

TOWN COUNCIL MINUTES OF MEETING HELD ON JANUARY 4, 1994

I. CALL TO ORDER AND ROLL CALL: President Weinberg called the Special Meeting of the Town Council on Zoning to order at 9:37 AM on January 4, 1994 in the Town Hall Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Weinberg, President Pro Tem Wiener, Councilwomen Wiener and Smith. Absent was Councilwoman Douthit. Also attending were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Director of Planning, Building and Zoning Moore, Assistant Building Official Zimmerman, Planning/Projects Coordinator Frank and William Brisson from Adley, Brisson, Engman, Zoning Consultants.

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

III. PROOF OF PUBLICATION: Mrs. Peters advised the advertisement has been published and proof of publication is forthcoming.

IV. APPROVAL OF AGENDA: Motion was made to approve the agenda as printed by Mrs. Wiener. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC: Mr. Weinberg indicated the procedures will be the presentation made by Mr. Moore with the findings and recommendations of the Zoning Commission; and the Council will vote on each item individually; and comments will be received from the general public.

VI. ADMINISTRATIVE PROPOSALS AND/OR RECOMMENDATIONS (ITEMS 1 THROUGH 20) AND RECEIPT OF THE RECOMMENDATIONS AND REPORT OF THE ZONING COMMISSION DATED DECEMBER 1, 1993.

ITEM ONE: Mr. Moore indicated the revision is to amend the Schedule of Off-street Parking Requirements, Item 8, to read as follows:

Medical or Dental offices or clinics - one (1) per two hundred fifty (250) square feet of gross leasable area (GLA).

He noted this is a change from the requirement that five spaces are required for a medical office and the Zoning Commission recommended approval of the proposal as submitted by the Administration.

Mr. Adrian Winterfield addressed the Council noting he thought this was a considerable change from the original requirement and he suggested before they approve this, they should look at the current number of medical personnel who have offices in the Town, how large their offices are, and the size of their waiting rooms as everyone knows there is always waiting time when one goes to the doctor or to the dentist. He felt the constant traffic in a medical office is far greater than for lawyers and accountants and more similar to a personal service activity, such as a beauty salon.

Mrs. Wiener moved approval of Item One, of the Zoning Commission recommendation that Section 6.21 (c) (4), Schedule of Off-Street Parking Requirements be amended. Seconded by Mrs. Smith.

Mr. Randolph asked Mr. Moore if they were not going to recommend that Item 4 C be also changed on page 2049. Mr. Moore responded on that page, there is a requirement for a 1200 square foot office minimum for a doctor or dentist and by approving Item One, that would eliminate that requirement.

On roll call, the motion carried unanimously.

ITEM TWO: REFORMAT THE CONTENTS OF THE ZONING ORDINANCE FOR THE PURPOSE OF CLARITY AND SIMPLICITY OF USE.

Mr. Moore explained there was no formal action taken by the Zoning Commission on this but it has been 20 years since the Town Ordinance has been codified. He noted each year the Ordinance is amended and they have proposed to the Zoning Commission that they take all of the changes which have occurred and reformat the Ordinance to make it user friendly. He advised he has received complaints in his office that information in the Zoning Ordinance is scattered throughout the Ordinance and not centrally located for each Zoning District. He stated each Zoning District would have its own section and it could be either found or cross-referenced for information on each District. He recommended that they go forward with the reformatting. He noted the Zoning Commission suggested the following:

- The Code be in normal size type and be notebook size - 8 1/2 by 11.
- A clear and detailed table of contents and a good index.
- It should have separate chapters covering nonconforming uses and structures; special exceptions, conditional uses and variances.
- Commission members receive and review major sections as they are completed, rather than receiving the whole document.

Mr. Moore pointed out if the Commission does receive the revisions as requested, this will add additional time to the process. He had hoped it would be ready for next November, however, if this is done section by section, it will add another year to the process for finalization.

Mrs. Smith felt there were many other items facing the Town that deserve priority over this as this reformatting would take staff and attorney time and suggested this be put on the back burner.

Mayor Ilyinsky agreed and called on Mr. Beal, the Chairman of the Zoning Commission for his comments. Mr. Alexander Beal addressed the Council indicating the Zoning Commission was in agreement that the Zoning Code needed to be revised.

Mr. Moore explained his staff has no problem with the Code as they use the Ordinance on a daily basis, and they had intended to do this reformatting in house.

Mrs. Wiener stated she was confused as if the Commission agreed to a certain format and it continued throughout the entire Code, that should be it as nothing is going to change. Mr. Beal agreed, noting that all that is required is to move things around. Mrs. Wiener asked why they wanted to go to a larger format to which Mr. Beal responded it would be easier to handle in the larger format. He stated he would like to get this done and if Mr. Moore feels it will take more time for them to get the job completed if they have to send out portions of the Code to the Commission members, he is willing to waive that and have the job done as quickly as possible.

Mrs. Smith asked if the Zoning Commission would be called back into session to review the formatted code as she was very concerned about the staff time and expense. Mr. Moore responded the best way to handle it would be to put the document together and then give it to the Zoning Commission and they could make their comments on the entire document rather than on a piece by piece basis. Mrs. Royal asked if it was feasible to do this in house? Mr. Moore believed it could be done and they would not be making any changes, but if discrepancies are found or areas which need attention, they will be kept on a separate list and will be given to the Zoning Commission for their action and the Town Council's subsequent action.

Mrs. Royal commented she heartily endorsed anything that would make it easier to follow and she would like to make a motion and then asked if there had to be a motion since the Zoning Commission didn't make a formal motion?

Mrs. Wiener asked if they could receive Zoning Codes from other municipalities as she thought the process could be simplified. Mr. Beal indicated he has seen other municipalities' codes and he is sure he can secure copies from other municipalities. Mr. Moore indicated he has a copy of Jupiter Island's Code and it is in a good format and he would recommend they go that way. Mr. Weinberg suggested they handle it the most simplest way. Mr. Moore stated he would like the Council's authorization to move forward on this and have the Ordinance formatted in a more friendly manner and in a size that would be more convenient.

Mrs. Royal moved that authorization be given to the Building Department to continue in its efforts to revise the Zoning Code and put it in a more readable fashion. Mrs. Wiener suggested the wording should be to revise the presentation of the Zoning Code to which Mrs. Royal agreed.

Mrs. Smith wondered why all of a sudden there is a problem with the Zoning Code and they are talking about it being "user-friendly" and wondered if it was for the attorneys and asked who can't read the Zoning Code. Mr. Moore responded through the years, they have had complaints from attorneys, architects, engineers, the public at large that they have to go to too many different places within the Ordinance to find the regulations that would be applicable to their application, and as a result of that, they have discussed recodifying the Ordinance, which has not been done since 1974. He thought they could take the changes and try to organize them to be more user friendly.

Mr. Adrian Winterfield addressed the Council believing that twenty years was a substantial lifetime for any basic ordinance. He thought that in 1974 when the present form was adopted, an independent committee was given the task of formulating the Ordinance and the initial phase of that ran afoul of the Sunshine Law and created a place in the law reports which designated the extent of the Sunshine Law. He suggested that if this is reformatted, it may run into contradictions and problems which have been disregarded for a long time. He thought there should be a separate list kept of any inconsistencies. He did not believe it was an administrative job and thought if the Zoning Commission was involved on an interim basis, it would be appropriate to convene meetings and invite public participation.

Mr. Weinberg handed the gavel to Mrs. Wiener to chair the meeting and seconded the motion. On roll call, the motion carried 3-2, with two negative votes cast by Mrs. Smith and Mrs. Wiener and Mayor Ilyinsky voting affirmatively for the motion.

ITEM 3: Mr. Moore stated this is amend Section 2.10, Definitions to amend "Building Height of" to read:

The vertical distance measured from the grade established by the Town for the crown of the public street or road at its height highest elevation abutting the lot to the top of beam or plate of the top story. The grade, as identified above, is defined as the zero datum for a lot.

He advised the Zoning Commission recommended unanimously this Item 3 be adopted. Mrs. Wiener moved for approval of Item 3 amending Definitions in Section 2.10, No. 11, "Building Height of".

Mr. Weinberg called on Mr. Winterfield who asked for recognition to be heard. Mrs. Wiener asked to make a comment, noting she understood this is a public hearing, however, it turns out it is a public consisting of one person continually giving his views, which have already been given to the Zoning Commission, and this is a little bit more than what her patience can stand. She knows the Zoning Commission have discussed this thoroughly in a public hearing.

Mr. Winterfield addressed the Council suggested the function of the Council is not to rubber stamp the Zoning Commission actions as it is conceivable that the duration of the patience of individual Council members notwithstanding, that comments rejected by the Zoning Commission might be deemed by the elected officials to have merit.

Mrs. Wiener responded she did not consider "a" member of the public as another Zoning Commission, and this may be a hobby of some people but this is serious business by serious people. She suggested that if people were serious about what they do in this Town, they would also attend to those financial matters that they have between themselves and the Town, so they could be on an equal footing with everyone else. She reminded that if someone comes before the Council and is not correct in any way, they do not entertain them. She thought this Council had been more than generous with their time. She advised if Mr. Winterfield has a strong feeling on something, she would be happy to hear him, but she doubted if he had a strong feeling on everything.

Item Two:
Reformat
Zoning Ord.
(cont'd)

Item 3:
Amend Sect.
2.10

Item 3.
Amend Sect.
2.10 (cont'd)

Mr. Weinberg asked Mr. Winterfield if he cared to comment on Item 3, to which Mr. Winterfield responded he would, indicating he felt this is a definition which contains a second definition referring to the zero datum, and he thought it was appropriate for them to create a definition for Zero Datum. He thought this was very important and if he understood the Building Official to state the height would be measured from the ground floor to the top of the beam or plate, and the proposed language did not do that. Mr. Moore disagreed. Mr. Randolph felt if the Building Department was satisfied with the definition, it is appropriate.

On roll call, the motion carried unanimously.

Item 4:
Amend off-street
parking re-
quirements

ITEM 4: Mr. Moore stated this amends the Schedule of Off-Street Parking Requirements to read:

7. Libraries, museums, and Nonprofit Cultural Centers - one per five hundred (500) square feet.

He advised the Zoning Commission recommended approval of the proposal. He indicated what was added was the Nonprofit Cultural Centers was put into the category of Libraries and museums as there was no parking requirement previously in the Ordinance for a Nonprofit Cultural Center use.

Mrs. Wiener moved for approval of Item 4, which contained an addition and amends Section 6.21 (c) (4) Schedule of Off Street Parking Requirements by adding Nonprofit Cultural Centers. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Item 5:
Amend Sect.
4.10

ITEM 5 - Mr. Moore advised this item amends Section 4.10, Schedule of Lot, Yard and Bulk Regulations establishing a sliding scale floor area ration (FAR) in the R-B District. He informed the Mayor and Council that this was disapproved unanimously by the Zoning Commission. He recalled this item was brought to the Council twice before.

Mr. William Brisson reported to the Council, noting that this item has been considered by the Town Council previously but the thought was to provide some relief to those owners of smaller lots. He noted the problem with the sliding scale, if it is assumed the FAR is appropriate, that they need the right balance of home size to lot size and that it provides for an appropriate scale of homes on the individual sized lots, to allow a smaller lot to have a larger home on it will overcrowd the lot. He thought when they get to the larger lots and they reduce the FAR, the biggest problem with that is the intent of the FAR to make for smaller homes on very large lots is that it should be compatible with the surrounding area, however, that sliding scale does not take into account the surrounding area. He believed they may have very large homes on very large lots on either side and because of the lower FAR, there would have to be a smaller home, which could be out of scale and the size could be too small compared to the adjoining properties.

Mr. Brisson thought when they get into handling the scale, it should be handled through the Architectural Commission and this sliding scale is not the most appropriate approach to this problem, and he recommends against this sliding scale. Mrs. Wiener asked why this was coming back every year as they have heard this before. Mr. Moore responded the item was an item that was requested to be studied by a member of the Town Council and the majority of the Council approved it as being a part of this year's Zoning Agenda. He realized the recommendation has not changed since the Council had considered it in a previous year. Mrs. Wiener asked if there was some way, after the Town Council has turned something down three times, that it not come back to them a fourth time as she believes it comes back to the Town Council because it is a pet project.

Attorney Randolph explained the way to have it not come back is for the majority of the Town Council to vote against that one particular suggestion. He thought anyone has the right to suggest it, but it is up to the entire Council to determine as to whether or not they wish to proceed with it. Mrs. Wiener believed there were other ways these items could get onto the Zoning Calendar, other than through a Council member. Attorney Randolph believed that the items considered by the Town Council do go to the Council itself for a vote. He believed they could change their policy and each time the suggestion is made by a Council member, it can be discussed and a recommendation made as to whether or not the Town Council wishes it to go forward.

Mrs. Wiener suggested that if it gets past her, that a member of the Zoning Commission advise her that it is on the Zoning Agenda.

Mrs. Royal made a motion that the Zoning Commission recommendation to disapprove Item 5 be upheld. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Item Six:
Amend Sect.
6.21(f)

ITEM SIX: Mr. Moore commented this amends Section 6.21 (f) Utilization of Yards, by amending the second paragraph to read:

In R-AA, R-A, R-B, R-C, R-D(1) and R-D(2) Districts, parking for single family, two family and townhouse development may be permitted in any setback area or yard area provided, however, that at least one (1) of the required parking spaces be located in a garage. Off-street parking may be permitted on the same lot provided that for all such required and/or supplemental spaces, not located within a structure, effective screening by hedges and/or walls permitted by code not less than six (6) feet in height shall be placed between the off-street parking and any street and/or interior lot lines. (Remainder of section is unchanged).

Mr. Moore noted their current policy is that they have not been interpreting the Ordinance as written, that the extra parking space could not be put into the driveway, without sightcreening. He needed direction from the Town Council as to whether or not the Council wished to allow the second car on a one car garage scenario sightcreened from the street, as if they do wish it sightcreened, that is the way the Ordinance reads now, but if they don't, as it is difficult to do in some of the older neighborhoods with the smaller lots, then an Ordinance change is needed. He advised they have not been enforcing the Ordinance literally the way it is written as the second space has not been required to be sightcreened from the street.

Mrs. Wiener thought it was strange that the two car garages are pretty well here, and her concern in talking about a one car garage as she knows that there are one car garages in the Town but there are also many residences in Town with the two car garages and here they are talking about one car garage and sightscreening those cars parked in the driveway. She didn't believe that they wanted to encourage people to build one car garages and have the extra cars parked in their driveways as she was looking at future construction. Mr. Moore recalled the one car garage issue was put into the Ordinance in the mid-eighties and it was to be a minimum, as people were converting their garages to living quarters and then coming to the Council for variances to put a garage onto the property after the fact.

Mr. Moore did not recall any new construction coming before the Town that did not have at least a two car garage. He noted this section was to address the older sections in Town which had either no garage or a one car garage. Mrs. Wiener stated she was thinking of future building in the R-A, R-AA and R-B Districts. She thought they needed to be addressing in some form or if a lot is not a certain size, they need to look at it.

Mr. Alexander Beal addressed the Council wondering if six feet of hedge was appropriate as he didn't think that was enough sightscreening to conceal a van, which many people now have and that was his concern.

Mrs. Smith advised her concern was the fact that people were converting their garages into living space and then have to come before the Council for variances for carports or to build another garage, which puts the parked cars closer to the street and there is no way to sightscreen them. She also didn't know how they would deal with the parking on the sub-standard lots. Mr. Moore did not believe they could sightscreen the parking on the smaller lots and the Code requires the driveways be offset to the side, which is difficult, however on new construction, it could be done on a standard size lot. He asked they approve on the two-family and Townhouse development, that one of the parking spaces be required to be in a garage and the other he needed direction on how the Council wished him to handle the issue of sightscreening the second car. Mrs. Smith noted the change is for new construction as they cannot change whatever is there now.

Attorney Randolph explained anytime a change is made in the Ordinance, it is always applicable to new construction and doesn't amortize out, unless that is so stated. He stated this would apply not only to new construction but to substantial reconstruction. Mrs. Smith thought it was not clear as if a new owner comes in and has not had to sightscreen his parking on his lot and then he does because he is remodeling, it is just not clear. Mrs. Wiener thought it was ludicrous to state the one car garage in the requirements. Mrs. Smith believed that it should be more specific as when they talk about the R-B District and the Townhouses, it is very different from the Estate section where the new construction could have an eight car garage.

Mr. Moore stated they can study it and rework it for the next year's Zoning Agenda, as this is not a high priority issue. Mrs. Smith stated she would hate to leave it for a year as if the Council can start this moving in the right direction. Mr. Randolph suggested the staff reclarify it and bring it back next year. Mrs. Smith asked if there was something that could be done without waiting for a year? Mr. Weinberg asked if it could be brought back to the next Council meeting? Mr. Randolph responded they will be considering this at the Public Hearing scheduled for 5:01 PM and if specific directions were given as to the intent, they could incorporate the wording into the Ordinance and it can be discussed at that time.

Mrs. Wiener believed the sight screening should be addressed and they should not let that go by, as obviously, it would be for new construction. She stated she had a problem with the one car garage as perhaps what they should do is make sure they get the sightscreening and she still felt to say that a minimum of a one car garage is needed is ridiculous.

Mr. Moore stated if they do that the fact of the matter is that nothing is being built with a one car garage and the only time that comes into play is in the older sections of Town with the smaller lots, where there are one car garages and in order to perpetuate at least the one space of off-street parking, and that is why this was put into the ordinance. He believed the issues of the townhouses and the duplex, was put in for clarification purposes as he felt that is the way the Ordinance should be interpreted but to clarify it, they put the words in there stating there needs to be at least a one car garage. He thought they could address the concern and state at least a two car garage needed to be provided, if that is what the Council wants and they will bring it back to the Council at the 5:01 Public Hearing. Mr. Randolph asked if that was not a pretty substantive change from what the Zoning Commission worked and it was previously advertised as a one car garage? Mr. Moore responded they would have to readvertise now as a quarter page ad has to go into the newspaper twice.

Mrs. Wiener suggested they just tell Mr. Moore to enforce the Ordinance as written, as he has pointed out no-one is coming in to build a one car garage. Mrs. Smith noted to park a car in the driveway, it has to be offset so that the car can be sightscreened. Mayor Ilyinsky stated he would rather see a car parked in a driveway rather than give up green space to hide the car from the public. Mrs. Smith did not agree, recalling when she served on the Architectural Commission, they spent hours working on the problem and having the driveways offset to hide the parking and have sightscreening with landscaping of bushes, hedges and trees. Mrs. Wiener thought another inconvenience is when they bring in a car and park it in front of the garage and then the person who is parked in the garage needs to get out, so it is an inconvenience. She felt there was no question that it should be interpreted as written. Mr. Moore indicated he would enforce the Ordinance as written, which they have not been doing.

Mr. Winterfield addressed the Council noting that one might consider establishing a standard for a number of garages, such as one garage for 6000 square feet, so if the house is large, two garages would not be sufficient and a third one might be required.

Mrs. Smith moved to uphold the Zoning Commission's approval of Item 6 and the Ordinance should be enforced as it is written and the Town Attorney and staff will look at this to see if any further clarification is necessary, it be brought back to the next Public Hearing on Zoning. Seconded by Mrs. Wiener noting there will be a minimum for the R-A and R-AA and R-B. Mrs. Smith thought that would be part of Mr. Randolph's study for clarification. On roll call, the motion carried unanimously.

ITEM SEVEN. Mr. Moore stated this is to amend Section 5.50, Accessory Buildings and or structures" by amending sub-section 5.51 by removing the requirement which was when accessory

Item Six:
Amend Sect.
6.21(f)
(cont'd)

Item Seven:
Amend Sect.
5.50

Section Seven:
Amend Sect.
5.50 (cont'd)

structures are located within ten feet of a principal structure, they would have to comply in all respects with the lot, yard and bulk requirements. He referred to the Zoning Commission recommendation which states:

"except by approval of a Special Exception and submission of a written agreement with the Town stating that said accessory structure will be used only by family members or household staff."

Mr. Moore noted this change involves a second kitchen and what this is doing is requiring the second kitchen to have a Special Exception rather than the prior way it was being handled by way of a variance. He stated the Zoning Commission and staff agree this be approved. He noted that would be a language change for omission of the ten feet for accessory structures and changing the requirement for a second kitchen to require a Special Exception rather than a Variance.

Mrs. Royal asked if this would include a Deed Restriction to which Mr. Moore agreed, noting it should be recorded in the public records of the County.

Mrs. Wiener moved that Item 7 be approved as recommended by the Zoning Commission and as shown on Page 4, 5, 6, and the first half of Page 7 in the Report of the Zoning Commission. Seconded by Mrs. Smith who suggested the item of the dish antenna and the sizes for the antenna is quite large and since technology is reducing the size of these antennas, and she suggested this item go back to the Zoning Commission for study next year. Mrs. Wiener included that as an amendment to her motion.

Adrian Winterfield addressed the Council stating there are several ambiguities as at one point they are told the lot requirements apply and if that is the case, the distance from the accessory building should be the same as the side yard setback. He felt the present language which speaks of the ten feet may or may not include a presumption that if it is less than ten feet, the space between the two structures should be considered as covered space in calculating the building coverage. Mr. Moore stated that is not the case.

Mr. Winterfield referred to Paragraph One which has a definition enclosed which means if indeed that definition is applicable for the entire ordinance, it should be a part of the definitions. He referred to Paragraph 5, noting that in the event of rental of the principal structure and obviously the occupant may use it in the same manner as the non-paying guests. He stated it is not clear what happens to the Kitchen facilities as the use of the kitchen facilities should probably be suspended during the tenancy.

On roll call, the motion carried unanimously.

Item Eight:
Section
9.60

ITEM EIGHT: Mr. Moore recalled what was presented to the Zoning Commission on this item was to add language under Section 9.60, Site Plan Review, to allow the recovery of additional costs for large Site Plan Reviews, very complicated Special Exception and Variance applications. He advised the Zoning Commission did approve, except they added language that the Town Attorney's legal expenses would not be included as a legal service. Mr. Moore advised they were asked initially to find a way to recover legal services which were extraordinary. He stated the Zoning Commission had a problem with the recovery of the Town attorney's expenses and inserted in the recommendation the exclusion of legal services rendered by the Town Attorney.

Mr. Moore reported the language has been revised and he read the revised language prepared by his department:

Item 8 - When an application for Site Plan Review is filed in which extraordinary professional advise and/or consultation is required, as determined by the Building Official, such as but not limited to architectural, engineering and legal services, then the expense of such professional advise shall be borne by the applicant.

Item 8 A - When an application for Special Exception or Variance is filed in which extraordinary professional advice and/or consultation is required, as determined by the Building Official, such as but not limited to architectural, engineering and legal services, then the expense of such professional advice shall be borne by the applicant.

Mr. Moore advised this is the staff recommendation and he realizes it does conflict with the Zoning Commission recommendation as he believed they should be able to recover in certain instances the extraordinary cost associated with the applicant's request that involve the Town's time and expertise and additional information which may be required from outside consultants, including the Town Attorney.

Mrs. Wiener recalled she and Mrs. Smith came forward with this during the deliberations of the Finance & Taxation Committee and it was brought to the Town Council who agreed and directed the Building Department to move forward. She didn't understand that when a directive is given by the Town Council, how something else is suddenly in front of the Council as the Council is in a position where they want to see what they can do to hold down the taxes and other people are using Town services for which they pay no more and she didn't understand why this is coming before them now.

Mr. Randolph advised what is before them is a recommendation from the Zoning Commission. He advised the way the item was presented by staff, it talked about third party professional advice and Mr. Randolph suggested to the Zoning Commission that to phrase it in that manner could eliminate him as Town Attorney and it was Mr. Randolph's suggestion that that be amended and he thought that was part of the intent of including "other than the Town Attorney" in their recommendation.

He recalled another point and reason made by the Zoning Commission was the feeling of some of the members of the Commission that the Town Attorney should not be included and it should be done only in the event it were a third party consultant. Mr. Randolph recalled staff disagreed with that and perhaps the Town Council has a recommendation for the modification of the language, but the language as presented means that in the event there is a project that requires more than normal time of himself or an architect or a planner or an engineer, then the Town Council will be able to recover those costs from that applicant.

Mrs. Smith noted the Town Attorney would be the only one who would not be paid by the outside experts, and the Council's main concern was the Town Attorney, as the Finance & Taxation Committee felt it was not fair that the Town Attorney was in effect working for the applicant, and that is how this all came about. Mr. Randolph agreed noting that the language as proposed by the Zoning Commission does not do what the Finance & Taxation Committee wanted it to do. He advised they are suggesting the proposed language as prepared by staff does do that.

Mrs. Smith thought perhaps Mr. Moore didn't make it that clear to the Zoning Commission to which Mr. Moore responded that was not the case as he made it very clear to which Mr. Randolph agreed, noting maybe this should not be applied to someone other than the Town Attorney as how would he divide his time and determine what he normally would have spent versus what is extraordinary.

Mrs. Smith asked for Mr. Beal's comments as to why there was confusion at the Zoning Commission. Mr. Beal addressed the Council, indicating he didn't believe there was confusion as far as the Zoning Commission was concerned. Mr. Beal stated if the Council feels the Town Attorney should not be included, that is up to them. He stated the Zoning Commission wanted to make the recommendation they made and if it is changed, that is the Council's right.

Mrs. Wiener recalled the Town Attorney is keeping a running list of the inquiries he receives to which Mr. Randolph responded he is keeping such a list.

Mrs. Royal asked if Mr. Moore was comfortable with the authority granted in 8 and 8 A, or would he like the Council to put a threshold there? Mr. Moore responded he is comfortable with the language as it exists, however, the ability to discuss that difference of opinion is available and the Town Council would be the ultimate decision maker.

Mr. Moore suggested the Council approve the Zoning Commission's recommendation with modified language as submitted by the staff.

Mr. Randolph thought that would be confusing and suggested the Council approve the recommendation of staff that was submitted to them today on Items 8 and 8A.

Mrs. Wiener moved that Item 8 with the language given to them by staff today be approved. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Mrs. Wiener moved that Item 8 A with the language given to them by staff today be approved. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

ITEM NINE: Mr. Moore explained this is an amendment to Section 5.11 on "Lot Regulations by amending subsection 5.11, "Existing Building Lots" to read as follows:

EXISTING BUILDING LOTS. . A single-family structure may be constructed on any existing nonconforming lot at the time of adoption of this ordinance, in any R District, except R-AA District, if said lot is less than the minimum area required for building lots in the R District in which it is located; provided, however, that the lot complies with all other provisions of the Schedule of Lot, Yard and Bulk Requirements of this Ordinance; and provided further, that the owner of said lot does not own any adjacent vacant land which would create a conforming lot if said vacant land were combined with the lot deficient in area.

Mr. Moore stated this was for all Districts except the R-AA District because of the fact that the minimum size lots would not total the minimum size square footage area. He advised the Zoning Commission disapproved this proposal with their reason being they do have non-conforming lots which would be adversely effected.

Motion was made by Mrs. Wiener that the Town Council uphold the Zoning Commission's recommendation to disapprove Proposal submitted by the Town Administration, amending Section 5.10, which is Item No. 9. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

ITEM NO. TEN. Mr. Moore stated this is to amend Section 4.10, "Schedule of Lot, Yard and Bulk Regulations" for the R-B District by increasing allowable lot coverage for one story structures from 30% to 40%, which the Zoning Commission recommended unanimously.

Mr. Brisson stated the reasoning behind this proposal is if the lot coverage is increased for a single family home and they leave the FAR and lot coverage as presently in the Code, there will be less of a disparity. He noted on a 10,000 square lot, there could be 4000 square feet in a single story home and 4500 square feet in a two story home, because of the 0.5 FAR.

Mr. Brisson exhibited a drawing which showed two examples and noted if the coverage was increased for a single story structure, wider buildings would be made; and in essence, the building would not look massive from the front as it would probably still be 75' wide across the front and the extra footage would be extended towards the rear lot line. He thought the encouragement towards the single story structure would not increase the appearance of mass from the front, but could slightly form the sideyards, in a sense there would be a deeper building, such as 53' deep as opposed to 40'. He thought that would be lessened by the fact of the Cubic Content Ratio, and if they wished to go from 30% to 40% in order to stay within the Cubic Content Ratio, they would have to lower the building.

Item Eight:
Section 9.60

Item Nine:
Amend. Sect.
5.11

Item Ten:
Amend Sect.
4.10

Item Ten:
Amend Sect.
4.10 (cont'd)

He stated under 30%, they could go 14' high to the top of the beam and if they go to 40%, the height would have to be reduced to 11 1/4', and on balance, the structure would not appear any larger to either the side property owners or from the front of the building and it might encourage single story construction.

He pointed out if someone does go to the 40% coverage, they would have to meet the same front setback requirement but the rear yard would be reduced. He believed this would offer the property owner more flexibility and if he chooses to make a bigger building in a single story, there would be less of a rear yard but that would be his choice. He saw no problem with increasing the coverage to 40% as far as mass and bulk were concerned, as they still have the same amount of required landscaped open space.

Mrs. Wiener asked if there was any discussion on having this change be 35% instead of 40%, which is a 30% increase. Mr. Moore responded there was not, but as a point of fact, the old ordinance allowed for two story lot coverage at 25% and one story at 30% and the five per cent increase was not enough to create a demand for the one story. He believed the concept would have been to offer a large enough incentive to perhaps make it more attractive to build the one story.

Mrs. Wiener believed this would probably create a rash of swimming pool variances, because they wouldn't have enough room in the rear yard, and she has a problem with that. Mrs. Royal believed there was always the possibility of someone down the line buying a house with the 40% lot coverage and then wanted to put a second story on the house and wondered if there could be a deed restriction that any single story house built with the 40% lot coverage could never have a second story? Mrs. Smith thought it would create a major problem as they would have the 40% lot coverage, the swimming pool crowding their rear neighbor's lot and she was not for it.

Mr. Beal addressed the Council, speaking personally, noting the cost today to build a home is \$150 a square foot, so 1000' would be \$150,000 and it could be more than that, and that doesn't mean because they allow a person to go from 3000 square feet to 4000, that everyone will go all the way as a person may choose to go to 3500 or 3000 if they want a swimming pool, so he thought it was a question as to whether or not the Council wanted them to go to 4000 as a maximum, as he thought with the costs arising, there would be very few people who would go to the maximum. Mrs. Wiener noted there was 15' in the back yard and this could also mean the requests would be made through the variance procedure for the pool to be in the front and side yards, to which Mr. Beal agreed.

Mrs. Smith commented on the problem they were discussing earlier about the sightscreened driveways as she envisioned the houses being pushed back with the garages on the side which will create larger variances when it comes to pools. Mrs. Smith moved that the Zoning Commission recommendation be disapproved on Item 10 to increase the lot coverage for Section 4.20 amending one story structures from 30 to 40 percent.

Mayor Ilyinsky believed they would be opening up a Pandora's box if they did this and he agreed with the motion.

Mrs. Wiener understood why they were trying to encourage one story and she would be inclined to suggest they go to 35% rather than the 40%. Mrs. Smith agreed but stated her surprise that 35% was not suggested by the Zoning Commission and amended her motion to disapproving the 40% and the increase be to 35%. Seconded by Mrs. Wiener.

Mr. Robert Deziel addressed the Council noting if they approve the 35%, they should have a restriction on the land which could not add a second story unless they move the five per cent on the first story which would take it back to the thirty percent. He did not believe this would be binding a future Council but would be creating a deed restriction.

Mr. Randolph noted this language could be put into the Code, but a Zoning Ordinance does not constitute a deed restriction, so it would not be binding on anyone in the future who sought a variance from the regulations. Mr. Deziel stated he was proposing that as part of the restriction, it not be a zoning restriction but be a deed restriction. Mr. Randolph noted Mr. Deziel is suggesting going beyond the variance setting and going into the building permit setting, to which Mr. Deziel agreed. Mr. Randolph reiterated it could be put into the Code and it might lend an element of protection, however even a deed restriction can be modified by a future Council.

Mrs. Smith stated she would not amend her motion to include that provision to which the seconder also agreed.

On roll call, the motion carried 3-1 with a negative vote cast against the motion by Mrs. Royal.

ITEM ELEVEN - Mr. Moore noted this amends Section 4.20, Schedule of Use Regulations for the C-WA District by eliminating Special Exception Uses L(1) and L(2) relating to dwelling units on the second and third floors and the alternative is the Town Council may authorize continuation of the Special Exception Uses L(1) and L(2). He advised the Zoning Commission recommended unanimously disapproval of the proposal which is to eliminate those uses and they recommend the continuance of the ability to have these two Special Exceptions until the year 1996 when this will be revisited.

Mrs. Royal moved that the Zoning Commission's disapproval be upheld of the proposal submitted by the Town Administration to amend Section 4.20, Schedule of Use Regulations for the C-WA District and to extend the expiration date to 1996. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

ITEM TWELVE: Mr. Moore advised this is to amend Section 6.64 Parking in Residential Areas by amending Section 6.64 (6), Issuance of Special Parking Permits upon application by increasing parking fee from \$10.00 to \$20.00, and the Zoning Commission recommended disapproval of the proposal. He recalled this was another item that the Finance & Taxation Committee asked to be addressed by increasing the parking fees.

Mrs. Smith asked why an increase in parking fees would be discussed by the Zoning Commission? Mr. Randolph responded the reason is the parking ordinance is in the Zoning Ordinance and it is there because of some case law in the past ruled that to uphold the zoning regulations it should be included in the Zoning Ordinance. He noted it is not the fact that there is a minor change in the fee, but because they interpreted the parking regulations to be a part of the Zoning

Item Eleven:
Amend Sec.
4.20

Item Twelve:
Amend Sect.
6.64

Ordinance and that Ordinance is coming before them. He stated it was disapproved by the Zoning Commission as there were some people who felt it was not appropriate.

Mrs. Smith asked Mr. Beal why there was so much discussion about this proposal? Mr. Beal responded he believed the feeling generally was why add another expense to the residents who live here and he really couldn't give any reason of what their thinking was on this matter. Mrs. Smith pointed out there are other sections in the Town who pay \$20 for this parking privilege and the idea was to make it uniform all through the Town. Mrs. Wiener moved that the Item No. 12 that the fee for special parking permits, issued upon application be increased from \$10 to \$20 and the Council disapprove the Zoning Commission's disapproval of this item. Seconded by Mrs. Smith.

Mr. Winterfield observed the Arlington Plan, as approved by the Supreme Court, was based upon an Ordinance which was included in the Zoning Ordinance of the municipality of Arlington, Va., and subsequently the Gainesville Plan was then enacted and although there are different criteria, the concept is the same. He is partisan on removing this plan from the Zoning Ordinance and suggested a Comprehensive Parking Ordinance be created at which time it would be appropriate to adjust the fee structure.

On roll call, the motion carried unanimously.

ITEM THIRTEEN: Mr. Moore stated this item was to amend Section 4.20, Schedule of Lot, Yard and Bulk Regulations, by adding a new footnote #27 applicable to single family and two family structures in R-AA, R-A, R-B, R-C, R-D (1) and R-D(2) Districts to read:

"Single family and two family multi-level (more than two) structures, commonly known as split level structures, may be constructed in "R" Districts provided the structure does not exceed the applicable lot, yard and bulk regulations for two story structures in the District."

Mr. Moore advised on a vote of 5-2, the Zoning Commission recommends disapproval of the proposal as submitted by the Town Administration and discussed in the Adley, Brisson, Engman Technical Memorandum. He recalled this has been before the Town Council and the Zoning commission in the mid-eighties and it was turned down. He advised the Town does permit, if the excess of floor change is not more than 18 inches, which is the same as what is raised above the crown of the road, levels to change with inside a structure. He advised this proposal and an example was at the corner of N. Ocean Way and No. Ocean Blvd. where the contour of the property allowed a split level structure be built and this would eliminate the need for that type of a variance request.

Mr. William Brisson addressed the Council recommended allowing the split level home as no one portion of the home would have more than two levels and it would encourage the variation of height, which reduces the mass and bulk. He recalled at the Zoning Commission meeting, there was an argument that this would reinstall the basement credit but he did not think that was true. He recommended this be allowed.

Mr. Moore explained that in no way would the height of this structure be permitted to be any higher than a two story structure with a variation of 18" which is currently allowed. He thought the worse case scenario would be the contour of the property which dictates the worse case scenario as they are only going to be able to achieve this where there is a high property on one side and a low property on the other side as otherwise, the 22' at point of measurement at slab to the top of the tie beam for the R-B District, would not allow for a split level as they would have to have a minimum of 8' ceilings and they would need 24' in order to do that.

Mrs. Smith believed this would create a real problem as the variance procedure is always available for split level homes to come before the Council and asked if the Chairman of the Architectural Commission, Mrs. Frost-Golino could address the Council on this item and see if this is a problem that can be dealt with by the architects when it comes to the grading on the various lots. Mrs. Joanna Frost-Golino addressed the Council, stated her concern about this proposal as she is very familiar with the house on which it is based and that was the house on Ocean Terrace. She recalled after the variance was granted, there was a tremendous amount of work done by the Town Staff to try and determine from where they would measure the Cubical Contents on this particular house. She was partly involved in this and it went back and forth many times and the concern was voiced that perhaps this was allowing a split level as there was space in the house which was not being counted for Cubical Contents because the floor was varying and therefore there was fill or dirt or whatever underneath which was not being counted. She thought on this particular case, it was helped by the the variance, but she thought in terms of the staff, it is difficult to make sure that the Cubical Contents is correct; and they worked very long on this with the architect to get it to look not like a split level, but make it appear as two levels. She pointed out the Brisson illustration makes it look like three levels on this side of the house and that is something they probably would not encourage at ARCOM, and they would encourage it to look like two levels, and she thought they may be seeing a lot of architects coming in with plans that were split level but it would not be in keeping in what they are seeing in Palm Beach now.

Mrs. Smith preferred to have the Council make the determination on the split levels through the variance process as it is now being done.

Mrs. Royal believed there were good architects practicing in the community and if they are given an envelope within which to design, it may be the answer.

Mr. Jeffrey Smith, Architect addressed the Council noting it is not a problem of the good architects in the community who are dealing with these problems but it is the ones who are not trained within the Town that do not know what is unique about Palm Beach, and the Council should be the ones to handle this through the variance process.

Mrs. Wiener wanted to talk about the difficulty with measuring as brought out by Mrs. Frost-Golino and she didn't see why there was any difficulty with measuring when professionals were doing the job of measuring something. Mr. Moore responded the cubic content for the point of measurement, which is a new item put into the Code last year and the architects chose a more advantageous point to begin the measurement than did the staff. He stated after a staff meeting, the architect was informed of his error and it was recalculated. Mrs. Wiener asked if it was still a problem with the staff? Mr. Zimmerman responded it was not. Mr. Frank noted on this particular

Item Twelve:
Amend Sect.
6.64

Item Thirteen:
Amend Sect.
4.20

Item Thirteen:
Amend Sect.
4.20
(cont'd)

example, there were two topics, one was the split level as to whether the mass should be allowed to move downward as there was a topographical change on the property, and that didn't bother them much, however, there were varying elevations within the house and the architect chose to raise the floor which gave the structure an appearance of massive increase from the exterior.

He advised them that was not appropriate as once the floor elevation is set, they would measure from that point and if the floor is raised, they will not get credit for the area to which they raised into. He believed once that problem was solved and once a set policy was established, they paved the way to effectively review these in a consistent manner. Mrs. Wiener stated it is not a difficulty then any longer to which Mr. Frank responded it is not and the split level can actually be dealt with and can be an enhancement.

Mrs. Wiener wanted to make sure that everyone understood how these things were measured. Mrs. Wiener had a second question as she has no feeling about a Pandora's Box or something different as when they go through the landmarking process, they see they are coming into an era of different types of homes being landmarked. She thought there were some things that would be good forever, and they are not all the same, and it has to be understood that if someone does choose to build a home that is within the regulations, in the final analysis, it is their money, their taxes and to summarily state they cannot build this particular type of split level home she thought was inappropriate. She thought split level homes fifty years from now may be homes that will be considered for landmarking in this Town as it will be typical of a certain era in the history of the Town.

Mrs. Wiener moved that the Zoning Commission's recommendation to disapprove Item 13 be disapproved by the Town Council. Seconded by Mrs. Royal. On roll call, the motion carried 3-1 with Mrs. Smith voting against the motion, explaining she thought she would see Regency landmarking before she sees split levels.

Meeting was adjourned for the luncheon break.

Meeting was reconvened by the President of the Council.

Item Fourteen:
Amend Sect.
5.18

ITEM 14 - Mr. Moore explained this is to amend Section 5.18 "Lot Grade Topography and there was a great deal of discussion on this and this issue of raising a property is also addressed in the Building Code which requires a retaining wall to hold that person's water on his side of the property so it will not flood the neighbor's property.

Mr. Moore explained the Zoning Commission voted 5-2 to approve the proposal as submitted by the Town Administration and due to discussions which occurred during the consideration of this particular item, the staff has tried to refine this item further and distributed a handout which contained alternative language to cover all of the issues:

LOT GRADE TOPOGRAPHY AND DRAINAGE: In residential districts for single family development the natural grade and topography of a lot may be altered to raise and grade same to meet base flood elevation requirements. Grade shall not be more than eighteen (18) inches except to meet minimum flood elevation requirements, nor be raised higher than eighteen (18) inches above the crown of the abutting street unless as part of a building official approved plan, which provides for natural containment of rain water and its percolation on the lot. The intent of this section is to allow minor changes in lot topography as long as proper drainage and/or containment of water is provided for.

Top of finished first floor (habitable) shall not exceed six (6) inches above the permitted grade.

Mrs. Smith asked why the language was added to the first paragraph on the intent as it was her feeling if the intent was clear, they wouldn't need this sentence. Mr. Moore responded it was their feeling by adding the language, it would give the architects a clear understanding of what this section was trying to say and it would be a benefit to those reading it. Mrs. Smith suggested the intent should be the first sentence but as she read it, she really didn't think the sentence may be necessary as she finds the paragraph explaining it very clearly.

Mrs. Royal asked if this addressed the amount of fill that would be brought in to build a house on the oceanfront? Mr. Moore stated it would control the amount of fill that could be brought in and would also limit it, except to meet the flood elevation.

Mr. Randolph asked if this language says that the Building Official could allow it to be above 18 inches as long as it was contained on the site? Mr. Zimmerman responded in situations where there are already exceptionally high existing grades, they may have that situation and that is when the Building Official's plan concept would come into play.

Mrs. Wiener asked if the language could be further clarified so it does not appear the Building Official's decision can be arbitrary but based on a set of regulations. Mr. Moore suggested that language could be stricken and he stated the language eliminated would be "unless as part of a building official approved plan."

Mr. Randolph asked if this would then have to come back to the Council for approval to make sure that the water is contained on the property? Mrs. Wiener explained her intent was that it not be that the Building Official makes the decision but if it falls within a set of rules, that would be applied equally to all and not as an arbitrary decision of the Building Official.

Mrs. Smith asked if Mr. Randolph had any language which would make this clearer? Mr. Randolph responded if indeed it is the intent that the Building Department through a set of regulations is allowed to approve the plan over 18 inches, then there should be language incorporated which would say that.

Mr. Moore advised the intent of the approved plan is to contain the water so it does not affect the abutting neighbor's property. Mr. Randolph noted it could then be 36" above the crown of the road, as long as the Department was satisfied the water would be contained on the property? Mr. Moore responded affirmatively. Mrs. Smith did not think that was clear as the intent probably attempts to make it clear but it doesn't. Mr. Randolph noted it states they can go over 18" if it is part of an approved plan. Mrs. Smith thought they were talking about specific guidelines so there is no gray matter.

Item Fourteen:
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5.18

Mr. Randolph stated he wanted to be sure that it was known that if the Building Department wished to go higher, as long as the water is contained on the property, they could do so. Mrs. Wiener thought they had to know there was a set of rules and regulations as long as someone doesn't go up seven feet in the air just because it suits him, that is the problem.

Mr. Randolph responded they could incorporate the language which will leave no opening for misinterpretation. Mr. Moore noted the guidelines are in the paragraph which refers to the natural containment of rain water and its percolation on the property. He advised an architect or engineer could choose to do that in several different ways, but they will look into more clarifying language.

Mrs. Wiener thought what they wanted was the lot grade be at the lowest level which will serve the intent of this section, as they want to be sure the rainwater is contained on the property. Mr. Moore responded that is the intent of the 18 inches and the last sentence states the finished floor shall not exceed six inches above the permitted grade and that is the controlling factor as that is where the point of measurement begins.

Mr. Randolph suggested the second sentence should read:

"Grade shall not be raised more than eighteen inches except to meet minimum floor requirements, nor be raised higher than eighteen (18) inches above the crown of the abutting street unless as part of a Plan approved pursuant to established guidelines of the Town which provides for natural containment of rain water and its percolation on the lot."

Mr. Randolph asked the Town Council if they wished to retain the intent sentence at the end of the first paragraph to which the Council agreed it should remain.

Mrs. Wiener moved approval of Item 14 as amended by the Council today and read by the Town Attorney. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

ITEM 15: Amend Section 9.40 Filing Fee to read as follows:

Item Fifteen:
Amend Sect.
9.40

Upon filing an application requesting rezoning or a special exception use approval, or a request for zoning variance, or an appeal, or any other matter relating to this ordinance which requires a public hearing, the applicant shall deposit with the office of the Building Official, the following application fees payable to the Town:

- (1) Fee for request for a
PUD application.....\$1,000.00
- (2) Fee for application for a Special
Exception Use or a modification
or expansion thereof.....450.00

Multifamily dwelling and
commercial uses.....500.00
- (3) Added fee for requests for zoning
variances contained within a Special
Exception Use approval request
first request.....150.00
- (4) Fee for zoning variance
requests involving structures.....375.00

Multi-family dwelling and commercial
structures.....550.00
- (5) Fee for zoning variance requests
involving signs, awnings,
fences, gateposts and
similar incidental accessory
items.....250.00
- (6) Additional fee for each added
item of a multiple point variance
request within any one zoning
variance request application.....100.00
- (7) Fee for filing of an application
for a Site Plan Review pursuant
to Section 9.60 of this Ordinance
in those instances that involve
no other type of zoning application
concurrent therewith and which
involve new building construction
or involve new building additions
exceeding two thousand (2,000)
square feet of total floor area.....425.00

Item Fifteen:
Amend Section
9.40 (cont'd)

Multi-family dwelling and commercial
uses.....700.00

(8) Fee for filing of all other Site Plan
Review applications.....225.00

Mr. Moore explained there has been no fee adjustments since 1988.

Mrs. Wiener moved for approval of Item 15 concerning Section 9.40, filing fees, as recommended by the Zoning Commission. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Item Sixteen:
Amend Section
4.20

ITEM NO. 16.

Amend Section 4.20" Schedule of Use Regulations" by
amending Accessory Use item #4 in the R-AA, R-A, R-B and
R-C Districts to read as follows:

"Other accessory uses, customarily incident to Permitted or
approved Special Exception Uses, not involving the conduct
of business. No person shall use any portion of any
building or accessory building or any land in this district
for the purpose of carrying on or practicing any
profession, occupation or calling, or for any commercial
or quasi-commercial use or purpose, including but not
limited to corporate meetings, banquets or entertainments,
film-making or movie producing, magazine feature
photography and the like, and such uses are hereby declared
to be a violation of the provisions of this Ordinance.

Remainder of section remains the same.

Mr. Moore explained some language has been eliminated and the Zoning Commission voted for approval which would allow charitable events in the districts without regulation as to their frequency.

He recommending the addition of a new Item 4 to the Accessory Uses for R-AA, R-A, R-B, and R-C District.

Mrs. Wiener felt people were entitled to do with their homes anything that they want and she was glad to see this provision.

Mr. Randolph noted the only thing changed is that portion dealing with charitable events, however, if there is something else which needs to be looked at, he will look at it.

Mr. Winterfield addressed the Council believed they were only going halfway as if the standards of the Charitable Solicitation Ordinance are applied, then there are certain events which are not considered a charitable solicitation, and the question arises as to what they are, as if they are banquets, they would not be allowed; and if they are entertainments, they would still be prohibited. He suggested the way to handle this would be to provide that any nonresidential use shall require a special exception and at that time, they will know precisely what the purpose would be.

Mr. Weinberg asked if Sloan's Kettering in N. Y. had found a cure for a certain disease and wanted to come to the Town and educate the people in the Town on what is happening, that would be education and they wouldn't need a permit.

Mr. Ilyinsky pointed out the Architectural Digest has extensive photographs of a home in Palm Beach this month.

Mrs. Wiener believed there was nothing that could be done about it and they should be reasonable about it. She moved to approve the Zoning Commission's recommendation on Item 16 pertaining to Charitable events in the R-A, R-AA, R-B and R-C Districts. Seconded by Mrs. Royal.

Mrs. Smith was not sure that the charities are still being limited to having two events in the Town per year and she thought that was giving unlimited usage in houses. She explained if a charity wants to have several small events, she thought they should be limited to once a month, as they would be held in private homes. Mrs. Wiener recalled people have several Christmas parties in their homes during December and they are not for a charity, but it would still impact the neighborhood.

Mrs. Smith noted there are certain houses which are larger which can be used more easily because they are bigger, but in the north end, they would have to park on both sides of the street and it would be an inconvenience. Mrs. Wiener suggested if there are more than a certain number of cars or guests, perhaps they could require valet parking. Mrs. Smith recalled on some of the narrow streets, the valet parkers park on both sides of the street and an emergency vehicle could not get through and she was not sure how to direct this. Mr. Randolph advised it should not be done through the zoning ordinance but through the police powers.

Mrs. Smith was not sure it should be limited to two events as more monies go to the charity if they are held in private homes. Mr. Randolph advised this would have to be addressed through the Charitable Solicitation Ordinance and not the Zoning Ordinance.

Mr. Winterfield addressed the Council noting the amount of congestion created by an event is not the only factor which should be taken into consideration as obviously no commercial activity for the practice of a profession is authorized, even if there is no discernible effect on the traffic. He thought entertainment falls within residential use and if one has 250 friends and wishes to invite them to dinner every night, that would be residential use, however, when the basis of the invitation is something other than personal friendship, that could be nonresidential use, and his answer to the problem is that nonresidential use be treated as a Special Exception and it would come before the Council.

On roll call, the motion carried unanimously for approval.

ITEM 17 - Mr. Moore explained this is the same recommendation as No. 16, except for the R-D(1) and R-D(2) Districts. Motion was made by Mrs. Douthit to approve the Zoning Commission's recommendation to add a new Item 5 in the Accessory Use column for R-D(1) and R-D(2) Districts. Seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Item Seventeen:

ITEM 18 - Mr. Moore advised the Zoning Commission recommended the disapproval of this proposal to amend Section 5.50 "Accessory Buildings and/or Structures" by amending Section 5.50 (a) by removing language and substituting the following:

Item Eighteen:
Sect. 5.50

General.....Further, in the event of demolition of a principal structure or in the event the principal structure is subdivided from any accessory structure, then all nonconforming accessory structures must also be demolished. Conforming accessory structures may remain but the use thereof must be suspended until a new principal structure exists.

Mr. Brisson advised he felt a swimming pool or any other accessory structure, such as a boathouse, or racquet ball court remain accessory to the residential use and not accessory to a particular house and in that case, one would treat it the way the Town has with regards to nonconforming use and it would be allowed to be continued until it is demolished. He stated this is a policy question as he could make a good argument on eliminating the non-conforming use by simply stating the whole idea of conforming was to eventually remove the nonconforming aspects.

Mr. Brisson believed as a planner he could not recommend the removal of accessory structures simply because the residential structure is removed. He stated if the residential use was being discontinued for a year or two, then the non-conforming accessory structures should be removed, but until that time as long as the residential use is expected to continue, he thought the accessory structures should be allowed to continue.

Mr. Moore advised after one year the accessory structures would be required to be removed if there was no primary structure. He advised initially the staff felt it would be more appropriate to eliminate the accessory structure and that was their original recommendation, however, discussions at the Zoning Commission meetings and with the Town's Attorney and Mr. Brisson have convinced them that even though it is a gray issue, that to penalize a property owner and force them to remove an accessory structure because they want to rebuild is not appropriate and on that, they have changed their position.

Mrs. Smith thought they have not addressed the area of historic preservation and it may be that certain facets of large properties can be saved and if they are forced to remove the accessory structures a year afterwards, there wouldn't be the Casa Bendita gazebo or the Stokesbury gate, and other structures which are currently standing and she sees no reason to putting a time limit on them.

Mr. Moore responded the accessory structures could not be used until such time as there is a principal structure. Mr. Randolph asked if abandonment dealt with uses rather than the structure? Mr. Zimmerman stated the accessory structures could not be used until there is a principal structure. Mr. Moore advised if someone had a piece of property with a house and a tennis court and the house was removed and they wished to use the tennis court, it could not be done. Mrs. Smith thought that was absurd. Mrs. Wiener agreed noting the property owner is paying taxes on the property and she could not see why they were not allowed to use what was on their property.

Mr. Moore did not see how this could be allowed unless they declare the accessory structures and uses, such as swimming pool and tennis courts as principal uses. Mrs. Wiener asked what would they do if someone owns a piece of property and the house is gone and there is a tennis court and he decides to play a game of tennis for an hour? She wondered if they would call the police or fine him? Mr. Moore responded as the Ordinance exists now, it would be a violation of the Ordinance. Mrs. Wiener believed they should have better things to do than worry about someone using their tennis court.

Mr. Randolph did not believe that was the way this was enforced and recalled a situation where the property owner owned two lots and the primary structure was demolished on the lot on which the tennis court existed and he was required to have a Unity of Title between the primary structure and the lot on which the tennis court was located.

Mrs. Wiener recalled when an air conditioning tower was called an accessory structure on a lot across the street from the principal structure and the owner built a house on the lot on which the air conditioning equipment was located.

Mr. Randolph stated they are not just talking about accessory structures such as swimming pools and tennis courts, but garages, cabanas, etc., and if they were to allow accessory structures to continue to exist, they could have a street full of accessory structures and people would come and use them as a recreational facility.

Mrs. Wiener did not believe the property values in this Town would allow this to happen other than in one or two instances and what they are saying is if the main house is torn down and there is something else on the lot, it should be allowed to remain until the plans are made for whatever they are going to do with the property.

Mr. Moore felt that is what this provision does to which Mr. Randolph agreed. Mrs. Smith asked if they were not saying that if the plans were not completed within a year, the accessory structures had to be demolished? Mr. Moore responded the use would stop for all practical purposes, if it were a tennis court, it could not be used until the principal structure is put back.

Mr. Alexander Beal stated his concern that if a swimming pool is allowed to remain for a year and the rains come down, it would be a problem with mosquitoes, etc. and it would become a hazard which needed attention, and he felt if an accessory structure is to remain, they should consider handling swimming pools differently. Mr. Randolph advised the requirements would remain the same, regardless of whether there was a primary structure there or not.

Item Eighteen:
Sect. 5.50
(cont'd)

Mr. Moore indicated Mr. Frank has reminded him that this provision only deals with nonconforming structures.

Leslie A. Shaw addressed the Council noting if a resident were to acquire an adjacent property and there would be a swimming pool or tennis court on that property, would they be treated as nonconforming structures or would they be forced to have a Unity of Title which means they would have to sell it as one lot. Mr. Randolph responded if they are going to use the tennis court and swimming pool as accessory to their main residence, they would have to have a Unity of Title, and if in the future, they wanted to put a primary structure on the lot with the pool and tennis court, they could always come back to the Town to break the Unity of Title.

Mr. Shaw asked what the advantage would be to the Town economically to force them to do that? Mr. Randolph responded the advantage to the Town is there cannot be independent accessory structures that are not tied into a primary use so the Town wants to make sure the title to those two properties are unified.

Mrs. Royal moved that the Zoning Commission's recommendation be upheld which was disapproval of the proposal submitted by Adley, Brisson & Engman to amend Section 5.50, (Item No. 18), Accessory Building Structures to require the removal of nonconforming accessory structures when the principal structure is demolished. Seconded by Mrs. Wiener. On roll call, the motion carried 3-1 with Mrs. Smith voting against the motion, but then changed her vote to affirmative and the motion carried unanimously.

Item Nineteen:
Amend Sect.
4.20

ITEM 19. Mr. Moore explained the Zoning Commission voted unanimously to approve the recommendation which was to amend Section 4.20 "Schedule of Lot, Yard and Bulk Regulations" for the R-AA District, by increasing allowable building height from 25' to 30' but retaining the existing overall building height of 35'.

Mr. Brisson explained there would be a higher vertical face of the building but the overall height would remain the same at 35'. He explained with a flat roof building, it would be the same also and he recommended this be approved as it allows more flexibility as they are dealing primarily with internal variation of floor area.

Mr. Moore recalled recently there have been two variances before the Council on this, one being the Cramer house on the Casa Apava property and the Old Adams property north of the Blossom Estate and staff has no objection.

Mrs. Wiener pointed out there is 60' of setback. Mrs. Smith recalled there is going to be a redesign on the Old Adams property and asked if they would have to come back for another variance? Mr. Moore stated they would if they still needed a variance.

Mrs. Wiener recommended approval of Item 19 as recommended by the Zoning Commission, increasing allowable building height from 25' to 30' but retaining the existing overall building height of 35'. Seconded by Mrs. Smith. On roll call, the motion carried unanimously.

Item Twenty:
Amend Sect.
4.20

ITEM 20. Mr. Moore explained this is to Amend Section 4.20, Schedule of Lot, Yard and Bulk Regulations for the R-A and R-AA Districts by eliminating the Building Height Plane requirement and the Zoning Commission recommended disapproval unanimously.

Mr. Brisson recalled the height plane consideration was eliminated last season in the R-B District and it was suggested by staff that this should also be done in the R-A and R-AA Districts. He disagreed as when the height plane provision was eliminated in the R-B District it was because the building heights were changed and the height plane did not have any effect, so there was no sense in keeping it in the Ordinance, but this does not apply to the R-A and R-AA and particularly the R-AA, as he felt it served well in setting back the buildings to minimize the appearance of bulk especially on the larger lots. He suggested they retain the height plane in the R-A and R-AA Districts.

Mrs. Smith and Mrs. Wiener did not agree. Motion was made by Mrs. Smith to approve the Zoning Commission's recommendation to disprove Item 20 and the Council uphold the Zoning Commission's recommendation to amend Section 4.20, Schedule of Lot, Yard and Bulk Regulations for the R-A and R-AA Districts. Seconded by Mrs. Royal who stated this was to disapprove the recommendation to eliminate the height plane. On roll call, the motion carried unanimously.

VII. ANY OTHER MATTERS:

A. UPCOMING MEETINGS ON THE ADOPTION OF THE ORDINANCE ON ZONING. Mr. Moore reminded the Council there are two 5:01 PM meetings scheduled to have the first and second readings of the Zoning Ordinance and they are January 24, 1994 and February 7, 1994.

B. UPCOMING SPECIAL TOWN COUNCIL MEETING TO CALL THE ELECTION: Mr. Doney reminded all of the Special Town Council Meeting on January 18, 1994 to call the election.

C. COMMENTS OF JESSE NEWMAN ON SALE SIGNS IN THE COMMERCIAL DISTRICTS: Mr. Moore asked if Mr. Newman could address the Council on a zoning matter.

Mr. Newman addressed the Mayor and Council indicating he is representing the business community and he wishes to talk about the sign section of the Ordinance. He recalled over twenty years ago when he served on the Zoning Commission, this section on sale signs was passed as there was not much business in the summer months in Palm Beach. He advised he had no objection to the word "sale" or no objection to the size of the sign, nor the time of the year that is allowed to have a sale, April 15 and October 15, however, the words "for twenty-one consecutive days" is a hardship for any merchant as if he wishes to have a sale on Memorial Day and Fourth of July and Labor Day, there is no way to do it. He recommended they eliminate the word "consecutive".

Mr. Randolph stated this can be accomplished by either calling the Zoning Commission back into session to consider this or by putting in the Zoning Agenda for next year.

Mrs. Wiener suggested this be put on the Zoning Calendar for the next Zoning Season next year.

D. DESTRUCTION OF VEGETATION ON DUNES IN THE NORTH END: Mrs. Smith asked what the Town was doing about the severe dune destruction in the north end in the last ten days and the subsequent

Any Other
Matters

Mtgs. on the
adoption of
Zoning ord.

Election

Jesse Newman

Destruction
of Vegetation
on Dunes

sinking of the barge that was doing the sand pumping? Mr. Doney responded the latest information on the dredge that had sunk, it has been raised and removed from the Inlet and the representative from Cavo Development Corp. out of Miami, who was the contractor, and a subsequent dredge is on its way from Atlanta and is expected to arrive within a week.

Destruction of
Vegetation on
Dunes (cont'd)

Mr. Doney stated the Corps of Engineer's contractor Cavo Development Corp. not within the permits of the Federal Government, the Corps or the State through the Department of Environmental Protection, had destroyed a significant amount of vegetation on the dune and the dune itself in the area of 1438 and 1535 North ocean Blvd. and yesterday, the Code Enforcement Officer, Mr. House is requiring complete restoration of the area which was destroyed and requires their response within fifteen days, or otherwise it will go to the Code Enforcement Board.

He advised the damage to the dune vegetation and the restoration is critical and the Town has the final control on this and is doing everything possible to have this restored to ensure the dune planting will be as good or better than it was previously. He reported Mr. Gann-Matzen would assist the staff on ensuring the restoration be done properly.

Mrs. Smith asked if there was any other action the Town could take as this is years and years of environmental damage which has occurred and a mitigation plan for the beach and a restoration of the dune will not be evident for several years in the very best of circumstances. She knew the Army Corps of Engineers have agreed to work with the Town, but they should realize that the Town can not just be upset with the contractor as it will be years until it is corrected. Mr. Randolph responded under the Code the Council has the ability to cite someone who has violated this section of the Code and then it would go to court and the court could fine that entity up to \$500 per day or six months in jail. He reported the Council also has a provision for mandatory injunctive relief to replace the damage. He understood that in the past the opportunity has been granted to give complete mitigation for the Town's satisfaction as that will achieve more than taking them to court or having a possible daily citation.

Mrs. Smith concurred and didn't want to be adversarial. She didn't believe anything like this has ever occurred before and she didn't want to see it occur again.

D. ALTERNATE VOTING ON VARIOUS COMMISSIONS: Mrs. Wiener stated she also had an item to bring up under Any Other Matters as she has noticed the minutes of the Landmarks Commission has a sheet attached which gives information as to who is attending, the ones who are absent and whether or not they are excused, recalling the only excuse would be illness. She noted there was no sheet like this with the Architectural Commission minutes. She suggested that on that form it should state who is voting as an alternate.

Alternate
Voting on
Various
Commissions

Mr. Moore indicated he spoke to both Mr. Frank and Mrs. Pollitt on this subject and there should have been a recordation on the front page of the minutes as to which alternate was voting for the absent member. He believed that elsewhere in the minutes when one member leaves a meeting, at that point it is recorded in the minutes which alternate is now voting for the departed member.

Mrs. Wiener believed the sheet should state when someone leaves and when the alternate is a full voting member, as one does get confused as they read the minutes. Mr. Randolph stated the "excused absence" is very difficult for the staff to interpret and he thought Council needed to give the staff some direction on this, as some members have had family problems and it is difficult for the staff to determine what is excusable.

Mrs. Smith recalled this is the third month that this has been in effect to keep record of who is attending or not attending and obviously it needs some clarification. She thought if there was a family illness, that should certainly be excused. Mr. Randolph believed they should put the reason in the minutes and at the end of the year, they will study it and gauge from that what the Council thinks are excused and are not excused. Mrs. Smith thought people should certainly know what is excused and should be made aware that by merely notifying the Commission that they will not be attending may not be an excused absence, however, she thought if there was a family illness, that should be excused, but she didn't believe stating they had a "family matter" then it would be up to the Chairman of the Commission to make the determination as to what is the family matter and whether it should be an excused absence or not.

Mr. Randolph stated he would recommend to each Commission that when an excuse is given, the Commission make the determination as to whether or not it is excused, rather than just accept the statement of the individual. Mrs. Wiener recalled it was the feeling of the Council when this was instituted that the Council wanted them to be in attendance and perhaps once a year, they may have a personal excuse if they are going to be out of Town. Mr. Randolph commented the staff did not have that kind of direction.

E. APPRECIATION EXPRESSED TO THE ZONING COMMISSION. President Weinberg expressed his appreciation and that of the Mayor and Council on the hard work done by the Zoning Commission.

Appreciation
to Zoning
Comm.

VIII. ADJOURNMENT. There being no further business, the meeting was adjourned at 2:45 PM.

Adjournment

Grace T. Peters
Town Clerk