

M E M O R A N D U M

DATE: January 14, 2014

TO: Planning and Zoning Board

FROM: Alaina Ray, AICP, Director
Planning, Zoning and Building Department

SUBJECT: Ordinance 2014-08 Zoning Board of Adjustment

Background and Analysis

Section 158.026 of the Town of Longboat Key Zoning Code establishes a Zoning Board of Adjustment (ZBA). The Zoning Code specifies that ZBA consist of seven (7) members who are residents and registered voters of the Town of Longboat Key and are appointed by the Town Commission. The ZBA is charged with hearing cases for the following:

1. Appeal of decision made by administrative official relating to the Zoning Code;
2. Applications for Special Exception for Home Occupations and windwalls.; Note: Section 158.028 (A) incorrectly states “windfalls” – this scrivener error will be corrected during future Code revisions;
3. Waivers from Daylight Plane regulations; and
4. Variances from certain specific provisions within the Zoning Code.

While the duties and powers are established by the Town’s Zoning Code, Art. II, Section 20 of the Town’s Charter states: (a) “At a minimum, the permanent boards of the town shall be the Planning and Zoning Board, the Zoning Board of Adjustment and the Code Enforcement Board, the duties and responsibilities of which shall be established by ordinance.” A legal determination may be necessary to ascertain whether this clause requires ZBA members who are not appointed to any other board.

Due to the seasonal residency of most ZBA members, it is often impossible to raise a quorum to hear Zoning Variance requests. There are also currently two (2) vacant seats on the ZBA and only one (1) application for a seat has been received for approximately one (1) year, despite recruitment efforts. During May 2013, two applications for Variance requests were received by the Planning, Zoning and Building Department. However, a quorum could not be reached until October and it was a minimum quorum requiring all members to vote in affirmative to approve a request. By that time, one of the applicants had chosen to withdraw their application. The other applicant chose to wait for a majority quorum to avoid the necessity to receive affirmative votes from all members present.

The Zoning Code does not establish specific dates when the ZBA must meet; however, meeting dates have typically been on the second Thursday of each month. Section 158.026(D) states: “The board of adjustment shall meet at the call of the chairman, at

the written request of three or more regular members, or within 30 days after receipt of a matter to be acted upon by the board.” This clause provides flexibility concerning meeting dates, but this flexibility has been insufficient to address the inability to reach a quorum. Additionally, the Zoning Code does not address a remedy in the event a quorum cannot be reached within the stated 30-day period.

Due to the ongoing difficulties in reaching a quorum, Staff was directed to investigate options to avoid delays to applicants. Staff researched other jurisdictions to determine methods by which counties and municipalities in the region handle Zoning Variance requests. Staff polled 22 jurisdictions; of these, nine (9) maintain separate ZBA entities and 12 relegate those duties to another board. The Planning and Zoning Board/Local Planning Agency handles ZBA duties in 11 of the polled jurisdictions, while one (1) assigns those duties to the City Commission. The following table indicates the jurisdictions polled and the body that handles ZBA duties.

COUNTY	Separate Zoning Board
CHARLOTTE	NO: Planning and Zoning Board
DESOTO	NO: Planning Commission/Board of Adjustment
HARDEE	NO: Planning & Zoning Board
LEE	NO: Hearing Examiner
MANATEE	NO: Planning Commission
SARASOTA	YES: Board of Zoning Appeals
MUNICIPALITY	
Punta Gorda	YES: Board of Zoning Appeals
Arcadia	YES: Board of Adjustments
Wauchula	NO: Planning and Zoning Board
Bonita Springs	NO: Local Planning Agency
Cape Coral	NO: Planning and Zoning Commission
Fort Myers	YES: Board of Adjustments
Fort Myers Beach	NO: Local Planning Agency
Sanibel	YES: Board of Adjustment and Appeals/Special Master
Anna Maria	NO: City Commission
Bradenton	NO: Planning Commission
Bradenton Beach	YES: Board of Adjustment/Special Master
Holmes Beach	YES: Board of Adjustment
Palmetto	NO: Planning and Zoning Board
North Port	YES: Zoning Board of Appeals
Sarasota	YES: Board of Adjustment
Venice	NO: Planning Commission

Proposed Options

During the Town Commission Regular Workshop on November 13, 2013, Staff presented this issue as a discussion item to the Town Commission, with the following options identified for consideration:

1. **Reduce the number of required ZBA members to five (5) and appoint additional alternates.** Staff is of the opinion that this will likely not rectify the situation, since the ZBA has only had five (5) seated members and has been unable to obtain a quorum. The lack of interest from the public to serve on this board would likely continue to be an issue in appointing alternates, as well.
2. **Assign the duties of the ZBA to the Town Commission.** The Town Commission holds regular meetings, which would provide timely attention to applicant requests.
3. **Assign the duties of the ZBA to the Planning and Zoning Board.** The Planning and Zoning Board is well versed in the Zoning Code, holds regular meetings, and could easily absorb the few requests per year presented to the Town.

The Town Commission directed Staff to draft language that would allow a case to be heard by the Planning and Zoning Board, in the event the Zoning Board of Adjustment could not attain a quorum.

Proposed Options

Staff recommends the Planning and Zoning Board consider the proposed ordinance and recommend approval to the Town Commission.

ORDINANCE 2014-08

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING CHAPTER 158, ZONING CODE, 158.026: ZONING BOARD OF ADJUSTMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 158, *Zoning Code* of the Town of Longboat Key Code of Ordinances establishes comprehensive controls for the development of land in the Town based on the Comprehensive Plan; and

WHEREAS, Section 158.026, Zoning board of adjustment, establishes a zoning board of adjustment (Board) and proscribes certain powers and duties to the Board; and

WHEREAS, there has repeatedly and historically been difficulty in obtaining a quorum of the Board to consider matters within the jurisdiction of the Board; and

WHEREAS, the inability to obtain a quorum has led to prolonged delay for property owners seeking relief from certain provisions of the Town Code; and

WHEREAS, the Planning and Zoning Board finds that the subject Town Code amendment will improve the development process, preserve community standards and protect property values in the Town and recommends approval of the proposed amendments; and

WHEREAS, the Town Commission, after careful consideration of the issues, finds that the proposed amendments are in the best interest of the health, safety, and welfare of the citizens of Longboat Key.

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* is amended to read as follows:

Subsection 158.026, Zoning board of adjustment

(G) If the board of adjustment is unable to achieve a quorum within 30 days after receipt of a matter to be acted upon by the board, the matter shall be referred to the planning and zoning board for consideration at its next available meeting after public notification is provided as required by State law and this Code. In the event a matter is referred to the planning and zoning board as a result of the board of adjustment's inability to achieve a quorum, the planning and zoning board in hearing such matter shall have all powers and duties proscribed to the zoning board of adjustment by this Code.

SECTION 3. If any section, subsection, sentence, clause, or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

SECTION 4. All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

SECTION 5. This Ordinance and proposed amendments shall take effect upon second reading in accordance with law and the charter of the Town of Longboat Key.

Passed on the first reading the ____ day of _____, 2014.

Adopted on the second reading and public hearing the _____ day of _____, 2014.

James L. Brown, Mayor

ATTEST:

Trish Granger, Town Clerk



Ordinance 2014-08

Zoning Board of Adjustment

Planning & Zoning Board
January 21, 2014



ZBA DUTIES

- Appeal of decision made by administrative official relating to the Zoning Code;
- Applications for Special Exception for Home Occupations and windwalls.
- Waivers from Daylight Plane regulations; and
- Variances from certain specific provisions within the Zoning Code.



ZBA Quorum

- ZBA consists of seven (7) seats.
- Due to the seasonal residency of most ZBA members, it is often impossible to raise a quorum to hear Zoning Variance requests.
- Currently two (2) vacant seats on the ZBA and only one (1) application for a seat has been received for approximately one (1) year, despite recruitment efforts.



Application Delay

- During May 2013, two (2) applications for Variance requests were received by the Planning, Zoning and Building Department.
- A quorum could not be reached until October and it was a minimum quorum requiring all members to vote in affirmative to approve a request.
- One (1) of the applicants withdrew their application.
- The other applicant chose to wait for a majority quorum to avoid the necessity to receive affirmative votes from all members present.



Other Jurisdictions

- Staff researched other jurisdictions to determine methods by which counties and municipalities in the region handle Zoning Variance requests. Staff polled 22 jurisdictions:
 - Nine (9) maintain separate ZBA entities.
 - 12 relegate the ZBA duties to another board.



Other Jurisdictions

- Of the polled jurisdictions that regulate the ZBA duties to another board:
 - 11 assign those duties to the Planning and Zoning Board/Local Planning Agency.
 - One (1) assigns those duties to the City Commission.



Proposed Revision

Subsection 158.026, Zoning board of adjustment

(G) If the board of adjustment is unable to achieve a quorum within 30 days after receipt of a matter to be acted upon by the board, the matter shall be referred to the planning and zoning board for consideration at its next available meeting after public notification is provided as required by State law and this Code. In the event a matter is referred to the planning and zoning board as a result of the board of adjustment's inability to achieve a quorum, the planning and zoning board in hearing such matter shall have all powers and duties proscribed to the zoning board of adjustment by this Code.