

**TOWN OF LONGBOAT KEY  
ZONING BOARD OF ADJUSTMENT  
MINUTES OF JANUARY 14, 2010 MEETING**

The meeting of the Zoning Board of Adjustment was called to order by Vice-Chairman Goldner at 9:30 a.m. on Thursday, January 14, 2010.

Members Present: Vice-Chairman Laurin Goldner, Secretary Charles Fuller, Members Gaelle Barthold, Sally Boynton, Ben Feole, Tom Murphy

Also Present: Kelly Martinson, Town Attorney; Monica Simpson, Planning, Zoning & Building Director; Steve Schield, Planner; Ric Hartman, Planner; Donna Chipman, Office Manager

Agenda Item 1. Election of Officers.

**It was moved by Goldner, seconded by Fuller, to move the Election of Officers to the end of the meeting. Motion carried unanimously.**

Agenda Item 3. PETITION #1-10 by Jewfish Key Preservation Association, Inc., requesting a Variance from Section 158.155 (A)(4)(a) of the Town of Longboat Key Zoning Code to construct an eight slip, private docking facility extending 175 feet from the mean high water line to accommodate four upland properties, for property located at 7140 La Lenaire Drive, Jewfish Key. The applicant is seeking a variance of 125 feet.

Ms. Chipman swore all those testifying at this hearing. Proof of Advertising in the *Sarasota Herald-Tribune*, the Town Attorney's Opinion and the Staff Report are part of the applicant's file. Michael Friday presented the Return Receipts to the Board.

Ms. Barthold commented that she understood that the applicant was the preservation association, and asked if that was considered the homeowner's association. Steve Schield, Planner, replied yes; they controlled the access easement and the dock. Ms. Barthold noticed the application indicated that only three of the 'landlocked' owners were participating in the application. She asked if they were participating financially; she wished to understand why the three owners, rather than the association, were not filing the application. Mr. Schield believed the three owners were financing the project for the association. Ms. Barthold asked if the request was an addition to the existing structure or was it a reconstruction. Mr. Schield noted the applicant was removing part of the old dock, because it was added illegally. There was a portion of the main platform that existed and would continue to exist with the new portion.

Steve Schield, Planner, reviewed the location map noting that the subject lot was currently being replatted. Mr. Fuller asked if the lot would be deeded over to the association. Mr. Schield replied yes. The applicant was seeking a variance to reconstruct the common dock, which would accommodate eight mooring areas and would have an overall projection into the water of 175 feet, which resulted in a variance request of 125 feet. Ms. Barthold asked if there were structures on all the lots. Mr. Schield responded no; approximately four lots had structures on them, with a fifth one under construction. He pointed out that the properties toward the southern side all had individual docks and had sufficient water depths to access those docks.

He discussed that both the dock and the channel were illegally altered and dredged in 2004, and noted that as a condition of obtaining a building permit, under the proposed variance, and part of the Consent Order from the Florida Department of Environmental Protection (FDEP), the section of the dock that was illegally added was required to be removed. Ms. Barthold questioned who was responsible for the illegal dredge and illegal construction. Mr. Schield explained that several members of the association had completed that on their own. Ms. Barthold asked if they were currently owners of the "shallow water lots." Mr. Schield replied no; he was not aware that any of those owners participated in the activity. Mr. Feole commented it was determined they had to correct the problem, and asked if there was a timeframe for compliance. Mr. Schield said yes and noted that the Town had a timeframe. There was an existing demolition permit, and the association had State permitting at this time to complete the dock and dredge. Ms. Boynton questioned if the variance was required in order to comply with the State and Federal permits. Mr. Schield responded no; but it was required in order to obtain a permit from the Town.

Mr. Schield continued reviewing his staff report discussing the requirements staff was requesting for the dock, such as railings along the access platform on the west and north side of the dock, to discourage mooring, in order to protect the seagrass beds in those areas. Ms. Goldner asked if the ZBA could include mooring as a prohibition in that area, rather than discouraging it. Mr. Schield responded it could be included as a condition, but staff wished to include a physical restriction from mooring in that area. Ms. Barthold asked how the barrier would work. Mr. Schield discussed that it would be a wood railing to make it difficult for one to get off the boat onto the dock. Ms. Barthold asked how the three homes have been accessing their lots. Mr. Schield pointed out the lots were currently vacant and were utilizing the existing dock.

Mr. Schield continued with his staff report noting that the code allowed two mooring areas per lot, but the variance was requesting two additional transient mooring areas for the association's common use. Ms. Barthold asked if the transient slips were to provide services to the island, and could they be rented to outside residents. Mr. Schield responded they were for service people, repair people, and visitors and pointed out that was the reason for inclusion of a condition that the eight new mooring areas were for the exclusive use of the property owners as designated by the association.

Ms. Barthold noted that the applicant's application stated, *"The structure has been designed, and oriented, in such a matter as to accommodate the remaining two shallow water owners and provide for the addition of four more slips should they be needed in the future after pursuing proper permitting."* She asked where the additional slips might be constructed in relation to the proposed dock plan. Mr. Schield responded the ZBA would only be granting a variance for the submitted dock structure; there was no expansion unless they utilized one of the transient areas. He commented that because both of the mooring areas could be transient, and not permanent mooring areas, staff would recommend removal of mooring pilings in the mooring area at the end of the dock. He noted that the transient area would have three mooring pilings, which required an additional 15 feet of variance. He discussed that the additional size for the dock required a special exception from the Planning & Zoning Board; that public hearing was scheduled for January 19, 2010.

Mr. Schield continued with reviewing the Findings of Fact, specifically reviewing Finding #6. Mr. Fuller asked if any of the codes defined what was a transient area or transient dock. Mr. Schield replied not to his knowledge. Mr. Feole asked for the other lots that were not included in the application, would they be able to come back for another dock or expansion of the subject dock. Mr. Schield replied it was a possibility, but he was not aware of any requests; the properties were vacant lots at this point. He continued with the recommended conditions of approval.

Ms. Barthold asked if the Board prohibited docking on the seagrass side of the dock, was it possible to require signage. Mr. Schield replied yes. Monica Simpson, Planning, Zoning & Building Director, requested that the Board also consider an explicit condition prohibiting the rental of the transient spaces. Mr. Feole asked if correction of the illegal activity was inherent in this proposal. Ms. Simpson replied yes. Mr. Fuller referred to paragraph four of the staff recommendation and voiced concern with the usage of the word 'etc.', and asked if staff could revise to refer to all documents required by other agencies.

Mr. Schield reviewed PowerPoint photos of the site.

Mike Friday, M.R. Friday & Associates, representing the applicant, noted the loading ramp had historically been the loading point for materials brought to the site. He mentioned that it was difficult to moor a vessel at the dock because of the shallow water. The illegal part of the dock would be removed regardless of the action taken at this meeting; however, once the structure was removed, it would limit access to the island. Mr. Fuller asked if there were docks on the west side of the island. Mr. Friday responded there were docks on the west side, but they were privately owned. The dock being proposed was a common dock. Mr. Feole asked if the ownership of the private docks were with the landowners on the west side. Mr. Friday replied yes. He discussed his proposal and reviewed an aerial illustration showing the location of the site. Ms. Goldner noted that Mr. Friday had commented that the removal of the dock addition would inhibit the homeowners from accessing the island, and asked how they accessed the island prior to its installation. Mr. Friday explained that the access was provided by the dock on the west side of the island; however, he reiterated that dock was now under private ownership. He reviewed the five lots that were considered "shallow water lots." He was proposing an eight slip structure to accommodate the needs of three of the five shallow water lot owners and provide two additional mooring areas for lot owners and service personnel.

Ms. Barthold asked if the three shallow water lot owners, who were funding the project, would then have an "absolute right" to each have two slips, so there was no possibility, in the future, that the homeowner's association could reduce the slip limit to one. Mr. Friday noted the entire structure was considered a common element, because it was extending from the common area, and everyone on Jewfish Key was being assessed for construction of the structure. Three mooring areas were to be private mooring areas dedicated to the three property owners who have elected to participate (of the five shallow water lots); those six mooring areas would be dedicated to those owners only and would run with the land. The other two slips, and general structure, was funded by everyone as a whole, because everyone would have use of the structure. He mentioned that one of the remaining owners did not wish to participate, and another lot owner had a dock. He explained that if, at some point in the future, they needed additional mooring areas, then it was strictly up to those residents to finance the additional amount. He pointed out that he had designed this structure to accommodate their needs.

Mr. Friday continued his presentation discussing the structure features. Ms. Barthold noted that the end slip was a transient slip and did not require the mooring pilings. Mr. Friday reviewed his responses to the staff recommendations noting that in response to recommendation one, the applicant requested that this recommendation be removed as the three proposed mooring pilings for slip seven were required to provide for the safe and secure mooring of residents' vessels as provided in slips one through six. Ms. Barthold pointed out there was a much protected area in that location; there were ways to secure boats other than mooring pilings. Mr. Friday continued with discussing future consideration of boat lifts being allowed within the footprint of the permitted mooring area without the need for a variance.

Mr. Feole questioned what applications were pending for this project. Mr. Friday responded there was the variance, the special exception application (before the Planning & Zoning Board), and a dredge application with the Town. He noted they were required to meet the requirements of the Town and State for compliance. Mr. Fuller did not believe there was sufficient room for construction of the proposed dock. Mr. Schield referred to the site plan and pointed out that the mooring areas were all 30 feet in depth, so there was approximately 50-60 feet behind the mooring areas where the boats could access. He did request a bathymetric survey of the existing conditions under the water and the dredging. He noted they would be dredging out existing areas that did not have existing seagrass.

Kelly Martinson, Town Attorney, commented that whatever direction the board chose for approval for the variance, they were limited to the conditions and the variance that was requested. She commented that if it did not work, then they might need to come back and seek a different type of variance if it required any changes. Ms. Barthold believed Mr. Fuller's concern would be under the purview of the dredging permit. Mr. Schield replied yes and explained that the State looked at the proposal to determine that it would work without creating danger to the seagrass beds. Ms. Boynton questioned the ability to install boat lifts. Ms. Simpson commented that if a variance was necessary for the installation of the boat lifts, then she did not believe the board could decide to 'dismiss or forgive' those variances. She noted that the board had not seen what was being proposed for the lifts, and the public notice did not include that in the advertisement. She commented that if Mr. Friday would like to request a continuance, modify the application, and re-advertise, then staff would be happy to review it; however, staff could not make a recommendation based only on Mr. Friday's comments. Mr. Schield pointed out that on 11-24-09, he sent a letter to Mr. Friday requesting information concerning whether lighting or future boat lifts would be proposed for the common dock, and Mr. Friday did not address whether boat lifts were or were not part of the proposal. Mr. Friday responded that he had met with Mr. Schield after receiving the letter, and they discussed how they could incorporate the idea of boat lifts without actually requesting them, because they were not requesting them in this application. He pointed out that the final submittal did mention boat lifts in response to staff's request to address the issue without asking for the lifts.

Ms. Barthold referred to Mr. Friday's application materials and noted that it discussed "with the potential for future boat lifts"; but it did not specifically request boat lifts. Mr. Friday responded that he wished to clarify that they were not asking for boat lifts, but wished to note their might be a future desire for it.

Ms. Simpson pointed out that Mr. Friday had stated that he wanted the ability to install those boat lifts without the need for future variances, which implied whether or not they required a variance. The board recognized that they could not do what Mr. Friday was asking them to do.

Mr. Feole noted that the application was a request to install a dock structure that would be 175 feet. Mr. Friday replied yes, from the Mean High Water Line (MHWL). Mr. Fuller noted that included the pilings. Mr. Feole questioned the basis for the request of 175 feet. Mr. Friday explained they needed to accommodate the needs for property owners that do not have the ability to construct docks off their own property. Mr. Feole noted the site plan showed six mooring areas. Mr. Friday replied there were eight total; seven were parallel to the land. Mr. Feole asked if in order to accommodate the additional land owners, they would have to add to that eight. Mr. Friday responded yes, they would have to add to the eight slips total. Mr. Feole asked how much further it would need to be extended. Mr. Friday noted 15 feet for every slip for an additional 30 feet from the existing pilings. Mr. Schield explained that the code allowed 50 feet, and the applicant was requesting an additional 125 feet, for a combined total of 175 feet. Staff was recommending a reduction of the request to 160 feet for a variance of 110 feet. Mr. Friday mentioned the idea of future expansion was something that needed to be considered conceptually, but it tied into why the structure was oriented the way it was. Mr. Schield responded that staff wished to minimize any future variances needed for Jewfish Key through construction of this one proposed structure, rather than having multiple structures built.

Ms. Simpson explained that it was the board's purview to decide what was the variance that met the criteria set in the code. She voiced concern with Mr. Friday's testimony concerning future expansion, other lots that might need variances, etc., because the discussion that had taken place during the time staff was working with the applicant, only addressed expansion and improvement of the common dock on the east side of the property so they could serve those people who would otherwise not have access because they did not have existing docks, or would require variances. However, she pointed out that she was now hearing testimony regarding the possible requests for future variances for those very lots that the common dock was to serve. She noted that, after discussion with Mr. Schield, they believed the projection into the water at 110 feet was the minimum necessary to serve a common dock, but she questioned whether the design, or special exception application, was something that staff could continue to recommend approval of understanding some of the other issues discussed at this hearing.

Mr. Fuller believed staff might wish to change their recommendation, or reconsider it, which might require a continuance of the hearing. Ms. Simpson responded that a continuance might be best. She commented that one of the conditions of approval was that the site plan submitted would be what would be allowed. Ms. Boynton asked for the attorney's legal opinion as to what were the boundaries that they could request that the application be a final application for the entire Jewfish Key and they would not be permitted to come back in the future. Kelly Martinson, Town Attorney, explained it was up to the applicant to come forward with their proposal, and the board needed to consider the application before them. She did not believe the board would have the ability to say conclusively "forever and always", this was all they would request. The board could include certain conditions, and the association would have the ability to come forward if conditions changed.

Ms. Boynton asked if staff envisioned a different plan that would minimize, or eliminate, the likelihood of the applicant requesting future variances. Ms. Simpson responded that could be, but also to create a more equitable, and more realistic, situation for the other lots that had not provided the financial support to get to this point. Mr. Friday commented that he was not sure of the advantage of delaying the process. There was an application for this structure before the board, and they were not requesting to modify it at this time. They had spent years permitting this structure through the state and federal agencies, and other supporting agencies. He hoped that his statement as to the possibility that, in the future, there might be more need, did not delay the project. He would retract the issues regarding boat lifts. He explained that as far as the homeowners that were not taking part in the proposal that was their decision. He had originally proposed a larger structure, but those owners decided not to participate, which resulted in the smaller structure being proposed. Ms. Goldner questioned if the State permits would expire. Mr. Friday replied yes; the standard permit was good for five years and it was issued six months ago. Ms. Simpson noted that staff's recommendation to delay action on this request was due more towards the special exception application that was to be heard by the Planning & Zoning Board on 1-19-10. She mentioned that at this point, she was not sure that staff would be able to continue with their recommendation for that, but because it tied specifically into this proposed site plan and variance, that was the cause for delay before this board.

Paul Zipper, 611 De Narvaez, informed the board that the illegal dredging was filled in by a barge and not naturally.

Mr. Friday requested clarification of what new information was presented. He commented the idea of the boat lifts was previously discussed with staff and mentioned in the submitted information. He noted that it was general knowledge that if someone proposed a dock that extended further than 50 feet, it would require a variance. Mr. Feole questioned if possible expansion was also discussed. Mr. Friday replied it always had been an issue. There were five properties that could not have docks, one already had a dock, and there was a property that would use the proposed dock. He pointed out there was one property owner that elected to not take part in this project for financial reasons, and that one property owner, in the future, may decide they had a necessity for moorings. He commented that it was made clear to that owner, that if he, at some point in the future, wished to have moorings, then the burden was on him to redo the process.

Ms Barthold pointed out that Mr. Friday had discussed properties on the north end that he anticipated might request in the future. Mr. Friday did not see how those properties would affect this project, because they were private properties. Ms. Barthold questioned if staff's concern extended to the properties on the north, or was it just as to the five shallow water lots. Ms. Simpson explained it was specifically to those lots, who were very unlikely, to ever be able to get a dock. Ms. Boynton asked if it was adequate to state that the concern was with only one lot. Ms. Simpson replied it could be; however, if Mr. Friday was requesting a variance for boat lifts, then he needed to incorporate, design, and request them, which would require re-advertising and re-noticing the surrounding owners. Mr. Fuller believed that staff was wishing to withdraw their recommendations. Ms. Simpson noted that staff would request a continuance of these proceedings to allow staff to look further into the design and what was being requested for the special exception application.

No one else wished to be heard, and the hearing was closed. The Board recessed from 11:25 – 11:37 am.

Ms. Simpson noted her desire to continue the hearing to determine the intent of the application. She pointed out that there was nothing in the Town Code that indicated the variance had to precede the special exception application; the only issue was timing. Ms. Barthold asked if the hearing was continued would staff be able to draft language with regard to the issue of rentals or leasing, the railings, and the signage for railings. Ms. Simpson replied they could add language. Ms. Barthold asked if the decision was made to not consider the issue of boat lifts in this application. Ms. Simpson noted it would be the decision of the applicant, and if he chooses to include the boat lifts, then the applicant would be required to re-advertise and re-notice the hearing.

**It was moved by Fuller, seconded by Boynton, to continue the hearing for Petition 1-10 to the February 11, 2010 meeting.**

<b>BARTHOLD:</b>	<b>AYE</b>	<b>BOYNTON:</b>	<b>AYE</b>
<b>FEOLE:</b>	<b>AYE</b>	<b>FULLER:</b>	<b>AYE</b>
<b>GOLDNER:</b>	<b>AYE</b>	<b>MURPHY:</b>	<b>AYE</b>

Agenda Item 4. PETITION #3-10 by Mark and Terri Fishman requesting a Variance from Section 158.150 (D) (1) of the Town of Longboat Key Zoning Code to reduce the required gulf waterfront yard from the required 150 feet to 117 feet, 10.5 inches, as measured from the Erosion Control Line, to allow for the construction of a new single-family home, for property located at 6517 Gulfside Road.

Ms. Chipman swore all those testifying at this hearing. Proof of Advertising in the *Sarasota Herald-Tribune*, the Town Attorney's Opinion and the Staff Report are part of the applicant's file. Charlie Bailey, attorney representing the applicant, presented the Return Receipts to the Board.

Ric Hartman, Planner, reviewed the staff report noting that the applicant had an existing non-conforming structure that was built prior to the Erosion Control Line (ECL) being adopted. The existing property would allow a 1,721 square foot house to be built in compliance with the ECL's 150 foot setback. He continued that the applicant was requesting a variance to reduce the setback from 150 feet to 117 feet, ten inches, which would allow a 4,022 square foot home, with a width of 74 feet, eight inches. He reviewed the location of the ECL, noting that it crossed most of the property, from south to north, at a depth of 194 feet, and then on the northern part of the property, it went out approximately 42 feet towards the gulf, before it continued north parallel to the shore. He continued with reviewing the staff report explaining how staff calculated the habitable space, which was approximately 7,600 square feet for a two-story building. He noted there was a discrepancy between the application and staff's calculations; there was usable space, under the Town Code, that the applicant was not proposing to use under the proposed design.

Ms. Barthold discussed the buildable and habitable square feet and the difference between what staff noted and what was noted in the applicant's application materials. Mr. Hartman responded the applicant's design incorporated areas of building area, where he was looking at a "rectangle" where it would possibly use all the areas.

He pointed out that their proposal had areas, such as balconies and exterior stairs, which should not be included as habitable space, but was structural coverage.

Ms. Goldner believed what was before the board did not have anything to do with the building design, but the board was to review the ECL setback; she did not believe the board was to consider the square footage. Ms. Martinson replied correct. Ms. Simpson clarified that one of the criteria that had to be considered was whether it was the minimum variance necessary for the land. She mentioned that one of the issues that had been discussed at length by the Town was how large of a house was sufficient for reasonable use. Ms. Martinson agreed. Ms. Barthold questioned what the guideline for reasonable use was. Ms. Simpson provided a historical background on the issue, noting that the wider the lot, the more square footage would be obtained. The Town Commission did not adopt any amendment, but left the decision to the ZBA to determine what was reasonable.

Ms. Barthold questioned if staff had calculated what the building and habitable space would be at 30 feet. Mr. Hartman responded that the building area would be 2,239 square feet, and if there was a 30 foot depth, it would be 137.5 feet from the ECL. The habitable space would be calculated at 4,000 square feet. Ms. Barthold noted that for a 4,500 square foot home, the 30 foot depth would not be sufficient. She asked what the variance would be if the structure was 137.5 feet from the ECL. Mr. Hartman replied approximately 12.5 feet. Ms. Barthold asked what variance was being requested. Mr. Hartman responded the variance request was for approximately 33 feet. Mr. Murphy commented if the board approved the variance, as requested, the applicant could build a home that was 7,600 square feet. Mr. Hartman replied correct, but it did not include design elements, such as balconies and stairs. He continued with his report, noting that staff believed it was not the minimum variance for reasonable use of the land. He mentioned that staff was not presented with sufficient evidence that what was being proposed was the minimum required for reasonable use, but suggested if the board wished to grant the petition, that they follow the guidelines in Ordinance 2007-33, which would allow for 30 foot depth of lot for a variance of 13 feet. He noted that there was an alternative in the Lot, Yard and Bulk section of the Town Code, which required a minimum habitable first floor of 1,600 square feet, with a lot depth of 21.5 feet resulting in a variance of four feet.

Charlie Bailey, attorney representing the applicant discussed their request, noting the existing home was nonconforming with regard to Florida Department of Environmental Protection (FDEP), Federal Emergency Management Agency (FEMA), the building code and the Town zoning code. He noted that the surrounding homes were further waterward than the subject site. He pointed out that previous variances were allowed based on the line of construction, and was considered by FDEP. He reviewed an illustration that showed the location of the ECL (Exhibit A-5). Mr. Bailey discussed that the home to the north had 4,500 square feet of habitable area and were able to achieve that without a variance. He noted that the home was approximately 155.6 feet from the ECL. He explained they would be demolishing the existing non-conforming structure and replacing it with a new single-family home. The new home would be ten feet further from the ECL than the existing structure. The proposed footprint was at 3,402 square feet, and the proposed habitable area was calculated at 4,338 square feet; the home was designed and committed to 4,338 square feet of living area. He reviewed the allowable buildable area according to the code, which he believed would not allow a reasonable use of the property.

Xavier Garcia, Sr., architect for the applicant, provided an overview of the design of the home. He reviewed the site plan showing the impact from applying the 150 foot setback on the property and noted that the code allowed a maximum of 25 percent building coverage. He mentioned that his clients did not wish to construct a "mega home," but wished to construct a modest home of approximately 4,500 to 4,800 square feet. He reviewed the design of the home, noting he had designed the home at 17.55 percent building coverage, which was well below the 25 percent allowed. The building coverage they were proposing was 3,402 square feet. Concerning the 437 square feet of usable space that staff noted was not used, he provided an illustration as to the reasons why it was not utilized. He noted they wished to include this plan as a binding instrument. Mr. Bailey explained that Mr. Garcia was addressing the statement by staff that there were usable areas, within the allowable buildable area, that appeared were not being used. Mr. Bailey noted that Mr. Garcia's point was that the applicant was not only dealing with the waterfront setback, but also the shape and corners of the lot which made the space difficult, if not impossible, to use.

Mr. Bailey mentioned that he had cited case law in the application that defined 'reasonable use.' He discussed that the ZBA had previously granted variances for other waterfront properties and reviewed variances that were granted for properties in the surrounding area of the subject property. He wished to point out that the location of the ECL created an undue hardship on the property. Mr. Murphy requested clarification of the square footage calculations (4,800 sq.ft. and 4,300 sq.ft) that were provided. Mr. Bailey responded that the proposed home would have a building coverage of 3,402 square feet, and the maximum allowed by code was 25 percent building coverage, which would allow a 4,845 square foot home (if not for the issue with the ECL).

Ms. Barthold questioned if everyone agreed that the figures that were indicated on page 3 of the staff report were accurate figures for what was being proposed. Mr. Bailey responded that the depth proposed was only 51 feet, and believed the staff analysis was considering the footprint of the structure to the front of the front setback. Mr. Hartman explained that the 51 foot depth that was proposed did not account for the 5 feet, 9 inches of area that was along the street on the south part of the property.

Ms. Barthold asked if the Town Attorney had stated that the board was passing, not the building design, but the variance, and presumed that the building could be redesigned, or removed at some other point, and a different structure constructed that would cover the entire area. Ms. Martinson responded that the board was focusing on the reduction of the gulf waterfront setback; the actual design of the building was irrelevant, and only relevant to the extent of the space that the building was taking up. Ms. Simpson agreed, but noted that the relevancy of the design of the building, if the board wished to approve the variance, would be carried into the conditions of approval. She explained that in the past the Town had considered variances without any sketches or plans, but other times, they had tied the variance to very specific structural designs, and there were older variances that had a site plan with only two boxes. Mr. Fuller asked if it was his understanding that if the applicant did not request a variance, then they would be able to construct a 3,270 square foot home. Mr. Hartman replied that was an approximate and would be maximizing the lot to the very edge of all the setback requirements. Mark Fishman, property owner, explained that in order to do that he would be required to construct a "cube," and pointed out that Mr. Garcia had noted that an architecturally beautiful building was not a cube.

Ms. Barthold asked Mr. Fishman if he would be concerned with having the land tied into this particular house and design, which could possibly affect the resale value. Mr. Fishman replied no; he had hired the firm to design this house and was happy with the design. He explained that it was his intention to build this home, and he was not looking to maximize every bit of available building space, and were trying to build a modest home.

Mr. Murphy asked if there was anything unique that would create the 42 foot setback from the water. Mr. Bailey believed it reflected what might have been a hardened shoreline at the time the ECL was established. He reviewed the ECL for the property. Mr. Fuller asked if the variance being requested was the minimum necessary to build the structure. Mr. Bailey replied the board was reviewing a proposed structure that was in harmony with the surrounding properties and consistent with the Town Code. Ms. Martinson asked if the board subtracted one or two feet from the request, would the applicant be able to construct that exact home that was proposed. Mr. Bailey explained that the home, as designed and depicted in the drawings, was 4,338 square feet. Mr. Garcia noted that the home could be constructed with a reduction of one to two feet; however, it would result in reductions of the terraces and other balconies. He believed what was presented was a reasonable home. Mr. Fishman pointed out that they were bound on three sides by setbacks. Mr. Feole asked if construction of the new structure would be further away from the ECL than the existing home. Mr. Fishman replied the home would be moved landward ten feet and would also result in a home that was in compliance with all other codes.

Mr. Fishman believed Ms. Barthold had asked if he would agree to be bound to the plan that was presented, and he replied yes. Mr. Bailey noted they would be willing to proffer a condition that would bind them to the submitted footprint. Ms. Barthold asked if the applicant would be willing to be bound not only to the proposed design, but also to the calculations provided by staff on page 3 of the staff report. Mr. Fishman commented that he understood the answer would be no, because the house that was shown took the amount of square footage that was presented. Ms. Boynton asked if that would change staff's view. Mr. Hartman replied no; this was a design seeking a variance, and staff did not look at the design, but looked at the minimum buildable area and minimum variance necessary. He noted that if the submittal was reduced, then the applicant would need to go back and redesign the structure according to the guidelines provided by the board. Mr. Feole questioned if the structure, as currently situated on the lot, was in compliance with side and street yard setbacks. Mr. Hartman replied yes. Mr. Feole asked if the only question was with regard to the ECL setback. Mr. Hartman replied correct.

Discussion ensued on binding the land to a specific footprint and structure; that if the applicant wished to change the structure, they would need to come back before the ZBA; and the issue of the setback from the ECL. Ms. Simpson pointed out that one of the items that staff, and the board, had to consider when reviewing variance requests were the site conditions at the time. Ms. Boynton asked what staff would require. Ms. Simpson explained that the board had been presented evidence that a structure could be built on the property, but there was no evidence provided that this was the minimum variance necessary for reasonable use of the property.

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

The Board recessed from 1:25 pm to 1:32 pm.

Ms. Boynton commented that she understood the ECL was there for a reason, but was struggling with the granting of a variance. She believed the real issue was how close to the ECL should a structure be permitted to be built. Mr. Murphy noted that with the ECL being setback 42 feet more than the other lots, there was an impact. Ms. Boynton pointed out that the applicant knew the ECL was setback further when they purchased the lot. Mr. Feole commented that Longboat Key had been trying to improve its situation with nonconforming structures. He discussed that the existing house was livable, but the construction of the new house would eliminate a nonconforming structure. Ms. Boynton questioned whether it had to be that house that was proposed. Mr. Fuller commented that the board had to decide what was reasonable, and not what they liked. Ms. Barthold mentioned that it was her initial response that the structure proposed was too much, but after hearing the discussion, she believed it was a reasonable use with regard to space, if they could bind the variance to the specific structure proposed. Mr. Murphy agreed. Discussion took place regarding binding the variance granted with a condition of approval with a plan sheet and the method that the next owner would be aware if there was a variance that ran with the land. Ms. Simpson noted that variances were not recorded with the county, so a title search would not reveal a variance, but during the due diligence, the potential buyer would be able to find the record granting the variance and the real estate agent would reveal the variance.

**Mr. Feole made a MOTION TO GRANT PETITION 3-10 AS REQUESTED AND ADOPTING THE FINDINGS OF FACT, FINDING THAT THE CRITERIA FOR THE VARIANCE HAVE BEEN MET, WITH THE CONDITION THAT THE CONSTRUCTION OF THE STRUCTURE ON THE PROPERTY SHALL CONFORM WITH ALL SPECIFICATIONS ON EXHIBIT 'A-3', INCLUDING, BUT NOT LIMITED TO, FOOTPRINT, SETBACKS, SQUARE FOOTAGE AND COVERAGE, AS ATTACHED TO THE APPROVAL DOCUMENTS; seconded by Mr. Fuller.**

Discussed ensued on the modification of the Findings of Fact and clarification of the motion, and as a result, Mr. Feole withdrew his motion, and Mr. Fuller withdrew his second.

**Mr. Feole made a MOTION TO GRANT PETITION 3-10 AS REQUESTED AND HAVING MADE FAVORABLE FINDINGS OF FACT THAT ALL NECESSARY CRITERIA FOR THE VARIANCE HAVE BEEN MET, WITH THE CONDITION THAT THE CONSTRUCTION OF THE STRUCTURE ON THE PROPERTY SHALL CONFORM WITH ALL SPECIFICATIONS ON EXHIBIT 'A-3', INCLUDING, BUT NOT LIMITED TO, FOOTPRINT, SETBACKS, SQUARE FOOTAGE AND COVERAGE AS WILL BE ATTACHED TO THE APPROVAL DOCUMENTS; seconded by Mr. Fuller and approved by a roll call vote:**

**MURPHY: AYE  
FULLER: AYE  
BOYNTON: AYE**

**GOLDNER: AYE  
FEOLE: AYE  
BARTHOLD: AYE**

**Agenda Item 2. Ms. Barthold made a MOTION TO APPROVE THE MINUTES OF THE SEPTEMBER 17, 2009, ZONING BOARD OF ADJUSTMENT MEETING; seconded by Ms. Goldner and approved by a unanimous vote.**

Agenda Item 1. Election of Officers.

**Mr. Feole made a MOTION TO NOMINATE LAURIN GOLDNER AS CHAIRMAN AND CHARLES FULLER AS SECRETARY; seconded by Ms. Barthold.**

There were no other nominations, and the nominations were closed.

**Motion carried on roll call vote:**

<b>MURPHY:</b>	<b>AYE</b>	<b>GOLDNER:</b>	<b>AYE</b>
<b>FULLER:</b>	<b>AYE</b>	<b>FEOLE:</b>	<b>AYE</b>
<b>BOYNTON:</b>	<b>AYE</b>	<b>BARTHOLD:</b>	<b>AYE</b>

**Mr. Fuller made a MOTION TO NOMINATE BEN FEOLE AS VICE-CHAIRMAN; seconded by Ms. Barthold.**

There were no other nominations, and the nominations were closed.

**Motion carried on roll call vote:**

<b>MURPHY:</b>	<b>AYE</b>	<b>GOLDNER:</b>	<b>AYE</b>
<b>FULLER:</b>	<b>AYE</b>	<b>FEOLE:</b>	<b>ABSTAIN</b>
<b>BOYNTON:</b>	<b>AYE</b>	<b>BARTHOLD:</b>	<b>AYE</b>

Agenda Item 5. Rescheduling of March 2010 Meeting Date

Ms. Simpson noted there was a minor conflict with the March meeting and the Town's early voting. The Commission Chambers would not be utilized for the voting, however, the Board would not be able to use the ante-chambers during the meeting.

**There was consensus to retain the March 11, 2010, meeting date.**

Setting Future Meeting Date.

The next regular meeting was tentatively scheduled for Thursday, February 11, 2010.

Adjournment. The meeting was adjourned at 1:58 p.m.

Respectfully submitted,

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Charles Fuller, Secretary  
Zoning Board of Adjustment  
/dmc