

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

The meeting of the Zoning Board of Adjustment was called to order by Chairman Goldner at 9:30 a.m. on Thursday, February 11, 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; Ric Hartman, Planner; Jo Ann Mixon, Deputy Town Clerk

Agenda Item 1. Jo Ann Mixon, Deputy Town Clerk, administered the Oath of Office to new member Andrew Aitkens, Seat 2.

Agenda Item 2. **Mr. Feole made a MOTION TO APPROVE THE MINUTES OF THE JANUARY 14, 2010, ZONING BOARD OF ADJUSTMENT MEETING; seconded by Ms. Boynton and approved by a unanimous vote.**

Agenda Item 3. The Public Hearing was opened for Petition #1-10 by Jewfish Key Preservation Association, Inc., requesting a Variance from Section 158.155 (A)(4)(a) of the Town of Longboat Key Zoning Code to construct a 12 slip, private docking facility, with ten boat lifts, extending 226 feet from the mean high water line to accommodate five upland properties, for property located at 7140 La Lenaire Drive, Jewfish Key. The applicant was seeking a variance of 176 feet.

Jo Ann Mixon, Deputy Town Clerk, 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 Friday presented the Return Receipts to the Board.

Steve Schield, Planner, reviewed the staff report noting that the variance request was presented to the ZBA during their January 14, 2010, meeting, at which time the hearing was continued to address how to handle the remaining two lot owners (of the five shallow water lots) and future variance requests. The original variance request was for 125 feet, and as a result of the proposed changes to accommodate the remaining two lots, an additional 50 feet was added. The applicant still planned on building the dock in two sections; they have state and federal permits to only build the dock for the three shallow water lot owners. If the remaining two owners wish, in the future, to construct docks, they would have the variance, but would need to obtain state and federal permits. He also pointed out that during the last meeting, it was not clear whether boat lifts were included in the request, and it was now stated that they would be included in the mooring areas. Mr. Schield pointed out that the property was deeded by easement to the Jewfish Preservation Association; most of the east side of the island was included in the easement. He noted that the homeowners association had filed a plat to divide the easement area from an existing single-family lot located to the north.

Mr. Schield continued reviewing the request noting it would include 12 mooring areas with 10 boat lifts contained within the mooring areas. He also discussed the proposed dock area, channel, grass flats and the special exception application that was going before the Planning and Zoning Board for the dock. He pointed out that staff was recommending approval of the requested variance with the conditions outlined in the staff report.

David Persson, Town Attorney, discussed that if the ZBA granted a variance in one area, based upon lots in another area that had shallow water, they had to be tied together, because the Association was "in the middle" applying for the variance. He commented that there needed to be a three-party agreement between the association, the lot owners, and the Town. He commented he had provided a suggestion for condition 7, with the remaining conditions renumbered, requiring the agreement to tie it all together. He mentioned that if all five owners signed the agreement, then the facility could be built as proposed; however, without the two owners' signatures on the agreement, they could not be bound to the agreement. Mr. Fuller asked if the Association was incorporated. Attorney Persson explained that the Association needed to be incorporated; the conservation easement existed, and the Town needed to ensure the Association had the lawful ability to move forward. He commented that if the ZBA granted the variance, the docks would be constructed and controlled by the Association. He assumed there would be a maintenance agreement and the rights of the owners would be identified and recorded.

Mr. Fuller noted if the ZBA granted the variance, then the Association would have permission for 12 moorings, but they would only construct eight, and at a future date, they could build the additional moorings without coming back to the ZBA for further approvals. Attorney Persson suggested that the ZBA should only give the Association a permit to build everything at this time if they had the other lot owners agreeing that was what they would do eventually. He explained that if all five land owners agreed to the agreement, the Association would not have to build everything at this time; however, if the two property owners did not wish to spend the money now, but wished to in the future, and they signed the agreement, there would not be a problem with constructing a portion now and the remaining portion in the future. He noted there would be a problem with proceeding with constructing everything now without having "everyone on board," because if they did not have the agreement, then they did not have their justification.

Ms. Barthold believed the Town's objective was to have one approval for everything. Monica Simpson, Planning, Zoning & Building Director, responded their objective was to create a common dock which took care of all the lot owners on Jewfish Key who could not, at this time, have a dock otherwise. Ms. Barthold asked if the other two lot owners did not sign the agreement would staff recommend that the ZBA move forward with only approving what they intended to construct, recognizing the Town might hear from the other lot owners in the future. Ms. Simpson explained that the goal of the design was to accommodate all the lot owners, because one of the criteria that the board needed to consider when reviewing a variance was whether it was the minimum variance necessary to make reasonable use of the land. She was not sure at this time, if it was minimized to the three lot owners, whether this was the minimum variance necessary.

Ms. Barthold noted the best scenario would be for all five owners to sign the agreement. Ms. Simpson replied yes; as was stated previously by Mr. Schield, the remaining two lots would have difficulty receiving permits from the state and Town due to the natural topography and sand bar in the area. She mentioned it was an advantage for them to go along with the plan because they would have the variance and water access. Ms. Goldner asked if the topography in that area had changed recently, or has it been consistent.

Ms. Simpson commented there was a chance that the topography could change, but it had been stable in that area. Mr. Aitken requested an explanation of the dredging issue that had occurred in the past. Mr. Schield identified the area where the illegal dredging occurred, and noted that damage had occurred to the grass flats.

Michael Friday, applicant representative, duly sworn, displayed a restoration plan identifying what needed to occur which would involve restoring the shoreline and removing the unauthorized section of the dock. Mr. Aitken asked if it also involved planting sea grass. Mr. Friday responded they were only required to remove the sediments to allow the grasses to grow. Mr. Aitken noted there did not seem to be a clear timeframe for removal of the illegal dock. Mr. Friday explained that removal of the illegal dock would be the first thing to happen, because it needed to be removed in order to perform the other work. They would then conduct the restoration activity, and then construct the proposed dock. Mr. Aitken asked if the removal of the dock would interfere with the restoration project. Mr. Friday commented that the restoration would be occurring as the dredging was being set up and once they obtained their permits and completed inspections, the dredge contractor would begin. Mr. Aitken noted that once the restoration work was complete and the area was back to a 'clean slate,' that was when the construction should begin. Ms. Simpson explained that the Board could make that a condition of approval to require removal of that portion of the dock prior to the start of any other portions of the project. She noted they received a demolition permit in early fall of 2009 to remove that dock, and that permit would expire quickly, so action was necessary soon. Mr. Aitken suggested that be added to condition 8.

Mr. Aitken commented the loading ramp had existed for forty years, and asked if it was in satisfactory condition. Mr. Friday responded that the ramp was in functional condition and was being used today. Ms. Simpson noted that the Town's building inspector would take action through the Town's code enforcement officer if the dock was not in acceptable condition.

Mr. Aitken asked if there would be potable water, lighting and fueling capabilities available on the dock. Mr. Friday noted that the state permit did not allow fueling facilities or overnight liveaboards, but there would likely be water and electric available. He pointed out there were no plans for having utilities on the dock; the facility was for the residents of Jewfish Key and was not a public marina. Mr. Friday commented they currently had a state and federal permit for an eight slip structure and could not build the remaining four slips without obtaining additional state and federal permits. He pointed out that as part of the state permitting process, the three participating owners had to execute a conservation easement which states it would be illegal to build a dock on their individual properties.

Mr. Feole asked if the agreement, pertaining to the owners of the remaining two lots, tied into the property or the owners; in other words, could the agreement transfer to subsequent owners of those lots. Mr. Friday believed the conservation easement, similar to the variance, would run with the land. If the current property owner executed the document, and it was recorded, then it would run with the land. He reiterated that they, by law, could only build the eight slip structure at this time, because that was what they have state and federal permits for.

Joe Suriol, president of the Jewfish Key Homeowner's Association, explained he had tried to get approval for the dock, and presented studies to the outside agencies. He understood that the ordinance only allowed one dock with two slips per property.

He commented that as a condition of obtaining the permit, all those asking for the permit from the Florida Department of Environmental Protection (FDEP) had to provide a conservation easement on the property, including the homeowners association. The two property owners who did not sign the agreement were not entitled to anything and would need to go through the same process as the association, including providing their own conservation easement. He did not see any problems with those conditions being stated in the ordinance for any owner who wished to construct a dock in the future. Ms. Barthold asked if the remaining two owners were involved in any of the illegal activities. Mr. Suriol replied one of the owners was involved.

Ms. Barthold asked if there was any way of resolving this problem by having the homeowners association sign the agreement as the applicant. Attorney Persson replied no and explained that the homeowners association could not deprive a property owner's rights.

Steve Ellis, property owner, duly sworn, explained the two property owners do not currently need a slip, did not have the funds to participate in building a new slip, and as an association, all shallow water lot owners need access to the island. He noted the Association decided to move forward with building the common slips, and everyone would have an assessment for the common portion of the dock.

Mr. Friday commented they could not build the 12-slip dock at this time; they would need to go through the state permitting, which would tie the remaining two property owners into "rigid requirements." He noted that the way the proposed Town agreement read now would allow these two property owners to hold the entire project "hostage." He believed granting approval of the 12 slips would be a 'win-win' situation, because they would not have to come back for a variance, but the two lot owners would have to seek state and federal permitting. However, the one particular clause in the proposed agreement from the Town would affect the project.

Ms. Boynton suggested that the board grant the variance for the 12 slips, and if the two property owners did not sign the agreement, then it would be reduced to eight slips; the two property owners would be on their own. Mr. Fuller understood that the applicant had not requested building permits for the last two slips. Ms. Simpson explained there were no building permits for any of the slips, as the applicant had to receive the variance and special exception prior to applying for a building permit; they had received state permits. She noted that she was not convinced, as of yet, because she had not been able to determine an alternative plan to ensure this was the minimum variance necessary if only looking at three lots. She was not sure how the condition could be written to allow the Board to revisit the issue if the two lot owners chose not to participate. Mr. Feole asked if staff was noting they agreed with the 12 slips, but if the two owners did not sign, then they would like to reopen for the eight. Ms. Simpson replied she would like to revisit it for the eight slips. She explained that in reviewing the configuration of this plan, without the other slips, she was not sure this was the design that would create the minimum variance necessary to have water access. Mr. Fuller thought there was a statement that they could bind a future ZBA, and he believed they could not do that, and the future board would have to decide cases on their own merits. Attorney Persson responded he was correct that they could not bind a future board.

Mr. Ellis commented at a minimum there were two slips for transient, and there were six slips inside, which was one more actual slip for safe access. He believed if the board approved 12 slips, and then if the other two owners did not sign within six months, then they would have met the minimum by allowing the island to retain nine slips.

Ms. Simpson noted that staff was not willing to design the facility "at the dais." Mr. Friday pointed out this design was for 12 slips; the original design was for eight slips and they added the four additional slips. He was not sure why the previous design with only eight slips might not be satisfactory if they reverted back to that design; they had gone through the process to expand the facility based on staff's request. Ms. Simpson explained that during the process of working with Mr. Friday to get Jewfish Key a common dock for the use of all lots that did not have a dock, it was made apparent that this was not, in fact, what was being presented to staff. The goal was to minimize the amount of structure that has to be constructed and had to be varied upon. She noted that two docks were the maximum that any land owner could have and it was not a right; staff would need to understand what was being proposed, and what was the minimum variance necessary to grant use for these properties.

Ms. Barthold asked if staff had previously agreed that what was proposed for the eight slips was the minimum variance required. Ms. Simpson responded it was for the overall utilization of Jewfish Key and the five lots. She mentioned that understanding the scenario better, there might be ways to make the proposal less than what it was; there was nothing in the Zoning Code that required the Town to permit two mooring spots for every lot. Ms. Goldner pointed out that she believed boat lifts were not part of the previous discussion. Ms. Simpson replied they were not. Ms. Barthold asked if staff believed there should be a reduction in the number of slips available for the property owners, or did they believe the eight slip dock could be smaller. She understood staff's concern conceptually, but understanding how, in fairness, the board could give the applicant less than what was proposed a month ago. Ms. Simpson explained that if they looked at the length of the depth of the area, and try to look at ways to redesign it to reduce the projection into the water, thereby also reducing the square footage of docking space needed, those were things that could be considered. Staff was satisfied, because of the number of slips that would be needed to accommodate all five lots, that this was the minimum necessary.

Ms. Boynton questioned how much time would staff need in order to re-examine the plan for the eight slips. Ms. Simpson responded that the association did not know whether or not the two remaining owners would participate. She believed the proposed design was excellent for Jewfish Key to accommodate all five lots. Mr. Feole asked if when the homeowner was asked to participate were they guaranteed two slips, or could they only purchase one slip. Ms. Simpson noted that was an association issue; there was no guarantee by the Town that every owner of any lot would get two mooring spots. Mr. Friday commented that this was the second time in front of the ZBA where staff had recommended approval, and now was asked to revise something; this design had been reviewed by staff and staff recommended approval. Mr. Suriol pointed out the design was based on the guidelines presented by Town staff. He commented that the FDEP process took five years to get their state and federal permits.

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

The Board continued their discussion with respect to: staff's recommendation to approve the 12 boat slips, but only constructing eight slips, as permitted by the state; including a new condition 8, to state, "*portions of the old dock, not included in this plan, shall be removed prior to construction;*" and the suggested motion by the Town Attorney as follows: "*Town staff shall, in writing, notice all five property owners referred to in this proposal. For each property owner who does not agree, or does not respond, within 60 days of the Town's notice, two slips shall be removed from the proposal from the southern end of the dock plan. At least three property owners shall agree for the granting of this variance.*"

Ms. Simpson requested clarification on the timeframe for removal of the illegal portion of the dock. Mr. Aitken responded that it was his intent to include it as part of condition 8, which currently addressed the dredge and fill requirement. Ms. Barthold asked how the board would make their Findings of Fact. Attorney Persson explained the board was granting a potential variance for 12 slips, but it would be reduced; if they did not have an agreement, then the slips would be reduced accordingly. He suggested the board follow staff's recommendation, include his revision for condition 7 and then renumber the remaining conditions, and then include condition 10 concerning the written notice.

**Ms. Boynton made a MOTION THAT THE ZBA ACCEPT, ADOPT, AND AGREE TO THE FINDINGS OF FACT AND THAT THE CRITERIA FOR GRANTING THE VARIANCE FOR PETITION #1-10 HAVE BEEN MET, SUBJECT TO, AND CONDITIONED UPON, THE CONDITIONS SET FORTH BY STAFF, WITH AN ADDITION TO CONDITION 8 TO INCLUDE THAT THE ILLEGAL EXISTING DOCK SHALL ALSO BE REMOVED; AND, IN ADDITION, CONDITION 9 WOULD STATE, "PRIOR TO APPLICATION FOR BUILDING PERMIT THE OWNERS OF LOTS 5A AND 5B, 6 AND 7, 8 AND 9, 10 AND 11, AND 12 AND 13, TOGETHER WITH THEIR MORTGAGE HOLDERS, THE ASSOCIATION AND THE TOWN SHALL ENTER INTO AN AGREEMENT FOR THE USE OF THE PROPOSED DOCKING FACILITY. THE AGREEMENT SHALL BE IN RECORDABLE FORM AND AT A MINIMUM SHALL INCLUDE: 1) 10 OF THE 12 SLIPS SHALL BE FOR THE EXCLUSIVE USE AND ENJOYMENT OF THE LOT OWNERS REFERENCED ABOVE; 2) THE REMAINING TWO SLIPS SHALL BE FOR THE USE AND ENJOYMENT OF THE REMAINING PROPERTY OWNERS; 3) THE OWNERS OF THE LOTS REFERENCED ABOVE AND THEIR MORTGAGE HOLDERS SHALL WAIVE ALL RIGHTS THEY MAY HAVE NOW AND IN THE FUTURE TO REQUEST A VARIANCE FOR STRUCTURES OVER WATER; 4) THE SLIPS MAY NOT BE LEASED, SUBLEASED, OR USED INDEPENDENTLY FROM THE PROPERTY TO WHICH THEY ARE ASSIGNED; AND, 5) NO DOCK SHALL BE USED FOR COMMERCIAL PURPOSES. IF THE AGREEMENT IS NOT EXECUTED AND RECORDED WITHIN SIX MONTHS OF THE DATE OF THE GRANT OF THIS VARIANCE, THIS VARIANCE SHALL BE NULL AND VOID;" AND WITH THE ADDITION OF CONDITION 10 TO STATE, "TOWN STAFF SHALL, IN WRITING, NOTICE ALL FIVE PROPERTY OWNERS REFERRED TO IN THIS PROPOSAL. FOR EACH PROPERTY OWNER, WHO DOES NOT AGREE OR DOES NOT RESPOND WITHIN 60 DAYS OF THE DATE OF THIS NOTICE, TWO SLIPS SHALL BE REMOVED FROM THE EAST END OF THE DOCK PLAN. AT LEAST THREE OWNERS MUST AGREE TO THE GRANTING OF THIS VARIANCE, AND CONDITION 9 SHALL BE AMENDED IN ACCORDANCE WITH THE NUMBER OF OWNERS THAT AGREE TO THIS PROPOSAL;" seconded by Ms. Barthold.**

Mr. Fuller commented that he was opposed to any timeframe being placed on the approval. He agreed that it was appropriate for the board to determine the number of slips to be constructed, but did not agree with placing a restriction on when the facility would be built or requiring the residents to inform the Town of their participation.

**Motion carried on roll call vote:**

<b>AITKEN:</b>	<b>AYE</b>	<b>BARTHOLD:</b>	<b>AYE</b>
<b>BOYNTON:</b>	<b>AYE</b>	<b>FEOLE:</b>	<b>AYE</b>
<b>FULLER:</b>	<b>NO</b>	<b>GOLDNER:</b>	<b>AYE</b>

Old Business

Mr. Fuller commented that on their Town email account, the board had received a letter, several days after the hearing, raising objections to Petition 3-10 (6517 Gulfside Road) which was heard at the January 14, 2010, meeting. He asked how the board should address the letter. Attorney Persson asked if this was an objection to a prior action taken by the board. Mr. Fuller noted that it appeared to be a presentation that the board normally would receive during a hearing; it was a position by an abutting property owner outlining all the reasons why the ZBA should not grant the variance. Attorney Persson responded that the hearing was closed, but the chairman could respond to the letter noting that their letter was received after the hearing. He pointed out there was a 30-day appeal process after the hearing for someone to appeal to the courts.

Setting Future Meeting Date.

The next regular meeting was scheduled for Thursday, March 11, 2010.

Adjournment.

The meeting was adjourned at 11:13 a.m.

Respectfully submitted,

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Charles Fuller, Secretary  
Zoning Board of Adjustment