

TOWN OF LONGBOAT KEY  
PLANNING AND ZONING BOARD  
MINUTES OF REGULAR MEETING

\*\*\*JUNE 19, 2012\*\*\*

The regular meeting of the Planning and Zoning Board was called to order at 9:00 AM.

Members Present: Vice Chair Allen Hixon, Secretary John Wild, Members Andrew Aitken, Jack Daly (via phone), Leonard Garner, Laurin Goldner, Walter Hackett, George Symanski

Members Absent: Chair BJ Webb

Also Present: David Persson, Town Attorney; Robin Meyer, Planning, Zoning & Building Director; Trish Granger, Town Clerk; Steve Schield, Planner; Ric Hartman, Planner; Donna Chipman, Office Manager

Vice Chair Hixon thanked former member Phineas Alpers for his service and contribution while a member of the Planning & Zoning Board. He also welcomed new member, Andrew Aitken.

ADMINISTRATION OF OATH

Trish Granger, Town Clerk, swore new member Andrew Aitken and reappointed members Leonard Garner and John Wild.

David Persson, Town Attorney, commented on Mr. Daly's participation by phone noting that due to the quasi-judicial nature of Agenda Item 1, he would recommend that Mr. Daly only listen to the dialogue and not participate. However, for Agenda Items 2 and 3, which were legislative, he saw no reason why Mr. Daly could not participate in the discussion. He noted that Mr. Daly would not be allowed to vote on any of the items.

Attorney Persson also discussed that if the Board was going to encourage member participation by phone, they should draft regulations to follow for attending by phone.

AGENDA ITEM #1  
DRY DOCK WATERFRONT GRILL, 412 GULF OF MEXICO DRIVE, SITE PLAN  
AMENDMENT (QUASI-JUDICIAL)

Pursuant to published notice, the public hearing was opened. All those testifying were sworn. Eric Hammersand, owner of Dry Dock Waterfront Grill, provided the certified mail receipts.

Steve Schield, Planner, reviewed a PowerPoint presentation showing the conditions of the site and reviewed the staff report noting:

- the proposal was to allow for construction of a 1,107 square foot addition to an existing second floor dining area
- the proposed addition would extend out over the existing covered outdoor dining area
- the proposed total lot coverage on the Boathouse/Dry Dock parcel would remain at 37,560 square feet or 39.52 percent (40 percent maximum allowed under the Zoning Code)
- the addition would be connected to the existing restaurant facilities
- the proposed addition would increase the economic viability of the restaurant
- additional parking will not be required for the relocation of the interior restaurant seating to the second story addition
- parking was being partially provided by a shared parking agreement with the Boathouse on Longboat Association for the use of 15 existing spaces located on the site which were not utilized after 5:00 pm (before 5:00 pm seating and after 5:00 pm seating has worked well over the years)
- the proposed second story dining room addition was approximately 24 feet from the north property line, approximately 138 feet from the south property line, and approximately 22 feet from Sarasota Bay
- the required bay waterfront yard was not subject to site plan review
- the maximum allowable non-open space coverage will remain at 78.07 percent
- the proposed second story addition would result in a building height of 24 feet 1 inch from the minimum habitable floor, or finished grade if lower than minimum habitable floor

The following individuals spoke in support of the application:

Robert Goodman, Sands Point Road  
Bob Craft, Binnacle Point Drive

No one else wished to be heard, and the hearing was closed.

**MR. GARNER MOVED THE P&Z BOARD RECOMMEND APPROVAL OF RESOLUTION 2012-15, AS WRITTEN, APPROVING A SITE PLAN AMENDMENT FOR THE DRY DOCK WATERFRONT GRILL. MR. WILD SECONDED THE MOTION.**

Mr. Hackett questioned whether the applicant had reviewed the conditions of approval and found them acceptable. Mr. Hammersand responded that he had reviewed the resolution and was agreeable to the conditions.

Discussion ensued related to the site plan, which showed the proposed square footage, and why the applicant did not have a need for additional seating. Mr. Hammersand explained that they had reduced the first level dining space and would take seating from the first level and move it to the second level. They would be arranging the space to separate the dining area from the bar area, along with a request for an elevator from the first floor to second floor. Mr. Aitken questioned what would happen with the first floor

area. Mr. Hammersand explained part of the area would be additional room for wait staff and the kitchen.

**MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; GARNER, AYE; GOLDNER, AYE; HACKETT, AYE; HIXON, AYE; SYMANSKI, AYE; WILD, AYE.**

AGENDA ITEM #2  
ORDINANCE 2012-10, FUTURE LAND USE MAP AMENDMENTS, 4110 AND 5810  
GULF OF MEXICO DRIVE

Pursuant to published notice, the public hearing was opened.

Ric Hartman, planner, discussed the staff report noting:

- this was a small scale comprehensive plan amendment to change the Future Land Use (FLU) for property at 4110 Gulf of Mexico Drive from Limited Commercial to Open Space-Active
- it also amends the FLU for 5810 Gulf of Mexico Drive from Medium-density, Single-family, Mixed residential to Open Space-Conservation
- 4110 Gulf of Mexico Drive is adjacent to the Bayfront Park Recreation Center and is an open tract
- The 4110 Gulf of Mexico Drive property will be included in the plans for the future development of the recreation center
- 5810 Gulf of Mexico Drive is a heavily wooded tract adjacent to the Emerald Harbor Subdivision and will be changed to Open Space-Conservation
- 5810 Gulf of Mexico Drive had not been rezoned and will be brought back in September to be rezoned

Bob Craft, Binnacle Point Road, provided a brief history of the property and supported the amendment.

No one else wished to be heard, and the hearing was closed.

Discussion ensued on the following:

- Whether the nuisance species were removed since the property at 5810 Gulf of Mexico Drive was overgrown; the Town had removed the Brazilian Peppers and Australian Pines at the request of Spanish Main Yacht Club and Emerald Harbor
- Whether the Town had an obligation to maintain the property; the Town was currently under budget constraints; however, the maintenance would be an issue that would be addressed by the Public Works Department or Town Manager
- The settlement agreement for 5810 Gulf of Mexico Drive, for what was previously known as the Mason property, which was rezoned under the settlement, for two gulf front lots, one rear lot, with a 10 foot right-of-way going to the beach
- The status of the density across the street from 5810 Gulf of Mexico Drive; part of the stipulation agreement was they were allowed to retain 18 units of density

- What uses were allowed in an Open Space-Conservation zoning; allowances would be items such as walkways and boardwalks; however, no building structures were allowed

**MR. WILD MADE A MOTION TO APPROVE ORDINANCE 2012-10 AS WRITTEN. MS. GOLDNER SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; GARNER, AYE; GOLDNER, AYE; HACKETT, AYE; HIXON, AYE; SYMANSKI, AYE; WILD, AYE.**

AGENDA ITEM #3  
ORDINANCE 2012-15, HEDGE HEIGHTS

Pursuant to published notice, the public hearing was opened.

Steve Schield, Planner, provided an overview of the history of the code section that dealt with hedge heights. He reviewed the staff report noting that on April 19, 2012, the Town Commission referred the issue of height of hedges located in the required side yard setback to the Planning and Zoning Board for consideration and to make recommendations on changes to the existing codes. Concerns were raised at that meeting by residents and included the use of 'Bamboo' plant species as a side yard hedge, and side yard waterfront views across a neighboring property. He continued reviewing the staff report pointing out:

- staff conducted an analysis of hedge height requirements in surrounding municipalities
- reviewed examples of hedges throughout the island
- surveyed existing homes and percentages
- reviewed the Town's landscaping requirements
- the positives of restricting hedge heights included preservation and protection of waterfront views
- elimination of excessive plant growth between homes, and increase air and light between buildings
- the negatives for restricting the height included hundreds of existing hedges over six feet in height that would need to be addressed; removing buffers between tall homes and buildings; higher maintenance costs; removal of shade for homes; and, increased code enforcement costs
- reviewed photographs of the problem hedges
- discussed issues with waterfront views being blocked by hedges

Mr. Symanski asked if a homeowner currently had the right to the hedge, and the Town was proposing to take that right away. Mr. Schield replied possibly. Mr. Symanski commented that the Town was proposing to grant a view easement that the adjacent property owner did not own. The owners had a right to block for privacy, but the Town was going to take that right away and give that right to the adjacent owner, which they were not entitled to; he believed it was confiscating a view easement and giving it to the neighbor. Mr. Garner questioned if the requirement being proposed was to be retroactive. Mr. Schield responded he was only noting the choices available and how it could be enforced. He noted that some plants, like Bamboo, could not be trimmed,

because they would die. Mr. Garner noted the ordinance, as written, did not refer to existing hedges. Mr. Schield commented it was included, and staff was recommending compliance within three years. Mr. Hixon noted there was not a 'grandfathering' provision in the proposed ordinance. Mr. Schield replied there was no grandfathering. The proposal would also restrict hedge heights in selective waterfront yards. He continued with reviewing illustrations in the ordinance and the proposed waiver process.

Discussion ensued on:

- Bamboo hedge restrictions and addressing setback issues recognizing it was an aggressive growing plant and require a minimum distance from property lines to prevent impact to the neighbors or street
- that grandfathering would only be fair, but would be an administrative concern
- whether the properties had to be located on waterfront, because there could be waterfront views, but there might be a street or common ground in between; there would not be any protection for those lots that were not on a waterfront
- whether a lot would be considered a waterfront view lot if there was no building across the street from a home, but only waterfront
- whether the Town had legal standing on mandating existing plantings be removed with the Town Attorney noting that it was similar to the Sign Code, which provided reasonable time to come into compliance after the regulations were changed; it would be dependent upon the material used as a hedge, as some vegetation could be trimmed and would survive; three years was a compromise to allow someone to replant, and to ensure sufficient growth; along with the inclusion of a waiver provision
- that the regulation would be granting private property rights to people for no public purpose
- that water views were a public right, but whether the Town should regulate them as outlined in the ordinance was a different issue; the Town currently had regulations in place restricting obstructions in certain areas
- that if a hedge was in place prior to the property being developed, the ordinance would require removal unless the owner received a waiver from the Zoning Board of Adjustment

Bob Craft, Binnacle Point Drive, commented that his property had a waterfront view that was being blocked by a neighbor's Bamboo hedge. He did not believe the ordinance would be taking a right away if there were laws in place that restricted it in the past. He believed it was time to enforce the regulations. Mr. Symanski asked if he was relying on the six foot height. Mr. Craft responded that six feet would be acceptable, because the home was built up; however, the laws were not being enforced.

No one else wished to be heard, and the hearing was closed.

Mr. Hixon noted that he had visited a site where there was an issue with hedge height.

Mr. Symanski questioned the definition of 'occupied structure. Mr. Schield read the restriction and explained that the idea was if there was a small accessory structure, the line would not be measured from that, but from the principle dwelling unit. Mr.

Symanski believed there should be rules based on zoning, and if they wanted specific zoning on waterfront properties, then it should be done. Mr. Hixon pointed out that the issue was discussed a number of years ago during discussions of the Tree Code revisions, but he was not sure if it gave a right to have an adverse impact on a neighbor.

Mr. Aitken referred to the discussion of the Bamboo hedge and asked if the adjacent owner had a right to trim on his property. Mr. Schield explained if the tree grew over the property line, then the adjacent owner had a right to trim what was hanging on their property. Mr. Hixon pointed out that the ordinance proposed to move the same visual screen back five feet and asked how that would improve the situation. Mr. Schield noted there were no view issues, but it was more due to aggressive plants intruding on the adjacent neighbor's landscaping. Mr. Aitken asked if the proposal were adopted, would it change the hedge height on the waterfront from three feet to six feet. Mr. Schield noted there was no proposal to change the height in the waterfront, but they were only creating a new classification for a waterfront yard in a side yard area; they were only proposing to restrict what impacted a waterfront view.

Mr. Wild asked if the plant materials were Bamboo and the Town was providing three years for compliance, would the height be restricted if it needed to be replaced. Mr. Schield explained the ordinance would restrict where the owner could plant the Bamboo. There were other plants that could also be aggressive. Mr. Wild believed the ordinance might need to be sent back and revised. Mr. Garner did not understand why Bamboo was included in the ordinance, and if the Town wished to address the restriction or elimination of Bamboo, it should be reviewed separately. The problem with the ordinance was it was all encompassing with no reference to multi-family versus single-family; and, if the owner was going to plant a hedge, they should be required to maintain both sides, or allow the adjacent property owner to trim. He believed the ordinance needed a lot of work.

Mr. Schield noted that Bamboo was not part of the ordinance, as it would be a separate issue. Staff was only trying to address waterfront issues, and if the board wished to address the issue of Bamboo, then staff would come back with a separate ordinance and/or requirement to address the species. Mr. Garner suggested staff come back with a separate ordinance addressing Bamboo.

Mr. Daly discussed protection of water views and developing specific regulations for those water views and plantings. He also discussed the possibility of inclusion of a water view protection provision in the Town's Comprehensive Plan.

**MR. GARNER MADE A MOTION THAT THE P&Z BOARD DENY THE ORDINANCE BECAUSE IT HAS TOO MANY CONFLICTING AREAS AND ISSUES THAT NEED TO BE ADDRESSED, AND SEND THE ORDINANCE BACK TO STAFF FOR REVIEW. MR. SYMANSKI SECONDED THE MOTION.**

Mr. Hackett believed the ordinance could be drafted similar to the Daylight Plane ordinance; there needed to be more definition. He asked about looking at the ordinance from a formula standpoint to preserve and protect on both sides of the hedge. Mr. Wild questioned how the ordinance came to the P&Z Board, and did the Town Commission

want the board to react immediately, or could it be sent back to staff to draft a better ordinance. Mr. Schield responded the consensus at the Town Commission workshop was to direct the P&Z Board to review the issue, which was the result of a complaint from a citizen.

Mr. Garner commented that if someone owned a vacant lot next to a large hedge, and then came in with a new building for that lot where the hedge would conflict with the ordinance, the development of the lot would now require the owner of the hedge to remove the planting. Mr. Schield replied correct. Mr. Garner believed that was confiscation of property rights. Mr. Aitken believed waterfront views were important; however, after listening to the discussion there might be a problem with the ordinance which would require it be revised. He did not believe the ordinance should be dropped, because there were problems that needed to be addressed. Mr. Symanski pointed out the code previously had a six foot requirement, which was removed, and believed if the requirement was not removed, it would not have created a problem. Mr. Schield replied correct. Mr. Daly noted that he agreed with Mr. Garner's comments.

Attorney Persson noted if the motion was to deny the ordinance, it would then be forwarded to the Town Commission for their review. Mr. Garner pointed out the intent of his motion was the board believed the ordinance needed to be denied and further revised and reviewed by staff.

**MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; GARNER, AYE; GOLDNER, AYE; HACKETT, AYE; HIXON, AYE; SYMANSKI, AYE; WILD, AYE.**

Mr. Schield noted that Mr. Garner had suggested staff come back with a discussion addressing the issue of Bamboo. Mr. Hixon requested when staff came back with Option 'A,' to please look at Option 'B,' because that would preserve the privacy right of the low rise structure, while improving the views to some extent of the high rise structure. Mr. Symanski reminded the board that the waiver provision was written to assist the Bamboo owner to obtain a waiver. He also believed consideration should be given to reverting back to the six foot height requirement.

#### AGENDA ITEM #4 CONSENT AGENDA

**MR. WILD MOVED APPROVAL OF THE MINUTES OF THE MAY 1, 2012, MEETING AND SETTING THE FUTURE MEETING DATE FOR SEPTEMBER 18, 2012. MR. GARNER SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.**

#### STAFF UPDATES

Mr. Aitken requested that the Longboat Island Chapel cell tower application be placed on the next P&Z Board agenda for discussion. Mr. Schield provided an update on the application noting that during the Zoning Board of Adjustment meeting on the issue there were certain points that were deemed incomplete and would require the applicant to submit additional materials. One of the items was an updated application showing the owner signatures, since the church board had changed. At this time the applicant

has chosen to defer the application until the finalization of the telecommunication study being conducted by the Town. Once the applicant has submitted the remaining materials required, the issue would be placed on an agenda.

### ADJOURNMENT

The meeting was adjourned at 10:54 am.

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John Wild, Secretary  
Planning and Zoning Board