

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING REGARDING ZONING ISSUES HELD ON JANUARY 3, 2002, AT 9:20 A.M.

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 9:30 a.m. in the Town Council Chambers by President Jack McDonald. On roll call, the following Elected Officials were found to be in attendance: Mayor Lesly Smith, President Jack McDonald, President Pro-Tem Sam McLendon, Councilman William Brooks, Councilman Norman Goldblum, and Councilman Allen Wyett.

Also attending for all or part of the meeting were: Town Manager Peter Elwell; Town Attorney John Randolph, Director of Planning, Zoning & Building Robert Moore; Zoning Administrator Paul Castro; Assistant Planning, Zoning & Building Director Veronica Close; Planning Administrator Tim Frank; Town Planning Consultant William Brisson from Adley Brisson Engman; and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. The Pledge of Allegiance was led by President McDonald.

III. APPROVAL OF AGENDA

Councilman Wyett made a motion to approve the agenda as presented. Councilman Brooks seconded the motion. On roll call, the motion carried unanimously.

IV. PROOF OF PUBLICATION

Town Clerk Pollitt affirmed the proof of publication.

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V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC

President McDonald announced that public comment would be allowed on every issue before the Town Council took a vote on any issue.

Bill Bradley, former Senator and part-time Palm Beach resident at 227 Brazilian Avenue, spoke in favor of the Special Exception zoning status for the Plaza Inn on Brazilian Avenue.

VI. 2001-2002 ZONING PROPOSAL STAFF REPORT, ITEMS II THROUGH IV AND THE RECOMMENDATIONS AND REPORT OF THE TOWN ZONING COMMISSION, DATED DECEMBER 3, 2001 ON THOSE ITEMS

The changes and/or additions to the existing Code which were recommended by the Zoning Commission are "underlined", and deletions are identified by "~~strikeout~~". Changes by the Zoning Commission to the proposals have been identified in "**bold**" type.

Item II. On a vote of 5-2 (Messrs. Broberg and Robertson dissenting), the Zoning Commission recommends not to rezone the Clarke property, but rather recommends approval of the Staff proposal, as modified by the Zoning Commission, to amend Section 134-1473 to read as follows:

Sec. 134-1473. Height, width and length limit for properties adjacent to properties in districts other than R-B.

No structure or beach building more than one story, but not to exceed 16 feet in height to the highest point of the roof, with maximum dimensions no greater than 20 feet by 25 feet shall be constructed on the privately owned property lying east of Ocean Boulevard, except as provided for by special exception under subsection (a) of this section....

(a) For properties lying east of Ocean Boulevard and having a lot frontage in excess of two times the minimum required under Section 134-1474, the maximum size of a beach house may be increased to ~~1,000~~ 2,000 square feet, provided however that:

(1) The maximum width of the structure along the frontage of Ocean Boulevard shall not exceed ~~40~~45 feet.

(2) The required ocean vista shall exist from the front to rear lot lines equal to 75 percent of the lot width;

(3) The beach house structure shall be set back not less than ~~20~~ 10 feet from the west property line; and,

(4) All other requirements of Sections 134-1473 and 134-1474 are met and the special exception is found to meet the standards of Sections 1134-227 through 134-233.

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After hearing a presentation by Attorney Timothy Hanlon, Alley, Maass, Rogers & Lindsay, representing the owner, James Clark, Councilman Wyett made a motion to approve the Zoning Commission's recommendation, changing Section 134-1473 (3) under (a) to: The beach house structure shall be set back not less than 35 feet from the west property line; and. The motion was seconded by Councilman Brooks and carried 5-0 on roll call.

President Pro-Tem McLendon made a motion to deny the rezoning on the Clark property. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

- Item III. On a vote of 7-0, the Zoning Commission, with Mrs. Golino voting in place of Mr. Lawrence who recused himself, recommends approval of the Staff recommendation to rezone Lot 33, Block F of the Royal Park Addition, from C-TS to C-B.

This item was heard at the end of the meeting.

Councilman Goldblum made a motion to accept the recommendation of the Zoning Commission. Councilman Brooks seconded the motion. The motion carried 4-0 on roll call. (President Pro-Tem McLendon was out of the room.)

IV. ZONING ITEMS

- Item 1. On a vote of 6-1 (Ms. Taca dissenting and Mr. Klein voting in place of Mr. Lawrence who recused himself), the Zoning Commission recommends disapproval of the Applicant's request to modify the regulations of the C-B District to accommodate enlargement of the Heart of Palm Beach and expansion of uses therein.

Councilman Goldblum made a motion to defer this item to be discussed at a separate Town Council meeting (date to be set at a later date). The motion was seconded by Councilman Brooks and carried 5-0 on roll call.

- Item 2. On a vote of 7-0, the Zoning Commission expressed an interest in favor of allowing multi-family residential use in the C-PC District. In addition, the Zoning Commission asked the Town Administration to meet with the Applicant to address the specific regulations associated with multi-family use; and that such regulations be considered at the Zoning Commission's meeting on December 3, 2001.

At the December, 3, 2001 meeting, the Zoning Commission by a 5-2 vote (Messrs. Broberg and Sanchez dissenting) deferred consideration of this Item to a Zoning Commission meeting to be held the last week of February, 2002. This is to provide Town Administration more time to study the concepts of allowing residential in the C-PC zoning district as a Special Exception Use with separate

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zoning regulations or as a Special Exception Use as a Planned Unit Development.

The Zoning Commission deferred this item to a Zoning Commission meeting to be held the last week in February. The Town Council took no action on this item.

- Item 3. On a vote of 4-3 (Messrs. Broberg, Kleid and Bertles dissenting), the Zoning Commission recommends including existing hotels as a special exception use in the R-C District by adding item (14), which reads as follows, to Section 134-945.

(14) Hotels which have been in existence for at least 15 years. Such hotels may include customary accessory commercial uses as set forth under Section 134-1906.

After hearing a presentation by Attorney Ron Kolins and having a discussion on the issue of existing hotels as a special exception use in the R-C District, **President Pro-Tem McLendon made a motion to approve the recommendation of the Zoning Commission. Councilman Goldblum seconded the motion. The motion carried 3/2 on roll call with President Pro-Tem McLendon, President McDonald, and Councilman Goldblum casting affirmative votes. Councilman Brooks and Councilman Wyett cast dissenting votes.**

- Item 4. On a vote of 7-0, the Zoning Commission recommends deferring consideration of changing the point of measurement of height in the R-AA District until the next Zoning Season to allow additional study, of both low and high properties, by the Staff.

After discussion, **Councilman Wyett made a motion to defer this item to the next Zoning Season to allow for additional study. President Pro-Tem McLendon seconded the motion. The motion carried 5-0 on roll call.**

- Item 5. On a vote of 7-0, the Zoning Commission recommends approval of the proposal as submitted by the Town Administration to amend Sec.134-1609, Multilevel and split level structures, to read as follows:

~~Where single-family and two-family multilevel or split level structures may be constructed in R districts, no portion of the structure may have more than two habitable floors in vertical alignment and the structure must meet all applicable lot, yard and bulk regulations for two-story construction in the district.~~

(1) Multilevel or split level structures may be constructed in the R-B District under the following conditions:

- (a) No portion of the structure may have more than two stories in vertical alignment;
- (b) A basement entirely located under and hidden by the dune shall not count as a story; and,

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- (c) The structure must meet all applicable lot, yard and bulk regulations for two-story construction in the district.
- (2) Where single-family and two-family multilevel or split level structures may be constructed in R districts, other than the R-B District, they may be so constructed under the following conditions:
 - (a) No portion of the structure may have more than two habitable stories in vertical alignment;
 - (b) A basement entirely located under and hidden by the dune shall not count as a story; and,
 - (c) The structure must meet all applicable lot, yard and bulk regulations for two-story construction in the district.

After discussion, **Councilman Goldblum made a motion to accept the recommendation of the Zoning Commission. President Pro-Tem McLendon seconded the motion. On roll call, the motion carried 4-0 as Councilman Brooks was out of the room.**

- Item 6. On a vote of 7-0, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration, to amend Section 134-2, Definitions and rules of construction, and Section 134-1608, Basements to read as follows:

A. Section 134-2, Definitions

Basement means ~~a story~~ floor area situated under a building, such ~~story~~ floor area having exterior perimeter walls and having a floor level two or more feet below the level of the contiguous exterior ground outside of the building and having one-half or more of its floor-to-ceiling height below the average level of the all of the exterior ground of the lot comprising the subject building development site.

Story means that portion of a building included between the surface of any floor and the surface of the next floor above it or, if there is no floor above it, the space between such floor and the next ceiling above it. Accessible open patios, observation decks and/or similar areas located above the first story shall be considered a story for the purpose of this definition. Roofs of buildings used as habitable space shall be considered as a story of a building.

B. Section 134-1608, Basements

- (a) In all zoning districts except the R-B zoning district, a basement ~~story~~ as defined in Sec. 134-2 shall not be considered a story with regards to height regulations contained in this chapter if the story basement ceiling does not exceed plus ~~eight~~ four feet above zero datum for the subject lot. ~~and if clearly designed and adapted to and used solely for the purpose of automobile parking and/or machinery and essential building utility services not involving habitable space.~~

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~~(b) In computing the height of a building, the height of a basement and/or sub-basement shall not be included if used for the purpose mentioned in the definition of a basement or sub-basement, as defined in section 134-2, as the case may be of automobile parking and/or machinery and essential building utility services not involving habitable space. Roofs of buildings used as habitable space shall be considered as a story of a building.~~

After discussion, a motion was made by Councilman Goldblum to accept the Zoning Commission's recommendation. The motion was seconded by President Pro-Tem McLendon and carried 4-1 on roll call with Councilman Wyett casting a dissenting vote.

- Item 7. On a vote of 7-0, the Zoning Commission recommends approval, as recommended by the Town Administration, of the proposal to amend Sec. 134-2, Definitions, to read as follows:

Sub-basement means a facility that is located underground and does not exceed in height the lowest point of the public sidewalk abutting the property or, alternatively, the lowest point of the public street if there is no public sidewalk, and ~~that is clearly designed and adapted to and used for the purposes of auto storage and/or furnace and other utility purposes not involving habitable space, provided the furnace and other utilities are located within~~ no portion of which is located beyond the projected confines of the outer walls of the main building ~~proper~~ located above ground level.

After discussion, Councilman Brooks made a motion to accept the recommendation of the Zoning Commission. President Pro-Tem McLendon seconded the recommendation, and the motion carried 5-0 on roll call.

- Item 8. On a vote of 3-4 (Messrs. Bertles, Lawrence, Broberg and Kleid dissenting) the motion to defer this item to next Zoning Season failed.

By consensus, the Zoning Commission deferred this Item to the December 3, 2001 meeting in order to provide Town Administration time to re-evaluate the proposal based on the Zoning Commission's comments.

At the December 3, 2001 meeting, the Zoning Commission by a vote of 7-0, deferred this Item to a Zoning Commission meeting to be held the last week of February, 2002. This is to provide Town Administration more time to provide a proposal for changes in the nonconforming lot issue.

Councilman Brooks made a motion to deter this item, as recommended by the Zoning Commission, to a Zoning Commission meeting to be held the last week of February, 2002. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

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Item 9. On a vote of 6-1 (Mr. Robertson dissenting), the Zoning Commission recommends approval of the proposal as submitted by the Town Administration to allow for administrative approval of some aspects of the Zoning Code now requiring approval by special exception, as follows:

A. Amend Sections 134-791(5), 134-841(5) and 134-891(5) to read as follows:

(5) Nothing contained in this section shall prohibit construction of an enclosed accessory building containing bedrooms with bath facilities used in connection with and as a part of the main residence, to be constructed within the building lines as provided in this chapter. Such enclosed accessory building shall be used only for occupancy of nonpaying guest of the owners of the main residence or bona fide members of the family or servants, and no kitchen or cooking facilities shall be constructed or used therein except by ~~approval a special exception and~~ submission of a written agreement with the town stating that such accessory structure will be used only by family members or household staff and approval by the Planning, Zoning and Building Director or his designee.

B. Delete Section 134-843(c) Lots, in its entirety.

~~(c) Lots. Any new single-family dwelling or accessory structure in the R-A zoning district, constructed on one or more platted lots or unplatted parcels or combinations thereof, involving a land equivalent to or greater than four times the minimum lot size for the district, shall be subject to an application for special exception with site plan review. If the lot size is 60,000 square feet or more, the proposed structure shall have minimum setback requirements equivalent to the R-AA district. This provision shall not apply to new accessory structures that are accessory to an existing single-family dwelling having had its certificate of occupancy in place for at least five years prior.~~

C. Amend Section 134-843(a)(8) to read as follows:

(8) Side yard. The minimum side yard setback shall be 15 feet, except that for lots of 60,000 square feet or more in area, the minimum side yard setback shall be 30 feet.

D. Delete Section 134-893(c) Lots, in its entirety.

~~(c) Lots. Any new single-family dwelling or accessory structure in the R-B zoning district, constructed on one or more platted lots or unplatted parcels or combinations thereof, involving a land equivalent to or greater than four times the minimum lot size for the district, shall be subject to an application for special exception with site plan review. If the lot size is 60,000 square feet or more, the proposed structure shall have minimum setback requirements equivalent to the R-AA district. This provision shall not apply to new accessory structures that are accessory to an existing single-family dwelling having had its certificate of occupancy in place for at least five years prior.~~

E. Amend Section 134-1109, Special exception uses, item (16) by deleting it in its entirety and

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amending Section 134-1107 Permitted uses, subsection (a), sub-items (1) through (6) to read as follows:

- (1) Retail and service establishments, such as restaurants and bars/lounges, hardware stores, food stores, clothing stores, drug stores, barbershops, beauty salons and jewelry stores.
- (2) Offices, ~~and~~ professional services, ~~and~~ business services, and securities or financial brokerage and trust companies located above the first floor.
- (3) Offices, professional services, business services, and securities or financial brokerage and trust companies above on the first floor only, provided such use has no frontage on, or entrance directly onto, a sidewalk fronting a roadway.
- (4)...
- (5)...
- (6)...

F. Amend Section 134-1159, Special exception uses, item (11) by deleting it in its entirety.

~~...(11) — Offices and professional and business services, including banks and financial institutions, not specifically cited previously under permitted uses in section 134-1157, provided such uses shall be located only above the first floor.~~

G. Amend Section 134-1157 by amending item (28) and adding a new item (29) to read as follows:

Section 134-1157

(a)(1) through (27)...

(28) Offices and professional and business services, including banks and financial institutions,
above the first floor

(29) Offices and professional and business services, including banks and financial institutions,
on the first floor, provided such use has no frontage on, or entrance directly onto, a
sidewalk fronting a roadway.

~~(29)~~ (30) Combinations of the uses in subsections (a)(1) through ~~(28)~~ (29) of this subsection.

H. Amend Section 134-2440(c) to read as follows:

- (c) Except for signs proposed on a facade of an existing building where the original architecture predicated that they be located higher, No individual business sign on a multistory building shall be located higher than the first floor elevation of the building or 15 feet, whichever is lower.

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After discussion, **Councilman Wyett made a motion to approve the recommendation of the Zoning Commission. President Pro-Tem McLendon seconded the motion which carried 5-0 on roll call.**

- Item 10. On a vote of 7-0, the Zoning Commission recommends disapproval, as recommended by the Town Administration, of the proposal to change the method of measuring building height on corner lots.

After discussion, **Councilman Brooks made a motion, agreeing with the Zoning Commission, to not change the method of measuring building height on corner lots. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.**

- Item 11. On a vote of 7-0, the Zoning Commission recommends disapproval of the proposal to allow additional building height in the R-D(2) Zoning District.

After discussion, **President Pro-Tem McLendon made a motion, agreeing with the Zoning Commission, to disapprove the proposal to allow additional building height in the R-D(2) District. The motion was seconded by Councilman Goldblum and carried 5-0 on roll call.**

- Item 12. On a vote of 7-0, the Zoning Commission recommends deferring, until next Zoning Season, consideration of placing a limit on the number of construction projects that are permitted to occur at any one time on a given street, so that more detailed study can be undertaken.

Following discussion of the item, **Councilman Goldblum made a motion to defer the item until the next Zoning Season. President Pro-Tem McLendon seconded the motion. On roll call, the motion failed 2-3 with Councilman Goldblum and President McDonald casting affirmative votes and, President Pro-Tem McLendon, Councilman Brooks, and Councilman Wyett casting negative votes.**

After further discussion regarding the related Administrative issues and actions, **Councilman Wyett made a motion to refer this item directly to the Town Council as soon as possible with a report and recommendations from Attorney Randolph/PZ&B Director Moore to consider how the Town Council can solve the excessive building permit problem. The motion was seconded by Councilman Brooks and carried 5-0 on roll call.**

- Item 13. On a vote of 7-0, the Zoning Commission recommends disapproval of the proposal to modify the Zoning Code to provide greater flexibility for the continued operation of nonconforming landmark

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hotels.

After Discussion, **Councilman Goldblum made a motion to uphold the Zoning Commission's recommendation to disapprove the proposal to modify the Zoning Code to provide greater flexibility for the continued operation of nonconforming landmark hotels. The motion was seconded by President Pro-Tem McLendon. The motion carried 5-0 on roll call.**

- Item 14. On a vote of 7-0, the Zoning Commission deferred this Item to the December 3, 2001 meeting, to provide Town Administration time to provide definitions for the terms arbor, trellis and pergola, and to redraft the recommendations to allow less height for pergolas in the required front, street side, side or rear yards.

At the December 3, 2001 meeting, the Zoning Commission by a vote of 7-0, deferred this Item to a Zoning Commission meeting to be held the last week of February, 2002. This is to provide Town Administration more time to re-evaluate the proposed changes brought to the Zoning Commission at this meeting.

After discussion, **Councilman Brooks made a motion to accept the Zoning Commission's recommendation to defer this item to the February 25th Zoning Commission meeting. The motion was seconded by President Pro-Tem McLendon and carried 4-0 as Councilman Goldblum was temporarily out of the room.**

- Item 15. On a vote of 7-0, the Zoning Commission recommends approval of the proposal, as submitted by the Town Administration, to amend ARTICLE II, ADMINISTRATION, DIVISION 4. SPECIAL EXCEPTION AND VARIANCES, *Subdivision I*. In General, Section 134-172. Hearing procedure. and 134-328. Review by building official; notice of hearing. of Chapter 134, Zoning, to read as follows. **In addition, the Zoning Commission further recommends that the Town Council modify the Architectural Commission notice requirements to provide a 300 foot property owner notice requirement and a minimum 15 day notice.**

A. Sec. 134-172 Hearing procedure.

(a) Applications for special exceptions and variances shall be accompanied by proper exhibits which shall be timely filed at least thirty (30) days prior to the Town Council meeting and shall include a certified property owner notification list with stamped, addressed envelopes to each affected property owner. In addition, applications shall include plans, documents and other materials to adequately depict and support the request. At a minimum, all applications for special exception and variance shall include...

(b) ...

(c) After completion of subsection (b) of this section, a copy of such application shall be mailed to the owners of the property and the property immediate adjacent thereto and across the street therefrom and to all property owners within ~~two hundred (200)~~ three hundred (300) feet from

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any part of the subject property at the address shown on the County property appraiser's tax records, together with a notice from the Building Official advising the time of the hearing on such application before the Town Council. In cases where a comprehensive plan amendment or zoning change increases the allowable density or intensity, the notification distance shall increase to one thousand (1,000) feet. Such list of property owners, together with a notification map, shall be provided by the applicant along with addressed and properly stamped envelopes and shall be certified by the applicant as being true and accurate.

Such list of property owners, together with a notification map, shall be provided by the applicant along with addressed and property stamped envelopes and shall be certified by the applicant as being true and accurate.

(d)...

(e) No application shall be heard less than ten days after the first publication of the notice and 15 days after the mailing to property owners directly affected as provided in this section, and all applications will be heard at regular meetings of the Ttown Ceouncil unless otherwise ordered by the Ttown Ceouncil and in accordance with sections 134-141, 134-142, 134-201 and 134-226.

B. Sec. 134-328 Review by building official; notice of hearing.

(a) A copy of such application for site plan review shall be mailed to the owners of the property and the property immediate adjacent thereto and across the street therefrom, and to all owners of all other property within ~~two hundred (200)~~ three hundred (300) feet from any part of the subject property at their respective addresses as shown on the County property appraiser's tax records, together with a notice from the Building Official advising the time of the hearing on such application before the Town Council. Such list of property owners, together with a notification map, shall be provided by the applicant along with addressed and properly stamped envelopes and shall be certified by the applicant as being true and accurate. No application shall be heard less than ten days after the first publication of the notice as provided in this section and 15 days after the mailing to property owners directly affected, and all applications will be heard at regular meetings of the Town Council unless otherwise ordered by the Town Council.

After discussion, **Councilman Brooks made a motion to approve the Zoning Commission's recommendations. Councilman Wyett seconded the motion. On roll call, the motion carried 5-0.**

- Item 16. On a vote of 6-1 (Mr. Sanchez dissenting), the Zoning Commission recommends approval of the proposal as submitted by the Town Administration to delete ARTICLE VI, District Regulations, Division 2 through Division 7, *Landscaped open space*, Sections 134-793(a)(12), 134-843(a)(12), 134-893(a)(12), 134-948(11)e., 134-1004(11)e. and 134-1059(11)g. of Chapter 134, Zoning which read as follows:

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Landscaped open space.

~~b and c. Additionally, not less than...per cent of the required front yard must be landscaped open space in thedistrict. In the R districts, required off-street parking, driveways and drive aisles that are uncovered and provided with an acceptable grass-crete type of surface may be allowed 25 per cent credit for meeting the site's overall landscape open space requirements. The grass-crete type surface or stabilized grass area shall be well maintained in a healthy manner.~~

After discussion, **Councilman Brooks made a motion to approve the Zoning Commission's recommendations. The motion was seconded by Councilman Goldblum and carried 4-0 as Councilman Wyett was temporarily out of the room.**

- Item 17. On a vote of 7-0, the Zoning Commission recommends approval of the proposal as submitted by the Town Administration, and as modified by the Zoning Commission, to amend CHAPTER 134 - ZONING, ARTICLE VI - DISTRICT REGULATIONS, Section 134-948, 134-1004, and 134-1059 as follows:

...(9) Lot Coverage

- (a) For single-family uses, the maximum lot coverage is 35 ~~30~~ percent
- (b) For two-family uses, the maximum lot coverage is 35 ~~30~~ percent

...(11) Landscape open space

- (a) For single-family uses, the minimum landscape open space is ~~35~~ 40 percent
- (b) For two-family uses, the minimum landscape open space is ~~35~~ 40 percent

After discussing and separating parts (9) and (11) in Item 17, **Councilman Goldblum made a motion to approve the staffs' recommendation for lot coverage (9) of 30% for both (a) and (b). The motion was seconded by Councilman Brooks and carried 5-0 on roll call.**

Councilman Brooks made a motion to approve (11) Landscape open space (a) and (b) at 40%, and to include this item as a study item for the next Zoning Season. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

- Item 18. On a vote of 7-0, the Zoning Commission recommends approval of the proposal as submitted by the Town Administration to amend CHAPTER 134 - ZONING, ARTICLE VI - DISTRICT REGULATIONS, Section 134-943, 134-998, and 134-1053 as follows:

- (4) or (5) Charitable events specifically approved by the town ~~council~~ manager.

After discussion, **Councilman Brooks made a motion to approve the Zoning Commission's**

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recommendation. The motion was seconded by Councilman Goldblum and carried 5-0 on roll call.

- Item 19. On a vote of 7-0, the Zoning Commission recommends approval of the proposal as submitted by the Town Administration, and as modified by the Zoning Commission, to amend CHAPTER 134 - ZONING, Division 6. STRUCTURES, Subdivision 1. In General, Section 134-1728, and Section 134-1729 as follows:

Sec. 134-1728. Air conditioning and pool heating equipment

No portion of any air conditioning and/or swimming pool heating equipment shall be located more than four feet from the principal structure. In addition, such air conditioning or swimming pool heating equipment shall be completely screened from the neighboring property with a five foot high wall or hedge. In addition, Air conditioning and/or swimming pool heating equipment in excess of two (2) units or in excess of four (4) feet in height, measured above the natural grade, or occupying more than twenty-five (25) square feet in area shall be considered an accessory structure and shall be constructed or erected or placed in compliance with all the provisions of the ordinance applicable thereto accept as stated herein.

~~In no instance shall more than one air conditioning condenser unit~~ One (1) piece of air conditioning and/or swimming pool heating equipment not in excess of four (4) feet in height, measured above the natural grade, nor occupying more than twenty-five (25) ten (10) square feet in area shall be allowed placed within each a required front yard. No portion of Ssuch air conditioninger or swimming pool heating equipment shall be located no closer than two feet from the building and does not extend more than five feet from the principal structure building nor closer than twenty (20) feet to the front property line. In addition, and such air conditioning or swimming pool heating equipment shall be completely screened from the neighboring property by with a four foot high wall and/or hedge. In addition, cooling towers, and air handlers and swimming pool heating equipment are prohibited in the required front setback, street side yard setback or street rear yard setback. However, any house that fronts on two or more streets shall be allowed to place two air conditioning units and/or one swimming pool heating equipment in one each required street side or street rear yard setback provided that the combination of said units does not exceed two in each of said setbacks; are not more than four feet in height above the natural grade; occupy no more than twenty-five (25) feet in area; and, are set back a minimum of twenty feet from the property line and are screened from view by a five four foot high wall and/or hedge.

Sec. 134-1729. Generators and swimming pool filters and pumps.

~~Generators, swimming pool filters pumps and heaters shall not be placed in the required front setback, street side yard setback or street rear yard setbacks.~~ One generator shall be allowed in a required side or rear yard provided said generator does not exceed a maximum height of seven feet and is screened from the neighboring property by a wall, or solid fence, with sound absorbing material on the generator side, that is the height of said generator.

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In addition, swimming pool filters and pumps shall be allowed in a required side or rear yard provided said equipment is placed no further than five feet from the principal structure and is screened from the neighboring property by a four foot high hedge and/or wall. However, any lot that fronts on two or more streets shall be allowed to place two pieces pieces of pool equipment one swimming pool filter and pump in one a required street side or street rear yard setback provided that said equipment is set back a minimum of twenty feet from the property line and is screened from view by a five foot high wall or hedge. pool filter and pump in combination with a pool heater and/or air conditioning unit does not exceed three pieces of said equipment; is set back a minimum of twenty feet from the street side or street rear property line; and, is screened from view from the street by a four foot high wall and/or hedge.

In addition, on a vote of 7-0, the Zoning Commission recommends that the Staff study further liberalizing the placement of swimming pool equipment.

After discussion, **Councilman Goldblum made a motion to approve the Zoning Commission's recommendation with the added condition that generators placed outside have noise absorbing materials inside a sound box. The motion was seconded by Councilman Wyett and carried 4-0 as President Pro-Tem McLendon was temporarily out of the room.**

- Item 20. On a vote of 7-0, the Zoning Commission recommends deferring revising the front and rear yard setback in the R-B District until this issue has been addressed in the Staff's study of the R-B District.

Councilman Wyett made a motion to approve the Zoning Commission's recommendation to defer the item to the 2002-2003 Zoning Season with the added suggestion to study the rear yard set backs. The motion was seconded by Councilman Brooks and carried 5-0 on roll call.

- Item 21. On a vote of 7-0, the Zoning Commission recommends approval of the proposal as submitted by the Town Administration to amend ARTICLE VIII, Supplementary District Regulations, Division 5, WALLS AND FENCES, Section 134-1671, Restrictions 134, Zoning to read as follows:

DIVISION 5. WALLS AND FENCES

Sec. 134-1666. Location generally; compliance.

Except as otherwise provided herein, walls or fences may be located or constructed within the required yard areas and shall conform to the following regulations except where special requirements are set forth for specific screening purposes elsewhere in this ordinance...

Sec. 134-1667. Front, street side or street rear yard.

(a) All walls and/or fences located in a front, street side or street rear setback areas shall not exceed six feet in height. The height of a wall or fence located in a front, street side or street rear set back areas, fronting on a street, shall be measured on the street side of the wall or fence from the

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top of the wall or fence and shall not exceed six feet in height above the crown of the street at a point directly opposite such points of measurement. (See following illustration.) If the wall or fence in a front, street side or street rear setback area is not fronting on a street, said wall or fence shall be measured from the lowest grade on either side of the property line adjacent to said wall or fence. The natural grade along the side property line within the front setback area may not be artificially changed to raise the height of said wall.

(b) Walls and fences in a required front yard, street side yard, or rear street yard more than four feet in height shall be set back three feet from the street property line and have landscaping on the street side of the wall or fence consisting of a continuous hedge at least three feet in height at the time of planting....

Sec. 134-1669. Side and rear yards.

All walls and/or fences located within ten feet of the side or rear property line shall not exceed seven feet in height except walls and/or fences located in a required street side yard setback of a corner lot and the required rear street yard setback for a through lot where they shall conform to the provisions of section 134-1667. The height of a wall or fence located in a side or rear yard shall be measured from the lowest grade on either side of the side or rear property line adjacent to said wall or fence to the top of the wall or fence and shall not exceed seven feet in height. This section prohibits an artificial change in the natural grade in any way to raise the height of said wall. (See the following illustration)...

Sec. 134-1670 Retaining walls.

(a) Retaining walls which front on a street and which are located in the street front, street side or street rear setback shall not exceed a maximum height of six feet as measured from the lowest grade on either side of the retaining wall to the top of said wall at that any location in that setback. In addition, if a retaining wall is within ten feet of a wall and/or fence in the same front, street side or street rear yard setback, said retaining wall and wall and/or fence shall not exceed a total combined height of nine feet as measured from the lowest grade adjacent to said retaining wall to the top of said wall and/or fence at that same location in that setback. However, in no instance shall a retaining wall, wall, fence or combination thereof exceed, or be contrary to, the maximum and minimum requirements in Section 134-1667.

(b) If a retaining wall in the front setback area is not fronting on a street, said retaining wall shall not exceed a maximum height of six feet as measured from the lowest grade on either side of the retaining wall to the top of said retaining wall at any location in that setback. In addition, if a retaining wall is within ten feet of a wall and/or fence in the same front setback not fronting a street, said retaining wall and wall and/or fence shall not exceed a total combined height of nine feet as measured from the lowest grade adjacent to the retaining wall to the top of the wall or fence at that same location in that setback nor six feet in height as measured from the abutting property. In addition, if said retaining wall, and wall and/or fence within the front setback area are within ten feet of each other and their combined height exceeds six feet, said retaining wall shall have a minimum four foot high hedge located on the inside portion of the retaining wall. ~~In no instance shall a retaining wall, wall, fence, or combination thereof exceed,~~

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~~or be contrary to, the maximum and minimum requirements in Section 134-1667.~~

(c) A retaining wall within ten feet of the side or rear property line shall not exceed a maximum height of seven feet from the lowest grade on either side of the retaining wall to the top of said retaining wall. In addition, if a retaining wall, and wall and/or fence is within ten feet of the side or rear property line, they shall not exceed a total combined height of ten feet as measured from the lowest grade adjacent to the retaining wall to the top of the wall or fence at that same location nor seven feet in height as measured from the abutting property. ~~However, in no instance shall a retaining wall and/or wall or fence exceed, or be contrary, to the maximum and minimum requirements in Section 134-1667. (See the following illustration for this section)...~~

Sec. 134-1671. Restrictions.

In addition to the other requirements in this division, a wall or fence shall conform with section 134-1637 and shall in no case be located closer than 2 ½ feet of the rear lot line unless previously approved by the town engineer, and execution and recordation of an acceptable removal agreement. In addition, no fence or wall shall ~~or~~ be located within the street right-of-way or street-ward of the front lot line as provided for in section 134-1637.

After discussion, **a motion was made by President Pro-Tem McLendon to approve the Zoning Commission's recommendations. Councilman Brooks seconded the motion. The motion carried 4-1 on roll call with Councilman Goldblum casting a dissenting vote.**

- Item 22. On a vote of 3-4 (Messrs. Bertles, Sanchez, Broberg and Kleid dissenting) the motion to approve six foot high walls and fences along Lake Trail in lieu of the four foot maximum allowed by the existing Code, as recommended by the Town Administration failed.

On a vote of 4-3 (Messrs. Lawrence and Robertson and Ms. Taca dissenting) the Zoning Commission recommends disapproval, as recommended by the Town Administration, of the proposal to allow walls or fences within 25 feet of Lake Trail to be six feet high in lieu of the current maximum of four feet.

After discussing this item, **Councilman Wyett made a motion to approve the Zoning Commission recommendation of leaving the height of the walls or fences at a maximum of four feet. The motion was seconded by Councilman Brooks. The motion carried 5-0 on roll call.**

SCHOOL CONCURRENCY COMPREHENSIVE PLAN AMENDMENT

On a vote of 7-0, the Zoning Commission recommends that the Town Council adopt the proposed Comprehensive Plan Amendment for School Concurrency as submitted by the Administration.

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No action by the Town Council was necessary on this item.

VII. 2001-2002 ZONING PROPOSAL STAFF REPORT, ITEM I, PROPOSED FIVE OVERLAY AREAS IN THE R-B ZONING DISTRICT

Item I. On a vote of 7-0 the Zoning Commission affirmed that it is the sense of the Zoning Commission to maintain and promote the existing character in certain areas of the Town.

On a vote of 6-1 (Mr. Harrison Robertson dissenting) the Zoning Commission affirmed that it is the sense of the Zoning Commission to maintain and promote the existing character of those particular areas by means of zoning overlay districts.

On a vote of 3-4 (Messrs. Broberg, Robertson, Lawrence and Kleid dissenting), a motion to hire a consultant to work with Town Administration as a team failed.

On a vote of 7-0 the Zoning Commission recommended that the Cubic Content Ratio (CCR) be reduced by 5% uniformly throughout the R-B Zoning District on a temporary basis for one year to allow the Town Administration time to finalize their recommendations for the R-B District.

President McDonald questioned if the zoning code should be "tinkered with" every year to the extent that twenty three items are discussed and/or changed yearly. He said that the consensus at this meeting was perhaps the north end should develop under the existing zoning laws with unique streets in the middle of Town (i.e. the "Sea" streets, Pendleton, and Barton) considered as an overlay district.

Mayor Smith commented that new construction should not receive variances.

Councilman Wyett said he would like to see the streets in the center of Town protected against major change using a well thought out formula. He suggested leaving the north end alone for a while to give the sliding scale a chance to work.

Attorney Randolph said the best way to deal with the "Sea" streets would be to designate them as a historic district, but that was attempted and rejected by the Landmarks Commission. He said that may be pursued again. He also suggested using a scale average or mean for each block on the "Sea" streets to maintain character of the neighborhood.

Director of Planning, Zoning & Building Moore stated the staff, the Zoning Commission, present and prior Town Councils attempted to deal with the issue of the overbuilding of new homes within the neighborhoods in the north end. He said very little to no trouble exists in the R-A or R-AA zoning districts.

President McDonald asked if Mr. Moore was suggesting the Code be changed?

Mr. Moore said that was one of the suggestions and from a policy standpoint, the staff is presently

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at a crossroads.

After a discussion about the landscaping requirements in the R-B district as related to Code requirements, **Councilman Brooks made a motion to do nothing in the north end R-B district and study the options in the center of Town (R-B district) to preserve the area (historic district, historic zone, etc.)** The motion was seconded by Councilman Goldblum and carried 5-0 on roll call.

VIII. ANY OTHER ITEMS:

On a vote of 7-0, the Zoning Commission recommends that the Town Council not accept retroactive applications for tax abatement on improvements to landmark structures.

Councilman Brooks made a motion to accept the recommendation of the Zoning Commission. The motion was seconded by Councilman Wyett and carried 4-0 on roll call as President Pro-Tem McLendon was temporarily out of the room.

On a vote of 7-0, the Zoning Commission will hold a Zoning Commission meeting on Monday February 4, 2002, to set planning and zoning priorities for the use of the Strategic Planning Board.

No Town Council action was necessary on this item.

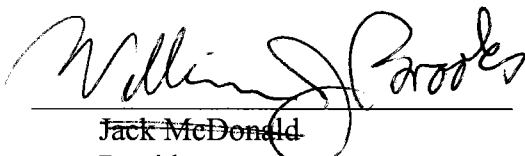
Zoning Administrator Castro requested the 5:01 p.m. readings of the Zoning Ordinance be changed to 9:30 a.m. on February 4th and February 19th which requires a 4/5 vote of the Town Council to do so.

Councilman Brooks made a motion to change the 5:01 p.m. readings for the first and second readings of the Zoning Ordinance to 9:30 a.m on February 4th and February 19th. The motion was seconded by President Pro-Tem McLendon and carried 5-0 on roll call.

IX. ADJOURNMENT

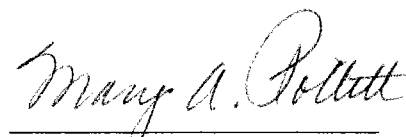
The meeting was adjourned at 3:33 p.m.

ATTEST:



Jack McDonald
President





Mary A. Pollitt
Town Clerk