

**Appeal of Hillsboro Property Owner, LLC ("Owner") Submitted Pursuant to
Section 12-283 of the Code of Ordinances of The Town of Hillsboro Beach
("Code") Regarding a Variance from Section 12-142 of the Code**

INTRODUCTION

On July 29, 2021, Owner filed an application for site plan approval for the development of 121 residential units upon the 11.2 +/- acre property located at 1174-1185 Hillsboro Mile and described on Exhibit A hereto (the "Development Property"). The Development Property comprises two parcels bisected by SR A1A/Hillsboro Mile. The East and West Parcels are described on Exhibit A hereto and are approximately 6.1 and 5.1 net acres, respectively and 11.7 gross acres including A1A. On the East Parcel, the Owner proposes to develop a 15-story condominium building with a measured height not to exceed 175 feet (the "East Building"). On the West Parcel, the Owner proposes to develop low rise condominium units and related amenities intended for exclusive use by the project's residents, including a recreational building, tennis courts and a private 11-slip marina.

REQUESTED VARIANCE AND APPLICABLE CRITERIA FOR REVIEW

On October 31, 2021, the Town's Consulting Planner, Jim Hickey, issued review comments regarding the site plan submitted for approval on July 29, 2021, and noted that the proposed East Building exceeds the currently permitted height for development within its existing RM-16 zoning pursuant to Section 12-142 of the Code. Pursuant to Section 12-142(a) of the Code, buildings are limited to three stories or 35 feet of height; Section 12-142(b) limits roof top features which exceed the maximum height of the building to "decorative features...not covering more than 20% of the roof area" which may be "erected to an additional height not to exceed 15 feet."

The proposed East Building is 15 stories or 175 feet; the roof top features which exceed 175 feet include a 15 foot high decorative screen (setback a minimum of 16 feet from the roof edge) which covers 29 percent of the roof top area and the building elevator returns within the screened area which elevator returns extend to 20 feet above the roof top . The Owner hereby requests a variance pursuant to Section 12-283 of the Code to exceed the height limitations in Section 12-142 of the Code as follows:

1. As to Section 142(a), a variance to permit a 15 story/175 foot building where 3 stories/35 feet of height is permitted; and
2. As to Section 142(b), a variance to permit roof top decorative features which cover 29 percent of the roof top area (a 9% increase over that permitted) and elevator returns extending 20 feet higher than the roof.

In support of these variances the Owner offers the following justification.

Section 12-283 of the Code provides that the Board of Zoning Appeals has the power and duty to authorize a such a variance from the strict application of the Code:

[W]henever a property owner can show that a strict application of the terms of this chapter relating to the use, construction or alterations of buildings or structures, or the use of land will impose upon him or her unusual and practical difficulties or particular hardship, such variances of land will impose upon him or her unusual and practical difficulties or particular hardship, such variances of the strict application of the terms of this chapter as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter, and at the same time, the surrounding property will be properly protected.

In authorizing such variances, the Board must also:

[F]irst determine that it will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach.

ARGUMENT IN SUPPORT OF REQUESTED VARIANCE

In support of the requested variance, the Owner offers the following:

- (1) a description of the "unusual and practical difficulties or particular hardship" imposed by "a strict application of the terms of [the Code]";
- (2) an explanation that "such variances of the strict application of the terms of this chapter [i.e. Chapter 12 of the Code] as are in harmony with its general purpose and intent";
- (3) an assurance "that a granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this chapter and at the same time, the surrounding property will be properly protected"; and
- (4) a description of how the requested variance "will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach."

(1) **Description of the "unusual and practical difficulties or particular hardship" imposed by "a strict application of the terms of this chapter"**

The Development Parcel is designated on the Broward County Land Use Plan as a "Local Area of Particular Concern" ("LAPC"). This LAPC contains portions of the beach and

dune community that are considered an endangered habitat within Broward County. In 1992, the then-owner of the Development Property entered into an agreement (the "Conservation Agreement") with Broward County establishing and designating a "Conservation Area" within the East Parcel in order to "preserve the best portion" of the property. Exhibit B hereto depicts the Conservation Area. The Conservation Area is approximately 2.877 acres, or 47 percent of the entire East Parcel. In accordance with the Conservation Agreement, the Conservation Area cannot be developed, and no structure, foundations or pilings may be placed within its boundaries, other than dune crossovers.

As a result of the Conservation Agreement and the requirement to preserve the Conservation Area, the strict application of the 3-story/35-foot height limitation to development within the East Parcel imposes "unusual and practical difficulties or particular hardship" upon the Owner in that:

(a) the Conservation Area is the *only* conservation area in the Town of Hillsboro Beach ("Town"), and as such, by its very existence and concomitant restrictions, creates an "unusual and practical difficult[y] or particular hardship" upon the Owner by constraining the area on which development can occur to less than 53 percent of the East Parcel; and

(b) the depth of the East Parcel, including the Conservation Area to the Easterly Building Line, is approximately 443 feet, but the area outside of the Conservation Area which can be developed is only 220 feet; this limited depth, together with the required building setback under the Code of 85 feet from the center line of A1A/Hillsboro Mile, leaves a physically constrained developable area that is only 135 feet deep.

(2) **"[S]uch variances of the strict application of the terms of this chapter are in harmony with its general purpose and intent"**

The general purposes and intent of Chapter 12 of the Code is to protect the public health, welfare and safety of the residents of the Town. The proposed development plan for the Development Parcel meets these purposes and intent, as more particularly described in (4) below. The requested variances result in a development plan which creates harmony between these fundamental standards and the resulting project.

Moreover, the granting of this variance is consistent with and in furtherance of Policies 2.23.3 and 2.23.4 of the Broward County Land Use Plan (applicable in the Town pursuant to the Broward County Charter and Land Development Code), which, provide:

POLICY 2.23.3 Broward County shall implement strategies for the protection of Local Areas of Particular Concern and other environmentally sensitive lands such as: acquisition by public or private organizations; establishment of a County trust fund for acquisition; **adoption of innovative land development regulations**; conservation easements; transfer of development rights; deed restrictions; and restrictive covenants. (emphasis added)

POLICY 2.23.4 By 2019, Broward County shall work with Broward's municipalities and interested stakeholders to study and recommend incentives to preserve designated environmentally sensitive lands that are privately controlled.

The requested variances are an example of an innovative land development regulation that will allow the Owner to develop its site while preserving the environmentally sensitive lands in the Conservation Area.

- (3) **"[A] granting of the variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by [the Code], and at the same time, the surrounding property will be properly protected"**

The requested variance to permit a 15-story/175-foot residential building upon the East Parcel is not a "mere convenience to the applicant" but rather "will alleviate" the "demonstrable and unusual hardship or difficulty" associated with the Conservation Area as described above.

The 2.1 acre portion of the Conservation Area to the Easterly Building Line reduces the developable area of the East Parcel by 33%. This hardship makes it difficult, if not completely impossible, for the Owner to avail itself of the entitlements provided by the Code for the East Parcel, including the 16-units per acre density. If the Development Parcel were developed in accordance with the RM-16 height limitations, the proposed development would provide limited sight lines, reduced green and open space, close proximity to the neighboring properties and create a "canyon" effect on State Road A1A, all of which are undesirable consequences. The requested variance would permit greater side setbacks, better view corridors and increase the amount of green space on the development.

- (4) **The granting of the variance " will not impair an adequate supply of light, air and sunshine to adjacent property or unreasonably increase the congesting in streets or highways or increase the danger of fire or endanger the public safety or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Town of Hillsboro Beach."**

Side yard requirements, density requirements and landscape and open space requirements are provided to assure that development provides an "adequate supply of light, air and sunshine to adjacent property", doesn't add to congestion on streets and highways and generally protects the "public health, safety, comfort, morals and welfare" of the residents of the Town.

The requested variance to permit the additional height of the East Building and related development plans are intended to directly address and improve these conditions. The proposed luxury, for sale, residential condominium, with its reduced density, greater sight lines, and additional green space, will enhance the Town's welfare and benefit the Town and its residents.

With the additional height, the Owner has planned side yards which create a separation between the East Building and its neighbors to the north and south which is considerably wider than would be provided by the 17.5 foot side yards required for a 3 story/ 35 foot high building pursuant to Section 12-142 of the Code. Thus, as proposed, a 15 story/ 175 foot building provides a greater supply of light, air and sunshine to adjacent property than would be provided by 17.5 foot side yards required for a 3 story/ 35 foot building.

In addition, upon the authorization of the requested variance, the Owner has agreed to reduce the density of the proposed development of both the East Parcel and the West Parcel from the 188 units which could be developed pursuant to the RM-16 zoning. A density reduction results in a reduction in the traffic generated by the proposed development.

Based upon the foregoing, we respectfully request that the Board of Zoning Appeals grant the requested variances.