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Via Email: council@townofpalmbeach.com; mayor@townofpalmbeach.com

The Honorable Mayor and Town Council
Town of Palm Beach
360 S. County Road
Palm Beach, FL 33480

Re: Zoning Case Number Z-19-00232

Dear Mayor and Council Members:

This firm represents the Kirkland House Condominium Association (“Kirkland”) which is located on the east end of Worth Avenue immediately adjacent to 125 Worth Avenue (“125”). The application before you requests numerous variances to a non-conforming building and has been on the ARCOM agenda and postponed for nearly 2 years. It was redirected to the Council, which we applaud as an approval of the architectural design is premature when the use and gross expansion of the building will have a lasting impact on Worth Avenue and its neighbors.

The Kirkland would like to state its objections to all of the requested variances for the following reasons:

1. The first request is for a fourth-floor addition. Pursuant to Section 134-1163(8)b. The applicant incorrectly states that it is an existing four-story building. According to the site history provided by the applicant, a building permit (NO. 51072) was issued for a three (3) level office building with two (2) levels for parking and a “mechanical penthouse.” The mechanical equipment for the building is on the roof and is enclosed. The fourth floor is not currently occupied and is not leasable space and should not be expanded to over three times its current size to accommodate four residences.
2. The second request is to allow for on-site shared parking pursuant to Section 134.2182(b). The current design eliminates thirty (30) parking spaces yet adds over 20,000 square feet of additional leasable space, which includes four (4) residential units. Pursuant to Section 134-1276 of the parking code, over 200 spaces would be required for this building. With the elimination of the 30 spaces, 125 Worth Avenue would need an additional 70 plus spaces more to be in compliance with the code. We take issue with the parking study provided to the Town and believe this variance will have a significant negative impact on traffic around the Kirkland and on Worth Avenue in general, especially during season and peak hours.

3. The third variance seeks to increase the height of the building to add a fourth story pursuant 134-419. As stated for the first variance, this is not a four-story structure. The code is specific in the ability to enlarge a non-conforming structure. Section 134-416 and 134-417 state in part:

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.

There are several other variance requests that seek to increase the bulk of the building as well as alter the setbacks, including a gross expansion of the first floor leasable space. To allow this variance would be a direct violation of the code and Worth Avenue Design Guidelines (“Guidelines”).

4. The fourth variance seeks to increase the overall building height pursuant to Section 134-419. The request cites the Guidelines because the maximum height is 40 feet. However, these Guidelines were written for three-story buildings. Again, the applicant creates a false narrative that this is a four-story building. On page 33 of the guidelines titled “EAST-END DEVELOPMENT AREA” it clearly states that the office building is three stories. (Attached).
5. This variance seeks to add a fourth air-conditioned floor to construct residential units. This space is currently not occupied, was not a part of the original parking configuration, and only houses mechanical equipment. This is a gross expansion of the building and as it has been stated to the Kirkland, these units are needed to make the renovation financially feasible.
6. Variance 6 seeks to significantly alter the setback of the property pursuant to Section 134-1163(5). Although widening the sidewalk may improve pedestrian flow, it is the only area of 125 that follows the code. It is another request to further make the building non-conforming.
7. This variance seeks to further expand the first-floor coverage pursuant to Section 134-1163(9)b. The original plans presented had the mechanical equipment immediately adjacent to the residential properties on the east. We repeatedly stated our objections as it was unclear what would be housed in the mechanical building and the potential to disturb the residences. Although we appreciate the developer’s gesture, it is Kirkland’s position that this variance should be rejected as the mechanical equipment should remain above the third level in its current structure.

8. This variance is a request for an addition of a fourth floor that does not currently exist. The developer may state that there is a fourth floor in every variance request, but it is simply a misstatement of the facts. The request to expand the fourth-floor coverage should be rejected simply on the basis that the developer seeks to add a fourth floor and that is clearly contrary to the code and the Guidelines.
9. This variance should be rejected on its face. The request seeks to expand the length of the east end of the building well over forty (40) feet. It is already non-conforming by over fifty (50) feet. This is contrary to the Guidelines and sets a dangerous precedent for Worth Avenue.

The developer's statements to justify the variance requests leave out a significant amount of information. The statements are misleading and are conclusions of fact without specific supporting evidence. For instance, under title **EXHIBIT B – REQUEST FOR SITE PLAN REVIEW**, the response to item 3 indicates there is no change to the ingress and egress or refuse collection. However, the plan eliminates the drive through that provides 2 additional entrances and exits for vehicles, including the parking which could ease congestion on Worth Avenue. Additionally, the garbage has been moved to the east side. It currently sits inside the building in an enclosed area in the rear center of the building and away from the residential side. Under the current plan, the garbage is moved to the east end and would need to either be dragged to the street or a garbage truck will need to back into the patio to pick it up. Placing this on the east side versus the west side is inconsiderate to the residential neighbors and will create an unnecessary nuisance.

The developer further ignores the traffic flow issues and internal traffic patterns under comment 4. The surface parking is listed as "unneeded," yet the expansion of the leasable space, addition of fourth floor residential, and the elimination of the 30 surface spaces including the ingress and egress on the east and west side, will have a significant impact on the residential neighbors. The property will be short over 70 spaces based on the code. Unneeded is an inaccurate conclusion that residents can attest to, especially during the season. The shared parking study and its stated impact on the Town is questionable.

The responses to each and every comment provide no evidence to justify the variances requested. There are repeated misstatements of the facts and the applicant suggests there is a vested interest in adding a fourth floor and expanding it well beyond the enclosed mechanical equipment footprint. This is an absurd conclusion as there is no evidence that a fourth floor ever existed. The roof of this building houses mechanical equipment only.

An issue that has not surfaced in newer versions of the renovation, is the desire of the developer to place a restaurant on the east end. The configuration of the interior first floor with doors that open to the patio is suspect. It would also explain why the garbage was placed on the east end of

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the building. Although we realize that potential uses would require a special exception, the Kirkland House is not looking for a protracted legal battle with their neighbor. We desire a restricted use on the east end and any high traffic tenant that creates a potential nuisance should be placed on the west end of the building. We believe this is a reasonable request. We have attempted to engage in meaningful dialogue, but we have been ignored.

The law is well-settled on when a variance should be issued based on hardship. *Town of Indianatlantic v. Nance*, 485 So.2d 1318, 1320 (Fla. 5th DCA). Meaning, the hardship must be unique to the property and that no reasonable use of the property exists. *Id.* The applicant would have you believe that the gross expansion is necessary to renovate the building and make it “prettier” for the Avenue. This is not a basis for a variance. The building can be renovated and used for its current purpose. There is no evidence that without this gross expansion, the building will be rendered unusable or cannot be renovated.

The developer stated in conversations with the Kirkland that the residential units and expansion of leasable space is needed to make the project financially viable, but this reason does not constitute a hardship sufficient to warrant the granting of a variance. See *Burger King Corporation v. Metropolitan Dade County*, 349 So.2d 210 (1977); *Metropolitan Dade County v. Reineng Corp.*, [399 So.2d 379 \(Fla. 3d DCA 1981\)](#). Moreover, the hardship cannot be self-created. *Josephson v. Autrey*, [96 So.2d 784 \(Fla.1957\)](#). The developer purchased this property knowing it was a three-story, non-conforming structure and burdened by the zoning restrictions. If the financial calculations do not make renovations without a gross expansion feasible, that was of their own creation. It has been operated as a retail office building and there is nothing preventing the developer from using it as it is currently configured. The expansion and requested variances are simply a desire to make additional profit.

Furthermore, the proper standard of review in a zoning variance case is whether the agency was presented with competent substantial evidence to support its finding. *Bernard v. The Town Council of the Town of Palm Beach*, 569 So.2d 853 (1990). In that case, the Court found that the wrong standard of review was used. As in *Bernard*, the hardship in this request seems to be in the “eye of the beholder.” The applicant has not provided any competent substantial evidence that this building’s non-conforming status creates a hardship as defined by the law. Therefore, the Kirkland requests denial of the variances and demands that the developer enter into meaningful discussions with its neighbors and submits a plan that is supported by the Worth Avenue residences.

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We look forward to working with the Council to continue to enhance one of the Town's greatest treasures, Worth Avenue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ellyn Bogdanoff', written over a light gray rectangular background.

Ellyn Bogdanoff
For the Firm

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