

TOWN COUNCIL MINUTES OF MEETING HELD ON JANUARY 3, 1991 TO HEAR ZONING COMMISSION REPORT AND RECOMMENDATIONS	
I. CALL TO ORDER AND ROLL CALL: The Special Town Council Meeting to hear the 1990-91 ZONING COMMISSION REPORT and RECOMMENDATIONS was called to order by President Heeke on January 3, 1991, at 9:30 AM in the Town Hall Council Chambers. On roll call, the following were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Ilyinsky, Councilman Weinberg, Councilwoman Wiener, (Councilwoman Douthit was absent). Also attending were: Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Mr. Moore, Mr. Frank, Mr. Zimmerman from the Building & Zoning Department and Mr. Brisson of Adley, Brisson and Engman, Zoning Consultants for the Town.	Roll Call
II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Mrs. Peters. Pledge of Allegiance was let by President Pro Tem Ilyinsky.	Invocation
III. PROOF OF PUBLICATION: Mrs. Peters reported the Proof of Publication has been filed with the record.	Proof of Publication
IV. APPROVAL OF AGENDA: Mr. Ilyinsky moved for approval of the agenda. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.	Approval of Agenda
V. PROCEDURE FOR COMMENTS BY GENERAL PUBLIC: Mr. Moore suggested the zoning items will be considered and the President will give the public an opportunity to speak on any of the issues. President Heeke indicated the Mayor and Town Council will discuss the proposed changes by the staff and the Zoning Commission and when that is concluded, any member of the public may speak for three minutes and if the subject has been covered by someone else, they should just concur or disagree and after receiving public comments, the Council will go into deliberation on the various items.	Procedure for Comments by General Public
IV. ADMINISTRATIVE PROPOSALS AND/OR RECOMMENDATIONS (ITEMS 1 THROUGH 19) AND RECEIPT OF THE RECOMMENDATIONS AND REPORT OF THE ZONING COMMISSION DATED DECEMBER 3, 1990.	Admin. Proposals and Recommendations - Zoning
Mr. Ilyinsky moved that the Recommendations and Report of the Zoning Commission dated December 3, 1990 be received. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.	
ITEM NO. 1 - Amend footnote (3) of Section 4.20 A. Schedule of Lot, Yard and Bulk Regulations to read as follows: (change is underlined) "(3) <u>With the exception of arcades and colonnades in the C-WA District</u> all buildings shall be set back so as to provide at least a ten-foot wide pedestrian walkway between the street curbline and the building, exclusive of beautification strips, not more than five (5) feet of which may be on the Town street right-of-way, where appropriate, and additionally, to provide for the minimum building front yard setback, which shall be measured from the inside (lot side) of said required pedestrian walkway	
Mr. Moore called on Mr. Brisson who gave his comments: He recalled last year there were certain suggestions relative to Worth Avenue as to allowable height and Special Exceptions for extra height and the Zoning Commission and then later the Town Council requested that his office develop guidelines for design, which will be the basis for the extra zoning criteria which was to be considered this zoning season. He indicated there are eight sub items in the Design Guidelines which have been distributed to the Mayor and Council. He stated the only things he would be covering is the Design Guidelines as it relates to the zoning, which pertain to Worth Avenue. He has rearranged the order of some of the items as he felt they inter-related to each other as opposed to the way they are in the Zoning Commission Report. He has Item 1 and Item 6 together as Item 1 relates to the provision for arcades and colonnades in the Worth Avenue District which refers to Section 5.33. He stated his recommendation is arcades and colonnades be allowed providing they meet with the requirements of Section 5.33 and be subject to the Worth Avenue Design Guidelines and be subject to approval by the Architectural Commission.	
Mr. Heeke felt it made sense to handle Items 1 and 6 together.	
Mr. Moore explained the Zoning Commission's recommendation also includes the following wording:	
<u>"Within the C-WA District, arcades or colonnades may be constructed over the sidewalks in the required front yard setback, provided they meet the requirements of Section 5.33 (e)."</u>	
Mr. Adrian Winterfield addressed the Council questioning whether or not this should be handled as a Special Exception, and although the Architectural Commission will fill the same function, he viewed this as an extraordinary departure and it would be appropriate for the Council to consider and approve this before it is submitted to the Architectural Commission. He stated his confusion on the status of the guidelines as it looked to him that it was not the present intention to identify the guidelines more precisely. He stated it was not clear to him to what extent the guidelines are mandatory and to which extent the Architectural Commission maintained its dependence.	
Attorney Randolph understood this would first come to the Council to be determined as to whether or not a Special Exception would be granted. He stated from a staff standpoint, it was decided the review should first come to the Council as there are certain aspects which affect on the neighborhood which should be considered by the Council before a decision is made as to whether or not to grant the benefit. He felt if it was approved by the Town Council, it would then be subject to review by the Architectural Commission, who would report back to the Council as to whether or not it meets the design guidelines and ultimately, the Council would have the final approval as to whether it would move forward.	
Mr. Randolph stated the effect of this is if a person decides to elect to go ahead with the benefits, such as the third story or the Colannades, then these would be more than the guidelines and at that point, they would be required to meet the guidelines in order to take advantage of the benefit.	
Mr. Brisson explained this is not a Special Exception and would not have to come before the Town Council as it is now proposed. Mr. Randolph stated he was grouping all these benefits together. Mr. Brisson stated everything else is listed as a Special Exception but the colonnades and arcades they did not put into that category, however, the Council could put that restriction onto it, if they wished to view, however, it was his belief that it was something that they wished to encourage, with the architectural and safety controls.	
Mayor Marix noted it would go directly to the Architectural Commission to which Mr. Brisson agreed.	
Mr. Weinberg asked if they would be losing walking space on Worth Avenue if the colonnades were installed. Mr. Brisson stated the pillars will occupy a portion of the ten foot sidewalk but it would not interfere	

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with the walking space.

Mayor Marix asked if there would be flower pots allowed in a beautification strip? Mr. Brisson stated it was not incorporated into their recommendation and it would be a separate item. Mr. Zimmerman stated the term "beautification strip" applies to those locations where there is a grass strip between the curb and the sidewalk. Mayor Marix asked what they would be doing about flowers? Mr. Zimmerman responded this does not address flowers. Mayor Marix wondered if it should as they are a very important element of this Town. Mr. Randolph did not believe this matter should be addressing the flower pots. Mr. Moore agreed stating this is an architectural feature of a building. Mayor Marix indicated she doesn't want to close the door on flower pots. Mr. Heeke stated that language is already in the Ordinance. Mr. Brisson stated this does not apply to flower pots. Mayor Marix recalled someone wanted to eliminate flower pots and she wants to protect flower pots and since we are discussing the ten foot walkway, this may be the time we should be considering the flowers, so the flower pots are not ruled out. Mr. Moore explained within the ten foot strip, they are currently prohibited. Mayor Marix stated they have to be legalized as most of the flowers are within that ten feet, and since they are redoing this section, it would be the logical thing to state flower pots are allowed or they are not. Mr. Heeke asked if the Zoning Commission discussed this matter? Mr. Moore responded they did not. Mr. Heeke indicated he would be reluctant to get into this area unless it was addressed by the Zoning Commission.

Mr. Weinberg recalled there are palm trees along Worth Avenue and if they are allowing colonnades, would they have to remove the palm trees? Mr. Moore stated this would be at the discretion of the builder as to whether a tree would remain or would have to be removed. Mr. Brisson introduced Mr. Smith, the senior designer who was responsible for the design guidelines and to answer Mr. Weinberg's question, three feet from the street would accommodate the present locations of the palm trees.

Mr. Ilyinsky moved the recommendation of the Zoning Commission dated Dec. 3, 1990 with regards to Item 1 A be approved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Winterfield asked if the guidelines allow anything to be done to the top of the arcade and wondered if the guidelines should be attached to the Ordinance as an annex. Mr. Randolph stated they will be referenced and will become a part of the Zoning Ordinance.

ITEM SIX. Mr. Brisson explained this is a referenced item and sets forth the specific details as to the location and dimensions required.

Section 5.33 as recommended by the Zoning Commission reads as follows: (e) Within the C-WA District, arcades or colonnades may be constructed over sidewalks or ways, providing that they shall not protect nearer than three (3) feet to the face of the street curb line, nor more than ten (10) feet from the exterior wall of the building; and provided that no support shall be nearer than three (3) feet to the face of the curb and said installation shall have a minimum of nine (9) feet of vertical clearance.

The design of such arcade or colonnades shall be based upon the "Worth Avenue Design Guidelines" and shall be subject to the review and approval by the Architectural Commission.

Mr. Brisson explained he has submitted a report dated Dec. 24, 1990 and in most instances reflects that which the Zoning Commission recommended, however, there are a few instances where they have recommended differently and the recommendations are not always identical. Mr. Heeke asked Mr. Brisson to point out these differences as they moved through the report.

Mr. Weinberg asked if the space could be used as a terrace or a deck for the second floor? Mr. Moore explained this would have to be by way of a Special Exception as one story is all that is permitted without a Special Exception.

Mr. Randolph suggested if there is any question on this the language could be added that the roof of the colonnade should not be used. Mr. Moore stated it is already in the Ordinance as they cannot have a second floor without a Special Exception.

Mrs. Wiener asked how wide were the sidewalks on Worth Avenue? Mr. Moore stated most of the areas are ten feet. Mrs. Wiener asked if there was a minimum space required? Mr. Smith of Adley indicated that is not addressed in the guidelines, although when ARCOM looks at it and if something is inordinately narrow, they would recommend it be different. Mr. Heeke asked if there could be a phrase added that it should be in the same plane as any existing abutting arcade? Mr. Smith stated they could put a minimum in the guidelines if the Council wished that provision. Mrs. Wiener felt it would also protect ARCOM from getting into an arbitrary situation and she would recommend that.

Mr. Heeke stated he did not want a jagged tooth effect.

Mayor Marix suggested it be put into the Ordinance as to what the size should be. Mrs. Wiener felt it should be put into the Ordinance. Mr. Smith stated the existing colonnades on the west side of Worth Avenue are not evenly spaced. Mr. Moore suggested if they put in a minimum, they should take into account the size of the column and make it six feet. Mr. Heeke believed it should be seven feet.

Mrs. Wiener moved the adoption of Item No. 6, with a modification which sets a minimum of seven feet. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ITEM 2. Amend Section 4.10 A. Schedule of Lot, Yard and Bulk Regulations by adding a provision allowing a Special Exception for a maximum height of three stories/35' in the C-WA District with a requirement for a minimum of 25% landscaped open space, and with a reference to footnote (20) which was modified to read:

(20) One (1) story with provision for a special exception for two (2) and three stories. See Special Exception provisions in Sections 5.48 relating to allowable height and lot coverage and Sections 6.40 (Special Exception Use) and 9.60 (Site Plan Review).

In addition, the Zoning Commission recommended Section 4.20 A. "Schedule of Lot, Yard and Bulk Regulations" be amended to include a rear yard setback of ten feet for the second and third stories; and that the allowance for a Special Exception for a third story in the C-WA District be subject to a "sunset" condition, providing for its automatic repeal on April 30, 1994 unless the Town Council specifically authorizes its continuation.

Mr. Brisson stated these are items two and four in his recommendation. Mrs. Wiener asked if the sunset provision would automatically come back to the Council in three years? Mr. Moore stated it would first go to the Zoning Commission and then to the Town Council. Mrs. Wiener asked if this was automatic, to which Mr. Moore responded affirmatively.

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Mayor Marix asked if there is a large building with a smaller one next to it and this provision sunsets, would we be in the same position as we were when you have a smaller house with a larger one next to it? Mr. Randolph responded he did not believe so as everyone would be on notice there is a sunset provision.

Mrs. Wiener moved that the Town Council accept the recommendation of the Zoning Commission concerning the changes in Section 4.20 Schedule of Lot, Yard and Bulk Regulations, which is Item 2 of the Zoning Commission's Report of Dec. 3, 1990. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ITEM IV. Mr. Moore explained the Zoning Commission recommends the approval of the proposal to amend Section 4.20 L under Special Exception Uses in the C-WA District to read:

L (1) One dwelling unit located on the second floor per fifty (50) feet of frontage.

L (2) Dwelling units located on the third floor provided; the second floor is also devoted to residential use as set forth in L (1); and, provided that the combined density of residential uses on the second and third floors does not exceed two (2) dwelling units per sixty (60) feet of frontage on Worth Avenue; and, provided such special allowance is based upon the "Worth Avenue Design Guidelines," and review and approval by the Architectural Commisison.

In addition, the Zoning Commission recommended that 4.20 A, Schedule of Lot, Yard and Bulk Regulations be amended to include a rear yard setback of 10' for the second and third stories; and that the allowance for residential uses on the third floor as set forth in L (1) and L (2) be subject to a "sunset" condition, providing for their automatic repeal on April 30, 1994 unless the Town Council specifically authorizes its continuation.

Mr. Winterfield felt when they refer to the frontage, only one dimension, it is assumed that all of the buildings are the same depth and that is not so. He stated if there is going to be such a limitation, he suggested it be made in terms of square feet. Mr. Brisson responded the coverage limitations will take care of that.

Mr. Randolph stated it should be made clear that on each of these items that are passed, the language will be modified so as to incorporate the Design Guidelines as part of the Zoning Ordinance.

Mrs. Wiener felt if they abide by the Guidelines, they all relate to each other and they are allowed to do these things and asked if she was interpreting that correctly to which Mr. Brisson responded affirmatively.

Mrs. Wiener moved for approval of the Zoning Commission's Recommendation of Dec. 3, 1990 with regards to Item IV, amending Section 4.20 (B) Item L (1) L (2) and the sunset provision. Seconded by Mr. Ilyinsky. On roll call the motion carried unanimously.

Motion was made by Mr. Ilyinsky that the Worth Avenue Design Guidelines be incorporated as part of this Zoning Ordinance and as adopted as fully set forth therein. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ITEM #3. The Zoning Commission recommends approval of the proposal to amend Section 4.20 A. Schedule of Lot, Yard and Bulk Regulations, Footnote (7) which would read:

7. The maximum density for hotels within the C-OPI commercial districts shall be thirty (30).

Mr. Brisson explained this is a housekeeping item. Mr. Weinberg moved for approval of the Zoning Commission's recommendation dated Dec. 3, 1990 with regards to Item 3 to modify Footnote (7) in Section 4.20 A. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ITEM 5. Mr. Heeke explained this is to add to Section 4.20 B, Schedule of Use Regulations, a new item "N" Outdoor Cafe to the list of Special Exception Uses in the C-WA District. Mr. Brisson indicated this does add to the character of Worth Avenue to allow outdoor cafes. Mr. Winterfield wondered if there should be a definition for outdoor cafes and whether they should be allowed in other commercial districts of the Town. Mr. Heeke felt these were good points and perhaps they could look at this in the next Zoning Season. Mr. Moore reported they have another section in the ordinance which deals with this and this recommendation by the Zoning Commission is to simply list this as a Special Exception Use. Mrs. Wiener moved that the Town Council adopt the Recommendation of the Zoning Commission as contained in their report dated Dec. 3, 1990 regarding Item 5, which concerns putting Outdoor Cafes into the list of Special Exception usages on Worth Avenue. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ITEM 7. Mr. Heeke explained the Zoning Commission modified the Administration's proposal to amend Section 5.48, Special Exception to Height Regulations; Special Exception Structures: to provide new height and coverage guidelines for two story and three story structures in the C-WA District, by modifying "G" to read:

C-WA District: The following provisions shall be applicable to two-story and three-story construction in the C-WA District:

1. Two story guidelines:

a. First story coverage not more than thirty-five per cent and second story coverage not more than thirty-five (35) per cent.

b. First Story coverage not more than fifty (50) per cent and second story coverage not more than thirty-five (35) per cent if designed under the Worth Avenue Guidelines in conformance with Section 6.40 (Q).

2. Three-story guidelines:

First story coverage not more than fifty (50) per cent; second story coverage not more than thirty-five (35) per cent; and third story coverage not more than twenty-five (25) per cent per special allowance under the Worth Avenue Design Guidelines in conformance with Section 6.40 (Q).

In addition, the Zoning Commission recommends Section 4.20 A, Schedule of Lot, Yard and Bulk Regulations, be amended to include a rear yard setback of 10' for the 2nd and 3rd stories; and that the allowance for increased coverage in 1 b and 2 above, be subject to a sunset condition, providing for their automatic repeal on April 30, 1994 unless the Town Council specifically authorizes its continuation.

Mrs. Wiener noted it was not an unanimous vote by the Zoning Commission and wondered what the negative point of view was? Mr. Robert M. Grace, the Chairman of the Zoning Commission, responded the general thinking of the minority members was that it was too dangerous to give anyone the opportunity to increase the number of stories on Worth Avenue beyond what we now have, and while they were sympathetic to the general desire to go back to better architecture, they were skeptical of making a channel effect on Worth Avenue and the top of the Coconut trees or the sun or the moon would not be able to be seen as it can be now.

Mr. Moore advised the sunset provision was not a recommendation by staff and was recommended to address some of the concerns that it may not be a workable regulation. Mayor Marix stated her concern about the canyon effect and wondered if in the meantime, until the sunset time has expired, there could be only a certain percentage of buildings allowed to be three stories, so there could be no canyon effect. Mr. Grace addressed the Council stating if one analyzed the lot coverage requirements and set back requirements, he felt that was enough of a control. Mr. Smith reported if a third story was ever put on in the middle of Worth Avenue, it would have to be set back fifty feet, so it doesn't interfere with the one and two story facades located in that portion of the Avenue, as they are not trying to change the character of Worth Avenue, but encourage what is there now. He indicated it would have to be a significant benefit and have provision of amenities in order to be approved by the Architectural Commission.

Motion was made by Mrs. Wiener to approve the adoption of Item 7, amending Section 5.48, Special Exception to the height regulations in the C-WA District, with the design guidelines as recommended by the Zoning Commission included therein. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ITEM 8 - Modification to Section 6.40 adding a new paragraph (g) was recommended by the Zoning Commission, as follows, stated Mr. Brisson:

(Q) Special Exceptions in the C-WA District which involve special allowances, pertaining to residential uses, height of coverage, as referenced in Section 5.48 of this Code, shall be based upon the Worth Avenue Design guidelines and subject to review and approval by the Architectural Commission.

The Architectural Commission, in order to grant such approval, must make an affirmative finding that the proposed Special Exception is meritorious to the Town of Palm Beach because of its general appearance and adherence to the "Worth Avenue Design Guidelines" published by Adley, Brisson, Engman, Inc.

Mr. Brisson stated since this deals with Special Exceptions, this sets forth the requirements set forth in Section 5.48 and that they be based on the Worth Avenue guidelines and review and approval of the Architectural Commission.

Mr. Heeke asked if the guidelines were sufficiently identified without the date of publication? Mr. Brisson stated the Zoning Commission did reference the text and they could add the date.

Mr. Winterfield addressed the Council indicating he thought the Council was responsible for granting Special Exceptions and he believed the language raises the question as to whether or not Council on any Special Exception refers the matter to the Architectural Commission for this type of matter, pointing out it is Council and not the Architectural Commission which grants the Special Exception.

Mr. Heeke pointed out the second paragraph stated ARCOM is to make an affirmative decision and then recommends and he didn't believe there was any abrogation of the Town Council's authority here. Mr. Randolph stated perhaps this should be clarified that the approval is not a final approval and the final approval as to the granting of the Special Exception will be done by the Town Council. Mr. Brisson stated perhaps the last line should state review and recommendation by the Architectural Commission and in the final paragraph they could state: The Architectural Commission, in order to make a positive recommendation, must make and then continue on with the wording as printed, as this will take out the approval aspect but still have a positive recommendation.

Mr. Heeke summarized the comments indicating that in the first paragraph of the new wording they would change the word "approval" to "recommendation" and in the second paragraph eliminate "grant such approval" and substitute "make a positive recommendation". Mrs. Wiener noted it goes to Council for the Special Exception grant, then goes to ARCOM, and then comes back to the Council and thought it should be put somewhere that this is the procedure. Mr. Heeke suggested that the wording in the first paragraph also be changed to have "subject to" modified to read: "contingent upon".

Mr. Ilyinsky moved the recommendations for amending Section 6.40 Special Exception Uses be approved as modified. Seconded by Mrs. Wiener. Mr. Heeke noted the modifications would be the addition of the date to the Design Guidelines and in the first paragraph "subject to review and approval" will read "contingent upon review and recommendation" and in the second paragraph, the words "grant such approval" would be changed to "make a positive recommendation".

Item 1 B - Mr. Moore stated the Zoning Commission recommended approval of the Section 6.40 by adding a new paragraph (g) as follows: That the proposed use will not place a greater burden, than would be caused by a permitted use, on municipal police services due to increased traffic, or on fire protection services due to the existence of, or increased potential for fire/safety code violations.

Mayor Marix wondered if Code Enforcement should be added to this. Mr. Moore stated this would be prejudging as Code Enforcement is after the fact. Mayor Marix thought if an additional burden is put on the police and fire, it might also be put on the Code Enforcement people.

Mrs. Wiener asked what they were specifically thinking about to come up with this particular wording and Mr. Weinberg asked for a definition of "greater burden". Mr. Moore advised this was originally proposed by a citizen last year and the matter was studied as originally it would have prohibited any Special Exceptions at all being granted if it was going to increase any burden on Police or Fire and the Zoning Commission felt it was too strict a proposal and asked for it to be restudied and the recommendation as modified by the Zoning Commission. Mrs. Wiener asked for an example. Mr. Moore responded a restaurant would be an example. Mayor Marix thought the restaurant which was requested next to the Post Office would be a good example. Mr. Randolph stated it would be based on whether or not either the Police or Fire Departments would have to have more manpower as a result of a Special Exception being granted. Mr. Moore stated every month before the Special Exceptions or Variances are heard by the Council, they are reviewed with the Police and Fire Departments and this would not be anything new, however, the difference here is that the Council would have to take this into direct consideration in the granting of a Special Exception. Mrs. Wiener felt there was a difference between more usage or making it difficult to provide a service and recalled the staff comments on a Special Exception that was requested by the Villa Plati and it was not because there would be more services required but it would be difficult to provide the services if they were required, so she had a problem with this recommendation.

Mrs. Wiener did not believe the person who proposed this originally would recognize it in this form. Mr. Randolph agreed it was modified beyond the initial intent because staff felt very uncomfortable with the initial recommendation because any application for Special Exception will increase the burden, as would the permitted use, and that is why it was decided to state it would cause no more services than would a Permitted Use.

Mr. Winterfield suggested the language is surplus as it is covered by 6.40 (B). Attorney Randolph did not agree as this language is stronger than what is in the section to which Mr. Winterfield refers.

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Mr. Heeke handed the gavel to Mr. Ilyinsky to chair the meeting and moved that Item 1 B as recommended by the Zoning Commission to amend Section 6.40, Special Exception Uses to add new paragraph (g) be approved. Seconded by Mr. Ilyinsky. On roll call, the motion tied with Mrs. Wiener and Mr. Weinberg voting against the motion and Mr. Ilyinsky and Mr. Heeke voting for the motion. Mayor Marix broke the tie and voted for the motion. Motion carried by vote of 3-2.

ITEM 1 C and 1 D. Mr. Moore explained this was an item submitted the year before and was studied further this year and the Zoning Commission recommended disapproval of the proposal to add a definition for the Use Variance and Dimensional Variance. Motion was made by Mr. Ilyinsky to accept the Zoning Commission's recommendation to not approve this proposal. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ITEM 2. Mr. Heeke indicated this is a recommendation by the Zoning Commission to amend Section 6.33 "Signs in Commercial Districts" to read as follows and to amend paragraph 6.33 (c) Location to read:

One building identification sign which is installed flat against the main wall of a building may be provided for each building street frontage provided such sign does not exceed twenty (20) square feet in area. Additionally, business signs which are installed flat against the main wall of a building are permitted for each licensed business in a building in accordance with the following regulations:

Amend Section 6.33 (c) to read as follows:

(c) Location. Tenants shall be allowed signs on first floor merchandise display areas, providing that the sign area for each individual display area shall not exceed its proportionage share of the total allowable maximum gross surface area for the building as calculated under (a) above and that the total gross surface area of all signs displayed on the building shall not exceed the maximum for that building as calculated under (a) above.

Mr. Moore explained this language permits upper storage tenants to have signage not to exceed what would be permitted on the first floor, as divided by the total of what would be permitted on the first floor. However, he stated, the signs would have to be installed on the first floor and the landlord would make the allocation. Mr. Ilyinsky moved for approval of the Zoning Commission's Recommendation on Item 2 amending Section 6.33. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ITEM 3. Mr. Moore explained the Zoning Commission recommended approval of the recommendation as submitted by the Town Administration and modified by the Zoning Commission to amend Section 6.40, Special Exception Uses to read as follows:

(1) For Special Exceptions granted in the C-TS, C-WA, C-PC and C-B Districts, the following requirements in addition to all other applicable requirements as set forth in this Chapter (Ordinance), shall be met:

(1) The proposed use will not attract the principal portions of its customers/clients from off-island locations. The applicant shall submit evidence satisfactory to the Town Council that not less than fifty (50) per cent of the customers of the proposed use will be "town persons";

(2) In the event an owner or tenant of a property previously granted a Special Exception subsequent to the enactment of Ordinance No. 4-80 should be required to obtain a new occupational license from the Town, such new business shall also be subject to approval by the Town Council per the requirements of (L) (1) above.

Mr. Brisson recalled the purpose of this is to allow the Council to review applications for businesses which have been granted Special Exceptions so it can be proven to the Council's satisfaction that they do indeed meet the requirements of Sub Section (L) which relates to Town serving. He indicated he believed this probably should be a new footnote No. 3 under the Special Exception Uses for those Districts and referred to Section 14 of his memorandum which is somewhat different than what the Zoning Commission recommended. He indicated another change has been made subsequent to the Zoning Commission Hearings as when the Town Council considers Special Exceptions in any of these commercial districts, regardless of whether it is for the 2000 feet or for some other use that requires a Special Exception, they have been considering Sub Section L, as this is required in their normal review of the Special Exceptions and that being the case, they have suggested they not limit the reconsideration to just those Special Exceptions for 2000 square feet but to any use and this would assure the Council it is meeting the intent of when the Special Exception was originally approved. Mr. Heeke wondered if this would eliminate the problem of them forgetting, in the event there is a change in occupancy. Mr. Brisson believed it would.

Mr. Moore indicated this would lay out specifically that it must happen, for example, it would state it has to be for this particular property and use only and for this user and this would actually quantify and be specific.

Mr. Winterfield addressed the Council indicating there is one Special Exception Use which would not fall into the Intent of L-1. He noted Public or Private Parking lots almost by definition may be there for other than Town-persons.

Mrs. Wiener felt this was a housekeeping item. Mr. Heeke asked about the renewal and new occupational license, and wondered if language should be added "Other than renewal" in order to get around that. Mr. Moore agreed the intent was for a new license and Mr. Winterfield is technically correct.

Mr. Ilyinsky moved that Item 3 as modified by Mr. Brisson be approved and with the further modification made by Mr. Heeke to add the words "Other than renewal" be adopted. Seconded by Mrs. Wiener.

The new language would read:

(2) in the event an owner or tenant of a property located within the C-TS, C-WA, C-PC or C-B Districts and granted a Special Exception prior to the passage of Ordinance No. 4-80 is required to obtain a new occupational license from the Town, such new use, other than renewal, shall also be subject to the approval by the Town Council per the requirements of (L) (1) above.

On roll call, the motion carried unanimously to approve.

ITEM 4 - Mr. Heeke noted this item was to require private mail boxes to be a Special Exception was

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disapproved by the Zoning Commission. Motion was made by Mr. Ilyinsky to accept the Zoning Commission's recommendation to disprove Item No. 4. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ITEM NO. 5 - Mr. Heeke noted the Zoning Commission approved this item. Mr. Moore stated this was to amend Section 4.10, A. Schedule of Lot, Yard, Yard and Bulk Regulations by adding a new sub-section (e) to footnote 23 which was to put an Angle of Vision on new structures which was restudied this year. He indicated they had not dealt with accessory structures which were detached from the main structure and the new sub section would read as follows:

(e) For the purposes of determining application of the building angle of vision, an accessory structure shall be considered part of the principal structure when it is separated from the principal structure by a distance of less than twenty five (25) feet.

When an accessory structure is separated by a distance of twenty-five (25) feet or more from the principal structure, it shall be treated as a separate structure and individually subject to the building angle of vision.

Mr. Larry Bell of 241 Banyan Road, Palm Beach addressed the Council indicating this particular revision needs further amendment as it is trying to determine from the angle of vision or trying to keep it too close from the adjacent properties but it doesn't address the fact that if someone does have a piece of property which is twice the width required in the Code, that is not taken into consideration and he thought it was appropriate for an amendment to be made that those angles should be separated so it keeps the setback properly from the adjacent properties and not penalize someone who has a wider piece of property. He is building on a piece of property and it wasn't identified when he applied for the building permit and had it applied to what they were doing, it would have been very restrictive. He has over 250' of frontage and this provision is designed for 125'.

Mr. Brisson advised this is not limiting anyone to where they can put an accessory structure adjacent to the property lines. It is simply saying the intent is if the accessory structure is separated a sufficient distance from the main structure, it should have its own angle of vision, which will generally allow that structure to be built closer to the front yard. He stated it would not affect its relationship on the wider lot and will still be able to go all the way over to the setback line and he doesn't believe there is any penalty if someone has a wider lot as they have made it possible to have two angles of vision. Mr. Smith addressed the Council, indicating his concept is this would allow two angles of vision if it is separated by twenty-five feet. He stated the basic intent was to help control the excessive mass of building as viewed from the front of the property.

Mr. Moore did not believe this problem that Mr. Bell has with the accessory building but the angle of vision as it applied to the main structure to which Mr. Bell agreed. Mr. Moore indicated Mr. Bell could always apply for a variance, and the hardship would be the wide lot. Mr. Moore stated Mr. Bell is correct in stating the angle of vision is designed for 100' or 125' or 150' lots. Mr. Bell felt as long as they are amending the Code, they probably should address the problem for those people who have a wider property. Mr. Moore responded this could not be done at this time as it has not been advertised and it would have to be put over to the next Zoning Season.

Mr. Doyle Rogers addressed the Council indicating he does have a client who has a problem with this as his property is on a cul de sac and this creates a little bit of a problem as instead of the angle being from further out in the middle of the property, the cul de sac makes the angle closer. He stated the property was purchased by his client prior to the ordinance being adopted and also he had purchased additional property on which to put a guest house, and to keep a guest house 25' away from the main house is a little strange and he hoped the Council would use some discretion in granting variances since the Ordinance is relatively new. Mr. Moore stated this point is well taken and that is exactly the type of thing that would come before Council on a variance request. Mrs. Wiener asked how they arrived at the figure of 25'? Mr. Brisson stated there was no scientific formula and it could be 20' or 30', but at 25', they felt it was an adequate separation where the eye took in two separate structures as opposed to one structure.

Mrs. Wiener noted there are areas in the Town which have 15' sideyard setback, so now there would be 30' between two separate properties and she didn't think that was logical. Mr. Brisson responded this thirty feet is enough to get a visual appearance of two structures. Mrs. Wiener indicated they are when we have two separate structures and two separate ownerships. Mr. Brisson stated that is not necessarily the case as this is not setting a distance requirement but is simply stating if you are closer than that, then you must abide by the angle of vision. Mayor Marix understood the angle of vision was to address how things actually look and one of the reasons there are setbacks is exactly for that reason - how things are going to look, so whether it is two houses on one property or two separate properties, the bottom line is how it is going to look; and as she views it this provision does not make a person put their house 25' away but allows them special consideration if it is 25' away, but they can put it five feet away if they want. She believed if they put it 25', they would probably gain by having the possibility of counting it as a separate house. Mr. Heeke felt in all likelihood they would have two residences that would perhaps be dissimilar in architecture or color so there is no question about them being separate structures, whereas if there is an accessory building generally, it would tie into the main building and give the appearance of mass, if there is a problem.

Mr. Smith advised the accessory structure could be in the side yard, but if it is not separated by the twenty-five feet, the separation between the structures is not really comparable to that required as a side yard setback.

Mr. Grace believed this was the kind of matter that can be discussed forever, but it is only when you get into specific examples and look at drawings that it makes any sense and it boils down to the fact whether one believes in the "cone of vision" concept or not. He believed a property such as Mr. Bell's which goes from County Road to the Lake and the Council would not want him to build a 300' house on it and the cone of vision is made to try and prevent that, and that is the purpose.

Mr. Bell addressed the Council stating he didn't believe anyone would intend to build a 400' house, however, he doesn't like the feeling he gets that they are changing the zoning and stating to him he can come before the Council and get an exception and he would rather see the law written in such a way that it would take these things into consideration as he felt they have to go through bureaucracy as it is and he believes this puts an additional layer onto this procedure. Mr. Randolph advised this is because all lots are not identical. Mr. Bell thought they needed to be giving some consideration to the lots in the Estate zoning as most of the lots are quite wider than those in the north end, and most of the mansions could not be build today because of this cone of vision.

Mr. Ilyinsky moved that the Town Council accept the Zoning Commission's recommendation on Item 5,

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amending Section 4.20 by adding new sub-section E, Footnote 23. Seconded by Mr. Weinberg. On roll call, the motion carried 3-1 with Mrs. Wiener voting against the motion.

Meeting adjourned for lunch.

Meeting called back to order by President Heeke.

ITEM No. 6. Mr. Moore explained the Zoning Commission recommends approval of the proposal to amend Section 6.32 "Signs in Residential Districts" by amending Subsection (b) (1) (a) to read as follows:

"The sign shall read either "Open", "For Rent" or "For Sale" and may include the name of the persons affecting the sale or rental and the telephone number of the owner or agent relative to the premises upon which the sign is located. Mr. Heeke noted this would still be the same size sign as we now use to which Mr. Moore agreed. Mr. Weinberg wondered if all this information could be contained on the same size sign to which Mr. Moore responded affirmatively. Mr. Ilyinsky moved the recommendation of the Zoning Commission with regards to Item No. 6, amending Section 6.32 (b) (1) (a) be approved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ITEM 7A. Mr. Moore explained the Zoning Commission recommended disapproval of this proposal to modify the last line of the third paragraph of Section 8.10 "Continuation of non-conforming uses" to read as follows: "..... but not to generally encourage their survival. Mr. Moore noted this is a companion item with Item 7 B, but the Zoning Commission felt it was necessary to address this particular item in this section and felt it was too broad to be included in this section. Mr. Moore explained staff agrees it is not necessary to have the statement in the Ordinance and Mr. Brisson agreed. Motion was made by Mr. Ilyinsky to accept the recommendation of the Zoning Commission on Item 7 A. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ITEM 7 B. - Mr. Moore explained the Zoning Commission recommended approval of the proposal to amend Section 8.11 "Extension or Expansion of Nonconforming Uses" to read as follows:

"No nonconforming use shall be enlarged, increased, intensified, substituted or extended to occupy greater area than it occupied at the effective date of adoption or amendment of this Chapter (Ordinance) except as may be granted by variance under Section 10.13 of this Ordinance. No such non-conforming use shall be relocated in whole or in part to any portion of lot or parcel except the location occupied by such use at the effective date of adoption or amendment of this Chapter (Ordinance)."

Mr. Winterfield addressed the Council stating he believed they would be opening the door to compromising the concept of granting variances. He suggested that perhaps 7 C should also be considered as then the current item will take care of itself if the Council should decide negatively on 7 C. Mr. Heeke asked that ITEM 7 C be considered at this time.

Mayor Marix asked for a further explanation on this item and Mr. Moore responded what they are proposing that under certain circumstances, the Council may consider granting a variance for a non-conforming use. He stated currently as the Ordinance is written, they are precluded from doing that. He thought they might want to decide whether or not they wish to consider Variances to non-conforming uses and if they do not, then they need not consider Item 7 C.

ITEM 7 C: The Zoning Commission recommended approval of this proposal, to amend Section 10.13 "Variances" by adding a new paragraph (f) and change existing paragraph (f) to paragraph (g). New paragraph (f) to read as follows:

(f) That in the event of the granting of a variance to Sections 8/11, 8/14, or 8.15, pertaining to the regulation of non-conforming uses, the following additional findings shall be made pertaining to the nonconforming use for which the variance is requested.

(1) That it is a continuance of a unique hotel or residential use that, over the years, has proven compativle with the surrounding uses; and

(2) Neither rezoning to a district which would allow the use, nor inclusion of the subject use as a permitted or special exception use in the district, would act to achieve the preservation of the subject use without opening the possibility of the incursion of uses incompatible with the immediately surrounding area.

And, further, that such variance shall:

(3) be granted only for the continuation of the same hotel or residential use; and,

(4) require and applicant to submit a Declaration of Use limiting the utilization of the property for which the variance was granted to the same use as that existing at the time the variance was granted.

Mrs. Wiener stated her dissatisfaction with the phrase "over the years" as she thought that should be more clarifying language. Mr. Ilyinsky suggested that phrase be eliminated. Mr. Randolph stated that could be done. Mr. Heeke suggested a period of years could be stated to which Mrs. Wiener agreed.

Mr. Winterfield felt they were destroying the concept of non-conforming use and felt this was arbitrary and would weaken the entire Zoning Ordinance. Mr. Heeke thought they had to remember the non-conforming use was not always that as at the time of construction, it was not prohibited and was permitted. Mrs. Wiener felt that as the zoning regulations are tightened, a certain percentage of property in the Town becomes non-conforming. Mr. Ilyinsky believed this language proposed would in a sense be loosening up the language. Mr. Moore reminded the Council they would always be permitted to come before the Council for a variance.

Mr. Grace reminded the Council and the Mayor they were talking about a "Use" here and not a structure, so dimensions are not part of the ball game. Mrs. Wiener felt whether they tighten "use" or "dimensions", they would be put in a non-conforming category as a result of actions that are taken by the Town Council long after a situation exists. Mr. Grace agreed but needed to clarify.

Mr. Randolph reminded that ideally as a Use becomes non-conforming, it is the intention that it would be phased out and survival is not encouraged and that is the whole intention of the non-conforming provision in the Ordinance, as the only thing that can happen to a non-conforming use is that it be patched up in order to be maintained rather than intensify the use, which encourages the survivability of that use. He felt this would act, in some circumstances, to encourage survivability.

Mr. Randolph felt the Council ought to be considering the other provisions in the Ordinance, as it may make it difficult or even impossible to be able to provide all of the things, but he felt they ought to be able to prove that for instance, there is a hardship and he didn't believe to receive a variance, they should be allowed to come

in and provide the items under Section 10.13 (f) and they should be able to show the need for the variance under these other provisions.

Mr. Grace addressed the Council, indicating he wanted to be sure the Council knew they were talking about a Use and not a structure, and dimensions are not part of this. Mrs. Wiener responded whether Use of dimensions are tightened in the Zoning Ordinance, the property becomes non-conforming as a result of the action taken by the Town Council long after a situation exists.

Mr. Randolph advised when a Use becomes non-conforming, the intention is ideally that it be phased out and its survivability not be encouraged and the only thing that can happen to a non-conforming use is that it be patched up in order to be maintained rather than intensified, which encourages the survivability of that Use. He felt this provision may act in some circumstances to encourage survivability and this is the policy issue before the Council. Mr. Heeke recalled the DCA would like these things to be amortized out and that does not always follow common sense. He wondered if perhaps in Item 7 B, it should refer to Section 10.13 (f) as they are aiming at one particular type of a situation. Mr. Randolph believed they ought to be considering the other provisions and it may be difficult or impossible for the applicant to prove all the criteria, but he should be able to come in and show it is a hardship and he didn't think he should just have to prove the items under 10.13 (f) and he thought the applicant should be able to show he is entitled to a variance under the other provisions, which may be difficult to do but it was his opinion the applicant should be required to do that.

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Mrs. Wiener stated her problem was with conversions, as they would have certain hotels, such as the Brazilian Court, which may even be landmarked and it may be that at some point in time, in order to maintain the landmark, it will have to be changed so they can keep it maintained. She thought they had to look down the road a little bit before making a decision.

Mr. Heeke turned the gavel over to President Pro Tem Ilyinsky and made the motion that the Town Council approve the Zoning Commission's recommendation, Item 7 B, amending Section 8.11, Extension or Expansion of Non-conforming Uses." Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Heeke advised they will now go to Item 7 C, which they have been discussing in conjunction with 7 B. Mr. Winterfield suggested this is one circumstance where they could require the building to be landmarked and notwithstanding that, he would like to invite their attention to the fact that in Section 10.13, it states: "...will not confer to the applicant any special privileges that is denied by this Ordinance to other lands, buildings or structures in the same Zoning Ordinance." He felt if they passed this, it would.

Mr. Randolph advised the Mayor and Council that in his opinion the Council will not be granting any special privilege to anyone that is reviewed under that same scenario and as long as the application is the same as all others coming under this provision, they could still qualify under that provision.

Mrs. Wiener wondered what would be a reasonable number of years? Mr. Heeke suggested fifteen years. Mr. Moore stated in 1974, there were a lot of non-conformities created with the passage of Ordinance No. 2-74 and prior to that it was the base Ordinance 1-47 which continued to be amended each year and he offers that for discussion purposes. Mayor Marix thought if there is to be an amount of years, it should be tied to something specific, such as the passage of a Zoning Ordinance or some sort of condition. Mr. Randolph advised fifteen years would tie the time into Ordinance 2-74, without mentioning it. Mr. Brisson advised that those things which are made non-conforming by this Ordinance, fifteen years from now would qualify.

Mr. Randolph stated the amended language would read:

"That it is a continuous of a unique hotel or residential use that has, for at least a period of fifteen (15) years, proven compatible with the surrounding uses; and"

Mrs. Wiener moved that the recommendation of the Zoning Commission with regards to Item 7 C be approved, but the language "over the years" be more specific with the language "has for at least a period of fifteen (15) years". Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ITEM No. 8. Mr. Moore advised the Zoning Commission recommends approval of the proposal to amend Section 4.20, A, Schedule of Lot, Yard and Bulk Regulations "to reduce the maximum allowable density for two-family uses from eight dwelling units per acre to six dwelling units per acre, and changing the minimum lot size for such uses from 10,000 square feet to 13,333 square feet.

Mr. Brisson indicated they were asked to investigate the reduction of multi-family density through the R-C District and in reviewing this and identifying those lands which remain vacant which could be developed at the existing density, or redeveloped, they found there were so few parcels which would be adjoining other multi-family uses that to modify the multi-family density itself would not be effective, and in some instances, it would have been inappropriate. He reported they did look at the duplex situation and felt the duplex should not be allowed at any greater density than a multi-family and they suggest reducing this to six units per acre, which will have an effect in reducing the maximum number of dwelling units which could be developed in the R-C District. He recalled duplexes have not been a very predominant use in these districts and changing to the 13,333 is only to show that the minimum lot size is appropriate for the density.

Mr. Theodore R. Hoppe, owner of 250 Atlantic Avenue addressed the Council indicating he has had his property up for sale and most of the prospective buyers are interested in building a two unit structure on this lot and until recently, he was not aware of this proposed provision. He now holds an agreement with a prospective buyer who wants to build a duplex and if this proposal is adopted, it will hamper the sale.

Mr. Heeke wondered if the number of duplexes could be reduced to a total of six per acre. Mr. Brisson stated they would have to have a larger lot than the 10,000 square feet.

Mrs. Wiener pointed out the way this reads it says to her that they may not have the usage if there is less than 13,333 square feet. Mrs. Wiener noted they are trying to upgrade and wondered if there has been dissatisfaction with duplexes in the area. Mr. Moore responded negatively indicating the study was to review density in the entire R-C zoning District and there has been some possibility created of parceling of single family residences in the R-C zoning District to create multi-family, townhouses, and/or duplicate and in the study done by Mr. Brisson he identified that it would not be worth our time or effort to change from town-house or multi-family but it would be valuable to look at the duplex and he felt the duplex density only is the one that should be reduced.

Mayor Marix asked Mr. Hoppe if it was possible for him to purchase additional land? Mr. Hoppe responded to the east there is a property for sale and it is a private home but no-one has lived there for a long, long time and it is 100 x 100'. Mayor Marix asked Attorney Randolph since Mr. Hoppe is negotiating at this time, if this matter is changing, would there be any way he could get out of the situation he is now in? Attorney Randolph responded negatively.

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Mr. Brisson indicated the intent of the study as directed was to reduce the potential re-development of the community in those areas and he did not find it appropriate to reduce the multi-family density, and this was posed as an alternative.

Mrs. Wiener stated the feeling she is getting where commercialism is involved, somehow everything is alright but the little individual on a small lot is really being pushed further than he should be and she finds it peculiar that where a great deal of density can be reduced in an apartment house, for instance, they are not looking at that but are looking at the duplexes, which are on small lots in the areas where people have built duplexes. She felt they are talking here about people's property rights and she would have less problem with tight regulations that concern commercial matters and she doesn't wish to go in this direction.

Mayor Marix stated she was under the impression there are a number of single family dwellings which are zoned for duplex or more families but at the present they are simply single family homes and if all of these are developed as duplexes, we would end up with a much higher density than we would have in the multifamily and that is why we are looking at this. Mr. Brisson responded there are very few two family structures through the R-C District. He stated there has not been a past pattern of conversion to duplexes, but there was some concern that there was a tendency to redevelopment in the Town to increase density, wherever possible and he could see no significant reason for having a higher density in the Town for duplexes than for multi-family. Mrs. Wiener wondered how many there were in the Town and she would definitely like to know how many parcels they were talking about.

Mr. Zimmerman reported there were probably as many properties in the R-C District, which are over-developed and if they were re-developed, the density would be less than what is there now. Mr. Moore stated what they are doing here is equalling the duplex density with the multi-family/town-house density. Mr. Brisson stated he didn't believe there were more than seven vacant lots in the areas he was looking at. Mayor Marix didn't think they could differentiate between the single family and the vacant as anyone could demolish the single family and put up a duplex if they could meet the criteria.

Mr. Randolph stated under today's ordinance, a single family lot could be redeveloped to a duplex if they had ten thousand square feet but under this proposal, they couldn't do it as they would have to have an extra footage from an adjacent lot and it would be much more difficult under today's proposal for that to occur.

Mr. Winterfield addressed the Council stating he felt it was an error to simulate a duplex to multi-family as it is a double single-family house. He asked what the Town would gain if it requires a property owner to purchase the lot next door as they can't have a three unit duplex. Mr. Zimmerman responded it would be a multi-family unit as there is no such thing as a three unit duplex.

Robert Miller addressed the Council pointing out the majority of the areas they are talking about are lots that were platted at 25 or 50 feet. He stated the bulk of bungalows are on 50' lots and people do go to great lengths to make these homes quite liveable. He didn't think that preventing a person from putting a duplex on two fifty foot lots, side by side, is all that disruptive. He recalled there was great furor when the Town increased the lot coverage from 75' to 100' in the north end as there were a lot of lots with 75' frontage so they would be opening up the process for more variances. He didn't think the reduction in density would make that much difference as the area in that end of Town is built about as dense as it could be.

Mr. Randolph stated there is a question being debated as to whether or not there could be a variance secured as this provision would be a prohibition of a duplex on a lot and he wasn't sure there can be a variance sought from that.

Mr. Zimmerman stated today a single family dwelling can be built in the R-C District on a 7500 square foot lot as long as it is 75' wide and 100' in depth, but to build a two family dwelling, there must be 10,000 square feet and to build a multi-family dwelling, there must be a minimum of 15,000 square feet.

Mr. Ilyinsky asked Mr. Randolph if Mr. Hoppe could come before the Council for a variance to build a duplex on his lot? Mr. Randolph did not believe that would be possible as there is a question as to whether or not a person could receive a variance for density and he believed the prevailing opinion is they could not as it would be a prohibition against duplexes on a lot less than 10,000 square feet and he thought they needed to take into consideration there may be no relief to a situation such as this.

Mr. Heeke recalled the Council did not landmark several small homes, relying on the fact that the existing zoning would not permit a redevelopment of the property and he felt if the existing vacant lots could be identified and adopt this provision and then two fifty foot lots could not be together for anything other than a single family residence, which would further protect what they are relying on the Zoning Code and denying landmarking of certain houses.

Mr. Randolph did not believe that provision would do violence to the Ordinance as he didn't think it was good for another person who has a single family residence on 100' square lot and they would indicate why they are discriminating against him versus the vacant lot. He stated it was a good argument.

Mr. Heeke gave an example of two fifty foot lots and those lots were combined through a Unity of Title and he wondered if it could be a multi-family or duplex as we have a lot of those particular structures that we had an interest in trying to save. He would like to seriously consider, except for presently existing vacant lots, undeveloped. Mrs. Wiener wondered if this could be restudied, as to tighten this up just for the sake of tightening and then hitting the small guy, which is exactly what we are seeing today, is not appropriate.

Mr. Heeke did not agree and thought perhaps they could use language to protect the presently existing vacant lots. Mr. Moore suggested they could deny this and send it back for more study. Mayor Marix indicated since they know the number of lots are few, they could pass it with exceptions and also have it restudied. She felt the empty lots should be exempt and this provision be for redevelopment. Mr. Heeke stated they could put in a provision that it should not apply to existing vacant lots for a period of twelve months.

Mr. Moore stated their overall goal is to reduce density, wherever possible and he felt the staff needed an expression from the Council as to whether or not they wished to have this restudied but more importantly, they should realize in the areas of the RC District, there will be redevelopment.

Mrs. Wiener recalled a Root Trail property which combined three homes to make one single family and she thought more of that type of activity will be seen because of the value of the land in Palm Beach. Mr. Moore stated he didn't disagree but didn't feel that was typical.

Mr. Ilyinsky moved to support the recommendations of the Zoning Commission to amend Section 4.20 A, Schedule of Lot, Yard and Bulk Regulations to reduce the maximum allowable density for two family uses from eight dwelling units per acre to six dwelling units per acre and changing the minimum lot size for such uses from 10,000 square feet to 13,333 square feet. There was no second to the motion.

Mrs. Wiener moved this particular item be returned to the Zoning Commission for restudy and when it comes

back to the Town Council, there will be the total figures of what now exists in the Town in that category. Mr. Ilyinsky pointed out this would be one year from now. Mrs. Wiener didn't think there was much that could happen in a year from now. Mrs. Wiener didn't think there was much that could happen in a year. Mr. Ilyinsky stated as long as the North End doesn't become a slum. Mrs. Wiener pointed out the north end is not zoned for this item. There was no second to this motion.

President Heeke handed the gavel to President Pro Tem Ilyinsky to chair the meeting and he moved the approval of Item 8 of the Zoning Commission's recommendation amending Section 4.20 A, Schedule of Lot, Yard, Bulk Regulations to be modified that the same should not apply to presently existing vacant lots for a period of twelve months from the effective date of the Ordinance. Seconded by Mr. Weinberg. Mr. Randolph suggested additional language which would read: "This provision would not be applicable to vacant lots existing as of the date of the adoption of this Ordinance, however, upon the expiration of that twelve month period, it shall become applicable." Mr. Heeke amended his motion to read as the attorney stated. Seconder accepted the amendment. Motion carried 3-1 with Mrs. Wiener voting against the motion.

Mr. Heeke assumed the chairing of the meeting.

Mr. Moore asked if they wished staff to give this further study and look at the number of lots this would affect for redevelopment in the future? Mayor Marix thought that was a decision which could be made when they plan for next year's zoning calendar. Mr. Heeke asked Mr. Moore to remind the Council about this and a decision will be made to see if they wish to restudy this item.

ITEM 9. Mr. Heeke reported on this item the Zoning Commission recommended disapproval to add hotels as a Special Exception Use in the R-C Residential and C-TS Commercial Zoning District. Mr. Moore stated this item was put on the agenda in the event there was not going to be consideration given to the possible granting of non-conforming use variances and because of the action taken earlier, the Zoning Commission recommended disapproval to which the staff concurs. Mrs. Wiener moved that Town Council concur with the Zoning Commission's recommendation to disapprove Item 9, the proposal to add hotels as a Special Exception Use in the R-C and C-TS Districts. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ITEM 10. Mr. Heeke called on Mr. Brisson for his comments and Mr. Brisson stated this is one of the more complex issues studied this year. He recalled last year the cone of vision was instituted but there were certain instances, it was felt that the "cone of vision" was not reducing the apparent bulk of structures as much as was expected, so they looked at a series of alternatives to achieve the reduction of the bulk of buildings particularly in the R-B District. He looked at a number of things, including the reduction of coverage allowable on the lot, and essentially found that could be one method, but later it was found that if they instituted the Floor Area Ratio (FAR), they could allow for flexibility of design and achieve the same result of reducing the size or scale of the buildings, particularly as viewed from the street, but in some instances, from adjoining properties.

Mr. Brisson stated his recommendations were to (1) incorporate a definition for a Floor Area Ratio (FAR) as recommended by the Zoning Commission; (2) to reduce the overall height of buildings in the R-B District from 35 and 30 to 30 and 27 feet; (3) and a simple way of doing it is to eliminate the "basement credit", all of which were recommended by the Zoning Commission.

Mr. Brisson stated he offered another solution in his document and that would be to incorporate a FAR of .6 or it could be .5, which would limit the maximum FAR above the ground to .4. He stated if they feel the basement credit would tend to encourage off-street parking, particularly underground, and they want to keep that and they wish to incorporate a FAR between .5 and .6 and if they want to count it as a floor, he would recommend the Council going along with the Zoning Commission's recommendation which is in essence eliminates the basement credit, institute a FAR of .45 and the Zoning Commission has also incorporated the recommendations on height.

Mayor Marix asked when they talk about "basements" could it be eight feet under ground or could it be one foot underground and the other ten would be above ground? Mr. Brisson indicated the present regulations require that at least half of it be below grade and the other half may be above.

Mr. Moore stated the overview has been given by Mr. Brisson and the Zoning Commission reports five items under Item 10 and he asked they be considered individually. Mr. Heeke noted Item 10.1 is eliminating the basement credit. Mrs. Wiener indicated she was in accord with the Zoning Commission's recommendation.

Mrs. Joanna Frost-Golino addressed the Council indicating she is a registered architect, a resident for eleven years and a member of the Architectural Commission, however is here as an individual to express her own opinion. She supports the proposals before the Council from the Zoning Commission to reduce the gross square footage, the cubical content and the building height and to eliminate the basement credit. She commended the Zoning Commission on their actions on Items 10, 15 and 19. She is one of the few architects in Town who feels the proposed regulations do not go far enough to minimize the negative impact that some new construction has had in Palm Beach which affects existing property values.

Ms. Frost-Golino noted the Zoning Ordinance does allow new construction to be up to four times the size of the existing homes in the area, and she thought it was time to question the provisions in the present Ordinance and she suggested they approve Item No. 10 with the caveat that the maximum building height proposed be reduced. She noted the Zoning Commission recommended disapproval of Item 10.5 and she believed this was recommended for disapproval as the fear exists that no two story house could ever be built with such a regulation and she recommended that perhaps the height limitations could be based on an average height of all one story houses within two hundred feet, or it could be based on the average size of two story structures within two hundred feet of the proposal.

She stated the reason for the Town seeing these massive houses is a result of the developers building to the maximum which is permitted in the Zoning Code and she hoped to see in the Zoning Code a limit on the number of maximums to which an applicant could be allowed to build. She felt visual harmony which we all pride in Palm Beach is in jeopardy.

Mr. Heeke noted Item 10.1 is the elimination of the basement credit. Motion was made by Mrs. Wiener to approve the Zoning Commission's recommendation on Item 10.1 which recommends eliminating the basement credit in the R-B District by making the basement count as a story. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ITEM 10.2. Mr. Heeke indicating this item is adding a new definition for Floor Area Ratio (FAR) to read:

22.11 Floor Area Ratio (FAR). A measure of land use intensity, expressing the mathematical relationship between the floor area of a building and the unit of land. It is arrived at by dividing the gross floor area of all buildings on a lot by the gross area of that lot.

Mr. Heeke asked Mrs. Frost-Golino if she thought this definition was too liberal to which she responded she hates to shoot it down before it is tried, and it is her thinking at this point in time that having eliminated the

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basement credit, they have come a long way to making this more realistic. It means that you can build a 4500 square foot house on a 10,000 square foot piece of property which is smaller than a lot of houses in the north end and in other places in Palm Beach. She would like to see it reduced more but she knows there are many architects which would not agree with her.

Mrs. Wiener indicated she didn't realize there would be a minority report on this. She knows there is a great feeling of a small minority in the north end but it is not the minority thinking. She agrees there should be no credit for basements as she thought the height of a building can be reduced and they can call the bottom floor what ever they want to, but on the other hadn, times have changed. She is a resident of the north end so has no qualms about saying that the north end was a series of some tract homes and a series of little for-a-few-week-vacation-shacks, if you will. Mr. Ilyinsky disagreed. Mrs. Wiener pointed out she did say "some" and she can show them where she walks her dog, they are there. Mayor Marix indicated she has been here since 1945 and this is history being re-written. Mr. Heeke pointed out Mrs. Wiener has the floor.

Mrs. Wiener continued by stating there are a few people trying to maintain this type of community and she thinks that is great, but on the other hand, those of them who live in the area are always pleased to see nice homes, and by that she doesn't mean fifty foot homes and she isn't talking about the ocean or the lakefront but if you look at the platted areas, they will know there were row houses, and a number of homes exactly as she described. She indicated she could take them on walks through the north end and if they looked at a picture of some of the homes, and it is the people's privilege and right, one would never believe they were in the Town of Palm Beach. She stated she has a great deal of problem with someone who lives on a street where there are nice homes on a side street, not overly large or small, but they like to see everything is kept in a proper manner and they do not look at people who do not have their things in a proper order, as would be correct for the Town of Palm Beach and say to them, "your home is too small - or out of code" as they are now coming to us saying "we prefer what is being put up in the Town of Palm Beach is small, inconspicuous and totally out of keeping with the value of the property". She explained she has had construction going on next to her home for the past year or so, and she is sure some people in the north end who prefer the smaller homes would be aghast, but it was passed by the Architectural Commission and she felt they had to seriously consider what they are talking about and forcing people to have little tiny homes in an age when people are living here all year round versus people who came for a month or so on the north end of Town is not realistic and she felt they needed to meld and she agreed with Mrs. Frost-Golino that they needed to reduce the bulk look, but there is a great difference between that and recommending little tiny homes as she didn't think that was Palm Beach either.

Mr. Heeke indicated they are discussing the Floor Area Ratio definition and Mrs. Frost-Golino has addressed the Council and not in any official capacity and has indicated there are some other approaches to considering the control of mass and he would think this is something that should be continually studied and reviewed by the Zoning Commission.

Mayor Marix wondered if the FAR as it was discussed was in black and white so it could be compared, as she understood the cubic foot requirement, but the FAR she knows what it is but wondered what the control would be. Mr. Randolph explained the control does come in a different section and all they are discussing now is the definition.

Mayor Marix stated she liked the cubic provision. Attorney Randolph indicated that was not advertised so it would have to be studied and brought back at a later time.

Motion was made by Mr. Ilyinsky to approve the recommendation of the Zoning Commission to approve the definition of Floor Area Ratio, Item 10, Sub-paragraph 2. Seconded by Mr. Weinberg.

On roll call, the motion carried unanimously.

ITEM 10.3. Mr. Heeke stated this item is the limitation of the overall height and would amend Section 4.20 A. Schedule of Lot, Yard and Bulk Regulations by adding a new footnote numbered 18 A which would read:

"Maximum overall height of a building in the R-B District shall be twenty-seven (27) feet for flat roofed structures and thirty (30) feet for all other roof styled structures."

Mr. Heeke asked what is the height of measurement if there has been fill added and the natural grade is no longer the natural grade. Mr. Moore responded they would use the crown of the road measurement. Mayor Marix recalled on Indian Road in the north end, there is a two story gray house which was placed on a lot of filled in land and wondered what the maximum height would have been on that house? Mr. Moore responded it would have been 35' as measured from the crown of the road. Mayor Marix wanted to know if this was for the chimney and the stairs that lead up to the top? Mr. Moore responded it would be to the peak of the roof but there would be an exemption for the chimney or bell towers of decorative items such as that.

Mr. Moore indicated the theory that was in place to this point of time and he recalled two architects coming to a meeting such as this about nine years ago, pleading for the retention of the height so the architect could have some ability within which to make his or her design. He stated the Council acquiesced to those desires but slowly and surely through the years, this matter which was once decided at the Architectural Commission has become a push and pull procedure, so the concept of the architects having more freedom of design within the height regulation in dealing with their clients, has been reversed to the point where they now want the maximum use of whatever is in the Zoning Ordinance. He stated the staff has recommended and the Zoning Commission has recommended that the overall height of the buildings be dropped, still allowing some architectural freedom but not putting it down to a point where they would be constricted to a low design. He recommended some flexibility be allowed, which he thought could be accomplished with the 27-30 foot height from the current 35-30.

Mr. Weinberg moved for adoption of the recommendation of the Zoning Commission with regards to item 10-3 to add a new footnote 18 A which would amend Section 4.20 A. Schedule of Lot, Yard and Bulk Regulations. Seconded by Mrs. Wiener.

Dr. Sten Lilja of 1330 N. Ocean Blvd., addressed the Council, indicating the proposal as recommended by the Zoning Commission as it pertains to the proposed height regulations of 27 feet and 30 feet for flat roofed and peaked roof buildings may have severe consequences, especially if that specification is allowed to overshadow other size restrictions. He asked the Council to keep in mind that the present proposal was triggered by a strong consensus that development along North Ocean Blvd. was getting out of hand and what particularly caused the concern was the present construction at 1300 North Ocean Blvd. Mr. Ilyinsky called for a point of order on that statement. Mr. Heeke advised Dr. Lilja to not discuss that point at all. Mr. Moore suggested strongly they not get into the specifics.

Dr. Lilja indicated he was not complaining about that particular one as such but intended to use it as a demonstration, as he has no criticism of that building as such. Dr. Lilja proposed to use that building as a reference to what 27' and 30' means and what it would look like. He exhibited photographs which showed the large size of that building and they could also see how it dwarfed adjacent properties. He pointed out that the present height of that building is only 22'8" above the ground in front of the building, which means the proposed height ordinance would

permit an additional 4'4" to be added to the top of that building.

Dr. Lilja suggested the height be limited to approximately 17' for flat roofed buildings and 25' for peaked roof buildings. He exhibited a photograph of a building at 1340 N. Ocean Blvd. which was at 25'. He showed a photograph of his own home at 1330 N. Ocean Blvd., which is typical of the homes in that area. He stated the height to the edge of the roof on his home is 12'4" above the ground and to the peak is 19'4".

Mr. Moore felt the elimination of the basement credit will go a long way to solve a portion of these problems, although it won't fix the problem Dr. Lilja is identifying directly one-hundred per cent as nothing in the Zoning Ordinance can fix an individual problem without creating a problem on others in the R-B District. He stated they can look at the overall effect of what should be done for the entire district for the benefit of all. Mayor Marix felt the same situation exists in other areas of the Town and not just on the North Ocean Boulevard and actually wherever there is a hill, there is this problem and she thought that matter could be dealt with by either restricting the rules for those places which have uneven terrain; or possibly combining it with the cubic feet proposal. She felt there were a lot of properties in Town who are about to be devastated by some of the height around them.

Mr. Moore stated the Zoning Commission and staff have attempted to deal with this problem by these recommendations. He stated these recommendations are almost all a "must" in order to reduce the effect of the mass of structures which are now being built in the R-B District and also this encompasses No. 19, which deals with the raising of the grade, which has been a huge problem for the creation of a massive structure.

Mayor Marix stated her dismay at the thought that these structures could legally be higher than what they are now and she thought this should be addressed positively and she thought the heights recommended are too high.

Mr. Moore responded some of the architects who do work in the Town will need some flexibility in the height, although they would be allowed to come for variances. Mayor Marix pointed out the flexibility in the height was given to allow beauty but now it is just creating massive structures and it might be that the additional height for the chimney, or widow's walk or whatever could be allowed but it would have to have special permission. Mr. Moore stated that would be a variance but he wished to caution them that to come forward with more prohibitive height restrictions at this point without going forward with the Zoning Commission's recommendations, is about a ten per cent drop in the measurement and he believed this would encourage applications for variances. Mayor Marix felt that would be alright and they might find the right vehicle to work it out as she found very worrisome the facts that Dr. Lilja presented on how high a building could actually be along that stretch. Mr. Moore stated there may be a problem with this further restriction not being advertised. Mr. Randolph agreed this would have to be advertised and they would have to call the Zoning Commission back into session. He suggested perhaps the most effective way to address this would be to create a new zoning district along this particular strip.

Dr. Lilja addressed the Council indicating he has a different opinion from Mr. Moore on the height of a building as to where it is measured - from the bottom of the building or the crown of the road. He felt in some cases they are right when the land has been raised up from the natural grade; however when the ground has not been raised and two examples would be his own home and 1332, which is two feet below the crown of the road. He felt the natural grade is very dear to him and they should work backwards to encourage that; secondly, he was well aware that his recommendation of the drastic change in height will raise a lot of comments, however, he urged the Council to consider his proposal as he felt they were justified.

Mrs. Frost-Golino addressed the Council as a private citizen and not as an architect stating she would like to see the height slightly less than what was proposed and she thought they should look at Item 15 (b) at the same time since that talks of building heights. She stated the Zoning Commission did recommend disapproval, but perhaps it was because there was too small a catchment area and it also does not differentiate between one and two story houses. She suggested they set a building height based on the average and she thought that should be addressed along with this proposal. She felt it would affect not only a situation where the streets are down in grade, but other places where there is no change in the grade.

Mr. Moore stated that was included in their recommendations but assuming there was a vacant lot and single family residences on either side, this would preclude a two story house being built between two one story houses, and the Zoning Ordinance does allow two stories and that was the purpose of the staff's recommendation to not move forward with this proposal, however, if within 200' and there are certain areas within 200' where there are two story residences, then the average of those would still preclude the Zoning Ordinance form being applied, which would permit two stories. He stated the staff recommends and the Zoning Commission recommended disapproval of that item.

Mr. Moore stated he likes the suggestion of Mrs. Frost Golino to approve 15 (b), but it would preclude the two scenarios that was given by him and that is why the Zoning Commission and staff recommend that particular item. He suggested a compromise of going down in height although he does question the methodology although not his intent which is to see a reduction in the mass. He stated he cannot recommend they use perception as a tool, but they must use absolutes. He felt that these set of conditions which have been recommended and the Zoning Commission has looked at and modified and these sets are the absolute minimums they would want to impose at this point in time and after a year's working with it, they may have to bring it back to the Council for further review. He felt these were substantial reductions and these proposals are substantial reductions to address the problems.

Mrs. Wiener left her seat on the podium and took the microphone on the floor, indicating she wished to speak to the Council as a resident of the North End. Mrs. Wiener explained these people are here in various capacities and she would like the President and the members of the Council to consider seriously that they abide by the recommendations of the Zoning Commission. She didn't believe that any of them were interested in having new construction in the north end of a series of low flat boxes. She stated she thought people have to have something to work within. She stated as you go through the north end, there are some things that are one story and there are some that are two stories and that's what makes that part of the Town very attractive, very liveable and very personable. She thought there comes to a point when one can be overly restrictive and recalled a conversation with a gentleman who said: "Remember all the people who are not here when you make your deliberations" and she recommended that to the Council.

Dr. Lilja addressed the Council indicating that in no way did he use the concept of visual, as that was only for demonstration purposes. He stated he has been working with elevations and that is the only way you can specify anything as to elevation.

Mayor Marix stated she is no architect but wondered if the maximums were reduced slightly, did the architects envision the entire north end to be a series of low boxes? Mrs. Frost-Golino stated absolutely not, as within the 30' or to be compromised at 27 or 28 feet, they could build a two story house very easily, but they wouldn't be able to build a 2 and one half story house which would tower over a one story neighbor, which is one of the things they are all objecting to. Mrs. Wiener noted when she said they were all objecting to, she recalled the vote at the Zoning Commission and she would rather hear from the other members rather than Mrs. Frost-Golino, which is exactly why she did what she did as she doesn't feel this was a proper procedure in her opinion. Mayor Marix thought that Mrs. Frost-Golino should be allowed to represent herself. Mrs. Frost-Golino stated she is a member of the Architectural Commission not the Zoning Commission and she hasn't mentioned one thing about the Architectural Commission.

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Mr. Randolph stated this is not a minority report from the Zoning Commission. Mr. Heeke ruled this was a separate individual report. Mrs. Wiener stated there has been a lot of lobbying in the back room on this issue and she is concerned about it and thinks this is an improper procedure. She believed that what has been recommended by the Zoning Commission, which is a substantial reduction, is correct and in order. She stated if twelve months from now, it is decided it is not good enough, they can go further if that is what the Zoning Commission and Council agree upon. She thought to make drastic changes of this nature were totally incorrect as she didn't think there was a major problem.

Mayor Marix responded she did not view this as a massive change and secondly, if they don't do anything about this and many more houses go up at 30', a year from now they can't come back and cut the roofs off of these houses as they will be there. She felt there was a strong feeling on this subject and suggested that they readvertise and rediscuss the subject as this is an important matter and if the Council can't agree, perhaps it is something the Zoning Commission needs to look at again.

Mrs. Wiener made a motion on Item 10.3 that the Zoning Commission's recommendation be accepted. Mr. Heeke believed there was a motion on the floor. Mrs. Peters agreed indicating Mr. Weinberg made the motion and Mr. Ilyinsky seconded the motion. Mr. Ilyinsky recalled he seconded it for discussion and now he wishes to withdraw his second. Mrs. Wiener seconded the motion. Mr. Weinberg indicated when he made the motion, he was comparing the current restrictions against 18 (a) which represented a minimum acceptable mass. He stated he is opposed to massive structures higher than 30' and higher than 27' and he was not considering anything lower than that as he thought this was the recommendation of the Zoning Commission, which had studied it and it represented their best thinking and that is the reason he made the motion.

On roll call, the motion carried (3-1) with one negative vote from Mr. Heeke. Mr. Heeke commented the motion passes and we can recommend it be studied some place else. Mayor Marix commented that anyone on the prevailing side can ask for it be be restudied. Mr. Ilyinsky indicated he would be delighted to have it restudied. Mr. Weinberg indicated that considering the emotion involved, he would hope it would be restudied. Mrs. Wiener stated this can be done for the next zoning season. Mayor Marix commented the Zoning Commission could be called back at this time if we want. Mr. Heeke asked if anyone wished to have this matter restudied during the present Zoning Season and if so someone on the prevailing side of the vote can make the motion.

Attorney Randolph stated there are two issues here one being that anyone on the prevailing side who wishes to reconsider the vote, they may make a motion to do so and that is different than calling the Zoning Commission back into session to have this issue restudied. He stated there is a little bit more to it than asking that it be restudied as it has to be readvertised and staff has examined this subject for a year and this would be sent back to them for their restudy and then staff would bring it back to the Council and then it would be readvertised, so it is a matter of whether or not staff wishes to restudy it in that period of time. Mr. Moore pointed out there are several other issues which should be considered in relation to the mass of the house and how it would look on the property and after these issues are considered, if they still believe it needs more study, then they can make the decision to call back the Zoning Commission but he didn't think they should make that decision at this point in time. Mr. Heeke indicated they would proceed with the agenda.

ITEM 10.4 - Mr. Moore noted the Zoning Commission on a vote of five to one, recommends approval of the proposal to amend 4.20 A. Schedule of Lot, Yard and Bulk Regulations to incorporate a maximum Floor Area Ratio (FAR) of .045 (including basements, garages, and above ground accessory structures) in the R-B District. Mr. Brisson explained this was the recommendation of the Zoning Commission in lieu of some of their recommendations and they recommended 0.45 and he wanted Council to be aware that the present FAR on the property is now above ground .5 as there can be 25% coverage on two stories, 5000 square feet on a 10,000 square foot lot, and the recommendation is to reduce it to 0.45 which would mean there could be 4500 square feet in total on the lot. Mr. Moore stated this is a significant reduction and under the basement concept, the maximum FAR was 7500 square feet of non-habitable space in the "basement" and then the two stories on top.

Mr. Ilyinsky moved the recommendation from the Zoning Commission on Item 10.4 to amend Section 4.20 A. Schedule of Lot, Yard and Bulk Regulations to incorporate a maximum Floor Area Ratio of 0.45. Mr. Weinberg seconded the motion. On roll call, the motion carried 3-1 with Mrs. Wiener voting against the motion.

ITEM 10.4 - Mr. Moore explained the Zoning Commission recommended disapproval of the proposal to amend Section 5.22, Permitted Exceptions to Height Regulations to incorporate special provisions relating to basements on lands in the R-B District having frontage on North Ocean Boulevard. Mr. Randolph pointed out this item has been taken care of by eliminating the basements. Motion was made by Mrs. Wiener to approve the recommendation of the Zoning Commission to disprove the proposal to amend Section 5.22. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mr. Grace made a request to be recognized, to which President Heeke agreed and he made the statement that he wanted to wait until they were through this particular item before making the request of the Council to authorize a study to be made by the staff of a much larger number of existing homes to determine what the Floor Area Ratio is of those homes during the coming year. He recalled a study was made of larger homes which he had selected and on the basis of that study, they came up with the average actual FAR being at .40 and it was felt that it could be more than that and if there could be a study made on the existing homes we could come up with a more precise number than this one picked here, based upon what does exist in the Town - what is being built, etc. He requested the study be made and it be done in-house as in times of recession, the Town, like all other governments should try and reduce spending.

He wished to also have as part of the record the statement that he lived in the north end of the Town from 1949 until 1957 on the same street as does Mrs. Eiener, and it was always his impression that the people who live in the north end were actually people who lived here year round and made their living in the community and he felt Mrs. Wiener was mistaken when she stated these people came for a week or two as it was his belief that the people in the large mansions south of here and not the people in the north end were the ones that came for a week or two and did not live here year round.

Mr. Heeke stated he wasn't sure if they could at this time ask staff to conduct that study. Mr. Moore responded the staff had been instructed by the Zoning Commission to do a study of the R-A and R-AA areas and he assumed by Mr. Grace's remarks, he would want this expanded into the R-B area as well. Mr. Heeke asked if they would be doing this study by pulling up the plans and making the comparisons to which Mr. Moore responded affirmatively.

ITEM 11. - Mr. Moore indicated the Zoning Commission recommended approval of this proposal to amend Section 13.20 "Violations and Penalties" by amending paragraph four to read:

"Nothing herein contained shall prevent the Town from taking other lawful actions necessary to present or remedy any violation of or failure to comply with the regulations contained in this Ordinance, including, but not limited to, the issuance of a citation pursuant to the general penalty provisions of the Town's Code of Ordinances and/or the commencement of a civil action in a court of appropriate jurisdiction."

ITEM (b) would be eliminated.

Mr. Heeke believed this fell into the supplemental provisions for Code Enforcement Board. Mr. Randolph did not agree, noting there was some question as to whether or not there were enough enforcement provisions within the Zoning Code so he included the new language.

Motion was made that Item 11 be approved as recommended by the Zoning Commission. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

A short break was taken.

Meeting called back to order by President Heeke.

ITEM 12. - Mr. Heeke explained the Zoning Commission recommended disapproval of a proposal to amend Section 5.17, "Existing Single Family Dwelling Development" to allow second floor additions to nonconforming one or two story dwellings if lot coverage is conforming. On motion of Mrs. Wiener moved that the Town Council accept the recommendations of the Zoning Commission on Item 12 to disapprove any amendment to Section 5.17 of the Zoning Code concerning Existing Single Family Dwelling Development. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

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ITEM 13. - Mr. Heeke explained the Zoning Commission recommended disapproval of the proposal to amortize non-conforming commercial uses. Motion was made by Mr. Ilyinsky for the Town Council to approve the Zoning Commission's recommendation to disapprove Item 13. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

ITEM 14. - Mr. Heeke stated this is with regards to beach houses. Mr. Moore advised the Zoning Commission recommends approval of the proposal to amend Section 5.37 (a) Beach House building and fence, etc., height, width, and length limit, to read as follows:

"No structure or beach house building more than one (1) story (but not to exceed eight (8) feet in height to the underside of the roof plus six (6) feet in height to the highest point of the roof, twenty (20) feet in width but occupying not more than 20% of the width of the lot and ten (10) feet in length) shall be constructed on privately owned property lying east of Ocean Boulevard; but this restriction shall not be deemed to apply to jetties or groins, or other structures for the protection of the beachfront; and provided further that no additional walls, fences, hedges or other structures or growth shall be erected or grown eastwardly of the Ocean Boulevard to a height greater than four (4) feet above the surface of the Ocean Boulevard pavement along which such wall, fence or growth is maintained. No parking will be allowed in the beach area district.

Mr. Brisson addressed the Council, indicating his recommendations are somewhat different than the Zoning Commission. He stated he had an additional recommendation and it was his understanding when the study was undertaken, that the concern over this particular area was the blocking of the view of the oceanfront for pedestrians and for those driving along the oceanfront. He stated he found the structures may block the view to a certain degree and for that reason, it was suggested the twenty per cent which was pretty much the same of which the Zoning Commission recommended. He stated he did find, however, that most of the view blockage occurs from the blocking of the walls and the landscaping and not really from the buildings themselves, so it is their recommendation that if the Town would like to retain the view, in addition to the recommendations of the Zoning Commission, they also limit the height with the language:

"And provided further that no additional walls, fences, hedges or other structures or growth shall be erected or grown eastwardly of the Ocean Boulevard to a height greater than two and one half feet (2 1/2) feet above the surface of the Ocean Boulevard pavement along which such wall, fence or growth is maintained, except that such walls, fences, hedges or other growth may be constructed at a height of not greater than four (4) feet above the surface of the Ocean Boulevard pavement immediately in front of the beach house."

Mr. Heeke thought there should be a provision that the measurement should be from the lesser of the natural grade or the crown of the road. Mr. Moore confirmed that they meant the overall height of the building to which Mr. Heeke agreed.

Dr. Lilja addressed the Council who proposed there be a slightly lesser width than the twenty feet recommended and suggested the figure be sixteen feet. He has measured the beach houses now existing along North Ocean Blvd. and clarified that everything he talks about he refers to the area along North Ocean Boulevard in the north end of Town as he has no knowledge of the rest of the beaches in Town. He stated he found the beach houses in that area range from six feet in width to twenty-five feet in width and if this proposition is approved, they could wind up with A-Frames. He thought the ceiling height should be seven and one half feet and add three feet for the roof on top of it, which would be a normal type slope on the existing beach houses in general. He also recommended that the Council consider it to be recommended not necessarily required that the Beach Houses be lowered below the elevation of the edge of the road, as there are some already and it looks very nice, which would lower the perception of height in that area.

Dr. Lilja thought that there should be some clarification on the cutting of the sea oats as there is great misunderstanding on the part of the citizenry on that point, noting he has a letter from the Town dated March 11, 1985, which recommends that sea oats and sea grapes not be cut at all and the wording used in that correspondence is "seaward from the dune line". He felt that was confusing and the residents have misunderstood it which means there are no sea oats and sea grapes have been cut since that type which makes it look a little bit messy. He thought a clarification needed to be made that anything west of the sea wall should be exempt from the cutting rule, as the seawall binds the dunes and the purpose of the sea oats and sea grapes is to bind the dunes and they don't need that and this clarification will let the people know they can be cut and it will make it look much nicer in this area.

Mr. Moore stated there has been confusion on the subject and the letter was sent to all beachfront and lake-front property owners with guidelines on the maintenance of dunes and mangroves and these were the recommendation of Mr. Blakeley, the landscape architect at that time. He felt there were two scenarios, one that is subsequent to 1985, the County has taken a position of authority in that area as well as the State advocating its responsibility and in certain cases asserting its responsibility over that particular area. He stated the Town's position is that all natural growth must be maintained, other than the invader species and all planting which has been planted due to construction may be maintained in the fashion it has been maintained, although it now takes a permit, under the Dune Ordinance, to maintain the planting in the fashion it was planted in the area east of the road and west of the sea-wall. He agreed it was confusing but that is what does happen when there are three governmental jurisdictions asserting their authority in one area.

Mr. Weinberg was confused about one thing and he asked Dr. Lilja if he suggested the ceiling be 7 and 1/2' high to which Dr. Lilja agreed, versus the eight feet as recommended by the Zoning Commission. Mr. Moore stated this is the minimum building height. Mayor Marix believed they would add three feet then for the slope. Mr. Heeke reminded all this was for beach houses. Mr. Moore indicated the Zoning Commission discussed the scenario of the six feet, and the concept of a Chickee-type hut design was considered by them and that would be the six feet. Mr.

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Weinberg believed the Zoning Commission recommended eight feet in height. Dr. Lilja indicated he is asking them to consider the 7 and one half feet, but he has no problem with the eight feet as recommended. He stated his problem is with the six feet for the roof.

Mr. Grace addressed the Council on the four feet wall and fences criteria and wanted to make sure the Council realized that the Zoning Commission had the benefit of Mr. Brisson's suggestion that that be reduced to two and one half feet and the Zoning Commission in its wisdom decided to keep it at the present four feet and the thinking was that people inside the beach areas like their privacy and they might have dogs with them that they don't want jumping over the fence and get run over. He stated the members of the Zoning Commission could not recall any Town residents coming to them and saying they had a complaint about the view of the ocean.

Mayor Marix recalled a picket fence being installed and it might be that if people wanted a fence at four feet, a picket fence could be constructed so the view would not be obstructed completely.

Mr. Jeffrey Smith, Chairman of the Architectural Commission addressed the Council noting they are reducing the size greatly and they are looking at the beach houses in the north end and he didn't believe they were grssping the situation of the major estates in the south end. He indicated he has two clients at the present time, one with three acres and one with six acres and they both want to install beach houses and the grade is greatly reduced and there would be a four to eight foot drop on the sites and a beach house could probably not be viewed from the road and to try and put a bathroom and a bar, it would reduce the size of the beach house so the people who have large pieces of property on the beach side would not be able to use them to a fullest extent and perhaps they should reduce it in the R-B area but the Estate area should be left.

Mr. Moore stated this would require rezoning as the zone is the Beach Diestrect all through the Town. Mayor Marix believed a new District needed to be created for R-A properties. Attorney Randolph believed the advertisement was the most restrictive as it stated this would be changed in the whole Beach District and he felt they could make it less restrictive without re-advertising and state for the R-B Zoning District within the Beach District, this application will apply and all others will remain, and in that way a different zoning district would not have to be created. Mr. Moore stated it could be done that way be stating this would apply to the Beach District adjacent to the R-B Zoning District.

Mr. Heeke asked for discussion on the height of the roof going up another six feet over the eight feet. Mayor Marix thought fourteen feet high for a beach house was completely unnecessary. Mr. Moore stated this would eliminate the Chickee. Mr. Ilyinsky believed they could always apply for a variance. Mr. Heeke handed the gavel to Mr. Ilyinsky and moved that the Zoning Commission's recommendation to amend Section 5.47 (a) Item 14, Beach Houses, adjacent to R-B Diestrects only shall be amended with the modification that the roof height be a maximum of four feet and that it be measured from the lesser of the natural grade or the crown of the road. Seconded by Mrs. Wiener.

Mayor Marix asked if they wanted to add the recommendation that they be stepped down like some of them already are? Mr. Moore stated that already happens because of the natural grade.

On roll call, the motion carried unanimosuly.

Mrs. Wiener pointed out they have considerably reduced what was permitted in the R-B District and in the mansion district, they have left them exactly what they were and wondered if that was appropriate? Mayor Marix responded that most of the beach houses in the mansion district are on larger pieces of property and many cannot be seen from the road as they are so much lower.

Mrs. Wiener indicated she would like to see a study on Beach Houses for next year.

ITEM 15 (a) - Mr. Moore stated this is somewhat of a housekeeping matter and the Zoning Commission recommended approval of the proposal to modify Section 4.20 (A.) Schedule of Lot, Yard and Bulk Regulations for the R-B Zoning District by adding under front yard minimum setback column, a new footnote numbered (13) (a) to read:

"The front yard setback required shall be not less than the average of the front yard setbacks of the two (2) nearest developed properties on the same side of the street in the same block."

Mr. Winterfield pointed out there is a property in the four hundred block of Brazilian which has no back yard but has a front yard setback of approximately sixty feet and if this property was adjacent to a property being developed for the first time, the owner would have to seek a variance from this provision and probably would be granted without difficulty. Mr. Moore responded he would have the right to seek a variance and claim the hardship of the house with the huge setback. He stated the concept is to remove the mass from the road and further back on the property.

Dr. Lilja addressed the Council noting if it were a corner lot, the corner lot on the opposite side of the street should be included in this and he talks of North Ocean Boulevard only as that is what he knows, and he asked the Council if they would consider taking a weighted average by including three properties and throw out the highest one and take the average of the remaining two.

Mrs. Wiener moved that they accept the recommendation of the Zoning Commission on Item 15 A concerning front yard setback requirements. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ITEM 15 B. Mr. Heeke stated the Zoning Commission recommended disapproval of the proposal to amend Section 4.20 A. Schedule of Lot, Yard and Bulk Regulations, to limit the height of structures in the R-B District to the average of the two nearest developed properties on the same side of the street. Mr. Ilyinsky moved the Town Council accept the Zoning Commission's recommendation on Item 15 B to disprove the proposal to limit the height of structures in the R-B District to the average of the two nearest development properties on the same side of the street (Section 4.20 A Schedule of Lot, Yard and Bulk Regulations).

ITEM 16. - Mr. Heeke reported this is a recommendation by the Zoning Commission to amend Section 4.20 A. Schedule of Lot, Yard and Bulk Regulations for R-AA and R-A Zoning Districts by increasing minimum landscaped open space percentage from 40% to 50% in R-AA District adn from 40% to 45% in the R-A District. Mr. Moore indicated studies were done to make the determination if green space could be increased without hurting the development of the property and it was found it could be done. Mr. Ilyinsky moved the recommendation of the Zoning Commission to approve Item 16 be accepted. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

ITEM 17. - Mr. Heeke noted the Zoning Commission recommended disapproval of the proposal to amend Section 6.31 General Regulations to permit public service signs as a Special Exception in the C-TS, C-OPI, C-PC and C-B Zoning Districts. Mr. Heeke asked if there was any discussion to allow any of these signs that have been in existence for over thirty years, if there was a minimum time of exposure? Mr. Randolph responded that was not discussed. Motion was made by Mr. Weinberg to approve the Zoning Commission's recommendation to disprove the amendment of Section 6.31

General Regulations to permit public service signs as a Special Exception in the C-TS, C-OPI, C-PC and C-B Zoning Districts. Seconded by Mr. Ilyinsky. On roll call, the motion carried 3-2 with Mrs. Wiener and Mr. Ilyinsky voting against the motion and Mayor Marix breaking the tie and voting for the Zoning Commission recommendation.

Mayor Marix made the statement that if some of these items are referred back to the Zoning Commission for further study, she would like to see them make an exception for the signs which have certain history. She realized charity in the Town could not have a sign but there are some organizations which have had them for years and years and she would like to see some kind of an arrangement to accommodate them.

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ITEM 18. - Mr. Heeke reported the Zoning Commission approved amending Section 5.14, "Street Lot Lines" with Paragraphs (a), (b) and (d) to be deleted, paragraph 5.14 to read as follows and remaining paragraphs (c) (e) and (f) to be relettered to (A), (b) and (c):

"5.14 STREET LOT LINES. The front lot line, side street line or rear street line of any lot shall be the right-of-way line (the street line) of the abutting street."

Mr. Moore indicated essentially what this does is eliminate the old right-of-way lines established in the 1970's when the Town contemplated purchasing property along various streets and widening the streets and it has now become evident the Town does not have long-range plans to acquire these rights-of-ways and the Comprehensive Plan does not contemplate it and he does not recall any variances being denied for this type of set-back.

Mr. Moore indicated as a result of that and a request by a Zoning Commission member that this matter be studied, the staff and Zoning Commission recommend this portion of the Ordinance be repealed.

Motion was made by Mr. Ilyinsky that the recommendation of the Zoning Commission with regards to Item 18 amending Section 5.14 be accepted. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

ITEM 19. - Mr. Heeke indicated this item is the grade problem. Mr. Moore explained this was recommended unanimously by the Zoning Commission to amend Section 5.10 Lot Regulations by adding a new sub-section 5.18 to read:

"5.18 ALTERATION OF NATURAL GRADE. In residential districts, for single-family development, the natural grade of a lot shall not be raised more than one (1) foot except to raise the grade to the minimum elevation to meet base flood elevation requirements or to the average elevation of adjacent properties."

Attorney Randolph recalled discussing this matter with Mr. Moore and asked if he had changed his mind about ending the sentence after "base flood elevation requirements" and allow anyone who wanted to apply for a variance to be able to do so with regards to this matter.

Mayor Marix wondered if someone builds a house on the higher grade and then a new owner demolishes the house and is going to build a new one, can that property owner be required to go back to the original grade? Mr. Moore thought it would be unwise to establish what the original natural grade was on the property. Mr. Zimmerman pointed out this would be the natural grade.

Mr. Winterfield addressed the Council asked why this provision was being restricted to single family only? Mr. Heeke responded the single family district is where the problem was identified. Mayor Marix wondered if this should be studied to see if there are any areas other single family which have this same problem. Mr. Moore felt when there hasn't been a problem, it was difficult to try and find one. Mrs. Wiener thought it would be a waste of money to institute such a study. Mr. Heeke felt they had time to think about this at a later date.

Mrs. Wiener moved that the recommendation of the Zoning Commission with regards to Item 19 be accepted concerning a new sub-section 5.18 be added with the modification that the sentence be ended after "requirements." Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ADDITIONAL RECOMMENDATIONS OR MOTIONS: Mr. Moore stated they have talked about the study in the R-A and R-AA on the Floor Area Ratios and Mr. Grace has requested this be extended to the R-B zoning area. Mr. Ilyinsky asked if this study could also include the height? Mr. Moore stated when they pull the plans and do the field surveys, that is the time they would do the cubic study as well and staff would not have the time to do a study during this zoning season involving the cubic as well as Floor Area Ratio.

Mr. Moore advised the staff would not have the time to do the study on cubic and Floor Area Ratio. He noted that any items that they want restudied for this zoning season, they would need time to advertise, however, this would not be one of them.

Mayor Marix asked what about the height problem? Mr. Moore stated the height of overall structures could be reduced to 28' and still provide buildings with nine foot ceilings and this would be 28' for pitched roofs and 25' for flat roofs and that could be modified for this year's zoning, if the Council so wishes.

Mr. Moore stated when one thinks of "adjacent properties" one thinks of those on either side and from a staff standpoint, for interpretation, the Council may wish to review that language as he has had the question asked of him and that was what about a rear property which may be higher. He commented: they may wish to change the wording "adjacent properties" to "abutting side and rear yards".

Mr. Moore reported any items the Council wants restudied for this Zoning Season will require readvertisement but he needs some time to do that, however, this study is not one of the items that can be studied this Zoning Season. Mayor Marix asked about the heights? Mr. Moore indicated the height of overall structures could be reduced to 28' for pitched roofs and 25' for flat roofs and still provide nine foot ceilings and this could be done now and Item 10 could be modified, but that would be the absolute lowest it could be cranked down to although staff is not in favor of that and would rather do the study before any changes are made.

Mayor Marix believed they could do that and if it found it is not workable, they could always raise it later.

Mr. Heeke called for a motion to reconsider Item 10 - 3. Mr. Ilyinsky moved to reconsider. Seconded by Mr. Weinberg. On roll call, the motion carried 3-1 with Mrs. Wiener voting against the motion.

Mr. Heeke indicated they are now reconsidering it and the recommendation from Mr. Moore has been the maximum height be 28' for pitched roofs and 25' for flat roofs above the crown of the road. Mayor Marix asked if this would give twelve or fourteen foot ceilings as Mrs. Frost-Golino had suggested? Mr. Moore recalled her recommendation was 27' would be workable on the pitched roof but he advised that would not be workable and still give nine foot ceilings using standard construction practices, so 28' would be the absolute minimum that could still give the nine foot ceilings but would preclude anything over nine feet and there could be no ten foot ceilings. Mr. Ilyinsky found that to be restrictive to which Mrs. Wiener agreed.

Mayor Marix announced this would just be for the R-B District and would not be for the mansion district.

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Mr. Grace addressed the Council noting if they were trying to reduce the mass effect, which he was in favor of, the Council may consider going back a few years when the Zoning Commission considered allowing the second story to only be a certain percentage of the first story, and in that way they would get a variation in heights and they might reduce the mass that way and allow freedom for architectural details. Mayor Marix asked if this would be thirty per cent or fifty per cent? Mr. Moore recalled this was his recommendation a few years ago at fifty per cent which was not approved and it was designed to be very restrictive but it was turned down. Mr. Moore advised the name of the game is still square footage and that height would still be traded for that percentage and he doesn't think any developer would ever trade to eliminate square footage.

Mr. Grace felt it would be like the Section 5.48 which allows for the additional height in return for architectural features except it would be applied to single family as it now applies to only multi-family and allows for the additional height in return for certain other things. Mr. Moore believed it would be a workable process but it would need to be advertised. Mr. Grace stated he wasn't thinking about this zoning season but for down the road.

Mayor Marix believed if they were going to be putting this over for next year, they should vote in the lower figures, and then study it and see what other goodies can be given.

Mrs. Wiener noted 30' and 27' was the recommendation of the Zoning Commission and they have reconsidered it and no-one has made the motion to reconsider the heights and she moved that Item 10-3 as recommended by the Zoning Commission be accepted. Mayor Marix did not agree as she thought the lower amount be put into effect and in the meantime, it be studied. Mrs. Wiener stated she didn't understand this whole thing as everytime something doesn't seem right to someone, they have to vote again on the subject. Mr. Ilyinsky stated that was what government was all about. Mrs. Wiener did not agree as the Council is a policy making group and they make decisions on what its members decide.

Mr. Heeke noted Mrs. Wiener's motion to accept what the Zoning Commission has recommended has not received a second and called for an alternative motion.

Mr. Weinberg moved the Zoning Commission's recommendations be reduced from 27' to 25' for flat roof structures and from 30' to 28' for all other styled structures in order to have a minimum acceptable mass. Seconded by Mr. Ilyinsky.

Attorney Randolph stated there is some question as to whether or not this is more restrictive than what was advertised. He stated the Brisson report specifically referred to 27' and 30' and now they are reducing it further than that and the quarter page ad referenced the Brisson report and he believed there could be a complaint by someone that had they known it was to be reduced to that height, they might have attended the meeting and stated their objection.

Mayor Marix recalled Mr. Moore didn't seem to think there was a problem with this earlier and secondly, if it should be readvertised, there is the time to do it and there can be objections raised at a second zoning hearing. Attorney Randolph indicated they would have to make the decision whether or not it is important enough to do two more quarter page ads for this one item.

Mr. Heeke asked if they had to readvertise this first before passing the motion? Mr. Randolph asked Mr. Moore if he felt this was advertised broadly enough to safely handle the reductions? Mr. Moore responded that quoting from the Adley's study, it does state 27' and 30'. Mr. Heeke concurred with the Town Attorney that they have not probably noticed the reduction beyond what was advertised. Mr. Moore asked Mr. Brisson to explain his report and tell the Council what the lowest figure they could go on based on his report.

Mr. Brisson advised he felt the 27' and 30' was the lowest the Council should go as they feel that is an appropriate height and that is their recommendation and they had no reference to anything lower than that.

Mr. Heeke stated the Chair is going to rule the motion which is more restrictive than what was advertised is inappropriate and improper. Mayor Marix suggested a motion be made to readvertise and get the Zoning Commission in on it this year. Mr. Moore stated this would be calling back the zoning Commission for two feet and he wished the Council to understand it was costly to advertise.

Mr. Heeke believed the motion as made by Mr. Weinberg for the 28' and 25' restriction would have passed and he wished to do it proper and allow those who might have objections to it come in and have the opportunity to be heard at a public hearing.

Mr. Weinberg stated he would withdraw his motion if the first one would prevail. Mrs. Wiener noted there was no second to her motion. Mr. Heeke ruled there was no proper motion on the floor at this point.

Mr. Weinberg stated he will go back to his motion. Mayor Marix suggested the motion be to readvertise. Mr. Weinberg believed the motion could have the addition in it to readvertise. Mrs. Wiener pointed out in the meantime we would have 35'.

Mr. Randolph agreed they are back to the Zoning Ordinance of 35' and 30' without the reduction suggested by the Zoning Commission. Mr. Heeke asked if there was Zoning in Progress? Mr. Randolph responded negatively. Mr. Moore stated there is another option and that would be to return to the proposal passed earlier, the 30' and 27', knowing that the staff cannot do a full report which would encompass the height as well as cubic contents and the Floor Area Ratio until next year and knowing the staff would place the legal question of anything over the 27' under consideration, Zoning in Progress, until next year and the study can be completed. He felt in that way they would not have to bring back the Zoning Commission and incur the additional advertising monies.

Mr. Winterfield addressed the Council noting the advertisement reads in part: "Amend Section 6.40 Special Exception Uses provide that in the event any property previously granted a Special Exception to 2000 square foot limitation is required to obtain a new occupational license. Such new business shall also be subject to approval by the Town Council."

Mr. Winterfield indicated the item discussed and passed goes far beyond that as was indicated in the Supplemental Report of the consultant and since this goes far beyond what was advertised, this was not validly considered.

Mr. Randolph asked Mr. Brisson if he reported on the 2000 square feet? Mr. Brisson responded affirmatively it was initially the 2000 square feet. Mr. Randolph asked if it was discussed in the report that it would apply to everything under Sub Item L? Mr. Brisson responded negatively. Mr. Randolph felt the only distinction and the reason there may be room to disagree is we considered that a housekeeping matter since it was felt from the staff's standpoint, they would not allow that to happen and when there is a change in occupational licenses, they would catch it and the people would be advised they have to appear before the Town Council. He felt technically the point made is correct, but since it was housekeeping, they felt it was alright to go ahead and take care of the other portion too.

Mr. Heeke recalled it is also something that in practice the Council tries to do and it is only because they

sometimes forget that they don't do it, so in many respects they should consider what Mr. Winterfield has just said.

Mr. Moore reported the quarter page advertisement to advertise the 5:01 meetings will appear next week. Mr. Randolph stated in that event this could be changed in those ads and he felt that resolved the issue. Mr. Moore stated the Zoning Commission would not have to meet. Mr. Heeke stated it would just be advertised for these two items.

Mr. Winterfield felt this was done in a high-handed matter as it was not condiered by the Zoning Commission and the change was made after the Zoning Commission hearings and they denied the public the opportunity to participate in the process and possibly change the result. He hears them saying that it doesn't make any difference what the Zoning Commission did and they will start anew here, as long as it is advertised twice and he doubted very much if that was the intent of the Town Ordinance.

Mr. Moore responded he felt the intent of the Town Ordinance and the State Laws was to provide notice to the public through the advertisement which they have always tried to follow the law. Mr. Randolph stated he was under the impression that they had completed the quarter page advertisement which is necessary under the State Law, and the changes must be advertised and he thought since the initial quarter page ads didn't have the changes, they couldn't go forward without bringing it back to the Zoning Commission but now feels they can as the whole purpose of this is to allow debate and allow things to change and they would be stymied in the event they were not able to make change and as long as notice is being given to the public by way of the quarter page ads, he doesn't believe the public has been denied anything.

Mr. Heeke stated in that event the Chair will reverse its prior ruling and Mr. Weinberg's motion and second by Mr. Ilyinsky is on the floor for discusison and voting and this would be for the 28' for pitched roofs and 25' for the flat roofs. Mayor Marix asked if this was going to be subject to it being advertised. Mr. Heeke stated it would have to comply with the State Laws. On roll call, the motion carried 3-1 with Mrs. Wiener voting against the motion.

Mr. Heeke asked that Section 6.40 also be taken care of in this advertising to which Mr. Moore agreed.

Mayor Marix asked if a motion had to be made to authorize the readvertising? Mr. Randolph responded as a result of the actions taken here, it will be readvertised. Mr. Moore indicated Mr. Zimmerman will make the changes in the advertisement to reflect the actions taken here, which will allow the public notice on this matter with two 5:01 meetings, one on January 22nd and one on February 4th.

ANY OTHER MATTERS. Mr. Heeke asked the record reflect the appreciation that the Town Council feels toward the Zoning Commission and the consultants and the public for its input throughout the Zoning Season.

ADJOURNMENT. There being no further business, the meeting was adjourned at 5:50 PM.

Grace T. Peters,
Town Clerk

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Grace T. Peters,
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TOWN COUNCIL MINUTES OF
JANUARY 8, 1991

I. CALL TO ORDER AND ROLL CALL: The January 8, 1991 Town Council meeting was called to order by President Heeke at 9:30 AM in the Town Hall Council Chambers. On roll call, the following were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Ilyinsky, Councilwoman Douthit, Councilman Weinberg and Councilwoman Wiener. Also attending for all or portions of the meeting were Town Manager Doney, Town Attorney Randolph, Mr. Dusey, Mr. Moore, Mr. Zimmerman, Mr. Frank, Mrs. Peters, Mr. Bowser, Mr. Bitzer, Chief Terlizzese and Chief Elmore.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by President Heeke: "Dear Lord, be with us today during our deliberations and at all times, and be especially mindful of our concerns for our service personnel both here and abroad. Watch over them and protect them. We ask your divine guidance and protection. Amen."

Pledge of Allegiance was led by President Pro Tem Ilyinsky.

III. APPROVAL OF AGENDA. Mr. Moore requested Item X. C. 2 - Variance No. 1-91 - Mrs. C. L. Farris, 319 El Vedado requested the agenda should show that the gateposts do exist and the application request is for the ten foot high gates. Motion was made by Mr. Ilyinsky to approve the agenda with modification. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

IV. PRESENTATION:

A. Retirement of Robert Foose, Lieutenant - Fire-Rescue Department - Deferred from Dec. meeting. Mayor Marix presented Lt. Foose with a plaque on his retirement from the Town after 24 years 9 months of service.

V. COMMENTS OF THE MAYOR: Mayor Marix expressed her thanks for all the Committees and Commissions who work so diligently for the Town and are doing a great job.

VI. PUBLIC HEARINGS:

A. Landmark Designation for 300 El Brillo Way - Consideration of Resolution No. 1-91.

Mrs. Peters confirmed that proof of publication has been filed with the record.

The Town Attorney gave the oath to all of those who will make comment at this public hearing.

Mr. Frank explained 300 El Brillo meets the following criteria for designation: