



# TOWN OF PALM BEACH

## Minutes of the Development Review

### Town Council Meeting

Held on December 13, 2023

#### I. CALL TO ORDER AND ROLL CALL

The Development Review Town Council Meeting was called to order on December 13, 2023, at 9:31 a.m. On roll call, all elected officials were found to be present.

#### II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

#### III. COMMENTS OF MAYOR DANIELLE H. MOORE

Mayor Moore did not have any comments.

#### IV. COMMENTS OF TOWN COUNCIL MEMBERS

The Town Council Members wished everyone a Merry Christmas, a Happy New Year, and a Happy Holidays.

Council President Zeidman recognized the Preservation Foundation of Palm Beach. She stated there was a new position, Director of Public Affairs, recently filled by Mackey Reed. She asked Amanda Skier, President and CEO of the Foundation, to talk about the new position and future changes in the foundation.

Amanda Skier stated that the foundation staff realized many changes were happening in town. They had been working to respond to the needs of the community and requests from members to be more involved in the town meetings. The Preservation Foundation Executive Committee was committed to advocacy and had created the Director of Public Affairs position to assist in keeping the foundation up to date on various goings on at Planning and Zoning, major commercial projects at the Architectural Commission (ARCOM), and conversations at Town Council meetings. She stated that Aimee Sunny, Director of Education, would assume the new title of Director of Preservation and Planning. Ms. Sunny would be dedicated to the Landmarks Preservation Commission (LPC) and advising on

other matters, including major commercial projects presented to ARCOM. She and Ms. Reed would be working closely. The Foundation was pleased to commit additional resources to help the Town Council guide the town through this critical period while preserving the town's character.

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

David Kelso, 255 Monterey Road, spoke about a demolition at 249 Monterey Road, followed by a huge, black 20' tall, 100' long construction screen on all four boundary lines of the property. At the time, Michael Peacock, the owner, did not have a permit. Code Enforcement did not inspect the site, and thirty days later, in August, under town ordinance, the fence should have been removed and the property sodded and irrigated until a building permit was issued and construction began. Code Enforcement did not inspect or cite the violation. Mr. Peacock should have been warned of non-compliance in September, but Code Enforcement did not inspect or cite the continuing violation. In October, with no building permit and the fence still in place, Mr. Peacock should have been sanctioned and fined for his continuing violation of town ordinances. Code Enforcement did not inspect, and no sanctions or fines were issued. In November, nothing had changed. On November 30, 2023, a building permit was issued. After Mr. Kelso called President Zeidman, he was informed that on December 11, 2023, Code Enforcement had finally inspected the site. Code Enforcement had advised Mr. Kelso that this violation would be discussed at their January meeting, but still no signs of construction. In the meantime, the residents who live on Monterey Road and some on Colonial Lane have had to live with the ugly construction site for six months, and the property owner has gotten away with knowingly flouting the town ordinances. Mr. Kelso had concluded that the current "real estate construction and development complex" had overwhelmed the town's administrative and supervisory capability. Property owners and the real estate design and construction complex know this and know they can game the system without any consequences. He asked how accountability would be enforced on the Code Enforcement division and how the Town Council would keep this type of scenario from recurring. Mr. Kelso asked the Council, "Can you understand why residents have lost confidence in your 'willingness' and 'ability' to protect their interests."

Council President Zeidman stated that the Town Council understood what was occurring on Monterey. She said that in response to what was going on, the Town tried to enact a Zoning in Progress while undergoing code review. She said the accusation that the Town Council did not understand was offensive and inappropriate. She said that every time Mr. Kelso had contacted anyone on the Town Council, he had received an appropriate response within the confines of the law. She could not agree more that the Code was flawed, but she said it must be noted that the Code was from 1979. She also wanted to avoid fingers being pointed toward the Town Council because of variances being granted. She said those variances must be given because of how the Code was written. She stated that the Town Council was doing its best to protect its residents. Council President Zeidman noted that this situation was presented to Mr. Bergman and the Town Council, and a determination was sought as to what the problems were with the ordinances or the process. She said issues were identified, and she agreed that the property was not sodded, irrigated, or adequately screened. She stated it was important for the accusations to stop, but more importantly, she wanted the Town Council and the Town Staff to respond in a helpful manner. She said a Zoning in Progress would have stopped some of the problems, but the town would also have been sued.

Mr. Bergman, Director of Planning Building and Zoning, stated that Mr. Kelso raised good

points that showed flaws between the various communications and departments. A demolition project involved the Planning, Zoning, and Building staff, but also Public Works for the staff that handles the right-of-way permits and Code Enforcement staff. He said that sometimes the Town could do a better job communicating between departments. The staff had worked on some changes and would like to present to the Town Council very quickly to close some loopholes in the demolition process. He said it was common for builders to demolish so they could begin construction immediately, alleviating the need to sod and irrigate the property. Other property owners need time between the demolition and when the construction project starts. He said the language in the code must be tightened up, and better coordination needs to be implemented between the town departments. Mr. Bergman said an internal policy may be put into place, but the ordinance would have to be amended by the Town Council.

Council Member Araskog commented that there had been challenges in finding people to check on the sites. She asked if the town needed to hire another person. She was not offended by Mr. Kelso's comments. Council Member Araskog said it was also a problem that when something was reported to Code Enforcement, it could take three months to get to a Code meeting. Until a case gets to Code Enforcement, neither the Town Council nor Code Enforcement can do anything about a violation because of the laws of due process. She felt bad for everyone being impacted by this situation. In addition, Council Member Araskog asked Mr. Bergman what was being done about getting construction site monitors on board. Mr. Bergman said he would have to check with Code staff and the Police Department to find out where they are in their hiring process for construction site monitors. Council Member Araskog thought a rush should be put on staffing the positions.

Council President Zeidman noted that part of the problem was the lack of qualified applicants to fill the code enforcement positions. As said before, she reiterated that since Monterey Road and Colonial back up to each other, they must be carefully monitored. President Zeidman expressed impatience with the lack of attention being paid to the residents of Monterey and specifically requested that this situation be remedied.

Council Member Crampton said residents were encouraged to let the Town Council know where things were not working. He said it did appear that the issue in this situation was execution. He thought that execution was the key. He said the staff engaged in this exercise needed to work to make the situation better, promptly. Council Member Crampton requested something in the council backup to show how Code Enforcement, Public Works, Planning Zoning and Building, and all other departments function together.

Anita Seltzer, 44 Cocanut Row, stated that ARCOM was forced to consider a commercial project in February that required a special exception and variances. She said it was not in compliance with the comprehensive plan or Worth Avenue Guidelines. The commissioners sent the project back to the Town Council in its entirety so that they could properly review the architecture within their ordinance if and when the application was presented to them again. As a result of this and another application in May, the Town Council decided to require that commercial properties be presented to the council first for deliberation. Despite the fanfare, four town council members voted last month to send a commercial project to ARCOM with unresolved zoning issues, impacting the plan since it cannot be legally built as presented. ARCOM and the other commissions serve at the pleasure of the Town Council. The Council has authority, but that comes with responsibility. Ms. Seltzer felt there may be a disconnect between what the Town Council says and what it does. She said it was as if the council discussion in May had never taken place. All the boards and commissions need

to be properly supported and protected to deliberate properly within their ordinances. Ms. Seltzer said familiarity with the Codes, Comprehensive Plan, and Design Guidelines was crucial. Liking or not liking a project was not relevant. Residents should not continue to expend time, energy, and resources to ensure that proper review procedures are being followed. She said if the Town Council continued to disregard recommendations from legal counsel and staff to follow the rule of law, the whole town would likely be shouldering the cost of defending such actions in court. She asked that the Town Council be mindful of these things moving forward.

## VI. APPROVAL OF AGENDA

Wayne Bergman, Director of Planning, Zoning and Building, offered the following modifications to the agenda:

*Addition of Waiver of Town Code Section 18-237 For Building Permit Extension for 300 Seminole Avenue under C. 4. Time Extensions, Waivers, and Three-Strike Matters.*

*A reordering of the resolutions, hearing Resolution No. 149-2023 before Resolution No. 148-2023*

**A motion was made by Council Member Cooney and seconded by Council President Pro Tem Lindsay to approve the agenda as amended. The motion was carried unanimously, 5-0.**

## VII. CONSENT AGENDA

- A. **ZON-23-112 285 SUNRISE AVE—SPECIAL EXCEPTION AND VARIANCE** The applicant, Island Animal Hospital (Dr. Mary Ellen Scully), has filed an application requesting Town Council review and approval for a Special Exception for a permitted use greater than 3,000 SF in the C- TS zoning districts for a new veterinarian office and (1) Variance to allow a new veterinarian office on the ground floor in lieu of the use being located above the first floor.
- B. **ZON-23-122 400 ROYAL PALM WAY—SPECIAL EXCEPTIONS WITH SITE PLAN REVIEW AND VARIANCE** The applicant, Citizens BankNA, has filed an application requesting Town Council review and approval for a (1) Special Exception for a bank and (2) a Special Exception for a drive-thru facility and a Site Plan Review for a use greater than 2,000 SF in the C-OPI zoning district for third-floor bank in an existing four-story office building. Additionally, a Variance is being requested to not provide 6 additional parking spaces required as a change of use from office space to banking space.

Council Member Cooney was prepared to make a motion but acknowledged that sometimes fair criticism is leveled at the desk about the Town Council's approval of variances. He noted a variance in the consent agenda for 285 Sunrise Avenue. This variance was a perfect example of a flaw in the code where it prohibited a veterinarian's office on the first floor of a building and required it to be on the second floor while simultaneously allowing a dog grooming operation to be on the first floor, but not the second floor.

**A motion was made by Council Member Cooney and seconded by Council Member Crampton to approve the consent agenda as amended, that the projects contained within the Consent Agenda meet the requirements of Chapter 134,**

specifically Sections 134-326 through 134-330 for Site Plan Review, Section 134-229 for Special Exceptions, and Section 134-201 for Variances, and with the removal of ZON-24-012, 325 Via Linda from the approval. The motion was carried unanimously, 5-0.

- C. **ZON-24-012 325 VIA LINDA - VARIANCE** The applicant, Three Palm Trees LLC (Maura Ziska), has filed an application requesting Town Council review and approval for a Variance to exceed by the maximum width of a dock based on lotwidth.

Council Member Araskog asked about the width of the proposed dock.

Maura Ziska, the attorney for the owner, advised that the dock width would be forty-nine feet long and eight feet wide.

**A motion was made by Council Member Crampton and seconded by Council President Pro Tem Lindsay that Variance No. ZON-24-012 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. The motion was carried 4-1, with Council Member Araskog dissenting.**

#### VIII. REGULAR BUSINESS

#### IX. RESOLUTIONS

- A. **RESOLUTION NO. 149-2023:** A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Ratifying And Confirming The Determination Of The Landmarks Preservation Commission That The Property Known As 318 Australian Ave Meets The Criteria Set Forth In Ordinance No. 2-84, Also Known As Chapter 54, Article IV Of The Code Of Ordinances Of The Town Of Palm Beach; And Designating Said Property As A Town Of Palm Beach Landmark Pursuant To Ordinance No. 2-84, Also Known As Chapter 54, Article IV Of The Code Of Ordinances Of The Town Of Palm Beach.  
*The property owners are supportive of this designation. The Landmarks Preservation Commission voted 7-0 for Landmarking.*

Council President Zeidman requested confirmation of proof of publication. Friederike Mittner, Design and Preservation Manager, provided confirmation.

Janet Murphy, MurphyStillings, presented background information on the project and historical information on the property. She outlined how the property met Criteria 1 and 3 for Landmark Designation. Ms. Stillings expressed appreciation to the owner for offering the home for landmark designation.

Ex-parte communications were disclosed by Council Member Cooney and Mayor Moore.

**A motion was made by Council Member Cooney and was seconded by Council President Pro Tem Lindsay to make the designation report part of the record. The motion was carried unanimously, 5-0.**

Council President Zeidman called for public comment.

Aimee Sunny, Preservation Foundation of Palm Beach, formally thanked the owner for their stewardship in bringing this property forward to be designated as a landmarked property. She encouraged the Town Council to support the renovation. She said variances would be requested and necessary for the property to be properly rehabilitated.

Council Member Cooney also thanked the owner for being willing to allow their property to be a landmarked structure. He said there have been some changes to state law, which will eliminate the town's ability to landmark properties absent the property owner's consent. He was delighted to have a property owner who recognized the importance of historic structures and the history of the built environment in the town.

**A motion was made by Council Member Araskog and was seconded by Council Member Cooney to adopt Resolution 149-2023, designating the property at 318 Australian Avenue as a landmark of the Town of Palm Beach on the basis that it meets criteria Numbers 1 and 3 of Section 54-161 of the Town of Palm Beach Code and in the Landmarks Preservation Ordinance No. 2-84.**

Council Member Cooney wondered if the town should require something in writing to formalize landmark designations since state law had changed. His concern was that future property owners may question whether the property was properly designated.

**The motion was carried unanimously, 5-0.**

Mackey Reed, Director of Public Affairs with the Palm Beach Preservation Foundation, was introduced and congratulated on her new role. Ms. Reed provided a short biography and said she looked forward to facilitating effective communication between all parties.

- B. RESOLUTION NO. 148-2023: A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Ratifying And Confirming The Determination Of The Landmarks Preservation Commission That The Property Known As 262 Sunset Ave Meets The Criteria set forth in Ordinance No. 2-84, Also Known As Chapter 54, Article IV Of The Code Of Ordinances Of The Town Of Palm Beach; And Designating Said Property As A Town Of Palm Beach Landmark Pursuant To Ordinance No. 2-84, Also Known As Chapter 54, Article IV Of The Code Of Ordinances Of The Town Of Palm Beach. *The property owner is opposed to this designation. The Landmarks Preservation Commission voted 7-0 for Landmarking.**

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

Council President Zeidman requested confirmation of proof of publication. Friederike Mittner, Design and Preservation Manager, provided confirmation.

Janet Murphy, MurphyStillings, presented background information on the project and historical information on the property. She outlined how the property met Criteria 1

and 3 for Landmark Designation.

**A motion was made by Council Member Cooney and was seconded by Council Member Araskog to make the designation report part of the record. The motion was carried unanimously, 5-0.**

Jamie Crowley, the attorney on behalf of 262 Sunset Avenue, LLC, stated that Stephen R. Karp, Founder and Chair of New England Development, was also present. Mr. Crowley said this property was affiliated with New England Development's ownership of the White Elephant. He said Eugene Pandula would also discuss changes that had occurred on the property over time and previous work done to analyze whether the property is eligible for designation. Mr. Crowley stated that hard work had been put into the White Elephant going through the local process to bring the building up to how it looked today. He added that millions of dollars were spent to update the White Elephant, and after the fact, they were not credited the federal credit. They received local ad valorem tax credits through the town program. Mr. Crowley said 262 Sunset was located adjacent to the White Elephant, and both buildings are legally nonconforming. He said this was a commercial zoning district where residential was not allowed. With respect to the street's character changing over time, residential was no longer an allowable use.

Mr. Crowley discussed the procedure for landmarking. He said the property was considered for landmarking only six months after purchase by the property owner. The property owner was not notified, and the agenda for the meeting where the property would be considered for landmark designation was unclear. He said that the agenda had no supporting documents attached. Mr. Crowley set forth the Landmark Criteria not met for the property to be designated. He spoke about House Bill 423 and stated that during the last designation season, all the properties considered were commercial. He said that based on research conducted by Mr. Pandula, the subject property did not meet the designation criteria. He noted that he had never challenged the Landmark Preservation Commission. However, they felt strongly that this particular property did not meet the criteria for designation.

Eugene Pandula, an architect representing the owner, stated he had attached more importance to the Florida Master Site File Forms and the last survey conducted by Environmental Services. He said the Florida Master Site File Forms had a history back to 1979 for the subject property. The first of which was done by a historic preservation consultant from Pittsburgh. The building was rated "D," the lowest possible grade then. The next three Florida Master Site File Forms were done in 1997, 2004, and 2010 by Dr. Day. Initially, Dr. Day said the building deserved additional research and could be a landmark in the town. That was before the zoning was changed, and the property was still residential. The changes when the property became commercial were necessary to support the change. He further explained the changes to the structure, making it ineligible to be landmarked. He said that architecturally, the building did not meet the landmark criteria.

Mr. Crowley said that the Landmarks Preservation Commission (LPC) was under time constraints due to scheduling, and therefore, the presentation at LPC was rushed, and many of the facts were eliminated. He felt this may have contributed to their unanimous vote. Mr. Crowley also noted that Mr. Pandula was a past Chairperson for the Landmarks Preservation Commission and has been a practicing architect in town

since the late 1970s.

Friederike Mittner, Design and Preservation Manager for the Town of Palm Beach said she thought the evidence that had been presented pointed toward the criteria in Section 54-161, which had been met. She stated that adapted use is one of the best practices in preservation and a rehabilitation tool used across the country. She thought the developer's request for additional space for parking and amenities could be achieved. She said the front structure was 2,958 square feet, a significant amount of square footage that could be adapted to use as amenities. She also thought additional parking could be accommodated at the rear of the site. She discussed the difficulty of getting through the State's Historic Preservation Office and getting a national register designation. She thought this spoke volumes about the status of the building.

Mr. Crowley said the building was a commercial structure with no parking. He said if they proposed a commercial use, there would be no parking available, and it would be another commercial building with no parking. He noted the consequences of landmarking buildings that had no space for parking.

Council President Zeidman called for public comment.

Aimee Sunny, Preservation Foundation of Palm Beach, offered professional analysis. She said it was the process in the Town of Palm Beach to prepare a list of potential properties, which was not published before the meeting. The process of putting a property under consideration sets in motion an in-depth study and temporarily requires changes to go before the Landmarks Preservation Commission. She said that when something could lead to a formal designation, there was proper notice, advertising, and due process that would be afforded to the property. Much of the argument against the designation relies on information from the 2020 ESI Historic Site Survey Report and the Florida Master Site File. She clarified what the ESI Historic Site Survey Report was intended to do. It is a preservation and planning tool, not an exhaustive survey. It was not in-depth, and they identified it as a comprehensive pedestrian survey. She agreed that it spoke volumes that this building was historic and to be contributed by the Historic State Preservation Office and the keeper of the national register. Regarding criteria one and three, she thought the building met both. She urged the Town Council to find that this building met the criteria for designation.

Amanda Skier, Preservation Foundation of Palm Beach, said the Town of Palm Beach had an incredible group of preservation experts working for it. Much of the owners' testimony and their argument relied on the work done by consultants who did their work in a very brief amount of time and on a budget. She said more weight should be given to Jane Day, who said it was potentially eligible, and to MurphyStillings, with the exhaustive research they did for the national register nomination in saying that this building was worthy of protection. She urged the Town Council to rely on the experts who work for the town.

Mr. Crowley mentioned that the comprehensive plan mentioned the historic site forms as the basis for what should be used to select a list of properties to be considered for designation. He said these resources were specifically cited in the historic preservation element of the comprehensive plan as the basis for what properties should be designated.



Town Attorney Randolph addressed the legal allegation regarding placing the property under consideration. He said the long-standing practice of the town had been to place a property under consideration without giving notice to the owner. Mr. Randolph said there was no violation of due process because a property right was not being taken away. It is just a temporary requirement for the owner to go before the Landmarks Preservation Commission before any designation. He said there were very explicit provisions under Section 54-164 relating to the notice procedures. He said several other provisions indicated the various requirements for notice during the designation process. Legally, Mr. Randolph advised that he did not believe there had been any violation of due process regarding the allegation that the property owner was not noticed when this property was placed under consideration.

Mr. Randolph mentioned another legal aspect regarding the hearing itself, related to the time they were given at the Landmark Preservation Commission hearing. He acknowledged that the meeting was rushed, and the property owners were not allowed adequate time to make their presentation.

Mr. Crowley said the argument was a change of position because before a property goes under consideration, there is a property right to demolish the building. He said a property may not be demolished once under consideration for landmark.

Council Member Araskog agreed that the property owner was not allotted adequate time to make their presentation to the Landmarks Preservation Commission. She wondered if that was a due process issue since their expert was not given time to speak. She said if that were an issue, she would suggest sending it back to Landmarks and allowing them to speak and have the commission vote again.

Mr. Randolph understood from the applicant that there was an argument regarding a due process violation as a result of not being able to be heard. Section 6, 54-164 said the Commission shall afford the owner of each affected property a reasonable opportunity to present testimony or documented evidence regarding the historic or architectural importance of such property. As argued, Mr. Randolph thought they were not given reasonable opportunities.

Mr. Crowley stated his hesitation in the Town Council sending this application back to the Landmarks Preservation Commission. He felt that the LPC members were comfortable in their unanimous vote based upon the assertions made without hearing a presentation from the applicant. His preference would be for the Town Council to address the substantive issue that the property does not meet the criteria, although he would rather have to go back to LPC than be designated.

Council Member Araskog asked Mr. Randolph to advise the Commission of the importance of listening and considering all the evidence if the application was sent back to LPC. She preferred to remand the application back to LPC.

Mr. Randolph said Mr. Crowley was not waiving his argument, and he felt it would be futile to go back to LPC. If the applicant wished to pursue legal action, Mr. Crowley would still have that argument.

Council Member Cooney stated he had not listened to or attended the LPC hearing, but he shared the belief that upon proper legal advice and counsel, the LPC members

would heed proper advice to hear this case with an open mind.

Council President Pro Tem Lindsay thought the application should be remanded to the LPC. She felt the members could listen with an open mind for reconsideration of their decision.

Council President Zeidman reiterated the two due process issues at hand. She thought this application should be remanded back to the LPC, given the time restraints under which they were working at the time of the original hearing.

**A motion was made by Council Member Araskog and was seconded by Council Member Cooney to remand Resolution No. 148-2023 back to the Landmarks Preservation Commission due to a procedural issue. The motion was carried unanimously, 5-0.**

Council Member Araskog thought it was necessary for Mr. Randolph to meet with the Chair and Vice-Chair of LPC before the next hearing. Mr. Randolph said the board was advised at the original hearing that they should not limit the applicant to three minutes for their presentation.

Mayor Moore stated she was disappointed that the LPC did not afford the applicant proper respect in allowing them to make their presentation in its entirety. She hoped this situation would not be occurring in the future.

**A motion was made by Council Member Araskog and was seconded by Council Member Cooney to amend the motion to remand Resolution No. 148-2023, 262 Sunset Avenue, to a date certain of January 17, 2024, back the Landmarks Preservation Commission due to a procedural issue. The motion was carried unanimously, 5-0.**

*Clerk's note: A short break was taken at 11:24 a.m. The meeting resumed at 11:41 a.m.*

## X. DEVELOPMENT REVIEWS

### A. Appeals

1. Administrative Appeal 1236 S Ocean Blvd./200 Emerald Beach Way: Appeal of the decision of an administrative officer regarding a code enforcement case of a fence. The appellant cites zoning code Sections 134-141, 134-1666, and 134-1548 for this appeal.

Mr. Randolph advised the Town Council that this was not a de novo hearing; no testimony would be heard today. Only the applicant would present an argument.

Amanda Quirke Hand, attorney for the owner at 100 Emerald Beach Way, presented the appeal of an administrative decision. The appeal was regarding a fence that was not on an approved site plan and did not have a building permit. The complaint was made originally in June 2023, and the Code Enforcement complaint was subsequently dismissed. The facts were undisputed. She said a fence was placed very close to the 100 Emerald Beach Way property. The complaint was that the fence was not on the governing site plan and was not permitted. The response by M. Timothy Hanlon, the

attorney representing Mr. and Mrs. Thornton, owners at 1236 S. Ocean Blvd., was that it was a temporary fence purchased from Amazon that did not require a permit. Ms. Hand presented a photograph that demonstrated grass growing up around the fence, which was used as a dog pen. She pointed out that the owners had constructed the fence for their dogs outdoors, immediately adjacent to the residence's front door at 100 Emerald Beach Way and as far as possible away from their own residence located at 1236 South Ocean Boulevard. Ms. Hand explained why the fence was illegal, citing zoning regulations regarding fences.

Ms. Hand stated that the owners of 100 Emerald Beach Way respectfully requested that the town grant the appeal.

Ms. Hand said that after she filed an appeal, Mr. Bergman had determined that no permit was required for a temporary fence. She stated she would submit that e-mail for the record.

Mr. Hanlon stated that the appeal presented no evidence indicating that the Code Enforcement Officer made an incorrect decision to dismiss the complaint or that the dog playpen constituted a fence under the zoning code. He stated the fence was a playpen and was temporary. The fence was originally located in the garage. He stated there was only one dog, mid-sized and ten years old. The playpen was not a fence; it was a temporary enclosure for dogs, and it could be quickly and easily moved from one location to another. He said the blue tarp referred to during the presentation was installed to block two video cameras and a voice recording mechanism installed by neighbors adjacent to the Thorntons property. The blue tarp was placed to preserve their privacy and prevent intrusion. Moreover, Mr. Hanlon said that once the property owner was alerted to the appeal, they voluntarily invited Town staff and Code Enforcement personnel to the residence to see the playpen, a very tiny enclosure.

Mr. Bergman stated that based on what he had seen in the photographs and materials, he would not consider the structure a fence, and requiring a building permit did not make sense.

Council Member Araskog asked how a fence was defined in the Town Code. Attorney O'Connor responded that it was not defined. Council Member Araskog asked Mr. Hanlon why a temporary fence had been in place for several years. Mr. Hanlon said it was because the Thorntons were using their yard. Council Member Araskog asked why the Thorntons had placed the fence far from their home. Mr. Hanlon said they had purchased the additional lot for an open space area for their dog.

Mayor Moore told the property owners they needed to work on a solution. She thought the situation was ridiculous.

Council Member Cooney agreed with Mayor Moore.

Council President Zeidman pointed out the hours spent by staff and the Town Council on issues such as this. She agreed with her fellow Town Council about the pettiness of this situation.

Council Member Araskog asked how long the fence had been in place. She said it looked like a fence and expressed her frustration. She asked why the Thorntons could not move the fence closer to their house to have a good relationship with their neighbors. Council Member Araskog voiced

frustration with the lack of sensibility and communication between the neighbors.

Mr. Hanlon said his client did not create this situation. He said the Thorntons bought the property for open space and were using it as such. He said the neighbors were only in town a short time each year and believed the appeal was filed out of spite.

**A motion was made by Council Member Crampton and was seconded by Council Member Cooney to deny the appeal based upon the fact that no credible evidence had been presented. The motion was carried 4-1, with Council Member Araskog dissenting.**

Council President Pro Tem Lindsay did not understand how the information provided was inconsistent. She thought there were communication issues that should have been worked out between neighbors.

Council Member Cooney asked Mr. Hanlon and Ms. Hand to give their clients the message that they should embrace kindness and use their boundless resources for good in the world. He said that Mayor Moore could help them find resources.

Council Member Araskog asked the attorneys to strongly recommend that the Thorntons relocate the fence.

Council President Pro Tem Lindsay suggested that the attorneys urge their clients to remove the surveillance equipment.

## **1. Old Business**

- a. **ZON-23-068 (ARC-23-090) 206 CARIBBEAN RD (COMBO) - SITE PLAN REVIEW** The applicant, Walter Wick, has filed an application requesting Town Council review and approval for Site Plan Review to allow development of a new single-family residence on a platted nonconforming parcel deficient in lot width and lot area required in the R-B Zoning District. The Architectural Commission shall perform the design review component of the application.

*Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.*

- b. **ZON-23-084 (ARC-23-109) 600 TARPON WAY (COMBO) - SPECIAL EXCEPTION AND VARIANCES** The applicants, Frank and Annie Falk, have filed an application requesting Town Council review and approval for 7 variances, including (1-2) for building height plane reductions, (3- 6) to locate mechanical equipment within the front yard, (7) to exceed maximum site wall height within the front yard, and a Special Exception for reduced vehicular gate setbacks on a dead-end street, for the construction of a new two-story single-family residence over 10,000 SF and sitewide landscape and hardscape improvements. The Architectural Commission shall perform the design review component of the application.

*Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.*

## 2. New Business

- a. **ZON-23-077 (ARC-23-107) 162 E INLET DR (COMBO) - VARIANCE** The applicants, David and Jill Shulman, have filed an application requesting Town Council review and approval for a variance to (1) exceed the maximum allowable Cubic Content Ratio (CCR) for the construction of enclosed additions and a rear awning to the single-family residence. The Architectural Commission shall perform the design review component of the application. *The Architectural Commission approved the design (5-2), and supported variances (7-0).*

Ex parte communications were declared by Council Members Araskog and Cooney and Council President Zeidman.

M. Timothy Hanlon, an attorney for the owner, provided an overview of the project and explained the variance requested. He noted that the renovation would eliminate three existing nonconformities.

Patrick Segraves, SKA Architect + Planner, presented the architectural plans proposed for the additions and modifications to the existing residence.

Council President Zeidman explained that the language used may lead some to erroneously conclude that ARCOM and LPC approve variances. In fact, the language is clear in that it states that the “variances will not negatively affect the architecture.”

Council Member Cooney said the variance was a reasonable request, but it was a violation of the code, and he could not see what the hardship was to justify further enlarging a structure that was already more than what was allowed.

Council President Pro Tem Lindsay agreed with Council Member Cooney. She said the subject area of town already had many homes too large for their properties. She felt there was no hardship, and making the home larger was unnecessary when it was already one of many homes too large for its lot.

Council President Zeidman asked for further clarification of the nonconformities that would be eliminated with approval of the variance. Mr. Hanlon explained that the swimming pool would be smaller, and landscaping would be increased at the rear of the property.

**A motion was made by Council Member Araskog and was seconded by Council Member Cooney that Variance No. ZON-23-077, 162 E. Inlet Drive, be denied for reasons that the application does not meet the criteria set forth in 134-201(a), items 1, 2, 3, 5, 6, 7.**

Mayor Moore asked to see the proposed interior of the structure. Mr. Hanlon

showed visual aids and explained the proposed modifications compared to the existing structure.

Council President Pro Tem Lindsay asked if there was an opportunity to make the variance smaller. Mr. Hanlon said no.

Council President Zeidman asked about the home's square footage as it currently existed. Mr. Hanlon said the home was 4,974 square feet, and the lot was 10,484 square feet. He said the addition would be approximately 159 square feet.

Council Member Crampton thought the proposed project's impact was minimal, but he could not find a hardship to justify granting a variance.

**The motion was carried unanimously, 5-0.**

*Clerk's note: Mayor Moore left the meeting at 12:37 p.m. and returned after the lunch break.*

- b. **ZON-23-088 (ARC-23-120) 1600 S OCEAN BLVD (COMBO) - SITE PLAN REVIEW AND VARIANCES** The applicant, PB Pavilion Trust (Michael Vineberg, Robert G. Simses and Peter Flanagan, Trustees), has filed an application requesting Town Council review and approval for site plan review for an addition to house a generator over 150kW, and (3) variances for (1) additional parapet height in the required north side yard setback and (2 – 3) to reduce the required north and south side yard setback in order to construct one-story additions to a previously approved two-story residence. The Architectural Commission shall perform design review of the application. *The Architectural Commission approved the design (7-0) and supported the variances (7-0).*

Ex parte communications declared by Council Member Araskog and Council President Zeidman.

Maura Ziska, an attorney for the owner, provided an overview of the project and explained the variances requested.

Harold Smith, Smith and Moore Architects, presented the architectural plans proposed for the additions and modifications to the existing residence.

Council Member Araskog inquired about eliminating the parapet, but Mr. Smith thought that would be a mistake.

Council President Zeidman said the project was beautiful, but she thought it could be symmetrical, eliminating the need for variance.

Mr. Smith showed the original proposal and explained the solution reached. The goal was to find a solution that would not interrupt the architecture of

the structure.

**A motion was made by Council Member Araskog that Variance No. ZON-23-088, 1600 S. Ocean Blvd., be denied for reasons that the application does not meet the criteria set forth in 134-201(a), items 1 through 7. The motion died for lack of a second.**

**A motion was made by Council Member Crampton and was seconded by Council President Zeidman that Variance No. ZON-23-088, 1600 S. Ocean Blvd., 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. The motion was carried 4-1, with Council Member Araskog dissenting.**

**A motion was made by Council Member Crampton and was seconded by Council President Pro Tem Lindsay that Site Plan No. ZON-23-088, 1600 S. Ocean Blvd., as said application meets the criteria set forth in sections 134-229 and 134-329, respectively, of the Town Code and finds 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. The motion was carried unanimously, 5-0.**

- c. **ZON-23-104 (ARC-23-137) 310 CLARKE AVE (COMBO)—VARIANCES** The applicant, Mark & Patricia Davies, has filed an application requesting Town Council review and approval for seven (7) Variances (1-2) to exceed maximum equipment screening wall heights in the east and west side-yards, (3) to exceed the maximum number of equipment in the west side-yard, (4-5) to locate A/C equipment closer than permitted to the east and west side property lines, (6) to locate a pool heater closer to the east side property line than permitted, (7) and to forgo the requirement to enclose pool equipment in a pump house enclosure. The Architectural Commission shall perform design review of the application.

***Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.***

- d. **ZON-23-105 (ARC-23-123) 1186 N OCEAN WAY (COMBO)—VARIANCES** The applicant, Martha Lee Johnson 2012 Exempt Trust (Stan Johnson), has filed an application requesting Town Council review and approval for (3) Variances: (1) for reduced rear setbacks for the installation of a pool heater, (2) for increased separation distance between the pool and the pool equipment, and (3) to exceed allowable chimney height, in conjunction with the construction of a new two-story single-family residence. The Architectural Commission will perform the design review component of the application.

*Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.*

- e. **ZON-23-106 (COA-23-038) 318 AUSTRALIAN AVE (COMBO) —VARIANCES** The applicant, Combinat, LLC (Rep. Timothy Hanlon), has filed an application requesting Town Council review and approval for (1) Variance to exceed the maximum allowable lot coverage for the construction of a rear enclosed addition and pergola to an existing one-story landmarked structure. The Landmarks Preservation Commission shall conduct the design review portion of the application and shall decide on the floodplain variance and Historic Preservation Tax Abatement. *The Landmarks Preservation Commission approved the design (7-0), supported variance (7-0) and supported floodplain variance (7-0).*

Ex parte communications declared by Council Member Cooney.

M. Timothy Hanlon, the owner's attorney, provided an overview of the project and explained the variance requested.

Yiannis Varnava, Varnava Design Studio, presented the architectural plans proposed for the modifications to the landmarked residence.

Council President Pro Tem Lindsay liked the pergola but asked if the terrace was permeable. She asked Ms. Ailes to consider making that space permeable to help with potential flooding. Mr. Varnava said the landscaping was conforming, and the drainage system would be entirely updated.

Council Member Cooney supported this project and was thankful to the owner for voluntarily designating the home. He noted the owner could have elected not to designate the home, and they could have complied with Town requirements with a much larger home. Instead, they were making a modest addition to a one-story home.

Council Member Araskog asked Mr. Hanlon to explain the hardship. He said the property was nonconforming, and the landmarked status created little to no flexibility to make the property conforming.

**A motion was made by Council Member Cooney and was seconded by Council Member Araskog that Variance No. ZON-23-106, 318 Australian Avenue, 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. The motion was carried unanimously, 5-0.**

- f. **ZON-23-109 (COA-23-040) 134 EL VEDADO RD (COMBO) —VARIANCE.** The applicants, Elizabeth and Jeffrey Leeds, have filed an application requesting Town Council review and approval



for (1) Variance to provide vehicle queuing space deficient in depth between the driveway gate and edge of roadway. The Landmarks Preservation Commission shall perform a design review of the application. The applicants, Elizabeth and Jeffrey Leeds, have filed an application requesting Town Council review and approval for (1) Variance to provide vehicle queuing space deficient in depth between the driveway gate and edge of roadway. The Landmarks Preservation Commission shall perform a design review of the application.

***Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.***

- g. **ZON-23-111 (HSB-23-009) 269 PARK AVE (COMBO)—VARIANCES** The applicant, Schnapps 269 Park Avenue LLC (Andrew and Lorraine Dodge), has filed an application requesting Town Council review and approval for four (4) Variances to (1) expand an existing nonconforming 3rd story of an existing three-story historically significant building by adding four side rooftop dormer windows, (2) to exceed the maximum overall building height for the construction of four dormer windows, (3) to reduce the required side setback for the dormer windows and habitable terrace deck, and (4) to reduce the required front setback for a new entrance feature and habitable terrace deck. The Landmarks Preservation Commission shall conduct the design review portion of the application and shall decide on the floodplain variance.

***Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.***

- h. **ZON-23-113 (ARC-23-145) 123 CHILEAN AVE (COMBO)—SPECIAL EXCEPTION AND VARIANCES** The applicant, Robert & Perri Bishop, has filed an application requesting Town Council review and approval for Special Exception to develop a parcel comprised of portions of platted lots which is deficient in minimum required lot width and lot area in the R-B district, and (3) Variances including (1 and 2) to reduce the required east and west side-yard setbacks and (3) to exceed the maximum permitted cubic content ratio (CCR) permitted, in conjunction with a new two-story single-family residence and one-story accessory cabana structure. The Architectural Commission shall perform design review of the application.

***Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.***

- i. **ZON-23-118 (ARC-23-140) 2278 IBIS ISLE RD (COMBO)—VARIANCE** The applicant, Angel Arroyo, has filed an application requesting Town Council review and approval for a Variance (1) to eliminate the required garage enclosure for two vehicles in the R-B district. The Architectural Commission shall perform design review of the application.

***Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.***

- j. **ZON-23-119 (ARC-23-146) 995 S OCEAN BLVD (COMBO)—VARIANCES** The applicant, Mary S. Conrad, has filed an application requesting Town Council review and approval for four (4) Variances to construct a second story addition on an existing single-family residence within the required (1-2) front yard setback, (3) within the required side yard setback, and (4) within the building height plane. The Architectural Commission shall perform design review of the application.

*Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.*

- k. **ZON-24-003 (COA-23-047) 340 ROYAL POINCIANA WAY (COMBO)—SPECIAL EXCEPTION AND VARIANCE** The applicant, TUTTO MARE LLC and SIDNEY SPIEGEL, TRUSTEE OF TRUST #31520371 DATED OCTOBER 25, 1984, has filed an application requesting Town Council review and approval for (1) a Special Exception for a new restaurant within the Royal Poinciana Theatre building at the west side of The Royal Poinciana Plaza, (2) a Special Exception for outdoor café seating in association with the restaurant, and (1) a Variance to exceed the maximum height of rooftop kitchen equipment. The Landmarks Preservation Commission shall perform design review of the application.

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

Jamie Crowley, the attorney for the applicant, provided an overview of the project. He stated that a special exception was requested for 64 outdoor seats and a variance for rooftop equipment. He said the rooftop equipment variances were necessary for proper ventilation. He noted that the Town Council had already looked at the number of seats and the valet parking system. He said his client was proposing an addition from a prior agreement. A new Declaration of Use Agreement for the restaurant's operation has been provided to town staff. Mr. Crowley said he had submitted an amended 1979 agreement update because two parking spaces had been used for the Marissa Collections expansion. Since only 200 seats were requested, the applicant asked to add 7 seats back, which would result in 50 seats. He discussed the sound study, which was produced by a sound engineer. The study measured sound at the southwest corner of the property, which indicated that outdoor seating would be well below the thresholds of the Town's noise ordinance.

Council President Zeidman asked who checked off on the Declaration of Use. Mr. Crowley responded that the document was prepared by the town's attorney and staff.

Council Member Araskog asked which variances were being dealt with today, and Mr. Bergman said one variance for the rooftop equipment was being requested at this time.

Dominic Kozerski, Bonetti Kozerski Architecture, presented the conceptual renderings and walked the Town Council through the vision for the proposed restaurant.

Nelo Freijomel, Spina O'Rourke, presented the architectural plans for the proposed restaurant. He spoke about the exterior changes proposed to the originally approved project.

Council Member Araskog asked if all sides would be screened. Mr. Freijomel said there would be a screen on all sides. Council Member Araskog asked about the French Doors, which were being replaced with sliding doors. Mr. Freijomel said that change would be presented to the Landmarks Preservation Commission. He said the site plan was previously approved, and the doors were the only exterior change being proposed.

Council Member Crampton asked if the windows could be opened to keep the interior rooms cooler. Mr. Freijomel said the glass in the western section of the dining room was screened, and the north did not have any direct incoming light. Council Member Crampton asked if any feedback had been received from the residents in The Towers. Mr. Crowley said a letter had been received from the closest affected residents in The Towers, but no letter had been received from the board. Additionally, there had been dialogue with The Towers, and they had received no objections.

Mr. Freijomel said a two-part canopy would be retractable and open completely to let light and air into the space. That area was not counted in the sound study. The retractable awning was part of the original approval and was a two-layer system.

Samantha David noted that there had been communications with the neighbors, and they had been supportive.

Council President Pro Tem Lindsay asked about closing times and whether the outside seating area would be operational at the same times as the indoor seating. Mr. Crowley said yes, but the closure would be at 10:00 p.m. Council President Pro Tem Lindsay also confirmed that the outdoor seating area would be food service and not just a bar environment. She also wanted assurance that all vegetation would be living, not artificial. In addition, she asked that a letter of support be obtained from the homeowner's association of the adjacent condominium. She was concerned about how much the sound would carry.

Ms. David said there were no public concerns, and she thought the residents would have spoken up if they had concerns. She also noted that the sound would travel west over the water rather than toward The Towers.

Council President Zeidman recommended that as far as the special exception for a new restaurant, sound had to be a consideration. There was also a special exception for outdoor seating with a Declaration of Use. She said that in order to grant a special exception for the restaurant, the Town Council would have to make sure everyone was protected from the sound.

Council Member Cooney did not think the Zoning in Progress pertaining to restaurant uses had ever been rescinded.

Council Member Crampton stated his support for the project.

Council Member Araskog asked for details about the sound study. She also asked if everyone in The Towers was notified, and Mr. Crowley said everyone was notified as required. Council Member Araskog brought up regional destination restaurants, stating this would be the only restaurant on the water. She asked how “town serving” would be handled and wanted proof that the restaurant would be “town serving.” She also had some issues with the hours of operation and wanted something in the Declaration of Use that ensured dining only in the patio seating area. She also thought it might be a good idea to start the outdoor seating slowly by having fewer seats outside in the beginning, with incremental increases conditioned upon whether there were complaints. She wanted to make sure the Town Council would have a right to decrease the number of outdoor seats. Mr. Crowley explained how the process would work. He said if there was a verified noise complaint, the restaurant was fined, and then Mr. Bergman would determine the date by which the restaurant had to comply. If that did not happen, the applicant would appear before the Town Council to discuss the Declaration of Use within thirty days.

Council President Pro Tem Lindsay asked questions and sought clarification about the number of patrons accommodated in the space.

Mayor Moore said the size of the room was determined by the size of the mural. She asked to see the rendering of the terrace. Based on the configuration of the seating, she did not share the same concerns as others. She did like the retractable awning because it would provide sound mitigation. Mayor Moore asked how soon the restaurant was anticipated to open. Mr. Crowley thought by January 1, 2025. Mayor Moore thought this type of waterfront dining was needed in Palm Beach, and she knew Mr. Crowley would help with the town-serving aspects of the restaurant. Mayor Moore said she would also like to see a letter of support from the President of The Towers, but she recalled residents from The Sun and Surf arguing against the project as a point of history. She said there were always nuances to everything, and she thought the surrounding property owners had proven themselves to be people who would stand up for themselves.

Council Member Crampton was pleased with the applicant’s effort to carry out the feeling of a celebrity room. He thought this proposal was elevated because it was in keeping with town traditions and myths that would add to the attraction of the venue.

Council Member Araskog mentioned some opportunities for modifications to the Declaration of Use. She did not think it should run with the land. She also thought that if the owner were to change, the Declaration of Use would need to be re-negotiated.

Council Member Cooney asked for clarification in the staff memo regarding the 1979 agreement.

Ms. David said she had the privilege of working with Gianpaolo and Gabby DeFelice, as well as other well-known, extraordinary restaurant owners. She said the objective was to start the restaurant

with their best foot forward. She asked that Mr. and Mrs. DeFelice be given the benefit of the doubt that they have earned as indicated by their reputation.

Gianpaolo and Gabby DeFelice, the owners of Tutto Mare, indicated they had been in Palm Beach for 8 years and had previously owned a small restaurant in The Hamptons. Ms. DeFelice said it was not always about creating a restaurant but about being part of the community and giving back. She was excited about being part of the Palm Beach community. Mr. DeFelice presented some history of his and Ms. DeFelice's history as restaurant owners. He said they are honored and excited to join the Palm Beach community. Ms. DeFelice said their cuisine would be seafood, which would include freshly caught fish, featuring Southern Mediterranean Cuisine.

Council President Zeidman called for public comment.

Anne Pepper, 333 Seaspray Avenue, asked how the town-serving aspect of the business would be enforced. She asked the Town Council to consider strengthening the Code Enforcement violation restrictions to make it more important for businesses to follow the law and their Declarations of Use. She also spoke about the potential for noise and acoustics that should be considered. She also asked about limiting events.

Council Member Araskog thought it was a good idea to investigate limiting special events. Council Member Cooney said he had mentioned this during the original approval and was unsuccessful.

Council President Zeidman advised that the Town Council members review the Declaration of Use thoroughly to discuss it in January and amend it as necessary. She asked about the doors on the south side of the structure. Mr. Freijomel said they were French doors that entered a vestibule space between the exterior and the celebrity room. Council President Zeidman also confirmed that there would only be ambient music and that there would be no dance floor or no live music.

**A motion was made by Council Member Crampton and was seconded by Council Member Cooney that Variance No. ZON-24-003 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 and that the area must be screened.**

Council Member Cooney noted that the type of equipment necessary for the roof was not allowed under the Town Code.

Council Member Araskog asked for a statement of the hardship. Mr. Crowley responded that the equipment that was designed and available to perform the function of the kitchen scrubber was not within the code parameters as written.

**The motion was carried unanimously, 5-0.**

**A motion was made by Council Member Crampton and was seconded by Council President Pro Tem Lindsay to approve Special Exception No. ZON-24-003, indoor restaurant seating, as said application, meets the criteria set forth in sections 134-229 and 134-329, respectively, of the Town Code and 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 approval is conditioned on approval of satisfactory details in the Declaration of use Agreement will return to the Town Council on January 10, 2024. The motion was carried unanimously, 5-0.**

**A motion was made by Council Member Crampton and was seconded by Council President Pro Tem Lindsay to approve Special Exception No. ZON-24-003, outdoor restaurant seating, as said application, meets the criteria set forth in sections 134-229 and 134-329, respectively, of the Town Code and 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 approval is conditioned on approval of satisfactory details in the Declaration of use Agreement will return to the Town Council on January 10, 2024. The motion carried 4-1, with Council Member Araskog dissenting.**

It was the consensus of the Town Council to defer the Declaration of Use, as well as the 1979 Agreement changes, to the Town Council meeting on January 10, 2024.

## **XI. ORDINANCES**

### **A. Second Reading**

1. **ORDINANCE NO 017-2023:** An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 18, Buildings And Building Regulations, At Article IV, Florida Building Code, Section 18-232, Definitions, Section 18-235, Building Division; At Section 18-237, Agreed Maximum Time Schedule For Completion Of Major Construction, And By Adding Section 18-240, Town Council Building Permit Extension Fee; Providing For Severability; Providing For The Repeal Of Ordinances In Conflict; Providing For Codification; And Providing An Effective Date.

Director Bergman read Ordinance No. 017-2023 by title only.

**A motion was made by Council Member Crampton and was seconded by Council Member Araskog to adopt Ordinance No. 017-2023 on the second reading. The motion was carried unanimously, 4-0.**

*Clerk's note: Council Member Cooney was not in the room during the vote.*

## **B. First Reading**

1. An Ordinance Amending Chapter 134, Zoning, to Allow Arcades and Colonnades Within Public Rights-Of-Way in the C-TS Zoning District

ORDINANCE NO. 008-2023: An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, Article VI, District Regulations, Division 8, C-TS Town-Serving Commercial District, Section 134-1114, Same-Exceptions, To Allow Arcades And Colonnades Within Public Rights- Of-Way; Providing For Severability; Providing For The Repeal Of Ordinances In Conflict; Providing For Codification; And Providing An Effective Date.

*Please note: This item was deferred to January 10, 2024, meeting at the Approval of the Agenda, Item VI.*

2. An Ordinance Amending Chapter 134, Zoning, to Allow Valet Only Parking Structures Ancillary to Existing Hotels in the R-C Zoning District

ORDINANCE NO. 024-2023: An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Article I., Section 134-2 Definitions And Rules Of Construction, To Create A Definition For Valet Only Garage; To Article VI, District Regulations, Division 5. R-C Medium Density Residential District, Section 134-945, Special Exception Uses; Section 134-948 Lot, Yard and Area Requirements, Section 134-955, And Off-Street Parking And Loading; To Allow Valet Only Parking Structures Existing Hotel; Providing For Severability; Providing For The Repeal Of Ordinances In Conflict; Providing For Codification; And Providing An Effective Date.

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

## **C. Time Extensions, Waivers, and Three-Strike Matters**

1. Waiver of Town Code Section 18-237, For Building Permit Extension for 334 Chilean Avenue

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

Paul Courchene, President of Courchene Development Corp, explained the ongoing project and the reason for the extension request to complete the work. He said the original permit was pulled by a different builder in 2022. In the interim, the homeowner hired Courchene Development Corp to build their home. Upon entering a contract, the homeowner changed the home and the foundation. He said the house had been under construction, and the job had moved quickly, although additional time was necessary to finish the home. New permits were obtained in April 2023.

**A motion was made by Council Member Cooney and was seconded by**

**Council Member Araskog to approve the request as presented. The motion was carried unanimously, 5-0.**

2. Waiver of Town Code Section 18-237, For Building Permit Extension for 200 Bahama Lane

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

Matt Courson, The Cury Group Inc., explained the ongoing project and the reason for the extension request to complete the work. Mr. Courson explained the details, causing a delay in the project. There was a pause in construction while some changes were made, and this contributed to the delay in completing the project sooner.

**A motion was made by Council Member Cooney and was seconded by Council Member Araskog to approve the request as presented. The motion was carried unanimously, 5-0.**

3. Waiver of Town Code Section 18-237, For Building Permit Extension for 2000 S Ocean Blvd.

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

Scott Houbert, CA Lindman of South Florida, LLC, explained details regarding the ongoing project and the reason for the extension request to complete the work.

**A motion was made by Council Member Araskog and was seconded by Council Member Crampton to approve the request as presented. The motion was carried unanimously, 5-0.**

4. Waiver of Town Code Section 18-237, For Building Permit Extension for 300 Seminole Avenue.

Wayne Bergman, Director of the Planning, Zoning and Building Department, described the building permit extension request until November 15, 2024.

Chet Davis, Davis General Contraction Corporation, explained details regarding the ongoing project and the reason for the extension request to complete the work.

**A motion was made by Council Member Araskog and was seconded by Council Member Crampton to approve the request as presented. The motion was carried unanimously, 5-0.**

## **XII. ANY OTHER MATTERS**

Council Member Araskog requested legal advice on the text amendments coming forward during the Code Reform project.

Council Member Araskog requested a discussion on what could be done to better the process regarding issues where Code, Planning and Zoning, and Public Works were not communicating effectively.



Mr. Bergman stated he heard the conversation earlier in the meeting. Better communication would be great, but everyone had rules that must be followed within their departments. He offered to have internal conversations to develop solutions that may be presented to the Town Council.

Council President Pro Tem Lindsay, having gone through demolition and rebuild, stated that coordination between departments seemed vulnerable. She supported having Mr. Bergman meet with the other directors and Mr. Blouin to reach a solution for presentation to the Town Council.

Council President Zeidman said Mr. Blouin must be involved because all the departments reported to the Town Manager. She commended the staff for working hard on all issues; she said she had never seen a harder working group. She did not want the staff to feel bad; she knew they would work with the Town Manager to find a resolution. Coordination between different departments could only come from the top down.

Everyone wished each other, staff, visitors, and residents a Merry Christmas, Happy Hanukkah, and Happy New Year.

XIII. ADJOURNMENT

**A motion was made by Council Member Araskog and seconded by Council Member Cooney to adjourn the meeting at 4:11 p.m. The motion was carried unanimously, 5-0.**

APPROVED:

\_\_\_\_\_  
Margaret A. Zeidman, Town Council President

ATTEST:

\_\_\_\_\_  
Kelly Churney, Acting Town Clerk  
Date: \_\_\_\_\_