

RECORD AND REPORT
PLANNING AND ZONING COMMISSION
2005-2006 ZONING HEARINGS
Thursday, March 23, 2006 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 9:34 a.m.

PRESENT: Harrison M. Robertson, Chairman
 Lowry M. Bell, Jr., Secretary
 Nancy M. Murray, Member
 Elizabeth S. Murphy, Member
 John Schuler, Member
 Alan S. Golboro, Member
 William M. Guttman, Alternate Member (Voting Member today)
 Walter Anthony Dowell, Alternate Member
 Leslie A. Shaw, Alternate Member
 John C. Randolph, Town Attorney
 Veronica Close, Director of Planning, Zoning & Building
 Paul W. Castro, Zoning Administrator
 William F. Brisson, Brisson Planning Solutions (Zoning Consultant)

ABSENT: Harrison M. Robertson, Chairman (Unexcused for p.m. session*)
 Peter S. Broberg, Member (Unexcused)

RECORDING SECRETARY: Cynthia M. Delp

II INVOCATION AND PLEDGE OF ALLEGIANCE: By Mrs. Delp

III CONSENT AGENDA

A. MINUTES, FEBRUARY 16, 2006
 APPROVAL OF THE MINUTES OF THE PLANNING AND ZONING
 COMMISSION MEETING

MOTION BY MR. GOLBORO FOR APPROVAL OF THE MINUTES.
MOTION SECONDED BY MR. SCHULER.
MOTION CARRIED UNANIMOUSLY.

IV REGULAR AGENDA

A. Old Business.

1. Consideration of the Report on Alternative Development Standards by Siemon and Larsen, P.A. and Staff's Report on the Proposal.
- 2, Consideration of the Staff Report on the Practical Difficulties Test

Mr. Robertson noted his preference to discuss the Practical Difficulties Test first. Ms. Close acknowledged this request and began with her opening remarks. She stated that the purpose of discussing both of these regulations is to respond to the desires of the community, as expressed in variance applications, to try to reduce the workload of the Town Council, and to provide legally defensible Town Council approvals. She listed the subjects which have been on staff's workload this season, i.e., the Neighborhood Index CCR, review of the R-B district, Alternative Development Standards, Practical Difficulties and Special Exception studies. Three of those items are being presented today. Ms. Close explained that in the zoning season of 2004/2005, the staff prepared a report relative to Alternative Development Standards and Practical Difficulties. Siemon and Larsen also presented a report to the Town Council relative to development review applications. Siemon and Larsen was also contracted by the Town Council to present a study of Alternative Development Standards which was done in November of 2005. At that time, the Planning and Zoning Commission took no action, preferring to wait until after the Community Meetings.

Ms. Close summarized staff's recommendations as follows:

1. Continue to study the various zoning districts to determine if the present code should be modified to reflect the existing built environment which most find acceptable.
2. Consider using Alternative Development Standards, but only on a limited basis, so unintended consequences are minimized, and unanticipated problems can be observed. Staff will be able to assess this limited use of alternative development standards on the community and monitor the workload involved. Results of possible court challenges may be assessed as well. "By employing alternative development standards in a limited manner, we can address the more frequent of our variance approvals that have the most consistent reasons for approval....by looking at setbacks, walls, fences, and cul de sacs, we have addressed 43% of the variances that come before the Council." Staff also believes that some variances should remain variances.
3. Staff recommends that code amendments be done for the point of measurement issue at the dune, the lake, and for FEMA requirements.
4. Staff recommends AGAINST the approval of Practical Difficulties at this time.
5. Staff recommends the retention of the existing variance procedure with the possibility of requiring a super-majority (a four-fifths vote of the Town Council required for approval.)

6. As a general policy, staff would always be in favor of addressing these issues by making code amendments rather than employing Alternative Development Standards or Practical Difficulties.

Ms. Close asked for the feedback of the commission so this information can be taken to the Town Council in the form of recommendations. Subsequent to Town Council review, staff would prepare an ordinance for the Town Council's further review.

Mr. Robertson commented that the Planning and Zoning Commission should take action within this zoning season to resolve the problem with variances. He recommended that the existing code be retained to apply to new construction. For reconstruction and remodels, however, he felt that the "undue hardship" provision should be eliminated, substituting the Practical Difficulties Test rather than Alternative Development Standards. Mr. Robertson was not in favor of Alternative Development Standards as he felt they will "clutter up" an already complex code.

Mr. Guttman stated that he hoped that the Planning and Zoning Commission would not be known as the "do nothing" commission. His opinion was that staff did not provide any workable staff proposals today with details covering Alternative Development Standards. He did not feel that the Town Council wants to postpone implementation of a Practical Difficulties Test while the staff "fiddles" with a set of Alternative Development Standards that it prefers. He stated that 80% of the variances requested are for existing homes. Mr. Guttman felt that the commission should do everything they can to protect the character of the community by encouraging modifications to existing homes which do not meet the "undue hardship" test, whether through a set of Alternative Development Standards or through a Practical Difficulties Test. He felt that the Town Council is anxious for relief from the requirements of the "undue hardship" test. Mr. Guttman thought the commission should recommend that the Town Council adopt the Practical Difficulties test (draft as distributed today), with a sunset provision, and with an additional category for which the "undue hardship" would still apply. This would allow the Practical Difficulties Test to be in place to regulate proposed changes to existing homes, while Alternative Development Standards are simultaneously developed. Mr. Guttman was not in favor of staff's recommendation for a super majority vote of the Town Council, commenting that it was undemocratic and "almost insulting".

MOTION BY MR. GUTTMAN TO RECOMMEND THE PRACTICAL DIFFICULTIES TEST (AS DISTRIBUTED THIS A.M. BY MR. GUTTMAN) FOR ADOPTION BY THE TOWN COUNCIL, AND ADDING THAT THE STAFF, IN DUE COURSE, IS TO BRING TO THE PLANNING AND ZONING COMMISSION A SET OF ITERATIVE ALTERNATIVE DEVELOPMENT STANDARDS BEGINNING NEXT SEASON, AND THAT AS ALTERNATIVE DEVELOPMENT STANDARDS ARE ADOPTED IN THE FUTURE, THE SCOPE AND IMPACT OF THE PRACTICAL DIFFICULTIES TEST WOULD BEGIN TO FADE AWAY.

MR. ROBERTSON STATED HE WOULD SECOND THE MOTION, BUT MR. RANDOLPH INTERJECTED THAT MR. ROBERTSON WOULD HAVE TO PASS THE

GAVEL TO SECOND THE MOTION.

Mr. Randolph advised the commission that this is a public hearing, and the public has not yet been given an opportunity to speak relative to this issue. Nor has Mr. Randolph, staff, or the other commission members had the opportunity to review the Practical Difficulties Test which was distributed this morning by Mr. Guttman. Mr. Randolph advised that normally, before motions are made, the commission hears from the public and staff, but Mr. Robertson can pass the gavel and second the motion. Mr. Guttman responded that there were no substantial changes in this morning's draft of the Practical Difficulties Test, except for some additional language which was added to ensure that the Bert Harris Act would not be implicated.

Mr. Bell commented that he has not been able to read the Practical Difficulties Test which was distributed this morning, and would prefer to wait till later in the meeting to take action in the form of a motion. Mr. Guttman advocated, at this point, that Mr. Brisson and Mr. Messenger be permitted to make their presentations prior to acting on the motion.

MR. ROBERTSON CLARIFIED THAT HE HAD NOT YET SECONDED THE MOTION, AND DID NOT PASS THE GAVEL. HE NOTED THAT THE MAKER OF THE MOTION NOW ENCOURAGES FURTHER DISCUSSION ON THE MATTER.

MR. RANDOLPH RESPONDED THAT THE MOTION WILL, THEN, DIE FOR LACK OF A SECOND.

Ms. Close stated that staff is happy to have the opportunity to comment relative to the Practical Difficulties Test prior to a motion being made, and deferred to Mr. Brisson for the presentation.

Mr. Bill Brisson, of Brisson Planning Solutions, stated that he has been the zoning consultant to the town for the past 30 years. Before addressing the Practical Difficulties Test, Mr. Brisson wanted to mention that staff intends to offer an alternative to the complex Alternative Development Standards outlined originally by Siemon and Larsen. Mr. Brisson stated that he, personally, favors the Practical Difficulties Test as more flexible than Alternative Development Standards. He noted that both Siemon and Larsen and the Town Attorney have expressed their favor of Alternative Development Standards.

Mr. Brisson referred to Mr. Guttman's proposal which he felt concerns the protection of neighborhoods, and the prevention of any undue impacts on them. He noted that Practical Difficulties not only considers the land, but also the structures on the land as being in a unique situation. Mr. Guttman's proposal is limited to existing development. As such, Practical Difficulties will affect 89% of the variances which are now before the Town Council. Only 11% involve new construction. Though Mr. Brisson favored Practical Difficulties over Alternative Development Standards, Mr. Brisson advocated changing the code before resorting to Practical Difficulties as he feared that using Practical Difficulties in Palm Beach would result in some unintended consequences. He anticipated that under the Practical Difficulties Test, some approvals will be allowed which affect neighbors to a greater degree than is currently allowed, or

is currently being approved. “It is the staff’s position, that it is better to take those steps incrementally, and address most of the variances, rather than the vast majority of them. So in the Alternative Development Standards that we will get into later in greater degree, those twelve instances account for probably 50%, maybe a little bit more percent of all the variances. We’re addressing a large part of them right off the bat.” Staff’s proposal for limited Alternative Development Standards will allow us to see what happens over time; whether they work or not; and, the ability to add more standards as well.

Mr. Brisson cautioned that if the Planning and Zoning Commission recommends the Practical Difficulties Standard, however, staff believes it should only be used in certain situations...only with existing development, and it should not be applied to cubic content, landscaped open space or lot coverage. Those issues (cubic content, landscaped open space and lot coverage) all refer to how large a house can be, and those should be subject to the hardship provision. Other staff recommendations are to use the super majority rule for variance approvals, and to always use Alternative Development Standards before the Practical Difficulties Test, as long as an Alternative Development Standard is available. Mr. Brisson noted that staff’s proposal gives enough substance to allow the commission to make a decision, but does not provide legal ordinance language.

Mr. Bell asked Mr. Brisson to cite examples of the harm to the neighborhoods which might occur under Practical Difficulties. Mr. Brisson could not cite specific problems at this time, but noted that Practical Difficulties would be more flexible than the existing code with Alternative Development Standards.

Mr. Todd Messenger of Siemon and Larsen stated that the consequences of the existing code are known. If an owner cannot get relief from the code for work on an existing home, tearing the house down will become the easy choice. The goal of the Practical Difficulties Test needs to be to protect the neighborhoods and community character. Mr. Messenger believed that Alternative Development Standards are preferable for the town. If the hardship standard is removed in favor of Practical Difficulties, and then at some time in the future, the hardship standard is reactivated, it may present legal problems for the town. If the Practical Difficulties language includes a sunset provision, as has been presented by Mr. Guttman, these legal problems may be a non-issue. Mr. Messenger thought that it was not too large a step to adopt the Practical Difficulties standard since in effect, decisions have been made using this standard for years.

Mr. Shaw commented that the changes in the zoning code over the last several decades have caused the problems we have today. While these changes may have been beneficial, Mr. Shaw felt there was reason for further modifications today. He stated that front yard setbacks typically have little impact on neighbors, but when you start changing side yard and rear yard setbacks, the ability to affect the neighbors increases. He suggested that width of lots be addressed before depth. Mr. Shaw commented that the commission needs to make decisions based on real facts, and recommended that variance applications be pulled to examine how the same conclusion or a better conclusion may have been reached.

Mr. Schuler asked how these proposals affect ARCOM's ability to exercise its powers. Ms. Close responded that staff is proposing, in its suggested Alternative Development Standards, that ARCOM and the Landmarks Preservation Commission play a strong role in implementing the standards, as the standards are not based on objective numbers, but on aesthetics.

Mr. Golboro, as a former developer, questioned whether individual residents will be able to demand Practical Difficulties on new construction too. He voiced his opinion against the temporary use of Practical Difficulties, and voiced his favor of providing the Town Council the ability to say "NO". He noted that developers have the time to try to break the town's codes. Mr. Golboro warned that by removing the hardship provision, the town is opening itself up to major challenge. Mr. Randolph responded that it could be argued by the town that it is in the legitimate public interest to have Practical Difficulties apply only to existing structures and not to vacant land. Of course, there is no way to absolutely prevent a legal challenge by some developer. Mr. Golboro went on to say that the town is facing some major changes (cited Royal Poinciana Plaza and 2875 S. Ocean Blvd.) and he wants the Town Council to have every right to say "NO" in an effort to protect the town and its way of life.

Mr. Guttman stated that the application of the undue hardship test has been very subjective, akin to the Practical Difficulties Test, but without standards. He commented that the town is in worse shape now making these development decisions on a subjective level than if it were to adopt the Practical Difficulties Test which, at least, offers guidelines rooted in some standards. Mr. Guttman stated that if ARCOM becomes the decision maker for Alternative Development Standards, staff will be overwhelmed with requests. As such, he recommended that ARCOM would benefit from an outside expert from a major school of architecture to prepare the reports for ARCOM's consideration relative to the Alternative Development Standards, much the same as Ms. Jane Day's service to the Landmarks Preservation Commission.

Mr. Golboro maintained that due to the obvious differences in the R-B neighborhoods, the commission should first be discussing dividing the R-B district, rather than changing the regulations. In fact, he stated that this division of the R-B district should have been handled last year, instead of dealing with the Neighborhood Index concept.

Mr. Bell asked what happened with the bonus zoning concept that was once proposed. Mr. Castro responded that it had been proposed in conjunction with discussions relative to the Neighborhood Index, and was not pursued further. He noted that the code already contains a provision for meritorious architecture, a provision which has existed for 15-16 years, although it is fairly stringent in its application.

Ms. Murphy stated that she remains convinced that the undue hardship standard should be retained, and then look to the future for the development of Alternative Development Standards. She did not think it would be a good idea to rush to approve the Practical Difficulties Test for use on a temporary basis, instead recommending that the research be done and the time be taken to develop a set of objective alternative development standards. Ms. Murphy did not think that the proposed sunset provision would necessarily work to prevent a Bert Harris claim. She

agreed with Mr. Golboro that the Town Council should have the power to say “NO”. Then, addressing Mr. Shaw’s earlier comment about the minimal impact of front setbacks on neighbors, Ms. Murphy disagreed since she felt that a front yard setback can affect neighbors by harming a streetscape.

Ms. Close reiterated that staff prefers the option of changing the code provisions or even the form of the code, to attempt to correct the problems which are now being encountered after years of code modifications. She acknowledged that the first step would normally be to re-design the R-B zoning district, and some preliminary steps have taken toward that goal.

Mr. Messenger agreed that logical sense should be made within the R-B zoning district. Siemon and Larsen was commissioned to provide regulatory language to empower individual decisions which are made to protect community character. His opinion was that the Practical Difficulties draft distributed today is the best he has seen. He recommended that if the Town is going to do something in this regard, the Practical Difficulties Test should be adopted. If the goal is to protect existing buildings, strict enforcement of the undue hardship provision will not work. (Let the record show that Mr. Messenger presented some slides at this time.) He answered the question...why is Palm Beach so beautiful? The answers are: quality is part of the culture; extraordinary architectural heritage; new development respects existing development due to ARCOM standards; lush landscaping; and, wonderful ocean and intracoastal views. The ARCOM standards serve to preserve compatibility in the neighborhoods, but if they are challenged, the character of the community will be greatly changed.

Town Councilwoman Susan Markin commented that while it is tempting to come to a quick decision to accomplish something in this zoning season, she urged the commission to take all the time that is necessary to review this particular issue. She did not believe that ARCOM should be the first line of defense in developing the town. The first line of defense should be our codes and our zoning. ARCOM should be used to fine tune the cosmetics of a property. She asked the commission to consider this question: “Do we want to minimize the variances by softening the code, or do we want to minimize the variances by fixing the problem, and fixing the problem means taking the R-B district by segment, by character, and starting at that point. And I think the other part of the solution is we must hold Town Council accountable for making reasonable and justifiable decisions.” Ms. Markin stated she had a problem with the Practical Difficulties Standard, as everyone has a different definition of the term. She felt that Practical Difficulties is too subjective, and could work to the benefit of developers because of that. “As a Town Council member I will tell you that I would much rather have the decision of a physical variance versus having the decision to decide which neighbor is more important, and whose perspective and whose lifestyle is more important than the other, and I think that is a much more difficult decision for a council member to make, and I don’t want to be in that situation, and I don’t want to pit one neighbor against another...” Again she asked the commission to fight the urge to rush to conclusion, and suggested that the zoning season could be extended all year round.

Mr. Guttman asked Ms. Markin if she was prepared to vote against every variance unless it satisfies the undue hardship test. Ms. Markin responded that this is not a black and white issue;

that in the history of the town, the Town Council has made discretionary decisions on these issues. The Town Council is capable of determining what is realistic for a property. She preferred to continue in this fashion rather than adopting the Practical Difficulties Test which will pit neighbor against neighbor.

Mr. Guttman asked Mr. Randolph if Ms. Markin can use such discretion under the undue hardship test. Mr. Randolph responded that the Town Council has employed such discretion, without much litigation, for over 30 years. He added that other communities in South Florida also make such discretionary decisions. Ms. Markin commented that the Town Council should be free to use their intelligence and discretion to do what is right for the town, and should not be held to the strict black and white aspect of the law. Mr. Guttman agreed and stated that the Practical Difficulties Test provides such a vehicle for discretion. Ms. Markin disagreed with the broad scope of Practical Difficulties.

Councilman Kleid stated that, as a lawyer, he has a problem with the undue hardship provision in the code. He stated that he is careful, in approving a variance, to state his reasons for approval for the record. He also commented that his personal opinion is that Town Council members should not express their personal opinions to Town boards and commissions to avoid any undue influence.

Mr. Castro stated that he feels that implementing the Practical Difficulties Test will increase the workload of the Town Council, when that is exactly what we are trying to avoid. So staff looked at the Alternative Development Standards presented by Siemon and Larsen, which were somewhat broad, and opted to propose limited Alternative Development Standards, based upon review of the variances which have been historically granted. These typical conditions would be taken to ARCOM or the Landmarks Preservation Commission for review, with appeal to the Town Council. Mr. Castro cautioned that if the standards are allowed to become more flexible, as with Practical Difficulties, this may open up a Pandora's Box of things which have not yet been seen by the Town Council.

Mr. Robertson asked Mr. Randolph if the number of variance applications can be limited in a given year. Mr. Randolph responded that the applications are handled on a first come-first serve basis, but cannot be limited without due process being questioned. While an individual does not have a legal right to a variance, that person does have the right to be heard about what he wants to do with his property.

Ms. Close stated that staff believes that the number of applications will increase regardless of whether Practical Difficulties or Alternative Development Standards are adopted.

Ms. Murphy, in light of Mr. Kleid's earlier comment, stated that she appreciates when Town Council members attend and speak at the Planning and Zoning Commission meetings. She stated that the purpose of either adopting Practical Difficulties or Alternative Development Standards is to enable the Town Council to honestly apply the law. She noted that the undue hardship provision is a black and white issue. Ms. Murphy thought that the Alternative

Development Standards would work to decrease the workload of the Town Council since no moral or fairness judgements would have to be made, because the provisions would already be in the code. She was also in favor of the strict application of the undue hardship test as a way to reduce the Town Council's workload.

Mr. Randolph added that it is true that if a community takes a hard line position on the application of the undue hardship test, there will be a reduced number of applications for variance.

Mr. Guttman agreed that if the undue hardship test is used, he would like to see it applied to the fullest, in the way the courts have interpreted it, without any subjective standards. Mr. Guttman did not, however, believe that this is what the Town Council wants to do.

Mr. Golboro recommended that variances be heard first at the Planning and Zoning Commission, as is done in so many communities, with the Town Council hearing such matters on an appeal basis only. Ms. Murphy stated she would be in favor of a new panel (not the Planning and Zoning Commission) reviewing the variances, with appeals to the Town Council. She also proposed that the Planning and Zoning Commission meet monthly all year round, with one of the two summer months not being mandatory. Mr. Guttman agreed that if the undue hardship provision is strictly applied, a separate committee, skilled in case law, should review variance requests. He was not opposed to year round monthly meetings either, but requested that participation be allowed by conference call. Mr. Robertson announced that further discussion of year round meetings should be deferred until after the Practical Difficulties discussion is completed.

Mr. Guttman clarified that his desire is to have Alternative Development Standards rooted in land use values, and the application of an undue hardship test in a formal and rigid fashion according to case law. His proposal for temporary adoption of Practical Difficulties was just a means to make interim decisions of the Town Council legal and honest, in the two to three years during which a set of Alternative Development Standards is being developed.

Mr. Robertson recognized Martin Klein, a former Chairman of the Planning and Zoning Commission, who agreed with Mr. Guttman. If over 80% of the variances granted do not meet the existing legal standard, the problem is worse right now than if the Practical Difficulties Test is adopted on a temporary basis. Mr. Klein stated that the Practical Difficulties Test is a reasonable option to pursue at this time, and recommended that the Planning and Zoning Commission adopt Mr. Guttman's proposal. He commented that adopting Alternative Development Standards is essentially re-writing the code, and should involve much public participation.

Mr. Bell questioned why all of these changes are being proposed when, according to Mr. Randolph, the Town has only been legally challenged less than five times while operating under the undue hardship provision as it has been applied by the Town Council for the past thirty years.

Mr. Guttman responded that the Civic Association asked Siemon and Larsen to do an empirical study relative to variances and special exceptions. The Civic Association's perception was that the application of subjective variance standards by the Town Council had increased the politicized process of asking for variances. He maintained that when variances are granted in a "wink and a nod world", you invite the possibility for corruption. Mr. Guttman stressed that the Town Council must use the rule of law in making these decisions.

Mr. Shaw noted that any decisions made by the Planning and Zoning Commission are merely recommendations to the Town Council which can be upheld or denied. He maintained that the commission's recommendations should be fully supported by information and proper justification to result in support from the Town Council. He noted that it appears that the majority of this commission appears to be in favor of Alternative Development Standards, but these cannot be quickly developed; thus, the proposal for Practical Difficulties on a temporary basis has been brought forward. "I would say our focus, our drive, our goal should be to take what seems to be the sentiment of this board and work it out, and if it takes an extension of this season to get it done....creating a few year stopgap so that we can meet as a board for a few months seems truly counter-productive to the long term goals of the Town of Palm Beach.

Mr. Bell was not sure that the commission feels that Alternative Development Standards are best. He had not heard that yet, and he advocated hearing the rest of the presentation. Mr. Bell questioned Mr. Guttman on his earlier statement about "politicizing" and asked for a further explanation. Mr. Guttman was reluctant to provide details, but re-stated that if a regime does not follow the rule of law, you encourage the misuse of the process. Ms. Murphy commented that proof of impropriety is really not the issue, but it is the appearance of impropriety which is of concern. "Having a black and white standard like the undue hardship, and applying it with discretion, like we have been doing, takes away from the integrity of the Town Council, and that is something we do not want to do. I happen to think that applying the Practical Difficulties standard or "softening the bible" will equally compromise the integrity of our council. So, I am all in favor of coming up with specific Alternative Development Standards, moving forward with that, and not trying to make a fast decision and then do something that, in my view, is going to be disastrous...applying the Practical Difficulties Test with a sunset, and hoping that we get it right, and that we're not legally in hot water at a later point."

Mr. Golboro stressed the point that the commission should be asking staff to develop, as soon as possible, a recommended division of the R-B zoning district as a first step. Mr. Castro clarified that Practical Difficulties affects all zoning districts, not just the R-B district. Mr. Golboro commented that this is precisely why the R-B district must be separated out so these regulations do not affect the entire town.

Mrs. Murray stated that she originally believed that Practical Difficulties should be approved, but after hearing the discussion today, does not believe that Practical Difficulties will help the Town Council very much. She recommended that an alternative solution be sought, and that the R-B district be subdivided.

Mr. Guttman asked how long it would take staff to develop a full set of Alternative Development Standards. Mr. Castro responded that while Siemon and Larsen has proposed a full set, staff has selected only certain ones for adoption as a limited set of Alternative Development Standards to be applied by ARCOM and the Landmarks Preservation Commission. Mr. Randolph answered Mr. Guttman's question with an answer of just a few weeks to complete the standards, during this zoning season.

Mr. Guttman thought it would be beneficial to go through the Siemon and Larsen standards, one by one. Mr. Messenger noted that the objecting neighbor determines the policy of the community when the community operates under the undue hardship provision. He questioned whether a variance approval is defensible. He agreed with staff that "baby steps" are a good way to proceed with the standards, and reminded the commission that if Alternative Development Standards are developed for setbacks, for example, that will deal with 40% of the variances. Mr. Messenger asked the Chairman if he should proceed as Mr. Guttman had suggested.

Ms. Close stated that Siemon and Larsen has made their proposal already. Staff has reviewed it and has made their recommendations. Staff is ready to proceed with its presentation.

Wendy Victor, as a member of the Landmarks Preservation Commission, stated her support of the existing process where the Landmarks Preservation Commission and ARCOM see the variance requests in advance of them being heard by the Town Council. With this first review, the commissions are encouraged to give feedback to the Town Council. She noted that Morgan Wheelock, ARCOM Chairman, also supports this preliminary review.

Mr. Guttman again called for Mr. Messenger to go through the Alternative Development Standards one by one. Ms. Close, however, asked the Chairman whether he wished to proceed in that way, since the Siemon and Larsen presentation was already presented in November of 2005, or, whether the commission wanted to hear staff's presentation, and she suggested the latter. Mr. Guttman remarked that staff has only brought an outline to the commission (which is a subset of the Siemon and Larsen standards), not a set of proposed language. He felt that by hearing the Siemon and Larsen standards, one by one, that would be the most systematic way to review the material and staff could comment about each one. Mr. Randolph stated that staff has prepared a template which has resulted from a review of the Siemon and Larsen report. He suggested that it would be much more expeditious to go through staff's template to enable a general discussion as to whether the commission wishes to see Alternative Development Standards for side yard setbacks, rear yard setbacks, front yard setbacks, etc. The details will then follow. He felt the commission would get bogged down in details if they proceeded as Mr. Guttman had suggested.

Mr. Messenger explained that "it was never our intent to come here and hi-jack the agenda and re-present something that had been presented before in the same way it was presented before." He stated that he was prepared to present the Siemon and Larsen Alternative Development Standards report in full should that be the desire of the Planning and Zoning Commission.

Mr. Robertson asked Mr. Guttman if he was still pushing for the Practical Difficulties Test. Mr. Guttman explained his position, which was followed by this motion:

MOTION BY MR. GUTTMAN TO RECOMMEND THAT THE TOWN COUNCIL ADOPT A PRACTICAL DIFFICULTIES TEST THAT IS SUNSETED WITHIN A BRIEF TIME THAT WOULD ENABLE THE PLANNING AND ZONING COMMISSION TO SYSTEMATICALLY ARRIVE AT A COMPREHENSIVE SET OF ALTERNATIVE DEVELOPMENT STANDARDS THAT WOULD THEN ALLOW THE TOWN COUNCIL TO RIGOROUSLY APPLY THE UNDUE HARDSHIP TEST.

MOTION FAILED FOR LACK OF A SECOND.

At this point, Mr. Robertson stated that discussion would proceed to Alternative Development Standards, and commence with the staff's presentation.

MOTION BY MR. GOLBORO THAT STAFF BRING INITIAL RECOMMENDATIONS TO THE PLANNING AND ZONING COMMISSION REGARDING DIVISION OF THE R-B ZONING DISTRICT, AND THAT THIS SHALL BE BROUGHT TO THE COMMISSION AT ITS APRIL MEETING.

**MOTION SECONDED BY MRS. MURRAY.
MOTION CARRIED UNANIMOUSLY.**

Mr. Brisson referred to the staff's report, pages 7 and 8. Mr. Brisson explained the layout of the staff's proposal matrix to assist the commission in their review. He noted that there are twelve situations shown in the matrix which relate to specific Alternative Development Standards. Two of them actually represent two code changes which the staff is recommending. Mr. Brisson stated that these twelve items probably address over 50% of the variances that the Town Council hears now. These general statements can easily be converted to ordinance language in a few weeks, during this zoning season. Staff will use the matrix to determine whether the variance request meets the established criteria, and if so, then forward the matter to ARCOM or the Landmarks Preservation Commission. Mr. Brisson noted that under the staff's proposal, ARCOM and the Landmarks Preservation Commission will be able to handle most of what is now heard by the Town Council. The Town Council will ratify the decisions of ARCOM and the Landmarks Preservation Commission (which have been made using Alternative Development Standards) and only hold hearings when required for appeals of these decisions. As stated in the staff report, "It should be noted that while staff is recommending the use of Alternative Development Standards in certain instances, as identified in the matrix, these Alternative Development Standards are not intended to be in lieu of the variance procedure. Staff is still recommending retention of the hardship variance."

Mrs. Murray referred to the reference in the matrix to "mature trees" stating that "mature" must be defined and should be associated with some level of quality. Ms. Close noted Mrs. Murray's recommendation.

Mr. Shaw questioned whether it was appropriate to establish the Alternative Development Standards at this time or whether it would be more appropriate to divide the R-B district first. He recommended that all the of garage settings be changed to non-conforming (where most relief is needed), so that for conforming lots, existing standards would still be used. He pointed out that “suitable” must be defined in #14 of the matrix. With regard to #11, “Garage has not been illegally converted to non-garage use,” Mr. Shaw asked if that means that the party is really asking for a second garage. Mr. Castro clarified that if a person converts their garage to living space without permit, and then asks for a new garage, that cannot be justification for approval based on the proposed Alternative Development Standard.

Chairman Robertson, just after Noon, declared a recess to 1:15 p.m. He passed the gavel to Mr. Bell for the afternoon session and tomorrow’s meeting, if necessary, since he had to go out of town.

Acting Chairman Bell called the meeting back in session and asked Mr. Brisson to continue.

Mr. Brisson reiterated that staff has developed a minimal set of Alternative Development Standards dealing with four topics, primarily setbacks, point of measurement, height and driveway gate setbacks less than 8 feet. There are twelve individual items which all fall into one of the four categories. These will account for a little more than 50% of all the variances heard now by the Town Council. There are objective conditions and criteria which are thresholds, and if staff identifies that an application meets those thresholds, that information is incorporated into the application which will then be reviewed by ARCOM or the Landmarks Preservation Commission. Mr. Brisson reviewed each of the Alternative Development Standards shown in the matrix on Pages 7 and 8 of the staff’s report, noting that if the commission approves of these, ordinance language can be developed within a few weeks. He explained that staff chose the simplest of the variance requests, since the Alternative Development Standards which had been presented by Siemon and Larsen were too complex, too flexible, and too involved. These simple ones could easily be written into the code, and could easily be attributed to each of the zones of a newly divided R-B zoning district.

The commission members asked Mr. Brisson to draw a comparison between the staff’s recommended Alternative Development Standards, those included in the Siemon and Larsen Report, and those recommended by Mr. Randolph.

Acting Chairman Bell recognized Councilman Wyett in the audience and invited him to comment freely.

Mr. Brisson began to discuss sideyard setbacks, the first item on the matrix, and contrasted staff’s standards with the standards listed in the Siemon and Larsen. When the discussion began to get detailed, Mr. Randolph interjected that perhaps it would be better to deal with the concepts first; for example, should we have Alternative Development Standards relating to setbacks. If so, then proceed to the details and criteria. Mr. Messenger added that even before that, the commission may want to consider the implications of setback deviations. Mr. Guttman

emphasized that the Siemon and Larsen seven year empirical study indicated that 93% of all of the variance requests involved setbacks. He stated that if we create an Alternative Development Standard for setbacks that does not capture most of the 93%, “we are, in effect, telling the Town Council that we expect them to deny future variance requests involving setbacks that are greater than whatever percentage we agree on.” Mr. Shaw asked what percentage of that 93% were conforming vs. non-conforming. Mr. Guttman responded that 80% of the variances requested relate to existing non-conforming houses or lots.

Mr. Shaw stated that what we are now calling Alternative Development Standards was formerly called zoning modifications. He claimed that we need to address non-conforming lots with existing structures with the Alternative Development Standards, and let conforming lots abide by the code. Mr. Messenger added that 80% of the variances of the 701 variances reviewed over a seven year period were for existing buildings, and it was not known whether they were conforming or non-conforming.

Mr. Golboro commented that there is no value to discussing this matrix until the R-B zoning district is divided.

Councilman Wyett spoke as a resident. He stated that setbacks, as they exist, should be considered sacred. He felt that trying to approve a code with a 20% invasion of the setback will open a Pandora’s Box. He urged the commission to not let it be easy to invade green space.

Mr. Randolph responded to Mr. Golboro’s earlier statement saying that he did not know when the staff and the commission will be in a position to be able to divide the R-B district. As such, he advocated Alternative Development Standards to be in place in the interim. Mr. Golboro responded that if 90% of the applications are for setbacks, how can we proceed without dividing the R-B district. He advocated spending the time necessary to do this to really get something constructive done. Mr. Messenger stated with regard to the R-B district, regardless of what is on the ground, Siemon and Larsen believes that the R-B district needs to be reviewed. He noted that even after dividing it, some of the lots will not conform. Mr. Messenger stated that this is really a policy decision...do we want to encourage tear downs or encourage remodeling of existing buildings. The Alternative Development Standards are designed to retain existing construction on the ground with incremental change managed over time - “evolution, not revolution.”

Mr. Golboro noted, however, that the same Alternative Development Standard cannot be applied to a home in the North end and a home on the Sea Streets, for example. The areas are too diverse. Again, he called for division of the R-B district first.

Mr. Bell asked how Mr. Schuler, former ARCOM Chairman, felt about ARCOM assuming this proposed new role of recommending, for example, 20% invasions into the setback. Mr. Schuler responded that he has always believed that ARCOM should see the variance first, and as such, he was a catalyst to the implementation of the current procedure which provides ARCOM and the Landmarks Preservation Commission the first look at projects which require variances, with the

proviso that input on the appropriateness of the variance is transmitted from the advisory board to the Town Council prior to the Town Council hearing. As far as ARCOM approving a setback, Mr. Schuler stated that the code should outline the setback.

Mr. Shaw, as a former ARCOM member, stated that the question that came before ARCOM under this new procedure is ...”architecturally, could it be built if the variance were not granted”. “I personally think that to put ARCOM in the position of looking at a set of plans that an architect is going to bring in, working on a set of guidelines that are approved, you will never see a set of plans that don’t take the maximum opportunity...I don’t know that ARCOM should be put in the position of discussing this, but rather some other body....it’s sort of like a balance of power. You’ve got the same body approving a variance or an alternative possibility, not a set of standards, and then going out and approving the architecture. So I think there is a problem in doing it...I don’t know that ARCOM should both be approving the architectural design and at the same time, in essence, granting itself a variance.”

Councilman Wyett stated that the Town Council, because of the continual downsizing of variances over the years, arrived at the conclusion that ARCOM should not be in the size business. The Town Council has set the parameters on size, and if ARCOM is permitted to further reduce the size of a building, the Town Council’s standards are meaningless. “You can’t constantly change the zoning and then allow any commission to then change it again, because people have to have the right of expectation when they buy a piece of property to know what they can build.” On the subject of subdivision of the R-B zoning district, Mr. Wyett noted that each different area will have different criteria. He reminded the commission that North end residents turned out in force to drive the point that they want their properties and the zoning of those properties left alone. North end residents do not want street by street zoning. “The final criterion for passing legislation rests with the people, and it is our job to give them what they want and what they need, not to impose law that they don’t want.”

Mr. Bell recognized Town Councilman Bill Brooks in the audience and welcomed him.

Ms. Close stated the reasons that staff agreed with Siemon and Larsen that ARCOM and the Landmarks Preservation Commission could assume a variance approval role. She stated that both of these boards are already used to dealing with the subject of criteria. Secondly, staff believes, like Mr. Shaw, that people would take advantage of the more flexible Alternative Development Standards, if adopted, and that would then increase the applications for Alternative Development Standards. Ms. Close believed that if the Town Council were reviewing the applications for Alternative Development Standards, that would greatly increase the Town Council’s workload. Staff’s proposal is designed to place that extra burden on ARCOM and the Landmarks Preservation Commission rather than the Town Council. The Town Council would still hear appeals of these matters.

Mr. Messenger added that ARCOM’S administration of the qualitative standards dovetails nicely, not only because they deal with architecture, but because their principal role is context, and the application of Alternative Development Standards is highly contextual. Secondly, in

response to the supposition that the workload for ARCOM and the Landmarks Preservation Commission will greatly increase, Mr. Messenger stated that in reality, this is already occurring when you consider that there were 701 variance requests in 7 years for a town this size. He stated that the architects and attorneys practicing in the town have learned to become very creative in trying to demonstrate hardship and work the existing system. "To the extent that this would cause additional demands on staff time, it's going to fail unless that staff time deficiency is addressed, and so we would recommend definitively now that you ought not bother continuing with a system that you've adopted with Alternative Development Standards unless you've staffed up to deal with it."

Mr. Shaw re-stated his position that if the town is making an alternative available, one should have to give something up in order to get the benefit of that alternative. He felt that owners and architects will always take advantage of the maximums allowed by the standards if they don't have to give anything else up. "Because I think what you're doing is you're calling it an alternative approach, but what you're really doing is you're modifying the zoning code." He noted that ARCOM has always been able to negotiate on a give and take basis with applicants, and they have made a practice of this. "If you're going to create this, there's got to be a scale. If you load it on the one side, you've got to take something back on the other." He did not see how the matrix will work to achieve that give and take.

Mr. Guttman stated that the Alternative Development Standards are designed to only be available, in prescribed situations, to existing homes rather than vacant lots.

Mr. Messenger stated that the Siemon and Larsen proposal already includes give and take provisions.

Ms. Murphy stated that the Siemon and Larsen report on variances showed the difference between aesthetically pleasing variances and the other variances. She suggested that the "other variances" be denied based on the undue hardship test, and that Alternative Development Standards be developed to deal with the aesthetically pleasing ones. She stated that 60% of the variances deal with setbacks. The fundamental question remains as to whether decreasing setbacks is really something that the commission wants to codify. Perhaps, the 700+ variances need to be reviewed again to determine a lower amount of variances which could be regarded as widely acceptable. She did not want the commission to proceed down the wrong path and make the town's small yards even smaller.

Mr. Messenger responded that his group did not make a distinction between which variances were pleasing and which were not. He stated that they assumed that if a variance was approved, it was pleasing. They also examined the denied variances to determine how those were different.

Ms. Murphy stressed that the goal should not be efficiency, i.e., cutting down the number of variances, but should be to preserve the aesthetic character of the town.

Mr. Schuler commented to Ms. Close that it might be easier for the commission to discuss if they

were reviewing ordinance language. He suggested that staff be given the time to formulate that language. Ms. Close responded that staff can prepare this language, but staff feels it is more important for the commission to first decide if they want to consider Alternative Development Standards and select the general categories of standards to be reviewed.

Ms. Murphy asked for a show of hands of those who would like to see setbacks reduced as a general concept. Mr. Bell asked for that show of hands. Mr. Shaw and Mr. Guttman objected to this show of hands. Mr. Shaw wanted clarification of which setbacks and circumstances are being considered. Mr. Guttman noted that the Town Council has decided to touch setbacks in 93% of the cases they heard. He stated he does not mind removing setbacks from the Alternative Development Standards discussion as long as everyone realized that the Town Council will be unable to approve future setback variances unless the undue hardship provision is satisfied.

At this time, 2:17 p.m., there was a short recess.

Mr. Messenger offered a short slide presentation. He stated that there were 701 variance applications from 1997 to 2003, with 90% of those granted without meeting the hardship criteria. "The floodgates are already open." Persons have been successful in obtaining variance approval if they were willing to spend the time and money involved. Mr. Messenger stated that 80% of the variances were for existing construction. The existing variance criteria is not specific to the desired quality and character of development, but those types of judgements are made at the Town Council level. He maintained that the Alternative Development Standards are predictable and not subjective. "If you put the standards that we've proposed before ARCOM, we believe that ARCOM could reach consistent decisions on almost every application that comes before them." Mr. Messenger agreed with presenting Alternative Development Standards in a limited way first, as staff has suggested, because supplemental standards can always be added, but the reverse would be more difficult.

Mr. Bell asked Mr. Wyett whether the Town Council, in granting a variance, asks the applicant to give something up. Mr. Wyett responded that this is not usually asked of the applicant. Mr. Wyett commented that he believes that some of the town's setbacks are large enough, and cited an example. He felt that the allowable setback must be correlated with the size of the lot. Mr. Wyett stated that setbacks are very important to the beauty of the town. "We have a town in which the lots are small and the problems are many...we should be careful not to destroy the beauty of this town that's been built up by free enterprise. Free enterprise needs some guidance, but don't handcuff them because you'll end up with boxes. Good architecture and good landscaping will solve most of the problems and the question is how to get it."

Ms. Murphy asked Mr. Wyett, if 40% of the setback variances were granted without meeting the undue hardship test, and without getting some concession from the applicant, what were the compelling reasons why they were granted. Mr. Wyett responded that some are infill setbacks; some are very minimal requests for encroachment, 6" or 1 ft.; some are granted because they deal with garages rather than living space. Hearing this, Ms. Murphy suggested that perhaps they should look at changing the code relative to the positioning of setbacks rather than

establishing an Alternative Development Standard.

Mr. Wyett suggested that when a variance comes to the Town Council and does not satisfy the undue hardship test, “a finding should be made that the variance would result in an improvement to the streetscape and to the quality of the neighborhood, or it would be in the best interest of the town.” If then, the super majority vote (4 out of 5) or even a unanimous vote is required for approval, this would allow council members to look at the merit of the request. If 5 people saw the merit in the variance, “you would probably find that a lot of these problems could be solved allowing people to have a little of what they want without trying to write miles of code.” Mr. Wyett also pointed out that Town Council meetings years ago used to go well into the evening with typically twenty variance requests per month. He stated that after enduring years of this the attorneys who frequently presented variance requests were told to cease bringing “silly” variance requests before the Town Council. The numbers of variance requests seemed to drop to about twelve, and more recently to approximately six as an average. He maintained that the large number of variances referenced in the Siemon and Larsen empirical study distorts the data, as variance requests are no longer being submitted in these quantities.

Mr. Shaw, referring back to 1997, when the number of variances was high, also noted that since that time, several good modifications to the code have been done. For example, the sliding scale was added, along with several other changes. Mr. Shaw stated that in his opinion, the code is fine in concept, although it may need a “tweak” here or there...for example, with infills, garages, non-conforming lots. He suggested that if the commission focuses on correcting the code in those three areas, they will be able to really accomplish something, and perhaps, within this zoning season. He agreed that the subdivision of the R-B district needs to be addressed, but that is a two-year project.

Ms. Close addressed the subject of the quid pro quo aspect of variance approval as was discussed earlier. She stated that quid pro quo is demonstrated through the new procedure which provides ARCOM and the Landmarks Preservation Commission the first view at a variance request with feedback of that review to the Town Council. It is also demonstrated through staff’s discussions and meetings with applicants and their representatives prior to the matter being heard by any board or commission. Mr. Castro added that when variances are granted, most have conditions attached to them, or in some instances, the applicant only gets a portion of what they have requested. So, while the report looks at the number of variances reviewed by the Town Council, it does not take into account the aspects of how they were granted and the conditions placed upon the applicant. The quid pro quo process is removed from the Alternative Development Standards process, and instead the applicant will have to meet certain criteria in the code. The staff looked at the very large scope of standards presented by Siemon and Larsen and saw this as a very drastic change. Instead, staff opted for a small number of standards which will affect a large percentage of variances. Mr. Castro felt that if the standards do not work out, it will not be that harmful to the overall development of the town. Mr. Castro noted that under the present undue hardship provision, the subjectivity which has historically accompanied review of variances has produced very little litigation, and the Town was successful in most litigation cases which occurred.

Mr. Bell called on Mrs. Murray for comment. She stated that she had originally believed in the Practical Difficulties avenue of approach, but after hearing legal arguments did not feel that this was better than the existing undue hardship provision. She thought that the Alternative Development Standards were “mind-boggling in complications”. Mrs. Murray believed that architects will design to the maximum under the Alternative Development Standards. She agreed with Mr. Golboro that the foremost concern should be subdividing the R-B district, and expressed that she was disappointed that in the community meetings, the subject of subdivision of the R-B district was thrown in with the very controversial subject of the Neighborhood Index. Mrs. Murray stated that she viewed Alternative Development Standards as a re-write of the code.

Mr. Dowell commented that sideyard setbacks and rear setbacks should be “cast in concrete”.

MOTION BY MR. GOLBORO THAT THE ALTERNATIVE DEVELOPMENT STANDARDS BE CONSIDERED AFTER THE COUNCIL HAS CONSIDERED RE-DISTRICTING THE R-B ZONE.

MOTION SECONDED BY MRS. MURRAY.

Subsequent to a question by Mr. Shaw, Mr. Golboro revised the wording of the motion as such:

MOTION BY MR. GOLBORO THAT THE ALTERNATIVE DEVELOPMENT STANDARDS BE CONSIDERED AFTER THE COUNCIL ACTS TO RE-DISTRICT THE R-B ZONE.

Mr. Shaw stated that this would take two years. Ms. Close responded that with an adequate staff compliment, the staff could make recommendations relative to the R-B re-districting and implement the changes, by ordinance, within a two year period. Conceptual direction may come from the Town Council within a one year period. Ms. Close estimated that the R-B district might ultimately be divided into 4-5 separate districts.

Ms. Murphy, under discussion, stated that before making any motion relative to the Alternative Development Standards, the commission should decide which of the twelve categories of standards presented by staff should be pursued, and more discussions should take place with Town Council members about why variances are granted. She advocated limiting the motion to dealing with subdivision of the R-B district only.

**AMENDMENT TO THE MOTION PROPOSED BY MS. MURPHY AS FOLLOWS:
THAT THE TOWN COUNCIL CONSIDER THE DIVISION OF THE R-B DISTRICT
AT THEIR NEXT MEETING, AND DELAY ANY FURTHER CONSIDERATION OF
EITHER ALTERNATIVE DEVELOPMENT STANDARDS OR PRACTICAL
DIFFICULTIES.**

**AMENDMENT ACCEPTED BY MR. GOLBORO.
AMENDMENT ACCEPTED BY MRS. MURRAY.**

Mr. Schuler mentioned that he thought that the North end property owners were against re-districting the R-B zone. Mr. Dowell acknowledged that while some of the north end residents were of this viewpoint, the R-B district is quite diverse, extending as far south as Ibis Isle. Ms. Murphy remarked that she had met with Ralph Del Deo and Sam Boykin from the North end group, and speaking for the group, they were not only vehemently opposed to the Neighborhood Index, but they were also not in favor of re-districting. She noted, however, that in the community meetings, the benefits of re-districting were unfortunately not discussed. Ms. Murphy stated that she would not want the north end residents to say that the commission, against their wishes, voted for the re-districting. She thought that perhaps another meeting may be in order to discuss benefits of re-districting.

Ms. Close reminded the commission that the results of the community meetings will be brought back to the Planning and Zoning Commission for a recommendation regarding the subject of the R-B district. That recommendation along with staff's recommendation will be forwarded to the Town Council. If the Town Council is interested in pursuing this, staff would recommend that the concept be thoroughly noticed to the community, and that staff develop adequate statistical information over the summer which would be imparted to the community. Referencing the motion made, Ms. Close noted that staff has not yet presented its information relative to re-districting the R-B zone.

Ms. Murphy and Mr. Schuler agreed that staff's recommendations should be heard and the participation of the public be encouraged as a first step toward re-districting.

Mr. Shaw felt that Mr. Boykin's objection, in speaking for the North end property owner's association, was not for re-districting of the R-B zone as a whole. Instead, he felt that Mr. Boykin had objected to subdividing the north end into multiple districts. Mr. Shaw suggested that it is not necessary to prevent this motion from going forward today. Mrs. Murray agreed with Mr. Shaw. Ms. Murphy cautioned that many of the people who attended the community meetings live south of those residents represented by Mr. Boykin, and she felt that more information is needed prior to the motion. Mr. Shaw responded that "just because you subdivide the districts doesn't mean that you change the code."

Mr. Dowell asked what the expected divisions of the R-B will be. Ms. Close anticipated 4-5 districts, probably Ibis Isle, the Sea Streets, Lake and Ocean properties, and a center portion. Staff wants to come back to the Planning and Zoning Commission in April with the results of the community meetings and a very broad recommendation of how staff believes the town may want to proceed in re-districting the R-B. Staff does not favor another community meeting this late in the season. Staff prefers to gather information over the summer for presentation in the fall.

Mr. Golboro strongly urged the commission to let the motion stand, as the Planning and Zoning Commission only makes recommendations to the Town Council anyway, which can either be upheld or denied. He stood by the wording of the motion as amended.

Mrs. Murray stated that while the commission wants to be responsive to what people are

thinking, but she encouraged the commission to “start to lead the way” as a planning commission.

Ms. Murphy thought it was important to encourage the Town Council to move forward with this, but stressed the fact that the public should be involved in the process so the lines between districts are drawn correctly and with public approval. She recommended that a meeting be scheduled with the public in the fall where staff’s report on re-districting can be presented.

Mr. Castro explained that the re-districting will be a long process. Staff has conceptual ideas of how the re-districting can be done, and will gather more data and do more research, but the districts cannot be determined without proper public notice and public involvement. Staff will remain flexible to change those geographic areas subject to public comments. Mr. Randolph added that the public notice can be specific enough to inform the public that re-districting is being discussed which would hopefully encourage the public input that the commission wants. Mr. Shaw stated that geographic differences must be identified first to start the process. Then it should be made very clear that this is a step toward looking at the specific zoning needs for each of the geographic areas. He thought that the geographical divisions might be able to be done within a year, with a re-evaluation of the zoning needs for each to follow. Mr. Randolph noted, however, that staff, in drawing the proposed geographic lines, has to examine the characteristics in that area so they can report why each of the areas should be treated differently. Mr. Guttman agreed with Mr. Randolph, that staff cannot merely present several different districts without giving people more information to justify the division, and having some idea as to how the regulations for each will be different. Mr. Messenger’s comment was that it will be easier to divide the districts first, and only after that, create zoning regulations for each of the identified neighborhoods by meeting with representative groups for each of the districts.

Mrs. Murray asked Ms. Close, in the eventual staff presentation, to present the public with several hypothetical examples which would illustrate that their neighborhoods already have established standards which are different from other R-B neighborhoods.

Mrs. Delp, upon request, re-stated the motion on the floor. In hearing it, Ms. Murphy asked if the timing worked out so that the public meeting could occur before the Town Council meeting, and if not, she felt the motion should be amended. Ms. Close stated that this will not be possible because staff has to bring the general report on the R-B district and general suggestions regarding subdivision of the R-B district back to the Planning and Zoning Commission first. As such, Ms. Murphy called for amendment of the motion on the floor.

MOTION AMENDED BY MR. GOLBORO THAT THE TOWN COUNCIL CONSIDER DIVISION OF THE R-B DISTRICT SUBSEQUENT TO THE APRIL PLANNING AND ZONING COMMISSION MEETING, AND TO DELAY ANY FURTHER CONSIDERATION OF THE ALTERNATIVE DEVELOPMENT STANDARDS AND/OR THE PRACTICAL DIFFICULTIES TEST.

Discussion continued relative to how this motion should be properly worded. Several members

were concerned that it be clear that the staff's report be heard by the commission first prior to making a recommendation to the Town Council. Others were concerned about ensuring public input. Ms. Close reiterated that while staff will present its report to the commission at its April meeting, they will not meet with the Town Council on this subject until May 1, 2006.

Mr. Randolph, after listening to the commission's comments and concerns, offered suggested wording for the motion:

MOTION BY MR. GOLBORO THAT THE PLANNING AND ZONING COMMISSION DEFER FURTHER CONSIDERATION OF ALTERNATIVE DEVELOPMENT STANDARDS AND PRACTICAL DIFFICULTIES UNTIL THE PLANNING AND ZONING COMMISSION HAS HAD THE OPPORTUNITY TO HEAR THE PRESENTATION FROM STAFF, AT THE APRIL MEETING, OF THE REPORT ON THE SUBDIVISION OF THE R-B DISTRICT.

MOTION SECONDED BY MRS. MURRAY.

MOTION CARRIED UNANIMOUSLY.

(Let the record show that Mr. Dowell had left the meeting at this point, and Mr. Shaw voted in his stead on this motion and all those which follow.)

Mr. Randolph asked the commission if they wished to give any direction to the Town Council relative to Practical Difficulties at this time. It was noted that the earlier motion regarding Practical Difficulties failed for lack of a second.

MOTION BY MRS. MURRAY THAT THE PLANNING AND ZONING COMMISSION SUBMIT TO THE TOWN COUNCIL THAT THE COMMISSION HAS DISCUSSED PRACTICAL DIFFICULTIES AND HAVE NOT FOUND IT TO BE A SUITABLE REPLACEMENT FOR HARDSHIP.

MOTION SECONDED BY MS. MURPHY.

MOTION CARRIED 6-1 WITH MR. GUTTMAN VOTING AGAINST THE MOTION.

Let the record show that there was a short recess at this point. The meeting reconvened at 4:08 p.m.

B. New Business

1. Consideration of Annotated Proposed Amendments to the Town of Palm Beach's Special Exception Regulations by Siemon and Larsen, P.A. and Staff's Report on the Proposal.

Mr. Messenger stated that Siemon and Larsen has drafted Special Exception regulations. The Civic Association had asked Siemon and Larsen to look at Special Exceptions in the town to see if Special Exceptions were used excessively for things that are defeating the community

character objectives of the town, and if so, what should be done about it. Analysis showed that special exception applications are much fewer in number than variances. The organization of special exceptions within the code are scattered through the code and the language is not particularly consistent. Mr. Messenger suggested standardizing the language and moving all of the special exception language to one place in the code in an organized fashion. He raised two questions of policy as well. There are some inconsistencies with regard to the implementation of the town-serving requirement; and, a protection was offered in new language dealing with town-serving. Secondly, with regard to development of a non-conforming lot by special exception, there are some staff interpretations which are too far back in the record and not easily researched by an applicant to find out what they can do. So, Siemon and Larsen has proposed a simplified policy standard that reflects the existing practice, but is not codified in the code in a way that is easily understood.

Mr. Messenger described what he perceived as a hole in the code which allows one retail use to another (over 2,000 sq. ft.) without special exception approval. Mr. Brisson responded that he wrote the code in 1979. This is a very complex issue, but it is not a loophole. The code is written this way on purpose. "That was the saving non-conforming clause that allowed us to get it passed. Without that clause at that time saying that those people who had larger than 2,000 sq. ft. establishments could retain the use of those establishments within the same generic, meaning essentially retail commercial use, in perpetuity, for all practical purposes, it could be over 5,000 sq. ft. as long as it stayed as the type of retail use, regardless of whether it went to a GAP, that was used, and that was the only reason, in my opinion, that we actually got the ordinance passed". Mr. Brisson stated he was very hesitant to make any changes to the town-serving at this time, especially since it has been challenged twice in court, and upheld both times.

Mr. Shaw stated that quite often gross leasable space is quite different than gross usable space. This part of the code affects retail storefronts (as originally intended) and office space alike. He stated that bathrooms are now required space as well. He suggested that the term gross leasable space be changed to net usable space, which excludes baths. Mr. Castro explained that now, in calculating parking requirements, staff will less out common areas like closets, baths, and mechanical rooms, but not storage areas. Mr. Shaw requested, if the code is being "cleaned up" that bathroom space is not counted in usable space. Mr. Castro responded that staff does not want to change the code whatsoever, or the way it is interpreted, fearing litigation. Ms. Close, when asked by the Chairman about staff's recommendation in this regard, stated that parts of Siemon and Larsen language that relate to town-serving are meritorious, but staff is very concerned about making any changes whatsoever to the town-serving sections of the code. As a result, staff recommends against adoption of those changes.

MOTION BY MR. GOLBORO TO SUPPORT THE STAFF'S RECOMMENDATION FOR NO CHANGE TO ANY PORTION OF THE REPORT THAT AFFECTS THE TOWN SERVING PORTION OF THE CODE, WHICH IS OTHERWISE STATED AS LEAVING THE CODE ALONE TODAY AS IT STANDS.

MOTION SECONDED BY MR. SHAW.

MOTION CARRIED UNANIMOUSLY.

Moving on to non-conforming lots, Mr. Messenger stated that there is tension in the code about when persons should be forced to combine property into a more conforming situation than exists. Also, some language is unclear in the code as well. He explained that the difficulty comes into play when a property owner acquires two adjacent properties, and whether that property owner is then obliged to combine them into a conforming or more conforming situation than exists. Ms. Close stated that staff agrees with the changes suggested by Siemon and Larsen (with one exception) in this case as they have just re-worded it to reflect the town's current interpretation of the matter. Ms. Close stated that staff has requested a minor word change, and Mr. Messenger has made the change, but staff has not had an opportunity to review the change. As such, she suggested that the changes could be approved, with the opportunity to review the exact wording at the April meeting.

MOTION BY MRS. MURRAY TO ACCEPT STAFF'S RECOMMENDATION AND TO LOOK AT THE NEW LANGUAGE AT THE APRIL MEETING.

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

Mr. Messenger stated that there is only one remaining issue regarding four wall racquet ball courts which are now considered unenclosed accessory structures which give them more liberal setback requirements than enclosed accessory structures. Mr. Messenger stated that whether or not the court has a roof, it has the appearance of a very large building. He suggested that it be redefined as an enclosed accessory structure and apply regular building setbacks to it. Mr. Castro stated that staff has some discomfort calling it an enclosed accessory structure because it affects other areas of interpretation in the code relative to accessory structures and prior interpretations. He agreed that it should be re-worded, that greater setbacks should be applied, and new language should be developed without calling it an enclosed accessory structure.

MOTION BY MS. MURPHY AND MR. GOLBORO SIMULTANEOUSLY TO ACCEPT STAFF'S RECOMMENDATION TO RE-WORD THE CODE RELATIVE TO RACQUET BALL COURTS.

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

Mr. Messenger stated the rest of the issues are housekeeping matters. Mr. Messenger described the Siemon and Larsen recommendations, and then Mr. Brisson listed the four suggestions for re-formatting the code which staff agrees to as follows:

1. Page 18, #3 in Staff Report, Pages 5 & 6 Siemon and Larsen Report: Adding new language for Site Plan Reviews.
2. Page 18, #4 in Staff Report, Page & of Siemon and Larsen Report: Establishing headings

- and breaking up the text into sub-sections
3. Page 18, #5 in Staff Report, Pages 8 & 9 of Siemon and Larsen Report: Added headings for approved use to clarify when Special Exceptions are required.
 4. Page 18, #6 on Staff Report, Page 10-13 of Siemon and Larsen Report: Took the Special Exception criteria and broke out the criteria that apply to all special exceptions and created another separate list for additional (uncommon) criteria.

Staff agrees with the aforementioned changes, but stressed that the town-serving sections of the code remain untouched. Staff recommends against moving all the special exception criteria into one section of the code.

MOTION BY MS. MURPHY FOR APPROVAL OF ALL OF THE STAFF RECOMMENDATIONS, INCLUDING THE RECOMMENDATION NOT TO CHANGE THE TOWN-SERVING SECTIONS OF THE CODE.

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

THE MOTION WAS AMENDED BY MS. MURPHY TO EXCLUDE ANY LANGUAGE IN THE AFOREMENTIONED CHANGES WHICH REFERENCE ALTERNATIVE DEVELOPMENT STANDARDS.

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

V COMMENTS OF THE PLANNING AND ZONING COMMISSION AND PLANNING AND ZONING DIRECTOR

MOTION BY MR. GOLBORO THAT THE PLANNING AND ZONING COMMISSION RECOMMEND TO THE TOWN COUNCIL THAT COMMENCING OCTOBER 2006, THE PLANNING AND ZONING COMMISSION SHALL MEET A MINIMUM OF ONCE EACH MONTH, 12 MONTHS OF EVERY YEAR THEREAFTER; AND THAT DURING THE MONTHS OF JUNE, JULY, AUGUST, AND SEPTEMBER, MEMBERS OF THE PLANNING AND ZONING COMMISSION MAY HAVE "EXCUSED ABSENCES" FOR EITHER OF THE FOLLOWING REASONS: (1) 14 DAYS ADVANCE NOTIFICATION TO THE STAFF PRIOR TO THE MEETING DATE; (2) NOTIFICATION BY THE STAFF OF THE LACK OF BUSINESS TO COME BEFORE THE COMMISSION; IN CASE OF THE NEED FOR A QUORUM, THE STAFF MAY NOTIFY THAT REQUESTOR TO BE PRESENT.

Mr. Guttman stated he had no problem with it as long as members can participate in the meeting via conference call. Mr. Randolph noted that conference call participation is permitted, but not to satisfy requirements for a quorum.

Ms. Murphy regarded year round meetings as a great step forward, but felt that making four months of the year effectively optional will result in many people not attending the meeting. She was in favor of having eleven months mandatory, and one month as a permissible absence, together with allowable participation by conference call.

Mr. Bell thought that a decision on this matter should wait until the April 18, 2006 meeting to see if year round meetings will actually be necessary. Mr. Bell stated that at this point, the commission does not know how much work will be on their plate.

Mr. Shaw stated that ARCOM and the Landmarks Preservation Commission already have guidelines for attendance, so there is no need to invent new ones. In those guidelines, a member is entitled to miss two meetings. He suggested that the commission might be required to meet every month during the zoning season, and then every other month outside the season. Mr. Golboro stressed the need for the commission to undertake planning activities. Mr. Shaw stated that he supports what Mr. Golboro is suggesting, but there must be a staff produced agenda which is put forward and requires action to substantiate a reason to call a meeting. Mr. Schuler stated his support of the concept, but agreed that a meeting should not be scheduled unless there is a real need for the meeting. Mr. Shaw stated that the concept is to have the meetings scheduled, but if there is no need for the meeting, it can be cancelled.

Ms. Murphy stated that she believes that the commission needs to meet every month, and it should be the same day each month, so that members can better schedule their time. It was suggested that it not be a Monday or a Friday. Ms. Close asked that the date not be set at this time, since staff needs to check the Town calendar for any conflicts. Mr. Castro reminded the commission that changing the zoning season will require an ordinance change. Mr. Castro added, however, and clarified that the commission can meet all year round, but can only make decisions relative to zoning code amendments or changes to the zoning map during the prescribed zoning season. The off-season time could be devoted to planning activities according to Mr. Castro.

Mr. Randolph stated that do planning in the summer months is a separate issue. He maintained that the motion on the floor is to begin having year round meetings commencing October 2006. Staff would have to submit an ordinance change to the Town Council for approval to effect that change.

There was some additional discussion relative to the number of allowable absences. Mr. Golboro clarified that it would be his intention to allow a member to be absent from the meetings during the summer months, plus two allowable absences during the other eight months. It was his intention to be generous to those who are typically away during the summer. Mr. Golboro repeated the motion at Mr. Bell's request.

MOTION SECONDED BY MR. SHAW.
MOTION CARRIED UNANIMOUSLY.

During the roll call, Ms. Murphy stated that she approves the motion, but with the understanding that she prefers a more stringent schedule, with fewer months off, or fewer excused absences. Mr. Bell supported the motion also, but with the proviso that the agendas are full for each meeting.

MOTION BY MS. MURPHY THAT THE PLANNING AND ZONING COMMISSION SCHEDULES ONE OR TWO PLANNING MEETINGS AFTER THIS ZONING SEASON EXPIRES.

MOTION SECONDED BY MR. GOLBORO.

Ms. Close stated that staff is in the midst of an Evaluation and Appraisal Report, and she did see a need for one or two planning meetings. Of course, if there is no business to conduct, the members will be notified of the meeting cancellation. Messrs. Shaw and Guttman stressed the opinion that the commission needs a staff driven or commission driven agenda for these planning meetings in order for them to be worthwhile.

MOTION CARRIED UNANIMOUSLY.

VI ADJOURNMENT

The meeting adjourned at 5:02 p.m. on a motion sponsored by Mr. Schuler.

The next meeting of the Planning and Zoning Commission will be held on Tuesday, April 18, 2006 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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