TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON AUGUST 12, 2003

I. CALL TO ORDER AND ROLL CALL

The regular Town Council Meeting was called to order by President William Brooks at 9:30 a.m. in the Town Council Chambers. On roll call the following elected officials were found to be in attendance:

Mayor Lesly S. Smith
President William J. Brooks
President Pro-Tem Norman P. Goldblum
Councilman Jack McDonald
Councilman Samuel McLendon *(left the meeting at 11:15 a.m. with an excused absence)*
Councilman Allen S. Wyett

Also attending for all or a portion of the meeting were:

Town Manager Peter B. Elwell
Assistant Town Manager Thomas G. Bradford
Assistant to the Town Manager Sarah Hannah
Town Attorney John Randolph
Police Chief Michael Reiter
Director of Planning, Zoning & Building Robert Moore
Assistant Director of Planning, Zoning, & Building Veronica Close
Zoning Administrator Paul Castro
Planning Administrator Tim Frank
Code Compliance Officer Rob Walton
Public Works Director Al Dusey
Public Works Assistant Director Paul Brazil
Water Resources Division Manager Larry Plympton
Town Engineer James Bowser
Coastal Management Coordinator Sandra Tate
Finance Director Jane Skittone
Fire-Rescue Chief Kent Koelz
Historic Preservation Consultant Jane Day
Town Clerk Mary A. Pollitt

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480 • (561) 838-5416
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Town Clerk Pollitt gave the invocation. President Brooks led the Pledge of Allegiance.

III. PRESENTATIONS

A. NONE

IV. COMMENTS OF MAYOR LESLY S. SMITH

Last week's devastating tornado remains in the news as the communities in its path clean up the wreckage. I want to express our sympathy to our neighbor city, Riviera Beach; we share their gratitude that despite the property destruction, no one was killed or seriously injured. When these disasters occur, we remember how important it is to be prepared for emergencies. Since September 11, we have been so focused on potential terrorism that it is easy to forget that nature can be just as cruel. This is a reminder of how thankful we should be in Palm Beach for the diligence of our public safety teams.

There are just a handful of items on today's agenda that warrant comment. First, Ken Reardon, Utilities Director for the City of West Palm Beach, will be talking to us about the water main through which the Town gets its water. I am pleased to once again welcome Mr. Reardon, who has always been a source of straightforward information.

We are considering this morning the Palm Beach Civic Association's offer to fund a peer review of our Town consultant's studies related to burying utility lines. While I respect this offer as generous and well-meaning, I want to make sure that with a peer review, we give adequate weight to our consultant's expertise and considerable experience. I would not want this issue to become a divisive "hot potato," and trust that any kind of review will be scrupulously objective.

We will also be considering this morning the request of St. Ann's School to lease the vacant Town property on Sixth Street in West Palm Beach. My only concern here is that the Town be protected absolutely from any liability stemming from such a lease. I would want Mr. Randolph's assurance that an agreement to this effect would be enforceable.

We have requested deferral until September of several agenda items related to the authority of ARCOM and the Landmarks Preservation Commission. I think this deferral is essential because so many people are away in August. I hope that those who are interested will take the time to understand new proposals and will plan to speak up at our September meeting.

Finally, we have on our agenda an appeal of an administrative decision, and a request for special exception with variance, submitted by the Flagler Museum. We, in Palm Beach, count the Flagler Museum as a national treasure and the Council has always cooperated with efforts to enhance the Museum. However, I urge the Council to consider plans for the Museum's dock enlargement – and especially the proposed water taxi service judiciously. If there is a motion for approval, I ask the motion maker to craft the motion very carefully so that it does not set a precedent for other future proposals.

V. APPROVAL OF AGENDA

The Agenda was approved with the following amendments:

DEFERRED to the September 9, 2003, Town Council Meeting, Item IX. A. 1. - Recommendations Regarding the Types of projects that ARCOM and the Landmarks Preservation Commission Would Hear Before Presentation to the Mayor and Town Council.

Motion made by Councilman McDonald, seconded by Councilman McLendon to defer Item IX. A. 1 to the September 9, 2003, Town Council Meeting. On roll call the motion carried unanimously.

DEFERRED to the September 9, 2003, Town Council Meeting, Item IX. A. 2. - Code Enforcement Board Authorization for Foreclosure Action Case No. 01-1358, Harry J. Brown, 130 Peruvian Avenue.

Motion made by President Pro-Tem Goldblum, seconded by Councilman McLendon to defer Item IX. A. 2 to the September 9, 2003, Town Council Meeting. On roll call the motion carried unanimously.

DEFERRED to the September 9, 2003, Town Council Meeting, Item IX. B. 7. - Consideration of a Letter of Intent from Royal Professional Builders, Inc. for Purchase of the Town's Pike Road Property.

Motion made by President Pro-Tem Goldblum, seconded by Councilman McLendon to defer Item IX. B. 7. to the September 9, 2003, Town Council Meeting. On roll call the motion carried unanimously.

WITHDREW from the Agenda, Item XII. B. 1. - Variance No. 6-2003, per letter dated August 4, 2003, from Attorney James Brindell.

Motion made by Councilman Wyett, seconded by Councilman McLendon, to withdraw Item XII. B. 1. from the Agenda. On roll call the motion carried unanimously.

DEFERRED to the September 9, 2003, Town Council Meeting, Item XII. B. 2. D. - Variance No. 29-2003, per letter dated July 18, 2003, from Attorney G. E. Young.

Motion made by Councilman Wyett, seconded by Councilman McLendon, to defer Item XII. B. 2. to the September 9, 2003, Town Council Meeting. On roll call the motion carried unanimously.

REMOVE from the Consent Agenda, Item E. 3 - Resolution No. 30-03, to be added to the Regular Agenda, under Item B. New Business, No. 7.

Motion made by Councilman McDonald, seconded by President Pro-Tem Goldlbum to remove Item E. 3. - Resolution No. 30-03, from the Consent Agenda, to be added to the Regular Agenda, under Item B. New Business, No. 7. On roll call the motion carried unanimously.

Motion made by Councilman Wyett, seconded by Councilman McLendon, to approve the Regular Agenda as amended. On roll call the motion carried unanimously.

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

There were none.

VII. PUBLIC HEARING

A. Class I Dune Vegetation Permit Application for **1410 South Ocean Boulevard** This is the application of Jeffrey Picower for property described as Lots1-8 inclusive, Ocean Vista Addition; commonly known as 1410 South Ocean Boulevard. The project is described as follows: The existing vegetation will be removed. The existing decorative wall will be demolished and removed. A new seawall will be constructed. Beach sand will be imported to backfill the westerly side of the seawall and to establish a new lawn elevation. Landscaping and irrigation will be installed. Mitigation for the loss of the dune vegetation, at a ratio of 5 to 1, will be accomplished as part of the Town's Mid-Town Beach Dune Restoration project, and will be finished within 60 days of the completion of the Dune Restoration project. [Robert L. Moore, Director of Planning, Zoning, and Building]

Director of Planning, Zoning & Building Robert Moore recalled that the Town Council had previously granted permission for seawall work to be done with hammer piles during the season last year, with which the applicant had opted not to go forward. The applicant was now requesting a different system, called pressing piling, to be done during the month of November. He referred to his memorandum to Town Manager Elwell, dated August 4, 2003, listing the conditions of an approval. He noted that there had been one small misunderstanding about the number of plants that would be put in per square yard. The minimum number of plants would be three per square yard, with a possibility of going to four with certain plant sizes.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that he was not familiar with the conditions to which Mr. Moore referred, and therefore, would not comment upon those. He stated that the new pile driving system was virtually without vibration or noise, which would allow the applicant to accomplish the work without impact on the Town or the neighbors. He stated that he had received a draft of the Florida Department of Environmental Protection (FDEP) permit, and had been assured that it would be signed today. He explained that there were several varied opinions on the density of the proposed plantings, and proposed that the Town Council approve everything today, subject to a satisfactory planting plan.

In response to Mayor Smith, Coastal Management Coordinator Sandra Tate explained that the mid-Town dune planting was expected to begin very shortly.

Mike Kiefer, Kimley Horn & Associates, Inc., explained that the approval from Countywide Beaches & Shores included the vegetation mitigation, however, it had not specified density, and the agreed upon mitigation plan discussed with the Town had been part of the package.

Attorney Kolins explained that the remaining question was how many plants would be installed in the geographic area specified.

Ms. Tate explained that plants could vary in size, and if the proposed plants were of sufficient size, staff would agree to three plants per square yard.

Mr. Rob Barron explained that the same methodologies, plant sizes, and plant choices done for the mid-Town project were proposed for a two-unit per square yard plan; the three unit per square yard plan would result in a faster grow out, however, putting in more plants than that would be wasteful. He provided specifics regarding the size of the root ball of the plants proposed.

Discussion took place regarding the irrigation of plants, and Director of Public Works Al Dusey recalled two previous projects – the regular mid-Town project, which was irrigated; the Garden Club had sponsored a Clark Avenue project that had not been irrigated, which had also been successful.

Mr. Barron replied that the irrigation pipe used at the main mid-Town project had not been necessary to use – there had not been any sprinkler heads installed.

Ms. Tate informed the Town Council that Palm Beach County typically planted dune restoration projects at one plant per square foot; Mr. Barron was proposing two plants per square yard, because the plants were larger.

Councilman Wyett suggested that there be a perpetual, or at least a two-year, guarantee on the plants.

Attorney Kolins commented that the applicant would work out a plan with staff, and that it would be unfair to the applicant to require them to do extraordinary planting.

President Pro-Tem Goldblum commented that approval of the Dune Preservation Permit application, would include the condition that a 135% bond be provided.

Director of Planning, Zoning & Building Moore read the conditions of approval proposed by staff:

1. **Documentation of required governmental approvals in the form of permits for the work prior to issuance of a Town permit.**

2. **A deposit with the Town of a performance bond in an amount of 135% of the estimated total project.**

3. **Any work relating to the vegetation within or on the dunes shall be accomplished by a Town registered landscape maintenance company and supervised by a state licensed coastal engineer, state licensed landscape architect, or other consultant with expertise in dune sysems management approved by the Town's Building Official, per the Town's code.**

4. **Reimbursement by the applicant for any consultant expenses incurred by the Town with respect to this permit application, including review of the application and inspection of the work involved.**

5. **FDEP approval of the piling system that the applicant was using, which would also give at least two feet of penetration into the rock system.**

6. **Conformance with the Nuisance Ordinance.**

7. **Any additional conditions discussed for the Town's benefit, per Ms. Tate and Town Consultant George Gann.**

He noted that property owners to the north and south had requested postponement of the permit, however, the only persons that could request a postponement were the applicant or the Town Council. The noise and damaged property issues appeared to be well in hand, because the pressing system would not create the vibration that a hammer driven pile would create.

Mr. Tom Eastwood, Worth Builders of Palm Beach, addressed the Town Council, advising that a ninety-day sequence was planned, from the point of installing the piles. He estimated that there would be a fifteen-twenty day mobilization period. The main driveway would be used, and there was a considerable storage and mobilization area there – there would be one big move in and one big move off.

In response to Mayor Smith, Attorney Kolins advised that the project would not be extraordinarily noisy during the holiday period.

Town Attorney Randolph expressed concern regarding the delegation of authority to staff in regard to final approval. He suggested specification of some sort of a minimum that staff was requiring, so that the public could know what that was. In that case he saw no problem with delegation of authority to staff, making sure that staff set forth a minimum of plantings of a certain density. As an alternative, he noted that the applicant could also submit a landscape plan to the Town Council for final approval.

Director of Planning, Zoning & Building Robert Moore suggested a minimum of three sea oat plants, with the full understanding that four may be required. He explained that if the applicant was not satisfied with the requirements, an appeal could be made to the Town Council

After further discussion, Councilman Wyett moved approval of the Class I Dune Vegetation Permit Application for 1410 South Ocean Boulevard with the conditions as set forth. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

Attorney Kolins clarified that he would work with staff regarding the minimum of three plants; whatever was agreed to subject to that minium was then satisfactory. If agreement was not reached, the applicant would return to the Town Council.

Attorney Gary Woodfield, Edwards & Angell, addressed the Town Council, on behalf of both adjoining landowners – Sydell Miller to the south at 1415 S. "Ocean, and the Goodrich Trust to the north at 1341 S. Ocean. He requested that the matter be continued and heard by the Town Council at the next Town Council Meeting. He stated that he believed the request would not prejudice the applicant from proceeding with the project in November, and it would give his clients the opportunity for a meaningful review of the project, as they had not yet had the opportunity to do so. He explained that there were two issues of significant concern: the landscape plan, and the procedure by which the wall would be built.

Attorney Kolins responded that a delay would dramatically prejudice the applicant, because the materials to do the work must be ordered now, and that the law firm of Edwards & Angell had been furnished the landscape plan for the Picower property for approximately 18 months, as well as a copy of every application that changed the landscape plans. He noted that he had also furnished information to the law firm regarding the new procedure to build the wall, and had not heard of any concerns from them in that regard.

Attorney Woodfield maintained that the latest landscape plan had been received with the permit; the files contained a print out of the website of the firm doing the procedure to build the wall. The engineers reviewing that information had not been able to obtain sufficient information from the website to be comfortable with the process.

Attorney Kolins maintained that he had provided a brochure, and the landscape plan had not changed.

Town Manager Elwell advised that after hearing the public comment, it would be appropriate for the Town Council to either affirm its prior decision, or modify the decision if it so chose.

Mr. Mike Kiefer, Kimley Horn Associates, Inc., addressed the Town Council, stating that the landscape plan was part of the FDEP package two years ago, and the re-submittal that was made four months ago was the same landscape plan that was presented in the original package, and had not changed. He explained that there had been a new landscape plan for the other upland planting further landward, which was 100-200 ft. from the seawall in question.

In response to Councilman McDonald, Attorney Woodfield explained that the engineers used by the law firm had not been able to review the pile driving process because of vacation problems. He noted that the Picowers had been granted numerous continuances of permit applications by his clients throughout both of his clients projects, and that he was requesting the same consideration.

Mr. Moore recalled that one of the conditions of approval had been that the FDEP approved the pile driving system; the likelihood of damage from the system was far less than the hammer driven piles.

President Pro-Tem Goldblum moved affirmation of the motion to approve the Class I Dune Vegetation Permit Application for 1410 South Ocean Boulevard. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

VIII. CONSENT AGENDA

A. APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE MEETING OF JULY 2, 2003 REGARDING THE TOWN'S STRATEGIC PLAN

B. APPROVAL OF TOWN COUNCIL MEETING MINUTES FOR THE MEETING OF JULY 8, 2003

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF JULY 23, 2003

D. APPROVAL OF THE WRITTEN REPORT OF THE FINANCE AND TAXATION COMMITTEE MEETING ON JULY 7, 2003

E. APPROVAL OF RESOLUTIONS

1. Resolution No. 28-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Browning Ferris Industries for Contract Collection of Compacted Garbage for the Town of Palm Beach, Sealed Bid Number 2003-12. [Albert P. Dusey, Director of Public Works]

2. Resolution No. 29-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Insituform Technologies, Inc., For The Cured In Place Pipe Rehabilitation Project, Request For Proposal Number 2003-13. [Albert P. Dusey, Director of Public Works]

3. Resolution No. 30-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Rescinding the Lien Search Fee Adopted in Resolution 90-01 and Establishing Updated Lien Search Fees, Establishing an Effective Date. [Jane Skittone, Director of Finance]

   (This item was removed from the Consent Agenda and put on the Regular Agenda under New Business).

4. Resolution No. 31-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing New

Dock Rates for Annual, Seasonal, and Winter Transient Leases. [Thomas G. Bradford, Assistant Town Manager]

5. Resolution No. 32-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting a Contingency Reserve - Health Insurance Fund; Establishing an Effective Date. [Jane Skittone, Director of Finance]

6. Resolution No. 36-03 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding the Town Docks Security Services Contract to the Wackenhut Corporation of Palm Beach Gardens, Florida, Effective October 1, 2003, Pursuant to the Terms and Conditions of the Solid Waste Authority of Palm Beach County Security Guard Services Agreement No. CT01-260 and Authorizing the Town Manager to Execute a Contract for Such Services on Behalf of the Town. [Thomas G. Bradford, Assistant Town Manager]

F. OTHER

1. Update Regarding Pike Road Drainage Analysis [Albert P. Dusey, Director of Public Works]

2. Update Regarding Lake Worth Inlet Sand Transfer Plant Project [Albert P. Dusey, Director of Public Works]

Dr. Sten Lilja addressed the Town Council concerning Item F.2 of the Consent Agenda. He requested more information concerning the update regarding the Sand Transfer Plant Project.

Town Manager Elwell responded that there was no action proposed to be taken as a result of the update which had been provided to the Town Council, and he indicated that he would provide a copy of the information to Dr. Lilja. For the benefit of the public he noted that the Agendas for the Town Council Meetings were available on the Thursdays prior to the meeting; the back-up was available on the Friday prior to the meeting.

Motion made by President Pro-Tem Goldblum, seconded by Councilman Wyett, to approve the Consent Agenda as amended. On roll call the motion carried unanimously.

IX. REGULAR AGENDA

A. Old Business

1. Recommendations regarding the types of projects that ARCOM and the Landmarks Preservation Commission would hear before presentation to the Mayor and Town Council. [Robert L. Moore, Director of Planning, Zoning, and Building] **Staff Requests Deferral to the September 9, 2003, Town Council Meeting.**

This item was deferred earlier in the meeting.

2. Code Enforcement Board Authorization for Foreclosure Action Case No. 01-1358, Harry J. Brown, 130 Peruvian Avenue. [Veronica B. Close, Assistant Director of Planning, Zoning, and Building] *Deferred from the July 8, 2003, Town Council Meeting.* **Request for Deferral to September 9, 2003, Town Council Meeting per Letter Dated July 31, 2003, from Alfred Brown.**

This item was deferred earlier in the meeting .

B. New Business

1. City of West Palm Beach Presentation of Subaqueous Crossing (Water Main) at Royal Poinciana Way. [Ken Rearden, City of West Palm Beach Utilities]

Mr. Ken Reardon, P.E., Director of Public Utilities, City of West Palm Beach, addressed the Town Council, presenting printed material, and discussed the sub-aqueous water main crossing project that would begin next week. He introduced Project Manager Laura Le, P E., Assistant Director of Public Utilities, Consultants from Metcalf and Eddy, Inc., Rich Ulkus and Adam Moore, and the Contractor Greg Welch from Piute Construction. He explained that Mr. Ulkus would review the details of the project. He noted that a supplemental letter had been provided concerning some conditions that would need to be approved in order to move forward on the project:

1. Close the southerly eastbound lane on Royal Poinciana, from the bridge to County Rd., for seven weeks for the assembling of the high density polyethylene pipe. Also the parking lane between Cocoanut and County Rd.

2. Close Cocoanut Row south of Royal Poinciana Way for 2 days, 24 hours per day, while the pipe was being pulled back.

3. For approximately one week, two eastbound travel lanes on Royal Poinciana Way (between east of the Flagler Bridge to the entrance of the Royal Poinciana Plaza/Cocoanut Row) must be closed to allow for the pipe installation and connection to the existing water distribution system. One lane eastbound and one lane westbound traffic will be open at all times.

4. Three of the Royal Palm trees and other ornamentals (Ficus hedge) along the south side of Royal Poinciana Way (just west of the entrance to the Royal Poinciana Plaza) may need to be transplanted during construction or replaced, in order to avoid damage. Replacement, if required, will be in-kind.

5. Twelve hour work day, 8 a.m. to 8 p.m. including Sundays and Veterans' Day, November 11, 2003.

Mr. Reardon advised that the project was a 105-day project

Councilman McDonald suggested that there be no work on Veterans' Day

In response to Mayor Smith's request to close Cocoanut Row on a weekend, rather than during the week, Mr. Rich Ulkus, Metcalf and Eddy, Inc., acknowledged that was acceptable.

Town Engineer James Bowser advised that the traffic lane in the westerly portion of Royal Palm way, west of Cocoanut, would be available to school buses, allowing them to take their normal route without detour.

Councilman Wyett moved approval of the requests made by the City of West Palm Beach, with the condition that there be no work done on Veterans' Day. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

2. Consideration of Staff Recommendation for the Florida Power and Light (FPL) Reconductouring of Power Lines for the Central Fire Station. [Albert P. Dusey, Director of Public Works]

Town Engineer James Bowser reported that the power line between Australian Ave. and Chilean Ave. east of County Rd. needed upgrading in order to provide 3 phase 240 volt power to the new Fire Station. He explained that Florida Power & Light (FP & L) had indicated that there was a budgetary constraint as to when the work could be accomplished, which would require the work to begin in February of 2004. He referred to his memorandum dated July 31, 2003, outlining several options for the consideration of the Town Council, however, since that time, discussions with FP & L had resulted in one change: FP & L would only ask the Town to advance the money for the project, estimated at approximately $70,000, since they did not have the funding in their budget to do the project; when their budget funding became available they would return the money to the Town. He explained that the Construction Contingency fund contained a sufficient amount with which to advance the money to FP & L. This would allow the work to move forward prior to the beginning of the Town's construction season restraints.

In response to Councilman Wyett, Mr. Rod Macon, FP & L, replied that there was always the possibility of lines being put underground, however, because of the timing on this particular project it may not be practical or advisable.

Town Manager Elwell clarified that timing, location, and costs were driving the decision to move forward with this particular project. He explained that there will be an overall plan developed in the next several months that would establish a program for undergrounding.

Councilman McDonald moved approval of the request from Florida Power and Light to advance the funds to pay for power lines with the condition that FP & L will reimburse the Town at a later date, with the project being completed by December 1, 2003. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

3. Palm Beach Civic Association Offer to Fund a Peer Review of the Town's Consultant's Studies Regarding Placing Overhead Utility Lines Underground. [Ned Barnes, Palm Beach Civic Association]

Mr. Ned Barnes, President/Chief Operating Officer, Palm Beach Civic Association, addressed the Town Council, stating that the Civic Association was very interested in conducting a study regarding burying overhead utility lines. He explained that an expert consultant had been located in Gainesville, Fl, and offered his services to the Town Council, at the expense of the Civic Association.

Mr. Barnes advised that the goal of the Civic Association was to obtain the best study so that the best decisions could be made.

Councilman Wyett moved approval of the Palm Beach Civic Association offer to fund a peer review of the Town consultant's study regarding placing overhead utility lines underground. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

4. Consideration of St. Ann School Request to Lease Vacant Town Property at 300, 312, and 320- 6th Street in West Palm Beach, Florida. [Michael Spaziani]

Mr. Michael Spaziani, on behalf of St. Ann School, addressed the Town Council, requesting that St. Ann School be allowed to lease the parcel of vacant land owned by the Town, located at 300, 312, and 320 6th St., West Palm Beach. He explained that a gymnatorium was being built on the present athletic field, and during the time that it was being constructed the school would like to lease the vacant land from the Town for utilization by the school for athletic activities and physical education.

Town Attorney Randolph commented that the lease should include a hold harmless agreement, and an insurance policy in a significant amount would also be required.

Town Manager Elwell commented that a lease would be subject to the review and satisfaction of the Town Attorney. He noted for the record, that if the City of West Palm Beach imposed any particular parking, drop-off, or other traffic circulation conditions, that would be the responsibility of the school and not the responsibility of the Town.

Councilman Wyett moved approval of the request from St. Ann School to lease vacant Town property at 300, 312, and 320 - 6th Street in West Palm Beach, Florida, subject to the conditions as set forth in the memorandum of Assistant Town Manager Thomas Bradford to the Mayor and Town Council, dated August 6, 2003, including the final approval of the Town Attorney as to the lease. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

5. Consideration of Code Enforcement Board Authorization for Foreclosure Action for Property at 159 Sunset Avenue. [Robert L. Moore, Director of Planning, Zoning, and Building]

Director of Planning, Zoning & Building Robert Moore recommended that the Town Council move forward with foreclosure action for property at 159 Sunset Avenue.

In response to Councilman McDonald, Code Compliance Officer Rob Walton, advised that staff was certain of the name of the property owner; the fines had started running before the foreclosure, and the total amount of the fines due was $44,250.00.

Councilman McDonald moved approval of moving forward with the foreclosure action for property at 159 Sunset Avenue. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

6. Palm Beach County Countywide Prohibited Invasive Non-Native Vegetation Removal Ordinance. [Thomas G. Bradford, Assistant Town Manager]

Assistant Town Manager Thomas Bradford reported that Palm Beach County had adopted their Prohibited Invasive Non-Native Vegetation Removal Ordinance in February of the current year, which was applicable to all unincorporated and incorporated areas of Palm Beach County, including the Town of Palm Beach. He explained that the ordinance described nine different plants that were invasive, and included the year that the particular species must be removed or eradicated. The County Ordinance included an incentive program to all qualified parcels and unimproved parcels within the buffer area surrounding a natural area. There appeared to be only a small handful of Town property owners who may fall within this category. He advised that a meeting had been held with staff and the Town Attorney and the consensus opinion was that the Town of Palm Beach should consider adopting its own ordinance, so that its own staff could accomplish the enforcement, as opposed to County staff.

President Brooks suggested that the Town Ordinance include that the Schefflera species be eradicated by the year 2006, as opposed to the County recommendation of 2010.

Councilman Wyett suggested that the Town Ordinance include the Kudzu being eradicated sooner than the 2012 date proposed by the County.

Councilman McDonald moved approval of opting out of the Palm Beach County Invasive Non-Native Vegetation Ordinance, and directed staff to proceed to draft a Town ordinance, with input from the Garden Club, that would be at least as strict as the County Ordinance.

President Pro-Tem Goldblum seconded the motion.

Mayor Smith commented that the County Ordinance would require an exception for Pine Walk, which is landmarked, and the Wells Road vista, which was also landmarked. If the Town created its own ordinance, those areas could be included as exemptions.

Town Manager Elwell commented that staff would consult with the Garden Club, and others, and the ordinance would be prepared for the September Town Council Meeting if possible; otherwise, it would be prepared for the October Town Council Meeting.

Attorney James Brindell commented that the Pine Walk area should be addressed by the ordinance, as well as the Australian Pine hedge along the north of the Sealord property. He recommended that those type of things be identified and addressed in the ordinance.

President Brooks clarified that the lower Australian Pine hedge would be exempt from the ordinance requirements.

On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

7. Consideration of a Letter of Intent from Royal Professional Builders, Inc., for Purchase of the Town's Pike Road Property. [Thomas G. Bradford, Assistant Town Manager]

   This item was deferred earlier in the meeting.

8. *(Moved from the Consent Agenda earlier in the meeting)*
Resolution No. 30-03 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Rescinding the Lien Search Fee Adopted in Resolution 90-01 and Establishing Updated Lien Search Fees, Establishing an Effective Date.

Councilman McDonald commented that he did not feel as though he had enough information to vote on Resolution No. 30-03, and would like more specific information concerning the updated lien search fees.

Finance Director Jane Skittone explained that when a lien search request was received, any monies due on a property were researched by staff. A survey of 31 municipalities in Broward and Palm Beach County indicated that there were 4 municipalities with a $35 fee (Boca Raton, Lake Worth, Plantation, and Tamarac). Two municipalities had a 24-hour rush fee of $100 (Boca Raton) and $75 (Boynton Beach). She estimated that the length of staff time spent on each lien search depended upon the property, and how much may be due – it could take an hour or two, or it could be as simple as a few minutes. She indicated that approximately 690 requests were received per year; very few of those requests were on a rush basis, however, staff had included a 24-hour rush fee in the Resolution for any person desiring it. The turn-around time on a lien search request was 3-5 days presently.

Town Attorney Randolph read Resolution No. 30-03 by title, as printed above.

After discussion, Councilman McDonald moved approval of Resolution No. 30-03. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

X. ORDINANCES

A. Second Reading

1. <u>Ordinance No. 13-03</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 2, Administration, of the Town Code of Ordinances, at Article IV, Boards and Commissions, So as to Change the Name of the Zoning Commission to the Planning and Zoning Commission; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Peter B. Elwell, Town Manager]

Town Attorney Randolph read Ordinance No. 13-03 by title, as printed above.

Councilman McDonald moved approval of Ordinance No. 13-03, on second reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

B. First Reading

1. Ordinance No. 14-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 130, Vehicles for Hire, Article II, Taxicabs and Limousines; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Jane Skittone, Director of Finance]

Town Attorney Randolph read Ordinance No. 14-03 by title, as printed above.

Councilman Wyett moved approval of Ordinance No. 14-03, on first reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

2. Ordinance No. 15-03 Amending Chapter 18, Buildings and Building Regulation by Providing Additional Language in Sections 18-962 and 18-963 Which Clarify the Assignment for Addresses on Corner Lots and the Addressing of Buildings with Multiple Tenants Spaces, Units or Apartments. [Paul Castro, Zoning Administrator]

Town Attorney Randolph read Ordinance No. 15-03 by title, as printed above.

Councilman Wyett moved approval of Ordinance No. 15-03 on first reading. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

3. Ordinance No. 16-03 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 118, Traffic and Vehicles. at Article III, Parking Stopping and Standing, By Amending Sections 118-92, 118-93 and 118-94; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Jane Skittone, Director of Finance]

Town Attorney Randolph read Ordinance No. 16-03 by title, as printed above.

President Pro-Tem Goldblum moved approval of Ordinance No. 16-03 on first reading. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

XI. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

There were none.

XII. DEVELOPMENT REVIEWS

A. Time Extensions

1. Phipps Ocean Park Tennis Facility; Request for Relief from Section 134-74(h) of the Town Code. [Thomas G. Bradford, Assistant Town Manager]

Assistant Town Manager Thomas Bradford recalled that the Town Council has approved a Special Exception with Site Plan Review and Variance Request at the September 11, 2001, Town Council meeting, for Phipps Ocean Park Tennis Facility. He explained the need for relief from Section 134-74(h) of the Town Code. His memorandum in this regard is included in its entirely below:

TOWN OF PALM BEACH
Information for Town Council Meeting on: August 12, 2003

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Thomas G. Bradford, Assistant Town Manager

Re: Request for Town Council Relief from the Provisions of Section 134-172(h) of The Town of Palm Beach Zoning Code; Phipps Ocean Park Tennis Facility; Modified Special Exception #18-2001 w/Site Plan Review and Variance Request

Date: July 10, 2003

At the Town Council meeting on September 11, 2001, the Town Council considered the Town staff's application for a modified Special Exception with Site Plan Review and Variance Request relative to the Master Plan for the Phipps Ocean Park Tennis Facility. The Master Plan included up to six clay tennis courts, tennis pro shop with restrooms and, ultimately, new restroom facilities for beach goers. The Town Council unanimously approved the application.

Subsequently, at the November, 2001 Town Council meeting, the Town Council approved the bid award to Welch Tennis Courts, Inc. The permit for the construction of the three clay tennis courts and appurtenances associated therewith was issued on December 3, 2001. The tennis courts opened on February 18, 2002 and the pro shop opened in October of 2002.

Section 134-172(h) of the Town Code of Ordinances reads as follows:

> *"(h) The work or use authorized under an approved Variance or Special Exception Application must be commenced or implemented within 12 months from the date of Town Council approval thereof, and if not so commenced the Special Exception or Variance shall be null and void. Once commenced or implemented, all authorized work must be completed within two years from the date of the original Town Council application approval."*

As you can see from the above indicated sequence of events, Town staff commenced and implemented the first three tennis courts at the Phipps Ocean Park facility within 12 months from the date of Town Council approval. Therefore, the Special Exception and Variances granted are still in full force and effect. However, although it was stated that the Master Plan was for ultimately six clay tennis courts, with the remaining three courts to be developed at some unknown point in time in the future, Section 134-172(h) requires that all authorized work must be completed within two years from the date of the original Town Council application approval.

In response to the Town Council's request that we move forward at this time in an expeditious manner with the construction of one additional tennis court, we are now requesting to be given relief from Section 134-72(h) of the Town Code of Ordinances to enable us to build the currently requested tennis court in accordance with the requirements of the Town without having to file for another special exception and variance request. Additionally, we are seeking Town Council approval of staff's request for an extended window of opportunity to accommodate the remaining two tennis courts currently contemplated to be constructed in FY2007 pursuant to the proposed FY2004 Capital Improvement Program Budget. Accordingly, **the relief that Town staff is requesting is a specific time extension for the implementation of the remaining tennis courts until December 31, 2008.** This gives the Town approximately 5.5 years to complete the remaining tennis courts and also provides a small amount of time cushion on the back side of the anticipated completion currently scheduled for FY2007. If the relief requested is granted, we can forego repeating the special exception and variance process again for an obviously beneficial public purpose project which will facilitate the ultimate implementation of the master planned tennis facility plan as desired by the Mayor and Town Council.

We recognize that the Town Council wishes to further review the timing of the final two Phipps courts vis-a-vis the possible redesign and reconstruction of the Seaview courts. Town Council approval of the requested time extension will not predetermine that decision. It will simply allow us to proceed in a more efficient manner if (prior to FY2007) the Town Council approves constructing the final two courts at Phipps.

Town staff will be happy to answer any questions that you may have in response to this request at your meeting on August 12, 2003.

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Councilman McDonald moved approval of the request of Town staff for a specific time extension for the implementation of the remaining tennis courts at Phipps Park until December 31, 2008. The motion was seconded by President Pro-Tem Norman Goldblum. On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

In response to Councilman McDonald, Town Engineer Jim Bowser advised that the planned schedule for completion of the fourth tennis court was January 6, 2004, however, staff was doing its best to beat the schedule.

After further discussion concerning the schedule for completion of the tennis courts as it would relate to the location for the tennis league, Town Manager Elwell advised that he would provide further information after conferring with staff from the Recreation Department. At a later point in the meeting, Mr Elwell advised that the schedule for completion of the tennis court at Phipps Ocean Park allowed that it would be completed in time for the tennis leagues to use them. The Woman's League would begin January 5, 2004, and the Men's League would begin January 8, 2004. In addition, staff would attempt to make arrangements to have the first several matches played with the Town team as visitors, allowing games to be played in other locations first; that would allow the Town until mid-January to host league games.

2. Appeal of Administrative Decision to require the applicant to seek Town Council approval of a time extension for Site Plan Review #8-2001, the Sea Lord Hotel Property. [James R. Brindell, Esq.] *Deferred from the June 10, 2003, Town Council Meeting.* **(On June 10th, the Town Council approved only the demolition of the buildings on the site, with the time extension and ARCOM approval to be deferred to the August 12, 2003, Town Council meeting.)**

Attorney James Brindell, on behalf of the Sea Lord Hotel, addressed the Town Council, stating that the house on the property was being demolished today, as was removal of all of the interior things in the hotel. He noted that there had been significant delays due to the requirements of Florida Power & Light (FP & L) and Southern Bell. The process was now proceeding forward. He estimated that the remaining demolition should be accomplished within thirty days. He requested a deferment until the next Town Council meeting to be held on September 9, 2003.

Director of Planning, Zoning & Building Robert Moore commented that there had been delays caused by the utility companies, and that there was a bond in place if the permit was not exercised. In response to Councilman McDonald he estimated that the screening used in another project (to screen the Picower property from construction debris) was approximately 20' in height, and was a black mesh type screening.

Councilman McDonald moved approval of the time extension for Site Plan Review No. 8-2001, until the September 9, 2003, Town Council Meeting, with the condition that the Harbour House be screened with a 20 ft. black mesh fiber cloth screening, similar to that which was used to screen the Picower property. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

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Town Clerk Pollitt administered the oath to all those who would be providing testimony regarding the following Development Review items.

B. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. VARIANCE #6-2003 The application of First Allied Jacksonville Corporation (Malcolm Glazer, President) relative to property described as the lengthy legal description on file; commonly known as 1100 South Ocean Boulevard; located in the R-AA Zoning District. To allow the relocation of the landmarked house to a more westerly location on the subject property requiring a side yard setback (south side) of 19.1 feet in lieu of the 30 feet minimum required by code. *Deferred from the February 11, 2003, and June 10, 2003, Town Council meetings.* **Request for Withdrawal Per Letter Dated August 4, 2003, from James R. Brindell.**

This item was withdrawn earlier in the meeting.

b. SPECIAL EXCEPTION #14-2003 The application of Philip Steinberg relative to property described as Corley Beach Estates, Lots 4 & 4A; commonly known as 1640 South Ocean Boulevard; located in the R-A Zoning District. Special Exception to allow two driveway gates located on a dead-end street to be setback 7'3" from the street pavement in lieu of the 18 foot minimum required. [Robert L. Moore, Director of Planning, Zoning, and Building] *Deferred from the July 8, 2003, Town Council Meeting.*

Ex-parte communication was declared by President Pro-Tem Goldblum with Attorney Maura Ziska; by Councilman Wyett with Attorney Ziska via telephone regarding the merits of the application; by Councilman McDonald with Mr. Steinberg via telephone regarding the discussion of the application at the Town Council meeting held on July 8, 2003; by President Brooks via telephone with Attorney Ziska, as well as discussion prior to the Town Council meeting on July 8, 2003.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, recalling that the project had been deferred last month, with the main concern being the proximity of the entrance to South Ocean Blvd. She advised that the architects had now widened the opening for the entrances, and the entrance and exit had been re-directed so that the entrance would be on the west opening, and the exit would be on the east opening. This would allow approximately 66 feet from South Ocean Blvd. She explained that she had contacted the Palm Beach Police Department to discuss the project, and the reconfiguration was acceptable to the Traffic Sergeant. She requested approval of the application.

Zoning Administrator Paul Castro commented that staff had requested that a re-design of the gates/driveway entrances be provided on or before July 25, 2003, however, nothing had been received until a phone call on August 8, 2003 from Attorney Ziska. At that time she had requested that staff attend a meeting she was having with the Police Department. A memorandum had been received from the Police Department today giving an opinion. He explained that staff was looking for a re-design, and the applicant had simply changed the circulation of traffic; the staff traffic consultant had not yet had an opportunity to review the proposal. The recommendation of staff was to defer until there was an opportunity to review the proposal.

Attorney Ziska responded that she had hoped to have a traffic engineer review the configuration, and had contacted a traffic engineer in this regard, however, she had not received information back that was applicable, and had looked to the Town staff to address the issue.

After discussion, Councilman McDonald moved approval of Special Exception No. 14-2003, as revised, and as based upon the opinion received from the Police Department. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion failed 2/3, with Councilman McDonald and President Pro-Tem Goldblum casting affirmative votes; Councilman Wyett and President Brooks casting dissenting votes; Councilman McLendon was no longer present at the meeting. Mayor Smith then broke the tie vote with a dissenting vote.

Councilman Wyett then moved for deferral of Special Exception No. 14-2003, to the September 9, 2003, Town Council Meeting, with direction given to the applicant to supply a traffic evaluation of the entrance closest to South Ocean Blvd., for exiting or entering. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman McLendon was no longer present at the meeting.

2. New Business

a. VARIANCE #25-2003 The application of Frederic B. Asche, Jr. relative to property described as Lot 41, Everglades Island, Plat No. 3; commonly known as 569 Island Drive; located in the R-B Zoning District. To allow construction of a 493 sq. ft., one-story garage addition with 6.30 ft. in lieu of 12.5 ft. as a side yard setback minimum required; and which would increase the angle of vision to 103.22 degrees in lieu of the 100 degree maximum.

Ex-parte communication was declared by President Pro-Tem Goldblum with Attorney Peter Broberg; by President Brooks via telephone with Attorney Broberg in regard to the application.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that a side yard setback and an angle of vision variance was being requested in order to build a garage on the property in question. He exhibited photographs of the property, as well as a rendering of the proposed garage. He explained that the applicant had a 16,000 sq. ft. lot with a one story house on it, and they desired to renovate the house. They were allowed 40% lot coverage, and presently had only 33.5% lot coverage. The garage would increase the coverage to 36.1%. The present CCR was 2.79, and the applicant was allowed 3.94. The garage would increase the CCR to 3.00. The house height was 17.1', with the allowed being 22'. He explained that every other house on Island Drive had a garage, and that the criteria for a variance had been met.

Zoning Administrator Paul Castro commented that the house had included a garage in 1980, and the previous owners had converted it into two rooms. At that time there had not been a provision in the Code that required a garage. Subsequent to the conversion in 1988-89, the previous owner had applied for a variance to construct a two car garage, free standing, which was denied by the Town Council. He explained that staff questioned the hardship for the application at hand, and believed that the garage could be designed to minimize the side yard, which was very close to the neighboring property owner.

Mr. Tim Solomon addressed the floor plan and spatial requirements of the property in question. He noted that there had been a substantial reduction in the angle of vision request since the original application had been submitted.

Director of Planning, Zoning & Building Robert Moore noted that there was no direct requirement for a side-loaded garage, although that was preferred by the Architectural Commission (ARCOM).

Mr. Solomon expressed concern regarding having enough space for a three point turn.

Councilman Wyett commented that the present plan would detract from the street scape. He expressed his concern that the amount of open space between single family homes in Palm Beach was being narrowed by variance requests every month.

Town Attorney Randolph pointed out that it was of concern to ARCOM when a specific design process was considered by the Town Council when granting a variance – an applicant may then present to ARCOM that a variance was granted subject to a specific design, and suddenly the jurisdiction of ARCOM was in question. He urged the Town Council to consider whether it wanted to direct a specific design, or whether the variance should simply be granted or denied.

President Brooks commented that he agreed that cases such as this should be referred to ARCOM for an opinion.

Councilman McDonald moved that Variance No. 25-2003 be deferred from Town Council consideration until the September 9, 2003, Town Council meeting, and that it be referred to ARCOM for consideration of the architectural portion of the request at its August meeting. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

Mr. Moore clarified that the applicant would only be receiving advice, not consent, from ARCOM.

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The luncheon recess was taken at 12:40 p.m.

The Regular Town Council Meeting of August 12, 2003, was reconvened at 2:15 p.m.

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b. VARIANCE #27-2003 The application of 470 South Ocean LLC, Ed Cury, Manager, relative to property described as Lot 1, Block 3, Villa Marine; commonly known as 470 South Ocean Boulevard; located in the R-C Zoning District. To allow the reconstruction of an existing three-story multi-family structure from thirteen (13) units and outside parking down to two (2) units and enclosed parking. This project requires the following variances: Variance to demolish and reconstruct more than fifty percent (50%) of an existing three-story multi-family structure and convert the new building from thirteen (13) units into two (2) units, with no increase in the total floor area and/or cubic footage, and to be constructed substantially within the same building footprint as the existing building; variance to allow a 10,497.5 square feet lot area in lieu of the 13,333 square feet minimum required; variance to allow a lot width of 70 feet in lieu of the 100 feet minimum required; variance to allow a 21.25 feet front yard setback in lieu of the 25 feet minimum required; variance to allow less than 40% of the frontage of the building set back less than the 45 feet minimum required; variance to allow a placement of a pool heater/pool pump in the front yard setback; variance to allow a 16.74 feet street side setback (east) in lieu of the 25 feet minimum required; variance for a side yard setback of 3.61 (the south pool) in lieu of the 10 feet required for swimming pools; variance for a side yard setback of 4.0 feet (the north pool) in lieu of the 10 feet required for swimming pools; variance to allow a

> 10.87 feet side setback (west) in lieu of the 15 feet minimum required; variance to allow a 5.9 feet rear setback on the south side of the property in lieu of the 15 feet minimum required; variance to allow 10 air conditioning units and one pool heater estimated to total approximately 30 square feet of area in lieu of the maximum of two allowed comprising of 25 square feet of area in a required setback; variance to allow a point of measurement of 17.4 feet NGVD in lieu of the 14.99 feet NGVD required; variance to maintain three stories in lieu of the two-story maximum; variance for a maximum height of 30.83 feet (an additional 6.83 feet) in lieu of the 23.5 feet maximum allowed in the R-C district; variance to allow an overall height of 38.5 feet to the highest point of the building's roof system in lieu of the 31.5 feet maximum; variance to have 45.9% lot coverage in lieu of the maximum lot coverage of 30% maximum allowed; and, variance to have 29.14% landscape open space in lieu of the 40% minimum required.

Ex-parte communication was declared by President Pro-Tem Goldblum with Attorney Kolins; by President Brooks with Attorney Kolins.

Attorney Ron Kolins addressing the Town Council, on behalf of the applicant, showed the property in its present configuration. He stated that the property which is south of the Charley's Crab parking lot is unattractive and his client plans to change the building dramatically. He advised that currently the building has thirteen rental apartments which impacts on Town services.

Attorney Kolins said that present today is his client, Ed Cury, Mr. Cury's architect Raphael Portuondo, and Karen Baxter of Greenberg Traurig who had assisted with processing the application.

Attorney Kolins presented renderings showing the conversion of the building from thirteen rental units into two condominium units. He stated that the architectural style is classic Mediterranean and it will include landscaping that will be lush as well as beautiful.

Attorney Kolins advised that Mr. Robert Wood, who lives just to the west of the building, strongly supports this project and a letter from Mr. Wood has been provided stating same. He reported that after consulting and working very closely with Mr. Wood, it was determined that additional variances were needed. He stated that these variances will be presented next month since they could not meet the deadline for this month. He continued that what is being shown today will be the end product if everything is approved.

Zoning Administrator Paul Castro requested Mr. Kolins show him, on the diagram, where the top of the pitched roof is on the proposed building. He advised that staff had questioned this earlier. Architect Raphael Portuondo responded to Mr. Castro's question.

Attorney Kolins advised that they are beautifying a building which in many respects is non-conforming and they are dramatically reducing those non-conformities. He continued that the net result would be a less massive building, a building with lesser impacts, lesser density and a much more beautiful building.

Attorney Kolins pointed out that they are before the Town Council with other requests because they are asking to do the renovation all at once. He advised that it is as if they starting fresh with a new building and have to meet all types of criteria. He continued that they are much closer to meeting this criteria than with the existing building.

Zoning Administrator Castro stated that it is a very in depth application. He advised that the Code in the Comprehensive Plan only allows one unit on this property. He continued that there are thirteen existing apartments on the property and the proposal is for a reduction to two units but advised that technically it is inconsistent with the Town's Comprehensive Plan in that it exceeds the density allowed in the Code.

Zoning Administrator Castro stated that there are several variances because they are asking to rebuild the building completely which exceeds several different provisions in the Code. He reviewed all the variance requests being made by the applicant. He advised that they do not meet the minimum landscaped open space requirements. He stated that the tradeoff is eliminating what is not a very pleasant looking building and placing something on the property that is more conducive to the area. He said that reducing the building to two apartments could alleviate many of the on street parking problems that the thirteen apartments may have created.

Zoning Administrator Castro stated that the applicant does have the full support of the neighbor to the west who is impacted the most by this application. He continued that the applicant will be coming back to Council next month to ask for some relief to address some of the concerns Mr. Wood has but is very much in support of the project.

Zoning Administrator Castro requested the applicant address the hardship related to the variance applications.

Zoning Administrator Castro gave the following staff comments from the Application Review Sheet: Comprehensive Plan: may be found to be inconsistent with Comprehensive Plan; should not exceed existing lot coverage; should not decrease landscape/open space. Building Department: technical violation of Comprehensive Plan with a reduction of units 13 to 2: retain the first 2" of storm water. Town Manager: existing percentage of landscape/open space not stated.

Director of Planning, Zoning & Building Robert Moore discussed the inconsistency and consistency of the Comprehensive Plan. He advised that it was the Planning, Zoning & Building Department's opinion that it was more of a benefit to have the newer building with less units and less competition for parking on the streets.

After discussion, it was determined that the address would not be 470 South Ocean and would have to be changed if the variance was granted.

Attorney Kolins advised that the non-conformity that is there now is greater than the variance being asked for. He said that reducing this non-conformity is a benefit to the Town and would be a dramatic improvement both in appearance and the function of the area. He stated that clearly the hardship relates to the land and the property that this building is on. He continued that if nothing dramatic was done to the building, there would be greater non-conformities than there are now. He said by asking for these variances, the applicant is asking for you to authorize the mitigation of the non-conformities and not add to them. He said the hardship is that it runs with the land and runs with the situation we find the land to be in with the building on it.

Councilman Wyett asked if they could actually rebuild this building only fifty percent if the Town Council turned down their request?

Zoning Administrator Castro said it is feasible to rebuild the building fifty percent at a time. He stated that he could not say how long, how much it would cost or what it would take but it is possible.

Councilman Wyett stated that he did not see a hardship but did see the applicant's desire to improve that corner which is rather ugly and also to reduce the density. He continued that there are certain other aspects that bother him such as the tremendous parking demands on that street. He said that two very large apartments would need more than two spaces each.

Attorney Kolins stated that they have seven spaces per unit and pointed to their location. He explained that there were two garages for each unit with driveway space for two more cars in front of each garage, and there is an area off to the side which holds another car plus there is permit parking on the street with each resident allowed two permits.

Councilman Wyett stated that a project this big should be designed with at least three garages per unit. He said that either the building should be smaller to allow for outdoor parking or there should be more underground indoor parking.

Attorney Kolins disagreed and stated that to do less with the building to provide more than seven spaces per unit is more than one can expect.

Councilman Wyett stated that permit parking is not providing any additional spaces and should not be counted.

Attorney Kolins restated that every one of the variances reduces the non-conformity and it is not a typical case because they are not asking for the Town Council to give them anything more; they are asking for something less, but technically have to ask for it.

Councilman Wyett said he is only requesting a modest amount of redesign work and adding one or two more garages inside that building on the first floor.

President Brooks stated that he totally disagreed with Mr. Wyett. He said that the situation has to be looked at, as said by staff, as a balance, and if you look at the existing building, you see that it does not stand up to what the Strategic Planning Board said about maintaining, preserving, and enhancing the quality of this Town. He stated Mr. Cury should be congratulated on this magnificent building and that he is on the side of balance and enhancing the beauty of the Town.

President Pro-Tem Goldblum asked if there were going to be more plantings on the north side of the building?

Attorney Kolins advised that there would be.

Councilman McDonald stated that he had three questions and the first being a request from Mr. Kolins to review the three variances that would be brought to Town Council next month, and also why Mr. Kolins would need or want the permit parking at all since on-street parking had been eliminated.

Attorney Kolins advised that he was responding to Mr. Wyett as to what was available to them as far as parking but said they might not make the request. He explained the three variances that would be presented next month.

Councilman McDonald said that Mr. Castro remarked that it did not compy with the Code and wanted to know if he meant the Comprehensive Plan or something else.

Mr. Castro responded that it does not comply with the Code and that is why all the variances are being requested in terms of setbacks, lot coverage, overall height, and landscaped open space.

Councilman McDonald said he understood but wanted to know the height; Mr. Castro responded that it is two story, twenty-three and a half feet.

Mr. Floyd Wideman stated that he has been before the Council a number of times to discuss variances and there are pros and cons. He said that he has always been concerned that variances have been granted without a definitive hardship. He reported that he heard

Mr. Kolins give the silliest answer when asked what hardship exists, and that Mr. Kolins never mentioned the hardship but stated that they were ameliorating some things, and they were going to build a beautiful building. Mr. Wideman said he never heard a word about a hardship He stated that the variances they are asking for violate every side yard, front yard, and back yard setback, and they are going higher than they are allowed under the code,; they are building a building that just does not fit in that neighborhood. He asked the Council to please find the hardship.

Attorney Kolins replied to Mr. Wideman stating that he did point out how the hardship relates to the land. He said he hopes Mr. Wideman will realize that by requesting the variances a situation is being made much better, not worse.

Mayor Smith asked Mr. Moore how many units were in the apartment building that was renovated on Brazilian and Cocoanut?

Director Moore replied that he thought there were eight units down to two.

Mayor Smith stated that this was done by gutting the building and leaving the walls up. She asked if the applicant gutted this building and left the walls up, could they renovate it in the same way.

Director Moore said they could renovate it and that would be the fifty percent issue of demolishing.

Town Attorney Randolph said he wanted to clear the record relating to the Comprehensive Plan. He stated that it was his understanding that the Building Department did not say that this application violates the Comprehensive Plan, but if it did violate it, he did not think the Town Council would have the authority to grant a variance to the provisions of the Comprehensive Plan. He continued that, as he understood it, by listening to Mr. Moore, that there is a goal in the Comprehensive Plan stating that you are to reduce density where you can. He said he does not see that as something that is in conflict with this application.

After discussion, it was clarified that the Comprehensive Plan does not state that there could be only one unit at this particular location.

President Pro-Tem Goldblum moved approval of Variance No. 27-2003. President Brooks passed the gavel and seconded the motion.

Mayor Smith asked Mr. Kolins if they planned to demolish the building?

Mr. Kolins said no, but if they do this more than fifty percent they are treated as if they are demolishing the building and starting from scratch. He advised that they want to do more than fifty percent at one time.

Mayor Smith asked if they could comply and do less than fifty percent at one time?

Mr. Kolins replied that if they did less than fifty percent of the work at a time, they could do essentially the same thing but it would just take much longer and would be much more disruptive to the Town.

Mayor Smith asked where the cars for the workers to park would be if approval was granted?

Mr. Ed Cury, developer, stated that sometimes they park people in West Palm Beach and bring them in, or park in the garages; arrangements are made to rent spaces.

Councilman Wyett stated that there is no argument that it is a beautiful piece of property and will add to the beauty of the oceanfront but said it was no excuse to approving it at the first round. He said that if this Council elected to reject the present plan, the developer would come in with something more acceptable that would be equally as beautiful and not quite as massive.

Councilman Goldblum stated that it could take two and half years to build it by doing it fifty percent at a time. He said the question is if the Council wants them to take that long or wants them to take it down now and build it in a year's time.

Mayor Smith asked Mr. Kolins to show the height of the building in relation to Mr. Wood's house to the west.

Mr. Kolins advised that he did not have that available but assured her that Mr. Wood is very supportive.

Mayor Smith responded that she had read his letter but stated that you are looking at a very large building and the question of the massiveness of the project has been raised. She asked if there was anyway to take this design and make it smaller?

Mr. Cury said that initally the design was not started with the intent to get all these variances but to renovate the building and then the question of demolishing came up. He stated that is what led to all the variances which are based on a two unit building in the RC-District. He advised that if he was to do a single family or even multi-family, the variances would all be different because there are different setbacks. He stated that they ended up with two units and then took the variances under the RC for two units and that was what generated all the setbacks.

President Brooks asked Mr. Cury if his architect thought it could be scaled back somewhat?

Mr. Cury responded that the renderings can be deceiving sometimes and without the landscaping it is hard. He advised that the house will all be landscaped as well as Mr. Wood's house and they plan to landscape Charley's Crab with Palm trees. He said when it is done it will look like the entrance to a residential section. He advised that it is as if they were doing a residential project as they plan to turn it into a residential street with two units and to screen the building from the street.

Mayor Smith said that in checking the square footage of the apartments, one apartment is 6,600 square feet and the other is 7,400 and wanted to know if there was no way they could be made smaller?

Mr. Cury responded that the square footage includes garages, the loggias and one side of the building is being used just to walk up to the third floor.

Architect Raphael Portuondo referred to the architectural displays indicating the location of the garages, loggias, covered porches, entries, etc.

President Brooks suggested that perhaps Mr. Kolins, after hearing what the Council is saying about the size, might want to take a deferral.

Mr. Kolins responded that they have taken this building and have made it as good as it can be and had done all kinds of unique things to get it to work. He said to try and take off a little bit is to bastardize a good thing. He continued that it is not easy to do that and not necessarily good and what would the Town have at the end of the day; nothing would be gained by cutting it back from 5,000 square feet of living space to 4,700 square feet, and he asked the Town Council to let it alone.

Mr. Cury said that in order to do what the Council is asking, the present design would have to be thrown out, and he would have to start over with a piece of land trying to make everything work. He advised that they made everything work with the building on the footprint that is basically there now. He stated that he would have to start all over again with a different approach.

Attorney Randolph wanted the applicant to understand that even if this Council was to approve these variances today, the Architectural Commission still has an opporotunity to look at it with regard to the surrounding area and how it conforms; ARCOM could make suggestions to the size of the second story. He continued that just because these variances are granted today does not mean that particular design is going to be approved. He said the applicant should be sensitive to the fact that there may be some tweaking necessary.

Mr. Kolins said they understand that, however, they are asking the Council to view this as a bit of a unique situation as they are not starting with a piece of dirt and building something that can be fooled around with. He advised they are trying to work within the parameters of that building leaving them with only so much they can do.

Mr. Kolins advised that they do not want to go to ARCOM first but want to get the approval from the Town Council and then go to ARCOM in the normal course of events.

After discussion regarding reducing the size of the project because of the concern regarding its massiveness, Mr. Kolins stated his client will not change in any meaningful or appreciable way the perception of the building. He advised that they will stay with what they have and ask for a vote and see what happens.

On roll call, the motion to approve failed 2/3, with Councilman Goldblum and President Brooks casting affirmative votes; Councilman Wyett casting a dissenting vote, Councilman McDonald casting a dissenting vote and Mayor Smith casting a dissenting vote to break the tie. Councilman McLendon was no longer in attendance at the meeting.

Attorney Randolph advised that a follow-up motion was necessary,because that was a motion to approve which failed.

Attorney Kolins requested that rather than walk out with a denial, he would prefer a deferral.

President Pro-Tem Goldblum made a motion to defer Variance #27-2003 to the September 9, 2003 Town Council meeting. Councilman Wyett seconded the motion On roll call, the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

c. VARIANCE #28-2003 The application of New Ventures of Palm Beach County, LLC (Mrs. San Lee) relative to property described as Lot 11, Vita Serena; commonly known as 181 Clarendon Avenue; located in the R-A Zoning District. To allow construction of a new swimming pool with a 32' front yard setback in lieu of the 35 feet minimum required in the R-A Zoning District; and, variance to allow the replacement of pool equipment in the front yard with a 14' setback in lieu of the 35 feet minimum required in the R-A Zoning District.

Ex-parte communication was declared by President Pro-Tem Goldblum with Attorney Maura Ziska; by Councilman Wyett with Attorney Maura Ziska and the owner of record; President Brooks with Attorney Maura Ziska.

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council. She advised that this project has previously been presented before the Town Council for certain variances and tweaking here and there. She explained that it is a Marion Sims Wyeth landmarked residence constructed in the 1920's which is undergoing an extensive renovation project. She said that the Landmark Commission did not like the swimming pool which was designed in an east/west orientation. She reported that the Landmark Commission's specific request was to orient the pool in a north/south direction centered off the loggia. She advised that the Landmark Commission has supported and approved this swimming pool as designed, however, it would require a variance because it is 32' from the property line as opposed to 35'. She said the hardship which runs with the land is that it is a very short lot and it is in an R-A District where 150' is required and only 82' exists. She stated that they are working the best they can to work with this piece of property in restoring it to today's living standards. She reported that there is another variance request for the pool equipment to be placed in the same location as before.

Director of Planning, Zoning and Building Moore stated that he believed that the Landmark Commission asked them to orient the pool in this fashion to try to get it as close to center as possible, but he was not certain that they asked the applicant to take that pool and come for a variance. He wanted to make sure there was no misunderstanding.

Attorney Ziska stated that this is the pool that the Landmark Commission liked. She said that they are dealing with an existing landmarked residence that is already non-conforming with a front yard setback which requires everything else to be offset. She advised that it is a severely insufficient lot in depth and is 70' short.

CouncilmanWyett stated that the hardship has been established, but as he discussed on the phone, the variance can be minimized which has not been done. He stated the pool could be made a little bit narrower which would not affect the suggestion of the Landmark Commission to center it. He advised that he was definitely against the pool equipment in front.

Councilman Wyett made a motion to approve the pool being 2' narrower, l' foot less on each side, east and west, and the pool equipment moved to another location.

Attorney Ziska reported that it is 16' wide right now and anything short of that would make it a lap pool because every foot you take off you have to take from the other side to make it symmetrical. She stated that it was a reasonably sized pool, and that if they cannot get in that location, it would have to be shifted. She advised that shifting it would be impossible because the Public Works Department has required an 18" linear drain for the length of the property and a swale, to conform to the 2" drainage. She stated centering it on the loggia was the best location. She continued that with regard to it being narrower, it has to have sufficient width to be centered on the loggia. She reported that a narrow lap pool would not look correct or architecturally aesthetic for this landmarked property.

Councilman Wyett disagreed stating that a lap pool is 4' to 6' wide and there are many pools in Town that are only 15' wide. He suggested putting a shape onto the project and by making a curvature.

Project Manager Mark Maher stated that if you are talking reducing it 6" could be done.

Councilman Wyett corrected him and stated that he had said 1' on each side.

Mr. Maher said that it really does narrow the size of the pool in relation to the lot and stated that the pool that was there previously was 20' wide. He advised that they have been to the Landmark Commission twice with regard to the pool. He said the second time was for approval on how they were going to landscape the whole package.

Mr. Maher advised that they were planning to put the pool equipment in the same location as before and pointed it out to the Town Council. He stated that they have previous approval of the variance and also from the Landmarks Commission to have a 6' high wall there. He continued there will not be visual or sound concerns regarding this equipment.

Councilman Wyett stated that it is a zoning requirement that they are not allowed in the front yard.

Mr. Maher continued that he understood but explained that this house has been raised from a 3' elevation to 7'10" throughout the whole property. He said the homeowner has made sure that this property stayed within the landmark requirements. He stated that the concern comes with regard to visual or sound and there is no concern in that regard.

Attorney Ziska stated that the pool equipment would have to be setback 5' from the rear or side property line if it was on the other side. She advised this would inhibit the view of the lake at that point. She a variance closer to the side yard, would be good because there is nothing on that side but the boat basin. She continued that the request today was to have the pool equipment placed in the exact same location as it was previously.

Councilman Wyett stated that there is no hardship for the pool equipment because there are other locations for it. He said the hardship goes with the land which would prevent you from doing something which the land does not prevent you from doing. He continued that Landmark Commission does not have the last word on the shape or size of a pool and they have made an advisory opinion. He said that the pool could be refashioned in many ways. He stated that he has identified how it could be made less offensive.

Attorney Ziska advised that she would agree to take the 16' wide pool and move the pool equipment.

Councilman Wyett made a motion to approve Variance #28-2003 with the condition that the pool equipment will not be located in the front yard setback. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

d. VARIANCE #29-2003 The application of Walter and Nancy Raquet relative to property described as lengthy legal description on file; commonly known as 215 Via Del Mar; located in the R-A Zoning District. To allow construction of a loggia on the lake (west) side of the house which would increase the lot coverage to 30.60% in lieu of the 29.46% approved in Variance #19-2003 and the 25% maximum allowed. **Request for Deferral to the September 9, 2003, Town Council Meeting per Letter Dated July 18, 2003, from G.E. Young, P.A.**

This item was deferred earlier in the meeting.

e. VARIANCE #30-2003 The application of Three Fours Trust, David Andelman and Amy Naughton, Co-Trustees relative to property described as lengthy legal description on file; commonly known as 444 North Lake Way; located in the R-B Zoning District. To allow construction of a new two story residence with a point of measurement of 16' NGVD in lieu of the 7.5' NGVD maximum allowed.

Ex parte communications were declared by President Pro-Tem Goldblum and President Brooks with Attorney Ziska and the owner of the property. Councilman Wyett declared ex parte communications with Attorney Ziska only.

Attorney Maura Ziska, representing the owners, said Architect Alan Shope of the firm of Shope, Reno, Wharton from Greenwich, Connecticut was present at the meeting.

Ms. Ziska identified the request was to construct a new story residence with a point of measurement of 16 feet in lieu of the 7.5 NGVD maximum allowed in the R-B zoning district, and the property contains approximately 34,000 square feet with a width of 119 feet and a depth of 280 feet. She continued that the current residence will be demolished and has a finished floor elevation of 16.83 NGVD and the proposed residence will have a finished floor elevation of 16 feet with a set back of 100 feet from the Lake Trail. She added the property will be graded to slope up from North Lake Way and the Lake Trail to the proposed finished floor level.

Ms. Ziska said the second floor portion of the proposed residence is stepped back from the first floor building line; the tie beam height and overall roof line height of the building is approximately the same as the existing house and in line with the neighboring properties along the lake. She stated the hardship runs with the land and is the grade of the land and the finished floor of the existing residence to be demolished is substantially higher than the crown of the road which is a low street and subject to flooding. She added a higher finished floor elevation is necessary to have an adequate view of the lake.

Ms. Ziska said the tie beam height is 21 feet, and the maximum allowed is 22 feet; although the majority of the proposed residence has one story ceiling heights of 11'8". She continued that neighbors on both sides of the property supported the request as no adverse impact would be made on the neighborhood. She noted the proposed finished floor elevation is lower than the finished floor elevation of the existing residence, and the project meets the current zoning code, public works code, and the building code regarding lot coverage, green space, CCR, and drainage requirements.

Mr. Moore questioned and pointed out that the finished first floor elevation of the proposed residence is lower than the SECOND floor of the existing to-be-demolished residence which is the first level of living area.

Architect Alan Shope, describing the design of the house, said the point of measurement variance was the only request needed to construct the residence.

Zoning Administrator Paul Castro said the project was sensitive to the neighbors' concerns regarding the one story elements that are closer to the property lines with the two story portion in the middle of the house. He said the height of the first floor is approximately 13 feet above North Lake Way although the grade would be sloped from the street to the house and gradually sloped back down to Lake Trail.

Mr. Castro said he had some point of measurement concerns, and the residence to the north has a first floor elevation of 12 feet, and the residence to the south has an 8 feet elevation. He continued that the elevation of the proposed residence will be taller than the house that is being demolished. He suggested that an elevation between 10 and 12 feet NGVD is more appropriate for the point of measurement.

Mr. Shope responded the requested 16 feet first floor elevation 'feels' correct for the property and is an appropriate elevation. He added the very highest part of the roof is within two feet of the existing neighbor albeit higher.

President Brooks questioned if the beauty of the residence would be affected if the height were reduced from 16 feet to 14 feet or 13 feet first floor elevation?

Mr. Shope said he would prefer to reduce the height from the top down rather than from the bottom up or reduce the ridge height to be consistent with the neighbors' heights. He offered to agree to that but preferred to keep the floor level at 16 feet.

Mr. Castro pointed out his office received an additional application from the Jaffes to construct a basement on this house which requires two variances which will be heard at the September meeting. He added if the finished floor were to be lowered, a basement may not be possible.

Mr. Shope confirmed Mr. Castro's statement and said the basement is really a small mechanical room below the kitchen to house a furnace.

Lory Volk, representing the John L. Volk Foundation, questioned if a hardship was proven? She said the present house is a split level with a screening room beneath and the point of measurement yesterday is not the point of measurement today. She continued that lot was enhanced, and the bluff was created for La Ronda as it presently sits, and the lot in 1969 was clearly a non-conforming lot with approvals given for the construction then.

Mrs. Volk said the applicant has not shown a reason for a hardship to build 8.5 feet above the grade. She quoted President Brooks as stating, "sometimes it is difficult to find a hardship in the variance requests" and that statement was made on June 10, 2003. Mrs. Volk quoted Mayor Smith as stating, ".... from time to time it saves money with the input of the Architectural Commission, could obtain, and would be very assisting in the variance process." Mrs. Volk said the reality is which comes first: the chicken or the egg. She concluded no hardship exists for this project, although the Code is very clear with the required language to prove a hardship. Mrs. Volk cited the staff's review sheet where each and every one of the staff members suggested either no hardship existed or addressed the excessive point of measurement request.

Ms. Ziska responded Mrs. Volks' remarks addressed the issue of the lot being a very unusual lot, and the remarks were inherent with the variance requests and hardship.

Mr. Shope added the variance request for the basement is a small one and was not included with this presentation as he was unaware that a variance was required for a furnace room and the advertising deadline had passed when he was made aware of that fact.

Mr. Moore, addressing the issues of the hardship and the land, said if a variance is approved, the approval must be made for a first floor basement level at 7.5 feet as the property is in flood zone A. He said if the point of measurement, 16 feet, was lowered, no basement could be built. He noted the height of the house or the ceiling height could be dropped.

President Pro-Tem Goldblum moved approval of Variance No. 30-2003, with the hardship being that the lot was in the flood zone. The motion was seconded by Councilman Wyett. ***(Architect Shope agreed to lower the height of the house by 2 feet from the top down.)*** **On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.**

f. VARIANCE #31-2003 The application of Diane S. Wister relative to property described as Lots 50 and 51, Revised Plat of Jungle Point; commonly known as 335 El Vedado Road; located in the R-A Zoning District. To allow construction adding a boatlift to existing dock, 15' 8" north of U.S. pierheadline in lieu of the 6 foot maximum allowed.

Attorney Timothy Hanlon, on behalf of the applicant, addressed the Town Council, stating that the applicant wished to add a boat lift to an existing dock which currently extends 17.5' from the property line. He advised that the proposed boat lift would extend an additional 15.8'. He explained that the hardship is the size and shape of the property because the property has a 200' frontage on the water and the neighbor's property, to the east, runs perpendicular. He continued that the extension into the lake makes more sense than extending it from side to side, further encroaching or coming near the property lines of the neighbors.

Zoning Administrator Paul Castro stated that staff had no objection to this request since it is a fairly de minimis variance as it relates to the dock feature and the request for the boat lift.

Councilman Wyett moved approval of Variance No. 31-2003. The motion was seconded by President Pro-Tem Goldblum. On roll all the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

g. Flagler Museum Dock

i. Appeal by Flagler Museum of an Administrative Decision Requiring the Museum to File, as a Part of its Special Exception Application to Reconstruct a Dock on the Property, a Special Exception for the Use of the Dock as a Water Taxi Service to and from the Museum. [Robert L. Moore, Director of Planning, Zoning, and Building]

Ex-parte communication was not declared by any member of the Town Council.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that there were two parts to the application. He explained that one was an appeal of the Town staff's determination that the use of the dock by water vessels to bring patrons of the Flagler Museum to and from the dock was an expansion of the Special Exception, and therefore would need to be approved under that process. He explained that the second portion of the application concerned a variance request related to the physical expansion of the dock

Attorney Brindell said that he was aware that the staff is recommending denial of the appeal, which was not directed at the enlargement of the dock, but rather at the staff position that the means by which people come and go to the Flagler Museum is somehow regulated by the special exception process. He compared it to regulating people arriving by land using the special exception process; he maintained that the water taxi was no different than a land taxi. He stated that the waters out there are navigable and are public waters with riparian owners having the right of ingress and egress themselves as well as their invitees to the property.

Attorney Brindell said it was erroneous to think that there is an expansion here due to that activity because there will not be any change in the Museum itself. He stated that some patrons would now arrive by water taxi at a dock rather than by the front door from the parking lot. He continued that it was really a mode of arrival and it was not proposed to be a public transit stop or a transfer point. He advised that only people going to the Museum will be able to get off there and get back on there, with access controlled by a security gate at the landing with security personnel. He stated that there would not be any leasing of the dock for any commercial use. He pointed out that the hours of the Museum will not be changed. He said it is a de minimis expansion of the dock.

Zoning Administrator Paul Castro stated that staff was relying on Code Provision 134-27 which relates to special exception uses and their related accessory uses for any expansion, enlargement or modification of an existing special exception use or any physical expansion of an existing special exception use or facility shall be permitted only by authorization of the Town Council, provided such uses shall be found by the Town Council to comply with the requirements in the subdivision. He said that staff believes this is a modification of a previously approved special exception for the museum, and they are providing a commercial type of vessel to dock at their proposed new dock. He stated, as an example, if a new bus service was to be provided to the museum, staff believes that Town Council has every provision to regulate where those busses could park and operate within the private property itself, or within land that was under the jurisdiction or the ownership or control of the property owner. He said that staff believes, in this case, even though the lake has historically been a highway for transit, the Council has the authority to regulate through the zoning laws how the docks are used for commercial boat activity on the property. Mr. Castro advised that staff was recommending that the Town Council uphold the administrative decision requiring that the use of the dock for water taxi service be considered as a modification or expansion of the special exception use.

Director of Planning, Zoning, and Building Robert Moore clarified that staff was not opposed to the special exception application and the concept of the controlled use of the water taxi stopping at the Museum for the Flagler patrons only.

Councilman McDonald moved denial of the appeal made by the Flagler Museum of an administrative decision requiring the museum to file a Special Exception *for the use of the dock* as a water taxi service to and from the Flagler Museum -- as a part of its Special Exception Application To Reconstruct A Dock On The Museum Property.

Councilman Wyett stated that he had concerns with any wording that incorporated the word water taxi or public transportation in any manner, shape or form. He stated that the Strategic Plan and the Comprehensive Plan discussed how the Town should handle future traffic. He continued that once the Convention Center was in operation and a hotel was built there, the Town would experience a tremendous increase in traffic. He continued that the Town would need to determine how to handle future traffic needs. He said that people are not just going to visit the museum and go right back to West Palm Beach, but that they will want to visit Worth Avenue, see the old Kennedy house, see what Mar-A-Lago looks like and see other sites. He stated that enlarging the dock was fine but he did not want to see any public use of it.

The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

ii. SPECIAL EXCEPTION #16-2003 WITH VARIANCE
The application of Henry M. Flagler Museum, John Blades, Executive Director, relative to property described as lengthy legal description on file; commonly known as Whitehall Way; located in the R-C Zoning District. To allow an expansion of the existing Museum special exception by a small enlargement of the dock, and to also include the ability for museum patrons to use the dock to access the property by water taxi service and private vessels; and, variance to expand the existing 89' long dock to 90' long in lieu of the 6' maximum length allowed west of the U.S. Pierhead Line.

Addressing the variance portion of Special Exception No. 16-2003 with Variance:

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that he would now address the variance, which was to enlarge the dock by 1' waterward, and 1' north and south by the encasement method, which was the least environmentally disturbing method. The request was related to the fact that the Code limit was 6' beyond the bulkhead, which would not reach out to a sufficient depth of water. The dock already existed, and had for many, many years. The increase was de minimis.

Town Attorney Randolph clarified that all that had been presented so far was the variance for the construction for the dock, which should be a separate consideration from the special exception to allow the dock to be used for water taxi purposes.

President Pro-Tem Goldblum moved approval of the variance for the enlargement of the dock at the Flagler Museum, with the hardship being that the dock was previously existing and would be extended by only 1'. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman McLendon was no longer in attendance at the meeting.

Addressing the special exception use portion of Special Exception No. 16-2003 with Variance:

Director of Planning, Zoning & Building Robert Moore commented that the Flagler Museum had historically been Town-serving. Staff had no objection to the public water taxi stopping at the dock, providing that a restriction be included that the dock would be for the use of the Flagler Museum patrons only; that is, drop off and pick up of those patrons using the Flagler Museum only. Also, no tickets would be permitted to be sold, other than what was bought at the point of entry for patrons to come to the Flagler Museum and leave.

Councilman Wyett commented that people would attempt to leave the Flagler Museum and go to other sites in Palm Beach, in order to spend the day.

Mr. John Blades, Executive Director of the Flagler Museum, commented that access to the property was now controlled at the front gates, not at the front door to the building. In the past a visitor could walk onto the property and walk around the back of the property and not even be a paid visitor — that was no longer the case. If a person came over on the water taxi and tried to leave the Museum area they would not be able to get back onto the property. The water taxi ticket purchased would be a round trip ticket.

President Pro-Tem Goldblum moved approval of Special Exception No. 16-2003, in order to create a special exception use for the water taxi so that patrons could buy a round trip ticket off-site to visit the Flagler Museum and leave from the Museum dock to return to West Palm Beach. President Brooks passed the gavel to second the motion. On roll call the motion carried 3/1, with Councilman Wyett casting a dissenting vote, and Councilman McLendon no longer being in attendance.

h. SPECIAL EXCEPTION #17-2003 WITH SITE PLAN REVIEW AND VARIANCE The application of 1620 South Ocean LLC (Stuart Wexelman, Member) relative to property described as lengthy legal description on file; commonly known as 1620 South Ocean Boulevard; located in the R-A Zoning District. To allow construction of a new two-story residence with a point of measurement of 21.5' NGVD in lieu of the 16.6' NGVD maximum allowed for the subject corner lot.

Ex parte communications were declared by President Pro-Tem Goldblum and President Brooks with Attorney Maura Ziska regarding the merits of the case.

Attorney Ziska said this property is located entirely east of the Coastal Construction Control Line, and a Florida Department of Environmental Protection (FDEP) permit was required for the project. She explained the request is to allow a new two story residence to be constructed with a point of measurement of 21.5 NGVD in lieu of the 16.6 NGVD maximum allowed for a corner lot. She continued the site is unplatted and non-conforming in width although it is 130 ft. wide, the sea grape right-of-way must be deducted from the width resulting in a 115 ft. width.

Ms. Ziska said the existing residence which will be demolished has a first floor elevation of 22.3 ft., and the proposed residence will have a finished floor elevation of 21.5 ft. with the tie beam height at 24.0 ft. or 1 foot lower than the maximum allowed, and the overall height is 30'8" or 5 ft. lower than the maximum allowed in the R-A zoning district.

Ms. Ziska continued that the natural grade of the property slopes from approximately 24.4 NGVD at South Ocean Boulevard to 17.0 NGVD at the west property line. She noted the house to the south has a finished floor elevation of 21 ft., and the house to the north has a finished floor elevation of 22.3 ft. She said the hardship that runs with the land in the subject property is that the property is located along the dune in the Town and the grade of the land and the finished floor elevation of the existing residence to be demolished is substantially higher than the average of the crown of the road at the intersecting roads. She noted that Seagrape Circle slopes from 20 ft. at South Ocean Blvd. to 12 ft. at the west property line, and because of that slope, the Town's required point of measurement is at 16.6 ft. or 4 ft. below the natural grade and 6 ft. below the existing finished floor.

Ms. Ziska said pursuant to the FDEP permit requirements, the lowest level habitable floor slab should be at or above the existing grade and only minor excavation will be allowed. She added minor excavation will be done when the piling is augered with the dirt spread on the property. She said the project meets all Code requirements with the exception of the point of measurement. She noted the curb cut on S. Ocean Blvd. will be removed if the owner can keep his S. Ocean address and enter from Seagrape.

Zoning Administrator Paul Castro said staff's recommendation was that the driveway be moved. He acknowledged that FDEP would not allow removal of any soil from the property and the grade beam was required to be at a certain elevation. Mr. Castro said the staff did have a question about the mass of the house, and the design was not sensitive to the neighbors in back of the residence although the house does meet the Code requirements.

President Brooks commented that the house looked massive and questioned the justification.

Ms. Ziska replied the heights have been mitigated to reduce the mass of the house.

Councilman Wyett noted the objection from former Councilman Robert Grace who was a neighbor to the west and requested his objection be made part of the record. He suggested the massiveness of the house be decreased.

After discussion regarding the mass of the residence, **Councilman Wyett made a motion to defer Special Exception No. 17-2003 with Site Plan Review and Variance to the September 9, 2003 Town Council meeting for re-study, and to refer the project to the Architectural Commission (ARCOM) for an architectural opinion.**

Mr. Moore said this project would be a prime candidate for ARCOM review.

Ms. Ziska explained any pool that would be built on the property would require a 90 day permit study by FDEP, and that was the reason for not showing a pool on the site plan.

Architect Harold Smith indicated where the pool could be located on the site plan.

President Pro-Tem Goldblum seconded the motion. On roll call the motion carried 4-0 as Councilman McLendon was no longer in attendance at the meeting.

i. SITE PLAN REVIEW MODIFICATION #5-2003 WITH VARIANCE The application of The Preservation Foundation of Palm Beach, Inc. relative to property described as Lots 33, 34, and 35, Block 11, Revised Map of Royal Park Addition; commonly known as 311 Peruvian Avenue; located in the C-TS Zoning District. Site plan approval required for construction of a new building in excess of 2,000 square feet in the C-TS district (and because of a change in the floor plan); and, variance of four feet to permit construction of handicap access in the two way parking lot driveway, thus reducing the width of the driveway to 17 feet in lieu of the previously approved 21 feet (25 feet required by code).

Ex parte communications were not declared by the Mayor or any Town Council member.

Attorney Frank Chopin stated the request was for site plan approval of the Preservation Foundation's new building at 311 Peruvian Avenue and for a variance to allow a driveway of 17.4 ft. in lieu of the previously approved 21.0 ft. He explained previous approvals were given for a site plan and various variances, and the re-approvals are necessary because the determination was made, well into construction, to require a 44 inch strip along the westerly side of the property to allow for access to the handicapped parking area and to the handicapped entrance.

Mr. Chopin added the entire driveway meets the handicapped accessibility requirements with a grade of 1/12, and the 44 inch strip will be the same elevation as the driveway. He said the hardship is the building is under construction.

Mr. Moore said the 44 inch strip is required for handicapped access as the strip must be separated from the driveway. He stated staff had no objection to the request.

President Pro-Tem Goldblum made a motion to approve Site Plan Review #5-2003 with variance. Councilman Wyett seconded the motion. The motion carried 4-0 on roll call as Councilman McLendon was no longer in attendance at the meeting.

j. SITE PLAN REVIEW #6-2003 WITH SPECIAL EXCEPTION AND VARIANCES MODIFICATION TO SITE PLAN REVIEW #6-2001 WITH SPECIAL EXCEPTION AND VARIANCE, AS PREVIOUSLY MODIFIED BY SITE PLAN REVIEW #16-2001 WITH VARIANCE The application of Premier Palm Beach, L.P., a Delaware limited partnership, relative to property described as lengthy legal description on file; commonly known as 3024 South Ocean Boulevard/3000 South Ocean Boulevard; located in the R-D(2) Zoning District. Site Plan Review with Special Exception modification with variance requests to increase the landscaped open space by 17% (27,739 sq. ft.), construct 44 condominium units in lieu of the 30 units approved and the 53 allowed by code in two five-story buildings with basements and sub basements each with a partial sixth floor penthouse level. The project includes health and exercise facilities, party rooms, maintenance and management offices, lobbies, mail rooms, concierge stations, below grade parking, a swimming pool, 12 cabanas in lieu of the 15 approved, two tennis courts, and 134 parking spaces in lieu of the 90 approved (maintaining a 3 to 1 ratio) on 4.079 acres of land, expanded sales building, a dune walkover, and underground utilities. The project also includes the architectural enhancement of the Town's pump station located at the northwest corner of the property. Requesting a modification to a previously approved special exception for two five-story buildings to allow two partial sixth stories with lot coverage not exceeding 22.45%; variance to allow an increase in the area previously approved for cabanas to have floor levels 0' below the level of the contiguous exterior ground outside the building, in lieu of 2 or more feet; variance to allow an increase in the area previously approved for certain permitted and accessory uses on the property to be located in the basements and sub-basements of the buildings without such uses causing the basements or sub-basements to be included or considered as a story or counted in computing height, such uses to include health and exercise facilities, party rooms, maintenance and management offices, lobbies, concierge stations, mail rooms (at a minimum elevation of 8.33' NGVD), and cabanas (at a minimum elevation of 10.5' NGVD), in addition to other uses ordinarily allowed in the basements and sub-basements; variances to allow a partial sixth story (in lieu of five stories) on each building with building heights of 70 ft. 4 inches (in lieu of 62 ft. six inches) and overall building heights of 78 ft. 10 inches (in lieu of 72 ft. 6 inches.); variance to allow a north side yard setback of 20 ft. in lieu of the required minimum 70 ft. 4 inches; variance to allow south side yard setback of 52 ft. 8 inches in lieu of the required minimum of 70 ft. 4 inches; variance to allow a point of measurement for building height of 20 ft. NGVD in lieu of 7.5 ft. NGVD; variance to allow three architectural features of 16.5 feet in height on top of the elevator returns for a height of 26.5 ft. to the top of the architectural features from the overall building height where no tower or architectural feature is allowed; variance to allow a building dimension of 380 ft. 2 inches for the combined building in lieu of the 150 feet maximum allowed; variance to allow a lot coverage of 22.45 % in lieu of 22 %; the existing approved portable sales building would be reoriented in the same general location with an addition of a 15 ft. x 60 ft. component meeting the current hurricane windload requirements; and it is requested that since the proposed plan revisions will require revisions to the building permit, that the 27 months of completion time start when the revised building permit is issued.

Ex parte communications were declared by President Pro-Tem Goldblum who said he heard a presentation at the Citizens' Association and spoke to several people at the meeting regarding the request; Mayor Smith said she spoke to Attorney Brindell, Mr. Deckelbaum, and Mr. Lawrence regarding the merits of the application; Councilman McDonald said he spoke with Mr. Frank several times and Mr. LeGault; President Brooks said he spoke with Mr. Deckelbaum at the time the first application was heard and Attorney Brindell; and Councilman Wyett said he had none.

Attorney Brindell stated the presentation included proposed revisions to a previously approved project commonly known as the Waters. He continued the property consists of 4.079 acres which, by the Zoning Code, is allowed to have 53 dwelling units on the parcel and is adjacent to the Lake Worth Beach on the south side. He said the parcel is unique in that it is surrounded by the expanse of the Ocean to the east, the large Lake Worth Beach property to the north, and the expansive Lake Worth Lagoon to the west creating a large amount of space around the property.

Mr. Brindell said the property needs a signature building with a scale that is appropriate for this large space, and that it is only one of three properties in Palm Beach that abuts another municipality. He stated the norm for the buildings north and south of this site in the Town is at the requested height or higher. He continued that 11 of the 16 buildings to the south of the Lake Worth Beach in the Town are projects between six and eight floors. North of the Beach, 9 out of 16 of the Ocean condominium projects are six to eight floors. He re-stated that the applicant's request is the norm for the large beach neighborhood.

Mr. Brindell said the new request is for 44 units in lieu of the 30 approved units but well under the 53 units the zoning allows; however, the units will be smaller to respond to the market place. He continued the key aspects to the revised project are modifications of previously approved variances and consist of changing the architecture to Mediterranean; the addition of partial sixth floors on the two building elements; three architectural elements; less density than allowed by Code; 50% more landscaping than required by the Code; and parking at a 3 to 1 ratio, more than required by Code.

Mr. Brindell said the 44 units range from 2100 square feet to approximately 4300 square feet with the four penthouses being somewhat larger, in the neighborhood of up to 5600 square feet. He noted that other changes include changing the two porte cocheres to one for both buildings; twelve cabanas in lieu of twenty; land coverage at 22.45%; and open space at 77.55%. He continued the two partial sixth floors on top, combined, comprise 13.5%; the part of the porte cochere that is covered by earth is the 0.45 in the 22.45% land coverage. He added that total air conditioned space, per floor, has been reduced with the increasing of the outdoor balcony spaces.

Architect Gene Lawrence presented the previously approved site plan and compared the new site plan to the approved plan. He emphasized the two underground parking garages with guest parking located in the front of the buildings on grass. He pointed out this is a signature project for the area, and the Mediterranean architecture is a statement for Palm Beach approaching from the Lake Worth Bridge and A1A.

Mr. Lawrence explained the rustication of the floors reduces the appearance of mass as well as the stepping back of both buildings from the Palmbeacher and the road.

Mr. Brindell summarized the requests before the Town Council and the changes made since the project was previously approved: one access point from A1A in lieu of three; most of the parking will be in the basements and sub-basements; landscaping, open space, will be 52%; drainage will meet the Town's 2-inch requirement; and provides recreational amenities, i.e. swimming, tennis, exercise room, cabanas. He said the site plan has been improved, and the applicant is requesting the Town Council re-approve the special exception for the five floors on each of the two buildings. He continued the setback for the five story components meet the Code requirement for setbacks from the south side; however, the partial sixth floor is also setback the required height of the sixth story element. He explained although the sixth story does not meet the Code requirements, the intention of the Code has been met. Mr. Brindell stated the design is consistent with the neighborhood.

Mr. Lawrence noted, for the record, that all parking aisles will be 25 feet wide and at least one dumpster will be provided for every trash chute in the building.

Mr. Lawrence stated the basement requirement has to be two feet below the surrounding grade, and two small portions on the west side of the building will be two feet below grade with the new design raising the basement floor in the area of the cabanas, exercise room, and the lobby to be flush with the pool deck.

Mr. Brindell pointed out the elevation variations on the property range from below 6 feet at the western end of the site to 20 feet at the eastern end. He continued that the Code requires sub-basements to be at 5.5 ft. elevation, the lowest point of the adjacent street, which is below the 7.5 ft. flood elevation.

Mr. Brindell identified the second request for a previously approved variance to allow an increase of certain accessory and permitted uses to be located in the basements and sub-basements and referred to the discussion regarding health and exercise rooms, party rooms, maintenance or management offices, lobby, concierge, cabanas, and mailrooms in the sub-basement areas.

Mr. Brindell said three variance requests are related to the partial sixth floors on each of the two buildings with the first one to allow the partial sixth floors with building heights of 70'4" in lieu of the 62'6" allowed by the Code and an overall building height of 78'10" in lieu of 72'6". He reiterated that most of the condominiums from Sloan's Curve south have six to eight floors. He stated the hardship is the size of the property and the context of the surrounding area.

Mr. Brindell said another variance request is for a north side yard setback of 20 feet in lieu of the 70'4", the height of the building up to the sixth floor. He continued that the Lake Worth Parking Lot is to the north, and the variance would allow for increased building separation providing additional open and green space around the buildings.

Mr. Brindell said the variance request for a 57'8" south side yard setback in lieu of the 70'4" allowed by Code related to the fifth and sixth stories of the building. He continued a point of measurement variance was previously approved at 20 feet NGVD in lieu of 7.5 feet necessitated by the elevation change from 6 ft. to 20 ft. He identified another variance request allowed three non-habitable features of 16 ft. in height resulting in heights of 26.5 ft. to the top of the architectural features from the overall building height.

Mr. Lawrence clarified that the three features, the towers, added architectural identity to the building.

Mr. Brindell continued that a variance request was made for a maximum combined building dimension of 380'2" in lieu of 150'. He explained this was a technical variance as the project reads as two buildings separated by 71'6", but because the two elements are linked by sub-basements with one porte cochere in lieu of two, the buildings are being treated as one long building.

Mr. Brindell summarized the last variance request to allow lot coverage of 22.45% in lieu of the required 22%, and the previously approved project had 22% coverage. He clarified the reason for the .45% overage is the porte cochere where the central part is not covered by earth with the result it is counted as coverage.

Mr. Brindell requested approval of an addition to the temporary sales building that would meet the wind load requirements and of a 27-month period for building time to begin when the revised building permit was issued. He explained that Mr. Deckelbaum and his group paid $525,000 in permit fees to the Town before this project was redesigned.

Mr. Castro reported that some complaints were received regarding the lack of dumpsters and their locations. He also mentioned that the entry gate may have to be moved back to allow additional cars to enter the property.

Mr. Castro pointed out one of the differences between the new site plan and the old site plan was the higher elevation of the area between the buildings and the tennis courts and the tennis courts themselves. He said the reason was to allow parking underneath the tennis courts with steps leading upward from the parking garage to the tennis courts.

He recapped that previously the applicant requested approval of a five story building, including a variance from the definition of sub-basement to allow the sub-basement to be above the crown of the road, where the Code required the sub-basement to be totally below the crown of the road. He added a point of measurement variance was granted to have the point of measurement for height to be actually at the second floor of the building with five floors above it for a total of six floors. He continued this request is for that same point of measurement to add an additional floor for a total of seven floors with a total height of 117 feet above the crown of the road. Mr. Castro said the Palmbeacher is approximately 70 feet above the crown of the road at six floors, and the proposed building would be substantially taller than the Palmbeacher.

Mr. Castro said many of the buildings Attorney Brindell cited as comparable buildings to the proposed structure were built many years ago before the Town's Code was changed. He added the Code was changed because the Council, at that time, wanted to reduce the size of the taller buildings that extended northward.

Mr. Castro explained the proposed building is substantially taller than the 62.5 feet maximum above the crown of the road that the Code allows; although the Council did grant a variance two years ago to allow an additional one floor over what the Code allows. He questioned the hardships for allowing an additional floor plus the tall elevator towers and the architectural features above the towers. He added the staff was concerned about the precedent this would set for the surrounding properties.

Architect Gene Lawrence responded the site contained four acres that would accommodate the cars on the property, and the planned landscaping and hardscaping around the tennis courts will not be overwhelming in scale from the road and will lessen the impact of the building.

Mr. Moore announced that several form letters signed by different residents supporting the project were received by the Town.

Mr. Lawrence said his company was currently working on a Lake Worth project in their POMF-30, Professional Office Multi Family, zoning district, 30 units per acre, which allows six floors; therefore the Lake Worth Code, as the land across the street is currently zoned, allows more than twice the intensive use with the same height allowed. He continued the precedent would not be set because the Code would be no higher than the proposed building.

Mr. Brindell pointed out the area between A1A and the north building and A1A and the Tennis Court is built up, but it is also heavily landscaped. He said he did not see any problem with that area.

Mr. Lawrence concurred and said the idea is to have the "Palm Beach Look" with the six foot fence and the high hedge behind it for the entire 400 feet down the length of the property. He recapped that a point of measurement variance was granted for the north building; however the south building is half way to the berm, which is measured from that point.

President Brooks said the project is beautiful, however he would like to see the penthouse above the fourth floor. He continued that the major obstacle in this case is the Town's ordinance, and compounding that were the Town Council's accommodations made in May of 2001 for the basement and the sub-basement. Mr. Brooks said the new proposal would place the structure at roughly 117 feet above the crown of the road, and that is tall.

President Brooks recalled that the Town Council rejected sending the study of the lifting of the five floor maximum ordinance to the Zoning Commission two years ago. He said the project has improved greatly over the original submission; but he did not see a hardship for granting the extra floor.

Attorney Brindell responded that height restrictions are typically done in the context of the size of the properties in a district; the proximity of buildings to the streets; and the relative scale of the buildings to the streets, pedestrians, etc. He continued the point he was trying to make was that the four acre property is very unusual and is surrounded by huge spaces – to the east, north and west. Mr. Brindell said the scale is consistent with the adjacent neighborhood, and those reasons are legitimate bases for the requested relief.

Gordon Deckelbaum, applicant, expressed appreciation for the Town Council's past cooperation and recognition of the development of the project. He recapped the development history of the project noting the 5,000 square foot units were too large for market demands, and the current plan calls for between 3,200 and 3,500 square feet units outside of the penthouse unit.

Mr. Deckelbaum said the 22.45% lot coverage includes the buildings and the ancillary structures, and the lobby roof was considered part of the lot coverage which was not anticipated originally. He said the impact of massiveness on the site was reduced by moving the buildings further away; specifically the north building further north which required a variance although the move benefitted the project.

Mr. Deckelbaum said he did not consider the height of the towers when the plan was developed since the towers were a very small part of the area, and they were designed to contain the elevator although the height could be reduced somewhat. He recalled the interpretation of the Code that provided for the basement applied to the west building on the site, because the road inside the site could have been considered a private road with the point of measurement taken from that road–the result being that a variance would not have been needed.

Mr. Deckelbaum requested the Town Council approve the project, although the project was different from any other that would be considered by the Council. He said, regarding the Steinhardt property, the approval of a six story project on this site would not work detrimentally to any position that the Town would take in terms of the height of the building that would be built on that site.

President Brooks responded that he did not have a problem with the presentation, except, the ordinance does not allow the sixth floor. He added the towers are beautiful, the building is not massive, the landscaping is beautiful, the variances for the setbacks are reasonable; however, the ordinance cannot be ignored.

Councilman Wyett said previous Councils allowed seven story buildings with the land being raised underneath them, and this building is unique and needs height. He said if the building were five stories high, with the Palmbeacher looming over it, the Waters would detract from what the Citizens Association is looking for to create something more beautiful with the entrance. He pointed out that 25 to 30 years ago, the Town Councils were trying to control development south of Sloan's Curve to avoid the appearance of South Palm Beach–all buildings. He said the five story building program resulted in wall to wall buildings with the ocean not visible between the buildings with the buildings spread out horizontally rather than vertically.

Mr. Wyett pointed out the applicant is using less land with this project and should receive some bonuses for that and encourage future high rise buildings to use less land area. He suggested re-visiting the issue of going to over five stories and encouraged the Town Council to allow the six or closer to seven stories that will blend into the neighboring buildings. He said this was the last chance the Council has to have the best possible building on this site.

President Brooks suggested Councilman Wyett write up a presentation to have the Zoning Commission reconsider the issue; however, the Town Council had the current Zoning Ordinance to contend with.

Councilman McDonald questioned the height of the south building as it would relate to the Palmbeacher?

Architect Lawrence replied the sixth floor of the proposed building is approximately 12 to 15' above the Palmbeacher.

Councilman McDonald asked what the height of the building was including the towers?

Mr. Lawrence responded the towers are approximately 25 feet.

Councilman McDonald asked if the south building were situated east of the Palmbeacher or was it directly beside the Palmbeacher?

Mr. Lawrence replied the two buildings would be almost side by side, and the proposed building was not farther forward than the Palmbeacher. He added the balconies leading to the apartments are on the north side of the Palmbeacher, and the sixth floor component of the proposed building would be approximately 12 feet higher than the Palmbeacher.

Councilman McDonald said the proposed project is a unique property in terms of every other property in Town in the sense that it has a public, municipal park on one side, a state highway on one side, and borders on water on two sides. He added the height is really not dissimilar to other condominiums on South Ocean Boulevard; however, the project does have pros and cons. He said the uniqueness of the property with the characteristics it has is probably a hardship.

Mr. Lawrence replied this property is the last undeveloped R-D2 property in the Town of Palm Beach, and 11 of the 16 buildings south of this property have six stories or above and are located on R-D1 properties.

Mr. Castro pointed out the Palmbeacher is at elevation 70, and the existing fifth floor that was approved is approximately 5 to 10 feet taller than the Palmbeacher. He added the proposed building is 111 ft. tall from South Ocean Boulevard, and he was in error reporting it at 117 ft.

Mr. Castro said if the Town Council believed that seven stories are appropriate for the area, then perhaps the Code should be revisited, as the current provision is for five stories. He said a variance for six floors has not been granted since he was employed by the Town.

Mr. Brindell said the hardship was the size and scale of the property, the context of the property, and the huge space it sits in, including the ocean and the public park. He said the property forces a building design that is out of scale with the size of the property.

Attorney Randolph added that Mr. Brindell's response was an answer to the question and considered a hardship, but the applicant had several other criteria to consider to receive a variance.

President Pro-Tem Goldblum questioned the variance on the north side of the property.

Mr. Lawrence responded the request was for 20 feet for one portion, a corner of the building, next to the parking lot.

Mr. Moore recapped that several of the buildings in that area were built under different regulations at different times during the 1970's and 1980's, and these buildings were taller. He continued that the Zoning Commission, the Mayors and Town Councils, and the public all wanted to have smaller buildings with space between the buildings with modifications made to the Zoning Ordinance through the years to accommodate the perceived errors over the years. He pointed out the difference between a story and a level with the story being used for habitable space.

Mr. Moore said this application is for a basement that has habitable space which is a level with five levels above it that were approved for a total of six levels or five stories with six levels. He continued the applicant is requesting a partial seventh level which is a penthouse with a request for towers on top of that which are considerably larger than they need to be. He said the staff estimates the overall height, including the towers, will be approximately 30 feet higher than the Palmbeacher.

Mr. Moore said several variances have been granted for the first level, the basement, through the years including the 2770 building built by Mr. Sacks on the last of the R-D(2) properties before this one, which is north of the Four Seasons Hotel. Mr. Moore said people will be watching the outcome of this application, and the staff is not recommending that the building heights in the Town be raised.

Mr. Brindell responded that one of the points of the variance process is to provide people a vehicle to come before the Town Council to present situations that are not within the generalization norm upon which those polices were adopted. He added the Council cannot pass an ordinance or regulation that fairly addresses every situation. He said this property was truly a unique situation and granting this request did not create any bad precedent relative to the Lake Worth property, the Steinhardt property. He requested the Council keep in mind the distinction between the height from the real building element to the top of the towers, and the tower height could be revisited.

Mayor Smith asked if one floor were eliminated, would a variance be necessary?

Mr. Moore responded the variance has already been granted covering that situation.

President Pro-Tem Goldblum questioned the hardship as being the size of the parcel.

Attorney Randolph replied he did not say there was a hardship; rather, that it was valid that the Council could consider that as a unique factor of the property in supporting a vote for a hardship, if the Council so chooses. He added that was one of several criteria to be met in the granting of a variance.

Councilman McDonald questioned the difference between this application and the application heard earlier in the meeting regarding the property at 470 South Ocean Blvd. as related to the heights of the building?

Mr. Moore replied three stories existed presently at 470 S. Ocean, and the difference was that the applicant wanted to rebuild a three story building that existed. He continued this application has an extra level to start off with plus the special exception for five stories of habitable area with a request for an additional story over and above the five stories.

Councilman McDonald responded the percentages are approximately the same or less. He said this was a unique piece of property, and the basis for a hardship exists. He asked how the Lake Worth zoning affected this piece of property?

Attorney Randolph replied it was not necessarily the Lake Worth Zoning that affects the property, but the conditions of approval of the sovereign land lease years ago by the Cabinet regarding the property in Lake Worth which had a provision that indicated that applicant would accept a provision of approval indicating that the applicant would be bound by the zoning laws as they exist in the Town of Palm Beach relating to height. He said that was something the Town of Palm Beach wanted to attempt to preserve.

Councilman Wyett made a motion to approve the project sans towers with the applicant returning to the Town Council to discuss the type of architecture or detail that will top the building off. He added the towers are much too tall and need improvement. He incorporated the conditions that the developer will improve the Town's Pump House located on the property to the satisfaction of the Town and that a study be made of the entry gate to relieve the possibility of cars piling up waiting for the gate to open.

Councilman Wyett said the hardship was the uniqueness of the site, the land is irregularly shaped, and the property is next door to a public facility (Lake Worth Casino area).

Mr. Lawrence offered to eliminate the variance request for the height of the towers.

Councilman McDonald asked if the height difference between the proposed building and the Palmbeacher was 16 or 17 feet?

Mr. Lawrence responded the difference was 12 feet.

Mr. Castro said the plans showed the top of the Palmbeacher at elevation 70, and the top of the seventh level on the proposed building is at 94 feet plus the height of the towers.

Mr. McDonald said he would second the motion; however, he was attempting to determine the height of the building. Mr. Lawrence said his information indicated that the fifth floor plate of the proposed building is approximately the same as the sixth floor of the Palmbeacher with the penthouse floor 12 feet above that.

The motion was seconded by Councilman McDonald.

President Pro-Tem Goldblum asked what the allowable minimum height was for an elevator tower?

Mr. Lawrence replied he did not have the answer immediately as a top floor override had to be figured, and water heaters would also be placed in that area. He requested approximately 15 feet above the penthouse roof to allow for the towers and equipment.

Mr. Moore said that was a reasonable number.

Councilman McDonald said those numbers indicated the building height would be 30 feet higher than the Palmbeacher.

Attorney Randolph clarified the motion that was made was specific to height and questioned if the motion was intended to approve the entire application?

Councilman Wyett replied it did, including the penthouse, but eliminated the two towers as shown and limits the height necessary for the elevator and equipment to 15 feet which should be within the Code.

On roll call the motion failed 2 - 3, with Councilman Wyett and Councilman McDonald casting affirmative votes; and President Pro-Tem Goldblum and President Brooks casting negative votes. Mayor Smith voted negative, breaking the tie vote, as Councilman McLendon was no longer in attendance at the meeting.

Councilman Wyett made a motion to defer the item to the September 9th Town Council meeting. President Pro-Tem Goldblum seconded the motion. On roll call, the motion carried 4-0 as Councilman McLendon was no longer in attendance at the meeting.

C. Other

1. Historical Society of Palm Beach County Request for Placement of Three "Storm of '28" Commemoration Banners on Landmarked Buildings Within the Town.
[Lauren Mintz, Executive Director, Historical Society of Palm Beach County]

Lauren Mintz, Executive Director, Historical Society of Palm Beach, explained the request was for commemoration banners to celebrate the 75th anniversary of 1928. He continued the request was for three banners on three buildings: Town Hall, the Paramount Building, and St. Edwards Church. He added 28 other buildings throughout Palm Beach County will have banners on them only for the month of September.

President Pro-Tem Goldblum made a motion to approve the banners.

Mr. Moore said that banners are not normally permitted in the Town; however, this is a one time request to honor a tragic event. He noted the Community Chest does receive an exemption to display its sign on Royal Palm Way. He added that more than three buildings in Palm Beach survived the 1928 hurricane. He said the staff's position was that this is a one time event with a precedent for it.

Mayor Smith said she agreed with the request; however, the month is too long and suggested the dates from September 2nd through September 16th which is the anniversary of the hurricane. She said she was concerned with other requests from charitable organizations to hang banners on Town Hall.

Mr. Mintz, responding to a question from Councilman Wyett, said the banners were 3 feet wide by 8 feet long

Councilman Wyett said he endorsed the Mayor's suggestion of two weeks from September 2nd through September 16th.

Mr. Mintz replied the banners could go up on September 3rd and stay up through September 17th.

President Pro-Tem Goldblum reaffirmed his motion with the banners going up on September 3rd and staying up through September 17th. Councilman Wyett seconded the motion. The motion carried 4-0 on roll call as Councilman McLendon was no longer in attendance at the meeting.

XIII. ANY OTHER MATTERS

There were no other matters.

XIV. ADJOURNMENT

There being no further business, the meeting was adjourned at 6:15 p.m.

William J. Brooks
Town Council President

Mary A. Pollitt
Town Clerk