

ORDINANCE NO. 08-2021

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 134, ZONING, ARTICLE II, ADMINISTRATION, DIVISION 4, SPECIAL EXCEPTIONS, VARIANCES, AND DIMENSIONAL WAIVERS, SECTIONS 134-172 THROUGH 134-174, AND AT ARTICLE III, SITE PLAN AT SECTION 134-328; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Chapter 134, Zoning, Article II, Administration, Division 4, Special Exceptions, Variances, and Dimensional Waivers, is hereby amended at Sections 134-172 through 134-174, as shown on Exhibit "A", attached.

Section 2. Chapter 134, Zoning, Article III, Site Plan, is hereby amended at Section 134-328, as shown on Exhibit "A", attached.

Section 3. Severability. If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 4. Repeal of Ordinances in Conflict. All other ordinances of the Town of Palm Beach, Florida, or parts thereof, which conflict with this or any part of this Ordinance are hereby repealed.

Section 5. Codification. This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach, Florida.

Section 6. Effective Date. This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

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PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach, Florida, on the First Reading this ____ day of _____, 2021; and for the Second and Final Reading on this ____ day of _____, 2021.

Danielle H. Moore, Mayor

Margaret Zeidman, Town Council President

Bobbie Lindsay, President Pro Tem

Julie Araskog, Town Council Member

ATTEST:

Lewis S.W. Crampton, Town Council Member

Queenester Nieves, CMC, Town Clerk

Edward Cooney, Town Council Member

EXHIBIT "A"

Chapter 134, Zoning Article II, Administration Division 4, Special Exceptions, Variances, and Dimensional Waivers

Sec. 134-172. - ~~Hearing procedure:~~ Uniform Development Review Procedures.

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

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

(c) After completion of subsection (b), a copy of such application shall be mailed to the owners of the property and the property immediately adjacent thereto and across the street therefrom and to all property owners within 300 feet from any part of the subject property at the address shown on the county property appraiser's tax records, together with a notice from the director or designee advising the date, time and location of the hearing on such application before the town council.

Commented [WB16]: Relates to plan specifics. Refers to staff memo to the Town Council. Relates to determining sufficiency. Mailing notice provisions now replaced.

(1) Application - All applications for development review, being variances, special exception, and site plan review, shall be filed with Director of Planning, Zoning & Building by the property owner or a designee, agent, or representative who is authorized to file an application by power of attorney, which is also filed with the Director of Planning, Zoning & Building. Applications shall be completed and submitted per the application instructions and shall include all items identified in the application checklist, which can be amended by Town staff from time to time. All applications shall include the application fee as set forth in the Town Fee schedule.

(2) Determination of Sufficiency – The Director of Planning, Zoning & Building, or their designee, shall review the application and required documents and determine whether it is competent and complete. If the Director, or their designee, determines that the application is not competent or complete, the Director of Planning, Zoning & Building, or their designee, shall notify the applicant as to the nature of the deficiency. In this case, no other action shall be taken on the application until the deficiency is remedied. If the Director, or their designee, determines that the application is competent and complete, the department will process the application.

(3) Schedule of Meetings and Deadlines – the Director of Planning, Zoning & Building shall produce each year a Schedule of Public Meetings and Deadlines for all development review applications, which can be amended from time to time. The Director shall place the Schedule of Meetings and Deadlines on the Town website.

(4) Notice of Public Hearings – Public Hearings for all development review projects, which includes the Architectural Review Commission major projects, Landmarks Preservation Commission Certificates of Appropriateness, and Town Council Special Exceptions, Variances, and Site Plan Review, shall be noticed in accordance with the following provisions:

(a) Advertisement – at least 30 days prior to the public hearing date, a description of the project or request, the date, start time of the meeting and location of the hearing shall be noticed in a newspaper of general circulation. The notice will be prepared and placed in the newspaper by Town staff.

(b) Mail Notice – at least 30 days prior to the public hearing date, the applicant shall mail a notice containing a description of the request, the date, start time of the meeting and location of the hearing shall be given by mail to the owners of record

of property lying within 300 feet of the property subject to the application. Applicants shall submit all information and certifications necessary to meet this requirement, as determined by the department and identified in the application instructions.

If a variance is being requested that exceeds the maximum density or the maximum off-street parking requirements allowed in the zoning district, the notification distance shall increase to 1,000 feet. A density variance is not allowed which is inconsistent with the maximum density allowed in the town's comprehensive plan.

If a special exception application is being requested for a service station, restaurant, lounge/bar, nightclub, private social, swimming, tennis or yacht club; or any other use deemed by the director of planning, zoning and building to be an intensification of use on a property, the notification distance shall increase to 750 feet. For the purpose of this section of the Code, intensification of use shall include, but not be limited to, increased tenant square footage, increased seating, increased off-street parking demand, and increased hours of operation of a special exception use.

(c) Posting – At least 30 days prior to the public hearing, the Town will post a copy of the hearing notice within a conspicuous place in Town Hall.

Such list of property owners, together with a notification map, shall be provided by the applicant and shall be certified by the applicant as being true and accurate. The applicant shall be required to mail the application to the property owners within the notification area within five days of submittal of the application to the town.

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

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

Sec. 134-173. – Deferral Request; Denial of Application; Duration of Approval; Time Extension; Clarification.

Sec. 134-173. – Judicial remedy by circuit court.

Any person aggrieved by any decision of the town council made pursuant to this chapter, on appeal within 30 days from the rendition of such decision, may appeal to the

Commented [WB17]: New application, sufficiency, meeting schedule and public notice language. Existing notice radius remains regarding density or maximum parking changes, or special exceptions for certain uses (750' and 1,000').

Commented [WB18]: Requires mailing map, now policy. Notice in newspaper replaced.

Commented [WB19]: New section title

circuit court for the 15th judicial circuit for a writ of certiorari to review such decision of the town council.

Commented [WB20]: Section simply moved to 134-174.

(1f) An initial deferral requests received by the town more than seven days prior to scheduled ~~town~~ Town Council hearing date may be granted for one month only or the next succeeding regular ~~T~~ town ~~C~~ council meeting, if that should occur on a different date. Any deferred action request received seven days or less from the scheduled meeting date shall be made in person at the ~~town council~~ Town Council meeting at the time the action item appears on the agenda. The applicant must explain or justify the request, which the ~~town council~~ Town Council may approve or deny. A second request for deferral shall be made in person at the ~~town council~~ Town Council meeting at the time the item appears on the agenda. The applicant must explain or justify the request, which the ~~town council~~ Town Council may approve or deny. A third request for deferral shall be denied unless the applicant can demonstrate to the town council that a compelling reason exists. Any deferral which is required due to a case being deferred by the architectural commission or landmark preservation commission shall be an exception to the regulation above. In no case shall a deferral exceed six months.

(2g) An application request seeking substantially the same relief cannot be accepted for consideration after it has been denied by the ~~town council~~ Town Council until after 12 months have elapsed from the date of denial.

(3h) The work or use authorized under an approved variance or special exception application must be commenced within 36 months from the date of the town council approval thereof, and if not so commenced the special exception or variance shall be null and void. Commencement shall be considered a the issuance of a building permit for the work related to the application or a business tax receipt if no building permit is required. In addition, all authorized work under the building permit for said approved special exception or variance must be completed within the timeframe set forth in section 105.4.1.6. of the Florida Building Code as amended in section 18-242 of this Code or said special exception or variance shall expire.

(4i) A request for a time extension from any of the requirements in subsection (h) may be granted or denied by the ~~town council~~ Town Council for just cause. Said time extension request shall be submitted in writing to the planning, zoning and building department at least one month prior to the expiration date or said special exception or variance approval shall expire.

(5) Should a question arise as to compliance with the conditions as outlined by the Town Council actions, a clarification hearing before the Town Council may be called at the request of the director of the planning, zoning and building department, or by the applicant.

Commented [WB21]: Sub Sections added for clarification hearings.

Sec. 134-174. – Judicial remedy by circuit court.

Any person aggrieved by any decision of the Town Council made pursuant to this chapter, on appeal within 30 days from the rendition of such decision, may appeal to the circuit court for the 15th judicial circuit for a writ of certiorari to review such decision of the Town Council.

Commented [WB22]: Simply moved this circuit court review to a new section.

Article III, Site Plan

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

(a) — A copy of such application for site plan review shall be mailed to the owners of the property and the property immediately adjacent thereto and across the street therefrom and to all owners of all other property within 300 feet from any part of the subject property at their respective addresses as shown on the county property appraiser's tax records, together with a notice from the director of planning, zoning and building or designee advising of the date, time and location of the hearing on such application before the town council. Such list of property owners, together with a notification map, shall be provided by the applicant along with addressed and properly stamped envelopes and shall be certified by the applicant as being true and accurate. The applicant shall be required to mail the application to the property owners within the notification area within five days of submittal of the application to the town. No application shall be heard less than ten days after the first publication notice as provided in this section and 15 days after the mailing to property owners directly affected, and all applications will be heard at regular meetings of the town council unless otherwise ordered by the town council.

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

Site Plan application and notice shall follow the requirements found in Section 134-172, Uniform Development Review Procedures.

Commented [WB23]: Relates to legal notice and notice in the newspaper, now replaced with new language.

EXHIBIT "A" Chapter 134, Zoning
Article II, Administration
Division 4, Special Exceptions, Variances, and Dimensional Waivers

Sec. 134-172. - Uniform Development Review Procedures.

- (1) Application - All applications for development review, being variances, special exception, and site plan review, shall be filed with Director of Planning, Zoning & Building by the property owner or a designee, agent, or representative who is authorized to file an application by power of attorney, which is also filed with the Director of Planning, Zoning & Building. Applications shall be completed and submitted per the application instructions and shall include all items identified in the application checklist, which can be amended by Town staff from time to time. All applications shall include the application fee as set forth in the Town Fee schedule.
- (2) Determination of Sufficiency – The Director of Planning, Zoning & Building, or their designee, shall review the application and required documents and determine whether it is competent and complete. If the Director, or their designee, determines that the application is not competent or complete, the Director of Planning, Zoning & Building, or their designee, shall notify the applicant as to the nature of the deficiency. In this case, no other action shall be taken on the application until the deficiency is remedied. If the Director, or their designee, determines that the application is competent and complete, the department will process the application.
- (3) Schedule of Meetings and Deadlines – the Director of Planning, Zoning & Building shall produce each year a Schedule of Public Meetings and Deadlines for all development review applications, which can be amended from time to time. The Director shall place the Schedule of Meetings and Deadlines on the Town website.
- (4) Notice of Public Hearings – Public Hearings for all development review projects, which includes the Architectural Review Commission major projects, Landmarks

Preservation Commission Certificates of Appropriateness, and Town Council Special Exceptions, Variances, and Site Plan Review, shall be noticed in accordance with the following provisions:

- (a) Advertisement – at least 30 days prior to the public hearing date, a description of the project or request, the date, start time of the meeting and location of the hearing shall be noticed in a newspaper of general circulation. The notice will be prepared and placed in the newspaper by Town staff.
- (b) Mail Notice – at least 30 days prior to the public hearing date, the applicant shall mail a notice containing a description of the request, the date, start time of the meeting and location of the hearing shall be given by mail to the owners of record of property lying within 300 feet of the property subject to the application. Applicants shall submit all information and certifications necessary to meet this requirement, as determined by the department and identified in the application instructions.

If a variance is being requested that exceeds the maximum density or the maximum off-street parking requirements allowed in the zoning district, the notification distance shall increase to 1,000 feet. A density variance is not allowed which is inconsistent with the maximum density allowed in the town's comprehensive plan.

If a special exception application is being requested for a service station, restaurant, lounge/bar, nightclub, private social, swimming, tennis or yacht club; or any other use deemed by the director of planning, zoning and building to be an intensification of use on a property, the notification distance shall increase to 750 feet. For the purpose of this section of the Code, intensification of use shall include, but not be limited to, increased tenant square footage, increased seating, increased off-street parking demand, and increased hours of operation of a special exception use.

- (c) Posting – At least 30 days prior to the public hearing, the Town will post a copy of the hearing notice within a conspicuous place in Town Hall.

Sec. 134-173. – Deferral Request; Denial of Application; Duration of Approval; Time Extension; Clarification.

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

the agenda. The applicant must explain or justify the request, which the Town Council may approve or deny. A third request for deferral shall be denied unless the applicant can demonstrate to the town council that a compelling reason exists. Any deferral which is required due to a case being deferred by the architectural commission or landmark preservation commission shall be an exception to the regulation above. In no case shall a deferral exceed six months.

- (2) An application request seeking substantially the same relief cannot be accepted for consideration after it has been denied by the Town Council until after 12 months have elapsed from the date of denial.
- (3) The work or use authorized under an approved variance or special exception application must be commenced within 36 months from the date of the town council approval thereof, and if not so commenced the special exception or variance shall be null and void. Commencement shall be considered as the issuance of a building permit for the work related to the application or a business tax receipt if no building permit is required. In addition, all authorized work under the building permit for said approved special exception or variance must be completed within the timeframe set forth in section 105.4.1.6. of the Florida Building Code as amended in section 18-242 of this Code or said special exception or variance shall expire.
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- (5) Should a question arise as to compliance with the conditions as outlined by the Town Council actions, a clarification hearing before the Town Council may be called at the request of the director of the planning, zoning and building department, or by the applicant.

Sec. 134-174. – Judicial remedy by circuit court.

Any person aggrieved by any decision of the Town Council made pursuant to this chapter, on appeal within 30 days from the rendition of such decision, may appeal to the circuit court for the 15th judicial circuit for a writ of certiorari to review such decision of the Town Council.

Article III, Site Plan

Sec. 134-328. - Site Plan application and notice shall follow the requirements found in Section 134-172, Uniform Development Review Procedures.