

**TOWN OF LONGBOAT KEY
ZONING BOARD OF ADJUSTMENT
MINUTES OF APRIL 8, 2010 MEETING**

The meeting of the Zoning Board of Adjustment was called to order by Chairman Goldner at 9:30 a.m. on Thursday, April 8, 2010.

Members Present: Chairman Laurin Goldner, Vice-Chairman Ben Feole, Secretary Charles Fuller, Members Andrew Aitken, Gaele Barthold, Sally Boynton

Members Absent: Tom Murphy

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

Chair Goldner noted that Mr. Murphy had resigned from the Zoning Board of Adjustment due to personal reasons.

Agenda Item 1. Ms. Boynton made a MOTION TO APPROVE THE MINUTES OF THE MARCH 11, 2010, ZONING BOARD OF ADJUSTMENT MEETING AS WRITTEN; seconded by Ms. Barthold and approved by a unanimous vote.

Agenda Item 3. The Public Hearing was opened for Petition #4-10 by Paul and Sarah Karon 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 88.4 feet from the Erosion Control Line to allow construction of a partial second story within the existing footprint of an existing legally non-conforming structure with an existing gulf waterfront yard measurement of 84.5 feet at the most southern portion of the existing structure for property located at 6601 Gulfside Road.

Chair Goldner noted that after the agenda packets were delivered, the ZBA received an email from Katherine Huelster, 6525 Gulf of Mexico Drive, who was opposed to the petition. This email was made part of the record.

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

Steve Schield, Planner, reviewed the staff report noting that the variance request was to construct a 795 square foot second story addition over the existing 3,390 square foot structure. The overhang of the new addition would be 88 feet, 4 inches from the Erosion Control Line (ECL) for a total structure of 4,185 square feet. He reviewed the staff assessment noting that the proposed addition would meet all zoning requirements with the exception of the gulf waterfront yard setback. Mr. Schield commented that the adjacent property to the north, located at 6603 Gulfside Road, was located 87 feet (ZBA Petition 14-00) from the ECL and 19 feet, 4 inches from the side property line. He pointed out that the Gulfside Road area was one of the few areas on the north end of the island that had a parallel road located west of Gulf of Mexico Drive.

He explained that seawalls and rock revetments were built behind these homes in the 1970s because of beach erosion, until the beach renourishment in the 1990s; the ECL was set at the

Mean High Water Line (MHWL), located along the old seawalls and revetments, which created shallower lots west of Gulfside Road. He reviewed the recommended conditions suggested by staff if the ZBA chose to approve the petition.

Mr. Aitken referred to the westerly line on the plans and asked if that was the ECL. Mr. Shield replied yes, noting the MHWL was further seaward. He discussed the location of the ECL and the MHWL pointing out the ECL was set at the MHWL in 1991 prior to the beach renourishment project.

Mr. Fuller referred to the map filed by the applicant and commented that it showed that the lot on the water side was owned by someone else (Paul and Sherry Stanley). He asked if that affected the decision. Mr. Schield responded that was a previous owner of both the home and lot, along with the adjacent lot; it was never corrected on the plat, because it was owned by the state. Mr. Fuller asked if the ZBA was only dealing with the setback; was the fact they could build a second story before the board for review. Mr. Schield responded that only the setback issue for the second story was before the board. He noted that the second story had building rules that the applicant would have to adhere to. David Persson, Town Attorney, asked if there was a prior variance that allowed an 87 foot setback. Mr. Schield replied no; Petition 14-00 was granted to the adjacent property. Attorney Persson questioned the existing setback. Mr. Schield replied the existing setback was 84.5 feet and they were requesting a variance for the new addition to be placed on the existing footprint of the house to be located 88.4 feet. He pointed out that the house angled and the closest point was 84.5 feet. The proposed addition would be 88.4 feet from the ECL to the overhang.

Mr. Feole noted the setback (88.4 feet) was the same as it would be if the additional second story was not constructed. Monica Simpson, Planning, Zoning & Building Director, explained that because the structure was legally, non-conforming, it technically could not be expanded, and the non-conformity could not be increased, and in this case, the additional second story would require a variance that was never granted, in order to build the second story and increase the non-conformity. She mentioned there were no additional impacts to the existing setback. Mr. Feole noted that the board was not addressing whether or not the applicant should build, or could build, a second story. Ms. Simpson responded that the applicant had options, if they were not happy with their existing structure. They could tear down the structure and rebuild a new structure that was more code compliant; or they could enhance the existing structure, but regardless, they would be required to obtain a variance. She pointed out that it was staff's recommendation that if the structure went away, the variance should also go away with it.

Mr. Fuller voiced concern with the statement that it was in the exact same footprint, and asked why they would require the increase. Mr. Schield explained that because the applicant was expanding a non-conformity, they would require a variance. Ms. Boynton understood that the reason the board was reviewing the variance was because the structure, as exists, was a nonconforming structure, and if any change were made, the applicant would require a variance whether the change was in the same footprint or not. Mr. Fuller noted the documents state the setback was going from 84 feet to 88 feet closer. Ms. Simpson explained the structure itself was not moving, but the legal point of measurement that was required was based off the closest part of the structure to the ECL.

She reviewed the site plan noting the existing setback (84.5 feet), and that the variance request was further landward (88.4 feet); there was not an existing variance, but it was technically the

points of measurement that staff legally had to follow in the variance process. Mr. Aitken asked if there was a limit to how much the ZBA could approve as an addition to the existing, nonconforming structure. Ms. Simpson replied the building and flood codes would limit the amount of increase to 50 percent.

Ms. Boynton asked why the denial of the variance would result in unnecessary and undue hardship on the applicant. Cesar Morales, architect representing the applicant, responded he had tried to propose the addition to be as conforming as possible, and was limiting it to the minimum possible for the second story. He noted that the addition was for the applicant's in-laws to allow them privacy in the house; the second story would be a master bedroom and bath.

Mr. Aitken asked if there were other issues raised based on notification of the neighbors. Mr. Schield replied no. Mr. Feole pointed out that the person making the objection was located five lots to the south, and across Gulf of Mexico Drive, from the subject property

Mr. Feole asked if the ZBA could bind the property so future owners, who wish to tear down and rebuild, could not rebuild the same house with the addition. Attorney Persson responded that staff was recommending that the variance be tied to the structure, and referred to the condition that if the structure were voluntarily, or involuntarily, removed, they would lose the right to the variance.

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

Mr. Aitken referred to the letter from Ms. Huelster, who had raised a number of points, and he believed some of the points were incorrect. He commented that one of the points raised indicated the Town was forcing new buildings, or extensions of buildings, more landward. Ms. Simpson explained that existing buildings, if not torn down or rebuilt, or requesting a variance, were allowed to remain in their current location and be maintained and repaired until such time they could no longer. She noted that within the last 10 years, any new variances, or new structures requested, staff had asked them to move more landward for various reasons.

Ms. Boynton commented that she was unsure if she was satisfied that the variance met the minimum use and hardship for the property. Ms. Barthold understood that there were other buildings in the same area that had substantially similar, if not greater, space variances. Mr. Schield replied that was correct. Ms. Barthold believed there were houses that had larger square footage variances than that being requested by the applicant. Mr. Schield noted it was a fairly modest addition being proposed.

Mr. Feole commented that the board had discussed the point whether it would deprive the homeowner the right to do more with their property, and asked what authority the board had to question the owner's reason for the variance. Attorney Persson explained that the fundamental standard for a variance was hardship, and a legal hardship was deprivation of all reasonable use of the property. The applicant had to show that the property was not allowed a reasonable use. Discussion ensued about deprivation of use. Attorney Persson commented that if an error happened in the past, the board was not required to compound it, but should review each application on its own merits. Mr. Schield pointed out there were nine variances granted on Gulfside Road: five were for additions, and four were for new construction.

Mr. Feole made a MOTION TO GRANT PETITION 4-10 BASED ON THE STAFF RECOMMENDATIONS AND CONDITIONS, AND THAT IT MET THE CRITERIA SPECIFIC TO THE FINDINGS OF FACT IN THE STAFF REPORT; seconded by Ms. Barthold and approved by a roll call vote:

AITKEN:	AYE	BARTHOLD:	AYE
BOYNTON:	NO	FEOLE:	AYE
FULLER:	AYE	GOLDNER:	AYE

Setting Future Meeting Date.

Discussion ensued on the next regularly scheduled meeting with Ms. Barthold, Mr. Aitken and Mr. Feole noting they would not be available for May 13, 2010. There was direction for staff to determine if there would be availability of the Commission Chamber and a quorum for a possible meeting on May 6, 2010.

Adjournment.

The meeting was adjourned at 10:20 AM.

Respectfully submitted,

Charles Fuller, Secretary
Zoning Board of Adjustment