

Regular Workshop – February 18, 2014
Agenda Item #12

Agenda Item: Ordinance 2014-08 Amending Chapter 158, Zoning Board of Adjustment

Presenter: Planning, Zoning & Building Director

Summary: Due to the ongoing difficulties in reaching a Zoning Board of Adjustment (ZBA) quorum, Staff was directed to investigate options to avoid delays to applicants. Staff presented several options to the Town Commission at their Regular Workshop on November 13, 2014.

During the Workshop, Vice Mayor Brenner made the suggestion to revise the Town's Code to specify that applicant requests be sent to the Planning and Zoning Board (PZB), in the event the ZBA was unable to reach a quorum. Consensus was reached by the Commission and Staff was directed to present this option to the PZB.

The PZB held a public hearing on this item on January 21, 2014. Staff will present the Planning and Zoning Board's recommendation to the Town Commission for their consideration. Based on Staff's research since the PZB hearing, it has been determined that the PZB recommendation would require revisions to numerous sections of the Town's Code. Staff will provide the process required for the PZB recommendation, as well as the option originally proposed to PZB.

Attachments: Staff memo, dated 02-10-2014, Director to Town Manager
Memo, dated 2-11-2014, P&Z Board Chair to Town Commission
PowerPoint Presentation
Staff Report, dated 1-14-2014, Director to P&Z Board
Draft Minutes from the 1-21-2014 P&Z Board Meeting
Proposed Ordinance 2014-08 (without P&Z Board recommendation)

Recommended Action: Pending discussion, provide direction to Staff.

M E M O R A N D U M

DATE: February 10, 2014

TO: Dave Bullock, Town Manager

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

SUBJECT: Ordinance 2014-08, Amends Chapter 158, Zoning Board of Adjustment

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During the Workshop, Vice Mayor Brenner made the suggestion to revise the Town's Code to specify that applicant requests be sent to the Planning and Zoning Board (PZB), in the event the ZBA was unable to reach a quorum. Consensus was reached by the Commission and Staff was directed to present this option to the PZB.

The PZB held a public hearing on this item on January 21, 2014. Staff will present the Planning and Zoning Board's recommendation to the Town Commission for their consideration. Based on Staff's research since the PZB hearing, it has been determined that the PZB recommendation would require revisions to numerous sections of the Town's Code. Staff will provide the process required for the PZB recommendation, as well as the option originally proposed to PZB.

MEMORANDUM

DATE: February 11, 2014

TO: Honorable Mayor and Town Commission

THROUGH: Dave Bullock, Town Manager

FROM: BJ Bishop, Chair
Planning and Zoning Board

SUBJECT: ORDINANCE 2014-08, ZONING BOARD OF ADJUSTMENT
OPTIONS

During the public hearing held on January 21, 2014, the Planning and Zoning Board recommended APPROVAL of Ordinance 2014-08, with revisions, amending Chapter 158, Zoning Code, concerning options for the Zoning Board of Adjustment. The specific motion from the January 21, 2014, meeting of the P&Z Board are as follows:

MR. HIXON MOVED TO RECOMMEND THAT ITEMS 2-4 (SPECIAL EXCEPTIONS FOR HOME OCCUPATIONS AND WINDWALLS, DAYLIGHT PLANE WAIVERS, AND VARIANCES) OF THE ZBA DUTIES BE MADE A PART OF THE P&Z BOARD RESPONSIBILITIES UNTIL SUCH TIME THE TOWN COMMISSION CAN MAKE A DECISION ON AMENDMENTS TO THE TOWN CHARTER. MR. WILD SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE.

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

1. Staff Memo, dated 2-10-14, Director to Town Manager;
2. Staff Report, dated 1-14-14, Director to P&Z Board;
3. PowerPoint presentation;
4. Draft minutes from the 1-21-14 regular P&Z Board meeting on this issue; and
5. Proposed Ordinance 2014-08 (without P&Z Board recommendation).

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

BJB/dmc



Ordinance 2014-08

Zoning Board of Adjustment

Town Commission Workshop
February 18, 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 in over 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.



Staff Recommendation to P&Z

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.



P&Z Board Recommendation

Transfer all ZBA powers to the Planning and Zoning Board, except appeal of decisions made by administrative officials relating to the Zoning Code.



P&Z Recommendation

- Ordinance would need significant revisions to include the following Code Sections:
 - 156.12(A) – relating to Zoning and Sign Variances
 - 158.007(B) – relating to Zoning District Boundary Lines
 - 158.026 – relating to ZBA duties
 - 158.028(A) – relating to Special Exceptions
 - 158.029 (A) – relating to Zoning Variances
 - 158.102(L) – relating to hardships
 - 158.126 – relating to Special Exceptions
 - 158.127(E)(1) – relating to Tennis Courts
 - 158.150(D)(1)(e) – relating to Gulf Waterfront Yard Variances
 - 158.150(D)(2) – relating to Pass Waterfront Yard Variances



P&Z Recommendation Timeline

- Ordinance Adoption:
 - March 18, 2014: P&Z Board Hearing
 - April 21, 2014: Town Commission Workshop
 - May 5, 2014: First Reading and Public Hearing
 - June 2, 2014: Second Reading and Public Hearing



Staff Recommendation Timeline

- Ordinance Adoption:
 - April 7, 2014: First Reading and Public Hearing
 - May 5, 2014: Second Reading and Public Hearing
- Application Request Processing
 - If ZBA Quorum cannot be verified three (3) weeks prior to ZBA meeting date, application would be forwarded to PZB. There is a one (1) week delay between ZBA and PZB meetings.

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.

AGENDA ITEM 4
ORDINANCE 2014-08 AMENDS CHAPTER 158
ZONING BOARD OF ADJUSTMENT OPTIONS

Pursuant to published notice, the public hearing was opened.

Mr. Garner commented he had three people approach him about wishing to obtain a variance, but concerned with the unavailability of the Zoning Board of Adjustment (ZBA) members. He believed the P&Z Board had sufficient knowledge to review the variances and encouraged incorporation of the functions into the board. Chair Bishop concurred.

Alaina Ray, Planning, Zoning & Building Director, reviewed a PowerPoint presentation noting:

- The ZBA consisted of seven members, but currently there were two vacancies for which the Town has been advertising for over a year with only one person showing interest in serving and submitting an application
- Due to seasonal residency of most of the members, there was difficulty obtaining a quorum for the majority of the year
- There had been significant delays in applications being heard, with one applicant, who had a contractual purchase on a lot, backing out of a sale, because they were unable to get their petition heard
- Due to Charter language in the Town Code requiring a ZBA, the Town was required to maintain the ZBA until such time the Charter was changed
- Staff was attempting to draft a Charter change for the next election; however, the election superintendent notified the Town that they had missed the deadline, but the Town Commission would be considering placing it on a future ballot
- Staff was recommending the Town Code (Section 158.026) be revised so that if staff was unable to obtain a quorum at the ZBA level within 30 days of receipt of an application, the P&Z Board would have the authority to review the application at their next available meeting

Mr. Aitken asked if the 30 day period would include the months of July and August. Ms. Ray replied yes; the ZBA can hear variances over the summer months as they were not included in the 'Zoning Season.'

Mr. Symanski commented he had a problem with the P&Z Board reviewing all applications, but noted that a variance was suppose to be an unusual occurrence. He mentioned the problem he had with the proposal was it was "transparently" avoiding the Charter and believed there was another way to resolve it. He also thought it was contrary to Section 158.026, which noted a person appointed to the ZBA could not concurrently serve on another board. An easier way to resolve the issue was that the Charter stated the powers and duties were assigned by ordinance to the ZBA, but if the variances were a problem, then they should amend the ordinance to remove variances from the ZBA and give to the P&Z Board for review until there was an election.

Maggie Mooney-Portale, Town Attorney, commented that the statement of law concerning the ZBA was correct that a variance was based on undue hardship. The first issue raised was membership on dual boards; staff was not recommending elimination of the ZBA (they would still be in effect), but the revision would functionally allow the P&Z Board to take action if the ZBA members were not available. Mr. Symanski disagreed. He believed variances should be removed from ZBA jurisdiction and given to the P&Z Board to “make it clean.” Attorney Mooney-Portale noted that under that scenario, the Town would have a Charter that requires a ZBA, but the board would have no duties. Mr. Symanski commented he was suggesting removal of only the variance duties. Attorney Mooney-Portale commented there would be a question of whether that was bypassing the Charter.

Mr. Schneier believed the proposal was a temporary solution, but would perpetuate delays for applicants as they would first need to establish whether there was a ZBA quorum, and if not, then they would need to go to another board. He commented it would be good if the Town could avoid that. He asked if it was determined there was no legal way to avoid a two-step process until an election. Attorney Mooney-Portale explained that she had examined the issue prior to her maternity leave, and it was her understanding that the proposal was the direction the Town Commission requested to move forward with, but if there was an alternative approach, staff could bring two proposals to the Town Commission.

MR. SYMANSKI MADE A MOTION TO ALLOW COMMISSIONER JACK DUNCAN TO ADDRESS THE P&Z BOARD. MR. WILD SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

Commr. Duncan understood there was an attendance problem, but questioned if there were other reasons why the ZBA was unable to meet. He believed the Town needed to talk with the Board and find out why they were having difficulty getting a quorum. He believed the Town Commission had given little direction on the issue.

Discussion ensued on the following:

- If there had been discussion to replace the current members and find residents that were available most of the year
- The reason for the attendance issue, and if needed, that it was incumbent on the Town Commission to reconsider the people on the board and possibly replace
- Agreement that the Town could not continue with the delays in reviewing applications

Mr. Schneier informed the board that he was a member of the ZBA for 2.5 years and believed what was happening was the ZBA meetings were scheduled the

same day each month, but there might only be a couple of meetings for the year. As a member, it was difficult to plan your schedule around a meeting where most were canceled due to no petitions being filed. He mentioned that the surrounding communities had a larger pool of people wanting to be active in government, where Longboat Key was a small population where most were not year-round residents. He agreed that they had the ability on the P&Z Board to perform the function. Mr. Hixon believed the board would still exist, but relocate some of their functions, and if it was a matter of attendance, he suggested the possibility of evening meetings.

MR. WILD MADE A MOTION TO ALLOW COMMISSIONER PHILL YOUNGER TO ADDRESS THE P&Z BOARD. MR. SYMANSKI SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

Commr. Younger disagreed with Attorney Mooney-Portale that it was the only solution, and agreed with Mr. Symanski that the duties of the ZBA can be taken away, with the exception of the appeals, and given to the P&Z Board.

Mr. Symanski suggested two options: 1) amend the ordinance and take the majority of the duties away from the ZBA and give to the P&Z Board; or 2) remove the sentence in Section 158.126 regarding the ability to concurrently serve on more than one board and appoint the P&Z Board Chair. Attorney Mooney-Portale explained that suggestion '2' would be a problem under applicable state law, because there was a constitutional restriction on dual office holding, so the suggestion would run afoul of state law. Mr. Symanski believed if that was the law, it might create a problem with the P&Z Board reviewing applications if the ZBA was not available, because they would be acting as the ZBA. Attorney Mooney-Portale commented she would like an opportunity to review that issue to determine if it would be in conflict with the law.

Commr. Duncan wished to point out that he, along with Commr. Younger, provided their opinions as individuals and were not providing an opinion of the entire commission.

The following points were discussed with staff:

- Delays were not good, along with lack of commitment
- Belief that it was the Town Commission's desire to amend the Charter to eliminate the ZBA
- An amendment to the Charter would have to be voted upon by ballot and the earliest it could be was possibly August, if there was an election
- Reviewed the duties of the ZBA and questioned which duties the board wished to remove and which to remain with ZBA

Chair Bishop concurred with Mr. Symanski that the duties should be assigned to the P&Z board; the board should make their recommendation and let the Town Commission decide how to move forward. Mr. Garner believed the Town had an obligation to provide the service to the public. Ms. Ray pointed out that

historically, waivers and variances were the most common requests. Mr. Schneier suggested, after reviewing the list, to leave the Appeal of Administrative Decision to the ZBA, and the remainder, which were applications, should be given to P&Z Board. Mr. Symanski asked if the advertisement for this hearing was broad enough for the P&Z Board to make the amendments, or did it need to go to the Town Commission and then brought back to P&Z Board. Attorney Mooney-Portale responded that notice was provided that this section was potentially going to be amended, so any amendments made did not have to be brought back to the board, unless the Town Commission sent it back to the board.

Chair Bishop suggested the P&Z Board recommend that the P&Z Board would be responsible for the duties of reviewing the applications for special exceptions for home occupations and windwalls, Daylight Plane waivers, and variances. Mr. Symanski believed they were limiting it to variances and waivers. Mr. Schneier reiterated that all the items, with the exception of the appeals, be given to P&Z Board. Mr. Hackett commented that if the objective was to diminish the ZBA duties completely, then all the duties listed would come to the P&Z Board. Discussion ensued on which duties should be reassigned to the P&Z Board.

MR. HIXON MOVED TO RECOMMEND THAT ITEMS 2-4 (SPECIAL EXCEPTIONS FOR HOME OCCUPATIONS AND WINDWALLS, DAYLIGHT PLANE WAIVERS, AND VARIANCES) OF THE ZBA DUTIES BE MADE A PART OF THE P&Z BOARD RESPONSIBILITIES UNTIL SUCH TIME THE TOWN COMMISSION CAN MAKE A DECISION ON AMENDMENTS TO THE TOWN CHARTER. MR. WILD SECONDED THE MOTION.

Mr. Garner suggestion that the word 'interim' be included in the motion. Mr. Symanski questioned the use of the word 'interim.' Mr. Garner explained that while the Town was continuing to search for a solution to the issue, the motion provided an interim provision until the Town Commission made a decision. Chair Bishop did not believe there was a need to include the word 'interim.' Mr. Wild agreed that the word 'interim' was not needed.

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

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



End of Agenda Item