TOWN COUNCIL MINUTES OF SPECIAL MEETING HELD ON JANUARY 5, 1993

TO HEAR THE REPORT AND RECOMMENDATIONS OF THE ZONING COMMISSION

Roll Call

I. CALL TO ORDER AND ROLL CALL. A special meeting of the Town Council was called to order by President Heeke at 9:30 AM on January 5, 1993 in the Town Hall Council Chambers. On roll call the following elected officials were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Weinberg, Councilwomen Douthit and Wiener and Councilman Ilyinsky. Also attending the meeting were Town Manager Doney, Town Attorney Randolph, Mrs. Peters, Mr. Moore, Mr. Zimmerman, Mr. Frank and Mr. Brisson of Adley, Brisson and Engman.

Pledge of Allegiance

II. INVOCATION AND PLEDGE OF ALLEGIANCE. Invocation was given by Council President Heeke. Pledge of Allegiance was led by President Pro Tem Weinberg.

III. PROOF OF PUBLICATION. Mrs. Peters confirmed the proof of publication has been received.

Approval of Agenda

IV. APPROVAL OF AGENDA. Motion was made by Mr. Ilyinsky to approve the agenda, and seconded by Mr. Weinberg. On roll call, motion carried unanimously.

Procedures for Comments By Gen.Public

V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC. Mr. Heeke said the Council would discuss each agenda item on an item by item basis. He said comments will then be heard from the staff, and consultants, and then comments will be heard from the public. Comments from members of the Zoning Commission will also be heard. Mr. Heeke said the Town Council will then go into executive session, and will reserve the right to question anyone who has spoken.

Admin. Proposals/Recommednations and Report of Zoning Comm.

VI. ADMINISTRATIVE PROPOSALS AND/OR RECOMMENDATIONS (ITEMS 1 THROUGH 21) AND RECEIPT OF THE RECOMMENDATIONS AND REPORT OF THE ZONING COMMISSION DATED DECEMBER 4, 1992.

Mr. Heeke called for a motion to accept the recommendations and reports of the Town Zoning Commission. On motion by Mrs. Wiener, seconded by Mr. Weinberg, on roll call the motion carried unanimously.

DATE: December 4, 1992

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 24, 1992 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. Mr. Martin Richmond was absent for personal reasons.

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.

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 21)

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, deletions are identified by "strikeout" and bold text indicates changes introduced by the Zoning Commission.

Zoning

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 21 as contained in the document entitled "ZONING PROPOSALS, 1992-1993 ZONING HEARINGS" dated November 5, 1992, 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:

Amend Section 4.20

Item 1. On a vote of 5:1, the Zoning Commission recommends approval of Alternative 2, as submitted by Adley, Brisson, Engman to:

Amend Section 4.20, "A. Schedule of Lot, Yard and Bulk Regulations" as they pertain to the R-B district to increase allowable lot coverage for two-story structures from 25% to 30%; and, increase front and side yard setbacks for the second story by five feet over the minimum that would otherwise be required.

Item 2. On a vote of 6:0, the Zoning Commission recommends disapproval of the proposal submitted by the Town Administration, to amend Section 4.20, "B. Schedule of Use Regulations" to add "Boat Docks" as a special exception in the R-AA, R-A, R-B, R-C, R-D(1), R-D(2) and C-PC zoning districts.

Item 3. 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" by amending definition (38.1), "Nonprofit Cultural Center", to read as follows:

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(38.1) NON PROFIT CULTURAL CENTER. An institution for promoting education and the refinement of taste, intellectual and/or aesthetic matters, not including museum or display uses, operated without profit. Limited display of related items may be permitted.

Item 3A. On a vote of 6:0, the Zoning Commission recommends disapproval of the proposal, as submitted by the Town Administration to amend Section 4.20, "B. Schedule of Use Regulations" to add "Nonprofit Cultural Centers" to the list of Special Exception Uses in the R-A and R-AA zoning districts.

Item 3B. 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 4.20, "B. Schedule of Use Regulations", for the R-B district, by amending item No. 8, Nonprofit Cultural Centers, under special exception use column to read as follows:

Nonprofit Cultural Centers occupying buildings of unique value as designated historical landmarks as determined by the Landmarks Preservation Commission and the Town Council, and for which it is demonstrated that no permitted use is economically viable.

Item 3C. 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 4.20, "B. Schedule of Use Regulations" for the R-C district, by amending item No. 7, Nonprofit Cultural Centers, under special exception use column to read as follows:

Nonprofit cultural centers occupying buildings of unique value as designated historical landmarks as determined by the Landmarks Preservation Commission and the Town Council, and for which it is demonstrated that no permitted use is economically viable.

Item 3D. On a vote of 4:2, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration to amend Section 4.20, "B. Schedule of Use Regulations" for the R-D(1) and R-D(2) districts by removing item No. 7, Nonprofit Cultural Centers, from special exception use column.

Item 3E. 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" for the C-PC district by removing item No. 17, Nonprofit Cultural Centers, from the permitted use column and adding Nonprofit Cultural Centers to the special exception use column as item No. M.

Item 3F. 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 4.20, "B. Schedule of Use Regulations" for the C-B district by removing item No. 4, Nonprofit Cultural Centers, from the permitted use column and adding Nonprofit Cultural Centers to the special exception use column as item No. 10.

Item 3G. 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 4.20, "B. Schedule of Use Regulations" for the C-TS district by adding a new item under special exception use column to read as follows:

Museums occupying buildings of unique value as designated historical landmarks as determined by the Landmarks Preservation Commission and the Town Council, and for which it is demonstrated that no permitted use is economically viable.

Item 4. On a vote of 4:2, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration and modified by the Zoning Commission to amend Section 5.50, "Accessory buildings and/or structures," by amending 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 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:

	District	Lot Size	Maximum Story Height	Maximum Building Height
	R-AA	All	2	25 feet
	R-A	All	2	25 feet
****	R-B	Up to 20,000 s.f.	1	15' overall
****	R-B	Over 20,000 s.f.	2	25 feet provided unity of title or deed restriction is furnished prohibiting any division of the lot which would leave less than 20,000 sf.
	R-C	All	2	25 feet
	R-D(1)	All	2	25 feet
	R-D(2)	All	2	25 feet

Paragraphs 1, 2, 3, 4 and 5 remain as is.

**** This is the only change to the regulation

Item 5. On a vote of 6:0, the Zoning Commission recommends disapproval of the proposal, as submitted by the Town Administration to amend Section 5.20, "Height Regulations", by amending subsection 5.21 to allow existing or proposed single family dwellings in the R districts with a partial second floor not exceeding 15% of the first floor area to be deemed a one-story structure for lot coverage purposes only. (redundant if Item No. 1 is approved).

Item 6. On a vote of 6:0, the Zoning Commission recommends disapproval of the proposal, as submitted by the Town Administration, to amend Section 5.36, "Garden Walls and Fences", by amending Section 5.36(a) to allow 6 foot high walls and fences in the front yard and requiring street side landscaping for such walls and fences of more than 4 feet in height.

Item 7. 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 amend item 4 under Accessory Uses in the R-AA, R-A, R-B and R-C districts and item 5 under Accessory Uses in the R-D1 and R-D2 districts, by changing the charitable event automatic expiration date from April 30, 1993 to April 30, 1995.

Item 8. 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 4.20, "B. Schedule of Use Regulations", for R-D(2) district by adding new item #6 under accessory use column to read as follows:

Accessory uses customarily incident to hotels such as, but not limited to, weddings and receptions, service club lunches, daily informational seminars, concerts, entertainment events and newsstands, dining rooms, bars, beauty shops, barber shops and similar personal service uses primarily but not exclusively for the convenience of tenants and their bonafide guests in hotels. Such accessory uses may be advertised in the local media.

* Note: Staff advised that Item No. 5 may need to reflect this addition.

Item 8A. 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", for R-D(1) district by eliminating therefrom item #4 under accessory use column. Renumber item #5 to item #4. Eliminate reference to item #4 contained in new item #4.

Item 8B. On a vote of 6:0, the Zoning Commission recommends disapproval of the proposal, as submitted by the Town Administration to amend Section 4.20, "B. Schedule of Use Regulations", for the R-C district by adding a new item #5 under accessory use column to allow accessory uses customarily incident to hotels.

**** In addition, the Zoning Commission recommends that the Town Council further investigate the level of interpretive enforcement by the staff regarding such uses in existing hotels in the R-C district.

Item 9. On a vote of 4:2, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration to amend Section 6.33, "Signs in Commercial Districts", by amending paragraph (b) to read as follows:

Permitted lettering. Permitted sign shall consist of lettering which specifies the name of the establishment and/or the nature of the business. Use of pictures, symbols etc. shall not be permitted. Symbols and/or logos, not exceeding one (1) square foot in area, may be included in the allowable sign area.

Item 10. On a vote of 6:0, the Zoning Commission recommends approval of the recommendation submitted by Adley, Brisson, Engman, and modified by the Zoning Commission, to amend Section 8.24 to read as follows:

(a) Destruction or Partial Destruction.

When fifty (50) percent or more of the existing floor area of a nonconforming building and/or structure is destroyed by fire or other casualty or Act of God or acts of the owner thereof, such building and/or structure shall not be rebuilt unless rebuilt as a conforming building and/or structure.

In the event that a nonconforming designated landmark, single-family dwelling, public structure, or public/private group use is destroyed by fire or other casualty or Act of God, to the extent of more than fifty (50) percent, as determined by cubic footage prior to its destruction, such designated landmark, single-family dwelling, public structure, or public/private group use may e reconstructed in its original location to its original size and configuration. No other nonconforming building and/or structure so destroyed shall be rebuilt unless rebuilt as a conforming building and/or structure.

Item 11. 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 Section 5.47, "Beach Area", by amending Subsection 5.47 (a)(1) and (a)(2) to read as follows:

(1) For properties within the Beach Area District adjacent to properties in the R-B District: No structure or beach building more than one (1) story (but not to exceed eight (8) feet in height as measured from the natural grade or crown of the road, whichever is less, to the underside of the roof plus four (4) feet in height to the highest point of the roof, twenty (20) feet in width but occupying not more than twenty (20) per cent of the width of the lot, and ten (10) feet in length) shall be constructed on privately owned property lying east of Ocean Boulevard: but this restriction shall not be deemed to apply to jetties or groins, or other structures for the protection of the beachfront; and provided further that in order to preserve a sense of openness, ocean vistas must exist from the front to rear lot lines equal to fifty (50) per cent of the lot width. Within the vista area all structures

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and/or vegetation shall not exceed four (4) feet in height measured above Ocean Boulevard.

No additional walls, fences, hedges or other structures or growth shall be erected or grown eastwardly of the Ocean Boulevard to a height greater than four (4) feet above the surface of the Ocean Boulevard pavement along which such wall, fence or growth is maintained. No parking will be allowed in the beach area district.

(2) For properties within the Beach Area District adjacent to properties in districts other than R-B: No structure or beach house building more than one (1) story (but not to exceed sixteen (16) feet in height to the highest point of the roof, twenty (20) feet in width, and twenty-five (25) feet in length) shall be constructed on privately owned property lying east of Ocean Boulevard: but this restriction shall not be deemed to apply to jetties or groins, or other structures for the protection of the beachfront; and provided further that in order to preserve a sense of openness, ocean vistas must exist from the front to rear lot lines equal to fifty (50) per cent of the lot width. Within the vista area all structures and/or vegetation shall not exceed four (4) feet in height measured above Ocean Boulevard.

No additional walls, fences, hedges or other structures or growth shall be erected or grown eastwardly of the Ocean Boulevard to a height greater than four (4) feet above the surface of the Ocean Boulevard pavement along which such wall, fence or growth is maintained. No parking will be allowed in the beach area district.

Item 12. On a vote of 6:0, the Zoning Commission recommends disapproval of the proposal, as submitted by the Town Administration, to amend Section 8.12, "Conversion of Nonconforming Uses," to replace the term "more restricted nonconforming use" with "more intense nonconforming use". Further, the Zoning Commission recommends deletion of Section 8.12 in its entirety.

Item 13. On a vote of 6:0, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration to amend Section 2.10, "Definitions" by amending definition (11.1), "Building, Height of, Corner Lot," to read as follows:

BUILDING, HEIGHT OF, CORNER LOT. In those cases involving a corner lot as defined in this section, the zero datum for the lot grade set forth in (11) herein above shall be measured from the average elevation (taken at crown of street) height of the grades established for the crown of each of the two (2) intersecting streets at their highest elevation abutting the lot.

Item 14. On a vote of 5:0, with one abstention, the Zoning Commission recommends approval of the proposal, as submitted by Adley, Brisson, Engman to amend Section 5.15 "Lot Area" by adding a new paragraph (c) to read as follows:

Any new single family dwelling or accessory structure in the R-A and R-B zoning districts, constructed on one or more platted lots or unplatted parcel(s), or combinations thereof, involving a land equivalent to, or greater than three (3) times the minimum lot size for the district, shall be subject to an application for special exception with site plan review.

Item 15. On a vote of 6:0, the Zoning Commission recommends disapproval of a proposal, submitted by the Town Administration, to amend Section 5.50 "Accessory buildings and/or Structures," by adding a new paragraph (6) under subsection 5.51 (b) to allow decorative nonhabitable and unenclosed accessory structures, not exceeding 100 square feet in area and 10 feet in height which are screened from view, to be located in required set back areas.

Item 16. On a vote of 6:0, the Zoning Commission recommends approval of a proposal, as submitted by the Town Administration, to amend Section 6.54 "Accessory Commercial Uses in a Hotel", to read as follows:

ACCESSORY COMMERCIAL USES IN A HOTEL. Accessory commercial uses designed primarily but not necessarily exclusively for the convenience of hotel guests or residents may be permitted within hotels in R-D(1) or the R-D(2) district as special exception uses, provided that the Town Council shall make the following findings:

(1) That the proposed special exception uses are in conformance with the provisions of Section 6.40 of this ordinance.

(2) That the proposed special exception uses are and shall be located entirely within the principal building with no outside entrances thereto and there shall be no exterior or external advertising of such use or uses.

(3) That the proposed special exception uses are permitted uses within the C-TS, C-WA, C-OPI or C-PC commercial districts.

(4) That the proposed special exception uses do not occupy more than fifteen (15) per cent of the total floor area of the principal building; provided further, however, that accessory commercial uses legally in existence at the time of passage of this ordinance within hotels located in R-D(1) or the R-D(2) district which occupy more than fifteen (15) per cent of the total floor area may continue, but shall not be expanded or in any way occupy more floor space than occupied at the time of passage of this ordinance.

(5) That the proposed special exception uses meet all other requirements of this ordinance, including but not limited to Sections 6.30, "Signs," and 6.21, "Off-street parking."

Item 17. 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 5.30, "Yard Regulations", by amending subsection 5.31(c) to read as follows:

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In the R zoning districts of the Town an awning, as defined and open trellises located in the side or rear yard which meets meet applicable minimum yard requirements may be erected provided the area of the principal structure and all awnings and open trellises combined does not exceed allowable lot coverage by more than three (3) per cent. It is the intent of this section that Awnings and/or trellises so erected may not in the future be converted to permanent additions to the principal structure if such conversion would increase lot coverage of the principal structure above allowed percentage.

Note: The exemption for retractable awnings in the side and rear yard were deleted by the Zoning Commission.

Item 18. On a vote of 6:0, the Zoning Commission recommends disapproval of the proposal, as submitted by the Town Administration, to amend Section 5.30, "Yard Regulations", by adding a new paragraph (d) under subsection 5.31 allowing, with certain limitations and restrictions, screened outdoor patios, recreation areas, and swimming pools to be exempt from FAR and/or lot coverage regulations when located in the R-B, R-A and R-AA zoning districts.

Item 19. On a vote of 5:1, the Zoning Commission recommends approval of a proposal, as submitted by the Town Administration to amend Section 5.17, EXISTING SINGLE FAMILY DWELLING DEVELOPMENT to read as follows:

A single family dwelling structure existing located in any "R" District, which dwelling is nonconforming with any of the schedule of Lot, Yard and Bulk regulations for the 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 the dwelling it is located, may be permitted building enlarged with first story and/or second story addition(s) provided: (i) the addition(s) complies (comply) with the current schedule of Lot, Yard and Bulk regulations for the district in which the dwelling is located; and (ii) the addition(s) does(do) not cause the dwelling to have more floor area than allowed a new such dwelling under the current schedule of Lot, Yard and Bulk regulations for the district in which the dwelling is located; provided, however, this section 5.17 shall not apply to a dwelling that is demolished by more than fifty percent (50%), additions provided said building additions shall not increase the extent of the particular zoning nonconformity(ies). In the event a second floor addition is added to a nonconforming one or two story dwellings said building addition shall meet front, side and rear setback requirements for two story dwellings and shall not increase the total floor area of such structure to more floor area than could be constructed if such structure were an entirely new structure. In the Event that more than fifty (50) per cent of a building as determined by cubic footage, is demolished, in preparation for any proposed addition, exterior renovation, or exterior reconstruction. then these provisions shall not apply and the entire structure shall be made to conform to existing zoning regulations. It is the intent of this section 5.17 to provide allow a partial exemption to the provisions prohibition of existing building enlargements contained in the provisions of Sections 8.20 and 8.21 of this ordinance.

Item 20. 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 amend Section 2.10, "Definitions", by amending definition (22.1) Floor Area Ratio (FAR) to read as follows:

FLOOR AREA RATIO (FAR). A measure of land use intensity, expressing the mathematical relationship between the floor area of a building, including covered terraces and porches, screened outdoor patios, screened recreation areas and screened pools, but not including awnings and open trellises approved pursuant to Section 5.31(c), and the unit of land. It is arrived at by dividing the gross floor area of all buildings (exterior dimensions) on a lot by the gross area of that lot.

Item 21. On a vote of 5:1, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration, to amend Section 5.36, "Garden Walls and Fences", by amending Section 5.36(c) to read as follows:

Side and rear yards. All garden walls and/or fences located between the side or rear building line and the side or rear lot line shall not exceed six (6) seven (7) feet in height except for a required street side yard of a corner lot and the required rear street yard of a through lot where they shall conform to the provisions of subparagraph (a) above. The height of a wall or fence located in a side or rear yard shall be measured on either side of the wall or fence from the top of the wall or fence and shall not exceed six (6) seven (7) feet in height from the lowest grade elevation opposite such point(s) of measurement. (See Attachment Five for illustration, attached at end of ordinance.)

Agenda Item 10. Property Rezoning Applications.

On a vote of 6:0, the Zoning Commission recommends denial of the proposal submitted by the property owner of 3000 South Ocean Boulevard for a rezoning from RD-1 to C-TS.

Agenda Item 11. Comprehensive Plan Review.

On a vote of 6:0, the Zoning Commission recommends that the Town Council not proceed with the preparation and submission of the small Plan Amendment to the Town's Comprehensive Plan involving a change in the future land use category from Multi-Family High Density to Commercial for the property located at 3000 South Ocean Boulevard.

Agenda Item 12. Landmark Preservation Ordinance Modification.

On a vote of 6:0, the Zoning Commission recommends approval of proposed amendment to the Landmarks Preservation Ordinance with minor modifications. The Town Attorney will revise the proposed ordinance accordingly.

In addition to the foregoing, the Zoning Commission also recommends that the Staff explore recognizing designated landmark structures in those provisions throughout the Zoning Code which

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refer to "historical landmarks." The Commission also authorized the Chairman and Secretary to sign and transmit the Zoning Commission recommendations to the Town Council.

Respectfully submitted,

Alexander Beal, Chairman
Town of Palm Beach
Zoning Commission

Martin Murphy, Secretary
Town of Palm Beach
Zoning Commission

ATTEST:

Grace T. Peters
Town Clerk

Item 1. On a vote of 5:1, the Zoning Commission recommends approval Alternative 2, as submitted by Adley, Brisson, Engman to:

Amend Section 4.20, "A. Schedule of Lot, Yard and Bulk Regulations" as they pertain to the R-B district to increase allowable lot coverage for two-story structures from 25% to 30%; and, increase front and side yard setbacks for the second story by five feet over the minimum that would otherwise be required.

Proposed Revisions

Consider rezoning of certain properties now zoned R-B Low Density Residential district to a proposed new R-BB Low Density Residential district. Area under consideration for rezoning is generally described as all single family residential properties presently located in the R-B zoning district on all streets from Seminole Avenue on the south to Inlet Drive on the north consisting of approximately 1,130 single family properties.

In the alternative, consider modifications to lot coverage and setback regulations for two story structures in the R-B district.

See Adley, Brisson, Engman document.

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Mr. Brisson discussed Item #1, noting the size of structures in the R-B district is more or less a continuation of discussions from last year, and the proposal from last year was to reduce the FAR allowed in the R-B district. He said there was a question of the reliability and validity of the survey which was conducted, and at the request of the Town Council, Adley, Brisson has conducted a complete survey of all structures in the R-B district. He said there are nearly 1,600 structures in the R-B district, and they identified the FAR, single story and two story data in all those structures. He said the information from that survey did indicate that the FAR, primarily in the northern R-B district was considerable lower than what is presently allowed. Mr. Brisson said even if they did reduce the FAR in the R-B district, it would not achieve their goals, and they are not recommending the re-zoning or the reduction of the FAR in the R-B district.

Mr. Brisson showed a graph of a 100 X 100 ft. lot to demonstrate what could be done in the R-B district. He said all the pink area represents the first story of the structure, and any area attached is the portion which includes the second story. He said the existing requirements of the FAR is a .45% ratio which means that on a 10,000 sq. foot lot a 4,500 sq. foot structure may be constructed with a limit of 2,500 sq. feet on the first floor, and 2,000 sq. feet is allowed on the second floor. Mr. Brisson said that under the existing regulations a 4,500 sq. foot structure could be built with 2,500 sq. feet on the first floor, and with the second floor, parallel with the first floor, with a maximum height of 30 feet, the setback of the second story portion would be 1-1/2 feet per each foot of height or a 45 foot setback. He said this is basically the largest building that could be constructed on the 100 X 100 ft. lot.

Mr. Brisson stated a two story structure with the second floor parallel with the first floor, looks like a complete box two stories, 30 feet high when viewed from the side, or from the street, and the only place it's not two stories would be viewed from the back. He said the .45% ratio allows a box approximately 36 feet deep and 70 feet wide. He said the proposal was to reduce the FAR, and reduce the size of the structure so it will look smaller from the street and adjoining properties which was the intent of the FAR. Mr. Brisson said they have found that designers are able to design a building which has a FAR of 4.0. The width of the building is still 70 feet, the depth of the building is still 36 feet, the overall sq. footage is 4,000 sq. feet but more of the building is only one story. He said in effect they have reduced the size of the building to 4,000 sq. feet, but it looks identical when viewed from the front, or from the side as the building which has 4,500 sq. feet.

Mr. Brisson said there is also a proposal to reduce the FAR to 3.5 which would reduce the building to 3,500 sq. feet, but if a designer wished to do so, he could still construct a building which looks as large as the 4,500 sq. feet using an entry of courtyard, and everything is two story all around the perimeter. He said the bulk and size of the building hasn't been reduced simply by reducing the square footage inside the building. Mr. Brisson said the reason this happens is there is an appearance of size and the open courtyard areas do not count towards floor area and lot coverage.

Mr. Brisson said they recommend that the FAR remain at .45, and increase the coverage allowed on single story buildings which could encourage more single story structures. He said if the FAR remains the same, and the first story coverage is increased. The building could be larger on the ground, but if the FAR is kept at 4,500 sq. feet that would mean less square footage on the second story. He said they also propose that if a second story is built or, a structure is higher then 15 feet which is the height allowed on single story structure, the setback would have to be another five feet. He said the purpose of the larger setback is, if the building is setback further, then the structure will appear smaller. Mr. Brisson said what they recommend is, that any portion of the building which exceeds 15 feet must be setback an additional five feet other than what the code calls for. He said he is using the maximum footage so the buildings shown are setback at least 45 feet, but the first story of any building in the R-B district can be as close as 30 feet which is the minimum front yard setback. He said when the second story is added the height plane of 1-1/2

foot per each foot of height is taken, and if the building is the maximum of 30 feet high, the second story must be setback at least 45 feet.

Mr. Brisson said there are three alternatives as to how a structure could be built under the proposed recommendations:

1. The building could be setback 45 feet, and because there is a second story, and the building is 30 foot high the building must have an additional five feet setback. The building could be set back an additional five feet from the front and five feet on the sides. The building has 4,500 square feet, 3,000 on the ground floor and, 1,500 square feet on the second floor, the building looks different but the interior square footage is the same. Mr. Brisson said they are not proposing that the developer be required to setback in the "wedding cake fashion". He said if the developer wishes, he could push the whole building back an extra five feet, and keep a straight flat front two stories high. Mr. Brisson said if someone wishes to build the first and second stories flush, the building could be pushed in another five feet on the sides. He said they are not trying to limit building styles, but to reduce the appearance of size and bulk. Mr. Brisson's recommendation is to allow 30% coverage on the ground floor, allow the same FAR of 4,500 sq. feet on a 10,000 foot lot, but require the additional setback of five feet which can be applied to the base or the first or second story.

2. Mr. Brisson said the second recommendation was made by the Zoning Commission. He said originally the second story would have to be set back the additional five feet, but there is a problem with a building which is supposed to be a one story building but became a two story building by constructing a great room without a floor. That did not become part of the setback so the height requirement of 15 feet was established.

Mr. Moore said after viewing the two alternatives, the Zoning Commission voted 5-1 to accept recommendation number two. He said that recommendation would, in effect modify the schedule of lot, yard and bulk regulations as they pertain to the R-B district to increase allowable lot coverage for two story structures from 25% to 30%, and increase the front and side setbacks for two story structures by five feet over the minimum which would be required. Mr. Moore said if the Council wished to regulate the style of two story buildings, and eliminate the "box style" that would restrict the second floor on two story constructions to no more than 50% of the first floor, with at least a five foot setback for any two story construction beyond what is put on the first floor.

Mr. Moore said there are definitely two sides of this issue. He said one issue is, the neighborhood characteristic is very strong and the objections which have been received by the Staff, are not necessarily objections to the square footage of the house, but the appearance of the structures being built as being to massive, and too close to neighbors. Mr. Moore said he does not believe that the proposal will satisfy all individuals. He doesn't believe it will satisfy the people who want to maintain the neighborhoods at the current level, or the people who wish to have homes which appear to be larger.

Mr. Moore said they did not wish to reduce the allowable square foot coverage, but they have addressed the problem concerning mass and bulk. He said he believed the 30% lot coverage on the first floor is advantageous on the two story structure, and will encourage more diverse second floor construction as far as the design is concerned. Mr. Moore said they have consulted an independent Architect, and in his opinion, the offset type of construction will cost approximately, an additional $10.00 per square foot.

Mr. Moore said the Staff recommends that the alternative of the additional setback be considered rather than the reduction of floor area ratio. Also, if the Council wishes to regulate the style of construction and eliminate the "box", then additional language must be added to what the Zoning Commission has recommended. Mr. Moore said he felt the Zoning Commission has addressed the issue of mass, appearance, and intrusion into the side yards, as well as property owners rights to continue to be able to use the .45% FAR.

Mr. Beal of the Zoning Commission commented that Mr. Brisson has divided the Town into eight sections showing the FAR in each section which he felt would be helpful to the Council in their decision making.

Mr. Brisson said in their survey of the Town they identified seven areas. He said section one and two which is the northern section of Town where 95% of all the homes, and 85% to 86% of all the two story homes have FAR of less than .35, which is less than the .45% now allowed. Mr. Brisson said that even in other parts of Town the FAR is less than what is presently allowed, and it varies from .35% to .40%.

Mr. Brisson said in his opinion the reduction of the FAR would solve the problem of size and bulk. He said they have since found that, while the FAR are smaller they do not achieve the reduction of the visual size and bulk.

Dr. Sten Lilja said he has a difference of opinion with Mr. Brisson. Dr. Lilja said there were two groups involved in the problem of the FAR, and size and bulk.

Dr. Lilja said one group is the residents who maintain that the Town must be preserved, and the other group is Developers, Contractors, Speculators and, to some extent Architects. Dr. Lilja said at the February 1992, session of the Town Council the proposal of .375 FAR had been approved on first reading of the ordinance, but because of so many objections the Council decided to reassess the proposal. Dr. Lilja said there was concern that the figures presented by Mr. Frank were based on too small a sample which was 10%, and the Council voted to send the proposal back to the Zoning Commission to determine if the figures were correct. Dr. Lilja said he did not feel the FAR was the only problem, but was a very important part of solving the problem, and would be a big help to ARCOM in their decisions from case to case.

Dr. Lilja quoted from Mr. Brisson's report which stated: "Findings. The overwhelming number and percentage of residential properties in areas one and two have been constructed at FAR's of .35 or less". He said that sections one and two is not a small area, but is four miles of the northern part of Palm Beach. Dr. Lilja said the report states that in area one, 95% of all homes and 86% of

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all two story homes were constructed at an FAR of .35% or less, and 80% of all single story homes have a coverage factor of .25% or less. He said in area the results are the same. Dr. Lilja said it was his understanding that the survey is based on 90% of the R-B area. He requested that the Council not eliminate the FAR.

Mr. Engelhardt said the issue of the FAR is, that it appears to be the answer to the problem of reducing the large bulk homes being built in an area of smaller homes. He said there are several reasons for someone to build a larger home, other than speculation or resale. Mr. Engelhardt said there are many homes in the R-B district which need to be expanded because families have grown. Some homes were built when residents were in town for short periods of time, and some didn't have heating or air conditioning or other amenities which are typical of full time residents.

Mr. Engelhardt said if you consider a lot of 10,000 square feet, and apply the .45% FAR, it does not fall outside the norms of the size of a home that a typical family would require. He felt it was important to look at the character of a neighborhood as to whether or not the issue of living space is in conflict with the concept of bulk. Mr. Engelhardt urged the Council to consider favorably some of the suggestions which would control the construction of homes which are out of the character of the neighborhood, based on criteria other than the square footage.

Mr. Brody said he was confused about staff recommendations and, asked Mr. Moore to repeat those recommendations. Mr. Moore said the recommendation of the Staff is to accept recommendation number two in Mr. Brisson's report, which would increase lot coverage from 25% to 30% for two story homes, and increase the setbacks from the front and sides by five feet. The problem of the 15 foot high ceiling will be addressed later in the recommendations. Mr. Moore pointed out to the Council that if the recommendations, as Mr. Brisson has pointed out, if a designer or property owner wished, they could create a style of stacked construction, commonly referred to as "the box". Mr. Moore said the setbacks of that box would require the additional five feet. He said Mr. Brisson has recommended that the Town not regulate the style of home construction, but if the Town desires to regulate the style of homes, then additional language would need to be added to Mr. Brisson's recommendation, and that language would be "that no more than 50% of the first floor could be built upon the second floor, and that the setbacks of the second floor must be an additional five feet on the front and sides".

Mr. Moore said if Mr. Brody is asking the staff to recommend the difference between the two styles of construction, that would be a policy decision. Mr. Brody said he agreed that the .45% FAR is really not the issue. He stated there are homes in the area which exceed .45% FAR, and are perfectly acceptable. He said the problem arises when the second floor is the same size as the first floor, and it's this type of design to which the Town objects. Mr. Brody said he felt builders could retain the .45% sq. feet on a 10,000 foot lot, but limit the second floor square footage to 50% of the first floor. He said additional language could be added such as, no vertical plane may exceed 15 feet without an additional setback, and if five feet isn't enough it could be raised to ten feet.

Mr. Jeff Smith said he felt the additional setback of five feet will be a problem with second floor construction. He said this has no roots in any historical architecture, and he felt this would create a bastard kind of architecture in the Town. Mr. Smith said he agreed that when dealing with second story residences they should be allowed additional lot coverage to encourage more first floor construction, and he also agrees with the 50% maximum on the second floor, but he felt the additional setback requirement on second floor construction will only create architectural problems with the style, and aesthetics of the structures. He said he would prefer that the setbacks be left as they are, or be increased for both the first and second floors.

Mr. Deziel, of the Zoning Commission said he was the only person on the Commission who voted no on this proposal. The reasons he voted against the proposal is, one the five foot additional side yard setback which Mr. Smith just addressed, and two is, that probably one of the most attractive houses which has been built in Town in the last five years in the R-B zoning district has a .45% lot coverage, and a side yard garage entry. He said the side yard garage entry was discussed, but when the Zoning Commission considered the proposal, it was rejected. The side yard garage entry has been encouraged by ARCOM for many years. Mr. Deziel said he agrees that to reduce the .45% FAR will not solve the problem. Mr. Deziel stated they are trying to balance homes in the north end, and on Seaspray/Seabreeze which are in the same zoning district, but are two totally different types of homes, and to a certain degree, homes in the north end would not fit in Seaspray/Seabreeze and vice versa. He felt the .45% sq. foot FAR is fine as it is, and he agreed that the first floor lot coverage on a two story home should be increased to 30%, and if the setbacks remain the same, the only place for the house to expand is to the rear. He said the only person who would be affected by that would be the homeowner, and if he wishes to fill up the back yard with home instead of a pool, and it reduces the second story mass then why not let them do it. Mr. Deziel said the house would have the same amount of square footage but the mass would be spread out.

Mr. Deziel suggests that the first floor coverage be 30% for a two story structure. He said most of the one story homes will eventually become two story homes, so why not just start off with them both being 30% coverage. Mr. Deziel said he felt the limit on second story sq. foot coverage should be between 50% and 75% of the square footage of the first floor. He said if a total of 4,500 sq. feet is allowed, and the entire 30% is built on the first floor, that would allow an additional 1,500 sq. feet on the second floor which would be exactly 50% of the square footage of the entire first floor. Mr. Deziel said if the entire 30% is not used on the first floor, he did not feel someone should be penalized because they wish to add more space to bedrooms upstairs as long as they limit themselves to the 45%. Mr. Deziel said this would require a sliding scale, or a fixed number between 50% and 75%. He said one home in Town has a balanced look which is staggered, it has a 15 ft. side yard setback on the side where it's two stories, and it's a very attractive home. He said they need to come up with a limit of square footage allowed on the second floor which is relative to the first floor.

Mr. Deziel suggested that the additional side yard setback requirements for second floor new home construction or the renovation of existing homes be deleted. He said there are two reasons for deleting the setback requirement. One reason is, that it doesn't treat new construction and renovations the same way. He said a lot of work is renovating existing homes, most of which are nonconforming structures, and if there is a 15 ft. sideyard setback for the first floor no variance is needed, but if you go from 12-1/2 feet to a 20 foot setback, a variance will be required. Mr. Deziel said he feels the required five foot setback will develop the "early 1990" style of home in

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Town. Everyone is building two story homes, and they are going to go out as far as they can on the first floor and then they are going to come in five feet. He said this would create a variance nightmare because there are too many homes that have too far to go to comply with this requirement. He isn't saying they shouldn't make things more stringent, but possibly there should be two different criteria, one for renovation and one new construction. Mr. Deziel said he isn't sure what the answer is, and possibly the setback requirement should be studied further, but he feels that the five foot setback requirement will be a variance nightmare.

Mrs. Joanna Frost-Golino from the Architectural Commission addressed the Council and said she is in favor of item number one, and she could understand why the Council wants the FAR to remain at .45% sq. feet. She said part of the responsibility of the ARCOM is to determine how a new or renovated house will fit into an existing neighborhood, and if houses in the north end of Town which basically have FAR of .35 or .30 sq. feet, and new construction is .45 sq. feet there is no way that a .45 sq. foot house is going to fit into that neighborhood with a home of .35 sq. feet or less. Mrs. Frost-Golino said she felt this requirement would put the Architectural Commission in a difficult position because ARCOM would require an applicant to choose which ordinance he will abide by. Mrs. Frost-Golino said she wished to comment on Mr. Deziel's comment regarding placing the bulk of the house in the rear yard. She said ARCOM now requires "streetscapes" so they can determine not only how the house fits in with its next door neighbors, but also how it fits into the house behind. She said there are many examples in Town where developers have put the bulk of the house in the rear and this has created a nightmare for their neighbors, and that is something that should be addressed.

Dr. Lilja said he wished to respond to the comment by Mr. Deziel about the side yard garage entry location. He said he was aware that ARCOM is of the opinion that garage entries should remain in the front. He said if the garage entry is located on the side of the house that would increase the setback requirement on that side of the house to 25 to 30 feet resulting in moving the house to one side of the lot creating an uneven look.

Mr. Deziel said he discussed the side yard garage entry when the Zoning Commission proposed to make the side yards 20 feet on each side, or if the structure is one story the setback would be 15 feet, and five additional feet would be required for two story structures. Mr. Deziel said his question is, what if someone wants their entire facade to be flush? The answer is to bring in both setbacks 20 feet which would result in a 40 foot side yard setback, so if there is a 40 foot set back and you need a minimum of 15 feet on one side, this would leave 25 feet on the other side, and would allow for the side yard entry. Mr. Deziel said he knew Dr. Lilja was concerned because his neighbor keeps his garage door open a great deal of the time. He said a side yard garage entry can be screened out, but a front entry garage can never be screened out. He felt if there was some flexibility in the setbacks it might encourage architects to be more creative. Also, he said the "staggering" design is what makes the homes so attractive in the Town, and it reduces the appearance of bulk.

Mr. Engelhardt felt the lot coverage could be increased beyond the 30%. He said with the concern for water conservation it might be better to increase the lot coverage to 40%, and that may also encourage more people to construct one story homes.

Mayor Marix asked Mr. Brisson if the drawings he presented are to scale. Mr. Brisson answered affirmatively. Mayor Marix asked where is the back yard. Mr. Brisson said in most cases they are pretty much the minimum required for back yards. Mayor Marix asked if they were going to have people asking to be allowed to put pools in their front yards. Mr. Brisson said that wasn't necessarily so. He said the drawing has been prepared for people who want the face of the building to be two stories, but the building can have space anywhere inside the triangle up to the 30 foot setback. He said it is not required that buildings be built in the "box" form or even the square form, and he doesn't expect that most will be. Mayor Marix said that if Mr. Brisson's drawing is to scale, and the setbacks are what is required, there is no way that a back yard is possible. She said in one of the drawings, the proportions look different, and shows a large back yard. Mr. Brisson said that exhibit is not to scale. Mayor Marix said they are neither architects nor members of the Zoning Commission, and she felt it was important for drawings to be to scale. She said according to Mr. Brisson's drawing there is no place for a back yard. Mayor Marix felt it was very important to maintain permeability, and if you build over the entire lot you lose permeability.

Mayor Marix said she agreed that reducing the FAR would not prevent people from building a monstrosity, and she felt the Architectural Commission should be given all the regulations possible to help them control the type of construction which is allowed in Town. She wondered if there could be some combination of the FAR and the lot coverage, for example if the FAR is 3.5 they would be allowed more lot coverage, but if the FAR is 4.0 or whatever, she felt the lot coverage percentage should be lower. Mayor Marix said the cubic footage is something which should be considered because if someone builds a square house with a flat roof it looks very much different than a house with a sloping roof. Mayor Marix felt the cubic footage should be considered, and additional lot coverage be allowed for the lower FAR's.

Mr. Brisson asked the Mayor if she is suggesting that the lot coverage be greater than the 3.0 on the first floor. Mayor Marix said that was correct. She said if someone constructs a one story house, and the extra lot coverage is required to keep the house to one story, she felt additional lot coverage should be allowed rather than keeping the lot coverage at 3.0, and encouraging two story construction to attain additional square footage. Mr. Brisson said according to the FAR, the more square footage that is put on the ground floor, the less square footage is allowed on the second floor. Mayor Marix said that was correct, but she is suggesting that the lot coverage allowed would be larger with low FAR. Mr. Brisson said if the lot coverage is increased that is the FAR. Mayor Marix said she was aware of that, but if the lot coverage is increased it would encourage more first story construction. Mr. Brisson said if you have .45% lot coverage, a second story would not be allowed, and he felt if lot coverage is increased that would eliminate second stories. Mayor Marix said she did not feel second story homes would be eliminated, and she wished to encourage more one story construction.

Mr. Brisson said he doesn't feel lot coverage in excess of .45 is possible. Mayor Marix said if the FAR is higher it encourages second floor construction, and enables people to build bigger houses. Mr. Brisson said if the FAR remains at .45 a 4,500 square foot house can be built. If the first story lot coverage is 30% then 1,500 sq. feet are allowed on the second story. Mayor Marix said suppose a one story house is allowed "X" amount of lot coverage, and a two story house is allowed "X" amount of lot coverage, she is suggesting that the one story construction be allowed

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more lot coverage. Mr. Brisson asked if the Mayor is suggesting that single story construction be allowed 4,500 sq. feet, but two story construction be allowed a total of perhaps 3,000 sq. feet. Mr. Brisson said the fact is, that FAR is lot coverage.

Mayor Marix said that when dealing with two story construction, if the FAR is 3,000 on the first floor and 1,000 on the second floor then that is two different things. Mr. Moore said it is .30% lot coverage and .45% FAR. Mayor Marix said she felt the lot coverage should be increased for one story construction. Mr. Moore said they do that now. He said if the building is a one story structure they are allowed .30% lot coverage, but if the structure is two stories, the allowable lot coverage is .25%. He said that has not proven to be an incentive for the construction of single story structures. Mayor Marix suggested that possibly .30% lot coverage for single story structures is not enough.

Mr. Brisson said that right now the lot coverage is .30% for one story structures and .25% for two story structures, he asked Mayor Marix if she is proposing raising the percentage to .35 for one story structures and .20% for two story structures? Mayor Marix said she felt something like that should be considered. Mr. Brisson said he did not feel that would solve the problem.

Mr. Moore said in early 1980 the lot coverage in R-B districts was .35% for both one and two story structures, and in an effort to encourage one story construction, the Town changed lot coverage to .30 for one story construction, and reduced two story construction to .25%.

Mrs. Wiener said she could see the advantage of encouraging single floor construction, but she felt that by expanding FAR it would be intruding on the green space. She felt that possibly by correcting the wording of the regulations giving specific instructions regarding second story construction, stating that the 50% second story coverage shall not be a strip in the front of the building. She said the problem is not how many rooms a structure has, but the appearance of the structure from the street.

Mrs. Douthit said she was concerned with the height of structures and pushing the building further back from the front. She stated while it helps the neighbors on the sides, and the view from the front, it's a disaster for the person in the rear yard. She said she would support a degree of freedom, but that second floor coverage be a maximum of 50%, which could be used any way the builder chooses.

Mr. Heeke said the side yard appearance may be as much of a problem to a neighbor, if the structure is all on one side of the lot instead of across the front of the building lot.

Mrs. Douthit asked how the proposed amendments to the Zoning Code have been advertised. She said she was not concerned about having to advertise the amendments again if they want to limit the FAR on the second floor structures. Mr. Heeke said he did not think the reduction of lot coverage for second story construction had been advertised. Mr. Moore said that was correct.

Mr. Weinberg said he agreed with a 50% maximum coverage on second story construction, and the number of feet for setback could be determined in the future. Mr. Moore asked if Mr. Weinberg is suggesting that no vertical plane may exceed 15 feet in height without an additional five foot setback, and second story coverage be limited to 50% coverage of the first floor? Mr. Weinberg said second floor coverage should be limited to no more than 50% coverage.

Mrs. Douthit asked if there should be a difference in the regulations for new construction and remodeling, and she is not sure how that question should be addressed. Mr. Heeke said this would be an ongoing process, and possibly that would be something for the Zoning Commission to consider next year. He said he agreed with Mr. Deziel regarding variance problems particularly on renovation. Mr. Heeke stated that when constructing a new house there are decisions to be made, stating for example, if the back yard is an important feature then the .45% angle from the front will become a very important factor as to whether a second story would be allowed, and if so, where?

Mr. Brisson said if someone builds a house as wide and as high as the zoning regulations allow, then that house would have to be pushed back farther, and that would minimize the back yard. He said the builder would need to make adjustments in accordance with the zoning regulations to suit their preference for setback.

Mr. Heeke said he would like to address the question of ARCOM's responsibility of configuration within the existing neighborhood. He wondered if there would be a conflict if the Council adopted alternate two as suggested by Mr. Brisson with Mr. Weinberg's suggestion of 50% maximum second story coverage.

Mr. Brisson said zoning deals with what is allowed in a given zoning district, and attempts to set regulations which are appropriate to that district. He said ARCOM deals with the compatibility of the home in its immediate surroundings. Mr. Brisson said the fact that zoning regulation allows a home to be .45% FAR does not necessarily mean that from the ARCOM's point of view, that home is appropriate for its immediate surroundings. He said it may be appropriate elsewhere in the district, but from an architectural standpoint it would not be appropriate in a particular immediate environment. Mr. Brisson said the ARCOM must operate within its own guidelines, and if the FAR is reduced in areas where larger FAR's may be inappropriate, then that would be setting zoning guidelines based on individual areas. He did not feel the FAR should be reduced because the Architectural Commission has a problem making a decision on whether or not a structure of a larger FAR is inappropriate in a particular environment.

Mr. Randolph asked if the question was whether or not the proposed amendment would make it more difficult for ARCOM? Mr. Heeke answered affirmatively. Mr. Randolph said he felt the proposed amendment would make it easier for ARCOM. He felt the difficulty which exists now in an area where a majority of the homes may be .25 or .30 FAR, and the zoning ordinance allows .45, means the Architectural Commission must decide between the difference in the zoning ordinance and their obligations. He said the zoning ordinance will include a provision that no more than 50% of the house can be built on the second floor, and the change in the setback would also help the ARCOM.

Mr. Moore said the Adley Commission's recommendation would be: a schedule lot yard bulk regulation pertaining to R-B, to increase allowable lot coverage for two story structures from 25% to 30%, and increase the front and side yard setbacks for two story construction by five feet over the minimum which would otherwise be required. The additional clarifying language, subject to Mr.

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Randolph's approval, and any changes made by Council, would be that no vertical plane may exceed 15 feet in height without an additional minimum 5 foot setback, and second floor construction may not exceed 50% of what is on the first floor.

Mayor Marix asked if that meant that the footprint of a two story structure is larger, and if so, why would anyone want to construct a one story home? Mrs. Wiener said she was confused as to how this proposal would encourage single story construction. Mr. Moore said the lot coverage would remain the same for both one and two story construction. Mr. Heeke said the difference is the proposal by Mr. Weinberg that second story coverage be limited to 50% of the first floor, and if the vertical plane exceeds 15 feet that would require an additional five foot setback.

Mayor Marix said she agreed with the proposed changes except for the lot coverage. She did not feel that a two story house should be allowed the same lot coverage as a one story house. Mr. Moore said the difference between the 25% lot coverage for two story construction vs. 30% for single story construction which has not encouraged construction of one story structures.

Mr. Moore said if the Council wished to encourage single story construction, they might want to consider increasing the lot coverage for one story construction from 30% to 35%. Mayor Marix asked why is the lot coverage being increased for two story construction? Mr. Moore said that is because a 45% FAR is allowed. He said a house with 4,500 sq. feet can be constructed, but they are trying to reduce the appearance of bulk by regulating the height, mass, and setback. Mayor Marix said that all lots are not 10,000 sq. feet, and if a person really wanted to, he could construct the 4,500 sq. feet somewhere. Mr. Moore said he was aware of that, but they must deal with the minimums.

Mr. Heeke suggested they retain the 25% and 30% lot coverage for one and two story houses, but adopt the balance of the Adley proposal. Mr. Brisson said if the lot coverage remains the same at .45% FAR, and without making any changes in what is allowed on the first and second stories, a 4,500 sq. foot building could be built on a 10,000 sq. foot lot. He said that would allow 2,500 sq. feet on the first floor (25% coverage), and 2,000 on the second floor. Mr. Brisson said there is no problem with keeping the existing lot coverage, as the only thing it does is force more of the space which is allowed under the FAR, to be placed on the second floor. Mr. Brisson said that as a planner, he has a problem with limiting the amount of space allowed on the second floor. He said assuming that the lot coverage on the first floor is 30%, as the regulation exists now, the most you could build on the first floor is 50%, but if the first floor is limited to 50% with the intent of preventing a "box" then that would prevent any construction of a "box" any where on the site at any setback of any size. Mr. Brisson said that does not solve the problem of visual appeal, and the Council proposes to prohibit the construction of a 1,000 sq. foot box with a 70 foot setback, which would make the house appear much smaller than if the setback is closer. He said they have gotten away from visual mass and bulk which is what zoning deals with, and gotten into style. He said he did not believe zoning could be used to eliminate the "box" because the size of the box is not the question at this time, and what the Council is suggesting is, that no building may have a flush face two stories tall no matter where it's located on the lot or how big the structure is. He said what they have been trying to stop is big and tall, not just vertical and flush, and as soon as the amount of space is limited on the second floor, and a smaller building is constructed, there is no justification for requiring that the second floor be smaller. Mr. Brisson said when the additional five foot setback is prohibited, and the entire building must be pushed back, that would indicate that the focus has been transferred from mass, and bulk to flush, and square. He said zoning is not a good tool for regulating design, but should be used for stopping size, visual appearance, and bulk and mass.

Mr. Heeke said they are working with an ordinance which dates back a number of years. He said it is impossible for the Council to answer every question at one sitting, and what they decide today, probably will need to be looked at again in the future. He said what they should look at today is what is the best answer right now.

Mayor Marix asked what if they went ahead as they had discussed previously, and did not change the 50% coverage allowed on the second floor, the worst thing that could happen is that on a 100 X 100 foot lot its very likely that a 4,500 sq. foot structure could not be built. Mr. Moore said when regulations are enacted they must be achievable. He said if the regulations are not achievable on a minimum size lot, then it would need to be dealt with in a different fashion. Mayor Marix said that would mean going back into the FAR again. Mr. Moore said he would like to go back to the comments about ARCOM vs. Zoning. He said that zoning is a form of land use and in deciding what the land use will be, then regulations are put in place. Mr. Moore said that unless those regulations are achievable they are meaningless. Mr. Moore said in trying to achieve a goal of character and style of a neighborhood as a whole, for instance the north end of Town from Wells road north, the alternative to what the Zoning Commission has recommended with some modifications is what is being presented to the Council today, and recognizing that nothing is perfect, these recommendations are intended to regulate a general area or macro. ARCOM regulates an area within 200 feet as defined in their ordinance as a neighborhood, and that is a micro. He said ARCOM should be allowed to do its job in a micro area and zoning should do its job in the macro area.

Mr. Heeke said there are two issues with Mr. Weinberg's suggestion. One is the maximum of 50% second story coverage. He said if there is no disagreement on that issue, then they could address the issue of whether or not any vertical plane exceeding a height of 15 feet must have an additional five foot setback to prevent the appearance of a "box".

Mrs. Douthit said she had a problem with regulating new construction and renovation under the same rule. She felt the two should be separated. She said new construction should be allowed 50% second floor coverage, but if homes are renovated and a second floor is added maybe that should be a percentage of the first floor, something like 33% or 40%. She said approximately 90 percent of existing homes are well under the current .45% FAR, it would be impossible for existing homes to bring in the side yard setbacks to be in compliance with the current zoning regulations. Mr. Heeke said a variance may be necessary for those renovations.

Mr. Moore said that since the inception of Ordinance No. 2-74 zoning has become more restrictive through the years, and the Council has handled those restrictions through variances.

Mr. Randolph said there may be a problem with advertising the ordinance. He said if something is less restrictive than the Town has advertised, there is no problem with going forward in making that modification. He said the restriction of no more than 50% of the total square footage may be

on the second floor, may be more restrictive than what has been advertised. He said the ordinance can be advertised again if necessary.

Mr. Moore said two advertisements would be needed prior to the upcoming 5:01 PM meetings scheduled for January 26th and February 8th.

Mrs. Douthit said she would like to make a motion. Mr. Heeke asked Mr. Moore if he could give them the proper language for a motion.

Mr. Brisson said the motion should be: "Maximum coverage in the R-B District would remain at 30%, that the second floor of the structure shall not exceed 50% of the square footage of the first floor, and there shall be an additional five (5) foot setback from the front, and sides of the building for any portion of the building exceeding 15 feet in height". Motion was seconded by Mrs. Wiener. On roll call the motion carried unanimously.

Item 2. On a vote of 6:0, the Zoning Commission recommends disapproval of the proposal submitted by the Town Administration, to amend Section 4.20, "B. Schedule of Use Regulations" to add "Boat Docks" as a special exception in the R-AA, R-A, R-B, R-C, R-D(1), R-D(2) and C-PC zoning districts.

Mr. Moore said there has been several discussions regarding boat docks, and in fact the ordinance was modified last year on the definition of boat docks in order to accommodate some of the accessory uses. He said this item was added to this years study as an alternative to inspecting every dock, which the Zoning Commission felt was unnecessary and the Staff recommends disapproval.

Mrs. Douthit made a motion to approve the recommendation of the Zoning Commission on Item 2. Seconded by Mr. Weinberg, and on roll call the motion carried unanimously.

Zoning
Amend Sect.
2.10

Item 3. 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" by amending definition (38.1), "Nonprofit Cultural Center", to read as follows:

(1) NONPROFIT CULTURAL CENTER. An institution for promoting education and the refinement of taste, intellectual and/or aesthetic matters, not including museum or display uses, operated without profit. Limited display of related items may be permitted.

Mr. Moore said as a result of last year's proposal to delete nonprofit cultural centers in most of the zoning districts, it was requested that the Staff go back and study the matter of the Nonprofit Cultural Centers. Mr. Moore said that by deleting the centers in the zoning districts, especially in the R-B district, it would affect at least one existing center which is the Society of the Four Arts, and in the commercial Town serving it would have made the Preservation Foundation of Palm Beach nonconforming.

Mr. Moore said the Staff worked with the Preservation Foundation in an attempt to develop a definition which would address what takes place at both the Four Arts and the Preservation Foundation. He said that's what is before the Council in Item number 3. However Items 3A, B, C, D, E, F and G must be dealt with as individual items because they deal with different zoning districts. Mr. Moore said Item 3 is the new definition of Nonprofit Cultural Centers and the Council is requested to address the issue of whether or not to allow Nonprofit Cultural Centers to have limited displays.

Mr. Heeke said they would address only the definition of Item 3 at this time which would be the nonconformity for the Four Arts and the Preservation Foundation.

Mayor Marix asked Mr. Randolph if they limit the displays which these Centers may have, would it be difficult to enforce those limits? Mr. Randolph said he felt it would be difficult because it is a vague and ambiguous term. He said he didn't think the Four Arts and the Preservation Foundation can be lumped together. He asked Mr. Moore if there would be something which would allow the Preservation Foundation a special exception use within a particular district. Mr. Moore said that was correct. Mr. Randolph said the question is whether or not in allowing a Nonprofit Cultural Center limited exhibits, does the Town wish to prohibit the display of material which may be associated with the Center. He said one example would be if the Preservation Foundation wanted to display photographs of homes within their building. Mr. Randolph said he didn't think that was precluded now, and he felt the intent of the definition now means that that shall not be the general use or purpose of the building. Mr. Randolph said it seemed to him that anyone can display something which is not the focal point of a particular building. He said if that exhibition of photographs became the focal point of the building, in his opinion that that would be precluded under the current definition. Mr. Randolph said that in changing the definition there may be difficulty in enforcing the provision. He said if a Nonprofit Cultural Center decides to display an exhibit, for instance a display of findings of a ship wreck and they maintain that the exhibit is a limited display, but the Town says this exhibit is something which will draw a lot of people into the area, he felt that enforcing the limited display provision would be difficult.

Mr. Moore said the issue then would be: does the Council wish to permit the Nonprofit Culture Centers to present a display. Mr. Heeke said it is Mr. Randolph's opinion that this is already permitted. Mrs. Wiener asked how you could stop someone from displaying something inside a building? Mr. Randolph said he didn't feel that would be possible, and he asked Mr. Moore to explain the Staff's reason for this recommendation.

Mr. Moore said the ordinance definition simply says that "not included in museum or display uses" which indicated to the Staff that the Town could not permit displays within Nonprofit Cultural Centers. He said if there are complaints and the Town is called upon to enforce the ordinance, the Town would have to explain, if the wording is not changed in the ordinance by eliminating "or display" from the ordinance, and/or adding new wording to allow displays then the Town must enforce the ordinance as it now reads. Mr. Heeke asked if they just eliminate the phrase "or display" would that not solve the problem? Mr. Moore said yes it would. Mr. Heeke said then just delete the words "or display" and delete the last sentence.

Zoning
Section 4.20

Mrs. Wiener moved for approval of Item number 3, but delete the words "or display" and eliminate the the last sentence with the definition ending with the word "profit." Seconded by Mr. Ilyinsky, Item 3 was approved..

Item 3A. On a vote of 6:0, the Zoning Commission recommends disapproval of the proposal, as submitted by the Town Administration to amend Section 4.20, "B. Schedule of Use Regulations" to add "Nonprofit Cultural Centers" to the list of Special Exception Uses in the R-A and R-AA zoning districts.

Mr. Moore said this item is submitted in conjunction with the Preservation Foundation, with the intent of creating an alternative use for structures within the two zoning districts R-A and R-AA to provide for small nonprofit organization uses to perpetuate and continue a landmark structure. Mr. Moore said the Zoning Commission felt this was not an appropriate use.

Mr. Ilyinsky made a motion to accept the recommendation of the Zoning Commission to disapprove Item 3A. Motion was seconded by Mrs. Wiener, and on roll call the motion carried unanimously.

Item 3B. 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 4.20, "B. Schedule of Use Regulations", for the R-B district, by amending item No. 8, Nonprofit Cultural Centers, under special exception use column to read as follows:

Nonprofit Cultural Centers occupying buildings of unique value as designated historical landmarks as determined by the Landmarks Preservation Commission and the Town Council, and for which it is demonstrated that no permitted use is economically viable.

Mr. Moore said this was an effort to preserve an alternative use for a landmarked structure other than demolition.

Mr. Heeke said the Council would go into executive session. He said he had reservations about this recommendation.

Motion was made by Mrs. Douthit to disapprove Item number 3B, seconded by Mrs. Wiener the motion carried unanimously.

Item 3C. 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 4.20 "B. Schedule of Use Regulations" for the R-C district, by amending item No. 7, Nonprofit Cultural Centers, under special exception use column to read as follows:

Nonprofit Cultural Centers occupying buildings of unique value as designated historical landmarks as determined by the Landmarks Preservation Commission and the Town Council, and for which it is demonstrated that no permitted use is economically viable.

Mr. Heeke said the language in Item 3C is the same as in Item 3B. Mr. Moore said this proposal is slightly different from item 3B.

Mrs. Earl from the Landmarks Preservation Foundation said the motivation behind this suggestion is not to open different areas of the Town to other uses. She said the intent of the proposal is to attempt to provide an option to possible difficult future problems. Mrs. Earl said what is happening in the Town is that some of the older buildings are being destroyed, and those buildings provide an important part of the fabric of some of the neighborhoods. Mrs. Earl said this usually occurs in residential areas when it is decided that there is no viable economic use for a particular building so it's demolished. Mrs. Earl said the intent of this proposal is to provide an option for nonprofit organizations with small density impact to make use of these endangered buildings, and possibly provide a way of keeping the neighborhoods more intact. She said if that option exists it could be regulated by the Town, but this proposal is intended to give the Town some options when facing decisions on structure demolition.

Mr. Ilyinsky asked Mr. Moore what exactly is the difference between Item 3B and Item 3C? Mr. Moore said the R-C district is a low density multi-family district rather than a pure single family district. Mr. Ilyinsky asked if that was the only difference? Mr. Moore said that was correct.

Mr. Heeke said he still has concerns because while there are good nonprofit organizations, there are also the other kind which would not be desirable in a residential area. He said he would rather have anyone wishing to acquire the home, to come before the Town Council. He said this would allow the Council to consider a variance or defer the decision until the next Zoning Commission meeting, and let them deal with the situation. Mrs. Wiener said she felt the Council is duty bound to protect the residential areas of the Town. She said she has no problem with the Centers in other parts of Town, but not in the residential districts.

Mrs. Douthit made a motion to overturn approval given by the Zoning Commission on Item 3C. Seconded by Mr. Weinberg, and on roll call the motion carried unanimously.

Item 3D. On a vote of 4:2, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration to amend Section 4.20, "B. Schedule of Use Regulations" for the R-D(1) and R-D(2) districts by removing item No. 7, Nonprofit Cultural Centers, from special exception use column.

Mr. Moore said this is actually removing the special exception use from the R-D(1) and R-D(2) districts.

Mrs. Wiener made a motion to approve the Zoning Commissions recommendation of Item 3D. Motion was seconded by Mr. Ilyinsky, and on roll call the motion carried.

Item 3E. 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" for the C-PC district by removing item No. 17, Nonprofit Cultural Centers, from the permitted use column and adding Nonprofit Cultural Centers to the special exception use column as item No. M.

Mr. Moore said the Staff felt it would be better to control the uses, and rather than a permitted use make it a special exception use. He said this includes the Royal Poinciana area, and the Zoning Commission agrees with the Staff's recommendation.

Motion was made by Mr. Weinberg to approve Item 3E as recommended. Seconded by Mrs. Wiener, on roll call the motion carried.

Item 3F. 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 4.20, "B. Schedule or Use Regulations" for the C-B district by removing item No. 4, Nonprofit Cultural Centers, from the permitted use column and adding Nonprofit Cultural Centers to the special exception use column as item No. 10.

Mr. Ilyinsky made a motion to approve Item 3F as recommended. Seconded by Mrs. Wiener, on roll call the motion carried unanimously.

Item 3G. 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 4.20, "B. Schedule of Use Regulations" for the C-TS district by adding a new item under special exception use column to read as follows:

Museums occupying buildings of unique value as designated historical landmarks as determined by the Landmarks Preservation Commission and the Town Council, and for which it is demonstrated that no permitted use is economically viable.

Mr. Heeke asked Mr. Moore if this is now a permitted use? Mr. Moore said it was not permitted at this time in the C-TS district, and that's why the Staff has recommended approval of Item 3G. Mr. Moore said there was one instance where they had to refuse a use of the Paramount because it was in the C-TS district.

Mrs. Wiener asked if they removed "and for which it is demonstrated that no permitted use is economically viable" would that solve the problem. Mr. Moore said that would be acceptable. Mayor Marix asked if that would still require Council action? Mr. Heeke said yes it would because it would be a special exception use.

Mrs. Wiener made a motion to approve Item 3G with the sentence ending after Council, and eliminate "and for which it is demonstrated that no permitted use is economically viable." Seconded by Mr. Weinberg, on roll call the motion carried unanimously.

Zoning
Sect. 5.50
Sect. 5.51(b)

Item 4. On a vote of 4:2, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration and modified by the Zoning Commission to amend Section 5.50, "Accessory buildings and/or structures," by amending 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 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 and defined as unattached and may be erected in accordance with the following requirements:

	District	Lot Size	Maximum Story Height	Maximum Building Height
	R-AA	All	2	25 feet
	R-A	All	2	25 feet
****	R-B	Up to 20,000 s.f.	1	15' overall
****	R-B	Over 20,000 s.f.	2	25 feet, provided unity of title or deed restriction is furnished prohibiting any division of the lot which would leave less than 20,000 s.f.
	R-C	All	2	25 feet
	R-D(1)	All	2	25 feet
	R-D(2)	All	2	25 feet

Paragraphs 1, 2, 3, 4 and 5 remain as is.

**** This is the only change to the regulation.

Mr. Moore said the notation at the bottom of the page indicates the only change in the regulation, and that would be that properties of 20,000 sq. feet or more would be the same as R-A, which would allow a two story accessory structure which is the same as permitted in the R-A and R-AA districts. Mrs. Wiener asked what if the structure was a one story house. Mr. Moore said it would still be permitted. Mrs. Wiener said that didn't make sense. Mr. Moore said that two story accessory structure is permitted in R-A, and in R-AA with a one story structure. Mrs. Wiener said she felt it would be horrible to add a two story accessory structure to a single story house.

Mayor Marix said at the present allowed FAR it is possible to construct a 9,000 sq. foot house on a 20,000 foot lot. Mr. Moore said that was correct. Mayor Marix asked if that would mean that a two story accessory structure could be added to the 9,000 sq. foot house? Mr. Moore said that was not correct. He said the total amount of square footage permitted on a 20,000 sq. foot lot

would be 45% including the accessory structure. Mrs. Douthit said she would like the Town to consider reducing the 4.5 footprint for the larger properties in the R-B district.

Mr. Randolph said the Staff should be advised as to whether or not items can be studied upon recommendation. Mr. Heeke said that could be heard under "any other matters."

Mrs. Wiener made a motion to deny approval of Item 4. The motion was seconded by Mr. Ilyinsky, and on roll call the motion carried unanimously for denial.

Item 5. On a vote of 6:0, the Zoning Commission recommends <u>disapproval</u> of the proposal, as submitted by the Town Administration, to amend Section 5.20, "Height Regulations", by amending subsection 5.21 to allow existing or proposed single family dwellings in the R districts with a partial second floor not exceeding 15% of the first floor area to be deemed a one-story structure for lot coverage purposes only. (redundant if Item No. 1 is approved).

Zoning
Section 5.20
Subsection 5.21

Mr. Moore said Item 5 is redundant in view of the fact that Item 1. was approved. He said the Council may wish to uphold the Zoning Commission's actions.

Mr. Ilyinsky made a motion to uphold the Zoning Commissions actions on Item 5. Seconded by Mrs. Wiener, and on roll call motion carried unanimously.

Item 6. On a vote of 6:0, the Zoning Commission recommends <u>disapproval</u> of the proposal, as submitted by the Town Administration, to amend Section 5.36, "Garden Walls and Fences", by amending Section 5.36(a) to allow 6 foot high walls and fences in the front yard and requiring street side landscaping for such walls and fences of more than 4 feet in height.

Zoning
Section 5.36
Section 5.36(a)

Mayor Marix said unless it creates a dangerous corner or something of that nature, she felt high walls should be allowed. She said if the Town wants to require hedges she has no objection to that. Mayor Marix said with the larger houses being built in Town, the four foot fence looks out of proportion, and with the security problems she feels higher fences should be allowed.

Mrs. Douthit said there is a five foot fence at what used to be the Sullivan house, and in her opinion it is ugly. Mr. Ilyinsky said the Council has granted many variances for higher walls than is allowed by the zoning regulations.

Mrs. Wiener made a motion to approve the Administrations recommendation to allow six foot high walls, and fences in front yards, and require street side landscaping of walls and fences of more than four feet in height. Seconded by Mr. Weinberg, on roll call the motion carried by a 4-1 vote with Mrs. Douthit casting a no vote.

Item 7. On a vote of 6:0, the Zoning Commission recommends <u>approval</u> of the proposal, as submitted by the Town Administration, to amend Section 4.20 "B Schedule of Use Regulations", to amend item 4 under Accessory Uses in the R-AA, R-A, R-B and R-C districts and item 5 under Accessory Uses in the R-D1 and R-D2 districts, by changing the charitable event automatic expiration date from April 30, 1993 to April 30, 1995.

Zoning
Section 4.20

Mr. Moore said this is a provision which allows one charitable event per year in the residential zoning district.

Mrs. Douthit moved to approve Item 7. Seconded by Mrs. Wiener, and on roll call the motion carried unanimously.

Item 8. On a vote of 6:0, the Zoning Commission recommends <u>approval</u> of the proposal, as submitted by the Town Administration and modified by the Zoning Commission to amend Section 4.20, "B. Schedule of Use regulations", for R-D(2) district by adding new item #6 under accessory use column to read as follows:

<u>Accessory uses customarily incident to hotels such as but not limited to weddings and receptions, service club lunches, daily informational seminars, concerts, entertainment events and newsstands, dining rooms, bars, beauty shops, barber shops and similar personal service uses primarily but not exclusively for the convenience of tenants and their bonafied guests in hotels. Such accessory uses may be advertised in the local media.</u>

* Note: Staff advised that Item No. 5 may need to reflect this addition.

Mr. Moore said this item deals with uses in hotels. He said in April of 1992, Mr. Sachs from the Ocean Grand Hotel came before the Council to request a special exception modification with variance. Mr. Moore said at that time it was determined that no special exception was required for the advertising, but a variance would be required. Mr. Moore said that was in effect for one year until the Zoning Commission could make its recommendation, and bring it to the Council for further action. He said this would deal with the special exception uses permitted for hotels in the R-D(2) district.

Mayor Marix said she was concerned that the list includes some specific categories which may be advertised by the hotels, but does not address certain other areas, and she was concerned that this might cause difficulties in the future. She recalled the problem with the psychic at the Colony Hotel and whether or not what she does is entertainment, and if the psychic returns to the Colony can she advertise.

Mr. Moore said those situations would be covered under the term "but not limited to," and the Council has determined that the psychic was acceptable to the Colony hotel. Mayor Marix said the Council determined that the psychic was an employee of the Colony Hotel, and it was her understanding that the beauty shop was not considered an employee. Mr. Moore said he felt there were two different situations being discussed here, one being uses which would be incident within the hotels which the Zoning Commission has passed, and the other matter is the psychic which the Council has determined is an employee of the hotel.

Mayor Marix said the proposal states that the advertising may be done in the local media, and she asked what is the local media, and why were the hotels prohibited from advertising in the past? Mr. Moore said he believed the prohibition against hotels advertising has been in effect

since about 1974, and it was basically to control traffic in residential areas. He said the Sun and Surf was one example of the ban on advertising because they had outside uses within the residential district, and if that was the case today the ban would still be in effect. He said this proposal applies to hotels only.

Mr. Heeke asked Mr. Moore what is the definition of R-D(2) districts? Mr. Moore said they were high density residential, and the definition reads as follows:

"The purpose of this district is to provide for residential uses (see definition of residential uses 2.10) of a variety of dwelling types, and under carefully controlled conditions, hotels and time-sharing uses. Permitted population density falls in the lower range of what is generally considered high density development."

Mr. Ilyinsky moved to accept the recommendation of the Zoning Commission and approve Item No. 8. Motion was seconded by Mr. Weinberg, and on roll call the motion carried.

Zoning Section 4.20

Item 8A. 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", for R-D(1) district by eliminating therefrom item #4 under accessory use column. Renumber item #5 to item #4. Eliminate reference to item #4 contained in new item #4.

Mr. Moore said there is only one hotel type use in the R-D(1) district, and that is the Beachcomber. He said the Staff feels this provision is no longer necessary in the ordinance.

Motion was made by Mr. Weinberg to approve Item 8A, and seconded by Mrs. Wiener, on roll call the motion was approved unanimously.

Item 8B. On a vote of 6:0, the Zoning Commission recommends disapproval of the proposal, as submitted by the Town Administration to amend Section 4.20, "B. Schedule of Use Regulations", for the R-C district by adding a new item #5 under accessory use column to allow accessory uses customarily incident to hotels.

**** In addition, the Zoning Commission recommends that the Town Council further investigate the level of interpretive enforcement by the staff regarding such uses in existing hotels in the R-C district.

Mr. Moore said this item deals with the R-C district where special exceptions are not a permitted use. Mr. Moore said they are a nonconforming use, and this proposal was strongly opposed by the Zoning Commission. He said this proposal would affect three hotels in Town which are, the Chesterfield, Brazilian Court, and the Plaza. Mr. Moore said the Zoning Commission recognized the problems associated with normal hotel functions of the nonconforming hotels, and he indicated there is no desire to see the hotels expand or be taken out of their nonconforming status. He said that is why the Zoning Commission voted disapproval of the proposal, but added the note expressing their desire that this proposal be discussed further as a policy matter by the Council and Staff as to the level of interpretive enforcement.

Atty.Curtin Re:Brazilian Court Hotel

Mr. Curtin, Attorney, representing the Brazilian Court Hotel addressed the Council. He stated the Brazilian Court has been a hotel in Palm Beach since 1925, which makes it one of the longest in continuous operation hotels in Palm Beach. Mr. Curtin said that virtually all of that time the hotel has operated restaurant and lounge facilities, as well as other types of facilities normally associated with hotels. Mr. Curtin stated that the hotel was expanded in the 1940's by adding a second court yard. He said most of the hotel's activities are conducted within the hotel with the exception of the pool, and that is somewhat shielded from the street.

Attorney Curtin stated the courtyard and the fountains are distinctive architectural elements of the hotel, and this makes the hotel distinctive from both an aesthetic standpoint, and also, as an intricate part of the Town's fabric. Mr. Curtin said because of the hotel's long standing duration it needs protection, particularly in light of action taken by the Council on Item 8 today. He said the Brazilian Court is in favor of permitting advertising, however, he felt an inequitable result would occur if the problem of the Brazilian Court is not addressed.

Mr. Curtin stated that the Brazilian Court is a nonconforming use hotel under R-C zoning which prohibits independent advertising in the local media. He said there are many events, and functions held at the hotel, but under the existing zoning regulations anything except uses which are specifically related to people staying at the hotel is a prohibited use of the restaurant facilities. Mr. Curtin said he would like to see some administrative relief which will allow the Brazilian Court to advertise the restaurant and lounge facilities. He said the advertising restriction significantly reduces the hotel's ability to make Town residents aware of functions at the hotel such as Thanksgiving, and Easter dinners, and is a considerable impediment to normal working conditions.

Attorney Curtin stated that in 1985, the Brazilian Court hotel was syndicated, and was sold to 134 different investors as part of a condominium situation. This resulted in a law suit which was settled in June, and now RTC basically owns the Brazilian Court hotel. Mr. Curtin stated that the hotel was sold in 1984, and was closed for approximately two years, and in that time the Town authorized the hotel to make extensive renovations which totaled approximately eight million dollars.

Mr. Curtin said the Brazilian Court would be put in a competitive disadvantage situation by not being able to advertise, and he requests that the Council address this subject today. He said if the Council acts only on amendment 4.2 for R-D(2) zoning districts, it would allow four hotels such as the Colony which is in direct competition with the Brazilian Court to advertise, but the other three hotels would not be allowed to advertise, and he felt this would create an economic inequity.

Mr. Curtin said he would like to address the Mayor's comment regarding parking. He said to the immediate east, the hotel has a parking lot which will accommodate approximately 120 cars, plus seven parking places on the south side of the hotel, and additional parking spaces in the rear. He felt this was more than adequate parking for the hotel.

Mr. Curtin said the question is, will there be a restraint of trade. He said when this meeting began, seven hotels in Town were prohibited from advertising, and after this meeting, will the

Council have adopted legislation allowing four hotels to advertise, but three will not be allowed to advertise?

Mr. Curtin stated there is concern that this amendment might encourage enlargement of nonconforming uses. He said the language in the ordinance regarding nonconforming use reads as follows: "Nonconforming uses are not to be enlarged, increased, intensified, substituted or extended to occupy a greater area than it occupied at the effective date of the ordinance". He said he would like to state for the record that the Brazilian Court has no intent to occupy a greater area for restaurant or lounge facilities than it presently occupies.

Zoning

Mr. Beal addressed the Council and stated that the reason the Zoning Commission returned this item back to the Council is, that the Commission felt it was unfair that the Brazilian Court should be put in a position of not being able to compete with other hotels in the R-D(2) districts. Mr. Beal said the primary objective of the Zoning Commission was to prevent the failure of the hotel. He said the only way the Brazilian Court will survive is if they are allowed to compete with every other hotel in the community in every way.

Mr. Beal
Re: Brazilian Court

Mr. Beal said there was also a concern that if the hotel is destroyed, will it be possible to rebuild the property in the same condition that it is now? He said this would be a concern to a potential buyer. Mr. Beal said the Brazilian Court was built 67 years ago and zoning went into effect in 1947. He said apparently when zoning went into effect the fact was overlooked that these hotels have a right to exist.

Mr. Wood, a member of the Zoning Commission addressed the Council. Mr. Wood said that Item 8B addresses the issue of whether or not the Town will allow accessory use in hotels in the R-C districts, and does not address the issues which Mr. Curtain has presented. Mr. Wood said it was pointed out at the Zoning Commission hearing that it is not possible to allow accessory uses in the R-C districts because they are not a permitted use. He said accessory uses can only exist as accessory to an existing, now allowed specifically permitted use. He said the Commission had no alternative but to disapprove the proposal, and from a procedural and legal standpoint, Town attorney Mr. Randolph agreed with the Commission's decision. Mr. Wood said he felt that Mr. Curtin is requesting that the Council ask the Staff to evaluate how they are interpreting the enforcement of the advertising for the nonconforming hotels, and he does not think any Council action is required on Mr. Curtin's request.

Mr. Wood

Attorney Curtin said he disagrees with Mr. Wood. He said he is speaking of results, and since the Council has already approved Item 8, he felt that Item 8B requires some action on the part of the Council. Mr. Curtin said the question before the Council is, what zoning ordinances to adopt and how to effect them. He said we have four hotels which will be allowed to move forward and three will be left with the old prohibition, if no action is not taken on Item 8B. Mr. Curtin said he felt that would create a level of economic discrimination that has anti-trust implications, and violates fundamental fairness.

Mr. Randolph said the Council needs to concentrate on the description of the uses in the two districts. He said in one area there is a permitted special exception use, and it has not been made clear the types of uses which are allowed in the permitted special exception use, and in the other district nonconforming uses are permitted. Mr. Randolph said the uses are nonconforming and there is not a permitted use to which accessory uses may be attached, so there is a nonconforming use and the nonconforming should be able to operate as they have in the past. Mr. Randolph said he is not sure it is appropriate for the Town to deal with advertising in the zoning ordinance. He said the Town does not describe a commercial use, and state that the commercial uses may advertise. Mr. Randolph said he felt Item 8 probably would be correct if the sentence "Such accessory uses may be advertised in the local media" is deleted. He said that is a matter of enforcement, and if accessory uses are appropriate in that hotel, then the hotel may do whatever is necessary to sustain themselves. Mr. Randolph said the problem is that Item 8 contains the last sentence, but Item 8B does not. He said he does not agree that there is a problem with equal protection, and restraint of trade, because there are peculiar characteristics applicable to each of the two areas, and they may be treated differently. Mr. Randolph said he feels it is the responsibility of the Council to determine how the enforcement of the advertising regulation will be applied in the future, but is something which should be reviewed by Staff, and any recommendations would then be sent back to the Council as to whether or not the Brazilian Court should be prohibited from advertising their restaurant separate from the hotel. He said it might be that the restaurant has always been a nonconforming use, and that is something which Staff should review. Mr. Randolph said he did not feel it is appropriate for the Zoning Commission to remove the administrative enforcement of the advertising provision. He said he felt the wording in the ordinance is inappropriate and it should describe the accessory uses which are appropriate for the hotels in the R-D(2) district. Mr. Randolph said the ordinance is correct in the R-C district because the hotels are not permitted uses in that district.

Zoning - Hotel-Brazilian Court

Mr. Heeke said those hotels are grandfathered in and are allowed to continue to transact business, but construction of a new hotel in the R-C zoning would not be permitted.

Mayor Marix said everyone wished to preserve the Town the way it has been for many years. She said we have the Brazilian Court which is a remarkable structure, but if the Town doesn't allow the hotel to advertise, it is very likely to cease to exist, because it isn't on a main street and a lot of people do not know it exists. Mayor Marix said she felt the Town must find a way of putting the Brazilian Court in a competitive position with the other hotels in Town.

Mrs. Wiener compared the Brazilian Court to the Ocean Grand hotel. She said before the Ocean Grand was constructed there were apartments on that site, and they had rights and entitlements which were passed on to the hotel, and the Ocean Grand is receiving rights and entitlements which a 67 year hotel does not receive. She said it doesn't make sense and she felt it was an error of omission which needs to be corrected.

Mr. Randolph said there may be several reasons which prevent the Brazilian Court from receiving those entitlements. He said the Council, sitting as a zoning body has no alternative but to approve the recommendation of the Zoning Commission because the Brazilian Court is not a permitted use to which an accessory use may be attached. He said the Council can recommend that the Staff review the proposal, and present it to the Council at a later date, but whether the Council approves or disapproves the proposal he did not feel it would have an effect on the proposal from a zoning standpoint.

Mrs. Wiener asked how can this matter be corrected?

Mr. Heeke suggested that the Council discuss advertising with respect to the hotels under "any other matters." Mr. Heeke said he felt the Council should reconsider Item 8 and consider a motion to remove the limitation on advertising. Mr. Heeke said the Town Council is not responsible for economics.

Mayor Marix said she agreed with Mr. Heeke, but when the hotels in the R-C district made these economic decisions the other hotels were not permitted to advertise, and now the Town is allowing the hotels in the R-D(2) districts to advertise. She said the economic decisions of the hotels in the R-C district were based on the fact that all the hotels in Town were operating under the same rules.

Mr. Heeke said the point he is making is, that the Town Council and the Town Administration has no responsibility for economic decisions made by any applicant on any building permit, and he would recommend that the Town Council concur with the Zoning Commission, and disapprove Item 8B, and reconsider Item 8, and delete the last sentence "Such accessory uses may be advertised in the local media." He said the Council could then bring up under "any other matters" for discussion of policy with respect to hotel advertising.

Zoning
Item 8B

Mr. Heeke called for a motion to sustain the Zoning Commission's recommendation to disapprove Item 8B.

Motion was made by Mrs. Douthit to disapprove Item 8B. Seconded by Mrs. Wiener, and on roll call the motion carried unanimously.

Mr. Heeke called for a motion to reconsider Item 8. Motion was made by Mr. Weinberg that the Council reconsider Item No. 8. Seconded by Mr. Ilyinsky, and on roll call the motion carried.

Mr. Heeke said the Council will now reconsider Item 8, and called for a motion to approve Item 8, but to delete the last sentence which reads "Such accessory uses may be advertised in the local media."

Motion was made by Mr. Weinberg to approve Item 8, with the deletion of the last sentence in the second paragraph. Seconded by Mr. Ilyinsky, and on roll call the motion carried.

Mr. Heeke said the Council will reconsider policy statement regarding hotel advertising under any other matters.

Zoning
Section 6.33

Item 9. On a vote of 4:2, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration to amend Section 6.33, "Sign in Commercial Districts", by amending paragraph (b) to read as follows:

> Permitted lettering. Permitted signs shall consist of lettering which specifies the name of the establishment and/or the nature of the business. Use of pictures, symbols, etc, shall not be permitted. Symbols and/or logos, not exceeding one (1) square foot in area, may be included in the allowable sign area.

Mr. Moore said this proposal is the result of the prohibition of the use of signs, letters and characters which prohibited logos. However, logos which had been grandfathered for many years were allowed to exist. Mr. Moore said it was felt that by limiting the size of the logos to 12 X 12, or one square foot to be part of the permitted signage which would allow logos to be associated with the businesses, but would not be a major portion of the allowable signage.

Mr. Zimmerman said he had received a comment from Mr. Rowe the owner of Phil Rowe Signs that the proposed 144 sq. inches allowed for logos may be too large, and possibly should be cut by half.

Mrs. Wiener asked if the Zoning Commission had considered signs smaller than 12 X 12? Mr. Beal said the Zoning Commission was of the opinion that this should be dealt with by the Architectural Commission. He said his personal feeling is that logos of a small size are not objectionable.

Mayor Marix said she had heard arguments that foreigners who do not speak English would not be able to find the shops without the logo. She felt this was not an issue as Cartier and Ferragamo are spelled the same all over Europe. Mayor Marix said the problem she has with logos, is that some may be cute, some may be nice, and some may be improper, and who should decide what is proper. She asked Mr. Randolph how it would be possible to decide which logos are in good taste and proper? Mr. Randolph said if the Town permits logos, the Architectural Commission will not be able to disallow a logo as long as it is the proper size. Mrs Douthit asked if the regulation would apply to the color of the logo as well as the size? Mr. Randolph said that is correct, if the color is important in the logo. Mayor Marix said she recalled what a problem the Town had some time ago when it was proposed that the Town logo should be changed. Mrs. Douthit said she felt the logos are unnecessary, and you can't allow them on one street, and prohibit them on another, so it's a possibility that logos will be all over Town.

Mrs. Douthit made a motion to disapprove the Zoning Commissions recommendation of Item 9.

Mrs. Wiener asked if it would be possible to differentiate between a logo of an establishment which is known throughout the world vs. one small shop? Mayor Marix said she felt that would be discrimination. Mrs. Wiener said people love logos and she didn't see a problem except for the proposed size. She felt the logos should be smaller. Mr. Randolph said the Town could regulate the logos which would distinguish one from the other such as nationally, and internationally recognized logos which have been in existence for a specific number of years. Mrs. Douthit said that would destroy the small shops (Mom & Pop shops) which the Town has been trying to encourage, because the Town is being invaded by chain stores. Mayor Marix said if she owned a small shop and was told she could not have a logo she would consult a lawyer. Mr. Randolph said he felt the Town could defend their position, and he didn't feel that a small shop needs a logo for identification.

Mr. Heeke said there is a motion on the floor to overrule the Zoning Commission's recommendation to approve Item 9, and he asked for a second to the motion.

Motion was seconded by Mr. Ilyinsky. On roll call the motion to disapprove Item 9 carried by a 3-2 vote with Mrs. Wiener and Mr. Weinberg casting no votes.

Item 10. On a vote of 6:0, the Zoning Commission recommends approval of the recommendation submitted by Adley Brisson, Engman, and modified by the Zoning Commission, to amend Section 8.24 to read as follows:

Zoning
Sect. 8.24

(a) Destruction or Partial Destruction.

When fifty (50) percent or more of the existing floor area of a nonconforming building and/or structure is destroyed by fire or other casualty or Act of God or act of the owner thereof, such building and/or structure shall not be rebuilt unless rebuilt as a conforming building and/or structure.

In the event that a nonconforming designated landmark, single-family dwelling, public structure, or public/private group use is destroyed by fire or other casualty or Act of God, to the extent of more than fifty (50) percent, as determined by cubic footage prior to its destruction, such designated landmark, single-family dwelling, public structure, or public/private group use may be reconstructed in its original location to its original size and configuration. No other nonconforming building and/or structure so destroyed shall be rebuilt unless rebuilt as a conforming building and/or structure.

Mr. Brisson said his recommendation is to allow the reconstruction of nonconforming structures. He said these structures are nonconforming only in height, side yard setbacks, coverage or other dimensional aspects. He said the recommendations would not apply to nonconforming uses or residential structures which exceed the allowable density. This would only apply to structural nonconformities.

Mr. Brisson said the Zoning Commission has recommended approval to allow those structures to be reconstructed in the same manner in which they existed prior to destruction if 50% of the structure is destroyed. He said the reconstruction would only apply to single family homes, public and private group uses and designated landmarks. Mr. Brisson said originally the recommendation was to allow reconstruction of any nonconforming structure, but the Zoning Commission has agreed with Mr. Brisson's recommendation on the basis that there are distinct differences between uses in the Town.

Mr. Brisson said there is a basis for recognizing that single family homes could be reconstructed as they were originally built, because over the years the Town has changed requirements related to single family homes. However, he said that most of the single family homes do not violate the character which was originally intended. Mr. Brisson said the reason the Town changed the ordinances over the years such as coverage, heights, and setbacks is because there were new approaches to development which violated what was originally intended to be constructed in Town. He said by allowing single family homes to be reconstructed in their original dimensions, is the Town is confirming that it wishes to continue with what has existed through the years. Mr. Brisson said they have not included multi-family structures in this recommendation because the multi-family structures do not define the character of the Town. Also they do not conform with density regulations, and will not be allowed to rebuild at their present density level because of the Comprehensive Plan. He said many of the multi-family structures were built with 30 units per acre, but the maximum density now allowed is 12 units per acre. Mr. Brisson said he has also excluded commercial structures from his recommendation. He said commercial structures had not been expected to be constructed at the scale and mass as they now exist, and to allow them to be rebuilt to their existing footprint would perpetuate something the Town has been trying to prevent from happening in the future. Mr. Brisson said he has recommended that public and private group uses be allowed to rebuild at their existing footprint, as there are not a lot of those structures, and most have historic value.

Mr. Brisson said he felt his recommendations gives the Town some flexibility of maintaining its existing character without encouraging the continuation and replacement of uses which the Town has been trying to avoid. Mr. Moore said Staff has recommended that all buildings be permitted to rebuild as they exist now.

Mr. Heeke said if each situation is acted upon by variance, the Council would be able to approve or disapprove variances on a case by case basis. He said there are some areas which the Town may not wish to allow structures to be rebuilt as they now exist because they may wish to reduce the density in some areas such as Root Trail.

Mrs. Wiener asked Mr. Brisson exactly what is a multi-family dwelling? Mr. Brisson said he believed the definition is any building with three or more units. He said what they are recommending is, if a multi-family structure is destroyed, it is not allowed by right to rebuild that structure to its existing footprint. Mr. Brisson said if the building is compatible with the the neighborhood it would be appropriate to grant a variance to rebuild a multi-family structure.

Mrs. Wiener asked if we have a hurricane, and a condo is destroyed will the people who live in that condo lose their home forever? Mr. Brisson said that would be true in one regard, but that is not what the Council is dealing with at this time. He said the Town's Comprehensive Plan forbids reconstruction of a 30 unit per acre structure in a 12 unit per acre land use category. Mrs. Wiener asked what about the buildings which are in the permitted use. Mr. Brisson said if they are in the permitted density, but are violating setbacks or heights or other aspects of the zoning code, that would be a variance provision. Mr. Brisson said what they are trying to do is reduce the need for variances in Town. He said right now all of the nonconforming multi-family structures, single family structures and any other use structure with regards to lot, yard, and bulk are destroyed by more than 50%, must have a variance to rebuild to its existing footprint. He said they are trying to maintain the character of the community.

Mrs. Wiener said if they are trying to maintain the character of the community, then people should be allowed to rebuild, if a natural disaster occurs unless it is determined that the structure is out of character with the neighborhood, and how is that determined. Mr. Brisson said the Town has changed the ordinance to recognize that some instances have arisen over the years which are out of character. He said there are specific structures and/or uses in Town which the Town decided was not what it wanted, so the ordinance was changed to prevent those structures from

being rebuilt. Mr. Brisson said structures have been built which are out of character with the Town, and the Town would prefer that that doesn't happen again.

Mr. Moore said that "happen again" are the key words. He said the Esplanade is an example, and if the Esplanade is not wanted, or repeats of a large interior mall type structure is not wanted, the ordinance has been changed to prevent that type of structure. He said the Esplanade is there now, but it can never be recreated.

Mayor Marix said if the Esplanade was destroyed and they wanted to rebuild it, as it now exists, they could request a variance and the variance could be granted or rejected. Mr. Randolph said this would also apply to a home if it's destroyed by fire. Mr. Heeke said there are a lot of homes in Town which are not conforming because they have 50 ft. lots. Mayor Marix said she believed the nonconforming homes on 50 ft. lots were included in the study to assure the people whose homes are on 50 ft. lots the peace of mind in knowing that, if the house is destroyed they will be able to rebuild.

Mr. Weinberg asked Mr. Brisson if an 80 unit condo which is located on the ocean is destroyed does this mean that that condo cannot be rebuilt as it was originally constructed? Mr. Brisson said that is correct. Mayor Marix said some could be rebuilt, but others would not be rebuilt. Mr. Brisson said it could not be rebuilt if it is nonconforming. Mr. Randolph said it may only be possible to rebuild 20 of the 80 units. Mr. Brisson said whether they could build 20 or 80 units is not under discussion. He said it is not possible to rebuild an 80 unit condo no matter what the Council decides today, because there is a provision in the Town's Comprehensive Plan which states "you shall prohibit replacement of uses that are incompatible with your land use plan." Mr. Brisson said unless the Comprehensive Plan is changed, if a multi-family structure is built, 40 units per acre, and the Comprehensive Plan says 12 units per acre are allowed, then nothing can be done until the Comprehensive Plan is changed. Mr. Brisson said the same size structure can be built but, only 12 units would be allowed with the same setbacks and the same height. Mr. Weinberg asked if that meant that the shell could be the same but the density must comply with todays zoning regulations? Mr. Brisson said the question is not the number of units, but the size of the physical structure. Mr. Heeke commented that if a situation such as Mr. Weinberg just described should occur, it would call for a public hearing.

Mr. Brisson said the reason he has offered a different alternative to the Administration's proposal, is that the legislation on nonconforming use is to assure that nonconforming structures will eventually be replaced by structures which are conforming.

Mrs. Douthit made a motion to approve Item 10 as recommended by the Zoning Commission. Seconded by Mr. Ilyinsky, and on roll call the motion carried 3-2 with Mr. Weinberg and Mrs. Wiener casting no votes.

Zoning
Sect. 5.47

Item 11. On a vote of 5:1, the Zoning Commission recommend approval of the proposal, as submitted by the Town Administration and modified by the Zoning Commission to amend Section 5.47, "Beach Area", by amending Subsection 5.47 (a)(1) and (a)(2) to read as follows:

(1) For properties within the Beach Area District adjacent to properties in the R-B District: No structure or beach building more than one (1) story (but not to exceed eight (8) feet in height as measured from the natural grade or crown of the road, whichever is less, to the underside of the roof plus four (4) feet in height to the highest point of the roof, twenty (20) feet in width but occupying not more than twenty (20) per cent of the width of the lot, and ten (10) feet in length) shall be constructed on privately owned property lying east of Ocean Boulevard: but this restriction shall not be deemed to apply to jetties or groins, or other structures for the protection of the beachfront; and provided further that in order to preserve a sense of openness, ocean vistas must exist from the front to rear lot lines equal to fifty (50) per cent of the lot width. Within the vista area all structures and/or vegetation shall not exceed (4) feet in height measured above Ocean Boulevard.

No additional walls, fences, hedges or other structures or growth shall be erected or grown eastwardly of the Ocean Boulevard to a height greater than four (4) feet above the surface of the Ocean Boulevard pavement along which such wall, fence or growth is maintained. No parking will be allowed in the beach area district.

(2) For properties within the Beach Area District adjacent to properties in districts other than R-B: No structure or beach house building more than one (1) story (but not to exceed sixteen (16) feet in height to the highest point of the roof, twenty (20) feet in width, and twenty-five (25) feet in length) shall be constructed on privately owned property lying east of Ocean Boulevard: but this restriction shall not be deemed to apply to jetties or groins, or other structures for the protection of the beachfront; and provided further that in order to preserve a sense of openness, ocean vistas must exist from the front to rear lot lines equal to fifty (50) per cent of the lot width. Within the vista area all structures and/or vegetation shall not exceed four (4) feet in height measured above Ocean Boulevard.

No additional walls, fences, hedges or other structures or growth shall be erected or grown eastwardly of the Ocean Boulevard to a height greater than four (4) feet above the surface of the Ocean Boulevard pavement along which such wall, fence or growth is maintained. No parking will be allowed in the beach area district.

Mr. Moore said the Administration has recommended this change toward open vistas because of the houses being constructed on the east side of Ocean Boulevard. He said what this proposal does is that it allows structures to be built, but that any barrier walls except for enclosed patio areas and the building, 50% of the lot frontage must be an open area, meaning open to the ocean to pedestrian and vehicular traffic.

Mr. Moore said the Staff's proposal of a two (2) foot maximum wall height was modified to four (4) feet by the Zoning Commission because of safety concerns for children, but no more than 50% should be enclosed. Mr. Moore said the Staff feels that a four (4) foot fence would defeat the purpose of the open vista, and fences should be no more than 36" and not less than 30" in order to be able to view the open vista.

Mr. Brisson said he had addressed this issue previously, and felt it was not the houses, and other structures which blocks the ocean view, but the walls and vegetation along the ocean. He said if the walls and hedges are limited to about two and one half (2-1/2) feet there is no obstruction of the ocean view, and would increase the safety level. He said walls and hedges should be no higher than three (3) feet.

Mayor Marix said Ocean Boulevard is a very heavily traveled road and she couldn't imagine anyone allowing small children in the road. She felt that concern is irrelevant, but she did feel it would be nice if everyone could enjoy the view along Ocean Boulevard. Mr. Heeke said he would be inclined to try the 2-1/2 foot wall.

Mr. Moore said some concern has been expressed by the public as to whether or not this would only affect new construction, or will it be retroactive. He said this proposal would only affect new construction and major remodeling, and would not force the removal of hedges which now exist along Ocean Boulevard. Mr. Heeke said the hedges could be trimmed to 2-1/2 feet.

Mr. Moore said the Staff did not propose to the Zoning Commission that this item be retroactive, but the new regulations would apply to new beach house construction. He commented that if an existing wood fence is replaced, the new height regulation would apply to the new fence.

Mrs. Douthit made a motion to reduce the Zoning Commission's recommendation of four (4) foot height limit on new fence, and wall construction to thirty (30) inches, and require that hedges be trimmed to 30 inches in height.

Mrs. Wiener asked if the people who have existing greenery at the four foot level, or higher will be required to trim them to the two and one half foot level? Mr. Heeke said that is uncertain, and the Staff needs to review that. Mrs. Wiener said she would like to know if people with existing hedges would be required to trim them to the two and one half foot level before she votes on the proposal. Mr. Randolph responded that a hedge is something which can be grandfathered, and it was the Staff's impression that existing hedges would not be required to be trimmed.

Motion was seconded by Mr. Ilyinsky, and on roll call the motion carried by a 4 to 1 vote, with Mrs. Wiener casting a no vote.

Item 12. On a vote of 6:0, the Zoning Commission recommends <u>disapproval</u> of the proposal, as submitted by the Town Administration, to amend Section 8.12, "Conversion of Nonconforming Uses," to replace the term "more restricted nonconforming use" with "more intense nonconforming use". Further, the Zoning Commission recommends deletion of Section 8.12 in its entirety.

Zoning Sect. 8.12

Mr. Moore said this section of the ordinance is very confusing and the Staff agrees with the Zoning Commission's recommendation to delete Section 8.12.

Mr. Deziel commented that when the Zoning Commission voted to delete Section 8.12 of the ordinance, it was with the understanding that the Building Department would have the authority to allow a less restrictive, or less intense nonconforming use to occur without review, or approval by the Town Council. Mr. Moore said that is correct.

Mrs. Wiener made a motion to disapprove Item 12 as recommended by the Zoning Commission and Section 8.12 of the ordinance be deleted in its entirety. Seconded by Mr. Weinberg, motion carried.

Item 13. On a vote of 6:0, the Zoning Commission recommends <u>approval</u> of the proposal, as submitted by the Town Administration to amend Section 2.10, "Definitions" by amending definition (11.1), "Building, Height of, Corner Lot," to read as follows:

Zoning Section 2.10

BUILDING, HEIGHT OF, CORNER LOT. In those cases involving a corner lot as defined in this section, the zero datum for the lot grade set forth in (11) herein above shall be measured from the average <u>elevation (taken at crown of street)</u> height of the grades established for the crown of each of the two (2) intersecting streets at their highest elevation abutting the lot.

Mr. Moore said this is the rewording and clarification of the interpretation of the ordinance.

Mrs. Wiener moved to approve Item 13. Seconded by Mr. Weinberg, on roll call the motion carried unanimously.

Item 14. On a vote of 5:0, with one abstention, the Zoning Commission recommends <u>approval</u> of the proposal, as submitted by Adley, Brisson, Engman to amend Section 5.15 "Lot Area" by adding a new paragraph (c) to read as follows:

Zoning Section 5.15

<u>Any new single family dwelling or accessory structure in the R-A or R-B zoning districts, constructed on one or more platted lots or unplatted parcel(s), or combinations thereof, involving a land equivalent to or greater than three (3) times the minimum lot size for the district, shall be subject to an application for special exception with site plan review.</u>

Mr. Moore said this matter is the result of a application to return an existing platted subdivision back to an estate. The Staff was requested by the Council to study what should be done when this occurs. Mr. Moore said the Staff requested that Mr. Brisson review the request and offer an opinion.

Mr. Brisson commented that when three or more lots are combined in the R-B district, with the setbacks which are required, it is possible to construct a very large structure which would be incompatible with the neighborhood. He said this could also occur in the R-A district because, if someone has a lot of 60,000 sq. feet, that essentially would be R-AA or an estate scale home with the R-A setbacks. Mr. Brisson said this could be a problem which would require Town Council review and approval under a special exception. He said they do not suggest this special exception for the R-B and R-A districts.

Mrs. Wiener asked if 920 South Ocean Boulevard is zoned R-A or R-AA? Mr. Moore said 920 South Ocean Boulevard is R-A.

Mayor Marix commented that there aren't many buildings such as 920 South Ocean which has three times the minimum lot size, or 30,000 feet for that district. She said it might be simpler if someone has two or three lots together, and only want to build on one lot they would not be required to apply for a special exception. Mr. Heeke asked what if they want an accessory building on the third lot? Mayor Marix said that is already allowed.

Mr. Brisson stated that two building lots is not as important as the scale of the building in relation to the side yard. He said the structure could be on one lot and be up in the 15 ft. setback, with a mansion scale structure with a 15 ft. side yard setback adjacent to a small R-B structure. Mayor Marix said FAR prevents that now, and she felt the problem is not being addressed properly.

Mrs. Wiener said she doesn't feel that a 50,000 sq. foot structure with a garage which houses twelve cars is what the Town considers single family usage. She said her concern is that when an applicant comes before the Council for permission to construct a 2,500 sq. foot structure, that applicant does not have to go through a lot of reviews and added expenses. She said with someone building a major structure, additional expenses are of no consequence, but for someone building a small structure, it could be a problem.

Mayor Marix said that three times the lot size is not very big. She said she has two lots and doesn't have a lot of room and, if this regulation had been in effect at the time she built her house, she would have been required to have site plan reviews, and conform with all the other regulations. Mayor Marix said the problems with 920 South Ocean Boulevard have been ongoing for some months, but they can afford the extra expenses. She suggested that if the Town is concerned about the size of the houses, they should review the FAR requirements. Mayor Marix felt it is the person who wants to build a home on two lots who will be hurt by this regulation.

Mrs. Wiener said she didn't feel they were hurting anyone, but are protecting the residential areas from structures which are not single family residential, and has nothing to do with 920 South Ocean Boulevard. She felt that if someone wants to build a home over 30,000 or 35,000 sq. feet the Town should know what is the purpose of the building. Mayor Marix said that 10,000 sq. feet is not very large. Mrs. Wiener said that 10,000 sq. feet is nothing at all, it's when homes over 30,000 sq. feet are built that concerns her. Mayor Marix said she was referring to the lot being three times the minimum lot size allowed in R-B district, and that would be 30,000 sq. feet. She did not think site plan reviews should be required for 30,000 sq. foot lots.

Mr. Heeke said possibly the language could be changed to "greater than" 30,000 sq. feet would require review."

Mayor Marix felt the problem could be solved if the regulation stipulated that the main structure be constructed on one lot, but not accessory structures. Mr. Moore said that accessory structures are a big concern. Mr. Randolph suggested that language be added to say: "in the event that structures or accessory uses are to be constructed on that portion of the property outside the combination of the three lots". He said for example if a person has a parcel of ten lots, and seven lots are garden or open space, and the accessory and main structures are constructed on the three lots, they would be required to appear for a site plan review. Mr. Randolph said two purposes could be accomplished by adding the provision "in the event a structure or accessory use is to be placed on any portion of the property other than the three lots".

Mrs. Wiener said when she spoke of 30,000 sq. feet she was referring to the house not the lot. Mr. Heeke said that three lots would be 30,000 sq. feet, and he felt it was not the intention of the Council to be that restrictive on a 30,000 sq. foot lot. Mr. Heeke said some control should be maintained, and he likes the language which Mr. Randolph has suggested or, possibly increase the land equivalent to four (4) times the minimum lot size for the district. Mr. Heeke suggested they increase the land equivalent to four (4) times on a trial basis, and if it needs further refinement, it could be handled next zoning season. He said that would also solve Mayor Marix's problem.

Mrs. Wiener made a motion to approve Item No. 14, but to increase land equivalent to four (4) times the minimum lot size for the district. Seconded by Mr. Ilyinsky, on roll call the motion carried unanimously.

Zoning
Sect. 5.50

Item 15. On a vote of 6:0, the Zoning Commission recommends <u>disapproval</u> of a proposal, submitted by the Town Administration, to amend Section 5.50 "Accessory buildings and/or Structures," by adding a new paragraph (6) under subsection 5.51 (b) to allow decorative nonhabitable and unenclosed accessory structures, not exceeding 100 square feet in area and 10 feet in height which are screened from view to be located in required set back areas.

Mr. Moore said there have been a number of occasions, at both administratively and Council level to review nonenclosed, small nonhabitable structures located in yards, and those structures would include gazebos, follys, and treillages. The Zoning Commission felt that placing accessory structures in yards could lead to construction of additional structures such as swimming pools.

Mr. Beal said it was the feeling of the Zoning Commission that a setback is a setback and nothing should be in it.

Motion was made by Mr. Weinberg to disapprove Item No. 15. as recommended by the Zoning Commission. Seconded by Mr. Ilyinsky, on roll call the motion carried by 4 to 1 vote, with Mrs. Douthit casting a no vote.

Zoning
Sect. 6.54

Item 16. On a vote of 6:0, the Zoning Commission recommends <u>approval</u> of a proposal, as submitted by the Town Administration, to amend Section 6.54 "Accessory Commercial Uses in a Hotel", to read as follows:

ACCESSORY COMMERCIAL USES IN A HOTEL. Accessory commercial uses designed primarily but not necessarily exclusively for the convenience of hotel guests or residents may be permitted within hotels in R-D(1) or <u>the</u> R-D(2) district as special exception uses, provided that the Town Council shall make the following findings:

(1) That the proposed special exception uses are inconformance with the provisions of Section 6.40 of this ordinance.

(2) That the proposed special exception uses are and, shall be located entirely within the principal building with no outside entrances thereto, and there shall be no exterior or external advertising of such use or uses.

(3) That the proposed special exception uses are permitted uses within the C-TS, C-WA, C-OPI or C-PC commercial districts.

(4) That the proposed special exception uses do not occupy more than fifteen (15) per cent of the total floor area of the principal building; provided further, however, that accessory commercial uses legally in existence at the time of passage of this ordinance within hotels located in R-D(1) or the R-D|2) district which occupy more than fifteen (15) per cent or the total floor area may continue, but shall not be expanded or in any way occupy more floor space than occupied at the time of passage of this ordinance.

(5) That the proposed special exception uses meet all other requirements of this ordinance, including but not limited to Sections 6.30, "Signs," and 6.21, "Off-street parking."

Motion was made by Mrs. Wiener, and seconded by Mr. Ilyinsky to approve Item No. 16. On roll call the motion carried unanimously.

Item 17. 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 5.30, "Yard Regulations", by amending subsection 5.31(c) to read as follows:

Zoning
Sect. 5.30
Subsect. 5.31(c)

In the R zoning districts of the Town an awning, as defined, and/or open trellises located in a side or rear yard which meets meet applicable minimum yard requirements may be erected provided the area of the principal structure and all awnings and open trellises combined does not exceed allowable lot coverage by more than three (3) per cent. It is the intent of this section that Awnings and/or trellises so erected may not in the future be converted to permanent additions to the principal structure if such conversion would increase lot coverage of the principal structure above allowed percentage.

Note: The exemption for retractable awnings in the side and rear yard were deleted by the Zoning Commission.

Mr. Moore said Item 17 permits open trellises to receive the same credit of 3% on lot coverage as awnings currently receive in the rear of the property.

Mrs. Douthit moved for approval of Item No. 17. Seconded by Mr. Ilyinsky, on roll call the motion carried unanimously.

Item 18. On a vote of 6:0, the Zoning Commission recommends disapproval of the proposal, as submitted by the Town Administration to amend Section 5.30, "Yard Regulations", by adding a new paragraph (d) under subsection 5.31 allowing, with certain limitations and restrictions, screened outdoor patios, recreation areas, and swimming pools to be exempt from FAR and/or lot coverage regulations when located in the R-B, R-A and R-AA zoning districts.

Mr. Moore said this exemption is intended to allow an exemption similar for open trellises and awnings for screened in patios and pool areas.

Mrs. Douthit made a motion to uphold the Zoning Commissions recommendation of disapproval of Item 18. Motion was seconded by Mrs. Wiener, and on roll call was approved unanimously.

Item 19. On a vote of 5:1, the Zoning Commission recommends approval of a proposal, as submitted by the Town Administration to amend Section 5.17, EXISTING SINGLE FAMILY DWELLING DEVELOPMENT to read as follows:

Zoning
Sect. 5.17

A single family dwelling structure existing located in any "R" District, which dwelling is nonconforming with any of the schedule of Lot, Yard and Bulk regulations for the 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 the dwelling it is located, may be permitted building enlarged with first story and/or second story addition(s) provided: (i) the addition(s) complies (comply) with the current schedule of Lot, Yard and Bulk regulations for the district in which the dwelling is located; and (ii) the addition(s) does(do) not cause the dwelling to have more floor area than allowed a new such dwelling under the current schedule of Lot, Yard and Bulk regulations for the district in which the dwelling is located; provided, however, this section 5.17 shall not apply to a dwelling that is demolished by more than fifty percent (50%), additions provided said building additions shall not increase the extent of the particular zoning nonconformity (ies). In the event a second floor addition is added to a nonconforming one or two story dwelling, said building addition shall meet front, side and rear setback requirements for two story dwellings and shall not increase the total floor area of such structure to more floor area than could be constructed if such structure were an entirely new structure. In the event that more than fifty (50) per cent of a building as determined by cubic footage, is demolished, in preparation for any proposed addition, exterior renovation, or exterior reconstruction. then these provisions shall not apply and the entire structure shall be made to conform to existing zoning regulations. It is the intent of this section 5.17 to provide allow a partial exemption to the provisions prohibition of existing building enlargements contained in the provisions of Sections 8.20 and 8.21 of this ordinance.

Mr. Moore said Zoning Commission members felt that clarification of the language in Section 5.17 would make it more usable for the public and Staff. He said the Staff has reviewed the change in language, and it does not change the substance of Section 5.17. He said Staff agrees with the recommendation of the Zoning Commission.

On motion by Mrs. Wiener, seconded by Mr. Ilyinsky, on roll call Item 19 was approved unanimously.

Zoning
Sect. 2.10

Item 20. 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 amend Section 2.10, "Definitions", by amending definition (22.1) Floor Area Ration (FAR) to read as follows:

FLOOR AREA RATIO (FAR). A measure of land use intensity, expressing the mathematical relationship between the floor area of a building, including covered terraces and porches, screened outdoor patios, screened recreation areas and screened pools, but not including awnings and open trellises approved pursuant to Section 5.31(c), and the unit of land. It is arrived at by dividing the gross floor area of all buildings (exterior dimensions) on a lot by the gross area of the lot.

Mr. Moore said this item is intended to clarify the definition of what is included in floor area ratio, and Mr. Brisson has added further clarification.

Mayor Marix said an awning could be small or it could be 40 or 50 feet long and 20 feet wide, and she would like to see them included in the floor area ratio.

Mr. Brisson said it was recently discovered that architects have been designing around the FAR limitations, and one example of that is, that by creating a great room which would have no ceiling until the second floor is reached, and because there is no floor, the great room would not be included in the FAR. He said in reality the result is, that the structure appears to have a much larger FAR. Mr. Brisson said he has suggested additional wording which states: "for the purposes of calculating the FAR, any portion of the building with a ceiling height that exceeds the maximum height allowable for a one story building, shall be treated as if a second story floor were present." He said that would truly reflect how big the building is, relative to what the FAR should be.

Mr. Heeke commented that Mr. Moore has an answer for Mayor Marix regarding her concern for the awnings. Mr. Moore said he recently inspected a house with an awning in the back and front. He said there is no exclusion from lot coverage for awnings placed in the front of the house. If the awning is placed on the side, or the rear of the house, there is a 3% exclusion similar to the action just taken regarding open trellises. Mr. Moore said if awnings are not counted as lot coverage, it certainly should not be counted as floor area ratio. He said as long as the awning is open there is no reason to count them as FAR. Mr. Moore said if the awning is located in the front of the house, it would count as lot coverage and FAR.

Mayor Marix asked what the difference was between an awning 18 feet wide and 30 feet long, open to the elements with no curtains, or a wooden roof of the same size? Mr. Moore said it would be possible to enclose the wooden roof at some future date. Mayor Marix said what if the person with the wooden roof agreed not to enclose the area. Mr. Moore said if they are allowed the 3% exclusion, it would need a variance from the Town Council to be able to close in the area. Mr. Moore said that from a construction standpoint, there is a major difference between an awning and a wooden roof.

Motion was made by Mrs. Wiener to approve Item number 20 as recommended by the Zoning Commission with the additional language. Seconded by Mr. Weinberg, and on roll call the motion carried unanimously.

Zoning
Sect. 5.36

Item 21. On a vote of 5:1, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration, to amend Section 5.36, "Garden Walls and Fences", by amending Section 5.36(c) to read as follows:

Side and rear yards. All garden walls and/or fences located between the side or rear building line and the side or rear lot line shall not exceed six (6) seven (7) feet in height except for a required street side yard of a corner lot and the required rear street yard of a through lot where they shall conform to the provisions of subparagraph (a) above. The height of a wall or fence located in a side or rear yard shall be measured on either side of the wall or fence from the top of the wall or fence and shall not exceed six (6) seven (7) feet in height from the lowest grade elevation opposite such point(s) of measurement. (See Attachment Five for illustration, attached at end of ordinance.)

Mrs. Douthit moved that Item 21 be approved. Seconded by Mrs. Wiener, on roll call the motion carried unanimously.

Property
Rezoning
Applications

Agenda Item 10. Property Rezoning applications.

On a vote of 6:0, the Zoning Commission recommends denial of the proposal submitted by the property owner of 3000 South Ocean Boulevard for a rezoning from RD-1 to C-TS.

Mr. Moore said that property belongs to WPBR radio station, and is located in the RD-1 district. He said they have requested that the property be changed to commercial Town serving. The property abuts the south side of the Lake Worth pier, and they want to change the property into a parking lot.

Mr. Heeke said it was his understanding that the City of Lake Worth objects to the change. Mr. Moore said they have objected to the Staff verbally, but not in writing. He said the property owner to the south has objected in writing to the change in zoning.

Mr. Brisson said the property at 3000 South Ocean Boulevard is presently shown as multi-family high density on the future land use plan. He said in order to rezone the property to commercial, the Comprehensive Plan would have to be changed. He commented that would be a procedural matter, but the Council needs to be aware of that. He said there are other uses permitted for that property in both nonconforming and allowed status in RD-1. Mr. Brisson said he felt a change in land use designation to commercial would be in violation of the Comprehensive Plan, and he did not recommend the change.

Mrs. Wiener moved to approve the Zoning Commissions recommendation to deny the 3000 South Ocean Boulevard rezoning. Seconded by Mrs. Douthit, on roll call the motion carried unanimously.

Comprehensive
Plan Review

Agenda Item 11. Comprehensive Plan Review.

Comprehensive Plan Review

On a vote of 6:0, the Zoning Commission recommends that the Town Council not proceed with the preparation and submission of the small Plan Amendment to the Town's Comprehensive Plan involving a change in the future land use category from Multi-Family High Density to Commercial for the property located at 3000 South Ocean Boulevard.

Mr. Moore said no action would be required on Item 11 because of action taken on Item 10.

Landmarks Preservation Ordinance

Agenda Item 12. Landmarks Preservation Ordinance Modification.

On a vote of 6:0, the Zoning Commission recommends approval of proposed amendment to the Landmarks Preservation Ordinance with minor modifications. The Town Attorney will revise the proposed ordinance accordingly.

Mr. Randolph said this is an amendment to the Landmark Ordinance which enables the owner of landmarked property, who cannot prove a hardship because the property no longer contributes to the Town as a landmark structure, this amendment would allow the owner an opportunity to show an economic hardship, and to present criteria to the Landmarks Commission, and ultimately to the Town Council to request permission to demolish a landmarked structure.

Mr. Randolph said he would like to point out to the Council some minor changes. He said on page 1, under 1-D the word "should" has been changed to "shall", and the criteria which is separate from the ordinance will be incorporated as part of the ordinance. He said the Landmarks Commission has suggested that a season for demolition requests, much like the season for designations which is November through April, should also be incorporated in the ordinance. Mr. Randolph said he has not included that in the ordinance, but if that is something the Council wants, he would need some input from them.

Mr. Randolph said there are pros and cons on that issue. He said the pro is, that if an important structure is going to be demolished the Town residents should be here, but the con is, that if a property owner wishes to demolish a structure, it could impose a hardship on the applicant if he had to delay demolition until the season.

Mr. Randolph said the ordinance proposes a two step process for demolition. He said one step is already in the ordinance and, it says the owner may demolish the property, if they can prove there is no longer historical significance for the building. The second reason is economic hardship. He said this is a two step process in which, if the applicant is denied permission to demolish under the first step, then they would apply to demolish under the economic hardship rule. Mr. Randolph said he has a problem with the two step process. He said if a property owner is unable to prove the property doesn't have historical significance, and the only reason for demolition is economic hardship, then why should they be required to prove reason number one. Mr. Randolph said in his opinion, from a legal standpoint, if the only reason for demolition is economic hardship, property owners should be able to apply for permission to demolish for that reason only.

Mr. Randolph said a provision which is now in the ordinance, provides that if a person wishes to demolish due to economic hardship, and obtains that permission, they would not be issued a permit to demolish until they presented plans for future construction on the property. He said Landmarks would like that provision retained in the ordinance. Mr. Randolph said he has informed the Landmarks Commission, that if a person has an economic hardship, and the property needs to be demolished, it serves no purpose to require that person to return with plans for the future use of that property. He said the economic hardship simply is, that the house needs to be demolished. Mr. Randolph said the Architectural Commission would still review plans for any proposed construction on the property. He said the question he has is, whether or not demolition should be tied to future plans for the property.

Mr. Heeke asked Mr. Randolph if he would go back through the items he has stated one at a time.

Mr. Randolph stated the items as follows:

1. Should there be a demolition season from November thru April. The Council agreed there should be a Demolition Season.

2. Should there be a two step demolition process, or should the property owner be allowed to apply for economic hardship, bypassing step one. The Council felt the two step demolition process should be retained in the ordinance.

3. Should the Town require plans to be reviewed and approved by the Landmarks Preservation Commission after demolition has been approved. The Council rejected Landmarks Preservation Commission's approval of plans.

Mrs. Volk said the Landmarks Preservation Commission feels the control of landmarked property should remain with the Commission. She said the Landmarks Commission is concerned with the street scapes as well as the house and property. She referred to a comment by Mr. Brisson "that you don't know what people are going to do until you see the site plan."

Mrs. Volk commented that the Town has only two historic districts. She said they haven't been able to form other historic districts, and the problem with that is, that the Town could lose the historic street scape and character which the Landmarks Commission is striving to preserve. Mrs. Volk said she feels the plan would have to be controlled by someone, and she would like it to be the Landmarks Preservation Commission.

Mrs. Wiener said one of the responsibilities of the ARCOM is to make sure that replacement homes should not be dissimilar. Mrs. Volk said dissimilar is different from a historic type house. Mr. Heeke stated that the home must conform to the surrounding neighborhood. Mrs. Wiener said a structure which is out of character would not be allowed. Mrs. Volk felt that is being optimistic, and since the property would be under the jurisdiction of one committee or another, wouldn't it be just as simple, if it were under the Landmarks Commission.

Mr. Randolph said if the Landmarks Commission districts an entire area, then that entire district would remain within its jurisdiction. Mrs. Volk stated that ideally that would be the thing to do, but it's very difficult. Mr. Heeke asked Mr. Randolph if he could add language to the

ordinance which would enable the Town Council to review whether or not the Landmarks Preservation Commission should review plans after demolition has taken place.

Any Other Matters

VII. ANY OTHER MATTERS:

Mr. Heeke said he would like to begin with policy statement, and then go to FAR.

Mr. Moore asked if he is referring to hotel advertising? Mr. Heeke answered affirmatively. Mr. Moore said the Staff has one problem from an administrative standpoint, but with policy direction from the Council, he felt the problem could be solved.

Mr. Moore said he felt the action of the Council upholding the Zoning Commission's recommendation regarding accessory use has eliminated the problem with dining rooms and restaurants. Mr. Heeke stated that he felt it was a subterfuge to require that a hotel may advertise dining rooms and restaurants if room rates are also advertised. He said there are services which are legitimately offered in nonconforming use because they have been grandfathered in, and he felt they should be allowed to advertise. Mayor Marix asked if that advertising would be for anything the hotels wanted to do? Mr. Randolph said the advertising would be limited to uses which have been ongoing for years, and they could not add uses. He said the issue is whether or not accessory uses have been able to advertise independently of the hotel. Mayor Marix asked if the hotels would be required to list their services? Mr. Randolph said that's one of the things which the Staff will review. Mrs. Douthit said she considered things such as hairdressers as normal hotel services. Mr. Randolph said adding uses would be going beyond the nonconforming use of the hotel. He stated the complaint from the hotels is, that they aren't able to advertise what services they offer, and he would have a real concern if the Council allowed expansion of the nonconforming use to include additional use, and allow the hotels to advertise them. Mr. Heeke said it is the tenor of the Council that the existing services in hotels may be advertised, but additional services may not be advertised.

Mr. Curtin asked if he is to meet with Staff, and then reappear before Council? Mr. Heeke said no, this was a policy statement.

Mr. Deziel asked if it would be possible for the Zoning Commission to meet more than once a year when complex issues arise such as the R-B zoning change? He said one day is not enough time to deal with such a complex issue. Mr. Heeke said the Commission may require special sessions or something of that nature. He felt this is something which should be investigated, and, may require some changes to the ordinance. Mr. Moore said the Zoning Commission is now allowed to meet as many days as they feel is necessary. Mr. Heeke said he realized that, but if there is an issue which is particularly involved, and complicated the Commission might wish to consider only that item.

Mr. Heeke said the next item for consideration is the FAR.

Mrs. Douthit said since lots in the R-B district are allowed to be combined, she felt that the 4.5 FAR needs to be examined very carefully. She said on lots with 10,000 sq. feet or more, a house with a FAR of 4.5 is colossal, and is out of keeping with the neighborhood. Mrs. Wiener said it's the same relationship. Mr. Moore said with lots over 12,000 sq. feet, the FAR may be adjusted downward. Mrs. Douthit stated that any lot over 10,000 sq. feet may be adjusted. Mr. Heeke said he would like the areas in which there are a lot of nonconforming homes reviewed. He said there are many 50 foot lot frontages, and maybe those areas should be made into a separate zoning district, and dealt with differently than lots which have say, 125 or 150 feet setbacks in the front.

Mr. Moore said he would like to remind the Council that there are two more zoning meetings. One is at 5:01 on January 26th, and the other is February 8, 1993, also at 5:01 PM, and there will be 9:30 AM meeting on January 19, 1993, to call the election.

Adjournment

VIII. ADJOURNMENT: Meeting was adjourned at 5:50 PM.

Grace T. Peters, Town Clerk