

RECORD AND REPORT
PLANNING AND ZONING COMMISSION
2005-2006 ZONING HEARINGS
Monday, November 28, 2005 at 9:30 a.m.
360 South County Road, Palm Beach
Town Council Chambers

I Call to Order and Roll Call: Chairman Robertson called the meeting to order at 9:30 a.m.

PRESENT: Harrison M. Robertson, Chairman
 Lowry M. Bell, Member
 Peter S. Broberg, Member
 Nancy M. Murray, Member
 Elizabeth S. Murphy, Member
 Susan Markin, Member
 John Schuler, Alternate Member (Voting Member today)
 Stanley G. Mortimer III, Alternate Member
 Veronica Close, Director of Planning, Zoning & Building
 Paul W. Castro, Zoning Administrator
 Timothy M. Frank, Planning Administrator
 William F. Brisson, Brisson Planning Solutions (Zoning Consultant)

ABSENT: Alan S. Golboro, Alternate Member (Excused by Town Manager)

RECORDING SECRETARY: Cynthia M. Delp

II Invocation: By Mrs. Delp

III Pledge of Allegiance:

Mr. Robertson recognized Mr. Brooks and Mr. Shaw, both of whom were seated in the Chambers.

IV Election of Chairperson and Secretary:

Mr. Bell nominated Mr. Robertson as Chairman. Mr. Broberg seconded that nomination. There were no other nominations.

MOTION BY MR. BELL THAT THE NOMINATIONS BE CLOSED AND THAT A BALLOT BE CAST FOR MR. ROBERTSON AS CHAIRMAN.

**MOTION SECONDED BY MR. BROBERG.
MOTION CARRIED UNANIMOUSLY.**

Mr. Robertson nominated Mr. Bell as Secretary. Ms. Murphy nominated Ms. Markin as Secretary. The matter was handled via a paper ballot, and Mr. Bell was selected.

- V **Proof of Publication:** Mr. Castro verified that proof of publication had been accomplished with regard to this hearing.
- VI **Robert's Rules:** Mr. Robertson stated that Robert's Rules of procedure will be observed in this hearing.
- VII **Procedures for Input by the General Public:** Typically three (3) minutes are allotted to each member of the public who wishes to speak. Mr. Robertson announced that Mr. Bill Guttman, former C.E.O. of the Civic Association, had asked the Chairman for permission to speak for eight (8) minutes, and Mr. Robertson granted permission. The following are Mr. Guttman's prepared remarks which will be included in the record of this meeting, per Mr. Robertson.

**Planning and Zoning Commission Meeting
Monday, November 28, 2005
Town Hall Council Chambers
Palm Beach, Florida**

William M. Guttman

My name is Bill Guttman. I live at 216 West Indies Drive in Palm Beach. Though I am a director of the Palm Beach Civic Association and the Citizens' Association of Palm Beach, my comments today embody my individual views and are not intended to represent the views of the Civic Association or the Citizens' Association.

This morning I would like to address the proposed "alternative development standards" included in the Town of Palm Beach Zoning Proposal Staff Report for the 2005-2006 zoning season. These proposals grew out of the Siemon & Larsen Report

commissioned by the Palm Beach Civic Association last season.

As the earlier Report noted, the Town Council has the authority to approve variances, which enable property owners to use their respective properties in ways otherwise forbidden by Town rules governing setbacks, building and wall heights, lot coverage, open space and other characteristics. That Report found that zoning restrictions are often out of step with actual neighborhood building characteristics considered desirable by the Town Council and residents.

On the other hand, variance approvals are or at least are supposed to be based on an applicant's ability to demonstrate that an "undue hardship" not economic but connected to the land would make it virtually impossible to use his property for a permitted use under Town zoning rules.

The Report found that the Town Council approved 90 percent of the variance requests it heard during the seven-year survey period from 1997 to 2003. It noted that the Town Council routinely violates its own "undue hardship" test, and that its review of variance requests is highly subjective.

In practice, the Report revealed that the Town Council focused on the aesthetic impact of the proposed changes to an applicant's property, and the impact of the variance request on neighbors and whether they objected. In essence, the Council was using the more liberal "practical difficulties" test rather than the more stringent "undue hardship" test mandated by the zoning code.

The Report concluded that the use of variances to provide flexibility in an otherwise inflexible Town zoning code may undermine the code's purpose — planned and orderly development that reflects the community's desires and standards.

Last April the Town Council asked Siemon & Larsen to draft "alternative development standards" based on their suggestions in their earlier Report. There were two central themes in the earlier Report. First, the Town Council's 90 percent approval rate for variances weakens the Town zoning code. Second, "alternative development standards" could substantially reduce the number of applications for variances that were otherwise desirable, while at the same time remaining faithful to the underlying land-use purposes and values in the Town zoning code.

In essence, there was a tradeoff. The Town Council would adopt "alternative

development standards” that would cover existing neighborhood conditions that the Town Council wanted to preserve as well as aesthetically desirable changes the Council wanted to encourage but which were otherwise prohibited by a strict application of the Town zoning code. In exchange, the community would expect the Town Council to adhere to the strict “undue hardship” test for future variances, and drastically reduce the number of variances it granted.

I am deeply concerned that the proposal for “alternative development standards” before you today is not sufficiently comprehensive or broad and flexible enough to accomplish the compromise I just described: elasticity rooted in standard-based guidelines in exchange for stricter enforcement of the “undue hardship” test for variances.

Consider setbacks. During the seven-year survey period, 93 percent of all variance requests heard by the Town Council involved setbacks. Of those, 25 percent were for distances of less than 20 percent of the total required setback, and more than 50 percent were for distances of less than 40 percent of the total required setback. Yet the “alternative development standards” before you today would not kick in if the front and side street setbacks exceeded 20 percent, and the flexible guidelines do not apply to encroachments in side setbacks in excess of 25 percent. That means that a huge number of variances involving setbacks might be prohibited under the proposal if the Council strictly applies the “undue hardship” test for variances involving setbacks of over 20 to 25 percent but less than 40 percent. A 40 percent ceiling would account for roughly 75 percent of the 93 percent of setback reductions granted by the Town Council during the survey period. Summarizing, are the setback percentages included in the proposal appropriate if we expect the Town Council to strictly enforce the “undue hardship” rule for variances in the future?

Consider also building height and point of measurement. The Report noted that “91 percent of all requests” involved “building height ([that is,] height and point of measurement), a large number of which involved lots with steep grades in relation to the crown of the road.” But proposed Section 18-211(d) and (e) do not cover homes to be constructed on lots with sharply sloping vertical grades. They only deal with point of measurement and building height involving lots below flood elevation, and multifamily, nonresidential, and mixed-use buildings.

Finally consider the proposed flexibility rules dealing with fences and walls. Why is only an additional two feet permitted if an applicant otherwise meets the

standards set out on pages 13 and 14 of the proposal. Remember that the earlier Report contained a case study of the Society of the Four Arts' master plan for its Sculpture Garden in the R-B zoning district, which illustrated that the five variance requests approved by the Town Council in that case would have been denied by a hypothetical "variance computer." The Four Arts' application sought a variance from the six foot maximum allowed for walls in order to build a perimeter wall of 7.16 feet to 8.7 feet. Yet under proposed Section 18-211(f) the Four Arts would not have been able to invoke the "alternative development standards" before you. And on top of that, even if the maximum height was increased to 9 feet or some other reasonable figure, the Four Arts would have failed to meet the proposed requirement that the additional height has to screen unsightly views and dust, etc. set forth in subsection (1)a of proposed Section 18-211(f).

These "big picture" comments are not meant to be exhaustive. They highlight the daunting task before you. If this community wants the Town Council to enforce its own legal test — "undue hardship" — before granting variances, you must assure yourself that the "alternative development standards" are comprehensive as well as broad and flexible enough to allow legitimate relief from those zoning restrictions that are out of step with actual neighborhood building characteristics or otherwise aesthetically desirable and equitable.

Though I have had only a short time to consider the proposal from a technical perspective, I do have several questions, including one about the language pertaining to the cubic content ratio in Section 18-211(i). The term "street segment" should be defined, and the following sentence is quite confusing: "A street segment is in transition when the standard deviation of cubic content ratios of existing and approved buildings in the same zoning district exceeds 0.5." Taken literally, this sentence seems to say that if the standard deviation of the cubic content ratios of all houses in the R-B zoning district exceeds one-half, then every single street in the R-B district is in transition. The sentence should probably read: "A street segment is in transition when the standard deviation of cubic content ratios of existing and approved buildings on that particular street segment exceeds 0.5." And obviously you should satisfy yourself that a 0.5 standard deviation reasonably captures the degree of variation on a hypothetical street for it to be considered in transition.

In conclusion, I hope you ask probing questions today and do not rush to conclude your study of the "alternative development standards" in the next two days, particularly because of the short time over the Thanksgiving weekend that you've had

to ponder the proposal. A lot is riding on getting this right!

Thank you.

VIII Evaluation and Appraisal Report (EAR) Public Hearing:

Tim Frank, Planning Administrator, stated that this subject was last discussed at the May, 2005 meeting. The EAR refers to the Comprehensive Plan which was written in 1987, approved in 1988 and updated in 2003. He explained that the Town uses a Comprehensive Plan Goals, Objectives and Policy Matrix which allows Town staff to track how the Comp Plan's goals and objectives are being met. Mr. Frank stated that after reviewing the matrix, there are no outstanding issues which need to be addressed. Mr. Frank distributed a report entitled *Preliminary Listing of Locally Important Issues in the Town of Palm Beach* which outlines those issues. He stated that the purpose of this meeting was to determine if there are any other issues to be added to the list. The report listed the locally important issues as follows:

1. Levels of Service
2. Infrastructure
 - Underground utilities
 - Emergency Water Supply
 - Deterioration of the easements/break walls along the shoreline of Lake Worth.
3. Preservation of Residential Neighborhoods
4. Shoreline Protection
5. Traffic & Parking
6. Safety Issues
 - Abandoned boats moored in Lake Worth
 - Consider preparation of an optional "Disaster Management Element"

The Chairman called for comments from the public. Mr. Shaw, 318 Seaspray Avenue, posed the question as to how underground utilities would impact residential and commercial development, and how they will affect the front yard setbacks, landscaping and other front yard issues. Mr. Frank responded that staff concurs with Mr. Shaw, acknowledging that burying the utilities must be studied. For the purposes of today's meeting, however, merely listing the issue was sufficient. Mr. David Barton, Jamaica Lane, questioned whether land use planning will be addressed in the EAR. He thought that the list of issues was insufficient in planning for the future of the town, especially in light of the proposed index zoning and accompanying building regulations.

Ms. Close explained that as the EAR process moves forward toward a Comp Plan amendment, all of these issues will be reviewed in detail, but today, just a listing of the issues is presented.

The Chair recognized Town Councilman Richard Kleid and welcomed him.

IX 2005-2006 Zoning Proposal Staff Report:

Ms. Close welcomed everyone to the 2005/2006 Zoning Season, and introduced staff, as well as Mr. Todd Messenger of Siemon and Larsen, who was to present a draft of the alternate development standards. She reminded the members about the four upcoming community meetings; that the R-B District study will begin this year; that the neighborhood index CCR will be studied (and will be the subject of the first two community meetings); that the zoning season includes review of four (4) study items; and, that the EAR effort will continue toward a report goal due to the State of Florida by November 2006. Lastly, alternate development standards will be studied. Siemon and Larsen has been hired by the Town Council to develop those standards. That work has occurred over this past summer, and was refined in a joint effort with staff.

Mr. Castro provided a brief history of previous zoning initiatives relative to the R-B Zoning District from 1989 through present. Several of those initiatives include the study and/or implementation of the building height plane, angle of vision, floor area ratio (FAR), cubic content ratio (CCR), architectural patterns and design guidelines, prototypes, and maximization studies, all of which have led to the recent neighborhood index concept.

STUDY ITEM 1. Proposed alternative development standards to be administered by the Architectural Commission

Ms. Close commented that staff considers the alternative development standards to be “another tool in the tool box” in addition to those which have been previously studied. Siemon and Larsen, hired by the Town Council, developed a draft of the alternative development standards for presentation today. Staff and Siemon and Larsen agreed that the new standards should be administered by the Architectural Commission and Landmarks Preservation Commission, with appeals to the Town Council.

The following represents the projected presentation bullets, as presented by Mr. Todd Messenger of Siemon and Larsen. The following supplements the information found in the *Town of Palm Beach Zoning Proposal Staff Report 2005-2006* under Study Items 1 and 2.

Proposed Alternative Development Standards

Architectural Commission

Objectives

- Allow certain deviations from the strict application of zoning code

sections that historically have been the subject of numerous variance requests.

- Protect the Town's special character.

Administration

- Administered by ARCOM --
 - ARCOM is already empowered to make qualitative judgments regarding compatibility.
 - Alternative development standards are a qualitative alternative to quantitative code requirements.
 - Alternative development standards considered at same time as generally applicable ARCOM standards.
 - Buildings that use alternative development standards must also comply with ARCOM standards.

Administration

1. Town Council ratifies ARCOM decisions on consent agenda.
 - Approvals may be removed from consent agenda by majority vote of the Town Council.

Alternatives provided for . . .

1. Setbacks
2. Building height (all aspects)
3. Fence and wall height
4. Location driveway gates
5. Lot coverage
6. Cubic content ratio
7. Angle of vision
8. Landscaped open space
9. Front yard landscaped open space

Front and Street Side Setbacks

10. May reduce front and street side up to 20% of district requirement.

Standards

11. Integrated architecture, colors, materials, windows, and roof line.
12. No dimension greater than 50 feet.
13. No blank walls.
14. "Encroachment" is one-story.
15. Landscaping reduces impact.

16. Compliance with certain other regulations.

Side Setbacks

17. May reduce side up to 25% of district requirement.

Standards

18. Standards are like the front and street-side setback reduction standards, plus:
 - Privacy / window alignment

Rear Setbacks

1. May reduce rear setback to 5 feet from rear lot line.

Standards

2. Standards are the same as side setback reduction standards

Building Height

3. Point of measurement of building that is nonconforming as to height may be raised to minimum flood elevation, provided:
 - CCR complies with requirement, if any.
 - Extent of nonconformity is not increased.

Building Height

1. Increase in *allowed* height is permitted in order to reduce nonconforming height when multifamily, nonresidential, and mixed-use buildings are redeveloped.

Fence and Wall Height

2. Maximum height may be 8 feet, if:
 - Needed to screen unsightly views and dust, noise or odor from services areas
 - Wall or fence is not visible from street
 - Wall or fence is set back 5 feet
 - Outside of wall or fence is landscaped
 - Wall is articulated
 - Owner has access to outside for maintenance

Fence and Wall Height

1. Point of measurement may be changed if:
 - Parcel is higher than street
 - Fence height is not more than 6 feet

- Fence is landscaped with 3-foot high hedge or shrubs

Location of Gates

1. No setback for “egress only.”

Location of Gates

2. Reduced setbacks for dead-ends and cul-de-sacs, if gates are no less than 20 feet away from other driveways.

Location of Gates

3. Reduced setbacks if:
 - Low traffic street
 - Gates are predominant element of character
 - Gate is not directly across from another gate
 - Gate is at least 50 ft. from an intersection

Location of Gates

1. Reduced setbacks if:
 - Demonstrated to be safe
 - Swing-in or slide operation
 - Preserves historic or specimen tree; or is necessary due to topography
 - Gates are part of character of street

–

Lot Coverage (R-AA, R-A, R-B)

1. Up to 10% increase, if:
 - No destruction of mature trees
 - Building cannot be obviously larger than others on the street
 - % increase in CCR (whether or not subject to CCR regulation) is less than or equal to % increase in coverage
 - No increase in CCR, if limited
 - Restriction recorded

Lot Coverage (other districts)

1. Up to 10% increase, if needed to retrofit building for ADA compliance; or
2. Up to 10% increase, if:
 - Currently nonconforming lot coverage;

- Reduction of nonconformity by at least 3 percentage points (e.g., 52.5% current, 49.5% proposed); and
- All required parking is provided.

Cubic Content Ratio

1. Increase of:
 - Up to 10% for 1-story
 - Up to 5% for 2-story
1. Increases tied to increasing setbacks
2. Massing must be sensitive to neighbors
3. Increase to 110% of the average CCR of the largest 85% of homes on the same street segment within 500 feet, if the street is “in transition.”

Angle of Vision

4. Increase of up to 5 degrees

Standards

5. Integrated architecture, colors, materials, windows, and roof line.
6. No dimension greater than 50 ft. in front.
7. No “blank wall” in encroachment.
8. Additional landscaping in front yard:
 - If “one-story” encroachment – 5x area of encroachment
 - If “two-story” – 10x area

Landscaped Open Space

1. Decrease of up to 20% in R-A, R-B, and R-C districts for attractive hardscaped areas
2. Decrease of up to 50% in C-TS, C-OPI, or C-B for:
 - ADA compliance, or
 - Provision of parking, provided that the parking areas are not poured concrete or asphalt

Front Yard

Landscaped Open Space

1. Decrease of up to 20% in R-A, R-B, and R-C districts for attractive hardscaped areas

2. Decrease of up to 100% in C-OPI, C-TS, C-B to provide quality pedestrian amenities

Commission/staff comments relative to Siemon & Larsen presentation:

Mr. Bell: Commented that ARCOM has always done an excellent job of controlling the size of homes and will continue to do that if permitted. Why should regulations be introduced which would allow persons to circumvent that and build larger?

Ms. Markin: (See Page 10 Zoning Proposal Staff Report) Noted that windows of adjacent properties do not have to be directly across or lined up from the ones of the neighbor for there to be privacy issues.

Mrs. Murray: (See Page 8/10 Zoning Proposal Staff Report) Regarding protecting existing trees, how can you prevent a property owner from removing a mature tree prior to applying for a building permit.

Mr. Schuler: ARCOM is a major factor in controlling development problems, but some of these proposed new regulations, while flexible, may be very complicated to implement. Good architecture is what is needed in the Town.

Mrs. Murray: With regard to Mr. Messenger's statements that ARCOM is a professional body of architects which will serve to make decisions about the "grey areas," this would greatly increase the demands for the level of expertise required of those who serve on ARCOM, especially considering the complicated nature of the newly proposed regulations which she likened to an IRS code.

Mr. Bell and Mr. Schuler: Agree that the proposed regulations are very complicated.

Ms. Close: These proposed regulations are just a draft and a concept which will have to be refined, if they are received favorably. Staff will recommend that these regulations are reviewed by ARCOM and the Landmarks Preservation Commission. With regard to the increased complexity of the regulations, Ms. Close felt that such regulations are better suited for review by ARCOM and the LPC, as they typically make similar qualitative judgements. The Town Council would only become involved on appeals

Ms. Murphy: (See Page 21 of Zoning Proposal Staff Report) Commented that the use of the term "attractive" is too subjective, and favors establishment of standards for brick pavers and courtyards, etc.; and what is the affect on drainage problems when impervious space is increased.

Ms. Murray: Reminded Mr. Messenger that pervious and impervious space has been a real issue with the Planning and Zoning Commission. Some of the worst examples of impervious area occur when the property must be built up to meet FEMA requirements, and a "hump" is created at the

driveway, which simply does not look nice, no matter what the driveway material is. She also recommended that regulations for green space in the front yard not be relaxed.

Mr. Robertson: Commented that if these regulations are adopted for ARCOM and the LPC, “The Town’s Zoning Code will become known as the Lawyer’s Full Employment Act of the year 2006. I think this Zoning Code is getting entirely too complicated.” He recommended substituting the “undue hardship” provisions with “practical difficulty” standards, or some other test. The proposal would add so many more pages to the existing zoning code, and Mr. Robertson was opposed to further complicating the Zoning Code. He felt that the new regulations are an excessive measure to fix the problem of “undue hardship.”

Ms. Markin: Agreed with much of Mr. Robertson’s comments. She appreciated the effort put into the presentation, but recalled that the purpose of the study was to decrease the number of variances and to address the residents’ concerns regarding overbuilding. The perception is that overbuilding is being allowed by the Town Council due to the number of variances granted. The goal is not just to reduce the number of variances. It is also to respond to the affect of building in a neighborhood. She did not feel that by relaxing the regulations, which would then reduce the number of variances, that the residents’ concerns are being addressed. She also questioned whether ARCOM, if given authority to enforce and interpret the code, would have a conflict with their current mission. She questioned why the need to prove hardship should be eliminated when a person is seeking a variance, and questioned the priority...is it to decrease variances or restrict overbuilding. Lastly, she stated that she had hoped that the alternative development regulations would serve to simplify the code, not complicate it further.

Ms. Close: Offered staff’s comments relative to the alternative development standards. Staff believes that the R-B district is a huge residential area composed of many distinct neighborhoods, which would probably be separate zoning districts in other communities. The alternate development standards, while designed to address the inconsistencies within the R-B district, are yet another attempt to solve the R-B problem. Staff believes that the review of the R-B zoning district should be done prior to implementation of any new standards. The upcoming community meetings will serve to gather essential information from residents about what they like and what they do not like about their neighborhoods. Staff believes it would be premature to try to approve the alternate development standards until that feedback is obtained. With that feedback, staff will prepare a report for the Planning and Zoning Commission and ultimately the Town Council, to address the standards initiatives.

Mr. Schuler: Felt that staff should be given the opportunity to hear from the community, and then prepare its report for the Planning and Zoning Commission.

Ms. Markin: Agreed with Ms. Close’s approach. She stated that the R-B district is too massive and diverse to apply these or any other standards. The community input will be essential because the homeowners have very different opinions.

Ms. Close: Reminded everyone that the first two community meetings are devoted to the

Neighborhood Index concept and the second two meetings are reserved for the R-B district.

MOTION BY MR. SCHULER THAT STAFF CONTINUE WITH THE ALTERNATIVE DEVELOPMENT STANDARDS STUDY IN CONJUNCTION WITH SIEMON AND LARSEN (MR. MESSENGER) AND THEN RETURN TO THE PLANNING AND ZONING COMMISSION WITH THEIR RECOMMENDATIONS AFTER THE COMMUNITY MEETINGS.

MOTION SECONDED BY MRS. MURRAY.

MS. MARKIN ASKED THAT THE MOTION BE AMENDED TO INCLUDE THAT STAFF SPECIFICALLY DEAL WITH THE SEPARATION OF THE R-B DISTRICT INTO SMALLER DISTRICTS.

THIS AMENDMENT WAS ACCEPTABLE TO THE MAKER AND SECONDER. MOTION CARRIED UNANIMOUSLY.

STUDY ITEM 2. PROPOSED ALTERNATIVE DEVELOPMENT STANDARDS TO BE ADMINISTERED BY THE LANDMARK COMMISSION.

Let the record show that there was no discussion relative to Study Item 2 as it was apparent that it was to be considered at the same time as study Item 1, after the Community meetings.

ADDITIONAL PUBLIC COMMENT:

Mr. McLendon (Former Town Councilman): Stated that it bothers him that the Town Council is being chastised for approving too many variances. He commented that he would like to see the R-B district subdivided.

Councilman Kleid, 2660 South Ocean Boulevard: Believed that hearing from the community first was the right approach. Agrees that the R-B District subdivision must be addressed. With regard to variances, he commented that he finds it difficult, as a Town Councilman and a lawyer, to grant variances when “undue hardship” has not been proven, essentially “illegal” variances. He stated that the Zoning Code has placed the Town Council at a disadvantage when they are required to vote for variances which are not legally defensible. “To continue the variances to be purely based on undue hardship creates a moral and legal dilemma.”

Town Council President Bill Brooks, 240 Seabreeze Avenue: Agreed with Mr. Kleid. The commission is moving in the right direction. Practical difficulty standards should be studied, along with an evaluation of the R-B district. “One size fits all has not been working.”

Leslie Shaw: Stated that he was distraught by the whole presentation. The R-B district, and subdivision of that district, has been a concern for many years, and he suspected that very little would be accomplished this zoning season due to the time involved to effect change. He felt that the alternative development standards openly invite architects to come to ARCOM with larger homes. He recommended that the first and most important step to be accomplished is to subdivide the R-B district and do it as fast as possible.

David Barton: Stated his concern about such reliance upon the upcoming community meetings. He felt that community meetings always fail because people are not properly briefed about the long-term interests of the town, and that staff will be disappointed if they rely on the meetings as a source of wisdom. The maximization study revealed that Town Councils have “acted as developers by allowing this zoning to go where it is.” The character of Palm Beach will change if it is allowed to continue.

STUDY ITEM 3. Proposed regulations for basements and sub-basements to allow their footprint outside the footprint of the building above.

Staff believes that some portion of a basement or sub-basement should be allowed to be outside the footprint of the first floor above the basement or sub-basement provided that it does not create the appearance of more building or burden a neighboring property owner, and provided it is not visible. Staff also recommended four conditions to accomplish this goal as found on Page 38 of the Zoning Proposal Staff Report 2005/2006. Possible uses of the basement area might be for a movie theatre, wine cellar, recreation room, etc., but it could not be used for bedrooms because of egress requirements. Mr. Castro acknowledged that this proposed code change is staff driven to provide more flexibility in the code without losing the intent of the code.

Ms. Markin questioned whether there are any engineering requirements involved here, especially considering situations where blasting may be required in an area where more than one property is located over a coral reef. Mr. Castro responded that the Building Department reviews the soil test and considers what kind of damage might occur to neighboring properties. Such provisions already exist in the Building Code.

MOTION BY MR. BELL TO APPROVE THE STAFF’S RECOMMENDATION AS LISTED ON PAGES 39-41 OF THE ZONING PROPOSAL STAFF REPORT 2005/2006.

MOTION SECONDED BY MR. SCHULER.

MOTION CARRIED UNANIMOUSLY.

STUDY ITEM 4. Proposed Lake Trail regulations for a scenic vista and wall height.

Mr. Castro stated that this proposal was initiated by the Town Council to create a scenic vista on the Lake and to allow the increase of the height of walls on the east side of the Trail. Currently, the code only allows four foot high walls or fences within 25 feet east of Lake Trail. Staff has a concern about the resulting appearance of higher walls, i.e, the canyon effect of taller walls on the east side of the Trail. Staff has recommended that if the wall will be higher than four feet, the wall would have to be inset a minimum of 3 feet, and a minimum 3 ft. high hedge be planted in front of the wall to soften the effect of the wall. The second part of the proposal is to create a scenic vista along the Lake Trail by creating certain landscape restrictions applying to the west side of the Trail. Staff's suggested landscape restrictions are found on Page 43 of the Zoning Proposal Staff Report 2005/2006.

Mrs. Murray asked Mr. Castro to confirm that there is no height limitation on the hedges located behind existing four feet high walls on the east side of the Trail. Mr. Castro confirmed same. Mrs. Murray then asked, since high hedges already provide security, whether this proposal was a security or privacy issue. Mr. Castro responded that the walls serve security, privacy and noise buffering functions. Mrs. Murray commented that it has previously been stated that the Lake Trail, with its exotic trees, is what makes the town really different than other communities which also enjoy Lake and Ocean frontage. As such, she advocated retaining the existing trees which overhang the Trail. Mr. Castro clarified that the proposal would regulate what is planted in the future and grandfather what is there today.

Ms. Markin agreed that placing restrictions on landscape material to be planted on the west side of the Trail is a good idea, but was not in favor of allowing six foot high walls on the east side of the Trail. She also advocated increased enforcement to ensure that hedges are present in front of the walls, but Mr. Castro clarified that currently the code does not require planting in front of existing walls, unless it was a condition of a variance. The proposed landscape requirements would only affect newly erected walls.

Ms. Murphy stated that she was likewise not in favor of walls higher than 4 feet, but was in favor of requiring landscaping in front of the walls.

MOTION BY MRS. MURRAY TO RETAIN THE CURRENT PROVISION FOR 4 FOOT HIGH WALLS ON THE LAKE TRAIL (EAST SIDE).

MOTION SECONDED BY MS. MURPHY.

DURING THE ROLL CALL VOTE, IT WAS CLARIFIED THAT THE MOTION INCLUDED ALL OF THE OTHER RECOMMENDATIONS OF THIS STUDY ITEM.

MOTION CARRIED UNANIMOUSLY.

STUDY ITEM 5. Housekeeping item on proposed change of construction time limits for renovation and reconstruction of nonconforming buildings or structures.

Mr. Castro referred to this as a housekeeping item to make the Zoning Code in alignment with the provisions of the recently modified Building Code in this regard, as shown on Page 44 of the Zoning Proposal Staff Report. Ms. Close explained that the time limits have been extended to allow for the new prohibition on Saturday work during the season. Mr. Bell felt that 13 months for restoration of structures of 3,999 sf or less under roof was an insufficient amount of time, especially in consideration of the negative impact of hurricanes on construction. Mr. Robertson stated that he would support the motion to have the Building Code and Zoning Code be consistent, but he is against extending construction times in general because there is too much construction in the Town.

**MOTION BY MR. SCHULER FOR APPROVAL OF STAFF'S RECOMMENDATION.
MOTION SECONDED BY MS. MARKIN.
MOTION CARRIED 6-1, WITH MR. BELL VOTING AGAINST THE MOTION.**

STUDY ITEM 6. Housekeeping item concerning lighting

Mr. Castro explained that this provision was inadvertently eliminated from the Code last year and should be re-inserted. (See Page 46 of the Zoning Proposal Staff Report 2005/2006.

**MOTION BY MR. SCHULER TO ACCEPT STAFF'S RECOMMENDATION.
MOTION SECONDED BY MRS. MURRAY.
MOTION CARRIED UNANIMOUSLY.**

X Any other items:

Mr. Castro stated that the Minutes of the May 16, 2005 and October 6, 2005 meetings of the Planning and Zoning Commission need to be approved.

Mr. Bell raised an objection to relative to the October 6, 2005 Minutes which show that Mr. Robertson, Mr. Bell, Mrs. Murray and Mr. Golboro had "unexcused" absences from that meeting. Mr. Bell thought he recalled that the first meeting of the season was to be at the end of October, not the beginning, and as such, many of the members made other plans and could not attend the meeting, or change their plans in short notice. He requested that, in light of the circumstances, that the absences be changed to "excused". Ms. Close responded that staff will advise the Town Manager of this request, and he will make the final determination. Ms. Close also noted that the zoning season was expanded to begin on October 1st and run through the end of May. She also stated that staff will try to have the zoning calendar for the next zoning season available prior to the end of the current zoning season to provide adequate notice.

Mrs. Murray and Mr. Robertson agreed with Mr. Bell and supported his request for the change in the minutes.

MOTION BY MS. MURPHY TO APPROVE THE OCTOBER 6, 2005 MINUTES, WITH THE RECOMMENDATION TO THE TOWN MANAGER TO CHANGE THE AFOREMENTIONED ABSENCES TO “EXCUSED”.

MOTION SECONDED BY MR. BROBERG.

MOTION CARRIED UNANIMOUSLY, WITH MR. ROBERTSON NOTING THAT HE WAS APPROVING THE CHANGE OF THE CLASSIFICATION OF THE ABSENCES, BUT COULD NOT VOTE TO APPROVE THE MINUTES AS HE DID NOT ATTEND THE MEETING.

At this point there was some discussion relative to the upcoming community meetings relative to the R-B district. Mrs. Murray asked that staff come prepared with some examples to spur the discussion at each of the tables. Ms. Close responded that staff could accommodate that request. Mr. Broberg suggested that the residents be told that 90% of the houses in the north end are non-conforming, and then ask the question whether they want to perpetuate what the zoning code has allowed or not.

Ms. Murphy mentioned that at a prior meeting she had requested that the maximization study be displayed in the Town Council Chambers. Ms. Close will check with the Town Manager relative to this, and the study will be posted at the community meetings.

Ms. Murphy also suggested that perhaps the Town should consider hiring a nationally recognized planner, like those used in other communities, to assist the Town in the next five years. Recently, she had spoken to such an individual, Alex Garvin, formerly a consultant with the Civic Association, who is well versed regarding the problems of the north end.

At this point, Ms. Markin initiated a review of several of the upcoming meeting dates.

Mr. Robertson asked Mr. Randolph if there have been court cases relative to the practical difficulty standard. Mr. Randolph will research this subject, especially with regard whether it is legally sustainable.

Ms. Markin asked staff whether the number of variances granted can be separated as to whether they pertain to non-conforming lots or do not pertain to non-conforming lots. Mr. Randolph felt it would be advisable to distinguish whether the variances pertained to new construction or renovations. He recommended that if alternative development standards are pursued, that they deal with non-conformities and renovations of existing lots as opposed to new buildings on new lots. Ms. Markin reiterated that she would be interested in knowing how many variances were granted for new construction. Ms. Close stated that staff will be able to provide that information.

Mr. Castro reminded the Commission that the May 16, 2005 minutes need to be approved.

MOTION BY MS. MARKIN FOR APPROVAL OF THE MAY 16, 2005 MINUTES.

MOTION SECONDED BY MRS. MURRAY.

MOTION CARRIED UNANIMOUSLY.

XI Adjournment:

MOTION BY MR. SCHULER TO ADJOURN THE MEETING AT 12:30 P.M.

MOTION SECONDED BY MS. MURPHY.

MOTION CARRIED UNANIMOUSLY.

The next meeting of the Planning and Zoning Commission will be held on Thursday, December 15, 2005 at 9:30 a.m.

Respectfully submitted,

**Harrison Robertson, Chairman
Town of Palm Beach
Planning and Zoning Commission**

**Lowry Bell, Secretary
Town of Palm Beach
Planning and Zoning Commission**

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