

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

DECEMBER 13, 2016

The regular meeting of the Planning and Zoning Board was called to order at 9:00 AM by Chair Jim Brown.

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

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

AGENDA ITEM 2
PUBLIC TO BE HEARD
Opportunity for Public to Address Planning and Zoning Board

No one wished to address the board.

AGENDA ITEM 3
CONSENT AGENDA

Mr. Schneier commented there seemed to be a gap between the discussion on pages 12 and 13. Staff indicated they would review and determine if discussion was missing. (A subsequent check of the original document showed no missing discussion; the error was a result of copier problems and the way the pages were printed) He also noted that he was shown on a subsequent vote, but had left the meeting earlier.

MS. BISHOP MOVED APPROVAL OF THE CONSENT AGENDA TO APPROVE THE MINUTES OF NOVEMBER 15, 2016, AS AMENDED, AND SETTING THE FUTURE MEETING DATE FOR JANUARY 17, 2017. MR. SCHNEIER SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARINGS

There were no public hearings scheduled.

WORKSHOP DISCUSSION
AGENDA ITEM 4
DISCUSSION OF HEIGHT REGULATIONS

Chair Brown discussed that the same language in the Town's Zoning Code has been in other zoning codes and was a fairly universal thing. He believed the code section was originally intended for use in a commercial area, including high rises, apartment buildings, etc. He explained when someone used an elevator over three stories, it was usually a traction elevator versus a hydraulic elevator. A hydraulic elevator has a piston buried in the floor that pushed it up, and a traction elevator has its pulleys and equipment above the elevator, and necessarily the equipment is generally placed on the roof; also, the best location for mechanical equipment was on the roof of a commercial building with stairs going to those facilities. He did not believe it was conceived for residential use, as when the ordinance was written, the key did not have houses with elevators. He commented the Board needs to review and think about what was needed – does the Town want to write a separate code for residential properties; and were the percentages correct. There were a lot of roof decks accessed by an outside stairwell, and there were elements of the Building Code that were new, which added to the complications, because it required certain things. The discussion needed to focus on what the Town wished to have for regulations.

Ms. Ray informed the Board that staff reviewed hundreds of documents over the last few weeks to provide what they could to the Board for review. She continued with reviewing a PowerPoint presentation. Ms. Ray commented it appeared the code section had been consistently applied over the years through the building permit process. She pointed out that height was not only addressed in the land development regulations (LDRs), but also in the Comprehensive Plan, which states height limitations shall not apply to these features. She explained when single-family construction plans were submitted, those plans were assigned to all the trades for review, and the site plan review considerations were looked at with the building plans to ensure they complied with various requirements. She mentioned that staff had seen where people tried to make the vestibule for the landings large enough for extra rooms; however, staff informs the applicant it has to be smaller as it could not accommodate furniture or anything else. There were similar allowances in the LDRs that provided exceptions to the lot regulations, such as encroaching into the setbacks for certain structures; allowing to exceed the height for accessory structures; and, allowing an additional five percent of lot coverage for screened pools.

Mr. Haycock questioned the size of the area in dispute at Halyard Lane. Ms. Ray responded the code allowed around 450 square feet, but staff kept it to the minimum to allow for the stairwell and landing, along with a small mechanical equipment room, which was accessed from below. Mr. Schneier asked if the percentage restriction was limited to the flat roof area they had access to, or the entire roof area. Ms. Ray noted the entire roof area. Chair Brown questioned when the percentage was adopted. Ms.

Ray explained the percentage was 10 percent in 1977, but changed to 15 percent when the Zoning Code was revised in 1997. Chair Brown believed it was an item that should be considered during review.

Ms. Ray discussed that staff had reviewed the language in the Florida Building Code and commented that years ago an owner was able to provide a rooftop hatch for access; however, it was no longer listed as an allowed access to areas that were used frequently. She noted that the Florida Building Code also required residential elevators to exit into a weatherproof vestibule. Ms. Ray continued with discussing the times when the Town Code conflicted with homeowners' covenants; age-friendly construction; people wishing to take advantage of rooftop views; potential revisions to the code (slide 31); and, that any changes made would require consideration of any conflicts created on properties by making them non-conforming. Maggie Mooney-Portale, Town Attorney, discussed the Bert Harris Act and that anyone that might be in the Town's review queue would still be reviewed under the existing code; however, those that were submitted after the change would have to comply with new code. The Board should think about the date they wish to make the revision.

Chair Brown asked if the Board wished to have a separate code for residential, or in the case of residential development include language that states, "the following applies...". He believed it was always intended, and not contemplated, that single-family residential would not use that section of the code. He referred to the home on Halyard Lane pointing out the tower could have been shorter, and he was not sure if the Board wished to include language to state they could only use a stairway to access it; or they could only use the minimum amount necessary to access it.

Mr. Symanski asked about the elevator and if there were three stories was there a need to have the mechanical equipment above. Chair Brown responded they were discussing a hydraulic elevator versus a traction elevator. Mr. Haycock commented that he had a mechanical elevator and the mechanical equipment could be placed in the attic. Mr. Symanski noted his mechanical equipment was in a storage room. He believed there was not a need for a roof projection if they had the right elevator.

Ms. Ray commented that the main issue was the area on the Halyard house was used for both an elevator and stairwell. Mr. Symanski asked if the Halyard house only used eight percent of the roof area and was considered out of character, then why would the Board suggest ten percent. Ms. Ray explained if there was an elevator that accessed a rooftop deck area, the deck area would be within the height limitation, but the stairwell or elevator shaft would go up beyond that limitation, above the roof top area. She continued with reviewing photographs of 572 Hornblower Lane, which also had an additional area for their elevator/stairwell. Ms. Ray noted there were also some new issues brought to her attention by the Building Official concerning FEMA regulations and using hydraulic elevators at ground level, and requiring all mechanical equipment above the FEMA level.

Chair Brown asked if it was just the mechanical equipment or just the cylinder that can be below the base flood elevation. Darin Cushing, Town Building Official, explained there were various ways to get the equipment mid-span, because when you deal with

hydraulics, the equipment has to be placed above base flood elevation (BFE). Chair Brown asked if there were any provisions for flood-proofing that area. Mr. Cushing replied it was “doable.”

Mr. Schneier agreed that the home on Halyard seems to have a large space on top, and he guessed when restrictions were put in place, it was intended for multi-family. Newer homes were larger than in the past, and he questioned if there was data available showing how other communities, similar to Longboat Key, addressed this issue. Ms. Ray responded staff did not have data, but could review other communities. She mentioned that the trend of elevators was not restricted to Longboat Key; however, there was more difficulty because of FEMA issues. She noted that most codes have these types of provisions.

Discussion ensued on the following points:

- Did the Town want elevators to access rooftop decks and allow them within the code
- Is the appearance so abhorrent to the community that they did not want the owner to access their rooftop
- Did the Town wish to allow handicap individuals to access their own home
- That the illustration of the front elevation of the Halyard home, when reviewing the 30-foot elevation line, the floor was another five feet down, so it made the rooftop of the building about 15 feet high – did the Board wish to state they could only do the minimum in order to access
- Whether the Halyard home was reviewed by their homeowner’s association (HOA) – staff has asked that question, but has received different answers

Chair Brown noted that Mr. Madva was president of Country Club Shores IV. Mr. Madva commented that their board met last week, and was unanimous in their desire to amend their bylaws so the 30-foot limit meant 30 feet, and two stories was two stories. He explained that Country Club Shores IV was the only association with covenants, and their amendments only covered six streets. Hornblower Lane was in another section of Country Club Shores. He noted that his association did review the plans for Halyard Lane, but they do not have a covenant that has height limitations – the setbacks and side yards were different from the Town of Longboat Key. He pointed out that half of the homes in Country Club Shores were original, and he urged the Town to, for residential areas, maintain the height at 30 feet with two stories. He also asked when a plan review was done, that the plan was consistent with adjacent and surrounding homes, including across the canal.

Chair Brown commented the only possible problem he saw was that Country Club Shores IV was mostly single-story homes, but with the transitioning/revitalization of neighborhoods, he was not sure they could be legally that restrictive. Mr. Haycock believed the HOA reviewed the plans to determine how it would fit within the community. Ms. Ray responded that the older homes in Country Club Shores were single story, at grade, and if built to FEMA requirements, it would be incompatible as it would be two stories. The FEMA-compliant home would overwhelm any single story, so if they started reviewing compatibility with surrounding homes, there might be an issue.

She mentioned when discussing visibility from adjoining streets, the site plan requires it be architecturally consistent; also, the vestibule on the Halyard home was not considered habitable space.

Mr. Schneier asked if there was a way to view the percentage of roof area, but change it to the percentage of accessible flat roof area, so it will still apply to the taller, residential multi-family buildings, but within a single-family residential zone, it would be much smaller. Ms. Ray explained most of the usable roof area was fairly small, and if it went to a percentage of that, it would be questionable in gaining access to those areas. The Halyard home vestibule included mechanical equipment, so for a single-family home, she was not sure it was necessary. Staff could tighten up the language so it only allowed a single straight flight of stairs.

Chair Brown asked if the Board wished to allow the elevator to access roof decks.

There was majority consensus (five) to continue to allow elevator access to roof decks.

Chair Brown asked how the Board should address the language so the stairs used the minimum for access, and the height did not need to be more than necessary. Ms. Ray responded the way the Code was currently written, it was 'free reign' for a homeowner to do anything up to 15 percent and ten feet; staff could not restrict them as long as they met the parameters. She would specifically state the access for the stairs must be separate and within the 30 feet height. She noted if there was an elevator, they would be required to have a stairwell, but the language should be written that the secondary stairwell would be within the 30 feet. Chair Brown commented it would basically state what it would need to be for the minimum for access. Mr. Symanski asked if anyone had a raised area in the home where hot air rises, and there was a whole house fan that moved the air outside. Mr. Schield commented they would need to be within the 30 feet. Ms. Ray explained if the mechanical equipment was inside the area, it would be considered mechanical area under the Florida Building Code and could extend above the 30 feet. Chair Brown reiterated it should include language that it would have to be the minimum in order to achieve access.

Ms. Bishop asked if the Board wished to exclude mechanical equipment from being part of the elevator shaft and space, or allow them to continue to use the area. Chair Brown replied the language would have to state no mechanical equipment could be allowed if it could be accommodated elsewhere. Attorney Mooney-Portale reviewed Section 158.153(B)(1) of the current code.

Ms. Bishop suggested decreasing the allowance of 15 percent of the roof area to a smaller number; she preferred eight percent. Chair Brown questioned eight percent of what – if there was a small lot and house, eight percent might not be sufficient. He suggested up to ten percent, but no larger, to accommodate. Ms. Ray commented staff could include language that it could not be larger than required by the Florida Building Code for that feature.

The following was discussed:

- A letter was sent to Town Manager Bullock from Dan Whelan, resident on the north end of the key, discussing the mechanicals for elevators noting they could be placed in a sealed vault underground; and also discussed use of a pneumatic tube, which did not require any rooftop mechanical area and was cheaper
- Whether the Board was contemplating different rules for single-family residential; should have separate requirements for single-family
- Revise the section so it addresses multi-family, or other type of construction, and include a separate section addressing single-family

Randall Clair, Bogey Lane, discussed that it was their assumption that all single-family homes on Longboat Key were restricted to two stories, with 30 feet, and no exceptions. He commented when reviewing Section 158.153(B)(1), there was no mention about an elevator vestibule, or landing area, for an enclosed stairwell. He continued with noting the language discussed 'enclosed,' and reviewed the definition of 'enclosed' in the dictionary. He pointed out if the Town was going to review this section of the code, or allow any type of elevator vestibule, they will have to amend the section, because he believed it was not currently allowed.

Chair Brown informed Mr. Clair the Board had found there were conflicts and some had not been amended, and it might be a conflict that has to be resolved. Mr. Clair responded the citizens had a right to rely on their existing code, and the Board should change the code first if they were going to make changes. He pointed out there was a provision in the code for variances and some of the earlier homes might have one. Chair Brown pointed out it was the Board's intent to change the code and limit the ability to go above the 30-foot limit to only the minimum necessary to access the area within the codes. Mr. Clair wished to confirm, with regards to their HOA, they had deleted the section of their bylaws related to height based on legal advice solely on the basis it was unenforceable, and if the HOA maintained that position, they would be picking up a liability, because they did not have the standards to apply that section. He understood the neighborhood was changing, and homes were building at two stories, but all single-family homes should be treated the same, notwithstanding what their zoning district is. He commented when discussing mixed residential districts, he was not sure how they could address those issues, but suggested giving some consideration to amending Section 158.153(B) and requiring a provision that any person using this section to minimize the impact of the exemption; that the Halyard home was a 17 ft. x 3 ft (200 sq.ft.) area with dual stairwells with a platform, so if they eliminated one of those things, it would reduce that area by a fourth.

Mr. Clair continued with discussing:

- His preference for single-family homes would be to not allow them to go ten feet above; they could allow up to a five-foot maximum
- Reduce the mass of the structure so it did not overwhelm the existing neighborhood
- When it came to site plan review, there should be some objective standards when staff is reviewing the plans

- The neighborhood should not only include those adjacent, but across the canal too

Chair Brown commented that the Board agreed; however, if the Halyard home was surrounded with adjacent properties that were similar, then it would not be an issue. He mentioned because it was surrounded by single-story homes, it might change. Mr. Clair pointed out it was out of character for the neighborhood, and suggested when staff was doing the plan review, to review the language in order to identify when a structure would be overbearing.

Mr. Symanski questioned if Mr. Clair was contending the approval was not legal under the code. Mr. Clair responded he was not asking the Board to do anything; obviously the Town Commission has a right to place something on hold, but he was trying to make it clear that the Town had to amend Section 153 to allow the other things explicitly; they could not rely on the Florida Building Code to reinforce the Town Code. Mr. Symanski asked where an appeal would be directed jurisdictionally. Attorney Mooney-Portale explained an aggrieved party could appeal to the Zoning Board of Adjustment (ZBA) within 30 days of the rendition of that official's order. She believed that period of time has expired, and the Board had no authority. She noted that based on the current language, there was no conflict with what was built; however, what was arising was whether the Town required a policy change to address the situation.

Discussion ensued on the appeal process specifically:

- That if someone wished to appeal the approval of this permit, or any other structure, they would have to do it within 30 days of the permit being issued
- A review of the appeal process language
- How an adjacent owner would know what was being contemplated on a project
- That in this specific case, because Country Club Shores has separate covenants, the HOA would have reviewed the plans
- That the way the code has been interpreted, not just for this property, but others, has been consistent for years
- There were a lot of things within the code that allowed an owner to go beyond what the lot regulations stated, and if the Board was discussing notification to surrounding property owners each time, staff would be processing dozens or more per week
- If the Board went down this path, they would be opening the ZBA for neighbors who might not get along with another and try to impede construction
- The Board needed to understand the volume before placing a notification requirement in the ordinance
- The question was to make it a legitimate appeal provision

Mr. Schneier agreed with Attorney Mooney-Portale. The process of getting something done in this country was out of control, so when reviewing the Country Club Shores construction rules on the property, there has to be a presumption that our staff would be following the rules as far as the standard rules on how to do their job. He pointed out to place another level of notice for someone trying to build a single-family home was a

“terrible slippery-slope.” Ms. Bishop agreed; if notice was another tier for someone renovating their home, it places another level of cost on them.

Mr. Symanski pointed out that Mr. Clair was contending staff made a mistake, and there was a question of whether going to have an appeal procedure, and if not, then just remove it. Chair Brown did not believe the appeal procedure would apply if the owner did everything within the code. They were discussing something that was an exception to the code, which was going above the normal maximum building height. He believed a simple solution would be if they were going beyond the maximum, then they provide notice.

Mr. Garner believed the current code required notification if someone was going to be departing from the code. Ms. Ray explained those requirements were for someone seeking a variance; the Board was currently discussing something that was allowed by right. Variances were very clearly utilized for when the code did not allow for it, and the homeowner wished to do it because there was a hardship, and they would not have reasonable use of their property. The current discussion was for something that has always been allowed by right and never been handled as an exception or departure.

Mr. Garner commented there were notification requirements for certain things, but there could be changes, or use of the code, which were subject to review and the neighbors would not be aware, such as the rooftop modification. He suggested one of the ways to resolve was language to require notification of neighbors, within the usual distance, that there was a permit application submitted to create the awareness, and if they wished, they could review the file. Attorney Mooney-Portale responded generally, the appeal process, which does stay the continuation of the permit, has been used by the property owner. It discussed the aggrieved person, which was typically the owner, but does not mean the neighbor did not have an interest. The code could be modified, but a variance process was provided because of a hardship. There were specific criteria in the variance provisions that were conferred and accepted to all case law around the country. She cautioned the Board with “muddling and mixing” the term ‘exception to the code’ with a ‘variance,’ but if they did not agree with the term ‘exception,’ then staff could go back and draft particular criteria that protected the interest of the public.

Attorney Mooney-Portale believed the Board had provided great direction, but for the purpose of the drafters of the next round of code changes that come to the Board, she wished to ensure that whether preserving the right to have a rooftop terrace, or some type of viewing platform, was still a value to the Board and Town Commission, but she wished to make it clear on the record. Chair Brown did not believe they had a right to limit if it was below 30 feet. Attorney Mooney-Portale commented they were asking for clarification. Mr. Schneier believed the consensus was to continue to allow the elevator access to the rooftop.

There was consensus to continue to allow rooftop terraces.

Ms. Ray noted that staff had received clear direction and would bring an ordinance back to the Board for review.

NEW BUSINESS

Chair Brown discussed that at the December 12, 2016, Town Commission meeting, there was a presentation of the ordinances that were approved by the P&Z Board at their November meeting. He had provided, on behalf of the Board, a summary of the reasons supporting the Board's recommendations. There was a good discussion of those issues; however, what the Board had forwarded to the Town Commission was being sent back for additional clarification on several items. He suggested the Board members review the video of the Town Commission meeting, if available online. The points that were sent back to the Board were specific points for discussion, such as compatibility with neighboring properties; and, language that provides staff, and the Board, a guideline on how to view. Ms. Ray noted that other issues for discussion were setbacks from Gulf of Mexico Drive – setbacks that were currently allowed and something that might provide setbacks for taller buildings. Attorney Mooney-Portale included that also with that issue was consideration of shadowing of the beach and Gulf of Mexico Drive. Ms. Bishop commented that the Town Commission has the ability to amend something that was sent forward as a recommendation from the Board.

STAFF UPDATE

Ms. Ray informed the Board their iPads had been ordered, and after the holidays, the IT Department would be contacting each member for training and setting up their accounts. She mentioned if they currently have an Apple account to bring their password; however, if they did not have an account, the IT Department would set one up for them.

ADJOURNMENT

The meeting was adjourned at 10:53 am.

Ken Schneier, Secretary
Planning and Zoning Board