

## M E M O R A N D U M

**TO:** Tom Harmer, Town Manager

**FROM:** Allen Parsons, AICP  
Director, Planning, Zoning and Building Department

**REPORT DATE:** November 18, 2021

**MEETING DATE:** December 6, 2021

**SUBJECT:** Subdivision Variance: Arpke Subdivision

### **Recommended Action**

Pass Subdivision Variance Order 2021-01

### **Background**

A Subdivision Variance request is proposed for the Arpke Subdivision, which consists of three properties located at 680 Cedar Street, 690 Cedar Street and 681 Hibiscus Way. The properties are zoned R-6SF, "Single-Family High-Density Residential District" and have a Future Land Use designation of RH-6, "High Density Single-Family/Mixed Residential". The properties, totaling 0.96-acres, currently have one single-family home on the center lot, 690 Cedar Street. The two other lots, 680 Cedar Street and 681 Hibiscus Way, are vacant.

The Town Commission approved the Arpke Subdivision on November 7, 2005. As part of the subdivision approval and in order to create three conforming lots, Town Code required the applicant to provide roadway access to each lot. The Final Plat was approved with a 50-foot private roadway and drainage easement and public utility easement to that minimum street frontage requirement. This easement connects Cedar Street to Hibiscus Way.

The applicant is now seeking to develop the two remaining vacant lots within the subdivision and build two additional single-family homes. As part of the permitting requirements, the property owners are required to construct the private road to Town standards, prior to issuance of any building permits within the subdivision. The private road has to meet the requirements of Section 157.49(H) of the Subdivision Code, which requires private roads to have a pavement width of 22 feet. Section 157.58(B) of the Subdivision Code also requires that private roads have an approved "wearing surface," which is typically an asphalt cap.

The applicant is seeking a Subdivision Variance from Sections 157.49(H) and 157.58(B) of the Subdivision Code in order to alternatively construct a 16-foot-wide private roadway, where 22-feet is required, and to utilize compacted shell for the approved wearing surface, where an asphalt cap would typically be required.

The applicant has indicated that constructing the private road to Town standards would have a number of negative impacts on the Arpke Subdivision, as well as the surrounding neighbors. The applicants note that full width private roadway

construction would result in removing existing trees and landscaping. The applicant also asserts that the proposed 16-wide shell private roadway would preserve the existing character within the neighborhood and would maintain the look and feel of the existing surrounding public rights-of-way. For example, the existing driveway that leads to the single-family home at 690 Cedar Street is compacted shell and the portion of Hibiscus Way that connects to the subdivision is also compacted shell.

The Town also received a letter from surrounding neighbors who are in support of granting this Subdivision Variance, as they feel it would negatively impact the neighborhood if a paved roadway was constructed.

### **Analysis**

The Town's Public Works Department and the Fire Marshal reviewed the Subdivision Variance application to ensure consistency with Town policies and codes. The Public Works Department has no objection to the reduction in roadway width. Furthermore, the Public Works Department has no objection to the utilization of 12" of compacted shell as the approved wearing surface, along with a recognition that the private roadway will essentially serve as a driveway for a small, low traffic-volume, in-fill subdivision, in an existing neighborhood. The Town's Fire Marshal found that the proposed private roadway would meet the minimum requirements of the Florida Fire Prevention Code for life safety and would provide sufficient, stabilized access to emergency vehicles.

Subdivision Code Sections 157.07 provides the review standards for Subdivision Variance applications. The following is an analysis of the Findings of Fact standards for Subdivision Variance approval.

*Strict application of the provisions of the Subdivision Regulations would deprive the applicant of the reasonable use of their land.* The properties are located along Sarasota Bay, with additional street frontages on Cedar Street and Hibiscus Way. The properties are also heavily landscaped, which is consistent with the character of the nearby Longbeach Village properties. Strict application of the Subdivision Regulations would require the applicants to construct a paved urban-character road that will function mainly as a driveway that is primarily internal to a 3-unit subdivision. Staff does believe that this would impact the character of both the subdivision and could impact the surrounding properties by changing the nearby Longbeach Village character comprised of multiple, narrower shell roads with significant landscaping/vegetation. Staff is of the opinion that constructing the road to the required Town width of 22-feet could be viewed as unreasonably requiring the applicant to remove trees and vegetated open space from the site. Utilizing compacted shell in a smaller footprint would maintain additional open space and elements of the existing vegetation, providing reasonable use of land for the property owners.

*The variance is necessary for the preservation and enjoyment of a substantial right of the petitioner.* Staff is of the opinion that allowing the applicant to construct a smaller roadway with compacted shell will allow for the preservation of more of the property's trees and landscaping, thereby maintaining the existing Longbeach Village character of the many nearby properties.

*The granting of the variance will not be detrimental to the public welfare or injurious to other property in the territory in which the property is situated.* The proposed variance is internal to a small subdivision site and will not have an impact on surrounding property as the private roadway will primarily serve as a driveway access to 3 single-family homes. Staff is of the opinion that the variance would allow the applicants to maintain and preserve the existing character of the surrounding neighborhood and preserve both landscaping and open space.

### **Planning & Zoning Board (P&Z Board) Recommendation**

At their November 16, 2021 Regular Meeting, the P&Z Board recommended approval (5-2) of Subdivision Variance Order 2021-01. Two P&Z Board members did not find there was enough competent substantial evidence to deem that strict application of all of the provisions of the Subdivision Regulations would deprive the applicant of the reasonable use of their land.

Subdivision Variance Order 2021-01 can be found in Attachment A. A full copy of the materials distributed to the P&Z Board, including the applicant's materials can be found in Attachment B. The P&Z Board draft minutes from the November 16, 2021 meeting are provided in Attachment C. The PowerPoint Presentation for the Town Commission hearing is provided as Attachment D.

### **Staff Recommendation**

Pass Subdivision Variance Order 2021-01.

### **Attachments**

- A. Subdivision Variance Order 2021-01
- B. Materials Distributed to the P&Z Board (Available in Town Clerk's Office)
- C. November 16, 2021 P&Z Board Draft Meeting Minutes
- D. PowerPoint Presentation (Available in Town Clerk's Office)

**TOWN OF LONGBOAT KEY, FLORIDA  
TOWN COMMISSION  
SUBDIVISION VARIANCE ORDER NO. 2021-01**

**AN ORDER OF THE TOWN OF LONGBOAT KEY (“TOWN”)  
TOWN COMMISSION APPROVING SUBDIVISION VARIANCE  
APPLICATION NO. PSV21-0001 FOR THE ARPKE  
SUBDIVISION, TO CONSTRUCT A 16-FOOT-WIDE PRIVATE  
ROADWAY WITH 12 INCHES OF COMPACTED SHELL FOR  
THE ROADWAY’S APPROVED WEARING SURFACE;  
PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Michael Kimball (hereinafter the “Owners”) owns certain real property located at 680 Cedar Street (hereinafter “Property”); and

**WHEREAS**, Raymond and D’Arcy Arpke (hereinafter the “Owners”) own certain real property located at 690 Cedar Street (hereinafter “Property”); and

**WHEREAS**, Frank Sands Jr (hereinafter the “Owners”) own certain real property located at 681 Hibiscus Way (hereinafter “Property”); and

**WHEREAS**, the above described real properties are immediately adjacent to one another and are part of the Arpke Subdivision (hereinafter “Subdivision”); and

**WHEREAS**, on November 7, 2005, the Town Commission approved a final plat, which subdivided the Property into three lots to create the Arpke Subdivision; and

**WHEREAS**, the Subdivision contains a 50-foot-wide private roadway and drainage easement; and

**WHEREAS**, Sections 157.46(H) and 157.58(B) of the Town’s Subdivision Code requires that the Owners construct a private roadway that is 22-foot wide with an approved wearing surface, such as an asphalt cap; and

**WHEREAS**, the Owners have collectively applied and submitted Subdivision Variance Application No. PSV21-0001, to seek a variance from the above referenced private roadway subdivision standards pursuant to Section 157.07 of the Town’s Subdivision Code; and

**WHEREAS**, the Owners are requesting that the Town Commission grant a variance for the construction of a 16-foot-wide private roadway, instead of the 22-foot roadway required by Section 157.46 (H) of the Town’s Subdivision Code, and allow the Owners to utilize 12 inches of compacted shell for the approved wearing surface, instead of an asphalt cap required by Section 157.58(B) of the Town’s Subdivision Code; and

**WHEREAS**, the Owners have collectively submitted a site plan showing the proposed roadway; and

**WHEREAS**, the Town’s Planning and Zoning Board held a public hearing on November 16, 2021, and considered the evidence and testimony relating to the proposed subdivision variance presented by the Owners’ representative(s), Town Staff and public comment regarding the Owner’s requested subdivision variance; and

**WHEREAS**, the Town's Planning and Zoning Board found that the proposed subdivision variance is consistent with the Town of Longboat Key Subdivision Regulations and forwarded the subdivision variance to the Town Commission for consideration; and

**WHEREAS**, on \_\_\_\_\_ 2021, the Town Commission conducted a duly noticed public hearing on the proposed subdivision variance and, based upon competent substantial evidence, including but not limited to the findings and professional analysis of Town Staff in the staff report and presentation, makes these conclusions and findings of fact:

1. There are special circumstances or conditions affecting the property such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of his land.
2. The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
3. The granting of the variance will not be detrimental to the public welfare or injurious to other property in the territory in which the property is situated.

**NOW, THEREFORE, BE IT ORDERED BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:**

Section 1. The above recitals are true and correct and are fully incorporated herein by reference.

Section 2. The Subdivision Variance application for the Arpke Subdivision, located at the currently addressed 680 Cedar Street, 690 Cedar Street, and 681 Hibiscus Way, Longboat Key, Florida 34228 is hereby approved subject to the conditions contained in Exhibit "A". Exhibit A is incorporated fully herein. The owners shall construct the private roadway as shown on the approved site plan contained in Exhibit B. Exhibit B is incorporated fully herein.

Section 3. The Owners shall provide the Town with the costs of processing and recording the Subdivision Variance Order, and within thirty (30) days the Town shall submit the Subdivision Variance Order to Manatee County for approval and recording in the official records.

Section 4. This Subdivision Variance Order shall become effective immediately upon adoption.

ORDERED at a meeting of the Town Commission of the Town of Longboat Key on the \_\_\_\_ day of \_\_\_\_\_ 2021.

\_\_\_\_\_  
Kenneth Schneier, Mayor

ATTEST:

\_\_\_\_\_  
Trish Shinkle, Town Clerk

Attachments:

- Exhibit "A", Conditions Requisite for Approval
- Exhibit "B", Site Plan

EXHIBIT "A"  
SUBDIVISION VARIANCE ORDER NO. 2021-01

CONDITIONS REQUISITE FOR APPROVAL  
SUBDIVISION VARIANCE  
ARPKE SUBDIVISION

1. The Owners shall obtain a Building Permit from the Town in order to construct the private roadway.
2. The grading of the graded private roadway shall meet the minimum of a 32-ton load to accommodate a fire apparatus.
3. Prior to issuance of a Building Permit to construct the private roadway, the Owners shall coordinate with the Town's Public Works Department regarding utility plans and connections
4. Prior to issuance of a Building Permit, the Owners shall obtain Town approval of an Address Changes for each Property within the Arpke Subdivision. The new addresses shall utilize the new name of the private roadway in order to provide adequate emergency response to the Subdivision.
5. Overhead clearance shall be maintained to 13'6" the entire width of the access road from Cedar Street continuously around to Poinsetta Avenue. The minimum clearance required is 13'6" and additional overhead clearance may be required for emergency access upon completion.

**TOWN OF LONGBOAT KEY  
PLANNING AND ZONING BOARD  
MINUTES OF REGULAR MEETING  
NOVEMBER 16, 2021**

Members Present: Chair David Green; Vice Chair David Lapovsky; Secretary Jay Plager; Members Gary Coffin, Paul Hylbert, Margaret Nuzzo, Michael Warnstedt

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

**1. Pledge of Public Conduct**

Chair Green noted the Town's Civility Policy and read the Pledge of Public Conduct.

**2. Call to Order**

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

**3. Roll Call**

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

**4. Public to be Heard**

At each meeting, the Planning & Zoning Board sets aside time for the public to address issues not on the agenda. No one wished to address the board.

**5. Consent Agenda**

**MR. LAPOVSKY MOVED TO APPROVE THE CONSENT AGENDA APPROVING THE OCTOBER 19, 2021 REGULAR MEETING MINUTES; AND SETTING THE FUTURE MEETING DATE AS DECEMBER 14, 2021. MR. HYLBERT SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.**

**6. Public Hearings**

**A. Arpke Subdivision, 680 Cedar Street, 690 Cedar Street and 681 Hibiscus Way, Subdivision Variance**

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. Walt Smith, agent representing the 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. There were no conflicts of interest noted. Regarding Ex Parte Communications:

- Mr. Lapovsky noted he had visited the site and affirmed he could be fair and impartial
- Mr. Hylbert noted he had visited the site and affirmed he could be fair and impartial

No other Ex Parte communications were noted.

Maika Arnold, Senior Planner, provided an overview of the project with reviewing a PowerPoint presentation and discussing the proposed variance for the roadway.

Discussion ensued with staff on the following topics/issues:

- The need to correct the inconsistency between the notice, which states the roadway is required at 20 feet where staff's presentation indicates 22 feet
- Responsibility for maintenance of the shell roadway and that the property owners would be responsible as it is a private drive
- The approval would run with the subdivision approval and binding upon the successors
- The potential density for the site by code was six units per acre, but with the subdivision there was an allowance for only three homes
- Concern with drainage with the revision to the roadway; Public Works reviewed and are requiring the applicant to provide details as part of the building permit review
- Concern with precedent, with staff pointing out each application has to meet the criteria
- That no objections were received by staff, but only a number of phone calls with questions
- Whether 16 feet was a safe width for vehicles; the location was actually a private driveway versus roadway, and there is not a lot of traffic that would be needing ingress/egress
- Concern with emergency vehicles accessing the site; Fire Marshal reviewed plans and found it was satisfactory to Life Safety Code

Upon inquiry as to whether Lot 1 could propose an additional driveway cut to Cedar Street, Public Works Director Isaac Brownman, duly sworn, explained that Cedar Street was a low volume roadway, and there was no prohibition to having an additional driveway onto Cedar Street, which would not cause a traffic issue. Regarding Lot 3, he noted that although the owner could propose an additional driveway, Hibiscus Way does not exist to the east, and they would have to build-out additional roadway and make the additional connection.

Discussion continued with Public Works Brownman and Senior Planner Arnold on the following:

- The proposal creating access to the lots via a 'loop' from Hibiscus Way to Cedar Street
- The 50-foot public easement and the allowance for the private roadway
- Owner of Lot 3 and whether they could restrict access
- The subdivision being platted with the requirement for the 50-foot private roadway and drainage easement
- The lots being required to have 40-feet of frontage on a public/private roadway
- The configuration of Lot 3 would not meet lot depth if they chose to use Hibiscus Way for their frontage

Walt Smith, agent representing the applicants, commented the applicants agreed with staff's report noting their primary objective was to retain the integrity of the conditions of the site. He mentioned while there were existing shell roads, and that the Fire Department has had access to the site, the goal was to make it safe and create access to the lots. He also pointed out that the private roadway was for the exclusive use of the owners of Lots 1, 2 and 3. He voiced the applicants' agreement with the stipulations outlined in the staff's report.

Nelon Kirkland, attorney representing the applicants, discussed there would be two entrances off Poinsettia and Cedar to serve only these three lots and requested the Board's support of the application.

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

**MR. HYLBERT MOVED TO RECOMMEND APPROVAL OF THE ARPKE SUBDIVISION VARIANCE FOR 680 CEDAR STREET, 690 CEDAR STREET, AND 681 HIBISCUS WAY, AS PROPOSED. MR. COFFIN SECONDED THE MOTION.**

Mr. Plager commented that while he believed the proposal was not unreasonable, he was concerned with compliance with the criteria outlined in Section 157.07 of the Town Code for the granting of a subdivision variance. Chair Green discussed the Board was required to base their decision on competent, substantial evidence, and letters received from the property owners specifically address the criteria. He believed there was sufficient evidence in the record that supports compliance with the standards. Mr. Warnstedt disagreed with Mr. Plager commenting the use of the land is a rectangular piece of land with vegetation on it, and he commended the owners for retaining the vegetation.

**MOTION CARRIED (5-2) ON ROLL CALL VOTE: COFFIN, NO; GREEN, AYE; HYLBERT, AYE; LAPOVSKY, AYE; NUZZO, AYE; PLAGER, NO; WARNSTEDT, AYE.**

**End of Agenda Item**