

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

APRIL 19, 2011

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

Members Present: Vice-Chair Allen Hixon, Secretary John Wild, Members Phineas Alpers, Laurin Goldner, Walter Hackett, Bradford Saivetz, George Symanski

Members Absent: Chair BJ Webb

Also Present: Kelly Martinson, Assistant Town Attorney; Monica Simpson, Planning, Zoning & Building Director; Steve Schield, Planner; Ric Hartman, Planner; Donna Chipman, Office Manager

AGENDA ITEM #1
ORDINANCE 2011-26, ZONING BOARD JURISDICTION

Pursuant to published notice, the public hearing was opened.

Ric Hartman, Planner, reviewed the staff report noting this was an amendment to Section 158.026(F)(5) and 158.029(A)(1) of the Zoning Code. He explained that currently the determination of whether the Board has jurisdiction to consider a variance was determined by the Town Attorney. The ordinance recommends the final determination for jurisdiction should be with the Board and should be based upon the opinion of the Town Attorney.

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

MR. WILD MOVED THE P&Z BOARD RECOMMEND APPROVAL OF ORDINANCE 2011-26 AS WRITTEN. MR. HACKETT SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; GOLDNER, AYE; HACKETT, AYE; HIXON, AYE; SAIVETZ, AYE; SYMANSKI, AYE; WILD, AYE.

AGENDA ITEM #2
ORDINANCE 2011-16, P&Z REVIEW OF COMMERCIAL SITE PLAN REVIEW STANDARDS FOR LANDSCAPE BUFFERS

Ric Hartman, Planner, explained that there had been discussion over the last several months as to what was required with the yard regulations for transition yards that separate residential and non-residential, and also between single-family zoning districts and multi-family zoning districts. He commented that a ten foot landscaping buffer was required to be placed on the non-residential property in the transition yard.

The Board had directed staff to draft an ordinance that included a wall in lieu of the ten foot landscape buffer, and also an amendment that when the installation of the wall, or the landscape buffer, occurred, it did not have to happen only during a rezoning. Staff did not wish to have two separate regulations concerning this issue, which was what currently existed. He mentioned what was proposed, subject to the requirements of intersection visibility, was that a six foot wall or landscape buffer could not interfere with the safety of the driveway that intersected with the street, and for waterfront yards. Staff was recommending: 1) either a six foot wall or fence of 80 percent opacity be installed on the subject property (non-residential property); or 2) the ten foot landscape buffer. The landscape buffer would also be required to be 80 percent opacity.

Mr. Hackett asked if the wall would be placed on the boundary line of the property. Mr. Hartman responded it would be on the property line of the abutting property. Mr. Hackett asked if the wall was constructed would it necessitate the landscaping. Mr. Hartman noted it would be in place of the ten foot landscaping buffer, which was the intent of the board.

Mr. Symanski asked if staff added the word 'auditory.' Mr. Hartman replied yes; it was added because the board had discussed not only a visual block, but screening would dampen the sound emanating from non-residential property. Mr. Symanski preferred providing more flexibility and suggested the wording, "*Provided, however, the Commission may waive or modify the requirements with attached conditions where it finds that an alternative proposal would be in accordance with the purpose and intent of this requirement.*" He commented that in the case of Moore's and Mar Vista restaurants, they could state it was not necessary because it was a non-conforming use, but attach a condition stating they would need to provide, or some alternative, if Moore's reverted to residential. Mr. Hartman replied that could be the board's recommendation. He noted that it would be more clear to add wording under item 'A' (last line of last sentence) to state, "*The provision of the required screening shall not be required until the non-conforming property is redeveloped.*" Ms. Simpson commented that staff found after the last meeting there were certain things allowed as permission in one section of the code, and in another section of the code there was a requirement that was a non-flexible requirement which was in conflict. She explained that taking what the board wished to allow Mar Vista, to not have the ten foot buffer at this time, staff provided it as an automatic item; they could either provide a ten foot landscape buffer or solid wall. She mentioned that the Town Commission could adopt stricter conditions if they saw circumstances that would warrant it. Mr. Wild discussed a wall versus plantings. He liked the idea of including the non-conforming language presented by staff, and assumed that the sound would be covered by the Town's noise ordinance.

Mr. Saivetz asked why one multi-family complex should be impacted with the requirement for a ten foot buffer, if the adjacent multi-family decided to convert to residential. He believed the burden should be on the person requesting the change, not the existing complex. Concerning the walls, he voiced concern with being able to finish the wall as the neighbors may not allow access on their property to complete. Mr. Hixon agreed and questioned who would be responsible for providing the buffer. Mr. Symanski presumed that the adjoining neighbor would not be responsible for installing retroactively, unless they applied for a new permit. Mr. Hartman explained the way the ordinance was written it would require installation retroactively as it is directed towards all transitional yards. Ms. Simpson pointed out that the current code placed the burden on the more intense use, and if the board wished to change, then they should provide direction to staff.

MR. SAIVETZ MOVED THE P&Z BOARD DIRECT STAFF TO MAKE CHANGES TO THE ORDINANCE SO THE LAST PERSON SUBMITTING TO THE TOWN IS REQUIRED TO MAKE THE CHANGE. MR. ALPERS SECONDED THE MOTION.

Mr. Symanski believed non-conforming use rights overruled what would be required if someone came in and developed. Mr. Hartman explained the time the issue had arisen was when the non residential property came in for site plan review. Mr. Symanski commented it should be when they request a change; they should not be required to go back and create a ten foot buffer. Ms. Simpson pointed out the way the code was currently written was if Moore's restaurant developed as single-family residential, then the Mar Vista restaurant would be required to install the buffer.

Kelly Martinson, Assistant Town Attorney, discussed if there was a question of whether or not they would have to come forward, it would make sense for the code to be clear that if the Town did not wish to require an existing property to install the buffer, then it should be included in the code. Mr. Symanski commented that he was addressing the example provided by Mr. Saivetz. He believed non-conforming use rights would allow the first property, unless it came in with a change, to remain as is with no ten foot buffer. Ms. Simpson noted that the board was, with the motion, eliminating that and requiring the last person to submit to install the buffer. Mr. Wild questioned what constituted the last person to request. Ms. Simpson commented that staff would draft some language that the board could review.

Mr. Symanski asked if it was the intent that if the second property came in for redevelopment, they still did not have to install the screening. He suggested adding the wording "*if they want to,*" and also made a suggestion to provide the Town Commission more flexibility, instead of precise language. He pointed out that the proposal was in 'A,' last sentence, to provide that "*the commission may waive or modify.*" Mr. Wild concurred, because the Town Commission was the elected body, and he agreed with the flexibility statement. Mr. Symanski discussed that if the board was moving in that direction, then he believed the word 'auditory' would not be good, because they would not be including a standard for auditory screening. Mr. Wild pointed out the Town's noise ordinance had decibel standards. Ms. Goldner agreed and mentioned they should let the noise ordinance address it. Mr. Hartman asked if it was the board's direction to delete reference to 'auditory'. **There was consensus to delete the reference to 'auditory.'**

MR. SAIVETZ MOVED THE P&Z BOARD DIRECT STAFF TO INVESTIGATE THE SITUATION. MR. ALPERS SECONDED THE MOTION.

Mr. Symanski believed the motion did not provide detailed direction. Mr. Hixon discussed that the board would like to provide flexibility and believed the one requesting the change should be responsible for constructing the protected privacy systems. The Board would have the right to review and make a recommendation. Mr. Alpers pointed out the problem raised by Mr. Saivetz concerning the neighbor not allowing the owner to finish a wall and asked if staff had run into this problem. Ms. Simpson explained that if the wall was on the owner's property, the neighbor could not object. The Town did not get involved in private property matters; that would be a civil case.

Discussion ensued on the motion and that the ordinance was only for discussion and not advertised for a public hearing at this time. The board would only need to provide a consensus on their direction.

As a result, Mr. Saivetz withdrew his motion and Mr. Alpers withdrew his second. Ms. Simpson noted that staff would bring back a draft ordinance with draft language for public hearing and advertise for adoption at the May 17, 2011, P&Z Board meeting.

AGENDA ITEM #3
COMMERCIAL BUILDING HEIGHT STANDARDS

Mr. Hartman reminded the board they had discussed, at their March meeting, commercial building height and some flexibility to allow additional building height for certain structures, not as a right, but as a condition or to be granted by Town Commission during site plan review. This was considered a change to the Town's Comprehensive Plan, because it was a change in the intensity of use, and the Town was limited to two Comprehensive Plan amendments. Staff was suggesting this item be "rolled into" a future plan amendment. He noted the discussion was whether the board wished to allow an additional five feet in building height for commercial zoning districts, but it was not clear whether the board was wishing to apply it to certain types of use, specifically waterfront restaurants, or allow this flexibility for uses in a C-1, C-2, or C-3 district or in all commercial districts.

Mr. Symanski noted it was his intent to apply it to waterfront dining areas. Mr. Alpers commented that he did not see any advantage to providing restaurants an additional five feet; 30 feet height was sufficient for a building. There was an opinion that it would allow better views, and he suggested if the owner needed additional height, then they could seek an adjustment from the Zoning Board of Adjustment. Mr. Hackett believed waterfront dining should be provided as much flexibility as allowed to preserve it in the future. Mr. Symanski agreed; that was the reason he suggested the overlay. Mr. Wild asked if waterfront dining was synonymous with rooftop dining and something that might be available in other areas. He discussed the Whitney Beach Shopping Center and whether it would be high enough to have a dining area on the roof. Ms. Simpson pointed out that the Whitney Beach area would be addressed separately.

There was consensus that the additional height apply only to waterfront dining.

Height Differential:

Mr. Hixon commented that in the case of the Mar Vista restaurant, the reason to allow the additional footage was to raise the floor level to get the view of the water. Mr. Wild noted he would not object to the five feet. Ms. Goldner and Mr. Hackett were okay with allowing five feet. Mr. Symanski pointed out this was upon application to ensure it did not impact anyone. Ms. Simpson commented that it would depend on whether the board wished for Mar Vista to go back through the site plan review process again. She noted that it was the Board's intent to allow Mar Vista to just apply it, but if the board wanted to require it "upon application," then it would not work.

There was consensus to allow the additional five feet in height without an application.

AGENDA ITEM #4
CONSENT AGENDA

Ms. Simpson requested that the Board amend the Consent Agenda to include the meeting date of May 5, 2011, which was a special meeting that was scheduled to discuss only Comprehensive Plan issues.

MS. GOLDNER MOVED APPROVAL OF THE MINUTES OF THE MARCH 15, 2011, REGULAR MEETING AND SETTING THE FUTURE MEETING DATE FOR MAY 5, 2011, AND MAY 17, 2011. MR. ALPERS SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: ALPERS, AYE; GOLDNER, AYE; HACKETT, AYE; HIXON, AYE; SAIVETZ, AYE; SYMANSKI, AYE; WILD, AYE.

BOARD COMMENTS

Mr. Symanski discussed an article he found in *Business Weekly*. He read an excerpt of the article, which commented on the lack of business on Longboat Key.

Mr. Symanski questioned staff concerning an article written by Steve Reid, publisher of the *Longboat Key News*, addressing the Colony Beach and Tennis Resort and whether the 30-day rental rule applied to the units. Ms. Simpson responded that with all the research done on the Colony Beach and Tennis Resort, there was no indication that it was approved for anything other than a tourism resort hotel, which meant the 30-day rental rule would apply. She discussed that the Colony Association submitted a request to the Town Commission for extension of the abandonment period, which would expire on August 15, 2011. This would be heard by the Town Commission at their May meeting. She made it clear to the applicant that they were discussing tourism units and tourism use and that the 30-day rule would apply. Mr. Symanski suggested that staff and the Town Commission require the applicant to agree to that before granting an extension.

Mr. Hackett questioned what type of constraints the Colony Beach and Tennis Resort came under if they tried to revitalize the existing facility under the FEMA codes. Ms. Simpson explained the Town's Flood Control ordinance specifically stated that they would be allowed to do improvements and maintenance of a FEMA non-conforming structure up to 50 percent of its appraised value; the current flood control speaks to it as a matter of permits.

Mr. Hixon noted that Ms. Zunz was no longer a member of the Planning and Zoning Board and had moved up to the Town Commission. He thanked her and Mr. Saivetz for their service to the community.

ADJOURNMENT

The meeting was adjourned at 9:54 am.

John Wild, Secretary
Planning and Zoning Board