

TOWN OF LONGBOAT KEY
ZONING BOARD OF ADJUSTMENT
MINUTES OF APRIL 10, 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, April 10, 2014.

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

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 Larry Linhart.

Election of Chairman.

Mr. Fuller made a MOTION TO NOMINATE GAELE BARTHOLD AS CHAIRMAN; seconded by Mr. Bijou.

There were no other nominations, and the nominations were closed.

Motion carried on roll call vote:

BARTHOLD:	AYE	LINHART:	AYE
BIJOU:	AYE	WHITE:	AYE
FULLER:	AYE		

Vice-Chairman

Mr. Fuller made a MOTION TO NOMINATE LARRY LINHART AS VICE-CHAIRMAN; seconded by Ms. Barthold.

There were no other nominations, and the nominations were closed.

Motion carried on roll call vote:

BARTHOLD:	AYE	LINHART:	AYE
BIJOU:	AYE	WHITE:	AYE
FULLER:	AYE		

Secretary

Ms. Barthold made a MOTION TO NOMINATE CHARLES FULLER AS SECRETARY; seconded by Mr. Bijou.

There were no other nominations, and the nominations were closed.

Motion carried on roll call vote:

BARTHOLD:	AYE	LINHART:	AYE
BIJOU:	AYE	WHITE:	AYE
FULLER:	AYE		

All those testifying at this hearing were sworn at this time.

Agenda Item 1. Overview of Responsibilities and Process for Zoning Board of Adjustment

Alaina Ray, Planning, Zoning & Building Director, provided an overview of Town Code Section 158.127 outlining the responsibilities of the Zoning Board of Adjustment (ZBA) and what applications they hear.

Maggie Mooney-Portale, Town Attorney, expanded on Ms. Ray's overview noting:

- The board members were serving in a quasi-judicial capacity
- The standard of review by the board was evaluated by a review of the court
- Decisions were to be based on competent, substantial evidence
- The board should adhere to Town Code Sections 158.026 and 158.029
- The Town Attorney represented the board for purposes of the proceedings

Attorney Mooney-Portale reviewed how the meeting should be conducted; discussed the board make-up and the proposed ordinance that was contemplating reducing the number of board members; and reviewed how a vote should be taken in accordance with the Town Code.

Conflicts of Interest and Ex-Parte Communications

Attorney Mooney-Portale discussed what qualified as a conflict of interest and ex parte communications, and that it not only applied to the board member, but also their family.

Mr. Fuller noted he had a lot of legal questions, and he would agree to continue the hearing if the Town Attorney needed to research. Attorney Mooney-Portale responded if the board chose to continue, they would need to continue to a date / time certain since the hearing has been noticed.

Mr. Bijou noted that each application stood on its own merit. Attorney Mooney-Portale replied that was correct. Mr. Linhart commented there were a number of items in the document that discussed prior action. Attorney Mooney-Portale explained one of the code requirements dealt with the issue of hardship to justify the granting of a variance. Consideration of the history could be made; however, each application stands on its own, each is unique.

Approval of Minutes

Ms. White made a MOTION TO APPROVE THE MINUTES OF THE FEBRUARY 13, 2014, ZONING BOARD OF ADJUSTMENT MEETING AS WRITTEN; seconded by Mr. Bijou and approved by a unanimous vote.

Chair Barthold commented that any materials not submitted with the Applicant's application, and the applicant wishes to have considered by the board, must be received by the Town at least 15 business days prior to the hearing. She had received several letters in the past few days and wished to determine if they were timely received in order to make them part of the record. Staff noted they were timely received.

Agenda Item 3. PETITION #3-14 by Jane Wittlinger requesting a Waiver from Section 158.153(C), Daylight Plane Regulations, of the Town of Longboat Key Zoning Code to increase the maximum allowable 53-degree Daylight Plane angle to 65 degrees at the westerly property line to allow for construction of a new residence for property located at 585 Channel Lane.

Maggie Mooney-Portale, Town Attorney, asked if any of the board members had a conflict of interest with this petition. No conflicts were noted.

Attorney Mooney-Portale asked if any board members had any Ex-Parte communications.

- Mr. Linhart noted he had visited the site and noted it appeared to be a vacant lot with no existing structures
- Mr. Fuller and Mr. Bijou also noted they had visited the site.

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. Jon Coulthurst, representing the applicant, had previously submitted the Return Receipts to the Board.

Steve Schield, Planner, reviewed the staff report noting:

- The site had previously contained a single-family residence that was constructed in 1972, which was prior to the establishment of the Daylight Plane ordinance
- The applicant was proposing to construct a new, two-story, single-family residence on the bay
- The lot area of the site was approximately 10,153 square feet, and the new structure was proposed to be 2,966 sq.ft.
- The proposed structure would have 29 percent lot coverage
- The Bay Harbour Condominium was located 170 feet from the subject lot
- The proposed structure was proposed to be eight feet from the side property line with a 30 foot rear setback from the bay

Mr. Schield continued with reviewing a PowerPoint showing the conditions of the site. Chair Barthold discussed the angle that was in question and asked which section of the home was being impacted. Mr. Schield responded he believed it would be a bedroom on the second floor that would be impacted if they had to structurally change the house. Mr. Linhart noted that staff had mentioned that a FEMA compliant home could be constructed without a waiver. He asked how staff determined that and what type of home could be constructed. Mr. Schield explained that since it was a new home they were not constricted as if there was an existing structure. They would need to “slide in” the second story to comply with the Daylight Plane, which could be done since the lot was vacant. Mr. Linhart referred to the statement noting a prior variance for 11 degrees was granted on another property. Mr. Schield replied it was for an existing home.

Discussion ensued on the following points:

- Whether the owner could include dormers and if they would be within the code; staff noted yes, but if the angle was reduced down to 12 feet
- That the 20-foot strip of land shown was owned by the adjacent condominium association

Fred Wittlinger, applicant’s representative, discussed their application and noted:

- The goal was to enhance the area
- When they first acquired the property they knew they would have to renovate
- Discussed the need to be FEMA compliant
- There was a visible difference to the adjacent property, which was 150 feet away
- They had discussed the proposal with their neighbors on the street, and they were in agreement with the proposal

Mr. Fuller discussed that one of the criteria for granting was the presence of a hardship. Mr. Wittlinger pointed out that the hardship was not being able to construct a sufficient size home that was FEMA compliant. Mr. Linhart asked if the law required granting of a variance if the board found certain factors existed, along with a hardship; or that the board was permitted to give a variance if those things were concluded. Attorney Mooney-Portale explained the way the law worked was if the board was going to find that an application met the criteria for granting of a variance, it needed to be based on competent, substantial evidence. She pointed out that what was not a hardship was something that was self-created, such as economic disadvantage or not unique to a particular property. Mr. Schield pointed out this application was for a waiver, which had different criteria than a variance. Attorney Mooney-Portale reviewed the waiver criteria that should be considered. Chair Barthold asked to what extent it would be subjective. Attorney Mooney-Portale discussed that the board had the ability to grant a waiver with or without conditions, and that if it was granted, then it would run with the land.

John Coulthurst, agent representing the applicant, explained the design was due to the uniqueness of the property. The street ended in the corner of the property, and the design was laid out so a vehicle could turn in/out of a garage. There was no adjacent

house or building to the north, but there was a home to the south; however, on the rear property line, they would look past the Daylight Plane. He commented if the design was changed to meet the daylight plane, it was possible to increase the pitch and change the overhangs. The building was set back 25 feet from the south property line, so any decrease by moving the structure would result in an impact.

Mr. Linhart questioned the use of dormers and whether they could still have the square footage for the bedroom in order to comply. Mr. Coulthurst responded they would have to change the configuration of the floor plan, because they would need space for the bedroom, bathroom, closet, and hall space. Chair Barthold pointed out that it looked like it would not impact the floor space if a dormer was placed in the area of the daylight plane. Mr. Coulthurst explained the dormer would add 108 square feet. Mr. Bijou asked how many square feet would the request add to the floor plan. Mr. Wittlinger responded there would be a difference of 500 square feet of area.

Discussion ensued on the following items:

- If the board could find that it would be an inordinate burden on the property owner; inordinate burden would be particular to the land owner and that is what needs to be found; it was a finding of fact that would need to apply
- If the applicant could not get a waiver, would they be able to accommodate the revisions in other areas; due to the fact of how the street dead ends and how low the property was, there was a need to accommodate drainage
- If they moved the square footage in more, it would change the structure
- The applicant took the various scenarios into consideration and when they talked with staff, they discussed getting a waiver

Allen Fishbein, Bay Harbour, commented they were not questioning the statement with regard to the return receipts that were mailed, but noted that he was president and had not received notice. They were notified last week of the hearing and had letters in opposition.

Paul Olah, attorney representing Bay Harbour Association, understood the applicant was allowed to build a house, but as they reviewed the staff report, there were concerns. He discussed the view impact to the Bay Harbour condominiums. Mr. Linhart pointed out even if the applicant redesigned the home, FEMA requirements pushed the design up, which would still impact the view. Mr. Olah responded that the Town had never granted a 12 degree waiver; he believed the structure could be shifted over and impact the view more. Attorney Mooney-Portale noted whatever waiver was given would be based on the specific plans presented to the board. Chair Barthold asked if after hearing that clarification was there less concern about the view impact and the discussion of the dormer. Mr. Olah believed it would have less impact, and noted the applicant was in a position to have flexibility since the lot was vacant.

Concerning the issue of notification for Bay Harbour, Ms. Ray noted the notice was sent to the president and secretary in care of the association's management company.

Attorney Mooney-Portale pointed out the code required the notice only be sent to the president and secretary of the association.

Mr. Fishbein, representing Bay Harbour, requested permission to submit a petition signed by unit owners, along with letters, into the record. Chair Barthold asked if Mr. Fishbein was stating that if the board accepted the letters into the record they would waive their objection to improper notice. Mr. Fishbein responded they would not pursue a legal argument that they did not receive proper notice. Attorney Mooney-Portale replied she was comfortable with that.

Mr. Fuller made a MOTION TO ACCEPT THE PETITION AND LETTERS AS TIMELY SUBMITTED; seconded by Ms. White. Motion carried on roll call vote:

BARTHOLD:	AYE	LINHART:	AYE
BIJOU:	AYE	WHITE:	AYE
FULLER:	AYE		

Mr. Linhart believed, in the future, the notices should be sent to the statutory agent. Attorney Mooney-Portale noted the code also stated there was discretion to notice each unit owner or cooperative unit owner. Discussion ensued on providing notice to statutory agents.

Mr. Coulthurst continued his review pointing out that the pool was at-grade with no cage. Concerning the dormer, they would be allowed to put a 12-foot wide dormer all the way to the water and the view would not change. Discussion ensued on:

- The height of the structure and its impact on the intersecting angle
- Reviewed different areas where the Daylight Plane could be modified
- Reducing the degree of waiver
- Installation of the dormer
- That the view would still be impacted with the dormer
- That in the recommended Findings of Fact it stated the proposed waiver did not impact the condominiums and whether anything changed staff's opinion; staff believed the property could be redesigned where it would affect the view.

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

Mr. Bijou voiced concern with granting a waiver when it could be redesigned without a waiver; however, he did not know what the impact would be to the adjacent properties. Ms. White agreed with the statement. Mr. Fuller pointed out the differences between a waiver and variances; if any change or redesign did not provide a difference, what was the burden on the applicant to redesign the structure. Mr. Linhart responded whether the board granted the waiver, or not, there could still be a tall building. Chair Barthold commented it seemed that denying the waiver would create a hardship for the owner to redesign, with the peculiarities of the lot and FEMA regulations; there will still be an impact on the view even if the waiver was not granted. Attorney Mooney-Portale

reminded the board of the waiver application criteria; they need to ensure it was clear as to which criteria applied to this applicant. Chair Barthold noted her opinion on the waiver criteria.

Mr. Fuller asked if council would prepare the wording if the board granted the waiver so it was limited to the specific building discussed. Attorney Mooney-Portale explained the board could grant the waiver specific to the plans before the board; or, they could grant with or without conditions. The condition would be that approval be subject to only this design before the board; the waiver was specific to the plans before the board and not for future additions or future plans that may change.

Mr. Fuller made a MOTION TO GRANT THE WAIVER SUBJECT TO THE FINDINGS OF FACT AND THAT THE WAIVER APPROVAL BE LIMITED TO THE PLANS PRESENTED TO THE BOARD AT THIS HEARING AND NOT FOR FUTURE ADDITIONS OR FUTURE PLANS THAT MAY CHANGE; seconded by Ms. White.

Ms. White believed the house plan was still in motion and voiced concern the plans would be changed. She pointed out the plans before the board did not include the swimming pool. Mr. Linhart agreed; when conditioned on these plans, the plan should include the ground level pool without a cage, which was one of the concerns raised by Bay Harbour. Mr. Bijou asked if the fact they were granting a waiver was taking away a view that someone was entitled to. Chair Barthold thought what the board had established was even if they did not grant the waiver the impact on view would be the same.

Chair Barthold reopened the public hearing.

Mr. Schield provided a visual of the former conditions on the site. He noted that with the new design the view for the first floor condominium units at Bay Harbour would slightly improve; however, he pointed out whatever the view, it would be impacted by the proposed building. Mr. Bijou believed the board did not have sufficient information to determine what the view impact would be. Mr. Schield explained that by restricting the applicant to the current plans, the board was ensuring a setback of 30 feet versus 20 feet allowed. Chair Barthold commented the proposed Finding was that whether the board did or did not approve the waiver, the same impact could occur on the view even without the waiver by virtue of moving the home. Mr. Schield noted it could result in a greater impact. Mr. Olah reiterated that the association was asking for something to be done that would have less impact.

Discussion continued on:

- if a ten foot and nine foot ceiling would have less impact
- Historically, the Town had not granted a 12-degree waiver
- If there would be a greater impact if the applicant chose to build without a waiver, because the building would be moved further with a dormer, which would have a more detrimental effect; certain units would have a greater impact and others would have less

- That denial of the waiver and allowing the applicant to proceed without any change would allow them to come forward with plans that would be more detrimental to the views of the condominium
- If the footprint were shifted it would be more of an impact to the lower level units, but less impact to third floor units
- That due to FEMA regulations, the view would be impacted regardless of a waiver

Chair Barthold closed the public hearing.

Motion carried on roll call vote:

BARTHOLD:	AYE	LINHART:	AYE
BIJOU:	NO	WHITE:	AYE
FULLER:	AYE		

The Board recessed from 11:37 AM – 12:00 PM

Chair Barthold noted that Mr. Bijou no longer wished to participate in this hearing and was resigning from the ZBA effective immediately.

Agenda Item 4. PETITION #5-14 by Diane Goll requesting a Variance from Section 158.145 of the Town of Longboat Key Zoning Code to increase the allowed building coverage from 25 percent to 30 percent to allow construction of a new single-family residence, for property located at 321 North Shore 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. Diane Goll, the applicant, presented the Certified Receipts to staff on 3-27-2014.

Chair Barthold opened the hearing and announced that the board would be recessing for lunch and will reconvene at 1:30 PM.

Maggie Mooney-Portale, Town Attorney, asked if any of the board members had a conflict of interest with this petition. No conflicts were noted.

Attorney Mooney-Portale asked if any board members had any Ex-Parte communications.

- Mr. Linhart noted he had visited the site on 4-9-2014 and walked the neighborhood.
- Ms. White noted she had no Ex-Parte communications.
- Chair Barthold mentioned she had visited the site and drove the neighborhood.
- Mr. Fuller also noted he had visited the site.

Attorney Mooney-Portale reminded the board to approve any petition for variance, the vote would need to be by an unanimous vote of all four remaining members. If the vote was not unanimous, then the proceedings would be continued to another hearing.

Michael Furen, attorney representing the applicant, discussed that he had talked with Don Hemke, attorney representing Tom Munsell/Sue Degennaro and Wendi Bundy/Maureen Merrigan, concerning procedural matters. He requested that the Town's file and staff report/recommendation, the Longboat Key Comprehensive Plan and Future Land Use Map, Town Zoning Code and Official Zoning Map, Google Earth photographs, and certain property appraiser records and aials be a part of the record. Attorney Hemke voiced no objection.

Steve Schield, Planner, provided an overview of the request noting:

- The applicant proposed a 2,690 square foot single-family residence
- Maximum lot coverage in R-3SF zoning district is 25 percent, which would equate to a 1,490 square foot footprint; however, the R-3SF district required a minimum footprint of 1,600 square feet
- The applicant cannot meet both requirements without a variance, and without a variance the lot is unbuildable
- Applicant exceeds all required setbacks
- Another option for the variance would be to waive the minimum 1,600 square foot footprint requirement and allow the 1,490 square foot footprint
- Waiver of the minimum square footage requirement could result in the applicant potentially increasing the square footage on the second floor to compensate for the loss of square footage on the first floor; this option would require a new hearing, new advertising and notification
- The lot was a legal, non-conforming lot of record, having been originally and legally platted in the early 1900s and prior to the adoption of the 1984 Comprehensive Plan Amendment
- The applicant was requesting a 1,740 square foot footprint, or 29.2 percent lot coverage, which was a reduction of their 2011 request

Mr. Schield continued with reviewing the Recommended Findings of Fact contained in the staff report.

Discussion ensued on the following points:

- If the plans were showing 29.2 percent lot coverage, why was the applicant requesting 30 percent; staff noted it was to provide flexibility
- If the board decided to go with the alternative variance, they would have to schedule a new hearing, provide new advertising and notification
- The alternative variance would be from Section 158.145, but instead of a variance from lot coverage, it would be a variance from the minimum footprint requirement; the board could reduce the lot coverage at this hearing

- The proposed residence would meet all other zoning requirements, with the exception of the coverage
- Understanding Finding of Fact 6, how was the variance for 301 North Shore Road justified, because 301 North Shore Road was granted a higher lot coverage percentage even though it met the minimum 1,600 square foot requirement; staff noted the property was not granted a variance to increase the lot coverage, but granted a variance from the setback requirements with a condition that they would have to meet the minimum 1,600 square foot requirement
- That the Zoning Board of Adjustment (ZBA) allowed changes for 301 North Shore Road with regard to setback and in allowing those changes it was conditioned upon a 1,600 square foot footprint; staff had reviewed the permit and construction plans, which showed steps, balconies, raised decks, etc., which counted in lot coverage
- That the 301 North Shore Road property had built the structure at 27.5 percent lot coverage without a variance; Attorney Mooney-Portale noted she would need to review the issue to determine if there was a right of recourse

Mr. Schield continued his presentation with reviewing a PowerPoint showing the site conditions.

Mr. Fuller pointed out that from the aerial photographs, it looked as though the trees were on the subject property. Mr. Schield responded the canopy of the trees hung over onto the subject lot. He explained that the proposed residence would be similar to the one constructed on 301 North Shore Road, but will be higher due to FEMA regulations, which have changed since 301 North Shore Road was constructed. He pointed out that the lots at 350 North Shore Road and 300 North Shore Road were on the pass and ranged from 19,000 square feet to 20,000 square feet.

The board continued discussion on the following:

- Although the petition was requesting 30 percent lot coverage, would it be agreeable to allow a variance for 27 percent
- Whether that percentage was the minimum necessary to allow reasonable use of the property (staff noted it would be)
- Question of whether the board could revise the request at this hearing with Attorney Mooney-Portale noting the hearing would have to be re-noticed if the applicant wished to request a waiver from the minimum square footage requirement
- That the board could reduce the first floor to 27 percent at this hearing

Attorney Mooney-Portale reiterated that the variance before the board concerned lot coverage requirements, and in order to obtain a waiver from the 1,600 square foot requirements, it would require another hearing as it would be considered a new variance. She continued with reviewing the code requirements and the options available to the board.

Attorney Furen questioned staff concerning other uses in the area other than single-family to which staff pointed out on Google Maps the multi-family uses.

Attorney Furen commented on the following:

- This was not a typical variance; it was a “pure variance,” and the applicant was not seeking “economic enhancement”
- A variance was necessary to have any reasonable use of the property; without a variance the owner could not build on the lot
- The problem existed due to two unintentional conflicts with the Zoning Code – one being that the Zoning Code required, in this zoning district, that a minimum footprint of the first floor was required to be 1,600 square feet
- Another provision in the Zoning Code states an owner could only have a maximum building coverage of 25 percent, which did not meet the 1,600 square foot requirement
- Even with a variance, as proposed, the footprint would be considerably less than other homes in the area

Attorney Furen noted that the applicant wants to be a good neighbor and accommodate the neighbor’s desire for a smaller home; the applicant would agree to formally accept the staff recommendation of 27 percent maximum building coverage, which would result in a minimum 1,600 square foot footprint on the lot.

Chair Barthold pointed out that if the board agreed with the variance, the applicant would be bound by the minimum 1,600 square foot footprint and maximum building coverage of 27 percent.

Concerning the amount of case law that was presented by Attorney Hemke, Attorney Furen noted they were not controlling in any way when applied to the factual case; they were not applicable and did not apply to this application. He entered into the record his responses to Attorney Hemke’s cases noting they did not involve a variance application where a variance was necessary. They involved cases to enhance the value of property, or give economic advantage, and not a variance necessary to make any reasonable use of property.

Diane Goll, applicant, provided a brief bio of her family and the background in purchasing their lot. Attorney Furen provided a photograph of the subject lot.

Glenn Goll, co-owner of 321 North Shore Road, addressed the issue of the trees and noted that if they required trimming, he would ensure they were trimmed professionally.

Mr. Fuller noted that Attorney Furen would be submitting legal briefs that the Board had not had a chance to review. Attorney Mooney-Portale pointed out there were no restrictions in the Town Code so the board could accept. She mentioned that the submittal appeared to be counter arguments to case law cited by Attorney Hemke. Attorney Furen explained that the purpose of his submittal was to ensure something was

in the record to support his oral argument that none of the case law cited by Attorney Hemke supported the opponent's position.

Charles Streich, 431 North Shore Road, asked if the board was stating they would accept Attorney Furen's submittal without reviewing. Chair Barthold asked Attorney Mooney-Portale if the board should recess to read the case law. Attorney Mooney-Portale explained that it was not a pre-requisite for the board to read case law; the purpose of the board was to review the Town Code and apply it with respect to variances. There was not an expectation that the board read every case that was cited by each of the attorneys, but the board could if they chose. Mr. Streich withdrew his concern.

Chair Barthold briefly left the meeting at this time, which resulted in no quorum present. The meeting was placed on hold until her return.

Mr. Streich continued voicing his objection to the petition.

Deborah Thompson, seasonal visitor, asked to read a letter from Wendi Bundy, owner of 301 North Shore Road, into the record. There was consensus that since the board had previously received, and read, the letter from Ms. Bundy, which was part of the record, there was not a need to read it into the record.

Lynette Emmons, 450 Firehouse Court, noted that she had also looked at the lot, but did not wish to place a house on a small lot, and purchased a smaller home elsewhere. She requested that the variance be denied.

Attorney Furen asked if Ms. Emmons believed the home located at 301 North Shore Road was a "monstrosity." Ms. Emmons responded that she had hoped it would have been smaller, but it did have vegetation surrounding it.

Laura Forecki, 450 Firehouse Court, submitted a petition that was signed by all the neighbors in the neighborhood opposing the variance. She voiced concern with building on a lot that she considered unbuildable and requested the variance be denied.

Mr. Linhart commented that if the board denied the application, the owners had a right to get a waiver from the minimum square foot requirement, which meant they would be forced to build a taller structure up to the maximum allowable height. Chair Barthold explained that the board had an obligation to apply principles of law with regard to owner's rights to the land and as the law states, the variance had to be the minimum variance that would allow the reasonable use of the land. The lot was platted years ago, and due to Town regulations, it could not meet all the requirements, but it did not make it unbuildable. Attorney Mooney-Portale replied that was correct.

Bob Fletcher, 301 North Shore Road, stated he was representing Maureen Merrigan, who opposed the variance request, and he also submitted a letter from North Gate Condominium owner, Eloy Burciaga, who also opposed the variance.

Tom Munsell, 361 North Shore Road, spoke in opposition to the variance and pointed out that the lot coverage for the home at 301 North Shore Road was 25 percent, and concerning the trees, there was only ten feet of side yard, which would require the destruction of the trees in order to construct a fence.

In response to the concerns with height, Mr. Schield explained that the FEMA regulations required the home to be raised 15 feet, which was the minimum in that velocity zone. The grade at the lot was 6-8 feet, and the applicant would be allowed to build 30 feet above that. He continued with reviewing the plans and elevations of the proposed structure.

Discussion ensued on the following:

- Mr. Munsell pointing out that the drawing was at the maximum height
- Height was 30 feet from the flood elevation; 15 feet was the required flood elevation for FEMA regulations
- The proposal included a pitched roof, but if the applicant chose to install a flat roof, they could increase the height
- That flat roofs were allowed and met hurricane codes
- This home could have higher ceilings and still be within the maximum height requirements
- The home could be redesigned, and meet all hurricane and building codes and still have a maximum height of 45 feet

Mr. Munsell disagreed with the figures stated by staff. He noted he was representing Sue Degennaro (361 North Shore Road), Bill Lacey (350 Firehouse Court), and John Percy (420 Firehouse Court).

Mr. Munsell reviewed a staff report that was prepared by former planner Ric Hartman, for the previous variance request for the subject property. Mr. Schield pointed out that Mr. Hartman's comments related to the previous variance and not this variance. Attorney Furen objected to the comments pointing out that the prior variance request, which was denied by the board, had no value on this application.

Mr. Munsell continued with discussing the percentages outlined in the PowerPoint presentation; that he had commissioned a study, through a local realtor utilizing the Multiple Listing Service (MLS) system, which indicated that 83 lots had less than 6,000 square feet; that he did not believe the proposal was good, and the Town should not be in the business of ensuring one's economic success; and, that he believed the Town was setting a dangerous precedent if they allowed a 30 percent maximum lot coverage.

Alaina Ray, Planning, Zoning & Building Director, addressed the comments by Mr. Streich related to his lot at 431 North Shore Road pointing out that he owned three lots that were joined together. She explained that the prior owner owned all three lots, and under the Town Code, when there were non-conforming lots adjacent to each other and under single ownership, they were considered one lot. Also, as far as percentage, the

house that was being proposed was one-two percent over; however, it could be constructed at a smaller size without a variance. Mr. Streich agreed he did not ask for a variance, but he had talked with staff who informed him that he should not exceed the lot coverage and should redesign his home. Chair Barthold pointed out that the situation with his lot was that it was not a situation where he required a variance to comply with the law; he was able to construct a home on his lot in compliance with the law.

Mr. Munsell voiced concern with property values; reviewed an illustration showing the location of the trees; and noted the potential impact with a house casting a shadow on his home. He did not believe there was legal precedent for construction and believed there would be an extremely adverse impact. Attorney Furen questioned Mr. Munsell concerning the relationship of the property with the other adjacent homeowner, Maureen Merrigan, and whether they were interested in purchasing the property. Mr. Munsell replied yes, he had disclosed that in his letter.

Mr. Linhart discussed Mr. Munsell's drawing which raised a question about the possibility that the trees will need to be removed to construct a fence. He asked if the fence was required or just a design issue. Mr. Schield pointed out that the fence was not required by Town Code, and the applicant would need to offset the fence, because he would not allow removal of the trees for a fence. He noted the only trees allowed to be removed would be those within the footprint of the proposed structure.

Chair Barthold questioned if a minimum variance was granted could the board impose a condition that no trees be cut down for a fence. Attorney Mooney-Portale responded she would need to confer with staff. Chair Barthold pointed out that Mr. Munsell had voiced concern with Daylight Plane. Mr. Schield commented that any design would have to meet the Daylight Plane regulations.

Mr. Goll commented that he did not believe in cutting down trees, and had no desire to remove trees for a fence. He noted that he would not put up a fence and would look into planting additional trees. Mr. Fuller suggested the board not get into "micro-managing the trees."

Discussion took place between Attorney Hemke and Chair Barthold on the following:

- The letters and petition that were submitted to the board
- Attorney Hemke's letter responding to the seven criteria
- The relevancy if the properties he was discussing had existing homes versus the vacant subject lot
- Attorney Hemke believing the variance requested was not the minimum variance necessary for a single-family home
- that the application was asking to vary the 25 percent lot coverage to 30 percent, but Attorney Hemke understood that the 30 percent figure was being modified
- Chair Barthold noting that the applicant was requesting to maintain the 1,600 minimum square foot requirement

- Attorney Hemke commenting the applicant could request a waiver from the 1,600 square foot requirement and maintain a 25 percent lot coverage
- That the ordinance states the applicant was entitled to a minimum variance, and a 1,488 square foot footprint would be less than the 1,600
- That there were a series of lots that were vacant on Firehouse Lane
- That any variance was self-created, because the applicant purchased the property in December 2012, which was after the Town restrictions had been in effect for some time
- Discussed case law concerning variances for properties that were considered unbuildable prior to the sale

Attorney Mooney-Portale explained that of the cases cited, in many instances there were unique factors in each case, and from the cases she reviewed that were provided by Attorney Hemke, she did not believe all apply to this situation. The cases did cite the principles of variance law, but she referred to the Town Code, which she noted “echoed” Florida law on variances.

Mr. Fuller asked if Attorney Hemke was taking the position that once a property no longer complied with the zoning regulations, if it changed owners, could never be built upon. Attorney Hemke responded that it would depend on the facts of the case; but that his primary position was no variance should be allowed on this property. He noted the Beatty case involved an unbuildable lot.

Chair Barthold questioned whether the Beatty case was the best authority Attorney Hemke had in support of his position. Attorney Hemke replied yes. Chair Barthold noted that a circuit court decision would not bind outside that county. Attorney Mooney-Portale replied correct, but it was persuasive.

Chair Barthold pointed out there were two possible variances – reduce the footprint or increase the lot coverage. Attorney Hemke commented there was probably not a case that precisely addressed the issue, but he believed “minimum meant minimum,” and a variance that permitted construction at 1,488 square feet was minimum compared to 1,800 square feet.

Attorney Hemke addressed the issue of impact noting the board had heard testimony from the neighbors concerning impact to the area. He reviewed the percentages for the various lots in the neighborhood against the percentage for the subject lot. He commented there were other reasons to deny the variance, because the application could not carry the burden of proof on four of the seven criteria. Attorney Hemke discussed that his clients had offered to purchase the lot in order to make their two lots conforming. Chair Barthold asked if Attorney Hemke agreed the board had to grant something for reasonable use of the land. Attorney Hemke replied yes, but he did not believe this was the minimum.

Mr. Schield responded to the previous statement concerning the vacant lots on Firehouse Lane noting that all the vacant lots were within the Conrad Beach development, which was constructed as a PUD Overlay and all were conforming and

needed no variances in order to build. The other vacant lots were within the Longbeach Village area, which were under the R-6SF Zoning District that only required a 1,000 square foot footprint. Chair Barthold questioned if staff was stating that the subject property was the only lot on Longboat Key where it required a variance for construction. Mr. Schield responded he was not aware of another lot on the north end of the island that had this uniqueness.

The board recessed from 4:52 PM to 5:16 PM to allow Attorney Mooney-Portale to review the case law submitted.

Attorney Mooney-Portale explained that after reviewing the cases submitted by Attorney Hemke, she determined that the Freedland Case was not applicable, because there was a use that was not contemplated by the underlying zoning district; the Beatty vs. Winter Park case had similar thought patterns, but one of the issues was the landowners in the case were applying for multiple setback variances to allow a residence on the site, and the court also discussed that for this particular property that there was contemplation that no residential home would be placed on the lot; and, in the Thompson case one of the issues was development of a commercial property and the need for an associated parking lot.

Concerning Attorney Furen's citing of the City of Coral Gables case, Attorney Mooney-Portale noted the hardship was not solely the fact they knew it was an odd-shaped lot, but was based on what was the use and if there was denying of all reasonable use. Discussion ensued on the legal question raised concerning purchasing a lot with prior knowledge. There was also a question of, assuming that all Findings of Fact and Conclusions of Law were relevant, and if the board had to grant a variance, because otherwise the owner would be deprived use of their property, which variance should be considered – reduction in footprint or increase in lot coverage. Attorney Mooney-Portale noted the cases cited did not speak to that issue; however, the Town Code states when considering a variance, the variance granted was a minimum variance that would make possible the reasonable use of land, building or structure.

Ms. Ray explained that when it came to the Zoning Code, the person responsible for interpreting the code would be her, and she noted that the Town Code did not define 'minimum variance' and gave no weight to what was important. The R-3SF Zoning District was for larger lots and homes, and the minimum square footage requirement was a method for maintaining higher property values in that area. Since there was no code definition, staff looked at how historically it had been defined, and as a result they looked at the minimum variance for a reasonable use which they believed was typical for R-3SF and that was 1,600 square feet. She pointed out that for the home at 301 North Shore Road, the ZBA mandated the 1,600 square feet, and if the footprint for this petition was reduced, the applicant could cantilever the second floor and have similar footprint.

Discussion continued on the following:

- The filing date of the application, which was noted as May of 2013
- That the applicants were intending to live in the home year round

- Attorney Hemke noting that 1,485 square feet was the minimum variance that will make possible the reasonable use of the land
- The impact on the vacant lots on Firehouse Lane to which staff noted they had been vacant, but were legal lots and do not need variances to be built upon
- That the application had been pending for some time due to lack of ZBA quorums, and to suggest the applicant come back with another variance was not fair and equitable to the applicant
- That the board was to base their decision on competent, substantial evidence, and should consider the evidence presented, the staff report recommendation

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

Attorney Mooney-Portale reminded the board that the criteria for granting a variance was set forth in the Town Code under Section 158.029, and those are the items that need to be followed.

Chair Barthold reviewed the Findings of Fact and noting the following:

- **Finding 1** – agreed
- **Finding 2** – the board heard testimony about how this was essentially a non-conforming lot and was only 50 feet wide; it was platted in the 1900s, prior to the current Zoning Code being put into effect. The testimony was it was a unique parcel in that it is one of the very few, if not only lot, where there could not be building done without a variance
- **Finding 3** – as discussed, it was a threshold, legal issue, and it has been recommended by counsel that based on case law the special condition is not the result of the applicant simply by virtue of the fact they purchased the property and required a variance
- **Finding 4** – the variance request was now being reduced to 27 percent lot coverage, so it was a minor increase from the required 25 percent and assuming the applicant was entitled to the variance; staff had noted the more important interest to preserve for property values was the minimum square foot in this zoning district
- **Finding 5** – the board understood that in order to have use of the land, the applicant had to be granted some type of variance
- **Finding 6** – staff had noted there should be deference to slightly increasing the lot coverage versus reducing the footprint
- **Finding 7** – it was believed there were grounds for the Finding of Fact, and the board understood the neighbor's concerns

It was moved by Fuller to GRANT PETITION 5-14 TO INCREASE THE ALLOWED BUILDING COVERAGE FROM 25 PERCENT TO 27 PERCENT AND THAT THE BOARD ADOPT THE FINDINGS OF FACT AS WRITTEN IN THE STAFF REPORT.

Chair Barthold offered a friendly amendment that the board incorporate into the recommendation the deference to staff's interpretation of importance in terms of giving

preference to square foot coverage so more reasonable uses can be assured relying on the fact of the record regarding vacant lands. Mr. Fuller discussed the inclusion of the amendment noting they were not applying anything for square footage of house. Mr. Linhart commented that he would like to see it included as it showed interpretation of the minimum in this zoning classification as 1,600 square feet.

Ms. Ray noted that the board might wish to incorporate Chair Barthold's comments into the Findings of Fact. Attorney Mooney-Portale responded the Findings of Fact, as cited by the Chair, could be supplemental to the staff Findings of Fact.

Ms. White asked if the board could include a condition concerning the removal of the trees. Chair Barthold noted the applicant had promised to not remove trees for a fence. Attorney Mooney-Portale explained there was a stipulation on the record by the applicant they would not remove trees for a fence. She reiterated the motion was to adopt staff's findings, but there was an amendment request to include the Findings of Fact as articulated by the Chair, and now there was an additional amendment to include, as a condition, the stipulation agreed to by the applicant concerning removal of trees. Chair Barthold pointed out the other item was deference to staff's interpretation.

Mr. Furen asked that the stipulation concerning the trees not prevent the owner from trimming for the foundation. There was agreement by the board that it did not include trees within the footprint.

Mr. Fuller amended his MOTION TO GRANT PETITION 5-14 TO INCREASE THE LOT COVERAGE FROM 25 PERCENT TO 27 PERCENT SUBJECT TO THE FINDINGS OF FACT AND CONCLUSIONS OF LAW AS PREPARED BY STAFF AND SUPPLEMENTED BY CHAIR BARTHOLD, AND THAT TREE TRIMMING/REMOVAL BE LIMITED TO THOSE LOCATED WITH THE SUBJECT FOOTPRINT; seconded by Mr. Linhart and approved by a roll call vote:

BARTHOLD:	AYE	LINHART:	AYE
FULLER:	AYE	WHITE:	AYE

Setting Future Meeting Date.

The next meeting was tentatively scheduled for Thursday, May 8, 2014.

Adjournment.

The meeting was adjourned at 6:13 Pm.

Respectfully submitted,

Charles Fuller, Secretary
Zoning Board of Adjustment