TOWN OF LONGBOAT KEY
ZONING BOARD OF ADJUSTMENT
MINUTES OF JANUARY 9, 2014 MEETING

The meeting of the Zoning Board of Adjustment was called to order by Vice Chair Gaele Barthold at 9:30 a.m. on Thursday, January 9, 2014.

Members Present: Vice Chair Gaele Barthold; Secretary Charles Fuller; Members Thomas Bijou, Jean White

Members Absent: Chairman Ben Feole, Member Lee Riley

Also Present: Maggie Mooney-Portale, Town Attorney; Alaina Ray, 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 new member Jean White.

Approval of Minutes
Mr. Bijou made a MOTION TO APPROVE THE MINUTES OF THE MARCH 14, 2013, ZONING BOARD OF ADJUSTMENT MEETING AS WRITTEN; seconded by Ms. White and approved by a unanimous vote.

Agenda Item 1. PETITION #1-14 by Edward and Terry Kolodzieski requesting a Variance from Section 158.155(A)(4)(b), Structures Over Water, of the Town of Longboat Key Zoning Code to construct a dock, boat lift and mooring pilings 102.00 feet from the Mean High Water Line, a variance of 52 feet, for property located at 6550 Bayou Hammock Road.

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. Kristina Tignor, representing the applicant, presented the Return Receipts to the Board.

Maggie Mooney-Portale, Town Attorney, asked if anyone had Ex Parte communications with the applicant or their agents, or visited the site, to please disclose for the record. Mr. Bijou noted he had driven by and boated near the site, while the remaining board members noted they had no contact or had visited the site.

Steve Schield, Planner, provided an overview of the request noting the location of the site was in the 'Village' area of the island; the variance requested was 52 feet where the Town Code allowed 50 feet; and, he reviewed photographs of the site and surrounding conditions.

Ms. Barthold asked if the reason for the variance was due to the low water level and sea grass beds, and the applicant wishing to access navigable water. Mr. Schield replied yes; in the subject location, the sea grass beds were healthy, and it was hoped that relocating the dock would prevent damage to those beds.

Mr. Schield continued with reviewing the bathymetric survey, which showed the water depths and location of the proposed new dock. He had met with the applicant, who originally was requesting an extension further out, but after discussion, the applicant redesigned the facility and brought the dock back to the minimum required. He noted that staff recommended approval, but with the following conditions:

1. The applicant shall apply for a building permit, through the Town of Longboat Key Planning, Zoning and Building Department. The plans submitted shall be in accordance with the proposed design submitted to the Town on December 20, 2013, as described in Staff's report.
2. The applicant shall install railings on the sides of the walkway portion of the dock to within 30 feet of the end of the dock in order to discourage docking within the sea grass areas.
3. The applicant shall apply for and receive approval from all applicable state and federal agencies for the proposed structures over water, prior to applying for a building permit. Photocopies of any final permits, as-built plans, engineer's certification, etc., required by the subject agencies, shall be submitted to the Town.

Ms. Barthold asked if the Board should also include a condition requiring placement of signs that stated, 'No Docking' or 'No Mooring.' **There was consensus to include placement of signs as a condition.**

Kristi Tignor, engineer representing the applicant, noted she had been sworn, and that the applicant agreed with the staff report and conditions, including the addition of mooring signs. She continued with reviewing the application noting:

- Sea grasses were a problem on the site
- Prior to any design work, the applicant had hired a professional land surveyor, who obtained the water depth information and sea grass limits
- Desire to improve on an existing dock facility to make the area more user- and environmentally-friendly
- The deck spacing will be half-inch spacing to allow sunlight through the deck to the sea grass
- Dock was raised to prevent shadowing
- They would be wrapping the pilings to help minimize the intrusion of the piling treatment into the water
- The structure itself was moved further away from the southern neighbor to allow a buffer for navigation to their dock
- She reviewed an aerial view of the site superimposing the proposed dock to show the impact

- They had Florida Department of Environmental Protection (FDEP) and Army Corps of Engineers approval for the longer dock that was originally proposed at 120 feet, but after working with staff, was scaled back; they have spoken to the FDEP reviewer who had no problem approving the modification to the structure

Mr. Fuller questioned the riparian line. Ms. Tignor explained it was the area that an upland property owner had for use for offshore submerged area, and they were significant in dock design, because they had to locate docks and dock structures a certain distance from the line (25 feet was required by the state). The applicant provided more distance from the northern riparian line to where any structure was proposed.

Edwina Neilon, Bayou Hammock Road, noted that she had been sworn. She asked if the option of docking the boat at a deep water facility was considered, and if the implications would result elsewhere for moving docks further out. Ms. Barthold noted that applications were reviewed on a case-by-case basis. Maggie Mooney-Portale, Town Attorney, noted the purpose of a variance was to make provisions beyond the code and to see individual applications on a case-by-case basis. Mr. Fuller asked if Ms. Neilon was in favor of, or opposed to, the variance. Ms. Neilon believed, after discussion, that her concerns had been addressed.

Hank Mastenbroek, Bayou Hammock Road, commented he had no problem with extending, or building, a new dock, but voiced concern with the illustrated riparian lines. He disagreed with Ms. Tignor's definition of 'riparian line' and noted that it was clearly an extension of the lot lines. He noted the original survey indicated a revision on 10-29-2013, and asked why the riparian lines changed. He mentioned that if you follow the riparian lines, the dock and lift would be in front of the property more than it was now proposed. He reviewed a drawing showing his interpretation of the riparian lines.

Discussion ensued on the interpretation of the riparian lines.

Ms. Barthold questioned the impact of the petition on Mr. Mastenbroek. Mr. Mastenbroek reviewed a drawing showing his property and the impact. Ms. Barthold asked if he was requesting the dock be angled more to lessen the impact on his property. Mr. Mastenbroek responded that it would improve the distance, but his problem was not with the extension of the dock, but with the boat lift. He questioned the hardship. Mr. Fuller asked if it was his contention that the dock, as shown on the sketch, was in violation of the setback from the riparian line. Mr. Mastenbroek replied absolutely; if the owner wished to move it out another 50 feet, he did not mind, but it was the boat lift that was a visual problem.

Mr. Schield noted the main intent of the variance was the extension out 52 feet, but the Board would be approving a specific plan that included a boat lift and associated pilings. Mr. Mastenbroek noted his boat dock went out 75 feet, but he did not have a lift. He voiced concern with the view impact from the subject lift, and believed the application submitted was "poorly worded and incorrect."

Ms. Ray commented the application was very narrow, and the Board was only considering the length of the dock; the application did not take into consideration the aesthetics or whether a lift was included. Concerning the riparian rights issue, staff disagreed with Mr. Mastenbroek. The riparian line was measured from a line perpendicular to a line tangent at the intersection of the side property line and the Mean High Water Line; it was measured at the angle of the seawall or shoreline. She pointed out that riparian lines had been approved by the state, and if the Town was to take this property and measure it differently, it would "throw off" all riparian rights that had been granted on previous properties.

Mr. Fuller believed the board did consider aesthetics and the impact on the neighbors. Attorney Mooney-Portale explained that riparian rights were provided under Florida Statutes and case law, and one of those protected rights was 'right to view.' However, the right to a view was the right to the view in the riparian area of the owner, and was not a right to a panoramic view. She mentioned that an owner had the right to a view in front of their property, but not the entirety of the landscape. Ms. Tignor pointed out the survey showing the riparian rights were included in the packet. There was no change in the finding of the survey to what was proposed on the site plan. She also pointed out that the original application was for a longer dock, and that dock was to project 116.88 feet with a mooring piling beyond it, for a total projection of 125.83 feet, which was approved by the state. After working with staff, the applicant agreed it could be minimized. The boat lift shown on the site plan was the same boat lift that existed today, but it showed it relocated.

Mr. Mastenbroek argued the existing dock met the requirements of the Town Code and the applicant should extend the existing dock. Ms. Barthold responded the property owners had a right to approach the Town and request a variance. The Board would take into consideration all the testimony, along with the law, to make their decision. Mr. Mastenbroek noted it was legal hardship the Board had to consider, and he believed there was no legal hardship for the request. Mr. Fuller asked if he was not opposed to the construction of extending the dock, but was opposed to the lift. Mr. Mastenbroek replied he was not opposed to the extension, or the lift in its current location, but opposed to moving the lift further out.

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

Mr. Fuller asked if the Board was only considering the dock, or also considering the boat lift. Attorney Mooney-Portale explained that the Board was considering the application before them and whatever materials were included in the agenda packet. Ms. Barthold asked staff to notate which part of the application included a lift. Mr. Schield referred to the site plan that showed the mooring pilings and boat lift. He noted that condition '1' referred to the plan and design, which included a dock, lift and mooring pilings. Ms. Barthold asked when they relocated the lift, they would require a permit, but not a variance. Mr. Schield replied correct. The condition would make the applicant adhere to the site plan that was currently in the application. Ms. Barthold asked if where it stated 'relocated boat lift,' would it assume the same or similar size lift that currently existed. Mr. Schield reiterated they would need to adhere to the configuration of the site

plan that was presented, but it did not control the power of the lift. Attorney Mooney-Portale pointed out that the Town Code had provisions that addressed boat lifts. She noted that riparian rights included the right to build a dock, but also included access rights.

Ms. Barthold noted the board had fully reviewed the Findings of Fact and Conclusions of Law contained in the staff report, along with the inclusion of the suggested conditions. She commented that if the board approved the petition, they should include the Findings, Conclusions and conditions, including the additional condition for signage.

Mr. Fuller made a MOTION TO GRANT PETITION 1-14 BASED ON THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND CONDITIONS SET OUT IN THE STAFF REPORT; INCLUDING THE ADDITIONAL CONDITION THAT THE APPLICANT POST SIGNAGE INDICATING 'NO DOCKING' OR 'NO MOORING;' seconded by Mr. Bijou and approved by a unanimous vote:

BARTHOLD:	**AYE**	**BIJOU:**	**AYE**
FULLER:	**AYE**	**WHITE:**	**AYE**

Setting Future Meeting Date.
The next meeting was tentatively scheduled for Thursday, February 13, 2014.

Adjournment.
The meeting was adjourned at 10:36 am.

Respectfully submitted,

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Charles Fuller, Secretary
Zoning Board of Adjustment