

TOWN OF PALM BEACH

Information for Town Council Meeting on: October 14, 2020

To: Mayor and Town Council

From: Wayne Bergman, Director, Planning, Zoning & Building Department

Re: Planning and Zoning Commission Record and Report: Proposed Modifications and Changes to Chapter 134, Zoning, Regarding Lot Fill, Mechanical Equipment and Off-Site Supplemental Shared Parking

Date: September 24, 2020

STAFF RECOMMENDATION

Staff recommends that the Town Council consider the Planning and Zoning Commission Recommendation and Report (EXHIBIT A) and staff's recommendations, and provide further direction on possible amendments to the Zoning Ordinance. Study items appear in "BOLD" print and newly proposed text is in add/delete format for ease of identification. Staff recommendations follow recommendations from the Commission.

GENERAL INFORMATION

The Town Council authorized staff to work with the Planning and Zoning Commission on three zoning issues. Those zoning items are as follows:

- Addressing lot fill issues related to raising buildings to meet Federal Emergency Management Agency (FEMA) flood plain elevation requirements.
- Reviewing consolidating the zoning regulations related to the screening and placement of generators, air conditioning, pool pump, filter and heating equipment to make them more user friendly.
- Review existing zoning requirements related to supplemental off-site shared parking to provide more flexibility to utilize existing parking lots.

Staff worked on proposed modifications to Chapter 134, Zoning, to address these issues and presented them to the Planning and Zoning Commission at meetings on June 16, 2020, July 21, 2020 and August 18, 2020. The Commission, after lengthy discussion on these items, made recommendations for Town Council's consideration. Staff is requesting that the Council consider

the proposed changes in the Record and Report identified in EXHIBIT A, and provide direction for drafting proposed ordinances for subsequent Local Planning Agency and Town Council action.

cc: Planning and Zoning Commission
Kirk Blouin, Town Manager
Jay Boodheshwar, Deputy Town Manager
John Randolph, Town Attorney
Paul Castro, AICP, Zoning Manager

EXHIBIT A: PLANNING AND ZONING COMMISSION RECORD AND REPORT

1. Proposed Changes to Chapter 134, Zoning, Addressing Topographical Grade Changes Related to Projects Meeting FEMA Flood Plain Elevation Requirements.

Background

The Town Council authorize staff to work with a consultant and the Planning and Zoning Commission to address the issue of excessive fill being placed on lots where the buildings are built higher to meet FEMA flood plain regulations. Staff retained Calvin Giordano & Associates to assist the Town in this effort.

As you drive down any Town road you will probably encounter a new construction project, sometimes several on the same street. It is common to witness the “Palm Beach” way of building – demo the old buildings and structures, clear the lot, throw up a screening fence and gates, add gravel out front for the contractor parking, and then begin building side and rear walls along the property lines. Why build these walls, you may ask? The reason is so that the entire lot can be filled. These are retaining walls, designed to support newly placed levels of fill. Cubic yard after cubic yard of new fill.

The issues of filling a lot, meeting FEMA and Florida Building Code minimum floor elevations, and site drainage are complex and interconnected items. The Planning & Zoning Commission initially focused primarily on specific zoning code requirements and the impacts of various amounts of fill placed on a lot. However, based on comments, Staff provided a more comprehensive background and overview of this issue.

First, the Town has an antiquated zoning code that over the last few decades has been modified with a patchwork of text amendments, each one generally adopted to deal with a specific problem. The existing zoning code and Town drainage regulations require, and incentivize, lot grades to be raised when a building floor elevation is forced to be raised. Once a new building is constructed, it must comply with FEMA and the Florida Building Code (FBC). The same compliance requirements are triggered when an existing home is renovated and the value of the renovation exceeds 50% of the building’s appraised / assessed value. Therefore, all new construction and substantial renovations, for the most part, must comply with the FEMA minimum floor elevations and with the FBC.

Staff believes that the existing mandatory requirement to add fill to a lot when new construction occurs can be a problem. The additional fill many times adversely affects storm water drainage, especially to lower lying properties. The visibility of newer homes being elevated much higher than the existing, older homes on the street, coupled with the requirement to also raise the grade of the lots creates a “jigsaw”, “hodgepodge” streetscape that can damage the character of certain neighborhoods.

In August of last year, staff members Paul Castro and John Lindgren, both professional planners,

made a presentation to the Town Council on how the neighborhoods of the Town are forever changing. Their research and presentation focused on two significant issues – the changing grades of residential lots and the unabated demolition of older buildings. The presentation examined how the Town could possibly address neighborhood change by dealing with the lot grade changes and demolition issues. Some of the proposed solutions included: reducing/limiting the amount of fill placed on residential lots; allowing the use of steps, terraces and landings within the required building setbacks with exceptions for lot coverage; and allowing garages below the minimum flood elevation without counting in building height requirements.

There is currently a code requirement that mandates the placement of fill to be within 8” of the finished floor elevation. This code requirement needs to be modified to allow an owner to elevate a house without forcing them to fill the lot or even raise the grade. This code section is 134-898, Lot Grade Topography & Drainage – RB Districts.

On June 16, 2020 and July 21, 2020, the Planning & Zoning Commission met on this issue and concurred that Code changes were necessary and some reasonable limits on fill needed to be addressed. Staff and the Commission willingly acknowledge many of the benefits of partially filling a lot. Therefore, the following proposals were presented to the Planning and Zoning Commission for its consideration:

- The Town regulations allow an unlimited amount of fill. Staff’s thought was to set a limit on the amount of fill that could be added to a lot (18”, 24” and 30” were presented). If an owner needed to add more than the maximum limit ultimately established, that owner could pursue a waiver or variance process to receive approval for additional fill. Staff feels that it is important to limit the maximum amount of fill.
- Encourage the use of added fill to be placed only under the footprint of a home (stem wall to stem wall), or under the center of a lot and then terraced down to the existing grade at the property lines.
- Community education and/or incentives to encourage development that can minimize the use of fill, even though filled lots do accomplish the following: meeting current FEMA and FBC minimum floor elevations, minimizing steps into the building, and allowing simple storm water drainage systems placed in the clean, added fill. Education / incentives must point owners to minimize fill in an effort to prevent adverse impacts – to low lying neighboring properties, to maintain existing natural storm water flows between properties (such as swales), and to limit any increase to the number of elevated properties that contribute to the jagged, irregular look of the streetscape that can damage the character of the neighborhood.
- Review and propose code incentives to allow terraces, landings and steps to be constructed within yard setbacks when buildings are elevated / built at a higher elevation to meet FEMA and the FBC, without the use of added fill. By allowing these structures to be located in the setbacks, the entire building envelope area is preserved for the building.

- Assess the Town's 2" requirement for storm water retention. While this is a great benefit to the Town and does help with flooding, is it necessary in all residential situations? Maybe the Town can treat very small lots differently by exempting the lot owners from the 2" retention requirement, possibly allowing those owners to pay into a Town drainage fund to be used for future storm water system upgrades in their area of the Town.
- Lastly, review entire code to determine other code sections that may need to be updated to avoid conflicts.

On June 16, 2020, after much discussion at that Commission meeting, both the Commission and Staff came to the conclusion that placing an exact amount of fill as a maximum, based either on zoning district or area of the Town, is not a complete solution and may have unintended consequences on other areas of the Town. The item was deferred and staff and the consultant provided more graphics to visually show the fill issue and in the interim reassessed possible solutions to topographic grade changes that were occurring in Town.

On July 21, 2020, the Planning and Zoning Commission considered a staff proposal that limited the maximum amount of fill on a property based three on different street elevation ranges with a waiver or variance provision to exceed the three maximums allowed. They were as follows:

- If the highest crown of road (COR) elevation is 0 feet to 3 feet National American Vertical Datum (NAVD), the maximum amount of fill on a lot could not exceed 30 inches.
- If the highest COR elevation is 3 feet to 5 feet NAVD, the maximum amount of fill could not exceed 24 inches.
- If the highest COR is 5 feet to 7 feet NAVD, the maximum amount of fill could not exceed 18 inches.

The item was deferred so that staff could present more data on street elevations throughout the town and to prepare better graphics to illustrate how the proposed changes would work. It was during the interim period between the July and August Commission meeting that staff found a better solution to the fill issue. Through more analysis of all of these issues staff was able to create an alternative proposal. The proposal is a simple calculation that could determine the maximum amount of fill that could be used anywhere on the Island, which is equitable, reasonable, can be used on any lot, and would accomplish the goals of reducing fill levels and providing adequate storm water management.

On August 18, 2020, staff presented the original proposal with this new, alternative approach to the Commission to address a more holistic approach based on a lot-by-lot situation within the town. The alternative proposal presented and recommended by staff is based on the existing street elevation in front of the individual lot and FEMA elevation requirement rather than three ranges as previously presented. The waiver or variance process to raise the grade above what would be allowed was still in the proposal

Staff analyzed this alternative approach solution over several different areas of the Island and

even contemplated some extreme situations. Wild shifts between the COR and the finished floor elevation (FFE) , especially east of the Coastal Construction Control Line (CCCL) on ocean front properties, could be mitigated by using the proposed fill calculation as provided below. Staff believes that using this calculation, along with a maximum prescriptive amount of fill would be right and would resolve any anomalies.

The calculation below would be the fill that would be allowed by right with a simple waiver process to allow an owner to request more fill than is permitted by right. It is anticipated that staff would develop a set of low threshold standards that would allow an owner another foot (12 inches) of fill on a lot if the owner could demonstrate that they meet those standards. This waiver process staff would anticipate would be reviewed by the Town Council, since they already review and approved special exceptions and variances.

The final staff recommend proposal to the Commission, that the Commission is recommending to the Town Council, is as follows:

- Take the crown of road ("COR") measurement in front of the subject property.
- Take the minimum lowest finished floor elevation ("FFE"). Subtract the lower number from the higher number. COR – FFE or FFE – COR.
- Half of the product obtained above can be fill, the other half can be only elevated building.

$$\frac{(COR - FFE)}{2} = \text{Max Fill} \quad \text{OR} \quad \frac{(FFE - COR)}{2} = \text{Max Fill}$$

Example:

COR = 3' NAVD.
FFE = 7' NAVD.
 $7 (FFE) - 3 (COR) = 4$.
 $4 / 2 = 2$. Therefore, on this example 2 feet of fill could be added, by right. The additional elevation required would be accomplished by elevating the building on its stem walls.

Another example:

COR = 0.
FFE = 7' NAVD.
 $7 (FFE) - 0 (COR) = 7$.
 $7 / 2 = 3.5$. Therefore, 3.5 feet of fill could be added to this property, by right. The additional elevation required would be accomplished by elevating the building on its stem walls.

Code could be written to state that the maximum level of fill could be:

"The product of the calculation [above], not to exceed 36" of fill."

Possible standards for the waiver process could be:

"The Town Council may approve a waiver above the maximum amount of fill described in Sec. _____. The maximum height of fill granted through the waiver shall not exceed 48 inches of total fill measured from the highest crown of road abutting the property. The following criteria shall be met to be considered for a waiver:

- 1. The applicant shall provide plans to demonstrate the following:*
 - A. Fill will be placed in a manner that will not result in additional storm water runoff onto adjacent property or public rights-of-way; and*
 - B. Fill will be placed in a manner that will not result in significant soil erosion.*
- 2. Any waiver to provide an increase of fill approved by this section shall meet the following criteria:*
 - A. Will not cause substantial injury to the value of any other property in the neighborhood where it is to be located; and*
 - B. Will be compatible with adjoining development and the intended purpose of the district in which it is to be located; and*
 - C. Will be consistent with all relevant elements of the Town's comprehensive plan; and*
 - D. Will not result in substantial noise, dust, glare, or odor impacts on any other property in the neighborhood where it is to be located.*

If the request for fill exceeds 48 inches above the highest crown of the road abutting the property, the applicant may pursue a variance, subject to Chapter 134, Division 4, Special Exceptions, Variances, and Dimensional Waiver of the Code of Ordinances."

Staff also did identify possible incentives to owners that choose to not raise their lot, but only raise their home and use only a minimal amount of fill, or to terrace their lot where the existing grade is maintained along the property lines, such as decreased yard setbacks or different lot coverages, increased CCR, etc. While the Planning and Zoning Commission did not recommend the Town pursue those incentives, the Commission did recommend zoning code changes that would allow landings, stairs, porches and landings in required setbacks to facilitate the change in maximum grade requirements.

Planning and Zoning Commission Recommendation:

After considering all of the alternatives, the Planning and Zoning Commission, by a 7-0 vote, recommended approval of staff's final recommended proposal to the Town Council that the maximum fill on lot be based on the final staff recommended proposal that calculates the maximum amount of fill on a lot based on the COR and the FFE for each lot in any location; eliminate the requirement that the grade cannot be less than 8 inches below the finished floor of the house; and make necessary Code modifications that are required to implement the proposed fill changes that allow flexibility for elevated landings, stoops, porches and stairs in required setbacks.

Staff Recommendation:

Staff concurs with the Planning and Zoning Commission recommendation.

2. Consideration of Staff Request to Review and Consolidate the Regulations for the Screening and Placement of Generators, Air Conditioning, Pool Pump, Filter and Heating Equipment.

Background

Staff has been experiencing issues related to the screening and placement of generators, air conditioning, pool pump, pool filter and heater equipment. The existing zoning regulations are within two different sections of the Code and seem to be inconsistent as it relates to screening said equipment when in a required setback.

Section 134-1728 is split up into three parts that separately regulate air conditioning equipment, cooling tower and swimming pool and fountain mechanical equipment. The proposed regulations allow for more equipment in a setback; allow equipment closer to a street rear property line; provide more of a setback for pool heating equipment; and provide a maximum distance that pool equipment can be from the swimming pool, spa or fountain it serves (staff does not recommend the last change).

Section 134-1729 is proposed to be modified to allow more than one generator on a property but only allow one in a required setback. It also is modifies the generator regulations so that if a combined number of generators exceed an output of 120 KW, said generators require site plan review approval by the Town Council. Lastly, the pool pump and filter regulations that were once in this section are being moved out of this section and consolidated with existing regulations for swimming pool heating equipment that is Section 134-1728 of the Code.

The proposed changes in add/delete format segregate the equipment regulations into four segments. Staff has also provide a clean copy of the proposed changes in Exhibit B attached.

Planning and Zoning Commission Recommendation:

The Planning and Zoning Commission recommends the following changes by a vote of 7-0. Staff concurs with all of the proposed changes with the exception of the added requirement that the swimming pool or fountain equipment be within twenty-five feet of the swimming pool or fountain it serves.

Staff Recommendation:

Staff concurs with the Planning and Zoning Commission recommendation with the exception of the requirement that the swimming pool heating, pump and filter equipment and fountain equipment being no further than 25 feet from swimming pool or fountain's water edge.

The recommended changes are as follows:

Sec. 134-1728. - Air conditioning and swimming pool heating and fountain equipment.

~~(a) No portion of any air conditioning and/or swimming pool equipment shall be located closer~~

than five feet from a side or rear property line. In addition, such air conditioning or swimming pool equipment within ten feet from the side or rear property line shall be completely screened with a wall as high as said equipment from the neighboring property. Except as provided for in subsection (b) of this section, air conditioning and/or swimming pool equipment, in excess of two units or more than four feet in height, as measured above the natural grade or minimum flood elevation, whichever is greater, or occupying more than 25 square feet in total area, shall be considered an enclosed accessory structure and shall be constructed, erected or placed in compliance with all the provisions of the ordinance applicable thereto.

(b) In the R-AA, R-A and R-B zoning districts, where setbacks for principal structures are increased based on a larger lot width, the air conditioning and/or swimming pool equipment which are in excess of number, height and area restrictions identified in subsection a of this section shall only be required to meet the minimum yard setback requirements for an enclosed accessory structure on a minimum size lot in that district.

(c) Cooling towers shall be required to meet the same minimum yard setback requirements as the principal structure, and shall be screened from the neighbors and/or a street by a three-sided, concrete block masonry finished wall at least as high as said cooling tower. If the required wall is higher than the Code allows in a setback in order to screen the cooling tower from the neighbors and/or a street, said wall shall also meet the minimum yard setback requirement as the principal structure.

(d) No air conditioning or swimming pool equipment shall be allowed in a front yard setback.

(e) Any house that fronts on two or more streets shall be allowed to place air conditioning (excluding cooling towers) and/or swimming pool equipment in each required street side or street rear yard setback provided that the combination of said equipment does not exceed two in each of said setbacks; are not more than four feet in height above the natural grade or the minimum flood elevation, whichever is greater, occupy no more than 25 square feet in total area; and are setback a minimum of 20 feet from the street side or street rear property line and are screened from view by a wall as high as said equipment and three foot high hedge outside said wall.

(a) Air conditioning/chiller equipment (excluding cooling towers):

Air conditioning equipment shall not be allowed in a required front yard setback. Said equipment shall be allowed in a required side, rear, street side and street rear yard setback provided the following requirements are met:

1. The equipment shall have a minimum five-foot side and rear yard setback.
2. The equipment shall have a minimum twenty-foot street side and street rear yard setback.
3. A maximum of two pieces of air conditioning equipment not exceeding six feet in height above grade or the minimum flood elevation, whichever is higher, shall be allowed.
4. The equipment shall be completely screened from the neighboring property and the street by a concrete wall as high as said equipment. Said wall cannot exceed the maximum height allowed by Code. A neighbor's existing concrete wall can satisfy said requirement.
5. If the equipment and required screening wall can be seen from the street, said equipment and wall shall be approved by either the Architectural Commission or Landmark Preservation

Commission, whichever is applicable. Intervening landscape material shall not be considered when determining air conditioning/ chiller equipment visibility.

6. Where required setbacks for principal structures are increased based on a larger lot width or depth, the air conditioning equipment (not including cooling towers) shall meet the same requirements as the standard size lots in the district it is located.

(b) Cooling tower/chiller equipment:

Cooling tower/chiller equipment shall meet the following requirements:

1. The equipment and screening wall required below shall meet the same minimum required yard setbacks as the principal structure.

2. The equipment shall be screened from the neighbors and/or a street by a three-sided, concrete wall at least as high as said cooling tower.

3. If the equipment and required screening wall can be seen from the street without intervening landscape material, said equipment and wall shall be approved by either the Architectural Commission or Landmark Preservation Commission, whichever is applicable.

(c) Swimming pool and fountain equipment:

Swimming pool and fountain equipment shall be allowed in a required side, rear, street side and street rear yard setback provided the following requirements are met:

1. Swimming pool and fountain pump and filter equipment shall have a minimum five foot side and rear yard setback and shall in all situations be located no further than twenty-five feet from the pool or fountain water's edge.

2. Swimming pool heater equipment shall have a minimum ten-foot side and rear yard setback and shall in all situations be located no further than twenty-five feet of the swimming pool water's edge.

3. Swimming pool heater and pump equipment and fountain equipment (excluding filters) shall not exceed four pieces of equipment.

4. Swimming pool heater, pump and filter equipment and fountain equipment shall not exceed a maximum height of four feet above grade or the minimum flood elevation, whichever is higher.

5. All swimming pool and fountain equipment, including a heater and filter equipment, shall have a minimum twenty-foot street side yard setback and a fifteen-foot street rear yard setback and in all situations shall be located no further than twenty-five feet from the water's edge of the swimming pool and/or fountain.

6. Swimming pool and fountain pump and filter equipment, excluding swimming pool heater equipment, shall be enclosed in a pump house and shall be located no further twenty-five from the swimming pool or fountain water's edge.

7. Swimming pool heater equipment shall be completely screened from a neighboring property and a street by a building or concrete wall as high as said equipment. Said wall cannot exceed the maximum height allowed by Code. A neighbor's existing concrete wall can satisfy said requirement.

8. If the equipment and required screening wall or pump house can be seen from the street, said equipment and wall shall be approved by either the Architectural Commission or Landmark Preservation Commission, whichever is applicable. Intervening landscape material shall not be considered when determining swimming pool and fountain pump, heating and filter equipment visibility.

9. Where required setbacks for principal structures are increased based on a larger lot width or depth, the swimming pool and fountain pump, filter and heating pool equipment shall meet the same requirements as the standard size lots in the district it is located.

Sec. 134-1729. - Generators ~~and swimming pool equipment.~~

Except for generators serving a public purpose and owned and operated by the town or temporary generators used during or after a natural disaster such as a tropical storm or hurricane event, and which are therefore exempt from these regulations, portable or permanent generators temporarily or permanently placed on the ground, on a stand or on a trailer, shall not be placed in the required front, street side or street rear yard setbacks; provided, however, not more than one such generator shall be placed in any given within the same required side or rear yard setback ~~or yard area.~~

(1) One or a combination of more than one portable or permanent generators with an combined output of not more than 60 KW shall be allowed provided only one generator is within the same required yard area and no closer than ten-foot side or rear yard property line. Said generator(s) shall be allowed five feet from a side or rear property line be allowed in a required side or rear yard setback provided said generator meets the following conditions requirements:

a. ~~The generator is set back a minimum of five feet from the property line.~~ There is only one generator within that required yard area.

b. The generator(s) shall not, at any time or for any purpose, exceed the maximum decibels allowed at the property line as set forth in section 42-228.

c. The highest point on the generator(s) shall not exceed a maximum of seven feet above the neighboring property owner's grade or zero datum as defined in the appropriate definition of building height in section 134-2.

d. ~~The generator(s) is shall be completely screened from a street and the neighboring property owners by a concrete block masonry finished wing wall (three-sided wall), at least four feet high or the same height as the generator (including the height of the exhaust muffler), whichever is greater.~~ An adjacent property owner's side or rear wall that completely screens the generator can count towards screening.

e. If the generator(s) is visible from a street or public way, its location shall be subject to approval by the architectural commission or landmarks preservation commission, whichever is applicable. Intervening landscape material shall not be considered when determining a generator's visibility.

ef. The generator's exhaust shall, as much as practically feasible, vented upwards or directed away from neighboring properties.

fg. The generator(s) shall be used only during periods of power outages or for periodic testing and necessary maintenance operation and shall not be used to sell power back to a power

company or for use by power customers during periods of peak demand.

gh. The generator(s) shall be operated for routine testing and maintenance purposes not more than one time in any seven-day period and no test shall exceed 30 minutes. Testing of emergency generators is permitted Monday through Thursday only (excluding holidays), between the hours of 11:00 a.m. and 12:00 p.m. or 2:00 pm. and 3:00 p.m.

hi. Testing may be conducted when the unit is being repaired, provided that such testing period shall not exceed 30 minutes and shall be conducted only between the hours of 10:00 a.m. and 5:00 p.m. Monday through Saturday, excluding holidays.

ij. Generators shall not be permitted on the roof of a building.

(2) Temporary or permanent generators with a combined output of greater than 60 KW or more may be temporarily placed on the ground, on a stand or on a trailer ~~A portable or permanent generator may be permanently or temporarily placed on the ground, on a stand, or on a trailer outside of required yard setback areas;~~ provided, however, said generator(s) meets the following ~~conditions~~ requirements:

a. ~~If the A generator(s)'s output capability is greater than 60KW, it shall be placed on the property only in conformance with~~ meet the minimum setback requirements applicable to a principal structure and not more than one generator shall be within the same required setback or yard area.

b. The generator shall not, at any time or for any purpose, exceed the maximum decibels allowed at the property line as set forth in section 42-228.

c. ~~If the generator exceeds an output capacity of 100 KW or the combined output capacity of multiple generators output capacity is greater than 100 exceeds 120 KW, it said generator(s) shall be subject to site plan review as defined in sections 134-326—134-330, and If any individual generator output capacity exceeds 100 KW it shall be housed in an enclosed building with landscaping as approved by the architectural commission or landmarks preservation commission, whichever is appropriate applicable.~~

d. ~~If the generator is greater than exceeds 60KW and is 100KW or less, and is visible from a street or public way, it shall be screened from view at the street and from the neighboring properties by a concrete block masonry finished wing wall (three-sided wall), at least four feet high or the same height as the generator (including the height of the exhaust muffler), whichever is greater. An adjacent property owner's side or rear wall that completely screens the generator can count towards screening.~~

e. ~~If the generator is 60KW or less and is visible from a street or public way, its location shall be subject to approval by the architectural commission or landmarks preservation commission, as applicable. Intervening landscape material shall not be considered when determining a generator's visibility.~~

f. The generator¹(s) exhaust is shall, as much as practically feasible, be vented upwards or directed away from neighboring properties.

g. The generator(s) shall be used only during periods of power outages, periods of power reductions resulting from the exercise of utility load control programs or for periodic testing and necessary maintenance operation and shall not be used to sell power back to a power company.

h. The generator(s) shall be operated for routine testing and maintenance purposes not more than one time in any seven-day period and no test shall exceed 30 minutes. Testing of emergency generators is permitted Monday through Thursday only (excluding holidays), between the hours of 11:00 a.m. and 12:00 p.m. or 2:00 p.m. and 3:00 p.m.

i. Testing may be conducted when the unit is being repaired, provided that such testing period shall not exceed 30 minutes and shall be conducted only between the hours of 10:00 a.m. and 5:00 p.m. Monday through Saturday, excluding holidays.

j. Generators ~~are~~ shall not be permitted on the roof of a building.

(3) Notwithstanding subsection (a), the director or designee may grant a waiver allowing a one generator with an output capability in excess of 60KW to be located within a required side or rear yard setback, provided the applicant submits to the town a site plan and evidence or testimony substantiating each of the following conditions:

a. The output of a 60 KW or less generator is incapable of providing enough electricity for the basic necessity of occupying a building and/or protecting interiors or possessions in a building from the damaging effects of prolonged loss of power.

b. The proposed location is not merely for the convenience or preference of the applicant, but that there is no other location outside of the required setbacks that will provide for safe placement of the generator.

c. The proposed location represents the minimum intrusion into the required setback(s) necessary to safely accommodate the generator.

(4) If an administrative waiver is not granted pursuant to subsection (c) the applicant may appeal the administrative decision to the town council pursuant to sections 134-131—134-145.

~~In addition, swimming pool pumps and filters shall be allowed in a required side or rear yard provided said equipment is placed no closer than five feet from the side or rear property line and is enclosed in a pump house not exceeding a height of four feet. However, any lot that fronts on two or more streets shall be allowed to place one swimming pool filter and pump in a required street side and/or street rear yard setback provided that said swimming pool filter and pump, in combination with a pool heater and/or air conditioning unit does not exceed three pieces of said equipment; is set back a minimum of 25 from the street side or street rear property line; and, is screened from view from the neighboring property owner by a five foot~~

high wall and from the street by a minimum five foot high wall and three foot high hedge:

3. Proposed Modifications to the Zoning Regulations in Chapter 134, Zoning, to Allow Off-Site Supplemental Parking as a Permitted Use in the C-TS, C-WA, C-OPI and C-PC Commercial Zoning Districts.

BACKGROUND

On April 8, 2020, the Town Council asked staff to process zoning text amendments that would allow commercial property owners to share their parking lots. The intent is to encourage optimal use of these parking lots to alleviate traffic and parking problems throughout the Town. Staff has attached the existing shared parking regulation in the Code. It is evident to staff that in order to create an environment that will promote the use of under-utilized parking lots that the existing shared parking regulations need to be relaxed. Staff's recommendation is to eliminate or significantly modify Section 134-2177 through 134-2182 to allow supplemental off-site shared parking as a permitted use rather than a special exception use in the C-TS, C-WA and C-OPI commercial zoning districts. This proposal would allow a commercial tenant to use another property's parking lot for parking, even if that use did not have enough required parking. However, it would not allow a commercial use to expand or intensify a use by using off-site shared parking.

On July 21, 2020, the Planning and Zoning Commission considered the proposed modifications to the off-site supplemental parking regulations. At that time, the Commission expressed concern over possible negative impacts that could occur by allowing property owners to share off-street parking with neighboring businesses. The Commission wanted to know what parking lots existed within the commercial zoning districts that could be used for supplemental shared parking if staff's proposal was adopted. The item was deferred so that staff could provide more information on the location of the commercial parking lots that could be used for shared parking.

On August 18, 2020, the Planning and Zoning Commission reconsidered staff's recommended proposal and staff provided the attached aerial maps that identified the off-street parking lots in the Town. The Commission decided that staff's recommendation went too far at this time. The Commission recommended to allow supplemental off-site shared parking only within 33 percent of an underground parking garage's parking capacity as a permitted use in the C-TS, C-WA, C-OPI and C-PC commercial zoning districts with a three year sunset provision. The recommendation would keep the existing off-site supplemental parking regulations in place for all other private commercial parking lots. The Commission recommends that these proposed changes sunset in three years unless the Town reassess these parking regulations and determines whether they should revert back or become less restrictive.

Staff continues to recommend that the Town allow the most flexibility for off-site supplemental shared parking within commercial zoning districts, as identified in the original staff proposal that is in the Staff recommendation in this report.

Planning and Zoning Commission Recommendation:

The Planning and Zoning Commission by a 5-2 vote (Commissioners LeCates and Spaziani

dissenting) recommends the following changes to Chapter 134 Zoning to allow supplemental off-site shared parking within underground parking garages as a permitted use in the C-TS, C-WA and C-OPI Commercial Zoning Districts provided that the shared parking not exceed 33 per cent of the parking lot spaces, and continuing to require special exception approval for all other commercial supplemental off-site shared parking. The Commission also recommends that the proposed changes sunset after three years.

Staff's Recommendation:

Staff recommends eliminating the existing the special exception requirement for all commercial supplemental off-site shared parking in the C-TS, C-WA, C-OPI and C-PC Commercial zoning districts.

The Planning and Zoning Commission's recommended code changes are as follows with staff recommended code changes to follow.

Planning and Zoning Commission Recommended Code Changes:

The recommendation modifies the permitted and special exception uses in Sections 134-1107 and 134-1109 in the C-TS, Sections 134-1157 and 134-1159 in the C-WA and Sections 134-1207 and 134-1209 in the C-OPI commercial zoning districts by making supplemental off-site shared parking within an underground parking garage a permitted use in those districts with language that would sunset and eliminate that modification in three years. It also continues to require all other supplemental parking and supplemental off-site shared parking as a special exception use.

Other Section of the Code requiring modification are as follows:

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

...

Parking, supplemental means those parking facilities provided as either a permitted use and which is in addition to the existing parking, or permitted as a special exception use and which are in addition to required parking as set forth in the schedule of off-street parking requirements.

Sec. 134-2177. Location of parking spaces.

Parking spaces for all uses or structures which are provided as required parking in conformance with the schedule of off-street parking and other applicable sections shall be located on the same lot and shall have the same district classification as the principal use or structure they are intended to serve, except as specifically excepted as follows:

(1) The town council may permit, as a special exception, the establishment of such required off-street parking facilities for commercial uses within 500 feet of the premises, as measured along

the nearest public or permanent private pedestrian walkway they are intended to serve when:

- a. Practical difficulties prevent the placing of the facilities on the same lot as the premises they are designed to serve;
- b. The proposed location is located within the same zoning district as the principal use it is designated to serve;
- c. The owner of the parking area shall enter into a written agreement with the town, with enforcement running to the town, providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the building which the parking area serves so long as the facilities are required; and
- d. The owner agrees to bear the expense of recording the agreement and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.

(2) The town council may permit, as a special exception, the establishment of supplemental off-street facilities which are in addition to those facilities required in accordance with the schedule of off-street parking for a permitted or approved special exception use. Such supplemental off-street parking facilities may be permitted only after the required parking for the principal use involved has been provided in full at current standards as contained in the schedule. This additional parking may be supplemental parking located on the same lot or supplemental off-site parking located on a directly adjoining lot or a lot which would be directly adjoining except for the location of a street or public way; provided, however, that all other provisions for special exceptions as set forth in sections 134-227 through 134-233 are complied with and, further, that the granting of such supplemental on-site or supplemental off-site parking is not construed as permission to expand, enlarge, alter, renovate, or modify the use of structure except in accordance with the requirements of this chapter.

(32) The town council may permit, as a special exception, the establishment of required off-street parking facilities for commercial uses in zoning districts differing from the district of the principal uses of structures they are intended to serve if the following conditions are met:

- a. The owner of the parking area shall enter into a written agreement with the town with enforcement running to the town providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the buildings with which the parking area serves so long as the facilities are required.
- b. The owner of the parking area shall agree to bear the expense of recording the agreement, and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.
- c. The parking area shall have been used as a parking area for the entirety of each of the five calendar years immediately preceding the application for special exception.
- d. The parking area shall abut the property on which is situated the principal structure for which it is to furnish the required off-street parking.
- e. The provisions for special exceptions as set forth in sections 134-227 through 134-233 are complied with.
- f. The said parking area shall be located at ground level or below ground level and shall not be located within any structure above ground.

Sec. 134-2182. - Shared parking in C-TS, C-WA and C-OPI commercial zoning districts.

(a) Special exception. Although there is no entitlement to shared parking, arrangements for shared parking may be allowed in the CT-S, C-WA and C-OPI commercial zoning districts, subject to the review and approval of a special exception as set forth under sections 134-227 through 134-233 and under the circumstances provided in this section.

(b) On-site shared parking. When a new use is proposed to occupy existing floor space and the new use would require a greater number of parking spaces than required by the former use, the new use may request sharing of on-site parking to meet the town's off-street parking requirements, provided:

- (1) A traffic planner or traffic engineer clearly establishes to the town council, at the applicant's expense, that:
 - a. All uses utilizing the existing parking facilities will primarily utilize these parking spaces at different times of the day, week, month or year;
 - b. The sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities; and
 - c. The available parking will be adequate to serve the needs of the proposed use.
- (2) If the building official determines that professional advice and/or consultation is required to review the applicant's parking findings, the expense of such professional advice shall be borne by the applicant.
- (3) The applicant provides to the town, at the applicant's expense, a recorded three-party agreement, including the town as one of the parties, with enforcement running to the town, guaranteeing the continuing availability of the shared parking spaces during the period of operation of the applicant's use. The term of the agreement shall approximate the life of the building or use for which the shared parking spaces fulfill the town's off-street parking requirement. If the shared parking ever ceases to be available or becomes inadequate due to a change in the uses' respective schedules of operation that results in conflicting or overlapping usage, the proposed use shall be required to obtain a new occupancy permit and provide proof that sufficient parking will be provided or shall be required to immediately reduce the intensity of the use served to the extent that it will be conforming to the town's off-street parking requirements.

(c) Supplemental off-site shared parking. With the exception of underground supplemental off-site shared parking that is a permitted use in the C-TS, C-WA and C-OPI zoning district, A a conforming use may lease to another existing conforming use the former's required or supplemental parking spaces for use by patrons or employees of the latter, provided:

- (1) The area to be used for off-site shared parking shall be in the C-TS, C-WA, C-PC or C-OPI zoning district, and, except for shared parking within a parking garage

or underground/underbuilding parking area, any area used for off-site shared parking shall be accessible only to and used by parking attendants and shall have controlled access in the form of gates or other barriers acceptable to the town that can be accessed and used only by parking attendants.

- (2) Off-site shared parking shall be located no more than 500 feet from the use the off-site shared parking is intended to serve.
- (3) The applicant shall provide evidence which shall prove to the satisfaction of the town council that the off-site shared parking use shall not increase noise, light or traffic impacts upon neighboring residential districts.
- (4) A traffic planner or traffic engineer establishes to the satisfaction of the town council, at the applicant's expense, that all other establishments using the existing parking spaces will primarily utilize these spaces at different times of the day, week, month or year from that of the applicant's use, and that the sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities.
- (5) If the director of planning, zoning and building department should determine that professional advice and/or consultant is required to review the applicant's parking findings, the expense of such professional advice shall be borne by the applicant pursuant to sections 134-171 and 134-172.
- (6) Off-site shared parking shall only be supplemental, and such parking shall not be used to meet required parking for new construction or expansion or addition to existing floor area.
- (7) The town may impose such additional conditions that it deems necessary to minimize noise, light and traffic impacts upon neighboring residential districts.
- (8) The approval shall initially be limited to a period of six months, whereupon a subsequent review shall be made at a public hearing of the town council at which the interim approval may be renewed, modified or revoked.
- (9) The provision for supplemental off-site shared parking in an underground garage as a permitted use in the C-WA, C-TS and C-OPI zoning district will sunset on January 28, 2024 unless the Town modifies this provision.

Staff's Recommended Code Changes:

The proposal would modify the permitted and special exception uses in Sections 134-1107 and 134-1109 in the C-TS, Sections 134-1157 and 134-1159 in the C-WA, Sections 134-1207 and 134-1209 in the C-OPI and Sections 134-1257 and 134-1259 in C-PC commercial zoning districts by making supplemental parking and supplemental off-site parking a permitted use in those

districts. In addition, modifying Sections 134-1302 and 134-1304 in the C-B commercial zoning district by making only supplemental parking a permitted rather than a special exception use.

Other Section of the Code requiring modification are as follows:.

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

...

Parking, supplemental means those parking facilities provided as a permitted or special exception and which are in addition to existing required parking ~~as set forth in the schedule of off street parking requirements.~~

Sec. 134-2177. Location of parking spaces.

Parking spaces for all uses or structures which are provided as required parking in conformance with the schedule of off-street parking and other applicable sections shall be located on the same lot and shall have the same district classification as the principal use or structure they are intended to serve, except as specifically excepted as follows:

- (1) The town council may permit, as a special exception, the establishment of such required off-street parking facilities for commercial uses within 500 feet of the premises, as measured along the nearest public or permanent private pedestrian walkway they are intended to serve when:
 - a. Practical difficulties prevent the placing of the facilities on the same lot as the premises they are designed to serve;
 - b. The proposed location is located within the same zoning district as the principal use it is designated to serve;
 - c. The owner of the parking area shall enter into a written agreement with the town, with enforcement running to the town, providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the building which the parking area serves so long as the facilities are required; and
 - d. The owner agrees to bear the expense of recording the agreement and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.

~~(2) The town council may permit, as a special exception, the establishment of supplemental off-street facilities which are in addition to those facilities required in accordance with the schedule of off street parking for a permitted or approved special exception use. Such supplemental off-street parking facilities may be permitted only after the required parking for the principal use involved has been provided in full at current standards as contained in the schedule. This additional parking may be supplemental parking located on the same lot or supplemental off-site parking located on a directly adjoining lot or a lot which would be directly adjoining except for the location of a street or public way; provided, however, that all other provisions for special exceptions as set forth in sections 134-227 through 134-233 are complied with and, further, that the granting of such supplemental on-site or supplemental off-site parking is not construed as permission to expand, enlarge, alter, renovate, or modify the use of structure except in accordance with the requirements of this chapter.~~

- ~~(3)~~ (2) The town council may permit, as a special exception, the establishment of required off-

street parking facilities for commercial uses in zoning districts differing from the district of the principal uses of structures they are intended to serve if the following conditions are met:

- a. The owner of the parking area shall enter into a written agreement with the town with enforcement running to the town providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the buildings with which the parking area serves so long as the facilities are required.
- b. The owner of the parking area shall agree to bear the expense of recording the agreement, and agrees that the agreement shall bind his heirs, successors and assigns. The written agreement shall be voided by the town if other off-street facilities are provided in accordance with this chapter.
- c. The parking area shall have been used as a parking area for the entirety of each of the five calendar years immediately preceding the application for special exception.
- d. The parking area shall abut the property on which is situated the principal structure for which it is to furnish the required off-street parking.
- e. The provisions for special exceptions as set forth in sections 134-227 through 134-233 are complied with.
- f. The said parking area shall be located at ground level or below ground level and shall not be located within any structure above ground.

~~Sec. 134-2182. Shared parking in C-TS, C-WA and C-OPI commercial zoning districts.~~

~~(a) Special exception. Although there is no entitlement to shared parking, arrangements for shared parking may be allowed in the C-TS, C-WA and C-OPI commercial zoning districts, subject to the review and approval of a special exception as set forth under sections 134-227 through 134-233 and under the circumstances provided in this section.~~

~~(b) On-site shared parking. When a new use is proposed to occupy existing floor space and the new use would require a greater number of parking spaces than required by the former use, the new use may request sharing of on-site parking to meet the town's off-street parking requirements, provided:~~

- ~~(1) — A traffic planner or traffic engineer clearly establishes to the town council, at the applicant's expense, that:~~
 - ~~a. — All uses utilizing the existing parking facilities will primarily utilize these parking spaces at different times of the day, week, month or year;~~
 - ~~b. — The sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities; and~~
 - ~~c. — The available parking will be adequate to serve the needs of the proposed use.~~
- ~~(2) — If the building official determines that professional advice and/or consultation is required to review the applicant's parking findings, the expense of such professional advice shall be borne by the applicant.~~
- ~~(3) — The applicant provides to the town, at the applicant's expense, a recorded three-party agreement, including the town as one of the parties, with enforcement~~

~~running to the town, guaranteeing the continuing availability of the shared parking spaces during the period of operation of the applicant's use. The term of the agreement shall approximate the life of the building or use for which the shared parking spaces fulfill the town's off-street parking requirement. If the shared parking ever ceases to be available or becomes inadequate due to a change in the uses' respective schedules of operation that results in conflicting or overlapping usage, the proposed use shall be required to obtain a new occupancy permit and provide proof that sufficient parking will be provided or shall be required to immediately reduce the intensity of the use served to the extent that it will be conforming to the town's off-street parking requirements.~~

~~(c) Supplemental off-site shared parking. A conforming use may lease to another existing conforming use the former's required or supplemental parking spaces for use by patrons or employees of the latter, provided:~~

~~(1) The area to be used for off-site shared parking shall be in the C-TS, C-WA, C-PC or C-OP1 zoning district, and, except for shared parking within a parking garage or underground/underbuilding parking area, any area used for off-site shared parking shall be accessible only to and used by parking attendants and shall have controlled access in the form of gates or other barriers acceptable to the town that can be accessed and used only by parking attendants.~~

~~(2) Off-site shared parking shall be located no more than 500 feet from the use the off-site shared parking is intended to serve.~~

~~(3) The applicant shall provide evidence which shall prove to the satisfaction of the town council that the off-site shared parking use shall not increase noise, light or traffic impacts upon neighboring residential districts.~~

~~(4) A traffic planner or traffic engineer establishes to the satisfaction of the town council, at the applicant's expense, that all other establishments using the existing parking spaces will primarily utilize these spaces at different times of the day, week, month or year from that of the applicant's use, and that the sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities.~~

~~(5) If the director of planning, zoning and building department should determine that professional advice and/or consultant is required to review the applicant's parking findings, the expense of such professional advice shall be borne by the applicant pursuant to sections 134-171 and 134-172.~~

~~(6) Off-site shared parking shall only be supplemental, and such parking shall not be used to meet required parking for new construction or expansion or addition to existing floor area.~~

~~(7) The town may impose such additional conditions that it deems necessary to~~

minimize noise, light and traffic impacts upon neighboring properties.

The public hearing of the town council at which the application was initially reviewed shall be limited to a period of six months, whereupon a new public hearing will be required if the application is not approved or if it is modified or revoked.

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~~(g) The approval shall initially be made at a public hearing. Subsequent review shall be made at a renewed modified or revised public hearing which the interim approval may be renewed, modified or revised on or before sunset on the day after the date of the next meeting of the Planning Commission.~~

~~which the~~

(9) ~~The provision as a permitted use in the town code unless the Town modifies it by January 28, 2024.~~

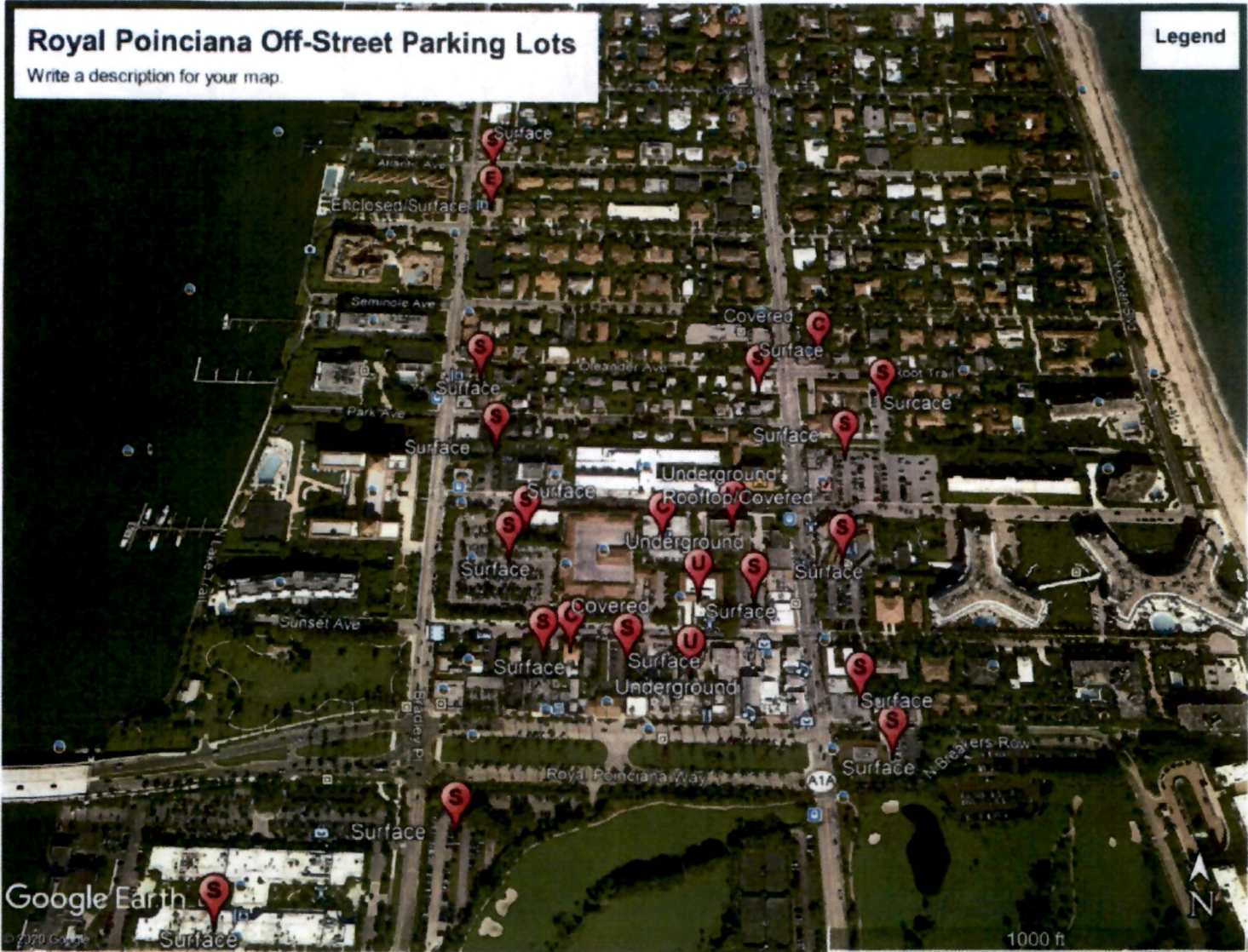
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Royal Poinciana Off-Street Parking Lots

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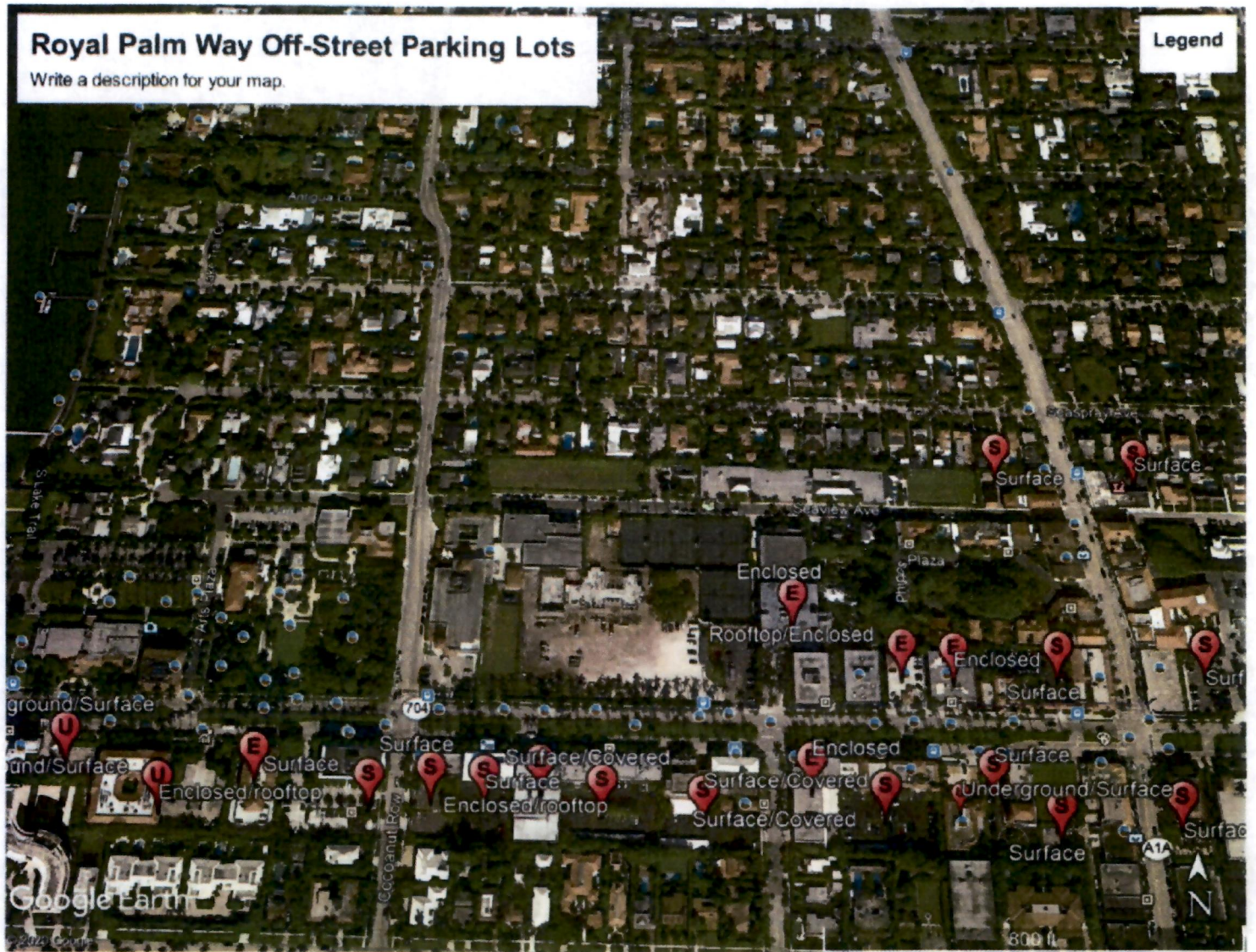
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Royal Palm Way Off-Street Parking Lots

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Worth Avenue Off-Street Parking Lots

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Palm Beach South Off-Street Parking Lots

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