



TOWN OF PALM BEACH

PLANNING, ZONING, & BUILDING DEPARTMENT

TOWN COUNCIL MEETING DEVELOPMENT REVIEW

TOWN HALL
COUNCIL CHAMBERS - SECOND FLOOR
360 SOUTH COUNTY ROAD

AGENDA

NOVEMBER 13, 2020

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

Gail L. Coniglio, Mayor
Margaret A. Zeidman, President
Bobbie Lindsay, President Pro Tem
Julie Araskog
Lew Crampton
Danielle H. Moore

II. INVOCATION AND PLEDGE OF ALLEGIANCE

III. COMMENTS OF MAYOR GAIL L. CONIGLIO

IV. COMMENTS OF TOWN COUNCIL MEMBERS

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

VI. APPROVAL OF AGENDA

VII. PUBLIC HEARINGS

VIII. RESOLUTIONS

- A. RESOLUTION NO 114-2020 280 Sunset Avenue A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions For The Property Hereinafter Described And Stating That The Subject Property Meets The Criteria Set Forth In Chapter 54, Article V Of The Code Of Ordinances Of The Town Of Palm Beach, Relating To Landmarks Preservation And Titled "Tax Exemptions." Pg. 13
- B. RESOLUTION NO. 131-2020 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida Approving The Attached Amended Certificate Of Notification Of Designation Of Certain Properties As Landmarks; Authorizing Its Execution By The Town Manager And Providing For Its Recording In The Public Records Of Palm Beach County, Florida; Providing For An Effective Date. Pg. 18

IX. DEVELOPMENT REVIEWS

A. Time Extensions and Waivers

1. Time Extension for 264-270 S. County Road Pg. 26
2. Time Extension for 150 Worth Avenue Pg. 34

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. **Z-19-00211 SPECIAL EXCEPTION WITH SITE PLAN REVIEW** Zoning District: C-PC Planned Center The application of 305 Concepts Palm Beach, LLC d/b/a Coyo Taco, Applicant, relative to property located at **340 ROYAL POINCIANA WAY SUITE: M337**, legal description on file, is described below. Pg. 39
- On March 15, 2017, the Town Council approved Special Exception #5-2017, which authorized Coyo Taco to operate a restaurant containing more than 3000 S.F. in the C-PC zoning district at Suites #337A and M 333 of the Royal Poinciana Plaza. The approval was conditioned upon execution of a Declaration of Use Agreement, which did not permit Coyo Taco to have a disc jockey. This application seeks to amend the existing Declaration of Use Agreement to allow the restaurant to have a DJ on Tuesday, Friday and Saturday nights, in addition to special events. The hours requested for the DJ are 8:00pm to 12:00pm on Tuesday nights and 8:00pm to 1:00am on Friday and Saturday nights and for special events. The DJ will be confined to the

interior of Coyo Taco. No physical changes to the previous approval are requested.

The Declaration of Use Agreement also required Coyo Taco to return to the Town Council to demonstrate compliance with the Town Serving requirement. Coyo Taco has collected data confirming that the Town Serving requirement is met. This information will be presented to the Town Council during the public hearing on this application. [Applicant's Representative: James M. Crowley Esq]

Pg. 43

- b. **Z-20-000262 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: R-D(2) High Density Residential The application of The Ambassador Hotel Cooperative Apartments Corp., A Florida Corporation (Richard Schlesinger, President), Applicant, relative to property located at **2730 S OCEAN BLVD**, legal description on file, is described below. The following zoning relief is being requested: 1. Section 134-1055 (16.): Special Exception approval to modify the existing condo-hotel use in the R-D(2) Zoning District. 2. Section 134-327: Site plan approval for the modifications to the existing condo-hotel site as identified above. 3. Section 134-1064: Special exception approval for the new balconies on the third, fourth and fifth floors. 4. Section 134-1060 (6)(f): Variance request for the proposed redevelopment to include the addition of balconies on the south side of the building that will encroach into the south side yard setback by a 30 inches thus a variance request for a setback of 27.5 feet in lieu of the 30 foot minimum required. 5. Section 134-2172: Variance to allow the proposed off-street, valet-operated parking, to be tandem and stacked in lieu of the code required off-street parking standards related to size of spaces and access. The code requires parking spaces to be designed so that a vehicle can be removed without the necessity to move another vehicle. The proposed parking is modifying and adding parking areas designed with stacked (tandem) and lift parking. 6. Section 134-1064: Variance to allow the lot coverage to be 44.9% in lieu of the 23.7% existing and the 22% maximum allowed in the R-D(2) Zoning District for 5 story buildings (the building is 7 stories with a lower level floor area). 7. Section 134-1060(6): Variance to allow a north side yard setback of 15 feet in lieu of the 30 foot minimum required for the under dune garage. 8. Section 134-1064(b)(3): Variance to allow a height of 68.96 feet in lieu of the 62.5 maximum allowed for the Penthouse additions (7th floor). [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission deferred this project to the October 28, 2020 meeting at the request of the attorney. Carried 7-0.] **Request for Withdrawal per Letter Dated October 21, 2020 from Maura Ziska.**

- c. **Z-19-00236 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of Jennifer J. Naegele, Applicant, relative to property located at **70 MIDDLE RD**, legal description

Pg. 46

on file, is described below. The applicant is undertaking a renovation of a 3 story landmarked residence located in the R-B Zoning District. The renovation includes a 91 square foot laundry room addition to the northwest corner of the house; a 191 square foot covered terrace addition on the north side of the house; and a 60 KW generator proposed in the street side yard along Via Marina. The following variances are being requested: 1) Sec. 134-1729: a variance to allow a 60 KW generator to be placed in the street side yard along Via Marina with a setback of 8.5 feet in lieu of the 25 foot minimum required. 2) Sec. 134-893(11): a variance for lot coverage for the laundry room addition of 34.47% in lieu of the 33.07% existing and the 30% maximum allowed. 3) Sec. 134-893(13): a variance for a cubic content ratio ("CCR") for the laundry room and covered terrace of 8.85 in lieu of the 8.32 existing and the 3.95 maximum allowed. 4) Sec. 134-893(7): a variance for a north side yard setback of 7.6 feet in lieu of the 12.5 feet minimum required for the laundry room addition. 5) Sec. 134-893(7): a variance to convert the existing flat roof to a covered balcony with railing that will have a north side yard setback of 7.6 feet in lieu of the 15 foot minimum required. [Applicant's Representative: Maura Ziska Esq] [Landmarks Preservation Foundation Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject landmarked property. Carried 7-0.] [The Landmarks Preservation Commission approved the project as presented with the condition that the homeowner voluntarily grants the utility easement. Carried 7-0] **Email Dated October 21, 2020 from Jennifer Naegele Requesting Deferral to the May 2021 Meeting.**

- d. **Z-20-00265 SPECIAL EXCEPTION WITH SITE PLAN REVIEW** Zoning District: R-B Low Density Residential The application of Carlos Musso, Sr., Applicant, relative to property located at **110 SEAGATE RD**, legal description on file, is described below. Special Exception with Site Plan Review to allow the construction of a 4,201 square foot two-story new residence on non-conforming portions of platted lots with a depth of 96.12 feet in lieu of the 100 foot minimum depth required in the R-B Zoning District. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed special exception and site plan review will not cause negative architectural impact to the subject property. Motion carried 7-0.] [The Architectural Review Commission approved the project as presented. Carried 7-0.] [The Architectural Review Commission reviewed this project after it was remanded back to them from Town Council. The Architectural Review Commission approved the project as presented based on the competent, substantial evidence and on Section 18-205, criteria 4, 6 and 8.]

Pg. 110

- e. **Z-20-00269 VARIANCES** Zoning District: R-B Low Density

Pg. 158

Residential The application of John Criddle and Franny Frisbie, Applicant, relative to property located at **143 REEF RD**, legal description on file, is described below. The applicant is proposing to construct a new 597 square foot one story garage to the west of the existing residence. The following variances are being requested: 1. Section 134-893(7): The applicant is requesting a variance for a west side yard setback of 5 feet in lieu of the 12.5 foot minimum required for a one story building. 2. Section 134-893(6): The applicant is requesting a variance for an angle of vision of 105 degrees in lieu of the 100 degrees maximum allowed. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variance will not cause negative architectural impact to the subject property. Motion carried 4-3.] [The Architectural Review Commission approved the project as presented. Carried 4-3.] **Request for Deferral to the December 9, 2020 Meeting per Letter Dated October 29, 2020 from Maura Ziska.**

- f. **Z-20-00281 SPECIAL EXCEPTION WITH SITE PLAN REVIEW** Zoning District: R-D(2) High Density Residential and R-C Medium Density Residential The application of CH HOTEL, LLC (Andrew and Sarah Wetenhall and Family), relative to property located at **135 HAMMON AVE, 152 HAMMON AVE, AND 155 HAMMON AVE**, legal description on file, is described below. Request for a modification to the previously approved Special Exception for the Colony hotel use to allow the relocation of the previously held events on the west side of the ballroom building to the new east garden. The use of the garden area east of the ballroom building shall be primarily used as a pre-function space such as wedding ceremonies and cocktail receptions -all to be used in conjunction with the ballroom building that was approved by the Town Council In 1986. The Colony Hotel is requesting the following terms to be approved: 1) All pre-function events or ceremonies in the garden will be concluded by 10:00 p.m. 2) There shall be only background music allowed or live music of no more four instruments. 3) There shall be no DJ music 4) Microphone use shall be allowed for officiant for wedding services or an individual making remarks. 5) The hotel will agree to install a custom designed in-ground sound system to abate noise. 6) The hotel will install a mutually agreeable privacy/landscape buffer along the eastern property line. [Applicant's Representative: Maura Ziska Esq] **Consideration of Proposed Declaration of Use Agreement.**

Pg. 221

- g. **Z-20-00282 VARIANCE(S)** Zoning District R-B Low Density Residential The application of Mr. and Mrs. Terwilliger, Applicants, relative to property located at **202 PLANTATION RD**, legal description on file, is described below. The applicant is proposing to renovate the two-story single family residence by

Pg. 235

constructing a 425 square foot master bedroom addition and replacement of a 183 square foot open air trellis with a 183 square foot covered porch. The following variances are being requested: 1. Section 134-893(6): an angle of vision of 114 degrees in lieu of 108 degrees existing and 108 degrees maximum allowed. 2. Section 134-893(13): a cubic content ratio of 3.99 in lieu of 3.83 existing and 3.94 maximum allowed. [Applicant's Representative: Maura Ziska Esq]

- h. **Z-20-00289 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: C-B Commercial The application of LR Palm House LLC (Ian Livingstone, Executive Chairman), Applicant, relative to property located at **160 ROYAL PALM WAY**, legal description on file, is described below. Section 134-1304 (5): Request to modify Site Plan Review # 1-2016 with Special Exception to change the approved use from condo-hotel to hotel; modify the previously approved site plan; and amend the conditions of approval in the Declaration of Use Agreement, as identified in the proposed Third Amendment to the Declaration of Use which is Exhibit "F") of this application. The proposed site modifications being requested as follows: Section 134-1304(5): The existing Palm House hotel is located at 160 Royal Palm Way, Palm Beach, Florida. It is currently vacant and construction is partially completed. The structure is three stories with a partially enclosed basement containing parking and back-of-house functions. The hotel is 84,495 gross square feet in total. There is an East and West guest wing, and these wings are connected by a central core containing the Main Entrance and other partially completed public functions. A separate conference and events "Function Room" and partial pool deck was also constructed at the south east portion of the property. Section 134-227. 326 & 329 1729(2) (c): (Site Plan Review) The new owner/applicant is proposing new work for the hotel which includes the following site plan modifications: 1) Completion and conversion of guest rooms for a total of 79 keys. Two new presidential suites will be constructed within the building core, each with private outdoor balconies. 2) Completion of the lower level for back-of-house, administrative and housekeeping functions for the hotel. The interior modifications for the lower level includes renovation of partially completed areas including kitchen, food storage, housekeeping, staff areas and hotel administrative offices. The owner is requesting an additional 148 SF to provide a new service stair form the lower level to support the Pool Area. Additional areas for renovation include spaces for MEP Infrastructure such as electrical, hot water, and elevator systems. The proposed modifications remove all Hotel Guest program areas from the lower level. The lower level renovation includes restoration of parking area for 60 parking spaces including three accessible parking spaces. Two parking spaces which includes on Van

Pg. 237

Accessible parking space is located behind the existing function room. All parking will be Valet only per the Declaration of Use Amendment Three. Total on-site parking provided is 62 spaces.

3) A new pool deck will be constructed adjacent to the existing Function Room, with various amenities that include chaise lounges and outdoor seating, shade umbrellas, toilets, a towel/concierge stand, open-air bar with enclosed pantry behind, water features, lush native plantings, and Event Lawn to be used as a pre-function space, or for small wedding and/or overflow sun bathing;

4) The first level lobby and public spaces will be completed to include fine dining and lobby bar, with 88 indoor seats as well as 36 outdoor seating facing the new pool deck. The second floor dining that was previously approved has been eliminated to make room for the reconfigured hotel suites which include the new presidential suites;

5) The Function Room construction will be completed and the seating plan in the Function Room is being revised to add 50 more seats for a total of 200 seats (the total overall number of seats throughout the hotel that was previously approved is being reduced from 336 to 324);

6) A small 556 square foot banquet prep kitchen is proposed to be constructed adjacent to and on the east side of the existing Function Room.

7) Replace a 250 RW generator in the basement with the same size that exists today.

- Other exterior Improvements will include new third floor railings, re-painting, new exterior floor finishes, trellises and a covered walkway leading to the existing Function Room. Fenestration requiring replacement will be replaced with similar windows and doors. Addition of a small 61 square foot pool service building; enclosing the 679 square foot function room pre-function space on the west side of the Function Room; addition of 588 square foot restroom for Function Room, addition of 556 square foot prep kitchen for Function Room and addition of 148 square foot stairwell to access Function Room prep kitchen.

The following is a list of the proposed special exceptions and variances being requested for the hotel project:

1) Section 134-226 & 229: A special exception request to modify the approved special exception by converting from a condominium hotel to hotel use and make the site modifications and change to the conditions of approval as identified in this application.

2) Section 134-1305: A special exception request to allow 36 seats for outdoor dining on the first floor on the north side of the pool deck; and

3) Section 134-1308(9): A variance for lot coverage to be 63.8% in lieu of the 62.8% existing and the 50% maximum allowed in the C-B Zoning District;

4) Section 134-1308(8): A variance for the addition of railings and solid wall on the east facade of the hotel above the second floor where only a two story building is allowed in the C-B Zoning District;

5) Section 134-1308(8): A variance for the addition of railings and solid wall on the east facade of the hotel with a height of 31.83 feet in lieu of the 25 foot maximum allowed;

6) Section 134-1669: A variance for the height of the wall

enclosing the dumpster located at the southeast corner of the property to be 13.25 feet tall in lieu of the 7 foot maximum height allowed from the neighbor's grade; 7) Section 134-1308(8): A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with a height of 33.58 feet in lieu of the 25 foot maximum allowed in the C-B Zoning District; 8) Section 134-1308(8): A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with an overall height of 42 feet in lieu of the 35 foot maximum allowed in the C-B Zoning District; 9) Section 134-1669: A variance for the height of the wall along the rear property line to be 8.5 feet in lieu of the 7 foot maximum allowed from the neighbor's grade; 10) Section 134-1669: A variance for the height of the wall enclosing the existing chiller at the south west corner of the property to be 12 feet tall in lieu of the 7 foot maximum allowed from the neighbor's grade; 11) Section 134-1308(7): A variance for a rear yard setback for the chiller to be 2.25 feet in lieu of the 10 foot minimum required in the C-B Zoning District; 12) Section 134-1308(6): A variance for a west side yard setback for the chiller to be 5.8 feet in lieu of the 10 foot minimum required in the C-B Zoning District.

[Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission Recommendation:

Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 7-0.] [The Architectural Review Commission approved the project as presented with the landscape, service gate and paint colors to return to the November 20, 2020 meeting. Carried 6-1.]

- i. **Z-20-00291 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of Hi Mount LLC (Amy Zabetakis, Manager), relative to property located at **756 HI-MOUNT RD**, legal description on file, is described below. The applicant is proposing a new 8,327 square foot, two story residence on the subject property that will require the following variances: 1) Section 134-895(1): A chimney with a height of 13.56 feet in lieu of the 8.8 foot maximum allowed; 2) Section 134-8893(11): A lot coverage of 33% in lieu of the 30% maximum allowed for a two story residence in the R-B Zoning District; 3) Section 134-1: The proposed sub-basement is under the confines of the building above it and also below the lowest grade of the public street (Hi Mount Road) in front of the lot, however, it is not completely underground. A variance is being requested to allow a proposed sub-basement where a portion is not completely underground as there is a substantial change of grade from Hi Mount Road to Lake Trail. 4) Section 134-1670(c): A height of the retaining wall along the north property line to be 11.03 at its maximum height in lieu of the 7 foot maximum allowed. 5) Section 134-1670(c): A retaining wall at the northwest corner of the house, in the side yard

Pg. 322

within 10 feet of the property line that is at 14 feet in height in lieu of the 10 foot maximum from adjacent grade.

[Applicant's Representative: Maura Ziska Esq] **Request for Deferral to the December 9, 2020 Meeting per Letter Dated October 29, 2020 from Maura Ziska.**

2. New Business

- a. **Z-20-00292 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of Michael and Lisa Rome, Applicant, relative to property located at **240 VIA LAS BRISAS**, legal description on file, is described below. A request to enclose the existing 607 square foot canvas covered pergola with permanent roof structure that would require the following variances: 1) Section 134-893(13): A cubic content ratio of 4.28 in lieu of the 4.09 existing and the 3.90 maximum allowed in the R-B Zoning District. 2) Section 134-893(11): A lot coverage of 31.9% in lieu of the 29.9% existing and the 25% maximum allowed in the R-B Zoning District for lots over 20,000 square feet. [Applicant's Representative: Maura Ziska Esq] Pg. 324
- b. **Z-20-00293 SITE PLAN REVIEW WITH VARIANCE(S)** Zoning District: R-C Medium Density Residential The application of Elaine Hirsch, Applicant, relative to property located at **130 SUNRISE AVE, SUITE: PH 1**, legal description on file, is described below. A site plan modification with variances to allow a 365 square foot fixed awning over the terrace on the seventh floor of a seven story condominium building. The following variances are being requested: 1. Section 134-948(8): To allow the awning at a height of 61.5 feet in lieu of the 23 1/2 foot maximum height allowed in the R-C Zoning District. Section 134-948(8): To allow the awning at an overall height of 63.66 feet in lieu of the 26 1/2 foot maximum height allowed in the R-C Zoning District. Section 134-948(8): To allow the awning on the existing seventh floor penthouse of a seven story building in lieu of the two story building maximum allowed in the R-C Zoning District. Section 134-948(6): To allow a west side yard setback of 50.1 feet in lieu of the 61.5 foot minimum required. Section 134-948(7): To allow a rear street yard setback of 106.5 feet in lieu of the 123.16 foot minimum required. [Applicant's Representative: Maura Ziska Esq] **Request for Deferral to the December 9, 2020 Meeting per Letter Dated October 27, 2020 from Maura Ziska.** Pg. 327
- c. **Z-20-00294 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of Georgia Benevides, Applicant, relative to property located at **266 COLONIAL LN**, legal description on file, is described below. A request for a flood plain variance for this historically designated house in order to construct the proposed addition with a finished floor elevation of 5.43 feet North American Vertical Datum ("NAVD") in lieu of the 7 foot Pg. 329

NAVD required when construction exceeds 50% of the market value of the residence. The following other variances are being requested: 1. Section 134-893 (7): To allow a new 187 square foot one story addition to the west side of the residence and change the existing flat roof of that portion of the house to a higher pitched roof that will require a variance to have a 5.1 foot west side yard setback in lieu of the 12.5 foot minimum required in the R-B Zoning District. 2. Section 134-893 (9): To raise the height of the existing house in the rear from a flat roof to a pitched roof that will raise the height in a setback that is currently 2.5 feet in lieu of the 10 foot minimum required in the R-B Zoning District. 3. Section 134-2179: To convert a one car garage into living space which requires a variance to remove a required garage enclosure. [Applicant's Representative: Maura Ziska Esq] [Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the historically significant building. Carried 7-0.] [The Landmarks Preservation Commission approved the project. Carried 6-1.]

- d. **Z-20-00295 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: C-TS Town-Serving Commercial The application of Café L'Europe, Applicant, relative to property located at **331 S COUNTY RD**, legal description on file, is described below. 1) Section 134-1109 (14): Special Exception with Site Plan Review is being requested to relocate 20 seats from the inside 175 seats of Cafe L'Europe and relocate them outside along the sidewalk for dinner. 2) Section 134-1113(5)c: Cafe L'Europe is proposing to add 11 new arched top awnings and add new fabric at existing awning. The new awnings project 3'-0" off the face of the building and the bottom of the awning is 9' -0" above the existing sidewalk. The existing entrance awning projects approximately 10' -0" over the existing sidewalk, the existing frame will remain unchanged, only the fabric is being changed out. A variance is being requested to have 4.75 feet of clear sidewalk (along South County Road) in lieu of the 10 foot minimum required; and to have 7.75 feet of clear sidewalk (along Brazilian Avenue) in lieu of the 10 foot minimum required. [Applicant's Representative: Maura Ziska Esq] [Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the landmarked building. Carried 7-0.] [The Landmarks Preservation Commission approved the project with conditions relating to the architecture. Carried 7-0.]

Pg. 332

- e. **Z-20-00296 SITE PLAN REVIEW WITH VARIANCE(S)** Zoning District: R-C Medium Density Residential The application of Palm Beach Biltmore Condominium Beach Club, Applicant, relative to property located at **100 SUNSET AVE, BLDG 2**, legal description on file, is described below.

Pg. 345

1) Section 134-326: A site plan modification with variances to allow a 728 square foot fixed awning addition to the covered patio that currently exists at the Beach Club. The following variances are being requested to construct the following: 2) Section 134-948(9): To allow the awning which will increase the lot coverage to 38.2% in lieu of the 33.3% existing and the 30% maximum allowed.

3) Section 134-948(7): To allow an east street-side yard setback of 14.83 feet in lieu of the 25 foot minimum required. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 7-0.] [The Architectural Review Commission approved the project as presented. Carried 7-0.]

X. ORDINANCES

A. First Reading

1. ORDINANCE 16-2020

Pg. 348

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, As Follows: At Article VIII, Supplementary District Regulations, Section 134-1728 Air Conditioning And Swimming Pool Heating Equipment, By Changing The Title; Reorganizing The Regulations; Allowing The Use Of A Neighbor's Concrete Wall For Screening Said Equipment; Providing For A Recorded Agreement With The Town To Build A Screening Wall As Provided For In The Code Should The Neighbor Remove Their Wall; Providing A Maximum Distance That Swimming Pool Equipment Can Be Located From A Swimming Pool Or Fountain; At Article VIII, Supplementary District Regulations, Section 134-1729, Generators And Swimming Pool Equipment, By Modifying The Title And Generator Regulations; Moving Swimming Pool Equipment Into Section 134-1728 Of The Code; Allowing More Than One Generator On A Property And Allowing The Use Of A Neighbor's Concrete Wall For Screening Said Equipment; Providing For A Recorded Agreement With The Town To Build A Screening Wall As Provided For In The Code Should The Neighbor Remove Their Wall; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

XI. ANY OTHER MATTERS

A. Consider Time Extension to Palm House Hotel Settlement Agreement

Pg. 360

B. Path Forward - 800 S. County Rd.
John C. Randolph, Town Attorney

XII. ADJOURNMENT

- Note 1:** If a person decides to appeal any decision made by this Council with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings. For such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.
- Note 2:** Disabled persons who need an accommodation in order to participate in the Town Council Meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.
- Note 3:** Items listed on the Consent Agenda will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that any item(s) be moved to the Regular Agenda and individually considered.
- Note 4:** 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: November 13, 2020

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO 114-2020 280 Sunset Avenue A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions For The Property Hereinafter Described And Stating That The Subject Property Meets The Criteria Set Forth In Chapter 54, Article V Of The Code Of Ordinances Of The Town Of Palm Beach, Relating To Landmarks Preservation And Titled “Tax Exemptions.”

Presenter

ATTACHMENTS:

- **Memorandum Dated October 29, 2020 from Laura Groves van Onna, Historic Preservation Planner**
- **Resolution No. 114-2020**

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 13, 2020

To: Mayor and Town Council

From: Laura Groves Van Onna, Historic Preservation Planner, PZB

Via: Wayne Bergman, Director of Planning, Zoning and Building

Re: Tax Abatement: 280 Sunset Avenue
Resolution No: 114-2020

Date: October 29, 2020

STAFF RECOMMENDATION

Staff recommends that the Town Council approve Resolution No. 114-2020, granting Tax Abatement to the property at 280 Sunset Avenue.

BOARD OR COMMISSION RECOMMENDATION

The Landmarks Preservation Commission has approved all changes to this property using the Secretary of Interior (Federal) Standards for Rehabilitation as required in the Tax Abatement program.

GENERAL INFORMATION

1. Project Summary: The above-mentioned applicant has applied for participation in the Town's Tax Abatement Program.

280 Sunset Avenue was designated as a Landmark of the Town of Palm Beach on April 17, 1980.

The Landmark Preservation Commission (LPC) approved the Tax Abatement Application in November 2018. The improvements to the property include the restoration and renovation of the historic structure. The completed work has been reviewed and found to be in compliance with the LPC approval.

2. Town Council approval is required to grant this abatement and forward same to Palm Beach County.

3. A written application for ad valorem tax exemption has been presented to Town staff as prescribed by Section 54-199 of Town Code. As additionally required by Section 54-200, the property owner must enter into a covenant or agreement with the Town, the form of which is established by the Department of State, requiring that the character of the property and the qualifying improvements be maintained during the exemption period.

FUNDING/FISCAL IMPACT

Action will abate ad valorem Town of Palm Beach property tax increase (new incremental value only) for a period of ten years. Full value assessment will be applicable after the ten year program.

The estimated cost of the improvement as provided by the property owner is \$25,789,171. The Palm Beach County Property Appraiser will determine the value of the tax abatement using its own methodology.

TOWN ATTORNEY REVIEW

Resolution No. 114-2020 has been approved by the Town Attorney for legal form and sufficiency.

Attachments

cc: Emily Stillings, Murphy Stillings LLC

RESOLUTION NO. 114-2020

280 Sunset Avenue

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING AD VALOREM TAX EXEMPTIONS FOR THE PROPERTY HEREINAFTER DESCRIBED AND STATING THAT THE SUBJECT PROPERTY MEETS THE CRITERIA SET FORTH IN CHAPTER 54, ARTICLE V OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, RELATING TO LANDMARKS PRESERVATION AND TITLED "TAX EXEMPTIONS."

WHEREAS, pursuant to the provisions of Chapter 54, Article V, Code of Ordinances of the Town of Palm Beach, the Landmarks Preservation Commission of the Town of Palm Beach held public hearings and approved Certificates of Appropriateness for renovations and improvements of the certain property described herein; and

WHEREAS, those improvements are consistent with the United States Secretary of Interior's Standards for Rehabilitation and were made in accordance with the guidelines developed by the Department of State, they will qualify for said tax exemption; and

WHEREAS, the property owner agrees to enter into a covenant of agreement with the Town for the ten year term for which the exemption is granted.

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

Section 1. The property hereinafter described in Section 2 of this Resolution, being listed as a Landmark of the Town of Palm Beach, is hereby approved for the Ad Valorem Tax Exemptions for Historic Properties, pursuant to the provisions of Chapter 54, Article V.

Section 2. The landmark is owned by Bradley Park Owner LLC and is located at 280 Sunset Avenue, Palm Beach, Florida. The property is legally described as follows:

Tax Folio Number: 50-43-43-22-31-000-0301

Legal Description: The East 10 feet of Lot 30 and all of Lots 31 through 37, inclusive, MAP OF FLORAL PARK, according to the Plat thereof, as recorded in Plat Book 2, Page 6, of the Public records of Palm Beach County, Florida.

Section 3. The Town Clerk is hereby ordered to furnish the owner of the property a copy of this Resolution.

Section 4. A copy of this Resolution with completed application for Ad Valorem Tax Exemptions will be filed with the Property Appraiser's Office as defined in and subject to the provision of Chapter 54 of the Code of Ordinances of the Town of Palm Beach, Florida.

PASSED AND ADOPTED in a regular, adjournment session of the Town Council of the Town of Palm Beach assembled this ____ day of _____ 2020.

Gail L. Coniglio, Mayor

ATTEST:

Queenester Nieves, Town Clerk

Resolution No. ____-2020

Page 2 of 2

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 131-2020 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida Approving The Attached Amended Certificate Of Notification Of Designation Of Certain Properties As Landmarks; Authorizing Its Execution By The Town Manager And Providing For Its Recording In The Public Records Of Palm Beach County, Florida; Providing For An Effective Date.

Presenter

ATTACHMENTS:

- **Memorandum and Backup Dated November 2, 2020 from John Randolph, Town Attorney**

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 13, 2020

To: Mayor and Town Council

From: John Randolph, Town Attorney

Cc: Kirk Blouin, Town Manager & Wayne Bergman, Director of PZB

Re: 310 Clarke Avenue & Resolution 131-2020

Date: November 2, 2020

RECOMMENDATION:

It is recommended that the Mayor and Town Council adopt Resolution 131-2020, approving an Amended Certificate of Notification of Designation of Certain Properties as Landmarks so as to delete from the legal description the vacant lot known as 310 Clarke Avenue.

DISCUSSION:

In 2017, the Town Council approved a lot split of a Landmark property known as 310 and 322 Clarke Avenue. The landmark structure was fully contained within lot 322 thereby leaving a vacant lot. The property owner wishes to sell the vacant lot but wishes to amend the legal description on the Certificate of Designation so as to eliminate the Landmark status of the vacant lot. The owner went before the Landmarks Commission to seek its recommendation for approval of this amendment. The Landmarks Commission agreed that the legal description of the Certificate of Designation should be amended to delete the vacant lot which has no landmark status. This matter is therefore before the Mayor and Town Council requesting that the Council approve Resolution 131-2020 so as to modify the legal description removing the vacant lot at 310 Clarke Avenue from the description.

Attached:

Resolution 131-2020

Proposed Amended Certificate of Notification of Designation of Certain Properties as Landmarks

Existing Certificate of Notification of designation of Certain Properties as Landmarks

RESOLUTION NO. 131-2020

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA APPROVING THE ATTACHED AMENDED CERTIFICATE OF NOTIFICATION OF DESIGNATION OF CERTAIN PROPERTIES AS LANDMARKS; AUTHORIZING ITS EXECUTION BY THE TOWN MANAGER AND PROVIDING FOR ITS RECORDING IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the properties at 310 and 322 Clarke Avenue legally described as Lots 69 and 70 Primavera Estates (Middle Section) according to the Plat thereof as recorded in Plat Book 7, Page 39; in the Public Records of Palm Beach County, Florida were designated Landmarks of the Town at a meeting of January 8, 2002 and on March 23, 2004 a Certificate of Notification of Designation as a Landmark was recorded in Official Records Book 1603, Page 982 of the Public Records of Palm Beach County; and

WHEREAS, the properties at 310 and 322 Clarke Avenue were separated in 2017 when the Town Council subsequently approved an application for a lot split; and

WHEREAS, the landmark structure remains on lot 322 of Clarke Avenue of the described property but, because of its lot split, the property described as lot 310 Clarke Avenue has become a vacant lot, containing no structures and therefore has no significance as a landmark property; and

WHEREAS, the owners of the property at 322 of Clarke Avenue have requested that the legal description of the property be amended to delete the reference to the vacant lot located at 310 Clarke Avenue.

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

Section 1. The original Certificate of Notification of Designation of Certain Properties as Landmarks, attached hereto, is hereby amended as set forth in the Amended Certificate of Notification of Designation of Certain Properties as Landmarks, attached hereto, which is hereby approved, thereby amending the legal description so as to remove 310 Clarke Avenue from the legal description of the Landmark property.

Section 2. The Town Manager is hereby authorized to execute the Amended Certificate of Notification of Designation of Certain Properties as Landmarks and the recording of said Amendment in the Public Records of Palm Beach County is hereby authorized.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on this 13th day of November, 2020.

Gail L. Coniglio, Mayor

ATTEST:

Queenester Nieves, Town Clerk

**Prepared by and return to:
Town of Palm Beach
P.O. Box 2029
Palm Beach, FL 33480**

PCN: 50-43-43-22-04-000-0700 and 50-43-43-22-04-000-0690

**AMENDED CERTIFICATE OF NOTIFICATION OF
DESIGNATION OF CERTAIN PROPERTIES AS LANDMARKS**

Pursuant to the provisions of Ordinance No. 2-84 of the Town of Palm Beach, duly adopted on March 1, 1984, the Landmarks Preservation Commission of the Town of Palm Beach did ratify and confirm that the properties or portions of property(s) in the Town of Palm Beach described herein, had been designated as Landmarks pursuant to the provisions of Ordinance 2-84, and as described in Section 54-164 of the Town of Palm Beach Code of Ordinances, and were therefore subject to the provisions of said Ordinance. The Certificate ratified the actions of the Town Council of the Town of Palm Beach at a meeting held January 8, 2002 at which the Town Council approved the designation of the property(s) described herein as Landmarks pursuant to the provisions of the above referenced Ordinance and on March 23, 2004, recorded a Certificate of Notification of Designation in Official Records Book 16703, Page 982, Public Records of Palm Beach County, Florida. The properties previously designated as Landmarks were described as follows:

ADDRESS: 322 Clarke Avenue, Palm Beach, Florida

OWNER: Marilyn E. Tracy

TAX FOLIO NUMBER: 50-43-43-22-04-000-0700

50-43-43-22-04-000-0690

LEGAL DESCRIPTION: Lots 69 & 70, Primavera Estates (Middle Section), according to the Plat thereof as recorded in Plat Book 7, Page 39, in the Public Records of Palm Beach County, Florida.

Pursuant to the Town Council action taken on November 13, 2020, this Certificate of Notification of Certain Properties as Landmarks is **HEREBY AMENDED TO REMOVE LOT 69**

**(310 CLARKE AVENUE) FROM LANDMARK DESIGNATION AND AMEND THE
DESIGNATION PROPERTY AS FOLLOWS:**

ADDRESS: 322 Clarke Avenue, Palm Beach, Florida

OWNER: Jay C. Horgen and Katherine Battle Horgen

TAX FOLIO NUMBER: 50-43-43-22-04-000-0700

**LEGAL DESCRIPTION: Lot 70, Primavera Estates (Middle Section), according to
the Plat thereof as recorded in Plat Book 7, Page 39, in the Public Records of Palm Beach
County, Florida.**

This Amendment shall be recorded in the Public Records of Palm Beach County, Florida.

TOWN OF PALM BEACH:

Witness Signature

Witness Printed Name

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of physical presence
or online notarization, this ____ day of _____, 2020, by
_____ on behalf of the Town of Palm Beach, a municipal corporation
existing under the laws of the State of Florida, on behalf of the corporation, who is personally
known to me or has produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida

Notary's printed name: _____

My commission expires: _____

Serial No: _____

CFN 20040157940
OR BK 16703 PG 0982
RECORDED 03/23/2004 11:54:55
Palm Beach County, Florida
Dorothy H Wilken, Clerk of Court

CERTIFICATE OF NOTIFICATION OF DESIGNATION
OF CERTAIN PROPERTIES AS LANDMARKS

Pursuant to the provisions of Ordinance No. 2-84 of the Town of Palm Beach, duly adopted on March 1, 1984, the Landmarks Preservation Commission of the Town of Palm Beach does hereby ratify and confirm that the property(s) or portions of property(s) in the Town of Palm Beach described herein, have been designated as Landmarks pursuant to the provisions of Ordinance 2-84, and as described in Section 54-164 of the Town of Palm Beach Code of Ordinances, and are therefore subject to the provisions of said Ordinance. This Certificate ratifies the actions of the Town Council of the Town of Palm Beach at a meeting held January 8, 2002 at which the Town Council approved the designation of the property(s) described herein as Landmarks pursuant to the provisions of the Ordinance above-referenced.

The property(s), or portions thereof, which have been designated as Landmarks are described as follows:

1. 322 Clarke Avenue, Palm Beach, Florida

OWNER: Marilyn E. Tracy

TAX FOLIO NUMBER: 50-43-43-22-04-000-0790
50-43-43-22-04-000-0690

LEGAL DESCRIPTION: Lots 69 & 70, Primavera Estates (Middle Section)

1993
RETURN TO:
TIMOTHY M. FRANK
TOWN OF PALM BEACH
LANDMARKS PRESERVATION COMMISSION
P.O. BOX 2029
PALM BEACH, FLORIDA 33480

DATED this 23rd day of MARCH, 2004.
LANDMARKS PRESERVATION COMMISSION
Town of Palm Beach, Florida

Shane Kasser
Witness

Shane Kasser
Witness

By Timothy M. Frank
Timothy M. Frank

STATE OF FLORIDA:

COUNTY OF PALM BEACH:

I HEREBY CERTIFY that on this day, before me, an officer duly qualified to take acknowledgements, personally appeared Timothy M. Frank, on behalf of the Landmarks Preservation Commission of the Town of Palm Beach, Florida, to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that (s)he executed the same for the purposes therein expressed. WITNESS my hand and official seal in the County and State aforesaid this 23rd day of March, 2004.

Mary Alice Pollitt

My Commission Expires:



MARY ALICE POLLITT
MY COMMISSION # DO 133157
EXPIRES: October 7, 2008
Bonded Third Budget Notary Services

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Time Extensions

Agenda Title

Time Extension for 264-270 S. County Road

Presenter

ATTACHMENTS:

- **Memorandum Dated October 27, 2020 from Wayne Bergman, Director of Planning, Zoning and Building**

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 13, 2020

To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

From: Wayne Bergman, Director of Planning, Zoning & Building

Re: Waiver of Town Code Section 42-199, For Extended Working Hours at 264/270 S. County Rd. – AND – Request to Maintain the Existing Scaffolding

Date: October 27, 2020

STAFF RECOMMENDATION

Staff recommends that the Town Council consider a request for an extension of the hours for construction work that is underway at 264/270 S. County Rd. (Carriage House Club). Also requested is permission to leave in place the existing perimeter scaffolding. If approved, staff recommends that the approvals be conditioned upon the October 21, 2020 letter and attachments from Maura Ziska, Esq., in which she describes the details of the two requests, along with Pat Marshall's letter of October 19, 2020, explaining the scaffolding.

Staff has notified the applicant that granting of extended working hours is the sole discretion of the Town Council.

GENERAL INFORMATION

First Request - The applicant is requesting an extension of the hours to complete renovations at 264/270 S. County Rd. The project involves interior and exterior renovations. The applicant is requesting work hours throughout the prohibited winter season (which begins on November 1 and runs through the end of April) of 8:00 am to 6:00 pm, Monday through Friday, and 8:00 am to 6:00 pm on Saturdays, quiet inside work only. The request is basically to continue with the summer work hours right through the winter season for work performed Monday through Friday, and then start at 8:00 am on Saturdays (not at 9:00 am as the code requires). Beginning May 1, 2021, their request will meet code for Monday through Friday work, but the Saturday work is requested to start an hour early.

The project is indicated on the CPM graph to be finished by mid-October, 2021.

Second Request – The applicant is requesting permission to maintain the perimeter scaffolding currently placed around the buildings – for the winter season. The scaffolding is explained in Pat Marshall's letter of October 19, 2020. The scaffolding provides protected and illuminated

walkways around the east and north side of the buildings. This safe walkway eliminates the need to re-route pedestrian traffic in the area.

Ordinance 03-2018, passed by the Town Council on second reading on February 13, 2018, modified the construction working hours in the Town as follows:

Sec. 42-199. - Hours for construction work.

(b) Limited. Beginning on the Monday preceding Thanksgiving, and during the months of December, January, February, March, and April of each year, construction work not otherwise prohibited by section 42-198 or other work resulting in noise tending to disturb the people in the vicinity thereof shall not begin until the hour of 8:00 a.m., and shall cease at the hour of 5:00 p.m., except Saturday, Sunday, and legal holidays, when all construction work is prohibited. In no event shall heavy equipment or other construction-related noise be permitted before 9:00 a.m. At all other times such work may commence at 8:00 a.m. and cease at the hour of 6:00 p.m., except Saturdays, Sundays and legal holidays, including the Friday immediately after Thanksgiving, when all construction work is restricted or prohibited. Construction work is permissible on Saturdays from May through the Monday preceding Thanksgiving, but subject to the following restrictions: work shall not begin until the hour of 9:00 a.m. and shall cease at the hour of 5:00 p.m.; all work must be quiet in nature during which all of the noise and machinery prohibitions identified in section 42-198 are applicable; material deliveries are prohibited in all cases unless the Building Official waives such restriction due to compelling circumstances; concrete pours and concrete sawing is prohibited unless the Building Official waives such restriction due to compelling circumstances; and the razing of buildings is prohibited, with the exception of non-mechanized debris clean-up. The permitted hours for construction work in the C-WA zoning district shall be from 8:00 a.m. until 8:00 p.m. during the months commencing May 1 and ending on October 31, except Sundays and legal holidays, when all construction work is prohibited.

(c) Exceptions.

(4) Interior work not resulting in noise tending to disturb people in the vicinity thereof, shall be allowed during the hours of 9:00 a.m. and 5:00 p.m. on Saturdays during the period commencing on the Monday preceding Thanksgiving and ending on April 30.

(5) The town council, in its discretion, for the benefit of the health, safety and welfare of the residents of the town may, by resolution, temporarily amend the hours for construction work referenced herein.

The applicant is requesting both an extension of the working hours and requesting the ability to maintain the existing scaffolding around the buildings. The applicant was asked to notify surrounding property owners of the request and of the date of this meeting.

For reference, the conditions attached by the Town Council for similar requests regarding work hours and days are:

- Saturday interior work only.
- The PZB Director has the authority to shut down work if problems or complaints arise.
- The contractor will take off the week of Thanksgiving (11/21 – 11/29) and during the Christmas / New Year holidays (12/19 – 1/3/21).
- Staff also requests that the contractor stop work on Hanukkah, Friday, 12/11.

Attachment – Letter, with attachments, from Maura Ziska, Esq., dated September 21, 2020
Letter, with aerial picture, from Pat Marshall, dated October 19, 2020

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

Amy D. Bahl
*Also admitted in New York

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

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

October 21, 2020

VIA EMAIL

wbergman@townofpalmbeach.com

Mr. Wayne Bergman, Building Official
Town of Palm Beach
360 S County Road
Palm Beach, FL 33480

Re: Extension for construction time frame /264 and 270 South County Road, Palm Beach, FL

Dear Wayne,

This letter shall serve as formal notice of the request for a waiver of the time schedule for continual construction by the owners of 264 and 270 South County Road, Palm Beach, Florida. The requested time schedule is to continue working Monday through Friday 8:00 a.m. – 6:00 p.m. and Saturdays 8:00 a.m. – 6:00 p.m. quiet inside work only.

Also, being requested is approval to maintain the existing perimeter scaffolding. The current scaffolding provides a protected lighted public walkway so there is no rerouting of pedestrians walking on the sidewalk along the East and North side of the site.

The reason for the request for the extended hours is due to unforeseen delays due to COVID-19. The requested waiver would continue until the end of season on May 1, 2021. I have also included a copy of the letter that will be sent notifying the abutting property owners and the owners across the street from the project.

Please place this request on the November 13, 2020 Town Council agenda.

Respectfully,

Maura Ziska

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

Amy D. Bahl
*Also admitted in New York

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

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

October 21, 2020

RE: 264 and 270 South County Road, Palm Beach

To Whom It May Concern:

A waiver of Town Ordinance 42-199, Hours of Construction, is being requested by 264 and 270 South County Road, to allow work to continue during normal seasonal hours from November 1, 2020 through May 1, 2021 to be 8:00 a.m. – 6:00 p.m. and quiet interior work on Saturdays 8:00 a.m. – 6:00 p.m.

This matter will be presented to the Town Council at the regularly-scheduled meeting on November 13, 2020. Any concerns regarding this matter should be expressed at this meeting.

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

Respectfully,

Maura Ziska



TC DEV REVIEW MEETING 11-13-20

31 of 422

Monday, October 19, 2020

Town of Palm Beach
Department of Planning, Zoning and Building
360 South County Road
Palm Beach, FL 33408

Attention; Wayne Bergman, Acting Director

Reference; Extension of Off Season Construction Restrictions – Carriage House

Good day;

Due to numerous, mostly COVID related, production and material delays Hedrick Brothers is requesting that we be allowed to leave the existing perimeter scaffolding in place and maintain the off-season construction working hours through the season.

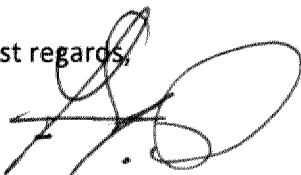
The current scaffolding provides a protected lighted public walkway so there no rerouting of pedestrians walking on the east and north construction site perimeters.

The area of construction activity at both 264 and 270 South County is not less than 120 feet away from the nearest occupied residence (see the aerial included). The majority of work at the site is being done within the two buildings or within the common courtyard. New window, doors, exterior trim, cleaning and painting are the tasks affecting the perimeter of the site.

As always every effort will be made to minimize any impact to the residents.

Please let us know the best next step for this request to be considered by Town Council and any other needs you deem appropriate.

Best regards,



Pat Marshall
Project Manager
Hedrick Brothers Construction



TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Time Extensions

Agenda Title

Time Extension for 150 Worth Avenue

Presenter

ATTACHMENTS:

- **Memorandum Dated October 27, 2020 from Wayne Bergman, Director of Planning, Zoning and Building**

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 13, 2020

To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

From: Wayne Bergman, Director of Planning, Zoning & Building



Re: Waiver of Town Code Section 42-199, For Extended Working Hours at 150 Worth Avenue
– The Esplanade – Mansard Roof Repair

Date: October 27, 2020

STAFF RECOMMENDATION

Staff recommends that the Town Council consider a request for a time extension for the emergency repairs to the damaged mansard roof at the Esplanade. Knowing that this is a life safety matter, staff approved the start of this project, with the condition that the owner make this formal request to the Town Council. If approved, staff recommends that it be conditioned upon the October 27, 2020 letter (attached) from Yvonne Jones, Property Manager for The Esplanade, which describes the request and the expected duration of the project. Also included is an October 22, 2020 letter from ONM&J, an engineering firm hired by the Esplanade owner to assist in the project. This letter details the roof damage and needed repair.

Staff has notified the applicant that granting of extended working hours is the sole discretion of the Town Council.

GENERAL INFORMATION

The applicant is requesting another extension of the work times and days to continue and complete emergency repairs to the mansard roof system along the north elevation of the building. They are expecting the work to be completed by November 30, 2020.

Ordinance 03-2018, passed by the Town Council on Second Reading on February 13, 2018, modified the construction working hours in the Town as follows:

Sec. 42-199. - Hours for construction work.

- (b) Limited. Beginning on the Monday preceding Thanksgiving, and during the months of December, January, February, March, and April of each year, construction work not otherwise prohibited by section 42-198 or other work resulting in noise tending to disturb the people in the vicinity thereof shall not begin until the hour of 8:00 a.m., and shall cease at the hour of 5:00 p.m., except Saturday, Sunday, and legal holidays, when all construction work is prohibited. In no event shall heavy equipment or other*

construction-related noise be permitted before 9:00 a.m. At all other times such work may commence at 8:00 a.m. and cease at the hour of 6:00 p.m., except Saturdays, Sundays and legal holidays, including the Friday immediately after Thanksgiving, when all construction work is restricted or prohibited. Construction work is permissible on Saturdays from May through the Monday preceding Thanksgiving, but subject to the following restrictions: work shall not begin until the hour of 9:00 a.m. and shall cease at the hour of 5:00 p.m.; all work must be quiet in nature during which all of the noise and machinery prohibitions identified in section 42-198 are applicable; material deliveries are prohibited in all cases unless the Building Official waives such restriction due to compelling circumstances; concrete pours and concrete sawing is prohibited unless the Building Official waives such restriction due to compelling circumstances; and the razing of buildings is prohibited, with the exception of non-mechanized debris clean-up. The permitted hours for construction work in the C-WA zoning district shall be from 8:00 a.m. until 8:00 p.m. during the months commencing May 1 and ending on October 31, except Sundays and legal holidays, when all construction work is prohibited.

(c) *Exceptions.*

(5) *The town council, in its discretion, for the benefit of the health, safety and welfare of the residents of the town may, by resolution, temporarily amend the hours for construction work referenced herein.*

The applicant was asked to notify surrounding property owners of the request and of the date of this meeting, as required.

Staff recommends the Town Council consider extending the work through November 30, 2020 for this project.

Attachments: October 27, 2020 letter from Yvonne Jones
October 22, 2020 letter from John Dawson, P.E., ONM&J, Inc.

WRB

cc: Yvonne A. Jones, CPM, CCIM, Property Manager for The Esplanade

Wilson 150 Worth LLC
c/o O'Connor Property Management LLC
240 Royal Palm Way, 2nd Floor
Palm Beach, FL 33480

October 27, 2020

VIA EMAIL

Mr. Wayne Bergmann, MCP, LEED-AP
Assistant Director
Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480

**RE: Request for Extension to Complete EMERGENCY Mansard Roof Repair
The Esplanade at 150 Worth Avenue, Palm Beach**

Dear Wayne,

Please accept this letter as our request to be granted permission to appear in front of Town Council during their regularly scheduled planning and zoning meeting to be held on Friday, November 13th. The purpose is for ownership to seek approval to properly finish the emergency mansard roof repair that has been noted by our structural engineer as a life-safety hazard condition requiring immediate attention. A copy of this letter is enclosed for your reference.

At this time, our engineer and construction teams are designing the repair and plan to start as soon as possible but will not be complete by the October 31 deadline. Once started, they expect the repair to take no more than 3 weeks. Therefore, we are requesting a short-term extension until November 30, 2020 so we may complete the entire project. Kindly allow us this time to properly complete the necessary, emergency mansard repairs above Saks Fifth Avenue's Worth Avenue entrance. It would not be right to leave this work unattended knowing the life/safety concern it poses.

Pursuant to section 42-199 of the Code of Ordinances, an exception to continue work may be granted at the discretion of Town Council. Please consider our request and let me know if we can be added to the agenda and/or if there is additional information you need before doing so.

Thank you in advance for your help.

Sincerely,

Yvonne A. Jones

Yvonne A. Jones, CPM, CCIM
Property Manager for the Esplanade, 150 Worth Avenue

cc: Bud Barton
Ed Menter
John Dawson
Bob Waskiewicz

October 22, 2020

Wilson 150 Worth LLC
c/o O'Connor Property Management LLC
240 Royal Palm Way, Suite 200
Palm Beach, FL 33480

**RE: Esplanade Worth Avenue
150 Worth Avenue
Palm Beach, Florida
Project No. 577.003.01**

Subject: CLAY TILE MANSARD ROOF FRAMING

We performed a site visit on October 7, 2020 to review the condition of the North elevation condition of the wood framing at the clay tile mansard roof along a large section of the North building elevation.

The following was observed:

1. Accessed two (2) observation ports in the mansard roof soffit to view the condition of the wood framing system. (Exhibit 1)
2. Observation in the Easterly accessed port revealed the wood 2"x4" wood frames to be in satisfactory condition. Noted was a slight detachment (+/- 2" - 4") of the frame from the building parapet wall in various spots (Exhibits 2-4)
3. Observation at the Westerly observation port revealed similar conditions found at the Easterly port. (Exhibits 2 - 4 similar)
4. The condition of mansard roof at the Easterly and Westerly +/- 10 - 15 ft. was noted to be in poor condition.
5. The condition of the mansard roof at the West end (N.W. Corner) requires evaluation.

Conclusion:

1. The Easterly and Westerly 10 - 15 ft. end section of the mansard roof cladding and framing must be removed/replaced without delay.
2. The mansard clay tile roof cladding and wood framing system on the North elevation are in satisfactory condition, albeit the slight areas of detachment noted must be further investigated and corrected to provide expeditiously as feasible a secure - snug attachment to the building parapet wall.

Please feel free to contact this office should you have any problems concerning this matter.

O'DONNELL, NACCARATO, MIGNOGNA & JACKSON, INC.



John N. Dawson, BSCE
Senior Engineer

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - Old Business

Agenda Title

Z-19-00211 SPECIAL EXCEPTION WITH SITE PLAN REVIEW Zoning District: C-PC Planned Center The application of 305 Concepts Palm Beach, LLC d/b/a Coyo Taco, Applicant, relative to property located at **340 ROYAL POINCIANA WAY SUITE: M337**, legal description on file, is described below. On March 15, 2017, the Town Council approved Special Exception #5-2017, which authorized Coyo Taco to operate a restaurant containing more than 3000 S.F. in the C-PC zoning district at Suites #337A and M 333 of the Royal Poinciana Plaza. The approval was conditioned upon execution of a Declaration of Use Agreement, which did not permit Coyo Taco to have a disc jockey. This application seeks to amend the existing Declaration of Use Agreement to allow the restaurant to have a DJ on Tuesday, Friday and Saturday nights, in addition to special events. The hours requested for the DJ are 8:00pm to 12:00pm on Tuesday nights and 8:00pm to 1:00am on Friday and Saturday nights and for special events. The DJ will be confined to the interior of Coyo Taco. No physical changes to the previous approval are requested.

The Declaration of Use Agreement also required Coyo Taco to return to the Town Council to demonstrate compliance with the Town Serving requirement. Coyo Taco has collected data confirming that the Town Serving requirement is met. This information will be presented to the Town Council during the public hearing on this application. [Applicant's Representative: James M. Crowley Esq]

Presenter

ATTACHMENTS:

- ❑ **Email Dated June 4, 2020 from James Crowley**
- ❑ **Email Dated June 4, 2020 from Simon Taylor**

From: [Crowley, James](#)
To: [Paul Castro](#); [Wayne Bergman](#); [Kelly Churney](#)
Subject: Coyo Taco - Z-19-00211
Date: Thursday, June 04, 2020 4:15:01 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Paul, Wayne, and Kelly,

After speaking with my client, we would like to ask for a deferral of this item until the November Town Council meeting. We think that meeting before then would be premature given the loss of the past several months due to COVID-19 and the slower summer months, when interested neighbors might be out of Town.

Thank you,

Jamie

James M. Crowley, Esq. | Shareholder
Environmental & Land Use
777 S. Flagler Drive, Suite 500 East
West Palm Beach, FL 33401
P 561-650-0633 F 561-655-5677

[gunster.com](#) | [View my bio](#)
Email me: jcrowley@gunster.com

SIMON TAYLOR
777 South Flagler Drive
Suite 800 West Tower
West Palm Beach, Florida 33401

June 4, 2020

To: Honorable Mayor and Town Council Members of Palm Beach
Subject: Application for Three-Times-a-Week DJ for Coyo Taco, Zoning Case No. Z-19-00211

At a time when the Town Council is holding its meetings by teleconference to maintain social distancing during the Coronavirus pandemic, Coyo Taco is submitting an application to pack people into a small room three nights a week, drawing them in with a DJ. This proposal is undoubtedly based on the same business model that Coyo Taco had when it brought a similar application to the Town Council in August 2019, while many residents were not in town: Promote Coyo Taco's DJ party nights across a wide region to draw late-night business in and add another revenue stream for the taco restaurant.

The Council should reject Coyo Taco's application for a Special Exception (Zoning Case No. Z-19-00211), which will be heard at the June 10 teleconference Council meeting. The proposal not only ignores the current Covid-19 crisis; it also defies the opposition voiced by Town residents last November, after Coyo Taco had to reschedule the hearing of its application from August to November 2019, following public objection to the timing of its summertime pitch.

The application should be rejected in no small part because it is opposed by neighboring residents and will have a negative impact on them, on nearby businesses and on the Town. As important is the principled argument made against Coyo Taco's prior, November 2019 re-application: That the bid for a Special Exception reflects a cynical assumption that votes by the Council and opposition by residents can be ignored, because the developer or business in question can simply come back again and smooth-talk, manipulate and wear down the Town Council until the applicant gets the vote it wants. At the November 2019 Council meeting, confused voting resulted in Coyo Taco being granted a test period to have a DJ one night a week. Council members who voted against the weekend-night DJ relied on a principled argument: that recently considered and approved decisions by the Council should not be reversed merely based on relentless re-visiting of rejected applications.

It should also be noted that the renewed application by Coyo Taco makes a non-credible claim that the restaurant has "collected information" that its proposed late-night DJ meets a Town-serving requirement. However, the Agenda for the Council meeting on June 10 indicates that this "information" will not be posted online but instead "will be presented to the Town Council

during the public hearing on this application,” a hearing that residents will be hampered from participating in during the social-distancing teleconference meeting.

When Coyo Taco made its request for a DJ in 2017, the Town Council rejected that application, explicitly deciding that there would be “no DJ.” Residents would like to see the Town Council stand up for principle again and reject the renewed Special Exception application by Coyo Taco.

Sincerely,
Simon Taylor, Town resident

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-000262 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)

Zoning District: R-D(2) High Density Residential The application of The Ambassador Hotel Cooperative Apartments Corp., A Florida Corporation (Richard Schlesinger, President), Applicant, relative to property located at **2730 S OCEAN BLVD**, legal description on file, is described below. The following zoning relief is being requested: 1. Section 134-1055 (16.): Special Exception approval to modify the existing condo-hotel use in the R-D(2) Zoning District. 2. Section 134-327: Site plan approval for the modifications to the existing condo-hotel site as identified above. 3. Section 134-1064: Special exception approval for the new balconies on the third, fourth and fifth floors. 4. Section 134-1060 (6)(f): Variance request for the proposed redevelopment to include the addition of balconies on the south side of the building that will encroach into the south side yard setback by a 30 inches thus a variance request for a setback of 27.5 feet in lieu of the 30 foot minimum required. 5. Section 134-2172: Variance to allow the proposed off-street, valet-operated parking, to be tandem and stacked in lieu of the code required off-street parking standards related to size of spaces and access. The code requires parking spaces to be designed so that a vehicle can be removed without the necessity to move another vehicle. The proposed parking is modifying and adding parking areas designed with stacked (tandem) and lift parking. 6. Section 134-1064: Variance to allow the lot coverage to be 44.9% in lieu of the 23.7% existing and the 22% maximum allowed in the R-D(2) Zoning District for 5 story buildings (the building is 7 stories with a lower level floor area). 7. Section 134-1060(6): Variance to allow a north side yard setback of 15 feet in lieu of the 30 foot minimum required for the under dune garage. 8. Section 134-1064(b)(3): Variance to allow a height of 68.96 feet in lieu of the 62.5 maximum allowed for the Penthouse additions (7th floor). [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission deferred this project to the October 28, 2020 meeting at the request of the attorney. Carried 7-0.] **Request for Withdrawal per Letter Dated October 21, 2020 from Maura Ziska.**

Presenter

ATTACHMENTS:

- ▯ **Letter Dated October 21, 2020 from Maura Ziska**

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

Esperanté
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401
Telephone 561-802-8960
Facsimile 561-802-8995

*also admitted in NY

VIA EMAIL

October 21, 2020

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

RE: Z-20-00262 and B-034-2020
2730 South Ocean Boulevard, Palm Beach, Florida

All:

Please **withdraw** the above referenced project from the October 28, 2020 **ARCOM** agenda and the November 13, 2020 **TOWN COUNCIL** agenda. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,

Maura Ziska

Maura A. Ziska

maz/jc

cc: Kelly Churney
Raphael Saladrigas
Client

A Florida Professional Limited Liability Company Including Professional Associations

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - Old Business

Agenda Title

Z-19-00236 VARIANCE(S) Zoning District: R-B Low Density Residential
The application of Jennifer J. Naegele, Applicant, relative to property located at **70 MIDDLE RD**, legal description on file, is described below. The applicant is undertaking a renovation of a 3 story landmarked residence located in the R-B Zoning District. The renovation includes a 91 square foot laundry room addition to the northwest corner of the house; a 191 square foot covered terrace addition on the north side of the house; and a 60 KW generator proposed in the street side yard along Via Marina. The following variances are being requested: 1) Sec. 134-1729: a variance to allow a 60 KW generator to be placed in the street side yard along Via Marina with a setback of 8.5 feet in lieu of the 25 foot minimum required. 2) Sec. 134-893(11): a variance for lot coverage for the laundry room addition of 34.47% in lieu of the 33.07% existing and the 30% maximum allowed. 3) Sec. 134-893(13): a variance for a cubic content ratio ("CCR") for the laundry room and covered terrace of 8.85 in lieu of the 8.32 existing and the 3.95 maximum allowed. 4) Sec. 134-893(7): a variance for a north side yard setback of 7.6 feet in lieu of the 12.5 feet minimum required for the laundry room addition. 5) Sec. 134-893(7): a variance to convert the existing flat roof to a covered balcony with railing that will have a north side yard setback of 7.6 feet in lieu of the 15 foot minimum required. [Applicant's Representative: Maura Ziska Esq] [Landmarks Preservation Foundation Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject landmarked property. Carried 7-0.] [The Landmarks Preservation Commission approved the project as presented with the condition that the homeowner voluntarily grants the utility easement. Carried 7-0] **Email Dated October 21, 2020 from Jennifer Naegele Requesting Deferral to the May 2021 Meeting.**

Presenter

ATTACHMENTS:

- ▢ **Email Dated October 21, 2020 from Jennifer Naegele**
- ▢ **Memorandum Dated September 18, 2020 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▢ **Comments from the Development Review Committee**
- ▢ **Letter Received January 8, 2020 from Ellen Cunningham**
- ▢ **Letter Received February 4, 2020 from Martha Schar**
- ▢ **Letter Received March 10, 2020 from Monika Preston**
- ▢ **Email Received March 11, 2020 from Myrna Partrich**
- ▢ **Letter Received March 18, 2020 from Sally Ross Soter**
- ▢ **Letter Received May 13, 2020 from Jill Glazer**
- ▢ **Email Received July 7, 2020 from Craig Omtvedt**
- ▢ **Email Dated July 9, 2020 from Jill Glazer**
- ▢ **Email Dated July 9, 2020 from Francis Lynch**
- ▢ **Email Dated July 11, 2020 from Charlotte Beers**
- ▢ **Letter Dated July 13, 2020 from M. Tim Hanlon**
- ▢ **Email Dated July 13, 2020 from Francis Lynch**
- ▢ **Email Dated July 15, 2020 from Spencer Partrich**
- ▢ **Email Dated October 12, 2020 from Frank Lynch**

From: S M
To: RENE SILVIN; pat@skaarchitect.com; kim@kimcoleman.com; ssolie@aol.com; timgannon@outback.com; tim@fernandowongold.com; annegm44@gmail.com; brittainbarges@gmail.com; Anne Fairfax; Laura Groves van Onna; Jackie Albarran
Cc: Jorge Sanchez; Wayne Bergman; John (Skip) C. Randolph; Legal; Town Attorney; Kelly Churney; Bradley Falco; Paul Castro; Pat Gayle-Gordon; Human Resources
Subject: Re: 70 Middle Road: Landmark REVISION to Variance Request Z-19-00236

To: Rene Silvin, Ted Cooney, All Landmark Commissioners

cc: Jorge Sanchez, SMI, Wayne Bergman, Skip Randolph, Paul Castro, Town Officials, Town Council Members

From: Jennifer Naegele

Re: 70 Middle Road: Landmark REVISION Request to **Variance Request Z-19-00236**

Dear Landmark President and Commissioners, 10/21/20

1) I would like to request that the following CHANGES be approved to my previous Landscape Design for my Landmark House either at the STAFF LEVEL or at Landmark Hearing—so I may proceed with the Town Council for my VARIANCE REQUEST Z-19-00236 (which has been DELAYED due to the global COVID pandemic ; and other disturbing incidents perpetrated against me by the TPB).

2) The changes I am requesting include the following: a) Revised pool and patio design (which includes the removal of ALL interior Courtyard hardscape to be replaced with green grass and Landscaping), b) **Installation of a new 3-foot site wall**; located South and East--to attach to existing South site wall (to be enhanced by Landscaping), and, c) **Installation of a Fountain located within the half circular driveway--** at the front façade of the house.

3) I have enclosed revised plans, photos and 3-d model images for better visualization. I have provided all the relevant information required.

4) At my 1st Landmark Hearing someone incorrectly stated that “Landmark Houses do not have site walls”.

5) I have enclosed several photos showing numerous examples of Landmark Houses (and other house) in my neighborhood showing site walls to include; tall site walls, low site walls and entire hedge walls on Middle Road and via Marina. (See enclosed photos)

6) My neighbor, Craig Olmvedt (at 79 Middle Road) installed a NEW SITE WALL at his house--a few years ago--when he renovated his Landmarked House directly across the street from my house (See enclosed Photos).

7) I have also included an old photo of my house; when it had a very diseased Ficus hedge; which needed to be removed due to “whitefly infection”.
(Enclosed)

8) I can state truthfully that ALL my neighbors—at their homes on Middle Road and Via Marina--experience PRIVACY; I can confirm that there is NO exception to that statement. (See enclosed Photos)

9) As such, my neighbors (who have high site walls, low site walls and hedge walls) can enjoy peace of mind and a sense of security by not having prying eyes into their homes and properties.

10) My Landmarked House is particularly vulnerable and exposed due to the location of it being situated on a corner lot (as was the same situation for Craig Olmvedt at 79 Middle Road).

11) Whereby, I have suffered from “fish bowl living” due to the heavy traffic on Via Marina --when “speeders” use the street to bypass the traffic from South Ocean Boulevard to South County Road.

12) As a single woman homeowner, I have been vulnerable and exposed due to the lack of privacy and screening by not having a small site wall and landscaping enclosing the perimeter of my property.

13) Therefore, I (and Jorge Sanchez of SMI) are proposing a 3-foot site wall (which is LOWER than Craig Olmvedt’s site wall across the street) which would also include privacy Landscaping.

14) I have enclosed images from my 3d model showing a) the new Pool design in my Interior Courtyard, b) the new East and South site walls; attached to my existing South site wall, Please NOTE: I did not INCLUDE Landscaping on the model adjacent to the new site walls-- because it would obscure the site wall for review. c) a new Fountain installed in my half circular driveway.

15) Before the global COVID pandemic, I spent 3 months in Brazil studying the “green world” and wonders of the Amazon rainforest. As a result, I have eliminated all but the most minimal of concrete on my property; to include minimally sized walk ways, removal of all hardscape in my Interior Courtyard, including the creation of a smaller circular driveway in order to give “green space” back to my property.

16) Therefore, I request that you consider and approve these requests that will only enhance and improve the Landmark House.

17) Thereafter, when my Landmark requests are considered and revised; I will be able to proceed with the Town Council for my VARIANCE REQUEST Z-19-00236 in MAY 2021.

Thank you for your assistance.

With enclosures

Sincerely,

Jennifer Naegele

TOWN OF PALM BEACH

Information for Town Council Meeting on: October 14, 2020

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-19-00236 VARIANCE(S)**
70 MIDDLE RD

Date: September 18, 2020

BACKGROUND

An application has been received for the following project:

REQUEST:

The applicant Is undertaking a renovation of a 3 story landmarked residence located In the R-B Zoning District. The renovation Includes a 91 square foot laundry room addition to the northwest corner of the house; a 191 square foot covered terrace addition on the north side of the house; and a 60 KW generator proposed In .the street side yard along Via Marina. The following variances are being requested:

- 1) Sec. 134-1729: a variance to allow a 60 KW generator to be placed In the street side yard along Via Marina with a setback of 8.5 feet In lieu of the 25 foot minimum required.
- 2) Sec. 134-893(11): a variance for lot coverage for the laundry room addition of 34.47% In lieu of the 33.07% existing and the 30% maximum allowed.
- 3) Sec. 134-893(13): a variance for a cubic content ratio ("CCR") for the laundry room and covered terrace of 8.85 In lieu of the 8.32 existing and the 3.95 maximum allowed.
- 4) Sec. 134-893(7): a variance for a north side yard setback of 7.6 feet In lieu of the 12.5 feet minimum required for the laundry room addition.
- 5) Sec. 134-893(7): a variance to convert the existing flat roof to a covered balcony with railing that will have a north side yard setback of 7.6 feet In lieu of the 15 foot minimum required.

ADDRESS: 70 MIDDLE RD

OWNER: NAEGELE JENNIFER J

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-26-03-000-0621

ZONING DISTRICT: R-B Low Density Residential

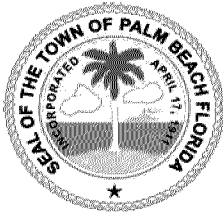
LEGAL DESCRIPTION: SINGER ADD S 3 FT OF W 81 FT OF LT
62, LTS 63, 64 & E 10 FT OF LT 79

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Page Two

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT
Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 12/9/19

APPLICATION NO.: Z-19-00236 **APPLICATION TYPE:** VARIANCE(S)

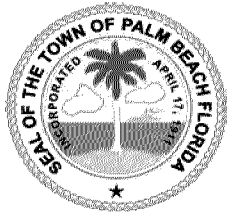
ADDRESS: 70 MIDDLE RD

DESCRIPTION:

The applicant is undertaking a renovation of a 3 story landmarked residence located in the R-B Zoning District. The renovation includes a 91 square foot laundry room addition to the northwest corner of the house; a 191 square foot covered terrace addition on the north side of the house; and a 60 KW generator proposed in the street side yard along Via Marina. The following variances are being requested:

- 1) Sec. 134-1729: a variance to allow a 60 KW generator to be placed in the street side yard along Via Marina with a setback of 8.5 feet in lieu of the 25 foot minimum required.
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- 4) Sec. 134-893(7): a variance for a north side yard setback of 7.6 feet in lieu of the 12.5 foot minimum required for the laundry room addition.
- 5) Sec. 134-893(7): a variance to convert the existing flat roof to a covered balcony with railing that will have a north side yard setback of 7.6 feet in lieu of the 15 foot minimum required.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Acting Director, Planning, Zoning & Building	12/16/2019	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	2/4/2020	Contact Steven Stern (561) 227-6307 regarding an acceptable easement for undergrounding for the property. Applicant shall be responsible for the cost of relocating the existing trees within the rights-of-way should the proposed work impact them. Trees need to be shown on plans. The curb for the limits of Middle Road, due to the driveway relocations, will need to be replaced. Coordinate work with Public Works.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	12/16/2019	Stormwater Management System proposed for the site meets the Town's level of service.
PZB DIRECTOR	Wayne Bergman, Acting Director, Planning, Zoning & Building	12/16/2019	No comments



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 12/9/19

PZB - ZONING

Paul Castro, Zoning
Administrator

2/3/2020

There are several small additions proposed to this
landmark home. I have no comments on the proposed
variances.

40 Middle Road

Palm Beach, Florida 33480

Landmarks and Preservation Commission

Town of Palm Beach

I am writing to object to application COA 002 2020. The owner of 70 Middle Rd requests approval to work on her house and yard. I know she has 3 open permits now and has current code violations. Her hurricane shutters are still on rear windows and pool water is dark green and filthy. She has had a dumpster in front for years, many trucks in front and a Worth Ave. Builder sign by road. These were removed this summer but if she obtains a new permit I am afraid we will be looking at an unsightly yard for years.

Sincerely

Ellen Cunningham

TC DEV REVIEW MEETING 11-13-20

RECEIVED
JAN 11 2021
54 of 422
TOWN OF PALM BEACH
PLZ REF

550 S. Ocean Blvd.
Palm Beach, Florida

February 4, 2020

Re: Application for Variances at 70 Middle Road

Mayor Coniglio and Members of the Town Council
Town of Palm Beach

We are writing to request the discussion of the zoning variances requested by the owner of 70 Middle Road, application COA #002-2020, be deferred to a later Town Council meeting. The application is scheduled to be brought before the Town Council next week on February 12, but it seems something went awry with the notifications to neighbors living within 300 feet.

We certainly don't know all of our neighbors, but we did not receive the certified letter of notification and neither did any of other five neighbors we have asked. We think it is reasonable to send out notifications again and allow the neighbors time to review the owner's plans.

We look forward to the owner improving her home at 70 Middle Road, but we are also concerned we may be looking at a dumpster in front of the house for multiple years again. Should the Town Council approve remodeling work at 70 Middle Road and given the history of long delays in making improvements to the property, we request the Town Council require a detailed time schedule with appropriate deadlines for EACH item of work and add an incentive for getting the work done by the scheduled due dates.

Thank you for your consideration.

Martha and Dwight Schar

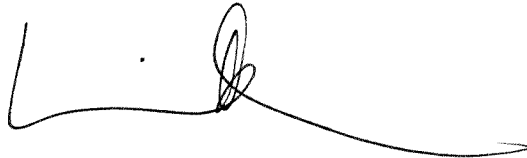
Monika and John Preston
25 Middle Road
Palm Beach, FL 33480

Re: Presentation for 70 Middle Road
March 10, 2020

Members of the Town Council and Landmark Preservation
Commission,

We have met with the architect for 70 Middle Road and have
reviewed the plans. We are in total support of the project as
presented.

Sincerely,
Monika and John Preston

A handwritten signature in black ink, consisting of a long horizontal line with a small loop at the end and a vertical line extending upwards from the middle of the horizontal line.

From: Myrna Partrich
To: Kelly Churney
Subject: 70 Middle Rd. Construction
Date: Wednesday, March 11, 2020 12:31:02 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Re: Landmark and Variance approvals for 70 Middle Rd.

Landmark Commission
Town Council Members

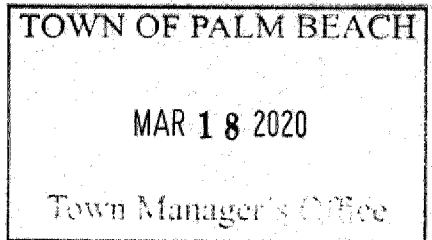
We are writing in reference to the presentation plans for 70 Middle Rd. We have reviewed the plans with the architect. The restoration is magnificent, and we are very excited about this project coming to fruition. We would like to support this restoration and variances as presented.

We appreciate the amount of work that the architect has invested her time into making this house so beautiful.

We love our street!

Sincerely yours,
Myrna and Spencer Partrich
22 Middle Rd.

Sally Ross Soter
198 via Marina
Palm Beach,
Florida 33480



March 16, 2020

The Honorable Gail L. Coniglio
The Mayor of Palm Beach
360 South County Road
Palm Beach, Florida 33480

Dear Mayor Coniglio,

My husband, William Soter, and I have had great concerns about Jennifer J. Naegele's plans for the restoration of 70 Middle Road, Palm Beach, Florida. For years, we and others have endured people coming and going, messy dumpsters, garage doors open, shutters up at windows all year long, and unkempt grounds. It has been a mess.

When the notice came regarding the Landmarks Preservation Commission application and the Zoning Application to be heard by the Town Council on April 15, 2020, we became worried about the placement of the generator facing via Marina. Jacqueline Albarran, an architect with SKA Architect + Planner met with me. She shared the plans and we walked the area. We do not believe that we have any concerns regarding the placement of the generator according to the plans that I saw the beginning of March.

However, we have concerns about the shrubbery facing via Marina. It is all old and too many different kinds mixed in together. There is no ground cover, but dirty sand and poor sidewalks.

We are pleased that we were able to see the plans for the generator, for there were so many stories. We hope that Ms. Naegele will follow the rules set by the Town Council of Palm Beach and will maintain a neat and clean construction site, for this has not been the case for the last four or more years.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sally", with a long horizontal flourish extending to the right.

Sally Ross Soter

Town of Palm Beach
Town Council and Landmarks Preservation Commission
360 S. County Road
Palm Beach, FL 33480

May 13, 2020

RE: 70 Middle Road Variance request

Dear Commissioners,

I am contacting you in support of the variance request for the location of the generator at 70 Middle Road.

We own the property at 195 Via Marina, immediately to the west of 70 Middle Road and are probably the neighbor most affected by the generator variance request.

We have had several meetings on site, have walked the property with the architect and landscape architect.

We are in support of the proposed generator variance, provided the following are met:

1. The application, as presently before you, represents the full scope of the project that will be undertaken. The applicant will not be coming back to you seeking additional approvals.

2. There is a defined timeline for completion that is reasonable, that the applicant is held to and is enforced. This house has been under construction for the last four years and we would like to see it completed as soon as possible.

3. The generator meets all soundproofing and decibel readings as required by town code.

4. All dumpsters, portable toilets, and other construction equipment are completely screened behind fencing and/or landscaping.

5. The new landscape buffer will completely screen the house, equipment and generator upon completion.

Thank you for your consideration of this matter.

Sincerely,

From: [Craig Omtvedt](#)
To: [Margaret Zeidman](#); [Lew Crampton](#); [Gail Coniglio](#); [Bobbie Lindsay](#); [Julie Araskog](#); [Kelly Churney](#); [Richard Rene Silvin](#); [Wayne Bergman](#); [Steven Stern](#)
Cc: [Martha Schar](#); [Charlotte Lowe](#); [Charlotte Beers](#); [Greg Dryer](#); [Sarah Soter \(srsoter@gmail.com\)](#); [Jill Glazer](#); [ellencunningham@mac.com](#); [susanisbishop@gmail.com](#); [Peter wood](#); [Adam Bulmer](#); [John Preston](#); [cochran63@mac.com](#)
Subject: Fwd: Transformer Easement
Date: Tuesday, July 07, 2020 5:03:52 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Mayor, Town Council Members, and ARCOM members,

I am writing today regarding the various current town matters related to 70 Middle Rd. Specifically, three items:

1. Request for 5 variance approvals
2. What will be the allowed timeframe for completion of the planned remodeling work
3. Sorting out the required transformer service and transformer placement

Having spoken with or seen correspondence from more than 10 of our neighbors bordering Jennifer's property or in the vicinity on Middle Rd, this is a matter of grave concern and interest to all of us. Additionally, despite our repeated attempts to engage in constructive conversation with Jennifer, all attempts have been met with ranting emails that have taken us nowhere. We need your help!

All of this said, I am aware that many, if not all of you, have received similar correspondence from her. Sad.

I offer the following:

1. Variance Approval

As I and others assume you will, please ensure the requested variances are truly necessary and will add to the beauty and architectural aesthetic of the neighborhood.

2. Construction Timeline

The neighborhood has endured years of worker vehicles and dumpsters at 70 Middle Rd. While I am aware that Jennifer has had health issues to deal with both personally and among family members, it only partially excuses the lack of responsible management and consideration of the neighborhood.

3. Transformer requirement and Placement

First, let me say how gracious and helpful Steve Stern has been in helping me understand the issues and possible options.

That said, having had numerous conversations with Steve to understand the issues and possible options, it is clear that Jennifer

has not taken the time or put forth the effort to properly consider what best serves both her and the neighborhood

Please note the attached email and attachments sent to Jennifer, her lawyer and architect on June 30th. A few points of emphasis:

1. Jennifer's electric meter calls for a three phase open delta transformer. As such, she can't be serviced by other transformers in the area. Regardless, as you will note, there is at least one reasonable option for a transformer on her property, maybe more. Also, the transformer will serve only her property. She would not be doing this for the greater good.
2. Jennifer refers to a Via Marina Chicane as life saving. Ridiculous. As you all know, Via Marina is a short street with minimal traffic and stop signs east and west at its intersection with Middle Rd.

In closing, let me highlight that our neighborhood is the result of the town's foresight to landmark properties and its investment to maintain the beauty and aesthetic of the area. We as owners have done the same. Our collective effort is not just for us, but for generations to come.

As such, it is requested that you deal with variance approval, construction timeline and undergrounding transformer need/placement in totality rather than as individual matters. It is also requested that any decisions be tabled and put on hold until an informed reasonable discussion can take place regarding the totality of the matters.

Thank you and regards, Craig Omtvedt

----- Forwarded message -----

From: **Craig Omtvedt** <cpomtvedt@gmail.com>

Date: Tue, Jun 30, 2020 at 10:28 AM

Subject: Transformer Easement

To: <2ordernow@gmail.com>

Cc: Maura Ziska <mziska@floridawills.com>, <jackie@jackiealbarran.com>

Hi Jennifer,

Thanks for your recent text. Always good to have the facts. Let me return the favor.

1. Your drawings are a gross exaggeration of what is needed. The 12'x13' you continue to reference is both the transformers and work space requirement. The worst case space requirement for the actual transformers is 80"L x 36"W x 34"H. If you would take the time to get an electrician out to check your electrical panel and needs, it could be that you could have your meter replaced

with a more current meter and only need a single phase transformer 40"L x 36"W x 34"H. Note attachment showing proposed placement of transformers in a partially enclosed area with your air conditioning units. Also note elimination of easement space as shown.

2. Yes, you will have four south side windows, but none on the ground level. The two windows on the first floor will basically be light only windows with likely minimal, if any, exterior viewing down onto the air conditioning units and a placed transformer. The second story windows will either overlook your air conditioning units and a placed transformer or your air conditioning units and a Chicane. As such, and given it can be done right with placement and landscaping, you are giving up very little having the transformer on your property.

Lastly, a few other things for you to ponder:

1. When all is said and done, there will be nine transformers in the area. Five already exist on neighbor's property, two neighbors have graciously accepted transformers, and placement discussion is starting regarding a third. Only you, who ironically will be the only one served by your transformer, is not taking the actions necessary to get all the facts and support the best outcome for the neighborhood.

2. Again, it's a straightforward process:

- A. Confirm your current electrical needs
- B. Constructively participate in a full, qualitative discussion of options
- C. Go with the best option for both you and the neighborhood

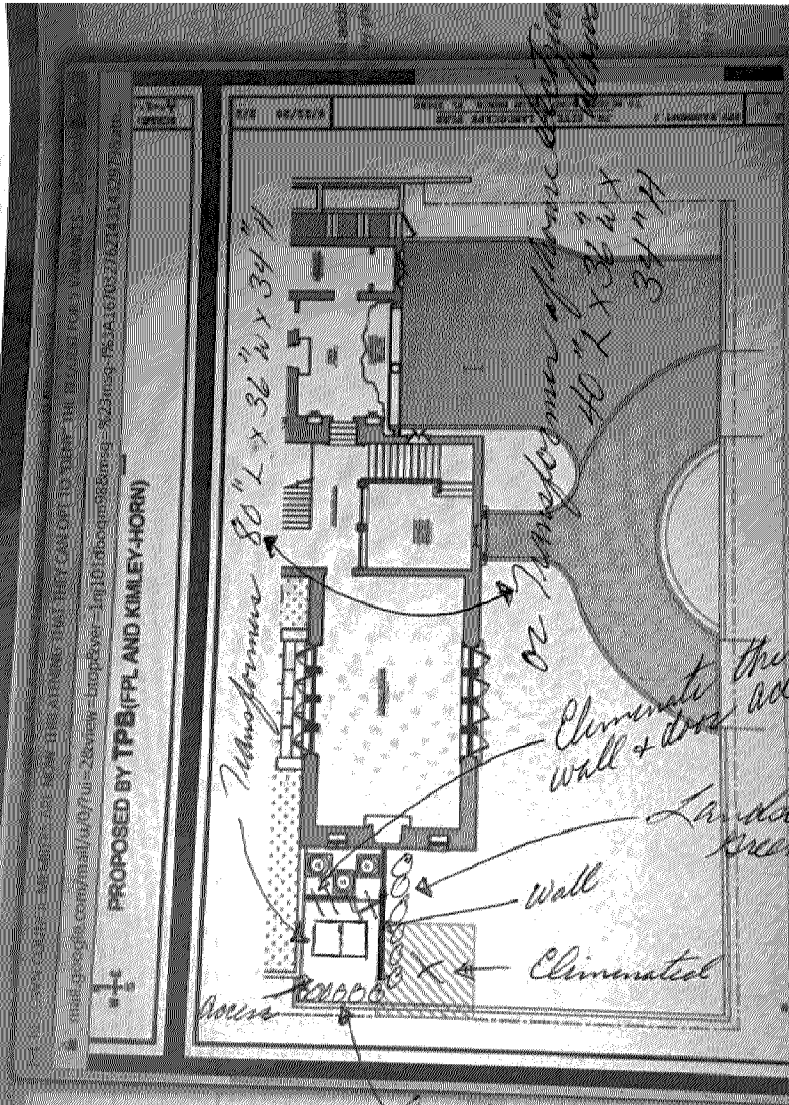
3. You are correct that FPL doesn't know what you currently have for electrical infrastructure. Like other utilities, they only go to the meter, The house side of the meter is your responsibility. If the meter you have is in excess of what you currently need and the meter just didn't get changed out along the way, there may be a simpler transformer option than currently on the table

In summary, Jennifer, please discontinue your extreme emails, get the facts regarding your home's electrical infrastructure, and let's work together to get to an answer we can all understand and accept.

Best, Craig

ps. It is truly disappointing that you won't take a call. We could move this ahead so much more productively and efficiently with a call.

Sent from my iPhone





* Last
resort
Chucane
for
70
Middle
Rd.
Transformers
or
Transformer

From: Jill Glazer
To: Steven Stern
Cc: Gail Coniglio; Margaret Zeidman; Lew Crampton; Bobbie Lindsay; Julie Araskog; Kelly Churney; Wayne Bergman; Rene Silvin For Palm Beach Town Council; daniellemoorepb@gmail.com
Subject: 70 Middle Road
Date: Thursday, July 09, 2020 1:21:58 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Steve:

I have wanted to follow up with you Re the meeting we had at my request regarding the possibility of a Chicane on Via Marina.

As you are aware, our property will be the most impacted with the current location being proposed.

We have now received many emails from our neighbor at 70 Middle Road regarding her request that either the sidewalk on the north side of Via Marina be removed or that a chicane be created within Via Marina so that she, who is in the process of renovating her property and seeking a number of variances and other approvals from the town council, does not have to be subjected to easements on her property required by the town's current utility undergrounding project.

Those of us that have either renovated or built our homes in the last few years are aware that the town, in granting our approvals, has requested that we grant similar easements on our properties. We agreed to do this and believe that many of our neighbors have done this as well.

Our neighbor's justification for attempting to avoid granting an easement on her property is that she is renovating a landmarked home. Many of us also own or have owned landmarked homes or have received awards from the town for the architectural design of our homes as well.

At the same time, in the interest of being good neighbors, we were willing to agree not to contest our neighbor locating her generator to an area closest to our property line, near our front door and bedroom side of the house, provided Ms. Naegele agrees to allow the undergrounding easements on her property, just like the rest of us agreed to.

I am sure you saw the email Options A, B and the chicane, which I believe were prepared by our neighbor's representatives (although there is no block indicating that these were prepared by a licensed professional), and not by the town, so that you can see what is being proposed. At the very least, I would hope that the town would prepare (or have a professional prepare) the visual aids for these proposals so that we can all see an unbiased presentation of what this will look like, before town council votes on something which could affect our homes. At the very least, we believe that this is a reasonable request to ask the town to do before town council votes on this.

Both Options A and B involve removing the sidewalk on the north side of Via Marina. For those of

you who may not know, there is no street light on the north side of this block of Via Marina and I believe that the that is located on the south, it is at the corner of South County Road and has no impact on our section of Via Marina. At night, the north side of the street is very dark. Having an unusual condition at a dark area of the street and right at our property line, is of major concern.

We are not willing to allow the major portion of this project, the generator and the location of the FPL equipment, to be located so close to our property line as to burden our property or to create safety risks for us by removing the sidewalk or placing a chicane within 20 feet of our driveway. Our landscapers and other service providers already have difficulty parking and accessing our property; they can't park on South County Road, so Via Marina is the only parking they have. In addition, our landscape material is placed in this area for pick up. The chicane will all but eliminate use of this area for parking or to allow the town to pick up landscape material.

It is interesting that the chicane plan shows the FPL equipment surrounded by poles to protect it. This all but acknowledges that this chicane will create a dangerous condition for vehicles driving on Via Marina. But what about us and our guests using our driveway and backing out onto Via Marina? This also creates a dangerous condition for those who drive and walk along this portion of Via Marina.

Eliminating the sidewalk will mean that we will need to walk in the street when walking the dog. At night on a road, that is dark due to lack of streetlights, that is used by many to cross over from South Ocean Boulevard to South County Road, this creates a dangerous condition, again, not only for us but also those who drive and safe all along this portion of Via Marina.

If we were inclined to agree to a chicane, we would like to see it moved much further east adjacent to 70 Middle Road, closer to the intersection of Via Marina and Middle Road, with a street light placed on the north side of Via Marina. Of course Ms. Naegele likes the location to the east of our driveway. She indicated numerous times in her email, she will not see this as it will be on the other side of her '30 foot wall of green hedges'. But the Soter's across the street and we will see it all day long entering and exiting our properties.

We all wanted to be good neighbors and to see that this house gets finished once and for all, but we do not want to create a safety risk for us and our guests or to be overburdened by this project, while the property owner receives the full benefit from all of this.

As we discussed when we met on site, I would also appreciate it if your would please confirm that there is no viable location for the transformer on our property, should we be inclined to grant an easement to make this nuisance go away.

Lastly, we have just received your letter and a picture of the Chicane located on the north end. For our reference, can you please confirm if the one currently outlined by our Via Marina property line, is the same size as the one in the picture located on Laurie Lane.

Thank you for your consideration,

Sincerely,
Jill and Avie Glazer
195 Via Marina

From: [Francis Lynch](#)
To: [Gail Coniglio](#); [Danielle Hickox Moore](#); [Julie Araskog](#); [Lew Crampton](#); [Bobbie Lindsay](#); [Margaret Zeidman](#)
Cc: [Wayne Bergman](#); [Paul Castro](#); [Steven Stern](#); [John \(Skip\) C. Randolph](#); [Kelly Churney](#)
Subject: Variance Application # Z-19-00236 / 70 Middle Road
Date: Thursday, July 09, 2020 4:49:07 PM
Attachments: [#FP.EASEMENT.4A OPTION A-EASEMENT ALTERNATIVE.pdf](#)
[#FP.EASEMENT.4B OPTION B-EASEMENT ALTERNATIVE.pdf](#)
[Scan Jul 8, 2020, 7:54 PM.pdf](#)
[202007090913.pdf](#)

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Madam Mayor, Ladies and Gentleman of the Town Council and Town Staff:

Please be advised that I represent Avram and Jill Glazer, the owners of the property located at 195 Via Marina, the property located immediately to the west of the Applicant's property. As a point of information, the Glazers' home was awarded the 2020 Elizabeth and John Schuler Award for excellence in new architecture. The Glazers have also owned and renovated a landmarked home on Middle Road in the past.

We have received the application along with the Applicant's request that either the sidewalk on the north side of Via Marina be removed or that a chicane be created within Via Marina so that the Applicant, who is seeking the following variances:

1. To allow a generator to be placed in a street side yard with a setback of 8.5' in lieu of 25' required (this is closest to the Glazers' front door and bedroom side of their house),
2. A variance for lot coverage (which is already exceeded by more than 10% above that allowed by code) to allow for the construction of a laundry room,
3. To allow the already-exceeded cubic content ratio to be expanded even further (the existing cubic content ration is now more than twice that permitted by code, prior to the filing of this application),
4. To allow for a north side setback of 7.6' in lieu of 15' required to allow for the aforementioned laundry room and
5. To convert an existing flat roof to a covered balcony with a side yard setback of 7.6' in lieu of 15', which will loom over the Glazers' property.

As you are all aware, this house and its seemingly never-ending construction has been the subject of expired permits prior to the Applicant filing this Application.

As you are also well aware, the request by the town of an owner/applicant (and the consent of that owner/applicant) for a utility easement on an applicant's property has been a part of the zoning process since the town began considering the utility undergrounding program. The town's request for an easement should come as no surprise to this particular Applicant, however, in addition to the numerous variances

requested, the Applicant also seeks that her property not be subjected to easements on her property required by the town's current utility undergrounding project.

Last but not least, you are aware that Middle Road was, at one point, under consideration for landmarking as a district, given the significant number of landmarked homes located on that street. But this Applicant, despite the number of requests in her zoning Application, is unwilling to accept an easement on her property to allow the undergrounding to be shielded from view on her property, as many other property owners in the town have been asked, and agreed, to do.

Instead of doing this, the Applicant would like you to locate the utilities near the Glazers' property, either by removing a sidewalk or by placing a chicane in Via Marina, allowing the Glazers to bear the full brunt of the Applicant's zoning request. In the interest of being good neighbors, the Glazers have already submitted a letter consenting to the placement of the generator in the street side yard setback, an area closest to their front door and bedroom areas of their home. This consent was given prior to the Applicant's request related to the utilities and, should the Applicant continue to refuse to grant an easement on her property, the Glazers may elect to rescind this consent, as the Glazers are unwilling to bear the full brunt of these requests. The Glazers are extremely concerned that either the elimination of the sidewalk on the north side of Via Marina or the creation of a chicane on the north side of Via Marina, approximately 20' from the Glazers' driveway onto Via Marina, will create a dangerous condition for the Glazers and their guests.

I am attaching to this email Options A, B and the chicane, which I believe were prepared by the Applicant's representatives (although there is no block indicating that these were prepared by a licensed professional) and circulated to the neighbors. At the very least, I would hope that the town would prepare (or require that a professional prepare) the visual aids for these proposals, appropriated scaled and dimensioned, so that those potentially affected by these options can all see an unbiased presentation of what this will look like and exactly where it will be located before town council votes on something which could affect the neighbors' homes.

Both Options A and B involve removing the sidewalk on the north side of Via Marina. For those of you who may not know, there is no street light on either side of this block of Via Marina. As a result, at night, the street is very dark. Recently, the police directed the protesters from the recent march down Via Marina. One of them peered into the Glazers' security camera. As you can imagine, both the re-direction of the protest and the situation with the security camera were unsettling. This, coupled with a tall hedge to shield the equipment from view, creates not only a security issue for the Glazers, their property and their guests, but also creates a safety issue, impairing the visibility of those exiting the Glazers' driveway onto Middle Road as well as impairing the visibility of the Glazers' driveway for those traveling west along Via Marina. This would literally create an accident waiting to happen.

Eliminating the sidewalk on the north side of Via Marina would also mean that the contiguous sidewalks in this area would be eliminated. At present, the neighbors can walk along Middle Road, Via Marina, South County Road and Gulfstream Road without the need to cross a street.

The third option proposed by the Applicant, and only recently presented by the town (see Steven Steven's letter dated June 26, 2020), is the chicane. It is my understanding that a chicane is in use in only one other location in town- on Laurie Lane, adjacent to a property owned by a client of mine. In this particular instance, none of the neighbors was willing to grant an easement on their property. At the same time, none of the property owners in this area sought an ARCOM, LPC or zoning approval at the time the easement was requested. Subsequently, a property was sold to my client, that property required zoning approvals to build, and despite the chicane already existing, the approval granted required that an easement be placed on the property prior to a building permit being issued. Please see a copy of the zoning approval letter attached to this email. This would lead me to believe that even the town does not believe a chicane to be a desired method of placing the necessary equipment, but only as a last resort. In this particular instance, this Applicant is seeking a number of variances, the legal hardship for which may or may not exist, but is refusing to consent to an easement on her property. Additionally, Laurie Lane is a significantly less traveled street than is Via Marina. Many use Via Marina as a connector between South County Road and South Ocean Boulevard. In contrast, there are a total of six houses on Laurie Lane and only two have Laurie Lane addresses, according to the Palm Beach County Property Appraiser's website.

The Glazers' landscapers and other service providers already have difficulty parking and accessing their property; they cannot park on South County Road, so Via Marina is the only parking they have. In addition, landscape material from the Glazers' property is placed in this area for pick up. By the same token, the service providers for the Glazers' neighbors on South County Road providers also park on Via Marina as they cannot park on South County Road. The chicane will all but eliminate use of this area for parking or to allow the town to pick up landscape material.

The chicane appears to have a curb surrounding it. There is no curb on the north side of Via Marina in this block. Installing a curb around the chicane will create a tripping hazard, especially in a block that is very dark at night.

Via Marina is approximately thirty feet wide. The chicane, as painted in the street, appears to be about ten feet wide by thirty feet long. If the chicane is installed, that will narrow Via Marina in this area such that it will be difficult for two cars to safely pass one another.

It is interesting that the Applicant's chicane plan and the photograph in Mr. Stern's letter shows the FPL equipment surrounded by poles to protect it. This all but acknowledges that this chicane will create a dangerous condition for vehicles driving on

Via Marina. But what about the Glazers and their guests using the Glazers' driveway and backing out onto Via Marina? This also creates a dangerous condition for those who drive or walk along this portion of Via Marina as the Glazers' driveway will be obscured to those traveling west along Via Marina. As I said earlier, this would create an accident waiting to happen.

Last, but not least, a chicane would not be the most attractive addition to a neighborhood that includes landmarked and award winning homes.

If you are inclined to agree to a chicane, we would like to see it moved much further east adjacent to 70 Middle Road, closer to the intersection of Via Marina and Middle Road, with a street light placed on the north side of Via Marina. As Ms. Naegele indicates in her series of vitriolic emails, she will not see this as it will be on the other side of her '30 foot wall of green hedges'.

The Glazers want to be good neighbors and want to see that this house gets finished once and for all, but they do not want to create a safety or security risk for themselves or their guests or to be overburdened by this project, while the Applicant receives the full benefit from all of the approvals sought and bears none of the burden for any of this.

Thank you for your consideration of this matter.

Sincerely,
Frank Lynch

Francis X. J. Lynch, Esquire

<image001.jpg>

605 North Olive Avenue, 2nd Floor
West Palm Beach, Florida 33401
T (561) 721-4000 / F (561) 721-4001 / D (561) 721-4004
E-mail: flynch@sniffenlaw.com
Website: www.sniffenlaw.com / Twitter: @Sniffenlaw

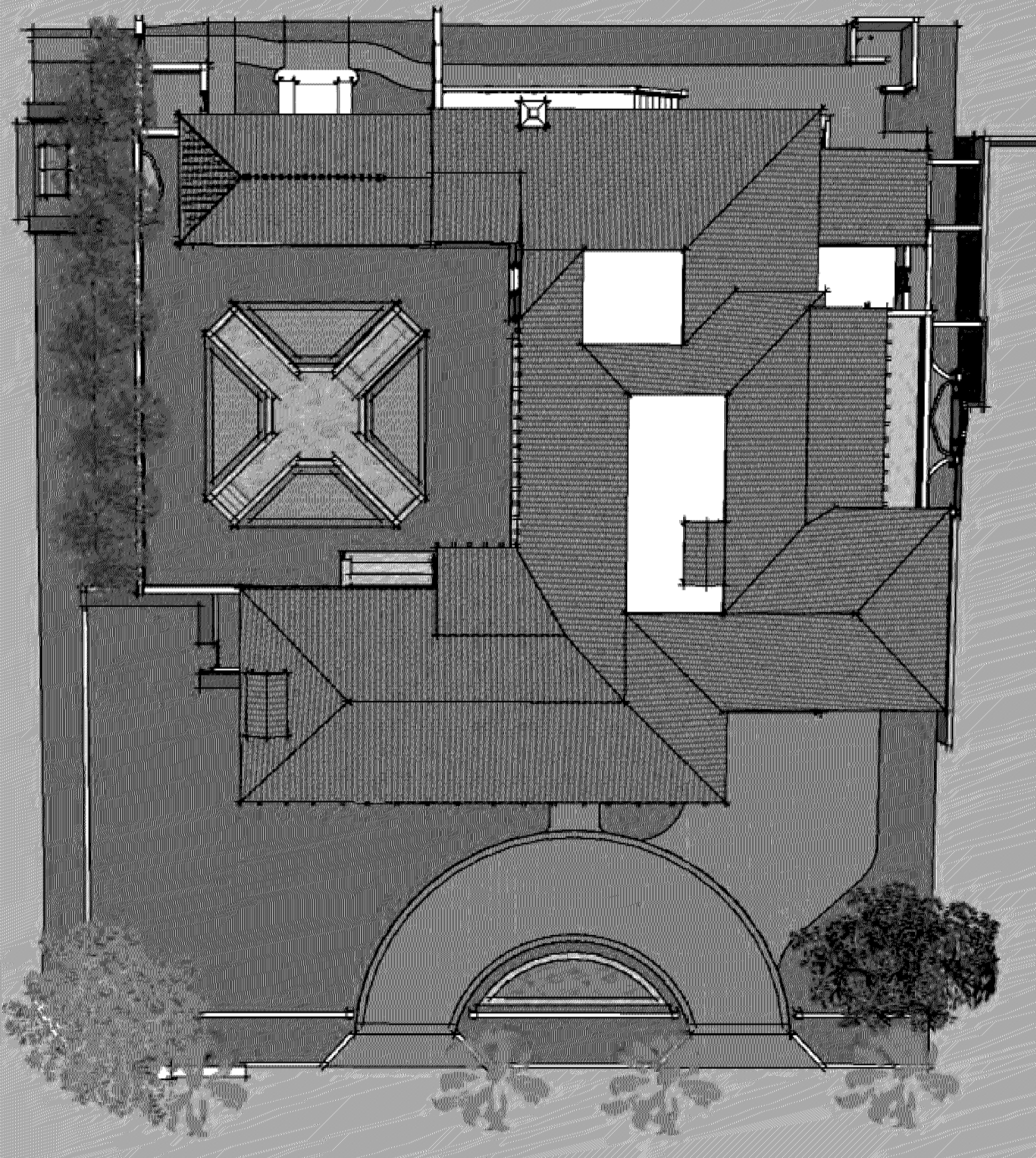
AS OF OCTOBER 1, 2019, WE HAVE JOINED THE FIRM OF SNIFFEN & SPELLMAN, P.A. PLEASE NOTE THE CHANGE OF E-MAIL ADDRESS. OUR TELEPHONE NUMBER, FACSIMILE NUMBER AND ADDRESS REMAIN THE SAME.

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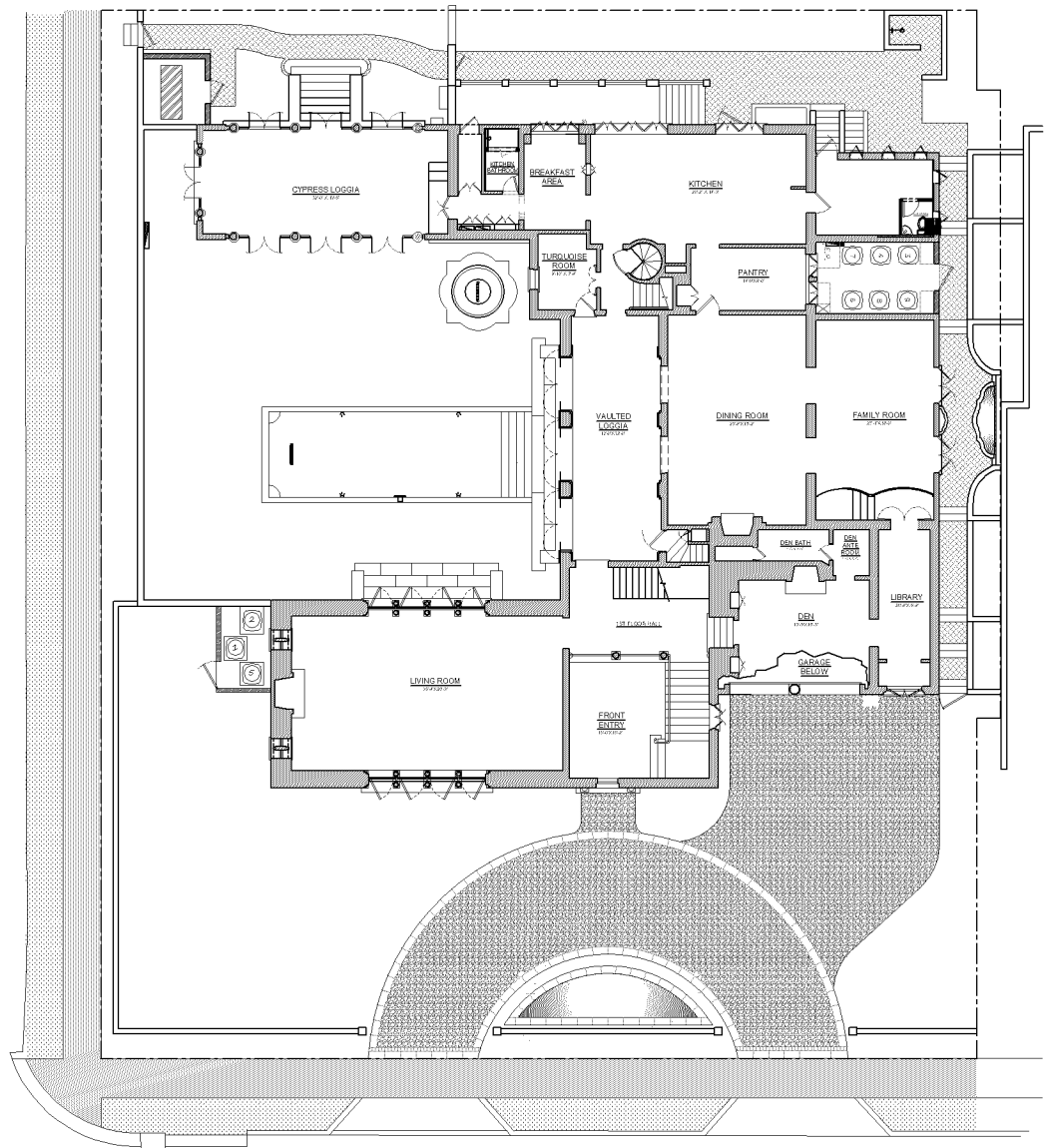
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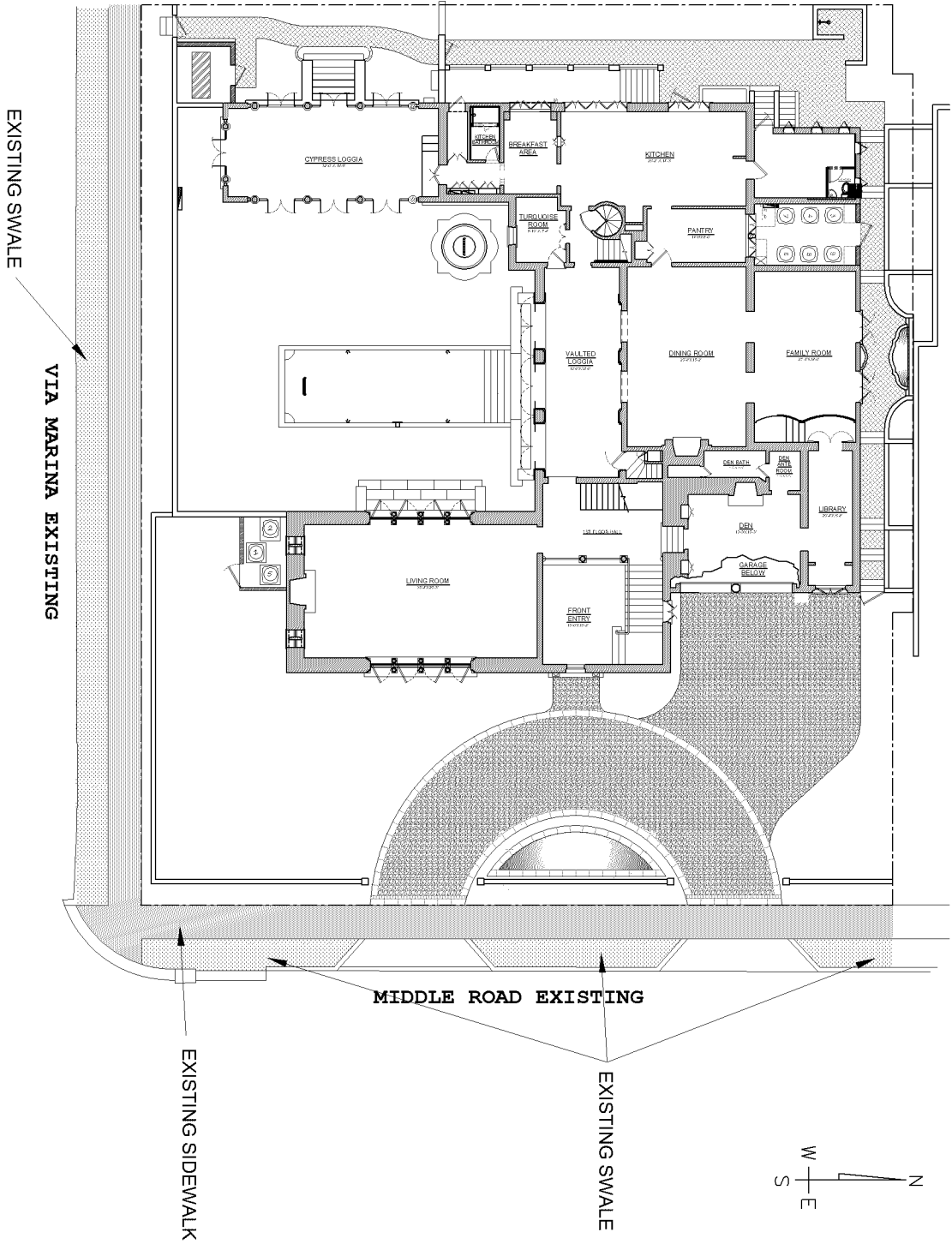
VIA MARINA EXISTING



NOTE:
SIDEWALK IN FRONT OF (AND
ADJACENT TO) 70 MIDDLE RD.
TO BE REMOVED
TO ACCOMMODATE UTILITIES
EASEMENT.*

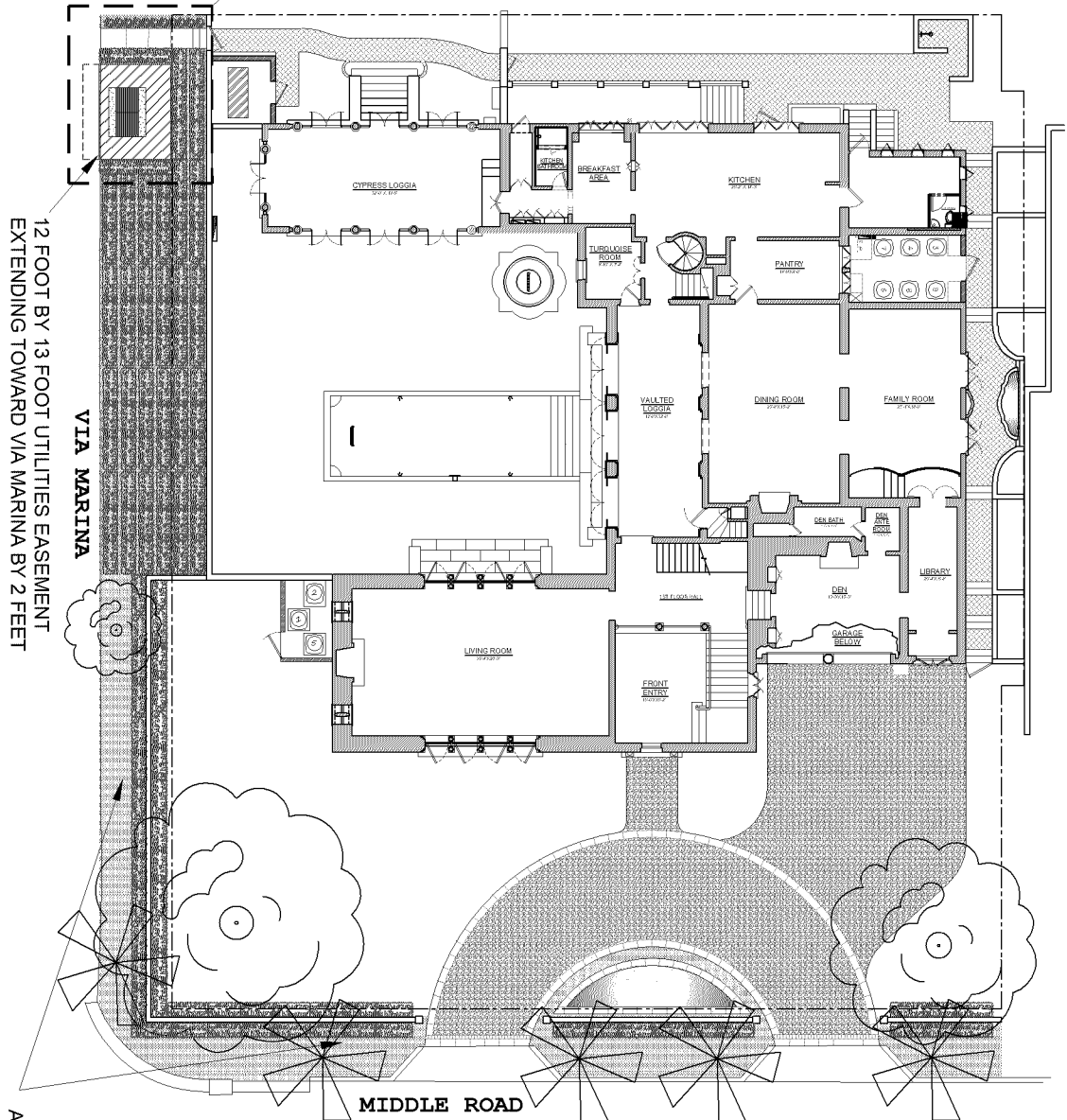
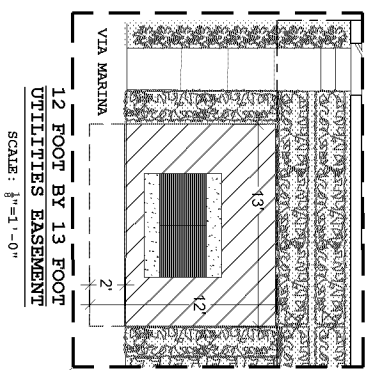
* EXACT LOCATION OF UTILITIES EASEMENT
TBD WITH STEVEN STERN (AND ALL).

SITE & LANDSCAPE DESIGN WITHOUT UTILITIES EASEMENT



NOTE:
SIDEWALK IN FRONT OF (AND
ADJACENT TO) 70 MIDDLE RD.
TO BE REMOVED
TO ACCOMMODATE UTILITIES
EASEMENT.*

DETAIL



* EXACT LOCATION OF UTILITIES EASEMENT
T.B.D. WITH STEVEN STERN (AND ALL).

**PROPOSED SITE & LANDSCAPE DESIGN WITH UTILITIES EASEMENT
OPTION A**

ALL FUTURE LANDSCAPE ON
SOUTH AND EAST SITE WALLS
T.B.D. BY JN AND S.M.I.

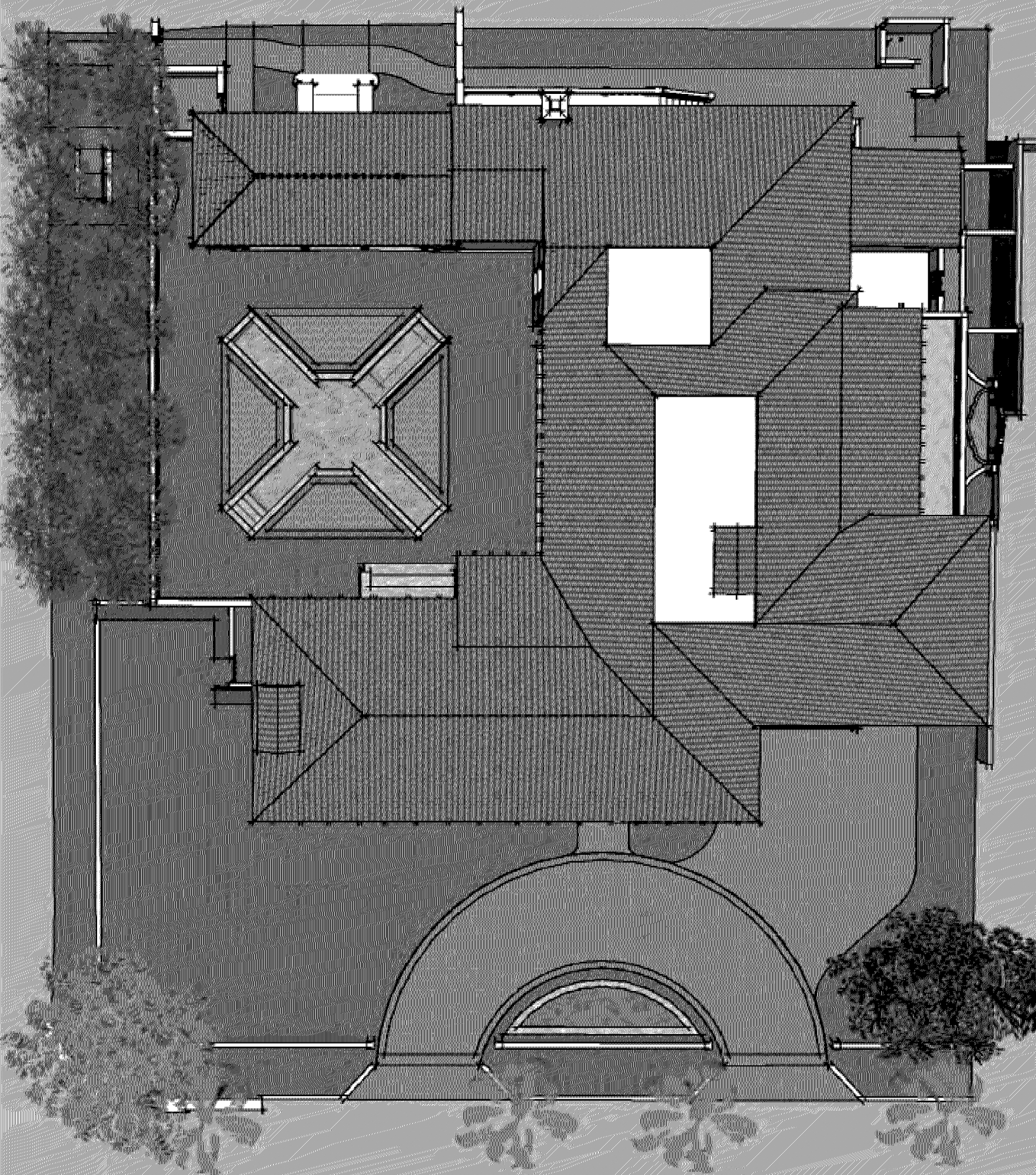
SCALE: $\frac{1}{16}"=1'-0"$

#FP . EASEMENT . 4A
T.C. DEV REVIEW MEETING 11-13-20

JN: OPTION A: EASEMENT ALTERNATIVE
70 MIDDLE ROAD, PALM BEACH, FL 33480

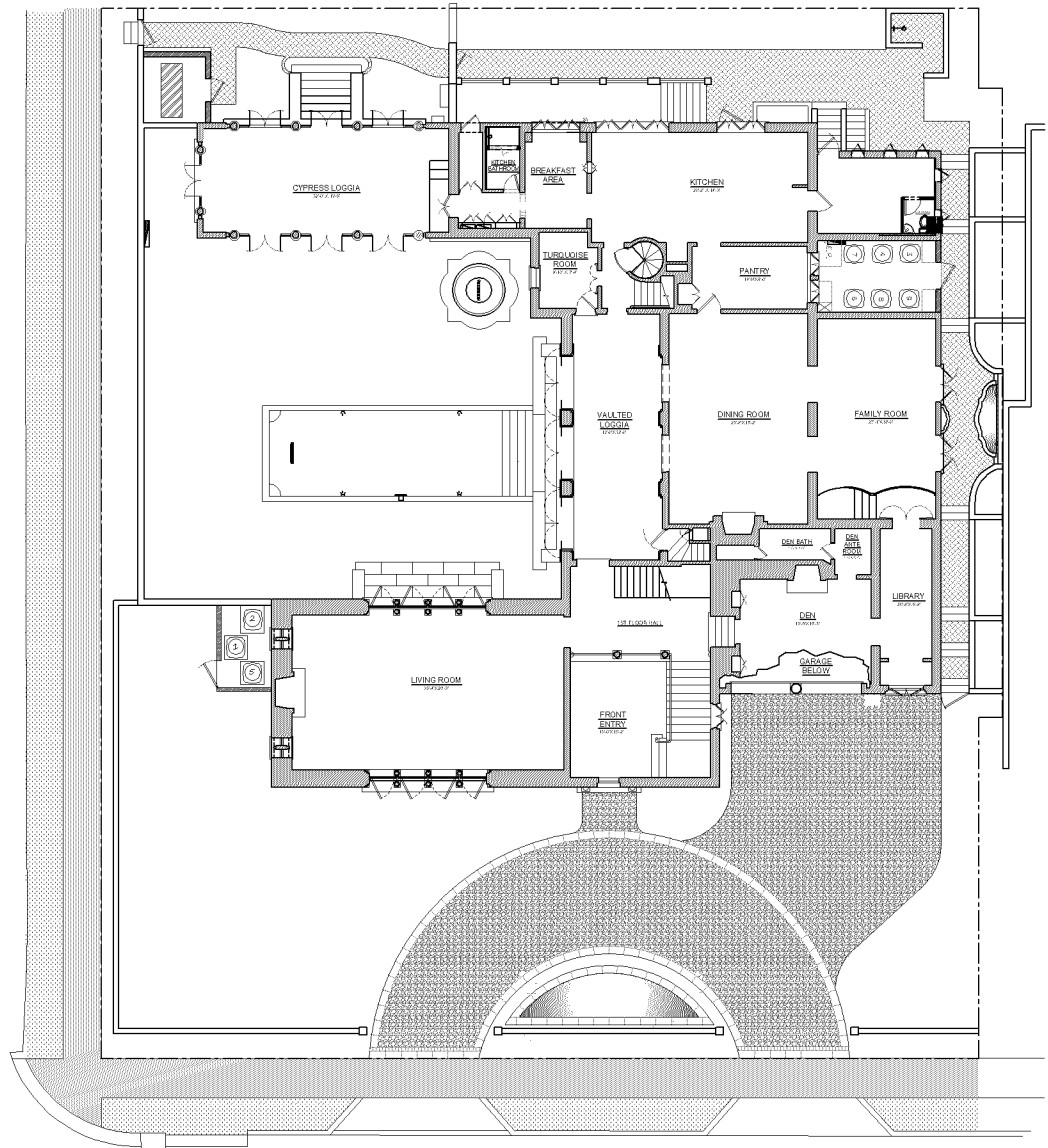
7/6/20

3/3



VIA MARINA EXISTING

SITE & LANDSCAPE DESIGN



MIDDLE ROAD EXISTING



SCALE :
1/16" = 1'-0"

#FP . EASEMENT . 4B
T.C. DEVR REVIEW MEETING 11-13-20

JN: OPTION B: EASEMENT ALTERNATIVE
70 MIDDLE ROAD, PALM BEACH, FL 33480

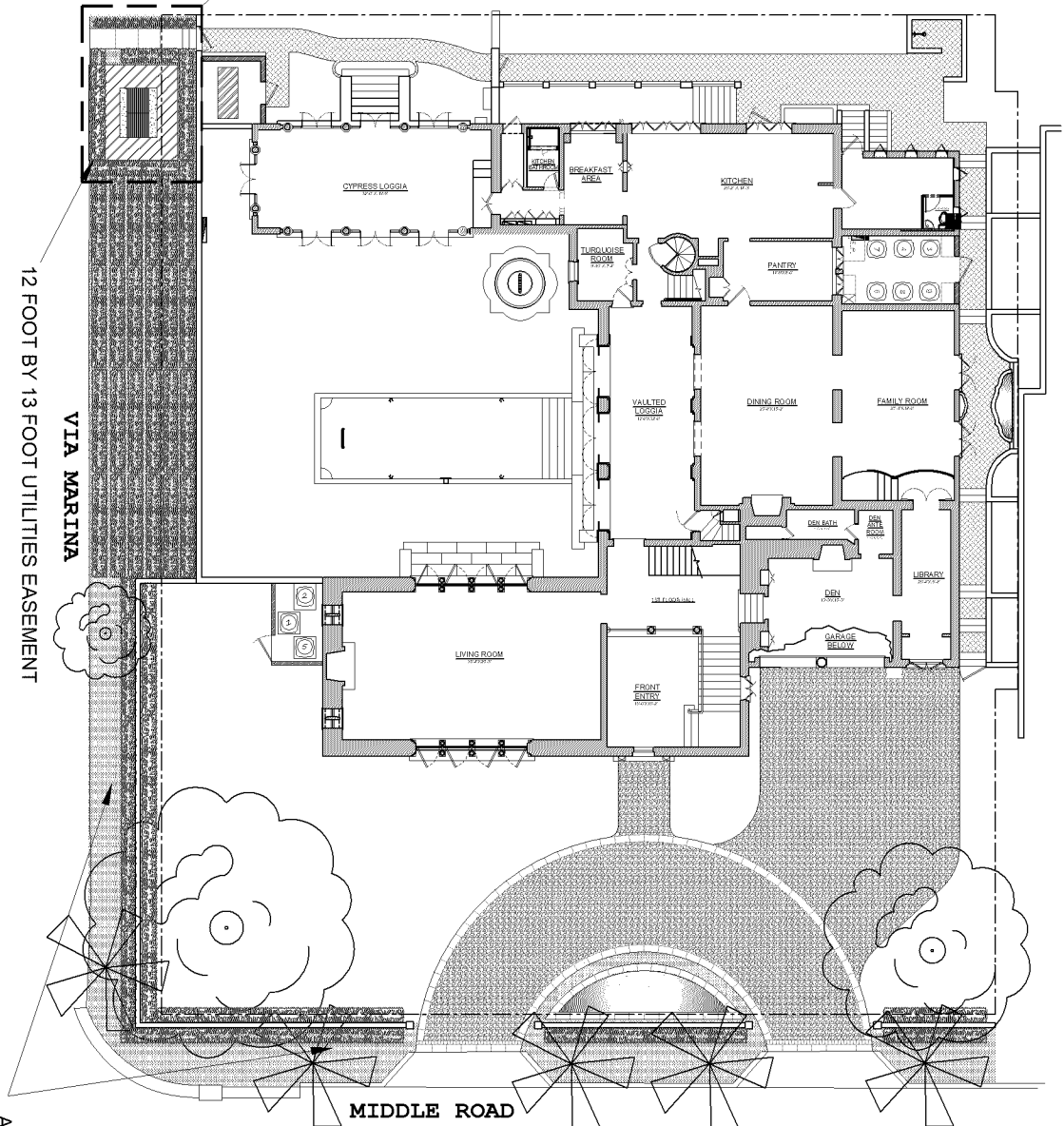
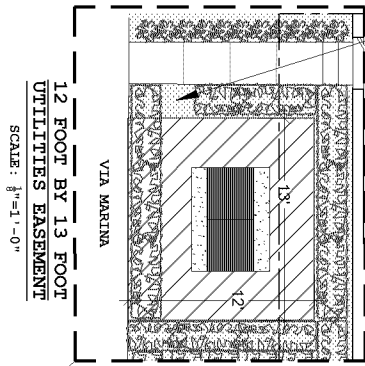
7/6/20 8:00 PM

1/3

* EXACT LOCATION OF UTILITIES EASEMENT
TBD WITH STEVEN STERN (AND ALL).



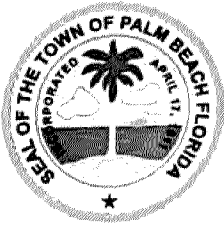
DETAIL



PROPOSED SITE & LANDSCAPE DESIGN WITH UTILITIES EASEMENT
OPTION B

ALL FUTURE LANDSCAPE ON
SOUTH AND EAST SITE WALLS
T.B.D. BY JN AND S.M.I.





TOWN OF PALM BEACH

Town Manager's Office

June 26, 2020

Avram Glazer
Jill Glazer
195 Via Marina
Palm Beach, FL 33480
Re: 195 Via Marina

Re: *Underground Utilities Conversion Project - Phase 3 South Notice of two
Street Chokers – Via Marina & Middle Road*

Dear Mr. & Mrs. Glazer,

The Town of Palm Beach is sending this notice to inform property owners of the Town's planned use of a Street Choker also known as a "Chicane" or "Traffic Calming Device" within the Public Right-of-Way¹ on Via Marina and Middle Road. The installed Street Choker will be used to facilitate equipment placement for the Underground Utilities Conversion Project.

Property owners have been overwhelmingly supportive of the project and have granted nearly all of the necessary easements the Town has requested. However, two additional voluntary easements are needed for electric and communications services. The first transformer supports services to 20, 22 & 30 Middle Road within a chicane planned to be deployed to the east of 30 Middle Road. The second transformer supports services to 70 Middle Road within a chicane planned to be deployed to the south of the property along Via Marina.

The purpose of this letter is to inform the neighborhood of the proposed Street Chokers and make a final attempt to request an easement where installation is feasible on a property served by the device. If we remain unsuccessful, we have no choice but to move forward and deploy the Street Chokers within the Public Right-of-Way.

We are available to discuss the option of equipment placement within a voluntary easement at any of the served properties. Please contact me by calling (561) 838-5410 or emailing sstern@townofpalmbeach.com.

Your time and consideration concerning this important matter is appreciated.

Thank you,

Steven N. Stern
Underground Utilities Project Manager

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

Note: You may view a deployed Street Choker in the Phase I North construction area on Laurie Lane. An image of this recently installed Traffic Calming Device is shown on the following page.



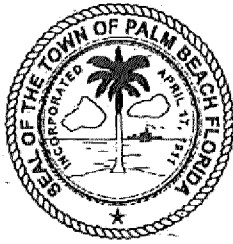
Figure 1: Laurie Lane, Phase 1 North, Street Choker

cc:

Mayor & Town Council
Underground Utilities Task Force
Kirk Blouin, Town Manager
H. Paul Brazil, P.E., Director, Public Works
Patricia Strayer, P.E., Town Engineer
Kevin Schanen, P.E., Kimley-Horn

- 1. For more information and answers to frequently asked questions about the Right of Way visit the Town's Undergrounding Web Site at <http://undergrounding.info/newsletters/> and click on the June 2018 newsletter.*

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



TOWN OF PALM BEACH

Planning, Zoning & Building Department

November 25, 2019

Mr. Francis X.J. Lynch, Esq.
605 North Olive Avenue
2nd Floor
West Palm Beach, FL 33401

Subject: Z-19-00224, 218 Debra Lane

Dear Mr. Lynch:

The Town Council, at its November 13, 2019 meeting, conditionally approved your client's site plan review application to construct a 3,539 square foot, 2-story home, hardscape and swimming pool on an existing 10,393 square foot platted lot with a depth of 90' in lieu of 100' minimum required. The following variances were conditionally approved for the proposed swimming pool:

1. A front yard setback of twenty feet, four inches (20.33') in lieu of the twenty-five foot (25.0') minimum front yard setback required by code.
2. A proposed swimming pool in a required street side yard with a continuous hedge of three feet (3.0') in height in lieu of six feet (6.0') minimum required.

The condition of approval is that prior to the issuance of a building permit, your client shall either provide a recorded utility easement or an easement agreement satisfactory to the Town that ensures undergrounding of utilities in the area. The Town Council approval is identified on the stamp approved and stamp dated plan package dated September 27, 2019 from Laberg & Mernard, Inc., Todd Maclean, Gruber Consulting Engineers and Nexgen Surveying, LLC, all of which are made part of the approval of this application.

The approval of this zoning application constitutes only zoning approval and does not relieve the owner and/or applicant from obtaining additional Town approvals as may be required such as construction permits. The work authorized under the approval of this zoning application must be commenced within three years from the date of approval or said approval will expire.

Sincerely,

Paul Castro, AICP
Zoning Manager

cc: Josh Martin, Director of Planning, Zoning and Building
Wayne Bergman, Asst. Director of Planning, Zoning and Building
John Lindgren, Planning Manager
pf

From: [Charlotte Beers](#)
To: [Craig Omtvedt](#)
Cc: [Margaret Zeidman](#); [Lew Crampton](#); [Gail Coniglio](#); [Bobbie Lindsay](#); [Julie Araskog](#); [Kelly Churney](#); [Richard Rene Silvin](#); [Wayne Bergman](#); [Steven Stern](#); [Martha Schar](#); [Charlotte Lowe](#); [Greg Dryer](#); [Sarah Soter \(srsoter@gmail.com\)](#); [Jill Glazer](#); [ellencunningham@mac.com](#); [susanisbishop@gmail.com](#); [Peter wood](#); [Adam Bulmer](#); [John Preston](#); [cochran63@mac.com](#)
Subject: Re: Transformer Easement
Date: Saturday, July 11, 2020 1:24:39 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Mayor and Council Members ,

I'm adding my support to the painstaking assessment Craig Omtvedt has made regarding this subject. I live at 82 Middle Road. I was attracted to this oasis in part because of the wide peaceful unencumbered streets.

Your work too to remove power lines and require flood basements has I believe , the same goal and result .

Our request of our neighbor at 70

Middle road is to agree to an adjustment on one key exception which affects us all adversely , to help justify so many other exceptions you are reviewing .

I have the greatest sympathy for the confusion and Time such construction takes ; but we have seen that driveway filled with trucks for over three years. I hope we can all press for a fair conclusion here . Fair to the grace and hoped for continued tranquility of Middle Road

Thank you so much for offering your time and concern and expertise in such matters. It's why Palm Beach remains a home for us of restraint , safety , and beauty .

Charlotte Beers

Sent from my iPhone

On Jul 7, 2020, at 5:03 PM, Craig Omtvedt <cpomtvedt@gmail.com> wrote:

Dear Mayor, Town Council Members, and ARCOM members,

I am writing today regarding the various current town matters related to 70 Middle Rd.

Specifically, three items:

1. Request for 5 variance approvals
2. What will be the allowed timeframe for completion of the planned remodeling work
3. Sorting out the required transformer service and transformer placement

Having spoken with or seen correspondence from more than 10 of our neighbors bordering Jennifer's

property or in the vicinity on Middle Rd, this is a matter of grave concern and interest to all of us. Additionally, despite our repeated attempts to engage in constructive conversation with Jennifer, all attempts have been met with ranting emails that have taken us nowhere. We need your help!

All of this said, I am aware that many, if not all of you, have received similar correspondence from her. Sad.
I offer the following:

1. Variance Approval

As I and others assume you will, please ensure the requested variances are truly necessary and will add to the beauty and architectural aesthetic of the neighborhood.

2. Construction Timeline

The neighborhood has endured years of worker vehicles and dumpsters at 70 Middle Rd. While I am aware that Jennifer has had health issues to deal with both personally and among family members, it only partially excuses the lack of responsible management and consideration of the neighborhood.

3. Transformer requirement and Placement

First, let me say how gracious and helpful Steve Stern has been in helping me understand the issues and possible options.

That said, having had numerous conversations with Steve to understand the issues and possible options, it is clear that Jennifer has not taken the time or put forth the effort to properly consider what best serves both her and the neighborhood

Please note the attached email and attachments sent to Jennifer, her lawyer and architect on June 30th. A few points of emphasis:

1. Jennifer's electric meter calls for a three phase open delta transformer. As such, she can't be serviced by other transformers in the area. Regardless, as you will note, there is at least one reasonable option for a transformer on her property, maybe more. Also, the transformer will serve only her property. She would not be doing this for the greater good.

2. Jennifer refers to a Via Marina Chicane as life saving. Ridiculous. As you all know, Via Marina is a short street with minimal traffic and stop signs east and west at its intersection with Middle Rd.

In closing, let me highlight that our neighborhood is the result of the town's foresight to landmark properties and its investment to maintain the beauty and aesthetic of the area. We as owners have done the same. Our collective effort is not just for us, but for generations to come.

As such, it is requested that you deal with variance approval, construction timeline and undergrounding transformer need/placement in totality rather than as individual matters. It is also requested that any decisions be tabled and put on hold until an informed reasonable discussion can take place regarding the totality of the matters.

Thank you and regards, Craig Omtvedt

----- Forwarded message -----

From: **Craig Omtvedt** <cpomtvedt@gmail.com>

Date: Tue, Jun 30, 2020 at 10:28 AM

Subject: Transformer Easement

To: <2ordernow@gmail.com>

Cc: Maura Ziska <mziska@floridawills.com>, <jackie@jackiealbarran.com>

Hi Jennifer,

Thanks for your recent text. Always good to have the facts. Let me return the favor.

1. Your drawings are a gross exaggeration of what is needed. The 12'x13' you continue to reference is both the transformers and work space requirement.

The worst case space requirement for the actual transformers is 80"L x 36"W x 34"H. If you would take the time to get an electrician out to check your electrical

panel and needs, it could be that you could have your meter replaced with a more current meter and only need a single phase transformer 40"L x 36"W x 34"H. Note attachment showing proposed placement of transformers in a partially enclosed area with your air conditioning units. Also note elimination of easement space as shown.

2. Yes, you will have four south side windows, but none on the ground level. The two windows on the first floor will basically be light only windows with

likely minimal, if any, exterior viewing down onto the air conditioning units and a placed transformer. The second story windows will either overlook your air conditioning units and a placed transformer or your air conditioning units and a Chicane. As such, and given it can be done right with placement and landscaping, you are giving up very little having the transformer on your property.

Lastly, a few other things for you to ponder:

1. When all is said and done, there will be nine transformers in the area. Five already exist on neighbor's property, two neighbors have graciously accepted transformers, and placement discussion is starting regarding a third.

Only you, who ironically will be the only one served by your transformer, is not taking the actions necessary to get all the facts and support the best outcome for the neighborhood.

2. Again, it's a straightforward process:

- A. Confirm your current electrical needs
- B. Constructively participate in a full, qualitative discussion of options
- C. Go with the best option for both you and the neighborhood

3. You are correct that FPL doesn't know what you currently have for electrical infrastructure. Like other utilities, they only go to the meter, The house side of the meter is your responsibility. If the meter you have is in excess of what you currently need and the meter just didn't get changed out along the way, there may be a simpler transformer option than currently on the table

In summary, Jennifer, please discontinue your extreme emails, get the facts regarding your home's electrical infrastructure, and let's work together to get to an answer we can all understand and accept.

Best, Craig

ps. It is truly disappointing that you won't take a call. We could move this ahead so much more productively and efficiently with a call.

Sent from my iPhone

<IMG_2819.JPG>

<IMG_2820.JPG>

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HAROLD G. MAASS (1923-2006)
DOYLE ROGERS (1926-2016)
KAREN S. MARX (1964-1994)

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July 13, 2020

Mayor Gail Coniglio
Town Council
Landmarks Commission
Town of Palm Beach
360 South County Road
P.O. Box 2029
Palm Beach, FL 33480

Re: Utilities Equipment related to 70 Middle Road

Dear Madam Mayor, members of Town Council and members of the Architectural Commission:

This firm represents William and Sarah Ross Soter, the owners of 198 Via Marina. We understand that you are scheduled to again review requested renovation plans and multiple required variance requests related to 70 Middle Road.

This letter confirms that the Soters oppose the installation of a chicane on Via Marina because it would create a dangerous life safety issue for pedestrian and vehicular traffic in the neighborhood and because there are available locations for a transformer at 70 Middle Road without a disruption to that owner or to the neighborhood.

It is our understanding that other property owners in the Middle Road/Via Marina neighborhood have agreed to placement of transformers on their properties to service all properties other than 70 Middle Road. It certainly appears that there is sufficient space at 70 Middle Road to place a transformer of sufficient capacity to serve just that property without otherwise negatively affecting the renovation or future use of 70 Middle Road.

This same process is being successfully and repeatedly implemented throughout the Town as Town residents have repeatedly agreed that the efficiency and other advantages associated with underground utilities certainly outweigh any aesthetic disadvantage of the transformer location, especially after the transformer is well-screened by landscaping.

The owners in this neighborhood have already contributed easements to the Town and service has or will be buried to serve the properties. These residents should not have to suffer through the danger and negative aesthetics of a chicane on Via Marina or Middle Road because one property owner believes that only her property should be exempt from locating the transformer on her property.

The refusal by the owner of 70 Middle Road is especially befuddling because the transformer would serve only 70 Middle Road and the owner is requesting zoning relief from the Town which is not currently permitted under the Zoning Code. If the owner is not willing to grant the small easement necessary to serve her property, then the Town should certainly not grant unwarranted zoning relief and variances when no legal hardship exists.

For the foregoing reasons, the Soters request that you deny the zoning relief and variances requested by the owner of 70 Middle Road if she is not willing to provide the Town with a small easement necessary to allow the placement of a transformer on her property.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Timothy Hanlon', with a stylized flourish extending from the end.

M. Timothy Hanlon

cc: Mr. and Mrs. Soter

From: [Francis Lynch](#)
To: [Gail Coniglio](#); [Danielle Hickox Moore](#); [Julie Araskog](#); [Lew Crampton](#); [Bobbie Lindsay](#); [Margaret Zeidman](#)
Cc: [Wayne Bergman](#); [Paul Castro](#); [Steven Stern](#); [John \(Skip\) C. Randolph](#); [Kelly Churney](#)
Subject: RE: Variance Application # Z-19-00236 / 70 Middle Road
Date: Monday, July 13, 2020 12:42:48 PM

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In the event there is any confusion as to my clients' position in this, please be advised that the Glazers are withdrawing their letter of support for this application and request that the Applicant prove her hardship as to the variances requested.

Thank you.

Frank Lynch

Francis X. J. Lynch, Esquire

SNIFFEN & SPELLMAN, P.A.

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From: Francis Lynch

Sent: Thursday, July 09, 2020 4:47 PM

To: mayor@townofpalmbeach.com; dmoore@townofpalmbeach.com;
jaraskog@townofpalmbeach.com; lcrampton@townofpalmbeach.com;
blindsay@townofpalmbeach.com; mzeidman@townofpalmbeach.com
Cc: Wayne Bergman <wbergman@TownOfPalmBeach.com>; Paul Castro
<PCastro@TownofPalmBeach.com>; Steven Stern <ssstern@TownOfPalmBeach.com>;
jrandolph@jonesfoster.com; Kelly Churney <KChurney@TownofPalmBeach.com>
Subject: Variance Application # Z-19-00236 / 70 Middle Road

Dear Madam Mayor, Ladies and Gentleman of the Town Council and Town Staff:

Please be advised that I represent Avram and Jill Glazer, the owners of the property located at 195 Via Marina, the property located immediately to the west of the Applicant's property. As a point of information, the Glazers' home was awarded the 2020 Elizabeth and John Schuler Award for excellence in new architecture. The Glazers have also owned and renovated a landmarked home on Middle Road in the past.

We have received the application along with the Applicant's request that either the sidewalk on the north side of Via Marina be removed or that a chicane be created within Via Marina so that the Applicant, who is seeking the following variances:

1. To allow a generator to be placed in a street side yard with a setback of 8.5' in lieu of 25' required (this is closest to the Glazers' front door and bedroom side of their house),
2. A variance for lot coverage (which is already exceeded by more than 10% above that allowed by code) to allow for the construction of a laundry room,
3. To allow the already-exceeded cubic content ratio to be expanded even further (the existing cubic content ration is now more than twice that permitted by code, prior to the filing of this application),
4. To allow for a north side setback of 7.6' in lieu of 15' required to allow for the aforementioned laundry room and
5. To convert an existing flat roof to a covered balcony with a side yard setback of 7.6' in lieu of 15', which will loom over the Glazers' property.

As you are all aware, this house and its seemingly never-ending construction has been the subject of expired permits prior to the Applicant filing this Application.

As you are also well aware, the request by the town of an owner/applicant (and the consent of that owner/applicant) for a utility easement on an applicant's property has been a part of the zoning process since the town began considering the utility undergrounding program. The town's request for an easement should come as no surprise to this particular Applicant, however, in addition to the numerous variances requested, the Applicant also seeks that her property not be subjected to easements on her property required by the town's current utility undergrounding project.

Last but not least, you are aware that Middle Road was, at one point, under

consideration for landmarking as a district, given the significant number of landmarked homes located on that street. But this Applicant, despite the number of requests in her zoning Application, is unwilling to accept an easement on her property to allow the undergrounding to be shielded from view on her property, as many other property owners in the town have been asked, and agreed, to do.

Instead of doing this, the Applicant would like you to locate the utilities near the Glazers' property, either by removing a sidewalk or by placing a chicane in Via Marina, allowing the Glazers to bear the full brunt of the Applicant's zoning request. In the interest of being good neighbors, the Glazers have already submitted a letter consenting to the placement of the generator in the street side yard setback, an area closest to their front door and bedroom areas of their home. This consent was given prior to the Applicant's request related to the utilities and, should the Applicant continue to refuse to grant an easement on her property, the Glazers may elect to rescind this consent, as the Glazers are unwilling to bear the full brunt of these requests. The Glazers are extremely concerned that either the elimination of the sidewalk on the north side of Via Marina or the creation of a chicane on the north side of Via Marina, approximately 20' from the Glazers' driveway onto Via Marina, will create a dangerous condition for the Glazers and their guests.

I am attaching to this email Options A, B and the chicane, which I believe were prepared by the Applicant's representatives (although there is no block indicating that these were prepared by a licensed professional) and circulated to the neighbors. At the very least, I would hope that the town would prepare (or require that a professional prepare) the visual aids for these proposals, appropriated scaled and dimensioned, so that those potentially affected by these options can all see an unbiased presentation of what this will look like and exactly where it will be located before town council votes on something which could affect the neighbors' homes.

Both Options A and B involve removing the sidewalk on the north side of Via Marina. For those of you who may not know, there is no street light on either side of this block of Via Marina. As a result, at night, the street is very dark. Recently, the police directed the protesters from the recent march down Via Marina. One of them peered into the Glazers' security camera. As you can imagine, both the re-direction of the protest and the situation with the security camera were unsettling. This, coupled with a tall hedge to shield the equipment from view, creates not only a security issue for the Glazers, their property and their guests, but also creates a safety issue, impairing the visibility of those exiting the Glazers' driveway onto Middle Road as well as impairing the visibility of the Glazers' driveway for those traveling west along Via Marina. This would literally create an accident waiting to happen.

Eliminating the sidewalk on the north side of Via Marina would also mean that the contiguous sidewalks in this area would be eliminated. At present, the neighbors can walk along Middle Road, Via Marina, South County Road and Gulfstream Road without the need to cross a street.

The third option proposed by the Applicant, and only recently presented by the town (see Steven Steven's letter dated June 26, 2020), is the chicane. It is my understanding that a chicane is in use in only one other location in town- on Laurie Lane, adjacent to a property owned by a client of mine. In this particular instance, none of the neighbors was willing to grant an easement on their property. At the same time, none of the property owners in this area sought an ARCOM, LPC or zoning approval at the time the easement was requested. Subsequently, a property was sold to my client, that property required zoning approvals to build, and despite the chicane already existing, the approval granted required that an easement be placed on the property prior to a building permit being issued. Please see a copy of the zoning approval letter attached to this email. This would lead me to believe that even the town does not believe a chicane to be a desired method of placing the necessary equipment, but only as a last resort. In this particular instance, this Applicant is seeking a number of variances, the legal hardship for which may or may not exist, but is refusing to consent to an easement on her property. Additionally, Laurie Lane is a significantly less traveled street that is Via Marina. Many use Via Marina as a connector between South County Road and South Ocean Boulevard. In contrast, there are a total of six houses on Laurie Lane and only two have Laurie Lane addresses, according to the Palm Beach County Property Appraiser's website.

The Glazers' landscapers and other service providers already have difficulty parking and accessing their property; they cannot park on South County Road, so Via Marina is the only parking they have. In addition, landscape material from the Glazers' property is placed in this area for pick up. By the same token, the service providers for the Glazers' neighbors on South County Road providers also park on Via Marina as they cannot park on South County Road. The chicane will all but eliminate use of this area for parking or to allow the town to pick up landscape material.

The chicane appears to have a curb surrounding it. There is no curb on the north side of Via Marina in this block. Installing a curb around the chicane will create a tripping hazard, especially in a block that is very dark at night.

Via Marina is approximately thirty feet wide. The chicane, as painted in the street, appears to be about ten feet wide by thirty feet long. If the chicane is installed, that will narrow Via Marina in this area such that it will be difficult for two cars to safely pass one another.

It is interesting that the Applicant's chicane plan and the photograph in Mr. Stern's letter shows the FPL equipment surrounded by poles to protect it. This all but acknowledges that this chicane will create a dangerous condition for vehicles driving on Via Marina. But what about the Glazers and their guests using the Glazers' driveway and backing out onto Via Marina? This also creates a dangerous condition for those who drive or walk along this portion of Via Marina as the Glazers' driveway will be obscured to those traveling west along Via Marina. As I said earlier, this would create

an accident waiting to happen.

Last, but not least, a chicane would not be the most attractive addition to a neighborhood that includes landmarked and award winning homes.

If you are inclined to agree to a chicane, we would like to see it moved much further east adjacent to 70 Middle Road, closer to the intersection of Via Marina and Middle Road, with a street light placed on the north side of Via Marina. As Ms. Naegele indicates in her series of vitriolic emails, she will not see this as it will be on the other side of her '30 foot wall of green hedges'.

The Glazers want to be good neighbors and want to see that this house gets finished once and for all, but they do not want to create a safety or security risk for themselves or their guests or to be overburdened by this project, while the Applicant receives the full benefit from all of the approvals sought and bears none of the burden for any of this.

Thank you for your consideration of this matter.

Sincerely,
Frank Lynch

Francis X. J. Lynch, Esquire

<image001.jpg>

605 North Olive Avenue, 2nd Floor
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E-mail: flynch@sniffenlaw.com
Website: www.sniffenlaw.com / Twitter: @Sniffenlaw

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From: [Tracy Phillips](#)
To: [Gail Coniglio](#); [Danielle Hickox Moore](#); [Julie Araskog](#); [Lew Crampton](#); [Bobbie Lindsay](#); [Margaret Zeidman](#)
Cc: [Wayne Bergman](#); [Paul Castro](#); [Steven Stern](#); [John \(Skip\) C. Randolph](#); [Kelly Churney](#)
Subject: Variance Application # Z-19-00236 / 70 Middle Road
Date: Wednesday, July 15, 2020 11:09:01 AM

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Dear Madam Mayor, Ladies and Gentleman of the Town Council and Town Staff:

I am the resident and owner at 22 Middle Road, and have lived here since 1986.

I am primarily concerned about the location of the chicane on Via Marina, and the possible elimination of the sidewalk on Via Marina. Since Via Marina has no street light, if the sidewalk were to be removed, it would be a very dangerous night time walk and, in addition, in my opinion, it would completely obstruct the Glazers view as they back out of their driveway onto Via Marina, thus creating another very dangerous situation.

There must be another solution to the placement of the transformer.

Thank you for your consideration.

Spencer M. Partrich
31550 Northwestern Highway
Suite 200
Farmington Hills, MI 48334
Cell: (248) 310-0157
Tel: (248) 737-1432
Fax: (248) 851-0503
spartrich@lautrecltd.com

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From: [Paul Castro](#)
To: [Kelly Churney](#); [Bradley Falco](#)
Subject: FW: Variance Application # Z-19-00236 / 70 Middle Road
Date: Tuesday, October 13, 2020 11:20:37 AM
Attachments: [#FP.EASEMENT.4A OPTION A-EASEMENT ALTERNATIVE.pdf](#)
[#FP.EASEMENT.4B OPTION B-EASEMENT ALTERNATIVE.pdf](#)
[Scan Jul 8, 2020, 7.54 PM.pdf](#)
[202007090913.pdf](#)

FYI

From: Francis Lynch <flynch@sniffenlaw.com>
Sent: Monday, October 12, 2020 2:32 PM
To: Gail Coniglio <GConiglio@TownofPalmBeach.com>; Danielle Hickox Moore <DMoore@TownofPalmBeach.com>; Bobbie Lindsay <BLindsay@TownofPalmBeach.com>; Julie Araskog <jaraskog@TownOfPalmBeach.com>; Margaret Zeidman <MZeidman@TownofPalmBeach.com>; Lew Crampton <lcrampton@TownOfPalmBeach.com>
Cc: Wayne Bergman <wbergman@TownOfPalmBeach.com>; Paul Castro <PCastro@TownofPalmBeach.com>; John (Skip) C. Randolph <JRandolph@jonesfoster.com>
Subject: Variance Application # Z-19-00236 / 70 Middle Road

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Dear Madam Mayor, Ladies and Gentleman of the Town Council and Town Staff:

Once again, I am contacting you on behalf of my clients, who are the owners of the property at 195 Via Marina. My chronology of objections to the Application as well as to the chicane to house the equipment for the town's underground utility program is set forth in my emails below.

At this point, the Applicant seeks yet another deferral of her Application. This follows deferrals from the July, 2020 town council meeting, by the Applicant's right, and also a deferral by vote of the council at its August, 2020 meeting based upon the Applicant's inability to use technology to participate in that meeting via zoom and also for COVID-related concerns.

My clients have been forced to expend fees to track this Application and have me prepare to present their objections unnecessarily given the last minute nature of the Applicant's deferral requests. The continued deferrals are not fair to the neighbors who are not in favor of the Application or the chicane.

It has become apparent that the Applicant is seeking to defer her Application until the Town is compelled to either establish the chicane or compel another property owner (who is not seeking an ARCOM or zoning approval) to accept onto their property an easement for this equipment because of the Town's timeline for the undergrounding project. The Applicant has stated in no uncertain terms that she is unwilling to allow an easement to be placed upon her property for this equipment. Further, the proposed equipment will benefit only the Applicant's property.

As this town council indicated, the establishment of a chicane creates a potentially dangerous condition, has rarely been used during this undergrounding process and, in the very limited instances in which it has been used, has not been used on a street as busy as Via Marina.

My clients' and their property are most affected by this as it is their driveway that has its visibility diminished by the location of the chicane approximately twenty feet (20') from it. This will obscure the driveway, and the visibility of those exiting from it, onto Via Marina from vehicles traveling west along Via Marina. Ironically, it was this driveway onto Via Marina that was created when my clients' built their home to in order to reduce the number of curb cuts onto South County Road, as Public Works saw that access as a potentially dangerous situation.

The actions of the Applicant have placed my clients in the untenable position of accepting the chicane (thereby creating a dangerous condition acknowledged by the Town for themselves and their guests) or being forced to place an easement on their property (which will not benefit their property) to avoid the chicane, only to have the Application (to which my clients have objected as it relates to their property) remain pending. If certain aspects of that Application are subsequently granted, those approvals will diminish my clients' ability to the quiet enjoyment of their home by invading their privacy.

Based upon the foregoing, my clients request that you deny the deferral and deny the Application.

Thank you.
Frank Lynch

Francis X. J. Lynch, Esquire

SNIFFEN & SPELLMAN, P.A.

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West Palm Beach, Florida 33401
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Website: www.sniffenlaw.com / Twitter: @Sniffenlaw

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BEWARE OF CYBER FRAUD – BEFORE WIRING ANY FUNDS, CALL THE INTENDED RECIPIENT AT A NUMBER YOU KNOW IS VALID TO CONFIRM THE INSTRUCTIONS – AND BE VERY WARY OF ANY REQUEST TO CHANGE WIRE INSTRUCTIONS YOU ALREADY RECEIVED.

From: Francis Lynch

Sent: Thursday, July 09, 2020 4:47 PM

To: mayor@townofpalmbeach.com; dmoore@townofpalmbeach.com; jaraskog@townofpalmbeach.com; lcrampton@townofpalmbeach.com; blindsay@townofpalmbeach.com; mzeidman@townofpalmbeach.com

Cc: Wayne Bergman <wbergman@TownOfPalmBeach.com>; Paul Castro <PCastro@TownofPalmBeach.com>; Steven Stern <sstern@TownOfPalmBeach.com>; jrandolph@jonesfoster.com; Kelly Churney <KChurney@TownofPalmBeach.com>

Subject: Variance Application # Z-19-00236 / 70 Middle Road

Dear Madam Mayor, Ladies and Gentleman of the Town Council and Town Staff:

Please be advised that I represent Avram and Jill Glazer, the owners of the property located at 195 Via Marina, the property located immediately to the west of the Applicant's property. As a point of information, the Glazers' home was awarded the 2020 Elizabeth and John Schuler Award for excellence in new architecture. The Glazers have also owned and renovated a landmarked home on Middle Road in the past.

We have received the application along with the Applicant's request that either the sidewalk on the north side of Via Marina be removed or that a chicane be created within Via Marina so that the Applicant, who is seeking the following variances:

1. To allow a generator to be placed in a street side yard with a setback of 8.5' in lieu of 25' required (this is closest to the Glazers' front door and bedroom side of their house),
2. A variance for lot coverage (which is already exceeded by more than 10% above that allowed by code) to allow for the construction of a laundry room,
3. To allow the already-exceeded cubic content ratio to be expanded even further (the existing cubic content ration is now more than twice that permitted by code, prior to the filing of this application),
4. To allow for a north side setback of 7.6' in lieu of 15' required to allow for the

aforementioned laundry room and

5. To convert an existing flat roof to a covered balcony with a side yard setback of 7.6' in lieu of 15', which will loom over the Glazers' property.

As you are all aware, this house and its seemingly never-ending construction has been the subject of expired permits prior to the Applicant filing this Application.

As you are also well aware, the request by the town of an owner/applicant (and the consent of that owner/applicant) for a utility easement on an applicant's property has been a part of the zoning process since the town began considering the utility undergrounding program. The town's request for an easement should come as no surprise to this particular Applicant, however, in addition to the numerous variances requested, the Applicant also seeks that her property not be subjected to easements on her property required by the town's current utility undergrounding project.

Last but not least, you are aware that Middle Road was, at one point, under consideration for landmarking as a district, given the significant number of landmarked homes located on that street. But this Applicant, despite the number of requests in her zoning Application, is unwilling to accept an easement on her property to allow the undergrounding to be shielded from view on her property, as many other property owners in the town have been asked, and agreed, to do.

Instead of doing this, the Applicant would like you to locate the utilities near the Glazers' property, either by removing a sidewalk or by placing a chicane in Via Marina, allowing the Glazers to bear the full brunt of the Applicant's zoning request. In the interest of being good neighbors, the Glazers have already submitted a letter consenting to the placement of the generator in the street side yard setback, an area closest to their front door and bedroom areas of their home. This consent was given prior to the Applicant's request related to the utilities and, should the Applicant continue to refuse to grant an easement on her property, the Glazers may elect to rescind this consent, as the Glazers are unwilling to bear the full brunt of these requests. The Glazers are extremely concerned that either the elimination of the sidewalk on the north side of Via Marina or the creation of a chicane on the north side of Via Marina, approximately 20' from the Glazers' driveway onto Via Marina, will create a dangerous condition for the Glazers and their guests.

I am attaching to this email Options A, B and the chicane, which I believe were prepared by the Applicant's representatives (although there is no block indicating that these were prepared by a licensed professional) and circulated to the neighbors. At the very least, I would hope that the town would prepare (or require that a professional prepare) the visual aids for these proposals, appropriated scaled and dimensioned, so that those potentially affected by these options can all see an unbiased presentation of what this will look like and exactly where it will be located before town council votes on something which could affect the neighbors' homes.

Both Options A and B involve removing the sidewalk on the north side of Via Marina. For those of you who may not know, there is no street light on either side of this block of Via Marina. As a result, at night, the street is very dark. Recently, the police directed the protesters from the recent march down Via Marina. One of them peered into the Glazers' security camera. As you can imagine, both the re-direction of the protest and the situation with the security camera were unsettling. This, coupled with a tall hedge to shield the equipment from view, creates not only a security issue for the Glazers, their property and their guests, but also creates a safety issue, impairing the visibility of those exiting the Glazers' driveway onto Middle Road as well as impairing the visibility of the Glazers' driveway for those traveling west along Via Marina. This would literally create an accident waiting to happen.

Eliminating the sidewalk on the north side of Via Marina would also mean that the contiguous sidewalks in this area would be eliminated. At present, the neighbors can walk along Middle Road, Via Marina, South County Road and Gulfstream Road without the need to cross a street.

The third option proposed by the Applicant, and only recently presented by the town (see Steven Steven's letter dated June 26, 2020), is the chicane. It is my understanding that a chicane is in use in only one other location in town- on Laurie Lane, adjacent to a property owned by a client of mine. In this particular instance, none of the neighbors was willing to grant an easement on their property. At the same time, none of the property owners in this area sought an ARCOM, LPC or zoning approval at the time the easement was requested. Subsequently, a property was sold to my client, that property required zoning approvals to build, and despite the chicane already existing, the approval granted required that an easement be placed on the property prior to a building permit being issued. Please see a copy of the zoning approval letter attached to this email. This would lead me to believe that even the town does not believe a chicane to be a desired method of placing the necessary equipment, but only as a last resort. In this particular instance, this Applicant is seeking a number of variances, the legal hardship for which may or may not exist, but is refusing to consent to an easement on her property. Additionally, Laurie Lane is a significantly less traveled street than is Via Marina. Many use Via Marina as a connector between South County Road and South Ocean Boulevard. In contrast, there are a total of six houses on Laurie Lane and only two have Laurie Lane addresses, according to the Palm Beach County Property Appraiser's website.

The Glazers' landscapers and other service providers already have difficulty parking and accessing their property; they cannot park on South County Road, so Via Marina is the only parking they have. In addition, landscape material from the Glazers' property is placed in this area for pick up. By the same token, the service providers for the Glazers' neighbors on South County Road providers also park on Via Marina as they cannot park on South County Road. The chicane will all but eliminate use of this area for parking or to allow the town to pick up landscape material.

The chicane appears to have a curb surrounding it. There is no curb on the north side of Via Marina in this block. Installing a curb around the chicane will create a tripping hazard, especially in a block that is very dark at night.

Via Marina is approximately thirty feet wide. The chicane, as painted in the street, appears to be about ten feet wide by thirty feet long. If the chicane is installed, that will narrow Via Marina in this area such that it will be difficult for two cars to safely pass one another.

It is interesting that the Applicant's chicane plan and the photograph in Mr. Stern's letter shows the FPL equipment surrounded by poles to protect it. This all but acknowledges that this chicane will create a dangerous condition for vehicles driving on Via Marina. But what about the Glazers and their guests using the Glazers' driveway and backing out onto Via Marina? This also creates a dangerous condition for those who drive or walk along this portion of Via Marina as the Glazers' driveway will be obscured to those traveling west along Via Marina. As I said earlier, this would create an accident waiting to happen.

Last, but not least, a chicane would not be the most attractive addition to a neighborhood that includes landmarked and award winning homes.

If you are inclined to agree to a chicane, we would like to see it moved much further east adjacent to 70 Middle Road, closer to the intersection of Via Marina and Middle Road, with a street light placed on the north side of Via Marina. As Ms. Naegele indicates in her series of vitriolic emails, she will not see this as it will be on the other side of her '30 foot wall of green hedges'.

The Glazers want to be good neighbors and want to see that this house gets finished once and for all, but they do not want to create a safety or security risk for themselves or their guests or to be overburdened by this project, while the Applicant receives the full benefit from all of the approvals sought and bears none of the burden for any of this.

Thank you for your consideration of this matter.

Sincerely,
Frank Lynch

Francis X. J. Lynch, Esquire

<image001.jpg>

605 North Olive Avenue, 2nd Floor
West Palm Beach, Florida 33401
T (561) 721-4000 / F (561) 721-4001 / D (561) 721-4004
E-mail: flynch@sniffenlaw.com

Website: www.sniffenlaw.com / Twitter: @Sniffenlaw

AS OF OCTOBER 1, 2019, WE HAVE JOINED THE FIRM OF SNIFFEN & SPELLMAN, P.A. PLEASE NOTE THE CHANGE OF E-MAIL ADDRESS. OUR TELEPHONE NUMBER, FACSIMILE NUMBER AND ADDRESS REMAIN THE SAME.

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From: Francis Lynch

Sent: Monday, July 13, 2020 12:43 PM

To: mayor@townofpalmbeach.com; dmoore@townofpalmbeach.com; jaraskog@townofpalmbeach.com; lcrampton@townofpalmbeach.com; blindsay@townofpalmbeach.com; mzeidman@townofpalmbeach.com

Cc: Wayne Bergman <wbergman@TownOfPalmBeach.com>; Paul Castro <PCastro@TownofPalmBeach.com>; Steven Stern <ssstern@TownOfPalmBeach.com>; jrandolph@jonesfoster.com; Kelly Churney <KChurney@TownofPalmBeach.com>

Subject: RE: Variance Application # Z-19-00236 / 70 Middle Road

In the event there is any confusion as to my clients' position in this, please be advised that the Glazers are withdrawing their letter of support for this application and request that the Applicant prove her hardship as to the variances requested.

Thank you.

Frank Lynch

Francis X. J. Lynch, Esquire

SNIFFEN & SPELLMAN, P.A.

605 North Olive Avenue, 2nd Floor

West Palm Beach, Florida 33401

T (561) 721-4000 / F (561) 721-4001 / D (561) 721-4004

E-mail: flynch@sniffenlaw.com

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From: Francis Lynch

Sent: Saturday, August 08, 2020 9:07 AM

To: 'mayor@townofpalmbeach.com' <mayor@townofpalmbeach.com>; 'dmoore@townofpalmbeach.com' <dmoore@townofpalmbeach.com>; Lew Crampton <lcrampton@TownOfPalmBeach.com>; Julie Araskog <jaraskog@TownOfPalmBeach.com>; Bobbie Lindsay <BLindsay@TownofPalmBeach.com>; Margaret Zeidman <MZeidman@TownofPalmBeach.com>

Cc: Wayne Bergman <wbergman@TownOfPalmBeach.com>; 'Paul Castro' <PCastro@TownofPalmBeach.com>

Subject: Variance Application # Z-19-00236 / 70 Middle Road

Dear Madam Mayor, Ladies and Gentleman of the Town Council and Town Staff:

To follow up my previous email to you of July 9, 2020, please be advised that my clients object to the above Application.

The objections are based on the already non-conforming nature of the improvements which the Application seeks not only to expand but add to in its five (5) variance requests.

The Application acknowledges that the property is "non-conforming to today's code". The existing improvements are non-conforming at least as to the following prior to filing this Application:

PERMITTED

EXISTING

A. Building height

22.0' maximum

30.0' (estimated)

B. Building Overall Height	30.0' maximum	35.4'
C. Lot coverage	30.0% maximum	33.5%
D. Landscaped open space	45.0% minimum	32.2%
E. CCR	3.96 maximum	8.32

yet the Applicant seeks to expand the non-conformities set forth in items C, D and E above while creating additional non-conformities by way of variances as to the street side yard (the generator) and the north side yard setback (the laundry room and covered balcony). In each of the above instances, the existing condition significantly exceeds that permitted by code, prior to filing the Application. The variances as to the generator, laundry room and covered porch are also significant, rather than de minimus, variances.

We are left to ask "Where does this end?"

The Applicant already has a house that is taller than permitted by code, with a greater lot coverage than permitted by code, with less landscaping than required by code, yet seeks additional variances to allow her to expand even further on those non-conformities.

My clients are opposed to the Application, as submitted, for the reasons indicated above and ask that you deny each request.

Thank you for your consideration of this matter.

Sincerely,

Frank Lynch

Francis X. J. Lynch, Esquire

SNIFFEN & SPELLMAN, P. A.

605 North Olive Avenue, 2nd Floor

West Palm Beach, Florida 33401

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TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00265 SPECIAL EXCEPTION WITH SITE PLAN REVIEW Zoning District: R-B Low Density Residential The application of Carlos Musso, Sr., Applicant, relative to property located at **110 SEAGATE RD**, legal description on file, is described below. Special Exception with Site Plan Review to allow the construction of a 4,201 square foot two-story new residence on non-conforming portions of platted lots with a depth of 96.12 feet in lieu of the 100 foot minimum depth required in the R-B Zoning District. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed special exception and site plan review will not cause negative architectural impact to the subject property. Motion carried 7-0.] [The Architectural Review Commission approved the project as presented. Carried 7-0.] [The Architectural Review Commission reviewed this project after it was remanded back to them from Town Council. The Architectural Review Commission approved the project as presented based on the competent, substantial evidence and on Section 18-205, criteria 4, 6 and 8.]

Presenter

ATTACHMENTS:

- ▢ **Memorandum Dated October 29, 2020 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▢ **Comments from the Development Review Committee**
- ▢ **Email Dated July 27, 2020 from Kathleen Amling**
- ▢ **Email Dated July 28, 2020 from Anthony Nicolette**
- ▢ **Email Dated July 27, 2020 from Joanne Paladino**
- ▢ **Letter Dated July 27, 2020 from Jeffrey Smith**
- ▢ **Email Dated August 31, 2020 from Kathleen Amling**
- ▢ **Letter Received September 3, 2020 from Joanne Paladino**
- ▢ **Email Dated September 15, 2020 from Claire Musso**
- ▢ **Email Dated September 15, 2020 from Khooshe Aiken**
- ▢ **Email Dated October 21, 2020 from Michael McDonald**
- ▢ **Email Dated October 22, 2020 from Khooshe Aiken**

- ▢ **Email Dated October 19, 2020 from Vickie Scheuer**
- ▢ **Letter Received October 27, 2020 from Joanne Paladino**
- ▢ **Email Dated October 23, 2020 from Anthony Nicolette**
- ▢ **Email Dated October 23, 2020 from Jacqueline Murphy**
- ▢ **Email Dated October 26, 2020 from Anne Metzger**
- ▢ **Email Dated October 23, 2020 from Tom Holland**
- ▢ **Email Dated October 23, 2020 from Sally Gingras**
- ▢ **Letter received October 21, 2020 from Susan Gary**
- ▢ **Email Dated October 26, 2020 from Jennifer Garrigues**
- ▢ **Email Dated October 25, 2020 from John C. Dotterrer**
- ▢ **Email Dated October 26, 2020 from Kathy Delaney**
- ▢ **Email Dated October 24, 2020 from Lisa Bertelson**
- ▢ **Letter Dated October 22, 2020 from John Andrica**
- ▢ **Email Dated October 26, 2020 from Kathleen Amling**
- ▢ **Letter Received October 30, 2020 from Adele Merck**
- ▢ **Email Dated October 30, 2020 from Melanie Fowler**
- ▢ **Email Dated October 30, 2020 from Melanie Fowler**

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 13, 2020

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00265 SPECIAL EXCEPTION WITH SITE PLAN REVIEW**
110 SEAGATE RD

Date: October 29, 2020

BACKGROUND

An application has been received for the following project:

REQUEST:

Special Exception with Site Plan Review to allow the construction of a 4,201 square foot two-story new residence on non-conforming portions of platted lots with a depth of 96.12 feet in lieu of the 100 foot minimum depth required in the R-B Zoning District.

ADDRESS: 110 SEAGATE RD

OWNER: MUSSO CARLOS SR

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-42-34-08-000-0012

ZONING DISTRICT: R-B Low Density Residential

LEGAL DESCRIPTION: NORTH SHORE ADD TO PALM BEACH W 101.5
FT OF LT 1 & E 3 FT OF LT 7

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 6/12/20

APPLICATION NO.: Z-20-00265 **APPLICATION TYPE:** SPECIAL EXCEPTION WITH SITE PLAN REVIEW

ADDRESS: 110 SEAGATE RD

DESCRIPTION: Special Exception with Site Plan Review to allow the construction of a 4,201 square foot two-story new residence on non-conforming portions of platted lots with a depth of 96.12 feet in lieu of the 100 foot minimum depth required in the R-B Zoning District.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Acting Director, Planning, Zoning & Building	6/23/2020	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	7/30/2020	No Comments - Stormwater Level of Service proposed to be meet.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	6/23/2020	There are no fire code concerns with this project
PZB DIRECTOR	Wayne Bergman, Acting Director, Planning, Zoning & Building	6/23/2020	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	6/23/2020	There are no variances being requested an I have no comment.

From: KATHLEEN AMLING
To: Kelly Churney
Subject: 110 Seagate Road
Date: Monday, July 27, 2020 5:59:58 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear members of ARCOM,

I'm writing to express our dissatisfaction with the proposed plans for 110 Seagate Road. The pueblo style architecture could not be more dissimilar to the rest to the neighborhood. There have been many lovely additions to our street over the last few years that add to the harmonious nature of the neighborhood. We urge you to reject the current plans and encourage the future plans to be in good taste and design for our lovely street.

Sincerely,

Katy Dew Amling
161 Seagate Road
Palm Beach, FL 33480

Sent from my iPad

From: Anthony Nicolette
To: Kelly Churney
Subject: 110 Seagate Road proposal by Daily Janssen Architects
Date: Tuesday, July 28, 2020 7:36:38 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

July 28, 2020

Mr. ARCOM Chairman and ARCOM Members:

My wife's parents along with my spouse and I have had an association as owners of 124 Seagate Road for over 46 years. I have received a letter from the Town of Palm Beach of a redevelopment project proposal at 110 Seagate Road. The proposed new residence is completely out of context with our immediate and surrounding neighborhood.

Therefore, I must respectfully disapprove of this proposed structure. The exterior design reminds me of a western jail in the 1800's including the small windows. The house is quite dissimilar in regard to other homes nearby. From my memory of our building code, I believe new residences have to be in some type of conformity with our immediate area on the North End of the island. Kindly reject this proposal. Thank you for your attention in this matter.

Sincerely,

Anthony J. Nicolette, Jr., M.D.

From: Joanne Paladino
To: Kelly Churney
Subject: Plans for 110 Seagate Road
Date: Monday, July 27, 2020 7:18:26 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Members of ARCOM,

I am writing to express my dissatisfaction with the proposed plans for 110 Seagate Road. The architectural style, Euro Modern, Pueblo Style, ??? could not be more dissimilar to the rest of the neighborhood. I urge you to reject the current plans, see Jeff Smith and Katy Amling's letter, sent to ARCOM separately.

I encourage you to consider a future plan which is more in keeping with cohesiveness of this very special neighborhood.

Thank you in advance for your consideration and your time spent on this important topic.

Best Regards,
Joanne Paladino
148 Seagate Road
Palm Beach FL, 33480

From: [work](#)
To: [Kelly Churney](#)
Cc: [Smith Jeffery](#); [Smith Nancy](#)
Subject: 110 Seagate Road, Palm Beach
Date: Monday, July 27, 2020 3:36:09 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Kelly,

Attached is a letter addressed to the Chairman of ARCOM and all ARCOM members. Will you please see that everyone gets a copy of my letter.
Thank you in advance.
Best regards,

Jeffery W. Smith, AIA
jeff@smitharchitecturalgroup.com

JEFFERY W. SMITH, AIA
119 SEAGATE ROAD
PALM BEACH, FLORIDA

July 21, 2020

Town of Palm Beach
Architectural Review Commission
360 South County Road
Palm Beach, Florida 33480

Re: ARCOM #B037-2020/110 Seagate Road, Palm Beach

Dear Mr. Chairman and ARCOM Members,

My family and I have owned the property at 119 Seagate Road for 50 years. I have been notified by the Town of Palm Beach of the redevelopment of the property at 110 Seagate Road. We have watched the gradual redevelopment of houses on the street without incident. However, the proposed new residence at 110 Seagate Road is out of context with the immediate neighborhood, which our code defines as an area within 200 feet of the proposed development. My property is less than 25 feet from said project.

I am a past member of the Architectural Review Commission for 15 years, 7 of which I was the Chairman. I know you have a difficult job in front of you every month but you cannot lose sight of our ordinances or your charge to enforce them.

I submit to you that this project does not meet the letter of our Code in the following respects, taken directly from the language in our Code of Ordinances:

Sec. 18-205. - Criteria for a building permit.

(a) The architectural commission may approve, approve with conditions, or disapprove the issuance of a building permit in any matter subject to its jurisdiction only after consideration of whether the following criteria are complied with:

(1) The plan for the proposed building or structure is **(NOT)** in conformity with good taste and design and in general contributes to the image of the town as a place of beauty, spaciousness, balance, taste, fitness, charm and high quality.

(3) The proposed building or structure is ~~not~~, in its **exterior design** and appearance, of inferior quality such as to cause the nature of the local environment to materially depreciate in appearance and value.

(4) The proposed building or structure is **(NOT)** in harmony with the proposed developments on land in the general area, with the comprehensive plan for the town, and with any precise plans adopted pursuant to the comprehensive plan.

(6) The proposed building or structure **(is)** ~~not~~ excessively dissimilar in relation to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features:

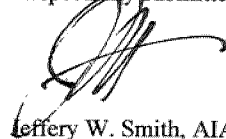
- b. Other significant design features including, but not limited to, materials or quality of architectural design.
- c. Architectural compatibility.
- d. Arrangement of the components of the structure.
- e. Appearance of mass from the street or any perspective visible to the public or adjoining properties.

(8) The proposed building or structure is **(NOT)** appropriate in relation to the established character of other structures in the immediate area or neighboring areas in respect to significant design features such as material or quality or architectural design as viewed from any public or private way (except alleys).

Our code is quite clear in that no new residence may be too similar or too dissimilar to any residence within 200 feet of the proposed structure.

The only way to approve this project is to change the wording in our Town Code.

Respectfully submitted,



Jeffery W. Smith, AIA

From: Antonette Fabrizi on behalf of Town Council
To: Town Council & Mayor
Cc: Wayne Bergman; Kelly Churney; Laura Groves van Onna
Subject: Fw: 110 Seagate Road
Date: Monday, August 31, 2020 11:12:05 AM

From: KATHLEEN AMLING <dewkaty@me.com>
Sent: Monday, August 31, 2020 10:54 AM
To: Town Council; arcom@townofpalmbeach.com
Cc: Joanne Paladino; Jeff Amling; work; Araskog Julie; Betsy Shiverick
Subject: Fwd: 110 Seagate Road

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Town Council and ARCOM,

It's come to my attention that my email below never made it to ARCOM. Because of this, there are two issues I ask you to address. One, this project passed with numerous neighbors objecting. My neighbors objected because the Adobe architecture is too dissimilar to the rest of the neighborhood. Given that this house sits close to the gateway of the street, wouldn't it be the civilized thing to do to keep with code and keep a harmonious neighborhood?

Shouldn't code matter? I understand the new plans allow for more landscaping. ARCOM should be solely fixated on architecture, not ever changing landscaping. Good landscaping does not cure inappropriate architecture! The current plans do not follow our town's code!

Second, why did my email never make it to ARCOM? Why did my neighbors' letters not make it either? Are there systematic processes that need to be addressed? Our neighborhood is far too important to let mistakes like this happen.

Your very frustrated neighbor,

Katy Dew Amling

161 Seagate Road

Sent from my iPad

Begin forwarded message:

From: Kelly Churney <KChurney@TownofPalmBeach.com>
Date: July 28, 2020 at 6:22:03 AM MDT
To: KATHLEEN AMLING <dewkaty@me.com>

Subject: RE: 110 Seagate Road

Thank you Ms. Amling,

I have passed your email to the ARCOM members.

Have a good day,

Kelly Churney
Administrative Specialist

Town of Palm Beach
Planning, Zoning & Building
360 S. County Rd.
Palm Beach, FL 33480
561-227-6408
561-835-4621 (fax)
www.townofpalmbeach.com

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

From: KATHLEEN AMLING <dewkaty@me.com>
Sent: Monday, July 27, 2020 6:00 PM
To: Kelly Churney <KChurney@TownofPalmBeach.com>
Subject: 110 Seagate Road

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear members of ARCOM,
I'm writing to express our dissatisfaction with the proposed plans for 110 Seagate Road. The pueblo style architecture could not be more dissimilar to the rest of the neighborhood. There have been many lovely additions to our street over the last few years that add to the harmonious nature of the neighborhood. We urge you to reject the current plans and encourage the future plans to be in good taste and design for our lovely street.

Sincerely,
Katy Dew Amling
161 Seagate Road
Palm Beach, FL 33480

Sent from my iPad

Please be advised that under Florida law, e-mails and 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 at (561) 838-5400, or in writing: 360 S. County RD, Palm Beach, FL 33480.

Dear Town Council and ARCOM

I would like to bring to your attention two important procedural breakdowns during the presentation of the proposed building plan for 110 Seagate Road, at the July 29th and August 26th ARCOM meetings.

The first, two letters, Katy Amling's and mine, both strongly objecting to the proposed plan, were not presented to members of ARCOM. Further, the letters did not become evidence when considering the project at either meeting. Nor, was their content part of any discussion about the design being excessively dissimilar for the neighborhood. I believe these factors create a due process issue.

We have received an apology from ARCOM for this mistake, however, should Seagate residents have to pay for an ARCOM error by living with a home that is not appropriate to the established character of the street? I think not.

The second, important breakdown, I was unable to log on to the July 29th meeting to express my opposition to the plan due to technical difficulties on the Town's end. Jeff Smith, unfortunately, was not able to join the August 26th meeting, again, due to technical difficulties on the Town's end.

My voice was not heard at the July 29th meeting but my objections still stand. This is not a criticism of the architecture, it's about a home, which clearly, is not in harmony with the neighborhood.

I understand there are some examples of this architectural style in West Palm Beach. However, there is nothing like this on the North End of Palm Beach, much less within 200 feet of 110 Seagate Road. It is also, materially inconsistent with the architecture of the street and therefore, does not meet Town Code.

Why ARCOM did not see this and exercise its responsibility to enforce code, I will never know. Didn't members take into consideration how we, the residents, might feel about having this disruptive element as the gateway to our neighborhood?

Given these town generated procedural errors, further supported by residents' opposition to a home that is out of context with the neighborhood, this plan should be sent back to ARCOM. No amount of landscaping is going to change the architecture, which is too dissimilar and not a good fit for the block.

It is not by chance that Seagate Road, a small, tightly knit, cohesive neighborhood, is so special. We have, fought hard to make and keep it this way by insuring Code is applied to all renovations, additions and new builds, 110 should be no different.

Sincerely,
Joanne Paladino
148 Seagate Road

From: [claire musso](#)
To: [powellpaladino@gmail.com](#); [dewkatv@aol.com](#); [jeffrey.amling@fticonsulting.com](#)
Cc: [Roger Janssen](#); [mziska@floridawills.com](#); [Kelly Churney](#); [Wayne Bergman](#); [ivaonna@townofpalmbeach.com](#); [Paul Castro](#); [Bradley Falco](#); [kaiken@renaissancepartners.com](#)
Subject: 110 Seagate Road
Date: Tuesday, September 15, 2020 2:56:05 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Mrs. Paladino,
Dear Mr. and Mrs. Amling,

My husband, Carlos, and I were devastated to hear that you are appealing the unanimous vote of the Architectural Commission regarding the plans for our home.

I wanted to reach out to you really just to offer some friendship and let you know us a little better. We both have deep ties to Palm Beach as my family lived at 66 Middle Road (and later bought number 54 and made it apart of 66) for many decades. Later my widowed father moved to 273 List Road. I lived and have worked as a flower and garden designer in Palm Beach from 1997 until retiring 2 years ago. Carlos' business, Unisa, had a shop at 313 Worth Avenue from 2003 until 2008.

Originally, Carlos came to Palm Beach from Cuba in 1960 where his family lived on the Phipps property as Mr. Phipps and his grandfather were great friends. Later his grandfather developed Kawama Lane with the Fanjul family each owning 3 properties. Carlos still has family ties in Palm Beach with his cousins Toinette and Amanda Boalt Coleman-who is also a neighbor on Angler Road.

All three of our sons grew up in Palm Beach and attended school there. My son, Graham Faught, went to Palm Beach Academy and the Day School. Young Carlos and Tony Musso attended Rosarian.

Carlos and I married in 2005 and while living in Coral Gables we have always dreamed of returning to Palm Beach. We have worked on these plans for the last 5 years. I know where you are coming from (and agree) in the sense of disliking the super modern, cold and bright white boxy houses that have been built in Palm Beach of late... but our design is not really at all going to be like those. It is impossible to get a true feeling what it would look like from a CAD print. First of all, we value our privacy and will restore the Seagrape hedge to cover the 2 stories. The stucco finish will be very rounded, a warmer white, to imitate the older homes in Ibiza where we found our inspiration. And being a garden designer, I am very sensitive to the edges of the roofline and will be softening those with pale pink Pandorea vines. I know you say that the architecture should stand alone but that is not really fair as you will not be impacted after construction.

As far as the house not being your taste, there's nothing I can do about that except say that I am sorry! But do you really want every house to look similar? That would be perfect in a development but Palm Beach is not about that. There are many, many Spanish inspired homes

and buildings in Palm Beach! I'd like to think that Addison Mizner would have liked our little house by the sea.

I ask that you please give us the opportunity to build our dream home and, given the chance, become good neighbors to you.

Most sincerely,
Claire and Carlos Musso

P.S.
Please call if us if you like. My number is 561-379-3269 and Carlos 305-606-9800

From: Khooshe A Aiken
To: [claire musso](#)
Cc: [powellpaladino@gmail.com](#); [dewkaty@aol.com](#); [jeffrey.amling@fticonsulting.com](#); Roger Janssen; [mziska@floridawills.com](#); [Kelly Churney](#); [Wayne Bergman](#); [ivaonna@townofpalmbeach.com](#); [Paul Castro](#); [Bradley Falco](#)
Subject: Re: 110 Seagate Road
Date: Tuesday, September 15, 2020 8:26:58 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Claire,

Thank you for your kind note. I like the design and scale of your new home. I hope that this difference of design and code interpretation will be resolved swiftly and amicably so that we may toast and welcome you to our neighborhood.

Best,

Khooshe Aiken
145 Seagate

On Sep 15, 2020, at 2:56 PM, [claire musso <bplanetclaire123@gmail.com>](#) wrote:

Dear Mrs. Paladino,
Dear Mr. and Mrs. Amling,

My husband, Carlos, and I were devastated to hear that you are appealing the unanimous vote of the Architectural Commission regarding the plans for our home.

I wanted to reach out to you really just to offer some friendship and let you know us a little better. We both have deep ties to Palm Beach as my family lived at 66 Middle Road (and later bought number 54 and made it apart of 66) for many decades. Later my widowed father moved to 273 List Road. I lived and have worked as a flower and garden designer in Palm Beach from 1997 until retiring 2

years ago. Carlos' business, Unisa, had a shop at 313 Worth Avenue from 2003 until 2008.

Originally, Carlos came to Palm Beach from Cuba in 1960 where his family lived on the Phipps property as Mr. Phipps and his grandfather were great friends. Later his grandfather developed Kawama Lane with the Fanjul family each owning 3 properties. Carlos still has family ties in Palm Beach with his cousins Toinette and Amanda Boalt Coleman-who is also a neighbor on Angler Road.

All three of our sons grew up in Palm Beach and attended school there. My son, Graham Faught, went to Palm Beach Academy and the Day School. Young Carlos and Tony Musso attended Rosarian.

Carlos and I married in 2005 and while living in Coral Gables we have always dreamed of returning to Palm Beach. We have worked on these plans for the last 5 years. I know where you are coming from (and agree) in the sense of disliking the super modern, cold and bright white boxy houses that have been built in Palm Beach of late... but our design is not really at all going to be like those. It is impossible to get a true feeling what it would look like from a CAD print. First of all, we value our privacy and will restore the Seagrape hedge to cover the 2 stories. The stucco finish will be very rounded, a warmer white, to imitate the older homes in Ibiza where we found our inspiration. And being a garden designer, I am very sensitive to the edges of the roofline and will be softening those with pale pink Pandorea vines. I know you say that the architecture should stand alone but that is not really fair as you will not be impacted after construction.

As far as the house not being your taste, there's nothing I can do about that except say that I am sorry! But do you really want every house to look similar? That would be perfect in a development but Palm Beach is not about that. There are many, many Spanish inspired homes and buildings in Palm Beach! I'd like to think that Addison Mizner would have liked our little house by the sea.

I ask that you please give us the opportunity to build our dream home and, given the chance, become good neighbors to you.

Most sincerely,
Claire and Carlos Musso

P.S.

Please call if us if you like. My number is 561-379-3269 and Carlos 305-606-9800

From: Michael McDonald
To: Kelly Churney; Wayne Bergman; ivaonna@townofpalmbeach.com; Paul Castro; Bradley Falco
Cc: Roger Janssen; Megan McDonald
Subject: 110 Seagate Road
Date: Wednesday, October 21, 2020 12:35:38 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Good afternoon Town of Palm Beach,

My wife and I have both reviewed designs of a proposed house at 110 Seagate Rd (Architect Roger Janssen). Both my wife and I have **no** objections to this design as well as the size of this house. We trust this email will suffice as support from both my wife and myself on the proposed house at 110 Seagate Rd. We trust whatever differences there are will be fixed as soon as possible.

Best Regards,

Michael & Megan McDonald
156 Seagate Rd
Palm Beach, FL 33480
561.529.0606

From: [Maura Ziska](#)
To: [Kelly Churney](#)
Cc: roger@dailevjanssen.com
Subject: FW: Musso Residence 110 Seagate
Date: Thursday, October 22, 2020 1:45:03 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Kelly: can you please share the below support email with the ARCOM commissioners from Khooshe Aiken who lives at 145 Seagate. Thanks. Maura

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

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From: Khooshe A Aiken <kaiken@renaissancepartners.com>
Sent: Thursday, October 22, 2020 7:31 AM
To: Maura Ziska <MZiska@floridawills.com>
Subject: Re: Musso Residence 110 Seagate

Hi Maura,
You absolutely may. I do think the right kind of architectural diversity on our street should be embraced. I am inspired by the Musso house with its unique, charming and understated tropical design.
Best,
Khooshe

On Oct 21, 2020, at 9:22 PM, Maura Ziska <MZiska@floridawills.com> wrote:

Hi Khooshe: Hope you are staying well! I was Just wondering if I can forward the below email to the ARCOM commissioners or would you send another support letter to kchurney@townofpalmbeach.com
For their ARCOM project that is coming up next week? Thanks. Maura

From: **Khooshe A Aiken** <kaiken@renaissancepartners.com>
Date: Tue, Sep 15, 2020 at 8:26 PM
Subject: Re: 110 Seagate Road
To: claire musso <bplanetclaire123@gmail.com>
Cc: <powellpaladino@gmail.com>, <dewkaty@aol.com>, <jeffrey.amling@fticonsulting.com>, Roger Janssen <roger@daileyjanssen.com>, <mziska@floridawills.com>, <kchurney@townofpalmbeach.com>, <wbergman@townofpalmbeach.com>, <ivaonna@townofpalmbeach.com>, <Pcastro@townofpalmbeach.com>, <bfalco@townofpalmbeach.com>

Dear Claire,

Thank you for your kind note. I like the design and scale of your new home. I hope that this difference of design and code interpretation will be resolved swiftly and amicably so that we may toast and welcome you to our neighborhood.

Best,

Khooshe Aiken
145 Seagate

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

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intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

From: Vickie Scheuer
To: Kelly Churney
Subject: Fwd: 110 Seagate Road
Date: Monday, October 19, 2020 2:47:12 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Please forward to ARCOM - thank you.

Sent from AOL Mobile Mail
Get the new AOL app: mail.mobile.aol.com

On Monday, October 19, 2020, arcom@townofpalmbeach.com <arcom@townofpalmbeach.com> wrote:

My name is Vickie Scheuer and I own 120 Seagate Road.

I have been gone for the summer months visiting my grandchildren up north.
I had no idea what was being proposed for the property right next door to mine, at 110 Seagate Road.

After seeing the photos of the white box, I am pleased that the appeal was granted for the integrity of the island. I do not believe that the proposed plan conforms to town code, and the design is completely dissimilar to the beautiful neighborhood.

Thank you!

Vickie

Sent from AOL Mobile Mail
Get the new AOL app: mail.mobile.aol.com

Members of ARCOM,

I am writing to request the plans for 110 Seagate be sent back for changes which would make it a better fit for the neighborhood.

Architecture is a visual art, considered not only for its design and style, but also for its perception in its surroundings.

Your first perceptions were correct, spot on. You didn't need us to tell you to read the code to express your considered views. You saw immediately that the proposed plan was materially inconsistent with the architecture on the street and did not meet Town Code.

Seven members present at the July 29 meeting thought it was either too dissimilar, not a good fit, or needed changes. Five members suggested changes, from arching the windows, using barrel tiles, or adding traditional detailing, to changing the roof line. No substantive changes were made, yet the plan was unanimously approved at the August 28 meeting. A few pandora vines were added to soften the roof line and all the windows and doors were changed to have coral stone and Brickmold and wood headers.

Visually, I think you knew the plan should have been sent back to the drawing board for changes so it would fit seamlessly into the neighborhood. But in your relief to see something new, "I am so happy to see this, I am so sick of these island houses, I could scream." You unanimously approved, what several members thought to be, architecturally, a "great house". I understand how this plan got approved.

My understanding, however, does not change the fact that you did not exercise your duty or fulfill your responsibility to enforce Town Code. You approved a plan you knew was out of context and not in harmony with the established neighborhood because you liked it. I can't find the word "like" as a criteria in Town Code.

I think our requests provide you with the opportunity to remedy this situation. Please reconsider, the growing number of neighbor objections, apply criteria 4,6, and 8 of the Building Code (SEC. 18-205), and direct the architect to go back to the drawing board to come up with a more harmonious design.

I look forward to a positive resolution. One which would satisfy residents, owners and Town Code. I recognize this is no easy task, but it is critical to the visual preservation and cohesiveness of our neighborhoods. I know we are up to it.

Thank your for your consideration

Joanne Paladino
148 Seagate Road

From: Anthony Nicolette
To: Kelly Churney
Subject: Re: 110 Seagate Road proposal by Daily Janssen Architects
Date: Friday, October 23, 2020 9:35:50 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

ARCOM Chairman and ARCOM members:

It has been brought to my attention that the proposed project at 110 Seagate Road in Palm Beach was unanimously approved on August 28th of 2020. I would like to reiterate my opposition to this plan as was so stated in my letter of July 28th of 2020. It is extremely difficult for me to understand how something so dissimilar and so disruptive to the harmony of the neighborhood was approved. As stated in my previous letter, I was under the impression that new homes under construction have to be in conformity within our immediate area on the North End of the island. The proposed plans do not accomplish that goal. I once again ask your members of ARCOM including the chairman to reject this project completely. Kindly reconsider what your are doing to this area. Substantial changes need to be made that would keep the project into compliance with the Town Code(s). I would urge all members to reconsider their decision, and try to make a better fit for the immediate neighborhood. Thank you again for your attention in this matter.

Sincerely,

Anthony J Nicolette, Jr., M.D.
124 Seagate Road

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

From: Kelly Churney <KChurney@TownofPalmBeach.com>
To: Anthony Nicolette <anicolette@aol.com>
Sent: Tue, Jul 28, 2020 8:06 pm
Subject: RE: 110 Seagate Road proposal by Daily Janssen Architects

Thank you Dr. Nicolette for your email.

I have sent this on to the ARCOM Commissioners.

Have a good evening,

Kelly Churney
Administrative Specialist

Town of Palm Beach
Planning, Zoning & Building
360 S. County Rd.
Palm Beach, FL 33480
561-227-6408
561-835-4621 (fax)
www.townofpalmbeach.com

From: Anthony Nicolette <anicolette@aol.com>

Sent: Tuesday, July 28, 2020 7:37 PM
To: Kelly Churney <KChurney@TownofPalmBeach.com>
Subject: 110 Seagate Road proposal by Daily Janssen Architects

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

July 28, 2020

Mr. ARCOM Chairman and ARCOM Members:

My wife's parents along with my spouse and I have had an association as owners of 124 Seagate Road for over 46 years. I have received a letter from the Town of Palm Beach of a redevelopment project proposal at 110 Seagate Road. The proposed new residence is completely out of context with our immediate and surrounding neighborhood.

Therefore, I must respectfully disapprove of this proposed structure. The exterior design reminds me of a western jail in the 1800's including the small windows. The house is quite dissimilar in regard to other homes nearby. From my memory of our building code, I believe new residences have to be in some type of conformity with our immediate area on the North End of the island. Kindly reject this proposal. Thank you for your attention in this matter.

Sincerely,

Anthony J. Nicolette, Jr., M.D.

Please be advised that under Florida law, e-mails and 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 at (561) 838-5400, or in writing: 360 S. County RD, Palm Beach, FL 33480.

From: jmurphy29@verizon.net
To: [Kelly Churney](#)
Subject: ARCOM request
Date: Friday, October 23, 2020 5:16:47 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

**RE: OPPOSITION TO DESIGN OF NEW RESIDENCE AT
110 SEAGATE**

230 Onondaga Avenue
Palm Beach FL 33480
23 October 2020

Dear Mr. Chairman and Members of ARCOM:

We are writing to ask you to deny your approval of the architectural design for 110 Seagate Avenue. We are fairly new to the North End of Palm Beach. We had lived in Miami, and when our building was bought by investors, we looked all over south Florida to settle. After almost a year, we found the perfect North End. It had everything we wanted: ocean, bay, privacy, and homes which fit the simple but beautiful landscape.

It seems that over the past couple of years, the trend is away from that regal simplicity. Seagate is an ideal street and to put something there which would cry out against what the North End epitomizes, would be close to an artistic crime.

We ask you, under #6 of Section 18-205 of the ARCOM requirements, to consider “architectural compatibility” and “quality of architectural design” and to retain what so many of us love about this particular area.”

Thank you for your consideration,

Jacqueline and Richard Murphy

From: [Anne Metzger](#)
To: [Kelly Churney](#)
Cc: JWMETZGER@aol.com
Subject: 110 Seagate Road
Date: Monday, October 26, 2020 1:14:08 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Hello, Kelly,
Please circulate this letter to the members of Arcom.
Thank you very much,
Anne and Bill.

Dear Members of Arcom,

This letter is in reference to the proposed design for a house at 110 Seagate Road. We live on Esplanade Way, a few blocks away.

In our opinion, the house as designed is too dissimilar for the neighborhood. Also, we feel it appears massive in scale for the neighborhood. The proposed design disrupts the harmony of both the immediate street and the surrounding neighborhood community.

Please request that the owners and architects of 110 Seagate design a house which better incorporates their goals within the requirements of the interests articulated in the Town code.

Sincerely,
Anne and Bill Metzger
277 Esplanade Way
Palm Beach, Florida
33480

From: [Tom Holland](#)
To: [Kelly Churney](#)
Cc: susankgary@aol.com
Subject: : Letter opposed to 110 Seagate
Date: Friday, October 23, 2020 3:32:22 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

217 Debra Lane
Palm Beach, Florida 33480
October 23, 2020

RE: Letter opposed to 110 Seagate

Dear Chairman Small and Members of ARCOM:

I grew up in Palm Beach on Orange Grove as my parents for many years owned a shop on Worth Avenue.

Our family has continuously owned a home on the island for more than 50 years. In all of those years, we have resided in the North End of the Island, first on Arabian and currently on Debra.

Over the years, like many of my neighbors, I have become alarmed at the incongruity of the newly developed homes as they are not in harmony with the neighborhood. In my opinion, the proposed home at 110 Seagate presents just such a problem.

ARCOM has the duty and responsibility per the Town Code to help us preserve those characteristics we all love about the North End. Specifically, Section 18-205 sets clearly sets out those guidelines; specifically in this case #4, #6 and #8 which refers to buildings "too dissimilar". 110 Seagate clearly violates that which is proscribed by the code.

We respectfully request that ARCOM please exercise its good judgment and direct the architect to revise the proposed home so that it is not "too dissimilar" and will meet the ARCOM requirements.

We thank you for all your good work.

Tom and Kathi Holland

From: [Sally Gingras](#)
To: [Kelly Churney](#)
Subject: Fwd: Comments on 110 Seagate for ARCOM
Date: Friday, October 23, 2020 12:33:34 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Begin forwarded message:

From: Sally Gingras <sp.gingras47@gmail.com>
Subject: Comments on 110 Seagate for ARCOM
Date: October 23, 2020 at 10:32:51 AM PDT
To: kchurney@thetownofpalmbeach.com

RE: 110 Seagate Rd

Dear Members of ARCOM,

I am writing to object to the proposed project at 110 Seagate. In my opinion this house would definitely fall into the category of “too dissimilar” to the rest of the neighborhood. There are no other flat roofed houses on this side street or any of the neighboring side streets. The flatness of the central element facade is not significantly improved by the change of materials. And the lack of ornamentation serves to exaggerate the massing.

As a former member of ARCOM, I am well aware of the difficulties you face making decisions that satisfy both owners and neighbors. And I appreciate your willingness to take on that task. I do believe this project needs some more work to make it fit seamlessly into the neighborhood.

Thank you for your time,

Sally Gingras
153 Reef Rd
Palm Beach

RE: OPPOSITION TO DESIGN OF NEW RESIDENCE at 110 Seagate

229 Onondaga Avenue

Palm Beach, Florida 33480

October 21, 2020

Dear Mr. Chairman and members of ARCOM,

We are writing to request that you deny approval for the current design of a new residence at 110 Seagate due to non-conformance with Section 18 -205 –Criteria for building permit.

We cite number six (6) of Section 18-205 under the ARCOM requirements that “the proposed building or structure is not excessively dissimilar in relation to any other existing structure... within 200 feet of the proposed site with respect to ONE OR MORE of the following features:

- a.) Height of building or height of roof
- b.) quality of architectural design
- c.) Architectural compatibility
- d.) Appearance of mass from the street...

We believe that the building proposed at 110 Seagate violates each and every section cited above.

We believe that the “box-like” structure now envisioned is more in-keeping with warehouse styles that would be appropriate for manufacturing or industrial areas. It is definitely very dissimilar to the homes in both the immediately adjacent area and the surrounding north-end neighborhood.

We urge ARCOM members to request that the architecture for 110 Seagate be remedied so that we maintain the standards set forth in the statement of findings and purpose of ARCOM. To summarize:

“The essential foundation of beauty in communities is HARMONY. It is the intent of this article to achieve a pleasant and comprehensive COHESIVENESS in community development.” This quote is taken from Division #1 of the Town Code relating to the purpose of ARCOM.

We have resided in the north end neighborhood nearby to the proposed new home for more than twenty years. Each year we see the charm and character of our north end neighborhood assailed by these undistinguished massive boxes which are out of context with the existing streetscape.

We urge you to enforce the ARCOM rules as set forth by the Town Code and request the architect “go back to the drawing board” and come up with a more HARMONIOUS design as envisioned by ARCOM.

Thank you.

W. Bradford and Susan Gary

From: jenny@jennifergarrigues.com
To: [Kelly Churney](#)
Subject: Fwd: Protest.
Date: Monday, October 26, 2020 4:56:04 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Kelly.

Reference ARCOM meeting on Wednesday this week.

I left a voicemail and just want to follow up.

Would you be so kind as to distribute this letter to ARCOM , the Town Council and the Mayor.

Thank you in advance.

Regards,

Jennifer Garrigues

Jennifer Garrigues
Jennifer Garrigues Interior Design
308 Peruvian Avenue
Palm Beach, FL 33408
Office: (561)659-7085
Cell: (561)346-1811
Fax: (561)659-7090
www.jennifergarrigues.com

Begin forwarded message:

From: "jenny@jennifergarrigues.com" <jenny@jennifergarrigues.com>
Date: October 26, 2020 at 4:51:55 PM EDT
To: "jenny@jennifergarrigues.com" <jenny@jennifergarrigues.com>
Subject: Fwd: Protest.

Jennifer Garrigues
Jennifer Garrigues Interior Design
308 Peruvian Avenue
Palm Beach, FL 33408

Office: (561)659-7085
Cell: (561)346-1811
Fax: (561)659-7090
www.jennifergarrigues.com

Begin forwarded message:

From: "jenny@jennifergarrigues.com"
<jenny@jennifergarrigues.com>
Date: October 26, 2020 at 1:57:58 PM EDT
To: "kchurney@thetownofpalmbeach.com"
<kchurney@thetownofpalmbeach.com>
Subject: Fwd: Protest.

Jennifer Garrigues
Jennifer Garrigues Interior Design
308 Peruvian Avenue
Palm Beach, FL 33408
Office: (561)659-7085
Cell: (561)346-1811
Fax: (561)659-7090
www.jennifergarrigues.com

Begin forwarded message:

From: "jenny@jennifergarrigues.com"
<jenny@jennifergarrigues.com>
Date: October 26, 2020 at 1:44:05 PM EDT
To: "Kchurney@thetownofpalmbeach.com"
<Kchurney@thetownofpalmbeach.com>
Cc: Joanne Paladino <powellpaladino@aol.com>,
"jenny@jennifergarrigues.com"
<jenny@jennifergarrigues.com>
Subject: Protest.

To whom it may concern.

I am writing this letter to protest the building of a new house at 110 Seagate Road.

The reason is that I am very worried about the charming North End of Palm Beach. There seems to be no thought or consequences of the type of homes that are going up

at our end of the island.

Seagate is a pretty street with new and older houses. There are different shapes and styles but all seem to have the same sensibility and fit together very well.

The new house has a completely different style. I think it will look very odd and out of place on this street.

I happen to love modern and contemporary houses but this one does not lend itself to this particular area.

If we do not put a stop to this we are going to have a mishmash of styles on all the streets and spoil our beautiful paradise up on the North End.

Thank you for reconsidering this particular house on this very charming street.

Jennifer Garrigues
Jennifer Garrigues Interior Design
308 Peruvian Avenue
Palm Beach, FL 33408
Office: (561)659-7085
Cell: (561)346-1811
Fax: (561)659-7090
www.jennifergarrigues.com

From: John C. Dotterrer
To: Kelly Churney; Wayne Bergman
Subject: 110 Seagate: B-037-2020 Letter of Opposition - Meeting 10/28/20
Date: Sunday, October 25, 2020 9:51:33 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Mr. Chairman and Members of the Architectural Review Commission
c/o Ms. Kelly Churney via email kchurney@townofpalmbeach.com - please
circulate to ARCOM commissioners

I reside about 4 blocks north of the proposed project at 110 Seagate and
oppose the application as presently constituted.

It does not comport with Section 18-205(a)(4) in that it is too box like, lacks
charm, presents the heavy appearance of too much mass and height and is
not in harmony with homes in the general area.

For the same and similar reasons, it does not comply with Section 18-205(a)
(6) because it is excessively dissimilar to homes within 200' of the proposed
site (c - architectural compatibility), (d- arrangement of components), (e -
appearance of mass from the street or from any visible perspective), (g-
appearance of mass through improper proportions), nor with 18-205(a)(8) -
appropriate in relation to the established character of immediate or
neighboring areas.

The proposed project should be reduced and refined in compatible style.

Best Wishes,

John C. Dotterrer
1470 N. Ocean Blvd.
Palm Beach, FL 33480

561 475 9500
jdotterrer@hotmail.com

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From: Kathy Delaney
To: Kelly Churney
Subject: Letter opposing 110 Seagate
Date: Monday, October 26, 2020 2:22:51 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Chairman and members of ARCOM:

I am writing that you request revisions to the design of the new house proposed for 110 Seagate so it complies with Section 18- 205 of the ARCOM Code.

I have watched for more than 25 years as our charming neighborhood in the north end of the Island has become inundated with new homes that are out of character with the existing homes. The home proposed for 110 Seagate will only add to the disarray.

When one reads the “Criteria for building permit” of section 18-205, it is clear that the proposed home is not in “harmony” with the general area as required. The new home also is “excessively” dissimilar in relation to existing homes nearby.

I urge you to recommend that the architect revise his plans to bring them into compliance with ARCOM regulations.

Thank you kindly for considering my request.

Kathy Delaney

From: [Lisa Bertelson](#)
To: [Kelly Churney](#)
Subject: Proposed home at 110 Seagate Road
Date: Saturday, October 24, 2020 1:13:56 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

>
> Dear Kelly,
>
> I am writing in opposition to the proposed structure to be built at 110 Seagate Road. It is my understanding that it is not Town Code compliant. Further, the scale and design of the house are out of step with the established character of the rest of the street. The large and boxy structure is visually discontinuous with others in our neighborhood and I do not believe it makes any kind of aesthetic contribution to Seagate Road. As I live directly across the street at 111 Seagate, I will see more of this structure than anyone else in the vicinity. I am hopeful that appropriate architectural modifications will be required to make this home a welcome and more fitting addition to the neighborhood.
>
> I respectfully ask that you distribute this email to the members of ARCOM, Town Council and the mayor.
>
> Yours,
>
> Lisa S. Bertelson
> 111 Seagate Road
> 781-856-3590
>
>
>
>
> Sent from my iPad

John D. Andrica

134 Seagate Road – Palm Beach, Florida 33480 | 216-272-0096 | john-andrica@msn.com

10/22/2020

ARCOM

Town of Palm Beach

Palm Beach, FL 3480

Dear ARCOM:

I was surprised you unanimously approved the 110 Seagate Rd project, even though the project does not meet the Town's zoning code, and the box-like structure of a house would not complement the other homes in the area.

I understand the Town has sent the project back to ARCOM for a relook of the zoning issues. I hope you also ask their architect team to address the home design to reflect the community's other homes better. I'm sure with appropriate architectural changes to the roofline, chimney, and structure; this home could be a welcome addition to the neighborhood. In short, I am opposed to the current home because it is not appropriate concerning the others' established character in the immediate area. The box-like structure is visually disruptive and does not contribute to the beauty and harmony of our neighborhood.

Sincerely,

John And Diane Andrica

From: KATHLEEN AMLING
To: Kelly Churney
Cc: Paladino Joanne; Jeff Amling; M. Hanlon
Subject: ARCOM letter
Date: Monday, October 26, 2020 8:14:27 AM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Kelly,
Would you be so kind to please forward the following to ARCOM for Wednesday's meeting?
Many thanks,
Katy Amling

Dear ARCOM,

We are asking you, once again, to enforce Town Code, and reject the plans for 110 Seagate Road. On October 14, Town Council granted our appeal and remanded 110 Seagate Road as stated in the record, because it did not meet criteria 4, 6 and 8 of the Building Code (SEC.18-205).

We view the proposed Adobe/Ibiza style of architecture materially different from anything in our neighborhood, or, for that matter anything on the entire island of Palm Beach. It's not hard to see that the small black windows in contrast with the stark white exterior on a two story flat roof structure is an extreme difference from anything anywhere close to our neighborhood.

To this point, at your July 29th meeting, several members commented, on the record, that the plans were too dissimilar and did not meet Code. Bob Garrison said, "He is agreeing with Mr. Smith, just too dissimilar." Masie Grace said, "if you could make some changes, it would fit in better." Michael Small said, "could work well, make some changes, barrel tiles to tie it with the street scape." Betsy Shiverick said, "I don't use this much, but it is just too dissimilar." Richard Sammons said, "the roof line needs to be changed." KT Catlin said, "I don't think it is a good fit for the neighborhood, it is just too stark a difference." Ted Cooney said, "I have strong concerns of it being too dissimilar for the street."

To further substantiate our position, in Jeff Smith's letter submitted for the July 29th meeting, and written prior to his current Commission seat, he states that the plans for 110 Seagate Road did not meet Town Code, SEC. 18-205. He specifically sites criteria 1,3,4, 6 and 8. He concludes by saying, "that the only way to approve this project is to change the wording in our Town Code".

Again, on record, at the July 29 meeting, architect, Roger Janssen, termed the proposed plans as an "anomaly."

We simply ask you to serve as you pledged, to uphold Town Code, when you accepted your appointment to the Architectural Commission of the Town of Palm Beach. We are urging you

to work with the owners of 110 Seagate Road to develop new plans that are appropriate and meet Town Code - Plans which add to the harmony and beauty of the neighborhood and which are not too dissimilar.

We sincerely hope for a positive resolution and hope to welcome our new neighbors to our street with a design that's more fitting to the neighborhood. If no material changes are made to the design, we would feel forced to once again appeal 110 Seagate Road to Town Council and if necessary to Palm Beach County Circuit Court. We would, however, expect to prevail as you yourselves have already provided sufficient evidence on the record that the current plans violate Code by being too dissimilar.

Thank you for your consideration,
Jeff and Katy Amling
161 Seagate Road

Sent from my iPad

ADELE S. MERCK
167 Seagate Road
Palm Beach, Florida 33480

October 28, 2020

Town of Palm Beach
Building and Zoning Department
ARCOM
P. O. Box 2029
Palm Beach, FL 33480

Re: 110 Seagate Road

To Whom It May Concern:

I have reviewed the plans for renovation of the residence at 110 Seagate Road and I support the design for the renovations. The modifications shown in the plans will not only be consistent with the architecture in our neighborhood but will be a valuable and aesthetic enhancement to the street. Mr. Carlos Musso has always had a passion for design and the renovations will highlight a fine example of Mediterranean architecture.

Sincerely,

Adele S. Merck

Sent via email to Kelly Churney
kchurney@townofpalmbeach.com

From: Melanie Charlton
To: Kelly Churney
Subject: 110 Seagate Plans and Support
Date: Friday, October 30, 2020 1:31:58 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Kelly,

I have reviewed the plans of 110 Seagate and I am writing in support of the design for the house. These plans and both beautiful and consistent with the architecture in our immediate North end streets.

The architecture is a wonderful example

of a unique Mediterranean style from the Balearic Islands. Carlos Musso is an old friend and passionate about both design and architecture.

His new home will only improve our gorgeous North end neighborhood!

Thank you for listening!

Warmly,

Melanie Fowler

152 Reef Road

Sent from my iPhone

From: Melanie Charlton
To: Kelly Churney
Subject: Re: 110 Seagate Plans and Support
Date: Friday, October 30, 2020 2:23:32 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

corrected
version below

Sent from my iPhone

> On Oct 30, 2020, at 1:35 PM, Kelly Churney <KChurney@townofpalmbeach.com> wrote:

>

> Thank you for your letter.

>

> I will include your letter in the Town Council backup.

>

> Have a good day,

>

> Kelly Churney

> Administrative Specialist

>

> Town of Palm Beach

> Planning, Zoning & Building

> 360 S. County Rd.

> Palm Beach, FL 33480

> 561-227-6408

> 561-835-4621 (fax)

> www.townofpalmbeach.com

>

>

>

>

> -----Original Message-----

> From: Melanie Charlton <melanie@clos-ette.com>

> Sent: Friday, October 30, 2020 1:32 PM

> To: Kelly Churney <KChurney@TownofPalmBeach.com>

> Subject: 110 Seagate Plans and Support

>

> *****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

>

> Dear Kelly,

> I have reviewed the plans of 110 Seagate and I am writing in support of the design for the house. These plans are both beautiful and consistent with the architecture in our immediate North end streets.

> The architecture is a wonderful example

> of a unique Mediterranean style from the Balearic Islands. Carlos Musso is an old friend and passionate about both design and architecture.

> His new home will only improve our gorgeous North end neighborhood!

> Thank you for listening!

> Warmly,

> Melanie Fowler

> 152 Reef Road

>

> Sent from my iPhone

> Please be advised that under Florida law, e-mails and 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 at (561) 838-5400, or in writing: 360 S. County RD, Palm Beach, FL 33480.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00269 VARIANCES Zoning District: R-B Low Density Residential The application of John Criddle and Franny Frisbie, Applicant, relative to property located at **143 REEF RD**, legal description on file, is described below. The applicant is proposing to construct a new 597 square foot one story garage to the west of the existing residence. The following variances are being requested: 1. Section 134-893(7): The applicant is requesting a variance for a west side yard setback of 5 feet in lieu of the 12.5 foot minimum required for a one story building. 2. Section 134-893(6): The applicant is requesting a variance for an angle of vision of 105 degrees in lieu of the 100 degrees maximum allowed. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variance will not cause negative architectural impact to the subject property. Motion carried 4-3.] [The Architectural Review Commission approved the project as presented. Carried 4-3.] **Request for Deferral to the December 9, 2020 Meeting per Letter Dated October 29, 2020 from Maura Ziska.**

Presenter

ATTACHMENTS:

- ❑ **Letter Dated October 29, 2020 from Maura Ziska**
- ❑ **Memorandum Dated September 18, 2020 from Wayne Bergman, Director of Planning, Zoning and Building**
- ❑ **Comments from the Development Review Committee**
- ❑ **Email Dated August 25, 2020 from David Lambert**
- ❑ **Email Dated August 25, 2020 from Maureen and Don Kandziora**
- ❑ **Email Dated August 25, 2020 from Jack Cooney**
- ❑ **Email Dated August 24, 2020 from Sean Bresnan**
- ❑ **Email Dated August 26, 2020 from Anne Metzger**
- ❑ **Letter Dated August 25, 2020 from John Eubanks**
- ❑ **Letter Dated September 4, 2020 from John Eubanks**

- ▢ **Exhibits to accompany John Eubanks Letter Dated September 4, 2020**
- ▢ **Email Dated September 8, 2020 from Anne and Bill Metzger**

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

Esperanté
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401
Telephone 561-802-8960
Facsimile 561-802-8995

*also admitted in NY

VIA EMAIL

October 29, 2020

Paul Castro
Kelly Churney
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Z-20-00269
143 Reef Road, Palm Beach, Florida

Dear Paul and Kelly:

Please **defer** the above referenced matter from the **November 13, 2020** Town Council meeting to the **December 9, 2020** Town Council meeting. Thank you.

Sincerely,

Maura Ziska

Maura A. Ziska

maz/jc
cc: Client

A Florida Professional Limited Liability Company Including Professional Associations

TOWN OF PALM BEACH

Information for Town Council Meeting on: October 14, 2020

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00269 VARIANCE(S)**
143 REEF RD

Date: September 18, 2020

BACKGROUND

An application has been received for the following project:

REQUEST:

The applicant is proposing to construct a new 597 square foot one story garage to the west of the existing residence. The following variances are being requested: 1. Section 134-893(7): The applicant is requesting a variance for a west side yard setback of 5 feet in lieu of the 12.5 foot minimum required for a one story building.

2. Section 134-893(6): The applicant is requesting a variance for an angle of vision of 105 degrees in lieu of the 100 degrees maximum allowed.

ADDRESS: 143 REEF RD

OWNER: CRIDDLE JOHN K

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-42-34-08-000-0450

ZONING DISTRICT: R-B Low Density Residential

LEGAL DESCRIPTION: NORTH SHORE ADD TO PALM BEACH LT 45

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 7/24/20

APPLICATION NO.: Z-20-00269 **APPLICATION TYPE:** VARIANCE(S)

ADDRESS: 143 REEF RD

DESCRIPTION:

The applicant is proposing to construct a new 597 square foot one story garage to the west of the existing residence. The following variances are being requested: 1. Section 134-893(7): The applicant is requesting a variance for a west side yard setback of 5 feet in lieu of the 12.5 foot minimum required for a one story building.
2. Section 134-893(6): The applicant is requesting a variance for an angle of vision of 105 degrees in lieu of the 100 degrees maximum allowed.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	7/29/2020	No Comment
PUBLIC WORKS DEPARTMENT	Craig Hauschild, Civil Engineer	8/28/2020	Driveway opening needs to conform to Public Works standards. Coordination between Landscape Architect and Stormwater Engineer not provided. Town's stormwater level of service is being meet.
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	7/30/2020	There are no fire code concerns with this proposed project.
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	7/29/2020	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	7/29/2020	The applicant is required to demonstrate the hardship for the variances being requested.

From: DAVID G LAMBERT
To: Kelly Churney
Subject: 143 Reef Road
Date: Tuesday, August 25, 2020 5:28:20 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Members of ARCOM and Town Council:

We write this email in support of the renovation plans submitted for 143 Reef Road, which will be heard at today's meeting (Wednesday). We are neighbors on Esplanade thrilled to have another young family move to the north end. Their request for a 2-car garage seems fair and practical. After all, new construction on the island always includes a 2-car garage, at the very minimum. The 2-car garage, as its designed incorporates lovely and tall landscaping to the west and actually helps to balance out the front facade of the existing home. Not to mention, the 2-car garage gets rid of the unsightly garbage receptacles that are visible from the street as you walk by. Their new landscape plan also looks like a great improvement and we love their desire to implement native species in the majority of the garden. The room addition to the north also seems reasonable and after reviewing their interior plans, they really improve the functionality of the home.

Thank you for considering to grant approval to their plans today. Take care and stay well.

Kindly,

David Lambert
200 Esplanade Way
Palm Beach, Fl 33480

From: [Raihle, Maureen](#)
To: [Kelly Churney](#)
Cc: [Donald Kandziora](#)
Subject: Letter of Support for our neighbors
Date: Tuesday, August 25, 2020 5:12:31 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Town Council and Members of ARCOM:

We hope this email finds everyone well. We are writing to support the plans submitted for the proposed renovation on 143 Reef Road (our westerly neighbors). We have personally met the family and believe them to be great new stewards for the property. They deeply care about our community and our neighbors. We can appreciate their need and therefore request for a 2-car, 1-story garage. Their intentions to honor the existing structure with thoughtful enhancements to the facade, landscape, and hardscape are very much in keeping with the overall aesthetic of our block. Please consider granting approval to their plans. Thank you and stay safe.

Kindly,
Maureen Raihle Kandziora
Don Kandziora

135 Reef Road
Palm Beach FL 33480

Maureen Raihle, CPWA®, CEPA
Managing Director, Wealth Manager
First Republic Investment Management
First Republic Private Wealth Management

155 North Wacker Drive, Suite 4250, Chicago, IL 60606

241 Royal Palm Way, Palm Beach, FL 33480
Office: (561) 803-1090 | Fax: (561) 803-1000

Registered Representative of First Republic Securities Company, LLC



First Republic Private Wealth Management encompasses First Republic Investment Management, Inc. ("FRIM"), an SEC-registered investment advisor, First Republic Securities Company, LLC ("FRSC"), Member FINRA/SIPC, First Republic Trust Company ("FRTC") and First Republic Trust Company of Delaware LLC ("FRTC-DE"). FRIM, FRSC, and FRTC-DE are wholly owned subsidiaries of First Republic Bank. FRTC is a division of First Republic Bank. Investment advisory services are provided through FRIM. Securities brokerage services are provided through FRSC. Trust and fiduciary services are provided through FRTC and FRTC-DE.

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We reserve the right to monitor and review the content of all email communications sent or received. Emails sent to or from this address may be stored in accordance with regulatory requirements.

From: [Jack Cooney](#)
To: [Kelly Churney](#)
Subject: 143 Reed Road
Date: Tuesday, August 25, 2020 6:25:40 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Members of ARCOM and Town Council:

We write this email in support of the renovation plans submitted for 143 Reef Road. As fellow North End residents, we are thrilled to welcome a young, year-round family with long-standing community ties to the neighborhood. We personally know the applicants and trust in their ability to tastefully improve the aesthetics and function of an outdated home that fits with the charm and character of the street. We understand the difficulty of not having a garage and respect their desire to create a more beautiful front facade instead of having vehicles, equipment, garbage cans and other “stuff” laying in plain sight for all to see. While it was probably easier to scrape the structure and build new, this applicant has chosen to undertake the more "life disruptive" process of renovating a home while living in it, and meanwhile preserving a traditional North End 1-story cottage that is becoming increasingly rare.

Thank you for considering the approval of their plans and thank you for your leadership.

Jack & Nikki Cooney
140 Seagate Rd

Jack Cooney
303.517.4484

From: Sean P. Bresnan
To: Kelly Churney
Subject: 143 Reef Road - ARCOM
Date: Monday, August 24, 2020 3:03:04 PM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Town Council and ARCOM Board Members:

I am writing to show support for the plans submitted for 143 Reef Road to be considered at the August 26th ARCOM hearing. We appreciate the applicants thoughtful effort to revitalize a 1950s cottage, especially at a time when most of these homes in the north end have been razed. The applicants request for a 2-car garage, arguably a necessity today, makes perfect sense for the protection of their vehicles, safety and security of bikes/equipment, etc. While closer in proximity to the property line, their plan for a hedge screening that matches their western neighbor's south hedge seems like a very reasonable offset.

Please consider approving this applicant's request.

Sincerely,
Sean Bresnan
236 Esplanade Way

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From: [Anne Metzger](#)
To: [msmall@smallawpalmbeach.com](#); [RNG@garrisonarch.com](#); [alexives@hotmail.com](#); [amginny@aol.com](#); [John David Corey](#); [betsyshiverick@gmail.com](#); [catlinkt@gmail.com](#); [dan.floersheimer@icloud.com](#); [edward.cooney@gmail.com](#); [info@fairfaxandsammons.com](#)
Cc: [Wayne Bergman](#); [Kelly Churney](#)
Subject: Concerns re: 143 Reef Road - ARCOM meeting Today
Date: Wednesday, August 26, 2020 7:57:10 AM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Members of the Architectural Commission,

This letter is in regard to the proposed plans for 143 Reef Road that you are considering today.

We live one block to the north on Esplanade Way and are very familiar with the subject property. We walk our dog on Reef Road almost every day.

In our opinion, the proposed plans for the house need to be scaled back. The two car garage will look very squeezed so close to the west property line.

We are concerned that this will set an undesirable precedent in our neighborhood.

In addition, the front door looks out of scale for the house.

Please ask for the plans to be restudied.

Thank you,
Anne and Bill Metzger
277 Esplanade Way
Palm Beach

SNIFFEN & SPELLMAN, P.A.

Sender's Direct Line: (561) 721-4002
Sender's Email: jeubanks@sniffenlaw.com

August 25, 2019

Via E-mail

Architectural Commission
c/o Michael Small, Chair
Town Council of the Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

**Re: Objection to Application No. B-045-2020 for Proposed Garage at
143 Reef Road**

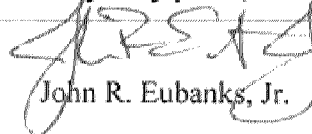
Dear Mr. Small:

Our office was hired this afternoon by Gayle P. Petersen, the owner of 151 Reef Road. Ms. Peterson's home lies immediately to the west of 143 Reef Road. In that capacity please be advised that Ms. Petersen objects to the two car garage proposed by the Applicant, along with the potential variance needed to approve the same.

In direct conflict with the Applicant's representations, the house at 143 Reef Road was built with a one car garage, which was later converted to living space. As a result, there is no hardship which would support a variance.

At the same time, the proposed garage would reduce the normal side yard setback and greenspace in half, change the appearance of the residence from the street, increase the massing next to Ms. Petersen's home, and impinge upon her privacy. Moreover, the Application is nothing more than the same proposal set forth in former Variance #11-2011, which was soundly rejected by the Town Council in July of 2011, resulting in its withdrawal at that time. A copy of the objections from the surrounding neighbors in July 2011, along with a copy of the withdrawal is attached hereto.

Very truly yours,



John R. Eubanks, Jr.

cc: ARCOM Committee Members
Wayne Bergman, Acting Director Planning, Zoning & Building
Kelly Churney, Administrative Specialist
Town Clerk, Town of Palm Beach

REPLY TO:

605 NORTH OLIVE AVENUE, 2ND FLOOR
WEST PALM BEACH, FL • 33401
PHONE: 561.721.4000
FAX: 561.721.4001

TC DEV REVIEW MEETING 11-13-20

WWW.SNIFFENLAW.COM

123 NORTH MONROE STREET
TALLAHASSEE, FL • 32301
PHONE: 850.205.1096
FAX: 850.205.3004

189 of 422

July 1, 2011

RECEIVED

JUL - 6 2011

TOWN OF PALM BEACH
PZB DEPT

Town of Palm Beach

Zoning & Building Department

360 S. County Road

Palm Beach, Florida 33480

Re: 143 Reef Road *Variance # 11-2011*

To Whom it May Concern:

We have been residents of 144 Reef Road for 16 years, the home directly across the street from 143 Reef. We both have also been residents of the town of Palm Beach for 50 years, our entire lives. We are submitting this notice to preserve the ambiance on the north end. Reef Road is a quiet street with an Island appeal. Most of the residents like it that way and moved here because they hope to keep it this way. We understand a petition to build a two car garage has been filed. Our concerns are as follows:

The house is being rented and they are not the owners.

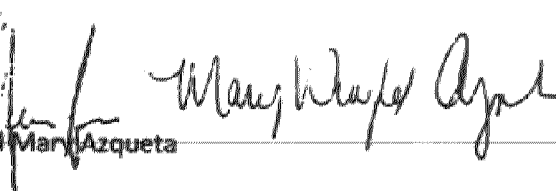
Why do they have to expand to a garage that is so large, the house originally had a one car garage.

The disruption to the safety of the families on the street and the disturbance of peace is overwhelming.

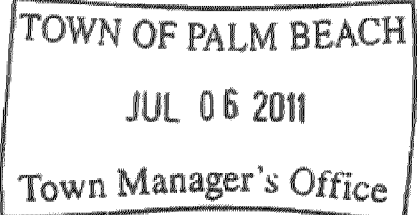
It would seem that the appropriate size garage for this street would be a one car garage, considering the size of the home and property, fitting in with the rest of the street, and the north end.

Thank you for your consideration in this matter.

Sincerely,


Jesse and Mary Azqueta

Paul Gingras, DMD
153 Reef Road
Palm Beach, FL 33480



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

30 June 2011

Dear Members of the Town Council:

My wife and I live at 153 Reef Road and we received a notice of a request for a zoning variance for a property located at 143 Reef Road. We have three concerns regarding the request.

1. The application lists the property owners as David and Sarah Hruda. We are not sure Mr. and Mrs. Hruda own the property. We have been repeatedly told that someone else owns the property. The Town needs to determine who the owners are before proceeding with the application.
2. Under Exhibit A- Request For Variance, item 4, the applicant states that the residence was built without a garage. This house was originally built with a one car garage. This garage was later converted to a living space by a previous owner. A check with the Building Department will confirm this.
3. The addition of a two car garage would reduce the normal side yard setback by half which would change the appearance of the residence by reducing the greenspace surrounding it. This would set a bad precedent for the R-B zoning in this neighborhood. A one car garage addition would impose less on the normal setback.

We are opposed to a two car garage addition and we are not opposed to a one car garage addition.

Sincerely,

Two handwritten signatures in black ink. The first signature is "Paul Gingras, DMD" and the second is "Sally Gingras".

Paul and Sally Gingras

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: 561-835-4621

July 21, 2011

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

RE: Variance #11-2011/249/143 Reef Road, Palm Beach

Dear Mayor and Town Council:

Please **withdraw** the above referenced matter from the August 10, 2011 Town Council agenda. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely yours,



Maura A. Ziska

MAZ/mr

cc: Paul Castro

Pat Seagraves

00011412

SNIFFEN & SPELLMAN, P.A.

Sender's Direct Line: (561) 721-4002
Email: jeubanks@sniffenlaw.com

September 4, 2020

Via E-mail

Mayor and Town Council
c/o Maggie Zeidman, President
Town Council of the Town of Palm Beach
360 South County Road
Palm Beach, Florida 33408

**Re: Lack of Hardship to Support Variances in Application No. Z-20-00269
("Present Application") for New 2 Car Garage on West Side of 143 Reef Road**

Dear Mayor and Town Council Members:

Our office represents Gayle P. Petersen, as Trustee of the Gayle P. Petersen Revocable Trust, ("Petersen"), the owner of 151 Reef Road located directly west of and abutting 143 Reef Road ("Property"). Ms. Petersen objects to the variances sought by John K. Criddle ("Owner")¹ to construct a new two car garage on the west side of the Property near her master bedroom and bathroom. The garage would reduce the protections of the side yard setback on the Property from 12.5 feet to 5 feet, impose the mass of a new garage close to her bedroom, subject her to additional noise, light and odors, and impinge upon her privacy, all without the requisite hardship needed for a variance. As a result, the Present Application should be denied.

I. Background

A. Original House Included a Garage Which was Converted to Living Space

The house at 143 Reef Road was built in 1951. The original plans included an enclosed one car garage. In 1972 the garage was converted into a bedroom and bathroom. The plans and approval for the conversion by the Building Department are attached as Exhibit "B." As such, at the time there was a conscious decision to trade garage space for living space on the Property, ostensibly to comply with the setbacks in the Town Code.

Nevertheless, the Owner now seeks to have his cake and eat it too by keeping the former garage living space and designing a two car garage (and rear BBQ area) which is too large for the lot. It requires two variances, including a massive 60% reduction in the west side yard set back. In doing so the Owner is forcing Ms. Petersen to bear burden of the new garage, because the Owner **"would like to have a 2 car garage to park their cars, and store their bicycles."** (emphasis added)

¹ The Present Application includes references to both John Criddle and Frances Frisbie. The owner of the Property, however, is only Mr. Criddle. *See*, Warranty Deed recorded on June 2, 2020 in the Public Records of Palm Beach County, a copy of which is attached as Exhibit "A." The ownership of the Property by just Mr. Criddle (and the lack of a homestead filing) begs the question as to his long term goals with the property. Mr. Criddle has indicated to Ms. Peterson that his plan is to upgrade and flip the house in order to make money to purchase a larger home in the future.

REPLY TO:

605 NORTH OLIVE AVENUE, 2ND FLOOR
WEST PALM BEACH, FL • 33401
PHONE: 561.721.4000
FAX: 561.721.4001

TC DEV REVIEW MEETING 11-13-20

WWW.SNIFFENLAW.COM

123 NORTH MONROE STREET
TALLAHASSEE, FL • 32301
PHONE: 850.495.1006
FAX: 850.205.3004

To the extent the Owner “would like” a two car garage it could easily be constructed without the need for any variances. By merely sliding the new garage to the east and incorporating the former garage (which is 9 feet 6 inches in width) area into the new garage design, there would be no need for a 7.5 foot reduction in the west side yard set back.² In the alternative, as several ARCOM members, neighbors, and Ms. Petersen have suggested, the Owner could build a smaller one car garage. The Owner has refused to consider such options, despite the fact either would comply with the Town Code, preserve the side setback, and not impose upon Ms. Petersen.

B. Prior Attempt for Variances for a Two Car Garage and Withdrawal of Application

In May of 2011, an application (“Prior Application”)³ was filed by Maura Ziska seeking a variance to construct a two car garage at the Property with a 6.25 feet wide side yard setback in lieu of the 12.5 feet required and an angle of vision variance of 112 degrees in lieu of the 100 degrees allowed under the Code.⁴ The proposed two car garage was 20’ 6” in width, 24’ 4” in depth. The design included a new chimney and a BBQ area attached to the rear of the garage. *See*, Exhibit “D,” pages A-1, A-2, A-3, SP-1.

In support of the Prior Application, Ms. Ziska argued that the hardship supporting the variances included, but was not limited to, that: i) the residence was **built without a garage**; ii) the applicant would **“like to have” a 2 car garage to park their cars, and store their bicycles**, recreational equipment and vehicles; iii) because of the configuration of the house the only place to put the garage was on the west side of the house and iv) the garage “would only **slightly encroach** into the setback” and “was minimal **for a one story structure.**”⁵

Several nearby neighbors, including Jesse and Mary Azqueta, Anne and Bill Metzger, Paul and Sally Gingras, and Ms. Petersen all objected to the Prior Application and the reduction of the side yard setbacks.⁶ Ms. Ziska requested a deferral of the Prior Application in an effort to come to a consensus with the neighbors.⁷ She could not. As a result, the Prior Application was withdrawn by letter July 21, 2011, which withdrawal was accepted by the Town on August 10, 2011.⁸

² It would also eliminate the need for any angle of vision variance.

³ A copy of the Prior Application is attached hereto as Exhibit “C.”

⁴ A copy of the applicable portions of the Site Plan and Elevations for the Prior Application is attached as Exhibit “D.”

⁵ Ms. Ziska indicated, under oath, at the August 26, 2020 ARCOM Meeting, that the Prior Application objected to by the neighbors was for a **two story garage**. The Plans show that not to be true and the Prior Application clearly sought a taller garage which was still **“a one story structure.”** More importantly, the objections filed to the Prior Application were not based upon the height of the proposed garage but upon its encroachment into the side yard setback and adverse effects on Ms. Petersen. The Zoom recording of the August ARCOM meeting for the Present Application can be found beginning at 3:45:49 which is incorporated herein by reference.

⁶ A copy of the objections to the Prior Application are attached hereto as Exhibit “E.” Mr. Hanlon notes in his objection for Ms. Petersen that Ms. Ziska may have a conflict since she represented Ms. Petersen in the purchase of her home.

⁷ A copy of the request for the Deferral is attached as Exhibit “F.”

⁸ A copy of the letter by Ms. Ziska requesting the withdrawal and the confirmation of the withdrawal by Mr. Castro are attached hereto as Composite Exhibit “G.”

C. Present Application Is a Revamp of the Prior Withdrawn Application

The Present Application⁹ is seeking essentially the same variances as the Prior Application which was withdrawn, namely a (now larger) variance from the west side yard setback of 5 feet in lieu of the 12.5 foot minimum under the Town's Code and a variance for an angle of vision for 105 degrees in lieu of the 100 degrees maximum allowed per the Code. The proposed two car garage is 20 feet 10 inches in width, and 21 feet 2 inches in depth. The new design also includes a new chimney (with a slightly altered design from the Prior Application) and, again, includes a BBQ grill and bar area on the backside of the proposed garage. *See*, Exhibit "I," pages A-2.01, A-2.02, A-2.03, A-2.4, SP-1.01, and Sp-1.02.

As with the Prior Application, Ms. Ziska has indicated that the hardship by the Owner includes, but is not limited to, that: i) the **residence was built without a garage**; ii) the applicant **"would like to have" a 2 car garage to park their cars, and store their bicycles**, and recreational vehicles and equipment; iii) because of the configuration of the house the only place to put the garage was on the west side of the house; iv) the garage **"would slightly encroach into the setback;"** and v) **other properties in the area have garages and nonconforming setbacks** because they were built prior to the current zoning restrictions.¹⁰ Again, neighbors, including Ms. Petersen, have objected to the variances requested.¹¹

Regardless of the desires of the Owner, the Present Application simply does not meet the standards required for the approval of a variance under Section 134-201 of the Town Code and the case law thereon. As such, the Present Application should be denied.

II. Inability to Meet Variance Standards

A. Variances Are Direct Violations of the Code

Far too often used as an "innocent" tool to allow a specific project to slide by and be approved, a variance is nothing more than a Town sanctioned violation of the Town Code. Approving unsupported variances undermines the protections of the Code which are designed to maintain the character of the Town. As such, a variance should not be granted except in the most extreme circumstances in which the Code would not allow for virtually any use at all of the property. This is not one of those circumstances.

While homeowners often claim they have a "property right" to build on their lot, there simply is no "property right" for a variances in violation of the Town Code. Nor can a variance be based upon the "wish," "like," or "desire" of an owner to "upgrade" the home, make it more "modern" and "livable" or become their "forever home." Desires and wishes do not support a variance.

⁹ The Present Application and applicable Site Plan and Elevations are attached as Exhibits "H" and "I" respectively.

¹⁰ While both the Prior and Present Applications include references to changes in the Town Code which require a two car garage for new construction, the lack of a two car garage on the Property is clearly a prior non-conforming permitted use and as such cannot be the basis for any claim of a "hardship."

¹¹ A copy of the correspondence against the variances is attached as Exhibit "J."

Neighboring property owners, however, “have a right to rely on existing zoning conditions and they have a right to a continuation of these conditions in the absence of a showing that the variance is proper.” *Thompson v. Planning Com. of Jacksonville*, 464 So. 2d 1231 (Fla. 1st DCA 1985); *see also, Allapattah Cmty. Asso. v. Miami*, 379 So. 2d 387 (Fla. 3d DCA 1980). As such, often it is the “property rights” of neighbors, such as Ms. Petersen, which get trampled by the approval of an unsupported variance.

B. Owner’s Claimed “Hardship” Falls Short of Variance Standards

1. Insufficient Factual Basis for “Hardship” in Light of Original Garage

In the Present Application the Owner has indicated that “**the hardship** which runs with the land **is that the residence was built without a garage** and the zoning code has changed...” *See*, Present Application, Section III and Exhibit “A,” Criteria 4. (emphasis added) Such a statement is demonstrably incorrect. Therefore, it would be impossible for the Town to grant a variance based on the assertion that the “hardship” is that the residence was built without a garage when it was built with a garage, which was later intentionally converted into living space. As a result, the Owner has failed to meet the requirements of item III of the Application and Criteria 4 in Exhibit “A” of the Application. For this reason alone the Application must be denied.

In addition, the desire of the Owner to keep the old garage living space while adding a new two car garage that requires a 60% side yard variance cannot create a “hardship” either, especially in light of alternate designs available without a variance. Moving the proposed garage to the east and incorporating the old garage would not require a variance.¹² Likewise, a one car garage could easily meet the Town Code setbacks. The failure to build within the confines of the Town Code when it is clearly possible further dictates the denial of the Present Application.¹³

2. Insufficient Unnecessary and Undue “Hardship”

Section 134-201 of the Town Code is clear that only variances that “will result in **unnecessary and undue hardship**” can be granted (emphasis added). The Court’s are also clear that an applicant for a variance must demonstrate a “unique hardship” to qualify for a variance. *Bernard v. Town of Palm Beach*, 569 So. 2d 853 (Fla. 4th DCA 1990) (citing, *Nance v. Town of Indialantic*, 419 So. 2d 1041 (Fla. 1982)). By definition, a “**hardship**” **may not be found unless no reasonable use can be made of the property without the variance**; or, stated otherwise, “**the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.**” *Bernard* at 854 (citing, *Town of Indialantic v. Nance*, 485 So. 2d 1318, 1320 (Fla. 5th DCA); *see also Thompson v. Planning Comm’n*, 464 So. 2d 1231, 1237 (Fla. 1st DCA 1985)(emphasis added).

In the case of *Bernard v. Town of Palm Beach*, 569 So. 2d 853 (Fla. 4th DCA 1990) the

¹² The ability to use an alternate design with no variance(s) negates the Owner meeting the standards of Section 134-201(a)(5) of the Town Code that the variance sought is the minimum variance that will make possible the reasonable use of the land, building or structure, since the “minimum variance” would be no variance.

¹³ *See, Indialantic v. Nance*, 400 So. 2d 37, 40-41 (Fla. 5th DCA 1981)(existence of a viable alternate plan demonstrated a lack of hardship); *Auerbach v. City of Miami*, 929 So. 2d 693, 694 (Fla. 3d DCA 2006).

desire to construct a 35 to 40 foot master bedroom, bath and den above an existing southern portion of the house resulting in a rear setback of 5 feet instead of 15 feet was not a “hardship.”¹⁴ The house could continue to be used for its purpose, albeit with a smaller bedroom and bathroom.

So too here, the claim that the Owner “would like to have” a two car garage to store its cars, equipment and bicycles does not constitute a showing that no reasonable use can be made of the Property without it. To the contrary the house can continue to be used as it has been for over 38 years since the prior garage was converted to a bedroom in 1972. Or, if the Owners “would like to have” a two car garage, it can incorporate the former garage in its design and stay within the parameters of the Code. Therefore, the Applicant cannot meet the requisite unnecessary and undue hardship needed for a variance, leaving the Present Application to be denied.

3. Any “Hardship” Would be Self-Imposed

Even if the lack of a legally recognized hardship could be overlooked (which it cannot) any “hardship” alleged by the Owner would clearly be self-imposed. The courts have consistently found that a hardship must arise from circumstances **peculiar to the realty alone, unrelated to the conduct or to the self-originated expectations of any of its owners or buyers.**¹⁵ See, *Maturo v. Coral Gables*, 619 So. 2d 455 (Fla. 3d DCA 1993); *City of Coral Gables v. Geary*, 383 So. 2d 1127 (Fla. 3d DCA 1980).

As a result, situations in which purchasers **are fully aware of the shape and size of a lot, but still design a building which is too large for the lot, constitutes a self-created hardship.** *Thompson v. Planning Com. of Jacksonville*, 464 So. 2d 1231, 1237 (Fla. 1st DCA 1985); see also, *Namon v. State Dept. of Environ. Reg.*, 559 So. 2d 504 (Fla. 3d DCA 1990). In the present case, the Owner was (or should have been) fully aware of the Property’s size, location and set backs, yet designed a two car garage which was too large and encroached on the required side yard setbacks next to Ms. Petersen. Such a choice represents a self-centered, self-created “hardship” which cannot support the variances sought. As such, the Present Application must be denied.

4. Property Restrictions Are Not Unique

In addition to the above, there can be no “hardship” in the present case in light of the fact that several of the nearby homes admittedly share the same difficulties as the Property. Under Section 134-201(a)(1) of the Code an applicant must demonstrate that “special conditions and circumstances exist which are peculiar to the land, structure or building involved **which are not applicable to other land lands, structure or buildings in the same zoning.**” (emphasis added)

As a result, “a prerequisite to the granting of a hardship zoning variance is the presence of

¹⁴ See also, *Herrera v. Miami*, 600 So. 2d 561, 562 (Fla. 3d DCA 1992) (reversing approval of a variance where there is no finding that “it is virtually impossible to use the land as it is presently zoned.”); *Auerbach v. City of Miami*, 929 So. 2d 693, 694 (Fla. 3d DCA 2006) (“Florida courts have held that a legal hardship will be found to exist only in those cases where the property is **virtually unusable...**”)(citing to *Mauro v. City of Coral Gables*, 619 So. 2d 455, 456 (Fla. 3d DCA 1993)).

¹⁵ Here, there is no peculiarity at all as to the size or shape of the Property.

an exceptional and unique hardship to the individual landowner; **unique to that parcel and not shared by other property owners in the area.**" *Indialantic v. Nance*, 400 So. 2d 37, 40 (Fla. 5th DCA 1981)(emphasis added). Therefore, as is the case here, where an applicant's lot has a similar size, shape and topography and is subject to the same zoning requirements, including the height, set-back, and landscaping, restrictions, the restrictions are common difficulties and cannot establish the unique hardship required to support the proposed variances.¹⁶

In the Present Application Ms. Ziska admits that the present house is "nonconforming to today's code" and further admits that "many properties and residences in the area have garages and non-conforming setbacks as the residences were built before the current zoning restrictions were in place."¹⁷ Moreover, the lots in the area are the same general shape and size. As such, the limitations on the Property are shared by other lands, structures and buildings in the same zoning district and cannot be the basis for a hardship. The Present Application therefore must be denied.

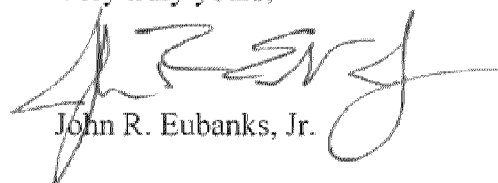
III. Conclusion

The circumstances in the Present Application simply do not factually or legally support the requisite "hardship" for a variance under the Town Code or the case law. The argument that the original house did not have a garage when it did cannot be used as the basis for a hardship. The home can reasonably continue to be used as it has been since 1972 without a two car garage. In the alternative, the plans can be modified to construct a two car garage without a variance.

The Owner's situation is not unique. Many other homes in the area have the same shape, size and issues. Therefore, any "hardship" is clearly self-imposed by the Owner by designing too large of a garage on too small of a lot, despite knowing the shape and size limitation of the Property. Under the circumstances, Ms. Petersen should be allowed to rely upon the protections in the Town Code and not be forced bear the burden of the Owner's desire for a two car garage which requires a 60% side yard set back reduction next to her master bedroom and bathroom.

The Application should be denied.

Very truly yours,



John R. Eubanks, Jr.

cc: Wayne Bergman, Director Planning, Zoning & Building
Paul Castro, Zoning Manager
John C. Randolph, Esq.
Kelly Churney, Administrative Specialist
Town Clerk, Town of Palm Beach

¹⁶ Likewise, a variance application **cannot rely upon previously approved variances in the jurisdiction.** *See, City of Jacksonville v. Taylor*, 721 So. 2d 1212 (Fla 1st DCA 1998); *see also, Herrera v. City of Miami*, 600 So. 2d 561, 563 (Fla 3d DCA 1992)("on review of an administrative grant of a zoning variance, **the standard is not whether variances have been granted to similarly-situated applicants in the community...**") (emphasis added)

¹⁷ Again, the mere fact that the Property may be non-conforming and grandfathered is not the basis for a variance.



CFN 20200188192

THIS INSTRUMENT PREPARED BY AND RETURN TO:

Maura Ziska, Esq
Kochman & Ziska, PLC
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401
Our File No.: 1803-21

OR BK 31444 PG 0655
RECORDED 06/02/2020 12:06:22
AMT 1,850,000.00
Doc Stamp 12,950.00
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pg 0655 - 656 (2pgs)

Property Appraisers Parcel Identification (Folio) Number: 50-43-42-34-08-000-0450

SPACE ABOVE THIS LINE FOR RECORDING DATA

WARRANTY DEED

THIS WARRANTY DEED, made the 29th day of May, 2020 by Sean Heyniger, a married man, whose post office address is 3140 Washington Rd, West Palm Beach, FL 33401 herein called the Grantor, to John K Criddle whose post office address is 143 Reef Road, Palm Beach, FL 33480, hereinafter called the Grantee:

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH that the Grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee all that certain land situate in Palm Beach County, State of Florida, viz.:

Lot 45 of PLAT OF NORTH SHORE ADDITION TO PALM BEACH, according to the Plat thereof as recorded in Plat Book 10, Page 62, of the Public Records of Palm Beach County, Florida.

Subject to easements, restrictions and reservations of record and taxes for the year 2020 and thereafter.

This property does not constitute the homestead of the Grantor nor is it contiguous to the homestead of Grantor who reside on lands other than the lands described herein. The Grantor's address is: 3140 Washington Rd, West palm Beach, FL 33401

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND, the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2019.

EXHIBIT A

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Christine Belsky
Witness #1 Signature

Christine Belsky
Witness #1 Printed Name

Kristina Neville
Witness #2 Signature

Kristina Neville
Witness #2 Printed Name

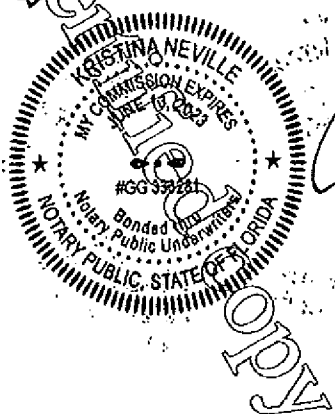
Sean Heyniger
Sean Heyniger

State of Florida
County of Palm Beach

The foregoing instrument was acknowledged before me this 29th day of May, 2020, by Sean Heyniger who has/have appeared by ☒ physical presence or ☐ online notarization and has produced _____ as identification and ☐ did ☐ did not take an oath.

SEAL

My commission expires:



Kristina Neville
Notary Public

Printed Notary Name

Permit No. 80172

Palm Beach, Florida, August 9, 1972

TO THE BUILDING INSPECTOR
OF PALM BEACH, FLORIDA

The undersigned requests that you grant a building permit to

D. Wendell, Owner

TO CONSTRUCT Alter garage to bedroom and shower

in accordance with plans and specifications submitted with this application.

Located on Lot 45 Subdivision N. Shore

On 143 Reef Road Street, Between N. Lake Way and N. Lake Way

ZONING DISTRICT R-B

Occupancy Classification Single Family Dwelling Size of Addition NO Addition

Construction Classification Existing

Roofing Material Existing

Owner's Name D. Wendell

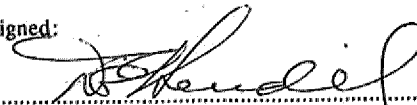
Builder's Name owner by Frank Johns

Architect and/or Engineer Herman Fernau Architect

Approximate Cost \$ 5,000 Height Story

Now, therefore, in consideration of this permit, the owner and builder agree to undertake said work in full compliance with Ordinances of the Town of Palm Beach, Florida, and further agree that no work shall be undertaken prior to securing a building permit, issued by the building inspector.

Signed:



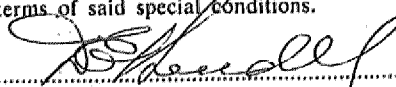
Applicant

The Building Inspector's notes, as shown on the approved plans, will be adhered to.

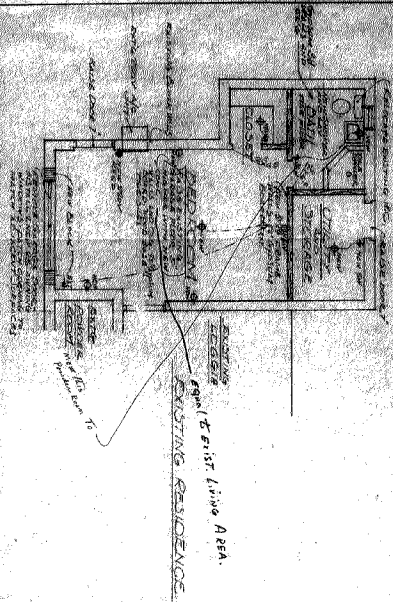
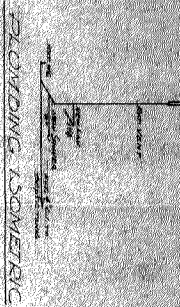
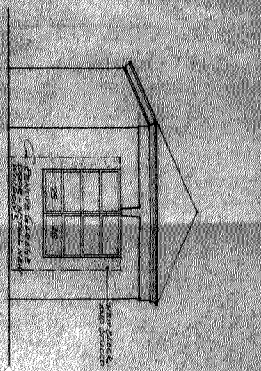
The granting of this building permit is subject to the following special conditions pertaining thereto, as directed by the building inspector:

This work is being done on an hourly wage basis, no contract is involved

On behalf of the owner and builder, I agree to the terms of said special conditions.



Applicant



ALTERATIONS FOR JANE WINDEL

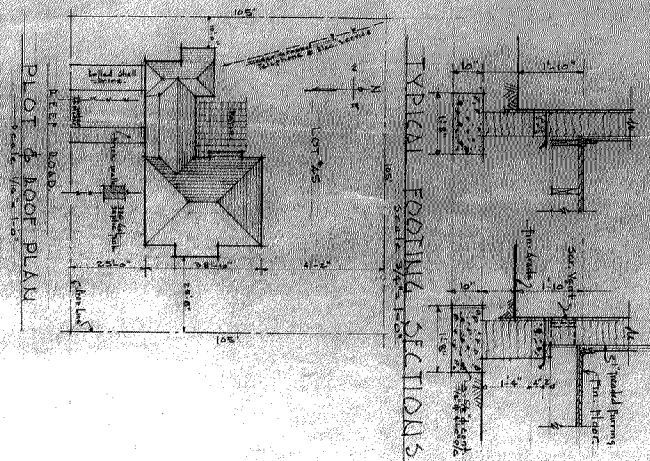
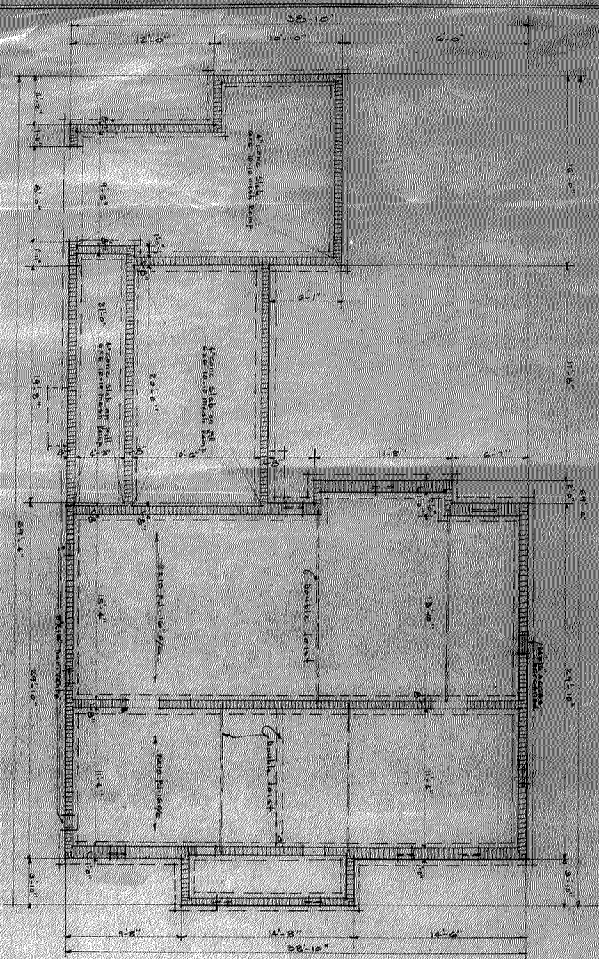
APPROVED

NO CHANGES TO BE MADE FROM ORIGINAL PLANS FILED WITH THIS OFFICE WITHOUT BEING APPROVED BY BUILDING INSPECTOR

NO CHANGES TO BE MADE FROM ORIGINAL PLANS FILED WITH THIS OFFICE WITHOUT BEING APPROVED BY BUILDING INSPECTOR

Handwritten signature

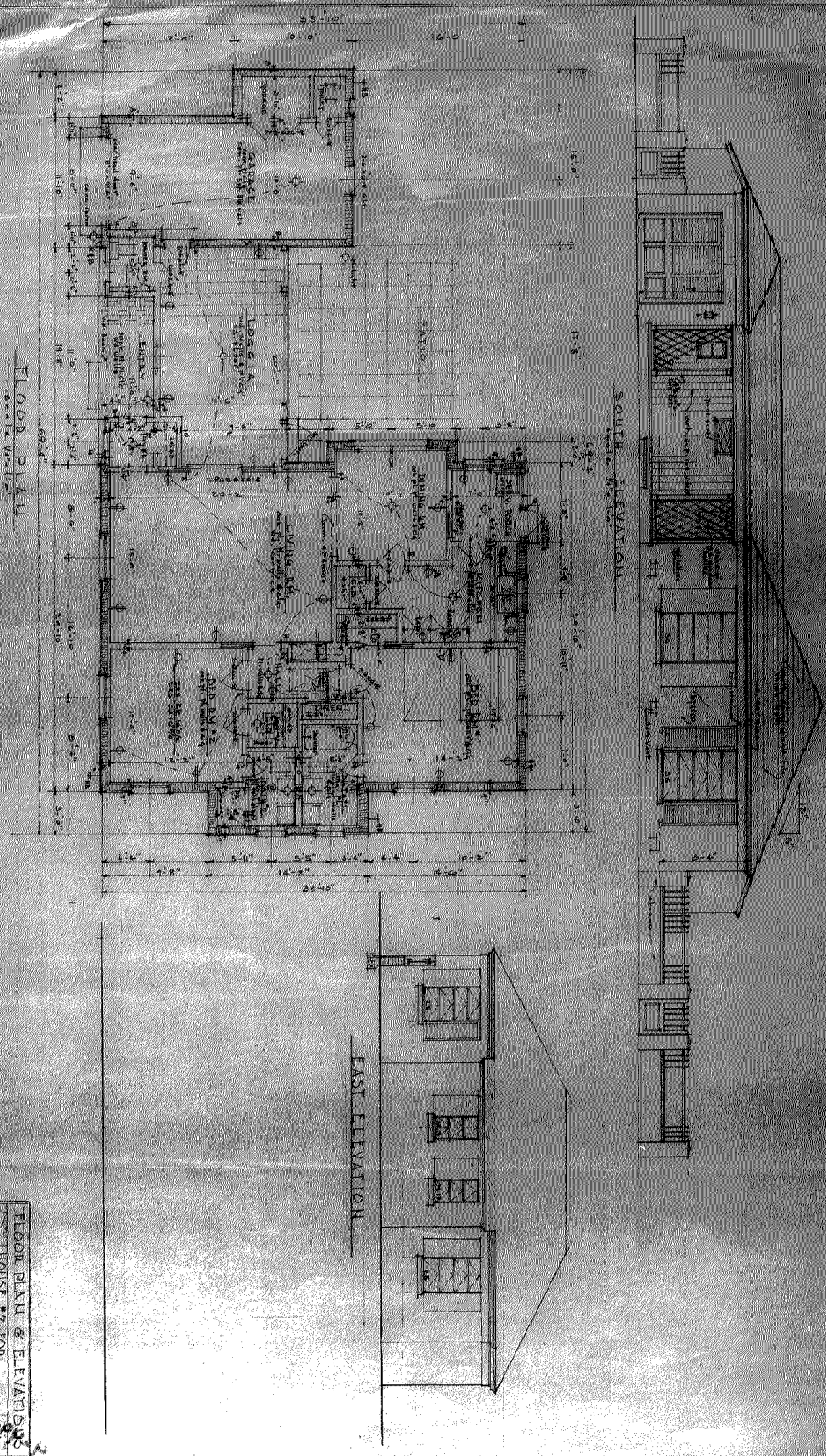
10-15-72



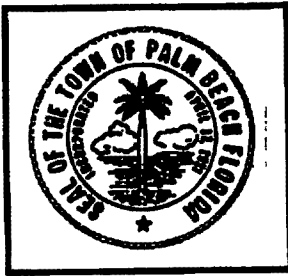
FOUNDATION & PLOT PLAN	
HOUSE #2 FOR	2.12Z
F. H. DODDLY JR.	61.14g
1511 ROAD LOT #15	
WALK	
CASE AND FLOREMAN	
WALK BRIDGE TIA	1
ACREAGE	

5

417



FLOOR PLAN & ELEVATIONS			
HOUSE NO.	100	242	
LOT NO.	100	100	
DATE	1918	1918	
BY	W. H. B. & SONS	W. H. B. & SONS	
FOR	W. H. B. & SONS	W. H. B. & SONS	
2			



ZONING APPLICATION
TOWN OF PALM BEACH

Variance # 11-2011

(Zoning Case Number)

This application includes requests for:

- ☐ Site Plan Review
☐ Special Exception
☒ Variance

TO BE HEARD BY THE TOWN COUNCIL ON JULY 13, 2011, AFTER 9:30 A.M., IN THE TOWN OF PALM BEACH COUNCIL CHAMBERS, LOCATED ON THE 2ND FLOOR, 360 SO. COUNTY ROAD, PALM BEACH. Pursuant to the Town Zoning Code of Ordinances, Sections 134-172 (Special Exceptions and Variances) and/or 134-328 (Site Plan Review), this application is being sent to all property owners within 300' of the location of the subject zoning application. A copy of this application along with all exhibits such as large drawings and other supporting documents that are not attached to this application are available for inspection at the Town's Planning, Zoning & Building Department, 360 S. County Rd., south entrance, weekdays between the hours of 8:30 a.m. and 4:30 p.m.

All interested persons may appear and be heard at said Public Hearing and may likewise submit written statements prior to and at said Public Hearing. If any person decides to appeal any decision made by the Town Council with respect to this matter, he/she will need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based.

I. **Subject Address:** 143 Reef Road

Zoning District R-B

Fee Simple Property Owner's Name: David and Sarah Hrudá

Legal Description: Lot 45 of NORTH SHORE ADDITION TO PALM BEACH, according to the Plat thereof as recorded in Plat Book 20, Page 62, of the Public Records of Palm Beach County, Florida.

Name and address of person who can receive service of process for purposes of litigation in Palm Beach County: Maura Ziska, Esquire, 222 Lakeview Avenue, Suite 1500, West Palm Beach, FL 33401

II. **DESCRIPTION OF THE REQUEST TO BE HEARD BY TOWN COUNCIL, citing applicable Town Zoning Code Section Number(s):**

A. **Applicable Zoning Code Section Number(s):**

1. **Section 134-201 Findings Prior to Authorization.**
2. **Section 134-893 (7) Side yard.**
3. **Section 134-893 (6) Angle of Vision.**

RECEIVED

MAY 20 2011

**TOWN OF PALM BEACH
PZB DEPT**

EXHIBIT C

5/14/2010

Variance # 11-2011
Zoning Case Number

B. Description of request by Zoning Section Number(s):

A request for a variance to construct a two car garage with (I) a 6.25 foot west side yard setback in lieu of the 12.5 feet required in the R-B Zoning District; and (II) an angle of vision of 112 degrees in lieu of the 100 degrees allowed in the R-B Zoning District.

III. APPLICATIONS CONTAINING VARIANCES

If the application contains requests for variances, please respond to the questions below, and complete Exhibit A (Findings for authorizing a variance as stated in the Town's Zoning Code at Section 134-201).

- a. Applicant should provide a brief description of the special conditions which when subjected to a literal enforcement of the provisions of the zoning ordinance will result in unnecessary and undue **HARDSHIP**. This explanation should be a summary of information provided in Exhibit A.

The hardship, which runs with the land, is that the residence was built without a garage and the zoning code has changed since that time requiring a two-car garage for single family residence construction. The applicant would like to make their house conforming and provide a place for their automobiles and recreational equipment and vehicles. Because of the existing configuration of the house, the only location for the garage is on the west side of the house and would slightly encroach into the setback.

- b. Applicant should address how granting of a variance for these special conditions will not be contrary to the public's interest.

The granting of the variance will not be contrary to the public's interest as the proposed garage will shield the cars and bikes from the street where they are currently out in plain view.

IV. SITE HISTORY

Please provide a detailed history in chronological order of all zoning-related requests processed on or after January 1, 1970 applicable to this property.

None.

Respectfully submitted,



Applicant's Signature

Maura A. Ziska, Atty. For David and Sarah Hruda
(561) 802-8960
(Typed name & telephone #)



Fee Simple Property Owner's Signature
(or his/her duly authorized attorney)

Maura A. Ziska, Atty. for David and Sarah Hruda
(561) 802-8960
(Typed name & telephone #)

5/14/2010

EXHIBIT A - REQUEST FOR VARIANCE

CRITERIA FOR AUTHORIZING A VARIANCE

The Town Council must find the application in conformance with a number of criteria. Please address each of the criteria completely in order to provide the Council with sufficient information to make a determination on your application.

1. List the special conditions and circumstances peculiar to the land, structure or building which are not applicable to other lands, structures or buildings in the same zoning district.

The existing house is nonconforming to today's code by not having a two car garage. Although it is grandfathered, the Applicant would like to have a two car garage to park their cars and store their bicycles.

2. Indicate how the special conditions and circumstances do not result from the actions of the applicant.

The applicant was not the cause of the special conditions of the property or residence as the non-conformity of not having a garage existed prior to the applicant owning the property.

3. Demonstrate that the granting of the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.

The granting of the variance will not confer on the applicant a special privilege that is denied to the neighboring properties as many properties and residences in the area have garages and non-conforming setbacks as the residences were built before the current zoning restrictions were in place.

4. Demonstrate how literal interpretation of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.

The hardship, which runs with the land, is that the residence was built without a garage and the zoning code has changed since that time requiring a two-car garage for single family residence construction. The applicant would like to make their house conforming and provide a place for their automobiles and recreational equipment and vehicles. Because of the existing configuration of the house, the only location for the garage is on the west side of the house and would slightly encroach into the setback.

5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Since the structure will be covering an existing driveway and not greenspace, it will not be detrimental to the landscaping or drainage. The non-conforming setback is minimal for a one story structure that is screened from the neighbor with landscaping.

6. Show how the granting of the variance will be in harmony with the general intent and purpose of this chapter, and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

The granting of the variances will be in harmony with the general intent and purpose of this ordinance and will not be injurious to the neighborhood since the current code would require a two car garage and it will improve the aesthetics of the site.

5/14/2010

EXHIBIT "B"

PARKING STATEMENT

143 Reef Road

Variance #11-2011

All construction vehicles will either park on the property or permitted parking on the right of way as allowed by the town.

LAW OFFICES
ALLEY, MAASS, ROGERS & LINDSAY, P.A.

340 ROYAL POINCIANA WAY, SUITE 321

POST OFFICE BOX 431

PALM BEACH, FLORIDA 33480-0431

(561) 659-1770

FACSIMILE (561) 833-2261

DOYLE ROGERS
ALAN LINDSAY
PAUL B. ERICKSON
DAVID H. BAKER
WILLIAM W. ATTERBURY III
LOUIS L. HAMBY III
ROBB R. MAASS
M. TIMOTHY HANLON
WARREN D. HAYES, SR.
STUART J. HAFT
BRUCE A. McALLISTER

RAYMOND C. ALLEY (1893-1975)
HAROLD G. MAASS (1923-2006)
DWIGHT A. MILLER (1946-2010)
KAREN S. MARX (1964-1994)

EDWARD D. LEWIS (OF COUNSEL)

CAROL S. WAXLER
1331 SE OCEAN BOULEVARD
STUART, FLORIDA 34996
P (772) 287-4404
F (772) 287-4044

July 8, 2011

**VIA E-MAIL &
REGULAR MAIL**

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

RECEIVED

By MORAKIS at 4:11 pm, Jul 08, 2011

**Re: Variance #11-2011
143 Reef Road**

Dear Mayor Coniglio and Members of Town Council:

This firm has been retained to represent Mrs. Gayle Petersen, who lives at 151 Reef Road. Mrs. Petersen lives immediately west of the property located at 143 Reef Road, which is the subject of Variance Application #11-2011 to be considered by you at your June 13, 2011 meeting.

Mrs. Petersen vehemently objects to the application because her bedroom is located at the point on her property closest to the proposed construction of the two car garage. Mrs. Petersen has suffered from sleep deprivation for the last several years due to the long term illness of her husband Raymond, and both the construction and completed garage would cause further noise and interruption to her attempts to sleep and could result in additional negative health issues.

Legally, there is no legal hardship presented in the application or applicable to this property. This lot is very similar to most of the other properties on Reef Road, and the owners were certainly aware (or should have been aware) of these size limitations when they purchased the property. In addition, a reasonable use of the property already exists and under applicable case law no variance should be granted. Mrs. Ziska acknowledges that no garage is currently required because the property is "grandfathered." Furthermore, the application states that the applicant "would like" a two car garage, but no hardship exists and a reasonable use of the property has existed for numerous years.

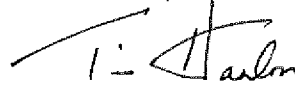
In addition, it is odd that Mrs. Petersen was approached by Sean Heiniger, a former owner of this property (he deeded the property to the Hrudas in 2004), who requested Mrs. Petersen's consent to the variance to accommodate Mr. Heiniger and his children. Mr. Heiniger is neither the property owner nor the applicant, and we respectfully request that you inquire about this inconsistency.

Interestingly, Mrs. Ziska represented Mrs. Petersen in her purchase of 151 Reef Road and she appears to have a conflict of interest in this matter.

For all of the reasons described above, on behalf of Mrs. Petersen, we respectfully request that you deny Variance Application #11-2011.

If you have any questions, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Timothy Hanlon". The signature is stylized with a large, sweeping initial "M" and a cursive "Hanlon".

M. Timothy Hanlon

MTH/cmm

cc: Mrs. Gayle Petersen

From: Anne metzger <amet44@aol.com>
Subject: **143 Reef Road**
Date: July 8, 2011 7:57:31 AM EDT
To: annegm44@gmail.com
Cc: Anne metzger <amet44@aol.com>, Bill Metzger <JWMETZGER@aol.com>



July 8th, 2001

To the Members of the Town Council:

We live at 277 Esplanade Way and were noticed about the proposed changes to the house at 143 Reef Road, which is in our neighborhood. The requested variance would allow the standard 12.5-foot setback to be reduced by 50%, resulting in a 6.25-foot setback. We believe this would be *too narrow a set back* and would compromise privacy in the neighborhood. Additionally, we are concerned about the precedent that might be established by allowing structures to be built so close to adjoining neighbors' property.

Thank you,

Anne Metzger
Bill Metzger

Anne and Bill Metzger

RECEIVED
JUL - 8 2011
TOWN OF PALM BEACH
PZB DEPT

July 1, 2011

RECEIVED

JUL - 6 2011

TOWN OF PALM BEACH
PZB DEPT

Town of Palm Beach

Zoning & Building Department

360 S. County Road

Palm Beach, Florida 33480

Re: 143 Reef Road *Variance # 11-2011*

To Whom it May Concern:

We have been residents of 144 Reef Road for 16 years, the home directly across the street from 143 Reef. We both have also been residents of the town of Palm Beach for 50 years, our entire lives. We are submitting this notice to preserve the ambiance on the north end. Reef Road is a quiet street with an Island appeal. Most of the residents like it that way and moved here because they hope to keep it this way. We understand a petition to build a two car garage has been filed. Our concerns are as follows:

The house is being rented and they are not the owners.

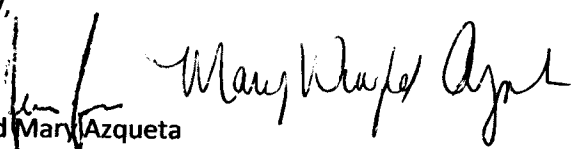
Why do they have to expand to a garage that is so large, the house originally had a one car garage.

The disruption to the safety of the families on the street and the disturbance of peace is overwhelming.

It would seem that the appropriate size garage for this street would be a one car garage, considering the size of the home and property, fitting in with the rest of the street, and the north end.

Thank you for your consideration in this matter.

Sincerely,


Jesse and Mary Azqueta

Paul Gingras, DMD
153 Reef Road
Palm Beach, FL 33480

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

30 June 2011

Dear Members of the Town Council:

My wife and I live at 153 Reef Road and we received a notice of a request for a zoning variance for a property located at 143 Reef Road. We have three concerns regarding the request.

1. The application lists the property owners as David and Sarah Hruda. We are not sure Mr. and Mrs. Hruda own the property. We have been repeatedly told that someone else owns the property. The Town needs to determine who the owners are before proceeding with the application.
2. Under Exhibit A- Request For Variance, item 4, the applicant states that the residence was built without a garage. This house was originally built with a one car garage. This garage was later converted to a living space by a previous owner. A check with the Building Department will confirm this.
3. The addition of a two car garage would reduce the normal side yard setback by half which would change the appearance of the residence by reducing the greenspace surrounding it. This would set a bad precedent for the R-B zoning in this neighborhood. A one car garage addition would impose less on the normal setback.

We are opposed to a two car garage addition and we are not opposed to a one car garage addition.

Sincerely,

Paul and Sally Gingras

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

July 11, 2011

VIA FACSIMILE: 561-835-4621

RECEIVED

By Deborah A. Morakis at 5:09 pm, Jul 11, 2011

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

RE: Variance #11/2011/ 143 Reef Road, Palm Beach

Dear Mayor and Town Council:

On behalf of the property owner, I would like to request a deferral of the above-referenced matter from the July 13, 2011 until the August 10, 2011 Town Council meeting. The reason for the deferral is so the applicant can have time to work out issues with the neighbors.

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

Sincerely yours,


Maura A. Ziska

MAZ/mr

cc: Paul Castro

00011258

EXHIBIT F

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: 561-835-4621

July 21, 2011

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

RE: Variance #11-2011/249/143 Reef Road, Palm Beach

Dear Mayor and Town Council:

Please **withdraw** the above referenced matter from the August 10, 2011 Town Council agenda. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely yours,



Maura A. Ziska

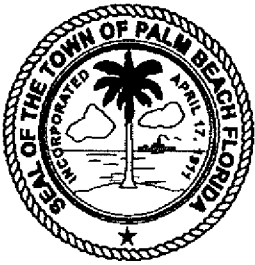
MAZ/mr

cc: Paul Castro

Pat Seagraves

00011412

EXHIBIT G



TOWN OF PALM BEACH

Planning, Zoning & Building Department

July 25, 2011

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

Subject: Variance #11-2011, 143 Reef Road

Dear Ms. Ziska:

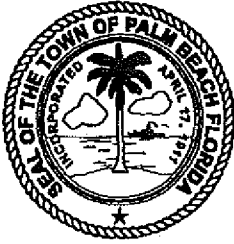
The Town Council, at its July 13, 2011 meeting, deferred the subject application at your client's request. The Town has subsequently received your client's request to withdraw the subject application. The Town Council will consider that request at the August 10, 2011 Council meeting.

If you have any questions, please feel free to contact me at 227-6406,

Sincerely,

Paul Castro, AICP
Zoning Administrator

cc: John S. Page, Director, Planning, Zoning & Building
Jeff Taylor, Building Official
John Lindgren, Planning Administrator
zf & pf



TOWN OF PALM BEACH

Planning, Zoning & Building Department

August 23, 2011

Ms. Maura Ziaska, Esq.
222 Lakeview Avenue
Suite 1500
West Palm Beach, FL 33401

Subject: Variance #11-2011, 143 Reef Road

Dear Ms. Ziaska:

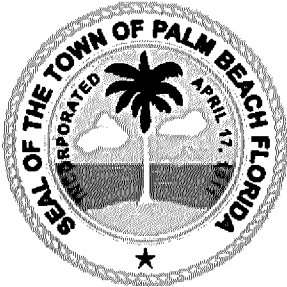
The Town Council, at its August 10, 2011 meeting, accepted your client's request to withdraw the subject application. If you have any questions, please feel free to contact me at 227-6406.

Sincerely,

Paul Castro, AICP
Zoning Administrator

cc: John S. Page, Director, Planning, Zoning & Building
Jeff Taylor, Building Official
John Lindgren, Planning Administrator
zf & pf

ZONING APPLICATION
TOWN OF PALM BEACH



Z-20-00269
(Zoning Case Number)

This application includes requests for:

- ☐ Site Plan Review
- ☐ Special Exception
- ☒ Variance

TO BE HEARD BY THE TOWN COUNCIL ON SEPTEMBER 9, 2020 AFTER 9:30 A.M., IN THE TOWN OF PALM BEACH COUNCIL CHAMBERS LOCATED ON THE 2ND FLOOR, 360 SO. COUNTY ROAD, PALM BEACH. Pursuant to the Town Zoning Code of Ordinances, Sections 134-172 (Special Exceptions and Variances) and/or 134-328 (Site Plan Review), this application is being sent to all property owners within 300' of the location of the subject zoning application. A copy of this application along with all exhibits such as large drawings and other supporting documents that are not attached to this application are available for inspection at the Town's Planning, Zoning & Building Department, 360 S. County Rd., east entrance, weekdays between the hours of 8:30 a.m. and 4:30 p.m.

All interested persons may appear and be heard at said Public Hearing and may likewise submit written statements prior to and at said Public Hearing. If any person decides to appeal any decision made by the Town Council with respect to this matter, he/she will need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based.

I. SUBJECT ADDRESS: 143 Reef Road Zoning District: R-B

Fee Simple Property Owner's Name: John K. Criddle

Legal Description: Lot 45, Plat of North Shore Addition to Palm Beach, according to the Plat thereof, recorded in Plat Book 20, Page 63, as recorded in Public Records in and for Palm Beach County, Florida.

Name and address of person who can receive service of process for purposes of litigation in Palm Beach County: Maura Ziska, Esq. 222 Lakeview Ave, Suite 1500 West Palm Beach, FL 33401

Applicant Name: John Criddle and Franny Frisbie

Contact phone: c/o Maura Ziska 561-802-8960

II. **DESCRIPTION OF THE REQUEST TO BE HEARD BY TOWN COUNCIL, citing applicable Town Zoning Code Section Number(s):**

A. Applicable Zoning Code Section Number(s):

1. Section 134-201. Findings prior to authorization.
2. Section 134-893. Lot, yard and area requirements – Generally. (7) Side yard; and (6) Angle of Vision.

Z-20-00269

Zoning Case Number

B. Description of request by Zoning Section Number(s):

The applicant is proposing to construct a new 597 square foot one story garage to the west of the existing residence. The following variances are being requested:

- 1. Section 134-893(7): The applicant is requesting a variance for a west side yard setback of 5 feet in lieu of the 12.5 foot minimum required for a one story building.**
- 2. Section 134-893(6): The applicant is requesting a variance for an angle of vision of 105 degrees in lieu of the 100 degrees maximum allowed.**

III. APPLICATIONS CONTAINING VARIANCES

If the application contains requests for variances, please respond to the questions below, and complete **Exhibit A** (Findings for authorizing a variance as stated in the Town's Zoning Code at Section 134-201).

a. Applicant should provide a brief description of the special conditions which when subjected to a literal enforcement of the provisions of the zoning ordinance will result in unnecessary and undue **HARDSHIP**. This explanation should be a summary of information provided in Exhibit A.

The hardship, which runs with the land, is that the residence was built without a garage and the zoning code has changed since that time requiring a two-car garage for single family residences. The applicant would like to make their house conforming and provide a place for their automobiles and bicycles. Because of the existing configuration of the house, the only location for the garage is on the west side of the house and would slightly encroach into the setback.

b. Applicant should address how granting of a variance for these special conditions will not be contrary to the public's interest.

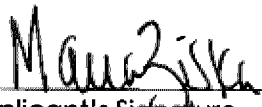
The variances being requested will not be contrary to the public's interest as the proposed garage will hide the cars and bikes from the street where they are currently out in plain view.

IV. SITE HISTORY

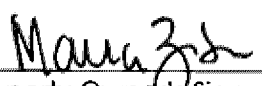
Please provide a detailed history in chronological order of all zoning-related requests processed on or after January 1, 1970 applicable to this property.

08/10/2011 – Variance #11-2011 – Requests variances to construct a two car garage with a 6.25 feet West side yard setback in lieu of the 12.5 feet required; and an angle of vision of 112 degrees in lieu of the 100 degrees allowed. WITHDRAWN per letter dated July 21, 2011.

Respectfully submitted,


Applicant's Signature

Maura Ziska, Attorney for John Criddle
Typed name & telephone # 561-802-8960


Property Owner's Signature
(or his/her duly authorized attorney)

Maura Ziska, Attorney for John Criddle
Typed name & telephone # 561-802-890

EXHIBIT A - REQUEST FOR VARIANCE

CRITERIA FOR AUTHORIZING A VARIANCE

The Town Council must find the application in conformance with a number of criteria. Please address each of the criteria completely in order to provide the Council with sufficient information to make a determination on your application.

1. List the special conditions and circumstances peculiar to the land, structure or building which are not applicable to other lands, structures or buildings in the same zoning district.

The existing house is nonconforming to today's code by not having a two car garage. The Applicant would like to have a garage to park their cars and store their bicycles.

2. Indicate how the special conditions and circumstances do not result from the actions of the applicant.

The applicant was not the cause of the special conditions of the property or residence as the non-conforming lack of garage existed prior to the applicant owning the property.

3. Demonstrate that the granting of the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.

The granting of the variance will not confer on the applicant a special privilege that is denied to the neighboring properties as many properties and residences in the area have garages and non-conforming setbacks as the residences were built before the current zoning restrictions were in place.

4. Demonstrate how literal interpretation of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.

The hardship, which runs with the land, is that the residence was built without a garage and the zoning code has changed since that time requiring a two-car garage for single family residence construction. The applicant would like to make their house conforming and provide a place for their automobiles and recreational equipment and vehicles. Because of the existing configuration of the house, the only location for the garage is on the west side of the house and would slightly encroach into the setback.

5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Since the structure will be covering an existing driveway and not greenspace, it will not be detrimental to the landscaping or drainage. The non-conforming setback is minimal for a one story structure that is screened from the neighbor with landscaping.

6. Show how the granting of the variance will be in harmony with the general intent and purpose of this chapter, and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

The granting of the variances will be not be injurious to the neighborhood since the code today would require a two car garage and it will improve the aesthetics of the site.

Z-20-00269

Zoning Case Number

EXHIBIT B - PARKING STATEMENT

Please provide a detailed parking statement which includes details of all available off-street parking, including information regarding the number of parking spaces designated for service use (for example: lawn service, pool service, etc), staff/employee use, etc.

COMMERCIAL PROPERTIES MUST:

PROVIDE NUMBER OF OFF-STREET PARKING SPACES AVAILABLE
FOR EMPLOYEES ON THE SUBJECT PROPERTY: _____

PROVIDE NUMBER OF EMPLOYEES/STAFF PER SHIFT: _____

INDICATE LOCATION WHERE EMPLOYEES PARK OFF SITE: _____

All construction vehicles and/or visitors will park on site or in the permitted right of way.

SNIFFEN & SPELLMAN, P.A.

Sender's Direct Line: (561) 721-4002
Sender's Email: jeubanks@sniffenlaw.com

August 25, 2019

Via E-mail

Architectural Commission
c/o Michael Small, Chair
Town Council of the Town of Palm Beach
360 South County Road
Palm Beach, Florida 33480

**Re: Objection to Application No. B-045-2020 for Proposed Garage at
143 Reef Road**

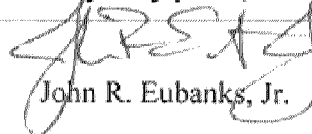
Dear Mr. Small:

Our office was hired this afternoon by Gayle P. Petersen, the owner of 151 Reef Road. Ms. Peterson's home lies immediately to the west of 143 Reef Road. In that capacity please be advised that Ms. Petersen objects to the two car garage proposed by the Applicant, along with the potential variance needed to approve the same.

In direct conflict with the Applicant's representations, the house at 143 Reef Road was built with a one car garage, which was later converted to living space. As a result, there is no hardship which would support a variance.

At the same time, the proposed garage would reduce the normal side yard setback and greenspace in half, change the appearance of the residence from the street, increase the massing next to Ms. Petersen's home, and impinge upon her privacy. Moreover, the Application is nothing more than the same proposal set forth in former Variance #11-2011, which was soundly rejected by the Town Council in July of 2011, resulting in its withdrawal at that time. A copy of the objections from the surrounding neighbors in July 2011, along with a copy of the withdrawal is attached hereto.

Very truly yours,



John R. Eubanks, Jr.

cc: ARCOM Committee Members
Wayne Bergman, Acting Director Planning, Zoning & Building
Kelly Churney, Administrative Specialist
Town Clerk, Town of Palm Beach

EXHIBIT J

REPLY TO:

605 NORTH OLIVE AVENUE, 2ND FLOOR
WEST PALM BEACH, FL • 33401
PHONE: 561.721.4000
FAX: 561.721.4001

TC DEV REVIEW MEETING 11-13-20

WWW.SNIFFENLAW.COM

123 NORTH MONROE STREET
TALLAHASSEE, FL • 32301
PHONE: 850.205.1096
FAX: 850.205.3004

215 of 422

July 1, 2011

RECEIVED

JUL - 6 2011

TOWN OF PALM BEACH
PZB DEPT

Town of Palm Beach

Zoning & Building Department

360 S. County Road

Palm Beach, Florida 33480

Re: 143 Reef Road *Variance # 11-2011*

To Whom it May Concern:

We have been residents of 144 Reef Road for 16 years, the home directly across the street from 143 Reef. We both have also been residents of the town of Palm Beach for 50 years, our entire lives. We are submitting this notice to preserve the ambiance on the north end. Reef Road is a quiet street with an Island appeal. Most of the residents like it that way and moved here because they hope to keep it this way. We understand a petition to build a two car garage has been filed. Our concerns are as follows:

The house is being rented and they are not the owners.

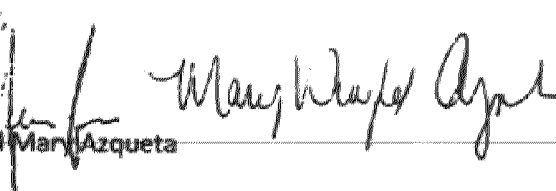
Why do they have to expand to a garage that is so large, the house originally had a one car garage.

The disruption to the safety of the families on the street and the disturbance of peace is overwhelming.

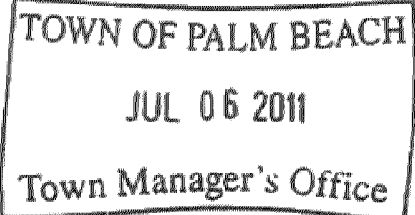
It would seem that the appropriate size garage for this street would be a one car garage, considering the size of the home and property, fitting in with the rest of the street, and the north end.

Thank you for your consideration in this matter.

Sincerely,


Jesse and Mary Azqueta

Paul Gingras, DMD
153 Reef Road
Palm Beach, FL 33480



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

30 June 2011

Dear Members of the Town Council:

My wife and I live at 153 Reef Road and we received a notice of a request for a zoning variance for a property located at 143 Reef Road. We have three concerns regarding the request.

1. The application lists the property owners as David and Sarah Hruda. We are not sure Mr. and Mrs. Hruda own the property. We have been repeatedly told that someone else owns the property. The Town needs to determine who the owners are before proceeding with the application.
2. Under Exhibit A- Request For Variance, item 4, the applicant states that the residence was built without a garage. This house was originally built with a one car garage. This garage was later converted to a living space by a previous owner. A check with the Building Department will confirm this.
3. The addition of a two car garage would reduce the normal side yard setback by half which would change the appearance of the residence by reducing the greenspace surrounding it. This would set a bad precedent for the R-B zoning in this neighborhood. A one car garage addition would impose less on the normal setback.

We are opposed to a two car garage addition and we are not opposed to a one car garage addition.

Sincerely,

Two handwritten signatures in black ink. The first signature is "Paul Gingras, DMD" and the second is "Sally Gingras".

Paul and Sally Gingras

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: 561-835-4621

July 21, 2011

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

RE: Variance #11-2011/249/143 Reef Road, Palm Beach

Dear Mayor and Town Council:

Please **withdraw** the above referenced matter from the August 10, 2011 Town Council agenda. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely yours,



Maura A. Ziska

MAZ/mr

cc: Paul Castro

Pat Seagraves

00011412

From: [Anne Metzger](#)
To: msmall@smallawpalmbeach.com; RNG@garrisonarch.com; alexives@hotmail.com; amginny@aol.com; [John David Corey](#); betsyshiverick@gmail.com; catlinkt@gmail.com; dan.floersheimer@icloud.com; edward.cooney@gmail.com; info@fairfaxandsammons.com
Cc: [Wayne Bergman](#); [Kelly Churney](#)
Subject: Concerns re: 143 Reef Road - ARCOM meeting Today
Date: Wednesday, August 26, 2020 7:57:10 AM

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Members of the Architectural Commission,

This letter is in regard to the proposed plans for 143 Reef Road that you are considering today.

We live one block to the north on Esplanade Way and are very familiar with the subject property. We walk our dog on Reef Road almost every day.

In our opinion, the proposed plans for the house need to be scaled back. The two car garage will look very squeezed so close to the west property line.

We are concerned that this will set an undesirable precedent in our neighborhood.

In addition, the front door looks out of scale for the house.

Please ask for the plans to be restudied.

Thank you,
Anne and Bill Metzger
277 Esplanade Way
Palm Beach

From: [Antonette Fabrizi](#) on behalf of [Town Council](#)
To: [Town Council & Mayor](#)
Cc: [Pat Gayle-Gordon](#); [Queenester Nieves](#); [Wayne Bergman](#); [Kelly Churney](#); [Paul Castro](#); [Kirk Blouin](#); [Jay Boodheshwar](#)
Subject: Fw: 143 Reef Road
Date: Tuesday, September 08, 2020 12:30:44 PM

From: jwmetzger <jwmetzger@aol.com>
Sent: Tuesday, September 8, 2020 10:11 AM
To: Town Council
Subject: 143 Reef Road

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Members of the Town Council and Mayor,

This letter is in regard to the proposed plans for 143 Reef Road.

We live one block to the north on Esplanade Way and are very familiar with the subject property in that block of Reef Road. We very often walk our dog on Reef Road.

In our opinion, the house as proposed with the reduced setback would be too close to the property line with the adjoining neighbor and would set a precedent for our neighborhood that we do not support.

The proposed plans for the house need to be scaled back. The two car garage will look very squished so close to the west property line and the neighbor's house and yard.

Please deny the request for the side yard variance and suggest the plans be restudied.

Thank you,
Anne and Bill Metzger
277 Esplanade Way
Palm Beach

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00281 SPECIAL EXCEPTION WITH SITE PLAN REVIEW Zoning District: R-D(2) High Density Residential and R-C Medium Density Residential The application of CH HOTEL, LLC (Andrew and Sarah Wetenhall and Family), relative to property located at **135 HAMMON AVE, 152 HAMMON AVE, AND 155 HAMMON AVE**, legal description on file, is described below. Request for a modification to the previously approved Special Exception for the Colony hotel use to allow the relocation of the previously held events on the west side of the ballroom building to the new east garden. The use of the garden area east of the ballroom building shall be primarily used as a pre-function space such as wedding ceremonies and cocktail receptions -all to be used in conjunction with the ballroom building that was approved by the Town Council In 1986. The Colony Hotel is requesting the following terms to be approved: 1) All pre-function events or ceremonies in the garden will be concluded by 10:00 p.m. 2) There shall be only background music allowed or live music of no more four instruments. 3) There shall be no DJ music 4) Microphone use shall be allowed for officiant for wedding services or an individual making remarks. 5) The hotel will agree to install a custom designed in-ground sound system to abate noise. 6) The hotel will install a mutually agreeable privacy/landscape buffer along the eastern property line. [Applicant's Representative: Maura Ziska Esq] **Consideration of Proposed Declaration of Use Agreement.**

Presenter

ATTACHMENTS:

- **Memorandum Dated November 3, 2020 from Wayne Bergman, Director of Planning, Zoning and Building**
- **Draft Declaration of Use Agreement**

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 13, 2020

To: Mayor and Town Council

From: Wayne Bergman, Planning, Zoning and Building Director

Re: Proposed Declaration of Use Agreement for the Colony Hotel's Use of the New Garden Area on the East Side of the Ballroom, Z-20-00281, 135, 152 and 155 Hammon Avenue

Date: November 3, 2020

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the proposed Declaration of Use Agreement, as modified by Staff.

GENERAL INFORMATION

On October 14, 2020, the Council conditionally approved Z-20-00281, Special Exception with Site Plan Review to allow The Colony Hotel to have events, such as weddings, receptions and pre-function activities in the new garden area on the east side of the ballroom. The applicant presented proposed conditions of approval related to the use of that area and the Council modified and expanded on those conditions. The Council approval requires the applicant to draft a proposed Declaration of Use Agreement incorporating those conditions for their consideration and approval at the November 13, 2020 Council meeting.

The applicant's attorney, Maura Ziska, has drafted a proposed Agreement based on the development order and her understanding of what those conditions are. Staff has reviewed the draft Agreement and has made modifications. The attached proposed Agreement incorporates Staff's recommended changes. While staff has sent the recommended changes to the applicant's attorney, to date no response has been provided to the Town. The additional or modified conditions that Staff recommends be included in the proposed Agreement are identified in bold, add/delete format for discussion.

TOWN ATTORNEY REVIEW

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

cc: Kirk Blouin, Town Manager
Jay Boodheshwar, Deputy Town Manager
Nicholas Caristo, Police Chief
zf & pf

DECLARATION OF USE AGREEMENT

by

THE TOWN OF PALM BEACH

and

CH HOTEL LLC

_____ **2020**

**Prepared by and return to:
Maura A. Ziska, Esquire
Kochman & Ziska PLC
222 Lakeview Avenue, Suite 1500
West Palm Beach, FL 33401
(561) 802-8960**

TABLE OF CONTENTS

	Page
ARTICLE 1	RECITALS.....3
ARTICLE 11	REPRESENTATION OF OWNERSHIP.....3
ARTICLE III	HOTEL USE4
ARTICLE IV	CONDITIONS.....4
ARTICLE V	VOLUNTARY AGREEMENT.....7
ARTICLE VI	REMEDIES FOR VIOLATION.....7
ARTICLE VII	PROVISIONS TO RUN WITH THE HOTEL/RECORDING.....8
ARTICLE VIII	ENTIRE AGREEMENT.....8
ARTICLE IX	EFFECTIVE DATE.....8
ARTICLE X	MISCELLANEOUS.....8

DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2020 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called “Town”) and CH HOTEL LLC, 155 Hammon Avenue, Palm Beach, Florida 33480 (hereinafter called “Hotel”), which terms “Town” and “Hotel” will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH:

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

WHEREAS, the Hotel Location falls within the Town’s R-D(2) Zoning District; and

WHEREAS, The Hotel desires a Special Exception use at the Hotel Location; and

WHEREAS, the Town Council conditionally approved Zoning Application Number Z-20-00281 on October 14, 2020 which granted the Hotel special exception approval to allow relocation of the previously held events on the West side of the ballroom building to the new East garden area; and

WHEREAS, all of the representations made herein are true and accurate and the approval of the Special Exception and Site Plan are conditioned upon the representations made herein and all of the conditions herein imposed; and

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

ARTICLE I **RECITALS**

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

ARTICLE II **REPRESENTATION OF OWNERSHIP**

The Hotel has full right to enter into this Agreement and to bind the Land and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Land in accordance with the terms and conditions of this Agreement. No consent to execution, delivery and performance hereunder is required from any person, partner, limited partner, creditor, investor, judicial or administrative body, governmental authority or other party other than any such consent which already has been unconditionally given or referenced herein. The execution of this Agreement or the consummation of the transactions contemplated herein will not violate any restriction, court order or agreement to which the Hotel or Land are subject.

ARTICLE III
EAST GARDEN USE

The East Garden use that is the subject of this Agreement shall be as set forth in the application submitted to the Town as Z-20-00281 and approved by the Town Council on October 13, 2020, as the same may be amended from time to time (hereinafter referred to as the "Approval").

ARTICLE IV
CONDITIONS

The approval **to use the east garden area** shall be based upon the following conditions:

- 1) All outdoor events in the ~~Eeast~~ garden area shall be concluded by 10:00 p.m. ~~Load out and clean up can and will occur thereafter.~~
- 2) There shall be a maximum capacity of 175 people per event.
- 3) The only amplified music allowed shall be background music played via the hotel's custom-designed installed in-ground sound system that governs volume.
- 4) ~~No D.J.s with external sound equipment shall be allowed to perform in the East Garden.~~ **are prohibited. Music shall be allowed in the east garden area in accordance with 3, 5 and 6 of this Article.**
- 5) When live musicians perform, the groups are not to exceed four instruments; no ~~live~~ drums or percussion shall be allowed in the ~~Garden~~ **east garden area**. The use of all live instruments shall end no later than 9:00 p.m.
- 6) A microphone will be allowed only for an officiant or for an individual making remarks. Microphone use shall end no later than 9:00 p.m.
- 7) The ~~Eeast~~ doors of the ballroom building shall ~~not~~ remain ~~propped open during ballroom events.~~ **closed during events. During said events, doors shall be used for ingress and egress.**
- 8) A privacy landscape buffer shall be installed **and maintained** on the East property line. Said landscape buffer shall include a six-foot-high, white vinyl fence and a continuous Podocarpus hedge. These attributes were agreed to by the neighbors at 129 Hammon Avenue.
- 9) **If there are more than three verified complaints regarding noise or activities beyond the scope of this Agreement in the east garden area, the use of the subject area shall cease and the applicant shall return to the next regularly scheduled Town Council meeting to address said complaints**
- 10) ~~9)~~ The applicant shall come back to the Town Council **at their regular May 2021 meeting on May 12, 2021** to address the conditions of approval and determine if any modifications are required to further mitigate any negative impacts by the use of the

East Garden area, as substantiated by Town of Palm Beach Code Enforcement Director of Planning, Zoning and Building.

ARTICLE V
VOLUNTARY AGREEMENT AND HOLD HARMLESS

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

ARTICLE VI
REMEDIES FOR VIOLATION

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

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

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

ARTICLE VII
PROVISIONS TO RUN WITH THE ~~HOTEL~~ LAND/RECORDING

~~This Agreement shall NOT run with the Land and shall be binding upon the Hotel only and shall terminate upon the termination of the Hotel's business tax receipt for~~

~~operation of a cooperative hotel, or rescission of the Approval. This Agreement shall be recorded by the Hotel in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto.~~

This Agreement shall run with the Land and shall be binding upon the Hotel and their respective heirs, legal representatives, successors and assigns. This Agreement shall be recorded by the Hotel in the official Records of Palm Beach County, Florida upon full execution by the parties hereto.

ARTICLE VIII ENTIRE AGREEMENT

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

ARTICLE IX EFFECTIVE DATE

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

ARTICLE X MISCELLANEOUS

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

All references in this Agreement to times of a day are stated in terms of Eastern Time, i.e. whichever of Eastern Standard Time or Eastern Daylight Time may be in effect at the time. The word “day” in this Agreement means any period beginning when the time of day is midnight and ending on the next later occasion when the time of day is midnight.

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

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

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

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

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

Signed, sealed and delivered
In the presence of:

THE TOWN OF PALM BEACH:

Print Name: _____

By: _____
Gail Coniglio, Mayor

Print Name: _____

By: _____
Margaret Zeidman, President

Print Name: _____

Print Name: _____

By: _____
Kirk Blouin, Town Manager

Print Name: _____

Print Name: _____

HOTEL:

CH HOTEL LLC

Print Name: _____

By: _____
Its: _____

Print Name: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by GAIL COGNILIO, the Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by MARGARET ZEIDMAN, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by KIRK BLOUIN, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by _____, the _____ of CH HOTEL LLC, a Florida limited liability corporation, on behalf of the corporation, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

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

By: _____
John C. Randolph, Esquire

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel I

Beginning at a point on the North line of First Street (now Hammon Avenue) as shown on a map of VILLA MARINE, recorded in Plat Book 2, page 98, in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, 147 feet West of the Southwest corner of Lot 6, Block 1 of said VILLA MARINE; thence run West on the North line of said First Street 60 feet; thence run North 140 feet; thence run East 60 feet; thence run South 140 feet to the point of beginning.

Parcel II

A tract of land in Section 26, Township 43 South, Range 43 East, in the Town of Palm Beach, Florida, bounded and described as follows:

Beginning at a point on the South line of First Street (also known as Hammon Avenue) if projected Westerly as said street is shown on the Plat of VILLA MARINE which is recorded in the office of the Clerk of the Circuit Court of Palm Beach County, Florida, in Plat Book 2, page 98, which point is 350 feet West of the Northeast corner of Lot 1, Block 2, as shown on said plat of VILLA MARINE, running thence Southerly along a line that is parallel with the East line of said Block 2 a distance of 110 feet, thence Westerly along a line that is parallel with the South line of said First Street a distance of 3.06 feet; thence Southerly along a line that is parallel with the East line of said Block 2 a distance of 30 feet; thence Westerly along a line that is parallel with the South line of said First Street a distance of 46.74 feet; thence Northerly along a line that is parallel with the East line of said Block 2 a distance of 140 feet to the south line of said First Street; thence Easterly along the south line of said First Street, a distance of 49.8 feet to the point of beginning.

Parcel III

Beginning at a point on the South boundary of First Street (also known as Hammon Avenue) 50 feet West of the Northwest corner of Lot 6 of Block 2 of VILLA MARINE, according to the plat thereof on file in the Office of the Clerk of the Circuit Court in and for said County in Plat Book 2, page 98, and running, thence South 140 feet; thence run West 53.06 feet, thence North 30 feet; thence East 3.06 feet, thence North 110 feet to the South line of said First Street, thence East along the South line of First Street 50 feet to the point of beginning.

Parcel IV

Beginning at a point in the south line of First Street if projected westerly by the plat of VILLA MARINE which point is 350 feet west of the northeast corner of Lot 1 of Block 2 of Villa Marine, according to the plat of said Villa Marine, which is recorded in the office of the Clerk of the Circuit Court of Palm Beach County, Florida, in Plat Book 2, Page 98: Thence southerly 140 feet parallel to the east line of said Block 2: Thence westerly parallel to the south line of said First Street 379.6 feet to the east line of the county road; Thence northerly along the east line of the county road 140 feet, more or less, to an intersection of the south line of First Street if

projected westerly by said plat of Villa Marine: Thence easterly on the south line of First Street as aforesaid, 386.7 feet, more or less, to the point of beginning, EXCEPTING THEREFROM the easterly 49.80 feet thereof.

PARCEL 1:

A parcel of land situate, lying and being in the county of Palm Beach, State of Florida, to wit:

BEGINNING at a point in the northerly right of way line of Hammon Avenue (formerly First Street) at a distance of 306 feet westerly from, when measured along the north line of said Hammon Avenue, the southwest corner of Lot 6 of Block 1 of VILLA MARINE, according to plat of said subdivision on file in the office of the Clerk of the Circuit Court, in and for said County, in Book 2 of Plats at page 98: thence continue westerly, along the north line of said Hammon Avenue, a distance of 29.42 feet; thence northerly at right angles to the north line of said Hammon Avenue, a distance of 32 feet; thence westerly, parallel to the north line of said Hammon Avenue, a distance of twenty-three (23) feet; thence northerly, at right angles to the preceding course, a distance of 108.33 feet, more or less, to a point in the south line of Block 17, of ROYAL PARK ADDITION, according to the revised map thereof on file in the office of the Clerk of the Circuit Court, in and for said County, in Plat Book 4 at page 1; thence easterly along the south line of said Block 17 of ROYAL PARK ADDITION, a distance of 55.56 feet, more or less, to a point in a line parallel to and 306 feet westerly from, when measured along the south line of said Block 17 of ROYAL PARK ADDITION, the west line of said Lot 6 of Block 1 of VILLA MARINE; thence southerly along said last described parallel line, a distance of 140.32 feet, more or less, to the point of beginning.

PARCEL 2:

A parcel of land situate, lying and being in the County of Palm Beach, State of Florida, to wit:

BEGINNING at a point on the North line of First Street as shown on the Plat of VILLA MARINE recorded in Plat Book 2 at page 98, Palm Beach County Records 250 feet West of the Southwest corner of Lot 6 in Block 1 of said Plat; thence West along said North line of First Street 50 feet; thence North 140 feet, more or less, to the South line of ROYAL PARK; thence East along said South line of ROYAL PARK 50 feet; thence South 140 feet more or less, to the point of beginning, being Lots 17 and 18 of Block 1 of VILLA MARINE Plat if said Plat were extended Westerly.

ALSO: A right of way or easement 6 feet wide by 140 feet along the East side of Lot 19, the said lot being numbered according to an extension of Plat of VILLA MARINE recorded in Plat Book 2 at page 98, Palm Beach County Records over land described as follows: BEGINNING at a point on the North line of First Street as shown on Plat of VILLA MARINE, 300 feet West of the Southwest corner of Lot 6 of Block 1 of said Plat; thence run West 6 feet; thence North 140 feet to the South line of ROYAL PARK; thence East along said South line 6 feet; thence South 140 feet, more or less, to the point of beginning.

PARCEL 3:

COMMENCING at a point on the North line of First Street, as shown on the map of VILLA MARINE, recorded in Plat Book 2, page 98, in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, 207 feet west of the southwest corner of Lot 6, Block 1, of said VILLA MARINE, aforesaid, thence run west along the North line of First Street 43 feet, thence run North 140 feet more or less; thence run East 43 feet, thence run South 140 feet, more or less, to the point of beginning.

PARCEL 1:

A parcel of land in Section 26, Township 43 South of Range 43 East, Palm Beach County, Florida, and within the corporate limits of the Town of Palm Beach, Florida, more particularly described as follows:

Beginning at a point on the east line of the County Road, where said line would be intersected by the north line of First Street, if projected westerly by plat of VILLA MARINE, as recorded in Plat Book 2, page 98, in the office of the Clerk of the Circuit Court of Palm Beach County, Florida; thence East on the North line of First Street, 109 feet; thence North 140 feet, more or less, to the south line of ROYAL PARK ADDITION; thence West, along the said South line of ROYAL PARK ADDITION, to the intersection of the east line of the County Road; thence southeasterly, along the east line of the County Road, to the point of beginning:

PARCEL 2:

Beginning at a point in the northerly right of way line of Hammon Avenue (formerly First Street) at a distance of 306 feet westerly from, when measured along the north line of said Hammon Avenue, the southwest corner of Lot 6 of Block 1 of VILLA MARINE, according to plat of said subdivision on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Book 2 of Plats at page 98; thence continue westerly, along the north line of said Hammon Avenue, a distance of 29.42 feet to the point of beginning and the southeast corner of the parcel herein described; thence northerly at right angles to the north line of said Hammon Avenue, a distance of 32 feet; thence westerly parallel to the north line of said Hammon Avenue, a distance of 23 feet; thence northerly, at right angles to the preceding course, a distance of 108.33 feet, more or less, to a point in the south line of Block 17 of ROYAL PARK ADDITION, according to the revised map thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 4 at page 1; thence westerly, along the south line of said Block 17 of ROYAL PARK ADDITION, a distance of 19.86 feet, more or less, to a point in the east line of property described in deed recorded in Deed Book 715, page 71 of the Public Records of Palm Beach County, Florida; thence southerly, parallel to the west line of Lot 6 of Block 1 of VILLA MARINE, and along the east line of said property described in said deed recorded in Deed Book 715, at page 71, a distance of 140.38 feet, more or less, to a point in the north line of said Hammon Avenue and the southeast corner of said property described in said deed recorded in Deed Book 715, at page 71; thence easterly, along the north line of said Hammon Avenue, a distance of 46 feet to the point of beginning.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00282 VARIANCE(S) Zoning District R-B Low Density Residential The application of Mr. and Mrs. Terwilliger, Applicants, relative to property located at **202 PLANTATION RD**, legal description on file, is described below. The applicant is proposing to renovate the two-story single family residence by constructing a 425 square foot master bedroom addition and replacement of a 183 square foot open air trellis with a 183 square foot covered porch. The following variances are being requested: 1. Section 134-893(6): an angle of vision of 114 degrees in lieu of 108 degrees existing and 108 degrees maximum allowed. 2. Section 134-893(13): a cubic content ratio of 3.99 in lieu of 3.83 existing and 3.94 maximum allowed. [Applicant's Representative: Maura Ziska Esq]

Presenter

ATTACHMENTS:

- ▣ **Letter Dated October 29, 2020 from Maura Ziska**

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

Esperanté
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401
Telephone 561-802-8960
Facsimile 561-802-8995

*also admitted in NY

VIA EMAIL

October 29, 2020

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

RE: Z-20-00282
202 Plantation Road, Palm Beach, Florida

All:

Please **withdraw** the above referenced project from the **November 13, 2020 TOWN COUNCIL** agenda. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,

Maura Ziska

Maura A. Ziska

maz/jc

cc: Kelly Churney
Client

A Florida Professional Limited Liability Company Including Professional Associations

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00289 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND

VARIANCE(S) Zoning District: C-B Commercial The application of LR Palm House LLC (Ian Livingstone, Executive Chairman), Applicant, relative to property located at **160 ROYAL PALM WAY**, legal description on file, is described below. Section 134-1304 (5): Request to modify Site Plan Review # 1-2016 with Special Exception to change the approved use from condo-hotel to hotel; modify the previously approved site plan; and amend the conditions of approval in the Declaration of Use Agreement, as identified in the proposed Third Amendment to the Declaration of Use which is Exhibit "F") of this application. The proposed site modifications being requested as follows: Section 134-1304(5): The existing Palm House hotel is located at 160 Royal Palm Way, Palm Beach, Florida. It is currently vacant and construction is partially completed. The structure is three stories with a partially enclosed basement containing parking and back-of-house functions. The hotel is 84,495 gross square feet in total. There is an East and West guest wing, and these wings are connected by a central core containing the Main Entrance and other partially completed public functions. A separate conference and events "Function Room" and partial pool deck was also constructed at the south east portion of the property. Section 134-227. 326 & 329 1729(2)(c): (Site Plan Review) The new owner/applicant is proposing new work for the hotel which includes the following site plan modifications: 1) Completion and conversion of guest rooms for a total of 79 keys. Two new presidential suites will be constructed within the building core, each with private outdoor balconies. 2) Completion of the lower level for back-of-house, administrative and housekeeping functions for the hotel. The interior modifications for the lower level includes renovation of partially completed areas including kitchen, food storage, housekeeping, staff areas and hotel administrative offices. The owner is requesting an additional 148 SF to provide a new service stair form the lower level to support the Pool Area. Additional areas for renovation include spaces for MEP Infrastructure such as electrical, hot water, and elevator systems. The proposed modifications remove all Hotel Guest program areas from the lower level. The lower level renovation includes restoration of parking area for 60 parking spaces including three accessible

parking spaces. Two parking spaces which includes on Van Accessible parking space is located behind the existing function room. All parking will be Valet only per the Declaration of Use Amendment Three. Total on-site parking provided is 62 spaces. 3) A new pool deck will be constructed adjacent to the existing Function Room, with various amenities that include chaise lounges and outdoor seating, shade umbrellas, toilets, a towel/concierge stand, open-air bar with enclosed pantry behind, water features, lush native plantings, and Event Lawn to be used as a pre-function space, or for small wedding and/or overflow sun bathing; 4) The first level lobby and public spaces will be completed to include fine dining and lobby bar, with 88 indoor seats as well as 36 outdoor seating facing the new pool deck. The second floor dining that was previously approved has been eliminated to make room for the reconfigured hotel suites which include the new presidential suites; 5) The Function Room construction will be completed and the seating plan in the Function Room is being revised to add 50 more seats for a total of 200 seats (the total overall number of seats throughout the hotel that was previously approved is being reduced from 336 to 324); 6) A small 556 square foot banquet prep kitchen is proposed to be constructed adjacent to and on the east side of the existing Function Room. 7) Replace a 250 RW generator in the basement with the same size that exists today. - Other exterior Improvements will include new third floor railings, re-painting, new exterior floor finishes, trellises and a covered walkway leading to the existing Function Room. Fenestration requiring replacement will be replaced with similar windows and doors. Addition of a small 61 square foot pool service building; enclosing the 679 square foot function room pre-function space on the west side of the Function Room; addition of 588 square foot restroom for Function Room, addition of 556 square foot prep kitchen for Function Room and addition of 148 square foot stairwell to access Function Room prep kitchen. The following is a list of the proposed special exceptions and variances being requested for the hotel project: 1) Section 134-226 & 229: A special exception request to modify the approved special exception by converting from a condominium hotel to hotel use and make the site modifications and change to the conditions of approval as identified in this application. 2) Section 134-1305: A special exception request to allow 36 seats for outdoor dining on the first floor on the north side of the pool deck; and 3) Section 134-1308(9): A variance for lot coverage to be 63.8% in lieu of the 62.8% existing and the 50% maximum allowed in the C-B Zoning District; 4) Section 134-1308(8): A variance for the addition of railings and solid wall on the east facade of the hotel above the second floor where only a two story building is allowed in the C-B Zoning District; 5) Section 134-1308(8): A variance for the addition of railings and solid wall on the east facade of the hotel with a height of 31.83 feet in lieu of the 25 foot maximum allowed; 6) Section 134-1669: A variance for the height of the wall enclosing the dumpster located at the southeast corner of the property to be 13.25 feet tall in lieu of the 7 foot maximum height

allowed from the neighbor's grade; 7) Section 134-1308(8): A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with a height of 33.58 feet in lieu of the 25 foot maximum allowed in the C-B Zoning District; 8) Section 134-1308(8): A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with an overall height of 42 feet in lieu of the 35 foot maximum allowed in the C-B Zoning District; 9) Section 134-1669: A variance for the height of the wall along the rear property line to be 8.5 feet in lieu of the 7 foot maximum allowed from the neighbor's grade; 10) Section 134-1669: A variance for the height of the wall enclosing the existing chiller at the south west corner of the property to be 12 feet tall in lieu of the 7 foot maximum allowed from the neighbor's grade; 11) Section 134-1308(7): A variance for a rear yard setback for the chiller to be 2.25 feet in lieu of the 10 foot minimum required in the C-B Zoning District; 12) Section 134-1308(6): A variance for a west side yard setback for the chiller to be 5.8 feet in lieu of the 10 foot minimum required in the C-B Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 7-0.] [The Architectural Review Commission approved the project as presented with the landscape, service gate and paint colors to return to the November 20, 2020 meeting. Carried 6-1.]

Presenter

ATTACHMENTS:

- ▢ **Memorandum Dated October 29, 2020 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▢ **Comments from the Development Review Committee**
- ▢ **Email Dated September 18, 2020 from Jorge Sanchez**
- ▢ **Letter Dated September 21, 2020 from Donald Lunny**
- ▢ **Letter Dated September 22, 2020 from John Eubanks**
- ▢ **Letter Dated October 26, 2020 from Donald Lunny**
- ▢ **Letter Dated October 26, 2020 from John Eubanks**

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 13, 2020

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00289 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARI/**
160 ROYAL PALM WAY

Date: October 29, 2020

BACKGROUND

An application has been received for the following project:

REQUEST:

Section 134-1304 (5): Request to modify Site Plan Review # 1-2016 with Special Exception to change the approved use from condo-hotel to hotel; modify the previously approved site plan; and amend the conditions of approval in the Declaration of Use Agreement, as identified in the proposed Third Amendment to the Declaration of Use which is Exhibit "F") of this application. The proposed site modifications being requested as follows: Section 134-1304(5): The existing Palm House hotel is located at 160 Royal Palm Way, Palm Beach, Florida. It is currently vacant and construction is partially completed. The structure is three stories with a partially enclosed basement containing parking and back-of-house functions. The hotel is 84,495 gross square feet in total. There is an East and West guest wing, and these wings are connected by a central core containing the Main Entrance and other partially completed public functions. A separate conference and events "Function Room" and partial pool deck was also constructed at the south east portion of the property. Section 134-227. 326 & 329 1729(2)(c): (Site Plan Review) The new owner/applicant is proposing new work for the hotel which includes the following site plan modifications: 1) Completion and conversion of guest rooms for a total of 79 keys. Two new presidential suites will be constructed within the building core, each with private outdoor balconies. 2) Completion of the lower level for back-of-house, administrative and housekeeping functions for the hotel. The interior modifications for the lower level includes renovation of partially completed areas including kitchen, food storage, housekeeping, staff areas and hotel administrative offices. The owner is requesting an additional 148 SF to provide a new service stair from the lower level to support the Pool Area. Additional areas for renovation include spaces for MEP Infrastructure such as electrical, hot water, and elevator systems. The proposed modifications remove all Hotel Guest program areas from the lower level. The lower level renovation includes restoration of parking area for 60 parking spaces including three accessible parking spaces. Two parking spaces which includes on Van Accessible parking space is located behind the existing function room. All parking will be Valet only per the Declaration of Use Amendment Three. Total on-site parking provided is 62 spaces. 3) A new pool deck will be constructed adjacent to the existing Function Room, with various amenities that include chaise lounges and outdoor seating, shade umbrellas, toilets, a towel/concierge stand, open-air bar with enclosed pantry behind, water features, lush native plantings, and Event Lawn to be used as a pre-function space, or for small wedding and/or overflow sun bathing; 4) The first level lobby and public spaces will be completed to include fine dining and lobby bar, with 88 indoor seats as well as 36 outdoor seating facing the new pool deck. The second floor dining that was previously approved has been eliminated to make room for the reconfigured hotel suites which include the new presidential suites; 5) The Function Room construction will be completed and the seating plan in the Function Room is being revised to add 50 more seats for a total of 200 seats (the total overall number of seats throughout the hotel that was previously approved is being reduced from 336 to 324); 6) A small 556 square foot banquet prep kitchen is proposed to be constructed adjacent to and on the east side of the existing Function Room. 7) Replace a 250 RW generator in the basement with the same size that exists today. - Other exterior Improvements will include new third floor railings, re-painting, new exterior floor finishes, trellises and a covered walkway leading to the existing Function Room. fenestration requiring replacement will be replaced with similar windows and doors. Addition of a small 61 square foot pool service building;

enclosing the 679 square foot function room pre-function space on the west side of the Function Room; addition of 588 square foot restroom for Function Room, addition of 556 square foot prep kitchen for Function Room and addition of 148 square foot stairwell to access Function Room prep kitchen.

The following is a list of the proposed special exceptions and variances being requested for the hotel project:

- 1) Section 134-226 & 229: A special exception request to modify the approved special exception by converting from a condominium hotel to hotel use and make the site modifications and change to the conditions of approval as identified in this application.
- 2) Section 134-1305: A special exception request to allow 36 seats for outdoor dining on the first floor on the north side of the pool deck; and
- 3) Section 134-1308(9): A variance for lot coverage to be 63.8% in lieu of the 62.8% existing and the 50% maximum allowed in the C-B Zoning District;
- 4) Section 134-1308(8): A variance for the addition of railings and solid wall on the east facade of the hotel above the second floor where only a two story building is allowed in the C-B Zoning District;
- 5) Section 134-1308(8): A variance for the addition of railings and solid wall on the east facade of the hotel with a height of 31.83 feet in lieu of the 25 foot maximum allowed;
- 6) Section 134-1669: A variance for the height of the wall enclosing the dumpster located at the southeast corner of the property to be 13.25 feet tall in lieu of the 7 foot maximum height allowed from the neighbor's grade;
- 7) Section 134-1308(8): A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with a height of 33.58 feet in lieu of the 25 foot maximum allowed in the C-B Zoning District;
- 8) Section 134-1308(8): A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with an overall height of 42 feet in lieu of the 35 foot maximum allowed in the C-B Zoning District;
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- 12) Section 134-1308(6): A variance for a west side yard setback for the chiller to be 5.8 feet in lieu of the 10 foot minimum required in the C-B Zoning District.

ADDRESS: 160 ROYAL PALM WAY

OWNER: 160 ROYAL PALM LLC

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-23-05-026-0310

ZONING DISTRICT: C-B Commercial

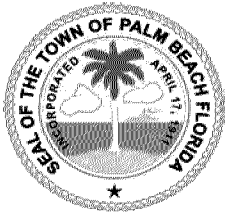
LEGAL DESCRIPTION: ROYAL PARK ADD LTS 31 TO 33 INC
BLK F

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Page Two

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



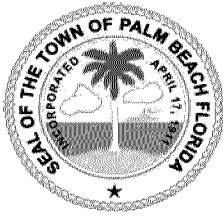
PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 8/21/20

APPLICATION NO.: Z-20-00289 **APPLICATION TYPE:** SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)
ADDRESS: 160 ROYAL PALM WAY **TENANT:**THE PALM HOUSE



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

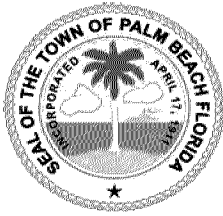
DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 8/21/20

DESCRIPTION:

Section 134-1304 (5): Request to modify Site Plan Review # 1-2016 with Special Exception to change the approved use from condo-hotel to hotel; modify the previously approved site plan; and amend the conditions of approval in the Declaration of Use Agreement, as identified in the proposed Third Amendment to the Declaration of Use which is Exhibit "F") of this application. The proposed site modifications being requested as follows: Section 134-1304(5): The existing Palm House hotel is located at 160 Royal Palm Way, Palm Beach, Florida. It is currently vacant and construction is partially completed. The structure is three stories with a partially enclosed basement containing parking and back-of-house functions. The hotel is 84,495 gross square feet in total. There is an East and West guest wing, and these wings are connected by a central core containing the Main Entrance and other partially completed public functions. A separate conference and events "Function Room" and partial pool deck was also constructed at the south east portion of the property. Section 134-227. 326 & 329 1729(2)(c): (Site Plan Review) The new owner/applicant is proposing new work for the hotel which includes the following site plan modifications: 1) Completion and conversion of guest rooms for a total of 79 keys. Two new presidential suites will be constructed within the building core, each with private outdoor balconies. 2) Completion of the lower level for back-of-house, administrative and housekeeping functions for the hotel. The interior modifications for the lower level includes renovation of partially completed areas including kitchen, food storage, housekeeping, staff areas and hotel administrative offices. The owner is requesting an additional 148 SF to provide a new service stair form the lower level to support the Pool Area. Additional areas for renovation include spaces for MEP Infrastructure such as electrical, hot water, and elevator systems. The proposed modifications remove all Hotel Guest program areas from the lower level. The lower level renovation includes restoration of parking area for 60 parking spaces including three accessible parking spaces. Two parking spaces which includes on Van Accessible parking space is located behind the existing function room. All parking will be Valet only per the Declaration of Use Amendment Three. Total on-site parking provided is 62 spaces. 3) A new pool deck will be constructed adjacent to the existing Function Room, with various amenities that include chaise lounges and outdoor seating, shade umbrellas, toilets, a towel/concierge stand, open-air bar with enclosed pantry behind, water features, lush native plantings, and Event Lawn to be used as a pre-function space, or for small wedding and/or overflow sun bathing; 4) The first level lobby and public spaces will be completed to include fine dining and lobby bar, with 88 indoor seats as well as 36 outdoor seating facing the new pool deck. The second floor dining that was previously approved has been eliminated to make room for the reconfigured hotel suites which include the new presidential suites; 5) The Function Room construction will be completed and the seating plan in the Function Room is being revised to add 50 more seats for a total of 200 seats (the total overall number of seats throughout the hotel that was previously approved is being reduced from 336 to 324); 6) A small 556 square foot banquet prep kitchen is proposed to be constructed adjacent to and on the east side of the existing Function Room. 7) Replace a 250 RW generator in the basement with the same size that exists today. - Other exterior Improvements will include new third floor railings, re-painting, new exterior floor finishes, trellises and a covered walkway leading to the existing Function Room. fenestration requiring replacement will be replaced with similar windows and doors. Addition of a small 61 square foot pool service building; enclosing the 679 square foot function room pre-function space on the west side of the Function Room; addition of 588 square foot restroom for Function Room, addition of 556 square foot prep kitchen for Function Room and addition of 148 square foot stairwell to access Function Room prep kitchen.

The following is a list of the proposed special exceptions and variances being requested for the hotel project: 1) Section 134-226 & 229: A special exception request to modify the approved special exception by converting from a condominium hotel to hotel use and make the site modifications and change to the conditions of approval as identified in this application. 2) Section 134-1305: A special exception request to allow 36 seats for outdoor dining on the first floor on the north side of the pool deck; and 3) Section 134-1308(9): A variance for lot coverage to be 63.8% in lieu of the 62.8% existing and the 50% maximum allowed in the C-B Zoning District; 4) Section 134-1308(8): A variance for the addition of railings and solid wall on the east facade of the hotel above the second floor where only a two story building is allowed in the C-B Zoning District; 5) Section 134-1308(8): A variance for the addition of railings and solid wall on the east facade of the hotel with a height of 31.83 feet in lieu of the 25 foot maximum allowed; 6) Section 134-1669: A variance for the height of the wall enclosing the dumpster located at the southeast corner of the property to be 13.25 feet tall in lieu of the 7 foot maximum height allowed from the neighbor's grade; 7) Section 134-1308(8): A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first



PLANNING, ZONING AND BUILDING DEPARTMENT

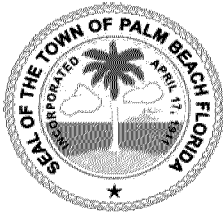
Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 8/21/20

floor with a height of 33.58 feet in lieu of the 25 foot maximum allowed in the C-B Zoning District; 8) Section 134-1308(8): A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with an overall height of 42 feet in lieu of the 35 foot maximum allowed in the C-B Zoning District; 9) Section 134-1669: A variance for the height of the wall along the rear property line to be 8.5 feet in lieu of the 7 foot maximum allowed from the neighbor's grade; 10) Section 134-1669: A variance for the height of the wall enclosing the existing chiller at the south west corner of the property to be 12 feet tall in lieu of the 7 foot maximum allowed from the neighbor's grade; 11) Section 134-1308(7): A variance for a rear yard setback for the chiller to be 2.25 feet in lieu of the 10 foot minimum required in the C-B Zoning District; 12) Section 134-1308(6): A variance for a west side yard setback for the chiller to be 5.8 feet in lieu of the 10 foot minimum required in the C-B Zoning District.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	8/28/2020	No Comment
PUBLIC WORKS DEPARTMENT			No Comment
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	11/3/2020	. This use is not in conflict with the adopted fire code. There will be code concerns going forward since the building has a lot of fire code violations left in place from the previous construction work. This building was fully sprinkled and is required to remain protected with a sprinkler system. The code requires this system to be restored as soon as they begin their work. We agreed with the court appointed legal representative to hold off on fines in order to get the legal concerns resolved. This is a building that needs to restore the designed life safety features that were built into the building and are required to be maintained throughout the life of the building.
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	8/28/2020	No Comment



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 8/21/20

PZB - ZONING

Paul Castro, Zoning
Administrator

11/2/2020

The conversion from a cond-hotel to a more transient hotel use may lessen the parking demand for the hotel. In addition, many of the proposed changes to the hotel are related to function. The east enclosure of the open balcony walkways; the new prep kitchen to the rear of the Function Room; and the covered walkway changes from the hotel lobby to the Function Room are intended to improve the use of the hotel. The basement kitchen and service area improvements and the loss of the basement spa are also improvements to help with the function of the hotel operation.

There are also necessary changes required to the Declaration of Use Agreement related to the loss of the third floor deck and second floor dining area above the lobby and the loss of stairs and elevator at the Function Room. However, there is concern by Staff about some of the other modifications to the Declaration of Use Agreement. Other proposed modifications would allow an additional 50 seats in the Function Room, from 150 seats to 200 seats. While they are eliminating dining room seats, the additional seats being requested in the Function Room may create more impact to the valet and parking operation for the hotel. This space, unlike the dining room seating, will generate more traffic during events being held in the Function Room as visitors will be coming and leaving around the same time. The intent of the existing Agreement is to open the business for a period of time to evaluate how the Function Room would operate and access any impact prior to consideration of the additional seating.

In addition, the applicant is proposing to more than double the outside seating in the new pool deck area (16 approved seats to 36 seats). This, coupled with request for extended outdoor hours for service is a concern. Lastly, the request to change the Agreement to allow for later hours in the Function Room and the use of the outdoor pool deck and lawn area in front of the Function Room for pre-function events (no hours mentioned) is also a concern for staff as it may also impact the neighbors to the south. Staff requests that the Council address these concerns with the applicant and return with a modified Agreement for Council consideration.

Lastly, staff recommends a Construction Management Agreement, similar to the previous Agreement for the subject property, with a construction schedule and defined completion date to monitor and ensure completion on time.

From: [Lynnette R Ballard](#)
To: [Kelly Churney](#)
Cc: [Jorge Sanchez](#)
Subject: FW: Palm House
Date: Friday, September 18, 2020 11:22:48 AM
Attachments: [image001.png](#)
[2020-09-16 COVER PAGE - 160 ROYAL PALM WAY PRESENTATION.pdf](#)

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Kelly,

At the request of Jorge Sanchez, I am forwarding the below e-mail to you regarding Palm House Hotel at 160 Royal Palm Way, ARCOM No. B-063-2020 and Zoning Case No. Z-20-00289. He would like to have this e-mail sent to the ARCOM Members. For your convenience, I have attached the cover page from the presentation regarding this item.

Please let me know if you have any questions.

Thank you!

Lynnette R. Ballard
Administrative Assistant
SMI Landscape Architecture, LLC
140 Royal Palm Way, Suite 206
Palm Beach, FL 33480
(561) 655-9006
(561) 655-9007 Fax
lynnette@smila.net
www.smila.net



From: Jorge Sanchez <jorge@smila.net>
Sent: Friday, September 18, 2020 11:10 AM
To: Lynnette R Ballard <Admin@smila.net>
Subject: Palm House

To the Architectural Commissioners:

We would greatly appreciate if the existing East wall Clusia hedge were to remain in place. We

struggled with the past owners for a privacy hedge, which they eventually installed. It is finally growing, so please leave it in place. Our agreement at time of install was it would be allowed to grow to 25' in height.

Much appreciated,



Jorge A. Sánchez

SMI Landscape Architecture, LLC

140 Royal Palm Way # 206

Palm Beach, FL 33480

(561) 655-9006

www.smila.net

Recipient of the Arthur Ross Award



Donald J. Lunny, Jr., Esq.
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Please reply to Fort Lauderdale

September 21, 2020

The Honorable Members of the Town of Palm Beach Architectural Review Commission

Michael B. Small, Chairman
Robert N. Garrison, Vice Chairman, Architect
John David Corey, Member, Master Gardener
Maisie Grace, Member
Alexander C. Ives, Member
Betsy Shiverick, Member
Richard Sammons, Member, Architect
Katherine Catlin, Alternate Member
Dan Floershemier, Alternate Member
Ted Cooney, Alternate Member

Via E-mail Request to Ms. Kelly Churney and Ms. Laura Groves van Onna

Re: September 23, 2020
Agenda Item X C. 7
Major Project
Application No. B-063-2020:
The Palm House Hotel
160 Royal Palm Way,
Palm Beach, Florida 33480

Dear Commission Members:

This Firm Represents Virginia C. Simmons, individually and as Trustee of the Virginia C. Simmons Revocable Trust U/A/D May 4, 2018, the owner of single-family residential property having a street address of 133 Brazilian Avenue, Palm Beach, Florida. The Simmons property is within 200 feet of The Palm House Hotel as demonstrated by the Composite Exhibit "1" location map prepared by Cooper Gary, and an excerpt of the Simmons' property aerial map

from the Palm Beach County Property Appraiser website. Our Firm has been retained to provide preliminary comment on Application No. B-063-2020 (the "Application") which is pending before the Architectural Review Commission ("ARCOM").

At this time, our client is concerned about the following:

- (1) Whether the Town's Notice Requirements have been met for the September 23, 2020 ARCOM Meeting;
- (2) There is no Town professional Staff report which has been prepared for the ARCOM Meeting;
- (3) ARCOM's consideration of the *aesthetic* and *design* aspects of the Application is premature because Town Commission pre-requisite development orders in the form of granting special exceptions and variances and increasing non-conformities would be required to approve the Site Plan; furthermore, to the extent that ARCOM is requested to make recommendations concerning the Applicant's requests for variances, special exception, and Site Plan approval, our client would request that ARCOM **recommend denial** of those requested development orders; and
- (4) The Application's failure to fully illustrate its short comings.

Each of these four (4) concerns are explained in more detail in the sections that follow.

1. Notice

Our first concern is notice. The Application bears a date of August 21, 2020. Unfortunately, a complete copy of the Application was not received by our client in the mail and was only obtained by the undersigned last week to discover what was on the Agenda for the September 23, 2020 ARCOM Meeting. Attached as Exhibit 2 are the only documents which our client received in the mail with respect to The Palm House Hotel development. As can be seen, much of the Application material is not included in Exhibit "2." At the outset, our client desires to know whether the Town's notice requirements for the scheduled September 23, 2020 ARCOM Meeting have been met and would request the Commission to make a specific determination in

this regard before considering the Application¹. If the Town's notice requirements have not been met, the Application should be re-advertised, and its consideration deferred.

2. No Professional Staff Report

Our second concern is that there is no written Staff report for the upcoming ARCOM Meeting, and thus, there is no Staff comment concerning the Application, or the accuracy of the representations and statements made in the Application. This creates a concern for citizens who do not have the practical expertise or ability, or time, to review and verify such matters. It also appears from the Agenda format that ARCOM is expected to make recommendations concerning the variances and special exceptions and request for Site Plan approval contemplated in the Application; however, there is no Town Professional Staff Comment concerning its evaluation of the applicable standards as applied to the Application which must be met for such development orders to be granted. It is common in our experience for local advisory commissions to have Staff's evaluation and reports when taking action - - even when part of such action is advisory in nature. Our client would request that ARCOM ask the Town's professional development Staff to review the Application and comment on the various statements or representations of the Application, upon ARCOM's standards for review as applied to the Application², and upon the requested special exceptions, variances, and Site Plan Approval.

Without a written report from the Town's professional Staff, it is likely that some important details might be missed. For example, the Application discloses that music and other activities might occur on the pool deck and in the grass area near the pool deck. In 2012, the historical digest received by our client for the zoning application discloses that the Town Commission conditioned its approval of the development orders it then granted to indicate in Condition 4 that *"The pool deck area shall be allowed only background music and light live music with the speaker system directed to the North. There shall be no music on the abutting grass area."* The Amendment to Declaration of Use Agreement recorded in Official Records Book 25694 at page 0633 indicates in Article IV, Paragraph 3 that there will be no events on the pool deck, the grass area will remain *"passive,"* and music on the pool deck will be only background or light live music with the speaker system directed to the North. In the Second Amendment to Declaration of Use Agreement recorded in Official Records Book 26251 at page 0078, Article IV, Section 2 states that the activity allowed on the rooftop of the function room

¹ As our client's land is within 200 feet of The Palm House Hotel, and the Application requires Site Plan Approval, Variances, and Special Exceptions, she should have been provided with a copy of Application No. B-063-2020, and did not receive same. Please see Sec. 18-202 (1) of the Town Code.

² We have reviewed Sec. 18-205 (a) of the Town's Code, and several of ARCOM's standards for review lend themselves to Staff Comment, such as standard (a)(4) [harmony with the Town Comprehensive Plan and any precise plans adopted pursuant to the Comprehensive Plan], (a)(5) [conformity with the Town's Code and other ordinances], (a)(6) [degree of excessive dissimilarity], and (a)(8) [appropriateness in relation to established character of other structures in the immediate area or surrounding areas relative to design features viewable from public and private rights of way].

was transferred to the rooftop of the hotel, provided no events of any kind or recorded or live music were allowed. The foregoing conditions and restrictions are amended and *removed* by the proposed, draft Third Amendment to Declaration and Use Agreement. One is left to wonder *where* is live and recorded outdoor music and entertainment and activity contemplated, *what* is contemplated, and most importantly *why* is this intensification being considered? Our client opposes any increase in noise or outdoor activity that generates noise, and would prefer that very light, live or recorded background music be limited to defined areas, be limited to daylight hours only, have enforceable decibel limits, and require speakers facing North. Other problematic compatibility issues may be disclosed by a written Staff Report.

3. ARCOM Aesthetic Architectural and Design Review is premature; furthermore, ARCOM should recommend that development orders be denied.

The Application discloses that The Palm House Hotel is non-conforming, and that for the proposed Site Plan to be approved, certain special exceptions and numerous variances will need to be granted by the Town Commission. Our client (and we believe other Town citizens) plan(s) on opposing some of the requested special exceptions and variances which are necessary for Site Plan Approval. It is our understanding that the Town's ARCOM approval is needed relative to aesthetic design and architectural matters prior to an application for a building permit being approved. Further, it is our understanding that an application for a building permit should take place after Site Plan Approval. Indeed, Sec. 18-205 (a) (9) of the Town's Code indicates that in order for ARCOM to approve a proposed project, it must determine that:

"(9) The proposed development is in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved."

In a case such as this which involves Town Commission required development orders as a prerequisite to Site Plan Approval, it would seem premature for the applicant to seek ARCOM aesthetic architectural and design approval at this time, and our client would request that the Architectural Review Commission defer its consideration of these aspects of the subject application until after the Town Commission considers the pre-requisite development orders and determines whether to grant Site Plan Approval.

Since it is apparent from the Agenda that the Architectural Review Commission is considering making recommendations to the Town Commission concerning whether the Town Commission should grant or deny the requested Special Exceptions, Variances, and approve a Site Plan which increases nonconformities, the following Sections 3A, 3B, and 3C provide some preliminary observations as to why the Architectural Review Committee should recommend that these development orders be **denied**.

A. Claimed Hardships Seem “Self Imposed” Suggesting that
Variances should be Denied

As stated above, variances are needed for the Site Plan requested to be approved. Our preliminary review of the Town’s variance law would cause an objective reader to doubt whether sufficient grounds for granting a variance are present in this case. Our review the Palm Beach County Property Appraiser records discloses that the applicant, LR Palm House LLC, a Delaware Limited Liability Company, obtained a Debtor in Possession Deed to the site on May 15, 2019, which is *after* the 2016 Town conditional development approvals. While our investigation is on-going, we would note that the boundary survey which is contained in the subject Application and was prepared by Wallace Surveying Corporation discloses that The Palm House Hotel site is uniformly rectangular, having a 300’ x 200’ dimension. Thus, the real property on which The Palm House Hotel sits has no irregular contours or shape which would support a variance request. Moreover, the real property *more than satisfies* the C-B Zoning District’s minimum lot area, lot width, and lot depth requirements (*See* Sec. 134-1308 (1), (2), (3) Town Code). Given that the current owner acquired the site *after* the 2016 conditional town approvals and *after* the Town’s 2017 Comprehensive Plan Amendments, and given that the real property on which the hotel is not irregular and more than satisfies the Town’s C-B District minimum dimensional requirements, any claimed “hardship” for a requested variance should be viewed as “self-created” in as much as a *developed site* was purchased, and the Application results from the property owner’s desire to change things. A self-created hardship can not be the basis for granting a variance.

- B. A Hotel having in excess of 26 Units Per Acre is presently not a listed Special Exception Use in the C-B Zoning District; therefore, the requested Special Exception Approvals are not available.

As stated above, the Application states that special exceptions granted by the Town Commission are needed for the Site Plan to be approved. Our preliminary review of the Town’s special exception law would cause an objective reader to doubt whether the Town Commission can consider the subject Application as a Special Exception. Sec. 134-229 (1) of the Town Code reads as follows:

“The requirements for granting a special exception use under this chapter are as follows:

- (1) The use is a permitted special exception use as set forth in article VI of this chapter.”

The Town's C-B District Regulations define the applicable Special Exception Use in Section 134-229 (a) (5) as follows:

- (a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-B commercial district are as follows:
 - (5) Hotels at a maximum of 26 units per acre.

Our review of the Application discloses that The Palm House Hotel presently has more than a maximum of 26 units per acre, and therefore, an application for the Hotel *as currently developed* does not qualify as a Special Exception Use since it is not a listed special exception use in the C-B Zoning District. Therefore, this special exception can not be granted.

C. Non-conformities should not be allowed to increase and enlarge.

As stated above, the Application discloses The Palm House Hotel is a non-conforming structure, and some of the requests in the Application increase the extent of such nonconformities, and this does not appear to be permitted under the Town's Code. The Town's Code makes a distinction between regulations that relate to non-conforming uses, and regulations that relate to non-conforming structures, and the Code is less flexible for expansions to non-conforming structures. As the Members may know, non-conformities should be *reduced* over time, and when this occurs, such action should not be viewed as justifying an increase in non-conformities elsewhere in the development (or "traded" for an increase in non-conformities elsewhere within the development). As an example, the Application advises that the rear yard setback requirement is 23.88 feet, and yet new construction is proposed which would encroach within the rear yard setback so that a 10-foot rear yard setback is requested. The new construction would include, an enclosed dumpster area, electric transformer, pool water feature, pool concierge, portion of the pool deck, retaining walls, a bar and restroom facility, a chiller, a screen wall, and a second transformer. These all engender noise and activity and loss of separation which form the policy considerations protected by yard setback regulations. We also note that the apparent maximum allowed lot coverage requirement is 50%, and the Application proposes to *increase* the current non-conformity of 62.8% to 63.8%. Finally, the Application discloses that the maximum allowed building height is two stories, and not only are three (3) stories existing, but the space on the third floor may be activated which increases the extent of non-conformity. A proposed expansion or enlargement of nonconformities goes against zoning legal policy considerations and all concepts of proper use of the property and should not be allowed.

4. Failure to Highlight Extent of Shortcomings

Our fourth concern is the Application's apparent focus between what was conditionally approved in 2016 as opposed to what is requested now. It is important to note that one very

significant difference between conditional approvals in 2016 and requested approvals in 2020 is that the Town completed its Comprehensive Plan Evaluation and Appraisal Report and adopted Comprehensive Plan Amendments when the Town Commission enacted Ordinance No. 9-2017 which was passed on Second Reading on August 9, 2017. Section 5 of this Ordinance repealed all ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with Ordinance No. 9-2017 or any part of Ordinance No. 9-2017. From a practical perspective, therefore, the proper focus of the Town should not merely concentrate on the claimed-and-not-yet-Staff-verified “differences” between the 2016 conditional Town approval versus what is requested in 2020; but instead, the proper focus should be on what is being requested in 2020 versus what is allowed under the Town’s land development regulations, and whether any of the changed provisions of the Comprehensive Plan affect the Application. The true extent of the development’s various shortcomings will then be apparent and disclosed, and this will enhance the development review process.

Conclusion

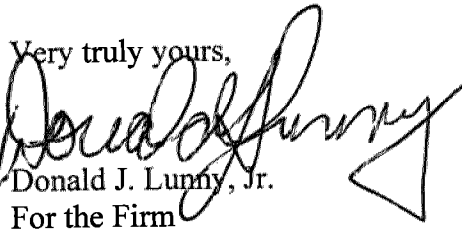
As stated above, our client is: (1) concerned about whether the Town’s Notice Requirements have been met for the September 23, 2020 ARCOM Meeting, (2) concerned that there is no Town professional Staff report which has been prepared for the ARCOM Meeting, (3) concerned that ARCOM’s consideration of the aesthetic architectural or design aspects of the Application is premature because Town Commission pre-requisite development orders have not been granted; and furthermore, ARCOM should recommend that such development orders be denied, and (4) is concerned with fact that the Application does not demonstrate the extent of its shortcomings.

If the matter is to proceed after the Notice concern is evaluated, our client would request that consideration of the aesthetic architectural and design aspects of the Application be deferred until after the Town Commission considered the Applicant’s requests for Site Plan Approval, special exception approvals, and numerous variances. Further, our client would request that the Architectural Review Commission recommend that the requested special exceptions, variances, and Site Plan Approval be denied.

We reserve the right to revise our preliminary comment as our investigation continues to add additional reasons why our client’s requests should be granted.

Thank you for your kind attention to this matter.

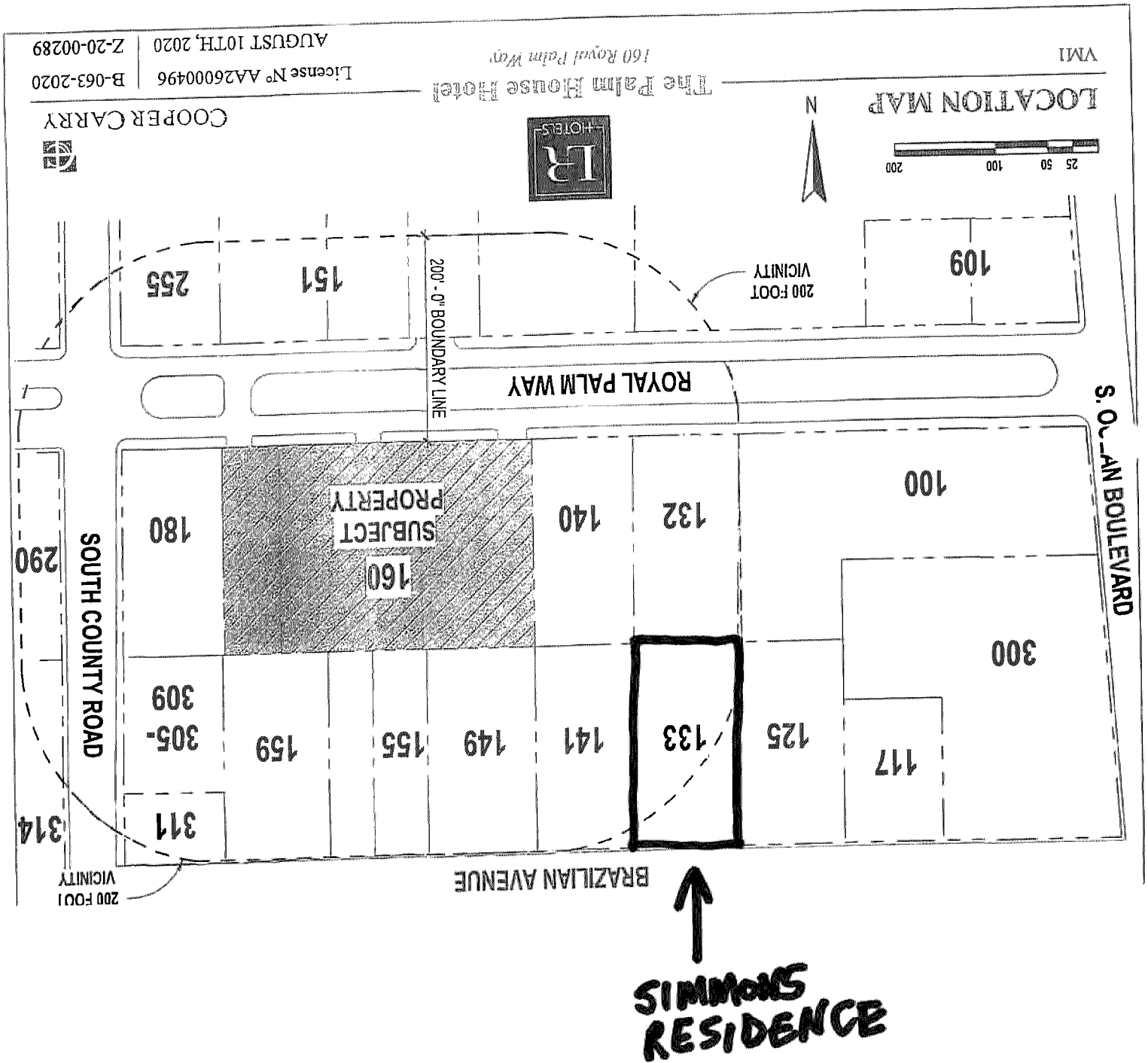
Correspondence addressed to
Town of Palm Beach Architectural Review Commission
September 21, 2020
Page 8 of 8

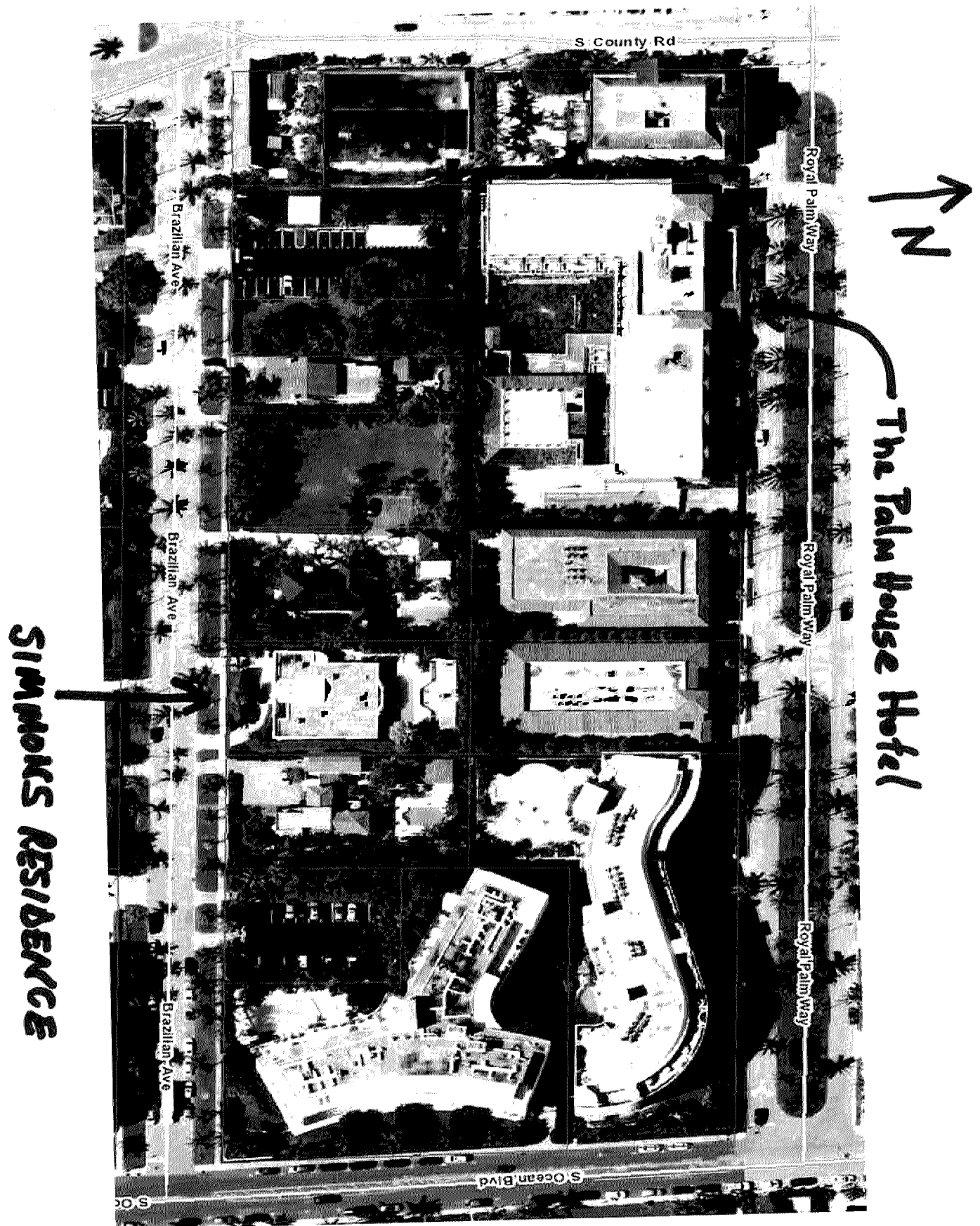
Very truly yours,

Donald J. Lunny, Jr.
For the Firm

Cc w/encl: (Via E-mail):

Mr. Wayne Berman;
Ms. Debbie Moody;
Ms. Virginia C. Simmons;
Harris K. Solomon, Esq.; and,
Maura Ziska, Esq.

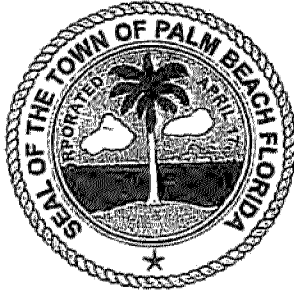
Composite Exhibit “1”





Composite Exhibit “2”

ZONING APPLICATION
TOWN OF PALM BEACH



Z-20-00289
(Zoning Case Number)

This application includes requests for:

<u>X</u>	Site Plan Review
<u>X</u>	Special Exception
<u>X</u>	Variance

TO BE HEARD BY THE TOWN COUNCIL ON OCTOBER 14, 2020 AFTER 9:30 A.M., IN THE TOWN OF PALM BEACH COUNCIL CHAMBERS LOCATED ON THE 2ND FLOOR, 360 SOUTH COUNTY ROAD, PALM BEACH. Pursuant to the Town Zoning Code of Ordinances, Sections 134-172 (Special Exceptions and Variances) and/or 134-328 (Site Plan Review), this application is being sent to all property owners within 300' of the location of the subject zoning application. A copy of this application along with all exhibits such as large drawings and other supporting documents that are not attached to this application are available for inspection at the Town's Planning, Zoning & Building Department, 360 S. County Rd., east entrance, weekdays between the hours of 8:30 a.m. and 4:30 p.m. All interested persons may appear and be heard at said Public Hearing and may likewise submit written statements prior to and at said Public Hearing. If any person decides to appeal any decision made by the Town Council with respect to this matter, he/she will need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based. Please be advised that the Town does not enforce private covenants or deed restrictions.

I. SUBJECT ADDRESS: 160 Royal Palm Way

Zoning District C-B

Legal Description: Being all of Lots 31, 32 and 33, Block F, ROYAL PARK ADDITION to the Town of Palm Beach, Florida, according to the plat thereof as recorded in Plat Book 4, Page 1 Public Records of Palm Beach County, Florida.

Fee Simple Property Owner's Name: LR Palm House LLC (Ian Livingstone, Executive Chairman)

Name and address of person who can receive service of process for purposes of litigation in Palm Beach County: Maura Ziska, Esquire, Kochman & Ziska PLC, 222 Lakeview Ave. Suite 1500 West Palm Beach, FL 33401

Applicant Name: LR Palm House LLC (Ian Livingstone, Executive Chairman)

Contact Phone c/o Kochman & Ziska PLC 561-802-8960

II. **DESCRIPTION OF THE REQUEST TO BE HEARD BY TOWN COUNCIL**, citing applicable Town Zoning Code Section Number(s):

A. Applicable Zoning Code Section Number(s):

Section 134-226. Special Exception Request to modify the approved Special Exception.

Section 134-227. Town council authorization, compliance and site plan review required.

Section 134-329. Review by town council.

Section 134-201. Findings prior to authorization.

Section 134-1304. Special Exception uses. (5) Hotels.

Section 134-1305. Outdoor dining.

Section 134-1308. Lot, yard and area requirements (6) Side yard; (7) Rear yard; (8) Height and Overall height; (9) Lot coverage

Section 134-1669. Side and rear yard walls.

Section 134-1729. Generators and swimming pool equipment. (2) c.

B. Description of request by Zoning Section Number(s): Project Overview:

Section 134-1304 (5): Request to modify Site Plan Review # 1-2016 with Special Exception to change the approved use from condo-hotel to hotel; modify the previously approved site plan; and amend the conditions of approval in the Declaration of Use Agreement, as identified in the proposed Third Amendment to the Declaration of Use which is Exhibit "F") of this application. The proposed site modifications being requested as follows:

Section 134-1304(5): The existing Palm House hotel is located at 160 Royal Palm Way, Palm Beach, Florida. It is currently vacant and construction is partially completed. The structure is three stories with a partially enclosed basement containing parking and back-of-house functions. The hotel is 84,495 gross square feet in total. There is an East and West guest wing, and these wings are connected by a central core containing the Main Entrance and other partially completed public functions. A separate conference and events "Function Room" and partial pool deck was also constructed at the south east portion of the property.

Section 134-227, 326 & 329 1729(2)(c): (Site Plan Review) The new owner/applicant is proposing new work for the hotel which includes the following site plan modifications:

- 1) Completion and conversion of guest rooms for a total of 79 keys. Two new presidential suites will be constructed within the building core, each with private outdoor balconies.
- 2) Completion of the Lower Level for back-of-house, administrative and housekeeping functions for the hotel. The interior modifications for the lower level includes renovation of partially completed areas including kitchen, food storage, housekeeping, staff areas and hotel administrative offices. The Owner is requesting an additional 148 SF to provide a new service stair from the Lower Level to support the Pool Area. Additional areas for renovation include spaces for MEP infrastructure such as electrical, hot water, and elevator systems. The proposed modifications remove all Hotel Guest program areas from the Lower Level. The Lower Level renovation includes restoration of parking area for 60 parking spaces including three accessible parking spaces. Two parking spaces which includes on Van Accessible parking space is located behind the existing function room. All parking will be Valet only per the Declaration of Use Amendment Three. Total on-site parking provided is 62 spaces.
- 3) A new pool deck will be constructed adjacent to the existing Function Room, with various amenities that include chaise lounges and outdoor seating, shade umbrellas, toilets, a towel/concierge stand, open-air bar with enclosed pantry behind, water features, lush native plantings, and Event Lawn to be used as a pre-function space, or for small wedding and/or overflow sun bathing;
- 4) The first level lobby and public spaces will be completed to include fine dining and lobby bar, with 88 indoor seats as well as 36 outdoor seating facing the new pool deck. The second floor dining that was previously approved has been eliminated to make room for the reconfigured hotel suites which include the new presidential suites;
- 5) The Function Room construction will be completed and the seating plan in the Function Room is being revised to add 50 more seats for a total of 200 seats (the total overall number of seats throughout the hotel that was previously approved is being reduced from 336 to 324);
- 6) A small 556 square foot banquet prep kitchen is proposed to be constructed adjacent to and on the east side of the existing Function Room.
- 7) Replace a 250 RW generator in the basement with the same size that exists today.

7-20-00289
Zoning Case Number

Other exterior improvements will include new third floor railings, re-painting, new exterior floor finishes, trellises and a covered walkway leading to the existing Function Room. Fenestration requiring replacement will be replaced with similar windows and doors. Addition of a small 61 square foot pool service building; enclosing the 679 square foot function room pre-function space on the west side of the Function Room; addition of 588 square foot restroom for Function Room, addition of 556 square foot prep kitchen for Function Room and addition of 148 square foot stairwell to access Function Room prep kitchen.

The following is a list of the proposed special exceptions and variances being requested for the hotel project:

- 1) **Section 134-226 & 229:** A special exception request to modify the approved special exception by converting from a condominium hotel to hotel use and make the site modifications and change to the conditions of approval as identified in this application.
- 2) **Section 134-1305:** A special exception request to allow 36 seats for outdoor dining on the first floor on the north side of the pool deck; and
- 3) **Section 134-1308(9):** A variance for lot coverage to be 63.8% in lieu of the 62.8% existing and the 50% maximum allowed in the C-B Zoning District;
- 4) **Section 134-1308(8):** A variance for the addition of railings and solid wall on the east façade of the hotel above the second floor where only a two story building is allowed in the C-B Zoning District;
- 5) **Section 134-1308(8):** A variance for the addition of railings and solid wall on the east façade of the hotel with a height of 31.83 feet in lieu of the 25 foot maximum allowed;
- 6) **Section 134-1669:** A variance for the height of the wall enclosing the dumpster located at the southeast corner of the property to be 13.25 feet tall in lieu of the 7 foot maximum height allowed from the neighbor's grade;
- 7) **Section 134-1308(8):** A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with a height of 33.58 feet in lieu of the 25 foot maximum allowed in the C-B Zoning District;
- 8) **Section 134-1308(8):** A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with an overall height of 42 feet in lieu of the 35 foot maximum allowed in the C-B Zoning District;
- 9) **Section 134-1669:** A variance for the height of the wall along the rear property line to be 8.5 feet in lieu of the 7 foot maximum allowed from the neighbor's grade;
- 10) **Section 134-1669:** A variance for the height of the wall enclosing the existing chiller at the south west corner of the property to be 12 feet tall in lieu of the 7 foot maximum allowed from the neighbor's grade;
- 11) **Section 134-1308(7):** A variance for a rear yard setback for the chiller to be 2.25 feet in lieu of the 10 foot minimum required in the C-B Zoning District;
- 12) **Section 134-1308(6):** A variance for a west side yard setback for the chiller to be 5.8 feet in lieu of the 10 foot minimum required in the C-B Zoning District;

III. APPLICATIONS CONTAINING SITE PLAN REVIEW

If the application contains Site Plan Review, complete Exhibit A, and briefly describe below the reasons why such application should be approved. This explanation should be a summary of information provided in Exhibit A (Site Plan Review by Town Council as stated in the Town's Zoning Code at Section 134-329).

The Site Plan should be approved as part of the Special Exception approval as the proposed site plan is completing unfinished work, correcting unauthorized work and adding functional space to improve the hotel operations and property.

Zoning Case Number

IV. APPLICATIONS CONTAINING SPECIAL EXCEPTIONS

If the application contains requests for Special Exceptions, complete **Exhibit B**, and briefly describe below the reasons why such application should be approved. This explanation should be a summary of information provided in Exhibit B (Requirements for granting Special exceptions by the Town Council as stated in the Town's Zoning Code at Section 134-229).

The Special Exception should be approved as the Palm House hotel has been in existence since the 1961 (previously the Heart of Palm Beach Motor Hotel) and has been an asset to the community for many years. However, the site has been abandoned and is in need of completion and the opportunity to open a viable business in this location. The new owner/application has tremendous experience in the hotel business (globally) and has every intention of making this hotel a beautiful site for many years to come. The proposed completion of the project will be a tremendous asset to future guests of the hotel as well as the neighboring properties.

V. APPLICATIONS CONTAINING VARIANCES

If the application contains requests for variances, please respond to the questions below, and complete **Exhibit C** (Findings for authorizing a variance as stated in the Town's Zoning Code at Section 134-201).

- a. Applicant should provide a brief description of the special conditions which when subjected to a literal enforcement of the provisions of the zoning ordinance will result in unnecessary and undue **HARDSHIP**. This explanation should be a summary of information provided in Exhibit C.

The hardship that runs with the land is that the existing hotel is non-conforming to today's code. The additional square footage will improve amenities, livability and aesthetics within the confines of the existing building and property. This would be challenging without zoning relief from the current code.

- b. Applicant should address how granting of a variance for these special conditions will not be contrary to the public's interest.

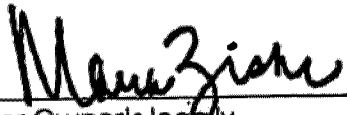
Granting the variances is reasonable as the total number of off-street parking spaces remains the same as the previous approval and will be all valet spaces. The overall seating within the hotel property has been reduced from that which was previously approved.

VI. SITE HISTORY

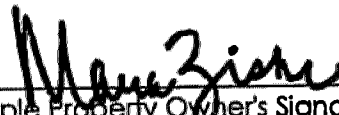
Please provide a detailed history in chronological order of all zoning-related requests processed on or after January 1, 1970 applicable to this property.

See attached Exhibit "E".

Respectfully submitted,



Owner or Owner's legally
Authorized Agent*
Maura Ziska, Esq., Attorney LR Palm House LLC
561-802-8960



Fee Simple Property Owner's Signature
(or his/her duly authorized attorney)
Maura Ziska, Esq. Attorney for LR Palm House LLC
561-802-896

EXHIBIT A – REQUEST FOR SITE PLAN REVIEW

In order to assist the Town Council in reviewing the site plan application, please ensure that the following items have been addressed.

1. Sufficiency of statements on ownership and control of the subject property and sufficiency of conditions of ownership or control, use and permanent maintenance of common open space, common facilities or common lands to ensure preservation of such lands and facilities for their intended purpose and to ensure that such common facilities will not become a future liability for the Town.

The owner in control of the property is LR Palm House LLC, a Delaware limited liability company.

2. Intensity of use and/or purpose of the proposed development in relation to adjacent and nearby properties and the effect thereon.

The proposed modifications to the previously approved hotel project does not intensify the use as the same number of "keys" are being proposed with the same number of parking spaces previously approved and an overall reduction in seating throughout the hotel.

3. Ingress and egress to the property and the proposed structure thereof, with particular reference to automotive and pedestrian safety; separation of automotive traffic; traffic flow and control; provision of services and servicing of utilities and refuse collection; and access in case of fire, catastrophe or emergency.

Ingress, egress, utilities, and refuses collection will remain the same along Royal Palm Way.

4. Location and relationship of off-street parking and off-street loading facilities to thoroughfares and internal traffic patterns within the property, with particular reference to automotive and pedestrian safety, traffic flow and control, access in case of fire or catastrophe, and screening and landscaping.

The proposed reorganization of off-street parking and off-street loading facilities will improve internal traffic patterns within the property including: automotive/pedestrian safety, traffic flow and control (valet operations), access in case of fire or catastrophe, and screening and landscaping.

5. Proposed screens and buffers to preserve internal and external harmony and compatibility with uses inside and outside the property boundaries.

Landscaping will be tremendously enhanced via this proposal.

6. Manner of drainage on the property, with particular reference to the effect of provisions for drainage on adjacent and nearby properties and the consequences of such drainage on overall town capacity.

Drainage will be improved if required by the Town of Palm Beach.

7. Utilities, with reference to hook-in locations and availability and capacity for the uses projected.

The utility hook ups will remain the same.

8. Recreation facilities and open spaces, with attention to the size, location and development of the areas as to adequacy, effect on privacy of adjacent and nearby properties and uses within the

property, and relationship to community-wide open spaces and recreation facilities.

N/A.

8. Such other standards as may be imposed by this chapter for the particular use or activity involved.

N/A.

10. Height of commercial structures with reference to adjoining buildings, the effect on uniformity in height, and the general principle of retaining the low profile scale of commercial architecture.

The proposed height of the new addition to the existing structures match the existing height of the hotel, which are non-conforming to today's code but grandfathered.

11. Visible size and bulk. The proposed development should be so arranged that it minimizes the visible bulk of the structures to drivers and pedestrians on abutting roadways, the point of reference being the centerline of the abutting roadways, with the intent being to maintain visual impact of multistory buildings at the same relative level of intensity as a single-story building at the minimum required setback.

The proposed modifications to the hotel will not create additional visible size and bulk as most of the changes are internal to the property.

EXHIBIT B - REQUEST FOR SPECIAL EXCEPTION

The Town Council must find the application in conformance with a number of requirements. Please provide sufficient information on each of the requirements to enable the Council to make a determination on your application.

1. The use is a permitted special exception use as set forth in article VI of this chapter.
A hotel is a permitted Special Exception use in the C-B Zoning District under Section 134-1304 of the Town of Palm Beach Zoning Code.
9. The use is so designed, located and proposed to be operated that the public health, safety, welfare and morals will be protected.
The proposed uses and innovative site design will not adversely impact the public or neighborhoods but alternatively will provide a much aesthetically-improved site for the future users and adjacent neighbors of the site.
10. The use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.
The proposed uses associated with the modifications to the hotel development will have a positive impact on the value of neighboring properties as the modifications to the hotel will be elegant and the hotel and restaurant will serve as another choice for Royal Palm Way and the Town visitors.
11. The use will be compatible with adjoining development and the intended purpose of the district in which it is to be located.
The proposed modifications to the hotel will be compatible with the neighborhood as there has been a hotel in this location since 1961.
12. The use will comply with yard, other open space, and any special requirements set out in article VI for the particular use involved.
The proposed modifications to the hotel will comply with all yard, other open space, and any special requirements set forth in Article VI, that are grandfathered with the property except the minor relief being requested herein.
13. The use will comply with all elements of the comprehensive plan.
The proposed modifications to the hotel will comply with the Comprehensive Plan, where applicable.
7. The use will not result in substantial economic, noise, glare, or odor impacts on adjoining properties and properties generally in the district.
The proposed modifications to the hotel and site will not result in substantial economic, noise, glare, or odor impacts on adjoining properties and properties generally in the district since the activity is internal to the buildings except minor outdoor uses,
8. Adequate ingress and egress to property and proposed structures thereon and off-street parking and loading areas will be provided where required, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or

catastrophe.

Adequate ingress, egress, and parking is provided on Royal Palm Way and in the underground parking garage. All off-street parking will be subject to valet parking operations.

9. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, and economic impact shall be compatible and in harmony with properties in the district.

Any proposed signage will comply with the applicable Town standards.

10. Location, availability and compatibility of utility service for the use shall be satisfactory to ensure health and safety.

The utility service will remain the same or be upgraded if required by the Town.

14. Refuse and service areas for the use shall not adversely affect automotive and pedestrian safety and convenience, traffic flow and control, or access in case of fire or catastrophe.

The refuse and service areas will remain the same or will be upgraded if required by the Town.

15. In all districts except the C-OPI district, and also with the exception of hotel, motel and timeshare uses, the proposed special exception use will not attract the principal portion of its customers/clients from off-island locations. The applicant shall submit evidence satisfactory to the town council that not less than 50 percent of the customers of the proposed use will be town persons. Evidence submitted in support of this contention shall include credible data or information suitable for review by the town to determine the credibility and the appropriateness of the applicant's conclusion. The submittal shall include a description of the types of information used and the methodology employed to arrive at the conclusion. Information used shall include, but shall not be limited to, lists of customer/client addresses or certification thereof by an independent certified public accountant approved by the town, market studies prepared by independent professional firms, or data from similar operations under the control of the applicant. The town may in the future require the applicant to demonstrate to the satisfaction of the town council that the special exception use is continuing to be town-serving.

Hotels by definition under the code are "town serving".

16. If historic/specimen trees are located on the subject property, the location of said historic/specimen trees shall be identified on a signed and sealed survey. In addition, adequate landscaping, screening and barricade protection of historic/specimen trees shall be demonstrated to be provided as required in this chapter.

N/A.

17. The proposed use will not place a greater burden than would be caused by a permitted use on municipal police services due to increased traffic or on fire protection services due to the existence of or increased potential for fire/safety code violations.

The proposed modifications to the hotel and will meet the fire code and safety requirements and will have controlled parking using a valet service operation. Therefore, it should not create a greater burden to the Town.

EXHIBIT C - REQUEST FOR VARIANCE

CRITERIA FOR AUTHORIZING A VARIANCE

The Town Council must find the application in conformance with a number of criteria. Please address each of the criteria completely in order to provide the Council with sufficient information to make a determination on your application.

1. List the special conditions and circumstances peculiar to the land, structure or building which are not applicable to other lands, structures or buildings in the same zoning district.

The special conditions and circumstances peculiar to the land and structure is that the hotel was constructed in 1961 (as Heart of Palm Beach Motor Hotel) and is in need of completion and further development to bring it up to today's living standards and community needs.

2. Indicate how the special conditions and circumstances do not result from the actions of the applicant.

The special circumstances do not result from the actions of the applicant as the site and building have pre-existed the purchase by the applicant.

3. Demonstrate that the granting of the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.

Granting the variances will not confer special privileges as other buildings in the C-B Zoning District are non-conforming to today's code and are similarly situated with the need to update.

4. Demonstrate how literal interpretation of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.

The hardship that runs with the land is that the existing hotel is non-conforming to today's code. The additional square footage will improve amenities, livability and aesthetics within the confines of the existing building and property. This would be challenging without zoning relief from the current code.

5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

The variances being granted are the minimum necessary to bring the property and hotel up to world class status and complete a dormant abandoned building.

6. Show how the granting of the variance will be in harmony with the general intent and purpose of this chapter, and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Granting the variances will be in harmony with the intent of the code to protect the neighborhood and town and will not be injurious to the public welfare as the hotel is in need of completion and updating to open and be a viable business in Town.

EXHIBIT D - PARKING STATEMENT

Please provide a detailed parking statement which includes details of all available off-street parking, including information regarding the number of parking spaces designated for service use (for example: lawn service, pool service, staff/employee use, etc.)

COMMERCIAL PROPERTIES MUST:

- PROVIDE NUMBER OF OFF-STREET PARKING SPACES AVAILABLE FOR EMPLOYEES ON THE SUBJECT PROPERTY: 10
- PROVIDE NUMBER OF EMPLOYEES/STAFF PER SHIFT: 20 employees per shift
- INDICATE LOCATION WHERE EMPLOYEES PARK OFF-SITE: West Palm Beach Marriott (also owned by L+R Hotels) 1001 Okeechobee Blvd., West Palm Beach

RESIDENTIAL PROPERTIES MUST:

- PROVIDE NUMBER OF OFF-STREET PARKING SPACES AVAILABLE ON THE SUBJECT PROPERTY: _____
- PROVIDE NUMBER OF EMPLOYEES/STAFF PER SHIFT: _____
- INDICATE LOCATION WHERE EMPLOYEES/STAFF PARK OFF-SITE: _____

EXHIBIT E – SITE HISTORY

Please provide a detailed history of all zoning-related requests applicable to this property processed on or after January 1, 1970, in chronological order, including but not limited to variances, special exceptions, site plan reviews, and existing agreements.

1971 – Variance #42-71 was approved for permission to install a sign, which is (8'-6") two feet from the front street line

07/08/1975 - Special Exception – #8-75 was approved to construct a hotel building having forty-five rooms with the following conditions:

- 1. front yard kept in natural land cover**
- 2. two or more shade trees at least twelve feet and with a spread of not more than ten feet upon planting be provided in the front yard**
- 3. The Town will be furnished with a letter that existing hotel and approved hotel will never be connected**

1975 - Special Exception – #8-75 Town Council approved a six month extension

12/11/1979 – Variance to Commercial Moratorium No. 5-79 – Permission to expand existing hotel by constructing a 3-story, 45 unit hotel with related parking. Deferred from 10/9/1979 meeting. DENIED

**12/11/1979 - Special Exception No. 22-79 – Permission to construct three story hotel in lieu of two story with density of 45 units/acre in lieu of 22. CB District.
APPROVED with special amendments:**

- 1. A sufficient dimension be allowed in the proposed parking lot at the rear and an additional hedging along the South line of the property line be installed at a height of six feet.**
- 2. Five foot wall conforming to the existing wall now at the rear of the existing hotel property be continued along the South property line to the Eastern terminus of the property.**
- 3. 30 units be allowed in lieu of the requested 32.**
- 4. Applicant is required to participate in the sanitary and storm sewer construction in the future on a equitable basis as we approved for other applicants in the same sewer.**

01/12/1982 – Special Exception No. 2-82 – Permission to modify Special Exception No. 22-79 by constructing a vinyl awning structure over walkway between East and West buildings that will not be visible from the street. C-TS District. APPROVED – No enclosures on the sides of this awning permitted.

**12/11/2001 – Site Plan Review No. 21-2001 With Special Exceptions and Variances – Approval requested for a modified site plan to the Heart of Palm beach hotel to include one and two story additions to provide for a ballroom and associated service area, elevator, handicap restroom and storage building; and
SPECIAL EXCEPTION – approval requested to allow a two story addition to the existing hotel located in the C-TS District; and
SPECIAL EXCEPTION – approval requested to provide for supplemental off-site shared parking in the C-TS District in conjunction with a signed parking license agreement with JP Morgan Chase to provide 53 shared spaces; and
VARIANCE – to allow an expansion of a non-conforming hotel use in existence over 15 years; and
VARIANCE – to allow the expansion of a non-conforming building or structure by completing the proposed site plan changes; and**

VARIANCE – for a total building length of 264 feet in lieu of the required maximum of 150 feet for a variance of 114 feet; and
VARIANCE – to allow floor area within the C-TS Zoning District of 27,101 square feet in lieu of the 25,388 square feet existing and 15,000 square feet allowed maximum for a variance of 1713 square feet; and
VARIANCE – to allow a 25.09 foot front setback in lieu of the 30.29 foot required setback for a variance of 5.2 feet; and
VARIANCE – to allow a rear setback of 11.48 feet in lieu of the 15 foot minimum required setback for a variance of 3.52 feet; and
VARIANCE – to allow the proposed modifications without providing the additional 33 off-street parking spaces required by code.

DEFERRED to January 8, 2002 meeting per Town Council.

01/08/2002 – Modified Site Plan Review No. 21-2001 With Special Exceptions and Variances – Approval requested for a modified site plan to the Heart of Palm Beach Hotel to include one and two story additions to provide for a ballroom/function place and associated service area, elevator, handicap chair lift, meeting room, new handicap restroom and storage building;

SPECIAL EXCEPTION – approval requested to allow a two story addition to the existing hotel located in the C-TS District; and

VARIANCE – to allow an expansion of a non-conforming hotel use in existence over 15 years; and

VARIANCE – to allow the expansion of a non-conforming building or structure by completing the proposed site plan changes; and

VARIANCE – for a total building length of 264 feet in lieu of the required maximum of 150 feet for a variance of 114 feet; and

VARIANCE – to allow floor area within the C-TS Zoning District of 27,101 square feet in lieu of the 25,388 square feet existing and 15,000 square feet allowed maximum for a variance of 1713 square feet; and

VARIANCE – to allow a 25.09 foot front setback in lieu of the 30.29 foot required setback for a variance of 5.2 feet; and

VARIANCE – to allow valet only parallel parking in existing parking areas and a reduction in aisle width to 13' in lieu of the required 25' for valet parking only for a variance of 12'; and

VARIANCE – to allow parallel parking automobiles to block another automobile requiring one automobile to be moved to allow another to be taken from the property which is contrary to Section 134-2172.

DEFERRED to February 12, 2002 meeting per December 21, 2001 letter from James R. Brindell, Esq.

02/12/2002 – Modified Site Plan Review No. 21-2001 With Special Exceptions and Variances – Site plan approval requested for a modified site plan to the Heart of Palm Beach Hotel. Request has been reduced since its origination in two regards: the elimination of the proposed enclosure of a pool area and a storage/bathroom proposed to be located slightly into a setback. **DEFERRED** to March 12, 2002 meeting for further review by the Town's Traffic Consultant.

03/12/2002 – Modified Site Plan Review No. 21-2001 With Special Exceptions and Variances – Site plan approval requested for the Heart of Palm Beach Hotel to construct one and two story additions for function/pre-function areas, elevator, handicap chair lift and a new handicap restroom; special exception approval to allow a two story addition to the existing hotel located in the C-TS District; and, variances to allow:

VARIANCE – expansion of a non-conforming building or structure by completing the proposed site plan changes; and

VARIANCE – connecting both building to allow a total building length of 264 feet in lieu of the required maximum 160 feet; and

VARIANCE – floor area of 27,101 square feet in lieu of the 25,388 square feet existing and 15,000 square feet maximum allowed; and

VARIANCE – a 25.09 foot front setback in lieu of the 30.29 foot required setback for a variance of 5.2 feet; and

VARIANCE – valet only parallel parking in existing parking areas during function events;; and

VARIANCE – reducing the drive aisle width to 13' in lieu of the required 25' maximum allowed for valet parking only; and

VARIANCE – allowing parallel parking of automobiles to block another automobile requiring one automobile to be moved to allow another to be taken from the property which is contrary to Section 134-2172.

APPROVED with the following conditions:

- 1. Functions during breakfast shall be limited to 74 guests.**
- 2. Functions during lunch shall be limited to 49 guests.**
- 3. Functions with less than 25 guests will not be required to have valet parking attendants.**
- 4. Functions of 25 to 50 guests shall be required to have a minimum of two valet parking attendants and one parking supervisor.**
- 5. Functions of 75 to 110 guests shall be required to have a minimum seven valet parking attendants and two parking supervisors.**
- 6. Any time valet parking operations are required to be provided by the hotel, there shall be one special duty Town of Palm Beach police officer, payed for by the hotel, on duty at that location. If the Town determines that one police officer is not sufficient, the applicant at his own expense, shall be required to provide one additional Town of Palm Beach special duty place officer at the hotel for those functions that are of the size that have been determined to be a problem.**
- 7. When valet operations are required as stated above, the hotel shall being valet operations 24 hours prior to the event.**
- 8. When the West garage becomes full during valet operation, no further valet drop-offs will occur in that garage.**
- 9. If the Town determines that the valet operations are not adequate to handle the parking requirements for the functions at the hotel, the applicant shall be required to come back to the Town Council to determine what adjustments, limitations or other accommodations need to be imposed to address such problem. In addition, the applicant shall also be required to return in one year after the proposed function/pre-function addition is completed to re-evaluate the valet parking and traffic circulation issues at the hotel. If the Town determines that the valet operation during the events in the function/pre-function area are not working, the Council may take remedial action, up to and including further limiting the use of said area.**

05/14/2002 - Modified Site Plan Review No. 21-2001 Council clarified the conditions of approving with the following conditions (changes underlined):

- 1. Functions during breakfast shall be limited to 74 non-hotel guests**
- 2. Functions during lunch shall be limited to 49 non-hotel guests**
- 3. Functions with less than 25 non-hotel guests will not be required to have valet parking attendants**
- 4. Functions of 25 to 50 non-hotel guests shall be required to have a minimum of 2 valet parking attendants and 1 parking supervisor**

5. Functions of 75 or more non-hotel guests shall be required to have a minimum of 7 valet parking attendants and 2 parking supervisors. The maximum capacity for the function/pre-function area shall be 110 total guest

12/09/2003 – Site Plan Review #10-2003 with Special Exception – Modifying Site Plan Review #21-2001 with Special Exception and Variances – to expand the previously approved hotel (a special exception used) by constructing a 452 square foot basement addition below the service area and previously approved function room. The additions will consist of a hallway, storage room, elevator machine room and elevator hoist way. APPROVED.

01/13/2004 – Site Plan Review #1-2004 with Special Exception and Variances – Site Plan approval for a modified site plan for the Heart of Palm Beach Hotel including a partial third floor addition on the East building to add 6,984 square feet for 7 rooms and a corridor, and a basement parking garage of 8,237 square feet under the existing surface parking lot, raising the surface parking lot in the back, for a net gain of 17 off-street parking spaces. These seven additional hotel units will allow the hotel to provide a few suites which it currently lacks.

SPECIAL EXCEPTION – to expand the previously approved hotel special exception.

VARIANCE – to allow a partial third story addition to the existing hotel in the C-B Zoning District, where only two stories are allowed; and

VARIANCE – to allow the expansion of a non-conforming building or structure by completing the proposed changes and extending the overall length of the third floor of the building to 264 feet in lieu of the 150 feet allowed; and

VARIANCE – to allow 63.33 hotel rooms per Palm Beach acre in lieu of the 58.67 existing and the maximum 26 hotel rooms per Palm beach acre allowed by adding 7 additional rooms on the third floor of the East part of the building; and

VARIANCE – to allow a building height of 34.92 feet from zero datum in lieu of the 25 foot maximum height allowed for a two-story building for the East building addition; and

VARIANCE – to allow an overall building height of 36.0 feet from zero datum in lieu of the 30 foot maximum overall height allowed for a two-story building for the East building addition.

DEFERRED to the February 10, 2004 meeting.

02/10/2004 – Site Plan Review #1-2004 with Special Exception and Variances – Site Plan approval for a modified site plan for the Heart of Palm Beach Hotel including a partial third floor addition on the East building to add 6,984 square feet for 7 rooms and a corridor, and a basement parking garage of 8,237 square feet under the existing surface parking lot, raising the surface parking lot in the back, for a net gain of 17 off-street parking spaces. These seven additional hotel units will allow the hotel to provide a few suites which it currently lacks.

SPECIAL EXCEPTION – to expand the previously approved hotel special exception.

VARIANCE – to allow a partial third story addition to the existing hotel in the C-B Zoning District, where only two stories are allowed; and

VARIANCE – to allow the expansion of a non-conforming building or structure by completing the proposed changes and extending the overall length of the third floor of the building to 264 feet in lieu of the 150 feet allowed; and

VARIANCE – to allow 63.33 hotel rooms per Palm Beach acre in lieu of the 58.67 existing and the maximum 26 hotel rooms per Palm beach acre allowed by adding 7 additional rooms on the third floor of the East part of the building; and

VARIANCE – to allow a building height of 34.92 feet from zero datum in lieu of the 25 foot maximum height allowed for a two-story building for the East building addition; and

VARIANCE – to allow an overall building height of 36.0 feet from zero datum in lieu of the 30 foot maximum overall height allowed for a two-story building for the East building addition.

APPROVED with the following conditions:

1. Applicant must provide 2 inch storm water retention as required by Code.

2. Fire sprinkle the entire building prior to the certificate of occupancy for the improvements identified above.

04/13/2004 – Special Exception #10-2004 – Special Exception modification requested from the Heart of Palm Beach Hotel to provide a gift shop on the second floor of approximately 160 square feet. DEFERRED to the May 11, 2004 meeting.

05/11/2004 – Special Exception #10-2004 – Special Exception modification requested from the Heart of Palm Beach Hotel to provide a gift shop on the second floor of approximately 160 square feet. DEFERRED to the June 8, 2004 meeting.

06/08/2004 – Special Exception #10-2004 – With Site Plan Review and Variances (MODIFIED) – Modify the Special Exception and Site Plan Approval Granted under Site Plan Review #1-2004 with Special Exception and Variances

VARIANCE – addition of 800 square feet of office and storage in the basement, and to add 1,380 square feet of storage on the roof of the third floor of the East wing; and

VARIANCE – a gift shop on the second floor; and

VARIANCE – an increase for a building height of 35.58 feet from zero datum (a variance of 10.58 feet) in lieu of the previously approved building height of 34.92 feet from zero datum (a variance of 9.92 feet) and the 25 foot maximum height allowed for a two-story building to the East wing addition; and

VARIANCE – a modification to allow an increase in the existing variances for an overall building height of 36.67 feet from zero datum (a variance of 6.67 feet), in lieu of the previously approved overall building height of 36.0 feet from zero datum (a variance of 6.0 feet) and the 30 foot maximum overall building height allowed for a two-story building for the East wing addition; and

VARIANCE – a modification to allow an access aisle width on the new part of the basement garage at 17.67 feet in lieu of the 20 feet minimum required; and

VARIANCE – two air conditioning cooling towers which are 72 square feet in area and 9.58 feet high and are to be installed on an existing 2 foot high basement wall 3.75 feet from the rear property line in lieu of the minimum 15 foot required by Code for accessory structures (a variance of 11.25 feet); and

VARIANCE – a screen wall for the new air conditioning units to be 11.58 feet high in lieu of the maximum 7 foot height allowed by Code (a variance of 4.58 feet).

APPROVED with the following conditions:

1. Applicant must continue to meet all previous conditions of the approval

2. Fire sprinkle the entire building and additions prior to the certificate of occupancy for the improvements identified above.

3. Provide signage in the new portion of the parking garage basement that allows only valet and employee parking in that portion of said garage.

01/09/2007 – Site Plan Review #2-2007 with Special Exceptions and Variances and Waiver of Zoning In Progress – Request special exception approval for continued operation of hotel under new ownership. Applicant believes prior zoning applications are vested and not subject to the zoning in progress, but if Town attorney concludes that the applicant is not vested, the Applicant requests that the Town waive the application of the zoning in progress for this application.

SPECIAL EXCEPTION - for expansion of hotel's accessory uses, including 1,500 square foot expansion of spa facility; addition of 1,335 square feet of public space, plus 360 square feet of back room space, for function room in a building in lieu of existing tent facility; replacement of the existing second floor function space with a 3,600 total square foot dining room including 840 square feet for outdoor seating on balcony; and

SPECIAL EXCEPTION – to permit outdoor dining with maximum of 56 seats on 840 square foot second floor balcony on front façade; and

SITE PLAN APPROVAL – for expansion of an existing hotel within nonconforming building. This site plan request includes the addition of a 1,940 square foot porte-cochere/covered drop off and relocation of the loading dock from the front façade to under the West wing of guest rooms; relocation and construction of new lobby; the construction of a 1,695 total square foot addition in the rear yard to serve as function space in lieu of the existing tent facility space; an expansion of the spa facility to 4,100 square feet; replacement of the existing second floor function space with a 3,600 total square foot dining room, including 840 square foot dining area on balcony; renovation of guestrooms (net

reduction of units: 95 to 80); construction of an enclosure for an existing outdoor fire stairwell; new roof design and materials; infilling the walls of the balconies; a new 2,160 square foot loggia in the back pool area of the building fronting the swimming pool; and adoption of exclusively valet parking for the site.

VARIANCE – to permit construction of a porte-cochere/covered drop off with front set back of .34 feet, in lieu of 34.72 foot minimum required front yard setback required by code.

VARIANCE – to permit construction of a relocated curb cut and porte-cochere/covered drop off, expansion of existing spa and construction of a permanent function space, which increases lot coverage to 66.4%, in lieu of the 61.4% existing lot coverage and the 50% maximum lot coverage allowed by code.

VARIANCE – to permit construction of relocated curb cut and porte-cochere/covered drop off expansion of the existing spa and construction of permanent function space, with overall landscape space of 23% overall landscaped space (no change from existing) in lieu of the 30% minimum overall landscaped space required by Code.

VARIANCE – to accommodate new mansard roofing design and material, to permit overall building height of 35.27 feet from zero datum (no change from existing) in lieu of the 30 foot maximum overall building height allowed by Code.

VARIANCE – to accommodate new mansard roofing design and material to permit building height of 34.61 feet from zero datum (no change from existing) in lieu of 25 feet maximum building height allowed by Code.

VARIANCE – to have two architectural tower features in lieu of the two (2) maximum tower features allowed by Code.

VARIANCE – for two (2) of the architectural tower features and four dormer windows with front yard setbacks of 24.5 feet and 24.88 feet in lieu of the 39.72 foot minimum front yard setback required by Code.

VARIANCE – for two (2) architectural towers, 5 feet maximum in height, with an overall building height of 40.27 feet, in lieu of the 35 feet maximum overall building height allowed by Code for the towers.

VARIANCE – to construct a 3,000 total square foot function room to replace current tent facility, with a 10.0 foot rear yard setback, in lieu of 28.88 minimum rear yard setback required by Code.

VARIANCE – to accommodate new mansard roof design and materials with a 5.8 feet side yard setback (no change from existing) at Western property line, in lieu of the 19.72 foot minimum side yard setback required by Code.

VARIANCE – to allow outdoor dining room seating on the front and back outside balconies where said use is required by Code to be entirely within the principal building.

VARIANCE – to allow a marquee wider than the entry way and with support closer than eighteen inches to the face of the curb.

VARIANCE – to construct 9,100 square foot of additional improved space, without providing the one additional loading berth required by Code.

VARIANCE – to provide 67 off street parking spaces, in lieu of 97 existing spaces and the 147 required by Code.

VARIANCE – to allow required parking to be stacked in a method which required the movement of other vehicles in order to move another vehicle.

DEFERRED to the February 13, 2007 meeting.

02/13/2007 – Site Plan Review #2-2007 with Special Exceptions and Variances and Waiver of Zoning in Progress – Request special exception approval for continued operation of hotel under new ownership. Applicant believes prior zoning applications are vested and not subject to the zoning in progress, but if Town attorney concludes that the applicant is not vested, the Applicant requests that the Town waive the application of the zoning in progress for this application.

DEFERRED to the March 13, 2007 meeting to allow more research to address Town Council's questions.

03/13/2007 – Site Plan Review #2-2007 with Special Exceptions and Variances and Waiver of Zoning in Progress – Request special exception approval for continued operation of hotel under new ownership. Applicant believes prior zoning applications are vested and not subject to the zoning in progress, but if Town attorney concludes that the applicant is not vested, the Applicant requests that the Town waive the application of the zoning in progress for this application.

DEFERRED to the April 10, 2007 meeting.

04/10/2007 – Site Plan Review #2-2007 with Special Exceptions and Variances and Waiver of Zoning in Progress – Request special exception approval for continued operation of hotel under new ownership. Applicant believes prior zoning applications are vested and not subject to the zoning in progress, but if Town attorney concludes that the applicant is not vested, the Applicant requests that the Town waive the application of the zoning in progress for this application.
DEFERRED to the May 7, 2007 meeting.

05/07/2007 – Site Plan Review #2-2007 with Special Exceptions and Variances and Waiver of Zoning in Progress – Request special exception approval for continued operation of hotel under new ownership. Applicant believes prior zoning applications are vested and not subject to the zoning in progress, but if Town attorney concludes that the applicant is not vested, the Applicant requests that the Town waive the application of the zoning in progress for this application.

APPROVED with the following conditions:

1. Applicant enter into a Construction Agreement and a Declaration of Use Agreement which incorporated the conditions of approval for the operation of the hotel and its amenities.
2. Applicant is also required to design and construct new median cuts in the 100 block of Royal Palm way to the satisfaction of the Town's Public Works Department.

07/11/2012 – Site Plan Review #6-2012 with Special Exception and Variances – The subject condominium hotel is currently under renovation pursuant to the approval of the Town Council in May 2007. The site plan has been modified from the original plan which requires approval from the Town Council. The following is a list of the proposed changes to the approved plan:

- Elimination of two pool structures and relocation of a pool structure;
- Relocation of pool restrooms to inside of Function Room;
- Relocation of bar area;
- Elimination of the mansard roof on the East elevation and addition of a mansard roof on the North elevation and East guest wing elevation;
- Relocation of pool equipment and storage to under pool service building;
- Approval of landscaping, cabanas and pool terrace for the entire site;
- Addition of plunge pools to the pool terrace area;
- Addition of interior floor above lobby to total 1,486 square feet of which 500 square feet is dining area;
- Addition of parapet to connect East and West stair towers;
- Addition of roof deck lounge on existing rooftop of hotel;
- Addition of elevator to the show on roof plan of function roof where previously not shown

A request for Special Exception approval is required for the new owner of the condominium hotel and changes and modification of the hotel which is a special exception. The following variances are requested in conjunction with the modification to the site plan:

VARIANCE – for the height and overall height of the new mansard roofing design and material to be 35.27 feet from zero datum (no change from existing) in lieu of the 30 foot maximum overall building height allowed by code in the C-B Zoning District;

VARIANCE – for 7 parking spaces due to the additional floor 986 square feet created above the lobby for additional dining and kitchen facilities (no increase in number of seats) and finished kitchen prep area which totals 831 square feet in the basement;

VARIANCE – to allow construction of the new function room building, spa and second floor dining room to be phased and completed after the hotel has a certificate of occupancy and open for business. The applicant is requesting a 5 year extension from the certificated of occupancy to construct and/or build out the function room building, spa and dining room on the second floor.

APPROVED – The Council approved the change in hotel operators with the following conditions:

1. The hotel, with the exception of the spa/fitness area in the basement and second floor dining room above the lobby, shall be completed and have a certificate of occupancy by February 14, 2013.
2. The spa/fitness area and second floor dining room above the lobby shall have the shell (exterior space drywall, all life safety features, minimum electric and floor slab) completed by

February 14, 2013. Those areas shall be completed following issuance of building permit(s) and final certificate of occupancy when commercial tenants are secured.
3. The South perimeter landscape buffer shall be approved and completed by September 30, 2012.

The remainder of the site plan review with variances shall be considered at the August 15, 2012 Council meeting.

08/15/2012 – Modified Site Plan Review #6-2012 with Special Exception and Variances – Additional changes to the 07/11/2012 request are as follows:

- Replace solid parapet on function room with balustrade railing;
- Increase height of doors in main lobby overlooking pool deck by 3 feet;
- Add a breezeway from the main lobby to function room;
- Add a 7 foot tall hedge with a 42 inch rail on South side of proposed swimming pool to run length of pool deck area;
- Add pergola on south elevation and extend balconies on North, South and East elevations;
- Addition of service corridors and expansion of kitchen and laundry room which totals

approximately 3,625 square feet;

- Shift location of approved function room 25 feet to the East and add back the 4 of the 6 parking spaces that are lost. Size of the spa facility is decreased from 7,325 square feet to 5,948 square feet which eliminates the need for 2 parking spaces that were lost. Net effect is zero loss of parking spaces;
- Replace solid concrete railing on stairway on South side of West wing fire escape with precast balustrade railing.

A request for Special Exception approval is required for the new owner of the condominium hotel and changes and modification of the hotel which is a special exception. The following variances are requested in conjunction with the modification to the site plan:

VARIANCE – for the height and overall height of the new parapet roofing design and material to be 35.27 feet from zero datum (no change from existing) in lieu of the 30 foot maximum overall building height allowed by Code in the C-B Zoning District;

VARIANCE – for 4 parking spaces due to the additional floor 986 square feet created above the lobby for additional dining and kitchen facilities (no increase in number of seats);

VARIANCE – for 3 parking spaces due to the addition of a kitchen prep area which totals 831 square feet in the basement for a total of 7 parking spaces that would be required;

VARIANCE – to increase the height of the parapet wall above the parking deck to be 14 feet in lieu of the 5 foot maximum allowed and the 3.5 feet existing.

APPROVED MODIFIED SITE PLAN REVIEW REQUEST #S 2,3,4,6,7,8,10, 11, 13, 14, 15 AND 16. REQUEST #S CORRESPOND TO PRESENTATION FROM 8/15/2012. REQUEST #12, TO ADD A BREEZEWAY BETWEEN THE HOTEL AND THE PROPOSED FUNCTION ROOM WAS WITHDRAWN BY THE APPLICANT. REMAINING REQUESTS WERE APPROVED, SUBJECT TO THE FOLLOWING CONDITIONS:

1. The proposed 14 foot tall parapet wall between the proposed function room and the proposed service bar shall have a water feature that runs the length of the wall. Said water feature shall be operational as determined by the Town Council as outlined in the proposed Declaration of Use Agreement.
2. The service bar shall remain for the use of only the hotel staff. Service shall not be provided to hotel guests. In addition, no chairs shall be allowed for hotel guest at the service bar.
3. The pool deck area and abutting grass area between the pool deck and proposed Function Room to the East shall remain passive and no events shall be held in those areas.
4. The pool deck area shall be allowed only background music and light live music with the speaker system directed toward the hotel to the North. There shall be no music on the abutting grass area.
The hours shall be as identified in the original Declaration of Use Agreement.
5. The air conditioning equipment on the proposed Function Room roof shall be screened from the neighbors by a solid parapet wall.

6. The Function Room elevator and stairwells shall not be accessible from 7:00 p.m. to 9:00 a.m. Fire-rescue accessibility shall be provided by Knox-boxes and an elevator override system.
7. Additional landscape material to completely screen the back of the hotel from the neighbors shall be required and maintained on the South perimeter of the subject property in perpetuity. The landscaping of the entire property shall be approved by the Architectural Commission.
8. These new conditions of approval shall be incorporated in the Declaration of Use Agreement.

ALL 3 VARIANCE REQUESTS APPROVED.

APPLICANT IS REQUIRED TO COMPLETE THE FUNCTION ROOM, MESSANINE DINING ROOM AND FITNESS CENTER/SPA CONSTRUCTION TO MINIMUM "SHELL" COMPLETION PRIOR TO FEBRUARY 14, 2013; THEREAFTER ONLY INSIDE QUIET WORK WILL BE ALLOWED.

01/09/2013 – Site Plan Review #3-2013 with Special Exception and Variance – Requesting a modification to the site plan and special exception from the approved zoning application Site Plan Review #6-2012 with Special Exception and Variances which requires approval from the Town Council.

- Relocation of the roof top sundeck on the proposed Function Room, including the removal of the two stairwells and elevator going to that area. The sundeck was allowed to be relocated on top of the second floor roof above the lobby dining room. This approval included required stairs and an elevator to the new proposed sundeck area and physical separation of the proposed sundeck from the South ten feet of the building. In addition, other roof areas that are not part of the approved new sundeck area shall also have a structural separation from the new sundeck. The previous conditions of approval of the sundeck on the Function Room apply to this new sundeck area.

- Relocation of the air conditioning equipment from the Function Room roof to the Northeast corner of the surface parking lot as identified on the plans.

- Elimination of the outside stairs to the spa area.

- Modification of the service double doors on the East side of the proposed Function room.

- Modification to create a niche on only the West end of the proposed water wall between the

Function room and the outside service area building on the South side of the subject property

The Council denied the sliding doors on the West entrance to the Function Room, the niche on the East side of the water wall and the bar area abutting the South doors from the lobby dining room leading out to the outside seating area.

APPROVED with the following conditions:

1. The East and South boundary of the subject property shall be screened in a manner which is approved by the neighbors to the East.

2. The relocated air conditioning equipment shall also be fully screened by a wall and landscape material. Said screening shall be maintained in perpetuity.

3. Applicant is required to come back to the February 13, 2013 Town Council meeting for approval of a second amendment to the Declaration of Use Agreement, which addresses all of the proposed modifications changing the Agreement. All other conditions of approval in the Declaration of Use Agreement remain valid.

09/10/2014 – Site Plan Review #12-2014 with Special Exceptions and Variances – Requesting a modification of the site plan which requires approval from the Town Council. Proposed changes to the SPR #3-13 approved hotel plan:

SPECIAL EXCEPTION – addition of 1,006 square feet of basement level spa/salon/fitness area and 6,719 square feet of hotel lounge, business center, guest recreation and services area ("Premier Guest Service Area") to primarily serve hotel guests; addition of 3,804 square feet for back of house support services in the basement level and change of such uses to administrative offices, employee break room, restrooms, housekeeping and kitchen coolers/freezers; addition of 75 square feet for pool deck restrooms; addition of 573 square feet for exterior Function Room bathrooms; change of use to pool deck and adjacent Function Room courtyard area to allow for pre-function events; redesign and reduction of main kitchen by 100 square feet; addition of 1,483 square feet for Function Room finishing kitchen, "green room" and speaker area; reintroduction of previously approved function room

sundeck to private spa deck on roof; addition of 39 dining seats to interior second floor restaurant and relocation of those seats to the previously approved third floor deck; and conversion of one hotel room to a private dining room and relocation of 12 previously approved second floor interior restaurant dining room seats to such room.

SPECIAL EXCEPTION – to permit outdoor dining with a maximum of 39 seats on the previously approved third floor deck and addition of three bar/beverage stations customarily associated with a hotel use; one on the third floor deck, one to serve the second floor North dining terrace and one portable station for the Function room courtyard area for pre-function events (total approved outside seating in other areas is 66 seats). Total outdoor seating proposed to be 105 seats.

VARIANCE – to permit construction of an addition to the basement level (for area not below existing building footprint) to allow for back of house space, expanded spa and Premier Guest Service Area which increases lot coverage to 71%, in lieu of the 66.4% existing and the 50% maximum lot coverage allowed by Code.

VARIANCE – to allow a basement addition to extend further outside the confines of the existing building footprint which is not permitted by code.

VARIANCE – to allow a landscaped open space of 12.2% in lieu of the 12.7% existing and the 30% minimum required by Code.

VARIANCE – for a front yard setback of 7.66 feet in lieu of the 29.54 foot minimum front yard setback required to install a retractable awning which covers the second floor doors and the previously approved outdoor seating area on the North dining terrace.

VARIANCE – for a 10 foot rear yard setback in lieu of the 15 feet required to relocate previously approved pool cabanas.

VARIANCE – for a 10 foot rear yard setback in lieu of the 15 foot minimum required for the location of a men's restroom to service the pool area.

VARIANCE – for a 10 foot rear yard setback in lieu of the 15 foot minimum required to construct an addition to the East side of the previously approved Function Room.

VARIANCE – for the non-conforming hotel to not provide an additional required loading space for commercial deliveries based on the additional accessory commercial square footage of 7,864 proposed for the hotel.

VARIANCE – to allow changes to the use of the 1,881 square foot third floor deck as Town Code provides for a two story limitation. The prior variance limited the use of the third floor deck to a private spa deck and there is a proposed change of use associated with that variance to allow for the addition of 39 outdoor dining seats, a bar/beverage station customarily associated with hotel uses (with 410 square feet of decorative, open trellis), 80 square foot enclosed storage room and 1,132 square foot expansion of deck area.

VARIANCE – for height and overall height to allow a 410 square foot open trellis on the third floor deck associated with the proposed outdoor dining area. The variance request is for the height of the trellis on the third floor to be 41 feet high in lieu of the 25 foot maximum allowed which is 16 feet over the maximum building height of 25 feet and the maximum overall height of 41 feet in lieu of the 30 foot maximum allowed.

VARIANCE – for 68 off-street parking spaces for the proposed addition of the finishing kitchen, "green room" and speaker are for the Function Room, the increase in spa square footage, the loss of parking spaces resulting from the addition of the Function Room addition, the additional back of house space to serve the hotel, the additional 39 dining seats and the Premium Guest Services Area located in the basement level.

DEFERRED to October 13, 2014, Special Town Council Meeting.

FOUR OUTSTANDING ISSUES THAT HAVE TO BE RESOLVED BY OCTOBER 13, 2014 MEETING:

1. Provide a letter from the City of West Palm Beach that there is adequate portable water capacity for the project.

2. Provide the Town's Public Works Department with the sewer capacity analysis from a licensed engineer. That has to be reviewed and signed off on by Public Works and accepted by John Page, Director of Planning, Zoning and Building.

3. Discussions with Building Official Bill Bucklew note that handicap accessibility requirements are not being met for proposed parking, even if it is completely valet. Please contact Bill Bucklew to address the issue.

4. Provide John Randolph, Town Attorney, the draft waiver language as discussed at the Council meeting from both the client and Mr. Straub, for his review. Once approved by Mr. Randolph, the waivers are to be executed and submitted to this office prior to the October 13 Council meeting. A newly revised Declaration of Use Agreement is also to be provided.

10/13/2014 – Site Plan Review #12-2014 with Special Exceptions and Variances – Requesting a modification of the site plan which requires approval from the Town Council. DENIED FOR SPECIAL EXCEPTIONS AND VARIANCES. SITE PLAN MODIFICATIONS DENIED WITH THE EXCEPTION OF THE FOLLOWING FIVE:

1. Reintroduction of a rectangular shaped pool (26' x 48') previously approved by the Town Council from curvilinear design decision by prior owner.
2. Reintroduction of an awning to connect main hotel and Function Room previously approved by the Town Council but eliminated by prior owner.
3. Design change to front door (North), West restaurant and East egress doors.
4. Enclosure of first through third level exterior access corridors on most Eastern elevation, above garage entrance.
5. Change of building color to custom pink hue.

01/13/2016 – Site Plan Review #1-2016 with Special Exception – for modification to hotel approved plans to comport with previous approvals with exception of minor changes to improve service areas and access to those areas via stairs and elevators. The intent of the following proposed site plan changes is to address and secure the Town's approval for certain improvements that (A) are already partially constructed, (B) will improve the function of the hotel, but (C) will not increase the intensity of the use of the Property or require any additional variances of any nature:

1. Complete construction of Function room and pool area consistent with plans previously approved by the Town.
2. Demolish partially constructed bathrooms on West side of Function Room and complete construction in area immediately adjacent to the Southeast corner of the Function room per plans previously approved by the Town.
3. Demolish partially constructed walkway, stairs and elevator in so far as it provides access to roof above Function Room.
4. Demolish approximately 1,140 square feet of office space in area previously approved as service corridor and laundry space.
5. Demolish partially constructed enclosures of portions of the basement garage on both East and West side of the Property, to restore 5 required off-street parking spaces.
6. Completion of partially constructed stair and elevator from basement to third floor on North side of hotel building and demolish partially constructed elevator extension to roof top.
7. Restore guest room area on third floor which was converted to private dining over-looking the second floor dining room.
8. Demolish partially constructed partial wall in the Function Room kitchen.
9. Construction of new access stairs from the basement kitchen area to the lobby dining room.
10. Construct new stairs, elevator and dining area on the second floor dining room.
11. Construct redesigned mezzanine dining room stairs.
12. Construct opening on the East side of the Function Room wall identified as the state.
13. No reduction of condo-hotel units. The condo-hotel units remain at 79 units.
14. Remove infill framing at exterior walkways on East elevation (installed subsequent to staff's identification of non-approved construction).

APPROVED.

01/11/2017 – Request for One Year Time Extension, Site Plan Review # 1-2016 – APPROVED for 12-month time extension.

01/10/2018 – Request for One Year Time Extension, Site Plan Review # 1-2016 – APPROVED for 12-month time extension.

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

THIRD AMENDMENT TO DECLARATION OF USE AGREEMENT

By

THE TOWN OF PALM BEACH

and

LR PALM HOUSE LLC
(F/K/A 160 ROYAL PALM LLC and ROYAL 160, LLC)

Dated September, 2020

EXHIBIT "F"

AMENDMENT OF DECLARATION OF USE AGREEMENT

THIS THIRD AMENDMENT TO DECLARATION OF USE AGREEMENT ("Amendment") is made and entered into this ____ day of _____, 2020 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter the "Town"); and LR PALM HOUSE LLC, formerly known as ROYAL 160, LLC and ROYAL 160, LLC, 160 Royal Palm Way, Palm Beach, Florida 33480 hereinafter the ("Owner"), which terms "Town" and "Owner" will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH:

WHEREAS, the Town and Owner heretofore entered into a Declaration of Use Agreement, dated July 30, 2007 and recorded in Official Records Book 21987, Page 499, and an Amendment to the Declaration of Use Agreement, dated December 28, 2021 and recorded in Official Records Book 25694, Page 633, and further amended in the Second Amendment to the Declaration of Use Agreement, dated August 13, 2013 and recorded in Official Records Book 26251, Page 78, all in the Public Records of Palm Beach County, Florida ("Agreement");

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

WHEREAS, title to all of the Land is held by the Owner;

WHEREAS, the Palm House Hotel (hereinafter referred to as the "Hotel") is located and operated on the Land at 160 Royal Palm Way in the Town;

WHEREAS, the Town Council on October 9, 2020, approved the Site Plan Revise with Special Exception and Variances number Z-20-00__ to modify the previously approved Site Plan Review #16-2016 with Special Exception, which allowed the new Owner to operate the Hotel subject to the modified conditions, which modified previous conditions of approval;

WHEREAS, the modifications to the previous conditions of approval are set forth herein and the approval of this Agreement is on the basis of the Owner's application and the testimony on behalf of the Owner;

WHEREAS, the Town made specific findings that the Owner met all applicable provisions of the Town Code governing site plan review, special exceptions, and variance requests;

WHEREAS, in approving the Site Plan Review with Special Exceptions and Variances, the modifications to the previous conditions of approval reflected herein are imposed in order to regulate the use, mitigate any adverse impacts of the use, and insure that said use shall not be adverse to the public interest;

WHEREAS, all of the representations made herein are true and accurate and the approval of the Site Plan Review with Special Exception and Variances are conditioned upon the representations made herein and all of the conditions herein imposed; and,

WHEREAS, in granting the approval, the Town Council relied upon the oral and written representations of the property owner/applicant both on the record and as part of the application process.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and in consideration of other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed that the Agreement is hereby amended and modified as follows:

ARTICLE I **RECITALS**

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

ARTICLE II **REPRESENTATION OF OWNERSHIP**

Owner has full right to enter into this amendment to the 2007 Declaration of Use Agreement, as amended, and to bind the Land, Hotel and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Hotel and Land in accordance with the terms and conditions of this Agreement. No consent to execution, delivery and performance hereunder is required from any person, partner, limited partner, creditor, investor, judicial or administrative body, governmental authority or other party other than any such consent which already has been unconditionally given or referenced herein. The execution of this Amendment will not violate any restrictions, court orders or agreements to which Owner or the Land are subject.

ARTICLE III **CONDOMINIUM HOTEL USES**

The use of the Land shall be for hotel uses and accessory uses in compliance with all of the information and exhibits not inconsistent with the terms and conditions set forth herein and as set forth in the applications previously submitted to, and approved by, the Town (hereinafter referred to as the "Approvals"). The Town's approval of the Application is subject to that provision of the Town Code which provides that no subsequent deviation may be made from the application as approved by the Town Council except upon new application to and approval by the Town Council. Any additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Architectural Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under any of the foregoing governmental authorities.

ARTICLE IV **MODIFICATIONS TO PREVIOUS CONDITIONS OF APPROVAL**

The following modifications to previous conditions of approval are imposed as conditions of granting approval of the Site Plan Review with Special Exceptions and Variances contained in Z-20-00289 and are required to be met as conditions of the continued operation of the Hotel.

DECLARATION OF USE DATED JULY 30, 2007

1. Paragraph 3 shall be amended as follows:

~~The second floor dining room area is approved for a total 120 seats with the ability to relocate 50 of those seats to the second floor balcony patios (a maximum of 25 seats on the front balcony and 25 seats on the back balcony terrace). In addition, The first floor dining room is approved for 65 88 indoor seats with the ability to relocate 16 and 36 outdoor seats facing the new pool deck outdoors on the covered pool loggia. The dining room may serve meals to the public and hotel guests in the dining rooms from 5:00 AM to 1:00 AM. Outside dining shall only be allowed from 9:00 AM to 10:00 PM on the covered pool loggia. However, seating for patrons for dining on the covered pool loggia shall not occur after 9:00 PM. Outside dining shall only be allowed from 6:00 AM to 11:00 PM on the second floor dining room balconies. However, seating for patrons for dining on the second floor outside dining shall not occur after 9:00 PM. This shall not preclude 24 hours room service.~~

2. Paragraph 7 shall be amended as follows:

~~The function area shall only be allowed 150 200 seats with recorded or live music or other entertainment between the hours of 12:00 Noon and 11:30 PM. 12:00 AM. No sooner than one year from the date of the certificate of occupancy, the applicant may apply for a special exception with variance for a maximum of 50 additional seats in the function area.~~

3. Paragraph 8 shall be deleted in its entirety as follows:

~~The upper deck sun deck on top of the function room shall only be used for sunning or lounging. There shall be no events of any kind or live or recorded music provided on said sun deck.~~

AMENDMENT TO DECLARATION OF USE DATED DECEMBER 28, 2012

1. Paragraph 1 shall be amended as follows:

~~The proposed 14 15.16 foot tall parapet wall between the proposed function room and the proposed employee pool service building west wing of the hotel shall have a water feature that runs the length of the wall. Said water feature shall be operational between the hours of 9:00 a.m. and midnight (12:00 a.m.).~~

2. Paragraph 3 shall be amended as follows:

~~There shall be no Pre-function events in the pool deck and grass area between the pool deck and Function Room shall be allowed. These areas shall remain passive. The pool deck area shall be allowed only background music and light live music with the speaker system directed towards the hotel to the north. There shall be no music played on the~~

abutting grass area. The pool deck hours and hours for music shall be as identified in the Agreement.

3. Paragraph 5 shall be deleted in its entirety as follows:

~~Except for emergencies, the Function Room elevator and stairwells shall not be accessible to the sundeck from 7:00 PM to 9:00 AM so as not to allow hotel guests and employees on the Function Room roof during those hours. Fire rescue accessibility shall be provided by knock boxes and an elevator override system. The access points to the stairs leading to the sundeck on the Function Room shall be designed to be completely isolated from the ground floor with a full door and other separation to ensure that when they are locked there is no access to the sundeck.~~

4. Paragraph 7 shall be deleted in its entirety as follows:

~~All construction must be completed by February 14, 2013 with the exception of the function room, spa/fitness area and second floor dining room above the lobby which shall be required to only have the shells (drywall, all life safety features, minimum electric and floor slab) completed by February 14, 2013. Any elements of the Hotel or Land not completed by February 14, 2013, include the function room, spa/fitness area and second floor dining room shall be required to obtain new approvals and permits.~~

SECOND AMENDMENT TO DECLARATION OF USE DATED AUGUST 13, 2013

1. Paragraph 1 shall be deleted in its entirety as follows:

~~The air conditioning equipment previously approved to be located on the roof of the Function Room shall be relocated to the planters on the east side of the Function Room and are required to be screened from the neighbors.~~

2. Paragraph 2 shall be deleted in its entirety as follows:

~~The previously approved activity and restrictions for the roof top of the Function Room shall be transferred to the roof top area above the Hotel lobby on the third floor of the hotel. The following restrictions now apply to the roof top of the Hotel in lieu of the roof top of the Function Room: (a) the sundeck shall only be used for sunning or lounging; (b) there shall be no events of any kind or live or recorded music provided on said sundeck; (c) except for emergencies, the Hotel elevator and stairwells shall not be accessible to the sundeck from 7:00 p.m. to 9:00 a.m. so as not to allow hotel guests and employees on the Hotel sundeck during those hours. Fire rescue accessibility shall be provided by knock boxes and an elevator override system. There shall be a barrier constructed to the satisfaction of the Town which precludes access to the roof top of the hotel to the east and south of the sundeck.~~

3. Paragraph 4 shall be deleted in its entirety as follows:

~~All construction must be completed by February 14, 2013 for the function room, spa/fitness area and second floor dining room. All construction shall be required to only have the shells (drywall, all life safety features, minimum electric and floor slab) completed by February 14, 2013. Any element~~

~~completed by February 14, 2013, including the function room, spa/fitness area and second floor dining room shall be required to obtain new approvals and permits.~~

ARTICLE V **PROVISIONS FOR NOTICE**

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

To the Town Manager:

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

To the Owner:

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

ARTICLE VI **PROVISIONS TO RUN WITH LAND/RECORDING**

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

ARTICLE VII **ENTIRE AGREEMENT**

This Amendment, as identified herein, only represents the modifications to the Agreement, as recorded in Official Records Book 21987, Page 499 and Amendment to the Agreement as recorded in Official Records Book 25694, Page 633 and Second Amendment to the Agreement as recorded in Official Records Book 26251, Page 78, of the Public Records of Palm Beach County between the parties and may not be amended except by written agreement executed by both parties. All other provisions and conditions in the Agreement, as recorded in Official Records Book 21987, Page 499 and Official Records Book 25694, Page 633 and Official Records Book 26251, Page 78 of the Public Records of Palm Beach County, remain in full force and effect.

ARTICLE VIII **MISCELLANEOUS**

Wherever the word "laws" appears in this Agreement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities. This Amendment may not be amended except by written instrument signed by all parties hereto. Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All references to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs and subparagraphs of this Agreement and to exhibits attached hereto, which exhibits are by this reference made a part hereof. This Agreement shall be binding upon the parties hereto and upon their successors and assigns. In the event of the invalidity of any provision of this Agreement,

same shall be deemed stricken herefrom and this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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

Signed, sealed and delivered
In the presence of:

TOWN OF PALM BEACH

By: _____
Gail Coniglio, Mayor

By: _____
Maggie Zeidman, President
Town Council

By: _____
Kirk Blouin
Town Manager

LR PALM HOUSE LLC

By: _____
Its: Manager/Member

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by Gail Coniglio, the Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by Maggie Ziedman, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by Kirk Blouin, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by _____, the _____ of LR Palm House LLC, a Florida limited liability company, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

John C. Randolph
Town Attorney

Exhibit "A"

Legal Description of the Land:

Being Lots 31, 32 and 33, Block F, Royal Park Addition, a subdivision in the Town of Palm Beach, Palm Beach County, Florida, as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida.

BRAZILIAN AVENUE

S. OCEAN BOULEVARD

300

117

125

133

141

149

155

157

100

132

140

160

SUBJECT
PROPERTY

ROYAL PALM WAY

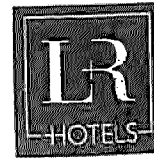
109

200 FOOT
VICINITY

200' - 0" BOUNDARY LINE

151

25 50 100 200



LOCATION MAP



VM1

The Palm House Hotel
160 Royal Palm Way

License N°

AUGU:



**Town of Palm Beach
Notification to Property Owners**

Architectural Review Commission Project Notice

TO BE HEARD BY THE ARCHITECTURAL REVIEW COMMISSION ON **September 23, 2020**
AFTER 9:00 A.M., in the Town of Palm Beach Council Chambers located on the 2nd floor, 360 South County Road, Palm Beach. Pursuant to Section 18-202 (1) of the Town Architectural Review Ordinance, this application is being sent to all property owners within 250' radius of the location of the subject application.

All interested persons may appear and be heard at said Public Hearing and may likewise submit written statements prior to and at said Public Hearing. If any person decides to appeal any decision made by the Architectural Review Commission with respect to this matter, he/she will need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based. Please be advised that the Town does not enforce private covenants or deed restrictions.

ARCOM#: B-063-2020

Address: 160 Royal Palm Way, Palm Beach Florida 33480

Applicant: LR Palm House LLC

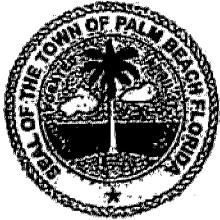
Project Description:

The existing Palm House hotel is located at 160 Royal Palm Way, Palm Beach, Florida. It is currently vacant and construction is partially completed. The structure is three stories with a partially enclosed basement containing parking and back-of-house functions. The proposed new work for the hotel includes completion and conversion of guest rooms for a total of 79 Keys. A new pool deck will be constructed adjacent to the existing Function Room. Other exterior improvements will include re-painting, new exterior floor finishes, trellises and a covered walkway leading to the existing Function Room. Fenestration requiring replacement will be replaced with similar windows and doors.

This notification is not to solicit approval or disapproval. It is a required notification to surrounding property owners. The plans for the project are on file in the Planning, Zoning & Building Department and are available for review Monday through Friday between 8:30 a.m. and 4:30 p.m. or may be available via the Town's website at www.townofpalmbeach.com/index.aspx?NID=676. Please note that the applicant may submit revised plans and materials up to 9 days prior to the meeting date; therefore, if you are an interested party, you will need to contact the Town using the information below to verify if revisions have or have not been submitted.

If you would like to be automatically informed of changes to the ARCOM Agenda and Back-up Material, please visit our website www.townofpalmbeach.com and click on the "Stay Informed" button on the main page and follow the instructions provided and select Architectural Commission (ARCOM).

If you need further information relative to this project, please contact Josh Martin, Director of Planning, Zoning and Building at 561-227-6401 or jmartin@townofpalmbeach.com.



TOWN OF PALM BEACH
Planning, Zoning & Building Department
360 S. County Rd.
Palm Beach, FL 33480

APPLICATION FOR PROJECT REVIEW BY THE ARCHITECTURAL REVIEW COMMISSION

Application Number: B-063-2020

Date: August 21st, 2020

Application Type:

☐ Major ☒ Combination*
☐ Minor ☐ Minor with notice

*If Town Council review required, include Zoning Application Number: Z-20-00289

- I. **PROJECT ADDRESS:** 160 Royal Palm Way, Palm Beach Florida 33480
- II. **DESCRIPTION OF THE REQUEST:** The exact wording in this section will appear on the ARCOM Agenda. Please include a comprehensive summarized description of the proposed project.
The existing Palm House hotel is located at 160 Royal Palm Way, Palm Beach, Florida. It is currently vacant and construction is partially completed. The structure is three stories with a partially enclosed basement containing parking and back-of-house functions. The proposed new work for the hotel includes completion and conversion of guest rooms for a total of 79 keys. A new pool deck will be constructed adjacent to the existing Function Room. Other exterior improvements will include re-painting, new exterior floor finishes, trellises and a covered walkway leading to the existing Function Room. Fenestration requiring replacement will be replaced with similar windows and doors.

Whole Structure Demolition? Yes or No X

Number of Stories: 3 Roof Material (type): Clay tile & modified bitumen membrane
Concrete Clay Tile, Low
Const. Type: CBS: IIIA Frame: & Steel Colors: Building: Pink Roof: Slope Roofs: Gray
Stucco, Stone
Trim: & Wood Shutters: N/A *this information to be included on the cover sheet of the ARCOM plans

III. **DESIGN PROFESSIONAL(S):**

☒ Architect ☐ Design Consultant
☐ Landscape Architect ☐ Engineer
☐ Other: ☐ Check if you are an ARCOM member and this project will result in a voting conflict for you.

Name of Professional: Michael Sean McLendon License #: AR95062

Phone number: 404-240-9537 Email address: seanmclendon@coopercarry.com

IV. **OWNER/AGENT INFORMATION:**

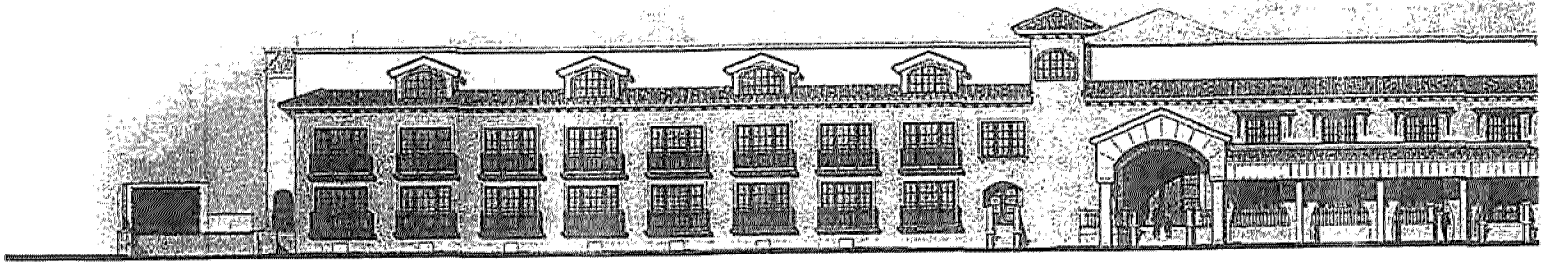
Property Owner's Name: LR Palm House LLC

Owner's Address (if different from Subject Address): c/o Kochman & Ziska PLC

222 Lakeview Avenue, Suite 1500 Phone number: 561-802-8960

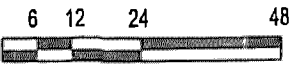
Signature (owner or owner's legally authorized agent*): *Maura Ziska*
*if signed by a legally authorized agent, must be accompanied by a Power of Attorney or statement from the property owner authorizing the signer to sign on the owner's behalf.

(printed name and title) Maura Ziska



NORTH ELEVATION - ROYAL PALM WAY



ELEVATION 

EL1.B

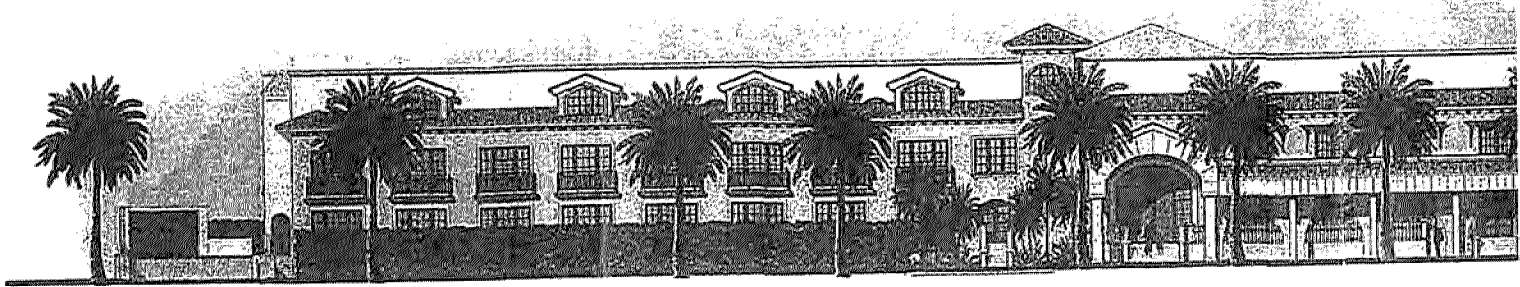
The Palm House Hotel

160 Royal Palm Way

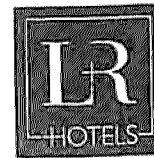
License N° .

AUGUS





NORTH ELEVATION - ROYAL PALM WAY



ELEVATION



EL1.A

The Palm House Hotel
160 Royal Palm Way

License N°
 AUGU

SNIFFEN & SPELLMAN, P.A.

Sender's Direct Line: (561) 721-4002

Email: jeubanks@sniffenlaw.com

September 22, 2020

Via E-mail

Architectural Commission
c/o Michael Small, Esq., Chair
360 South County Road
Palm Beach, Florida 33408

**Re: Neighborhood Concerns Regarding ARCOM Application B-063-2020
("Application") by LR Palm House LLC ("Owner")
160 Royal Palm Way, Palm House Hotel**

Dear Mr. Small:

Our office represents Thomas O. McCarthy who resides at 140 Brazilian Avenue in the neighborhood immediately behind the Palm House Hotel ("Hotel"). While Mr. McCarthy is cautiously optimistic about those portions of the revised plans which eliminate the "Sunset Deck," eliminate outdoor second floor dining, eliminate the use of the Function Room roof and eliminate other items confirmed in the attached e-mail, he (along with other neighbors including the Devries who reside at 141 Brazilian Avenue and own the vacant lot at 149 Brazilian Avenue, directly behind the Hotel) still harbor some concerns.

With the proposed addition of a prep-kitchen, an outside bar, updated pool deck bathrooms, the glass enclosure of a portion of the Function Room, the increase in the number of seats in the Function Room and the active use of the Event Lawn, it appears to the neighbors that the Hotel will be quickly become a wedding reception destination. The neighbors are concerned about the inescapable noise, light and odors from such an expanded use, along with other modifications to the Hotel, including, but not limited to,:

- The operating hours of the indoor dining room until 1:00 a.m., leaving patrons and staff to exit the Hotel area at the quietest part of the early morning hours in the neighborhood.
- The addition of 36 pool level outdoor dining seats which are open until 10 p.m.
- The increase in the Function Room seating from 150 to 200 seats, resulting in up to 200 guests potentially over and above those staying in the hotel, and the large influx in the number of vehicles for such functions, many of which will inevitably end up parking in the residential neighborhoods, including Brazilian Avenue.
- The proposed active use (and accompanying rise in noise level) of the Event Lawn being used as a pre-staging and bar area for receptions and parties for up to 200 attendees, excluding employees and wait staff.

REPLY TO:

605 NORTH OLIVE AVENUE, 2ND FLOOR
WEST PALM BEACH, FL • 33401
PHONE: 561.721.4000
FAX: 561.721.4001

TC DEV REVIEW MEETING 11-13-20

WWW.SNIFFENLAW.COM

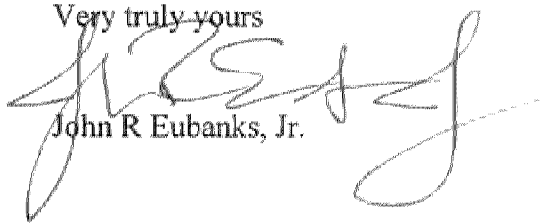
123 NORTH MONROE STREET
TALLAHASSEE, FL • 32301
PHONE: 850.205.1006
FAX: 850.205.3004

298 of 422

- The potential use of live bands, a DJ, or amplified speakers as part of any reception or use of the Event Lawn, Function Room, and/or on the pool deck.
- The proposed extension of the hours of operation of the Function Room until 12:00 a.m., again resulting in guests and staff leaving in the normally quite early morning hours.

As a result, while the neighbors recognize the steps taken by the Applicant to comply with the Town Council's 2016 mandates, they request that ARCOM (and the Town Council) take into consideration how best to protect the adjacent residential homes and neighborhood from the above issues.

Very truly yours



John R Eubanks, Jr.

Attachment

cc: ARCOM Committee Members
Wayne Bergman, Acting Director Planning, Zoning & Building
Kelly Churney, Administrative Specialist
Town Clerk, Town of Palm Beach
Thomas O. McCarthy
Gayle and Timothy DeVries

From: Maura Ziska
To: John Eubanks Jr
Subject: FW: 160 Royal Palm Way - Palm House Hotel
Date: Friday, September 18, 2020 2:40:16 PM

John see responses below from the architect. Let me know if you need any further information. Tx

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

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From: Sean McLendon <seanmclendon@coopercarry.com>
Sent: Friday, September 18, 2020 10:44 AM
To: Maura Ziska <MZiska@floridawills.com>; Mark Banfield <mbanfield@tpgcompanies.com>; Kathy Logan <kathylogan@coopercarry.com>
Subject: RE: 160 Royal Palm Way - Palm House Hotel

Maura:

Kathy and I have reviewed the comments below from John Eubanks with Sniffen & Spellman. The list is an accurate description of the proposed modifications/remediation for the Palm House.

1. The Hotel will become only a Hotel (not a condominium) and retain a total number of Rooms at 79. Cooper Carry Response: Correct, Hotel use; no condominium;
2. The will be 62 parking on site (in the garage) with all remaining parking via valet off site on Okeechobee Blvd location. Cooper Carry Response: 62 spaces are provided on-site; all on-site parking will be valet, most staff parking facilitated at an off-site location owned by L+R.
3. There will be no on street parking requested or parking in the neighborhoods. Cooper Carry Response: No street parking utilized to meet "required" parking
4. The elevator shafts will be eliminated to the third floor and there will be no rooftop "sundeck." Cooper Carry Response: Correct, sunset rooftop deck & associated elevator towers will be removed;
5. There will be no third floor private dining area overlooking what was to be the second

floor dining area. Cooper Carry Response: Correct, the previous Level 2/3 dining areas are reprogrammed as Presidential Suites. All Dining functions occur on the Lobby Level.

6. The walkways, stairs and elevator to the Function Room will be removed so that there is no access to or use of the roof of the Function Room. Cooper Carry Response: Correct, the access to the Function Room Roof is proposed to be removed;
7. The second floor dining area and 120 dining seats, including the outside dining seats, will no longer exist, but will be replaced with new Presidential Suites. Cooper Carry Response: Correct
8. There is a proposed Increase in number of seats in Function Room Seats from 150 to 200. Cooper Carry Response: Correct. The previous Declaration of Use agreement allowed for an increase in seating from 150 to 200 seats after 12 months of operation. The new Owner is requesting 200 seats for the Function Room. Please note that the total number of seats for the project as proposed is below previous seat count as approved.
9. There is a proposed addition of or active use of an Event Lawn in front of Function Room which will be used as a Pre-Function Area. Cooper Carry Response: Correct.
10. There is a proposed enclosure of the existing walkway to the Function Room. Cooper Carry Response: Correct, the covered portico of the Function Room is proposed to be enclosed and serve as a Pre-Function space and serve as a vestibule for the Function Room.
11. There is a proposed new set of bathrooms and full service bar next to new Event Lawn, which will replace the partially constructed bathrooms. Cooper Carry Response: Correct; our design goal is to keep restroom entrances separated from the Function Room; our intent is to use the addition to provide screening and separation from properties to the South
12. There is a proposed addition of a new Banquet Prep Kitchen next to Function Room on northeast side. Cooper Carry Response: Correct. The main kitchen space is located on the Basement level. L+R Hotels has requested a warming/prep area on the Lobby Level behind the Function Room to facilitate service expectations.
13. The dining in Lobby Area Dining is proposed to be increased from 65 to 88 seats. Cooper Carry Response: Correct, 88 interior seats at Lobby Level Dining/Bar; all previously approved upper level dining seats are removed.
14. There is a proposal to add Presidential Suites in the former second floor dining area along with south facing balconies Cooper Carry Response: Correct; the south facing & north facing balconies are accessed via proposed Level 2 Presidential Suites.

15. There is a proposed addition of covered walkway from the Lobby to Function Room.
Cooper Carry Response: Correct, the covered walkway is not enclosed. We think a covered connection is important for Hotel events
16. There is a proposal for the extension of several walls and heights of same. Cooper Carry Response: Correct, wall modifications along the south property line are to provide for a service stair from the Basement Level to the Pool Deck area.
17. The pool area is proposed to be reconfigured to now include 36 outside pool deck dining seats along with supporting structures and a water feature. Cooper Carry Response: Correct.
18. There will be much more landscaping screening the Hotel from all sides including tall trees on southern portion of the Hotel facing the neighborhood. Cooper Carry Response: Yes, our landscape team has increased screening and plantings at the perimeter of the site. We have focused on improving the percentage of Native species.

Please advise if you have additional questions.

v/R,

Sean

Sean McLendon, AIA
Principal

D: 404.240.9537
C: 404.317.3444

COOPER CARRY
THE CENTER FOR CONNECTIVE ARCHITECTURE

191 PEACHTREE STREET NE, SUITE 2400, ATLANTA, GA 30303-1770
TEL (404) 237-2000 • FAX (404) 237-0276 • WWW.COOPERCARRY.COM

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Please consider the environment before printing this e-mail

From: Maura Ziska [mailto:MZiska@floridawills.com]
Sent: Friday, September 18, 2020 9:59 AM
To: Mark Banfield <mbanfield@tpgcompanies.com>; Kathy Logan <kathylogan@coopercarry.com>; Sean McLendon <seanmclendon@coopercarry.com>
Subject: FW: 160 Royal Palm Way - Palm House Hotel

Hi All: See below from a lawyer who is representing some neighbors. Who is best to respond to his questions? Thanks. Maura

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

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From: John Eubanks Jr <jeubanks@sniffenlaw.com>

Sent: Friday, September 18, 2020 9:50 AM

To: Maura Ziska <MZiska@floridawills.com>

Subject: 160 Royal Palm Way - Palm House Hotel

Maura:

I represent Tom McCarthy who lives at 140 Brazilian Avenue in the neighborhood behind the Palm House Hotel. I have also received calls from other neighbors on Brazilian that they are concerned that the Hotel will impinge upon the neighborhood.

In reviewing the Plans, however, it looks like the new owner has addressed some of the earlier issues identified by the Town regarding open dining on the second floor, use of the third floor roof as a Sunset Deck," the use of the roof of the Function Room and parking. As a result, if you or your client would confirm the below points it would go a long way to help the neighbors to understand the Project and exactly what is and is not being proposed going forward.

1. The Hotel will become only a Hotel (not a condominium) and retain a total number of Rooms at 79.
2. There will be 62 parking on site (in the garage) with all remaining parking via valet off site on Okeechobee Blvd location.
3. There will be no on street parking requested or parking in the neighborhoods.
4. The elevator shafts will be eliminated to the third floor and there will be no rooftop "sundeck."
5. There will be no third floor private dining area overlooking what was to be the second floor dining area.
6. The walkways, stairs and elevator to the Function Room will be removed so that there is no access to or use of the roof of the Function Room.
7. The second floor dining area and 120 dining seats, including the outside dining seats, will no longer exist, but will be replaced with new Presidential Suites.
8. There is a proposed Increase in number of seats in Function Room Seats from 150 to

200.

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16. There is a proposal for the extension of several walls and heights of same.
17. The pool area is proposed to be reconfigured to now include 36 outside pool deck dining seats along with supporting structures and a water feature.
18. There will be much more landscaping screening the Hotel from all sides including tall trees on southern portion of the Hotel facing the neighborhood.

Again, responses to these issues may go a long way in dispelling any misinformation which is out in the neighborhood. Thanks.

John R Eubanks, Jr.



605 North Olive Avenue, 2nd Floor
West Palm Beach, Florida 33401
T (561) 721-4000 / F (561) 721-4001 / D (561) 721-4002
E-mail: jeubanks@sniffenlaw.com
Website: www.sniffenlaw.com / Twitter: @Sniffenlaw

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Donald J. Lunny, Jr., Esq.
donald.lunny@brinkleymorgan.com

One Financial Plaza
100 SE 3rd Avenue, 23rd Floor
Fort Lauderdale, Florida 33394
(954) 522-2200
(954) 522-9123 Facsimile

2255 Glades Road, Suite 414E
Boca Raton, FL 33431
(561) 241-3113
(561) 241-3226 Facsimile

www.brinkleymorgan.com

Please reply to Fort Lauderdale

October 26, 2020

The Honorable Members of the Town of Palm Beach Architectural Review Commission

Michael B. Small, Chairman

Robert N. Garrison, Vice Chairman, Architect

John David Corey, Member, Master Gardner

Maisie Grace, Member

Alexander C. Ives, Member

Betsy Shiverick, Member

Richard Sammons, Member, Architect

Katherine Catlin, Alternate Member

Dan Floershemier, Alternate Member

Ted Cooney, Alternate Member

Via E-mail Request to Ms. Kelly Churney and Ms. Laura Groves van Onna

Re: October 28, 2020
ARCOM Agenda Item VII D. 10 (Rev.2)
Major Project
Application No. B-063-2020:
The Palm House Hotel
160 Royal Palm Way,
Palm Beach, Florida 33480

Dear Commission Members:

This Firm Represents Virginia C. Simmons, individually and as Trustee of the Virginia C. Simmons Revocable Trust U/A/D May 4, 2018, the owner of single-family residential property having a street address of 133 Brazilian Avenue, Palm Beach, Florida. The Simmons' property is located Southeast to, and within 200 feet of, The Palm House Hotel.

As you may know, the Agenda and back-up material for this Wednesday's Meeting was not posted as of last Thursday, but we requested and received from the Town's Staff late Thursday the Revised Plans. Based on the Chairperson's advice at last Month's Meeting, we will reserve for the Town Commission hearing our evidence and argument to the effect that the

Town's legal requirements for the many requested variances and special exceptions contemplated by the revised application have not been met in this case, we will not comment of the Declaration's proposed Amendment at this time, and we will limit our comment to those matters which we understand are within ARCOM's purview.

We have reviewed the Revised Plans with our client and would note that some of the Revised Plans are an improvement over the prior versions considered last month. Particularly, our client was pleased that the dumpster previously proposed at the Southeast corner of the subject property has been relocated, and that no garbage, recycling, or trash storage or collection will occur in the vicinity of that corner. Also, our client was pleased that the pool concierge structure seems to have been relocated out of the rear yard setback area, that the glass dome structure has been removed, and the covered walkway has been redesigned. Our client was also pleased with the roof-line revision of the main structure, and with the added embellishments on such structure's Southern façade. Finally, our client was relieved that the Revised Plans still seemingly prevent the use of rooftops for any assembly or guest use.

At this time, our client remains concerned about the following four Architectural Matters:

1. The Application still contemplates expansions to a non-conforming building which is not allowed by the Town's land development regulations. Subsection 134-416(d) of the Town's Code states as follows:

“(d) It is further the intent that, by the provisions of this chapter or by amendments that may be adopted, there may exist buildings or structures which were lawful before this chapter was adopted or amended, but which would be prohibited, regulated or restricted under the terms of this chapter or future amendments thereto. 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. Such nonconforming buildings and structures are allowed to be enlarged, expanded or extended, provided that said enlargement, expansion or extension meets all of the lot yard and bulk regulations for the zoning district in which the building or structure is located and provided that said enlargement, expansion or extension is not used as grounds for adding other buildings or structures prohibited elsewhere, in the same district.” (Emphasis Supplied).

Further, Sec. 134-417 of the Town's Code states as follows:

“A building or structure which is nonconforming with any of the lot, yard and bulk, regulations may be enlarged, expanded or extended to occupy a greater area of land provided that the enlargement, expansion or extension complies with all lot, yard and bulk regulations for the zoning district in which the building or structure is located. This section shall not apply to a building or structure which is demolished by more than 50 percent, as

provided for in section 134-419(1), in preparation for any proposed enlargement, expansion, or extension of a building or structure.” (Emphasis Supplied).

The Function Room is a non-conforming structure as a portion of such building is currently located in the rear yard setback area which the Applicant has computed to be 23.88 feet in the Zoning Tabulation Table on Plan Sheet A104. We also note that the Zoning Tabulation Table on Plan Sheet A104 discloses that the zoning district maximum lot coverage requirement of 30,000 SQ FT has been exceeded by 8,397 SQ FT. With the above in mind, we note that:

- A. The proposed expansion of the Function Building to include the enclosed pool bar and single use restroom facility building is contrary to the above Code provisions since that new addition of the non-conforming Function Building is also within the 23.88 rear yard setback.
- B. The proposed expansion of the Function Building to include the new Function Service building is contrary to the above Code provisions because such expansion can not be achieved without exceeding the maximum lot coverage requirement.

Our client objects to the above two proposed expansions. Removing these proposed additions would not in our view materially compromise the subject property’s overall architectural design.

- 2. Our client would ask the ARCOM Members to require as much internal soundproofing measures as is reasonably possible for the interior of the Function Room. We do not know what measures are proposed, if any, or whether such measures will be effective.
- 3. Our client would request that the Pool Water Feature be moved so that it is not located in the rear yard setback area.
- 4. Our client remains concerns about whether the proposed planting plan along the Southern boundary of the Site is feasible. The Survey on the last page of last Month’s application discloses that there is little ground area along the Site’s Southern border that is not currently improved with impervious surfaces. A field inspection discloses significant elevation changes in this area of the Site. Finally, the utility easement area in the rear of the site is not all within the Applicant’s property, but also covers land to the immediate south of the Applicant’s land. We do not believe that the Applicant has the right to install landscaping within easement areas outside of property the Applicant owns, and this is regardless of whether such landscape is installed after the utility’s infrastructure is placed underground. Even if such were the case, “off site” landscaping should not satisfy an “on site” planting or

screening requirement. Our client believes that plantings in the rear are critical to screening and helpful to minimize adverse impacts to the adjacent single family homes; however, we are uncertain how the planting shown on the Revised Plans can be implemented unless the Southern portion of the site is redeveloped with the removal and relocation of impervious improvements which are shown in the Revised Plans as remaining.

We wish to remind the ARCOM Members that our client is an *interested party* in these proceedings and is not a mere member of the public at large. This means that we must be given the right to fully participate in the presentation of the matter, which includes not being subject to the customary 3 minute public comment cut-off, being allowed to cross examine witnesses and present argument, and not being shut out of the Zoom session until after the Commission takes action on the matter. Last month, the Zoom Moderator removed my “presenter status” when I was finished speaking, and I could not examine the developer’s witnesses during their continuing presentation or respond to Attorney Ziska’s final conclusions. We think that this can be easily managed giving us full “presenter” status as long as the Developer or its lawyer are permitted to participate in the hearing. In short, due process requires that all parties have the same privileges. With the foregoing being said, we do plan on tailoring our comments so that they are respectful of the Members’ time and the Chair’s need to manage the long Agenda.

Unfortunately, we still have not received a copy of the correspondence received by the ARCOM Members from attorney Ziska, which was mentioned in last month’s meeting as being in response to my correspondence of September 21, 2020. I have made two (2) written requests of Staff for this correspondence. If any of you have it in your possession, please send it to Mr. Bergman or Mr. Randolph so that I can obtain same as soon as possible. I am unable to complete suitably preparing for the Meeting without being able to review this correspondence.

Finally, if any of you have received any other e-mail or correspondence from Attorney Ziska or any member of her Firm which mentions or comments upon any statement or position made by this Firm or by John Eubanks Esq. relative to The Palm House Hotel Application and which was not shown as being sent to me, please similarly furnish me with a copy of same as soon as possible.

Thank you for your kind attention to this matter.

Correspondence addressed to
Town of Palm Beach Architectural Review Commission
October 26, 2020
Page 5 of 5

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Donald J. Lunny, Jr.", with a stylized flourish at the end.

Donald J. Lunny, Jr.
For the Firm

Cc w/encl: (Via E-mail):

Mr. Wayne Berman;
Ms. Kelly Churney;
Ms. Virginia C. Simmons;
Harris K. Solomon, Esq.;
Maura Ziska, Esq.
John Eubanks, Esq.
John Randolph, Esq.

018618-20001 [4041526]

SNIFFEN & SPELLMAN, P.A.

Sender's Direct Line: (561) 721-4002

Email: jeubanks@sniffenlaw.com

October 26, 2020

Via E-mail

Architectural Commission
c/o Michael Small, Esq., Chair
360 South County Road
Palm Beach, Florida 33408

**Re: Objections and Concerns to ARCOM Application B-063-2020 ("Application")
by LR Palm House LLC ("Owner")
160 Royal Palm Way, Palm House Hotel ("Hotel")**

Dear Mr. Small:

Along with Thomas O. McCarthy, who resides at 140 Brazilian Avenue, our office now also represents Timothy and Gayle DeVries, the owners of their home at 141 Brazilian Avenue, as well as 149 Brazilian Avenue, which is the presently vacant lot directly behind the Palm House Hotel on which the DeVries plan to construct a separate home in the future. Reviewing the Revised Plans, the DeVries have a series of objections and concerns regarding the latest proposal.¹

1. **Function Service Building/Banquet Prep Kitchen** – The DeVries object to the creation of a new 556 square foot Function Service Building which would house a Banquet Prep Kitchen attached to the Function Room. Outside of the fact that new construction may very well constitute the expansion of a nonconforming structure, and therefore not be permitted, the proposed new Function Service Building would be located at the top of the ramp of the east Private Drive at the height of a two- story building directly behind their property. *See*, Composite Exhibit "A." As such, the Function Service Building will become a source of constant noise, odors and headlights of vehicles going up and down the ramp not only to deliver food, flowers, and decorations for any function, but also to reverse that process during the take down and clean up of whatever event has ended, which will typically be late at night. Additionally, due to the limited space, any vehicles delivering to the Function Service Building will be required to back up in a small area in order to turn around and go back down the ramp. On top of the above, is the fact that there is virtually no setback between the outside wall of the ramp and loading area and the DeVries property at 149 Brazilian Avenue.² Without the Function Service Building, food, decorations, and flowers could simply come through the lobby or up from the existing kitchen area accessed from

¹ While our clients have a number of other objections with the proposed project, including, but not limited to, the addition of 36 new seats located on the pool deck, the hours of operation, the need for restrictions on live and loud music, the increase in the number of seats in the Function Room, the increase in lot coverage, the Applicant's apparent failure to meet the standards for a special exception or variance, the expansion of a non-conforming use and/or structure, and the terms of the Amended Declaration of Use Agreement, they are not waiving such issues, but will address those objections in further detail with the Town Council.

² In fact, the survey form Wallace Surveying contained in the Hotel's prior presentation shows that the rear property line of the Hotel is the centerline of a 5 foot utility easement. As such, there is only 2.5 feet available on the Hotel side for plantings to shield the DeVries property from the noise and light of the use of the Function Service Building.

REPLY TO:

605 NORTH OLIVE AVENUE, 2ND FLOOR
WEST PALM BEACH, FL • 33401
PHONE: (561) 721-4000
TO: DEV REVIEW MEETING 11-13-20
FAX: 561.721.4001

WWW.SNIFFENLAW.COM

123 NORTH MONROE STREET
TALLAHASSEE, FL • 32301
PHONE: 850.205.1996
FAX: 850.205.3004

the West Private Drive A (next to commercial buildings which are unoccupied at night) and walked to the Function Room via the proposed covered walkway.

2. Function Room Insulation and Enclosure – The DeVries are also concerned that the Function Room itself will be the source of continued noise, including loud music as well as the vibration of music through the walls to the surrounding property. As such, they ask that the Function Room walls are required to be sufficiently insulated to stifle the noise of any music or bands as well as the 200 proposed guests, along with any required wait staff and other employees. While the DeVries do not object *per se* to the enclosing of the Function Room walkway/arcade, they assume the area would be air conditioned and would request that double doors be used to reduce any noise from the Pre-Function area escaping into the neighborhood.

3. New Single Use Restrooms, Full Service Bar Area and Activated Event Lawn– The DeVries also object to the construction of new single use bathrooms along with a new full service bar area on the west side of the Function Room. As originally designed, the bathrooms provided only internal entrances and exits to make sure that any odors stayed inside. As redesigned, there are also two single use bathrooms which would exit directly onto the pool patio area backed up to the south property line allowing noxious odors to escape.

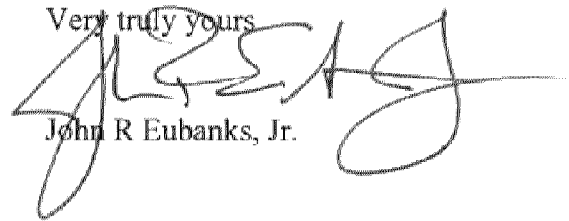
At the same time, the addition of a newly proposed external bar³ (which again, may well be an improper expansion of a nonconformity) would introduce a new source of noise and light into the surrounding neighborhood as guests from both the pool area and those waiting for a function to begin will congregate in front of the bar. Similarly, the new bar area will result in the active use the nearby Lawn area, which was specifically not permitted under the prior approval and Declaration of Use Agreement for the Hotel.

4. South Property Line Walkway, Wall and Walkway – Finally, the DeVries do not understand, nor it is clear from the plans, the exact location of the proposed 8.5 foot extended south retaining wall (which the DeVries agree should be extended), as well as the location of the proposed walkway for staff access to the pool, and/or where exactly the proposed lush vegetation and trees identified in the landscape plan will be placed. Again, from the survey there clearly does not appear to be enough space from the existing concrete wall in the easement to the neighboring property line to plant the large trees in what appears to be only 2-3 feet of space. Recent pictures of the area, demonstrate that the present retaining wall sits in the middle of the Town's utility easement with apparent gas and electric lines attached thereto. Even assuming such lines could be placed underground, again there simply is no room for a walkway and/or any plantings on the south side of the wall in the easement which is presently a ditch filled with weeds and water. *See*, Composite Exhibit "B." At the same time, the hotel cannot encroach on the neighboring owner's property to install plantings which are required to fulfill its Site Plan. Added to these difficulties is the fact that the easement has a change in elevation. As a result, absent additional information, it would appear that any improvements and plantings will necessarily need to be placed inside the Hotel's retaining wall.

³ Again, in accordance with the prior survey and plans, there was no outside bar located near the pool, but instead only a "pool service station" for the storage of equipment was approved for the area.

In light of the above, the DeVries would respectfully request that the plans as presently proposed be denied.

Very truly yours

A handwritten signature in black ink, appearing to read "JRE", with a long horizontal flourish extending to the right.

John R Eubanks, Jr.

Attachments

cc: ARCOM Committee Members
Wayne Bergman, Director Planning, Zoning & Building
Kelly Churney, Administrative Specialist
Town Clerk, Town of Palm Beach
Thomas O. McCarthy
Gayle and Timothy DeVries



WARNING
Obstruction of pedestrian
passage. No parking, loading,
unloading or storage of materials
or equipment on this sidewalk.

17-029 (REVISED) SECTION 11-02.00

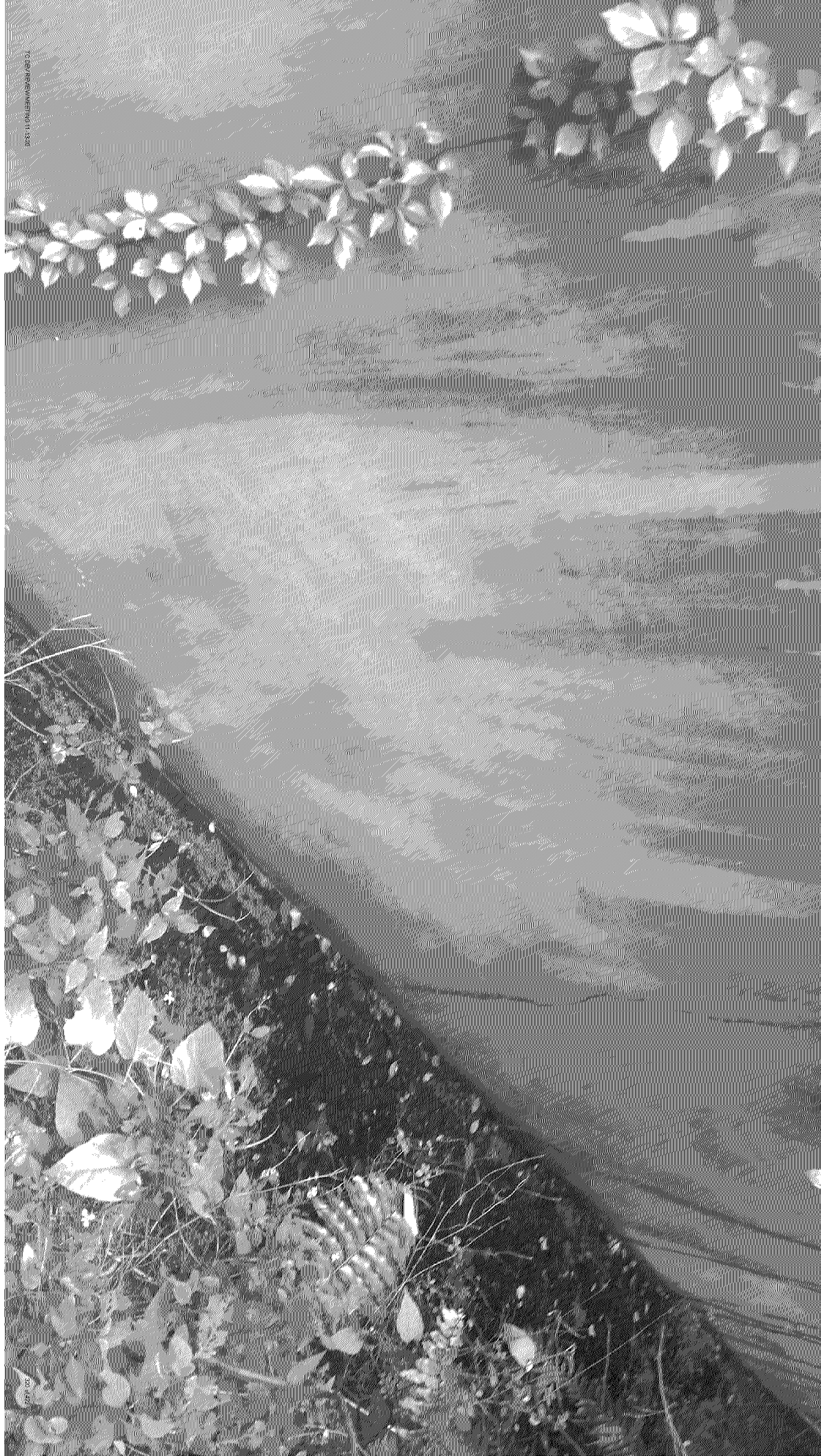














TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - Old Business

Agenda Title

Z-20-00291 VARIANCE(S) Zoning District: R-B Low Density Residential

The application of Hi Mount LLC (Amy Zabetakis, Manager), relative to property located at **756 HI-MOUNT RD**, legal description on file, is described below. The applicant is proposing a new 8,327 square foot, two story residence on the subject property that will require the following variances: 1) Section 134-895(1): A chimney with a height of 13.56 feet in lieu of the 8.8 foot maximum allowed; 2) Section 134-8893(11): A lot coverage of 33% in lieu of the 30% maximum allowed for a two story residence in the R-B Zoning District; 3) Section 134-1: The proposed sub-basement is under the confines of the building above it and also below the lowest grade of the public street (Hi Mount Road) in front of the lot, however, it is not completely underground. A variance is being requested to allow a proposed sub-basement where a portion is not completely underground as there is a substantial change of grade from Hi Mount Road to Lake Trail. 4) Section 134-1670(c): A height of the retaining wall along the north property line to be 11.03 at its maximum height in lieu of the 7 foot maximum allowed. 5) Section 134-1670(c): A retaining wall at the northwest corner of the house, in the side yard within 10 feet of the property line that is at 14 feet in height in lieu of the 10 foot maximum from adjacent grade.

[Applicant's Representative: Maura Ziska Esq] **Request for Deferral to the December 9, 2020 Meeting per Letter Dated October 29, 2020 from Maura Ziska.**

Presenter

ATTACHMENTS:

- ▯ **Letter Dated October 29, 2020 from Maura Ziska**

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

*also admitted in NY

Esperanté
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401
Telephone 561-802-8960
Facsimile 561-802-8995

VIA EMAIL

October 29, 2020

Paul Castro
Kelly Churney
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Z-20-00291
756 Hi Mount Road, Palm Beach, Florida

Dear Paul and Kelly:

Please **defer** the above referenced matter from the **November 13, 2020** Town Council meeting to the **December 9, 2020** Town Council meeting. Thank you.

Sincerely,

Maura Ziska

Maura A. Ziska

maz/jc
cc: Client

A Florida Professional Limited Liability Company Including Professional Associations

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00292 VARIANCE(S) Zoning District: R-B Low Density

Residential The application of Michael and Lisa Rome, Applicant, relative to property located at **240 VIA LAS BRISAS**, legal description on file, is described below. A request to enclose the existing 607 square foot canvas covered pergola with permanent roof structure that would require the following variances: 1) Section 134·893(13): A cubic content ratio of 4.28 in lieu of the 4.09 existing and the 3.90 maximum allowed in the R-B Zoning District. 2) Section 134·893(11): A lot coverage of 31.9% in lieu of the 29.9% existing and the 25% maximum allowed in the R-B Zoning District for lots over 20,000 square feet. [Applicant's Representative: Maura Ziska Esq]

Presenter

ATTACHMENTS:

- ▢ **Memorandum Dated October 29, 2020 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▢ **Comments from the Development Review Committee**

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 13, 2020

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00292 VARIANCE(S)**
240 VIA LAS BRISAS

Date: October 29, 2020

BACKGROUND

An application has been received for the following project:

REQUEST:

A request to enclose the existing 607 square foot canvas covered pergola with permanent roof structure that would require the following variances: 1) Section 134-893(13): A cubic content ratio of 4.28 in lieu of the 4.09 existing and the 3.90 maximum allowed in the R-B Zoning District.

2) Section 134-893(11): A lot coverage of 31.9% in lieu of the 29.9% existing and the 25% maximum allowed in the R-B Zoning District for lots over 20,000 square feet.

ADDRESS: 240 VIA LAS BRISAS

OWNER: PORRECO DEBRA

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-14-29-000-0070

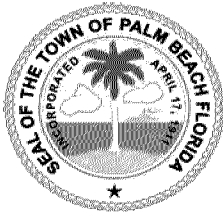
ZONING DISTRICT: R-B Low Density Residential

LEGAL DESCRIPTION: PHIPPS ESTATES LT 7

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 9/11/20

APPLICATION NO.: Z-20-00292 **APPLICATION TYPE:** VARIANCE(S)

ADDRESS: 240 VIA LAS BRISAS

DESCRIPTION:

A request to enclose the existing 607 square foot canvas covered pergola with permanent roof structure that would require the following variances: 1) Section 134-893(13): A cubic content ratio of 4.28 in lieu of the 4.09 existing and the 3.90 maximum allowed in the R-B Zoning District.
2) Section 134-893(11): A lot coverage of 31.9% in lieu of the 29.9% existing and the 25% maximum allowed in the R-B Zoning District for lots over 20,000 square feet.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	9/21/2020	No Comment
PUBLIC WORKS DEPARTMENT			No Comment
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	9/21/2020	There are no fire code concerns with the proposed project.
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	9/21/2020	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	9/22/2020	The applicant must demonstrate to the satisfaction of the Town Council that a hardship exists based on the criteria in Chapter 134, Zoning.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00293 SITE PLAN REVIEW WITH VARIANCE(S) Zoning District: R-C Medium Density Residential The application of Elaine Hirsch, Applicant, relative to property located at **130 SUNRISE AVE, SUITE: PH 1**, legal description on file, is described below. A site plan modification with variances to allow a 365 square foot fixed awning over the terrace on the seventh floor of a seven story condominium building. The following variances are being requested: 1. Section 134-948(8): To allow the awning at a height of 61.5 feet in lieu of the 23 1/2 foot maximum height allowed in the R-C Zoning District. Section 134-948(8): To allow the awning at an overall height of 63.66 feet in lieu of the 26 1/2 foot maximum height allowed in the R-C Zoning District. Section 134-948(8): To allow the awning on the existing seventh floor penthouse of a seven story building in lieu of the two story building maximum allowed in the R-C Zoning District. Section 134-948(6): To allow a west side yard setback of 50.1 feet in lieu of the 61.5 foot minimum required. Section 134-948(7): To allow a rear street yard setback of 106.5 feet in lieu of the 123.16 foot minimum required. [Applicant's Representative: Maura Ziska Esq] **Request for Deferral to the December 9, 2020 Meeting per Letter Dated October 27, 2020 from Maura Ziska.**

Presenter

ATTACHMENTS:

- ▯ **Letter Dated October 27, 2020 from Maura Ziska**

KOCHMAN & ZISKA PLC

Ronald S. Kochman*
Maura A. Ziska

*also admitted in NY

Esperanté
222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401
Telephone 561-802-8960
Facsimile 561-802-8995

VIA EMAIL

October 27, 2020

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

RE: Z-20-00293 and A-040-2020
130 Sunrise Avenue, PH 1, Palm Beach, Florida

All:

Please **defer** the above referenced project from the October 28, 2020 **ARCOM** meeting to the November 20, 2020 **ARCOM** meeting and from the November 13, 2020 **TOWN COUNCIL** meeting to the December 9, 2020 **TOWN COUNCIL** meeting. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely,

Maura Ziska

Maura A. Ziska

maz/jc

cc: Kelly Churney
Jeffrey Brasseur
Client

A Florida Professional Limited Liability Company Including Professional Associations

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00294 VARIANCE(S) Zoning District: R-B Low Density Residential The application of Georgia Benevides, Applicant, relative to property located at **266 COLONIAL LN**, legal description on file, is described below. A request for a flood plain variance for this historically designated house in order to construct the proposed addition with a finished floor elevation of 5.43 feet North American Vertical Datum ("NAVD") in lieu of the 7 foot NAVD required when construction exceeds 50% of the market value of the residence. The following other variances are being requested: 1. Section 134-893 (7): To allow a new 187 square foot one story addition to the west side of the residence and change the existing flat roof of that portion of the house to a higher pitched roof that will require a variance to have a 5.1 foot west side yard setback in lieu of the 12.5 foot minimum required in the R-B Zoning District. 2. Section 134-893 (9): To raise the height of the existing house in the rear from a flat roof to a pitched roof that will raise the height in a setback that is currently 2.5 feet in lieu of the 10 foot minimum required in the R-B Zoning District. 3. Section 134-2179: To convert a one car garage into living space which requires a variance to remove a required garage enclosure. [Applicant's Representative: Maura Ziska Esq] [Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the historically significant building. Carried 7-0.] [The Landmarks Preservation Commission approved the project. Carried 6-1.]

Presenter

ATTACHMENTS:

- **Memorandum Dated October 29, 2020 from Wayne Bergman, Director of Planning, Zoning and Building**
- **Comments from the Development Review Committee**

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 13, 2020

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00294 VARIANCE(S)**
266 COLONIAL LN

Date: October 29, 2020

BACKGROUND

An application has been received for the following project:

REQUEST:

A request for a flood plain variance for this historically designated house in order to construct the proposed addition with a finished floor elevation of 5.43 feet North American Vertical Datum ("NAVD") in lieu of the 7 foot NAVD required when construction exceeds 50% of the market value of the residence. The following other variances are being requested: 1. Section 134-893 (7): To allow a new 187 square foot one story addition to the west side of the residence and change the existing flat roof of that portion of the house to a higher pitched roof that will require a variance to have a 5.1 foot west side yard setback in lieu of the 12.5 foot minimum required in the R-B Zoning District. 2. Section 134-893 (9): To raise the height of the existing house in the rear from a flat roof to a pitched roof that will raise the height in a setback that is currently 2.5 feet in lieu of the 10 foot minimum required in the R-B Zoning District. 3. Section 134-2179: To convert a one car garage into living space which requires a variance to remove a required garage enclosure.

ADDRESS: 266 COLONIAL LN

OWNER: CONROY FRANCIS P &

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-03-11-000-0441

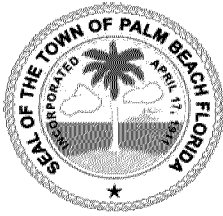
ZONING DISTRICT: R-B Low Density Residential

LEGAL DESCRIPTION: EL ENCANTO PLAT 2 W 75 FT OF LOT 44
/LESS S 12 FT/

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 9/14/20

APPLICATION NO.: Z-20-00294 **APPLICATION TYPE:** VARIANCE(S)

ADDRESS: 266 COLONIAL LN

DESCRIPTION:

A request for a flood plain variance for this historically designated house in order to construct the proposed addition with a finished floor elevation of 5.43 feet North American Vertical Datum ("NAVD") in lieu of the 7 foot NAVD required when construction exceeds 50% of the market value of the residence. The following other variances are being requested: 1. Section 134-893 (7): To allow a new 187 square foot one story addition to the west side of the residence and change the existing flat roof of that portion of the house to a higher pitched roof that will require a variance to have a 5.1 foot west side yard setback in lieu of the 12.5 foot minimum required in the R-B Zoning District. 2. Section 134-893 (9): To raise the height of the existing house in the rear from a flat roof to a pitched roof that will raise the height in a setback that is currently 2.5 feet in lieu of the 10 foot minimum required in the R-B Zoning District. 3. Section 134-2179: To convert a one car garage into living space which requires a variance to remove a required garage enclosure.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	10/30/2020	No Comment
PUBLIC WORKS DEPARTMENT			No Comment
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	11/2/2020	There are no fire code concerns with this proposed project
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	10/30/2020	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	11/2/2020	I have no comment on the flood variance, however, I question the hardship on the other variances, especially the elimination of the required garage parking space.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00295 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)

Zoning District: C-TS Town-Serving Commercial The application of Café L'Europe, Applicant, relative to property located at **331 S COUNTY RD**, legal description on file, is described below. 1) Section 134-1109 (14): Special Exception with Site Plan Review is being requested to relocate 20 seats from the inside 175 seats of Cafe L'Europe and relocate them outside along the sidewalk for dinner. 2) Section 134-1113(5)c: Cafe L'Europe is proposing to add 11 new arched top awnings and add new fabric at existing awning. The new awnings project 3'-0" off the face of the building and the bottom of the awning is 9'-0" above the existing sidewalk. The existing entrance awning projects approximately 10'-0" over the existing sidewalk, the existing frame will remain unchanged, only the fabric is being changed out. A variance is being requested to have 4.75 feet of clear sidewalk (along South County Road) in lieu of the 10 foot minimum required; and to have 7.75 feet of clear sidewalk (along Brazilian Avenue) in lieu of the 10 foot minimum required. [Applicant's Representative: Maura Ziska Esq] [Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the landmarked building. Carried 7-0.] [The Landmarks Preservation Commission approved the project with conditions relating to the architecture. Carried 7-0.]

Presenter

ATTACHMENTS:

- **Memorandum Dated October 29, 2020 from Wayne Bergman, Director of Planning, Zoning and Building**
- **Comments from the Development Review Committee**
- **Letter Dated October 19, 2020 from John Eubanks**

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 13, 2020

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00295 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARI/**
331 S COUNTY RD

Date: October 29, 2020

BACKGROUND

An application has been received for the following project:

REQUEST:

1) Section 134-1109 (14): Special Exception with Site Plan Review is being requested to relocate 20 seats from the inside 175 seats of Cafe L'Europe and relocate them outside along the sidewalk for dinner. 2) Section 134-1113(5)c: Cafe L'Europe is proposing to add 11 new arched top awnings and add new fabric at existing awning. The new awnings project 3'-0" off the face of the building and the bottom of the awning is 9' -0" above the existing sidewalk. The existing entrance awning projects approximately 10' -0" over the existing sidewalk, the existing frame will remain unchanged, only the fabric is being changed out. A variance is being requested to have 4.75 feet of clear sidewalk (along South County Road) in lieu of the 10 foot minimum required; and to have 7.75 feet of clear sidewalk (along Brazilian Avenue) in lieu of the 10 foot minimum required.

ADDRESS: 331 S COUNTY RD

OWNER: 331 SOUTH COUNTY ROAD LLC

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-23-05-028-0290

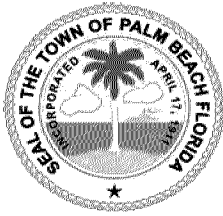
ZONING DISTRICT: C-TS Town-Serving Commercial

LEGAL DESCRIPTION: ROYAL PARK ADD LTS 29 TO 32 INC &
NLY 9.95 FT OF LT 33 BLK H

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT

Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 9/16/20

APPLICATION NO.: Z-20-00295 **APPLICATION TYPE:** SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)
ADDRESS: 331 S COUNTY RD **TENANT:**CAFE L'EUROPE

DESCRIPTION:

1) Section 134-1109 (14): Special Exception with Site Plan Review is being requested to relocate 20 seats from the inside 175 seats of Cafe L'Europe and relocate them outside along the sidewalk for dinner. 2) Section 134-1113(5)c: Cafe L'Europe is proposing to add 11 new arched top awnings and add new fabric at existing awning. The new awnings project 3'-0" off the face of the building and the bottom of the awning is 9' -0" above the existing sidewalk. The existing entrance awning projects approximately 10' -0" over the existing sidewalk, the existing frame will remain unchanged, only the fabric is being changed out. A variance is being requested to have 4.75 feet of clear sidewalk (along South County Road) in lieu of the 10 foot minimum required; and to have 7.75 feet of clear sidewalk (along Brazilian Avenue) in lieu of the 10 foot minimum required.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	9/22/2020	No Comment
PUBLIC WORKS DEPARTMENT			No Comment
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	9/22/2020	They have clear aisles for people to walk on the public walkway.
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	9/22/2020	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	9/23/2020	While foot traffic is not heavy at this location, there is minimal clearances on the sidewalk. The applicant needs to demonstrate that there is adequate sidewalk clearance for the proposed tables and seats. If approved, no outdoor music or background music should be permitted and the applicant should address the hours for outdoor seating.

SNIFFEN & SPELLMAN, P.A.

Sender's Direct Line: (561) 721-4002

Email: jeubanks@sniffenlaw.com

October 19, 2020

Via E-mail

Landmarks Preservation Commission
c/o Renee Silvan, Chairman
360 South County Road
Palm Beach, Florida 33408

**Re: Objection to Application by Café L'Europe for Outdoor Seating
Landmarks' Case # COA-039-2020
Zoning Case #Z-20-00295**

Dear Chairman Silvan:

Our office represents Thomas O. McCarthy who resides at 140 Brazilian Avenue in the residential neighborhood immediately adjacent to Café L'Europe. Mr. McCarthy objects to the Application by 331 South County Road LLC ("Applicant") seeking to relocate 20 dining seats from inside Café L'Europe to outside along the sidewalk of South County Road and Brazilian Avenue. Such outdoor seating would: a) alter the Historic Vista of the Town Hall Square District; b) result in an inadequate space for pedestrian standing or traffic; c) allow for noise and odors to permeate into the nearby residential neighborhood; d) promote a future increase in the number of seats of Café L'Europe; and e) is on its face not supported by a sufficient hardship required for the variance sought.

The Applicant asserts that it should be allowed to relocate 20 of its inside seats to outside dining along the sidewalk on South County Road and Brazilian Avenue, because "it is common for restaurants in this area" to have such seating. The analysis is not that simple. The Applicant overlooks the fact that much of the outside dining in the Town is not located on a public sidewalk, but placed within the property lines of the restaurant (such as Bricktops) or tucked away on a side street or Via, as opposed to along a main street such South County Road or Worth Avenue.

More importantly, Café L'Europe is located in the Town Hall Square Historic District and Vista. The Town Hall Square District was put in place in 1990 in order to preserve the character and vista of the Town Hall Square from South County Road (in both directions) from Chilean Avenue on the south end to Brazilian Avenue on the north end.¹ In doing so, the Town Hall Square area was to recall "Palm Beach's early, pedestrian-oriented days." At the same time, while the focus of the district was the Town Hall and the Memorial Fountain, the buildings on the west and east sides of South Ocean were included to "help to frame in, and compliment, this focal composition." Town Hall Square Designation Report, p. 3. The Applicant's request, however, will alter the Town Hall vista, and narrow the accessibility of the very sidewalks which were to reflect the early "pedestrian oriented days."

¹ A copy of the Town Hall Square District/Vista Map is attached hereto as Exhibit "A."

REPLY TO:

605 NORTH OLIVE AVENUE, 2ND FLOOR
WEST PALM BEACH, FL • 33401
PHONE: 561.721.4000
FAX: 561.721.4001

TC DEV REVIEW MEETING 11-13-20

WWW.SNIFFENLAW.COM

123 NORTH MONROE STREET
TALLAHASSEE, FL • 32301
PHONE: 850.205.1996
FAX: 850.205.3004

335 of 422

In addition, the granting of outdoor seating to Café L'Europe could easily set a precedent for restaurants like Buccan,² or other future restaurants, to seek the approval of its own outdoor seating on the sidewalk of South County Road, thereby narrowing the pedestrian flow on both sides of the Historic District. As such, the Application should be denied.

Outside of marring the Historic District and Vista, granting the Applicant's Application for outdoor seating on the sidewalk would result in inadequate space for pedestrian standing or traffic. This squeeze in space is apparent in the Applicant's Site Plan. Page LS.5³ shows the sidewalk along South Ocean Avenue in front of Café L'Europe is at most 10 feet in width, which width is diminished to 7 feet in the multiple areas where 3 foot planters are located on the street side of the sidewalk. Taking out the width of the tables⁴ from this area leaves 4.75 feet (per the Application) of clear sidewalk (or less than half of the original size) of sidewalk available for public use. Such area is less than even the 6 feet required for social distancing.⁵

At the same time, the available sidewalk space between tables will be further reduced by those patrons getting in and out at the valet stand in front of the entrance,⁶ as well as any diners waiting outside for their table, who will necessarily compete for the same space containing tables and seating for 12. The result is even less public sidewalk access, along with the creation of a potential public safety issue should there be an emergency which requires an evacuation of the restaurant. Therefore, the Application should be denied.

On the Brazilian Avenue side of Café L'Europe, in addition to a reduction in the available clear sidewalk space, the four proposed tables and 8 outdoor seats will necessarily result in an increase in the noise, glare, light and odors escaping into the nearby residential area and Mr. McCarthy's home. It is inevitable that conversation, music and odors will travel easily to the nearby neighbors. At the same time, it will be tempting for Café L'Europe to open the floor to ceiling windows along both Brazilian Avenue and South County Road next to the outdoor seating, so that outdoor diners can feel like they are part of the inside action while also getting a breath of cool air from the air conditioning, resulting in even more noise and odors being released into the neighborhood. Denying the Application will keep any such light, noise and odors captured inside, leaving the neighborhood to remain silent in the evenings.

Added to the above, Mr. McCarthy and others in his neighborhood are concerned that the transfer of 20 seats from inside to outside of Café L'Europe is merely the first step in a process designed to pave the way for a future expansion of the number of total permitted seats. Given that outdoor seating cannot expand the total number of seats available under the Town Code, it appears clear that in these times of COVID-19 concerns, the Applicant is moving tables outside to accommodate those patrons who may balk at dining in close quarters. The Applicant will then later

² Presently, Buccan has only temporary COVID outside seating.

³ An expanded view of page LS.5 is attached hereto as Exhibit "B."

⁴ Curiously, there are no pictures of the proposed tables and/or a mock set up of how they would (or would not), actually fit in the small space between the planters and the building along South County Road.

⁵ Pictures demonstrating just how narrow the sidewalk area is now, much less if tables were added, are attached as Composite Exhibit "C."

⁶ While the Applicant appears to represent that there are 6 spaces in front of Café L'Europe, it fails to disclose that three of the spaces are reserved for the valet service. *See*, pictures attached as Composite Exhibit "D."

come back for permission to fill in the seats which it transferred outside, thereby increasing the overall number of seats and exacerbating the existing parking and other present operational issues of Café L'Europe. As such, the Application should be denied.

Finally, even if all of the above issues could be ignored (which they cannot) on its face the Application includes a request for a variance, but does not demonstrate any hardship at all, much less of the level required for a variance. At the same time, the Application reflects the desire for a future increase the total number of seats as a justification for a variance, despite the fact on its face the Application claims there will be no increase in total seats.

For example, despite admitting that “the property contains an existing restaurant which has been in existence in this location since 1995,” the Applicant suddenly claims it needs “20 outdoor seats to accommodate their customers when the weather is nice and the Town is at its busiest” in order to operate. Moreover, the need for such seats is because “there have been many occasions **when the applicant has had to turn away customers for lack of seating during the popular dining hours.**” Application Exhibit “C”, ¶1 (emphasis added). The Applicant then claims that it “was not the cause of the dinner patterns of their customers wanting to come at the same timeframe and **causing a lack of available seating.**” Application, Exhibit “C” ¶2 (emphasis added). As a result, the Applicant claims its hardship is a lack of parking for additional outdoor seats, and that 20 outdoor seats is the minimum amount that will make possible the reasonable use of the land, building or structure. Application, Exhibit “C” ¶4-5.

As a preliminary matter, the Court's are clear that an applicant for a variance must demonstrate a “unique hardship” to qualify for a variance. *Bernard v. Town of Palm Beach*, 569 So. 2d 853 (Fla. 4th DCA 1990) (citing, *Nance v. Town of Indialantic*, 419 So. 2d 1041 (Fla. 1982)). By definition, such a **“hardship” may not be found unless no reasonable use can be made of the property without the variance;** or, stated otherwise, **“the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.”** *Bernard* at 854 (citing, *Town of Indialantic v. Nance*, 485 So. 2d 1318, 1320 (Fla. 5th DCA); *see also, Thompson v. Planning Comm’n*, 464 So. 2d 1231, 1237 (Fla. 1st DCA 1985)(emphasis added). The Applicant admits, however, that a restaurant has been in existence on the property since 1995 without outdoor seating. Therefore, the property can clearly be used for its intended purpose. There is no hardship and no basis for a variance. As such, Landmarks should not be required to spend its valuable time, effort and energy on an Application which on its face cannot be granted because the variance required is not obtainable.

Furthermore, as noted, the Application indicates that it seeks to “Relocate 20 of the existing indoor dining seats to outdoor dining (**not increasing total number of seats**)” yet the justification for the Application relies upon the circumstances and a hardship of having “to turn away customers **for lack of seating,**” and that customers all come at the same time “causing a **lack of available seating.**” (emphasis added) Such statements are inapposite. Clearly, moving seats from inside to outside and “not increasing the total number of seats” will not address having to turn away customers for a lack of available seating as there will still be the exact same number of seats. As such, the “lack of available seating” cannot be the basis for a hardship to support a variance for

outdoor seating which does not seek an increase in the total number of seats. Therefore, the Application should be denied.

In light of all of the above, Mr. McCarthy respectfully requests that the Application be denied.

Very truly yours,

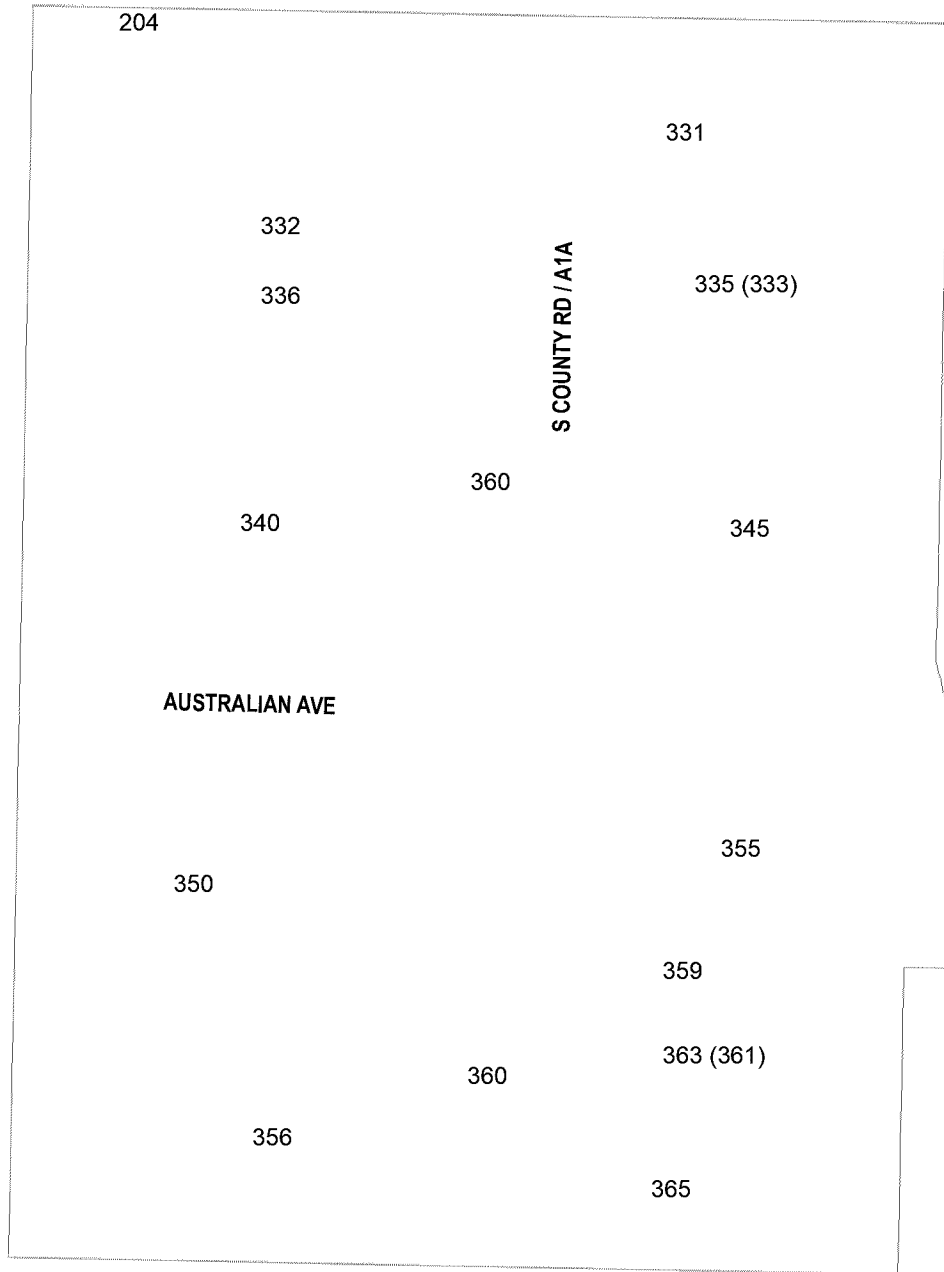
/s/ John R. Eubanks, Jr.

John R. Eubanks, Jr.

cc: Landmarks Preservation Commission Members
Wayne Bergman, Director Planning, Zoning & Building
Kelly Churney, Administrative Specialist
Town Clerk, Town of Palm Beach
Thomas O. McCarthy

TOWN HALL SQUARE DISTRICT

BRAZILIAN AVE



AUSTRALIAN AVE

CHILEAN AVE

EXHIBIT A



Legend

Historic Districts / Vistas



Created By: J. David Donta
Date: February 22, 2016
Town of Palm Beach
Planning, Zoning & Building Dept.





EXHIBIT C





EXHIBIT D



TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Development Review - New Business

Agenda Title

Z-20-00296 SITE PLAN REVIEW WITH VARIANCE(S) Zoning District: R-C Medium Density Residential The application of Palm Beach Biltmore Condominium Beach Club, Applicant, relative to property located at **100 SUNSET AVE, BLDG 2**, legal description on file, is described below.

1) Section 134-326: A site plan modification with variances to allow a 728 square foot fixed awning addition to the covered patio that currently exists at the Beach Club. The following variances are being requested to construct the following: 2) Section 134-948(9): To allow the awning which will increase the lot coverage to 38.2% in lieu of the 33.3% existing and the 30% maximum allowed.

3) Section 134-948(7): To allow an east street-side yard setback of 14.83 feet in lieu of the 25 foot minimum required. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 7-0.] [The Architectural Review Commission approved the project as presented. Carried 7-0.]

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated October 29, 2020 from Wayne Bergman, Director of Planning, Zoning and Building**
- ▣ **Comments from the Development Review Committee**

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 13, 2020

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Subject: **Z-20-00296 SITE PLAN REVIEW WITH VARIANCE(S)**
100 SUNSET AVE SUITE: BLDG 2

Date: October 29, 2020

BACKGROUND

An application has been received for the following project:

REQUEST:

1) Section 134-326: A site plan modification with variances to allow a 728 square foot fixed awning addition to the covered patio that currently exists at the Beach Club.

The following variances are being requested to construct the following: 2) Section 134-948(9): To allow the awning which will increase the lot coverage to 38.2% in lieu of the 33.3% existing and the 30% maximum allowed. 3) Section 134-948(7): To allow an east street-side yard setback of 14.83 feet in lieu of the 25 foot minimum required.

ADDRESS: 100 SUNSET AVE SUITE: BLDG 2

OWNER: PALM BEACH BILTMORE COND DECL

OWNER'S REPRESENTATIVE: KOCHMAN AND ZISKA

PROPERTY CONTROL NO.: 50-43-43-15-27-000-0000

ZONING DISTRICT: R-C Medium Density Residential

LEGAL DESCRIPTION:

Staff recommends that the Town Council consider the presentations by the applicant and Staff, as well as the report of the Development Review Committee (attached) and comments from interested parties regarding the application.

Attachment

cc: John C. Randolph, Town Attorney
pf & zf



PLANNING, ZONING AND BUILDING DEPARTMENT
Town of Palm Beach
360 S County Rd
Palm Beach, FL 33480

DEVELOPMENT REVIEW COMMITTEE REPORT

DRC MEETING: 9/17/20

APPLICATION NO.: Z-20-00296 **APPLICATION TYPE:** SITE PLAN REVIEW WITH VARIANCE(S)
ADDRESS: 100 SUNSET AVE SUITE: BLDG 2 **TENANT:** PALM BEACH BILTMORE

DESCRIPTION:

1) Section 134-326: A site plan modification with variances to allow a 728 square foot fixed awning addition to the covered patio that currently exists at the Beach Club.
The following variances are being requested to construct the following: 2) Section 134-948(9): To allow the awning which will increase the lot coverage to 38.2% in lieu of the 33.3% existing and the 30% maximum allowed. 3) Section 134-948(7): To allow an east street-side yard setback of 14.83 feet in lieu of the 25 foot minimum required.

<u>DEPARTMENT</u>	<u>NAME/TITLE</u>	<u>DATE</u>	<u>COMMENT</u>
BUILDING OFFICIAL	Wayne Bergman, Director, Planning, Zoning & Building	9/22/2020	No Comment
PUBLIC WORKS DEPARTMENT			No Comment
FIRE RESCUE DEPARTMENT	Martin DeLoach, Fire Marshal	9/22/2020	The additional awnings may require additional sprinkler heads for a sprinkled building
PZB DIRECTOR	Wayne Bergman, Director, Planning, Zoning & Building	9/22/2020	No Comment
PZB - ZONING	Paul Castro, Zoning Administrator	9/23/2020	The applicant is required to demonstrate a hardship for the variances for the proposed awning. No additional indoor or outdoor seating is permitted on the subject property.

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE 16-2020

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, As Follows: At Article VIII, Supplementary District Regulations, Section 134-1728 Air Conditioning And Swimming Pool Heating Equipment, By Changing The Title; Reorganizing The Regulations; Allowing The Use Of A Neighbor's Concrete Wall For Screening Said Equipment; Providing For A Recorded Agreement With The Town To Build A Screening Wall As Provided For In The Code Should The Neighbor Remove Their Wall; Providing A Maximum Distance That Swimming Pool Equipment Can Be Located From A Swimming Pool Or Fountain; At Article VIII, Supplementary District Regulations, Section 134-1729, Generators And Swimming Pool Equipment, By Modifying The Title And Generator Regulations; Moving Swimming Pool Equipment Into Section 134-1728 Of The Code; Allowing More Than One Generator On A Property And Allowing The Use Of A Neighbor's Concrete Wall For Screening Said Equipment; Providing For A Recorded Agreement With The Town To Build A Screening Wall As Provided For In The Code Should The Neighbor Remove Their Wall; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Presenter

ATTACHMENTS:

- ▯ **Memorandum from Wayne Bergman, Director of Planning, Zoning and Building**
- ▯ **Ordinance No. 16-2020**

TOWN OF PALM BEACH

Information for Local Planning Agency and Town Council meeting on:
November 13, 2020

To: Town Council

From: Wayne Bergman, Planning, Zoning and Building Director

Re: Consideration of Proposed Zoning Text Amendments regarding Air Conditioning, Swimming Pool and Fountain Equipment and Generators in Chapter 134 of the Code of Ordinances.
Ordinance No. 16-2020

Date: November 2, 2020

STAFF RECOMMENDATION

Staff recommends the Local Planning Agency recommend approval and the Town Council approve attached Ordinance No. 16-2020 on first reading.

PLANNING AND ZONING COMMISSION RECOMMENDATION

The Planning and Zoning Commission, at its on June 16, 2020 and July 21, 2020 meetings, considered and unanimously recommended approval of the proposed Zoning Code modifications as outlined in Ordinance No. 16-2020.

BACKGROUND

The Planning and Zoning Commission, at its June 16, 2020, reviewed the proposed language staff presented on proposed changes to the mechanical equipment regulations. They deferred the item and at their July 21, 2020 meeting reconsidered the proposed zoning text amendments with changes they requested staff make. The proposed changes recommended by the Commission to Sections 134-1728, Air conditioning and pool heating equipment, and Section 134-1729, Generators and swimming pool equipment, are outlined in add/delete format in the Planning and Zoning Commission Record and Report.

The Town Council, at its October 14, 2020, meeting considered that Record and Report and directed staff to draft an ordinance consistent with the Commission's recommendation. The amendments that are incorporated into proposed Ordinance No. 16-2020, consolidates and reorganizes the regulations in Section 134-1728 for air conditioning, cooling tower, and swimming pool and fountain equipment; requires pool and fountain equipment to be within 25 feet of the pool or fountain; and allows the use of an abutting neighbor's concrete wall to meet the screening requirements for that mechanical equipment (excluding cooling towers) provided a

recorded agreement is provided that requires the owner to construct the required concrete wall if the neighbor's wall is removed.

The amendments in the proposed Ordinance related to Section 134-1729, Generators and swimming pool equipment, eliminates pool equipment from that section and moves those provisions to Section 134-1728; allows for more than one generator on a property; and provides the same use of a neighbor's concrete wall with an agreement similar to what is proposed for air conditioning and swimming pool equipment. The specific changes to the Code are identified in add/delete format in attached Ordinance No. 16-2020.

TOWN ATTORNEY REVIEW

Ordinance No. 16-2020 has been approved by Town Attorney John C. Randolph for legal form and sufficiency.

cc: Kirk Blouin, Town Manager
Jay Boodheshwar, Deputy Town Manager
John C. Randolph, Town Attorney
Planning and Zoning Commission
Paul Castro, Zoning Manager

ORDINANCE NO. 16-2020

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, AS FOLLOWS: AT ARTICLE VIII, SUPPLEMENTARY DISTRICT REGULATIONS, SECTION 134-1728 AIR CONDITIONING AND SWIMMING POOL HEATING EQUIPMENT, BY CHANGING THE TITLE; REORGANIZING THE REGULATIONS; ALLOWING THE USE OF A NEIGHBOR'S CONCRETE WALL FOR SCREENING SAID EQUIPMENT; PROVIDING FOR A RECORDED AGREEMENT WITH THE TOWN TO BUILD A SCREENING WALL AS PROVIDED FOR IN THE CODE SHOULD THE NEIGHBOR REMOVE THEIR WALL; PROVIDING A MAXIMUM DISTANCE THAT SWIMMING POOL EQUIPMENT CAN BE LOCATED FROM A SWIMMING POOL OR FOUNTAIN; AT ARTICLE VIII, SUPPLEMENTARY DISTRICT REGULATIONS, SECTION 134-1729, GENERATORS AND SWIMMING POOL EQUIPMENT, BY MODIFYING THE TITLE AND GENERATOR REGULATIONS; MOVING SWIMMING POOL EQUIPMENT INTO SECTION 134-1728 OF THE CODE; ALLOWING MORE THAN ONE GENERATOR ON A PROPERTY AND ALLOWING THE USE OF A NEIGHBOR'S CONCRETE WALL FOR SCREENING SAID EQUIPMENT; PROVIDING FOR A RECORDED AGREEMENT WITH THE TOWN TO BUILD A SCREENING WALL AS PROVIDED FOR IN THE CODE SHOULD THE NEIGHBOR REMOVE THEIR WALL; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, after public hearings pursuant to notice required by law, the Planning and Zoning Commission considered all testimony and recommended modification to the Code of Ordinances; and

WHEREAS, after public hearing pursuant to notice required by law, the Town Council considered the Planning and Zoning Commission's Record and Report and all evidence and testimony and as the Local Planning Agency 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 requires 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. Article VIII, SUPPLEMENTARY DISTRICT REGULATIONS, Sec. 134-1728, Air conditioning and swimming pool heating equipment, is hereby amended to read as follows:

Sec. 134-1728. - Air conditioning and swimming pool, heating and fountain equipment.

~~(a) No portion of any air conditioning and/or swimming pool equipment shall be located closer than five feet from a side or rear property line. In addition, such air conditioning or swimming pool equipment within ten feet from the side or rear property line shall be completely screened with a wall as high as said equipment from the neighboring property. Except as provided for in subsection (b) of this section, air conditioning and/or swimming pool equipment, in excess of two units or more than four feet in height, as measured above the natural grade or minimum flood elevation, whichever is greater, or occupying more than 25 square feet in total area, shall be considered an enclosed accessory structure and shall be constructed, erected or placed in compliance with all the provisions of the ordinance applicable thereto.~~

~~(b) In the R-AA, R-A and R-B zoning districts, where setbacks for principal structures are increased based on a larger lot width, the air conditioning and/or swimming pool equipment which are in excess of number, height and area restrictions identified in subsection a of this section shall only be required to meet the minimum yard setback requirements for an enclosed accessory structure on a minimum size lot in that district.~~

~~(c) Cooling towers shall be required to meet the same minimum yard setback requirements as the principal structure, and shall be screened from the neighbors and/or a street by a three-sided, concrete block masonry finished wall at least as high as said cooling tower. If the required wall is higher than the Code allows in a setback in order to screen the cooling tower from the neighbors and/or a street, said wall shall also meet the minimum yard setback requirement as the principal structure.~~

~~(d) No air conditioning or swimming pool equipment shall be allowed in a front yard setback.~~

~~(e) Any house that fronts on two or more streets shall be allowed to place air conditioning (excluding cooling towers) and/or swimming pool equipment in each required street side or street rear yard setback provided that the combination of said equipment does not exceed two in each of said setbacks; are not more than four feet in height above the natural grade or the minimum flood elevation, whichever is greater, occupy no more than 25 square feet in total area; and are setback a minimum of 20 feet from the street side or street rear property line and are screened from view by a wall as high as said equipment and three foot high hedge outside said wall.~~

(a) Air conditioning/chiller equipment (excluding cooling towers):

Air conditioning equipment shall not be allowed in a required front yard setback. Said equipment shall be allowed in a required side, rear, street side and street rear yard setback provided the following requirements are met:

1. The equipment shall have a minimum five-foot side and rear yard setback.
2. The equipment shall have a minimum twenty-foot street side and street rear yard setback.

3. A maximum of two pieces of air conditioning equipment not exceeding six feet in height above grade or the minimum flood elevation, whichever is higher, shall be allowed.
4. The equipment shall be completely screened from the neighboring property and the street by a concrete wall as high as said equipment. Said wall cannot exceed the maximum height allowed by Code. A neighbor's existing concrete wall can satisfy said requirement provided that wall meets the height requirement to completely screen said equipment from the adjacent neighbor and the applicant enter into a recorded agreement with the town to construct said wall as provided for in the Code to meet the screening requirement should the neighbor remove their wall.
5. If the equipment and required new screening wall can be seen from the street, said equipment and wall shall be approved by either the Architectural Commission or Landmark Preservation Commission, whichever is applicable. Intervening landscape material shall not be considered when determining air conditioning/ chiller equipment visibility.
6. Where required setbacks for principal structures are increased based on a larger lot width or depth, the air conditioning equipment (not including cooling towers) shall meet the same requirements as the standard size lots in the district it is located.

(b) Cooling tower/chiller equipment:

Cooling tower/chiller equipment shall meet the following requirements:

1. The equipment and screening wall required below shall meet the same minimum required yard setbacks as the principal structure.
2. The equipment shall be screened from the neighbors and/or a street by a three-sided, concrete wall at least as high as said cooling tower.
3. If the equipment and required screening wall can be seen from the street without intervening landscape material, said equipment and wall shall be approved by either the Architectural Commission or Landmark Preservation Commission, whichever is applicable.

(c) Swimming pool and fountain equipment:

Swimming pool and fountain equipment shall be allowed in a required side, rear, street side and street rear yard setback provided the following requirements are met:

1. Swimming pool and fountain pump and filter equipment shall have a minimum five foot side and rear yard setback and shall in all situations be located no further than twenty-five feet from the pool or fountain water's edge.
2. Swimming pool heater equipment shall have a minimum ten-foot side and rear yard setback and shall in all situations be located no further than twenty-five feet of the swimming pool water's edge.
3. Swimming pool heater and pump equipment and fountain equipment (excluding filters) shall not exceed four pieces of equipment.

4. Swimming pool heater, pump and filter equipment and fountain equipment shall not exceed a maximum height of four feet above grade or the minimum flood elevation, whichever is higher.
5. All swimming pool and fountain equipment, including a heater and filter equipment, shall have a minimum twenty-foot street side yard setback and a fifteen-foot street rear yard setback and in all situations shall be located no further than twenty-five feet from the water's edge of the swimming pool and/or fountain.
6. Swimming pool and fountain pump and filter equipment, excluding swimming pool heater equipment, shall be enclosed in a pump house and shall be located no further than twenty-five feet from the swimming pool or fountain water's edge.
7. Swimming pool heater equipment shall be completely screened from a neighboring property and a street by a building or concrete wall as high as said equipment. Said wall cannot exceed the maximum height allowed by Code. A neighbor's existing concrete wall can satisfy said requirement provided the wall meets the height requirement to completely screen said equipment from the adjacent neighbor and the applicant enters into a recorded agreement with the town to construct said wall as provided for in the Code to meet the screening requirement should the neighbor remove their wall.
8. If the equipment and required new screening wall or pump house can be seen from the street, said equipment and wall shall be approved by either the Architectural Commission or Landmark Preservation Commission, whichever is applicable. Intervening landscape material shall not be considered when determining swimming pool and fountain pump, heating and filter equipment visibility.
9. Where required setbacks for principal structures are increased based on a larger lot width or depth, the swimming pool and fountain pump, filter and heating pool equipment shall meet the same requirements as the standard size lots in the district it is located.

Section 2. Article VIII, SUPPLEMENTARY DISTRICT REGULATIONS, Sec. 134-1729, Generators and swimming pool equipment, is hereby amended to read as follows:

Sec. 134-1729. - Generators and swimming pool equipment.

Except for generators serving a public purpose and owned and operated by the town or temporary generators used during or after a natural disaster such as a tropical storm or hurricane event, and which are therefore exempt from these regulations, portable or permanent generators temporarily or permanently placed on the ground, on a stand or on a trailer, shall not be placed in the required front, street side or street rear yard setbacks; provided, however, not more than one such generator shall be placed in any given within the same required side or rear yard setback ~~or yard area~~.

(1) One or a combination of more than one portable or permanent generators with an combined output of not more than 60 KW shall be allowed provided only one generator is within the same required yard area and no closer than ten-foot side or rear yard property line. Said

generator(s) shall be allowed five feet from a side or rear property line be allowed in a required side or rear yard setback provided said generator meets the following conditions requirements:

a. ~~The generator is set back a minimum of five feet from the property line. There is only one generator within that required yard area.~~

b. The generator(s) shall not, at any time or for any purpose, exceed the maximum decibels allowed at the property line as set forth in section 42-228.

c. The highest point on the generator(s) shall not exceed a maximum of seven feet above the neighboring property owner's grade or zero datum as defined in the appropriate definition of building height in section 134-2.

d. ~~The generator(s) is shall be completely screened from a street and the neighboring property owners by a concrete block masonry finished wing wall (three-sided wall), at least four feet high or the same height as the generator (including the height of the exhaust muffler), whichever is greater. An adjacent property owner's existing side or rear concrete wall that completely screens the generator from the neighbor adjacent to that generator can count towards screening neighbor's existing concrete wall can satisfy said requirement provided the wall meets the height requirement to screen the generator and the applicant enters into a recorded agreement with the town to construct said wall as provided for in the Code to meet the screening requirement should the neighbor remove their wall.~~

e. If the generator(s) is visible from a street or public way, its location shall be subject to approval by the architectural commission or landmarks preservation commission, whichever is applicable. Intervening landscape material shall not be considered when determining a generator's visibility.

ef. The generator's exhaust shall, as much as practically feasible, vented upwards or directed away from neighboring properties.

fg. The generator(s) shall be used only during periods of power outages or for periodic testing and necessary maintenance operation and shall not be used to sell power back to a power company or for use by power customers during periods of peak demand.

gh. ~~The generator(s) shall be operated for routine testing and maintenance purposes not more than one time in any seven-day period and no test shall exceed 30 minutes. Testing of emergency generators is permitted Monday through Thursday only (excluding holidays), between the hours of 11:00 a.m. and 12:00 p.m. or 2:00 pm. and 3:00 p.m.~~

hi. ~~Testing may be conducted when the unit is being repaired, provided that such testing period shall not exceed 30 minutes and shall be conducted only between the hours of 10:00 a.m. and 5:00 p.m. Monday through Saturday, excluding holidays.~~

ij. Generators shall not be permitted on the roof of a building.

(2) Temporary or permanent generators with a combined output of greater than 60 KW or more may be temporarily placed on the ground, on a stand or on a trailer. A portable or permanent generator may be permanently or temporarily placed on the ground, on a stand, or on a trailer outside of required yard setback areas; provided, however, said generator(s) meets the following conditions requirements:

a. If the A generator(s)'s output capability is greater than 60KW, it shall be placed on the property only in conformance with meet the minimum setback requirements applicable to a principal structure and not more than one generator shall be within the same required setback or yard area.

b. The generator shall not, at any time or for any purpose, exceed the maximum decibels allowed at the property line as set forth in section 42-228.

c. If the generator exceeds an output capacity of 100 KW or the combined output capacity of multiple generators output capacity is greater than 100 exceeds 120 KW, it said generator(s) shall be subject to site plan review as defined in sections 134-326-134-330, and If any individual generator output capacity exceeds 100 KW it shall be housed in an enclosed building with landscaping as approved by the architectural commission or landmarks preservation commission, whichever is appropriate applicable.

d. If the generator is greater than exceeds 60KW and is 100KW or less, and is visible from a street or public way, it shall be screened from view at the street and from the neighboring properties by a concrete block masonry finished wing wall (three-sided wall), at least four feet high or the same height as the generator (including the height of the exhaust muffler); whichever is greater. An adjacent property owner's side or rear concrete wall that completely screens the generator from the neighbor adjacent to said generator can count towards screening provided that the wall meets the height requirement to screen the generator and the applicant enters into a recorded agreement with the town to construct said wall as provided for in the Code to meet the screening requirement should the neighbor remove their wall.

e. If the generator is 60KW or less and is visible from a street or public way, its location shall be subject to approval by the architectural commission or landmarks preservation commission, as applicable. Intervening landscape material shall not be considered when determining a generator's visibility.

f. The generator'(s) exhaust is shall, as much as practically feasible, be vented upwards or directed away from neighboring properties.

g. The generator(s) shall be used only during periods of power outages, periods of power reductions resulting from the exercise of utility load control programs or for periodic testing and necessary maintenance operation and shall not be used to sell power back to a power company.

h. The generator(s) shall be operated for routine testing and maintenance purposes not more than one time in any seven-day period and no test shall exceed 30 minutes. Testing of

emergency generators is permitted Monday through Thursday only (excluding holidays), between the hours of 11:00 a.m. and 12:00 p.m. or 2:00 pm. and 3:00 p.m.

i. Testing may be conducted when the unit is being repaired, provided that such testing period shall not exceed 30 minutes and shall be conducted only between the hours of 10:00 a.m. and 5:00 p.m. Monday through Saturday, excluding holidays.

j. Generators ~~are~~ shall not be permitted on the roof of a building.

(3) Notwithstanding subsection (a), the director or designee may grant a waiver allowing a one generator with an output capability in excess of 60KW to be located within a required side or rear yard setback, provided the applicant submits to the town a site plan and evidence or testimony substantiating each of the following conditions:

a. The output of a 60 KW or less generator is incapable of providing enough electricity for the basic necessity of occupying a building and/or protecting interiors or possessions in a building from the damaging effects of prolonged loss of power.

b. The proposed location is not merely for the convenience or preference of the applicant, but that there is no other location outside of the required setbacks that will provide for safe placement of the generator.

c. The proposed location represents the minimum intrusion into the required setback(s) necessary to safely accommodate the generator.

(4) If an administrative waiver is not granted pursuant to subsection (c) the applicant may appeal the administrative decision to the town council pursuant to sections 134-131—134-145.

~~In addition, swimming pool pumps and filters shall be allowed in a required side or rear yard provided said equipment is placed no closer than five feet from the side or rear property line and is enclosed in a pump house not exceeding a height of four feet. However, any lot that fronts on two or more streets shall be allowed to place one swimming pool filter and pump in a required street side and/or street rear yard setback provided that said swimming pool filter and pump, in combination with a pool heater and/or air conditioning unit does not exceed three pieces of said equipment; is set back a minimum of 25 from the street side or street rear property line; and, is screened from view from the neighboring property owner by a five foot high wall and from the street by a minimum five foot high wall and three foot high hedge.~~

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 thirty-one days after its adoption, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 13th day of November, 2020, second reading and final adoption on this ____ day of _____, 2020.

Gail L. Coniglio, Mayor

Margret A. Zeidman, Town Council President

Bobbie Lindsay, Council President Pro Tem

Julie Araskog, Town Council Member

ATTEST:

Danielle H. Moore, Town Council Member

Queenester Nieves, Town Clerk

Lewis S.W. Crampton, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Any Other Matters

Agenda Title

Consider Time Extension to Palm House Hotel Settlement Agreement Regarding 90 Days for Compliance

Presenter

ATTACHMENTS:

- ▣ **Memorandum Dated October 29, 2020 from John C. Randolph, Town Attorney**
- ▣ **Proposed Amendment to the Declaration of Use Agreement**
- ▣ **Previous Agreements**

Memo

To: FILE
From: John C. Randolph
Date: October 29, 2020
Subject: 160 ROYAL PALM LLC
PALM HOUSE

RECOMMENDATION

It is recommended that the Mayor and Town Council give consideration to the request to extend the Development Approval Deadline contained within the Second Amended Settlement Agreement attached hereto.

DISCUSSION:

The Town and 160 Royal Palm Way LLC entered into a Second Amended Conditional Settlement Agreement dated March 19, 2019 to resolve outstanding issues relating to Code Enforcement and the Declaration of Use Agreement entered into by the parties.¹ The Declaration of Use Agreement provides for, among other things, a deadline for the completion of construction of the Hotel. Intervening litigation and a bankruptcy action have, as you are aware, extended this deadline. By virtue of the Settlement Agreement, the parties agreed to a settlement amount to be paid by the owners of the Palm House to the Town. All of these monies have been paid in full. Section 4 of the Settlement Agreement provides that the Town shall extend the Development Approval through a date ninety (90) days after the date of a sale order being final and not subject to appeal. This 90-day period began on October 13, 2020, the date the Supreme Court of the United States entered a Final Order denying a Petition for Writ of Certiorari in the case of *KK-PB Financial LLC v. 160 Royal Palm, LLC*.²

The owner now seeks an extension of the 90-day period incorporated in the Settlement Agreement, and it is that matter which is before you for consideration.

¹ See Agreement attached.

² See attachment.

E S T .
1 9 2 4

SECOND AMENDED CONDITIONAL SETTLEMENT AGREEMENT

This Second Amended Conditional Settlement Agreement ("Settlement Agreement") is entered into as of March 19, 2019 between the Town of Palm Beach, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 ("Town") and 160 Royal Palm, LLC, a Florida limited liability company, 160 Royal Palm Way, Palm Beach, Florida 33480 ("Owner") (Town and Owner are hereafter collectively referred to as the "Parties"). Upon execution by the Parties, this Settlement Agreement shall amend and replace the Amended Conditional Settlement Agreement (the "Amended Agreement"), executed by the Parties on January 8, 2019, which amended and replaced the Conditional Settlement Agreement (the "Agreement") executed by the Parties on October 9, 2018.

WHEREAS, on July 30, 2007, Town and Royal 160, LLC ("Former Owner"), the prior Owner of the Land, as hereinafter defined, entered into a Declaration of Use Agreement, recorded in the Official Public Records Book 21987, Page 499, of the Public Records of Palm Beach County, Florida (the "Agreement"), and a Heart of Palm Beach Construction Management Agreement, recorded in the Official Records Book 21987, Page 510, of the Public Records of Palm Beach County, Florida (the "CMA"), concerning the conditional use of the land described in Exhibit A to the Agreement (the "Land") as a hotel and accessory uses consistent with and subject to the conditions for the 'Approval,' including, among other conditions, a liquidated amount of \$2,000 per violation per day remedy (the "Violation Assessment"), as specifically set forth in the Agreement;

WHEREAS, the Land is described in **Exhibit A**, attached hereto, it is located within the municipal limits of Town and title to the Land is held by Owner;

WHEREAS, Town and Owner entered into an Amendment to Declaration of Use Agreement made on December 28, 2012 and recorded in the Official Public Records Book 25694, Page 633, of the Public Records of Palm Beach County, Florida (the 'Amendment'), modifying the Agreement for the conditional use of the Land as a hotel and accessory uses and for operation on the Land of the Palm House Hotel ('Hotel') consistent with and subject to the conditions for the 'Approval' including, among other conditions, a February 14, 2013 deadline for the completion of construction of the Hotel (the "Completion Deadline"), as more specifically set forth in the Amendment;

WHEREAS, Owner commenced a civil action in December 2012 in the Fifteenth Judicial Circuit of Palm Beach County, Florida, styled *160 Royal Palm, LLC v. Town of Palm Beach*, Case No.: 502012CA023613XXXXMB (the "Litigation"), seeking a declaratory judgment concerning the Completion Deadline, which action remains pending but currently stayed based on the Bankruptcy Action, as hereinafter defined;

WHEREAS, effective February 15, 2013, Town commenced assessment of the Violation Assessment based on Owner's failure to complete construction of the Hotel by the Completion

Deadline, despite Owner's contention that the Completion Deadline had been extended for two years, as alleged in the Litigation;

WHEREAS, Town and Owner entered into a Second Amendment to Declaration of Use Agreement made on August 13, 2013 and recorded in the Official Public Records Book 26251, Page 78, of the Public Records of Palm Beach County, Florida (the 'Amendment')(hereinafter the "Second Amendment" for clarity), modifying the Agreement for the conditional use of the Land as a hotel and accessory uses and for Owner's operation on the Land of the Palm House Hotel ('Hotel') consistent with and subject to the conditions for the 'Approval,' including, among other conditions, the Completion Deadline, as specifically set forth in the Second Amendment;

WHEREAS, in 2014, the Town of Palm Beach Police Department, Code Enforcement Office initiated a code enforcement action, Case # CE-14-1212, 160 Royal Palm Way, 160 Royal Palm LLC, against the Land for unauthorized construction of the Hotel by Owner. Owner failed to satisfy or correct the code enforcement violation resulting in the entry of an Order Assessing Fine and Order Imposing Lien by the Town of Palm Beach Code Enforcement Board of the Town of Palm Beach ("Town Code Enforcement") in the amount of \$250 a day, commencing January 10, 2015 (the "Code Enforcement Fine"), which is recorded in Official Records Book 27315, page 1368 of the Public Records of Palm Beach County, Florida (the "Code Enforcement Lien") to enforce compliance with the code enforcement order (the "Code Enforcement Order") requiring the removal of all unpermitted work done beyond the scope of Owner's approved variances and building permits and passing all inspections;

WHEREAS, in 2014 construction of the Hotel was terminated and abandoned without completion or compliance with the Code Enforcement Order and the building permit for construction of the Hotel expired;

WHEREAS, on or about December 15, 2014 a civil action was commenced in the Fifteenth Judicial Circuit of Palm Beach County, Florida, styled as *Ryan Black v. Gerry Matthews*, et al, Case No.: 502014CA014846XXXXMB AG (the "Receivership Action") by Ryan Black, as a member and former managing member of Palm House, LLC, a Delaware limited liability company and the sole member of Owner, seeking appointment of a receiver for Owner;

WHEREAS, on or about July 20, 2015 the court in the Receivership Action entered an Amended Agreed Order on Plaintiff's Motion to Appoint Receiver (the "Receivership Order") whereby Cary Glickstein (the "Receiver") was appointed as Receiver for the real and personal property of Owner, including the Land and the partially constructed Hotel, and directed by the Receivership Order to pursue completion of the Hotel, upon securing construction financing, as approved by Town;

WHEREAS, in November 2015, Receiver applied for and on January 13, 2016, the Town Council granted the Receiver approval of Site Plan # 1-2016 with Special Exception for construction of the Hotel (the "Development Approval"), imposing conditions of approval in order

to regulate the use, mitigate any adverse impacts of the use, and insure that said use shall not be adverse to the public interest, including, in part, correction of the unauthorized construction underlying the Code Enforcement Lien, which approval was to be further memorialized in a Third Amendment to Declaration of Use Agreement (the "Third Amendment"), which has not been executed nor has the work commenced, as authorized by the Development Approval, by application for a building permit revision;

WHEREAS, in November 2016, the Receiver sought and on December 14, 2016, the Town Council granted the Receiver's request for a conditional, temporary abatement of the Violation Assessment accruing since February 15, 2013, which abatement remains conditionally and temporarily in effect;

WHEREAS, on or about November 17, 2016, the Receiver applied for and the Town Code Enforcement Board granted the Receiver's request for a conditional, temporary abatement of the Code Enforcement Fine accruing since January 10, 2015, which abatement remains conditionally and temporarily in effect. Among the conditions imposed for the continued abatement of the Code Enforcement Fine was payment to the Town of the Code Enforcement Fine amount accruing before the abatement date, which amount was paid in full;

WHEREAS, because the work authorized by the Development Approval could not be commenced within 12 months from the date of Town Council approval, in December 2016, Receiver applied for and in January 2017 the Town Council granted the Receiver's request to extend the Development Approval for one year through January 13, 2018;

WHEREAS, because the work authorized by the Development Approval could not be commenced within 12 months from the date of Town Council approval, in or about December 2017, Receiver applied for and in January 2018 the Town Council granted the Receiver's second request to extend the Development Approval for one year through January 9, 2019;

WHEREAS, on July 3, 2018, an order was entered by the Court in the Receivership Action expanding the Receiver's powers and making the Receiver the sole and exclusive manager of Owner, among other powers;

WHEREAS, on August 2, 2018, Owner, by and through the Receiver as the sole and exclusive manager of Owner ("Manager"), filed a petition for Chapter 11 bankruptcy relief in the United States Bankruptcy Court, Southern District of Florida, West Palm Beach, styled *In re: 160 Royal Palm, LLC*, Case No.: 18-19441-EPK (the "Bankruptcy Action");

WHEREAS, Manager believes the sale of the Land and the Hotel (collectively, the "Property" or "Project") to a qualified buyer is in the best interests of Owner's creditors, Town and interested parties and represents a final opportunity for the Manager to accomplish what the Receiver could not by completion of the Hotel as approved by Town;

WHEREAS, Owner, under the direction of Manager and subject to court approval in the Bankruptcy Action, intends to sell the property to a qualified buyer who will complete construction of the Hotel as approved by Town consistent with the Development Approval, a revised CMA and building permit revision, as described below;

WHEREAS, the Violation Assessment, Code Enforcement Fine, Code Enforcement Order, Code Enforcement Lien and impending expiration of the Development Approval in January 2019 separately and collectively create uncertainty in any prospective buyer's evaluation of the Land and the Hotel for acquisition purposes and that uncertainty materially and adversely affects the marketability of the Property and viability of the Project;

WHEREAS, the Town's interests are furthered by the sale of the Property to a qualified buyer who will complete the Project in accordance with the Development Approval;

WHEREAS, further to the above objectives, Owner and the Town Code Enforcement Board entered into a Conditional Settlement Agreement (the "CEB Settlement Agreement") on October 18, 2018, which was amended and replaced by an Amended Conditional Settlement Agreement (the "Amended CEB Settlement Agreement"), dated January 17, 2019, to settle all claims, demands, rights, and causes of action with respect to the Code Enforcement Order, Code Enforcement Fine and Code Enforcement Lien, and based on the impending sale of the Property to the Qualified Buyer identified below, the Parties desire to further conditionally compromise and settle all claims, demands, rights, and causes of action with respect to the Violation Assessment and impending expiration of the Development Approval; and

WHEREAS, a Sale Order was entered on March 12, 2019 in the Bankruptcy Action and that Sale Order (the "Sale Order") was appealed on March 12, 2019 by KK-PB Financial.

NOW THEREFORE, in consideration of the mutual promises, premises and covenants set out in this Settlement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, and upon the terms and subject to the conditions contained herein, the Parties expressly agree and covenant as follows:

Section 1: Incorporation of Recitals

The Parties expressly incorporate the recitals of this Settlement Agreement as a part hereof.

Section 2. Continued Abatement of Violation Assessment.

Based on Owner's timely payment of the Settlement Amount, on behalf of the "Qualified Buyer," as defined in Section 7 below, and the timely payment of the Supplemental Settlement Amounts, as those terms are defined in Section 3 below, the foregoing abatements shall continue and remain in force and effect conditioned on completion of construction of the Hotel in accordance with the requirements for extension of the Development Approval in Section 4 below.

Section 3: Settlement Amount, Supplemental Settlement Amount and Payment

Town acknowledges receipt of payment of \$200,000 (the "Settlement Amount") and further acknowledges receipt, on behalf of the Town Code Enforcement Board, of payment of \$50,000 (the "Settlement Amount") due respectively under the Amended Agreement and the Amended CEB Settlement Agreement, on behalf of the Qualified Buyer, as hereinafter defined, in full and final settlement of the Violation Assessment and Code Enforcement Fine accruing through the Development Approval Deadline (hereafter defined). Town agrees to accept: (i) payment of \$100,000 (the "Qualified Buyer Supplemental Settlement Amount") from the Qualified Buyer, as hereinafter defined, and (ii) \$100,000 (the "Owner Supplemental Settlement Amount") from Owner (the Qualified Buyer Supplemental Settlement Amount and the Owner Supplemental Settlement Amount being the "Supplemental Settlement Amounts"), which payments are in addition to the \$200,000 Settlement Amount paid on behalf of the Qualified Buyer, in full and final settlement of the Violation Assessment through the Development Approval Deadline, provided that in addition to payment of the Supplemental Settlement Amounts, the Qualified Buyer makes application for and receives Town approval for a modification to special exception for construction and operation of the Hotel, consistent with the Development Approval, or as otherwise requested by the Qualified Buyer and approved by the Town, as provided in Section 4. Payment of the Supplemental Settlement Amounts shall be delivered to Town on or before the date six (6) business days from the Sale Order being final and not being subject to stay or any pending appeal. Payment of the Qualified Buyer Supplemental Settlement Amount and the Owner Supplemental Settlement Amount shall each be made in a single payment payable to Town of Palm Beach and delivered to Town at 360 South County Road, Palm Beach, Florida 33480. Timely payment of the Supplemental Settlement Amounts shall be an express condition precedent to the continued abatement of the Violation Assessment through the abatement period set forth in Section 2.

Section 4: Extension of Development Approval

The Development Approval shall continue in force and effect pending and subject to timely performance of this Settlement Agreement. Based upon the timely payment of the Settlement Amount and the Supplemental Settlement Amount, Town agrees to extend the Development Approval through the date ninety (90) days after the date of the Sale Order being final and not being subject to stay or any pending appeal (the "Development Approval Deadline"), provided on or before the Development Approval Deadline, the Qualified Buyer: (i) makes application for and upon Town approval thereafter executes and delivers the Third Amendment consistent with the Development Approval; (ii) makes application for and upon Town approval thereafter executes and delivers a revised CMA consistent with the Development Approval; (iii) makes application for a building permit revision for construction of the Hotel consistent with the Development Approval; and (iv), if required by Town, concurrent with the Qualified Buyer's application for Third Amendment and revised CMA, and solely to approve the change in ownership of the Land from Owner to the Qualified Buyer, makes application for and receives Town approval for a modification to special exception for construction and operation of the Hotel, consistent with the

Development Approval, or as otherwise requested by the Qualified Buyer and approved by the Town.

Section 5: Satisfaction and Discharge of Violation Assessment

Upon timely completion of the Hotel, as provided in the Third Amendment, the revised CMA and building permit revision, the Violation Assessment shall be deemed fully satisfied and discharged. Nothing contained herein shall prevent Town and the Qualified Buyer from agreeing to an alternative protocol for the timing of the satisfaction and discharge of the Violation Assessment.

Section 6. Dismissal of Litigation

On or before closing on the sale of the Property to a Qualified Buyer following entry of a court order approving this Settlement Agreement in the Bankruptcy Action and the execution and delivery of this Settlement Agreement by the Parties, the Litigation shall be dismissed with prejudice.

Section 7: Qualified Buyer

For purposes of this Settlement Agreement, the Qualified Buyer ("Qualified Buyer") shall be LR U.S. Hotels Holdings LLC ("LR") and any wholly owned affiliate of LR as the purchaser of the Property pursuant to a fully performed contract and sale approved by the Court in the Bankruptcy Action in an Order Approving Sale of the Property to LR.

Section 8: Conditional Settlement

This Settlement Agreement shall be of no force or effect unless it is executed and delivered by the respective Parties and approved by a court order duly entered in the Bankruptcy Action. In the event (1) the purchaser of the Property is not a Qualified Buyer or (2) a Third Amendment to Declaration of Use Agreement is not timely executed by and delivered to Town by the Qualified Buyer or (3) construction of the Hotel is not timely completed by the Qualified Buyer in accordance with the Third Amendment, revised CMA and building permit revision, then the Development Approval shall expire. Unless otherwise extended by Town, the Violation Assessment abatement shall terminate and the assessment and fine shall be reinstated as if the abatement had never been granted, less payments received by Town, if any. If the Bankruptcy Action is dismissed before the sale of the Property or if Owner is otherwise prevented or unable to sell the Property to a Qualified Buyer, Owner reserves all of its rights, claims and defenses as asserted in the Litigation and/or that are or as may be available to Owner in the Bankruptcy Action with regard to the Property, the Violation Assessment, the Code Enforcement Fine and/or the Code Enforcement Lien.

Section 9: No Admission of Liability or Fault

This Agreement is a compromise of a disputed claim and the execution of this Settlement Agreement is not, and should not be construed to be, as an admission of liability or fault on the part of any party, their respective successors, assigns, subsidiaries, affiliates, agents, managers, members, partners, and employees, and by executing this Settlement Agreement the Parties expressly deny any liability or fault.

Section 10: Governing Law

This Settlement Agreement shall be interpreted, construed and enforced pursuant to and in accordance with the laws of the State of Florida.

Section 11: Attorneys' Fees and Costs

In the event of litigation to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-performing party. Except as specifically provided in this Settlement Agreement, the Parties shall bear their own respective attorneys' fees and costs incurred in connection with the Litigation and the negotiation and performance of this Settlement Agreement.

Section 12: Time is of the Essence

Time is of the essence for all dates and time periods expressed herein.

Section 13: Choice of Law and Forum Selection

The Parties agree that this Settlement Agreement is made and entered into in the State of Florida, and shall in all respects be interpreted, enforced and governed under the laws of the State of Florida without applying conflict of laws principles, and shall be subject to the exclusive jurisdiction of the courts of Florida. The sole and exclusive venue for any litigation arising out of, or relating to this Settlement Agreement shall be in Palm Beach, Florida, to the exclusion of any and all other venues.

Section 14: Interpretation of Settlement Agreement

The Parties have been represented by counsel, and have reviewed this Settlement Agreement through their respective attorneys or have had the opportunity to do so. None of the Parties (nor any attorney for any of the Parties) shall be deemed to be the drafter of this Settlement Agreement. Any rule of construction under Florida law requiring that ambiguities be resolved against the drafting party shall not be employed in the interpretation of this Settlement Agreement. The Parties further agree that all parts of this Settlement Agreement shall in all cases be construed as a whole according to its fair meaning.

Section 15: Successors and Assigns

This Settlement Agreement shall apply to the Parties, as well as to each of their predecessors, successors and assigns.

Section 16: Declaration of Use Agreement, the Amendment and the Second Amendment

The Declaration of Use Agreement, the Amendment to Declaration of Use Agreement and the Second Amendment to Declaration of Use Agreement remain in full force and effect, subject to further modification by a Third Amendment to Declaration of Use Agreement between Town and a Qualified Buyer, as generally described herein.

Section 17: Authority to Execute Settlement Agreement

Each of the Parties, and those persons executing this Settlement Agreement on behalf of the Parties, warrants to the other that each has full power, authority and capacity to execute this Settlement Agreement. In addition, the Parties warrant and represent that they are the owner of the claims asserted against the other and have not transferred or assigned any claim, in whole or in part.

Section 18: Town Cooperation

In connection with Owner's sale of the Property to the Qualified Buyer as authorized and approved in the Bankruptcy Action, Town agrees to cooperate with the settlement, title or closing agent, Owner and the Qualified Buyer, at no expense to Town, and use its best reasonable efforts to timely review and comply with written requests for information, acknowledgements and confirmations further to Owner's conveyance of title, confirmation of Qualified Buyer status, and verification of the recitals set forth in this Settlement Agreement as of the date of closing on Owner's sale of the Property. Provided this Settlement Agreement is in effect and being timely performed by the Qualified Buyer, Town, as a creditor in the Bankruptcy Action, shall be required to vote in favor of any Chapter 11 Plan that is filed by Owner in the Bankruptcy Action, so long as the Town's treatment under the Plan is consistent with the terms of this Settlement Agreement.

Section 19: Headings

All sections, titles or captions contained in this Settlement Agreement are for convenience only and shall not be deemed to be a part of this Settlement Agreement, and shall not affect the meaning or interpretation of this Settlement Agreement.

Section 20: Merger

There have been no written or oral representations made, or relied upon, by the Parties as inducement for the execution of this Settlement Agreement that are not expressly stated herein. The terms of this Settlement Agreement are contractual, not mere recitals, and may be enforced by a court of competent jurisdiction. No changes in or additions to this Settlement Agreement shall be valid, enforceable or recognized, unless made in a writing and signed by all of the Parties.

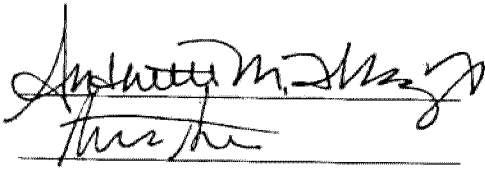
Section 21: Execution in Counterparts

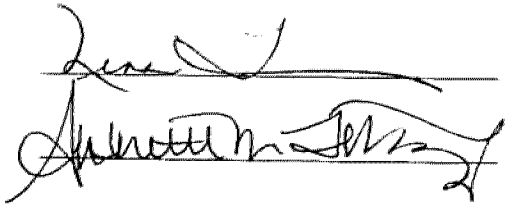
This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument. Additionally, the different counterparts of this Settlement Agreement may be executed separately by each signatory, and all such separately executed counterparts, when taken together, shall be treated as and constitute one and the same instrument. Any signature delivered by electronic or facsimile transmission shall be treated in all manner and respect as an original document.

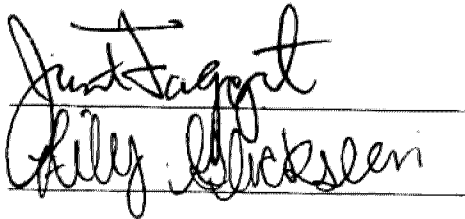
IN WITNESS WHEREOF the Parties have hereunto set their hands and seals the day and year first above written.

SIGNATURES ON FOLLOWING PAGE

Signed, sealed and delivered
in the presence of:







TOWN OF PALM BEACH,

By: 
Gail Coniglio

By: 
Kirk Blodin
Town Manager

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY


John C. Randolph
Town Attorney

160 ROYAL PALM, LLC, a Florida limited
liability company

By: 
Cary Glickstein, as Manager for 160 Royal
Palm, LLC, and not individually

EXHIBIT A

Legal Description for the Land:

Being Lots 31, 32 and 33, Block F, Royal Park Addition, a subdivision in the Town of Palm Beach, Palm Beach, Florida, as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida

USCA11 Case: 19-11402 Date Filed: 10/13/2020

Supreme Court of the United States

Office of the Clerk

Washington, DC 20543-0001

Oct 14, 2020

ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S. D. OF FLA. - MIAMI

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 13, 2020

Clerk
United States Court of Appeals for the Eleventh
Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

19-80351-CV RLR

Re: KK-PB Financial, LLC
v. 160 Royal Palm, LLC
No. 19-1456
(Your No. 19-11402)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

AMENDMENT OF DECLARATION OF USE AGREEMENT

THIS THIRD AMENDMENT TO DECLARATION OF USE AGREEMENT ("Amendment") is made and entered into this ___ day of _____, 2020 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter the "Town"); and LR PALM HOUSE LLC, formerly known as ROYAL 160, LLC and ROYAL 160, LLC, 160 Royal Palm Way, Palm Beach, Florida 33480 hereinafter the ("Owner"), which terms "Town" and "Owner" will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH:

WHEREAS, the Town and Owner heretofore entered into a Declaration of Use Agreement, dated July 30, 2007 and recorded in Official Records Book 21987, Page 499, and an Amendment to the Declaration of Use Agreement, dated December 28, 2012 and recorded in Official Records Book 25694, Page 633, and further amended in the Second Amendment to the Declaration of Use Agreement, dated August 13, 2013 and recorded in Official Records Book 26251, Page 78, all in the Public Records of Palm Beach County, Florida ("Agreement");

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

WHEREAS, title to all of the Land is held by the Owner;

WHEREAS, the Palm House Hotel (hereinafter referred to as the "Hotel") is located and operated on the Land at 160 Royal Palm Way in the Town;

WHEREAS, the Town Council on October 9, 2020, approved the Site Plan Revise with Special Exception and Variances number Z-20-00__ to modify the previously approved Site Plan Review #16-2016 with Special Exception, which allowed the new Owner to operate the Hotel subject to the modified conditions, which modified previous conditions of approval;

WHEREAS, the modifications to the previous conditions of approval are set forth herein and the approval of this Agreement is on the basis of the Owner's application and the testimony on behalf of the Owner;

WHEREAS, the Town made specific findings that the Owner met all applicable provisions of the Town Code governing site plan review, special exceptions, and variance requests;

WHEREAS, in approving the Site Plan Review with Special Exceptions and Variances, the modifications to the previous conditions of approval reflected herein are imposed in order to regulate the use, mitigate any adverse impacts of the use, and insure that said use shall not be adverse to the public interest;

WHEREAS, all of the representations made herein are true and accurate and the approval of the Site Plan Review with Special Exception and Variances are conditioned upon the representations made herein and all of the conditions herein imposed; and,

WHEREAS, in granting the approval, the Town Council relied upon the oral and written representations of the property owner/applicant both on the record and as part of the application process.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and in consideration of other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed that the Agreement is hereby amended and modified as follows:

ARTICLE I **RECITALS**

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

ARTICLE II **REPRESENTATION OF OWNERSHIP**

Owner has full right to enter into this amendment to the 2007 Declaration of Use Agreement, as amended, and to bind the Land, Hotel and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Hotel and Land in accordance with the terms and conditions of this Agreement. No consent to execution, delivery and performance hereunder is required from any person, partner, limited partner, creditor, investor, judicial or administrative body, governmental authority or other party other than any such consent which already has been unconditionally given or referenced herein. The execution of this Amendment will not violate any restrictions, court orders or agreements to which Owner or the Land are subject.

ARTICLE III **CONDOMINIUM HOTEL USES**

The use of the Land shall be for hotel uses and accessory uses in compliance with all of the information and exhibits not inconsistent with the terms and conditions set forth herein and as set forth in the applications previously submitted to, and approved by, the Town (hereinafter referred to as the "Approvals"). The Town's approval of the Application is subject to that provision of the Town Code which provides that no subsequent deviation may be made from the application as approved by the Town Council except upon new application to and approval by the Town Council. Any additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Architectural Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under any of the foregoing governmental authorities.

ARTICLE IV **MODIFICATIONS TO PREVIOUS CONDITIONS OF APPROVAL**

The following modifications to previous conditions of approval are imposed as conditions of granting approval of the Site Plan Review with Special Exceptions and Variances contained in Z-20-00289 and are required to be met as conditions of the continued operation of the Hotel.

DECLARATION OF USE DATED JULY 30, 2007

1. Paragraph 3 shall be amended as follows:

~~The second floor dining room area is approved for a total 120 seats with the ability to relocate 50 of those seats to the second floor balcony patios (a maximum of 25 seats on the front balcony and 25 seats on the back balcony terrace). In addition, The first floor dining room is approved for 65 88 indoor seats with the ability to relocate 16 and 36 outdoor seats facing the new pool deck outdoors on the covered pool loggia. The dining room may serve meals to the public and hotel guests in the dining rooms from 5:00 AM to 1:00 AM. Outside dining shall only be allowed from 9:00 AM to 10:00 PM on the covered pool loggia. However, seating for patrons for dining on the covered pool loggia shall not occur after 9:00 PM. Outside dining shall only be allowed from 6:00 AM to 11:00 PM on the second floor dining room balconies. However, seating for patrons for dining on the second floor outside dining shall not occur after 9:00 PM. This shall not preclude 24 hours room service.~~

2. Paragraph 7 shall be amended as follows:

~~The function area shall only be allowed 150 200 seats with recorded or live music or other entertainment between the hours of 12:00 Noon and 11:30 PM. 12:00 AM. No sooner than one year from the date of the certificate of occupancy, the applicant may apply for a special exception with variance for a maximum of 50 additional seats in the function area.~~

3. Paragraph 8 shall be deleted in its entirety as follows:

~~The upper deck sun deck on top of the function room shall only be used for sunning or lounging. There shall be no events of any kind or live or recorded music provided on said sun deck.~~

AMENDMENT TO DECLARATION OF USE DATED DECEMBER 28, 2012

1. Paragraph 1 shall be amended as follows:

~~The proposed 14 15.16 foot tall parapet wall between the proposed function room and the proposed employee pool service building west wing of the hotel shall have a water feature that runs the length of the wall. Said water feature shall be operational between the hours of 9:00 a.m. and midnight (12:00 a.m.).~~

2. Paragraph 3 shall be amended as follows:

~~There shall be no Pre-function events in the pool deck and grass area between the pool deck and Function Room shall be allowed. Those areas shall remain passive. The pool deck area shall be allowed only background music and light live music with the speaker system directed towards the hotel to the north. There shall be no music played on the~~

abutting grass area. The pool deck hours and hours for music shall be as identified in the Agreement.

3. Paragraph 5 shall be deleted in its entirety as follows:

~~Except for emergencies, the Function Room elevator and stairwells shall not be accessible to the sundeck from 7:00 PM to 9:00 AM so as not to allow hotel guests and employees on the Function Room roof during those hours. Fire rescue accessibility shall be provided by know boxes and an elevator override system. The access points to the stairs leading to the sundeck on the Function Room shall be designed to be completely isolated from the ground floor with a full door and other separation to ensure that when they are locked there is no access to the sundeck.~~

4. Paragraph 7 shall be deleted in its entirety as follows:

~~All construction must be completed by February 14, 2013 with the exception of the function room, spa/fitness area and second floor dining room above the lobby which shall be required to only have the shells (drywall, all life safety features, minimum electric and floor slab) completed by February 14, 2013. Any elements of the Hotel or Land not completed by February 14, 2013, include the function room, spa/fitness area and second floor dining room shall be required to obtain new approvals and permits.~~

SECOND AMENDMENT TO DECLARATION OF USE DATED AUGUST 13, 2013

1. Paragraph 1 shall be deleted in its entirety as follows:

~~The air conditioning equipment previously approved to be located on the roof of the Function Room shall be relocated to the planters on the east side of the Function Room and are required to be screened from the neighbors.~~

2. Paragraph 2 shall be deleted in its entirety as follows:

~~The previously approved activity and restrictions for the roof top of the Function Room shall be transferred to the roof top area above the Hotel lobby on the third floor of the hotel. The following restrictions now apply to the roof top of the Hotel in lieu of the roof top of the Function Room: (a) the sundeck shall only be used for sunning or lounging; (b) there shall be no events of any kind or live or recorded music provided on said sundeck; (c) except for emergencies, the Hotel elevator and stairwells shall not be accessible to the sundeck from 7:00 p.m. to 9:00 a.m. so as not to allow hotel guests and employees on the Hotel sundeck during those hours. Fire rescue accessibility shall be provided by knox boxes and an elevator override system. There shall be a barrier constructed to the satisfaction of the Town which precludes access to the roof top of the hotel to the west, east and south of the sundeck.~~

3. Paragraph 4 shall be deleted in its entirety as follows:

~~All construction must be completed by February 14, 2013 with the exception of the function room, spa/fitness area and second floor dining room above the lobby which shall be required to only have the shells (drywall, all life safety features, minimum electric and floor slab) completed by February 14, 2013. Any elements of the Hotel or Land not~~

~~completed by February 14, 2013, including the function room, spa/fitness area and second floor dining room shall be required to obtain new approvals and permits.~~

ARTICLE V **PROVISIONS FOR NOTICE**

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

To the Town Manager:

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

To the Owner:

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

ARTICLE VI **PROVISIONS TO RUN WITH LAND/RECORDING**

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

ARTICLE VII **ENTIRE AGREEMENT**

This Amendment, as identified herein, only represents the modifications to the Agreement, as recorded in Official Records Book 21987, Page 499 and Amendment to the Agreement as recorded in Official Records Book 25694, Page 633 and Second Amendment to the Agreement as recorded in Official Records Book 26251, Page 78, of the Public Records of Palm Beach County between the parties and may not be amended except by written agreement executed by both parties. All other provisions and conditions in the Agreement, as recorded in Official Records Book 21987, Page 499 and Official Records Book 25694, Page 633 and Official Records Book 26251, Page 78 of the Public Records of Palm Beach County, remain in full force and effect.

ARTICLE VIII **MISCELLANEOUS**

Wherever the word "laws" appears in this Agreement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities. This Amendment may not be amended except by written instrument signed by all parties hereto. Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All references to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs and subparagraphs of this Agreement and to exhibits attached hereto, which exhibits are by this reference made a part hereof. This Agreement shall be binding upon the parties hereto and upon their successors and assigns. In the event of the invalidity of any provision of this Agreement,

same shall be deemed stricken herefrom and this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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

Signed, sealed and delivered
In the presence of:

TOWN OF PALM BEACH

By: _____
Gail Coniglio, Mayor

By: _____
Maggie Zeidman, President
Town Council

By: _____
Kirk Blouin
Town Manager

LR PALM HOUSE LLC

By: _____
Its: Manager/Member

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by Gail Coniglio, the Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by Maggie Ziedman, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by Kirk Blouin, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

STATE OF FLORIDA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by _____, the _____ of LR Palm House LLC, a Florida limited liability company, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced _____ as identification.

Notary Public – State of Florida

Notary Seal: _____

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

John C. Randolph
Town Attorney

Exhibit “A”

Legal Description of the Land:

Being Lots 31, 32 and 33, Block F, Royal Park Addition, a subdivision in the Town of Palm Beach, Palm Beach County, Florida, as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County , Florida.



CFN 20070367904
QR BK 21987 PG 0499
RECORDED 08/01/2007 10:41:42
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0499 - 509; (11pgs)

DECLARATION OF USE AGREEMENT
by
THE TOWN OF PALM BEACH
and
ROYAL 160, LLC

July, 2007

TABLE OF CONTENTS

ARTICLE I	RECITALS.....	2
ARTICLE II	REPRESENTATION OF OWNERSHIP	2
ARTICLE III	CONDOMINIUM HOTEL USES	2
ARTICLE IV	CONDITIONS	2
ARTICLE V	APPLICATION TO CONDOMINIUM UNIT OWNERS	4
ARTICLE VI	VOLUNTARY AGREEMENT	4
ARTICLE VII	REMEDIES FOR VIOLATION	4
ARTICLE VIII	PROVISIONS FOR NOTICE	5
ARTICLE IX	PROVISIONS TO RUN WITH LAND/RECORDING	5
ARTICLE X	ENTIRE AGREEMENT	5
ARTICLE XI	EFFECTIVE DATE	6
ARTICLE XII	MISCELLANEOUS.....	6

DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT is made and entered into this 30th day of July, 2007 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called the "Town"); and Royal 160, LLC (hereinafter called "Owner"), which terms "Town" and "Owner" will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH:

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

WHEREAS, title to all of the Land is held by Owner;

WHEREAS, the Heart of Palm Beach Hotel (hereafter referred to as the "Hotel") is located and operated on the Land at 160 Royal Palm Way in the Town;

WHEREAS, the Hotel is a valid use which was approved in 1981, but is now non-conforming in several aspects as a result of Code changes since its construction;

WHEREAS, prior to 1997 recorded or live music or entertainment was allowed in hotel dining rooms and restaurants;

WHEREAS, prior to 1997 the Hotel provided recorded or live music or entertainment and is grandfathered to allow recorded or live music or entertainment provided certain conditions are met as identified in this Agreement;

WHEREAS, the Land has a future land use designation of Commercial on the Comprehensive Plan Future Land Use Map;

WHEREAS, the Land is zoned C-B, Commercial Business;

WHEREAS, OWNER filed an application for approval of Site Plan Review #2-2007 with Special Exceptions and Variances ("Application");

WHEREAS, the number of Hotel units is being reduced from 95 to 79 units, dining room indoor and outdoor seating is increasing from an approved 150 seats to 185 seats;

WHEREAS, the function seating is changing from 110 approved seats to 150 seats;

WHEREAS, the Town Council conducted hearings on the Site Plan with Special Exceptions and Variances on January 9, 2007, February 13, 2007, April 10, 2007 and May 7, 2007;

WHEREAS, Owner made numerous revisions to the Site Plan in response to comments from the Town Council, the Architectural Commission, and neighbors;

WHEREAS, the Town Council approved on May 7, 2007, Site Plan Review, Special Exceptions and Variances, subject to the conditions set forth herein and the approval of this Agreement on the basis of the Owner's application and the testimony on behalf of the Owner;

WHEREAS, the Town made specific findings that the Owner met all applicable provisions of the Town Code governing site plan review, special exceptions, and variance requests;

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

WHEREAS, all of the representations made herein are true and accurate and the approval of the Site Plan with Special Exception and Variances are conditioned upon the representations made herein and all of the conditions herein imposed; and,

WHEREAS, in granting the approval, the Town Council relied upon the oral and written representations of the property Owner/applicant both on the record and as part of the application process.

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

ARTICLE I
RECITALS

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

ARTICLE II
REPRESENTATION OF OWNERSHIP

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

ARTICLE III
CONDOMINIUM HOTEL USES

The use of the Land shall be for hotel uses and accessory uses in compliance with all of the information and exhibits not inconsistent with the terms and conditions set forth herein, set forth in the application submitted to the Town for Site Plan Review No. 2-2007 with Special Exception and Variances, as amended and approved by Town Council on May 7, 2007 (hereinafter referred to as the "Approval"). The Town's approval of the Application is subject to that provision of the Town Code which provides that no subsequent deviation may be made from the application as approved by the Town Council except upon new application to and approval by the Town Council. Any additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Architectural Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under any of the foregoing governmental authorities.

ARTICLE IV
CONDITIONS

The following conditions are imposed as conditions of the granting the approval of the Site Plan Review with Special Exceptions and Variances and are required to be met as conditions of the continued operation of the Hotel.

1. All parking at the Hotel shall be valet parking managed pursuant to a valet parking permit plan approved by the Town Police Chief.
2. If it is determined by the Town Police Chief that the valet parking operation at the Hotel is not working properly, the Town has the right to require measures as deemed necessary, including additional valet parking personnel or special duty officer(s), to resolve the issue(s).
3. The second floor dining room area is approved for a total 120 seats with the ability to relocate 50 of those seats to the second floor balcony patios (a maximum of 25 seats on the front balcony and 25 seats on back balcony terrace). In addition, the first floor dining room is approved for 65 seats with the ability to relocate 16 seats outdoors on the covered pool loggia. The dining room may serve meals to the public and hotel guests in the dining rooms from 5:00 AM to 1:00 AM. Outside dining shall only be allowed from 9:00 AM to 10:00 PM. on the covered pool loggia. However, seating for patrons for dining on the covered pool loggia shall not occur after 9:00 PM. Outside dining shall only be allowed from 6:00 AM to 11:00 PM. on the second floor dining room balconies. However, seating for patrons for dining on the second floor outside dining shall not occur after 9:00 PM. This shall not preclude 24 hour room service.
4. Pool hours and pool side beverage service shall be allowed only between the hours of 9:00 AM and 9:00 PM. Pool side food service shall be allowed only between the hours of 11:00 AM and 7:00 PM.
5. Recorded or live music or other entertainment is allowed on the pool deck area between 12:00 Noon and 8:30 PM. However, no recorded or live music, or other entertainment of any kind shall be permitted outside the Hotel building outside of those hours except background music as provided below. Background music is defined as low volume music where a normal conversation could be held over the music. Background music on the pool deck area shall be allowed between the hours of 9:00 a.m. and 7:00 PM.
6. Recorded or live music or entertainment shall be allowed inside the Hotel building from 9:00 a.m. to 11:30 p.m.
7. The function area shall only be allowed 150 seats with recorded or live music or other entertainment between the hours of 12:00 Noon and 11:30 PM. No sooner than one year from the date of the certificate of occupancy, the applicant may apply for a special exception with variance for a maximum of 50 additional seats in the function area.
8. The upper deck sun deck on top of the function room shall only be used for sunning or lounging. There shall be no events of any kind or live or recorded music provided on said sun deck.
9. All newly constructed lights in the Parking Lot shall be low level so that they shine downward and do not produce any light or glare which would adversely affect surrounding properties.
10. The building(s) shall be equipped with a fire alarm and suppression system as approved by the Fire Marshall.
11. The Hotel Owner(s) shall provide a minimum of 30 employee parking spaces and an employee shuttle service from December 1st through April 30th at an off-site location(s) within 15 minutes average driving time from the Hotel. This location shall not be within the Town limits unless specifically allowed for in Chapter 134, Zoning, ARTICLE IX, OFF-STREET PARKING AND LOADING, of the Town Code of Ordinances. If the Hotel proposes to provide the off-site parking location outside the Town's jurisdiction, the

Owner(s) shall inform the Town in writing of the location(s) of said parking. It shall be the responsibility of Hotel(s) Owner to ensure that the off-site parking location is allowed within the jurisdiction being proposed for said parking arrangement. It shall be the Hotel Owner(s) responsibility to immediately inform the Town in writing of the loss of said parking area and make arrangements for the necessary approval(s) for alternate location(s). Failure to ensure that the off-site location is allowed by the jurisdiction in which said parking is located, or the loss of said parking may result in a reduction in dining room seating. That determination will be made by the Town Council at the earliest Town Council meeting after the Town becomes aware of the situation.

12. The demolition and construction contemplated by the Approval shall be conducted pursuant to a Construction Management Agreement entered into between Hotel Owner(s) and Town prior to the issuance of a building permit for said construction. That agreement shall address, among other things, phasing, worker parking, materials delivery and storage, construction hours, demolition, noise, dust, rodent control, security, project management, coordination with the Town, and a construction schedule. The Town Manager is authorized to execute that agreement on behalf of the Town.
13. The Town shall have the right to check the seating in the Hotel on a periodic basis. Failure to allow a check will constitute a violation of this Agreement.

ARTICLE V APPLICATION TO CONDOMINIUM UNIT OWNERS

Owner(s) shall ensure by a legally enforceable document that the condominium hotel unit Owner(s) assume all liability and responsibility as outlined in this Agreement in perpetuity.

ARTICLE VI VOLUNTARY AGREEMENT

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

ARTICLE VII REMEDIES FOR VIOLATION

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

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

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

ARTICLE VIII PROVISIONS FOR NOTICE

For the issuance of any notice regarding the terms of this Agreement, notice shall be provided:

- a. To the Town: Town Manager at Town of Palm Beach Town Hall, 360 South County Road, Palm Beach, Florida, 33480
- b. To the Owner: C/O Robert Matthews, Royal 160 LLC, condominium owners and condominium association manager, 160 Royal Palm Way, Palm Beach, Florida 33480

ARTICLE IX PROVISIONS TO RUN WITH LAND/RECORDING

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

ARTICLE X ENTIRE AGREEMENT

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

ARTICLE XI
EFFECTIVE DATE

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

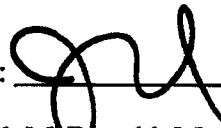
ARTICLE XII
MISCELLANEOUS

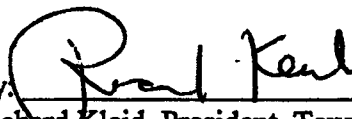
Wherever the word "laws" appears in this Agreement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities. This Agreement may not be amended except by written instrument signed by all parties hereto. Paragraph headings are inserted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

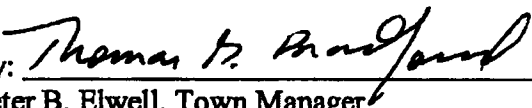
IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above. Signed, sealed and delivered in the presence of:

Signed, sealed and delivered TOWN OF PALM BEACH

in the presence of:

By: 
Jack McDonald, Mayor

By: 
Richard Kleid, President Town Council

By: 
for: Peter B. Elwell, Town Manager

By: [Signature]
Name: Robert Matthews
160 Royal LLC, as President

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th day of July, 2007, by Jack McDonald, the Mayor of The Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

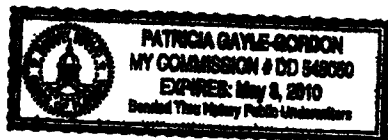


Patricia Gayle Gordon
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th day of July, 2007, by Richard Kleid, the President of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.



Patricia Gayle Gordon
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th day of July, 2007, by Peter B. Elwell, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.



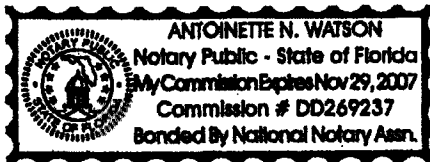
Patricia Gayle Gordon
Signature of Notary Public
Printed Name of Notary Public

Commission No.: _____
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 23rd day of July, 2007, by Robert Matthews, 160 Royal LLC, as President. He is personally known to me and he did not take an oath.



Antoinette N. Watson
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

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

By: [Signature]
John C. Randolph, Esquire

RECOMMEND APPROVAL:
7/25/07
[Signature]
Paul Castro, AICP
Zoning Administrator

EXHIBIT A

LEGAL DESCRIPTION

BEING ALL OF LOTS 31, 32 AND 33, BLOCK F, ROYAL PARK ADDITION, A SUBDIVISION IN THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA. AS RECORDED IN PLAT BOOK 4, PAGE 1, PALM BEACH COUNTY PUBLIC RECORDS.



STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office.

THIS 1st DAY OF Aug, 2007
SHARON R. BOOK
CLERK & COMPTROLLER

By [Signature]

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



CFM 20130005174
OR BK 25694 PG 0633
RECORDED 01/04/2013 12:30:48
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0633 - 641; (9pgs)

AMENDMENT TO DECLARATION OF USE AGREEMENT
by
THE TOWN OF PALM BEACH
and
160 ROYAL PALM LLC (F/K/A ROYAL 160, LLC)

Dated: December, 2012

AMENDMENT OF DECLARATION OF USE AGREEMENT

THIS AMENDMENT TO DECLARATION OF USE AGREEMENT ("Amendment") is made and entered into this 28th day of December, 2012 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter the "Town"); and 160 ROYAL PALM LLC, formerly known as ROYAL 160, LLC, 160 Royal Palm Way, Palm Beach, Florida 33480 hereinafter the ("Owner"), which terms "Town" and "Owner" will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH:

WHEREAS, the Town and Owner heretofore entered into a Declaration of Use Agreement made on July 30, 2007 and recorded in Official Records Book 21987, Page 499, of the Public Records of Palm Beach County ("Agreement");

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

WHEREAS, title to all of the Land is held by the Owner;

WHEREAS, the Palm House Hotel (hereinafter referred to as the "Hotel") is located and operated on the Land at 160 Royal Palm Way in the Town;

WHEREAS, the Town Council on July 11, 2012, approved the special exception portion of the Site Plan Review #6-2012 with Special Exceptions and Variances, which allowed the new Owner to operate the Hotel subject to a condition that the south perimeter landscaping having to be completely installed by September 30, 2012;

WHEREAS, the Town Council on August 15, 2012 granted conditional approval of Site Plan Review #6-2012 with Special Exception and Variances which amended Site Plan Review No. 2-2007 with Special Exceptions and Variances on the Land;

WHEREAS, the conditions of approval are set forth herein and the approval of this Agreement on the basis of the Owner's application and the testimony on behalf of the Owner;

WHEREAS, the Town made specific findings that the Owner met all applicable provisions of the Town Code governing site plan review, special exceptions, and variance requests;

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

WHEREAS, all of the representations made herein are true and accurate and the approval of the amended Site Plan with Special Exception and Variances are conditioned upon the representations made herein and all of the conditions herein imposed; and,

WHEREAS, in granting the approval, the Town Council relied upon the oral and written representations of the property Owner/applicant both on the record and as part of the application process.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and in consideration of other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed that the Agreement is hereby amended and modified as follows:

ARTICLE I
RECITALS

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

ARTICLE II
REPRESENTATION OF OWNERSHIP

Owner has full right to enter into this amendment to the 2007 Agreement and to bind the Land, Hotel and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Hotel and Land in accordance with the terms and conditions of this Agreement. No consent to execution, delivery and performance hereunder is required from any person, partner, limited partner, creditor, investor, judicial or administrative body, governmental authority or other party other than any such consent which already has been unconditionally given or referenced herein. Neither the execution of this Amendment to the 2007 Agreement, nor the consummation of the transactions contemplated hereby will violate any restriction, court order or agreement to which Owner or the Land are subject.

ARTICLE III
CONDOMINIUM HOTEL USES

The use of the Land shall be for hotel uses and accessory uses in compliance with all of the information and exhibits not inconsistent with the terms and conditions set forth herein, set forth in the application submitted to the TOWN for Site Plan Review No. 2-2007 with Special Exception and Variances, as amended and approved by Town Council on May 7, 2007, and as amended by Site Plan Review #6-2012 with Special Exceptions and Variances, as amended and approved by the Town Council on July 11, 2012 and August 15, 2012 (hereinafter referred to as the "Approval"). The Town's approval of the Application is subject to that provision of the Town Code which provides that no subsequent deviation may be made from the application as approved by the Town Council except upon new application to and approval by the Town Council. Any additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Architectural Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under any of the foregoing governmental authorities.

ARTICLE IV
ADDITIONAL CONDITIONS OF APPROVAL

The following new conditions are imposed as conditions of granting approval of the Site Plan Review with Special Exceptions and Variances and are required to be met as conditions of the continued operation of the Hotel.

1. The proposed 14 foot tall parapet wall between the proposed function room and the proposed employee pool service building shall have a water feature that runs the length of the wall. Said water feature shall be operational between the hours of 9:00 a.m. and midnight (12:00 a.m.).
2. The employee pool service building shall be only for the use of the Hotel staff and will not be used by Hotel guests to order or consume food and/or beverages. There shall be no chairs for hotel guests at the employee pool service building.
3. There shall be no events in the pool deck and grass area between the pool deck and Function Room. Those areas shall remain passive. The pool deck area shall be allowed only background music and light live music with the speaker system directed towards the hotel to the north. There shall be no music played on the abutting grass area. The pool deck hours and hours for music shall be as identified in the Agreement.
4. The air conditioning equipment on the roof of the Function Room shall be screened from the neighbors by a solid parapet wall on the three exterior sides.
5. Except for emergencies, the Function Room elevator and stairwells shall not be accessible to the sundeck from 7:00 p.m. to 9:00 a.m. so as not to allow hotel guests and employees on the Function Room roof during those hours. Fire-rescue accessibility shall be provided by knox-boxes and an elevator override system. The access points to the stairs leading to the sun deck on the Function Room shall be designed to be completely isolated from the ground floor with a full door and other separation to ensure that when they are locked there is no access to the sundeck.
6. Additional landscape material to completely screen the back of the Hotel from the neighbors shall be required and maintained on the south perimeter of the subject property in perpetuity. The landscaping of the entire property shall be approved by the Architectural Commission.
7. All construction must be completed by February 14, 2013 with the exception of the function room, spa/fitness area and second floor dining room above the lobby which shall be required to only have the shells (drywall, all life safety features, minimum electric and floor slab) completed by February 14, 2013. Any elements of the Hotel or Land not completed by February 14, 2013, including the function room, spa/fitness area and second floor dining room shall be required to obtain new approvals and permits.

ARTICLE V
PROVISIONS FOR NOTICE

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

To the Town Manager:

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

To the Owner:

c/o Glenn F. Straub,
160 Royal Palm Way
Palm Beach, FL 33480

ARTICLE VI
PROVISIONS TO RUN WITH LAND/RECORDING

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

ARTICLE VII
ENTIRE AGREEMENT

This Amendment, as identified herein, only represents the modifications to the Agreement, as recorded in Official Records Book 21987, Page 499, of the Public Records of Palm Beach between the parties and may not be amended except by written agreement executed by both parties. All other provisions and conditions in the Agreement, as recorded in Official Records Book 21987, Page 499, of the Public Records of Palm Beach County, remain in full force and effect.

ARTICLE VIII
MISCELLANEOUS

Wherever the word "laws" appears in this Agreement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities. This Amendment may not be amended except by written instrument signed by all parties hereto. Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All references to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs and subparagraphs of this Agreement and to exhibits attached hereto, which exhibits are by this

reference made a part hereof. This Agreement shall be binding upon the parties hereto and upon their successors and assigns. In the event of the invalidity of any provision of this Agreement, same shall be deemed stricken herefrom and this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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

Signed, sealed and delivered
In the presence of:

Gayle Gordon
Laren Temme

Gayle Gordon
Laren Temme

Gayle Gordon
Laren Temme

Maria Zisna
Care Pore

TOWN OF PALM BEACH

By: Gail L. Coniglio
Gail Coniglio

By: David Rosow
David Rosow, President
Town Council

By: Peter Elwell
Peter Elwell
Town Manager

160 ROYAL PALM LLC

By: [Signature] MANAGER
Its: Manager/Member

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 27th day of December 2012, by Gail Coniglio, Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. She is personally known to me ~~or has produced~~ as identification.



(SEAL)

Patricia Gayle-Gordon

Notary Public-State of Florida

Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 27 day of December 2012, by David Rosow, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me ~~or has produced~~ as identification.



(SEAL)

Patricia Gayle-Gordon

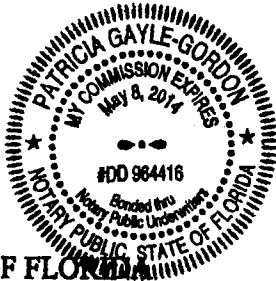
Notary Public-State of Florida

Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 28th day of December 2012, by Peter Elwell, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me ~~or has produced~~ as identification.



(SEAL)

Patricia Gayle-Gordon

Notary Public-State of Florida
Commission Number: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 5 day of November, 2012, by Glenn F. Straub on behalf of the company. He is personally known to me or has produced as identification.



(SEAL)

Maura Ziska

Notary Public-State of Florida
Commission Number: _____

RECOMMEND APPROVAL:

11/13/12

Paul Castro

Paul Castro, AICP
Zoning Administrator

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

John C. Randolph

John C. Randolph
Town Attorney

Exhibit "A"

Legal Description of the Land:

Being Lots 31, 32 and 33, Block F, Royal Park Addition, a subdivision in the Town of Palm Beach, Palm Beach County, Florida, as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida.



STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office with redactions, if any as required by law.

THIS 11 DAY OF Jan, 2013

SHARON R. BOCK
CLERK & COMPTROLLER

By [Signature]
DEPUTY CLERK

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

CFN 20130360132
OR BK 26251 PG 0078
RECORDED 08/13/2013 12:50:22
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0078 - 86; (9pgs)

SECOND AMENDMENT TO DECLARATION OF USE AGREEMENT
by
THE TOWN OF PALM BEACH
and
160 ROYAL PALM LLC (F/K/A ROYAL 160, LLC)

Dated August 13, 2013

AMENDMENT OF DECLARATION OF USE AGREEMENT

THIS SECOND AMENDMENT TO DECLARATION OF USE AGREEMENT ("Amendment") is made and entered into this 13th day of August, 2013 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter the "Town"); and 160 ROYAL PALM LLC, formerly known as ROYAL 160, LLC, 160 Royal Palm Way, Palm Beach, Florida 33480 hereinafter the ("Owner"), which terms "Town" and "Owner" will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

W I T N E S S E T H:

WHEREAS, the Town and Owner heretofore entered into a Declaration of Use Agreement made on July 30, 2007 and recorded in Official Records Book 21987, Page 499, of the Public Records of Palm Beach County ("Agreement");

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

WHEREAS, title to all of the Land is held by the Owner;

WHEREAS, the Palm House Hotel (hereinafter referred to as the "Hotel") is located and operated on the Land at 160 Royal Palm Way in the Town;

WHEREAS, the Town Council on July 11, 2012, approved the special exception portion of the Site Plan Review #6-2012 with Special Exceptions and Variances, which allowed the new Owner to operate the Hotel subject to a condition that the south perimeter landscaping having to be completely installed by September 30, 2012;

WHEREAS, the Town Council on August 15, 2012 granted conditional approval of Site Plan Review #6-2012 with Special Exception and Variances which amended Site Plan Review No. 2-2007 with Special Exceptions and Variances on the Land;

WHEREAS, the Town Council on January 9, 2013 granted approval of Site Plan Review # 3-2013 with Special Exception and Variances which amended Site Plan Review No. 2-2007 with Special Exception and Variances and Site Plan Review # 6-2012 with Special Exception and Variance;

WHEREAS, the conditions of approval are set forth herein and the approval of this Agreement on the basis of the Owner's application and the testimony on behalf of the Owner;

WHEREAS, the Town made specific findings that the Owner met all applicable provisions of the Town Code governing site plan review, special exceptions, and variance requests;

WHEREAS, in approving the second amendment to the Site Plan Review with Special Exceptions and Variances, the conditions of approval reflected herein are imposed in order to regulate the use, mitigate any adverse impacts of the use, and insure that said use shall not be adverse to the public interest;

WHEREAS, all of the representations made herein are true and accurate and the approval of the amended Site Plan with Special Exception and Variances are conditioned upon the representations made herein and all of the conditions herein imposed; and,

WHEREAS, in granting the approval, the Town Council relied upon the oral and written representations of the property Owner/applicant both on the record and as part of the application process.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and in consideration of other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed that the Agreement is hereby amended and modified as follows:

ARTICLE I **RECITALS**

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

ARTICLE II **REPRESENTATION OF OWNERSHIP**

Owner has full right to enter into this amendment to the 2007 Agreement and to bind the Land, Hotel and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Hotel and Land in accordance with the terms and conditions of this Agreement. No consent to execution, delivery and performance hereunder is required from any person, partner, limited partner, creditor, investor, judicial or administrative body, governmental authority or other party other than any such consent which already has been unconditionally given or referenced herein. Neither the execution of this Amendment to the 2007 Agreement, nor the consummation of the transactions contemplated hereby will violate any restriction, court order or agreement to which Owner or the Land are subject.

ARTICLE III **CONDOMINIUM HOTEL USES**

The use of the Land shall be for hotel uses and accessory uses in compliance with all of the information and exhibits not inconsistent with the terms and conditions set forth herein, set forth in the application submitted to the TOWN for Site Plan Review No. 2-2007 with Special Exception and Variances, as amended and approved by Town Council on May 7, 2007, and as amended by Site Plan Review #6-2012 with Special Exceptions and Variances, as amended and approved by the Town Council on July 11, 2012 and August 15, 2012, and as amended by Site Plan Review # 3-2013 with Special Exception and Variance, as amended and approved by the Town Council on January 9, 2013 (hereinafter referred to as the "Approval"). The Town's approval of the Application is subject to that provision of the Town Code which provides that no subsequent deviation may be made from the application as approved by the Town Council except upon new application to and approval by the Town Council. Any additional uses of the Land

shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Architectural Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under any of the foregoing governmental authorities.

ARTICLE IV **ADDITIONAL CONDITIONS OF APPROVAL**

The following new conditions are imposed as conditions of granting approval of the Site Plan Review with Special Exceptions and Variances and are required to be met as conditions of the continued operation of the Hotel.

1. The air conditioning equipment previously approved to be located on the roof of the Function Room shall be relocated to the planters on the east side of the Function Room and are required to be screened from the neighbors.
2. The previously approved activity and restrictions for the roof top of the Function Room shall be transferred to the roof top area above the Hotel lobby on the third floor of the hotel. The following restrictions now apply to the roof top of the Hotel in lieu of the roof top of the Function Room: (a) the sundeck shall only be used for sunning or lounging; (b) there shall be no events of any kind or live or recorded music provided on said sundeck; (c) except for emergencies, the Hotel elevator and stairwells shall not be accessible to the sundeck from 7:00 p.m. to 9:00 a.m. so as not to allow hotel guests and employees on the Hotel sundeck during those hours. Fire-rescue accessibility shall be provided by knox-boxes and an elevator override system. There shall be a barrier constructed to the satisfaction of the Town which precludes access to the roof top of the hotel to the west, east and south of the sundeck.
3. Additional landscape material to completely screen the east property line of the Hotel from the neighbors shall be required and maintained in perpetuity on the east perimeter of the subject property in perpetuity. The landscaping of the entire property shall be approved by the Architectural Commission.
4. All construction must be completed by February 14, 2013 with the exception of the function room, spa/fitness area and second floor dining room above the lobby which shall be required to only have the shells (drywall, all life safety features, minimum electric and floor slab) completed by February 14, 2013. Any elements of the Hotel or Land not completed by February 14, 2013, including the function room, spa/fitness area and second floor dining room shall be required to obtain new approvals and permits.

ARTICLE V **PROVISIONS FOR NOTICE**

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

To the Town Manager:

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

To the Owner:

c/o Glenn F. Straub,
160 Royal Palm Way
Palm Beach, FL 33480

ARTICLE VI
PROVISIONS TO RUN WITH LAND/RECORDING

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

ARTICLE VII
ENTIRE AGREEMENT

This Amendment, as identified herein, only represents the modifications to the Agreement, as recorded in Official Records Book 21987, Page 499 and Amendment to the Agreement as recorded in Official Records Book 25694, Page 633, of the Public Records of Palm Beach between the parties and may not be amended except by written agreement executed by both parties. All other provisions and conditions in the Agreement, as recorded in Official Records Book 21987, Page 499 and Official Records Book 25694, Page 633, of the Public Records of Palm Beach County, remain in full force and effect.

ARTICLE VIII
MISCELLANEOUS

Wherever the word "laws" appears in this Agreement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities. This Amendment may not be amended except by written instrument signed by all parties hereto. Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All references to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs and subparagraphs of this Agreement and to exhibits attached hereto, which exhibits are by this reference made a part hereof. This Agreement shall be binding upon the parties hereto and upon their successors and assigns. In the event of the invalidity of any provision of this Agreement,

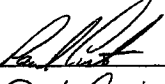
same shall be deemed stricken herefrom and this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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

Signed, sealed and delivered
In the presence of:



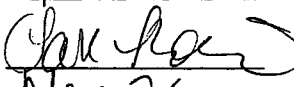
Paul Castro



Paul Castro

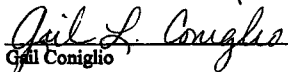


Paul Castro



Nanni Bore

TOWN OF PALM BEACH

By: 

Gail Coniglio

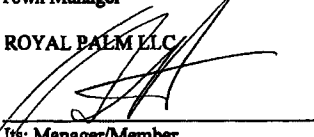
By: 

David Rosow, President
Town Council

By: 

Peter Elwell
Town Manager

160 ROYAL PALM LLC

By: 

Its: Manager/Member

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 9 day of AUGUST, 2013, by Gail Coniglio, Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. She is personally known to me or has produced _____ as identification.

(SEAL)


DEBORAH A. MORAIS
Notary Public-State of Florida
Commission Number: DD966204

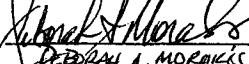


STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 13 day of AUGUST, 2013, by David Rosow, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

(SEAL)


DEBORAH A. MORAIS
Notary Public-State of Florida
Commission Number: DD966204

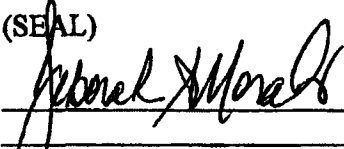


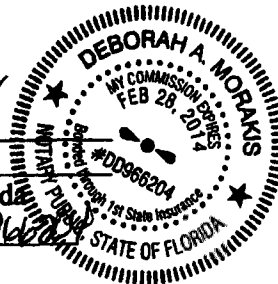
STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 9 day of AUGUST, 2013, by Peter Elwell, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

(SEAL)


Notary Public-State of Florida
Commission Number: DD966204



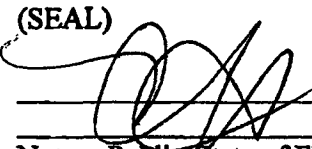
STATE OF FLORIDA

COUNTY OF PALM BEACH

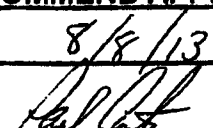
The foregoing instrument was acknowledged before me this 7 day of August 2013, by Glenn F. Straub on behalf of the company. He is personally known to me or has produced _____ as identification.



(SEAL)


Notary Public-State of Florida
Commission Number: EE841098

RECOMMEND APPROVAL:

8/8/13

Paul Castro, AICP
Zoning Administrator

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY:

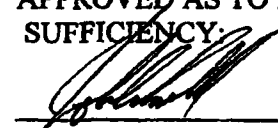
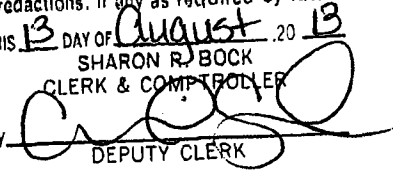

John C. Randolph
Town Attorney

Exhibit "A"

Legal Description of the Land:

Being Lots 31, 32 and 33, Block F, Royal Park Addition, a subdivision in the Town of Palm Beach, Palm Beach County, Florida, as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida.

 STATE OF FLORIDA - PALM BEACH COUNTY
I hereby certify that the foregoing is a
true COPY of the record in my office with
redactions, if any as required by law.
THIS 13 DAY OF August 20 13
SHARON R. BOCK
CLERK & COMPTROLLER
By  DEPUTY CLERK



PDF
L31.32
SE
VC
PC
PE
JT
DT

ONE NORTH CLEMATIS STREET
SUITE 500
WEST PALM BEACH, FLORIDA 33401
TELEPHONE: 561.832.3300
FACSIMILE: 561.655.1109
www.broadandcassel.com
JACQUELINE S. MILLER
EMAIL: jsmiller@broadandcassel.com

August 1, 2007

RECEIVED

AUG 01 2007

TOWN OF PALM BEACH
PZB DEPT.

BY HAND DELIVERY

Mr. Paul Castro
Zoning Administration
Town of Palm Beach
360 S. County Road
Palm Beach, FL 33480

Re: Royal 160 LLC

Dear Mr. Castro:

I enclose certified copies of the Construction Management Agreement and Declaration of Use, as filed with the Clerk of Court.

Sincerely,

BROAD AND CASSEL

A handwritten signature in cursive script, appearing to read 'J. Miller', is written over the printed name 'Jacqueline S. Miller'.

Jacqueline S. Miller

JSM/bp
Encls.



CFN 20070367905
OR BK 21987 PG 0510
RECORDED 08/01/2007 10:41:42
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0510 - 516; (7pgs)

Heart of Palm Beach Hotel
Construction Management Agreement

Royal 160 LLC ("Owner") and the Town of Palm Beach, Florida ("Town") enter into the following Agreement on this 30th day of July, 2007.

WHEREAS, Owner owns an existing hotel property located at 160 Royal Palm Way in the Town ("Property"); and

WHEREAS, Owner received approval on May 7, 2007 by the Town Council of Site Plan Review #2-2007 with Special Exceptions and Variances ("Approval") for redevelopment of the Property; and

WHEREAS, Owner and Town entered into a Declaration of Use Agreement on July 30th, 2007, which requires among other things that the parties enter into this Construction Management Agreement.

NOW THEREFORE, Owner and Town agree as follows:

RECITALS

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

CONDITIONS

2. The Owner shall follow the Schedule of Construction as set forth in Exhibit A ("Schedule") attached hereto, however, said Schedule may be modified provided that construction does not exceed the maximum number of day allowed by Code. The construction is approved subject to the following conditions:

A. **Demolition.**

1. Rodent extermination shall be completed prior to the start of demolition by a Florida licensed and bonded exterminator. A written report shall be provided on the extermination to the Town.
2. Removal of debris on an every other day basis shall be required of the contractor. Prior to the issuance of a demolition or construction permit the contractor shall provide the Town with an acceptable plan that identifies the staging area for debris accumulated on the site. Said plan shall provide detailed information on how the contractor will screen the debris staging area from the neighboring property owners and street.

B. **Dust Control During Construction**

Dust control shall be as prescribed by the Town Code of Ordinances.

- C. Property Security. Any security lighting shall be shielded so that it shines downward and does not produce any light or glare which would adversely affect surrounding property owners. Such lighting shall be the minimum necessary to allow security surveillance of the property. In addition, said lighting shall meet all ordinances and laws regarding turtle season nesting.
- D. Worker Parking. Construction workers and project management personnel may park only within the boundaries of the Property. Parking by said persons in the public rights-of-way is prohibited.
- E. Storage Areas. Storage and delivery area plans shall be submitted and approved by the Town prior to the issuance of a demolition or construction permit. Those areas on the Property shall be fenced and screened from view by a six foot high green mesh fence. All construction deliveries shall be conducted on site and not in the public rights-of-way, unless prior approval from the Town's Department of Public Works is obtained. In addition, prior approval shall also be required from the Town Police Department to bring in large deliveries that may block the street or access into the site.
- F. Hours of Construction. Hours of construction shall be governed by Section 42-199 of Town's Code of Ordinances. No construction activity shall be allowed on Saturdays in the Season (except for interior work allowed by the Town Code), on Sundays, or on holidays.
- G. Complaints. If valid noise, odor, dust control or other valid complaints are reported to the Town, the Town may order a cessation or modification of construction activities on the Property, until such time as the Town is satisfied that such complaints have been resolved. Upon receipt of a complaint which the Director of Planning, Zoning, and Building believes may be valid, the Director shall notify Owner and obtain Owner's response to the complaint prior to making a determination on the complaint. Owner shall have the right to appeal the Director's determination to the Town Council at the next scheduled Council meeting.
- H. Project Management.
1. The owner's general contractor shall schedule and attend a pre-construction meeting with all of the subcontractors and Town Staff prior to the issuance of a demolition or building permit.
 2. The owner's general contractor shall designate two project managers who can be contacted by the Town with respect to any issues involved with the construction. The name of those persons shall be provided in writing to the Town and shall be updated upon any change. At least one of those project managers shall be on the Property at all times when construction work is being done on the Property.

I. Construction Trailers

1. Construction trailers shall only be for the general contractor and subcontractors. No trailers shall be allowed on the site for sales or Hotel staff unless previously approved by the Town Council.

J. Violations.

1. If the owner fails to complete the construction in the maximum number of days allowed as identified in the Town Code of Ordinances, the Owner shall pay to Town a liquidated amount of \$ 2,000.00 per day for each calendar day past the maximum number of days allowed by the Town Code of Ordinances.
2. In addition to the above, for violations of any of the conditions of this Agreement, Owner shall pay Town a liquidated amount of \$2,000.00 for each day that any of the conditions of this Agreement are violated, which amount shall accrue on a per day basis for each day a violation of this Agreement exists and which shall increase annually beginning one year from the date of this Agreement based upon the Consumer Price Index for South Florida.
3. If valid noise, odor, dust control or other complaints are reported to the Town, the Town may order a cessation or modification of construction activities of the Hotel, until such time as the Town is satisfied that such complaints have been resolved. Upon receipt of a noise, odor, dust or other complaint which the Director of the Planning, Zoning and Building Department believes may be valid, the Director shall notify Owner and obtain Owner's response to the complaint prior to making a determination on the complaint. Owner shall have the right to appeal the Director's determination in regard to the remedies described in this section to the Town Council at the next scheduled meeting of the Town Council, which is at least fifteen (15) days subsequent to the date of the notice of appeal for all outstanding amounts imposed by this provision.
4. All outstanding amounts imposed under this provision shall be paid by the Owner prior to the issuance of a certificate of occupancy for any building or structure on the Property.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above. Signed, sealed and delivered in the presence of:

Signed, sealed and delivered TOWN OF PALM BEACH

in the presence of:

By: [Signature]
Jack McDonald, Mayor

By: [Signature]
Richard Kleid, President Town Council

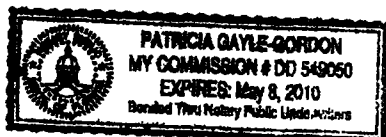
By: [Signature]
for: Peter B. Elwell, Town Manager

By: [Signature]
Name: Robert Matthews
160 Royal LLC, as President

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th day of July, 2007, by Jack McDonald, the Mayor of The Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and she did not take an oath.

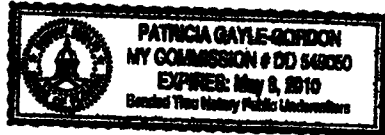


Patricia Gayle-Gordon
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th day of July, 2007, by Richard Kleid, the President of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.



Patricia Gayle Gordon
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th day of July, 2007, by Peter B. Elwell, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

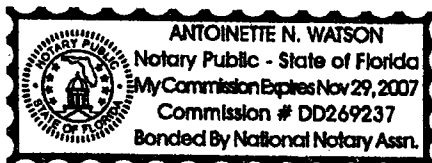


Patricia Gayle Gordon
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 23rd day of July, 2007, by Robert Matthews, 160 Royal LLC, as President. He is personally known to me and he did not take an oath.



Antoinette N. Watson
Signature of Notary Public
Printed Name of Notary Public
Commission No.: _____
Commission Expires: _____

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

By: John C. Randolph
John C. Randolph, Esquire

RECOMMEND APPROVAL:

7/25/07
Paul Castro
Paul Castro, AICP
Zoning Administrator

EXHIBIT A "SCHEDULE"

Lobby/Portico/Chire	
1001	General Requirement (Lobby/Portico/Chire)
2001	Demolition (Lobby/Portico/Chire)
3001	Concrete (Lobby/Portico/Chire)
14001	Conveying Systems (Lobby/Portico/Chire)
4001	Masonry (Lobby/Portico/Chire)
6001	Framing (Lobby/Portico/Chire)
7001	Thermal & Moisture Protection (Lobby/Portico/Chire)
8001	Doors & Windows (Lobby/Portico/Chire)
9001	Metals (Lobby/Portico/Chire)
15001	Mechanical, Plumbing & Fire P. (Lobby/Portico/Chire)
16001	Electrical & Low Voltage (Lobby/Portico/Chire)
8001	Finishes (Lobby/Portico/Chire)
10001	Specialties (Lobby/Portico/Chire)
11001	Special Equipment (Lobby/Portico/Chire)
13001	Special Construction (Lobby/Portico/Chire)
12001	Furnishing (Lobby/Portico/Chire)
New Structure	
1002	General Requirement (New Structure)
2002	Demolition (New Structure)
3002	Concrete (New Structure)
4002	Masonry (New Structure)
7002	Thermal & Moisture Protection (New Structure)
8002	Doors & Windows (New Structure)
6002	Framing (New Structure)
14002	Conveying Systems (New Structure)
10002	Specialties (New Structure)
13002	Special Construction (New Structure)
15002	Mechanical, Plumbing & Fire P. (New Structure)
16002	Electrical & Low Voltage (New Structure)
8002	Finishes (New Structure)
11002	Special Equipment (New Structure)
12002	Furnishing (New Structure)
Pool	
1003	General Requirement (Pool)
2003	Demolition Site, Excavation of New (Pool)
11003	Special Equipment (Pool)
6003	Metals (Pool)
9003	Finishes (Pool)
Start date 01AUG07 Finish date 02SEP08 Data date 01AUG07 Run date 18JUL07 Page number 1A © Primavera Systems, Inc.	

10003	Specialties (Pool)	Specialties (Pool)	
12003	Furnishing (Pool)	Furnishing (Pool)	
13003	Special Construction (Pool)	Special Construction (Pool)	
16003	Mechanical, Plumbing & Fire P. (Pool)	Mechanical, Plumbing & Fire P. (Pool)	
18003	Electrical & Low Voltage (Pool)	Electrical & Low Voltage (Pool)	
3003	Concrete (Shed Garble for Pool)	Concrete (Shed Garble for Pool)	
4003	Masonry (Pavers around Pool)	Masonry (Pavers around Pool)	
1004	General Requirement (Room Renovations)	General Requirement (Room Renovations)	
2004	Demolition (Room Renovations)	Demolition (Room Renovations)	
3004	Concrete (Room Renovations)	Concrete (Room Renovations)	
4004	Masonry (Room Renovations)	Masonry (Room Renovations)	
5004	Doors & Windows (Room Renovations)	Doors & Windows (Room Renovations)	
6004	Mechanical, Plumbing & Fire P. (Room Renov)	Mechanical, Plumbing & Fire P. (Room Renov)	
7004	Electrical & Low Voltage (Room Renovations)	Electrical & Low Voltage (Room Renovations)	
8004	Metals (Room Renovations)	Metals (Room Renovations)	
9004	Finishes (Room Renovations)	Finishes (Room Renovations)	
1004	Specialties (Room Renovations)	Specialties (Room Renovations)	
11004	Special Equipment (Room Renovations)	Special Equipment (Room Renovations)	
12004	Furnishing (Room Renovations)	Furnishing (Room Renovations)	
1005	General Requirement (Shed)	General Requirement (Shed)	
2005	Demolition (Shed)	Demolition (Shed)	
3005	Thermal & Moisture Protection (Shed)	Thermal & Moisture Protection (Shed)	
4005	Concrete (Shed)	Concrete (Shed)	
5005	Finishing (Shed)	Finishing (Shed)	
6005	Mechanical, Plumbing & Fire Protection (Shed)	Mechanical, Plumbing & Fire Protection (Shed)	
7005	Electrical & Low Voltage (Shed)	Electrical & Low Voltage (Shed)	
8005	Masonry (Shed)	Masonry (Shed)	
9005	Doors & Windows (Shed)	Doors & Windows (Shed)	
1005	Finishes (Shed)	Finishes (Shed)	
11005	Metals (Shed)	Metals (Shed)	
12005	Specialties (Shed)	Specialties (Shed)	
13005	Special Equipment (Shed)	Special Equipment (Shed)	
14005	Furnishing (Shed)	Furnishing (Shed)	

THE PALM HOUSE

■ Early bar
 ■ Progress bar
 ■ Critical bar
 ■ Summary bar
 ▲ Progress point
 ▲ Critical point
 ▲ Summary point
 ▲ Start milestone point
 ▲ Finish milestone point



STATE OF FLORIDA - PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office.

THIS DAY OF Aug, 2007
 SHARON R. BOCK
 CLERK & COMPTROLLER
 By [Signature]
 DEPUTY CLERK

TOWN OF PALM BEACH

Town Council Meeting Development Review on: November 13, 2020

Section of Agenda

Any Other Matters

Agenda Title

Path Forward - 800 S. County Rd.

Presenter

John C. Randolph, Town Attorney

ATTACHMENTS:

- **Letter Dated November 3, 2020 from John K. Shubin**

Via Email

November 3, 2020

John C. Randolph, Esq.
Town Attorney
Town of Palm Beach
360 S. County Road
Palm Beach, FL 33480
jrandolph@jonesfoster.com

Re: 800 South County Road, Palm Beach, FL (the “800 Property”)

Town Attorney Randolph:

Our firm is counsel, along with Harvey Oyer of Shutts & Bowen, for Cobey W. Rapaport, the owner of 790 South County Road (the “790 Property”). We are directing this correspondence to you on behalf of our client to address numerous concerns which Ms. Rapaport has with respect to the legal propriety of certain approvals and actions taken by the Town of Palm Beach which ran in favor of the owner of the abutting 800 Property. Without revealing all of the elements of our client’s potential claims, some of which have previously been articulated to you at public meetings, our client maintains that there were numerous public notice deficiencies (and deficiencies related to the application seeking the variances) which permeated the process and denied our clients (and related property owners) of their due process rights. Moreover, we maintain that the Town’s numerous public hearings addressing the alleged “reconsideration” of the originally approved variances reinforce the legal conclusion that the variances must be, and should be, voided by the Town and that a quasi-judicial hearing on the requested variances should be re-commenced with appropriate due process safeguards put into place to ensure a process that will allow our client to properly register her objections to the variances sought (and improperly obtained) by her neighbor.

It is our client’s first preference, however, to avoid unnecessary litigation with the Town and, in this spirit, our client would agree that, should the Town agree to void the variances and attendant permits issued to the 800 Property as a result of this deficient process, she would agree not to initiate a judicial proceeding against the Town and to mediate her dispute with her neighbor on an expedited basis prior to any new hearing on the variances. She would further agree to split the costs of a mediator, with her neighbor, to avoid any expense to the Town.

Our client possesses very reasonable concerns about the impact of the approved variances on her property that have not been addressed in the context of a quasi-judicial proceeding because of the undisputed notice deficiencies, and we would strongly urge you to advise the Town to rectify this deficient process. She seeks your assistance as a last resort before having to sue the Town to address a

process which has accrued solely to her neighbor's benefit. To be clear - should you acknowledge the need for a new hearing, without any prejudice to any party, she further represents to the Town that she will first attempt to resolve her concerns through expedited mediation. Last, before initiating this correspondence to you our client has sought to address her concerns directly with the owner of the 800 Property, and their agents, but it has been to no avail.

Thank you for your thoughtful consideration of this reasonable request.

Regards,



John K. Shubin
For the Firm

cc: Maura Ziska, Esq., Kochman & Ziska PLC (MZiska@floridawills.com)
Harvey Oyer, Esq.

Signature:

Email: jshubin@shubinbass.com