

TOWN OF PALM BEACH

Information for Town Council Meeting on: October 13, 2021

To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

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



Re: Path Forward for Code Review Efforts and Review of Several Zoning Code Matters

Date: October 4, 2021

BACKGROUND

Please review the attached memos regarding the recent efforts of the Town regarding an incremental approach to review and update the zoning code.

During the last year, PZ&B staff, the Planning & Zoning Commission, and the Town Council have all reviewed and addressed a number of zoning code matters that were identified as problematic, many of them commonly recurring. In March of 2020, staff provided the Town Council a list of the “top ten” identifiable problems with the zoning code—among the critical items, were FEMA “fill” concerns and historic preservation/loss of architectural heritage. Since then, staff has been keeping an ongoing list of zoning matters that are occasionally in conflicting and contradictory ways, or confusing, and/or altogether illogical. Additionally, the list includes items that have been mentioned by Commissioners and Council members as inconsistent, problematic and identified as ‘needed to be addressed’. This is a path, or target group, outlined by staff offering strategies for addressing the Town’s most critical zoning code reform needs. ‘The List approach enables the Town Council to visualize the crucial areas and set their own pace for code changes, allowing Council to prioritize their efforts in areas that they believe are in need of greatest repair of the built environment and facilitate greater community buy in.

Progress has been made since the original March 2020 “List” in regards to overall code review and reform:

- Vulnerability Analysis and Design / Regulation for Resiliency — The Woods Hole Group completed a Coastal Flood Vulnerability Assessment in 2019, which looked at protecting public infrastructure. Woods Hole is now presenting the Town with a Level-Up Palm Beach – A Coastal Resiliency Plan to protect the Town from the effects of rising sea levels. FEMA is in the process of updating the Flood Insurance Rate Maps, which will be implemented county-wide in the next six to twelve months. Staff and the Planning & Zoning Commission spent considerable time last year reviewing and preparing zoning

code changes which address the amount of fill that can be added to properties, which has been a serious concern from both an aesthetic point and a drainage point. The Town Council recently adopted an ordinance which, for the first time, limits fill. Public Works and consultant Kimley Horn are reviewing the stormwater retention requirement of 2", with an eye to adopting the 10-year design storm event, which could increase the amount of stormwater required to be contained on private properties.

- Complete Streets, Retail Trends, and Parking Resource Management — the Town recently did an RFP and awarded Yard & Co. to conduct a Retail Study, which may be completed this upcoming winter season. The Town's Parking Committee and the newly-formed Business and Administrative Committee have reviewed parking challenges throughout the Town and have proposed ordinances to make some of the parking capacity in lower level parking areas accessible to other users, while working street by street to improve parking arrangements. Two separate ordinances have been adopted by the Town Council addressing supplemental off-site shared parking in commercial lots. To date, the parking matters are under an on-going analysis.
- Historic Preservation — the PZB department held a Historic Symposium in December of 2019, along with a public feedback session. This was a great opportunity to hear the visions and recommendations of nationally recognized historic preservation specialists. The Town, with the assistance of the State, adopted the Historically Significant Building program last year, which provides FEMA and Florida Building Code exemptions to certain homes that are at least 50 years old. Since the start of this program, about 25 residential homes have been preserved. Earlier this year the 10-Year Historic Site Survey was completed. Recently the Town Council approved the budget for the study of homes placed under consideration for possible Landmarking to be doubled, which should allow about 20 to 25 buildings to be studied in the 2022 fiscal year.
- New Regulations - Six ordinances have been adopted by the Town Council addressing zoning issues. Ord. No. 16-2020 modified regulations for outdoor mechanical equipment; Ord. No. 01-2021 and Ord. No. 20-2021 provides relief for certain commercial parking situations; Ord. No. 12-2021 made all restaurants, bars, lounges and nightclubs special exceptions uses (no longer permitted by right) in all zoning districts; Ord. No. 16-2021 amended regulations for outdoor seating and marginal docks; and Ord. No. 19-2021 set the limits on the filling of a lot.

WHY / HOW IS THE CODE BROKEN?

The PZB department continues to recognize the need to improve the current zoning code. It is outdated, overly complex, and unmanageable due to an extensive patchwork of "fixes" and additions made over the past several decades. It is a conventional Euclidian code developed to match many similar post- WWII codes that were created to manage growth — in suburban areas. In the case of Palm Beach, the zoning code prohibits an owner from replicating many of the existing buildings and spaces that are beloved by many residents. It forces diverse homes and diverse lot sizes into singular, overly prescriptive zoning districts. It is not easy for users to accurately or completely interpret the code as it relates to any item, as regulations for the same item can be located throughout the code.

Realistically, while complete code reform may be best, the political will and/or resident support may not exist for this to happen. We know from a historical perspective that there has been public push back and some reluctance by the Town officials to push forward with full code reform. Reasons for the past push back include the Town official's recognition of property rights and entitlements that presently exist for many homeowners.

LEGAL CONCERNS

When zoning regulations are changed, which may diminish an owner's ability develop their property with the full entitlements that they have today, the Town could be faced with Bert Harris claims. The proposed changes need to be carefully examined to limit any possible litigation. Some code changes could be drafted to allow current regulations to be applicable until a certain date, at which time the new regulations would become effective and the old regulations "sunset". Staff has had discussions with Skip Randolph on this issue and Skip has identified various options and limits for potential code changes.

INCREMENTAL APPROACH

Code review and updating can be accomplished incrementally, focusing on the most pressing issues of the day, and can be done over time (several years). A possible approach would be to focus on the zoning code concerns, present today, that involve the single-family residential neighborhoods on the north end of the Island. Town officials have heard from many residents that the quality of life in the north end has become compromised by the new larger homes that are either recently built or under construction at this time. The primary concerns are the height, scale, mass, yard setbacks, fill, drainage, and second floor elements that pose privacy concerns to neighbors.

Staff put together a Request for Qualifications (RFQ), with the help of the Purchasing Department, to hire a professional planning consultant. The RFQ is out for bidding at this time. The goal of this RFQ is to contract with a professional planning firm for assistance with community education and outreach regarding code review and updating. This firm should be selected and engaged in the next two months. This partnership will allow the PZB Department to begin public meetings to discuss the existing code, the perceived problems, and ways to mitigate the problems. The consultant will also assist staff with the public meetings, with presentations to the Planning & Zoning Commission and Town Council. They will assist in proposing solutions to problems that are identified, and will help draft code amendments that can be considered by the Town.

Items that could be reviewed initially are:

- At the top of the list, and you will hear this mentioned often in the upcoming years, is the respectful suggestion that the Town Council consider the creation of a Zoning Board of Adjustment to hear zoning variance requests. It is very difficult for the elected officials of any municipality to grant or deny zoning variances. This task should be delegated (and usually is delegated) to another group of residents in the form of a Zoning Board of Adjustment. The primary role of this type of zoning board is to review and decide cases where a relaxation of the ordinance is sought. This would also allow the Town Council to hear appeals of matters involving the approval or denial of the zoning variances. This is a better, more effective model of government, which would eliminate appeals of variances being heard off-Island in Circuit Court. Another option might be to classify variances as minor or major, with different approval criteria - minor variances possibly approved at the Commission level, with major variances elevating to a higher level of review.

- Nonconforming lots and buildings. In Palm Beach, these are the “norm”, not the anomalies. It is very difficult to apply and expect proper “conforming” zoning regulations on such a large number of nonconformities.
- Incentivize one-story buildings on streets with small lots.
- Conversion from CCR to FAR (cubic content ratio to floor area ratio). The use of CCR has always been a bit of a mystery to staff and residents, as CCR can easily change based on story heights and overall building height. Floor Area Ratios are more common, clearer to understand, and better regulate the size of new buildings. However, any conversion from the current CCR to future FAR may be a challenge, as the smallest lots today have the highest cubic content ratios. Therefore, the straight linear conversion would show higher floor area ratios for the smallest lots. But, nevertheless, FAR is a better way of managing the size of new homes.
- Yard setbacks should be studied for both the first and second floors in order to further regulate bulk and mass along the front and side setbacks. In some locations, more restrictive front, side, and rear yard setbacks could reduce the impacts of new buildings. Keep in mind – FEMA and the Florida Building Code have mandated higher floor levels in new buildings, which results in taller buildings. The buildings are rising while the yard setbacks remain static. This is pushing additional mass of buildings directly on neighbors.
- Second floor mass. Second floor massing could be addressed by limiting the floor areas of second floors to a maximum dimension or a percentage (e.g. – 75%) of the first floor area. This would reduce the second floor massing and impacts of second floors near property lines and near neighboring buildings.
- Uninterrupted two-story side elevations and amount of glass along second floor side elevations.
- Anything measured from a neighbor’s grade.
- Mechanical equipment [permitted in required yards]. Again.
- Off-street parking and garage mandates.
- Floor elevation. The Woods Hole Group has presented their recommendations to the Town Council to provide for coastal resiliency. Some of those recommendations are increased “freeboard” for buildings and seawalls. If the Council agrees with the Woods Hole Group, building floor elevations could be increased by up to two feet and seawalls along the Intracoastal Waterway could be increased by up to three feet. These recommendations are intended to protect the built environment but will increase the elevations of lots along the water and new buildings throughout Town. Any decision on implementing additional freeboard should be linked with discussions on added fill and drainage.
- Stormwater retention. Public Works and PZB have asked Kimley Horn to review the 2” of stormwater retention currently required for new development and to propose higher levels of on-site retention, based possibly upon lot size, that can help reduce flooding and gain points on the Community Rating System (CRS Program).

- “Building height” definitions. The code presently has nine separate definitions for building height, which leads to confusion. Creating a uniform definition would be helpful.
- Landscape open space and lot coverage percentages could be reviewed. The current ratios were developed many decades ago and should be reviewed for possible updating.

The code review and update process could look something like this:

1. Town Council commits to the process and establishes a realistic budget each year (underway).
2. Hire the consultant through the RFQ process (underway).
3. Analyze existing code and challenges / conflicts within the code.
4. Review Federal and State laws that may drive Town code changes.
5. Conduct Public Outreach — community meetings for education and public input. A series of meetings and symposiums could be scheduled to address areas of concern or matters of interest to the community. Meeting topics could include the background and purpose of land use codes, examine current spaces and building forms in Palm Beach, and good design.
6. Review the matters with the Planning & Zoning Commission.
7. Draft new code.
8. Present draft code changes to the Town Council for consideration and adoption by ordinance.

Attached: Staff’s Master List of Zoning “Issues”
Memo Dated February 27, 2020
Memo Dated May 28, 2021

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 9, 2021

To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

From: Wayne Bergman, Planning, Zoning & Building Director

Re: Possible Path Forward for Code Review Efforts

Date: May 28, 2021

BACKGROUND

In early 2019, former PZB Director Josh Martin began developing a path forward to accomplish an overhaul of the Town zoning code, using the Congress for New Urbanism, (CNU) as the primary consultant. CNU developed a "Project for Code Reform Model" in 2016, and this process was described by Mr. Martin as a "way to streamline the code reform process by providing local governments with place-specific incremental coding changes that address the most problematic barriers first, build political will, and ultimately create more walkable, prosperous, and equitable places". The model was presented to the Town Commissions and to Town Council. Details of the CNU process included the steps needed to implement the project, the categories of research and review, and categories of land use regulatory research through which the process was to be delivered.

The final presentations were made to the Town Council on November 13, 2019 and to the Planning & Zoning Commission on November 18, 2019. Ultimately, the Project for Code Reform and the hiring of CNU was not approved by the Town Council. Mr. Martin left the Town's employ in early 2020.

For the time before and after Mr. Martin, "code reform" has been handled in a piece meal process, as evidenced by our list of the ten most crucial zoning problems in February of last year, and by recent actions taken by the Town Council in referring newer items to the Planning & Zoning Commission this year. As zoning code problems are identified, staff and the Planning & Zoning Commission address the matters, and if the solutions are acceptable, the Town Council adopts ordinances to provide the solutions.

Some recent work has already taken place with regards to overall code reform:

- Vulnerability Analysis and Design / Regulation for Resiliency — The Woods Hole Group completed a Coastal Flood Vulnerability Assessment in 2019, which looked at protecting public infrastructure. Woods Hole is now presenting the Town with a Level-Up Palm Beach – A Coastal resiliency Plan to protect the Town from the effects of

rising sea levels. The Town is in the process of updating the FEMA Flood Insurance Rate Maps, which will be implemented in about nine to twelve months. Staff and the Planning & Zoning Commission spent considerable time last year reviewing and preparing zoning code changes which will limit the amount of fill that can be added to properties, which has been a serious concern from both an aesthetic point and a drainage point. Public Works at this time is reviewing the stormwater retention requirement with an eye to adopting the 10-year design storm event. To date, this matter is pending a full text change review by staff and the drafting of an ordinance.

- Complete Streets, Retail Trends, and Parking Resource Management — the Town recently did an RFP and hired Yard & Co. to conduct a Retail Study, which may be completed this upcoming winter season. The Town's Parking Committee and the newly-formed Business and Administrative Committee have reviewed parking challenges throughout the Town and have proposed ordinances to make some of the parking capacity in lower level parking areas accessible to other users, while working street by street to improve parking arrangements. To date, the parking matters are under an on-going analysis.
- Historic Preservation — the PZB department held a Historic Symposium in December of 2019, along with a public feedback session. This was a great opportunity to hear the visions and recommendations of nationally recognized historic preservation specialists. The Town, with the assistance of the State, adopted the Historically Significant Building program last year, which provides FEMA and Florida Building Code exemptions to certain homes that are at least 50 years old. Early this year the 10-Year Historic Site Survey was completed. Recently the Town Council approved the budget for the study of homes placed under consideration for possible Landmarking to be doubled, which should allow about 25 buildings to be studied un the 2022 fiscal year.

As you can see, some of the work and effort of code review and reform has already taken place or is underway at this time.

GENERAL INFORMATION AND POSSIBLE PATH FORWARD

The PZB department still recognizes the need to continue work on improving the current zoning code. It is outdated, overly complex, and unmanageable due to an extensive patchwork of "fixes" and additions made over the past several decades. It is a conventional Euclidian code developed to match many similar post- WWII codes that were created to manage growth — in suburban areas. In the case of Palm Beach, the zoning code prohibits an owner from replicating many of the existing buildings and spaces that are beloved by many residents. It "shoe-horns" diverse homes (design and mass) and diverse lot sizes into singular, overly prescriptive zoning districts. It is not easy for users to accurately or completely interpret the code as it relates to any item, as regulations for the same item can be located throughout the code.

Realistically, while full and complete code reform may be best, the political will and/or resident support may not exist for this to happen. Historically (I am told) there has been public push back and some reluctance by the Town officials to push forward with full code reform. Reasons for the past push back include the Town official's recognition of property rights and entitlements that presently exist for many homeowners. When zoning regulations are changed, which may diminish an owner's ability develop their property with the full entitlements that

they have today, the Town could be faced with Bert Harris claims. The proposed changes need to be carefully examined to limit any possible litigation. Some code changes could be drafted to allow current regulations to be applicable until a certain date, at which time the new regulations would become effective and the old regulations “sunset”. Staff has had discussions with Skip Randolph on this issue and Skip has identified various options and limits for potential code changes. Code reform / review can be accomplished incrementally, focusing on the most pressing issues of the day, and can be done over time (several years). A possible approach would be to focus on the zoning code concerns, present today, that involve the single-family residential neighborhoods on the north end of the Island. Town officials have heard from many residents that the quality of life in the north end has become compromised by the new larger homes that are either recently built or under construction at this time. The primary concerns are the height, scale, mass, yard setbacks, fill, drainage, and second floor elements that pose privacy concerns to neighbors.

Items that could be reviewed are:

- Convert from CCR to FAR (cubic content ratio to floor area ratio). The use of CCR has always been a bit of a mystery to me (and other staff), as CCR can easily change based on story heights and overall building height. Floor Area Ratios are more common and better regulate the size of new buildings. However, any conversion from the current CCR to future FAR may be problematic, as the smallest lots today have the highest cubic content ratios. Therefore, the conversion would show higher floor area ratios for the smallest lots. But FAR appears to be a much better way of managing the maximum size of new homes.
- Yard setbacks for both the first and second floors in order to further regulate bulk and mass along the front and side setbacks. In some locations, more restrictive front, side, and rear yard setbacks could reduce the impacts of new buildings.
- Second floor mass. Second floor massing could be addressed by limiting the floor areas of second floors to a percentage (e.g. – 75%) of the first floor area. This would reduce the second floor massing and impacts of second floors near property lines and near neighboring buildings.
- Lot aggregation. The joining of two or more lots naturally allows a larger home to be built. An analysis of the streets and neighborhoods (looking at average lot size and average building size and height) could provide the context in which to provide both a minimum and a maximum lot size by zoning district. Also, any proposed FAR could be set with a decreasing FAR as the lot size increases.
- Stormwater retention. Public Works and PZB have asked Kimley Horn to review the 2” of stormwater retention currently required for new development and to propose higher levels of on-site retention, based possibly upon lot size, that can help reduce flooding and gain points on the Community Rating System (CRS Program).

- “Building height” definitions. The code presently has nine separate definitions for building height, which leads to confusion. Creating a uniform definition would be helpful.
- Landscape open space and lot coverage percentages could be reviewed.
- Review the power and responsibilities of Arcom. Staff has discussed the concept of Arcom being granted the power to approve projects with reduced floor area, lower building height, and/or increased yard setbacks if projects do not fully comply with the standards and criteria used now by Arcom in approving projects.
- Focus on generally cleaning up the code. The zoning code is very complex and can be difficult for people to understand. A big piece of amending the code would be to begin simplifying the code text, and adding illustrations and simple tables to help explain the code requirements.

CODE REVIEW & CLEAN-UP PROCESS

From 30,000 feet, the code review and clean-up work plan could look something like this:

1. Town Council commits to the process and establishes a realistic budget, by year.
2. Develop and draft a RFQ for land use / planning consultants. This would require assistance from Purchasing and from Town Council.
3. Town Council to advertise the RFP, then hire the consultant.
4. Analyze existing code and challenges / conflicts within the code.
5. Review Federal and State laws that may drive Town code changes.
6. Conduct Public Outreach — community meetings for education and public input. A series of meetings and symposiums could be scheduled to address areas of concern or matters of interest to the community. Meeting topics could include the background and purpose of land use codes, examine current spaces and building forms in Palm Beach, and good design.
7. Review the matters with the Planning & Zoning Commission, draft new code.
8. Present draft code changes to the Town Council for consideration and adoption by ordinance.

A key piece of the code reform puzzle would be the hiring of a professional consultant to assist the Town perform the reviews and help make recommendations. The consultant group may consist of a skilled land use attorneys, architects and professional planners.

TOWN OF PALM BEACH

Information for Town Council Meeting on: March 11, 2020

To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

From: Wayne Bergman, Acting Director of Planning, Zoning & Building

Re: Review of Several Zoning Code Matters and Expected Costs

Date: February 27, 2020

BACKGROUND

Prior to the February Town Council Development Review meeting, a couple of Town Council members asked Paul Castro and me for our list of the most pressing zoning code matters, in our view, at this time. The thought was that if formal code reform efforts were stalled or scaled back, at least some items could be addressed by the Town Council and then possibly sent to PZC or to consultants for study. Paul and I prepared a final list of eleven (11) items we believe are the primary concerns today (there are others) and we sent the list out to the Town Council.

At the February Town Council meeting, there was a request to list this matter as an agenda item at the next (March, 2020) meeting for further discussion. There was also a request to associate an expected cost of the review to the items on the list.

GENERAL INFORMATION

The list is provided again, along with a preliminary staff assumption of the expected costs (in red).

Small scale:

- *The review of required yard setbacks (front, rear, and especially side) in each zoning district. Over the past two years there have been 93 variances for yard setback relief. Clearly the code requirements are not working. \$8K- \$12K*
- *Review lot coverage requirements for each zoning district. Over the past two years there have been 28 variances for lot coverage relief. \$8K - \$12K*

- Review regulations for pools – setbacks, equipment, and screening. 14 variances over the last two years. **\$8K - \$12K**
- Review requirements for retail uses in commercial districts, with an eye for other permitted and special exception uses on the first floor. 13 variances over the last two years. **\$16K - \$20K**
- Review the ten separate definitions of “building height” for possible consolidation. **\$3K- \$5K**
- Consider the use of FAR (floor area ratio) instead of CCR, angle of vision and building height plane to control the size of new buildings. There were 37 zoning variances for these items over the last two years, many of which lead to increases in the size of buildings. One of the most often heard complaints in Town is the size of new buildings. FAR could be the answer and could easily be linked with an algorithm to lot size. FAR’s can vary in the different zoning districts, to have appropriate building sizes match the corresponding lot sizes. **\$16K - \$24K**
- Consider a maximum lot size for each residential zoning district. **\$16K - \$24K**

Total small scale \$90K.

On a larger scale:

- Consider the creation of a Board of Zoning Adjustment to hear all variance, and special exception, requests. This is how zoning relief is granted in most other communities and would free the Town Council from this monthly task. The Town Council could hear appeals of zoning variances (from applicants and affected neighbors) and approve site plans. **\$6K - \$10K**
- Review the entire Town for adjustments to the current zoning districts, and possibly create new zoning districts. Average lot size is one way to set the various zoning districts. Land use is another. Remove the Four Arts and the Flagler Museum from residential zoning districts and amend the Comp Plan land use maps regarding these two important properties. **\$16K - \$24K**
- Review parking regulations, especially relative to retail and restaurant uses. Public Works, Police and Fire Rescue will be needed for this discussion. Also review the residential garage regulations. **\$16K - \$24K**

Total large scale \$64.8K.

And the biggest problem in our mind at this time:

- FEMA floor and equipment elevations, drainage requirements, and adding fill and retaining walls to lots in order to build. This should be a major discussion and will have long-term effects on the entire built environment. Public Works, consulting engineers, and others will be needed for this discussion. **\$30K - \$50K, maybe more**

Total other \$45.5K.

A few professional planners were contacted over the past month, but only one, to date, has provided actual quotations on the items above, as some planners did not handle re-writing municipal codes, or that a full scope of work would be required before they could formally respond. Please see, as an example, the return email from Jim Norquest with Gunster. This has been a typical response. A couple of the planners also felt the estimated costs, proposed by staff, were too low. The cost of reviewing, discussing, and proposing solutions to each item would vary greatly depending on the number of meetings, both with staff and with the public. The topics, at this point, are also very open ended, and planners had a difficult time seeing where each task would actually end. Also the review of any single item could trigger other requests for additional review, and therefore, more time to complete each item. Bill Whiteford did respond, and his quotations are above in blue print. His total was \$200,300.

Staff's best "guestimate" at this time would place the complete study costs of the eleven items listed above somewhere between \$143,000 and \$217,000, possibly more.

To put this into perspective, the department had budgeted about \$130,000 this fiscal year for planning and zoning projects and consultants, which included the start of code reform. Code reform, to date, has cost the Town about \$63,000, almost all of which was spent on the historic district symposium (a three day event). This leaves about \$67,000 remaining for code reform efforts throughout this year.

Please contact me with any questions.

Attachments – Email from Jim Norquest, February 21, 2020
Email from Bill Whiteford, March 2, 2020