

TOWN OF LONGBOAT KEY  
ZONING BOARD OF ADJUSTMENT  
MINUTES OF MARCH 8, 2012 MEETING

The meeting of the Zoning Board of Adjustment was called to order by Chairman Feole at 9:30 a.m. on Thursday, March 8, 2012.

Members Present: Secretary Charles Fuller, Members Andrew Aitken, Kenneth Schneier, Lee Riley

Members Absent: Chairman Ben Feole, Vice Chairman Gaele Barthold, Member Thomas Bijou

Also Present: David Persson, Town Attorney; Ric Hartman, Planner; Donna Chipman, Office Manager

Approval of Minutes

**Mr. Aitken made a MOTION TO APPROVE THE MINUTES OF THE JANUARY 12, 2012, ZONING BOARD OF ADJUSTMENT MEETING AS WRITTEN; seconded by Mr. Riley and approved by a unanimous vote.**

Agenda Item 1. PETITION #4-11 by Linda C. Firkins and William C. Saba, Trustees, requesting a Variance from Section 158.145 of the Town of Longboat Key Zoning Code to reduce the required combined side yard setbacks from 25 feet to 22.8 feet, to reduce the required rear yard setback from 25 feet to 6.2 feet, and to increase the maximum lot coverage from 25 percent to 38.6 percent, for property located at 321 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, attorney representing the applicant, presented the Return Receipts to the Board.

Ric Hartman, Planner, reviewed the staff report noting the applicant was requesting three variances to reduce the required combined side yard setbacks from 25 feet to 22.8 feet, to reduce the required rear yard setback from 25 feet to 6.2 feet, and to increase the maximum lot coverage from 25 percent to 38.6 percent. He reviewed PowerPoint slides showing the site conditions commenting the applicant was not proposing to move the entire structure as they would be reducing the size of the rear patio area. The proposed variance request would place the structure approximately 6.2 feet from the rear setback line. Concerning the combined side yard setbacks, Mr. Hartman explained that the code had a section referencing the status of non-conformities (158.138(B)(1)(a)(i) ) and noted that a number of lots along North Shore Road were 50 feet wide. The structure was being required to reduce the minimum rear yard. The proposed house was located on the lot across the street, so it was conforming as far as the setbacks, but the applicant was requesting a variance to move the current home to a smaller lot, which required the variances for the setback and lot coverage. The structure was 37 years old, and the variance would only apply to this

house; it would not run with the land. He commented that if the structure were torn down, or substantially demolished, the owner could not rebuild. However, due to the non-conforming status of the lot, there were certain standards in the code that required some sort of variance to build in the future. He mentioned that if the board granted the variance, then it would be in compliance with the Comprehensive Plan. He continued with reviewing an illustration of the proposal.

Mr. Hartman mentioned that staff has presented the recommended Findings of Fact that were necessary for the record, along with the criteria for the board to evaluate and determine whether to grant the variance. There were several findings where staff did not find the criteria had been met.

Discussion ensued on the following:

- If a portion of the rear porch were removed, would the home fit on the lot; staff noted that it would not, because the rear porch was approximately six feet deep, and if the six foot depth were removed, it would make the distance 12.2 feet from the rear property line. The zoning criteria required 25 feet from the rear yard.
- Did the adjacent properties have similar size lots with similar rear yards and lot coverage; the house to the east was a much older structure and approved under an older zoning code that was in place at the time of construction.
- The requirement in that area for that size of building was 1,600 square feet, and due to the size of the lot, it would not be buildable without a variance.
- The proposed coverage was approximately 28 percent versus the 25 percent maximum allowed.

Michael Furen, attorney representing the applicant, discussed:

- Section 158.138 of the Town Zoning Code, which allowed minimum combined side yard setbacks on a non-conforming lot be 20 feet; the applicant was providing combined side yard setbacks of 28.2 feet and no variance was required.
- Requested that the Town files on this request be made part of the record.
- Reviewed an old plat from the 1920s that showed the lot, and that historically, variances had been considered and favorably approved by the Town when there were problems with lot configuration.
- The owner of the home was environmentally sensitive and this home, built in 1973, he wished to move in order to save it.
- There was a variance previously granted for 301 North Shore Road for five feet from the Joy Street right-of-way.
- Reviewed photographs of the existing home (that would be moved) at 300 North Shore Road pointing out that all the area of the deck, past the stairway, would be demolished, but the stairway and landing would remain for access.
- That the purchaser of the site wished to maintain a functional and usable structure.

- Pointed out that the staff report indicated there were no special conditions and circumstances existing on the property; however, he was not aware of a homeowner in that area who sought a variance in order to move a home onto another lot, which he believed was a unique circumstance. Another unique circumstance was that no residential use could be placed on the lot without a variance.
- Referred to a previous variance petition (Petition 2-09) where staff's assessment found there were unique circumstances that were not from the actions of the applicant, even though the property was acquired with knowledge of the Town's regulations, including the gulf waterfront yard requirements.
- The present residence at 300 North Shore Road was conforming as to maximum building coverage, because of the size of the lot and was also conforming as to the rear yard; however, it was not conforming as to side yard setbacks.
- If the home were moved, part of the cost included rehabilitation to the home to eliminate some of the existing non-conformities.
- Referred to the proposed site plan noting the rear setbacks and pointed out that there would be 51.5 percent open space.

Mr. Fuller questioned the square footage of the building if it was moved. Mr. Furen responded the total building, with landing, would be 2,301 square feet. Mr. Aitken questioned Mr. Furen's comments related to the historical value of the home. Mr. Furen explained the home was an old Longboat Key beach house and worth saving for the community. He pointed out that it was also indicated in the staff report. He commented they could request a variance for this site to allow the minimum first level habitable space, but could also add an additional five percent coverage for a pool cage structure for a total of 33 percent.

Mr. Schneier asked if all the current storm related construction requirements would be incorporated in the building if it was moved. Mr. Furen explained it would be selective, but there would be significant elimination of storm related non-conformities.

The following residents spoke in opposition to the variance request:

Roger O'Bryon, 301 North Shore Road  
 Barry Walsh, 350 North Shore Road  
 Katherine Martin, 320 North Shore Road

Mr. Hartman mentioned that a variance would be required from the maximum structural coverage; the setbacks were not an issue to build, but a variance would be required to build a minimal habitable floor area within the percentages that were required. Mr. Aitken noted that staff had mentioned they could not build without a variance. Mr. Hartman responded they would require a variance from the minimum habitable floor area, or the maximum structural coverage would have to be increased by approximately 3.3 percent.

Mr. Furen distributed letters in support of the variance from neighbors in the vicinity of the subject site. He commented that after hearing the opposition, it was noted that the primary concern was the rear yard setback. He worked with the architect to determine if they could reduce the request, but it was not possible to meet the 25 foot setback requirement; however, there was an ability to significantly reduce the request. He noted it involved removing eight feet from the proposal so the setback would increase to 14 plus feet from the previous request, which was a minimum of 6.2 feet. The rear setback would be 13.8 feet (reducing the variance request to 1.2 feet), and by eliminating the stairway and landing portion of the structure, it would reduce the maximum building coverage to 35.6 percent. This reflects a compromise proposal, which would economically still justify the moving of the residence. It would remove 2 feet 3 inches from the rear of the home.

Mr. Aitken questioned why additional square footage could not be removed from the rear. Joe Toph, architect representing the applicant, commented they would have to decrease the master bedroom size and/or the front bedroom. He noted the absolute maximum they could remove would be two feet in order to maintain the functionality of the structure. Mr. Furen pointed out that the variance, if granted, would only be for the structure, not for the land. The owner of the home was 100 percent funding the effort to relocate the home onto the lot.

Mr. Hartman believed the proposed compromise would not negate the staff report. The current property at 300 North Shore Road met most of the setbacks, but it did not meet the setback on the east side adjacent to the Martin's residence. It sat 7.6 feet from the property line, and not the ten feet that was required. He continued with reviewing a photograph of the rear yard of the proposed site and its impacts on the adjacent neighbor. It was pointed out that in criteria six of the Findings of Fact that 28.3 percent was the bare minimum that would make use of the land or structure, and would still meet all the setbacks. Staff would not find that a structure that was approximately 35.6 percent was the minimum necessary for this lot, and would continue to recommend denial. Discussion ensued on setback measurements, the width of the structure, and the coverage percentage.

Mr. Furen noted his appreciation with the dialogue for a resolution; however, if the board was not willing to grant the compromise that was presented, then he would ask they not approve the variance.

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

The board recessed from 11:00 am to 11:06 am.

Mr. Fuller discussed there was no permissible use of the lot. David Persson, Town Attorney, responded there would be a need for a variance, but it did not have to be this variance; there has to be the minimum variance for reasonable use of the property.

Mr. Schneier commented that the board received many applications that did not have any comments from the neighbors; however, he believed when the adjacent owners objected to the use, the board should give consideration to their comments. He did not believe the variance, as amended, was an appropriate variance, and he agreed with staff's recommendations as to why it was inappropriate. He believed it was an overuse of the property with regard to the rear yard setback and the percentage of lot coverage. He also believed moving an older home from across the street, which was described as outdated, was not an attractive component of the application, and for the reasons stated he would not support the variance request.

Mr. Riley noted that he appreciated the intentions of the owner of the structure, and he appreciated the comments from the neighbors and the analysis from staff; however, he also agreed that this was not a variance that met the criteria sufficiently, and did not support the variance request.

Mr. Aitken discussed that the concern was with the rear setback, and he believed if that was not part of the request, there would not be a lot of opposition. He pointed out that if the 25 foot setback could be met, he would support the variance request, but in the absence of that change, he agreed with Mr. Schneier and Mr. Riley. Mr. Fuller referred to the photograph of the rear yard noting the steps going to the second deck on the adjacent home was at the 25 foot setback, and he believed privacy would not be an issue, because the proposed home would have windows on that side. Mr. Schneier mentioned that if the rear setback issue was resolved, it would resolve the issue of the lot coverage, which might not need a variance. Mr. Fuller noted with the new plan, the structure would be 2,300 square feet where the minimum allowed was 1,600 square feet in that zoning district.

**Mr. Schneier made a MOTION TO DENY PETITION 4-11 AS AMENDED FOR THE REASONS SET OUT IN THE STAFF REPORT; seconded by Mr. Riley and approved by a unanimous vote:**

<b>AITKEN:</b>	<b>AYE</b>	<b>FULLER:</b>	<b>AYE</b>
<b>RILEY:</b>	<b>AYE</b>	<b>SCHNEIER:</b>	<b>AYE</b>

Setting Future Meeting Date.

The next meeting was tentatively scheduled for Thursday, April 12, 2012.

Adjournment.

The meeting was adjourned at 11:19 am.

Respectfully submitted,

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Charles Fuller, Secretary  
Zoning Board of Adjustment