

ORDINANCE NO. 11-2018

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 134, ZONING, AS FOLLOWS: AT ARTICLE I, IN GENERAL, SECTION 134-2, DEFINITIONS AND RULES OF CONSTRUCTION, BY MODIFYING BUILDING, HEIGHT OF (APPLICABLE ONLY IN THE R-B DISTRICTS) TO CORRECT THE DEFINITION'S INTENT AND BUILDING HEIGHT OF, CORNER LOT TO CORRECT A SCRIVENERS ERROR WHICH INADVERTANTLY ELIMINATED LANGUAGE IN THE DEFINITION RELATED TO THE DEFINITION'S APPLICABILITY TO THE R-B ZONING DISTRICT; ARTICLE II, ADMINISTRATION, SECTION 134-172, HEARING PROCEDURE, SECTION 134-328, REVIEW BY DIRECTOR OF PLANNING, ZONING AND BUILDING OR HIS/HER DESIGNEE AND SECTION 134-330. ACTION BY TOWN COUNCIL; DEVIATIONS; TIME LIMIT FOR BEGINNING WORK, TO INCREASE THE NOTICE REQUIREMENTS FOR SPECIAL EXCEPTIONS, VARIANCES AND SITE PLAN REVIEWS THAT ARE AN INTENSIFICATION OF USE OR FOR OFF-STREET PARKING VARIANCES; TO REQUIRE THE LEGAL NOTICES TO BE MAILED BY THE APPLICANT; AND TO ALLOW 36 MONTHS TO COMMENCE WORK BY THE ISSUANCE OF A BUILDING PERMIT RELATED TO THE ZONING APPLICATION; SECTION 134-532, PUBLIC HEARINGS, TO ADD A 300 FOOT MAILING NOTICE AND LEGAL ADVERTISING REQUIREMENT FOR PUD APPLICATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE

WHEREAS, after public hearings pursuant to notice required by law, the Planning and Zoning Commission considered all testimony and recommended modification to the Code of Ordinances; and

WHEREAS, after public hearing pursuant to notice required by law, the Town Council considered the Planning and Zoning Commission's Record and Report and all evidence and testimony and as the Local Planning Agency recommended that the Town Council adopt the subject Ordinance; and

WHEREAS, after public hearing pursuant to notice as required by law, the Town Council does hereby find, determine, and declare that the public health, safety, morals and general welfare of the citizens of the Town of Palm Beach requires that the aforesaid Chapter 134, ZONING, of the Code of Ordinances, be amended as hereinafter set forth.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Article I, IN GENERAL, Section 134-2, Definitions and rules of construction, is hereby amended to read as follows:

Sec. 134-2. Definitions and rules of construction.

(a)...

(b) *Definitions* The following words, terms and phrase, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building, height of (applicable only in the R-B districts) means the vertical distance from zero datum (excluding garage) to the bottom of the top chord of the roof framing member where it intersects the plane of the outside face of the exterior wall for pitched roofs (excluding dormer windows in non-habitable space). For flat roofs the measurement is to the point where the ceiling meets the exterior wall. If the lot grade is raised more than 18 inches pursuant to section 134-898, the building height zero datum shall be from a point 18 inches above the highest street elevation or the minimum flood elevation, whichever is ~~lower~~ higher. For the purpose of constructing additions of less than 800 square feet, the zero datum shall be the top of the lowest top of first floor slab of the existing building.

Building height of, corner lot. In those cases involving a corner lot as defined in this section, the zero datum of the lot set forth in the definition of the term “building, height of (applicable to all districts except the R-B district)” and the definition of the term “building, height of (applicable only in the R-B district)” shall be measured from the average elevation (taken at the crown of the street) of each of the two intersecting streets abutting the lot. For the purpose of constructing additions of less than 800 square feet, the zero datum shall be the top of the lowest top of the first floor slab of the existing building.

Section 2. Article II, ADMINISTRATION, Section 134-172, Hearing procedure, is hereby amended to read as follows:

Sec. 134-172. Hearing procedure.

(a) Applications for special exceptions or variances shall be accompanied by proper exhibits, which shall be timely filed and shall include plans, documents and other materials to adequately depict and support the request. At a minimum, all applications for a variance shall include a plot plan identifying the following information: Location of structure(s), lot size, setbacks, percent of lot coverage, percent landscaped open space (front yard and total lot), and finished topographical elevations. In addition, if historic/specimen trees are located on the subject property, a signed and sealed survey with all pertinent information including the location of historic/specimen trees is required and a detailed written explanation of how said trees shall be protected by barricading shall accompany said application. Upon receipt of the application for a special exception or variance, the procedures in this section shall be undertaken.

(b) The director of planning, zoning and building or designee shall examine all applications requesting rezoning, special exception uses, dimensional variances or other matters requiring a public hearing to determine if they meet the requirements of this chapter, and that the action or approval requested is properly allowable by the town council under this chapter and if so shall prepare a report setting forth his recommendations. If the director or designee determines the application fails to meet the provisions of this chapter, he may schedule a pre-application conference and request modifications as may be required to bring the application within the provisions of this chapter.

(c) After completion of subsection (b), a copy of such application shall be mailed to the owners of the property and the property immediately adjacent thereto and across the street therefrom and to all property owners within 300 feet from any part of the subject property at the address shown on the county property appraiser's tax records, together with a notice from the director or designee advising the date, time and location of the hearing on such application before the town council. If a variance is being requested that exceeds the maximum density or the maximum off-street parking requirements allowed in the zoning district ~~based on the maximum density allowed by the future land use designation on the property~~, the notification distance shall increase to 1,000 feet. A density variance is not allowed which is inconsistent with the maximum density allowed in the Town's Comprehensive Plan.

If a special exception application is being requested for a service station, restaurant, lounge/bar, nightclub, private social, swimming, tennis or yacht club; or any other use deemed by the Director of Planning, Zoning and Building to be an intensification of use on a property, the notification distance shall increase to 750 feet. For the purpose of this section of the Code, intensification of use shall include, but not be limited to, increased tenant square footage, increased seating, increased off-street parking demand, and increased hours of operation of a special exception use. Such list of property owners, together with a notification map, shall be provided by the applicant ~~along with addressed and properly stamped envelopes~~ and shall be certified by the applicant as being true and accurate. The applicant shall be required to mail the application to the property owners within the notification area within five days of submittal of the application to the Town.

(d) The director or designee shall also cause to be published in a newspaper of general circulation in Palm Beach or West Palm Beach a brief summary of such application and the date of the hearing, directed "to all to whom it may concern"; such notice to be published on two separate days not less than seven days apart, the first to be at least ten days before the meeting of the town council to consider such application. The cost of such publication shall be borne by the applicant.

(e) No application shall be heard less than ten days after the first publication of the notice and 15 days after the mailing to property owners directly affected as provided in this section, and all applications will be heard at regular meetings of the town council unless otherwise ordered by the town council in accordance with sections 134-141, 134-142, 134-201 and 134-226.

(f) An initial deferral requests received by the town more than seven days prior to scheduled town council hearing date may be granted for one month only or the next succeeding regular town council meeting, if that should occur on a different date. Any deferred action request received seven days or less from the scheduled meeting date shall be made in person at the town council meeting at the time the action item appears on the agenda. The applicant must explain or justify the request, which the town council may approve or deny. A second request for deferral shall be made in person at the town council meeting at the time the item appears on the agenda. The applicant must explain or justify the request, which the town council may approve or deny. A third request for deferral shall be denied unless the applicant can demonstrate to the town council that a compelling reason exists. Any deferral which is required due to a case being deferred by the architectural commission or landmark preservation commission shall be an exception to the regulation above. In no case shall a deferral exceed six months.

(g) An application request seeking substantially the same relief cannot be accepted for consideration after it has been denied by the town council until after 12 months have elapsed from the date of denial.

(h) The work or use authorized under an approved variance or special exception application must be commenced within ~~42~~ 36 months from the date of the town council approval thereof, and if not so commenced the special exception or variance shall be null and void. Commencement shall be considered as ~~either landmarks preservation commission or architectural commission application approval, whichever is appropriate, or the submission the~~ issuance of a building permit for the work related to the application or a business tax receipt if no building permit is required. ~~application if said commission's approval is not required. A building permit, if required, must be issued within one year of the date of commencement or said special exception or variance approval shall expire.~~ In addition, all authorized work under the building permit for said approved special exception or variance must be completed within the timeframe set forth in section 105.4.1.6. of the Florida Building Code as amended in section 18-242 of this Code or said special exception or variance shall expire.

(i) A request for a time extension from any of the requirements in subsection (h) may be granted or denied by the town council for just cause. Said time extension request shall be submitted in writing to the planning, zoning and building department at least one month prior to the expiration date or said special exception or variance approval shall expire.

Section 3. Article II, ADMINISTRATION, Section 134-328, Review by director of planning, zoning and building or his/her designee; notice of hearing, is hereby amended to read as follows:

Sec. 134-328. Review by director of planning, zoning and building or his/her designee; notice of hearing.

(a) A copy of such application for site plan review shall be mailed to the owners of the property and the property immediately adjacent thereto and across the street therefrom and to all owners of all other property within 300 feet from any part of the subject property at their respective

addresses as shown on the county property appraiser's tax records, together with a notice from the director of planning, zoning and building or designee advising of the date, time and location of the hearing on such application before the town council. Such list of property owners, together with a notification map, shall be provided by the applicant along with addressed and properly stamped envelopes and shall be certified by the applicant as being true and accurate. The applicant shall be required to mail the application to the property owners within the notification area within five days of submittal of the application to the Town. No application shall be heard less than ten days after the first publication notice as provided in this section and 15 days after the mailing to property owners directly affected, and all applications will be heard at regular meetings of the town council unless otherwise ordered by the town council.

(b) The director or designee shall also cause to be published in a newspaper of general circulation in Palm Beach or West Palm Beach a brief summary of such application and the date of the hearing, directed "to all to whom it may concern", such notice to be published on two separate days not less than seven days apart, the first to at least ten days before the meeting of the town council to consider such application. The cost of such publication shall be borne by the applicant.

Section 4. Article II, ADMINISTRATION, Section 134-330. Action by town council; deviations; time limit for beginning work, is hereby amended to read as follows:

Sec. 134-330. Action by town council; deviations; time limit for beginning work.

(a) After review and preparation of the findings, the town council shall approve, approve with changes, or deny the application for site plan review and direct the director of planning zoning and building or designee to approve or withhold approval of the building permit.

(b) An approval of a site plan review application by the town council shall include, as a part thereof, all of the information and exhibits as required by this chapter. No subsequent deviation or change may be made from this information and the exhibits as approved by the town council in the implementation of the town council approval except upon new application to and approval by the town council. The application shall include size, shape, style and location of buildings, number of dwelling units, location of parking facilities, driveways, accessory uses and buildings, landscaping concepts, and all other aspects of the proposed development germane to the site plan review. Any deviation will result in a stay of work until resolved.

(c) An initial deferral request received by the town more than seven days prior to scheduled town council hearing date may be granted for one month only or until the next succeeding regular town council meeting, if that should occur on a different date. Any deferred action request received seven days or less from the next scheduled meeting date shall be made in person at the town council meeting at the time the action item appears on the agenda. The applicant must explain or justify the request, which town council may approve or deny. A second request for deferral shall be made in person at the town council meeting at the time the item appears on the agenda. The applicant must explain or justify the request, which town council may approve or deny. A third request received for deferral shall be denied unless the applicant can demonstrate to the town council that a compelling reason exists. Any deferral

which is required due to a case being deferred by the architectural commission or landmark preservation commission shall be an exception to the regulation above. In no case shall a deferral exceed six months.

(d) The work authorized by town council approval of a site plan review must be commenced within ~~42~~ 36 months after the date of town council approval thereof, and if not so commenced town council approval shall thereupon become null and void. Commencement shall be considered ~~either landmarks preservation commission or architectural commission approval or the submission of the issuance of a building permit for the work related to the application if said commission's approval is not required.~~

Section 5. Article II, ADMINISTRATION, Section 134-532. Public hearings, is hereby amended to read as follows:

Sec. 134-532. Public hearings

(a) Upon submission of a complete planned unit development application, the planning and zoning commission shall hear said application within 60 days of the application being deemed complete by the director of the planning, zoning and building department or designee. A public hearing on the planned unit development application shall then be held by the planning and zoning commission and town council after public notice is given in accordance with law. A copy of the PUD application shall be mailed to the owners of the property and the property immediately adjacent thereto and across the street therefrom and to all property owners within 300 feet from any part of the subject property at the address shown on the county property appraiser's tax records, together with a notice from the director or designee advising the date, time and location of the hearing on such application before the planning and zoning commission and town council. Such list of property owners, together with a notification map, shall be provided by the applicant and shall be certified by the applicant as being true and accurate. The applicant shall be required to mail the application to the property owners within notification area within five days of submittal of the application to the Town. No application shall be heard less than ten days after the first publication notice as provided in this section and 15 days after the mailing to property owners directly affected, and all applications will be heard at regular meetings of the town council unless otherwise ordered by the town council.

(b) A transcript of the hearing shall be caused to be made by the town council, copies of which shall be made available at cost to any party to the proceedings, and all exhibits accepted in evidence shall be identified and duly preserved, or, if not accepted in evidence, shall be properly identified and the reason for the exclusion clearly noted in the record. The planning and zoning commission shall report on the proposed planned unit development not less than 15 days before the public hearing, and the report shall be available for public inspection during reasonable hours.

Section 6. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the

invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 7. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 8. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 9. Effective Date.

This Ordinance shall take effect thirty-one days after its adoption, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 13th day of June, 2018, second reading and final adoption on this 11th day of July, 2018.

Gail L. Coniglio, Mayor

Danielle H. Moore, Town Council President

Margaret A. Zeidman, Council President Pro Tem

Julie Araskog, Town Council Member

ATTEST:

Lewis S.W. Crampton, Town Council Member

Kathleen Dominguez, Town Clerk

Bobbie Lindsay, Town Council Member