

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

DECEMBER 17, 2019

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

Members Present: Chair BJ Bishop; Vice Chair David Green; Secretary Ken Marsh, 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 OCTOBER 15, 2019 REGULAR MEETING. MR. MARSH SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

AGENDA ITEM 3

CONSENT AGENDA

MR. MARSH MOVED APPROVAL OF THE 2020 MEETING CALENDAR WITH THE REVISIONS TO THE JANUARY, FEBRUARY, MARCH, AND AUGUST MEETING DATES. MR. YOUNGER SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARINGS

AGENDA ITEM 4

**6920 GULF OF MEXICO DRIVE,
SITE DEVELOPMENT APPROVAL (QUASI-JUDICIAL)**

Pursuant to published notice, the public hearing was opened

All those testifying at this hearing signed a '*Request to Be Heard*' form affirming their evidence or factual representation Mark Anderson, applicant's representative, provided the Return Receipts to the Board

Chair Bishop informed the Board the Town had received an email from the applicant's agent, Lynn Burnett, requesting reordering of the agenda due to a conflict that has arisen, which would cause a slight delay in her attendance at this meeting. She noted there were a number of people from the public in attendance to speak on this issue, and she recommended the Board consider setting a specific time for the hearing for 10:30 AM or the Board could choose to maintain the current schedule. Mr. Younger commented that if the Board set a time certain, they might be in the midst of discussion on another agenda item. Chair Bishop pointed out the remaining items were workshop discussion. Maggie Mooney, Town Attorney, agreed, noting the remaining items were legislative, and it would be acceptable to pause discussion without detriment.

MR. YOUNGER MOVED THE BOARD PROCEED WITH DISCUSSION OF AGENDA ITEM 4 AS SCHEDULED. MR. LAPOVSKY SECONDED THE MOTION.

Attorney Mooney requested the record reflect that the applicant's agent, Lynn Burnett, requested a delay of the agenda item and also indicated that, given the choice, the applicant waives the option of continuing the proceeding to another time. The applicant also indicated they would rather move forward without the applicant's designated representative. Chair Bishop noted the owner's representative, Mark Anderson, was in attendance and asked if he would be prepared to speak. Mark Anderson, Chiles Group, replied yes.

MOTION CARRIED ON ROLL CALL VOTE: BISHOP, NO; GOLD, AYE; GREEN, NO; LAPOVSKY, AYE; MARSH, AYE; WILLIAMS, AYE; YOUNGER, AYE.

Attorney Mooney asked the Board if anyone had any Ex Parte communications or Conflicts of Interest that they wish to disclose on the record. Chair Bishop noted she had received two emails from residents in the Village to her personal account, which she forwarded to the Town Clerk. Attorney Mooney asked the Chair the nature of the emails. Chair Bishop responded the residents opposed the project. Attorney Mooney asked if the Chair could be fair and impartial. Chair Bishop replied yes. She commented she had also visited the site. The remaining board members noted they had no Ex Parte communications or Conflicts of Interest, and could be fair and impartial on their observation of the site.

Maika Arnold, Senior Planner, provided an overview of the project noting:

- The request was for approval of construction of a 300 square foot office with 98 associated parking spaces
- The site is 62,257 square feet, vacant, and has a C-2 zoning designation
- Lot, Yard and Bulk Regulations do not have a minimum floor area requirement for the C-2 zoning district
- Parking was based on the area of the office; and required accessible parking spaces were based upon the parking required for the use on the property

- The applicant was proposing two access drives – one along Cedar Street and one along Palm Drive
- The site meets the yard requirements outlined in Section 158.100
- Previous parking was being provided, and exceeded the code requirements, along with managing the stormwater runoff

Mr. Green asked if there will be separate stormwater retention provided on site. Ms. Arnold commented the applicant would be able to address that question; however, the Town's Public Works Director reviewed the application and it was satisfactory to his review.

Ms. Arnold continued with her presentation discussing:

- The owner intends to use the site's excess parking to serve the Mar Vista restaurant at 760 Broadway
- The restaurant will use the site at peak times to provide a park-and-ride facility to allow restaurant employees and customers to park at this location and ride a shuttle to the restaurant
- They will use a solar powered electric golf cart, serviced by the current valet service company that services Mar Vista
- The Town's Zoning Code does not have provisions that address maximum parking or how a private parking lot can be used
- The Zoning Code does not prohibit use of off-site parking for other uses when a use has excess parking
- Mar Vista restaurant could not use the excess parking for its 'required' parking
- The project meets the landscaping requirements set forth in Zoning Code Section 158.030(E)(5) and 158.100(J)
- Applicant has proposed to preserve and/or relocate 40 trees
- the Findings of Fact contained in the Staff Report

Attorney Mooney questioned if the Findings of Fact were staff's analysis of Town Code Section 158.031. Ms. Arnold replied yes. She continued with reviewing the conditions of approval contained in Site Development Order 2019-02.

The Board continued with discussing the following topics:

- Public notification of the availability of the lot and the signage; the owner would only be allowed to provide one sign no more than two square feet in size
- Clarification of the trip generation calculations; the applicant indicated the site would not generate new trips as the Mar Vista Restaurant generated a certain number of trips, and this site would not generate new trips to Mar Vista, but capture those number of trips attributed to Mar Vista.
- That the Town Code has a requirement that off-site parking be within a certain number of feet of a restaurant; 600 feet was required for parking (the Mar Vista is 1,800 feet from the proposed site)
- The projected completion of the project, which would be the summer of 2020
- Whether a parking lot was permissible in C-2 zoning

- In terms of pervious parking, the calculation to the extent the pervious design is equal to the site improvement
- The current tree inventory and the over abundance of Australian Pines on the site; the applicant provided a current inventory and would be removing the Australian Pines
- The use of pervious surface would lessen the impact of runoff into the bay; staff could not guarantee there would be absolutely no runoff, but the use of pervious materials would lessen the impact
- The applicant provided a lighting plan and would be utilizing solar lights
- Whether the applicant was aware of the conditions imposed in the Site Development Order, and if they were acceptable; staff noted the applicant had not indicated they disagreed with any of the conditions
- The Conservation and Coastal Management Element of the Town's Comprehensive Plan, and the policy that encouraged the removal of nuisance species; the applicant met the policy, because they would be removing a number of exotics and nuisance species
- The timeframe for use of the lot and the indication that the lot would close at 11:30 PM; staff noted the timeframes were provided by the applicant
- Discussion on the runoff from the site and whether there was an analysis of the capacity; typically, there was preliminary engineering completed at the site development approval stage, and then ultimately, when it comes in for development for building permit, which is when the details were finalized in relation to amount of volume treated on site, stored on site; etc.
- Review of the infiltration trench diagram, and that the Town's Public Works Director reviewed noting it was sufficient
- Whether the site was for the exclusive use of the Mar Vista, or would it be shared with other users; staff pointed out the application states it was for Mar Vista, but did not state it was exclusive

Mark Anderson, Project Manager of Development for the Chiles Group, along with Robert Baugh, Operating Officer for the Chiles Group, made themselves available for questions.

There was discussion between the applicant and the Board related to:

- The use of the parking lot for valet versus self-parking
- That the proposal was to address complaints from residents related to parking on the streets in the Village
- It provided an opportunity to create space for their Human Resource Department, which consisted of 400 employees between three restaurants, but they did not have sufficient space in their current location for the staff
- the use of a shuttle to and from the restaurant; a reduction of the traffic impact in the area; use of the lot for valet and self-parking; and the hours of operation.
- Whether the applicant agreed with the conditions contained within the Site Development Order to which the applicant responded they did not read anything that would be a concern to them
- Whether the applicant's intention was to require the employees to park in this lot to which the applicant responded yes

- Availability of the lot for use by The Shore Restaurant or others
- Clarification on how many employees were working a typical shift; in off-season there were typically 15 employees, and during season that amount would double
- The use of this lot would allow the reduction of at least two dozen vehicles not being parked on the street.

Mr. Anderson explained the infiltration system commenting that all parking lots are infiltration system lots. They require maintenance, and they are prepared to keep it maintained. The maintenance of the infiltration trench would require removal of the dirt over the layer of sand (a minimum of 36 inches). They would take 100 percent of the materials and transport to their farm to minimize the waste in the landfill.

At the request of the Chair, Attorney Mooney discussed the process for considering criteria in a Quasi-Judicial hearing, and the three elements that were reviewed by the courts.

Mr. Younger suggested the Board recess for a few minutes and then come back in order to allow the applicant's agent, Lynn Burnett, an opportunity to provide information.

The Board recessed from 10:20 AM to 10:28 AM.

Ms. Chipman swore-in Lynn Burnett, engineer representing the applicant. Ms. Burnett discussed the permeable surface and the infiltration system used for the lot. She commented that the systems had been used on the other barrier islands and have been successful. The systems have been on the island since 2012 and provided a 100 percent capture of runoff with no discharge into the bays or canals as the materials were captured within the stone beds.

The following individuals commented on the application:

- Christy Lowe, Whitney Beach Condominiums
- Paul Hylbert, Gulf of Mexico Drive
- Gene Jaleski, Cedar Street
- Larry Grossman, Sarasota
- Michael Drake, Longboat Drive South

Chair Bishop questioned if the Chiles Group had discussions with the owner of Whitney Beach Shopping Center about the possibility of utilizing their parking. Mr. Drake commented he had spoken with Ryan Snyder, owner of Whitney Beach Shopping Center, who noted the applicant had not contacted him. Mr. Green asked if the shopping center owner would have the ability to offer parking spaces, and if so, how many could be offered without impacting their ability to comply with zoning requirements. Mr. Drake responded he did not know those numbers, but assured there were spaces available.

Others who commented on the application included:

- Patricia Zunz, Lands End
- Catherine Hylbert, Gulf of Mexico Drive

Ms Burnett discussed that prior to submitting their application, they had numerous discussions with staff in looking to the future and being proactive to address the parking

issues in the Village. Discussion ensued with the Board on: whether runoff from a parking lot was equivalent, in terms of its composition, from the existing condition of the site. Mr. Green asked if the applicant would be agreeable to an additional condition that the parking lot must be utilized by employees of the Mar Vista, and if used differently than what was considered today, the Town would have an opportunity to revisit. Ms. Burnett replied yes. Mr. Younger discussed the statement concerning the runoff, and the impact of the oils and residues; and also noted there was no ability for the Town to enforce the stipulation that the lot must be used by the employees. Ms. Burnett addressed her statement concerning the infiltration system noting that her statement was it would capture 100 percent of the pollutants in the first few layers. The maintenance would be to remove the first few inches.

The following items were discussed by the Board with Ms. Burnett:

- The process for removal of the pollutants
- that with 400 employees, this was an office building that would only accommodate two employees and whether there were thoughts about expanding in the future
- that each one of the restaurants have their own offices built-in for the management
- whether the owner would consider a stipulation that the lot would not be used by valets and would only be used by employees; that patrons would go directly to the lot and be shuttled
- parking at the Mar Vista Restaurant and concern the parking spots at the restaurant were being restricted – spots that were required by the Town for approval of the restaurant

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

Attorney Mooney reviewed how the board should proceed in their Quasi-Judicial role.

There was a question from Chair Bishop requesting clarification on how the Town Code addressed established, required parking for an entity; does it allow the business to restrict the use of the spaces. Attorney Mooney explained there was no language in the Town Code that states how an owner utilizes their parking spaces on the site, and the Town did not have the ability, under the Code, to direct people that they shall use their parking a certain way.

MR. MARSH MOVED APPROVAL OF SITE DEVELOPMENT ORDER 2019-02 FOR 6920 GULF OF MEXICO DRIVE, SUBJECT TO THE CONDITIONS OUTLINED IN THE STAFF REPORT, AND SUBJECT TO THE ADDITIONAL CONDITION THAT THE EMPLOYEES BE REQUIRED TO USE THIS LOT FOR PARKING. MR. GREEN SECONDED THE MOTION.

Following individual comments from Board members related to the application, the **MOTION TO APPROVE SITE DEVELOPMENT ORDER 2019-02 PASSED ON ROLL CALL VOTE: BISHOP, AYE; GOLD, AYE; GREEN, AYE; LAPOVSKY, AYE; MARSH, AYE; WILLIAMS, AYE; YOUNGER, AYE.**

Mr. Marsh left the meeting at 12:03 pm.

The Board recessed for lunch from 12:03 pm – 12:43 PM

WORKSHOP DISCUSSION ITEMS

AGENDA ITEM 5

SINGLE FAMILY STRUCTURE HEIGHT, INCLUDING DAYLIGHT PLANE REQUIREMENTS

Allen Parsons, Planning, Zoning and Building Director provided an overview of the item as follows: –

- this was an issue that the Town Commission reviewed and workshopped to address the type of building in the town
- the Town Commission requested Planning & Zoning Board input to frame future discussion
- the Town Commission had discussed Daylight Plane and compatibility with new single-family residential structures
- the Town Commission discussed:
 - Federal Emergency Management Agency (FEMA) requirements
 - Options to consider lowering maximum height of homes
 - Creation of nonconforming structures, if regulations are modified
 - Options to modify the way Daylight Plane may be measured and regulated
 - Daylight Plane waivers that have been granted, and
 - Engaging architectural expertise on Daylight Plane requirements
- Land value drives buyers to make their structures larger
- It is a town-wide issue
- Reviewed the existing code related to what was allowed for height
- Entire island is in a 'Special Flood Hazard Area,' which required elevation of structures above the 100-year floodplain

Discussion ensued between the Board and staff on the following issues:

- If someone wished to build new construction on the island, could they build it at-grade; staff noted that was not allowed
- What was the minimum grade on the island; grade is at ground level with the Village area being 2-3 feet above sea level and there were other ranges within the town
- Was an owner allowed to bring in fill to obtain Base Flood Elevation (BFE); an owner would be allowed, but would have to meet a 4:1 ratio
- All new construction was required to meet FEMA regulations and elevations
- The Town requires an additional one foot for 'freeboard', and if the site was forward of the Coastal Construction Control Line (CCCL), it required an additional three feet of height to raise above the flood elevation
- Reviewed why structures were required to elevate
- The Town was entirely within a special flood hazard area and are required, by flood insurance, to mandate structures be elevated above BFE
- Daylight Plane was a requirement for taller buildings to be set back further from the side property line
- Why the Town does not measure from the lower level for Daylight Plane

- The criteria and process for granting a waiver from Daylight Plane
- That surrounding communities have a similar requirement, but were more permissive than Longboat Key
- Compatibility characteristics were: scale, massing, and privacy

Mr. Lapovsky questioned if privacy was a legitimate issue that the Town should be concerned with. Attorney Mooney responded she would have to look into that; as it was entirely possible that privacy rights have developed even further in a land use perspective. Mr. Parsons discussed legal constraints and the Bert Harris Act.

Chair Bishop asked about neighboring property owners being inordinately burdened by the increase in height. Attorney Mooney explained flood and sea level rise protection was becoming a priority, and there was a question of what it meant for existing and future housing products. It would be the Board's determination as to where they wish to go in the future. She discussed the Bert Harris Act noting if the Board modified the regulations in such a way that would take away something the owner had a reasonable expectation to think they have, then it might be an issue under the Bert Harris Act. Chair Bishop questioned how the Town protects the architectural integrity of older communities. She suggested one of the items that could be reviewed was inclusion of 'serious landscaping.'

The Board continued with discussing

- Establishing some guidelines so massing and scale are considerations when someone submits for a permit
- That under certain situations, and included in the review process, there be an enhanced level to landscaping for privacy
- The Town Code criteria that is applied during Variance requests before the Zoning Board of Adjustment
- Concern with limiting the height of a building, because of the surrounding neighborhood
- The only way to mitigate the height will be landscaping that protects the adjoining properties without restricting the applicant from building what they are allowed by Town Code
- Massing and scale need to be reviewed; there should be a guideline, or criteria, that should be part of the applicant's burden, and that staff review related to massing
- Question related to elevation for floodplain and the difference between the east versus the west side of Gulf of Mexico Drive; could there be an adjustment on the bayside versus the gulf side (the challenge would be it would apply to zoning districts)

Gene Jaleski, Cedar Street, discussed setbacks, density, and massing.

The Board provided the following direction to staff:

- Interest in seeing some architectural massing so rigid fronts did not have a major impact on the neighborhood
- Protection of privacy for existing properties
- Address landscaping and design without impacting property rights
- Explore measuring Daylight Plane from the ground and if other jurisdictions have done it/been challenged in court

- Were there other standards for ‘massing’ in other jurisdictions and how they handle
- Exploring other communities and their restrictions
- Review design criteria with emphasis on privacy and a different way to measure Daylight Plane

Mr. Parsons noted staff will bring back for discussion at the next meeting.

AGENDA ITEM 6 RESTAURANT PARKING REQUIREMENTS

Maika Arnold, Senior Planner, discussed the following with the Board:

- The Town Commission eliminated the parking waiver and flexibility provision in the Commercial Revitalization provisions
- The Town Commission provided consensus to evaluate restaurant parking requirements
- The Zoning Code requires parking for uses differently, based on the use of the property
- Section 158.100 (D) of the Zoning Code provides a schedule of off-street parking requirements
- A restaurant is required to provide one parking space per four seats based on maximum allowable capacity
- The Town counts seats at tables and bars, based on the definition of a restaurant
- Reviewed the definition of ‘Restaurant’
- Staff conducted a review of Zoning Codes from surrounding and similar jurisdictions
- The Town’s parking requirements are less stringent than other jurisdictions

The following discussion took place between staff and the Board:

- Concern with ‘within the building’ in the definition; suggestion to revise to ‘within the premises’
- There are a number of jurisdictions that do not require parking based on seats
- Request for staff to revise and bring back a new definition
- That the Board might wish to focus on ‘occupancy’ versus ‘tables’
- That the ‘Outdoor Dining’ definition refers itself to an enclosed space
- There are life safety requirements for occupancy standards
- Defining the seating areas and service areas, along with defining the areas which would be considered ‘waiting’ areas; impose strict regulations for ‘waiting areas’
- Review how zoning applies to ‘take-out’ restaurants
- That the parking standards do reference indoor or outdoor
- The approved parking for existing restaurants
- Encouraging staff to review the codes for Sanibel Island and determine how their restrictions would impact parking on Longboat Key
- Any new requirements should not be based on seating
- Whether the Board should consider reviewing off-site parking for restaurants
- Whether a restaurant, when submitting a plan for approval, should address their plan for employee parking

- If government can dictate how to use required parking; if the site was required to have a certain amount of spaces, then they need to be open and available for customers
- Discussion on use of valet parking and if spaces are required, they must be open to the public at no cost – should not be forced to use valet

Attorney Mooney noted there are several jurisdictions in Pinellas County that require valet parking for certain restaurants. Staff can review to determine if there are models available that mandate valet parking. Mr. Parsons pointed out the intent behind The Shore and Mar Vista restaurants utilizing valet parking was to create more spaces than available.

Cyndi Fisher, Linley Street, questioned the non-seated capacity and enforcement under the Code; and commented that the valet parking in the Village was working.

AGENDA ITEM 7 SWIMMING POOL DEVELOPMENT STANDARD PROVISIONS

Allen Parsons, Planning, Zoning & Building Director, provided an overview as follows:

- During the Zoning Code rewrite process, staff identified a number of provisions and code sections to revise and revise in order to add clarity
- Staff had received feedback from the public that the Swimming Pool Code provisions could be difficult to interpret
- During the P&Z Board’s review of the Batch 2 amendments at their September 17, 2019, meeting, the Board recommended redrafting versus editing the standards
- There were several types of pools:
 - low elevated pool
 - low elevated pool with cage
 - elevated (six inches above finished grade)
 - elevated (six inches above finished grade) with cage
- Discussed Section 158.095(B)(1)

Mr. Younger suggested staff place all pools at the same standard, which would decrease the different types. Discussion ensued on caged pools, the appearance of bulk, elevated pools, and non-elevated pools.

Mr. Parsons noted that staff would develop a two-row table with two types of pools with footnotes. One for at-grade pools, which would provide advantages in relation to its location and how much of the site it can occupied; and all other pool types would have to meet code requirements.

AGENDA ITEM 8 NEW BUSINESS

There was no New Business.

STAFF UPDATE

Mr. Parsons reviewed the staff report outlining the Board’s accomplishments over the past year.

Mr. Parsons informed the Board that the three workshop items from this meeting will be scheduled for the January meeting. He noted there might be a site plan amendment

approval scheduled for the meeting for the Aria development, who were requesting the addition of a proposed caretaker structure on the property. The submittal was currently in the staff review process.

ADJOURNMENT

The meeting was adjourned at 2:47 pm.

Ken Marsh, Secretary
Planning and Zoning Board