



AGENDA ITEM MEMORANDUM

Town Attorney

Susan L. Trevarthen

Department

Department Director

COMMISSION MEETING DATE (*) - 7:00 PM	Deadline to Town Clerk
<input checked="" type="checkbox"/> Jan 10, 2012	Dec 30 th
<input type="checkbox"/> Jan 17, 2012 SPECIAL COMMISSION MEETING	Jan 6
<input type="checkbox"/> Jan 24, 2012	Jan 13
<input type="checkbox"/> Feb 14, 2012	Feb 3
<input type="checkbox"/> Feb 28, 2012	Feb 17

*Subject to Change

- Presentation Reports Consent Ordinance
 Resolution Quasi-Judicial Old Business New Business

FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC

SUBJECT TITLE: Paid Private Parking Conditional Use Impacts on RM Parking Lots

EXPLANATION: We have been asked whether there are any issues with the conditional use approval of paid private parking when that approval utilizes off-site parking lots which are in the RM-25 zoning district. Specifically, on November 29, 2011, the Commission granted a conditional use approval for Aruba Beach Café to provide “paid private parking” for their beach valet parking service. See Agenda item number 14(a) on November 29, 2011.

Under the previous Code, Aruba was allowed to provide valet parking to serve Aruba customers only. Recent code changes created the new conditional use in the B zoning districts of "paid private parking." The reason Aruba needed this conditional use was to legalize its valet parking service for beachgoers and visitors to the general area. As part of that approval process, Aruba provided evidence of signed agreements for the use of the lots where the cars would be parked and met other regulatory requirements.

We have been advised by staff that two of the lots used by Aruba (at 4412 and 4432 Ocean Drive) are zoned RM-25. Aruba has long been parking its valet customers in these lots by agreement with the property owner. Lots in the RM-25 zoning district may only be used as parking lots when they are used for a business located in a B zoning district that is within two (2) lots of the parking lot (see Town Code Section 30-320(a)(2)(ii)-(iii)). Otherwise, it only allows parking to serve onsite principal RM-25 uses, such as a hotel or apartment building. These Code requirements have existed for a number of years and have not been changed.

The off-site Aruba valet lots are too far from Aruba to satisfy the Code requirements found in Section 30-320(a)(2)(ii)-(iii), so they would not be allowed to be newly established today for Aruba’s use. However, the Town has previously advised that its records indicate that these lots are nonconforming; their existence as stand-alone parking lots (as well as use by Aruba for valet purposes) has been in place for many, many years and predates the current zoning restrictions. This non-conforming status is the same regardless of what type of parking the site is used for – off-site customer parking or paid private parking. If the use of the off-site Aruba lots for parking is abandoned or if the lots are redeveloped into conforming RM-25 uses, then their nonconforming status would be lost and these properties could not be utilized as stand-alone parking lots.

The parking lot at 4412 meets the requirements of Town Code Section 30-320(a)(2)(ii)-(iii) and as such, if the parking lot use of the property at 4412 Ocean Drive is abandoned, it could serve as additional parking for the property located at 4400 Ocean Drive as permitted in the Code, but not for any other property. The property at 4432 Ocean Drive is too far from the B District to permit any “parking only” use if the nonconforming status is lost. Further, if the use of these two properties as parking lots is ever lost, or the agreements between Aruba and



the parking lot owners is terminated, Aruba may need to make other arrangements in order to continue its valet service. (See Section 30-21 regarding nonconforming uses)

The approval of the expansion of Aruba's valet operation to include beach valet parking does not change the use of the RM-25 lots, affect in any way the nonconforming status of these RM-25 lots, or give the RM-25 lots additional legal protections or rights. Their previous principal use was parking, Aruba was legally using them for its customer valet parking, and they continue to be used for that purpose. Other properties in RM-25 could not be developed for the principal use of serving as valet lots.

EXHIBITS: Town Code Section 30-320(a)(2)(ii)-(iii)
Town Code Section 30-21(a)-(g)

Reviewed by Town Attorney
 Yes No

Town Manager Initials CA

Sec. 30-320. - Parking other than on-site location.

(a) *Regulation of required parking, shared parking and off-site required parking.* Parking spaces shall be located as follows:

(1) *Onsite:* Required parking spaces may be located upon the same plot or parcel of land the parking area is intended to serve.

(2) *Off-site:* Required parking spaces may be located offsite, upon a plot of land owned or leased by the same person or business entity that owns the business which is served by the parking spaces that is:

(i) Located within the Town's corporate limits and zoned for business use; or

(ii) Located in an RM-25 district, when the lot is adjacent to the business use; or

(iii) On an RM-25 lot located within 50 feet of the RM-25 lot utilized for parking for the business under subsection (2)(ii) above.

another type of retail store but not as a laundromat or other type of service establishment.

(f) *Discontinuance or abandonment of a nonconforming use.*

(1) If for any reason a nonconforming use of land ceases or is discontinued for a period of more than 60 days, the land shall not thereafter be used for the same or any other nonconforming use.

(2) If for any reason the nonconforming use of a building ceases or is discontinued for a period of 60 days or more (not including periods when restoration is in progress), the building shall not thereafter be used for the same or any other nonconforming use.

(3) Any part of a building, structure or land occupied by a nonconforming use which is abandoned shall not again be occupied or used for a nonconforming use.

(4) Any part of a building, structure or land occupied by a nonconforming use which is changed to or occupied by a conforming use shall not thereafter be used or occupied by a nonconforming use.

(g) *Continuance of nonconforming uses and structures.* Any legal nonconforming use or structure may be continued in accordance with the requirements of this section and Section 7.1 of the Town Charter.

Sec. 30-21. - Nonconforming uses and structures.

(a) *Existing uses and structures.* Any lawful use or structure, excluding signs, existing on the effective date of this chapter and which by the terms thereof has become a nonconforming use or structure is hereby declared not to be in violation at this chapter's effective date. Such a nonconforming use or structure shall be subject to all of the provisions of this section pertaining to its continuance, change and discontinuance and Section 7.1 of the Town Charter.

(b) *Nonconforming use; extensions.* The nonconforming use of a building may be extended throughout any part of a building clearly designed for such use but not so used at the effective date of this chapter. Any nonconforming use which occupied a portion of a building not originally designed or intended for such use shall not be extended to any other part of the building. No nonconforming use shall be extended to occupy any land outside the building on the same plot not used for such nonconforming use of land at the effective date of this chapter. The nonconforming use of land shall not be extended to any additional land not so used at the effective date of this chapter.

(c) *Nonconforming use, repair, alteration, enlargement.* No structure utilized for a nonconforming use shall be enlarged, extended, reconstructed or structurally altered unless the use is changed to one which complies with the provisions of this chapter; provided that repairs, maintenance and improvement may be carried out in any 12-month period in an amount not to exceed 25 percent of the assessed value of the structure for that year, and provided that such work does not increase the cubical content of the building nor the floor area devoted to the nonconforming use or increase the number of dwelling units. Nothing in this article shall prevent or excuse compliance with applicable laws or resolutions relative to the safety and sanitation of a building occupied by a nonconforming use.

(d) *Reconstruction after catastrophe.* If any nonconforming structure or if any building in which there is a nonconforming use is damaged by fire, flood, explosion, collapse, wind, war or other catastrophe to such an extent that surpasses 50 percent of the replacement cost of the building or structure, it shall not be again used or reconstructed except in full conformance with all applicable land development regulations and Section 7.1 of the Town Charter.

(e) *Change of nonconforming use.*

(1) In any residential district, any change of a nonconforming use in a conforming building shall be to a conforming use.

(2) In a residential district, a nonconforming use and a nonconforming building shall be changed only to a use permitted in the particular residential district involved except as provided in subsection (e)(4) below.

(3) Any change of a nonconforming use of land shall be to a conforming use except as provided in subsection (e)(4) below.

(4) There may be a change of tenancy, ownership or management of a nonconforming use, provided that there is no change in the specific character of such nonconforming use except as may be permitted by this chapter. For example, a nonconforming professional office may continue as a nonconforming professional office after a change in tenancy, ownership or management but may not continue as another commercial or business use. Likewise, a retail store may continue as