

TOWN OF LONGBOAT KEY  
ZONING BOARD OF ADJUSTMENT  
MINUTES OF JANUARY 12, 2012 MEETING

The meeting of the Zoning Board of Adjustment was called to order by Chairman Feole at 9:30 a.m. on Thursday, January 12, 2012.

Members Present: Vice Chairman Gaele Barthold, Secretary Charles Fuller, Members, Andrew Aitken, Kenneth Schneier, Lee Riley, Thomas Bijou

Members Absent: Chairman Ben Feole

Also Present: David Persson, Town Attorney; Ric Hartman, Planner; Donna Chipman, Office Manager

Approval of Minutes

**Mr. Schneier made a MOTION TO APPROVE THE MINUTES OF THE NOVEMBER 10, 2011, ZONING BOARD OF ADJUSTMENT MEETING AS WRITTEN; seconded by Mr. Aitken and approved by a unanimous vote.**

Agenda Item 1. PETITION 1-12 by Randolph and Alicia Cohen requesting a Variance from Section 158.150(D)(1) of the Town of Longboat Key Zoning Code to reduce the required gulf waterfront yard from the required 150 feet to 70 feet from the Erosion Control Line to allow construction of a new single-family residence for property located at 3029 Gulf of Mexico Drive.

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. Brent Whitehead presented the Return Receipts to the Board.

Ric Hartman, Planner, reviewed the staff report noting the lot was 50 feet wide and a non-conforming gulf waterfront lot. He pointed out that the current non-conforming home would be replaced with a home that was approximately one foot, 10 inches closer to the Erosion Control Line (ECL). The proposed area of the first floor was proposed at 1,648 square feet and the second floor was 1,657 square feet, with an air-conditioned area of 3,271 square feet. He reviewed an aerial photograph of the property, along with a PowerPoint showing the site conditions. The proposed house would be located at the 20 foot street setback, and they would be maximizing the available footprint to utilize the lot.

Mr. Aitken asked if any calculations were made for daylight plane. Mr. Hartman responded the proposed house would only be two-stories, but the daylight plane calculations show the house would not be intruding into it.

Mr. Fuller asked if the staff had any recommendations as to conditions that should be imposed if the Board decided to grant the petition. Mr. Hartman responded that although there was nothing specific to this structure, the variance would run with the land.

Mr. Schneier asked if there had been any comments received from the neighbors. Mr. Hartman replied no. Mr. Schneier noted that the board had imposed a deadline on previous applications. David Persson, Town Attorney, explained that unless the Board noted a deadline for the variance, it would run with the land; however, if they wished, they could impose a timeframe for use of the variance. Ms. Barthold asked if staff would recommend a deadline. Mr. Hartman pointed out that staff would not recommend a sunset provision or time limit, as it was clear if someone wished to build on this lot, it would require a variance.

Brent Whitehead, Whitehead Construction, representing the applicant, commented that the Cohens had discussed the proposal with their neighbors at length, and the neighbor to the south was supportive of the variance, because they wished to see an upgrade to the home. He mentioned the neighbor to the north also did not object. Mr. Whitehead commented that it was their opinion that they had met all six criteria set out by the Town Code. He noted that the property owners were being conservative, because they were only asking for a variance of 70 feet to the ECL. He commented that the applicant did not wish to construct a “mega-mansion.” Also, it was noted that the Florida Department of Environmental (FDEP) and the Federal Emergency Management Agency (FEMA) were encouraging the updating of the existing structure.

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

Mr. Fuller believed in recent years the Board had limited variances to the current construction proposed, and if he understood staff, they were suggesting the variance run with the land. He believed this issue should be discussed. Ms. Barthold noted it was her understanding that in the previous cases, where they restricted the variances to the property for a particular type of construction, it was not similar to this case where the property was unusable without the variance. Mr. Hartman replied that was correct. Attorney Persson commented the previous cases usually addressed an existing structure where the applicant was requesting an addition, where this case was for a new structure.

**Mr. Bijou made a MOTION TO GRANT PETITION 1-12 AS SUBMITTED; seconded by Mr. Schneier and approved by a unanimous vote:**

<b>AITKEN:</b>	<b>AYE</b>	<b>FULLER:</b>	<b>AYE</b>
<b>BARTHOLD:</b>	<b>AYE</b>	<b>RILEY:</b>	<b>AYE</b>
<b>BIJOU:</b>	<b>AYE</b>	<b>SCHNEIER:</b>	<b>AYE</b>

Agenda Item 2. PETITION #3-11 by Hratch Kaprielian requesting a Variance from Section 158.145 of the Town of Longboat Key Zoning Code to reduce the required minimum left (west) side yard from 10 feet to 6.0 feet; and, to reduce the combined side yard minimum from 25 feet to 16.0 feet to allow construction of a new single-family residence for property located at 300 North Shore Road.

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. Stephen Rees, Jr., presented the Return Receipts to the Board.

Ric Hartman, Planner, provided an overview of the November 2011 meeting where the petition was originally heard, and noted that the applicant had revised the request based on the discussion at that meeting. He pointed out that the applicant had moved the structure away from the Joy Street access and closer to the ten foot side setback on the other side property line. He pointed out the bridge structure was still included in the plan, and there had been discussions in regards to the three-car garage. The applicant had expanded the building with the structural footprint located all the way back to the 150 foot pass waterfront yard area. The front of the structure was setback 30-35 feet, where the minimum required was 20 feet from the North Shore Road right-of-way (ROW). He continued with reviewing a PowerPoint showing the site conditions, pointing out there was not an improved access for Joy Street.

Ms. Barthold commented that during the last hearing there was concerns raised by residents that there was no signage for Joy Street, and the residents were not aware it was a public access. Mr. Hartman responded that it would be important if there was an access point; they could walk on the access, but it ended into the Mangroves and there was no launch for boats. He discussed that Joy Street was zoned Open Space-Passive, which did not allow for any construction. He pointed out that the structure would conform to all other zoning requirements, and the building would be 38 feet wide at the three-car garage on the street side, and as the lot narrowed, it became approximately 31 feet wide.

Ms. Barthold commented that she found that since the previous hearing the structure had increased in size. She reviewed the letter received from the Martins noting their concerns with impacts on their view, although the applicant was technically able to build as far back as they wished. She questioned whether the Board could consider the impact on the neighborhood for reasons such as the size of the structure, or could they not be considered. Mr. Hartman explained the ZBA had to determine whether the variance was appropriate. Mr. Fuller understood that the size of the structure, as long as it conformed, was not an issue before the Board. Attorney Persson commented that was correct as the revised application was a lesser requested variance. Mr. Hartman replied correct; the applicant had previously requested to place the building 2.5 feet setback from Joy Street, so they were asking for a reduction of 7.5 feet from the required side setback. However, at this time they were requesting to place the building six feet or a variance of four feet. Ms. Barthold questioned whether the mass of the house and the impact on the neighborhood, even though the mass was unrelated to the variance being requested, was a proper consideration for the Board. Attorney Persson explained that if the variance affected the mass of the house, then it could be considered in the Board's deliberation. Mr. Fuller asked if the only issue before the Board was the side setbacks. Attorney Persson replied that was correct, but the Board could consider the effects of granting the request. Ms. Barthold asked if the proposed addition in the back also required a variance. Mr. Hartman replied as designed, it did require a variance.

Mr. Bijou questioned if the back of the house was shifted and the house was pulled forward to the 20 foot setback requirement, would the two points that impact the setback be at 10 feet. Mr. Hartman was not sure how much less of a variance would be required if the home was designed all the way forward on the lot, because the information was not provided.

Mr. Schneier asked if staff had insight as to why the size of the building increased. Mr. Hartman commented the applicant was unaware of the additional five percent being allowed for raised pools and decks. They had designed under the 25 percent lot coverage limit, but when they became aware that they were not constricted for the raised pool and pool deck, they redesigned the structure to utilize the additional five percent for that area.

Mr. Aitken asked if there would be a need for a variance on the back third portion of the property. Mr. Hartman responded there would be a need for an additional four feet for the back third of the property to move over, and when scaled, it was approximately 2.5 to three feet. It would reduce the variance required for the back third, but the variance would still be required for the front portion. Mr. Aitken commented that the front of the structure was driven by the desire to have a three-car garage and asked why the applicant did not consider a two-car garage. Mr. Hartman noted that was one of the key points of the previous discussion; however, the garage was not changed.

Ms. Barthold commented that she did not believe staff had a more neutral position with the revisions. Mr. Hartman explained the applicant had not provided sufficient evidence to warrant the granting of the variance. He pointed out that the Findings of Fact show there was not an unusual or unique hardship on the property. Mr. Aitken pointed out that in the applicant's materials there were citations related to reductions in side yard setbacks for other properties. Mr. Hartman explained that each variance request was to be reviewed on its own merit and there should not be precedential value for other variances that had been granted.

Stephen Rees, Jr., attorney representing the applicant, reviewed aerial photographs showing the site conditions. He reviewed the Findings of Fact noting the old platted parcel had shown a measurement of 50 feet wide in the rear of the lot, but the survey showed less; most of the applicant's property was 50 feet wide. The required side yard setbacks were based on the fact they would be for that zoning. He mentioned the applicant was proposing a variance that would provide a cumulative setback of 16 feet (10 feet conforming on the north, and a six foot side yard setback on the southeast). The applicant's property was extremely narrow and irregular shaped, with the width of 50-60 feet and a variable depth of approximately 392 feet along the southwest property line and 446 feet along the southeast property line. Mr. Rees explained that the proposed residence would be two-story over parking, with no other variances requested other than the side yard. He noted the proposed residence would comply with all FEMA, FDEP and Town regulations. The issue of self imposed hardship was inconsistent with staff's other recommendations in the past, and noted that an R-3SF zoning district intent was to allow reasonable size single family residence consistent with present land values. He continued reviewing his responses to the Findings of Fact outlined by staff, pointing out

that the applicant had not requested the maximum variance allowed by code. He believed the evidence supported their position that the variance for the side yard setback be granted as requested.

Mr. Aitken noted that Mr. Rees had cited five prior variances as a reason for meeting the criteria and asked if he believed those cases were precedents. Mr. Rees responded one of the criteria for a variance was finding hardship, and in this case the hardship was the land itself. He referenced the other variances to point out that side yard setbacks had been granted by the Town.

Mr. Fuller asked if he understood the property was purchased by the present owner with the idea of demolishing the structure and constructing a new home. Mr. Rees explained the existing residence was built in 1973 and renovated in 1998, and it was always the applicant's intention to have a code compliant structure for the overall best use of the property. He commented it was not the applicant's intention to design a home that had to encroach into the setbacks, but in working with the architect, it was realized the lot was so irregularly shaped. Mr. Fuller pointed out it seemed like the structure could be moved towards North Shore Road to provide additional room in the rear to build in conformance with the codes.

Joe Toph, architect for the applicant, commented the building was pushed back to the 150 foot setback line, and the increase in square footage was not actual building square footage, but paving and pool patio area that were allowed additional square footage for paving. He noted they were at the maximum site coverage and working from the waterfront setback back to the road. The applicant wished to get as close to the water as possible. He suggested that moving the structure closer to the street would bring it off the setback line in the rear, which they wished to maintain. Ms. Barthold noted that one of the objections was with moving the structure so far back that it impacted the neighbors. Mr. Toph pointed out that the applicant wished to be closer to the amenity similar to the adjacent homes. He continued with reviewing the site and illustrations of the proposed home.

Mr. Schneier asked if between the first plan and the current plan if the structural part had been moved further north. Mr. Toph replied no; there had also not been an increase in the square footage. Mr. Bijou suggested an alternative of moving the house forward to the 20 foot setback line, and clip the back corner of the garage, which would result in 10 feet while retaining the 3 car garage. Mr. Toph commented they could have designed a home that did not require any type of variance, but Mr. Kaprielian wanted to construct something that was special and wanted to get enough width as possible; four feet would make a major difference. Mr. Bijou believed shifting it two feet to the right and two feet narrower was minor. Mr. Toph responded shifting it to the east would require lowering the height of the building and the roofline.

Joseph Martin, 320 North Shore Road, who lived adjacent to the subject property, spoke in opposition to the request. He discussed fire access in the area of the subject property commenting that the Fire Department had indicated that the Joy Street access would not be closed, because they required the space to access the property behind the structures

on North Shore Road. He voiced concern with the setback reduction and the impact to fire response.

Katherine Martin, 320 North Shore Road, voiced concern with the Joy Street access being crowded by a large structure. She would like to see full side setbacks on the west side. She noted that she had not heard any hardship being discussed, and the only hardship was the owner wished to construct an oversized house on a very small lot. She pointed out that most lots on North Shore Road were small non-conforming lots, and voiced concern with the size of the proposed structure.

Roger O'Bryon, 301 North Shore Road, noted he was a full time resident and lived directly across the street from the subject site. He strongly objected to the variance being requested as he saw no evidence of a hardship, other than the applicant wishing to construct a larger home. He had built his home in 2005 and requested a variance for a five foot setback on the street side. The footprint for his home was 24 feet wide, but he had proved a hardship due to the narrowness of the lot.

Bennett Bates, realtor with Coldwell Banker, spoke on behalf of the Munsells, 361 North Shore Road, and discussed that garages in the Longbeach neighborhood, that have been successfully marketed and sold, had at least 15,000-20,000 square feet of land and not one had a 3-car garage. He noted that of homes that had 50-60 foot setbacks in that neighborhood, over the past 10-12 years, he was not aware of any of those homes having 3-car garages. He referred to the overall square footage for the neighborhood, noting that an average home had approximately 1,600-1,700 square feet under air and between 2,200 and 2,400 total square footage.

Charles Sweeney, 280 North Shore Road (360 North Condominium), noted that he had been a property owner since the 1970s, and he voiced concern with the placement of a home that was not appropriate for the lot or the neighborhood. He opposed the granting of the variance.

Barry Walsh, 350 North Shore Road, asked if the lot was considered a corner lot when the setbacks were originally established. Mr. Hartman responded it was not considered a corner lot, which would require it to have two street setbacks. Ms. Walsh believed if the Town developed Joy Street, it might be considered a corner lot. She opposed granting the variance due to the impact on Joy Street and its future use.

Don Hemke, attorney representing the Martins and the Munsells, reviewed the petition noting that the applicant had the "burden of proof" to establish a hardship. He emphasized that the case law was clear that the applicant had to prove each of the criteria. He commented that the applicant had a reasonable use of the property, and pointed out that Mr. Toph, the applicant's architect, had noted they could design without the need for a variance. Mr. Hemke reiterated that he did not believe there was an "unnecessary or undue hardship," and that the applicant was referencing economic hardship. He referred to Page 9, Point 9, of his handout noting that all evidence shows the lot was not unique. The proposal would be out of scale with the neighborhood. Ms. Barthold referred to pages 12 and 13 and commented that Mr. Hemke had quoted her on

things she had said at the last meeting, and that she stated things as a belief. She explained that when she asks questions, she was not stating beliefs, but exploring possibilities, and she did not wish to have anything in the record to suggest that anything she said or did was any kind of belief, but that she was only inquiring. Mr. Hemke continued with discussing case law and requested that the variance be denied.

Mr. Rees commented there was discussion concerning prior petitions, and he wished to point out that the non-conforming lots in this area were each unique and the application of the Town's code presented design limitations. The impacts on Joy Street were minimal, and if the access were improved, then it would further compound the limitations on the applicant's lot. He believed there was sufficient evidence to support granting of the variance.

Mr. Aitken questioned the hardship. Mr. Rees responded that the lot was irregularly shaped and was comprised of two parcels – the platted lot and the accreted lands. The location compared to the pass and applying the waterfront yard; the location of Joy Street; and the existing residences surrounding the lot resulted in a very small buildable area. The hardship was the land itself. Mr. Hartman clarified that the development of Joy Street was zoned for Open Space-Passive. He did not want people to misunderstand that at some point there could be development of Joy Street.

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

Mr. Schneier did not believe the applicant had demonstrated a hardship. He commented there should be considerable weight given to the participation of the neighbors and their comments, and agreed that the proposed home was massive for the neighborhood. Mr. Aitken noted that with revisions to the plans, the applicant could construct a nice home without the need for a variance. Mr. Bijou agreed that the house could be designed to conform to the lot. Mr. Riley commented that he had a conflict in terms of not encouraging an owner to improve a property, but in this case, he was persuaded that the home was too large for the lot. Mr. Fuller pointed out that the size of the home was not an issue before the board, and the only issue was whether to grant a reduction of the setback. Ms. Barthold commented that the petition should be denied as the applicant had not met any of the legal criteria for the granting of a variance.

**Mr. Aitken made a MOTION TO DENY PETITION 3-11 BASED ON THE FINDINGS OF FACT AS OUTLINED BY STAFF; seconded by Mr. Schneier and approved by a unanimous vote:**

<b>AITKEN:</b>	<b>AYE</b>	<b>FULLER:</b>	<b>AYE</b>
<b>BARTHOLD:</b>	<b>AYE</b>	<b>RILEY:</b>	<b>AYE</b>
<b>BIJOU:</b>	<b>AYE</b>	<b>SCHNEIER:</b>	<b>AYE</b>

Setting Future Meeting Date.

The next meeting was tentatively scheduled for Thursday, February 9, 2012.

Ms. Barthold and Mr. Bijou noted they would not be available for the March 8, 2012, meeting.

Adjournment.

The meeting was adjourned at 11:34 PM.

Respectfully submitted,

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Charles Fuller, Secretary  
Zoning Board of Adjustment