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**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 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: 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

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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.

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Respectfully Submitted,

A handwritten signature in blue ink, reading "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.

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