



**PLANNING AND ZONING COMMISSION
MEETING MINUTES
TUESDAY, JULY 21, 2020 9:30 A.M.**

Please be advised that in keeping with a recent directive from the Town Council, the minutes of all Town Boards and Commissions will be "abbreviated" in style. Persons interested in listening to the meeting, after the fact, may access the audio of that item via the Town's website at www.townofpalmbeach.com or may obtain an audio recording of the meeting by contacting Kelly Churney, Secretary to the Planning & Zoning Commission at (561) 227-6408.

I. CALL TO ORDER AND ROLL CALL

Chair Klein called the meeting to order at 9:31 a.m. All members participated via Zoom Webinar due to the COVID-19 Situation.

Martin I. Klein, Chair	PRESENT
Michael Ainslie, Vice Chair	PRESENT
Carol LeCates, Member	PRESENT
Rick Pollock, Member	PRESENT
Michael Spaziani, Member	PRESENT
Richard Kleid, Member	PRESENT
Eric Christu, Member	PRESENT
Ronald Berk, Alternate Member	PRESENT
Marilyn Beuttenmuller, Alternate Member	PRESENT
Jorge Sanchez, Alternate Member	PRESENT

Staff Members present were:

Wayne Bergman, Acting Director of Planning, Zoning and Building
Paul Castro, Zoning Manager
Brad Falco, Zoning Technician
Laura Groves van Onna, Historic Preservation Planner
Kelly Churney, Secretary to the Planning and Zoning Commission

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Ms. Churney led the Commission with the Invocation and the Pledge of Allegiance.

Mr. Klein welcomed all in attendance at the meeting and welcomed new Historic Preservation Planner Laura Groves van Onna to the Planning, Zoning & Building Department

III. APPROVAL OF THE AGENDA

Motion made by Mr. Pollock and seconded by Mr. Spaziani to approve the agenda.
Motion carried unanimously.

IV. APPROVAL OF JUNE 16, 2020 PLANNING & ZONING COMMISSION MINUTES

Motion made by Mr. Spaziani and seconded by Mr. Pollock to approve the minutes from the June 16, 2020 meeting. Motion carried unanimously.

V. COMMUNICATION FROM CITIZENS – 3 MINUTE LIMIT PLEASE

There were no communications from citizens at this time.

VI. ZONING ITEMS

- A. Update on the Review Regarding Proposed Changes to Chapter 134, Zoning, Addressing Topographical Grade Changes Related to Projects Meeting FEMA Flood Plain Elevation Requirements.

Mr. Bergman discussed specific zoning code requirements and the impacts of various amounts of fill placed on a lot. He explained the Town Council had asked staff to address the problem of fill, FEMA requirements and drainage, and described the process to date. Calvin Giordano and Associates had been engaged to study the code requirements that mandates fill and to address the actual amounts of fill that should be allowed by right, by administrative waiver process to a second level, and then a variance for more fill. Mr. Bergman discussed some options that could be studied by the Commission.

Clerk's note: Mr. Berk and Mr. Kleid joined the meeting at this time.

Robert Collins, Calvin Giordano, provided a presentation of specific locations with excessive fill and examples of successful terracing.

Mr. Klein called for public comments. There were no public comments at this time.

Clerk's note: Mr. Christu joined the meeting at this time.

Mr. Sanchez stated he felt the beauty of Palm Beach was due to the development by good architects, such as Fazio and Mizner, and encouraged study of their plans. He believed the amount of fill should be determined by the architecture.

Ms. Beuttenmuller did not favor placing homes on mountains of fill or having a lot of stairs.

Mr. Berk agreed with the prior comments, and felt the answer was between what was environmentally sound and the aesthetics of the situation.

Mr. Christu would like to give the Commission and the Council enough flexibility to address unique situations.

Mr. Kleid favored terracing or placing steps inside the building.

Mr. Spaziani commented that he loved the way 330 Seaspray Avenue was handled.

Mr. Pollock agreed with Mr. Christu regarding terracing, and felt resident input would be good for the Commission.

Ms. LeCates commented all new construction must comply with FEMA, so this debate should be the amount of fill versus the amount of foundation. She did not believe it was important to fix the jagged roof lines in the streetscape. She favored terracing, and asked for information regarding the amount of fill used relative to the crown of the road, and the median elevation.

Mr. Ainslie agreed with Ms. LeCates, and that a more important issue was how sites dealt with storm runoff.

Mr. Klein suggested the Commission coalesce around a maximum number of feet of fill with safeguards in place including a waiver and variance process. Mr. Bergman stated staff's position would have to balance between fill and steps.

Mr. Klein called for public comments. It was noted that there were none at this time.

Ms. LeCates felt much more data was needed to gain a better understanding of the matter.

Rick Pollock commented a finite number of fill did not make sense. He thought every situation would be different, that drainage to the neighboring properties should be studied, and suggested placing fill, for example a maximum of 30 inches, at the property line, then ascending moving toward the house. This would provide a starting point for designing drainage and the architecture of the house.

Mr. Spaziani liked Mr. Pollock's idea and favored terracing. He felt the problem has been caused by a change in the FEMA flood maps. Mr. Spaziani added that he felt the Planning and Zoning Commission had lost its planning aspect and felt the Commission needed to look to the future as to what would happen to the floodplain. Street heights would have to be changed in the future.

Richard Kleid felt terracing and 30" fill was a good solution.

Mr. Christu pointed out that there were high and low streets, and a one size fits all approach was problematic. He also felt the Town would effectively deal with the drainage issue. He wanted to give this issue more thought before deciding on an arbitrary figure.

Mr. Berk felt there should be different requirements for the low lying streets and streets with a higher crown. Mr. Berk added that stairs could be dangerous in certain circumstances and there should not be a one size fits all solution. He felt further investigation was necessary.

Marilyn Beuttenmuller stated she fully understood the FEMA requirements and felt it would be hard to have a one size fits all solution. She thought this should be a matter for the Architectural Commission on a case by case basis, and would like some way to limit the fill.

Jorge Sanchez suggested that the Commission should look at the situation that occurred in Key Biscayne and learn from their errors. He clarified his position that resident members on ARCOM should be considered for their abilities and knowledge.

Mr. Klein called for public comments. It was noted that there were none at this time.

Carol LeCates asked Mr. Castro what he had been seeing as an average over the years.

Paul Castro, Zoning Manager, explained issues with smaller lots along the ocean due to dune elevations, and State requirements, which dictated the change in elevation in those areas. He explained in the R-B District, people were building retaining walls and raising the lots to build houses, causing loss of privacy in neighborhoods as well as drainage issues. A change in FEMA regulations to raise the elevation another foot was anticipated within the next year. These were all really big issues.

Michael Ainslie asked Mr. Sanchez to get photographs of several of the properties in Key Biscayne. Mr. Sanchez agreed, and also suggested that the Preservation Foundation provide a list of addresses of well-grounded and elegant houses that met all of the FEMA requirements.

Mr. Klein spoke about limiting fill to three feet, an administrative waiver for fill between three and five feet, and a variance procedure for Town Council for over five feet, and possibly limiting this to the R-B Zoning District only. Mr. Castro explained the problem of raising the grade on smaller lots, and suggested Commission members drive the streets to view the properties

Mr. Klein asked if the group would be amenable to deferring this one more month before making a recommendation. Mr. Castro felt the deferral could provide time for members to drive the streets to view different properties. Also, Mr. Sanchez had agreed to provide photographs of Key Biscayne properties.

Mr. Klein stated that he felt some people would like to go out and look at examples. He hoped that next month people would feel comfortable to come to some resolution. Mr. Castro agreed.

Ms. LeCates requested hard data on the average fill in the R-B district over the last 10 years, and the trend over that period.

Mr. Klein indicated Calvin Giordano might provide data.

Zoning Manager Castro responded the amount of fill had never been limited. The trend was over 3'. Discussion ensued. Mr. Castro stated 24 to 30 inches with a waiver provision to go even higher, and a variance above that, was a solid recommendation in the right direction. Mr. Bergman stated that staff would try to provide requested information by next month.

Mr. Collins added that staff was not looking for a single solution, but a variety of solutions to be adjusted in each of the different zoning categories since each of the residential zoning districts already had its own code section discussing the grading on the lot.

B. Proposed Modifications to the Zoning Regulations in Chapter 134, Zoning, Related to the Placement and Screening of Air Conditioning Equipment, Swimming Pool Equipment and Fountain Equipment to Consolidate and Possibly Modify Regulations Related to Said Equipment.

Zoning Manager Castro presented to the Commission proposed changes to the zoning code related to mechanical equipment that had been discussed last month. Mr. Castro reminded the Commission that direction had been given to staff to move forward and come back with proposed regulations that could be used as a starting point. Mr. Castro presented two specific sections of the code that need to be modified or changed to make it easier for staff to communicate and regulate the mechanical equipment provisions in the code. He presented three proposed code sections for mechanical equipment.

Ms. LeCates offered an edit on number 3 in air conditioning equipment to clarify a maximum of two pieces of equipment within the same setback. Mr. Castro agreed that could be done. She also wanted language that if a property owner was relying on a neighbor's wall for screening their equipment and that wall was removed, then the property owner would have to provide their own screening. Mr. Castro indicated the wall did not have to be replaced. Ms. LeCates disagreed.

Mr. Sanchez wanted to be able to go into the corners of a property to place equipment. Mr. Castro stated that already could be done at this time. Mr. Castro provided history of walls for screening. Mr. Sanchez felt hedges did a better job at lessening sound than walls, and focus should be on lessening sound instead of screening.

Messrs. Ainslie, Christu and Berk and Ms. LeCates and Beuttenmuller preferred vegetation. Mr. Spaziani felt a wall might be necessary to hold back fill. Mr. Berk felt a 5-foot setback was unnecessary. Ms. Beuttenmuller was reluctant to change the setback. Mr. Sanchez felt the five foot setback was necessary to provide room for the hedge and for walking around the machinery.

Mr. Klein was not sure a concrete wall was the answer. Mr. Castro stated that this mechanical equipment issue was the biggest complaint received in the department. He added that staff wanted to have the right codes in place for new equipment so existing owners would not have to call code enforcement and create a situation among neighbors when a new house is built next door.

Mr. Castro explained cooling tower equipment had been segregated from A/C equipment in terms of swimming pool equipment to make it easier for the neighbor to put in the equipment.

Ms. Beuttenmuller requested three similar paragraphs regarding cooling towers, swimming pools, and generators be rewritten to be consistent.

Mr. Sanchez felt equipment should be on all drawings presented to ARCOM, and staff should not accept any movement of equipment without notifying the neighbor.

Mr. Berk was not convinced a 5 foot setback was needed but wanted to hear the difference in sound from different footages.

Mr. Christu thought everyone would place their equipment at the best location on their property and had no problem with a 5-foot setback.

Mr. Spaziani asked if a wall is required for fill when building a new house. Mr. Castro explained that a retaining wall is built, then the lot is filled and the equipment is installed on top of it.

Ms. LeCates stated that she felt a wall should be higher than the equipment.

Mr. Castro stated there were a lot of complaints about noisy pool equipment, and there was no limit on the number of pumps, which could be located in a setback. He had built a pump house around his own pool equipment which reduced the noise substantially and protected the equipment from weather.

Mr. Ainslie felt the wall requirements should remain, but agreed allowing the neighbor's wall to suffice was a very good improvement and if they took that wall down that was their decision.

Mr. Castro confirmed for Mr. Kleid the correction on page six would be made: "shall be located no further than 25 feet".

Motion made by Mr. Ainslie and seconded by Mr. Spaziani to approve the recommendations with the edits suggested. Motion carried unanimously.

Mr. Castro discussed Staff's proposed modifications to allow more than one generator on a property. If a generator was over 100 KW it now required Site Plan Review by Town Council. Homeowners sometimes request two 60 KW's or two 80 KW's on a property, and only one can be placed in each setback. If the combined generator output exceeded 120 KW, which was a little higher than 100, that would trigger Site Plan Review. Mr. Castro explained that this was the big change to the section provided, other than addition of the word "completely" in Item D, to read "completely screened from the street." Also included was the language previously discussed that it had to be screened excluding any of the landscape material.

Mr. Klein asked why people wanted two generators. Mr. Castro explained a scenario he had encountered. The same would apply to some of the larger condominiums.

Ms. Beuttenmuller commented she felt the word "conditions" needed to be changed to "requirements" and proposed a list of changes she would like to see, such as replacing conditions with requirements. It should say provided the following requirements are met. Or the generator meets the following requirements. She thought this section addressed requirements. Starting in section one it said a required yard area, no closer than 810 foot side or rear line property line. In that same paragraph, it should say "provided the following requirements are met". Item (a) should say "there shall be only one generator". In (d), it should say the generator or generators shall be completely screened. It should also say the generators exhaust shall, as much as practically feasible, be vented upwards. Mr. Castro agreed to the changes.

Ms. Beuttenmuller added it said generators were not permitted on the roof, and should say “generators shall not be located on the roof of the building”. Mr. Castro stated that Council did not want them on the roof.

Chairman Klein asked if those changes could be made, since they did not change the intent of the language.

Ms. Beuttenmuller asked about temporary or permanent generators that may be temporarily placed on the ground or on a standard trailer. Mr. Castro explained this did not refer to temporary generators on wheels, but generators that were not mobile.

Mr. Ainslie had no comment.

Ms. LeCates commented on confusing language regarding generator placement. Mr. Castro stated it could be closer, within the 10 feet but no closer than five.

Messrs. Spaziani, Kleid and Christu had no comments.

Mr. Sanchez asked if a generator could be placed someplace on an upper level, like a flat roof area as a Special Exception, to which Mr. Castro responded no, but he could bring that to the Council's attention and see if they were willing to look at more flexibility, especially if it was hidden behind a parapet and only ran once a week.

Motion was made by Mr. Ainslie, and seconded by Mr. Spaziani to approve with changes as suggested. Motion carried unanimously.

Mr. Pollock rejoined the meeting. Mr. Klein asked for his comments regarding the concrete wall versus a vegetation wall. Mr. Pollock was happy with the outcome.

- C. Proposed Modifications to the Zoning Regulations in Chapter 134, Zoning, to Allow Off-Site Supplemental Parking as a Permitted Use in the C-TS, C-WA, C-OPI and C-PC Commercial Zoning Districts.

Mr. Castro explained this item came from the direction of the Town Council. The parking committee had been involved in trying to provide means and methods to provide more off-street parking to alleviate some of the parking traffic issues in the town. Council's request was to come up with a way to allow flexibility for someone to rent parking spaces or lease parking spaces to someone else for underutilized parking areas within the Town. There were several areas in the Town where the parking was underutilized, mostly on Worth Avenue, but that required Special Exception approval.

Mr. Castro explained that in Exhibit A, the Special Exception process for supplemental parking was being eliminated. This was for those situations where possibly a retail tenant needed some parking for its employees and wanted to leave some spaces for the employees to park off-street, or to rent some spaces to valet park in certain areas without having to come to the Town Council. Mr. Castro discussed the locations where the provisions were being eliminated, which would

help the Town in its goal to provide more off-street parking for all the grandfathered commercial tenant spaces that had no parking at all.

Mr. Klein called for public comments. It was noted that there were none at this time.

Mr. Ainslie commented that Council Members Crampton and Moore were now heading a new committee for the Council which was looking at parking and specifically off-site parking, and he felt it was premature for this Commission to act until that task force had done more work. Also he did not like what was being proposed because if the grantor or owner of a parking garage were to allow some other person or other commercial establishment to rent someone's parking, they must grant to the Town of Palm Beach a permanent contract which bound grantor and his successor, which could affect sale of the property. Mr. Castro explained that was existing language in the code that was not being changed. Mr. Ainslie felt shared parking should be allowed for a minimum of five years. Mr. Castro responded.

Mr. Ainslie stated he knew the parking issue was complicated which was the reason the New Economic Committee had been formed by the Council, and parking was first on their agenda. Mr. Ainslie suggested deferral of this subject until hearing from the Committee. Mr. Castro further explained that in April, Council had asked staff to bring this item to the Commission in order to bring changes to the Zoning Code that would allow more flexibility. He knew it was interrelated with the parking committee and this new subcommittee, but Planning and Zoning had been specifically asked to try to make this happen as soon as possible.

Ms. LeCates stated she was confused about the locations, and a map would be helpful. She felt this was a critical aspect of planning for the Town, and would like to know more about these lots and who would use them.

Mr. Pollock agreed, adding that he felt more information would be required in order to give an opinion as to whether it was purposeful or not. Mr. Castro commented supplemental parking could possibly be a conditional use. He suggested there was room for additional conditions such as: it must be within a garage, only within certain hours, etc.

Mr. Pollock remembered having conversations about Worth Avenue, where the employees were taking up patrons parking spots, and the intent was to have them park in the Esplanade. Mr. Castro explained that had been the on-street parking. The Parking Committee had been heavily involved in that and they were just rotating cars moving to another block, zoned parking areas. This was trying to create a situation where the Town was not the problem, but trying to help solve the problem.

Mr. Pollock asked if supplemental parking was for business hours, for restaurants after hours, or for bars. Mr. Castro responded that the Commission and staff could look at how to allow supplemental parking as a permitted use with conditions included such as where and when. Mr. Pollock thought they needed to be very cautious.

Mr. Spaziani was in agreement with the other Commissioners. He wanted to study this and then make some suggestions. He recommended deferral even though Council wanted quick decisions.

Mr. Christu felt the intent of this was to encourage optimal use of these parking lot facilities in order to help alleviate traffic and parking problems that had occurred in season throughout the Town, which was a good idea. He would vote in favor of looking at reasonable options.

Mr. Kleid stated that parking had always been the number one priority of this town, and the time had come for changes. He was in favor of studying it, and deferring to the next meeting to get further clarification as to what the Town would like done, and how to do this work.

Mr. Berk echoed what everyone else said. He requested in the future, in order to have an informed discussion about these issues, to receive materials much further in advance of the meeting. He felt the issue needed to be discussed, but not at this meeting.

Mr. Klein felt everyone agreed and commented materials would be provided as quickly as possible.

Ms. Beuttenmuller agreed and felt this was premature. She added she had the same criticism of this section as she had in the other ones. Some items should be listed as conditions, some as requirements. She recommended consistency throughout the language. Mr. Castro affirmed.

Mr. Kleid liked the proposed idea but also felt it was premature and needed to be explored rather than making it an open ended permitted use. He also added that he would like to know the genesis.

Ms. LeCates clarified that she was in favor of making some changes, requested a map next time, asked if there was a particular urgency in this that Council sent it now, and if Town vehicles were impacted. Mr. Castro answered that it was not a Town vehicle issue.

Mr. Castro explained the high cost of getting an application approved. He added that staff was trying to cut the expense and bureaucracy and do it administratively. Staff was in favor of their suggestion provided it did not affect the neighbors. Discussion ensued.

Ms. LeCates wanted to know more about Royal Palm Way, and the specific need. Mr. Castro said that it was mostly during the day. Ms. LeCates said those lots often were not filled during the day. Mr. Castro agreed they were underutilized and stated more information would be brought next month.

Mr. Klein noted the Commission had reached a consensus.

Chairman Klein thanked everyone for their cooperation and called for any comments from any other Commissioner.

Mr. Ainslie asked for a list of zoning districts and 11 key zoning issues, which Mr. Bergman said could be provided.

Mr. Ainslie commented scores of the Town's small businesses were being obliterated by the COVID crisis, and he would like staff to address the issue of reviewing the zoning for ground floor commercial, looking at possible alternative uses and inducements to reactivate the life of the Town's streets, including commercial, professional, office, and possibly residential uses, because spaces would remain empty for years unless something was done to provide inducements for landlords to find new users. He thought the Planning and Zoning Commission could take initiatives here and encourage staff to think creatively to define new uses for those spaces.

Mr. Bergman stated this was a matter staff could discuss with the Town Council and move forward if they were in agreement.

Mr. Klein felt Town Council had been very responsive to that by approving variances and special exceptions or spaces that might otherwise not be available to certain tenants, but he thought that was a wonderful idea and was in favor of adding it to the agenda for discussion next month. He felt the Commission's role was planning and they did not do enough of it.

Ms. LeCates and Mr. Spaziani agreed it was a great idea.

Mr. Klein indicated it would be on the agenda for next month.

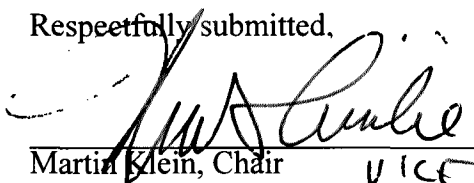
VII. COMMENTS FROM PLANNING AND ZONING COMMISSIONERS AND THE PLANNING, ZONING AND BUILDING DIRECTOR

There were no comments.

VIII. ADJOURNMENT

Motion by Mr. Pollock and seconded by Ms. LeCates to adjourn the meeting at 12:46 p.m. Motion carried unanimously.

Respectfully submitted,



Martin Klein, Chair
Town of Palm Beach
Planning & Zoning Commission

VICE CHAIR