

From: [Kelly Churney](#)
To: [Wayne Bergman](#); [James Murphy](#); [Antonette Fabrizi](#); [Sarah Pardue](#); [Jordan Hodges](#)
Cc: [Joshua Martin](#); [Pat Gayle-Gordon](#); [Deborah Jones](#)
Subject: FW: 125 Worth Ave. - 4th Story Eligibility and Worth Ave. Design Guidelines
Date: Friday, March 03, 2023 3:22:45 PM
Attachments: [Sec. 134 2. Definitions and rules of construction..docx](#)
[DIVISION 9. C WA WORTH AVENUE DISTRICT.docx](#)
[EastEndDev.Area.pdf](#)
[Excerpt.pdf](#)
[Worth Avenue Design Guidelines 1991-01-03 MINUTES Special Town Council.pdf](#)

Good afternoon Mayor and Town Council Members,

Please see the email below and the attachments from Carol LeCates regarding the upcoming project at 125 Worth Avenue.

Thank you,

Kelly Churney
Acting Town Clerk

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From: Carol LeCates <clecates@comcast.net>
Sent: Friday, March 3, 2023 1:37 PM
To: Kelly Churney <KChurney@TownofPalmBeach.com>
Subject: 125 Worth Ave. - 4th Story Eligibility and Worth Ave. Design Guidelines

*****Note: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Dear Kelly,

Would you kindly share with the Mayor and Council?

Thank you.

Carol

Dear Mayor and Council Members,

Mr. Sammons has designed a most attractive new facade for 125 Worth Avenue that would be far easier to endorse if only the applicant didn't over-reach for floor area and under-provide on pedestrian landscaped space.

This application must be seen for its implications for the area as well as for its own compliance with town laws. With no legal basis for eligibility for expansion, the applicant is in essence asking for wholesale changes to the C-WA district regulations, and the Comprehensive Plan and Worth Avenue Design Guidelines (which it did attempt several years ago). Since the granting of the requested variances will be used as legal precedent for future development, it is critical that the existing laws be upheld, and not distorted for the gain of a single developer. The clear and specific elements of the town ordinance that prohibit over-development of the Avenue, and more specifically a 4th story, include:

1) *The Worth Ave. Design Guidelines, East End Development Area* (pages 63-69, attached) - Specifically listed special allowances refer only to one-story, two-story, and three story buildings. A 4th story is *not listed* as an available special allowance.

In addition, the subject property is not eligible for special allowances in the East End because it already exceeds the maximum parameters of the special allowances that can be granted. Applicant now claims that, as if by magic, a 4th story is permitted by both the zoning code and the Guidelines. It then uses this new conjured interpretation to request a variance for 32% lot coverage "on the fourth floor in lieu of the 30% maximum allowable by the Zoning Code". This is a gross misinterpretation of the spirit and the letter of the law.

2) *Ordinance Sec. 134-2. Definitions and Rules of Construction Part (a)*, attached, makes clear that the absence of mention of a particular structure cannot be construed as permission for it:

"(a) *Rules of construction.* For the purpose of this chapter, the regulations are structured so as to be strictly permissive. As such, only those uses and structures which are specifically permitted in the Code of Ordinances are allowed. If there is no specific language in the Code which addresses a use or a structure, then said use or structure is not permitted."

In this case, staff refers to the Worth Ave. Guidelines as being "silent" on structures of more than 3 stories. According to the code, this silence is a prohibition, which in this case is already made clear by the references to a 3rd story and "other special allowances" in the Code. It is clear that "other special allowances" does *not* refer to additional stories, since only 1, 2, and 3 stories are addressed, and with specific size maximums. (See Sec. 134-1165 and the rest of the C-WA district regulations, attached.)

3) *The Comprehensive Plan, Policies Regarding Change...*

"The Town recognizes that future development and attendant population growth would aggravate traffic problems, perhaps bringing the Town to a critical level of overuse. The Town has therefore adopted the following policy regarding growth: To prevent critical and dangerous overuse of its streets, parking resources, public services and facilities, and damage to its historic character and to overall property values of the community, the Town will take all technical and administrative measures legally available, including the use of this Comprehensive Plan, to minimize the

change or transition of existing low-density areas or structures to more intensive use patterns, and thereby lower the pattern of density, where possible, and to minimize tourism inflow."

In seeking to expand a large non-conforming building and eliminate open space, the applicant ignores the zoning code's clear intention for redeveloped structures to be of reduced scale and intensity in this treasured historic district. Furthermore, allowing the building to use adjacent non-conforming structures as a basis for enlarging its own space will only have a domino effect on the Avenue and elsewhere, most immediately and critically on 151 Worth Avenue to its west. (Indeed, the absurdly incongruous and highly visible 3rd story granted to the Tiffany building, which also was not eligible for a special exception, stands as a reminder of the need for town officials to vigorously enforce the town code.) The description of the 4th story of 125 Worth as being "set back" is wrong - the 100' span including the habitable towers and pergola is flush with the front of the building and will certainly block light and sky views, not to mention adding to the already over-scale appearance. And staff erroneously describes 151 Worth Ave. as a 4 story building. This building is primarily two stories, with a small area of 3rd floor habitable space and only purely decorative towers above. Its design is much more faithful to the Guidelines for the district, but its new owners will be watching for the outcome of the 125 Worth application and may seek similar expansion.

In addition to not meeting basic zoning code requirements, most especially the one for hardship, for expansion on Worth Ave., the proposed redesign also fails to comply with many of the most important and oft-cited elements of the Design Guidelines. (See attached excerpt from my e-mail to ARCOM, and town council meeting minutes from 1991.)

Finally, the LOI and Justification Statement fail to adequately address the questions and design objectives that are essential to evaluating this project. In some cases the answers are mere restatements of the question, in some the answer makes no sense, and in others the answer is demonstrably false, as in the claim that the 4th story is "stepped back", that the project complies with all elements of the Comprehensive Plan (when it violates the primary goal of reducing intensity), or the claim that there is a hardship when there is none. In addition, staff's creative interpretations of the code (the definitions of "habitable space" and "story", the condoning of 50% non-conforming demolition "at various stages", long-standing and clear zone maximums) seem intended to serve the developer and not the town. The code is not intended to be picked over for phrases that match an applicants needs while ignoring the parts that require compliance.

A renovation of this property could be a significant enhancement to Worth Avenue, and could easily be done with proper respect for the town ordinances, the Worth Avenue Design Guidelines, and the town's over-arching philosophy of restraint of scale. A 3 story building with the existing mechanical penthouse, purely decorative towers, an arcade and inviting courtyards would be something everyone could support.

Respectfully,

Carol LeCates

PART II - CODE OF ORDINANCES
Chapter 134 - ZONING
ARTICLE VI. - DISTRICT REGULATIONS
DIVISION 9. C-WA WORTH AVENUE DISTRICT

DIVISION 9. C-WA WORTH AVENUE DISTRICT¹

Sec. 134-1156. Purpose.

The purpose of the C-WA Worth Avenue district is to preserve and enhance an area of unique quality and character oriented to pedestrian comparison shopping and providing a wide range of retail and service establishments, to be developed whether as a unit or as individual parcels, serving the shortterm and longterm needs of townpersons. Drive-in retail facilities are not permitted. Further it shall be the intent of this district to enhance the town-serving character of the area through use of limitations on maximum gross leasable area (GLA), thereby reducing the problems of parking and traffic congestion determined to result from establishments of a region-serving scale.

(Ord. No. 2-74, schedule B, 3-26-74; Ord. No. 3-77, § 2, 3-29-77; Ord. No. 5-78, §§ 10, 15, 3-31-78; Ord. No. 7-79, §§ 2, 5, 7, 3-30-79; Ord. No. 4-80, § 3, 3-31-80; Ord. No. 6-81, § 2(a)—(d), (g), (h), 3-31-81; Ord. No. 7-82, § 3(a)—(d), 3-31-82; Ord. No. 2-83, § 3(c), 2-23-83; Ord. No. 1-84, § 2(f)—(h), 3-1-84; Ord. No. 1-85, § 2(g)—(k), 2-11-85; Ord. No. 1-86, § 2(b), (c), 2-10-86; Ord. No. 1-87, § 2(c)—(f), 2-9-87; Ord. No. 2-88, § 1, 2-8-88; Ord. No. 1-89, § 2(a), 2-6-89; Ord. No. 1-90, § 2(f)—(i), 2-5-90; Ord. No. 1-91, § 2(b), 4-23-91; Ord. No. 1-92, § 2, 2-3-92; Ord. No. 6-93, § 2(a)1—7, 2-9-93; Ord. No. 1-05, § 1, 3-8-05)

Sec. 134-1157. Permitted uses.

(a) *Enumeration; maximum gross leasable area.* The permitted uses in the C-WA Worth Avenue commercial district, with a maximum of 4,000 square feet of gross leasable area (GLA), are as follows:

- (1) Antiques.
- (2) Apparel and accessories.
- (3) Art galleries.
- (4) Art services.
- (5) Bed and bath boutiques.
- (6) Cards/gifts.
- (7) Crafts.
- (8) Drugstore/pharmacy.
- (9) Fabrics.
- (10) Flowers/florist.
- (11) Furniture.
- (12) Hair styling/beauty salon.

¹Cross reference(s)—Businesses, ch. 22.

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- (13) Interior decorating sales/services.
 - (14) Jewelry.
 - (15) Kitchenwares.
 - (16) Luggage/leather goods.
 - (17) News/books.
 - (18) Optical goods.
 - (19) Perfumery.
 - (20) Photographic services/studios.
 - (21) Shoes.
 - (22) Stationery.
 - (23) Essential services.
 - (24) Tobacconist.
 - (25) Toys.
 - (26) TV and electronic items.
 - (27) Offices and professional and business services, including banks and financial institutions, and executive offices above the first floor, excluding veterinarian offices.
 - (28) Storage facility related to a permitted or special exception use in the district provided said use meets all additional conditions in section 134-1760 of this chapter.
 - (29) Residence(s) above the first floor.
 - (30) Combinations of the uses in subsections (a)(1) through (28) of this section.
 - (31) Supplemental off-site shared parking as provided for in sections 134-2177 and 134-2182 This use will sunset on March 13, 2024, unless extended or modified by town council.
- (b) *Regulation of existing nonconforming commercial uses.* Any existing uses contained on the list of permitted uses shown in subsection (a) of this section which contain more than 4,000 square feet of gross leasable area (GLA) shall be classified as existing nonconforming uses under article VI of this chapter pertaining to nonconforming uses. However, all future changes of use shall be limited to those uses listed as permitted uses on the list contained in this section with a maximum gross leasable area of 4,000 square feet, and if a change of use is contemplated from one general commercial category (retail and services; office, professional and business services; or banks and financial institutions) to another, wherein the new use will involve a gross leasable area exceeding 4,000 square feet, the contemplated new use shall be subject to prior approval of a special exception application by the town council before the change is made (refer to sections 134-227 through 134-233 pertaining to special exception uses). In effect, this will allow any existing use over 4,000 square feet, in a district with a 4,000 square footage limitation, to continue operating at its existing scale or to change to another use within the same general commercial category without town council approval. For example, if a ladies apparel store of 10,000 square feet exists in the C-WA district and the owner wishes to change to an antique store of the same size or subdivide into two 5,000 square-foot offices, the owner would need to apply for and obtain approval of a special exception from the town council. No existing commercial use which is subject to the 4,000 square feet maximum gross leasable area (GLA) regulation may occupy additional space within 1,500 feet of the existing businesses, which distance shall be measured along the public sidewalk, if such new space to be occupied will increase the total gross leasable area (GLA) to more than 4,000 square feet.

(Ord. No. 2-74, schedule B, 3-26-74; Ord. No. 3-77, § 2, 3-29-77; Ord. No. 5-78, §§ 10, 15, 3-31-78; Ord. No. 7-79, §§ 2, 5, 7, 3-30-79; Ord. No. 4-80, § 3, 3-31-80; Ord. No. 6-81, § 2(a)—(d), (g), (h), 3-31-81; Ord. No. 7-82, § 3(a)—(d), 3-31-82; Ord. No. 2-83, § 3(c), 2-23-83; Ord. No. 1-84, § 2(f)—(h), 3-1-84; Ord. No. 1-85, § 2(g)—(k), 2-11-85; Ord. No. 1-86, § 2(b), (c), 2-10-86; Ord. No. 1-87, § 2(c)—(f), 2-9-87; Ord. No. 2-88, § 1, 2-8-88; Ord. No. 1-89, § 2(a), 2-6-89; Ord. No. 1-90, § 2(f)—(i), 2-5-90; Ord. No. 1-91, § 2(b), 4-23-91; Ord. No. 1-92, § 2, 2-3-92; Ord. No. 6-93, § 2(a)1—7, 2-9-93; Ord. No. 1-02, § 11, 3-12-02; Ord. No. 1-04, §§ 18, 23, 3-9-04; Ord. No. 1-05, § 3, 3-8-05; Ord. No. 2-2011, § 5, 7-13-11; Ord. No. 7-2014, § 6, 5-14-14; Ord. No. 8-2017, § 2, 4-12-17; Ord. No. 17-2019, § 7, 6-12-19; Ord. No. 01-2021, § 4, 2-10-21; Ord. No. 12-2021, § 3, 6-9-21; Ord. No. 20-2021, § 3, 9-13-21)

Sec. 134-1158. Accessory uses.

The accessory uses in the C-WA Worth Avenue district are as follows:

- (1) Off-street parking and loading.
- (2) Signs.
- (3) Accessory uses customarily incident to the permitted or approved special exception uses.

(Ord. No. 2-74, schedule B, 3-26-74; Ord. No. 3-77, § 2, 3-29-77; Ord. No. 5-78, §§ 10, 15, 3-31-78; Ord. No. 7-79, §§ 2, 5, 7, 3-30-79; Ord. No. 4-80, § 3, 3-31-80; Ord. No. 6-81, § 2(a)—(d), (g), (h), 3-31-81; Ord. No. 7-82, § 3(a)—(d), 3-31-82; Ord. No. 2-83, § 3(c), 2-23-83; Ord. No. 1-84, § 2(f)—(h), 3-1-84; Ord. No. 1-85, § 2(g)—(k), 2-11-85; Ord. No. 1-86, § 2(b), (c), 2-10-86; Ord. No. 1-87, § 2(c)—(f), 2-9-87; Ord. No. 2-88, § 1, 2-8-88; Ord. No. 1-89, § 2(a), 2-6-89; Ord. No. 1-90, § 2(f)—(i), 2-5-90; Ord. No. 1-91, § 2(b), 4-23-91; Ord. No. 1-92, § 2, 2-3-92; Ord. No. 6-93, § 2(a)1—7, 2-9-93; Ord. No. 5-09, § 8, 4-15-09; Ord. No. 16-2021, § 11, 8-11-21)

Sec. 134-1159. Special exception uses.

- (a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-WA Worth Avenue district are as follows:

- (1) Pay parking.
- (2) Public or private parking or storage garages.
- (3) Private social, swimming, tennis or yacht clubs.
- (4) Public structures/uses.
- (5) Essential services related to town-owned municipal buildings and structures.
- (6) Supplemental parking per sections 134-2177 and 134-2182.
- (7) Restaurants, nightclubs, lounges/bars, excluding formula restaurants as defined in section 134-2.
- (8) Museums and nonprofit cultural centers.
- (9) Permitted uses cited under permitted uses in section 134-1157 which contain greater than 4,000 square feet GLA gross leasable area.
- (10) Uses not specifically enumerated under permitted uses in section 134-1157 but having traffic, patronage and intensity of use characteristics similar to those uses cited therein.
- (11) Outdoor promotional events. See section 134-2115 for additional conditions and criteria.
- (12) Roof deck automobile parking.

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- (13) Outdoor cafe seating is permitted only for restaurants, retail specialty food including the sale of prepared food for takeout only, and private, social, swimming, golf, tennis and yacht clubs, provided that all requirements and conditions in sections 134-2104 through 134-2108 are met.
- (14) Retail specialty foods, including incidental sale of prepared foods for takeout.
- (b) An owner or tenant of a property, located within the C-WA district, which property has received approval of a special exception after March 31, 1980, shall be required to obtain approval by the town council under the provisions of section 134-229 prior to being granted a new business tax receipt. This subsection shall not apply to renewal of an existing business tax receipt.
- (Ord. No. 2-74, schedule B, 3-26-74; Ord. No. 3-77, § 2, 3-29-77; Ord. No. 5-78, §§ 10, 15, 3-31-78; Ord. No. 7-79, §§ 2, 5, 7, 3-30-79; Ord. No. 4-80, § 3, 3-31-80; Ord. No. 6-81, § 2(a)—(d), (g), (h), 3-31-81; Ord. No. 7-82, § 3(a)—(d), 3-31-82; Ord. No. 2-83, § 3(c), 2-23-83; Ord. No. 1-84, § 2(f)—(h), 3-1-84; Ord. No. 1-85, § 2(g)—(k), 2-11-85; Ord. No. 1-86, § 2(b), (c), 2-10-86; Ord. No. 1-87, § 2(c)—(f), 2-9-87; Ord. No. 2-88, § 1, 2-8-88; Ord. No. 1-89, § 2(a), 2-6-89; Ord. No. 1-90, § 2(f)—(i), 2-5-90; Ord. No. 1-91, § 2(b), 4-23-91; Ord. No. 1-92, § 2, 2-3-92; Ord. No. 6-93, § 2(a)1—7, 2-9-93; Ord. No. 1-94, § 2(b)(5), 2-7-94; Ord. No. 1-96, § 17, 2-5-96; Ord. No. 2-98, § 3, 2-27-98; Ord. No. 1-02, § 10, 3-12-02; Ord. No. 1-03, § 3, 3-11-03; Ord. No. 1-04, § 29, 3-9-04; Ord. No. 4-08, § 9, 4-7-08; Ord. No. 5-09, § 9, 4-15-09; Ord. No. 2-2011, § 6, 7-13-11; Ord. No. 3-2012, § 5, 4-11-12; Ord. No. 10-2012, § 4, 9-11-12; Ord. No. 30-2017, § 3, 1-10-18; Ord. No. 02-2019, § 10, 3-19-19; Ord. No. 17-2019, § 8, 6-12-19; Ord. No. 01-2021, § 5, 2-10-21; Ord. No. 12-2021, § 4, 6-9-21; Ord. No. 16-2021, § 12, 8-11-21)

Sec. 134-1160. Accessory structures.

- (a) *Generally.* Enclosed accessory structures in the C-WA Worth Avenue district shall comply with front and side yard requirements for the principal structure to which they are accessory and shall be not closer to any rear property line than ten feet.
- (b) *Dish antennas.* A dish antenna shall be an accessory structure and shall be constructed, erected or placed in compliance with all of the provisions of this chapter applicable to accessory structures. Dish antennas shall not exceed three meters in diameter. Only one dish antenna that exceeds one meter in diameter shall be permitted on each building. Such dish antenna which exceeds one meter in diameter shall not be attached to a building; shall not be closer than ten feet to any side or rear property line; shall not exceed 12 feet in height above the average grade; and, shall not be located in a required front yard, street side yard or rear street yard setback. Each residential unit or commercial tenant space shall not be limited as to the number of dish antennas of one meter or less in diameter and said antenna(s) may be attached or unattached to a building. If said dish antenna(s) is unattached, said antenna(s) shall not exceed 12 feet in height above the average grade; shall be located no closer than ten feet to any side or rear lot line; and, shall not be located in a required front yard, street side yard or rear street yard setback. All attached and unattached dish antennas in this commercial zoning district shall be screened from public view, and private and public streets and ways; be neutral in color; and, to the maximum extent possible, compatible with the surrounding neighborhood appearance and character. In addition, no form of lettering, advertising or identification shall be allowed on any such antenna or its framework (other than the manufacturer's small identification plate).
Note: One meter in the metric system of measurement equals 39.37 inches or 3.28 feet.

(Ord. No. 2-74, § 5.51, 3-26-74; Ord. No. 3-76, § 3, 3-23-76; Ord. No. 5-78, § 11, 3-31-78; Ord. No. 7-79, § 11, 3-30-79; Ord. No. 4-80, § 4, 3-31-80; Ord. No. 7-82, § 4(i), (k), 3-31-82; Ord. No. 1-84, § 3(h), 3-1-84; Ord. No. 1-85, § 3(e), 2-11-85; Ord. No. 1-86, § 3(d), 2-10-86; Ord. No. 1-87, § 3(e), 2-9-87; Ord. No. 1-90, § 3(g), 2-5-90; Ord. No. 1-92, § 3(e), 2-3-92; Ord. No. 1-93, § 3(g), 2-8-93; Ord. No. 1-94, § 3(c), 2-7-94; Ord. No. 1-95, § 1(b), 1-23-95; Ord. No. 1-97, § 5, 2-17-97; Ord. No. 1-99, § 10, 4-5-99)

Sec. 134-1161. Reserved.

Ord. No. 16-2021 , § 12, adopted August 11, 2021, repealed § 134-1161, which pertained to stands, seated dining areas and open counters for eating and drinking and derived from Ord. No. 2-74, § 6.61, 3-26-74; Ord. No. 3-77, § 14, 3-29-77; Ord. No. 1-89, § 4(f), 2-6-89; Ord. No. 1-04, § 16, 3-9-04; Ord. No. 5-09, § 10, 4-15-09.

Sec. 134-1162. Commercial uses; site plan approval for new buildings, new building additions or changes in permitted uses over certain floor area.

All applications for new buildings or for new building additions or for changes in a permitted use in section 134-1157 which involve more than 2,000 square feet of building floor area of buildings in the C-WA Worth Avenue district shall require a site plan approval in accordance with article III of this chapter. No certificate of occupancy shall be issued for any building, unless all facilities included in the site plan have been provided in accordance therewith. The maximum dimension of any structure or group of attached structures shall not exceed 150 feet.

(Ord. No. 2-74, § 6.55, 3-26-74; Ord. No. 5-78, § 12, 3-31-78; Ord. No. 7-79, § 14, 3-30-79; Ord. No. 4-80, § 6, 3-31-80; Ord. No. 7-82, § 5(d), 3-31-82; Ord. No. 1-85, § 4(h), 2-11-85)

Sec. 134-1163. Lot, yard and area requirements—Generally.

In the C-WA Worth Avenue district, the schedule of lot, yard and area requirements is as given in this section:

- (1) *Lot area.* The minimum lot area is 4,000 square feet.
- (2) *Lot width.* The minimum lot width is 30 feet.
- (3) *Lot depth.* The minimum lot depth is 90 feet.
- (4) *Density.* A single dwelling unit, or multiple dwelling units not to exceed ten dwelling units per gross acre as provided for in the Worth Avenue design guidelines which are on file in the town clerk's office, and which are incorporated and adopted as part of this chapter as if fully set forth in this chapter. See article III of this chapter for site plan review requirements.
- (5) *Front yard.* All buildings shall be set back so as to provide at least a ten-foot-wide pedestrian walkway between the street curblin and the building, exclusive of beautification strips, not more than five feet of which may be on the town street right-of-way, where appropriate, and additionally, to provide for the minimum building front yard setback, which shall be measured from the inside (lot side) of the required pedestrian walkway. Where no front yard building setback is approved or required, two feet of the required ten-foot-wide pedestrian walkway, adjacent to the inside (lot side) of the walkway, may be landscaped by placement of potted plants or removable planters. Such potted plants or planters shall include xeriscape landscaping whenever possible. Within the C-WA district, arcades or colonnades may be constructed subject to approval as a special exception over the sidewalks in the required front yard setback, provided they meet the requirements of section 134-1213(e).
- (6) *Side yard.* There is no minimum side yard required for one-story structures, but a side yard shall be five feet if provided.
- (7) *Rear yard.* The minimum rear yard setback is ten feet.
- (8) *Height and overall height.*
 - a. For one-story buildings, the maximum building height is 15 feet.
 - b. For two-story buildings, the maximum building height is 25 feet, allowable as a special exception.

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- c. Maximum overall height of a building shall be the maximum allowable building height, as defined in section 134-2, plus five feet for a flat roof and ten feet for all other roof styles. When a parapet is used above the maximum building height, as defined in section 134-2, the building overall height will be calculated based on the flat roof style identified above. Parapet walls extending above the maximum allowable building height shall have appropriate architectural treatment.
 - d. Refer to Worth Avenue Design Guidelines for special exception requirements providing for special allowances to coverage, height, building length and gross floor area limitations.
- (9) *Lot coverage.*
- a. For one-story buildings, the maximum lot coverage is 75 percent.
 - b. For two-story buildings, the maximum lot coverage is 35 percent for the first floor and 35 percent for the second floor. See special exception provisions in sections 134-227 through 134-233 (special exception use), section 134-1165 relating to allowable height and lot coverage, and article III of this chapter (site plan review).
 - c. Refer to Worth Avenue Design Guidelines for special exception requirements providing for special allowances to coverage, height, building length and gross floor area limitations.
- (10) *Length.*
- a. For one-story buildings, the maximum building length is 150 feet.
 - b. For two-story buildings, the maximum building length is 150 feet.
 - c. For each multifamily building maximum dimensions, see section 134-1871 et seq.
 - d. Refer to Worth Avenue Design Guidelines for special exception requirements providing for special allowances to coverage, height, building length and gross floor area limitations.
 - e. Sub-basements are exempt from the maximum building length, requirement. Individual building elements extending above ground from a single sub-basement shall each be considered as a separate building for the purpose of calculating building length.
- (11) *Landscaped open space.*
- a. For one-story buildings, the minimum landscaped open space is 15 percent.
 - b. For two-story buildings, the minimum landscaped open space is 25 percent.
 - c. For three-story buildings, the minimum landscaped open space is 25 percent.
- (12) *Floor area.*
- a. For one-story buildings, the maximum gross floor area of buildings is 15,000 square feet.
 - b. For two-story buildings, the maximum gross floor area of buildings is 15,000 square feet.
 - c. Refer to Worth Avenue Design Guidelines for special exception requirements providing for special allowances to coverage, height, building length and gross floor area limitations.
 - d. Sub-basements are exempt from the maximum, building length, requirement. Individual building elements extending above ground from a single sub-basement shall each be considered as a separate building for the purpose of calculating building floor area.

(Ord. No. 2-74, schedule A, 3-26-74; Ord. No. 7-79, §§ 2, 6, 3-30-79; Ord. No. 4-80, § 3, 3-31-80; Ord. No. 6-81, § 2(e), (f), 3-31-81; Ord. No. 7-82, § 3(e), 3-31-82; Ord. No. 2-83, §§ 3(a), (b), 2-23-83; Ord. No. 1-84, §§ 2(a)—(e), 3-1-84; Ord. No. 1-85, § 2(b)—(f), 2-11-85; Ord. No. 1-86, § 2(a), 2-10-86; Ord. No. 1-88, § 1, 2-8-88; Ord. No. 1-89, § 2(b)—(d), 2-6-89; Ord. No. 1-90, § 2(a)—(e), 2-5-90; Ord. No. 1-92, § 2(a)1, 2, 2-3-92; Ord. No. 9-93, § 2(b), 6-8-93;

Ord. No. 1-94, § 2(a), 2-7-94; Ord. No. 1-96, § 8, 2-5-96; Ord. No. 1-97, § 1, 2-17-97; Ord. No. 1-98, §§ 2—4, 2-9-98; Ord. No. 2-98, §§ 1, 2, 2-27-98; Ord. No. 1-04, § 32, 3-9-04; Ord. No. 16-2016, § 3, 12-14-16)

Sec. 134-1164. Same—Exceptions.

- (a) In the C-WA Worth Avenue district, cornices, solid canopies, or architectural features may extend 48 inches over the sidewalk or required yard area, provided they shall have nine feet of vertical clearance between any solid construction and the sidewalk or yard.
- (b) Marquees or canvas-covered fireproof canopies, no wider than entranceways, may be constructed over main entrances to hotels, theaters and places of public assembly and may extend to the face of the curb, provided that no support shall be nearer than 18 inches to the face of the curb, and the installation shall have a minimum of nine feet of vertical clearance between any solid construction and the sidewalk.
- (c) No projections shall be allowed in the required rear yard except open-type fire escapes, and these must be provided with a counter-balanced bottom section to provide for nine feet of clearance when up.
- (d) Awnings may be suspended over sidewalks or ways, provided that they shall not project nearer than 18 inches to the face of the street curblin or more than eight feet from the exterior wall of the building, and the installation shall have at least seven feet six inches of vertical clearance between any solid construction and the sidewalk or way. Cloth front and side drops shall measure not less than six feet six inches from their lowest point to the sidewalk or way.
- (e) Within the C-WA district, arcades or colonnades may be constructed, subject to approval as a special exception, over sidewalks or ways, provided that they shall not project nearer than three feet to the face of the street curblin or more than ten feet, but not less than seven feet, from the exterior wall as measured from the exterior face of the building to the exterior face of the arcade or colonnade, and provided that no support shall be nearer than three feet to the face of the curb, and the installation shall have a minimum of nine feet of vertical clearance. The design of such arcades or colonnades shall be based upon the Worth Avenue Design Guidelines and shall be subject to review and approval by the architectural commission. The Worth Avenue Design Guidelines are incorporated and adopted as part of this chapter as if fully set forth in this chapter.

(Ord. No. 2-74, § 5.33, 3-26-74; Ord. No. 4-80, § 4, 3-31-80; Ord. No. 1-91, § 3(c), 4-23-91)

Sec. 134-1165. Special exception to height regulations; special exception structures.

- (a) *Criteria for granting.* In order to encourage increased open space, landscaped open space, reduced density and lot coverage and architectural detail, the town council may at its discretion, upon review of an application and public hearing thereon, allow for the increase of the maximum building height in the C-WA Worth Avenue district, upon a finding being made by the town council that the proposed increase in height for a contemplated special exception structure is in the public interest, that careful attention is given to architectural detail, and that it meets the standards of sections 134-227 through 134-233 and the goals and guidelines in this section.
- (b) *Two-story and three-story construction.* The following shall be applicable to two-story and three-story construction in the C-WA district:
 - (1) First story coverage not more than 35 percent and second story coverage not more than 35 percent. Additional coverage and other special allowances may be granted if the structure is built in accordance with the Worth Avenue Design Guidelines in conformance with section 134-233.

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- (2) A third story and other special allowances may be granted if the structure is built in accordance with the Worth Avenue Design Guidelines in conformance with section 134-233.

(Ord. No. 2-74, § 5.48, 3-26-74; Ord. No. 3-76, § 3, 3-23-76; Ord. No. 5-78, § 11, 3-31-78; Ord. No. 7-82, § 4(g), 3-31-82; Ord. No. 2-83, § 4(d), 2-23-83; Ord. No. 1-84, § 3(e), 3-1-84; Ord. No. 1-85, § 3(d), 2-11-85; Ord. No. 1-91, § 3(e), 4-23-91; Ord. No. 1-92, § 3(d), 2-3-92; Ord. No. 2-98, § 4, 2-27-98; Ord. No. 1-01, § 6, 2-19-01)

Cross reference(s)—Applicability of Worth Avenue design guidelines in C-WA district, § 134-233.

Sec. 134-1166. Supplementary district regulations.

The supplementary district regulations which may be applicable to the C-WA Worth Avenue district are contained in article VIII of this chapter.

Sec. 134-1167. Off-street parking and loading.

The off-street parking or loading requirements which may be applicable in the C-WA Worth Avenue district are contained in article IX of this chapter.

Sec. 134-1168. Signs.

The sign regulations which may be applicable in the C-WA Worth Avenue district are contained in article XI of this chapter.

Sec. 134-1169. Air conditioning and generator equipment.

Air conditioners and air handlers, cooling towers, generators, swimming pool filters, pumps and heaters are regulated in section 134-1728 and 134-1729.

(Ord. No. 1-99, § 11, 4-5-99)

Sec. 134-1170. Architectural tower features.

In the commercial zoning districts, a maximum of two towers as architectural features may be constructed as integral parts of the building provided that no tower(s) exceeds the allowable overall height by more than five feet; such tower(s) is set back an additional five feet on the front, rear, side, and street side and street rear yards; and, such tower(s) has no habitable floor area. The area of such tower(s) shall in combination not exceed two percent of the gross floor area of the building. This section does not apply to entry facades or parapets.

(Ord. No. 1-00, § 2, 2-22-00)

Sec. 134-1171. Lot grade topography and drainage.

In the C-WA, commercial worth avenue district, the natural grade and topography of a lot shall not be altered to raise and the grade the lot to meet base flood elevation requirements except as provided for in section 134-1600. The grade shall not be raised on a vacant or occupied piece of property unless a building permit is issued which addresses the paving and drainage requirements of the town.

(Ord. No. 19-2021 , § 5, 9-13-21)

Secs. 134-1172—134-1205. Reserved.

EAST-END DEVELOPMENT AREA

URBAN DESIGN OBJECTIVES

- * To preserve, maintain and enhance existing Mediterranean-Revival/Neo-Classical character of the area.
- * To encourage the protection and enhancement of non-designated but potential Mediterranean-Revival/Neo-Classical historical structures.
- * To encourage new development and remodeling to use Mediterranean-Revival, Neo-Classical architectural styles or other updated compatible variants.
- * To insure compatibility of new development with existing uses and these Guidelines through review and approval of the Architectural Commission.
- * To encourage the remodeling/rehabilitation of incompatible buildings and storefronts in the area, including the provision of multiple storefront entrances, and unification of display windows, awnings, colors, materials, and signage.
- * To encourage the use of arcades or colonnades along Worth Avenue frontages.
- * To encourage the interconnection of additional vias, courtyards, patios and other passageways both on and off-site; and,
- * To encourage upper-floor residential use or the appearance associated with upper-floor residential design.

DESIGN GUIDELINES

<u>ELEMENT</u>	<u>DESIRABLE</u>	<u>UNDESIRABLE</u>
Building Form:		
Apparent Width:		
Building:	Maximum 50 feet	Over 100 feet
Storefront:	Maximum 30 feet	Over 50 feet
Massing:		
Mediterranean-Revival multi-story buildings	Min. 15% of frontage open or recessed, set-back or projecting at least 2 ft. from the building face.	
Entrances:	One storefront entrance per each 30 ft.	Over ca. 50 ft.
Roofs (based on style):	Multiple levels; shed, gable, ridge, hip or flat roof & false front.	
Building Walls:		
Storefronts:		
Clear glass openings	Min. 50% and max. 75% of 1st story frontage up to 15' high. Max. 50% above first story.	Mirrored glass
Storefront windows:		
Sill:	Min. 1 ft. above first floor level.	
Material/Color:	Wood frame, stained or painted; metal, if dark color and flat finish.	Metal, stainless steel, unfinished.
Storefront doors:		
Material/Color:	Heavy paneled wood, stained or painted; metal, if dark color and flat finish; and multiple lights if used.	Metal, stainless steel, unfinished.
Wall Materials:	Stone, masonry and stucco.	Glass curtain metals, wood siding, metal, and brick.

DESIGN GUIDELINES (cont.)

<u>ELEMENT</u>	<u>DESIRABLE</u>	<u>UNDESIRABLE</u>
Arcades:		
Supports (columns and arches):	Stone, masonry and stucco. Min. 3 ft. setback from curb face.	Wood or metal.
Roof form:	Shed or flat with parapet.	
Roof material:	Reddish barrel tiles or built-up.	
Paving:	Stone or masonry blocks; brick or tile (non-slip); textured concrete.	
Signs:		
Above Arcade or Awning:	Flat to wall. Bold stroke painted or low profile cut-out letters.	
Under Arcade or Awning:	Wood or wrought-iron hanging, or flat to wall. Bold stroke painted or carved. Min. 7'-6" clearance.	
Lighting:	Shielded from view. Wrought-iron lamps.	Unshielded lighting.
Details:	Wrought-iron window guards, grilles, gates, brackets, balustrades, and benches. Terra cotta pots, sculpture, courtyard fountains.	Plastic, fiber glass, and shiny metal details.

VIII. SPECIAL ALLOWANCES FOR THE EAST-END DEVELOPMENT AREA

Provisions for Special Allowances have been included in these Guidelines in order to:

- (1) Encourage the maintenance and restoration of the architectural heritage of Worth Avenue;
- (2) Encourage the creative use of modern variants of the Mediterranean-Revival, Neo-Classical and other compatible architectural styles;
- (3) Promote use of Mediterranean-type pedestrian characteristics such as arcades, shopping vias, courtyards and patios, fountains and sculpture, extensive landscaping, multi-level development, hidden staircases, and - the provision for upper-story residences or the appearance associated with upper-floor residential design.
- (4) Allow for structures which emulate the character of the West-End Development Area but not to alter, nor act as a precedent for altering, the existing character of the Mid-Avenue or West-end Development Areas.

Use of these Special Allowances for substantial improvements meeting the intent of this section will enhance the quality, character and image of the Avenue; and will also provide a visual linkage between contemporary development and the Avenue's unique historical past.

A. ELIGIBILITY FOR SPECIAL ALLOWANCES

In order to encourage the maintenance of the Avenue's original architectural heritage and encourage the creative and compatible use of Mediterranean-Revival style and characteristics, as well as Neo-Classical and other compatible architectural styles, on the Avenue; the following buildings are eligible to earn special allowances as specified in Section "C", following:

1. New buildings constructed on the Avenue in accordance with the Town of Palm Beach Zoning Code and the design guidelines described in Sections VI and VII. Approval of Special Allowances shall be subject to review and approval by the Architectural Commission after review and approval by the Town Council.
2. Existing buildings which were not designed in the Mediterranean-Revival, NeoClassical, Art Deco, Art Moderne, or other similar compatible style; and which, through substantial and appropriate exterior renovation, are voluntarily converted to the Mediterranean-Revival or Neo-Classical style or modern variant thereof in accordance with the Town of Palm Beach Zoning Code and the design Guidelines described in Sections VI and VII. Approval of Special Allowances shall be subject to review and recommendation for approval by the Architectural Commission.

3. Existing Mediterranean-Revival, Neo-Classical, Art Deco, Art Moderne, or other similar or compatible style buildings which have not been designated as Landmarks; and, which are voluntarily restored through substantial and appropriate exterior renovation to the appropriate style in accordance with the Town of Palm Beach Zoning Code and the design Guidelines described in Sections V. and VI. Approval of Special Allowances shall be subject to review and approval by the Architectural Commission after review and approval by the Town Council.

B. DEFINITIONS

For the purpose of determining eligibility for a special allowance, the following definitions shall apply:

1. SUBSTANTIAL EXTERIOR RENOVATION OR RESTORATION

Improvements costing 15% or more of the appraised value of the structure. The applicant shall be responsible for submitting an up-to-date appraisal so that the Building Official can certify the appraisal value and construction costs.

2. APPROPRIATE EXTERIOR RENOVATION OR RESTORATION

Improvements which are consistent with the design Guidelines described in Sections VI and VII, and recommended for approval by the Architectural Commission.

C. SPECIAL ALLOWANCES

1. Commercial development, redevelopment, restoration or renovation providing an enhanced level of amenities and features in accordance with paragraph "D", following, shall be eligible for elimination of the building length limitation and the 15,000 square foot limit on gross floor area and an increase in maximum building coverage and height as follows:
 - a. Existing buildings:
 - (1) one-story building, maximum coverage, 75%
 - (2) two-story building, 2nd story maximum coverage, 65%
 - b. New 1 story building, maximum coverage, 75%
 - c. New 2-story buildings: maximum first story building coverage, 75%; 2nd story maximum coverage, 65% .
 - d. New 3-story buildings: maximum first story building coverage, 75%; 2nd story maximum coverage, 65%; 3rd story maximum coverage, 30%; and allowable building height up to forty (40) feet.

2. Mixed-use commercial and residential development, redevelopment, restoration or renovation providing commercial uses on the ground floor and residential uses above, and providing an enhanced level of amenities and features in accordance with paragraph "D", following, shall be eligible for elimination of the building length limitation and the 15,000 square foot limit on gross floor area, increase in maximum building coverage and height, and allowable residential units as follows:

a. Existing buildings:

- (1) One-story building maximum coverage, 75%;
- (2) Second story coverage, 65% and a maximum of one (1) residence per each fifty (50) feet of frontage on Worth Avenue.
- (3) Third story maximum coverage, 30%; allowable building height up to forty (40) feet and a maximum one (1) additional residence per each sixty (60) feet of frontage on Worth Avenue; provided, however, that all uses above the first floor shall be residential uses only and that the combined density of residential uses on the second and third floors does not exceed two (2) dwelling units per sixty (60) feet of frontage on Worth Avenue.

b. New one story building, maximum coverage, 75%

- c. New 2-story buildings: maximum first story building coverage, 75% maximum second story coverage, 65% ; and a maximum one (1) residence per each fifty (50) feet of frontage on Worth Avenue.

d. New 3-story buildings:

- (1) Maximum first floor building coverage, 75%;
- (2) Maximum second story coverage, 65% and a maximum one (1) residence per each fifty (50) feet of Worth Avenue frontage;
- (3) Maximum third story coverage, 30%; allowable building height up to forty (40) feet; and a maximum one (1) additional residence per each sixty (60) feet of Worth Avenue frontage; provided, however, that all uses above the first floor shall be residential uses only and that the combined density of residential uses on the second and third floors does not exceed two (2) dwelling units per sixty (60) feet of frontage on Worth Avenue.

3. Arcades over the sidewalk shall not count towards building coverage. Where no arcades are provided landscaping shall be planted.

4. Equipment rooms, stair towers, and towers used only as architectural features, may be erected no more than forty (40) per cent above the allowable building height and may occupy no more than fifteen percent of the ground floor area of such building or structure.

D. CRITERIA FOR APPROVAL OF SPECIAL ALLOWANCES.

New development, or substantial and appropriate redevelopment, restoration or renovation proposals shall be reviewed by the Landmarks Commission or the Architectural Commission in relation to the appropriate provision of a greatly enhanced level of amenities and features which will significantly benefit the development, the general public, the Avenue and the Town of Palm Beach.

Based on the following list of desirable amenities and features, and a positive determination of the Architectural Commission; a proposed development, redevelopment, restoration or renovation may be approved for a Special Allowance.

- * Public arcades, vias, courtyards, useful open space and interconnection.
- * Private open spaces, patios, terraces, balconies, loggias, etc.
- * Mixed-use development with upper-story residential.
- * Restoration of original facade.
- * Appropriate style change.
- * Varied roof heights, towers, chimneys, etc.
- * Two story and/or three-story commercial structures shall provide a heightened level of architectural amenity and enhancement such as real or simulated balconies, loggias, or step-backs, etc. to ensure that the second and third stories shall have the appearance associated with residential design as personified in the West-End Development Area.
- * Any other significant amenities or features determined to be appropriate for review by the Architectural Commission.

E. LIMITATIONS ON THE USE OF SPECIAL ALLOWANCES

Special Allowance granted for residential uses may not be accumulated or transferred to any other building or site.

Excerpt from e-mail to ARCOM regarding W.A.D.G., based on earlier version of LOI for 125 Worth Ave.

“Having been built prior to creation of the Guidelines, the 125 Worth Ave. non-conformities are not surprising. What is astounding is the intent to greatly increase all of the non-conformities, especially over-all mass, as though the code and Guidelines were non-existent. This application requests two special exceptions that require adherence to the Guidelines, and while the design of the street elevation is much improved and has some stylistic details that comply with the guidelines, the structure still fails to meet most of the code and Guidelines' major goals and the specific requirements for special allowances in the district. In many cases it does the exact opposite:

- it increases floor area, lot coverage, height and intensity
- it reduces parking, open space, and sidewalk width
- it creates no arcades, vias, courtyards, or linkages to invite pedestrians and eliminates recesses
- its towers violate the size, setback, and use limitations
- it adds no residences
- it adds no pedestrian retail entrances that face the street
- the Mediterranean style is not consistent across elevations

Sec. 134-2. Definitions and rules of construction.

- (a) *Rules of construction.* For the purpose of this chapter, the regulations are structured so as to be strictly permissive. As such, only those uses and structures which are specifically permitted in the Code of Ordinances are allowed. If there is no specific language in the Code which addresses a use or a structure, then said use or structure is not permitted.

The term "used for" shall include the term "designed for", the term "structure" shall include the term "building", the term "lot" shall include the terms "plot" or "tract", and the term "shall" is mandatory and not permissive.

In the interpretation or application of any provision of this chapter, it shall be held to be the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision imposes greater restrictions upon the subject matter than the general provision imposed by the Code, the provision imposing the greater restriction or regulations shall be controlling.

- (b) *Definitions.* The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory use or building or structure means a subordinate use or structure customarily incident to the principal use or structure located on the lot or located on a contiguous lot when a unity of title has been provided.

Acre means, for the purpose of calculating dwelling units, an area or parcel of land containing 40,000 square feet.

Alley means a facility which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

Attic means non-habitable, unfinished space within the roof system of a building or structure with less than seven feet of head room, access by only pull down, non-mechanical stairs and used only for storage, mechanical or machinery use.

Auto rental lot means a lot or parcel of land on which passenger automobiles for active rental purposes only are stored or parked.

Awning means an accessory structure either temporary or permanent which is supported by an open framework and is covered by cloth material.

Awning, sidewalk means an awning that projects over a public sidewalk or walkway.

Banks and financial institutions means establishments providing saving, lending, trust, and other financial services to the public. Banks and financial institutions shall include, but not necessarily be limited to, banks, brokers and brokerage firms, savings and loan associations, mortgage companies, loan offices, credit unions, and trust companies.

Bar/lounge means an establishment dispensing alcoholic beverages for on-site consumption.

Basement means floor area situated under a building, such floor area having exterior perimeter walls and having a floor level two or more feet below the level of the contiguous exterior ground outside of the building and having one-half or more of its floor-to ceiling height below the average level of all of the exterior ground of the lot comprising the subject building development site. For additional regulations and the exceptions to the regulations of basements see sections 134-1608, 134-1609 and 134-1611. See also *sub-basement*.

Beach house means a permanent structure which may contain a bathroom and other rooms, but not a kitchen or any sleeping rooms, and not used as a dwelling unit.

Building. See *Structure*.

Building angle of vision means a line drawn from the front yard property line as determined in section 134-1636(2) 50 degrees either side of a line drawn perpendicular or radial to the front yard property line.

Building, height of (applicable only in the R-B districts) means the vertical distance from zero datum (excluding garage) to the bottom of the top chord of the roof framing member where it intersects the plane of the outside face of the exterior wall for pitched roofs (excluding dormer windows in non-habitable space). For flat roofs, the measurement is to the point where the ceiling meets the exterior wall. The building height zero datum shall be a maximum of 18 inches above the crown of the public or private street or road at its highest street elevation or the minimum flood elevation as established in chapters 18 and 50 of this Code, whichever is higher. For the purpose of constructing additions of less than 800 square feet, the zero datum shall be the top of the lowest top of first floor slab of the existing building.

Building height of (applicable to all districts except the R-B districts) means the vertical distance from zero datum (excluding garage), which is the crown of the public or private street or road at its highest elevation abutting the lot or the minimum flood elevation as established in chapters 18 and 50 of the Code, whichever is higher, to the bottom of the top chord of the roof framing member where it intersects the plane of the outside face of the exterior wall for pitched roofs (excluding dormer windows in non-habitable space). For flat roofs, the measurement is to the point where the ceiling meets the exterior wall. For the purpose of constructing additions of less than 800 square feet, the zero datum shall be the top of the lowest top of first floor slab of the existing structure.

Building, height of, (applicable only to structures on lots located on the west side of South Ocean Boulevard between Via Agape and Sloan's Curve in the R-AA district and having a natural ground level lower than that of the roadway on which the lot fronts) means the vertical distance from the point of measurement zero datum for height to the bottom of the top chord of the roof framing member where it intersects the plane of the outside face of the exterior wall for pitched roofs. For flat roofs, the point of measurement for height shall be measured from zero datum to the point where the ceiling meets the exterior wall. The point of measurement zero datum for height is the highest crown of road elevation in front of the lot for that portion of the lot which is within 50 feet west of the Coastal Construction Control Line (CCCL). The point of measurement for the portion of the lot west of that area shall be from the point where the exterior wall meets the minimum flood elevation as defined in chapter 50 or the natural grade, whichever is higher. For the purpose of constructing additions of less than 800 square feet, the zero datum shall be the lowest top of first floor slab of the existing structure building.

Building, height of, (applicable to lots or portions of lots east of the State of Florida Coastal Construction Control Line (CCCL)) means the vertical distance from the point of measurement for height zero datum to the bottom of the top chord of the roof framing member where it intersects the plane of the outside face of the exterior wall for pitched roofs (excluding dormer windows in non-habitable space). For flat roofs the measurement is from the point of measurement for height shall be measured from zero datum to the point where the ceiling meets the exterior wall. The point of measurement zero datum for height in all zoning districts for buildings either east or partially east of the CCCL shall be the minimum bottom of grade beam elevation as established by the Florida Building Code plus two feet, the highest crown of road in front of the lot, or the highest first floor elevation of an abutting principal building, whichever is highest, provided all of the following conditions are met:

- (1) The proposed principal building can be no closer to the bulkhead line than the average setback of the closest principal buildings on the north and south side of the subject lot, provided the required rear setback is met;
- (2) The proposed principal building can be no closer to the front property line than the average front setback of the closest principal buildings on the north and south side of the subject lot, provided the required front setback is met; and
- (3) The proposed building can be no taller than five feet above the average height of the principal buildings on the north and south side of the subject property provided the overall height does not exceed the maximum overall height allowed. For the purpose of constructing additions that do not

exceed 800 square feet onto an existing structure on a lot, the point of measurement for height shall be the top of the lowest floor slab on the existing structure provided that said addition(s) meet the minimum requirements as established in the Florida Building Code for construction east or partially east of the CCCL.

Building height of corner lot. In those cases involving a corner lot as defined in this section, the zero datum of the lot set forth in the definition of the term "building, height of (applicable to all districts except the R-B district)" and the definition of the term "building, height of (applicable only in the R-B district)" shall be measured from the average elevation (taken at the crown of the street) of each of the two intersecting streets abutting the lot. For the purpose of constructing additions of less than 800 square feet, the zero datum shall be the top of the lowest top of the first floor slab of the existing building.

Building, height of, lot abutting low streets, means for the purpose of establishing zero datum lot grade in the definition of the term "building, height of (applicable to all districts except the R-B districts)"; the definition of the term "building, height of (applicable only in the R-B district)"; the definition for the term "building, height of, corner lot"; and the definition of "building, height of, through lot," those cases involving a street having a low existing street elevation abutting the lot, and if such street elevation is below the minimum flood elevation as established in chapter 50 of this Code. Zero datum for measuring building height shall be measured from the minimum flood elevation.

Building, height of, through lot. In those cases involving a through lot as defined in this section, zero datum as set forth in the definition of the term "building height of (applicable to all districts except in the R-B district)" and the definition of the term "building, height of (applicable only in the R-B district)" and the definition of the term "building, height of, corner lot" of the portion of the building fronting on the front street to one-half of the mean lot depth shall be from the crown of the public street at its highest elevation abutting the front of the lot zero datum for the portion of the building fronting on the rear street shall be from the crown of the public street at its highest elevation abutting the rear street yard of the lot. For the purpose of the definition, North Lake Trail shall not be considered a rear street. For the purpose of constructing additions that do not exceed 800 square feet onto an existing structure on a lot, the zero datum shall be the top of the lowest floor slab on the existing building.

Building, height of, (applicable to R-B lots abutting Lake Trail), means the vertical distance from zero datum (excluding garage) to the bottom of the top chord of the roof framing member where it intersects the plane of the outside face of the exterior wall for pitched roofs (excluding dormer windows in non-habitable space). For flat roofs, the measurement is to the point where the ceiling meets the exterior wall. The top of the floor slab for buildings may be raised to either 18 inches above the crown of the public street at its highest elevation abutting the lot, the minimum flood elevation, or to the existing grade elevation of the lot at its midpoint, whichever is higher, provided that the top of the floor slab is at a minimum elevation of the crown of the public street at its highest elevation abutting the lot and the minimum flood elevation. For the purpose of constructing additions that do not exceed 800 square feet onto an existing structure on a lot, the zero datum shall be the top of the lowest first floor on the existing building.

Building, height of, (applicable to all other lots abutting Lake Trail), means the vertical distance from zero datum (excluding garage) to the bottom of the top chord of the roof framing member where it intersects the plane of the outside face of the exterior wall for pitched roofs (excluding dormer windows in non-habitable space). For flat roofs the measurement is to the point where the ceiling meets the exterior wall. Zero datum for buildings shall be either the crown of the public street at its highest elevation abutting the lot, the minimum flood elevation or to the existing grade elevation of the lot at its midpoint, whichever is higher, provided that the top of the floor slab is at a minimum elevation of the crown of the public street at its highest elevation abutting the lot. For the purpose of constructing additions that do not exceed 800 square feet onto an existing structure on a lot, the zero datum shall be the top of the lowest floor slab on the existing building.

Building height plane means a height limiting plane extending at an inclined angle from the intersection of the front yard property line as determined in section 134-1636(2) and the zero datum as defined in "height of

building" and "overall height of building", or the minimum floodplain elevation as established in chapter 50 of this Code, whichever is higher.

Building line means the line, established by law, beyond which a building shall not extend, except as specifically provided by law.

Building, overall height of includes the height of a building, as defined in the definition of the term "building, height of (applicable to all districts except the R-B districts)"; the definition of the term "building, height of (applicable only in the R-B district)"; the definition for the term "building, height of, corner lot"; the definition of "building, height of, through lot"; and the definition of "building, height of, lot abutting low streets," plus the vertical distance from the building height to the highest point of the building's roof system.

Business services means establishments providing support services to other business concerns. Business services would include, but not necessarily be limited to, print shops, secretarial services, travel agents, drafting services, and advertising agencies, etc.

Cabana (pool house) means an accessory structure usually used in connection with outdoor bathing, providing enclosed space for showering or changing clothes, with recreational cooking and/or bar facilities, but no sleeping rooms.

Cannabis cultivation means a use of any property, in whole or in part, including inside buildings, for the growing or cultivation of Cannabis plant(s), whether or not such growing or cultivation is lawful under federal or state law.

Carport means an unenclosed accessory structure for the sheltering of an automobile(s).

Change in generic use means the change in the use of a parcel or structure thereon or portion thereof from one generic category of use to another, but not including a change of activity within a generic use category.

Club, private means buildings and/or facilities, not open to the general public, owned and operated by a corporation or association of persons for social or recreational purposes for members and their bona fide guests and which may render, as an accessory use, services that are customarily carried on as a business. Within residential zoning districts, a private club may provide living quarters for its bona fide employees only.

Commercial use means use of land or structures thereon or portions thereof, for the purpose of conducting business, including the provision of goods and/or services, not otherwise identified under the definition of other generic uses, to the general public or segments thereof. For the purposes of this definition, timesharing, motel and/or hotel uses and occupancy of residential properties for periods of less than three months more frequently than three times per calendar year shall be considered commercial uses.

Common open space means that area of a development site which is unencumbered by buildings, other structures, driveways for vehicular access, or automobile parking areas and storage. This area shall include all yard areas as well as those other open land areas located within the planned unit development site.

Cubic content ratio (CCR) means a measure of land use intensity, expressing the mathematical relationship between the cubic content of a building and the unit of land. It is arrived at by dividing the gross cubic content, as calculated by multiplying building height as stated in the definition of the term "building, height of (applicable only in the R-B district)" in this section times exterior building width times exterior building depth of all structures by the gross area of the lot.

Declaration of use means a town agreement signed under oath and recorded against the title of land in order to provide notice that the use of the land or structure is subject to certain limitations and/or conditions of approval, which unless otherwise determined by the town council, shall include provisions for remedies for violation of said limitations, conditions of approval and/or the Code of Ordinances and that the use will remain in compliance with the limitations in the Code of Ordinances and conditions of approval by the submittal of a certificate of compliance each year.

Dining room means any building or part thereof or any room or part thereof in which food is dispensed or served for profit or gratis to a restricted and limited clientele consisting of tenants and residents of the same premises and their bona fide guests, and private club members and their bona fide guests.

Dish antenna, television and communication means an accessory structure consisting of a satellite earth station designed to receive television or other broadcasts relayed by microwave signals from earth-orbiting communications satellites.

Distribution electric substation means an electric substation which takes electricity from the transmission grid and converts it to a lower voltage so it can be distributed to customers in the local area on the local distribution grid through one or more distribution lines less than 69 kilovolts in size.

Dock means an unenclosed accessory structure built on piling over the water, which is designed or used to provide dockage for and access to one or more boats and which may have davits, vertical lifts, gates, water and electrical service, other similar public utility services and additional accessory uses customarily incident to a dock, such as but not limited to storage chests and low-intensity lighting approved by the town and installed in a manner as to not have an adverse effect upon adjacent properties.

Drive-in use means an establishment that, by design, physical facilities, service, or by packaging procedures, encourages or permits customers to receive goods or services in their motor vehicles.

Dwelling means a building or portion thereof designed or used exclusively for residential occupancy, but not including trailers, campers, mobile homes, hotels, motels, motor lodges, boardinghouses and lodginghouses, tents, tourist courts or tourist homes.

Dwelling, multiple or multifamily, commonly known as an apartment house, means a building or portion thereof used or designed as a residence for three or more families living independently of each other, having individual living units with each unit having cooking facilities and containing a living room and/or one or more bedrooms.

Dwelling, single-family means a detached building designed and used exclusively for residential purposes by one family.

Dwelling, townhouse means an attached building, not over two stories in height, which is designed for or occupied exclusively by one individual or family and attached to two or more other buildings of similar design and in which each dwelling unit is separated from adjacent dwelling units by party walls extending vertically from the ground upward through the roof in a manner so that there shall be no interconnection of or overlapping between any part of individual dwelling unit walls, floors, roofs, basements or other portions of the building structure, and in which each dwelling unit shall have separate and individual sewer, water and public utilities connections. Townhouses may or may not be located on land belonging exclusively to the individual dwelling unit owner.

Dwelling, two-family means a detached building designed and used exclusively for residential purposes by two families living independently of each other.

Dwelling unit (D.U.) means a room or group of rooms designed, used exclusively or occupied as separate living quarters by a single family.

Employee means any person generally working on site for the establishment and includes sole proprietors, partners, limited partners, corporate officers and the like.

Essential services means public utility facilities related to water supply, telephone, cable television, gas and electrical distribution systems, town-owned town-operated services such as sanitary sewer, stormwater drainage and solid waste collection and disposal systems, and town-owned municipal buildings and structures, including any necessary appurtenant structures serving the town, but not including buildings housing employees.

Executive/employee/group vacation retreat means simultaneous use or occupancy of a dwelling unit by a group of individuals other than a family.

Executive office suites means a tenant space shared by separate office and professional services, each of which has a fixed desk. The executive office suite and each office and professional service business within said suite is licensed and has a fixed desk for each employee.

Family means an individual; or two or more persons related by legal adoption, blood, or a licit marriage; or a group of not more than three persons who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling.

Floor area total means the sum of the gross horizontal area of all the floors of a building, except a basement or subbasement as defined, measured from the exterior faces of exterior walls and/or supporting columns.

Formula restaurant means a restaurant that is one of a chain or group of three or more restaurants in the nation, and which satisfies at least two of the following three descriptions:

- (1) It has the same or similar name, trade name, or trademark as others in the chain or group;
- (2) It has standardized and limited menus, ingredients, food and beverage preparation;
- (3) It offers any of the following characteristics in a style that is distinctive to and standardized among the chain or group:
 - a. Exterior design or architecture;
 - b. Interior design; or
 - c. Uniforms, except that a personal identification or simple logo will not render the clothing a uniform.

Foster care facility means a facility, licensed or funded by the state department of children and family services, housing foster residents and providing a family living environment for the residents, including such supervision and care as may be necessary to meet the physical, emotional and social needs of the residents and serving either children or adult foster residents.

Frontage means all the property on one side of a street or place between two intersecting streets or places measured along the line of the street or place, or, if the street or place is dead-ended, all of the property abutting on one side between an intersecting street or place and the dead end of the street or place.

Garage, private means a building or space used as an accessory to or part of a main building permitted in any residence district and providing for the storage of motor vehicles and in which no business, occupation or service for profit is in any way conducted.

Garage, storage means any building or premises, other than a private garage, used exclusively for the parking or storage of motor vehicles.

Generic use is the broad description for the use of a parcel or structure or portion thereof. There are but three generic uses in the town: residential, commercial and public/private group use.

Gross leasable area (GLA) means the sum of the gross horizontal area of all floors on one building, which are leased, rented or owned areas within a building, measured from the interior faces of exterior walls and from the interior faces of common interior walls, exclusive of common areas. For the purposes of this definition, the gross leasable area of a given use shall include all floor areas being used, advertised or operated under a single commercial use name which are adjacent to one another; or all floor areas being used, advertised or operated under a single commercial use name which are within 1,500 feet of one another; or all floor areas being used or operated under different commercial use names, but for which interior access between/among them is provided.

Group home means a facility, licensed or funded by the state department of children and family services, providing a living environment for unrelated residents who operate as the functional equivalent of a family, including such supervision and care as may be necessary to meet the physical, emotional and social needs of the residents.

Habitable space means space in or on a structure used or intended to be used for occupancy, for living, sleeping, lounging, eating, cooking or recreation. Finished or unfinished floors above the maximum number of stories allowed containing an elevator, permanent or mechanically operated stairs and seven feet or more of head room shall be considered habitable space. Closets, hallways, storage rooms, attics, machinery rooms, mechanical equipment rooms, utility space and similar areas shall not be considered habitable space.

Historically or architecturally significant multifamily structure means a structure designated by the town council as an historic or architecturally significant structure and which is proposed for conversion to a multifamily structure under a PUD-4 application.

Hotel/motel means an establishment which provides, for pay, lodging and other services to transient and semipermanent residents. A hotel provides meals, convenience shops, entertainment, lounges and recreational facilities as well as maid, laundry, valet, telephone, desk, limousine and other personal services. A hotel may consist of one or more buildings and/or accessory buildings.

House of worship means a structure owned and/or utilized by a religious organization for worship, religious training or education. A house of worship, for the purposes of this chapter, may include, in addition to the principal structure, accessory structures and/or dwelling units for religious organization personnel located within an accessory structure which is utilized primarily for religious training or educational purposes.

Institutions means public and public/private group use of a nonprofit nature typically engaged in public service, e.g., houses of worship, nonprofit cultural centers, charitable organizations.

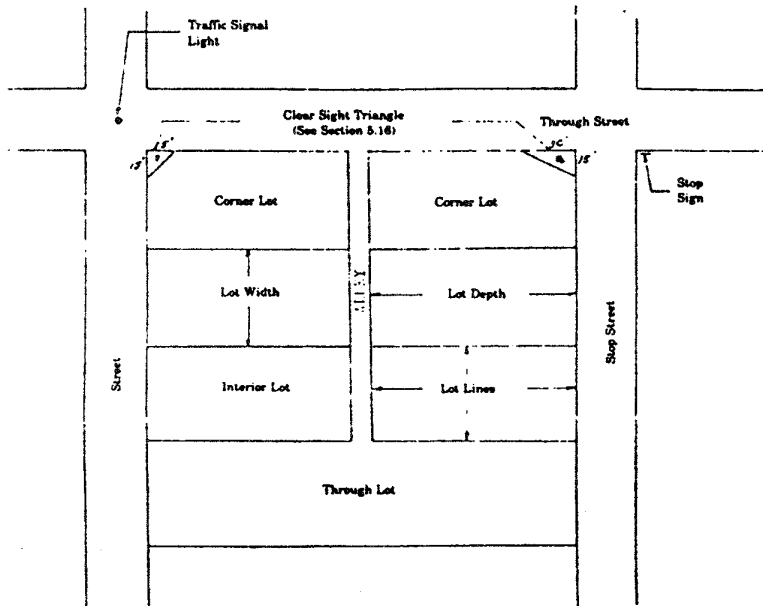
Landscaped open space means open space which is covered and maintained with natural growth in a permeable soil.

Landscaping, required means landscaping that shall consist of those plantings required by this chapter, including beautification strips, hedges, trees, planted ground cover, sodded and grassed areas and planted floral installations, all of which must be composed of natural plantings only as distinguished from artificial manufactured planting reproductions.

Logo means a graphic representation, letter, character, symbol, trademark, design or crest or combinations thereof used to identify a business or organization.

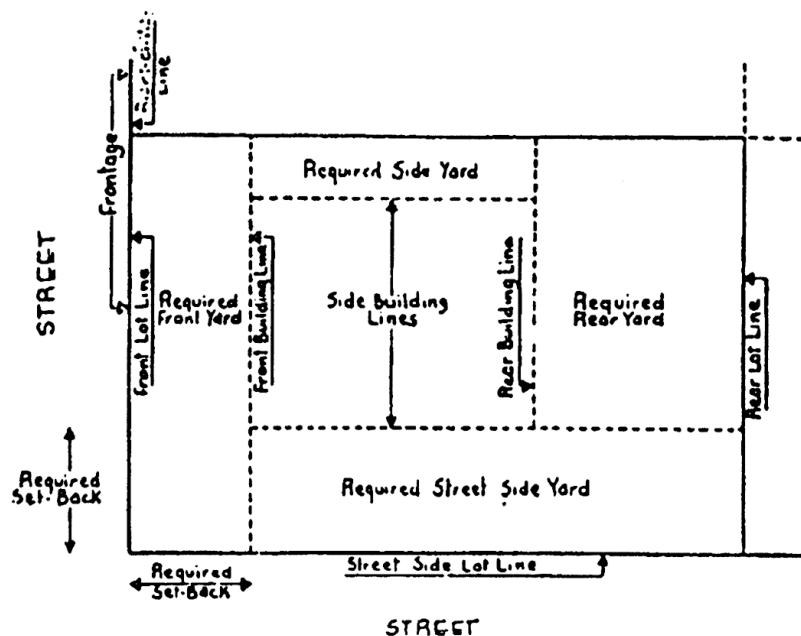
Lot means a parcel of land, vacant or occupied. For the purpose of this chapter, the word "lot" shall be taken to mean any number of contiguous lots of record or unplatted parcels of land or portions thereof not separated by a street or public way, upon which one or more principal structures for a single use are erected or are to be erected. When the lot is situated immediately adjacent to the ocean front, for the purpose of this chapter, the east lot line shall be the town's bulkhead line as provided in chapter 62 of this Code or the mean high water line, whichever is most westerly. When the lot is situated immediately adjacent to the waters of Lake Worth, the west lot line shall be the existing bulkhead wall or mean high water line, whichever is most easterly. The exception to this definition is that town-owned or town-leased property is exempt from this definition. The following is an illustration of this definition:

Lot Definitions—General



Lot, corner means a lot abutting upon two or more streets at their intersection which is illustrated as follows:

Yard Definitions—Corner Lot



Lot coverage means that percentage of the lot area covered or occupied by the buildings or any part of the buildings, excluding therefrom any projections permitted to extend into yard areas elsewhere by this chapter.

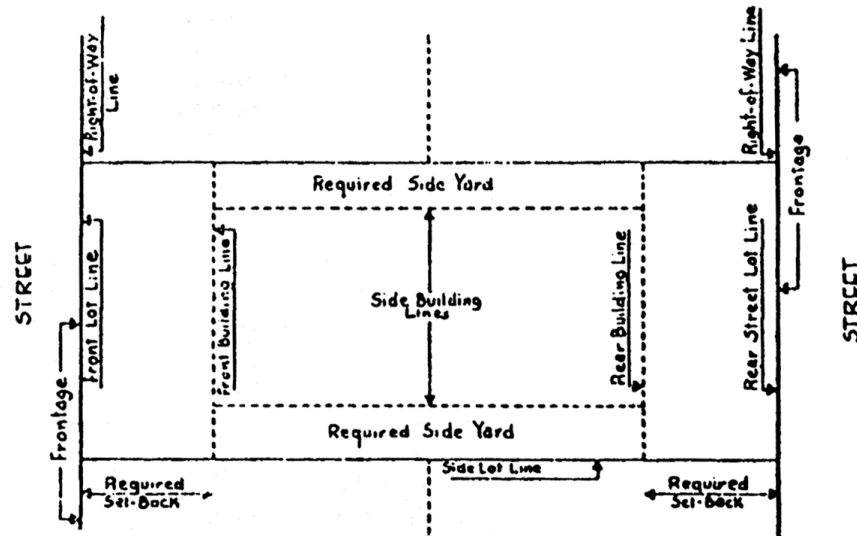
Lot depth means the distance from the midpoint of the front lot line to the midpoint of the mean rear lot line.

Yard Definitions—Interior Lot

Lot lines means the lines bounding a lot as established by ownership.

Lot, street lot line means the front street lot line, side street lot line or rear street lot line of any lot, which shall be the right-of-way line of the abutting street. For public streets this shall consist of the dedicated right-of-way line of public streets plus any additional street widths as required by section 134-1636; for private streets, such right-of-way line shall consist of the platted or unplatted right-of-way line of such private streets plus any additional street width as required by section 134-1636. Note: Refer to section 134-1636 for street lot lines.

Lot, through means an interior lot having frontage on two streets, other than a corner lot, illustrated as follows:



Lot width means the distance measured along the front building line between the side lot lines of a lot.

Manufactured housing means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or panels, and which is built on a frame and designed to be used as a dwelling with a permanent foundation and connected to all required utilities and may include plumbing, heating, air conditioning, and electrical systems contained therein. If fabricated after June 15, 1976, each section shall bear a U.S. Department of Housing and Urban Development label certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standards.

Medical marijuana dispensary means a facility that is operated by an organization or business holding all necessary licenses and permits from which marijuana, cannabis, cannabis-based products, or cannabis plants are delivered, purchased, possessed, or dispensed for medical purposes and operated in accordance with all local, federal, and state laws. Physicians authorized by state law to order low-THC cannabis, as defined in Florida Statutes, for qualified registered patients' medical use are not included in the definition of medical marijuana dispensary.

Medical marijuana treatment center means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualified registered patients or their personal caregivers and is registered by the state department of health and regulated under chapter 134 of the Town Code of Ordinances.

Municipally owned or operated refers to the town.

Museum means an institution for collecting, preparing, and exhibiting rare, interesting, or typical specimens of works of art, science, invention, manufacturers, etc., or of antiquities, curiosities; or objects of natural history; also, the collection of such articles or their repository.

Nightclub means an establishment dispensing alcoholic beverages for on-site consumption, whether or not food is served, and which is a place of entertainment that is usually open late at night, offering live music, dancing, drinks, and a floorshow:

- (1) By one or more performing artists;
- (2) By one or more live entertainers singing to prerecorded music or

(3) A deejay playing recorded music;

provided, however, that a restaurant that provides only background dinner music, or entertainment, or where dancing is conducted to live or recorded music does not constitute a nightclub.

Nonconforming building or structure means a building or structure lawfully in existence on the effective date of the ordinance from which this chapter is derived that does not conform to the regulations contained in this chapter for the zoning district in which the building or structure is situated.

Nonconforming land means a parcel of land lawfully in existence on the effective date of the ordinance from which this chapter is derived that does not conform to the regulations contained in this chapter for the zoning district in which the land is situated.

Nonconforming use means a use lawfully in existence on the effective date of the ordinance from which this chapter is derived that does not conform to the regulations contained in this chapter for the zoning district in which the use is situated.

Nonprofit cultural center means an institution for promoting education and the refinement of taste, intellectual and/or aesthetic matters, not including museum uses, operated without profit.

Office and professional services means administrative offices and establishments providing professional services such as lawyers, doctors, insurance agents, real estate brokers, consultants, interior designers, architects, and engineers.

Office, veterinarian means an establishment which provides medical and surgical care for animals, and may provide overnight facilities.

Open space means that area of a lot which is unencumbered by buildings, other structures, driveways, or automobile parking areas, except for garden walls and fences as provided in this chapter.

Outdoor cafe seating is the placing or locating of furniture outdoors, including tables, chairs, and umbrellas, adjacent to a business licensed as a restaurant dining room, retail specialty food including the sale of prepared foods for takeout only, or private, social, swimming, golf, tennis or yacht club, with the purpose of providing outdoor seating.

Outdoor promotional events means events sponsored and managed by a property owner where the event is to be held in the C-TS, C-WA or C-PC Zoning District for the purpose of providing a public event or promoting business on said private property. Such event shall be limited in scope and size by special exception approval by the town council and the criteria as set forth in section 134-2115 of this Code.

Parapet wall means a low wall to protect the edge of a roof.

Parking lot, public or private means an open area or plot of land used for the storage or parking of motor vehicles to provide off-street parking, either for profit or gratis, for commercial or residential uses, other than single-family.

Parking, principle of equivalency, as it relates to a method of establishing an inventory of required off-street parking spaces for a conforming or nonconforming use of an existing building, or structure for the purpose of determining the net off-street parking requirement for the establishment of a proposed new use to be permitted in the existing building or structure, is based on the "schedule" in section 134-2176.

Parking, required means those parking facilities determined as the minimum facilities necessary to comply with this chapter as set forth in the schedule of off-street parking requirements.

Parking, supplemental means those parking facilities provided as a permitted or special exception and which are in addition to existing required parking as set forth in the schedule of off-street parking requirements. Supplemental off-site parking in an underground garage or surface, enclosed, partially enclosed, or a rooftop parking facility that is a permitted use in the C-TS, C-WA and C-OPI zoning districts is not required to be parking

that is in addition to what is required in the schedule of off-street parking requirements in the code. This definition will sunset on March 13, 2024 and revert back to the definition prior to the adoption of Ordinance Nos. 1-2021 and 20-2021 unless extended or modified by the town council.

Pergola means an open, accessory structure comprised of a structural framework over an outdoor area usually covered with climbing shrubs or vines.

Personal service establishments means establishments primarily engaged in the provision of services to individuals dealing with their personal or immediate effects. Personal services would include, but not necessarily be limited to, hairstyling or beauty services, tailor/dressmaker, travel agent, cleaning services, interior decorator services, dance studio or similar personal instruction services.

Public/private group use means use of land or structures thereon or portions thereof for public structures, governmental operations, education, essential services, recreation and cultural amenities generally beneficial to the public health, safety and general welfare of the town's residents.

Public structures means municipally owned and/or operated structures used for public purposes such as, but not limited to, administrative offices, recreational buildings, police and/or fire stations and other public safety facilities.

Quasi-commercial means any activity that would seemingly or to some degree be normally considered commercial in nature.

Rear height plane means a height limit of a building in the R-B district as measured by the maximum overall height permitted on the abutting lot to the rear. When a lot abuts more than one lot to the rear, an average maximum overall height will be used to establish the rear height plane.

Residential use means use of land or structures thereon or portions thereof for residential occupancy of a permanent or semipermanent nature with an intended occupancy period, by any one individual or family, with or without bona fide nonpaying guests, of not less than three months; except that residential uses may be occupied by any one individual or family for periods of less than three months not more frequently than three times per calendar year; and except that this definition does not include occupancy of a transient nature such as in hotel, motel or timesharing uses.

Restaurant means every building or part thereof and all accessory buildings used in connection therewith or any place or location kept, used or maintained as, advertised as or held out to the public to be a place where meals and foodstuffs are prepared and served.

Retail establishments means establishments selling commodities or goods to ultimate consumers.

School, academic means a structure or portions thereof designed or used for instructing one or more persons, either children or adults, in either general or specialized education, and including accessory uses such as administrative offices, physical education facilities and group housing facilities for students or staff; provided, however, that instruction received by children or adults in their place of residence shall not constitute a school.

School, professional or studio-type means a structure or portion thereof designed and used for the business of instructing one or more persons, either children or adults, in a specialized subject such as voice, language, dancing or modeling.

Service station means a building or lot where gasoline, oil, greases, batteries and tires are supplied and dispensed to the motor vehicle trade and where repair services other than body work and painting are rendered and where motor vehicles are washed and/or polished manually but not by machinery.

Shade tree means a tree having a height of not less than 12 feet and a spread of not less than ten feet at the time of planting.

Sign means signs and/or lettering, pictures, illustrations or trademarks, logograms, posters or characters, visible from a public or private roadway and/or sidewalk, which shall be classified as signs regardless of whether

they are freestanding or attached or painted to or on a building, structure, display board, screen surface or wall or are projected thereon by artificial lighting.

Sign, artisan means a temporary sign of mechanics, painters or other artisans or artisan concerns erected and maintained only during the period such persons or concerns are actively performing work on the premises on which such signs are erected or placed.

Sign, awning. See *Sign, banner*.

Sign, banner means a sign possessing characters, letters, illustrations, ornamentations, or that is designed so as to attract attention by a scenic effect, including pennants, balloons, and flags with or without lettering or characters, including streamers and wind-driven whirligigs, propellers or other devices, and applied to cloth, paper, fabric or like kind of material, either with or without frame, and which sign is not of permanent construction.

Sign, building identification means a sign designed and intended readily to indicate the location of a certain and specific multifamily or commercial building.

Sign, business directory means a wall mounted sign which identifies only the names of the businesses located in a via or building in a via. Said directory sign at the entrance to a via or building in a via may include the name of the via and the via address.

Sign, development means a temporary sign advertising the sale, rental or development of the premises as a whole upon which it is placed or erected.

Sign, illuminated means a sign which is lighted by electrical lighting installed thereon or therein or lighted by remotely located lights or that is produced and/or displayed by means of artificial projected light or lighted by reflected light.

Sign, individual business means a flat wall-mounted identification sign permitted for each individually town-licensed business with street or parking lot frontage and having direct ground level walk-in access from a public or private roadway, sidewalk, or parking lot in a commercially zoned district. *Sign, institutional* means a sign for building identification of schools, colleges, museums, libraries, houses of worship, or other institutions of a similar public or semipublic nature.

Sign, menu means a restaurant or take-out food establishment wall or pedestal mounted sign which identifies the menu and prices within said establishment.

Sign, official traffic means a sign placed or erected by a municipal, county, state, or federal governmental agency as a regulatory, aid-to-traffic or informational sign, in connection with control of vehicular or pedestrian traffic over a bridge, roadway, pathway or sidewalk.

Sign, property identification yard means a detached and freestanding identification sign for a Commercial zoned property supported on a monument, pillar or similar supporting structure.

Sign, sale or rental means a temporary sign advertising the sale or rental of the premises upon which it is placed or erected by the owner or broker or any other person interested in the sale or rental of the premises.

Sign, tow-way means a sign which provides notice as required by Florida Statute for any property owner, lessee, or person authorized by a property owner or lessee to tow or remove any vehicle or vessel from private property without the consent of the owner or other legally authorized person in control of that vehicle or vessel.

Sign, yard means a detached and freestanding identification sign supported on a pole or similar supporting structure.

Special exception. Special exception uses are allowable as conditional uses authorized in a zone only under the specific conditions specified in sections 134-227 through 134-233 and article III of this chapter and pursuant to the procedures in divisions 3 and 4 of article II of this chapter, but which use cannot be located in a zone as a matter of right and which may be revoked if any of the required conditions to approval and operation are violated.

Special exception structure means a structure approved as a special exception subject to sections 134-227 through 134-233, 134-897, 134-952, 134-1008, 134-1063, 134-1115, 134-1165 and 134-1214.

Statue or sculpture means an object which is fashioned, shaped and formed by hand or machine into a work of art, including but not limited to contemporary, modern, classical and/or abstract design, and that may or may not be a likeness of a person or thing.

Story means that portion of a building, other than an attic, included between the surface of any floor and the surface of the next floor above it or, if there is no floor above it, the space between such floor and the ceiling next above it. Habitable space, open patios, accessible roof decks not used exclusively for mechanical equipment, observation decks and/or similar areas located above the first or second story shall be considered a story for the purpose of this definition.

Street means a facility, either public or private, that affords the primary access to abutting property and that is intended for general traffic circulation. A street includes the entire area between street lines (right-of-way lines), including provisions for culs-de-sac.

Street line means the line between the street and abutting property. Also referred to as right-of-way line.

Structural alteration means any change, except the repair or replacement, in the supporting members of a building, such as bearing walls, columns, beams or girders, or the rearrangement of any interior partitions affecting more than 50 percent of the floor area of the building.

Structure means anything constructed, placed or erected on land, submerged land or over water, the use of which requires permanent or temporary location on the land, submerged land or over water, or attachment to something having permanent or temporary location on or over the land, submerged land, or water.

Structure, principal means a main and foremost building or structure located on a lot and in which is conducted the main and foremost use of the lot on which the building or structure is situated.

Structure, public means anything constructed, placed or erected on land, submerged land or over water by a Federal, State, County, City of West Palm Beach and City of Lake Worth governmental entities, the use of which requires permanent or temporary location on the land, submerged land or over water, or attachment to something having a permanent or temporary location on or over the land, submerged land, or water.

Sub-basement means a facility that is located underground and does not exceed in height the lowest point of the public sidewalk abutting the property or, alternately, the lowest point of the public street if there is no public sidewalk and no portion which is located beyond the confines of the outer walls of the main building located above ground level. For additional regulations and the exceptions to the regulations of sub-basements see sections 134-1610, 134-1611 and 134-2179.

Timesharing use means the use of any unit under which the exclusive right of use or occupancy of the unit for a period of less than three months circulates among various occupants in accordance with a fixed time schedule on a periodically recurring basis for a period of time established by such schedule. Such a use is permitted in the town only by special exception in the C-OPI, C-PC, C-B and R-D(2) zoning districts.

Townpersons means all full-time and seasonal residents as well as visitors staying at accommodations and employees working in establishments located within the town.

Town-serving means establishments principally oriented to serving the needs of townpersons which would not substantially rely upon the patronage of persons not defined as townpersons. Town-serving establishments, by definition, would typically contain 4,000 or less square feet of interior gross leasable area (GLA) in the C-WA district, 3,000 or less square feet of interior GLA in the C-TS and C-B districts and 2,000 or less square feet interior GLA in the C-PC district. Establishment would also not engage in advertising designed to attract other than townpersons.

Trellis means an ornamental accessory structure of lattice work over which vines are trained, usually made of narrow strips of wood which cross each other at regular intervals.

Use, principal means a main and foremost use of improved or unimproved property, such use established on the property and which may be within or without any building on the property.

Vacant land means any lot or parcel of land which is completely open, has no use associated with it or upon it and is not utilized as the required yard area for any adjoining uses.

Variance means a modification from the literal interpretation of this chapter, other than those sections relating to use requirements, subject to the procedures of divisions 3 and 4 of article II of this chapter.

Yard means an open space on the same lot with a building, such space unoccupied by structures and unobstructed from the ground upward except by trees or shrubbery or as otherwise provided in this chapter. The term "yard" may also apply to that area of the lot required to remain in open space by percentage of lot coverage regulations contained in this chapter in addition to the required front, required side or required rear yard open spaces.

Yard, front means a yard across the full width of the lot, extended from the front building line, including open porches, to the front street line of the lot.

Yard, rear means a yard extending across the full width of the lot and measured between the rear line of the lot and the rear building line of the main building. For corner lots, the rear yard shall be the yard opposite the front street line of the lot. For through lots, the rear yard fronting on the street opposite the front street line of the lot shall be the rear street yard. (Note: Refer to section 134-1636 for street lot lines.)

Yard, side means an open unoccupied space on the same lot with a building between the building line and the sideline of the lot extending through from the front building line to the rear yard or to the rear line of the lot, where no rear yard is required.

Zero datum means the point of measuring all zoning code calculations related to building height, building overall height, building height plane and cubic content ratio.

Zoning in progress means a period of time during the zoning procedures which begins with active and documented efforts by those authorized to do the zoning work which, in the normal course of municipal action, may culminate in the requisite zoning change.

(Ord. No. 2-74, § 2.10, 3-26-74; Ord. No. 3-77, § 1, 3-29-77; Ord. No. 5-78, § 1, 3-31-78; Ord. No. 7-79, §§ 1, 4, 3-30-79; Ord. No. 4-80, § 1, 3-31-80; Ord. No. 6-81, § 1(a), 3-31-81; Ord. No. 7-82, § 1(a), (b), 3-31-82; Ord. No. 2-83, § 1(a), (b), 2-23-83; Ord. No. 1-84, § 1(a), (b), (d)—(i), 3-1-84; Ord. No. 2-84, § 1(c), 3-1-84; Ord. No. 1-85, § 1(a)—(i), 2-11-85; Ord. No. 1-86, § 1(a), (c)—(e), 2-10-86; Ord. No. 1-87, § 1(a)—(d), 2-9-87; Ord. No. 1-89, § 1(a)—(i), 2-6-89; Ord. No. 1-90, § 1(a), (b), 2-5-90; Ord. No. 1-91, § 1(a), (b), 4-23-91; Ord. No. 1-92, § 1(a), 2-3-92; Ord. No. 1-93, § 1(a)—(c), 2-8-93; Ord. No. 9-93, § 1(a)—(h), 6-8-93; Ord. No. 1-94, § 1(a), 2-7-94; Ord. No. 1-96, §§ 2, 18, 19, 2-5-96; Ord. No. 1-98, § 1, 2-9-98; Ord. No. 1-99, §§ 1, 2, 4-5-99; Ord. No. 1-01, §§ 3, 5, 2-19-01; Ord. No. 1-02, §§ 3, 4, 3-12-02; Ord. No. 3-02, § 1, 7-9-02; Ord. No. 1-03, § 1, 3-11-03; Ord. No. 1-04, §§ 7, 21, 3-9-04; Ord. No. 1-06, § 1, 3-14-06; Ord. No. 1-07, § 1, 4-10-07; Ord. No. 4-08, §§ 1, 4, 7, 4-7-08; Ord. No. 11-08, §§ 1, 2, 5-12-08; Ord. No. 5-09, § 29, 4-15-09; Ord. No. 26-10, § 1, 12-15-10; Ord. No. 14-2011, § 1, 6-15-11; Ord. No. 2-2011, § 1, 7-13-11; Ord. No. 3-2012, § 1, 4-11-12; Ord. No. 10-2012, § 1, 9-11-12; Ord. No. 7-2014, § 1, 5-14-14; Ord. No. 25-2015, § 1, 11-12-15; Ord. No. 31-2015, § 1, 2-10-16; Ord. No. 24-2016, § 1, 1-11-17; Ord. No. 15-2017, § 1, 7-12-2017; Ord. No. 04-2018, § 1, 4-11-18; Ord. No. 30-2017, § 1, 1-10-18; Ord. No. 11-2018, § 1, 7-11-18; Ord. No. 02-2019, § 1, 3-19-19; Ord. No. 01-2021, § 1, 2-10-21; Ord. No. 16-2021, § 1, 8-11-21; Ord. No. 19-2021, § 1, 9-13-21; Ord. No. 20-2021, § 1, 9-13-21)

Editor's note(s)—Ord. No. 25-2015 § 8, adopted November 12, 2015 provided that the amendment to section 134-2 contained in § 1 of said ordinance shall sunset on December 13, 2017, whereupon section 134-2 as it existed prior to adoption of said ordinance shall remain in full force and effect.

Cross reference(s)—Definitions generally, § 1-2.

TOWN COUNCIL MINUTES OF MEETING HELD ON JANUARY 3, 1991 TO HEAR ZONING COMMISSION REPORT AND RECOMMENDATIONS	
I. CALL TO ORDER AND ROLL CALL: The Special Town Council Meeting to hear the 1990-91 ZONING COMMISSION REPORT and RECOMMENDATIONS was called to order by President Heeke on January 3, 1991, at 9:30 AM in the Town Hall Council Chambers. On roll call, the following were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Ilyinsky, Councilman Weinberg, Councilwoman Wiener, (Councilwoman Douthit was absent). Also attending were: Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Mr. Moore, Mr. Frank, Mr. Zimmerman from the Building & Zoning Department and Mr. Brisson of Adley, Brisson and Engman, Zoning Consultants for the Town.	Roll Call
II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Mrs. Peters. Pledge of Allegiance was let by President Pro Tem Ilyinsky.	Invocation
III. PROOF OF PUBLICATION: Mrs. Peters reported the Proof of Publication has been filed with the record.	Proof of Publication
IV. APPROVAL OF AGENDA: Mr. Ilyinsky moved for approval of the agenda. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.	Approval of Agenda
V. PROCEDURE FOR COMMENTS BY GENERAL PUBLIC: Mr. Moore suggested the zoning items will be considered and the President will give the public an opportunity to speak on any of the issues. President Heeke indicated the Mayor and Town Council will discuss the proposed changes by the staff and the Zoning Commission and when that is concluded, any member of the public may speak for three minutes and if the subject has been covered by someone else, they should just concur or disagree and after receiving public comments, the Council will go into deliberation on the various items.	Procedure for Comments by General Public
IV. ADMINISTRATIVE PROPOSALS AND/OR RECOMMENDATIONS (ITEMS 1 THROUGH 19) AND RECEIPT OF THE RECOMMENDATIONS AND REPORT OF THE ZONING COMMISSION DATED DECEMBER 3, 1990.	Admin. Proposals and Recommendations - Zoning
Mr. Ilyinsky moved that the Recommendations and Report of the Zoning Commission dated December 3, 1990 be received. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.	
ITEM NO. 1 - Amend footnote (3) of Section 4.20 A. Schedule of Lot, Yard and Bulk Regulations to read as follows: (change is underlined) "(3) <u>With the exception of arcades and colonnades in the C-WA District all buildings shall be set back so as to provide at least a ten-foot wide pedestrian walkway between the street curbline and the building, exclusive of beautification strips, not more than five (5) feet of which may be on the Town street right-of-way, where appropriate, and additionally, to provide for the minimum building front yard setback, which shall be measured from the inside (lot side) of said required pedestrian walkway</u>	
Mr. Moore called on Mr. Brisson who gave his comments: He recalled last year there were certain suggestions relative to Worth Avenue as to allowable height and Special Exceptions for extra height and the Zoning Commission and then later the Town Council requested that his office develop guidelines for design, which will be the basis for the extra zoning criteria which was to be considered this zoning season. He indicated there are eight sub items in the Design Guidelines which have been distributed to the Mayor and Council. He stated the only things he would be covering is the Design Guidelines as it relates to the zoning, which pertain to Worth Avenue. He has rearranged the order of some of the items as he felt they inter-related to each other as opposed to the way they are in the Zoning Commission Report. He has Item 1 and Item 6 together as Item 1 relates to the provision for arcades and colonnades in the Worth Avenue District which refers to Section 5.33. He stated his recommendation is arcades and colonnades be allowed providing they meet with the requirements of Section 5.33 and be subject to the Worth Avenue Design Guidelines and be subject to approval by the Architectural Commission.	
Mr. Heeke felt it made sense to handle Items 1 and 6 together.	
Mr. Moore explained the Zoning Commission's recommendation also includes the following wording:	
<u>"Within the C-WA District, arcades or colonnades may be constructed over the sidewalks in the required front yard setback, provided they meet the requirements of Section 5.33 (e)."</u>	
Mr. Adrian Winterfield addressed the Council questioning whether or not this should be handled as a Special Exception, and although the Architectural Commission will fill the same function, he viewed this as an extraordinary departure and it would be appropriate for the Council to consider and approve this before it is submitted to the Architectural Commission. He stated his confusion on the status of the guidelines as it looked to him that it was not the present intention to identify the guidelines more precisely. He stated it was not clear to him to what extent the guidelines are mandatory and to which extent the Architectural Commission maintained its dependence.	
Attorney Randolph understood this would first come to the Council to be determined as to whether or not a Special Exception would be granted. He stated from a staff standpoint, it was decided the review should first come to the Council as there are certain aspects which affect on the neighborhood which should be considered by the Council before a decision is made as to whether or not to grant the benefit. He felt if it was approved by the Town Council, it would then be subject to review by the Architectural Commission, who would report back to the Council as to whether or not it meets the design guidelines and ultimately, the Council would have the final approval as to whether it would move forward.	
Mr. Randolph stated the effect of this is if a person decides to elect to go ahead with the benefits, such as the third story or the Colannades, then these would be more than the guidelines and at that point, they would be required to meet the guidelines in order to take advantage of the benefit.	
Mr. Brisson explained this is not a Special Exception and would not have to come before the Town Council as it is now proposed. Mr. Randolph stated he was grouping all these benefits together. Mr. Brisson stated everything else is listed as a Special Exception but the colonnades and arcades they did not put into that category, however, the Council could put that restriction onto it, if they wished to view, however, it was his belief that it was something that they wished to encourage, with the architectural and safety controls.	
Mayor Marix noted it would go directly to the Architectural Commission to which Mr. Brisson agreed.	
Mr. Weinberg asked if they would be losing walking space on Worth Avenue if the colonnades were installed. Mr. Brisson stated the pillars will occupy a portion of the ten foot sidewalk but it would not interfere	

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with the walking space.

Mayor Marix asked if there would be flower pots allowed in a beautification strip? Mr. Brisson stated it was not incorporated into their recommendation and it would be a separate item. Mr. Zimmerman stated the term "beautification strip" applies to those locations where there is a grass strip between the curb and the sidewalk. Mayor Marix asked what they would be doing about flowers? Mr. Zimmerman responded this does not address flowers. Mayor Marix wondered if it should as they are a very important element of this Town. Mr. Randolph did not believe this matter should be addressing the flower pots. Mr. Moore agreed stating this is an architectural feature of a building. Mayor Marix indicated she doesn't want to close the door on flower pots. Mr. Heeke stated that language is already in the Ordinance. Mr. Brisson stated this does not apply to flower pots. Mayor Marix recalled someone wanted to eliminate flower pots and she wants to protect flower pots and since we are discussing the ten foot walkway, this may be the time we should be considering the flowers, so the flower pots are not ruled out. Mr. Moore explained within the ten foot strip, they are currently prohibited. Mayor Marix stated they have to be legalized as most of the flowers are within that ten feet, and since they are redoing this section, it would be the logical thing to state flower pots are allowed or they are not. Mr. Heeke asked if the Zoning Commission discussed this matter? Mr. Moore responded they did not. Mr. Heeke indicated he would be reluctant to get into this area unless it was addressed by the Zoning Commission.

Mr. Weinberg recalled there are palm trees along Worth Avenue and if they are allowing colonnades, would they have to remove the palm trees? Mr. Moore stated this would be at the discretion of the builder as to whether a tree would remain or would have to be removed. Mr. Brisson introduced Mr. Smith, the senior designer who was responsible for the design guidelines and to answer Mr. Weinberg's question, three feet from the street would accommodate the present locations of the palm trees.

Mr. Ilyinsky moved the recommendation of the Zoning Commission dated Dec. 3, 1990 with regards to Item 1 A be approved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Winterfield asked if the guidelines allow anything to be done to the top of the arcade and wondered if the guidelines should be attached to the Ordinance as an annex. Mr. Randolph stated they will be referenced and will become a part of the Zoning Ordinance.

ITEM SIX. Mr. Brisson explained this is a referenced item and sets forth the specific details as to the location and dimensions required.

Section 5.33 as recommended by the Zoning Commission reads as follows: (e) Within the C-WA District, arcades or colonnades may be constructed over sidewalks or ways, providing that they shall not protect nearer than three (3) feet to the face of the street curb line, nor more than ten (10) feet from the exterior wall of the building; and provided that no support shall be nearer than three (3) feet to the face of the curb and said installation shall have a minimum of nine (9) feet of vertical clearance.

The design of such arcade or colonnades shall be based upon the "Worth Avenue Design Guidelines" and shall be subject to the review and approval by the Architectural Commission.

Mr. Brisson explained he has submitted a report dated Dec. 24, 1990 and in most instances reflects that which the Zoning Commission recommended, however, there are a few instances where they have recommended differently and the recommendations are not always identical. Mr. Heeke asked Mr. Brisson to point out these differences as they moved through the report.

Mr. Weinberg asked if the space could be used as a terrace or a deck for the second floor? Mr. Moore explained this would have to be by way of a Special Exception as one story is all that is permitted without a Special Exception.

Mr. Randolph suggested if there is any question on this the language could be added that the roof of the colonnade should not be used. Mr. Moore stated it is already in the Ordinance as they cannot have a second floor without a Special Exception.

Mrs. Wiener asked how wide were the sidewalks on Worth Avenue? Mr. Moore stated most of the areas are ten feet. Mrs. Wiener asked if there was a minimum space required? Mr. Smith of Adley indicated that is not addressed in the guidelines, although when ARCOM looks at it and if something is inordinately narrow, they would recommend it be different. Mr. Heeke asked if there could be a phrase added that it should be in the same plane as any existing abutting arcade? Mr. Smith stated they could put a minimum in the guidelines if the Council wished that provision. Mrs. Wiener felt it would also protect ARCOM from getting into an arbitrary situation and she would recommend that.

Mr. Heeke stated he did not want a jagged tooth effect.

Mayor Marix suggested it be put into the Ordinance as to what the size should be. Mrs. Wiener felt it should be put into the Ordinance. Mr. Smith stated the existing colonnades on the west side of Worth Avenue are not evenly spaced. Mr. Moore suggested if they put in a minimum, they should take into account the size of the column and make it six feet. Mr. Heeke believed it should be seven feet.

Mrs. Wiener moved the adoption of Item No. 6, with a modification which sets a minimum of seven feet. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ITEM 2. Amend Section 4.10 A. Schedule of Lot, Yard and Bulk Regulations by adding a provision allowing a Special Exception for a maximum height of three stories/35' in the C-WA District with a requirement for a minimum of 25% landscaped open space, and with a reference to footnote (20) which was modified to read:

(20) One (1) story with provision for a special exception for two (2) and three stories. See Special Exception provisions in Sections 5.48 relating to allowable height and lot coverage and Sections 6.40 (Special Exception Use) and 9.60 (Site Plan Review).

In addition, the Zoning Commission recommended Section 4.20 A. "Schedule of Lot, Yard and Bulk Regulations" be amended to include a rear yard setback of ten feet for the second and third stories; and that the allowance for a Special Exception for a third story in the C-WA District be subject to a "sunset" condition, providing for its automatic repeal on April 30, 1994 unless the Town Council specifically authorizes its continuation.

Mr. Brisson stated these are items two and four in his recommendation. Mrs. Wiener asked if the sunset provision would automatically come back to the Council in three years? Mr. Moore stated it would first go to the Zoning Commission and then to the Town Council. Mrs. Wiener asked if this was automatic, to which Mr. Moore responded affirmatively.

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Mayor Marix asked if there is a large building with a smaller one next to it and this provision sunsets, would we be in the same position as we were when you have a smaller house with a larger one next to it? Mr. Randolph responded he did not believe so as everyone would be on notice there is a sunset provision.

Mrs. Wiener moved that the Town Council accept the recommendation of the Zoning Commission concerning the changes in Section 4.20 Schedule of Lot, Yard and Bulk Regulations, which is Item 2 of the Zoning Commission's Report of Dec. 3, 1990. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ITEM IV. Mr. Moore explained the Zoning Commission recommends the approval of the proposal to amend Section 4.20 L under Special Exception Uses in the C-WA District to read:

L (1) One dwelling unit located on the second floor per fifty (50) feet of frontage.

L (2) Dwelling units located on the third floor provided; the second floor is also devoted to residential use as set forth in L (1); and, provided that the combined density of residential uses on the second and third floors does not exceed two (2) dwelling units per sixty (60) feet of frontage on Worth Avenue; and, provided such special allowance is based upon the "Worth Avenue Design Guidelines," and review and approval by the Architectural Commission.

In addition, the Zoning Commission recommended that 4.20 A, Schedule of Lot, Yard and Bulk Regulations be amended to include a rear yard setback of 10' for the second and third stories; and that the allowance for residential uses on the third floor as set forth in L (1) and L (2) be subject to a "sunset" condition, providing for their automatic repeal on April 30, 1994 unless the Town Council specifically authorizes its continuation.

Mr. Winterfield felt when they refer to the frontage, only one dimension, it is assumed that all of the buildings are the same depth and that is not so. He stated if there is going to be such a limitation, he suggested it be made in terms of square feet. Mr. Brisson responded the coverage limitations will take care of that.

Mr. Randolph stated it should be made clear that on each of these items that are passed, the language will be modified so as to incorporate the Design Guidelines as part of the Zoning Ordinance.

Mrs. Wiener felt if they abide by the Guidelines, they all relate to each other and they are allowed to do these things and asked if she was interpreting that correctly to which Mr. Brisson responded affirmatively.

Mrs. Wiener moved for approval of the Zoning Commission's Recommendation of Dec. 3, 1990 with regards to Item IV, amending Section 4.20 (B) Item L (1) L (2) and the sunset provision. Seconded by Mr. Ilyinsky. On roll call the motion carried unanimously.

Motion was made by Mr. Ilyinsky that the Worth Avenue Design Guidelines be incorporated as part of this Zoning Ordinance and as adopted as fully set forth therein. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ITEM #3. The Zoning Commission recommends approval of the proposal to amend Section 4.20 A. Schedule of Lot, Yard and Bulk Regulations, Footnote (7) which would read:

7. The maximum density for hotels within the C-OPI commercial districts shall be thirty (30).

Mr. Brisson explained this is a housekeeping item. Mr. Weinberg moved for approval of the Zoning Commission's recommendation dated Dec. 3, 1990 with regards to Item 3 to modify Footnote (7) in Section 4.20 A. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ITEM 5. Mr. Heeke explained this is to add to Section 4.20 B, Schedule of Use Regulations, a new item "N" Outdoor Cafe to the list of Special Exception Uses in the C-WA District. Mr. Brisson indicated this does add to the character of Worth Avenue to allow outdoor cafes. Mr. Winterfield wondered if there should be a definition for outdoor cafes and whether they should be allowed in other commercial districts of the Town. Mr. Heeke felt these were good points and perhaps they could look at this in the next Zoning Season. Mr. Moore reported they have another section in the ordinance which deals with this and this recommendation by the Zoning Commission is to simply list this as a Special Exception Use. Mrs. Wiener moved that the Town Council adopt the Recommendation of the Zoning Commission as contained in their report dated Dec. 3, 1990 regarding Item 5, which concerns putting Outdoor Cafes into the list of Special Exception usages on Worth Avenue. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ITEM 7. Mr. Heeke explained the Zoning Commission modified the Administration's proposal to amend Section 5.48, Special Exception to Height Regulations; Special Exception Structures: to provide new height and coverage guidelines for two story and three story structures in the C-WA District, by modifying "G" to read:

C-WA District: The following provisions shall be applicable to two-story and three-story construction in the C-WA District:

1. Two story guidelines:

- a. First story coverage not more than thirty-five per cent add second story coverage not more than thirty-five (35) per cent.
- b. First Story coverage not more than fifty (50) per cent and second story coverage not more than thirty-five (35) per cent if designed under the Worth Avenue Guidelines in conformance with Section 6.40 (Q).

2. Three-story guidelines:

First story coverage not more than fifty (50) per cent; second story coverage not more than thirty-five (35) per cent; and third story coverage not more than twenty-five (25) per cent per special allowance under the Worth Avenue Design Guidelines in conformance with Section 6.40 (Q).

In addition, the Zoning Commission recommends Section 4.20 A, Schedule of Lot, Yard and Bulk Regulations, be amended to include a rear yard setback of 10' for the 2nd and 3rd stories; and that the allowance for increased coverage in 1 b and 2 above, be subject to a sunset condition, providing for their automatic repeal on April 30, 1994 unless the Town Council specifically authorizes its continuation.

Mrs. Wiener noted it was not an unanimous vote by the Zoning Commission and wondered what the negative point of view was? Mr. Robert M. Grace, the Chairman of the Zoning Commission, responded the general thinking of the minority members was that it was too dangerous to give anyone the opportunity to increase the number of stories on Worth Avenue beyond what we now have, and while they were sympathetic to the general desire to go back to better architecture, they were skeptical of making a channel effect on Worth Avenue and the top of the Coconut trees or the sun or the moon would not be able to be seen as it can be now.

Mr. Moore advised the sunset provision was not a recommendation by staff and was recommended to address some of the concerns that it may not be a workable regulation. Mayor Marix stated her concern about the canyon effect and wondered if in the meantime, until the sunset time has expired, there could be only a certain percentage of buildings allowed to be three stories, so there could be no canyon effect. Mr. Grace addressed the Council stating if one analyzed the lot coverage requirements and set back requirements, he felt that was enough of a control. Mr. Smith reported if a third story was ever put on in the middle of Worth Avenue, it would have to be set back fifty feet, so it doesn't interfere with the one and two story facades located in that portion of the Avenue, as they are not trying to change the character of Worth Avenue, but encourage what is there now. He indicated it would have to be a significant benefit and have provision of amenities in order to be approved by the Architectural Commission.

Motion was made by Mrs. Wiener to approve the adoption of Item 7, amending Section 5.48, Special Exception to the height regulations in the C-WA District, with the design guidelines as recommended by the Zoning Commission included therein. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ITEM 8 - Modification to Section 6.40 adding a new paragraph (g) was recommended by the Zoning Commission, as follows, stated Mr. Brisson:

(Q) Special Exceptions in the C-WA District which involve special allowances, pertaining to residential uses, height of coverage, as referenced in Section 5.48 of this Code, shall be based upon the Worth Avenue Design guidelines and subject to review and approval by the Architectural Commission.

The Architectural Commission, in order to grant such approval, must make an affirmative finding that the proposed Special Exception is meritorious to the Town of Palm Beach because of its general appearance and adherence to the "Worth Avenue Design Guidelines" published by Adley, Brisson, Engman, Inc.

Mr. Brisson stated since this deals with Special Exceptions, this sets forth the requirements set forth in Section 5.48 and that they be based on the Worth Avenue guidelines and review and approval of the Architectural Commission.

Mr. Heeke asked if the guidelines were sufficiently identified without the date of publication? Mr. Brisson stated the Zoning Commission did reference the text and they could add the date.

Mr. Winterfield addressed the Council indicating he thought the Council was responsible for granting Special Exceptions and he believed the language raises the question as to whether or not Council on any Special Exception refers the matter to the Architectural Commission for this type of matter, pointing out it is Council and not the Architectural Commission which grants the Special Exception.

Mr. Heeke pointed out the second paragraph stated ARCOM is to make an affirmative decision and then recommends and he didn't believe there was any abrogation of the Town Council's authority here. Mr. Randolph stated perhaps this should be clarified that the approval is not a final approval and the final approval as to the granting of the Special Exception will be done by the Town Council. Mr. Brisson stated perhaps the last line should state review and recommendation by the Architectural Commission and in the final paragraph they could state: The Architectural Commission, in order to make a positive recommendation, must make and then continue on with the wording as printed, as this will take out the approval aspect but still have a positive recommendation.

Mr. Heeke summarized the comments indicating that in the first paragraph of the new wording they would change the word "approval" to "recommendation" and in the second paragraph eliminate "grant such approval" and substitute "make a positive recommendation". Mrs. Wiener noted it goes to Council for the Special Exception grant, then goes to ARCOM, and then comes back to the Council and thought it should be put somewhere that this is the procedure. Mr. Heeke suggested that the wording in the first paragraph also be changed to have "subject to" modified to read: "contingent upon".

Mr. Ilyinsky moved the recommendations for amending Section 6.40 Special Exception Uses be approved as modified. Seconded by Mrs. Wiener. Mr. Heeke noted the modifications would be the addition of the date to the Design Guidelines and in the first paragraph "subject to review and approval" will read "contingent upon review and recommendation" and in the second paragraph, the words "grant such approval" would be changed to "make a positive recommendation".

Item 1 B - Mr. Moore stated the Zoning Commission recommended approval of the Section 6.40 by adding a new paragraph (g) as follows: That the proposed use will not place a greater burden, than would be caused by a permitted use, on municipal police services due to increased traffic, or on fire protection services due to the existence of, or increased potential for fire/safety code violations.

Mayor Marix wondered if Code Enforcement should be added to this. Mr. Moore stated this would be prejudging as Code Enforcement is after the fact. Mayor Marix thought if an additional burden is put on the police and fire, it might also be put on the Code Enforcement people.

Mrs. Wiener asked what they were specifically thinking about to come up with this particular wording and Mr. Weinberg asked for a definition of "greater burden". Mr. Moore advised this was originally proposed by a citizen last year and the matter was studied as originally it would have prohibited any Special Exceptions at all being granted if it was going to increase any burden on Police or Fire and the Zoning Commission felt it was too strict a proposal and asked for it to be restudied and the recommendation as modified by the Zoning Commission. Mrs. Wiener asked for an example. Mr. Moore responded a restaurant would be an example. Mayor Marix thought the restaurant which was requested next to the Post Office would be a good example. Mr. Randolph stated it would be based on whether or not either the Police or Fire Departments would have to have more manpower as a result of a Special Exception being granted. Mr. Moore stated every month before the Special Exceptions or Variances are heard by the Council, they are reviewed with the Police and Fire Departments and this would not be anything new, however, the difference here is that the Council would have to take this into direct consideration in the granting of a Special Exception. Mrs. Wiener felt there was a difference between more usage or making it difficult to provide a service and recalled the staff comments on a Special Exception that was requested by the Villa Plati and it was not because there would be more services required but it would be difficult to provide the services if they were required, so she had a problem with this recommendation.

Mrs. Wiener did not believe the person who proposed this originally would recognize it in this form. Mr. Randolph agreed it was modified beyond the initial intent because staff felt very uncomfortable with the initial recommendation because any application for Special Exception will increase the burden, as would the permitted use, and that is why it was decided to state it would cause no more services than would a Permitted Use.

Mr. Winterfield suggested the language is surplus as it is covered by 6.40 (B). Attorney Randolph did not agree as this language is stronger than what is in the section to which Mr. Winterfield refers.

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Mr. Heeke handed the gavel to Mr. Ilyinsky to chair the meeting and moved that Item 1 B as recommended by the Zoning Commission to amend Section 6.40, Special Exception Uses to add new paragraph (g) be approved. Seconded by Mr. Ilyinsky. On roll call, the motion tied with Mrs. Wiener and Mr. Weinberg voting against the motion and Mr. Ilyinsky and Mr. Heeke voting for the motion. Mayor Marix broke the tie and voted for the motion. Motion carried by vote of 3-2.

ITEM 1 C and 1 D. Mr. Moore explained this was an item submitted the year before and was studied further this year and the Zoning Commission recommended disapproval of the proposal to add a definition for the Use Variance and Dimensional Variance. Motion was made by Mr. Ilyinsky to accept the Zoning Commission's recommendation to not approve this proposal. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ITEM 2. Mr. Heeke indicated this is a recommendation by the Zoning Commission to amend Section 6.33 "Signs in Commercial Districts" to read as follows and to amend paragraph 6.33 (c) Location to read:

One building identification sign which is installed flat against the main wall of a building may be provided for each building street frontage provided such sign does not exceed twenty (20) square feet in area. Additionally, business signs which are installed flat against the main wall of a building are permitted for each licensed business in a building in accordance with the following regulations:

Amend Section 6.33 (c) to read as follows:

(c) Location. Tenants shall be allowed signs on first floor merchandise display areas, providing that the sign area for each individual display area shall not exceed its proportionate share of the total allowable maximum gross surface area for the building as calculated under (a) above and that the total gross surface area of all signs displayed on the building shall not exceed the maximum for that building as calculated under (a) above.

Mr. Moore explained this language permits upper storage tenants to have signage not to exceed what would be permitted on the first floor, as divided by the total of what would be permitted on the first floor. However, he stated, the signs would have to be installed on the first floor and the landlord would make the allocation. Mr. Ilyinsky moved for approval of the Zoning Commission's Recommendation on Item 2 amending Section 6.33. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ITEM 3. Mr. Moore explained the Zoning Commission recommended approval of the recommendation as submitted by the Town Administration and modified by the Zoning Commission to amend Section 6.40, Special Exception Uses to read as follows:

(1) For Special Exceptions granted in the C-TS, C-WA, C-PC and C-B Districts, the following requirements in addition to all other applicable requirements as set forth in this Chapter (Ordinance), shall be met:

(1) The proposed use will not attract the principal portions of its customers/clients from off-island locations. The applicant shall submit evidence satisfactory to the Town Council that not less than fifty (50) per cent of the customers of the proposed use will be "town persons";

(2) In the event an owner or tenant of a property previously granted a Special Exception subsequent to the enactment of Ordinance No. 4-80 should be required to obtain a new occupational license from the Town, such new business shall also be subject to approval by the Town Council per the requirements of (L) (1) above.

Mr. Brisson recalled the purpose of this is to allow the Council to review applications for businesses which have been granted Special Exceptions so it can be proven to the Council's satisfaction that they do indeed meet the requirements of Sub Section (L) which relates to Town serving. He indicated he believed this probably should be a new footnote No. 3 under the Special Exception Uses for those Districts and referred to Section 14 of his memorandum which is somewhat different than what the Zoning Commission recommended. He indicated another change has been made subsequent to the Zoning Commission Hearings as when the Town Council considers Special Exceptions in any of these commercial districts, regardless of whether it is for the 2000 feet or for some other use that requires a Special Exception, they have been considering Sub Section L, as this is required in their normal review of the Special Exceptions and that being the case, they have suggested they not limit the reconsideration to just those Special Exceptions for 2000 square feet but to any use and this would assure the Council it is meeting the intent of when the Special Exception was originally approved. Mr. Heeke wondered if this would eliminate the problem of them forgetting, in the event there is a change in occupancy. Mr. Brisson believed it would.

Mr. Moore indicated this would lay out specifically that it must happen, for example, it would state it has to be for this particular property and use only and for this user and this would actually quantify and be specific.

Mr. Winterfield addressed the Council indicating there is one Special Exception Use which would not fall into the Intent of L-1. He noted Public or Private Parking lots almost by definition may be there for other than Town-persons.

Mrs. Wiener felt this was a housekeeping item. Mr. Heeke asked about the renewal and new occupational license, and wondered if language should be added "Other than renewal" in order to get around that. Mr. Moore agreed the intent was for a new license and Mr. Winterfield is technically correct.

Mr. Ilyinsky moved that Item 3 as modified by Mr. Brisson be approved and with the further modification made by Mr. Heeke to add the words "Other than renewal" be adopted. Seconded by Mrs. Wiener.

The new language would read:

(2) in the event an owner or tenant of a property located within the C-TS, C-WA, C-PC or C-B Districts and granted a Special Exception prior to the passage of Ordinance No. 4-80 is required to obtain a new occupational license from the Town, such new use, other than renewal, shall also be subject to the approval by the Town Council per the requirements of (L) (1) above.

On roll call, the motion carried unanimously to approve.

ITEM 4 - Mr. Heeke noted this item was to require private mail boxes to be a Special Exception was

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