

TOWN OF PALM BEACH

Office of The Town Clerk

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING
(Summary of Planning & Zoning Commission Actions Included as Attachment to the Minutes)**

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting was called to order on Monday, February 12, 2007, at 1:30 p.m. in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald
President Richard M. Kleid
President Pro Tem Denis P. Coleman
Council Member William J. Brooks
Council Member Gail Coniglio
Council Member Susan Markin

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

Planning, Zoning & Building Director Veronica Close
Zoning Administrator Paul Castro
Planning Administrator Tim Frank
Town Attorney John Randolph
Planning, Zoning & Building Consultant William Brisson
Town Clerk Susan Eichhorn

II. INVOCATION AND PLEDGE OF ALLEGIANCE

President Kleid led the Pledge of Allegiance. Town Clerk Eichhorn provided the invocation.

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007, REGARDING ZONING
--

III. APPROVAL OF AGENDA

Through motion of Council Member Brooks, seconded by President Pro Tem Coleman, the agenda was approved with the following amendment:

Item VII. Communication From Citizens moved to be heard immediately following Item III.

On roll call the motion carried unanimously.

IV. COMMUNICATIONS FROM CITIZENS

Mr. Royall Victor, 208 Via Tortuga, commented that the Palm Beach Civic Association had presented a report on the Town's commissions and boards approximately one year ago. He recalled that the underlying theme to the report had been the importance of maximizing the competence, efficiency, effectiveness and value of the Town's boards and commissions. The Town Council could then look to the commissions and boards to carry out a significantly greater amount of the Town's business in the future. This would also permit the Town Council to devote significantly more valuable time to addressing the more substantive matters, and longer term strategic issues facing the Town. Successful implementation of such a strategy would also result in upgraded commissions and boards, as a result of having made service on them more interesting and exciting, while the Town Council would gain additional assistance in their governing challenges. The report had also strongly affirmed that the work and support of Town staff was critical to the commissions and boards and largely determined a successful outcome.

Mr. Victor stressed that it was important that both the Town staff and the boards and commissions have a fully transparent and open working relationship, such that opposing points of view, or differing approaches, be fully vetted and openly discussed. If not resolved, at least the views and approaches could be cooperatively enumerated, in order to provide the greatest assistance to the Mayor and Town Council.

Mr. Victor stated that the Palm Beach Civic Association was pleased with many of the actions taken by the Town in the last year, and the initiatives taken by the Town in the last year, aimed at making the boards and commissions more effective.

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

**V. 2006-2007 ZONING SEASON STAFF REPORT PART 2 OF PHASE II AND THE
TOWN PLANNING AND ZONING COMMISSION'S RECORD AND REPORT**

President Kleid advised that staff would present each study item considered by the Planning & Zoning Commission as set forth in the 2006-2007 Phase II Staff Report. Staff would then present the Planning & Zoning Commission's recommendation, and the staff recommendation, if different. Following that, comments of the Planning & Zoning Commissioners would be heard, then citizen comments with respect to the study items being discussed. Finally, the Mayor and Town Council would have discussion and reach a decision.

Director of Planning, Zoning and Building Veronica Close advised that staff would be working from the document entitled "Summary of Planning & Zoning Commission Actions." Items to be discussed: (*Summary of Planning & Zoning Commission Actions document attached to these minutes*).

Study Item #2 - Review the Variance Criteria to consider Additional Categories.

Study Item #9 - Study Delegating Authority to Consider and Decide on Variances, Special Exceptions and Site Plan Reviews to Another Board or Commission.

Study Item # 10 - Study establishment for Home Use licenses in Residential Districts.

Study Item #11 - Study Portable On-Demand and Temporary Storage Trailers.

Two other items, related to condo/hotels and restaurants, would be further studied over the summer. Staff would also provide an update on the discussion of the Planning & Zoning Commission regarding the Royal Poinciana Planning Study. The Commission had also continued discussion on their role, and staff would be coming forward at a later date with the Commission's recommendations in that regard.

Study Item #2 - Review the Variance Criteria to consider Additional Categories (Dimensional Waivers for Existing Single-Family Development):

Zoning Consultant Bill Brisson, Larue Planning & Management Services, Inc., addressed the

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

Town Council, presenting the recommendations made by the Planning & Zoning Commission as well as staff.

He first addressed the granting waivers to the variance criteria with regard to single family homes that were built prior to 1980 (non-landmarked homes). Most of the changes in the regulations that had affected the residential districts over the years had occurred in the very early 1980's when people started to develop their properties to the very maximum. There was an effort to reduce the ability to utilize all of the maximum to the minimums in the Code.

The Commission and staff had agreed with the recommendations for the waivers for single family homes built before 1980, as being approved administratively, because the criteria presented in the recommendations was all very objective, and would not require subjective judgment. The Commission and staff agreed that waivers could be granted for the minimum side yard setbacks, minimum rear yard setbacks, minimum front yard setbacks, and entry features, along with the need to notice the abutting property owners, and including a provision for appeal. However, the Commission was not in agreement with regard to requiring compensating and mitigating factors in order to be granted a waiver to the zoning regulations as they now existed. Staff noted that the Town had granted many variances over the years, based on some mitigating factors, in order to be granted some relief from the ordinance. The Commission's primary concern was that mitigation worked against the intent of the waiver. The intent of the waiver provision was to make it easier for single family property owners in the residential districts to modify their homes and buildings.

Mr. Brisson reviewed the recommendations of the Summary of Planning & Zoning Commission Actions regarding non-landmarked structures. He also made notations as to text changes.

- ▶ Correction of a mistake in Item 3(a)(2): The measurement of the projection from the building wall shall be not ~~less~~ **greater** than the width of the entry feature.
- ▶ New wording in Item 4(d): The applicant or abutting property owners shall have 30 days from the date **of the issuance of the letter** notifying the applicant of the director's decision, to file an appeal with the town council as set forth under sec. 134-145.
- ▶ Item 4(e): The approval of a waiver by the director or his or her designee shall ~~not~~ become effective upon the expiration fo the appeal period as outlined in Sec. 134-145.

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

Planning & Zoning Commission Comments:

Mr. Leslie Shaw, 318 Seaspray Avenue, member of the Planning & Zoning Commission, commented that he was not sure that the differences in opinion were being clearly outlined or documented in the presentation that was being given to the Town Council today. If staff was going to provide a commentary as to what transpired, the draft of the minutes must be done in such a way that both sides clearly were expressing their opinions. There were some subtle issues that needed to be addressed pertaining to the waiver concept. There had been discussion about the setback dimensions for abutting properties. If the theory of the waiver was to take one or two percent of the applications off of the Town Council's plate that would be accomplished. If, on the other hand, the idea was to look at the properties realistically, the waiver idea may not work on particular properties.

Mr. Shaw commented that he had never been a big fan of pushing houses back on streets to create front yard setbacks, and also respected that there was a difference between streets where there was no parking and no sidewalk area, and streets where there were excessive setbacks, such as the "Sea" streets, with a parkway between the street and the sidewalk. He questioned whether that should have been incorporated, not so much as a modification to the zoning, but rather as part of the discussion that was presented to the Town Council. He noted that he was hopeful that, without having to listen to the meeting verbatim, all differences of opinion would be noted.

Mr. William Guttman, West Indies Drive, member of the Planning & Zoning Commission, pointed out that the Planning & Zoning Commission had voted unanimously on this particular recommendation, even though there had been much debate.

Mr. Guttman explained that from the Planning & Zoning Commission perspective the goal of allowing waivers in situations involving dimensional standards in the zoning code was to encourage the modification and renovations of existing houses in the R-B District, and to avoid teardowns.

Town Council Comments:

Council Member Markin commented that, from a planning and zoning perspective, the goal should not be just to make everything more flexible; the other side of the goal was to ensure that the character, integrity and privacy was maintained of all those involved on both sides of the residents who wanted to renovate. She expressed concern with the only criteria to deny a waiver being the compromising of traffic or fire safety.

Town Attorney John Randolph advised that this came about as result of the fact that this was

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

going to be considered by staff, and subjective criteria should not be given to staff to make these determinations. They ought to be able to look at a formula and make a determination as to whether the formula criteria were met. The intent had been to put it into staff's hands, but to have it so clear-cut that the staff could make the determination.

Council Member Brooks commented that there was a need for flexibility; also to preserve what was in place and avoid the teardown. He noted that he was in favor of flexibility and supporting both the Commission and the staff on the whole concept of granting a waiver.

In response to Council Member Coniglio, Ms. Close advised that most dimensional waivers would be going through the Architectural Commission – the only exception would be if they were totally in the rear and could not be seen from the street. Mr. Castro added that when Siemon & Larsen had done their original report, they were looking at where variances had been granted in the past and had tried to provide some flexibility to eliminate those variances that were being approved by the Council and that were deemed to be fairly acceptable. Staff was trying to provide some latitude and flexibility to allow people to get waivers for things that had typically been approved. It also provided a mechanism where the neighbor had some input in the situation, and the applicant would not get anything that the neighbor did not already have.

President Kleid commented that notices should continue to be sent to abutting property owners.

Ms. Close replied that in item 4(d) language was proposed saying that the applicant or abutting property owner shall have 30 days from the date of issuance of the letter notifying the abutting property owner and the applicant. President Kleid was assured that both parties would then be notified of everything that transpired along the application process.

Town Attorney Randolph suggested that item 4(c) have language added that would require notifying the applicant and abutting property owners by certified mail.

Regarding Study Item #2, Waivers for Nonlandmark Properties:

Motion made by Council Member Brooks, seconded by Council Member Markin, to accept the recommendations of the Planning & Zoning Commission, as well as staff recommendations, with the modifications made today, to incorporate waivers to the dimensional regulations for nonlandmark single-family structures as contained in pages 1 – 5 of the Summary of Planning & Zoning Commission Actions. On roll call the motion carried unanimously.

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

- 1. Delete subsection (d) on pages 2 and 3;**
- 2. Change the word "less" to "greater" on line 2 of subsection (2) on page 4;**
- 3. Delete subsection (c) on page 4; and**
- 4. Modify subsections (c) , (d), and (e) on page 5 to read as follows:**
 - (c) The director or his or her designee shall approve, approve with modifications or deny the application for a waiver within 30 days of receipt of the application and shall notify the applicant in writing by certified mail within 7 calendar days of the decision.**
 - (d) The applicant or abutting property owners shall have 30 days, from the date of issuance of the certified letter notifying the applicant of the director's decision, to file an appeal with the town council as set forth under Sec. 134-145.**
 - (e) Effective date of approval of a waiver.**

The approval of a waiver by the director or his or her designee shall become effective upon the expiration of the appeal period as outlined in Sec. 134-145.

Comments by Planning & Zoning Commission:

Mr. William Guttman, Planning & Zoning Commission, commented that in the north end there were many existing homes with side yard setbacks that were nonconforming, so that if someone wanted to add on to the back of the house they would need a variance. The purpose of the waiver provision was to allow them to expand their house along the nonconforming line. If the goal was to encourage people in the north end, in particular, not to teardown, it would seem that the regulations should not take back with one hand what was being given with the other.

Mr. Leslie Shaw, Planning & Zoning Commission, commented that the waiver would work well in second story additions, and both items in (d) were dealing with footprint. Therefore, anything that would be done on a second story would be moot. Without having actual numbers as to how many variances involved a one-story addition with a second story above it, or a one-story fill in with a second story addition, he did not believe that this particular clause would affect most of the variances that were put forth for consideration. Even if there was a waiver, the application would still need to go before the Architectural Commission (ARCOM) in most cases.

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

Zoning Administrator Castro explained that if it could be seen from the street when one was walking on the sidewalk, it would need to go to ARCOM.

Council Member Brooks clarified that the motion had approved the recommendations of the Planning & Zoning Commission with the modifications as amended at this meeting, specifically with respect to the notice provisions.

Town Attorney Randolph clarified that the bold/strike out language was approved, with the clarifications made today.

Study Item #2 - Review the Variance Criteria to consider Additional Categories (Dimensional Waivers for Landmark Properties).

Zoning Consultant Brisson advised that landmarks was a slightly different waiver. The waiver would be heard by the Landmarks Preservation Commission (LPC) and ultimately ratified by the Town Council. This waiver recognized that the Town wanted to avoid weakening variance provisions of the zoning code, and did not want to imply that landmarking was a burden. Staff had revisited the proposals that were initiated by Siemon & Larsen in the 2005-2006 Zoning Season, and made some modifications to those. Essentially, all waivers would be heard by the LPC and would be ratified by the Town Council on its consent agenda, or pulled from that consent agenda for further consideration by the Town Council. A request for a waiver would first have to be found to meet the appropriate criteria for a Certificate of Appropriateness. The staff and the Planning & Zoning Commission were in agreement on all aspects, except one. The Planning & Zoning Commission had recommended that a waiver be included to cubic content, whereas the staff did not initially incorporate that into its recommendations. At this point, staff believed it may be premature to allow a waiver for cubic content. Staff was looking for an initial starting point to see how it worked. The Town Council had not granted variances and flexibility with regard to the cubic content very often, and staff felt that it was not appropriate at this time to include that; however, at some point in the future it could be added in, if it was felt to be appropriate.

Comments by Planning & Zoning Commission:

Mr. William Guttman, Planning & Zoning Commission, commented that there were two reasons that the Planning & Zoning Commission thought that the cubic content ratio should be included, but only for restoration or renovation of existing nonconforming landmarked buildings. Siemon & Larsen had recommended the inclusion of such a provision, following their seven year survey of variance grants. He noted that the staff, during the 2005-2006 Zoning Season had

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007, REGARDING ZONING

specifically included this provision. When asked why they had changed their minds, the answer was that in the last twelve months or so there had been very few requests for this kind of relief. It did not seem that one year's worth of experience would compare to a seven year survey. He stated that it was a public policy decision as to whether more landmarking in the community should be encouraged or not.

Zoning Administrator Castro advised that the last time a cubic content ratio variance was granted was seven or eight years ago, however, he could not recall, in the R-B District, where a landmarked structure had been granted a cubic content variance. Given the fact that the track record was not there, staff did not believe the cubic content waiver ratio needed to be included.

In response to Mr. Leslie Shaw, Mr. Castro explained that there were certain times that landmarked structures needed to be torn down and rebuilt, because of age, termite damage, etc., so redevelopment of that portion was necessary. In addition, there may be a landmarked building where an addition had existed but was torn down twenty or thirty years ago, and the new owners would like to rebuild that addition. For that reason, the staff had recommended the redevelopment language.

Discussion took place regarding removal of decisions from the consent agenda, and at what point citizens could then comment (Item 3(b)). It was determined that the last sentence of that item would be deleted.

Regarding Study Item #2: Dimensional Waivers for Landmark Properties:

Motion made by Council Member Markin, and seconded by Council Member Brooks, to accept the recommendations of the Planning & Zoning Commission, and the Planning, Zoning & Building Department, to incorporate waivers to the dimensional regulations for landmark properties as contained in pages 5 – 10 of the Summary of Planning & Zoning Commission Actions with the following exceptions. On roll call the motion carried unanimously.

- 1. Change subsection 1 of Sec. 134-237 on page 5 so that the waivers are applicable only to structures in residential districts.**
- 2. Add the word "street" between the words "rear" and "yard" on the second line from the bottom of page 6.**
- 3. Change the word "no" to "not" on line 5 of subsection (e) on page 9 and delete subsection (g), also on page 10, in its entirety.**

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

- 4. Change the word “place” to “placed” on line 5 of subsection (a) on page 10 and delete the last sentence of subsection (b) also on page 10.**

Study Item #9: Study Delegating authority to Consider and Decide on Variances, Special Exceptions, and Site Plan Reviews to Another Board or Commission

Zoning Consultant Brisson advised that staff had reviewed the presentations and recommendations on this topic that had been made during the 2004-2005 Zoning Season, and staff recommendations remained the same – essentially, while the Planning & Zoning Commission recommended that the Town Council continue to hear variances, staff recommended that a hearing officer would be the preferred approach for hearing variances, or another appointed board would be an alternative approach. The appeals would then go to the Circuit Court.

Harrison Robertson, 134 Seagate Road, Chairman of the Planning & Zoning Commission, commented that he had sought to have variances taken from the province of the Town Council for two reasons: to relieve the Town Council of the burden of hearing variances; and second, to remove them from the political process that is inherent in having the Town Council pass on variances. He stated that he supported the recommendation of staff, that variances be taken from the Town Council and placed with a hearing officer, not with another commission. Variance questions were very technical, and someone with a special education should be hearing them.

Council Member Brooks commented that the existing situation had an exceptionally inflexible code, so that a hearing master or another board would have to follow the law, and it would be nearly impossible for a variance to be granted. He emphasized that the Town Council was a public policy body, granted the Town Council sat in a quasi judicial role when hearing variances, etc., however, the preminent position of the Town Council was to be a public policy body.

Council Member Markin commented that she would not support variances going to a hearing officer, or one person, as one person could not possible look at all of the nuances related to variances. It was also very helpful to hear the collaborative opinions of the Town Council members when variances were heard. She stated that she supported variances remaining with the Town Council for the time being, because there was no better solution, nor was there agreement on a solution.

President Kleid commented that when he was on the Planning & Zoning Commission and during his first years on the Town Council, he believed that variances and special exceptions should

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007, REGARDING ZONING

be heard ab initio by a body other than the Town Council. However, he noted that he had now changed his mind; residents want their elected officials to rule on those matters which were so personal to them and affect their quality of life. The Town Council takes into consideration not only the strict reading of the zoning code, but also opinions of neighbors, mitigating circumstances, and whether granting the variance will result in an improvement to the neighborhood, as well as an outcome helpful to the homeowner, while not disturbing neighbors. He suggested that efforts should be directed to getting more flexibility into the zoning code so that less variances are sought, and decision making in some areas would be delegated to the staff.

Zoning Consultant Brisson continued with the recommendations regarding special exceptions and site plan reviews. The Planning & Zoning Commission and the staff were in agreement that the Town Council should continue to handle all site plans and special exceptions, however, staff had recommended that an administrative review of new structures on nonconforming platted single family lots. Unfortunately, this had not come out during the discussion with the Planning & Zoning Commission, and the Planning & Zoning Commission may not have had adequate opportunity to cover this item. Staff recommended that their concurrence be obtained before presenting the recommendation to the Town Council.

Regarding Study Item #9: Study Delegating authority to Consider and Decide on Variances, Special Exceptions, and Site Plan Reviews to Another Board or Commission:

By consensus, the Town Council determined that it would continue to hear and act upon variances, special exceptions and site plans, and directed the Staff to bring its recommendation, to allow applications for single-family structures on nonconforming platted lots to be administratively approved, back to the Planning & Zoning Commission for its consideration.

Study Item #10 - Study Establishment for Home Use licenses in Residential Districts.

Zoning Consultant Brisson reported that while staff recommended allowing home offices in residential districts, the Planning & Zoning Commission recommended leaving the situation as it is now, with no provision for a home office in residential districts. There was concern that allowing home offices would make it easier for individuals to exploit the Town name, and inappropriately use a Town address in connection with activities which may be questionable. Also, they believed it may change the residential character of the neighborhood.

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

Staff, however, believed that allowing a limited home office use in the districts would not negatively impact the residential neighborhoods, given the very narrow limits and specific conditions that the staff had proposed. The conditions were outlined on page 12 and 13 of the Summary of Planning & Zoning Commission Actions.

Zoning Administrator Castro noted that this was a departure from a position that staff had taken several years ago in which a proposal had been set forth regarding home occupational uses within the residential districts. At that time, staff had concerns related to the character of residential streets and the historical consideration that the Town Council had taken relative to keeping the residential streets as strictly residential. Upon further reflection, staff reviewed home office uses, and felt that with the new technology available, and with many people strictly doing work on their computers, fax, or telephone, specific conditions could be provided that would limit the type of activity, so as not to have any physical appearance of any commercial uses. That would allow some flexibility to allow residents to work out of their homes. The Planning & Zoning Commission did not want to change the Town's long standing position of not allowing any commercial or quasi-commercial uses in residential districts.

Planning & Zoning Commission Comments:

Mr. Tony Dowell, 101 E. Inlet Drive, member of the Planning & Zoning Commission commented that he had lived in the Town for 44 years, and there had never been a business operated in a residential neighborhood, and he hoped there never would be. It would completely corrupt the residential integrity of the neighborhood, and was an ill conceived idea, without merit. There was a big difference between conducting business out of your home, and operating a business within your home. He also noted that the name "Palm Beach" meant a lot in the commercial market, and having a Palm Beach address may serve to legitimize illegal endeavors.

Mr. Harrison Robertson, Chairman of the Planning & Zoning Commission stated that he vehemently opposed the staff recommendation.

Mr. William Guttman, member of the Planning & Zoning Commission, commented that the driving force behind this provision was to permit residents to get an occupational license that would entitle them to use their letterhead and have their principal office in their residential home, and he was not in favor of that. He suggested that the code be left as is.

Council Member Brooks commented that many residents ran businesses from their homes; even paying the gas bill or electrical bill on line could be considered such. He suggested that although the terms were not clearly defined, the code should be left as is, which would eliminate all of the concerns raised by the Planning & Zoning Commission.

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

President Pro Tem Coleman commented that everyone had a home office – everyone had faxes, computers, etc. What was not wanted was commercial activity.

Regarding Study Item #10 Study Establishment for Home Use licenses in Residential Districts:

Motion made by Council Member Brooks, seconded by Council Member Markin, to accept the recommendations of the Planning & Zoning Commission and to proceed no further with changes to the Zoning Code relating to home offices. On roll call the motion carried unanimously.

Study Item #1: Study a provision to prohibit the use of portable on-demand storage and temporary storage trailers.

Zoning Administrator Castro advised that staff believed that a reasonable time frame of 72 hours should be established for roll-off storage units.

President Pro Tem Coleman suggested that before someone could bring a storage unit on the Island, there be a notification process, so that the person could be cited at the end of the period permitted.

Mr. Leslie Shaw, member of the Planning & Zoning Commission questioned the distinction between a pod and a trailer. Zoning Administrator Castro explained that a trailer had a hitch on it that could be physically unhooked.

Study Item #1, Portable On-Demand and Temporary Storage Trailers.

By consensus, the Town Council directed the Staff to develop appropriate language to allow temporary storage units on a property for a period not to exceed 72 hours and to include language that would require notification to the Town prior to the placement of such a unit on the property thereby providing the Town with a basis for determining the starting point for the 72-hour period.

President Pro Tem Coleman clarified that staff would prepare a proposed ordinance, at which time the specific language would be discussed.

Study Item #12, Conversion of Hotels into Condominium Hotels:

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

Zoning Consultant Brisson reported that staff had no formal recommendations at this time. Both the Planning & Zoning Commission and staff had agreed that the item should be studied further over the summer.

Zoning Administrator Castro remarked that Study item #12 was not in the Summary of the Planning & Zoning Commission Actions, but was included in the actual record report of the Planning & Zoning Commission. He pointed out that the Town was in zoning in progress, which would not allow any new condominium hotels or condotels at this point in time. Because this was a fairly new and complicated issue, the zoning in progress status would provide the staff the opportunity to review the issue.

Regarding Study Item #12 - Conversion of Hotels into Condominium Hotels:

By consensus, the Town Council directed the Staff to further study condotels over the summer.

Study Item #13, Differentiating between entertainment allowed in nightclubs and restaurants

Mr. Brisson explained that now there is a fairly strict dichotomy; a nightclub can receive a license which allows levels of entertainment that are not allowed in a restaurant. A restaurant is primarily allowed only to have an individual or an instrument, and the entertainment activity is supposed to be at a level which would not interfere with normal conversation; no dancing at all is allowed. There were some suggestions from the Planning & Zoning Commission as to perhaps instituting some temporary measures over the summer, whereby the impact of the regulations allowing limited restaurant entertainment could be determined. Staff was not ready, at this point, to prepare changes to the existing regulations.

Mr. Brisson noted that there was a wide range of entertainment that various restaurant owners would like to be allowed to undertake, and staff suggested studying this issue further during the summer.

Council Member Markin suggested that if further study would be done during the summer, there not be any prior discussions at this point in time until all of the terminology and proposed recommendations were provided.

Ms. Markin recommended that a different format be considered for presenting the results of the study item studies - - - a more simplified and direct format that would specify what the

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007, REGARDING ZONING

Planning & Zoning Commission recommended versus what the staff recommended. If there was no discrepancy between the two, a unified recommendation would be appropriate, so that it would be very clear.

President Kleid commented that he believed that staff was aware that a more concise presentation would be desirable.

Regarding Study Item #13 - Differentiating between entertainment allowed in nightclubs and restaurants.

By consensus, the Town Council directed the Staff to further study, over the summer, appropriate methods by which to expand the limited level of entertainment now allowed in restaurants. Both staff and the Planning & Zoning Commission agreed that the issue needed to be studied over the summer, and that there needed to be an outreach effort to obtain input from residents who were likely to be affected by any relaxation of the entertainment limitations for restaurants.

Ms. Close noted that the Planning & Zoning Commission had asked staff to solicit letters of interest and some figures for Town Council consideration when the Royal Poinciana Area Planning Study was considered. In addition, the Planning & Zoning Commission has had continuing discussions on their planning role, and after the next discussion, she would prepare a report and forward it to the Mayor and Town Council.

VI. COMMENTS OF MAYOR AND TOWN COUNCIL AND DIRECTOR OF PLANNING, ZONING AND BUILDING DEPARTMENT

(Comments of the Mayor and Town Council , and Director of Planning, Zoning and Building Department included under each study item).

**VII. COMMUNICATIONS FROM CITIZENS
[Moved to immediately follow Item III.]**

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

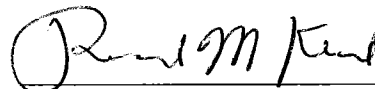
VIII. OTHER ITEMS

There were none.

IX. ADJOURNMENT

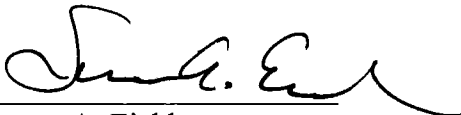
There being no further business, the Special Town Council Meeting, held on March 27, 2007, was adjourned at 12:00 p.m.

APPROVED:



Richard M. Kleid
Town Council President

ATTEST:



Susan A. Eichhorn
Town Clerk

N:\TOWN MEETINGS\MINUTES\TownCouncil\2007\20070327 STC Zoning.wpd

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007, REGARDING ZONING

GENERAL INFORMATION (from staff memorandum dated March 23, 2007):

The Planning & Zoning Commission has reviewed the Staff Report for Phase II of 2006/2007 Zoning Season. In order to assist you in reviewing the study items and the Planning & Zoning Commission's actions, we have provided, in the attached Summary, the initial staff recommendations, and the Planning & Zoning Commission's modifications. All modifications where Staff agreed with the Commission's modifications are shown in bold.

Please note that we did not list those items in this report where no action was taken that would result in an ordinance change. However, as we go through the report at your meeting, we will be covering all of the topics considered by the P&ZC.

SUMMARY OF PLANNING & ZONING COMMISSION ACTIONS

Study Item #2 Review the Variance Criteria to Consider Additional Categories

The Planning & Zoning Commission recommended deleting the provisions requiring compensating reductions in existing nonconforming setbacks, reduction in lot coverage, or increase in open space as a condition of obtaining a dimensional waiver. In addition, the Commission recommended changing certain thresholds for waivers, and creating a notice requirement and time frame for decisions on waivers. There are also minor changes that the Planning & Zoning Commission recommends to clarify certain provisions.

Staff's proposed new code provisions for waivers is provided below. The Planning & Zoning Commission's proposed modifications to Staff's proposal are shown in add/delete format in the proposed language. Staff's concurrence with Planning & Zoning Commission's recommendations are provided in bold type.

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

Sec. 134-234. Dimensional waiver described.

Waivers providing for relief from the strict application of certain of the dimensional requirements of the Zoning Code are available for the following situations:

1. Additions to, or renovation ~~or reconstruction~~ of existing single-family development constructed prior to 1980. These waivers will be reviewed and approved or denied administratively by the Director of Building, Planning and Zoning.
2. Modifications to landmark structures or properties. These waivers will be reviewed and approved or denied by the Landmarks Preservation Commission and ratified by the Town Council.

Sec. 134-235. General conditions applicable to all dimensional waivers

1. Approval of the waiver will not compromise traffic safety.
2. Approval of the waiver will not compromise fire safety.
3. ~~Approval of the waiver will not create an undesirable change in the character of the neighborhood.~~

Sec. 134-236. Dimensional waivers for existing single-family development constructed prior to 1980, and which have not been designated a landmark.

1. Specific conditions for approval of a waiver of required minimum side yard setback
 - (a) For a single-story structure, the resulting side yard setback is not less than any existing nonconforming side yard setback of the principal structure located on property immediately abutting the side yard for which the waiver is requested.
 - (b) For a two-story structure, the resulting side yard setback is not less than:
 - (1) any existing nonconforming side yard setback of the single-story principal structure located on property

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

immediately abutting the side yard for which the waiver is requested, plus 2 ½ feet; or,

(2) any existing nonconforming side yard setback of any two-story principal structure located on property immediately abutting to the side yard for which the waiver is requested.

(c) In no event shall the side yard be less than 7.5 feet in the R-B district and not less than 10 feet in any other residential district.

~~(d) The site plan and associated calculations provided by the applicant show that:~~

~~(1) There is an equal or greater compensating reduction in the extent of nonconforming setbacks elsewhere on the property (e.g., removing an equal square footage of building footprint that intrudes into another setback); or~~

~~(2) There is a compensating reduction in lot coverage and/or increase in open space equal in area to or greater than that of the footprint of the intrusion into the required setback~~

2. Specific conditions for approval of a waiver of required minimum rear yard setback.

(a) For a single-story structure, the resulting rear yard setback is not less than any existing nonconforming rear yard setback of the principal structure located on property immediately abutting the rear yard for which the waiver is requested.

(b) For a two-story structure, the resulting rear yard setback is not less than:

(1) any existing nonconforming rear yard setback of any single-story principal structure located on property immediately abutting the rear yard for which the waiver is requested, plus 5 feet; or,

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

- (2) any existing nonconforming rear yard setback of any two-story principal structure located on property immediately abutting the rear yard for which the waiver is requested.
 - (c) In no event shall the rear yard be less than 7.5 feet in the R-B district and not less than 10 feet in any other residential district.
 - (d) ~~The site plan and associated calculations provided by the applicant show that:~~
 - (1) ~~There is an equal or greater compensating reduction in the extent of nonconforming setbacks elsewhere on the property; (e.g., removing an equal square footage of building footprint that intrudes into another setback); or~~
 - (2) ~~There is a compensating reduction in lot coverage and/or increase in open space equal in area to or greater than that of the footprint of the intrusion into the required setback.~~
- 3. Specific conditions for approval of a waiver of minimum front yard setback for entry features.
 - (a) The waiver shall be only for single-story entry feature which meets the following conditions:
 - (1) Such feature shall not exceed 25% of the total dimension of the building wall from which such entry feature projects (measured parallel to said building wall) but shall not be required to be less than 10 feet wide.
 - (2) The measurement of the projection from the building wall shall be not less than the width of the entry feature.
 - (b) The resulting front yard setback is not less than the lesser of any existing nonconforming front yard setback of the principal structures located on property immediately abutting either side of the property for which the waiver is requested. In no case,

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING

however, shall the front yard setback be less than 20 feet.

~~(c) The site plan and associated calculations provided by the applicant show that:~~

~~(1) There is an equal or greater compensating reduction in the extent of nonconforming setbacks elsewhere on the property (e.g., removing an equal square footage of building footprint that intrudes into another setback); or~~

~~(2) There is a compensating reduction in lot coverage and/or increase in open space equal in area to or greater than that of the footprint of the intrusion into the required setback.~~

4. Notice to abutting property owners; review by director.

(a) Abutting property owners shall be notified by certified mail to their respective addresses, as shown on the county property appraiser's tax records, not less than 15 calendar days prior to a decision by the director to approve or deny an application for a dimensional waiver.

(b) Said notification shall describe the nature and extent of the requested waiver, the location of the property for which the waiver is requested, and the date the application will be acted upon by the director.

(c) The Director or his or her designee shall approve, approve with modifications or deny the application for a waiver within 30 days of receipt of the application and shall notify the applicant in writing by regular mail within 7 calendar days of the decision.

(d) The applicant or abutting property owners shall have 30 days, from the date the certified letter notifying the abutting property owner of the director's decision, to

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

**file an appeal with the town council as set forth under
Sec. 134-145.**

(e) Effective date of approval of a waiver.

**The approval of a waiver by the director or his or her
designee shall not become effective upon the expiration
of the appeal period as outlined in Sec. 134-145.**

Sec. 134-237. Dimensional waivers for landmark properties.

The purpose and intent of this section is to provide owners of landmark properties and structures with flexibility in the rehabilitation, expansion, and redevelopment of buildings and structures within the Town. The Town Code establishes general standards for the location, design, scale, and massing of buildings and structures which do not always fit the unique conditions and circumstances of a built-out community that includes many buildings of distinctive individual and cumulative design and character. This section establishes substantive criteria for the review and approval of development on landmark properties when the property owner desires to use conditional dimensional waivers to the strict application of the underlying zoning district regulations.

1. Application of dimensional waivers for landmark properties.

The dimensional waivers of this section may be applied to applications that seek to deviate from the strict application of the underlying zoning district regulations, except that these standards shall not be applied in the C-PC zoning district. The dimensional waivers of this section shall be applied in addition to the standards for approval of certificates of appropriateness that are set out in Chapter 54 of the Town Code of Ordinances. It is not the intent of this section that the consideration of a

dimensional waiver supercede the criteria for granting a certificate of appropriateness.

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

2. Description of conditional dimensional waivers available for landmark structures.

The landmark preservation commission may apply the following conditional dimensional waivers in the alternative to the strict application of the underlying zoning district regulations:

(a) Reduced setbacks for expansion of landmark buildings.

Reduced side and rear yard setbacks may be approved for the expansion of landmark buildings, or the addition of permissible new buildings, on a lot which contains a landmark building if all of the following are demonstrated:

(1) The setback does not violate any of the following conditions:

Front: Reduction can be up to 90% of underlying zoning district requirement; provided, however that the front yard setback shall not be less than the lesser of the existing front yard setbacks of the principal structures on the lots immediately abutting the side property lines of the lot for which the waiver is being requested.

Side: Reduction can be up to 65% of underlying zoning district requirement; provided, however, that the side yard setback shall not be less than five feet.

Side

street: Reduction can be up to 65% of underlying zoning district requirement.

Rear: Reduction does not result in a rear yard setback of less than **57.5** feet.

Rear

street: Reduction does not result in a rear yard setback of less than **520** feet.

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

(2) The proposed portion of building or structure between the required setback and the reduced setback does not compromise the historic character of the landmark building, due to one or more of the following:

a. The architecture and design of the additional building or structure between the required setback and the reduced setback:

I. Is complimentary to the architecture of the landmark building, while neither replicating the architecture nor fundamentally departing from it;

ii. Is such that the additional building or structure appears subordinate to those parts of the landmark building that materially contribute to its landmark status;

iii. Does not block public views of those parts of the landmark building that materially contribute to its landmark status; and

iv. Allows for future removal of the additional building or structure and restoration of the landmark building to its existing design.

b. The volume and footprint of the portion of the building or structure between the required setback and the reduced setback is *de minimus*, and the character of the proposed building or structure does not tend to distract the eye from the principal landmark building.

c. The portion of the additional building or

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

structure between the required setback and the reduced setback is completely

screened from view from public rights-of-way by existing topography, existing walls, and/or existing landscaping that do not interfere with the historic character of the landmark building.

Reasonable alternative designs that are permitted by the strict requirements of the underlying zoning district and result in the same cubic content ratio would detract from the landmark character of the building.

(b) *Reduced setbacks for restoration/replacement of documented portion of a landmark building that has been destroyed.* A reduction of up to 100% of any required setback may be approved if it is demonstrated that the proposed development between the required setback and the reduced setback area enhances the historic character of the landmark building by restoring or replacing a portion of the original building or structure that had been destroyed or demolished.

(c) *Increasing maximum height of driveway gates.* An increase in the maximum height of driveway gates may be approved if it is demonstrated that:

- (1) The proposed driveway gates will restore or replace gates that contribute to the character of landmark building;
- (2) The proposed driveway gates are located no closer to the street than the original driveway gates; and
- (3) The proposed driveway gates will not compromise traffic safety.

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

(d) *Decreasing minimum setback of driveway gates.* A decrease in the minimum setback of driveway gates may be approved if it is demonstrated that:

(1) The proposed driveway gates will restore or replace gates that contribute to the character of landmark building;

(2) The proposed driveway gates are located no closer to the street than the original driveway gates; and

(3) The proposed driveway gates are designed and located in such a manner that they will not compromise traffic safety.

(e) *Decreasing landscaped open space for restoration or renovation of nonconforming landmark buildings.* A decrease in the minimum landscaped open space may be approved in order to permit landmark buildings that do not conform to the minimum landscaped open space requirements to be renovated, reconstructed, or restored, in order to either preserve the building as it existed when it was landmark; or in conjunction with restoration that involves the application of subsection (b) of this section.

(f) *Decreasing landscaped open space for expansion of landmark buildings which are used for an important public purpose.* A decrease of up to 15% of the minimum required landscaped open space may be approved if it is demonstrated that:

(1) The reduction is necessary to permit the necessary expansion of a landmark building which serves an important public purpose; and

(2) Reasonable alternative designs that are otherwise permitted by the strict requirements of the underlying

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

zoning district, and which would result in the same cubic content ratio, would detract from the landmark character of the building.

(g) Increasing cubic content ratio for restoration or renovation of nonconforming landmark buildings. An increase in the maximum cubic content ratio may be approved in order to permit landmark buildings that do not conform to cubic content limitations to be renovated, reconstructed, or restored, in order to either recreate the building as it existed when it was designated a

landmark; or in conjunction with restoration that involves the application of subsection (b) of this section.

3. Landmarks preservation commission action; town council ratification of commission action on applications involving dimensional waivers.

(a) Decisions to be placed on town council consent agenda. Decisions of the landmark preservation commission to approve, approve with conditions, or deny applications for development approval involving dimensional waivers shall be place on the consent agenda of the first available meeting of the town council after the decision.

(b) Removal of decisions from consent agenda. Decisions that are placed on the town council consent agenda pursuant to subsection (a), above, shall be removed from the consent agenda and placed on the regular agenda at the request of a member of the town council. The public shall be provided an opportunity to comment regarding removal of landmarks preservation commission decisions from the consent agenda before a motion for approval of the consent agenda is made.

Study Item #9: Study Delegating Authority to Consider and Decide on Variances, Special Exceptions, and Site Plan Reviews to Another Board or Commission.

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

The Planning & Zoning Commission recommended the Town Council continue to review and approve or deny all variances. Staff recommends that variances be heard by a hearing officer, or alternatively an appointed board, and should be appealed directly to Circuit Court, but only if the Hardship Test contains additional flexibility.

The Planning & Zoning Commission recommended that all Special Exception and Site Plan applications continue to be reviewed by the Town Council. Staff recommended that the Town Council continue to review all Site Plan Review and Special Exception applications except single-family structures on nonconforming platted lots. The proposed modifications by Staff are in underline format.

1. Amend Sections 134-793, 134-843, and 134-893. Lot, yard and area requirements – Generally, subsection (b) relating to the R-AA, R-A, and R-B zoning districts, respectively, to read as follows:

...(b) *Existing building lots.* A single-family structure may be constructed on any existing nonconforming lot at the time of the adoption of the ordinance from which this section derives in the *[insert zoning district]* zoning district if the lot is less than the minimum area and/or dimension required for building lots in this district; provided, however,

(1) that a special exception with site plan review would be required for an unplatted lot; and,

(2) site plan review by the Director of Planning, Zoning and Building or his/her designee would be required for a platted lot. Such site plan review shall be limited to the requirements of Sections 134-326, 134-327 and 134-329 of Article III.

2. Amend Article III. SITE PLAN, Sec. 134-326. Purpose of review process; building permit denial pending approval; costs of extraordinary professional advice, subsections (a) and (b) to read as follows:

(a) The primary purpose of the site plan review process is to examine for potential adverse impact upon the adjacent area, neighborhood or town those uses having characteristics identified as possessing the potential for negative impact, and to ensure such uses are located, sited and designed that they result in a positive contribution to their area, neighborhood and town. To achieve these purposes, the town council or Director of Planning, Zoning and Building or

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

his/her designee, as applicable, may, after detailed review of the site plan and its potential off-site impact, impose such operational and/or design conditions as will eliminate or minimize such impact. Such conditions shall reflect the review criteria set forth in this article.

(b) Where, by the terms of this chapter, site plan review is required, no building permit shall be issued for the purpose of erecting, altering or converting any structure or building or any part thereof or altering the use of any land until after the town council or Director of Planning, Zoning and Building or his/her designee, as applicable, shall approve the site plan in accordance with this article.

3. Amend Article III. SITE PLAN, Sec. 134-329. Review by town council to read as follows:

Sec. 134-329. Review and consideration by town council or Director of Planning, Zoning and Building or his/her designee.

Within 30 days of receipt of the application for site plan review, the town council or Director of Planning, Zoning and Building or his/her designee, as applicable, shall review and consider the application. Before any site plan shall be approved, approved with changes, or denied, the town council or Director of Planning, Zoning and Building or his/her designee, as applicable, shall make a finding that the approval of the site plan will or will not adversely affect the public interest and certify that the specific zoning requirements governing the individual use have or have not been met and that, further, satisfactory provision and an arrangement has or has not been made concerning the following matters, where applicable:..

Study Item #10. Study Establishment for Home Use Licenses in Residential Districts

The Planning & Zoning Commission recommended disapproval of the Staff recommendation to allow home offices in residential districts. However, Staff believes allowing limited home office use in the residential districts would not negatively impact the Town's residential neighborhoods given the narrow limits contained within proposed regulations. The proposed changes by Staff to the existing language are provided in underline format below:

Amend Sections 134-788, 134-838, and 134-888, 134-943, 134-998, and 134-1053, Accessory Uses, by adding a new sub-item (5) to read as follows, and renumber the current subsection (5) to (6); and adding

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

(5) home office (see definition in 134-2 and Sec. 134-1760 for specific restrictions).

Amend subsection (1) of Sections 134-789, 134-839, and 134-889, 134-944, 134-999, and 134-1054, Prohibited Uses, to read as follows:

(1) No person shall use any portion of any building or accessory building or any land in this district for the purpose or carrying on or practicing any profession, occupation or calling or for any commercial or quasi-commercial use or purpose, other than a home office as defined in Section 134-2 and regulated under Sec. 134-1760. This prohibition shall include including but not be limited to corporate meetings, banquets or entertainments, film-making or movie producing, magazine feature photography and the like, and such uses are declared to be a violation of this chapter.

Amend DIVISION 7, ACCESSORY USES, *Subdivision I, In General*, by adding a new Section 134-1760 regulating home offices, to read as follows:

Sec. 134-1760. Home office.

(a) In order to preserve the character of residential neighborhoods and minimize traffic and nonresidential disturbances, permitted home offices may be operated only if they comply with all of the following conditions:

(1) The home office and associated activity must be conducted entirely within the principal dwelling unit by a member of the family residing in the dwelling unit. Only members of the family residing in the dwelling unit may assist or be employed in the home office.

(2) The activity undertaken within the home office shall be limited to that characteristic of an administrative or professional office use and all contacts with clients, customers, and suppliers shall be limited to telephone, fax and other electronic forms of communication.

(3).The area of the dwelling unit devoted to the home office shall occupy not more than 10% of the total square footage or 500 square feet, whichever is less.

(4) There shall be no sales, storage of products or commodities on the property and there shall be no delivery of products or commodities from the property or delivery of commodities, products, or supplies to the property.

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 27, 2007,
REGARDING ZONING**

(5) There shall be no external sign or evidence on the property that the dwelling unit contains a home office or is being used as a home office and there shall be no pedestrian or vehicular traffic to or from the property in connection with the home office.

(6) No vehicles exhibiting any visual indication of the business or profession associated with the home office shall be parked on the site or on the street so as to be visible from anywhere outside the boundaries of the property.

(7) The home office shall not noticeably detract from the outward residential character of the neighborhood and there shall be no type of public nuisance as a result of this minor business activity on the resident's property.

Study Item #1: Study portable on-demand and temporary storage trailers

The Staff originally recommended that such trailers be prohibited entirely. However, the Planning & Zoning Commission recommended modified language (shown in bold) allowing these trailers for a period up to 72 hours. Staff agrees with this modification. Amend Article VIII, DIVISION 7, ACCESSORY USES, Supplementary District Regulations by adding a new Section 134-1732 regulating temporary storage units to read as follows:

Sec. 134-1732. Temporary storage units

Temporary roll-off storage units, such as portable on demand storage units, or temporary storage units and trailers are **permitted on a property for a maximum period of 72 hours prohibited.**