

**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, previously 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, however, staff pointed 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 Ms. Arnold on the following:

- The approval providing 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
- 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 applicant, commented the applicant 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 his 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 AS SUBMITTED. MR. COFFIN SECONDED THE MOTION.

Mr. Plager commented that while he believed the proposal was not unreasonable, he voiced concern 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.

MR. HYLBERT MOVED TO RECOMMEND APPROVAL OF THE SUBDIVISION VARIANCE FOR 680 CEDAR STREET, 690 CEDAR STREET AND 681 HIBISCUS WAY AS PROPOSED. MR. COFFIN SECONDED THE MOTION. MOTION CARRIED (5-2) ON ROLL CALL VOTE: COFFIN, NO; GREEN, AYE; HYLBERT, AYE; LAPOVSKY, AYE; NUZZO, AYE; PLAGER, NO; WARNSTEDT, AYE.

B. Verizon Wireless, Special Exception Application

C. Verizon Wireless, Site Development Plan Application

Pursuant to published notice, the public hearings were opened. All those testifying at these hearings have submitted, and signed, a *'Request to Be Heard'* form affirming their evidence or factual representation. James Johnson, attorney representing the applicant, previously provided the Return Receipts to staff.

Maggie Mooney, Town Attorney, clarified that the P&Z Board was not reviewing nine, separate site development plans, but only one. She continued with reviewing 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 Conflicts of Interest. Regarding Ex Parte communications:

Ex Parte Communications:

- Mr. Lapovsky noted he had visited the various sites and confirmed he could be fair and impartial.
- Mr. Hylbert visited eight of the nine sites and confirmed he could be fair and impartial. He commented he had several concerns voiced to him by neighbors, and he informed them they could attend the hearing.

Attorney Mooney asked if all emails received regarding the two applications had been made a part of the record, with Ms. Chipman affirming they were.

Conflicts of Interest:

Mr. Hylbert disclosed that his home is within 40 feet of one of the proposed locations. He would like to participate in the discussion, but at the time a vote is taking place, he will recuse himself from the hearing. Attorney Mooney explained the process, under Florida law, is to make that disclosure, and Mr. Hylbert will need to complete a 'Conflict of Interest' form to be filed with the minutes of this hearing. She noted in accordance with the rules, Mr. Hylbert is allowed to participate in the discussion, but was not allowed to vote. Brief discussion ensued on Mr. Hylbert's recusal.

Allen Parsons, Planning, Zoning & Building Director, provided an overview of the two applications with reviewing a PowerPoint presentation and discussing the applications. Discussion ensued between staff and the Board on:

- letter from Attorney Mooney in 2019 regarding the restrictions within the Telecommunications Act
- that the Town Code could not have regulations regarding radio frequency emissions
- prohibition for co-location on poles within the rights-of-way

Attorney Mooney reviewed the prohibition explaining the Florida Legislature provided those towns, who were embarking on significant undergrounding of their utilities in 2017, allowance to utilize some of the aesthetic components within the Town Code that are not pre-empted (Section 158.114).

The following topics/issues were discussed between the Board, Mr. Parsons and Isaac Brownman, Public Works Director:

- The specific locations of the nine poles
- Whether the revisions reviewed by the Town Commission on November 15, 2021, impacted these applications, which staff noted they did not
- The ancillary boxes on the poles were revised recently in terms of size
- Minimum distance requirements
- That Verizon would need to obtain authorization from a property owner to install a pole outside the right-of-way (ROW); however, seven poles were located within Florida Department of Transportation (FDOT) ROWs and two were within Town ROWs
- Maintenance of the trees within the ROWs and concern with poles being installed in clusters of trees
- Poles would include 4G technology installation as it was not prone to obstruction from vegetation, like 5G technology
- Concern raised regarding the applicant's location of poles adjacent to residential areas versus consideration of commercial areas

Referring to Condition 7 regarding final locations, Mr. Lapovsky asked whether there would be further review of those locations if they need to be moved. Mr. Parsons responded the Special Exception and Site Development Plan orders reflected that if there is an obstruction in the right-of-way location, conditions of approval would allow a slight movement to accommodate. There was a suggestion to modify to remove 'Town's' and replace with 'right-of-way.' Chair Green noted staff might wish to ensure they made it clear that if there was flexibility of movement, it would still require approval by Town staff.

Discussion ensued on:

- Revisions to Ordinance 2021-16 made by the Town Commission at their November 15, 2021 Regular Meeting
- Ordinance 2021-16 adopted by the Town Commission at their November 15, 2021, regular meeting and that it did not impact staff's evaluation or recommendation
- Expense of the poles would be paid by the applicant, and not the Town
- Installation of ancillary equipment on the new light poles and if a contract had been entered into with vendors; staff noted there are no contracts with other providers to utilize the light poles at this time
- The timeline for when the facilities will be operational and provide services was estimated to be a maximum of six months
- If other carriers wish to install they would need to have a fiber connectivity nearby; Verizon would be handling the electricity and payment of their installation; if another provider wished to come in they would be approached about using the Town's infrastructure
- Meetings with AT&T, Verizon and Sprint discussing providing group service on the island; however, Verizon's main issue was coverage on the north end of the island

James Johnston, 300 South Orange Avenue, Sarasota, representing the applicant, discussed

- System is an integrated system
- RF engineered systems
- Designs are to make them least intrusive to the community
- Providing better communications for public safety

Kerri Burrows, Verizon Wireless, senior consultant, noted:

- Verizon was aware of each location for light poles before they did their final design for the cell facilities
- There is a "macro-tower" located south of Sarasota
- The Town light poles will not work for their equipment
- Health and safety is their main concern and reason for design
- When they selected the sites, they did not want to adjust locations more than 20 feet
- They were targeting areas due to emergency services

The Board discussed the following topics/issues with Mr. Johnston and Mr. Burrows:

- The concern with location in residential areas when available commercial locations were nearby
- Data on emergency calls comparing residential versus commercial
- Relocating poles to more commercial zones
- The existence of propagation studies
- The systems used to transmit over the Verizon system for emergency services
- Concern with approving for 4G service and then finding that there may be a different need 5G services
- Why there were no sites closer to the bay; most small boats carry their cell phone
- That 4G services cover voice and data where 5G services are strictly data

- Concern there were not additional presentations from primary vendors and whether Verizon would allow connection to their poles to which Verizon replied they did not have a plan for allowing that connection

Upon inquiry as to whether the Town utilized Verizon as its communication system for emergency services, Public Works Director Brownman responded he was unsure and would need to speak with the Town's IT Department.

Mr. Plager asked if Verizon placed the poles in cluster of trees, or foliage, without impact to the signal, or would they have to be cleared. Mr. Burrows explained when they placed the poles in full foliage areas they contracted with arborists to review, and in most cases, as long as the foliage is not thick and touching the antennas (they tried to maintain a three-foot radius around the pole), it would be fine to go straight up.

The Board recessed from 11:53 AM to 12:06 PM.

The following individuals commented on the proposed Special Exception and Site Development Plan applications:

- Cyndi Seamon, Beachwalk Condominium (opposed to location in residential area)
- Susan Jones, Emerald Harbor Drive (opposed to location in residential area)
- Doug Walker, attorney representing Ohana Hale Estate Land Trust (adjacent to site 4) (opposed to location in residential area)
- Matt Schroeder, Sea Pines Condominium (opposed to location in residential area and long term exposure to RF rates and property values)
- Sadler James, Harbourside Drive, former Telecommunications Director for a telecommunications company
- Brenda Frost, Binnacle Point Drive (opposed to location in residential area)
- Wayne Swift, Emerald Harbor Drive (opposed to location in residential area)
- Frederick Emmrit, Old Compass Road (opposed to location in residential area)
- Mark Forbes, Old Compass Road (opposed to location in residential area)
- Mark Carboni, Gulf of Mexico Drive (opposed to location in residential area)

James Johnson, attorney representing Verizon, pointed out that the Town staff have found they met all the code requirements and requested that the P&Z Board follow staff's recommendation for approval of the two applications.

Chair Green questioned why Verizon chose the west side of Gulf of Mexico Drive, which was mostly residential homes, as opposed to commercial sites along the east side. He noted the compatibility issue and the concern with maintaining the character of the residential neighborhoods. Mr. Burrows pointed out that small cell antennas have a limitation of their coverage based on the type of radio and wattage used on 4G. He explained that on these installations, which are currently one of the best 4G systems, they still had limitations. They generally look anywhere from 1,000 to 1,500 feet in each direction, and possibly stretching it up to 1,750 feet. He discussed that it begins with the macro site and where the radio frequency bands from that site come into Longboat Key from the tower. They map the locations from that propagation study, and once laid out, it was believed they

would get better coverage on Gulf of Mexico Drive; however, they were still requiring an offset location (residential).

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

Attorney Mooney provided an overview of the federal, state and Town regulations related to telecommunications. She referred to Federal Law 47 USC 332(7)(B)(4), and Florida Statute 365.172, which addresses local municipalities and their regulations. Concerning Mr. Hylbert's Conflict of Interest, she explained that he will need to abstain from voting, and as a result, there needs to be a majority approval of the applications as a tie vote will be a recommendation of denial.

Chair Green re-opened the public hearing to hear further testimony from staff.

Mr. Parsons informed the Board that the Town utilized Verizon for emergency services; however, contact with the hospitals took place via an 800-megahertz radio system and did not rely on Verizon.

Mr. Johnson, representing Verizon, requested the Board continue the hearing so Verizon can address the concerns and issues raised during the hearing.

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

During Board discussion on the applications, the following issues were raised:

- The lack of compelling evidence provided indicating this is the only way it can be done
- Concern that the applications are not complete
- The need to address the points raised regarding land use compatibility and the criteria in the Town Code
- Suggestion the Board grant a continuance and ask staff, and Verizon, to work on the configuration of the light poles to place in locations that are more compatible with surrounding properties

Chair Green re-opened the public hearing.

Mr. Johnson commented after discussions with Mr. Burrows, Verizon would request a continuance until the February P&Z Board meeting.

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

Discussion ensued between the board on the following topics/issues:

- That there was an understanding that the Town's undergrounding project was going to include cellular service
- That the applicant, if they do the work, be required to return the sites to their original state once installed
- Whether a 'macro' tower could be installed on the island to cover the entire key
- Concern with lack of information related to studies, and location alternatives, in the application

MR. PLAGER MOVED THAT THE BOARD DISMISS THE APPLICATION, "WITHOUT PREJUDICE," AS IT IS NOT READY FOR THE BOARD'S CONSIDERATION DUE TO A NUMBER OF UNRESOLVED ISSUES. MS. NUZZO SECONDED THE MOTION.

Attorney Mooney explained that a dismissal, with or without prejudice, is not applicable in local government land-use decision making. The Board can only approve, deny, or continue an application. Chair Green requested Mr. Plager withdraw his motion as the Town could not take that particular action.

Ms. Nuzzo withdrew her second.

MOTION DIED FOR LACK OF SECOND.

CHAIR GREEN MOVED TO CONTINUE THE PUBLIC HEARING FOR THE VERIZON SPECIAL EXCEPTION AND SITE DEVELOPMENT PLAN APPLICATIONS UNTIL THE FEBRUARY 15, 2022, PLANNING & ZONING BOARD MEETING, BEGINNING AT 9:15 AM. MS. NUZZO SECONDED THE MOTION. MOTION CARRIED (7-0) ON ROLL CALL VOTE: COFFIN, AYE; GREEN, AYE; HYLBERT, AYE; LAPOVSKY, AYE; NUZZO, AYE; PLAGER, AYE; WARNSTEDT, AYE.

7. Workshop Discussion Items

Ordinance 2021-11, Adding Buffering and Screening Requirements for Certain Single-Family Residential Structures (*Continued from the October 19, 2021 Regular Meeting*)

Mr. Parsons reviewed a PowerPoint presentation and provided an overview of the revisions discussed at the October P&Z Board meeting.

Mr. Coffin pointed out that he believed the Board had recommended removing item (e) under Section 158.103(A)(3). **There was consensus to remove Item (e) under Section 158.103(A)(3).**

The following discussion took place regarding:

- Page 2 of 4, Section 3(a), what was the definition of 'non-residential use'
- As written, the ordinance indicates it would apply to existing circumstances; should not be retroactive
- Suggestion that it state 'newly constructed non-residential structure (versus 'use)'
- The ambiguities within the ordinance

There was consensus to continue discussion on Ordinance 2021-11 to the December 14, 2021, P&Z Board meeting.

Ms. Nuzzo noted that she would not be available for the December meeting. Chair Green requested that Mr. Parsons and Attorney Mooney request special consideration for Ms. Nuzzo to participate via Zoom for the December meeting.

Upon inquiry by staff related to the format for Ordinance 2021-11, it was confirmed that the Board would hold another workshop discussion at the December meeting and then schedule for public hearing at the January 2022 meeting.

8. New Business

There was no New Business.

9. Staff Update

Mr. Parsons informed the Board that for the December meeting staff would be presenting a Special Exception application for a restaurant, along with the continued discussion of Ordinance 2021-11.

10. Planning & Zoning Board Member Comments

Mr. Hylbert suggested the P&Z Board should have a discussion on their role. Chair Green commented there was discussion with setting up a series of workshops for the Comprehensive Plan process, which would be a major work effort for the Board. He explained the Town Commission had agreed to provide a generic letter to the state noting the Town's intention of amending their Comprehensive Plan. He agreed that the role of the P&Z Board should be better defined and requested that staff place a discussion item on an agenda for review.

11. Adjournment

The meeting was adjourned at 1:57 pm.

Jay Plager, Secretary
Planning and Zoning Board