

TOWN OF LONGBOAT KEY
ZONING BOARD OF ADJUSTMENT
MINUTES OF DECEMBER 11, 2014 MEETING

The meeting of the Zoning Board of Adjustment was called to order by Chair Gaelle Barthold at 9:00 a.m. on Thursday, December 11, 2014.

Members Present: Chair Gaelle Barthold; Secretary Charles Fuller; Members Larry Linhart, Ann Roth, Jean White

Also Present: Maggie Mooney-Portale, Town Attorney; Alaina Ray, Planning, Zoning & Building Director; Steve Schield, Planner; Maika Arnold, Planner; Jo Ann Mixon, Deputy Town Clerk; Donna Chipman, Office Manager

Administration of Oath

Jo Ann Mixon, Deputy Town Clerk, swore new member Ann Roth.

Approval of Minutes

Ms. White made a MOTION TO APPROVE THE MINUTES OF THE APRIL 10, 2014, ZONING BOARD OF ADJUSTMENT MEETING AS WRITTEN; seconded by Mr. Linhart and approved by a unanimous vote.

Chair Barthold informed the board they had received a copy of an email from the president of the Buttonwood Harbour Association, noting their support of Petition 6-14.

Alaina Ray, Planning, Zoning & Building Director, reviewed an Acknowledgement and Escrow Agreement between the Town and the owners of 6600 Bayou Hammock Road (Petition 7-14). The owners had constructed a seawall which encroached onto the adjacent Town-owned property, and the agreement acknowledged the encroachment. The agreement also provided that the seawall and the Town property were property of the Town.

Chair Barthold pointed out there had been a change adopted through Ordinance 2014-25, which outlined the process for Zoning Board of Adjustment presentations. The change provided that after staff's presentation, the suggested guideline was the petitioner should take no more than 20 minutes for their presentation with follow-up questions. The public comment would be limited to five minutes per person and rebuttal was limited to five minutes.

Agenda Item 2. PETITION #6-14 by Andrew J. Sloman requesting a Variance from Section 158.150(D) (1), of the Town of Longboat Key Zoning Code to allow a 75 foot Gulf Waterfront Yard Setback from the Town Erosion Control line to construct a porch/deck addition to the current house in compliance with this Variance for property located at 3021 Gulf of Mexico Drive.

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. Peter Horstman, representing the applicant, previously 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. Chair Barthold, Ms. Roth and Mr. Linhart noted they had visited the site.

Alaina Ray, Planning, Zoning & Building Director, provided an overview of the request noting the applicant was requesting a variance to reduce the required gulf waterfront yard from 150 feet to 75 feet. She continued with a PowerPoint presentation showing the existing conditions. The applicant was wishing to add a porch/deck addition 16 feet closer to the Erosion Control Line (ECL). There was an existing variance granted in 1984, which provided a gulf waterfront yard setback of 84.3 feet, to allow construction of the home in its present location. She pointed out that the location of the property was one of the narrower areas of the island on the west side of Gulf of Mexico Drive. Several variances have been granted to lots located along this area, and they all were for construction of new homes. Ms. Ray continued with reviewing the Findings of Fact.

Chair Barthold noted it appeared on the second floor there was a protrusion and asked if that was the furthest point from the home. Ms. Ray replied yes. Chair Barthold asked if the applicant wished to construct an elevated deck, how many feet could they extend out from the protrusion. Ms. Ray pointed out where the deck could be constructed, which was an additional 9.3 feet. She noted the closest part of the existing structure currently sat 92.3 feet from the ECL. The applicant could construct a deck without an additional variance, with a minimum width of eight feet at the narrowest point and a maximum width of approximately 14 feet at the widest point.

Discussion ensued on:

- The purpose of the ECL
- There were properties in the adjacent area that were closer to the ECL
- If the board was inclined to grant the variance, how would it make the situation worse; staff noted it would continue an unfavorable practice of impacting the ECL setback
- Were the adjacent properties narrower than the subject property
- Question if it made a difference, as a matter of law, whether discussing a variance for existing construction versus new construction; the Town Code did not make that distinction, but provided criteria that was to be reviewed against the request
- Staff looked at whether a variance for new construction was required in order to build at all

Mr. Linhart questioned if the property at 3037 Gulf of Mexico Drive had received a variance as it seemed to be close to the ECL. Steve Schield, Planner, responded that the property had received a variance to add a second story. Mr. Linhart pointed out the property at 3029 Gulf of Mexico Drive appeared to have a covered deck, and if the variance concept was to grant minimum variances, why would they get a variance for a pool deck. Ms. Ray explained staff would need to review the ZBA hearing to determine the board's reasoning for allowing the covered patio.

Ms. Roth questioned the conservation for this property and the impact on the beaches. Ms. Ray noted the dune system to the north was fairly wide. Chair Barthold commented that staff had indicated that this deck addition would impact the area where the house was. Staff's concern was policy, in terms of strict application of the ECL, and their practical concern dealt with other properties to the south. Ms. Ray explained the practical concern was another continuation, and another encroachment, into the setback, and at what point did the Town say no more encroachments, or change the code, which was a policy decision that needed to be made. Discussion was held on the variance policy.

Attorney Mooney-Portale explained that one of the criteria considered when reviewing the provisions of the variance for granting was whether it was in harmony with the surrounding area and the intent. She believed concerns with environmental factors could be considered. Mr. Fuller commented the only intrusion into the surface would be support pilings. Ms. Ray explained once the variance was granted, it was granted for a setback. Mr. Fuller noted if the board chose to grant the variance, they could grant with conditions. Mr. Linhart questioned the significance of the Coastal Construction Control Line (CCCL). Ms. Ray responded the line was set by the state and included additional restrictions if anything was built seaward of that line.

John Shea, attorney representing the applicant, noted this was a significant structure that was of the Sarasota School of Architecture design. He pointed out that no home could be built on the beach without a variance, because of the strict application of the ECL; the structure was fully compliant in all other aspects; the house was built in 1987, and the variance granted at that time was from a road setback as the ECL was not in place at that time; even at 75 feet set back, it was still behind other structures in the area. He reviewed drawings from their application package showing the impact to the ECL. He noted they would be open to having restrictions placed on this variance making it particular to this structure, and to the improvements – an open air, non air-conditioned space. He would also stipulate that the deck area would never be an enclosed air-conditioned area; that the variance was only applicable to this project; and that no ground walls would ever be constructed from the ground up to the base level of the addition. He respectfully disagreed with interpretations of staff on criteria and feel they have a hardship; it was created by 'Mother Nature' and the regulatory application of the ECL after the original construction on the property making it impossible to build anything in that area. He did not believe they were being granted a special privilege that no one else has been granted; believed literal interpretation did deprive the owner of reasonable use; and believed it was the minimum variance.

Peter Horstman, architect representing the applicant, provided an overview of the home's architecture and background; discussed the impact to the ECL noting it was an open structure that did not add to the erosion problem; reviewed an illustration of the proposed deck; and noted the intent of the deck was to be an outdoor living space.

Chair Barthold questioned the number of pilings. Mr. Horstman replied there were nine pilings along with the stairway down to the beach. Chair Barthold asked if the design was sufficiently finalized so if the board decided to grant the variance, they could grant it on the condition that this particular design be used. Mr. Horstman responded yes; it could be based on the presented design. Mr. Linhart pointed out there appeared no walls were around the deck. Mr. Horstman explained there would be a railing; the square footage of the deck within the variance would be 620 square feet and the additional was 540 square feet. They would not be disturbing the existing vegetation, but would be removing the at-grade decks and replacing that area with vegetation. The owner wished to maintain the dune system along the property.

Ms. Roth asked if the ground level, under the deck, was going to be dirt or concrete. Mr. Horstman responded there would be some type of patio area underneath the deck itself, possibly with pavers and landscaping. Discussion ensued on the area underneath the raised deck. Chair Barthold noted that it was possible for the board to include a condition that whatever was done, that it not be concrete. Mr. Horstman noted the applicant would agree with that stipulation. Ms. White questioned the stairway and asked if it was a stairwell. Mr. Horstman replied no; it was open underneath with treads on a beam with an open railing.

John Patterson, attorney representing the applicant, believed one of the key things in the staff findings was granting of the minimum variance was consistent, but then there was the issue of what was reasonable use. He reviewed an aerial photo showing the impact of the deck on the ECL. He commented they were discussing about eight feet to allow a deck. Ms. Ray commented that staff agreed the design was beautiful, but the staff report was from the strict application of the code. Ms. Roth asked if staff was concerned with precedent. Ms. Ray replied that was the main concern and a policy issue for staff. Mr. Fuller asked if the board was bound by precedent. He believed they had to review on a case-by-case basis. Attorney Mooney-Portale replied that was correct; the board had to review the criteria and make findings. In the past, the board had reviewed the staff reports and has agreed with the entire report or part of the report. The fact the neighbor received a variance did not mean they were required to grant this one; they have to review the criteria and determine if there was a hardship.

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

Mr. Linhart recommended voting in favor. Mr. Fuller commented he would recommend denial, because the structure within the variance would provide sufficient outdoor patio area. Chair Barthold noted she would support, but with conditions imposed on the approval. Ms. Roth was inclined to accept the variance with conditions. Ms. White

voiced concern with the environmental impact, because the beach erosion continues, and she did not see it stopping.

Discussion points were:

- That it could be a very modest environmental improvement
- The Applicant has agreed that whatever was put in place below the deck would be pervious
- Only nine pilings and no structure being constructed
- Other surrounding properties have more intrusion into the ECL versus this property
- The request was a very limited encroachment onto the beach
- Reviewed Exhibit 'A', paragraph 6, which noted that it did not create open space or additional impervious surfaces at-grade
- Appeared the impact would be the same environmentally whether built out to what was allowed now or built additional with variance

Chair Barthold reopened the hearing to allow the applicant to answer questions raised by the board.

Mr. Shea commented the variance would reduce impervious surface, because the existing wood deck would be removed and replaced with pervious. Ms. Ray explained that without a variance, the applicant could construct improvements that were not pervious at-grade, which would extend into the gulf waterfront yard, such as a pool.

Chair Barthold asked if even though the applicant had a variance that would allow them to do anything for the 8 feet, could the applicant voluntary give up that right, or is that something the board could not ask them to do. Attorney Mooney-Portale responded the board had authority to include conditions, but cautioned the board on asking the applicant to give up a right they were entitled to. Chair Barthold asked if it would change the situation if the applicant voluntarily agreed to as part of the application. Attorney Mooney-Portale noted that a voluntary proffer from the applicant was different than a request by the board.

Discussion ensued on Finding 6 and a minimum variance.

The public hearing was closed.

Mr. Linhart made a MOTION TO GRANT PETITION 6-14 TO REDUCE THE GULF WATERFRONT YARD FROM 150 FEET TO 75 FEET, SUBJECT TO THE FOLLOWING FINDINGS OF FACT AND CONDITIONS: 1) ANY IMPROVEMENTS CONSTRUCTED UNDER THE EXTENDED DECK AT-GRADE LEVEL SHALL USE PERVIOUS MATERIALS; 2) THE APPLICANT MAY INSTALL PILINGS FOR THE EXTENDED DECKING AS PROVIDED FOR IN THE DESIGN PLANS PRESENTED AT HEARING; HOWEVER, NO ENCLOSED WALLS SHALL BE CONSTRUCTED

ABOVE OR BELOW THE EXTENDED DECK; AND, 3) APPROVAL OF THE REQUESTED VARIANCE IS CONDITIONED UPON THE APPLICANT'S CONSTRUCTION OF THE DESIGN PLANS PRESENTED AT HEARING; seconded by Ms. Roth and approved by a unanimous vote:

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

1. The variance requested **is** in fact a variance as set forth within Chapter 158 of the Town Code and within the jurisdiction of the Board.
2. Special conditions and circumstances **do** exist which are peculiar to the land, structure, or building, and which are not applicable to other lands, structures, or buildings in the same zoning district.
3. The special conditions and circumstances **do not** result from the actions of the Applicant.
4. Granting the variance requested **would** confer on the Applicant a special privilege that is denied by Chapter 158 of the Town Code to other lands, buildings or structures in the same zoning district.
5. Literal interpretation of the provisions within Chapter 158 of the Town Code **would** deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Chapter and **would** result in unnecessary and undue hardship on the Applicant.
6. The variance requested **would be** the minimum variance that will make possible the reasonable use of the land, building or structure.
7. The granting of the variance for the gulf waterfront yard **would be** in harmony with the general intent and purpose of Chapter 158 of the Town Code.

Discussion ensued on whether the variance would be transferred with a sale. Attorney Mooney-Portale explained that the conditions that were imposed on the approval were attached to the variance, so if the property was sold to a new owner, the buyer would be subject to the variance with conditions; if a subsequent owner wanted to utilize the variance, they could only utilize it to the same extent as approved.

The Board recessed from 10:46 AM -10:59 AM.

Agenda Item 3. PETITION #7-14 by Michael and Michelle Morris, requesting a Variance from Section 158.155(A)(4)(b), of the Town of Longboat Key Zoning Code to construct a replacement dock and boat lift that extends 100 feet from the Mean High Water Line, a variance of 50 feet for property located at 6600 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. Kristi Tignor, representing the applicant, previously 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. Ms. Roth noted that she lived in the area and had seen the location of the dock.

Steve Schield, Planner, provided an overview of the request noting the area was located in the Village; was a bayfront lot; the escrow agreement was an agreement that was required because the applicant had replaced the seawall and replaced all the way down to the bay access owned by the Town; when found, there was a settlement agreement that the seawall and property was Town-owned, and the applicant had no rights to it. Mr. Fuller questioned the legal significance of the agreement. Attorney Mooney-Portale explained the acknowledgement would only seek some sort of assurances; the fact the application before the board was specific to the Morris' property, and was not to the portion of the property to the northwest (Jackson Way) which was Town-owned property. The purpose of the acknowledgement was a recorded legal document noting the Jackson Way right-of-way was Town-owned.

Mr. Schield continued providing an update and reviewing a PowerPoint presentation showing the existing conditions; the existing dock was in poor condition and only went out 24 feet. The existing dock was non-conforming and extended over onto Town property. The new dock would be moved and centered along the Morris' property within their riparian lines. He noted that staff recommended approval of the variance with the conditions outlined in the staff report, including:

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 September 11, 2014, 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 seagrass 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.

Discussion ensued on:

- including a condition related to 'No Docking' or 'No Mooring' and requiring railings along the walkway portion of the dock; staff noted that language could be added to Condition 2 to address that concern

- that language should be revised in Condition 2 to include 'railings on both sides'
- adequate water depth and what constituted water depth; attempting to get past the sea grass beds and provide reasonable water access for the property

Kristi Tignor, engineer representing the applicants, explained that the applicant recognized the existing dock was non-conforming and had limitations (did not meet setbacks and encroached the riparian line on the north), but the current proposal would not encroach on the public right-of-way. She pointed out the existing dock was non-conforming as to state regulations, and the new dock and lift would be centered on the frontage of the property with the boat and propeller out past the seagrass. She commented that 50 feet out, which was allowed by the Town, was in the middle of the seagrass bed, and the dock was elevated five feet above the mean high water line (MHWL). They would limit the mooring along the access part of the dock and along the north side, because it was a higher elevation. There would be handrails installed on both sides of the dock.

Mr. Fuller asked if the boat lift was placed on the end of the dock would it be completely out of the seagrass. Ms. Tignor responded that would extend the variance further, and they were wishing to have a minimal variance. Mr. Linhart questioned how deep the water was. Ms. Tignor replied 4.5 feet. Mr. Linhart asked if within the 4.5 feet would there be destruction of the grass. Mr. Schield noted that was one of the reasons the boat lift was front loading.

Mr. Kolodzieski, Bayou Hammock Road, noted he had appeared before the Board a year ago to obtain a variance for his dock, and he fully supported both neighbors in their request.

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

Ms. White made a MOTION TO GRANT PETITION 7-14 TO ALLOW CONSTRUCTION OF A REPLACEMENT DOCK AND BOAT LIFT THAT EXTENDS 100 FEET FROM THE MEAN HIGH WATER LINE, A VARIANCE OF 50 FEET, SUBJECT TO: 1) THE FINDINGS OF FACT, INCORPORATED BY REFERENCE, FROM THE STAFF REPORT DATED OCTOBER 23, 2014; 2) SUBJECT TO THE CONDITIONS OUTLINED BY STAFF, ALONG WITH AN ADDITIONAL CONDITION TO INCLUDE SIGNAGE FOR 'NO DOCKING' OR 'NO MOORING;' AND, 3) REPLACE THE WORD 'THE' WITH THE WORD 'BOTH' IN CONDITION 2 TO STATE '...RAILINGS ON BOTH SIDES...'; seconded by Ms. Roth and approved by an unanimous vote:

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

Agenda Item 4. PETITION #8-14 by Joseph V. Chillura, Manager, requesting a Variance from Section 158.155(A)(4)(b), of the Town of Longboat Key Zoning Code to

construct a replacement dock and boat lift that extends 98 feet from the Mean High Water Line, a variance of 48 feet for property located at 6526 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. Kristi Tignor, representing the applicant, previously 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. Ms. Roth noted she has seen the site by boat and walking.

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

- the proposed boat lift, dock and pilings were 98 feet from the MHWL for a variance of 48 feet
- there was a shallow area with seagrasses
- there was lack of adequate water depth
- the lot has larger frontage on the bay
- the proposed dock will be 168 feet from northwest adjacent dock and 130 feet to the south
- the existing dock goes out to a 2.5 foot depth
- there was no navigational hazard
- the Findings of Fact supported the approval of the variance, subject to conditions
- suggested amending Condition 2 to include 'both' sides for railings and include a condition for signage

Mr. Schield commented that staff recommended approval of the variance with the conditions outlined in the staff report, including:

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 October 6, 2014, 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 seagrass 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.

Mr. Fuller asked if being at 3.5 feet would result in problems. Mr. Schield responded they were trying to protect seagrasses. Ms. Tignor explained the existing dock was 671 square feet at a mooring depth of 2.5 feet, and a non-conforming dock, at a single-family residence, was allowed a 500 square foot dock. The proposed dock would utilize the same access through the Mangroves with no additional impact. She pointed out the ramp from the shoreline would elevate the remaining dock at five feet above MHWL.

Mr. Kolodzieski, Bayou Hammock Road, noted he was immediately to the northwest of the subject site, and voiced his support of the variance.

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

Ms. White made a MOTION TO GRANT PETITION 8-14 TO ALLOW CONSTRUCTION OF A REPLACEMENT DOCK AND BOAT LIFT THAT EXTENDS 98 FEET FROM THE MEAN HIGH WATER LINE, A VARIANCE OF 48 FEET, SUBJECT TO: 1) THE FINDINGS OF FACT, INCORPORATED BY REFERENCE, FROM THE STAFF REPORT DATED OCTOBER 20, 2014; 2) SUBJECT TO THE CONDITIONS OUTLINED BY STAFF, ALONG WITH AN ADDITIONAL CONDITION TO INCLUDE SIGNAGE FOR 'NO DOCKING' OR 'NO MOORING;' AND, 3) REPLACE THE WORD 'THE' WITH THE WORD 'BOTH' IN CONDITION 2 TO STATE '...RAILINGS ON BOTH SIDES...'; seconded by Ms. Roth and approved by an unanimous vote:

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

New Business. Ms. Ray introduced Maika Arnold, the Town's new planner.

Setting Future Meeting Date. The next meeting was tentatively scheduled for January 8, 2015.

Ms. Ray informed the board staff was reviewing a variance application for Moore's Stone Crab Restaurant and was anticipating scheduling it for January.

Mr. Linhart noted he would not be available for the January meeting.

Adjournment.

The meeting was adjourned at 12:08 pm.

Respectfully submitted,

Charles Fuller, Secretary
Zoning Board of Adjustment