



TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON TUESDAY, JANUARY 6, 2004, REGARDING ZONING

I. CALL TO ORDER AND ROLL CALL

President William J. Brooks called the Special Town Council meeting regarding zoning to order at 9:30 a.m. on Tuesday, January 6, 2004, in the Town Council Chambers in Town Hall.

On roll call, the following Elected Officials were found to be in attendance: Mayor Lesly S. Smith; President William J. Brooks; President Pro-Tem Norman P. Goldblum; Councilman Jack McDonald; Councilman Samuel C. McLendon; and Councilman Allen S. Wyett. Also attending for all or part of the meeting were: Town Attorney John C. Randolph; Director of Planning, Zoning & Building Robert L. Moore; Zoning Administrator Paul Castro; Assistant Director of Planning, Zoning & Building Veronica Close; Planning Administrator Timothy M. Frank; William Brisson, Consultant from Adley, Brisson, Engman; Town Clerk Mary A. Pollitt.; and Deputy Town Clerk Susan Eichhorn.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. The pledge of allegiance was led by President Brooks.

III. APPROVAL OF AGENDA

Councilman Wyett made a motion to approve the agenda. Councilman McLendon seconded the motion, and it carried 5-0 on roll call.

IV. PROOF OF PUBLICATION

Town Clerk Pollitt verified proof of publication.

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V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC

President Brooks said comments from the public can be made at the time an item is discussed.

VI. 2003-2004 ZONING SEASON STAFF REPORT AND THE TOWN ZONING COMMISSION'S RECORD AND REPORT ON MEETINGS HELD IN DECEMBER

Mr. Moore said the Zoning Commission's report will be presented at this meeting with the exception of one item, the R-B Study of Jamaica Lane and Ridgeview Road, which will be presented to the Zoning Commission at their January 15, 2004, meeting. He added that study will be presented to the Mayor and Town Council after review by the Zoning Commission.

I. Town-Initiated Proposed Comprehensive Plan Future Land Use Map Amendments

Consultant Bill Brisson said nine properties were identified as having conflicts between the Official Zoning Map and the Official Land Use Map with the additional of one other identified parcel.

Study Item 1. 200 North Ocean Boulevard

Mr. Brisson said the Planning and Zoning Commission's recommendation was for approval to change the designation on the Future Land Use Map for both the Warden House property (200 North Ocean Boulevard) and the associated beach parcel from Multi-Family Moderate Density to Single-Family Residential.

Mr. Brisson explained a scrivener's error was the reason for the differences between the Official Zoning Map and the Official Future Land Use Map.

President Pro-Tem made a motion to accept the recommendation of the Planning and Zoning Commission. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

Study Item 2. 40 Cocoanut Row

Mr. Brisson presented the Planning and Zoning Commission's analysis and recommendation pertaining to this property. He said the property is presently used as a parking lot which supports a commercial use fronting on Cocoanut Row with the present land use designation being multi-family, high density. He added this was also a scrivener's error, and the Planning and Zoning Commission recommended approval to change the designation on the Future Land Use Map for the property from Multi-Family High Density to Commercial.

A motion was made by President Pro-Tem Goldblum and seconded by Councilman McDonald to accept the recommendation of the Planning and Zoning Commission. On roll call, the motion carried 5-0.

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Study Item 3. 247, 231, & 221 Royal Palm Way; 215 Seaview and 218, 222, 224 & 228 Phipps Plaza (West Dr.); and 236 Phipps Plaza (South Dr.)

Mr. Brisson presented details pertaining to these properties as presented to the Planning and Zoning Commission. He said the Commission recommended approval to change the designation on the Future Land Use Map for 247, 231, & 221 Royal Palm Way from Multi-Family Moderate Density to Commercial, and 215 Seaview, 218, 222, 224 & 228 Phipps Plaza (West Dr.), and 236 Phipps Plaza (South Dr.) from Commercial to Multi-Family Moderate Density.

Mr. Brisson identified this Study Item as part of the scrivener's errors.

Councilman McLendon made a motion to approve the recommendation of the Planning and Zoning Commission. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

Study Item 4. Parcels 8, 9, & 10 "The East Plaza" subdivision

Mr. Brisson said this was another one of the scrivener's errors and identified these parcels as the parking lot adjacent to First National Bank. He reported the Planning and Zoning Commission recommended approval of the Staff recommendation to change the designation of these properties on the Future Land Use Map from Commercial to Single-Family Residential.

Councilman Wyett said he was aware that several potential buyers were interested in developing the parcels for town houses, and if the Council would make the requested change, he questioned how a developer would present a plan to the Council.

Mr. Brisson said if the requested change was approved, the property could only be developed as single family units in the R-B district.

President Pro-Tem Goldblum made a motion to accept the recommendation of the Planning and Zoning Commission. Councilman McLendon seconded the motion. The motion carried 5-0 on roll call.

Study Item 5 and 11. 215 Brazilian Avenue

Mr. Brisson explained that the property owner's request was to change the current zoning from R-C to C-B and the property is commonly known as the Plaza Inn property. He explained the property has always been zoned R-C medium density although the Future Land Use Map shows the property as Commercial. He added the Future Land Use Map was drawn in 1983 and the intent of the Councils at that time was to continue the existing zoning and the patterns that had evolved in the Town. Mr. Brisson said that over the years as the Comprehensive Plan was updated, no changes were made to the Future Land Use Map and no attention was paid to the errors on the map. He noted that with the new GIS mapping system, new maps will not have these discrepancies.

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Councilman Wyett made a motion to hear Study items 5 and 11 together for presentation purposes. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

Town Clerk Pollitt administered the oath to everyone who would be giving testimony.

Attorney James Brindell, representing the property owner, requested the Town Council change the zoning to agree with the Future Land Use Map's designation of C-B Commercial Offices.

Mr. Brindell submitted exhibits for the record: the rezoning application with attachments; the C-B district regulations; the C-OPI district regulations; the C-TS district regulations; the R-C district regulations; an aerial map outlining the zoning districts; neighborhood photographs; an analysis by Architect Gene Lawrence of the condominium building to the west; affidavit by Planner Jim Norquest regarding the Town's public records relating to the property; Henry Iler's resume; copy of the staff report for the Zoning Commission covering study items 5 and 11.

Mr. Brindell pointed out that the parcel met all of the zoning requirements for the C-B district, and that the C-B district allows only a limited number of commercial uses including hotels and office buildings, but does not allow retail stores, stand alone bars or restaurants, or other retail uses.

Ex-parte communications were declared by: Councilman McLendon - telephone call from Mr. Brindell; President Pro-Tem Goldblum - telephone call from Mr. Brindell; Councilman Wyett - numerous conversations with Mr. Brindell and the owner, Mr. Asrani; Councilman McDonald - telephone call from Louis Pryor who opposed the change; and President Brooks met with Mr. Brindell and Mr. Asrani and visited with Louis Pryor.

Henry Iler, planning consultant speaking as an expert witness, presented arguments for changing the zoning of the Plaza Inn property from R-C Medium Density to C-B Commercial.

Mr. Castro, responding to Mr. Iler's presentation, said staff's position regarding the proposed C-B Commercial designation was that not a lot of discretion exists as related to the commercial uses that can be applied to the subject property, and permitted and special exception uses would probably be allowed as the test for special exception uses is weaker than the test for variances. He said if the property were re-zoned as Commercial, the requested density would be twice the allowed density in the C-B district.

Mr. Iler replied that the hotel usage has been commercial for over 60 years, and the residential usage is on paper only. He added the Town-serving hotel has worked well for the community, and it makes sense to retain the commercial use.

Mr. Moore stated the issue of hotels that have existed for 15 or more years is dealt with in the variance provisions in the Code in the R-C district. He added that if a new hotel were constructed in the C-B zoning district, as mentioned, only 21 units would be permitted without a variance as opposed to the existing 50+ units in the Plaza Inn.

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Attorney Randolph, responding to questions from President Brooks, suggested the Mayor and Town Council could defer the issue until after the February 10th Town Council meeting when the applicant's variance request will be heard under the provision of existing hotels. He added the applicant's preferred alternative would be to not change the Comprehensive Plan and have the Town Council make the zoning comply with the Comprehensive Plan or the Commercial use. He said he had a concern regarding the Council's discretion if it were rezoned to commercial to not allow uses that are otherwise permitted within the commercial use and have the Council involved in a contract zoning situation.

Councilman Wyett made a motion to refer the issue to the Zoning Commission for further study this zoning season. The motion died for lack of a second.

After further discussion, **Councilman McDonald made a motion to defer Study Items 5 and 11 to the March 9, 2004, Town Council meeting (*after the Town Council will hear the Plaza Hotel variance presentation at the February 10, 2004, Town Council meeting*). The motion was seconded by Councilman Wyett and carried 5-0 on roll call.**

Study Item 6. 160 Brazilian Avenue

Mr. Brisson explained this was a supplemental parking lot used by Café L'Europe that was allowed in the R-B district, but the Future Land Use Map showed it as commercial, and the lot should have been identified as single family residential. He noted the zoning has always been single family residential, R-B, and he requested the Future Land Use Map reflect the original intent.

Motion made by President Pro-Tem Goldblum to approve the recommendation of the Planning and Zoning Commission to change the designation of this property on the Future Land Use Map from Commercial to Single-Family Residential, R-B. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

Study Item 7. Town Golf Course and Tres Vidas Planned Unit Development (PUD) properties

Mr. Brisson said these two properties were simply designated inappropriately where the map ties together.

Councilman McLendon made a motion to approve the recommendation of the Planning and Zoning Commission to change the designation of the Tres Vidas PUD property on the Future Land Use Map from Multi-Family Moderate Density to Approved PUD; and, to change the designation on the northernmost portion of the Town Golf Course from Approved PUD to Public Recreation. The motion was seconded by President Pro-Tem Goldblum and carried 3-0 on roll call as Mr. McDonald and Mr. Wyett were temporarily out of the room.

Study Item 8. Audubon Society Property

Mr. Brisson said the Future Land Use Map was simply colored an incorrect shade of green,

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implying private group use, land use designation, and the correct designation was conservation use designation on the Future Land Use Map.

President Pro-Tem Goldblum made a motion to approve the recommendation of the Planning and Zoning Commission to change the designation of this property on the Future Land Use Map from Private Group Use to Conservation. The motion was seconded by Councilman McLendon and carried 3-0 on roll call as Mr. McDonald and Mr. Wyett were temporarily out of the room.

II. Town-Initiated Proposed Rezonings

Study Item 9. 251 Bradley Place

Mr. Brisson said although a scrivener's error which reflected the existing use; however, upon inspection of the property, the appropriate zoning use would be RC-medium density rather than CTS-Commercial because of the non-conforming aspect of the lot size.

Councilman McLendon made a motion to approve the recommendation of the Planning and Zoning Commission to change the zoning designation of this property on the Zoning Map from C-TS town-serving commercial to R-C medium density residential. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.

Study Item 10. 266 South Ocean Boulevard and 109 Royal Palm Way

Mr. Brisson noted that this item involved rezoning rather than a Comp Plan amendment. He explained the existing use for the parcel is commercial and was involved in a court action in 1983 when commercial use was required by the courts, and the land use was changed subsequent to that case, although the zoning was never changed from RC to CB.

President Pro-Tem Goldblum made a motion to approve the recommendation of the Planning and Zoning Commission to change the zoning designation of this property from R-C medium density residential to C-B commercial district. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

III. Applicant-Initiated Proposed Rezonings

Study Item 12. 455 North County Road

No ex parte communications were declared by the Mayor or Town Council members.

Attorney Frank Lynch, representing the new property owner, 123LLC, made his presentation in support of the property owner's request to change the current zoning from R-AA large estate residential to R-A estate residential. He explained his client would like to preserve the integrity of

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the Landmarked property by allotting it as much land as possible with the main lot having 100,000 square feet and a second buildable lot with 30,000 square feet. He added that R-A zoning requires a minimum of 40,000 square feet for a lot with a 60,000 square foot average. Mr. Lynch said his client is willing to execute a deed restriction limiting the property to two buildable lots with a caveat that if the lot to the north is re-zoned, the same treatment be applied to this property.

After discussion, **Councilman Wyett made a motion to uphold the recommendation of the Planning & Zoning Commission to disapprove the applicant's request to change the zoning of this property from R-AA large estate residential to R-A estate residential. The motion was seconded by President Pro-Tem Goldblum and carried 5-0 on roll call.**

Study Item 13. Beach Area District Text Modifications

Attorney Ron Kolins, representing the applicants, Mr. and Mrs. Kevin McGovern, said his clients' request was to increase the allowable size of beach houses on properties located in the Beach Area district and adjacent to the R-B district.

Mr. Moore said the Code currently requires that 50% of the area in front of the property must have vegetation that is no more than 30 inches high to provide for the public's ocean view. He said the actual change to the Code is that in order to obtain approvals for improvements in the beach area district, the existing walls and hedges must comply with the 50% rule.

Mr. Brisson said the Planning and Zoning Commission disagreed with the staff that the size of a permitted beach house could increase dramatically from 200 square feet to 500 square feet and added a provision that if the lot frontage was between 125 ft. and 150 ft., the maximum size of the beach house would be 350 square feet and over 150 linear ft., a 500 square foot beach house could be built.

Attorney Randolph said if this provision is approved, it would be the first step of designating certain areas where variances would not be allowed. He said it was legally appropriate to do this, but unusual.

James Bertles, Planning and Zoning Commission Chairman, said the proposal before the Commission was to increase the size of beach houses in the R-B district, and the Commission wanted to be very careful about size increases for any beach houses. Mr. Bertles continued that the Commission agreed that on certain sized lots, some nominal size increases could be allowed; however, in exchange for allowing a property owner to increase the size of his or her beach house beyond the allowed 200 square feet in R-B, the ocean vista or compliance with the current Code should be required. He added that the Commission thought it was prudent to allow limited increase in the size; however, it was very important to require the vista restoration in exchange for that size increase.

Mr. Bertles recalled that the issue of not allowing variances was raised by Mr. Castro, and the discussion was mixed among the Commission members; however, the vote was unanimous. He

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added the consensus of the Commission was that the Town Council granted too many variances.

Mr. Randolph said he would discourage an ordinance requirement to prohibit applicants from applying for variances.

Councilman Wyett made a motion to defer Item 13 to the 2004-2005 Zoning Season for study. The motion was seconded by Councilman McDonald.

Mr. Kolins said deferring this item for a year is the wrong thing to do, and his clients, the McGoverns, proposed several ways to deal with the expressed concerns stated by the Mayor and Town Council.

Mr. Bertles said he disagreed with Councilman Wyett's suggestion to defer the issue back to the Planning and Zoning Commission as he heard only two issues that could be dealt with. He identified them as: 1) Should we agree with the Planning and Zoning Commission's recommendation with regard to prohibiting variances? and 2) The issue that deals with beach house location on the parcel as proposed by President Pro-Tem Goldblum. Mr. Bertles encouraged the Mayor and Town Council to take action on this item as the commission thought it was reasonable to allow property owners to moderately increase the sizes of their beach houses in the R-B district and to further study the R-A and R-AA provisions for beach houses.

Kevin McGovern, citing Mr. Goldblum's comments on aligning beach houses with main residences, requested that each situation be considered on its own merits because aligning his beach house with the main house would hinder rather than help the ocean vista.

Mr. Randolph said since the issue is a special exception and rather than be definitive as to where the beach house would be located on the property, a condition could state that the larger cabana shall be placed in a position so as to provide the best view from the right-of-way. He added the only other condition discussed was the Zoning Commission's recommendation regarding the requirement that no variances be granted by the Town Council for exceptions to the provision.

Councilman Wyett reiterated that the item should be remanded back to the Planning and Zoning Commission where it could be heard in March and returned to the Town Council with their suggestions.

Councilman Wyett and Councilman McDonald withdrew the motion and the second that was on the floor.

After further discussion, **President Pro-Tem Goldblum made a motion, with a second by Councilman McDonald, to make the following changes to Section 134-1472, Height, width and length limit for properties adjacent to properties in the R-B district to read as follows:**

No structure or beach building more than one story ~~or but not to exceeding~~ eight feet in height as measured from the natural grade or crown of the road, whichever is less, to the underside of

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the roof, plus four feet in height to the highest point of the roof, with maximum dimensions no greater than 10 feet by 20 feet but occupying not more than 20% of the width of the lot and shall be constructed on the privately owned property lying east of Ocean Boulevard, except as provided for by special exception under subsection (1) of this section. However, this restriction shall not be deemed to apply to jetties or groins, or other structures for the protection of the beachfront.

- (1) For properties lying east of Ocean Boulevard and having a lot frontage of 125 feet or greater, the maximum size of a beach house may be increased, by approval of a special exception, up to the maximum size set forth in the following table; and, provided further that the conditions and standards set forth in the table and the requirements of Sections 134-1472 and 134-1474 are met, and the special exception is found to meet the standards of Sections 134-227 through 134-233.

	<u>ON LOTS OF 125 BUT LESS THAN 150 FEET IN WIDTH</u>	<u>ON LOTS 150 FEET OR GREATER IN WIDTH</u>
a.	Maximum Size: 350 square feet	Maximum Size: 500 square feet
b.	Neither width nor depth shall exceed 20'	Maximum Dimensions: 20' by 25'
c.	<u>When a beach house in excess of 200 square feet is newly constructed, expanded to exceed 200 square feet, or demolished, restored or reconstructed in excess of 50% of its existing cubic footage, the property on which such beach house is located shall be made to conform to the requirements and limitations set forth in subsections (2), (3) and (4) of this section, and such beach house shall be so located as to provide the best possible view of the ocean.</u>	

- (2) In order to preserve a sense of openness, ocean vistas must exist from the front to rear lot lines equal to 50 percent of the lot width. Within the vista area no all structures ~~and/or~~ vegetation shall ~~not~~ exceed 30 inches in height measured above Ocean Boulevard.
- (3) No additional walls, fences, hedges or other structures or growth shall be erected or grown eastwardly of Ocean Boulevard to a height greater than four feet above the surface of Ocean Boulevard pavement along which such wall, fence or growth is maintained.
- (4) No parking shall be allowed in the beach area district.
- A. When any beach house is newly constructed, or undergoes expansion which results in an increase in its existing square footage, or is demolished, restored or reconstructed in excess of 50% of its existing cubic footage, the property on which such beach house is located shall be made to conform to the ocean vista requirements and other limitations as to the height of walls, fences, hedges or other structures or growth along the frontage of Ocean Boulevard as set forth above or in subsection (1) of this section, as applicable, and

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such beach house shall be so located as to provide the best possible view of the ocean.

- (a) Any nonconforming structure which is destroyed by fire ~~or other casualty~~ or act of ~~God~~ nature to the extent of 50 percent or less, as determined by cubic footage prior to destruction, ~~may~~ can be reconstructed in its original location, to its original size, and configuration provided the following conditions are met:

(1) The structure met the minimum flood elevation requirements prior to such destruction: or,

(2) If said structure did not meet the minimum flood elevation requirements prior to such destruction, and said reconstruction exceeds 50% of the market value which results in a FEMA requirement that the structure be raised, said structure can be raised to meet the minimum flood elevation.

- (b) A nonconforming structure which is destroyed by fire ~~or other casualty~~ or act of ~~God~~ nature to the extent of more than 50 percent, as determined by cubic footage prior to destruction shall be rebuilt only as a conforming structure except:

(1) A nonconforming designated landmark, single-family dwelling, public structure or public/private group use structure which is entirely east of the coastal construction control line ~~may~~ can be reconstructed in its original location, to its original size, and configuration. If said structure did not meet the Town's minimum flood elevation requirements, the rebuilt structure can be raised to meet said requirements.

On roll call, the motion carried 5-0.

Mr. Castro said, after the lunch break, that he would like to have the Council's approval to proceed forward with the recommendation to recreate the ocean vista for the expansion of cabanas or new cabanas across from the R-A and R-AA district for the beach area district, and it should be made part of the previous motion.

Councilman Wyett made a motion to approve the recommendation to recreate the ocean vista for the expansion of the cabanas or new cabanas across from the R-A and R-AA districts in the beach district. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

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IV. Zoning Study Items

Study Item 14. Residential Redevelopment – Neighborhood Scale

R-AA district

Mr. Brisson explained this item came from the Strategic Plan's recommendation to maintain residential scale as related to the aggregation of lots in the R-AA, R-A, and R-B districts. He said Staff did not find any real basis to limit the aggregation of lots in the R-AA district since this is a large estate district.

R-A district

Mr. Brisson said no documentation existed that proved when lot sizes increased in the R-A district that home sizes increased dis-proportionately and potentially caused problems with the surrounding neighborhood. He summarized that unless anecdotal or other evidence existed was presented indicating that this would be a problem, the recommendation was not to limit the size of aggregation of lots in the R-A district.

R-B district

Mr. Brisson said experience has shown as the lots increase, the size of the homes do increase, and the current cubic content ratio only slightly reduces the potential for the buildings to get larger and larger as the lot sizes increase. He continued that the Planning and Zoning Commission recommended limiting the size of parcels formed when lots are aggregated in the R-B district.

Mr. Castro pointed out that the Town Council requested staff to study this issue, and it was also pointed out in the Strategic Plan. He added that the massing out study will be presented to the Planning and Zoning Commission on January 15th that will show the existing homes built in 2001-2002 using the existing sliding scale with installed landscaping, and this should provide information as to how well the sliding scale has worked. Also a max-out study of two streets, Jamaica Lane and Ridgeview, will be presented.

President Pro-Tem Goldblum made a motion to accept the recommendation of the Planning and Zoning Commission, to disapprove the Staff recommendation limiting the aggregation of lots in the R-B district. The motion was seconded by Councilman McLendon and carried 5-0 on roll call.

Study Item 15. Maximization Study; Recently Constructed Homes and Maximum Build-out Study

This item will be heard by the Planning and Zoning Commission at their meeting on January 15th.

Study Item 16. Nonconforming Structures

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1. The "50% rule" as applied to Voluntary Demolition and Reconstruction of Nonconforming Single-family Structures

Mr. Brisson said the Zoning Code now allows a nonconforming structure to be voluntarily demolished and restored or reconstructed provided the activity involves not more than 50% of the existing cubic footage. This provision has been interpreted such that a home is permitted to be demolished and restored or reconstructed in multiple stages of less than 50% at a time. Sometimes this has resulted in an entire structure being replaced.

He continued that Staff believed that if it were originally intended that a nonconforming structure could be entirely rebuilt, there would have been no "50% rule". Therefore, Staff believed that it should be made clear that the 50% limitation in Section 134-419(1) applies to the aggregate of all reconstruction over the life of the structure. This means that in no case may more than 50% of the original cubic footage of the structure ever be restored or reconstructed unless the entire structure is brought into conformance with the Code.

Mr. Brisson stated that the Planning & Zoning Commission in its first motion on this issue recommended that nonconforming single-family homes, but only single-family homes, be allowed to be rebuilt in stages as this section has been interpreted in the past. In its fourth motion, the Commission recommended that reconstruction of nonconforming multi-family and non residential structures should be limited to 50% of the existing cubic footage over the life of the structure.

He added that the Commission also recommended that the Staff study a provision that would permit a nonconforming single-family structure to be rebuilt in its entirety all at one time on the same footprint and with substantially the same style as the original structure. Since this is a policy issue, Staff believed there is no additional study necessary, and if the Town wants to allow nonconforming single-family structures to be rebuilt in their entirety, the 50% rule should be eliminated. Since the entire structure would be allowed to be rebuilt, there is no benefit to forcing the reconstruction to be undertaken in stages. The 50% rule merely adds unnecessary complexity and cost for the homeowner with no compensating benefit to the Town.

Mr. Brisson presented an addendum showing Staff recommendations vs. Planning and Zoning recommendations.

Responding to comments from President Pro-Tem Goldblum, Attorney Randolph said he understood the suggestion was to have a provision whereby anyone who wishes to renovate a home by more than 50% would be subject to a Special Exception in which case the Town Council would be able to review a project and make a determination as to placement of the structure as opposed to following specific rules.

Mayor Smith questioned if the 50% rule would be arbitrary, and that the Council would make the decision if the demolition was over 50%?

Mr. Randolph replied the 50% rule would remain in effect, and the practice to allow that 50% to occur in increments would be discontinued.

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Mayor Smith stated she was concerned that the Town would be relaxing the 50% rule without very strict controls from the Council, and questioned why the 'same style' language had to be included in the ordinance.

Mr. Moore responded the 'same style' language was inserted to maintain the character of the neighborhood.

After discussing the issue of this as a Special Exception, Mr. Randolph responded the Town Council did not have the same authority with a Special Exception as with a Variance. He continued if an applicant meets the criteria of a Special Exception, the Town Council would be required to grant it.

Councilman Wyett said the Town Council's flexibility to handle each case is important.

Mr. Randolph responded the flexibility issue was a good point but suggested if that route is followed, the issue should be studied to provide specific criteria under the Special Exception provision. He added language should be inserted that it is not in contravention of the adjoining properties, and the set of criteria would have to be met by an applicant.

After further discussion, **Councilman McDonald made a motion to approve the status quo, maintain the 50% rule with the understanding that the 50% rule means 50% over the life time of the property and study the remaining issues that were discussed at this meeting, including non-residential properties.(The study would go back to the Planning and Zoning Commission for next year.) The motion was seconded by Councilman Wyett and carried 4-0 as Councilman McLendon left the meeting at 2:35 p.m.**

Mayor Smith clarified that Study Item 16 would still fall under 'Zoning in Progress' until the next Zoning Season. *(Later in the discussion, Mr. Moore said 'Zoning in Progress' would not be needed.)*

Jan Conroy, resident of Colonial Lane, stated her concerns were for some of the non-conforming lots and questioned the number of non-conforming lots and how they would be affected by the Council's actions. She said the Town should not be stuck in time in one area and over-developed on the other end with a gray area in the middle. Ms. Conroy concluded the Town should assist property owners in providing favorable and creative ways for changes with no penalties with more restrictive conditions.

2 Additions to nonconforming single-family homes

Mr. Brisson explained that the Code presently allows nonconforming single-family homes to be expanded by either a second floor addition or physical expansion on the first floor. He noted that Staff recommended no additional variances should be allowed when a nonconforming single-family home is expanded as permitted under Section 134-419(2).

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Mr. Brisson reported the Planning and Zoning Commission did not recommend approval of Staff's recommendation.

Councilman McDonald said he had a problem with the issue, because many of the residences need help that may include expansions or additions and removing the ability to request a variance is too severe.

Councilman McDonald made a motion to approve the Planning and Zoning Commission's recommendation to disapprove the Staff's recommendation to allow no additional variances. The motion was seconded by President Pro-Tem Goldblum and carried 4-0 on roll call as Councilman McLendon was absent from the meeting.

3. Voluntary Demolition and reconstruction, when combined with additions to nonconforming single-family homes.

Mr. Brisson said the Planning and Zoning Commission recommended disapproval of the Staff recommendation to limit variances when additions are allowed to nonconforming single-family structures. He explained this issue related to additions and expansions, and were they to be included as part of the 50% rule?

Councilman Wyett made a motion to approve the disapproval of the Planning and Zoning Commission. The motion was seconded by Councilman McDonald and carried 4-0 on roll call as Councilman McLendon was absent from the meeting.

4. Involuntary Destruction of a Nonconforming Structure and the Need for a Variance to Meet the Minimum floor Elevation

Councilman McDonald made a motion to approve the recommendation of the Planning and Zoning Commission to limit voluntarily demolition and restoration and reconstruction of a nonconforming multi-family or nonresidential structure to not more than 50% of the cubic footage over the life of the structure. The motion was seconded by President Pro-Tem Goldblum and carried 4-0 on roll call as Councilman McLendon was absent from the meeting.

5. Consistency between the Intent Section and the Current Nonconforming Provisions

Mr. Brisson said Staff suggested incorporating language to recognize that the Town does give certain leeway for the replacement and/or reconstruction and other factors relative to nonconforming structures. He noted that presently the language states it is not the Town's intent to allow nonconformities to be expanded or to encourage continued existence. He added new language would recognize the current policy.

Mr. Randolph said Councilman McDonald's previous motion changed that policy by preserving the status quo as stated in the ordinance and not using the flexible provisions that Mr. Moore has been using. He said since this issue will be studied, the language may not be appropriate.

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Mr. Moore said he agreed with Attorney Randolph and this is a study item that will be continued to be studied.

Councilman McDonald made a motion that deferred this item to the next Zoning Season. The motion was seconded by Councilman Wyett and carried 4-0 on roll call as Councilman McLendon was absent from the meeting.

6. Timing of Completion of Voluntary Reconstruction

Mr. Brisson said the Planning and Zoning Commission recommended deferral of this item because of the potential conflicts with the Building Code.

Councilman McDonald made a motion to defer this item to the next Zoning Season. The motion was seconded by President Pro-Tem Goldblum and carried 4-0 as Councilman McLendon was absent from the meeting.

7. Correction of Section 134-419(2)

Mr. Brisson explained the present regulation refers to a limitation of floor area, and the Code does not regulate floor area any more as it is considered under Cubic Content; the term 'floor area' will be replace with 'cubic content'.

President Pro-Tem Goldblum made a motion to approve the correction. The motion was seconded by Councilman Wyett and carried 4-0 on roll call as Councilman McLendon was absent from the meeting.

Study Item 17. Off-Street Parking for Residential Development

Councilman McDonald made a motion to approve the recommendation of the Planning and Zoning Commission to defer this investigation until February 2004. The motion was seconded by President Pro-Tem Goldblum. (No roll call).

Responding to a question from Mayor Smith regarding the decision by the Planning and Zoning Commission, Mr. Brisson replied the deferral recommendation because the issue needed to be studied during a peak period.

Mr. Castro added evening and morning studies will need to be conducted during February and March to see the effects of parking at some of the recently built multi-family structures to determine deficiencies.

Councilman Wyett requested the issue of the relationship between the size of the apartment, the number of bedrooms in the apartment, to the number of parking spaces be studied as apartments are becoming larger.

Mr. Castro replied the three most recently constructed multi-family structures will be studied.

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Study Item 18. Beach Access Easements

Councilman McDonald made a motion to accept the recommendation of the Planning and Zoning Commission to restudy the issue of Beach Access Easements. The motion was seconded by Councilman Wyett. On roll call, the motion carried 4-0 as Councilman McLendon was absent from the meeting.

Study Item 19. Accessory Structures such as Canvas Awnings, Portable Beach Cabanas and Carports

Mr. Brisson explained the original idea was to modify the definition of an accessory structure; however, most of the portable items do not meet the definition of structures, although they are accessory structures. He continued that, rather than modifying the definition, that the portable structures not be allowed and certain definitions be modified to clearly state what is a structure and what is not a structure. The Commission approved the limitation of freestanding awnings and carports without a permanent location on the land and free standing portable beach or swimming pool cabanas would be permitted provided they were not within required setbacks, and did not exceed the maximum life coverage allowed in the district.

Mr. Castro, responding to questions from Councilman McDonald, said Staff's reasons for not allowing some of the items were aesthetics, safety, and drainage issues.

After further discussion, **Councilman McDonald made a motion to defer Study Item 19 to the next Zoning Season. The motion was seconded by President Pro-Tem Goldblum.**

Councilman Wyett said he would like to approve the study item.

Councilman McDonald, responding to Mr. Randolph's question regarding Zoning in Progress, said he would not object to prohibiting freestanding awnings in setbacks if that were an important issue.

Councilman McDonald clarified that his motion would be to defer the prohibition of the mentioned items until the next Zoning Season, but they will not be allowed in the setbacks. On roll call, the motion carried 4-0 as Councilman McLendon was absent from the meeting.

Mr. Moore said he wanted everyone to realize that the Mar-a-Lago tent is in the setback and it will not disappear, but the issue is grandfathered.

Study Item 20. Submerged Lands in Lake Worth

Mr. Moore reported that Mr. Brisson recommended the Town come in with a conservation district. He said the area in question was being considered for development of the submerged land west of A1A.

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Mr. Brisson said the Planning and Zoning Commission recommended the issue be deferred because of concern over the docks, and the question was: could or could not a dock be built once the Land Use designation was changed to conservation? He continued the Comprehensive Plan will be updated soon, and this could be dealt with during that update in the next year or year and a half. He added that, currently, development of the submerged lands is not allowed.

Mayor Smith questioned if all the submerged lands that are not developed on the Lake Worth side were being considered or was it just the submerged lands by the Patrician? She suggested all the lands should be considered.

Mr. Moore responded all of the submerged lands were being considered.

President Pro-Tem Goldblum made a motion to defer Study Item 20. The motion was seconded by Councilman McDonald and carried 4-0 on roll call as Councilman McLendon had left the meeting.

Study Item 21. Assembly Uses

Councilman McDonald made a motion to approve the recommendations 1 through 4 of the Planning and Zoning Commission to ensure that houses of worship are treated no differently than other places of assembly. The motion was seconded by Councilman Wyett. On roll call, the motion carried 4-0 as Councilman McLendon was absent from the meeting.

Study Item 22. Two-Family Residential Development

Mr. Brisson identified the study item as dealing with a potential problem when two-family structures were developed on a parcel of land and later sold independently creating coverage and landscape problems. He continued that the Planning and Zoning Commission recommended the addition of new language, Section 134-1968, to require each unit and associated lot of a two-family dwelling to meet the lot coverage and landscape open space requirements independently of each other.

Councilman Wyett made a motion to approve the Planning and Zoning Commission's recommendation to add new language. The motion was seconded by Councilman McDonald and carried 4-0 on roll call as Councilman McLendon was absent from the meeting.

Study Item 23. Landscaped Open Space Requirements

Councilman McDonald moved approval of the Planning and Zoning Commission's recommendation modifying the percentages for landscaped open space requirements in the R-AA, R-A, and R-B zoning districts.

Councilman Wyett commented that the increased percentages were going too far and qualified almost as a land taking.

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Mr. Castro said the open space modifications were the result of the direction from the Town Council to study the drainage problems in Town after the large capital improvement program was undertaken. He explained the new requirements would not affect existing homes but would affect major renovations or new construction.

Mayor Smith said some consideration should be given to the fact that green space exist at least around the perimeter of a building.

Councilman McDonald renewed his motion to approve the recommendation.

Councilman Wyett said one rule does not cover everything and mentioned that new materials can be used for driveways, etc. that are porous and can achieve drainage control.

President Brooks suggested Councilman McDonald's motion could be amended to approve the following:

1. **Amend Sec. 134-793. Lot, yard and area requirements - Generally, subsection (a)(12)a, in the R-AA district to read as follows:**
 - a. **The minimum landscaped open space is 55 percent.**
2. **Amend Sec. 234-843. Lot, yard and area requirements - Generally, subsection (a)(12)a, in the R-A district to read as follows:**
 - a. **The minimum landscaped open space is 50 percent.**

and defer 3 for study:

3. **Amend Sec. 134-893. Lot, yard and area requirements - Generally, subsection (a)(12)a, in the R-B district to read as follows:**
 - a. **The minimum landscaped open space is ~~40~~ 45 per cent except as follows:**
 - b. **The minimum landscaped open space is ~~40~~ 42.5 percent for houses built on corner lots, houses with side-loaded garages, or houses with garages which are set back a minimum of 65 feet from the front property line.**

Councilman McDonald accepted that suggestion to amend his motion on the floor.

The motion was seconded by Councilman Wyett and carried 4-0 on roll call as Councilman McLendon was absent from the meeting.

Study Item 24. Right-of-Way Signage

Mr. Castro explained that Staff believed the street signage could be addressed; however, Staff needed to work with FDOT in terms of some standards they have and observe signs in other communities, and Staff recommended deferral of this study item.

Councilman McDonald made a motion to defer Study Item 24, Right-of-Way Signage. The

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motion was seconded by President Pro-Tem Goldblum and carried 4-0 on roll call as Councilman McLendon was absent from the meeting.

Study Item 25. Outdoor Seating for Restaurants and Takeout Prepared Food

Mr. Castro presented the analysis and recommendations to allow extra outdoor seating as part of a takeout food business in the C-TS district and the proposal to eliminate the requirement that special exceptions for stands, seated dining areas and open counters for eating and drinking be renewed annually.

Councilman McDonald made a motion to approve the recommendation as stated by Mr. Castro. President Pro-Tem Goldblum seconded the motion. The motion carried 4-0 as Councilman McLendon was absent from the meeting.

Study Item 26. Vias and Walkways

Mr. Castro presented the Staff's analysis and recommendations to eliminate offices as an allowable use on the first floor in the C-WA district; clarify the language concerning offices on the first floor in the C-TS district; and add language specifically regulating office uses and signs in the C-TS and C-WA zoning districts.

Councilman McDonald made a motion to approve the recommendation as stated above. President Brooks passed the gavel and seconded the motion.

Roll Call:

Councilman McDonald	-	yes
President Brooks	-	yes
Councilman Wyett	-	no
President Pro-Tem Goldblum	-	no

Mayor Smith broke the tie and voted 'yes'. The motion passed 3-2 with Councilman McLendon absent from the meeting.

Study Item 27. Bike Trail Access from Roadways

Mr. Castro presented the Staff's and Commission's analyses and recommendations to prohibit driveways from connecting to any bicycle and pedestrian access to Lake Trail.

Councilman McDonald made a motion to approval of the recommendation of the Staff and Commission. The motion was seconded by Councilman Wyett and carried 4-0 on roll call as Councilman McLendon was absent from the meeting.

Study Item 28. Office Suites

Mr. Castro presented the Staff's and Commission's analyses and recommendations to create a definition and use regulations for "Executive office suites" in the C-TS, C-WA, C-OPI, and C-PC

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commercial zoning districts.

Councilman McDonald made a motion to approve the recommendation as presented above. The motion was seconded by Councilman Wyett and carried 4-0 on roll call as Councilman McLendon was absent from the meeting.

Study Item 29. Digitization of Official Land Use and Zoning Maps

Councilman McDonald made a motion to digitize the Official Land Use and Zoning Maps. The motion was seconded by Councilman Wyett and carried 4-0 on roll call as Councilman McLendon was absent from the meeting.

Study Item 30. Driveway Curb Cuts and Site Visibility Triangles

Mr. Castro explained that the Staff originally recommended including a cross-reference in the Zoning Code to the Right-of-Way Manual, developed by the Public Works Department, as adopted by the Town Council. He added that during the discussion with the Planning and Zoning Commission, concerns were expressed regarding the adaptation of the new provisions to private curb cuts, and the limitation of curb cuts on the major arterials. He continued that the Commission thought the issue was a zoning matter as it dealt with land development of property and what landowners could do with their property and requested the Commission, in the future, be provided with specific information before the items are adopted to provide a recommendation to the Town Council. He said the Commission also requested to review, retroactively, these two provisions and other provisions that substantially limited how property owners could access their properties and site visibility issues for private driveways.

Mr. Moore said the Commission wanted to review anything that was developed through the Comprehensive Plan that affected private property and have the ability to recommend actions to the Town Council on any Public Works proposals. He noted that the Town Council has adopted some proposals that do affect private property owners, and the Commission would like to consider those retroactively.

Mayor Smith said the final decision is made by the Town Council, and although the Commission's input is appreciated, the Town Council hears appeals from property owners regarding curb or driveway cuts. She added if the applicant had to apply to Building & Zoning and then the Town Council and the Zoning Commission, a two or three month delay would occur.

Mr. Moore responded the Commission thought they should look at a document if it involved private property such as the Right-of-Way Manual, and that was the document they wanted to review retroactively. He said the second Town Council decision would be the issue of review by the Planning and Zoning Commission of any changes to or issuance of a new Right-of-Way Manual.

Councilman Wyett made a motion to deny the approval of the Planning and Zoning

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Commission. The motion was seconded by Councilman McDonald.

Councilman McDonald clarified the motion was to deny number 2.: the Planning and Zoning Commission be able to have input into both existing and future portions of the Right-of-Way Manual affecting private property, before adoption by the Public Works Department or the Town Council.

Councilman Wyett amended the motion to approve number 1, to include a cross reference in the Zoning Code to the Right-of-Way Manual, and deny number 2 as stated above. Councilman McDonald agreed with the amendment. On roll call, the motion carried 4-0 as Councilman McLendon was absent from the meeting.

Study Item 31. Housekeeping Items

Councilman Wyett made a motion to approve the recommendations, A through K, under the study item. The motion was seconded by President Pro-Tem Goldblum and carried 4-0 on roll call as Councilman McLendon was absent from the meeting.

VII. ANY OTHER MATTERS

Councilman Wyett requested the Town Council schedule a closed-door session regarding the law suit relating to the Nativity and Menorah situation.

Attorney Randolph said that was an issue that should be on the next Town Council meeting agenda on January 13th.

VIII. ADJOURNMENT

The meeting was adjourned at 3:50 p.m.


William J. Brooks, Town Council President


Mary A. Pollitt, Town Clerk