

TOWN COUNCIL MINUTES OF SPECIAL MEETING HELD ON JANUARY 6,

1992 AND JANUARY 7, 1992 TO HEAR THE REPORT AND

RECOMMENDATIONS OF THE ZONING COMMISSION

I. CALL TO ORDER AND ROLL CALL: The Special Meeting of the Town Council was called to order by President Heeke at 9:30 AM on January 6, 1992 in the Town Hall Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Marx, President Heeke, Councilwoman Douthit, Councilman Ilynsky, Councilwoman Wiener. (President Pro Tem Weinberg arrived later in the meeting). Also attending for all or portions of the meeting were Town Manager Doney, Town Attorney Randolph, Mrs. Peters, Mr. Moore, Mr. Zimmerman, Mr. Frank and Mr. William Brisson of Adley, Brisson and Engman.

Roll Call

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Mrs. Peters. Pledge of Allegiance was led by President Heeke.

Invocation

III. PROOF OF PUBLICATION. Mrs. Peters confirmed the Proof of Publication has been filed.

IV. APPROVAL OF AGENDA:

Appr. of Agenda

PUD APPLICATIONS: Sloan's Curve - PUD-B; MAR-A-LAGO - PUD 4. After discussion, motion was made by Mr. Ilynsky, seconded by Mrs. Wiener to defer the Sloan's Curve PUD matter as requested by Attorney James Wearn to the January 14, 1992 Town Council Meeting. On roll call, the motion carried unanimously.

PUD App.
. Sloan's
Curve

MAR-A-LAGO - PUD-4

. Mar-a-lago

Mayor Marx remarked these zoning hearings have been set for quite some time and wondered if this should be granted as she knows they work under a strict calendar with regards to passage of the Ordinance. Mr. Heeke believed they had to handle these matters even-handed, as they have already approved one deferral and the need to name a time certain is to avoid the need of additional publication. Mrs. Wiener asked if they would have everything that was necessary at this hearing so that it wouldn't have to be postponed again waiting for additional information. Mr. Heeke suggested the matter be deferred to the Town Council Meeting of February 11, 1992 and at that point in time, they could schedule the hearing within a thirty day period of that meeting.

Mr. Adrian Winterfield of 445 Brazilian Avenue addressed the Council stating he had difficulty understanding this as if this were a question of a scheduling conflict, they would not have to wait another month to reschedule, but if on the other hand, the applicant is stating he is not ready and he would need weeks or months to prepare, he would respectfully submit that that should be the basis of the request. He felt if that is the case, there is a substantial question as to whether or not such a request should be handled so casually. He suggested an alternative to schedule an initial presentation to be made and if the Council acting in its capacity as the Board of Zoning decides that more information is required, the hearing should be continued.

Mayor Marx stated she agreed as they wish to divide this property and it almost looks like they would be dividing this area if the proper information is given. She believed these dates have been in place for a long time. Mr. Heeke felt the applicant is the one who decides when to proceed and when they are prepared to proceed and they tell us specifically. Mrs. Wiener agreed there was wisdom in this suggestion and she moved that the matter be deferred to the February meeting at which time a time certain to be within a thirty day period, prior to the March meeting be set. Seconded by Mr. Ilynsky. On roll call, the motion carried unanimously.

Motion was made by Mr. Ilynsky to approve the agenda as modified. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC. Attorney Randolph set out the procedures, which would be to hear the comments of the applicant, whether it be Town staff or someone in the audience, and then call for public comment from the audience to hear those comments and then the Council will deliberate as to the action that will be taken. Mr. Heeke ruled this will be the manner in which this hearing will be conducted. Mr. Heeke announced there will be a luncheon break from Noon to 1:30 and the meeting today will adjourn at 4 PM and all items that have not been heard will be heard tomorrow commencing at 9:30 AM.

Procedures
for comments
by general
public

VI. ADMINISTRATIVE PROPOSALS AND/OR RECOMMENDATIONS (Items 1 through 25) AND RECEIPT OF THE RECOMMENDATIONS AND REPORT OF THE ZONING COMMISSION DATED DECEMBER 4, 1991.

Report of
Zoning Comm.

Motion was made by Mrs. Douthit, seconded by Mrs. Wiener to receive the Report and Recommendations of the Zoning Commission. Motion carried unanimously.

DATE December 4, 1991

TO The Mayor and Town Council

FROM The Town Zoning Commission

SUBJECT: RECOMMENDATIONS AND REPORT OF THE TOWN ZONING COMMISSION

Pursuant to Public Notice duly published in accordance with law, the meeting of the Zoning Commission of the Town of Palm Beach, Florida was held on November 26, 1991 and December 3, 1991, in the Town Council Chambers in Town Hall. After a roll call disclosed that a quorum of the members of the Zoning Commission was present, an election of a Commission Chairman and Secretary was duly held.

At said time and place, all persons interested were given ample opportunity to be heard in support of, or in opposition to, the matters before the Commission.

Report of
Zoning Commission
(cont'd)

The Zoning Commission, after consideration of the matters presented, and giving all interested persons an opportunity to be heard, recommends to the Town Council as follows:

ADMINISTRATIVE PROPOSALS AND/OR RECOMMENDATIONS
(Items Numbered 1 through 25)

For the purposes of clarification, when a section of the Zoning Ordinance is depicted herein it is enclosed in quotation marks; changes or new additions are underlined and deletions are identified by "strikeout."

The Town Zoning Commission recommends certain amendments to the Town Zoning Ordinance No. 2-74, as Amended, in accordance with the proposals and recommendations numbered Items 1 through 25 as contained in the document entitled "ADMINISTRATIVE PROPOSALS AND/OR RECOMMENDATIONS, 1991-1992 ZONING HEARINGS" dated October 25, 1991, which is on file in the office of the Town Clerk of Palm Beach. Said proposals were reviewed item by item by the Commission. Recommendations are set forth as follows: Item 1. On a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by Adley, Brisson, Engman and modified by the Zoning Commission, to:

A. Amend Section 4.20, "A. Schedule of Lot, Yard and Bulk Regulations" as they pertain to the R-B district so as to eliminate reference to Footnote #22.

B. Amend Section 4.20, "B. Schedule of Use Regulations" to add a new R-BB zoning district, encompassing that area from Queens Lane to Onondaga Avenue between North Ocean Boulevard on the east and North Ocean Way on the west, with the same Permitted, Accessory and Special Exception Uses now allowed in the R-B district; and, by incorporating the following PURPOSE:

C. Amend Sec. 4.20, "A. Schedule of Lot, Yard and Bulk Regulations" to add regulations applicable to the R-BB district as follows:

LOT, YARD AND BULK REGULATIONS, R-BB DISTRICT

ONE-STORY STRUCTURES

Minimum Lot Dimensions

Area	10,000 sf
Width	100'
Depth	100'

Maximum Density 4 du/ac.

Minimum Side Yard Setbacks 12.5'

Minimum Rear Yard Setback 10'

Maximum Height 15'

Maximum Overall Height One-story structure:

Flat roofed	20'
Pitched roofed	25'

TWO-STORY STRUCTURES

Minimum Lot Dimensions

Area	10,000 sf
Width	100'
Depth	100'

Maximum Density 4 du/ac

Minimum Side Yard Setbacks

One-story portion	12.5'
Two-story portion	17.5'

Minimum Rear Yard Setback

One-story portion	10'
Two-story portion	15'

Maximum Building Height

One-story portion	15'
Two-story portion	25'

Maximum Overall Height 1. Flat roofed: 27' provided, however, that the second story floor area shall not exceed 35% of that allowable on the first floor as determined by maximum permitted coverage for a two-story structure.

2. Pitched roofed: 30' provided, however, that the second story floor area shall not exceed 35% of that allowable on the first floor as determined by maximum permitted coverage for a two-story structure.

ONE-STORY STRUCTURES

Maximum Lot Coverage 30%

Min. Landscaped Open Space 40%

Maximum Floor Area Ratio (FAR) including basements
Not applicable

TWO-STORY STRUCTURES

Maximum Lot Coverage 25%, except, lot coverage for lots in excess of 15,000 s.f. in area shall be limited to a maximum of 22.5%

Min. Landscaped Open Space 40%

Maximum Floor Area Ratio (FAR) including basements 0.3375, provided, however, that

(a) When used in conjunction with the natural grade conditions, garages and mechanical rooms not exceeding an aggregate of seven hundred (700) square feet shall be permitted at the natural grade (low side of the property), and such areas shall not count as a story nor be counted towards the maximum allowable FAR. However, only one (1) additional story shall be allowed over such areas; and,

(b) Such area must meet the definition of a basement as set forth in Section 2.10 of this Ordinance, except that on the western side (or non-street yard if the lot is a corner lot) the lot may be "bermed" up at no more than a 45 degree angle in order to meet the definition of a basement. [Note: This is intended to encourage a variety of roof levels while providing a stepping down of structures toward lower, adjacent properties.

(c) Garages shall be designed so that the opening will not face a street or shall be sight screened by landscaping.

Minimum Front and Street Yard Setbacks

The minimum front yard and street yard setbacks shall be the greatest of the setbacks required under the following conditions:

1. The average of the front yard setbacks of the two (2) nearest developed properties on the same side of the street in the same block.

2. One-story structure or parts thereof: 25'

3. Two-story structure or parts thereof: 30'

4. Building Angle of Vision: 100 degrees provided;

(a) No portion of any individual building shall extend beyond a line drawn from the front yard property line fifty (50) degrees either side of a line drawn perpendicular to the front property line.

(b) In the case of "corner lots" or "through lots" with frontage on North Ocean Boulevard, the "building angle of vision" shall be applied only to the frontage along that roadway.

(c) In the case of other "corner lots" or "through lots", the "building angle of vision" shall be applied only to the front yard as determined by the orientation of the building.

(d) See Sec. 5.31 for exceptions.

5. Building Height Plane: 1.5' setback for each 1' of building height, provided;

(a) No portion of any building or roof system shall extend beyond a height limiting plane extending at an inclined angle from the intersection of the front yard property line and the zero datum grade for a lot or seven and one-half (7.5) feet, whichever is greater, as defined by "height of building" and "overall height of building."

(b) In the case of "corner lots" or "through lots" with frontage on North Ocean Boulevard, the "building height plane" shall be applied only to the frontage along that roadway.

(c) In the case of other corner or through lots, the "building height plane" shall be applied only to the front yard as determined by the orientation of the building.

Sect. 4.20
(cont'd)

Sect. 4.20
(cont'd)

(d) The granting of a variance for measurement of building height for ground level above seven and one-half (7.5) feet mean sea level is not intended to modify the location of the "building height plane."

(e) See Sec. 5.22 for exceptions.

Parapet Walls

Parapet walls extending above the maximum allowable building height shall have appropriate architectural treatment.

Properties Without Frontage On North Ocean Boulevard

In the event a property located in this zoning district does not front on North Ocean Boulevard, the lot, yard and bulk regulations of the R-B district shall apply.

ITEM NO. 1 - Mr. Moore explained this item was recommended unanimously by the Zoning Commission of the proposal of Adley, Brisson, Engman and modified by the Zoning Commission to amend Section 4.20, Schedule of Lot, Yard and Bulk Regulations as they pertain to the R-B District, to eliminate reference to Footnote #22 and to add a new R-BB Zoning District encompassing the area from Queens Lane to Onondago Avenue between N. Ocean Blvd. on the east and N. Ocean Way on the west, with the same Permitted Accessory and Special Exception Uses now allowed in the R-B District.

PURPOSE

The purpose of this district is to provide for low density, single-family residential use (see definition of residential use, Sec. 2.10) of moderately spacious character, together with accessory uses as may be necessary or normally compatible with residential surroundings. The district is located, and its implementing regulations are intended, to protect existing development and recognize topographic and locational factors unique to the district. The district contains land considered appropriate for such development or redevelopment.

Mr. Brisson explained that over the past few years, he has heard the persistent concerns of the appearance of bulk and mass in the R-B District and especially along the oceanfront at the Ridge in the northern part of the island. He noticed the problem seems to be to construct R-A scale structures in the R-B District, which are sizeable structures on smaller lots, as opposed to those which might have been built on larger lots in the R-A District. He recalled the idea was brought up to address the problem on the Ridge, which is generally described as "looming" structures of those further to the east because they are built on this higher "ridge" area and the original idea was to limit the height of the structures on the Ridge, creating a new District with more severe restrictions than those presently in effect in the R-B District.

Mr. Brisson recalled after the Zoning Commission hearings, the recommendations were somewhat modified to be more flexible than what was originally proposed and he does agree with the recommendations of the Zoning Commission, which are less restrictive than what was originally advertised. He reported what had been proposed is to maintain the existing limited height limitations in the R-BB District from Queens Lane to Onondago and from North Ocean Blvd. to North Ocean Way. He advised the heights now in the R-B District are a maximum height of 25' for a single story pitched structure, which would be retained and all of the other height limitations presently in the R-B District.

Mr. Brisson displayed a panel which showed the Lot, Yard and Bulk Regulations in the Zoning Code for the R-B and those proposed for the R-BB. He noted the setbacks for one story structures are the same as they are in the R-B District but for two story structures, they are presently 30' in the front, 15' on the side and 10' in the rear plus some changes in the front yard setback relative to height plane and the angle of vision. He reported there is a slight modification in the proposal for the R-BB District in that on the side yard, if the first story portion of the structure would have a side yard setback of 12.5', the second story portions would have an increased side yard setback of 17.5', which is a slight sideyard setback increase. He commented on the rear yard setback, for the one story portion it will be 10' and for the two-story portions, it would be 15'. He stated the lot coverage is presently kept the same, 30% for one story and 25% for two story structure and on larger lots, there is a reduction of the overall coverage to 22.5% for the larger single family lots and basically this is to reduce the overall bulk as the lots get larger, particularly when they are surrounding smaller lots.

Mr. Brisson explained in the FAR, the present ratio in the R-B District is 0.45 and they are proposing to have it reduced to 0.35. He believed there would be more buildings allowed in the R-BB District because they have a .3375 FAR, plus an additional 700 square feet of basement, which would make it about 4075 square feet available on a 10,000 square foot lot. He believed this would at 0.40 from the present 0.45, so it is less restrictive because of the basement and the elevation and the allowance of the basement underneath. He recalled the heights were proposed to be reduced in the R-B but after discussion, it was felt the heights be maintained as they presently are allowable in the R-B District but limit the fact that in the R-BB where there is a ridge and the potential for bulk looming over the adjacent lower structures that no more than 35% of the maximum floor area coverage on the first floor would be allowed to be on the second floor and that basically is how they get to the .3375.

Mr. Brisson added that the landscaping and angle of vision requirements will remain the same. He stated there is somewhat more restriction in the R-BB District than in the R-B District in that they would be proposing in the next zoning item to allow a Special Exception for the height limit in the R-B, which would not be available in the R-BB because of it being on the Ridge and trying to reduce the potential for the larger scale.

He stated the Zoning Commission's recommendations are somewhat less restrictive than what was originally discussed. He recalled another item the Zoning Commission discussed was the concern about how buildings built in this manner along Ocean Way might appear to those on the other side of Ocean Way with the problem being, now having allowed certain mass and height in the R-BB District adjoining the lower R-B District, so what has been said essentially is these regulations only

pertain to properties who do have frontage on North Ocean Boulevard and those without frontage on North Ocean Blvd would use the normal R-B District regulations.

Zoning

Mr. Brisson noted at present on a two story structure in the R-B District, there could be 25% coverage with a maximum .45 FAR, which means in essence there could be another 20% coverage on the second story, or about 80% of the building. He typically uses the 10,000 square foot lot as that is a "zoning" size. He noted there could be 2500 square feet of floor area on a 10,000 square foot lot on the first floor and another 2000 square feet on the second floor which will give a 4500 square feet, which is allowed on a 10,000 square foot lot. He explained in the R-BB District coming down with the .3375 FAR (25% lot coverage with one third of it allowable on the second floor) which will give you just about 3375 square feet, plus the 700 garage basement, or a total of 4075 square feet. He noted 4500 is now allowed, which would include the square footage for the garage. He stated this is a reduction of the mass and scale along with the inability to have the Special Exception height and some increase in the sideyard setbacks.

Attorney James Nemec, 1438 North Ocean Blvd. addressed the Council indicating he opposed the new district vehemently. He thought they should address the history of the zoning and he has gone over this with Mr. Zimmerman going back to the original zoning regulations back to 1947 when the restrictions were for either a one story or a two story and it would have a 25' setback and 20' sideyard and a height of 35'. He noted in 1974, the side yard setbacks were adjusted and changed to 10' with a 35' height limitation. He stated the new proposal asks for a height reduction from 35' to 25'. He believed the two story has a 30' setback now which was 25' before and the sideyard is 17.5' on each side, or 35' of land taken away from the property owner and if there is a 100' lot, there is not much left on which to build a house. He stated in the one story and two story area, the one story is 3000 square feet and previously the two story was 4500 square feet and the change now is 3335 square feet, as the first floor is reduced to 2500 square feet and the second floor is 875 square feet, so there is a total reduction from 4500 square feet and that is a loss of 1125 square feet if one wants to build a two story building.

Mr. Nemec advised he has read the report from Adley, Brisson and Engman and noticed there was a statement that this area encompassed 19 streets, and actually he counted 31 streets. He thought what they were saying also is that there couldn't be one story buildings and two story buildings on the same street, and state it is "incompatible" to have a two story next to a one story. He toured this area and finds there are many one story homes next to two story homes and there are not very many vacant lots, and the report goes on to say: "... these homes with the greater mass, height and bulk heretofore characterize the area and present significant incompatibilities." Mr. Nemec felt they could not challenge buildings because they are incompatible to the area.

Mr. Nemec referred to a letter he sent which stated the proposed zoning is to enforce uniform size of buildings so that ultimately all structures would be limited in size and space in a certain area along the high ridge in Palm Beach and he didn't like that as he believed the people in that area liked changes in the structure to give variety and appearance of something worth while.

Mr. Nemec advised he believed the notice was defective as the notice to the property owners failed to state in detail how the change in zoning would effect the owners and to rely upon the newspaper for details is not a legal notice.

Mr. Nemec stated his objection because: The present zoning has existed for more than 40 years and each property owner has the right to rely upon that 40 years of zoning. He stated the law states that the zoning restrictions are subject to removal or change when the reasons for them or the circumstances prompted them, ceases. He stated when they become obsolete or run afoul of the public welfare would be a good test to prompt the time for change or removal. He stated where the character of a zoned area has changed substantially so that is no longer suitable or adaptable to the purposes for which it is zoned, it is the duty of the zoning authorities to change it, however, it is acknowledged that the present zoning has not become obsolete or run afoul to the public welfare or the police powers, and therefore it would require no change.

Mr. Nemec felt to reduce the allowed square footage of the use of the land would reduce the value of each property. He stated to limit the structure to a particular size such as the square foot area or building set back lines, or height of the structure to achieve conformity with the structures in the existing buildings is void. He felt that the zoning ordinance requires completed appearance of every new building or structure to substantially equal that of the adjacent buildings in appearance and he stated zoning is an exercise of police power and ordinarily the exercise of such power in zoning has relation to structure qualities and the use of structures when considered in reference to the protection of health, welfare, safety and morals of the public and he quoted the case of West Palm Beach vs. Duffey, in 1974, Judge Chillingworth was the Judge and it was appealed to the Supreme Court and this law has not been changed and Duffey was a veteran and wanted to build a one story building and next to the lot was a two story building, and West Palm Beach tried to tell him they he couldn't build a one story, he had to build two stories and the Supreme Court ruled that cannot be regulated and Duffey had the right to build a one story building. He stated the bare fact that the theory that by controlling the square footage and setback lines of new homes to reduce their size because such buildings may be larger than the existing buildings does not promote health, welfare, safety and morals, which is the basis for any change in the zoning and he saw nothing here for health, welfare, etc.

Mr. Nemec stated the fact that never homes may be larger than existing homes is no reason to change the existing zoning. He stated to achieve a balance among the old and new buildings does not warrant a change in the zoning and stated an example that many of the existing smaller homes are now being demolished and larger homes are being built on the same property, but not on the oceanfront but on the side streets.

Mr. Nemec stated this particular zoning is being proposed for the "ridge" area and consistently with the view that the requirement of a comprehensive zoning plan is complied with only if the entire territory of the municipality is zones, it has been upheld that piecemeal zoning or zoning which does not regulate the entire area within a zoning authority is invalid and he viewed this as "spot" zoning which results from a zoning ordinance which contain provisions creating a small area within the limits of some zones which are permitted uses inconsistent with those permitted in the larger areas. He related that this is would have the effect of "box effect" buildings. He asked what would happen if an owner had two or three lots or more and the construction would be larger and not in keeping with the existing structures, which would defeat the purpose of the proposed zoning.

Zoning

He summarized that the present two story zoning requires a 15' sideyard on each side, with 30' front yard setback and a height restriction of 35' and a building lot coverage of 4500 square feet, and this means 3000 square feet on the first floor and 1500 on the second floor and if the proposed zoning were adopted, there is proposed a 17.5' side yard setback with 30' setback and a height of 30' and this would reduce it from 3000 to 2500 square feet on the first floor and from 1500 to 875 on the second floor and this would be a loss of 1125 square feet, which he views as a severe loss of use, and represents a "taking".

He requested this proposed zoning be struck down.

Charlotte Rosene, 1430 N. Ocean Blvd., addressed the Council stating she agreed with the remarks of Mr. Nemec and further, she felt they were reducing the values of their property but not reducing their taxes and will be paying the same amount of taxes for a lesser home and that just is not equitable.

Mrs. Carole Hickman addressed the Council noting there was a discrepancy in the figures in the Adley, Brisson, Engman report as the data used in the report was based on living area square footage to compute the Floor Area Ratio and does not include garages or un-airconditioned space, and the Town when computing FAR uses total area and there is a discrepancy there. She felt these are important decisions and they needed accurate information on which to base their decisions.

Mr. Weinberg asked what Mr. Brisson would have to say about this? Mr. Brisson advised at the time their memo was prepared using the survey prepared by the Town, he was informed by the Town they had conducted various tests and utilized data which employed the entire coverage of the building and that is what their recommendations were based upon, however, since the Zoning Commission meetings, he has talked with Mr. Zimmerman and found that there were two forms of data provided by the County and one did utilize garages and one that includes interior space. He commented that this doesn't relate as much with the R-BB District as it does in the R-B, in relation to modifying the coverage allowable in the R-B District. He advised that the data that Mr. Zimmerman recomputed and it was identified that the range of coverages for one story buildings in the R-B District, which the survey included and the average were somewhat off because of the data he used the second time. He advised they have recommended the recommendation of the Zoning Commission which kept the coverage in the R-B District to 30%, which is as it is now. He believed the data that Mrs. Hickman was speaking of related to primarily single story structures and it is his recommendation that they retain certain coverage for one story buildings in the R-B District, which is presently there.

Mr. Brisson stated on second story structures in the R-B District, they are talking about a 35% FAR and Mr. Zimmerman has examined that data and it appears it would still support an FAR of .35 within the R-B District for two story structures.

He is recommending that the Zoning Commission retain the 30% coverage in the one story, which it is now and for the two story, they are recommending the FAR be at .35 as the new data doesn't change anything in that regard, although there is a slight difference.

Mrs. Douthit asked if this would affect having the accessory uses on the property, such as a swimming pool or tennis court to which Mr. Zimmerman responded it would not affect these uses at all.

Mr. Adrian Winterfield addressed the Council pointing out that even assuming there is a problem, the proposed creation of this new zoning district, is not the way to handle the problem as if one looks at Section 5.387. (F), it refers to the criteria which the Architectural Commission should use in considering plans, one item being "the proposed structure should not be excessively dissimilar in cubical contents, gross floor area, and height of building and roof." He has not been able to understand why this provision of the Architectural Commission Ordinance should not be used to deal with the problem of the "ridge" as the problem is more one affecting the immediate neighbors than the Town as a whole. He referred to Section 2.10 (11.1) defining height of buildings on corner lots which indicates that one takes the height of the intersecting lots at their highest elevation and this is what in effect, does create the problem as here there is a differential of up to four feet. He thought between Ocean Blvd. and the level of the east/west street, at which the house is fronting, but at the intersection it would be calculating the height of the building from the same height as Ocean Blvd. He believed if there was an amendment which made it clear that some height, whether it be an average of the height on Ocean Blvd and the height of the east west road before the slope, if a different definition would be established, there should be no reason in the world while the Architectural Commission could note it was measured from the east/west street and it was too high but with this language, they do not have that possibility.

He believed they could clear up some of the language which states in the garage the area should not count as a story, as the language states such area shall not count as a story, but that is available if there is only one story above and he believed that language could be refined.

He pointed out another item which relates to the remainder of the R-B Zoning District and recalled last year there was a removal of R-B only of the treatment for basements and it was his suggestion that it was not the Council's intention that a building in the R-A Zoning District should be entitled to that preferential treatment when the R-B District was not.

Attorney Paul Prosperi addressed the Council stating he would like to make a suggestion by way of an antidote, as he owns a home in Jupiter Island which had a concern which was predicated by the fact that single story houses on a ridge facing the ocean were being redeveloped and a two story house was erected at the maximum height and everyone thought the result was pretty undesirable. He stated they approached this problem in two ways, one way is a requirement in the Ordinance that there be sight-screening and identifying "privacy" zones for the neighboring properties which would take into account where pools were or bedroom windows were or areas where an adjacent owner had an expectation of privacy and they required sight-screening or relocation of windows. He stated the second thing that was done is they dropped ceiling heights and created angles of vision which worked fine for large lots, but on the smaller lots, it has not been successful. He recalled people were complaining that the houses that were going up were ugly and when the owners showed up to defend themselves they pointed out the Codes, the sizes of their lots, the DNR mandate of what their finished floor elevation must be on the first floor; the Flood Insurance mandates and the fact was there was nothing else that could be done and what he found missing here in the presentation was a volumetric projection, which would easy to do on the computer screen as to what

the bulk would be of the building they are mandating. He felt all of us were experienced enough to know that with economics as they are, they will have someone trying to build to the maximum on the lot. He suggested they should look at what that maximum will look like. He thought perhaps what they were asking for was a shoebox sitting on top of a hatbox. He felt they needed to overlay what other regulatory agencies had mandated for the finished floor area and see what the likely architectural result would be. He was concerned that perhaps well intentioned zoning would result in architectural mediocrity and perhaps there are other alternatives.

Zoning

Jesse Newman, addressed the Council noting he lived north of the area in question but he does drive through this area every day and enjoys the eclectic pattern that does exist and as a member of the Architectural Commission, he could report they do examine each case on its own merits or demerits. He knows also that each property area surrounding the property gets notice that there will be a change. He believed that in forty years of living there, he has never seen so many "For Sale" signs on properties throughout the Town and many people in that area of Town that have their entire fortune in their home and a lot of them are selling because of the high rate of taxes. He believed their dreams could be further shattered if it is made so restrictive that they couldn't sell the house because perhaps the new owner would want to make an addition that would not be allowed under the new zoning. He felt the zoning that now exists is fine and there is great control with the zoning we now have in place.

Sten Lilja, 1330 N. Ocean Blvd., addressed the Council, indicating he has lived there for over 30 years and wished to address the report dated Dec. 4, 1991 specifically, Page 4, which says the lot can be bermed up on no more than a 45 degree to meet the requirement of Section 2.10 for a basement. He believed there might be a technical conflict here since Section 2.10 calls for the basement to be two feet below the land on which the house is built. He recalled there is an Ordinance which allows only a twelve inch buildup.

Dr. Lilja referred to page 11 which states the grade cannot be raised 18" above the crown of the abutting street, which is usually higher than the lowest part of the lot and he thought that should also be looked into.

Dr. Lilja expressed his appreciation to the Council, the staff and the Zoning Commission, and ARCOM for the work that has been done on this particular subject in the past 18 months.

Dr. Lilja referred to Mr. Nemec's remarks when he stated there could be three story homes on the side streets, and he did not believe that was the case as the present Ordinance calls for two stories which include the basement. He felt the new proposed R-BB District could be higher than the side streets as they could end up with a partial basement, a full first story and a partial second story.

Dr. Lilja advised he had received a letter from Mr. Nemec which was placed in his mailbox which he viewed as a violation of Federal laws. He stated the letter states this new zoning will lower the sale value of their homes and he agreed, however, it the letter continues to say that it will not reduce the taxes and he does not agree with that. He felt the assessments would go down and the taxes would have to go down, according to the law. He advised his taxes have increased over six hundred per cent over the last ten years and it all applies to the value of the land, and the speculators are coming in and will pay anything for the land so that can built to the maximum and that is the key to make money.

He felt it all came down to the normal difference between two groups, the speculators and the home owners. He noticed that some of the speakers preceding him are commercial people and they have an interest but he hoped they would respect the rights of the residents who wish to just live in peace in the homes they have purchased to live in this area and are not interested in making a profit on the land. He did not believe that Mr. Nemec believed the "welfare" of the residents was also being discussed and that is a big part of this matter. He brought out the fact that there are at least five existing homes in this area which have been demolished and new homes built on the same lots. He believed he heard Mr. Nemec state that this applied to some of the homes on the side streets, but Dr. Lilja pointed out the written material submitted by Mr. Nemec states there are no buildings being torn down. He believed there was one thing that disturbed him and that was in two places it states that it should not be left to the whim of ARCOM, and he feels quite badly about that as he has followed the Architectural Commission meetings and he felt there was a sincere effort on their part to take care of the interests of the Town and it is not a "whim".

Dr. Lilja stated there was a quote from a legal decision in Mr. Nemec's written comment, stating that "Zoning Ordinance requiring completed appearance of every new building or structure in a subdivision to substantially equal that of adjacent buildings in appearance, square foot area and height was void for uncertainty and as leaving exactions to whim or caprice of an administrative agency." He thought the Town Ordinance was exactly the opposite as it states they cannot be too similar but have to be compatible. He stated his neighbors have been in attendance at the Zoning Commission meetings but there is a limit on how long they can keep coming as they have been coming for a year and a half and he has been asked to speak for them that the Council should not forget their input in the past where they have been asking for what he has presented today.

Patricia Sousa, 1300 N. Ocean Blvd. addressed the Council indicating she was against the proposed R-BB zoning or spot zoning. She noted there were many homes on North Ocean Blvd. for sale and if this type of zoning goes through, it would not be in their best interest with the property values being so high and the cost of construction being so high so anyone purchasing the property in this area will naturally want to use it to its maximum. She felt the zoning laws that have been in effect have allowed the construction of two, three and even four story homes which have been there long before the newly constructed homes and there were no complaints with the huge homes that have been there as they are surrounded by large hedges and not noticeable. She thought to change what Palm Beach was in the past to something new and taking people's rights away is wrong. She felt the existing laws were adequate and she wanted them to know she is strongly opposed to the zoning change.

Mrs. Gale Nemec, 1438 North Ocean Blvd. addressed the Council indicating she was opposed to the zoning changes because she is thinking beyond the time when there may be a new Zoning Commission, a new Town Council and she was thinking of children and grandchildren. She felt the homes on the ridge will always be bigger simply because they are on the ridge. She felt to limit the size of those homes would mean they should go one step further and knock down the ridge, then all of the homes could be the same.

Zoning

She was interested in the statement that they may want to limit the size of the homes as they may have "ugly" homes going up, and stated there are already "ugly" homes in Palm Beach although most are beautiful. She found it surprising that they are dividing the Town in half and the fact they are not limiting anything on the west side of North Ocean Blvd. or on the west of North Lake Way, but only a certain section on the east side of these roads, and that also means they will continue to build huge mansions in these areas but totally limit the structures going up on the east side of the Town. She believes this is discrimination to her and she believes they should think about future times in Palm Beach as this is a lovely area and it was unfortunate that no longer could larger structures be built on the ridge.

Mr. Wolfe Falkberg, 1178 N. Ocean Blvd. addressed the Council stating he agrees with the previous speakers and the zoning should not be changed. He stated he bought his property with the idea of adding a second story because his house is one of the ugly ones built there and he wanted to see the ocean. He stated he lives on the oceanfront but there is a road in front of him with a lot of traffic and he cannot open his windows because of the noise and he cannot see the water because of the hedges or the traffic, and also obviously the assessment and taxes keep going up. He stated he did not buy the house in order to resell it and make money off it, but he wishes to have a nice home, and with this restriction, he will not be able to add the second story.

Charlotte Rosane addressed the Council again indicating she has lived in her house for over 30 years and did not buy her property for resale but to live in. She lives in a one story home and has two story homes on both sides of her which is not a problem. She too would like to add a second story, if and when she can afford it, however, at the rate the taxes are going up, she believed soon no-one will be able to afford it. She wanted to make the point that they are not commercial and she was sorry to hear the statement that everyone who bought in the north end, did so for speculation purposes as that is not a true statement. She stated the houses on the east-west streets will always be lower than the houses built on the ridge and always will be.

Mr. James Nemec asked the Council who started the rezoning process? Mr. Heeke responded this has a long history of over eighteen months, and a moratorium was in place in order to study this area.

Mr. Falkberg addressed the Council once again and commented on the ridge starting in Maine and goes to Key West and he didn't see any reason why they should create this special zoning district.

Short break was taken.

Meeting called back to order by President Heeke.

Mr. Heeke stated they are now in Executive Session which means the Council will be speaking among themselves and relies on staff for any questions they may have.

Mr. Heeke asked Mr. Randolph to discuss the legal issues which were raised by Mr. Nemec. He stated the first one was that this was "spot" zoning. Mr. Randolph responded he does not believe on the basis of information which has been provided by the Planner in regard to the area that this is "spot" zoning, as spot zoning typically deals with an attempt to accommodate a certain use within an area where the characteristics within the general zoning area do not support that particular use they are trying to "spot" zone, so to speak. He felt where there are characteristics of a zoning area to support the use which would be put to that particular district, he did not view that as "spot" zoning.

Mr. Heeke recalled the other issue was the sufficiency of the details in the notice. Mr. Randolph felt the notice was sufficient and quite frankly was more than sufficient. He recalled there was first advertising that these matters would be before the Zoning Commission and in addition to the title being published, people are advised that all of the detail and reports relating to this specific item are on file at Town Hall to look at and they can do that before the Zoning Commission hearings and before the Town Council hearings and then finally will have an opportunity to hear it today and in the future when the Ordinance goes on first and second readings.

Mr. Heeke stated the third question was whether they had the right to make the zoning changes as a matter of law, again invoking police power and the welfare question. Mr. Randolph believed the authority was there but it was a matter of policy for the Council to make a determination as to whether or not the District is differentiated in a way that it could support different zoning characteristics in this particular zone. He recalled two things were mentioned one that the case law says that you can't have different regulations for a small portion of a zoning district and that is correct and that has been stated in the past. He did not believe that was being proposed here as this is a entirely new Zoning District with different regulations, and the Town Council had the authority to do that. He recalled another case cited by Mr. Nemec related to the West Palm Beach case which indicated you can't dictate that because they don't like a second story house next to a one story house and there is a provision which would preclude that. He felt that case didn't say exactly that in those terms but said there weren't specific guidelines within that particular ordinance and that is why that ordinance was thrown out and in this case, he believed they were proposing certain guidelines.

Mr. Heeke recalled they also had provisions for one or two stories instead of prohibiting the second story altogether.

Mrs. Wiener believed she heard him state that unless everything is treated the same way and in this R-BB District, there appeared to be a difference as the chart Mr. Brisson exhibited indicated that properties that were on North Ocean Blvd. were going to be treated slightly differently than the adjoining one, and yet they are in that same R-BB District and asked for a clarification. Mr. Randolph responded that was justified because they are treating everyone in that same district exactly the same and a uniform provision is provided which indicates that this applies to those within the District who are fronting on the Ocean and there is a distinction between those that are not fronting on the Ocean. He stated since it is uniform within the entire District, it could be sustained.

Mrs. Wiener did not know why they had to have that part of the District as there are people being treated differently in the same very small district. Mr. Randolph stated if they could be

carved out of the District, that would be a good way of doing it but he doesn't know if that can be done.

Mayor Marix believed she heard the attorney stating that this is a very clear distinction in the R-BB District, such restrictions do apply to those on North Ocean Boulevard. Mr. Randolph agreed.

Mr. Brisson stated this came up at the Zoning Commission hearings also and the reason it was done in the manner they have it now as it now deals with only properties fronting on North Ocean Blvd., rather than mapping out the properties which do not front on North Ocean was to avoid the combination of lots where there would be a property with no frontage on North Ocean Blvd., but joins with one that has frontage and would then be subject only to the RB regulations or vice versa, so they would be avoiding a change in the ownership pattern which could circumvent the intent of the regulations.

Zoning

Mr. Randolph pointed out there are other examples of distinguishing the premise he stated that they have to treat everyone within the zoning district the same, i. e., if there was a distinction between 10,000 square foot lots and 20,000 square foot lots, they could have a provision that setbacks on 10,000 square foot lots or less should be thus and so and shall be greater for those lots which are larger. He stated there is another distinction that is applicable throughout the zoning district but is different from the zoning regulations which apply throughout the whole area and that would be an analogy to the type of thing he was just explaining to them.

Mrs. Wiener stated her concern is the Town has been here all this time and that ridge has existed all this time and there are older, very large homes in that district area, and she wondered why they were suddenly putting themselves in this position, and this is a change in zoning. She recalled the Zoning Ordinance passed either last year or the year before, there must be four out of five votes or was it five out of five? Mr. Randolph responded all is needed is three-fifths. Mrs. Wiener believed there was a change made that when a zoning district is changed, it required four votes and wondered if this would fall into that category?

Mr. Weinberg believed Mrs. Wiener was stating if it ain't broke, don't fix it.

Mayor Marix believed that nowadays people are actually building to the maximum allowed recalling when the north end was developed, many of the homes were relatively small and the larger ones were extremely limited in that area. She recalled Mr. Nemec's home is large, but he has a lot of land, and most of the houses were almost cottage style, recalling she has lived in that area since 1960 and most of the houses were fairly small, however today because of the problems which are built, so many of the homes being built have been very, big buildings and this is to the serious detriment of their neighbors and that is what is broke and this zoning was meant to fix it, the fact that now some of these homes are big and are seriously affecting the neighbors next to them and they have been extremely badly hurt.

She wished to protect the people who have homes and don't want to be overpowered and overbuilt on.

Mrs. Wiener believed there is a problem between restricting volume or increasing the volume. Mr. Heeke pointed out there were some comments on relying on ARCOM, recalling they have been advised not to consider volume in their deliberations, so he thought they had to bear that in mind, as there isn't the control there that one would think is there. He had another question on the technical issue that he believed Dr. Lilja raised with regards to the measurement from the crown of the road where there might be a conflict with 2.11 where they could go up eighteen inches and the berming and wondered if there was a difficulty there.

Mr. Moore responded that the eighteen inch requirement is for the flooding and that is permissible. Mrs. Douthit asked if that was likely in many places as that is high pitched now and flood control would not be interested as that is always above seven feet. Mr. Moore stated that is not likely although it could occur. He stated eighteen inches is a standard that is used throughout the County to get a floor level which would be above elevation ten to preclude or cut down the chances of a flooding event, rather than building it flush on the ground, but the 18" is fairly standard. Mayor Marix asked if this was even if there was no flooding problem? Mr. Moore stated it would be to preclude a flooding problem. Mayor Marix asked if there was no flooding problem, could they go to the eighteen inches? Mr. Moore stated they could as there is no exclusionary area that would not be subject to potential flooding, in the event of a storm, so 18" is standard throughout the county.

Mr. Weinberg asked Mr. Moore how many vacant lots were vacant in this area and what would his guesstimate be for lots which may be eligible for redevelopment in the future? Mr. Moore responded prior to 1975, the potential for redevelopment would be at any point. He believed there was no vacant lots in this particular area. Mr. Weinberg asked how many homes actually existed in this particular ridge. Mr. Zimmerman responded there are approximately 60 properties in this potential rezoned area.

Mayor Marix advised the Council of the unbelievable size of the Mimun house, and if this is what is going to be built, that is going to be a problem and they shouldn't forget that that does raise the taxes of other people in the area.

Mr. Heeke responded to Mrs. Wiener's question that it will take four affirmative votes on zoning matters.

Mr. Ilyinsky recalled there have been a lot of conversation this morning about the unfair setbacks, the reduction in useable space, etc., and he wished to ask Mr. Brisson if he could tell them exactly what was the difference between what is allowed today and what the proposal would actually be. Mayor Marix believed on the two story, the setbacks in the rear have been increased, which she felt made sense as that is what towers over the adjoining houses. Mr. Brisson responded there was an increase in the sideyard setback when there is a second story. He asked them to bear in mind that if someone wishes to build a first story portion at the 12.5' setback, they still may do that but the second story, would have to add another five feet.

Mr. Brisson assured them they would not have to lose land usage in order to add a second story. He advised another major difference is lot coverage, as the existing in the R-B District is 2500 square foot first floor and a 2000 square foot second floor, or 4500 square feet and within

that if they wanted a garage, they could, but the overall square footage would have to be 4500 square feet.

Mrs. Wiener asked what would it be under the proposed? Mr. Brisson responded it would actually be a total of 4075, 700' could be a garage and the reason they have done this is that in the R-B District, the underbasement garage does count as a story and counts towards Floor Area Ratio (FAR) as most everyone wishes to use this change in elevation on the Ridge to install the garage understorey and they took it out of counting towards FAR. He advised the total amount they could have on a ten thousand foot lot is 4075 square feet, and 700' might be garage and 3375 would be living space, so the difference is a little less than ten per cent.

Mr. Ilyinsky asked what exactly has it done with the height of the house as measured from the crown of the road? Mr. Brisson responded the allowable heights are the same as allowed in the R-B District. He stated the understorey garage can be installed but they can't have two stories and a garage to give the tall looming effect.

Mr. Heeke asked Mr. Brisson if this would still lend itself to different appearances by neighboring houses, if there was a redevelopment, for example, of three houses in a row, would they be restricting those three houses to be ever similar or is there enough flexibility that they could have different architectural styles and appearances? Mr. Brisson responded they are not really changing the architectural flexibility at all except the building envelope will be smaller. He advised they could still have a two story, but it would not be a two story with a 2500 first story and 2500 on the second story, but if they wish to have a box, they could have it, and they could have a L-shaped and varying heights, but the only thing they can't have is as much space on the second story. Mrs. Wiener believed there would be less space, period. Mr. Brisson agreed stating this was the intent.

Mr. Ilyinsky asked how many new houses along this Ridge could not have been built under this proposed zoning asking if the Mimun could have been built? Mr. Moore responded it could not have been built in its present configuration. Mrs. Douthit recalled there has been confusion over that piece of property involving a second lot. Mr. Moore advised that with the second lot, the lot coverage is under what would have been allowed, and the setbacks would have been effected by this proposal. Mrs. Douthit viewed them as being improper to begin with.

Mr. Ilyinsky believed that if this proposed zoning does pass, they have not dramatically changed anyone's right to build a house, to which Mrs. Douthit agreed.

Mayor Marix pointed out that except for the gigantic house which is there, out of the houses that have been built, or renovated or redone in that area, what would this set of regulations have any bearing on the houses built there, except for the Mimun house? Mr. Zimmerman responded the new two story built on the oceanfront south of Mr. Diamond's residence, that could not have been built under these guidelines and they would have had to have a smaller second floor.

Mr. Nemec asked to be heard and Mr. Heeke reminded this session is being restricted to Council questions only as they are in executive session.

Mr. Ilyinsky moved the Zoning Commission's recommendation to approve the proposal as submitted by Adley, Brisson, & Engman as modified in reference to Item One, creating the R-BB District and the regulations containing thereto also be adopted. Seconded by Mrs. Douthit.

Mrs. Wiener recalled this matter came up a year ago and they decided it should be studied and she was opposed to it then as she considers the zoning question in a grey area. She recalled when they talked about what the vote should be to change zoning, there was a lot of discussion on whether it should be unanimous or four affirmative votes, which is an indication of how serious the Council feels changing zoning is in this Town. She believed taking a little now, then later a little more and later yet, a little more, is a problem which they are facing and she is not prepared to open that door on this issue.

Mr. Heeke recalled this is the second time the Zoning Commission has looked into this issue on the size of houses and a moratorium was initiated as the Council was concerned about the overall suggestions that had been made and whether it was sufficient refinement to come before the Council, so it has been something which they have not always agreed upon, but it has been discussed in at least three sessions of the Zoning Commission.

Mayor Marix did not think this was something they were taking lightly as the Zoning Commission are extraordinary well-versed and have gone into this matter in great depth and she viewed all zoning to protect the major interest and she felt they were trying to protect the interest of many people whose properties are being affected by these gigantic structures being built there and if not limited, will continue to get bigger and bigger.

Mrs. Douthit recalled they have all heard the objections from Mr. Nemec and the other citizenry and she counts six people and that is a ten per cent complaint as there are sixty properties in this area, and it only can be assumed not hearing from the others that they have no complaints on the reduction of 425 square feet, possibly overall.

Mr. Heeke felt the restrictions were reasonable and he didn't believe they went too far to put an unreasonable burden on the property owners, that might be of a mind to sell for redevelopment or for whatever purposes, taking into account the properties that abut them and are nearby in the neighborhood and this Council has heard these concerns over the last eighteen months.

Mrs. Peters called the roll and the vote was 4-1 with Mrs. Wiener voting against the motion.

Mr. Nemec addressed the Council stating the figure 475 is wrong as he calculated them as losing 1125 square feet.

Lunch break was taken.

President Heeke called the meeting back to order at 1:30 PM.

Mr. Heeke stated they will start with Item 2, and he read the recommendation: On a vote of 6:0, the Zoning Commission recommends approval as modified by the Zoning Commission of the

proposal, as submitted by Adley, Brisson, Engman to amend Section 5.48, "Special Exception to Height Regulations; Special Exception Structures" to read as follows:

Existing Section 5.48 becomes Subsection I.

I. R-C, R-D(1), R-D(2), C-TS, C-WA, and C-OPI zoning districts. "In order to encourage increased open space, landscaped open space, reduced density...."

II. R-B Zoning District. In order to encourage meritorious architectural design, variety in the setback of structures, increased open space and landscaped open space, reduced lot coverage, and reduced floor area ratio, Town Council may at its discretion, upon review of an application and public hearing thereon, allow for the increase of the maximum building height in the R-B zoning district of the Town provided said special exception meets the standards of Section 5.40 of this Ordinance, and the goals, standards, and guidelines set forth in this Section.

A. The Town Council shall find that:

1. the proposed increase in height for a contemplated special exception structure is in the public interest;

2. The Architectural Commission shall have reviewed the proposed special exception and reported to the Mayor and Town Council that the applicant has given careful attention to architectural excellence, and that the request is meritorious of consideration for a special exception.

3. The structure is compatible with the site, adjacent properties and the neighborhood after consideration of:

a. The general form of the land before and after development or redevelopment;

b. The spatial relationships of the structures and open spaces to nearby land uses, including positioning of the building, transition in height and number of stories, garage placement, landscaping, and other site improvements;

c. The appearance, including building bulk, proportion, scale, massing, materials, colors, and architectural details, of buildings and open spaces as they contribute to the surrounding area; and,

d. The protection of neighboring owners and uses by ensuring that reasonable provision has been made for such matters as surface water drainage, sound and sight buffers, the preservation of views, light and air, and those aspects of design, not adequately covered by other regulations, which may have substantial effects on neighboring land uses

B. R-B Zoning District

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

1. A maximum of fifty (50) percent of the second story may be requested for a special exception permitted overall height requirements. In addition, a minimum of fifty (50) percent of the first floor shall be retained as one-story, height not to exceed twenty (20) feet overall for pitched roofs and seventeen (17) feet overall for flat roofs. [Note: It is not the intent of this Section to discourage other portions of the second story to be built at thirty feet (30) for pitched roofs and twenty-seven (27) for flat roofs, or less, which would permit three (3) or more roof levels.

2. The minimum rear yard setback for all parts of the second story portion of construction shall be fifteen (15) feet. The minimum rear yard setback for first-story portions shall be ten (10) feet.

3. The minimum side yard setback for all parts of the second story portion of construction shall be seventeen and one-half (17.5) feet. The minimum side yard setback for first story portions shall be twelve and one-half (12.5) feet.

4. The minimum front yard, street side yard, and street rear yard setbacks shall be thirty-five (35) feet for the second story portion over thirty (30) feet overall height for pitched roofs and over twenty-seven (27) feet overall height for flat roofs.

5. Lot coverage for lots in excess of fifteen thousand (15,000) square feet in area shall be limited to a maximum twenty-two and one-half (22.5) percent.

6. Garages shall be designed so that the opening will not face a street or shall be sight-screened by landscaping.

7. The maximum permitted Floor Area Ratio (FAR) shall be one (1) percent less than the permitted FAR for the R-B zoning district.

8. All other R-B zoning district regulations shall apply.

Mr. Brisson recalled last year when they reduced the maximum allowable height in the R-B District, they requested they investigate and develop a method of Special Exception which would allow the property owner to achieve the heights that were originally allowed in the R-B District under the previous Ordinance. He stated the first portion is more generalized subjective criteria addressing the need to assure compatibility within the specific geographical area of that property which would be requesting the increase in height. He advised in the second part are detailed criteria, which are trade-offs to the Lot, Yard and Bulk Regulations, which essentially lower the bulk of the structure and increase setbacks.

Zoning

Mr. Brisson advised the Zoning Commission approved the recommendation that was provided to allow the greater flexibility in the R-B District.

Mr. Heeke called for public comments. Mr. Adrian Winterfield addressed the Council stating under A-2, this type of Special Exception would go first to the Architectural Commission, which is a reversal of procedure as at present all Special Exceptions come to the Town Council first, and he viewed this as a strained situation if there was another Special Exception or Variance connected with the same application as it would have to go to Council, then to the ARCOM, and back to Council. He believed the Council could make the initial decision, subject to approval by the ARCOM.

Mr. Winterfield pointed out the extensive language relates only to the R-B District and one would then assume that this would not be available to other districts, which doesn't make sense to him.

Mr. Winterfield commented on a last point, on B-5, he thought it could result in an anomalous calculation as if a lot is 14,500 square feet, they would be entitled to greater coverage than a lot which would be 15,001 square feet.

Mr. Moore stated Mr. Winterfield is correct with regards to B-5, but the question as to whether it would have to go to the ARCOM prior to the Town Council, the discussion at the Zoning Commission centered around the fact that the ARCOM has to make this finding that it is meritorious in consideration of a Special Exception and the Zoning Commission felt those on ARCOM would at least in theory and most of the time, in practice, have a greater knowledge of the design and therefore, it was contemplated that it go to ARCOM first, and then to the Town Council for the Special Exception consideration. Mr. Heeke didn't believe it would have to go back to ARCOM to which Mr. Moore agreed.

Mr. Heeke asked about the example that Mr. Winterfield stated about the 14,500 square foot area that the lot coverage would be greater than that at 15,001 square feet, asking if it were in terms of percentage? Mr. Moore agreed that the cut off of 15,000 was derived from two different areas, one that it would be half again the size of the minimum lot and the minimum lot of 10,000 square feet was the basis used in all calculations on the 25% and 30% lot coverage scenarios which exist today. He felt the reduction in the lot coverage for this consideration was arbitrarily selected as half of what the minimum lot size was and there is no magic to that other than that.

Mr. Ilyinsky asked what the major change was from this and what was now existing. Mr. Moore reported the major consideration is that it is returning the ability of reaching a 35' height of certain portions of the building to encourage different roof and architectural designs, and it is an effort to try and liberalize what was done last year but under the control of a Special Exception.

Motion was made by Mrs. Douthit to approve Item 2 and all of the assorted phases as contained in the recommendations of the Zoning Commission. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Heeke thanked the Zoning Commission for the tremendous amount of work they did and the number of hours devoted to this is sincerely appreciated.

Mr. Heeke referred to Item 3. On a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration, to amend Section 5.51(f) to read as follows:

(f) Dish antennas. A dish antenna shall be an accessory structure and shall be constructed, erected or placed in compliance with all of the provisions of this ordinance applicable to accessory structures and in accordance with the following table:

<u>District</u>	<u>Lot Area Sq. feet</u>	<u>Dish Diameter</u>	<u>Height Above Ground</u>
<u>R-B and R-C</u>	<u>up to 20000</u>	6.5 feet	8 feet
	over 20000	9.8 feet	12 feet
<u>R-A</u>	<u>up to 4000</u>	9.8 feet	12 ft.
	over 4000	9.8 feet	12 ft.
<u>R-AA</u>	any size	12.5 feet	14 ft.
<u>All Other</u>	any size	16.4 feet	18 feet

No dish antenna shall exceed two (2.0) meters in diameter in the R-A and R-B residential zoned districts; no dish antenna shall exceed three and eight tenths (3.8) meters in diameter in the R-AA residential zoned district; and no dish antenna shall exceed five (5.0) meters in diameter in any other zoning district. Only one such antenna may be erected as an accessory structure on any one building lot. Further, an unattached antenna shall not exceed eight (8) feet in height above ground (average grade) in the R-A and R-B residential zoned districts; such antenna shall not exceed fourteen (14) feet in height above ground (average grade) in the R-AA residential zoned district; and such antenna shall not exceed eighteen (18) feet in height above ground (average grade) in any other zoning district. No dish antenna shall be located closer than ten (10) feet to any side or rear lot line. No unattached dish antenna shall be erected in a required front yard, required street side yard or required rear street yard setback area in any zoning district. No dish antennas shall be located on the roofs of or attached to buildings except that a dish antenna not exceeding one (1) meter in diameter may be roof mounted if screened from view.

All dish antennas shall be screened from the public view and from public streets and ways. In any zoning district, no form of lettering, advertising or identification shall be allowed on such antenna or its framework (other than the manufacturer's small identification plate). All such antennas shall be neutral in color and, to the extent possible, compatible with the surrounding neighborhood in appearance and character. (Note: One meter in the metric system of

measurement equals thirty-nine and thirty-seven one hundredths (39.37) inches, or three and twenty-eight one hundredths (3.28 feet).

(Note: Staff will inquire with the dish antenna industries regarding the latest state of the art and the use of metric measurement vs. avoirdupois for the sizing of the dish diameter.)

Zoning

Mr. Moore explained the Council will recall there have been variances before the Mayor and Town Council on this subject in order to give relief on some of the larger properties in the R-B Zoning Districts and they have made contacts with the industry to determine what the state of the art was currently and that is what before them today. He recalled the Zoning Commission did request this be translated from meters into feet, which they have done.

Mrs. Wiener believed the advances made in technology have allowed the dishes to become smaller and smaller, but she didn't believe they seemed to be following that pattern here and are going in the opposite direction. Mr. Moore responded the technology is there but the cost is the major factor and it has not yet become cost effective in the smaller sizes. Mr. Ilyinsky asked if an Ordinance was really needed to control this. Mrs. Douthit reminded all that there has always been an Ordinance to have some control but she doesn't understand the compulsion to have these huge dishes. Mrs. Wiener believed it was possible to have smaller satellites. Mr. Moore responded they are being marketed in Europe but not here.

Mr. Heeke indicated he went to Comcast and talked to them about it and they indicated they too are anticipating smaller dishes and it is important for them to be on top of this as Comcast considers themselves a deliverer, whether it be by cable system or by leasing smaller antennas which might be affixed to a roof. He stated at the present time they are hoping to make more channels available through regular cablevision and they are striving to improve the quality of it. Mrs. Wiener stated this is a commercial entity but what she was talking about was what was before them. Mr. Heeke agreed noting there is an Ordinance which does permit them but with controls.

Dr. Lilja addressed the Council noting the technology is available for smaller antenna, but the problem is in the sky, and it is the transmission tower from the satellites that is restricting.

Mayor Marix asked why this was included on the zoning agenda? Mr. Heeke recalled in the past year there were two large lots and they were limited by the size of the antenna they were allowed to install, and their argument was this regulation should not apply to them as they had large lots and they were willing to dig a hole and put it below the existing height level, but they wanted to have the larger diameter. He recalled the Council did grant the variance. Mayor Marix felt that should be the way to handle it, on a case-by-case basis. She stated her concern about allowing the dishes to be bigger, and she thought it should be handled the way it has been handled in the past.

Mr. Heeke asked if the Council had objection to the antenna on the roof of one meter? Mrs. Douthit felt that was too large, to which Mrs. Wiener agreed.

Mrs. Douthit moved that Item 3 not be approved on the grounds that the size and proportion would be increased and those few exceptions can always come before the Town Council for its consideration. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously to not approve Item 3.

Item 4. Mr. Heeke stated the next item is Item 4 and on a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration and modified by the Zoning Commission, to amend Section 2.10, "Definitions", revising Definition (14) "Dock" to read as follows:

Zoning
Sect. 2.10

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

Mr. Moore reported the Zoning Commission did modify this recommendation and the language changed has been underlined. After discussion, the Council further modified the language to read:

"An unimproved accessory structure built on pilings over the water which is designed or used to provide dockage for and access to one or more boats at the dock."

Mr. Winterfield addressed the Council suggesting the word "mooring" rather than "dockage" and suggested docks be treated as a Special Exception, which will allow notice to the neighbors and the possibility for them to be heard, and additionally, there should be a regulatory section which might require a gate as while most docks do have gates, there are some that have none at all and this would prohibit children from wandering onto the dock and perhaps falling into the water. He was concerned over the broad language of "similar public utility service" and would be surprised if fueling facilities were contemplated on private docks, and to avoid any possible ambiguity, he submitted language be included so there is no doubt that fueling facilities be explicitly prohibited. He thought if they considered the Special Exception approach, implicit in that provision would be the requirement that any changes to the existing docks would require a Special Exception.

Mr. Heeke recalled any fueling would require special permitting to which Mr. Moore agreed. Mayor Marix agreed with Mr. Winterfield's concern about children wandering onto the dock. Mr. Heeke agreed but noted this is a definition of the docks. Mr. Moore stated he could include it in the Zoning calendar for next year. Mr. Ilyinsky asked if this would include properties located along the waterfront? Mr. Moore believed that was the intention. Mayor Marix understood this was only a definition but wondered if davits would make a lot of noise which would be disturbing to the neighbors? Mr. Heeke responded that would be controlled by the nuisance ordinance.

Zoning

Mr. Heeke believed some thought should be given to the Special Exception control and they may want to consider putting that on the Zoning agenda and suggested they talk in the future about whether or not this should be an item for study.

Dr. Lilja asked if there should also be reference to Federal and State Law which prohibits any fueling, even if it is coming from shore and a tank truck. Mr. Randolph believed that could be an item which could be considered with the Special Exception. Mr. Heeke agreed recalling it has been attempted. Mr. Moore recalled someone was asked to leave the public docks because of that.

Mr. Ilyinsky suggested gates also be included in the definition. Mrs. Douthit moved for approval of No. 4, with the modification which would read:

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

Seconded by Mr. Ilyinsky. On roll call the motion carried with four votes as Mrs. Wiener was out of the room at the time of the roll call.

Item 5. Mr. Heeke stated on a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration, to delete sections 5.18 and 5.19 in their entirety and insert a new section 5.18 to read as follows:

Zoning

Sect. 5.18

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

Mr. Moore explained this is a housekeeping matter as 5.18 and 5.19 were slightly in conflict. Mrs. Douthit felt the verbiage here was cumbersome and suggested it be modified somewhat. After discussion, the language was modified in the second last line to read:

"In the event existing grade is at or above minimum flood elevation requirements, then grade shall not be raised higher than eighteen (18) inches above the crown of the abutting street, unless as part of a Building Official approved plan, providing for natural containment of rain water and its percolation on the lot (not man-made unless tied to the storm sewer, if available)."

Mr. Heeke pointed out the last line does end in a preposition. Mr. Moore stated he would look at that.

Motion was made by Mrs. Wiener to approve the Zoning Commission's recommendation on Item #5, with the modification as stated in the second last line. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously for approval.

Sect. 4.20

Item 6. Mr. Heeke advised the Zoning Commission, on a vote of 4:2, the Zoning Commission recommends approval of the proposal, as submitted by Adley, Brisson, Engman and modified by the Zoning Commission, to amend Section 4.20, "A. Schedule of Lot, Yard and Bulk Regulations" as they pertain to the R-B district to reduce maximum floor area ratio (FAR) from 0.45 to 0.35, including basements.

Mr. Brisson advised the Mayor and Council that he agreed with the recommendation of the Zoning Commission. He recalled his original recommendation was to reduce the allowable lot coverage for single story homes as well as the FAR for two story structures, but during the course of the Zoning hearings, there was information forthcoming that the data received from the County used for the single story structures may have been in error. He stated the Zoning Commission did recommend to leave the single story lot coverage as it now exists and he agreed and the fact that the data may or may not have included the garages makes it more appropriate for this recommendation.

Mr. Brisson advised with regards to the two story buildings, it was also related that the information received on the two story structures was asked also from the County, and he has looked at the information compiled by Mr. Zimmerman prepared and that does include the garages and the numbers do not change significantly, so the data used in the survey indicated that the range of FAR for two story structures in the north area of the R-B District ranged from .16 to .35 and that figure changed with Mr. Zimmerman's update from .17 to .36. He recalled he mentioned in his memorandum this was not an exhaustive study of all the residences in the R-B District and concentrated on the northern section of Town. He had noted in previous discussions that in order for this to be adopted, the southern portions of Town should be included, but didn't see anything that would make that totally inappropriate but felt it should be looked at to make sure that the FARs for the balance of the R-B District, outside of the north end of Town, are looked at so there is no problem. He recalled there was a moratorium for the area where it was primarily enacted and it was intended for the northern area of the Town. He advised the numbers that were discussed with Mr. Frank to determine when the survey as undertaken, and it was his job to ensure that a reasonable approach to the survey was undertaken and he did not expect that with the information provided to him that it was necessary to have a significant survey as they were looking for generalized patterns and this is a fairly small pattern. He pointed out that generally that area of Town is characterized by FARs lower than what would be allowed and he felt .035 was a reasonable

number and in fact, there was only one residence surveyed in that particular area that was over that figure.

Zoning

Mr. Winterfield addressed the Council, asking if he was understanding correctly and those properties in the R-BB District which qualify for the 700' basement bonus, will be eligible for a greater FAR than the R-B District? Mr. Moore answered that was correct. Mr. Heeke believed the recommendation to look at the other R-B areas in the Town to ensure they are all being handled equally is a good suggestion.

Dr. Lilja believed he heard at a previous meeting that it was a good idea to get good data from the County records, and since there has been a difference in applying the FAR to the outside walls and the inside walls and in between, that perhaps they should ensure they are going by the same ground rules.

Mrs. Wiener commented when she looks at the recommendations on this, she questioned Mr. Moore as to how many homes there were in the R-B District in the north end? She looked at a figure which included 19 homes as being used to come to an answer on something, she has a problem with that. She felt Adler has put their name on this report and the Town is paying them good money and she was advised that the wrong data is what the Town had given Adler, Brisson and Engman and she is still looking for an explanation and she would like a background on it so she can feel the Town is receiving competent advice.

Mr. Frank reported that when this task was initiated to come up with Floor Area Ratios (FAR), the only way they could do so was to actually go into the microfilmed drawings and measure the square footage of the first and second floor and compare it to the actual lot size, which was a monumental task to perform for the entire R-B District. He stated they started the task by taking some sample sub-divisions and started with the north end. He advised they were unbiased as when they found a subdivision with all the drawings, they took the entire subdivision. He could not recall how many were looked at initially, but perhaps it was four or five in the north end.

Mr. Frank advised when they started to do the mathematics to determine what the actual square footage was in each and every home in the District, in the middle of doing this exercise, they found the County had a data base on this, with a Floor Area Ratio figure and at that time it was decided was to take all of the numbers available to them and compare them to the County's data base to make a determination on how valid it was. He reported it was found the County was making their determination by interior dimensions and in some of the reports, they apparently excluded the garage areas. He found that in each and every case, and they tested one hundred, there was a different FAR from what the County came up with, and the range was around two or three per cent difference. He stated knowing that the County is constantly updating their records, based on Building Permits and what they see as additions, they strongly feel that the Town's data base be used and they are recommending they purchase it for the entire Town and once that is in house, they can do a better analysis of all of the areas in Town, but at this stage of the game, he only feels comfortable with the north end. He recalled Mr. Brisson has looked it further and he is comfortable that it can be carried throughout the R-B District.

Mrs. Wiener asked how she was supposed to know whether these figures submitted are the norm, or high end levels, or low end? Mr. Frank explained they took the best data available and were not discriminatory on how the information was taken, and he found the extremes were very low percentile and most of the information massed toward the middle and he felt this was a fairly accurate test of the data they had, but it is geared towards the north end so there may be some modest discrepancy.

Mr. Ilyinsky moved that the Zoning Commission's recommendation on Item 6 be accepted. Seconded by Mrs. Douthit. On roll call, the motion carried 3-2 with Mr. Weinberg and Mrs. Wiener voting against the motion.

Mrs. Wiener stated she was voting against the motion based on the fact that the outcome may be correct but based on this kind of information, she can't go along with it.

Item 7. Mr. Heeke commented that on a vote of 3:0, the Zoning Commission recommends approval of the proposal, as submitted Adler, Brisson, Engman, to:

A. Amend Section 4.20, "A. Schedule of Lot, Yard and Bulk Regulations", Footnote #23 to read as follows:

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

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

Mr. Brisson explained they had been apprised there were problems with the Code in implementing the angle of vision relative to the cul de sacs and it was recognized that it was best to not have the angle of vision provision apply to the cul de sac lots and their recommendation is to remove that provision to the cul de sac lots. He advised another problem was with the larger lots also as the lots got larger, the Council was being asked for variances to provide a wider building footprint and he believed the provisions regarding this should be more flexible, and to allow, as the lots got larger, up to a certain given number, i. e. 40' in excess of the minimum lot size, to add two per cent to the angle of vision, which would take all these factors into consideration.

Mr. Winterfield addressed the Council asking if this was based on the assumption that all lots are rectangular and they could establish a point in the center of the lot and he could see no reason why there should be a requirement to place the building at dead center, as assuming there is an angle of vision concept, it should not be harmed if one side was sixty degrees and the other side was forty degrees. Mr. Heeke recalled this issue had come up and it was handled at the Council level.

Dr. Lilja addressed the Council suggesting the center point for the angle of vision was put at the middle of the house, it would solve the problem. Mr. Zimmerman did not agree and advised the point does not have to be at the center of the lot and can be at the architect's choice.

Motion was made by Mrs. Wiener to approve the recommendation of the Zoning Commission to adopt Item No. 7. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously to approve.

Item 8. Mr. Heeke noted on a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration, to amend Section 5.47(b) "Number of beach house buildings and setback", to read as follows:

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

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

for each one hundred (100) feet of lot frontage on the Ocean Boulevard, said Beach house structure to shall be set back not less than ten (10) feet from the north property line and shall be set back not less than ten (10) feet from the south property line and shall be set back not less than ten (10) feet from the west property line of said one hundred (100) foot wide lot; and provided, however, that the foregoing restrictions shall not be deemed to apply to jetties or groins or other structures for the protection of the beachfront; and provided further that no such beach house structure or lot shall ever be used for any purpose other than private bathing purposes incidental to the ownership thereof, said use to be an accessory use to the residential building located directly across the street therefrom or within a radius of one thousand five hundred (1500) feet one mile (5280) feet and with unity of title thereof; or such use to be an accessory use for an association of property owners on the adjacent east-west streets and provided further that such beach house structure has been approved as a special exception use in conformance with Section 6.40 of this ordinance.

Mr. Moore advised the Mayor and Council that last year modifications were made to this portion of the Ordinance and they studied further the item of looking at the different districts in relationship to the districts they abut and that is what has been put before the Council. He further advised that some time ago staff had proposed in an effort to tie beach property to the structures in the area, adjacent and across the street, it had been proposed that beach houses be tied to the property across the street and there was much discussion on this matter and the figure of 1500 was proposed as being reasonable for walking or bicycle transportation. He stated under today's ordinances, there may not be any parking at the beach structures although there are some grandfathered in with parking. He advised in an effort to try and accommodate one particular property owner who fell outside of this 1500', staff looked at this again and felt that it was not unreasonable for this figure to be a one mile radius and that was recommended, which the Zoning Commission has approved.

Mrs. Wiener stated she had a conceptual problem here, especially recalling the discussions they had arriving at the 1500' and now they are going to one mile and what bothered her about this was Mr. Moore's presentation was "to accommodate one property owner" as she didn't think they changed zoning to accommodate one property owner, which will impact a lot of other people with being driven to the beach house as there is no parking there. Mr. Heeke and Mrs. Douthit agreed with Mrs. Wiener recalling the idea was this was for the beach houses to be used in a neighborhood. Mayor Marix believed one of the reasons this has come up also is that now when one drives along the oceanfront, there are so many beach houses, that it is not possible to see the ocean. Mr. Heeke recalled that was part of the problem and also if there was not abutting property ownership and the beach houses should be reasonably accessible to the principal place of residences. Mayor Marix asked what they were doing to have a view of the ocean. Mr. Moore recalled the size of the beach houses last year was reduced.

Mrs. Wiener moved that Item 8 as recommended be approved as recommended by the Zoning Commission, except that the change from 1500' to one mile be nullified and the regulation be returned to the 1500' provision. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Item 9. Mr. Heeke explained on a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by Adeley, Brisson, Engman, to amend Section 4.20, "B. Schedule of Use Regulations", item "N" under the Special Exception column of the C-WA district to read as follows:

N. Outdoor Cafe. Outdoor seating in conjunction with permitted restaurants.*

* See Section 6.61

Mr. Brisson reported last year, the Worth Avenue District was discussed and the allowance of outdoor cafes and at that time, they talked about having it in the C-TS and perhaps a definition needs to be developed for an outdoor cafe. He felt it was clear that they already have in the Worth Avenue District the allowance for outdoor seating in conjunction with a permitted restaurant and it was much easier to add the wording to the C-WA District as it was already in the C-TS District and create a new definition for a term that was not defined.

Mrs. Douthit moved for approval of Item 9 as recommended by the Zoning Commission. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Item 10. Mr. Heeke reported that on a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by Adeley, Brisson, Engman, to amend footnote (3) of Section 4.20 to read as follows:

Zoning

With the exception of arcades and colonnades in the C-WA district All buildings shall be set back so as to provide at least a ten-foot wide pedestrian walkway between the street curbline and the building, exclusive of beautification strips, not more than five (5) feet of which may be on the town street right-of-way, where appropriate, and additionally, to provide for the minimum building front yard setback, which shall be measured from the inside (lot side) of said required pedestrian walkway. Where no front yard building setback is provided or required, two (2) feet of the required ten (10) foot wide pedestrian walkway, adjacent to the inside (lot side) of said walkway, may be landscaped by placement of potted plants or removable planters. Such potted plants or planters shall include xeriscape landscaping whenever possible.

Within the C-WA district, arcades or colonnades may be constructed subject to approval as a special exception, over the sidewalks in the required front yard setback, provided they meet the requirement of section 5.33(e).

Mr. Brisson reported this was discussed last year and a modification was proposed to the staff's wording on this amendment and suggested that decorative planting, removal planters and things of this nature be allowed for the inside two feet adjacent to the front of a store or a building, however, things such as potted plants should not be removed, primarily because in the area proposed adjacent to the stores, the two feet is not lost in the event it is ever changed and secondly, they felt it was more in character with the nature of the District, particularly in the C-TS District. President Heeke left the meeting for a short time and handed the gavel to President Pro Tem Weinberg who chaired the meeting until his return. Mrs. Douthitt felt it was a good idea as it will do nothing but enhance the commercial district with lovely plantings and moved for approval of the Zoning Commission's recommendation with regards to Item 10. Seconded by Mr. Ilyinsky. On roll call, the motion carried with four votes with Mr. Heeke being out of the room at the time of the roll call.

Item 11. Mr. Weinberg commented on a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration, to amend Section 5.50, "Accessory buildings and/or structures", subsection 5.51(b) to read as follows:

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

Mr. Moore reported the Zoning Commission recommended approval for this proposal, Item 11, and this matter has been studied this year with regards to the restriction in the R-A and R-AA Zoning Districts with regards to one story accessory structures, providing they were in a setback greater than required.

Mr. Ilyinsky moved for approval of the Zoning Commission's recommendation on Item 11. Seconded by Mrs. Douthitt. On roll call, the motion carried unanimously. (Mr. Heeke had returned to the room and resumed the chairmanship of the meeting).

Item 12. Mr. Heeke indicated that on consecutive votes of 3:3 on motions for approval and denial, the Zoning Commission failed to approve or deny the proposal submitted by the Town Administration to amend Article 7. Planned Unit Development, Sec. 7.20, "Approval" by adding a paragraph to read as follows:

Minor changes to existing PUD agreements may be made by Town Council, after a review by the Building Official, without a prior review and report by the Zoning Commission.

Mr. Moore explained there have been some discussions about whether or not for minor modifications, it could be handled at staff level, recalling the Sloan's Curve request for modification of the landscaping on the west side. He recalled they have already dealt with variances and have allowed the property owners to come to the Council for such things as a side yard variance. He advised that after consultation with the Town Attorney, they have elected to not take these matters to the Zoning Commission first and allow the applicants to come directly to the Council. He recalled it was pointed out to them there was no direct provision for this in the Ordinance to allow this and this was added to the list of items to be studied. He reported the Zoning Commission on a consecutive vote of 3-3 did not approve or deny the recommendation, and Mr. Flower was not able to attend the first Zoning Commission meeting, and therefore there was no tie-breaking vote. He stated he had no problem with the concept of taking everything to the Zoning Commission, even the minor items. He stated staff recommended approval since the Town Council is the final authority on these matters, with or without the recommendation of the Zoning Commission.

Mr. Winterfield addressed the Council suggesting the language "minor in nature" is quite vague and it should have language more specific such as "modification to a landscape plan" then it should be so stated. He suggested that if it was decided the matter need not go before the Zoning Commission, there would be nothing to prohibit the advisory opinion of the Architectural Commission and he viewed it as not the usual procedure in PUD matters for the Council to rule directly.

Mayor Marix agreed with Mr. Winterfield and although she recognizes why they are trying to put this regulation into the Code, she would rather the language be more specific. Mr. Heeke stated he too was concerned about the terminology.

Mr. Moore advised the down side of this matter is that an applicant would have to wait until the Zoning Commission has its yearly hearing. Mr. Heeke stated when the Council is involved in a PUD, it is extremely important and it may lose some significance with minor changes, however, the Town Council would still have the option of sending this to the Zoning Commission, if they so desired to which Mr. Moore responded affirmatively. Mayor Marix stated her concern that a Council may want to rule on it, without sending it to the Zoning Commission and she viewed that as a check and balance system.

Zoning

Motion was made by Mrs. Douthit that Item 12 be sent back to the Zoning Commission for a more careful definition as it seems to be a bit vague. Mr. Randolph advised the Mayor and Council the difficulty that staff would have in coming back with specifics is the fact there are so many things that could be considered as minor. Mr. Heeke believed they could use language "such as but not limited to", and also perhaps build in whether or not the PUD had been fully developed or was in the process. Mr. Randolph was not sure a vote against this in its present form would necessarily be a statement to staff that every single thing would have to go to the Zoning Commission and he didn't see why it couldn't be handled the same way as it has been in the past and then, if the staff is found to be wrong in that the Council didn't consider it to be a minor matter, they could send it to the Zoning Commission.

Motion was made by Mrs. Douthit to deny the Administration's proposal of Item 12. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously for denial.

Sect. 7.10

Item 13. President Heeke noted this item had a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration and modified by the Zoning Commission, to amend Article 7, Planned Unit Development, Section 7.10, "Purpose" by amending the third paragraph to read as follows:

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

Mr. Moore explained in reviewing the language currently under PUD-4, it was discovered there is a benefit there that would not be under the Subdivision Ordinance and staff has offered this recommendation and the Zoning Commission recommended approval.

Motion was made by Mr. Ilyinsky, seconded by Mr. Weinberg to approve the recommendation of the Zoning Commission with regards to Item 13.

Mr. Weinberg asked for a further clarification. Mr. Heeke responded the purpose of this recommendation is to make this section of the PUD compatible with the Sub-Division Ordinance as there is a slight inconsistency in this area between the two.

Mr. Weinberg asked if this would pertain to anything that is now pending? Mr. Moore stated it could not.

On roll call, the motion carried unanimously.

Item 14. President Heeke noted on a vote of 5:1, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration and modified by the Zoning Commission, to amend Article 7, Planned Unit Development, Section 7.436, "Permitted Land Use", by Amending PUD-4 paragraph to read as follows:

PUD-4. Any use permitted in the R-AA large estate residential or R-A estate residential district, townhouses and historically or architecturally significant multi-family structures, provided said uses are developed in conjunction compatibly with an historical or architecturally significant structure or premises.

Mr. Moore noted this has been recommended by staff and modified by the Zoning Commission.

Mrs. Wiener moved that Item 14 as recommended and modified by the Zoning Commission be approved. Seconded by Mr. Weinberg. Motion carried with four votes on roll with Mr. Ilyinsky out of the room at the time the roll call was taken.

Item 15. Mr. Heeke noted there was a vote of 4:2, the Zoning Commission recommends disapproval of a proposal, submitted by the Town Administration, to amend Section 6.21, "Off-Street Parking" by adding a new section 6.21(D)(4) to permit, as a special exception, shared parking in commercial districts by allowing the owner of commercial property with off-street parking located thereon, to provide supplemental parking for commercial uses within 1500 feet.

Sect. 6.21(D)(4)

Mr. Moore explained this matter was brought to the Zoning Commission by staff in an effort to try and deal with some of the parking problems the Town has, specifically that shared parking, for instance, an office building which would not be using the parking after 5 PM, might be permitted to share parking for a restaurant in the area, however, the Zoning Commission felt this may encourage expansion of nonconforming and recommended disapproval.

Mr. Heeke called for public comments and there being none, went into Executive Session and called for Council's comments.

Mayor Marx thought 1500' would be a large area for a person to walk and probably there would be valet parking. Mr. Heeke agreed with the Zoning Commission's disapproval.

Mrs. Wiener commented that this provision is already there and she asked Mr. Moore what they were doing and his response was they were trying to put a few controls in. Mr. Moore advised there is a problem at Bradley's, for instance, and it is not being controlled there. Mrs. Wiener stated they have to get down to what they are really talking about as we know they are doing it and it looks like we are opening this up to allowing people to do more of the same and maybe this will give them a handle. Mr. Heeke asked what kind of control would be gained, for instance at Bradley's? Mr. Moore responded under a Special Exception, they would be able to negotiate conditions, hours, off-duty policemen, things such as that.

Motion was made by Mrs. Wiener for the Town Council to approve the Zoning Commission's recommendation to disapprove Item No. 15. Seconded by Mr. Ilynsky. On roll call, the motion carried 4-1 with Mr. Weinberg voting against the motion.

Zoning

Item 16. President Heeke stated on a vote of 6:0, the Zoning Commission recommends disapproval of a proposal, submitted by the Town Administration, to amend Section 6.21, "Off-Street Parking" by adding a new section 6.21(A.4) to permit, with conditions, reconfiguration of existing off-street parking to allow tandem parking.

Sect. 6.21(A.4)

Mr. Moore pointed out the Zoning Commission disapproved this recommendation also. Mr. Heeke asked if this would be off-street parking to which Mr. Moore responded affirmatively. Mr. Zimmerman explained this would be off-street parking and it would be for existing parking facilities to allow a reconfiguration of the existing parking arrangement that would let there be tandem parking, provided the property owner had a full time attendant on site.

Mr. Heeke called for public comment and there was none and the Council went into Executive Session.

Mrs. Wiener moved the Zoning Commission's recommendation to disapprove be upheld on Item 16. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

Item 17. Mr. Heeke noted there was a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by Adley, Brisson Engman, to amend Section 6.21, "Off-Street Parking, Schedule of Off-Street Parking Requirements", sub-item (6) to read as follows:

Sect. 6.21

USE

(6) Hotels, motels, motor inns, and timesharing uses. Spaces Required Per Unit

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

Mr. Brisson explained it was brought to their attention that perhaps the present parking requirements for hotel were lower than what the actual need would be and this is primarily geared to the fact that if there would be any new hotels proposed for the Town, they would be luxury resort hotels and they conducted a survey of similar types of facilities around the State, and they also looked at the Ocean Grand and the Ritz Carlton in Naples and Manalapan and identified what they were providing and what they considered to be their parking needs.

Mr. Brisson reported their recommendation is to require 1.75 spaces per unit for units with two or fewer rooms and 2.75 spaces per unit for those hotels with more than two rooms with an additional requirement of one parking place for each five seats if there is a conference capacity.

Mr. Heeke called for public comment and there was none.

Mr. Moore pointed out the Breakers has a proposal in their PUD to erect a parking garage in one of the later phases.

Mr. Weinberg asked if this provision would have any effect on the Chesterfield Hotel? Mr. Moore responded the Chesterfield is totally nonconforming now. Mr. Weinberg noted this would not improve the parking for the Chesterfield or the Brazilian as they will continue to remain deficient in what parking they now provide.

Mrs. Douthit moved to approve the recommendation of the Zoning Commission on Item 17. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Item 18. President Heeke advised that on a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration, to amend Section 4.20, "B. Schedule of Use Regulations", to remove item 6, Hotels, and item 12, Time-Sharing Uses from the Special Exception Use column of the C-OPI district.

Sect. 4.20

Mr. Moore advised this is a housekeeping matter and was approved by the Zoning Commission, as they do not feel they need to have this listed as a Special Exception in this district.

Mr. Heeke called for public comment. Mr. Winterfield addressed the Council, noting that he could understand the desire to remove the reference to Time-Sharing but could see no harm in retaining Hotels in C-OPI as a Special Exception, as although it is highly unlikely there will be an application made, but if it were to be made, who is to say such an application would not be of benefit to the Town and the area specifically.

Mr. Heeke announced the Mayor and Council will now go into Executive Session and called for comments. Motion was made by Mrs. Douthit to approve the Zoning Commission's recommendation to approve Item 18. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Item 19. Mr. Heeke noted that on a vote of 6:0, the Zoning Commission recommends disapproval of a proposal, submitted by the Town Administration, to amend footnote 3 of Section 4.20, "B. Schedule of Use Regulations" to expand the Town Council's basis for approval from just item "L" of Section 6.40 to include all items under Section 6.40.

Sect. 4.20

Mr. Brisson recalled this was discussed last year with regards to the review of Special Exceptions and they were required to obtain a new Occupational License and in so doing, they would be revisited by the Town Council with regards to Item L. He recalled these were only Special Exceptions that had been approved prior to 1980 in the Commercial Districts and at that time they were approved if they had given to the Council sufficient evidence that they have met the Town serving requirements of the Special Exception criteria within Section 6.40 and he was asked to look into the possibility of expanding that review by the Council to incorporate all of the other provisions of the Special Exception requirements and after his study, he recommends the Council do not expand the review of the Special Exceptions and the reason is the applicants have given assurances to the Town that they would meet the requirements of Item L and no other Special Exception is re-reviewed, only if some substantive change in the Special Exception occurs,

Zoning

therefore, he believed it would be consistent that they only review these particular roll-over Special Exceptions with regards to the one item to which they were specifically reviewed previously.

Mr. Heeke recalled he was the one who asked this item be studied and felt there was a point being missed as frequently on Special Exceptions if ownership is changed, the Special Exception granted would be for that particular occupant and the Council wants to know who is going in next, and that was the whole purpose that it would automatically come back to Council so they would not overlook advising the applicant they had to come back if there was a change of tenant or ownership as the Council wanted to look at it to make sure it was the same thing that was granted, and that was the purpose, not merely limiting it to the Occupational License as he didn't believe that would reach far enough and another point was that the Council wouldn't forget to make that condition.

Mr. Brisson responded in any future Special Exception, if they would attach that wording, they would be able to review, and the problem he has with this, this provision relates to those they have not put that condition on, previously approved Special Exceptions and at that time it was approved on the basis of this item, and the only thing that is changing is this one item, and otherwise they would be trying to make it retroactive to a condition that was not imposed at that time and he didn't believe it was appropriate to make them come under other items to which other people were not required to be reviewed.

Mayor Marix felt if they were not going retroactive, at least it would cure the problem for the future. Mr. Heeke felt they would also be having ample warning. Mrs. Wiener asked what they could say no to as the Town-serving is the core as everything else has been taken care of by the time they get to the Council. Mr. Heeke thought there was eight items which were looked at under Special Exception review. Mrs. Wiener felt it was all pro-forma except for that one item. Mr. Heeke believed the Town-serving would only be when they went over the 2000 square feet as sometimes there is something lesser, and they may want to put a condition on the Special Exception for the new use and they didn't want to grandfather the Special Exception Use accidentally into that space. Mrs. Wiener recalled normally it would be a Bank or commercial institution or a restaurant, so a new one would go in and she asked what would be asked of them that hasn't been asked of the other applicants, and she believed it was only the Town-serving item if they are doing what they are supposed to be doing.

Mrs. Douthitt felt it was a safeguard so they didn't sell the business to someone who would come in and change the square footage and other items. Mr. Brisson explained this goes to the basis of what the Special Exception is typically as almost always it is granted for the Use and has nothing to do with who owns the property and the reason they are having this discussion is they have instituted the procedure which deals with the ownership and/or the running of that business and that is the 2000 square foot and the Town-serving character and if they didn't have that item in the Zoning Code, he would not recommend that they ever re-review a Special Exception unless there was a modification to that particular use which would be significant as normally the Special Exception goes with the land.

Mr. Heeke responded on Special Exceptions that is what they are trying to stop happening as the Council wants to have an opportunity to make reasonable inquiry and would give them and the public a chance to comment. Mr. Brisson believed that perhaps what they needed to do is not expand this provision but get with the Attorney and alter the very nature of the Special Exception and see whether they actually can have a Special Exception which is to the owner/lessee/and/or operator of the property. He stated they have done it somewhat only because they were able to point out that it could vary and they have been very careful to identify there is a definite possibility in the change of the character of that use by the occupant and have instituted the review. He felt they were moving into a new area as opposed to simply modifying what they need to re-review.

Mayor Marix asked if they could sunset the Special Exceptions, perhaps every five years, or eight or ten years, would that provide the same thing? Mr. Heeke believed that would be alright for those which were granted in the future but could be a problem with those that have been granted.

Mr. Heeke called for public comments. Mr. Winterfield addressed the Council noting Mr. Brisson mispoke as he stated before 1980 and actually it is after 1980. He stated his difficulty he has with this provision is the advantage that this provision allows to the property which is nonconforming because the tenant was there with a particular use prior to 1980 at which time the Special Exception was required. He felt that grandfathering was an excuse for avoiding careful analysis since even looking at the current language, there is a restriction on the use of property. He recalled in the Zoning Ordinance there is a provision that a nonconforming restaurant use may not have the same rights as they had before and by transferring the property to someone who wishes to use the property for retail use, therefore, he believed they already have restricted the rights. He recalled prior to 1980 the owner of a 3000 square foot restaurant could have converted the space to a 3000 square foot retail space without the Council's approval.

Mr. Winterfield believed there was also a question as to whether the user who has the Special Exception which has not been explicitly restricted in its very terms does not have a valid expectancy to transfer as a tenant or an owner to someone else who would maintain the same general commerce without obtaining a Special Exception. He commented that whatever decision is made here, he assumes that if a retail store is granted a Special Exception to operate in excess of 2000 square feet, and wishes to convert to a restaurant, this would require a Special Exception because restaurants are specifically a Special Exception Use in the District.

Mr. Heeke pointed out the Zoning Commission has recommended the disapproval of this recommendation. On motion of Mrs. Wiener the Zoning Commission's recommendation to disapprove Item 19 be approved. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Item 20. President Heeke stated on a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration, to amend Section 4.20, "B. Schedule of Use Regulations", Item 4 under Accessory Uses in the R-A, R-A, R-B and R-C districts and Item 5 under Accessory Uses in the R-D1 and R-D2 districts, by changing the charitable event automatic expiration date from April 30, 1992 to April 30, 1994.

Mr. Heeke pointed out this provision was a two year provision and was to sunset in April of 1992 and it is the recommendation this be approved for another two years. Mr. Heeke called for public comments.

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Zoning

Mr. Winterfield addressed the Council recalling this was passed by the Zoning Commission without any discussion and he suggested this merits discussion because of apparent abuses as there are at least two property owners in the Town who continually have non-residential functions at their properties, some of which are ostensibly identified as a way of not including charitable solicitations, and others very clearly include charitable solicitations and he thought Council needed to make a clear stand on this issue, as there are innumerable functions being held "in honor of" and that seems to be accepted as not being a fund-raiser. He believed these functions were clearly in support of the institution for which the function is organized as there is always press coverage and if there is a Ball, a cocktail party is given in honor of the Chairman of the Committees of the particular Ball and there is press coverage with the telephone numbers listed, he felt it was a substitute for paid publicity, inviting people to subscribe. He stated the practice if no monies are solicited on the premises, it is not really solicitation is nonsense as if there is a benefit to the organization, even if only through free publicity that organization does benefit whether or not the host would be entitled to credit for a charitable contribution through offering his premises for the function may or may not have any relevance, but if Mr. X. has a function in support of the Ball to the extent that the expense of a luncheon at the Breakers is avoided, the institution profits. He felt that before extending this provision for another two year period, they request staff to provide detailed information as to who, when and how many times a private residence has been utilized.

Mr. Heeke indicated they would be going into executive session, noting that a lot of what has been said may be happening, that is an enforcement issue. Mayor Marix knew there were a lot of shady areas here and she didn't know whether the whole thing should be looked at, but it is making fools out of the Council and the regulations. She didn't know if there was an effective way of monitoring what is happening. She wondered if a serious effort was made of finding out who was doing what. Mrs. Douthit felt it was a matter of policing but also they are taking great advantage of the opportunity to hold charitable events in their homes. Mayor Marix believed they also actually did fund raising at the events which they are not calling fund raisers. Mr. Heeke recalled the idea of having a sunset date was to take a look at how it was working. Mr. Weinberg thought perhaps they needed to study whether or not the fund raisers should be limited. Mayor Marix believed it had to be limited. Mr. Weinberg pointed out they are unable to police them now and wondered how they could get more restrictive and maybe this needs to be looked at before the time period is extended. Mr. Heeke agreed. Mrs. Douthit did not think it could be extended as it has been abused. Mayor Marix stated if they don't extend the time, it will mean that no fund raisers can be held in the homes.

Mrs. Wiener recalled this had been discussed at great length last year and it was decided people would be given permission to use their homes for whatever they wanted to use it for, once a year, if they wanted to have a charitable event. She felt the fact of the matter is it is not controllable and more and more it comes to the fore since this provision has been put into the Ordinance that they can use their homes once a year for a charitable event, and she thinks perhaps they were better off by handling it the way they did before by sticking their heads in the sand, except for the few good people who came forward honestly and stated they would like to lend their home to a charitable purpose. She felt the whole thing was not reasonable as who are they protecting from what and why? She stated if she had a large home and wants to hold a party five nights a week, no-one can stop her from doing that but if she happens to attach a good cause to the party, then it is not allowed and that is not reasonable as it doesn't change anything as far as the Town is concerned. She knew there were people who are pleased to give their home whether it is to honor the Chairman of a Ball or whatever, and there is not much that can be done about it.

Mayor Marix knew that was true but we all know there are people who do have these events constantly and it is upsetting to the neighborhood and they are heavily underwritten either by the charity itself or they take it off their taxes, and there are many parts of Town that the neighbors don't want constant, huge parties next door. She believed the size of the functions is what brought this to the Council's attention to begin with, as the neighbors were complaining. Mr. Heeke believed it was very close to being a commercial effort for a charitable purpose as opposed to a residential use of the property.

Mrs. Wiener believed it was brought to a head when there was an auction held at a private residence and that was strictly commercial, and that should be separated as to what is a bona fide charitable event. She didn't believe there was a place for the commercial auction in the residential zones. Mayor Marix asked would this cover the auction which was held for charity? Mrs. Wiener stated she was talking about an auction house showing its commercial goods at a private residence, however on the other hand when there is something held for a charity, she has a problem with denying someone the right to do that. Mr. Heeke suggested it be left go for another year and they look at the problem and see if there is something that can be done. Mayor Marix believed they needed to look at how it can be enforced administratively and study it. Mr. Heeke believed some was legitimate but he didn't know how to sort it out.

Mr. Weinberg moved the recommendation not be approved. There was no second to the motion.

Mr. Ilyinsky then moved that the recommendation No. 20 be approved but the date for sunseting be changed to end in 1993 instead of 1994. Mr. Heeke passed the gavel to Mr. Weinberg to chair the meeting and seconded the motion. On roll call, the motion carried 4-1 with Mr. Weinberg voting against the motion.

Mrs. Douthit suggested all keep a diary on the events held during the next year.

Item 21. Mr. Heeke stated on a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by Adey, Brisson, Engman, to amend Section 4.20, "B. Schedule of Use Regulations", by adding a new item 16 under the Special Exception Use column of the C-TS district to read as follows:

Sect. 4.20

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

Mr. Heeke stated the Council in the past has granted these as variances. Mr. Heeke called for public comment and Mr. Winterfield responded stating this was a band aid to cover past practices as obviously the variance procedure was highly imaginative but irregular, allowing a landlord to pretend that if he weren't allowed the right to rent to a specific tenant, he would be suffering a hardship. He advised the Council that this should be handled by a Special Exception procedure but

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he believed it was too restrictive, requiring there be no entrance to the property from the sidewalk. He suggested if they wanted to have it, they should do so because if there was a property fronting onto the sidewalk and a real estate broker wished to rent it, the broker presumably because of the direct access, there would be no Special Exception and he hoped they wouldn't let them qualify to have it as a Variance. He recommended that if they wished to maintain control, make it a Special Exception but eliminate the provision relative to the direct entrance.

Mr. Moore reported the staff recommends this. Mr. Heeke stated they are encouraging the first floor areas be used for retail. Mr. Weinberg moved for approval of the Zoning Commission's recommendation on Item 21. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Heeke reminded the Mayor and Council he would have to leave the meeting, however, Mr. Weinberg as President Pro Tem could chair the remainder of the meeting, noting there were people in the audience from the Four Arts, who have been sitting there all day to hear Item 24.

Item 22. Mr. Heeke advised on a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by Adley, Brisson, Engman and modified by the Zoning Commission, to:

A. Amend the first paragraph of Section 10.13, "Variances" to read as follows:

(10.13) VARIANCES. Authorize upon appeal such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary and undue hardship. Under no circumstances, except as may be specifically permitted in this section, may a variance be granted to permit a density or use not generally or by special exception permitted in the zoning district involved. Nor may a variance be granted to a provision of this ordinance which expressly or by implication is otherwise prohibited by the terms of this ordinance. A variance may be granted to any other provision of this ordinance. In order to authorize any variance from the terms of this ordinance, the Town Council must and shall find:

B. Amend the last paragraph of Section 10.13 (g) to read as follows:

The Town Council may prescribe a reasonable time within which the action for which the variance is required shall be begun or completed or both. Under no circumstances except as permitted above shall the Town Council grant a variance to permit a use not generally or by special exception permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of this ordinance in the zoning district. No nonconforming use of neighboring lands, structures or buildings in the same zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance.

Mr. Moore advised there have been many occasions as to whether variances may be applied for and considered by the Town Council and Mr. Brisson and Mr. Randolph have been studying this and the Zoning Commission recommended approval with slight modification of the language, but what it is saying if there is a prohibition, there shall be no variance granted.

Mr. Brisson reported they have clarified the language and it is primarily just that of what is already in the Ordinance.

Mr. Heeke called for public comment and Mr. Winterfield responded this was acknowledgement of what Council did in authorizing first floor offices which he viewed as being granted wrongly. He stated Councils have a great deal of authority and there is no control when Council wishes to exercise that authority and he found it was foolish to even attempt to do so.

Mr. Randolph stated he wished to comment on Mr. Brisson's statement and he viewed this as more of a clarification as the Ordinance previously stated they should not use a variance to grant a use, which is otherwise prohibited, and the last part of that section speaks to any use expressly or by implication prohibited by the terms of the Ordinance. He stated the new wording states: "Nor may a variance be granted to a provision of this Ordinance which expressly or by implication is otherwise prohibited by the terms of this Ordinance" and this wording does not use the word "Use", therefore if there is a prohibition on the lighting of tennis courts, for instance, there may have been the right to give a variance to that in the past because that might not necessarily have been a use within a District, but this particular provision states the Council cannot grant a variance to that particular provision.

Mrs. Wiener believed they were getting a lot more restrictive in that they don't know at this point how many things they are saying no to as if you go back to the flag pole situation, the question for a variance on that was not allowed and there may be many other regulations in the Ordinance that say prohibited, and before they put this restriction into the Ordinance, they need to be aware of every single prohibition that is in the Ordinance.

Mr. Brisson stated Mr. Randolph was correct as Mr. Brisson's recommendation was the prohibition for a use and the Zoning Commission changed that. He stated the original intent was to prohibit a variance be granted to a use of this Ordinance not expressly or otherwise been prohibited. He stated the Zoning Commission included the word "provision" where he originally had the word "use" there.

Mr. Heeke left the meeting at 4:10 PM and Mr. Weinberg chaired the meeting.

Mr. Weinberg asked the Council's feeling with regards to the time as they were supposed to adjourn at 4 PM and there are items which may take a lot of time. Mr. Ilyinsky asked what item is the Four Arts matter? Mr. Weinberg noted it is Item 24.

Mrs. Wiener commented there was public notice that this meeting was going to be over at 4 and she would recommend they leave the item they are now discussing and they go to Item 24, as these people have been here on this matter since 9:30 this morning and after that, adjourn the meeting until tomorrow morning. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Item 24. On a vote of 4:1, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration, to amend Section 4.20, "B. Schedule of Use Regulations", by removing item 8, "Nonprofit cultural centers" from R-B district and removing item 7, "Nonprofit cultural centers" from the R-C, RD-1 and RD-2 districts.

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Mr. Moore advised the Zoning Commission did approve this recommendation to remove the non-profit cultural centers from certain districts. He recalled Mr. Grace, the Chairman of the Zoning Commission had written a letter to the Mayor and Town Council on this particular matter:

"At the Zoning Commission Meeting with respect to Item 34, the Commission was not reminded, and possibly the members were unaware of the fact that the north side of Royal Palm Way where the Society of Four Arts is located, is on property zoned R-B, single family. Thus the action of the Commission on Item 24 made the Four Arts a nonconforming use. Since there could easily have been an oversight in this action, it would seem to me appropriate to put their recommendation aside. Sincerely, Robert M. Grace."

Mr. Weinberg called for comments from the public and Mr. Eugene Dixon, President of the Society of the Four Arts addressed the Council indicating he has also sent a letter stating their position and asked that this item not be approved or if they do approve, the Four Arts be exempt from the provision as the Society of Four Arts does have a purchase agreement for the Embassy Apartment Buildings and they hope to utilize the first floor for office space for the Four Arts and rent out apartments on the second and third floors, and they will come back to the Town in the future about what they plan to do with the building, but it is hoped it can be restored to its beauty when it was built in 1936.

Mrs. Douthit made a motion to disapprove Item 24 in favor of the Four Arts and the Embassy Building, as she viewed the Four Arts as a very important part of the community, and she didn't see how this will affect any other part of the Town as all of the neighbors have been very happy being right next door to the Four Arts, therefore her motion to disapprove the recommendation of Item 24.

Mr. Randolph asked if the motion also intended to remove non-profit cultural centers from the other districts, R-C, R-D1 and R-D2? Mrs. Douthit modified her motion to make the disapproval only for the R-B District. Seconded by Mrs. Wiener.

Polly Earl of the Preservation Foundation addressed the Council wanted her remarks to support unequivocally the request from the Society of the Four Arts and the fact that this comes now when they are considering the question of larger non-profit organizations in different areas of the Town, which to her illustrated one of the problems with this proposal, which she tried to address to the Zoning Commission. She recalled Mr. Heeke's comments earlier to look at facts in the future rather than speculate now and what she would like the Council to consider is structuring their concerns about non-profit cultural use in the different zoning districts in a way they could allow themselves to look at facts in the future, rather than speculation now. She stated the history of non-profit cultural use in this Town - the Four Arts and she hoped the Preservation Foundation which has been able to do such things as saving Seagull Cottage, establishing their headquarters in the Earl E. T. Smith Park, and none of these initiatives would be possible if this zoning were passed and suggested the Preservation Foundation and other organizations would be willing to work with the staff and consultants to evolve some more kinds of criteria for these types of Special Exceptions, so the concerns might be alleviated by a process in the future of looking at the facts, rather than speculating now that any non-profit cultural use in these areas is prohibited. She told them in the case of Preservation initiatives, the ability to have a preservation function or other non-profit function in a mixed residential district which might well stabilize a building that may not be a landmark but may be an older single-family nice building which could be a part of a package a developer is trying to put together and create other uses. She thought this may be a stabilizing and low intensity use in that kind of neighborhood but the important thing is not put the blanket prohibition in the zoning, but to put the criteria in the Special Exception section of the Ordinance, so they have a chance to look at the facts.

Mayor Marix asked what was the purpose of doing this as she agreed with Mrs. Earl. Mr. Moore stated this request was put forth by the Zoning Commission as an item to study. He concurs with Mrs. Earl on certain areas of where she is referring and they tried to fill the void of just purely eliminating this type of use, but there were some legal problems, they withdrew that proposal before the Zoning Commission. He felt it was worthy of study for another year and try and come up with more definitive terms.

Mayor Marix asked if the motion would have to be withdrawn. Mrs. Douthit stated she would be happy to change her motion to disapprove Item 24 in its entirety, that would be for all districts, and this be sent back for restudy for next year's zoning calendar. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Meeting was adjourned at 4:28 PM to 9:30 AM on January 7, 1992.

JANUARY 7TH, 1992 at 9:30 AM.

January 7th

President Heeke reconvened the Town Council meeting to hear the recommendations of the Zoning Commission dated December 4, 1991 stating this was a continuation of the meeting of January 6, 1992. On roll call, the following were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Weinberg, Councilman Ilyinsky, Councilwomen Douthit and Wiener. Also in attendance were Mr. Doney, Mr. Moore, Mr. Frank, Mr. Randolph, Mr. Zimmerman, and Mrs. Peters.

Mr. Heeke reviewed the procedures that will be used to hear the remainder of the zoning items.

Mr. Heeke recalled they were on Item 22. Mr. Brisson indicated this relates to a more clear description of what the Town may or may not allow a variance provision within the Ordinance and his recommendation originally was to reword with a little bit more clarification to that provision which is now in the Ordinance which essentially states a variance cannot be allowed for a use or density and he put in language that a variance could be granted for any other provision which is not expressly prohibited from being granted a variance.

Item 22

Zoning

He recalled the Zoning Commission did change the wording to a prohibition of a variance to any provision of the Ordinance which is implied or specifically prohibited, i. e., if the Ordinance states tennis court lighting is prohibited, the Council would not be allowed to issue a variance to that. He stated it really boils down to now is if the Council wishes to prohibit variances being granted for items other than use which are specifically prohibited in the Ordinance, and this is a policy decision as to whether or not they wish to take away the right to grant a variance to all aspects that are prohibited in the Ordinance as opposed to prohibited uses. He stated if they don't agree with the Zoning Commission recommendation, they would change the wording to prohibit the granting of a variance for a use which is expressly or by implication, prohibited, rather than the word "provision".

Mr. Heeke called for public comments. Attorney Doyle Rogers addressed the Council indicating he is speaking as a citizen on this matter as he doesn't represent anyone on this matter, suggesting the Council should retain as much discretionary authority as they can to protect property rights and an example would be the tennis court lighting, and he believed a tennis court and lighting could be installed and it wouldn't bother anyone, for instance on large pieces of property, such as the Phipp's estate in the north end which he believed was 17 acres and perhaps Mar-a-Lago and one of the South Ocean estates where they have in excess of five acres. He believed on acreage which was that extensive, there should be an exception as it couldn't bother any neighbors and it should be up to the discretion of this Council. He urged the Council to give consideration to this matter before they eliminate their authority to hear form the public on this matter.

Attorney Robert Deziel addressed the Council asked what they meant by "density" to which Mr. Brisson referred? Mr. Brisson responded if the Ordinance would limit the maximum allowable density to two-thirds of a unit per acre, the Council could not grant a variance to allow one unit per acre. He stated the reason for this is in essence they would be giving a rezoning for the property. Mr. Deziel recalled variances have been granted in the past and cited as an example if there was a two-family zoning district, the R-C, which allows for a two family structure and now it requires 13,333 square feet and there are some instances where there would be lots of 12,500 or 10,000 square feet and he knows some of the lots are located where they are surrounded on either side by other two-family structures, so there could be a situation where someone could be shy of footage to construct a structure which would be consistent with the surrounding structures and to a certain degree, what this provision is doing is rezoning those properties. He believed a new zoning district would have to be created to allow for the construction of a two family structure on that lot which doesn't meet the requirement of 13,333 square feet, because a variance could not be granted. He viewed this as spot zoning.

Mr. Brisson responded it would not be his opinion that this amendment which would cause that problem as that occurred when the minimum lot size was changed to 13,333 square feet. He recalled that even prior to this amendment, his interpretation was the Council could not allow a duplex on a lot which was smaller in size and would cause the density to be greater than that allowed in the District.

Mr. Brisson believed his statement was only a clarification as he believed that was already the interpretation of this section of the Ordinance, as that is in reality a "Use" and they would be rezoning that property by granting a variance, at least with regard to density, but not with regard to the uses allowed.

Attorney Randolph agreed this provision would prohibit the Council from granting a variance as outlined by Mr. Brisson. He recalled there was much debate as to whether or not granting a variance for density was in fact granting a "use" variance as there are many attorneys who think that cannot be done. He recalled they did allow this to happen before and because they did follow that line of thinking, they felt in order to make a change from the practice they had in the past, they would have to clarify it, if this in indeed what they wanted to do. He didn't believe there would be a problem where someone would have to come in and rezone, but simply build a single family structure on the lot which does not meet the qualifications in that particular area.

Attorney Deziel commented that after he heard this yesterday, he did some research, and under Florida law, in order to get a variance from the 13,333 to 12,500, that would be clearly permissible as it is allowed to be obtained for a square footage or area requirement, which would not allow a different use in a zoning district which would not be normally allowed. He stated if two-family structures are allowed in the R-C District, any variance can be given on the limitation or the required amount of square footage required in that R-C Zoning District for a two family structure. Mr. Randolph agreed and that is why they allowed this to happen in the past, although this provision proposed will change that. Mr. Deziel stated this change would prohibit the Council from making decisions it could normally make under Florida Law.

Mrs. Douthit viewed this as removing all sorts of things from the Council's purview and she was not in favor of it. Mayor Marx asked if they would have a lot of lesser footage, this would stop someone from erecting a house and recalled they have granted these in the past. Mr. Randolph advised this provision would not change that as that would be the only use to be made of that area as a single family residence, however, where there is a single family neighborhood and somebody wants to go up to two dwellings and they have a 7000 foot lot instead of 10,000 foot lot, which would be required, the Council is saying that they have to comply with the single family provisions and a variance could not be given for that.

Mayor Marx thought in a sense they would have the same problem on a second story. Mr. Randolph explained those are regulations and not changes in use. Mayor Marx suggested it should probably be "density of use" as that is probably what they mean. She agreed with the fact that if something is not allowed, one shouldn't give it a variance, and if tennis courts should be lit, which is the example Mr. Rogers used, she thought the reference to tennis courts should be that lights are not permitted and it should be that lights are only permitted under certain circumstances. She thought the things they thought were important enough not to use, they should not be able to grant a variance on them, unless they want to change the laws, however, she thought they should be very careful on what things they say are not allowed, such as tennis court lighting.

Mr. Ilyinsky thought the flag pole on the dock was a classic example, as that actually was not allowed. Mrs. Wiener was sure there were plenty of other things like that which are not allowed and they won't know about them until it comes before them, and she thought the Council should have some flexibility.

Mr. Ilyinsky believed the power to grant or not grant variances is something that the Council should maintain and they may find themselves in a unique situation which it is not possible for them to undo.

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Attorney Deziel again addressed the Council stating he doesn't represent anyone but he thought the recommendation had the potential to create a problem and he didn't think the answer was as Mr. Brisson pointed out to change "use" to "provision".

Mr. Winterfield addressed the Council noting that if they were going to tighten up on variances, he thought they should make a slight change in the wording, as the way it now reads there is not an explicit requirement that a hardship be demonstrated. He stated the reference to hardship is in the introductory language and if it is placed in the list of the findings Council must make before a Variance is granted, then they will tighten up a great deal and it is fair to say that many times when Council makes a decision that an application for variance will be granted, the question of hardship does not come up and without inclusion of the principle of hardship and the specific finding, the whole function of the variance is corrupted.

Mrs. Rose Harwitz recalled in the discussions on the Zoning Commission in the years she served, there was talk that the Commission created the zoning rules and Council abuses them by granting too many variances and it was her thought to be more inclined to leave the authority of the Council as it is and leave it flexible to changing conditions, as despite the discussions on lights or any other specifics, in general, the Council should have the authority as a specific case comes up and there should be confidence in their discussing a specific question instead of having it encased in cement, the rule against giving them that authority.

Mr. Heeke announced they are now in Executive Session and Mrs. Douthit agreed the Council should maintain a flexibility in its decisions and freedom and proper thought and discussions on the individual situation, however, she doesn't want to lose sight of hardship and she moved that Item 22 as recommended by the Zoning Commission be disapproved. Seconded by Mrs. Wiener.

Mayor Marx suggested that perhaps the applicants who are applying for the variances should be made more aware of the fact they will be asked to address hardship. Mr. Heeke believed the application forms might be amended to designate the hardship as one of the criteria.

On roll call, the motion carried unanimously.

Item 23. Mr. Heeke noted on this item there was a vote of 5:0, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration, to amend Section 4.20, "B. Schedule of Use Regulations", by removing item 8, "Museums", from the Special Exception Use column of the R-AA, R-A and R-B districts; and by removing item 10, "Museums", from the R-B district.

Set. 4.20

Mr. Moore requested the Council to disapprove the zoning Commission's actions on these items as they will restudy the use of museums and non-profit cultural centers and bring it back next year with some modifications of different types of uses which might be acceptable and would not be in violation of the Comprehensive Plan and be included in the Zoning Ordinance as Special Exception type uses as they are currently. Mr. Heeke asked if he was recommending approval of the Zoning Commission's action to disapprove 23A and 24A? Mr. Moore agreed. Mr. Heeke indicated he would like them handled individually.

Mr. Heeke called on the public for their comments. Mrs. Earl asked for a clarification and Mr. Randolph responded the recommendation was to disapprove Item 23 and approve the Zoning Commission's recommendations for 23A and 24A which was to disapprove.

Mrs. Earl stated she wanted to repeat some of her comments as Mr. Heeke was not in attendance yesterday when she took some of his words out of context and that was his remark about wanting to be able to judge on facts in the future rather than present speculation and studying this particular question in all of the different zoning issues will produce a much better measure and which would allow good things to happen and in addition, protect the Town where it needs protection.

Mr. Heeke indicated they were now in executive Session and the recommendation from staff is to disapprove Item 23, which was recommended by the Zoning Commission for approval. Mrs. Wiener so moved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously to disapprove.

Item 23A. Mr. Heeke noted this item on a vote of 5:0, the Zoning Commission recommends disapproval of a proposal, submitted by the Town Administration, to remove item G. "Museums and nonprofit cultural centers" from the list of special exception uses in the C-WA district.

Mr. Moore suggested the Council approve the Zoning Commission's recommendation to disapprove. Mr. Weinberg moved the Zoning Commission's recommendation on Item 23 A be approved. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Item 24A. Mr. Heeke noted this item had a vote of 5:0, the Zoning Commission recommends disapproval of a proposal, submitted by the Town Administration, to remove item 4. "Nonprofit cultural centers" from the list of special exception uses in the C-TS district.

C-TS
district

Mr. Moore recommended the Council approve the Zoning Commission's action on this item to disapprove. There were no comments by the public. Mr. Weinberg moved to approve the Zoning Commission's recommendation to disapprove Item 24A. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Item 25. Mr. Heeke noted on this item there was a vote of 5:0, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration, to amend Section 5.17, "Existing Single Family Dwelling Development" to read as follows:

Sect. 5.17

EXISTING SINGLE FAMILY DWELLING DEVELOPMENT: A single family dwelling structure existing in any "R" District at the time of adoption of this ordinance which does not comply with the lot, yard, and bulk regulations for building lots in the "R" District in which it is located may be permitted building additions on the first story provided said building additions shall not increase

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the extent of the particular zoning nonconformity (ies); further, a second floor addition may be added to a nonconforming one-or two-story dwelling provided said building addition meets front, side and rear setback requirements for two-story dwellings and provided said building addition or portion thereof shall not increase the total floor area of such structure to more floor area than could be constructed if such structure were an entirely new structure, and further provided that not more than 50% of the building, as determined by cubic footage, is demolished in preparation for the proposed addition. It is the intent of this section to provide a partial exemption to the prohibition of existing building enlargements contained in the provisions of sections 8.20 and 8.21 of this ordinance.

Mr. Moore advised Item 5.17 was put into the Zoning Ordinance in the seventies as the Council recognized the zoning restrictions become tighter and it has been modified subsequently and is still a tool used to give the single family dwelling some recognition and consideration for the time that it was instituted, however, he has seen an abuse on this, recently at 1070 North Ocean Blvd., where more than 50% of the floor area was demolished leaving a few walls and the use of the house was for all practical purposes demolished. He stated in an effort to further restrict that, the staff and the Zoning Commission recommends in order to preclude that from occurring again, that the 50% issue be determined by cubic footage in the preparation for an addition that no more than that could be demolished which at that point if more were contemplated, the property owner would need to come for a variance for demolition of more than the 50% of a nonconforming structure and he recommended approval.

Mayor Marix stated since cubic footage was her idea, how would it be looked at if a roof were removed, asking if the top story roof were removed, that would destroy the top story's cubic footage to which Mr. Moore agreed. Mr. Ilyinsky asked if they had an attic that would count as cubic footage to which Mr. Moore agreed noting by the length, the width and the height cubic footage is determined and if the top is removed, that would mean more than 50% of a roof was being removed.

Mr. Winterfield addressed the Council noting he would like to confirm that this does not apply when there is no addition, for example if he has a nonconforming house, there would be nothing here to prevent him from gutting it leaving the walls standing and rebuilding the house with the same footprint? Mr. Moore stated that was correct. Mr. Heeke stated if the roof is removed, however, that would have to come to Council.

Mr. Moore advised once the roof is altered more than fifty per cent that would have to come to Council. Mr. Winterfield stated he would be staying within the same footprint and there is no addition and he would be reconstructing with the exact cubic footage and it is not an addition. Mayor Marix stated if she wanted to knock the house down and gut it, it was already not complying with the present zoning and that is where the problem comes in and explained if Mr. Winterfield's house fully complies with the zoning, he could ask to rebuild it. Mr. Moore agreed as long as it is done in conjunction with whatever ordinances are in effect. Mrs. Douthit noted he started out talking about a nonconformity. Mr. Winterfield stated that was so, but he was maintaining the same footprint and the same cube and this would not be adding anything to the size of the present structure. Mayor Marix explained he would be rebuilding with the wrong setbacks and that is what the problem is. Mrs. Douthit noted that he would also be maintaining a nonconformity. Mr. Winterfield responded he is asking the question because the language does not cover the problem and they might want to change the language. Mr. Moore responded the intention is to permit a homeowner who may have a home built in 1950 to be able to redo the inside of that home, by completely gutting it and becomes nonconforming only when there is more than 50% of the roof removed. Mr. Ilyinsky believed it meant to remove 50% of anything. Mr. Moore agreed. Mrs. Wiener pointed out that one could get around it by spending large sums of money, as they can do 25% and then 20% and they can keep at it until it is completed by doing it in stages. Mr. Heeke noted it would not be an economic reality to do it that way. Mrs. Wiener felt it needed to be further thought through as there is a difference between pulling down everything and calling it a redo and pulling down a portion of it.

Mr. Ilyinsky asked what if someone wanted to retain the same footprint of a house to make renovations and he wanted to retain some of the walls and when the plans are brought into the Building Department it is found that he is not increasing the cubic footage. Mr. Moore responded if he would be conforming to today's Zoning Ordinance, he would not have to come to the Town Council. Mr. Heeke asked what was wrong with them coming to the Council as he viewed that as the whole purpose of this, as they could very well still grant the variance, it is just that they don't want them twisting the zoning laws to build an entire new structure. Mr. Moore stated the question is if they are nonconforming, does the Council want to see them as in the past they have been able to skirt around it. Mr. Ilyinsky felt strongly that that procedure needs to be stopped. Mr. Moore informed the Mayor and Council it is his belief that this provision will indeed stop that. Mrs. Wiener agreed that this needs to be stopped, but on the other hand, they have to be sure what they are doing it. Mr. Moore stated if they are talking about phasing it over a period of years, they haven't had a problem with that type of scenario. He indicated if someone wanted to change the roof style, they would not have to come to the Council to do that but would go to the Architectural Commission. He noted this particular item is in contemplation of an addition. He stated there were other parts of the Ordinance to which the rebuilding of nonconforming houses would apply.

Mayor Marix clarified that Mr. Moore stated in looking at an addition, this provision would apply, and she really didn't believe that was they were talking about as at 1070 North Ocean Blvd, if that had been knocked down to the ground and rebuilt without being bigger but the setbacks are wrong, this provision would stop that. Mr. Moore advised they were making an addition as they came for a variance on the height. Mayor Marix commented that was not what she was talking about, as she felt if more than 50% is torn down of the cubic area, they should either comply with the existing zoning or come to the Council for permission. Mr. Heeke noted it was his feeling that was what the whole purpose of this provision. Mayor Marix did not think so as Mr. Moore stated if they were making additions, but if they are not making additions, they still should not be able to tear the whole house down. She understood it would be 50% unless they were complying with the zoning.

Mr. Heeke called for public comments. Mrs. Rose Harwitz addressed the Council, noting she is in favor of the approval in order to have a distinction between reconstruction and an addition because reconstruction can be either. She viewed the purpose of this recommendation was something which had already been before the Council and it was to fill in a possible future repetition of

that type of application and to discourage it, they are putting into the hands of the Council the right of the owner who may be complying with the zoning law. She felt they should approve the recommendation.

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Attorney Deziel pointed out this language does not solve the problem which existed at 1070 North Ocean Blvd., as it not only applies to additions but only to second floor additions.

Mr. Heeke suggested it should state "for any proposed addition" instead of "the proposed addition". Mayor Marix felt it was not handling the problem as one could tear the house down completely and rebuild one just as big with the wrong setbacks. Mrs. Wiener suggested the wording: "renovation and/or additions" to which Mr. Heeke and Mayor Marix agreed.

Attorney Randolph asked what would happen if the house was damaged in a hurricane? Mr. Heeke viewed that as a hardship. Mr. Randolph did not agree as when they come back to rebuild the house, would they have to comply with this recommendation, stating he believed there was a conflict because at 5.17, it refers at the end to 8.20 and 8.21 and the purpose of this is to give an exception to those sections, however, 8.14 talks about regulation of nonconforming uses, which states "any nonconforming use which has less than 50% of its previous existing floor area made unsafe or unusable by lack of maintenance or by deterioration shall not be rebuilt" and in looking at the 1070 N. Ocean Blvd. he looked at this and was surprised to find out they have always referred to "floor area" rather than 50% of the assessed value or cubic footage, so that a nonconforming structure could be destroyed totally, yet 100% of the floor area of the building could remain, and it could be rebuilt in its nonconforming status. He stated if that is their intent, that is fine, but if the intent is if anyone destroys their structure by more than 50% of its assessed value or cubic footage, either voluntarily or by Act of God, that when they rebuild, they should rebuild in a conforming status.

Mr. Randolph believed anything that needed to be added to this would have to go back to the Zoning Commission, but he wished to point out there was an inconsistency.

Mrs. Wiener suggested they take the worse case scenario and there is a hurricane and many homes are destroyed, most of which were built prior to 1970 and this provision is saying those houses cannot be reconstructed the way they were. Mr. Randolph advised that was not the case with the current ordinance. Mrs. Wiener felt it should stay the way it is and it should be based on existing floor area. Mayor Marix asked if they should add unless it was an Act of God? Mr. Heeke did not believe that was necessary as he thought it was covered. Mr. Randolph reported there is a different treatment for nonconforming houses that are destroyed by Acts of God, than for someone that comes in and wants to make an addition.

Mr. Heeke declared the Council is in Executive Session and he believed the recommended language would be: ".....In the event that more than 50% of a building, as determined by cubic footage, is demolished in preparation for any proposed addition or renovation." Mayor Marix asked if that corrected the grammar so they are not only talking about a second story addition? Mr. Heeke suggested the wording: "provided, further". Mr. Randolph asked if he could analyze it and if there was any change which addressed their intent, they will make such change to which Mr. Heeke agreed.

Motion was made by Mrs. Douthit that Item 25 be approved with the changes to end the sentence with structure and begin the next sentence with "provided further" and substituting the word "any" before the word "proposed" and adding the words "or renovation" after the addition, but this would allow the privilege of the Town Attorney to reword this, if they found it to be necessary. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

VII. PUD APPLICATIONS:

Breaker's Hotel - PUD A

PUD APP.

Sloan's Curve - PUD B (acted on earlier in the meeting and postponed to January 14, 1992 Town Council Meeting.)

ADDITIONAL RECOMMENDATIONS OR MOTIONS:

Mr. Heeke noted there were additional recommendations with regards to the Breaker's PUD:

Breaker's PUD

Item 1. On a vote of 5:0, the Zoning Commission recommends that the application as submitted in September, 1991 and revised in November 1991 to amend the Breakers Hotel Planned Unit Development be approved as submitted with the following exceptions:

1. Modification No. 6 as found in Resolution 17-90 dates be changed from 1996-97 on the lease of the Pinewalk to the year 2012 and that all dates be of a tentative nature as submitted under Appendix H to Exhibit 11 of Resolution 10-81.

2. Item E found on Page 5 - which states: "filing for a building permit" be changed to: "issuance of a building permit".

Attorney James Brindell addressed the Council reporting the Flagler System has been focusing on renovations and they wish to continue with that for the next several years, and they came to the Council in June, 1991 to discuss the need for additional time for revised land planning which would attempt to accommodate the Town's request to have the presently approved development at the corner of Coconut Row and Royal Poinciana Way moved; and the development of the trash transfer site moved elsewhere. He commented they have also been talking about the drainage problem where the water collects at the entrance to the hotel on South County. He advised they have come back with the amendments to try and address these various items:

1. Extend the time to conduct the planning and transfer of density from one place on the property to another by 1996-97;
2. Extension of the Transfer Lease until the year 2012, unless they find by 1996-97 that

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Breaker's PUD

is not going to happen and in that event, they would provide that by the end of 1999, the Town would have to find an alternate location;

3. Undertake a long-term drainage improvement program through planning, permitting and construction to be completed by the end of 1996, and in the interim, undertake an interim drainage program to provide relief on a short term basis to the flooding that occurs there when it rains heavily, and this would be to construct a couple of water hazards on the Golf Course, which would commence in July of 1992 and be completed by October, 1992.

He advised there is a certain amount of the drainage which would be Town drainage, and this is now being calculated. He indicated he did have a handout with Exhibit A, which is a time line that shows the task starting in last quarter of 1991, which would be the cost-sharing determination and the long term plan to be completed by the end of 1996. He recalled the whole business of equitable sharing has been recognized for a number of years as part of the whole drainage project under the PUD and they would come back with the apportionment and when that was agreed, they would commence the construction with the Flagler System front ending all of the costs of the interim improvements with a credit back for the long-term improvement for whatever was the Town's proportion.

Mr. Brindell advised the other matters extend the time frames of the various priorities remaining so the system is not forced to have to start spending money to develop other components, while they are renovating the hotel. He stated because of the concern that the Town may get locked into the interim construction costs, without the Town's knowing exactly what the cost was, he has put in language that they can undertake the construction without the formula being approved for the allocation of the costs, as they hope to come back in April or May with the apportionment of those costs. He indicated the Flagler engineers have talked to the South Florida Water Management District and the interim improvements will not require any permits from the District, so their ability to initiate this by July would mean they would have to get only the permitting of the Town.

He indicated the additional language would be under Modification 7, Sub-Part (D) and he distributed a copy of the modification and he requested their approval. Mayor Marix asked Mr. Brindell if he had any idea of what they were talking about with regards to the Town's share? Mr. Moore responded that would be done by Mr. Dusey and the Flagler engineer, Mr. McCarthy and would represent their total cost of the improvements. Mayor Marix asked if they might have a ball park figure as before they agree to share the costs of a drainage system, she would like to have a figure. Mr. Heeke pointed out the Town has already agreed to share these costs, and that is not an issue for discussion today. Mr. Moore asked if the Mayor meant the total costs of the interim or the entire project.

Mr. Brindell explained the long-term has not been figured out as yet, as obviously this would have a lot of features which have not been identified, but they are working on the short-term and the point of the additional language was to assure the Town the Flagler System would not start constructing, thereby come back and committed the Town to something which they don't know the cost of and they will also know, before they start of what the apportionment will be and nothing will move forward until those are agreed upon and he envisioned that happening probably in April.

Mr. Randolph asked if the percentages of the cost proportionment been previously decided to which Attorney Brindell responded negatively.

Mrs. Wiener recalled this was discussed previously and she too had asked the question about what the percentages would be and she felt they needed to have some kind of figure and the Breakers have identified it as something that needs to be addressed. Mr. Heeke felt they had been up-front on the issue. Mr. Moore indicated he has been in discussion with the Kenans, Mr. Brindell and the management at the Breakers and he does understand the Mayor and the Council's concerns, however, they never seem to want to bite the bullet, that is both the Town and the Breakers on this issue and what is before them today will force them to do so as to what the proportionate share will be and what the projected costs will be, and they want to evaluate how the interim solution will function. Mayor Marix noted there is no question about the Breakers being an excellent neighbor, but the matter she brought up is what exactly are they talking about - millions or hundreds of thousands or what? Mr. Brindell responded on the interim, they are probably talking about one, two or three hundreds of thousands, but for the long-term, he has no idea.

Mr. Ilyinsky moved to approve the Zoning Commission's recommendation with regards to the modification to Item 7 D in the Resolution with the inclusion of the additional language provided by the Breaker's attorney. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Item 2. On a vote of 7:0, the Zoning Commission recommends approval of the request for minor modification of PUD Resolution 35-78 as submitted by the Residents of Sloan's Curve, Inc. (homeowner's association). (Acted on earlier in the agenda).

Item 3. On a vote of 7:0, the Zoning Commission recommends disapproval of an application for Tentative Approval of a PUD-4 Historical Preservation Residential Development at 1100 South Ocean Boulevard (Mar-a-Lago).

In addition to the foregoing, the Zoning Commission also recommends that the Staff explore regulations regarding lights on docks and the appropriateness of allowing two-story accessory structures on R-B lots of at least 20,000 square feet. The Commission also authorized the Chairman and Secretary to sign and transmit the Zoning Commission recommendations to the Town Council.

Mr. Moore suggested there was lengthy discussion on the lighting of docks and he would like to study whether this can be regulated by "foot candles" which is a form of lighting and they would like to explore whether or not it can be done administratively, rather than by the zoning ordinance.

PUD Res. 35-78

PUD-4

Mr. Moore noted another issue on the R-B lots of at least 20,000 allowing the two story accessory structures, he believed this could be added to the study items for the Zoning Commission next year, if the Council so wishes. Mr. Ilyinsky moved that the item on two story accessory structures being allowed in R-B lots of at least 20,000 square feet be added to the Zoning Agenda for next year. Mr. Weinberg seconded the motion.

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Mrs. Wiener reminded all that this does cost money when they add these items to the list, and she thinks perhaps in some cases it is unnecessary and perhaps staff could look at it preliminarily and see if there is a way which this could be handled under what is presently in place. Mr. Heeke understood staff wanted to undertake the dock lighting, but are ready to proceed on the 20,000 and that was their request. Mr. Moore believed the dock lighting can probably be handled administratively and this is a policy decision as the Zoning Commission would like to have studied and have a recommendation from staff as to whether or not there should be two story accessory structures in the R-B Zoning District for lots over 20,000 square feet and what Council needs to do is either approve the request or not approve it. Mr. Heeke stated they are speaking about two story garages in those areas. Mrs. Wiener asked what is the purpose of having that? Mr. Moore explained they have just changed the zoning for R-A and R-AA to permit them in those Districts and there are some properties in the R-B District which are in excess of 20,000 square feet which would permit a two story house and an accessory structure would require a variance, but it is difficult to find a hardship to grant this type of variance. He stated it is not a major item.

Mayor Marix asked if they would looking at the possibility that anything under 20,000 would not be included? Mr. Zimmerman explained the reason 20,000 was chosen was that is the minimum lot area in that District. Mr. Heeke agreed there was a certain degree of consistency there and what we are saying is let them look at it, and we don't know what the conclusions will be, or what the Council's will be.

On roll call, the motion carried unanimously.

III. ANY OTHER MATTERS: Mr. Ilyinsky recalled the conversation yesterday about having charitable events in the homes and last evening he received a phone call from someone who has a landmarked house who wishes to open it to the public once a month to show it off. Mr. Weinberg asked if he would be charging for this to which Mr. Ilyinsky responded he did not know. Mrs. Wiener stated it would not be allowed. Mrs. Douthit agreed stating it would really be something like a Museum and that wouldn't be allowed. Mr. Moore stated he would need a Special Exception.

Mr. Moore reminded on January 21, 1992 at 5:01 PM there will be first reading of the Ordinance and the second reading on February 3, 1992 at 5:01 PM.

IV. ADJOURNMENT: Meeting was adjourned at 10:50 AM.

Adjournment

Grace T. Peters, Town Clerk