



TOWN OF PALM BEACH

Minutes of the Development Review
Town Council Meeting
Held on August 9, 2023

I. CALL TO ORDER AND ROLL CALL

The Development Review Town Council Meeting was called to order on August 9, 2023, at 9:30 a.m. On roll call, all elected officials were found to be present, with Mayor Moore participating virtually.

II. COMMENTS OF MAYOR DANIELLE H. MOORE

Mayor Moore stated she did not have any comments.

III. COMMENTS OF TOWN COUNCIL MEMBERS

Council Member Araskog asked to discuss a possible template for future declaration of use agreements. She suggested that the item be placed on the September agenda. Mr. Bergman said he would do his best to prepare a template for that meeting.

IV. COMMUNICATIONS FROM CITIZENS – 3-MINUTE LIMIT, PLEASE

No one indicated a desire to speak.

V. APPROVAL OF AGENDA

Wayne Bergman, Director of Planning, Zoning and Building, introduced one modification to the agenda.

Addition of Waiver of Section 18-237, For Building Permit Extension at 150 El Vedado Road under VII., D. Time Extensions and Waivers.

Council President Zeidman asked to discuss Time Extensions, Building Permit Waivers, and the method in which neighbors are noticed under Item IX - Any Other Matters.

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

Council Member Araskog asked to hear updates on Code Review at upcoming meetings where Sean Suder would not be presenting. Mr. Bergman stated that Mr. Suder would be presenting an update in September.

VI. DEVELOPMENT REVIEWS

A. **Declaration of Use Agreements**

1. **ZON-23-046 329 WORTH AVE - SPECIAL EXCEPTION WITH SITE PLAN REVIEW - CHURCHILL CIGAR COMPANY DECLARATION OF USE AGREEMENT**

Council Member Araskog asked if the use listed in the agreement could be changed from bar/nightclub to something different so a future tenant could not use the space as a bar/nightclub.

Maura Ziska, attorney for the applicant, stated she could change the use to a cigar lounge. Town Attorney Randolph advised that the approval did not run with the land and that any future tenant would need a special exception from the Town Council.

Mr. Bergman stated that he had no comments regarding the application.

Council Member Araskog asked to add “and any other issues that may arise” to Article 4, Number 3. Ms. Ziska agreed to the change.

Council President Zeidman called for public comment. No one indicated a desire to speak.

Motion made by Council Member Araskog and seconded by Council Member Crampton to approve the declaration of use agreement as amended, with the addition “and any other issues that may arise.” to Article 4, Number 3 and the condition that the bar/lounge shall return to Town Council in May 2024 to review the operation of the business. Motion carried unanimously, 5-0.

2. **ZON-23-019 (COA-23-002) 363 COCOANUT ROW - THE VINETA HOTEL (COMBO) - SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCES** - Declaration of Use Agreement & Seating Chart Review **2:00 PM TIME CERTAIN**

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

M. Timothy Hanlon, attorney on behalf of the Oetker Collection, noted that the owners and operators had made great efforts to collaborate with the Town and surrounding property owners on this project. He reviewed some of the changes that had been made to the project since its inception.

Council Member Araskog expressed her opinion regarding restrictions in the declaration of use agreement.

Council Member Cooney asked if Town Attorney Joanne O’Conner would review changes in the declaration of use agreement made since the last meeting.

Attorney O’Conner reviewed all the changes in the agreement, page by page.

Attorney Randolph advised that he had suggested a change to Article VI, which indicated that any future owner or operator would have to renegotiate a new declaration of use agreement.

Council Member Araskog commented about some conditions she thought the Town Council had requested to be included. She stated she did not see those changes in the agreement. Additionally, she reviewed items she believed were left out of the agreement.

Council Member Cooney asked about a new item added to Article VI. He wondered how it would relate to Article II. Town Attorney Randolph advised that he thought it was consistent, and once notice was provided, renegotiation of use would commence.

Council President Zeidman reviewed the items brought up by Council Member Araskog. After discussion, the Town Council decided not to include a volume-limiting agent or any such language relating to landscaping. Attorney Hanlon agreed to include a statement that would eliminate the opportunity for a dance floor and a statement that would ban the use of an independent subwoofer under paragraph 6(a).

Duarte Bon de Sousa, Oetker Collection, raised the issue of the need to control the overall volume. He concurred with including language to disallow additional independent subwoofer equipment.

Council President Zeidman asked Ms. Churney to read the motion from the April 2023, Town Council meeting. Ms. Churney read the motion to the Town Council.

Council President Zeidman warned that a Declaration of Use Agreement was intended to provide protection for residents and the Town as a whole, but it was not possible to include every potential issue that might arise.

Following extensive discussion about the declaration of use agreement and the language therein, the following decisions were reached by a majority of the council:

Item #5 – The following sentence shall remain as written: “as shown in the hour-by-hour seating plan, all food and beverage service should close to the public no later than midnight. Then added was “for purposes of this agreement, the term closed to the public shall specifically not apply to food and beverage service in specific rooms that offer services at a given time only to hotel guests, employees, owners of the property, owners of the hotel operator and guests of hotel guests.”

Item #6 – The definition of “Largely Electronic Music” shall remain as written since sound has to be controlled.

Addition of language to disallow any additional independent subwoofer.

Item #6B – The wording “without limitation” shall be removed, and the remainder shall remain as written, to allow ambient music outdoors.

Item #7 shall remain as written.

Council President Zeidman stated that the Town Council was trying to reach a point where the neighbors would be protected, and the business would be viable.

Item #15 – A majority of the Town Council agreed that a review would occur after the first two seasons. If neighborhood complaints constituted a violation of the declaration of use agreement or the town code, those complaints would be addressed.

Mr. Randolph asked Mr. Hanlon if he was concerned about language that referred to a change in ownership, or if he would rather have the agreement read: “in the event of a change in operator, the owner shall be required to renegotiate the declaration of use agreement.” Mr. Hanlon said that legally, if an owner would sell, he would sell pursuant to the operating agreement with the operator and subject to zoning rules and the Declaration of Use Agreement.

Mr. Randolph clarified that if an owner sold, the owner would be bound by the Declaration of Use Agreement. However, if there were a new operator, the agreement would have to be renegotiated. Mr. Hanlon affirmed his understanding.

Council Member Araskog noted her biggest concerns were the guests of guests and hotel staff. She noted that a discussion should take place regarding what time the music would end. Mr. Hanlon said it was not addressed in the agreement because there was a restriction to prohibit music that may be heard outside the facility.

Council President Zeidman called for public comment.

John Corey, 426 Australian Avenue, thought the declaration of use agreement should be simple and straightforward for anyone, including the Code Enforcement team, to interpret. He expressed concern about the number of seats allowed and the closing time set forth in the agreement.

Maisie Grace, 247 Seaspray Avenue, expressed concern about the restaurant’s closing time and asked for a hard stop at midnight. She also expressed concern about reaching a Code Enforcement officer after 5 p.m. and, if contacted, whether Code Enforcement personnel would be able to ascertain what was allowed or disallowed according to the agreement and the town code.

Council President Pro Tem Lindsay thought the hotel operation, as it pertained to the agreement’s contents, should be reviewed before Easter, during the

season. She felt there had been enough language incorporated into the agreement. Council President Zeidman thought that was a good suggestion; however, she wanted to ensure the facility was open long enough to warrant a review.

Motion made by Council Member Cooney and seconded by Council Member Crampton to approve the declaration of use agreement as amended by the Town Council and Attorneys during the meeting. Motion carried 4-1, with Council Member Araskog dissenting.

B. Appeals

1. Appeal of ARCOM Approval of 232 Colonial Lane at the May 24, 2023, Meeting
Scott M. Zaslav, Zaslav & Armbruster, P.A.

Attorney Scott Zaslav, representing Steven and Heather Wolf at 225 Monterey Road, outlined his arguments for the reasons he believed the Architectural Review Commission (ARCOM) decision to approve the request at 232 Colonial Lane should be overturned.

Attorney Jamie Crowley, representing the owners at 232 Colonial Lane, provided rebuttal arguments to the statements made by Attorney Zaslav.

Attorney Zaslav responded to Attorney Crowley's comments.

Town Attorney Randolph stated that the Town Code did not require ARCOM members to state the evidence when approving a project; however, the criteria were used for denial. He further noted case law, which stated that the reviewing body would not reweigh the evidence but would only look at the record to determine whether there was substantial competent evidence to support the decision made. The role of the Town Council was not an application of the law. The Council reviewed the record to ensure substantial competent evidence was available for ARCOM.

Council Member Araskog asked Mr. Zaslav to explain how evidence was presented to indicate that there was an easement. Mr. Zaslav cited testimony, which was reflected on page 8 of his provided transcript. He added that ARCOM did not state any of the criteria considered when discussing the project.

Council Member Crampton did not see an issue with the project and thought the owners of 232 Colonial Lane should have a right to fully use their backyard. He noted that both sides of the fence would want privacy. Attorney Zaslav argued that the owner had the right to use their property, but not to the detriment or destruction of their neighbor's property.

Mr. Crowley noted it was not the owner's responsibility to allow the neighbors access to their property so they could maintain their landscaping.

Council Member Araskog asked if removing the wall would lessen the protection from the noise. Attorney Zaslav responded that Mr. Mizell had testified that it would reduce the noise protection. Council Member Araskog asked when the Town's engineer had reviewed the project. Mr. Bergman responded that the Town's engineer's review would be conducted before the issuance of a building permit to determine whether there was a problem. Council Member Araskog asked Attorney Crowley to explain the competent, substantial evidence that supported the noise pollution would not increase with the removal of the wall. Council Member Araskog asked Mr. Randolph if the Town Council could deny and return the matter to ARCOM. Mr. Randolph said it could be remanded back to ARCOM for clarification.

Council President Zeidman thought the issue was simple and that this situation was more of a property dispute. She added that she wished the two property owners had resolved the issues before the item was presented to ARCOM. She thought ARCOM had acted appropriately, and that they had considered the issue at length.

Council President Pro Tem Lindsay agreed that it was too bad the neighbors could not agree. She thought this situation would be more common now that many of the easements were being abandoned for the undergrounding of utilities. She also thought that ARCOM had acted appropriately. She thought the material replacements were sensitive when she looked at the record, but she still believed that ARCOM acted appropriately.

Mayor Moore agreed that, based on the record, ARCOM had acted appropriately.

Council Member Araskog had difficulty with the noise pollution and wondered if there was competent, substantial evidence in the record that this was considered. Attorney Crowley stated there was still an opportunity for discussion with the neighbors.

Motion made by Council Member Crampton and seconded by Council President Pro Tem Lindsay to deny the appeal of the ARCOM action for property located at 232 Colonial Lane, based on the discussion that there was competent, substantial evidence and that the Architectural Review Commission acted appropriately. Motion carried 4-1, with Council Member Araskog dissenting.

Council Member Araskog asked staff to review the issue of removing hedges that would destroy neighbors' privacy.

Clerk's note: A short break was taken at 10:53 a.m. The meeting resumed at 11:00 a.m.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. **ZON-22-021 (ARC-22-022) 160 SEAVIEW AVE (COMBO) – VARIANCES** The applicant, Coral Beach Corporation (Angela Feldman, President) and Seaview Holdings, Inc. (David Feldman, Director), has filed an application requesting Town Council review for variances to exceed the point of measurement elevation higher than allowed to be measured from and to reduce the required street side yard setback for a new guest house on combined parcels at 160 and 170 Seaview Avenue. ARCOM will perform design review of the application. [The Architectural Review Commission deferred the project to their March 29, 2023, meeting.] [This project shall be deferred to the September 13, 2023, Town Council meeting pending review by the Architectural Review Commission.]
Please note: This item was deferred to the September 13, 2023, meeting at the Approval of the Agenda, Item V.

- b. **ZON-23-014 (ARC-22-243) 302 SEABREEZE AVE (COMBO) - SITE PLAN REVIEW AND VARIANCE** The applicant, Sean Rooney, has filed an application requesting town council review and approval for development of a new two-story single-family structure on a parcel, comprised of platted lots, which is deficient in lot width and lot area in the R-B zoning district requiring Site Plan Review, and a variance to provide one garage parking spot in lieu of the two required. The Architectural Commission will perform design review of the application. [The Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause negative impact to the subject property. The Architectural Review Commission approved this project with conditions. Carried 7-0.]

Council Members Araskog, Cooney, and Mayor Moore declared ex-parte communications.

Maura Ziska, attorney for the applicant, presented an overview of the project and the zoning requirements for the project.

Peter Papadopoulos, Smith and Moore Architects, presented the architectural plans proposed for a new residence.

Director Wayne Bergman provided staff comments.

Council Member Cooney was supportive of the request.

Council Member Araskog was worried about the proposed location of the generator. Attorney Ziska stated that the adjacent neighbor was in favor of the conditions. Mr. Papadopoulos stated that the generator's placement complied with the Town Code. He further described the location and his discussions with the neighbor. Council Member Araskog asked about the hardship for the two variances. Attorney Ziska outlined the hardship.

Council President Zeidman called for public comment. No one indicated a desire to speak.

Motion made by Council Member Cooney and seconded by Council Member Araskog that Site Plan Review No. ZON-23-014 be approved based upon the finding that approval of the site plan will not adversely affect the public interest, and that all zoning requirements governing the use have been met and that satisfactory provision and arrangement has been made concerning items (1) through (11) of section 134-329. Motion carried unanimously, 5-0.

Motion made by Council Member Cooney and seconded by Council President Pro Tem Lindsay that Variance No. ZON-23-014 shall be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(A), items 1 through 7 have been met. Motion carried unanimously, 5-0.

- c. **ZON-22-121 (HSB-22-012) 428 CHILEAN AVE (COMBO) - VARIANCE** The applicant, David Mooney, has filed an application requesting Town Council review and approval for a variance to exceed maximum equipment screening wall height, to screen equipment in the west side yard. The Landmarks Preservation Commission shall perform design and flood plain variance review of the application. [The Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause negative impact to the subject property. The Landmarks Preservation Commission approved this project with conditions. Carried 7-0.]

Council Member Cooney declared ex-parte communications.

Guy Rabideau, attorney for the applicant, presented an overview of the project and the zoning requirements for the project.

Council Member Araskog asked about the hardship for the request of the variances. Mr. Rabideau responded and described the conditions for the variances.

Council President Zeidman called for public comment. No one indicated a desire to speak.

Motion made by Council Member Cooney and seconded by Council Member Araskog that Variance No. ZON-22-121 shall be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201 (A), items 1 through 7, have been met and providing that the property owner did voluntarily commit that prior to the issuance of a building permit to either provide a recorded utility easement or an easement agreement satisfactory to the Town that ensures a recorded easement will be granted, if necessary, to underground utilities in the area. Motion carried unanimously, 5-0.

- d. **ZON-23-002 (ARC-22-241) 624 ISLAND DR (COMBO) - VARIANCES** The applicant, Holly Ann Bartlett, as Trustee of the 1220 South Ocean Boulevard Trust dated May 23, 2013, has filed an

application requesting Town Council review and approval Variances (1) to exceed the maximum amount of lot coverage, (2) to exceed the maximum amount of Cubic Content Ratio (CCR), (3) to exceed the maximum allowable building height, and (4) to exceed the maximum allowable overall building height, in the R-B zoning district in conjunction with the enclosure of an existing open-air courtyard of a two-story residence with a new clerestory. The Architectural Commission will perform design review of the application. [The Architectural Review Commission deferred this project for restudy to the May 24, 2023, meeting. Carried 7-0.] [This project shall be deferred to the September 13, 2023, Town Council meeting pending review by the Architectural Review Commission.]

Please note: This item was deferred to the September 13, 2023, meeting at the Approval of the Agenda, Item V.

- e. **ZON-23-020 (COA-23-003) 139 N COUNTY RD - THE PARAMOUNT THEATER (COMBO) - SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCES** The applicant, WEG Paramount LLC, has filed an application requesting Town Council review and approval for a Special Exception with Site Plan Review for the renovation of an existing Landmarked theater structure and the construction of a new three-story mixed use (retail and four residential units) development including Special Exception requests (1) to permit Private Club use in the C-TS district, (2) for square footage > 3,000 SF in the C-TS district, (3) for Restaurant use in the C-TS district, (4) for Outdoor seating use (100 seats) associated with a restaurant or private club in the C-TS district, (5) for a maximum of two stories in the C-TS district and (6) for shared parking in the C-TS district. The applicant is also seeking Site Plan Review for new building(s) or for changes in a permitted use in Sec. 134- 1107 which involve more than 2000 square feet of building floor area in the C-TS zoning district. Additionally, the applicant is seeking review and approval for Variances (1) to reduce the required front yard for new construction, (2) front side street yard for new construction, (3) and rear yard setback requirements for new construction, (4) to allow three stories in lieu of two stories in CTS district, (5) to exceed the maximum height, (6) to exceed the maximum overall building height, (7) to exceed the maximum allowable lot coverage limitation, (8) to exceed the maximum building length permitted, (9) to exceed the maximum building size (floor area) permitted, (10) to reduce the required overall landscape open space, (11) to reduce the required front yard landscape open space, (12) to reduce the required front yard setback for the subterranean parking level, (13) front side street yard setback for the subterranean parking level, (14) and rear yard setback requirements for the subterranean parking level, (15) a variance to permit tandem and triple stacking for parking in the garage structure, (16) a variance to eliminate the required onsite loading space, (17) a variance to reduce the required drive aisle width, (18) a variance to exceed the maximum drive aisle slope in a garage, (19) a variance to exceed the maximum height of a perimeter wall on a side or rear property line, and (20) a variance to allow a generator (between 64kW-100kW) within a required side or rear setback, in conjunction with the renovation of an existing Landmarked theater structure and the construction of a new three-story mixed use (retail and four residential units) development with two subterranean

parking levels (127 parked spaces). The Landmarks Preservation Commission will perform the design review. [This project shall be deferred indefinitely and will be advertised when the applicant is ready to bring the project forward for Town Council review.]

Please note: This item was deferred indefinitely at the Approval of the Agenda, Item V.

- f. **ZON-23-050 (ARC-23-036) 243 SEASPRAY AVE (COMBO) – VARIANCES** The applicant, 243 Seaspray LLC (Larry Meyer, Manager), has filed an application requesting Town Council review and approval for (2) variances for (1) a reduced west side yard setback and (2) a reduced north rear yard setback, as it pertains to construction of a new two-story single-family residence. The Architectural Commission shall perform design review of the application. [This project no longer has a zoning component and shall be withdrawn from the Town Council agenda.]

Please note: This item was withdrawn at the Approval of the Agenda, Item V.

- g. **ZON-23-063 (ARC-23-039) 599 S COUNTY RD (COMBO) – VARIANCES** The applicant SAS Realty Enterprises LLC (Greg Simonian, President), has filed an application requesting Town Council review and approval for a variance to exceed the maximum overall building height, as part of the construction of a new two-story single family dwelling. The Architectural Commission shall perform design review of the application. [This project shall be deferred to the September 13, 2023, Town Council meeting, pending review by the Architectural Review Commission.]

Please note: This item was deferred to the September 13, 2023, meeting at the Approval of the Agenda, Item V.

- h. **ZON-23-059 (ARC-23-063) 1265 N LAKE WAY (COMBO) – SITE PLAN REVIEW** The applicant, 1265 N Lake Way LLC (Maura Ziska, Manager), has filed an application requesting Town Council Site Plan Review for development of single-family dwelling on a lot deficient in lot width in the R-B zoning district. The Architectural Commission shall perform design review of the application. [This project shall be deferred to the September 13, 2023, Town Council meeting pending review by the Architectural Review Commission.]

Please note: This item was deferred to the September 13, 2023, meeting at the Approval of the Agenda, Item V.

- h. **ZON-23-021 (ARC-23-015) 320 CHILEAN AVE (COMBO) - VARIANCES** The applicants, Valentin and Yaz Hernandez, have filed an application requesting Town Council review and approval for Site Plan Review and (6) variances, including (1) to reduce side setbacks for the installation of a new pool, (2) to reduce rear setbacks for a new pool heater, (3) to place pool equipment within a yard setback more than 25 linear feet away from the pool water's edge, (4) to reduce overall Landscape Open Space below the required amount, (5) to reduce Front Yard Open Space below the required amount, and

(6) to reduce the required parking spaces, in conjunction with overall site plan modifications for an existing two-story condominium building, including landscape and hardscape improvements and the installation of a pool. The Architectural Commission will perform the design review component of the application. [The Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause negative impact to the subject property. The Architectural Review Commission approved this project. Carried 7-0.]

Council Member Cooney and Araskog declared ex-parte communications.

Adam Mills, Environment Design Group, presented an overview of the project and the zoning requirements for the project. He showed the proposed landscape and hardscape plans for the project.

Director Wayne Bergman provided staff comments.

Council Member Araskog asked if the units had a unity of title. She expressed concern for the owners of the other units.

Valentin Hernandez, the owner, discussed the units he owned in the building and the plans for his residence. He discussed his desire to swim daily.

Council Member Araskog discussed the location of the pool and wondered about the hardship of the proposed location. Mr. Mills said the property was extremely tight, and relocating the pool would not be possible.

Council President Zeidman asked about the parking requirement for the units. Mr. Bergman responded and discussed that the unity of title would be required for the ground units. A discussion ensued regarding the unity of title. He said if there were 5 units, a total of 13 parking spaces would be required.

James Murphy, Assistant Director of Planning, Zoning and Building, discussed the current number of units and the parking spaces required.

Council President Zeidman inquired about whether there were any neighbor objections. Mr. Mills responded that there was an existing wall, and he had not heard any objection from neighbors. Council President Zeidman also asked about the location of the pool equipment.

Council Araskog wondered why the pool width could not be reduced to six feet. She was not in favor of the expressed hardship.

Council Member Crampton thought two feet was di minimis, but he understood Council Member Araskog's concerns. Council Member

Crampton thought it was within the Town Council's discretion to allow the request.

Council President Zeidman thought the request would be almost compliant with the Code if the pool were reduced. Mr. Mills advocated for the extra feet.

Mr. Hernandez advocated for a pool 8 feet in width. He said a pool that was only 6 feet in width would be very tight when two or more people wanted to use the pool simultaneously.

Council President Zeidman called for public comment. No one indicated a desire to speak.

Mayor Moore mentioned her 10-foot-wide pool, which she thought was too narrow. She thought decreasing the density by going from 8 units to 3 owners on the island would be a positive step that should be taken into consideration.

Motion made by Council President Pro Tem Lindsay and seconded by Council Member Crampton that Variance No. ZON-23-021 shall be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201 (A), items 1 through 7 have been met and providing that the property owner did voluntarily commit that prior to the issuance of a building permit to either provide a recorded utility easement or an easement agreement satisfactory to the Town that ensures a recorded easement will be granted, if necessary, to underground utilities in the area.

Council Member Araskog expressed concern for future applications that the Town may receive for similar pools. She also believed that there was no hardship for the application.

Motion carried 3-2, with Council Members Araskog and Cooney dissenting.

- j. **ZON-23-054 (ARC-23-064) 1473 N OCEAN BLVD (COMBO) – VARIANCES** The applicants, William C. Powers & Marianne Elaine Elmasri, have filed an application requesting Town Council review and approval for (2) variances from (1-2) north and south side setback requirements. The Architectural Commission shall perform design review of the application. [This project shall be deferred to the September 13, 2023, Town Council meeting, pending review by the Architectural Review Commission.]

Please note: This item was deferred to the September 13, 2023, meeting at the Approval of the Agenda, Item V.

2. New Business

- a. **ZON-23-078 (ARC-23-112) 225 WORTH AVE (COMBO) - SITE PLAN REVIEW AND VARIANCE** The applicant, 225

WORTH AVENUE HOLDINGS LLC, has filed an application requesting Town Council review and approval for Site Plan Review for hardscape modifications in the rear (north) of the property, including a Variance (1) to reduce the nonconforming landscape open space requirement. The Architectural Commission shall perform design review of the application.

There were no declarations of ex-parte communications.

Polly Daughtery, Paradelo Burgess Design Studio, presented an overview of the project and the zoning requirements for the project.

Director Wayne Bergman provided staff comments.

Council President Pro Tem Lindsay asked if the project would require native landscaping, which Mr. Bergman confirmed it would. Council President Pro Tem Lindsay encouraged the professional to use native materials and sand set pavers to improve drainage.

Council Member Cooney thought the request was reasonable and the property would be improved.

Council Member Crampton agreed with Council Member Cooney. He was supportive of Council President Pro Tem Lindsay's recommendation.

Council Member Araskog asked about permeable pavers. Council Member Araskog also asked about the existing landscaping on the site. Ms. Daughtery responded. Council Member Araskog asked about the hardship for the requested variances, to which Ms. Daughtery responded.

Council President Zeidman called for public comment. No one indicated a desire to speak.

Motion made by Council Member Cooney and seconded by Council President Pro Tem Lindsay that Site Plan Review No. ZON-23-078 be approved finding that approval of the Site Plan will not adversely affect the public interest, that all zoning requirements governing the use have been met and that satisfactory provision and arrangement has been made concerning items (1) through (11) of Section 134-329, and with the condition that the proposed landscape materials shall be compliant with the native planting requirements, permeable pavers shall be used and the Architectural Review Commission approves the project, and providing that the property owner did voluntarily commit that prior to the issuance of a building permit to either provide a recorded utility easement or an easement agreement satisfactory to the Town that ensures a recorded easement will be granted, if necessary, to underground utilities in the area. Motion carried unanimously, 5-0.

Motion made by Council Member Cooney and seconded by Council Member Araskog that Variance No. ZON-23-078 shall be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201 (A), items 1 through 7 have been met, and with the condition that the proposed landscape materials shall be compliant with the native planting requirements, permeable pavers shall be used, and the Architectural Review Commission approves the project. Motion carried unanimously, 5-0.

- b. **ZON-23-079 (ARC-23-110) 2773 S OCEAN BLVD (COMBO) - SITE PLAN REVIEW AND VARIANCES** The applicant, Carlyle House Condominium, has filed an application requesting Town Council review and approval for Site Plan Review for demolition and redesign of the north and south parking areas, landscaping, new monument signage, and entry canopies, including Variances (1) to exceed the maximum allowable lot coverage, and (2) to reduce the amount of landscape open space, and (3) to maintain two nonconforming yard identification signs and (4) to exceed the maximum size of the nonconforming yard identification signs in the r-o-w, to an existing multifamily building. The Architectural Commission shall perform design review of the application.

There were no declarations of ex-parte communications.

Maura Ziska, attorney for the applicant, presented an overview of the project and the zoning requirements for the project.

Don Skowron, BGS Landscape, Architecture & Engineering, presented the landscape and hardscape plans proposed for the site.

Director Wayne Bergman provided staff comments. He noted that two of the original four variances requested have been removed.

Council President Pro Tem Lindsay asked the professional to consider using permeable pavers for the parking lot materials. Mr. Skowron stated he would consider using a permeable paver material.

Council Member Crampton agreed that the variance request was a small request.

Mayor Moore cautioned that any of the proposed changes were not something that would need to be removed due to impending FDOT changes. Mr. Skowron responded. She thought permeable pavers would significantly increase the expense of the materials, although she understood Council President Pro Tem Lindsay's suggestion.

Council Member Cooney understood that permeable pavers were a better choice; however, the owners may not support the additional cost of the material. He thought that with a lot of the deferred maintenance situations, the building recertification program, and assessments, the economic impact on residents with fixed incomes was substantial.

Council Member Araskog asked if there were other locations where additional landscape could be placed. Mr. Skowron responded that the landscape had been slightly increased. Council Member Araskog asked about the hardship for the request, to which Ms. Ziska noted that the property was already non-conforming.

Council President Zeidman called for public comment. No one indicated a desire to speak.

Motion made by Council Member Cooney and seconded by Council President Pro Tem Lindsay to approve Site Plan No. ZON-23-079 based upon the finding that approval of the Site Plan will not adversely affect the public interest, that all zoning requirements governing the use have been met and that satisfactory provision and arrangement has been made concerning items (1) through (11) of Section 134-329 with the request to consider using permeable pavers, and with the condition that the Architectural Review Commission approves the project. Motion carried 4-1, with Council Member Araskog dissenting.

Motion made by Council Member Cooney and seconded by Council Member Crampton that Variance ZON-23-079 shall be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201 (A), items 1 through 7 have been met with the request to consider using permeable pavers, and with the condition that the Architectural Review Commission approves the project. Motion carried 3-2, with Council Member Araskog and Council President Zeidman dissenting.

c. **ZON-23-080 (ARC-23-108) 760 N OCEAN BLVD—PALM BEACH COUNTRY CLUB (COMBO)—SPECIAL EXCEPTION WITH SITE PLAN REVIEW AND VARIANCES.**

The applicant, Palm Beach Country Club, Inc. (Robert Schlager, President), has filed an application requesting Town Council review and approval for modifications to an existing previously approved private club which is a special exception use in a residential zoning district by adding two pickleball courts on the Fairview Road property owned by the Palm Beach Country Club. And Variances (1) to reduce the required side (west) setback, (2) to reduce the height of required court fencing, and (3) to reduce the height of required landscape screening. The Architectural Commission shall perform design review of the application.

Council Members Araskog, Cooney, Council President Zeidman, and Mayor Moore declared ex-parte communications.

Maura Ziska, attorney for the applicant, presented an overview of the project and the zoning requirements for the project. She noted that the property was already used for recreation, including tennis and

croquet. She also said a sound engineer was engaged who provided a plan to enhance the buffering to make the use meet the town decibel requirements.

Ron Rickert, Intelae Architect, presented the architectural plans for the proposed pickleball court.

Assistant Director Murphy stated that a sound report was submitted and included in the backup. Mr. Murphy reviewed the report.

Council President Zeidman did not believe there was enough setback on the west side and wondered if this was an appropriate location for the pickleball court. Council President Zeidman asked to review the distance from the court to the adjacent homes. Mr. Rickert responded and described the proposed buffers.

Council President Pro Tem Lindsay asked about the proposed hours of operation. Mr. Rickert stated the courts would be used from 10 a.m. to 5 p.m. Ms. Ziska stated it would be the same hours as the Padel Court.

Council President Pro Tem Lindsay asked about the location of the pickleball courts in Phipps Park and how far they were from the closest residence. Mayor Moore thought it was approximately 270 feet.

Council Member Araskog asked about the sound readings that were taken. Mr. Rickert responded.

Council President Zeidman called for public comment.

Paul Rampell, 237 Ridgeview Drive, presented his objections to the proposed pickleball courts. He felt the request should be denied. He also suggested alternate sites for the pickleball courts.

James Green, Attorney representing 241 Ridgeview Drive and other neighbors on Ridgeview and Fairview Roads, presented his objections to the proposed pickleball courts. He felt the pickleball courts would be too noisy for the surrounding residential area.

Ms. Ziska asked for a deferral of the application so they could speak with the neighbors to find an alternative location for the courts. She stated that Palm Beach Country Club desired to be a good neighbor.

Antonio Farnos, 241 Fairview Road, presented his objections to the proposed pickleball courts.

Mayor Moore thought there were other alternative locations for the pickleball courts. She thought the Council should allow the Palm Beach Country Club to return with alternative locations.

Council Member Araskog asked about the document shown, which indicated that there must be a buffer. Mr. Rampell discussed the documents shown. He said one of the documents was minutes from a meeting held in 1973, where conditions were articulated, and the

second document was a deed restriction recorded in the official records of Palm Beach County.

Ms. Ziska stated she had not seen the documents being referred to and provided rebuttal arguments to the items stated by Mr. Rampell. Ms. Ziska said those co-sections had to do with residents, and this request was for a club with a different special exception use in a residential district. Therefore, different rules are applied.

Mr. Randolph stated that even though there had been zoning arguments, there was still enough evidence before the Town Council to look at the criteria for special exception and variance to make a decision.

Council Member Araskog believed there was enough evidence to deny the application.

Council Member Cooney asked about the Code sections cited by Mr. Rampell. Mr. Rampell reviewed the Code sections.

After all the evidence was presented, Ms. Ziska requested to withdraw the application with prejudice on the floor of the meeting.

Council President Pro Tem Lindsay stated that she could not support the application because of the location of the pickleball courts in proximity to the neighbors.

Council Member Crampton agreed and thought the proposed location was not appropriate. He added that there were many better locations for the courts.

- d. **ZON-23-081 936 N LAKE WAY - VARIANCES.** The applicants, J Michael and Pamela B Cline, have filed an application requesting Town Council review and approval for two (2) Variances to install a boat lift and new dock extension onto an existing finger pier dock (1) to exceed more than 10' in width and (2) to exceed more than 30% of the lot width.

There were no declarations of ex-parte communications.

Clerk's note: Ms. Araskog left the meeting at 1:24 p.m. and was not in the room during the discussion. Ms. Araskog returned after the lunch break at 2:14 p.m.

Maura Ziska, attorney for the applicant, presented an overview of the project and the zoning requirements for the project.

Terry Isiminger, Isiminger & Stubbs, discussed the boat to be used at the proposed location.

Director Wayne Bergman provided staff comments.

Council President Zeidman called for public comment. No one indicated a desire to speak.

Motion made by Council President Pro Tem Lindsay and seconded by Council Member Crampton that Variance No. ZON-23-081 shall be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201 (A), items 1 through 7 have been met and providing that the property owner did voluntarily commit that prior to the issuance of a building permit to either provide a recorded utility easement or an easement agreement satisfactory to the Town that ensures a recorded easement will be granted, if necessary, to underground utilities in the area. Motion carried unanimously, 4-0.

Clerk's note: A short break was taken at 1:30 p.m. The meeting resumed at 2:14 p.m.

- e. **ZON-23-085 (ARC-23-087) 4 LA COSTA WAY (COMBO) - VARIANCE.** The applicant, LCW Trust (Geoffrey and Maureen Squibb), has filed an application requesting Town Council review and approval for a variance to reduce front yard landscape open space below the required amount due to the installation of a new generator and screening walls. The Architectural Commission shall perform the design review component of the application. [This project no longer has a zoning component and shall be withdrawn from the Town Council agenda.]

Please note: This item was withdrawn at the Approval of the Agenda, Item V.

- f. **ZON-23-086 (ARC-23-088) 292 ORANGE GROVE RD (COMBO) – VARIANCE** The applicants, Stephen and Kerri Meyers, have filed an application requesting Town Council review and approval for (1) variance to exceed the maximum Cubic Content Ratio (CCR) for the construction of a new two-story single-family residence. The Architectural Commission shall perform the design review component of the application. [The Architectural Review Commission deferred the project to their August 23, 2023, meeting.] [This project shall be deferred to the September 13, 2023, Town Council meeting pending review by the Architectural Review Commission.]

Please note: This item was deferred to the September 13, 2023, meeting at the Approval of the Agenda, Item V.

D. Time Extensions and Waivers

1. **Waiver of Town Code Section 18-237, For Building Permit Extension at 127 Dunbar Road**

Wayne Bergman, Director of Planning, Zoning and Building Department, described the building permit extension request.

George Ford, Seabreeze Building, discussed the reason for the extension request, which included material delays. He discussed how he had worked to keep the site clean and orderly.

Council Member Araskog discussed the issues in the supply chain. She added that she supported the request.

Council Member Cooney supported the request. He indicated that the change in ownership was a blessing for the future of this historic property.

Motion made by Council Member Araskog and seconded by Council Member Cooney to approve the building permit extension for 127 Dunbar Road, as requested. Motion carried unanimously, 5-0.

2. Waiver of town Code Section 18-237, For Building Permit Extension at **230 Atlantic Avenue**

Wayne Bergman, Director of Planning, Zoning and Building Department, described the building permit extension request.

Antoine Sanchez, OSCE Construction & Development, discussed the reason for the extension request, which included small items.

Council President Zeidman called for public comment. No one issued a desire to speak at this time.

Council Member Araskog asked about the previous extension request. Mr. Bergman responded.

Motion made by Council President Pro Tem Lindsay and seconded by Council Member Araskog to approve the building permit extension as requested for 230 Atlantic Avenue, with the conditions that no work will continue during the holiday hours per the Town Code and that if there are any verifiable complaints, the Director of Planning, Zoning and Building could resolve the issue or take the matter to Town Council. Motion carried unanimously, 5-0.

3. Waiver of Town Code Section 18-237, For Building Permit Extension at **266 Colonial Lane**

Clerk's note: Council Member Crampton was not in the room during the presentation of this item.

Wayne Bergman, Director of Planning, Zoning and Building Department, described the building permit extension request to September 30, 2023. He noted the purpose of the request. Mr. Bergman said a message was received from neighbor David Kelso, but an agreement has been reached between Mr. Kelso and the contractor.

Jeff Berkoff, Bella Construction, discussed the reasons for the building permit extension request.

Council President Zeidman called for public comment. No one expressed a desire to speak at this time.

Council Member Cooney thought the project was moving in the right direction.

Motion made by Council Member Cooney and seconded by Council President Pro Tem Lindsay to approve the building permit extension request for 266 Colonial Lane, subject to the condition between the

construction company, and the neighbor, Mr. Kelso. Motion carried unanimously, 4-0.

4. **Waiver of Town Code Section 18-237, For Building Permit Extension at 525 N. County Road**

Wayne Bergman, Director of Planning, Zoning and Building Department, introduced Mr. Davis and indicated that the request was carried over from the previous month.

Hugh Davis, Davis Construction, apologized for not attending the last meeting. He reviewed the reasons for the building permit extension.

Council President Pro Tem Lindsay commented on the cleanliness of Mr. Davis's construction sites.

Council Member Araskog also complimented Mr. Davis.

Motion made by Council President Pro Tem Lindsay and seconded by Council Member Cooney to approve the building permit extension request for 525 N. County Road, until November 15, 2023. Motion carried unanimously, 5-0.

5. **Waiver of Town Code Section 24-199, For Construction Work Hour Extension at 3475 S. Ocean Blvd.**

Wayne Bergman, Director of Planning, Zoning and Building Department, described the construction work hour request.

Telisa Rivera, Best Roofing, described the construction work hour extension due to rain delays.

Motion made by Council Member Crampton and seconded by Council President Pro Tem Lindsay to approve the construction work hour extension for 3475 S. Ocean Blvd, including Saturday work, to September 29, 2023, and that if there are any verifiable complaints, the Director of Planning, Zoning and Building could resolve the issue or take the matter to Town Council. Motion carried unanimously, 5-0.

6. **Waiver of Section 18-237, Building Permit Extension at 150 El Vedado Road**

Wayne Bergman, Director of Planning, Zoning and Building Department, described the building permit extension request.

Alan Butler, Willoughby Construction, stated it had been a challenge to get the equipment necessary to complete the project. He stated that sub-contractors were parked off-site and shuttled in. Every effort had been made to be a good neighbor.

Council Member Araskog asked about the location and wondered if the neighbors had been alerted.

Motion made by Council Member Araskog and seconded by Council Member Crampton to approve the building permit extension as requested for 150 El Vedado Road, with the condition that any

restrictions in the hours listed in the Code are followed and that if there are any verifiable complaints, the Director of Planning, Zoning and Building could resolve the issue or take the matter to Town Council. Motion carried unanimously, 5-0.

VII. ORDINANCES

A. Second Reading

1. Amendment to the Definition of Building Height, Point of Measurement

Ordinance No. 011-2023: An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, Article I, in General; Section 134-2, Definitions and Rules of Construction, Related to Building Height Point of Measurement; Providing for Severability; Providing for the Repeal of Ordinances in Conflict; Providing for Codification; and Providing an Effective Date.

Director Wayne Bergman read Ordinance No. 011-2023 by title only.

Council President Zeidman called for public comment. No one issued a desire to speak at this time.

Motion was made by Council Member Araskog and seconded by Council Member Crampton to adopt Ordinance No 011-2023 on second reading. Motion carried unanimously, 5-0.

A. First Reading

1. Amendment to the Requirements for Special Exception on Non-Conforming Lots within the Single-Family Districts

Ordinance No. 010-2023: An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, Article IV, Nonconformities, Division 4. - Land; Section 134-446. Development and Redevelopment of Nonconforming Residential Lots; Article VI, District Regulations, Division 2. - RAA Large Estate Residential District, Section 134-793. Lot, Yard, and Area Requirements; Division 3. -R-A Estate Residential District, Section 134-843. Lot, Yard, and Area Requirements; and Division 4. - R-B Low Density Residential District, Section 134-893. Lot, Yard, and Area Requirements Providing for Severability; Providing for the Repeal of Ordinances in Conflict; Providing for Codification; and Providing an Effective Date.

Director Wayne Bergman explained that the subject Code amendment had been presented to the Planning and Zoning Commission several times over the past few years, most recently on April 27, 2023. Town planning staff was directed to proceed with several code amendments identified as those that could be adopted prior to the Town Zoning Code rewrite. The proposed Code language set forth that single-family prior platted lots that do not meet the lot frontage, lot dimensions, or lot size, do not require processing an application for Special Exception Approval.

Mr. Bergman explained that many of the special exceptions and variance applications that were presented to the Town Council were required due to the existing nonconformity on which development or redevelopment was proposed. He stated that staff recommended that the Town Council approve the ordinance on first reading, accepting the preliminary findings of the proposed Code language related to non-conforming lots.

Council Member Araskog wished there had been a history of the request provided. She thought it would be important for the Town Council to have the history of projects passed on non-conforming lots.

Council Member Cooney raised the question posed in Ms. LeCates' email where maybe if 54% of the lots were non-conforming, why would the regulations not be modified to bring the homes into conformity? Mr. Bergman said that the subject should be looked at during the code review process. He noted that the Town Council had asked staff to bring this forward for consideration. He said that although he disagreed, he drafted the ordinance only to include the R-B zoning district. The R-A and R-AA would still require special exceptions and site plan approval if that were the Town Council's will. It was not his recommendation, but he still felt this request would be a positive change.

Council President Pro Tem Lindsay did not favor the change to only the R-B zoning district. She would prefer to do all or none.

Mayor Moore had more concerns about the R-B lots and thought there was more impact on the neighbor than on larger lots.

Council President Zeidman thought the ordinance needed to include all the zoning districts.

Anita Seltzer, 44 Coconut Row, discussed the ramifications of making a change. She noted that last month, most of the Town Council had voted for this item to move forward without any documentation or maps. She also noted that the Planning and Zoning Commission did not have the information. Ms. Seltzer said she felt the public needed to be better informed regarding code amendments.

Council Member Cooney said took offense to the insinuation that things were happening without the public being informed. He said the Florida Sunshine Law required transparency, and he added that ordinances required two readings. Further, residents were given the right and opportunity to participate in the approval of ordinances. Council President Zeidman shared that meetings may be reviewed on the Town website.

There was a consensus of the Town Council Members not to move forward with Ordinance No. 010-2023.

VIII. ANY OTHER MATTERS

Council Member Cooney complimented the new staff memos being produced on each project. He asked if previous zoning approvals could be included in future memos.

Council Member Crampton thought that in the future, applicants should include why they met the hardship requirements. Mr. Bergman stated that the question was in the application.

Council President Pro Tem Lindsay asked for a redline agreement of the declaration of use agreement for the Vineta Hotel once it is executed. After some discussion, the Town Council requested that the final declaration of use agreement be posted on the Town website.

Clerk's note: Mr. Cooney left the meeting at 5:21 p.m.

Mayor Moore thought it was incumbent on the applicant to research and reveal deed restrictions.

Council President Zeidman thought deed restrictions should be placed on the next agenda for discussion. Council President Zeidman also asked to place a discussion of Time Extension and Waivers on the next agenda. She thought the communication between the builders and neighbors needed to be improved.

Council Member Araskog reminded Mr. Bergman that she wanted to add a declaration of use template.

IX. ADJOURNMENT

Motion made by Council Member Araskog and seconded by Council President Pro Tem Lindsay to adjourn the meeting at 5:26 p.m. Motion carried unanimously, 5-0.

APPROVED:

Margaret A. Zeidman, Town Council President

ATTEST:

Kelly Churney, Acting Town Clerk
Date: _____