

TOWN OF PALM BEACH

Information for Town Council Meeting on: December 11, 2024

To: Mayor and Town Council

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



Cc: Kirk Blouin, Town Manager & James Murphy, Asst. Director of PZB

Re: Construction That Deviates From The Approved Permit Plans

Date: November 21, 2024

DISCUSSION:

One of the continuing and problematic issues for the Planning, Zoning & Building Department is when a construction project deviates from the approved design plan. Arcom and Landmarks often spend a great deal of time and effort to approve construction projects, many times with significant neighbor input. Projects are approved and permitted with specific plans. But the owners deviate from the approved plans and install unapproved and unpermitted features or exceed the scope of the approved work. Often these deviations are not noticed until it is after the fact or at the end of the project (if the owner or contractor are using private providers) when the now-mandatory design inspections are called for. The unapproved and unpermitted work creates the need for further design review by staff, involvement with the Chairs of Arcom or Landmarks, and sometimes by the full design Commissions. Staff cannot issue the final inspections and certificate of occupancy until the Town approves the deviations. At times even zoning variances are required at the end of a project for height or setback encroachments resulting from the unpermitted construction work.

Most of the these “after the fact” approvals relate to driveway layout, mechanical equipment, site walls, screening walls around equipment, pool and water feature locations, and building and structure setbacks.

Staff has tried various remedies to stop these unapproved construction projects without much success. Contractors often cave to the pressure of an owner’s request to make a construction change without going through the proper zoning and design review process. Private providers generally inspect to code but do not hold their clients to strict plan compliance. Arcom, Landmarks and Town Council have all seen these types of projects over the past several years. Currently there is no penalty for these deviations, only a delay in obtaining a final inspection or certificate of occupancy.

During a recent staff discussion, the concept of making construction that deviates from the approved permit plans a “Strike” under the “3 Strike” program. The idea would be once our

inspection staff determines that a portion of the project was built in violation of the approved permit set of plans, that a “strike” would be issued.

The “3 Strike” program has proven to be a very effective tool at controlling construction site problems, as no contractor or owner would want their project shut down for a period of time and require Town Council relief to restart the project.

If the Town Council agrees, the attached code amendment could be placed in an ordinance and enacted at upcoming meetings.

I would also suggest that the Master Fee Schedule be amended to place a double fee (two times the normal fee) on any design application that intends to obtain permission for construction work that deviates from the approved plans for work that has already occurred (After the Fact Application).

This matter is before you for discussion. If acceptable, we could return with an ordinance next month for the code change and a resolution to set the double fee.

ARTICLE VII. - CONSTRUCTION ~~SITE~~ MANAGEMENT

Sec. 18-351. - Maintenance of construction sites and construction work to match Town-approved building plans.

Property owners and their contractors shall build in accordance with the Town-approved permit plans, based upon approval by the Architectural Commission or the Landmark Preservation Commission and shall be responsible for the implementation, installation, and maintenance of all required demolition and construction screening, perimeter landscaping and screening, on-job toilet facilities, truck logistics and staging, and other required site matters required by this chapter (see Sections 18-2, 18-3, 18-86, 18-111, and 18-201).

Any Town-documented lack of required item(s), construction with features or elements that deviate from the Town-approved permit plans, or lack of maintenance of the item(s) shall be a violation of this chapter and each violation will constitute one strike under the "3 Strike Rule", which is detailed in the Town Right of Way Manual, Chapter XII, Miscellaneous Provisions, Construction Parking & Construction Site Management. Compliance with the Town Right of Way Manual is mandated by Section 18-111.