

**PLANNING AND ZONING COMMISSION
MEETING MINUTES
TUESDAY, MARCH 16, 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 9:30 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, Zoning Technician
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. Ainslie welcomed all in attendance, especially the two newly appointed alternates, Ms. McDonald and Mr. Tatooles.

III. APPROVAL OF THE AGENDA

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

IV. **APPROVAL OF FEBRUARY 16, 2021 PLANNING & ZONING COMMISSION MINUTES**

Motion made by Mr. Kleid and seconded by Mr. Sanchez to approve the minutes of the February 16, 2021 Planning & Zoning Commission meeting as presented. Motion carried unanimously.

V. **COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE**

Mr. Ainslie asked for public comment.

Paul Leone, The Breakers of Palm Beach, offered his support for restaurants to be able to have outdoor seating on a more permanent basis. He also suggested adding seats to the restaurants, rather than making them use their indoor seats for outdoor seating. He did not believe barriers should be used to contain the area.

Mr. Kleid asked Mr. Leone why he believed additional outdoor seating should be provided rather than using existing indoor seating. Mr. Leone discussed the reasons he believed this was a viable suggestion.

Mr. Pollock expressed concern for a restaurant with full capacity, both indoor and outdoor seating, in the event of bad weather. He also thought ambient noise could be an issue. Mr. Leone responded.

Mr. Ainslie inquired about retractable awnings and hoped that they could be considered with the new regulations.

Ms. McDonald suggested aesthetic guidelines for furniture, barriers, accessories, awnings, etc. Mr. Ainslie thought the Commission should not dwell on the specific details of design at this time.

Mr. Sanchez supported Mr. Leone's ideas with a one-year trial and favored very loose guidelines. He felt awnings would need limitations.

Mr. Gilbane stated he had witnessed when regulations had produced unintended consequences. He agreed that the Commission should focus on the big picture.

VI. **POSSIBLE CODE CHANGES TO THE REGULATIONS RELATED TO OUTDOOR SEATING FOR FOOD AND DRINK SERVICE IN THE COMMERCIAL ZONING DISTRICTS**

Mr. Bergman discussed the current guidelines for outdoor seating. Due to COVID, outdoor seating became very popular and many people had requested that outdoor seating become permanent. Mr. Bergman stated that the Town Council supported the exploration of outdoor seating, beginning with looking at current guidelines for amendments. Messrs. Bergman and Castro were ready to review the code to see where changes could be made.

Mr. Ainslie asked the difference between a sidewalk café and normal outdoor seating. Mr. Bergman responded they were the same but would have different regulations. He discussed the possibility of permitting with an annual fee, which would increase the Town's revenue, and allow monitoring.

Mr. Tatoes asked if there was a distinction between what could be on sidewalks or private property. Mr. Bergman responded there would be separate regulations.

Mr. Gilbane commented that regardless of the outcome, the Town should make certain that safety in the right-of-way was a priority.

Chair Ainslie reported speaking with Alex Patterson who discussed that she had found in many cities, the required right-of-way for ADA was expanded to a 5-foot minimum.

Mr. Kleid felt decisions could not be left up to individual restaurateurs, because rules and regulations must be followed.

Mr. Sanchez commented there were always regulations, and the police could monitor compliance.

Mr. Kleid wanted to embrace outdoor dining.

Ms. Beuttenmuller asked Mr. Bergman's opinion of which of the regulations from other towns he had provided would be the best fit for Palm Beach. Mr. Bergman responded he liked the sidewalk café concept but did not know if it would work here. The Town had relaxed rules that would not work permanently, and he felt this group should work with the Town code and make recommendations.

Ms. McDonald thought guidelines should be given to restaurants as a starting point.

Mr. Ainslie requested that the Commission put together some recommendations so that it could be presented to Mr. Bergman and then Town Council. He wanted to take some risk, with some added guidelines, and move forward.

Mr. Kleid gave arguments against increasing seating.

Mr. Tatoes thought additional parking may be needed if seats were increased.

Public Comment:

Jane Holzer suggested allowing retractable awnings, wherever possible, in the event of inclement weather. She commented that patrons were parking in the Peruvian lot at night and it was never full.

Attorney John Eubanks expressed concern for the lack of parking, as well the effects on the surrounding neighborhoods, if seating was increased.

Mr. Sanchez believed parking should not be a problem if the restaurant had a valet service.

Mr. Christu asked Messrs. Bergman and Castro if there had been significant neighborhood issues over the past months. Mr. Bergman reported a few significant issues but added they were handled by the restaurants expeditiously.

Jane Holzer made the point that Bricktops had an underground lot and valet parking.

Motion made by Mr. Kleid and seconded by Mr. Sanchez that the recommendation of Planning and Zoning Commission was to continue the discussion with respect to outdoor seating; consensus of the Commission was in favor of outdoor seating; continue discussions

whether to increase seating outside; implement some reasonable rules and regulations guiding the approval process; a one year review period is placed on any new regulations. Motion carried unanimously.

Mr. Sanchez left the meeting at 10:41 p.m.

VII. PROPOSED CODE MODIFICIATIONS CHANGING RESTAURANTS, LOUNGES/BARS; AND OTHER FOOD AND DRINKING ESTABLISHMENTS FROM A PERMITTED USE TO A SPECIAL EXCEPTION USE IN THE COMMERCIAL ZONING DISTRICTS

Mr. Bergman provided the background on the issue and how a wine bar had been permitted without special exception review in a commercial town-serving district where restaurants and bars were a permitted use. He reported that Zoning Manager Castro had developed ways to take permitted uses and make them special exception uses in the future.

Mr. Kleid asked what the complaint was, other than the procedure. Mr. Bergman responded it was the procedure itself, and Town Council had been surprised to learn a wine bar was a permitted use in the commercial town-serving district. The Council asked the Planning and Zoning Commission to have a discussion whether they felt this was appropriate, acceptable, or recommended any changes. Mr. Castro had looked at all the commercial districts and recommended some changes for the Commission to consider, which would apply to all the commercial zones.

Chair Ainslie asked what the affected types of uses were other than restaurants.

Mr. Castro explained bars and lounges were added as permitted uses sometime in the 1980's, but restaurants in the C-WA District had always been approved by the Town Council because seating always regulated restaurants. Other types of uses in the code were drinking establishments, which was not defined, bars, lounges, merchant retail take-out, dining rooms, and specialty food establishments. The recently permitted wine bar had surprised Town Council, and they wanted more control over uses.

Chair Ainslie thought this change made sense.

Mr. Castro cautioned as the outdoor seating issue went forward to remain conscious that any modification of a special exception use required Town Council approval. He thought staff would need specific, measurable conditions to take to the Council with the Commission's recommendation to provide the ability to have outdoor seating, but also to control it so that it would not negatively affect adjacent residential streets.

Mr. Pollock thought the issue returned to parking and impact to the residents. He recommended giving the power to Town Council because of the avalanche of problems this could bring. He thought they had the ability to keep tabs on what was happening with the storefronts. He felt an evolution was coming with three large restaurants recently opened, and asked at what point a restaurant became a chain, which would bring a host of other issues. He felt this was the first step in moving towards control.

Motion made by Mr. Pollock and seconded by Ms. McDonald to adopt the proposed change that the Town staff had recommended.

During discussion of the motion, Ms. Beuttenmuller commented it was fine to approve it, but felt the language in what they were adding was imprecise and suggested changing Section 22 to: *bars, lounges and restaurants, excluding formula restaurants* as defined in 134. Mr. Bergman agreed to make the change.

Mr. Kleid thought all the Commission members should understand this would put a greater burden on the applicant. He added to get a special exception would take more time and would be an added expense. He asked what kind of criteria staff used when determining if something was allowed by right; did staff have any discretion. Mr. Castro responded staff had no discretion. Therefore, Mr. Kleid was in favor of the motion.

Ms. McDonald asked if the only area where permitting was allowed was along South County Road. Mr. Castro responded it could happen anywhere.

Mr. Tatoes asked if the changes would be consistent through the whole zoning code. Mr. Castro responded yes.

Motion carried by unanimous vote.

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

Mr. Castro introduced an item to the Commission that had become an issue where owners were expanding their docks in the north end of the island past the allowed perimeters. Some had covered their marginal docks with grass to make their yards larger. The question was whether the Commission wanted to control this. Mr. Castro stated this item would be on the agenda next month.

Mr. Bergman stated that on the next agenda, staff would like to add dimensional waivers for discussion. The goal would be to make the waivers more efficient and easier to obtain from the Town Council, particularly as an incentive to landmark properties.

Mr. Ainslie asked if Code Enforcement would respond when someone placed sod on their dock west of the bulkhead line. Mr. Castro responded there was presently nothing in the code to cite them on.

Mr. Kleid asked if this would come under the purview of South Florida Water Management as did submerged lands. Mr. Castro responded docks were allowed by the Town, and were permitted through the South Florida Water Management and the Army Corps of Engineers. He did not know if they were permitted with sod on them. Mr. Kleid thought those agencies should be contacted to see what they permitted. A discussion ensued about submerged lands.

Ms. Beuttenmuller asked about the main objection to placing sod on docks. Ms. Castro stated the concern was over development.

Mr. Pollock asked about the acceptable dock size in relation to the property. Mr. Castro responded that size was not necessarily the issue but added the intent for the dock was the question.

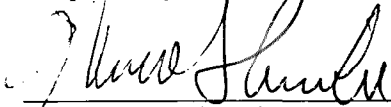
Mr. Tatoes asked if materials were an issue. Mr. Castro responded that it was a size issue when the dock was not intended for a boat. Mr. Castro indicated they would bring plans to next month's meetings.

Mr. Ainslie announced the Preservation Foundation of Palm Beach Workshop on April 9, 2021, from 10 a.m. to 4 p.m., addressing flood risk. He added that registration was required for the event.

IX. ADJOURNMENT

Motion made by Mr. Kleid and seconded by Mr. Spaziani to adjourn the meeting at 11:00 a.m. Motion carried unanimously.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Ainslie", is written over a horizontal line.

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