TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON WEDNESDAY, FEBRUARY 16, 2011

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Wednesday, February 16, 2011, at 9:30 a.m., in the Town Council Chambers. On roll call, all of the elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Administrative Assistant Anne Boyles gave the invocation. President Rosow led the Pledge of Allegiance.

III. COMMENTS OF MAYOR GAIL L. CONIGLIO

Mayor Gail Coniglio commented that she received a letter from the Garden Club regarding their major fundraiser, the House and Garden Day event. They had planned to hire professionals to run four of the E.R. Bradley Wicker Wheelchairs on the Lake Trail. Because of an ordinance, it would not be allowed. She requested that the Town Council give consideration to a one-time approval to do this in honor of the Centennial and the Garden Club's efforts, which are magnanimous in the Town.

President Rosow said to place it on the Agenda, and if everyone agrees it would be added as Item 3 under Item IX.D., Other.

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

There were none.

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

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Gay Cinque, 3 Golfview Road, owner of a small jewelry boutique on Via de Mario, commented that she and other business owners were noticed by Code Enforcement that their signs did not comply. She asked for a concession to leave the signs on the Vias as they are until a new ordinance could be written; one for the very narrow Vias and one for the very open Vias, such as Via Gucci.

President Rosow indicated that in addition to Zoning Administrator Castro working on this issue, Landmarks Preservation Commission was also involved in this process. He requested that Code Enforcement delay issuing any citations of their signs on Via de Mario until such time that there was a resolution to the signage issue.

It was the consensus of the Town Council that Code Enforcement delay issuing any citations of the signs on Via de Mario until such time that there was a resolution to the signage issue.

Discussion occurred among the Town Council, Town Attorney Randolph, staff, and Ms. Cinque relative to the signage on Via de Mario. Several of the following issues were discussed:

- The ordinance being proposed would allow for hanging signs, up to two square feet;
- The signs that were cited are over arches and on pillars, or were too large;
- Caution should be taken on how not to enforce ordinances;
- The owners did not have permits or ARCOM approval for the signs on the Via.
- Via de Mario was the narrowest of all the Vias in Town and the owners relied on the horizontal, adjacent location of their signs;
- A variance could be filed showing a hardship;
- An extension should be requested at the Code Enforcement Board hearing until the Ordinance was worked out; and
- According to the process, in order to allow the existing signs the owners would be required to go through the Architectural Commission or Landmarks Preservation Commission, before coming to Town Council.

Bill Strawbridge, 223 Atlantic Avenue, agreed to return to Town Council at the time when the item regarding 1100 N. Ocean Boulevard was being discussed later in the meeting.

Adele Kahn, 231 Peruvian Avenue, commented regarding the signage on Via de Mario in support of the store owners.

VI. APPROVAL OF AGENDA

The following changes were made to the Agenda:

WITHDRAWN: Item IX.C.2.h., Variance #5-2011 on page 6.

ADDED: Item IX.D.3., under Other, regarding the Garden Club fundraising event with the E.R. Bradley Wicker Bicycles.

ADDED: Item IX.D.4., under Other, regarding Council Member Kleid's comment regarding Royal Poinciana Way and engaging the Planning and Zoning Commission.

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

VII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 6 -11 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Adding A New Provision To The Town Code Of Ordinances At Chapter 18, Building And Building Regulations, Section 108.2 Permit Fees; Providing For The Institution Of A Building Permit Revision Fee; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date. [John Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 6-11 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to adopt Ordinance No. 6-11. On roll call, the motion carried unanimously.

B. First Reading

1. ORDINANCE NO. 5-11 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County Florida, Amending Chapter 134, Zoning, At Sections 134-172 To Change The Commencement Of Special Exceptions And Variances From Architectural Commission Or Landmark Preservation Commission Submission To Approval; Section 134-330 To Change The Commencement Of Site Plan Review As Architectural Commission Or Landmark Preservation Commission Submission To Approval; Sections 134-1107 And 134-1109 To Permit Office Uses On The First Floor In The Two Hundred Block Of Peruvian Avenue And Bradley Place In The C-TS Zoning District; Section 134-2175 By Providing An Exemption For The Two Hundred Block of Peruvian Avenue And Bradley Place In The C-TS Zoning District from Principal Equivalency For Required Parking; Sections 134-2436 And 134-2437 To Provide A Provision To Allow Hanging Business Identification Signs In Commercial Zoning Districts; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing For An Effective Date. [John Page, Director of Planning, Zoning, and Building]

Council Member Diamond recused himself, as his wife owns the building on the corner of Peruvian Avenue; he left the dais and submitted a Conflict of Interest Form 8b to the Clerk.

Town Attorney Randolph read Ordinance No. 5-11 by title, as printed above.

Zoning Administrator Castro provided a background of the Ordinance.

Motion made by Council Member Kleid to approve on first reading Ordinance 5-11.

Responding to Council Member Kleid, Mr. Castro commented that the Ordinance would include the Esplanade building and Arcade, although they did not want to be considered a Via.

President Pro Tem Wildrick seconded the motion.

Responding to Mayor Coniglio, Mr. Castro noted that the signage portion of the Ordinance was considered by the Planning and Zoning Commission and he explained that originally the recommendation was that the signs should be uniform in nature, same color and style, but the Commission recommended that the signage could be as creative as possible. After consideration, staff concurred with the recommendation by the Planning and Zoning Commission, with ARCOM or Landmarks Preservation Commission approval. The only condition was that the sign could not exceed two square feet in area, and the requirement of a minimum clearance of eight feet.

Bob Moore, representative of the Goodman Company, indicated that the Ordinance regulated signs on the inside area of the Esplanade that could not be seen from the public way, which would be in contrast to the original development agreement with the Town that said their signs would not be regulated. He asked for a clarification.

Responding to Mr. Moore, President Rosow indicated that the Town Council would proceed on the motion, staff could research the development agreement, and the Ordinance may have to be amended for second reading to exclude the Esplanade.

Town Attorney Randolph noted that if the Goodman Company has an agreement that zoning shall not regulate their interior property then that would be the case and the Ordinance would not need to be amended.

Responding to Mayor Coniglio, Code Enforcement Manager Raychel Houston indicated that the complaint regarding Via de Mario would not transfer to this Ordinance, as the opposition was to the signs on the posts and up over the properties and on some planters in the front.

Responding to Mayor Coniglio, Town Attorney Randolph indicated that, if the Ordinance passed, he considered businesses on the first floor as an overlay within a district, as opposed to spot zoning.

Anita Seltzer, 44 Cocoanut Row, commented regarding opposition to office use on the first floor and spot zoning.

Motion made by Council Member Kleid to approve on first reading Ordinance 5-11. President Pro Tem Wildrick seconded the motion. On roll call, the motion carried 4-0, as Council Member Diamond recused himself.

VIII. RESOLUTIONS

1. RESOLUTION NO. 9-11 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Adopting A Permit Revision Fee In Accordance With Chapter 18, Section 108.2 (P) Of The Town Code Of Ordinances; Providing An Effective Date. [John Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Resolution No. 9-11 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve Resolution No. 9-11. On roll call, the motion carried unanimously.

2. RESOLUTION NO. 17-11 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Adopting An Application Fee And Renewal Fee For Administrative Approval Of Outdoor Seating In Accordance With Chapter 134, Section 134-2104(b) Of The Town Code Of Ordinances; Providing An Effective Date. [John Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Resolution No. 17-11 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve Resolution No. 17-11. On roll call, the motion carried 4-1, with President Pro Tem Wildrick dissenting.

IX. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours of Construction Work, at 206 Worth Avenue (Per Email Dated January 28, 2011, From Michael K. Vaughn).

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

Planning, Zoning and Building Director Page provided an overview of the request, and noted that staff did not recommend that work be allowed during the season.

Motion made by Council Member Diamond to deny the Request for Waiver of Section 42-199, Hours of Construction Work, at 206 Worth Avenue.

President Rosow passed the gavel to President Pro Tem Wildrick.

President Rosow seconded the motion. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. SPECIAL EXCEPTION #3-2011 WITH VARIANCES The application of Worth Avenue Associates; relative to property commonly known as 150 Worth Avenue; described as lengthy legal description on file; located in the C-WA Zoning District. The applicant is requesting a Special Exception to modify the special exception for the arcade which was approved in 1998 (Site Plan Review No. 4-98 with Special Exception and Variance) to allow for the addition of signs. Variances are requested to allow signs to be erected within the right-of-way of Worth Avenue and for those signs to exceed the allowable sign area for Gucci. All of Gucci's signs will total 28.92 square feet, while the code allows a 20 square foot maximum. [Attorney: James R. Brindell] [ARCOM Recommendation: Approval of the variances as requested and the signage and architectural changes necessary for the signage to occur. Specifically, ARCOM approved the Gucci, Tory Burch and Lacoste signage placed on existing bands, and the Vilebrequin, Christofle and Pucci signage on the existing keystones over the arches (Option 1); no architectural changes are needed to accommodate this signage. ARCOM also approved the Louis Vuitton sign on an added single band under one of the curved arches (Option 2). Carried 6-1.] Deferred from the January 12, 2011, Town Council Meeting.

(1) Appeal of ARCOM Decision B-070-2010, 150 Worth Avenue (Per Letter Dated December 22, 2010, from James R. Brindell).

Ex-parte communication was declared by Council Member Kleid, President Rosow, and Council Member Diamond who all had earlier conversations with Attorney James Brindell, but none recently; he advocated the position of his client.

Administrative Assistant Boyles administered the oath to all those who would be providing testimony.

Attorney Brindell, on behalf of 150 Worth Avenue and the Goodman Company, provided an overview of the request.

Planning, Zoning and Building Director Page provided staff's comments and noted that as Attorney Brindell met with ARCOM, who approved changes in signage on the existing Arcade without altering the architecture with the exception that a horizontal band would be situated on one of the arches to allow a sign representing Louis Vuitton.

Attorney Brindell provided a presentation of the photographs of the signage that were approved by ARCOM.

Motion made by Council Member Diamond to approve Special Exception #3-2011 with Variances.

President Pro Tem Wildrick noted that Louis Vuitton looked fine, but he did not like the duplication of the signs, as it was not needed in the interior and exterior.

Responding to Mayor Coniglio, Attorney Brindell affirmed that Mr. Goodman would be supportive to include in the approval that the bougainvillea be there in perpetuity.

The maker agreed.

Council Member Kleid asked the maker of the motion to make the approval contingent upon the applicant dismissing the appeal that they presently have.

The maker agreed.

Amended motion made by Council Member Diamond to approve Special Exception #3-2011 with Variances, including that the bougainvillea be kept in perpetuity, and that the ARCOM appeal be dismissed.

President Rosow noted that he did not like the exterior signs, as they are at too high of an angle, to see from a car.

Council Member Kleid seconded the motion. On roll call, the motion carried 3-2.

President Rosow	**No**
President Pro Tem Wildrick	**No**
Council Member Diamond	**Yes**
Council Member Kleid	**Yes**
Council Member Pucillo	**Yes**

2. New Business

a. SITE PLAN REVIEW #3-2011 WITH VARIANCE The application of Lydian Bank; relative to property commonly known as 180 Royal Palm Way; described as lengthy legal description on file; located in the C-OPI Zoning District. The applicant is requesting a Site Plan Review to request a modification to the parking lot which required changes to the handicap spaces to meet the American with Disabilities Act ("ADA"). The changes require variances: to have 11 parking spaces in lieu of the 12 parking spaces that exist and to have a drive isle width of 24 feet in lieu of the 25 foot minimum required. [Attorney: Maura A. Ziska]

Ex-parte communication was declared by: President Pro Tem Wildrick and President Rosow, who are customers of Lydian Bank and parked in the parking lot.

Attorney Maura Ziska, on behalf of Lydian Bank, provided an overview of the request.

Zoning Administrator Castro provided staff comments and indicated that the applicant came in for a building permit to sealcoat and restripe the parking lot, as it existed, and that met their handicap requirements. The applicant was not required to meet today's code, because it was grandfathered. When the parking lot was torn apart, in order to install pavers, it was discovered that the minimum aisle width was not met and that a site plan modification was needed.

Danny Brown, GSP Architects, noted that the original permit showed that the parking lot was to be replaced and not restriped. The configuration of the parking lot matched what was existing at the time, with two non-code compliant parking spaces for the handicapped.

Administrative Assistant Boyles administered the oath to Building Official Jeff Taylor who would be providing testimony.

Building Official Taylor explained that once the pavement was torn up and replaced, a permit was issued as a restriping; when it was put in it did not match the permit application that was submitted. He indicated that after reviewing the parking area, it was determined that 12 spaces could be accommodated and the applicant could meet the requirements.

Motion made by Council Member Diamond, seconded by Council Member Pucillo, to deny Site Plan Review #3-2011 with Variance. On roll call, the motion carried unanimously.

b. SITE PLAN REVIEW #4-2011 The application of 210 Emerald Lane, LLC.; relative to property commonly known as 210 Emerald Lane; described as Lot 34 of REVISED PLAT OF STOTESBURY PARK, according to the Plat thereof as recorded in Plat Book 20, Page 42, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a Site Plan Review to permit construction of a 3,197 square foot two-story single family residence on a platted lot with a width of 90 feet in lieu of the minimum 100 foot lot width required within the R-B District. [Attorney: M. Timothy Hanlon]

Ex-parte communication was declared by: Mayor Coniglio, who received a call from Attorney Timothy Hanlon; Council Member Pucillo, who walked by the property; Council Member Kleid, who looked at the site, spoke to one of the neighbors immediately to the east, who advocated her position with respect to the application; Council Member Diamond, who spoke with Attorney Hanlon, visited the site, and spoke with the owner of the property to the north who advocated his position of opposition to the application.

Attorney Timothy Hanlon, attorney for the applicant, 210 Emerald Lane, LLC, provided an overview of the request.

Zoning Administrator Castro provided staff's comments. He noted that staff had heard from some of the neighbors, specifically, Ms. Krakoff about her concerns relative to the property.

Administrative Assistant Boyles administered the oath to all those who would be providing testimony.

Sandra Krakoff, 200 Emerald Lane, commented that she was opposed to the applicant's request and expressed her concerns.

Dr. Jerome Klein, 225 Emerald Lane, commented that he felt that he was living in a construction zone for the last four years, and that he is against the project.

Responding to Dr. Klein, President Rosow noted that Town Council could not change the rule of two weeks notice, and that certain conditions could be added, but that there was a limit.

Attorney Hanlon indicated that the neighbors' concerns did not point at any deficiency in the application. He stated that they were willing to meet and address a timeline for construction with the neighbors.

Discussion occurred among the Town Council and Mr. Castro. Several of the following issues were addressed:

- Since the owner already has a guesthouse, the Town Council would have to grant a variance for an extra guesthouse along with a Unity of Title.

- The Town Council's function is to make an independent decision based on how this kind of situation is normally handled, which would be to grant the request. Although the neighbors' concerns, if true, are distasteful, it would not apply to the decision that is made on its face value.

- If the site plan review was not granted, the property would be useless; if it were sold, the situation would be the same as it is today.

Town Attorney Randolph advised that the owner would not be allowed to unify the properties without going through Town approval. It would have to be viewed as a single lot. The Town Council could put conditions in to help protect the neighbors. If a person owns a non conforming lot but owns property next to it that makes it conforming, a variance would be required, not a site plan review.

Motion made by President Pro Tem Wildrick that Site Plan Review #4-2011 be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements

governing the individual use had been met and that satisfactory provision and arrangement had been made concerning section 134-329, Items 1-11, with the condition that ARCOM pay special attention to the landscaping of the area, in order to provide adequate privacy for the neighbors, and to the potential of having a fence or wall with a gate. Council Member Pucillo seconded the motion.

Council Member Kleid asked, relative to the condition in the motion regarding ARCOM, that a fence, with access, and landscaping would be placed on the property, which was agreed to by the applicant.

The maker and seconder agreed.

Amended motion made by President Pro Tem Wildrick that Site Plan Review #4-2011 be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning section 134-329, Items 1-11, with the condition that a fence, with access, and landscaping would be placed on the property. Council Member Pucillo seconded the motion. On roll call, the motion was denied 3-2.

President Rosow	**No**
President Pro Tem Wildrick	**Yes**
Council Member Diamond	**No**
Council Member Kleid	**No**
Council Member Pucillo	**Yes**

President Rosow noted that he would like to see this come back with a neighbor agreement between the applicant and the neighbors.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to defer Site Plan Review #4-2011, in order to allow the neighbors and applicant to return to Town Council with an agreement. On roll call, the motion carried unanimously.

c. SPECIAL EXCEPTION #6-2011 WITH VARIANCES The application of Terry R. Taylor; relative to property commonly known as 780 South Ocean Blvd.; described as lengthy legal description on file; located in the R-A Zoning District. Variances are requested to install a tennis court with a rear yard setback of 10 feet in lieu of the 35 foot minimum required; to allow an associated 10 foot high fence with a side yard setback of 15 feet in lieu of the 30 foot minimum required and to install light poles at a height of 23 feet in lieu of the 15 foot maximum required. A Special Exception is requested to install night lighting which will meet all requirements in the Code, including a light timer switch to ensure the lights will operated only from 9:00 a.m. to 9:00 p.m. [Attorney: Peter S. Broberg]

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

Attorney Peter Broberg, on behalf of the applicant, Terry Taylor, provided an overview of the request.

Zoning Administrator Castro provided the following comments:

- The property is elevated where the tennis court would go. It is approximately 4' to 5' above County Road.

- The neighbors to the south have written a letter of objection to the luminaries, lights and privacy issues related to the tennis court.

- Staff has concerns relative to the visibility of the lights from County Road, even though there is a large hedge and wall between the property line.

Attorney Maura Ziska, representing the property owners to the south, noted that they are concerned about noise and light, as they have a guest house that is only 7' from the property line and their main pool area. She noted that in order to prove a legal hardship there had to be no reasonable use of the property without granting a variance.

Ted Cooney, 495 North Lake Way, a member of Landmarks Preservation Commission commented regarding an addition of a large summer kitchen that was approved by Landmarks Preservation Commission on the north side of the property, and it was not shown on the site plan. He said his biggest concern is the entrance from South County Road, which is the main entrance to the property, with a grand staircase, wall and fountain. The code required fencing around the tennis court and light poles, and it would loom over the special entrance.

Attorney Broberg indicated that there is no other place to put a tennis court on the property, and that there previously was a tennis court in the general location.

Council Member Diamond indicated that this was a self created hardship, and since there was neighbor objection to this type of request, it should not be approved.

Council Member Pucillo noted that there were other places on the property where the tennis court could be placed, and that there was a problem in meeting the hardship requirement.

Motion made by Council Member Diamond to deny Special Exception #6-2011 with Variances.

Attorney Broberg asked for a deferral.

The maker and seconder agreed.

Amended motion made by Council Member Diamond, seconded by Council Member Kleid, to defer Special Exception #6-2011 with Variances to the March 9, 2011, Town Council Meeting. On roll call, the motion carried unanimously.

President Rosow noted, as guidance, that he would not be in favor of lights.

d. SPECIAL EXCEPTION #7-2011 The application of Robert and Ann Fromer; relative to property commonly known as 340 Polmer Park; described as Lots 6, 6A and 7, POLMER PARK, according to the Plat thereof, as recorded in Plat Book 27, Page 53, Palm Beach County, Florida, Public Records; located in the R-B Zoning District. A Special Exception is being requested to allow a set of driveway gates on Polmer Park (which is a cul-de-sac) with a 5 foot setback from the street pavement in lieu of the 18 foot minimum required. [Attorney: Maura A. Ziska]

Ex-parte communication was declared by: President Pro Tem Wildrick who drove by the property.

Attorney Ziska, on behalf of Robert and Ann Fromer, provided an overview of the request.

Zoning Administrator Castro provided staff's comments, and asked that a Knox Box for the Fire-Rescue Department and possibly a key pad for their service personnel be provided.

Motion made by Council Member Diamond that Special Exception No. 7-2011 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met.

Council Member Kleid noted that the staff's conditions should be added into the motion.

The maker agreed.

Amended motion made by Council Member Diamond that Special Exception No. 7-2011 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met; that a Knox Box and a key pad for the applicant's service personnel be provided. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

e. SPECIAL EXCEPTION #8-2011 The application of Bank United; relative to property commonly known as 2875 South Ocean Blvd.; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting a Special Exception to permit a 618 square foot expansion to the operation of an approved 4,004 square foot full service bank in the C-TS Zoning District, for a total of 4,622 square feet. [Attorney: Alfred J. Malefatto]

Ex-parte communication was declared by: Council Member Kleid, Council Member Diamond and Mayor Coniglio who spoke to the owner of the property who advocated his position;

Seth Behn, Land Use Planner, Greenberg Traurig, on behalf of Bank United, provided an overview of the request.

Zoning Administrator Castro provided staff's comments, and noted that town-serving documentation had been provided, that additional space was needed, and the Bank is a needed service for that area of Town.

Motion made by Council Member Diamond that Special Exception No. 8-2011 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

f. VARIANCE #3-2011 The application of Matt and Tracy Smith; relative to property commonly known as 1240 North Ocean Blvd.; described as Lots 1, 1-A, 2 and 2-A, of Alto Lido, according to the Plat thereof, as recorded in Plat Book 11 at Page 36, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a Variance to allow the minimum perimeter landscape area to be 6,909 square feet in lieu of the 8,010 square foot minimum required to meet the 50% of the 45% in the code for the perimeter of a lot in the R-B Zoning District. [ARCOM Recommendation: Implementation of the proposed variance would not cause negative architectural impacts. Carried 7-0.] [Landmark Commission Recommendation: Landmark Commission recommends that the statue can be modified to conform to the Code without the need for a variance. Carried 7-0.] [Attorney: Maura A. Ziska]

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

Attorney Ziska, on behalf of Matt and Tracy Smith, provided an overview of the request. She noted that the hardship was that because of the size of the property, there was no way in which to meet the minimum perimeter landscape requirement.

Zoning Administrator Castro provided staff's comments and that the hardship was accurate. He also noted that in order to write the Florida Department of Environmental Protection (FDEP) letter for their permitting and to proceed to ARCOM, the applicant would need to get the address change completed.

Attorney Ziska responded that the architect is working on the address change.

Motion made by Council Member Diamond that Variance #3-2011, 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 Wildrick seconded the motion. On roll call, the motion carried unanimously.

g. VARIANCE #4-2011 The application of Richard and Patsy Johnson; relative to property commonly known as 751 Island Drive; described as lengthy legal description on file; located in the R-B Zoning District. The applicant is proposing to convert two patio awnings to permanent loggias, enlarge the family room, and convert the front entry awning into a permanent structure. The proposed additions will require a variance to allow an increase in the lot coverage to 34.6% in lieu of the 27.3% existing and 30% maximum allowed in the R-B Zoning District. Variances are also requested to: allow an existing boat lift to remain in the same location after the reconstruction of the seawall which is currently at 20 feet west of the U.S. Pierhead line the Town's Bulkhead line in lieu of the 6 foot maximum allowed; to allow a marginal dock to be 20 feet from the north property line in lieu of the 25 foot minimum required; to allow a marginal dock to be 20 feet from the south property line in lieu of the 25 foot minimum required. [Attorney: Maura A. Ziska] [ARCOM Recommendation: Implementation of the proposed variance would not cause negative architectural impacts. Carried 7-0.]

Ex-parte communication was declared by: Mayor Coniglio who had a conversation with the homeowner.

Attorney Ziska, on behalf of Richard and Patsy Johnson, provided an overview of the request. She noted that the hardship was that it was a one-story house with a very small two-story section over the garage, which makes it a two-story house, with slightly over 30% of lot coverage with the improvements.

Zoning Administrator Castro provided staff's comments.

Motion made by Council Member Diamond Variance #4-2011, 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 Wildrick seconded the motion. On roll call, the motion carried unanimously.

h. VARIANCE #5-2011 The application of John J. Cafaro Revocable Family Trust u/a/d 11/1/95, as amended and restated; relative to property commonly known as 860 South Ocean Blvd.; described as lengthy legal description on file; located in the R-A Zoning District. The applicant is requesting a variance to permit a statue/fountain which is 14 feet in height in lieu of the 12 foot maximum allowed. [Attorney: M. Timothy Hanlon]

Item IX.C.2.h., Variance #5-2011 has been withdrawn.

D. Other

1. ARCOM Recommendation Regarding Revised Plans at 1100 North Ocean Boulevard (Karp/Castle). [John Page, Director of Planning, Zoning, and Building]

Time Limit: 15 Minutes Per Side

Attorney James Green, indicated that he had a Point of Order, by John and Marianne Castle. He requested that President Rosow pass the gavel, based upon his conduct at the January 12, 2011 hearing. Attorney Green recited the basis on which the Castle's found President Rosow biased.

President Rosow passed the gavel to President Pro Tem Wildrick, but said he would not disqualify himself.

Town Attorney Randolph advised that Attorney Green's motion was highly unusual. He noted that in the current situation President Rosow represented the Town and was required to take a position. He indicated that Mr. Rosow was one of five votes and it was his right to decide whether or not to recuse himself.

Attorney Green responded regarding President Rosow.

Responding to Council Member Diamond, Town Attorney Randolph indicated that it is not a matter of law or a requirement that Mr. Rosow recuse himself simply on the basis of allegations made by Attorney Green.

President Pro Tem Wildrick, Council Member Kleid and Council Member Diamond spoke in support of President Rosow that he should not recuse himself.

President Pro Tem Wildrick passed the gavel back to President Rosow.

Attorney James Brindell, on behalf of Mr. & Mrs. Karp, provided a brief history of the proposal for the project, and presented his client's side of the case.

Architect Lawrence presented the architectural drawings of the project and provided his document to the Clerk.

Attorney Paul Rampell, on behalf of Mr. and Mrs. Castle, commented that the Castle's wished to protect the historic Kennedy estate, and presented his client's side of the case.

Both Attorney's Brindell and Rampell provided rebuttal.

President Rosow asked the Town Council for ex-parte communication, even though it was not required, in order to provide a good record.

Ex-parte communication was declared by: Council Member Pucillo who told Attorney Green that his policy was not to do any ex-parte; Council Member Kleid who had conversations with Attorney Brindell, Attorney Rampell, and had been to the Castle's home and looked out the window that was facing over the property; Mayor Coniglio who had conversations on multi-sides of the fence and each of them advocated for their own positions; President Rosow went to the Castle home with Attorney Rampell and looked through the window, he declined a tour of the remainder of the house, he had talked to numerous people on both sides of the issues regarding the character or lack thereof of both parties, his wife said that if he voted one way or the other, he might be sleeping in another bedroom, he voted against her wishes, and he drives by both homes at least twice a day; President Pro Tem Wildrick who had more than one phone call, many from various citizens and law firms on both sides of the matter, all advocating their side, he drives by the houses more than once every day and is very familiar with the properties, and has not been in either house; Council Member Diamond who had multiple contact with both sides, he visited the Castle property and looked out the window, and was very familiar with this case, as it has gone on for so long, and he attended every one of the ARCOM meetings regarding this.

Town Attorney Randolph, indicated that regarding his conversation with President Rosow, in the event this case goes beyond the Town Council it would be a determination of another venue as to whether or not they believe this to be a quasi-judicial hearing, but this is not the Town's typical quasi-judicial hearing, as it is a settlement as opposed to a normal quasi-judicial hearing. He stated that he advised Mr. Rosow that ex-parte statements should be taken, as it is sort of a hybrid type of hearing.

President Rosow and Town Attorney Randolph provided their responses and comments to Attorney Rampell's comments.

Gina Borman, 1086 N. Ocean Blvd., commented that between the Karp's and the Castle's properties she has an ocean vista and was assured when she purchased her home that there would be no further construction and her ocean view would not be obstructed.

President Rosow declared ex-parte communication regarding a discussion he had with Mr. Strawbridge relative to today's meeting.

Bill Strawbridge, 223 Atlantic Avenue, a member of ARCOM, commented regarding his decision in the ARCOM meeting.

Leslie Diver, a member of ARCOM, commented regarding that she was in favor of continuing the mediation process and that only one option was given on this project during the ARCOM process.

William Holman, 1090 N. Ocean Blvd., the property directly opposite the Karp residence, commented regarding his objection, which is based on financial consideration. He indicated that taking away the vista impacts the value of his property.

President Rosow called the Town Council into executive session. During the discussion among the Town Council members, Town Attorney Randolph, and Attorneys Brindell and Rampell, several of the following comments were made:

- Continue with the mediation process.

- Attorney Rampell agreed to mediation, but with all three parties, the Town, the Karp's and the Castle's.

- Under Chapter 70 process, the Town and the Karp's were the parties that chose the mediator. The next step, if mediation does not work, is an adversarial proceeding where that same mediator would take testimony from the parties.

- Attorney Brindell indicated that previous efforts were made for discussion with Attorney Rampell and the Castle's and were rejected; he said he did not have much faith in scheduling more conversations.

- Under the law, there is no legal right to the neighbors' vistas.

- The two parties could have a discussion and the Town Council could have a conversation without a vote so the neighbors would know their thoughts, and then maybe going to mediation would be a fruitful path.

- Once the neighbors, not just the attorneys, come to a compromise, they could come back to the Town Council.

President Rosow suggested that the parties return to the March 9, 2011, Town Council Meeting, after having extensive discussions and negotiations, without Town Council or ARCOM members.

Attorney Rampell indicated that he welcomed mediation but believed that the Town should be a part of it.

President Pro Tem Wildrick suggested that since the Mayor cannot be accused of being biased, as she does not vote, she should be the representative, if she is willing.

It was the consensus of the Town Council, Attorney Brindell and Attorney Rampell, to return to the March 9, 2011, Town Council Meeting with or without a compromise, with or without having any meetings, without further testimony, or with a testimony. The Town's representative will be Mayor Coniglio.

Motion made by Council Member Diamond, seconded by Council Member Pucillo, to defer the ARCOM Recommendation Regarding Revised Plans at 1100 North Ocean Boulevard (Karp/Castle) to the March 9, 2011, Town Council Meeting. On roll call, the motion carried unanimously.

2. Request to Consider Zoning Ordinance No. 5-11 Prior to 5:00 p.m. at the March 9, 2011, Town Council Meeting. [John Page, Director of Planning, Zoning, and Building]

Motion made by Council Member Diamond, seconded by Council Member Pucillo, to approve the Request to Consider Zoning Ordinance No. 5-11 prior to 5:00 p.m. at the March 9, 2011, Town Council Meeting. On roll call, the motion carried unanimously.

3. Garden Club Fundraiser

Sue Strickland, Garden Club of Palm Beach, Chairman for the House and Garden Day event, requested a permit to hire professionals to run four of the E.R. Bradley Wicker Wheelchairs, also known as E.R. Bradley Carriages, or Palm Beach Chariots, up and down the Lake Trail between the Four Arts and the Flagler Museum. Their event, named the Centennial Walk, will be held on Sunday, March 6, 2011, from 11:00 a.m. to 4:00 p.m., and there will be seven properties on their tour in that location that would be open to their visitors. This is their biggest fundraiser for Town beautification projects, scholarships and the Four Arts Garden.

Raychel Houston, Code Enforcement Manager, noted that Ordinance 118-8, which states that anything on the bicycle trail in excess of 32" is not allowed. The E.R. Bradley chairs are 48". She indicated that Code Enforcement receives a significant amount of complaints about activities on the bicycle trail; in keeping with the Ordinance bicycle companies in West Palm Beach are not permitted to conduct tours in Palm Beach. She suggested that the Garden Club obtain a Special Event Permit, as she could not give permission to violate an ordinance of the Town.

Motion made by Council Member Kleid that in view of the fact that this event is being sponsored by a recognized organization in the Town of Palm Beach, and that it is tied in with the Centennial for the Town, for this one event only, within the prescribed hours, permission is granted. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

4. Royal Poinciana Way

President Rosow commented that, at yesterday's Town Council meeting, Council Member Kleid brought up the issue of Royal Poinciana Way and wanted the Planning and Zoning Commission to look at it with a narrowly defined view of just Royal Poinciana Way and the backside of it. He said that he concurs with Council Member Kleid that Planning and Zoning Commission should review and offer solutions for the Town.

Responding to Council Member Diamond, President Rosow said just the south side of the street, not the grassy area, and north side of Sunset Avenue.

Zoning Administrator Castro indicated that the Testa Family, Inc., had submitted an application, which is on hold. He said that it is his understanding that they would be re-filing concurrency and other data and analysis relative to that particular block. He said he did not want to duplicate work, but that he could contact their attorney.

Responding to Council Member Kleid, Mr. Castro said he anticipated that it would be within the next 60 days, but he would contact them. He noted that he was not sure if it would do everything that the Council would want, or Planning and Zoning Commission, but it would be a foundation to work from instead of starting from scratch.

President Rosow stated to place this item on the Agenda for next month.

X. ANY OTHER MATTERS

There were none.

XI. ADJOURNMENT

There being no further business, the February 16, 2011, Town Council Meeting was adjourned at 1:52 p.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Cheryl Somers
Acting Town Clerk

BackUp Documents 2-16-11