

**TOWN OF LONGBOAT KEY  
PLANNING AND ZONING BOARD  
MINUTES OF REGULAR MEETING  
NOVEMBER 17, 2020**

The regular meeting of the Planning and Zoning Board was called to order at 9:15 AM by Chair David Green.

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

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

Chair Green informed the Board that Ken Marsh has resigned, and the Town Commission will be interviewing potential candidates for replacement. It is expected the Town Commission will appoint a new member at their December meeting. He continued with recognizing Penny Gold and Debra Williams, who ran for the Town Commission unopposed and will become Town Commissioners in March 2021. Chair Green welcomed Jay Plager to his first in-person meeting.

**AGENDA ITEM 4  
APPROVAL OF VIRTUAL MEETING PROTOCOLS AND PROCESS**

*Allen Parsons, Planning, Zoning & Building Director, provided an overview of the process and protocols for this meeting:*

*The Town continues to operate under a National, State and Local "State of Emergency" due to the COVID-19 virus.*

*On November 2, 2020, the Town Commission adopted Resolution 2020-28 which authorizes the Town Commission and the Town's advisory boards to meet in a "hybrid" meeting format. Hybrid meetings are intended to provide a level of flexibility to all public meetings and hearings while COVID-19 remains a threat. All locally adopted Town provisions governing in person participation requirements have been waived so elected and appointed board members may choose to use telephone and video conferencing for public meetings and hearings, as long as a quorum of the board is physically present at public meetings and hearings.*

*Our hearing and meeting protocols have been adjusted to recognize both in person and virtual components.*

*We continue to publish the agenda in advance at [www.longboatkey.org](http://www.longboatkey.org) and now include the public participation instruction for a hybrid meeting.*

*Any person choosing to appear virtually before the Planning & Zoning Board on quasi-judicial or legislative matters shall continue to be subject to applicable time limits provided for in the Town Code. Individuals may also choose to submit written comments upon registering pursuant to the public comment instructions. The public may also indicate that they will be in-person, subject to the same applicable timelines.*

*All comments received or presented will be part of the public record. When speaking members of the public must 1st state their name, address, and address what item they are speaking about. If they are participating remotely, when not speaking audio should be muted.*

*We continue to use Zoom to hold our public meetings and hearings.*

*We also broadcast the meeting through all of the usual channels and avenues provided when a Planning & Zoning Board meeting is held fully in the Commission Chambers at Town Hall.*

*Our live stream can be viewed at [www.longboatkey.org](http://www.longboatkey.org) and includes closed captioning- there is a slight delay on the streaming video to accommodate the closed captioning.*

*The 6 options that are available for this meeting:*

- Listen to the audio by phone*
- Watch the meeting on the web stream*
- Watch the meeting on the web stream and provide written comments to the Clerk in advance (by 10am the day of the meeting)*
- Watch the meeting and participate using Zoom. Requests to participate in this format were to be submitted to the Clerk in advance (by 10am)*
- Attend the meeting in person, follow all of the required safety precautions required, and observe the meeting*
- Attend the meeting in person, follow all of the required safety precautions required, and speak at the meeting. Requests to participate in this format were to be submitted to the Clerk in advance (by 10am)*

*Should you encounter difficulty with one of the options, we ask that you switch to one of the other options that are available.*

*For today's meeting we have extra precautions here in Town Hall for the safety of the Planning & Zoning Board members, the Public, and our employees that work in Town Hall and/or are presenting at today's meeting.*

*Public entering the building, must enter through the front doors, their temperature will be taken and they will be screened by a staff member from the Clerk's Office. We have limited the occupancy in the Chambers to make sure are meeting the recommended social distancing requirements. Consistent with our mask ordinance we are also requiring masks when someone enters Town Hall, in the common areas and when unable to meet social distancing. We have set up an overflow in the lobby of Town Hall and have an area set up outside in the breezeway for those that do not wear a mask.*

*The Clerk's Office will help manage any in-person public speakers, especially if there is not room in the chambers to accommodate them. She will also read into the record any requests that may have been received by the deadline.*

**AGENDA ITEM 5  
PUBLIC TO BE HEARD**

Opportunity for Public to Address Planning and Zoning Board

No one wished to address the board.

**AGENDA ITEM 6  
|CONSENT AGENDA**

**MR. YOUNGER MOVED APPROVAL OF THE MINUTES OF THE OCTOBER 20, 2020, REGULAR MEETING AND SETTING THE NEXT MEETING FOR DECEMBER 15, 2020. MS. GOLD SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.**

**AGENDA ITEM 7  
535-547 ST. JUDES DRIVE, SPECIAL EXCEPTION APPLICATION (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. Lynn Christensen, applicant, provided the Return Receipts to staff.

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 an overview of the application with reviewing a PowerPoint presentation and noting:

- The request would allow a restaurant and outdoor dining use
- The dining area will be 1,500 square feet (indoor) and 600 square feet (outdoor)
- The parking standards code had been revised by the Town from calculating based on the number of seats to square feet
- There will be 14 parking spaces provided, including two handicap spaces
- One of the structures will be demolished to allow for the construction of 14 parking spaces
- The applicant will have to go through three steps for approval: they have received approval for a variance; this request for special exception; and then a site plan approval
- The project meets, and exceeds, the landscaping requirements, including providing screening of the outdoor dining area in and around the entire perimeter of the property consisting of new plantings and a six-foot high fence along the eastern property line

Mr. Plager commented that C-1 zoning was a transitional area between residential and commercial and asked if C-1 was being used as a transitional buffer, should the next

property be rezoned residential. Mr. Taylor commented the property adjacent was not part of the special exception application and was not considered as part of the discussion. Attorney Mooney explained there should be caution when discussing properties that are not included in the application. The Board could only consider the application before them from the existing property owner, and could not go beyond that to consider other properties that were not included in the application.

Chair Green asked if staff received any written comments from the public in opposition to this application. Mr. Taylor responded no; staff did not receive any correspondence in support or opposition. He questioned if staff had reviewed the impact of the application on adjacent properties. Mr. Taylor replied yes.

Robert Rokop, agent representing the applicant, noted staff had provided the project overview, but he included:

- Harry's Continental Kitchens restaurant is in the process of expanding their business
- The goal was to accommodate potential ongoing social distancing through outdoor dining as they have lost space in their indoor dining from pandemic restrictions
- They were also wishing to accommodate changes in the Zoning Code related to parking
- The alterations were needed to continue sustaining their business
- They believed the revisions will provide improvement to the existing conditions and improve parking
- They recognized the concerns relating to stormwater issues and have addressed those concerns by ensuring containment on site

Chair Green asked if the applicant had any objections to the conditions outlined in the Special Exception Order 2020-04. Mr. Rokop replied no.

Discussion ensued between the Board and staff on:

- Whether the existing restaurant would be connected to 535 St. Judes Drive; the intention is to integrate the structures, whether it was physical or a roof connection (it will not be free-standing)
- If food preparation for the new use will be in the existing restaurant or new building; the main kitchen will remain in the current location; however, there might be food preparation in the new structure
- Whether there was a parking area between the existing restaurant and 535 St. Judes Drive; the existing restaurant did not have parking on the east side, but there was parking on the west side
- How combining the existing restaurant structure with 535 St. Judes Drive will impact parking requirements; staff noted unless there was an increase in square footage of the buildings, there would be no additional impacts
- That the existing restaurant, and associated parking, was approved under the prior parking requirements, which meant the parcel has grandfathered parking and was not impacted

- That parking on the parcels being discussed under this application would be impacted by the new restrictions

Harry Christensen, applicant, explained the reason for the expansion was due to the impacts from COVID-19 (i.e., shutting down of restaurant, limiting indoor seating, etc.). He began the process in May 2020 in an attempt to retain seating that was lost and in order to retain his staff. The request was to prepare for long-term effects from the pandemic. Chair Green asked if Mr. Christensen agreed with the approval conditions. Mr. Christensen replied yes.

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

Discussion ensued between the Board members and staff on:

- At what point does the site become one restaurant, and therefore, subject to new parking requirements
- Whether there was a deficit in the existing parking under the new regulations
- The existing restaurant was approved prior to the new code and stands independent from the new property
- If the owner expands and connects the properties, they would have to accommodate the parking under the new standards; staff would need to determine if all the parking had to be brought up to new code or just the expansion
- If a single restaurant were placed on the property, and required to be evaluated under the Town Code, at what point does it become a single restaurant; staff indicated they have to review the site independently, including reviewing the current square footage and that it met the parking standards – anything else was outside of the special exception request
- The only way to impose the new parking standards was for the entire three parcels to be demolished and build a new restaurant

Attorney Mooney cautioned the board when discussing someone's private property rights that the applicant determines how they want their properties to look and what type of operations. She noted if the owner wished to retain the existing facilities, they can do that, or if they wish to demolish and combine, it was their decision. She pointed out that speculating what the owner should do is beyond the application request.

Discussion continued on food preparation and which site the approval condition referred to with staff noting that 535 St. Judes Drive will have a restaurant use with outdoor dining only. The testimony indicated the food and drink preparation might occur at 535 St. Judes Drive, or in the existing restaurant. There was no commitment to prepare food at 535 St. Judes Drive, but if there was food preparation, it would be inside the building.

**MR. PLAGER MOVED TO APPROVE THE SPECIAL EXCEPTION APPLICATION FOR 535-547 ST. JUDES DRIVE, AS SUBMITTED, INCLUDING THE CONDITIONS OF APPROVAL WITHIN SPECIAL EXCEPTION ORDER 2020-04 AND THE BUFFERING REQUIREMENTS BETWEEN 547 ST. JUDES DRIVE AND THE PROPERTY TO THE EAST. MS. WILLIAMS SECONDED THE MOTION. MOTION CARRIED ON ROLL**

**CALL VOTE: GOLD, AYE; GREEN, AYE; LAPOVSKY, AYE; PLAGER, AYE; WILLIAMS, AYE; YOUNGER, AYE.**

Mr. Plager voiced concern with the discussion that when reviewing an application for a change of use of a property that the Board was not allowed to review adjoining properties and ask whether adjoining properties were adversely affected, or if there were zoning issues on those properties. He believed it was the Board's obligation to look beyond the immediate and look for the long-range consequences from the Board's decisions. Chair Green commented he believed there was an obligation for staff, and then the Board, to review the impact on adjoining properties. The distinction was looking at whether the Board should consider the rezoning of adjacent properties as part of it; rezoning properties was a legislative action, which the Board did not have control over.

Attorney Mooney explained there is a distinction between discussing a rezoning request of a property during a quasi-judicial process where the neighbor/owner are not in attendance at that hearing, as opposed to criteria in the Town Code that discusses how will neighboring properties be impacted. That is different than the question as to whether that property should be rezoned. Chair Green asked if in the future, when there were requests for quasi-judicial items, that staff ensure they explain in the staff report whether the Board was making a recommendation or making a final decision, and what other steps the applicant might have to go through before they could proceed with development.

#### **AGENDA ITEM 8**

#### **WORKSHOP DISCUSSION: COMMISSION DIRECTION TO FURTHER CONSIDER ORDINANCE 2020-07, AMENDING CHAPTER 158.098(D), DAYLIGHT PLANE AND SINGLE-FAMILY RESIDENTIAL STRUCTURE BUFFERING REQUIREMENTS AND AN OVERLAY DISTRICT CONCEPT FOR SINGLE-FAMILY REDEVELOPMENT**

Allen Parsons, Planning, Zoning & Building Director, provided an overview of the Town Commission's direction and P&Z Board's previous workshop discussion with reviewing a PowerPoint presentation and noting:

- The Town Commission disapproved the modifications to the Daylight Plane requirements
- Directed the P&Z Board to consider refinements to Ordinance 2020-07, including provisions for Privacy Guidelines and Standards and the use of an overlay zoning district
- there were modifications to Section 158.098(E) addressing sight line views and privacy
- discussion at the October 20, 2020 P&Z Board workshop included:
  - concept of design criteria
  - eliminating building design and construction materials options
  - administrative authority
  - Overlay Zoning Districts

Discussion ensued with the Board and staff on:

- Concern with taking a situation where there was an older single-family residence and bestowing unique rights on them, but if someone constructed a new structure adjacent to the older home, the Town was eliminating how they can construct their home; the older home could be demolished, but because it now had a multi-story home beside it, the new construction has the freedom to decide how it could be built
- The Town was not providing equal protection when they allow freedom with building design and perhaps, construction materials, because of the unequal application in the long-term
- The impact from revision to Section 158.098(E) noting with the language it was mandatory for a new home to preserve the privacy of the immediately adjacent property, which places a major burden on the applicant
- Reviewing the original mandate and whether have to address as Board; the original started at the Town Commission 2019 Goals and Objectives Workshop
- Discussion began due to new single-family construction at the corner of Buttonwood Drive and Gulf of Mexico Drive
- How many properties were being discussed; staff noted there were 918 single-family homes in the Sarasota County portion, and 836 single-family homes in the Manatee County portion – of those, 340 in Sarasota County were constructed prior to 1975 and 578 after; 433 in Manatee County were constructed prior to 1975 and 403 after
- Suggestion to have a limit on height and state that even though they were going to build at FEMA regulation, under no circumstance would a building exceed a certain height
- Belief that FEMA restrictions themselves set a certain height restriction; there was already a built-in modifier on most, but it was true that a residential portion is limiting the personal value of those properties
- The privacy issue was well intentioned; however, after further review, it would be a “bureaucratic” nightmare as it would prevent renovation/upgrading on the island
- Review of the Bert Harris Act; the proposed language states there is no standard, and there was concern with it surviving a court challenge

Chair Green recommended the Board revisit the four questions that were raised in the December 2019 staff report at the next meeting. Mr. Younger referred to the Overlay Zoning District and noted the Town was too small to create an overlay district for every unique situation that was presented to the Board, and did not believe it should be addressed.

David Bishop, president of the Buttonwood Harbor Homeowners Association, addressed the Board discussing the issue was raised due to the construction of the two new single-family homes at the corner of Buttonwood Drive and Gulf of Mexico Drive. He noted the construction negatively impacted the adjoining properties, which are at-grade homes, and voiced concern that the same situation could arise in other areas of the island if the Town does not address it.

Chair Green commented the specific situation the Board was attempting to address is where there are homes built prior to FEMA requirements, along with a new home that is required to comply with FEMA standards, what additional criteria should be imposed on the new home as it goes through the Building Permit process.

There was continued discussion on:

- the Board needs to decide whether to address bulk and mass or the privacy issues; the bulk and mass could be dealt with by limiting to pre-1975; however, it might be difficult to address the privacy issue
- the economic impact analysis report that was distributed to the Board and the obsolescence of condominiums
- when a condominium association decided to redevelop, it would be their decision as to how to proceed and the cost associated
- the Town's involuntary redevelopment code, and that the Board should be reviewing items in long-term; they did not wish to create something that would become an issue, or negatively impact older structures
- the Board should place focus on single-family structures versus condominiums as they should be encouraging redevelopment of single-family homes while encouraging condominium associations to revitalize their properties
- whether there were any 'role model' communities that have dealt with similar issues or have guidelines that the Town could review; staff had looked into communities for guidelines on massing; however, the models reviewed did not address the issue citywide, but were focused on areas with unique characteristics they wished to preserve
- that Daylight Plane intended to address large-scale homes; staff found the Town's Daylight Plane requirements were more restrictive than other local communities

Chair Green suggested that before the next meeting he will meet with staff to place further workshop discussion on the December agenda. They will take the four questions, along with the fifth question, and determine whether they could prepare a narrative, or context, and work on reconfirming what the Board was trying to accomplish.

## **AGENDA ITEM 9 NEW BUSINESS**

Mr. Parsons informed the Board there was a need to reschedule the January and February 2021 P&Z Board meetings due to the Town Commission rescheduling their meetings, due to holidays, to the same day as P&Z Board. **There was consensus to reschedule the P&Z Board meetings to January 21, 2021 and February 18, 2021.**



## **AGENDA ITEM 10 STAFF UPDATE**

Mr. Parsons noted the following projects were being reviewed by staff for scheduling at a future meeting before the P&Z Board:

- Sun and Sea redevelopment, 4651 Gulf of Mexico Drive – Site Plan and Special Exception applications
- Buccaneer Restaurant, 4120 Gulf of Mexico Drive – Site Plan and Special Exception applications

Chair Green discussed training requirements for new board members pointing out a new member is required to go through the Government-In-The-Sunshine and Ethics training. He suggested staff schedule the training when the Board had the newer members appointed. Attorney Mooney explained she had a discussion with Mr. Plager on the rules and regulations, including Sunshine Law and Ethics laws; however, if there was a need for something more than a 'one-on-one' conversation, then it could be scheduled either via Zoom or in the Commission Chamber. She noted that even if a person was a board-elect or commissioner-elect, the rules still applied, and she asked that the Board members be cognizant that an appointee is "off-limits" to discuss an issue that might come before the Board. Mr. Parsons mentioned there was training provided in 2019 with Gene Boles, University of Florida, and staff was considering bringing Mr. Boles back for additional training.

Chair Green questioned if the Town would be holding another Citizens Academy training session. Mr. Parsons responded it would be dependent upon the COVID-19 situation and the safety of everyone. The training was potentially being rescheduled to March 2021. Chair Green requested that current members of the Board, and new members that might be appointed, be invited to participate in the training.

## **AGENDA ITEM 13 ADJOURNMENT**

The meeting was adjourned at 12:01 pm.

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Penny Gold, Secretary  
Planning and Zoning Board