

November 1, 2023

James G. Murphy
Assistant Director
Planning, Zoning & Building Department
360 S. County Road
Palm Beach, FL 33480

Re: C-TS Zoning Text Amendment
Zoning Case Number: ZON-23-040

Dear Mr. Murphy,

Attached is our revised language for the proposed C-TS zoning text amendment, which will allow for the Town to consider the approval of arcades/colonnades to extend off of private property and into rights-of-way.

The proposed C-TS zoning text amendment was brought to Town Council on April 4, 2023, where the Town Council gave an informal approval for the amendment to proceed to formal review by the Planning and Zoning Commission and Town Council. At the meeting, Public Works Director Paul Brazil voiced support of the zoning text amendment, provided safeguards are included in the language of the code.

The proposed C-TS zoning text amendment was originally drafted to include language addressing initial Public Works concerns, including that safe sight visibility triangles or clear zones not be obstructed, that sidewalk widths within an arcade or colonnade be maintained or increased if needed to meet Town requirements, and that an arcade or colonnade cannot interfere with vehicular traffic or parking.

The proposed C-TS zoning text amendment was brought to the Planning and Zoning Commission on April 27, 2023, where the Commission voiced support for the concept of allowing arcades and colonnades, but deferred the project for restudy of the proposed zoning text amendment language so that it addresses usable space above an arcade or colonnade, maintenance, indemnification, and whether the use of the public right-of-way would be done through easement or sale of property. At his meeting, additional comments from Public Works were provided, and included in their recommendation that an applicant purchase the right-of-way

from the Town to place the arcade or colonnade within, or execute a long term lease with the Town that includes a hold-harmless agreement indemnifying the Town, and include the Town as an additional insured party on the owner's general liability insurance policy.

Per the comments received at the April 27, 2023 Planning and Zoning Commission, the proposed C-TS zoning text amendment was revised to include that any potential usable space above an arcade or colonnade is reviewed and approved by Town Council. Furthermore, any approval of an arcade or colonnade over sidewalks or other rights-of-way must include the execution of a license or easement agreement reviewed and approved by the Town Attorney and the Director of Public Works. And any agreement that is part of an approval for an arcade or colonnade to extend into Town property shall require the property owner to obtain adequate insurance that names the Town as an additional insured party, and that the Town shall be held harmless and indemnified for any injury occurring on Town property.

The proposed C-TS zoning text amendment was brought back to the Planning and Zoning Commission on October 17, 2023, where the Commission again voiced support for the concept of allowing arcades and colonnades, but deferred the project for restudy, and asked that the code require the second floor to be stepped back, and that the code specify that maintenance of an arcade or colonnade, including the sidewalk, will be responsibility of the applicant, and at the expense of the applicant. The Commission also voiced concern that perhaps the special exception criteria allowing for an arcade or colonnade did not provide Town Council the ability to deny a requested arcade or colonnade if they did not feel it was appropriate.

Per the comments received at the October 17, 2023 Planning and Zoning Commission, the proposed C-TS zoning text amendment was revised to include language that the vertical wall face for any floor above the first floor shall be setback at least five (5) feet from the vertical elements on the first floor (see revised criterion #4). Furthermore, language was added that specifies that an applicant will bear the responsibility and expense of maintenance of the sidewalks and arcades/colonnades within the right-of-way (see revised criteria #7 and #11). Finally, a new and general criterion was added to the proposed code language that allows Town Council to deny an arcade or colonnade within a right-of-way if the Town Council determines that the arcade or colonnade is not in harmony with the code, or is in any way injurious or detrimental to the welfare of the public (see new criterion #1). This new criterion further allows Town Council to require whatever conditions they deem necessary if they decide to approve an arcade or colonnade within a right-of-way. This new criterion gives Town Council enormous latitude in applying whatever conditions of approval they deem necessary, or even to deny a proposed arcade or colonnade in a right-of-way if they decide that it is simply not appropriate.

The proposed C-TS zoning text amendment continues to provide for extensive oversight by the Town regarding arcades and colonnades extending off of private property and into a right-of-way, and include Architectural Commission or Landmarks Preservation Commission review and

approval of the design of the arcade or colonnade, and Town Council review and approval of a Special Exception permitting the arcade or colonnade within the right-of-way.

We look forward to proceeding to the meeting date with the Planning and Zoning Commission on November 8, 2023, and then on to Town Council at their next available meeting. Please let us know if you have any questions or require any additional information.

Sincerely,

John Lindgren

John Lindgren, AICP

C-TS PROPOSED TEXT AMENDMENT REVISIONS

Sec. 134-1114. Same—Exceptions.

(e) Within the C-TS town-serving commercial district, arcades or colonnades may be constructed over sidewalks or ways after review and approval from the Town Council as a special exception use, provided that all of the following criteria are met:

(1) The proposed arcades or colonnades are in harmony with the general intent and purpose of this chapter, and will not be injurious to the area involved or otherwise detrimental to the public welfare, as determined by the Town Council. In granting approval of an arcade or colonnade, the Town Council may prescribe appropriate conditions and safeguards in conformity with this chapter.

(2) The proposed arcade or colonnade shall not project nearer than three feet to the face of the street curbline;

~~(23)~~ The proposed arcade or colonnade shall not project more than ten feet, but not less than seven feet, from the exterior wall as measured from the exterior face of the building to the exterior face of the arcade or colonnade;

~~(34)~~ No above-ground structural support for the proposed arcade or colonnade shall be nearer than three feet to the face of the curb, and the vertical wall face for any floor above the first floor shall not be nearer than eight feet to the face of the curb, as measured horizontally;

~~(45)~~ The proposed arcade or colonnade shall have a minimum of nine feet of vertical clearance;

(~~56~~) Review shall be conducted by the Town's Public Works Department to confirm that the arcades or colonnades do not obstruct safe sight visibility triangles and do not otherwise interfere with vehicular traffic or parking, including, but not limited to, entering and exiting vehicles from adjacent streets;

(~~67~~) Sidewalk widths within arcades and colonnades shall be maintained or increased if needed per Town requirements at the expense of the applicant;

(~~78~~) Enclosed usable space shall be permitted above the arcade, and within the right-of-way, subject to review and approval by the Town Council;

(~~89~~) The design of arcades or colonnades shall be subject to review and approval by the architectural commission or the landmarks preservation commission, whichever has jurisdictional review;

(~~910~~) The approval of any colonnade or arcade over sidewalks or other public rights-of-way shall be conditioned upon execution of a license or easement agreement to be reviewed and approved by the Town Attorney and the Director of Public Works; and

(~~1011~~) Any easement agreement drafted pursuant to this Section shall require, at minimum, adequate insurance coverage naming the Town as an additional insured party. The agreement shall also hold the Town harmless and provide for indemnification to the Town for any injury occurring on Town property, and shall require the applicant

to maintain the arcade or colonnade in a structurally sound and safe condition at the applicant's sole expense.