

# Holland & Knight

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December 17, 2021

VIA EMAIL:[mserda@townofhillsborobeach.com](mailto:mserda@townofhillsborobeach.com)

William "Mac" Serda, Town Manager  
Town of Hillsboro Beach  
1210 Hillsboro Mile  
Hillsboro Beach, FL 33062

Re: Revised Variance Request and Revised Site Plan Approval

Dear Mr. Serda:

On December 7th, the Town Commission sitting as the Board of Zoning Appeals considered my clients' request for 2 variances related to the proposed height of the development planned for the property located at 1174-1185 Hillsboro Mile. Although members of the Board expressed concerns with the requested height of 15 stories/175 feet, there appeared to be a general consensus that 10 stories may be supported. We appreciate the Board providing us with a continuance to allow my clients to revise their plans consistent with Board comments.

We are hereby submitting our revised request for approval of the following variance:

- (i) to permit a 10 story/130 foot high residential development where 3 stories and 35' of height is permitted.

Enclosed is "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 Variance from Section 12-142 of the Code Revised December 17, 2021" which describes the technical aspects of the requested variance and the Owner's justification for this request. Pursuant to Section 12-286 of the Town Code, the Board of Zoning Appeals may set an expiration date for approved variances. We respectfully request that the expiration date for the variance be the same as that provided for site plan approval pursuant to Section 12-48(G) of the Town Code<sup>1</sup>.

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<sup>1</sup> (G) *Effective period of final site plan approval.* A final site plan shall be effective until the development is completed except that: if, after the expiration of 1 year from the date

In addition, the Site Plan for the proposed development has been revised to be consistent with the requested variance for the East Parcel, and to incorporate 3 story/35 ' high condominium units on the West Parcel; no variances are requested for the West Parcel development. The site plan now proposes up to 102 residential units on the East Parcel and 28 residential units on the West Parcel.

We look forward to the Board of Zoning Appeals/Town Commission consideration of this variance and site plan approval, as well as consideration of the plat note amendments requested via separate cover letter of this same date.

Sincerely,  
*Debbie M. Orshefsky*  
Debbie M. Orshefsky

cc: DJ Doody, Town Attorney (via email with encl)  
Sherry Henderson, Town Clerk (via email with encl)  
Jim Hickey, Town Consulting Planner (via email and hand delivery, w/encl)  
Mr. Eric Fordin  
Mr. Arthur Gallagher  
Mr. Ray Fort

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of approval by the Town Commission, a period of 90 days occurs in which no valid building permit is in effect, the final site plan approval shall be null and void unless extended by the Town Commission.

**REVISED**  
**December 17, 2021**

**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"). On December 7, 2021, the Town Commission sitting as the Board of Zoning Appeals considered a request for height variances and suggested the Owner revise its request for height variances to reduce the height of the proposed development from 15 stories/175' to 10 stories/130'. The following is submitted in response to that direction.

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 10-story condominium building with a measured height not to exceed 130 feet with up to 102 residential units (the "East Building"). On the West Parcel, the Owner proposes to develop 28 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. The proposed East Building is 10 stories or 130 feet. 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 10 story/130 foot building where 3 stories/35 feet of height is permitted.

In support of this variance 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 variance is 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 10-story/130-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 10 story/ 130 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 variance.