

TOWN OF LONGBOAT KEY
ZONING BOARD OF ADJUSTMENT
MINUTES OF NOVEMBER 10, 2011 MEETING

The meeting of the Zoning Board of Adjustment was called to order by Chairman Feole at 9:30 a.m. on Thursday, November 10, 2011.

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

Also Present: David Persson, Town Attorney; Monica Simpson, Planning, Zoning & Building Director, Steve Schield, Planner; Jo Ann Mixon, Deputy Town Clerk; Donna Chipman, Office Manager

Administration of Oath. Deputy Clerk Mixon swore new members Thomas Bijou and Lee Riley and reappointed member Kenneth Schneier.

Election of Chairman.

Ms. Barthold made a MOTION TO NOMINATE BEN FEOLE AS CHAIRMAN; seconded by Mr. Aitken.

There were no other nominations, and the nominations were closed.

Motion carried on roll call vote:

AITKEN:	AYE	FULLER:	AYE
BARTHOLD:	AYE	RILEY:	AYE
BIJOU:	AYE	SCHNEIER:	AYE
FEOLE:	AYE		

Vice-Chairman

Mr. Fuller made a MOTION TO NOMINATE GAELE BARTHOLD AS VICE-CHAIRMAN; seconded by Mr. Bijou.

There were no other nominations, and the nominations were closed.

Motion carried on roll call vote:

AITKEN:	AYE	FULLER:	AYE
BARTHOLD:	AYE	RILEY:	AYE
BIJOU:	AYE	SCHNEIER:	AYE
FEOLE:	AYE		

Secretary

Ms. Barthold made a MOTION TO NOMINATE CHARLES FULLER AS SECRETARY; seconded by Mr. Aitken.

There were no other nominations, and the nominations were closed.

Motion carried on roll call vote:

AITKEN:	AYE	FULLER:	NO
BARTHOLD:	AYE	RILEY:	AYE
BIJOU:	AYE	SCHNEIER:	AYE
FEOLE:	AYE		

David Persson, Town Attorney, requested a modification to the agenda in order for the Board to consider Item 4, Petition 5-11, as the first petition. He explained the reason for his request was due to the Board being required to enter an order, which should be completed at this meeting, and once he understood the Board's wishes, he could draft the Order for the chairman's signature during the hearings.

Ms. Barthold made a MOTION TO REORDER THE AGENDA TO CONSIDER PETITION 5-11 AS THE FIRST ITEM; seconded by Mr. Fuller and approved by a unanimous vote.

Approval of Minutes

Ms. Barthold made a MOTION TO APPROVE THE MINUTES OF THE APRIL 14, 2011, ZONING BOARD OF ADJUSTMENT MEETING AS WRITTEN; seconded by Mr. Schneier and approved by a unanimous vote:

Agenda Item 3. PETITION #5-11 by Grand Mariner on Dream Island LLC, Accursio Sclafani, and Doreen Erickson requesting an Appeal of Decision of an Administrative Official made on September 20, 2011, determining that the Outline Development Plan, Special Exception, and Site Plan Applications for the Longboat Island Chapel Personal Wireless Service Facility are found complete for property located at 6200 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. Charlie Bailey presented the Return Receipts to the Board.

Monica Simpson, Planning, Zoning & Building Director, reviewed the staff report noting it was an appeal of the decision made by Planning Staff that the Outline Development Plan (ODP), Special Exception, and Site Plan Amendment applications were complete. She reviewed the first four appeal points and noted they dealt specifically with Section 158.097, which were submittal requirements. She continued with reviewing a PowerPoint presentation. She reviewed Section 158.097(W)(2), and the possible interpretation of that section as those requirements did not have to be submitted within the application, but rather as part of a condition of approval. Planning staff did require other subsections of that section to be submitted, such as a balloon test and verification

of adequate landscaping. Ms. Simpson noted that if one took the entire section, in its entirety, as opposed to separating certain sections, it would be logical to think that consistent application of all those subsections within Section 158.097(W)(2) would require everything to be submitted. She commented that consistent application of those subsections would render appeal points 1-4 valid; thereby making the applications for site plan review incomplete.

Ms. Barthold questioned why the original staff review came to the opposite conclusion than Ms. Simpson; did she review the report. Ms. Simpson responded that as an individual citizen of Manatee County, she served on the Anna Maria Island Community Center board, and as most might be aware, the center was contemplating erecting a cell tower on their property. At the beginning of the process, she very clearly, knowing that Ridan Industries and Jim Eatrides were candidates under consideration, and to be clear with the perception of conflict of interest, stated she could not serve on the committee for the community center, and could not have any conversation or input on their decision with regard to their cell phone tower. She had explained to Steve Schield, planner, who was assigned this project that she would not provide input as far as testimony at the public hearings, and she did not attend any of the pre-application conferences subsequent to the first one, which was prior to the community center contemplating a tower.

Ms. Barthold asked if she was stating that she did not review the staff report at that point, but now giving an opinion on it. Ms. Simpson explained that she had read the report for technical merit, but did not come to any technical conclusions on completeness or the merit of the cell phone tower on the property.

Steve Schield, Planner, commented this was a unique condition, and to be consistent with other parts of the code, in site plans the Town did not require detailed construction plans and testing until there was approval. He noted that at times, during the site plan review process, things could change. Attorney Persson explained the normal sections of the code would lead Mr. Schield to the conclusion he reached, and there was logic for that. He referred to the section of the code that governed cell towers, and it was very stringent as to what needed to be submitted. He pointed out this was the first time this section of the code had been addressed, because the Town had never had a tower application before them.

Mr. Fuller asked if the only issue before the ZBA was whether the applications were complete. Attorney Persson replied yes. Mr. Schneier commented that he looked at the staff as "one body," and found the conclusion to be from "staff." He questioned who was representing staff. Attorney Persson explained this was not unique; there have been times when there was a planner making a recommendation to a body and there was a challenge. The process was once an appeal was filed, the director of the department had to review and make the decision.

Ms. Barthold asked to what extent should the board, or might they, defer to Mr. Persson's legal interpretation as to the fact that this was a more stringent section. Attorney Persson responded his role was to advise the board, and he encouraged the

members to look at the requirements outlined by staff. He noted the code was different, particularly with the tower issue. Ms. Barthold asked if the board found the applications legally incomplete, then the applicant would have to go back and complete the items. Attorney Persson replied correct.

Ms. Simpson continued with her review of appeal point 5 dealing with Section 158.097(C) and a Verified Statement of Ownership for the property that the site encompasses. The appellant was suggesting that ownership for Ridan Industries, which was a leaseholder on the property, should have been provided. The Longboat Island Chapel verification was part of all the applications; however, Ridan Industries, subsequent to the appeal filing, have provided a statement to the Town which would address appeal point 5.

Ms. Simpson addressed appeal point 6, which addressed Sections 158.125, 158.126, and 158.200(B) and (B)(11). The applicant believed a special exception application must be processed in conjunction with a site plan application, and they were also contending that the site plan application was not complete because of the other items previously discussed. She continued with reviewing the cited sections of the code and their purpose. Ms. Barthold asked if Ms. Simpson concluded the point was valid or invalid. Ms. Simpson responded that she would consider it valid; however, it was a code interpretation, and literal writing did not require both applications be reviewed in conjunction with each other. She mentioned, in the abundance of caution, and because it was an interpretation of the code, there was no harm with Ridan Industries submitting the items raised by the appellant.

Referencing appeal point 7, which addressed Section 158.067 and that if the site plan application was incomplete, then the ODP application could not be heard, she pointed out that the code did not require a completed site plan application be filed concurrently with the ODP application. She referred to the October 18, 2011, Planning and Zoning (P&Z) Board meeting where the Town Attorney had an opinion that the ODP public hearing could be held, and the attorney for Ridan Industries agreed. The P&Z Board had recommended approval of that application. The public hearings for the special exception and site plan amendment were not held and were pending the outcome of this hearing. Ms. Simpson noted that staff recommended approval of the appeal and also recommended that Ridan Industries amend its site plan to adequately address appeal points 1, 2, 3, 4, and 6. Staff did not believe appeal points 5 and 7 were valid.

Mr. Aitken commented the P&Z Board deferred action, because of the lack of construction plans, and asked if they could not have requested those plans during their hearing. Attorney Persson explained when the appeal was filed, and if what it argued was correct, then the jurisdiction was removed from the P&Z Board and forwarded to the ZBA. Ms. Barthold questioned the appeal process from the ZBA decision. Attorney Persson responded the appellant had 30 days to appeal to the circuit court, which was one of the reasons he was requesting a written order of the board's action. He explained when dealing with cell towers, they were not only dealing with local law, but also state and federal law, which both had time requirements for review.

Mr. Schneier asked if appeal points 1-4 and 7 would require more information. Ms. Simpson explained that appeal point 7 was predicated on the concept that the site plan was not complete. She noted that in the appellant's opinion once it was deemed incomplete, it affected everything else, and it was her interpretation that section of the code did not require site plan application to be used to compare requirements with the special exception; it only required review of the site plan review requirements. She pointed out that it was at the applicant's discretion when and how they wished to submit for approval the three separate applications. She noted that in appeal points 1-4, it addressed specific materials that needed to be submitted for review of the telecommunication tower. Attorney Persson explained that an ODP sets, or adjusts, the zoning for the property, where the site plan provided specific details of the project.

Charlie Bailey, attorney representing Grand Mariner on Dream Island LLC, explained they were challenging, through the appeal, the determination of completeness made on September 20, 2011. His client, along with Accursio and Doreen Sclafani, disagreed with the completeness determination on all three applications. There were seven items they were basing their appeal on. He commented that in Ms. Simpson's report of October 24, 2011, she affirmed that appeal points 1-4 and 6 had basis, and they agreed with that position. Concerning appeal points 5 and 7, Ms. Simpson believed those points were addressed and an appeal should not be granted as to those points. He noted there was a requirement in the code for a verified statement, including a certificate of ownership, showing each and every person having a legal ownership interest in the subject property. Attorney Persson asked if the Town had provided a copy of what was filed for ownership and asked if the document resolved the problem. Mr. Bailey responded it addressed the issue, but it was a matter of staff reviewing and deeming complete. He explained that Ridan Industries was identified as a tenant on the property, and under Florida Law, if one had a leasehold interest that was considered an ownership interest in the property. He believed the appeal should be granted on all seven points, and he believed the applicant was working on the items to provide to staff for the applications.

Attorney Persson asked if the board were to adopt Ms. Simpson's proposal, Mr. Bailey was not agreeing to that, because he wished to include the Verified Statement of Ownership as well as the inability to move forward with the ODP. Mr. Bailey replied yes. Attorney Persson asked if he determined the ODP could not have proceeded, it would go back to the P&Z Board. Mr. Bailey noted the basis for appeal point 7 was the site plan application was not complete. Attorney Persson pointed out that if Mr. Bailey was correct, that the site plan was an integral part of the ODP, then they had to bring the ODP back to the P&Z Board. He restated their request asking that the appeal be granted on appeal points 1-6. Mr. Aitken believed Mr. Bailey's concern was the lack of construction plans. Mr. Bailey replied yes, that was one of the items. He explained the issues were largely addressed with the construction plans.

Michael Furen, attorney representing Accursio Sclafani and Doreen Erickson, noted his client lived immediately adjacent to the chapel. He concurred with Mr. Bailey's comments, but reminded the board they were reviewing a decision made on September 20, 2011. Attorney Persson asked if Mr. Furen was agreeing with Mr. Bailey on appeal

point 7. Mr. Furen responded he was not sure of the implications. Mr. Aitken asked if Mr. Furen agreed that the principle deficiency was the lack of construction plans. Mr. Furen believed the appeal should not be limited to only that item, as he believed there were other issues. He explained that there was a requirement for a certification from an engineer regarding the soil testing and drainage, and also an engineering analysis or other data that certified the collapse zone, which was not a construction plan certification.

Mary Solik, representing Ridan Industries, pointed out that the first five points of the appeal addressed certain required documents not submitted, but because of the intense scrutiny on this application, the applicant was working on construction plans, which would be submitted on November 14, 2011. She noted they had submitted some documentation from a professional engineer certifying that the collapse zone requirements, drainage, and subsoil issues would be met; the only document missing were the construction plans. Ms. Barthold asked if the plans would address the appeal points. Ms. Solik responded that appeal points 1-4 would be addressed by the construction plans, and appeal point 5 dealt with the verified statement of ownership, which was provided to the Town on November 9, 2011. Concerning appeal point 6, they agreed with the position at the P&Z Board meeting on October 18, 2011, and did not request for the special exception application to be heard. She pointed out that with appeal point 7 it was not an argument that the application was incomplete, but was an argument that the P&Z Board had certain parameters when reviewing the application. Under Section 158.097, which was the ODP requirements, was a very onerous list of submission requirements, and they had submitted every single one of those documents. There had been no contention that they missed those requirements under Section 158.097.

Ms. Barthold questioned the implications if, in fact, all the items were submitted to the Town on November 14, 2011; if the board found the application legally incomplete, but it would be found complete on that date, what was the implication. Attorney Persson explained that if the board found the application incomplete, and items were submitted on November 14, 2011, and by later that week staff found it complete, then it would go back to the P&Z Board, but if the board stated the application was complete, then it would still go back to the P&Z Board.

Discussion ensued on the completeness with Attorney Persson commenting that if the board found the application incomplete, and the applicant submitted the materials to which staff found it complete, then it would go back to the P&Z Board unless Mr. Furen appealed to the court. He noted that if the board found that the ODP should not have been processed, then it would go back to the P&Z Board and would delay the review process; however, if the ODP moved forward to the Town Commission as scheduled, while they were holding the first reading, the P&Z Board would be reviewing the site plan and special exception, and then all three applications would be heard by the Town Commission upon second reading of the ODP.

Mr. Aitken asked if the items discussed with Mr. Furen, who believed were not part of the construction plans, would be submitted on November 14, 2011. Ms. Solik replied

yes; but contrary to Mr. Furen's comments, those items were a part of the construction plans. She commented that appeal point 7 stated the Town Code required the P&Z Board to make findings, and she did not believe that was an application insufficiency or argument. Attorney Persson explained that the argument for appeal point 7 was that the ODP should not have been heard by the P&Z Board. He asked if she was comfortable, if the board granted appeal point 7, that her client would not go back to P&Z Board. Ms. Solik replied yes, if the board granted appeal point 7. Ms. Barthold asked if Ms. Solik would have a problem if the board found all seven points were meritorious. Ms. Solik noted she was more comfortable with the finding that the board did not have jurisdiction on appeal point 7.

The board recessed from 10:33 am – 10:40 am.

Ms. Solik commented that on behalf of Ridan Industries, they would withdraw any objection to the granting of the appeal as to appeal point 7. She noted that appeal points 1-4 would be addressed by the submission on November 14, 2011, they had filed a response to appeal point 5, they agreed with appeal point 6, which was the special exception and site plan should be reviewed concurrently, and she reiterated their withdrawal of any objection to appeal point 7. Attorney Persson noted that by granting appeal points 1-7, the process would go back to the P&Z Board on all three applications. Ms. Solik agreed. Attorney Persson asked if she agreed this would toll the clock, if there was a clock running, until such time it was brought back to the P&Z Board. Ms. Solik believed the clock was not tolling any longer than this hearing. Attorney Persson commented assuming the order was entered at this hearing. Ms. Solik replied the clock would "pick back up." Attorney Persson questioned what would happen between the timeframe from now until the P&Z Board heard the applications; he believed the clock would stop at the hearing before the P&Z Board. Ms. Solik believed the clock would stop until there was a determination that the applications were complete, and then the clock would begin again. Discussion ensued on the effect of the order and the time clock. Mr. Schield believed the clock first began at the issuance of the completeness letter on September 20, 2011, and when the appeal was filed, it stopped the clock. He did not believe the clock would resume until the applications were found complete. Ms. Solik explained there was a "bifurcation" between the clock on completeness and the clock on approval, so when staff issued a new completeness letter, there would be a new 90 day clock since it would address all three applications.

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

Mr. Fuller discussed appeal point 7 asking if the Town Code stated there was not a requirement for the site plan. Attorney Persson responded that was his opinion. Mr. Fuller understood that if the board ruled that appeal point 7 was incomplete, then the ODP process would go back to the P&Z Board. Attorney Persson explained that all three applications would go back to the P&Z Board, and then pending their decision, would be forwarded to the Town Commission. He noted that the ZBA Order would render the P&Z Board action moot and the ODP would be brought back to the P&Z Board for another hearing.

Mr. Fuller made a MOTION TO FIND THE OUTLINE DEVELOPMENT PLAN, SPECIAL EXCEPTION, AND SITE PLAN AMENDMENT APPLICATIONS FOR THE LONGBOAT ISLAND CHAPEL PERSONAL WIRELESS SERVICE FACILITY TO BE INCOMPLETE AS TO APPEAL POINTS 1-7; seconded by Ms. Barthold.

Mr. Fuller asked if staff agreed with the motion. Ms. Simpson replied staff agreed. She continued to believe that the ODP and site plan amendment could run separately; however, under caution, she agreed it could be brought back to the P&Z Board.

Motion carried on roll call vote:

AITKEN:	AYE	FULLER:	NO
BARTHOLD:	AYE	RILEY:	AYE
BIJOU:	AYE	SCHNEIER:	AYE
FEOLE:	AYE		

Agenda Item 1. PETITION #2-11 by Wayne and Mindy Rollins requesting a Variance from Section 158.150(D)(1) of the Town of Longboat Key Zoning Code to reduce the required gulf waterfront yard to construct a screened porch that is 110.41 feet from the Erosion Control Line and to construct a wall that is 111.47 feet from the Erosion Control Line, for property located at 6341 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. Michael Siegel presented the Return Receipts to the Board.

Steve Schield, Planner, reviewed the staff report noting the subject property was an existing, grandfathered non-conforming single-family structure constructed in 1959 and was located 84 feet, 2 inches from the Erosion Control Line (ECL) on a 150 foot wide lot with a minimum depth of 372 feet. The proposal was to construct a 517 square foot screen porch and a six foot wall between the existing 5,459 square foot single-family home and a 1,306 square foot guest house. The screen porch was proposed at 110 feet, 5 inches from the ECL and the wall would be located 111 feet from the ECL. He explained that the previous owners of the property acquired the legal, non-conforming 50 foot lot to the south in 2004 and was merged with 6341 Gulf of Mexico Drive to make one legal lot. Mr. Schield pointed out that the Zoning Code required a minimum of 100 foot width on the lots, they could never divide them in the future. He pointed out that the property had received two previous variances for the existing home: Petition 4-86 was granted in February 1986 to reduce the gulf waterfront yard from 150 feet to 136 feet from the Mean High Water Line (MHWL) as there was no ECL in 1986 (it was established in the early 90s); and, Petition 9-94, granted in December 1994, reduced the gulf waterfront yard setback from 150 feet to 92 feet from the ECL. He continued with reviewing the Findings of Fact in the staff report, and a PowerPoint presentation showing the site conditions.

Mr. Schield noted the applicant was proposing to place a screen room between the two structures to tie them together. Ms. Barthold asked if the screen cage would be subject

to all the new rules of construction. Mr. Schield responded yes, and the applicant would have to apply for a state permit, but they would require a variance to apply. He commented that if the board wished to grant the petition, then staff would recommend the following conditions be imposed on any approval: 1) the variance would only be for the construction of the screened porch and wall addition to the existing structure within the existing footprint as shown on the application plans; and, 2) if the existing structure is voluntarily or involuntarily replaced in the future, this variance would be considered null and void, and a new variance would have to be granted based on the variance criteria and the site conditions at that time.

John Patterson, attorney representing the applicant, reviewed aerial photographs of the site, and an old plat. He noted that on the half platted lot a structure was built, and the property line went down the middle; both were independent non-conforming structures. The applicant would remove existing screen porches on those structures (three). He reviewed an illustration that showed a new screen porch in between the existing structures noting that it would be located further landward from the ECL than those that would be removed. He continued with reviewing his responses to the Findings of Fact suggested by staff. He mentioned the variance would eliminate three non-conforming structures, and they would provide a Certificate of Unified Ownership. Mr. Patterson noted that the conditions outlined by staff were acceptable to the applicant, if the board chose to grant the variance. Ms. Barthold asked if Mr. Patterson would submit revised Findings of Fact consistent with his presentation so if the board chose to grant the petition, they would grant based on those findings. Mr. Patterson replied he would provide revised findings.

Mr. Feole asked if by placing the wall shown between the structures would that join and make it considered a single unit, or did it still stay and separate the units. Mr. Patterson noted the wall would not touch any of the structures. Mr. Schield pointed out that if the structures were located within ten feet of each other, they were considered one structure, whether the structures touched or not; the Code did not allow any walls within gulf waterfront yards, which was the reason for the variance. He commented that if the board chose to grant the petition, and if the applicant was willing to remove the existing screen porches, he would request a third condition which stated they would remove the three existing non-conforming porches prior to building the new porch. Mr. Patterson accepted the stipulation. Mr. Feole asked if the lots would still be considered two lots if the board approved the variance. Mr. Patterson responded no; they would become one single-family lot.

Mr. Schneier questioned the status of the remaining portion of the lot on the south side. Mr. Patterson noted it was owned by someone else; that lot was split years ago into two separate ownerships. Mr. Schield pointed out the lot was a legal non-conforming lot and was divided prior to the Zoning Code adoption. He mentioned that once it was merged, it could not be divided again. Mr. Schneier asked if any of the other proposed renovations would require a variance. Mr. Patterson replied no; he believed they were further away from the 150 foot ECL, and the internal changes did not require a variance. Ms. Barthold understood there would not be a problem with the additional condition for removal of the screen porches. Mr. Patterson replied correct.

Mr. Feole asked if the building on the half lot would still remain a non-conforming dwelling. Mr. Schield explained it would be a non-conforming structure on the property; it would not be used as a dwelling as the kitchen would be required to be removed, and it would be considered a guest quarters. Mr. Feole questioned how they could be certain that the kitchen would be removed. Mr. Patterson noted they would not be able to obtain the Certificate of Occupancy (CO) until it was removed.

Attorney Persson requested that the conditions be listed for the record. Mr. Schield reviewed the conditions being imposed, which included: 1) the variance would only be for the construction of the screen porch and wall addition to the existing structure within the existing footprint as shown on the application plans; (2) if the existing structure is voluntarily or involuntarily replaced in the future, this variance would be considered null and void, and a new variance would have to be granted based on the variance criteria and the site conditions at that time; and, 3) removal of three porches as specified on the site plan. Attorney Persson asked how the porches would be identified. Mr. Patterson indicated the respondent had drawings that showed the existing porches, which would show the exact location. Attorney Persson noted that staff would need to review the drawing and agree on the locations. Mr. Feole believed it should be part of the variance.

Attorney Persson questioned the lot merger. Mr. Schield responded that was completed. Mr. Patterson commented the applicant had tendered the document to staff. For clarification on staff recommendation condition 2, Mr. Patterson asked if when they state "if the existing structure is voluntarily or involuntarily replaced," if 'existing structure' meant either or both of the homes that existed. Mr. Schield replied yes. Mr. Patterson suggested revising the wording to state 'structures are.' Ms. Barthold commented they could also include in the record the document being reviewed and notate the location of the second porch. Mr. Schield explained he would prefer a survey or site plan showing the exact location.

Mr. Feole asked if the variance would end with the current ownership and structure if the lot were sold. Attorney Persson noted the ownership was irrelevant; if the owner demolished the existing structure and wished to build a new structure, this variance would not apply. Mr. Patterson commented that they would stipulate that this variance, or the prior two variances, would not apply to any replacement structure in the future.

Mindy Rollins, co-applicant, explained that they had lived in the home for three years and were now beginning a renovation. They had always wished to combine the lots and create a place for their family, and were attempting to make this a cohesive architecture for the two properties.

Attorney Persson provided revised language for condition 2 addressing the removal of the structures and the application of the variances. The revised language would state, *"If the existing structures are voluntary or involuntarily replaced in the future, this variance, and all prior variances, would be considered null and void, and a new variance*

would have to be granted based on the variance criteria and the site conditions at that time.”

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

Mr. Schneier made a MOTION TO GRANT PETITION 2-11, SUBJECT TO THE CONDITIONS OUTLINED BY STAFF.

Ms. Barthold provided a friendly amendment to approve the petition based on the Findings of Fact that would be provided by the applicant.

Mr. Schneier accepted the friendly amendment; seconded by Mr. Aitken, and approved by a roll call vote:

AITKEN:	AYE	FULLER:	AYE
BARTHOLD:	AYE	RILEY:	AYE
BIJOU:	AYE	SCHNEIER:	AYE
FEOLE:	AYE		

The board recessed from 11:46 am - 11:53 am

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 side yard setbacks from 25 feet combined / 10 feet one side to 12 1/2 feet combined / 2 1/2 feet one side, 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. Michael Furen presented the Return Receipts to the Board.

Ric Hartman, Planner, reviewed the staff report noting the property had an existing structure and what was proposed was a variance of the required side yard setbacks. He commented the applicant was proposing to build a new one-story single-family residence located 2.5 feet from the west side property boundary adjacent to the Town-owned, 50 foot wide Joy Street Public Bay Access, which is zoned Open Space-Passive (OS-P). The proposed structure would be located 10 feet from the east side property boundary adjacent to another residential property with an existing structure. He discussed Section 158.126(F)(4), which provided for specific restrictions on variances, and reviewed an illustration of the setback from Joy Street. Staff did not believe the building was set back the maximum distance away from the Joy Street property line, because the proposed structure could be moved further toward the ten foot setback line on the east side. Mr. Hartman noted that staff was recommending denial, because when reviewing the Findings of Fact, specifically Finding 2, there were not special conditions that existed that were peculiar to the land or property. He explained that the lot width was 50 feet, which was not uncommon in the R-3SF district; and, there were several properties along North Shore Road that had 50 foot widths. He requested that if the board wished to grant the

variance, that a condition be placed upon the approval that the structure be placed at the maximum building setback line at ten feet on the east side, and that it only be granted for the structure as proposed, and not run with the land.

Mr. Hartman continued with reviewing the GIS aerial showing the subject property. Mr. Fuller asked if a 30 foot wide home did not require a variance. Mr. Hartman replied correct. Mr. Fuller questioned what width was proposed. Mr. Hartman pointed out it was a little wider toward the front, but the width of the building front was 37.5 feet. Mr. Aitken commented the applicant's request was premised on a 100 foot wide lot, and asked if it was an absolute requirement. Mr. Hartman explained the requirement applied to lots all over the island that were nonconforming to width.

Ms. Barthold noted that the board had received two letters of objection to the proposal and asked if they should be made a part of the record. Attorney Persson commented they were part of the record.

Mr. Bijou asked if the width of the walkway was the minimum width required by code. Mr. Hartman believed it was a design element; there was not a minimum width for a walkway in the Zoning Code, but there might be in the Building Code.

Michael Furen, representing the applicant, reviewed the history of the lot, noting there had been significant accretion over the years from the original plat. Ms. Barthold asked if they were allowed to build on any of the accreted portion. Mr. Furen replied yes; the property was larger in depth, but not in any minimum width, which was the issue being addressed with this variance. Attorney Persson noted there was also a 150 foot setback. Ms. Barthold asked even with the 150 foot setback, how far back they could go on the accreted land. Mr. Furen reviewed an illustration showing the location of the 150 foot setback line. He mentioned that staff agreed that the minimum width for a non-conforming lot only required ten feet on each side; however, in considering the value of real estate on Longboat Key, it was their view they could not "create a house worthy of this prime piece of real estate." He proposed that the setback for the R-3SF district assumed that the lot complied with the minimum width and minimum lot area requirements of that particular district. He had pro-rated the setback requirements based upon the lot width. He believed he was correct that if they applied the reduced 20 foot setback, it would result in 40 percent of a 50 foot lot width. They suggested a pro-rata of the required setback for a 100 foot wide lot and apply those allocations to a 50-60 foot lot.

Ms. Barthold noted that when his client purchased the lot, they knew it was a 50-60 foot wide lot, and this was not the only lot in the area that was 50 feet in width. She visited the neighborhood and noted it was a neighborhood that had distance between the homes, because people had not received variances. She believed if they began approving variances in the neighborhood, it would result in homes on top of homes. Mr. Furen pointed out that they thought the concept of side yard setbacks was not to protect pedestrians along a street, but to provide privacy between adjacent structures. He commented there were other R-3SF lots where people were permitted to have a reasonable use of their property based upon a setback (100 foot lot minimum width) that

did not take significant portions of their property. He continued with reviewing photographs of the site. He explained that the present structure was non-conforming as to the setback to the property to the east (it was only 7.6 feet, where ten feet was required); this request would create a conforming ten foot setback for the new residence to that line and the nonconformities would be eliminated. They were providing property to the east at the required minimum ten foot setback, so he did not understand the complaint, because he believed the proposal would not directly impact the neighbors to the east. He disagreed with staff's position that special circumstances did not exist, because special circumstances do exist when there was a non-conforming lot, particularly one of this narrow width, and a very valuable piece of property on which they were trying to create a home of reasonable size. He continued with reviewing photographs showing the existing conditions.

Joe Toph, architect representing the applicant, reviewed aerial views showing the proximity of the site; and reviewed the proposed layout of the new structure and renderings of what the structure would look like once complete. He commented they moved the bridge area all the way to the ten foot setback line so there was not any Daylight Plane issues; the main part of the building still had to setback more than the ten feet to meet the Daylight Plane.

Mr. Aitken asked why the bridge area could not be internalized between the structures, as suggested by staff, to avoid the need for a 2.5 foot variance. Mr. Toph explained the applicant wished to have an entrance into the building, and presented it on the front of the structure for a proper entrance. The proposal was to bring the pool area up 5-6 feet so there was a softer relationship between the two areas. The existing house was approximately 2,400 square feet, but the proposed residence was estimated to be 5,000 square feet of air-conditioned space. He indicated he had spoken to most of the neighbors except two, and Mr. O'Brien, who lived directly across the street, had noted no problems or concerns. He commented that he had spoken to Mr. Sweeney, president of the condominium association to the west, who did not have any issues with the proposal. Mr. Furen requested that the file be included as part of the record. No objections were noted to his request.

Don Hemke, attorney representing the Martins and the Munsells, who were adjacent neighbors, discussed that the Longboat Key Town Code, Section 158.129, noted that an application had to satisfy seven criteria, and the staff report concluded that the applicant had satisfied one of the criteria; six criteria were not met. He contended when there was a space that was Town-owned, and dedicated as Open Space, that allowing a structure to be constructed within 2.5 feet of the space would have negative impact upon the vegetation and ambience of the area. He commented that as noted by the Munsells in their letter, the proposal would be out of scale with the neighborhood, and the applicant should be required to adhere to the minimum ten foot setback.

Mr. Hemke reviewed case law, which he distributed to the board. He believed there was a reasonable use of the land at this time, as there was a reasonable size home on the lot. He addressed Ms. Barthold's comment related to the applicant knowing the conditions when they purchased the property, noting they purchased the property in the

mid 1990s, and at that time, all the setback requirements were in existence. Ms. Barthold commented that the fact they knew it was a 50 foot wide lot put them on notice they would need to request a variance, but asked if Mr. Hemke was stating that precluded them from asking for the variance. Mr. Hemke responded the applicant could ask, but whether they were entitled to receive a variance was the question. Attorney Persson noted it depended on the type of variance. The ZBA had the jurisdiction to consider the variance, but whether the application met the criteria was another question. Mr. Hemke pointed out that the entire presentation was based on economic value, which was not allowed to be considered for a variance. He referred to Mr. Furen's presentation where he provided a list of properties that had received variances, but noted there was no indication as to which zoning district they were located. He pointed out there were others that had complied with the required setbacks for 50 foot lots in that area.

Tina Rudek, 380 North Shore Road, noted she had owned her property since 1993 and mentioned that the structure at 300 North Shore Road had been an 'eyesore.' She believed most of the neighbors did not realize there was open space available for public use as it was not marked. She spoke in support of the application.

Mr. Aitken voiced concerned with the proposal and the setback, and believed the bridge area could be modified to eliminate the 2.5 foot variance. Mr. Hartman commented they were reviewing a five foot, four inch wide bridge area that was proposed, and at the time, it was not set at the ten foot line; the building, as proposed, was 37.5 feet wide and would be 32.2 inches if the bridge were removed. He explained as proposed, in the application, there was still two- to three-feet of the building removed from the ten foot setback, which was exactly why staff believed, but were unsure without further engineering evidence, that the structure could be built without a variance. Mr. Hartman also pointed out that staff had not seen any information about the Daylight Plane and the inability to build; there was no proof provided that the structure could, or could not, be built within the Daylight Plane angle. Concerning the three car garage, he understood the garage was a major reason for the setback variance. He noted the applicant had not built to the 20 foot setback line from North Shore Road, where the lot was wider; they were set back further into the narrow part of the lot where they could move it forward (towards North Shore Road) and have a wider area for the garage.

Ms. Barthold questioned if garages were allowed to have stacking, where it might be a two-car garage, but they could park a third or fourth car behind another. Mr. Hartman replied yes.

Mr. Toph commented that 30 feet was the minimum interior dimension for a three car garage, but typically they would use a 32 foot minimum outside to outside width for a three car garage. Mr. Feole questioned why they were set back further from the road. Mr. Toph responded they measured from the waterfront setback forward. They could move closer, but then they would get into site coverage problems. Mr. Feole asked if the bridge area was essential. Mr. Toph explained that the additional width was the function of creating an entrance adjacent to the garages. Discussion ensued on the architectural points of the bridge; reduction of the side yard setbacks; and, the elimination of the bridge to reduce the setback from 12.5 feet to 17.5 feet.

Ms. Barthold noted there was a previous case where there was a variance being requested and the board gave the applicant an opportunity to redesign to reduce, or eliminate, the requested variance. She asked if that was something the applicant would consider. Mr. Toph noted there was a point where the garage and the entrance would not work because of the geometry of the cars. Ms. Barthold questioned if they needed to have a three car garage. Mr. Furen asked if given the fact that the early drawings reflected space between the easterly face of the structure and the ten foot setback line on the east, if they met that, it would eliminate the present non-conforming setback; if they shifted it over they could probably decrease the variance requested on the west side against the open space parcel and provide a five foot area. Mr. Toph noted it would be tight.

After consultation with Mr. Toph, Mr. Furen asked that this petition be continued until the December 1, 2011, meeting to enable them to respond to the concerns noted and to consult with his client. He commented they would welcome an approval with the requested variance reduced by five feet on the west side so a five foot setback would be provided against the Town's Open Space. Ms. Barthold cautioned Mr. Furen that no one had suggested that five feet would be appropriate. Mr. Furen responded he was only suggesting that they would reluctantly agree to the five feet versus the 2.5 feet. Ms. Barthold commented there were other properties in the area that had the same restriction and were able to construct homes 30 feet wide with ten foot setbacks on both side. Mr. Furen understood, but noted this was a unique residence. He also pointed out that there was clear case law in Florida that one could not seek, with knowledge of the conditions, and obtain a variance. Mr. Furen addressed the technical points raised by Mr. Hemke commenting that if the board strictly applied the criteria for variances, the board would never be able to approve a variance; they could not meet the standards articulated by Mr. Hemke.

Mr. Hemke suggested that if the board chose to continue the hearing that there be some type of deadline imposed for submittal of materials to allow him the ability to respond to the revisions.

Mr. Fuller made a MOTION TO GRANT A CONTINUANCE OF PETITION 3-11 TO THE DECEMBER 1, 2011, ZONING BOARD OF ADJUSTMENT MEETING, WITH THE CONDITION THAT THE APPLICANT SUBMIT THE REVISED MATERIALS TO STAFF BY NOVEMBER 17, 2011; seconded by Mr. Aitken and approved by a roll call vote:

AITKEN:	AYE	FULLER:	AYE
BARTHOLD:	AYE	RILEY:	AYE
BIJOU:	AYE	SCHNEIER:	AYE
FEOLE:	AYE		

Setting Future Meeting Date.

The next meeting was tentatively scheduled for Thursday, December 1, 2011.

Adjournment.

The meeting was adjourned at 1:40 PM.

Respectfully submitted,

Charles Fuller, Secretary
Zoning Board of Adjustment