



TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE TOWN COUNCIL MEETING HELD ON WEDNESDAY, DECEMBER 16, 2009

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Wednesday, December 16, 2009, at 9:30 a.m., in the Emergency Operations Center, 355 South County Road, Palm Beach. On roll call, all of the elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Cunningham gave the invocation. President Rosow led the Pledge of Allegiance.

III. COMMENTS OF MAYOR JACK McDONALD

There were none.

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

There were none.

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

There were none.

VI. APPROVAL OF AGENDA

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve the Agenda. On roll call, the motion carried unanimously.

VII. PUBLIC HEARINGS

A. RESOLUTION NO. 120-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as Seagull Cottage, Located at 58 Cocoanut Row, Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach. [John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Resolution No. 120-09 by title, as printed above.

Responding to President Rosow, Historic Consultant Jane Day responded that proof of publication had been obtained.

Town Clerk Cunningham administered the oath to all those who would be providing testimony.

Jane Day provided a PowerPoint presentation and submitted a copy into the record, regarding the criteria of designating the Seagull Cottage, 58 Cocoanut Row, as a landmarked property.

Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond, to accept the Designation Report of the Seagull Cottage. On roll call, the motion carried unanimously.

Historic Consultant Day recognized the architect for the restoration of Seagull Cottage, Jacqueline Albarran of SKA Architects and Planners, who was in the audience.

President Pro Tem Coniglio expressed her appreciation to the community and the Palm Beach Preservation Foundation in their efforts to maintain the Cottage through the Landmarks Preservation Commission's process. She commented that the Royal Poinciana Chapel should be commended, thanked and congratulated for their hard work, and efforts in fundraising.

Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond, to approve Resolution No. 120-09, designating the property at 58 Cocoanut Row, as a landmark of the Town of Palm Beach on the basis that it met criteria 1, 3 and 4, of Section 54-161 of the Town of Palm Beach Code and the Landmarks Preservation Ordinance No. 2-84. On roll call, the motion carried unanimously.

Michael Ainsley, President of Royal Poinciana Chapel commented that he was happy that the Seagull Cottage was expanded and landmarked.

VIII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 20-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for a New Chapter 19 Relating to Unlicensed Contractors; Providing for the Adoption by the Town of Provisions of Section 489.127 Florida Statutes; Designating the Town's Code Enforcement Section to Enforce the Provisions of Said Statute Pursuant to its Terms; Providing for Code Enforcement Procedures and Penalties; Amending Chapter 2 of the Town Code Relating to Administration, at Article V Code Enforcement, Division 3 Procedure, Section 2-439 Citation Fine Schedule, So as to Include Class IV Violations of \$500.00; Providing That Violations of Section 19-1, Relating to the Adoption and Enforcement of Florida Statute Section 489.127 Relating to Unlicensed Contractors Shall Be Considered a Class IV Violation; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance No. 20-09 by title, as printed above.

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to adopt Ordinance No. 20-09. On roll call, the motion carried unanimously.

B. First Reading

1. ORDINANCE NO. 17-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 22, Businesses, Division 2, Window Treatment, Providing for Definitions; Providing Specifications for Window Treatments and Screening of Store Fronts in Commercial Zoning Districts; Providing Exceptions; Providing a Penalty; Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; Providing an Effective Date. [John S. Page, Director of Planning, Zoning, and Building] Deferred from the November 12, 2009, Town Council Meeting.

Planning, Zoning and Building Director Page commented that the changes regarding the window treatments discussed prior to today's meeting had been incorporated into the first reading of the ordinance.

Planning Administrator Lindgren provided a PowerPoint presentation regarding the specifications for window treatments and screening in store fronts.

Discussion occurred among the Council Members and staff. The following items were addressed:

- Exceptions for legal nonprofit institutions; for example, the Church Mouse.
- Drapes and curtains could be used as a backdrop for historic photos.
- Difficulties regarding staging without any benchmarks could be subjective for Code Enforcement.
- On pages 47 and 48 in the backup, in *Division 2. Window Treatment*, Section 22-57 is printed as: All transparent windows and doors...; in Section 22-58, the corresponding language should be changed to agree with Section 22-57...

Town Attorney Randolph read Ordinance No. 17-09 by title, as printed above.

Town Attorney Randolph advised that “not-for-profit” or “nonprofit” language was correct when describing charitable institutions, rather than non for profit, which was not correct.

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to approve on first reading Ordinance 17-09, as amended, that the language in Section 22-58 be changed to agree with the language, *All transparent windows and doors...*, in Section 22-57. On roll call, the motion carried unanimously.

IX. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours of Construction, at the Everglades Club, 405/415 Cocoanut Row (Per Letter Dated December 2, 2009, From Maura A. Ziska).

Town Clerk Cunningham administered the oath to all those who would be providing testimony.

Ex-parte communication was declared by:

- President Pro Tem Coniglio received a telephone call from Attorney Maura Ziska, advocating for her client.

Attorney Ziska, on behalf of the Everglades Club, provided an overview of a Request for Waiver of Hours of Construction. She indicated that the request was for 19 days of work on Worth Avenue, which exceeded the “no work on Worth Avenue” ordinance; the Everglades Club was

not located directly on Worth Avenue. The Worth Avenue Association gave their consent. Her clients agreed to all of the conditions set forth by staff.

Staff Comments:

Planning, Zoning and Building Director Page concurred with Attorney Ziska and outlined seven conditions contingent on the approval.

President Rosow stated that he was a member of the Everglades Club and earlier Town Attorney Randolph said that he could participate in the discussion, as he did not have any financial interest in the Club. Council Member Wildrick noted that he was also included in the same situation as President Rosow.

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to approve the Request for Waiver of Section 42-199, Hours of Construction, at the Everglades Club, 405/415 Cocconut Row, as amended by staff's conditions. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

- a. VARIANCE #28-2009 The application of L. Frank Chopin, Attorney for William and Norma Tiefel; relative to property commonly known as 159 Via Del Lago; described as lengthy legal description on file; located in the R-A Zoning District. Request approval of a variance to allow the placement of a swimming pool within the front yard area. The variance is to allow the reconfiguration of a swimming pool with a front yard setback of 26.5 feet in lieu of the 35 foot minimum required. The existing swimming pool has an 18.34 foot setback. [Attorney: L. Frank Chopin, Esq.]

Ex-parte communication was declared by:

- Council Member Kleid had a brief conversation with Attorney Frank Chopin, where he advocated his client's position.
- President Pro Tem Coniglio had a brief conversation with Attorney Frank Chopin, where he advocated for his client.

Attorney Chopin, on behalf of William and Norma Tiefel, provided an overview of the variance request, at 159 Via Del Lago. He displayed renderings in order to show what they were trying to achieve. He indicated that the hardship was that the zoning of the property had changed.

Staff Comments:

Responding to President Rosow, Zoning Administrator Castro noted that there were no objections from neighbors.

Mr. Castro said that the pool was being moved further back onto the property, and the pool was being moved around in order to have a more east-west orientation than north-south. The property was designed to have the pool at that location and was decreasing the nonconformity.

President Pro Tem Coniglio moved that Variance No. 28-2009, be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

- b. MODIFIED SPECIAL EXCEPTION #10-2009 WITH SITE PLAN REVIEW AND VARIANCES The application of Maura A. Ziska, Attorney for Palm Beach Orthodox Synagogue, Inc.; relative to property commonly known as 120, 122 & 126 North County Road; described as Lots 178, 177, 176 and the South 8.14 feet of Lot 175, according to the Plat thereof, on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida recorded in Plat Book 2, Page 6, less the East 15 feet of County Road Right of Way; located in the C-TS Zoning District. Request to Modify a Special Exception use by expanding the entry of the Synagogue by allowing a pediment over the middle building and shed roof over the north building that will extend 0.83 feet (10 inches) from the existing building facade. A Site Plan Review is requested as part of the special exception use to allow the Synagogue to expand their entry feature and place a pitched roof over the flat roof on the northern portion of the building. Site Plan Review is requested to allow the Synagogue to modify their entry feature and replace a portion of their roof from a flat roof to a pitched roof. Variances are requested to expand a non-conforming building by allowing the proposed pediment/architectural feature to increase the height; to allow a building identification sign and emblem to be at 16.75 feet and 17.8 feet in height (respectively) in lieu of the 15 foot maximum allowed; for a front yard setback of 3.87 feet in lieu of the 5 foot minimum required and 4.79 existing for the new pitched roof to be placed on top of the flat roof on the northern portion of the building; for the north side yard setback of 0 feet in lieu of the 5 foot minimum required for the new pitched roof and parapet that will be placed in the flat roof on the northern portion of the building; for the overall height to be 24.1 feet in lieu of the 20 foot maximum allowed for the new pitched roof over the northern building. [Attorney: Maura A. Ziska, Esq.] [Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the landmark property. Carried 7-0.]

1 Ex-parte communication was declared by:

- 2
- 3 • Council Member Diamond said that he is the Director of the Palm Beach Orthodox
- 4 Synagogue, Inc., but he did not receive any financial consideration from the Synagogue.
- 5 Town Attorney Randolph advised Council Member Diamond that because he is on the
- 6 Board, he should recuse himself.
- 7
- 8 • President Pro Tem Coniglio had a telephone call from Attorney Ziska, who advocated for
- 9 her client.
- 10

11 Council Member Diamond filed form 8B and left the dais.

12

13 Attorney Ziska provided an overview of the request. She indicated that it was a landmarked

14 building and currently nonconforming to today's zoning code; any improvements would make it

15 an expansion of a nonconforming building.

16

17 Arthur Chabon, architect for the project, presented the drawings.

18

19 Jacqueline Albarran, SKA Architects and Planners, addressed a previous objection from one of

20 the neighbors, who had since withdrawn the objection.

21

22 Staff Comments:

23

24 Zoning Administrator Castro made several of the following comments:

25

- 26 • Landmarks recommendation was that the implementation of the proposed variances
- 27 would not cause a negative architectural impact on the landmarked property.
- 28
- 29 • The hardship needed to be demonstrated.
- 30
- 31 • The change in roof style was the reason behind the setback variances.
- 32
- 33 • The signs in the front of the entry feature were being modified and required a variance
- 34 because it exceeded the Town's maximum height allowed.
- 35
- 36 • There was discussion regarding the naming of the building and putting the person's name
- 37 on the building; the Landmarks Preservation Commission would have preferred a plaque,
- 38 but no action was taken on that issue. There was precedence for having names on the
- 39 buildings.
- 40
- 41 • Staff's other concern was calling it a learning center, and staff wanted to ensure that there
- 42 were no school type activities, as there was no approval from the Town Council to
- 43 operate a private school.
- 44

45 Council Member Wildrick said he was impressed with how the organization worked and how it

46 worked with the community to resolve the issues.

President Pro Tem Coniglio agreed with Council Member Wildrick and asked that the organization be consistent with staff's request that it not be a learning center. She said that the renovation was a beautiful job and applauded Ms. Albarran and the Landmarks Preservation Commission for being adaptable to buildings that were considered history for the Town.

Zoning Administrator Castro added that the Synagogue would need to work with the Fire Marshal to install sprinklers and provide a Knox box externally to provide access for Fire-Rescue in case of an emergency.

President Pro Tem Coniglio moved that Modified Special Exception #10-2009 with Site Plan Review and Variances, be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met, including conditions set forth by staff. Council Member Wildrick seconded the motion. On roll call, the motion carried 4-0, as Council Member Diamond had recused himself.

3. Old Business- More Than 15 Minutes

- a. VARIANCE #26-2009 The application of James C. Paine, Jr., Esquire, Attorney for Eugene R. Fagan III; relative to property commonly known as 135 Root Trail; described as the west 12 feet of Lot 3 and all of Lot 4, Roots Subdivision, according to the plat thereof, recorded in Plat Book 13 Page 35 of the public records of Dade County, Florida and recorded in Plat Book 1, Page 22, of the public records of Palm Beach County, Florida, said lands lying and being and situate in Palm Beach County, Florida; located in the R-C Zoning District. Request approval of variances to modify and renovate an existing two story, flat roof, eight unit apartment building and create two single family dwelling units within the approximate footprint of the existing building. The existing building consists of two, four unit sections connected by an exterior stair and breezeway. The renovation will comply with the requirement that no more than 50% of the structure be demolished so that the building footprint, which is nonconforming, may remain. They are proposing a change from a flat to a pitched roof which require the following variances to increase the height and overall height of the existing building within the required setbacks: (1) a 4.2 foot existing front yard setback in lieu of the 25 foot minimum required; (2) a 1.5 foot existing east side yard setback in lieu of the 15 foot minimum required; (3) a 2.2 foot existing west side yard setback in lieu of the 15 foot minimum required; (4) a 2.8 foot existing rear yard setback in lieu of the 15 foot minimum required. [James C. Paine, Jr., Esq.] [ARCOM Recommendation: Implementation of the proposed variance does not cause negative architectural impact. Carried 4-3; Ms. Diver, Mrs. Vanneck and Mr. Feldkamp dissenting.] Deferred from the November 12, 2009, Town Council Meeting (Special Circumstances).

Ex-parte communication was declared by:

- 1 • Council Member Diamond had brief conversations in the past on behalf of the applicant,
2 and attended the ARCOM meetings.
- 3
- 4 • President Pro Tem Coniglio had seen the presentation several times, attended the
5 Architectural Commission (ARCOM) meeting, spoke to a neighbor, and visited the site.
- 6
- 7 • Council Member Kleid attended the ARCOM meetings.
- 8

9 Attorney Timothy Hanlon provided an overview of the request for a variance for Eugene R.
10 Fagan, III, at 135 Root Trail. He read a letter of support, into the record, from neighbor Denis
11 Coleman.

12
13 Attorney James Paine and owner Mr. Eugene Fagan III presented the drawings.

14
15 Staff Comments:

16
17 Zoning Administrator Castro made several of the following comments:

- 18
- 19 • The reason for not having more variances was because they were not demolishing more
20 than 50% of the volume of the building.
- 21
- 22 • By decreasing from 8 units to 2 units, it reduced density and increased two on-street
23 parking spaces.
- 24
- 25 • Facade improvements on the building relative to stucco improvements made it more
26 aesthetically pleasing.
- 27
- 28 • It would be a large improvement to the property, and the four variances being requested
29 were necessary.
- 30
- 31 • In order to meet the height requirements in the code, some of the parapets would be
32 shaved off in order to put the roof trusses on the parapet, and there would be some
33 engineering improvements on the trusses and the roof.
- 34
- 35 • The Fire Marshal submitted comments that the EPA requirements for code would have to
36 be met and that the applicant would have to work with the Fire Marshal at the time of
37 obtaining the building permit to ensure the improvements were made.
- 38

39 **Council Member Diamond moved that Variance No. 26-2009, be granted and found, in**
40 **support thereof, that all of the criteria applicable to this application as set forth in Section**
41 **134-201(a), items 1 through 7 had been met, including staff recommendations that the**
42 **Environmental Protection Agency's (EPA) requirements had been met. Council Member**
43 **Wildrick seconded the motion. On roll call, the motion carried unanimously.**
44
45

4. New Business- More Than 15 Minutes

- 1
- a. VARIANCE #29-2009 The application of Maura A. Ziska, Attorney for Liza B. Risin; relative to property commonly known as 206 Seaspray Avenue; described as Lots 457 and 459, POINCIANA PARK SECOND ADDITION, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 6, Page 86; located in the R-B Zoning District. Request approval of a variance to allow construction of a 796 square foot two story addition for a garage and master bedroom with a west side yard setback of 5.2 feet in lieu of the 15 foot minimum required. [Attorney: Maura A. Ziska, Esq.]

2
3 *This item was heard after item IX.C.4.b., as the architect was not present.*

4
5 Ex-parte communication was declared by:

- 6
- 7 • Council Member Diamond received a telephone call from Adam Falkoff, on behalf of the
 - 8 applicant, advocating the applicant's position.
 - 9
 - 10 • President Pro Tem Coniglio had a brief conversation with Attorney Ziska, a telephone
 - 11 conversation with Oliver Quinn, Katy Pressly, Mary Pressly, and the owners of the
 - 12 surrounding property.
 - 13

14 Responding to Town Attorney Randolph, President Pro Tem Coniglio related that Attorney

15 Ziska advocated for her client, Liza Risin, Mr. Quinn and the Pressly's were concerned about the

16 hardship and the impact the Variance would have upon their properties.

17

18 Attorney Ziska, on behalf of Dr. and Mrs. Risin, provided an overview of the request.

19

20 Architect Michael Perry presented the plans, and responded to questions and comments by the

21 Council.

22

23 Council Member Diamond indicated that part of the condition of approval would be that the

24 garage would be used for at least one car and not storage only.

25

26 Staff Comments:

27

28 Zoning Administrator Castro made several of the following comments:

- 29
- 30 • The reason the neighbor was over the cubic content ratio (CCR) was because many years
 - 31 ago when the Sea streets were developed, the setbacks were more flexible.
 - 32
 - 33 • Many of the houses today were nonconforming, as they were built prior to the existing
 - 34 code.
 - 35

- In this situation, the house was built to the east side of the property in order to accommodate a driveway going back to a carriage house.
- The owner was requesting to add a two-story addition with a five foot setback on a 52 foot wide lot, a very small piece of property, unlike the neighbor to the east, where they were asking for a very diminimus variance for a small cottage, one-story additions, and very unassuming.
- This was a much larger addition, and staff was not sure of the hardship for such a variance request on this lot.

Attorney Ziska responded to questions and comments by the Council and staff.

Town Clerk Cunningham administered the oath to Dr. Risin, who would be providing testimony.

Dr. Risin commented that his reason for adding a garage was an issue of safety for his children, and it would not be used for storage.

Architect Albarran, for the record, on behalf of Mr. Quinn, related his concern, which was explained in Mr. Castro's comments regarding the houses setbacks being to one side to allow for a driveway, and that the proposed house was obtrusive.

Motion made by Council Member Kleid to defer Variance #29-2009 to the January 13, 2010, Town Council Meeting. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

President Pro Tem Coniglio commented that the Town Council was not in a position to decide what architecturally fit with the neighborhood and the client.

Responding to Attorney Ziska, President Rosow noted that it would be acceptable to have an informal review at ARCOM, and that the Town Council would not decide if the proposed plan was architecturally appealing, but whether or not the Variance was appropriate.

Amended motion made by Council Member Kleid to defer Variance #29-2009 to the March Town Council Meeting. The seconder agreed.

Attorney Ziska indicated that the applicant could be ready by the February Town Council Meeting.

Council Member Kleid further amended to defer Variance #29-2009 to the February Town Council Meeting and in the interim it would be referred to ARCOM for their consideration. The seconder agreed.

Responding to President Pro Tem Coniglio, Town Attorney Randolph indicated that the variance request was deferred with the direction to restudy. It had not been deferred so that the application would come back.

Upon roll call, the motion carried unanimously.

- b. VARIANCE #30-2009 The application of Maura A. Ziska, Attorney for St. George Investments, LLC (Wayne Ducote); relative to property commonly known as 1470 North Lake Way; described as lengthy legal description on file; located in the R-A Zoning District. Request approval of variances to (1) construct a dock and associated appurtenances a maximum of 244 feet west of land in lieu of the 150 foot maximum allowed; (2) for a side yard setback for triple dolphin piles to be 15 feet from the south property line and 15 feet from the north property line in lieu of the 25 foot minimum required; (3) to allow an accessory structure (dock) to be built on a parcel of land that has no principal structure. [Maura A. Ziska, Esq.]

President Rosow recused himself since this was his neighbor and he may have financial loss or gain. He filed form 8B and left the dais after passing the gavel to President Pro Tem Coniglio.

Ex-parte communication was declared by:

- Council Member Diamond had a telephone conversation with Attorney Ziska, who called to explain her client's point of view, and he received a letter from Attorney Hanlon in opposition to the application.
- Council Member Wildrick that Mr. Ducote called him to explain the project, and Mr. Wildrick suggested that Mr. Ducote call the neighbors to ensure there were no disagreements.
- President Pro Tem Coniglio talked with Attorney Ziska, walked the site and had a conversation with Attorney Hanlon regarding his concerns of his property owner.

Attorney Ziska provided an overview of the applicant's request. The hardship was the lay of the land which contained a recessed alcove.

Staff Comments:

Zoning Administrator Castro made several of the following comments:

Paul Castro said the property was located in a cove, as the properties on either side jutted out.

- The most difficult of the variances, for staff, was building a dock without a house.
- There were issues in the past of people docking their boats and using the property for their own recreational needs before the home was built.

- 1 • The code did not allow any accessory structures without a principal structure, which was
- 2 one of the variances.
- 3
- 4 • The second variance related to how far into the intracoastal the applicant wanted the dock
- 5 to extend, which was relative to the bathometric depths, and how big a boat that the
- 6 property owner wanted. The dock was designed for a much larger boat, as well as some
- 7 smaller boats with other lifts, which could be seen by the dolphin piles located further
- 8 outside of the dock.
- 9
- 10 • Not knowing the size of the boat was a concern for the neighbors.
- 11
- 12 • Staff was not sure of the hardship on the side yard setbacks, as the applicant would have
- 13 to speak to it. The setback variances were related to how big a boat the applicant may
- 14 want to place in the future.
- 15

16 Discussion occurred among the Town Council Members, Attorney Ziska and Attorney Hanlon
17 regarding several of the following comments:

- 18
- 19 • The long length of the dock.
- 20
- 21 • Consent was needed from the neighbors.
- 22
- 23 • The adjacent neighbors consented to the dock.
- 24
- 25 • Ogden Phipps and Susan Markin objected.
- 26
- 27 • Mr. Phipp's view would be compromised if there was a boat located at the 150' length of
- 28 the dock.
- 29
- 30 • Mr. Wilson, the adjacent neighbor, had submitted an application for a similar length
- 31 dock, which would compromise their view, and this application would be used as a
- 32 precedent if approved today.
- 33
- 34 • There was no hardship related to the pilings and intrusion into the side setbacks.
- 35
- 36 • No hardship related to use without a principal residence.
- 37
- 38 • By law, residents were not entitled to a view.
- 39

40 Responding to Attorney Hanlon's statement that the variance was unjustified by legal analysis,
41 Attorney Ziska indicated that there was a right to a variance when the hardship was the shallow
42 water and there was a precedence of docks because of the sea grass and shallow water, and the
43 topography of the land.

Council Member Diamond moved that Variance #30-2009 be denied for the reason that the application did not meet the criteria set forth in Section 134-201(a), items 1 through 7. Council Member Wildrick seconded the motion.

Attorney Ziska requested a deferral in order to work with the neighbors.

Substitute motion made by Council Member Kleid, to defer Variance #30-2009 to the January 13, 2010, Town Council Meeting. Council Member Wildrick seconded the motion.

Motion to deny was withdrawn by Council Member Diamond.

Upon roll call, the motion carried 3-1, with President Pro Tem Coniglio dissenting, and President Rosow recusing himself.

- c. SPECIAL EXCEPTION #16-2009 The application of Dana Schechtman, Managing Member of DPS Fit LLC for Three Pearls, Ltd.; relative to property commonly known as 235 Sunrise Ave., Suite C-23 through C-26; described as Palm Beach Hotel Condominium Units C-23 through C-26; located in the C-TS Zoning District. Request a Special Exception to allow the operation of a 3,099 gross leasable sq. ft. health and fitness studio, spa and med-spa ("Essentio Fitness Club and Spa"). Since the proposed space is in excess of 2,000 sq ft of gross leasable area, the new tenant is required to obtain Town Council approval and a finding that the proposed use is town serving. [Attorney: Dana Schechtman, Managing Member of DPS Fit LLC]

Ex-parte communication was declared by:

- Council Member Diamond received a letter from the Palm Beach Hotel, which was sent to all the members of the Town Council.
- President Pro Tem Coniglio had a conversation with Dick Spilberg, president of the condominium association.

Tara Pearl, owner of Three Pearls, Ltd., introduced applicant and Attorney Dana Schechtman, who provided an overview of the request.

Staff Comments:

Zoning Administrator Castro made several of the following comments:

- Previously, a trainer's gym was located in the Palm Beach Hotel, who was not allowed to have music and only one television in the tenant space.
- Typically gyms open early in the morning and stay open later in the evening, as people need to attend before and after work hours.

- Staff's concern was relative to the music and the noise created from the gym; a remedy for that would be to allow club members' the use of walkmans or headphones and the personal training would be without music where it would not emanate any noise or vibration.

- Staff was not sure what was being proposed regarding the Med Spa.

Randolph Inman, Community Association Manager for the Palm Beach Hotel Condominium Association, stated that the Association did not have an objection to the gym. He noted that the Association's objection was an issue with the landlord, which was still pending, and the lease would not be approved until the matter was cleared up. He asked that the request be deferred to a future meeting.

Ms. Pearl responded that the request was a zoning issue and not relevant to the issue with the association manager.

Town Attorney Randolph noted that the application related to the Special Exception and whether or not it was Town serving. If there was a dispute between the two parties, it would need to be resolved between them.

Discussion occurred among the Town Council Members regarding deferring the item until matters were cleared between the Association and the landlord.

Ms. Pearl and Attorney Schechtman responded to questions and comments from the Council.

Responding to Council Member Kleid, Town Attorney Randolph explained the Council's position with a Special Exception, vis-a-vis a Variance. The gym area exceeded 2,000 square feet and the applicant needed to prove that they were Town serving.

Motion made by Council Member Wildrick that Special Exception No. 16-2009 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met.

Discussion occurred among the Council Members regarding a possible noise problem that could be created by allowing the gym to be in operation.

Town Clerk Cunningham administered the oath to Dick Spilberg.

Dick Spilberg, president of the Palm Beach Hotel Condominium Association, provided clarification on several issues between the Association and the landlord, Ms. Pearl.

Zoning Administrator Castro stated that the applicant needed to meet all of the criteria in the code, which included impacts to the neighbors, which was also Town serving. He added that the applicant could be required to return to the Council with Town serving documentation at a later date.

Responding to Mayor McDonald, Mr. Spilberg indicated that he could control the starting time, and that there was no Board meeting where the members expressed their opinion regarding the gym. Mayor McDonald informed him that Florida Statute 718 did not allow polling the Board members, as opposite opinions had been discussed.

Town Attorney Randolph provided further clarification regarding Town serving criteria and also the criteria set forth in the Town Code, which the Council had the right to impose conditions.

Responding to Council Member Kleid, Attorney Schechtman stated that he had no objection to changing his hours to open at 7:00 a.m.

President Rosow commented that while using the television, earphones should be used or use of closed caption, and that noise and hours of operation should be controlled by the Council, in order to not change the quality of life of the residents in the Hotel.

Discussion occurred among the Council regarding the landlord and the Association's differences being separate from the noise issues and hours of operation; also the Council discussed deferring the item until the lease was approved.

Attorney Schechtman noted that he discussed his business interactions with the residents, which did not include disturbing the residents, as they were also his clients. He stated that he would do everything physically possible to ensure that the residents' concerns were addressed.

Motion made by Council Member Diamond to defer Special Exception No. 16-2009 until the January 13, 2010, Town Council Meeting in order to report on the progress of the DPS, LLC. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

Council Member Kleid voted yes, but indicated that he was not sure much progress could be made, as the Association and the landlord were in absolute opposing positions.

Attorney Schechtman stated that as a business owner, he was responsible for his employees, clients, and members and that by deferring the issue he could not successfully open his business. He requested a conditional approval pending the Association's approval.

Responding to Council Member Kleid, Attorney Schechtman replied that he did not expect to open up the business without the Association's approval.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to reconsider the previous motion regarding deferral of Special Exception No. 16-2009. On roll call, the motion carried unanimously.

President Pro Tem Coniglio expressed concern regarding the public leaving after the previous motion was approved.

Mayor McDonald noted that the only person who left was Mr. Spielberg and that his interest would be protected in the motion.

Motion made by Council Member Diamond to conditionally approve Special Exception No. 16-2009, subsequent to the approval by the Board of Directors of Palm Beach Hotel Condominium Association.

Amended motion made by Council Member Diamond to conditionally approve Special Exception No. 16-2009, subsequent to the approval by the Board of Directors of Palm Beach Hotel Condominium Association, including: listening to television, radio, or music of any kind would require the use of earphones; the hours of operation as determined by the Association; return to staff with proof of Town serving documentation within six months of the opening of the business and provide a copy of the lease approval. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

D. Other

None

X. ANY OTHER MATTERS

There were none.

XI. ADJOURNMENT

There being no further business, the Town Council Meeting of December 16, 2009, was adjourned at 11:44 a.m.

APPROVED:



David A. Rosow
Town Council President

ATTEST:



Joanna Cunningham
Town Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Diamond William J		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Town Council	
MAILING ADDRESS 220 Wells Road		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY Palm Beach	COUNTY Palm Beach	☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY NAME OF POLITICAL SUBDIVISION: Palm Beach Town Council	
DATE ON WHICH VOTE OCCURRED 12/16/07		MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

RECEIVED

DEC 16 2007

TOWN CLERK

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, William J. Diamond, hereby disclose that on December 16, 2009:

(a) A measure came or will come before my agency which (check one)

- ☒ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of _____, by
whom I am retained; or
- ☐ inured to the special gain or loss of _____, which
is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

SPEC Exp. #10-2009 w/SPR & Variances

I serve on the Board on the property Discussed

Date Filed

[Signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>Rosou David</i>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Town Council</i>	
MAILING ADDRESS <i>1460 N. Lake Way</i>		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY <i>Palm Beach</i>	COUNTY <i>Palm Beach</i>	☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY	
DATE ON WHICH VOTE OCCURRED <i>12/14/07</i>		NAME OF POLITICAL SUBDIVISION: <i>Palm Beach Town Council</i>	
		MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

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DEC 16 2009
TOWN CLERK

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, David A. Rosen, hereby disclose that on December 16, 2009:

(a) A measure came or will come before my agency which (check one)

- ☒ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of _____, by
whom I am retained; or
- ☐ inured to the special gain or loss of _____, which
is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Variance # 30-2009
Neighbor to property & may have financial loss or gain

12/16/09
Date Filed

David A Rosen
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.