

# SNIFFEN & SPELLMAN, P.A.

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## Via E-mail

Mayor and Town Council  
c/o Maggie Zeidman, President  
Town Council of the Town of Palm Beach  
360 South County Road  
Palm Beach, Florida 33408

**Re: Consideration of Zoning Application for 160 Royal Palm Way, Palm House Hotel (Zoning Application Z-20-00289) by Town Council is Premature**

Dear Mayor and Town Council Members:

Our office represents Thomas O. McCarthy, who resides at 140 Brazilian Avenue, as well as Timothy and Gayle DeVries, the owners of 141 and 149 Brazilian Avenue which back up to the Palm House Hotel. In that capacity, we understand that the Town Council is scheduled to consider Zoning Application Z-20-00289 ("Application") by LR Palm House LLC ("Applicant") for the Palm House Hotel at its November 13, 2020 meeting. Please be advised that it is our clients' position that any such consideration would be premature given that ARCOM did not approve the Applicant's Landscape Plan at its October 28, 2020 meeting.<sup>1</sup>

As you are aware, the Application includes a Special Exception **with Site Plan Review**, along with requests for a number of variances. Because the hotel is at best a special exception use<sup>2</sup> under Section 134-1304 (a)(5) of the Code, any special exception "**require[s] a site plan review** as provided in article III of this chapter." As a result, the Council cannot approve the Special Exception in the Application without having a proper, completed Site Plan at the time of approval.

Under Section 134-326 of the Town Code "[t]he **primary purpose of the site plan review process is to examine for potential adverse impact on the adjacent area, neighborhood or town**, those uses having characteristics as possessing the potential for negative impact **and to ensure such uses are located, sited and designed that they result in a positive contribution to the area, neighborhood and town.**" (emphasis added) To do so, under Section 134-327(b) of the Code all Site Plan reviews must include a series of detailed filings, including, but not limited to, not only architectural elevations and buildings under subsection (b)(9), but also the location of "**all screens and buffers**" under subsection (b)(4)(f) and under subsection (b)(11) a "**[l]andscaping plan, including types, sizes and locations of vegetation and decorative shrubbery, and showing provisions for irrigation and maintenance.**" (emphasis added) The Town has tasked ARCOM (or Landmarks if the structures are historic) with the obligation to review applications for a Site Plan approval, including any Landscape Plans, and make a recommendation to the Town

<sup>1</sup> There is also a pending appeal of ARCOM's October 28, 2020 decision, to which our clients have are filing a joinder, which would likewise make it premature for the Town Council to consider the Application.

<sup>2</sup> The hotel is a non-conforming use as it has 79 rooms on only 1.377 acres of property (as shown on the Survey submitted by the Applicant) which would only allow for 36 rooms, or less than half of the existing rooms on the property under Section 134-1304(a) (5) which allows for a hotel use "at a maximum of 26 units per acre."

## **REPLY TO:**

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Council prior to any final approval of the Site Plan required for a Special Exception with Site Plan.

In the present case, while ARCOM considered the Site Plan of the Applicant and made a positive recommendation on the bulk of the architectural drawings and elevations, it specifically did not approve the Landscaping Plan presented by the Applicant. To the contrary, after both our firm on behalf of Mr. McCarthy and the DeVries, as well as Donald Lunny, Esq. on behalf of the Simmons (the owners of 133 Brazilian Ave.) raised significant issues of the ability of the Applicant to actually implement its proposed Landscape Plan, which included tall trees and "lush native plantings," in an easement as small as 2.5 feet, the issue was deferred for further consideration to the November 29, 2020 ARCOM Meeting.<sup>3</sup> As a result, absent a demonstration that the proposed Landscape Plan is designed to protect the surrounding neighbors and is actually feasible, the Site Plan application is incomplete and does not meet the standards or purpose of Section 134-326. This will be especially true if there in fact is not enough room for landscaping and the Applicant has to relocate its proposed landscape to inside its own property within its Site Plan.

Therefore, until such time as ARCOM has been presented with, approved and recommended a Landscape Plan (a mandatory element of a Site Plan) which it confirms can actually be installed it would be improper for the Town Council to move forward with the consideration of the Special Exception with Site Plan. To the extent the Town Council nevertheless considers the Special Exception without ARCOM's further investigation and Site Plan approval, outside of opening the Town to a due process and failure to follow the essential requirements of the law argument, it will have established a dangerous precedent that any applicant can merely design a landscape plan that looks good on paper, but may not work in the real world, and yet take it directly to the Town Council for a Special Exception with Site Plan approval.

In light of the above, our clients request that the Town Council defer any consideration of the Application at its November 13, 2020 meeting.

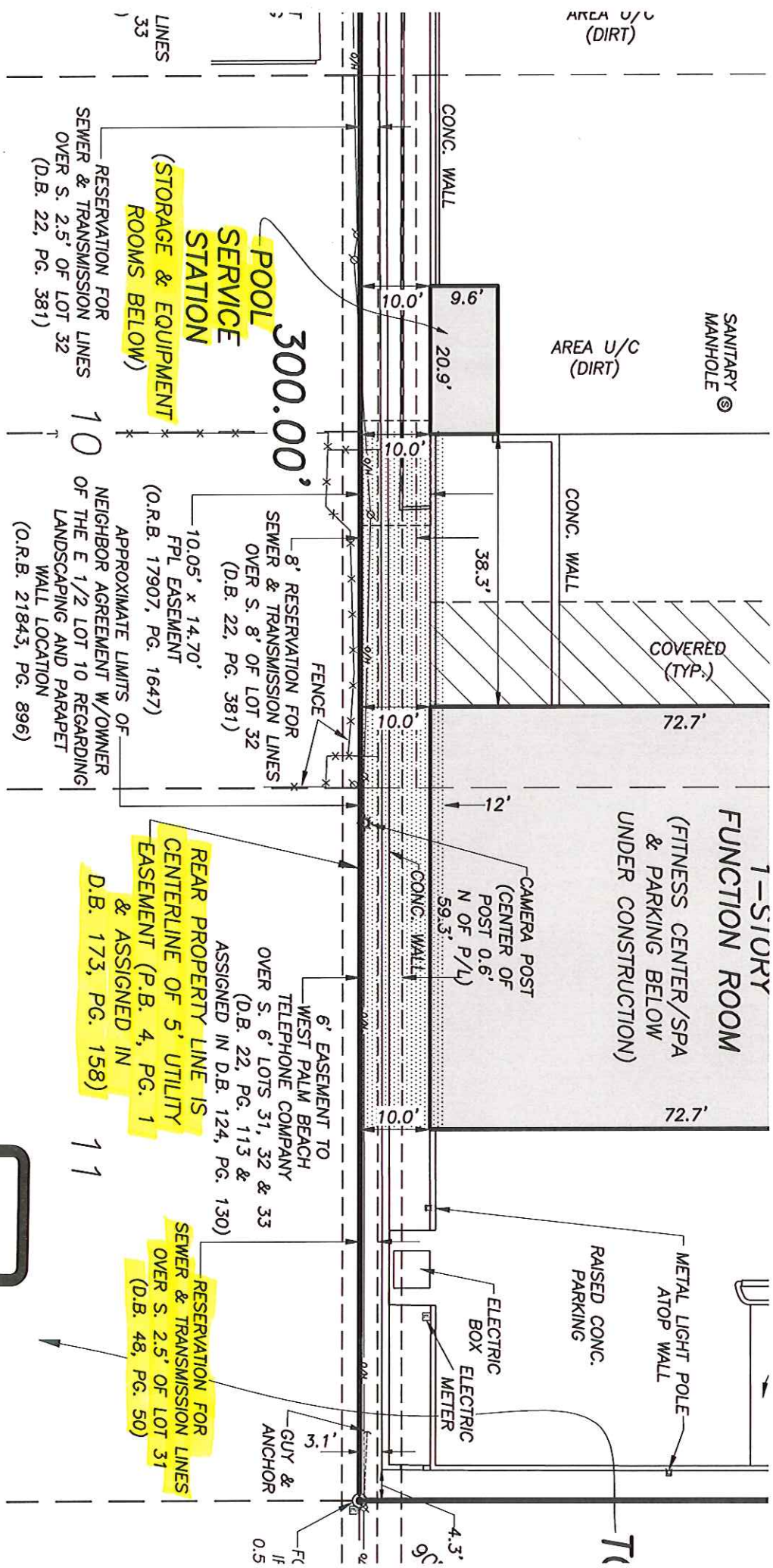
Very truly yours,

  
John R. Eubanks, Jr.

cc: Wayne Bergman, Director Planning, Zoning & Building  
John Randolph, Esquire, Town Attorney  
Kelly Churney, Administrative Specialist  
Town Clerk, Town of Palm Beach  
Tim and Gayle DeVries  
Thomas O. McCarthy

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<sup>3</sup> The Applicant's Survey by Wallace Surveying dated 2/5/2014 included in the record shows that the property line between the Hotel and its neighbors is located in the middle of a 5 foot utility easement for gas and water as well as an easement of 2.5 ft. (or less than a yard stick) to the south of the property line for sewer and transmission lines. As a result, there is little if any room for landscaping. An expanded copy of the Survey as well as pictures of the limited area available for landscaping are attached hereto as Exhibit "A" and Composite Exhibit "B" respectively.



EXHIBIT

A

tabbies



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**EXHIBIT**  
Camp B









