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JUL 08 2022

Town of Palm Beach  
PZB Dept

July 7, 2022

Pat Gayle-Gordon, Acting Town Clerk  
Town of Palm Beach  
360 S. County Road  
Palm Beach, FL 33480

RECEIVED

JUL 08 2022

Town of Palm Beach  
PZB Dept

RE: ARCOM Application ARC-22-075 (the "Application")  
Property Address: 301 Polmer Park Road, Lot B, Palm Beach, FL 33480  
Property Owner: 301 Polmer Park LLC (Richard True, Member)

Dear Madame Clerk:

Pursuant to Section 18-177 of the Town Code, the six property owners listed on Exhibit "A" attached to this letter of Appeal (the "Appellants") hereby appeal the approval of the above-referenced Application by the Town of Palm Beach Architectural Commission ("ARCOM") rendered on June 29, 2022. We hereby request that this Appeal be placed on the next available Town Council Agenda but within 45 days from the filing of this Appeal.

On September 13, 2021, Town Council approved Application Z-21-00372 Variances, which conditionally approved a lot split for 301 Polmer Park Road (the "Conditional Lot Split Variance"). The Conditional Lot Split Variance was conditioned upon removal of at least three structures, two of which were located on both of the two proposed lots to be created by the lot split. The third is a portion of the existing residence at 301 Polmer Park Road, which was required to be removed to make the eastern lot compliant with the side yard setback requirement applicable to said lot (the "Office Setback Demo Requirement").

As of the date of the ARCOM approval, the Office Setback Demo Requirement had not been started or completed. At the April 27, 2022 ARCOM Hearing, the Applicant's representatives represented to ARCOM that the reason that the Office Setback Demo Requirement had not been completed was because the owner did not want to complete the work during the season, but that it would be completed in May. As of the date of this letter, the Office Setback Demo Requirement

has not been either started or completed. In other words, it has been approximately ten months since Town Council approved the Conditional Lot Split Variance, but the required conditions have not yet been satisfied.

As such, there is no lot split, and only one lot (301 Polmer Park Road) exists from a Town of Palm Beach zoning perspective. ARCOM had no authority to approve an application for a new home on the referenced "Lot B" because the Office Setback Demo Requirement has not been satisfied and, therefore, only one lot exists. Lot B does not exist.

In addition, because the conditions have not yet been satisfied, the Application fails to meet Section 18-205(a)(9) of the Town Code because the lot split has not been finalized, and the proposed development is not in conformity with the Town Code because it does not comply with Sections 134-893(b)(7) and 134-893(c) of the Town's Zoning Code as follows:

- a. Section 134-893(b)(1)(a) requires a side yard setback of 17.5' for a one-story structure based on the size of the property; and
- b. Section 134-893(c) requires compliance with all lot, yard and area requirements when the owner owns an adjacent vacant lot which would create a conforming lot if the vacant lot were combined with the non-conforming lot.

These zoning code requirements were adopted to stop this exact factual situation, and that is why Town Council insisted on the Office Setback Demo Requirement. In other words, the setback violation caused by the location of the office does not exist on the larger, combined property, but a lot split would result in a significant setback violation. In fact, immediately before Town Council approved the Conditional Lot Split Variance, both Council Members Cooney and Lindsay confirmed that the approval must include the removal of the office (see Minutes of September 13, 2021 Town Council Hearing attached as Exhibit "B").

Second, Section 18-201 of the Town Code specifically states as follows: "A construction screening plan shall be submitted as part of all major ARCOM projects that demonstrates how the adjacent neighbors will be screened from the construction activity through the use of landscaping and construction fencing/gates. Said construction screening plan must be approved by ARCOM..." This requirement is especially important on Polmer Park because only one access point to Polmer Park Road exists and the road is narrow and elevated. Construction activity will be disruptive and unsafe if not planned and screened appropriately.

Despite the express code requirement in Section 18-201 and despite Appellant's objection at the May and June ARCOM presentations of this Application, the Applicant did not submit a construction screening plan and no such construction screening plan was reviewed or approved by ARCOM.

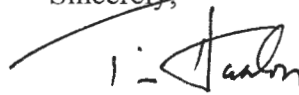
This is a second procedural failure by ARCOM, which also dictates that the approval by ARCOM be overturned and reversed to a denial.

We incorporate the record of the ARCOM meetings relative to the Application dated April 27, 2022, May 25, 2022 and June 29, 2022 into our appeal.

For the reasons stated above, we respectfully request that Town Council overturn and reverse the approval of the Application and instead deny the Application as permitted pursuant to Section 18-177 of the Town Code.

If you have any questions or need additional information from me, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Timothy Hanlon". The signature is written in a cursive style with a large, sweeping initial "M" and a long, horizontal stroke extending to the right.

M. Timothy Hanlon

**EXHIBIT "A"**  
**List of Owners**

1. Darrell and Susan Ross (300 Polmer Park Road)
2. Sean and Jennifer Oscannlain (310 Polmer Park Road)
3. Tony and Lara Ignaczak (320 Polmer Park Road)
4. Matthew and Diane Barrett (331 Polmer Park Road)
5. Robert and Ann Fromer (340 Polmer Park Road)
6. William and Donna Jo Acquavella (243 Polmer Park Road)



# TOWN OF PALM BEACH

## Minutes of the Development Review

### Town Council Meeting

Held on September 13, 2021

I. CALL TO ORDER AND ROLL CALL

The Development Review Town Council Meeting was called to order September 13, 2021 at 9:00 a.m. On roll call, all elected officials were found to be present with the exception of Council President Zeidman, who arrived at 12:28 p.m.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Deputy Town Clerk Churney gave the invocation. Council President Pro Tem Lindsay led the Pledge of Allegiance.

III. COMMENTS OF MAYOR DANIELLE H. MOORE

Mayor Moore stated it was a somber weekend as the United States commemorated the 20<sup>th</sup> anniversary of 9/11. She asked all to pray for those who were lost and their families.

IV. COMMENTS OF TOWN COUNCIL MEMBERS

There were no comments heard at this time.

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

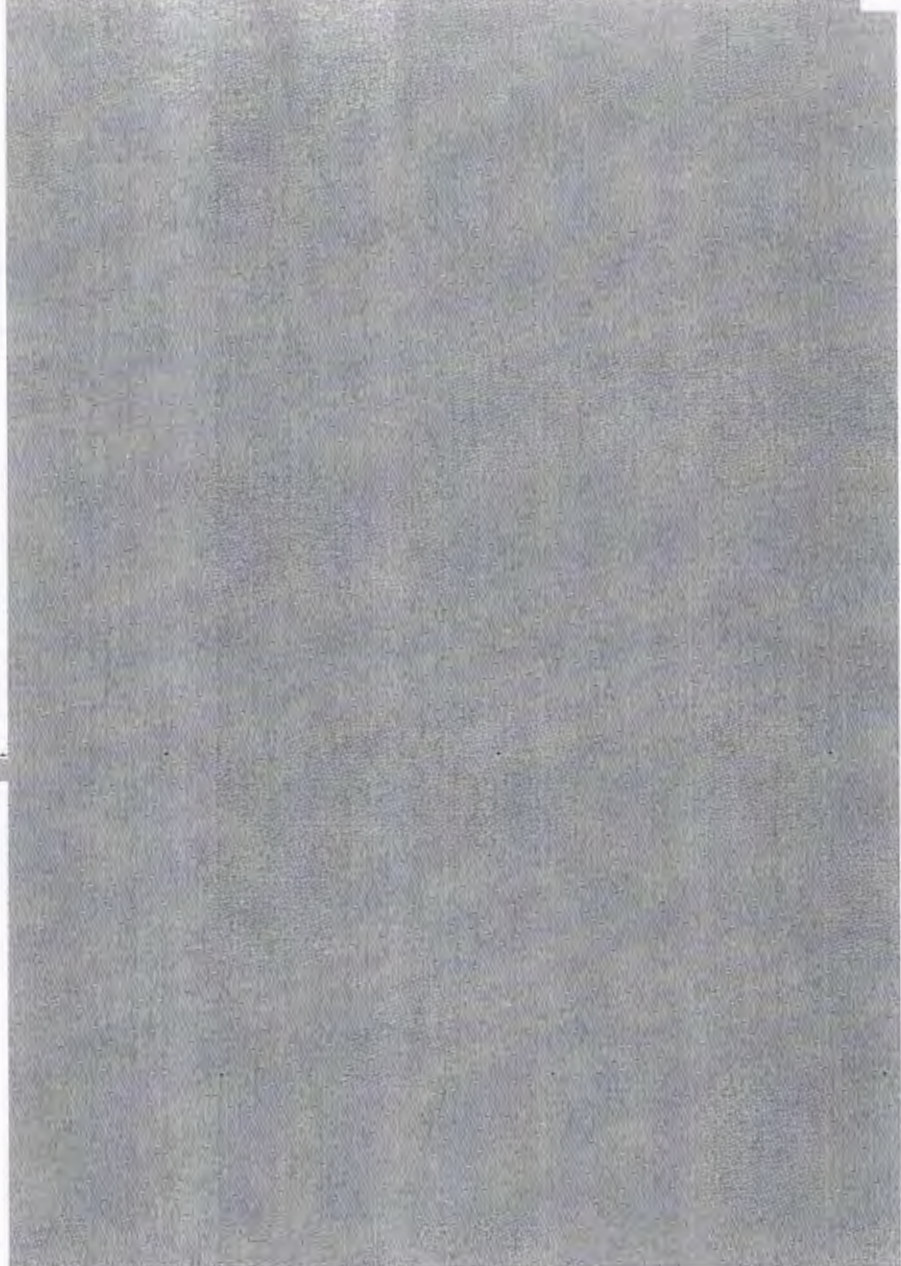
Mayor Moore welcomed James Gavigan, who was filling in for Town Attorney Randolph.

VI. APPROVAL OF AGENDA

Director of Planning, Zoning and Building Bergman read the following requested modifications:

Deferral of Item VII. A.1 to the October 13, 2021 meeting.

Deferral of Item VII. B. 1.a to the October 13, 2021 meeting



- h. **Z-21-00372 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of 301 POLMER PARK LLC (RICHARD TRUE, CONTRACT PURCHASER), APPLICANT, relative to property located at **301 POLMER PARK**, legal description on file, is described below. The subject property is 37,818 square feet in total area. The applicant is requesting a variance to split the lot into two lots. East Lot with residence 22,873 square feet in area; and West vacant lot 14,945 square feet in area. All improvements will be removed from the West lot. The following variances are being requested in order to split the property into two lots and retain the residence on the East



lot. Request for a west side yard setback of 8.25 feet (for the proposed East lot) in lieu of the 17.5 foot minimum required for a lot in the R B Zoning District that is in excess of 20,000 square feet and has a width in excess of 150 feet. A lot coverage of 29% in lieu of the 25% maximum allowed for a lot in excess of 20,000 square feet in the R-B Zoning District. [Applicant's Representative: Maura Ziska Esq]

Ex parte communications declared by Council Members Araskog, Crampton and Cooney, Council President Pro Tem Lindsay and Mayor Moore.

Maura Ziska, attorney for the owner, presented the zoning request for the project and explained the request.

Zoning Manager Castro provided staff comments.

Council Member Araskog asked why the pool cabana could not be removed to come into compliance. Ms. Ziska stated eliminating the pool cabana would not bring the property into compliance.

Mr. Castro stated eliminating the pool cabana would make the property more compliant.

Council Member Araskog stated she respected the wishes of the neighbors but the request was for 28.5% in lieu of 25%. Ms. Araskog asked if the second lot would be a conforming lot. Mr. Castro stated that both lots would be conforming. Council Member Araskog inquired about the hardship for the variance. Ms. Ziska responded the hardship was preserving the existing house for the owners and the neighbors.

Council Member Crampton inquired if this would create anything non-conforming. Mr. Castro stated the house would be non-conforming, and was already non-conforming. Council Member Crampton added he had toured the site, felt the existing house was worth saving and was in favor of moving forward with approval.

Council President Pro Tem Lindsay inquired if the intent was to save the original home. Ms. Ziska confirmed this statement. Ms. Lindsay stated her understanding was the neighbors preferred to keep this home because it conformed to the neighborhood design and would reduce construction. She added the house could be demolished.

Council Member Cooney commented if they demolished the house,

they would not need any relief from Council.

Richard True, owner, confirmed the house was for sale as one estate and he had agreed with the neighbors that he would market it as one piece of property until February. Their backup plan, if it did not sell by February, was to develop the lot where there is currently a large tennis court. Their other option was to demolish both houses and build two 10,000 square foot houses, for which no variances would be needed.

Mayor Moore stated initially she was a bit uncomfortable. However, now seeing the pictures and understanding the request, she believed the existing request was less damaging.

Council Member Araskog suggested a 5-year restriction not to tear the house down.

Council Member Cooney asked if a new purchaser would be bound by a restriction, and the response was they would not.

Mr. True wanted a backup plan to develop the tennis court.

Council Member Araskog suggested a condition that the house would not be demolished before February 1.

Mr. Castro did not understand placing a condition that restricted demolition since they could tear down the house by right. They were asking for relief to keep the existing house intact. If the owner requested to split the estate, it would need to proceed through the administrative process, which would take several months.

Council Member Cooney thought the issue was the level of non-conformity with which Council was comfortable.

Council President Pro Tem Lindsay stated she was comfortable with the plans as presented that included removing the office.

Council Member Cooney confirmed with Ms. Ziska that the plans, as presented, included removal of the office.

**Motion made by Council Member Cooney and seconded by Council Member Crampton, that Variance Z-21-00372 shall be granted and find in support thereof that all criteria applicable to this application as set forth in Section 134.201(a) items 1 through 7**



have been met, and providing that the property owner did voluntarily commit that prior to the issuance of a building permit to either provide a recorded utility easement or an easement agreement satisfactory to the town that ensures a recorded easement will be granted if necessary to underground utilities in the area. Motion carried 4-0, with Council President Zeidman absent.

