TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON WEDNESDAY, APRIL 15, 2009

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council meeting was called to order on Wednesday, April 15, 2009, at 9:30 a.m., in the Town Council Chambers. On roll call, all of the elected officials were present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Cunningham gave the invocation and Council 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

Council Member Diamond commented regarding ex-parte communication relative to Development Reviews, as an added item to a future Ethics Committee meeting that he would chair.

Council Member Kleid commented that he would be interested in ex-parte communication being explained in more detail, as had been conveyed to the Town Council by Town Attorney Randolph.

V. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

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

There were none.

VI. APPROVAL OF AGENDA

The following changes were made to the Agenda:

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DEFERRED, Item IX.C.2.c., Variance #6-2009, to the May 13, 2009, Town Council meeting.

WITHDRAWN, Item IX.C.3.b., Variance #2-2009.

TIME CERTAIN: 2:00 P.M., Item IX.D.4., Discussion of the Future Use of the Royal Poinciana Plaza, would be heard.

TIME CERTAIN: 12:00 Noon, Item IX.D.3., Status of Palm House (Heart of Palm Beach Hotel) Project would be heard.

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

VII. PUBLIC HEARING

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

A. RESOLUTION NO. 29-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Vacating and Abandoning a Portion of a Five (5) Foot Utility Easement Lying Within Lots 2 and 3 of Via Vizcaya, on Property Commonly Known as 203 Via Vizcaya, Town of Palm Beach, Florida. [John S. Page, Director of Planning, Zoning, and Building, and H. Paul Brazil, Director of Public Works] *Deferred from the March 10, 2009, Town Council Meeting.*

Ex-parte communication was declared by:

- Council Member Diamond received phone calls;

- Council Member Kleid read the letters from the neighbors;

- President Rosow received the same letters through the Town offices from the neighbors;

- President Pro Tem Coniglio received the same letters and several phone calls from Mrs. Donnelly;

- Council Member Wildrick did not receive phone calls, but received letters, as well.

Public Works Director Paul Brazil provided an overview of the abandonment of the utility easement.

Zoning Administrator Castro made several of the following comments:

- The necessary steps, for the property owner to develop both lots in combination, were outlined in Planning, Zoning, and Building Director Page's memorandum on page 13 of the backup material.

- Even though it was a civil matter, the building lines shown on the plat had been encroached upon by five other property owners. If the current code was not met, an owner would have to enter into a Unity of Title Agreement to preclude the properties from splitting up.

- Architectural Commission (ARCOM) and Zoning approval would be required in order to build the house.

- Staff's recommendation was to abandon the utility easement. There were no plans for any utility within this easement and there were no utilities within the easement today.

Attorney Paul Rampell, represented Paul O'Keene, property owner, provided a handout, which indicated that the applicant had complied with the Town's prescribed application procedures. Attorney Rampell indicated that all of the utilities, that might use the easement, signed letters consenting to the abandonment agreement and were attached to the application. He illustrated how easements would remain, after this one was abandoned, so that all utilities would continue to have access. He noted that no neighbor would be adversely impacted, because of the remains of the north/south easements along Mr. O'Keene's western property border.

Responding to Council Member Diamond, Mr. Castro explained that the if the easement was abandoned, and Unity of Title occurred, the property owner could be allowed to build 13,900 square feet approximately of buildable floor area, and he also explained ARCOM's function.

Discussion occurred among the Town Council, Mayor McDonald, Town Attorney Randolph, and Attorneys Chopin and Rampell. Attorney Chopin, on behalf of his neighbor, the Donnelly's, who objected to the abandonment request, commented that the easement was being requested to be abandoned in order to build a larger house. He added that when a house was purchased in a platted subdivision, it was reasonable to expect that the provisions of the plat would govern the future development of the neighborhood, and that the Donnelly's did not want to see developers build a massive house in the subdivision.

Town Attorney Randolph noted that a utility easement was not dedicated to the use and benefit of the public who purchased property in a subdivision, as it was dedicated to the utilities, who were now relinquishing it.

Mayor McDonald commented that the Council should not preoccupy itself with intent of owner, and that there was no legal reason that an owner could not purchase or combine two lots.

President Rosow noted that the neighbors were very concerned about the size of the home, as it would be different than the remaining homes.

Motion made by Council Member Diamond to reject the application to abandon the easement. The motion died for lack of a second.

President Pro Tem Coniglio expressed concern regarding the property owners and that the platted lines, in the subdivision, indicated where a house could be built, and that the zoning code determined how the house would be built.

Zoning Administrator Castro commented that it was customary to build over lot lines either through a Unity of Title Agreement or combination of lots in certain municipalities; utility easements, required abandonment agreements, as they could impact neighboring properties; lot lines historically allowed only 25 foot lots that were platted and had to be combined; subdivisions only guaranteed minimum lot sizes.

Council Member Wildrick commented this was an issue of an abandonment of an easement, and the Town Council had a history of addressing it.

Council Member Kleid noted that in the past, the Town Council allowed abandonment easements, when requested, and the utilities expressed that they did not have a need for them.

Responding to President Pro Tem Coniglio, Mr. O'Keene indicated that he could not specify the appropriate size home he would build, but that it would not be maximized.

Responding to President Rosow, Attorney Rampell indicated that his client would possibly be agreeable to limiting a maximum size home on the combined lot, if the abandonment of the easement was granted, and if the neighbors all agreed to the same restriction.

Motion made by Council Member Kleid, seconded by Council Member Wildrick to approve Resolution No. 29-09, Vacating and Abandoning a Portion of a Five (5) Foot Utility Easement Lying Within Lots 2 and 3 of Via Vizcaya, on Property Commonly Known as 203 Via Vizcaya, in the Town of Palm Beach, Florida. On roll call, the motion carried 3 – 2.

President Rosow	**No**
President Pro Tem Coniglio	**Yes**
Council Member Diamond	**No**
Council Member Kleid	**Yes**
Council Member Wildrick	**Yes**

President Pro Tem Coniglio read a letter into the record that was provided to the Town Clerk, which was submitted too late for the discussion of the item.

VIII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 5-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, of the Code of Ordinances as Follows: Create Division 14, Sections 134-2104 Through 134-2108 and Modify Sections 134-

1053, 134-1055, 134-1056, 134-1108, 134-1109, 134-1111, 134-1158, 134-1159, 134-1161, 134-1208, 134-1209, 134-1210, 134-1303, 134-1304 And134-1305 to Create an Administrative or Special Exception Approval of Outdoor Seating Related to Dining Rooms and Restaurants in the R-D(2), C-TS, C-WA, C-B and C-OPI Zoning Districts; Section 134-1906 to Allow Outdoor Seating by the Administrative or Special Exception Approval Process in Hotels and Condo-hotels; Section 134-1637 to Create New Regulations to Address Intersection Site Triangles in All Residential Zoning Districts; Create Division 15, Sections 134-2109 and 134-2110 and Modify Sections 134-1055, 134-1058, 134-1059, 134-1304 and 134-1906 to Regulate the Condominium Form of Hotel Use; Section 134-2176 to Create More Stringent Off-street Parking Requirements for Hotels, Condominium Hotels, Motels, Motor Inns and Timesharing Uses and Their Accessory Commercial Uses; Section 134-261 and 134-532 to Eliminate Zoning Season and Create a Hearing Time Line for Zoning Applications; Section 134-172 by Modifying the Deferral Regulations for the Hearing Process of Special Exception and Variance Applications; Section 134-330 by Creating Deferral Regulations for the Site Plan Review Application Hearing Process and Eliminating Wording in Subsection (D); Sections 134-2 and 134-2175 by Changing the Definition of Parking, Principal of Equivalency and the Principal of Equivalency Regulation to Refer to the Appropriate Off-street Parking Standard and Not Cubic Content Ratio; Section 134-390 and 134-419 to Modify the Regulation for Nonconforming Building Construction Which Does Not Finish on Time; Section 134-38 to Create a Fee for Administrative Approval of Site Plan Review; Section 134-326 to Create an Administrative Site Plan Review Approval Process; Section 134-2 by Modifying the Definition of Structure to Be More Inclusive; Sections 134-172, 134-328 and 134-330 to Modify the Deferral Procedure for Special Exception and Variance Applications, Changing the Designee and Clarifying When Work Has Commenced Relative to Special Exception, Variance and Site Plan Approvals; Section 134-893 by Eliminating the Additional Front Setback for Lots under 20,000 Sq.ft. In the R-B Zoning District Which Are Equal to or Greater than 150 Feet Deep; Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; Providing an Effective Date.

Town Attorney Randolph read Ordinance No. 5-09 by title, as printed above.

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio to adopt Ordinance No. 5-09. On roll call, the motion carried unanimously.

2. ORDINANCE NO. 6-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Adopted Town of Palm Beach Comprehensive Plan, Pursuant to Chapter 163, Florida Statutes, Based on the Evaluation and Appraisal (EAR) Report Adopted by the Town of Palm Beach on December 12, 2006 and Determined to Be Sufficient by the Department of Community Affairs on March 23, 2007; Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; Providing an Effective Date. [John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 6-09 by title, as printed above.

Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond to adopt Ordinance No. 6-09. On roll call, the motion carried unanimously.

B. First Reading

1. ORDINANCE NO. 7-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, at Sections 134-796, 134-846 and 134-896, Relating to Exceptions to Height Limitations, to Provide for Increased Height of Flagpoles by Special Exception; Amending Chapter 134, Zoning, Section 134-2372, General Regulations Applicable to Permitted Signs, to Provide Regulations and Definitions Concerning Flags and Flag Size; at Section 134-2176 to Provide More Off-street Parking for Larger Homes; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 7-09 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid to approve Ordinance No. 7-09 on first reading. On roll call, the motion carried unanimously.

2. ORDINANCE 11-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 22, Businesses, Division 2, Window Treatment, Providing for Definitions; Providing Specifications for Window Treatments and Screening of Store Fronts in Commercial Zoning Districts; Providing Exceptions; Providing a Penalty; Providing for Severability; Repealing all Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; Providing an Effective Date. [John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 11-09 by title, as printed above.

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio to approve Ordinance No. 11-09 on first reading. On roll call, the motion carried unanimously.

IX. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours of Construction, at 1170 South Ocean Boulevard (Bath & Tennis Club) Per Letter Dated March 31, 2009, From James R. Brindell. John S. Page, Director of Planning, Zoning, and Building]

Attorney James Brindell provided an overview of the Request for Waiver of Construction Hours for extended hours, for interior work only.

Motion made by President Pro Tem Coniglio, seconded by Council Member Wildrick to approve the Request for Waiver of Section 42-199, Hours of Construction, at 1170 South Ocean Boulevard (Bath & Tennis Club) with the conditions set forth by staff.

Council Member Kleid noted that Labor Day, September 7, 2009, was not excluded in the request. He indicated that the Town had a pattern of excluding legal holidays and that Labor Day should be excluded also.

Amended motion made by President Pro Tem Coniglio to approve the Request for Waiver of Section 42-199, Hours of Construction, at 1170 South Ocean Boulevard (Bath & Tennis Club) with the conditions set forth by staff, and to exclude work hours on Labor Day, September 7, 2009.

The seconder agreed.

Responding to Council Member Diamond, Attorney Brindell replied that he was not aware of any neighborhood objections.

Planning, Zoning and Building Director John Page indicated that Code Enforcement requested that if approved, a copy of the extended work hours be maintained on the job site, along with the permit.

Amended motion made by President Pro Tem Coniglio to approve the Request for Waiver of Section 42-199, Hours of Construction, at 1170 South Ocean Boulevard (Bath & Tennis Club) with the conditions set forth by staff, with the exclusion of work hours on Labor Day, September 7, 2009, and with the condition that a copy of the extended work hours be maintained on the job site, with the permit. The seconder agreed. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

a. VARIANCE #4-2009 The application of 190 South Ocean Land Trust (Llwyd and Diana Ecclestone); relative to property commonly known as 190 South Ocean Blvd.; described as lengthy legal description on file; located in the R-B Zoning District. The applicant requests variances to construct six (6) small additions to the existing residence. The additions will be one and two stories and will also be infill additions. The following variances are requested: to construct a two story addition on the north side of the residence consisting of 419 square feet with a north side yard setback of 15.6 feet in lieu of the 20.6 foot existing and 22 foot minimum required in the R-B Zoning District for a lot over 20,000 square feet in area and in excess of 150 feet in width; to construct six (6) small one and two story additions and infill additions totaling 2,467 square feet that will increase the overall cubic content ratio. The variance request is to allow a cubic content ratio of 5.34 in lieu of the 4.30 existing and 3.72 allowed in the R-B Zoning District and a variance to have a point of measurement of 17.79 National Geodetical Vertical Datum mean sea level (NGVD) for building height in lieu of the 16.05 feet NGVD required. [Attorney: Maura A. Ziska] [ARCOM Recommendation: Approval of the variances with the exception of the variance request for enclosure of the east, open front loggia on the second floor, the two story "bump out" on the north facade, and the one-story storage closet proposed on the southwest corner of the house. Carried: 7-0.)

Ex-parte communication was declared by:

- Council Member Diamond with the Ecclestone's who were friends of his family, and have visited each other's homes, they had contributed to his political campaign, and he had conversations with Mr. Ecclestone on this matter, who had wanted him to make a motion in favor of the variance, and Mr. Ecclestone had described in great detail the difficulties they were having as a couple living in the houses presently constructed and that the ARCOM restrictions were too onerous for them.

- Council Member Kleid met with Attorney Maura Ziska and Architect Smith, who told him about the plans, and lobbied for approval of the plans.

- Council Member Rosow met with Attorney Ziska and representatives with Architect Smith's office, who told him about the project. He knows the Ecclestones' but they never asked him about this project.

- President Pro Tem Gail Coniglio spoke to Attorney Ziska and a representative of Architect Smith's office.

Attorney Ziska, on behalf of Mr. and Mrs. Ecclestone, provided an overview of the project. She indicated that the hardship was that it was an ocean front lot, almost 40,000 square feet, and if the location had been in the R-A District, a variance would not be needed.

Mrs. Diane Ecclestone stated that she wanted to let the Council know that her and her husband had spent two years with Architect Jeff Smith's office, developing a plan that would have the most benefit to them and the least impact to their neighbors.

Staff Comments:

Zoning Administrator Castro commented on several of the following:

- The existing and proposed square footage of the home;

- The house was on a large lot in the R-B district with certain setback and cubic content ratio (CCR) requirements, and staff was not sure how the hardship related to any of those;

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- ARCOM reviewed the project and recommended approval of three of the six requested, as identified in the Town Council Agenda and backup material on page 87.

Council Member Diamond moved that Variance #4-2009, 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 have been met. Council Member Wildrick seconded the motion.

President Pro Tem Coniglio expressed concern regarding the increase in cubic content ratio (CCR).

Attorney Ziska indicated that all the houses in the area were over CCR by half to one percent. She added that the infill storage room on the south side of the house could be eliminated.

Responding to President Pro Tem Coniglio, Mr. Castro noted that the applicant explained the hardship of each variance request separately.

Upon roll call, the motion carried unanimously.

b. VARIANCE #5-2009 The application of David Koch, Trustee of the David H. Koch 2003 Trust u/a/d 1/24/03; relative to property commonly known as 150 South Ocean Blvd.; described as Lots 1 through 4, according to the Plat of Primavera Estates (Ocean Section), as recorded in Plat Book 6, Page 82, Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant requests a variance to allow a 9 foot high wall in lieu of the 5.83 foot existing and the 6 and 7 foot maximums allowed. The proposed 9 foot high wall is along the alley that runs north/south along the west side of the applicant's property. [Attorney: Maura A. Ziska] [Landmark Commission Recommendation: Approval of the variance. Carried 7-0.]

Ex-parte communication was declared by:

- Council Member Diamond had not been contacted by anyone, but he knows Mr. Koch and has been at his home, socially.

- Council Member Kleid had a conversation with Attorney Ziska, and she advocated for the nine foot wall; and he met Thomas Kirchhoff at an informal Preservation Foundation event and he spoke to him about the project

- President Rosow had not been approached by anyone, but he knows the Koch's.

- President Pro Tem Coniglio and Council Member Wildrick had no conversation with anyone.

Attorney Ziska, on behalf of Mr. and Mrs. David Koch, accompanied by Architect Kirchhoff for the project, provided an overview of the request.

Discussion occurred among Mayor McDonald, Attorney Ziska, and Architect Kirchhoff regarding the location and height of the wall.

Council Member Diamond moved that Variance #5-2009 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 have been met.

Responding to Mayor McDonald, Council Member Diamond indicated that the hardship was a security issue.

Attorney Ziska noted that, although there was a hardship requirement, there also was a reasonableness to granting a variance, as there was a list of criteria to be met. There was an existing wall prior to the renovation of the second house, which did not impact anyone; buffering behind the wall with landscaping would be unacceptable, as it was a motor court and certain depths and widths were needed to turn vehicles around. In this situation the way to increase their privacy and security was to increase the height of the wall.

Council Member Wildrick seconded the motion. On roll call, the motion carried unanimously.

c. <u>VARIANCE #6-2009 The application of The Ross Family Residence Trust for Michael Ross and Merry Ross (Matthew Kamens and Daniel Promislo, Trustees); relative to property commonly known as 321 Tangier Avenue; described as Lot 1 and that part of Lot 1A lying West of a line parallel to the West Boundary thereof and 16 feet East thereof, measured at right angles thereto, of Tangier Estates; a subdivision of lands in the Town of Palm Beach, Florida, according to the Plat thereof on file and of record in the Office of the Clerk of the Circuit Court, Palm Beach County, Florida, Plat Book 12, Page 16; also that tract or parcel of land bounded on the West by the waters of Lake Worth, on the East by the West boundary of the aforesaid Lot 1 of Tangier Estates, on the North by the Northline of said Lot 1, produced Westerly to the waters of Lake Worth and on the South by the South boundary of said Lot 1 projected West to the Waters of Lake Worth; located in the R-B Zoning District. The applicant requests a variance to construct a 555 square foot second story addition above the existing garage which will increase the cubic content ratio to 4.54 in lieu of the 4.30 existing and 3.88 maximum allowed in the R-B Zoning District.</u> [Attorney: Maura A. Ziska] [ARCOM Recommendation: Approval of the variance with removal of the east window. Carried 4-3.] Request for Deferral to the May 13, 2009, Town Council Meeting Per Letter Dated March 26, 2009, From Maura A. Ziska.

Variance #6-2009 has been deferred to the May 13, 2009, Town Council meeting.

d. <u>SPECIAL EXCEPTION #2-2009 WITH VARIANCE The application of Palm Beach Country Club, Steven Bielsky, General Manager; relative to property commonly known as 760 N Ocean Blvd.; described as lengthy legal description on file; located in the R-A Zoning District. The applicant requests special exception to allow the lighting of two existing tennis courts</u>

located on the south side of the main parcel of the Country Club (north of Country Club Road and west of North Ocean Blvd.). The proposed lights will meet all other requirements of Sec. 134-1759 of the Code of Ordinances including hours of operation, timer switches, etc. A variance is requested to allow the lights to be placed at a height of 20 feet 6 inches above finished grade in lieu of the 15 foot maximum allowed by code.[Attorney: L. Frank Chopin] [ARCOM Recommendation: Approval of variance. Carried 7-0.]

Ex-parte communication was declared by:

- President Rosow had a brief conversation and social setting with Attorney Chopin, who mentioned the project.

Attorney Chopin, representing The Palm Beach Country Club, provided an overview of the request.

Mayor McDonald expressed concern regarding light spilling out to areas outside the club.

Staff Comments:

Zoning Administrator Castro made several of the following comments:

- The lights of North Ocean Boulevard could be seen from the street, but would not be glaring at the car passing by, similar to a stadium.

- The applicant had agreed to all the conditions in the code, relative timing and switching on and off of the lights relative to portions of the screening.

- The applicant had to speak to the hardship relative to the variance. It would not impact neighboring residential properties, as it was two properties removed: the Beach Club and their property from most of the residential properties.

Attorney Chopin noted that the hardship was that whatever needed to be done, could not be done properly at 15 feet.

Responding to President Pro Tem Coniglio, Attorney Chopin stated that the height of the lights of the Beach Club was a little over 20 feet.

President Pro Tem Coniglio moved that Special Exception #2-2009 with Variance, shall be granted based on 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 based on the hardship that goes with the land. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

President Pro Tem Coniglio moved that Variance #2-2009, be granted and found, in support thereof, that all of the criteria applicable to the application as set forth in Section 134-201(a), items 1 through 7 had been met based on the hardship that goes with the land.

Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

e. SPECIAL EXCEPTION #4-2009 The application of Palm Beach Day Academy - 241 Seaview Avenue, Daniel A. Hanley, as Trustee, 211-213 Seaview Avenue; relative to property commonly known as 241 Seaview Avenue; described as lengthy legal description on file; located in the R-B Zoning District and 211-213 Seaview Avenue; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant requests a special exception to modify and amend the previous special exception approvals for Palm Beach Day Academy at 241 Seaview Avenue to allow 211-213 Seaview Avenue to be used for school purposes, such as school audio video facilities for private student broadcasting, as well as to allow Commercial Town Serving tenants in the building. [Attorney: Ray Royce]

Ex-parte communication was declared by:

- Council Member Diamond had a tour of the school premises with Rebecca van der Bogert.

- Council Member Kleid spoke with Ms. van der Bogert, and she asked that the Council approve the Special Exception.

- President Rosow spoke Ms. van der Bogert and she asked that the Council approve the Special Exception.

- Council President Pro Tem Coniglio spoke to Ms. van der Bogert and received an email.

- Council Member Wildrick spoke with Ms. van der Bogert, and took a tour of the school.

Attorney Raymond Royce, on behalf of Palm Beach Day Academy, provided an overview of the request.

Staff Comments:

Zoning Administrator Castro made several the following comments:

- In order for the school to expand in any way, would require the Town Council's approval.

- Five years ago, the school moved into the commercial building, which they own, to provide the facility for the children. Staff was unaware of the move, but was in support of it.

- It would not impact the settlement agreement for the parking lot, that was adjacent or between the school and the small broadcasting facility for student in the school.

- Not be using the field for parking, and staff did not believe that it would have any negative impact.

Discussion occurred among Town Council Members and the school faculty members. Following were several of the issues addressed:

- The Palm Beach Day Academy held a neighborhood meeting, and passed an inspection by the Fire-Rescue Department, which ensured the children's safety.

- Future use of the building and parking.

Mr. Castro said staff recommended approval of only the tenant's use of space that was being proposed today. He noted that if the school was going to be expanded, the Academy would need to represent the operational aspects, to the Council today.

Attorney Royce noted that Palm Beach Day Academy would use the space, as it was being used today; applicable only to the western half of the property and building.

Carolyn Jaeger, 215 Phipps Plaza Drive, commented that she was opposed to the expansion of Palm Beach Day Academy, as it caused congestion on her street.

Bud Jamison, commented that his children participated in BTV, and that he was in support of the project.

Lory Volk, representing two property owners, Mrs. John Volk and John Volk, Jr., 206 Phipps Plaza Drive, commented that Mrs. Volk and the condo association lost service parking availability on Seaview Avenue. She requested that the violations, made by the school, be placed on the record, so that in future requests, it would not be forgotten. She reminded that there had been a successful lawsuit on the abutting property, so that it would not become a parking availability at a future date.

Mayor McDonald commented that conditions could be attached that the parking could not be used, and would remain with the commercial tenants.

Council President Rosow directed Public Works staff to review the former decision regarding the service parking spaces in front of the residents' homes on Seaview Avenue.

Motion made by Council Member Coniglio, seconded by Council Member Wildrick that Special Exception #4-2009 shall be granted based upon the finding that such grant will not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code have been met with the following enumerated staff conditions: that the tenant space only be used for the audio video part of the campus, the parking lot associated with the commercial building not be used for parking by the school facility for staff, parents, and students, on only the west side of building, which would be used Monday through Friday without weekends. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

a. MODIFIED SITE PLAN REVIEW #10-2008 WITH SPECIAL EXCEPTION AND VARIANCES The application of BNB Ventures Palm Beach I, LLC; relative to property commonly known as 204-210 Royal Palm Way; described as a part of Lot 36, Block E, of the ROYAL PARK ADDITION to the Town of Palm Beach, Florida, according to the plat thereof as recorded in Plat Book 3, Page 1, Public Records of Palm Beach County, Florida, as described as: Beginning at the NW corner of said Lot 36; thence south on the West line of said Lot 36, 125 feet, thence East on a line parallel with North line thereof, a distance of 87 feet; thence North to a point on the North line said Lot 36, just 87 feet East of the Point of Beginning; thence West to the Point of Beginning; located in the C-OPI Zoning District. The applicant requests site plan review to construct a 14,027 square foot (gross building area), three story commercial building. A special exception is requested to allow a three story commercial building in the C-OPI Zoning District. Variances are requested as follows: for a front yard setback for the building to be .95 feet in lieu of the 15 foot minimum required; for the east side yard setback to be 0 feet in lieu of the 15 foot minimum required; for the west side yard setback to be 0 feet in lieu of the 15 foot minimum required; for lot coverage of 66.8% in lieu of the 25% maximum allowed; for landscaped open space to be 5.1% in lieu of the 30% minimum required for the entire site; for the landscaped area to be 0.0% in lieu of the 10% (of the parking and drive aisle area) minimum required for the interior parking lot; for the landscaped area to be 7.3% in lieu of the 15% (of the parking and drive aisle area) minimum required for screening and interior landscaping; for landscaped open space in the front yard to be 10.6% in lieu of the 35% minimum required; for a front yard setback for the tower to be 7.62 feet in lieu of the 20 foot minimum required; for the east side yard setback for the tower to be 6.67 feet in lieu of the 20 foot minimum required; to allow a tower feature to be 2.4% of the maximum gross floor area in lieu of the 2% maximum allowed; to allow the parking spaces to be situated in contradiction to the maneuvering requirements in Section 134-2172, that section provides that required parking be designed so as to not require the movement of another vehicle in order to remove another vehicle from a required parking space. The applicant is proposing stacked parking which requires the shuffling of vehicles in order to remove vehicles from required parking spaces; to provide 22 parking spaces in lieu of the 35 parking spaces required (a deficit of 13 parking spaces); to provide a loading space that is 18 feet deep with a clear height of 10 feet in lieu of the 25 foot minimum depth and 14 foot minimum clear height required; to allow the air-conditioning equipment on the roof to be 8 feet in lieu of the 4 foot maximum allowed above the roof stand. [Attorney: Maura A. Ziska] [ARCOM Recommendation: Approval of the variance. Carried 4-3.] Deferred from the November 11, 2008, December 8, 2008, January 14, 2009, February 11, 2009, and March 11, 2009, Town Council Meetings (Special Circumstances).

Ex-parte communication was declared by:

- Council Member Diamond received a call from Attorney Ziska, but did not meet with her.

- Council Member Kleid met with Attorney Ziska, discussed the project and listened to the arguments in favor of it.

- President Rosow attended a meeting with Attorney Ziska, the owner, and architect to discuss the project; he raised his concerns about the project at that time.

- President Pro Tem Coniglio had a short meeting with Bob Moore.

- Council Member Wildrick received a call from Attorney Ziska, but he chose not to speak with her.

Attorney Ziska, on behalf of the property owner of 204 Royal Palm Way, Leonard Ackerman, accompanied by Ed Oliver, the Architect, Bob Moore, Consultant, and Brian Johnson, traffic engineer from DKS & Associates. She provided an overview of the project.

Architect Ed Oliver presented aerial photographs, drawings, a model, and a detailed description of the variances and modifications to the Town Council.

Brian Johnson, DKS & Associates, provided a presentation regarding parking spaces and traffic.

Discussion occurred among the Town Council members and Attorney Ziska, regarding the financial plans for the building.

Staff Comments:

Zoning Administrator Castro made several of the following comments:

- The parking did not work, as 8 of 22 parking spaces were stacked.

- Staff's concern was relative to the parking, the size of the building, and staff did not know what the hardship was for 15 variances.

Discussion continued with concerns regarding not enough parking, and no green space, and office use.

Zoning Administrator Castro asked that the applicant work with Public Works regarding trash pickup, because the dumpsters were in the very back of the property.

Mr. Castro asked that if valet parking was being provided, that it be in perpetuity.

Council Member Diamond moved that Variance #10-2008 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 have been met, and that staff's recommendations be incorporated therein.

Attorney Ziska noted that the hardship was that it was a narrow lot, 87 feet, difficult area of Town, a commercial district that all of the buildings on that road did not meet today's code with regard to the setbacks. In order to build the building that fits in with this neighborhood, there needed to be some relief to the zoning code.

Mr. Castro disagreed and that the existing zoning code could be a hardship.

Council Member Wildrick seconded the motion.

Mr. Castro indicated that the motion should state approval of the Modified Site Plan Review #10-2008 with Variances, and 15 Variances were attached relative to the Site Plan Approval with Special Exception.

Attorney Ziska stated that some of the numbers from the last ARCOM meeting had improved, and the file would have to be updated with the number of the variances.

Maker and seconder agreed.

Fire Marshal Tim Pompos noted that if the Fire-Rescue Department did not have access to parked cars, the property owner would be cited, and the Police Department would be contacted, if the cars were not moved immediately.

Town Attorney John Randolph noted that any neighbor could challenge the project with the hardship description on the basis that they did not think there was competent substantial evidence to support the fact there was a hardship.

Upon roll call, the motion carried 3-2.

President Rosow	**No**
President Pro Tem Coniglio	**No**
Council Member Diamond	**Yes**
Council Member Kleid	**Yes**
Council Member Wildrick	**Yes**

Council Member Diamond moved that Special Exception No. 10-2008 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 have been met. Council Member Wildrick seconded the motion. On roll call, the motion carried 3-2.

President Rosow	**No**
President Pro Tem Coniglio	**No**
Council Member Diamond	**Yes**
Council Member Kleid	**Yes**
Council Member Wildrick	**Yes**

Council Member Diamond moved that Modified Site Plan No. 10-2008 be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certified that the specific zoning requirements governing the individual use have been met and that satisfactory provision and arrangement had been made concerning Section 134-329, items 1 through 11. Motion seconded by Council Member Wildrick. On roll call, the motion carried 3-2.

President Rosow	**No**
President Pro Tem Coniglio	**No**
Council Member Diamond	**Yes**
Council Member Kleid	**Yes**
Council Member Wildrick	**Yes**

b. VARIANCE #2-2009 The application of Abe Haruvi and Giovana Haruvi; relative to property commonly known as 112 Via Palma; described as lengthy legal description on file; located in the R-A Zoning District. The applicant requests variances to construct a 2,786 square foot second story addition; to allow a point of measurement of 19.4 feet National Geodetical Vertical Datum mean sea level ("NGVD") for building height and overall height in lieu of the 15.1 feet NGVD required; a variance to allow a building height plane setback on the north side of the lot of 56 feet in lieu of the 73.66 foot minimum required. [Attorney: Maura A. Ziska] Item was withdrawn. 1. [ARCOM Recommendation: Approve project subject to reducing the roof height so that variances are eliminated.] 2. Deferred from the March 11, 2009, Town Council Meeting (Special Circumstances). 3. Request for Withdrawal Per Letter Dated March 25, 2009, From Maura A. Ziska.

Variance #2-2009 was withdrawn.

4. New Business- More Than 15 Minutes

a. SPECIAL EXCEPTION #3-2009 The application of New Bradley House, LTD (George Levin); relative to property commonly known as 290 Sunset Avenue; described as The East 10 feet of Lot 30 and all of Lots 31-37 inclusive, FLORAL PARK, a subdivision in the Town of Palm Beach, Florida, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach, Florida, in Plat Book 2, Page 6 AND Lots 194 to 200 inclusive FLORAL PARK, a subdivision in the Town of Palm Beach, Florida, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach, Florida, in Plat Book 2, Page 6; located in the C-TS Zoning District. The applicant requests to modify the previously approved Special Exception #10-2002 Condition Number 3 to allow the restaurant to be open for lunch between 11:00 a.m. and 3:00 p.m.[Attorney: Maura A. Ziska]

Ex-parte communication was declared by:

- Council Member Kleid had a brief conversation, in passing, about the application.

Attorney Ziska provided an overview of the request.

Zoning Administrator Castro provided a brief background before staff's recommendations were given.

Staff Comments:

Mr. Castro noted that staff's only concern was that the valet's understand, if the restaurant was allowed to open at lunch, that the parking lot be used and not use the on-street parking in that area, as parking was limited.

Discussion occurred regarding the rules that were not being followed by the valet parking and the impacted traffic.

Motion made by President Pro Tem Coniglio, seconded by Council Member Wildrick to approve Special Exception #3-2009, with the condition that a luncheon operation would be allowed and revisited at the January 2010, Town Council meeting, no valet operation would be required, that 30 parking spaces behind Publix would be held and maintained as Restaurant Parking Only, if acceptable with the zoning code, and the 30 spaces could not be filled with 15 employees. On roll call, the motion carried unanimously.

Mr. Castro commented that the applicant would need to re-notice the neighbors, so if there were problems, they would be notified of the January meeting.

D. Other

1. <u>Proposed Re-zoning of Lakefront Area from R-B to R-A Zoning District.</u>

Ex-parte communication was declared by:

- Council Member Diamond received a large packet of information from Attorney Brindell, and he spoke with him on the telephone, and he spoke with Mr. deMarco.

- Council Member Kleid spoke with Attorney Brindell, Mr. deMarco, who briefly alerted him to their position with respect to this application.

- President Rosow spoke with Attorney Brindell, Mr. deMarco, received information and had meetings with them to discuss their point of view.

President Pro Tem Coniglio received a voice mail from Attorney Brindell, a package from Mr. deMarco, an email from Mr. Horwitz followed by a voice mail and a conversation by a prior councilman, and the letters in the book.

Council Member Wildrick received a package from Mr. deMarco, and he had called him and pushed his side of the argument a couple of times with him personally.

Attorney James Brindell provided a presentation on the proposed rezoning of the Lakefront Area.

Staff provided their concerns to the Town Council. Zoning Administrator Castro noted that staff's recommendation would be to rezone the property, if that was the direction of the Town Council, and notice all neighbors within 300 feet, in order to obtain the residents input.

Discussion occurred with Attorney Brindell, staff, and the Town Council.

Kleid suggested that Planning and Zoning Commission go back for re-zoning, and to add this item as a rezoning study item

Motion made by Council Member Diamond to approve staff recommendations for text changes regarding the RB lots measuring 20,000 square feet or larger on the lakefront. A draft Ordinance will be prepared for first reading next month. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

2. Consideration of Ocean Vista Study Item.
   [John C. Randolph, Town Attorney]
   Deferred from the March 11, 2009, Town Council Meeting.

This item was deferred to the May 15, 2009, Town Council Meeting.

3. Status of Palm House (Heart of Palm Beach Hotel) Project.
   [John S. Page, Director of Planning, Zoning, and Building]
   TIME CERTAIN: 12:00 Noon

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

Ex-parte communication was declared by:

- Council Member Diamond was contacted by Robert Matthews;
- Council Member Kleid had received a telephone call from Mr. Matthews, explaining the position of the project.
- President Rosow discussed concerns with the neighbors.
- President Pro Tem Coniglio had a telephone conversation with Mr. Matthews
- Council Member Wildrick received a telephone call from Mr. Matthews, but never connected.

Building Official Jeff Taylor provided the status of the progress of the Hotel, and noted that it could be extended to January 10, 2010.

Discussion occurred among the Town Council members and staff regarding whether or not the construction progress was moving in a timely manner.

Robert Matthews of Mathews Hospitality Group, 101 Casa Bendita, indicated that the delay in working on the project was obtaining financing. He planned to request a six-month extension in August, in order to complete the project by February 10, 2010.

Mr. Matthews replied to questions from the Council members.

Murray Green, noted that he was the appointed receiver, for funding, to ensure that the project moved forward. He responded to comments and questions by the Town Council and indicated that when he provided a report to the court, he would provide a report to the Town.

Peter Madden, 100 Royal Palm Way, commented that the Hotel property was in disarray and not much progress had been made, and urged the Town Council to do whatever possible to help the project be completed as soon as possible.

Discussion continued, and Mr. Mathews agreed to clean up the area immediately, and would do whatever the Town wanted.

Attorney Jim McCann, counsel for the foreclosure case for the lender, commented that the receiver was obtained on an expedited basis, because of Mr. Taylor's letter. The lender would do whatever was necessary to keep the permits in place.

President Rosow asked Building Official Taylor to work with the lender to provide what was needed by the Town for the appearance of the construction site.

4. <u>Discussion of the Future Use of the Royal Poinciana Plaza.</u>
[John C. Randolph, Town Attorney]
TIME CERTAIN: 2:00 P.M.

The following groups and individuals provided presentations/comments regarding the future use of the Royal Poinciana Plaza:

Lee Munder of the Sterling Group, 300 Seminole Avenue,

John Eubanks of Moyle Flanagan, represented Palm Beach Towers;

John Ripley, of the Palm Beach Preservation Foundation;

Patrick Flynn, 2600 N. Flagler, West Palm Beach, of the Palm Beach Theater Guild;

Bill Metzger, 277 Esplanade Way, Vickie Hlamos, 315 Clarke Avenue, of the Performing Arts Center, Volunteer Task Force;

William Amador, Fire-Rescue Chief, of the Town of Palm Beach;

Jeff Taylor, Building Official, of the Town of Palm Beach;

Discussion occurred among the Town Council members, Mayor McDonald and staff regarding life/safety concerns of the building.

Public Comment was provided by the following:

Bill Amador (Town of Palm Beach)
June Bakalar
Steve Brown
Ralph DelBaio
Joan Ellis
John Eubanks (Attorney for Palm Beach Towers)
Patrick Flynn (Theater Guild)
Janet Gordon
Evans Hale (Cape Playhouse Theater)
Vicki Halmos (Citizens Task Force)
Arnold Hoffman
Doug Holtz (Theater Guild Treasurer)
Vivian Hiberg
Owen Larkin
Lowell Levine
Greg Lewis
Betty Maddie
Lawrence McNamara (Preservation Palm Beach PAC)
Mrs. Lawrence McNamara
Dale McNulty (Palm Beach Symphony)
Heather McNulty
Pam McIver
Bill Metzger (Citizens Task Force)
Lee Munder (Sterling Organization)
Paul Noble (Member Palm Beach Theater Guild and other cultural orgs.)
Dorothy Respin
Ann Riker
John Ripley (Preservation Foundation)
Steven Stolman (Board of Governors, Historical Society; Member Preservation Foundation)
Jeff Taylor (Town of Palm Beach)
Lory Volk (John L. Volk Foundation)
Judy Wells-Hoffman

Comments from Council:

The Town Council provided comments and concerns of the future of the Plaza.

Motion made by Council Member Diamond to reaffirm the support of the Town of the 1979 Agreement and allow the parties the ability to negotiate a settlement. If the parties were unable to settle, the Town Council had the protection of the 1979 agreement; if a settlement was reached, the Council had the ability to modify it.

Motion died for lack of a second.

Council Member Wildrick said he would second Council Member Diamond's motion for discussion purposes.

Council Member Wildrick withdrew his second.

Council Member Kleid moved that the Town Council approve, in general, the conceptual plan presented by the Sterling Group for the redevelopment of the Royal Poinciana Plaza, including the potential demolition of all, but the eastern façade of the Royal Poinciana Theater. He expressed the Town Council's concerns over the density, height, and mass of the residential components of the conceptual plan; and expressed concern that the size and seating of the Theater should be enlarged. In addition, the Landmarks Preservation Commission and the Planning and Zoning Commission would need begin to work with the developers to produce a mutually acceptable plan and the necessary approvals, and zoning changes to effectuate said plan, subject to all of the condition precedents, deemed necessary by the commissions, and eventually the Town Council.

Responding to President Pro Tem Coniglio, Council Member Kleid noted that the motion included the 17 conditions proposed by the Planning and Zoning Commission, and things that had not even been thought about.

President Pro Tem Coniglio seconded the motion.

Responding to President Rosow, President Kleid explained that his motion indicated that the Town Council was stepping back from meetings and discussions concerning the Royal Poinciana Plaza, and relegating this item back to the Landmarks Preservation Commission.

Council Member Wildrick stated that he would need a deadline included in the motion.

Town Attorney Randolph requested that Council Member Kleid change his wording "conceptual approval" to "he expressed the Council's general support of the Sterling Group moving forward through the various boards and commissions of the Town with the plans that have been presented".

Council Member Kleid noted that he could accept the language change, if it included the "potential demolition".

Discussion continued regarding the motion.

Council Member Kleid withdrew his motion.

Motion made by President Pro Tem Coniglio to approve an extension to the parties at a Special Town Council meeting on Thursday, May 7, 2009, at 9:30 a.m. Motion seconded by Council Member Wildrick. On roll call, the motion carried unanimously.

President Rosow announced that the Special Town Council meeting had been changed to **Friday, May 8, 2009, at 2:00 p.m.** The location has not been determined, but would be notified through the Town's web page and news releases.

X. ANY OTHER MATTERS

1. Proposed Worth Avenue Improvement Project.[Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Bradford provided an overview of the item concerning the Worth Avenue property owners and tenants.

Discussion occurred among the Town Council members, staff and Mayor McDonald regarding whether or not the Town should proceed with assessments and improvements of Worth Avenue, as changes could occur in the future, by either the Town or the owners.

Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond to approve the Worth Avenue Improvement Project.

Mr. Bradford indicated that he would need to proceed to spend $4,500 for the Request for Proposals (RFP) with the banking and financial industry in order to determine the best terms and conditions.

Amended motion was to approve the Worth Avenue Improvement Project and the expense of $4,500 for the Request for Proposal process. The maker and seconder agreed. On roll call, the motion carried unanimously.

2. Island Cats

Terry Watterson of Island Cats provided a proposal of an agreement to the Town Council.

Town Attorney Randolph explained that the lawsuit would be dismissed through a stipulation by both parties, and could not be refilled.

Sergeant Krauel, of Palm Beach Police Department, Code Enforcement Unit, noted that he was confident that Mr. Watterson was well versed in the Palm Beach County Ordinance requirements and Mr. Watterson agreed to obtain the permitting and adhere by the Town's rules in subsection 10-9.

Council Member Diamond moved to accept the offer of Island Cats proposal. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

President Kleid commented that staff recommended paying $37,500 in advance, which was still owed to the Town.

President Rosow requested that Town Manager Elwell send a bill to Island Cats and place it on the on the Agenda for the next meeting, in May, if not paid by that time.

XI. ADJOURNMENT

There being no further business, the Regular Town Council meeting of April 15, 2009, was adjourned at 5:37 p.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk