



TOWN OF PALM BEACH

Minutes of the Development Review

Town Council Meeting

Held on July 14, 2021

I. CALL TO ORDER AND ROLL CALL

The Development Review Town Council Meeting was called to order July 14, 2021 at 10:24 a.m. On roll call, all of the elected officials were found to be present except Council Member Araskog who was excused but attended via Zoom. She joined the meeting in person at 1:43 p.m.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Presentation by Donovan Rypkema - Methodology of Study on the Effect of Landmarking on Property Values

Aimee Sunny, The Preservation Foundation of Palm Beach, introduced Donovan Rypkema, who they have engaged to study the effects of the landmarks program on property values in Palm Beach.

Mr. Rypkema explained the core of the study was to look at the impact on property values of landmark designations in Palm Beach. He explained he would evaluate the risk for historic properties in FEMA designated flood zones, as well as conducting a willingness to pay survey, which identifies additional historic resources with economic value over and above the real estate value. He invited all questions now or at a later date.

Council President Zeidman expressed Council's concern regarding the vulnerability to sea level rise of our landmarked properties. She asked if he was aware of any state funds available for raising these properties. Mr. Rypkema responded that was not within the scope of their study. Mr. Rypkema indicated

the study was proposed to be delivered to the client in September or October.

IV. DISCUSSION ITEMS

- A. Discussion Regarding Quality of Life and Traffic Impacts Associated with the Increasing Number of New Restaurants in the Town

Council Consensus was to defer this item to October 13, 2021.

- B. Recognition and Discussion of Increased ARCOM Workload and Applications (to be heard after 2 p.m.)

Council Consensus was to defer this item to August 11, 2021.

V. COMMENTS OF MAYOR DANIELLE H. MOORE

Mayor Moore reported she had traveled to Jacksonville to visit the Army Corps of Engineers with Town Manager Blouin, Rob Weber and former Mayor Coniglio. Col. Kelly was departing, as his term was up, and they visited with staff, who were very appreciative that the Town had made the effort to go to Jacksonville, since most municipalities did not do so. She commended Town staff and the former Mayor for the great relationship they now had with the Army Corps of Engineers.

VI. COMMENTS OF TOWN COUNCIL MEMBERS

There were no comments by Town Council members at this time.

Administrative Specialist Churney read into the record that Council Member Cooney had a conflict of interest last month, and he had correctly filled out the proper forms for Z-21-00359, 870 South Ocean Boulevard.

VII. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

There were no communications from citizens at this time.

VIII. APPROVAL OF AGENDA

Council Member Crampton asked for a reconsideration of the Business and Administrative Committee recommendation regarding the implementation of placard parking on eastern portion of the 400 block of Peruvian Avenue

Motion made by Council Member Crampton and seconded by Council Member Cooney to defer reconsideration of expanding the placard program to Peruvian Avenue from the July 13, 2021 meeting until the Business and Administrative Committee could meet with affected residents and associations. Motion carried unanimously, 4-0.

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

Deferral of Item X. A. 1 to the August 11, 2021 meeting.

Deferral of Item X. A. 1.a to the August 11, 2021 meeting

Deferral of Item X. B. 1.b to the August 11, 2021 meeting

Deferral of Item X. B. 1.c to the August 11, 2021 meeting

Deferral of Item X. B. 1.e to the August 11, 2021 meeting

Deferral of Item X. B. 1.f to the August 11, 2021 meeting

Withdrawal of Item X. B.1.g

Deferral of Item X. B. 1.h to the August 11, 2021 meeting

Deferral of Item X. B. 1.j to the August 11, 2021 meeting

Deferral of Item X. B. 2.b to the August 11, 2021 meeting

Deferral of Item X. B. 2.c. to the August 11, 2021 meeting

Deferral of Item X. B. 2.k to the August 11, 2021 meeting

Public Comment

Maura Ziska expressed her hope that the Council would hear 720 South Ocean Boulevard. Zoning Manager Castro reported Ms. Ziska had been notified in June that the plans were due July 1, and were not received until July 9 so there had not been time for his review. Director Bergman described the new review process. Council Member Crampton supported staff. Council President Zeidman thought this should be heard next month since Zoning Manager Castro had not reviewed the plans. Mr. Castro discussed the process.

Motion made by Council President Lindsay and seconded by Council Member Crampton to approve the agenda as amended. Motion carried unanimously, 4-0.

IX. RESOLUTIONS

A. RESOLUTION NO. 68-2021 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Adopting Revised Fees Related To the Planning, Zoning & Building Department

Director Bergman presented Resolution No. 68-2021. He reported staff had looked at fees and had considered the extra staff and amount of review time required, researched comparable fees in the area, and had adjusted fees accordingly. He described various fees which had been added, changed, or remained the same.

Council Member Cooney asked about fees for ARCOM deferrals. Assistant Director Murphy described when a resubmittal fee would be triggered.

Council Member Crampton asked where this money was going. Director Bergman indicated it would go into the General Fund.

Council President Pro Tem Lindsay asked where the Town had fit into the range of fees charged by other municipalities. Director Bergman indicated the Town had been on the low side and now were in the middle range after the proposed changes.

Council President Zeidman called for public comment. There were no public comments.

Director Bergman suggested to address Council Member Cooney's concern that the department could create a policy regarding resubmittal fees, which could be reviewed by Town Council to give everyone clarity on this matter.

Motion made by Council Member Crampton and seconded by Council

President Zeidman to approve Resolution No. 68-2021. Motion carried unanimously, 4-0.

X. DEVELOPMENT REVIEWS

A. Appeals

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

This item was deferred to the August 11, 2021 meeting at approval of the Agenda.

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. **Z-20-00289 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** 160 ROYAL PALM WAY
Consideration of the Construction Management Agreement Request for Deferral to the August 11, 2021 Meeting Per Maura Ziska, Esq

This item was deferred to the August 11, 2021 meeting at approval of the Agenda.

- b. **Z-20-00311 SPECIAL EXCEPTION WITH VARIANCE(S)**
Zoning District: C-TS 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]

This item was deferred to the August 11, 2021 meeting at approval of the Agenda.

- c. **Z-21-00333 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of 101 NIGHTINGALE 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 July 28, 2021 meeting. Carried 7-0.] Staff Recommends Deferral to the August 11, 2021 meeting.

This item was deferred to the August 11, 2021 meeting at approval of the Agenda.

- 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] [Architectural Review Commission Recommendation: Implementation of the proposed variance will not cause negative architectural impact to the subject property. Carried 7-0.] [The Architectural Review Commission approved the project as presented with a condition related to the architecture. Carried 6-1.]

Administrative Specialist Churney swore in all those intending to speak and continued to do so throughout the meeting.

Ex parte communications were disclosed as follows: Council Members Cooney, Crampton and Council President Pro Tem Lindsay.

Maura Ziska, attorney for the owner, explained the zoning requests and presented the project.

Zoning Manager Castro stated he had no new comments.

Mayor Moore had no problems with the project and believed it to be minor.

Council Member Cooney indicated he had taken a fresh look at this and supported the project.

Council Member Crampton continued to support the project.

Council President Pro Tem Lindsay indicated she voted against this last month but now had seen the site and had changed her mind because it was a small change on a large piece of property, and not visible from the street.

There was no public comment.

Motion made by Council Member Crampton and seconded by Council Member Cooney that Variance Z-21-00341 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 unanimously, 4-0.

- e. **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 July 28, 2021 meeting. Carried 7-0.] Staff recommends a deferral to the August 11, 2021 meeting.

This item was deferred to the August 11, 2021 meeting at approval of the Agenda.

- f. **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] [Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 7-0.] [The Landmarks Preservation Commission approved this project with conditions to the architecture at their June 16, 2021 meeting. Carried 7-0.]

This item was deferred to the August 11, 2021 meeting at approval of the Agenda.

- g. **Z-21-00347 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of PETER MENKES & ALLISON MENKES, applicants, relative to property located at **135 WELLS RD**, legal description on file, is described below. Section 134-1728: A request for a variance to allow the relocation of two additional air conditioning condenser units in addition to the one existing in the equipment yard for a total of three air conditioning units in the west side yard setback and north rear yard setback in lieu of the two pieces of equipment allowed in these setbacks in the R-B Zoning District. [Applicant's Representative: Maura Ziska Esq] Request for Withdrawal Per Letter from Maura Ziska

This item was withdrawn at approval of the Agenda.

- h. **Z-21-00353 SITE PLAN REVIEW** Zoning District: R-A Estate Residential The application of TODD GLASER, applicant, relative to property located at **1080 S OCEAN BLVD**, legal description on file, is described below. Section 134-843(b): Request for Site Plan Review to allow the construction of a 9,485 square foot two story, single family residence on a non conforming platted lot that is 17,567 square feet in area in lieu of the 20,000 square foot minimum required in the R-A Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to the July 28, 2021 meeting. Carried 7-0.] Staff Recommends a Deferral to the August 11, 2021 Meeting

This item was deferred to the August 11, 2021 meeting at approval of the Agenda.

- i. **Z-21-00354 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: R-B Low Density Residential The application of LISA L. PAOLOZZI, applicant, relative to property located at **160 CHILEAN AVE**, legal description on file, is described below. Section 134-229, Section 134-329 and Section 134-893(b): Special Exception with Site Plan Review to allow the renovation of an existing one story residence by demolishing more than 50% cubic footage on a lot with a width of 50 feet in lieu of the 100 foot minimum required and an area of 8,000 square feet in lieu of the 10,000 square foot minimum required in the R-B Zoning District. Additionally, the applicant is proposing to construct one story additions totaling 950 square feet that will require the following variances to be requested: Section 134-893(7): to allow a 4.7 foot east side yard setback in lieu of the 12.5 foot minimum required in the R-B Zoning District. Section 134-893(7): to allow a 5.2 foot west side yard setback in lieu of the 12.5 foot minimum required in the R-B Zoning District. [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 7-0.] [The Architectural Review Commission approved the project at their June 23, 2021 meeting. Carried 7-0.]

Each Council Member stated they had no ex parte communication to declare.

Maura Ziska, attorney for the owner, explained the zoning requests and presented the project.

Mark Marsh, Bridges and Marsh, presented the architectural plans, reviewed the site plan and described the requested variances.

Attorney Ziska noted a letter of support had been received from the adjacent neighbor.

Zoning Manager Castro provided staff comments.

Council President Pro Tem Lindsay asked if the hedges shown on the rendering existed. Mr. Marsh advised they existed but some were in poor shape and would be replaced at the same scale. Council President Pro Tem Lindsay supported the project.

Mayor Moore stated she was encouraged by this plan and that the owners wanted to preserve the quaint look of their home, which was hard to find.

Council Member Crampton described the project as charming and commented the architect had done a good job with this project.

There was no public comment.

Motion made by Council Member Crampton and seconded by Council President Pro Tem Lindsay that Variance Z-21-00354 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 unanimously, 4-0.

Motion made by Council Member Crampton and seconded by Council President Zeidman that Special Exception Z-21-00354 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 unanimously, 4-0.

Motion was made by Council Member Crampton, and seconded by Council President Zeidman that Site Plan Z-21-00354 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 made concerning Section 134-329 items 1 through 11. Motion carried unanimously, 4-0.

Please Note: A short break was taken at 11:22 a.m. The meeting reconvened at 11:33 a.m.

- j. **Z-21-00356 SPECIAL EXCEPTION WITH SITE PLAN REVIEW** Zoning District: C-TS Town Serving Commercial The application of BUCCAN (SAM SLATTERY), relative to property located at **350 S COUNTY RD SUITE: 100**, legal description on file, is described below. Section 134-1109 and Section 134 1112: Modification to a previously approved special exception use with site plan approval for the sandwich take out counter business for Buccan Restaurant to request the following: (a) to install two (2) new awnings to match existing awnings; (b) to modify the storefront to include a new door in the existing opening; (c) to modify an interior floor plan of the sandwich shop (no seats are being proposed); (d) to modify the hours of operation to be 7:00 AM to 3:00 PM (previously approved were 11:00 AM 3:00 PM) [Applicant's Representative: Maura Ziska Esq]

Ex parte communications were declared as follows: Council Members Cooney, Crampton, Council President Zeidman, Council President Pro Tem Lindsay and Mayor Moore.

Maura Ziska, attorney for the owner, recalled that last month they had been directed to see what could be done to improve conditions on the property. She reported receiving a letter from the landlord and that they had spoken with Chester Purves from Public Works who had also reviewed the plans. Photos of a gate to shield the alleyway were shown.

Sam Slattery, with Buccan Palm Beach, described steps taken to improve the situation.

Council President Zeidman asked if he had a schedule to make sure everything was maintained. Mr. Slattery responded yes, that unnecessary items had been removed and a gate was proposed to shield the view.

Zoning Manager Castro indicated that Landmark Commission would need to approve the gates. He added that over the past three weeks, the alley had not looked as good, as shown in the pictures provided.

Council Member Crampton asked for a description of how waste and grease were handled and asked if there was refrigeration available for garbage. Mr. Slattery responded, describing the grease collection and added they had no garbage refrigeration. Council Member Crampton credited the improvements but stated they did not go far enough.

Council Member Cooney felt the screening was a good solution to shield back of house space.

Council President Pro Tem Lindsay commended the progress and suggested garbage pickup on Sunday. Mr. Slattery explained they were unable to dump garbage after 8 p.m. due to a prior agreement with a neighbor. Council President Pro Tem Lindsay offered copies of comments from neighbors, which she felt would be helpful, and suggested contacting that neighbor again. She commented this request was only for breakfast, and felt progress had been made.

Council Member Cooney commented a small expansion and change in operating hours was being requested, and felt most restaurants in Town were not refrigerating garbage.

Council Member Crampton stated reading through the comments and complaints, odor control was a consistent complaint and what had been done so far did not address odor control. Mr. Slattery commented the garbage trucks were leaking liquid and he hoped to solve that issue with Mr. Purvis.

Council President Zeidman commented this was a great restaurant and felt the owners were limited in what they could do by the landlord, the garbage trucks, and limited space for trash refrigeration. She commented Council had married the conditions to the approval

for a breakfast service and a change in hours. She was disappointed in photos up until last week that still showed lack of organization. She felt it would be impossible to keep on top of this all the time, which was why she had asked if he had a schedule in place, and suggested an employee must be responsible for checking the alley during the day.

Public Comment

Ian Zwerdling, 214 Chilean Avenue, commented the problem was only in season, 150 days in a row of the grease and smell was just too much, and refrigerating the garbage was a cheap fix for the neighbors who had put up with this for 27 years. He knew from personal experience that refrigerating garbage was a cheap solution. He thought Mr. Slattery did not want to spend the money, and indicated that the landlord liked the idea.

Council Member Crampton commented this community had high standards and the applicant was being asked to meet the standards. Without odor control, for which refrigeration was the easiest and cheapest, he did not see how the Town Council could meet the standards they had set for themselves. He felt it would be a mistake to allow breakfast until the odor control program was satisfied once and for all, and for him that meant refrigerating the garbage.

Council President Zeidman questioned Mr. Slattery, who responded he would have to talk with the landlord since he believed a parking space would be lost in order to provide space for refrigeration, and there was no room inside the restaurant for it. She asked if he was aware of any other way to control the odors for people living nearby and if he was even aware of the odors. Mr. Slattery responded he was aware that odors could be a problem at certain times under certain conditions, and they did their best every day and were doing a better job of getting the material from the restaurant to the receptacles and the garbage sitting outside at night had always been a problem. He stated that quadrant of the area belonged to the landlord and he would have to be part of any discussions if refrigerated garbage was required.

Council Member Crampton commented he did not see how they could let a landlord control the standards they knew must be met for the residents. He stated it was Mr. Slattery's problem to get the landlord to work with him.

Council President Zeidman commented there were 17 code enforcement complaints, and Council needed that type of information ahead of time.

Mayor Moore clarified that for this year, there were 3 complaints and last year there were 4, and several were case closed unfounded or compliance.

Council President Zeidman commented she loved the restaurant, but the restaurant must be a good neighbor to everyone and the residents must realize they lived in a commercial/residential district.

Public Comment

Lorraine Tuohy, President of the Board at 389 South Lake Way had comments concerning a matter that had already been deferred until October, so did not make comments at this time.

Ian Zwerdling, 214 Chilean Avenue, commented he had spoken with Mr. Slattery a few times and he had refrigerated garbage at another restaurant, and unless this was mandated, he would not do it.

Council President Pro Tem Lindsay requested staff provide the Council with everything that would be presented at the August 11, 2021 meeting by July 30.

Motion made by Council President Pro Tem Lindsay and seconded by Council Member Crampton to defer Special Exception Z-21-00356 until August 11, 2021 to allow Mr. Slattery to include his landlord and come back to Town Council with a written plan and its implementation schedule to keep the alley clean, including investigating garbage refrigeration possibilities as well as determining if garbage pickup on Sundays is feasible. Motion carried unanimously, 4-0.

Zoning Manager Castro requested that the applicant provide all materials to the Building Department by July 30.

- k. **Z-21-00357 VARIANCE(S)** Zoning District: R-B Low Density Residential / B-A Beach Area The application of MAURA ZISKA, AS TRUSTEE OF THE 230 NORTH OCEAN TRUST DATED JULY 9, 2020, applicant, relative to property located at **230 N OCEAN BLVD**, legal description on file, is described below. Section 134-893(13). A request for a variance to add two pergola structures located in the back yard totaling 619.6 square feet which will result in a cubic content ratio ("CCR") of 4.395 In lieu of 4.14 existing CCR and the 4.15 maximum CCR allowed in the R-B Zoning District. [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 7-0.] [The Architectural Review Commission approved the project as presented. Carried 7-0.]

Ex parte communication was disclosed by Council Member President Zeidman, Council President Pro Tem Lindsay, and Council Member Crampton.

Zoning Manager Castro provided staff comments.

Attorney Maura Ziska reviewed photos showing the grass, which was real grass, not artificial turf, and the proposed sun protection. She described the requested variance for the pagoda.

There was no public comment.

Motion made by Council Member Crampton and seconded by Council President Zeidman that Variance Z-21-00357 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 unanimously, 4-0.

1. **Z-21-00358 SITE PLAN REVIEW WITH VARIANCE(S)** Zoning District: B-A Beach Area The application of 1540SOCEANLLC (STEVEN KIRSCH, MANAGING DIRECTOR), applicant, relative to property located at **1540 S OCEAN BLVD**, legal description on file, is described below. Section 134-843(b): Request for a Special Exception with Site Plan Review to allow the construction of a 10,284 square foot two story, single family residence on a non-conforming platted lot that is 16,151 square feet in area in lieu of the 20,000 square foot minimum required; 145.53 feet In depth in lieu of the 150 foot minimum depth required; and 112.53 feet in width in lieu of the 125 foot minimum depth required in the R-A Zoning District. Section 134-2: a variance to allow a point of measurement of 21.42 ft NAVD in lieu of the 18.87 ft NAVD maximum allowed for the building height plane calculation. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission approved the project at their June 23, 2021 meeting. Carried 6- 1.]

Ex parte communication was disclosed by Council Members Crampton, Cooney, Council President Pro Tem Lindsay and Council President Zeidman.

Maura Ziska, attorney for the owner, introduced the project and stated it had been redesigned to no longer require any variances. She added the site plan review was still required because the lot was non-conforming.

Jason Skinner, Dailey, Janssen Architects, reviewed the site plan, and presented the architectural plans for the project.

Zoning Manager Castro provided staff comments. He noted a

6-foot hedge was required for the parking in the front of the property as a condition of approval; if not the applicant would need to request a variance. Mr. Skinner agreed to the 6-foot hedge.

Council Member Crampton asked why there were two curb cuts. Mr. Skinner explained it would provide a safer exit. Council Member Crampton noted all residents on Ocean View had complained about the two curb cuts.

Council President Pro Tem Lindsay asked staff about the curb cuts. Zoning Manager Castro explained how the second curb cut was not needed.

Mayor Moore felt the center curb cut was a necessity and did not feel anxiety over the two requested curb cuts.

Council President Zeidman commented it was lost on her why there was so much concern from residents about two curb cuts.

Council Member Araskog agreed there should not be two curb cuts.

Public Comment

Lindsay DuGan spoke on behalf of her mother, Edith Cary at 114 Oceanview Road (west of the home). She expressed concern with the number of trucks using this street.

Motion made by Council President Pro Tem Lindsay and seconded by Council President Zeidman that Site Plan Z-21-00358 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, 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 with only one curb cut. Motion carried unanimously, 4-0.

2. New Business

- a. **Z-21-00355 SITE PLAN REVIEW** Zoning District: C-TS Town Serving Commercial The application of CARRIAGE HOUSE PROPERTIES PARTNERS LLC (JOSHUA LEVY, DIRECTOR), Applicant, relative to property located at **205 ROYAL PALM WAY**, legal description on file, is described below. Section 134 1112: Request by the applicant for site plan

review modification to the property as follows: 1. Add new pavers along the north property line, next to the Carriage House Club, to accommodate valet and Club access for off-site parking as previously approved. 2. Add new landscaping along the north property line. 3. Add a new concrete block wall enclosure with gates at the northwest corner of the property for trash and future undergrounding transformer. 4. Add new sliding access gates in existing perimeter site wall for two future underground transformers. 5. Add new louvered access panels and gates to enclose opening on north side of building to enclose mechanical equipment. [Applicant's Representative: Maura Ziska Esq] [The Landmarks Preservation Commission approved this project at their June 16, 2021 meeting. Carried 7-0.]

Ex parte communication was disclosed by Council Members Cooney, Crampton, Council President Zeidman, Mayor Moore, and Council President Pro Tem Lindsay.

Maura Ziska, attorney for the owner, explained the zoning requests and presented the project.

Dustin Mizell, Environment Design Group, presented the landscape and hardscape plans for the project.

Zoning Manager Castro provided staff comments, and stated Maura Ziska was to provide off-street parking contracts for 205 and 230 Royal Palm Way to Town Attorney Randolph, and he was not sure that was done. Ms. Ziska indicated that she had not yet provided these documents done.

Motion was made by Council Member Cooney and seconded by Council Member Crampton that Site Plan Z-21-00355 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, 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, subject to providing private parking contracts to be reviewed and approved by the Town Attorney Randolph within 30 days. Motion carried unanimously, 4-0.

- b. **Z-21-00360 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of MICHAEL & PAMELA CLINE, Applicants, relative to property located at **936 N LAKE WAY**, legal description on file, is described below. Section 134 893(7): The applicant is requesting a variance for a

north side yard setback of 5.5 feet in lieu of 12.5 foot minimum required for a one-story structure in the R B Zoning District for a new pool cabana. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variance will not cause negative architectural impact to the subject property. Carried 4-3.] [The Architectural Review Commission approved the project at their June 23, 2021 meeting. Carried 5-2.]

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

Maura Ziska, attorney for the owner, explained the zoning requests and presented the project.

Michael Perry, MP Design & Architecture, presented the architectural plans for the proposed project.

Zoning Manager Castro felt the hardship was unclear.

Council Member Araskog recalled the ARCOM meeting and asked staff's recollection of the project. Assistant Director Murphy commented his primary recollection was the design introduced a very symmetrical rear pool and buttress by pavilions and that the existing line and structure in and of itself was not symmetrical or on an axis, so the new design was forcing symmetry and balance to a design that was not originally composed that way.

Council President Pro Tem Lindsay requested dimensions of the new pool, which were provided, and discussed by Mr. Perry.

Council Member Crampton asked about massing compared to other houses. Ms. Ziska discussed the hardship.

Mayor Moore asked about the symmetrical design.

Council Member Araskog thought an umbrella could be placed on one side and have one cabana. She stated she would like to see a different solution. She did not believe there was a hardship.

There was no public comment.

Motion made by Council Member Araskog that Variance Z-21-00360 be denied for the reasons that the application did not meet the criteria set forth in Section 134.201(a) items 1 through 7, and there was no hardship for this variance. Motion failed for lack of a second.

The architect was asked how far he could move the cabana, and reduce the size. Mr. Perry responded with possible solutions. Council President Pro Tem Lindsay suggested making the pool smaller. Mayor Moore noted a portion of the variance was due to the solid wall to accommodate the neighbor. Council Member Araskog commented they could lose one cabana, and the pool

could be smaller.

Motion made by Council President Pro Tem Lindsay and seconded by Council Member Cooney that Variance Z-21-00360 be deferred to the August 11, 2021 meeting to come back if they were unable to remove the variance. Motion carried 4-1, with Council Member Araskog opposed.

- c. **Z-21-00361 VARIANCE(S)** Zoning District: R-C Medium Density Residential The application of GARY PURUCKER (CONTRACT PURCHASER), Applicant, relative to property located at **334 CHILEAN AVE**, legal description on file, is described below. Section 134 948: A request for a variance to construct a new 5,270 square foot, two story residence, on a non conforming lot with a lot area of 9,384 sq. ft. in lieu of the 10,000 sq. ft. minimum required in the R-C Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to their July 28, 2021 meeting. Carried 4-2.] Staff Recommends a Deferral to the August 11, 2021 Meeting.

This item was deferred to the August 11, 2021 meeting at approval of the Agenda.

- d. **Z-21-00362 SPECIAL EXCEPTION** Zoning District: C-TS Commercial Town Serving The application of FLAGLER HOLDINGS NORTH CAROLINA INC (ALEX GILMURRY, VICE PRESIDENT), Applicant, relative to property located at **3 VIAFLAGLER**, legal description on file, is described below. Section 134-1113: Request to modify the previously approved Special Exception to allow a second story in the C-TS Zoning District by adding a 297 square foot pergola over the south balcony of building Three (3 Via Flagler) fronting Royal Poinciana Way. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission approved the project at their June 23, 2021 meeting. Carried 4-2.]

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

Maura Ziska, attorney for the owner, explained the zoning requests and presented the project.

Jason Skinner, Dailey, Janssen Architects, presented the architectural plans for the proposed project.

Mayor Moore reported seeing precedent for this request.

Zoning Manager Castro stated staff had no comments.

There was no public comment.

Motion made by Council Member Cooney and seconded by Council Member Crampton, that Special Exception Z-21-00362 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 unanimously, 4-0.

Please Note: A lunch break was taken at 12:56 p.m. The meeting reconvened at 1:43 p.m. At this time, Council Member Araskog joined the meeting in person.

- e. **Z-21-00363 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of SUSAN G. PAPAS, Applicant, relative to property located at **147 DUNBAR RD**, legal description on file, is described below. Section 134 2 (b) A request to build a 7,610 square foot (under air) two (2) story single family home with a variance to allow the point of measurement for calculating the maximum cubic content ratio (CCR) to be at Eleven and 85/100th feet (11.85') NAVD (North American Vertical Datum) in lieu of Eleven and 05/100th feet (11.05') NAVD required by code. [Applicant's Representative: Francis X. J. Lynch, Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 6-0.] [The Architectural Review Commission approved the project at their June 23, 2021 meeting. Carried 6-0.]

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

Frank Lynch, attorney for the owner, explained the zoning requests and presented the project. The western neighbor, Mr. Richter, had written a letter of support.

Zoning Manager Castro provided staff comments.

Tom Kirchoff, Kirchhoff and Associates, pointed out on the original site plan all the grades that would have to be cut down approximately 6 inches all around the property and soil hauled off the property.

Discussion ensued regarding the grade.

Council President Pro Tem Lindsay commented the house to the west had received the same variance a year ago and she was inclined to grant this variance.

Council Member Cooney supported the variance. Council President Zeidman supported the variance.

There was no public comment.

Motion made by Council Member Cooney and seconded by Council President Pro Tem Lindsay, that Variance Z-21-00363 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. During discussion of the motion Council Member Araskog asked what the difference in elevation would be if this were granted, to which the response was 3 to 4 inches. Motion carried unanimously, 5-0.

- f. **Z-21-00364 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of JONATHAN & CAROLINE SACK, Applicants, relative to property located at **8 WINDSOR CT**, legal description on file, is described below. A request for a variance to replace the pool cabana roof with a new copper roof, replace the trellis porch with a new copper roof, and replace the existing canopy at the breezeway with a new slate tile roof to match the existing which will result in the following variance requests: Section 134-893 (11): A request for a variance of lot coverage of 27.6 percent in lieu of 24.7 existing and 25 percent maximum allowed in the R B Zoning District. Section 134-893 (13). A request for a variance for cubic content ratio ("CCR") of 3.89 in lieu of 3.61 existing CCR and the 3.80 maximum CCR allowed in the R-B Zoning District. [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 7-0.] [Architectural Review Commission approved the project at the June 23, 2021 meeting, with an architectural feature to return to the July 28, 2021 meeting. Carried 7-0.]

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

Maura Ziska, attorney for the owner, explained the zoning requests and presented the project.

Michael Perry, MP Architecture and Design, presented the architectural plans for the proposed project.

Zoning Manager Castro provided staff comments.

Council Member Araskog commented she had a problem with the 3% lot coverage credit, then when another owner wanted to enclose a space they had even more lot coverage.

Council Member Cooney commented on the half roof hard surface and half awning and stated he would be prepared to move forward with a deed restriction not to enclose the pool cabana and breezeway. Mr. Perry agreed.

Mayor Moore thought the awning roof should be covered and a deed restriction required.

Motion made by Council Member Cooney and seconded by Council President Zeidman that Variance Z-21-00364 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 this approval shall be subject to the recording of a deed restriction that the pool cabana and breezeway shall never be enclosed with glass and air conditioning. Motion carried 4-1, with Council Member Araskog opposed.

Council President Pro Tem Lindsay asked that this issue be looked at, and Zoning Manager Castro offered the solution of not giving a bonus. Council President Zeidman commented Director Bergman was making a list and asked that he determine when to put this issue on the agenda.

- g. **Z-21-00365 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of LEONORA A. CALLAHAN, Applicant, relative to property located at **625 ISLAND DR**, legal description on file, is described below. Section 62 74. A variance request to allow a new 510 square foot platform boatlift to the west of the marginal dock with six pilings to support the lift that will be located 27.12 feet from the seawall in lieu of the six foot maximum allowed. [Applicant's Representative: Maura Ziska Esq]

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

Maura Ziska, attorney for the owner, explained the zoning requests and presented the project.

Zoning Manager Castro provided staff comments.

Council Member Araskog asked about the location of the proposed lift as well as the width. Ms. Ziska discussed the dimensions of the platform boat lift. Mr. Castro discussed the reasons that the variance was needed.

Council Member Cooney supported the request.

There was no public comment.

Motion made by Council President Pro Tem Lindsay and seconded by Council Member Cooney that Variance Z-21-00365 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 unanimously, 5-0.

- h. **Z-21-00366 SPECIAL EXCEPTION WITH SITE PLAN REVIEW** Zoning District: C-WA Worth Avenue
The application of COJIMAR PALM BEACH (JOSEPH HERNANDEZ & CHARLES MASSON, PRINCIPALS), Applicant, relative to property located at **150 WORTH AVE, SUITE: 234**, legal description on file, is described below. Section 134-1159 (b): A request for special exception approval to operate a new restaurant at 150 Worth Avenue Suite 234, called "Cojimar Palm Beach", which will replace the previous restaurant "Hai House". The new restaurant will occupy the same square footage (5,243) and have the same number of total seats (151). The applicant agrees to be bound by all previous conditions of approval. [Applicant's Representative: Maura Ziska Esq]

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

Maura Ziska, attorney for the owner, explained the zoning requests and presented the project.

Joe Hernandez provided his background and described the proposed restaurant that was inspired by Ernest Hemmingway. Charles Masson explained the concept of the restaurant and his father's dream of opening a restaurant in Palm Beach.

Zoning Manager Castro provided staff comments.

Council Member Crampton commented this would add to the diversity of restaurants and if successful it would be great for the Town.

Council Member Cooney welcomed the new business.

Council Member Araskog was excited but asked about the 3 a.m. closing on New Year's Eve, and 1 a.m. otherwise. Mr. Castro commented this restaurant was not close to a residential area.

Council President Pro Tem Lindsay commented this was terrific and the restaurants that failed in that location did not have good food. She discussed the outdoor seating program being adopted by the Town.

Mayor Moore commented on the garbage problem. Mr. Masson commented he had been one of the first to install refrigeration for garbage in a restaurant, and he wanted the kitchen to be so clean guests could visit it.

Council President Zeidman felt they would not have a difficult time in that location because of their reputation for excellence.

Motion made by Council Member Crampton and seconded by Council Member Araskog that Special Exception Z-20-00366 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, with the condition that the applicant meet all previous conditions of approval of previous restaurants at this location including the condition that the applicant is to return to Town Council one year after opening. Motion carried unanimously, 5-0.

Motion was made by Council Member Crampton and seconded by Council President Pro Tem Lindsay that Site Plan Z-20-00366 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-21-00367 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of THE SOCIETY OF THE FOUR ARTS, INC (PHILIP B. RYLANDS, PRESIDENT & CEO), Applicant, relative to property located at **100 FOUR ARTS PLZ**, legal description on file, is described below.

Section 134-893(b) (1) The Society of the Four Arts ("Applicant") requests a variance to allow the reduction in the north street side yard setback to feet 18 ft. in lieu of the 35 ft. minimum required for the installation of a 6 ft. 4 inch sculpture. The Applicant proposes to install the sculpture in the Donnell Terrace which is an open space plaza on the north side of the Dixon Educational Building. [Applicant's Representative: Harvey E Oyer III Esq] [Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 7-0.] [The Landmarks Preservation Commission approved the project at their June 16, 2021 meeting. Carried 7-0.]

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

Harvey E. Oyer III, attorney, stated he was joined by Dr. Philip Rylands, President and CEO of The Society of the Four Arts. He explained the zoning requests and presented the project.

Dr. Rylands provided information regarding the sculpture and the sculptor, Giampaolo Seguso.

Zoning Manager Castro provided staff comments.

Council Member Cooney confirmed with Mr. Castro that a variance would not be needed for a smaller size of under 6 feet.

Mayor Moore felt this was an appropriate spot for viewing by members of the Four Arts and expressed appreciation for the donation.

Council Member Crampton agreed with Mayor Moore and thanked the Four Arts for their complete request.

Council President Zeidman was grateful for the sculpture and the history provided by Dr. Rylands.

Council Member Araskog asked for a condition for a hedge to remain. Mr. Oyer explained the reasons for the hardship.

Council President Pro Tem Lindsay liked the sculpture and the location.

Motion made by Council Member Crampton and seconded by Council Member Araskog that Variance Z-21-00367 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 during the time the statue is on this location that hedges of the same size and height remain. Motion carried unanimously, 5-0.

- j. **Z-21-00368 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of PETER D. GARVY, Applicant, relative to property located at **300 CHERRY LN**, legal description on file, is described below. A request to raise an existing 6 foot high retaining wall on the east side of the property along North Lake way by 2 feet that would allow the wall to be 8 foot high in lieu of the 6 foot maximum allowed. [Applicant's Representative: Kevin Asbacher] [Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impact to the subject property. Carried 7-0.] [Architectural Review Commission approved the project at the June 23, 2021 meeting. Carried 7-0.]

Ex parte communication was disclosed by Council Members Cooney, Araskog, Council President Zeidman, Council President Pro Tem Lindsay and Mayor Moore.

Sharon Healy, Asbacher Architects, presented the project and discuss the zoning requests.

Zoning Manager Castro made staff comments.

Council Member Araskog pointed out the 2-foot difference in wall height viewed from North Lake Way. The hedge would be 8' outside the wall so the wall would not be visible.

There was no public comment.

Motion made by Council Member Cooney and seconded by Council President Zeidman that Variance Z-21-00368 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 subject to the new Podocarpus hedge being at 8 feet tall at time of installation. Motion carried unanimously, 5-0.

- k. **Z-21-00369 SITE PLAN REVIEW WITH VARIANCE(S)** Zoning District: R-D(2) High Density Residential The application of PARK PLACE INC, (DANA ENRIQUEZ, MANAGER), Applicant, relative to property located at **369 SLAKE DR**, legal description on file, is described below. Section 134-1052 (4): The

Park Place Co-op is requesting a site plan modification to allow the construction of a new 467 square foot building to enclosure a 400 KW generator with a 3,000 gallon fuel tank. The generator building is proposed to be adjacent to the pool deck in the middle of the property and will replace an existing storage shed that will be demolished to make room for the new building. The following variance is being requested in order to _construct the new generator building: Section 134-1060(9)d: request for lot coverage of 41.8 percent in lieu of the 41.3 percent existing and 40 percent maximum allowed in the R-D(2) Zoning District. [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 7-0.] [Architectural Review Commission approved the architectural portion of the project at the June 23, 2021 meeting, but deferred the site plan and the landscape plans to the July 28, 2021 meeting. Carried 7-0.]

This item was deferred to the August 11, 2021 meeting at approval of the Agenda.

1. **Z-21-00370 VARIANCE(S)** Zoning District: R-A Estate Residential The application of GOLDEN CRATE LLC (MATTHEW RIZIK, OFFICER AND AUTHORIZED REPRESENTATIVE), Applicant, relative to property located at **100 EL BRAVO WAY**, legal description on file, is described below. Section 134-1728(c) A request to use an existing seven foot (7.0') concrete block masonry finished site wall (said height is measured from the adjoining neighbor's existing grade) with a zero foot (0.0') setback at the property line as one (1) of the three (3) walls required for the enclosure of a cooling tower in lieu of a three (3) sided wall with the 15.0' setback required by code in the R-A Zoning District. Said existing site wall exceeds the height of the proposed cooling tower. [Applicant's Representative: Francis X.J. Lynch, Esq]

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

Frank Lynch and Tom Kirchoff represented the applicant.

Mr. Lynch presented the variance request and reviewed the plans.

Mr. Kirchoff added that a garage had been torn down and a sunken equipment yard added which was below grade. They were asking for removal of a wall between two pieces of equipment so that they could more easily be maintained.

Zoning Manager Castro addressed the reason for the wall.

Council Member Cooney felt this would provide screening to the abutting property while meeting the intent behind the code.

Council President Pro Tem Lindsay commented this was below grade so she did not find it hard to grant the variance.

Council Member Araskog asked why the code was changed. Mr. Castro responded because of noise and the height of some cooling towers, and he did not believe a situation like this had ever been contemplated.

Mr. Lynch discussed the hardship for the request.

In answer to Council Member Crampton, Mr. Lynch stated there were no other variances on this property.

Council Member Araskog confirmed the variance was only for the wall.

Architect Kirchoff confirmed their client voluntarily landmarked this property. Council Member Cooney recalled this property had been denied landmarking by the previous owner and it was a blessing that this owner had voluntarily done so,

There was no public comment.

Motion made by Council President Pro Tem Lindsay and seconded by Council Member Araskog that Variance Z-21-00370 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 unanimously, 5-0.

X. ORDINANCES

A. First Reading

1. ORDINANCE 16-2021 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 I, In General, Section 134-2, Creating A Definition For Outdoor Café Seating; At Article VI, District Regulations, Sections 134-791, 134-841, 134-891, 134-946, 134-1001 And 134-1053, Accessory Structures, In The R-AA, R-A, R-B, R-C, R-D(1) And R-D(2) Residential Districts By Allowing Only One Dock On A

Property And Cross Referencing The Setback And Other Dimensional Requirements For A Dock In Sections 62-74, 62-75 And 134-1697 Of The Code; At Section 134-1053, Accessory Uses, By Eliminating As An Accessory Use Administrative Approval Of Outdoor Seating In The R-D(2) Residential District; Section 134-1055, Special Exception Uses, By Changing From Outdoor Seating To Outdoor Cafe Seating Related To Hotels, Condo Hotels And Dining Rooms And Cross Referencing Sections 134-2104 Through 134-2108 Related To Requirements And Conditions Allowing Said Seating; Section 134- 1056, Stands, Seated Dining Areas And Open Counters For Eating And Drinking, By Eliminating Said Section In The R-D(2) District And Renumbering Subsequent Sections Of The Code; Section 134-1057, Accessory Structures, And 134-1057, Accessory Structures, In The R-D(2) Residential Districts By Allowing Only One Dock On A Property And Cross Referencing The Setback And Other Dimensional Requirements For A Dock In Sections 62-74, 62-75 And 134-1697 Of The Code; Sections 134-1108, 134-1158, 134-1208 And 134-1303, Accessory Uses, By Eliminating As An Accessory Use Administrative Approval Of Outdoor Seating In The C-TS, C-WA, C-OPI And C-B Commercial Zoning Districts; Sections 134-1109, 134-1159 And 134- 1259 Special Exception Uses In The C-TS, C-WA And C-PC Commercial Zoning Districts, By Changing Outdoor Seating To Outdoor Café Seating Only For Restaurants, Retail Specialty Food Including The Sale Of Prepared Food For Takeout Only And Private, Social, Swimming, Golf, Tennis And Yacht Clubs And Cross Referencing Sections 134-2104 Through 134-2108 Related To Requirements And Conditions Allowing Said Seating; Sections 134- 1111, 134-1161, 134-1210, 134-1260 And 134-1305, Stands, Seated Dining Areas And Open Counters For Eating And Drinking, By Eliminating Those Sections In The C-TS, C-WA, C-OPI, C-Pc And C-B Commercial Zoning Districts And Renumbering Subsequent Sections Of The Code; Section 134-1304, Special Exception Uses, In The C-B Commercial Zoning District By Changing Outdoor Seating To Outdoor Café Seating For Only Hotels, Condo-Hotels And Dining Rooms And Cross Referencing Sections 134-2104 Through 134- 2108 Related To Requirements And Conditions Allowing Said Seating; Section 134-1209, Special Exception Uses In The C-OPI Commercial District By Changing Outdoor Seating To Outdoor Café Seating For Only Restaurants, Excluding Formula Restaurants As Defined In Section 134-2 And Dining Rooms And Cross Referencing Sections 124-2104 Through 134-2108 Related To Requirements And Conditions Allowing Said Seating; At Article VIII, Supplementary District Regulations, Section 134-1697, Buildings And Structures Over Lake Worth, By Clarifying That There Is An Exception For Town- Owned Landing Docks And Piers On Municipal Property, Providing For Only One Pier Or Landing Dock And Cross Referencing The Requirements For A Pier Of Landing Dock In Sections 62-74 And 62- 75 Of The Code; By Eliminating Division 14, Administrative Approval Of Outdoor Seating In Its Entirety And Creating A New Division 14, Section 134-2104 Through 134-2109, Conditional Approval Of A Special Exception For

Sidewalk And/Or Private Property Outdoor Café Seating Only For Restaurants, Excluding Formula Restaurants As Defined In Section 134-2, Dining Rooms, Retail Specialty Food Including The Sale Of Prepared Food For Takeout Only, And Private, Social, Swimming, Tennis, And Yacht Clubs, Providing Conditions And Requirements; Fees And Security Deposit; Application Requirements; Standards And Criteria For Special Exception And Outdoor Café Permit And Review; Requirements For Liability And Insurance, Providing That Retail Specialty Food Uses Including The Sale Of Prepared Food For Takeout Only That Is Under 2,000 Square Feet Gross Leasable Area Can Request An Additional Eight Seats Over The Inside Capacity; Provisions For Denial, Revocation And/Or Suspension Of Approval Of An Outdoor Café Seating Permit And Appeal Procedure For Denial, Suspension Or Revocation; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Town Attorney Randolph announced the LPA had recommended approval of adoption of this Ordinance subject to certain amendments that had been made by Zoning Manager Castro. The changes were reviewed.

Town Attorney Randolph read Ordinance 16-2021 on first reading by title only.

Council President Pro Tem Lindsay asked if there were hours for outdoor seating. Zoning Manager Castro explained that would be done on a case-by-case basis.

Council Member Crampton asked the definition of ‘formula restaurant’. Mr. Castro explained it was a chain of three or more.

Zoning Manager Castro clarified the changes.

Motion made by Council Member Crampton and seconded by Council President Pro Tem Lindsay to approve Ordinance 16-2021 as amended on first reading by title only. Motion carried unanimously, 5-0.

During discussion of the expiration of COVID outdoor seating, Council Member Cooney suggested to provide for continuity of restaurants having outdoor seating by giving them a little more time of COVID seating to allow a period to submit an application within the new deadlines so that they don’t have to shut it down and then open again. The code would become effective September 13. Discussion ensued. Director Bergman suggested a letter to the restaurants informing them the time line of Council, the adoption date, what the new program looked like, and the fees. Council President Zeidman agreed. Assistant Director James Murphy suggested sending a letter sooner than later to restaurants letting them know that an ordinance was changing regulating outdoor café seating on private property and in public rights-of-way, and at a date to be determined COVID seating will expire. The Town was urging them to contact Planning Zoning and Building to determine the timeline as well as to get knowledge of the appropriate outdoor café regulations that were going to be in progress, and then give them the

opportunity to apply to Town Council in October, November or December. Mr. Castro recommended stating a date in December when COVID seating would end.. Council President Zeidman requested the letter be sent before second reading.

Mr. Murphy also suggested a second letter after second reading stating the Town was reaching out to provide assistance with COVID seating ending. Council President Pro Tem Lindsay suggested holding two workshops early in the process to answer questions. Director Bergman suggested a virtual workshop. Some restaurants were already approved for outdoor seating.

2. ORDINANCE 17-2021 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 62, Marine Structures As Follows: At Article III, Bulkheads, And Pierheads On Lake Worth, Section 62-74, Bulkheads, Landing Docks And Piers To Accord With Plat; Waivers And Variances, To Allow One Pier Or Landing Dock And To Provide A Maximum Width Of A Pier Or Landing Dock; At Section 62-75, Construction Specification To Identify That One Pier Or Landing Dock Is Permitted And That The Maximum Width Of A Pier Or Landing Dock Is 30% Of The Lot Width, Six Feet From The Mean High Water Line Or Bulkhead Line, Whichever Is Furthest East, And Not More Than 10 Feet In Width When Past Said Six Feet; At Section 62-74.2, Exemptions By Correcting The Exemption For Town Owned And Operated Docks Is Exempt From The Chapter And Not The Section Of The Code; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Town Attorney Randolph announced the LPA had recommended approval of adoption of this Ordinance subject to certain amendments that had been made by Zoning Manager Castro. The changes were reviewed.

Town Attorney Randolph read Ordinance 17-2021 on first reading by title only.

Motion made by Council Member Araskog and seconded by Council Member Crampton to approve Ordinance 17-2021 as amended by Mr. Castro on first reading by title only. Motion carried unanimously, 5-0.

Council Member Cooney added to the Zoning Study list to study the requirement for a 6-foot hedge hiding parking areas, and the 3% bonus for awning and trellises. Council Member Araskog also wanted to add that extra feet in back yard could be set forward that was a guarantee.

XI. ADJOURNMENT

The meeting was adjourned at 4:26 p.m. without benefit of a motion or roll call.

APPROVED:

Margaret Zeidman, Town Council President

ATTEST:

Kelly Churney, Administrative Specialist