

TOWN OF LONGBOAT KEY
PLANNING AND ZONING BOARD
MINUTES OF REGULAR MEETING

JANUARY 19, 2016

The regular meeting of the Planning and Zoning Board was called to order at 9:29 AM by Chair Jim Brown.

Members Present: Chair Jim Brown; Vice Chair BJ Bishop; Secretary Ken Schneier; Members Andrew Aitken, Leonard Garner, Stephen Madva; George Symanski

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

AGENDA ITEM 1
PUBLIC TO BE HEARD
Opportunity for Public to Address Planning and Zoning Board

No one wished to address the board.

AGENDA ITEM 1
ORDINANCE 2016-13, STATUS OF NONCONFORMITIES

Pursuant to published notice, the public hearing was opened.

Alaina Ray, Planning, Zoning & Building Director, provided an overview of the ordinance noting:

- The purpose of the chapter was to provide for the management of the Town's nonconformities
- The Zoning Code (Section 158.138(B)(8)(b), currently allowed the Town Commission to grant an extension of the period of time a nonconforming use or structure can remain unused or vacant if caused by legal restraints upon the owner or lessee
- The Town Commission has typically included a condition of approval to require the property and/or structures to be secured for the health, safety, and welfare of the public; Staff recommends codifying this provision to provide more specific requirements; the Town Commission does not have any flexibility if they find it necessary to provide an extension in excess of five years due to extenuating

circumstances; Staff recommends modifications that were set by resolution for a specified period

- Revisions also provided clarity on what codes the property owner must comply with, and addressed required surety bonds

Mr. Madva questioned why the ordinance included the word 'may' versus 'shall.' The Town Commission had lots of responsibility, and one basic responsibility, was addressing health, safety, and welfare. He asked why they would put the Town Commission in a position where they maybe occasionally suggest it or not. Maggie Mooney-Portale, Town Attorney, explained that the word 'may' was an optional, discretionary determination and was language that denoted discretionary notation. Embedded was a case-by-case evaluation by the Town Commission, depending on the circumstances of the property. In another subsection, they would evaluate particular rights of the site, the use, and other items; if it was a vacant parcel, there would be nothing that could potentially harm a neighboring property. Mr. Madva commented that if the Town required properties to be secure, then they should use the word 'shall.'

Mr. Schneier understood when talking about non-conforming in the overall plan, there was an item about whether to allow a non-conforming use to continue and asked if that was a conflict. Ms. Ray responded it would not conflict with any future provisions. Staff was currently reviewing provisions that they would want to maintain through the rewrite of the Zoning Code. Mr. Symanski requested an example of what was being discussed. Ms. Ray pointed out the Colony Beach & Tennis Resort was a prime example. The Town Commission has discretion to extend the non-conforming use; they have the ability to extend the use beyond the one year restriction.

Mr. Symanski referred to the application and noted that it lists the owner 'or' lessee may petition the Town; why was the owner not required to be a party to the application. He believed if it was affecting the status of the property, the owner should be on the petition. Ms. Ray explained the owner did have to sign an authorization for the Town to move forward on any action involving their property. Mr. Symanski pointed out the language stated 'or.' Ms. Ray noted the language was what currently existed within the Code, and staff was not requesting it be changed, but agreed it was a valid point. The language could be revised to remove the word 'lessee.' She reiterated that any actions staff brought to the board or Town Commission involving a property required the owner to authorize the action, and she saw no reason why it could not be stricken.

Discussion ensued on the following points:

- Section 158.138(B)(8)(c) – currently mentions that the owner must comply with the code, instead of all relevant state and local codes
- Staff was proposing to broaden the language, not only to the Zoning Code, but broaden to include state laws
- When the Town Commission grants an extension, the property owner must provide a surety bond or some type of security; there was not currently a mechanism in place to require a bond that might be sufficient for that, and the code did not require any criteria to ensure sufficient funds for those bonds or securities

- Section 158.138(B)(8)(c) would include a new Section 2 and revisions to Section 1
- Proposed to require a surety bond amount up to an amount equal to 50 percent of the total value of the structure(s)
- What was the philosophy behind going beyond five years; if an owner had to go through legal proceedings for a property, by the time it worked through the court system, it could take a lengthy amount of time
- Provided the Town Commission the ability to review on a case by case basis; ability to review the circumstances of each property owner and legal circumstances, rather than have a certain number that may not correlate with the circumstances on the ground
- Definition of 'Abandonment' and whether language could address non-conforming, non-habitable, or not in use; definition noted it would be one year without being in operation, and at the one year mark, if the use was abandoned, the owner would lose the non-conforming status
- For owners that did not want to use the non-conforming status, they could come to the Town Commission and request, due to legal constraints, an extension of that non-use
- The extension request did not apply because the owner was having trouble selling the property, it was specifically for legal constraints

Ms. Bishop concurred with the concerns noted by Mr. Garner related to abandonment commenting that if there was a property that was abandoned, and not in use for five years, it created an issue of health, safety, and welfare with an unsafe structure. Mr. Schneier asked why there were two separate provisions. Ms. Ray responded that Section (B) discussed when a non-conforming use was abandoned and set forth the time it may be extended. Section (c) talked about the extension and how it would work. Attorney Mooney-Portale referred to the definition of 'Abandonment,' notated in Section 158.138(B)(8)(a).

Mr. Aitken reviewed the assigned value of the structure and asked if they could consider the underlying land value as part of the calculation for the surety bond. Ms. Ray explained staff did consider that, and it is a possibility, but there was a point where that value may be so high that it is untenable. Staff was concerned more with the structures as the land would remain. Mr. Symanski agreed with Mr. Aitken in that there should be some flexibility built into the sentence. The staff could recommend an amount based on that, and if it turned out to be right, to lock it into that he believed was a mistake. Ms. Ray commented staff could revise it to state instead of up to an amount equal to 50 percent, but not less than 50 percent. If staff believed 50 percent was sufficient, then the Town Commission could hold at that, but they would have the flexibility to increase it if needed.

Mr. Garner questioned why they did not allow the Town total flexibility and why there was a need to include criteria; why could it not be whatever the Town decided would be an ample reserve. Attorney Mooney-Portale explained staff was suggesting objective criteria so it was not deemed arbitrary; it provided something for someone to refer to in the code for reference. Mr. Garner commented the Town had a right to protect their

investment and it was his suggestion to maximize flexibility for the Town Commission to set the fee for the bond. Attorney Mooney-Portale agreed, but voiced concern with maximum flexibility. She agreed the circumstances to particular individual properties was unknown; however, she did not think it was in the Town's interest to get into litigation with land owners over arbitrary bond amounts when there was something in the code that could be referred to. Ms. Ray noted it placed a property owner on notice to review these things and realize the Town might require a bond that encompassed those items.

Mr. Garner suggested removing the language referring to 50 percent of the property value. Ms. Ray responded it did not limit the Town if it was noted that was the minimum, because as proposed at this meeting, it was changed from 'up to' to 'not less than,' which gave the Town Commission a lot more flexibility. Attorney Mooney-Portale pointed out it was the expectation that the property owner, who wished to maintain the non-conforming status, had the burden of maintaining the property, and the bond was in place in the event the owner did not meet those commitments, and the Town had to go in and maintain it.

The Board continued with discussing:

- Suggestion that having a minimum of 50 percent of assessed value might be too high; whether there was a possibility of using the existing language and only having the maximum limit being the full assessed value of the property
- Staff being uncomfortable with the Town Commission not having any flexibility; realistically looking at what it cost to remove structures
- Possibility of following the suggestion using a range of 0-100 percent, which would allow the Town Commission to have flexibility and require within that range
- Establishing concrete criteria for the Town Commission to refer to, because there was no criteria that currently existed in the code
- Whether there should be language that stated 'up to the value of the property based on appraised values'; the taxable value was the standard way and an established method, which the current code used for other items
- That discussion was held using the 'value of the property,' but the proposed ordinance states 'value of structure' (staff's goal was to build some criteria and ensure they had some level of comfort with the bond requirement)
- The Town Attorney indicating there would be a public hearing where the land owner and staff would be presenting what the level would be for granting the extension; there could be two different suggestions and the Town Commission would have some discretion of choosing which one to follow
- That if the Town Commission were to grant an extension for one year, at the end of that year if the owner wished to request another extension, the Town Commission would be allowed to re-evaluate it and consider all those factors, including site conditions; they could reset the value of the bond at a different amount at that time
- That the value of the property would include the land

Following discussion, Ms. Ray reiterated that staff would revise the ordinance to: 1) strike the reference to the 'lessee,' so it only referred to 'owner'; 2) change the surety bond from requiring up to amount equal to 50 percent to up to an amount up to 100 percent; and 3) instead of referring to 'structure', the language will state, 'property, including structures and land'

Ms. Bishop asked if the Board wished to incorporate Mr. Madva's concern with the use of the word 'shall' versus 'may.' Chair Brown believed Attorney Mooney-Portale's explanation covered that issue.

MS. BISHOP MOVED TO RECOMMEND APPROVAL OF ORDINANCE 2016-13, STATUS OF NONCONFORMITIES, WITH THE FOLLOWING AMENDMENTS: 1) STRIKE THE REFERENCE TO THE 'LESSEE SO IT ONLY REFERRED TO OWNER;' 2) CHANGE THE SURETY BOND FROM REQUIRING UP TO AMOUNT EQUAL TO 50 PERCENT TO 'UP TO AN AMOUNT UP TO 100 PERCENT;' AND 3) INSTEAD OF REFERRING TO 'STRUCTURE,' THE LANGUAGE WILL STATE: 'PROPERTY, INCLUDING STRUCTURES AND LAND.' MR. GARNER SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; BROWN, AYE; GARNER, AYE; MADVA, AYE; SCHNEIER, AYE; SYMANSKI, AYE.

AGENDA ITEM 2
CONSENT AGENDA

APPROVAL OF THE MINUTES OF THE NOVEMBER 17, 2015, REGULAR MEETING AND SETTING THE FUTURE MEETING DATE FOR FEBRUARY 16, 2016, REGULAR MEETING WERE UNANIMOUSLY APPROVED.

STAFF UPDATE

Chair Brown requested a status on the proposed zoning code changes.

Ms. Ray explained staff was in the process of issuing a Request for Proposal (RFP) for a planning consultant that dealt with zoning code changes. She had prepared a Scope of Work, which was submitted to the Town's Purchasing Manager, for review and it was expected back within the next week for advertising. A selection committee would then review all the proposals and select one. She mentioned that of those firms she had spoken with they were aggressive with their timeframe.

ADJOURNMENT

The meeting was adjourned at 10:26 AM

Ken Schneier, Secretary
Planning and Zoning Board