

## **ORDINANCE NO. O-6-22**

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT APPENDIX A. ZONING. AT SECTION XV. VARIANCES AND SPECIAL EXCEPTIONS. BY REPEALING REFERENDUM LANGUAGE PROHIBITED BY STATE LAW AND UPDATING THE LEGAL ADVERTISING AND PUBLIC NOTICE PROCEDURES FOR ALL VARIANCE AND SPECIAL EXCEPTION APPLICATIONS; PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF APPENDIX A. ZONING. SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ADOPTED; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**WHEREAS**, remnant language remains in Pf. 15.4 of the Town's Zoning Code requiring a referendum prior to acting upon variance requests to increase building height or lot coverage more than ten percent (10%); and

**WHEREAS**, this remnant language is in direct conflict with Section 163.3167(8), Florida Statutes and the precedent established by Archstone Palmetto Park LLC v. Kennedy, 132 So.3d 347 (Fla. 4th DCA 2014); and

**WHEREAS**, the same Pf. 15.4 prescribing the legal advertising and public notice requirements for variances and special exceptions contains antiquated language which exceeds the requirements of state law, creates a longer development application processing timelines and is generally burdensome on Town Staff;

**WHEREAS**, the Town Commission of the Town of Palm Beach Shores desires to amend the Town's Zoning Code to repeal the referendum language that is violative of state law and update the legal advertising and public notice requirements to reflect current practice and facilitate efficient development application processing while maintaining adequate notice to affected residents; and

**WHEREAS**, the Town Commission of the Town of Palm Beach Shores believes that these revisions to the Town Code of Ordinances are in the best interests of the Town of Palm Beach Shores and will promote the public health, safety and welfare of its citizens.



**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF PALM BEACH SHORES, FLORIDA, AS FOLLOWS:**

**Section 1:** Appendix A, Section XV. Variances and Special Exceptions. of the Code of Ordinances of the Town of Palm Beach Shores is hereby amended at Pf. 15.4. Procedure. to repeal referendum language prohibited by state law and to update the legal advertising and notice procedures for all variance and special exception applications submitted to the Town; providing that Pf. 15.4 shall hereafter read as follows:

**Pf. 15.4. - Procedure.**

Every person requesting a variance shall make written application to the Town Clerk ~~Building Official~~ therefor and file the same, with the necessary copies thereof, with the supporting facts and data as required by this Zoning Code. ~~The Building Official shall forthwith examine said application and endorse his recommendations thereon to the Chairman of the Planning and Zoning Board.~~ The Planning and Zoning Board shall consider such ~~the~~ applications and submit its recommendations to the Town Commission. Thereupon, a A notice ~~copy of said application~~ shall be mailed by regular ~~certified~~ mail to the owners of the property immediately adjacent thereto and across the street therefrom, at the address shown in-on the Palm Beach County Tax Collector's records ~~Town tax records, together with a notice from the Building Official~~ advising of the time of the public hearings on said application before the Planning and Zoning Board and the Town Commission.

The Town Clerk ~~Building Official~~ shall also cause to be published in a newspaper of general circulation in the Town a brief summary of said application and the date of the hearing, ~~directed "To all whom it may concern";~~ said notice shall be published once at least ten (10) ~~fifteen (15)~~ days prior to the date set for said hearing before the Planning and Zoning Board and the Town Commission, and notice shall be posted on the official bulletin board in the Town Hall and at two (2) other conspicuous locations in the Town.

~~Any request for a ten (10) percent or more increase in building height variance or a ten (10) percent or more increase in permitted lot coverage variance shall require the Town Commission to first determine the public interest through a referendum prior to making its final decision on the variance request.~~



No application shall be heard less than ~~ten (10) fifteen (15)~~ days after mailing to property owners directly affected as herein provided; and all applications will be heard at regular meetings of the Planning and Zoning Board and Town Commission, unless otherwise ordered by the Board or Commission, with statement of the reasons therefor spread on the official minutes.

All costs and expenses in the application and notification to adjacent owners {must} be paid by the applicant before the hearing on the application of a variance.

~~Building Construction~~ permits for granted variances must be obtained within six (6) months of variance approval. A single renewable six-month period to obtain building~~construction~~ permits may be allowed at the discretion of the Town Commission.

Any variance granted by the Town Commission prior to the enactment of Ordinance No. 201 on August 8, 1983, upon which a building permit was required not heretofore issued must be reviewed by the Planning and Zoning Board of Adjustment and Appeal.

~~{The} following~~ notice required~~appears~~ pursuant to F.S. § 286.0105, as amended from time to time, shall appear on all Town public agenda notices.÷

~~PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision made by the Planning and Zoning Board or Town Commission with respect to any matter considered at this meeting or hearing, such interested person will need a record of the proceedings, and for such purpose may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The meeting/hearing will be continued from day to day, time to time, place to place, as may be found necessary during the aforesaid meeting.~~

**Section 2:** Each and every other section and subsection of Appendix A. Zoning. shall remain in full force and effect as previously adopted.

**Section 3:** All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.



**Section 4:** Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

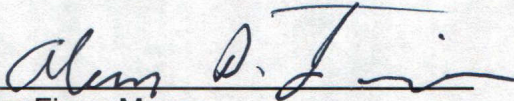
**Section 5:** Specific authority is hereby granted to codify and incorporate this Ordinance into the existing Code of Ordinances of the Town of Palm Beach Shores.

**Section 6:** This Ordinance shall become effective immediately upon passage.

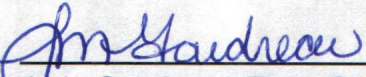
**FIRST READING** this 26<sup>th</sup> day of September 2022.

**SECOND AND FINAL READING** this 24<sup>th</sup> day of October 2022.

**TOWN OF PALM BEACH SHORES**

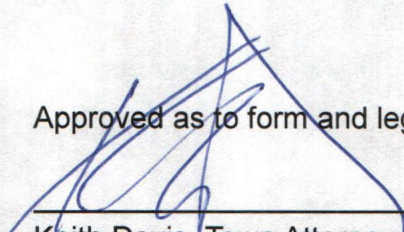
  
Alan Fiers, Mayor

ATTEST:

  
Jude Goudreau, Town Clerk



Approved as to form and legal sufficiency.

  
Keith Davis, Town Attorney