

**TOWN OF LONGBOAT KEY  
ZONING BOARD OF ADJUSTMENT  
MINUTES OF REGULAR MEETING  
MARCH 18, 2021**

Members Present: Chair Gaele Barthold, Vice Chair Neal Colton, Secretary Ann Roth  
Members Aaron Kleiner

Members Absent: Kevin Magnus

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

**1. Call to Order**

The regular meeting of the Zoning Board of Adjustment was called to order at 9:37 AM by Chair Gaele Barthold.

**2. Roll Call**

Senior Office Manager, Donna Chipman, called roll for attendance with all members present.

**3. Virtual Meeting Protocols and Process**

Allen Parsons, Planning, Zoning & Building Director, reviewed the process and protocols for the virtual meeting.

**It was moved by Kleiner; seconded by Colton, to accept the Virtual Meeting Protocols and Process, as presented by staff. Motion carried unanimously.**

**4. Public to be Heard**

At each meeting, the Zoning Board of Adjustment (ZBA) sets aside time for the public to address issues not on the agenda. No one wished to address the board.

**5. Consent Agenda**

**It was moved by Colton, seconded by Kleiner, to approve the October 15, 2020 Zoning Board of Adjustment Meeting minutes as written and scheduling the next regular meeting for April 15, 2021. Motion carried unanimously on roll call vote: Colton, aye; Kleiner, aye; Barthold, aye; Roth, aye.**

**6. Public Hearings**

**Petition PDP21-0001, 3602 Fair Oaks Lane, Daylight Plane Waiver Application  
(QUASI-JUDICIAL)**

The public hearing was opened for Petition #PDP21-0001 by David Danna, property owner, requesting approval of a Daylight Plane Waiver in accordance with Town Code Section 158.098(D) of the Town of Longboat Key Code of Ordinances to increase the Daylight Plane angle from the required 62 degrees to 68.5 degrees on the east side and

65.5 degrees on the west side of the home, for property located at 3602 Fair Oaks Lane.

Maggie Mooney, Town Attorney, reminded the ZBA members of the legal requirements associated with quasijudicial meetings, and asked if any members had any Ex Parte communications or conflicts of interest. There were no Ex Parte communications or conflicts of interest noted.

All those testifying at this hearing submitted, and signed, a '*Request to Be Heard*' form affirming their evidence or factual representation. Proof of Advertising in the *Sarasota Herald-Tribune*, the Town Attorney's Opinion and the Staff Report, including supporting documentation, are part of the applicant's file. Stacy Fastiggi, representing the applicant, previously presented the Electronic Return Receipts to staff.

Maika Arnold, Senior Planner, duly sworn, provided an overview of the petition as follows:

- Reviewed a PowerPoint Presentation, the Daylight Plane criteria, and the Findings of Fact contained in the staff report
- Noted that the northeast angle meets two of the three Daylight Plane criteria; however, concerning the southwest angle, the applicant has not provided sufficient information to demonstrate the request, or waiver, will not impact the property to the southwest
- The applicant has also not demonstrated that the strict application of the required 62 degrees, on the southwest side, would deprive the owner of a reasonable design (criteria (c) )
- Staff is recommending approval of the 68.5 degree angle on the northeast side of the structure, but is recommending denial of the requested 65 degree angle for the southwest side of the structure

Town Attorney Mooney asked Ms. Arnold to include her professional credentials on the record. Ms. Arnold responded she was American Institute of Certified Planners (AICP) certified, has been working with the Town of Longboat Key as a planner for six years and prior to that as a planner for three years in Ohio. Town Attorney Mooney asked Ms. Arnold who carried the burden, based upon the Town Code, in demonstrating qualifications for a Daylight Plane Waiver. Ms. Arnold noted the applicant would carry the burden on providing the information to meet the criteria of the Daylight Plane Waiver. Chair Barthold asked if staff was stating the applicant did not prove there would not be an impact on the neighbor. Ms. Arnold responded the applicant did not provide sufficient information as to the impact, or state whether the applicant would be deprived of reasonable design by adhering to the 62-degree angle requirement.

Charlie Re, contractor representing the applicant, reviewed the project with the Board explaining:

- He has been a State-licensed contractor since 1985 and was familiar with the Queens Harbor development as he was responsible for construction of most of the homes in the 1990s
- The applicant wishes to construct a second story addition over the garage

- The result of compliance with the 62 degree required angle would provide for a seven foot ceiling height, which was low
- reviewed a side view of the existing house showing they would be going up another 10-11 feet
- the garage addition will be higher than the existing house, but should terminate clean with waiver
- if they “stepped” the addition back to meet the required 62-degree angle, it would not look aesthetically correct

Discussion ensued with the Board and and the applicant on:

- The intended use of the room above the garage, which the applicant indicated was for a spare bedroom and bathroom of 450 square feet (20x22)
- There have been four other Daylight Plane Waivers granted in Queens Harbor for second story additions, and the other 25 properties they constructed were able to meet the required angle
- Whether the applicant could adjust the ceiling on the room so some portion of it could be substantially higher than the remainder in order to meet the Daylight Plane requirement; the applicant indicated they did not believe they could maintain the architectural integrity of the structure
- Whether the applicant has prepared an alternative site plan that was within the requirements of the Town Code in order to compare and explain why meeting the code would be a burden; Mr. Re noted the registered architect for the project had only prepared one set of plans

Robert Gorei, 3600 Fair Oaks Lane, stated he owned the property that directly abuts this site. He mentioned he was not consulted by the owner, and was first notified of the proposed request when he received the required certified notice from the applicant. Mr. Gorei continued with discussing:

- If the plane of the existing wall is maintained, then he believed the intrusion into his property would be quite minimal
- He wished to maintain his privacy and would object to any window on that side which viewed into his family room
- He did not have any negative or positive comments, but wished to state that any intrusion on his privacy would be objectionable

Mr. Kleiner asked if Mr. Gorei has any objection to the Daylight Plane Waiver request. Mr. Gorei responded no to the technical point before the Board, but yes if there were other ramifications. He noted it appeared to have minimal impact on the use of his property. Mr. Re addressed Mr. Gorei’s concern with windows, pointing out that any window would be either glass block or non-existent. He mentioned that Queens Harbor’s architectural review board would not allow windows on that second floor bedroom, unless they were obscure glass or a small transom higher up, but no window that would invade the privacy of the adjacent neighbor.

Ms. Roth asked if it would be possible to redesign the addition within the required Daylight Plane; if the applicant could go back to the architect in an attempt to resolve

the issue. Mr. Re explained by moving the room over and making it smaller would create a 'jog' in front of the home that was not typical of any other structures in the subdivision. He noted that forty percent of the homes were two-story. Stacy Fastiggi, agent representing the applicant, included that it would compromise the aesthetic value of the home, and it was believed that the architectural review board would not approve it.

Mr. Colton questioned if it was the applicant's testimony that they chose not to provide an alternative plan after learning the Town rejected the west side elevation due to previous board approvals of prior Daylight Plane Waiver requests. Ms. Fastiggi responded yes.

The Board recessed from 10:27 am to 10:33 am.

Discussion ensued between the Board, the applicant, and staff on:

- Five properties who received approvals and the degree of Daylight Plane Waiver from those previous approvals; that the applicant needed to provide the specifics of those waivers and the degree of waiver
- Whether the previous waivers were relevant to this application; Town Attorney Mooney explained they were not as the criteria that the Board needed to consider did not require review of previous approvals
- The burden is on the applicant, and not Town staff, to put forward an application and to meet the applicable elements of the Town Code
- All three criteria in the Daylight Plane Waiver regulations have to be met and must be based upon competent, substantial evidence
- That staff has found that subsection (b) of the code was met, but also concluded that the southwest angle may have an impact on the adjacent neighbor
- Whether the testimony from the adjacent neighbor, who believed it would not be a substantial impact, was legally sufficient to over ride what staff has concluded under subsection (a); Town Attorney Mooney noted the ZBA weighed the evidence before them and if they decide the evidence was of equal weight, then it was up to the Board to ensure there was sufficient evidence in the record to sustain their findings

Chair Barthold asked whether the Board could request that the applicant provide alternatives, based on Mr. Colton's comments, and continue the hearing. Town Attorney Mooney responded it was within the Board's prerogative to continue the meeting to a date and time certain, which would not require further notice. At that meeting the Board can consider additional evidence that the applicant might wish to present with respect to the criteria.

Mr. Kleiner asked if Mr. Gorei was the only neighbor that was affected by this request. Ms. Arnold replied correct; he was the only adjacent neighbor that would be impacted by the addition as the other side abuts water.

Mr. Kleiner found it unfortunate the applicant did not contact the neighbor so the Board had the information prior to the hearing; however, based on his past experience as a builder, he did not believe there was a reasonable alternative for the structure, and it was a minor adjustment. Mr. Colton believed the burden was on the applicant to show

the Board, in some fashion, how it is burdensome. He felt an alternative design, that met the criteria of the existing code, would be helpful, along with addressing a minor adjustment on the interior of the addition, and correspondence from the Queens Harbor Architectural Review Board as to whether it would impact their review board action. He supported continuance of the hearing if the applicant decided to return and supplement the record.

Ms. Roth voiced concern with setting a precedent, and she understood the Board had provided waivers in the past, but continuing to approve was impacting the aesthetics of the island. She agreed with Mr. Colton that the applicant should bring back an alternative for consideration.

Chair Barthold addressed the west side of the property and was concerned that no effort was made to prepare an architectural alternative to see what the reasonable alternatives were once the Town noted they were not recommending a waiver for that side of the structure. She would feel more comfortable continuing the hearing and receiving more evidence in the record to make a determination. Chair Barthold asked the Town Attorney if the Board recommended continuing the hearing in order to obtain additional information, should they act upon the one waiver that was being recommended at this hearing. Town Attorney Mooney recommended the Board wait until the next hearing and consider the waiver request in its entirety for purposes of final action.

Chair Barthold asked the applicant whether they wished to continue the hearing in order to submit additional information for consideration by the Board. Mr. Re responded they would agree to a continuation to bring back additional supporting evidence.

**It was moved by Colton, seconded by Roth, to continue the Zoning Board of Adjustment hearing on Petition PDP21-0001, for 3602 Fair Oaks Lane, until 9:30 AM on April 15, 2021. Motion carried unanimously on roll call vote: Colton, aye; Kleiner, aye; Barthold, aye; Roth, aye.**

## **7. New Business**

There was no New Business.

## **8. Staff Update**

There was no Staff Update.

## **9. Adjournment**

The meeting was adjourned at 10:54 am.

Respectfully submitted,

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Ann Roth, Secretary  
Zoning Board of Adjustment