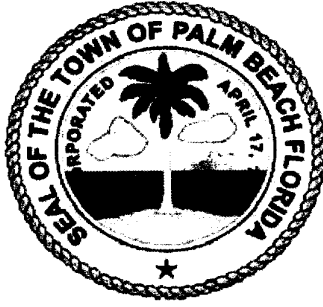




TOWN OF PALM BEACH

Minutes of the Development Review

Town Council Meeting

Held on July 10, 2024

I. CALL TO ORDER AND ROLL CALL (05:47)

The Development Review Town Council Meeting was called to order on July 10, 2024, at 9:32 a.m. On roll call, all elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE (6:02)

Deputy Clerk Gayle-Gordon gave the invocation. Council President Lindsay led the Pledge of Allegiance.

III. COMMENTS OF MAYOR DANIELLE H. MOORE (06:51)

No comments were heard at this time.

IV. COMMENTS OF TOWN COUNCIL MEMBERS (07:02)

No comments were heard at this time.

V. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT, PLEASE (07:21)

No comments were heard at this time.

VI. APPROVAL OF AGENDA (07:38)

A motion was made by Council Member Cooney and seconded by Council Member Araskog to approve the agenda as presented. The motion was carried unanimously, 5-0.

VII. CONSENT AGENDA

There were no items heard at this time.

VIII. DISCUSSION ITEMS

A. Reconsideration of the Declaration of Use Closing Time for the New Taboo Restaurant (08:20).

Council Member Araskog thanked Director Bergman for including Taboo's Declaration of Use Agreement in the backup. She thought the neighbors did not have a chance to express their concerns about the traffic that may be

traversing Worth Avenue to Hibiscus and/or Cocoanut Avenues through the adjacent neighborhoods when patrons left the restaurant. Another concern was the large bar proposed that could attract people from off the island to the area. She noted other establishments in the area that closed earlier. She thought the 1 a.m. closing time would set a precedent. She reviewed several other establishments and their closing times, which were earlier than Taboo. She noted an article that had advertised the 1 a.m. closing time. Finally, she noted that East Hampton recently passed legislation requiring that all establishments close at 11:00 p.m. She thought residents in the area would be upset at the approved closing time and should be given an opportunity, in season, to weigh in on the issue, especially since the establishment would not be opening soon.

Council Member Cooney stated that he had not heard any new information and advocated for the approval of the declaration of use.

Council Member Araskog stated that the new information was the declaration of use agreement and the closing times. She noted that all patrons would be exiting on Worth Avenue and Hibiscus Avenue. Council Member Cooney disagreed and thought this information had been discussed.

Council Member Moran agreed to hear the new information, but she thought the points raised were semantics and were assumed during the last presentation. She noted that she was still comfortable with the 1 a.m. closing time.

Mayor Moore felt differently about this area of Town, especially since it was a commercial district, and the establishment was a restaurant. She thought that all items had been considered.

Council President Pro Tem Crampton respected Council Member Araskog's concerns for the residents. However, he agreed that this was a commercial area, and he did not believe it would create a large disruption in an adjacent neighborhood.

Council President Lindsay reminded the Town Council that the establishment would return after the first season so that the Council could review the declaration of use agreement. This provided her comfort, as she knew the Town Council could review the agreement with them, including hours of operation. She did express concern about the employees parking on Chilean Avenue and rewinding up their cars when leaving at 1 a.m.

Council Member Araskog asked about reviewing the agreement after one season. Council President Lindsay stated that they would be reviewing it for compliance. Council Member Araskog wanted it to be clear that the 1 a.m. closing time could be changed during the yearly review if necessary.

Town Attorney O'Connor stated that the Town Council could review and address the concerns if there were three verifiable complaints. Council Member Araskog expressed further concern that the closing time could be changed, especially if there was excess noise outside the restaurant related

to traffic in the neighborhoods. Town Attorney O'Connor stated that paragraphs 19 and 20 in the agreement provided the flexibility to review any issues.

Council President Lindsay asked about deliveries in the red-lined version of the declaration of use and expressed concern for deliveries on Worth Avenue. Maura Ziska, the applicant's attorney, stated that the intent was to deliver via Peruvian Avenue. Council President Lindsay said she had no issues if deliveries occurred on Worth Avenue after closing but did not want any deliveries during the main business hours. Ms. Ziska agreed to remove Worth Avenue from deliveries.

A motion was made by Council Member Cooney and seconded by Council President Pro Tem Crampton to reaffirm the approval of the declaration of use agreement that was approved in May 2024, with the removal of deliveries at the Worth Avenue loading zone and only allowing deliveries on Peruvian Avenue. The motion was carried 4-1, with Council Member Araskog dissenting.

This discussion lasted approximately 20 minutes. To listen, please click the link on the agenda topic above.

IX. DEVELOPMENT REVIEWS

A. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

- a. **ZON-24-058 (ARC-24-073) 400 ROYAL PALM WAY (COMBO)**
- VARIANCE(S) (28:43) The applicant, Citizens Bank (James Meany), has filed an application requesting Town Council review and approval for eight (8) variances as they relate to the installation of commercial signage, including (1) a variance to install signage on an exterior electronic banking machine, (2-4) variances to exceed maximum sign area permitted, exceed maximum logo size permitted, and exceed maximum sign and logo height above grade permitted on the north elevation, (5) variance to exceed height of logo above grade on the east elevation, and (6 – 8) variances to exceed maximum height and logo size and to permit signage facing a parking area in lieu of a right of way. The Architectural Commission shall perform a design review of the application. *[Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause a negative architectural impact on the subject property. Carried 7-0.] [The Architectural Review Commission approved the project with conditions. Carried 6-1.] [The Town Council deferred this project to the July 10, 2024, Town Council meeting requesting additional changes to signage. Carried 5-0.]*

Mr. Bergman provided staff comments and introduced the project.

Maura Ziska, the applicant's attorney, provided an overview of the project and discussed the options that would be proposed. She stated she would leave it up to the Town Council to decide what would be best

for the Town.

Council Member Araskog asked for clarification on the number of variances requested. Ms. Ziska stated she was asking for eight variances but was willing to scale them down depending on the Town Council's desires.

Ex-parte communication was declared by Council Member Moran.

Nelo Freijomel of Spina O'Rourke + Partners presented the architectural plans for the signage.

Council Member Araskog asked about the height limit for the Citizens' signage. Bradley Falco, Design and Preservation Planner discussed the zoning code and the allowable height for business and building identification signage.

Council Member Moran asked if a logo was requested on the west side. Mr. Freijomel further clarified the request but stated his client would prefer the word Citizens and the logo on the west side. Mr. Freijomel reviewed the different options and discussed the variances required for the signage.

Council Member Moran wondered if the logo could be removed; she thought it would look nicer.

Mr. Falco discussed the Code requirement for a building identification sign.

Council Member Cooney agreed with Council Member Moran that the signage would look better if the word "building" was removed. He found it hard to identify a hardship for the request. He also thought that the ATM signage in the Town violated the Code and that Code Enforcement should review the ATM signage throughout the Town.

Council Member Araskog asked Town Attorney O'Connor's opinion on the Code provision, who agreed that the building identification signage should have the word "building" in it, according to the Code.

Council Member Araskog thought the identifier on the ATM machines could be a hardship. She did not believe the rest of the signage had a real hardship and worried about setting a precedent for other signage. She asked whether the other buildings shown had been granted a variance for the signage. Mr. Falco discussed the three other buildings shown by the applicant and whether they required a variance for their signage. Council Member Araskog did not believe the three buildings shown were a good comparison to the proposed request.

Ms. Ziska stated that she had obtained variances for similar situations on the same road. She stated that the business wanted to place signage on the building and leave it up to the Town Council's discretion to decide what looked best for the Town. She argued that there was a

hardship for the ATM signage. She stated that they wanted to show different options as well as what was allowable by right.

Mayor Moore wondered if the signage on the north frontage could be lowered, to which Ms. Ziska stated it would still require a variance for height. Mayor Moore thought it would look nicer with the business name and logo. Council Member Moran thought it would look nicer with the word "Citizens" only.

Council Member Moran thought the ATM machines should have signage. She preferred the signage to be tan or yellow to match the building.

Council President Lindsay agreed that the ATM machines needed signage and was happy to grant the variance for that request. She preferred the signage "Citizens" without the word building.

Assistant Director Murphy stated that the applicant properly advertised for higher signage, so he believed the Town Council could approve the signage for Citizens without the logo or the word business.

There was a short discussion about the east and west signage and what was most appropriate.

Mr. Freijomel discussed the specific variances required for the east and west signage. He stated the north signage would require variances 2 and 3, the ATM would require variance 1, and the west signage would require variances 5 and 7.

Council Member Araskog asked Town Attorney O'Connor for confirmation that the applicant needed to demonstrate a hardship for their request. Town Attorney O'Connor agreed that the applicant needed to demonstrate a hardship, but Council Member Araskog did not believe the applicant had one.

Mayor Moore thought that adding the signage to the east by right, rather than the west, would be inconvenient to their patrons. Mr. Falco stated that the word "Citizens Building" could be added to the east, but it would still need a variance for height.

Council Member Araskog wondered if this topic should be added to ORS so that some of the language could be removed from the Code.

Council President Lindsay called for public comment. No one indicated a desire to speak.

Ms. Ziska agreed to withdraw variances 4, 6, and 8 from their application.

A motion was made by Council Member Cooney and seconded by Council President Pro Tem Crampton that Variance No. ZON-24-058 shall be granted and find, in support thereof, that all the criteria

applicable to this application as set forth in Section 134-201 (a), items 1 through 7, have been met, and with the conditions that variances 1, 2, 3, 5 and 7 are approved, and with the condition that the word “building” shall be deleted from the signage as well as no logo shall be added to the signage, and that the applicant shall relinquish their permitted right to signage on the east elevation in lieu of the west elevation signage. The motion was carried 4-1, with Council Member Araskog dissenting.

This discussion lasted approximately 40 minutes. To listen, please click the link on the agenda topic above.

b. ZON-24-043 (ARC-24-035) 620 N LAKE WAY (COMBO) - VARIANCES

The applicant Ocean Front Avenue 2, LLC, a VA limited liability company (Don & Donna Whitaker), has filed an application requesting Town Council review and approval for two (2) variances, (1) to exceed maximum permitted building height and (2) to exceed maximum permitted cubic content ratio (CCR), as it relates to the construction of a new residence. The Architectural Commission shall perform a design review of the application. *[This project shall be deferred to the August 12, 2024, Town Council meeting pending Architectural Review.]*

Clerk’s note: This item was deferred to the August 12, 2024, meeting at the Approval of the Agenda, Item VI.

2. New Business

a. ZON-23-020 (COA-23-003) 139 N COUNTY RD - THE PARAMOUNT THEATER (COMBO) – SPECIAL EXCEPTIONS WITH SITE PLAN REVIEW AND VARIANCES (3:27:39)

The applicant, WEG Paramount LLC, has filed an application requesting Town Council review and approval for a Special Exception with Site Plan Review for the renovation and adaptive re-use of an existing Landmarked theater structure, including Special Exception requests (1) to permit Private Club use in the C-TS district, (2) for square footage greater than 3,000 SF in the C-TS district, (3) for Outdoor café seating use associated with a private club in the C-TS district, (4) for shared parking in the C-TS district, (5) for a modification to a previously approved Special Exception for Churches, synagogues or other houses of worship, and (6) for approval for supplemental off-site shared parking. The applicant is also seeking Site Plan Review for new building(s) or for changes in a permitted use in Sec. 134- 1107 which involve more than 2000 square feet of building floor area in the C-TS zoning district. Additionally, the applicant is seeking the review and approval for three (3) Variances (1) to allow generators on a roof(s), (2) to exceed the maximum height of a screening wall for mechanical equipment on a roof, and (3) to exceed the maximum distance separation for supplemental off-site shared parking located further than 500 feet from the subject property. The Landmarks Preservation Commission will perform the design review.

TIME CERTAIN 2:00PM

Council Members Araskog, Cooney, and Moran, Council President Pro Tem Crampton, Council President Lindsay, and Mayor Moore declared ex-parte communication.

Director Wayne Bergman provided an overview and staff updates for the project.

Jamie Crowley, the applicant's attorney, provided an overview of the project and explained what had changed since the last presentation.

Rick Gonzalez, President of REG Architects, expressed his excitement about preserving the building. He stated that he would be the new architect of record. He advocated for restoring the building soon so it would not have to be replicated. He presented the architectural plans for the restoration and discussed the plans for de-intensifying the occupancy. He reviewed renderings of the existing and proposed plans.

Mr. Crowley spoke about the Carriage House project and compared their existing conditions to the current proposal.

Chris Hegan of Kimley Horn Associates discussed the basic premise and traffic engineering facts included in the analyses. He said the Town Code and Comprehensive Plan governed Kimley Horn as they prepared the analyses. He said the project complied with the county's Traffic Performance Standards. He addressed information related to the analysis in the study regarding compliance with the Comprehensive Plan. Mr. Hegan said the parking requirements met the code requirements. He said the code allowed for the principle of equivalency, which was especially necessary for historic landmarks such as the Paramount. He said the study did not include construction traffic and noted that it would typically be dealt with when a building permit was issued. He said a detailed analysis of valet operations with fluctuations in attendance and occupancy was included. He said the attendance level would be lower during peak daytime hours. A lot of the parking would be contained on-site. However, an agreement for supplemental off-site parking was applicable in the evening hours, after 5:30 p.m. on weekdays, and after 2:30 p.m. on weekends. Kimley Horn included a detailed analysis of the queuing at the valet stand, routing, and the number of valet attendants that would likely be required. As the valet operator worked the stand, the number of attendants would be adjusted as needed.

The building owner, Lester Woerner, discussed the proposed uses and felt he was choosing the least intensification of use for the building. He advocated for his current proposal.

Council President Lindsay called for public comment.

John Eubanks, the attorney representing several different owners, discussed the three variances, one specifically for parking. He stated

that the applicant was responsible for providing evidence that their parking would not cause noise, odor, or impact on the surrounding properties. He argued that there was no hardship for the requested variances. He also spoke about the special exceptions being requested for off-street parking. He said it was very similar in that the applicant must demonstrate that the use would not result in substantial economic noise, glare, odor, or impacts on adjoining properties and that there would be sufficient ingress/egress and proper traffic flow. He discussed the issues he felt did not meet the standards for a variance to be granted.

John Grosskopf, General Manager of the Palm Beach Towers at 44 Coconut Row, discussed the intense traffic over the last several years.

Mr. Crowley withdrew the request for a variance and a special exception for off-site valet parking to save time.

James Green, the attorney representing Tony Stepanski and four other residents at the Sun and Surf Condominium, noted significant gridlock in traffic at the subject location and said the proposal would intensify it. He asked permission to submit three expert reports. One expert, Robert R. Reynolds, III, a certified real estate appraiser for the area, was present to address the Town Council.

Mr. Crowley objected to the expert witnesses since the information came in that morning. He had not had an opportunity to review the information or obtain experts to rebut the testimony. He indicated that his client was prejudiced by the testimony.

Mr. Reynolds, a real estate appraiser, stated that Mr. Stepanski would lose 10-15% of his market value with the proposed club. In response to Mr. Green's questions, he extrapolated the decrease in value for many of the building's owners. Mr. Reynolds discussed the traffic concerns that would affect the Sun and Surf owners.

Mr. Crowley asked Mr. Reynolds if he had reviewed homes around the Carriage House, Mar-a-Lago, The Breakers, and the Sailfish Club to see if they had decreased in value. He stated that he had looked at homes around the Everglades Club and found they would decrease in value.

Council Member Araskog asked if the market had changed in the last few years. She noted that the prices had increased in the last several years. Mr. Reynolds explained how the value decreased within the first few years of the club being built.

Council Member Moran questioned whether the value of Palm Beach homes decreased because of their proximity to a club.

Council Member Cooney asked how Mr. Reynolds arrived at the 10-15% decrease in value. Mr. Reynolds stated it was due to the noise.

Mr. Green called Les Blackman, a certified urban planner, for questioning. Mr. Blackman stated that the applicant had presented that the building could have 1,123 occupants between the opening and closing times, which went against the Code. Mr. Blackman thought the applicant was overrepresenting the size and use of the building. Mr. Blackman also acknowledged that the Comprehensive Plan was the leading document, which did not include the principle of equivalency parking calculation.

Council Member Cooney asked about his experience with Mar-a-Lago and wondered if the conversion from a single-family residence to a private club intensified its use. Mr. Blackman said yes, but it was on eighteen acres.

Council Member Araskog asked Mr. Blackman whether he believed the proposed use would intensify existing use. Mr. Blackman responded.

Council President Pro Tem Crampton asked if Mr. Blackman thought the Comprehensive Plan was a regulatory document, to which Mr. Blackman responded it was. Council President Pro Tem Crampton disagreed and thought the Comprehensive Plan was intended to be used more as a strategic plan.

Town Attorney O'Connor opined that the Comprehensive Plan was not a policy document but a constitution for the Town regarding land use matters. She said zoning and the zoning code must be consistent with the Comprehensive Plan's content.

Mr. Crowley asked Mr. Blackman if he had read policy 2.2 in the Comprehensive Plan regarding parking. Mr. Blackman said yes. Mr. Crowley added that it referenced the specific regulations in the Land Development Code.

Mr. Eubanks stated that the Comprehensive Plan was always above the Code. He discussed the ways that he believed the proposal would intensify the use.

Cecelia Ward, President of JC Consulting and urban planner, stated she had been retained by Mr. Eubanks on behalf of the objectors of this application. She was tasked with providing her professional opinion on whether the redevelopment of the Paramount Theater, as proposed, was consistent with the Town's Comprehensive Plan, concurrency, and zoning regulations. She discussed her review of all the relevant information she had read, researched, and studied. She thought the applicant had failed to address many planning and zoning issues. She outlined the results of her review, which she believed would necessitate denial of the application. She highlighted the most critical issues, which included the fact that the project would present an intensification of use. She concurred with the staff's determination. She said the language in the code provided parameters for the Town's staff to make determinations as to what constituted an intensification of use. She said the proposed private club and outdoor dining

increased the hours of operation, as did the church, which also increased the seating capacity. She noted the project was not allowed as of right but could only be realized with the Town's approval of several special exception and variance requests. She stated that, in her professional opinion, the applicant had not demonstrated compliance; rather, there had been substantial competent evidence entered into the record that, to the contrary, showed that the applicant had not met the criteria. She discussed justifications for her professional opinion. She added that unless substantial competent evidence had been provided, a denial of the Paramount Theater application was warranted.

Council President Pro Tem Crampton questioned whether the owner would allow all the small-scale retail uses that would be allowed and how that would compare to the use of a club from the perspective of intensification. Ms. Ward responded there were different factors, the first being the use of the club. A private club with dining would generate a lot of traffic and parking, instead of an office building that would not have the same impact as a private club with dining. It seemed to Council President Pro Tem Crampton that retail could possibly generate more traffic, which would be more difficult to track from a Town-serving perspective. Ms. Ward responded.

Jennifer Hofmeister-Drew, Planner III, clarified there was a difference between the Comprehensive Plan and the Land Development Regulations. She said the Comprehensive Plan changed every seven years. It is the public servants' responsibility to ensure that every seven years, when the Evaluation and Appraisal Report (EAR) is reviewed, compliance with the state is ensured. She said the site plan was ultimately based on policy. Currently, there are policies in the Comprehensive Plan that encourage small businesses. She said the subject building was substantially larger, and if the parking equivalency standard were not in place, the existing uses would generate a need for 133 parking spaces; the proposed would call for 169 parking spaces. That was an intensification of use.

Council Member Araskog asked if the occupancy of 1,123 was allowed by right. Ms. Hofmeister-Drew responded that the fire code presented the maximum occupancy allowed for public safety and welfare. When viewing the site from a zoning point of view, the fire safety code number was not considered; it was based on the use and what the parking demands. Parking demand was a primary driver of development, and the Town of Palm Beach had a very conservative parking code. Ms. Hofmeister-Drew said, in response to Council Member Araskog, that the proposal would be an intensification of use. She also read relevant sections from the zoning code and Comprehensive Plan.

Council Member Araskog asked if land development regulations needed to be consistent with the Comprehensive Plan. Ms. Hofmeister-Drew stated they did.

Rick Smith, 130 Sunrise Avenue, discussed his belief that the proposed

use of the Paramount would be significantly more than the Carriage House.

The following individuals spoke in opposition to the proposed project:

Vincent Cloud, 146 Sunset Avenue
Larry Flick, 152 Sunset Avenue (opposed to valet parking)
Fred Wright, 44 Cocoanut Row
Judy Cooper, 100 Sunrise Avenue
Anne Pepper, 333 Seaspray Avenue
Elaine Bedell, 100 and 130 Sunrise Avenue
Marty List, 202 Phipps Estate Way (opposed to increase in traffic)
Jerry Zaro, 100 Sunrise Avenue
Staci Barber, 100 Sunrise Avenue
Beryl Simonson, 130 Sunrise Avenue
Sarah Mettler, 330 Cocoanut Row
Rob Spatt, 150 N. Ocean

Clerk's note: A short break was taken at 5:10 p.m. The meeting resumed at 5:16 p.m.

The following individuals spoke in support of the proposed project:

Amanda Skier, The Preservation Foundation of Palm Beach
Skip Aldridge, 2295 S. Ocean Blvd.
Denise Sandell, 100 Sunrise Avenue
Louis Garcia, 2285 Ibis Isle Rd. E.

Rick Smith, 130 Sunrise Avenue, thought Mr. Woerner was not served appropriately when he purchased the property. He thought he should put it back up for sale. He thought the project would not meet the Code requirements and pointed out points in the Code where he believed it failed.

Mr. Crowley stated that no one had rebutted Mr. Hagen's testimony that the proposal would cause the roadways to fail. He also noted that this project was not prohibited in the Comprehensive Plan and that the Comprehensive Plan and Land Development Uses were not in conflict. He said nothing in the code prohibited intensification of use. He testified that concurrency requirements had been met. He addressed Mr. Woerner's property rights according to the property rights element of the Comprehensive Plan, constitutional property rights, and property rights granted by the State of Florida. Mr. Crowley spoke about their exercise in determining the best use for the building that would result in the lowest traffic impacts. He indicated a willingness to work with the neighbors and stated it was the same with the Carriage House, which had the strongest declaration of use agreement in the Town.

Mr. Hagen rebutted two items mentioned during public comments. He discussed the standards of service and how they were identified. He also spoke about the Corradino Report and the intersection analysis. He did not believe the proposal would degrade the current roadway levels of service. He touched on the principle of equivalency,

discussed how it was calculated, and the lack of parking spaces for use. He said that even if the project was denied, the fact that the site required 91 phantom parking spaces would not change. The project, as proposed, reduced the number of necessary phantom parking spaces.

Mr. Bergman asked Mr. Czerniejewski if the proposed project would degrade the level of service on any of the adjacent roadways.

Eric Czerniejewski, Corradino Group, explained that one manual from 2020 showed a degradation in traffic, and the manual from 2023 did not. However, Palm Beach County has not yet adopted the 2023 manual.

Ms. Hofmeister-Drew stated that Kimley Horn was hired to perform traffic counts for the Comprehensive Plan.

Council Member Araskog asked about the trip counts reported by Mr. Czerniejewski, to which he further clarified.

Ms. Hofmeister-Drew stated that the community benchmarks were established in the Comprehensive Plan. The current level of service for this area is E. Mr. Czerniejewski spoke about the amount of traffic that would cause the road level of service to fail to an F.

Council Member Araskog asked about the applicant's suggestion that the previous use should be the current use of today. Mr. Bergman stated that he and the Fire Marshal did not disagree with the applicant; in fact, they came up with a higher maximum occupant load. Mr. Bergman discussed how the parking spaces played into the number of occupants. Council Member Araskog asked about the occupancy from the 1950s and how it was being compared to today. She also asked about the definition of intensification of use 134-172(4)(b). Town Attorney O'Connor thought it was a portion of the definition of an intensification of use. Council Member Araskog also asked about the definition of the C-TS Zoning District and wondered if the proposal fits the definition. Mr. Bergman weighed in on the issue.

Council President Pro Tem Crampton asked where the remainder of the parking spaces would come from in the calculations. Mr. Bergman discussed how the parking credits were calculated. Mr. Crowley stated that the current calculated parking existed, and one use was being exchanged for another. Council President Pro Tem Crampton asked how the owner would be prevented from using all the space he could use. Mr. Bergman stated that everything over 3,000 square feet would need to be approved by the Town Council as a special exception. Council President Pro Tem Crampton asked Mr. Bergman if he thought there was a degradation of service on the roads. Mr. Czerniejewski pointed out that the level of service degradation referenced was a roadway segment, not an intersection. He said the segment from Bradley Place to Royal Poinciana North was where the level of service dropped from an E to an F if using the 2020 handbook. He said it had to do with the number of cars on the road.

Council Member Moran wondered if the level of service failed at a certain time of day. Mr. Czerniejewski said that it dropped in the p.m. peak hours. Council Member Moran asked the applicant to confirm it was a three-story building, and Mr. Crowley concurred.

Council Member Araskog asked if the Code was followed and if that would be competent substantial evidence that the application was an intensification of use. Attorney O'Connor said that would be for the Town Council to determine. Council Member Araskog asked if there was one of the specific policies in the Comprehensive Plan that should be followed. Town Attorney O'Connor stated that in a special exception if the applicant demonstrated they had met consistency with the zoning code and standards had been met, the Town Council could only deny the application if there was comprehensive substantial evidence that the request did not meet the criteria.

Council President Lindsay did not believe the proposal met criteria 4 in the special exception criteria. She questioned whether a private club could meet the criteria. She recommended that the criteria for the special exceptions be reviewed on the desk.

Mr. Bergman suggested that the Town Council review the variances and special exception criteria to determine whether the requests should be approved.

Mr. Bergman requested a review of special exception #5. Council Member Araskog asked if this one had been abandoned. Mr. Bergman referenced Section 134.229, requirements for granting a special exception, and stated if the council believed the standards were met, it could be approved, and if not, it could be denied. He added that there was no business tax receipt for a church in this location.

Council Member Araskog thought this request was an intensification of use according to the Comprehensive Plan.

Mayor Moore pointed out that the intensification of use was for a church, and the goal was to get more people to go to church or a religious institution. Mr. Bergman said there was already an approval for a 105-seat church. He said they were asking for an increase from 105 to 200 seats. Special exception #4 was for shared parking. Because they had 133 parking credits, with the proposed private club of 475 members and the proposed church of 200 seats, they were at 169 parking credits. The only way they could move forward on the 200-seat church would be for the Town Council to approve Special Exception #4 to allow shared parking. If Special Exception #4 was not approved, then Special Exception #5 could not be approved.

Mr. Murphy said if Special Exception #4 was not approved, the request for the private club and/or the church would have to be decreased. He said reducing other requests would be a way to lower the membership. This was why staff put information in the staff memo about small-scale retail. Their analysis did not include

allocating the parking equivalency to that of retail use.

Council President Pro Tem Crampton stated he could not support the proposed application but thought he could support a lower-impact program. He acknowledged the property was iconic and said there was a potential for even greater impacts by the owner if the property was developed to its full potential. He said a key element that must be considered was that the owner's rights could not be ignored. Second, the building was an important structure to the community; it was strategically located with a history, and the Town could not afford to have people walk away from it. Council President Pro Tem Crampton said the impact of a club was a lesser evil than a major building with multiple retail and other shops. He suggested working with the owner to find an acceptable alternative use and program for the building.

Council President Lindsay's concern was that the proposed club did not meet the zoning purpose or Special Exception criteria number four.

Council Member Cooney did not think that a club of the size and scale proposed was in keeping with the character of the business district or the purpose and intent of the zoning district.

Mayor Moore recommended that the applicant return to the Town Council with a smaller plan. She suggested small retail and a small restaurant or other similar elements.

Council Member Araskog thought the application should be denied as it violated the Comprehensive Plan and did not meet the criteria for a special exception.

Council President Pro Tem Crampton thought it would be wise to see if the owner would be willing to come in with a smaller application.

Mr. Crowley asked for a reduction in members and to be granted what the Carriage House was granted, which was 232 seats.

Mayor Moore thought the Carriage House being compared to this project was like comparing apples to oranges.

A motion was made by Council Member Araskog that Special Exception No. ZON-23-020 be denied because the granting of Special Exception #1 will adversely affect the public interest, and the specific requirements of Section 134-229, specifically 2, 3, 4, and 6, have not been met. The motion failed for the lack of a second.

Mr. Crowley stated that the owner was asking for a vote, one way or the other.

Council Member Crampton asked the owner if he would consider a lower member count for the club members, of 232 members, which would equal 59 parking spaces and 74 spaces for retail parking, for a total of 133 spaces. The owner stated he would accept the lower number of members.

Council Member Araskog was hesitant to proceed with a smaller project because the Town Council had not seen the modified plan.

A motion was made by Council Member Araskog and seconded by Council President Lindsay that Special Exception No. ZON-23-020 be denied because the granting of Special Exception #1 will adversely affect the public interest, and the specific requirements of Section 134-229, specifically 4 and 6, have not been met. The motion passed 3-2, with Messrs. Cooney and Crampton dissenting.

A motion was made by Council Member Moran and seconded by Council President Pro Tem Crampton that Special Exception No. ZON-23-020 number 5 shall be granted, based upon the finding that such grant will not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code have been met, and with the condition that the total seating has been approved for 200. The motion passed 4-1, with Ms. Araskog dissenting.

This discussion lasted approximately 5 hours and 50 minutes. To listen, please click the link on the agenda topic above.

- b. **ZON-24-0004 (COA-24-0001) 126 S OCEAN BLVD (COMBO) - VARIANCES (1:09:00)**The applicant, South Ocean Boulevard LLC (James M. Crowley, Authorized Representative), has filed an application requesting Town Council review and approval of three (3) variances to 1) reduce the rear yard setback for the generator, 2) reduce the street side yard setback for the cooling tower, and 3) increase the mechanical equipment enclosure wall height. The Landmarks Preservation Commission shall perform a design review of the application. *[Landmarks Preservation Commission Recommendation: Implementation of the proposed variances will not cause negative architectural impacts on the subject property. Carried 7-0.] [The Landmarks Preservation Commission approved the project as presented. Carried 7-0]*

Ex-parte communication was declared by Council Member Moran and Council President Pro Tem Crampton.

Jamie Crowley, the applicant's attorney, provided an overview of the project and explained the requested variances. He discussed the legal hardship for the variance request.

Council Member Cooney asked if there were any neighbor objections, to which Mr. Crowley stated there were none.

Council Member Araskog asked about the reason for the variance and confirmed the need for a larger piece of equipment. Mr. Crowley responded and indicated the new piece of equipment would be quieter.

Council President Lindsay called for public comment. No one indicated a desire to speak.

A motion was made by Council Member Araskog and seconded by Council Member Moran that Variance No. ZON-24-0004 shall be granted and find, in support thereof, that all the criteria applicable to this application as set forth in Section 134-201 (a), items 1 through 7, have been met. The motion was carried unanimously, 5-0.

This discussion lasted approximately 5 minutes. To listen, please click the link on the agenda topic above.

- c. **ZON-24-0005 (ARC-24-0004) 260 COLONIAL LN (COMBO) – SPECIAL EXCEPTION WITH SITE PLAN, REVIEW AND VARIANCE**
The applicant, Maura Ziska (attorney), in conjunction with SKA Architect + Planner, has filed an application requesting Town Council review and approval for a Special Exception with Site Plan Review approval to develop a nonconforming parcel in the R-B zoning district and one (1) variance to reduce the rear yard setback for a swimming pool in relationship with the construction of a new one-story single-family residence with final hardscape and landscape. The Architectural Commission (ARCOM) shall perform a design review of the application. *[This project shall be deferred to the August 12, 2024, Town Council meeting pending Architectural Review.]* **Clerk's note: This item was deferred to the August 12, 2024, meeting at the Approval of the Agenda, Item VI.**
- d. **ZON-24-0006 (ARC-24-0011) 1741 S OCEAN BLVD (COMBO) - VARIANCES.** The applicant, Maura Ziska (attorney) in conjunction with SKA Architect + Planner, has filed an application requesting Town Council review and approval for four (4) variances to (1) increase the maximum allowable lot coverage, (2) to allow existing non-conforming front yard setback to remain, (3) to allow existing side yard setback to remain, and (4) to allow landscape open space to increase from existing but still not meet minimum requirement as it relates to the existing structure and site improvements being modified. The Architectural Commission (ARCOM) shall perform a design review of the application. *[This project shall be deferred to the September 11, 2024, Town Council meeting pending Architectural Review.]* **Clerk's note: This item was deferred to the September 11, 2024, meeting at the Approval of the Agenda, Item VI.**
- e. **ZON-24-0007 (ARC-24-0016) 403 BRAZILIAN AVE (COMBO) - VARIANCE (1:14:19)** The applicant, BHJ Land Trust, has filed an application requesting Town Council review and approval for one (1) variance to exceed the required 25' maximum distance of pool equipment from the water's edge by 25.7'. The Architectural Commission shall perform a design review of the application. *[Architectural Review Commission Recommendation: Implementation of the proposed variances will not cause a negative architectural impact on the subject property. Carried 7-*

0.][The Architectural Review Commission approved the project as presented. Carried 7-0.]

Ex-parte communication was declared by Council Member Moran and Council President Pro Tem Crampon.

The applicant's attorney, M. Timothy Hanlon, provided an overview of the project and explained the requested variances. He indicated that he was not aware of any neighbor objections.

Council Member Araskog asked about the pool's installation before the zoning code and wondered when it was built. Mr. Hanlon responded. Council Member Araskog wondered if the variances were needed for the previous pool; Mr. Hanlon was not aware.

Council President Lindsay called for public comment. No one indicated a desire to speak.

A motion was made by Council Member Cooney and seconded by Council Member Araskog that Variance No. ZON-24-0007 shall be granted and find, in support thereof, that all the criteria applicable to this application as set forth in Section 134-201 (a), items 1 through 7, have been met. The motion was carried unanimously, 5-0.

This discussion lasted approximately 4 minutes and 30 seconds. To listen, please click the link on the agenda topic above.

- f. **ZON-24-0009 (COA-24-0002) 195 VIA DEL MAR (COMBO) - VARIANCES (1:18:54)** The applicant, Guy Rabideau (Trustee of the 195 Via Del Mar Trust), has filed an application requesting Town Council review and approval of (1) variance to reduce the minimum driveway area in front of the vehicular gate fronting South County Road. The Landmarks Preservation Commission shall perform design review of the application. *[Landmarks Preservation Commission Recommendation: Implementation of the proposed variance will not cause a negative architectural impact on the subject property. Carried 7-0.] [The Landmarks Preservation Commission approved the S. County Rd. facing gates of the proposed project. The remainder of the project will return to Landmarks for further review. Carried 7-0.]*

David Klein, the applicant's attorney, provided an overview of the project and explained the requested variances.

Ex-parte communication was declared by Council Member Moran.

Council Member Cooney was glad to see the original drawings in the packet. He indicated that the gate was part of the original design, and in this case, the applicant could not comply with the Code due to the existing location of the home and piers. He believed the applicant had a legal hardship.

Mayor Moore stated that although gates on major thoroughfares were cause for concern, she found the proposed gates lovely and appropriate.

Council Member Araskog asked about the previous approval for the gates on a landmarked property. Town Attorney O'Conner stated that the Town Council could consider the items related to the historical landmarks as a hardship.

Council President Lindsay called for public comment. No one indicated a desire to speak.

A motion was made by Council Member Cooney and seconded by Council President Pro Tem Crampton that Variance No. ZON-24-0009 shall be granted and find, in support thereof, that all the criteria applicable to this application as set forth in Section 134-201 (a), items 1 through 7, have been met. The motion was carried unanimously, 5-0.

This discussion lasted approximately 4 minutes and 30 seconds. To listen, please click the link on the agenda topic above.

- g. **ZON-24-0010 (ARC-24-0023) 515 NORTH LAKE WAY (COMBO) - SPECIAL EXCEPTION AND VARIANCE** The applicant JORDAN GRETCHEN S TRUST (Maura Ziska, Authorized Representative) has filed an application requesting Town Council review and approval for a special exception review to develop the existing nonconforming lot and one variance 1) to exceed the permitted angle of vision for the construction of a new one-story single-family residence with final hardscape and landscape. The Architectural Commission (ARCOM) shall perform a design review of the application. *[This project shall be deferred to the August 12, 2024, Town Council meeting pending Architectural Review.]*
Clerk's note: This item was deferred to the August 12, 2024, meeting at the Approval of the Agenda, Item VI.

- h. **ZON-24-0011 253 ROYAL POINCIANA WAY - SPECIAL EXCEPTION AND VARIANCE (1:23:35)** The applicant, Field of Greens and Flagler System Management Inc, has filed an application requesting Town Council review and approval of a Special Exception for restaurant use in the C-TS zoning district and a Variance to not provide the required on-site parking for a change of use from retail to restaurant use.

Ex-parte communication was declared by Council Members Araskog, Cooney, and Moran.

The applicant's attorney, Jamie Crowley, provided an overview of the project and explained the requested zoning requests.

Council Member Cooney stated in a previous approval that he had

asked for off-site parking to be accommodated on The Breakers' property. Mr. Crowley stated he could make the request work with respect for the employees who work at the facility. He stated there was a hardship with the request as there was no parking at the facility.

Council Member Moran wondered if outdoor seating was proposed with the application, to which Mr. Crowley responded no. She thought this location was better for the tenant due to the on-street parking. She asked if additional seating would be added to the counter, to which Mr. Crowley stated no.

Council Member Cooney asked about the proposed hours of operation. Attorney Maura Ziska, who represented the tenant, stated that their hours would be the same as previously existed. Council Member Cooney confirmed that there was no need for rooftop equipment, to which Mr. Crowley replied that there was no need. Council Member Cooney agreed with Council Member Moran that this location was more convenient for the customers.

Council Member Araskog asked about the number of seats in the current restaurant. Mr. Crowley stated that the seats were being reduced to 19. Council Member Araskog expressed concern about the change from a retail operation to a restaurant and wondered if this could be limited. She asked about the parking credit and expressed concern that the next retailer should not receive more parking spaces.

Mr. Crowley stated that the restaurant was approved for another bay and was being moved. Mr. Crowley stated that they would do the best they could to accommodate staff parking on The Breakers' property. Council Member Araskog did not want the next tenant to come in and get more parking. She worried about the future use.

Council Member Cooney agreed and requested that The Breakers accommodate the parking at another location.

Mayor Moore understood Council Member Araskog's concerns. However, since The Breakers owned the property and had multiple parking options, she felt comfortable that they could accommodate them at another location.

Council President Lindsay called for public comment. No one indicated a desire to speak.

Council Member Moran confirmed that a second Field of Greens would not be approved on the street. Mr. Crowley stated there would only be one business on the street.

There was a short discussion on how to approve the 8 off-site parking spaces.

A motion was made by Council Member Cooney and seconded by Council Member Moran that Variance No. ZON-24-0011 shall be

granted and find, in support thereof, that all the criteria applicable to this application as set forth in Section 134-201 (a), items 1 through 7, have been met, with the conditions that the 8 parking spaces will be accommodated off-site and controlled by The Breakers, and the parking requirement will run with the land, not the tenant. The motion was carried unanimously, 5-0.

A motion was made by Council Member Cooney and seconded by Council Member Moran that Special Exception No. ZON-24-0011 shall be granted, based upon the finding that such grant will not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code have been met, and with the condition that the number of seats approved is 19, and the approved hours of operation are 9 a.m. to 4 p.m. The motion was carried 4-1, with Council Member Araskog dissenting.

This discussion lasted approximately 28 minutes. To listen, please click the link on the agenda topic above.

Clerk's note: A short break was taken at 11:14 a.m. The meeting resumed at 11:25 a.m.

- i. **ZON-24-0018 353 PERUVIAN AVE—SPECIAL EXCEPTION WITH SITE PLAN REVIEW (1:51:44)** The applicant, Lifestyle Holdings LLC, has filed an application requesting Town Council review and approval for a Special Exception request to allow specialty retail foods with indoor seating with site plan review in the C-TS district.

Philippe Delgrange, Le Bilboquet Gourmet Market, discussed the naming of his business.

Ex-parte communication was declared by Council Member Araskog, Cooney, Moran, and Mayor Moore.

Assistant Director Murphy discussed the notice sent out and posted for the proposed project.

Council Member Cooney was pleased to see the posting outside of the project and noticed residents using the QR code to obtain more information on the project.

Maura Ziska, the applicant's attorney, provided an overview of the project and explained the requested zoning requests. She presented the architectural plans for the proposed request. Mr. Delgrange discussed the reason for the proposed market and how he intended to serve the residents of Palm Beach.

The building owner, Jay Biggins, stated he met with the residents of the condominium buildings adjacent to the building, who had indicated to him that they supported the application.

Council President Pro Tem Crampton thought there was a place in the

market for the proposed business. He thought it was in a good location and convenient. He stated he would be willing to defer the project to hear any neighbors who wanted to speak on this, but he thought it was a good application.

Council Member Moran asked about the storage facility and stated that it would not be allowed to face the street. Ms. Ziska stated that the window could not be removed since the building was historic, but the window could be blocked with drywall. Council Member Cooney pointed out a second window that would need to be covered as well.

Clerk's note: A brief power outage interrupted the meeting. It resumed as soon as all the equipment was operational.

Ms. Ziska pointed out the two windows on the west elevation that would be blocked from the inside.

Council Member Moran expressed concern that it looked like a restaurant with a kitchen. She thought that if there were seats, it should be considered a restaurant. She also thought the presentation was ambiguous and would be in favor of deferring the application to allow neighbors to weigh in on the request.

Ms. Ziska stated a restaurant classification depended on service, particularly a server going to a table and taking an order was considered a restaurant. This would not occur at this location.

Council President Lindsay wondered if seats were removed, would Council Member Moran support the request.

Council Member Moran thought it should be a restaurant, but Ms. Ziska stated that the owner did not want it to be a restaurant and requested at least two seats.

Council President Lindsay thought this business was the perfect location for the area and would serve the neighborhood well. She also did not believe that this would be a destination for outsiders.

Mayor Moore asked about the owner's estimate of the number of people they anticipated each day. She heard the concerns about the seating but had confidence in the operator.

Council Member Cooney agreed with Council President Lindsay and found the business appropriate for the area. He thought the business would enhance the area, and he thought any quality-of-life issues could be handled through a declaration of use agreement.

Council Member Araskog agreed with Council Member Moran. She also thought that residents who received the notification did not properly understand the request. She thought the request should be deferred to the season to allow people to participate in the request. She thought this market would further congest the area. She did not

believe the location was appropriate. She questioned the closing hours stated in the application, which indicated 8 p.m.

Mr. Delgrange suggested keeping the market open until 6 p.m.

Council Member Araskog expressed concern about the switch from retail to restaurants and the trucks that would traverse the neighborhood. Ms. Ziska argued that the location would remain a retail space.

Council Member Moran thought the location was good, and there were only two restaurants within walking distance.

Council President Lindsay argued that the proposal was not a restaurant.

Clerk's note: There was an additional power outage that interrupted the meeting. The meeting resumed as soon as all the equipment was operational.

Council President Lindsay called for public comment.

Anne Pepper, 333 Seaspray Avenue, expressed concern about the chairs and the potential to eat inside the market. She did not believe the seating was appropriate for the application and should be removed or deferred to be heard when more residents were in Town to hear the application.

Council Member Araskog asked if the seats could be replaced with another counter of food offerings. Mr. Delgrange suggested leaving two chairs and removing the table.

Carla Alexander, 174 E. Inlet Drive, stated she used to work at a French bakery in the 1970s in this same location. She thought this was a wonderful location for the proposed business and agreed a few seats were needed. She saw this business as retail and was in full support of the application.

Council Member Cooney asked for confirmation of the hours. Mr. Delgrange suggested 8:30 a.m. to 6 p.m.

Mayor Moore suggested closing at 5 p.m. to help reduce the traffic in the area.

A motion was made by Council Member Cooney and seconded by Council President Pro Tem Crampton that Special Exception No. ZON-24-0018 shall be granted, based upon the finding that such grant will not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code have been met, and with the conditions that the applicant will return with a declaration of use agreement that will outline employee parking as well as the delivery plan in the Apollo lot with items hand trucked to the location, no deliveries will occur on

Cocoanut Row, the approved hours of operation are 7:00 a.m. to 5:30 p.m., and two acceptable window screens be added to the appropriate windows that face the storage and counter. The motion was carried 4-1, with Council Member Araskog dissenting.

Mr. Delgrange stated if there was anything that the Town Council did not like, please contact him, and he would rectify the situation.

This discussion lasted approximately 1 hour and 14 minutes. To listen, please click the link on the agenda topic above.

- j. **ZON-24-0019 (COA-24-0005) 1 S COUNTY RD (COMBO) SITE PLAN REVIEW – THE BREAKERS (3:06:05)** The applicant, Breakers Palm Beach Inc., has filed an application requesting Town Council review and approval for Site Plan Review for site changes, including the modifications to the main entrance drive to the hotel and the porte-cochere arrival area. The Landmarks Preservation Commission shall perform a design review of the application.

Ex-parte communication was declared by Council Member Cooney, Moran, and Mayor Moore.

The applicant's attorney, Jamie Crowley, provided an overview of the project and explained the requested zoning requests. John Schmidt of Schmidt Nichols presented the architectural plans for the proposed changes.

Council Member Cooney asked about the LED light fixture details. Mr. Nichols responded and demonstrated the conditions. Council Member Cooney asked about the details for the mountable curb. Mr. Nichols responded. Council Member Cooney did not want the lights to appear as a condition such as a runway.

Council Member Araskog thought the changes would alter the specialness of the existing entrance condition. She wondered why the existing lanes could not be converted to achieve the same results. Mr. Nichols explained they were asking for additional bypass lanes in front of the Porte-cochere.

Council Member Moran thought this would improve the problem of people waiting on County Road to enter the location.

Council Member Cooney clarified that this application would better manage existing traffic, not accommodate more traffic. Mr. Crowley provided confirmation.

Council President Pro Tem Crampton was happy that The Breakers was trying to manage the traffic problem and supported the request.

Council President Lindsay called for public comment. No one indicated a desire to speak.

A motion was made by Council Member Araskog and seconded by Council Member Moran that Site Plan No. ZON-24-0019 be approved, based upon the finding that the approval of the site plan will not adversely affect the public interest and that the Council certified that the specific zoning requirements governing the individual use have been met and that satisfactory provision and arrangement has been made concerning Section 134-329, items 1 through 11, and with the condition that the applicant shall try to reduce the number of lights next to County Road. The motion was carried 4-1, with Council Member Cooney dissenting.

A short discussion ensued about the proposed lights. Council Member Araskog asked if fewer lights could be installed. Attorney Jamie Crowley stated he would try to eliminate the number of lights near County Road.

This discussion lasted approximately 15 minutes. To listen, please click the link on the agenda topic above.

Clerk's note: A lunch break was taken at 1:05 p.m. The meeting resumed at 2:01 p.m.

X. ANY OTHER MATTERS (3:21:08)

Council Member Cooney asked the staff to get minor projects on the agenda faster than the 3-month process. He stated that the staff believed they had found a way to resolve the issue, believed it would require notice and an Ordinance change, and asked that it be added to the next agenda.

Assistant Director Murphy discussed how minor projects could be given a two-week rather than a 30-day notice. He stated he could make a presentation to the Town Council that would outline the projects that could traverse the shorter timeframe. He stated the change would require a change to an Ordinance and would bring a draft to the next meeting.

This discussion lasted approximately 6 minutes. To listen, please click the link on the agenda topic above.

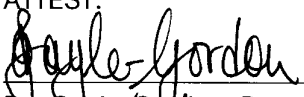
XI. ADJOURNMENT (9:17:18)

A motion was made by Council Member Araskog and seconded by Council Member Cooney to adjourn the meeting at 7:55 p.m. The motion was carried unanimously, 5-0.

APPROVED:


Bobbie D. Smith, Town Council President

ATTEST:


Pat Gayle Gordon, Deputy Town Clerk

Date: 8/13/2024

