

M E M O R A N D U M

TO: David Bullock, Town Manager

THROUGH: Robin D. Meyer, AICP, Director
Planning, Zoning and Building Department

FROM: Steve Schield, AICP, ASLA, CFM, Planner
Planning, Zoning and Building Department

SUBJECT: Ordinance 2012-19, Amending Town Code Section 158.152, Maximum Hedge Height

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 code.

A hedge height ordinance was presented to the Planning and Zoning Board at their meeting of June 19, 2012. The ordinance limited the height of hedges in a limited area of the side yard on waterfront lots. The Board recommended denial of the ordinance and that the ordinance be sent back to staff for review.

Staff is requesting direction from the Town Commission to either adopt the proposed ordinance, adopt the proposed ordinance with amendments; request staff review the proposed ordinance and provide alternatives to the Planning and Board; or do not move forward with additional hedge height restrictions

Attachments: Ordinance 2012-19
Memo, Hixon to Mayor and Town Commission
Memo, Schield to Planning and Zoning Board
Minutes, June 19, 2012 Planning and Zoning Board

xc: David Persson, Town Attorney
Robin D. Meyer, AICP, Director – Planning, Building & Zoning Department

MEMORANDUM

DATE: August 24, 2012

TO: Honorable Mayor and Town Commission

THROUGH: David Bullock, Town Manager

FROM: Allen Hixon, Vice Chair
Planning and Zoning Board

SUBJECT: ORDINANCE 2012-19 (f/k/a 2012-15), HEDGE HEIGHTS

During the public hearing held on June 19, 2012, the Planning and Zoning Board recommended DENIAL of Ordinance 2012-19 as written. The specific motion of the P&Z Board is as follows:

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

Enclosed, for your review and consideration, please find the following support documentation:

1. Ordinance 2012-19;
2. Staff Report, dated 6-19-12, Planner to Planning & Zoning Board; and
3. Draft minutes from the 6-19-12 regular P&Z Board meeting on this issue.

If you should have any questions, or desire any additional information, please do not hesitate to contact me.

/dmc

ORDINANCE 2012-19

AN ORDINANCE AMENDING THE ZONING CODE OF THE CODE OF ORDINANCES OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING CHAPTER 158, ZONING CODE, ARTICLE I, GENERAL PROVISIONS, SECTION 158.152, WALLS, FENCES, HEDGES, BERMS, LANDSCAPE LOGS AND FIREWOOD, BY AMENDING SUBSECTION (B) SIDE AND REAR YARDS, TO LIMIT TO SIX (6) FEET HEDGES LOCATED IN PORTIONS OF CERTAIN REQUIRED SIDE YARDS ADJACENT TO WATERFRONT YARDS IN THE REGULATION; AMENDING THE APPENDIX TO THE ZONING CODE BY ADDING SECTION 12: SIDE YARD HEDGE HEIGHT WAIVER PROCESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Longboat Key is a place of exceptional natural beauty, which is an important reason people enjoy living, visiting, and working on the island; and

WHEREAS, waterfront views make a significant contribution to our perception of the beauty of Longboat Key; and

WHEREAS, through the regulation and enforcement of landscaping maintenance codes, the Town wishes to increase the beautification of the island and protect property values; and

WHEREAS, the Town of Longboat Key Zoning Code does not regulate the height of hedges in required side yards in Section 158.152(B); and

WHEREAS, to protect waterfront views, the Town wishes to restrict the height of hedges located within required side yards located adjacent to waterfront yards; and

WHEREAS, the Planning and Zoning Board finds that the subject Zoning Code amendment is consistent with the Town of Longboat Key Comprehensive Plan; and

WHEREAS, the Town Commission of the Town of Longboat Key finds that the proposed code amendments are in the best interest of the Town and consistent with the Town's comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:

SECTION 1. The Whereas clauses above are ratified and confirmed as true and correct.

SECTION 2. Chapter 158, Zoning Code, Article IV, General Regulations, Division 2, Lot, Yard and Bulk Regulations, Section 158.152, Walls, fences, hedges, berms, landscape logs and firewood, subsection (B), Side and Rear Yards, is hereby amended as follows:

(B) Side and Rear Yards. All walls or fences, within the required side or required rear yards shall not exceed six feet in height. Where two adjacent properties each contain dwelling unit(s) and both have waterfront yards, hedges located in the side yards shall not exceed six feet in height from a point parallel to the waterside of the more landward of the two occupied structures in accordance with the diagram appended to this Chapter as section 12.

SECTION 3. Chapter 158, Zoning Code, is hereby amended by adding Appendix Section 12, Side Yard Hedge Height Waiver, attached as Exhibit "A".

SECTION 4. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

SECTION 5. All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

SECTION 6. This Ordinance shall take effect upon second reading in accordance with Law and the Charter of the Town of Longboat Key.

Passed on the first reading and public hearing the ____ day of _____, 2012.

Adopted on the second reading and public hearing the ____ day of _____, 2012.

James L. Brown, Mayor

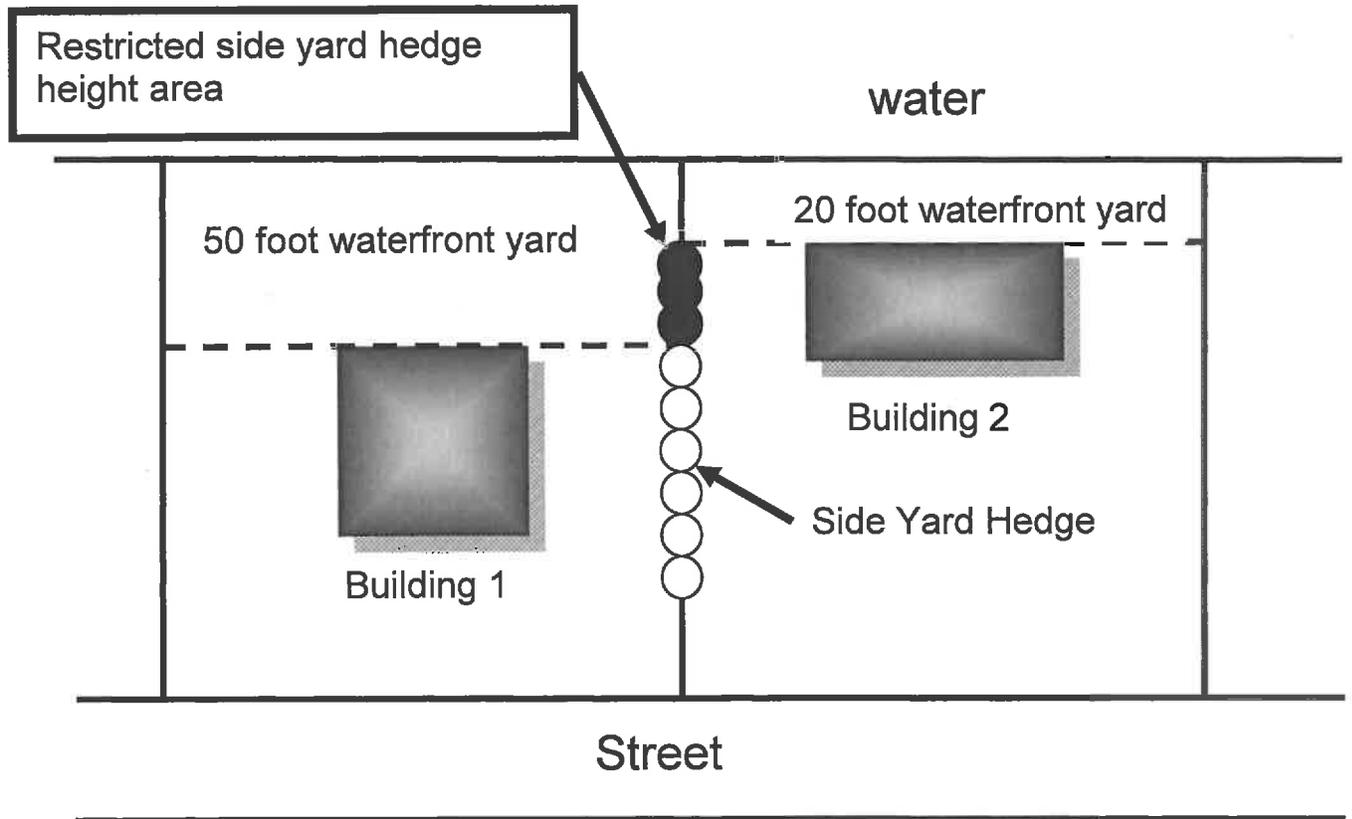
ATTEST:

Trish Granger, Town Clerk

Exhibit "A"

SECTION 12

Sarasota Bay Canal/Bayou/Pass



Side Yard Hedge Height Waiver

All hedges limited in height by 158.152 (B) as depicted in this Section shall be brought into compliance on or before June 30, 2015. The Zoning Board of Adjustment, after a properly noticed and advertised public hearing, may grant waivers to compliance of this requirement based upon consideration of the following criteria:

- 1) The type of material which makes up the hedge and its ability to be successfully trimmed;
- 2) The extent the hedge adversely impacts the view corridor from the adjoining structure;
- 3) Special circumstances or conditions that make reduction of the hedge height not in the public interest.

DATE: June 19, 2012

M E M O R A N D U M

TO: Planning and Zoning Board

THROUGH: Robin D. Meyer, AICP, Director
Planning, Zoning and Building Department

FROM: Steve Schield, AICP, ASLA, CFM, Planner
Planning, Zoning and Building Department

SUBJECT: Ordinance 2012-19, Amending Town Code Section 158.152, Maximum Hedge Height

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 code. At the meeting concerns were raised by residents about two unique situations in regards to side yard hedge height. The first was in reference to the use of the "Bamboo" plant species as a side yard hedge, and the second was a concern about the side yard waterfront views across a neighboring property.

STAFF FINDINGS:

Currently, Section 158.152 of the Town Zoning Code does not limit the height of hedges in the required street, side and rear yards or in non-required yards. It limits the height of hedges in waterfront yards to three feet. Previous to 2008, the Town regulated the height of hedges in side and rear yards to six feet. The previous requirement has been in, or a part of the code of ordinances since the 1970s. Staff enforced the previous side yard hedge height requirement when a complaint was filed with the Town. Until a complaint was filed in 2008 about a side yard hedge height (Bamboo hedge), the Town had not had a complaint filed for a number of years. The Town does receive waterfront hedge height (three feet maximum height) complaints on a regular basis.

In other communities that staff surveyed (refer to chart), staff found that they either did not regulate the height of hedges in side or rear yards or did not actively enforce the regulation. Most communities have not had a complaint in regards to hedge height for a number of years. The cities of North Port and Bradenton Beach both do not actively enforce the height requirement and only respond to complaints. Only one of the Longboat Key homeowner associations that were surveyed regulated hedge height in side yards; most had references to regulating vegetation for light and air and for canal views.

MAXIMUM HEIGHT RESTRICTIONS IN STREET, SIDE AND REAR YARDS

Location	Fence/Wall	Hedge, Street Yard	Hedge, Side & Rear Yards
Sarasota County	6 ft. in side and rear yard	No maximum	No maximum
City of North Port	6 ft. in side and rear yard	3 ft. in street yard	10 ft. in side and rear yard, no active enforcement
City of Sarasota	6.5 ft. in side and rear yard	6.5 ft. in street yard	No maximum
City of Venice	6 ft. in side and rear yard	No maximum	No maximum
Manatee County	8 ft. in side and rear yard	4 ft. in street yard	No maximum
City of Anna Maria	6 ft. in side and rear yard	No maximum	No maximum
City of Bradenton	6 ft. in side and rear yard	4 ft. in street yard	6 ft. in side and rear yard, no active enforcement
City of Bradenton Beach	6 ft. in side and rear yard	4 ft. in street yard	6 ft. in side and rear yard, no active enforcement
City of Holmes Beach	6 ft. in side and rear yard	No maximum	No maximum
City of Palmetto	6 ft. in side and rear yard	No maximum	No maximum

In the 1970s, when hedge height was first addressed in the code, most homes in the Town were one story on grade and averaged 12- to 15-feet in height above grade. This would make a six foot hedge about half the height of the house and adequate to buffer windows that were three-to four-feet above grade. The newer homes are usually two stories over parking and about 35 feet above grade. The first living level windows are about 10- to 14-feet above grade. This would require vegetation to be about 15- to 20-feet tall to provide a buffer between building windows. Condominiums are also being built 10- to 14-feet above grade, and the Town has encouraged and required heavier vegetation and buffering around condominiums over the last 20 years.

The Town has required that 75 percent of the landscaped areas for a condominium be planted with trees and shrubs. This was done to conserve water and to create a soft natural buffer between properties and roadways. This has resulted in thick and tall vegetation in side and street yards around condominium sites; many now would be in excess of the side yard hedge height requirements. About two years ago, the Town passed a new water conservation landscape ordinance, which requires that new single-family homes must plant at least 50% of their landscape area with trees and shrubs. Along with a general trend to plant more drought tolerant vegetation and less sod, staff expects denser and taller vegetation in all yard areas with the increased planting requirements.

A windshield survey of side yard hedge heights was conducted in 2008. The heights of the hedges at that time ranged from approximately eight feet to 30 feet. Roughly 21

percent of the 1,044 homes surveyed had hedges in excess of eight feet in height. These ranged from 12 percent of the homes in the Country Club Shores and Bayou neighborhoods on the south end, to a high of approximately 38 percent in the Sleepy Lagoon and Hideaway Bay neighborhood on the north end. The Village area had approximately 20 percent of the homes that exceeded the side or rear yard hedge height requirements. The homes on the north end of the island tend to have less turf and be more heavily planted with shrubs and trees. The plantings were taller both in the side yard and street yard areas. Staff believes that the number and height of hedges has increased since any restrictions on height were removed in 2008.

STAFF ASSESSMENT:

The regulation of side yard hedge height would impact hundreds of homes and condominium complexes if side yard hedge height restrictions were regulated again. It would also greatly increase the cost of code enforcement if staff was required to measure and enforce the height of all side yard hedges.

The area of hedge height that the residents and the Town Commission have strongly felt should be regulated is in the waterfront yard and those side yard areas that would affect waterfront views. Hedges in waterfront yards are required to be no more than three feet high. Many neighborhood associations have additional requirements in regards to vegetation within the waterfront yard. The height restriction helps protect waterfront views along the bay, canals and bayous. The area of greatest concern is where two neighboring properties have different waterfront yards. The house or building with the greater waterfront yard is impacted by the side yard hedge located closer to the water. Staff is proposing that restriction be placed only on the portion of the side yard that is located between the two different waterfront yards. This would provide equal waterfront views to both buildings. A selective regulation of hedges located in side yards adjacent to waterfront yards would give additional protection for water views over neighboring properties, and it should not impact the great number of taller side yard hedges where no one has raised concerns.

The other concern about side yard hedges was the use of the Bamboo species as a planting material for hedges. Bamboo is a member of the grass family. It grows very quickly in height and, as a grass also spread along the ground. It can be very aggressive and can be difficult to contain along a property line. Individual shoots can be removed, but the overall plant can not be trimmed without killing any stalks from the trimming. The species is not currently on any nuisance exotic plant list on the federal, state or local levels, but staff does recognize the aggressive nature of the plant and does not recommend its planting where it would impact neighboring properties.

STAFF RECOMMENDATION:

As a result of recent concerns that the Town Commission has raised about side yard waterfront yard views, staff is recommending that hedge height regulations in side yards be selectively restricted where waterfront yard views are impacted.

Please find attached Ordinance 2012-19, which selectively restricts side yard hedge height, for your consideration.

Because of the very unique case of the Bamboo hedge, staff is not recommending a change to the Town code, but if the Board wishes to address the concerns about the use of “Bamboo” as a side yard hedge plant, staff would recommend that the board may want to restrict the specie Phyllostachys “Bamboo” from being planted or maintained within five feet of any property lines.

Attachments: Ordinance 2012-19

xc: David Persson, Town Attorney
Robin D. Meyer, AICP, Director – Planning, Building & Zoning Department

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.



End of Agenda Item