TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON WEDNESDAY, JULY 14, 2010

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Wednesday, July 14, 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

There were none.

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

There were none.

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

WITHDRAWN: Item IX.B.1., Request for Waiver of Section 42-199, Hours for Construction, Cartier, 214 Worth Avenue.

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Telephone (561) 838-5416 • Facsimile (561) 838-5417
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Staff requested deferral of Item IX.C.2.g., Variance #11-2010, 300 Dunbar Road to the August 11, 2010, Town Council Meeting, as there was an incorrect locator map included as notification to the abutting property owners.

Attorney Timothy Hanlon pointed out that the address on the legal description was correct and the locator map was incorrect; he noted that the neighbors would not be confused by the map, and he requested that it be heard today.

Town Attorney Randolph indicated that the notice was appropriate, and that the maps were sent as a subsequent identifier of the property.

It was the consensus of the Town Council to hear Variance #11-2010.

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. RESOLUTIONS

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

A. RESOLUTION NO. 70-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Resolution No. 4-05, The Breakers PUD, to Correct a Scriveners Error and Correctly Update the Deadline for Requesting the Relocation of Dwelling Units Within the Breakers PUD.[John S. Page, Director of Planning, Zoning and Building]

Planning, Zoning and Building Director Page presented the item, noting that in 2005, a provision from 2001 was inadvertently omitted from the agreement, and that this Resolution was a correction of that omission. Zoning Administrator Paul Castro provided additional information. Attorney James Brindell, representing the Breakers, indicated it was a classic scrivener's error and he had no objection.

Council Member Diamond declared, for the record, that he was a member of the Breaker's Club.

Motion made by President Pro Tem Coniglio, seconded by Council Member Wildrick, to approve Resolution No. 70-10.

Town Attorney Randolph read Resolution No. 70-10 by title, as printed above.

Upon roll call, the motion carried unanimously.

VIII. **PUBLIC HEARINGS**

A. RESOLUTION NO. 48-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the

Landmarks Preservation Commission that the Property Known as 290 South County Road Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating the North and East Facade of Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach. Deferred from the May 12, 2010, Town Council Meeting.

Ex parte communication was declared by:

- Council Members Rosow, Diamond, Kleid, and Wildrick all received a letter from owner, Thomas Campaniello, opposing the landmarking of his property.

- President Pro Tem Coniglio received correspondence and had spoken with Kathy Elliott, who, as a property manager, represented Mr. Campaniello. She had numerous telephone calls with Historic Consultant Jane Day and members of the Landmarks Preservation Commission.

Historic Consultant Day provided an update of the discussion with Mr. Campaniello, who remained opposed to landmarking the building, as he had made a substantial investment and could not benefit from any of the tax breaks of a landmark status.

Discussion occurred among the Town Council members and Mayor McDonald. President Pro Tem Coniglio recommended landmarking only the north and east sides of the facade of the building.

Council Member Kleid posed the following hypothetical question: if the Theater Guild Resolution was put on the ballot and approved, and Mr. Campaniello wanted to demolish the west end of the building and Landmarks Preservation Commission agreed to it, is this something that would be voted on by the residents, based on the fact that it would be a partial demolition of a landmarked building, which could be construed for public use?

Town Attorney Randolph responded that the ballot language in the referendum for the Theater Guild is "public private use"; the definition is unknown and could be subject to challenge.

Mayor McDonald thanked the Town Council for reconsidering the landmarking and said he would not veto it. He added that Council Member Kleid and President Pro Tem Coniglio made good points.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve Resolution No. 48-10, landmarking the north and east facades of the property known as 290 South County Road.

Town Attorney Randolph read Resolution No. 48-10 by title, as printed above.

Council Member Wildrick suggested including the "northeast" façade of the building along with landmarking the north and east facades because of the shape of the building.

The maker and seconder agreed.

Amended motion made by Council Member Diamond, seconded by Council Member Kleid, to approve Resolution No. 48-10, landmarking the north, northeast and east facades of the property known as 290 South County Road.

Town Attorney Randolph indicated that the property description would be changed as designated in the Resolution in accordance with the motion.

Upon roll call, the motion carried unanimously.

IX. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of ARCOM Recommendation No. B6/10, Addition, 1100 North Ocean Boulevard (Per Letter Dated May 5, 2010, From 1100 North Ocean Boulevard Trust).

Ex-parte communication was declared by:

- Council Member Diamond had substantial ex-parte from Attorney James Brindell, representatives of the Castle's, and a plethora of material that had been submitted by both sides, which he had read assiduously.

- Council Member Kleid spoke with Attorney Brindell, Attorney Paul Rampell, and received a significant amount of correspondence.

- President Rosow spoke with Attorney Rampell, Attorney Gregory E. Young, Mr. Karp, Attorney Brindell, and two residents, all of which advocated for their respective positions.

- President Pro Tem Coniglio spoke with Attorney Rampell on behalf of the Castle's, at length with Attorney Young, received an enormous amount of paperwork and read letters of objection from the neighbors.

- Council Member Wildrick spoke to various neighbors and representatives from both sides, all pleading their case.

Town Attorney Randolph clarified with President Rosow regarding the correspondence referred to in the ex-parte was the only correspondence that was on the record and not any other.

President Rosow noted that each side would have 15 minutes to present their appeal; that there would not be any witnesses for any new testimony.

Attorney Young, a partner with Edwards Angell Palmer & Dodge LLP, on behalf of Steven and Jill Karp, and Steven S. Fischman, as Trustee, provided an overview of the request for appeal of the Architectural Commission's (ARCOM) decision.

Attorney Paul Rampell, represented John and Marianne Castle, provided an overview rejecting Mr. Karp's three-story addition, which was in accordance with ARCOM's decision.

Attorney Young provided a rebuttal.

The Town Council Members, Mayor McDonald, and Town Attorney Randolph discussed the laws pertaining to views.

Motion made by Council Member Diamond to uphold ARCOM's denial of the addition.

President Rosow informed Council Member Diamond that his motion was too early, and he would not call for a second.

The Town Council resumed their discussion with each providing their opinion on the issue.

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to uphold ARCOM's denial of the addition. On roll call, the motion carried 4-1, with President Rosow dissenting.

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours for Construction, at 214 Worth Avenue (Cartier) (Per Letter Dated June 3, 2010, From R & R Professional Services, Inc.)
Deferred from the June 22, 2010, Town Council Meeting.

Item IX.B.1., was deferred to the August 11, 2010, Town Council Meeting.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business - Less than 15 Minutes

a. VARIANCE #4-2010 The application of Robert T. Tomsich, relative to property commonly known as 151 Via Bellaria; described as lengthy legal description on file; located in the R-A Zoning District. Request a variance to permit the construction of a new larger two-story open loggia to replace the existing two-story loggia, which will result in a lot coverage of 25.8% in lieu of the 24.9% existing and 25% maximum allowed. [Attorney: M. Timothy Hanlon] [ARCOM Recommendation: Defer to the July 28, 2010, ARCOM Meeting. Request to Withdraw Application.]Deferred from the May 12, 2010, and June 22, 2010, Town Council Meetings (Special Circumstances).Request for Withdrawal Per Letter Dated July 1, 2010, From M. Timothy Hanlon.

Item IX.C.1.a., Variance #4-2010 was withdrawn.

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

b. MODIFIED SITE PLAN REVIEW #3-2010 WITH VARIANCE The application of Mr. & Mrs. Adler, relative to property commonly known as 7 Sloan's Curve Drive; described as lengthy legal description on file; located in the PUD-B Zoning District. Request for Site Plan Review to construct a 135 square foot infill addition on the front entry of an existing townhouse and a 49 square foot infill addition to the breakfast atrium and a 49 square foot infill addition to an upstairs bedroom. A Variance is requested to allow two small additions that will enclose the entry feature and an interior atrium thereby increasing the lot coverage to 42.1% in lieu of the 39.5% existing and the 35% maximum allowed in the PUD-B district. The proposed additions will modify a previously approved site plan in a PUD complying with Section 134-688 (b) of the Town's Zoning Code. [Attorney: Maura A. Ziska, Esq.][ARCOM Recommendation: Approval of the Variance Will Not Cause Negative Architectural Impacts. Carried 7-0.] Deferred from the May 12, 2010, and June 22, 2010, Town Council Meetings.

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Maura Ziska previously.

- Council Member Kleid spoke with Attorney Ziska, who advocated the position of her client.

- President Rosow spoke with Attorney Ziska, who advocated the position of her client.

- Council Member Wildrick spoke with Attorney Ziska.

Attorney Ziska noted that last month she provided an overview of the applicant's request, but because a notice was not placed in the newspaper, a vote could not be taken until today.

Responding to President Rosow, Attorney Ziska commented that nothing had occurred in the interim.

Motion made by Council Member Diamond that Modified Site Plan Review #3-2010 be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning Section 134-329, items 1 through 11. He also moved that the Variance of Modified Site Plan Review #3-2010 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 Kleid seconded the motion. On roll call, the motion carried unanimously.

2. New Business - Less than 15 Minutes

a. SPECIAL EXCEPTION #12-2010 The application of Everglades Club Inc., relative to property commonly known as 351 Worth Avenue and 405 Cocoanut Row; described as lengthy legal description on file; located in the C-WA and C-TS Zoning District. Request for Special Exception to allow a 6,346 square foot single family residence in Via Parigi above a first floor retail store (Fiandaca). The previous tenant for all three floors was Mary Mahoney, a retail store. The applicant proposes to join the subject property (351 Worth Avenue) with the property owned by the Everglades Club at 405 Cocoanut Row. This will allow one additional residential unit on the proposed combined property to meet the density requirement. The new residential dwelling unit would occupy Mary Mahoney's previous second and third floor retail space. Fiandaca retail store will occupy Mary Mahoney's previous first floor space. By combining both properties, the proposed residential unit would not exceed the maximum ten (10) dwelling units per acre allowed. [Attorney: Maura A. Ziska]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Ziska and she advocated the position of her client.

- Council Member Kleid spoke with Attorney Ziska and she advocated the position of her client.

- President Rosow spoke with Attorney Ziska and she advocated the position of her client; he was approached by the manager of the Everglades Club, Inc., and is also a member with no financial interest in this application.

- Council Member Wildrick spoke with Attorney Ziska and she advocated the position of her client and added that he is also a member of the Everglades Club, Inc.

Attorney Ziska, represented the Everglades Club, Inc., and provided an overview of the request.

Staff comments:

Zoning Administrator Castro made several of the following comments:

- The application was consistent with the Town's Comprehensive Plan as it related to density; a Unity of Title was required, which had been agreed upon.

- The applicant had agreed to pay the commercial assessment for the Worth Avenue improvements.

- Staff requested certain condition be placed in the letter submitted to the owner/applicant.

- Staff had no objections, as it was a Special Exception use above the first floor; the first floor conversion was for a small foyer, stairwell, and the elevator. The second and third floor would be for the residential unit.

Attorney Ziska agreed with the condition that the applicant would pay a commercial assessment and that there would be a Unity of Title Agreement for the two properties.

Motion made by President Pro Tem Coniglio that Special Exception #12-2010 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 set forth by staff. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

b. <u>SPECIAL EXCEPTION #13-2010 The application of Gunster, Yoakley & Stewart, PA, relative to property commonly known as 255 S. County Road a/k/a 151 Royal Palm Way; described as ROYAL PARK ADD LT 22 TO 26 INC, LT 27 (less S 103.09 FT of E 208.15 ft & TH PT of nly 3 ft in D8972 P392) & Lt 59 Blk 8; located in the C-B Zoning District. Gunster, Yoakley & Stewart P.A. has had offices in the Town since 1942. In 1985, the firm relocated the vast majority of its office space to West Palm Beach, retaining only a small amount of space in the Town. In 1995, the Applicant applied for a special exception to exceed 2,000 sq. ft. in the Palm Beach office. Per Sec 134-226 (b), the Town Council imposed a condition of approval on Special Exception #2-95 which required the submittal of an annual affidavit indicating the percentage of clients served by the office which are Town persons. The applicant is requesting that this condition be deleted because it has proven to be unnecessary as evidenced by the past 15 years of Town-serving affidavits. [Attorney: Kenneth S. Beall, Esq.]</u>

Ex-parte communication was declared by:

- Council Member Diamond spoke to Attorney James Brindell, who advocated the position of his client.

- Council Member Kleid spoke to Attorney Brindell, who advocated the position of his client.

- President Rosow spoke to Attorney Brindell, who advocated the position of his client.

- Council Member Wildrick spoke to Attorney Brindell, who advocated the position of his client.

Attorney Brindell, on behalf of Gunster, Yoakley, & Stewart, provided an overview of the request.

Planning, Zoning and Building Director Page noted that staff had no objection to the request.

Motion made by President Pro Tem Coniglio that Special Exception #13-2010 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. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

c. SPECIAL EXCEPTION #14-2010 The application of Christian Angle Real Estate, Inc., relative to property commonly known as 179 Bradley Place; described as Lots 18 and 19, JEANETTE COURT ADDITION TO PALM BEACH, according to the Plat thereof, recorded in Plat Book 10, Page 15, of the Public Records of Palm beach County, Florida; located in the C-TS Zoning District. Request for Special Exception to permit operation of a real estate brokerage office on the first and second floors containing 3,294 square feet. The subject space was approved as office by Special Exception prior to Code changing.[Attorney: M. Timothy Hanlon]

Ex-parte communication was declared by:

- Council Member Diamond stated that he knew Christian Angle.
- President Rosow spoke with Attorney Timothy Hanlon, who advocated for his client.
- President Pro Tem Coniglio spoke with Attorney Hanlon, who advocated for his client, and knows Mr. Angle.
- Council Member Wildrick spoke with Attorney Hanlon regarding this case.

Attorney Hanlon provided an overview of the request.

Staff comments:

Zoning Administrator Castro made several of the following comments:

- The building was used historically for office use, and was grandfathered as a Special Exception for office use on the first floor.
- Claude D. Reese Real Estate was the prior occupant.
- There is parking in the rear.

Motion made by Council Member Diamond that Special Exception #14-2010 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. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

d. VARIANCE #7-2010 The application of Tina Fanjul Associates, Inc., relative to property commonly known as 220 Sunrise Avenue, Suite 103, Chairman's Club Building; described as Lots 81 to 88, less the East 10 feet of said Lots 87 and 88, SUNRISE AVENUE ADDITION NO 2 TO PALM BEACH, according to the Plat thereof on file in the Office of The Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 8, page 68, said lands situate, lying and being in Palm Beach County, Florida; located in the C-TS Zoning District. The Applicant requests a variance to allow an office use (real estate brokerage office) of approximately 842.6 square feet on the first floor of a building located in the Town-Serving Commercial District which is in contradiction of Sec 134-1107 (2), which permits such use only above the first floor.[Attorney: Patricia Lebow, Esq.]

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

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Patricia Lebow, who advocated for her client.

- Council Member Kleid spoke with Attorney Lebow, who advocated for her client.

- President Rosow spoke to Mrs. Fanjul, who advocated for this space.

- President Pro Tem Coniglio spoke with Attorney Lebow, and Tina Fanjul in their presentation of this case.

- Council Member Wildrick spoke to Mrs. Fanjul and drove by the space to look at it.

Attorney Lebow, Broad & Kassel, said she was representing Tina Fanjul Associates. President Rosow indicated that it was unnecessary for her to provide a presentation, as the Town Council had read about the request in the backup material.

Staff comments:

Zoning Administrator Castro provided several of the following comments.

- Historically the office was built as an office building.

- It was stated in the code criteria that within 300 feet, the space had to be used primarily for office use.

- While it did not meet the criteria, it was not conducive for pedestrian shopping. There was a church across the street, a bank to the east, and an Echo Restaurant to the west.

- There was an office prior to this, but the grandfather status was lost because it was vacant for two years.

- The hardship was that it was an office use area, not conducive for retail.

Motion made by President Pro Tem Coniglio that moved that Variance #7-2010, 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.

e. VARIANCE #8-2010 WITH SUBDIVISION MODIFICATION The application of Paul L. Maddock, Jr., and the Estate of Paul L. Maddock, relative to property commonly known as 301 - 306 Maddock Way; described as Lots 1 - 6, LANDMARK ESTATE, Plat Book 111, Page 63; located in the R-B Zoning District. The applicant requests modification of a condition of approval for the Landmark Estates subdivision which requires the swimming pool on Lot 5 to be removed within 2 years of the plat being recorded. Applicant wants to allow the pool to remain until either Lot 1 or Lot 5 sells. Requests modification of a condition of approval for the Landmark Estates subdivision which requires a 2-car garage for the house on Lot 1. Applicant is requesting an additional 6 months to add the garage. The Applicant is also requesting to modify a condition of approval which requires a 2 car garage for the "Old Church" on Lot 2. Applicant is requesting to eliminate this condition and is requesting a variance for proposed Lot 2 to not construct a two car garage onto an existing landmarked house which is required by code. [Attorney: Peter S. Broberg, Esq.][Landmark Preservation Commission Recommendation: To allow the building to remain as it exists and eliminate the requirement for the two car garage on Lot 2. Carried 7-0.]

Ex-parte communication was declared by:

- Council Member Diamond attended the Landmarks Preservation Commission meeting hearings.

- Council Member Kleid also attended the Landmarks Preservation Commission meetings, where this item was discussed.

- President Rosow spoke to Attorney Peter Broberg, Paul L. Maddock, Jr., his sister and brother-in-law, who advocated for their position.

- President Pro Tem Coniglio listened to the Landmarks Preservation Commission meeting online.

- Council Member Wildrick said Attorney Broberg talked to him, and Mr. Maddock contacted him on several occasions regarding this item.

Attorney Peter Broberg, on behalf of Mr. Maddock, provided an overview of the request.

Staff comments:

Zoning Administrator Castro made several of the following comments:

- Approximately two years ago, the applicant subdivided the property to redevelop it from a single estate into six developable lots. Two of them were already developed, with landmark structures on both.

- An agreement to the subdivision of the property provided the applicant agreed to demolish the pool within two years, demolish the song house/tea house either in two years or when Lot 4 sold, whichever came first, build a two car garage on the church property and reconvert the garage situated on Duck's Nest. Nothing has happened in over two years, and the applicant was sent a reminder letter of the conditions.

- Subsequently, the variance request had been filed to eliminate the garage. The Landmarks Preservation Commission concurred unanimously that it should no longer be required based upon the lot configurations when the property was subdivided.

- The applicant is here today to eliminate the condition via the variance request.

- The other conditions were a policy decision for the Town Council as it related to meeting those conditions of approval from two years ago.

- The request is to keep the swimming pool until either one of the lots sell; obtain approval for another six months from today, to reconvert the garage on Ducks Nest, although the applicant has had two years to reconvert. Staff believes the applicant should have only until November 9, 2010, which was six months from the date that the deadline would have been met.

- The song house/tea house was the other part of that equation, which was not part of the application; it would be in front of the Code Enforcement Board tomorrow afternoon; it was required to come down in April, which was the date the lot sold, and is still remaining.

Motion made by Council Member Diamond to uphold Landmarks Preservation Commission's decision regarding the owner's exemption from the requirement to build a two car garage attached to the "Old Church" on Lot 2 and that Variance #8-2010, 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 Kleid seconded the motion. On roll call, the motion carried unanimously.

Motion made by Council Member Diamond to approve the extension of the deadline to January 14, 2011, to reconvert the building on "Ducks Nest", Lot 1 into a two car garage; the restrictive covenants on the property must be amended accordingly by the applicant; moved that Variance #8-2010, 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. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

Motion made by Council Member Diamond to approve the modification to the agreement extending the pool demolition deadline until either Lot 1 or 5 sells; letter of credit must be revised accordingly. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

f. VARIANCE #9-2010 WITH SUBDIVISION AMENDMENT The application of Ronald S Kochman as Trustee if 1255 South Ocean Boulevard Realty Trust dated 12/16/2009; relative to property commonly known as 1255 South Ocean Boulevard; described as Lots 7 and 8, less the south 7.5 feet of said Lot 8, THE BLOSSOM ESTATE, according to the Plat recorded in Plat Book 44, Page 122, and as re-platted in Plat Book 54, Page 127, of the Public Records of Palm Beach County, Florida; located in the R-AA Zoning District. The applicant requests a variance to allow an accessory structure (driveway) to be built on a parcel of land that has no principal structure; this request is in conjunction with a proposed amendment to the Blossom Estate Subdivision Agreement. The Second Amendment of the Blossom Estate Subdivision Amendment (executed in 1995) proposes a driveway configuration and certain improvements on Lot 7. The proposed (third) amendment would revise the driveway configuration and remove the specific improvements in the "Buildable Envelope" to allow the future owner to have flexibility in the design of a house on the subject property. [Attorney: Maura A. Ziska.]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Ziska, and toured the property with the owner, Lawrence Moens.

- Council Member Kleid spoke with Attorney Ziska who advocated the position of her client.

- President Rosow spoke with Attorney Ziska who advocated the position of her client.

- President Pro Tem Coniglio spoke with Lawrence Moens, property owner, who advocated for his position.

- Council Member Wildrick spoke with Attorney Ziska and Lawrence Moens who advocated their positions.

Attorney Ziska, stated that partner/owner, Lawrence Moens was present, and provided an overview of the request.

Town Clerk Cunningham administered the oath to Stella Rossi, who would be providing testimony.

Stella Rossi, 625 Whispering Pines Road, Boynton Beach, Florida, commented that she was an Audubon Society, Everglades Member, and that a small sanctuary, located adjacent to Lot 7, of Blossom Estates, was left to her Chapter many years ago for protection. She expressed concern regarding the soil, driveway, runoff, light and clean fill.

Maura Ziska noted that there were numerous restrictions already in place to protect the sanctuary and that the owner was willing to work with the Audubon Society.

Staff comments:

Zoning Administrator Castro provided a short presentation relative to the history of the property. Following were several of staff's recommendations:

- Amend the agreement to allow more flexibility on Lot 7 and the driveway.

- The driveway should not be built, or if it is built that there is an agreement with the Town that the two impacted specimen trees be replaced with a similar species and size of trees in the event that the trees die.

- The fence is installed before there is any more work done on the property and proper permitting is obtained through Florida Department of Environmental Protection (FDEP) and the Town.

- The intent of the view easement in 1982 when the property was platted, was to keep all of Lot 7 in its natural state, so that everyone had a view of the mangroves that were worth saving at that time, as well as a site to the Audubon Society property.

- A view easement was created to allow that view to continue, as that was the original agreement when the entire subdivision was platted.

- In 1996/1997 there was a previous owner that came to the Town and asked to amend the subdivision agreement, which was one of the Town's conditions of approval. The agreement expired, as it was never executed.

- Once the proper permitting is obtained, remove the fill or treat it as requested by Code Enforcement.

Discussion occurred among the Town Council members, Mr. Castro, and Attorney Ziska relative to the conditions recommended by staff. Attorney Ziska noted that the owner agreed with all the conditions except for the view easement. Also discussed were the covers over the piles of sand and dirt, the purpose for the temporary driveway and a time limit attached to it.

Mr. Moens commented regarding the position of the driveway, the effects it would have to the sanctuary, and that he wanted to make it more appealing to a potential buyer.

Motion made by Council Member Diamond that Variance #9-2010, 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; subject to all conditions set forth by staff; table the view easement until a permanent structure is built; the temporary driveway to exist for no more than three years.

Susan Snyder, Audubon Society Everglade Member, requested that the owner meet with their environmental members. She expressed concern regarding the runoff, and trenching around the Ficus Tree.

President Rosow suggested a deferral until next month.

Mayor McDonald noted that the only request for today was a driveway and that all of the other issues, except for the runoff, could be discussed at the time the permit was requested.

Council Member Wildrick seconded the motion.

Mayor McDonald and President Rosow suggested addressing the view easement at the time the house would be built.

Mr. Castro indicated that the subdivision agreement would have to be amended in order to build the driveway.

Upon roll call, the motion carried unanimously.

g. VARIANCE #11-2010 The application of Dean O'Hare; relative to property commonly known as 300 Dunbar Road; described as Lot 4, Replat of Lots 56 and 57, Adams Addition, according to the plat thereof as recorded in Plat Book 26, Page 3, Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant requests a variance to permit the construction of an ornamental balustrade on the existing parapet wall, which will add additional height within the existing west side yard setback of 9.58 feet in lieu of 12.5 foot minimum required.[Attorney: M. Timothy Hanlon]

Ex-parte communication was declared by:

- President Rosow spoke with Attorney M. Timothy Hanlon, who advocated for his client.
- President Pro Tem Coniglio spoke with Attorney Hanlon, who lobbied for his client.
- Council Member Wildrick spoke with Attorney Hanlon regarding this project.

Attorney Hanlon, on behalf of Dean O'Hare, provided an overview of the request. He noted that the hardship runs with the property, as a very small lot, with existing non-conformity.

Zoning Administrator Castro commented that the request is an improvement to the home.

Motion made by Council Member Diamond that Variance #11-2010, 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 Kleid seconded the motion. On roll call, the motion carried unanimously.

h. VARIANCE #12-2010 The application of Illustrated Properties Real Estate, Inc.; relative to property commonly known as 139 North County Road, Unit 15; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting a variance to permit the operation of a real estate brokerage office containing approximately 1,008 square feet in the first floor of the Paramount Building which does not meet all the requirements to allow an office use on the first floor in this situation. The proposed use meets the special exception uses requirement in Section 134-1109 (18) that there are at least 50% existing office uses on all floors in the Paramount Building but does not meet the requirement that there are more than 50% existing office uses on the first floor within 300 feet of the proposed use within the same zoning district.[Attorney: M. Timothy Hanlon]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Hanlon regarding this request.
- President Rosow spoke with Attorney Hanlon, who advocated for his client.
- President Pro Tem Coniglio spoke with Attorney Hanlon who lobbied for his client.
- Council Member Wildrick spoke with Attorney Hanlon.

Attorney Hanlon, on behalf of Illustrated Properties Real Estate, Inc., provided an overview of the request. He stated that the hardship runs with the property which was a very significant landmarked property, the Paramount Building.

Staff comments:

Zoning Administrator Castro made several of the following comments:

- The item is different than the other real estate items that were approved, as it is a highly visible part of the Paramount Theater. Historically, the area had been retailed to the front in this specific location as well as across the hallway. It is at the direct entrance of the Paramount building.
- Staff was concerned with visibility and the tendency to put up pictures of the real estate for sale, which would not be as aesthetically pleasing.

Discussion occurred among the Town Council members, Attorney Hanlon, Mayor McDonald, and Mr. Castro relative to parking use; limiting approval to this applicant in the event that the use changes to retail at a later time; if converted, a variance would be needed for parking to revert back to retail. He also indicated that variances had not been granted where there was office use with direct frontage on the street, and that a doorway opens up onto County Road that should not be used.

Mary Overall, leasing agent for the Paramount, said that other tenants in the adjacent areas inquired regarding the space in the Paramount, but found it to be expensive.

Motion made by Council Member Diamond that Variance #12-2010, 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, with the conditions that the door fronting the street not be used; restriction to this type of business for this applicant only; windows must be in accordance with good taste. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

3. Old Business - More than 15 Minutes

a. SITE PLAN REVIEW #4-2010 WITH SPECIAL EXCEPTION AND VARIANCES The application of Publix Super Markets, Inc., 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. Request for a Site Plan Review and Special Exception to construct a 50,870 (43,360 gross leasable) square foot one story grocery store on 4.36 acres. The new store will provide 218 off street parking spaces. There is proposed to be an outdoor ATM and the grocery cart storage within the building. All of the proposed mechanical equipment will be contained within portions of the building and will not be seen on the roof. Part of the proposed design is to have two generators located within 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. A Special Exception is being requested to have two illuminated monument signs at the northwest and southwest entrances to the west parking lot and one illuminated business identification sign on the west entrance of the building. The following variances are being requested to construct the proposed one story grocery store: (a) to allow a building length of 245 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 10 feet in lieu of the 14 foot minimum required based on building height; (c) to allow a side yard setback for the proposed towers to be 10 feet in lieu of the 19-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 50,870 square feet in lieu of the 15,000 square foot maximum allowed; (f) to allow 8 towers in lieu of the two maximum allowed; (g) to allow the area of the 8 towers to be 12.2% of the gross floor area of the building in lieu of the 2% maximum allowed (h) to allow the parking lot light poles to be 23 feet in height in lieu of the 15-foot maximum allowed; (i) to allow the height of the proposed one story grocery store to be 22.66 feet in lieu of the 15-foot maximum allowed; (j) to allow the overall height of the proposed one story grocery store to be 37 feet in lieu of the 20-foot maximum allowed; (k) to allow a monument sign at the northwest entrance where no sign is allowed; (l) to allow a monument sign at the southwest entrance where no sign is allowed. [Attorney: Maura A. Ziska, Esq.] [ARCOM Recommendation: Defer to the July 28, 2010, ARCOM Meeting.] Deferred from the May 12, 2010, and June 22, 2010, Town Council Meetings (Special Circumstances).Request for Deferral to the August 11, 2010, Town Council Meeting Per Letter Dated June 8, 2010, From Maura A. Ziska.

This item, IX.C.2.i., was deferred to the August 11, 2010, Town Council Meeting.

4. New Business - More than 15 Minutes

a. VARIANCE #10-2010 The application of Gregory L. Wilson and Lisa C. Wilson; relative to property commonly known as 1480 North Lake Way; described as lengthy legal description on file; located in the R-A Zoning District. The applicant requests a variance request to construct a dock and associate appurtenances a maximum of 178 feet west of land in lieu of the 150 foot maximum allowed. The proposed dock is 150 feet from land, however the mooring piles are 20 plus feet further out. [Attorney: Maura A. Ziska]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Ziska, who advocated the position of her client.

- Council Member Kleid spoke with Attorney Ziska, who advocated the position of her client.

- President Rosow spoke with Attorney Ziska, who advocated the position of her client, and lives two doors down from this piece of property.

- Council Member Wildrick spoke at length with Attorney Ziska.

Town Clerk Cunningham administered the oath to Charlie Isiminger and Mat Butler who would be providing testimony.

Attorney Ziska, on behalf of Mr. and Mrs. Greg Wilson, provided an overview of the request.

Charlie Isiminger, Isiminger & Stubbs, Inc., on behalf of the applicant, provided information relative to the mooring piles and answered questions by the Town Council.

Matthew Butler provided technical information relative to the new lift, and answered questions by the Town Council.

Motion made by Council Member Diamond that Variance #10-2010, 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 Kleid seconded the motion. On roll call, the motion carried unanimously.

X. ANY OTHER MATTERS

There were none.

XI. ADJOURNMENT

There being no further business, the July 14, 2010, Town Council Meeting was adjourned at 12:30 p.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk