

**TOWN OF LONGBOAT KEY
PLANNING AND ZONING BOARD
MINUTES OF REGULAR VIRTUAL MEETING
MAY 26, 2020**

The regular virtual meeting of the Planning and Zoning Board was called to order at 9:19 AM by Chair David Green.

Members Present: Chair David Green; Vice Chair Ken Marsh; Secretary Penny Gold; Members David Lapovsky, Debra Williams, Phill Younger

Also Present: Maggie Mooney, Town Attorney; Allen Parsons, Planning, Zoning & Building Director; Maika Arnold, Senior Town Planner; Tate Taylor, Planner; Donna Chipman, Senior Office Manager

**AGENDA ITEM 1
PUBLIC TO BE HEARD**

Opportunity for Public to Address Planning and Zoning Board

No one wished to address the board.

**AGENDA ITEM 2
APPROVAL OF MINUTES**

MR. YOUNGER MOVED APPROVAL OF THE MINUTES OF THE MAY 19, 2020, SPECIAL MEETING. MR. MARSH SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

**AGENDA ITEM 3
CONSENT AGENDA**

Allen Parsons, Planning, Zoning & Building Director, commented the only reason to schedule a June meeting would be if any items were continued from this hearing. Chair Green responded that he would hold a decision on scheduling the next meeting until the end of the agenda.

**AGENDA ITEM 4
GRANT'S GARDENS, 524 GULF BAY ROAD SPECIAL EXCEPTION APPLICATION
(QUASI-JUDICIAL)**

**AGENDA ITEM 5
GRANT'S GARDENS, 524 GULF BAY ROAD SITE DEVELOPMENT PLAN (QUASI-JUDICIAL)**

Pursuant to published notice, the public hearing was opened. All those testifying at this hearing have previously submitted a '*Request to Be Heard*' form affirming their evidence or factual representation. Bernadette Fisher, applicant's representative, provided the Return Receipts electronically to staff.

Chair Green noted that for purposes of presentation and discussion, the items would be combined, but they would go through separate motions.

Allen Parsons, Planning, Zoning & Building Director, provided the following statement related to the format of the meeting:

Pursuant to the Town Manager's Executive Order dated May 8, 2020, all in person meetings of the Town's Planning & Zoning Board have been temporarily suspended due to the ongoing threat from COVID-19. The Town Manager's Executive Order also provides that until further noticed any scheduled Planning & Zoning Board meetings or hearings will be conducted using remote/virtual meeting technology. The public is encouraged to view and participate in the all remote/virtual meetings and hearings, including the Planning & Zoning Board meetings.

In anticipation of today's meeting, and to ensure that the public has been provided as much access as possible, the Town has made public access to today's meeting and hearings available through generally accepted communication media technology means. First, the Town is live streaming today's PZB meeting through the Town's website. The Town does not typically stream PZB meetings on the Town's website, but we are doing so to afford the public as much viewing access as we can while the threat of COVID-19 still remains. The Town is also providing public access and encouraging public participation through Zoom. Zoom affords the public the ability to view or participate in the meeting by phone, by smart phone, tablet or computer. Zoom is free to anyone that chooses to use this medium. Finally, the public was also afforded an opportunity and option to submit written comments on the matters before the Board via email.

Detailed instructions on how to view or participate in today's virtual hearings has been posted on the Town's website, advertised in newspapers of general circulation, and was included in the notices to interested parties.

The Town also developed an online Request to Speak form (very similar to what the Town uses during in person meetings) for any individual that wants to participate in today's proceedings. Anyone that timely filled out a Request to Speak form online is permitted to participate in today's proceedings through Zoom. As mentioned above, anyone wishing to submit comments has been afforded the opportunity to submit such comments in writing in advance of today's proceedings to Donna Chipman. Ms. Chipman has, in turn, distributed all public comments she received to the Board and those comments will be part of the hearing record. If requested by the person submitting comments, Ms. Chipman will read those comments into the record during the appropriate agenda item.

The Town has made great efforts to afford more public access to the Town's virtual meetings and hearings than is typically provided when the Town conducts in person meetings at Town Hall. For example, the Town does not typically live stream video PZB meetings, nor does the Town typically read into the record public comments during the proceeding. These are just a few examples of how the Town is trying to provide more access to the public during these virtual proceedings.

The Town's virtual meeting process is consistent with how other local governments in our region and state are conducting public meetings while COVID-19 is still a threat. While we hope that in person meetings will resume in the near future, Governor Desantis' Executive Orders authorizes local governments to continue to hold virtual public meetings until at least July 7, 2020.

Maggie Mooney, Town Attorney, reviewed the process for Quasi-Judicial hearings as outlined in Chapter 33, Section 33.25, of the Town Code. She asked the Board if anyone had any Ex Parte communications or Conflicts of Interest that they wish to disclose on the record. The board members noted they had no Ex Parte communications or Conflicts of Interest.

Tate Taylor, Planner, provided a PowerPoint presentation on the Special Exception and Site Plan Approval requests for Grant's Gardens, including discussion of the proposed conditions within Special Exception Order 2020-01 and Site Development Plan Order 2020-02. Discussion was held between Staff and the Board on:

- The Special Exception to allow a 'landscaping and lawn service use'
- The Site Development Plan and redevelopment of the site, which will include a newly constructed 2,254 square foot office building; 10 standard parking spaces, including two required handicap spaces; and sufficient landscaping to create, maintain and enhance the property, including improving the ingress and egress to the site
- The landscaping will provide for 121 new plantings and a 21-foot wide, landscaped visual buffer along Gulf Bay Road
- Conditions of approval for the Special Exception include:
 - Two standard Town conditions of approval
 - Condition 2 – "the special exception is granted for landscaping and lawn services use"
- Conditions of approval for the Site Development Plan include:
 - Six standard Town conditions of approval
 - Condition 2 – "Construction plans shall be submitted concurrently with the building permit and shall provide stormwater management calculations to support the proposed stormwater system shown on the site plan"
- The Findings of Fact contained in the Staff Report

Chair Green asked if the applicant agreed with all conditions of approval recommended by staff. Mr. Taylor responded the applicant has received the conditions, and they did not raise any concerns with the recommended conditions. Attorney Mooney asked if staff completed the Request to be Heard form acknowledging their factual testimony. Mr. Taylor replied yes. She also asked if the applicant stipulated to the virtual quasi-judicial hearing. Mr. Taylor noted the applicant submitted a letter for the record stating they agree with participation with a virtual meeting.

Ms. Williams referred to the Special Exception Application, page 2, noting that the applicant had indicated there had not been any previous applications for the site. Chair Green commented that the applicant had rezoned the property and amended the Future

Land Use Map to change it to General Commercial. He believed the applicant should clarify in their application to ensure it was accurate.

Attorney Mooney questioned whether there can be a Site Development Approval without approval of the Special Exception. Mr. Taylor responded no; the Special Exception needs to be approved for the Site Development Plan to be implemented. Chair Green noted that both actions need to take place in order to move forward. The Board will review the Special Exception prior to the Site Development Plan, because if the Special Exception is not approved, then they would not move forward with review of the Site Development Plan.

Donald Neu, NeuMorris, agent for the applicant, noted that he completed a Request to be Heard form acknowledging his factual testimony. Bernadette Fisher, Senior Planner with NeuMorris, agent for the applicant, noted that she completed a Request to be Heard form acknowledging her factual testimony. Ms. Fisher continued with a PowerPoint presentation discussing:

- the site parameters
- the reason for the request for Special Exception and Site Development Plan approvals
- the previous approval requests for Future Land Use Designation from CL to CG; a Rezoning amendment from C-1 to C-2; and, a variance from the Zoning Board of Adjustment for reductions in the rear yard setback from 25 feet to 10 feet and a side yard setback from 30 feet to 14 feet
- The Special Exception and Site Development approval requests are to allow the existing landscaping and lawn service to remain in place legally
- Compliance with the Special Exception criteria; consistency with Comprehensive Plan Future Land Use Element, Goal 1 and Policies 1.1.7, and 1.1.10; consistency with applicable Zoning Codes and Land Development Regulations

Chair Green asked if anyone had submitted a Request to Speak form on these agenda items. Mr. Taylor replied no. Mr. Neu informed the Board that they agreed with the meeting procedures and also with the stipulations in the Special Exception and Site Development Plan orders.

No one else wished to be heard, and the hearings were closed.

MR. YOUNGER MOVED TO APPROVE SPECIAL EXCEPTION ORDER 2020-01 FOR GRANT'S GARDENS AS WRITTEN. MS. GOLD SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: GOLD, AYE; GREEN, AYE; LAPOVSKY, AYE; MARSH, AYE; WILLIAMS, AYE; YOUNGER, AYE.

MR. YOUNGER MOVED TO APPROVE SITE DEVELOPMENT PLAN ORDER 2020-02 FOR GRANT'S GARDENS AS WRITTEN. MR. LAPOVSKY SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: GOLD, AYE; GREEN, AYE; LAPOVSKY, AYE; MARSH, AYE; WILLIAMS, AYE; YOUNGER, AYE.

AGENDA ITEM 6
ORDINANCE 2020-05, PRIVATELY-INITIATED ZONING TEXT AMENDMENT,
HEIGHT EXCEPTION FOR LIGHTNING RODS

Pursuant to published notice, the public hearing was opened.

Chair Green outlined the process for the hearing noting that since it was a privately-initiated request, the applicant would be allotted time to provide a presentation. Attorney Mooney discussed Section 33.25 of the Town Code and the three-minute time limit for speakers. She also discussed the process for recommendation of the text amendment.

Tate Taylor, Planner, provided a PowerPoint presentation noting:

- The request was a privately initiated text amendment for lightning protection systems to amend Section 158.098, Height Regulations, to allow the systems to be included as an exception to the height and daylight plane regulations
- The Town Code currently allows a television or dish antenna, and church spires to be permitted as an exception to the maximum height regulations
- The Code does not address the ability for 'lightning protection systems' to exceed the maximum allowable height or daylight plane requirements
- The proposed amendment would permit these devices to exceed the Town's height limitations similar to other communities, but proposes limitations on the size and height

Mr. Marsh commented the applicant had provided numerous pictures of existing dwellings on Longboat Key that already have these types of lightning protection systems and questioned what those owners had to go through in the absence of a legislative change. Mr. Taylor explained there were existing devices that might be below the height requirement for the Town, which would allow them to be installed as long as they did not exceed the height requirements. He noted that the applicant had informed staff that prior Town Building Officials allowed installation and treated them as an appurtenance. Mr. Lapovsky asked if there were any limitations on the size and height of TV antennas and dishes. Mr. Taylor replied there were no limitations for TV antennas or church spires, but there was a separate section of the Code that addresses satellite dishes.

Discussion ensued between staff and the Board on:

- The Town's efforts over the last several years to limit the height of residential structures to 30 feet and concern over amendments to those efforts
- Research shows lightning rods are typically 12 inches high and 3/8 inches in diameter; the request was far in excess
- Whether there was a technical reason for requiring a 16-foot height; the only discussion was related to providing maximum protection
- That other research shows smaller devices (12 inches) provides protection for a 20-foot roof, why was there a need for a 16-foot height
- Suggestion to modify the request to limit lightning rods to 12 inches, but ensuring that whatever was proposed was sufficient to protect a structure

- That lightning rods were not prohibited on the island; however, the Code is not written in non-permissive, but permissive; since it does not state a lightning rod was permitted, it was interpreted as not allowed

John Barber, Windemuller Technical Services, agent for the applicant, noted that he completed a Request to be Heard form acknowledging his factual testimony. He continued with providing an overview of his request, including a PowerPoint and showing the Board the type of equipment being utilized. Mr. Barber explained there was a need to have a minimum of six foot above the roof, and a 16-foot mass provides a higher level of protection and comes with a \$10 million structure guarantee. The amendment is being proposed so systems are allowed for functionality.

The Board recessed from 10:57 am 11:15 am.

The following discussions continued between the Board, staff and the applicant:

- Issues with the height allowed by the mass and whether it was possible to limit the type of mass to six-feet for single-family structures and 16-feet for condominiums or larger structures
- The applicant noting there could be a limitation, but it would also limit the type of protection an owner might want
- The various types of antennas, the Town Code; and, an overview of the various types of systems and their levels of protection
- How often and time-consuming are requests for exceptions to the Daylight Plane rule for lightning rods; staff currently reviews all buildings for Daylight Plane compliance
- If the lightning rod was in place, staff would be requesting information at the time of application – if it was exempt, as proposed in the ordinance, then staff would review the maximum height above
- The applicant has to demonstrate they were not exceeding the maximum height allowed in that zoning district
- The applicant provided an overview of the process for applying for a building permit for installation, which included applying for a separate electrical permit
- Whether a light was included on the mass, which would be subject to Federal Aviation Administration (FAA) rules, along with a brief overview of FAA rules

Chair Green opened the hearing for public comments. At her request, Mr. Taylor read Dr. Doreen Dupont's comments, received via e-mail, into the record. Mr. Taylor noted that Dr. Dupont request her comments be included for this item and Agenda Item 7.

The following people submitted comments in opposition to the ordinance, via e-mail to staff and which were distributed to the Board and the applicant prior to the meeting:

- Bill Cook
- Lynn Cook
- Lynn Larson, President, Country Club Shores Unit 4 (submitted on behalf of Country Club Shores Units 1, 2, 3, 4 and 5 and Pete Rowan, Longbeach Village)
- Ned Jewett
- John Forch
- Kathy Callahan

- John Wilson
- Jeff Carter

Attorney Mooney informed the Board any emails and documents received prior to the hearing, and were distributed to the Board, will be included as part of the record. She pointed out that this was a legislative record, not a Quasi-Judicial record.

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

Mr. Lapovsky commented that while he was sympathetic to the property owner wanting to protect their property, he did not believe a 16-foot mass on a 30-foot home is appropriate. He asked if the Board would consider modifying the proposed ordinance to limit it to six feet with some type of Special Exception approval for anything beyond six feet. Ms. Gold agreed and believed it would be reasonable and would include the lightning rods in the standards. Ms. Williams understood the applicant to state that the vast majority of installations were at six feet, and the larger installations provided a larger insurance policy for protection. Mr. Marsh agreed with the comments.

MR. MARSH MADE A MOTION TO RECOMMEND APPROVAL OF PROPOSED ORDINANCE 2020-05 SUBJECT TO THE FOLLOWING AMENDMENTS: ADDITION OF A NEW SECTION (C)(6)(b), TO STATE, “SHALL NOT EXCEED 16 FEET ABOVE THE MAXIMUM ROOF ELEVATION FOR NON-RESIDENTIAL AND TWO-FAMILY STRUCTURES; AND, THE EXISTING LANGUAGE BE AMENDED TO INCLUDE “SHALL NOT EXCEED SIX-FEET ABOVE MAXIMUM HEIGHT FOR SINGLE-FAMILY AND TWO-FAMILY RESIDENTIAL STRUCTURES, AND MAY BE INCREASED TO NOT EXCEED 16 FEET BY SPECIAL EXCEPTION.” MS. GOLD SECONDED THE MOTION. MOTION CARRIED ON ROLL CALL VOTE: GOLD, AYE; GREEN, AYE; LAPOVSKY, AYE; MARSH, AYE; WILLIAMS, AYE; YOUNGER, NO.

AGENDA ITEM 7

ORDINANCE 2020-07, SINGLE FAMILY STRUCTURE HEIGHT, INCLUDING DAYLIGHT PLAN REQUIREMENTS

Pursuant to published notice, the public hearing was opened.

Allen Parsons, Planning, Zoning & Building Director, provided an overview of the ordinance noting:

- The Town Commission directed the P&Z Board to further discuss and make recommendations relating to heights of single-family structures and Daylight Plane Regulations
- At their December 17, 2019 meeting, the P&Z Board identified enhanced privacy standards; criteria to address scale and mass; options to modify existing Daylight Plane requirements; and, use of an overlay zoning district as items for more detailed consideration
- The Town Commission supported further discussion by the P&Z Board on: enhanced privacy standards and overlay zoning district concept
- The P&Z Board recommended development of an ordinance to add screening requirements for taller single-family structures, and modifications to the existing Daylight Plane requirements

- The proposed ordinance amends Section 158.098(E); revises the 'Daylight Plane' definition; and provides a new definition for 'Sight Line'

Discussion ensued between the staff and Board on

- buffering requirements
- measuring Daylight Plane from 'street' grade or 'side lot' grade and having a single requirement
- the language in new Section 158.098(E)
- that review criteria would only be applicable to existing side properties that have at-grade homes
- that it was up to the applicant to demonstrate to staff they used the criteria to mitigate the impacts, if they qualify
- The number of pre-1975 homes that the criteria would apply to
- Who would be the final arbitrator if a property owner disagreed with staff; the applicant could appeal decisions of the P&Z Official to the Zoning Board of Adjustment

Mr. Younger noted that subsection (f) only refers to 'chimneys' and suggested the language be modified to provide additional parameters, such as 'chimney less than x feet wide' and anything greater would not be allowed.

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

MR. LAPOVSKY MOVED TO RECOMMEND APPROVAL OF ORDINANCE 2020-07 WITH THE FOLLOWING AMENDMENT: SECTION 2(f)(1) BE MODIFIED TO STATE, 'CHIMNEYS LESS THAN FOUR FEET WIDE'. MR. YOUNGER SECONDED THE MOTION.

The Board continued with discussing:

- Whether pre-1975 homes are identifiable and information available to homeowners; staff noted the information was available through the property appraiser's office
- Section (f) language regarding roof overhangs up to two feet; if changing the Daylight Plane requirement to 75 degrees, the roof overhangs should not be included in the language and should be eliminated; staff indicated the language had been a longstanding item as the Daylight Plane requirements were placed in the Town Code in 1997
- Exceptions are common in other daylight plane ordinances

MOTION CARRIED ON ROLL CALL VOTE: GOLD, AYE; GREEN, AYE; LAPOVSKY, AYE; MARSH, AYE; WILLIAMS, AYE; YOUNGER, AYE.

Mr. Parsons informed the Board that when staff drafted the ordinance, the privately-initiated zoning text amendment (Ordinance 2020-05) had not been submitted. Staff will be tracking both ordinances and it may result in modifications to lettering and numbering; both ordinances will be impacted by the section referencing Daylight Plane.

Chair Green referred to the letter that was submitted by Dr. Doreen Dupont during discussion of Ordinance 2020-05 and noted that her comments were intended to be

also applicable to this ordinance. He informed those that submitted emails will have an opportunity to appear before the Town Commission as the ordinance will go through two public hearings as the P&Z Board is only providing a recommendation.

STAFF UPDATE

Mr. Parsons noted that since no items from this agenda were continued by the Board, there would be no items for discussion at the June meeting. He mentioned the Board would be in the summer recess (Zoning Season) for July and August. The next meeting will be scheduled in September, but he was unsure if the meeting would be in-person or another Zoom session.

Chair Green announced the Board would not schedule a meeting in June.

AGENDA ITEM 8 ADJOURNMENT

The meeting was adjourned at 12:54 pm.

Penny Gold, Secretary
Planning and Zoning Board