

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON WEDNESDAY, MARCH 11, 2009

1 I. CALL TO ORDER AND ROLL CALL

2
3 The regular Town Council meeting was called to order on Wednesday, March 11, 2009, at
4 9:30 a.m., in the Town Council Chambers. On roll call, all of the elected officials were present.

5
6
7 II. INVOCATION AND PLEDGE OF ALLEGIANCE

8
9
10 Town Clerk Cunningham gave the invocation and President Rosow led the Pledge of
11 Allegiance.

12
13
14 III. COMMENTS OF MAYOR JACK McDONALD

15
16 There were none.

17
18
19 IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

20
21 Council Member Diamond expressed his disappointment with the Council regarding the
22 vote against the elimination of all Conflicts of Interests. He stated that if the Town Council could
23 not reach an agreement on how to eliminate the Conflicts of Interest, the only resort would be for
24 a referendum and/or Charter change.

25
26
27 V. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE
28 **(Another opportunity for communications from citizens will be offered immediately**
29 **after the lunch break.)**

30
31 There were none.

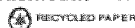
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3-11-09 TC Mtg.

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VI. APPROVAL OF AGENDA

The following changes were made to the Agenda:

President Rosow noted that in the morning, the Council would discuss the action among Surfrider's, the Florida Department of Environmental Protection (FDEP), and the Town of Palm Beach; and that a Closed Door Attorney Client Session would be scheduled.

DEFERRED: Item IX.C.3.b., Modified Site Plan Review #10-2008 with Special Exceptions to the April 15, 2009, Town Council Meeting.

DEFERRED: Item IX.C.4.a., Variance #2-2009 to the April 15, 2009, Town Council Meeting.

DEFERRED: Item IX.D.1.d., Proposed Re-zoning of Lakefront Area from R-B to R-A Zoning District to the April 15, 2009, Town Council Meeting.

TIME CERTAIN - 2:00 P.M.: Item IX. D.5., Poinciana Playhouse Matters.

Motion made by President Pro Tem Coniglio, seconded by Council Member Kleid to approve the Agenda as amended. On roll call, the motion carried unanimously.

VII. PUBLIC HEARING

All witnesses were sworn in by Town Clerk Cunningham.

A. RESOLUTION NO. 23-09 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 450 Royal Palm Way 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 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.

[John S. Page, Director of Planning, Zoning and Building]

There was no ex-parte communication on this item.

1 Historical Consultant Jane Day provided an overview of the Designation Report and the
2 criteria that was met by the property located at 450 Royal Palm Way.

3
4 **Motion made by President Pro Tem Coniglio to approve that the Designation Report**
5 **be made part of the record, and Resolution No. 23-09, designating, as a landmark, the**
6 **property at 450 Royal Palm Way. Council Member Diamond seconded the motion. On roll**
7 **call, the motion carried unanimously.**

8
9 Town Attorney John Randolph read Resolution No. 23-09, by title, as printed above.

10
11 President Rosow thanked all the people that were involved in the process.

12
13
14 **VIII. ORDINANCES**

15
16 A. **ORDINANCE NO. 6-09** An Ordinance of the Town Council of the Town of Palm
17 Beach, Palm Beach County, Florida, Amending the Adopted Town of Palm Beach
18 Comprehensive Plan, Pursuant to Chapter 163, Florida Statutes, Based on the
19 Evaluation and Appraisal (EAR) Report Adopted by the Town of Palm Beach on
20 December 12, 2006 and Determined to Be Sufficient by the Department of
21 Community Affairs on March 23, 2007; Providing for Severability; Repealing All
22 Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification;
23 Providing an Effective Date.
24 [John S. Page, Director of Planning, Zoning, and Building]

25
26 Town Attorney John Randolph read Ordinance No. 6-09, by title, as printed above.

27
28 **Motion made by Council Member Diamond to adopt Ordinance No. 6-09. Council**
29 **Member Kleid seconded the motion. On roll call, the motion carried unanimously.**

30
31
32
33 **IX. DEVELOPMENT REVIEWS**

34
35 A. Appeals

36
37 1. Appeal of ARCOM Denial of Gateposts and Gates at 10 Via Vizcaya - B100-
38 08. [Peter S. Broberg, Esq.]

39
40 Ex-parte communication was declared by: Council Member Kleid with Attorney Peter
41 Broberg; Council Member Diamond with Attorney Broberg and the owner; President Rosow with
42 Attorney Broberg, Mr. Malasky, and one other resident; President Pro Tem Coniglio with Attorney

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1 Broberg, Mr. Malasky, and Monnie Donnelley at Via Vizcaya; Council Member Wildrick with
2 Attorney Broberg.

3
4 Attorney Broberg, noted that he represented the owner, Conrad Yelvington, and provided
5 an overview of the Appeal of the Architectural Commission's (ARCOM) denial of gateposts and
6 gates.

7
8 Staff Comments:

9
10 Planning, Zoning, and Building Director John Page made the following comments:

- 11
12 • Staff confirmed the facts of the case, as Attorney Broberg had just presented.
- 13
14 • Four primary objections from ARCOM and comments:
 - 15
16 • Gates were not appropriate for the neighborhood;
 - 17
18 • Lights on posts;
 - 19
20 • Gates were too pretentious;
 - 21
22 • Gates did not fit with the landscaping;
 - 23
24 • It was the fourth re-vote to deny variance and gates.

25
26
27 The Town Council made several of the following comments:

- 28
29 • ARCOM's decision was arbitrary and capricious, and the matter should be reversed.
- 30
31 • It was too subjective of an opinion by ARCOM.
- 32
33 • If the Appeal was to be overturned, the owner would need to address the lights and
34 the landscaping to be in accordance with the neighborhood.

35
36
37 Motion made by President Pro Tem Coniglio, to overturn the denial of ARCOM in
38 favor of Attorney Broberg's client Mr. Yelvington. Council Member Wildrick seconded the
39 motion.

1 President Pro Tem Coniglio noted that she would allow Attorney Broberg and his client, Mr.
2 Yelvington, to work with the neighbors, as to what they would find fitting, regarding landscaping
3 and lighting.

4
5 Donald Malasky, 13 Via Vizcaya, commented that the gateposts and gates would be an
6 enhancement to the neighborhood and that, to his knowledge, none of the neighbors opposed the
7 applicant's request.

8
9 **Upon roll call, the motion carried unanimously.**

10
11
12
13 **B. Time Extensions**

14
15 None

16
17
18 **C. Variances, Special Exceptions, and Site Plan Reviews**

19
20 **1. Old Business- Less Than 15 Minutes**

21
22 None

23
24
25 **2. New Business- Less Than 15 Minutes**

- 26
27 a. **VARIANCE #3-2009** The application of David S. Pressly and Mary
28 G. Pressly; relative to property commonly known as **202 Seaspray**
29 **Avenue**; described as all of that part of Lots 461 and 463, Poinciana
30 Park (Second Addition), according to the Plat thereof recorded in Plat
31 Book 6, Page 86, lying between the north boundary of said Lots 461
32 and 463 and a line parallel to and 61.25 feet north of (measured
33 along the west boundary of Lot 461) the south line of said Lots 461
34 and 463; excepting therefrom the part thereof conveyed to the Town
35 of Palm Beach by deed recorded in Deed Book 255, Page 304, all of
36 the Public Records of Palm Beach County; located in the R-B Zoning
37 District. The applicant requests variances to raise a portion of the
38 roof of the house and add three additions totaling 103 square feet,
39 which requires the following four variance requests: a variance to
40 construct a 78 square foot one-story addition to an existing non-
41 conforming residence with a west side yard setback of 4.0 feet in lieu
42 of the 12.5 foot minimum required; a variance for a rear yard setback

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1 of 3.1 feet in lieu of the 10.0 foot minimum required; a variance to
2 construct a 56 square foot one-story addition to replace existing
3 loggia on an existing non-conforming residence with an east side
4 yard setback of 13.75 feet in lieu of the 25 foot minimum required;
5 variance for rear yard setback of 7.25 feet in lieu of the 10 foot
6 minimum required. [Applicant: David S. Pressly]
7 [ARCOM Recommendation: Approval of the project. Carried 7-0.]
8

9 Ex-parte communication was declared by: Council Member Diamond with Architect Harold
10 Smith; President Rosow with Architect Smith; President Pro Tem Coniglio with a home owner.
11

12 All witnesses were sworn in by Town Clerk Cunningham.
13

14 Architect Smith, with Smith & Moore Architects, Inc., represented David and Mary Pressly,
15 the new owners of the cottage built in 1930 at 202 Seaspray Avenue in the R-B zoning district. He
16 provided an overview of the applicant's request and indicated that the hardship runs with the land.
17 Architect Smith indicated that the zoning code had changed since the cottage was built and did not
18 currently meet the zoning code.
19

20 **Staff Comments:**
21

22 Zoning Administrator Castro made several of the following comments:
23

- 24 • Changes in code provision were not a hardship, in other words, if a zoning code had
25 changed, it would not be a hardship in order to grant a variance;
26
- 27 • In this case, it was a very small lot, and a very nice cottage that would be enhanced
28 by raising the ceiling heights to adapt to a living standard acceptable to the new
29 property owner;
30
- 31 • Setback requests were diminimus in nature and the Architectural Commission voted
32 unanimously to approve the project, as it was in keeping with a small cottage
33 building that was in character with the building of the street. The hardship was
34 addressed, somewhat; and
35
- 36 • In working with the Town, a utility easement, that dissected underneath the house,
37 had been moved and would be rerouted around the home to the main in the street.
38

39 The Town Council made several of the following comments:
40

- 41 • Architect Smith and the homeowner respected the architectural style in the Town;
42

1 **Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond**
2 **to approve Variance #3-2009.**

3
4 Town Council comments continued:

- 5
- 6 • The tiny cottage should be made livable;
- 7
- 8 • It was encouraging to have remodeling projects, as the other option would have been
- 9 a tear down. President Rosow asked staff to inquire about landmarking the property,
- 10 as two of the owners showed an interest.
- 11

12 **Upon roll call, the motion carried unanimously.**

- 13
14
15
- 16 b. **SITE PLAN REVIEW #5-2009 WITH SPECIAL EXCEPTION** The
- 17 application of 128 Ocean View, LLC; relative to property commonly
- 18 known as **128 Ocean View Road**; described as Lot 9 and 9A of
- 19 LAGOMAR PARK No. 1 and 2, a subdivision in the Town of Palm
- 20 Beach, Florida, according to the Plat thereof, as recorded in Plat
- 21 Book 24, Pages 29 and 44, Palm Beach County, Florida, Public
- 22 Records AND Lots 5 and 5-A OCEAN VIEW, according to the Plat
- 23 thereof on file in the Office of the Clerk of Court in and for Palm
- 24 Beach County recorded in Plat Book 21, Page 16; located in the R-A
- 25 Zoning District. The applicant requests site plan review with special
- 26 exception to allow the construction of a 8,468 square foot two story
- 27 single family residence in the R-A Zoning District on a non-
- 28 conforming platted lot which is 135 feet in depth in lieu of the 150
- 29 foot minimum required. [Attorney: Maura A. Ziska]
- 30

31 There was no ex-parte communication on this item.

32

33 Council Member Diamond commented, for the record, that his wife was a former owner of

34 the property.

35

36 Attorney Maura Ziska, represented the property owner, 128 Ocean View, LLC, accompanied

37 by Don Kino of Smith Architectural Group, and provided an overview of the applicant's request.

38

39 Mr. Kino presented the architectural plans and renderings.

40

41 Staff Comments:

42

1 Zoning Administrator Castro made the following comments:

- 2
- 3 • Staff requested that the applicant provide the location of the generator that meets
- 4 code on the plan; and
- 5
- 6 • A yard trash area would need to be provided for the Public Works Department.
- 7

8 Attorney Ziska indicated the location of the generator on the plan.

9

10 **Motion made by President Pro Tem Coniglio to approve Site Plan Review #5-2009 with**

11 **Special Exception with the condition set forth by staff. Council Member Kleid seconded the**

12 **motion. On roll call, the motion carried unanimously.**

13

14

15

16 3. Old Business- More Than 15 Minutes

17

- 18 a. VARIANCE #19-2008 The application of John R. Raese and
- 19 Elizabeth S. Raese; relative to property described as Lot 24 and the
- 20 East one-half of Lot 25, Plat of JAMAICA LANE, according to the
- 21 Plat thereof as recorded in Plat Book 18, Page 93, Public Records of
- 22 Palm Beach County, Florida; commonly known as **286 Jamaica**
- 23 **Lane**; located in the R-B Zoning District. The applicant requests a
- 24 variance to construct a one-story enclosed accessory structure with
- 25 a point of measurement of 21 feet National Geodetic Vertical Datum
- 26 (NGVD) in lieu of the 17.14 feet NGVD required. [Attorney: Peter
- 27 S. Broberg]
- 28 [ARCOM Recommendation: The Architecture does not warrant the
- 29 variance. Carried 6-1.]
- 30 *Deferred from the November 11, 2008, December 8, 2008, January*
- 31 *14, 2009 and February 11, 2009, Town Council Meetings (Special*
- 32 *Circumstances).*

33 There was no ex-parte communication on this item.

34

35 Zoning Administrator Castro pointed out that ARCOM recommended denial of the variances

36 and the project by a vote of 6 to 1. As this case was filed by Attorney Peter Broberg's client, staff

37 had to bring the case forward to the Council, in order to make a decision on the variances, even

38 though ARCOM had denied the project and the Appeal period had expired.

39

40 Attorney Broberg noted that he was withdrawing the project.

41

1 **Motion made by President Pro Tem Coniglio to accept the applicant's withdrawal, at**
2 **this time.**

3
4 Zoning Administrator Castro indicated that the applicant had a right to come back, but it
5 would have to be a different project, unless it was without prejudice.

6
7 **Council Member Kleid seconded the motion. On roll call, the motion carried**
8 **unanimously.**

- 9
10
11 b. MODIFIED SITE PLAN REVIEW #10-2008 WITH SPECIAL
12 EXCEPTION AND VARIANCES The application of BNB Ventures
13 Palm Beach I, LLC, (Len Ackerman, Manager); relative to property
14 commonly known as **204-210 Royal Palm Way**; described as a part
15 of Lot 36, Block E, of the ROYAL PARK ADDITION to the Town
16 of Palm Beach, Florida, according to the plat thereof as recorded in
17 Plat Book 4, Page 1 Public Records of Palm Beach County, Florida,
18 as described as: Beginning at the NW corner of said Lot 36; thence
19 south on the West line of said Lot 36, 125 feet, thence East on a line
20 parallel with North line thereof, a distance of 87 feet; thence North
21 to a point on the North line of said Lot 36, 87 feet East of the Point
22 of Beginning; thence West to the Point of Beginning; located in the
23 C-OPI Zoning District. The applicant requests site plan review to
24 construct a 14,027 square foot (gross building area), three story
25 commercial building. A special exception is requested to allow a
26 three story commercial building in the C-OPI Zoning District.
27 Variances are requested to construct the building as follows: for a
28 front yard setback for the building to be .95 feet in lieu of the 15 foot
29 minimum required; for the east side yard setback to be 0 feet in lieu
30 of the 15 foot minimum required; for the west side yard setback to be
31 0 feet in lieu of the 15 foot minimum required; for lot coverage of
32 66.8% in lieu of the 25% maximum allowed; for landscaped open
33 space to be 5.1% in lieu of the 30% minimum required for the entire
34 site; for the landscaped area to be 0.0% in lieu of the 10% (of the
35 parking and drive aisle area) minimum required for the interior
36 parking lot; for the landscaped area to be 7.3% in lieu of the 15% (of
37 the parking and drive aisle area) minimum required for screening and
38 interior landscaping; for landscaped open space in the front yard to
39 be 10.6% in lieu of the 35% minimum required; for a front yard
40 setback for the tower to be 7.62 feet in lieu of the 20 foot minimum
41 required; for the east side yard setback for the tower to be 6.67 feet
42 in lieu of the 20 foot minimum required; to allow a tower feature to
43 be 2.4% of the maximum gross floor area in lieu of the 2% maximum
44 allowed; to allow the parking spaces to be situated in contradiction

to the maneuvering requirements in Section 134-2172; that section provides that required parking be designed so as to not require the movement of another vehicle in order to remove another vehicle from a required parking space. The applicant is proposing stacked parking which requires the shuffling of vehicles in order to remove vehicles from required parking spaces; to provide 22 parking spaces in lieu of the 35 parking spaces required (a deficit of 13 parking spaces); to provide a loading space that is 18 feet deep with a clear height of 10 feet in lieu of the 25 foot minimum depth and 14 foot minimum clear height required; to allow the air-conditioning equipment on the roof to be 8 feet in lieu of the 4 foot maximum allowed above the roof stand. [Attorney: Maura A. Ziska]
[ARCOM Recommendation: Defer to the March 29, 2009, Architectural Commission meeting.]
Deferred from the November 11, 2008, December 8, 2008, January 14, 2009, and February 11, 2009 Town Council Meetings (Special Circumstances). Re-advertised for March 11, 2009, Town Council meeting.
Request for Deferral to the April 15, 2009, Town Council Meeting Per Letter Dated March 2, 2009, From Maura A. Ziska. (Special Circumstances)

Item IX.C.3.b., Modified Site Plan Review #10-2008 with Special Exceptions was deferred to the April 15, 2009, Town Council Meeting.

4. New Business- More Than 15 Minutes

- a. VARIANCE #2-2009 The application of Abe Haruvi and Giovana Haruvi; relative to property commonly known as **112 Via Palma**; described as lengthy legal description on file; located in the R-A Zoning District. The applicant requests variances to construct a 2,786 square foot second story addition; to allow a point of measurement of 19.4 feet National Geodetical Vertical Datum mean sea level ("NGVD") for building height and overall height in lieu of the 15.1 feet NGVD required; a variance to allow a building height plane setback on the north side of the lot of 56 feet in lieu of the 73.66 foot minimum required. [Attorney: Maura A. Ziska]
[ARCOM Recommendation: Defer to the March 25, 2009, Architectural Commission meeting.]
Request for Deferral to the April 15, 2009, Town Council Meeting Per Letter Dated March 3, 2009, From Maura A. Ziska. (First Request for Deferral)

Item IX.C.4.a., Variance #2-2009 was deferred to the April 15, 2009, Town Council Meeting.

D. Other

1. 2008-2009 Zoning Season Study Items.

[John S. Page, Director of Planning, Zoning, and Building]

- a. ORDINANCE NO. 5-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, of the Code of Ordinances as Follows: Create Division 14, Sections 134-2104 Through 134-2108 and Modify Sections 134-1053, 134-1055, 134-1056, 134-1108, 134-1109, 134-1111, 134-1158, 134-1159, 134-1161, 134-1208, 134-1209, 134-1210, 134-1303, 134-1304 And 134-1305 to Create an Administrative or Special Exception Approval of Outdoor Seating Related to Dining Rooms and Restaurants in the R-D(2), C-TS, C-WA, C-B and C-OPI Zoning Districts; Section 134-1906 to Allow Outdoor Seating by the Administrative or Special Exception Approval Process in Hotels and Condo-hotels; Section 134-1637 to Create New Regulations to Address Intersection Site Triangles in All Residential Zoning Districts; Create Division 15, Sections 134-2109 and 134-2110 and Modify Sections 134-1055, 134-1058, 134-1059, 134-1304 and 134-1906 to Regulate the Condominium Form of Hotel Use; Section 134-2176 to Create More Stringent Off-street Parking Requirements for Hotels, Condominium Hotels, Motels, Motor Inns and Timesharing Uses and Their Accessory Commercial Uses; Section 134-261 and 134-532 to Eliminate Zoning Season and Create a Hearing Time Line for Zoning Applications; Section 134-172 by Modifying the Deferral Regulations for the Hearing Process of Special Exception and Variance Applications; Section 134-330 by Creating Deferral Regulations for the Site Plan Review Application Hearing Process and Eliminating Wording in Subsection (D); Sections 134-2 and 134-2175 by Changing the Definition of Parking, Principal of Equivalency and the Principal of Equivalency Regulation to Refer to the Appropriate Off-street Parking Standard and Not Cubic Content Ratio; Section 134-390 and 134-419 to Modify the Regulation for Nonconforming Building Construction Which Does Not Finish on

1 Time; Section 134-38 to Create a Fee for Administrative Approval of
2 Site Plan Review; Section 134-326 to Create an Administrative Site
3 Plan Review Approval Process; Section 134-2 by Modifying the
4 Definition of Structure to Be More Inclusive; Sections 134-172, 134-
5 328 and 134-330 to Modify the Deferral Procedure for Special
6 Exception and Variance Applications, Changing the Designee and
7 Clarifying When Work Has Commenced Relative to Special
8 Exception, Variance and Site Plan Approvals; Section 134-893 by
9 Eliminating the Additional Front Setback for Lots under 20,000 Sq.ft.
10 In the R-B Zoning District Which Are Equal to or Greater than 150
11 Feet Deep; Providing for Severability; Repealing All Ordinances or
12 Parts of Ordinances in Conflict Hereof; Providing for Codification;
13 Providing an Effective Date.
14

15 Zoning Administrator Castro stated that Ordinance No. 5-09 memorializes the
16 recommendations made last month in drafting the ordinance and changing the zoning code. All of
17 the comments and recommendations have been incorporated for first reading.
18

19 Town Attorney Randolph read Ordinance No. 5-09 by title, as printed above.
20

21 Responding to President Pro Tem Coniglio, Mr. Castro explained that the condo-hotel
22 parking and hotel parking was being changed for consistency with other commercial uses. He
23 confirmed that Section 134-893 by Eliminating the Additional Front Setback for Lots under 20,000
24 square feet, did not relate to Item IX.D., on the Agenda.
25

26 **Motion made by Council Member Kleid, seconded by President Pro Tem Coniglio to**
27 **approve Ordinance No. 5-09, on first reading. On roll call, the motion carried unanimously.**
28
29
30

31 b. Ocean Vista Requirement in the Beach Area Zoning District.
32

33 Zoning Administrator Castro commented that staff, as part of the backup and the Phase I
34 staff report, provided a summary of the actions of the Planning and Zoning Commission, which was
35 staff's original recommendation. In the interim, staff wrote a memo to the State of Florida to obtain
36 a determination as to whether the Ordinance was consistent with state law.
37

38 Town Attorney Randolph read a memo he had addressed to the Planning and Zoning
39 Commission, which was on file, as backup, in the Town Clerk's Office. The memo related to the
40 guidelines of the height, width and length limit for walls, fences, structures and hedges located on
41 privately owned properties, east of Ocean Boulevard, adjacent to properties in the R-B District.
42

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Town Attorney Randolph made several of the following comments:

- The policy decision was to have one specific height apply across the entire property, which was 42 inches, as discussed at the Planning and Zoning Commission meeting.
- Planning and Zoning Commission's recommendation was to make it consistent with state law; that if there was any kind of conflict in the Florida Department of Environmental Protection (FDEP) trimming guidelines, the FDEP guidelines would prevail.
- A copy of the Ordinance had been sent to FDEP, and he was waiting to hear from them.

Discussion occurred among the Town Council, Town Attorney Randolph, and staff regarding several of the following comments:

- The Town Council should wait until the April 15, 2009, Town Council meeting, in the event that the FDEP would make a ruling by then.
- The Council would need to decide whether to accept the Planning and Zoning Commission's ruling of 42 inches, the existing 1993 ruling of 30 inches, or the ruling by FDEP, if one was provided.

Mr. Castro presented pictures of mid-town beach and South Ocean Boulevard in order to provide the Council with an idea of the difference between the 30, 42 and 48 inch requirements.

John Ripley, 206 Russlyn Drive, West Palm Beach, commented that an ordinance should not address the use of private property, such as lowering the hedges to see into a yard. The state had laws and authority, and by going forward with this, there would be some undesirable consequences. It would be very onerous and difficult on the Town to enforce this ordinance.

Jack Maxey, 244 Nightingale Trail, commented that the permit that he received, indicated that all non-native species must be removed from the property, and specifically included turf grass. He commented that the FDEP should have precedence, in general, inside the Ocean Vista zone.

It was the consensus of the Town Council to obtain the ruling of the FDEP regarding the code height, before the April 15, 2009, Town Council meeting, and if the FDEP chose not to respond, the Town Council would move forward and make a decision.

Responding to President Rosow, Town Manager Elwell indicated that he would ask the Inspector General if he could influence the FDEP for a response on the ruling.

c. Off Street Parking for Single Family Homes.

Zoning Administrator Castro noted that this recommendation derived from the Ordinance, Rules, and Standards Committee, and was directed by Town Council for staff to come back with specific languages provided in the Summary of Actions. The Planning and Zoning Commission recommended approval of staff's recommendation.

Mr. Castro indicated that one additional parking space would be required for every 3,000 square feet, and would not be in a garage, but on the property.

The Town Council made the several of the following comments:

- The additional parking space addressed many of the residents issues on some of the larger homes, by removing the parking off the street, and away from the neighbors.
- President Rosow indicated that the Town Council would like to see the ordinance back for the first reading at the April 15, 2009, Town Council meeting.

d. Proposed Re-zoning of Lakefront Area from R-B to R-A Zoning District. **Staff Recommends Deferral to Town Council Meeting on April 15, 2009.**

President Pro Tem Coniglio requested to be reminded when the Town Council reviewed the Strategic Plan, on page 6, in 2007, item number I2, residential density increases, taking actions to limit increases in density through the subdivision of properties including adjustments to north end zoning districts including conversion of areas of R-B to R-A or R-AA zoning districts along the Ocean and the Lake.

Item IX.D.1.d., Proposed Re-zoning of Lakefront Area from R-B to R-A Zoning District, was deferred to the April 15, 2009, Town Council Meeting.

2. Options for Consideration of Variance Applications.
[John S. Page, Director of Planning, Zoning, and Building]

Discussion occurred among the Town Council Members regarding reassigning responsibility for review and approval of variance requests. President Rosow commented that he was in favor of contacting former mayors and council members to create a panel to review "plain, vanilla" variances, the ones that were without special exceptions and/or site plan reviews. The proposed panel would help to alleviate the time it takes for the Town Council to address the variances.

The Town Council members made several of the following comments:

- Five people, instead of three would be preferred, as it would provide a better balance of viewpoint and would allow for a clear majority;
- If the variance requests were going to be handed off to another body, their decision would be final, and that any appeal of it would have to go to the courts and not come back to the Town Council;
- The reason for contacting former elected officials was because of their experience with variance requests during their terms on the Council;
- The property owner had the right to face the Council and not a panel that could not be unelected; and
- If an applicant had been turned down by the proposed panel, they should have the right to appeal to the Council, and not spend money going to court.

Town Attorney Randolph advised that once the decision was made, staff would need input as to what constituted a "plain, vanilla" variance, as variance requests required a site plan review, but not necessarily special exceptions.

Town Manager Elwell addressed the following:

1. Responding to President Pro Tem Coniglio, he noted that in the current ordinance, the individuals would be serving in another official Town capacity discharging duties for the Town, as opposed to lobbying on behalf of any private clients to the Town, which was what the ordinance was intended to preclude.
2. It may be preferable to send a letter to the former elected officials, rather than calling, as to their interest in serving on a board to review and approve variance requests.
3. Since the Council had been having two-day meetings, the workload on day two had become more manageable, and he asked the Council how it related to the proposed panel.

Council Member Diamond commented that the Town Council should be a policy board and that variance requests could be addressed at another level. If there was a unanimous vote against the applicant's request, there would be no appeal, but if there was a split vote, there could be an appeal to the Town Council.

Discussion continued regarding increases in costs associated with staff's workload, the fact that citizens preferred speaking directly to the elected officials, and if there were divided votes, it would come back to the Council.

Mayor McDonald noted that reassigning variance requests responsibility had been considered three times in the last 14 years, in order to alleviate the Town Council's workload and focus on policy decisions. The argument was that the residents should be able to look the elected officials in the eye, who were making the decisions. It was decided, on those occasions, not to follow through on the reassignment.

Motion made by Council Member Wildrick, seconded by President Pro Tem Coniglio, not to pursue options for variance applications. On roll call, the motion carried 4-1.

President Rosow	Yes
President Pro Tem Coniglio	Yes
Council Member Diamond	No
Council Member Kleid	Yes
Council Member Wildrick	Yes

3. Empty Storefront Window Treatments.
[John S. Page, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Director Page provided an overview of the proposed code amendment and written policy regarding vacant store fronts, from his memo, which could be found in the backup on page 182. He noted that Planning Administrator John Lindgren had worked with the issue and with various stakeholder organizations and was available to answer any questions.

Discussion occurred among the Town Council members, and other attendees regarding the empty storefront treatments. Following were several of the issues discussed:

- The standardized method of the materials that would be used in the windows/doors of vacant store fronts;
- Whether the timing guidelines were adequate;
- Window treatments would be varied from different store fronts to be aesthetically pleasing;
- The method of how the property owners would acquire the window treatments; and

- The property owners' cost of the materials.

Responding to Town Manager Elwell, President Rosow indicated that, as it would take two months for the policy to officially be in effect, it could be implemented on a voluntary basis until that time.

4. Storm Shutters - ARCOM Recommendations for Residential Properties.
[John S. Page, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Director Page provided an overview of ARCOM's recommendations of storm shutters for residential properties. It was ARCOM's consensus not to prohibit homeowners from shuttering their homes during the off-season, but to require that if any homeowner left their shutters in place longer than 14 days, that the Fire-Rescue Department would be notified with the dates that the structure would not be occupied.

President Rosow commented that he agreed with ARCOM's recommendations, and indicated that the homeowners notifying the Fire-Rescue Department was an excellent idea and a life/safety issue.

Council Member Kleid pointed out that the homeowners would not think about notifying the Fire-Rescue Department when they were away during season. He asked if there was an enforcement provision.

Town Attorney Randolph suggested a voluntary educational program, rather than legally enforcing the provision.

It was the consensus of the Town Council that staff work with the Fire-Rescue Department to undertake a public education effort rather than bring an ordinance to the Council.

The Town Council recessed for lunch at 11:30 a.m.

The March 11, 2009, Town Council Meeting reconvened at 2:00 p.m.

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON MARCH 11, 2009

1 President Rosow announced that a Closed Door Client/Attorney Session would be held on
2 Friday, March 20, 2009, at 10:30 a.m., to discuss the Reach 8 lawsuit.

3
4 **Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond**
5 **to approve that a Closed Door Client/Attorney Session to discuss the Reach 8 lawsuit would**
6 **be held on March 20, 2009. On roll call, the motion carried unanimously.**
7

8
9
10 5. Poinciana Playhouse Matters.
11 **TIME CERTAIN: 2:00 P.M.**
12

13 a. Review of the 1979 Agreement.
14 [John C. Randolph, Town Attorney]
15

16 Town Attorney Randolph provided a review of the 1979 Agreement, which could be found
17 in his memo, on page 192, in the Town Council backup material, that addressed specific allegations.
18

19 Town Attorney Randolph responded to several of the following questions from the Mayor
20 and Town Council:
21

- 22 • A good faith effort had been made to lease the theater.
23
- 24 • The language of the property use covenants running with the land, did not mean that,
25 if there was a modification of the Agreement, other parties, such as beneficiaries, and
26 adjacent property owners would be able to enforce the terms, as it would be between
27 the two parties, the Town and the property owner.
28
- 29 • The Agreement obligated the owners to lease it for use as a theater for performing
30 and visual arts, and it did not have to be leased every day, but a good faith effort
31 would have to be made.
32
- 33 • At the time of litigation, regarding language found in the Agreement, the Judge
34 determined that an ordinance had never been adopted and restrictions would not be
35 in effect.
36

37 **Public Comment:**
38

39 Bill Cooley, 8 Windsor Court, commented on the contract that was signed in 1979 regarding
40 the Poinciana Playhouse. He indicated that he was not in favor of tearing down the theater.
41

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON MARCH 11, 2009

1 Lawrence McNamara, 422 N. Lakeside Drive, Lake Worth, commented on behalf of Norman
2 Burwen, regarding a memo that was sent to the Council. He pointed out that the words in the
3 Agreement were "will", not "can" or "may" continue to lease.

4
5 Mrs. McNamara, 422 N. Lakeside Drive, Lake Worth, read the remaining of Norman
6 Burwen's letter that was sent to the Town Council.

7
8 George Scripps, Ballet Florida, 500 Fern Street, West Palm Beach, as a representative of a
9 performing arts organization, commented that the Poinciana Playhouse was the most perfect venue
10 for Ballet Florida, and performed there for many years.

11
12 Doug Holtz, 139 Sunrise Avenue, commented that the previous Council spent over \$200,000
13 to uphold the 1979 Agreement. It had been upheld by court and he asked for it to be enforced.

14
15 Lory Volk, on behalf of Bill Cooley, commented that money was the reason for discussion
16 of razing the theater. She finished reading Mr. Cooley's comment, which was in favor of retaining
17 the theater.

18
19 Discussion occurred among the Mayor, Town Council Members, and Town Attorney
20 Randolph regarding the theater. Following were several of the comments made:

- 21
- 22 • In the 1979 Agreement, it was the intention of the Council, at that time, that the
23 building should not be demolished and the court's decision was that the theater
24 should not be demolished.
 - 25
 - 26 • In the Judge's Agreement, it was stated that if the theater was economically unviable,
27 the remedy was with the Town and not the courts.
 - 28
 - 29 • If the Town Council had no intention of giving consideration of amending the
30 Agreement in the future or hearing any argument to do so, the position could be
31 taken that the Agreement stands.
- 32

33 Public Comment:

34
35 Laurel Baker, Palm Beach Chamber of Commerce, commented regarding the free enterprise
36 system, the importance of capitalism, and the obligation to look beyond, as times have changed.

37
38 Owen Larkin, 315 S. Lake Trail, commented that, as a resident, he was tired of the situation
39 and that the Town Council had more important things to do.

40
41 Patrick Flynn, president of the Palm Beach Theater Guild, commented that the Guild had an
42 ongoing lawsuit and that the interpretation would come back to the Town Council.

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON MARCH 11, 2009

1 John Ripley, Preservation Foundation of Palm Beach, commented on the meaning of the
2 Agreement, asking if the Playhouse had to be maintained at all times and what was the required
3 venue if it was leased. He said he disagreed with, for the record, any idea or the concept that the
4 times had changed, or that the buildings were expendable and would never come back to value.

5
6 Town Attorney Randolph advised that if the Council could not make their own interpretation
7 of what it meant to maintain and operate the theater, then they had the right to file their own
8 declaratory relief action.

9
10 Discussion continued regarding the following: the Sterling organization, who had dropped
11 the appeal, with prejudice, as a sign of good faith; the Town was not looking for more tax revenue;
12 a study would be done to determine if the theater was viable.

13
14 Fire-Rescue Chief Bill Amador noted that the theater was inspected as a vacant building and
15 could not be used as a theater, as it did not meet any of the codes, from a life/safety code
16 perspective, which changed every three years, and the building had not been maintained for 10
17 years.

18
19 Rob Walton, Code Enforcement, inspected the building last Friday, with others, and he had
20 seen old leaks and received a letter that the leaks were fixed. He also received a letter from an
21 environmental organization, stating that there was mold in the building, but further amplification
22 of the mold had stopped by keeping the air conditioning on and fixing the leaks. He saw no water
23 dripping, and had written a warning letter for the exterior of the building, for the broken windows,
24 rotten wood, and the paint issue, which had been taken care of.

25
26 Adam Munder, partner in Sterling, noted that, he contacted every performing arts
27 organization in the Palm Beach County, and no one wanted to lease the theater. He read into the
28 record a letter from Bill Meyer of the Kravis Center, confirming on a board vote of February 25,
29 2009, that they were still interested in pursuing the new venue.

30
31 Town Council continued discussion and Town Council Member Wildrick asked Town
32 Attorney Randolph to provide a memo of what the Town Council's authority and rights were in
33 order to resolve the situation with the theater. Several of the following questions were: could the
34 theater be demolished; could the landmarking be changed to demolish it; assurance that the builder
35 could not obtain zoning variances. He added that if everyone did not come together by the next
36 meeting, with a solution, the Town Council would provide one.

37
38 Council Member Diamond stated that the safest action would be to reaffirm the 1979
39 Agreement, as it stands, and let the parties work it out inside or outside of court, that the Town
40 Council would not get further involved, otherwise there could be litigation.

1 Adam Munder indicated that he had taken care of structural problems with the theater, and
2 it was in compliance.

3
4 Further discussion occurred, and Town Attorney Randolph noted that he would write a
5 memorandum for the Town Council, but indicated that he would not advise how a court might rule
6 regarding the 1979 Agreement. He would provide the Town Council with considerations given by
7 a court in order that a determination could be made.

8
9 John Eubanks, Palm Beach Towers Condominium Association, commented regarding
10 conversation with the parties; their point of view, and discussed the zoning variance issue.

11
12 Lee Munder, 300 Seminole Avenue, last April, commented regarding the dropping of the
13 lawsuit and that they set on a course and adhered to it. He noted that the Landmarks Preservation
14 Commission thought that they had a great plan, although the decision still remained with the Town
15 Council. He added that no one has come up with a creditable plan to lease their property.

16
17 President Rosow indicated that it was unknown whether the Town would support a theater.
18 He indicated that a public hearing would be held on April 15, 2009, at 2:00 p.m., and that the Council
19 would give guidance to the Landmarks Preservation Commission as to the appropriate look of the
20 plaza going forward. All the parties were to come to the Council with their recommendation: the
21 Towers, the Palm Beach Theater Guild, Bill Cooley, Preservation Foundation, and anyone who had
22 an interest.

23
24 **It was the consensus of the Town Council that Town Attorney Randolph prepare a**
25 **memo advising the Town Council what authority they would have regarding the theater.**

26
27 Bill Metzger commented that he created a volunteer task force few months ago, to
28 accumulate comments and make plans to put together a set of guidelines from Town's point of view.
29 The group was not aligned with any organizations, as they were interested in preserving the theater
30 in Palm Beach.

31
32 President Rosow indicated that Mr. Metzger would need to bring the volunteer task force
33 information to the April 15, 2009, Town Council meeting.

34
35
36 b. Cost Sharing and Schedule for Study of Playhouse Viability.

37
38 President Rosow noted that the Theater group offered to contribute one-third of up to
39 \$10,000 of the cost of an independent study commissioned by the Council to determine whether the
40 existing theater can succeed or whether a new theater should be constructed; Sterling Group had not
41 come forward with any contributions.

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON MARCH 11, 2009

X. ANY OTHER MATTERS

There were none.

XI. ADJOURNMENT

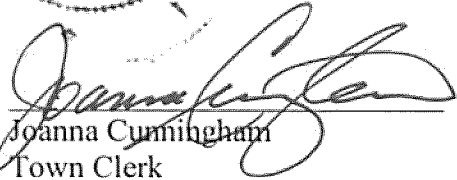
There being no further business, the March 11, 2009, regular Town Council meeting was adjourned at 3:40 p.m.

APPROVED:



David A. Rosow
Town Council President

ATTEST:



Joanna Cunningham
Town Clerk