PLANNING AND ZONING COMMISSION
MEETING MINUTES
TUESDAY, MAY 21, 2021 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 Ainslie called the meeting to order at 9:29 a.m. All members participated via Zoom Webinar due to the COVID-19 Situation.

Michael Ainslie, Chair	PRESENT
Richard Kleid, Vice Chair	PRESENT
Rick Pollock, Member	PRESENT
Michael Spaziani, Member	PRESENT
Eric Christu, Member	PRESENT
Marilyn Beuttenmuller, Member	PRESENT
Jorge Sanchez, Member	PRESENT
William Gilbane, Alternate Member	PRESENT
Nicki McDonald, Alternate Member	PRESENT
John Tatooles, Alternate Member	PRESENT

Staff Members present were:
Wayne Bergman, Director of Planning, Zoning and Building
James Murphy, Assistant Director of Planning, Zoning and Building
Paul Castro, Zoning Manager
Brad Falco, Planner 1
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.

III. APPROVAL OF THE AGENDA

Motion made by Mr. Kleid and seconded by Mr. Spaziani to approve the agenda as presented. Motion carried unanimously.

IV. APPROVAL OF APRIL 20, 2021 PLANNING AND ZONING COMMISSION MINUTES

Motion made by Mr. Kleid and seconded by Mr. Spaziani to approve the minutes of the April 20, 2021 Planning & Zoning Commission meeting as amended. Motion carried unanimously.

V. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE

There were no comments heard at this time.

VI. PROPOSED MODIFICATIONS TO THE CODE TO CREATE NEW OUTDOOR CAFÉ SEATING REGULATION AND A PERMIT PROCESS FOR FOOD AND DRINK SERVICE

Mr. Ainslie provided background for discussion, explaining that staff had deleted all references to outdoor seating from the code, and proposed a new conditional approval process to allow outdoor café seating as a special exception use. He felt the proposal was responsive and conservative, and a good first step to move toward a more open outdoor seating policy for the Town.

Zoning Manager Castro commented on the proposal prepared by staff at the direction of Town Council and this Commission, that addition of a specific condition was needed stating that outdoor seating shall not increase the allowable capacity and shall only be allowed for indoor seating placed outside. He outlined the procedure and conditions to be followed by restaurants.

Mr. Tatooles inquired if any of the restaurants currently would meet the criteria. Mr. Castro responded. Mr. Tatooles inquired about the requirements for sound. Mr. Castro responded. He asked the purpose of a security deposit and the $1,000 amount. Mr. Castro agreed a better solution would be a master fee schedule.

Mr. Kleid inquired if there would be changes to the seating abutting property lines. Mr. Castro responded that requests would be considered by Town Council on a case-by-case basis, and making the boundary to the property line was a starting point.

Ms. McDonald commented Town Council had extended the emergency ordinance for another month, and inquired assuming they lifted the restrictions in June, if the restaurants would have to put any existing outdoor seating back inside until a special exception was approved. Mr. Castro responded that was correct, but the Council might not lift the current outdoor seating, and the restaurants were aware this was temporary. Ms. McDonald asked the advantage of permanent outdoor seating. Mr. Castro responded it would not be permanent, but would be subject to an annual permit and review by staff with additional requirements to be met.

Mr. Christu liked the idea of taking out the old language and starting over, except for definitions in other parts of the code, and gave an example regarding property owners and tenants. Mr. Castro responded the applications all required consent of property owners, and explained the insurance requirement. Mr. Christu commented on language added to special exception uses. Mr. Castro explained that was an existing code provision and how it applied.

Mr. Pollock suggested using the language "business/tenant" wherever the property owner was mentioned, unless the intent was to make the owner ultimately responsible for the property being leased. Mr. Castro responded. Mr. Pollock asked the difference between the permit granted to Café L'Europe and all the new parameters being discussed today. Mr. Castro explained they had eliminated their outdoor seating at the last Council meeting so now were only under Covid restrictions, and would have to comply with the new provisions when Covid restrictions ended.

Ms. Beuttenmuller suggested being consistent with the wording for outdoor café seating, and questioned whether music should be permitted. Mr. Castro suggested the following wording: "an outdoor seating area may be allowed by the Town Council to have low-level background music provided that it meets the maximum decibels.

Mr. Kleid indicated he had found lots of drafting questions and asked permission from the Commission to speak to Mr. Castro with his suggestions. Mr. Castro agreed, and also invited Ms. Beuttenmuller to contact him with her questions on language. He agreed to send all the changes to the other Commission members.

Ms. McDonald asked about including language on cleaning the sidewalks. Assistant Director Murphy responded he believed in Miami Beach it was at the discretion of the café owner, but would check their ordinance. Mr. Ainslie preferred not to regulate too much and if this was a problem, it could be taken care of at the annual review. Mr. Castro indicated that this had not been a problem, but leaving the furniture out at night was a big issue.

Mr. Ainslie asked about the transition from Covid restrictions to the special exception approvals. Mr. Castro did not believe there would be a flood of applications all at once and explained his reasoning. Mr. Ainslie suggested to Council not to have a lengthy gap between the end of the Covid restrictions and the special exception requirements. He asked for a transition plan.

Mr. Sanchez commented he voted against this last month because he felt it should be increased from 100% to 110%. He had thought about it and now believed 100% was the correct number, particularly for the first year, and his only concern was the transition. Mr. Castro commented the restaurants were all aware they would lose their outdoor seating when Covid ended, and Council was very aware of providing sufficient lead time and allowing applicants to build in plans for indoor and outdoor seating in their applications.

Mr. Murphy indicated he had referred to the outdoor seating regulations in New York City and Miami Beach, and suggested including general maintenance language for the outdoor areas along sidewalks.

Mr. Pollock did not want to burden Council with excessive numbers of applications, and suggested leaving the current restrictions in place for a specific number of days to eliminate the abruptness of everyone having to comply with the new ordinance at once. Mr. Castro explained Council would be included in the process of developing the new language at their next meeting.

Motion made by Mr. Kleid and seconded by Mr. Spaziani, to recommend to Town Council approval in substance of the drafting of this provision and application of some of the language in the interim period. Motion carried unanimously, 7-0.

VII. PROPOSED CODE MODIFICATIONS FOR DOCKS AND PIERS

Mr. Castro summarized the proposed modifications and his conversations with the Florida Department of Environmental Protection, which did the permitting for the Army Corps of Engineers. He had learned any dock in the Town of Palm Beach under 1000 square feet did not require a permit from FDEP or the Army Corps of Engineers, only a submerged land lease from the Army Corps of Engineers. FDEP did the permitting for the Army Corps of Engineers for docks over 1000 square feet, or land of critical environmental concern. Most of the docks in the Town did not require a permit from FDEP, and when they did issue a permit, they were not concerned about the material of the dock, and had no concern with sod on the dock provided it did not percolate into the water. They did not do inspections, but if they were to receive a complaint about chemicals leaching into the water they would investigate.

Mr. Ainslie recalled the prior discussions had been regarding a loophole in the current code that had allowed docks to be used beyond the intended use and asked Mr. Castro to summarize that issue.

Mr. Castro provided an aerial view of the Town's docks and pointed out the lot line to lot line marginal docks. He commented this had been presented to see if Council was okay with the current regulation so long as the 25' setback was met, the dock could be as long or as wide as the owner wanted, and FDEP did not require a permit unless it was over 1000 square feet.

Mr. Sanchez asked about a specific property which was not in compliance with setbacks. Mr. Castro explained that specific property had been grandfathered in or variances granted.

Mr. Ainslie commented to the extent that the current code allowed these docks to be built without variances, the code needed to be tightened and changed. Mr. Sanchez pointed out the area of Everglades Island being viewed was a completely different situation with deeper water.

Mr. Ainslie asked Mr. Castro to present the proposed code changes. Mr. Castro noted only one dock would be allowed, not to extend out more than 25% of the lot width, and 25' setbacks from each abutting property. Discussion ensued.

Mr. Spaziani asked about the dock construction which allowed sod. Mr. Castro responded.

Mr. Castro stated the new proposed provisions included the dock width could not exceed 10 feet from the bulkhead.

Mr. Gilbane commented his firm built a lot of these in New York City, and when done right, they were celebrated by the environmentalists.

Mr. Sanchez commented a typical dock was cleaned with chemicals which went into the water, while a green dock had a drain that went back to the land. He felt the Town should have a code for construction of green docks.

Mr. Ainslie commented there were two issues—green docks, and a loophole in the code that allows excessive extension of property through the use of marginal docks against the bulkheads. He felt the marginal dock issue should be addressed in the code.

Mr. Sanchez agreed with the 10-foot limit to extend out, and limiting to 25 feet off the property line, but not the 25-foot overall limit.

Discussion ensued between Mr. Castro and Mr. Sanchez. Mr. Ainslie clarified this discussion was about marginal docks that extended along the entire property, except for the 25-foot setback on each side abutting neighboring property owners and whether that should be granted as a right for all property owners, even if limited to 10 feet of depth. He stated Mr. Sanchez did not agree it should be regulated further, while Mr. Ainslie did agree.

Ms. McDonald felt it was not right to extend on a large property almost the entire width of the property to make the property larger. Mr. Sanchez commented they paid property tax on the increased size.

Mr. Pollock commented there was a question of the ratio of the dock to the property line. He suggested proposing an ordinance where it was a percentage, within the guidelines of the setback, it would be proportionally relevant to the width of the property. Percolation, property taxes, and values were not what was under discussion, and he wanted to get back on track. Mr. Castro responded a percentage was what staff was proposing.

Mr. Sanchez felt 25% was too small. He also wanted to set guidelines for any green or regular dock, but that would be a separate ordinance.

Motion made by Mr. Spaziani and seconded by Mr. Kleid to follow staff's recommendation of 25% of the width of the property for the allowable dock space.

Mr. Pollock proposed an amendment to the motion, stating first of all the ordinance had to take into account the existing 25-foor setback, so it would not be 25% of the lot because you first had to remove 50 feet off. He suggested 30% of the remaining land. Mr. Castro clarified the percentage of dock space was based on the entire width of the property, including the 25-foot setback on each side. Mr. Sanchez stated he agreed with 30%.

Mr. Spaziani agreed to amend his motion to 30% of the width of the property for the allowable dock space and Mr. Kleid seconded the amendment. Motion carried unanimously, 7-0.

VIII. DISCUSSION OF PROPOSED INCENTIVES FOR LANDMARK BUILDINGS AND STRUCTURES

Historic Preservation Planner Laura Groves van Onna led the discussion. She shared visuals to show six projects on landmarked properties which had required variances where consideration might have been given to provide a dimensional waiver, and relief from the requirement to be reviewed by Town Council. None of these projects would be eligible for the current dimensional waivers, which indicated to staff there was room to reconsider the current parameters.

Mr. Ainslie commented the examples were all minor and all were approved by ARCOM, Landmarks, and Town Council.

Mr. Kleid agreed with the substance, but wondered how the verbiage buildings, structures, and properties applied. Ms. van Onna responded the word property referred to the whole property that was landmarked, and the words building or structure referred to a particular type of waiver or variance which applied specifically to a building or structure. Mr. Kleid asked that staff look at those terms and be consistent or say why they were using a different term.

Mr. Castro clarified that language had been written by a former employee, Veronica Close.

Mr. Ainslie asked if the Commission recommended approval of this resolution to Council, how approval would have affected the six properties shown in the presentation. Ms. Van Onna explained that Council review would not have been required, only appellate review.

Mr. Pollock felt approval would negate any neighbor input, with which he disagreed. Ms. Van Onna agreed to look at that further, and explained staff was not ready to seek approval today. Discussion ensued regarding neighbor input versus neighbor approval. Ms. Van Onna commented neighbors would receive notice and would have the opportunity to object and to appeal. Mr. Pollock did not feel this was friendly to the process and was not pertinent. He felt neighbors should be informed, have input, and decisions should be made by the people who make decisions in the Town and not staff.

Mr. Castro commented neighbors were still getting notice just like for a variance and the appeal process was easier than with a variance. Mr. Pollock disagreed with the notice process and thought the abutting neighbors should have the ability to object to the project.

Mr. Kleid commented if Mr. Pollock had an objection to the notice procedure, then he would have an objection to a lot of other things in the code where notice was sent. Mr. Pollock responded this was adding another layer to the process, and he felt this either complicated or circumvented the one road leading to a variance.

Mr. Ainslie commented this was intended to make landmarked properties easier to renovate, and requiring neighbor approval made that more difficult. It still had to go to the Landmarks Commission, and the neighbor had the right to appeal.

Motion made by Mr. Ainslie and seconded by Mr. Kleid that the Planning, Zoning and Building Commission agreed with the essence of what had been presented by staff and would like to see refined language and more details put into a draft proposed ordinance. Motion passed unanimously, 7-0.

IX COMMENTS FROM PLANNING AND ZONING COMMISSIONERS AND THE PLANNING, ZONING AND BUILDING DIRECTOR

There were no comments heard at this time.

X. ADJOURNMENT

Motion made by Mr. Christu and seconded by Mr. Sanchez to adjourn the meeting at 11:24 a.m. without benefit of a vote.

Respectfully Submitted,

Michael Ainslie, Chair
Town of Palm Beach
Planning & Zoning Commission