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## MEMORANDUM

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**TO:** Members of the Planning and Zoning Board

**FROM:** Leonard G. Rubin, Town Attorney

**RE:** Recommendation to Town Council (Ordinance No. 686)

**DATE:** June 21, 2016

**CC:** Ruben Cruz, Director of Planning and Zoning

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**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 wishes 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.

**Recommendation:**

Staff recommends that the Planning and Zoning Board recommend that the Town Council approve Ordinance No. 686 providing for Planning and Zoning Board review of variance applications (and administrative appeals).

1 TOWN OF JUNO BEACH, FLORIDA

2  
3 ORDINANCE NO. 686

4  
5 AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF JUNO  
6 BEACH, FLORIDA, AMENDING DIVISION 1, "GENERALLY," AND  
7 DIVISION 2, "ZONING BOARD OF ADJUSTMENT AND APPEALS," OF  
8 CHAPTER 34, "ZONING," OF THE TOWN CODE OF ORDINANCES BY  
9 AMENDING SECTION 34-28, "PLANNING AND ZONING BOARD  
10 DUTIES," SECTION 34-64, "POWERS, DUTIES, AND FUNCTIONS,"  
11 AND SECTION 34-66, "PROCEDURES," TO PROVIDE FOR PLANNING  
12 AND ZONING BOARD REVIEW OF VARIANCE REQUESTS AND  
13 ADMINISTRATIVE APPEALS PRIOR TO FINAL CONSIDERATION BY  
14 THE ZONING BOARD OF ADJUSTMENT AND APPEALS; PROVIDING  
15 FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN  
16 EFFECTIVE DATE.

17  
18 WHEREAS, Section 20-24 of the Town Code of Ordinance provides that the duties  
19 of the Planning and Zoning Board shall be as assigned to the Board by the Town Council;  
20 and

21  
22 WHEREAS, the Town Council wishes to expand the duties of the Planning and  
23 Zoning Board to provide recommendations on all applications for a variance from the  
24 requirements of Chapter 34 (Zoning) of the Town Code of Ordinances and all appeals  
25 from a determination or decision of an administrative official in the enforcement of Chapter  
26 34 (Zoning) of the Town Code of Ordinances; and

27  
28 WHEREAS, the Town Council determines that the adoption of this Ordinance is in  
29 the best interests of the residents and citizens of the Town of Juno Beach.

30  
31 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE  
32 TOWN OF JUNO BEACH, FLORIDA as follows:

33  
34 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and  
35 incorporated herein.

36  
37 **Section 2.** The Town Council hereby amends Division 1, "Generally," of Article  
38 II, "Administration and Enforcement," of Chapter 34, "Zoning," of the Town Code of  
39 Ordinances by amending Section 34-28 to read as follows (additional language is  
40 underlined):

41  
42 **Sec. 34-28. Planning and zoning board duties.**

43  
44 The planning and zoning board shall issue recommendations to the  
45 town council and zoning board of adjustment and appeals, as applicable,  
46 on all matters involving community planning, including, but not limited to,  
47 the comprehensive plan, site plan and appearance reviews, preliminary plat  
48 reviews, variances, administrative appeals, and special exception uses. It

1 shall exercise its power as defined in this chapter and as further established  
2 by F.S. ch. 163, part II. The planning and zoning board shall be the local  
3 planning agency required to be designated as such by F.S. § 163.3174.  
4

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

10  
11 **Sec. 34-64. Powers, duties, and functions.**  
12

13 (a) The board of adjustment shall have the power to hear and  
14 decide appeals where it is alleged that there is an error in any order,  
15 requirement, decision, or determination made by an administrative official  
16 in enforcement of any zoning ordinance or regulation. In exercising its  
17 power, the board of adjustment may, in conformance with the provisions of  
18 this chapter, reverse or affirm, wholly or partly, or may modify the order,  
19 decision or determination made by the administrative official in the  
20 enforcement of any zoning resolution or regulation adopted pursuant to this  
21 chapter and make such order, recommendation, decision or determination  
22 as ought to be made and to that end shall have all the powers of the officer  
23 from whom the appeal is taken.  
24

25 (b) The board of adjustment shall further have the power to  
26 authorize upon appeal such variance from the terms of this chapter as will  
27 not be contrary to the public interest, where, owing to specific conditions, a  
28 literal enforcement of the provisions of this chapter will result in an  
29 unnecessary and undue hardship. All variance requests shall first be  
30 considered by the planning and zoning board at a duly advertised public  
31 hearing. After consideration of the recommendation of the planning and  
32 zoning board, the board of adjustment shall not grant a A variance from the  
33 terms of this chapter ~~shall not be granted~~ unless the board of adjustment  
34 finds that:  
35

- 36 (1) Special conditions and circumstances exist which are peculiar  
37 to the land, structure or building involved and which are not  
38 applicable to other lands, structures, or buildings in the same  
39 district;  
40  
41 (2) The special conditions or circumstances do not result from the  
42 actions of the applicant;  
43  
44 (3) A granting of the variance requested will not confer upon the  
45 applicant any special privilege that is denied by this chapter  
46 to other lands, buildings or structures in the same district;  
47

- 1 (4) A literal interpretation of the provisions of this chapter would  
2 deprive the applicant of rights commonly enjoyed by other  
3 properties in the same district under the terms of this chapter  
4 and would work unnecessary and undue hardship on the  
5 applicant;  
6  
7 (5) A prior application for the granting of the variance had not  
8 been submitted within the preceding 12 months.  
9

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

15 \* \* \*

16  
17  
18 **Sec. 34-66. - Procedures.**

19  
20 The board of adjustment shall be governed by the following  
21 procedures:

- 22  
23 (1) Appeals to the board of adjustment concerning interpretation or  
24 administration of this chapter may be taken by any person aggrieved  
25 or by any officer or bureau of the town council affected by any  
26 decision of the administrative official. Such appeal shall be taken  
27 within 30 days of the decision by the administrative official  
28 concerning the issue by filing with the administrative official and with  
29 the board of adjustment a notice of appeal specifying the grounds  
30 thereof. All notices of appeal shall be made by filing an application  
31 on forms provided by the town clerk. The clerk shall forthwith transmit  
32 to the planning and zoning board and board of adjustment all papers  
33 constituting the record upon which the decision appealed from was  
34 rendered.  
35  
36 (2) No application shall be considered or construed to be completely  
37 filed until the application fee, as determined from time to time by the  
38 town council, shall have been paid.  
39  
40 (3) The board of adjustment shall fix a reasonable time for the hearing  
41 of the appeal not to exceed 60 75 days from the date of filing of a  
42 complete application. Prior to the hearing before the board of  
43 adjustment, the planning and zoning board shall consider the appeal  
44 at a duly advertised public hearing and providing a recommendation  
45 to the board of adjustment.  
46  
47 (4) ~~The board of adjustment town~~ shall give public notice at least once  
48 in a newspaper of general circulation in the town, at least 7 days prior

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

3  
4           (45) At the hearing the petitioner may appear in person, by attorney  
5           authorized to practice in the state, or by any agent who has received  
6           from the petitioner and submitted to the board a written authorization  
7           for their appearance.

8  
9           (56) A notice containing the same information in the published notice  
10          aforesaid shall be mailed by the town clerk on behalf of the board of  
11          adjustment, at the expense of the petitioner, to the property owners  
12          of record, their tenants or their agents, within a radius of 300 feet of  
13          the property described in the application.

14  
15          (67) When an appeal is taken to the board of adjustment, all work and  
16          proceedings shall stop on the project or premises in question unless  
17          the administrative official from whom the appeal was taken shall  
18          certify in writing that a stay would cause immediate peril to life or  
19          property. In such case, work and proceedings shall not stop unless  
20          the board of adjustment or a court of competent jurisdiction issues a  
21          temporary restraining order after application to the board or court and  
22          notice to the administrative official from whom the appeal is taken.

23  
24           **Section 4.** The provisions of this Ordinance shall become and be made a part  
25           of the Code of the Town of Juno Beach, Florida.

26  
27           **Section 5.** If any section, paragraph, sentence, clause, phrase, or word of this  
28           Ordinance is for any reason held by a court of competent jurisdiction to be  
29           unconstitutional, inoperative or void, such holding shall not affect the remainder of the  
30           Ordinance.

31  
32           **Section 6.** All ordinances or parts of ordinances in conflict with this Ordinance  
33           are hereby repealed to the extent of such conflict.

34  
35           **Section 7.** This Ordinance shall become effective immediately upon adoption

36  
37           FIRST READING this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

38  
39           SECOND, FINAL READING AND ADOPTION this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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42  
43           *[Remainder of page intentionally blank – signatures on next page]*  
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1			
2	<u>AYE</u>	<u>NAY</u>	<u>JASON HASELKORN, MAYOR</u>
3			
4			
5	<u>AYE</u>	<u>NAY</u>	<u>JIM LYONS, VICE MAYOR</u>
6			
7			
8	<u>AYE</u>	<u>NAY</u>	<u>FRANK FAHY, VICE MAYOR PRO TEM</u>
9			
10			
11	<u>AYE</u>	<u>NAY</u>	<u>ELLEN ANDEL, COUNCILMEMBER</u>
12			
13			
14	<u>AYE</u>	<u>NAY</u>	<u>BILL GREENE, COUNCILMEMBER</u>
15			
16			
17	ATTEST:		APPROVED AS TO FORM AND LEGAL
18			SUFFICIENCY:
19			
20			
21	<u>VANESSA M. MUTCHNIK, MMC</u>		<u>LEONARD G. RUBIN</u>
22	TOWN CLERK		TOWN ATTORNEY