

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

SEPTEMBER 17, 2013

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

Members Present: Chair BJ Webb, Vice Chair Jack Daly, Members Andrew Aitken, Leonard Garner, Walter Hackett, Allen Hixon, Ken Schneier, George Symanski, John Wild

Also Present: Maggie Mooney-Portale, Town Attorney; Kelly Fernandez, Town Attorney; Robin Meyer, Planning, Zoning & Building Director; Steve Schield, Planner; Alaina Ray, Planner; Donna Chipman, Office Manager

Chair Webb requested a moment of silence in honor of those impacted by the Washington Navy Yard shootings.

AGENDA ITEM #1
MAR VISTA RESTAURANT, 760 BROADWAY STREET
AMENDED SPECIAL EXCEPTION

AGENDA ITEM #2
MAR VISTA RESTAURANT, 760 BROADWAY STREET
SITE PLAN AMENDMENT

Maggie Mooney-Portale, Town Attorney, requested and recommended a continuance of the proceedings to a later date. On 9-16-2013 she received an objection from opposing legal counsel on moving forward with the special exception request. They had filed an objection to jurisdiction arguing that there was a special exception condition that required a certain level of activity following the grant of the previous special exception. In looking at activity, it appeared that there was an issue that staff needed to review and bring back to the board to determine if such an issue existed. She requested that the item be deferred to the October meeting pending review of the matter.

Discussion ensued on the postponement and when the application should be rescheduled. Chair Webb noted that she would prefer the notice be provided again when the application was scheduled in order to inform the public.

MR. GARNER MADE A MOTION TO POSTPONE THE HEARINGS ON THE MAR VISTA RESTAURANT SPECIAL EXCEPTION AND SITE PLAN AMENDMENT UNTIL SUCH TIME THE BOARD WAS ADVISED BY STAFF OF THE AVAILABILITY OF THE INFORMATION AND TO PROVIDE NOTIFICATION OF THE FUTURE HEARING. MR. WILD SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

AGENDA ITEM #3
ORDINANCE 2013-03, AMENDING CHAPTER 72, STOPPING, STANDING, AND PARKING, SECTION 72.06, RESTRICTIONS ON PARKING AND USE OF TRAVEL TRAILERS

Chair Webb thanked the subcommittee for meeting over the summer and working on this ordinance.

Steve Schield, Planner, reviewed the staff report:

- On April 16, 2013, the P&Z Board requested a subcommittee review the code related to parking of trailers
- Staff did a windshield survey of the trailers currently parked in open areas on single-family properties and counted 112 trailers, with 18 properties having two or more
- Reviewed a PowerPoint showing various boats and trailers parked throughout the island
- After discussion, the subcommittee recommended allowing the parking of trailers and boat trailers within the side or rear yards as long as they were screened from view
- Longbeach Village area were allowed parking in rear yards without screening to allow the parking of trailers off existing public alleys
- Reviewed proposed Section 72.06(C)(5)

MR. WILD MADE A MOTION TO RECOMMEND APPROVAL OF ORDINANCE 2013-03 AS WRITTEN. MR. HIXON SECONDED THE MOTION.

Mr. Symanski referred to a PowerPoint photo of a trailer on a property and discussed the setbacks. Mr. Schield explained that most street setbacks in the Town were 20 feet, and some homes were set back 40 feet; the intent was to have at least as far back as the house. Mr. Symanski commented they should use the setback line and not the house, because he did not feel it was fair that one neighbor could have a boat closer to the road, and another neighbor (who was not close to the road) was precluded from creating a screened area within the setback line. Mr. Schield noted that was an option; it was discussed, but for aesthetic reasons the committee chose to have the boats set as far back as the homes at the setback line.

Discussion was held on the following issues:

- Page 3 of 4 of the ordinance, (c)(5), the word 'purposed' should be 'purposes'
- The definition of a 'front yard,' which was described as the plane of the front wall of the house
- There should be sufficient room in the depth of the house for the boat and trailer
- If there were homes that did not have sufficient depth
- Question whether it would be a taking of a right if the Town denied the owner the ability to install a tall hedge
- The "viability and reality" of making the alleys navigable; it was a contentious issue, but it was decided there was a need to protect the neighborhoods and to be consistent
- That the Village area had most trailers parked in side yards and not in front yards
- There might be an impact if the Town required screening in alley areas
- Although alleys were discussed as a side issue, most have been permanently closed due to vegetation overgrowth
- The Town should not be reducing the potential storage area on a lot, because the lot was set back further than the neighbors; should be measured from the building setback line, rather than the front face of the house
- Concern with the five day restriction for parking within a 30-day period and whether it was too restrictive; would it prohibit a rent-producing property

Mr. Daly asked whether the subcommittee was in favor of this approach. Mr. Schield replied yes, but with reservations. Mr. Daly questioned what type of complaints had been received with regards to boat trailers as he understood there were very few.

Michael Drake, Longboat Drive South, discussed that the complaints were coming from people that brought boats into areas that were deed restricted, not in the Village or Sleepy Lagoon area. Country Club Shores and Emerald Harbor were once deed restricted communities and somehow their covenants were null and void, which was becoming the Town's problem. He believed going forward that those things can be dealt with on a one-on-one basis; the regulations were very restrictive and did not apply to the Village.

Mr. Symanski asked if Mr. Drake had comments concerning allowing measurement to the setback line. Mr. Drake responded he did not believe the issue was reviewed during the subcommittee meetings. He pointed out that most lots in the Village were 50 foot lots. Mr. Aitken noted that he was not sure what Mr. Drake's recommendation was. Mr. Drake commented that he would rather see the reinstatement of the covenants versus new regulations and also would like the Village excluded from the regulations.

Commr. Zunz mentioned that she had served on the subcommittee, and they had discussed the issue of the front yard setback, because of the variations of front yards. She commented that if they used the plane of the house, there would not be any dispute where the boat needed to be placed, and it provided a much more cohesive look to a community. Another issue she voiced concern with was the alleys were owned by the Town, and if the Town owned the property, the Town needed to maintain those alleys and have them available for their intended use.

Steven Gold, Bayview Drive, noted there were extensive discussions to determine how best to address the issue. The compromises reached were the ones presented to the Board. He pointed out that one of those regarded the Village area, and while it would treat the Village different from the rest of the key, there were desires by the property owners that they wanted their property to be treated in a way that made sense that might not apply to waterfront property elsewhere on the key. There was ample justification to treat the Village in the way the ordinance proposed.

Bryan Feeney, Broadway Street, supported the comments made by Mr. Drake. He was contemplating purchasing a boat and did not want an ordinance in place that restricted the placement of that boat on his property.

William Cloud, Country Club Shores 5, voiced concern with possible conflicting ordinances. He noted the proposed ordinance mentioned there would be screening to the adjacent properties that he was assuming would cover all the way to the rear of the boat. The Town had a restriction with vegetation over three feet tall in the waterfront yard setback. Mr. Schield responded boats and trailers were prohibited from parking in waterfront yards.

Pete Walker, Longboat Drive East, voiced concern with screening as he believed they could only go to three feet high until they met the 20 foot setback. Mr. Symanski asked if the property was non-conforming and within the front setback could they not have a six foot hedge at the plane of the house. Mr. Schield replied they could have a hedge, but not a fence if it was within the setback.

Gene Jaleski, Cedar Street, was not sure the Town would be able to force people to do something after the fact. He discussed there was a problem with enforcing current codes; commercial vehicles parked in driveways; and, believed that the alleys belonged to the property owners on both sides of the alley, but were vacated in the 80s and 90s with an easement to the Town.

Discussion took place on whether someone could park their boat in someone else's yard; if there were codes that prohibited it; and, that Section 5 of the ordinance provided 180 days after adoption of the ordinance to come into compliance.

Mr. Schneier asked the Town Attorney if she reviewed the ordinance and whether adoption of it would be legal. Maggie Mooney-Portale, Town Attorney, responded it was a policy decision as to whether to create a regulatory mechanism; however, it was legal.

Mr. Gold mentioned that ownership of the boat was discussed by the committee, but the circumstances occurred so rarely there was not a need to proactively ward off that type of activity. He had proposed that the language include a requirement that the boat must belong to the property owner (trailer or whatever was subject to restriction), but the committee, after discussion, decided it was not necessary.

Joan Spaulding, Broadway Street, believed five days was too restrictive and suggested it be eight days.

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

MR. SYMANSKI AMENDED HIS MOTION TO ALLOW TO THE FRONT SETBACK LINE AND ENSURE IT WAS PROPERLY SCREENED.

Robin Meyer, Planning, Zoning & Building Director, voiced concern with the amendment as it was screening something in front of the property that would not work well and would create more issues than wanting to solve.

MR. HIXON SECONDED THE MOTION.

Mr. Aitken was not supportive of the amendment, because he believed the Board was trying to prevent boats parked in the front yard. Mr. Garner commented that the philosophy of the ordinance was to improve aesthetics and the problems with the appearance of boats, trailers, etc, and to introduce something using the front yard would only negate the benefits of the ordinance. He did not support the amendment. Mr. Schneier agreed and opposed the amendment for the same reasons. Mr. Symanski pointed out that if the house was within the setback line, the owner could have a hedge, but not a fence. Mr. Hixon commented if the house was forward of the building setback line, it was considered non-conforming. If the owner placed a boat trailer forward, then it would increase the non-conformity, which was illegal.

AMENDMENT TO THE MOTION FAILED ON ROLL CALL VOTE: AITKEN, NO; DALY, NO; GARNER, NO; HACKETT, NO; HIXON, AYE; SCHNEIER, NO; SYMANSKI, AYE; WEBB, NO; WILD, NO.

Chair Webb thanked the Police Department and the Town's Code Enforcement Officer for all their work and commented that the Town's one Code Enforcement Officer worked very hard to bring people into compliance with the codes.

The following comments were discussed:

- The initial view was to look at some form of exception
- A better solution would be for local covenants, restrictions, etc
- Questioned the appropriateness of a Town-wide zoning provision, rather than a localized solution
- That the ordinance was requested due to complaints over the years and neighborhoods unable to enforce their own covenants
- That covenants, as a possible alternate solution, were not feasible
- Understood that the area where there was a preponderance of boat trailers did not have a problem, but it was a problem elsewhere
- Pointing out that in the neighborhood survey, it included eight neighborhoods of which two that let their covenants lapse
- The materials focused mainly on the Village area, and although they agreed with the issue of associations, it was not the Town's issue to tell them to form associations

- If the ordinance would be legal if it was drafted to exclude the Village; there were concerns with excluding portions of the Town from the ordinance without a rationale basis as it would need to be researched
- That the five day time period had been in place for years and should not be changed to allow an additional two days

ORIGINAL MOTION WAS APPROVED ON ROLL CALL VOTE: AITKEN, AYE; DALY, NO; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

The Board recessed from 10:36 am – 10:52 am

AGENDA ITEM #4
ORDINANCE 2013-26, COMPREHENSIVE PLAN AMENDMENT
FUTURE LAND USE ELEMENT, TELECOMMUNICATIONS

Pursuant to published notice, the public hearing was opened.

Robin Meyer, Planning, Zoning & Building Director, reviewed the staff report noting this ordinance adopted the policies that were previously discussed and forwarded to the Town Commission under Resolution 2013-09, and which were subsequently transmitted to the Florida Department of Economic Opportunity (DEO). The state, along with the other required agencies, did their review and did not have any comments. He continued with reviewing the amended policies noting that the Town Commission reverted back to the original language than what was proposed by the Planning and Zoning Board at their April 16, 2013, meeting.

Gene Jaleski, Cedar Street, spoke in opposition to the ordinance commenting that to remove the protections provided to the residents was a mistake; discussed that it was an important issue that should be protected; and, talked about the use of small cell technology.

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

MR. GARNER MADE A MOTION TO RECOMMEND APPROVAL OF ORDINANCE 2013-26 AS WRITTEN. MR. SYMANSKI SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

AGENDA ITEM #5
ORDINANCE 2013-18, AMENDING CHAPTER 158, ZONING CODE
PERSONAL WIRELESS SERVICE FACILITIES

Pursuant to published notice, the public hearing was opened.

Robin Meyer, Planning, Zoning & Building Director, reviewed the staff report noting that if the Board made changes, it would move forward to the Town Commission for review and adoption. He reviewed the following changes:

- The definition section was amended to include several new definitions, including a definition for 'alternative
- Addition of 'Purpose and Intent'
- Included hierarchy of personal wireless service facility preference
- Amends Section 158.200 and 158.201, Personal Wireless Service Facilities and Standards

Discussion ensued on:

- the cost factor and how it played into the hierarchy
- the need for clarification of the guidelines for this decision
- the importance of being 911 compliant
- whether cost was incorporated in the ordinance, or if it was absent
- the need to add language in 'Purpose and Legislative Intent'

John Figuero, AT&T representative, discussed 911 compliance noting that operators were only required to provide 911 service if the area was covered by AT&T. AT&T's approach for the north end of Longboat Key was to use a more comprehensive solution. The coverage area in Longboat Key was too large to handle with a DAS system, and also the availability of poles and availability in areas where they would like to provide a sole DAS system. Their approach was to provide umbrella coverage through macrocell or tower technology. Mr. Wild questioned how tall small cells were. Mr. Figuero responded they were located on utility poles about 20-30 feet; they had to be located below existing wires on a pole.

Mr. Schneier referred to the TE Connectivity Study and their coverage areas and asked if Mr. Figuero had seen and agreed with their coverage study. Mr. Figuero responded he had not seen the specific study for DAS. Mr. Hixon asked if there was an acceptable minimum level of service (LOS) that should be established on the north end of the key. Mr. Figuero explained AT&T had a certain negative signal level that they design for, and they have a site in the middle of the key on the Seagate Condominium building. The DAS idea was used to fill in voids, but was not used for main coverage.

Discussion with Mr. Figuero continued on the following:

- If AT&T felt it was economical to provide a technical needs study; they would be hesitant to provide if looking at a DAS or small cell system

- They were open to the idea where there was baseline coverage to fill in the spots, but they did not have that on the north end of Longboat Key
- The current baseline was at 90 feet high, but smaller spots would be at a 20-30 foot height on a utility pole
- Determining what was an acceptable LOS, believing AT&T's acceptable LOS was in terms of 'dbm'
- Concern with 'loose ends' being created in the ordinance
- If AT&T would be cooperative with other providers if they installed a system; AT&T was always open to other providers, but the advantages of a tower was it could be shared (the height would range between 130 feet to 150 feet)
- The distance between carriers on a pole would be at a 100 foot minimum
- The Public Works facility would be a perfect area for providing coverage
- For small cell technology, they would have to go on every street pole and typically covered 300-500 feet; if something changed, then there might not be coverage and may be a need to install another small cell
- Small cell technology worked better in theme parks, college campuses, etc.
- AT&T was planning on constructing a number of towers over the next three years throughout the country, but would rather co-locate with other providers
- That the diameter of a pole was 4-6 feet at the bottom and tapered as it went up

MR. GARNER MOVED THE APPLICATION BE SENT BACK FOR FURTHER REVIEW AND FOR STAFF TO INCORPORATE THE INFORMATION RECEIVED AT THIS MEETING. MR. WILD SECONDED THE MOTION.

The Board continued discussing the ordinance and suggesting a revision concerning basing the determination of dbm on industry standards; the inclusion of the language, "by providing a high quality of personal wireless service to the town," under Purpose and Legislative Intent, last sentence in subsection (a) at the end; and including a definition for "high quality personal wireless service."

Following the discussion, Mr. Garner and Mr. Wild withdrew the motion and second, respectively.

Mr. Garner left the meeting at this time.

The Board recessed for lunch from 11:56 am – 12:08 pm.

Mr. Meyer commented that staff would contact the other providers to determine if there was an industry standard, and if there was a range, then he would include a range. Mr. Symanski noted that if they included a range, then the lowest number would meet it. He asked if it was sufficient to include the notation, "current industry standard." Attorney Mooney-Portale responded most ordinances included the language, "as amended from time to time," to allow for changes as the law changes.

Mr. Meyer explained the process companies would have to go through, but noting that the locations were identified by the TE Connectivity Study. He mentioned that from talking to the industry, the locations were not the absolute optimum, but were the best options available. Mr. Aitken believed the public safety complex was too far south to

provide coverage up to the bridge. Mr. Meyer noted that had to be part of the analysis. There had to be thorough public involvement, so it was mitigated to the greatest extent possible. Mr. Hixon commented that if they were going to use the site, then they should extend the potential buildable area. Mr. Meyer responded it could be at the option of the Town Commission. Mr. Hixon did not believe it should be restricted in the plan.

Discussion ensued on:

- Reviewing the technical requirements and noting changes were made concerning timelines
- Reviewing the definition of 'alternative tower structure'
- Camouflaged towers and the criteria they should meet
- The need to make it clear that it met camouflage requirements; addition of language at the end of (f) that stated, "are concealed from view as follows," and "concealed from view using one of the following techniques"
- That AT&T had discussed a 150-foot pole and whether it would be considered a camouflage or alternative structure; it would fit the definition of alternative tower structure
- Language should include a flag pole option

Chair Webb suggested that whoever made the motion to ensure to include the language, "current industry standards" in all places where it stated 'technically viable.'" Mr. Hixon believed it should be excluded, because it did not serve the purpose; it would not provide the coverage farther north. Chair Webb commented that the Board did not have the technical expertise to state that it would not work. Mr. Hixon noted that it was located three miles from the bridge and only provided coverage 1.5 miles on each side. Mr. Meyer pointed out that a new tower was being installed on the south end of Bradenton Beach.

There was consensus to keep the options in the code.

Mr. Symanski referred to the top of the second page of the ordinance, towards the middle of the page, where it referred to approval by the P&Z Board or ZBA and suggested the removal of the reference to ZBA. He also referred to page 15 of 18, section 4(a), and the words, "adjacent properties," and asked if it was a disqualifier. Mr. Meyer noted that almost all standard applications request the zoning of adjacent properties, but staff could revise to reference 'abutting' properties to make it more clear.

Gene Jaleski, Cedar Street, commented that minus102 dbm would be considered, at the margin, of useful signal for present 3G phones; however, 102 dbm was considered a hefty signal for LTE service. He asked why the Board was discussing cell towers as the Town did not need cell towers. He disagreed with the AT&T engineer. He noted that only five people had sent emails to the Town complaining of service.

MR. SYMANSKI MOVED APPROVAL OF ORDINANCE 2013-18, AMENDED AS FOLLOWS: UNDER 'PURPOSE AND LEGISLATIVE INTENT' INCLUDING LANGUAGE THAT STATED, "HIGH QUALITY PERSONAL WIRELESS SERVICE AS TO INDUSTRY STANDARDS, AS MAY BE AMENDED;" AND, REVISE THE WORDS,

“CURRENT TECHNICAL” TO “CURRENT INDUSTRY STANDARDS.” MR. WILD SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; DALY, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

AGENDA ITEM #6
CONSENT AGENDA

MR. HIXON MOVED APPROVAL OF THE MINUTES OF THE JUNE 18, 2013, MEETING AND SETTING THE FUTURE MEETING DATE FOR OCTOBER 15, 2013. MR. AITKEN SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; DALY, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WEBB, AYE; WILD, AYE.

ADJOURNMENT

The meeting was adjourned at 12:52 PM

BJ Webb, Chair
Planning and Zoning Board