MEMORANDUM

TO: Mayor Jason Haselkorn
Vice Mayor Jim Lyons
Members of the Town Council

FROM: Leonard G. Rubin, Town Attorney

RE: Ordinance No. 686 (Planning and Zoning Board Review of Variances and Administrative Appeals)

DATE: July 22, 2016

CC: Joseph Lo Bello, Town Manager
Vanessa Mutchnik, Town Clerk
Ruben Cruz, Director of Planning and Zoning

Background:

Section 20-24 of the Town Code of Ordinances provides that the duties of the Planning and Zoning Board shall be as assigned to the Board by the Town Council. The Town Council indicated that it wished to expand the duties of the Planning and Zoning Board to provide a recommendation on all variance applications prior to final consideration by the Council sitting as the Zoning Board of Adjustment and Appeals.

The attached Ordinance provides for the following amendments to Chapter 34 of the Town Code of Ordinances:

- Amendment to Section 34-28, outlining the Planning and Board's duties, to require the Board to issue a recommendation on variance applications; and

- Amendment to Section 34-64, outlining the Zoning Board of Adjustment's powers, duties and functions, to require that all variance requests be considered by the Planning and Zoning Board at a duly advertised public hearing and that the Zoning Board of Adjustment consider the Planning and Zoning Board's recommendation prior to granting any variance from Chapter 34.

In addition to variances, the Zoning Board of Adjustment and Appeals also considers appeals from a determination or decision of an administrative official in the enforcement of Chapter 34 of the Town Code of Ordinances. In order to provide the Town Council with the option of requiring Planning and Zoning review of administrative appeals, the proposed Ordinance also amends Section 34-66 to provide for a Planning and Zoning

Board recommendation prior to final consideration of the appeal by the Zoning Board of Adjustment.

The Town Code requires Planning and Zoning Board review of any ordinance amending Chapter 34 of the Town Code of Ordinances. The Planning and Zoning Board reviewed the Ordinance (including both variances and administrative appeals) at its June 27, 2016 meeting and recommended that the Town Council approve the Ordinance. The Town Council adopted the Ordinance on first reading at its July 21, 2016 meeting without modification.

Recommendation:

Staff recommends that the Town Council consider and approve, on second and final reading, Ordinance No. 686 providing for Planning and Zoning Board review of variance applications and administrative appeals.

TOWN OF JUNO BEACH, FLORIDA

ORDINANCE NO. 686

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF JUNO BEACH, FLORIDA, AMENDING DIVISION 1, "GENERALLY," AND DIVISION 2, "ZONING BOARD OF ADJUSTMENT AND APPEALS," OF CHAPTER 34, "ZONING," OF THE TOWN CODE OF ORDINANCES BY AMENDING SECTION 34-28, "PLANNING AND ZONING BOARD DUTIES," SECTION 34-64, "POWERS, DUTIES, AND FUNCTIONS," AND SECTION 34-66, "PROCEDURES," TO PROVIDE FOR PLANNING AND ZONING BOARD REVIEW OF VARIANCE REQUESTS AND ADMINISTRATIVE APPEALS PRIOR TO FINAL CONSIDERATION BY THE ZONING BOARD OF ADJUSTMENT AND APPEALS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, Section 20-24 of the Town Code of Ordinance provides that the duties of the Planning and Zoning Board shall be as assigned to the Board by the Town Council; and

WHEREAS, the Town Council wishes to expand the duties of the Planning and Zoning Board to provide recommendations on all applications for a variance from the requirements of Chapter 34 (Zoning) of the Town Code of Ordinances and all appeals from a determination or decision of an administrative official in the enforcement of Chapter 34 (Zoning) of the Town Code of Ordinances; and

WHEREAS, the Town Council determines that the adoption of this Ordinance is in the best interests of the residents and citizens of the Town of Juno Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JUNO BEACH, FLORIDA as follows:

Section 1. The foregoing "Whereas" clauses are hereby ratified and incorporated herein.

Section 2. The Town Council hereby amends Division 1, "Generally," of Article II, "Administration and Enforcement," of Chapter 34, "Zoning," of the Town Code of Ordinances by amending Section 34-28 to read as follows (additional language is <u>underlined</u>):

Sec. 34-28. Planning and zoning board duties.

The planning and zoning board shall issue recommendations to the town council <u>and zoning board of adjustment and appeals, as applicable,</u> on all matters involving community planning, including, but not limited to, the comprehensive plan, site plan and appearance reviews, preliminary plat reviews, <u>variances, administrative appeals,</u> and special exception

uses. It shall exercise its power as defined in this chapter and as further established by F.S. ch. 163, part II. The planning and zoning board shall be the local planning agency required to be designated as such by F.S. § 163.3174.

Section 3. The Town Council hereby amends Division 2, "Zoning Board of Adjustment and Appeals," of Article II, "Administration and Enforcement," of Chapter 34, "Zoning," of the Town Code of Ordinances by amending Sections 34-64 and 34-66 to read as follows (additional language is underlined and deleted language is ~~stricken through~~):

Sec. 34-64. Powers, duties, and functions.

(a) The board of adjustment shall have the power to hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative official in enforcement of any zoning ordinance or regulation. In exercising its power, the board of adjustment may, in conformance with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, decision or determination made by the administrative official in the enforcement of any zoning resolution or regulation adopted pursuant to this chapter and make such order, recommendation, decision or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

(b) The board of adjustment shall further have the power to authorize upon appeal such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to specific conditions, a literal enforcement of the provisions of this chapter will result in an unnecessary and undue hardship. All variance requests shall first be considered by the planning and zoning board at a duly advertised public hearing. After consideration of the recommendation of the planning and zoning board, the board of adjustment shall not grant a ~~A~~ variance from the terms of this chapter ~~shall not be granted~~ unless the board of adjustment finds that:

(1) Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district;

(2) The special conditions or circumstances do not result from the actions of the applicant;

(3) A granting of the variance requested will not confer upon the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same district;

(4) A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter and would work unnecessary and undue hardship on the applicant;

(5) A prior application for the granting of the variance had not been submitted within the preceding 12 months.

In granting any variance, the board of adjustment shall prescribe appropriate conditions and safeguards in conformity with this chapter. The board of adjustment may also prescribe a reasonable time limit within which the action for which the variance is required shall commence, be completed, or both.

* * *

Sec. 34-66. - Procedures.

The board of adjustment shall be governed by the following procedures:

(1) Appeals to the board of adjustment concerning interpretation or administration of this chapter may be taken by any person aggrieved or by any officer or bureau of the town council affected by any decision of the administrative official. Such appeal shall be taken within 30 days of the decision by the administrative official concerning the issue by filing with the administrative official and with the board of adjustment a notice of appeal specifying the grounds thereof. All notices of appeal shall be made by filing an application on forms provided by the town clerk. The clerk shall forthwith transmit to the planning and zoning board and board of adjustment all papers constituting the record upon which the decision appealed from was rendered.

(2) No application shall be considered or construed to be completely filed until the application fee, as determined from time to time by the town council, shall have been paid.

(3) The board of adjustment shall fix a reasonable time for the hearing of the appeal not to exceed ~~60~~ 75 days from the date of filing of a complete application. Prior to the hearing before the board of adjustment, the planning and zoning board shall consider the appeal at a duly advertised public hearing and providing a recommendation to the board of adjustment.

(4) The ~~board of adjustment~~ town shall give public notice at least once in a newspaper of general circulation in the town, at least 7 days

prior to the planning and zoning board hearing and at least 15 days prior to the board of adjustment hearing, at the expense of the petitioner.

(~~4~~5) At the hearing the petitioner may appear in person, by attorney authorized to practice in the state, or by any agent who has received from the petitioner and submitted to the board a written authorization for their appearance.

(~~5~~6) A notice containing the same information in the published notice aforesaid shall be mailed by the town clerk on behalf of the board of adjustment, at the expense of the petitioner, to the property owners of record, their tenants or their agents, within a radius of 300 feet of the property described in the application.

(~~6~~7) When an appeal is taken to the board of adjustment, all work and proceedings shall stop on the project or premises in question unless the administrative official from whom the appeal was taken shall certify in writing that a stay would cause immediate peril to life or property. In such case, work and proceedings shall not stop unless the board of adjustment or a court of competent jurisdiction issues a temporary restraining order after application to the board or court and notice to the administrative official from whom the appeal is taken.

Section 4. The provisions of this Ordinance shall become and be made a part of the Code of the Town of Juno Beach, Florida.

Section 5. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative or void, such holding shall not affect the remainder of the Ordinance.

Section 6. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 7. This Ordinance shall become effective immediately upon adoption

FIRST READING this _____ day of _____, 2016.

SECOND, FINAL READING AND ADOPTION this _____ day of _____, 2016.

[*Remainder of page intentionally blank – signatures on next page*]

_____	_____	_____
AYE	NAY	JASON HASELKORN, MAYOR
_____	_____	_____
AYE	NAY	JIM LYONS, VICE MAYOR
_____	_____	_____
AYE	NAY	FRANK FAHY, VICE MAYOR PRO TEM
_____	_____	_____
AYE	NAY	ELLEN ANDEL, COUNCILMEMBER
_____	_____	_____
AYE	NAY	BILL GREENE, COUNCILMEMBER

ATTEST:

_____
VANESSA M. MUTCHNIK, MMC
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
LEONARD G. RUBIN
TOWN ATTORNEY