

TOWN OF PALM BEACH

Information for Town Council Meeting on: October 10, 2018

To: Mayor and Town Council

From: Josh Martin, Director of Planning, Zoning & Building

Re: Appeal of Administrative Decision That There is Only One Residential Unit Allowed at 206 Phipps Plaza

Date: September 28, 2018

STAFF RECOMMENDATION

Staff recommends that the Town Council uphold Staff's administrative decision that there is only one residential dwelling unit located at 206 Phipps Plaza.

BACKGROUND

On August 1, 2018, Staff was contacted by a perspective buyer of 206 Phipps Plaza to do a site visit and affirm the property owner's assertion that the subject property consisted of two residential units (first floor and second floor) and an office unit (first floor). The intent was to establish that the subject property was nonconforming to residential density and could be grandfathered to have two dwelling units in the Multi-Family Moderate Density Future Land Use Designation of the Town's Comprehensive Plan and the R-C (Medium Density Residential) Zoning District. The subject property with two dwelling units would not meet the Town's maximum density requirements for the Future Land Use Designation or the Zoning District, which is a maximum six dwelling units per Palm Beach acre. The two dwelling units require 13,333 square feet of land and the subject property is only 11,761 +/- square feet in area.

On August 6, 2018, after the site visit and property record research, Staff made an administrative zoning determination that the subject property is not grandfathered for two residential units. Based on research in the analysis below, the subject property is a single-family dwelling unit and a commercial office space. Staff's written determination and associated correspondence is attached as Exhibit A.

On August 30, 2018, Mr. David Klein, attorney representing, John K. Volk, filed an appeal of Staff's administrative determination that the residential element of the property located at 206/207 Phipps Plaza was not grandfather for two residential dwelling units. His justification for the appeal is in attached Exhibit B.

ANALYSIS

The subject property is a combination of two properties that were combined by Mr. John Volk in 1957 when Mr. John Volk purchased the two unit apartment building known at that time as 207 Phipps Circle (Exhibit C). At that time, he had his office on the first floor of 206 Phipps Circle and his residential unit above. That same year he connected both buildings with a passageway (Exhibit D). In 1959, Mr. Volk obtained permits to add a porch in the existing courtyard; a second floor balcony; and a garden wall and a new swimming pool as “single-family accessory” to the west of the combined buildings. The building permits all state that 206 Phipps Circle (Plaza) was a single-family residence (see Exhibit E). In 1970, Mr. Volk obtained a variance to add a bay window and enclose the interior courtyard. He also added an elevator from the enclosed interior courtyard to the second floor. That zoning application states the subject property is a “single family dwelling” and the associated building permit states that the property is a “Dwelling and office” (see Exhibit F). There also is a letter dated October 19, 1977 regarding removal of the existing roof over the patio area at pool side at “John Volk’s, 206 Phipps Plaza.”

Mr. Klein references 207 Phipps Plaza as being the downstairs residential unit. While there may have been a 207 Phipps Plaza in 1956 and 1961 as mentioned in his appeal, there no longer is a 207 Phipps Plaza address. That address was eliminated many years ago when both buildings were combined and being used by John L. and Jane Volk. He also mentions that the John L. Volk Foundation was also housed out of 207 Phipps Plaza in 2003. There is no record of an occupational license or business tax receipt for the John L. Volk Foundation, Inc., and the Town has no knowledge of that business being located at 207 Phipps Plaza. Since Section 134-944 prohibits any type of commercial or quasi-commercial use, the Town would not have allowed the Foundation to operate at that location. Similarly, the Air BNB use he also mentions in his appeal would not have been a permitted use. In fact, John K. Volk, the owner, was cited in 2012 for using 206 Phipps Plaza as a transient residential use in the R-C Zoning District (see Exhibit G) .

When visiting the property, the downstairs portion of the residence can be locked and separated from the interior air conditioned courtyard of the main portion of the residence on the second floor. There is also a separate kitchen, baths, bedrooms and an outer patio bar area that opens to the pool deck area. However, it is believed that these areas were always used for guest accommodations and private functions for John L. and Jane Volk until 2010, when Mrs. Jane Volk passed. In fact, in December 2006 Lillian Jane Kinney Volk, as Trustee of the Lillian Jane Kinney Volk Qualified Personal Residence Trust dated December 4, 1996, conveyed the entire property, including the residential and office building and pool and deck to John K. Volk in a Trustee Deed. That same day, John K. Volk (“Lessor”) and Lillian Jane Kinney Volk (“Leasee”) entered into a ninety-nine (99) year lease for that same property. Under subsection 3 of that lease, the lease states that the, “Leasee may use the Premises of her personal residence and any other purpose permitted by applicable laws, regulations and requirements” (see Exhibit H). Lastly, the Palm Beach County Property Appraiser Office identifies the property as one residential unit and one commercial unit (see Exhibit I).

Section 134-392 states that the discontinuance of a nonconforming use with the intention of the owner thereof to terminate the use for any period of time is an abandonment. Likewise, the

discontinuance of a nonconforming use for a period of two years without the intention of the owner thereof to discontinue the use and/or the change of a use to a more restricted or conforming use for any period of time shall be considered an abandonment thereof, and such nonconforming use shall not thereafter be revived. When John L. and Jane Volk combined the buildings in 1957 and improved the subject property with a private swimming pool and additions, they discontinued the use of the property as apartments in the two combined buildings. The 2006 life estate Lease to Jane Volk and the Property Appraiser's tax assessment as a single residential unit aided in that determination.

There are three meters on the subject property. I have advised that if the property owner can provide evidence in the form of written leases, rents, utility bills, etc. that show that the first floor residential space was continuously used as a separate residential tenancy that the Town would favorably take that into consideration. If the downstairs portion of the residence was always used as a separate residential unit as Mr. Klein has stated in his client's appeal then the owner would have ample evidence to substantiate that use. However, to date, no information that has been provided to the Town or in this appeal to corroborate that there are two separate residential units that have been continuously been used since 1967, the last date of any mention of apartments in Town property records.

Staff recommends that the Council uphold Staff's administrative zoning determination that the subject property can only be used as one residential dwelling and one commercial office space. If you have any questions, please do not hesitate to contact Paul Castro, Zoning Administrator, at 227-6406.

Attachments

cc: Jay Boodheshwar, Deputy Town Manager
John C. Randolph, Town Attorney
Paul Castro, Zoning Administrator
Bill Bucklew, Building Official
David Klein, Esq.
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