TOWN OF LONGBOAT KEY

PLANNING AND ZONING BOARD

MINUTES OF REGULAR MEETING

NOVEMBER 18, 2014

The regular meeting of the Planning and Zoning Board was called to order at 9:05 AM.

Members Present: Chair Allen Hixon, Vice Chair Jack Daly, Secretary John Wild, Members Andrew Aitken, Ken Schneier, George Symanski

Members Absent: Walter Hackett

Also Present: Maggie Mooney-Portale, Town Attorney; Alaina Ray, Planning, Zoning & Building Director; Donna Chipman, Office Manager

AGENDA ITEM 1
NONCONFORMING PROPERTIES AND POLICY DISCUSSION

Alaina Ray, Planning, Zoning & Building Director, outlined the process for the discussion, along with subjects that would be discussed on future meeting agendas.

Chair Hixon commented that the board was advised to request if anyone had an electronic device to ensure they were turned off during the hearings. Ms. Bishop commented she took notes on her iPad and had been advised by counsel that it was appropriate to do so. Maggie Mooney-Portale, Town Attorney, discussed that it was fine to take personal notes, but cautioned if there was anything beyond that, specifically texting or emailing. She asked that board members use their best judgment. She pointed out that if the notes were shared, they become public record, but if they were not shared, then it was considered entirely personal. Concerning whispering while on the dais, Attorney Mooney-Portale explained it could potentially be considered a violation of the Sunshine Law if members were discussing business at the dais.

Discussion ensued on:

- Not seeing a distinction between iPad notes and pencil notes – it was sharing notes that led to an issue
- The Town Attorney noting that she was not suggesting anyone was doing anything improper, but it was her job to make the members aware of the law – no passing notes as it would be considered public record and members were urged not to do that
- If a member was awaiting a personal call, should they have their phone on vibrate and then get up and leave the meeting; the Sunshine Law and public records laws did not regulate incoming telephone calls

Jerry Murphy, Town's Planning Consultant, began his presentation noting that staff was beginning the "overhaul" of the Town's Comprehensive Plan. He continued with reviewing a PowerPoint presentation and a color illustration denoting the nonconforming properties within the Manatee and Sarasota Counties portion of Longboat Key.

Mr. Aitken questioned if the map included commercial and tourist zoned properties. Mr. Murphy responded the map was provided by Commr. Phill Younger and at this time, staff had not verified the information. Mr. Symanski commented that Mr. Murphy noted that non-conformities were problematic and asked for him to expand on that statement; was it a 'given' that the Town liked every use existing or were they going to study each one to determine whether it was non-conforming for a reason. Mr. Murphy responded there were some policy issues that needed to be decided. There were some uses that might have gone away that the Town might decide they want, or there might be some they did not want to see. It was a policy decision that the board would need to recommend to the Town Commission.

Discussion ensued on the following issues:

- That there were 40 units behind Cedars East that were not identified on the map and should be reflected on future maps
- the map color legend and a question concerning duplexes- whether going to reflect the smaller family units; would be two-family units on single-family zoned properties
- that the map represented uses, and not the way the structure was constructed
- Town Charter changes related to allowing an opportunity to expand the Town Commission's ability to loosen those density constraints, without referendum, and not running afoul of the statutory prohibition against referendum changes to the Comprehensive Plan
- Reviewing and addressing nonconformities, with regards to the provisions within the Comprehensive Plan addressing involuntary destruction and voluntary reconstruction
- policy considerations – guiding document provisions in the Vision Plan; provisions in the resolution; current policy issues and potential options to address the policy issues
- Ordinance 2007-48, which provided a referendum related to density – implementation had not taken place

Mr. Garner addressed the issue of voluntary reconstruction commenting that if someone was going to do voluntary reconstruction, it would be to enhance the property to be more compatible with current standards. They were not going to be able to keep the same density and the same volume – they did not go together. Mr. Murphy responded they could, but they would keep the same thing they had. Ms. Ray explained this was the current policy, and the language that was underlined was problematic.

Mr. Murphy commented there would need to be the same level of outreach to the public once the Town decided what they wished to do. He continued with reviewing the policies in the Comprehensive Plan that would need to be revised.

Mr. Murphy reviewed a new policy staff was recommending: ***"For lawfully existing structures that do not conform to the future land use density and building cubic volume limits provided elsewhere in this Plan, the Land Development Code (<u>may/will</u>) specify incentives, provisions, and standards to encourage post-disaster redevelopment to conform the existing density."***

Ms. Bishop discussed that her experience using the word 'may' was not good for land development or staff, and urged the members to consider the word 'will' for the standard. Mr. Garner commented using the word 'may' provides the same flexibility. It did not bind anyone, and he suggested using the word 'may.' Mr. Symanski agreed with using the word 'may.' Ms. Ray provided the distinction on the level of approval required – when there was a Comprehensive Plan change, it went before the state to review, but a land development code change did not require a state review.

Mr. Schneier referred to Policy 1.1.5 noting there were strict restrictions on what could be done that were built into the documents . He mentioned there should be a standard where you say to the Town Commission you will create standards. He would not leave as 'may' because of the vagueness. Mr. Symanski asked what the policy meant and referred to the last sentence and suggested it be revised to state, "to conform ***<u>to</u>*** the existing density." Ms. Bishop asked why the board would want to state 'may.' Mr. Garner commented that the documents were not intended to be rigid; this portion was only referring to other documents that would be created.

Mr. Symanski asked if this was Comprehensive Plan language. Mr. Murphy replied yes. Mr. Symanski discussed using the word 'will' versus 'may' noting there were no incentive standards provided; the zoning code was suppose to follow the Comprehensive Plan. Mr. Murphy explained the document would go to the state, and when it was returned, the board would review the land development regulations (LDRs). The code provisions would be developed by the board and then forwarded to the Town Commission. The policy would order the Town Commission to adopt standards in the LDRs. Attorney Mooney-Portale explained the process noting that the Town Charter was the 'constitution' of the Town, and it was more difficult to change, because it required a referendum. The Comprehensive Plan was mandated by the state and was a document that was governed by the legislature. The next level would be the LDRs; the provisions went through the P&Z Board and Town Commission, but were easier to change.

Mr. Schneier commented that using the word 'may' would have generality and suggested the word 'future' be removed so it referred to those that "*did not conform to land use density*." Mr. Murphy noted that the Future Land Use (FLU) density could change over time, but he did not expect it to change much on the island. Mr. Schneier suggested the word '*conform'* be replaced with '*be consistent with*.'

Attorney Mooney-Portale commented the LDRs had to be consistent with the Comprehensive Plan. Mr. Symanski noted if the plan used mandatory language, the ordinances must conform to it. Attorney Mooney-Portale replied yes. Mr. Symanski pointed out that if it stated '*will'* the ordinances must conform to it. Mr. Daly agreed with using the word '*will*,' because it mandated the LDRs to do certain things. He was not

reading it as a mandate. Attorney Mooney-Portale explained there might be ways to revise the language to address circumstances. Mr. Murphy suggested the board use the '*will'* language and eliminate everything following '*redevelopment*.'

There was a consensus to use the word 'will' and eliminate everything following 'redevelopment.'

Mr. Aitken voiced concern with dropping the concept of no increase in density. Mr. Murphy commented the policy would be silent on density; the board was addressing density effecting policy, but not suggesting that existing density was always going to be with those standards that seek to conform. Chair Hixon requested that staff revisit the ordinance and bring back modified wording.

The board recessed from 10:23 am to 10:30 am.

The board continued with discussion of Policies 1.1.5(a) and (b), and 1.1.6, along with:

- A unified policy that discussed the non-conforming issue on the island *(The Land Development Code will specify standards for redeveloping lawfully existing property that does not currently conform to the future land use density and building volume limits provided elsewhere in this Plan—and may establish standards to conform property with lawfully existing nonconforming density.)*
- The need to retain the opportunity for the government to respond to the conditions that prevail
- The suggestion to use the word 'will'
- The land development code changed over time, and the board routinely had changes brought before them for discussion; it was hoped they would not use the word 'may.'

Mr. Symanski believed that the first use of the word '*will'* was fine, but voiced concern with the second use of '*will'.* He commented if the plan language said '*will'* the Town could not amend the LDRs, contrary to the '*will'* language. Mr. Garner agreed. Mr. Schneier agreed with the idea of eliminating Policy 1.1.5(a) and (b), and including '*will'* in the first sentence. Ms. Bishop agreed with the suggestion and noted it might help resolve concerns from the previous discussion. Mr. Schneier reiterated there should be a single Policy 1.1.6, and delete Policy 1.1.5 (a) and (b). Mr. Murphy agreed with including the word '*will'* in the first sentence.

MS. BISHOP MOVED TO DELETE POLICY 1.1.5 (a) and (b) AND INCLUDE THE WORD 'WILL' IN SECOND SENTENCE IN THE NEW POLICY. MR. WILD SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; DALY, AYE; GARNER, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, NO; WILD, AYE.

Policy 1.1.10 and Table 1

Mr. Murphy explained that Table 1 set forth all the Future Land Use density limitations, and noted staff would need to prepare additional mapping and analysis, and bring it back to the board for review.

Mr. Garner commented in keeping with the concept of the Town Center, signage laws should be revisited and revised to allow appropriate signage. He asked if the Town moved forward with the Town Center, how would it be identified. Ms. Ray explained staff was working with Tindale-Oliver on the Town Center, and they would be scheduling the first public workshop on December 11, 2014. The workshop will introduce the public to the project and Tindale-Oliver, and bring them up-to-date on the historic background of the Town Center. This would give the Town input on what the residents would like to see. She mentioned that staff had been working with the Code Enforcement Officer (CEO) on the signage, and the CEO had several suggestions for revisions.

Mr. Aitken commented he would like to schedule discussion on short-term rentals in residential areas. Ms. Ray explained that enforcement was handled by the CEO, and there was a Code Enforcement Board meeting in December where the CEO would be discussing his enforcement process. She pointed out that Code Enforcement was no longer under the Planning, Zoning & Building Department, but was now under the Police Department.

Mr. Symanski asked with regard to zoning, was staff contemplating removing residential in tourism zones. Ms. Ray responded staff had not addressed that at this time as that discussion would be held during the LDR changes.

Mr. Murphy informed the board staff was anticipating providing an overview of the LDR revisions at their December meeting, along with inviting Professor Martin Gold from the University of Florida to address the board. Mr. Symanski asked if staff was contemplating more than just two tourism zones. Mr. Murphy replied staff would bring back options.

CONSENT AGENDA

The next meeting was scheduled for December 16, 2014.

COMMENTS FROM THE PUBLIC AND PRESS

Larry Grossman, St. Judes Drive, discussed changing the Charter provision for density by planning versus referendum. He discussed the non-conforming definition commenting there was no policy that defined what was an area's potential development or redevelopment.

ADJOURNMENT

The meeting was adjourned at 11:05 a.m.

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John Wild, Secretary
Planning and Zoning Board

TOWN OF LONGBOAT KEY

PLANNING AND ZONING BOARD

MINUTES OF REGULAR MEETING

DECEMBER 16, 2014

The regular meeting of the Planning and Zoning Board was called to order at 9:13 AM.

Members Present: Chair Allen Hixon, Vice Chair Jack Daly, Secretary John Wild, Members Andrew Aitken, Walter Hackett, Ken Schneier, George Symanski

Also Present: Kelly Fernandez, Assistant Town Attorney; Alaina Ray, Planning, Zoning & Building Director; Donna Chipman, Office Manager

PUBLIC TO BE HEARD
Opportunity for Public to Address Planning and Zoning Board

No one wished to address the board.

AGENDA ITEM 1
INTRODUCTION TO UNIVERSITY OF FLORIDA URBAN DESIGN STUDIO

Jerry Murphy, Murphy Planning, provided an introduction of Gene Boles, University of Florida, and Martin Gold, professor/architect with University of Florida.

Mr. Boles reviewed a PowerPoint presentation and discussed the Town's Comprehensive Plan noting:

- The Planning & Zoning Board was also considered the Local Planning Agency for the Comprehensive Plan
- The Comprehensive Plan was a legislative process
- Reviewed the Community Planning Act (Section 163.3167(2) and 163.3161(6), and 163.3177(1) of the Florida Statutes)
- Each policy in the Comprehensive Plan should be "implementable"
- The plan should be informative so someone reading it could determine what the community was about and should include a vision statement

Mr. Gold discussed projects worked on with other agencies, Florida Resilient Communities Initiative, the project team for the Comprehensive Plan and Land Development Regulations (LDRs) update, and the process that will be used.

Mr. Hackett questioned what type of work they had done to approach aging facilities. Mr. Gold responded they have done some redevelopment case studies where one had to decide early on was it really redevelopment if they demolished and rebuild, or was it new development. Discussion ensued on viability in the marketplace.

Mr. Daly asked what projects had they done with respect to revitalization of non-conforming facilities. Mr. Gold explained there was a blighted area next to the University of Florida and it was underutilized and under-developed land, and the question was what needed to be done in order to get this land to be the type of environment and urban activity center that should go with the surrounding facilities. He commented that in order to address it, there might need to be changes to the facility or changes to codes, or both.

Mr. Murphy summarized that the idea was to discuss the approach that would be taken in terms of looking at the projects on Longboat Key; the opportunity areas that the ULI Study identified, such as Whitney Plaza and the Colony. This showed how the students would be approaching it from multiple angles, including presenting through community outreach opportunities and opportunities for the community to engage these ideas. The community would pick and choose, and then the students would develop something that they could build consensus around.

AGENDA ITEM 2
MAR VISTA RESTAURANT, 760 BROADWAY STREET
SPECIAL EXCEPTION USE (QUASI-JUDICIAL)

Pursuant to published notice, the public hearing was opened. All those testifying were sworn at this time.

Chair Hixon disclosed that he had visited the site often and knew the applicants. He had many friends in the Village that he has known for years. His bands have, or will, play at many of the restaurants on the keys, and in Sarasota, including those owned by the Chiles Group. Although he believed he could render an unbiased opinion on this application, if anyone on either side of the issue wished him to abstain, or disqualify, he would do so and turn the meeting over to the vice chair.

Gene Jaleski, Cedar Street, asked how unbiased Chair Hixon would be on the application. Chair Hixon replied it was his opinion that he felt he would be unbiased. He was a landscape architect and land planner, and he was looking at the issue from his background and history in that profession, rather than a musician.

No one else wished to note any Ex Parte communications, and no objections were noted.

Kelly Fernandez, Assistant Town Attorney, noted a request had been received from Mr. Jaleski to have “party intervener status.” She explained that “party intervener status” would, if granted, give someone the authority to act similar to an applicant; they would have the ability to testify, present evidence, cross-examine witnesses, and essentially

be a full party to the application. She commented that some local governments had policies where someone requesting the status would be required to provide notice a certain number of days in advance, but the Town did not have such a policy, and it was appropriate for the Board to consider the request at this time. Attorney Fernandez noted that generally what would confer "party intervener status" on someone was to have a special interest in the application beyond that of the general public. She pointed out that because someone was within the public notice radius did not automatically mean that they should have "party intervener status." After reviewing what Mr. Jaleski had provided on this matter, she recommended not granting 'party intervener' status. He could still come forth and speak to the Board, but it would not give him the ability to act like a party and cross-examine, and, present evidence and testimony.

MS. BISHOP MOVED THE P&Z BOARD ACCEPT THE TOWN ATTORNEY'S RECOMMENDATION AND NOT GRANT "PARTY INTERVENOR STATUS" TO MR. JALESKI. MR. SYMANSKI 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.

Alaina Ray, Planning, Zoning & Building Director, informed the board there were two applications for the Mar Vista Restaurant before the Board. The first application to review would be the Special Exception, followed by a Site Plan Amendment application. She explained that if the Special Exception application was not granted, then the Board would not move forward with the Site Plan Amendment public hearing; however, if the Special Exception was approved, then the Board would hold a hearing on the Site Plan Amendment. She noted that if the Special Exception was approved, and then the Site Plan Amendment not approved, the Special Exception approval would become null and void.

Mr. Symanski asked if the Board had considered this application before. Ms. Ray responded there was an application previously submitted for an amended Special Exception, but it was not utilized. There were improvements made to the site, but they did not build the deck, and the Special Exception had expired. This was a brand new application that did not rely on any previous approvals.

Ms. Ray reviewed the staff report noting:

- The application was for outdoor dining on a proposed second story deck
- The property was zoned C-1 and has a Future Land Use designation of CL-Limited Commercial
- The site and use were conforming under both its land use district and land use category
- The facility has ground level outdoor dining
- There were 59 seats for indoor dining, and if approved, 52 seats would be moved to the second story
- The indoor area will no longer have dining, but will be converted to retail space
- The previous submittal included an additional 11 seats; staff did not approve so the applicant removed the seats and would not be asking for the additional seats

- The applicant was currently providing sufficient parking spaces that complied with the current land development code and any previous approvals; additional seats would trigger a re-analysis of the parking and would require additional parking, and staff would not be able to support it based on current codes
- Use of the new boat docks - most of the boats would come during the day; vehicle traffic was more congested at night

Mr. Garner questioned if the retail area would require parking. Ms. Ray noted the retail area was based on square footage and not on seats. Ms. Bishop asked if the applicant voluntarily removed the 11 seats from the application. Ms. Ray replied yes; the application did not include the additional seats. Mr. Aitken commented that during the previous application hearing the board had received a number of emails from residents in the Village suggesting the current operation of Mar Vista exceeded the number of seats that were allowed. He asked if the applicant was currently in compliance with the seating. Ms. Ray noted staff had been monitoring the seating, and if they found additional seats, the applicant would be required to remove.

Chair Hixon voiced concern that the people waiting at the restaurant had driven to the facility and parked in the spaces that were of concern, but staff did not include those. He asked why the seats were not increased to provide additional dining to speed up service to those waiting. Ms. Ray commented if they increased the seating, there would still be people waiting as it would increase the number of people visiting the facility. The Town Code did not have a mechanism for requiring parking counts for people waiting for tables.

Ms. Ray continued with reviewing the staff report and the recommended Findings of Fact. She pointed out the district the restaurant was located was a commercial district and met all the Land Development Regulations (LDRs) for that district. She continued reviewing the standards outlined in Section 158.136 of the Town Code.

MS. BISHOP MADE A MOTION THAT THE P&Z BOARD ACCEPT THE STAFF REPORT AND FINDINGS OF FACT AS PRESENTED BY STAFF. MR. WILD SECONDED THE MOTION.

MR. GARNER MADE A MOTION TO APPROVE THE SPECIAL EXCEPTION ORDER 2014-01, INCLUDING THE FINDINGS OF FACT AND STAFF REPORT.

Mr. Symanski supported the motion, but noted the staff report was part of the record regardless of a motion. Attorney Fernandez agreed that the staff report was already part of the record.

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

Ms. Ray informed the Board that legal notice for the hearing went to those surrounding residents within a 600-650 foot radius. She continued with her PowerPoint, noting the

chain link fence would be removed, and the site improved with additional landscaping and a solid wood fence.

The Board recessed from 10:46 am to 10:55 am.

Lynn Burnett, engineer representing the applicant, introduced herself to the Board and commented she was available for any questions.

Steven Garrod, Russell Street, commented he had written several letters for the previous approval concerning the parking, but he did not provide them for this hearing, because they were not requesting additional seats. He discussed that the parking in the Village was a serious problem; the Town's current parking standards; concern with taking 50 plus seats and moving them to a second story; the noise impact on a residential area; that he did not want further expansion of a commercial use; the air-conditioning unit was extremely noisy as it was not screened, buffered, or enclosed; and, the new parking regulations were just implemented so it was difficult to see how they would impact the parking issue.

Chris Van Hise, attorney representing Samir and Corinne Ragheb, nearby property owners, distributed materials (Exhibit 1) into the record. Ms. Bishop noted that an exhibit provided at the last minute that could have been provided prior to the meeting to allow review by the Board would have been worthwhile, and voiced concern with trying to review documents while listening to someone providing testimony. Discussion ensued on timely submittal of materials. Mr. Schneier asked the Town Attorney if the Board could not consider the materials since they were not included in the record. Attorney Fernandez commented the materials were submitted as part of the hearing, so they would be part of the record, but the Board's comments concerning receipt of the materials were also part of the record.

Mr. Van Hise continued with discussing whether the property was conforming or non-conforming; the applicant's use of the Commercial Revitalization regulations; on-site and off-street parking spaces – the square footage of the restaurant was being increased, but not the parking; and, that he disagreed with staff that the parking complied as he believed the minimum parking required was 42 spaces. He distributed photographs that were taken from the Ragheb's property in March 2012 to show the parking problems that existed. Mr. Aitken questioned if the photos provided were taken prior to the change in the parking regulations. Mr. Van Hise replied yes; he wished to point out the current parking issue and how they believed the applicant's request would further impact the parking problems.

Mr. Schneier believed it was disrespectful for someone to come to the public hearing and distribute 31 pages of information for the Board to review, deliberate on, and possibly incorporate into a decision. Mr. Van Hise apologized. He noted the materials were three pages of bullet points, and the issue was clear that in order to enlarge the restaurant, the Code required an increase in parking. Ms. Bishop also voiced her disapproval of receiving the materials at the hearing. Mr. Symanski asked if staff had comments about the illegality of the parking. Ms. Ray responded that staff had not had

a chance to review the information. The Board had granted a previous waiver under the revitalization ordinance, and staff did not revisit those waivers. The parking requirement for restaurants was only based on seating; there was no additional requirement for seating plus square footage for parking spaces. They were allowed to utilize one boat slip per parking space up to a maximum of eight, and to use bicycle racks for four spaces.

Gene Jaleski, Cedar Street, noted that the Mar Vista restaurant was in direct sight line of his property; discussed the impact of the application and Section 158.126(A) of the Town Code; the Town had no way of enforcing sound, no means of issuing citations, or measuring sound violations; believed they should conduct a traffic study versus "taking information from a text book;" that the property was non-conforming; the need to address the parking issue; and, that there was no demonstration that it would not impact Town facilities.

Attorney Fernandez pointed out that the Mar Vista Restaurant was a conforming use. Mr. Schneier commented that the notion was raised that the Board was here to protect the residents, and he believed they were here to protect the entire community. The Mar Vista Restaurant was a long-standing part of the community.

Larry Grossman, St. Judes Drive North, discussed the issue of non-conformity; the application noting it had an approved Commercial Revitalization waiver for parking; that the code did not address the second story – not in the definitions or regulations; and, there were no standards in the code for second story outdoor dining, which might cause greater noise and nuisance factors.

Brian Feeney, Broadway Street, believed the second story would impact the Village as the noise would be loud. He was not supportive of the second story; that it would impact the residential areas; the parking formulas were flawed; the Town should review how parking was allocated for commercial establishments; asked about closing in the second story; and, how to control large events.

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

Mr. Symanski commented the area was a mixed neighborhood, and he understood the waivers were not in front of the Board as they were granted some time ago. Ms. Ray explained that the parking waiver was granted in 2008, and if there was a challenge, there was a legal recourse for that. Consideration of that waiver was not in front of the Board for review.

MS. BISHOP MOVED THE P&Z BOARD APPROVE SPECIAL EXCEPTION ORDER 2014-01, INCLUDING THE FINDINGS OF FACT OUTLINED IN THE STAFF REPORT. MR. GARNER SECONDED THE MOTION.

The public hearing was reopened for additional comment.

Ms. Burnett addressed the question of the traffic report noting a detailed Transportation Concurrency Analysis was provided and provided detailed, historical traffic data as well as the projected future; it was updated to project to 2017. Concerning the noise and light pollution concerns, Conditions 9-13 of the Order address those and the applicant had no problem with those conditions. She noted that the fireworks and the Annual Fish Fry were canceled due to the concerns expressed by the public regarding traffic and public health and safety.

The public hearing was closed again.

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

Mr. Hackett left the meeting at this time.

AGENDA ITEM 3
MAR VISTA RESTAURANT, 760 BROADWAY STREET
SITE PLAN AMENDMENT (QUASI-JUDICIAL)

Kelly Fernandez, Town Attorney, asked if there were any Ex Parte communications or conflicts that should be stated for the record. Chair Hixon disclosed that he had visited the site often and knew the applicants. He had many friends in the Village that he has known for years. His bands have, or will, play at many of the restaurants on the keys, and in Sarasota, including those owned by the Chiles Group. Although he believed he could render an unbiased opinion on this application, if anyone on either side of the issue wished him to abstain, or disqualify, he would do so and turn the meeting over to the vice chair. Attorney Fernandez asked if anyone had an issue with Chair Hixon's participation in the hearing. No objections were noted.

Attorney Fernandez informed the Board that Gene Jaleski had also requested 'Party Intervener' status for this hearing. She recommended the Board not grant 'Party Intervener' status, because Mr. Jaleski has not shown special injury as a result of the application.

MS. BISHOP MOVED TO DENY THE REQUEST FOR 'PARTY INTERVENER' STATUS. MR. WILD SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; DALY, AYE; GARNER, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE.

Alaina Ray, Planning, Zoning & Building Director, requested that the staff report be included in the record.

MR. WILD MOVED TO ENTER THE STAFF REPORT INTO THE RECORD. MS. BISHOP SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

Mr. Hackett returned to the meeting at this time.

Ms. Ray discussed the following points with the Board:

- Staff asked the applicant to revise the location of the handicap parking spaces. They were currently shown on the southwest of the building and not near the entrance of the restaurant; the applicant moved them to the northeast side and adjacent to the entrance
- The addition complied with all setbacks
- Discussed issues with stormwater runoff and requested they correct the issue to which they agreed
- The aprons of both driveways on Broadway Street would be redone and concrete
- On the portion of the parking lot directly behind the driveways and encompassing the first couple of parking spaces, the shell will be removed and replaced with #57 rock
- The remainder of the parking lot would be re-graded, and the Town's Public Works Director and engineer believed it would be an improvement
- One row of sod would be added along the shoreline

Chair Hixon questioned if that meant the stormwater storage basin shown on the plan was not going to be constructed, but in lieu would be one row of sod along the littoral area of the bay. Lynn Burnett, engineer representing the applicant, referred to the existing retention areas noting the only change that needed to be implemented was to raise the berm .25 feet (three inches), which could be accomplished by salt-tolerant sod just along the shoreline. There were no other changes to the existing retention on the site.

Ms. Ray continued with reviewing her PowerPoint presentation. Ms. Bishop noted there had been considerable discussion of noise concerns, and asked staff to address the noise issues. Ms. Ray explained the plan was to screen the upstairs area from adjacent properties with a railing, lattice and plants. She noted if the Town received complaints, there were other things that could be done. Ms. Bishop questioned the distance of the property line from the edge of the new second floor deck. Ms. Ray responded the outdoor dining area was 61 feet from Broadway Street, 60 feet from Lois Avenue, and 49 feet from Moore's Stone Crab Restaurant. Ms. Bishop discussed the noise ordinance in Leesburg, Virginia noting in the historic district they had a second floor outdoor dining facility which was exactly 15 feet from a residential property and very tight density issues; they had a very strict noise decibel ordinance and with dining it was never an issue. Mr. Aitken believed one of the things lacking in the Town Code was regulation of decibel levels. Ms. Ray commented that the Town did not use a decibel level, but measured by what a reasonable person would find offensive and handled on a case-by-case basis.

Ms. Bishop asked if there was an opportunity to provide extra buffering to mitigate the sounds from the condensing unit. Ms. Burnett believed the heavy vegetation that was being proposed would address the problem.

Brian Feeney, Broadway Street, believed going to the second level was irresponsible for a residential area.

Steven Garrod, Russell Street, requested that the applicant consider enclosing the sides that faced the residential areas (facing Lois and Broadway) with something other than lattice or railings; enclosed in a manner that was acoustically sound. He noted there was no expert analysis before the Board, and the noise from the current equipment facing Lois Avenue was unacceptable. Mr. Hackett asked Mr. Garrod what materials he would suggest. Mr. Garrod responded he was not an expert, but believed the materials need to have a certain density to mitigate the acoustical noise. Mr. Hixon agreed there was a need to screen the sides from the residential areas, but he did not wish to lose the view to the water. He commented a vertical louver could be installed facing the residential areas.

Chris Van Hise, attorney representing Samir and Corrine Ragheb, referred to Chapter 5 of the Florida Accessibility Code, Section 502.3, Handicap Parking Spaces, and pointed out that the access aisle was not 44 inches, so there was an issue with access. He believed, after reviewing Section 158.102(d) of the Town Code, there was not adequate area for backing up near the stairs.

Ms. Ray informed the Board that the Town's Fire Marshal had reviewed the plans and approved them.

Larry Grossman, St. Judes Drive, read the definition of outdoor dining area and noted it should be revised to include reference to a second story space. Concerning the request to enclose the sides, he asked when it would no longer be considered outdoor space.

Gene Jaleski, Cedar Street, discussed sound attenuation and enclosing the three sides. He mentioned that two employees of the Mar Vista Restaurant had informed him that their supervisor did not allow parking on-site, but to park on Village streets. He continued with noting: there was no protection from sound or light; he was not in favor of adding retail to a situation that was for dining only and not the original intent of the restaurant, and the request served no public purpose.

Ms. Burnett discussed:

- the Americans with Disabilities Act and accessibility code
- that all access aisles would be 60 inches or wider to provide accessibility
- concerning the comments related to noise, that there would be no music or amplified devices
- that the condition recommended by staff concerning amplification of music or voices from the outdoor dining area was agreeable to the applicant
- that the Mar Vista Restaurant was non-conforming at one point in time, but since the commercial revitalization waivers, they have been addressed and resolved
- they were not asking for waivers, but asking to reallocate existing seats

Mr. Aitken commented that the air-conditioning equipment was an amplification of sound. Ms. Burnett responded she believed the equipment needed to be replaced.

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

MR. GARNER MOVED THE P&Z BOARD APPROVE THE SITE PLAN APPLICATION AS PRESENTED, SUBJECT TO THE CONDITIONS OUTLINED BY STAFF. MR. DALY SECONDED THE MOTION.

Ms. Bishop wished to point out that the public purpose was always being served when real estate on the island was improved. One of the comments she had heard from people was the lack of restaurants since the hotels had disappeared. The applicant was not requesting to increase the number of seats, but asking to improve an aging building.

MR. AITKEN MOVED TO AMEND THE MOTION TO INCLUDE A CONDITION THAT, "SUITABLE ACCOUSTICALLY DENSE MATERIALS BE REQUIRED FOR SHIELDING SOUND FROM THE DINING AREA AND MECHANICAL EQUIPMENT FROM LOIS AVENUE AND BROADWAY STREET." MOTION DIED FOR LACK OF A SECOND.

Ms. Bishop commented the reason she would not offer a second to the motion was because the language was vague, and staff would not be able to enforce, and because the Town did not have specific language in the ordinance, the Board would be creating unenforceable language if the motion moved forward. Mr. Symanski agreed with Ms. Bishop concerning public purpose; he viewed waterfront restaurants as "jewels" on the island. Concerning Mr. Aitken's motion, he expected staff would handle the situation appropriately.

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

The board recessed from 12:25 pm to 12:35 pm.

AGENDA ITEM 4
ORDINANCE 2015-02, COMPREHENSIVE PLAN AMENDMENT
NONCONFORMING PROPERTIES

Pursuant to published notice, the public hearing was opened.

Mr. Symanski voiced concern with the second 'Whereas' clause and the increases in allowable density. Jerry Murphy, Town's Planning Consultant, commented that the ordinance provided an opportunity to relax the current restrictions in the Comprehensive Plan; the Charter provision would still apply until, and unless, the Charter was amended.

Ms. Bishop left the meeting at this time.

Alaina Ray, Planning, Zoning & Building Director, noted that some properties might need a little bit of density in order to fit them into whatever categories might end up being created. The 'Whereas' clause was looking forward and stating there might be opportunities to explore, if able to amend the Charter, and staff was revising language to accommodate those things. She noted that any increases in density would still go through a referendum process.

Mr. Symanski reiterated his concern with using only the words "increase in allowable densities," and suggested inclusion of "if otherwise allowed." He was trying to determine whether the first part of Policy 1.1.5 was existing law. Mr. Murphy explained the revised policy directs the regulatory aspect from the Comprehensive Plan to the Land Development Regulations (LDRs). Ms. Ray pointed out the Comprehensive Plan limited the building to the existing cubic content. Staff was suggesting removing the requirement from the Comprehensive Plan so if the Town decided, they could relax the LDR for that restriction.

Mr. Symanski questioned the last sentence, '*and may establish*.' He voiced concern that if they established standards, it might create a problem as it could be interpreted to apply to every property to make it conform. Mr. Murphy responded they could do certain standards or certain properties, and he would suggest certain standards. Mr. Garner suggested the language could read, "The existing land development code will specify standards." Mr. Murphy commented the language would be similar to the provision in the Charter that limited the Town to the 1984 densities.

Discussion ensued on:

- The way the ordinance was written, it could be argued if the Commission established standards to conform property with lawfully existing non-conforming density, that it would have to cover every property; would like to see language that stated "standards so that certain properties conform"
- Currently, under involuntary destruction, the effected facilities would be able to rebuild with the same density; however, what would happen, with respect to maintaining density, if the language was removed and there was involuntary destruction; under the current provisions of the LDRs, they would be able to maintain density, but could not be enlarged
- the language was only being removed from the Comprehensive Plan, and not eliminating the standards, because they exist within the LDRs
- Why the Comprehensive Plan should not mandate establishment of standards to conform; the language throughout the Comprehensive Plan, within the Future Land Use Element, consistently uses the word 'will' when directing the Town, and theoretically, the Town should have "greater power than the plan"
- When the Town approved the additional 250 tourism units, the mindset was different than today
- The issue seemed to be that the LDRs would become the guideline for land development and redevelopment

Following discussion, Mr. Schneier saw no problem with including the word 'certain,' as he believed with that addition, it addressed the board's concern and provided more flexibility. He believed the issue was the existing language, which was being stricken, did not give flexibility to the Town as to how to redevelop property, however it went away.

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

MR. SCHNEIER MOVED THE P&Z BOARD RECOMMEND APPROVAL OF ORDINANCE 2015-02 SUBJECT TO THE ADOPTION OF THE REVISED LANGUAGE FOR POLICY 1.1.5, WITH THE ADDITION OF THE WORD 'CERTAIN' BETWEEN THE WORDS 'CONFORM' AND 'PROPERTY', AND APPROVE DELETION OF THE EXISTING LANGUAGE. MR. WILD SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; DALY, AYE; GARNER, NO; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE.

CONSENT AGENDA

MR. GARNER MOVED APPROVAL OF THE MINUTES OF THE OCTOBER 21, 2014, MEETING AND SETTING THE FUTURE MEETING DATE FOR JANUARY 20, 2015. MR. DALY SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

STAFF UPDATE

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

Mr. Daly commented that during the last Commission meeting, the Mayor suggested discussion of reducing the number of Planning and Zoning Board members be scheduled for a future workshop. He suggested the board discuss this issue at their next meeting.

ADJOURNMENT

The meeting was adjourned at 1:13 p.m.

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John Wild, Secretary
Planning and Zoning Board