TOWN OF LONGBOAT KEY
ZONING BOARD OF ADJUSTMENT
MINUTES OF NOVEMBER 11, 2010 MEETING

The meeting of the Zoning Board of Adjustment was called to order by Chairman Feole at 9:30 a.m. on Thursday, November 11, 2010.

Members Present: Chairman Ben Feole, Vice-Chairman Andrew Aitken, Secretary Charles Fuller, Members, Gaele Barthold, Sally Boynton, Kenneth Schneier, Edward Zunz

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

Swearing in of New Members
Deputy Town Clerk Mixon swore new members Kenneth Schneier and Edward Zunz.

Election of Chairman.
Ms. Barthold made a MOTION TO NOMINATE BEN FEOLE AS CHAIRMAN; seconded by Mr. Fuller.

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

Motion carried on roll call vote:

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

Vice-Chairman
Ms. Barthold made a MOTION TO NOMINATE SALLY BOYNTON AS VICE-CHAIRMAN. Ms. Boynton declined the nomination.

Mr. Fuller made a MOTION TO NOMINATE ANDREW AITKEN AS VICE-CHAIRMAN; seconded by Ms. Boynton.

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

Motion carried on roll call vote:

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

Approval of Minutes

Ms. Barthold made a MOTION TO APPROVE THE MINUTES OF THE APRIL 8, 2010, ZONING BOARD OF ADJUSTMENT MEETING AS WRITTEN; seconded by Ms. Boynton and approved by a roll call vote:

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

Agenda Item 2. The Public Hearing was opened for Petition #5-10 by Kuno von Duerckheim, requesting a Waiver from Section 158.153(C), Daylight Plane regulations, of the Town of Longboat Key Zoning Code to increase the maximum allowable 56 degree Daylight Plane angle to 62 degrees to allow for a second floor addition for property located at 3491 Bayou Sound.

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 Epstein, applicant's representative, presented the Return Receipts to the Board.

Steve Schield, Planner, reviewed the staff report noting the applicant was requesting a waiver of the Daylight Plane regulations to increase the required 56 degree angle to 62 degrees on the west side of the parcel. The existing structure was built in 1993, prior to the adoption of the Daylight Plane ordinance. He mentioned that it was the applicant's intention to expand the second floor by adding additional square footage (723 square feet) above the existing habitable floor on the top of the west side at the front of the structure. He commented the proposed addition would not create any additional impact on the east side of the property. Mr. Schield pointed out that the daylight plane requirements would not apply to new single-family homes located within the Planned Unit Development (PUD); however, the requirements do apply to all remodeling, additions, renovations, and alterations of single-family homes within the PUD. He commented that the owners of 3481 Bayou Sound (west side) had submitted a letter in support of the petition. He continued reviewing the staff report, the Findings of Fact, and a PowerPoint presentation showing photographs of the site

Mr. Aitken questioned the reason the regulations did not apply in the PUD. Mr. Schield explained that when the Daylight Plane ordinance was adopted, it was found that the PUDs were unique situations with unique zoning requirements, and due to that, it was believed the Daylight Plane regulations could not apply to new construction. Mr. Aitken asked if the requirements would apply if the lot became vacant due to a demolition. Mr. Schield replied yes.

Mr. Zunz commented the staff report noted construction was going to take place on the west side, but the plans showed it on the south side, which he believed could be a significant factor to possible obstruction to the adjacent properties. Mr. Schield explained when looking at the façade of the home, the proposed area would be on the left side. Mr. Zunz discussed the criteria for granting a waiver and the hardship requirements, and asked whether lack of evidence related to a "mistaken impression" that the undue hardship criteria were relevant, which he did not believe it was, and if that was why staff felt additional evidence was necessary. Mr. Schield responded no; there was a fairly large home that currently existed. Ms. Simpson explained that staff's inability to recommend approval or denial had to do with the fact they were not confident in the information as to whether or not the light and air impacts to the neighbor to the south would not be detrimental.

She pointed out there was an abundance of landscaping that existed in that area that could, or could not be, removed in the future, which, if removed, would allow light and air; however, with the additional height for the addition, staff was not satisfied with the information provided that the area would not be impacted. Ms. Boynton asked what evidence would satisfy staff's concerns. Mr. Schield responded a two-story addition would impact light and air in some form, but the board would determine whether they felt it would impact the neighbor.

Mr. Fuller asked Attorney Martinson if it was a matter of the board's judgment. Kelly Martinson, Assistant Town Attorney, explained the board was ultimately charged with making the determination. Ms. Simpson wished to enter into the record that under Section 158.026(F)(3), subsection (c), the text in the staff report was verbatim that referenced special circumstances. Ms. Barthold asked if the fact that the Daylight Plane waiver being discussed would adversely affect the design of the new room and narrow substantially, and in addition to the fact that it would be out of proportion with the Daylight Plane that existed on the other side of the home, would be a basis for the board to find in favor. Ms. Simpson replied it could be. Mr. Aitken commented that he had visited the site and noted it was unlikely that the sunlight would be affected by the proposal for the home to the right (3481 Bayou Sound). Mr. Feole asked Mr. Schield if he saw any adverse consequences from a positive decision to grant the request. Mr. Schield replied it was minimal.

Michael Epstein, Seibert Architects, representing the applicant, commented the adjacent home was actually blocking the sun from the subject property, and noted the addition would have no impact to the sunlight for the adjacent property. He pointed out the window on the side of the adjacent home was to an ancillary space that was not used in the home; it was not a primary use within the residence. Mr. Epstein discussed the staff's Findings of Fact within the staff report. He pointed out there was a lot across the street that was currently vacant and someone could construct a home that was not in compliance with the Daylight Plane regulations. He commented there were no situations created by the proposed addition that were not currently enjoyed by others. He pointed out that the addition, if required to comply with the Daylight Plane restrictions, would require a "shallow step back" in the building façade, which was substantially less harmonious with the house's existing aesthetics, and was less in keeping with the aesthetics of the surrounding community. He noted that the home was not parallel to the side property line, and, as a result, the daylight plane varied on the south side. He believed there were letters of support from the neighbor and the association. Mr. Schneier commented that he reviewed a letter from the neighbor, but did not review one from the association. Mr. Epstein responded that he did not have a letter from the association at the time of submittal, but he thought they would be submitting it to the Town. Mr. Fuller noted the board could not consider the letter as it was not part of the record.

Mr. Zunz asked if they moved the wall 2-3 feet in to be in compliance, what would be the extra work involved and the difference in cost. Mr. Epstein noted he only addressed the impact to the neighborhood, because he believed that was the most concern. In terms of structural differences, the floor span, that would become the second floor, would span from the interior partition adjacent to the living room out to the exterior wall, and normally would only carry the loads associated with that. He said if they moved the second floor wall inward, it took the extreme loads from the roof and wall, and placed it on the members making the floor span which would require the members to be stronger to hold the additional load.

Mr. Feole asked if a rendering had been prepared of the building showing an illustration if it were to be built straight up with the extension. Mr. Epstein noted he had only prepared the drawings that were submitted. Mr. Feole commented in the materials it was noted there would be undue hardship with the size of the room. Mr. Epstein did not know if it represented an undue hardship, but a room that was 11 feet, 9 inches in width limited the options for use. Ms. Simpson explained that Mr. Epstein's comments concerning other approvals that others have received were not one of the three criteria that were reviewed for a daylight plane waiver. The Town Commission, who adopted the daylight plane, developed the waiver process for the ZBA to utilize and consider. Ms. Simpson commented that the request was for a waiver, and it was not a variance; the variance criteria were much more stringent.

Ms. Barthold asked for a description of the criteria for the waiver as opposed to the variance process. Attorney Martinson reviewed the three criteria in the staff report. Ms. Barthold commented that it appeared, given the subjective standard, the board could make findings to allow the waiver. Ms. Simpson noted that the Daylight Plane criteria were for the board to consider; whereas, the variance criteria had to be met.

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

Mr. Fuller and Mr. Feole did not see any adverse impacts from the request. Ms. Barthold pointed out that the motion should incorporate that the board found that the criteria had been satisfied.

Mr. Zunz made a MOTION TO GRANT PETITION 5-10 BASED ON THE EVIDENCE PRESENTED AND THAT IT MET THE CRITERIA SPECIFIC TO THE FINDINGS OF FACT IN THE STAFF REPORT; seconded by Ms. Boynton and approved by a roll call vote:

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

Agenda Item 3. The Public Hearing was opened for Petition #6-10 by Francis R. Trulaske 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 62.5 feet from the Erosion Control Line to allow for a second story addition to the existing home, for property located at 3037 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. James L. Brown, applicant's representative, presented the Return Receipts to the Board prior to the hearing.

Steve Schield, Planner, reviewed the staff report explaining that the existing Federal Emergency Management Agency (FEMA), Florida Department of Environmental Protection (FDEP), and Florida Building Code non-compliant, grandfathered, single-family home was constructed in 1952, prior to the establishment of the Town's Erosion Control Line (ECL), and was located approximately 60 feet, 6 inches from the ECL. The applicant was requesting a variance from the gulf waterfront yard in order to construct a 2,204 square foot second story addition over the existing 3,269 square foot structure, which would be located 62 feet, 6 inches from the ECL. He noted that eight variances had been granted in the last ten years to lots located in the same area as the subject lot, and were all for construction of new homes.

He commented that variances for the gulf waterfront yard had also been granted for second story additions to non-conforming structures in other areas of the Town. He reviewed the Staff Assessment, noting that the applicant was proposing to reduce the structure overhang on the north due to the encroachment into the lot line. He also reviewed the Findings of Fact in the staff report. Mr. Schield explained that staff did not have sufficient evidence that the request met the variance criteria, but if the ZBA wished to grant the petition, staff would recommend two conditions: 1) The variance shall be limited to the construction of a second story addition to the existing structure within the existing footprint as shown on 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. Mr. Schield summarized his presentation with review of PowerPoint slides showing the existing conditions.

Ms. Barthold commented she could appreciate staff's comments that if starting with a new house that it could be built closer to Gulf of Mexico Drive, but there was an existing home, and staff found there was a reasonable use of the property with the existing home. She questioned how staff determined a reasonable use of the property. Mr. Schield responded that the lot was 100 feet wide, which would allow a 75'x30' two-story footprint, which would result in a fairly large home. Ms. Barthold noted they would still require a variance to go up to the 20 foot setback and it would involve complete removal of the home. Ms. Simpson explained that after the hurricane season of 2004-05, the Town attempted to amend its zoning code to provide some guidance to not only the ZBA, but also staff and property owners of what would be deemed a reasonable size home. The square footage became an issue, and at that point, it was determined that a building footprint that could sufficiently house a 30 foot depth, depending on width of the lot, could be deemed reasonable; however, the Town Commission did not adopt that. She commented that Town Attorney, David Persson, had explained several times if there was a home that was livable, then there was reasonable use. Ms. Simpson commented the structure was setback 50 feet from the street property line versus the required 20 feet. Staff believed it was not the minimum variance necessary to make reasonable use of the land, so it was difficult for staff to make a positive recommendation. She believed there were alternatives for the design. Mr. Fuller questioned if the footprint would remain the same. Ms. Simpson replied yes, there was no increase in coverage.

Mr. Aitken noted the distance from the pool house to the ECL was 34 feet, 7.5 inches, but it was not addressed in the staff report. Mr. Schield explained that the applicant was not proposing any changes to the pool house. Mr. Zunz referred to Finding of Fact 3 concerning the special conditions and circumstances and asked for staff clarification concerning how it was a result of the applicant's actions. Ms. Simpson explained this was one of the reasons variances were considered on a case-by-case basis, noting that if the home was destroyed by a storm and the applicant had to rebuild, they would need a variance. In that case no circumstances were brought about by the applicant. However, she noted that in this case, the applicant was asking for an addition to an existing home in a position where they have potential to build an addition without having the amount of encroachment being requested into the gulf waterfront yard. Discussion ensued concerning impacts on the property from a major storm, with Mr. Zunz asking if the impact would be greater with a second story on the structure. Ms. Simpson explained that the impact had nothing to do with the number of stories, but with the placement of the structure on the property.

Concerning reasonable use of the property by the owner, Mr. Feole asked if the additional space could be built in the front (street yard) would it give the applicant all the variables needed to get the space for the home.

Mr. Schield responded either case would require a variance. Ms. Simpson explained what was being proposed did not meet the criteria of the code; it was not the minimum variance necessary for reasonable use of the land. She commented it was up to the ZBA to decide whether or not the variance should be granted based on the criteria.

Mr. Zunz voiced concern with taking action at this meeting without considering the feasibility of constructing something in front of the house as opposed to the top of the house. He suggested the ZBA continue the hearing, and request the applicant to come forward with a detailed feasibility study for something in front of the home. Mr. Fuller commented that in the past Attorney Persson had provided a very good description of reasonable use. He believed it would be difficult to find there was no reasonable use without a variance. Ms. Boynton asked if during discussions with the petitioner were there alternate plans provided. Mr. Schield responded that early in the discussions it was recommended, but the applicant decided to move forward with this application. Ms. Simpson responded to Mr. Zunz's comments stating there was reasonable use of the land with the existing home; they might look more favorable on an addition that changed location, but staff's recommendation would probably not change as they were looking strictly at the criteria.

Jeff Girard, Level 5 Consulting, representing the applicant, commented that if the applicant built on the front of the property, they would be restricted, because they only had 30 percent lot coverage. They could not expand much further forward on the property without taking down the structure and placing the building forward, which would also require a variance. He explained they were proposing a second story on the existing structure moving forward as far as possible without demolishing anything. He noted that anything built up would conform with the wind codes, will reduce the living space, and would meet all the guidelines for everything but the ECL. Mr. Zunz questioned the lot coverage calculation. Mr. Girard replied they were at 26.5 percent, and 30 percent was the maximum allowed.

Mr. Aitken asked if the applicant would consider removing the pool house, which was the closest structure to the ECL and marking the public access to the beach. Mr. Girard responded that access was marked on the maps, and if the Town wished to install a sign noting it was a public beach access, they would not be opposed to that. Attorney Martinson pointed out that the access was not their property, and any installation of signs would be the decision of the entity who owned the property. Mr. Fuller asked for Mr. Girard to address staff's finding that there was reasonable use. Mr. Girard responded that reasonable use could be anything that could be determined by staff; the applicant did not have a garage, but would like to construct one, and asked if that was a reasonable use; who determined reasonable use. He asked if there were larger homes on each side, then reasonable use of the property should be determined based on those structures. Ms. Boynton commented those were different circumstances, they were new structures that were built and the previous home was demolished.

Mr. Aitken reiterated his question concerning removal of the pool house. Mr. Girard replied he would have to ask the applicant, as the variance was for the home, not the pool house. Mr. Feole asked if the pool house affected the request for the variance. Mr. Schield replied no; there was no proposal to touch the pool house, which was an accessory structure, and it would not impact the variance being requested. Mr. Girard pointed out the request was similar to the request granted by the ZBA in April 2010 for 6606 Gulf of Mexico Drive. They were not asking for special privilege, because most of the homes in the neighborhood were non-conforming. Mr. Zunz asked what was being proposed for the second floor.

Mr. Girard explained they would open the roof to the existing structure, would have to drive pilings into the ground, and ensure everything attached to the new structure was conforming to the code.

Andrew Vac, 3105 Gulf of Mexico Drive, spoke in support of the variance request.

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

Mr. Fuller made a MOTION TO DENY PETITION 6-10 BASED ON THE STAFF FINDINGS OF FACT; seconded by Ms. Boynton.

Mr. Aitken commented that he would like to see the issue of the pool house and the marking of the beach access addressed before considering denial of the application. Ms. Barthold mentioned that she would support the petition. Ms. Boynton explained that she did not believe Mr. Girard provided alternatives for the structure, and if the house was an adequate use of the property as it existed, then she believed the ZBA was "stepping outside their bounds" to add on a second structure without exploring other possibilities. Mr. Aitken noted that he recalled Mr. Girard had commented that by building in the front of the structure would occupy more footprint than allowed, which would require something to be torn down. Mr. Girard replied Mr. Aitken was correct as it would exceed the 30 percent lot coverage requirement. Mr. Fuller reviewed the Findings of Fact, with Mr. Aitken noting his disagreement with Finding of Fact #3. Mr. Feole commented that it was not the board's decision to redesign the way the owner wishes to gain more space; he did not believe they were denying reasonable use of the property, because there were other options.

Mr. Zunz commented he was inclined to assist the applicant; however, with other options available he was concerned with allowing the variance. He would like to see some use made of the area in front, which was further from the water, and he would like to see something substantially done with the existing structure so it was not more susceptible to damage from a storm. Ms. Barthold asked if she was correct that this was similar to a variance granted in April 2010. Mr. Schield commented that particular variance was for a home on Gulfside Road that was entirely within the street and gulf setback; the addition was for 400-500 square feet over the existing footprint. He noted it was slightly different, as there was no flexibility on the lot. He noted the same conditions of approval were suggested for that petition. Discussion ensued on whether it would be helpful to allow the owner to reconsider their request and come back to the board with an alternative plan and further information. Attorney Martinson discussed that if the board denied the variance, it did not preclude the applicant from coming forward with a different variance in the future. Also, she noted that if the applicant expressed an interest in modifying the variance, or not proceeding with this variance, then the board could continue it or take no action. Mr. Schneier questioned the difference between denial and continuance. Attorney Martinson explained if the ZBA continued the application, then nothing would be decided at this meeting, and the applicant would come back to the board; however, if the board denied the request, then the applicant would be required to submit a new application for variance and start over.

Motion to deny application failed on roll call vote:

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

Mr. Zunz made a MOTION TO CONTINUE PETITION 6-10 FOR 30 DAYS AND GIVE THE APPLICANT AN OPPORTUNITY TO SUBMIT REVISED PLANS IN SUFFICIENT TIME FOR STAFF TO REVIEW AND PROVIDE COMMENTS FOR THE BOARD TO RECONSIDER.

Mr. Fuller asked if 30 days would be sufficient time for staff. Ms. Simpson pointed out that staff's review would be dependent upon how quickly the applicant could resubmit. She suggested the board might wish to consider continuing to the January meeting due to the upcoming holidays.

Mr. Zunz AMENDED THE MOTION TO CONTINUE THE HEARING UNTIL THE JANUARY 13, 2011, MEETING.

Mr. Aitken seconded the motion as amended. Motion carried on roll call vote:

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

Setting Future Meeting Date.
As there were no petitions scheduled for the December meeting, the next meeting was tentatively scheduled for Thursday, January 13, 2011.

Adjournment.
The meeting was adjourned at 11:44 AM.

Respectfully submitted,

_____
Charles Fuller, Secretary
Zoning Board of Adjustment