



TOWN OF PALM BEACH

Minutes of the Development Review

Town Council Meeting

Held on May 12, 2021

I. CALL TO ORDER AND ROLL CALL

The Development Review Town Council Meeting was called to order May 12, 2021 at 9: a.m. 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 Zeidman led the Pledge of Allegiance.

III. COMMENTS OF MAYOR DANIELLE H. MOORE

The Mayor stated she had no comments at this time.

IV. COMMENTS OF TOWN COUNCIL MEMBERS

Council Member Crampton discussed his tour of the north end of the island, reviewing homes that were too large for their site. He found nine homes that he believed were out of scale and not in harmony with the neighborhood. He thought that these items should be impressed onto ARCOM. He also believed that code reform was needed.

Council Member Araskog thought that it was very important to move code reform forward. She thought the Town was in danger of losing its brand. She requested to put a short discussion on the topic under Any Other Matters to the next agenda in order to find funds to begin this year. She reminded the Council that the burden relied on the applicant to provide a hardship for any variance requested, and provided legal cases on this subject.

Council Member Crampton thought that resources should be put into the Planning and Zoning Commission to handle code reform.

Council President Zeidman asked Director Bergman if he had requested money to be put into the budget for code reform. She wanted to clarify this item because she knew that a lot of resources had already gone into the FEMA issue, and wanted to

inform the public of that work. She also inquired about the staff's plan for code reform as well as the work that had been done by staff and the Planning and Zoning Commission on code reform.

Director Bergman discussed the budget that was requested for standard code reform. He discussed new software that the department was researching. He stated that if the will was to move forward with full code reform, staff could move in that direction. He added that he could move forward on the north end of the island as reform was needed on scale, massing, and other items. He reviewed the issue of fill related to the FEMA requirements that would be presented later in the meeting. He discussed many items that had already been completed, and explained the amount of additional budget money needed would depend on how much work was proposed to be done. He also viewed code reform as a multi-year project.

Council President Zeidman explained the process that had been followed on the issue of fill as it related to FEMA requirements and how concerned the Council was about how these requirements affected the character of the Town. She also thought that the 25-foot rule related to the pool equipment should be taken back to the Planning and Zoning Commission for re-evaluation. Zoning Manager Castro clarified the item and did not believe this was an issue.

Council Member Lindsay was encouraged on the progress that had taken place on some code reform issues. She commended staff for the work accomplished during the time of COVID. She wanted to keep the charm in Palm Beach.

Mayor Moore thought that the budget looked better and there might be more funds for code reform. She appreciated the work staff had already completed.

Council Araskog acknowledged staff and their accomplishments. Her focus and priority were the size and mass of new homes.

Council President Zeidman thought that the list of ten items of most important things to address in the zoning code should be re-reviewed. She agreed to add the item under Any Other Matters.

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

Susan Gary, 229 Onondaga Avenue, stated she sent a letter to the Town Council in March requesting that four items related to residential code reform be addressed. She asked that money be budgeted for code reform addressing privacy and neighborhoods. Her goal was to preserve the Town that everyone loves.

VI. APPROVAL OF THE AGENDA

Director of Planning, Zoning and Building Bergman read the following requested modifications:

Deferral of Item VIII. A. 1 to the June 9, 2021 meeting.

Deferral of Item VIII. B. 1 (a) to the June 9, 2021 meeting.

Deferral of Item VIII. B. 1 (b) to the June 9, 2021 meeting.

Deferral of Item VIII. B. 1 (e) to the June 9, 2021 meeting.

Deferral of Item VIII. B. 1 (f) to the June 9, 2021 meeting.

Deferral of Item VIII. B. 1 (g) to the June 9, 2021 meeting.

Deferral of Item VIII. B. 1 (i) to the June 9, 2021 meeting.

Deferral of Item VIII. B. 2 (d) to the June 9, 2021 meeting.

Deferral of Item VIII. B. 2 (f) to the June 9, 2021 meeting.

Withdrawal of Item VIII. B. 2 (g) to the June 9, 2021 meeting.

Deferral of Item VIII. B. 2 (h) to the June 9, 2021 meeting.

Deferral of Item VIII. B. 2 (i) to the June 9, 2021 meeting.

Council Member Araskog inquired if Z-20-00318, 1265 S. Ocean Blvd. could be removed from the agenda since the item kept returning to the agenda but the application was incomplete.

Ms. Ziska stated that the item would be ready to move forward at the next meeting.

Motion made by Council Member Araskog and seconded by Council Member Crampton to approve the agenda as amended. Motion carried unanimously.

VII. RESOLUTIONS

- A. Proposed resolution to provide tax abatement for improvements at 244 Nightingale Trail.

RESOLUTION 50-2021 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax Exemptions For The Property Hereinafter Described And Stating That The Subject Property Meets The Criteria Set Forth In Chapter 54, Article V Of The Code Of Ordinances Of The Town Of Palm Beach, Relating To Landmarks Preservation And Titled "Tax Exemptions."

Emily Stillings, Murphy Stillings, discussed the details of both tax abatement applications for Resolution 50-2021 and Resolution 51-2021.

There was no public comment.

Council Member Araskog confirmed with Ms. Stillings that she agreed this tax abatement was proper.

Council Member Cooney commented this tax abatement issue had led the owner to make the decision to landmark the property.

Motion made by Council President Pro Tem Lindsay and seconded by Council Member Crampton, to approve Resolution 50-2021. Motion carried by unanimously, 5-0.

- B. Proposed resolution to provide tax abatement for improvements at the Breakers Circle Dining Room.

RESOLUTION 51-2021 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Authorizing Ad Valorem Tax

Exemptions For The Property Hereinafter Described And Stating That The Subject Property Meets The Criteria Set Forth In Chapter 54, Article V Of The Code Of Ordinances Of The Town Of Palm Beach, Relating To Landmarks Preservation And Titled “Tax Exemptions.”

There was no public comment on this item.

Motion made by Council Member Crampton and seconded by Council Member Araskog, to approve Resolution 51-2021. Motion carried by unanimously, 5-0.

Administrative Specialist Churney swore in all those present intending to provide testimony during the meeting.

VIII. DEVELOPMENT REVIEWS

A. Appeals

1. ARCOM Appeals of B-063-2020 160 Royal Palm Way

This item was deferred during Item VI., approval of the agenda.

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. **Z-19-00211 SPECIAL EXCEPTION WITH SITE PLAN REVIEW** Zoning District: C-PC Planned Center The application of 305 Concepts Palm Beach, LLC d/b/a Coyo Taco, Applicant, relative to property located at **340 ROYAL POINCIANA WAY SUITE: M337**, legal description on file, is described below. On March 15, 2017, the Town Council approved Special Exception #5-2017, which authorized Coyo Taco to operate a restaurant containing more than 3000 S.F. in the C-PC zoning district at Suites #337A and M 333 of the Royal Poinciana Plaza. The approval was conditioned upon execution of a Declaration of Use Agreement, which did not permit Coyo Taco to have a disc jockey. This application seeks to amend the existing Declaration of Use Agreement to allow the restaurant to have a DJ on Tuesday, Friday and Saturday nights, in addition to special events. The hours requested for the DJ are 8:00pm to 12:00pm on Tuesday nights and 8:00pm to 1:00am on Friday and Saturday nights and for special events. The DJ will be confined to the interior of Coyo Taco. No physical changes to the previous approval are requested. The Declaration of Use Agreement also required Coyo Taco to return to the Town Council to demonstrate compliance with the Town Serving requirement. Coyo Taco has collected data confirming that the Town Serving requirement is met. This information will be presented to the Town Council during the public hearing on this application. [Applicant's Representative: James M. Crowley Esq] Request for Deferral to the June 9, 2021 Meeting per Email from JamesM. Crowley, Esq.

This item was deferred during Item VI., approval of the agenda.

- b. **Z-19-00232 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: C-WA Worth Avenue The application of 125 Worth Partners, LLC, Applicant, relative to property located at **125 WORTHAVE**, legal description on file, is described below. The applicant requests Site Plan Review modification approval for revitalization, renovation and expansion of the 45 year-old nonconforming commercial building located at 125 Worth Avenue in the C-WA zoning district. The building will be completely renovated architecturally using design themes found in the Worth Avenue Design Guidelines. In addition, a two story addition is being proposed on the east end of the property. To make this project financially feasible, the owners are requesting to demolish and rebuild the existing fourth story and expand its footprint to add four residential units. In addition to the Site Plan Review proposed modifications, the applicant is requesting the following Special Exceptions and Variances required to complete the project: 1. Per Section 134-1163(8)b., a special exception for a two-story and fourth story addition. The existing building is four stories but it is being expanded. 2. Per Section 134-2182(b), a special exception for on-site shared parking, subject to a professional shared parking analysis. 3. Per Section 134-419, a variance to allow an expansion of an existing nonconforming building by increasing the height from 53' in lieu of the 49'2" existing and the 25' maximum allowed by code. 4. Section 134-419, a variance to allow an expansion of an existing nonconforming building by increasing the overall building height to 63'4" in lieu of the 53'8" existing and the 35' maximum allowed by current code. 5. Per Section 134-419, variance to allow an expansion of an existing nonconforming building by increasing the existing air conditioned floor area of the fourth story to 13,212.9 square feet from 3,448.75 square feet existing. An open fourth story trellis of 5,433 square feet is also proposed in this application and included in the calculation of lot coverage, below. There is an existing exterior fourth floor covered area of approximately 3,290 Square feet in addition to the existing air conditioned floor area on the fourth story of the building. 6. Per Section 134-1163(5), variance to allow a minimum front yard setback of 1'1" for portions of the building in lieu of the 5' existing and the 5' minimum required on the private property. The sidewalk is required to be a minimum of 10' wide and this proposal is a minimum of 8'2" in the area where the sidewalk is only 1'1" wide on private property. 7. Per Section 134-1163(9)b., variance for lot coverage of 71% on the first floor in lieu of the 57% existing and the 35% maximum allowable. 8. Per Section 134-1163(9)b., variance for lot coverage of 71% on the second floor in lieu of the 57% existing and the 35% maximum allowed for second story. 9.

Per Section 134-1163(9)b., variance for lot coverage of 54% on the fourth floor in lieu of the 20% existing and the 35% maximum allowable by code. 10. Per Section 134-419, a variance to allow an expansion of an existing nonconforming building by increasing the existing building length at the east end of the building from 201'8" to 246' in lieu of the 150' permitted as of right in the C-WA zoning district. [Applicant's Representative: James M. Crowley Esq] [The Architectural Review Commission deferred this project to their June 23, 2021 Meeting. Carried 6-1.] Requested Deferral to the June 9, 2021 Meeting Per Letter from James Crowley.

This item was deferred during Item VI., approval of the agenda.

- c. **Z-20-00281 SPECIAL EXCEPTION WITH SITE PLAN REVIEW** The Colony Hotel relative to the property located at 132, 152, 155 Hammon Avenue; Recommendation of Conditions of Approval in the Declaration of Use Agreement related to the East Garden Area.

Ex parte communications were declared by Council Member Araskog.

Zoning Manager Castro introduced the item and discussed the project. He stated there was an outstanding code enforcement issue but it did not apply to the garden.

Maura Ziska, attorney for the applicant, stated that the restaurant was still operating under the COVID seating, and she was unaware of any code enforcement issue.

Council Member Crampton did not believe there had been any complaints after the Declaration of Use was instituted.

Council Member Araskog requested to hear from Code Enforcement. She also wanted clarification on the number of people that could speak on the microphone in the garden area. She also suggested revisiting the issue in one year to make sure there were no issues.

Zoning Manager Castro stated that the issue on the number of people that could speak had been decided during Council discussion on the Declaration of Use Agreement.

Council Member Cooney reported he had attended one event and was impressed at the sensitivity of the sound system.

Council Member Crampton pointed out that Council was hearing this today to act on the concerns expressed by Council Member Araskog; however, based on Council Member Cooney's comments, there was no need, since there were no problems, and he asked that the project continue under the existing Declaration of Use.

Council Member Araskog commented she had read further and now had no concerns.

Council President Pro Tem Lindsay stated she was in support of

continuing without any stipulations other than the Declaration of Use.

Carla Marcote, Code Enforcement, reported two complaints with no violations found.

Council Member Araskog asked the solution for complaints that were below the decibel level. Zoning Manager Castro responded they could speak before the Council in public comment.

Motion made by Council Member Crampton and seconded by Council Member Cooney, to allow The Colony to continue operations under the existing Declaration of Use. Motion carried by unanimously, 5-0.

d. **Z-20-00295 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S) 331 S COUNTY RD -**

Reconsideration of the Approval for Cafe L'Europe, Z-20-00295, Special Exception with Site Plan Review, 331 South County Road

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

Administrative Specialist Churney swore in John Eubanks. Keith Spina had previously been sworn. The other speakers, Jennifer and Mark Marcello, had also been sworn.

Zoning Manager Castro introduced the item.

Ms. Ziska stated that under the COVID seating, they were allowed 35 outdoor seats, while under the variance they were allowed 20 outdoor seats.

Town Attorney Randolph stated that if the restaurant was still operating under the COVID seating, the variances should be retracted while there was a lawsuit to be heard.

Town Attorney Randolph clarified for Council Member Araskog that a decision should be made regarding the variance. A lawsuit had been filed challenging the Town granting the variance. Also, COVID rules had changed allowing restaurants to have full capacity, which were changes from the time the variance was granted. Council should consider whether they still wished to grant the variance for outdoor seating.

Ms. Ziska stated that the applicant was there to be reviewed after 6 months but had not operated under the variance that had been granted. Town Attorney Randolph clarified that the Council was reviewing whether to allow the variance to go forward with a pending lawsuit, with outdoor seating under review for changes, and with the Governor's order changing seating from 50% to 100% capacity.

Council President Zeidman suggested Zoning in Progress should be declared for outdoor seating.

Town Attorney Randolph asked that this be heard today. Mayor Moore was concerned that Council Member Cooney had not

heard the first presentation. Discussion ensued regarding reconsideration.

Attorney Ziska asked about making the sidewalk wider. Staff responded. Discussion ensued regarding the applicable section of code.

Town Manager Blouin commented on the administrative procedure which instituted the COVID approval for outdoor seating, and unintended consequences.

Keith Spina, Spina O'Rourke, presented the architectural plans for the outdoor seating.

Jennifer Marcello, owner, stated there had been an overwhelming response to the outdoor seating. She said many local citizens had supported their request. She discussed the monies spent on the beautification of the outdoor area around the restaurant. She questioned that only one objection could have such an effect on their business and the future of outdoor dining. She confirmed her commitment to the Town.

Council President Zeidman called for public comments.

John Eubanks, attorney representing Thomas O. McCarthy at 140 Brazilian Avenue, discussed his client's objections to the zoning application. He also believed that the COVID seating should not be allowed.

Town Attorney Randolph stated that the Town Council should not consider the temporary outdoor seating at this time.

Ms. Ziska stated her applicant would like to withdraw the special exception, site plan review and variance request at this time.

Motion made by Council Member Araskog and seconded by Council Member Crampton to accept the withdrawal of the special exception and variances related to outdoor seating and site plan review, except for the awnings, for Cafe L'Europe. Motion carried unanimously, 5-0.

- e. **Z-20-00299 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: R A Estate Residential The application of 1015 SOUTH OCEAN LLC (MAURA ZISKA, MANAGER), applicant, relative to property located at **1015 S OCEAN BLVD**, legal description on file, is described below. 1) Section 134 840: Special Exception with Site Plan Review to allow the construction of an 11,031 square foot two story residence on a non-conforming lot that is 97.97 feet in depth in lieu of the 150 foot minimum required In the R A Zoning District. 2) Section 134 843(a)(5): A request for a variance to allow a front setback of 16 feet 7.5 inches in lieu of the 35 foot minimum required in the R A Zoning District. 3) Section 134 843(a)(9): A request for a variance to allow a rear setback of 2 feet 7 inches in lieu of the 15 foot minimum required in the R A Zoning District. 4) Section 134 843(a)(6)b: A request for a

variance to allow an Angle of Vision of 133.74 degrees in lieu of the 120 degrees maximum allowed in the R A Zoning District. 5) Section 134 843(a)(7): A request for a variance to have a building height plane setback ranging as close to the front property line as 16.8 feet (one story element) to 29.25 feet (two story element) in lieu of the minimum 35 foot (one story element) to 47.6 foot (two-story element) minimum required by Code in the R-A Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to the May 26, 2021 meeting. Carried 7-0.] Staff Recommends Deferral to the June 9, 2021 Meeting.

This item was deferred during Item VI., approval of the agenda.

f. **Z-20-00311 SPECIAL EXCEPTION WITH VARIANCES**

Zoning District: C-S Town Serving Commercial The application of Bricktop's Palm Beach, applicant, relative to property located at **375 S COUNTY RD**, legal description on file, is described below. Section 134 1109 (14): Modification to previously approved Special Exception with Site Plan Review is being requested for Bricktop's restaurant to add 40 outdoor seats for lunch and dinner in the north courtyard adjacent to the existing restaurant. The additional seating will increase the seating from 150 indoor and patio seats to 190 seats. The current approval allows 52 seats of the 150 seats to be outside on the south patio. Section 134 2176: a variance is being requested to provide zero (0) on-site parking spaces in lieu of the 13 parking spaces that are required for the additional 40 outdoor seats. [Applicant's Representative: Maura Ziska Esq] Staff Recommends Deferral to the June 9, 2021 Meeting to Allow for Further Study of Outdoor Seating Regulations.

This item was deferred during Item VI., approval of the agenda.

- g. **Z-20-00318 REPLAT** Zoning District: R-AA Large Estate Residential The application of BLOSSOM WAY HOLDINGS LLC (GERALD A. BEESON, MANAGER), applicant, relative to property located at **1265 S OCEAN BLVD**, legal description on file, is described below. An application to replat lots 1 through 6 and lot 10 of the Blossom Estate Subdivision, 60 Blossom Way, and 1290 S Ocean Blvd into 2 (two) buildable lots. The proposed replat will abandon in total the Blossom Way right-of-way; abandon the current beach access and dedicate a new 8-ft wide beach access along the north side of the proposed replat; terminate the Limited Access Easement along the east side of S Ocean Blvd which provides access to all of the Blossom Estate platted properties via Blossom Way; and incorporate 60 Blossom Way and 1290 S Ocean Blvd properties into the new Lots 1 and 2 of Blossom Estate subdivision. [Applicant's Representative: Maura Ziska Esq] Staff Recommends Deferral to the June 9, 2021

Meeting as the application is incomplete.

This item was deferred during Item VI., approval of the agenda.

- h. **Z-21-00329 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: R-A Estate Residential The application of 910 S OCEAN LLC (Tom Campbell), applicant, relative to property located at **910 S OCEAN BLVD**, legal description on file, is described below. 1. Section 134 843(b): Modification to a previously approved request for Site Plan approval to permit construction of a new 17,527 square foot, two story residence on a platted lot with a depth of 128.42 in lieu of the 150 foot minimum required In the R-A Zoning District. The proposed changes to the main house parcel are as follows: the addition of a cooling tower at southwest corner of the property; revision of the driveway and entries to reduce from three curb cuts to two curb cuts; elimination of the swimming pool on the east side of the house; addition of decorative balustrades at the roof level; revisions to floor plans and south façade due to plan changes; elimination of balcony on the west façade; minor adjustment to stonework and window/door configurations; and revision to metal railing design of balconies. Also proposed modifications to the basement enlarging the square footage by 994 square feet to house mechanical equipment. 2. Section 134 2: a variance to allow a point of measurement of 21.5 NAVD in lieu of the 18.34 NAVD maximum allowed for the building height plane calculation for the balustrade detail. 3. Section 134-1610(4) and 134-843(11): a variance to allow lot coverage to be 28.5% in lieu of the 25% maximum allowed when counting the basement walls that extend outside of the main building walls. 4. Section 134-790: Modification to a previously approved request for a special exception to permit construction of a new 500 square foot beach cabana east of South Ocean Boulevard. Modifications include new fenestration, columns, basement and raising finished floor elevation by 2 feet and to lower the site wall to meet the ocean vista requirement. [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.] [The Architectural Review Commission approved the project as presented with a few conditions related to the architecture and landscape. Carried 6-1.]

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

Maura Ziska, attorney for the applicant, discussed the modification to the architectural changes and explained the new variance request for lot coverage. She introduced the project and discussed the approval granted at ARCOM.

Rafael Portuondo, Portuondo Perotti Architects, presented the architectural plans for the new residence.

Zoning Manager Castro provided staff comments.

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

Council Member Crampton asked to see the view of the streetscape. Mr. Portuondo showed the streetscape for the existing home.

Council Member Araskog inquired about the basement below the beach cabana. Mr. Castro responded. Council Member Araskog inquired why 25% lot coverage could not be met. Mr. Castro responded.

Carlos Esteban, Portuondo Perotti Architects, discussed the design for the basement.

Council Member Zeidman did not see the negative for the variance request since the greenspace was still being met.

Mr. Castro stated that the basement was located under the driveway. Mr. Esteban reviewed the architectural plan for the basement.

Motion made by Council Member Crampton and seconded by Council President Zeidman that Special Exception Z-21-00329 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. Motion carried by unanimously, 5-0.

Motion made by Council President Pro Tem Lindsay and seconded by Council Member Crampton that Variance Z-21-00329 shall be granted and find in support thereof that all criteria applicable to this application as set forth in Section 134.201(a) items 1 through 7 have been met. Motion carried

4-1, with Council Member Araskog opposed.

Motion made by Council President Pro Tem Lindsay and seconded by Council Member Crampton that Site Plan Z-21-00329 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. Motion carried unanimously, 5-0.

- i. **Z-21-00333 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of 04TST101NIGHTINGALE LLC, applicant, relative to property located at **101 NIGHTINGALE TRL**, legal description on file, is described below. Section 134 893(13): The applicant is proposing to construct a 70 square foot one story bathroom addition and two Dutch gables that will be added to the courtyard elevations of the pool cabana and kitchen which will increase the cubic content ratio ("CCR") to 5.24 In lieu of the 5.01 existing CCR and the 3.9 maximum CCR allowed in the R B Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to their May 26, 2021, 2021 meeting. Carried 7-0.] Staff Recommends Deferral to the June 9, 2021 Meeting.

This item was deferred during Item VI., approval of the agenda.

Please note: A short break was taken at 11:47 a.m. The meeting resumed at 11:58 a.m.

- j. **Z-21-00336 MODIFIED SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: C-TS Town Serving Commercial The application of CARRIAGE HOUSE PROPERTIES PARTNERS LLC, A DELAWARE LIMITED LIABILITY COMPANY, applicant, relative to property located at **264 S COUNTY RD & 270 S COUNTY RD**, legal description on file, is described below. Section 134 1109: A request for a special exception with site plan review modification approval to modify a previously approved Club's 264 South County Road property as follows: At 264 South County Road: Modify quantity and size of rooftop mechanical equipment; Modify height of mechanical equipment screen wall; Modify Landscape and Hardscape Design including Landscape Open Space. At 270 South County Road: Modify quantity and size of rooftop mechanical equipment; New mechanical equipment screen wall; Modify Landscape and Hardscape Design including Landscape Open Space; Modify to Front Door & Overhang Design; Modify Door/Window Operation on East Elevation for Emergency Egress; New Concealed Emergency Egress Gate On East Elevation; New Decorative Shutters on

South Elevation; Modify quantity and location of windows on northwest corner of second floor. The following Variances are being requested: At 264 South County Road: 1) Section 134-1607(1): to allow (4) pieces of HVAC equipment at 51 inches in height in lieu of the 48" maximum allowed; 2) Section 134-1607(1): to allow the scrubber at 40 inches in height in lieu of the 36" maximum allowed. At 270 South County Road: Section 134-1607(1): to allow (5) pieces of HVAC equipment at 57 inches in height in lieu of the 48" maximum allowed. 3. Section 134-1113(6): To allow a parapet wall on the south side of the second story to screen proposed new mechanical equipment with a side yard setback of 2.11 feet in lieu of the 11 foot minimum required. [Applicant's Representative: Maura Ziska Esq] [Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject landmarked property. Carried 6-1.] [The Landmarks Preservation Commission approved the project as presented with conditions relating to the architecture to return to the May 19, 2021 Landmarks Preservation Commission meeting. Carried 7-0.]

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

Maura Ziska, attorney for the applicant, explained the zoning requests for the proposed project.

Keith Spina, Spina O'Rourke + Partners, discussed the issues of the construction prior to receiving approval.

Nelo Freijomel, Spina O'Rourke + Partners, presented the architectural plans for the proposed project, including the parapet wall, and the requested variances.

Zoning Manager Castro provided background information on this project, and described the variance requests.

Town Attorney Randolph spoke about Mr. Geist's request to test the noise decibels of the equipment.

Director Bergman stated he believed the section on mechanical equipment in the Code should be researched since the new mechanical equipment was getting larger as it became more efficient.

Council President Zeidman called for public comment.

Rene Silvin, Chairman of the Landmarks Preservation Commission, stated that he had been supportive of the project but expressed his dismay that a parapet wall was built larger

than allowed, as well as the two windows on the south side of the 264 S. County Road building were infilled without permission. He was not in favor of supporting any variances until the two filled-in windows were explained.

Council President Zeidman amended her ex parte communication to include that Mr. Silvin also said while he was disappointed in how this came about, he was reasonable and would work toward a resolution.

Council Member Crampton thought the changes proposed were de minimus. He stated he would support the request with the caveat that items were not to be built or changed without approval.

Council Member Cooney thought the building and changing items without approval was unfortunate. He was encouraged that the owners were putting in sophisticated equipment. He thought the proposed changes were reasonable. Mr. Cooney asked the allowable decibel level for this area. Zoning Manager Castro responded it was low.

Council President Pro Tem Lindsay thought the building and changing items without approval was unfortunate. She requested the applicant inform Landmark Commission on the proposed aesthetics.

Zoning Manager Castro commented on the allowable decibel levels which were 64 during the day and 58 at night.

Council Member Araskog inquired about the infilled windows. Mr. Spina confirmed that all of the original windows would remain after the project was complete. Council Member Araskog inquired if any of the equipment could be placed in the courtyard. Mr. Spina stated it could not. Ms. Araskog inquired if any of the equipment could be seen from the street. Mr. Spina responded some could be slightly visible, and had been approved by Landmarks. A discussion ensued. Mr. Spina stated there was no equipment on the roof that could be moved to the courtyard.

Zoning Manager Castro read the language from the Code regarding mechanical equipment.

Mayor Moore stated she depended on the professionals to do their jobs and was not happy that the professionals had to ask for forgiveness rather than permission.

Mr. Silvin agreed with the Mayor's comments and stated everyone had heard all original windows would be in place

when the project was finished and no windows would be infilled without permission.

Motion made by Council Member Crampton and seconded by Council Member Cooney that Variance Z-21-00336 shall be granted and find in support thereof that all criteria applicable to this application as set forth in Section 134.201(a) items 1 through 7 have been met, and providing that the property owner did voluntarily commit that prior to the issuance of a building permit to either provide a recorded utility easement or an easement agreement satisfactory to the town that ensures a recorded easement will be granted if necessary to underground utilities in the area, and prior to the issuance of a certificate of occupancy the decibel level shall be checked by the Police Department. Motion carried by unanimously, 5-0.

Motion made by Council Member Crampton and seconded by Council Member Cooney that Special Exception Z-21-00336 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. Motion carried by unanimously, 5-0.

Motion made by Council Member Crampton and seconded by Council Member Cooney that Site Plan Z-21-00336 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. Motion carried by 4-1, with Council Member Araskog opposed.

2. New Business

- a. **Z-21-00338 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of DAVID & SAMANTHA MILGRAM, applicant, relative to property located at **246 SEASPRAY AVE**, legal description on file, is described below. Section 134-1757: Applicant is requesting the following variances to construct a new 10' x 22' swimming pool: a 5 foot rear yard setback in lieu of the 10 foot minimum required; and a 5 foot west side yard setback in lieu of the 10 foot minimum required. [Applicant's Representative: Maura Ziska Esq]

Ex parte communications were disclosed by Council Members Cooney, Araskog, Crampton, Council President Zeidman,

Council President Pro Tem Lindsay and Mayor Moore.

Maura Ziska, attorney for the owners, explained the zoning requests for the proposed project.

Dustin Mizell, Environment Design Group, presented the architectural plans for the proposed renovation of the pool.

Zoning Manager Castro provided staff comments.

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

Mayor Moore inquired if there was a setback from the power lines at the back of the property. Mr. Mizell responded that would be confirmed. She wanted to make sure that the owner was not creating a safety issue.

Council President Zeidman stated she was sympathetic but was unsure how the Council would handle the hardship.

Council Member Araskog felt the pool could be smaller in width and thought the application should return with a full picture of the pool. Mr. Mizell showed the Town Council a picture of the entire backyard.

Mayor Moore felt the current pool being right next to the house was a safety issue.

Mr. Castro suggested that the pool move closer to the accessory building.

Council President Zeidman felt relief should be provided.

Motion made by Council Member Crampton and seconded by Council President Pro Tem Lindsay that Variance Z-21-00338 shall be granted and find in support thereof that all 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. Motion carried by unanimously, 5-0.

Please note: A lunch break was taken at 1:03 p.m. The meeting resumed at 1:55 p.m.

- b. **Z-21-00339 VARIANCE(S)** Zoning District: C-TS Town Serving Commercial The application of FRISBIE GROUP LLC (ROBERT FRISBIE JR., MANAGING DIRECTOR), applicant, relative to property located at **221 ROYAL POINCIANA WAY, SUITE 1**, legal description on file, is described below. Section 134 1107: Request for a variance to allow a first floor real estate office (Frisbie Group LLC) in Suite 1 of 221 Royal Poinciana Way which is comprised of 2,116 square feet. In addition to the real estate office there will be a retail component showcasing interior decorator items for sale. A variance is being requested to have the proposed real estate office on the first floor of a building located in the C-TS zoning district where office use is only allowed on the second floor if it doesn't meet the special exception criteria that would allow an office on the first floor. [Applicant's Representative: Maura Ziska Esq]

Ex parte communications: Council Member Cooney disclosed he had read the backup and had a meeting at the site with David Frisbee, who advocated for their clients, and read the letter from Paul Leone. Mayor Moore stated she read the backup and letter from Paul Leone. Council President Zeidman read the backup, walked the site with David Frisbee, and read the letter from Paul Leone. Council President Pro Tem Lindsay read the backup, and visited the site, and read the letter from Paul Leone. Council Member Araskog read the backup, visited the site, and read the letter from Paul Leone. Council Member Crampton read the backup and looked at the site.

Maura Ziska, attorney for the applicant, explained the zoning requests for the proposed project.

Jason Skinner, Dailey Janssen Architects, presented the architectural plans to show the portion of the building where the real estate office was proposed, and the surrounding mixed-use area.

Mayor Moore inquired about the items that would be for sale in the office. Ms. Ziska responded. The Mayor stated the retail component made her feel better about the request.

Council President Pro Tem Lindsay inquired about a percentage of the office with retail goods. Ms. Ziska responded.

Jake Leone, Frisbie Group LLC, discussed the retail goods that would be for sale.

Council Member Araskog inquired about the photographs of the surrounding buildings. Mr. Skinner presented photographs of the surrounding properties. Council Member Araskog stated if she were to approve the request, she would want to make sure that the retail items were in the front facing

portion of the space. Mr. Leone stated that they could meet this request.

Council Member Crampton did not have a problem with the request but he did not understand the hardship for the request.

Council President Zeidman agreed with Mr. Crampton. She indicated the reason why this provision was in the Code. She liked the idea of what they wanted to do.

Council Member Cooney thought that the retail facing the Via was better suited for pedestrian traffic.

Zoning Manager Castro provided staff comments.

Mr. Leone stated that there would not be any real estate photographs in the windows.

Council Member Araskog inquired about the hardship. Ms. Ziska discussed the hardship.

Council Member Lindsay agreed with Mr. Cooney that the Via side was more conducive to retail. She inquired about the total square footage. Ms. Ziska responded.

Council Member Araskog did not think she could support the request. She thought this would set a precedent for others.

There were no public comments.

Motion made by Council Member Crampton and seconded by Council President Pro Tem Lindsay that Variance Z-21-00339 shall be granted and find in support thereof that all criteria applicable to this application as set forth in Section 134.201(a) items 1 through 7 have been met, and providing that the property owner did voluntarily commit that prior to the issuance of a building permit to either provide a recorded utility easement or an easement agreement satisfactory to the town that ensures a recorded easement will be granted if necessary to underground utilities in the area, and the office space shall not exceed 1,346 square feet. Motion carried by 4-1, with Council Member Araskog opposed.

- c. **Z-21-00340 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of RONALD M. ALVAREZ AND ALICE A RUTH, TRUSTEES OF THE B.O.P. TRUST-I DATED 4/3/1998, applicant, relative to property located at **210 ORANGE GROVE RD**, legal description on file, is described below. Applicant is proposing to convert a one story two car

garage into a one story one car garage, and adding 50 square feet of space to the garage for a cabana bath. The following variances are being requested: Section 134-893(9): a rear yard setback of 6.4 feet in lieu of the 10 foot minimum required in the R-B Zoning District. Section 134-2179(b): Applicant is requesting a one car garage in lieu of the requirement of having a two car garage for properties in excess of 75 feet in width. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 6-1.] [The Architectural Review Commission approved the project as presented. Carried 7-0.]

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

Maura Ziska, attorney for the applicant, provided background for this project and explained the zoning requests for the proposed project. She stated the neighbors had no objections.

Michael Perry, MP Design and Architecture, presented the architectural plans proposed for the renovation and addition to the existing residence.

Zoning Manager Castro provided staff comments regarding the history of this property.

A discussion ensued about the previous approval.

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

Mr. Castro stated that staff would ask for a unity of title to be a condition of approval.

Council President Pro Tem Lindsay inquired if this was a newer or older home. Mr. Perry responded it was a renovation of an older home.

Council Member Crampton inquired about the streetscape for the home. Mr. Perry showed Mr. Crampton photographs of other surrounding homes. Council Member Crampton inquired if staff had received any complaints, to which Michael Perry replied that there were no complaints on the proposed project.

Council Member Araskog inquired about the other two car garages in the area. Mr. Perry responded. Ms. Araskog inquired if the project would be seen from the street. Mr. Perry

responded. Council Member Araskog inquired about the hardship. Ms. Ziska responded.

Council President Zeidman inquired about the setback next to the addition. Mr. Perry provided further clarification.

Motion made by Council Member Cooney and seconded by Council Member Crampton, that Variance Z-21-00340 shall be granted and find in support thereof that all 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. Motion carried by unanimously, 5-0.

- d. **Z-21-00341 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of GRETCHEN S. JORDAN, AS TRUSTEE OF THE GRETCHEN S. JORDAN 1998 TRUST DATED NOVEMBER 18, 1998, applicant, relative to property located at **273 TANGIER AVE**, legal description on file, is described below. The Applicant is proposing to enclose a 432 square foot balcony on the second floor in the rear of the residence in order to create an office. This will require the following variance to be requested: Section 134-893(13): a cubic content ratio of 4.1 in lieu of 3.9 existing and the 3.93 maximum allowed in the R-B Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred this project to the May 26, 2021 meeting. Carried 7-0.] Staff Recommends Deferral to the June 9, 2021 Meeting.

This item was deferred during Item VI., approval of the agenda.

- e. **Z-21-00342 VARIANCE(S)** Zoning District: R-C Medium Density Residential The application of THOMAS D'AGOSTINO, applicant, relative to property located at **253 SEMINOLE AVE**, legal description on file, is described below. Section 134-1757: Applicant is requesting the following variances to construct a new 10' x 35' swimming pool: a 5 foot rear yard setback in lieu of the 10 foot minimum required; and a 5 foot west side yard setback in lieu of the 10 foot minimum required. [Applicant's Representative: Maura Ziska Esq]

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

Maura Ziska, attorney for the applicant, explained the zoning requests for the proposed project.

Dustin Mizell, Environment Design Group, presented the architectural plans proposed for the new swimming pool.

Zoning Manager Castro provided staff comments.

Council Member Crampton questioned the hardship. He inquired if there were any complaints received on the application. Ms. Ziska stated she had not received any complaints.

Council Member Araskog expressed concern for the proposed pool. She thought the pool was too big and should be reduced so that the variances were not needed. She did not believe there was a hardship for the application.

Council Member Lindsay agreed with Ms. Araskog. She indicated she had trouble with the west side setback.

Ms. Ziska stated the pool could be reduced by five feet on the west side.

Discussion ensued regarding the setbacks.

Council Member Araskog commented she was trying to minimize the variance requests. She thought the pool was too long, and recommended moving the pool to eliminate one of the variances.

Council President Zeidman inquired if the pool could be moved closer to the home. Mr. Mizell responded.

Mayor Moore felt reasonable compromise had been reached.

Ms. Ziska withdrew the rear yard variance.

Motion made by Council Member Cooney and seconded by Council Member Crampton, that Variance Z-21-00342 shall be approved subject to shortening the west side by 5 feet and moving the pool 4 feet from the house and find in support thereof that all 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. Motion carried by unanimously, 5-0.

Staff confirmed there were no public comments.

f.Z-21-00343 SPECIAL EXCEPTION WITH SITE PLAN

REVIEW AND VARIANCE(S) Zoning District: R- A Estate Residential The application of 130 ALGOMA LLC (LEE FENSTERSTOCK, MANAGER), applicant, relative to property located at **130 ALGOMA RD**, legal description on file, is described below. Section 134-229, Section 134-329, and Section 134-843(b): Special Exception with Site Plan Review to allow the construction of a new, two-story 6,448.55 square foot residence while preserving the existing one story nonconforming garage on a lot with an area of 15,708 square feet in lieu of the 20,000 square foot minimum required; a lot depth of 142.33 feet in lieu of the 150 foot minimum required; and a lot width of 111.89 feet in lieu of the 125 foot minimum required; all in the R-A Zoning District. The following variances are being requested: 1) Section 134-843(8): to allow the existing east side yard setback to remain at 8.75 feet in lieu of the 15 foot minimum required to keep the existing nonconforming garage. 2) Section 134-843(7): to allow the building height plane setback to be 46.1 feet in lieu of the 48.33 foot minimum setback required. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred this project to the May 26, 2021 meeting. Carried 7-0.] Staff Recommends Deferral to the June 9, 2021 Meeting.

This item was deferred during Item VI., approval of the agenda.

- g. **Z-21-00344 SITE PLAN REVIEW WITH VARIANCE(S)** Zoning District: R-B Low Density Residential The application of MICHAEL S. ARLEIN, TRUSTEE OF THE 267 DUNBAR ROAD RTRUST DATED 12/07/20, applicant, relative to property located at **267 DUNBAR RD**, legal description on file, is described below. Section 134-893(c): Site Plan Review to allow the construction of a new one and two story 7,500 square foot single family residence on a non-conforming platted lot which is 98.5 feet in width in lieu of the 100 foot minimum width required in the R-B Zoning District. Section 134-893(5): A variance request to allow the construction of a new one and two story 7,500 square foot single family residence with a street side yard setback of 25 feet in lieu of the 30 foot minimum required in the R-B Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission denied this project at their April 28, 2021 meeting. Carried 7-0.] Staff Recommends that the Project Does Not Move Forward Due to a Denial at the Architectural Review Commission Meeting on April 28, 2021.

This item was deferred during Item VI., approval of the agenda.

- h. **Z-21-00345 VARIANCE(S)** Zoning District: R-A Estate

Residential The application of PAUL A. KRASKER, AS TRUSTEE OF THE 720 SOUTH OCEAN BOULEVARD LAND TRUST DATED SEPTEMBER 20, 2020, applicant, relative to property located at **720 S OCEAN BLVD**, legal description on file, is described below. The applicant is requesting approval to renovate and construct additions to the north side of the landmarked residence known as "El Salono" to include a new 486 square foot pool cabana and a 1,159 square foot second and third story addition. The following variances are being requested: 134 843(8): a north side yard setback ranging from 2.6 feet to 5.9 feet for the 2nd and 3rd story additions in lieu of the 15 foot minimum required in the R-A Zoning District. 134- 843(8): a north side yard setback of 4.9 feet for the pool cabana in lieu of the 15 foot minimum required in the R-A Zoning District. 134-843(10): a building height of 26.33 for the proposed 3rd story addition in lieu of the 25 foot maximum allowed in the R-A Zoning District. Section 134-844: A request for variance to construct a 3rd story addition where only two stories is the maximum allowed in the R-A Zoning District under the existing zoning code. [Applicant's Representative: Maura Ziska Esq] [The Landmarks Preservation Commission deferred this project to the May 19, 2021 meeting. Carried 7-0.] Staff Recommends Deferral to the June 9, 2021 Meeting.

This item was deferred during Item VI., approval of the agenda.

- i. **Z-21-00346 SPECIAL EXCEPTION WITH SITE PLAN REVIEW** Zoning District: R-B Low Density Residential The application of PALM BEACH COUNTRY CLUB INC (ROBERT SCHLAGER, PRESIDENT), applicant, relative to property located at **760 N OCEAN BLVD**, legal description on file, is described below. Section 134-890(5): Modification to a previously approved private club which is a special exception use in a residential zoning district by adding a paddle ball court on the Fairview Road property owned by the Palm Beach Country Club. Section 134-1759: A request for Special Exception Approval with Site Plan Review to allow construction of a paddle ball court that will be enclosed and screened by landscaping. (Backboard requires Special Exception Approval). [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred this project to the May 26, 2021 meeting. Carried 7-0.] Staff Recommends Deferral to the June 9, 2021 Meeting.

This item was deferred during Item VI., approval of the agenda.

A break was taken at 3:06 p.m. The meeting reconvened at 3:11 p.m.

IX. ORDINANCES

A. **First Reading**

1. Proposed ordinance to provide a fee modification to all Business Tax Receipts in accordance with State law.

ORDINANCE 04-2021 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 114 Taxation, Article II, Local Business Tax, At Section 114-43 Schedule, So As To Amend The Fees Delineated For Each Business, Profession Or Occupation; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Town Attorney Randolph read Ordinance 04-2021 by title only.

Planning, Zoning & Building Director Bergman stated this was the 5% allowable increase every two years, and would provide \$52,000 in revenue to the Town.

Council Member Araskog inquired if the increase could be moved to next year.

Motion made by Council Member Crampton and seconded by Council Member Cooney to approve Ordinance 04-2021 on first reading. Motion carried unanimously, 5-0.

2. Proposed ordinance to amend Chapter 18 to provide uniform public notice requirements for Architectural Review Commission applications.

ORDINANCE 06-2021 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending Chapter 18, Buildings And Building Regulations, Article III, Architectural Review, Division 3, Procedure And Requirements; Providing For Severability; Providing For The Repeal Of Ordinances In Conflict; Providing For Codification; And Providing An Effective Date.

Director Bergman explained the changes in this and the next two ordinances, which would modify notice requirements, height poles, and remove reference to two types of historic districts not included in the code.

Council Member Crampton commented this was putting things in order and cleaning up administrative procedures and getting rid of non-existent items in the code.

Council Member Araskog discussed the benefits of the virtual

models rather than the physical models.

Town Attorney Randolph read Ordinance 06-2021 by title only.

There were no comments from the public.

Motion made by Council Member Crampton and seconded by Council Member Cooney, to approve Ordinance 06-2021 on first reading. Motion carried unanimously, 5-0.

3. Proposed ordinance to amend Chapter 54 to provide uniform public notice requirements for Landmark Preservation Commission applications.

ORDINANCE 07-2021 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending Chapter 54, Historical Preservation, Article III, Certificate Of Appropriateness, Division 2, Procedures And Effect; Sections 54-93 And 54-94; And Amending Article IV, Designation Procedure, Section 54-162; Providing For Severability; Providing For The Repeal Of Ordinances In Conflict; Providing For Codification; And Providing An Effective Date.

Town Attorney Randolph read Ordinance 07-2021 by title only.

There were no comments from the public.

Motion made by Council Member Cooney and seconded by Council Member Crampton to approve Ordinance 07-2021 on first reading. Motion carried unanimously, 5-0.

4. Proposed ordinance to amend Chapter 134 to provide uniform public notice requirements for Town Council zoning relief applications.

ORDINANCE 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.

Town Attorney Randolph read Ordinance 08-2021 by title only.

There were no comments from the public.

Motion made by Council Member Crampton and seconded by Council President Pro Tem Lindsay to approve Ordinance 08-2021 on first reading. Motion carried unanimously, 5-0.

5. Proposed ordinance to amend Chapter 134, Zoning, to modify the use categories of restaurants, bars, and nightclubs and minor modifications to other food and beverage uses in the C-TS, C-WA, C-OPI, C-PC, and C-B districts.

ORDINANCE 12-2021 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning, As Follows: At Article VI, District Regulations, Sections 134-1107, Permitted Uses, By Eliminating “Restaurants, Excluding Formula Restaurants As Defined In Section 134- 2 And Bar/Lounges” As A Permitted Use In The C-TS Zoning District; At Section 134-1109, Special Exception Uses By Adding “Restaurants, Excluding Formula Restaurants As Defined In Section 134-2 And Bars/Lounges” As Special Exception Uses In The C-TS Zoning District; At Section 134-1157, Permitted Uses, By Eliminating “Retail Specialty Foods, Including Incidental Sale Of Prepared Food For Takeout” As A Permitted Use In The C-WA Zoning; At Section 134-1159, Special Exception Uses, By Adding “Retail Specialty Foods, Including Incidental Sale Of Prepared Food For Takeout” As A Special Exception Use In The C-WA Zoning District; At Section 134-1207, Permitted Uses, By Eliminating “Dining Rooms And Drinking Places When Not More Than 15 Percent Of The Gross Floor Area Of The Structure; No Exterior Or External Advertising To Be Permitted” As A Permitted Use In The C-OPI Zoning District; At Section 134-1209, By Adding “Dining Rooms When Not More Than More Than 15 Percent Of The Gross Floor Area Of A Building; No Exterior Or External Advertising Permitted” As A Special Exception Use In The C-OPI Zoning District; At Section 134-1257, Permitted Uses, By Eliminating The Lettering Identifying Permitted Uses And Replacing With Numbering And Eliminating “Dining Rooms And Drinking Places When Not More Than 15 Percent Of The Gross Floor Area Of The Structure; No Exterior Or External Advertising To Be Permitted” And “Retail Specialty Foods, Including Incidental Sale Of Prepared Foods For Takeout” As Permitted Uses In The C-PC Zoning District; At Section 134-1259, Special Exception Uses, By Adding “Dining Rooms When Not More Than 15 Percent Of The Gross Floor Area Of A Building; No Exterior Or External Advertising To Be Permitted” As Special Exception Use In The C-PC Zoning District; At Section 134-1302, Permitted Uses, By Eliminating “Dining Rooms And Drinking Places When Not More Than 15 Percent Of The Gross Floor Area Of The Structure; No Exterior Or External Advertising To Be Permitted” As A Permitted Use In The C-B Zoning District; At Section 134-1304, Special Exception Uses, By Adding “Dining Rooms When Not More Than 15 Percent Of The Gross Floor Area Of A Building; No Exterior Or External Advertising To Be Permitted” As A Special Exception Use In The C-B Zoning District; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing For An Effective Date.

Town Attorney Randolph commented this ordinance had been recommended by the LPA.

Town Attorney Randolph read Ordinance 12-2021 by title only.

Zoning Manager Castro requested following the wording “Be Permitted” to insert “and retail specialty foods including the incidental sale of prepared foods for takeout”. Mayor Moore noted a scrivener’s error where the words “more than” were typed twice; therefore, one would be removed. _

Motion made by Council President Pro Tem Lindsay and seconded by Council Member Araskog, to approve Ordinance 12-2021 as amended on first reading. Motion carried unanimously, 5-0.

6. **Discussion of the current codes regarding the automatic removal of architects on both the ARCOM and Landmarks Commissions due to the architects reaching the maximum number of conflicts of interest (five), per calendar year; and possible solutions, including consideration of Draft Ordinances:**

Proposed Amendment to the Town Code to Exempt ARCOM Member Architects from Conflict of Interest Regulations

ORDINANCE 09-2021 An Ordinance Of The Town Council Of The Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 18, Buildings and Building Regulations, Article III, Architectural Review, Division 1, Generally Section 18-170; Providing For Severability; Providing For The Repeal Of Ordinances In Conflict; Providing For Codification; And Providing An Effective Date.

Director Bergman discussed the two proposed ordinances regarding the number of conflicts for the architects on ARCOM and LPC. At the last Council discussion it was suggested rather than automatic dismissal when the number of conflicts reached five, that instead would trigger Council review, and Council would have final word on whether an architect should be dismissed. Also, minor projects at ARCOM would not count toward the five conflicts that would trigger a review. Director Bergman advised Ordinance 9 and Ordinance 10 had been revised based on these suggestions, and were ready for first reading.

Council President Zeidman inquired about the exclusion of minor projects. Town Attorney Randolph stated it was the Town Council’s discretion to exclude minor projects.

Town Attorney Randolph read Ordinance 09-2021 by title only.

There was no public comment.

Motion made by Council Member Cooney and seconded by Council Member Crampton, to approve Ordinance 09-2021 on first reading. Motion carried unanimously, 5-0.

7. Proposed Amendment to the Town Code to Exempt Landmarks Preservation Commission Member Architects from Conflict of Interest Regulations

ORDINANCE 10-2021 An Ordinance Of The Town Council Of The Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 54, Historical Preservation, Article II, Landmarks Preservation Commission, Section 54-38(b); Providing For Severability; Providing For The Repeal Of Ordinances In Conflict; Providing For Codification; And Providing An Effective Date.

Town Attorney Randolph read Ordinance 10-2021 by title only.

There was no public comment.

Motion made by Council Member Cooney and seconded by Council Member Crampton, to approve Ordinance 10-2021 on first reading. Motion carried unanimously, 5-0.

X. ANY OTHER MATTERS

a. Discussion on FEMA Fill

Director Bergman discussed the issue of adding fill to building lots for new homes, which created a hodgepodge streetscape. He reported staff had worked with Calvin Giordano and the Planning and Zoning Commission to discuss the issues and solutions for this problem. He presented two different options for determining the appropriate amount of fill for new homes. Option A was based on the crown of road, and the other Option B was based on finished floor elevation, subtracting the crown of the road or vice versa--the lower number subtracted from the higher number, and half of that would be the amount of fill. Director Bergman stated staff felt option B was the best solution. If more than three feet of fill was needed, a waiver would be required for up to four feet. Any fill over four feet would require a variance granted by the Town Council. Staff thought this path forward was a good solution to help control the amount of fill being used in the Town. He described how Miami Beach had addressed this problem. Director Bergman stated that Paul Brazil was working to come up with a solution to retain more than 2 inches of storm water on each lot. Director Bergman stated if acceptable, he would work on ordinances to bring back to Council for approval. He discussed the possibility of zoning incentives for not using any fill on the site.

Council President Pro Tem Lindsay inquired about the current height requirement to build a home. Director Bergman stated it depended on the lot. Council President Pro Tem Lindsay inquired whether staff knew about any homes that were below the basic requirement. Mr. Bergman responded. Council President Pro Tem Lindsay thought it would be beneficial for each homeowner to know their elevation and what flood zone they were in. Director Bergman stated owners could obtain a flood elevation certificate from a surveyor. Council President Pro Tem Lindsay inquired about some of the requirements to obtain a waiver to receive more fill. Director Bergman stated some of the requirements were subjective. Council President Pro Tem Lindsay thought option B was acceptable. She wondered how other low-lying coastal communities were handling the issue.

Council Member Araskog was not in favor of incentives.

Council President Zeidman worked through the policy questions posed by Director Bergman in the backup.

Council Member Cooney inquired about examples of properties that used excessive fill. Mr. Bergman responded.

James Murphy, Assistant Director of Planning, Zoning and Building, discussed the way City of Miami Beach handled the amount of allowable fill.

Council President Pro Tem Lindsay suggested the possibility of looking at this by districts in areas where there were low historic homes and one size would not fit all.

Zoning Manager Castro commented this was a balancing issue and a case by case basis may be best.

Assistant Director Murphy discussed how City of Miami Beach handled the fill in the public and private sectors. They had used the formula described by Director Bergman.

Council Member Crampton commented professional judgement was needed.

Zoning Manager Castro thought if the Town Council could give staff some direction, staff could bring back more detailed options.

Council President Zeidman stated that Option B seemed to be preferred by Council with three feet of fill being the maximum allowed. She asked what the others felt about waivers to go to four feet.

Mayor Moore thought the waivers were important for flexibility but questioned if any of the Town Council would approve the waivers. The Mayor recommended moving the next discussion on the topic to be heard earlier in the meeting.

Council Member Araskog thought some criteria would be necessary if a waiver was created. Town Attorney Randolph responded those were details staff would come back with. Council Member Araskog commented she was good with a waiver for four feet.

Council President Zeidman commented it seemed everyone was good with

a waiver for four feet.

Zoning processes were recommended for any incentives.

Town Attorney Randolph recommended a motion authorizing staff to move forward with this study with Option B and the other comments made today. If that motion carried, he would recommend zoning in progress.

Council President Zeidman called for public comment.

Anne Pepper, 333 Seaspray Avenue, felt everything possible should be done to keep the connection to the street. She described the situation in her neighborhood with varying building heights, and flooding that lasted for days. She felt there should be a prescriptive minimum and from that another option, and to try to push a combination of ways to keep fill limited.

Susan Gary, 229 Onondaga Avenue, thought staff had good recommendations and was in favor of moving forward. Her areas of concern were the waivers and variances, and the large number of variances that were approved by Town Council. She was worried that might happen with waivers.

Council President Pro Tem Lindsay asked if everyone felt there should be incentives for raising the flood elevation by other means than fill and confirmed Council had decided not to use zoning.

Anne Pepper responded to Council President Zeidman that she had not studied options A or B, but felt the goal was to raise only certain portions of the land, with a lesser amount of fill over the whole property, and to have a gradual slope to the road.

Motion made by Council Member and seconded by Council Member Crampton to direct staff to pursue the study of Option B and the discussion held today, and that staff shall return to the Council with an Ordinance in regard to same. Motion carried unanimously, 5-0.

Town Attorney Randolph stated he assumed that at the present time people could exceed the amount of fill contemplated in the study, so Zoning in Progress should be considered in regard to the study Council had authorized, to direct staff not to accept any applications in contravention to the study that was being undertaken or the Ordinance under review. He commented Zoning in Progress needed an expiration date and suggested September unless earlier withdrawn.

Zoning Manager Castro commented it would be impossible to physically build new homes to meet the zoning in progress provisions being provided for without getting variances.

Assistant Director Murphy expressed concern for buildings already in progress and projects that had been deferred. Town Attorney Randolph advised this would only apply to applications made after zoning in progress was instituted. Town Attorney Randolph commented zoning in progress should allow for a waiver for applications in contravention of the study.

Mayor Moore commented this could affect homes being considered at

ARCOM next month. Zoning Manager Castro indicated those would not be affected since this applied only to new applications. Assistant Director Murphy expressed concern that design work might already be completed for applications not yet submitted. Attorney Randolph responded if staff was not anticipating a flood of applications to be submitted, people would see the study being conducted, and zoning in progress should be delayed until this was more refined.

Council President Pro Tem Lindsay asked Assistant Director Murphy how he had handled this in Miami. Assistant Director Murphy responded.

Council Member Araskog asked for a possible timeline for zoning in progress. She wanted something so there could be no more four foot or more fill. Town Attorney Randolph responded zoning in progress did not have to be done until the ordinance was prepared, and there was case law on this so that it was not necessary to establish zoning in progress.

Assistant Director Murphy commented for those applications where design work was already completed but they had not yet applied, they would be required to execute a hold harmless agreement. Attorney Randolph further clarified Assistant Director Murphy's comments.

Council President Pro Tem Lindsay suggested calling Boynton Beach for more ideas.

Zoning Manager Castro indicated since Council gave staff direction to proceed, they could come back with further details.

Town Attorney Randolph advised zoning in progress had not been on today's agenda and it might be better to wait until Council had a more refined study.

Council Member Crampton thought zoning in process would complicate things, and he felt that should be thrown out until there was something concrete to deal with.

Council Member Araskog asked to put zoning in progress on next month's agenda. Council President Zeidman agreed to add it to the next agenda. She stressed that Council and staff were actively working on this issue.

b. Proposed Changes to ARCOM and LPC Designation Manual and Guide and Resolution 54-2021

Laura Groves van Onna, Historic Preservation Planner, presented the revisions to the manual and guide.

Council Member Araskog expressed concern for signage being staff approved. She also recommended limiting staff approvals to 3 per year rather than 3 per six months.

Mayor Moore inquired about the change in docks. Ms. Van Onna responded. Director Bergman spoke about docks, which were regulated by DEP and the Army Corps of Engineers. He added that this did not include marginal docks.

Council Member Crampton stated he would be inclined to approve the item.

Council Member Araskog thought if landscape was added to a dock, it should be approved by the design boards.

Council Member Araskog inquired how the Council felt about signage.

Council President Zeidman announced signage would be brought back.

Council Member Araskog thanked staff for their hard work on this matter.

Ms. Van Onna stated refinement would continue on this document.

Council President Zeidman called for public comment.

Jorge Sanchez, Landscape Architect with SMI Landscape Architecture, stated that green docks were legal, had drainage that runs back into the lot, and would increase property taxes. He thought green docks were ecologically beneficial.

Zoning Manager Castro explained Planning and Zoning Commissioners saw a green dock on a plan he had been using for another purpose and had questions. He stated that FDEP and the Army Corps of Engineers were not aware of the green docks, and were concerned.

Council President Zeidman stated she visited the dock in question.

Resolution 54-2021 was read by Director Bergman.

Motion made by Council Member Araskog and seconded by Council Member Crampton, to approve Resolution 54-2021 with the exception of signage, which would be discussed later. Motion carried unanimously, 5-0.

c. Authorization Declaring Zoning in Progress Regarding Landing Dock and Pier Regulations

Council President Zeidman discussed her visit to a home that had a green dock.

Zoning Manager Castro felt there was a loophole in the Code that allowed a larger dock. He felt the docks should be limited to 25% of the lot size.

Council Member Araskog stated she had asked to place this item on the agenda and discussed the reasons she thought zoning in progress should be declared.

Council Member Crampton thought that while one viewpoint could be

considered a loophole, another view could be improvement. He thought the issue was when Council got to look at these docks, because it seemed owners were taking an end run around Council by going to FDEP or the Corps of Engineers and getting a permit, then coming back and going ahead without any direction from the Town. He felt the town should change the process so that Council would approve these first before going to FDEP of the Corps of Engineers.

Zoning Manager Castro commented FDEP would have to change the process. He discussed another type of submerged dock that could be an issue as well.

Council President Pro Tem Lindsay commented there were many of the submerged docks and people used them for all types of watercraft.

Council President Zeidman called for public comment.

Jorge Sanchez, Landscape Architect with SMI Landscape Architecture, clarified that a pool needed to be at least 10 foot from the bulkhead, unless a variance was granted.

Motion made by Council Member Araskog to declare zoning in progress for the study of the docks while being discussed by the Planning and Zoning Commission, in regard to dock size whether horizontal or vertical, and to direct staff not to accept any applications in contravention of the study or of any ordinance that emanates therefrom, for a period of three months. Motion failed for lack of a second.

d. Discussion on Non-Conforming Lot Change

Director Bergman discussed the applications that came in for special exceptions and/or site plan review were only on the agenda because the lots were non-conforming by today's zoning regulations, and suggested these could be eliminated in the future for single family development, since these lots had been conforming at some point in the past. The language in the zoning code could be simplified to apply to single family development only, if the lot had the same metes and bounds as the original lot, or if it had been developed with a single family structure in the past. This could remove a few items from the agenda each month. Draft language had been provided for consideration.

Council Member Cooney was supportive of staff's suggestions.

Council Member Araskog had some grammatical changes and stated she would send them to staff. She also confirmed that this gave no special consideration and any required variances would not be affected.

Council President Pro Tem Lindsay pointed out the large number of applications the Council reviewed for variances.

Council Member Crampton had a concern for a large house on a small lot that would not need to come to the Town Council. Director Bergman responded.

Council President Pro Tem Lindsay did not want to see a two-story house get approved for a small lot because they didn't need to ask for a variance. Director Bergman responded ARCOM was the entity that would look at the project building, landscaping, and placement of driveway.

Council President Zeidman commented the code should be changed with regard to non-conforming lots.

Town Attorney Randolph commented staff could look at definitive regulations for non-conforming lots.

Zoning Manager Castro explained staff's position.

Council Member Araskog asked about using language she found in the code. Town Attorney Randolph responded the existing code did not allow what she wanted to do, but staff could be directed to make a study, which would require these things to come back to Council, and that was different than Director Bergman's proposal.

Mayor Moore supported staff's suggestion.

Council Member Crampton, Council President Pro Tem Lindsay, and Council Member Araskog were uncomfortable with staff's suggestion.

No action was taken.

e. Discussion on Number of Homes to be Placed Under Consideration For Landmarking Per Year

Council Member Araskog stated she had asked for the item to be placed on the agenda. She said a group of citizens told her they would donate money to add five extra homes to be studied for landmarking.

Town Attorney Randolph thought it was appropriate to add more money to the budget but thought a certain number should not be formalized.

Council Member Araskog asked the maximum everyone would be okay with studying.

Mayor Moore remembered that Council would increase the number from 10 to 20 homes. She felt going to 30 would be too high.

Council President Pro Tem Lindsay remembered that the entire Council was in favor of increasing the budget. She stated she was comfortable increasing the amount to 20 or 25, not 30.

Council Member Cooney discussed the one year when the Council doubled the budget. He thought a budget increase for the next several years was worth entertaining, and going to 20 or 25 properties a year would be a palatable amount.

Council Member Crampton thought 25 homes was a considerable increase.

Mayor Moore commented she was okay with 25.

Ms. Van Onna thought the discussion was timely as this month; the

consultants would be bringing forward new properties to place homes under consideration. With the homes from the historic survey, they were already at capacity of 30, which included 5 spots for property owners to come forward with requests for landmarking.

Town Attorney Randolph stated it was okay to increase the budget to a certain amount, but he thought it was wrong for Council to dictate how many homes should be done in a year. These came about as a result of a commission member or a property owner placing a home under consideration.

Discussion ensued.

Council President Zeidman thought a budget increase to study 20 homes was more appropriate and stated her reasons.

Council President Zeidman called for public comment.

Anne Pepper, 333 Seaspray Avenue., thought the Town Council could show the Town their commitment to preservation by increasing their budget.

Amanda Skier, The Preservation Foundation of Palm Beach, advocated for the landmarks budget to be doubled so that the Town could protect as many homes as possible. She discussed a study by a consultant to help quantify the financial impact of landmarking.

Council Member Araskog asked for clarification on the number of homes they were supporting, which was 20-25.

Rene Silvin, Chairman of the Landmarks Preservation Commission, reminded Council of the past Mayor's hesitation regarding going too fast with this program.

Council Member Araskog clarified the consensus was to double the budget.

Ms. Van Onna questioned the number of homes to be considered.

Town Attorney Randolph clarified they could do as many as they could under the amount budgeted.

Council President Zeidman thanked The Preservation Foundation for earmarking \$35,000 toward education of the public.

f. Zoning in Progress for Outdoor Seating

Town Attorney Randolph commented Director Bergman had put together a draft of an ordinance relating to outdoor seating, which had been under study for some time. He wanted to provide Council with the opportunity to declare zoning in progress regarding outdoor seating and instruct staff not to accept applications for outdoor seating which were in contravention of the study or the draft ordinance.

Council Member Araskog thought it was a good idea to place this under zoning in progress until a new ordinance was in place.

Motion made by Council Member Araskog and seconded by Council Member Crampton, to declare Zoning in Progress and not to accept any application in contravention to the study being done now or to the ordinance until the September 13, 2021 Town Council Meeting. Motion passed unanimously, 5-0.

IX. ADJOURNMENT

The meeting was adjourned at 6:30 p.m. without the benefit of a motion.

APPROVED:

Margaret Zeidman, Town Council President

ATTEST:

Kelly Churney, Administrative Specialist