

**TOWN OF LONGBOAT KEY
ZONING BOARD OF ADJUSTMENT
MINUTES OF APRIL 14, 2011 MEETING**

The meeting of the Zoning Board of Adjustment was called to order by Chairman Feole at 9:30 a.m. on Thursday, April 14, 2011.

Members Present: Chairman Ben Feole, Vice Chairman Andrew Aitken, Secretary Charles Fuller, Members Gaele Barthold, Sally Boynton (@ 9:34 am), Kenneth Schneier, Edward Zunz

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

Ms. Chipman swore all those testifying at this hearing.

Approval of Minutes

Mr. Aitken made a MOTION TO APPROVE THE MINUTES OF THE MARCH 17, 2011, ZONING BOARD OF ADJUSTMENT MEETING AS WRITTEN; seconded by Mr. Schneier and approved by a unanimous vote:

Agenda Item 1. PETITION #6-10 by Francis R. Trulaske requesting a Variance from Sections 158.150(D)(1) and 158.145 of the Town of Longboat Key Zoning Code to reduce the required gulf waterfront yard from the required 150 feet to 60 feet as measured from the Town's Erosion Control Line, and increase the maximum lot coverage from 25 percent to 36 percent, to allow for a second story addition to the existing home, for property located at 3037 Gulf of Mexico Drive. This petition was continued from the February 10, 2011, meeting.

Steve Schield, Planner, reviewed the revised staff report dated 2-10-11, noting that application was originally heard at the November 2010 meeting; however, the board requested a continuance for the applicant to possibly provide some additional options for pushing the addition further away from the Erosion Control Line (ECL) increasing the gulf waterfront yard. He continued with the staff report, including reviewing the three options presented by the applicant. He pointed out that the area in the 2000-3000 block of Gulf of Mexico Drive consisted of narrow lots, and the ECL was set at the Mean High Water Line (MHWL), which was set in 1991. The line was located along the old seawalls and rock revetments. He pointed out there had been eight variances granted within the last 10 years for new single-family homes. He continued with reviewing surrounding properties and their setback from the property line, and coverages for the R-3MX district. He noted that the second story addition would meet all zoning requirements except for the gulf waterfront yard and lot coverages. He reviewed the Findings of Fact in the staff report; staff's recommendation, including the conditions; a PowerPoint presentation showing photographs of the existing conditions; and, the three options provided by the applicant: Option 1 – existing request to reduce the gulf waterfront yard to 62 feet; Option 2 – moves it slightly forward to approximately another 15 feet; and

Option 3 – the applicant used the same footprint of the addition and transitioned it forward on the lot.

Mr. Schneier pointed out that in each of the diagrams there was a lighter area and asked if that was the existing footprint of the home. Mr. Schield responded that was correct, but it did not show the pool house. Mr. Schield continued with discussing the pros and cons for each option. Ms. Barthold asked if Option 1 would make the existing home more stable. Mr. Schield explained that it made the home structurally stronger, but the elevation would remain a problem if there was a storm surge. Ms. Barthold asked if the existing home would remain in its present location. Mr. Schield responded there was no request to demolish the existing home. Ms. Barthold asked if staff's concern was the fact that it was a variance from the ECL, but regardless it was going to stay close to the ECL. Mr. Schield replied yes; but again there was a safety issue and the code requirement. Staff tried to keep the gulf waterfront yard as wide as possible for future protection. He also noted that they were looking at what was reasonable. There was an existing 3,200 square foot home, but the applicant was indicating a need for a 5,000 square foot home. He commented that none of the options included demolition of the existing home.

Mr. Schield reviewed Option 2, noting it would require another variance for additional lot coverage (an increase of 32 percent) and was proposed to be setback at 75 feet (approximately 13 additional feet away from the ECL). The applicant stated it provided less structural protection for the existing home; an inefficient floor plan; it was less aesthetically pleasing; required more expensive construction costs; and, the existing home would still be at risk. Option 3 required an additional increase in lot coverage, up to 36 percent, but the applicant believed there would be no structural protection for the existing home, an undesirable floor plan and layout, would increase construction costs, and would be "extremely unpleasant aesthetically;" the setback would be at 88 feet.

Mr. Zunz commented the pool house was 32 feet from the ECL, and under the ordinance, there was allowance for a certain type of structure in the gulf waterfront yard area, but this was not a structure that would be permitted under the ordinance. He questioned the use of the home and asked if the building is auxiliary to the home, to what extent does that have to be taken into consideration. Mr. Schield explained that he did not know the current use of the pool house, and because it was at 32 feet, the maximum variance the board could grant would be 50 feet. He commented if the board believed it would benefit in the granting of the variance to remove the existing home, that could possibly be a condition that could be applied. Mr. Zunz asked that if the building did not meet the description of what could be permitted in the gulf waterfront yard, but was akin to additional living space, to what extent the board should take that into consideration in allowing a variance on the main house. David Persson, Town Attorney, responded the board could consider reasonable conditions of granting a variance, and one of the issues that would be tied to the property was it was located closer to the ECL than allowed by variance or any other mechanism, and if it was the board's determination that it may post a hazard in event of a storm, the board could place a condition on the variance that the structure be removed.

Mr. Schneier asked if the pool house was excluded from the existing and extended floor area. Mr. Schield replied he was not sure. He believed it was included in the total square footage because of the coverage requirements. Mr. Feole believed the pool house was not taken into consideration when determining the distance from the ECL. Mr. Schield pointed out that it was not in the main home; the 32 foot setback was pointed out in the staff report. Under the proposal for Option 1, the applicant would remove some of the overhang off the new addition so it would be 62 foot setback and the main home would be 60 feet. Mr. Feole questioned which option the applicant wished to consider. Mr. Schield responded that he believed they wished to consider Option 1, but because the board had requested further information, they provided Options 2 and 3.

Mr. Schneier discussed that the drawings were less detailed than other applications brought before the board, and asked if there was sufficient information to approve either Option 1, 2 or 3, and that further plans would be submitted in accordance with permitting. Mr. Schield explained that the plans for permitting would be based on the setback and maximum coverage. Mr. Feole asked how they would know if Option 3 provided more stability and integrity. Mr. Schield commented the applicant was stating that it would not.

George Mazzaranti, attorney representing the applicant, reviewed background information. Mr. Feole commented that Addendum 'A' was presented to the ZBA and staff to review at this meeting. He raised the question because during the last meeting, it was discussed whether the board should consider anything handed to them at the meeting without it being reviewed by staff or the board prior to the hearing. Attorney Persson noted it was being submitted, and the attorney had an opportunity to review the document with the board, but the board could continue the hearing; however, he would allow the attorney to explain the document before reaching a determination. Ms. Barthold commented it appeared to be proposed Findings of Fact to rebut the proposed findings by staff. Mr. Mazzaranti replied that was correct.

Mr. Mazzaranti suggested that the issue of the pool house was not for consideration. The pool house was an existing non-conforming structure, and to suggest that granting the variance would be reliant on some type of decision to remove the pool house was not legally appropriate. He pointed out that if the pool house was actually connected to the main house, it would still be encroaching further than the back wall of the house. He commented that another issue was staff's comment related to other applications that might come before the board, and he respectfully suggested that there were Findings of Fact, and each of those findings had to be addressed on their own merits. He reviewed the rear elevation of the structure, the side view looking north, and argued that the erosion occurred at the ground, not on the second story. He discussed that regardless of Options 1, 2, or 3, the existing home would remain. He understood Options 2 and 3 were requested by the board. He pointed out that the request was only a net increase of 1,600 square feet. He also noted that the pool house was not used for habitable living or a guest room; it was a pool house and exercise room. Ms. Barthold questioned the square footage of the pool house. Mr. Mazzaranti replied 320 square feet. He continued with reviewing his proposed Findings of Fact, Options 1, 2, and 3, and other

similar variances that had been granted in the vicinity. Ms. Barthold commented that it might be helpful to hear how structurally, the addition would improve the existing structure.

The board recessed from 10:44 am – 10:51 am.

Mr. Mazzaranti understood that somewhere in the discussions it was asked to see what else could be done with the site, but they were not options that were viable. Ms. Boynton questioned why it was not feasible to reinforce the structure. She asked regardless if the variance was granted for Options 2 or 3, whether his client was not interested. Mr. Mazzaranti responded they could not do it; it would diminish the value of his property, and it was financially not feasible. He noted that the options might trigger the 50 percent FEMA rule, and if triggered, it would not allow them to do the renovation.

Jim Brown, representing the petitioner, was sworn. He explained that he was a licensed architect and had been practicing since 1974 and that was the only reason he was in attendance. The strongest reason they would not be able to do it was because what was being proposed was going to the edge of the envelope for the 50 percent rule and to do the other options would only add cost, which would take the cost over the 50 percent amount. Mr. Feole noted that one of the questions was if they added a second story to the existing structure, which was non-conforming, how that improved the resistance to damage to the ground level from weather related incidents. Mr. Brown explained that the home, as built, had minimal spread footing, which in this area because there was no freezing, was minimally below the ground. He pointed out that in the FEMA and state code requirements, this was the most high hazard zone, so there was a requirement for pilings, which were complex and driven in clusters. Projecting above that was reinforced steel and concrete. In addition to the exposed columns, the actual structural columns were buried in the walls; the walls would be removed and replaced after the columns were built. There were also approximately 20 other columns within the building, and at the second floor level there would be concrete beams between the columns, which would create a very rigid frame, and the existing house would be tied to that frame. The existing house would be reinforced. He explained what would happen when a surge of water (or wave action) hits a foundation, which was called 'scouring', where the sand was washed out from around the foundation making it vulnerable; however, by installing deep pilings that problem was eliminated and the structure would be more stable.

Mr. Fuller asked if the board had authority to require such pilings be installed as a condition of granting the variance. Attorney Persson responded if the applicant would agree to make that a condition of approval. Mr. Mazzaranti noted they would stipulate to that condition, because that was the correct way to do that as it would give strength to the structure. Mr. Mazzaranti asked if the extension of the wall at the second story affected the ECL. Mr. Brown replied it did not affect it.

Ms. Boynton asked if the structure were to comply with FEMA, was the only thing that FEMA would require was to make the structure more secure against storms. Mr. Schield explained that since they were adding to an existing non-conforming structure, FEMA would not require that. He noted if it was a new home they would require the pilings and piles down into the sand, and more strengthening on connections within the home, as well as windows, doors and roof connections. Discussion ensued on construction of the second story and the strengthening, and the FEMA 50 percent rule.

Mr. Mazarranti discussed that the board should not direct the applicant to demolish the existing home and build a new home, and that from a cost standpoint, Option 1 was more feasible. He reviewed a photo of the existing home next to the home located at 3105 Gulf of Mexico Drive pointing out they were requesting to go up one story with a 50 foot section. The second floor would have no impact on the ECL.

Mr. Zunz commented the existing home had been used for years with no complaints, but now the applicant was stating they needed additional square footage. He noted the ZBA had very strict rules to comply with in granting a variance. Mr. Mazarranti responded they were requesting a minimal addition of 1,600 net usable square feet in the minimal way possible, which would provide a stronger, safer, and better structure. Mr. Zunz pointed out there were two major non-conformities – the distance from the ECL and the side yard setbacks. Mr. Brown commented he understood what the board was discussing, and reviewed the proposed interior of the addition.

Mr. Feole believed the board was to address the issue as to whether the applicant could reduce the setback. Mr. Aitken believed the request would be an improvement. Ms. Barthold noted she was personally comfortable with the Findings of Fact as presented by the applicant, pointing out that as a matter of law, the board could make requisite findings of fact if they were inclined to grant the petition. She had been persuaded by the applicant that the building would be more structurally sound. Mr. Schneier questioned if there were any structural changes to the 'wings'. Mr. Mazzaranti responded there would be reinforced rebar inserted in the columns, then filled to create a solid concrete column.

Mr. Schield commented staff believed the existing home provided reasonable use of the property, and the staff recommendation was for denial. He noted that Mr. Mazzaranti had commented about precedent; however, each petition stands on their own merit. Mr. Mazzaranti agreed with staff that each case stood on their own merits, but he referred to page five of the November 2011 minutes where staff had commented if the board was going to grant this petition, then they recommended conditions. The applicant agreed with those conditions, and he was unsure what happened since that hearing.

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

It was moved by Barthold, seconded by Schneier, to grant Petition 6-10, and that the ZBA find that the Findings of Fact, as proposed by the applicant, have been met and the ZBA grant the variance in accordance with Option 1 (dated 12-10-10, received 1-11-11 attached) to allow the applicant to build up to a distance of 62

feet from the Erosion Control Line, with the understanding there will be structural improvements in accordance with the Findings of Fact, that the applicant will use deep pilings for the foundation, and subject to the condition that if the existing structure was voluntary or involuntarily replaced, the variance would be null and void. Motion approved by a 5-2 roll call vote:

AITKEN:	AYE	BARTHOLD:	AYE
BOYNTON:	NO	FEOLE:	AYE
FULLER:	NO	SCHNEIER:	AYE
ZUNZ:	AYE		

Old Business: Mr. Schneier addressed the issue of documents being distributed at the meeting asking if there could be some step taken so the applicant was aware the documents had to be delivered and distributed in advance of the meeting. Attorney Persson pointed out that the Board could set rules that require delivery of documents by a date and time certain, and anything else submitted after that may or may not be considered, or might result in a continuance of the hearing. He commented there might be people that wish to submit items at the hearing for the purpose of delaying the hearing, so the board should ensure they had discretion to state they would hear it anyway. Mr. Zunz believed something had been adopted several years ago. Ms. Simpson commented the P&Z Board and Town Commission had established rules for their meetings; however the ZBA had not established similar rules. She mentioned the board might wish to amend the agenda to discuss the item and possibly establish rules. Attorney Persson would like the board to direct staff to draft something and bring back to the board for discussion.

Delivery of materials:

It was moved by Zunz, seconded by Barthold, to amend the agenda to include discussion of delivery of materials. Motion carried on roll call vote:

AITKEN:	AYE	BARTHOLD:	AYE
BOYNTON:	AYE	FEOLE:	AYE
FULLER:	AYE	SCHNEIER:	AYE
ZUNZ:	AYE		

Ms. Boynton suggested adopting the language referenced by Attorney Persson related to a date and time certain. Mr. Zunz asked if staff could draft something for consideration at the board's next meeting. He presumed that if an applicant offered something at the last minute, the board could not accept it, or accept it and continue the hearing. Ms. Boynton believed the board could also take a short recess to review the materials. Mr. Schneier commented that he believed most applicants would want to accommodate the board and provide the materials in advance. Attorney Persson noted there might be a third party that wishes to submit documents. He commented that it was difficult to not take the information from an appeals standpoint.

Ms. Simpson noted that staff would draft a document to bring to the next meeting for the board's consideration and adoption.

Discussion of Variance Criteria:

Ms. Simpson discussed the issue the board had addressed over the years dealing with reasonable use and minimum variance necessary. She commented that it was suggested to provide the board the information that was presented to the Town Commission, P&Z Board and ZBA several years ago so they could review what was proposed at that time. She understood several board members had raised concerns with this issue and possibly would like the Town Commission to reconsider it.

Mr. Zunz believed there were no standards at this time concerning the ECL. Ms. Simpson responded there were no standards with the exception the applicant had to comply with the 150 foot setback and meet the criteria, which were difficult. Mr. Feole pointed out that the ECL discussion each time was referencing setbacks at the 60 foot measurement. Ms. Simpson commented that the properties that had very shallow lot depths were the petitions being submitted, and as properties aged, the Town would see more requests. She pointed out that a former case struggled with the code not outlining what could be done with a property. Attorney Persson commented that an applicant needed to be aware of what they could do with a property when they purchased it. He discussed past approvals where different boards had established several different square footages they believed were minimum variances. The idea was to make the board's job easier that these were the parameters that would be reviewed and to make it easier for an applicant to determine what could be placed on the lot. Ms. Boynton pointed out that was her concern with the petition heard earlier as she believed the applicant had adequate minimum use, and believed if the board had guidelines it would make it easier. Ms. Barthold responded she had no problems with establishing guidelines, but was concerned with establishing mandates.

Ms. Barthold left the meeting at 11:54 am.

Attorney Persson provided a background of the ECL noting that it was required by the state in order to allow the Town to renourish the beaches; however, the barrier island continues to suffer erosion. In 1992, part of Gulf of Mexico Drive, near Bayport, washed out, so in order to renourish, the Town had to establish the line. The line was the mean high water line (MHWL) that existed in 1991. He commented that there were times when the beach had retreated beyond that line, but the Town's current position was they were going to maintain the beaches, but as the costs rise, it might not always be the case. There might not be a particular logic in looking at the ECL in 2011, but there might be a need to look at in 2016.

Mr. Schneier commented the 150 foot gulf waterfront setback requirement from the ECL effectively meant that many properties should not have homes. Attorney Persson pointed out that they had to give the minimum variance necessary for reasonable use, and that was what caused the issue. Mr. Schneier asked if there was any value for the board to have some sense of where the actual MHWL currently existed along that stretch

of beach. Attorney Persson replied it would not be helpful due to the change in the MHWL. Ms. Boynton believed they would be doing a service to the public if the Town could provide them an indication of their philosophy and parameters so they would be on notice when they purchased a property.

Mr. Feole commented there was a 'catch-22' situation where there were more very narrow lots; there were some areas where it would be 60-62 feet. Ms. Simpson responded in some cases the board had no choice but to grant something that small. Mr. Feole suggested the board might need to use other guidelines, because there was a responsibility to not just follow the code, but do the right thing. Ms. Simpson provided a general overview of staff's analysis noting that the Zoning Code had a section that discussed minimum square footage of the first habitable floor of a structure, and along with that and reviewing other sections of the code, basically decided that if there was 30 foot deep of livable space, then the applicant could build a reasonable home. She pointed out they excluded roof eave overhangs, which were included in the setback areas, and took a combination of the land development regulations (ldrs), and came up with something that was tangible, so if there was only a 90 foot depth, they would know what could be built without appearing before the ZBA. Ms. Simpson asked if it was the wish of the board to ask the Town Commission to review the Zoning Code and see if there was anything that could be provided as far as amendments, then staff could forward that request to the Town Commission.

Mr. Zunz commented that another issue was to limit the time for the variance, rather than allowing it to run with the land (sunset provision for the variance). Attorney Persson explained that moving forward, there would not be a problem with applying a sunset provision; however, there might be a problem applying it retroactively.

Attorney Persson asked if the board wished to review prior to being forwarded to the Town Commission. Mr. Feole believed the board should review prior to being sent to the Town Commission. Attorney Persson responded staff would bring back a recommendation for guidelines in terms of sizes of dwellings and non-conforming lots. Ms. Simpson questioned how in-depth the board wished to go with the amendments. She explained that if they wanted specifics presented to the Town Commission, she would request time for staff to review what was previously proposed. She noted that it would be reviewed by the Planning & Zoning (P&Z) Board. Mr. Feole believed if they could get a suggestion, or draft, of what would be needed to amend the code and provide a better guide for guidelines, then the Board could review and submit something more formally.

Mr. Zunz suggested staff review the prior proposal and then bring to the Board for review to determine if something along those lines, or a variation, could be presented to the P&Z Board and Town Commission. Mr. Aitken believed the ZBA had fully discussed each of the petitions brought before the board, and if the board was asking something to the specificity that was previously presented to the Town Commission, he did not wish to go forward with that; he would prefer to continue with the board's in-depth discussions.

Ms. Boynton made a MOTION THAT THE BOARD DIRECT STAFF TO REVIEW WHAT WAS PREVIOUSLY PROPOSED FOR POSSIBLE GUIDELINES, AND BRING BACK TO THE ZBA FOR THEIR DISCUSSION AND POSSIBLE RECOMMENDATION TO SUBMIT TO THE P&Z BOARD FOR CONSIDERATION AND ADOPTION; seconded by Mr. Zunz and approved by a roll call vote:

AITKEN:	AYE	BOYNTON:	AYE
FEOLE:	AYE	FULLER:	AYE
SCHNEIER:	AYE	ZUNZ:	AYE

Mr. Fuller asked if the information would include Mr. Zunz's suggestion for a deadline on the variance. Ms. Simpson replied no; the Town Attorney would research the legalities of being able to sunset and bring that information back to the board.

Attorney Persson informed the board that the Town Commission would be reviewing an ordinance which would change the criteria for granting a variance. He explained that currently the code states that the Town Attorney would make a determination on jurisdiction, but usually the ZBA would make the determination based on the advice of the attorney. He noted the ordinance would allow the attorney to make a recommendation of jurisdiction, but the final decision would be with the ZBA.

Ms. Simpson commented there were no petitions for the May meeting; therefore, there would not be a May meeting scheduled. Since there was not a meeting, she wished to officially thank Mr. Zunz and Ms. Boynton for their service on the board.

Ms. Boynton expressed that it was a privilege to work with everyone and she had learned a lot and it was a great experience. Mr. Zunz commented that he, too, appreciated his term on the board.

Setting Future Meeting Date.

The next meeting was tentatively scheduled for Thursday, October 13, 2011.

Adjournment.

The meeting was adjourned at 12:12 PM.

Respectfully submitted,

Charles Fuller, Secretary
Zoning Board of Adjustment