.

5. The increase in density proposed in this appeal does require a variance from the Town's parking requirements and does generate more demand for parking than the one dwelling unit.

6. The Town attorney has opined that the executed Unity of Title Agreement entered into by the previous owner is a legal document and binding on the property owner, successors or assigns.

7. The case in the Palm Beach Hotel is relevant (see attached Staff memorandum dated March 28, 2007). While that appellant's son originally began work without a permit in the previous appeal, a Unity of Title Agreement was entered into and a building permit issued to combine the units. Staff's justification for denial of the request to severe the Unity of Title is exactly the same as this appeal.

8. The Town's comprehensive plan future land use element is its legal document to guide the Town in decisions for development and redevelopment. As such, the Town has determined through the adoption of this document to limit development or redevelopment in this area to 13 dwelling units per acre. There is no goal, objective or policy in the Town's Comprehensive Plan which allows for exemptions to this maximum density for existing development. Staff believes there is merit to study a possible comprehensive plan text amendment to allow existing development to vest developed densities. Therefore, Staff is proposing this issue to be a study item this coming year. However, not unless or until a comprehensive plan amendment is adopted, this type of building permit (development order) is not permitted.

Staff recommends that the Council uphold the administrative decision that the appellant cannot ask to sever a Unity of Title in contravention to Florida Statutes, the Town's Comprehensive Plan and Zoning regulations. If you have any questions, please do not hesitate to contact Paul Castro, Zoning Administrator, at 227-6406.

Attachments

cc: John C. Randolph, Town Attorney
Veronica B. Close, Asst. Director of Planning, Zoning & Building
Paul W. Castro, Zoning Administrator
Susan Eichhorn, Town Clerk
Jeff Taylor, Building Official
zf

*Corbett and White, P.A.*

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* Board Certified in City, County and Local Government Law
^ State Certified County and Circuit Court Mediator
**AICP, LEED AP

October 11, 2011

Dear Paul:

First and foremost, I wanted to follow-up with you to let you know that I have departed from Lewis, Longman & Walker, P.A. and I am now Of Counsel with Corbett and White, P.A. which is why you are seeing a different letterhead with this correspondence. More to the point, I just wanted to make sure I clarified certain aspects of the request I submitted on August 26, 2011 on behalf of Owen Larkin. My previous request may have been unclear on a couple of points and I just wanted to assure that I had portrayed everything correctly before the Town Council meeting this week on October 12, 2011. Please include this correspondence in the back-up for the agenda item and discussion regarding our request.

**Requested "Study" versus Application Submittal**

In our determination, we are not requesting a comprehensive analysis that requires a significant amount of staff time or resources on either the part of the Town or Applicant. The basis for the request is to maximize efficiency and resources before going to the detail required of a potential Comprehensive Plan or Zoning Code amendment/modification.

We do not believe that the severance of a unity of title is feasible or preferable in every instance and there may be fact-specific criteria that could be developed to evaluate these requests. It would seem the goal of any such analysis or study would be to define what circumstances a severance could be accomplished, if at all. To do that, the actual impact would have to be known under a range of conditions because such severances may result in different impacts. It was our intent that the Town and the Applicant cooperate to define an approach, analyze the range of impacts and that this could lead to the submittal of a future application for Comprehensive Plan amendment and/or Zoning Code amendment if appropriate. The reason we are requesting that this item be discussed at this juncture is to, again, not waste the Town or potential Applicant's resources. We are not currently seeking guidance on submitting an actual application at this point in the process.

**Data Compiled by the Town to Date**

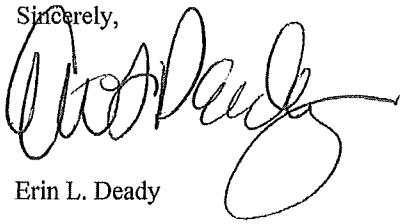
The Town has already compiled some data on the extent of instances where unities of title exist. While you point out that there are at least 55 Unity of Title Agreements in place combining 114 units, it seems not every instance may be appropriate for severance. As you also point out, there are also other situations where units have been combined (such as the Palm Beach Hotel and Palm Beach Towers) without Unities of Title that, if severed, could result in over a two-fold increase in the amount of units originally combined. This data demonstrates our point: no two requests are similar nor are their impacts.

**Conceptual Language in our Request**

Please note that the language we included in our request is by no means intended to be a formal submittal or suggestion. We wanted to put some type of "concept" on the table to further illustrate the type of change that may clarify an intent in the Comprehensive Plan to allow severances under limited circumstances. Such a suggestion is just one of many options that may be available to eliminate any potential inconsistency between a severance request and the Comprehensive Plan. As you point out in your Memorandum of September 30, 2011, and we recognize, there are further parking and density issues that would have to be addressed that would probably surface during the "study" or analysis of the issue.

Paul, I apologize for my lack of clarity in our request and I do hope that this more clearly describes what we are seeking and our position. I appreciate your follow-up with me on this matter and please let me know if there is anything else I can provide before the October 12, 2011 discussion. For any other information, please do not hesitate to call me at 954.593.5102.

Sincerely,



Erin L. Deady

WEDNESDAY, OCTOBER 12, 2011, TOWN COUNCIL MEETING

"APPROVAL OF AGENDA" INFORMATION SHEET

VII. DEVELOPMENT REVIEWS

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. **SPECIAL EXCEPTION #25-2011** The application of Johnny Meier, President, FEDCO, Inc.; relative to property commonly known as **2875 So. Ocean Blvd.;** described as lengthy legal description on file; located in the C-TS Zoning District. The applicant requests a special exception approval pursuant to Condition #2 in the original approval in 1980 to construct the existing building in the subject property (Special Exception #25-1980). The condition requires any retail applicant to contain Town Council approval for any use other than office and professional services. This request is to allow Fedco to operate a retail pharmacy in suite 103 of the first floor of the subject property containing 1,879 square feet. Site Plan Review approval is requested to convert approximately 1,879 sq. ft. of existing rentable floor area in suite 103 of the first floor to allow Fedco to operate a retail pharmacy. [Representative: Johnny Meier]

(1) Declaration of Use Agreement

***Request for Deferral to the November 10, 2011, Town Council Meeting Per Memorandum Dated September 30, 2011, from John S. Page, Director, Planning, Zoning, and Building Department.***

**Page 2**

**ARE THERE ANY OTHER CHANGES TO THE AGENDA?**