

TOWN OF LONGBOAT KEY
ZONING BOARD OF ADJUSTMENT
MINUTES OF MARCH 14, 2013 MEETING

The meeting of the Zoning Board of Adjustment was called to order by Chairman Ben Feole at 9:30 a.m. on Thursday, March 14, 2013.

Members Present: Chairman Ben Feole; Secretary Charles Fuller; Members Thomas Bijou, Kenneth Gorman, Lee Riley

Members Absent: Vice Chair Gaele Barthold

Also Present: Maggie Mooney-Portale, Town Attorney; Robin Meyer, Planning, Zoning & Building Director; Steve Schield, Planner; Jo Ann Mixon, Deputy Town Clerk; Donna Chipman, Office Manager

Administration of Oath

Jo Ann Mixon, Deputy Town Clerk, swore reappointed members Ken Gorman and Thomas Bijou.

Ex-Parte Communications

Maggie Mooney-Portale, Town Attorney, requested that if any board member had ex-parte communications with the applicant, or visited the site, to disclose those on the record.

Mr. Riley, Mr. Fuller, and Mr. Feole informed the board that they had visited the site, but had no communications with anyone.

Approval of Minutes

Mr. Riley made a MOTION TO APPROVE THE MINUTES OF THE JULY 12, 2012, ZONING BOARD OF ADJUSTMENT MEETING AS WRITTEN; seconded by Mr. Bijou and approved by a unanimous vote.

Agenda Item 1. PETITION #1-13 by Neal and Karen Neilinger requesting a Waiver from Section 158.153(C), Daylight Plane Regulations, of the Town of Longboat Key Zoning Code to increase the required 50-degree Daylight Plane angle to 56-degrees to allow construction of a new single-family residence for property located at 5809 Gulf of Mexico Drive.

Ms. Chipman swore all those testifying at this hearing. Proof of Advertising in the *Sarasota Herald-Tribune*, the Town Attorney's Opinion and the Staff Report are part of the applicant's file. Ken Aliff, representing the applicant, presented the Return Receipts to the Board.

Steve Schield, Planner, provided an overview of the Daylight Plane regulations and the code requirements noting the applicant was requesting a waiver to increase the required 50-degree Daylight Plane Angle to 56-degrees on the north and south sides of

the parcel. He continued with reviewing the Findings of Fact contained in the staff report and explaining:

- The site was a vacant lot that had not been previously built on
- The owner wishes to construct a three-story new home (two living floors over one level of parking)
- The second and third stories of the home would be recessed three and one half feet from the property line for a total of 16 feet (12.5 feet required)
- It would extend the third floor approximately three feet into the required 50-degree Daylight Plane Angle
- The front lot width measured approximately 100 feet, and the parcel area was approximately 18,898 square feet
- The proposed new structure would be approximately 67 feet from the Gulf of Mexico Drive right-of-way on the east side of the parcel
- The proposed structure would be 12 feet, 6 inches from the property lines on the north and south sides of the parcel
- Upon completion, the lot coverage and the non open-space would be in compliance with the maximum percentages allowed by code, which were 30 and 50 percent, respectively
- The proposed waiver did not appear to adversely impact the view of the light and air space for the residences to the north or south

Mr. Feole asked if the first plan was the only plan submitted to the department for review. Mr. Schield replied yes. Mr. Feole asked if the applicant was aware of the daylight plane, and if there had been any comments received from adjacent property owners. Mr. Schield commented he had received a few calls requesting information, and one neighbor who voiced concern with the buffer on the property.

Mr. Riley voiced concern with the staff recommendation and asked if there were any additional materials or information that could have been provided for staff's review. Mr. Schield explained that this was a new home and would have ample opportunity to meet the daylight plane requirements. He referred to the criteria that the applicant had to meet in order to be granted a waiver. The applicant had ample opportunity to meet the requirement with the design of the home. Mr. Gorman asked if staff had suggested submitting revised plans. Mr. Schield replied staff had a number of discussions with the applicant on the design of the home, and he had reminded them of the daylight plane requirement.

Ken Aliff, architect representing the applicant, noted the rationale behind the proposal was due to confusion with how the design criteria in the code were written. The code stated "*the plane shall be calculated from lowest habitable floor,*" and he had submitted a sketch to staff asking if the interpretation was correct (they submitted plans showing where they were calculating from), and it was sent back stating it was good. He proceeded to design under that assumption. He reviewed with Mr. Schield and realized the daylight plane was not figured from lowest habitable floor level, but from flood level, which was actually two feet below. The design was 50-60 percent complete, and it

would be a hardship to go back and totally redesign the house, but it was felt that the way the house was configured, they were meeting the intent of the daylight plane requirements.

Discussion ensued on the design of the home; the hardship from designing the home to fit the lot; that the ordinance should be more clear as to how to calculate; that there were no adverse impacts on the neighbors; and, that overhangs could extend into the daylight plane.

Maggie Mooney-Portale, Town Attorney, asked if the applicant had complied with the notice requirements. Mr. Schield replied yes.

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

Mr. Fuller believed the request would not adversely impact the surrounding neighbors; however, the third criteria related to deprivation of value, which was questionable. Mr. Riley believed it was an unfortunate circumstance when the applicant did what was required, but because of the ambiguity in the code, would have to spend additional monies to make it right. He agreed that it did not adversely impact the surrounding neighbors. Mr. Bijou pointed out that the applicant had attempted to comply, but this was a confusing section of the code. He commented if they had not made the attempt, he would feel differently.

Mr. Fuller made a MOTION TO GRANT PETITION 1-13 BASED ON THE FINDINGS OF FACT SET OUT IN THE STAFF REPORT; seconded by Mr. Bijou and approved by a unanimous vote:

BIJOU:	AYE	FEOLE:	AYE
FULLER:	AYE	GORMAN:	AYE
RILEY:	AYE		

Setting Future Meeting Date.

The next meeting was tentatively scheduled for Thursday, May 9, 2013.

Adjournment.

The meeting was adjourned at 10:06 am.

Respectfully submitted,

Charles Fuller, Secretary
Zoning Board of Adjustment