



TOWN OF PALM BEACH

Minutes of the Development Review

Town Council Meeting

Held on December 13, 2023

I. [CALL TO ORDER AND ROLL CALL \(1:20\)](#)

The meeting was called to order on December 13, 2023, at 9:31 a.m., with all elected officials present.

II. [INVOCATION AND PLEDGE OF ALLEGIANCE \(1:36\)](#)

Led by Acting Town Clerk Churney and Council President Zeidman.

III. [COMMENTS OF MAYOR DANIELLE H. MOORE \(2:24\)](#)

None

IV. [COMMENTS OF TOWN COUNCIL MEMBERS \(2:45\)](#)

Council President Zeidman recognized the new position at the Preservation Foundation of Palm Beach, recently filled by Mackey Reed.

Amanda Skier discussed the new position of Director of Public Affairs and stated that Aimee Sunny, Director of Education, will be assuming a new title as Director of Preservation and Planning. She indicated that Ms. Sunny would be dedicated to the Landmarks Preservation Commission (LPC) as well as major commercial projects being presented to ARCOM.

V. [COMMUNICATIONS FROM CITIZENS – 3-MINUTE LIMIT, PLEASE \(7:07\)](#)

David Kelso, 255 Monterey Road, discussed ongoing issues at 249 Monterey Road. He indicated that the owner, Michael Peacock, should have sodded and irrigated his property within 30 days of demolishing his previous home. This has not occurred for 6 months, and Mr. Peacock has not been issued a citation or been fined for these Code violations. The homeowners on neighboring streets had to deal with an unsightly construction site and are upset that the situation has not been dealt with. Council President Zeidman wanted the Town Council and the Town Staff to respond in a helpful manner. She thought since Monterey and Colonial Roads backed up to each other, they should be carefully monitored.

Council Member Araskog discussed the path for a violation to be heard by the Code Enforcement Board because of the laws of due process. She recommended hiring more construction site monitors. Council Member Crampton requested something in the council backup to show how Code Enforcement, Public Works, Planning Zoning and Building, and all other departments function together. Director Wayne Bergman acknowledged some inter-departmental communication issues. However, he indicated that staff had worked on some issues with the demolition process that he would like to present to the Town Council.

Anita Seltzer, 44 Coconut Row, discussed issues related to the Architectural Review Commission (ARCOM) and the Town Council's handling of commercial projects. ARCOM had to consider a commercial project in February that didn't comply with the comprehensive plan or Worth Avenue Guidelines. The project was sent back to the Town Council for proper review. In response to this and another application in May, the Town Council decided that commercial properties must be presented to them first for deliberation. Despite this, there was a recent vote to send a commercial project to ARCOM with unresolved zoning issues. Ms. Seltzer expressed concern about a potential disconnect between the Town Council's words and actions, emphasizing the importance of following legal procedures and codes to avoid legal complications and costs for the town. She urged the Council to be mindful of these issues in the future.

VI. [APPROVAL OF AGENDA \(23:32\)](#)

The following modifications were made to the agenda:

Addition of Waiver of Town Code Section 18-237 For Building Permit Extension for 300 Seminole Avenue under C. 4. Time Extensions, Waivers, and Three-Strike Matters.

A reordering of the resolutions, hearing Resolution No. 149-2023 before Resolution No. 148-2023

A motion was made by Council Member Cooney and seconded by Council President Pro Tem Lindsay to approve the agenda as amended. The motion was carried unanimously, 5-0.

VII. [CONSENT AGENDA \(25:16\)](#)

A. **ZON-23-112 285 SUNRISE AVE—SPECIAL EXCEPTION AND VARIANCE** The applicant, Island Animal Hospital (Dr. Mary Ellen Scully), has filed an application requesting Town Council review and approval for a Special Exception for a permitted use greater than 3,000 SF in the C- TS zoning districts for a new veterinarian office and (1) Variance to allow a new veterinarian office on the ground floor in lieu of the use being located above the first floor.

B. **ZON-23-122 400 ROYAL PALM WAY—SPECIAL EXCEPTIONS WITH SITE PLAN REVIEW AND VARIANCE** The applicant, Citizens BankNA, has filed an application requesting Town Council review and approval for a (1) Special Exception for a bank and (2) a Special Exception for a drive-thru facility and a Site Plan Review for a use greater than 2,000 SF in the C-OPI zoning district for third-floor bank in an existing four-story office building. Additionally, a Variance is being requested to not provide 6 additional parking spaces required as a change of use from office space to banking space.

Council Member Cooney noted that while there was fair criticism of variance

approvals by the Town Council, the variance request for 285 Sunrise Avenue was a perfect example of a flaw in the code.

A motion was made by Council Member Cooney and seconded by Council Member Crampton to approve the consent agenda as amended, that the projects contained within the Consent Agenda meet the requirements of Chapter 134, specifically Sections 134-326 through 134-330 for Site Plan Review, Section 134-229 for Special Exceptions, and Section 134-201 for Variances, and with the removal of ZON-24-012, 325 Via Linda from the approval. The motion was carried unanimously, 5-0.

- C. [ZON-24-012 325 VIA LINDA – VARIANCE \(27:10\)](#) The applicant, Three Palm Trees LLC (Maura Ziska), has filed an application requesting Town Council review and approval for a Variance to exceed by the maximum width of a dock based on lotwidth.

Council Member Araskog asked about the width of the proposed dock. Attorney Maura Ziska responded.

A motion was made by Council Member Crampton and seconded by Council President Pro Tem Lindsay that Variance No. ZON-24-012 shall be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201 (A), items 1 through 7, have been met. The motion was carried 4-1, with Council Member Araskog dissenting.

VIII. REGULAR BUSINESS

IX. RESOLUTIONS

- A. [RESOLUTION NO. 149-2023 \(29:43\)](#): A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Ratifying And Confirming The Determination Of The Landmarks Preservation Commission That The Property Known As 318 Australian Ave Meets The Criteria Set Forth In Ordinance No. 2-84, Also Known As Chapter 54, Article IV Of The Code Of Ordinances Of The Town Of Palm Beach; And Designating Said Property As A Town Of Palm Beach Landmark Pursuant To Ordinance No. 2-84, Also Known As Chapter 54, Article IV Of The Code Of Ordinances Of The Town Of Palm Beach. *The property owners are supportive of this designation. The Landmarks Preservation Commission voted 7-0 for Landmarking.*

Friederike Mittner, Design & Preservation Manager, provided confirmation of publication.

Janet Murphy, MurphyStillings, provided historical information on the property and outlined how the property met Criteria 1 and 3 for Landmark Designation.

Ex parte communications were disclosed.

A motion was made by Council Member Cooney and was seconded by Council President Pro Tem Lindsay to make the designation report part of the record. The motion was carried unanimously, 5-0.

Aimee Sunny, Preservation Foundation of Palm Beach, thanked the owner for

their stewardship and encouraged the Town Council to support the designation.

Council Member Cooney also thanked the owner for being willing to allow their property to be a landmarked structure.

A motion was made by Council Member Araskog and was seconded by Council Member Cooney to adopt Resolution 149-2023, designating the property at 318 Australian Avenue as a landmark of the Town of Palm Beach, on the basis that it meets criteria Numbers 1 and 3 of Section 54-161 of the Town of Palm Beach Code and in the Landmarks Preservation Ordinance No. 2-84.

Council Member Cooney asked Attorney O’Conner if the town would require something in writing to formalize landmark designations since state law had changed. His concern was that future property owners may question whether the property was properly designated.

The motion was carried unanimously, 5-0.

Mackey Reed, Director of Public Affairs with the Preservation Foundation, was formally introduced and congratulated on her new role.

- B. [RESOLUTION NO. 148-2023 \(42:33\)](#): A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Ratifying And Confirming The Determination Of The Landmarks Preservation Commission That The Property Known As 262 Sunset Ave Meets The Criteria set forth in Ordinance No. 2-84, Also Known As Chapter 54, Article IV Of The Code Of Ordinances Of The Town Of Palm Beach; And Designating Said Property As A Town Of Palm Beach Landmark Pursuant To Ordinance No. 2-84, Also Known As Chapter 54, Article IV Of The Code Of Ordinances Of The Town Of Palm Beach. *The property owner is opposed to this designation. The Landmarks Preservation Commission voted 7-0 for Landmarking.*

Ex parte communications were disclosed.

Friederike Mittner, Design & Preservation Manager, provided confirmation of publication.

Janet Murphy, MurphyStillings, provided historical information on the property and outlined how the property met Criteria 1 and 3 for Landmark Designation.

A motion was made by Council Member Cooney and was seconded by Council Member Araskog to make the designation report part of the record. The motion was carried unanimously, 5-0.

Jamie Crowley, the attorney on behalf of 262 Sunset Avenue, LLC, discussed the property's affiliation and its connection to the White Elephant. Mr. Crowley mentioned that significant efforts and expenses were invested in updating the White Elephant, but federal credits were not granted. The property at 262 Sunset Avenue, adjacent to the White Elephant, was legally nonconforming in a commercial zoning district where residential use was no longer allowed due to changes in street character

over time. Mr. Crowley criticized the landmarking procedure, stating that the property was considered for landmark designation without proper notification to the owner, and the meeting agenda lacked clarity and supporting documents. He argued that the property did not meet Landmark Criteria, referenced House Bill 423, and highlighted research findings by Eugene Pandula, indicating that the property did not meet the designation. Despite not typically challenging the Landmark Preservation Commission, Mr. Crowley asserted that this specific property did not warrant designation.

Eugene Pandula, representing the property owner, emphasized the significance of the Florida Master Site File Forms and the latest survey conducted by Environmental Services. The Florida Master Site File Forms, dating back to 1979, provided a historical perspective on the property, which initially received a low grade in 1979. Subsequent forms in 1997, 2004, and 2010 were completed by Dr. Day. Initially, Dr. Day suggested additional research and the potential for landmark status when the property was residential. However, Mr. Pandula explained that changes to the property, including the shift to commercial use, were necessary and rendered it ineligible for landmark designation. He asserted that, architecturally, the building did not meet the criteria for landmark status.

Mr. Crowley expressed concerns about time constraints affecting the Landmarks Preservation Commission's (LPC) decision-making process. He suggested that the rushed presentation and omission of facts during the LPC session might have influenced the unanimous vote. Additionally, Mr. Crowley pointed out that Mr. Pandula, who presented the case, has a history of involvement with LPC as a past Chairperson and has been practicing architecture in town since the late 1970s.

Friederike Mittner, Design and Preservation Manager for the Town of Palm Beach, expressed her belief that the evidence presented supported meeting Section 54-161 criteria. She emphasized the value of adapted use as a preservation practice, noting its widespread use across the country. Ms. Mittner suggested that the developer's request for additional parking and amenities could be fulfilled by adapting the front structure for amenities and accommodating additional parking at the rear of the site. She highlighted the challenges in obtaining national register designation, indicating that the difficulty in navigating the State's Historic Preservation Office indicated the building's significance.

Mr. Crowley argued that the building, being a commercial structure with no parking, posed challenges for proposing commercial use. He expressed concern that if the property were designated a landmark, it would remain a commercial building without available parking, highlighting the potential consequences of landmarking structures with insufficient parking space.

Aimee Sunny, Preservation Foundation of Palm Beach, provided professional analysis, explaining the Town of Palm Beach's process of preparing a list of potential properties before meetings. She indicated putting a property under consideration initiated an in-depth study and required changes to go before the Landmarks Preservation Commission. Ms. Sunny clarified the nature of the 2020 ESI Historic Site Survey Report, emphasizing its role as a preservation and planning tool rather than an exhaustive survey. She agreed that the building in question was deemed historic and contributory by the Historic State Preservation Office and the national

register keeper. Ms. Sunny believed the building met criteria one and three and urged the Town Council to designate it as such.

Amanda Skier, Preservation Foundation of Palm Beach, commended the Town of Palm Beach for having a skilled group of preservation experts. She expressed concern about the owners' testimony and arguments relying on consultants who worked under tight time constraints and on a budget. Ms. Skier suggested that more weight should be given to experts like Jane Day and Murphy Stillings, who conducted exhaustive research for the national register nomination, affirming that the building was worthy of protection. She urged the Town Council to trust the assessments of the town's own preservation experts.

Mr. Crowley highlighted that the comprehensive plan specifically referenced historic site forms as the basis for selecting properties for consideration in the designation process. According to him, these resources were explicitly mentioned in the historic preservation element of the comprehensive plan as the foundation for designating properties.

Town Attorney Randolph addressed the legal allegation regarding placing the property under consideration and explained the town's long-standing practice of doing so without giving notice to the owner. He argued that there was no violation of due process because this action did not take away a property right; it simply required the owner to appear before the Landmarks Preservation Commission before any formal designation. Mr. Randolph pointed to explicit provisions under Section 54-164 detailing notice procedures and emphasized that, legally, he did not believe there had been any violation of due process in not notifying the property owner when the property was placed under consideration.

Mr. Randolph addressed another legal aspect related to the Landmark Preservation Commission hearing, acknowledging that the meeting was rushed, and the property owners were not afforded sufficient time to make their presentation.

Mr. Crowley contended that the argument was a change of position because before a property goes under consideration, there is a property right to demolish the building. He said a property may not be demolished once under consideration for landmark.

Council Member Araskog agreed that the property owner was not allotted adequate time to make their presentation to the Landmarks Preservation Commission. She suggested sending it back to Landmarks and allowing them to speak and have the commission vote again. She also asked Mr. Randolph to advise the Commission of the importance of listening and considering all the evidence if the application.

Mr. Randolph understood from the applicant there was an argument regarding a due process violation and thought they were not given reasonable opportunities as stated in the Code.

Mr. Crowley expressed hesitancy in sending the application back to the Landmarks Preservation Commission and wondered if they could weigh in on the issue without any bias.

Mr. Randolph said Mr. Crowley was not waiving his argument, and he felt it would

be futile to go back to LPC. If the applicant wished to pursue legal action, Mr. Crowley would still have that argument.

Council Member Cooney, Council President Pro Tem Lindsay, and Council President Zeidman believed the application should be remanded to the LPC and expressed the belief that LPC members would listen with an open mind upon receiving proper legal advice and counsel.

A motion was made by Council Member Araskog and was seconded by Council Member Cooney to remand Resolution No. 148-2023 back to the Landmarks Preservation Commission.

Council Member Araskog thought it was necessary for Mr. Randolph to meet with the Chair and Vice-Chair of LPC before the next hearing.

A motion was made by Council Member Araskog and was seconded by Council Member Cooney to amend the motion to remand Resolution No. 148-2023, 262 Sunset Avenue, to a date certain of January 17, 2024, back to LPC. The motion carried unanimously, 5-0.

Clerk's note: A short break was taken at 11:24 a.m. The meeting resumed at 11:41 a.m.

X. DEVELOPMENT REVIEWS

A. Appeals

1. [Administrative Appeal 1236 S Ocean Blvd./200 Emerald Beach Way \(1:57:43\)](#): Appeal of the decision of an administrative officer regarding a code enforcement case of a fence. The appellant cites zoning code Sections 134-141, 134-1666, and 134-1548 for this appeal.

Mr. Randolph advised the Town Council that this was not a de novo hearing; no testimony would be heard today. Only the applicant would present an argument.

Amanda Quirke Hand, attorney for the owner at 100 Emerald Beach Way, presented an appeal of an administrative decision concerning an unauthorized fence. The fence, not on an approved site plan and lacking a building permit, prompted a complaint in June 2023, leading to the dismissal of the subsequent Code Enforcement complaint. The undisputed facts revealed that a fence was erected close to the 100 Emerald Beach Way property without proper approval. M. Timothy Hanlon, representing Mr. and Mrs. Thornton, argued it was a temporary, permit-free fence from Amazon. Ms. Hand presented a photograph illustrating the fence, used as a dog pen, with grass growing around it. She emphasized its proximity to the front door of 100 Emerald Beach Way and its distance from the Thorntons' residence at 1236 S. Ocean Blvd. Ms. Hand argued the illegality of the fence, citing zoning regulations regarding fences.

Ms. Hand stated that the owners of 100 Emerald Beach Way respectfully requested that the town grant the appeal. She added that Mr. Bergman had determined that no permit was required for a temporary fence.

Mr. Hanlon argued that the appeal lacked evidence challenging the Code Enforcement Officer's decision to dismiss the complaint or asserting that the dog playpen qualified as a fence under the zoning code. He maintained that the

playpen was temporary and not a fence, originally located in the garage, and intended for a single, older dog. Mr. Hanlon clarified that the blue tarp mentioned in the presentation was used to block video cameras and a voice recording mechanism installed by neighbors, aimed at preserving privacy. He added that the property owner voluntarily invited Town staff and Code Enforcement personnel to inspect the small playpen once the appeal was raised.

Mr. Bergman stated that based on photographs and materials he had seen, he would not consider the structure a fence and would not require a building permit.

Council Member Araskog asked how a fence was defined in the Town Code, to which Attorney O'Connor responded it was not defined. Council Member Araskog asked Mr. Hanlon why a temporary fence had been in place for several years. Mr. Hanlon said it was because the Thorntons were using their yard as they were legally able to do.

Mayor Moore told the property owners they needed to work on a solution. She thought the situation was ridiculous. Council Member Cooney agreed.

Council President Zeidman pointed out the hours spent by staff and the Town Council on issues such as this and agreed with her fellow Town Council about the pettiness of this situation.

Council Member Araskog asked how long the fence had been in place and wondered why the Thorntons could not move the fence closer to their house to have a good relationship with their neighbors.

Mr. Hanlon said his client did not create this situation. He said the Thorntons bought the property for open space and were using it as such. He said the neighbors were only in town a short time each year and believed the appeal was filed out of spite.

A motion was made by Council Member Crampton and was seconded by Council Member Cooney to deny the appeal based upon the fact no credible evidence had been presented. The motion was carried 4-1, with Council Member Araskog dissenting.

Council President Pro Tem Lindsay thought there were communication issues between neighbors that should have been worked out.

Council Member Araskog asked the attorneys to strongly recommend that the Thorntons relocate the fence, and Council President Pro Tem Lindsay asked the attorneys to urge their clients to remove the surveillance equipment.

1. **Old Business**

- a. **ZON-23-068 (ARC-23-090) 206 CARIBBEAN RD (COMBO) - SITE PLAN REVIEW** The applicant, Walter Wick, has filed an application requesting Town Council review and approval for Site Plan Review to allow development of a new single-family residence on a platted nonconforming parcel deficient in lot width and lot area required in the R-B Zoning District. The Architectural Commission shall perform the design review component of the application.

Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.

- b. **ZON-23-084 (ARC-23-109) 600 TARPON WAY (COMBO) - SPECIAL EXCEPTION AND VARIANCES** The applicants, Frank and Annie Falk, have filed an application requesting Town Council review and approval for 7 variances, including (1-2) for building height plane reductions, (3- 6) to locate mechanical equipment within the front yard, (7) to exceed maximum site wall height within the front yard, and a Special Exception for reduced vehicular gate setbacks on a dead-end street, for the construction of a new two-story single-family residence over 10,000 SF and sitewide landscape and hardscape improvements. The Architectural Commission shall perform the design review component of the application.

Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.

2. New Business

- a. **ZON-23-077 (ARC-23-107) 162 E INLET DR (COMBO) - VARIANCE (2:28:12)** The applicants, David and Jill Shulman, have filed an application requesting Town Council review and approval for a variance to (1) exceed the maximum allowable Cubic Content Ratio (CCR) for the construction of enclosed additions and a rear awning to the single-family residence. The Architectural Commission shall perform the design review component of the application. *The Architectural Commission approved the design (5-2), and supported variances (7-0).*

Ex parte communications were disclosed.

Attorney M. Timothy Hanlon and Patrick Segraves, SKA Architect + Planner, were the professionals who presented the project.

Council President Zeidman thought the language on the agenda should reflect either ARCOM's or LPC's recommendation on the variances.

Council Member Cooney and Council President Pro Tem Lindsay thought the variance was a reasonable request, but it was a violation of the code, and there was no hardship was to justify further enlarging a structure that was already more than what was allowed.

Council President Zeidman asked for further clarification of the nonconformities that would be eliminated with approval of the variance. Mr. Hanlon explained that the swimming pool would be smaller, and landscaping would be increased at the rear of the property.

A motion was made by Council Member Araskog and was seconded by Council Member Cooney that Variance No. ZON-23-077, 162 E. Inlet Drive, be denied for reasons that the application does not meet the criteria set forth in 134-201(a), items 1, 2, 3, 5, 6, 7.

When asked, Mr. Hanlon stated there was no opportunity to make the

variance smaller.

Council Member Crampton thought the proposed project's impact was minimal, but he could not find a hardship to justify granting a variance.

The motion was carried unanimously, 5-0.

Clerk's note: Mayor Moore left the meeting at 12:37 p.m. and returned after the lunch break.

- b. **ZON-23-088 (ARC-23-120) 1600 S OCEAN BLVD (COMBO) - SITE PLAN REVIEW AND VARIANCES (2:59:28)** The applicant, PB Pavilion Trust (Michael Vineberg, Robert G. Simses and Peter Flanagan, Trustees), has filed an application requesting Town Council review and approval for site plan review for an addition to house a generator over 150kW, and (3) variances for (1) additional parapet height in the required north side yard setback and (2 – 3) to reduce the required north and south side yard setback in order to construct one-story additions to a previously approved two-story residence. The Architectural Commission shall perform design review of the application. *The Architectural Commission approved the design (7-0) and supported the variances (7-0).*

Ex parte communications were disclosed.

Attorney Maura Ziska and Harold Smith, Smith and Moore Architects, were the professionals who presented the project.

When asked if the parapet could be eliminated, Mr. Smith thought that would be a mistake.

Council President Zeidman said the project was beautiful, but she thought it could be symmetrical, eliminating the need for variance.

Mr. Smith showed the original proposal and explained the solution reached. The goal was to find a solution that would not interrupt the architecture of the structure.

A motion was made by Council Member Araskog that Variance No. ZON-23-088, 1600 S. Ocean Blvd., be denied for reasons that the application does not meet the criteria set forth in 134-201(a), items 1 through 7. The motion died for lack of a second.

A motion was made by Council Member Crampton and was seconded by Council President Zeidman that Variance No. ZON-23-088, 1600 S. Ocean Blvd., shall be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201 (a), items 1 through 7, have been met. The motion was carried 4-1, with Council Member Araskog dissenting.

A motion was made by Council Member Crampton and was seconded by Council President Pro Tem Lindsay that Site Plan No. ZON-23-088, 1600 S. Ocean Blvd., as said application meets the criteria set forth in sections 134-229 and 134-329, respectively, of the Town Code and finds that approval of the Site Plan will not adversely affect the public interest, that all zoning requirements governing the use have been met and that satisfactory provision and arrangement has been made concerning items (1) through (11) of section 134-329. The motion was carried unanimously, 5-0.

- c. **ZON-23-104 (ARC-23-137) 310 CLARKE AVE (COMBO)— VARIANCES** The applicant, Mark & Patricia Davies, has filed an application requesting Town Council review and approval for seven (7) Variances (1-2) to exceed maximum equipment screening wall heights in the east and west side-yards, (3) to exceed the maximum number of equipment in the west side-yard, (4-5) to locate A/C equipment closer than permitted to the east and west side property lines, (6) to locate a pool heater closer to the east side property line than permitted, (7) and to forgo the requirement to enclose pool equipment in a pump house enclosure. The Architectural Commission shall perform design review of the application.

Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.

- d. **ZON-23-105 (ARC-23-123) 1186 N OCEAN WAY (COMBO)— VARIANCES** The applicant, Martha Lee Johnson 2012 Exempt Trust (Stan Johnson), has filed an application requesting Town Council review and approval for (3) Variances: (1) for reduced rear setbacks for the installation of a pool heater, (2) for increased separation distance between the pool and the pool equipment, and (3) to exceed allowable chimney height, in conjunction with the construction of a new two-story single-family residence. The Architectural Commission will perform the design review component of the application.

Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.

- e. **ZON-23-106 (COA-23-038) 318 AUSTRALIAN AVE (COMBO) - VARIANCES (3:18:48)** The applicant, Combinat, LLC (Rep. Timothy Hanlon), has filed an application requesting Town Council review and approval for (1) Variance to exceed the maximum allowable lot coverage for the construction of a rear enclosed addition and pergola to an existing one-story landmarked structure. The Landmarks Preservation Commission shall conduct the design review portion of the application and shall decide on the floodplain variance and Historic Preservation Tax Abatement. *The Landmarks Preservation Commission approved the design (7-0), supported variance (7-0) and supported floodplain variance (7-0).*

Ex parte communications were disclosed.

Attorney M. Timothy Hanlon and Yiannis Varnava, Varnava Design Studio, were the professionals who presented the project.

When asked about making the terrace space permeable, Mr. Varnava said the landscaping was conforming, and the drainage system would be entirely updated.

Council Member Cooney added his support for the project.

When asked, Mr. Hanlon further explained the hardship of the request.

A motion was made by Council Member Cooney and was seconded by Council Member Araskog that Variance No. ZON-23-106, 318 Australian Avenue, shall be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201 (a), items 1 through 7, have been met. The motion was carried unanimously, 5-0.

- f. **ZON-23-109 (COA-23-040) 134 EL VEDADO RD (COMBO)—VARIANCE.** The applicants, Elizabeth and Jeffrey Leeds, have filed an application requesting Town Council review and approval for (1) Variance to provide vehicle queuing space deficient in depth between the driveway gate and edge of roadway. The Landmarks Preservation Commission shall perform a design review of the application. The applicants, Elizabeth and Jeffrey Leeds, have filed an application requesting Town Council review and approval for (1) Variance to provide vehicle queuing space deficient in depth between the driveway gate and edge of roadway. The Landmarks Preservation Commission shall perform a design review of the application.
Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.

- g. **ZON-23-111 (HSB-23-009) 269 PARK AVE (COMBO)—VARIANCES** The applicant, Schnapps 269 Park Avenue LLC (Andrew and Lorraine Dodge), has filed an application requesting Town Council review and approval for four (4) Variances to (1) expand an existing nonconforming 3rd story of an existing three-story historically significant building by adding four side rooftop dormer windows, (2) to exceed the maximum overall building height for the construction of four dormer windows, (3) to reduce the required side setback for the dormer windows and habitable terrace deck, and (4) to reduce the required front setback for a new entrance feature and habitable terrace deck. The Landmarks Preservation Commission shall conduct the design review portion of the application and shall decide on the floodplain variance.
Please note: This item was deferred to January 10, 2024, meeting at

the Approval of the Agenda, Item VI.

- h. **ZON-23-113 (ARC-23-145) 123 CHILEAN AVE (COMBO)—SPECIAL EXCEPTION AND VARIANCES** The applicant, Robert & Perri Bishop, has filed an application requesting Town Council review and approval for Special Exception to develop a parcel comprised of portions of platted lots which is deficient in minimum required lot width and lot area in the R-B district, and (3) Variances including (1 and 2) to reduce the required east and west side-yard setbacks and (3) to exceed the maximum permitted cubic content ratio (CCR) permitted, in conjunction with a new two-story single-family residence and one-story accessory cabana structure. The Architectural Commission shall perform design review of the application.

Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.

- i. **ZON-23-118 (ARC-23-140) 2278 IBIS ISLE RD (COMBO)—VARIANCE** The applicant, Angel Arroyo, has filed an application requesting Town Council review and approval for a Variance (1) to eliminate the required garage enclosure for two vehicles in the R-B district. The Architectural Commission shall perform design review of the application.

Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.

- j. **ZON-23-119 (ARC-23-146) 995 S OCEAN BLVD (COMBO)—VARIANCES** The applicant, Mary S. Conrad, has filed an application requesting Town Council review and approval for four (4) Variances to construct a second story addition on an existing single-family residence within the required (1-2) front yard setback, (3) within the required side yard setback, and (4) within the building height plane. The Architectural Commission shall perform design review of the application.

Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.

- k. **ZON-24-003 (COA-23-047) 340 ROYAL POINCIANA WAY (COMBO)—SPECIAL EXCEPTION AND VARIANCE (3:33:46)** The applicant, TUTTO MARE LLC and SIDNEY SPIEGEL, TRUSTEE OF TRUST #31520371 DATED OCTOBER 25, 1984, has filed an application requesting Town Council review and approval for (1) a Special Exception for a new restaurant within the Royal Poinciana Theatre building at the west side of The Royal Poinciana Plaza, (2) a Special Exception for outdoor café seating in association with the restaurant, and (1) a Variance to exceed the maximum height of rooftop kitchen equipment. The Landmarks Preservation Commission shall perform design review of the application.

Ex parte communications were disclosed.

Jamie Crowley, the attorney for the applicant, outlined the project, indicating a special exception request for 64 outdoor seats and a variance for rooftop equipment necessary for ventilation. He mentioned that the Town Council had previously reviewed the number of seats and the valet parking system. The applicant proposed an addition to a prior agreement, providing a new Declaration of Use Agreement. An amended 1979 agreement update was submitted due to two parking spaces being used for Marissa Collections expansion. Despite requesting 200 seats, the applicant sought to add 7 seats back, resulting in 50 seats. Mr. Crowley discussed a sound study conducted by an engineer, indicating that outdoor seating would comply with the Town's noise ordinance thresholds.

When asked, Mr. Crowley responded that the Declaration of Use Agreement was prepared by the town's attorney and staff.

Mr. Bergman discussed the one variance for the rooftop equipment.

Dominic Kozerski, Bonetti Kozerski Architecture, and Nelo Freijomel, Spina O'Rourke, were the design team for the project and made the presentation.

Council Member Araskog asked about the screening of the outdoor seating as well as the French Doors. Mr. Freijomel said the doors were the only exterior change being proposed.

Council Member Crampton asked about the operability of the windows to keep the interior rooms cooler, and if any feedback had been received from the residents in The Towers. Mr. Freijomel responded about the doors. Mr. Crowley said a letter had been received from the closest affected residents in The Towers, but no letter had been received from the board.

Mr. Freijomel said a two-part canopy would be retractable and open completely to let light and air into the space.

Samantha David noted that there had been communications with the neighbors, and they had been supportive.

Council President Pro Tem Lindsay asked about closing times and outdoor seating. She requested real vegetation be used and a letter of support be obtained from the homeowner's association of the adjacent condominium.

Ms. David said there were no public concerns, and also noted that the sound would travel west over the water rather than toward The Towers.

Council President Zeidman stated that since the new restaurant was considered a special exception, the Town Council would have to make sure everyone was protected from the sound.

Council Member Cooney did not think the Zoning in Progress pertaining to restaurant uses had ever been rescinded.

Council Member Crampton stated his support for the project.

Council Member Araskog sought details about the sound study and inquired if all residents in The Towers were notified, to which Mr.

Crowley provided affirmation. She questioned how "town serving" would be ensured. She expressed reservations about the hours of operation and suggested including provisions in the Declaration of Use to ensure dining only in the patio seating area. Additionally, she proposed a gradual approach to outdoor seating, with the Town Council having the right to decrease the number of outdoor seats in response to complaints. Mr. Crowley explained the process for handling noise complaints, involving fines and potential appearances before the Town Council if compliance was not achieved.

Council President Pro Tem Lindsay asked questions and sought clarification about the number of patrons accommodated in the space.

Mayor Moore requested to see the rendering of the terrace. She expressed less concern about the seating configuration and favored the retractable awning for sound mitigation. She emphasized the need for waterfront dining in Palm Beach and expressed confidence in Mr. Crowley's commitment to town-serving aspects. Mayor Moore suggested obtaining a letter of support from The Towers' President.

Council Member Crampton thought this proposal was elevated because it was in keeping with town traditions.

Council Member Araskog did not believe the Declaration of Use should run with the land. She also thought that if the owner were to change, the Declaration of Use would need to be re-negotiated.

Council Member Cooney asked for clarification in the staff memo regarding the 1979 agreement.

Ms. David introduced the restaurant owners, Gianpaolo and Gabby DeFelice.

Gianpaolo and Gabby DeFelice, the owners of Tutto Mare, indicated they had been in Palm Beach for 8 years and had previously owned a small restaurant in The Hamptons. The DeFelices discussed their history in owning restaurants and felt honored and excited to join the Palm Beach community. They indicated their cuisine would be Southern Mediterranean Cuisine.

Anne Pepper, 333 Seaspray Avenue, expressed concern about the town-serving aspect of the business and the potential for noise issues. She also asked about limiting events.

Some members thought it was a good idea to limit special events.

Council President Zeidman advised that the Town Council members review the Declaration of Use thoroughly so they could hold a discussion in January. Council President Zeidman confirmed that there would only be ambient music and that there would be no dance floor or no live music.

A motion was made by Council Member Crampton and was seconded by Council Member Cooney that Variance No. ZON-24-003 be granted and find in support thereof, that all of the 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 and that the area must be screened.

Council Member Cooney noted that the type of equipment necessary for the roof was not allowed under the Town Code.

Council Member Araskog asked for a statement of the hardship. Mr. Crowley responded that the equipment that was designed and available to perform the function of the kitchen scrubber was not within the code parameters as written.

The motion was carried unanimously, 5-0.

A motion was made by Council Member Crampton and was seconded by Council President Pro Tem Lindsay to approve Special Exception No. ZON-24-003, indoor restaurant seating, as said application meets the criteria set forth in sections 134-229 and 134-329, respectively, of the Town Code and finding that approval of the Site Plan will not adversely affect the public interest, that all zoning requirements governing the use have been met and that satisfactory provision and arrangement has been made concerning items (1) through (11) of section 134-329, and approval is conditioned on approval of satisfactory details in the Declaration of use Agreement will return to the Town Council on January 10, 2024. The motion was carried unanimously, 5-0.

A motion was made by Council Member Crampton and was seconded by Council President Pro Tem Lindsay to approve Special Exception No. ZON-24-003, outdoor restaurant seating, as said application meets the criteria set forth in sections 134-229 and 134-329, respectively, of the Town Code and finding that approval of the Site Plan will not adversely affect the public interest, that all zoning requirements governing the use have been met and that satisfactory provision and arrangement has been made concerning items (1) through (11) of section 134-329, and approval is conditioned on approval of satisfactory details in the Declaration of use Agreement will return to the Town Council on January 10, 2024. The motion was carried 4-1, with Council Member Araskog dissenting.

It was the consensus of the Town Council to defer the Declaration of Use, as well as the 1979 Agreement changes, to the January 10, 2024, Town Council meeting.

XI. ORDINANCES

A. Second Reading

1. **[ORDINANCE NO 017-2023 \(5:17:25\)](#): An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 18,**

Buildings And Building Regulations, At Article IV, Florida Building Code, Section 18-232, Definitions, Section 18-235, Building Division; At Section 18-237, Agreed Maximum Time Schedule For Completion Of Major Construction, And By Adding Section 18-240, Town Council Building Permit Extension Fee; Providing For Severability; Providing For The Repeal Of Ordinances In Conflict; Providing For Codification; And Providing An Effective Date.

Director Bergman read Ordinance No. 017-2023 by title only.

A motion was made by Council Member Crampton and was seconded by Council Member Araskog to adopt Ordinance No. 017-2023 on the second reading. The motion was carried unanimously, 4-0.

Clerk's note: Council Member Cooney was not in the room during the vote.

B. First Reading

1. An Ordinance Amending Chapter 134, Zoning, to Allow Arcades and Colonnades Within Public Rights-Of-Way in the C-TS Zoning District

ORDINANCE NO. 008-2023: An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, Article VI, District Regulations, Division 8, C-TS Town-Serving Commercial District, Section 134-1114, Same-Exceptions, To Allow Arcades And Colonnades Within Public Rights- Of-Way; Providing For Severability; Providing For The Repeal Of Ordinances In Conflict; Providing For Codification; And Providing An Effective Date.

Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.

2. An Ordinance Amending Chapter 134, Zoning, to Allow Valet Only Parking Structures Ancillary to Existing Hotels in the R-C Zoning District

ORDINANCE NO. 024-2023: An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Article I., Section 134-2 Definitions And Rules Of Construction, To Create A Definition For Valet Only Garage; To Article VI, District Regulations, Division 5. R-C Medium Density Residential District, Section 134-945, Special Exception Uses; Section 134-948 Lot, Yard and Area Requirements, Section 134-955, And Off-Street Parking And Loading; To Allow Valet Only Parking Structures Existing Hotel; Providing For Severability; Providing For The Repeal Of Ordinances In Conflict; Providing For Codification; And Providing An Effective Date.

Please note: This item was withdrawn at the Approval of the Agenda, Item VI.

C. Time Extensions, Waivers, and Three-Strike Matters

1. [Waiver of Town Code Section 18-237, For Building Permit Extension for 334 Chilean Avenue \(5:18:53\)](#)

Wayne Bergman, Director of the Planning, Zoning and Building Department, described the building permit extension request.

Paul Courchene, President of Courchene Development Corp, explained the ongoing project and the reason for the extension request.

A motion was made by Council Member Cooney and was seconded by Council Member Araskog to approve the request as presented. The motion was carried unanimously, 5-0.

2. [Waiver of Town Code Section 18-237, For Building Permit Extension for 200 Bahama Lane \(5:22:15\)](#)

Wayne Bergman, Director of the Planning, Zoning and Building Department, described the building permit extension request.

Matt Courson, The Cury Group Inc., explained the ongoing project and the reason for the extension request.

A motion was made by Council Member Cooney and was seconded by Council Member Araskog to approve the request as presented. The motion was carried unanimously, 5-0.

3. [Waiver of Town Code Section 18-237, For Building Permit Extension for 2000 S Ocean Blvd. \(5:25:33\)](#)

Wayne Bergman, Director of the Planning, Zoning and Building Department, described the building permit extension.

Scott Houbert, CA Lindman of South Florida, LLC, explained details regarding the ongoing project and the reason for the extension request.

A motion was made by Council Member Araskog and was seconded by Council Member Crampton to approve the request as presented. The motion was carried unanimously, 5-0.

4. [Waiver of Town Code Section 18-237, For Building Permit Extension for 300 Seminole Avenue. \(5:28:44\)](#)

Wayne Bergman, Director of the Planning, Zoning and Building Department, described the building permit extension request until November 15, 2024.

Chet Davis, Davis General Contraction Corporation, explained details regarding the ongoing project and the reason for the extension request.

A motion was made by Council Member Araskog and was seconded by Council Member Crampton to approve the request as presented. The motion was carried unanimously, 5-0.

XII. [ANY OTHER MATTERS \(5:33:05\)](#)

Council Member Araskog requested legal advice on the text amendments coming forward

during the Code Reform project and a discussion on the coordination of Code, Planning and Zoning, and Public Works when there were issues.

Council President Pro Tem Lindsay and Council President Zeidman thought Mr. Blouin should be involved in the discussion as they knew departments had to work with the Town Manager to find a resolution.

XIII. [ADJOURNMENT \(5:38:20\)](#)

A motion was made by Council Member Araskog and seconded by Council Member Cooney to adjourn the meeting at 4:11 p.m. The motion was carried unanimously, 5-0.

APPROVED:

Margaret A. Zeidman, Town Council President

ATTEST:

Kelly Churney, Acting Town Clerk

Date: _____