

# TOWN OF PALM BEACH

Office of The Town Clerk

## MINUTES OF THE SPECIAL TOWN COUNCIL MEETING 2005-2006 ZONING HEARING WEDNESDAY, MAY 3, 2006, 9:30 A.M.

### I. CALL TO ORDER AND ROLL CALL

The Special Town Council meeting of Wednesday, May 3, 2006, was called to order at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald  
President Denis P. Coleman  
President Pro-Tem Richard M. Kleid  
Council Member William J. Brooks  
Council Member Susan Markin  
Council Member Allen S. Wyett

Others present for all or a portion of the meeting were:

Town Attorney John C. Randolph  
Planning, Zoning & Building Director Veronica Close  
Zoning Administrator Paul Castro  
Planning Administrator Timothy M. Frank  
Town Clerk Susan A. Eichhorn

Town Consultants:

William Brisson, Brisson, Planning Consultant, Planning Solutions, Inc.  
Charles Siemon, Siemon and Larsen, P.A.

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STC - Zoning  
Minutes 5-3-06

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II. INVOCATION AND PLEDGE OF ALLEGIANCE

The Invocation was given by Town Clerk Eichhorn. President Coleman led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

The Agenda was approved through motion of Council Member Wyett, seconded by President Pro Tem Kleid, carrying unanimously on roll call.

IV. Consideration of Siemon and Larsen Report on the Alternate Development Standard Proposal, and the Special Exception Proposal. Consideration of the Town's Staff Report dated March 23, 2006, and the Planning and Zoning Commission's Record and Reports on these proposals dated November 29, 2005, and March 23, 2006.

Director of Planning, Zoning & Building Veronica Close advised that at this, the last Zoning Meeting of the season, there would be discussion regarding four (4) items. She stated that some of these issues had already been reviewed, at previous meetings, and had been deferred until today.

1. Alternate Development Standards
2. Special Exception Study
3. Practical Difficulties
4. Review of Preliminary Report of the R-B Zoning District

Ms. Close acknowledged Mr. William Brisson, Planning Consultant, and Mr. Charles Siemon, Siemon and Larson.

Ms. Close referred to her detailed memorandum to the Mayor and Town Council, dated April 26, 2006, and included in the back-up material provided. She reviewed the four items to be discussed providing a brief history, and noted the recommendations made by staff, Siemon & Larson, and the Planning and Zoning Commission.

Mr. Charles Siemon provided a power point presentation to discuss the Siemon and Larson Report on the Alternate Development Standard Proposal.

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President Coleman asked Mr. Siemon to comment on the concept of allowing a variance where the bottom line of that variance was bringing the property more into conformity than it had been before.

Mr. Siemon responded that they had recommended provisions of that nature to mature communities and had a fair amount of success. The standard was a little more fully developed than described by President Coleman, but basically, it stated that a piece of property that was nonconforming, and could not make any changes to it, was given two choices: tear it down or leave it as it was. He advised that if neither condition was the preferred choice, and because it was often described that "nonconforming" could have a stigmatic characteristic to it, a process called the "conforming use process" was created. He explained that it was not a lawful use, but it was a conforming use, in which one went through a process to allow upgrades, improvements, replacements, etc. He stated that during the last year, a lot of attention had been given to this because of some of the limitations on the amount of changes and improvements, and that the fifty-percent value rule came into play. He noted that they have had good success with this process in other communities. He advised that the standard was if the applicant could demonstrate that they had complied to the maximum extent practicable.

President Pro Tem Kleid asked Mr. Siemon how he would react to individuals that state the alternative development standards were too cumbersome; and if put into the Zoning Code, it would make the code even more difficult to wade through.

Mr. Siemon stated that the sentiment was that the Alternative needed to be complete and full to serve its purpose. He noted that what was cumbersome, was how a presentation was organized and represented on the page, and how it was read. He advised that as a community matures, rules were needed as well as flexibility, but judgement was also needed. He believed that alternative development standards would assist in drawing a better balance; and in his experience, it was better to have more standards and not less, which helped guide better, more predictable and more defensible outcomes.

Zoning Administrator Paul Castro introduced Mr. Brisson, Town Consultant, stating that Mr. Brisson had collaborated with staff, to evaluate the Siemon and Larson proposal in order to make a presentation on that report, as well as to provide the Town Council with an overview of the Planning and Zoning Commission's Record and Reports of November 29, 2005 and March 23, 2006 regarding this issue.

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Mr. William Brisson, Brisson Planning Solutions, Inc., advised that he had reviewed the following items relative to the alternative development standards, which were to be administered by ARCOM as well as the Landmarks Commission:

- Discussion and recommendations in the Siemon & Larson Report;
- Letters from Mr. Randolph to Mr. Harrison relative to the alternative development Standards and practical difficulties;
- Mr. Guttman's proposal relative to practical difficulties as an alternative to the alternative development standards.

Mr. Brisson explained how he and staff had arrived at the recommendations being made:

- Reviewed information concerning variances and the common reasons for their having been granted;
- Reviewed the situations under which variances were usually granted, and that provided the basis for the criteria to be considered in applying alternative development standards;
- Reviewed all comments received over the past year;
- Looked at what body would best administer each of the individual alternative development standards.

Mr. Brisson advised that after reviewing the material from Siemon and Larson, which was very extensive, staff agreed with the Planning and Zoning Commission, that the extent of the changes were too great, tended to be somewhat more complex, and were too flexible. He advised that there were concerns that the changes could not actually be implemented and that there would be unintended consequences due to their extensiveness.

Mr. Brisson explained that the R-B Zoning District had the greatest problems and was the area where most variances were granted. The proposals and recommendations tended to run the full gamut of the Ordinance. He noted that it was a comprehensive approach to the problems of variances and the use of alternative development standards. He advised that it was felt that the Council was most interested in those aspects of the problem, which were most prevalent.

Mr. Brisson noted that there were twenty different recommendations relative to alternative development standards: twelve to be administered by ARCOM and eight to be administered by the Landmarks Preservation Commission. He explained that after review, twelve individual alternative development standards were selected that staff felt could be implemented, short term, by the

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community. He explained that the following were the reasons they selected the alternative development standards they did:

- It would assist in reducing the need to satisfy the hardship test;
- It would be sufficiently flexible to provide some meaningful relief, but not so flexible as to be ambiguous or have unintended consequences that could not be seen, at this time;
- It would be easily incorporated into the code, in the near term, with only a modest reformatting or revision of the code;
- It could also be incorporated, in the future, if and when the Town subdivided or provided overlays for the R-B Zoning District.

Mr. Brisson stated that it was expected that a number of the alternative development standards proposed by Siemon & Larson would fit in some of those areas, or overlays, more appropriately than others. He noted that much of the work that was done, both by staff and by Siemon & Larson, may well be incorporated in a more specific fashion in individual areas.

Mr. Brisson advised that the twelve standards that were recommended were broken down into four categories:

1. Setbacks;
2. Point of Measurement;
3. Height of Walls;
4. Locations of Driveway Gates

Mr. Brisson advised that staff agreed with the Planning and Zoning Commission that further consideration of the alternative development standards would be best deferred until there had been additional work and proposals regarding the possible overlays and redistricting of the R-B Zoning District, and then those aspects of the alternative development standards could be applied more effectively.

Mr. Brisson advised that it was recommended that certain changes be implemented next year, in the form of alternative development standards or code changes, as study items in the 2006-2007 zoning season. He stated that the following had been put in as next year's work items, but in reality, almost all of the work had already been done and most of the language had actually been drafted. He noted that these changes would be incorporated next year with the final review.

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- The point of measurement for homes relative to FEMA;
- The point of measurement for homes located on high lots along the lake or the ocean;
- Walls in the front yard setback;
- The location of driveway gates.

Council Member Brooks stated that he had attended the Planning and Zoning Commission's March meeting, and it was his impression that the Commission had been presented with an abundance of information that may have been too much to review at one time. He advised that he was recommending, picking up on Mr. Brisson's point, that they do not look at just the R-B Zoning District, street by street; but they look at the 50' wide lots. He recommended that alternative development standards could be used as a test field on the width of the lot before going on to overlays. He stated that, if necessary, they could then move on to study wider lots.

Director of Planning, Zoning and Building Veronica Close advised that staff had made that recommendation, which could be found in the section related to the R-B Zoning District.

Council Member Wyett stated that the majority of 50' lots were in the "Sea" street district and a couple of other nearby streets. He suggested separating them or making it a special section of the R-B Zoning District. The "Sea" streets had homes that were almost historic in nature, and the area should be preserved for future generations. He supported creating a historic district for the "Sea" streets

Council Member Wyett advised that after having heard from staff, the Planning and Zoning Commission, and residents, it was his understanding that the residents north of Wells Road did not want zoning changes as they were happy with what they had. He noted that requesting staff to conduct additional studies for the area north of Wells Road would not be time well spent.

Council Member Wyett, referring to the Siemon & Larsen Report, discussed the statistics relative to variances, noting that there had been 701 variance requests over a seven-year period, roughly 100 a year, but more recently, the Council had received three to five per month. He explained that the reason was that the Council used to be very liberal, which made it easier to obtain variances. He noted that about five to seven years ago, lawyers were advised not to bring frivolous requests before the Council; and over the years, the Council has heard fewer variances.

In response to President Pro Tem Kleid, Ms. Close recommended that the Council continue its review of the alternative development standards, dispose of that item, move onto special exceptions, and then continue discussion on the R-B Zoning District.

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In response to Ms. Close, President Pro Tem Kleid stated he did not have a problem with that. He commented on Council Member Wyett's statement that the Council was seeing fewer variances. He noted that if the entire year was reviewed, it would be noted that there had been a considerable number of variances. He pointed out, for the record, the Council had, on numerous occasions, spent entire afternoons and sometimes went into the early evening discussing variance cases.

Council Member Markin noted that when she had been a member of the Planning & Zoning Commission, the idea to conduct a study on variances had come up. She advised that, in her opinion, the issue of the number of variances granted continued to come up because too many were being granted in addition to overbuilding. She stated that what they were trying to accomplish was to strike a balance; as much as they wanted to reduce the number of variances coming before the Council, she did not believe the Council wanted to do so at the risk or cost of changing the character of the Town, and in fact, support overbuilding.

Council Member Markin commented regarding the statement in Mr. Siemon's presentation that "granting variances supported the tearing down of houses." She remarked that she believed that the history relating to the number of variances granted, since 1997 (eighty-percent of which were granted for renovations), supported keeping homes and did not support tear downs. It did go hand in hand with it being much more restrictive and related to new construction. She stated that she would like staff to look very closely at holding the line on variances for new construction. The houses being torn down were replaced by bigger houses. She noted that if applicants were receiving variances to build bigger homes, then the Council was making some critical errors. She explained that there was no reason why new construction could not adhere to existing codes, but if it was thought that the houses were too big, then the codes needed to be adjusted accordingly. She noted that she agreed with Mr. Siemon that the more standards the Town adopted, people would know better what they could and could not build. She supported strongly the ability to be able to grant variances, within reason, to renovated properties so that tear downs of older properties would not take place.

Council Member Brooks noted that it was his intention to tie 50' wide lots to the alternative development standards. He advised that he wanted to tie that in, as a possibility, subject to the Planning and Zoning Commission's study that perhaps it would be a useful approach.

Council Member Wyett advised that he supported the statement that variances granted for renovation, did not result in tear downs. It had been argued many times that the Council allowed variances in order to prevent tear downs. He noted that variance applications often requested that

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the home be renovated to make it useable in modern day life. He explained that the Landmarks Commission often allowed major renovations to homes that were landmarked and were not designed for current living to conform internally and make the house liveable. He noted that variances, in this Town had, historically, supported renovation and not tear down.

Council Member Wyett discussed the statistics relating to variances and noted that there was a forty-percent reduction in variance requests.

President Coleman inquired if it was known how many of the 701 variances were tied to landmarked properties versus properties that were not landmarked, and that may be an important consideration in trying to understand the nature of the variances coming forward. He explained that he believed that once a house was landmarked, an encumbrance had been created, which ran with the land, since an owner's flexibility was being restricted. He stated that the Council should be much more flexible in dealing with variances as far as defining what was a hardship.

President Coleman stated that he had concerns over trying to digest all of the items. He explained that he was an advocate of "incrementalism." He also stated that he would like to incorporate the concept of variances that reduce the overall nonconformity, which would give more defined flexibility under the concept of a variance. He explained that the Council should provide more flexibility on the reduction of an overall nonconformity. He suggested segregating the 701 variances into landmarks, in order to start reducing the grouping of what was perceived as an excess of variances.

Council Member Markin advised that she would like to see what variances were granted relative, for example, to setbacks versus what the Council would potentially see using alternative development standards.

Discussion ensued regarding the 701 variances and whether the Siemon & Larson Report counted each variance requested by an applicant for a particular project as one variance, or did it count each variance requested. Mr. Siemon advised that the 701 variances were part of 398 applications. He explained that as they prepared the report for the Civic Association, they digested it down to what they thought were meaningful quantities.

President Coleman suggested that the data should be subdivided into projects instead of variances, and subset variances within projects. The following information should be included:

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- How many projects;
- How many of those projects were for landmarked properties;
- How many projects were for a reduction of an overall nonconformity;
- How many projects were for new construction;
- How many projects were for existing construction, etc.

Mayor McDonald stated that he thought President Coleman's point was well taken because there was an unwritten policy for the last ten to twelve years that landmarked properties would be given the benefit of variance requests.

Mayor McDonald suggested that when studying variances for setbacks, how many times a property owner agreed to allow their neighbor to build in the setback should be looked at, because that would tell how many variances were granted with the neighbor actually approving the request. He noted that information was important. He commented that with new construction, most of the variances that were granted were for legitimate hardships, and actually met the hardship test.

Council Member Markin asked Mr. Siemon what range had they looked at when, as an example, they looked at setbacks for variances? She wanted to know what the thought process was relative to changing the setback?

Mr. Siemon explained the following procedures were used to arrive at the recommendations they made.

- It was based on their judgement as to a conservative standard of what appeared in almost every case approved;
- Reviewed records and not just the outcomes;
- Reviewed the minutes of the proceedings, discussions and concerns.

Mr. Siemon explained that, in some cases, the data was not as complete as had been hoped, but a considerable amount of time had been spent pulling each file apart. He advised that they did not look at summaries, but at every single one of the files.

Council Member Markin stated that to keep the harmony, a property owner might not want to find fault with what their neighbor was doing, and would allow them to encroach on a setback, which did not necessarily make the code right. She believed that there should be a code to address these types of situations.

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Council Member Wyett stated that he agreed with Mayor McDonald, who served on the Council for many years, and only voted for variances that included a hardship. He believed that new construction almost always had a true hardship, which meant that there was a problem with the land. He stated that new construction should not be given a variance unless there was a true hardship, and believed that the Council had, for a long time, conformed to that. He advised he did not agree to invading setbacks, and tended to vote against them, even if the neighbor agreed to it. He noted that setbacks allowing homes to be closer together was bad for the street scape. He commented that street scape was a very important consideration and was one of his own criteria. The project must improve the street scape and not subtract from it.

President Coleman asked Mr. Siemon if the Council could, as a matter of policy or regulation, consider landmarking as a hardship that runs with the land, when considering a variance? He noted that the Council when it landmarks a property, had encumbered the owner's flexibility, which was in itself a hardship.

Mr. Siemon advised that he believed the Council could do that, and it was a matter of fact, in law, called "adaptive reuse of landmarked structures." He noted that there were numerous cases around the country of landmarked properties, which would not have been allowed certain uses in a district, but in order to provide economic vitality and viability for a structure, which wished to be preserved, it had been sustained against a number of challenges.

President Coleman asked if the Council stated that the granting of variances to reduce an overall nonconformity was an unwritten policy, would it provide less guilt when those types of variances were granted; and perhaps, they could be codified.

Mr. Siemon advised that, in his opinion, the Council could do that but recommended that they not be codified. He stated that the Council could explain that, as suggested, the designation of landmark status qualifies an applicant for a variance. The degree of conformity that did not exist was a justification to grant relief.

President Coleman stated he would like to ascertain where the 398 variances actually fell, to see if they could codify and make a policy out of it. The purist who did not want to vote on anything that was not strictly a hardship, would then have some comfort and the areas of contention could be reduced.

Mayor McDonald commented that Mr. Siemon had stated earlier that a conforming use was not a legal use, but in view of his later comments, asked if what he had stated was that the code could

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be changed to make a conforming use, a legal use?

Mr. Siemon stated that there were several ways to make a situation lawful:

- Have it meet the established requirements of the code;
- Grant a specific exemption, which was the nature of a variance;
- Create a separate category referred to as a "lawfully conforming use", which brought it into a conforming status by having been granted a variance, because of the effort to bring it into compliance to the maximum extent practicable.

Mr. Siemon explained that "lawfully conforming use" had been used as a means to understand why there was this difference, but by granting a conforming status to a variance, it would then have a recorded status and a separate provision would not be needed.

After further discussion, Council Member Markin requested that Attorney Randolph comment, from a legal standpoint, as to where the Council's stronger ground was on the following two approaches.

- Alternative development standards
- Town's current system and current codes.

In response to Council Member Markin, Attorney Randolph made the following comments:

- The standards that were in place relating to variances were the strictest that could exist, and would be sustained in court, in the event the Council was to deny them.
- The Town had two ways of dealing with variances:
  - ▶ codify them;
  - ▶ or continue to do what the Town has been doing, which was to consider the issue and determine whether or not to grant a variance
- It was legitimate to give consideration to the fact that a property was landmarked when determining whether or not a hardship existed.
- It was legitimate to give consideration to the fact that a property was being brought more into conformity in order for the Council to grant a variance even though it was not included in the criteria. The purist might say that it should be included in the criteria so that if challenged, it could be sustained.

Mr. Randolph advised that he had commented, in the past, with regard to other communities

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that dealt with variances. He noted that he included that information in his letter to Harrison Robertson. He stated that it was more of a policy decision as to whether or not the Council wanted to get away from granting variances and get into something that was perhaps a little more liberal. He did not necessarily think alternative development standards, if drafted carefully, were necessarily more liberal than the Town's variances. He recommended that if the Council was to adopt alternative development standards, the variance standards should remain in place. The Town should continue to use those variance standards for undeveloped properties, such as vacant lots. The alternative development standards should only be used for very limited categories such as landmarked structures, replacement of nonconforming structures, and for renovations. He noted that this had been outlined in his letter.

Attorney Randolph stated that when there were problems with variances, and a lot of variances were being granted, it was usually found that there was something wrong with the regulations. It seemed that the best way to deal with the number of variances being applied for, if they could not be identified into specific categories, would be to look at the Zoning Code and determine what sections of the Zoning Code needed to be amended rather than try to change the variance standards. He explained that he remained in favor of keeping very strict variance standards in place, because it was the most defensible way for the Council to go.

Council Member Markin stated that if it was known that the Council wanted to act favorably toward variances, in order that properties could be brought into compliance, and the Council knows that they want to be flexible relative to landmarked properties, why should staff be asked to go back and dissect the numbers further?

President Coleman responded that there was a presumption that between the years the 701 variances were granted, the Council had approved too many variances, and explained that his purpose in requesting staff to dissect the numbers further, was to answer whether the Council really had granted too many variances or whether they were just, in an ad hoc fashion, already creating these exemptions; and by not articulating it, fostered a misconception within the community. He stated that he believed the Council wanted to evaluate what previous Councils had done.

Mr. Siemon stated that Siemon and Larson had determined, as professional planners, using their professional judgement, that the 398 variances granted out of the 701 variance applications, the outcomes of those were reasoned and appropriate. He noted that they had focused on going forward, and on how to ensure that they continue to be the record; and to determine if they could make it more predictable and easier to administer, and more certain in defending.

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Discussion ensued regarding variances with comments from the following Town Council Members.

Council Member Brooks:

- The Council, in the past, had produced density reductions, which he did not believe had much say in law.
- Commented that he was not sure that the law, presently, would support studying densities. He requested an answer to that and a recommendation.

President Coleman:

- Suggested that staff research and collect data on that subject, and then make a "bucket" for that category.
- Suggested that another "bucket" should be made which would study how many variances were for brand new construction and how many were for renovations of landmarked properties.

Council Member Wyett:

- Questioned the time spent as well as what would be learned by staff, if they went back seven years reading through all the applications.
- Suggested a one-year survey to determine if staff should study variances granted for the last seven years.

In response to Council Member Wyett, Town Attorney Randolph stated he did not believe alternative development standards, if adopted, would liberalize variance standards. He advised that variance standards should be kept in place. The same scenario would remain in regard to their defense. If alternative development standards were provided, the Town might receive more variance applications from people who believed they might stand a better chance.

Attorney Randolph advised that he did not know if there would be more lawsuits in regard to alternative development standards. He stated that he did think that there might be a greater burden in defending a denial under an alternative development standard, than under a strict variance.

Council Member Wyett stated that according to Attorney Randolph, the Town could end up with more variance requests, not less if the Town adopted alternative development standards.

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Attorney Randolph stated that it had been argued that more flexibility was obtained through the provision of alternative development standards and that more applications would be received.

Council Member Wyett advised that when a request was granted to one person on a street, it followed that all the other residents would make the same request.

In response to Council Member Wyett, Attorney Randolph stated that when a variance was granted, it should be granted based on the uniqueness of the land as opposed to anything having to do with the property owner.

Director of Planning, Zoning and Building Close suggested that it would be quite difficult for staff to go back and look at the variances that had been granted in the past, and to determine to what extent the overall variances were reduced. She noted that Mr. Castro could probably name almost every type of a reduction in variances off the top of his head. Staff was quite familiar with where variances were being reduced. She suggested that the Town Council may want to direct staff to come up with a method in which overall reductions in variances could be considered in the development review applications. Staff could consult with the Town Attorney regarding how to go about doing that.

President Coleman commented that he had no desire to go back. He explained that his idea was to stay with what was currently in place, and see how it progresses.

Mrs. Nancy Murray, 249 Monterey Road, made the following comments:

- If a "bucket" was made out of new construction, that bucket would need to be divided into those properties that were developed for sale and those that were developed by property owners, which were not flipped within a year.
- Neighbors, many times, do not object to what their neighbor was doing, but several people had told her that they were redoing a house with new construction, and then, as soon as the house was built, a for sale sign went up.
- Granting variances to an owner who has his own private needs, or fits within a certain category has to be distinguished from the developer who was trying to push the envelope and get as many square feet as he could out of a property.
- Suggested that perhaps properties could be looked at within a year to see if the ownership of the property had flipped. That would tell staff where a variance was justified and where it would come into the questionable range.

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President Coleman suggested that Ms. Close consider the comments of Mrs. Murray.

In response to Council Member Markin, President Coleman noted that the "buckets" were no longer to be examined by staff unless done on an ad hoc basis. It would have to be articulated as part of Town policy.

Council Member Markin stated that then Council would be provided an opportunity to look at the different variances that come before them, and to inform the applicant that the variance was okay and fit in. She noted that, on that basis, the Council would approve that particular variance, which would provide the public with a message that the Council would adhere to the code, but the Council would also entertain variances to maintain old structures, allowing property owners to renovate and to reduce density.

President Coleman stated that by clarifying policy, the Council would also strengthen their legal position, because each one of those objectives had a valid purpose. He advised that they could have an abbreviated special exception proposal but was not sure that a practical difficulties proposal would be required. The Town Council could then discuss overlays of the R-B Zoning District.

President Coleman explained that the following policy items, which the Council was requesting staff to review, if granted, could then be incorporated into the code, and put in place for use starting next season.

- Landmarked structures should be taken into consideration as it related to a hardship;
- Reduction in density
- Reduce the total nonconformity on a property when granting variances;
- Take parking into consideration.

President Coleman advised that the Council requested staff to study setbacks, point of measurements, walls and driveways.

Council Member Wyett suggested that the Council request staff to drop all studies relating to alternate development standards, as it was a waste of time. He stated that he believed it was the consensus of the Council to discontinue the study of that and suggested that a vote could be taken to see which Council Members were in favor of continued study by staff; and if so, why they wanted to continue.

President Coleman agreed with that and suggested that the Council follow the two paths he

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recommended: expanding the code; and studying those items. He advised that then in twenty-four months, the Council could review same. He advised that through the process of "incrementalism," variances could continue to be reduced.

Council Member Wyett stated that he did not know if this had been brought up earlier, but he suggested that staff study height requirements. He advised that twelve years ago the height in the north end of the R-B Zoning District was 35', and today it was 25', and that he did not want to see it go below 25'.

**After further discussion, a motion was made by Council Member Brooks, seconded by President Pro Tem Kleid to direct staff to incorporate the following into the Code, so that it could be implemented for next zoning season for the Town Council to take into consideration when variances were being considered:**

- **Allowing landmarked properties to be considered as a hardship;**
- **That as a matter of policy/purpose, the Council wanted to reduce density and reduce the amount of nonconformity;**
- **To allow that parking could be taken into consideration.**

**On roll call, the motion carried unanimously.**

In response to Director of Planning, Zoning & Building Veronica Close, Council Member Brooks explained that he had suggested limiting study to 50' wide lots as they began the process, and if the results received were favorable to serving the citizens and protecting the code, then the Council could look at the 75' wide lots.

After discussion regarding study items, Ms. Close noted that next month the Town Council would consider zoning study items, and that staff would incorporate the items discussed today: setbacks, point of measurement, walls, and driveways.

Mr. Charles Siemon provided a power point presentation to discuss the Siemon and Larson Report on Special Exceptions.

Mr. Siemon explained that the recommendations in the report fell into two categories: Town-serving and those that were not Town-serving. He advised that the changes were not substantive, in their opinion, but clarifications, reorganizations and supplements. The Planning and Zoning Commission, as well as staff, suggested leaving Town-serving as is, which he agreed with. He noted

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that Mr. Brisson, Town staff, and the Planning and Zoning Commission recommended approval of five recommendations, which contained fifteen separate sub-elements. He stated that they were encouraging Council to follow those recommendations.

**Motion made by President Pro Tem Kleid to adopt the March 23, 2006, Staff Report, concerning the Siemon & Larsen Report on special exceptions. The motion was seconded by Council Member Wyett, and carried unanimously on roll call.**

**Motion made by President Pro Tem Kleid that the Town Council not pursue the practical difficulty standard for variances. The motion was seconded by Council Member Wyett. On roll call the motion carried unanimously.**

Council Member Wyett advised that when the Mayor was a Council Member, he would not vote for variances that could not prove there was a hardship. He noted that President Pro Tem Kleid followed the same path, with justification. He suggested that the Town Council should have the right, if they were going to ignore Town Code, when approving a variance, to do so with a super majority vote rather than a 3/2 vote, which now prevails. The Council often had a four to five vote in favor, and a technical decline of one member. He thought that in order to make it more comfortable for the entire Council, it would be, in the interest of the Town, to allow a super majority vote.

In response to President Coleman's suggestion, Council Member Wyett recommended adding an item to the agenda for next month's Town Council Meeting for discussion, on the right of the Town Council to have a super majority vote rather than a 3/2 vote.

Mr. Brisson briefly summarized the discussion at the two public meetings that were held for Town residents regarding R-B Zoning Districts. He noted that sixty people attended the meeting held on January 19, 2006, at St. Edward's Catholic Church and thirty people were in attendance at the meeting held on January 26, 2006, at Town Hall.

Mr. Brisson advised that the residents were asked what they thought of their neighborhoods, as well as what they thought about the possible subdivision or overlay of that much larger district into smaller areas. The overriding answers to what the residents liked about their neighborhood were:

- Landscaping;
- Appearance of new homes, new development, as well as the architecture and diversity of style; less concerned over size of new homes.

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The responses from residents relative to what they disliked about their neighborhood were:

- Traffic and speeding;
- Site triangle intersection vision problems;
- Hedges that affected visibility along the roadway;
- Inadequate street lighting, conditions of roads, repaving and repair needed
- Older, poorly maintained homes

Mr. Brisson explained that residents were asked how they felt about the potential subdivision or the setting of overlays for the R-B Zoning District, and for the most part, residents were not in favor of dividing the R-B District. He noted that there was some consensus relative to those residents living on the "Sea" streets, that the R-B Zoning District could be divided.

Mr. Brisson advised that correspondence had been submitted by Attorney James Brindell, who represented forty-one property owners. The property owners had requested rezoning of lakefront property from Dunbar Avenue to Reef Road from R-B to R-A.

Mr. Brisson explained that within the year many different characteristics of the R-B Zoning District should be studied.

- Lot width, size, and depth;
- Setbacks of structures as they exist now;
- Heights, number of stories;
- Architectural style;
- Amount of open space.

Mr. Brisson advised that any number of these items could be studied to help determine what areas have uniformity and heterogeneity of appearance and scale, which might help in developing the regulations that would be applied to the overlay districts or the subdistricts. He stated that the Planning and Zoning Commission as well as staff recommended that these items should be studied in greater detail next year in order to come up with some initial proposals. The public should be invited to provide input in order to determine what they would like to see in those areas that show some pattern of either lot size or any of the other characteristics.

Zoning Administrator Paul Castro reported that the Planning and Zoning Commission had recommended that staff focus on just three areas to either subdivide or provide overlays. Staff requested the ability of not having to focus on just three areas, but to consider, objectively, how many

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areas should be identified that may merit subdivision or overlay.

Ms. Close identified the three areas recommended by the Planning and Zoning Commission:

- ▶ The "Sea" Streets;
- ▶ The lake and ocean area;
- ▶ The area of Ibis Isle, Everglades Isle, Middle Road.

Mr. Brisson explained that recommendation had been based on the sizes of the lots.

Ms. Close stated that the ultimate staff recommendation was to propose three different ways to look at data: through subdistricts, overlays by geography, or overlays by lot sizes. She advised that because of the interest of certain property owners along the lake, rather than having staff review and do a study item on that particular area, allow the property owners themselves to submit an application to the Town Council for that.

Council Member Wyett remarked that residents had indicated that they felt very strongly that things should be left as is. He suggested that the issues brought up such as traffic, lighting, paving, etc., should be addressed. He advised that no one would know better what was needed and wanted than those living on the streets in the neighborhood. He maintained that overlays and subdivisions would create confusion.

Council Member Brooks commented that he did not believe that the Town Council was trying to force any draconian measures on residents. He advised that staff was merely requesting that they be allowed to study it. If it was seen that there were a substantial number of variance requests on small sized lots, and if the Town Council was empowered to make it easier for the homeowner, the Town Council would be undertaking a process that would help the homeowner.

Council Member Wyett replied that he did think that the "Sea" streets should be separated from the R-B Zone, and those streets could be either changed to a subdivision of the R-B or changed to a historic zone. He recognized that the "Sea" streets needed protection, as well as a few other streets.

Ralph Del Deo, 265 Fairview Road, commented that there had to be some finality to all of this studying. He referred to the remark made by Mr. Brisson at the Planning and Zoning Commission meeting – "Good zoning transcends the will of the people." Mr. Del Deo maintained that good zoning was a matter of opinion, and the people in the Town determined their opinions and voted for

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representatives who would represent them. He urged that no further study take place, and that the message from the north end people was simply to leave them alone. If there were things that needed to be tweaked with the smaller lots, they could be addressed, without the need for an overall study.

Mr. Sam Boykin, 285 Jamaica Lane, commented that he agreed with Mr. Del Deo. He stated that he believed that an apology was due from Mr. Brisson relative to his comment that "good zoning overrides public opinion" because the comment was uncalled for and unnecessary.

Mr. Reg Stambaugh, Executive Director, Preservation Foundation, commented that the Preservation Foundation was looking into promoting and advocating the designation of the "Sea" streets as a historic district, which could resolve some of the issues for that section of Town.

Mr. Boykin commented that Dunbar Road should be considered as part of the north end. He noted that it had not been included on the map for the north end.

**Council Member Wyett moved that staff should be instructed that no further studies would be conducted north of Dunbar Road, other than the ones authorized earlier today.**

Council Member Markin stated that she did not see any harm in drawing some differences between the different issues on Ibis Island, the north end and the "Sea" streets.

Mr. Del Deo stated that he did not believe his and Mr. Boykin's statements should be interpreted as being against isolating the "Sea" streets. He advised that they were basically talking about the north end. He noted that he recognized that the "Sea" streets were a totally different entity than the north end.

Council Member Kleid agreed with Ms. Markin that the R-B Zoning District was huge. It was composed of different neighborhoods and various areas, which were not like one another. He noted that staff should not only study Ibis Island or Everglades Island and the "Sea" streets, but the areas along the lake and along the ocean. The opinion of the north end residents should be respected. The north end should not be included in that particular study, if the residents do not want it to be.

Mr. William Diamond, 220 Wells Road, questioned areas on the maps discussed earlier, relative to the area north of Dunbar. He noted that he did not understand why the map had been changed.

In response to Mr. Diamond, Mr. Brisson responded that those areas had not been down

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zoned. It had not been done intentionally, but was done for the reason that the residents of the north end, particularly those in the middle blocks, did not want staff to adjust the zoning. He explained that while the lot sizes in the area Mr. Diamond referred to were more than 15,000 square feet, they had not intended to separate them from the rest of the north end. The residents of that area wished to be put in a district, such as they were, that recognized that their lots were larger than what was typical in the north end.

President Coleman stated that they were trying to solve a problem that no one was complaining about, which was to leave the north end alone. He noted that there seemed to be a consensus to be open-minded to a presentation from the Preservation Foundation regarding the "Sea" streets. He stated that everyone recognized that was worthy of cogitating, but he advised that he was not quite sure what they were trying to solve since no one had presented a dilemma.

Mr. Boykin stated that he believed people should be conferred with. He noted that the people on Ibis Island should express themselves and the same for the residents of Everglade Island.

Council Member Wyett stated that he believed his motion was misunderstood and that it did not preclude separating out Ibis Island, the "Sea" streets or Middle Road as being unique. It was a request of the Council to advise staff that north of Dunbar, and he stands corrected, if it was north of Wells, that they have had enough studies, and they did not want any more studies. He noted that if there was a recommendation to create a special zone or a historic district, he was in favor of that, but he wanted to save the Town money, time, and effort in studying something that had been studied to death.

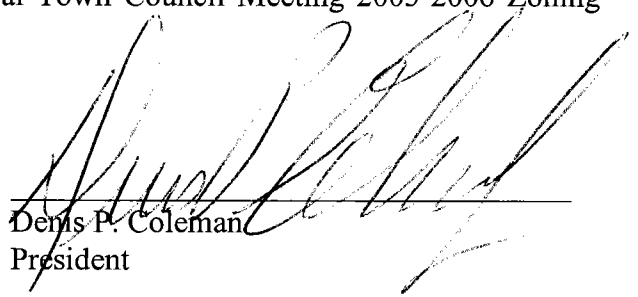
**After further discussion, Council Member Markin moved that consideration be given to dividing up the R-B District by Ibis Island, the "Sea" Streets, and the north end, leaving the north end as it currently existed, and just creating two more subdistricts of Ibis Island and the "Sea" Streets, at this point in time. The motion was seconded by Council Member Brooks. On roll call the motion carried 4/1: Council Member Markin, Council Member Brooks, Council Member Wyett, President Pro Tem Kleid casting affirmative votes; President Coleman casting a dissenting vote.**

President Coleman commented that the "buckets" would be created within the variance framework, where the Town Council could take into consideration in granting or denying variances, and then determine the problems, if any. He advised that they would go to incrementalism instead of revolution.

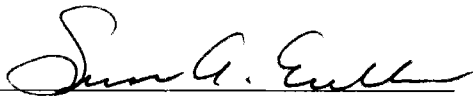
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V. ADJOURNMENT

There being no further business, the Special Town Council Meeting 2005-2006 Zoning Hearing was adjourned at 12:05 a.m.

  
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Denis P. Coleman  
President

ATTEST:

  
\_\_\_\_\_  
Susan A. Eichhorn  
Town Clerk