

RECORD AND REPORT
PLANNING AND ZONING COMMISSION
2004-2005 ZONING HEARINGS
Tuesday, April 19, 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
 Joanna Golino, Secretary
 Lowry M. Bell, Member
 Peter S. Broberg, Member (arrived at 9:35 a.m.)
 Nancy M. Murray, Member
 Elizabeth S. Murphy, Member
 Susan Markin, Member
 John Schuler, Alternate Member
 Stanley G. Mortimer III, Alternate Member
 John C. Randolph, Town Attorney
 Robert L. Moore, Director of Planning, Zoning & Building
 Veronica Close, Asst. 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)

RECORDING SECRETARY: Cynthia M. Delp

II Pledge of Allegiance

Mr. Moore stated, for the record, that Mr. Golboro was in Washington, D.C. on an excused absence.

III Procedures for Input by the General Public:

Mr. Robertson stated that members of the public will be allowed to speak for three minutes on any matter that comes before the commission today. Generally, the public is asked to withhold comments until after the staff presentations. Today, however, Mr. David Barton requested to be heard at this time, which was permitted by the chairman.

Mr. David Barton, Jamaica Lane, offered his remarks. He stated that notification to neighbors regarding the plan to alleviate overbuilding on the streets should be addressed now, not later. He felt it is crucial that the residents understand the concept of the neighborhood indexing and what is about to happen on their streets. He asked staff why entire streets (not just 200 feet) cannot be notified now.

Mr. Castro responded that staff plans to notify the residents prior to the beginning of the next zoning season. Residents will have the opportunity to attend some workshop-type meetings, as well as Planning and Zoning Commission meetings to discuss the impact of the proposal when completed. At this moment in time, staff is working with a concept only, not a completed proposal. Staff is prepared to notify all of the residents within the R-B district who will be impacted by neighborhood indexing.

Mr. Barton referred to a project on Tradewind Drive which was recently heard at ARCOM. It was his opinion that it is not sufficient to notice neighbors within 200 feet, but that neighbors on an entire street should be notified. Staff responded that such a change would require an ordinance change, and meetings of the Ordinance, Rules and Standards Committee, the Town Council and the Architectural Commission. Mr. Barton asked the Planning and Zoning Commission to push for such a change. He stated that the town is being overbuilt, and residents on a given street do not realize what is going to be built on their streets “until the bulldozers show up.”

Mrs. Golino suggested that perhaps it would be advisable to establish consistency within the code, between the 400 (as suggested) linear feet involvement for the neighborhood index and the ARCOM notifications (currently residents within a 200 ft. radius). Mrs. Golino stated that it seems reasonable to her that “if you’re going to be affected by it, you should be noticed by it.”

Mr. Barton was not satisfied with notifications within a certain number of feet. He called for all the residents on a given street to be notified. Mr. Castro responded that the notice provisions for variances, special exceptions and site plan reviews were increased from a 200 ft. radius to a 300 ft. radius several years ago. The ARCOM notice provisions (within a 200 ft. radius) have been in place for quite some time. Changing those notice provisions is a Town Council policy decision, not a staff decision. Mr. Barton again asked the Planning and Zoning Commission to recommend such a change. Mr. Robertson remarked that Mr. Barton’s point is noted by the commission, and they will take it under advisement.

Ms. Markin commented that at the last meeting, invoking zoning in progress was suggested. In fact, the Town Council is planning to invoke zoning in progress at their November 8, 2005 meeting. Ms. Markin was concerned that between now and then, developers will rush to get their projects approved to avoid the restrictions incumbent with zoning in progress. Mr. Moore responded that since this was announced, there has not been a flood of applications for new homes. Mr. Randolph added that the Planning and Zoning Commission could recommend that zoning in progress be invoked prior to November. Ms. Markin was in favor of establishing zoning in progress immediately. Mr. Moore responded that when zoning in progress is put in place, there must be definitive guidelines established to provide to applicants, along with a process in place for seeking a waiver. At this point, staff does not have such guidelines available, and needs the summer to establish same. Mr. Randolph commented that he thought the motion made relative to the neighborhood indexing (from the previous meeting) was definitive enough to allow zoning in progress to be declared sooner.

Mr. Castro stated that part of the administrative work that needs to be done involves a Request for Proposals for an architect to oversee and evaluate the projects. Staff is also concerned about projects which are well under way as to planning and architectural rendering. He noted that staff is still unclear as to when the neighborhood index would “kick in;” would it apply only to major additions or renovations, or even to small ones. These are just some of the considerations which need to be addressed during the summer months, so that by the fall, everything is in place to move forward with an objective and equitable procedure for all.

Mr. Bell inquired whether there would be public hearings on the matter. Mr. Castro replied affirmatively, stating that it is important to involve the community and advertise/notice the public sufficiently in advance of placing zoning in progress for the neighborhood indexing into effect.

Mr. Schuler asked whether the architect has been hired yet. Mr. Castro responded that a Request for Proposals must be issued for the architect. Through the competitive negotiation process, an architectural firm will be hired to work for the Town to provide peer review of certain development applications, and to be able to testify in the event of any appeals. The architect’s services would be paid by the applicant, rather than the Town. This peer review would occur prior to an application being heard at the Town Council or at ARCOM to ensure that the CCR’s represented by the architect are correct.

Mrs. Golino believed that the neighborhood index had already been discussed by the Planning and Zoning Commission at length. She felt it was well noticed and advertised in the *Shiny Sheet*, and had been discussed at the Town Council. As such, she disagreed that the public has not been notified. She thought that there has not been, perhaps, an anticipated outcry about the neighborhood index proposal because people are thrilled that finally there is a proposal and a passed motion to take definitive action.

Secondly, Mrs. Golino wondered if the staff’s administrative concerns could be addressed more quickly and efficiently if the neighborhood index was based on the FAR rather than the CCR.

She stated that if it was based on the FAR, it might not be necessary to hire the architect to review the applications. Applicants would know immediately, based on the property appraiser's records, how much they could build with 10% more. Using the FAR would be simpler and easier for applicants, and easier for staff to administrate. Mr. Moore stated that staff can look at this simpler concept, but noted that it does not take care of massing issues. Mrs. Golino acknowledged that some regulations for height would have to be put in place.

Let the record show that the commission had been provided with copies of letters from Alec Flamm and Ralph Del Deo relative to proposed zoning changes in the north end, and associated property values.

Mr. Broberg asked Mr. Randolph if the neighborhood index is enacted, and an increase of 10% in square footage becomes allowable, and that reduces the value of someone's property, does that trigger the Bert Harris Act. Mr. Randolph responded that such a situation is the type of condition which might prompt legal action based on the Bert Harris Act. He cautioned the Planning and Zoning Commission to be aware of the Bert Harris Act, not afraid of it, because the Town has a good zoning ordinance.

Ms. Markin returned to the subject of an earlier establishment of zoning in progress. While she respected staff's administrative concerns and restraints, she commented that these should not prevent the commission from taking appropriate action, even if the timetable is uncomfortable for staff. She felt that applicants should not be permitted to continue to submit their projects which fly in the face of the zoning changes contemplated.

Mr. Randolph commented that this could be handled a number of ways, with a building moratorium being the most severe. He explained that zoning in progress is declared so that when a study is being done, and the public is aware of it, applicants should not be permitted to ruin the effects of the study by making applications under current zoning which are to the detriment of what is being planned. The timing of the zoning in progress declaration is a policy decision, but the longer it is put off, the greater is the risk of the town's plans being hampered. When zoning in progress is declared, applicants can still build, but their projects must be built conforming to certain parameters established with the zoning in progress.

Mr. Robertson stated those parameters have not yet been established. Mr. Randolph, on the contrary, thought they had been established in the discussions and motion for the neighborhood index. In fact, Mr. Randolph read some of the parameters from a document supplied by Mr. Brisson: "Using the average of the existing CCR's for homes on both sides of the street...now, you don't have that average yet, I guess, and maybe that's Paul's concern...within 400 feet of the subject property. For properties located along the west sides, North Lake Way, and North Ocean Boulevard, the average will be computed only using those properties on the west side of the street. So, that's a problem that you don't have those, but...It says the maximum CCR allowable will be the greater of 110 % of the average, or 3.00. The maximum allowable CCR, in any instance, will be 4.5. Existing properties with CCR's of less than 4.5 will be considered conforming to the CCR limitations, etc." He felt these were specific enough to allow the

creation of parameters to allow people to build during the study period.

Mr. Robertson commented that it seems that Mr. Randolph is encouraging declaring zoning in progress. Mr. Randolph stated that he made these comments in response to Ms. Markin's earlier remarks. He stated that when the public is told that regulations will change, action should be taken to avoid a flood of applications being submitted trying to beat the new regulations. He stated that applications submitted prior to declaration of zoning in progress would not be affected by the zoning in progress because they are considered grandfathered in.

Mr. Bell asked how many applications are in now. Mr. Moore did not know the number, but reported that the plan reviewers have not indicated any sort of increase in applications. He noted that approximately 25 new homes are permitted each year, but there are also many permits issued for additions and remodels. Mr. Bell stated his concern about making zoning changes when many people are out of town. Mr. Moore acknowledged that giving ample notice was one of the reasons that the zoning in progress was tentatively scheduled for November. The other reason is that staff needs additional time. Mr. Moore invited the commission to recommend whatever time schedule they choose to the Town Council, and staff will get the work done, but it may require hiring additional staff.

Ms. Murphy stated she was likewise concerned about what could happen before November. Parameters seem to be available per a previous motion, but the drawback is that the average CCR information is not yet available. She supported Mrs. Golino's earlier suggestion to explore using the FAR instead of the CCR, together with keeping height restrictions. This would mean that no RFP would need to be done for an architect. She asked the other members if they too were interested in changing the recommendation to the Town Council.

Mr. Schuler agreed that it would be wise to declare zoning in progress earlier than November. Mrs. Murray commented that if the CCR is a problem, then a switch to the FAR would be better, along with keeping the existing height recommendations in place.

MOTION BY MS. MURPHY THAT WE RECOMMEND TO THE TOWN COUNCIL ALL THE PARAMETERS FROM THE PRIOR MOTION (FROM THE MARCH 29, 2005 MEETING) WITH THE EXCEPTION THAT IT WILL NOT BE BASED ON THE CUBIC CONTENT RATIO (CCR), BUT WOULD BE BASED ON FLOOR AREA RATIO (FAR), WITH ZONING IN PROGRESS TO BE EFFECTIVE JUNE 1, 2005.

MOTION SECONDED BY MS. MARKIN.

Under discussion, Mrs. Golino questioned whether the commission was able to vote on such a motion due to notice requirements. Mr. Moore responded that it had not been advertised. Mr. Moore asked what percentage of increase was being recommended by the commission. Mrs. Golino answered that it would be 10% above the neighborhood average. She noted that using the FAR, which is more lenient, will allow applicants to get a larger house. Mr. Bell objected to the 10% increase as he thought that was too small to allow people to add on a two car garage, for

example.

Mr. Brisson reminded the members that they originally chose to go with the CCR as a more sophisticated approach. He stated that when you limit the FAR, you limit the size of the house. With the CCR, however, the person has the flexibility of choosing floor area or ceiling height. More floor area means lower ceiling heights, and vice versa, but using the CCR for the calculations does not directly reduce the size of the home. Secondly, the FAR does not address mass and bulk. It addresses the footprint and floor area and allows maximum heights. Mr. Brisson was concerned that while it may be easier to calculate an average FAR, the end result may not be what the commission is looking for when it is coupled with a 10% increase and maximum heights.

Mr. Randolph was concerned about the lack of notice to the public relative to the proposed motion.

Ms. Murphy re-stated her concern about staying the zoning in progress until November. She remarked that the FAR information is available right now, and recommended that it be adopted as a temporary measure, and that zoning in progress be declared as of June 1, 2005. Bert Harris attacks could be avoided, she felt, as a result of this being done only as a temporary measure which is subject to staff review of the effect of the FAR. She advocated doing this to “stay” the summer activity.

Ms. Markin commented that the purpose of instituting zoning in progress is to “thwart off people who are going to try to get in under the wire.” If people do not want to be governed by the zoning in progress regulations, they have the opportunity to wait until the regulations are changed. The purpose is to ward off overbuilding until the fall, when the regulations are changed. She felt, like Mr. Barton, that many people do not know about this yet, and anticipated that many applications would be filed when they become aware.

Mr. Schuler responded to Mr. Brisson’s earlier remarks about not knowing the result of using the FAR, instead of CCR. Mr. Brisson said everyone will go to the maximum height with the FAR. Mr. Schuler thought that ARCOM could control that. Mr. Schuler commented that the architecture of some homes in Palm Beach has been ruined because the CCR does not allow people to achieve the ceiling heights that they want. Mr. Randolph responded that ARCOM can only restrict height on the basis of architecture, and they cannot require less CCR than is allowed under the zoning ordinance.

It was noted that there was a motion on the floor which was seconded. Mrs. Golino again asked if the commission could vote on that motion. Mr. Randolph responded that the motion was legal, and the motion is only a recommendation to the Town Council. He suggested that the motion might be separated into one related to the zoning in progress and the other for substituting the FAR.

Mrs. Golino referred to the motion made last month; that it required that the CCR be calculated

by someone else, not staff. In light of time constraints and in the interim until fall, she felt that staff could perform the same service that the architect was to perform. Mr. Moore stated that while staff can do the math, staff wanted a registered architect to serve as an independent authority who could testify, if necessary, as an expert if the Town is challenged.

Councilman Norman Goldblum appreciated the discussion. He reminded the commission, as he had stated at the last meeting, that he will not approve any variance unless hardship exists. He has also informed staff to tell applicants that if they need a variance, they might want to wait until after November to make the request. So, if the commission is worrying about an influx of applications, he felt it was unnecessary because applicants know that they must present evidence of hardship in order to obtain a variance.

Mr. Broberg asked Mr. Moore if surveying the north end to see what is on the ground, and then changing the code to accommodate what is on the ground, is still on staff's to-do list. When this is accomplished, Mr. Broberg stated that the number of variance requests will be greatly reduced. Mr. Moore acknowledged that it is one of staff's projects, and will take some time. While Mr. Moore had the floor, he re-stated that changing from CCR to FAR has not been noticed to the public, and deferred the legalities to Mr. Randolph.

Ms. Murphy inquired whether there was adequate time to notice the public for the May Planning and Zoning Commission meeting date. Mr. Randolph was not sure whether staff could get the advertising done in time, but he stated that the commission is not legally precluded from changing the CCR to the FAR, as this is just an item for study. He noted, however, that if they were to do this today, it would be adverse to their past practices, which has always allowed for public comment. Again, he suggested that the issues listed in the motion be separated into two motions. Mr. Randolph deferred to Mr. Castro for the advertising requirements.

Mr. Castro responded that the advertising could be done, but the Town Council would need to meet between the May meeting date and June 1, 2005. It was suggested that the June 1 date be changed to June 14th, the date of the regular Town Council meeting.

Ms. Markin thanked the Town Council for holding the line on variances. She was less concerned about variances than about applicants trying to get in under the wire before the regulations change.

Mrs. Murray reminded the commissioners, while considering zoning in progress issues, to recall that the 2003 new home study, from a previous meeting, revealed many homes which were considered too large even though they were under the maximum 4.0 CCR.

Mrs. Golino reconsidered that while it may make more sense to use the FAR, it might be wise to proceed with the CCR, per the motion last month, to invoke zoning in progress in June, and then ask staff to study using the FAR instead. While the CCR is a more sophisticated tool which also addresses mass, Mrs. Golino commented that the commission does not want to make the code so complex that the town needs to hire expert upon expert to interpret it. Moving forward with the

CCR at this time will allow the zoning in progress to be established sooner.

Mr. Brisson agreed that it would be better to proceed with the CCR because there are unknown parameters of minimums and maximums with the FAR. He also agreed that staff could study the option of substituting the CCR with the FAR for the future.

Mr. Moore addressed Mr. Bell's earlier comment about a 10% increase being insufficient to add a garage. He stated that staff is looking at giving some credit for garages due to the code requirement for two-car garages. As such, the interior space would not be penalized because a garage is needed.

MOTION AMENDED BY MS. MURPHY TO MOVE FORWARD WITH THE PLANNING AND ZONING COMMISSION'S RECOMMENDATION (FROM THE MARCH 29, 2005 MEETING) WITH THE STIPULATED PARAMETERS, AND TO DECLARE ZONING IN PROGRESS EFFECTIVE JUNE 1, 2005 USING THE CCR AVERAGE, AND TO ASK TOWN STAFF TO ACT AS PEER ARCHITECT UNTIL THE REQUEST FOR PROPOSALS HAS TAKEN PLACE AND THE INDEPENDENT PEER ARCHITECT HAS BEEN SELECTED.

MOTION SECONDED BY MS. MARKIN.

MOTION CARRIED 5-2, WITH MESSRS. BROBERG AND BELL VOTING AGAINST THE MOTION.

Mr. Broberg stated that he voted against the motion because he felt that the real problem is identifying what is on the land and changing the codes to accommodate that to alleviate variance requests. He also thought the 50% by volume rule is a large part of the problem which causes people to tear down and rebuild because they don't want to comply with that rule.

Mr. Bell stated that he voted against the motion because he feels that a 10% increase is too low and he thought it would be better to wait until November, rather than forcing the issue now.

IV Approval of the March 29, 2005 Planning and Zoning Commission Record and Report, on the Siemon and Larsen Report and Phase III Study Items

Mr. Castro explained that since the minutes were mailed, one typographical error was corrected, and Ms. Murphy's comments on Page 22 were clarified. Ms. Murphy agreed to the change.

MOTION BY MR. BELL FOR APPROVAL OF THE RECORD AND REPORT.

MOTION SECONDED BY MS. MARKIN.

MOTION CARRIED UNANIMOUSLY.

V Staff Presentation of the 2004-2005 Zoning Season (Ordinance #1-05 and 2-05)

Staff had previously distributed copies of the ordinances to the commission for review. Mr.

Castro explained, with regard to Ordinance #1-05, that the Planning and Zoning Commission had recommended that the perimeter landscaping not be implemented, but the Town Council superceded adopting the recommendation that 50% of the landscaping be located within 10 feet of the property line. Ordinance #2-05 codified the timing for renovations or reconstructions of non-conforming buildings, uses and structures, and handled other housekeeping items.

Another major topic discussed during the 2004-2005 zoning season concerns the neighborhood street by street with the CCR. This was recommended by the Planning and Zoning Commission and recommended to the Town Council. The Town Council authorized staff to study it. Staff will also look at creating separate zoning districts over a two year period, will look at alternative design guidelines, and making certain code changes so that some situations which now require a variance, i.e., "favorable variances" will no longer require same. Lastly, the intersection vision requirements presentation, already given to the Planning and Zoning Commission, will be discussed at the April 25, 2005 Town Council meeting, together with discussion relative to moving on to the next phase, the implementation process, and determining whether implementation would be retroactive, or based on new construction and major renovations. This subject will return to the Planning and Zoning Commission next year.

VI Comments Regarding Next Year's Study Items

Mr. Castro explained that staff is currently in and is approaching yet another very busy zoning season, having to deal with many technical aspects of the code. If the Town Council recommends the street by street index, staff will be greatly impacted. As such, staff recommended that they be allowed to proceed work on these major study items, but requested that little other than housekeeping matters be added to staff's workload.

VII Any Other Items

Mr. Mortimer asked whether anyone will be studying the economic impact, the effect on valuation of property, as a result of the neighborhood zoning. Mr. Castro responded that staff is moving forward to make rational and reasonable recommendations to place the Town's zoning regulations in line with the neighborhood mass, scale and character, regardless of economic issues. Mrs. Golino stated that nothing precludes the commission members from studying economic impact on an individual basis. She recommended against hiring an appraiser to study this subject.

Mrs. Golino noted that the eight planning areas are a subject for discussion at the next meeting of the Planning and Zoning Commission.

Mrs. Murray suggested that the 50% rule be studied, along with the neighborhood CCR.

Staff noted that the next meeting of the Planning and Zoning Commission will be held on Monday, May 16, 2005. (It had been previously shown as May 19, 2005 on a document, but Ms. Close took this opportunity to correct that error.) On May 16, 2005, the eight planning areas will

be discussed and the EAR review will take place.

Mr. Frank stated that the eight planning areas have been shown in the Comprehensive Plan since the 70's. They do not represent zoning districts or neighborhoods, but are planning areas. To date, there have been no sound arguments made to change the planning areas. The advantage in keeping them the same is that data exists for the eight planning areas which can be compared on a historical basis. On the other hand, if a sound reason is presented to change them, this can certainly be done. Mr. Frank invited the members to contact him, even in advance of the next meeting, relative to ideas for changing the planning areas.

Mr. Brisson stated that prior to the May 16, 2005 meeting, staff will develop a preliminary list of what staff perceives as locally important issues by examining the existing Strategic Plan, and adding other planning concerns to the preliminary list. Staff will provide that preliminary list to the members prior to the meeting. Members will be asked to suggest any other issues which they feel are locally important issues to be considered in the Comp Plan update. Mr. Brisson clarified that on May 16, 2005, the commission will not be looking at the goals and objectives of the plan, as that will be handled at a later date.

Like Mrs. Murray, Mr. Broberg asked that the 50% by volume rule be studied in conjunction with the neighborhood index. Mr. Broberg asked that staff study either eliminating the 50% rule as it encourages tear downs, or increasing the percentage to something more reasonable.

Ms. Murphy commented regarding the financial impact of the neighborhood index. She hoped that the neighborhood index and the other changes suggested by the Planning and Zoning Commission work to greatly improve property values. She noted that the Preservation Foundation will be presenting a seminar on design, and will be bringing in design experts from other cities. The Preservation Foundation has requested the participation of the Planning and Zoning Commission at the seminar. Ms. Murphy recommended to the Preservation Foundation that the Architectural Commission and the Landmarks Preservation Commission be likewise involved so the three commissions could participate on an active level.

Ms. Markin noted, as a north end resident, there are at least a dozen homes which are not being cared for, and have the "appearance of a junk yard." This works to de-value property. She questioned what the assurance is that town residential properties will be maintained. Ms. Close responded that code compliance, now more pro-active, would handle these issues, and asked Ms. Markin to provide staff with a list of the addresses in violation. Ms. Close stated that currently the town does not have a minimum housing standard. Ms. Markin suggested that a minimum housing standard be considered for the town, and promised to follow up with code compliance relative to the houses which are not in good condition.

Secondly, Ms. Markin asked how it can be permissible to have a truck parked in a parking lot which acts as a billboard advertisement for a business. Mr. Castro responded that this is both a code compliance and a zoning issue. He felt he knew the case to which Ms. Markin was referring, and reported that the owner of the truck has been notified that the truck can be there in

the daytime, but not in the evening. The Town has required that the truck be moved off island after hours. Ms. Close noted that if the code is insufficient in this regard, it may have to changed to address the concept of portable billboards.

VIII Adjournment

MOTION BY MR. BELL TO ADJOURN THE MEETING AT 11:20 a.m.

MOTION SECONDED BY MS. MURPHY.

MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,

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

**Joanna Golino, Secretary
Town of Palm Beach
Planning and Zoning Commission**

cmd