TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON TUESDAY, JANUARY 14, 2009

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Wednesday, January 14, 2009, at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald
President Richard M. Kleid
President Pro Tem Gail Coniglio
Council Member Denis P. Coleman
Council Member Susan Markin
Council Member David A. Rosow

Others present for all or a portion of the meeting were:

Town Manager Peter B. Elwell
Town Attorney John C. Randolph
Paul Castro - Zoning Administrator
Charles Langley - Public Works Assistant Director
John Page - Planning, Zoning and Building Director
Joanna Cunningham - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. COMMENTS OF MAYOR JACK McDONALD

There were none.

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IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Kleid thanked Council Member Coleman for his service to the community, as today was his last Town Council meeting.

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

Laurel Baker, Palm Beach Chamber of Commerce, commented on the business districts.

Council Member Markin commented on the City of West Palm Beach's new city center and the business community.

Responding to Mayor McDonald, Ms. Baker provided several ideas to the Town Council that could help the business districts improve.

VI. APPROVAL OF AGENDA

The following changes were made to the Agenda:

DEFERRED Item VII.C.3.a., Variance #19-2008, to the February 11, 2009, Town Council meeting.

DEFERRED Item VII.C.3.b., Site Plan Review #10-2008, to the February 11, 2009, Town Council meeting.

DEFERRED VII.C.3.c., Variance #21-2008, to the February 11, 2009, Town Council meeting.

DEFERRED VII.C.4.b., Site Plan Review #2-2009, to the February 11, 2009, Town Council meeting.

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

VII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business - Less Than 15 Minutes

Town Clerk Cunningham swore in all of the persons providing testimony.

a. VARIANCE #25-2008 The application of Charles C. Hickox; relative to property described as Lot 32, Plat No. 3 of EVERGLADES ISLAND DEVELOPMENT according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida recorded in Plat Book 23, page 120; commonly known as **528 Island Drive**; located in the R-B Zoning District. The applicant requests a variance to permit construction of new addition to existing residence containing 2,508.79 square feet providing a front yard setback of 39.5 feet in lieu of 41.6 foot minimum required.
[Attorney: M. Timothy Hanlon]
[ARCOM Recommendation: Approval of the variance. Carried 7-0.]
Deferred from the December 8, 2008, Town Council Meeting (Special Circumstances).

There was ex parte communication declared by Council President Pro Tem Coniglio via phone call.

Motion to approve was made by President Pro Tem Coniglio and seconded by Council Member Coleman. The motion passed unanimously.

2. New Business - Less Than 15 Minutes

a. VARIANCE #1-2009 The application of Clay Grubman; relative to property commonly known as **403 Seabreeze Avenue**; described

as Lots 48 and 50, POINCIANA PARK according to the Plat thereof, on file in the Office of The Clerk of the Circuit Court in and for Palm Beach County, recorded in Plat Book 6, Page 1; located in the R-B Zoning District. The applicant requests a variance to allow the rear yard setback for a swimming pool to be 5 feet in lieu of the 10 foot minimum required. Variances are also requested to allow partial demolition of an existing non-conforming accessory structure in the rear yard. This renovation will result in two smaller structures that are proposed to have: (1) an east side yard setback of 9 feet in lieu of the 25 foot minimum required; (2) west side yard setback of 4.9 feet in lieu of the 12.5 foot minimum required; and (3) rear yard setback of 2.7 feet in lieu of the 10 foot minimum required. A variance is also requested to eliminate the one parking space that was contained in the garage structure. [Attorney: Maura A. Ziska]
[Landmarks Preservation Commission Recommendation: Approval of the variances will not cause negative architectural impact to the subject property. Carried 7-0.]

There was no ex parte communication.

Motion to approve was made by Council Member Rosow and seconded by Council President Pro Tem Coniglio . The motion passed unanimously.

b. SITE PLAN REVIEW #1-2009 WITH VARIANCES The application of Lucille Lowenstein; relative to property commonly known as **100 Sunrise Avenue PH6**; described as Sun & Surf One Hundred Condominium Unit PH-6, according to the Declaration as recorded in Official Records Book 2583, Page 1391 and Official Records Book 2818, Page 1 of the Public Records of Palm Beach County, Florida; located in the R-C Zoning District. The applicant requests a site plan modification with variances to allow three (3) retractable awnings totaling 404 square feet over the terrace on the seventh floor of a seven story condominium building; a variance request to allow the awnings at a height of 58.4 feet in lieu of the 23.5 feet maximum height allowed in the R-C Zoning District; a variance request to allow the awnings on the existing seventh floor penthouse of a seven story building in lieu of the two story building maximum allowed in the R-C Zoning District.

[Attorney: Maura A. Ziska]
[ARCOM Recommendation: Approval of the variances. Carried 7-0.]

There was ex parte communication with Council Member Coleman via phone call.

Motion to approve was made by Council Member Rosow and seconded by Council Member Coleman . The motion passed unanimously.

3. Old Business - More Than 15 Minutes

a. VARIANCE #19-2008 The application of John R. Raese and Elizabeth S. Raese; relative to property described as Lot 24 and the East one-half of Lot 25, Plat of JAMAICA LANE, according to the Plat thereof as recorded in Plat Book 18, Page 93, Public Records of Palm Beach County, Florida; commonly known as **286 Jamaica Lane**; located in the R-B Zoning District. The applicant requests a variance to construct a one-story enclosed accessory structure with a point of measurement of 21 feet National Geodetic Vertical Datum (NGVD) in lieu of the 17.14 feet NGVD required.
[Attorney: Peter S. Broberg]
[ARCOM Recommendation: Defer to the January 28, 2009, Architectural Commission meeting.]
Deferred from the November 11, 2008, and December 8, 2008, Town Council Meetings (Special Circumstances).

DEFERRED Item VII.C.3.a., Variance #19-2008, to the February 11, 2009, Town Council meeting.

b. SITE PLAN REVIEW #10-2008 WITH SPECIAL EXCEPTION AND VARIANCES The application of BNB Ventures Palm Beach I, LLC (Len Ackerman, Manager); relative to property described as A part of Lot 36, Block E, of the ROYAL PARK ADDITION to the Town of Palm Beach, Florida, according to the plat thereof as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida, as described as: Beginning at the NW corner of said Lot 36; thence south on the West line of said Lot 36 125 feet, thence East on a line parallel with North line thereof, a distance of 87 feet; thence North to a point on the North line said

Lot 36, just 87 feet East of the Point of Beginning; thence West to the Point of Beginning; commonly known as **204-210 Royal Palm Way**; located in the C-OPI Zoning District. The applicant requests a Site Plan Review to construct 11,638 square foot, three story commercial building. A Special Exception is required to allow a three story commercial building in the C-OPI Zoning District. In addition, variances are being requested as follows: (a) a front yard setback of .07 feet in lieu of the 20 feet minimum required for a building and 25 feet minimum required for the tower; (b) an east side yard setback to be 0 feet in lieu of the 10 feet minimum required; (c) a west side yard setback to be 0 feet in lieu of the 10 feet minimum required; (d) lot coverage of 48.6% in lieu of the 25% maximum allowed; (e) a landscaped open space to be 9.1% in lieu of the 30% minimum required; (f) a landscaped open space in the front yard to be 17.6% in lieu of the 35% minimum required; (g) to allow a tower feature to be 4.2% of the maximum gross floor area in lieu of the 2% maximum allowed; (h) an overall height tower to be 49 feet in lieu of the 45 foot maximum height allowed; (I) to allow the architectural tower to be on the entry facade which is not permitted by code; (j) 19 parking spaces in lieu of the 35 parking spaces required (a deficit of 16 parking spaces); (k) to eliminate the need for the 1 required loading space; (l) an individual business identification sign on the proposed building to be above the first floor which is not allowed on a multi-story building; (m) a drive isle width in the parking lot to be a width of 16 feet in lieu of the 25 foot minimum width required; (n) allow the air-conditioning equipment on the roof to be 8 feet in lieu of the 4 foot maximum allowed by code; (o) to allow the parking spaces to be situated in contradiction to the maneuvering requirements in Section 134-2172; that section provides that required parking be designed so as to not require the movement of another vehicle in order to remove another vehicle from a required parking space. The applicant is proposing 11 stacked parking spaces which requires the shuffling of vehicles in order to remove vehicles from required parking spaces. [Attorney: Maura A. Ziska] [Architectural Commission Recommendation: Defer to the January 28, 2009, Architectural Commission meeting]
Deferred from the November 11, 2008, and December 8, 2008, Town Council Meetings (Special Circumstances).
Request for Deferral to the February 11, 2009, Town Council

Meeting Per Letter Dated December 22, 2008, From Maura A. Ziska (Special Circumstances).

DEFERRED Item VII.C.3.b., Site Plan Review #10-2008, to the February 11, 2009, Town Council meeting.

c. VARIANCE #21-2008 The application of Conrad Yelvington; relative to property described as Lot 10, Via Vizcaya, (Less NLY 2.43 feet); commonly known as **10 Via Vizcaya**; located in the R-A Zoning District. The applicant requests a variance to allow gate posts to be constructed with a point of measurement of 5.68 feet National Geodetic Vertical Datum (NGVD) in lieu of the 3.30 feet NGVD required by code. The posts and gate would be 10.38 feet high from the crown of the road in lieu of the 8 foot maximum allowed. [Attorney: Peter S. Broberg]
[ARCOM Recommendation: Defer to the January 28, 2009, Architectural Commission Meeting.]
Deferred from the December 8, 2008, Town Council Meeting (Special Circumstances).

DEFERRED VII.C.3.c., Variance #21-2008, to the February 11, 2009, Town Council meeting.

d. VARIANCE #23-2008 The application of Premier Holding Group LLC (Susan D. Hudson, Manager); relative to property described as lengthy legal description on file; commonly known as **601 Island Drive**; located in the R-B Zoning District. The applicant requests a variance to permit construction of a combination 65 foot wide concrete dock (extending 12 feet from the bulkhead), boatlift (extending 25.16 feet from the bulkhead) and three mooring piles (the furthest extending 34.75 feet from the bulkhead) in lieu of 6 feet maximum allowed for a marginal dock in this location. The existing wood dock and boatlift are to be removed and replaced by the proposed new dock, boatlift and piles.
[Attorney: M. Timothy Hanlon]
Deferred from the December 8, 2008, Town Council Meeting.

There was ex parte communication with Council President Pro Tem Coniglio via phone call and Council Member Rosow declared that he met with Attorney Hanlon on the project.

Mr. Hanlon informed the Council that they had previously heard this item the prior month and were directed to shorten the dock and have reduced the scope of the project. Staff comments by Mr. Castro indicated that Mr. Hanlon has not demonstrated a hardship other than citing other exceptions as a reason. Council Member Coleman indicated that this is not a modification of a project, but rather, new construction. Council Member Markin agreed with Council Member Coleman and stated that this is not a hardship. Council President Kleid concurred that the tenant should put in a bulkhead since this is new construction.

Motion to deny was made by Council Member Coleman and seconded by Council Member Markin.

Attorney Hanlon expressed that he had done what was asked of him at the last Town Council Meeting, and rather than receive a denial and have to resubmit a new application, requested that the current application be permitted to be deferred until the February 11, 2009 Town Council Meeting.

Council Member Rosow stated that in all fairness, Attorney Hanlon did do what was asked of him and recommended a deferral.

Council Member Coleman withdrew his Motion. Council member Rosow made a Motion and was seconded by Council President Pro Tem Coniglio to defer the item until the February 11, 2009 Town Council Meeting. The motion passed unanimously.

e. <u>SITE PLAN REVIEW #12-2008 WITH VARIANCES</u> The application of Villas Inc., by John Schuler, President; relative to property described as Lots 12 through 29 inclusive, Block 13 of Royal Park Addition, as recorded in Plat Book 4, page 1 of the Public Records of Palm Beach County, Florida, less that tract described in Deed Book 453, Page 389; commonly known as **425 Worth Avenue**; located in the R-D(2) Zoning District. The applicant requests a modification of the Villas' site plan to construct a 512 square foot building on the rear (north) side of the property to house a 350 KW generator, reconfigure the parking and open space in the vicinity of the generator enclosure, and relocate two (2) parking spaces to the front (south) side of the property. Variances being requested are as follows: (1) lot coverage of 40.49% in lieu of the 39.5% existing and the 22% maximum allowed for an existing five story residential building including an accessory building; (2) a street rear setback of 20 feet in lieu of the 30 feet minimum from the north (Peruvian Avenue) property line

required by code for an enclosed accessory building and generator in a street rear yard setback; (3) to allow two (2) required off-street parking spaces in the front (south) setback where none are allowed by code; (4) to allow one (1) required off-street parking space in the street rear (north) setback where none are allowed by code; (5) to allow seven (7) re-designed parking spaces in the northeast corner of the site to be 8.5 feet wide in lieu of the 9 feet minimum required. [Attorney: James R. Brindell]
[ARCOM Recommendation: Approval of the variance. Carried 7-0.]
Deferred from the December 8, 2008, Town Council Meeting (Special Circumstances).

Every Town Council Member declared ex parte communication by receiving a package about the project. In addition, all Council Members except for Council Member Rosow spoke with Attorney Brindell regarding the project.

Mr. Castro indicated that this project has come before the Council for several years now. The project has followed suggestions of staff, and recently received a unanimous approval from ARCOM. Mr. Castro indicated that the Attorney has spoken to the hardship and the project is much more deminimous than it was originally presented.

Council Member Markin asked if the proposed generator would power the entire building and the answer was yes. Council President Pro Tem Coniglio asked if the property previously had a generator and it did not. Mr. Castro confirmed that the public was noticed regarding the latest proposal and no complaints were received. He recommended that the generator structure be encased with landscaping and that the generator noise emissions must be in compliance with the Town's noise ordinance.

Motion made by Council Member Markin and seconded by Council Member Rosow to approve with conditions. The Motion passed unanimously.

4. New Business - More Than 15 Minutes

a. <u>SPECIAL EXCEPTION #1-2009</u> The application of Palm Way Associates, LLC (Thomas Campaniello); relative to property commonly known as **290 South County Road**; described as ROYAL PARK ADD N 125 FT OF LT 35 AND E 13 FT OF N 125 FT OF LT 36 BLK 3; located in the C-TS Zoning District. The applicant requests special exception modification to the approval granted 11/14/2006 to permit a 4,454 sq. ft..restaurant at this location under Section 134-1109a. The restaurant is proposed to have 130 seats with 6 parking spaces provided during lunch and 19 spaces provided at night. This request is to modify the valet traffic circulation as previously approved because the alley which existed from Brazilian Avenue to Royal Palm Way was closed at the North end. The request is to allow the required parking to circulate into and out of the South alley entrance turning West onto Brazilian Avenue and travel around the block, using Hibiscus and Royal Palm Way to return to the entrance on South County Road. [Attorney: J. Barry Curtin]

Ex parte communication was declared by Council President Kleid, Council President Pro Tem Coniglio, and Council Member Coleman.

Attorney Barry Curtin provided an overview of the request and indicated that his client would like to open the restaurant by February 1, 2009, if approved. Discussion occurred over the various staff concerns regarding parking, valet circulation, number of seating allowed in the restaurant and the outward appearance of the building.

Council Member Markin asked for assurances that the restaurant would remain open for more than a few weeks, as the last restaurant closed shortly after the grand opening. Mr. Curtin explained that the owner has carefully selected a renowned chef, Matteo, to manage the restaurant this time and has more carefully selected staff.

Council Member Coleman requested that the outside appearance of the building be improved. He would like to see lights on in the evening, window dressings, maintenance of awnings etc. Council Member Markin suggested painting the exterior and keeping the windows washed and clean. Town Attorney Randolph indicated that the suggestions could be made part of the agreement for approval of the special exception. Council Member Coleman asked Mr. Page of the Planning and Zoning Department to return to the Council with recommendations for Town-wide requirements for vacant storefronts.

Council Member Markin indicated that the restaurant is located at a key corner of the Town. She also commended Matteo, the chef, on his restaurants in New York.

Mr. Castro indicated that parking has always been an issue at this site. Council President Pro Tem Coniglio indicated that by placing restrictions on the parking, the Council would be making the site unusable since parking has always been an issue.

Council Member Coleman indicated that the presentation was sloppy and should at a minimum have diagrams. **Council Member Rosow made a Motion and seconded by Council Member Coleman to defer until the February 11, 2009 Town Council Meeting.** At that time he would like to see drawings with the Owner's commitments for parking, lighting, awnings, etc.

After discussion that a deferral would delay the opening of the restaurant, **Council Member Rosow withdrew his Motion.**

A Motion was made by Council Member Markin and seconded by Council President Pro Tem Coniglio to approve with conditions: 107 seats, as opposed to 138, to return to Council in February with a formal presentation, parking resolutions, and commitments that the windows must be lighted, awnings installed and maintained, shutters painted, exterior maintained and if not, then penalties would be assessed. The Motion passed unanimously.

b. SITE PLAN REVIEW #2-2009 WITH SPECIAL EXCEPTIONS AND VARIANCES The application of Dogwood Land Co., LLC., (Peter J. Callahan, Manager); relative to property commonly known as **700 South Ocean Blvd**.; described as lengthy legal description on file; located in the R-A Zoning District. The applicant requests a site plan review with special exception to allow construction of a two-story, single family residence totaling 10,079 air conditioned square feet, 11,874.5 total square feet, on an unplatted lot that is 126 feet in depth in lieu of the 150 foot minimum required in the R-A Zoning District; a variance to allow the overall height for a parapet architectural feature to be 31.6 feet in lieu of the 30 foot maximum required in the R-A Zoning District. [Attorney: Maura Ziska]
[ARCOM Recommendation: Defer to the January 28, 2009, Architectural Commission meeting.]
Request for Deferral to the February 11, 2009, Town Council Meeting Per Letter Dated December 19, 2008, From Maura A. Ziska (Special Circumstances).

DEFERRED VII.C.4.b., Site Plan Review #2-2009, to the February 11, 2009, Town Council meeting.

D. Other

1. ARCOM: Preservation of Key Landscaping Features.
[John S. Page, Director of Planning, Zoning, and Building]

Mr. Page informed the Council that existing Code is already in place and could be enforced by the Code Enforcement Department. Typically, the violations are brought to the attention of staff by a complaint from a resident. This generally occurs only once or twice a year. No further action was requested.

VIII. ANY OTHER MATTERS

There were none.

IX. ADJOURNMENT

There being no further business, the Town Council meeting of January 14, 2009 was adjourned at 11:17 a.m.

APPROVED:

Richard M. Kleid
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk

01/29/2010