



TENTATIVE:
SUBJECT TO
REVISION

TOWN OF PALM BEACH

Town Manager's Office

TOWN COUNCIL MEETING DEVELOPMENT REVIEW

TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD

AGENDA

SEPTEMBER 9, 2015

9:45 AM

Welcome!

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

I. CALL TO ORDER AND ROLL CALL

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

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. COMMENTS OF MAYOR GAIL L. CONIGLIO

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

VI. APPROVAL OF AGENDA

VII. DEVELOPMENT REVIEWS

A. Appeals

1. ARCOM Appeal
Handicapped Parking
300 South Ocean Boulevard

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

B. Time Extensions and Waivers

1. Extension of Time Schedule for Completion of Construction per Town Code
476 South Ocean Boulevard
John S. Page, Director of Planning, Zoning and Building

Page 24

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. **SPECIAL EXCEPTION #20-2015 WITH SITE PLAN REVIEW AND VARIANCE** The application of 8 Golfview, LLC as Contract Purchaser (Maura Ziska, Authorized Agent); relative to property commonly known as **8 Golfview Rd.**, described as lengthy legal description on file; located in the R-A Zoning Districts. The Applicant is requesting a Special Exception with Site Plan Review to allow the construction of a 8,706 sq. ft. two-story, single family residence on a non-conforming lot which is 140 ft. in depth in lieu of the 150 ft. minimum required and 19,500 sq. ft. in area in lieu of the 20,000 sq. ft. minimum required in the R-A Zoning District. A Variance is requested to have a building height plane setback ranging from 34.2 ft. to 55.85 ft. in lieu of the 46.1 ft. to 67.75 ft. minimum setback required. [Attorney: Maura Ziska, Esq.]

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

Deferred from the August 11, 2015, Town Council Meeting

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

- b. **VARIANCE #20-2015** The application of Lisa A. Konrad; relative to property commonly known as **242 Via Linda**, described as lengthy legal description on file; located in the R-B Zoning District. The Applicant is requesting a Variance to allow a 386 sq. ft. one-story cabana addition to have a side yard setback of 10 ft. in lieu of 12.5 ft. minimum required. [Attorney: Peter Broberg, Esq.]

Deferred from the August 11, 2015, Town Council Meeting

Request for Withdrawal Per Letter Dated August 27, 2015 from Peter S. Broberg

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

Page 29

2. New Business

- a. **SITE PLAN REVIEW #4-2015 WITH SPECIAL EXCEPTION** The application of Peter Gerhard; relative to property commonly known as **150 Kings Rd.**, described as lengthy legal description on file; located in the R-A Zoning District. The Applicant is requesting a Site Plan Review to allow the construction of a 6,823 sq. ft. two-story, single family residence on a non-conforming platted lot which is 100.03 ft. in width in lieu of the 125 ft. minimum required; a lot depth of 143.08 feet in lieu of the 150 foot minimum required; and, 14,312 sq. ft. in area in lieu of the 20,000 sq. ft. minimum required. Special Exception approval is requested to allow two gates (a sliding gate at the main entrance and a swinging gate at the service entrance) on

Kings Road (which is a dead end street) with a 10 foot setback from the street pavement in lieu of the 18 foot minimum required on a dead end street. [Attorney: Maura Ziska, Esq.]

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

- b. **SPECIAL EXCEPTION #24-2015 WITH SITE PLAN REVIEW** The application of Alex Guilmurray, Chief Financial Officer of the Breakers Palm Beach, Inc.; relative to property commonly known as **1 So. County Rd.**, described as lengthy legal description on file; located in the PUD-A Zoning District. The Applicant is requesting a Special Exception with Site Plan Review approval for the following modification projects at The Breakers: 1) Flagler Club Terrace Awning Structure: Replace existing umbrellas totaling 800 Sq. Ft. with a 680 Sq. Ft. awning on Flagler Terrace, which is on the 6th floor on the west side of The Breakers Hotel. The awning will be supported by aluminum columns and a rigid frame. 2) New Engine Room Building Extension: replace existing smoke stack (to be demolished) with a new extension of the existing engine room in the service court on the north side of the hotel. The new engine room will be an additional 3,945 sq. ft. under AC with 786 Sq. Ft. of covered loading, and will house a new generator, fire pump, and other equipment which are required to bring the building up to the current codes. The new 600 KW generator will replace an existing 500 KW generator. 3) Cooling Tower – Addition of 720 sq. ft., 20.6 Ft. high cooling tower just south of the existing cooling tower north of the main hotel parking lot. Said cooling tower will be screened from the parking lot and golf course by existing and supplemental landscaping. 4) Access Control Gates – addition of three decorative access control gates on the walkway between the main hotel building and the space building along the Ponce Promenade. [Attorney: James M. Crowley, Esq.] [Landmark Commission Recommendation: Implementation of the proposed special exception with site plan review will not cause negative architectural impacts to the subject landmark property if the larger gate's curvature is redesigned. Carried 6-1]

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

- c. **SPECIAL EXCEPTION #25-2015 WITH SITE PLAN REVIEW AND VARIANCE** The application of Bice Restaurante; relative to property commonly known as **313 ½ Worth Ave.**, described as lengthy legal description on file; located in the C-TS Zoning District. The Applicant is requesting a Special Exception with Site Plan Review approval to modify a previous approval for outdoor seating to replace an awning with a larger 486 sq. ft. awning over the permitted 46 outdoor seats in Via Bice. Special exception approval is being requested to add an 81 sq. ft. awning at the second floor car elevator location, where a second floor is a special exception approval. A Variance is requested to allow a zero (0) east side yard setback in lieu of the 5 ft. minimum required for the proposed awning at the second floor car elevator location. [Attorney: Maura Ziska, Esq.]

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

- d. **SPECIAL EXCEPTION #26-2015 WITH SITE PLAN REVIEW AND**

VARIANCE The application of Four Seasons Resort Palm Beach; relative to property commonly known as **2800 So. Ocean Blvd.**, described as lengthy legal description on file; located in the R-D(2) Zoning District. The Applicant is requesting a Special Exception with Site Plan Modification to the hotel site to improve its guest facilities in terms of aesthetics, functionality, guest amenities and life safety standards. 1. The proposed modifications can be categorized into three categories. **West Garden Improvements:** Modifications to the site plan: a) New service vehicle entry from South Ocean Blvd. at the north side of the property; b) increase green space park area including a yoga trellis to the front of the property; c) relocate tennis court (one existing tennis court will be eliminated) to the south to create service drive at the north side of the property. **Remodel Lobby Level Interiors:** The interiors will be updated by relocating the Lobby Bar, adding a Show kitchen in the Dining Room and improving the Dining Terrace area. d) Renovate reception and lobby sitting area to open up the floor plan; e) new guest retail shop; f) Renovate and downsize Guest Lounge (Living Room) to accommodate new retail shop; g) reconfigure Guest Lounge exterior hardscape; h) reconfigure dining room bar areas to reduce the size to accommodate a wider pool deck; i) new show kitchen in dining room; j) reconfigure Terrace Dining Area and add permanent roof structure to replace awning and add balcony extension above. **Pool Deck Improvements:** The pool deck will have an enlarged pool and a new secondary pool will be built that is sized in order to meet the current needs of the guests. Many rooms are proposed to have direct access to the pool deck with extended balconies and stairs. Ocean Views from the property will be improved by removing the existing obstructive concrete planters on the pool deck. Additionally, the existing Atlantic Bar and Grill (ABG) will be replaced with a new structure that has increased restroom capacity and improved kitchen and bar equipment. Service access to the new ABG will be from previous approval which was never built). The dune vegetation will be infilled and new growth will be encouraged. Relocate spa pool from the northeast corner of the pool deck to the northeast corner of the enlarged primary pool; extend terrace suite balconies (west building pool side) extend area in garage Mezzanine level consisting of 1,350 sq. ft. for added “back of house” space; j) create new Mezzanine level access from pool deck; k) add six temporary cabanas to the pool deck area as follows: (2) 74 sq. ft.; (2) 100 sq. ft.; and (2) 225 sq. ft.; l) infill dune landscaping and increase dune area. 2. In order to construct the Yoga Trellis, a variance is being requested to increase the lot coverage to 38.9% in lieu of the 38.7% existing and the 22% maximum allowed for 5 story building in the R-D(2) Zoning District. [Attorney: Maura Ziska, Esq.]

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

- e. **SPECIAL EXCEPTION #27-2015 WITH SITE PLAN REVIEW AND VARIANCES** The application of Il Sogno, LLC; relative to property commonly known as **1520 So. Ocean Blvd.**, described as lengthy legal description on file; located in the R-A Zoning District. The Applicant is requesting a Special Exception approval to construct a pedestrian access tunnel beneath South Ocean Blvd. connecting

Page 54

property owned by the Applicant on the east side of South Ocean Blvd. and on the west side of South Ocean Blvd., including providing electric, gas, water and other utility services to a beach house on the east side of South Ocean Blvd. Applicant seeks approval to construct a one-story 500 sq. ft. beach cabana intended for the use of family and guests, without sleeping quarters, on property it owns on the east side of South Ocean Blvd. across from the main residence located immediately to the west of the subject property. Site Plan Review approval of the beach house and tunnel as required for all special exceptions in the R-A Zoning District. Variance approvals are required to construct a beach cabana, beach access stairs, a beach tunnel and stairs to that tunnel on the land south of Southern Blvd without a property ocean bulkhead with a setback from designated Ocean bulkhead line of ranging from 52.5 feet to 90.0 feet, in lieu of 150 foot minimum required; and to construct tunnel stairs on the west side of South Ocean Blvd., with the front yard setback of 8.0 feet, in lieu of 35 feet required by code. [Attorney: Francis X. J. Lynch, Esq.]

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

Request for Deferral to the October 14, 2015 Town Council Meeting Per Letter Dated August 28, 2015 from Francis X.J. Lynch.

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

- f. **SPECIAL EXCEPTION #28-2015 WITH SITE PLAN REVIEW** The application of Paul Tudor Jones, II; relative to property commonly known as **1300 So. Ocean Blvd.**, described as lengthy legal description on file; located in the R-AA Zoning District. The Applicant is requesting a Special Exception with Site Plan Review approval to allow the installation of eight (8) new poles for tennis court lights at the existing tennis court located at the north-west corner of the property. [Attorney: Maura Ziska, Esq.]

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

- g. **VARIANCE #22-2015** The application of Robert F. Agostinelli; relative to property commonly known as **196 Banyan Rd.**, described as lengthy legal description on file; located in the R-A Zoning District. The Applicant is requesting Variances replace the flat roof on the house on the southwest side of the property with a pitched roof with a street side yard setback of 24.4 ft. in lieu of the 35 ft. minimum required; and, to enclose the first floor area on the southeast side of the property adjacent to the staircase on the house for use as storage with a street side yard setback of 24.4 ft., in lieu of the 35 ft. minimum required. [Attorney: Guy Rabideau, Esq.]
[Landmark Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject landmark property. Carried 7-0]

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

- h. **VARIANCE #23-2015** The application of James Goldrick, Officer; relative to property commonly known as **4 El Bravo Way**, described as lengthy legal description on file; located in the R-A Zoning District.

The Applicant is requesting a Variance to add an aluminum safety railing and gate at the fifth floor roof deck that will result in an overall height of 58.46 ft. in lieu of the 30 ft. minimum overall height allowed; and, to allow 16 electrical outlets and wet bar on the non-conforming fifth floor roof deck. [Attorney: Maura Ziska, Esq.]

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

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

- i. **VARIANCE #24-2015** The application of James Held and Kenn Karakul; relative to property commonly known as **241 Jungle Rd.**, described as lengthy legal description on file; located in the R-A Zoning District. The Applicant is requesting to modify the approved house as follows: Variance to add a 464 sq. ft. 2 car garage (two, 2 car garages already exist on the plan) that will increase the lot coverage calculation to 25.8% in lieu of the 25% maximum allowed; and, to allow screened solar panels on the roof of the residence that would cover 40.1% of the roof area in lieu of the 30% maximum coverage allowed. [Attorney: Maura Ziska, Esq.]
[Architectural Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject property. Carried 7-0]

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

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

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

3. Other

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

Page 56

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

VIII. ORDINANCES

A. First Reading

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

Page 66

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

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

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

IX. ANY OTHER MATTERS

X. ADJOURNMENT

PLEASE TAKE NOTE:

- Note 1:** No written materials received after 5:00 p.m. on the Thursday immediately prior to a monthly Town Council meeting will be included in the back-up binders distributed to the Mayor and Town Council in preparation for that meeting. Written materials received after 5:00 p.m. on Thursday will be separately distributed to the Mayor and Town Council; however, depending upon the length of the materials, the time of submittal, and other circumstances, the Mayor and Town Council may not be able to read and consider such late submittals prior to acting upon the policy matter(s) which they address.
- Note 2:** The progress of this meeting may be monitored by visiting the Town's website (townofpalmbeach.com) and clicking on "Meeting Audio" in the left column. If you have questions regarding that feature, please contact the Office of Information Systems (561) 227-6315. The audio recording of the meeting will appear within 24 hours after the conclusion of the meeting.
- Note 3:** If a person decides to appeal any decision made by this Council with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings. For such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.
- Note 4:** Disabled persons who need an accommodation in order to participate in the Town Council Meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.
- Note 5:** Items listed on the Consent Agenda will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that any item (s) be moved to the Regular Agenda and individually considered.

Note 6: All back-up material for the items listed on the agenda are posted to the Town's website and emailed to all Stay Informed subscribers on the Friday before the Town Council meeting. To access the back-up materials and/or subscribe to the Stay Informed list, please visit the Town's website (townofpalmbeach.com).

PROCEDURES FOR PUBLIC PARTICIPATION

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

PUBLIC HEARINGS:

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

COMMUNICATIONS FROM CITIZENS:

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

OTHER AGENDA ITEMS:

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

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

TOWN OF PALM BEACH

Town Council Meeting Development Review on: September 9,
2015

Section of Agenda

Appeals

Agenda Title

ARCOM Appeal
Handicapped Parking
300 South Ocean Boulevard

Presenter

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

Supporting Documents

- [Memorandum dated August 24, 2015 from John S. Page](#)
- [Letter dated July 31, 2015 from David E. Klein](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 9, 2015

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

Re: Appeal of ARCOM Case #B-054-2015
300 South Ocean Boulevard (handicapped parking)

Date: August 24, 2015

STAFF RECOMMENDATION

Staff recommends that the Town Council consider and rule upon the appeal of 300 South Ocean Boulevard Apartments, Inc., objecting to ARCOM's decision of July 22, 2015, requiring that the single existing handicapped parking space be retained on the site.

GENERAL INFORMATION

A multi-story condominium exists at 300 South Ocean Boulevard. The Association/applicant appeared before ARCOM on July 22, 2015 seeking approval of Case #B-054-2015, described as "Reconfiguration of pedestrian entry to south building entrance; addition of new parking lot column features; and renovation of landscaping for affected area."

First considered by ARCOM in June, the project was deferred for re-study of the columns and entry pedestals. Architect Andres Paradelo presented revisions in July, including parking lot changes. He explained that the single handicapped parking space at the site was to be eliminated in order not to lose any overall spaces. ARCOM eventually approved the project, excluding entry features to the parking lot that were considered undesirable, and also with the condition that the single, existing handicapped parking space be retained whether required by Code or not.

Attorney David Klein is appealing the condition of retaining the handicapped parking space. Per his attached appeal letter, he contends that such condition falls outside the jurisdiction of ARCOM. He has included a Declaratory Statement (Exhibit A) issued from the State of Florida Building Commission as well as a response prepared by Building Official Bill Bucklew (Exhibit B) titled Florida Building Code Accessibility Regarding Condominiums which he believes support his position that no handicapped parking space is necessary. Together, these documents are intended to clear-up confusion among ADA Guidelines, the Fair Housing Act, and the Florida Building Code. It is the Building Official's determination that because the building was completed for occupancy prior to March 13, 1991, and because no portion of the building is set

aside for public accommodation areas (the grounds are only to be used by residents and their guests), then there is no requirement for “accessibility compliance.”

SPECIAL CONSIDERATIONS

ARCOM members felt the size and nature of the property warranted at least one handicapped parking space at the site, and chose to make retention of the existing handicapped parking space a condition of approval for the remainder of the project.

Attachments

cc: David Klein, Applicant Attorney
John C. Randolph, Town Attorney
Bill Bucklew, Building Official
ARCOM members

P A L M B E A C H

David E. Klein, Esq.
direct: 561.402.7412
dklein@rabideau-law.com

July 31, 2015

Town Council Members
c/o The Office of the Town Clerk
Town of Palm Beach
360 S. County Road
Palm Beach, Florida 33480

Re: ARCOM B-054-2105 – Appeal to Town Council
Property: 300 South Ocean Blvd., Palm Beach, Florida
Applicant: 300 South Ocean Boulevard Apartments, Inc.

RECEIVED

Dear Town Council Members:

2015 JUL 31 13:59 TOWN CLERK

In connection with the above-referenced matter, I represent 300 South Ocean Boulevard Apartments, Inc. (the "Applicant"). On July 22, 2015, the architect for the Applicant, Paradelo & Fleck Design, appeared before ARCOM in order to seek approval of reconfiguration of the pedestrian entry to the south building entrance, addition of new parking lot column features, and renovation of landscaping (the "Project").

Part of the proposed Project involves restriping the parking lot in order to maintain the current number of parking spaces. There currently exists one handicapped parking space at the Property, which was created by the Applicant without any request by the Town of Palm Beach or any other government body. The decision to add a handicapped space was made solely by the Applicant. In order not to lose any parking spaces in connection with the Project, the handicapped space needs to be eliminated. At the July 22, 2015 ARCOM meeting, the Architectural Commission unanimously approved the Project on condition that there be one handicapped space (the "Condition"). The Applicant is hereby appealing such Condition.

We allege that the Condition placed on the Applicant by the Architectural Commission was inconsistent and nonconforming with the procedures and criteria of the Architectural Commission and the standards set forth in the Town of Palm Beach Code of Ordinances.

The Condition placed by the Architectural Commission was the result of a site plan review by the Architectural Commission. As stated in Section 18-146 of the Code, the task of the Architectural Commission is to "preserve various elements of urban beauty and require that new projects enhance the existing elements." It is our contention that site plan review and subsequent

request for modification falls outside the jurisdiction of the Architectural Commission. As per Section 134-326 of the Code, site plan review falls under the realm of either Town Council or the Director of the Planning, Zoning, and Building Department. As such, the Architectural Commission does not have the authority to require a handicapped parking space. The question of whether a handicapped space is required would be handled by either Town Council or administratively by the Director of the Planning, Zoning, and Building Department.

In addition, a handicapped space is not required at the Property. The only reason there currently exists a handicapped space is that the Applicant unilaterally chose to stripe the space as such.

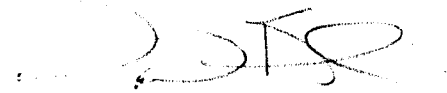
The Town of Palm Beach's accessibility requirements are governed by the Florida Accessibility Code for Building Construction, which incorporates the Americans with Disabilities Act's standards. The Florida Building Commission was aware of confusion regarding the Accessibility Code as applied to multifamily residential dwellings, such as condominiums, and, therefore, issued a Declaratory Statement, DS 2013-011 (the "Declaratory Statement") which stated that if areas of such buildings are available to the public, then a "public accommodation" exists and those portions of the building would need to meet the requirement of the Florida Accessibility Code. However, if a "public accommodation" is not present and all areas of the building are for the use of residents and guests only, then the building does not need to comply with the Florida Accessibility Code.

All areas of the Property are for the use of residents and guests only and there are not any features of the Property that are open to the public. Therefore, a handicapped parking space is not required. Enclosed please find the Declaratory Statement (attached hereto as Exhibit "A") as well as the document provided to us by Mr. William C. Bucklew, Building Official, in response to our inquiry as to this matter (attached hereto as Exhibit "B").

Based on the above, we request that the Architectural Commission's decision to require a handicapped parking space on the Property be overturned.

I have also enclosed the existing and proposed site plan for your review (attached hereto as Exhibit "C").

Sincerely,



David E. Klein

Enclosures

STATE OF FLORIDA
BUILDING COMMISSION

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	6/11/2013
File #	2013-03303

In the Matter of

ALLIANCE RESIDENTIAL
BUILDERS OF SOUTH FLORIDA, LLC, and
ALTIS AT COCONUT CREEK, LLC

DS 2013-011

Petitioners.

DECLARATORY STATEMENT

The foregoing proceeding came before the Florida Building Commission (Commission) by an Amended Petition from Robert Fine, Esquire for Alliance Residential Builders of South Florida, LCC, and Altis at Coconut Creek, LLC (Petitioners) that was received March 19, 2013. Based on the statements in the petition, the material subsequently submitted and the subsequent request by the Petitioner, the Commission states the following:

Findings of Fact

1. The petition is filed pursuant to, and must conform to the requirements of Rule 28-105.002, Florida Administrative Code (F.A.C.).
2. Petitioners are developers and/or builders of residential apartment developments that are defined as "covered multifamily dwellings" under the (Federal and) Florida Fair Housing Act. Petitioners currently have a project in development in South Florida and are considering additional developments.
3. Petitioners seek clarification as to the applicability of Sections 553.502-553.504, Florida Statutes (2012) and Section 424.1, Florida Building Code, Building (2010) as it applies to "covered multifamily dwellings" as defined by the Florida Fair Housing Act.

4. Petitioners request answers to the following questions:

(1) Are the areas of the apartment buildings and developments in projects that will be permitted and constructed by Petitioners in Florida, that are intended solely for the use of residents and their guests (including dwelling units and common use areas), that are not subject to Section 504 of the Rehabilitation Act (programs receiving federal financial assistance) and are not subject to Title II of the Americans with Disabilities Act (State and local Government Services), subject to the Accessibility Code except for the requirement set forth in Section 553.504(2), Florida Statutes (2012), as provided for in sections 101.1.3 and 201.1 of the Accessibility Code?

(2) Are swimming pools that are part of common use areas of the apartment buildings and developments in the projects that Petitioners will be permitting and constructing, that are solely intended for the use of the residents and their guests (and not otherwise available to the general public) and which are not the recipients of governmental financial assistance or sponsorship, subject to the Accessibility Code because Section 424.1 classifies them as "public swimming pools" or any other reason?

Conclusions of Law

5. The Commission has the specific statutory authority pursuant to Section 553.775(3)(a), Florida Statutes (2012) to interpret the provisions of the Florida Building Code (the Code) by entering a declaratory statement.

6. Section 553.503, Florida Statutes (2012) states:

Subject to modifications under this part, the federal Americans with Disabilities Act Standards for Accessible Design, and related regulations provided in 28 C.F.R. parts 35 and 36 and 49 C.F.R. part 37, are hereby adopted and incorporated by reference as the law of this state and shall be incorporated into the Florida Accessibility Code for Building Construction and adopted by the Florida Building Commission in accordance with chapter 120.

7. Section 101.1.3, Florida Building Code, Accessibility (2010) states:

This code establishes standards for accessibility to places of public accommodation and commercial facilities by individuals with disabilities. This code shall also apply: to state and local government facilities pursuant to Section 553.503, F.S.; to private clubs pursuant to Section 553.505, F.S.; and to residential buildings pursuant to Section 553.504(2), F.S., and the ADA Standards

for Accessible Design. It is to be applied during the design construction and alteration of such buildings and facilities as required by this code.

8. In accordance with Section 553.503, Florida Statutes, the Commission has adopted the U.S. Department of Justice's (DOJ) definitions of "places of public accommodations" and "commercial facilities" at 28 C.F.R. 36.104.

9. The current printing of Section 106.5, Florida Building Code, Accessibility (2010) contains a scrivener's error in the definition of "commercial facilities," making it inconsistent with the definition in 28 C.F.R. 36.104.

10. Section 553.775(5), Florida Statutes (2012) allows for declaratory statements and interpretations regarding the Florida Accessibility Code that are "not attributable to the Americans with Disability Act Guidelines ("Guidelines")."

11. Since the scrivener's error is attributable to the definition in 28 C.F.R. 36.104 and not the Guidelines, Section 106.5, Florida Building Code, Accessibility (2010) may be interpreted in this instance. Thus, the definition in 28 C.F.R. 36.104 should be used as it conforms to the intention of adopting the definitions set forth in Section 553.503, Florida Statutes.

12. In response to Petitioners' first question, the answer is that under Section 553.507(1-2), Florida Statutes (2012), "covered multifamily dwellings" that are not recipients of government financial assistance or sponsorship (federal, state, or local), are not subject to the Accessibility Code, with the exception of Section 553.504(2), Florida Statutes (2012), unless they are "places of public accommodation" or "commercial facilities." An exception to this would be discrete areas contained within the definitions of "place of public accommodation" or "commercial facilities" such as a leasing or sales office and the restrooms and parking that

support it (and the accessible route that connects these elements). Such areas would be subject to the Accessibility Code unless otherwise exempted by the Accessibility Code.

13. Section 424.1, Florida Building Code, Building (2010) defines "public swimming pool" or "public pool" as:

[A] public swimming pool or public pool shall mean a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boarding houses, hotels, mobile home parks, and townhouses. The term does not include a swimming pool located on the grounds of private residence.

14. In response to Petitioners' second question, the answer is that the technical requirements of Section 424.1, Florida Building Code, Building (2010) that define the terms "public swimming pools" or "public pools" are independent provisions that have no bearing on the technical scope of the Florida Accessibility Code.

15. Further, according to the "Questions and Answers: Accessibility Requirements for Existing Swimming Pools at Hotels and Other Public Accommodation" as published by the DOJ (which may be relied upon pursuant to Section 553.503, Florida Statutes (2012)), the answer to the subject in question is as follows:

Community pools that are associated with a private residential community and are limited to the exclusive use of residents and their guests are not covered by the ADA accessibility requirements (emphasis added). On the other hand, if a swimming pool/club located in a residential community is made available to the public for rental or use, it is covered under Title III of the ADA. If a community pool is owned or operated by a state or local government entity, it is covered by Title II of the ADA, which requires "program accessibility."

Questions and Answers: Accessibility Requirements for Existing Swimming Pools at Hotels and Other Public Accommodation, http://www.ada.gov/qa_existingpools_titleIII.htm (last visited May 22, 2013).

DONE AND ORDERED this 3rd day of June, 2013 in Jacksonville, Duval County, State of Florida.


RICHARD S. BROWDY
Chairman, Florida Building Commission

NOTICE OF RIGHT TO APPEAL

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with Section 120.68(2)(a), Florida Statutes, and Florida Rules of Appellate Procedure 9.110(a) and 9.030(b)(1)(C). To initiate an appeal, a Notice of Appeal must be filed with Agency Clerk, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-1000 and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Department of Business and Professional Regulation. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by Section 35.22(3), Florida Statutes.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been filed with the undersigned and furnished by U. S. Mail to the persons listed below this 11th day of June, 2013.

Brandon M. Nichols

Agency Clerk's Office
Department of Business and Professional Regulation
& Florida Building Commission
1940 North Monroe Street
Tallahassee, Florida 32399-1000

Via U.S. Mail

Robert Fine, Esq., A.I.A.
333 S.E. 2nd Avenue
Suite 4400
Miami, Florida 33131

Alliance Residential Builders of South
Florida
1 North Federal Highway
Suite 201
Boca Raton, Florida 33432

Altis at Coconut Creek
1515 South Federal Highway
Suite 300
Boca Raton, Florida 33432

Via Inter-Office or Email Delivery

Mo Madani, Planning Manager
Codes and Standards Section
Department of Business and Professional
Regulation
1940 North Monroe Street
Tallahassee, Florida 32399
Mo.Madani@dbpr.state.fl.us

Marjorie Holladay
Joint Administrative Procedures Committee
Pepper Building, Room 680
Tallahassee, FL 32399

Florida Building Code Accessibility Regarding Condominiums

There appears to be much confusion when discussing the codes for Accessibility in Condominium buildings. This information should help clear up some of the misinformation and confusion.

The three codes that are often mentioned when discussing Handicap Accessibility are the ADA (Americans with Disabilities Act) Guidelines, The Fair Housing Act, and the Florida Building Code Accessibility Volume. The Florida Building Code Accessibility Volume incorporates the ADA guidelines into the code so now we only have to deal with 2 codes.

The Department of Justice and the US Dept of Housing and Urban Development have put out a document that answers many questions for existing Condos. In the document, one of the questions addressed is this:

2. What types of housing are covered by the Fair Housing Act's design and construction requirements?

The Fair Housing Act requires all "covered multifamily dwellings" designed and constructed for first occupancy after March 13, 1991, to be readily accessible to and usable by persons with disabilities. In buildings with four or more dwelling units and at least one elevator, all dwelling units and all public and common use areas are subject to the Act's design and construction requirements. In buildings with four or more dwelling units and no elevator, all ground floor units and public and common use areas are subject to the Act's design and construction requirements.

This indicates that Condominium Buildings built and completed for occupancy prior to March 13, 1991 ARE NOT Required to meet the Fair Housing Standard Guidelines.

For the Florida Building Code Accessibility Volume compliance, The Florida Building Commission was aware of the confusion surrounding the Code and Issued a "Dec" Statement (A Declaratory Statement that explains the intent of the code.) Essentially the test of compliance with the code is determined by the availability of what is called a "public accommodation". If any areas of the Condominium Building are available to the general public (i.e. rooms for meetings, pools, beaches etc.) then a public accommodation is present and those portions of the building that constitute the public accommodation must meet the FBC Accessibility requirements. If no public accommodation is present and the areas of the condo are only for the use of the residents and their guests, then there is no requirement for Accessibility Compliance.

One of the specific issues addressed by the Florida Building Commission in the issuance of their DEC statement was the following:

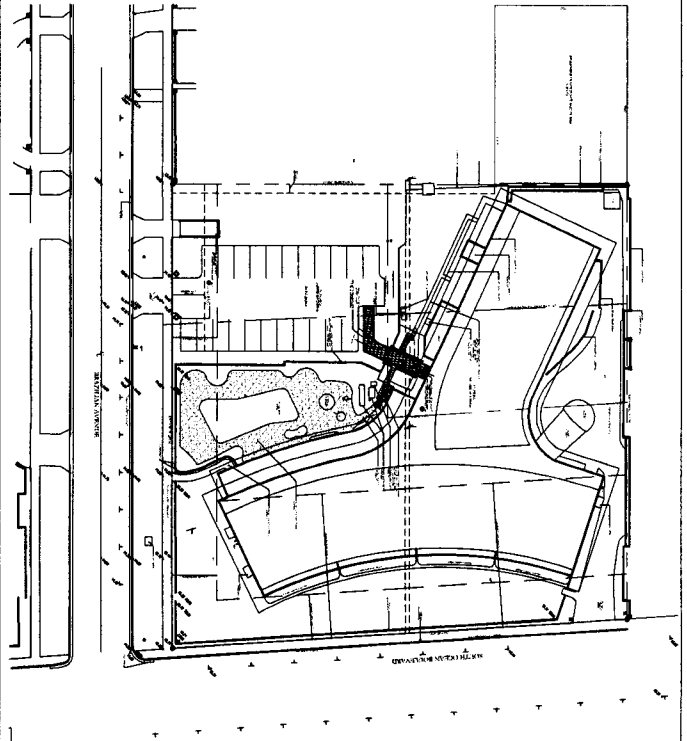
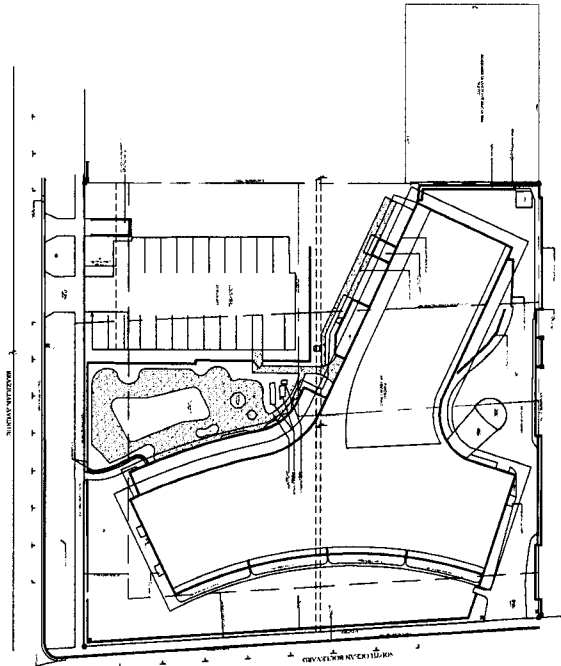
"Are swimming pools that are not part of common use areas of the apartment buildings and developments, that are solely intended for the use of the residents and their guests (and not otherwise available to the general public) and which are not the recipients of governmental

financial assistance or sponsorship, subject to the accessibility code because section 424.1 classifies them as "public swimming pools" or any other reason?"

The response to this question was the following:

"Community pools that are associated with a private residential community and are limited to the exclusive use of residents and their guests are not covered by the ADA accessibility requirements. On the other hand, if a swimming pool/club located in a residential community is made available to the public for rental use, it is covered under Title III of the ADA."

EXISTING SITE PLAN

[illegible]

EXISTING & PROPOSED SITE PLANS

300 SOUTH OCEAN BLVD APARTMENTS, INC.
PALM BEACH, FLORIDA

~ PARADELO & FLECK ~
LANDSCAPE ARCHITECTURE

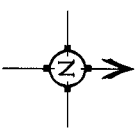
FLORIDA · ISLANDS · HAMPTONS

HARDSCAPE · LANDSCAPE · LIGHTING

WEST PALM BEACH, FLORIDA
ANDRES@PARADELO.COM
BOFL55@HOTMAIL.COM 561.951.7298



SCALE: 1/32" = 1'-0"

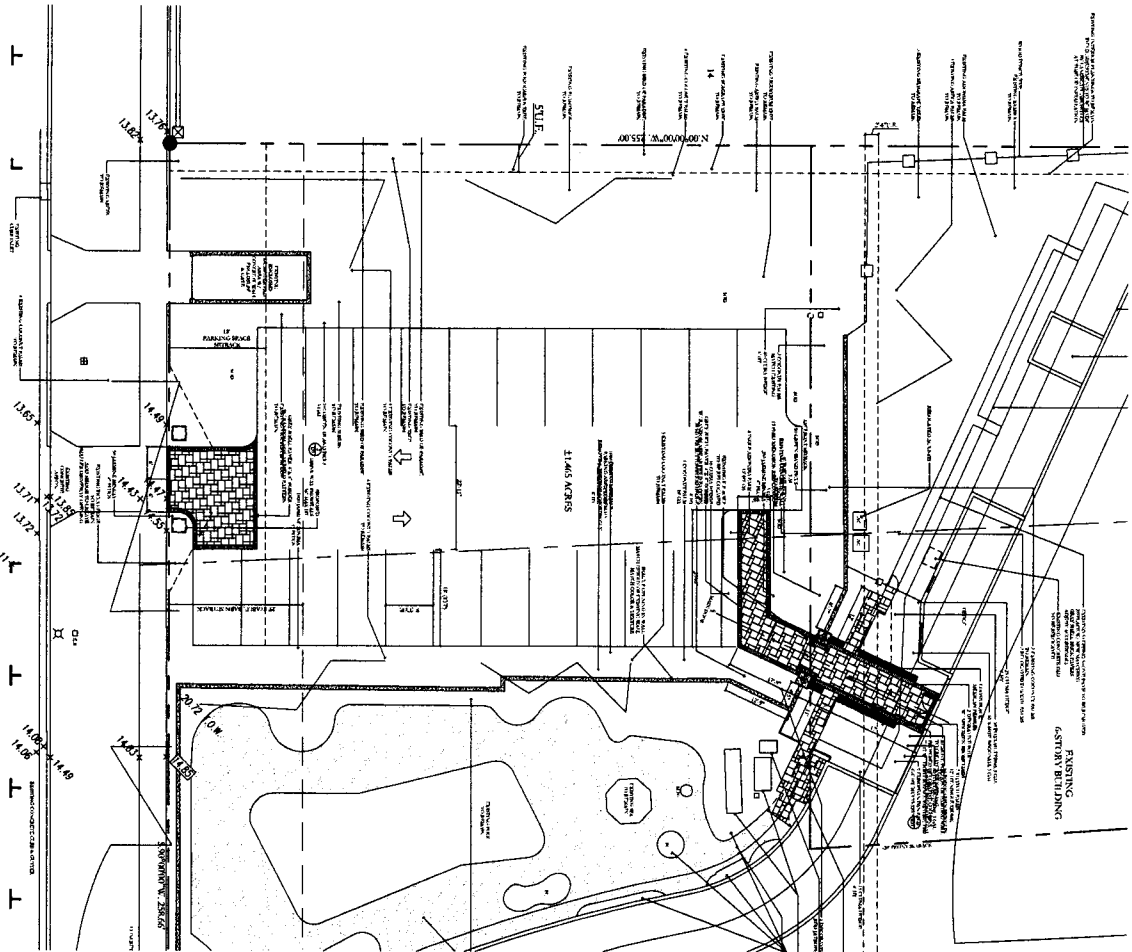
DATE ISSUED:
APRIL 16, 2011

XL

PROPOSED SITE PLAN

SCALE: 1/8" = 1'-0"

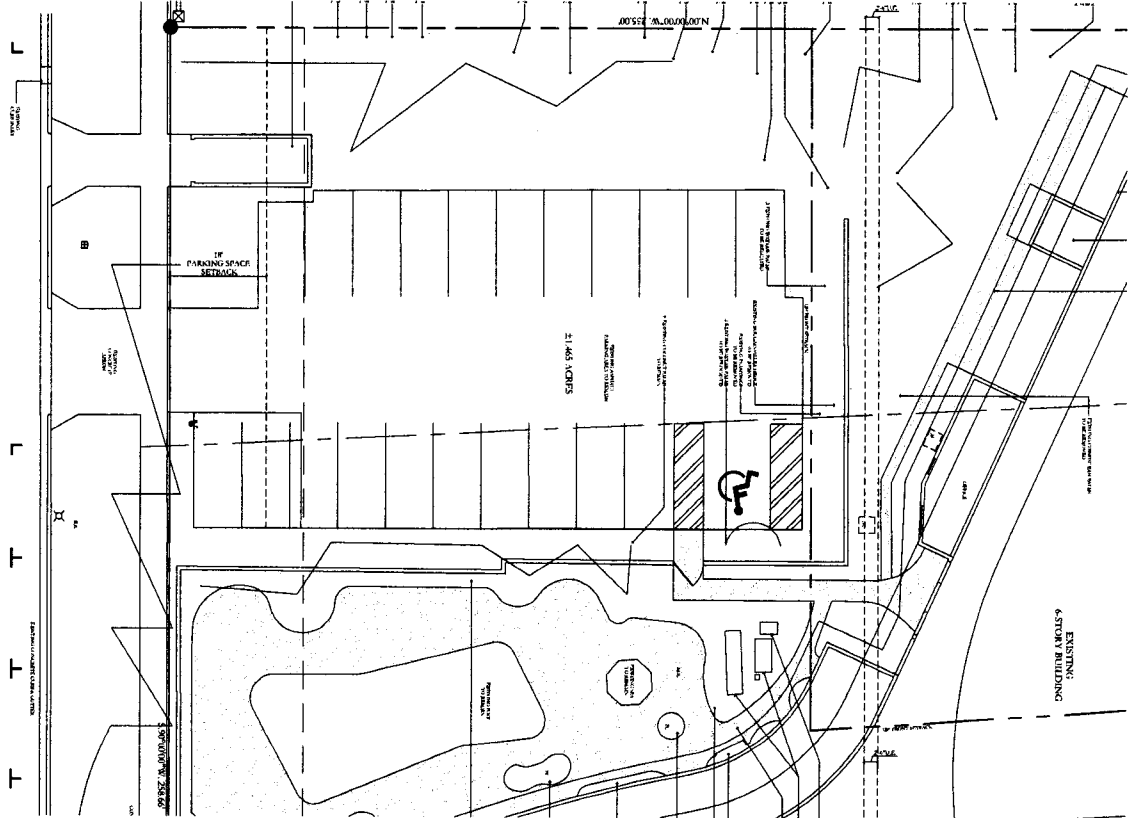
BRAZILIAN AVENUE



EXISTING SITE PLAN

SCALE: 1/8" = 1'-0"

BRAZILIAN AVENUE



SOUTH PARKING AREA EXISTING & PROPOSED SITE PLANS

300 SOUTH OCEAN BLVD APARTMENTS, INC.
PALM BEACH, FLORIDA

~ PARADELO & FLECK -
LANDSCAPE ARCHITECTURE
FLORIDA - ISLANDS - HAMPTONS
HARDSCAPE - LANDSCAPE - LIGHTING

WEST PALM BEACH, FLORIDA
ANDRES@PARADELO.COM 561.951.7525
ROH@PARADELO.COM 561.301.7298



EX1

SCALE: 1/8" = 1'-0"



DATE ISSUED:
JULY 22, 2015

TOWN OF PALM BEACH

Town Council Meeting Development Review on: September 9, 2015

Section of Agenda

Time Extensions

Agenda Title

Extension of Time Schedule for Completion of Construction per Town Code

476 South Ocean Boulevard

Presenter

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

Supporting Documents

- [Memorandum Dated August 24, 2015 from John S. Page](#)
- [Letter Dated August 14, 2015 from John L. McDonald](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 9, 2015

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

Re: Extension of Time Schedule for Completion of Construction per Town Code
476 South Ocean Boulevard

Date: August 24, 2015

STAFF RECOMMENDATION

Staff recommends that the Town Council consider an extension of the Code-specified time limit for construction of the project located at 476 South Ocean Boulevard.

GENERAL INFORMATION

Owner Janina Radtke Trust, via attorney Jack McDonald, has requested an extension of the time limit for new construction of a single family home. An initial permit was issued on November 8, 2012 for a residence of 10,715 sq. ft. Per Code at that time, a construction window of 36 months was allowed (completion is “due” by November 8, 2015). The home is now under construction (see attached current photo), yet the owner does not anticipate completion per Town deadline. A 6-month extension has been requested (May 8, 2016)

Per attached letter from the owner’s attorney, the extension request was triggered for two reasons: 1) reordering of windows and doors due to the sale of a vendor / necessity to choose another supplier, and 2) unforeseen complications involving the basement and garage access.

As outlined within the Code, the Council may impose conditions on the extension which may include the implementation of mitigation measures deemed appropriate by the Council and the imposition of a fee for each day of the extension beyond the 36 month term imposed. The fee established is 10 cents per square foot with a minimum of \$500/per day. Based upon record drawings of 10,715 sq. ft., the maximum fee that the Council could opt to impose is \$1,071.50 per day (which would accrue until the Planning, Zoning and Building Department issues a Certificate of Occupancy). Such fee, optional at the Council’s option, could be imposed beginning immediately after the original 36 month construction window lapses, or beginning immediately after a newly assigned extension date of completion is so granted. The Council is not obligated to impose a fee, but there is recent precedent for doing so.

Attachments

cc: Jack McDonald
John C. Randolph, Town Attorney
Bill Bucklew, Building Official

LAW OFFICES OF
JOHN LENOX MCDONALD, P.A.
400 Royal Palm Way, Suite 404
Palm Beach, Florida 33480

TELEPHONE 561-533-5000
EMAIL: JOHNLENOX@AOL.COM

August 14, 2015

HAND DELIVERY

Mr. John Page, Director
Palm Beach PZB
360 South County Road
Palm Beach, FL 33480

Re: Permit Number B-12-27508, Permit ID 344958
Issued 11-08-2012 – Janina Radtke Trust - 476 South Ocean Blvd.

Dear JP:

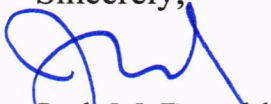
I represent Janina Radtke, as Trustee of the Janina Radtke Trust the owner of 476 South Ocean Boulevard, a single family home under construction.

I write to request a 6 month time extension to May 8, 2016 to complete the new construction.

The extension is requested for the following reasons:

1. A re-order of all windows and doors due to the sale of a vendor and the necessary to chose another supplier.
2. Unforseen complications with construction of the basement to provide adequate garage access.

Sincerely,



Jack McDonald
JLM/tk



TOWN OF PALM BEACH

Town Council Meeting Development Review on: September 9, 2015

Section of Agenda

Development Review - Old Business

Agenda Title

VARIANCE #20-2015 The application of Lisa A. Konrad; relative to property commonly known as **242 Via Linda**, described as lengthy legal description on file; located in the R-B Zoning District. The Applicant is requesting a Variance to allow a 386 sq. ft. one-story cabana addition to have a side yard setback of 10 ft. in lieu of 12.5 ft. minimum required.

[Attorney: Peter Broberg, Esq.]

Deferred from the August 11, 2015, Town Council Meeting

Request for Withdrawal Per Letter Dated August 27, 2015 from Peter S. Broberg

Presenter

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

Supporting Documents

- [E-mail Dated August 13, 2015, from Jonathan Gladstone](#)
- [E-mail Dated August 19, 2015, from Jonathan Gladstone](#)
- [Letter Dated August 27, 2015 from Peter S. Broberg](#)



Fw: Variance 20-2015 242 Via Linda
Paul Castro to: Kathleen Dominguez, Patricia Gayle-Gordon

08/17/2015 07:56 AM

Kathleen and Pat,

This case was deferred from the August 11 Town Council meeting to the September 9, 2015 meeting. Please make sure the Council get the attached letter.

Thank you,

Paul

----- Forwarded by Paul Castro/PalmBeach on 08/17/2015 07:54 AM -----

From: Jonathan Gladstone <realgladstone@aol.com>
To: pcastro@townofpalmbeach.com
Date: 08/13/2015 08:39 AM
Subject: Re: Variance 20-2015 242 Via Linda

> Hi Paul, below is a copy of my spiel on Tuesday. They denied this variance with a right of,
> ""Reconsideration"" next month??? This photo depicts what the predecessor in title (Lynn Hutton)
> did to me in 2013. These building are just to close!! This house 242 (right) was sold in 2004, 2009,
> & 2014. three renovations, I have observed. There is no fence here today, only a
> thinly veiled "weeping podacarpus" hedge exist. This is likely to happen again when construction begins. Just finished dealing with Gazdik last year, and I think he hoodwinked US in that meeting, otherwise I can't imagine you leaving those walls.
> I feel like I need some separation, & literal construction protection, Also here as a citizen. Prior to this, I built 171 Dunbar and lived there 1989 -1999. This is an encroachment, a non conforming set back, being requested, with objection from this neighbor. Though council has denied it?? Reconsideration???. Council may be over issuing (unnecessary) variances. Particularly, over an impacted neighbor's objection.

> Please help me here. Maybe your word to council would illuminate my case, read my letter, provide my photos,, supplement my circumstances?? I am your resident, & developer who knows better than to seek an unnecessary request for a TofPB, deviance from the code. Finally, as new owners continue to chip at properties, through variances, it does greatly impact the quality of life, for long term residents. Any assistance or suggestions would be greatly appreciated.

> Most Sincerely,
> Jonathan Gladstone 561 371 7014

>

> Lynn Hutton 242 (right) Via Linda in 2013



DSC02961.jpg DSC02968.jpg DSC02959.jpg Untitled 13.pdf



August 11, 2015

Good morning Mayor and members of the town council

I am the adjacent, property owner since 2000. I live at 234 Via Linda

I am here to request that applicant for 242 Via Linda be denied the side yard set back variance being requested.

The variance #20-2015 filed by Mr. Broberg contains Exhibit D #7 Req Clarity: He states: ""The neighbor adjacent to the proposed addition has no objections"" Here, Peter could only be referring to the unimpacted, neighbor.

In 2013, 22.5 feet East, of their existing structure, I built the exact addition, by the exact architect, and the exact existing, set back conditions. I Automatically went to the ""Required, and as of right"" set back of 12.5'. It simply requires you to do, a two feet offset from the original tie beam

In 2014, my neighbor to the East #226, came before you to request that he be granted a 5 foot variance of the 12.5' required code. Mr. Gazdik was denied, the perpetuation of a prior non conforming set back, and no precedent was set.

Since I also do this professionally. I examined the applicants architectural drawings and determined, statements concerning this addition, did not square, whatsoever, with the plans. I also communicated that to the owner.

The wisdom of the code benefits both property owners. It increases the distance between buildings by 25% if both neighbors observe it. Conversely deviance from the code, can create issues, at a closing table, for either party.

The consequence of not observing the setback is you create a canyon in between the buildings which ECHO AC noise, traffic from water meter readers, pool maint., landscape trimming, garbage and recycling, pool equipt, Illumination, not to mention cable, FP&L, @ Florida Gas, Telephone.... Really lovely!!! NOT ALL of which, are related to this case.

August 11, 2015

With all due respect to this neighbor, I would respectfully request Council not set a precedent by granting this variance, which contains no hardship and was a pre existing condition when the owner purchased it, a year ago.

My daughter uses our 12.5 feet to practice Lacrosse against our addition wall!!



Fw: Variance 20-2015

Paul Castro to: Patricia Gayle-Gordon, Kathleen Ruderman
Cc: Debby Morakis

08/20/2015 11:40 AM

fyi, Debby, please put this in our electronic file

thanks,

Paul

----- Forwarded by Paul Castro/PalmBeach on 08/20/2015 11:39 AM -----

From: Susan Owens/PalmBeach
To: John Page/PalmBeach@PalmBeach, Paul Castro/PalmBeach@PalmBeach
Date: 08/20/2015 09:56 AM
Subject: Fw: Variance 20-2015

FYI

Thank you,

Susan A. Owens, MPA, MMC

Town Clerk | Town of Palm Beach

360 South County Road

Palm Beach, FL 33480

561.838.5416 (ofc) | 561.838.5417 (fax)



Please be advised that under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact the Town of Palm Beach by phone, (561) 838-5400, or in writing: 360 S. County Road, Palm Beach, FL, 33480.

----- Forwarded by Susan Owens/PalmBeach on 08/20/2015 09:56 AM -----

From: Jonathan Gladstone <realgladstone@aol.com>
To: sowens@townofpalmbeach.com
Date: 08/19/2015 09:45 AM
Subject: Variance 20-2015

Susan, Hi I am the resident at 234 Via Linda who spoke in last weeks 5pm, council meeting, concerning a variance request #20-2015 242 Via Linda. After I spoke, I was positive council voted 3-2 against this variance. Somehow, that got translated into a deferment, in your record. They were in fact, granted a right to reapply. I'm not sure that's a deferment??

Notwithstanding, I have endured the renovation of this home in 2004, 2009, and lastly 2013. I plan to miss work again, and and vigorously object on Sept 9th. These are photos of the 2013 renovation. As you can see, demolished everything in between our homes. Today the only separation

is a thin weeping podocarpus hedge. I have lived at 234 since 2000. This owners renovation, does not offer any type screening or security for my property. I see no reason to believe, this

will not happen again. Furthermore, with a contentious neighbors objection, why would council unnecessarily allow, a non conforming use or encroachment??

I have written to Mr. Castro as well. Can you tell me how I can display these photos to council in the meeting. May I bring a memory stick?

Jay also knows me from a town matter. Do you think someone on staff can assist me here, in providing some protection? I am a resident since 1970. In three homes I never asked for a variance.

Thank you, Jonathan Gladstone 561 371 7014



will not happen to me again.





COE & BROBERG LLP

ATTORNEYS AND COUNSELORS

223 PERUVIAN AVENUE

PALM BEACH, FLORIDA 33480

PETER S. BROBERG

TELEPHONE (561) 655-5166

FACSIMILE (561) 655-0055

CHARLES FRANCIS COE

(1890-1956)

GUSTAVE T. BROBERG, JR.

(1920-2001)

August 27, 2015

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

VIA E-MAIL & US MAIL
PCastro@TownofPalmBeach.com

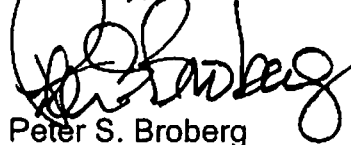
Re: Variance #20-2015
242 Via Linda, Palm Beach, FL

Dear Mr. Castro:

You will recall this matter was deferred this month to the September 9, 2015 Town Council meeting.

At this time the property owner wishes to withdraw the variance application. Please note the September agenda accordingly.

Sincerely,



Peter S. Broberg

PSB/amm

cc: Mr. William Palumbo, Jr.

psb1/P:\KONRAD Lisa A\242 VIA LINDA\Zoning Application - Cabana Addition\LT Paul Castro ntly withdraw var app.wpd

TOWN OF PALM BEACH

Town Council Meeting Development Review on: September 9, 2015

Section of Agenda

Development Review - New Business

Agenda Title

SPECIAL EXCEPTION #26-2015 WITH SITE PLAN REVIEW

AND VARIANCE The application of Four Seasons Resort Palm Beach; relative to property commonly known as **2800 So. Ocean Blvd.**, described as lengthy legal description on file; located in the R-D(2) Zoning District. The Applicant is requesting a Special Exception with Site Plan Modification to the hotel site to improve its guest facilities in terms of aesthetics, functionality, guest amenities and life safety standards. 1. The proposed modifications can be categorized into three categories. **West Garden Improvements:** Modifications to the site plan: a) New service vehicle entry from South Ocean Blvd. at the north side of the property; b) increase green space park area including a yoga trellis to the front of the property; c) relocate tennis court (one existing tennis court will be eliminated) to the south to create service drive at the north side of the property. **Remodel Lobby Level Interiors:** The interiors will be updated by relocating the Lobby Bar, adding a Show kitchen in the Dining Room and improving the Dining Terrace area. d) Renovate reception and lobby sitting area to open up the floor plan; e) new guest retail shop; f) Renovate and downsize Guest Lounge (Living Room) to accommodate new retail shop; g) reconfigure Guest Lounge exterior hardscape; h) reconfigure dining room bar areas to reduce the size to accommodate a wider pool deck; i) new show kitchen in dining room; j) reconfigure Terrace Dining Area and add permanent roof structure to replace awning and add balcony extension above. **Pool Deck Improvements:** The pool deck will have an enlarged pool and a new secondary pool will be built that is sized in order to meet the current needs of the guests. Many rooms are proposed to have direct access to the pool deck with extended balconies and stairs. Ocean Views from the property will be improved by removing the existing obstructive concrete planters on the pool deck. Additionally, the existing Atlantic Bar and Grill (ABG) will be replaced with a new structure that has increased restroom capacity and improved kitchen and bar equipment. Service

access to the new ABG will be from previous approval which was never built). The dune vegetation will be infilled and new growth will be encouraged. Relocate spa pool from the northeast corner of the pool deck to the northeast corner of the enlarged primary pool; extend terrace suite balconies (west building pool side) extend area in garage Mezzanine level consisting of 1,350 sq. ft. for added “back of house” space; j) create new Mezzanine level access from pool deck; k) add six temporary cabanas to the pool deck area as follows: (2) 74 sq. ft.; (2) 100 sq. ft.; and (2) 225 sq. ft.; l) infill dune landscaping and increase dune area. 2. In order to construct the Yoga Trellis, a variance is being requested to increase the lot coverage to 38.9% in lieu of the 38.7% existing and the 22% maximum allowed for 5 story building in the R-D(2) Zoning District. [Attorney: Maura Ziska, Esq.]

Presenter

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

Supporting Documents

- [Letter Dated August 25, 2015, from Maura Ziska](#)
- [Letter Dated August 24, 2015, from Neil M. Schiller, Esq.](#)
- [E-mail Dated August 24, 2015, from Stanley Saltzman](#)
- [E-mail Dated August 24, 2015, from Bess Solov](#)
- [E-mail Dated August 24, 2015, from Jennifer Post](#)
- [E-mail Dated August 24, 2015, from Sheila G. Farmer](#)
- [E-mail Dated August 24, 2015, from Leonard and Linda Berkowitz](#)
- [E-mail Dated August 24, 2015, from Arlene Feldman](#)
- [E-mail Dated August 24, 2015, from Kenneth P. Kates](#)
- [E-mail Dated August 25, 2015, from Holidae Hayes](#)
- [E-mail Dated August 25, 2015, from Gerald and Maureen Taylor and](#)
- [E-mail Dated August 25, 2015, from James P. Howe](#)

KOCHMAN & ZISKA PLC

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

*Also admitted in New York
*Also admitted in Michigan

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

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

VIA FACSIMILE: 561-838-5411

August 25, 2015

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

RE: Special Exception 26-2015 - 2800 S Ocean Blvd., Palm Beach, Florida

Dear Mayor and Town Council:

Please defer the above referenced matter from the September 9, 2015 Town Council agenda to the October 14, 2015 Town Council agenda. The reason for the deferral is due to ARCOM deferring the project to meet with concerned neighbors and revise the plans.

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

Sincerely,



Maura A. Ziska

MAZ/jch
cc: Paul Castro
Brad Garven
00029332.DOC

August 24, 2015

Mr. John Lindgren
Planning Administrator
Town of Palm Beach, Florida
360 South County Road
Palm Beach, Florida 33470

RE: B-090-2015 – ARCOM review of variance application for 2800 South Ocean Boulevard

Dear Mr. Lindgren,

Please be advised that the law firm of Becker & Poliakoff represents The Ambassador II Corporation ("Ambassador") and has registered as a lobbyist thereof. We understand that the Town of Palm Beach Architectural Commission ("ARCOM") is being asked to make a recommendation to the Town Council on a proposed variance for 2800 South Ocean Boulevard. ("Project") After reviewing the Applicant's Project, the Ambassador actively OPPOSES the Project and asks that ARCOM recommend DENIAL on the Applicant's variance.

The Ambassador has been in existence since 1968 with 95 units. They border the Project to the north and have had a number of issues with the Applicant's deliveries. The addition of a dedicated service road to the Project will cause significant harm to Ambassador by creating a dangerous traffic condition being just 35' away from Ambassador's driveway and closer to the Cove's driveway across A1A; in addition to the added noise and pollution the residents of the Ambassador already suffer from. The Applicant NEVER contacted the Ambassador to inform us of their application, and that public hearings for this application are scheduled in the summer when they know 80% of our residents are not in town. It wasn't until the Ambassador called the Applicant and asked for a meeting, that we were given the courtesy of a twenty-minute meeting.

The Applicant's application for a variance should be recommended for DENIAL because: (1) there are no special conditions peculiar to the land; (2) any special conditions or circumstances are the result of the Applicant; (3) there is no hardship faced by the Applicant; and (4) granting the variance will not be in harmony in the intent and purpose of the Code.

NO SPECIAL CONDITIONS

There are no special conditions that are peculiar to the land. The Applicant submits that the existing, hotel building is unique to the land because it is non-conforming, specifically; the lot coverage is 16.3% more than currently allowed by the Code. See. Town of Palm Beach Code of

Ordinances, Sec. 134-1064(a)(2) The Applicant proposes to expand that existing, non-conforming building's lot coverage by 0.2% by building a new yoga trellis. This expansion, even 0.2% from the current lot coverage violates the Code. Section 134-416(c) dictates that, "It is the intent of this chapter to permit these nonconforming buildings and structures to exist until they are voluntarily removed, removed by abandonment, or otherwise removed as required by this chapter, but not to encourage their survival." The Applicant's nonconforming building; which violates the current Code, cannot not be allowed to serve as the basis for a "special condition" that would allow for a further violations of the Code. This is a circular argument. The Code specifically does not encourage nonconforming buildings' survival. Granting the Applicant's variance encourages the nonconforming buildings' survival and therefore it should be denied.

SPECIAL CONDITIONS ARE THE RESULT OF THE APPLICANT

The Ambassador continues to assert that there are no special conditions found on this property for reasons expressed above. The Applicant has chosen to maintain the nonconforming building instead of coming into compliance with the Code. The Applicant's continuation of the nonconforming building is the sole reason why the "special condition" exists. The Code expressly intends to end the existing nonconforming buildings in the Town, not enlarge them. It also sets a dangerous precedent that would allow future applicants to use their nonconformities as a basis for a variance application. The special conditions that the Applicant based its application on are caused by the Applicant and therefore the variance should be denied.

NO HARDSHIP

There is no hardship presented by the Applicant. In its application, the Applicant claims that the "hardship runs with the land." This is not accurate as the buildings on the property can be removed at any time. Further, as expressed above, the hardship claimed is self-created and should not be used as a justification for the variance. The nonconformities presented in the application result in a financial windfall for the Applicant, which expressly contradicts the assertion that there is a hardship.

The Applicant failed to address how the "literal interpretation of this ordinance would deny the applicant of rights commonly enjoyed by other properties in the same zoning district;" which should automatically result in the recommendation of DENIAL. Instead the Applicant argues that it is foreseeable to make alterations to the buildings. While it is foreseeable to make changes to buildings, it is not foreseeable that those buildings would be nonconforming.

CONFLICT WITH THE CODE

The variance at issue is not in harmony with the general intent and purpose of the Code and therefore it should be denied. Section 134-416(c) dictates that, "It is the intent of this chapter to permit these nonconforming buildings and structures to exist until they are voluntarily removed, removed by abandonment, or otherwise removed as required by this chapter, but not to

August 24, 2015

Page 3

encourage their survival.” It is generally held in municipal law and in logic that buildings built under more relaxed ordinances, that still exist today, should not be enlarged even by 0.2%. Granting the variance requested by the Applicant creates a conflict with the intent and purpose of the Code and therefore it should be denied.

Even though the Applicant’s variance request is an increase in lot coverage by 0.2%, it should be denied. The special conditions requiring the variance request are self-created by the Applicant. The Applicant has maintained and benefited from the nonconforming lot coverage; they can’t have it both ways and use the nonconformity as justification for expanding the nonconformity. To even consider the nonconformity as a hardship is laughable, considering the Applicant has made millions from it. The proposed variance also violates the Code by allowing for the expansion of a nonconforming building. It is for these reasons, that we ask ARCOM to recommend DENIAL of the variance application.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil M. Schiller", with a stylized, flowing script.

Neil M. Schiller, Esq.

For the Firm

CC: Maura Ziska, Esq.
ARCOM members
Client

ACTIVE: 7503293_1

Untitled

From: stanley saltzman <stansaltzman@gmail.com>
To: JLindgren@TownofPalmBeach.com
Cc: Anthony J Colyandro <acolyandro@yahoo.com>
Date: 08/24/2015 11:32 AM
Subject: Four Seasons Construction Variance

I have an apartment in 2780 South Ocean Boulevard and want to express my serious concern for some of what the Four Seasons is attempting to do.

Currently, during the day and sometimes into the night the noise around our pool area caused by commercial trucks loading and unloading their tools and repair parts is sometimes deafening. They frequently drop their heavy things on the ground resulting in very disturbing noise.

Moving this driveway next to us and increasing the number of truck parking spaces adjacent to our property will only exacerbate this problem.

Please find a solution that will not make us have to bear with more noise and disturbance.

Thank you.

Very truly yours,

Stanley Saltzman

Stanley Saltzman

Untitled

----- Forwarded by John Lindgren/PalmBeach on 08/24/2015 12:30 PM

From: Bess Solov <bsolov123@yahoo.com>
To: "jlindgren@townofpalmbeach.com"
<jlindgren@townofpalmbeach.com>
Date: 08/24/2015 11:42 AM
Subject: 2780 S.Ocean Blvd vs The Four Seasons Hotel

To: Mr. John Lindgren, Planning Administrator

Dear Mr. Lindgren:

I am a resident/shareholder at Ambassador II, 2780 S. Ocean Blvd, Palm Beach.

I am also the Association's Secretary, having served on the Board of Directors for 6 years.

My purpose today in writing to you is to voice my disapproval of the service drive modification the Four Season Hotel is proposing.

And for the following reasons:

An increase in noise which is already been a problem being right next door to their property.

An increase in pollution.

Will impact negatively our property values and potential buyers.
The safety aspects of traffic control patterns due to proximity of this proposed service drive to our South driveway.

I hope you will strongly consider my position in this matter.

I am a year-round resident and I would want to enjoy my home and the beautiful surroundings.

The approval of such a project would impact my lifestyle greatly.

Thank you in advance for your time and consideration.

Sincerely,

Bess Solov

Untitled

----- Forwarded by John Lindgren/PalmBeach on 08/24/2015 04:04 PM

From: Jennifer Post <jpost@jenniferpostdesign.com>
To: JLindgren@TownofPalmBeach.com
Date: 08/24/2015 03:15 PM
Subject: Proposed service drive for Four Seasons Hotel

To Mr. John Lindgren
Palm Beach Planning Administrator

Hello Mr. Lindgren,

I am a resident of 2780 South Ocean Blvd condominium (Ambassador II) and the purpose of this e-mail is to register my concern and strong opposition to the proposed service drive for the Four Seasons Hotel to be located adjacent to my building. The entire building (Ambassador II) is situated as to take advantage of the South easterly exposure so our pool and recreational areas face the direction of the hotel and its proposed service drive. Moreover, my own apartment in the building faces that direction, which makes me doubly concerned about:

1. increase in noise
2. increase in pollution
3. negative impact on my property values
4. safety aspects as they relate to the traffic control patterns due to proximity of the proposed service drive next to our South Drive.

All of these points and the adverse impact the service drive would create overall are very important to me and I am sure just as important to the rest of the residents in the building, I hope our complains and feelings on the matter would be taken into consideration for the Town to reject the location of this proposed service drive in favor of the actual residents of the area vs hotel accommodations.

I thank you in advance for your special attention to this important matter.

Best regards,
Jennifer Post

Untitled

----- Forwarded by John Lindgren/PalmBeach on 08/24/2015 04:08 PM

From: "Sandy Gammill" <STGammill@starkcountyohio.gov>
To: <JLindgren@TownofPalmBeach.com>
Date: 08/24/2015 03:26 PM
Subject: Site Changes at 2800 S. Ocean Blvd., The Four
Seasons Hotel

Sheila G. Farmer
Ambassador II Corp.
2780 S. Ocean
Palm Beach, Florida 33480
.

August 24, 2015

Dear Board,

As a twenty-four year owner at 2780 S. Ocean, I write in opposition to the proposed construction and site changes at 2800 S. Ocean Blvd., The Four Seasons Hotel!

In the past we have experienced "noise pollution" from the hotel. With the addition of the new service drive, this noise pollution will only increase.

The proposed drive is within 35 feet of our south entrance/exit and is very close to the beach access walkway of "The Cove". In season, as well as off season, this close proximity will result in a traffic hazard. It will also increase the volume of traffic exiting within 35 feet of our drive as well as the property immediately across A-1-A.

With the elimination of one of the tennis courts we will lose some of the buffer zone created by the hotel's planners . I fail to see any positive benefit to the neighbors or to the hotel with the addition of the service drive.

Thank you for your consideration of my concerns.

Very truly yours,

Sheila G. Farmer

Untitled

----- Forwarded by John Lindgren/PalmBeach on 08/24/2015 04:10 PM

From: lberkowi <lberkowi@aol.com>
To: JLindgren@TownofPalmBeach.com
Date: 08/24/2015 03:58 PM
Subject: 4 Seasons Proposal

We are writing to object to the recent proposal to put a service driveway next to our property at 2780. It threatens to make an already noisy situation even worse. We believe it will lead to noise and pollution in our pool area where residents congregate and relax. The effect on traffic safety is also a concern.

The information sent us was very sketchy and lacked even a map.

Yours truly,
Leonard and Linda Berkowitz
Apt 104
2780 S. Ocean Blvd

Sent from my T-Mobile 4G LTE Device

Untitled

----- Forwarded by John Lindgren/PalmBeach on 08/25/2015 08:35 AM

From: Arlene Feldman <arlenetfeldman@gmail.com>
To: "JLindgren@TownofPalmBeach.com"
<JLindgren@TownofPalmBeach.com>
Date: 08/24/2015 04:25 PM
Subject: Four Seasons proposal

Dear Mr. Lindgren-

As an 11 year resident of The Ambassador II at 2780 South Ocean Blvd., I was dismayed to receive a notice of the proposal by the Four Seasons Hotel to change their delivery entry. We already have a terrible noise problem from the hotel. Beginning way too early in the morning, we hear deliveries and beeping as the trucks go into reverse. It is also terribly noisy at our pool throughout the day.

You might say that I purchased my apartment knowing that I was next to a hotel. That being the case, I did not expect to have their delivery driveway doubled in size and brought much closer to our property line.

I know trying to go against such a major hotel makes them a formidable foe.

However anything that you can do to help us would be very much appreciated.

Sent from my iPhone

Untitled

From: Ken Kates <kpkates@mindspring.com>
To: JLindgren@TownofPalmBeach.com
Date: 08/25/2015 08:12 AM
Subject: Fw: Driveway entrance proposal by the hotel

Kenneth P. Kates, CLU ChFC
Kates & Cohen Insurance Associates
181 Wells Avenue
Newton, MA 02459

p: 617-244-7030
f: 617-244-6944

-----Forwarded Message-----

>From: Ken Kates <kpkates@mindspring.com>
>Sent: Aug 24, 2015 8:11 PM
>To: JLindgren@TownofPallmBeach.com
>Subject: Driveway entrance proposal by the hotel
>
>
>
>August 24, 2015
>
>Dear Mr. Lindgren:
>
>My family has lived at 2780 South Ocean Boulevard since the
building opened in 1968.
>We are in unit #212 which abuts the current tennis courts so the
addition of a new
>driveway for trucks will definitely adversely affect us.
>
>Over the past ten years, the rise in noise levels due to trucks
backing up at the front
>entrance, the weekly testing of the generator and party-goers
laughing and yelling to
>each other at night has significantly escalated.
>
>Having trucks enter the property right next to our lot line will
make matters even worse.
>The new driveway entrance will certainly increase the air
pollution at our property and
>create a safety problem trying to enter and exit at our southern

Page 1

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entrance/exit area.

>

>This is a residentially zoned area, and adding a new driveway
for commercial trucks very

close to our property line will only lower the
value of the units at 2780 South

>Ocean Boulevard.

>

>We hope that you will deny this change requested by the Four
Seasons Hotel.

>

>

>

>Sincerely,

>

>

>

>Kenneth P. Kates

Leslie C. Robinson

>

>

>

>

>Kenneth P. Kates, CLU ChFC

>Kates & Cohen Insurance Associates

>181 Wells Avenue

>Newton, MA 02459

>

>p: 617-244-7030

>f: 617-244-6944

Untitled

----- Forwarded by John Lindgren/PalmBeach on 08/25/2015 08:37 AM

From: Holidaeh@aol.com
To: JLindgren@TownofPalmBeach.com
Date: 08/25/2015 08:09 AM
Subject: Four Seasons proposed service Road

I am writing to voice my strong objection to the service road proposed by the Four Seasons Hotel. As a long time resident of Palm Beach- 2780 South Ocean Drive- I have great optimism that the town council will listen to our objections and take them into consideration. This road will greatly disturb our quality of life- with the added noise, the visual blight and the safety hazards. We are already bombarded each morning with the sounds of their trucks backing up- Loud beep beeps every time they go in reverse- and engines roaring. This would make sleep impossible and be like living next to a loading zone. Because we will be! All 90 of us in the building have gone to great effort- and even greater expense- over the past 10 years to update and maintain our building and homes. We make sure it is kept clean and beautiful. This one move by this commercial entity can destroy everything we have worked so hard to accomplish. It will disrupt our sleeping, our serenity and negatively impact our home values. That is not something we all need after living through the financial/real; estate crisis of the last 7-8 years. Please ask yourselves- how would you feel if someone suddenly put a service road for large trucks to make deliveries right next to your bedroom and home. That is what the Four Seasons is threatening to do to us.

Thank you for your time and consideration.

Sincerely,
Holidaeh Hayes
2780 South Ocean Drive
#804

Untitled

----- Forwarded by John Lindgren/PalmBeach on 08/25/2015 11:49 AM

From: Jerry Taylor <JTaylor@lippetaylor.com>
To: "JLindgren@TownofPalmBeach.com"
<JLindgren@TownofPalmBeach.com>
Date: 08/25/2015 11:45 AM
Subject: Four Seasons Hotel Driveway

Hello Mr. Lindgren:

When Chris Partida informed us of the proposed "improvements" to the Four Seasons we were shocked. We, along with many of our neighbors at 2780 South Ocean (Ambassador II), frequent the hotel regularly and are quite familiar with the grounds. First, we find the proposal not within the good neighbor culture of South Ocean and Palm Beach as well as a redundancy of what currently exists. We are all wondering why the management would spend the money for such a minor issue.

More importantly, the proposed would increase noise (heard more by our residents than their guests) as well as pollution and ultimately a loss of property values at the Ambassador II, not to mention the safety aspects of a driveway used by heavy trucks in proximity to our south driveway.

Mr. Lindgren, we implore you to disapprove this proposal in the interest of keeping Palm Beach the paradise that it is.

Sincerely,

Maureen Lippe Taylor
Gerald L. Taylor
Apt 604

Untitled

----- Forwarded by John Lindgren/PalmBeach on 08/25/2015 01:46 PM

From: JAMES HOWE <depspector@yahoo.com>
To: "JLindgren@TownofPalmBeach.com"
<JLindgren@TownofPalmBeach.com>
Date: 08/25/2015 01:43 PM
Subject: Four Seasons Expansion Program

To Whom I May Concern:

Please be advised that as Chairperson of the Security Committee for Ambassador II Corporation, 2780 S. Ocean Blvd., Palm Beach and a retired Deputy Chief of Police from the New York Metro area, I find the proposed alteration to the Four Seasons Resort completely unacceptable.

I have not come to this conclusion without careful thought and consideration. I am very pleased to have the Resort as our next door neighbor since they have always attempted to balance their interests with that of the Palm Beach Community. However, in this instance I must strongly object. I fear the new entrance will disrupt the

orderly flow of traffic on South Ocean Blvd. and increase exponentially the risk of motor vehicle accidents in and around our southern entrance and exit. This will also increase the noise level which is already at an alarming rate due to backing up alarms on commercial trucks making pickups and deliveries to the premise. I have been told by realtors that this noise and pollution from vehicle exhaust has already had a negative affect on the pricing and financial worth of our property and will only harm us further. Please vote this plan down as it is now written and let another alternative be initiated.

Thank you for your time and consideration.

James P. Howe
Apt. 809
Chair - Security Committee.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: September 9, 2015

Section of Agenda

Development Review - New Business

Agenda Title

SPECIAL EXCEPTION #27-2015 WITH SITE PLAN REVIEW

AND VARIANCES The application of Il Sogno, LLC; relative to property commonly known as **1520 So. Ocean Blvd.**, described as lengthy legal description on file; located in the R-A Zoning District. The Applicant is requesting a Special Exception approval to construct a pedestrian access tunnel beneath South Ocean Blvd. connecting property owned by the Applicant on the east side of South Ocean Blvd. and on the west side of South Ocean Blvd., including providing electric, gas, water and other utility services to a beach house on the east side of South Ocean Blvd. Applicant seeks approval to construct a one-story 500 sq. ft. beach cabana intended for the use of family and guests, without sleeping quarters, on property it owns on the east side of South Ocean Blvd. across from the main residence located immediately to the west of the subject property. Site Plan Review approval of the beach house and tunnel as required for all special exceptions in the R-A Zoning District. Variance approvals are required to construct a beach cabana, beach access stairs, a beach tunnel and stairs to that tunnel on the land south of Southern Blvd without a property ocean bulkhead with a setback from designated Ocean bulkhead line of ranging from 52.5 feet to 90.0 feet, in lieu of 150 foot minimum required; and to construct tunnel stairs on the west side of South Ocean Blvd., with the front yard setback of 8.0 feet, in lieu of 35 feet required by code. [Attorney: Francis X. J. Lynch, Esq.]

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

**Request for Deferral to the October 14, 2015 Town Council Meeting
Per Letter Dated August 28, 2015 from Francis X.J. Lynch.**

Presenter

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

Supporting Documents

- [Letter Dated August 28, 2015, from Francis X.J. Lynch](#)

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

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

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

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

August 28, 2015

VIA E-MAIL

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

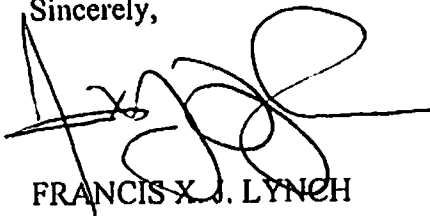
Re: 1520 South Ocean Boulevard
Variance No. 27-2015

Dear Paul:

With regard to the above, this letter shall serve as our request to defer the application from the September 9, 2015 town council meeting to the October 14, 2015 meeting due to the fact that ARCOM has deferred this matter to the September 23, 2015 meeting.

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

Sincerely,

A handwritten signature in black ink, appearing to be 'FXJL', written over the printed name 'FRANCIS X. J. LYNCH'.

FRANCIS X. J. LYNCH

FXJL/kh

TOWN OF PALM BEACH

Town Council Meeting Development Review on: September 9, 2015

Section of Agenda

Development Review - Other

Agenda Title

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

Presenter

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

Supporting Documents

- [Memorandum dated August 25, 2015 from John S. Page](#)
- [Memorandum dated March 19, 2014 from John S. Page](#)
- [Letter dated August 24, 2015 from Guy Rabideau](#)
- [Letter dated August 27, 2015 from Guy Rabideau](#)

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 9, 2015

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

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

Date: August 25, 2015

STAFF RECOMMENDATION

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

GENERAL INFORMATION

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

- The owners of the landmarked home at 330 Island Road began an extensive "rebuild" of the structure via building permit issued 11/29/11.
- Per the Building Code, the project was given a 30-month completion window (5/28/14).
- Per request from owner's architect at the Council meeting of 4/9/14, an approximate 7+ month time extension was approved with no late fee owed during the extension window, yet conditioned upon a daily fine of \$855/day due to the Town thereafter the extension if not complete.
- Town Code requires payment of such Council-imposed fines prior to the time PZB issues a Certificate of Completion.
- Per news from the owners (including their attorney, architect, and contractor) provided to staff on 8/24/15, they expect that the home will be ready for "final inspection" prior to the September 9 Town Council meeting.
- A final inspection is intended to occur prior to 9/9/15. Staff will report the results of that final inspection to the Council during the 9/9/15 meeting.
- The late fine of \$855/day amounts to \$237,690 as of 8/31/15.

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

SPECIAL CONSIDERATIONS

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

Attachments

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

TOWN OF PALM BEACH

Information for Town Council Meeting on: April 9, 2014

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

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

Re: Extension of Time Schedule for Completion of Construction per Town Code
Chapter 18, Section 242-105.4.1.6
330 Island Road

Date: March 19, 2014

STAFF RECOMMENDATION

Staff recommends that the Town Council consider an extension of the Code-specified time limit for construction for the project located at 330 Island Road (renovation of landmarked existing single family dwelling).

GENERAL INFORMATION

The applicant is requesting an extension of the time limit for the “renovation with additions” of a landmarked single family residence of approximately 8,551 square feet. The initial permit was issued on November 29, 2011. Per Code the project is to be completed in 30 months.

This limit imposes a completion date for the construction of May 28, 2014. See attachments from the owner’s Architect and the contractor outlining their plan to complete. The applicant is proposing to finish the project in November of 2014.

As outlined within the Code, the Council may impose conditions on the extension which may include the implementation of mitigation measures deemed appropriate by the Council and imposition of a fee for each day of the extension beyond the 30 month term imposed. The fee established is 10 cents per square foot with a minimum of \$500.00/per day. From the Town’s record drawings, the project square footage is 8,551 square feet. This means that the maximum fee that the Council could opt to impose is \$855.00 per day (which would accrue until the Planning, Zoning and Building Department issues a Certificate of Occupancy)

cc: Eugene Pandula, Architect
John Finnell, J. W. Finnell Construction
Paul W. Castro, Zoning Administrator
H. Paul Brazil, Public Works Director
Raychel Houston, Code Enforcement Unit

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AUG 24 2015

TOWN OF PALM BEACH
PZB DEPT

RABIDEAU LAW

PALM BEACH - TORONTO

Guy Rabideau, Esq.

direct: 561.402.7411

grabideau@rabideau-law.com

Florida Bar Board Certified in Real Estate Law

August 24, 2015

**Via e-mail: jpage@townofpalmbeach.com &
Via hand delivery**

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

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

Dear Mr. Page:

In connection with the above referenced Property, I represent the owner, Milan E.A.T., L.L.C. At the Town Council meeting on April 9, 2014, the Town Council granted an extension of time for the scheduled completion of construction per Town Code Chapter 18, Section 242-105.4.1.6 (the "Extension"), which Extension extended the timeframe to complete construction to no later than November 26, 2014 (the "Deadline"). Also included in the Extension was the provision that if completion of construction had not occurred by the Deadline, then the owner would be liable for a fee of \$855 per day (the "Fee") until the construction was completed.

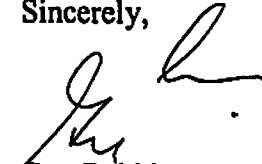
Due to a series of construction difficulties that the owner ran into during the course of protecting and preserving this landmarked home, the owner was not able to complete construction by the Deadline, and the Fee, which has grown to significant and onerous levels, is now due by the owner to the Town.

On behalf of the owner, I would like to appear before Town Council at its September meeting to request that Town Council reconsider the Fee that was imposed in connection with the completion of construction for the Property. Therefore, I request that this reconsideration be added as an item to the September agenda for Town Council.

A detailed explanation of the construction and landmark issues for the Property relating to the Deadline and the Fee will be submitted no later than Friday, August 28, 2015.

Thank you in advance for your consideration of this matter.

Sincerely,



Guy Rabideau

RABIDEAU LAW

PALM BEACH - TORONTO

RECEIVED

AUG 28 2015

TOWN OF PALM BEACH
PZB DEPARTMENT

Guy Rabideau, Esq.

direct: 561.402.7411

grabideau@rabideau-law.com

Florida Bar Board Certified in Real Estate Law

August 27, 2015

Via e-mail: ipage@townofpalmbeach.com &

Via hand delivery

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

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

Dear Mr. Page:

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

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

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

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

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

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

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

- Water damaged wood framing and sheathing.

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

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

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

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

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

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

Thank you in advance for your consideration of this matter.

Sincerely,


Guy Rabideau

TOWN OF PALM BEACH

Town Council Meeting Development Review on: September 9, 2015

Section of Agenda

Ordinances - First Reading

Agenda Title

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

Presenter

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

Supporting Documents

- [Memorandum dated August 25, 2015 from John S. Page](#)
- [Ordinance No. 24-2015](#)

TOWN OF PALM BEACH

Information for Local Planning Agency and Town Council Meetings on: September 9, 2015

To: Mayor and Town Council

Via: Thomas G. Bradford, Town Manager

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

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

Date: August 25, 2015

STAFF RECOMMENDATION

Staff recommends that the Local Planning Agency (LPA) consider Ordinance No. 24-2015, amending the Zoning Ordinance to regulate playground equipment and basketball goals in residential zoning districts and prohibit tree houses. The LPA should then make a recommendation on the proposed Ordinance to the Town Council for its consideration on first reading.

PLANNING AND ZONING COMMISSION RECOMMENDATION

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

GENERAL INFORMATION

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

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

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

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

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

TOWN ATTORNEY REVIEW

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

Attachment

PBE:jsp:pc

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

ORDINANCE NO. 24-2015

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

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

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

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

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

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

Sec. 134-1734. Playground equipment.

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

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

Sec. 134-1735. Basketball goals.

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

Section 3. Severability.

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

Section 4. Repeal of Ordinances in Conflict.

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

Section 5. Codification.

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

Section 6. Effective Date.

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

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

Gail L. Coniglio, Mayor

Michael J. Pucillo, Town Council President

Richard M. Kleid, Council President Pro Tem

Danielle H. Moore, Town Council Member

ATTEST:

Penelope D. Townsend, Town Council Member

Susan A. Owens, MMC, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting Development Review on: September 9, 2015

Section of Agenda

Ordinances - First Reading

Agenda Title

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

Presenter

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

Supporting Documents

- [Memorandum dated August 25, 2015 from John S. Page](#)
- [Memorandum Dated May 7, 2015 from John S. Page](#)
- [Memorandum dated June 10, 2015 from John S. Page](#)
- [Ordinance No. 25-2015](#)

TOWN OF PALM BEACH

Information for Local Planning Agency and Town Council Meetings on: September 9, 2015

To: Planning and Zoning Commission

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

Re: Proposed Modifications and Changes to Chapter 134, Zoning, Related To Supplemental Off-Street Parking Requirements
Ordinance No. 25-2015

Date: August 25, 2015

STAFF RECOMMENDATION

Staff recommends that the Local Planning Agency (LPA) consider Ordinance No. 25-2015, amending the Zoning Ordinance eliminating the requirement to have all required off-street parking in order to qualify for supplemental off-site parking, and creating an administrative approval and revocation/appeal process for off-site supplemental shared parking. The LPA should then make a recommendation on the proposed Ordinance to the Town Council for its consideration on first reading.

PLANNING AND ZONING COMMISSION RECOMMENDATION

The Planning and Zoning Commission, at its May 19, 2015 meeting, considered Staff proposed changes which allow for administrative review/approval of off-site shared parking. Discussion was continued to the following month in order for Staff to make Commission changes to the proposal. Those changes were approved at the June 16th Commission meeting.

GENERAL INFORMATION

The Town Council, at its March 10, 2015 meeting, directed Staff to work with the Planning and Zoning Commission on possible code amendments which would allow more flexibility in providing off-street, shared parking in the Town.

In that regard, Staff drafted a proposal to allow for more flexible off-street, off-site shared parking. Commission deliberation occurred at its May and June meetings (see attached Staff memorandum dated May 7, 2015). Staff was asked to make changes to the proposal by adding an appeal process to an administrative action to revoke off-street shared parking if there are three valid complaints within a one year period. The Commission also changed one of the conditions of approval so that supplemental off-site shared parking would only be allowed when businesses were open at different times from each other (See attached Staff memorandum dated June 10,

2015).

In summary, the proposed revisions shown in add/delete format in Ordinance No. 25-2015 are as follows:

- Changes the definition of “supplemental parking” to allow said parking off-site if there is inadequate required on-site parking (subject to other conditions of approval).
- Allows for administrative (Staff) approval for off-site, supplemental shared parking.
- Allows for said off-site parking within 1,500 feet of the receiving parking lot.
- Allows for shared parking if the businesses sharing the parking have different hours of operation.
- Provides for conditions to allow supplemental off-site shared parking, including a requirement for a shared parking agreement with the owner of the parking lot. The agreement would identify the number of shared parking spaces, where they are located and the specific hours in which those spaces would be used in the supplemental shared parking lot. As part of the agreement, the owner of the supplemental shared parking lot would be required to obtain a business tax receipt and provide the Town with an inventory of supplemental parking users annually at the time of renewal of the business tax receipt.
- Disallows any type of supplemental off-site shared parking for the purpose of development or redevelopment of property, or expansion or intensification of a use.
- Includes a provision enabling Staff to terminate administrative off-site, off-street supplemental shared parking if Staff has determined that there are three valid written complaints within a twelve month period.
- Allows for an appeal process.
- Allows for special exception approval by the Town Council if administrative off-site supplemental shared parking is terminated by Staff and the appeal is denied.
- Provides a sunset provision which automatically rescinds these off-site, supplemental parking regulations in five years unless the Council takes action to retain these proposed changes. If rescinded, the existing regulations would be automatically re-instated.
- Provides a one-time \$500 application fee.

TOWN ATTORNEY REVIEW

Ordinance No. 25-2015 was approved by Town Attorney John C. Randolph for legal form and sufficiency.

Attachments

cc: Planning and Zoning Commission
Jay Boodheshwar, Deputy Town Manager
John C. Randolph, Town Attorney
Paul W. Castro, AICP, Zoning Administrator

TOWN OF PALM BEACH

Information for Planning and Zoning Commission Meeting on: May 19, 2015

To: Planning and Zoning Commission

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

Re: Proposed Modifications and Changes to Chapter 134, Zoning, Related To Supplemental Off-Street Parking Requirements

Date: May 7, 2015

STAFF RECOMMENDATION

Staff recommends that the Planning and Zoning Commission consider and make recommendations on proposed modifications to off-site, shared parking requirements in the Code.

GENERAL INFORMATION

The Town Council, at its March 10, 2015 meeting, directed Staff to work with the Planning and Zoning Commission on possible code amendments which would allow more flexibility in providing off-street shared parking in the Town. This included looking at modifications to the Code which would allow more opportunities for businesses on Worth Avenue to share parking within the Neiman Marcus and One Hundred Worth (a.k.a. The Esplanade) parking garages.

Shared on-site and off-site parking is not a new concept and is used in many communities throughout the Country. Staff contacted the American Planning Association's Planning Advisory Service, which provided research to the Town on the issue. Staff was provided with numerous links to articles and journals that address this zoning issue in many different fashions. From Staff's review of documentation, it appears that the major premise of the shared parking concept is to allow closely situated businesses, which do not compete for parking, to share parking facilities.

The Town of Palm Beach's Zoning Code provisions allow for shared parking based on that same premise. However, off-street, off-site shared parking is only allowed in the Town if said parking is supplemental to required off-street parking. A business is required to first have all of its required parking on-site before off-site shared parking can be requested as supplemental parking by special exception approval from the Town Council. This prevents almost all businesses from being able to use off-site parking.

In addition, supplemental shared parking is only allowed if the applicant can demonstrate that two or more uses sharing the same parking do not have similar hours of operation and use of the parking lot. This is to ensure adequate parking availability during operating hours of the businesses and that no negative impacts are created for surrounding commercial and residential properties.

The Town is unique compared to many other communities as it relates to off-street parking. Most commercial development in the Town has little or no off-street parking (predating today's parking requirements). Traffic and parking impacts on many of the Town's commercial corridors (Royal Poinciana Way, North and South County Road and Worth Avenue) can be significant during Season. On-street parking, while available in these areas, is not adequate during peak Season to serve the needs of all of the commercial uses and surrounding residential neighborhoods competing for that parking. Shared parking is underutilized because the process for approval is expensive, time consuming, and in most cases, not feasible based upon the requirement that businesses can only share parking if their hours of operation do not conflict or overlap, and that they comply with all of the required on-site parking. Our experience has been that commercial businesses that have wanted to use shared parking usually have the same business hours or overlapping hours of operation, and/or do not have prerequisite required on-site parking.

The following proposed amendments to the Code, which are identified in add/delete format, are intended to allow more flexibility in the use of shared parking. These proposed changes are a starting point for discussion purposes. In order to provide you with the all of the information related to required and supplemental parking, Staff has provided other sections of the off-street parking regulations in the Zoning Code, even though there are no proposed changes to those sections.

Staff proposals, as drafted, are not intended to allow existing land uses, new land uses, or re-development of commercial property to intensify or expand by using off-site, shared parking. The intent is to modify the existing shared parking provisions to promote the use of underutilized parking lots, thus relieving some of the on-street commercial parking congestion impacting the Town.

In summary, the proposed revisions shown in add/delete format on all attached pages of the Zoning Code:

- Change the definition of "supplemental parking" to allow said parking off-site if there is inadequate required on-site parking (subject to other conditions of approval).
- Allow for administrative (Staff) approval for off-site, supplemental shared parking.
- Allow for said off-site parking within 1,500 feet of the receiving parking lot, even if there are conflicting hours for use of the parking, provided that only 25 percent of the parking can be used as shared parking for parking lots. The exception would be that parking lots

of 40 spaces or more would be allowed to share a maximum of 35 percent of a parking lot.

- Contain no maximum amount of shared parking if the businesses sharing the parking have different hours of operation.
- Provide for conditions to allow supplemental off-site shared parking, including a requirement for a shared parking agreement with the owner of the parking lot. The agreement would identify the number of shared parking spaces, where they are located and the specific hours in which those spaces would be used in the supplemental shared parking lot. As part of the agreement, the owner of the supplemental shared parking lot would be required to obtain a business tax receipt and provide the town with an inventory of supplemental parking users annually at the time of renewal of the business tax receipt.
- Disallow any type of supplemental off-site shared parking for the purpose of development or redevelopment of property, or expansion or intensification of a use.
- Include a provision enabling Staff to terminate administrative off-site, off-street, supplemental shared parking if Staff has determined that there are three valid written complaints within a twelve month period.
- Allow for special exception approval by the town council if administrative off-site supplemental shared parking is terminated by Staff.
- Provide a sunset provision which automatically rescinds these off-site, supplemental parking regulations in five years unless the Council takes action to retain these proposed changes. If rescinded, the existing regulations would be automatically re-instated.
- Propose a one-time \$500 permit fee for off-site, supplemental shared parking.

It should be noted that the maximum 25 to 35 percent threshold on the number of off-street parking spaces that can be shared within a parking lot is to ensure that there is adequate parking for the commercial tenants located at the "receiving" property. The twenty-percent to thirty-five percent maximums for shared parking are in a similar range as the increase in required parking standard that occurred in 1980. In 1980, the parking requirements were increased for retail uses increased by 33.3 percent and office uses by 16.6 percent.

Staff further recommends that these proposed code modifications be implemented on a five year trial basis and that a reversionary provision be placed on modified shared parking provisions so that a property owner cannot claim there is a taking of property rights should the Council decide not extend, or completely adopt, the shared parking zoning modifications when the five years expires. Properly authorized shared parking arrangements in existence (if rescinded) would remain permissible.

If you have any questions or concern about the following proposed Code changes please contact Paul Castro, Zoning Administrator at 227-6406.

PROPOSED CODE MODIFICATIONS

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

...

Parking, required means those parking facilities determined as the minimum facilities necessary to comply with this chapter as set forth in the schedule of off-street parking requirements.

Parking, supplemental means those parking facilities provided as an administrative approval or special exception use and which are in addition to existing on-site required parking or property that has deficient parking as set forth in the schedule of off-street parking requirements.

Supplemental parking cannot be used in the calculation of required off-street parking to develop or redevelop property, or to expand or intensify an existing or proposed use. This definition shall sunset on August 12, 2020 and revert back to the previous definition of supplemental parking if the Town Council does not extend this provision.

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

...

- (17) Administrative supplemental shared parking
permit (one-time fee).....500.00

ARTICLE IX. OFF-STREET PARKING AND LOADING*

DIVISION 2. OFF-STREET PARKING

...

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

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

(1) At the time of the erection of any building or structure, minimum off-street parking facilities shall be required with adequate provisions for ingress and egress, in accordance with sections 134-2172 through 134-2174 and the schedule of off-street parking requirements, as prescribed in section 134-2176.

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

(3) Except as provided in subsection (f), at the time any use or occupancy of an existing building is changed to a new use or occupancy having differing off-street parking requirements, the parking requirement for the new use or occupancy shall be computed on the basis of the schedule of off-street parking requirements in the section 134-2176. This requirement shall be compared to the requirements of the existing use or occupancy, and, if the total number of spaces required

under the new use or occupancy exceeds that of the existing use or occupancy, the difference shall constitute that number of additional off-street parking spaces to be provided, with adequate provisions for ingress and egress, in accordance with sections 134-2172 and the schedule of off-street parking requirements as prescribed in section 134-2176.

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

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

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

(1) Definition of principle of equivalency as applied to the schedule of off-street parking requirements. The principle of equivalency, as it relates to the schedule of off-street parking requirements, shall be defined as an automobile parking space required by section 134-2176 for establishing an inventory of automobile parking spaces for a conforming or nonconforming use of an existing building, or structure or use, for the purpose of determining the net off-street parking requirement for the establishment of a proposed new use to be permitted in the building, or structure or use.

(2) In evaluating off-street parking ~~in~~ for existing uses, the principle of equivalency shall be applied when the use or occupancy of an existing building is being changed to a new use or occupancy having a differing off-street parking requirement for the purpose of establishing

compliance with this chapter.

(3) The following floor area equivalencies may be used as a minimum guide in the application of the schedule of off-street parking requirements:

- a. One permanent seat equals six square feet of floor area in seating areas of occupancies requiring seating.
- b. One moveable seat equals 15 square feet of floor area in seating areas of occupancies requiring seating.
- c. The remainder of areas external to actual seating areas shall provide required parking according to the schedule of applicable parking requirements.
- d. One school student equals 20 square feet of floor area.

(e) For the purpose of this section, a landmarked commercially zoned building is exempt from providing additional required off-street parking if increased occupancy or use is created by interior building improvements which create more gross leasable area. However, all other provisions of subsections (a) through (d) apply.

(f) In the 200 Block of Peruvian Avenue and Bradley Place in the C-TS zoning district, existing buildings or establishments therein which are nonconforming with respect to the current parking requirements, and which involve only those uses requiring one space per 200 or 250 square feet of gross leasable area, whichever is applicable, shall not be required to provide additional parking spaces as a result of a change from a use which alters the parking ratio from one space per 250 square feet to a use which requires one space for every 200 square feet of gross leasable area.

Sec. 134-2176. - Same—Schedule.

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

Use		Spaces Required Per Unit
(1)	Single-family dwellings	Two per dwelling unit of 3,000 feet of floor area or less, plus one additional space per each 3,000 square feet or portion thereof of floor area above 3,000 square feet.
	Two-family dwellings and townhouses	Two per dwelling unit, plus one additional per each five family dwelling units or portion thereof. Any unit larger than 3,000 square feet shall provide three parking spaces plus one additional per each five dwelling units or portion thereof.
(2)	Multifamily dwellings (three units or more), number of units and required parking spaces as follows:	
	a. Three	Eight
	b. Four	11
	c. Five	13

	d. Six or more units	Two per dwelling unit plus one per five units or portion thereof
(3)	Houses of worship, theaters and auditoriums	One per four permanent seats in the main auditorium.
(4)	Social, swimming, golf, tennis and yacht clubs	One per four members.
(5)	Retail, commercial and personal service establishments and banks and financial institutions, excluding brokerage and trust companies	One per 200 square feet of gross leasable area (GLA)
(6)	Hotels, condo-hotels, motels, motor inns and timesharing uses	One and three-fourths per unit with two or fewer rooms, and 2.75 per unit with more than two rooms; plus one for each 2.5 seats of conference capacity including auditorium, ballroom, banquet facilities, convention hall, gymnasium, meeting rooms, or other similar places of assembly.
(7)	Libraries, museums and nonprofit cultural centers	One per 500 square feet
(8)	Medical or dental offices or clinics	One per 250 square feet of gross leasable area (GLA)
(9)	Restaurants, nightclubs or other eating places	One for each three proposed fixed seats, and/or one for each 45 square feet of floor area in the proposed public seating area not having fixed seats, plus one for each 300 square feet of floor area in the remainder of the floor area
(10)	Reserved	
(11)	Schools (public or private):	
	a. Grades one—six	One per 14 students
	b. Grades seven—nine	One per nine students
	c. Grades ten—12	One per three students
(12)	Accessory commercial retail and service uses in hotels and condo hotels	One per 250 square feet except for a restaurant, nightclub, bar, or other entry place which shall require the same as subsection (9) of this section, and except for conference facilities and similar places of assembly which shall require the same as subsection (6) of this section
(13)	Office, professional and business service establishments, institutions, institutions, and brokerage and trust companies	One per 250 square feet of gross leasable area (GLA)
(14)	Group home and foster care facilities	One space per each four resident occupants or fraction thereof, plus one per each employee in the largest work shift, with a minimum of two parking spaces

Sec. 134-2177. Location of parking spaces.

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

(1) The town council may permit, as a special exception, the establishment of such required off-street parking facilities for commercial uses within 500 feet of the premises, as measured along the nearest public or permanent private pedestrian walkway they are intended to serve when:

a. Practical difficulties prevent the placing of the facilities on the same lot as the premises they are designed to serve;

b. The proposed location is located within the same zoning district as the principal use it is designated to serve;

c. The owner of the parking area shall enter into a written agreement with the town, with enforcement running to the town, providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the building which the parking area serves so long as the facilities are required; and

d. The owner agrees to bear the expense of recording the agreement and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.

(2) The director of planning, zoning and building or designee town council may administratively approve permit, as a special exception, the establishment of supplemental off-street facilities which are in addition to the existing off-street parking to those facilities required in accordance with the schedule of off-street parking for a permitted or approved special exception use. Such supplemental off-street parking facilities may be permitted for new development or redevelopment only after the required parking for the principal use involved has been provided in full at current standards as contained in the schedule or for existing development if the supplemental parking is in addition to the existing or non-existing required parking and is not used as a basis to develop or redevelop property, or expand or intensify the use of property. This additional parking may be supplemental parking located on the same lot, or supplemental off-site parking located on a directly adjoining lot or a lot which would be directly adjoining except for the location of a street or public way; provided, however, that the town does not receive three or more valid complaints, as determined by the director of planning, zoning and building or designee, from three different property owners or tenants within 300 feet of the parking filed with the town within a 12 month period. If there are three valid written complaints about noise, light or congestion within that time frame, the supplemental, off-site parking shall be terminated. Said termination of the shared parking shall occur no later than 30 days after written notice by the Town. Subsequent to termination, the commercial tenant or property owner can apply for a special exception to seek approval of the shared parking which may be granted by the town council if it can be demonstrated that the shared parking meets all other provisions for special exceptions as set forth in sections 134-227 through 134-233, are complied with and, fFurther, that the granting of such supplemental on-site or supplemental off-site parking is not

~~construed as permission~~ shall not be allowed to expand, enlarge, alter, renovate, or modify the intensification of use of a structure except in accordance with the requirements of this chapter.

(3) The town council may permit, as a special exception, the establishment of required off-street parking facilities for commercial uses in zoning districts differing from the district of the principal uses of structures they are intended to serve if the following conditions are met:

- a. The owner of the parking area shall enter into a written agreement with the town with enforcement running to the town providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the buildings with which the parking area serves so long as the facilities are required.
- b. The owner of the parking area shall agree to bear the expense of recording the agreement, and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.
- c. The parking area shall have been used as a parking area for the entirety of each of the five calendar years immediately preceding the application for special exception.
- d. The parking area shall abut the property on which is situated the principal structure for which it is to furnish the required off-street parking.
- e. The provisions for special exceptions as set forth in sections 134-227 through 134-233 are complied with.
- f. The said parking area shall be located at ground level or below ground level and shall not be located within any structure above ground.

Sec. 134-2178. - Collective use.

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

Sec. 134-2179. - Utilization of yards.

(a) *Underground facilities in sub-basements.* Underground facilities in sub-basements. Provided the ground level at the lowest point of the public sidewalk abutting the property or the public street, if there is no public sidewalk, is maintained, required off-street parking facilities may be located in a sub-basement under required yards. Roofs of such sub-basements shall be sodded, landscaped and maintained, and there shall be no visible evidence of such underground facility from a public street or sidewalk. No such underground facility shall be closer than five feet to any property line.

(b) *Residential districts.* In the R-AA, R-A, R-B, R-C, R-D(1) and R-D(2) zoning districts, one and two-family dwellings shall provide the required parking set forth in section 134-2176. The following number of those required off-street parking spaces shall be located in an enclosed garage:

- (1) Lots which are 75 feet or more in width shall provide two parking spaces.

- (2) Lots under 75 feet in width shall provide one parking space, however, lots 50 feet or less in width shall not be required to provide any of the required off-street parking spaces in a garage. All required and supplemental parking spaces shall be designed so that both required and supplemental parking spaces are nine feet wide by 18 feet deep and have a minimum eight-foot free and clear drive aisle width into each space.
- Supplemental off-street parking for one-family and two-family development may be permitted in any setback area or yard area. All such supplemental parking spaces not located within an enclosed garage structure shall require effective screening by hedges and/or a wall permitted by this Code not less than six feet in height, which shall be placed between said off-street parking and any street and/or interior lot lines.
- (c) *Townhouse development in certain residential districts.* In the R-C, R-D(1), and R-D(2) districts, required parking (except guest spaces) for all town house development shall be located within a garage. Supplemental parking may be permitted in any setback area or yard area provided, however, that all such supplemental space, not located within a structure, shall require effective screening by hedges and/or walls permitted by this Code not less than six feet in height, which shall be placed between the off-street parking and any street and/or interior lot lines.
- (d) *Application of requirements for the parking.* The foregoing requirement for garage or screened parking applies only to new construction, redevelopment or major remodeling involving more than 50 percent of the existing cubic content of the structure.
- (e) *Multifamily development.* In all districts where permitted, multifamily development of less than five dwelling units shall provide all required parking (excluding guest spaces) within a garage. For all other multifamily development and in all districts for all other permitted or approved special exception uses, required front, street and street rear yards may not be used for off-street parking, but all other yards may be used for such purposes. If a side or rear yard or non-required front, street side or street rear yard is used for parking purposes, it shall be effectively screened with hedges or walls or a combination thereof placed at the appropriate building line between the off-street parking and any street. Such screening shall not be less than six feet high and shall laterally extend across the entire building line which separates the parking area from the street except for the access way.
- (f) *Other permitted and special exception uses.* In all districts for all other permitted or approved special exception uses, required front, street side, and street rear yards may not be used for off-street parking, but all other yards may be used for such purposes. In addition, no required or supplemental off-street parking shall be located closer than 15 feet from a front, street side, or street rear property line. Required or supplemental off-street parking shall be effectively screened with hedges or walls or a combination thereof placed at the appropriate building line between the off-street parking and any street. Such screening shall not be less than six feet high and shall extend across the entire building line which separates the parking areas from the street except for the access way. Such screening shall also be required along the interior lot lines and shall not be less than four feet in height and shall not encroach upon the rear easement line. The height of said required screening shall be measured as set forth in section 134-1666 et seq. Each

parking space shall have an adequate and substantial wheel stop or curb, not less than six inches in height, located at least four feet from the abutting side or rear property line and not less than two feet from required landscaping. Such two-foot setback may be part of the nine-foot by 18-foot parking space. Further, all required interior landscaping not already protected by wheel stops shall be protected by a curb, a minimum of six inches in height, around the perimeter of such landscaped area to prevent damage by vehicles maneuvering within the parking area. Such curbing must be so designed as not to prevent the drainage of water from the paved area into the landscaped area. In addition to the screening requirements in this subsection, the interior of the parking area must have suitable landscaping, including the provision of shade trees, such landscaped area to be not less than ten percent of the parking and drive aisle area. The total devoted to landscaping, comprising both the screening and the interior landscaping, must be at least 15 percent of the parking and drive aisle area. A site plan showing the landscaping and the irrigation facilities for the landscaping must be submitted.

Sec. 134-2180. - Approval of plan for ingress, egress and landscaping.

The plan for ingress and egress to and from any lot or parcel of land is subject to the approval of the director of public works. No landscaping associated with parking or ingress and egress, curbs or sidewalks shall be cut or altered in any manner without a permit from the director of public works. In addition, all lots or parcels of land are further regulated by the town's right-of-way manual as adopted by reference in section 106-4 of the Code of Ordinances.

Sec. 134-2181. - Utilization of structures.

When off-street parking facilities are located within a structure, the following conditions and restrictions shall apply:

- (1) The structure shall conform to all lot, yard and bulk requirements of the district in which it is located except as follows: In the R-C, R-D(1) and R-D(2) districts, when multifamily development of five or more units includes all required off-street parking, other than required guest spaces, in parking located underground or wholly under the building, using the town's minimum base flood elevation as the starting point, the first eight feet of such understory parking shall not count towards allowable building height, and maximum allowable building coverage may be increased by five percent.
- (2) The parking facilities shall be designed so as to conform to all other town ordinances and all other sections of this chapter.
- (3) All nonstructural portions of the exterior elevations, except for vehicular ingress and egress areas, shall, in addition to any required safety provisions, be screened by a sight block of at least 50 percent solidity for the total areas between deck levels, such sight blockage to be determined by elevation. A solid wall for 50 percent of the distance between deck levels will not be acceptable.
- (4) The town council may permit as a special exception the establishment of required off-street parking facilities for commercial and multifamily uses on the roof of a building. When parking facilities are located on the roof of a structure, a four-foot high balustrade sight block wall shall be provided having at least 25 percent but no more than 50 percent solidity. The area between the top of the balustrade wall and the underside of any overstructure shall be open, providing at least

three feet and six inches of vertical clearance. Further, a horizontally installed sight block framework having at least ten percent but not more than 25 percent solidity shall be installed to cover such rooftop parking. Such horizontal sight block framework shall cover the entire roof deck including ramps and shall be no higher above the roof deck parking spaces than necessary to provide a seven-foot six-inch headroom clearance. The definition for height of a building in section 134-2 shall apply except that the top story shall be determined as the story immediately below the rooftop parking deck of such structure. Landscaping for all facades shall be provided at each parking level to aid the sight block and shall be subject to the review and approval of the architectural commission.

(5) The parking structure or portions of a building devoted to automobile parking uses must be sight screened from public view by approved landscaping; provided, however, that enclosed garage areas of a building shall conform to the same architectural appearance as the remainder of the building. Automobile parking structures detached from the principal structure shall be compatible in appearance to the principal structure and shall comply with lot, yard, and bulk regulations applicable to the principal structure.

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

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

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

- (1) A traffic planner or traffic engineer clearly establishes to the town council, at the applicant's expense, that:
 - a. All uses utilizing the existing parking facilities will primarily utilize these parking spaces at different times of the day, week, month or year;
 - b. The sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities; and
 - c. The available parking will be adequate to serve the needs of the proposed use.
- (2) If the ~~building official~~ director of planning, zoning and building department determines that professional advice and/or consultation is required to review the applicant's parking findings, the expense of such professional advice shall be borne by the applicant.
- (3) The applicant provides to the town, at the applicant's expense, a recorded three-party agreement, including the town as one of the parties, with enforcement running to the town, guaranteeing the continuing availability of the shared parking spaces during the

period of operation of the applicant's use. The term of the agreement shall approximate the life of the building or use for which the shared parking spaces fulfill the town's off-street parking requirement. If the shared parking ever ceases to be available or becomes inadequate due to a change in the uses' respective schedules of operation that results in conflicting or overlapping usage, the proposed use shall be required to obtain a new occupancy permit and provide proof that sufficient parking will be provided or shall be required to immediately reduce the intensity of the use served to the extent that it will be conforming to the town's off-street parking requirements.

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

- (1) Administrative supplemental off-site shared parking shall only be allowed by permit and shall be terminated if three or more valid complaints, as determined by the director of planning, zoning and building or designee, from different property owners within 300 feet of the parking are filed in writing with the town within a 12 month period. Said termination of the shared parking approval shall be required no later than 30 days after written notice by the Town. Subsequent to the notice to terminate the administrative approval for shared parking, the commercial tenant or property owner can apply for a special exception to seek approval of the shared parking which may be granted by the town council if it can be demonstrated that the shared parking meets all provisions for special exceptions as set forth in sections 134-227 through 134-233.
- (2) Granting of such supplemental off-site shared parking shall not be granted to expand, enlarge or intensify an existing use or proposed use, or the development or redevelopment of a property or structure.
- (3) The maximum number of shared parking spaces on a property when the users have the same or conflicting operating hours cannot exceed 25 percent of the parking lot's inventory that is receiving the parking. A parking lot with 40 parking spaces or more, however, shall be allowed to share a maximum of 35 percent of a parking lot. There shall be no maximum amount of shared parking if it is demonstrated that the businesses sharing the parking lot have different hours of operation.
- (4) The owner of the parking lot shall enter into a written agreement with the town, with enforcement assigned to the town, which identifies the number of shared parking spaces, the hours the shared parking will be used by other businesses, and the location of the shared parking within the parking lot. If there is no shared parking cap, said agreement shall have all parties sharing parking acknowledge that they shall not have overlapping or conflicting hours of operation. In addition, as part of the written agreement, the supplemental shared parking lot owner shall be required to obtain a business tax receipt and annually provide the town with an inventory of those businesses and the number of spaces the businesses are individually using in the supplemental parking lot at the time of renewal of the business tax receipt.
- (5) Supplemental off-site shared parking shall be only for uses no more than 1,500 feet from the off-site supplemental shared parking lot.

(6) The applicant shall provide evidence which shall prove to the satisfaction of the town that the supplemental off-site shared parking use shall not cause over uses or parking congestion of the shared parking lot, or increase noise, light or traffic impacts upon neighboring residential districts.

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

- ~~(1) The area to be used for off site shared parking shall be in the C TS, C WA, C PC or C OPI zoning district, and, except for shared parking within a parking garage or underground/underbuilding parking area, any area used for off-site shared parking shall be accessible only to and used by parking attendants and shall have controlled access in the form of gates or other barriers acceptable to the town that can be accessed and used only by parking attendants.~~
- ~~(2) Off site shared parking shall be located no more than 500 feet from the use the off site shared parking is intended to serve.~~
- ~~(3) The applicant shall provide evidence which shall prove to the satisfaction of the town council that the off-site shared parking use shall not increase noise, light or traffic impacts upon neighboring residential districts.~~
- ~~(4) A traffic planner or traffic engineer establishes to the satisfaction of the town council, at the applicant's expense, that all other establishments using the existing parking spaces will primarily utilize these spaces at different times of the day, week, month or year from that of the applicant's use, and that the sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities.~~
- ~~(5) If the director of planning, zoning and building department should determine that professional advice and/or consultant is required to review the applicant's parking findings, the expense of such professional advice shall be borne by the applicant pursuant to sections 134-171 and 134-172.~~
- ~~(6) Off site shared parking shall only be supplemental, and such parking shall not be used to meet required parking for new construction or expansion or addition to existing floor area.~~
- ~~(7) The town may impose such additional conditions that it deems necessary to minimize noise, light and traffic impacts upon neighboring residential districts.~~
- ~~(8) The approval shall initially be limited to a period of six months, whereupon a subsequent review shall be made at a public hearing of the town council at which the interim approval may be renewed, modified or revoked.~~

Sec 134- 2183. Sunset Provision.

The provisions for supplemental off-site shared parking in sections 134-38, 134-2177 and 134-2182 of the Code shall sunset on August 12, 2020 and revert back to the previous provisions in these sections of the Code unless the Town Council extends such provisions.

DIVISION 4. - PARKING LOTS

Sec. 134-2236. - Site plan review.

Applications for public or private parking lots, either as a special exception use or as required off-street parking, shall require site plan review in accordance with article III of this chapter. The material submitted with the application shall include the location, number and size of spaces; type of surfacing material and method of drainage; size and location of access drives and maneuvering aisles; and location and type of screening and landscaping in accordance with this chapter and other applicable town ordinances, together with any other elements as may be deemed essential by the building official.

Sec. 134-2237. - Alternate guidelines for operation as principal use of land.

For a public or private parking lot which is to be operated as the principal and sole use on the parcel of land, the following may be utilized as alternate guidelines in reviewing the site plan:

(1) *Size and access.* An off-street parking space shall have minimum dimensions of nine feet in width and 18 feet in length for the parking of each automobile, exclusive of access drives or aisles thereto. Minimum width of an access drive shall be ten feet for one-way traffic. Minimum width of an aisle designed and intended for the maneuvering into a 90 degree parking space shall be 25 feet; 20 feet into 60 degree parking space; and 15 feet into a 45 degree parking space (see illustration in section 134-2171). Individual ingress and egress drives extending across the public sidewalks and curbs and connecting the parking lot to the public street areas shall not exceed a maximum of 30 feet. The design, number and placement of such drives are to be subject to the approval of the director of public works before being installed.

(2) *Tandem parking.* Tandem parking may be permitted on a parking lot with a full-time attendant, provided that not more than two cars may be parked in tandem at each parking space location.

(3) *Location of spaces.* Required front, street side or street rear yards may not be used for off-street parking, but all other areas, exclusive of easements, may be used for such purposes, providing parking lot paving shall not extend closer than four feet to any abutting side or rear property line.

(4) *Landscaping.* Screening shall be provided in accordance with division 2 of this article.

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

TOWN OF PALM BEACH

Information for Planning and Zoning Commission Meeting on: June 16, 2015

To: Planning and Zoning Commission

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

Re: Proposed Modifications and Changes to Chapter 134, Zoning, Related To Supplemental Off-Street Parking Requirements

Date: June 10, 2015

STAFF RECOMMENDATION

Staff recommends that the Planning and Zoning Commission consider and make recommendations on proposed modifications to off-site, shared parking requirements in the Code.

GENERAL INFORMATION

The Planning and Zoning Commission, at its May 19, 2015 meeting, discussed the staff's supplemental off-site shared parking proposal. After much discussion, Staff was asked to make changes to the proposal by adding an appeal process to an administrative action to revoke off-street shared parking if there are three valid complaints within a one year period. In addition, Staff was asked to change one of the conditions of approval so that supplemental off-site shared parking would only be allowed when businesses are open at different times from each other. Those proposed changes are in bold, italic add/delete format.

Staff has also looked at other possible alternatives to the original proposal discussed in May. Town Attorney, John Randolph has worked on a proposed resolution which would allow the owners of 150 Worth and Neiman Marcus properties to lease off-street parking spaces within their garages on a one year trial basis. Mr. Randolph will be at the meeting to discuss the draft resolution in your Commission package.

PROPOSED CODE MODIFICATIONS

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

...

Parking, required means those parking facilities determined as the minimum facilities necessary to comply with this chapter as set forth in the schedule of off-street parking requirements.

Parking, supplemental means those parking facilities provided as an administrative approval or special exception use and which are in addition to existing on-site required parking or property that has deficient parking as set forth in the schedule of off-street parking requirements. Supplemental parking cannot be used in the calculation of required off-street parking to develop or redevelop property, or to expand or intensify an existing or proposed use. This definition shall sunset on August 12, 2020 and revert back to the previous definition of supplemental parking if the Town Council does not extend this provision.

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

...

- (17) Administrative supplemental shared parking permit (one-time fee).....500.00

ARTICLE IX. OFF-STREET PARKING AND LOADING*

DIVISION 2. OFF-STREET PARKING

...

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

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

(1) At the time of the erection of any building or structure, minimum off-street parking facilities shall be required with adequate provisions for ingress and egress, in accordance with sections 134-2172 through 134-2174 and the schedule of off-street parking requirements, as prescribed in section 134-2176.

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

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

(b) Except as provided in subsection (f), a use, building or structure, lawfully in existence at

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

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

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

(1) Definition of principle of equivalency as applied to the schedule of off-street parking requirements. The principle of equivalency, as it relates to the schedule of off-street parking requirements, shall be defined as an automobile parking space required by section 134-2176 for establishing an inventory of automobile parking spaces for a conforming or nonconforming use of an existing building, or structure or use, for the purpose of determining the net off-street parking requirement for the establishment of a proposed new use to be permitted in the building, or structure or use.

(2) In evaluating off-street parking in for existing uses, the principle of equivalency shall be applied when the use or occupancy of an existing building is being changed to a new use or occupancy having a differing off-street parking requirement for the purpose of establishing compliance with this chapter.

(3) The following floor area equivalencies may be used as a minimum guide in the application of the schedule of off-street parking requirements:

a. One permanent seat equals six square feet of floor area in seating areas of occupancies requiring seating.

b. One moveable seat equals 15 square feet of floor area in seating areas of occupancies requiring

seating.

c. The remainder of areas external to actual seating areas shall provide required parking according to the schedule of applicable parking requirements.

d. One school student equals 20 square feet of floor area.

(e) For the purpose of this section, a landmarked commercially zoned building is exempt from providing additional required off-street parking if increased occupancy or use is created by interior building improvements which create more gross leasable area. However, all other provisions of subsections (a) through (d) apply.

(f) In the 200 Block of Peruvian Avenue and Bradley Place in the C-TS zoning district, existing buildings or establishments therein which are nonconforming with respect to the current parking requirements, and which involve only those uses requiring one space per 200 or 250 square feet of gross leasable area, whichever is applicable, shall not be required to provide additional parking spaces as a result of a change from a use which alters the parking ratio from one space per 250 square feet to a use which requires one space for every 200 square feet of gross leasable area.

Sec. 134-2176. - Same—Schedule.

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

Use		Spaces Required Per Unit
(1)	Single-family dwellings	Two per dwelling unit of 3,000 feet of floor area or less, plus one additional space per each 3,000 square feet or portion thereof of floor area above 3,000 square feet.
	Two-family dwellings and townhouses	Two per dwelling unit, plus one additional per each five family dwelling units or portion thereof. Any unit larger than 3,000 square feet shall provide three parking spaces plus one additional per each five dwelling units or portion thereof.
(2)	Multifamily dwellings (three units or more), number of units and required parking spaces as follows:	
	a. Three	Eight
	b. Four	11
	c. Five	13
	d. Six or more units	Two per dwelling unit plus one per five units or portion thereof
(3)	Houses of worship, theaters and auditoriums	One per four permanent seats in the main auditorium.
(4)	Social, swimming, golf, tennis and yacht clubs	One per four members.

(5)	Retail, commercial and personal service establishments and banks and financial institutions, excluding brokerage and trust companies	One per 200 square feet of gross leasable area (GLA)
(6)	Hotels, condo-hotels, motels, motor inns and timesharing uses	One and three-fourths per unit with two or fewer rooms, and 2.75 per unit with more than two rooms; plus one for each 2.5 seats of conference capacity including auditorium, ballroom, banquet facilities, convention hall, gymnasium, meeting rooms, or other similar places of assembly.
(7)	Libraries, museums and nonprofit cultural centers	One per 500 square feet
(8)	Medical or dental offices or clinics	One per 250 square feet of gross leasable area (GLA)
(9)	Restaurants, nightclubs or other eating places	One for each three proposed fixed seats, and/or one for each 45 square feet of floor area in the proposed public seating area not having fixed seats, plus one for each 300 square feet of floor area in the remainder of the floor area
(10)	Reserved	
(11)	Schools (public or private):	
	a. Grades one—six	One per 14 students
	b. Grades seven—nine	One per nine students
	c. Grades ten—12	One per three students
(12)	Accessory commercial retail and service uses in hotels and condo-hotels	One per 250 square feet except for a restaurant, nightclub, bar, or other entry place which shall require the same as subsection (9) of this section, and except for conference facilities and similar places of assembly which shall require the same as subsection (6) of this section
(13)	Office, professional and business service establishments, institutions, and brokerage and trust companies	One per 250 square feet of gross leasable area (GLA)
(14)	Group home and foster care facilities	One space per each four resident occupants or fraction thereof, plus one per each employee in the largest work shift, with a minimum of two parking spaces

Sec. 134-2177. Location of parking spaces.

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

(1) The town council may permit, as a special exception, the establishment of such required off-street parking facilities for commercial uses within 500 feet of the premises, as measured along the nearest public or permanent private pedestrian walkway they are intended to serve when:

- a. Practical difficulties prevent the placing of the facilities on the same lot as the premises they are designed to serve;
- b. The proposed location is located within the same zoning district as the principal use it is designated to serve;
- c. The owner of the parking area shall enter into a written agreement with the town, with enforcement running to the town, providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the building which the parking area serves so long as the facilities are required; and
- d. The owner agrees to bear the expense of recording the agreement and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.

(2) The director of planning, zoning and building or designee town council may administratively approve permit, as a special exception, the establishment of supplemental off-street facilities which are in addition to the existing off-street parking to those facilities required in accordance with the schedule of off-street parking for a permitted or approved special exception use. Such supplemental off-street parking facilities may be permitted for new development or redevelopment only after the required parking for the principal use involved has been provided in full at current standards as contained in the schedule or for existing development if the supplemental parking is in addition to the existing or non-existing required parking and is not used as a basis to develop or redevelop property, or expand or intensify the use of property. This additional parking may be supplemental parking located on the same lot, or supplemental off-site parking located on a directly adjoining lot or a lot which would be directly adjoining except for the location of a street or public way; provided, however, that the town does not receive three or more valid complaints, as determined by the director of planning, zoning and building or designee, from three different property owners or tenants within 300 feet of the parking filed with the town within a 12 month period. If there are three valid written complaints about noise, light or congestion within that time frame, the supplemental, off-site parking shall be terminated. Said termination of the shared parking shall occur no later than 30 days after written notice by the Town. Any termination of administrative off-site supplemental shared parking may be appealed to the Town Council based on Sec. 134-141 through 134-145 of the Code. Subsequent to termination, the commercial tenant or property owner can apply for a special exception to seek approval of the shared parking which may be granted by the town council if it can be demonstrated that the shared parking meets all other provisions for special exceptions as set forth in sections 134-227 through 134-233, are complied with and, ~~f~~Further, that the granting of such supplemental on-site or supplemental off-site parking is not construed as permission shall not be allowed to expand, enlarge, alter, renovate, or modify the intensification of use of a structure except in accordance with the requirements of this chapter.

(3) The town council may permit, as a special exception, the establishment of required off-street parking facilities for commercial uses in zoning districts differing from the district of the principal uses of structures they are intended to serve if the following conditions are met:

- a. The owner of the parking area shall enter into a written agreement with the town with enforcement running to the town providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the buildings with which the parking area serves so long as the facilities are required.
- b. The owner of the parking area shall agree to bear the expense of recording the agreement, and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.
- c. The parking area shall have been used as a parking area for the entirety of each of the five calendar years immediately preceding the application for special exception.
- d. The parking area shall abut the property on which is situated the principal structure for which it is to furnish the required off-street parking.
- e. The provisions for special exceptions as set forth in sections 134-227 through 134-233 are complied with.
- f. The said parking area shall be located at ground level or below ground level and shall not be located within any structure above ground.

Sec. 134-2178. - Collective use.

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

Sec. 134-2179. - Utilization of yards.

(a) *Underground facilities in sub-basements.* Underground facilities in sub-basements. Provided the ground level at the lowest point of the public sidewalk abutting the property or the public street, if there is no public sidewalk, is maintained, required off-street parking facilities may be located in a sub-basement under required yards. Roofs of such sub-basements shall be sodded, landscaped and maintained, and there shall be no visible evidence of such underground facility from a public street or sidewalk. No such underground facility shall be closer than five feet to any property line.

(b) *Residential districts.* In the R-AA, R-A, R-B, R-C, R-D(1) and R-D(2) zoning districts, one and two-family dwellings shall provide the required parking set forth in section 134-2176. The following number of those required off-street parking spaces shall be located in an enclosed garage:

- (1) Lots which are 75 feet or more in width shall provide two parking spaces.
 - (2) Lots under 75 feet in width shall provide one parking space, however, lots 50 feet or less in width shall not be required to provide any of the required off-street parking spaces in a garage.
- All required and supplemental parking spaces shall be designed so that both required and

supplemental parking spaces are nine feet wide by 18 feet deep and have a minimum eight-foot free and clear drive aisle width into each space.

Supplemental off-street parking for one-family and two-family development may be permitted in any setback area or yard area. All such supplemental parking spaces not located within an enclosed garage structure shall require effective screening by hedges and/or a wall permitted by this Code not less than six feet in height, which shall be placed between said off-street parking and any street and/or interior lot lines.

(c) *Townhouse development in certain residential districts.* In the R-C, R-D(1), and R-D(2) districts, required parking (except guest spaces) for all town house development shall be located within a garage. Supplemental parking may be permitted in any setback area or yard area provided, however, that all such supplemental space, not located within a structure, shall require effective screening by hedges and/or walls permitted by this Code not less than six feet in height, which shall be placed between the off-street parking and any street and/or interior lot lines.

(d) *Application of requirements for the parking.* The foregoing requirement for garage or screened parking applies only to new construction, redevelopment or major remodeling involving more than 50 percent of the existing cubic content of the structure.

(e) *Multifamily development.* In all districts where permitted, multifamily development of less than five dwelling units shall provide all required parking (excluding guest spaces) within a garage. For all other multifamily development and in all districts for all other permitted or approved special exception uses, required front, street and street rear yards may not be used for off-street parking, but all other yards may be used for such purposes. If a side or rear yard or non-required front, street side or street rear yard is used for parking purposes, it shall be effectively screened with hedges or walls or a combination thereof placed at the appropriate building line between the off-street parking and any street. Such screening shall not be less than six feet high and shall laterally extend across the entire building line which separates the parking area from the street except for the access way.

(f) *Other permitted and special exception uses.* In all districts for all other permitted or approved special exception uses, required front, street side, and street rear yards may not be used for off-street parking, but all other yards may be used for such purposes. In addition, no required or supplemental off-street parking shall be located closer than 15 feet from a front, street side, or street rear property line. Required or supplemental off-street parking shall be effectively screened with hedges or walls or a combination thereof placed at the appropriate building line between the off-street parking and any street. Such screening shall not be less than six feet high and shall extend across the entire building line which separates the parking areas from the street except for the access way. Such screening shall also be required along the interior lot lines and shall not be less than four feet in height and shall not encroach upon the rear easement line. The height of said required screening shall be measured as set forth in section 134-1666 et seq. Each parking space shall have an adequate and substantial wheel stop or curb, not less than six inches in height, located at least four feet from the abutting side or rear property line and not less than two feet from required landscaping. Such two-foot setback may be part of the nine-foot by 18-

foot parking space. Further, all required interior landscaping not already protected by wheel stops shall be protected by a curb, a minimum of six inches in height, around the perimeter of such landscaped area to prevent damage by vehicles maneuvering within the parking area. Such curbing must be so designed as not to prevent the drainage of water from the paved area into the landscaped area. In addition to the screening requirements in this subsection, the interior of the parking area must have suitable landscaping, including the provision of shade trees, such landscaped area to be not less than ten percent of the parking and drive aisle area. The total devoted to landscaping, comprising both the screening and the interior landscaping, must be at least 15 percent of the parking and drive aisle area. A site plan showing the landscaping and the irrigation facilities for the landscaping must be submitted.

Sec. 134-2180. - Approval of plan for ingress, egress and landscaping.

The plan for ingress and egress to and from any lot or parcel of land is subject to the approval of the director of public works. No landscaping associated with parking or ingress and egress, curbs or sidewalks shall be cut or altered in any manner without a permit from the director of public works. In addition, all lots or parcels of land are further regulated by the town's right-of-way manual as adopted by reference in section 106-4 of the Code of Ordinances.

Sec. 134-2181. - Utilization of structures.

When off-street parking facilities are located within a structure, the following conditions and restrictions shall apply:

(1) The structure shall conform to all lot, yard and bulk requirements of the district in which it is located except as follows: In the R-C, R-D(1) and R-D(2) districts, when multifamily development of five or more units includes all required off-street parking, other than required guest spaces, in parking located underground or wholly under the building, using the town's minimum base flood elevation as the starting point, the first eight feet of such understory parking shall not count towards allowable building height, and maximum allowable building coverage may be increased by five percent.

(2) The parking facilities shall be designed so as to conform to all other town ordinances and all other sections of this chapter.

(3) All nonstructural portions of the exterior elevations, except for vehicular ingress and egress areas, shall, in addition to any required safety provisions, be screened by a sight block of at least 50 percent solidity for the total areas between deck levels, such sight blockage to be determined by elevation. A solid wall for 50 percent of the distance between deck levels will not be acceptable.

(4) The town council may permit as a special exception the establishment of required off-street parking facilities for commercial and multifamily uses on the roof of a building. When parking facilities are located on the roof of a structure, a four-foot high balustrade sight block wall shall be provided having at least 25 percent but no more than 50 percent solidity. The area between the top of the balustrade wall and the underside of any overstructure shall be open, providing at least three feet and six inches of vertical clearance. Further, a horizontally installed sight block framework having at least ten percent but not more than 25 percent solidity shall be installed to cover such rooftop parking. Such horizontal sight block framework shall cover the entire roof

change in the uses' respective schedules of operation that results in conflicting or overlapping usage, the proposed use shall be required to obtain a new occupancy permit and provide proof that sufficient parking will be provided or shall be required to immediately reduce the intensity of the use served to the extent that it will be conforming to the town's off-street parking requirements.

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

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

(2) Granting of such supplemental off-site shared parking shall not be granted to expand, enlarge or intensify an existing use or proposed use, or the development or redevelopment of a property or structure.

(3) *The applicant establishes to the satisfaction of the town staff, at the applicant's expense, that all other establishments using the existing parking spaces will primarily utilize these spaces at different times of the day, week, month or year from that of the applicant's use, and that the sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities.*

(4) *The owner of the parking lot shall enter into a written agreement with the town, with enforcement assigned to the town, which identifies the number of shared parking spaces, the hours the shared parking will be used by other businesses, and the location of the shared parking within the parking lot. Said agreement shall have the applicant acknowledge that all parties sharing parking shall not have overlapping or conflicting hours of operation. In addition, as part of the written agreement, the supplemental shared parking lot owner shall be required to obtain a business tax receipt and annually provide the town with an inventory of those businesses and the number of spaces the businesses are individually using in the supplemental parking lot at the time of renewal of the business tax receipt.*

(5) Supplemental off-site shared parking shall be only for uses no more than 1,500 feet from the off-site supplemental shared parking lot.

(6) The applicant shall provide evidence which shall prove to the satisfaction of the town that the supplemental off-site shared parking use shall not cause over uses or parking congestion of the shared parking lot, or increase noise, light or traffic impacts upon neighboring residential districts.

material submitted with the application shall include the location, number and size of spaces; type of surfacing material and method of drainage; size and location of access drives and maneuvering aisles; and location and type of screening and landscaping in accordance with this chapter and other applicable town ordinances, together with any other elements as may be deemed essential by the building official.

Sec. 134-2237. - Alternate guidelines for operation as principal use of land.

For a public or private parking lot which is to be operated as the principal and sole use on the parcel of land, the following may be utilized as alternate guidelines in reviewing the site plan:

(1) *Size and access.* An off-street parking space shall have minimum dimensions of nine feet in width and 18 feet in length for the parking of each automobile, exclusive of access drives or aisles thereto. Minimum width of an access drive shall be ten feet for one-way traffic. Minimum width of an aisle designed and intended for the maneuvering into a 90 degree parking space shall be 25 feet; 20 feet into 60 degree parking space; and 15 feet into a 45 degree parking space (see illustration in section 134-2171). Individual ingress and egress drives extending across the public sidewalks and curbs and connecting the parking lot to the public street areas shall not exceed a maximum of 30 feet. The design, number and placement of such drives are to be subject to the approval of the director of public works before being installed.

(2) *Tandem parking.* Tandem parking may be permitted on a parking lot with a full-time attendant, provided that not more than two cars may be parked in tandem at each parking space location.

(3) *Location of spaces.* Required front, street side or street rear yards may not be used for off-street parking, but all other areas, exclusive of easements, may be used for such purposes, providing parking lot paving shall not extend closer than four feet to any abutting side or rear property line.

(4) *Landscaping.* Screening shall be provided in accordance with division 2 of this article.

cc: Mayor and Town Council
Thomas G. Bradford, Town Manager
Jay Boodeshwar, Deputy Town Manager
John C. Randolph, Town Attorney
Veronica B. Close, AICP, Asst. Director, Planning, Zoning and Building Department
Paul W. Castro, AICP, Zoning Administrator
zf

ORDINANCE NO. 25-2015

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

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

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

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

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

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

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

...

Parking, supplemental means those parking facilities provided as an administrative approval or special exception use and which are in addition to existing on-site required parking or property that has deficient parking as set forth in the schedule of off-street parking requirements. Supplemental parking cannot be used in the calculation of required off-street parking to develop or redevelop property, or to expand or intensify an existing or proposed use. This definition shall sunset on August 12, 2020 and revert back to the previous definition of supplemental parking if the Town Council does not extend this provision.

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

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

...

(17) Administrative supplemental shared parking permit (one-time fee).....500.00

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

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

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

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

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

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

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

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

- (1) Definition of principle of equivalency as applied to the schedule of off-street parking requirements. The principle of equivalency, as it relates to the schedule of off-street parking requirements, shall be defined as an automobile parking space

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

- (2) In evaluating off-street parking in for existing uses, the principle of equivalency shall be applied when the use or occupancy of an existing building is being changed to a new use or occupancy having a differing off-street parking requirement for the purpose of establishing compliance with this chapter.
- (3) The following floor area equivalencies may be used as a minimum guide in the application of the schedule of off-street parking requirements:
 - a. One permanent seat equals six square feet of floor area in seating areas of occupancies requiring seating.
 - b. One moveable seat equals 15 square feet of floor area in seating areas of occupancies requiring seating.
 - c. The remainder of areas external to actual seating areas shall provide required parking according to the schedule of applicable parking requirements.
 - d. One school student equals 20 square feet of floor area.

Section 4. Amend Article IX, OFF-STREET PARKNING AND LOADING, Section 134-2177, Location of parking spaces, to read as follows:

Sec. 134-2177. Location of parking spaces.

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

- (1) The town council may permit, as a special exception, the establishment of such required off-street parking facilities for commercial uses within 500 feet of the premises, as measured along the nearest public or permanent private pedestrian walkway they are intended to serve when:
 - a. Practical difficulties prevent the placing of the facilities on the same lot as the premises they are designed to serve;

- b. The proposed location is located within the same zoning district as the principal use it is designated to serve;
 - c. The owner of the parking area shall enter into a written agreement with the town, with enforcement running to the town, providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the building which the parking area serves so long as the facilities are required; and
 - d. The owner agrees to bear the expense of recording the agreement and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.
- (2) ~~The director of planning, zoning and building or designee town council~~ may administratively approve ~~permit, as a special exception,~~ the establishment of supplemental off-street facilities which are in addition to the existing off-street parking to those facilities required in accordance with the schedule of off-street parking for a permitted or approved special exception use. Such supplemental off-street parking facilities may be permitted for new development or redevelopment only after the required parking for the principal use involved has been provided in full at current standards as contained in the schedule or for existing development if the supplemental parking is in addition to the existing or non-existing required parking and is not used as a basis to develop or redevelop property, or expand or intensify the use of property. This additional parking may be supplemental parking located on the same lot, or supplemental off-site parking located on a directly adjoining lot or a lot which would be directly adjoining except for the location of a street or public way; provided, however, that the town does not receive three or more valid complaints, as determined by the director of planning, zoning and building or designee, from three different property owners or tenants within 300 feet of the parking filed with the town within a 12 month period. If there are three valid written complaints about noise, light or congestion within that time frame, the supplemental, off-site parking shall be terminated. Said termination of the shared parking shall occur no later than 30 days after written notice by the Town. Any termination of administrative off-site supplemental shared parking may be appealed to the Town Council based on Sec. 134-141 through 134-145 of the Code. Subsequent to termination, the commercial tenant or property owner can apply for a special exception to seek approval of the shared parking which may be granted by the town council if it can be demonstrated that the shared parking meets all other provisions for special exceptions as set forth in sections 134-227 through 134-233, are complied with and, Further, that the granting of such supplemental on-site or supplemental off-site parking is not construed as permission shall not be allowed to expand, enlarge, alter, renovate, or modify the intensification of use of a structure except in accordance with the requirements of this chapter.

- (3) The town council may permit, as a special exception, the establishment of required off-street parking facilities for commercial uses in zoning districts differing from the district of the principal uses of structures they are intended to serve if the following conditions are met:
- a. The owner of the parking area shall enter into a written agreement with the town with enforcement running to the town providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the buildings with which the parking area serves so long as the facilities are required.
 - b. The owner of the parking area shall agree to bear the expense of recording the agreement, and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.
 - c. The parking area shall have been used as a parking area for the entirety of each of the five calendar years immediately preceding the application for special exception.
 - d. The parking area shall abut the property on which is situated the principal structure for which it is to furnish the required off-street parking.
 - e. The provisions for special exceptions as set forth in sections 134-227 through 134-233 are complied with.
 - f. The said parking area shall be located at ground level or below ground level and shall not be located within any structure above ground.

Section 5. Amend Article IX, OFF-STREET PARKING AND LOADING, Section 134-2178, Collective use, to read as follows:

Sec. 134-2178. - Collective use.

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

Section 6. Amend Article IX, OFF-STREET PARKING AND LOADING, Section 134-2182, Shared Parking in the C-TS, C-WA and C-OPI commercial zoning districts, to read as follows:

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

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

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

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

immediately reduce the intensity of the use served to the extent that it will be conforming to the town's off-street parking requirements.

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

- (1) Administrative supplemental off-site shared parking shall only be allowed by permit and shall be terminated if three or more valid complaints, as determined by the director of planning, zoning and building or designee, from different property owners within 300 feet of the parking are filed in writing with the town within a 12 month period. Said termination of the shared parking approval shall be required no later than 30 days after written notice by the Town. Any termination of administrative off-site supplemental shared parking may be appealed to the Town Council based on Sec. 134-141 through 134-145 of the Code. Subsequent to the notice to terminate the administrative approval for shared parking, the commercial tenant or property owner can apply for a special exception to seek approval of the shared parking which may be granted by the town council if it can be demonstrated that the shared parking meets all provisions for special exceptions as set forth in sections 134-227 through 134-233.
- (2) Granting of such supplemental off-site shared parking shall not be granted to expand, enlarge or intensify an existing use or proposed use, or the development or redevelopment of a property or structure.
- (3) The applicant establishes to the satisfaction of the town staff, at the applicant's expense, that all other establishments using the existing parking spaces will primarily utilize these spaces at different times of the day, week, month or year from that of the applicant's use, and that the sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities.
- (4) The owner of the parking lot shall enter into a written agreement with the town which identifies the number of shared parking spaces, the hours the shared parking will be used by other businesses, and the location of the shared parking within the parking lot. Said agreement shall have the applicant acknowledge that all parties sharing parking shall not have overlapping or conflicting hours of operation. In addition, as part of the written agreement, the supplemental shared parking lot owner shall be required to obtain a business tax receipt and annually provide the town with an inventory of those businesses and the number of spaces the businesses are individually using in the supplemental parking lot at the time of renewal of the business tax receipt.

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

- ~~(8) — The approval shall initially be limited to a period of six months, whereupon a subsequent review shall be made at a public hearing of the town council at which the interim approval may be renewed, modified or revoked.~~

Section 7. Amend Article IX, OFF-STREET PARKING AND LOADING, Creating Section 134-2183, Sunset provision, to read as follows:

Sec 134- 2183. Sunset provision.

The provisions for supplemental off-site shared parking in sections 134-2, 134-38, 134-2177 and 134-2182 of the Code shall sunset on August 12, 2020 and revert back to the previous provisions in these sections of the Code unless the Town Council extends such provisions.

Section 8. Severability.

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

Section 9. Repeal of Ordinances in Conflict.

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

Section 10. Codification.

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

Section 11. Effective Date.

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

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

Gail L. Coniglio, Mayor

Michael J. Pucillo, Town Council President

Richard M. Kleid, Council President Pro Tem

Danielle H. Moore, Town Council Member

ATTEST:

Penelope D. Townsend, Town Council Member

Susan A. Owens, MMC, Town Clerk

Robert N. Wildrick, Town Council Member