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LAND USE AND LOCAL GOVERNMENT LAW AND LITIGATION

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Delivered via Email: aparsons@longboatkey.org

Allen Parsons, Director, Planning, Zoning & Building Department
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228

RE: Country Club Association, Inc.'s Objection to Departure Application PAR24-001 for Seawall Construction at 582 Ranger Lane,

Dear Mr. Parsons:

As you know, I represent Country Club Association, Inc. (the "Association") regarding its concerns with Application #PAR24-001 (the "Application"), a request for a Departure for Seawall Construction for property located at 582 Ranger Lane (the "Property"). The Application also seeks after-the-fact permission to depart from the seawall construction standards at 592 Ranger Lane (the "Adjacent Property"). I write to state the Association's concerns and objections to the Application and urge the Town to deny the Departure.

History

The Applicant applied for the seawall permit on March 22, 2023, but did not submit engineered plans until February 12, 2024. Those plans failed to account for the "timber pins" later found to be supporting the existing seawall. On April 11, 2024, the Applicant submitted revised plans (the "Revised Application"). The Revised Application was misleading, incomplete and failed to comply with the Town Code. Regardless, the Town approved the Revised Application and issued building permit PB23-0253 (the "Permit").

However, when the Town inspected the construction on or about May 7-8, 2024, the inspector discovered that the construction violated the Permit and Sec. 151.03(B)(3)(a) of the Town Code because the face and cap of the newly installed seawall extended more than 12" beyond the adjacent seawall. The inspector issued a stop-work order.

The construction of the seawall was in blatant violation of the plain requirements of the Code, not only with respect to the location of the seawall on the Property, but also with respect to its extension beyond the face of the existing seawall and seawall cap on the Adjacent Property. In addition, the Applicant (or its agents) simply extended the seawall construction onto the Adjacent Property without a permit and also in violation of the standards – another blatant violation that resulted in a separate Code Enforcement action against the Adjacent Property, and also required the Adjacent Property to be included in the Application.

On May 11, 2024, the Applicant submitted additional drawings asking the Town to approve the permit despite the clear violation of the Code. For the first time, the Applicant attempted to justify installing the seawall beyond the timber pins based on alleged (but unsupported) risks to the environment and existing pool. When the Town refused, the Applicant filed the Application, which now seeks to both waive the clear requirements of the Code and excuse blatant violations of the Code.



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Key Facts

The Applicant's Building Permit application includes the following statement:

Applicant's Affidavit: I certify that all the information is accurate and complete. *I further certify that* no work or installation has commenced prior to the issuance of a permit and *that all work will be performed in accordance with the standards of all laws regulating construction in this jurisdiction.*

(emphasis added).

The Transmittal narrative filed with the Revised Application failed to indicate that the entire seawall was being moved further seaward. In fact, the "description" stated:

Revisions to plans: *everything to stay the same with the only exception* being that we are widening the cap by 8" which will take the original plans from a 28" wide cap to a 36" wide cap.

(emphasis added). That statement was not true: the Revised Application also moved the proposed seawall beyond "timber pins" that had previously been installed outside the seawall.

Page 1 of the Revised Application drawing included a text box stating:

EXISTING TIMBER PIN PILES TO REMAIN. PROPOSED WALL TO BE INSTALLED DIRECTLY IN FRONT OF PIN PILES.

Page 2 of the Revised Application includes a cross section locating the proposed seawall beyond "Existing Timber Pin Piles to Remain". *Moreover, the cross-section drawing depicts the face of the new seawall at 12" beyond the "Pin Piles" and the new seawall cap to extend an additional 6" beyond the face of the new seawall, for a total of 18".*

In addition, the Revised Application drawing on Page 1– as in the original – depicts the proposed seawall as almost aligned with the existing adjacent seawalls.

The Revised Application did not directly request the Town: (1) to agree that the "Pin Piles" were or should be treated as the face of the seawall or seawall cap (as the Applicant now asserts), (2) to agree that the proposed seawall and cap could be 18" wide rather than 12", or (3) to agree that the proposed seawall and cap could extend more than 12" beyond the seawall of the Adjacent Property or the property to the west. If such a request had been made, the Town would have (or should have) responded that each of those requests are separate and distinct departures from the plain requirements of the Town Code.

The Permit Comment and Corrections Report, issued on April 19, 2024, based on a review of the Revised Application, states:

This is the summary of the review comments from the applicable disciplines of plans received. This review summary shall not be construed as authority to violate, cancel, alter or set aside any provision of the Town Codes or Ordinances. Please submit revised drawings/plans per the comments below.

The Town then issued the Permit on April 20, 2024, based on the misleading Revised Application. The Permit includes the following express stipulation (taken from Sec. 151.03(B)(3)(a)):

Construction, inclusive of a buttress and seawall cap, shall not protrude more than 12 inches seaward of the existing seawall or seawall cap. Notwithstanding the foregoing, if there are two existing seawalls abutting the subject replacement seawall of differing seaward projections, then the subject replacement seawall shall be further limited to a seaward projection distance of no more than either equal to the immediately abutting seawall with the least projection or a total seaward projection of 12 inches, whichever is less.

The “aerial surveys” submitted as part of the original permit application and included in the Application demonstrate that, prior to the new construction, the face of the seawall cap on the Property was in-line (within inches) from the face of the seawall caps on the Adjacent Property (which lies to the east) and at 572 Ranger Lane, which lies to the west of the Property. See, e.g. Application, Pages 6-7.

The Sampey Burchett survey sealed and dated July 22, 2021 (submitted on May 10, 2024) also depicts the seawalls and caps on the neighboring properties as functionally extending from the face of the seawall cap on the Property. In addition, the Sampey Burchett survey depicts the pool located 17.7’ from the back of the seawall cap, with a deck that runs to a point 13.0’ from the seawall. However, the “disapproved” “Sketch” submitted on May 10, 2024 - and included at Page 13 of the Application - depicts the pool shell a mere 10’ from the existing seawall.

The minimum canal setback in the applicable R-4SF zone district is 20’. Pursuant to Zoning Code Sec. 158.094(C)(4), regulating canal yards, “[t]he waterfront yard is a required yard and shall not be utilized for any purpose other than docks, open area, landscaping, a dock access ramp or stairs, a ladder or other device pursuant to Subsection 158.096(F)(2)...” However, per Sec. 158.095(B)(1), in a single-family district, the waterfront yard setback for a swimming pool of less than 6” above finished grade, without a cage, is 15’. The picture at Page 17 of the Application appears to depict the pool shell at greater than 6” above grade, which would require locating it 20’ from the property line.

In addition, the Applicant never submitted the Permit to the Association for review and approval, as expressly required by the Declaration of Covenants applicable to the Property. While the Town does not and cannot enforce those covenants, if the Applicant had complied and submitted the plans and permit to the Association prior to commencing construction, the issue might have been identified and addressed before the Applicant constructed an illegal structure. Responsibility for that failure lies with the Applicant, not with the Association, the other lot owners represented by the Association, or the Town.

The Permit Application and Revised Application Never Met the Requirements of the Code.

The Permit Application never met the application requirements of Sec. 151.03(B)(1)(c) because the plans failed to include accurate drawings or depictions of the existing adjacent seawalls within 200 feet – an omission which directly led to the current problem.

The proposed seawall and cap *never* met the standards of Sec. 151.03(B)(3)(a), which limits the total distance for a replacement seawall *and cap* to 12” from the face of the existing seawall and seawall cap. Even a cursory review of the cross-section diagram on Page 2 of both the initial engineering plans and the “approved” April 12 plans, show the face of the “new” seawall at 12” from the existing seawall – or in the case of the April plans, the “pins” – *plus* an additional 6” from the face of the seawall to the face of the cap, for a total of 18”. The Application drawings also depict the improper extension. See Application Page 9. If granted, the Departure

would approve this additional 6" incursion into the canal that was *never* intended or permitted by the Code, and never expressly requested as a Departure.

The Town Should Not Grant a Departure Based on the Erroneous Approval of the Permit.

The Applicant attempts to place the burden of its illegal construction of the seawall on the Town's Permit approval, claiming "notwithstanding there is a condition noted on the permit requiring compliance with Section 153.B.3.a, (sic) the contractor assumed that the construction pursuant to the approved permit was in all ways compliant."

Above and beyond the language on the Permit itself, the contractor could not have believed in good faith that the new seawall was compliant with the Code and the Permit. First, it was clear that the proposed seawall and cap extend more than 12" beyond the prior seawall and cap – even if the "Timber Pins" could be included. It was also clear to the contractor that the new seawall would extend more than 12" beyond the face or cap of the adjacent seawalls. And, it was certainly clear to the contractor that the Permit did not authorize construction on the Adjacent Property.

The Town's permit reviewers rely on the Applicant (or its engineer or contractor) having reviewed sealed drawing submitted with an application for compliance with the Codes. While the reviewers may catch errors, in this case the Applicant submitted incomplete and misleading drawings and narrative for the Revised Application, which likely led the reviewer into overlooking the Applicant's changes to the location of the proposed seawall. The Applicant has no right to imply the Town is responsible for not "catching" these violations, and the Town should not grant a departure to solve a problem created entirely by the Applicant and its agents.

Ultimately, it appears the Applicant and his agents "pulled a fast one" on the Town in this case by providing misleading information and incomplete plans that fail to comply with the Code. The contractor (and the Applicant) cannot complain about the Town catching these violations during inspection and cannot assert any good-faith reliance on the Town's issuance of the Permit. The Applicant (and its agents) are wholly responsible for a situation that could have been avoided if they had simply followed the Code and the Association's covenants. Any burden on the Applicant to now comply with the Code is legally insufficient to serve as justification for a departure.

**The Town Must Deny This After-the Fact Departure Request
For a New Seawall and Cap That Directly Violates the Town Code.**

Both the original plans and the Revised Application propose construction of a seawall and cap that extends 18", rather than 12". The Plans fail to meet the unambiguous 12" limit on replacement seawalls established by Sec. 151.03(B)(3)(a). Regardless of whether the Applicant should be allowed a separate departure to build beyond the "Timber Pins", or extend past the adjacent seawalls, the Town must deny a departure for a seawall that does not even attempt to meet the Code's 12" limit for replacement seawalls and caps.

If the Applicant and its agents thought the Code's 12" standard was somehow unreasonable or unworkable for this site, it was their responsibility to request a departure from that standard *during the application process and before construction*. The Town must not allow the Applicant to abuse the departure process by submitting a non-compliant application and then requesting an after-the-fact departure to avoid the clear legal standards.

The Town Should Deny the Departure Because the Applicant Could Have Met the Codes, and the Current State of the Seawall and Pool Do Not Legally Justify a Departure.

The Applicant attempts to justify construction beyond the face of the “Timber Pins” - rather than the face of the existing seawall and cap - by claiming that the existing seawall may collapse if the pins are removed, possibly resulting in environmental damage and damage to the pool and deck. However, the Applicant and contractor have other options to meet the Code rather than coopting an additional 15” (or more) of the canal. The Applicant could shore the seawall with smaller “pins” and remove the existing pin piles, construct the new seawall *behind* the existing seawall, provide sediment screens in the canal behind the construction, and utilize other methods to comply with the Code. Based on the aggravating factors present here, the Town should deny this request for an after-the fact departure for construction beyond the actual face of the existing seawall and cap.

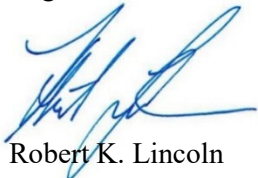
Conclusion

Town Code Section 151.03(E) requires the town manager to “determine that the proposed design meets the intent of this chapter” before granting a departure. Section 151.02 states, in relevant part, that the purpose of the chapter is to manage and conserve the town’s shoreline by “regulating the installation of seawalls ... to ensure the minimal physical effect on existing shoreline conditions...” Here, the proposed seawall violates the Code by extending more than 12” past the existing seawall and cap, not only on the Adjacent Property, but in front of the existing seawall - and in fact, in front of the existing timber pins.

The Application is wholly inconsistent with the purpose and intent of the Code to regulate the installation of seawalls when considering the actions of the Applicant and its agents. As demonstrated above, the Applicant (and its contractor or engineer): (1) filed plans that never met the Code standard for replacement seawalls (requesting 18” rather than 12”); (2) filed a misleading narrative with the Revised Application that did not disclose the fact that the seawall was being moved; (3) filed incomplete and misleading plans that did not properly depict the configuration of the proposed construction with respect to the neighboring seawalls; and (4) commenced construction on the Adjacent Property without a permit. In addition, the Applicant has never properly or fully justified why, in this case, the “pin piles” should be considered the “face of the seawall and cap” as referenced in the Code.

The Town must deny this after-the-fact Departure as a clear attempt to clean up the Applicant’s own preventable violations of the Town Code. On behalf of the Association, I request you include this letter in any record for this matter, including any appeal to the Town Commission.

Regards,



Robert K. Lincoln

RKL/adr

cc: Tate Taylor, Planner, ttaylor@longboatkey.org
Maggie Mooney, Town Attorney, mmooney@flgovlaw.com
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