

## M E M O R A N D U M

**DATE:** February 21, 2014

**TO:** Dave Bullock, Town Manager

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

**SUBJECT:** Ordinance 2014-07, Amends Chapter 158, Special Exception Uses

Section 158.126(B) of the Town of Longboat Key Zoning Code specifies that Special Exception uses expire 12 months after the uses are granted, if those uses have not commenced by that time. Special Exceptions have often been granted for uses which did not require construction activities; for example, outdoor dining when commencement of the use entailed moving tables and chairs to an existing outdoor area. In these instances, commencement of the use was easily accomplished within the 12-month period. However, when Site Plan approval and/or construction activities are necessary in order to accommodate uses granted by a Special Exception, 12 months may not be sufficient time to navigate the Site Plan approval process, obtain building permits, and complete construction.

The Planning and Zoning Board held a public hearing on this item on January 21, 2014, and as a result, are recommending revisions to Section 158.126(B), Expiration, including extending the expiration to 24 months to coincide with the site plan approval expiration.

The Town Commission reviewed the Planning and Zoning Board's recommendation at their February 18, 2014 Regular Workshop Meeting, and after discussion, requested the ordinance be forwarded, as recommended by the Planning and Zoning Board, for first reading and public hearing at the March 3, 2014 Regular Meeting.

## MEMORANDUM

**DATE:** February 6, 2014

**TO:** Honorable Mayor and Town Commission

**THROUGH:** Dave Bullock, Town Manager

**FROM:** BJ Bishop, Chair  
Planning and Zoning Board

**SUBJECT:** ORDINANCE 2014-07, AMENDS CHAPTER 158, SPECIAL  
EXCEPTIONS

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During the public hearing held on January 21, 2014, the Planning and Zoning Board recommended APPROVAL of Ordinance 2014-07, with revisions, amending Chapter 158, Zoning Code, Section 158.126(B), Expiration, of the Town of Longboat Key Code of Ordinances. The specific motion from the January 21, 2014, meeting of the P&Z Board are as follows:

**MR. GARNER MOVED TO RECOMMEND APPROVAL OF ORDINANCE 2014-07, AS REVISED. MR. AITKEN 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 Report, dated 1-14-14, Director to P&Z Board;
2. PowerPoint presentation;
3. Draft minutes from the 1-21-14 regular P&Z Board meeting on this issue; and
4. Proposed Ordinance 2014-07.

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

BJB/dmc

## MEMORANDUM

DATE: January 14, 2014

TO: Planning and Zoning Board

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

SUBJECT: Ordinance 2014-07 Special Exception Expirations

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### Background

Section 158.126(B) of the Town of Longboat Key Zoning Code specifies that Special Exception uses expire 12 months after the uses are granted, if those uses have not commenced by that time. Special Exceptions have often been granted for uses which did not require construction activities; for example, outdoor dining when commencement of the use entailed moving tables and chairs to an existing outdoor area. In these instances, commencement of the use was easily accomplished within the 12-month period. However, when Site Plan approval and/or construction activities are necessary in order to accommodate uses granted by a Special Exception, 12 months may not be sufficient time to navigate the Site Plan approval process, obtain building permits, and complete construction.

### Analysis

Section 158.126 does provide a mechanism for the Town Commission to grant an extension to Special Exception uses. The maximum extension currently allowed by Code is an additional six (6) months. In cases where construction is required, an applicant could still face an expiration of the Special Exception before the granted uses commenced, with no provision available in the Code to seek an additional extension. This could leave a property owner in the difficult position of having expended considerable funds on construction to accommodate a use that becomes invalid prior to construction being finalized. The only option would be to then apply for a new Special Exception.

In an effort to provide adequate time for Special Exception uses to commence when Site Plan approval, building permitting, and construction processes are required, staff identified multiple options, including:

1. Revise Section 158.126(B) to allow more time before Special Exception uses expire. As an example, Site Plan approvals expire 24 months after approval is granted, if a building permit has not been granted by that time.
2. Revise Section 158.126 to allow a Special Exception to remain valid if an applicant is actively pursuing Site Plan approval, building permits, or is under construction to accommodate the uses granted by the Special Exception.
3. Add language to provide a mechanism for additional extensions.

During the Town Commission Regular Workshop on November 13, 2013, Staff presented this issue as a discussion item to the Town Commission. Staff was directed to draft language that would lengthen the expiration timeframe from 12 to 24 months and to remove language restricting the Town Commission's extension authority to six (6) months.

**Conclusion**

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

# TOWN OF LONGBOAT KEY



## **Ordinance 2014-07 Special Exceptions Expiration**

**Town Commission Meeting  
March 3, 2014**

# TOWN OF LONGBOAT KEY



## SECTION 158.126(B)

- Section 158.126(B) of the Town of Longboat Key Zoning Code specifies that Special Exception uses expire 12 months after the uses are granted, if those uses have not commenced by that time.
- This expiration provision could present difficulty for property owners when construction needs to occur to accommodate the Special Exception uses.

# TOWN OF LONGBOAT KEY



## Examples

- Special Exception for outdoor dining when commencement of the use entails moving tables and chairs to an **existing** outdoor area. In these instances, commencement of the use is easily accomplished within the 12-month period.
- Special Exception for outdoor dining for a building that has **yet to be constructed or renovated** (new/remodeled restaurant). Twelve months may not be sufficient time to navigate the Site Plan approval process, obtain building permits, and complete construction.

# TOWN OF LONGBOAT KEY



## Extension Provision

- Section 158.126 provides a mechanism for the Town Commission to grant an extension to Special Exception uses.
  - The maximum extension currently allowed by Code is an additional six (6) months.
  - In cases where construction is required, an applicant could still face an expiration of the Special Exception before the granted uses commenced, with no provision available in the Code to seek an additional extension.

# TOWN OF LONGBOAT KEY



## Planning & Zoning Board Recommendation

### Subsection 158.126, Special Exception Uses

(B) Expiration. Any special exception shall expire ~~12~~ the later of 24 months from the date of grant, or the date of the site plan expiration, as applicable, if by that date the use for which the special exception was granted has not been commenced, unless appealed and extended by action of the town commission. An appeal for extension shall show that commencement of the use is being actively pursued by evidence of an application for a building permit, preliminary plat, or site and development plan, or other evidence satisfactory to the town commission; ~~said extension shall not exceed six months.~~

AGENDA ITEM 3  
ORDINANCE 2014-07 AMENDS CHAPTER 158  
SPECIAL EXCEPTION EXPIRATIONS

Pursuant to published notice, the public hearing was opened.

Ms. Ray discussed there had been issues with special exceptions that had been previously approved, but then expired prior to the applicant utilizing the uses. She explained the Town Code only allowed 12 months from the date a special exception use was approved for the use to be utilized by the applicant. She noted it was typically not a problem when most of the applications involved outdoor dining in areas that already existed, but staff was now finding they were receiving applications for special exception uses for things not yet constructed. She mentioned that most applicants wished to obtain approval for the special exception use prior to submitting an application for site plan approval so they would know if they could get approval for the uses prior to site plan. A site plan had 24 months from date of approval before it expired, and what was happening was by the time the site plan was approved, and the applicant began construction, the special exception would have expired. The code did allow the Town Commission to extend the special exception for six months and nothing after that; the applicant would have to come back through the approval process. Ms. Ray noted the proposed revision was to change the expiration to 24 months to coincide with site plan approval, but also to remove the last sentence in Section 158.126 which said the extension would not exceed six months.

The following points were discussed with staff:

- The proposed revision would only apply to future applications
- The approach of tying special exceptions to other approvals was necessary, but the only issue with the language was to see it tie into any other approval that was for the same project, such as building permits, site plan approvals, etc.
- Belief that if the permit was granted that it would extend the approval at that time; however, it was noted that only the site plan approval would be extended and not the special exception as the Town Commission would determine whether the permit was being actively pursued.

Maggie Mooney-Portale, Town Attorney, suggested revised language to state, "any special exception shall expire **the later of** 24 months from the date of grant, **or the date of the site plan expiration, as applicable,** unless appealed and extended by action of the town commission if by that date the use for which the special exception was granted has not been commenced."

Mr. Symanski did not agree with the paragraph and the way it was written. He believed it meant that the application was automatically extended. Ms. Ray responded that it was not tied to a building permit, but tied to commencement of use. Mr. Symanski requested that the paragraph be further "wordsmith" prior to forwarding to Town Commission.

**MR. GARNER MOVED TO RECOMMEND APPROVAL OF ORDINANCE 2014-07, AS REVISED. MR. AITKEN SECONDED THE MOTION.**

Mr. Schneier suggested that the words, "*unless appealed and extended by action of the Town Commission,*" be placed at the end of the sentence. Ms. Ray noted that the word 'applicable' was added prior to the words 'site plan' in order to tie it into the special exception.

Mr. Garner and Mr. Aitken both accepted Mr. Schneier's and staff's suggestion.

**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 2014-07**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING CHAPTER 158, ZONING CODE, SECTION 158.126: SPECIAL EXCEPTION USES; 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 158.126, Special exception uses, regulates uses that may be permitted within the Town based on findings of fact by the Planning and Zoning Board; and

**WHEREAS**, Section 158.126, Special exception uses, specifies that any special exception use shall expire 12 months from the date of grant, unless appealed and extended by the Town Commission, if by that date the use for which the special exception was granted has not been commenced; and

**WHEREAS**, special exception uses that require new construction and/or renovation of existing structures in order to be accommodated may be unable to commence prior to the stated expiration date; 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 158.126, Special Exception Uses

(B) Expiration. Any special exception shall expire the later of 12 24 months from the date of grant, or the date of the site plan expiration, as applicable, unless appealed and extended by action of the town commission, if by that date the use for which the special exception was granted has not been commenced. An appeal for extension shall show that commencement of the use is being actively pursued by evidence of an application for a building permit, preliminary plat, or site and development plan, or other

evidence satisfactory to the town commission; ~~said extension shall not exceed six months.~~

**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, public hearing, and adoption in accordance with law and the charter of the Town of Longboat Key.

Passed on the first reading and public hearing 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**