

ORDINANCE NO. 016-2022

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 50, FLOODS, BY AMENDING ARTICLE II, FLOOD DAMAGE PREVENTION, DIVISION 7, VARIANCES AND APPEALS, AT SECTIONS 50-110, 50-111, 50-112, 50-116 AND 50-117; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida has, in Chapter 166 – Municipalities, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Town Council of the Town of Palm Beach, Palm Beach County, Florida, currently hears and renders decisions on any floodplain variances and appeals of Chapter 50, Floods; and

WHEREAS, floodplain variance requests are linked to designated historic structures in the Town of Palm Beach; and

WHEREAS, the Town Council desires to transfer that responsibility to the Landmark Preservation Commission; and

WHEREAS, the Town of Palm Beach, Florida determined that it is in the public interest to amend the floodplain management regulations to have the Landmark Preservation Commission review and render decisions on floodplain variances and appeals of Chapter 50, Floods.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Palm Beach, Palm Beach County, Florida, as follows:

Section 1. The Town Code of Ordinances at Chapter 50, Floods, is hereby amended at Article II, Flood Damage Prevention, Division 7, Variances and Appeals, Section 50-110 through 50-117, as follows:

“DIVISION 7. - VARIANCES AND APPEALS

Sec. 50-110. - General.

The Landmark Preservation Commission shall hear and decide on requests for appeals and requests for variances from the strict application of this chapter. Pursuant to F.S., §553.73(5), the Landmark Preservation Commission shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant

construction requirements of the Florida Building Code. This section does not apply to Section 3109 of the Florida Building Code, Building.

Sec. 50-111. - Appeals.

The Landmark Preservation Commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this chapter. Any person aggrieved by the decision may appeal such decision to the town council. The appeal shall take the form of a letter addressed to the town clerk and shall be based upon the record. The appeal shall be filed or made within ten days. Appeals shall set forth the alleged inconsistency or nonconformity with procedures or criteria set forth in this chapter. The town council shall decide an appeal within 45 days of the filing of such appeal unless an extension of time is consented to by the applicant. The town council disposition of the matter shall be final.

Sec. 50-112. - Limitations on authority to grant variances.

The Landmark Preservation Commission shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in section 50-116 of this chapter, the conditions of issuance set forth in section 50-117 of this chapter, and the comments and recommendations of the floodplain administrator and the building official. The Landmark Preservation Commission has the right to attach such conditions as it deems necessary to further the purposes and objectives of this chapter.

[No Changes to Sections 50-113 through 50-115]

Sec. 50-116. - Considerations for issuance of variances.

In reviewing requests for variances, the Landmark Preservation Commission shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this chapter, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;*
- (2) The danger to life and property due to flooding or erosion damage;*
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;*
- (4) The importance of the services provided by the proposed development to the community;*
- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;*
- (6) The compatibility of the proposed development with existing and anticipated development;*

(7) *The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;*

(8) *The safety of access to the property in times of flooding for ordinary and emergency vehicles;*

(9) *The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and*

(10) *The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets, and bridges.*

Sec. 50-117. - Conditions for issuance of variances.

Variances shall be issued only upon:

(1) *Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this chapter or the required elevation standards;*

(2) *Determination by the Landmark Preservation Commission that:*

(a) *Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;*

(b) *The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and*

(c) *The variance is the minimum necessary, considering the flood hazard, to afford relief.*

(3) *Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and*

(4) *If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the floodplain administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to*

amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.”

Section 4. Severability. If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 5. Repeal of Ordinances in Conflict. All other ordinances of the Town of Palm Beach, Florida, or parts thereof, which conflict with this or any part of this Ordinance are hereby repealed.

Section 6. Codification. This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach, Florida.

Section 7. Effective Date. This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 14th day of September, 2022, and for second and final reading on this ____ day of _____, 2022.

Danielle H. Moore, Mayor

Margaret A. Zeidman, Town Council President

Bobbie Lindsay, Town Council President Pro Tem

ATTEST:

Julie Araskog, Town Council Member

Edward A. Cooney, Town Council Member

Pat Gayle-Gordon, Acting Town Clerk

Lewis S.W. Crampton, Town Council Member