TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON WEDNESDAY, AUGUST 11, 2010

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Wednesday, August 11, 2010, at 9:30 a.m., in the Town Council Chambers. On roll call, all of the elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Cunningham gave the invocation. President Rosow led the Pledge of Allegiance.

III. COMMENTS OF MAYOR JACK McDONALD

Mayor McDonald commented that today the Town Council would consider Publix' application to build a new store. The application is brought to the Town Council by the applicant without an Architectural Commission's (ARCOM) recommendation. The application will be considered by five members who are not architects or land planners with no prior service on ARCOM. They will make variance decisions that will affect the size and appearance of the structure without the benefit of an advisory commission recommendation, and that is disappointing. He is certain that a larger and modern store will bring additional non-residents and traffic to Town and the proposed store will be out of scale with the neighborhood. If the Town is able to accept these negatives, then the resulting structure must be an architectural jewel, not a building that achieves basic standards. Publix has been a positive presence and a good community citizen while operating in an essential and highly profitable business for many years. We have been fortunate to have them as our corner grocery store, and they are fortunate to be located in a unique and world famous Town. I hope they recognize the value of being the exclusive grocery store in Town. We are pleased to have Publix here and the residents want Publix here with a modern store, better service and selection. I hope Publix appreciates the high regard our residents have for them and reciprocate with a structure that enhances one of the most beautiful towns in the United States, one we can take pride in, Publix can be proud of, and one ARCOM can zealously recommend. I think former Mayor Marix in her recent letter to the *Palm Beach Daily News* expressed persuasively the positives and need for action. However, this compromise must be beneficial to all concerned. This Council has the duty to decide what is best for all the residents, not just those who shop at Publix. Let the Council grant the variances the applicant qualifies for,

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accept the elimination of a third loading dock and an enlarged sign. Who in Palm Beach needs a larger sign to find Publix? Thank you.

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council Member Wildrick commented on behalf of Alan Goldboro, chairman of the Planning and Zoning Commission, as he could not attend today's meeting. Mr. Goldboro's comment related to his disappointment that ARCOM had not adhered to their architectural piece, and consequently moved into the Planning & Zoning area, which was not their area. He noted that Mr. Goldboro said some of ARCOM's activities have been grossly inappropriate. The Planning and Zoning Commission and Mr. Goldboro's opinion was that any Planning and Zoning differences should be recommended to Town Council and that ARCOM should adhere to architecture. Mr. Wildrick indicated that Town Attorney Randolph advised ARCOM on more than one occasion to follow the charter. Mr. Wildrick said that a lot of time had been wasted of the Town and Publix by delving off into other areas.

Council Member Diamond stated that he wanted to know what would happen if Publix' variances were not granted.

Responding to Council Member Diamond, President Rosow said that they would discuss it at the appropriate time.

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

There were none.

VI. APPROVAL OF AGENDA

The following changes were made to the Agenda:

WITHDRAWN: Item VIII.C.2.a., Special Exception #15-2010

ADDED: Item VIII.C.4., Consideration of ratifying the decision of yesterday's settlement agreement at the Attorney/Client Session regarding Christine Brexel v Town of Palm Beach, Case No. 50-2008-CA-012927-XXXX-MB-AA.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve the Agenda as amended. On roll call, the motion carried unanimously.

VII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 3-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Text of the Infrastructure Element (Section VI) of the Town of Palm Beach Comprehensive Plan as Last Amended on April 15, 2009 with the Adoption of Ordinance No. 6-09, by Amending Policy 12.3 to Include a 10-Year Water Supply Facility Work Plan, Pursuant to Chapter 163.3177(6)(C), Florida Statutes (Water Supply Planning Requirements); Providing for Severability; Repealing all Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; and Providing an Effective Date.[John S. Page, Director of Planning, Zoning and Building]

Town Attorney Randolph read Ordinance No. 3-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to adopt Ordinance No. 3-10. On roll call, the motion carried unanimously.

B. First Reading

1. ORDINANCE NO. 23-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, at Section 134-36 to Change the Use of the Term Building Official to Director of Planning, Zoning and Building and to Add a Provision Which Allows the Town Council to Waive Certain Zoning Provisions in Chapter 134 for a Town Event, Public Rights-of-Way, Town Building, Town Structure or Town Property Provided Certain Conditions are Met; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.[John S. Page, Director of Planning, Zoning and Building]

Town Attorney Randolph read Ordinance No. 23-10 by title, as printed above.

President Pro Tem Coniglio expressed that the change in the term of Building Official to Director of Planning, Zoning and Building was de minimis and should be done. However, the remaining portion was done with respect to banners and may be too broad.

Planning, Zoning and Building Director John Page noted that the Palm Beach Civic Association proposed placing banners along streetlight posts on public property and rights-of-way for the Centennial celebration. At present time, the zoning ordinance disallows it. The Planning, Zoning and Building Department (PZB) designed a provision that would allow the Town Council to waive a zoning requirement on a case by case basis, if there was a super majority vote to waive the requirement.

President Pro Tem Coniglio said that the Town should react the same way with an application as required by anyone else. She also indicated that her preference would be to work together, as the banners have been well received both by the Council and the community.

Council Member Wildrick agreed with President Pro Tem Coniglio, and that the Ordinance was too far reaching and maybe unnecessary. The Town Council should consider looking at the Ordinance again.

Town Attorney Randolph said if the sense of the Council was not to delay it, he suggested that it could be amended to only deal with banners.

Council Member Diamond indicated that a letter from the Royal Park Homeowners Association indicated that the Planning and Zoning Commission's approval may not have been thoroughly considered plus it is said to have been given despite unidentified reservations on the part of Town Attorney Randolph, who was not present at the meeting.

Responding to Council Member Diamond, Town Attorney Randolph said that his reservation was the same concerns mentioned by two of the Council members.

President Rosow asked if it was the consensus of the Town Council to remove language from the Ordinance, as it was overreaching.

Town Attorney Randolph suggested that in Section 1, Section 134-36(b) the language should be amended as:

(b) The town council shall have the power to waive zoning provisions in Chapter 134 regulating the use of public rights-of-way to allow town sponsored events; ~~and from the lot yard and bulk requirements for town buildings, town structures or town property~~, provided that the waiver is consistent with the town's comprehensive plan ~~and the permitted uses allowed in the zoning district~~ and further, that there is a favorable vote to grant the waiver by four members of the town council at a regularly scheduled town council meeting.

In addition, Town Attorney Randolph indicated that he would need to change the title if the Town Council was in agreement to the change.

Town Attorney Randolph read the change of the title as:

ORDINANCE NO. 23-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, at Section 134-36 to Change the Use of the Term Building Official to Director of Planning, Zoning and Building and to Add a Provision Which Allows the Town Council to Waive Certain Zoning Provisions in Chapter 134 Regulating the Use of Public Rights-of-Way to Allow Town Sponsored Events, Provided Certain Conditions are Met; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.[John S. Page, Director of Planning, Zoning and Building]

Motion made by President Pro Tem Coniglio, seconded by Council Member Kleid, to approve on first reading Ordinance No. 23-10, as amended. On roll call, the motion carried unanimously.

VIII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions & Waivers

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business - Less than 15 Minutes

None

2. New Business - Less than 15 Minutes

a. SPECIAL EXCEPTION #15-2010 The application of 2875 Investors LLC; relative to property commonly known as 2875 South Ocean Blvd.; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting a Special Exception to permit the operation of a 4,004 square foot full service bank in the C-TS Zoning District and a Special Exception request to permit operation of 3 existing drive-thru lanes in support of bank use. [Attorney: Alfred J. Malefatto]

Item VIII.C.2.a., has been withdrawn.

b. VARIANCE #13-2010 The application of Andres B. Fanjul and Catherine A. Fanjul; relative to property commonly known as 109 Wells Road; described as Lot 2, LINDA VISTA; located in the R-B Zoning District. The applicant is requesting a variance to allow an unenclosed accessory structure to be constructed 5 feet from the side property line in lieu of the 10 foot minimum setback required. [Attorney: Peter S. Broberg]

President Pro Tem Coniglio said that she would gain or lose nothing on the Variance, but would recuse herself based on public perception. She provided form 8b to Town Clerk Cunningham and left the dais.

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

Town Clerk Cunningham administered the oath to all those who would be providing testimony.

Attorney Peter Broberg, on behalf of Andres and Catherine Fanjul, provided an overview of the request.

Planning, Zoning and Building Director Page commented that staff had no outstanding concern with the proposal.

Responding to President Rosow, Attorney Broberg noted that the hardship was that the house was purchased as is and that the applicant did not construct the hardscape, the house, or the pool. It was proposed in order to provide privacy and was the only place where it would fit.

Motion made by Council Member Diamond, seconded by Council Member Wildrick, to approve Variance #14-2010, and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7, had been met.

Attorney Broberg noted that it was Variance #13-2010, rather than Variance #14-2010.

The maker and seconder agreed.

Amended motion made by Council Member Diamond, seconded by Council Member Wildrick, to approve Variance #13-2010, found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7, had been met. On roll call, the motion carried 4-0, with President Pro Tem Coniglio recused.

c. <u>VARIANCE #14-2010 The application of South Ocean Boulevard, LLC, Thomas C. Iskalis, President; relative to property commonly known as 126 South Ocean Blvd.; described as Lengthy Legal Description on File; located in the R-B Zoning District. The applicant is requesting a variance from the provisions of Section 62-38, 62-39 and Section 134-1701 which do not allow construction east of the bulkhead line. The variance is proposed to allow construction of a sheet pile toe wall 22 feet east of the Town's bulkhead line in order to protect the existing bulkhead. [Attorney: Raymond W. Royce]</u>

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Raymond Royce, who advocated the position of his client.

- Council Member Kleid spoke with Attorney Royce.

- President Rosow stated that Attorney Royce sent him a letter.

- President Pro Tem Coniglio received a letter and spoke to Attorney Royce as well.

President Pro Tem Coniglio suggested that Variances #14-2010 and #15-2010 be presented together, as they mirrored one another.

Attorney Royce provided a PowerPoint presentation of the applicant's request. He noted that the hardship was that the property could be eroded away or the yard and home damaged. It is the minimum variance, and that it was a unique situation.

President Rosow disclosed that Ron Dixon has been his coastal engineer with respect to docks and seawalls.

Responding to President Rosow, Attorney Royce noted that there were no similar structures on the south side of Clarke Beach which has eroded away and in the north he did not think that there was a seawall immediately adjacent.

Ron Dixon, Dixon and Associates Engineers of West Palm Beach, provided further information regarding the seawalls in the adjacent area. He indicated that the purpose of the toe wall would be protection of the facilities from further erosion.

Town Clerk Cunningham administered the oath to Zoning Administrator Paul Castro who would be providing testimony.

Staff comments:

Zoning Administrator Castro indicated that the purpose of the sheet pile and the toe wall is to protect the existing seawall from wave continuation. The reason for the Variance is that the code did not allow for construction east of the Town's official bulkhead line.

Responding to President Pro Tem Coniglio, Attorney Royce responded that he had approval from the Florida Department of Environmental Protection (FDEP); he said that the Breakers had no objection to the Variance.

Responding to President Pro Tem Coniglio, Public Works Director Paul Brazil saw no additional scouring that would impact the north and south properties.

Motion made by President Pro Tem Coniglio that Variance #14-2010 be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7, had been met. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

d. VARIANCE #15-2010 The application of Flagler Drive Holdings, LLC, Thomas C. Iskalis; relative to property commonly known as 115 Flagler Drive; described as Lengthy Legal Description on File; located in the R-B Zoning District. The applicant is requesting a variance from the provisions of Section 62-38, 62-39 and Section 134-1701 which do not allow construction east of the bulkhead line. The variance is proposed to allow construction of a sheet pile toe wall 22 feet east of the Town's bulkhead line in order to protect the existing bulkhead. [Attorney: Raymond W. Royce]

Please see above discussion as it was presented with this Variance.

Motion made by President Pro Tem Coniglio that Variance #15-2010, be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7, had been met. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

3. Old Business - More than 15 Minutes

a. MODIFIED SITE PLAN REVIEW #4-2010 WITH SPECIAL EXCEPTION AND VARIANCES The application of Publix Super Markets, Inc. and Sunset Avenue Corp.; relative to property commonly known as 265, 255, 235, 231 Sunset Avenue and 240 Sunrise Avenue; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting Site Plan Review and Special Exception to construct a 53,272 (44,018 gross leasable) square foot one story grocery store on 4.36 acres. The new store will provide 201 off-street parking spaces. There is proposed to be an outdoor ATM and the grocery cart storage will be within the building. All of the proposed mechanical equipment will be contained within portions of the building and will not be seen as equipment on the roof. Part of the proposed design is to have two generators located on the southeast corner of the proposed store that will contain a 100 KW standby generator and a 500 KW main generator. There is proposed to be two loading areas within the loading dock on the east side of the building that will be screened. The proposed store will have a pharmacy, deli, bakery and a larger selection of food items and other products. Since the proposed grocery store is in excess of 2,000 square feet, the applicant is required to obtain Town Council approval of a special exception and a finding that the proposed use is town serving. The following variances are being requested to construct the proposed one story grocery store: (a) to allow a building length of 257'-5" feet in lieu of the 150 foot maximum allowed; (b) to allow a front yard setback at the northwest corner of the proposed building of 6'7" feet in lieu of the 10 foot minimum required based on building height; (c) to allow a side yard setback of 3'9" feet in lieu of the 10 foot minimum required; (d) to allow two loading spaces in lieu of the three spaces required by code; (e) to allow the proposed building to be a total square footage of 53,272 square feet in lieu of the 15,000 square foot maximum allowed; (f) to allow a rear yard setback of 14'2" in lieu of the 15 foot minimum required; (g) to allow an architectural tower to be on the entry façade that is not permitted by Code; (h) to allow the height of the business identification sign to be 22 feet in lieu of the 15 foot maximum allowed; (i) to allow the height of the proposed one story grocery store to be 25 feet in lieu of the 15 foot maximum allowed; (j) to allow the overall height of the proposed one story grocery store to 36 feet in lieu of the 20 foot maximum allowed; (k) to allow 201 parking spaces in lieu of the 220 required (a deficit of 19 parking spaces); (l) to allow a 4 parking spaces with a depth of 17'6" in lieu of the 18 feet minimum required. [Attorney: Maura A. Ziska, Esq.] [ARCOM Recommendation: Defer to the August 25, 2010, ARCOM meeting.] Deferred from the May 12, 2010, June 22, 2010, and July 14, 2010, Town Council Meetings (Special Circumstances).

President Rosow commented that the Town Council was not here to review the architecture, only the special exceptions and the variances.

Ex-parte communication was declared by:

- Council Member Diamond met with members of the Publix Corporation and Attorney Maura Ziska.

- Council Member Kleid had conversations with Attorney Ziska, representatives of Publix and received many emails and letters with respect to the Publix application.

- President Rosow had conversations with Publix going back to the charettes, and met with them Monday, August 9, 2010, along with Attorney Ziska; he had the same emails from residents that most of the Town Council has received and several phone calls from residents, both pro and con.

- President Pro Tem Coniglio met with Attorney Ziska, representatives of Publix, had numerous conversations with Hank Forshay(ph) on behalf of Publix and conversations with residents, both pro and con and emails that all have received.

- Council Member Wildrick received letters and phone calls from residents, both pro and con; he talked with Attorney Ziska on the phone and met with Attorney Ziska and Publix representatives.

Attorney Ziska provided an overview of the request.

Responding to President Rosow, Architect Brian Fisher, Fisher Architects, explained that the height of the sign on the new building was approximately the same as the sign on the existing building.

Attorney Ziska continued with her presentation while discussing the list of variances a-l.

Staff comments:

Zoning Administrator Castro made several of the following comments:

- The original site plan showed that the internal deliveries would be on site from Sunset Avenue driving through the property, and prior to getting back on to Sunrise Avenue backing up into a loading dock area with access from the rear of the property.

- In compromising with the Palm Beach Hotel and their concerns relative to the times of the deliveries, the headlights, and the noise, the site was redesigned to move the building further back to the east and north within the site.

- The site originally had all of its required parking at 90 degrees, but in the redesign and relative to concern about mixing one-way with two-way traffic, the parking lot was redesigned with angled parking, which precipitated the need for the variance for the 19 parking spaces, as shown on the existing plan.

- The site plan shows all of the mechanical equipment being totally enclosed, including the trash compactor, along with a 500 kilowatt generator and a 100 kilowatt generator for backup.

- The store size had been dictated by architectural details, the arcade to the north and west side, the front side of the store, as well as enclosing the mechanical equipment as identified by Attorney Ziska.

- Garrett Klotz, American Consulting Engineers, reviewed the internal design of the parking lot, and reported that there were no traffic conflicts.

- All of the concurrency requirements have been met, which was adequate capacity for roadway, water, sewer, potable water, and trash refuse.

- One concern staff has with the site plan was internal deliveries, as Publix has been vague as to when the deliveries would occur, especially the big semi-truck deliveries.

- Another concern was the construction timeline and staff recommended that they come back at a later date with a Construction Management Agreement.

- Mr. Klotz was here today to address any parking and traffic issues.

- The Police Department had no concerns with early morning hour deliveries, as it is currently.

- The hardships were spoken to relative to the variances.

Discussion occurred among the Town Council, Attorney Ziska, Zoning Administrator Castro, and Mr. Klotz regarding the truck deliveries, extended construction hours, and 90 degree parking versus angled parking. Mr. Klotz commented that he agreed with Mr. Castro that the angled parking caused a possible loss of up to 19 spaces. Attorney Ziska stated that Publix could design 90 degree parking, for 222 spaces versus 201 without a variance, and that their preference was angled parking.

Public Comment:

Town Clerk Cunningham administered the oath to Attorney Jeffrey A. Rembaum who would be providing testimony.

Attorney Rembaum, Siegfried, Rivera, Lerner, De La Torre & Sobel, P.A., representing the Palm Beach Hotel Condominium Association, spoke in opposition to the approval and listed the Association's reasons. He submitted documents into the record (Exhibits 1 and 2) that supported their issues.

Dan Ionescu, owner and part time resident of the Palm Beach Hotel, spoke in opposition to the approval. He submitted a copy of his document into the record.

Ned Barnes, Palm Beach Civic Association, stated that the Association conducted several surveys on Town issues. He noted that 77% of their survey supported a new, larger Publix.

Carole Spilberg, Palm Beach Hotel resident for 10 years, commented regarding her parking concerns and indicated that she needed a permit.

Responding to Council Member Diamond, when asked if she could stay longer in Palm Beach if she had permit parking, Ms. Spilberg said "absolutely".

President Rosow informed Ms. Spilberg that the Palm Beach Hotel had parking and sold it.

Discussion occurred among the Town Council and Mr. Rayburn, Director of Asset Management, Real Estate for Publix Supermarkets, Inc., regarding several of the following comments that were made:

- Publix would find a temporary space in order to provide a small market in the interim.

- If the variances were not approved and Publix had to stay with the current space, Publix would have to consider what their options were, as the store was 40 years old and did not meet Publix standards.

- Mr. Rayburn indicated that Publix did not have control over available space for a temporary market; Publix was doing everything possible to accommodate a temporary store.

- Publix wanted to be open for Christmas next year, and that they needed approval from ARCOM and Town Council by the end of September in order to stay on schedule.

President Pro Tem Coniglio provided her list of concerns, and made several of the following comments:

- The community has said that the new Publix is too large, and requested a 10% reduction.

- Regarding parking and the variances, there are 12 weeks a year that there are a large number of residents and shoppers.

- The hours of operation will remain as it is and not increase to a 24-hour store.

- Valet parking will continue.

- Trash will be on Sunset Avenue.

- Construction Management Plan is needed including conditions relative to it.

- Construction timeline, agreement on equipment, security and a "penalty fee" situation if not completed as promised.

- Publix would provide a small market on the island in the interim.

- The Publix sign, etched in stone and not lighted.

- A north and south signage is not necessary.

- Restriction of hours of delivery for the semi-trucks.

- Concurrency is needed within roads, streets, and sewers.

- Paul Castro commented that reserve trips could not be reserved and each application would have to demonstrate adequate roadway capacity within all segments and intersections to expand and redevelop.

- Several comments from residents were provided regarding the outside appearance.

- A generator would be needed, and more organic and healthier foods.

Council Member Wildrick noted that President Pro Tem Coniglio stated his thoughts, as well. He provided his views on the Town and stressed the importance of maintenance and upkeep of the Town; he added that the Town has not learned to collaborate in order to make improvements. He also noted that he was proud of staff, Mr. Page, and Mr. Castro of how they help the citizens; he also mentioned the Police Department and how they wave and make the people feel good in Town. This is what makes Palm Beach different and unique. He said he hopes that ARCOM, in particular, can be more user friendly as they were giving the town a bad reputation. He will consider how they treat people when they are up for reappointment.

President Rosow explained that the Town Council would go through each individual variance. He noted that President Pro Tem Coniglio came up with a very good list of items that should be a part of the vote. He wanted to make this a condition precedent for the first vote and therefore a condition precedent for all the votes. Following is the list of conditions to the Variances the Town Council would address:

- Construction Management Agreement
- Construction Timeline
- A time schedule for truck deliveries in order to avoid conflicts with residential traffic
- Hours of operation
- Valet service
- A temporary store
- The Publix new sign would not be lit, but would be recessed in stone
- Signage on the north and south side
- Trash only on Sunset Avenue

Responding to President Rosow, Attorney Ziska indicated that regarding a temporary store, it would be difficult to make that a condition without knowing what the future holds. However, she said that they would make their best effort to provide one.

Discussion occurred among the Town Council, Town Attorney Randolph, Planning, Zoning and Building Director Page, Zoning Administrator Castro, and Nick Abiusi, manager of Publix on Sunrise Avenue. Following were several of the issues discussed:

- Provisions for a temporary store
- A Declaration of Use Agreement
- PZB staff to provide the policing of the best efforts to provide a temporary store
- Hours of operation of the store
- Delivery schedule not to be from 4:00 p.m. to 8:00 p.m. in the evening
- If project approved, staff would bring the Construction Management Agreement and Declaration of Use Agreement back to the Council next month

The following variances were requested to construct the proposed one story grocery store:

a. To allow a building length of 257'-5" in lieu of the 150' maximum allowed.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing a building length of 257'-5". On roll call, the motion carried unanimously.

b. To allow a front yard setback at the northwest corner of the proposed building of 6'7" in lieu of the 10' minimum required based on building height.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing a front yard setback of 6'7". On roll call, the motion carried unanimously.

c. To allow a side yard setback of 3'9" in lieu of the 10' minimum required.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing a side yard setback of 3'9". On roll call, the motion carried unanimously.

d. To allow two loading spaces in lieu of the three spaces required by code.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing two loading spaces in lieu of three spaces required. On roll call, the motion carried unanimously.

e. To allow the proposed building to be a total square footage of 53,272 square feet in lieu of the 15,000 square foot maximum allowed.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing the proposed building to be a total square footage of 53,272 square feet in lieu of the 15,000 square foot maximum allowed. On roll call, the motion carried unanimously.

f. To allow a rear yard setback of 14'2" in lieu of the 15' minimum required.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing a rear yard setback of 14'2" in lieu of the 15' minimum required. On roll call, the motion carried unanimously.

g. To allow an architectural tower to be on the entry facade that is not permitted by Code;

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing an architectural tower to be on the entry facade that is not permitted by Code. On roll call, the motion carried unanimously.

h. To allow the height of the business identification sign to be 22' in lieu of the 15' maximum allowed.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing the height of the business identification sign to be 22' in lieu of the 15' maximum allowed. On roll call, the motion carried unanimously.

i. To allow the height of the proposed one story grocery store to be 25' in lieu of the 15'maximum allowed.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing the height of the proposed one story grocery store to be 25' in lieu of the 15' maximum allowed. On roll call, the motion carried unanimously.

j. To allow the overall height of the proposed one story grocery store to be 36'6" in lieu of the 20' maximum allowed.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance allowing the overall height of the proposed one story grocery store to be 36'6" in lieu of the 20' maximum allowed. On roll call, the motion carried unanimously.

k. To allow 201 parking spaces in lieu of the 220 required (a deficit of 19 parking spaces).

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Variance with the condition of allowing 215 parking spaces in lieu of the 220 required, that said parking spaces be 90 degrees and have two lane rows.

Discussion occurred among the Town Council, Planning, Zoning and Building Director Page, and Zoning Administrator Castro regarding the number of parking spaces. President Rosow suggested approving a Variance for 215 parking spaces in lieu of 220, and Town Council would be in favor of obtaining more than that if possible.

Upon roll call, the motion carried unanimously.

l. To allow four parking spaces with a depth of 17'6" in lieu of the 18' minimum required.

Motion made by President Pro Tem Coniglio, seconded by Council Member Kleid, to approve the Variance allowing four parking spaces with a depth of 17'6" in lieu of the 18' minimum required. On roll call, the motion carried unanimously.

Motion made by Council Member Diamond that the Variances of Modified Site Plan Review #4-2010 with Special Exception and Variances be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met.

President Rosow asked that Council Member Diamond amend his motion to include the nine conditions of the Town Council, including the 90 degree parking.

The maker agreed.

Amended motion made by Council Member Diamond that the Variances of Modified Site Plan Review #4-2010 with Special Exception and Variances be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7, had been met, subject to the nine conditions of the Town Council and the 90 degree parking. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

Motion made by Council Member Diamond that the Special Exception of Modified Site Plan Review #4-2010 with Special Exception and Variances shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met, with conditions and 90 degree parking set forth in the previous motion. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

President Rosow indicated that ARCOM would determine the appearance of the building and staff would work on bringing the Declaration of Use Agreement and Construction Management Agreement back to the Council at the same time.

Motion made by President Pro Tem Coniglio to defer the Site Plan Review of the Modified Site Plan Review #4-2010 with Special Exception and Variances until it had been reviewed by Town staff and brought back to Town Council at the September 15, 2010, Town Council Meeting. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

President Pro Tem Coniglio noted that she would like to give clear direction from the Council to ARCOM that ARCOM take consideration that this needs to move forward in an expeditious manner; that Council is looking toward the September Town Council meeting for the second Site Plan Review, and that it appears that ARCOM is very close and that the Town Council could put an umbrella blessing on it.

Council Member Kleid indicated that President Pro Tem Coniglio stated very concisely that the Town Council would like to see the project moving forward and that the suggested details seemed to be acceptable to Publix.

Council Member Wildrick stated that ARCOM is extraordinarily talented, but collaboration is needed and that ARCOM would need to move forward, now that decisions have been made. ARCOM should be the leader and not be the most obstructionist group in Town.

4. New Business - More than 15 Minutes

There were none.

D. Other

a. Ratifying Settlement Agreement of yesterday's Attorney/Client Session Regarding Christine Brexel v Town of Palm Beach, Case No. 50-2008-CA-012927-XXXX-MB-AA

Town Attorney Randolph requested that Town Council authorize and make part of the record, the specific terms of the settlement, which was incorporated into the document provided.

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to approve the ratification of the Settlement Agreement regarding Christine Brexel v Town of Palm Beach, Case No. 50-2008-CA-012927-XXXX-MB-AA. On roll call, the motion carried unanimously.

IX. ANY OTHER MATTERS

There were none.

X. ADJOURNMENT

There being no further business, the August 11, 2010, Town Council Meeting was adjourned at 12:11 p.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham

Development Review Applications & Plans