



TOWN OF PALM BEACH

Minutes of the Development Review

Town Council Meeting

Held on October 13, 2021

I. CALL TO ORDER AND ROLL CALL

The Development Review Town Council Meeting was called to order October 13, 2021 at 9:32 a.m. On roll call, all elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Deputy Town Clerk Churney gave the invocation. Council President Zeidman led the Pledge of Allegiance.

III. COMMENTS OF MAYOR DANIELLE H. MOORE

Mayor Moore thanked everyone who had expressed confidence in her at the meeting on Tuesday.

IV. COMMENTS OF TOWN COUNCIL MEMBERS

Council Member Cooney asked that the Town Council to reconsider the decision made on the previous day regarding Outdoor Seating. Town Attorney Randolph advised a motion to reconsider could be made at this point, then later in the meeting that motion could be addressed.

Motion made by Council Member Cooney, and seconded by Council Member Crampton to reconsider the decision made on the previous day regarding outdoor seating. Motion carried unanimously, 5-0.

This item was scheduled to be heard Any Other Matters.

Council Member Araskog asked for reconsideration for direction on the construction issue heard yesterday. She requested a short discussion on the issue and asked that this be heard under Any Other Matters, since she now had much more information. She wanted to discuss whether the issue should be discussed at ORS or again by the Town Council.

Council Member Crampton was in favor of sending this back to ORS.

Mayor Moore wanted to be sure this was properly noticed. Town Attorney Randolph commented everyone had been informed the previous day there would be changes to this ordinance so there was no harm in sending it to ORS before it came back to Town Council, and proper notice would be given for the ORS meeting.

Council Member Araskog commented her other recommendation was to split this ordinance because it was critical to stop people arriving as early as 5 a.m. for work beginning at 8 a.m.

Council President Pro Tem Lindsay commented the people in the north end would be put off, and she wanted it to come back to Council.

Council President Zeidman requested the discussion end and that both for Reconsideration be placed under Any Other Matters.

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

There were no communications heard at this time.

VI. APPROVAL OF AGENDA

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

Deferral of Item IX. A.1 to the November 10, 2021 meeting

Deferral of Item IX. C. 1.a to the November 10, 2021 meeting

Deferral of Item IX. C. 1.b to the November 10, 2021 meeting

Deferral of Item IX. C. 1.d to the November 10, 2021 meeting

Deferral of Item IX. C. 1.e to the December 15, 2021 meeting

Deferral of Item IX. C. 1.g to the November 10, 2021 meeting

Deferral of Item IX. C. 1.h to the November 10, 2021 meeting

Deferral of Item IX. C. 1.j to the November 10, 2021 meeting

Deferral of Item IX. C. 1.k to the November 10, 2021 meeting

Deferral of Item IX. C. 1.l to the November 10, 2021 meeting

Motion made by Council Member Cooney and seconded by Council Member Crampton to approve the agenda as amended. Motion carried unanimously, 5-0.

VII. PRESENTATIONS

A. Presentation by Donovan Rypkema - Landmarks Report

Aimee Sunny, Director of Education for The Preservation Foundation of Palm Beach, introduced Mr. Rypkema.

Donovan Rypkema, Place Economics, presented the results of a several month study on the value of Landmarked homes and buildings in the Town, which showed property values for Landmarked homes went up, not down.

Council Member Crampton thought the study was well done and looked forward to supporting the process moving forward.

Council Member Araskog thanked Mr. Rypkema and The Preservation Foundation. She thought the study would be used as a tool to educate the community and to demonstrate that Landmarked homes were not diminishing in value, but were going up.

Council President Zeidman thanked Mr. Rypkema and The Preservation Foundation for the study. She added that the Town Council was very supportive of the Landmarks program and had recently increased that budget by 100%. She still had two concerns; one concern was that people would not want to purchase a landmarked home due to the fact that there was a need to raise the home for protection against rising waters, the other concern was how the Town could protect these homes against rising waters.

Michael Small, Chairman of the Architectural Review Commission, stated that the Commission had a hard time approving the many demolition requests that they received, especially for some homes that they believed deserved another consideration to see if the home was worth protection. He added that he would make the information available to the Commissioners.

Richard Rene Silvin, Chairman of the Landmarks Preservation Commission, thanked Mr. Rypkema for his presentation. He also thanked The Preservation Foundation for funding the study. Mr. Silvin inquired how other communities spread this type of information throughout their members. Mr. Rypkema responded.

Council President Pro Tem Lindsay thought it would be wonderful for the Landmarks consultants to have this information for their use.

Mayor Moore thought it would be useful to distribute the information to the real estate brokers in the Town.

Council Member Araskog thought it would also be helpful to distribute the information to the attorneys and architects who worked in the Town.

Ms. Sunny asked to be contacted if anyone had further suggestions.

Council President Zeidman announced Boards and Commissions would meet in person beginning October 20, 2021. She wanted to correct the statement made in the Palm Beach Daily News that incorrectly stated in person meetings would begin in November. She added that the Declaration of Emergency to cover Zoom meetings ended on October 20, 2021.

VIII. DISCUSSION ITEMS

A. Overview of Incremental Code Reform and Review of Possible Zoning Topics

Wayne Bergman, Director of Planning, Zoning and Building, presented a list of critical zoning code changes needed. Mr. Bergman thought a number of items could be reviewed over the next several years, starting with concerns of single family residential neighborhoods on the north end of the Island.

Mayor Moore congratulated Mr. Bergman and his staff for their work and efforts. She also discussed her knowledge of the reason that the Zoning Board of Adjustment and Appeals did not exist.

Council Member Araskog agreed with staff and was in favor of creating a Zoning Board of Adjustment and Appeals. At Council Member Araskog's request, Director Bergman explained non-conforming lot problems, and CCR versus FAR.

Council Member Crampton was in favor of looking at creating a Zoning Board of Appeals. Council Member Crampton also thought that having the budget numbers for all of these changes would help to make a decision moving forward. Mr. Crampton inquired about the type of planner that Mr. Bergman thought the Town should hire to assist with these changes. Director Bergman thought legal assistance could come from someone within the Town Attorney's firm, rather than from the new planner.

Council President Pro Tem Lindsay suggested that some issues could be tied together, such as fill, FAR and FEMA. She also recognized that CCR was an issue.

Council Member Cooney spoke about the rate of construction in the Town and the approvals from 1-2 years ago were now being constructed, which highlighted the most pressing issues to be considered.

Council President Zeidman felt the timing was urgent, and stated she had driven the north end and she thought there were several areas that needed to be addressed. She called for a presentation on CCR and FAR.

Assistant Director of Planning, Zoning and Building James Murphy explained the problems that were created when measuring from a neighbor's grade.

Council President Zeidman expressed her feeling that a Zoning Board of Adjustment could be looked at, but should be kept on hold. She felt the urgent matters were CCR and FAR, incentivizing one story buildings on streets and small lots, side yard setbacks and mass, and how all that tied in with FEMA, lot coverage, lot aggregation, establishing the process to move forward quickly, and how to involve Planning and Zoning Commission.

Mayor Moore inquired what direction the Council needed to give to staff to move forward. Director Bergman responded staff would provide an update on the process going forward.

Council President Pro Tem Lindsay stated she did not believe the Zoning

Board of Appeals was a high priority. She asked if zoning in progress was allowed in this situation. Town Attorney Randolph responded yes, but he felt it was premature.

Zoning Manager Castro stated that he believed it was too early to think about zoning in progress.

Council Member Araskog thought that maximum lot size was another issue to be discussed. She inquired about Town Attorney Randolph's concerns if the Town switched from CCR to FAR, especially relating to Bert J. Harris.

Town Attorney Randolph responded each item needed to be looked at on an individual basis to determine its effect. He added that Bert J. Harris claims must be filed within one year after the property owner received notice of the limitation placed on the property.

Council President Zeidman inquired if staff had enough direction to move forward. Mr. Bergman confirmed that he did.

Mayor Moore requested a tutorial on CCR versus FAR at the beginning of the next meeting, and invited the Planning and Zoning Commission members to attend.

Council President Pro Tem Lindsay thought that ARCOM and LPC Commissioners should attend this tutorial. Council President Zeidman agreed, and recommended making the item time certain.

Council Member Crampton thought the Planning and Zoning Commission should be used to the maximum extent in this effort.

Council Member Araskog thought that the Planning and Zoning Commission could study the requirement of mechanical equipment placed in the setbacks right away. She also thought they could study building height definitions.

Council President Pro Tem Lindsay suggested that the Planning and Zoning Commission look at incentivizing a one-story home. Council President Zeidman suggested they look at this topic in conjunction with staff.

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

Please note: The Town Council took a short break at 11:55 a.m. The meeting resumed at 12:04 p.m.

IX. DEVELOPMENT REVIEWS

A. Appeals

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

This item was deferred at approval of the agenda to the November 10, 2021 meeting.

Deputy Town Clerk Churney administered the oath at this time and throughout the meeting as necessary.

B. Time Extensions and Waivers

1. Time Extension Update - 1960 S. Ocean Blvd.

Martin Klein, attorney on behalf of Steven Wynn, provided an update on the project at 1960 S. Ocean Blvd. This 6-month update had been requested by the Town Council. Attorney Klein reported the project was on schedule, and barring unforeseen weather events was expected to be completed ahead of schedule. He thanked staff, the neighbors, and Town Council.

2. Time Extension Request - 200 Worth Avenue, Ferragamo

Mr. Bergman provided an overview of the time extension requested through February 2022.

M. Timothy Hanlon, attorney on behalf of Ferragamo USA, Inc., discussed the delays, material and labor shortages that had occurred. He discussed that the current work now to be completed would be all interior work. He stated that work would be completed in stages.

Council President Pro Tem Lindsay inquired if the construction parking would be held on site, which was confirmed.

Council Member Cooney confirmed there would be no sidewalk barriers and construction traffic could be accommodated in the rear parking lot.

Council Member Araskog felt this was warranted. She requested the approval be conditioned upon ingress and egress of construction traffic be through their lot; and that Mr. Bergman would deal with any complaints.

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

Motion made by Council Member Araskog, and seconded by Council President Pro Tem Lindsay, that the time extension request for 200 Worth Avenue be granted subject to the following conditions: there will be no work blocking the sidewalk, all construction parking, both ingress and egress, shall be contained on the Ferragamo lot, and Director Bergman shall handle any issues that arise. Motion carried unanimously, 5-0.

3. Time Extension Request -150 Worth Avenue, Esplanade

Mr. Bergman provided an overview of the time extension request.

Yvonne Jones, O'Conner Capital Partners for the Esplanade, discussed the repairs that had occurred on the building. Once the repairs had begun, they noticed structural issues that needed to be addressed. The contractor stated he would be off of Worth Avenue at the end of October; however, interior renovations would still need to be done, as well as roof repairs.

Mayor Moore expressed concern that work was beginning at 7:00 a.m. She made the request that if the extension was approved, that work should not begin until 7:45 a.m.

Council Member Cooney was supportive of the extension request.

Council Member Araskog agreed, and since the working hours on Worth Avenue were 8 a.m. to 8 p.m., she requested no noise until 8 a.m.

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

Motion made by Council Member Crampton, and seconded by Council President Pro Tem Lindsay, to grant the time extension request for 150 Worth Avenue, Esplanade. Motion carried unanimously, 5-0.

C. 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
Staff Recommends Deferral to the November 10, 2021 Meeting
This item was deferred at approval of the agenda to the November 10, 2021 meeting.
- b. **Z-20-00299 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: R A Estate Residential
The application of 1015 SOUTH OCEAN LLC (MAURA ZISKA, MANAGER), applicant, relative to property located at **1015 S OCEAN BLVD**, legal description on file, is described below.
1) Section 134 840: Special Exception with Site Plan Review to allow the construction of an 11,031 square foot two story residence on a non-conforming lot that is 97.97 feet in depth in lieu of the 150 foot minimum required In the R A Zoning District.
2) Section 134 843(a)(5): A request for a variance to allow a front setback of 16 feet 7.5 inches in lieu of the 35 foot minimum required in the R A Zoning District.
3) Section 134 843(a)(9): A request for a variance to allow a rear setback of 2 feet 7 inches in lieu of the 15 foot minimum required in the R A Zoning District.
4) Section 134 843(a)(6)b: A request for a variance to allow an Angle of Vision of 133.74 degrees in lieu of the 120 degrees maximum allowed in the R A Zoning District.
5) Section 134 843(a)(7): A request for a variance to have a building height plane setback ranging as close to the front property line as 16.8 feet (one story element) to 29.25 feet (two story element) in lieu of the

minimum 35 foot (one story element) to 47.6 foot (two- story element) minimum required by Code in the R-A Zoning District. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variances will cause negative architectural impacts to the subject property. Carried 6-1.] [The Architectural Review Commission denied the project at the May 26, 2021 meeting. Carried 5-2.] Staff Recommends a Deferral to the November 10, 2021 Meeting

This item was deferred at approval of the agenda to the November 10, 2021 meeting.

c. **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]

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

Maura Ziska, attorney for Bricktop's, presented the zoning request for the project and explained the request. Ms. Ziska withdrew the variance relating to parking.

Zoning Manager Castro provided staff comments, including the recent lighting added in the courtyard had not been approved and would have to go to ARCOM for approval.

Council Member Crampton asked for confirmation this was not an intensification of use. Ms. Ziska confirmed that it would not be an intensification of use.

Council Member Araskog thought it was disturbing that the applicant added lighting outdoors without approval. She inquired if there had been any complaints in regard to the outdoor seating. Mr. Castro and Ms. Ziska were not aware of complaints. She thought a condition of approval should include an approval of the recent lighting.

Council President Zeidman inquired if the applicant would need to obtain a café permit. Mr. Castro stated that they would need a permit and additional conditions could be placed within the permit,

including the insurance requirement.

Council Member Araskog wondered if the café permit requirement needed to be placed into the motion. Mr. Castro responded.

Mayor Moore confirmed with Mr. Castro anyone in the new café seating program would not be grandfathered in. Mr. Castro responded further regarding this specific situation.

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

Motion made by Council Member Crampton, and Council President Pro Tem Lindsay seconded, that Special Exception Z-20-00311 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 that the applicant will be required to apply annually for a café permit when the COVID authorization expires, and that the courtyard lighting must immediately be approved by ARCOM. Motion carried unanimously, 5-0.

- d. **Z-21-00333 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of 04TST101NIGHTINGALE LLC, applicant, relative to property located at 101 NIGHTINGALE TRL, legal description on file, is described below. Section 134-893(13): The applicant is proposing to construct a 70 square foot one story bathroom addition and two Dutch gables that will be added to the courtyard elevations of the pool cabana and kitchen which will increase the cubic content ratio ("CCR") to 5.24 In lieu of the 5.01 existing CCR and the 3.9 maximum CCR allowed in the R B Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to the October 27, 2021 meeting. Carried 7-0.] Staff Recommends a Deferral to the November 10, 2021 Meeting

This item was deferred at approval of the agenda to the November 10, 2021 meeting.

- 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 November 19, 2021 meeting. Carried 7-0.] Staff Recommends a Deferral to the December 15, 2021 Meeting

This item was deferred at approval of the agenda to the December 15, 2021 meeting.

- f. **Z-21-00349 SITE PLAN REVIEW** Zoning District: R-B Low Density Residential The application of STEPHEN LIVADITIS (CONTRACT PURCHASER), applicant, relative to property located at 200 BAHAMA LN, legal description on file, is described below. Section 134-893(b): Site Plan Review to allow the construction of a 5,856 square foot two story, single family residence on a non-conforming platted lot that is 90.17 feet in depth in lieu of the 100 foot minimum required in the R-B Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission approved the project at the September 29, 2021 meeting. Carried 7-0.]

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

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

Daniel Clavijo, SKA Architect + Planner, presented the architectural plans for the newly proposed home.

Zoning Manager Castro provided staff comments.

Mayor Moore inquired about the gates that were proposed to open onto the park. Ms. Ziska stated that the applicant would like to either purchase the park property or would donate the money to beautify the property.

Council Member Araskog thought this home was quite big for Bahama Lane. She also was not in favor of the proposed gates swinging into Town property.

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

Motion made by Council Member Crampton, and seconded by

Council President Zeidman, that Site Plan Z-21-00349 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 the condition that the east gate will swing into the property and not onto park property. Motion carried unanimously, 5-0.

Please note: A lunch break was taken at 12:50 p.m. The meeting resumed at 1:37 p.m.

- g. **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] Staff Recommends Deferral to the November 10, 2021 Meeting

This item was deferred at approval of the agenda to the November 10, 2021 meeting.

- h. **Z-21-00359 SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCE(S)** Zoning District: R-A Estate Residential / B-A Beach Area The application of 870 S OCEAN LLC (TODD GLASER, MANAGER), Owner, relative to property located at 870 S OCEAN BLVD, legal description on file, is described below. Section 134-840: Request for a Special Exception with Site Plan Review to allow construction of a 435 square foot beach cabana (20' x 25') with a 250 square foot pool and a new seawall in the R-A/B-A Zoning District. Section 134- 1474(a): Request for a variance to construct a 435 square foot beach cabana that is on a lot with frontage of 101.53 feet in lieu of the 125 feet required for lot width in the B A Zoning District for beach area property adjacent to R-A Zoning District. Section 134- 1701 and 62 37: Request for a variance to construct a new 100.5' seawall three feet east of the existing seawall which is east of the Town of Palm Beach bulkhead

line 6'2" at the south end and 6'0" at the north end, in lieu of the seawall being placed directly on the bulkhead line. The proposed new seawall will align with the recently constructed seawall at 880 South Ocean Boulevard. [Applicant's Representative: Maura Ziska Esq] [Architectural Review Commission Recommendation: Implementation of the proposed variances will cause negative architectural impacts to the subject property. Carried 6-1.] [The Architectural Review Commission deferred this project to the October 27, 2021 meeting. Carried 7-0.] Staff Recommends a Deferral to the November 10, 2021 Meeting

This item was deferred at approval of the agenda to the November 10, 2021 meeting.

- i. **Z-21-00371 SITE PLAN REVIEW** Zoning District: R-B Low Density Residential The application of MICHAEL S. ARLEIN, TRUSTEE OF THE 267 DUNBAR ROAD TRUST DATED 10/07/20, APPLICANT, relative to property located at 267 DUNBAR RD, legal description on file, is described below. Site Plan Review to allow the construction of a new two story 7,552 square foot single family residence on a non-conforming platted lot which is 98.5 feet in width in lieu of the 100 foot minimum width required in the R-B Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission approved the project at the September 29, 2021 Meeting. Carried 6-1.]

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

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

Daniel Clavijo, SKA Architect + Planner, presented the architectural plans for the newly proposed home.

Zoning Manager Castro provided staff comments.

Council Member Crampton thought the house was big. Mr. Clavijo displayed a streetscape for massing comparison to other houses on the street.

Council President Lindsay inquired about the width and depth of the lot. Mr. Clavijo responded.

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

Motion was made by Council President Pro Tem Lindsay, and seconded by Council President Zeidman, that Site Plan Z-21-00371 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. Motion carried unanimously, 5-0.

- j. **Z-21-00374 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of JORDAN AND KRISTIN BENNETT GRAY, APPLICANTS, relative to property located at 224 LA PUERTA WAY, legal description on file, is described below. The applicant Is requesting four variances In order to build a two story addition which includes a 315 square foot one story addition to the garage, a 184 square foot addition for a covered terrace on the first floor, and a 930 square foot second floor addition for two bedrooms, including a 130 square foot covered balcony and two bathrooms. The requested variances are a for an east side yard setback of 11 feet in lieu of the 12.5 foot minimum side yard setback required for the garage addition in the R B Zoning District; an east side yard setback of 11 feet in lieu of the 15 foot minimum side yard setback for a second story addition and covered balcony; an east side yard setback of 9.8 feet in lieu of the 10.5 foot minimum side yard setback required for a bay window on the first floor; and an east side yard setback of 9.8 feet in lieu of the 13 foot minimum side yard setback required for a bay window on the second floor in the R-B Zoning District. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to the October 27, 2021 meeting. Carried 7-0.] Staff Recommends a Deferral to the November 10, 2021 Meeting

This item was deferred at approval of the agenda to the November 10, 2021 meeting.

- k. **Z-21-00383 VARIANCE(S)** Zoning District: R-B Low Density Residential The application of MICHAEL T FRIES & MICHELLE R MALONE, Applicants, relative to property located at 146 SEASPRAY AVE, legal description on file, is described below. Request a variance to expand nonconforming 2-story accessory building in the rear of the property by adding a 128 square foot one story cabana/office addition that would result in a 5.6 foot rear yard setback in lieu of the 10 foot minimum required 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 4-3.] [The Architectural Review Commission approved the project as presented. Carried 4-3.] Request for Deferral to the November 10, 2021 Meeting Per Maura Ziska, Esq.

This item was deferred at approval of the agenda to the November 10, 2021 meeting.

1. **Z-21-00385 SPECIAL EXCEPTION WITH SITE PLAN REVIEW** Zoning District: R-B Low Density Residential The application of 239 MONTEREY ROAD LLC (Louis Capano, Jr., Manager), Applicant, relative to property located at 223 MONTEREY RD, legal description on file, is described below. The lot is non-conforming in area: 9,000 square feet in lieu of the 10,000 square feet required in the R-B Zoning District; and in width: 90 feet in width in lieu of the 100 foot minimum required in the R-B Zoning District. Request to demolish the existing one story residence, accessory structure, pool, driveway and miscellaneous site walls, piers and fences and construct a new 3,902 square foot single family two-story home on a non-conforming lot (overall size and width) meeting all applicable Town codes. The request includes a driveway, pool/spa, hardscape and landscape, including an emergency generator and civil storm water and grading. [Applicant's Representative: Maura Ziska Esq] [The Architectural Review Commission deferred the project to the October 27, 2021 meeting. Carried 7-0.] Staff Recommends a Deferral to the November 10, 2021 Meeting

This item was deferred at approval of the agenda to the November 10, 2021 meeting.

2. **New Business**

- a. **ZON-21-001 VARIANCE(S) 620 N LAKE WAY** The applicant, Robert Lazarowitz and Cobey Rapaport, have filed an application for the construction of a new one-story residence elevated to 12' NAVD, including variances (1) to exceed by 1.5' the maximum building height for a one story structure, (2) to exceed by 3.5' the maximum overall building height, (3) to exceed the maximum allowable cubic content ratio (CCR), (4) to exceed by 3% the maximum allowable lot coverage for a one-story structure, and (5) to eliminate required landscape screening of parking in the front yard. [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 the September 29, 2021 meeting. Carried 6-1.]

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

Pro Tem Lindsay and Mayor Moore.

Maura Ziska, attorney for the owner, presented the zoning request for the project and explained the request. Ms. Ziska discussed the hardship relating to the land.

Jacqueline Albarran, SKA Architect + Planner, presented the architectural plans for the new proposed home.

Zoning Manager Castro provided staff comments.

Council President Pro Tem Lindsay asked for clarification on the variances requested. Zoning Manager Castro responded the variance for the 6-foot hedge was being eliminated.

Council Member Cooney was happy to see a one-story house.

Council Member Araskog was also happy with the one-story house.

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

Motion made by Council Member Cooney, and seconded by Council President Zeidman, that Variance(s) ZON-21-001 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. ANY OTHER MATTERS

1. Reconsideration of the Decision on Outdoor Seating

Council Member Cooney discussed the approval made the previous day regarding outdoor seating. He felt after two violations, the permit should not be taken away without a hearing before Town Council.

Zoning Manager Castro stated that anyone could appeal staff's decision to the Town Council. Mr. Castro thought the intent of the decision was to stop the operation until they had the opportunity to appeal to the Council.

Council Member Cooney clarified this was only regarding the temporary COVID outdoor seating.

Mayor Moore asked if the concept would be to shut down or to be notified until they could appear before Council.

Zoning Manager Castro pointed out there would have been ongoing,

previous problems that should be well documented.

Council Member Cooney commented he wanted to add an element of fairness and to allow someone to plead their case.

Zoning Manager Castro commented several restaurants were habitually over capacity outdoors.

Council President Pro Tem Lindsay commented it was not fair to those who did play by the rules. She added the Council's intent was to help the restaurants get through the season.

Mr. Castro stated it indicated in Chapter 134 of the Code that anyone could appeal a decision to Council and further explained the process. Mr. Castro stated that a violation would not be a code enforcement action since this was an emergency order by the Council to allow flexibility during COVID.

Council Member Araskog felt Council had done the right thing, to shut down their outdoor seating after two strikes.

Mayor Moore was comfortable with yesterday's decision.

Council President Zeidman commented there were two restaurants who constantly abused the rules, and it should be fair for everyone. She commented there could be a warning system with two warnings and on the third warning they would have to appeal.

Council Member Cooney felt there was consensus to stick with the decision made yesterday.

Council President Pro Tem Lindsay asked staff to call the two offenders.

Motion made by Council Member Cooney, and seconded by Council President Pro Tem Lindsay, to continue the COVID-19 temporary outdoor seating through Memorial Day 2022, with outdoor furniture to be brought in each evening, and after two capacity violations, the privilege of outdoor seating would be revoked but could be appealed to the Town Council. Motion carried unanimously, 5-0.

2. Reconsideration of the Decision on Construction on Saturdays

Council Member Araskog reported contacting many condo owners and learning no one allowed Saturday construction work or noisy landscape work. She requested to accept the 8 am to 9 am weekdays, off season, quiet work, and in order to protect multifamily dwellings, and a HOA for multifamily dwellings could be allowed to permit emergency work or work necessary to finish, and to allow emergency work on Saturdays.

Council Member Crampton thought much more data should be collected and the Town should get in touch with the condominium owners and boards to see what their requests were in regards to weekend construction hours. He wanted to make sure multifamily homeowners were heard and

considered because the impacts of work were different. He added that Town staff should contact the boards of the condos to determine their views on the issue. He supported the early work hours as well as the ordinance to go into effect in the single family dominated zoning districts.

Council Member Araskog responded that she had recommended an exception for the multifamily dwellings, which was to allow the HOA to control the work between 8 and 9 or work on Saturdays.

Council Member Crampton had no problem getting the data and coming back to Council with data in hand to work out a decision.

Council Member Araskog suggested two ordinances; one with her suggestions and the other with Council Member Crampton's suggestions so it could be decided next month.

Council Member Cooney did not want to send this to ORS. He expressed concern with noisy, exterior Saturday work. Council Member Crampton indicated he was talking about quiet interior work.

Council President Pro Tem Lindsay commented on an area in the center of town with single family homeowners next to condos or co-ops, and the idea was to give relief to homeowners who were tired of disruption of their weekends. Many of the condos did not have parking for workers, so they ended up in a neighborhood. She did not think mid-town could be treated the same as the south.

Council Member Crampton had no problem moving forward with single family dwellings.

Town Attorney Randolph stated Council did not have an ordinance in front of them today and he felt it was not reasonable to ask for amendments to be made to the ordinance at this point in the meeting. He advised to give staff direction as to what they wanted in an ordinance to be presented at the next meeting.

Deputy Town Manager Boodheshwar advised he had been working with the Town Attorney on language for this ordinance. He thought it was possible to carve out a geographical area and to add language that defined multifamily properties. Because time was of the essence, staff could bring an emergency ordinance to pass in November to take effect before season.

Council Member Araskog agreed to move forward with staff preparing an ordinance for next month, only carving out south of Sloan's Curve until a later time.

Council Member Crampton responded.

Council President Zeidman commented the south end was mostly condos. She added in mid-town there were condos next to single family homes. Development and redevelopment for a condo was different than for a single-

family home. She clarified that Council had made a decision there would be no Saturday work in season.

Council Member Crampton pointed out there were situations in the south end and other areas that should be heard.

Motion made by Council Member Araskog that Staff come back to Council with a revised version of the ordinance deferred yesterday, making the geographic exception that south of Sloan's Curve was exempt for now, off-season only.

Additional discussion took place.

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

Motion died for lack of a second.

Motion made by Council Member Crampton to ask staff to secure data from the HOA's and condos that exist in town on their current practices with respect to Saturday work during season and not season and bring that to Council. Motion failed for a lack of a second.

Council Member Crampton stated he was willing to compromise to get something going. He was willing to take the exemption of the south end, which had already been offered. However he wanted to hear all of the other condos as well.

Council President Zeidman suggested hearing the data, then having this discussion again and refining it, at the Tuesday November Town Council meeting, and considering an emergency ordinance the next day at Development Review.

Deputy Town Manager Boodheshwar questioned Town Attorney Randolph if an emergency ordinance was presented in draft form for discussion at the Tuesday meeting and tweaks were needed, could those tweaks be made overnight and presented at Development Review. Town Attorney Randolph responded yes, because there were no notice requirements for first reading, even on emergency basis, and he recommended having the basic ordinance prepared and ready for discussion at the Tuesday meeting.

Council President Pro Tem Lindsay felt that the Council should get something on the books now, with the exemption of Sloan's Curve and south. She thought studying the multifamily situation in mid-town, and then adding it to the ordinance later, was acceptable.

Town Attorney Randolph advised if there was consensus for Council President Pro Tem Lindsay's proposal, staff could move forward with her suggestion.

Council Member Crampton agreed.

Mayor Moore asked if it would be possible at next month's Tuesday meeting to reconsider yesterday's ordinance, with the geographical carve out, on an emergency basis.

Council Member Araskog agreed.

Council President Zeidman thanked Council Member Crampton for his compromise.

Deputy Town Manager Boodheshwar asked and received consensus with the clarification of a geographical carve out, south of Sloan's Curve included all buildings, not just multifamily. He advised staff would begin working on the data and hopefully would have it completed by December.

Council President Zeidman called for public comment.

Susan Gary, 229 Onondaga Ave., thanked everyone on Council and staff for their consideration.

XI. ADJOURNMENT

The meeting was adjourned at 2:56 p.m. without benefit of a motion.

APPROVED:

Margaret Zeidman, Town Council President

ATTEST:

Kelly Churney, Deputy Town Clerk