

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON WEDNESDAY, JANUARY 12, 2011

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Wednesday, January 12, 2011, at 9:30 a.m., in the Town Council Chambers. On roll call, all of the elected officials were found to be present with the exception of Mayor Jack McDonald, who was unable to attend the meeting.

President Rosow noted that Mayor McDonald had an earlier meeting and would attend the meeting if time permitted.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. COMMENTS OF MAYOR JACK McDONALD

There were none, as Mayor McDonald was unable to attend the meeting.

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

There were none.

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

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

Eric Gilbertson, 151 Chilean Avenue, commented regarding his residence being a topic of discussion at the December meeting, and his reasons for not being present. He thanked the Town Council for not raising taxes.

The following residents commented regarding difficult parking issues on Clarke Avenue:

1
2 Gerald Lemole, 124 Clarke Avenue;
3 John Gooch, 132 Clarke Avenue;
4 Robert Forbes, 171 Clarke Avenue;
5 Susan Ross, Clarke Avenue and Ocean Boulevard; and
6 Emily Jane LeMole, 124 Clarke Avenue.
7

8 Council Member Diamond asked that the parking issue on Clarke Avenue be placed on the
9 Agenda for next month.
10

11 President Rosow noted that, although the parking issue could be revisited, it had been discussed
12 at three Town Council meetings, at least, and it was a difficult situation on a variety of streets.
13 He stated that he did not know what else could be done.
14
15

16 VI. APPROVAL OF AGENDA

17 **Motion made by Council Member Diamond, seconded by Council Member Kleid, to**
18 **approve the Agenda. On roll call, the motion carried unanimously.**
19
20

21 VII. PUBLIC HEARINGS

22 Administrative Assistant Boyles administered the oath to all those who would be providing
23 testimony.
24

25 A. RESOLUTION NO. 1-11 A Resolution of the Town Council of the Town of Palm Beach,
26 Palm Beach County, Florida, Ratifying and Confirming the Determination of the
27 Landmarks Preservation Commission that the Property Known as 105 Banyan Road Meets
28 the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the
29 Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town
30 of Palm Beach Landmark Pursuant to Ordinance 2-84, Also Known as Chapter 54, Article
31 IV of the Code of Ordinances of the Town of Palm Beach. [John Page, Director of
32 Planning, Zoning, and Building]

33 Historic Consultant Jane Day provided the Designation Report of the 105 Banyan Road property
34 for landmarking. Ms. Day read criteria three and four into the record.

29 President Pro Tem Coniglio thanked the homeowner and commented that because there would
30 be a renovation of the property, it showed that landmarking was very flexible in creating a use
31 that becomes 21st century.
32

33 Town Attorney Randolph read Resolution No. 1-11 by title, as printed above.
34

1 **Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond, to**
2 **accept the Designation Report of 105 Banyan Road and approve Resolution No. 1-11**
3 **designating said property on the basis that it met criteria 1, 3, and 4 of section 54-161 Town**
4 **of Palm Beach Code, Landmarks Preservation 2-84. On roll call, the motion carried**
5 **unanimously.**
6

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
VIII. ORDINANCES

A. Second Reading

None

B. First Reading

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

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

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

IX. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of Administrative Decision that the Nonconforming Residential Use Located at 332 South County Road has Been Abandoned by Discontinuance for a Period of Two Years. [John Page, Director of Planning, Zoning, and Building]

Ex-parte communication was declared by:

- Council Member Diamond was called by Attorney George Ord, but he did not discuss the appeal with him.
- President Rosow, President Pro Tem Coniglio, and Council Member Wildrick spoke briefly with Attorney Ord on behalf of his client.

1 Attorney Ord provided an overview of the appeal on behalf of his client, Robert Andrew Roddy,
2 of 332 South County Road, LLC.

3
4 Planning, Zoning and Building Director John Page provided staff's comments and offered photos
5 showing the condition of the property.

6
7 Zoning Administrator Paul Castro provided, for the record, a letter from Leslie Evans dated
8 January 11, 2011, as evidence for the Town, and provided a brief history of the property. He
9 noted that the property owner was not able to provide staff any evidence of leases, water bills, or
10 electric bills that showed that anyone has leased or used any of the apartments. As a result, staff
11 made the decision that the property owner had abandoned the apartment use of 19 dwelling units
12 at 332 S. County Road.

13
14 Attorney Ord submitted a letter from Leslie Evans dated September 15, 2010, into the record
15 regarding Mr. Roddy's high quality restoration of a privacy wall. Attorney Ord provided a
16 rebuttal to staff. He stated that if the apartment use was taken away, it would be nonsensical for
17 Mr. Roddy to continue the completion of compliance with Code Enforcement. He discussed the
18 Ordinance on abandonment of property.

19
20 Robert Andrew Roddy, manager of 332 South County Road, LLC, pointed out that the pictures
21 showing the condition of the property were taken a year ago and improvements had been made
22 since that time. He discussed his progress of the improvements to the building. He asked for
23 support from the Town to allow him to move forward with his restoration project.

24
25 President Rosow stated that he toured the property this morning and that although it was vastly
26 improved, it look like a slum. He commented that although Mr. Roddy has been acting in good
27 faith, there has been no rental of the apartments since 2002, which indicated that the use had
28 been abandoned.

29
30 Responding to Council Member Diamond, Zoning Administrator Castro indicated that there
31 would have to be another adaptive reuse of the building such as retail on the first floor, offices on
32 the second and third floor, and maybe one residential unit. He noted that smaller office uses are
33 in high demand because there is not as much overhead; he said staff was attempting to provide
34 some other adaptive reuse other than the nonconforming use with the density as was heard today.

35
36 Council Member Kleid commented that he was at two of the Code Enforcement Board hearings,
37 which was very frustrating because Mr. Roddy stated that he would continue his work, although
38 it was very slow. Mr. Kleid indicated that the renovation of this building has taken over seven
39 years and is not yet completed. He noted that the question was not a Code Enforcement issue, but
40 that there was compelling evidence to the fact that he has abandoned the use.

41
42 President Pro Tem Coniglio indicated that as Mr. Castro stated that the business tax receipt did
43 not quantify as use of the property, the commercial site lost its ability to operate in their current
44 usage based on the two year lapse and the loss of the grandfather clause.

1 Council Member Wildrick noted that he was disappointed that there was no firm time and action
2 calendar provided by Mr. Roddy. He said that this could go on forever, and as a result he was not
3 sympathetic to him.

4
5 Zoning Administrator Castro indicated, for the record, that the building permits that were issued
6 were directly related to remedying the Code Enforcement action and not to perpetuate the
7 apartments until a determination was received on the appeal.

8
9 **Motion made by Council Member Diamond to uphold the administrative decision that the**
10 **nonconforming residential use located at 332 South County Road had been abandoned by**
11 **discontinuance for a period of two years.**

12
13 President Rosow passed the gavel to President Pro Tem Coniglio.

14
15 **President Rosow seconded the motion. On roll call, the motion carried unanimously.**
16

- 17
18 2. Appeal of Administrative Decision that Valet Parking Operations are Not Permitted at the
19 Nonconforming Parking Lot Located at 176 Sunset Avenue. [John Page, Director of
20 Planning, Zoning, and Building]

21
22 Planning, Zoning and Building Director Page provided an overview of the appeal. He noted that
23 the parking lot is situated in a residentially zoned district and that valet parking would intensify
24 the nonconforming use.

25
26 Zoning Administrator Castro noted that it was a grandfathered use since the 1950's and has been
27 used by commercial tenants, including the Post Office. Staff determined that if valet businesses
28 were allowed to use the property, it would be in conflict with the R-C zoning district, which did
29 not allow any quasi-commercial or commercial uses in the district. He continued that the code
30 stated in the nonconforming section that "no person shall use a nonconforming use as a grounds
31 to intensify the use or allow more uses that are not permitted in the district in which it is
32 located".

33
34 President Pro Tem Coniglio recused herself, as owner of Nick & Johnnies and Cucina del Arte,
35 which was mentioned in the backup. She provided a Conflict of Interest form 8b, and left the
36 dais.

37
38 Ex-parte communication was not declared by member of the Town Council.

39
40 Jay Dinger, manager of Leverett House Condominium, 120 Sunset Avenue, commented all
41 members of the board unanimously opposed the granting of valet parking to the lot. He asked if
42 the Town Council was inclined to approve this, the board would ask for a deferment in order to
retain counsel.

Responding to Council Member Diamond, Mr. Castro indicated that approval of valet parking
would intensify and worsen the traffic in the neighborhood, as there would be several

1 commercial property owners that would lease valet operations to use the parking lot, which go as
2 late as 2:00 or 3:00 a.m. It is currently used sporadically at night.

3
4 Responding to President Rosow, Mr. Castro indicated that an administrative appeal does not
5 require noticing any property owners.

6
7 **Motion made by Council Member Diamond that the administrative decision that valet**
8 **parking operations are not permitted at the nonconforming parking lot located at 176**
9 **Sunset Avenue, be upheld. Council Member Wildrick seconded the motion.**

10
11 Town Attorney Randolph asked that, for the record, the Town Council hear from Mr. Castro the
12 notification he provided Attorney Harvey Oyer. He pointed out that there was a three page letter
13 from Mr. Oyer setting forth his position regarding this.

14
15 President Rosow noted that the Town Council had received and read the letter.

16
17 Mr. Castro, and for the record, stated that he contacted Attorney Oyer regarding the date and
18 time of the meeting in addition he emailed the backup information of the meeting, which
19 included the staff memorandum which contains the date of the meeting.

20
21 Council Member Wildrick indicated that Mr. Oyer's letter was on page 317 of the backup.

22
23 **Upon roll call, the motion carried 4-0, with President Pro Tem Coniglio recused.**

24
25 Mr. Castro indicated that Attorney Oyer had been contacted and that there had been a
26 discrepancy in the first email that was sent to him in regards to the day and date of the meeting.
27 The second email that was sent had the correct date.

28
29 * * * * *

30
31 *Clerk's Note: The following reconsideration of this item was heard after Item IX.C.4.b.*

32
33 **Motion made by Council Member Kleid to reconsider the previous motion upholding the**
34 **administrative decision that valet parking operations are not permitted at the**
35 **nonconforming parking lot located at 176 Sunset Avenue. Council Member Diamond**
36 **seconded the motion.**

37
38 President Pro Tem Coniglio recused herself, as owner of Nick & Johnnies and Cucina del Arte,
39 which was mentioned in the backup. She provided a Conflict of Interest form 8b, and left the
40 dais.

41
42 **Upon roll call, the motion to reconsider carried 4-0, as President Pro Tem Coniglio recused**
43 **herself.**

44
45 Attorney Oyer, on behalf of Johnstone Capital Partners I, LLC, provided an overview of his
46 client's position regarding the use of valet parking at 176 Sunset Avenue.

Mr. Dinger stated that the Leverett House Condominium Board of Directors unanimously decided to oppose valet parking based on experience in exiting the dead end street and the difficulty of intensification of use that would be added to the traffic.

Discussion occurred among the Town Council and Attorney Oyer. Several of the following issues were addressed:

- Historically, there was use of a parking attendant and a structure, which was later removed;
- Valet parking had been requested by nearby restaurants as a result of the construction of the new Publix and loss of parking spaces.
- Currently, the majority of daytime parking spaces was leased to U.S. Post Office employees.

Responding to Town Attorney Randolph, President Rosow agreed to make Zoning Administrator Castro's previous remarks part of this hearing.

Mr. Castro noted that it was not just the residents of the Leverett House that were impacted, but also single family homes that abut the property, are across the street or behind it. He added that it is an intensification of use that could not be used as the basis of a nonconforming use for granting businesses or expansion of business operation, which is a commercial and residential pay parking lot.

Attorney Oyer indicated that if staff's only concern is the impact on the neighborhood, he would meet with all the residents in order to make the neighbors comfortable with the valet parking.

Town Attorney Randolph stated that the concern was not only the impact on neighborhood, but that it is an expansion of a nonconforming use, which is the decision of the administrative official, and needed to be ruled right or wrong in that regard.

Motion made by Council Member Kleid to uphold the administrative decision that valet parking operations are not permitted at the nonconforming parking lot located at 176 Sunset Avenue. Council Member Wildrick seconded the motion. On roll call, the motion carried 4-0, as President Pro Tem Coniglio was recused.

B. Time Extensions & Waivers

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business - Less than 15 Minutes

None

2. New Business - Less than 15 Minutes

- a. SITE PLAN REVIEW #1-2011 WITH VARIANCES The application of French Villas Association, Inc.; relative to property commonly known as 240 North County Road; described as FRENCH VILLAS OF PALM BEACH, A CONDOMINIUM, ORB 1588, Pg 324; located in the R-C Zoning District. The applicant is requesting a Site Plan Review to modify the existing site plan to add 200 sq. ft. awning to cover a portion of the parking lot. Variances are requested to: add 360 sq. ft. of covered parking with a rear setback of 2.4 ft in lieu of the 15 ft. minimum required; add 200 sq. ft. of covered parking which would increase lot coverage from 32.13% existing to 32.75% in lieu of 30% minimum required. [Attorney: Peter S. Broberg][ARCOM Recommendation: Approval of the variance will not cause negative architectural. Carried 6-1.]

Ex-parte communication was declared by: Council Member Kleid, Council Member Wildrick, and President Pro Tem Coniglio with Attorney Peter Broberg who advanced the position of his client.

Attorney Broberg, on behalf of the French Villas Association, Inc., provided an overview of the applicant's request.

Zoning Administrator Castro provided staff's comments. He commented that ARCOM recommended approval based on the condition that a 10' hedge be provided on the west property line. He noted that a neighbor objected to the project, as his apartment abutted the property to the west and was concerned about his view.

Discussion occurred among the Town Council regarding the height of the proposed and existing awnings.

Motion made by Council Member Diamond that Site Plan Review #1-2011 with Variances be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning section 134-329, items 1-11; and that the Variances be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met, with the condition that a 10' hedge be maintained in perpetuity. Council Member Wildrick seconded the motion. On roll call, the motion carried unanimously.

- b. SITE PLAN REVIEW #2-2011 WITH SPECIAL EXCEPTION & VARIANCE The application of HoJo Partners, LLC.; relative to property commonly known as 2880 S. Ocean Blvd.; described as 23 / 24-44-43, SLY 150 Ft of ELY 256.9 Ft of filled land Lyg W of SR A1A & N of Lake Ave being Pt of Gov Lot 1 SEC, of the Public Records of Palm Beach County, Florida; located in the C-TS Zoning District. The applicant is requesting a Site

Plan Review to allow for the existing building (which is to be renovated) and parking areas to remain, except for the elimination of one parking space in order to add two handicap parking spaces and the relocation of the existing dumpster enclosure as indicated on the plans, all in connection with the renovation and use of an existing building that is approximately 3,835 sq. ft. in area. A Special Exception is requested to allow a business to occupy more than 2,000 sq. ft. allowed by Code. This request is a reduction of the previous approval. A Variance is also requested to allow for an office use on the ground floor. [Attorney: Robert E. Deziel, P.A.]

Ex-parte communication was declared by:

- Council Member Diamond, President Rosow, and Council Member Wildrick talked to Attorney Robert E. Deziel, who lobbied for his client.
- Council Member Diamond's wife was the former owner of the property and he is familiar with it.
- Council Member Kleid did not have a present conversation, but had previous conversations with Attorney Deziel. Mr. Kleid's wife is a Real Estate Agent, and Town Attorney Randolph finds no conflict of interest regarding this issue.

Attorney Deziel, representing the applicant, HoJo Partners, LLC, provided an overview of the request.

Zoning Administrator Castro provided staff's comments. He indicated that staff recommended repaving and restriping the parking lot to make it presentable. Office use on the first floor would be appropriate, as the area was not conducive to retail.

Jimmy Ryan, 2860 S. Ocean Blvd., Chairman of the Palm Beach Citizen's Association, and neighbor asked that the applicant reconsider as the building was functionally obsolete. He commented that only painting and placing shrubs would not enhance the gateway to the neighborhood; they wanted it to be developed.

Discussion occurred among the Town Council, Attorney Deziel, and staff regarding ARCOM's denial of the previous requests to develop the property. Council Member Wildrick noted that it was an important entrance to the Town. Attorney Deziel indicated that his client did not want to develop the building, and did not want to return to ARCOM or revisit the old application. He said that there was a difference in the process in developing a new building and renovating an old building.

Attorney Deziel provided a presentation of the exterior appearance of what had already been approved by the Town.

Responding to Council Member Kleid, Attorney Deziel clarified that there would be new, impact resistant windows, a new roof, all new mechanical equipment, electrical system, and plumbing system.

1
2 Attorney Deziel noted that he would meet with the neighboring property owners in order to
3 obtain their input on the property.
4

5 **Motion made by Council Member Diamond that Site Plan Review #2-2011 with Special**
6 **Exception and Variances be approved based upon the finding that the approval of the site**
7 **plan would not adversely affect the public interest and that the Council certifies that the**
8 **specific zoning requirements governing the individual use had been met and that**
9 **satisfactory provision and arrangement had been made concerning section 134-329, items**
10 **1-11; Special Exception #2-2011 shall be granted based upon the finding that such grant**
11 **would not adversely affect the public interest and that the applicable criteria set forth in**
12 **Section 134-229 of the Town Code had been met; and that the Variance #2-2011 be granted**
13 **and found, in support thereof, that all of the criteria applicable to this application as set**
14 **forth in Section 134-201(a), items 1 through 7 had been met, with conditions set forth by**
15 **staff to repave and restripe the parking lot. Council Member Wildrick seconded the**
16 **motion. On roll call, the motion carried unanimously.**
17

- 18
19 c. VARIANCE #1-2011 The application of Robert and Helen Ficalora; relative to property
20 commonly known as 221 Ocean Terrace; described as Lot 12 and East 10 feet of Lot 13,
21 OCEAN TERRACE, according to the Plat thereof, as recorded in Plat Book 20 at Page 640,
22 of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District.
23 The applicant is requesting a Variance to allow a point of measurement of 10.97 feet
24 National Geodetical Vertical Datum mean sea level ("NGVD") for cubic content ratio in
25 lieu of the 8.63 feet NGVD maximum allowed to construct a 510 square foot one story
26 addition and a 1,342 square foot second story addition. If this calculation is taken from the
27 Town's point of measurement, which is 18 inches above the road, the proposed CCR would
28 be 4.15 in lieu of the 3.98 maximum allowed. [Attorney: Maura A. Ziska][ARCOM
29 Recommendation: Implementation of the proposed variance will not cause negative
30 architectural impacts. Carried 6-1.]

31
32 Ex-parte communication was declared by:

- 33
34 • Council Member Diamond, Council Member Kleid, and President Rosow each had a
35 conversation with Attorney Maura Ziska, who advocated the position of her client.

36 Attorney Ziska, representing Mr. and Mrs. Ficalora, provided an overview of the request.

37 Zoning Administrator Castro provided staff's comments. He noted the condition of approval to
38 maintain a hedge in perpetuity in height to screen the house.

39 Responding to President Pro Tem Coniglio, Mr. Castro indicated that there was not a limit to
40 how many times a filing deadline could be missed and re-presented. He noted that the tests of the
41 code would be required, as there could be changing conditions, or the Council could make a
42 different decision. He said there were several projects today that had expired.
43

1 President Pro Tem Coniglio expressed concern that in the process of re-application, there is a
2 loss of continuity for the neighbors.

3
4 **Motion made by President Pro Tem Coniglio that Variance #1-2011, be granted and found,**
5 **in support thereof, that all of the criteria applicable to this application as set forth in**
6 **Section 134-201(a), items 1 through 7 had been met; and that the same conditions apply as**
7 **were previously approved by Council. Council Member Diamond seconded the motion. On**
8 **roll call, the motion carried unanimously.**

- 9
10
d. VARIANCE #2-2011 The application of Domenica L. Falcione; relative to property commonly known as 970 North Lake Way; described as lengthy legal description on file; located in the R-B Zoning District. The following variances are being requested: To allow air conditioning equipment (cooling tower) with a north side yard setback of 1.16 feet in lieu of the 12.5 foot minimum required; to allow a front setback of 20.25 feet in lieu of the 25 foot minimum required; to allow the air conditioning equipment to be higher than the screening wall which is not permitted. [Attorney: James R. Brindell]

11
12 Ex-parte communication was declared by:

- 13
14 • Council Member Diamond indicated that he had discussed this issue previously with
15 Attorney James Brindell.
16
17 • Council Member Kleid, President Rosow, and Council Member Wildrick had a
18 conversation with Attorney Brindell and he advanced the position of his client.
19

20 Attorney Brindell, on behalf of Domenica L. Falcione, provided an overview of the request.

21
22 Planning, Zoning and Building Director Page provided staff's comments. He noted that last year,
23 a permit was submitted for approval, and as it was a replacement system, a site plan was needed
24 in order to confirm zoning compliance.

25
26 Responding to Council Member Diamond, Mr. Castro noted that there was a major renovation on
27 the house, no record of the permit for the original equipment could be found. At the time that the
28 original equipment was installed, site plans were not required, and the permit would not have
29 been issued without a variance.

30
31 **Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond, that**
32 **Variance #2-2011, be granted and found, in support thereof, that all of the criteria**
33 **applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been**
34 **met. On roll call, the motion carried unanimously.**

- 35
36
e. SPECIAL EXCEPTION #1-2011 WITH SITE PLAN REVIEW AND VARIANCES The application of Mary T. Khawly; relative to property commonly known as 888 South Ocean Blvd.; described as lengthy legal description on file; located in the R-A/B-A Zoning

Districts. The applicant is requesting a Special Exception to construct a 414 square foot beach cabana on property across the street from the main residence, which is in the B-A Zoning District. Variances are requested to construct a beach cabana that is on a lot with frontage of 58 feet in lieu of the 125 feet of frontage required in the R-A Zoning District; to construct a beach cabana to be 22.66 feet x 26.25 feet in lieu of the 20 foot by 25 foot maximum allowed; to have an ocean vista of 50% that is non-continuous in lieu of a continuous 50% ocean vista. [Attorney: Maura A. Ziska]

Ex-parte communication was declared by:

- Council Member Diamond, Council Member Kleid, and President Rosow, each had a conversation with Attorney Ziska, who advocated the position of her client.

Attorney Ziska, representing Mr. and Mrs. Khawly, provided an overview of the request and circumstances of the time extension.

Zoning Administrator Castro provided staff's comments and explained that the time that expired was in commencing the work on the cabanas; not commencing the work on the property, but on the approval of the variances that were granted. Staff recommended that if same project was approved, it meets all previous plans and conditions that were approved previously by the Town Council.

Council Member Kleid noted that there was an ordinance for ocean vistas so as not to impair the view. In this instance, the applicant wants the following three variances: (1) place a cabana on a smaller parcel of land than required by the ordinance; (2) on the smaller parcel of land place a larger cabana than required; (3) place the larger cabana on the smaller parcel of land and violate the 50% rule, which is a continuous vista of 50%. He indicated that if the ordinance was to be eroded, than the Town should not have the ordinance.

Zoning Administrator Castro indicated that the requirement could not be met because the lot was only 50' wide. The cabana is larger than allowed by code. Staff expressed concern, when this case was last heard over year ago, that there was no hardship to meet the requirements relative to the maximum size of a cabana. It was reduced a little bit. The dilemma was that meeting the 10' side yard setbacks on either side, would not be continuous, because the width of the cabana was over 16 ½ feet to meet a continuous vista requirement on a 50' lot.

Attorney Ziska responded that the hardship was inherent with the size of the property.

Responding to President Pro Tem Coniglio, Mr. Castro noted that the cabana of 20' x 25' in dimension was larger than the 414 square feet that was proposed; the hardship was the design of the cabana, as it is a circular shape. Today, they would not even be allowed a cabana because the minimum width is not met.

President Rosow noted that it was approved previously by the Town Council.

1 Motion made by Council Member Diamond that Special Exception No. 1-2011 with Site
2 Plan Review and Variances shall be granted based upon the finding that such grant would
3 not adversely affect the public interest and that the applicable criteria set forth in Section
4 134-229 of the Town Code had been met; that Site Plan Review 1-2011 be approved based
5 upon the finding that the approval of the site plan would not adversely affect the public
6 interest and that the Council certifies that the specific zoning requirements governing the
7 individual use had been met and that satisfactory provision and arrangement had been
8 made concerning section 134-329, items 1-11; and that Variance #1-2011 be granted and
9 found, in support thereof, that all of the criteria applicable to this application as set forth in
10 Section 134-201(a), items 1 through 7 had been met. Council Member Wildrick seconded
11 the motion. On roll call, the motion carried 4-1, with Council Member Kleid dissenting.
12
13

f. SPECIAL EXCEPTION #2-2011 The application of 128 Ocean View LLC; relative to property commonly known as 11 Lagomar Road; described as lengthy legal description on file; located in the R-A Zoning District. The applicant is requesting a Special Exceptions to allow a set of driveway gates on Ocean View Road (which is a cul-de-sac) with a 5.25 foot setback from the street pavement in lieu of the 18 foot minimum required and to allow a set of driveway gates on Lagomar Road (which is a cul-de-sac) with a 10.66 foot setback from the street pavement in lieu of the 18 foot minimum required. [Attorney: Maura A. Ziska]

14
15 Ex-parte communication was declared by:

- 16
17 • Council Member Diamond stated that, to correct the record, the prior ownership problem
18 refers to this property, not the prior 2880 Southern Boulevard property, as this property
19 was owned by his wife, and sold to the current owner several years ago and that he is
20 very familiar with it; Attorney Ziska spoke about it with him.
21
- 22 • Council Member Kleid and President Rosow each had a conversation with Attorney
23 Ziska, who advocated the position of her client.
24

25 Attorney Ziska, on behalf of the applicant, provided an overview of the request.
26

27 Zoning Administrator Castro provided staff's comments.
28

29 Motion made by President Pro Tem Coniglio that Special Exception No. 2-2011 shall be
30 granted based upon the finding that such grant would not adversely affect the public
31 interest and that the applicable criteria set forth in Section 134-229 of the Town Code had
32 been met. Council Member Kleid seconded the motion. On roll call, the motion carried
33 unanimously.
34
35

g. SPECIAL EXCEPTION #5-2011 WITH SITE PLAN REVIEW The application of The Town of Palm Beach; relative to property commonly known as 420 S. Lake Dr. (Lakeside Park); described as lengthy legal description on file; located in the R-B Zoning District. Request for Special Exception with Site Plan Review to construct a new 805 sq. ft. D-7

Storm Water Pump Station containing a 1000 KW generator and controls to be located at the south end of Lakeside Park. In addition, the request includes constructing two new wet wells below grade immediately adjacent to the existing D-6 and D-7 wet wells. The wet wells are part of an upgrade to the storm water facilities for the downtown Palm Beach commercial district and adjacent residential homes and condos. [Contact: H. Paul Brazil, Director of Public Works]

1
2 Zoning Administrator Castro provided staff's comments. He noted that any public structure that
3 serves the need of the public and the Town, including the much needed drainage improvements,
4 requires a quasi-judicial hearing in front of the Town Council. This process is required, which
5 includes neighbor notification.
6

7 **Motion made by President Pro Tem Coniglio that Special Exception No. 5-2011 with Site**
8 **Plan Review shall be granted based upon the finding that such grant would not adversely**
9 **affect the public interest and that the applicable criteria set forth in Section 134-229 of the**
10 **Town Code had been met; that Site Plan Review No. 5-2011 be approved based upon the**
11 **finding that the approval of the site plan would not adversely affect the public interest and**
12 **that the Council certifies that the specific zoning requirements governing the individual use**
13 **had been met and that satisfactory provision and arrangement had been made concerning**
14 **section 134-329, items 1-11. Council Member Wildrick seconded the motion. On roll call,**
15 **the motion carried unanimously.**
16
17

18 3. Old Business - More than 15 Minutes

19 None

20 4. New Business - More than 15 Minutes

a. SPECIAL EXCEPTION #3-2011 WITH VARIANCES The application of Worth Avenue Associates; relative to property commonly known as 150 Worth Avenue; described as lengthy legal description on file; located in the C-WA Zoning District. The applicant is requesting a Special Exception to modify the special exception for the arcade which was approved in 1998 (Site Plan Review No. 4-98 with Special Exception and Variance) to allow for the addition of signs. Variances are requested to allow signs to be erected within the right-of-way of Worth Avenue and for those signs to exceed the allowable sign area for Gucci. All of Gucci's signs will total 28.92 square feet, while the code allows a 20 square foot maximum. [Attorney: James R. Brindell][ARCOM Recommendation: Implementation of the variance will cause negative architectural impacts. Carried 7-0. ARCOM unanimously denied the signs.]

21
22 Ex-parte communication was declared by:

- 23
24 • Council Member Diamond, Council Member Kleid, and Council Member Wildrick had a
25 conversation with Attorney Brindell and he advocated the position of his client.

- President Rosow had a conversation with Attorney Brindell who advocated the position of his client, and he viewed the façade of the building.
- President Pro Tem Coniglio had a passing conversation with Attorney Brindell, a telephone conversation with property owner Mr. Goodman, Mr. Moore, a representative, and Jeff Smith, chairman of ARCOM.

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

Zoning Administrator Castro provided staff's comments.

Attorney Brindell noted that ARCOM did not like the idea of signs on the face of the arcade, as it would not look good with the architecture.

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

Bob Saffran, on behalf of 150 Worth Avenue, indicated that discussions with some of the tenants occurred regarding additional signage.

Discussion occurred among the Town Council and Attorney Brindell regarding the appearance of the signage along with the bougainvillea. Several of the following comments were made:

- The applicant should return to ARCOM in order to address the additional signage, architectural element requirements, and the bougainvillea;
- It would be better to wait until the bougainvillea was fully grown;
- Properly trained bougainvillea would not interfere with names on stores signs when it is grown across the arches;
- A completed presentation was needed; and
- The applicant should work with ARCOM.

Motion made by Council Member Wildrick to defer Special Exception #3-2011 with Variances and to direct the Architectural Commission work with 150 Worth Avenue on signage. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

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

President Rosow indicated that the appeal would be held in abeyance.

- b. SPECIAL EXCEPTION #4-2011 WITH VARIANCES The application of Coco Palm Beach; relative to property commonly known as 290 Sunset Avenue and 139 North County Road; described as lengthy legal description on file; located in the C-TS Zoning District.

The applicant is requesting to modify the previously approved Special Exception #10-2002 to relocate the 30 off-site, shared supplemental parking spaces from 255 Sunset Avenue to 139 North County Road. A Variance is requested to allow the off-street, shared supplemental parking spaces to be 1,150 feet from the restaurant door in lieu of the 500 foot maximum allowed. [Attorney: Maura A. Ziska]

1
2 Ex-parte communication was declared by: Council Member Diamond, Council Member Kleid,
3 and President Rosow, had a conversation with Attorney Ziska, who advocated the position of her
4 client.

5
6 Attorney Ziska, on behalf of Coco Palm Beach, provided an overview of the request.
7

8 Zoning Administrator Castro provided staff's comments. He noted staff's concern was that there
9 were four signalized lights from the parking lot to the front of the restaurant and that it would
10 take a considerable amount of time for valet service. He added that there were limited parking
11 locations with limited abilities based on construction of the new Publix; therefore, staff
12 recommended that if the Town Council approves it, to allow six months for a trial and then
13 return to the Council to address any issues with the Police Department or Code Enforcement.
14

15 Jay Dinger, Leverett House Condominium, 120 Sunset Avenue, indicated that the issue was
16 similar to the next one that would be heard, which was the impact of valet parking service at a
17 parking lot that is across the street from the other parking lot. He asked that a decision be
18 deferred to allow him time to review it with counsel or his board.
19

20 Discussion among the Town Council, staff, and Attorney Ziska occurred. Several of the
21 following issues were addressed:
22

- 23 • Suggestion that the Town Council allow a six-month trial period with no valet parking;
- 24 • Other alternatives for parking such as the Fedco lot and Biltmore Galleria;
- 25 • If the requirement to have 30 off-site parking spaces was eliminated, the Restaurant could
26 still have valet parking if they had a valid parking permit from the Police Department,
27 which identified the location of the parking, usually on the street.
28

29 Mr. Castro provided a brief history of the parking situation at Coco Palm Beach and the impact
30 on the seating. He noted that next month there would not be any parking and that the Restaurant
31 was in a tight spot.
32

33 President Rosow indicated that the Town Council could approve the valet parking with the
34 requirement to come back in May and provide an update; at the same time, a report from the
35 Police Department, Code Enforcement, and the residents as to how it has worked out and if there
36 were any issues.
37

38 **Motion made by Council Member Diamond that Special Exception No. 4-2011 with**
39 **Variances shall be granted based upon the finding that such grant would not adversely**
40 **affect the public interest and that the applicable criteria set forth in Section 134-229 of the**
41 **Town Code had been met; that the Variance be granted and found, in support thereof, that**

1 all of the criteria applicable to this application as set forth in Section 134-201(a), items 1
2 through 7 had been met; with recommendation of returning to the Town Council meeting
3 in May 2011 with a report from the Police Department, Code Enforcement, and any
4 complaints from residents. Council Member Kleid seconded the motion. On roll call, the
5 motion carried unanimously.

6
7 Planning, Zoning and Building Director Page noted that notification would go out to the abutting
8 property owners.

9
10 * * * * *

11
12 *Clerk's Note: Please see Item IX.A.2., for further discussion and reconsideration, regarding*
13 *the Appeal of Administrative Decision that Valet Parking Operations are Not Permitted at the*
14 *Nonconforming Parking Lot Located at 176 Sunset Avenue.*

15
16
17
18 D. Other

- 19
20 1. Mediation Report Re: Stephen and Jill Karp, 1100 North Ocean Boulevard. [John C.
21 Randolph, Town Attorney]

22 Town Attorney Randolph provided an overview of the Mediation Report. He indicated that the
23 Karp's presented an alternative plan, which was reviewed and accepted by President Rosow and
24 Jeffrey Smith of the Architectural Commission (ARCOM). The recommendation of the parties
25 was that the matter be presented to the Town Council who could have the plan presented to
26 ARCOM with their recommendations to be heard at the February Town Council meeting.

27 President Rosow recommended that the Council review the Report and decide whether or not to
28 send it to ARCOM for their review. He noted that Jeff Smith was pleased with the Karp's plan
29 and that ARCOM could make a recommendation that the plans were appropriate.

30 Attorney James Green, representing John and Marianne Castle, requested a postponement of this
31 matter as Attorney Paul Rampell, and Architect Thomas Kirchhoff, were unable to attend today's
32 meeting.

33
34 President Rosow indicated that, as this matter had been argued for months, he was disinclined to
35 grant a deferral. He said that arguments were heard before ARCOM and the Town Council, and
36 it was time to bring the matter to a conclusion.

37
38 Responding to Council Member Diamond, Attorney Green commented that the Mediation
39 Report was inaccurate and did not contain the plans proposed by the Castle's, which had not
40 been presented before the Town Council. He stated that there were legal issues that were
41 identified in their response to the Report.

1 Town Attorney Randolph advised that, if the Council thought it was necessary, it could make the
2 determination whether or not to send it back to mediation. He stated that all the facts are before
3 the Town Council, representatives of the Town were at the mediation, and the Report is the
4 culmination of that hearing; there is no obligation on the Town Council's part to send the matter
5 back for more mediation.

6
7 President Rosow noted that the plans referred to by Attorney Green were shown at the
8 Mediation, which was reviewed by the Town's Attorney, Mr. Smith and President Rosow.

9
10 Council Member Wildrick and Council Member Kleid each indicated that that the matter should
11 be remanded back to ARCOM.

12
13 Attorney Green submitted, into the record, a petition signed by 265 residents of the Town that
14 were in support of the Castle's.

15
16 Town Attorney Randolph advised that the issue was whether to accept the recommendations of
17 the Mediation Report, and then there would be no reason to remand because the recommendation
18 of the Mediation Report was to submit it back to ARCOM and obtain their comments. He said
19 that the issue would come back to the Council.

20
21 **Motion made by Council Member Wildrick to accept the Mediation Report. Council**
22 **Member Kleid seconded the motion. On roll call, the motion carried unanimously.**

23
24 President Rosow requested that Historic Consultant Jane Day review the Castle's property for
25 landmarking eligibility.

26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
2. Presentation by Dr. Jane Day on the 2010 Historic Sites Survey. [John Page, Director of
Planning, Zoning, and Building]

Historic Consultant Day presented the updated 2010 Historic Sites Survey.

Ms. Day stated that she was hoping to get a letter from the new Mayor to lobby the state legislature to fund the grants, as the Town was ranked number 13 out of 57 applicants. If funded, the Town would receive \$350,000 toward restoration of the Memorial Fountain.

Ms. Day suggested passing an archeological ordinance, as there had been two or three sites in the last few years, in order to have all control of the Town's resources to be local, rather than just the historic preservation element in the Comprehensive Plan. She noted that she had been working on the Ordinance with Town Attorney Randolph.

Responding to President Rosow, Ms. Day indicated that the Landmarks Preservation Commission members will provide a list of top 20 properties to be considered for landmarking, which would be scaled down to a top 10.

1 Responding to President Pro Tem Coniglio, Ms. Day indicated that in the Sunshine at the
2 Landmarks Preservation Commission meeting, the members will vote on properties to be
3 considered. Processing properties without owner objection takes less time than one that does
4 have objections. She said she hopes to be done this season with the 10 selected.

5
6 Responding to Council Member Diamond regarding the objections to landmarking the three
7 Breakers cottages based on a prior agreement for Planned Unit Development, Town Attorney
8 Randolph stated that he was not prepared to give an opinion until the Landmarks Preservation
9 Commission meeting occurs.

10
11 Alexander Ives, Preservation Foundation of Palm Beach, thanked Ms. Day, the Town Council,
12 President Pro Tem Coniglio and future Mayor for supporting this program.

13
14 **Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to**
15 **accept the 2010 Historic Site Survey. On roll call, the motion carried unanimously.**
16
17
18
19

20
21 **X. ANY OTHER MATTERS**

22
23 **A. Agenda Change**

24 President Rosow commented that he would like to remove from the Agenda, the wording in the
25 items that read "Less than 15 Minutes" and "More than 15 Minutes", as it no longer has value.

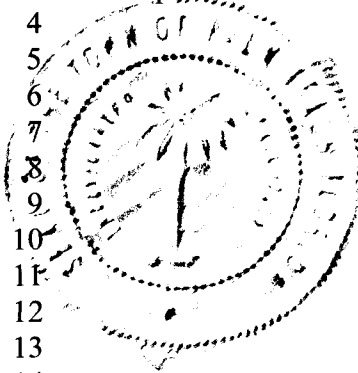
26 **It was the consensus of the Town Council to remove the wording from the Agenda items**
27 **that read "Less than 15 Minutes" and "More than 15 Minutes".**
28
29
30
31

32 **B. Boards and Commissions**

33
34 Discussion regarding Boards and Commissions occurred among the Town Council Members.
35 President Pro Tem Coniglio noted that the process was breaking down and that the Town
36 Council needed to make decisions regarding the benchmark of criteria of being helpful,
37 courteous and flexible. Council Member Kleid suggested having a general discussion about
38 giving direction and working with the residents. President Rosow indicated that ARCOM, the
39 Landmarks Preservation Commission, and the Code Enforcement Board could be invited to a
40 Town Council Meeting for an open discussion regarding the processes at their meetings.
41
42
43
44
45

XI. ADJOURNMENT

There being no further business, the January 12, 2011, Town Council Meeting was adjourned at 1:38 p.m.



APPROVED:

David A. Rosow
Town Council President

ATTEST:

Cheryl Somers
Acting Town Clerk