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January 12, 2021

VIA E-MAIL

Town of Palm Beach
360 South County Road
Palm Beach, FL 33480
Attn: Mayor and Town Council

Re: 1118 North Lake Way (f/k/a 1120 North Lake Way) – Zoning Case No. 20-00306; Item 2c (New Business) on January 13, 2021 Town Council Agenda

Dear Mayor and Town Council:

Our firm represents 1110 North Lake Way LLC, the owner of 1110 North Lake Way, which is immediately adjacent to the property requesting three variances from the Town Code of Ordinances (“Code”) under Zoning Case No. 20-00306 (“Applicant”). Our client’s home is located on the south side of the Applicant’s property and is the closest structure to the south side yard setback variance request. As such, our client is an “Affected Party” under the law.

I would like to share with you our client’s concerns and objection to the requested variance for the south side yard setback. I would like to make clear that our client is not objecting to the Applicant’s proposed architecture. The Applicant has hired a skilled architect who has, no doubt, designed a nice addition/renovation. Our objection is that the Applicant’s existing structure already violates the Code -required side setbacks and, as such, is a non-conforming structure. The Applicant’s proposal is to expand and dramatically increase this non-conformity, which is specifically prohibited by the Code. Moreover, the Applicant has failed to establish a hardship that would justify the granting of the requested variance.

The proposed second story addition is only a few feet from my client’s existing master bedroom and, if constructed, amounts to an unwarranted invasion of privacy and a diminution in the value of my client’s property.

Sec. 134-387 of the Code provides, in part, that “No nonconforming use shall be enlarged, increased, intensified, substituted or extended to occupy a greater area than it occupied at the effective date of adoption or amendment of this chapter . . .” The portion of the proposed second story addition that encroaches into the 15 foot minimum side yard setback increases the non-conformity expressly prohibited by this Sec. 134-387.

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The criteria for the granting of variances is found in Sec. 134-201 of the Code. In order to grant a variance, the Town must make findings of facts, on the record, that all variance standards have been met through the establishment of facts, including:

(1) Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

(2) The special conditions and circumstances do not result from the actions of the applicant.

(3) Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in this same zoning district.

(4) Literal interpretation of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.

(5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

(6) The grant of the variance will . . . not be injurious to the area involved or otherwise detrimental to the public welfare.

The Applicant has failed to establish any facts or justifications to support the granting of this variance. There are no legitimate hardships stated in the Applicant's zoning application. In fact, the zoning application is completely void of any justifications under the variance criteria. The justifications cited by the Applicant are that the existing house was built in "1976 and needs to be brought up to today's living standards", "is in need of an upgrade", has "design challenges", and "that the house was built in 1976 and is non-conforming to today's code as the existing south side yard setback is 9.9 feet." Of course, none of these statements by the Applicant establishes any fact to support a hardship. The reality is that the Applicant simply wants a larger house. If there is a hardship, it is entirely self-created by the Applicant. There is no unique hardship on the land. There is no special condition or circumstance peculiar to the land or structure which are not applicable to other land or structures in the same zoning district. There is evidence that granting the variance would be injurious to my client. There is no demonstration that the requested variance is necessary to make reasonable use of the land because it has been used perfectly well for the last 44 years, so much so that the Applicant recently paid \$12.6 million to use it.

For these reasons, I respectfully request that you deny the south side yard setback variance request.

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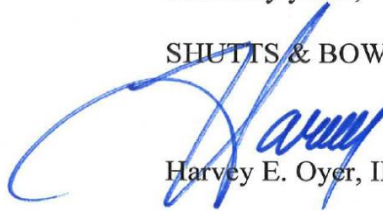
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Thank you for your consideration in this matter and for your service to the Town. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

SHUTTS & BOWEN LLP



Harvey E. Oyer, III, Esq.

HEO/ias

cc: Wayne Bergman
Paul Castro
Laura Groves van Onna
Kelly Churney