

M E M O R A N D U M

TO: Planning and Zoning Board
FROM: Allen Parsons, AICP
Director, Planning, Zoning and Building Department
DATE: June 18, 2019
SUBJECT: Petition to Vacate Right-of-Way on Broadway Street, Ordinance 2019-07

Application Information

APPLICANT: Stephen Rees, on behalf of 800 Broadway, LLC
SITE LOCATION: Broadway Street Right-of-Way Abutting 800 Broadway Street
EXISTING ZONING: C-1
EXISTING USE: RESTAURANT (THE SHORE)
REQUEST: Vacation of 20 feet of the platted right-of-way immediately abutting 800 Broadway Street

History & Background

The applicant is petitioning the Town to discontinue, close and vacate a 20 foot wide portion of right-of-way (ROW) on Broadway Street. The remaining 60 feet, including the paved 40 feet wide portion of Broadway Street, would remain Town ROW. The subject twenty (20) foot wide portion of Broadway Street is located immediately adjacent to the property located at 800 Broadway Street (currently being developed as The Shore Restaurant) and is directly across from five (5) single family lots (see attached Ordinance 2019-03, Exhibit 'A' Sketch and Description).

The Broadway Street ROW is eighty (80) feet in width. Broadway Street is identified as a "Collector" roadway, collecting all Longbeach Village traffic and providing primary access for the neighborhood to Gulf of Mexico Drive (SR 789). Town Code establishes minimum ROW widths for various street designations, including for this collector-type roadway (Town Code Sec. 157.46). The paved portion of the Broadway Street ROW is forty (40) feet in width. The proposed 20 feet of vacated ROW is presently unimproved and is utilized for Town infrastructure, including a 2" utility water main, which runs through the ROW area. The ROW provides for maintainability for all existing and future infrastructure, including planned improvements associated with the Town's Undergrounding project.

The subject ROW vacation area is immediately adjacent to the Applicant's subject property (800 Broadway Street), which is currently being developed, with the construction of a new 185-seat restaurant/retail commercial use, with 55 on-site parking spaces to be provided (46 spaces are required based on the restaurant's maximum allowed seating of 185 seats {1 parking space required for each 4 seats}). The subject property was previously developed with the former Moore's Stone Crab restaurant.

The applicant is seeking the ROW vacation in order to add on an additional 20 feet of area to the subject property, allowing for the development of additional on-site parking for the commercial use. These additional on-site parking spaces would require subsequent and separate Site Development Plan approval. The applicant's stated intent for providing additional on-site parking is to proactively address both existing and anticipated peak parking demands associated with the two restaurants located in this otherwise residential neighborhood.

Staff Assessment

Section 97.11 Standards of review.

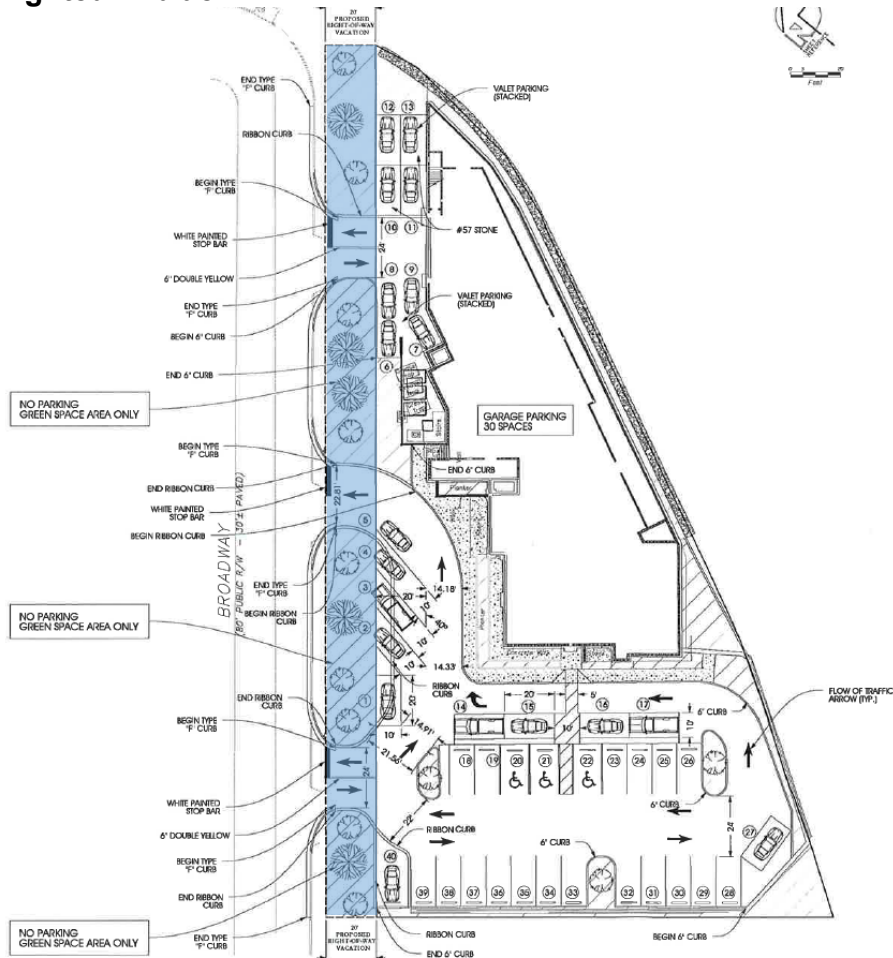
Section 97.14 of the Town Code, states that the Planning and Zoning Board shall review all vacation petitions, for recommendation to the Town Commission. Section 97.15 provides the Town Commission with the ability to close and discontinue a street or easement.

In making such a determination to close and discontinue an easement, the Commission shall consider and make findings on the following standards. To facilitate the review of the subject petition to vacate an easement, staff has provided an assessment of each of the criteria (in **bold**).

- (A) *The benefit to the town and general public of the existing street, right-of-way or easement.*
The primary Town/public benefit is the usefulness of this ROW for locating and maintaining utilities and other public infrastructure. The Town has a 2" utility water main through the right-of-way area. These facilities, including future potential facilities, could be accommodated via easement, if a ROW vacation were granted. However, access to, and maintenance of, all Town owned infrastructure is always preferred in Town-owned properties and right-of-way, particularly in existing right-of-ways. The Town's major Underground project includes electrical infrastructure that will be placed within this portion of the right-of-way area, including but not limited to a primary feeder line, splice box, and a major Florida Power and Light (FPL) electrical re-switch device providing primary voltage to Jewfish Key through an existing sub-aqueous primary feeder line. In addition, Broadway Street functions as a collector roadway, collecting all Longbeach Village traffic, and providing primary access to Gulf of Mexico Drive (SR 789). Town Code establishes minimum right-of-way of 80-feet for a collector-type roadway (Town Code Section 157.46). The vacation would provide an inconsistency to this minimum code amount.
- (B) *The rearrangement of streets, rights-of-way, easements or nonfee interests of the town that will be required to secure a regular and harmonious system for traffic circulation if the request is granted.*
The proposed ROW vacation would not require the rearrangement of streets for traffic circulation. The paved portion of Broadway Street would remain with its existing 40 foot width, providing no change to existing vehicular circulation.
- (C) *Whether the street, right-of-way or easement has been improved or abandoned, and the extent to which it is currently, or in the future will be, utilized by the general public.*
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proposed vacation area is presently being utilized for an existing water utility main and is anticipated to be utilized for electrical infrastructure as part of the Town's Undergrounding project. Additional future uses are undetermined but could include elements such as stormwater management facilities. In addition, at the time of writing this memorandum, responses from the utility companies, including Frontier Communications, Comcast Cablevision of West Florida, Inc., Florida Power and Light Company, Teco/Peoples Gas have not been received. Adjacent property owners were also notified of the ROW vacation request. To date, the Town has received one response in opposition to the proposed vacation request.

- (D) Whether the closing and discontinuation is proposed in conjunction with an application for development approval for adjacent property. The vacation of the ROW is proposed in conjunction with an approved application for development of the adjacent property. The applicant is nearing completion of the construction of The Shore Restaurant, a 185-seat restaurant commercial use. The applicant indicates that if the proposed ROW vacation were approved, that a subsequent Site Development Plan request would be filed to add additional and landscaping in the 20-foot wide vacated area. The applicant has provided a depiction of the proposed improvements, including the provision of 15 additional parking spaces, which is included in the applicant's materials and is reproduced below. The ROW vacation area is highlighted in blue.



(E) *Whether the proposed closing and discontinuation of the street, right-of-way or easement is in the public interest.* **Staff is of the opinion that the proposed discontinuation of this ROW easement is not in the public interest. It can be argued that the public could benefit from reducing off-site parking impacts associated with the commercial activities, in the otherwise residential Longbeach Village area. However, those gains in on-site parking would be subsidized by the granting of public ROW and with benefits accruing to private property interests. Staff has concerns about the potential precedent setting nature of exchanging a public asset for private gain, notwithstanding the potential public benefit that may be gained from reducing off-site parking impacts in this residential neighborhood. Additionally, staff has concerns with the potential precedent of vacating an existing improved and utilized ROW. Past ROW vacations in the Town appear to have only involved unimproved (i.e. “paper ROWs,” meaning ROWs that were platted but never developed) roadways or minimally improved roadways cutting through properties.**

Per Section 97.13, *Conditions of approval*, in the event of a closing and discontinuation of a street, right-of-way or easement it is required to be conditioned upon the following:

- (A) Additional building or lot coverage shall not accrue to a lot or parcel as a result of the proposed closure or discontinuance of use;
- (B) Additional residential density shall not accrue to a lot or parcel as a result of the proposed closure or discontinuance of use;
- (C) No setback adjustment shall extend into any easement without concurrent modification of the easement, vacation of the easement, or a change in the recorded plat regarding the easement to accommodate the administrative adjustment.

Staff Recommendation

Based on the above assessment, staff recommends DENIAL of the request by the applicants to close and discontinue the twenty (20) foot wide portion of the Broadway Street ROW. Staff cannot determine a public benefit in giving this Town-owned ROW to the private property owners. Additionally, the petition included in the application did not provide responses from potentially affected utilities or signatures of all of the property owners abutting the subject ROW. To date, none of these property owners has indicated support for the request.

ATTACHMENTS

- A. Ordinance 2019-07
- B. Applicant’s Application Materials
- C. DRC Review Comments
- D. Correspondence Received

ORDINANCE 2019-07

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, CLOSING AND DISCONTINUING A PORTION OF BROADWAY STREET IN THE LONGBEACH SUBDIVISION, WITH CONDITIONS, IN ACCORDANCE WITH SECTIONS 97.10 – 97.15 OF THE TOWN OF LONGBOAT KEY CODE OF ORDINANCES; VACATING THE PORTION OF BROADWAY STREET BEING DESCRIBED AS A TWENTY (20) FOOT WIDE RIGHT-OF-WAY OF BROADWAY STREET LOCATED IN BLOCK 1 OF THE REVISED LONGBEACH SUBDIVISION AND LOCATED IMMEDIATELY ADJACENT TO REAL PROPERTIES WITH THE FOLLOWING ADDRESSES 760, 800, 771, 789, 791, AND 801 BROADWAY STREET AND 7015 BAYSIDE DRIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Stephen Rees, Jr., Esq., on behalf of 800 Broadway LLC, owner of property at 800 Broadway Street, has submitted an application petitioning to close and discontinue a twenty (20) foot wide right-of-way of Broadway Street located in Block 1 of the Revised Longboat Subdivision (hereinafter the “ROW”); and

WHEREAS, the Town’s Planning and Zoning Board held a public hearing on June 18, 2019, and considered the evidence and testimony relating to the proposed closure and discontinuance of ROW provided by the applicant, Town Staff and public comment; and

WHEREAS, the Town’s Planning and Zoning Board found that the proposed petition is consistent with the Town Code Section 97.11 and forwarded the petition to the Town Commission for consideration; and

WHEREAS, on _____, 2019, the Town Commission conducted a duly noticed, public hearing regarding the applicant’s petition to close and discontinue the ROW; and

WHEREAS, after considering all testimony and evidence entered into the record at such public hearing the Town Commission finds that the granting the applicant’s petition to close, discontinue and vacate the ROW is consistent with the provisions of Town Code and is in the best interest of the public.

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

SECTION 1. The Whereas clauses above are ratified and confirmed as true and correct.

SECTION 2. The Town Commission having considered the Staff Report, the applicant's Petition, and other testimony and evidence presented at a duly noticed public hearing on this matter has considered and made findings on the following standards:

- A. The benefit to the town and general public of the existing street, right-of-way or easement;
- B. The rearrangement of streets, rights-of-way, easements or nonfee interests of town that will be required to secure a regular and harmonious system for traffic circulation if the request is granted;
- C. Whether the street, right-of-way or easement has been improved or abandoned, and the extent to which it is currently, or in the future will be, utilized by the general public;
- D. Whether the closing and discontinuation is proposed in conjunction with an application for development approval for adjacent property; and
- E. Whether the proposed closing and discontinuation of the street, right-of-way or easement is in the public interest.

SECTION 3. Subject to the conditions provided below, the following described street right-of-way is hereby vacated to wit:

A TWENTY (20) FOOT WIDE RIGHT-OF-WAY OF BROADWAY STREET LOCATED IN BLOCK 11 OF THE REVISED LONGBEACH SUBDIVISION.

The conditions for vacation approval as provided for in Section 97.13 Town Code are as follows:

- A. Additional building or lot coverage shall not accrue to a lot or parcel as a result of the proposed closure or discontinuance of use;
- B. Additional residential density shall not accrue to a lot or parcel as a result of the proposed closure or discontinuance of use;
- C. No setback adjustment shall extend into any easement without concurrent modification of the easement, vacation or the easement, or a change in the recorded plat regarding the easement to accommodate the administrative adjustment.

SECTION 4. The Town Clerk is directed to record a certified copy of this Ordinance in the Public Records of Manatee County, Florida.

SECTION 5. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

SECTION 6. All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

SECTION 7. This Ordinance shall take effect upon second reading in accordance with Law and the Charter of the Town of Longboat Key.

Passed on first reading and public hearing the ____ day of____, 2019.

Adopted on second reading and public hearing the _____day of _____,
2019.

George L. Spoll, Mayor

ATTEST:

Trish Shinkle, Town Clerk

Exhibits: "A":Proposed Street Vacation Sketch

ADDITIONAL SUPPORTING
DOCUMENTS ARE AVAILABLE
IN THE
PLANNING, ZONING AND BUILDING
DEPARTMENT