

TOWN OF LONGBOAT KEY  
ZONING BOARD OF ADJUSTMENT  
MINUTES OF FEBRUARY 12, 2015 MEETING

The meeting of the Zoning Board of Adjustment was called to order by Chair Gaelle Barthold at 9:30 a.m. on Thursday, February 12, 2015.

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; Donna Chipman, Office Manager

Approval of Minutes

**Ms. White made a MOTION TO APPROVE THE MINUTES OF THE DECEMBER 11, 2014, ZONING BOARD OF ADJUSTMENT MEETING AS WRITTEN; seconded by Ms. Roth and approved by a unanimous vote.**

Chair Barthold reviewed the process for submittal of materials and for the meetings, and advised the applicants of the governing guidelines for the meeting (Ordinance 2014-15), noting that the applicant presentation shall not exceed 20 minutes with follow-up questions.

Gene Jaleski, Cedar Street, noted that he had submitted a request to move Agenda Item 4, Moore's Stone Crab Restaurant, to the first item. Maggie Mooney-Portale, Town Attorney, addressed the Board commenting the Board could consider the request as long as the two interested parties have no objection in reordering the agenda. Mr. Linhart questioned if people wanted to come to the meeting for the Moore's request, and because it was listed fourth on the agenda, and then the Board changed the order of the agenda, would it be considered a problem if people came later believing the petition would not be heard first thing. Attorney Mooney-Portale explained she would need to review the notice. Alaina Ray, Planning, Zoning & Building Director, explained the notice only stated the time the meeting would begin and the order of the agenda items. Chair Barthold pointed out people might be led to believe the matter would not be heard first.

Mr. Jaleski commented there had been numerous occasions where the agenda had been changed in meetings of legislative and jurisdictional bodies; there was a precedent. Chair Barthold explained that she appreciated what he was saying, but there was concern that someone might come later based on the agenda that was published. Attorney Mooney-Portale commented the Town Commission shifts items on a frequent basis; however, those items were of a legislative nature and not quasi-judicial nature. Mr. Jaleski commented in the absence of a published time certain, it behooves an interested party to show up at the beginning of the meeting.

Mr. Linhart commented the board has the discretion, not an obligation, to change the agenda. Ms. Ray pointed out the Town Attorney believed the request was made on February 7<sup>th</sup>, and staff had already published the agenda. Attorney Mooney-Portale explained that the former Town Attorney, David Persson, always advised it was better to give more due process than less, and the Board has touched on the issue of due process if items were moved. It was her recommendation to protect the interest of the unknown resident that might believe the Moore's variance request would be heard later.

Larry Grossman, St. Judes Drive North, discussed that in other jurisdictions they publish a long docket, and they will inform you what time your item will be heard, but Longboat Key does not do that. He noted that if what the Town Attorney was stating was true, the governing board would have no discretion to change the docket; it would set a bad precedent as it would apply to all governing boards. Attorney Mooney-Portale responded she was speaking with regards to quasi-judicial proceedings versus legislative hearings.

Jo Ann Schwencke, Fox Street, asked if the three items could be covered in a short period of time, and asked how long it would take to review. Chair Barthold asked Attorney Mooney-Portale if the Board could schedule the Moore's hearing to a time certain. Attorney Mooney-Portale replied the Board certainly could and give them a time certain.

**Mr. Fuller made a MOTION THAT THE BOARD REORDER THE AGENDA TO HEAR AGENDA ITEM 4, MOORE'S STONE CRAB RESTAURANT, AS THE FIRST ITEM; seconded by Mr. Linhart and approved by a unanimous vote.**

Agenda Item 4. Petition #1-15 by Applicant Moore's Stone Crab Restaurant requesting a Variance from Section 158.145, of the Town of Longboat Key Zoning Code to reduce the street yard setback to 20 feet, and Section 158.150(D)(3) to reduce the bay yard setback to zero feet for a restaurant use located at 800 Broadway Street. The Applicant's Variance request is contingent upon the Applicant's approval of rezoning and land use change to C-1 (Limited Commercial District) and C-L (Future Land Use designation – Limited Commercial). To the extent that the requested Variance is approved and the aforementioned land use and zoning change is not granted by the Town Commission, said Variance will become null and void.

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 Dailey, representing the applicant, presented the Return Receipts to the Board.

Alaina Ray, Planning, Zoning & Building Director, reviewed the staff report noting

- The restaurant building was considered a grandfathered structure, and in non-compliance with FEMA, the Florida Department of Environmental Protection (FDEP), and the Florida Building Code
- In 2010, the property was changed to residential, but it appeared from the hearings at that time there was no plan to cease operation of the restaurant
- The current residential zoning did not allow any significant changes to the building, or reconstruction following a natural disaster or fire; it only allowed for minor repairs to the property
- Current residential zoning requires a 20 foot setback from the street right-of-way and a 20 foot waterfront setback
- If the land use and zoning change were approved for the property, it would require a 45 foot street setback and a 20 foot waterfront setback
- The variance would establish the allowable setbacks for potential renovation of the property
- The variance is being requested prior to the land use changes, because as part of those applications, the applicant has been working on 3-D renderings and plans for those hearings, and they need to know where they could place the building
- the current restaurant cantilevers over the water at this time and violated the setbacks
- the proposal would allow a 20 foot setback on the front and zero setback on the rear line
- the intent of the applicant was to either significantly renovate or reconstruct a building basically in the same location, but within the new setbacks

Ms. Ray continued with reviewing the Findings of Fact contained in the Staff Report. Staff recommended approval with two conditions – 1) the variance only applies to a restaurant use; and, 2) would become null and void if the Town Commission did not grant the Comprehensive Plan change and rezoning request. She continued reviewing a PowerPoint showing the existing conditions.

Mr. Fuller asked if the variance was granted that it include a provision that the cantilever part be removed. Ms. Ray responded the variance request was for a zero setback, which would require the cantilevered section to be removed. She noted that it was currently protruding eight feet into the water at this time. Mr. Fuller commented if the variance was granted for a 20 foot setback, it did not mean that they would move the building back to 20 feet if the setback were granted for zero. Ms. Ray commented if the variance were granted at zero, the respondent could leave the building as it existed, but if they tear down, they would have to comply with any setbacks that were established with this variance request. Mr. Fuller asked if they made alterations, they did not have to move off the water. Chair Barthold commented that Mr. Fuller noted there was no harm if a condition was included. Ms. Ray informed the board the applicant would agree to a two year time period so that at the end of two years, if not reconstructed, the variance would expire.

Attorney Mooney-Portale asked if anyone had Ex Parte communications with regard to the matter, and did they have a conflict of interest where a ruling on this application would have monetary gain for them.

Chair Barthold noted she did not have any Ex Parte communications other than having dinner and lunch at Moore's. She did not believe she had a conflict of interest as a result of the ruling. Ms. Roth also noted she did not have any Ex Parte communications or any financial gain. She commented that she had eaten at the restaurant many times. Mr. Fuller, Ms. White, and Mr. Linhart also noted they had no Ex Parte communications or any conflicts of interest.

Peter Dailey, Dailey Design Group, planner representing the owners, noted:

- Six years ago Moore's sought funds for renovation of the restaurant, and due to the economy were unable to obtain funds on a commercial property and went through the Comprehensive Plan and rezone process in 2010;
- Have partnered with the Caragiulos to update and renovate the restaurant, but want insurance that if something happened, they would be able to rebuild in its current location
- The Comprehensive Plan and rezoning are being processed through the P&Z Board and Town Commission
- The setbacks are 20 feet from Broadway Street and zero from the Mean High Water Line (MHWL)
- Would allow the restaurant to remain in its current location on the property
- The restaurant was one of the few waterfront restaurants remaining on the Key
- The requested setbacks would be consistent with those setbacks found in the Village area

Chair Barthold asked for confirmation that the petitioner was asking to reduce setbacks on both sides. Mr. Dailey replied correct. Mr. Fuller noted that Mr. Dailey had used both the terms 'a new building' and 'alteration.' Chair Barthold questioned the two year window. Mr. Dailey pointed out that if the board granted the variances at this hearing, within two years, they would begin the process with the variances for either reconstruction or renovation. Ms. Ray commented that typically the Commission includes a condition that states a final building permit would be issued at a date certain. Chair Barthold asked if the applicant was committing that they would have a building permit within two years and then two years for construction. Ms. Ray explained the Commission only approves upon issuance of permit, because they were aware that construction times were varied due to outside conditions. Mr. Dailey noted they were agreeing to two years when the Town Commission votes and approved their request.

Ms. Ray noted staff's suggestion would be to base the agreement on the issuance of the building permit. She suggested to 'start the clock' at the time the comprehensive plan amendment and rezoning applications were approved, then they should project out two years beyond for issuance of the final building permit.

Mr. Fuller asked if there was concern with the cantilever portion over the water. Ms. Ray commented staff would like to see it removed as it was not healthy for the shoreline. Mr. Fuller asked if the applicant decided to renovate in the same building, would the Board have authority to require them to remove the cantilever section over the water. Attorney Mooney-Portale responded she would need to review the Town Code to determine if the Board could place a condition upon any approval. Ms. Ray commented that because the structure was non-compliant with regards to FEMA and the FDEP, if they were to invest more than 50 percent of the current value of the current structure, they would need to comply, and would be required to remove that section at that point.

Alan Moore, owner of Moore's Stone Crab Restaurant, commented the plan was to bring the cantilever back whether they remodeled or rebuild. He commented that what the Board did today was contingent on final approval from the Town Commission of the Comprehensive Plan Amendment and Rezoning applications.. They were in favor and want to renovate, because they were excited about what was happening on Longboat Key with all the construction of the hotels, etc. They had a meeting with the residents of the Village one night at the restaurant and received a majority approval for what was presented. He was not asking for additional seating as they have an issue currently with outdoor dining that they were working out with the Town.

Attorney Mooney-Portale asked if Mr. Moore was stipulating on the record that he would agree to the removal of the cantilever section of the building in the event of either a remodel or reconstruction. Mr. Moore replied yes. He explained that the section was tied into the dock lease with the state; if they did anything to the building, they will need to pull it back. Chair Barthold confirmed that Mr. Moore was stipulating that with any remodel or rebuilding, they would remove the cantilevered section. Mr. Moore responded they would bring the building back to the proper setback.

Ms. Ray noted that staff had proof of mailings for the hearing.

Dr. Samir Ragheb, Bayside Drive, explained that he has owned the home across the street from Moore's for 35 years and was told by the Building Department in 1981 and in 1990-91 that Moore's could not make any improvements to the building. He asked if the new restaurant failed, would he be able to come back and ask to rezone it back to residential. Chair Barthold explained to Dr. Ragheb that what was before the board was a very limited variance request that was conditioned upon the Comprehensive Plan and Rezoning changes being approved by the Town Commission. Dr. Ragheb questioned if it was appropriate to request a variance prior to receiving approval for the Comprehensive Plan amendment or rezoning. Ms. Ray explained with the application and presentations made before the Planning & Zoning Board and Town Commission, while they do not need detailed site plans, they do require conceptual designs, so the applicant needs to know where they can locate the structure on the property.

Joe Mazza, Poinsettia Avenue, supported the request. He discussed that Moore's restaurant has been there since 1967. The waterfront has changed in the last few years, and he urged the Town to monitor the waterfront.

Gene Jaleski, Cedar Street, noted there was no site plan, and he did not believe the Board could not consider opinions; there was no supporting data as to how the project would impact FEMA insurance discounts; no definition on how density would be increased; believed they were increasing the non-conformity in a residential neighborhood; and, did not believe they should receive a variance prior to the Comprehensive Plan and rezoning changes.

Larry Grossman, St. Judes Drive, distributed a letter he would read into the record. The Board gave consensus to allow the distribution. Mr. Grossman read his letter into the record which questioned how the variance could be reviewed prior to approval of the Comprehensive Plan and the rezoning applications. He also questioned how the applicant would comply with FEMA and other state and federal regulations. He believed there needed to be a policy in place prior to approval.

Corinne Ragheb, Bayside Drive, noted she lived across the street from the restaurant. She commented that Mr. Moore informed the Board that he invited everyone in the neighborhood to a meeting and she attended. She pointed out that Mr. Moore explained at that meeting he was going to renovate the restaurant, but now she was hearing that the restaurant would be torn down. She discussed the parking and other issues that had taken place on site over the years.

The Board recessed from 11:10 am to 11:19 am. Attorney Mooney-Portale reminded the Board members that they were sitting in a quasi-judicial capacity and should not partake in any Ex Parte communications.

Mr. Dailey clarified they would have a representative site plan drawn up in the near future, and a site plan application submitted by February 24, 2015. Mr. Moore commented that their docks were permitted by the state and the FDEP. He noted the riprap that was installed did not require permitting as long as it did not increase the waterline. Mr. Linhart commented the staff report stated that the variance was being requested prior to the Comprehensive Plan and rezoning applications, because the site plan concept to be utilized for those hearings could not be finalized until the issue of the variance was determined. He asked why the variance application was taken out of order if the other two applications were being reviewed the following week. Mr. Dailey explained when they first started the process, they had to submit a Special Exception, Comprehensive Plan Amendment, and a Rezoning. They met with staff, and staff recommended moving forward first on the variance so they knew what they were working with. Ms. Ray commented when staff met with the applicant and discussed everything that would be involved, one of their concerns and staff's concern was making sure that any documents submitted to the P&Z and Town Commission, and any presentations before them, would be as accurate as could be. They also discussed the fact that the applicant would be submitting a site plan application concurrently with

those applications. Staff needed to know where the building could be or could not be, so staff recommended proceeding with the variance first. The matter before the board was a very narrow matter only dealing with setbacks, and not dealing with the merits or any other considerations that involve the decision that would be before the P&Z and Town Commission.

Discussed ensued on:

- What would happen if the applicant did not have a variance; they would have to bring the site plan back through the P&Z Board
- That the variance was conditioned upon the Comprehensive Plan and rezoning applications being approved
- Whether the board could place a condition upon the approval that the number of seats not be increased
- Variances were granted under Section 158.029, and there were certain criteria to be considered
- The Board should be cautious to ensure conditions imposed were within their purview and not within the purview of another board
- Any increase in seating would be through a Special Exception application, and while the ZBA had those powers in some circumstances, seating requests were under the purview of the P&Z Board related to the site plan and potential special exception use
- Reviewed a new third condition, which stated, *“It is required that under any remodeling or reconstruction permit of the restaurant building, per the stipulation of the property owner, the property owner will remove any sections of the building that does not comply with the variance setbacks. The issuance of the building permit will be required within two years of the property being rezoned to Limited Commercial by the Town Commission or the variance will be null and void.”*

Dr. Ragheb, Mr. Grossman and Mr. Jaleski provided additional comments relating to:

- The Town staff placing emphasis on the triangle lot and how it was difficult to work with, which Moore’s knew what they had and during the original rezoning, they could of asked for three single-family sites, but only requested two
- The ordinances that were passed in 2007 to change the zoning did not make the Comprehensive Plan and rezoning contingent upon the site plan
- That the variance request could only be considered when dealing with a piece of residential property; believed it would set a precedent for other residential properties in the Village to request the same consideration

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

Mr. Moore pointed out that the building was conforming when it was built, but the Town made it non-conforming when they changed the zoning laws.

Mr. Linhart made a MOTION TO GRANT PETITION 1-15 SUBJECT TO THE CONDITIONS AND THE RECOMMENDED FINDINGS OF FACT CONTAINED IN THE STAFF REPORT, AND SUBJECT TO THE THIRD CONDITION, ***“IT IS REQUIRED THAT UNDER ANY REMODELING OR RECONSTRUCTION PERMIT OF THE RESTAURANT BUILDING, PER THE STIPULATION OF THE PROPERTY OWNER, THE PROPERTY OWNER WILL REMOVE ANY SECTIONS OF THE BUILDING THAT DOES NOT COMPLY WITH THE VARIANCE SETBACKS. THE ISSUANCE OF THE BUILDING PERMIT WILL BE REQUIRED WITHIN TWO YEARS OF THE PROPERTY BEING REZONED TO LIMITED COMMERCIAL BY THE TOWN COMMISSION OR THE VARIANCE WILL BE NULL AND VOID;”***seconded by Ms. White and approved by a roll call vote:

<b>BARTHOLD:</b>	<b>AYE</b>	<b>FULLER:</b>	<b>AYE</b>
<b>LINHART:</b>	<b>AYE</b>	<b>ROTH:</b>	<b>AYE</b>
<b>WHITE:</b>	<b>AYE</b>		

Attorney Mooney-Portale reminded the Board that during the lunch break to not have any Ex Parte communications.

The board recessed for lunch from 11:49 am to 12:29 pm

Agenda Items 1, 2 and 3 - Jurisdictional Determination Hearings.

Attorney Mooney-Portale made the Board aware of a request that was received by Mr. Gene Jaleski with regard to the Board and its deliberations. On 1-10-2015, Mr. Jaleski requested recusal of two members of the board during deliberations on his requests due to their past involvement with the Longboat Key Public Interest Committee (PIC). It was her legal opinion that the allegations were not legally sufficient as a basis for recusal. She continued with discussing when board members shall abstain from a vote. Attorney Mooney-Portale explained that the ZBA was sitting in a quasi-judicial capacity and reviewed Florida Statute 286.012. She reviewed the Consent Final Order in Mr. Jaleski’s legal case against PIC, pointing out that it was against an organization and not the specific people he was referring to for recusal.

Attorney Mooney-Portale asked if members could be fair, impartial, and unbiased in making a determination on the jurisdiction of this board in accordance with Section 158.126(F) of the Town Code. Chair Barthold commented the basis for Mr. Jaleski’s request was that she, along with Ms. Roth, were ZBA members who were previously members of PIC and were party to the decree that pertained to the Longboat Key Public Interest Committee.

Attorney Mooney-Portale asked if any member had Ex Parte communications with regard to the item before them for Agenda Item 1. No Ex Parte communications were noted. She asked if anyone had a Conflict of Interest as recognized by Florida law. No conflicts of interest were noted. She asked if the members could be fair and impartial, and free from bias or prejudice on their ruling. Chair Barthold believed she could be fair and impartial, and act without bias. Ms. Roth noted the same. Mr. Fuller pointed out

that he was also a member of the PIC board when the legal action took place. He noted he did not have any bias and could be fair and impartial. Mr. Linhart also noted he was a member of the PIC board and was familiar with the document. He had no doubts he could be fair and impartial. Ms. White commented she was not a member of PIC, and believed she could be fair and impartial. As a result, Attorney Mooney-Portale believed there were no grounds for members to recuse themselves, but she would leave the decision with the individual board members.

Gene Jaleski, Cedar Street, commented it was not a political setting, and the nature of the suit was that a 501C (4) was not a political entity; the only two signatures on the findings by the state were the two named parties. He feared he would not receive an impartial hearing, and would be more comfortable if he did not have previous history and statements made about him in a political advertisement.

Chair Barthold and Ms. Roth noted they could be fair and impartial in making a decision on the request, and there was no personal vendetta. They both declined to recuse themselves from the hearings. Mr. Fuller and Mr. Linhart also declined to recuse themselves.

Agenda Item 1. Request from Mr. Gene Jaleski dated December 10, 2014, for opinion of the Zoning Board of Adjustment, after consideration of the recommendation of the town attorney, as to whether the Zoning Board of Adjustment has jurisdiction over the matter presented by Mr. Jaleski per Town Code Section 158.026(F).

Attorney Mooney-Portale reminded the Board that they were not speaking on the merits of the request, but whether the Board has jurisdiction to hear the request. She reviewed the history of the request, referring to Town Code Section 158.124(F)(4), Powers and Duties, of the Board. She explained that what was being asked referred to the Town Commission and P&Z Board actions concerning a specific restaurant. The Board's purview was to review an Appeal of a Decision of an Administrative Official. There was also a timing issue as the ZBA had to review an appeal within 30 days of the action; the allegation from Mr. Jaleski goes back 20-25 years. He was also asking for the Board to review actions of another board, which was not under the ZBA's purview under the Town Charter. She noted that if the Board decided they did have jurisdiction, then Mr. Jaleski would be required to notice the hearing for a later time as the entity whom he is taking issue with should be afforded an opportunity to be at those hearings. There was also a requirement for a deposit and fees to be paid for the appeal process. If the Board determined there was no jurisdiction, then this proceeding ends and an Order will be entered stating such.

Mr. Linhart asked if the Board was hearing testimony. Chair Barthold responded she understood that the Board needed to hear from Mr. Jaleski as to whether the Board had jurisdiction. If the Board decided they did have jurisdiction, then the hearing would cease, and the appeal would have to be noticed for a subsequent meeting. Attorney Mooney-Portale explained that she had indicated in her staff memo that the hearing should be treated as a quasi-judicial proceeding affording Mr. Jaleski the ability to

address the matter. She made it clear that it was not a stipulation that this is technically a quasi-judicial normal proceeding, but affords Mr. Jaleski additional time and the ability to speak with the board. Ms. White believed the Board did not have a right to rule on something that happened 25 years ago. Attorney Mooney-Portale explained that was her opinion and that was what Mr. Jaleski was seeking. The Code did not allow the ZBA to rule on items of other boards, or items that were beyond the timeframe set forth in the code, which was 30 days.

Ms. Roth asked for clarification on Item 1 and who would make the decision. Attorney Mooney-Portale noted that Mr. Jaleski was not requesting a determination by a staff member, but asking for formal review of certain actions taken by the Town Commission and P&Z Board; he was asking the ZBA to review actions of another board.

Mr. Jaleski commented it was a constitutional due process question that was being addressed. He continued with reviewing a PowerPoint presentation. He noted that he was not notified by certified letter, for the past 25 years, of land use actions by the Town within 500 feet of his property. He believed the ZBA had jurisdiction to hear his complaint. Mr. Fuller questioned who Mr. Jaleski was referring to in his complaint. Mr. Jaleski pointed out that there were errors committed by an administrative official of the Town and not by the board. Mr. Fuller pointed out that his letter referred to the P&Z Board and Town Commission. Mr. Jaleski responded at the time he made the complaints, he had not been challenged by the Town Attorney. The Town Attorney raised the point of Section 158.026(F)(1); otherwise, the discussion would be about 'void ab initio.' Discussion ensued on the intent of Mr. Jaleski's letter. Attorney Mooney-Portale commented that Mr. Jaleski was changing his request as to what he is seeking relief from as what he had written in his 12-10-2014 letter was different than what was being discussed. She continued with reading Section 158.027.

Discussion ensued on:

- Whether the board could review an issue that was different than requested
- That the Town Attorney had reviewed Mr. Jaleski's request, and the Board was reviewing to determine their ability to hear the case
- Whether Mr. Jaleski was disputing the 30-day time limit for appeals, to which Mr. Jaleski replied yes
- That if the request was within the Board's jurisdiction, they would need to hear a case within 30 days of the decision; however, if it was outside the 30 days, then Mr. Jaleski would need to bring his argument to another body
- That Mr. Jaleski's remedy did not lie within the jurisdiction of the ZBA
- Mr. Jaleski believing there was no "clock running"

Ed Zunz, Lands End Drive, commented the question was whether the ZBA has jurisdiction to hear this matter, and if the board did not have jurisdiction, but the board went ahead and made a decision, the decision would not have validity, because they would not have jurisdiction to render it. Decisions were made in the past related to the

Mar Vista Restaurant, and he believed Mr. Jaleski's request was directed at the approval for renovations and that notice was not provided to people within 500 feet. He did not believe Mr. Jaleski was arguing the decisions made over the past 20-25 years were improper based on the merits, but that notice was not received by those within 500 feet; that improper notice was given over the past 20-25 years.

Mr. Fuller discussed that Mr. Jaleski was arguing that the hearings were 'void ab initio', but that did not confer any jurisdiction on the ZBA to hear whatever his complaint was. Mr. Jaleski commented it was a complex issue and believed the Board was able to ask for a continuance to look into these matters.

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

Attorney Mooney-Portale directed the Board to the specificity of the code, and the specific request from Mr. Jaleski.

Mr. Linhart commented that based upon the application submitted by Mr. Jaleski, and on the opinion by the Town Counsel, he did not believe the Board had jurisdiction over the complaint as it was applied for. Mr. Fuller agreed. Ms. Roth discussed Section 158.026 of the Town Code, and she did not see, as presented, where the Board would have jurisdiction. Chair Barthold pointed out there was a specific complaint, and the ZBA did not have jurisdiction over the Town Commission or P&Z Board. She did not see anything that fit within the three narrow criteria that gave jurisdiction. Ms. White questioned how many residents it might have impacted because this was not reported years ago.

**Mr. Fuller made a MOTION TO FIND THAT THE ZONING BOARD OF ADJUSTMENT DID NOT HAVE JURISDICTION AS TO AGENDA ITEM 1 COMPLAINT FILED BY MR. JALESKI, DATED DECEMBER 10, 2014; seconded by Mr. Linhart and approved by a roll call vote:**

<b>BARTHOLD:</b>	<b>AYE</b>	<b>FULLER:</b>	<b>AYE</b>
<b>LINHART:</b>	<b>AYE</b>	<b>ROTH:</b>	<b>AYE</b>
<b>WHITE:</b>	<b>AYE</b>		

The board recessed from 2:10 pm to 2:18 pm.

Agenda Item 2. Request from Mr. Gene Jaleski dated January 6, 2015, for opinion of the Zoning Board of Adjustment, after consideration of the recommendation of the town attorney, as to whether the Zoning Board of Adjustment has jurisdiction over the matter presented by Mr. Jaleski per Town Code Section 158.026(F).

Chair Barthold noted that prior to Agenda Item 1, the Board reviewed the legal and recusal issues. She asked if Mr. Jaleski wished to review that discussion again, or if he would like to proceed with the fact that no board members wished to recuse

themselves, subject to Mr. Jaleski's objection. Mr. Jaleski concurred that it was on the record the decision of each of the members, and it would apply across the board to all hearings. Attorney Mooney-Portale agreed that the board was adopting all of the discussion, by reference, in consideration of this agenda item as well.

Attorney Mooney-Portale wished to make clear for the record that none of the board members had Ex Parte communications, any conflicts of interest, and could maintain impartiality and unbiased deliberations on this proceeding. All board members agreed.

Attorney Mooney-Portale reviewed her memorandum in response to the materials submitted by Mr. Jaleski. She reviewed the complaints, which were: 1) alleged statements made by a Planning & Zoning Board member at a Planning and Zoning Board quasi-judicial hearing that took place on December 18, 2014; and 2) advice that was given by the Town Attorney at that same quasi-judicial hearing with regard to a determination about intervener status. She explained that Mr. Jaleski took issue with advice provided by the attorney at that hearing which was "that the Town usually does not grant party intervener status to residential property owners within 500 feet of an affected property" to which the P&Z Board denied him intervener status. She reviewed the complaints against the context of the Town Code, specifically Section 158.026(F), subsections 1-4, and it was her opinion they do not rise to provide the ZBA with jurisdiction over the matters he raised. She wished to incorporate, by reference, everything within the agenda materials as well as the attachments.

Gene Jaleski, Cedar Street, discussed his complaints noting that his request for intervener status was based on the complaint that he had not been legally notified of Town actions. Discussion ensued on the complaint with Mr. Jaleski pointing out that the attorney at that meeting was not Attorney Mooney-Portale, but an associate, to which he understood they were not considered employees of the Town. He believed the attorney at that meeting erred in their advice to the board about his status.

Chair Barthold asked if Mr. Jaleski conceded that the ZBA did not have jurisdiction. Mr. Jaleski replied yes.

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

**Mr. Fuller made a MOTION TO FIND THAT THE ZONING BOARD OF ADJUSTMENT DID NOT HAVE JURISDICTION AS TO AGENDA ITEM 2, COMPLAINT FILED BY MR. JALESKI, DATED JANUARY 6, 2015; seconded by Ms. White and approved by a roll call vote:**

<b>BARTHOLD:</b>	<b>AYE</b>	<b>FULLER:</b>	<b>AYE</b>
<b>LINHART:</b>	<b>AYE</b>	<b>ROTH:</b>	<b>AYE</b>
<b>WHITE:</b>	<b>AYE</b>		

Agenda Item 3. Request from Mr. Gene Jaleski dated January 13, 2015, for opinion of the Zoning Board of Adjustment, after consideration of the recommendation of the town attorney, as to whether the Zoning Board of Adjustment has jurisdiction over the matter presented by Mr. Jaleski per Town Code Section 158.026(F).

Attorney Mooney-Portale asked Mr. Jaleski if he agreed to incorporate, by reference, all of the discussions with regards to recusals that occurred in the first proceeding and incorporate into these proceedings. Mr. Jaleski agreed.

Attorney Mooney-Portale asked if any member had Ex Parte communications with regard to the item before them for Agenda Item 3. No Ex Parte communications were noted. She asked if anyone had a Conflict of Interest as recognized by Florida law. No conflicts of interest were noted. She asked if the members could be fair and impartial, and free from bias or prejudice on their ruling. All agreed they could be fair and impartial and free from bias or prejudice.

Attorney Mooney-Portale reviewed Mr. Jaleski's complaint noting she had determined the Board did not have jurisdiction. She explained that the ZBA did not have jurisdiction to review another Board's decision.

Gene Jaleski, Cedar Street, submitted letters from December and January that established the timeliness questioned earlier, and the letters directly dealt with his concerns about what would happen at the future P&Z Board meeting and whether the Town could move forward in that area. Chair Barthold noted the agenda materials were incorporated into the record. She pointed out that the January letter outlined three complaints, and the Town Attorney indicated that Complaints 1 and 2 had been resolved earlier by findings of non jurisdiction, and the Board was focusing on Complaint 3 related to the Special Exception Use. Mr. Jaleski concurred.

Mr. Jaleski explained that his complaint was that errors were made by the Town Planning, Zoning & Building Director when submitting the staff report to the P&Z Board approving the Mar Vista Restaurant Special Exception Use Application, and that these errors constitute a prime cause for the P&Z Board to enforce certain Town codes and ordinances. Mr. Linhart noted what Mr. Jaleski was discussing was not what he had outlined in his complaint. Chair Barthold pointed out that the ZBA had limited authority under the Town Codes, and his complaint did not fit into any of those categories. Mr. Linhart noted there were four broad areas that could be brought to the Board, which were outlined in the code section. Chair Barthold pointed out that the P&Z Board was the entity who took the action. Mr. Jaleski believed that the PZB Director was in error in the parking calculations for the Mar Vista Restaurant.

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

**Mr. Linhart made a MOTION TO FIND THAT THE ZONING BOARD OF ADJUSTMENT DID NOT HAVE JURISDICTION AS TO AGENDA ITEM 3,**

**COMPLAINT FILED BY MR. JALESKI, DATED JANUARY 13, 2015; seconded by Ms. White and approved by a roll call vote:**

<b>BARTHOLD:</b>	<b>AYE</b>	<b>FULLER:</b>	<b>AYE</b>
<b>LINHART:</b>	<b>AYE</b>	<b>ROTH:</b>	<b>AYE</b>
<b>WHITE:</b>	<b>AYE</b>		

New Business. There was no new business.

Setting Future Meeting Date. The next meeting was tentatively scheduled for March 12, 2015.

Adjournment.

The meeting was adjourned at 3:06 pm.

Respectfully submitted,

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Charles Fuller, Secretary  
Zoning Board of Adjustment