TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON WEDNESDAY, MARCH 10, 2010

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Wednesday, March 10, 2010, at 9:30 a.m., in the Emergency Operations Center, 355 South County Road, Palm Beach. On roll call, all of the elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Cunningham gave the invocation. President Rosow led the Pledge of Allegiance.

III. COMMENTS OF MAYOR JACK McDONALD

Mayor McDonald commented that the Council was so considerate and generous to the business people in Town yesterday that he thought with the construction of the new Royal Poinciana Bridge, that perhaps the businesses along Royal Poinciana Way could think of some ways the Council might be of assistance to them while the bridge was being replaced and come to the Council to present issues that might be helpful.

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

There were none.

V. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

There were none.

VI. APPROVAL OF AGENDA

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve the Agenda. On roll call, the motion carried unanimously.

VII. DEVELOPMENT REVIEWS

A. Appeals

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1. Appeal of Administrative Decision Regarding Patio Roof Construction, 3000 South Ocean Boulevard (Bellaria) (Per Letter Dated March 2, 2010, From James R. Brindell).

Ex-parte communication was declared by:

- Council Member Diamond was contacted by Attorney James Brindell.
- Council Member Kleid spoke to Attorney Brindell.

Attorney Brindell noted that he and Mr. Eugene Lawrence were representing Mrs. Diane Wren.

Architect Lawrence provided a graphics presentation of the Appeal; he noted that it was just a shade over a penthouse roof deck.

President Rosow responded that the issue was the appeal of the administrative decision, not the architecture.

Attorney Brindell provided an overview of the Appeal.

Discussion occurred among the Town Council Members, Attorney Brindell, and Architect Lawrence, in which several of the following comments were made:

- The architectural feature addition did not affect any of the criteria for special exceptions and site plan reviews. Why should the change to the roof, which was an Architectural Commission issue, have to be processed as a special exception?
- As the patio belonged to Mrs. Wren, she would be responsible for the maintenance of the roof.
- It was unique only to the penthouse floor, and there were only four penthouses in the two buildings.
- If it was approved, no other unit owner would want a similar covering, since they were covered by a canopy from the floor above; the other three penthouses were sufficiently shaded and did not need it.

Town Clerk Cunningham administered the oath to all those who would be providing testimony. Responding to President Rosow, Attorney Brindell and Architect Lawrence agreed that the testimony provided previously was covered under the oath, which was just administered.

Planning, Zoning and Building Director Page provided the specific details of the Zoning Ordinance and noted that it was not within staff's authority to provide administrative approval in this situation.

After discussion, **a motion was made by Council Member Diamond to approve the Appeal of Administrative Decision Regarding Patio Roof Construction, 3000 South Ocean Boulevard on the proviso that it did not constitute a precedent.**

Motion died for lack of a second.

Motion made by President Pro Tem Coniglio, seconded by Council Member Wildrick, to uphold the administrative decision by staff, that it was not within staff's authority to provide administrative approval regarding a patio roof construction at 3000 South Ocean Boulevard. On roll call, the motion carried 4-1, with Council Member Diamond dissenting.

B. Time Extensions & Waivers

1. Waiver of Town Code Section 18-242, 105.4.1.6.A., Extension of Agreed Maximum Time Schedule for Completion of Construction, 640 Island Drive (Per Letter Dated January 27, 2010, From Zack Ciomek). Request for Withdrawal Per Letter Dated February 24, 2010, From Zack Ciomek.

Item VII.B.1., was requested to be withdrawn per letter dated February 24, 2010, from Zack Ciomek.

Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond, to approve the request for withdrawal of Waiver of Town Code Section 18-242, 105.4.1.6.A., for an extension of agreed maximum time schedule for completion of construction, at 640 Island Drive. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

a. VARIANCE #1-2010 The application of Paul Benk, relative to property commonly known as 231 Cocoanut Row; described as Lots 656, 660 and 662, POINCIANA PARK THIRD ADDITION, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County Florida, recorded in Plat Book 6, Page 86; located in the R-B Zoning District. Request for Variance to allow a new circular driveway which would result in a front yard landscaped open space of 23% in lieu of the 40% minimum required and the 49.8% existing. [Attorney: Maura A. Ziska, Esq.]

Ex-parte communication was not declared by any members of the Town Council.

Attorney Ziska, on behalf of property owner for 231 Cocoanut Row, with Paul Benk and Architect Peter Papadopoulos, Smith and Moore Architecture, provided an overview of the request.

Staff Comments:

Zoning Administrator Castro made several of the following statements:

- It was a narrow lot, a congested area when school let out in the afternoon, and difficulty exiting the property.

- Public Works recommended that this type of change would be conducive to the area and help the property owner enter the street safely, which was the hardship.

Architect Peter Papadopoulos presented the drawings and the site plan, and noted that there would be adherence to the site triangles.

Responding to President Pro Tem Coniglio, Attorney Ziska noted that regarding the neighbors, there would be no planting in the site triangle.

Motion made by President Pro Tem Coniglio that Variance #1-2010, be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

b. VARIANCE #2-2010 The application of Bradford D. and Jill E. Kaufman; relative to property commonly known as 151 Seagate Road; described as Lot 16, NORTH SHORE ADDITION TO PALM BEACH according to the Plat thereof recorded in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, ion Plat Book 20, Page 62; located in the R-B Zoning District. Request for Variance to reduce side yard setback from 12.5 feet to 5 feet in order to construct a one story, one car garage and laundry room addition. [Agent: Thomas M. Kirchhoff, AIA, PA]

Ex-parte communication was declared by:

- Council Member Diamond heard from the applicant, Ms. Kaufman, and an unnamed neighbor who left a telephone message of objection, without stating why.

- Council Member Kleid received two calls, spoke to the two individuals, who remained anonymous, but said they were concerned neighbors and they did not like the appearance of the proposed project.

- President Rosow received a call from the Kaufman's, William Powers, who stated his objection to the "0" lot line, as he called it, and received a message from an anonymous woman who voiced her concern regarding this variance.

- President Pro Tem Coniglio spoke with Mrs. Kaufman, and received two anonymous calls, both of which offered their concerns regarding the project.

- Council Member Wildrick received a call, but did not speak with Mrs. Kaufman; he received two anonymous voice messages, and he did not know if they were citizens.

Jill Kaufman provided an overview of her request, and indicated that the hardship was the location of the house, as there was no other place to add the second garage and laundry room.

Staff Comments:

Zoning Administrator Castro made several of the following comments:

- While the project was eliminating nonconformity by providing an extra garage, it was creating or expanding an existing one, as there was a side yard setback for the house toward the back of the property.

- There were seven letters of support in the file, but none from the neighbor directly to the west.

Ms. Kaufman interjected that yesterday she requested a letter from her neighbor to the west, however the neighbor's husband was the owner of the property, and was traveling; her neighbor said that Ms. Kaufman could go on record stating that they did not oppose it. Attorney Ziska was the neighbor's attorney and told Ms. Kaufman that it was fine to say that they were not objecting, but that they wanted vegetation. Ms. Kaufman said she approached her neighbors and everyone she spoke with was in support of her request and signed the letter. She had not heard any objections from neighbors, and did not know the people who were calling.

Mr. Castro continued his comments:

- A carport existed on that side of the house that was fairly close to the property line also.

- Regarding the hardship, it was up to the applicant to provide the Council satisfactory evidence that the criteria had been met for granting the Variance.

Motion made by Council Member Diamond that Variance #2-2010 be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

None

4. New Business- More Than 15 Minutes

None

D. Other

1. Request for Consultant Funding to Conduct Town-Serving Study. [John S. Page, Director of Planning, Zoning, and Building]

Planning, Zoning and Building Director Page provided an overview of the request. He indicated that the Planning and Zoning Commission recommended that Bill Brisson, the original consultant for the study of the ordinance to the Town, be hired to look at existing commercial trends in order to determine any necessary changes to the Town-Serving ordinance, at a cost of $18,000.

Zoning Administrator Castro provided a historical perspective of the past to the present Town-Serving regulations.

Bob Moore, Director of South County Road Association, had no comments, at this time.

Discussion occurred among the Council Members, Town Attorney Randolph, and Mayor McDonald regarding the Town-Serving ordinance, and several of the following items were discussed:

- The method of administering the Town-Serving ordinance, the frequency and the implementation of it.
- The goal of the Town-Serving ordinance was to determine if it were still relevant for the business community and the Town.
- The Town-Serving ordinance inhibited people from coming to the Town, as it was burdensome for the business community.
- The reason for hiring a consultant and incurring the expense of $18,000 for a study.
- The study would absorb a significant amount of staff time, and Mr. Brisson was familiar with it.
- The study would go back to the Planning and Zoning Commission, there was money in the budget for it, and a portion of the work would be handled by staff in order to control the cost in the best possible way.

President Pro Tem Coniglio commented that based on the amount of concern in the community by the residents and businesses, the study should be undertaken.

Motion made by President Pro Tem Coniglio to approve the recommendation to retain Bill Brisson for the Town-Serving study with a not to exceed cost of $18,000. Council Member Diamond seconded the motion.

Discussion ensued regarding the study and whether or not $18,000 was an excessive amount, as President Rosow indicated that it was apparent that there would be an increase from 2,000 feet to 2,500 or 3,000 feet, and that there was no question that the environment changed dramatically. Town Attorney Randolph indicated that there were several businesses, in the past, that could not expand their place or have a business in Town due to the Town-Serving issue, and filed a lawsuit against the Town. After going to court, the Town prevailed, as a result of the documentation of Mr. Brisson's study. Several of the following issues were discussed:

- The ramifications of not having a Town-Serving ordinance.
- The Town-Serving ordinance should be placed on the Planning and Zoning Commission's agenda, in order to receive their input.
- It should be studied in order to put numbers on the table and avoid guesswork or opinions.
- Elimination of the Town-Serving ordinance.
- A more defined scope of the project was requested than what was in the backup.

Anita Seltzer, 44 Cocoanut Row, asked if staff could clarify issues that were raised during the study and what the relationship was between the parking ratio and how it related to the Town-Serving issue.

Town Attorney Randolph responded that the parking ratio was based on traffic from the region as opposed to the Town.

Mr. Moore offered his insight and background on the Town-Serving concept, and made several of the following comments:

- The Town Council would have the ability to control the size of businesses.
- The Town Council would be retaining control (if Town-Serving was maintained) on a negotiation basis.

Amended motion made by President Pro Tem Coniglio, to approve the recommendation to retain Bill Brisson for a Town-Serving study, at a not to exceed cost of $18,000, including the specific proposals of the square footage, its relevance, and necessity of a Town-Serving ordinance. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

Responding to Mr. Castro, President Rosow clarified that the issue would first go to the Planning and Zoning Commission and then to the Town Council.

VIII. ANY OTHER MATTERS

Eric Gilbertson, 151 Chilean Avenue, commented regarding the high increase in the Town's police officers' pension plan. He also commented regarding the Theater Guild in the Royal Poinciana Plaza.

IX. ADJOURNMENT

There being no further business to discuss, the March 10, 2010, Regular Town Council Meeting was adjourned at 10:41 a.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk