

TOWN OF LONGBOAT KEY  
PLANNING AND ZONING BOARD  
MINUTES OF REGULAR MEETING

\*\*\*JANUARY 21, 2014\*\*\*

The regular meeting of the Planning and Zoning Board was called to order at 8:30 AM.

Members Present: Chair BJ Bishop, Vice Chair Jack Daly, Secretary John Wild (@ 8:54 AM) Members Andrew Aitken, Leonard Garner, Walter Hackett (@ 8:57 AM), Allen Hixon, Ken Schneier, George Symanski

Also Present: Maggie Mooney-Portale, Town Attorney; Alaina Ray, Planning, Zoning & Building Director; Steve Schield, Planner; Donna Chipman, Office Manager

Chair Bishop announced that Alaina Ray has been named the Town's Planning, Zoning & Building Director.

Alaina Ray, Planning, Zoning & Building Director, introduced Briana Ozor, temporary planner, who was working with the Town through an interlocal agreement with the University of Florida, and would be providing daily planning assistance in the Planning, Zoning & Building Department.

AGENDA ITEM 1  
VILLA AM MEER, 2251 GULF OF MEXICO DRIVE (QUASI-JUDICIAL)  
SITE PLAN APPLICATION

Pursuant to published notice, the public hearing was opened.

Chair Bishop requested if there were any Ex Parte communications concerning this application, that those board members note it for the record. No one noted any Ex Parte communications.

All those testifying at the hearing were sworn at this time.

Steve Schield, Planner, provided an overview of the request noting:

- The subject property contained three detached residences, two of which were planned for demolition
- The historic main house was proposed to be renovated for use as a manager's residence and a community building

- The project has been known as Villa Am Meer, but the applicant was marketing it under the name 'Aria'
- The applicant was required to provide 45 parking spaces, but was actually providing 53 spaces
- The old historic estate was built in the 1930s and was ten acres; however, the adjacent condominium project, Villa di Lancia, purchased five acres
- The developer was also preserving the historic main gate and would be incorporating it into the buffer design
- Reviewed the landscape plan noting that the Town Code required at least 50 percent open space, and the applicant was providing 70 percent
- There were a number of palm trees located around the site, and the existing trees would be preserved and relocated on the site
- Downstairs of historic home will be manager's apartment and upstairs will be community area

Mr. Symanski referred to the Traffic Impact Analysis and noted he found it curious that the site warrants a left turn lane, but going south did not warrant the same traffic stoppage or slow down. Mr. Schield assumed, since the project was located on the south end of the key that the majority of the service staff would come from Sarasota County.

Jay Tallman, developer, commented that he had been involved in a number of projects on the island and knew historically they had always seen traffic patterns, with greater number of traffic, from the south. This was a low-intensity development. Mr. Symanski questioned if the PM peak traffic was more than the AM peak traffic. Mr. Tallman responded in the morning the service people would be coming in from the south and making a left hand turn, and then in the afternoon, they would be heading south.

Discussion ensued on the following:

- Whether the northbound traffic was not being considered; people going south would not impact north traffic, because they would only be turning into the site from the north
- Whether if there was no existing turning lane, would the project warrant a turn lane; staff noted it was possible, but the project has an existing turning lane
- Question whether the existing fences would remain as is, or would they require a variance due to the building modification; staff noted the applicant was not enlarging the building, and could modify the interior without a variance – the fences could not be replaced, but had to be maintained and repaired
- The type of due diligence staff did to ensure the financial ability of the applicant to follow-through on the project; staff noted the Town required the applicant to post bonds for various items on the site, including site restoration
- That the developer had paid the application fees to the Town; had no debt on the property; and the project was well financed

Mr. Tallman provided an overview of the development team for the project, including Joel Freedman, planner, and Allen Estavan, architect. Mr. Freedman provided a brief

overview of the request, and Mr. Estavan, reviewed a PowerPoint presentation showing an illustration of the proposed development on the site.

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

**MR. GARNER MOVED THE P&Z BOARD RECOMMEND APPROVAL OF RESOLUTION 2014-04 APPROVING A SITE PLAN TO ALLOW A 17 UNIT RESIDENTIAL DEVELOPMENT AT 2251 GULF OF MEXICO DRIVE, SUBJECT TO THE CONDITIONS OUTLINED IN EXHIBIT 'A'. MR. HIXON SECONDED THE MOTION.**

Mr. Hixon commented that the Town had previously reviewed an application for this site, which did not move forward due to the poor design. However, he wished to compliment the applicant and entire team on a great submission; he believed they had done an excellent job designing the proposed project. Mr. Symanski voiced his approval in hearing that the unique trees on the site were going to be preserved.

Mr. Hackett referred to Conditions 31, 32, 33, and 34 in regards to the fencing and asked if the applicant considered it a hindrance. Mr. Tallman responded no; the applicant could work with the existing fencing as they had a right to maintain the fence. Discussion ensued on the type of fencing and dense vegetation that would be planted around the property line.

**MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE.**

AGENDA ITEM 2  
ORDINANCE 2014-06 COMPREHENSIVE PLAN AMENDMENT  
CAPITAL IMPROVEMENTS ELEMENT

Pursuant to published notice, the public hearing was opened.

Alaina Ray, Planning, Zoning & Building Director, noted the amendments included in the ordinance were 'housekeeping' as the state required the Capital Improvements Element (CIE) be reviewed each year and the tables updated. The state, in 2011, changed the law so they did not have to review minor amendments to the CIE, and did not require submittal of the updates as long as they did not require text amendments. She pointed out that the projects noted within the documents were previously approved by the Town Commission, along with the costs. The only revisions being made were removal of the previous fiscal year and adding the fifth fiscal year for 2018. She mentioned that following the P&Z Board action, the ordinance would move forward to the Town Commission for approval, but will not be forwarded to the state for review since the items were housekeeping only.

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

**MR. WILD MOVED TO RECOMMEND APPROVAL OF ORDINANCE 2014-06 AS WRITTEN. MR. GARNER SECONDED THE MOTION.**

Mr. Aitken questioned if the \$2 million that was struck-through on the chart meant the funds had been expended, or that the project was complete, because he had not seen any construction. Dave Bullock, Town Manager, explained that the amount would be spent in the coming fiscal year, so it has not moved along as quickly as hoped. He noted it was the potable water line from Manatee County that supplied drinking water. The project was designed and would be let out to bid later than they had thought.

Discussion ensued on the following:

- That Policy 1.4.3, page 61, had previously shown water usage had declined by a third
- That Policy 1.4.3 addressed the Facility Investment Fee (FIF) for new capacity
- Review of consumption rates, conservation rates, and charging of capacity fees
- That the Villa Am Meer project outlined in their application that there was a fee for proposed water usage that the project would cause
- That the Town was not at risk of not having potable water; Manatee County has a lot of capacity within their system, and it was managed very well. The only item at risk was paying additional capacity fees, which the developer was required to pay
- The term for the water agreement with Manatee County, which it was noted were usually 20 year agreements

George Spoll, Fairway Bay, commented that in the past the Town was required to regularly pay penalties, because of excess water usage, which resulted in the adoption of conservation efforts.

**MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE**

AGENDA ITEM 3  
ORDINANCE 2014-07 AMENDS CHAPTER 158  
SPECIAL EXCEPTION EXPIRATIONS

Pursuant to published notice, the public hearing was opened.

Ms. Ray discussed there had been issues with special exceptions that had been previously approved, but then expired prior to the applicant utilizing the uses. She explained the Town Code only allowed 12 months from the date a special exception use was approved for the use to be utilized by the applicant. She noted it was typically not a problem when most of the applications involved outdoor dining in areas that already existed, but staff was now finding they were receiving applications for special exception uses for things not yet constructed. She mentioned that most applicants wished to obtain approval for the special exception use prior to submitting an application for site plan approval so they would know if they could get approval for the uses prior to site plan. A site plan had 24 months from date of approval before it expired, and what was

happening was by the time the site plan was approved, and the applicant began construction, the special exception would have expired. The code did allow the Town Commission to extend the special exception for six months and nothing after that; the applicant would have to come back through the approval process. Ms. Ray noted the proposed revision was to change the expiration to 24 months to coincide with site plan approval, but also to remove the last sentence in Section 158.126 which said the extension would not exceed six months.

The following points were discussed with staff:

- The proposed revision would only apply to future applications
- The approach of tying special exceptions to other approvals was necessary, but the only issue with the language was to see it tie into any other approval that was for the same project, such as building permits, site plan approvals, etc.
- Belief that if the permit was granted that it would extend the approval at that time; however, it was noted that only the site plan approval would be extended and not the special exception as the Town Commission would determine whether the permit was being actively pursued.

Maggie Mooney-Portale, Town Attorney, suggested revised language to state, “any special exception shall expire the later of 24 months from the date of grant, or the date of the site plan expiration, as applicable, unless appealed and extended by action of the town commission if by that date the use for which the special exception was granted has not been commenced.”

Mr. Symanski did not agree with the paragraph and the way it was written. He believed it meant that the application was automatically extended. Ms. Ray responded that it was not tied to a building permit, but tied to commencement of use. Mr. Symanski requested that the paragraph be further “wordsmith” prior to forwarding to Town Commission.

**MR. GARNER MOVED TO RECOMMEND APPROVAL OF ORDINANCE 2014-07, AS REVISED. MR. AITKEN SECONDED THE MOTION.**

Mr. Schneier suggested that the words, “*unless appealed and extended by action of the Town Commission,*” be placed at the end of the sentence. Ms. Ray noted that the word ‘applicable’ was added prior to the words ‘site plan’ in order to tie it into the special exception.

Mr. Garner and Mr. Aitken both accepted Mr. Schneier’s and staff’s suggestion.

**MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE**

AGENDA ITEM 4  
ORDINANCE 2014-08 AMENDS CHAPTER 158  
ZONING BOARD OF ADJUSTMENT OPTIONS

Pursuant to published notice, the public hearing was opened.

Mr. Garner commented he had three people approach him about wishing to obtain a variance, but concerned with the unavailability of the Zoning Board of Adjustment (ZBA) members. He believed the P&Z Board had sufficient knowledge to review the variances and encouraged incorporation of the functions into the board. Chair Bishop concurred.

Alaina Ray, Planning, Zoning & Building Director, reviewed a PowerPoint presentation noting:

- The ZBA consisted of seven members, but currently there were two vacancies for which the Town has been advertising for over a year with only one person showing interest in serving and submitting an application
- Due to seasonal residency of most of the members, there was difficulty obtaining a quorum for the majority of the year
- There had been significant delays in applications being heard, with one applicant, who had a contractual purchase on a lot, backing out of a sale, because they were unable to get their petition heard
- Due to Charter language in the Town Code requiring a ZBA, the Town was required to maintain the ZBA until such time the Charter was changed
- Staff was attempting to draft a Charter change for the next election; however, the election superintendent notified the Town that they had missed the deadline, but the Town Commission would be considering placing it on a future ballot
- Staff was recommending the Town Code (Section 158.026) be revised so that if staff was unable to obtain a quorum at the ZBA level within 30 days of receipt of an application, the P&Z Board would have the authority to review the application at their next available meeting

Mr. Aitken asked if the 30 day period would include the months of July and August. Ms. Ray replied yes; the ZBA can hear variances over the summer months as they were not included in the 'Zoning Season.'

Mr. Symanski commented he had a problem with the P&Z Board reviewing all applications, but noted that a variance was suppose to be an unusual occurrence. He mentioned the problem he had with the proposal was it was "transparently" avoiding the Charter and believed there was another way to resolve it. He also thought it was contrary to Section 158.026, which noted a person appointed to the ZBA could not concurrently serve on another board. An easier way to resolve the issue was that the Charter stated the powers and duties were assigned by ordinance to the ZBA, but if the variances were a problem, then they should amend the ordinance to remove variances from the ZBA and give to the P&Z Board for review until there was an election.

Maggie Mooney-Portale, Town Attorney, commented that the statement of law concerning the ZBA was correct that a variance was based on undue hardship. The first issue raised was membership on dual boards; staff was not recommending elimination of the ZBA (they would still be in effect), but the revision would functionally allow the P&Z Board to take action if the ZBA members were not available. Mr. Symanski disagreed. He believed variances should be removed from ZBA jurisdiction and given to the P&Z Board to "make it clean." Attorney Mooney-Portale noted that under that scenario, the Town would have a Charter that requires a ZBA, but the board would have no duties. Mr. Symanski commented he was suggesting removal of only the variance duties. Attorney Mooney-Portale commented there would be a question of whether that was bypassing the Charter.

Mr. Schneier believed the proposal was a temporary solution, but would perpetuate delays for applicants as they would first need to establish whether there was a ZBA quorum, and if not, then they would need to go to another board. He commented it would be good if the Town could avoid that. He asked if it was determined there was no legal way to avoid a two-step process until an election. Attorney Mooney-Portale explained that she had examined the issue prior to her maternity leave, and it was her understanding that the proposal was the direction the Town Commission requested to move forward with, but if there was an alternative approach, staff could bring two proposals to the Town Commission.

**MR. SYMANSKI MADE A MOTION TO ALLOW COMMISSIONER JACK DUNCAN TO ADDRESS THE P&Z BOARD. MR. WILD SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.**

Commr. Duncan understood there was an attendance problem, but questioned if there were other reasons why the ZBA was unable to meet. He believed the Town needed to talk with the Board and find out why they were having difficulty getting a quorum. He believed the Town Commission had given little direction on the issue.

Discussion ensued on the following:

- If there had been discussion to replace the current members and find residents that were available most of the year
- The reason for the attendance issue, and if needed, that it was incumbent on the Town Commission to reconsider the people on the board and possibly replace
- Agreement that the Town could not continue with the delays in reviewing applications

Mr. Schneier informed the board that he was a member of the ZBA for 2.5 years and believed what was happening was the ZBA meetings were scheduled the same day each month, but there might only be a couple of meetings for the year. As a member, it was difficult to plan your schedule around a meeting where most were canceled due to no petitions being filed. He mentioned that the surrounding communities had a larger pool of people wanting to be active in government, where Longboat Key was a small population where most were not year-round residents. He agreed that they had the ability on the P&Z Board to perform the function. Mr. Hixon believed the board would

still exist, but relocate some of their functions, and if it was a matter of attendance, he suggested the possibility of evening meetings.

**MR. WILD MADE A MOTION TO ALLOW COMMISSIONER PHILL YOUNGER TO ADDRESS THE P&Z BOARD. MR. SYMANSKI SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.**

Commr. Younger disagreed with Attorney Mooney-Portale that it was the only solution, and agreed with Mr. Symanski that the duties of the ZBA can be taken away, with the exception of the appeals, and given to the P&Z Board.

Mr. Symanski suggested two options: 1) amend the ordinance and take the majority of the duties away from the ZBA and give to the P&Z Board; or 2) remove the sentence in Section 158.126 regarding the ability to concurrently serve on more than one board and appoint the P&Z Board Chair. Attorney Mooney-Portale explained that suggestion '2' would be a problem under applicable state law, because there was a constitutional restriction on dual office holding, so the suggestion would run afoul of state law. Mr. Symanski believed if that was the law, it might create a problem with the P&Z Board reviewing applications if the ZBA was not available, because they would be acting as the ZBA. Attorney Mooney-Portale commented she would like an opportunity to review that issue to determine if it would be in conflict with the law.

Commr. Duncan wished to point out that he, along with Commr. Younger, provided their opinions as individuals and were not providing an opinion of the entire commission.

The following points were discussed with staff:

- Delays were not good, along with lack of commitment
- Belief that it was the Town Commission's desire to amend the Charter to eliminate the ZBA
- An amendment to the Charter would have to be voted upon by ballot and the earliest it could be was possibly August, if there was an election
- Reviewed the duties of the ZBA and questioned which duties the board wished to remove and which to remain with ZBA

Chair Bishop concurred with Mr. Symanski that the duties should be assigned to the P&Z board; the board should make their recommendation and let the Town Commission decide how to move forward. Mr. Garner believed the Town had an obligation to provide the service to the public. Ms. Ray pointed out that historically, waivers and variances were the most common requests. Mr. Schneier suggested, after reviewing the list, to leave the Appeal of Administrative Decision to the ZBA, and the remainder, which were applications, should be given to P&Z Board. Mr. Symanski asked if the advertisement for this hearing was broad enough for the P&Z Board to make the amendments, or did it need to go to the Town Commission and then brought back to P&Z Board. Attorney Mooney-Portale responded that notice was provided that this section was potentially going to be amended, so any amendments made did not have to be brought back to the board, unless the Town Commission sent it back to the board.

Chair Bishop suggested the P&Z Board recommend that the P&Z Board would be responsible for the duties of reviewing the applications for special exceptions for home occupations and windwalls, Daylight Plane waivers, and variances. Mr. Symanski believed they were limiting it to variances and waivers. Mr. Schneier reiterated that all the items, with the exception of the appeals, be given to P&Z Board. Mr. Hackett commented that if the objective was to diminish the ZBA duties completely, then all the duties listed would come to the P&Z Board. Discussion ensued on which duties should be reassigned to the P&Z Board.

**MR. HIXON MOVED TO RECOMMEND THAT ITEMS 2-4 (SPECIAL EXCEPTIONS FOR HOME OCCUPATIONS AND WINDWALLS, DAYLIGHT PLANE WAIVERS, AND VARIANCES) OF THE ZBA DUTIES BE MADE A PART OF THE P&Z BOARD RESPONSIBILITIES UNTIL SUCH TIME THE TOWN COMMISSION CAN MAKE A DECISION ON AMENDMENTS TO THE TOWN CHARTER. MR. WILD SECONDED THE MOTION.**

Mr. Garner suggestion that the word 'interim' be included in the motion. Mr. Symanski questioned the use of the word 'interim.' Mr. Garner explained that while the Town was continuing to search for a solution to the issue, the motion provided an interim provision until the Town Commission made a decision. Chair Bishop did not believe there was a need to include the word 'interim.' Mr. Wild agreed that the word 'interim' was not needed.

**MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE.**

AGENDA ITEM 5  
CONSENT AGENDA

**MR. GARNER MOVED APPROVAL OF THE MINUTES OF THE DECEMBER 17, 2013, MEETING AND SETTING THE FUTURE MEETING DATE FOR FEBRUARY 18, 2014 BEGINNING AT 8:30 AM. MR. HIXON SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: AITKEN, AYE; BISHOP, AYE; DALY, AYE; GARNER, AYE; HACKETT, AYE; HIXON, AYE; SCHNEIER, AYE; SYMANSKI, AYE; WILD, AYE.**

Ms. Ray informed the board there were no applications scheduled for the February P&Z Board meeting, but staff may have code issues ready to be brought forward for discussion.

ADJOURNMENT

The meeting was adjourned at 10:28 AM

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John Wild, Secretary  
Planning and Zoning Board