



# TOWN OF PALM BEACH

## Minutes of the Development Review Town Council Meeting Held on September 11, 2019

### **I. CALL TO ORDER AND ROLL CALL**

The Development Review Town Council Meeting was called to order September 11, 2019 at 9:30 a.m. in the Town Council Chambers. On roll call, all of the elected officials were found to be present.

### **II. INVOCATION AND PLEDGE OF ALLEGIANCE**

Administrative Specialist Churney gave the invocation. Council President Moore led the Pledge of Allegiance.

### **III. PRESENTATIONS**

#### **A. Gold Star Families Plaque – Memorial Park**

John Lindgren, Planning Manager, updated the Council and reviewed the approval of the plaque by the Landmarks Preservation Commission. He asked the Town Council for their final approval. Lauren Berkson with Gold Star Families was recognized for her efforts in bringing this forward.

**Motion was made by Council Member Crampton, and seconded by Council Member Araskog, to approve the Gold Star Families Plaque as presented. On roll call, the motion carried unanimously.**

### **IV. COMMENTS OF MAYOR GAIL L. CONIGLIO**

Mayor Coniglio remembered those who were lost on 9/11.

**V. COMMENTS OF TOWN COUNCIL MEMBERS AND DIRECTOR OF PLANNING, ZONING AND BUILDING**

Council Members Araskog remembered those who were lost on 9/11.

Council Member Araskog discussed the process of receiving the correspondence for the Development Review Meeting. She requested a procedural change to have the blue folders provided at their Tuesday meeting. Staff had no problem with this change.

**VI. COMMUNICATIONS FROM CITIZENS**

There were no comments from citizens.

**VII. APPROVAL OF AGENDA**

Staff requested the deferral of variance Z-19-00213 to the November 13, 2019 meeting.

**Motion was made by Council President Pro Tem Zeidman, and seconded by Council Member Lindsay, to approve the agenda as amended. On roll call, the motion carried unanimously.**

**VIII. PUBLIC HEARINGS**

**IX. DEVELOPMENT REVIEWS**

All those intending to give testimony at today's meeting were sworn in by Administrative Specialist Churney at this time and throughout the meeting as necessary.

**A. APPEALS**

**1. Appeal - 1236 S. Ocean Blvd., Hitting Wall**

Council Member Lindsay recused herself.

Town Attorney Randolph explained this was a request for re-hearing because appellant did not receive certain requested information before the last hearing and asked for a motion to reconsider.

No ex-parte communications were declared.

Town Attorney Randolph advised this re-hearing would be limited to the missing information. He had asked both parties to present their memoranda by 5 p.m. the previous Friday. Mr. Hanlon had not filed his papers until Monday. Mr. Schneider had objected and was offered a continuance. Mr. Schneider stated he did not want a continuance.

**Motion was made by Council Member Araskog, and seconded by Council President Moore, to reconsider the decision regarding the 1236 S. Ocean Boulevard hitting wall. On roll call, the motion carried unanimously 4-0.**

Kathleen Dominguez, Town Clerk, discussed the records that were left out of the records request and stated she had subsequently provided the records.

Town Attorney Randolph clarified for Council Member Araskog the Council could make a decision based upon what was presented today.

Jeffrey Schneider with Levine Kellogg Lehman Schneider & Grossman LLP, counsel for 100 Emerald Beach Way, argued the appeal. He asked that their appeal be granted, and either the hitting wall be removed or a special exception obtained.

M. Timothy Hanlon, attorney for John and Margaret Thornton, provided rebuttal to the argument made by Mr. Schneider. He asked that the appellant petitioner's request be denied.

Jeffrey Schneider rebutted Mr. Hanlon's argument and provided a photo of the area.

Council Member Araskog read from the transcript of the last hearing and asked about the use, and the wording "staff approval request", to which Mr. Hanlon and Mr. Schneider responded.

Council President Moore asked staff about the final application submitted to the Town. Zoning Manager Castro responded and reviewed the history of the application.

Council Member Crampton asked Mr. Hanlon why access was denied, who stated he had not known of the request. Council Member Crampton asked for evidence it was being used for a hitting wall.

Mayor Coniglio asked staff if it was unusual for staff to meet with applicants and members of their project team. Mr. Castro responded not if they had questions. She asked for dates of when the applicant applied for ARCOM staff approval permit and when that permit was approved by the Town. She asked if the change in height would change the staff approval. Dates were provided.

Council President Pro Tem Zeidman asked about access being denied. She commented the Town Council must infer intent from material before them.

Planning Manager John Lindgren clarified the date of administrative approval. Zoning Manager Castro displayed a building permit for the wall and extension of existing slab. He showed on an aerial the

basketball goal and described locations of the wall and gate, and an extension of the wall at another location with a gate, and confirmed dates as previously stated.

Town Attorney Randolph described the progression of this appeal from the Code Enforcement Board decision to dismiss this case because of no information that the wall had been used as a hitting wall, which changed when Ms. Hand argued it was about being improperly permitted in the first instance as a hitting wall. Attorney Randolph questioned whether there had been notice to appeal, and clarified that the appeal today was to consider the appeal based on the Code Enforcement action.

Attorney Schneider read from the message sent to Mr. and Mrs. Thornton of code violation for building the wall without a special exception permit.

Council Member Araskog asked if Zoning Manager Castro would have responded differently if he had seen the emails. He responded he would have responded differently by requiring a texture on the wall. There was no code provision regarding striping, and no evidence of the wall being used as a hitting wall. Council Member Araskog recapped the discussion that they could not have appealed the Code Enforcement decision of building without a special exception because there was no notice in the first place, and there was intent for a hitting wall. Mr. Castro provided the staff approval.

Council Member Araskog understood the decision to be made was if what was built and what existed now needed a special exception. She questioned staff on intent. Mr. Castro said he could only state they built a 10-foot high wall and then striped it without the Town's knowledge as a half tennis court.

Council Member Araskog asked who would not allow them to enter the property. Ben Alma, Code Enforcement Manager, responded it was Mr. Critton.

Council President Pro Tem Zeidman confirmed with Mr. Castro this was only about whether the wall was being used as a hitting wall. Mr. Castro responded the applicants re-submitted stating it would not be used as a hitting wall, but a perimeter-screening wall with a basketball court.

Council Member Crampton commented the wall met the code because it was built outside the setbacks, and staff did not feel a special exception was warranted. He accepted staff's judgment.

**Motion was made by Council Member Crampton, and seconded by Council President Pro Tem Zeidman, to deny the appeal regarding the 1236 S. Ocean Boulevard hitting wall.**

During discussion of the motion, Council Member Araskog asked if they could ask for striping to be removed, which the Town Attorney said was not an issue here. Council Member Crampton confirmed for Town Attorney Randolph that his finding of facts for this motion was based on his prior statements. Council Member Araskog stated she would vote yes, but she felt the intent was clear and felt it should be followed with no notice.

**On roll call, the motion carried unanimously, 4-0.**

*A short break was taken at 11:11 a.m. The meeting resumed at 11:16 a.m.*

2. Administrative Appeal of Determination and Decision by the Director of Zoning that the Proposed "Guest House and Pavilion for the Main House at 1480 North Ocean Boulevard" located at 1485 Via Manana is a Stand Alone Residence that Does Not Require a Unity of Title

Council Member Araskog declared a conflict of interest and left the room in an abundance of caution.

No ex parte communication was declared.

Town Attorney Randolph laid out the facts of his ruling. He stated he spoke with Mr. Eubanks and with Julie Araskog at the outset of this appeal, and had said the only parties to this appeal were the appellant and the administrative official who made this decision. Attorney Randolph stated if he said or implied that the property owner affected had no say, then he was in error, because to deny the property owner to speak to this would be a violation of due process. He had apologized to the parties, who indicated they had relied on his statements to their detriment, but the only issue was whether Mr. Green, attorney for property owner, had an opportunity to address the Town Council on this. Town Attorney Randolph advised the Town Council should consider the motion to strike. He was asked if Mr. Green's comments should be limited to the motion to strike or if he should be able to be involved in the total process. Town Attorney Randolph advised the opposing side felt Mr. Green should not even have been able to file the papers, and he believed it should relate not only to Mr. Green being able to speak for the motion to strike, but to extend to the whole appeal.

John Eubanks, Attorney for Julie Araskog, discussed what the Code allowed when an Administrative Appeal was filed, and made his argument for the motion to strike. He believed the appeal was not open to others since it was not in the Code.

Town Attorney read aloud his email response to John Eubanks in response to his argument, advising it was proper to allow the property owner to present argument in order to be consistent with previous practice. Upon receipt of Mr. Eubanks' email, Town Attorney Randolph had contacted Mr. Castro's office and learned that the applicant's response filed by James Green had already been

distributed and was part of the record before the Mayor and Town Council.

Mr. Eubanks provided a rebuttal argument against reconsidering a decision and did not believe previous practice would trump Code.

James Green, Attorney for property owner Jason Kalisman, indicated Federal and Florida constitutional protections for due process would trump the Code. He and the property owner were interested in Mr. Castro's decision because unity of title would adversely affect his client.

Council President Moore asked Attorney Randolph for his opinion. Mr. Eubanks responded. Town Attorney Randolph stated his opinion that the Town Code did not preclude a property owner from being heard but did not necessarily make them a party. It was silent as to whether or not another party affected by the appeal should have an opportunity to address it. In addition, the Town had consistently allowed affected property owners to be heard in cases like this one.

Council Member Crampton commented this property owner was definitely an aggrieved party. He stated he would vote to deny the motion to strike, especially since the appellant was a member of the Town Council.

Council Member Lindsay commented because the Code was silent and because they had consistently allowed the other parties to respond, she would deny the motion to strike.

**Motion made by Council Member Crampton and seconded by Council President Pro Tem Zeidman to deny the motion to strike. On roll call, the motion carried unanimously, 4-0.**

Mr. Eubanks stated he and Attorney Ron Kolins were present representing Julie Araskog, neighbor to the property. He argued that a unity of title was needed for the new guesthouse. He cited a letter from Zoning Manager Castro that a unity of title was not needed because this was a stand-alone house. He stated the words *stand-alone house* were not in the Code and that this was an accessory building. He reviewed the ARCOM comments, which referenced the building as a guesthouse.

Mr. Green objected to affidavits presented by Jeff Smith and Gene Pandula, Architects and Julie Araskog because they were not part of Mr. Castro's decision. Town Attorney Randolph agreed they were outside the record but had been seen. Mr. Eubanks argued why the affidavits should be allowed. Zoning Manager Castro advised his decision was made before the ARCOM presentation. Town Attorney Randolph stated in hearings before municipal bodies most everything was allowed in with the understanding the Council could give it the proper weight when making their decision. Mr. Eubanks reviewed

the affidavits, and gave the reasons he felt Mr. Castro's decision should be reversed.

Zoning Manager Paul Castro stated his credentials, reviewed the sequence of events in this case, and referred to the single-family district in the zoning regulations. He advised that in the past, if a property owner brought a house next door and wanted to tear it down and build another house, they must meet all the lot, yard, and area requirements in the code. This building met all requirements of a single-family dwelling. He commented the term guesthouse was not referenced in the code. His determination had been made long before Julie Araskog had raised the issue. He expressed his belief that the property owner had every right to build two single-family homes and use both, so long as the house being torn down and rebuilt met all zoning requirements of the Code as to a single-family dwelling. He gave reasons for why another property referenced by Mr. Eubanks needed a unity of title. Mr. Castro stated his determination was if a single family dwelling was built on a conforming lot and met all the lot, yard, and other regulations used by one single family, it should be permitted.

Attorney Green responded by requesting Mr. Castro's comments be incorporated into his response and stated there was nothing in the Town Code that prevented a family from buying an adjacent residence or to build an adjacent residence for use by other members of the family.

Ron Kolins, Attorney for Julie Araskog, argued why he felt Mr. Castro's determination should be overturned. In his argument, he stated he did not dispute that this structure met all the requirements for a single-family house, and in the R-B Zoning District all accessory structures must also meet the same requirements. In addition, this structure had been referred to in all referenced documents as a guesthouse. His conclusion was the appeal must be upheld.

Council Member Crampton asked questions of Paul Castro clarifying his previous experience with unity of title agreements, that his decision was made on a set of plans, not pictures, that no one advised him in making his decision, and his decision was based on the definition of single family dwelling in the Code. Council Member Crampton expressed his opinion that it came down to best professional judgment, and whether the Town Council backed up his decision as an employee of the Town.

Council President Pro Tem Zeidman asked if a unity of title would change any requirements. Mr. Castro responded it would only change the setback from the cul-de-sac an additional five feet,

Council Member Lindsay asked if Mr. Castro was present at the

ARCOM meeting, and his opinion as to if this house had gone before ARCOM as a single-family house and not as a guest house, it would have passed. Mr. Castro's response was he could not speculate. He indicated as to the windows and door issue that there was a front door, which was a sliding door, and those were architectural issues rather than zoning issues. Council Member Lindsay asked if there were other instances in the Town, where one owner had two parcels adjacent to each other. Mr. Castro responded there were several.

Mayor Coniglio commented that looking at the map it appeared the only view of the home from Mrs. Araskog's home was from her front door. Mr. Eubanks indicated the view was not raised in the appeal because that was an ARCOM issue. Mr. Castro advised he did not consider any of the information from ARCOM in his decision, but it would not have changed his decision.

Council President Moore asked if she bought the house behind hers for use by her family members and did not have a connecting sidewalk if unity of title would be required. Mr. Castro explained why no unity of title would be required. The connecting sidewalk was discussed.

Attorney Kolins asked that the record reflect a comment made by Mr. Castro that his decision was based solely on what came out of his meeting with Mr. Kahan and did not consider the application itself, which stated this was to be a guesthouse. Mr. Castro responded quoting testimony from the ARCOM meeting on August 21.

**Motion made by Council Member Crampton and seconded by Council President Moore to deny the appeal of Determination and Decision by the Director of Zoning that the Proposed "Guest House and Pavilion for the Main House at 1480 North Ocean Boulevard" located at 1485 Via Manana.**

Town Attorney Randolph clarified the Town Council was not to consider the architectural information in their decision.

**On roll call, the motion carried unanimously, 4-0.**

*A short break was taken at 12:31 p.m. The meeting resumed at 12:36 p.m.*

*At this time, the following project was moved up in the agenda.*

a. **Z-19-00221 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)**

Zoning District: C-WA Worth Avenue. The application of Le Bilboquet (Philippe Delgrange, Principal), Applicant, relative to property located at 247 Worth Ave Suite: Site, legal description on file, is described below. 1) Sec. 134-1159 (a)(6), Sec. 134-329 and Sec. 134-229: A request for Special Exception with Site Plan Review

approval to operate a 3,590 square foot, 109 seat restaurant (“Le Bilboquet”) on both the 1<sup>st</sup> and 2<sup>nd</sup> floor in the rear of the Via located at 247 Worth Avenue. The proposed restaurant will feature upscale French cuisine. The proposed hours of operation are requested to be 11:00 a.m. to 12:00 a.m. midnight seven (7) days a week. A sample menu is on file with the Town’s backup. 2) Sec. 134-1159 (a)(6), Sec. 134-2176 and Sec. 134-2001: A request for Special Exception with Site Plan Review approval to have 44 (of the 109 proposed seats) to be outside in the Via. 3) Sec. 134-2175, Sec. 134-329 and Sec. 134-229: A request for a variance to provide zero (0) on-site parking spaces in lieu of the required 29 parking spaces that would be required under the principle of equivalency for the 87 additional seats which are over the inside capacity of the proposed restaurant.

Ex Parte communications were disclosed by Council Members Crampton, Lindsay and Araskog, Council President Moore, Council President Pro Tem Zeidman.

Maura Ziska, Attorney for the applicant, presented the project and request to the Town Council.

Zoning Manager Castro provided staff comments. Mr. Castro recommended that the building permit be conditional until receipt of concurrency from the County.

Council Member Araskog asked if any residents lived nearby. Attorney Ziska responded there was none. Council Member Araskog asked if the applicant could accommodate the 29 spaces, to which the response was yes.

Council President Moore called for public comment.

The owner of 277 Worth Avenue spoke in favor of the project.

**Motion was made by Council Member Crampton, and seconded by Council Member Araskog, that Special Exception Z-19-00221 shall be granted based upon the finding that such grant will not adversely affect the public interest, and that the applicable criteria set forth in Section 134-229 of the Town Code have been met, and that the building permit be conditional until receipt of concurrency from Palm Beach County, 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 this area. On roll call, the motion carried unanimously.**

**Motion was made by Council Member Crampton, and seconded by Council Member Araskog, that Site Plan Z-19-00221 be approved based upon the finding that the approval of the Site Plan will not adversely affect the public interest; that the Council certifies that the specific zoning requirements governing the individual use have been met and that satisfactory provision and arrangement have been met**

concerning Section 134-229 items 1 through 11 have been met. On roll call, the motion carried 4-0, with Council President Moore absent.

Motion was made by Council Member Crampton, and seconded by Council Member Araskog, that Variance Z-19-00221 shall be granted and find in support thereof that all the criteria applicable to this application as set forth in Section 134-201(a) items 1 through 7 have been met. On roll call, the motion carried unanimously 4-0, with Council President Moore absent.

## **B. TIME EXTENSIONS AND WAIVERS**

### **1. Time Extension Request for Roof Waterproofing, Repair and Maintenance Work at the Esplanade, 150 Worth Avenue**

Wayne Bergman, Assistant Director of Planning, Zoning and Building, introduced the project to the Town Council, and requested the ability to continue the waterproofing work beyond October 31, 2019, if needed.

Yvonne Jones, Property Manager for The Esplanade, 131 Worth Avenue, introduced Bud Barton, Construction Consultant for O'Conner Capital Partners, one of the investors in The Esplanade, discussed the need for waterproofing.

Mr. Barton discussed the timeline for waterproofing the roof, and believed the work would take two months.

Mayor Coniglio felt so long as there were no objections from neighbors the work should cease for a week at Thanksgiving and the end date should be December 15.

Council Member Araskog stated she was in full agreement with Mayor Coniglio.

Council President Moore called for public comment. There were no comments heard at this time.

Motion was made by Council Member Araskog, and seconded by Council Member Crampton to approve the 150 Worth Avenue extension request for roof waterproofing and maintenance work at The Esplanade, 150 Worth Avenue, to be completed by December 15 and not to be worked on during Thanksgiving week starting Monday through Friday. On roll call, the motion carried unanimously.

## **C. VARIANCES, SPECIAL EXCEPTIONS AND SITE PLAN REVIEWS**

### **1. New Business**

- a. **Z-19-00212 VARIANCE(S)** Zoning District: R-A Estate Residential The application of R. Harrison McCarthy, Applicant, relative to property located at **520 S OCEAN**

**BLVD**, legal description on file, is described below.

Section 134-843(a)(11) - Variance request to allow extension of the second floor balcony and converting a trellis covered loggia into an uncovered balcony, resulting in a lot coverage of 26.83% in lieu of the 25% maximum allowed in the R-A Zoning District.

No ex parte communication were disclosed.

David Klein, Attorney for the applicant, presented the project and request.

Zoning Manager Castro provided staff comments supporting the request.

Council Member Araskog asked if this had gone before ARCOM.

Pat Seagraves, Architect, responded, explaining it was not required to go to ARCOM and explained the project.

Council Member Araskog asked what the hardship was, to which the response was that Code only allowed 2 feet for the balcony and dirt and rainwater was pooling there.

Council President Moore called for public comment. There were no comments heard at this time.

**Motion was made by Council Member Lindsay, and seconded by Council Member Araskog, that Variance Z-19-00212 shall be granted and find in support thereof that all 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 insures a recorded easement will be granted if necessary to underground utilities in the area. On roll call, the motion carried unanimously.**

- b. **Z-19-00213 VARIANCE(S)** Zoning District: R-B Low Density Residential. The application of Armen A. Manoogian, Applicant, relative to property located at 224 S. Ocean Blvd., legal description on file, is described below: A request to add a two-car one-story garage onto the North side of the house which requires the following variances: 1. Sec 134-1576, A street side yard setback of six feet in lieu of the eighteen foot minimum required. 2. Sec 134-893 b (13). A Cubic Content Ratio of 6.13 in lieu of the 5.82 existing and the 3.94 maximum allowed. [Architectural Review Commission Recommendation: Implementation of the proposed variance will cause negative architectural impact to the subject property. Carried 7-0. The Architectural Review Commission deferred the project to the September 25, 2019 meeting. Carried 4-3]

Deferred at the approval of the agenda to the November 13, 2019 meeting.

- c. **Z-19-00214 SITE PLAN REVIEW** Zoning District R-D(2) High Density Residential The application of 330 South Ocean, Inc. (Steve Miller, Manager), Applicant, relative to property located at 330 S. Ocean Blvd., legal description on file, is described below. The 330 South Ocean Condominium Association, Inc. is requesting site plan approval for a 550 KW generator with a 4,000 gallon underground fuel tank and the construction of a 458 square foot building to house the generator. The generator building is proposed to be located on the northwest side of the condominium property. A 211 square foot shed will be removed to make room for the building and landscaping.

Ex parte communications were disclosed by Council Members Araskog, Crampton, Lindsay and Council President Pro Tem Zeidman.

Maura Ziska, Attorney for the applicant, presented the project and request.

Zoning Manager Castro provided staff comments.

There were no public comments to be heard.

**Motion was made by Council Member Araskog, and seconded by Council President Pro Tem Zeidman, that Site Plan Z-19-00214 be approved based upon the finding that the approval of the Site Plan will not adversely affect the public interest; that the Council certifies that the specific zoning requirements governing the individual use have been met and that satisfactory provision and arrangement have been met concerning Section 134-329 items 1 through 11 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 insures a recorded easement will be granted if necessary to underground utilities in the area. On roll call, the motion carried unanimously.**

*A lunch break was taken from 1:02 p.m. The meeting resumed at 1:34 p.m.*

- d. **Z-19-00216 VARIANCE(S)** Zoning District: R-B Low Density Residential. The application of ILLKM PB, LLC, (Jeffrey Weiner, Member) Applicant, relative to property located at 655 Island Dr, legal description on file, is described below. A request for a variance to construct an open one-story pool loggia on the west side of the property that will result in a cubic content ratio ("CCR") of 4.74 in lieu of the 4.47 existing and the 3.92 maximum allowed in the R-B Zoning District.

Ex parte communications were disclosed by Council Members

Araskog, Crampton, Lindsay and Council President Pro Tem Zeidman.

Maura Ziska, Attorney for the applicant, presented the project and request.

Zoning Manager Castro provided staff comments.

Council Member Araskog asked what the hardship was to which Ms. Ziska responded that the house was built in 1989 before the CCR requirement and was currently non-conforming to today's code anyway. She stated this was a very slight increase. It was not looked at by ARCOM because it cannot be seen from the street.

Council President Moore called for public comment. There were no comments heard at this time.

**Motion was made by Council Member Crampton, and seconded by Council Member Lindsay, that Variance Z-19-00216 shall be granted and find in support thereof that all the criteria applicable to this application as set forth in Section 134-201(a) items 1 through 7 have been met. On roll call, the motion carried unanimously.**

- e. **Z-19-00217 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: B-A Beach Area The application of CKMJ Palm Beach LLC, Applicant, relative to property located at 1213 N. Ocean Blvd. Suite: Beach Cabana, legal description on file, is described below. Request a special exception with site plan review to remove an existing pergola and add 79 square feet to the east of the existing 121 square foot beach cabana that will require a south side yard setback of 3.5 feet in lieu of the 10-foot minimum required.

Ex parte communications were disclosed by Council Members Araskog, Crampton, Lindsay and Council President Pro Tem Zeidman.

Maura Ziska, Attorney for the applicant, presented the project and request.

Zoning Manager Castro provided staff comments.

Council Member Araskog asked what the hardship was, to which Ms. Ziska responded it was a non-conforming lot before this was built and they were matching the existing building line.

Zoning Manager Castro advised there were other cabanas on similar lots.

Council President Moore called for public comment. There were no comments heard at this time.

Zoning Manager Castro noted unity of title would be required.

**Motion was made by Council President Pro Tem Zeidman, and seconded by Council Member Lindsay, that Special Exception Z-19-00217 shall be granted based upon the finding that such grant will not adversely affect the public interest, and that the applicable criteria set forth in Section 134-229 of the Town Code 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. On roll call, the motion carried unanimously.**

**Motion was made by Council President Pro Tem Zeidman, and seconded by Council Member Lindsay, that Site Plan Z-19-00217 be approved based upon the finding that the approval of the Site Plan will not adversely affect the public interest; that the Council certifies that the specific zoning requirements governing the individual use have been met and that satisfactory provision and arrangement have been met concerning Section 134-329 items 1 through 11 have been met, On roll call, the motion carried unanimously.**

**Motion was made by Council President Pro Tem Zeidman, and seconded by Council Member Lindsay, that Variance Z-19-00217 shall be granted and find in support thereof that all the criteria applicable to this application as set forth in Section 134-201(a) items 1 through 7 have been met. On roll call, the motion carried unanimously.**

- f. **Z-19-00218 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of Christopher J. Lazzara and Jennifer Lazzara, Applicant, relative to property located at 272 Queens Ln, legal description on file, is described below. The applicant is proposing to construct a 3,468 square foot two-story addition to the west of the current residence comprised of living space, new garage and loggia that would result in the following variance being requested: 1)an angle of vision of 120 degrees in lieu of the 78 degrees existing and the 116 degrees maximum allowed in the R-B Zoning District. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variance will not cause negative architectural impact to the subject property. Carried 6-1. The Architectural Review Commission approved the architectural portion of the project. Carried 5-2]

Ex parte communications were disclosed by Council Members Crampton, Lindsay, Council President Moore and Council President Pro Tem Zeidman.

Maura Ziska, Attorney for the applicant, presented the project and request. She explained the hardship was the existing historic house was closer to the street than allowed, and the lot was non-conforming in depth, which was a hardship that ran with the land.

Zoning Manager Castro provided staff comments.

Council President Moore inquired if the renovation of the older section had been completed. Ms. Ziska responded it was completed and was just being closed out; the family would occupy the completed portion. She added that the applicant's goal was to complete the new construction as soon as possible, estimated at 10 months.

Zoning Manager Castro noted Josh Martin's comment had been the angle of vision needed to be revisited because it was a useless standard in the zoning code.

Council Member Araskog asked staff if this would negatively affect the neighbors. Mr. Castro responded he did not believe so.

**Motion was made by Council Member Lindsay, and seconded by Council President Pro Tem Zeidman, that Variance Z-19-00218 shall be granted and find in support thereof that all 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. On roll call, the motion carried unanimously.**

- g. **Z-19-00219 VARIANCE(S)** Zoning District: C-TS Town-Serving Commercial. The application of Wadia Associates (Dinyar Wadia, Principal), Applicant, relative to property located at 375 County Rd, Suite: 107, legal description on file, is described below. Request for a variance to allow an 829 Square foot architectural office (Wadia Associates) in suite 107 (previously Pastry Heaven) which is on the first floor of the building where office use is only allowed on the second floor in the C-TS Zoning District.

Ex parte communications were disclosed by Council Members Crampton, Lindsay, Araskog and Council President Pro Tem Zeidman.

Maura Ziska, Attorney for the applicant, presented the project and request.

Zoning Manager Castro advised this was a policy decision and staff believed there should be a Code change to address this issue and allow flexibility of uses on the first floor.

Mayor Coniglio expressed support for the project.

Council Member Crampton expressed support for the project.

Council Member Araskog expressed support for the project, and stated she needed to change her ex parte since she did discuss this project with Ms. Ziska.

**Motion was made by Council Member Crampton, and seconded by Council Member Araskog, that Variance Z-19-00219 shall be granted and find in support thereof that all the criteria applicable to this application as set forth in Section 134-201(a) items 1 through 7 have been met, and with the qualification that the Variance granted is only with the tenant. On roll call, the motion carried unanimously.**

- h. **Z-19-00220 VARIANCE(S)** Zoning District C-TS Town-Serving Commercial The application of The Palm Group (Kevin Mulvaney, Principal), Applicant, relative to property located at 361 S. County Road Suite: J & K, legal description on file, is described below. Request for a variance to allow a 500 square foot office (The Palm Group-Luxury Realty & Estate Management) in suites J & K (previously a dry cleaner and antique store) which is on the first floor of the building where office use is only allowed on the second floor in the C-TS Zoning District.

Ex parte communications were disclosed by Council Members Crampton, Lindsay, Araskog and Council President Pro Tem Zeidman.

Maura Ziska, Attorney for the applicant, presented the project and request.

Zoning Manager Castro provided staff comments.

**Motion was made by Council Member Araskog, and seconded by Council Member Crampton, that Variance Z-19-00220 shall be granted and find in support thereof that all the criteria applicable to this application as set forth in Section 134-201(a) items 1 through 7 have been met, and with the qualification that the Variance granted is only with the tenant. On roll call, the motion carried unanimously.**

## **2. Other**

- a. Consideration of Esplanade - Outdoor Promotional Events

Zoning Manager Castro commented as part of the backup, the applicant had provided as well as a list of upcoming events for the next year. He had contacted the Police Department and Code Enforcement and found no complaints related too any of their outdoor promotional events. Staff recommended they be allowed to continue to do this without coming back before the Council unless there was a problem in the future.

Council Member Araskog expressed her support, and stated she was ready to move this forward.

Yvonne Jones, The Esplanade, discussed the events for the 2019-2020

season.

Council Member Araskog stated her comments stood, with the addition that the property owners had shown this was Town serving, and that the outdoor promotional events be allowed to go forward.

Mayor Coniglio agreed this should go forward and asked if they needed to come back. Zoning Manager Castro explained with this type of approval if there was any issue in the future they could come back, and recommended it be specified they did not need to come back unless there was a problem in the future.

**Motion was made by Council Member Araskog, and seconded by Council President Moore to approve that the outdoor promotional events at the Esplanade be allowed to go forward, with the addition that the applicant does not need to return to the Town Council for future events. On roll call, the motion carried unanimously.**

No ex parte communication was declared.

**X. ORDINANCES**

**A. Second Reading**

1. ORDINANCE NO. 33-2019 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, Article I, In General, Division III, Plans And Permits, By Adding Section 18-86, Construction Staging And Truck Logistics Plan; Providing For Severability; Providing For The Repeal Of Ordinances In Conflict; Providing For Codification; And Providing An Effective Date.

Town Attorney Randolph read Ordinance No. 33-2019 by title only on second reading.

**Motion was made by Council Member Araskog, and seconded by Council President Pro Tem Zeidman to approve Ordinance No. 33-2019 on second reading. On roll call, the motion carried unanimously.**

Council President Moore called for public comment for the promotional events at The Esplanade. There were no comments heard at this time.

**XI. ANY OTHER MATTERS**

**A. Code Reform - Proposed Scope and Schedule**

Martin Klein, Chair of the Planning and Zoning Commission, spoke as a private citizen in favor of education and moving forward.

Assistant Director Wayne Bergman commented one of the goals to talk about today was to make sure the Council was supportive of their efforts and wished to move forward.

Council Member Lindsay spoke in favor of the educational process.

Council President Pro Tem Zeidman spoke in favor of the educational process, and Josh Martin's credentials and the planned workshop.

Council Member Araskog stated she wanted to reform the code, but thought more research was needed before proceeding, and voiced her concerns about potential costs and presenters. Her concerns about the presenters were whether they were the right fit, if they were the ones Council would choose, and who else was out there to consider. She also thought the discussion should be held during the season and not in the summer. She stated she wanted all the facts before making a decision. She suggested acting on ten items, then take time to explore, and make a decision in December or January.

Mayor Coniglio commented she thought everyone was interested in taking this forward, that Mr. Martin had listed his previous successes, and that they could be confident he would go forward with deliberation, thoughtfulness, and inclusiveness. She wished to add communication to the educational process, and suggested this be given the green light today and that Mr. Martin return in October with an update.

Council Member Crampton agreed with the Mayor, and felt everyone trusted Mr. Martin to bring the right kinds of presenters and experts, procedures, and processes, and thought the Code changes should be slow and steady. He wanted to give the green light now and move forward slowly, which was Mr. Martin's plan.

Council Member Lindsay expressed her opinion they should give the green light today and that Mr. Martin's plan was to do the majority of this during season but it was such a big project it needed to start now.

Council Member Araskog asked what was being green lighted. The response was it was for Mr. Martin to come back to bring everything. Council Member Araskog indicated she was fine with that but wanted to know the cost. Mr. Bergman confirmed the majority of the costs that Mr. Martin was aware of were in the 2020 budget. Mr. Klein suggested coming back. Council President Pro Tem Zeidman described the proposed project as a template to move forward, how to get everyone to have the same level of understanding, to get feedback, and then make a decision on how to move forward. Mr. Bergman discussed the cost, which Mr. Martin could communicate.

#### Public Comments:

Simon Taylor, 234 Oleander Avenue, commented he liked the direction the Town Council was going but advised that what was being proposed was to turn over the process to two entities, and if Council voted to approve, they were letting those entities create a template for code reform for the whole country with the Palm Beach brand, and he favored voting today to defer to let Planning and Zoning work on it.

Anita Seltzer, 44 Cocoanut Row, read from the proposal that they were working to build places that people love--thriving, prosperous communities where people had diverse choices for how they live, work, shop and travel. They would change the standards of urban design. She

expressed her opinion that Palm Beach was already diverse and had choices, and Palm Beach was already the brand that others sought to emulate. She did not want to hand over the Town and the Code to this group, and added her concern for the potential cost.

Anne Pepper, 333 Seaspray Avenue, agreed with Mr. Taylor, and felt code reform should be accomplished by Planning and Zoning working with Mr. Martin to define all the areas to break it down and get the built environment everyone wants. She felt the proposed project would only give a rubber stamp to new urbanism, and Palm Beach was already a poster child for the right built environment for ecology, economy and the vision for the Town. She believed Planning and Zoning was more than capable of carving up areas so that districts, streets, and neighborhoods would have zoning that would specifically build neighborhoods the Town would like and preserve.

Mayor Coniglio thought the concept was for the project to be green lighted today, then it would be brought back next month for Mr. Martin to present the details and framework and the Council would determine if they wanted move forward.

Council Member Crampton commented that he wanted Mr. Martin to hear all of the comments. He thought the concerns were legitimate, but added that the Town Council would not let experts completely change their views. He commented the focus was more on the process and on the quality of the Code and Code problems that need to be fixed. He said the Congress for New Urbanism had some good ideas and they were applicable. He thanked the residents for their comments, which were a cautionary tale for Mr. Martin. He was still behind Mr. Martin's proposal and added that the residents' comments should be taken into account going forward.

Council Member Araskog commented Mr. Taylor had voiced her concerns. Also, it was right that today's decision had nothing to do with urbanism, but the backup showed the education was only being done by people whose past projects were nothing like Palm Beach. She thought the experts who came in should present issues with certain zoning areas and tell how they could help to fix them. She stated the vision scared her, and she would not green light anything until she heard the presentation from Mr. Martin, and felt it should be when the residents were present.

**Motion was made by Council Member Araskog to defer until the November 13, 2019 meeting when Mr. Martin was present for a complete presentation.**

During discussion of the motion, Council President Moore asked Mr. Bergman what Mr. Martin had asked for today. Mr. Bergman indicated Mr. Martin was asking for it to be deferred, but their question was to get the temperature of the Town Council. Were they open to go forward with some changes in Code, with looking at what could be best for the Town or just stay where they were?

**Council President Moore seconded the motion.**

Mayor Coniglio indicated she would like to defer until October and reminded everyone they had moved everything to November. Council Member Araskog said she thought the whole process should start with the residents.

**On roll call, the motion carried 3-2 with Council Member Lindsay and Council President Pro Tem Zeidman opposed.**

B. “Sea” Streets Historic District Consideration - Path Forward

Town Attorney Randolph expressed concern for the purpose of the item. Attorney Randolph explained the process and discussed the concerns of the public.

Planning Manager Lindgren explained the agenda item was a separate matter. He requested approval for an educational symposium for Town residents on historic preservation in historic districts to be held in December so that everyone could participate. The symposium would occur prior to the historic district hearing at Landmarks for their consideration and recommendation to Town Council.

Council President Moore questioned if a “Sea” Street overlay were proposed, would double jeopardy apply to some of the homes. Town Attorney Randolph stated that would be called administrative res judicata, and he believed it would apply to 145 Seaspray.

Council Member Crampton thought it logical to place this question into the matter of overall zoning reform.

Mr. Lindgren commented they wanted to start work on this symposium right away. The Landmarks Commission had already placed the Sea Streets under consideration as a historic district, and it would take the consultants until January or February to put that together to bring to the Town Council. In the meantime, they wished to have the educational symposium to educate the public. Council Member Crampton thought the symposium should be included.

Council Member Araskog proposed making a recommendation to the Landmarks Commission that they take this off consideration until the comprehensive update of the master site surveys and the overall Code reform. She believed they should wait. She commented there had been no notice of placing over a hundred homes under consideration. People were very upset. She stated she would like the Code looked at as soon as possible to change the Code so that notice would be required before the Landmarks Commission could place homes under consideration. She would like to recommend to Landmarks Commission that they take these homes off consideration, to give time to look at what was approved, to hold the symposium Mr. Lindgren requested, then look at the overlay

plan and decide if they were going ahead with the study.

Council President Pro Tem Zeidman agreed with Council Member Araskog and the Council's responsibility was to see beyond the recommendation and protect the residents. This consideration tied the hands of the property owners and they did not know how long it would take. She thought the Council needed to use caution and pull back on this, and recommend to the Landmarks Commission that they pull back.

Council Member Lindsay stated she was on the same page as Council President Pro Tem Zeidman, and the other members of Council.

**Motion was made by Council Member Araskog, and seconded by Council President Pro Tem Zeidman to recommend to Landmarks Planning Commission that they reconsider and withdraw consideration and not have the "Sea" Streets under consideration for Historic District, in light of the fact the Town Council would be getting the history of the homes, they were going to hold an educational historical symposium, and the Council was discussing changing the Code.**

Council President Moore recognized the motion and second on the floor, but requested that the public be allowed to provide their comments.

Public Comment

Gigi Tylander, 225 S County Road, agreed with the motion on the floor. She stated she had been present at Landmarks Commission when this motion when the motion was made to make the Sea Streets a historic district, there was no discussion before the vote as to what a historic district was composed of, and it carried unanimously. She commented about Hurricane Dorian and how a home built in 1929 could not withstand such a storm, and the zoning code needed to address how to handle historic homes with today's regulations and expressed appreciation that the Council did not want homes tied up for an unknown period of time.

Nadine Levy, 315 Seaspray Ave., suggested with all the misinformation going around neighbor to neighbor in the "Sea" Streets, it be stopped by having an educational symposium, occurring prior to the issue being considered further.

**On roll call, the motion carried unanimously.**

**Town Council consensus was that the symposium could proceed.**

C. 145 Seaspray Avenue – Opposition to being included in "Sea" Streets Historic District

M. Timothy Hanlon, Attorney, representing David and Kelly Williams, contract purchasers of 145 Seaspray Avenue, advised that, in April, the Landmarks Commission had recommended to the Town Council to Landmark 145 Seaspray Avenue. On May 15, the

Town Council considered an appeal and decided not to designate that property. Mr. Strickland, the current owner was present today. Mr. Hanlon noted the Town Attorney had told the Council that administrative res judicata applied. His clients had asked him to request a declaration that by virtue of the Town's previous consideration and decision to not designate 145 Seaspray as a Landmark property that the Town of Palm Beach may not ever again consider or approve the current home and property at 145 Seaspray Avenue for Landmark designation either individually or as part of the Historic District.

Attorney Randolph commented there might be a change of circumstances in the future where somebody built a new house. Attorney Hanlon responded that was why he said current home, if they could carve out change of circumstances due to a new home, they were fine with that.

Mayor Coniglio commented on speaking previously with Attorney Hanlon, but she had not known any of the details. She expressed her opinion was they had already dealt with this issue, based on the fact that their prior decision made the issue moot, with the exception that Attorney Hanlon would like to have the comfort of a motion.

**Motion was made by Council Member Lindsay, and seconded by Council President Moore that 145 Seaspray Avenue, in recognition that it had already gone through Landmarks consideration and was denied by this Council, that administrative res judicata applies to this home and therefore this would be exempt from anything that might happen in the street going forward as far as designation or individually. On roll call, the motion carried unanimously.**

Council Member Araskog requested future action to require notice before the Landmarks Commission could place homes under consideration. Town Attorney Randolph recommended looking at the whole issue.

*Consensus of Town Council was to send this matter to the ORS Committee.*

Anita Seltzer asked for clarification of the motion made that morning concerning the blue folders, and was answered by Council President Moore and by Council Member Araskog. Ms. Seltzer asked about deadlines for placing backup online, which were printed on the agenda.

## **XII. ADJOURNMENT**

Council President Pro Tem adjourned the meeting at 3:26 p.m.