

TOWN COUNCIL MINUTES OF SPECIAL TOWN COUNCIL MEETING HELD

ON JANUARY 21, 1992 AT 5:01 PM

I. CALL TO ORDER AND ROLL CALL. The Special Town Council Meeting was called to order at 5:01 PM by President Heeke on January 21, 1992 in the Town Hall Council Chambers. On roll call, the following elected officials were found to be in attendance: President Heeke, President Pro Tem Weinberg, Councilwoman Douthit and Wiener and Councilman Ilyinsky. (Mayor Marx was not in attendance). Also in attendance were Mr. Doney, Mr. Randolph, Mrs. Peters, Mr. Dusey, Mr. Bowser, Mr. Moore, Mr. Zimmerman, Mrs. Crozier, Mr. Doney, Mr. Jakubiak, Mr. Elwell and Mr. Frank.

Roll Call

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Mrs. Peters gave the invocation and Pledge of Allegiance was led by President Pro Tem Weinberg.

invocation

III. APPROVAL OF AGENDA: Mr. Ilyinsky moved for approval of the agenda. Mr. Weinberg requested an item be added under Any Other Matters and that is the discussion on Old A-1-A. Mr. Heeke commented this could be considered if time permits, but he did have to leave the meeting at 6:30 PM. Mr. Doney advised another item to be considered would be the issue of bond refinancing; and if time permits, to allow Mr. Randolph to report on the meeting held today by Municipal Attorneys regarding the Countywide Planning Council and the Charter Amendment. The motion was seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

IV. PROOF OF PUBLICATION: Mrs. Peters reported proof of publication has been filed for the record.

V. FIRST READING OF ZONING ORDINANCE NO. 1-92 Mr. Heeke called on Mr. Randolph to read the Zoning Ordinance No. 1-92 and Mr. Randolph read:

Ord. 1-92

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO. 2-74, AS AMENDED, THE OFFICIAL ZONING ORDINANCE OF THE TOWN OF PALM BEACH; PROVIDING AMENDMENTS TO ARTICLE 2, SECTION 2.10 ENTITLED "DEFINITIONS", BY REVISING DEFINITION (14) "DOCK"; TO PROVIDE AMENDMENTS TO ARTICLE 4 ENTITLED, "DISTRICT REGULATIONS"; BY AMENDING SECTION 4.10 SCHEDULE A, SCHEDULE OF LOT, YARD AND BULK REGULATIONS, BY ADDING A NEW R-BB ZONING DISTRICT AND REGULATIONS THEREFORE; BY REPEALING FOOTNOTE #22 RELATING TO BUILDING HEIGHT; REDUCING FLOOR AREA RATION (FAR) IN THE R-B DISTRICT; MODIFYING FOOTNOTE #23 TO EXCLUDE LOTS FRONTING ON CUL-DE-SACS AND INCREASING ANGLE OF VISION ON LOTS EXCEEDING MINIMUM WIDTHS; MODIFYING FOOTNOTE #3 TO ALLOW PLANTERS ON LANDSCAPING IN PEDESTRIAN WALKWAY; PROVIDING AMENDMENTS TO SECTION 4.10, SCHEDULE B, "SCHEDULE OF USE REGULATIONS", BY ADDING "OUTDOOR SEATING IN CONJUNCTION WITH PERMITTED RESTAURANTS" AS A SPECIAL EXCEPTION USE IN THE C-WA DISTRICT; BY REMOVING HOTELS AND TIME SHARING USES FROM SPECIAL EXCEPTION USES IN THE C-OPI DISTRICT; BY CHANGING THE CHARITABLE EVENT EXPIRATION DATE IN THE RESIDENTIAL DISTRICTS; BY ALLOWING OFFICE AND PROFESSIONAL SERVICES AND BUSINESS SERVICES ON FIRST FLOOR IN C-TS DISTRICT AS SPECIAL EXCEPTION USES; PROVIDING AMENDMENTS TO ARTICLE 5 ENTITLED, "SUPPLEMENTARY LOT REGULATIONS", BY AMENDING SECTION 5.17, "EXISTING SINGLE FAMILY DWELLING DEVELOPMENT", BY PROVIDING DEFINITIVE REGULATIONS RELATING TO DEMOLITION OF NONCONFORMING DWELLINGS; BY ELIMINATING SECTION 5.18, "ALTERATION OF NATURAL GRADE" AND BY ELIMINATING SECTION 5.19, "LOT DRAINAGE, GRADE AND TOPOGRAPHY" AND INSERTING A NEW SECTION 5.18, "LOT GRADE, TOPOGRAPHY AND DRAINAGE"; BY AMENDING SECTION 5.47(b), "NUMBER OF BEACH HOUSE BUILDINGS AND SETBACK"; BY INCREASING MINIMUM LOT FRONTAGE; AMENDING SECTION 5.48 "SPECIAL EXCEPTION TO HEIGHT REGULATIONS; SPECIAL EXCEPTION STRUCTURES", BY ESTABLISHING NEW REGULATIONS APPLICABLE TO THE R-B DISTRICT; AMENDING SECTION 5.51(b) TO ALLOW TWO STORY ACCESSORY BUILDINGS IN THE R-A AND R-AA DISTRICTS; PROVIDING AMENDMENTS TO ARTICLE 6, ENTITLED "SUPPLEMENTARY USE REGULATIONS," BY AMENDING SECTION 6.21 "SCHEDULE OF OFF-STREET PARKING REQUIREMENTS", BY INCREASING PARKING REQUIREMENTS FOR HOTELS, MOTELS, MOTOR INS AND TIME SHARING USES; PROVIDING AMENDMENTS TO ARTICLE 7 ENTITLED, "PLANNED UNIT DEVELOPMENT", BY AMENDING SECTION 7.10, "PURPOSE", BY REDUCING ALLOWABLE AREA UPON WHICH DENSITY IS CALCULATED; AMENDING SECTION 7.436, "PERMITTED LAND USE". BY ELIMINATING REFERENCE TO TOWNHOUSES AND HISTORICALLY OR ARCHITECTURALLY SIGNIFICANT MULTI-FAMILY STRUCTURES; PROVIDING FOR REZONING OF CERTAIN PROPERTIES IDENTIFIED HEREIN TO R-BB; MODIFYING THE TOWN'S ZONING MAP ACCORDINGLY BY THE PROPER TOWN OFFICIAL TO REFLECT CHANGES IN ZONING DISTRICT CLASSIFICATION TO THE R-BB ZONING DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY FOR A VIOLATION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Heeke reminded all that the minutes of the January 6, 1992 Meeting are a part of the official record. Mr. Heeke stated they could proceed with a motion to approve the Ordinance and under discussion they could discuss each item. Mrs. Wiener asked to go through the items in the Ordinance one by one.

Mr. Heeke proceeded to Section 1, Definitions. Mrs. Douthit moved for approval of the dock definition as contained in Section 1. Mr. Winterfield addressed the Council suggesting that instead of using the word "dockage" they use "mooring".

Mrs. Wiener seconded the motion and on roll call, the motion carried unanimously for approval of the definition.

The definition reads as follows:

DOCK. An unenclosed accessory structure built on piling over the water, which is designed or used to provide dockage for and access to one or more boats and which may have davits, vertical lifts, gates, water and electrical service, other similar public utility services and additional accessory public utility services and additional accessory uses customarily incident to a dock such as but not limited to storage chests and low intensity lighting approved by the Town and installed in a manner so as to not have an adverse effect upon adjacent properties.

Mr. Heeke went to Section 2, Article 4 - to amend the Schedule of Lot, Yard and Bulk Regulations to reduce the maximum Floor Area Ratio, (FAR) and to amend the footnote 22; also to repeal the height regulations of the R-B District and amend footnote 23 to add a new paragraph. He advised the second part of this would be to amend Section 4.10 Schedule B to add a new Zoning District R-BB encompassing the area from Queen's Lane to Onondaga Avenue between North Ocean Blvd.

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on the east and North Ocean Way on the west and the purpose and schedule of Lot, Yard and Bulk Regulations for this new District which are set out in pages 3 to 6. He advised Paragraph E is Section 5.22 for Exceptions and parapet walls are discussed and Item D to amend Section 4.10 Schedule B.

Mr. James Nemec addressed the Council, indicating he lived at 1438 N. Ocean Blvd. and he did not believe they had proper publication of the Notice of the Hearing as he believed under the Law the Ordinance for a proposed rezoning needed to be published thirty days before the hearing. He believed the notice for November before the Zoning Commission was also deficient. He advised Mr. Moore of this by letter dated Dec. 12, 1991 stating the notice to the property owners was defective. He didn't believe the residents of the Town know what R-B or R-BB is and the Notice must clearly define, according to the Statutes, what the changes are and he didn't think he was in receipt of proper notice as he had to read in the newspaper what it was all about.

Mr. Nemec recalled the Town Attorney stated the new zoning would affect only the houses on North Ocean Boulevard and he recalled Mrs. Wiener mentioned that appears to be a difference in the changes that Mr. Brisson had shown them before and it indicated that the properties facing North Ocean Blvd were going to be treated slightly differently that adjoining houses and yet they were in the same R-BB District. He recalled Mr. Randolph stated they are providing a uniform provision which indicates this applies to those within the District who are fronting on the ocean and that was the distinction. Mayor Marix later stated that this distinction applies to those on North Ocean Blvd. only and Mr. Nemec did not think the Ordinance stated that. He was puzzled why the proposed new District did not include the properties along the back of North Ocean Blvd and he wondered why they didn't go to the Lake. He heard statements that the houses were big and overpowering their neighbors and this area was overbuilt and he asked why would the Building Department allow them to overbuild?

Mr. Nemec referred to the statement made by Mr. Randolph which referred to the case he quoted, the City of West Palm Beach vs. Duffy, and Mr. Randolph stated this case did not apply. Mr. Heeke suggested that argument should be made before the court and not this Council. Mr. Nemec recalled Mayor Marix's statement about it affecting the neighbors and that is why he quoted that case. He stated that particular case goes on to say an examination of the plans and specs showed among other defects that the building would contain only five small rooms, whereas other homes in that subdivision contained seven to nine rooms. Mr. Heeke reminded him that the record of January 6th is part of the record of these proceedings.

Mr. Nemec continued indicating he wished to summarize Mrs. Marix's statement who said that it would affect the general neighborhood and the summary of this case says the proposed building would not equal or compare favorably with any other residence in the general neighborhood over which the respondent has no control. He recalled the Mayor referred to the incredible size of the house and that is what they were trying to stop and he asked if this whole proposed zoning was based on just one house or to try and stop houses like it from being built in the future.

Mr. Nemec recalled they asked how many vacant lots were there and the answer was there were none, so he wondered if there were no vacant lots, why would they want this regulation and Mr. Brisson stated the area could be redeveloped in the future, so he thought they were guessing what they were going to do. He heard them say there would be a reduction of 495'; but he calculates a loss of 1125 feet. He heard Mr. Brisson state that they are providing the homeowners the opportunity to have a garage and storage area of 700' and that can be turned into living space that will result in a reduction from the former square footage to 425'. He recalled hearing them state they had complaints on this and wondered if the complaints were oral or written. He submitted a petition signed by seven people and Mrs. Douthitt noted that was only 10% of the sixty homes up there and only six people showed up.

Mr. Nemec stated there were no changes in the two story buildings, however, in 1983, the height allowed was 35' and now it will be 30'. He noted the setback is 15' and for two stories it is 17.5', so that is 35' of land being taken away. He did not know how they were going to juggle the areas as they state you are allowed to put 2500 square feet on the first floor, 875' on the second floor for a total of 3375, and he viewed that as a loss of 1125'.

Mr. Nemec remarked that if you look at the proposed zoning and the property along North Ocean it will be seen that it adjoins a two story building and next to that is another two story building and behind that is also a two story building, so there are six two story buildings in that area on six lots.

Doug Rozell of 222 Mockingbird Trail addressed the Council indicating he doesn't know how this got started as everyone he has spoken with about this is against it and he thought it would automatically depreciate the property values in the north end and suggested they handle it on an ad hoc basis - case by case.

Patricia Tracy of 244 Nightingale Trail addressed the Council stating she agreed it should be on a case by case basis. She thought if the Town felt a house was too large, then it was the Town's fault and they shouldn't have issued the permits for that particular house. She believed this Ordinance would affect the values of the entire neighborhood. She stated she and her husband may someday want to add another bedroom upstairs but they wouldn't be able to do it if this Ordinance was passed. She noted on her street there are presently three houses for sale and they have been on the market for quite a while and she knows they probably would not be able to add onto their houses. She suggested that this matter be put to a vote by the people who live in that area.

Mr. George Garland, 133 Dolphin Road addressed the Council stating he bought there because of the texture of the area and the neighborhood and the openness and the air. He is in favor of controlling the size and amount of use developers or people put their properties, as they seem to want to use every square inch that they would be allowed to use and he was against that. He felt the area they are talking about had architectural appeal as there are many different styles of houses but the newer ones fill every inch of the land.

Mr. Heeke noted the last three speakers were not affected by the zoning change and asked Mr. Moore to clarify.

Mr. Moore stated the only one who was affected was Mr. Nemec. He advised they sent individual letters to all of the affected property owners.

Mr. Philip Englehart of 248 Via Bellaria addressed the Council asking if he heard there would be a reduction in the R-B District all over town from .45 to .35? Mr. Moore apologized stating they are also talking about the Floor Area Ratio. Mr. Englehart stated he believed this change was for the R-B Zone and it is more global in nature. Mr. Moore advised it is Town-wide. Mr. Moore believed the only speaker who was concerned with the R-BB zone was Mr. Nemec, the others were addressing the floor area reduction from .045 to .035. Mr. Englehart stated he was addressing both issues. Mr. Ilyinsky asked him why? Mr. Moore advised Mr. Englehart was not in the R-BB District.

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Mr. Englehart continued stating he thought that both areas of concern should be heard at the same time as the discussion in this Town isn't the same as a far flung suburb of Dallas where they would be talking about 10,000 square miles that might be developed sometime in the future. He stated the existing homes and families who live on a barrier island and there are plenty of stories about people still suffering in the Carolinas from not having paid close attention when their respective Councils were making changes to their zoning. He commented when Mr. Garland purchased his house and the views were attractive and the zoning was what it was at that time, and the changes may not be attractive to the residents but it would be beneficial to others. He felt the key was to make sure that it doesn't become a hardship. He felt one of the great concerns needed to be divided into two areas One - is it appropriate that the Town take in fact such a large percentage of the value of a person's property as if someone was compelled to reconstruct after a storm and there is no adequate provision for reconstruction, that would a very substantial hardship to a lot of families as this Town is no local for occasional winter visitors. He stated there are a lot of families living here full time.

He recalled at the Jan. 6th meeting, there was an issue raised about the content of a report which was studied by the consultant and the information on which they based their study contained inaccuracies. He believed if they were influenced by inaccuracies and the knowledge that there was such, he believed they were going to invite some very difficult questions from future property owners and perspective buyers and people suffering from future events that might be financially hurt by the change of this zoning. He believed that was an issue of law and perhaps the Council needed to take a look at whether or not in fact those circumstances existed and if that would preclude the current changes from having an effect on a procedural matter.

Mr. Englehart stated the other issue is that in today's market, values are depressed by most standards and he did not believe \$100,000 would not be an unreasonable estimation of the change in the available bulk on a given 10,000 square foot lot, as the market value of \$200 per square foot for a home in that part of Town and \$100 to construct it are reasonable estimates, so the inability to place an extra 1000 square feet on the property would have a \$100,000 negative impact on the property owner. He thought if they took that figure and multiplied it by the number of properties that are in question, the Town is potentially taking a very large sum from the residents and that should be addressed. He believed that the statement made by Mrs. Tracy that the permits should perhaps not have been issued in the first place is a very viable argument and it is their responsibility to see that construction like that does not take place. He did not believe that they should restrict all of the activities in the future in the Town just because one or two permits may have been issued in error. He felt they were dealing with the lives of many people and a very significant fiduciary responsibility and this could be applied to a large number of people with a tremendous financial loss over a long period of time. He suggested they not treat it lightly and to ensure the public is very well aware of the scope of the change in the proposed ordinance.

Mr. Adrian Winterfield addressed the Council on the notice as he believed the Statute is very clear on the notice requirements. He advised there is also language relative to the map which must accompany the published Ordinance and it should contain a geographic location mark which clearly indicates the area covered and that was not done. He respectfully submitted that for the reasons of inadequate notice and the fact that rezoning requires a super majority, and the present ordinance requires only a normal majority that it would be advantageous for the Town, especially in view of the opposition that they withdraw all provisions relative to the R-BB District and place them in a new Ordinance which would contain only the language relative to the R-BB District. He did not think a new ordinance needed to be published as this area is less than the five per cent of the total Town.

Mr. Leonard Sousa of 1300 N. Ocean Blvd. addressed the Council indicating he agreed with Mr. Nemec about the proposed zoning change. He has spoken to his neighbors and they too are opposed. He liked the suggestion of Mrs. Tracy that this matter be put to a vote on the ballot and that would allow the people in the north end to decide if they wanted a zoning change in the north end.

Mr. Gerald Goldsmith, 635 Crest Rd., addressed the Council noting he is a member of the Zoning Commission and was part of the deliberations on that Commission when this was considered. He stated he did vote in favor of the creation of the R-BB District and then afterwards took the time to consult with architects and had a second look at the area in question. He believed he did not review it properly enough and if they would adopt this, they would have impractical houses. He suggested before they make their decision, they consult with architects and designers.

He stated a second point is they are trying to preserve the integrity of the various neighborhoods particularly in the north end. He recalled there was a regulation in the Zoning Ordinance that if they change more than fifty percent of a house, they need to adhere to the new zoning requirements and he thought that had good merits. He felt if they wanted to preserve the character of the entire north end as is now exists, and preserve the value of the homes in that area, they may also add to this that they are going to allow the same footprints as now exists for houses up there so that they can be remodeled and the character can be retained. He believed they would also destroy the value of the homes in that area. He apologized for not knowing enough about this as he would have been strong in his objections at the Zoning Commission.

Jesse Newman, addressed the Council stating he has lived in the north end for 40 years and enjoys the eclectic feeling. He drives by the area in question every day and he thinks the people who want to make changes should have that opportunity. He advised he was a member of the Architectural Commission and had served on the Zoning Commission for 12 years and he felt they do judge each house on an individual basis. He recalls turning down houses that were big on the grounds of quality and merit and recommended they continue this process because they do have control. He stated the Council always has the last word and it is not necessary to have this change in the Ordinance.

Mr. Dave Paladino, 1204 N. Ocean Blvd. addressed the Council stating he was opposed to the zoning change.

Mr. Robert Stillman, 320 Seabreeze addressed the Council noting he is not a resident of the Zoning District affected but he is a property owner and resident of Palm Beach. He objected to the change as he didn't think they needed stronger restrictions but they should look at the zoning requirements they have right now and how they are enforced. He felt the issue of larger houses overshadowing their neighbors is not peculiar to the north end but to the whole Town and he believed this happens because exceptions and variances are granted. He objected also to them making a hard and fast rule for this Ridge area or any area in Palm Beach that they could have only 35% of the second floor as buildable space as that encourages bad architecture and these things should be decided on a case-by-case basis. He didn't think they should make things so strict that a really nice house could not be built. He would like to be able to build a house that has 5000 square feet and have a yard and a pool and there are few places that one can do that and the north end is probably one of the most affordable places to do that, but by adopting these restrictions, they would be cutting out a whole segment of the population from building.

Mr. Fred Patten, 1285 N. Ocean Blvd. addressed the Council suggesting this could probably be done in a much simpler manner as has been suggested by several speakers and that would be to control it from an architectural end or a permitting end. He was against putting limitations on a very small area and he believed they would save themselves a lot of criticism in the future if they handled the problem in that way rather in the way they have planned.

Mr. Nemec suggested if they want to do this, why stop at the Ridge and why not go from the Kennedy house all the way south as there are big houses there and nobody seems to object to them.

Mrs. Peters was asked to read Gene Barbado's letter into the record:

"Gene Barbado, 1280 N. Lake Way wrote to Mayor Marix:

Dear Mayor Marix:

As a resident of the Town and owner of a home, I object strenuously to some of the provisions of Ord 1-91 amending the official zoning ordinance of the Town of Palm Beach, specifically the provisions amending Section 4.10.

In my opinion the majority of the residents do not want these changes and probably do not understand the effect of the ordinance change on their property use. As elected officials, I believe you should ask for the majority and not for a few individuals that are envious or aggravated. As a Civil Engineer by discipline, it takes time for me to understand the full effect of Section 4.10 on our properties. Never mind the typical home owner. In my opinion, these zoning changes are unwarranted and unnecessary and ask you to vote again adoption of Section 4.10."

Mr. Heeke called on Mr. Randolph to respond to the questions raised about notice. Mr. Randolph advised the Statute does provide a methodology whereby a notice to each owner of land within the particular area is furnished with notice of the hearing thirty days prior to the hearing and he believed that was done. He stated the other methodology is in cases where the proposed ordinance deals with more than five per cent of the total land of the municipality the governing body shall provide for public notice and hearings and it provides for the notice to be by a newspaper ad and typically, that's the way the Town does it, and he thinks technically from that standpoint, the Town has met the provisions of law for notification as set forth in the Statute.

He recalled another point that was raised was even when giving notice by publication, there is a requirement to designate the specific area that is to be identified for rezoning and the ad that was placed did not color code it or identify it in any way so as to show where the R-BB District was, however, he believed from a technical standpoint, the advertising requirements have been met as provided by law in that it simply indicated that there needed to be published a one quarter page ad and as this Zoning Ordinance rezones by way of regulation and by rezoning the entire area shown in this map, so by the publication they have put everyone on notice that the entire area shown in the map may be affected by zoning regulations that are to be adopted and it further indicates that the specific text of the Zoning Ordinance can be found and examined in the Town Hall during regular business hours. He believed that technically the requirements of the zoning have been met pursuant to State law.

Mr. Heeke asked if the next procedure would be to split this part of the Ordinance off and readvertise? Mr. Randolph advised if they wanted to deal with this separately and give notice to the property owners within that district, they would have to carve out from the Ordinance which has been published that specific language and then they would have to readvertise and send notice to those particular property owners. He reported if this particular provision relating to the R-BB were not included in this Ordinance and there was a separate ordinance specifically rezoning the R-BB District, then the provisions of the Statutes relating to notice to property owners of land that is less than five per cent of the community would have to be followed. He stated that if they were having a rezoning of R-BB that's the provision that would have to be followed and if they had two ordinances, one for the zoning regulations and one for the R-BB, then they would have had to have given the thirty day notice.

Mr. Ilyinsky commented that he would not want to be insensitive to those who have spoken and his suggestion is to send this back to the Zoning Commission for further study as he was just not ready to vote on this Ordinance at this point in time.

Mr. Weinberg agreed. Mr. Heeke asked if they were referring to the R-BB District to which they responded affirmatively. Mr. Heeke asked the attorney if this particular section would require a 4/5th vote in order to pass to which Mr. Randolph responded affirmatively.

Mrs. Wiener asked to make her comments stating she has been sitting here for a year on this particular subject. She recalled last year she left the dais and went to the podium microphone and talked as a resident of the north end concerned with their making a change in the zoning at the north end. She recalled at the January 6th hearing she asked Council if it was necessary to have four out of five votes when there was a zoning change and was told that would be necessary. She was glad to see the public reaction to this here today and realized that it was a minority of voices which have brought them here and she really didn't want to see this go back to the Zoning Commission and the Council should simply vote it down. She read what the purpose of the District

was: "to provide for low density single family residential use of moderately spacious character" and felt that is what they had here and she stated there may be some homes there with five or six or seven thousand feet but not twelve or fifteen thousand square feet and that is not considered a large home and moved that this matter be voted down.

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Mr. Randolph stated there were certain lines that would be deleted from the title he read earlier which would remove the reference to the R-BB zoning if they so chose to move forward in that direction.

Mr. Ilyinsky stated he would prefer not to move voting on the R-BB changes this evening. Mrs. Douthit asked if they wanted a motion to send it back to the Zoning Commission. Mr. Heeke stated a motion has been made to deny it completely. Mr. Ilyinsky stated he was asking if they would be willing to move that Ordinance No. 1-92 be adopted with the removal of all references to the R-BB District. Mrs. Wiener advised she had a problem with the Floor Area Ratio. Mrs. Douthit moved that this matter on the R-BB be sent back to the Zoning Commission for further study.

Mrs. Wiener asked this be sent back for a report when? Mr. Ilyinsky stated he did not know. Mr. Weinberg believed it should be a special meeting of the Zoning Commission to which Mrs. Wiener did not agree. Mr. Ilyinsky believed the Zoning Commission could have a special meeting. Mr. Randolph stated there may be a timing matter if they wanted to have a second Zoning Commission hearing this zoning season.

Mr. Moore suggested because of the studying involved, the two matters, the R-BB and the Floor Area Ratio be sent back to the Zoning Commission. Mrs. Wiener asked if there would have to be zoning in progress on this. Mr. Moore stated they would not, as this would take it away until the Zoning Commission has acted upon it which would probably be mid-November of this year.

Mr. Ilyinsky stated that was his motion. Seconded by Mr. Weinberg. Mr. Randolph clarified that the motion did not address there would be Zoning in Progress. Mr. Heeke agreed. Mrs. Douthit thought perhaps they needed to declare Zoning in Progress as most of the construction in the Town is in the R-B District. Mr. Heeke stated that was not in the motion. Mr. Heeke noted that would delete all of Section 2 in the Ordinance 1-92. Mr. Randolph believed it only deleted initially the items that had to do with the R-BB. Mrs. Wiener understood that the motion includes the Floor Area Ratio in the R-B District also, which is Item 1 under Section 2, which reads:

"A. Amend Section 4.10, "Schedule A., Schedule of Lot, Yard and Bulk Regulations" to:

1. Reduce maximum floor area ratio (FAR) in the R-B District from 0.45 to 0.35, including basements."

Mrs. Douthit felt there were still some parts in Section 2 that are worthy unless Mr. Randolph has a problem with that? Mr. Randolph responded it is his understanding they wanted deleted all the sections with regard to R-BB, and that would start at the bottom of Page 2 with Item 4 (b), all of page three, four, five and down to Item D on Page 6. Mrs. Wiener stated she understood it would also include the removal of the FAR in the R-B District, which is Item No. 1, Section 2 on Page 1. Mr. Moore agreed. Mrs. Douthit did not agree. Mr. Heeke pointed out Section 2 (a) (2) amends the footnote 3 which is not the issue we have been debating. Mr. Moore stated then it would cover Section 2, A-1 and the pages that Mr. Randolph has read. Mr. Randolph agreed. Mr. Ilyinsky clarified they are dealing with everything that had to do with the R-B and the R-BB zones. Mr. Heeke stated it would be Section 2, (a) 1 and Section B. Mr. Moore stated they would be leaving in Section 2 (a) (2) which is to amend footnote #3. Mr. Heeke agree. Mr. Moore stated they would be repealing Number 3 which addresses Footnote 22; but Item 4 (a) on page 2 which addresses Footnote 23 should remain. He stated Item 4 (b) would be deleted. Mrs. Wiener asked if Item 3 on Page 5 would be deleted to which Mr. Moore responded that would be deleted. Mr. Heeke believed item (e) in number 3 should be retained.

Mr. Heeke recapped the discussion, noting the deletions in Section 2, on Page 1 would be A.1; A.4.(b) on page 2; A.4 (c) on Page 3 and Page 4 and part of Page 5; No. 5 on page 5. Mr. Randolph noted Section 6 on Page 12 should also be deleted. Mr. Heeke responded that is a different section in the Ordinance and they will get to that later.

Mr. Ilyinsky moved to delete in Section 2, A.1 found on Page One; Section B on Page Two; Section C on Page Three and Four and the top half of Page 5; and Section 5 on Page Five and top of Page 6. Mr. Moore asked if they wanted to keep the Special Exception? Mr. Heeke responded this will be sent back to the Zoning Commission. Mr. Weinberg seconded the motion. On roll call, the motion carried 4-1 with Mrs. Wiener voting against the motion because she would have liked to see the Council resolve this matter and not go through this again next year.

Mr. Nemecek asked for a clarification to which Mr. Heeke responded they have eliminated the R-BB provisions that were proposed and the R-B provisions that were proposed and it goes back to the Zoning Commission.

Mr. Heeke stated the next item for consideration is Footnote 3, which is Section 2 (a) (2) on Page One, with regards to the pedestrian walkway.

Section 2. (a) 2. reads as follows:

Amend Footnote (3) to read as follows:

"All buildings shall be set back so as to provide at least a ten foot wide pedestrian walkway between the street curbline and the building, exclusive of beautification strips, not more than five feet of which may be on the Town street right-of-way, where appropriate, and additionally to provide for the minimum building front yard setback, which shall be measured from the inside (lot side) of said required pedestrian walkway. Where no front yard building setback is provided, or required, two feet of the required ten foot wide pedestrian walkway, adjacent to the inside (lot side) of said walkway, may be landscaped by placement of potted plants, or removable planters. Such potted plants or planters shall include xeriscape landscaping whenever possible.

Within the C-WA District, arcades or colonnades may be constructed subject to approval as a Special Exception, over the sidewalks in the required front yard setback, provided they meet the requirement of Section 5.33 (e)."

Mrs. Wiener moved for adoption of Section 2. (a) 2. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Mr. Heeke referred to Section 2. (a) 3 amending Footnote 22, asking Mr. Randolph if they wanted to keep that? Mr. Randolph responded if they are going to adopt a new provision for R-B, he presumed the reason this was deleted was it was conflicting with the new R-B, so they would now want to keep that provision. Mrs. Wiener asked for it to be read. Mr. Brisson explained it is the fifteen foot height limitation for one story buildings and structures which do not have at least a fifteen foot side yard setback. In its application, he stated, it applies to portions of building constructed between the 12.5 and the 15', so it is stating that the height limits is one story if they don't have a 15' setback. Mr. Heeke clarified that since they are not enacting a new regulation, this particular provision should be rejected.

Section 2. (a) 3 read as follows:

"Footnote (22) and the reference thereto contained in the height regulations of the R-B District is hereby repealed."

Mrs. Wiener moved to delete Section 2.(a) 3 with regards to Footnote 22. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously to delete Footnote 22.

Mr. Heeke stated they are now at Item 4 in Section 2 (a) which is to amend the Footnote 23 on the building angle of vision with regards to cul-de-sacs. Mrs. Douthit moved to maintain this item as this is for the angle of vision on cul-de-sacs. Mrs. Wiener asked if this refers to the change that we just got rid of it. Mr. Ilyinsky responded he didn't think it did. Mrs. Douthit stated this refers to the existing and it increases it by two degrees for cul de sacs, and she moved for approval.

Section 2 (a) 4 read as follows:

"4. Amend footnote (23) to read as follows:

(23) Building Angle of Vision (not applicable to lots fronting on cul-de-sacs).

(a) No portion of any individual building shall extend beyond a line drawn from the front property line fifty (50) degrees either side of a line drawn perpendicular or radial to the front yard property line. For lots exceeding the minimum required width, the base angle of vision (fifty) 50 degrees on either side of the line) shall be increased by two (2) degrees for each ten (10) feet of increased lot width over the minimum up to a maximum additional width of forty (40) feet in the R-B District and up to a maximum additional width of fifty (50) feet in the R-A and R-AA Districts."

Mr. Heeke recalled there were several variances on cul-de-sacs and this will take care of that. Mr. Ilyinsky seconded the motion. On roll call, the motion carried unanimously.

Mr. Heeke advised the next item is on Page 6. still Section 2, Item (d) which has to do with outdoor seating, which reads as follows:

"Amend Section 4.10, "Schedule B. Schedule of Use Regulations" to:

1. Amend Item "N" under the Special Exception column of the C-WA District to read as follows:

"N" Outdoor seating in conjunction with permitted restaurants. (See Section 6.61)"

Mrs. Wiener moved for the acceptance of D-1 concerning outdoor seating in restaurants. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Heeke stated the next item is Section 2, under D, number 2, remove Hotels and Time Share Uses from the Special Exception Use column of the C-OPI District.

"2. Remove Item 6, Hotels, and Item 12, Time-Sharing Uses from the Special Exception Use column of the C-OPI District."

Mrs. Douthit moved this item be approved. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Heeke stated the next item is Item D.3 on page 6:

"3. Amend Item 4 under Accessory Uses in the R-AA, R-A, R-B and R-C Districts and Item 5 under Accessory Uses in the R-D1 and R-D2 Districts, by changing the charitable event automatic expiration date from April 30, 1992 to April 30, 1993."

which extends the charitable event automatic expiration date, which will sunset this year. Mrs. Wiener commented this suggestion came to the Council from the Zoning Commission to extend this for two more years. Mrs. Douthit indicated she had a strenuous opinion on it. Mrs. Wiener responded Mrs. Douthit is entitled to her opinion and Mrs. Wiener was entitled to hers, and she thought to revisit this every year is a little bit ridiculous as people know what they are doing in their homes and to mix zoning with what someone does in their home and not for a commercial purpose but for a charitable purpose is not something they should be looking at and it was her recommendation they go back to what the Zoning Commission recommended which was to have this sunset on April 30, 1994. Mrs. Douthit did not agree. Mr. Heeke believed the discussion was to have one of the Committees study this during the current year. Mrs. Wiener thought they were playing games here as someone can have one hundred people to their home for a birthday or anniversary but if they are having a charitable event, it makes no difference in the traffic or anything else.

Mr. Winterfield addressed the Council noting the Zoning Commission recommended the two year extension without discussion. He respectfully submitted there is a lot to look into on this matter as the data is available as all one has to do is look at the Palm Beach Daily News for the upcoming events which contain far more than those approved. He felt the Ordinance needed to be amended

either as Mrs. Wiener suggests or they should study it between now and the next meeting with a view toward taking other action. Mr. Heeke recalled this was discussed at the January 6th meeting.

Mrs. Douthit moved the sunset date be for one year. Seconded by Mr. Ilyinsky. Mrs. Tracy addressed the Council indicating she has chaired three benefits in the last three and one half years and found that if they were careful with the wording on the invitations they could have pre-benefit receptions at the various homes and this was extensively done for publicity purposes and usually was for the large donors. She felt it was a matter of semantics, as they were not soliciting but they were invited because they had given large donations. She thanked the Council for their previous action and Mr. Goldsmith from the Zoning Commission who retracted his vote. She apologized to Mrs. Wiener who stated earlier she has been trying for one year to fight this as Mrs. Tracy stated she gets her news from the Shiny Sheet and didn't know until yesterday that this was coming up. She doesn't read the public notices and felt if something this important is happening in the future, that somehow it can be in the paper other than by the small public notices.

Mr. Heeke called for the vote and on roll call, the motion carried 3-2 with Mrs. Wiener and Mr. Weinberg voting against the motion.

Mr. Heeke stated the next item under Section 2, is D.4 found on Page 6 which adds a new item 16 to the Special Exception Use column in the C-TS District:

"4. Add new Item 16 under the Special Exception Use column of the C-TS District to read as follows:

16. Offices, professional services and business services located on the first floor provided such use has no frontage on, or entrance directly onto, a sidewalk fronting a roadway."

Mrs. Douthit moved for approval of this Item. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Heeke advised they now go to Section 3 (a) to amend Section 5.17 found on Page 7 which has to with the fifty per cent demolition. Mrs. Douthit moved for approval of Section 3 (a). Mr. Weinberg seconded the motion.

Section 3 (a) reads as follows:

"(A) Amend Section 5.17, "Existing Single Family Dwelling Development to read as follows:

EXISTING SINGLE FAMILY DWELLING DEVELOPMENT:

A single family dwelling structure existing in any "R" District at the time of adoption of this Ordinance which does not comply with the lot, yard, and bulk regulations for building lots in the "R" District in which it is located, may be permitted building additions provided said building additions shall not increase the extent of the particular zoning nonconformity (ies). In the event a second floor addition is added to a nonconforming one or two-story dwellings said building addition shall meet front, side, and rear setback requirements for two-story dwellings and shall not increase the total floor area of such structure to more floor area than could be constructed if such structure were an entirely new structure. In the event that more than 50% of a building, as determined by cubic footage, is demolished, in preparation for any proposed addition, renovation, or reconstruction, then these provisions shall not apply and the entire structure shall be made to conform to existing zoning regulations. It is the intent of this section to provide a partial exemption to the prohibition of existing building enlargements contained in the provisions of Sections 8.20 and 8.21 of this Ordinance."

Mr. Englehart asked if there were any special provisions for hardship cases for reconstruction after a storm? Mr. Heeke stated this is not aimed at that but if someone comes in for a total remodeling and they end up by destroying or removing more than fifty per cent and they want to build in the same footprint which does not comply with the present setback requirements, then they have to come back to the Council. Mr. Englehart commented his question is what if they have to rebuild because of an act of God? Mr. Heeke responded stating that was a different section entirely and that is not being amended.

Mr. Winterfield then addressed the Council recalling at the Zoning Commission Hearing the question was asked if this had any effect on an existing building which is gutted and rebuilt on the same footprint and the response was that was correct. He recalled this was also discussed by the Town Council on January 6th and what the President has just said was in direct contradiction of the word "renovation" and there is now wording added which adds "reconstruction". He suggested they highlight the new language as they do in the State Statutes so that it can be far easier identified. He stated if this provision is enacted, he has two questions: (1) the procedure one of totally changing the impact of language after consideration by the Zoning Commission and secondly, he finds himself struggling with the idea of grandfathering as if a house is reconstructed on the same footprint is treated more severely than the house next door which is expanded.

Mr. Heeke called for the vote on the motion and the motion on roll call carried unanimously to approve Section 3 (a).

Mrs. Douthit asked Mr. Heeke if it was time for him to leave? Mr. Heeke stated he would have to leave very shortly. Mrs. Douthit suggested they meet tomorrow after 5:01 PM as there is still a lot to be covered. Mr. Ilyinsky asked if they could meet in the morning at 9 AM. Mrs. Wiener

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noted this is the first reading of the Zoning Ordinance and they have to meet after 5 PM and there has to be four members of Council who would have to all vote for any of the items being considered and she was prepared to stay tonight to consider these matters. Mrs. Douthit stated she would make a motion that they continue the hearing to tomorrow after 5:01 PM. Mr. Ilyinsky asked if they could do that? Mr. Randolph responded they could continue the meeting to tomorrow after five, but he didn't believe that had much more to do, to which Mrs. Wiener agreed.

Mr. Heeke believed there were several other matters that might come up. Mrs. Douthit believed they were very important matters. Mr. Ilyinsky asked if they had to do with zoning? Mr. Heeke responded they did not and were approved for Any Other Matters. Mr. Ilyinsky felt they could approve the resolution on the election. Mrs. Wiener felt they should go through the zoning matters as there are people who are in the room who came for that. Mrs. Douthit stated it was fine with her but she was simply thinking about Mr. Heeke having to leave the meeting. Mr. Heeke passed the gavel to President Pro Tem Weinberg to chair the remainder of the meeting and left the meeting at 6:40 PM.

Mr. Weinberg asked Mrs. Douthit to repeat the motion. Mr. Ilyinsky seconded the motion. Mrs. Douthit stated her motion is to adjourn this meeting and hold it over to 5:01 tomorrow evening in the Council Chambers. Mr. Ilyinsky asked if they didn't want to finish the matters in the Zoning Ordinance first? Mrs. Douthit stated she was willing to do that but then adjourn after the zoning is considered until 5:01 tomorrow.

Mr. Randolph stated the only reason to adjourn this meeting to 5:01 PM tomorrow is if they are to continue to consider zoning matters tomorrow. Mr. Moore pointed out Mr. Brisson is here tonight and would not be able to be in attendance at a meeting tomorrow. Mrs. Douthit withdrew her motion, stating she had not thought about Mr. Brisson.

Mr. Moore stated the next item is in Section 3 on Page 7 which deletes Section 5.18 and 5.19 in their entirety and inserts new language for 5.18:

"b. Delete sections 5.18 and 5.19 in their entirety and insert a new Section 5.18 to read as follows:

LOT GRADE TOPOGRAPHY AND DRAINAGE. In residential districts for single family development the natural grade and topography of a lot may be altered to raise the same to meet base flood elevation requirements. In the event existing grade is at or above minimum flood elevation requirements, then grade shall not be raised higher than eighteen (18) inches above the crown of the abutting street unless as part of a building official approved plan, providing for natural containment of rain water and its percolation on the lot (not man-made unless tied into the storm sewer, if available). IN all cases proper drainage and/or containment of water must be provided for."

Mrs. Douthit moved for approval of Section 3 item B. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mrs. Douthit noted the next item is Section 3 (C) which is about the beach houses. Mr. Moore stated this section is to amend Section 5.47 (b):

"Amend Section 5.47 (b) "Number of Beach Houses buildings and setback" to read as follows:

Number of beach house buildings and setback. Not more than one (1) beach house structure shall be erected on property under single ownership and not more than one (1) property under single ownership and not more than one (1) beach house structure shall be erected on a lot in accordance with the following minimum lot frontage requirement.

<u>Beach Area Property adjacent to</u>	<u>Minimum Lot Frontage</u>
R-B District	100 feet
R-A District	125 feet
R-AA District	150 feet
All Other Districts	150 feet

Beach house structures shall be set back not less than ten (10) feet from the north property line and shall be set back not less than ten (10) feet from the south property line and shall be set back not less than ten (10) feet from the west property line provided however, that the foregoing restrictions shall not be deemed to apply to jetties or groins or other structures for the protection of the beachfront; and provided further that no such beach house structure or lot shall ever be used for any purpose other than private bathing purposes incidental to the ownership thereof, said use to be an accessory use to the residential building located directly across the street therefrom or within a radius of one thousand five hundred (1500) feet and with unity of title thereof; or such use to be an accessory use for an association of property owners on the adjacent east-west streets and provided further that such beach house structure has been approved as a Special Exception Use in conformance with Section 6.40 of this Ordinance."

and the Zoning Commission's recommendation was to change the area of radius to 5,280 but the Town Council did not approve that recommendation and the figure has been changed to 1,500 and he knew there was someone in the audience who wished to address this item.

Mr. William Buckley, Seaview Avenue addressed the Council noting his wife owns a beachfront property at 1206 North Ocean Blvd., which is between Nightingale and Mockingbird and this was bought in 1976, which they have completely renovated. He stated they have been thinking for some time of selling it and his wife has had a number of good offers and one about six or eight months ago, at which time he had a phone call from Mr. Moore who told him there was someone in his office who was representing a potential buyer and wanted to know if they were considering selling the cabana. Mr. Buckley recalled he had responded that his wife had a very good offer and was very tempted since the doctor has told his wife she shouldn't be in the sun very much, so they were tempted to sell. He recalled at this time Mr. Moore told him that in 1988 the Ordinance on Beach Houses was changed and he would only be allowed to sell this beach house to someone who lived within 1500' of it. He advised he received notice at his residence when someone next door wanted to convert a garage but he had never heard a word about what took place at 1205 North Ocean Blvd. He recalled Mr. Moore read the Ordinance to him and he has since received a copy of the Ordinance. He advised the potential buyer withdrew his offer to buy. He stated another provision in the Ordinance is that they have to put the property in a Unity of Title with their main residence, and that is not the way it is presently as they have a separate deed for the beach front property.

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(Buckley
residence)

Mr. Buckley recalled he was advised by his attorney to attend the Zoning Commission hearings, as the attorney couldn't be here when the Zoning Commission was going to be considering this matter and the Zoning Commission's recommendation was that the radius be increased to 5,280'. He asked Mr. Moore how many similar instances there were to his case and Mr. Moore didn't know. He felt this provision which has since been reduced to 1500' is grossly unfair and discriminatory and devalues a very good asset very substantially and he really doesn't think that is the Council's intention. He knows what their intention is and he would not sell the cabana to someone who did not live in Palm Beach and his wife would not also. He stated they would like to sell it to someone who is within the area, but they are restricted. He didn't know who arbitrarily picked out the 1500' figure, as there was a beach house built two lots north on which a cabana was built by someone who did live further away than the 1500'. He stated he doesn't attend Council meetings very often and he can understand why there is no opposition for the elected officials as nobody wants the job. He believed he had witnessed American Government at its best and these people came here tonight trying to get something overturned and the Council listened and acted and gave them consideration. He stated that has nothing to do with what he is here for, but it was his personal view and he congratulated them all.

Mr. Moore indicated he has had several conversations with Mr. Buckley and it would take an exhaustive search to make the determination as to who owns the remainder of the beach houses there and whether they are tied with the Unity of Title. He stated the 5,280' was an arbitrary figure they picked up but the 1500' was not arbitrary although it was referred to as such. He indicated the 5,280 was to expand the area for walking and bicycling to a reasonable area and Staff had proposed that after discussions with Mr. Buckley and hearing of his hardship and it was recommended by the Zoning Commission. He recalled the Council did hear this on Jan. 6th and felt the 5,280 figure was not appropriate and reduced it to the 1500' figure.

Mrs. Wiener and Mrs. Douthit recalled this had been discussed quite lengthily. Mr. Moore explained the 1500' was not arbitrarily picked as it is the distances located between businesses and would be relative to walking from between schools and churches and bars.

Mrs. Douthit felt they should stick with the 1500'.

Mr. Buckley advised there is no parking east of North Ocean Blvd., although there is on South Ocean Blvd., as originally when they got this lot they thought they could make a cut and park their car about 15 to 20 hours per week, but were not allowed to do that. He didn't think anyone had to live within walking distance as they might call a cab, or ride a moped or bicycle or walk to it. He felt the 5,280' was a better figure for him than the 1500' but that throws a golf course in the area and there are not that many residents who are interested in buying real estate. He feels exactly as the Council does except he disagrees there should be this strong restriction.

Mr. Winterfield addressed the Council noting since there was no restriction at the time this property was purchased, he suggested their old friend grandfather might suggest that no restriction should be imposed on his right to alienate the property at this time, and it could be very simple to impose it on the next generation who might wish to transfer.

Mr. Robert Stillman addressed the Council asking for a clarification. Mr. Moore responded Beach Houses are an accessory uses to principal structures and at one time they were allowed to be separate ownership and in 1984 or 1985 the restriction was put into the Ordinance and he assumed it had to do with parking so the parking could be provided at the principal structure within the vicinity of the Beach House. Mr. Weinberg asked if the responsibility of the parking would be on the owner as to where he could park legally? Mr. Moore responded at some point it was decided that parking would not be permitted on beach properties, although there is some grandfathered parking that exists currently on several beach properties south of the Buckley property but he doesn't believe there is any on the Ridge area north of this property.

Mrs. Douthit believed the parking was also banned because of dune maintenance. Mr. Ilyinsky recalled they didn't want beach houses to become residences also. Mr. Moore commented they are accessory uses rather than main residences. Mr. Weinberg asked if there was any way they could become residences? Mr. Moore stated they could by way of a variance. Mr. Ilyinsky advised he has no objection to what Mr. Buckley is saying. Mrs. Douthit recalled this has been discussed quite fully and they put in the 1500' figure in an effort to get them back into an accessory structure.

Mrs. Wiener indicated this is the same kind of problem Council had with the R-BB. She didn't believe they could change zoning to affect one or two people and when she asked Mr. Moore how they came to bring this figure from 1500 to the 5,280 figure, his response was to accommodate a resident. She believed the problem could be solved by either grandfathering it or through the variance procedure. Mrs. Douthit stated she would be perfectly willing to grandfather it, providing when they elected to sell it, they sold it to someone who lived within that area.

Mr. Moore indicated they are missing a point as Mr. Buckley has been told about the variance process and it's not satisfactory to him, as he would like the provision changed.

Mr. Buckley interrupted stating he has lived here for 21 years and understands about variances and he is not evading, avoiding or ignoring what Mr. Moore has said once or twice.

Mr. Moore explained the option has been put forth. He believed the only thing about grandfathering is - he is not precluded now from using that property. He stated he can sell it but the new owner would be affected in buying a piece of property and he didn't want to get into the legalities, but he can sell it, but the question is whether or not it can be used after it is sold.

Mr. Buckley assured the Council it could probably be controlled by to whomever it is sold that it be put in Unity of title with his main residence, so he couldn't turn around and sell it to someone else.

Mrs. Wiener believed the buyer would want the same right that Mr. Buckley has. Mr. Buckley responded the buyer would have to buy it with the understanding it would have to have Unity of Title. Mrs. Wiener asked if he was willing to do that? Mr. Buckley responded he wouldn't sell it to anyone who didn't live in Palm Beach and own property and would put a Unity of Title on the beach property with the main residence property.

Mr. Weinberg pointed out this would be without parking facilities. Mr. Moore felt the logical consideration of this would be a variance procedure and once there was a buyer, the variance could be applied for and the hardship could be looked at but he didn't believe that was the proper solution to which Mrs. Wiener agreed. Mr. Weinberg thought it would be a problem to the new purchaser.

Mr. Ilyinsky asked what would be the problem if this is left as it is and they are allowed to come for a variance? Mr. Buckley felt that would allow him to be in a stronger position rather than to be held to the 1500'. Mr. Moore stated the buyer would need a variance under the provision as it now exists. Mr. Ilyinsky recalled they granted a variance to Mr. Cole and it was nowhere near where he lived. Mr. Moore stated that he received a variance.

Mrs. Wiener recalled it was a thousand foot variance, but each one is looked at individually. She thought the 1500' figure should be put into the Ordinance, however, there should be something in the language that would allow the beach houses that are currently not within the 1500' and she believed she heard Mr. Moore state there were only about two or three like that. Mr. Moore explained it would take some research but that is his understanding. Mrs. Wiener felt even if there were five, it would be much better to do it that way. Mr. Randolph pointed out that that is not what is under for consideration now and if they wished that matter to be studied, it would have to be sent to the Zoning Commission. Mrs. Douthit moved that the Council approve the 1500 figure and send the question on the three or four special beach structures that now exist without Unity of Title or which are not within the 1500' back to the Zoning Commission for further study as to what should be done about them. Mr. Ilyinsky asked what would happen if someone wished to buy someone's beach house before the Zoning Commission meets again, would they come before the Council? Mrs. Douthit believed they could, but didn't think it had to be part of the motion. Mr. Moore confirmed that they would have that right at this time and asked for clarification that what the Council is looking for is language which would possible allow the existing beach houses identified that would be exempt from this 1500' as long as the beach property is sold to someone who lives in Palm Beach and asked Mr. Ilyinsky if that is what he was looking for? Mr. Ilyinsky stated he didn't really know. Mr. Randolph stated he would rather they didn't do that. Mrs. Douthit indicated she would rather see it studied. Mr. Randolph agreed it needed to be studied.

Mr. Buckley asked if he could now offer the property to anyone who is a property owner in the Town and doesn't live within 1500' as long as they are agreeable to put the property in a Unity of Title with their main residence? Mrs. Douthit felt he was asking for the variance right now. Mr. Buckley pointed out the language is restrictive and he didn't want to run an ad offering the property for sale if he couldn't sell it. Mrs. Douthit noted there is a motion on the floor and that should be solved first and reiterated he was asking for a variance and now wanted the Council to word his advertising. Mr. Buckley responded he was not requesting a variance and he didn't mean to imply that he was and all he wants is to know if someone was willing to meet the stipulations mentioned about the Unity of Title and they were property owners in the Town of Palm Beach that they could come and have a chance at receiving a variance.

Mr. Randolph advised Mr. Buckley to get with Mr. Moore on the interpretation of the Zoning Ordinance as it now applies to his property. Mr. Buckley responded he and Mr. Moore have discussed this a couple of times and got nowhere, then the Zoning Commission came up with the 5280' and Council turned it down so he felt he was right back where he started and he didn't believe that any further conversation with Mr. Moore was going to accomplish anything. Mr. Moore responded Mr. Buckley has been told he needs to come for a variance. Mr. Weinberg asked Mr. Buckley if he would come for a variance in thirty days? Mr. Buckley responded he wasn't asking for a variance and all he wants to know is that he will not be restricted to offering this piece of property for sale to people who live within the 1500'. Mr. Randolph responded the Town Council has a motion on the floor and what that motion states is to limit it to 1500' but it be sent back to the Zoning Commission who will look at other options next year and the interpretation of the Ordinance has been given to Mr. Buckley by Mr. Moore previously and that is still in effect and he didn't believe the Council was going to give him any other advice other than what he has already received tonight. Mr. Buckley responded he guessed there wasn't much point in him coming here tonight then under the circumstances. Mr. Randolph disagreed stating the Council is not in favor of the 5,280' but they are in favor of taking another look at this but it would have to be done next year and until then, Mr. Buckley will be bound by the Ordinance as it now exists. Mr. Buckley asked why he had to wait a year? Mrs. Wiener responded because that is the Zoning season. After further discussion, the roll was called and the motion carried unanimously.

Mr. Moore stated they are now at Item D on Page 8 which is to amend Section 5.48 with regards to Special Exception height regulations by adding a new Subsection II to allow the Town Council by Special Exception to find the items listed on Page 9 and this would go through the Architectural Commission review first and then come to the Council which will reverse the procedure which presently exists. Mr. Ilyinsky asked if the Council had agreed to this provision to which Mr. Moore responded affirmatively.

The sections reads as follows:

"(d) Amend Section 5.48 "Special Exception to Height

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(cont'd)

(Item D -
page 8, Sect.
5.48)

Regulations; Special Exception Structures" to identify the existing text of Section 5.48 as Subsection I and to add a new Subsection II to read as follows:

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(cont'd)

- "II. R-B Zoning District. In order to encourage meritorious architectural design, variety in the setback of structures, increased open space and landscaped open space, reduced lot coverage, and reduced floor area ratio, Town Council may at its discretion, upon review of an application and public hearing thereon, allow for the increase of the maximum building height in the R-B Zoning District of the Town provided said Special Exception meets the standards of Section 6.40 of this Ordinance, and the goals, standards and guidelines set forth in this Section.

A. The Town Council shall find that:

1. The proposed increase in height for a contemplated Special Exception structure is in the public interest;
2. The Architectural Commission shall have reviewed the proposed Special Exception and reported to the Mayor and Town Council that the applicant has given careful attention to architectural excellence, and that the request is meritorious of consideration for a Special Exception.
3. The structure is compatible with the site, adjacent properties and the neighborhood after consideration of:
 - a. The general form of the land before and after development or redevelopment;
 - b. The spatial relationships of the structures and open spaces to nearby land uses, including positioning of the building, transition in height and number of stories, garage placement, landscaping, and other site improvements;
 - c. The appearance, including building bulk, proportion, scale, massing, materials, colors, and architectural details, of buildings and open spaces as they contribute to the surrounding area; and
 - d. The protection of neighboring owners and uses by ensuring that reasonable provision has been made for such matters as surface water drainage, sound and sight buffers, the preservation of views, light and air, and those aspects of design, not adequately covered by other regulations, which may have substantial effects on neighboring land uses.

B. R-B Zoning District

The maximum allowable overall height under this section shall be thirty-five (35) feet for a two-story structure with a pitched roof and thirty (30) feet for a two-story structure with a flat roof, provided the following standards are met:

1. A maximum of fifty (50) percent of the second story may be requested for a Special Exception to permitted overall height requirements. In addition, a minimum of fifty (50) percent of the first floor shall be retained as one-story, height not to exceed twenty (20) feet overall for pitched roofs and seventeen (17) feet overall for flat roofs. (Note: It is not the intent of this Section to discourage other portions of the second story to be built at thirty feet (30) for pitched roofs and twenty-seven (27) for flat roofs, or less, which would permit three (3) or more roof levels.
2. The minimum rear yard setback for all parts of the second story portion of construction shall be fifteen (15) feet. The minimum rear yard setback for first-story portions shall be ten (10) feet.
3. The minimum side yard setback for all parts of the second story portion of construction shall be seventeen and one-half (17.5) feet. The minimum side yard setback for first story portions shall be twelve and one-half (12.5) feet.
4. The minimum front yard, street side yard and street rear yard setbacks shall be thirty-five (35) feet for the second-story portion over thirty (30) feet overall height for pitched roofs and twenty-seven (27) feet overall height for flat roofs.
5. Lot coverage for lots in excess of fifteen thousand (15,000) square feet in area shall be limited to a maximum twenty-two and one-half (22.5) percent.
6. Garages shall be designed so that the opening will not face a street or shall be sight-screened by landscaping.
7. The maximum permitted Floor Area Ratio (FAR) shall be one (1) percent less than the permitted FAR for the R-B Zoning District.
8. All other R-B Zoning District regulations shall apply."

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Mr. Winterfield addressed the Council believing that this would produce a yo-yo effect as it will be heard by ARCOM, come to the Council and then have to go back to ARCOM and respectfully submitted that there's no reason to treat this type of Special Exception any differently from the others as Council can always approve it, subject to the finding of the Architectural Commission.

Mr. Moore recalled that subject was also debated by the Zoning Commission who felt the Architectural Commission should first look at the design. After discussion, motion was made by Mrs. Wiener to approve Item D which is under Section 3 and that is found on the bottom of Page 8, all of Pages 9 and 10 and on the top of Page 11. Seconded by Mr. Ilyinsky On roll call, the motion carried unanimously.

Mr. Moore stated they are now at Item E of Section 3 which amends Section 5.50, Accessory buildings and/or structures which would allow accessory structures in the R-A and R-AA Districts as long as they have the same setback as the principal structure and would allow two stories where heretofore only one story was permitted:

"(e) Amend Section 5.50 "Accessory buildings and/or structures", subsection 5.51 (b) to read as follows:

Sect. 5.50

Unattached accessory structures in R Districts. Accessory structures in the R-B District not exceeding one (1) story in height, and not exceeding an overall height of fifteen (15) feet, and accessory structures in the R-A and R-AA Districts not exceeding the height of the principal structure, and without kitchen facilities, which are located no closer than ten (10) feet to a principal structure are defined as unattached and may be erected in accordance with the following requirements:"

He advised the Zoning Commission has asked them to study this item for the R-B area next year on lots which are over 20,000 square feet. Mrs. Douthit moved for approval. Seconded by Mr. Ilyinsky.

Mr. Winterfield asked if there has been any determination of how many properties will be rendered non-conforming if this particular section is adopted? He believed there are a lot of properties in the R-B District which already have two story accessory structures and particularly those located on alleys as the lower portion is used as a garage and the upper portion for living purposes. He felt consideration should be given to that fact and also making the two story accessory structure in all Districts a Special Exception Use. Mrs. Douthit pointed out this only applies in R-B areas of over 20,000'. Mr. Moore corrected her to point out this was requested to be studied by the Zoning Commission and right now, it's a one story restriction in R-B and they would be allowing two story structures in the R-A and R-AA. On roll call, the motion carried unanimously.

Sect. 4

Mr. Moore indicated the next item is Section 4, which addressed the Supplementary Use regulations as contained in Section 6.21 to be amended. The language reads as follows:

"SECTION 4. Article 6 of the aforesaid Ordinance titled "SUPPLEMENTARY USE REGULATIONS" is hereby amended as follows:

Sect. 6.21

(A) Amend Section 6.21 "Off-Street Parking, Schedule of Off-Street Parking Requirements", sub-item (6) to read as follows:

USESPACES REQUIRED PER UNIT

(6) Hotels, motels, motor inns, and timesharing uses.

One and three-quarters (1.75) per unit with two (2) or fewer rooms, and two and three-quarters (2.75) per unit with more than two (2) rooms; plus (1) for each five (5) seats of conference capacity."

Mrs. Wiener moved the adoption of Section 4 as printed on Page 11. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Sect. 5

Mr. Moore advised the next item is Section 5, which amends the Planned Unit Development purpose as contained in Article 7 of the Ordinance, and this is found on Pages 11 and 12 and it contains (a) and (b) and is a housekeeping matter. The language reads as follows:

"SECTION 5. Article 7 of the aforesaid Ordinance titled "PLANNED UNIT DEVELOPMENT" is hereby amended as follows:

(a) To amend Section 7.10, "PURPOSE", by amending the third paragraph to read as follows:

In addition to the above, PUD-4 historical preservation-residential development is intended to preserve structures and/or premises of significant historical or architectural value to the Town by allowing for low-density residential development at a density calculated on the area of the entire property, excluding the area of property required by the Town to be assigned to the historical structure. Structures and/or premises listed in the National Record or in any current or future historical report recognized by the Town Council may be considered significant for the purposes of this article. In addition, the Town Council may declare any other structure and/or premises to be of historical or architectural significance.

(b) Amend Section 7.436, "PERMITTED LAND USE", by amending PUD-4 paragraph to read as follows:

PUD-4. Any use permitted in the R-AA Large Estate Residential or R-A Estate Residential District, provided said uses are developed compatibly with an historical or architecturally significant structure or premises."

Mr. Ilyinsky moved for adoption of Section 5. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Mr. Ilyinsky moved that Section 6 be deleted as that applies to the R-3B District which was taken out of the Ordinance earlier in the meeting. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously to delete.

Ord. 1-92
(cont'd)

Mr. Randolph suggested they make a motion to adopt Ordinance 1-92 as amended. Mrs. Douthit so moved. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously for approval.

Mrs. Douthit believed they should now adjourn until tomorrow night. Mr. Ilyinsky suggested they deal with the next item which is the Resolution on the election, to which Mrs. Wiener agreed.

VI. RESOLUTION No. 5-92 WITH REGARDS TO THE ELECTION. Mr. Randolph read it by title:

Res. 5-92

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA DECLARING THE RESULTS OF THE TOWN CAUCUS, REFLECTING ACTIONS SUBSEQUENT THERETO RELATING TO THE WITHDRAWAL BY A CANDIDATE: DECLARING THAT A MUNICIPAL ELECTION SHALL NOT BE CONDUCTED.

Mrs. Wiener moved for the adoption of Resolution 5-92. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously for approval of Res. 5-92.

Mr. Ilyinsky asked about Resolution 6-92 and Mr. Randolph indicated that was postponed until the February 11, 1992 meeting.

VII. ANY OTHER MATTERS:

A. Consideration of Proposed Contract with American Coastal Engineering, Inc., for PEP Reef at Mid-Town Public Beach Area.

PEP Reef

Discussion was had by the Council as to whether or not the remainder of the items to be discussed could be done during the daytime. Mr. Lickle addressed the Council, indicating he had quite a busy schedule during the day and would appreciate if it could be after 5 PM.

Mr. Randolph indicated he can make a report on the meeting held today by Municipal Attorneys on the Countywide Planning Council at any time and it wouldn't have to be this evening.

BOND REFINANCING: Mr. Doney advised that the other issue is the bond refinancing and there are representatives from Smith Barney here tonight. The representatives from Smith Barney advised they would be able to come back tomorrow evening.

Bond Refinancing

MUNICIPAL LEAGUE MEETING: Mr. Doney noted there is a Municipal League meeting tomorrow and one of the items on the agenda is the Countywide Planning Council charter issue. Mr. Randolph advised there would be a report at that meeting of what happened at the meeting he attended of the Municipal Attorneys to discuss the various positions of the municipalities in the County as to whether or not they want to be involved in challenging the ballot question that is proposed to be put forward by the County. Mr. Doney advised the meeting is at 10 AM tomorrow in Juno Beach. Mrs. Wiener asked Mr. Doney if he or Mr. Elwell will be attending to which Mr. Doney advised there are a lot of other things that needed to be attended to and he didn't believe he could go, and in any event, they are not the voting delegates, as the Mayor is the voting delegate. Mr. Randolph believed the question will be if a lawsuit is launched to oppose the Charter Amendment by the County, does the Town of Palm Beach want to be a part of that lawsuit? After discussion, Mrs. Wiener moved that the Town of Palm Beach participate in any legal action taken by the Municipal League, or the various municipalities concerning the Planning Council item which is proposed to be put on the ballot by the County Commission. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Municipal League Meeting

OLD A-1-A. Mr. Weinberg announced this matter will be put off until tomorrow night's meeting.

VIII. ADJOURNMENT There being no further business, the meeting was adjourned at 7:38 PM to 5:01 PM on January 22, 1992.

Adjournment

Grace T. Peters
Town Clerk