



Fort Myers Beach Town Council

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Tuesday, February 21, 2023

9:00 AM

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Veatch and Council Member Woodson.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member Veatch moved to approve the final agenda with Item B. pulled for discussion; second by Council Member King.
Motion carried unanimously.

V. PUBLIC COMMENT

Town Clerk Baker noted that she forwarded an email from Tim Shadle and a handout from Dewitt and Christine Willis to Council Members.

Cindy Johnson, resident, noted that a window tint study was released that indicated any tint above 30% would disorient turtles. She commented that the town required a 45% window tint and suggested that residents install a 30% tint. She remarked that red tide was in the area and encouraged anyone who found sea turtles or other wildlife on the beach to call Turtle Time or FWC (Fish & Wildlife Conservation Commission).

Samantha Campbell, resident, reported that someone removed all the mangroves behind the Beach Theater at 5:30 a.m. She commented that debris from Charlie's Boathouse kept blowing into her mangroves and she could not access the area to remove the mess. She added that the owners did not clean out their coolers and the contents smelled awful.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Vice Mayor Atterholt recognized parents and the children who attended the beach school. He noted that the Lee County School Board is meeting on Wednesday to determine the school's future. He encouraged those who could not attend to email their school board members via the Lee County School District's website to voice support for the beach school.

Council Member Veach thanked Public Works staff for cleaning up the dead fish on the beach.

Council Member Woodson commented that the parents supported Option C regarding the beach school. She thanked Beach Talk Radio for reporting that supplies for the Lover's Key summer eco camps were stolen. As a result of their broadcast, funds were raised to replace the supplies.

Council Member King thanked the residents and town staff for their perseverance, hard work and dedication after Hurricane Ian.

Mayor Allers thanked John Henry from the Red Sox for inviting him, Interim Town Manager Wilkins and other families to the stadium. He thanked the staff for participating in the Edison Parade.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Steve Johnson, Chair of the Marine and Environmental Resources Task Force (MERTF), thanked Council for expediting the reappointments. He reported that the friends of MERTF were donating items for the pop-up booth events. He requested approval to start meeting again in March. He provided an update on the mosquito board facilities and noted they intended to rebuild.

Chair Johnson received support to hold their meeting in March.

Anita Cereceda, Chair of the Local Planning Agency (LPA), requested a joint work session on March 9, 2023, at 9:00 a.m. with Town Council and the consultant for the LDC (Land Development Code) and the Comprehensive Plan. She noted the LPA made a list of items to discuss, including a definition of a public benefit. She added that she was available to present the LPA's perspective on the zoning cases before the Council.

VIII. APPROVAL OF MINUTES

A. Town Council - February 6, 2023

Mayor Allers moved to approve the minutes; second by Council Member King.

Motion carried unanimously.

B. Management & Planning Session - February 9, 2023

Mayor Allers moved to approve the minutes; second by Council Member King.

Motion carried unanimously.

C. Town Council Special Meeting - February 9, 2023

Mayor Allers moved to approve the minutes; second by Council Member King.

Motion carried unanimously.

IX. CONSENT AGENDA

A. International Fine Arts Studio Inc.

Approve the construction contract between the Town of Fort Myers Beach and International Fine Arts Studio Inc. for repair services to the Mound House historic buildings and to authorize the Town Manager to execute the contract on behalf of the Town and waive the bond requirement per Code 2-484.c.(2) .

Council Member Veach moved to approve the contract; second by Vice Mayor Atterholt.

Motion carried unanimously.

B. Scotts® Field Refurbishment Program Application

Approve staff to apply for the Scotts® Field Refurbishment Program Application for enhancements to the ball fields at Bay Oaks Recreations Campus.

Council Member Veach questioned whether participating in the program limited what could be done with the ball fields. Director of Culture, Parks and Recreation Alison Giesen replied that the fields would remain and the non-matching grant allowed the town to offset up to \$50,000.00. If they applied, the deadline was February 28, 2023, and the town would know whether they were approved by the spring/summer. Enhancements will be completed by summer. She confirmed that the funds could be used for the small ball field since the larger field was planned to be relocated.

Interim Town Manager Wilkins indicated that FEMA (Federal Emergency Management Agency) would test and mitigate the soil where applicable. Director Giesen noted that chemicals would be applied to maintain the sod.

Council Member King moved to approve; second by Vice Mayor Atterholt.

Motion carried unanimously.

X. PUBLIC HEARINGS

A. Ordinance 23-04; Pink Shell CPD Amendment

1st Reading and Public Hearing on proposed Ordinance 23-04 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 13-23, AND AMENDING THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 200 AND 275 ESTERO BLVD., FORT MYERS BEACH; PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on March 6, 2023 at 9:00 AM.

Mayor Allers read the title of the ordinance. Ex parte communications:

Council Member Veach spoke to the applicant and Mayor Allers drove by the

site. No disclosures from other members. Town Attorney Herin, Jr. swore in those providing testimony.

Community Development Planner Sarah Provost stated that the applicant requested an amendment to the Pink Shell CPD to allow liveaboard vessels in association with the submerged land lease from the FDEP (Florida Department of Environmental Protection). She noted the land lease was updated to allow liveaboard vessels because the Pink Shell provided facilities. She reviewed three new conditions and noted that staff and the LPA recommended approval to allow liveaboards with the conditions stated in the staff report.

Council Member Veach questioned whether density would be increased. Planner Propst replied that staff did not consider liveaboards density, although it could be viewed differently.

Bill Waichulis, applicant, stated that the slips were rented the same as a hotel unit with a nightly rate. He noted they had the right for 41 slips and described the required amenities. He indicated the docks were being welded offsite and would be floating by July. He stated that the FDEP determined anyone staying over five nights was considered a liveaboard, but the town did not define liveaboard. Mr. Waichulis requested that the language between the FDEP and the town be clarified.

Council Member Veach clarified that anyone who requested to stay for under five days was allowed to stay. Mr. Waichulis replied affirmatively but added that since the FDEP allowed them to stay more than five days, the Pink Shell would allow a couple of days longer if requested. He noted that the average stay was three days.

No public comment.

Vice Mayor Atterholt moved to adopt Ordinance 23-04 and move it to a second reading on March 6, 2023, at 9:00 a.m.; second by Council Member King.

Motion carried unanimously by roll call vote.

B. Ordinance 23-02; Corner Lot and Setback Regulations

Second and Final reading, Public Hearing and adoption of proposed Ordinance 23-02 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 3, SECTION 34-638 MINIMUM SETBACKS, SECTION 34-2 DEFINITIONS, AND TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open second public hearing and then vote to approve the Ordinance.

Mayor Allers read the title of the ordinance. Planner Propst noted the packet covered corner lots, porches, and stoop encroachments, decreased additional setbacks for houses over 65 feet in length based on the side street setback, removed the 15% side setback requirement, amended the Matanzas

10-foot side setback and allowed for new mechanical equipment encroachment. The approach agreed upon in June included a standard front setback of 25 feet, a decreased side street setback based on the lot width and a side setback and a rear setback. A property on Estero would be required to apply the front street setback of 25 feet to the Estero-facing side of the property. If a lot takes its road access from the narrower setback, the site plan must show how vehicles would not encroach into the right of way. Lots greater than 75 feet have a 20-foot side street setback, lots greater than 50 feet up to 75 feet have a 15-foot side street setback and lots 50 feet or less have a 10-foot side street setback. The proposed language would allow porches, balconies and stoops to encroach half of the side street setback or 10 feet, whichever was less. The additional setback for houses that exceed 65 feet of frontage on a street has been decreased in proportion to the side street setback. For lots 50 feet or less wide, the additional setback would be 3 feet. For lots greater than 50 feet up to 85 feet wide, the additional setback would be 6 feet and for lots wider than 85 feet, the additional setback would be 12 feet. The proposed ordinance amendments would include a return to the 7.5-foot and 10-foot side yard setback. A 7.5 side yard setback for lots up to 75 feet wide and an increase in the side yard setback to 10 feet for lots greater than 75 feet wide was included. The 10-foot side setback for Matanzas Street and Matanzas Court was removed. The proposed language would also allow existing homes to install new equipment that encroaches up to 3 feet into side and side street setbacks. New homes would be required to meet side and side street setbacks.

Public comment:

John Elwood, realtor, questioned 3 feet additional for lots 50 feet and under. Planner Propst explained the proposed language.

Dave Sterman, owner of a construction company, requested clarification of setbacks for a particular sized lot on Gulf Road and Gulf Drive.

Public comment closed.

Planner Propst stated that she would review Mr. Sterman's issues.

Council Member Woodson moved to approve Ordinance 23-02; second by Mayor Allers.

Council Member Veach requested that Council reconsider using a 10% setback with a minimum of 7.5 feet for lots 100 feet or smaller.

Motion carried unanimously by roll call vote.

C. Ordinance 23-03; Nonconforming Lots, Minimum Use Determinations and Administrative Variances

Second reading and Public Hearing of proposed Ordinance 23-03 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 4, SECTIONS 34-3273 GENERAL REQUIREMENTS FOR RESIDENTIAL USES ON NONCONFORMING LOTS, SECTION 34-3274 MINIMUM USE DETERMINATIONS, AND CHAPTER 34, ARTICLE II., DIVISION 6, SECTION 34-268 ADMINISTRATIVE SETBACK VARIANCES; PROVIDING

FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Final adoption of ordinance 23-03

Mayor Allers read the title of the ordinance. Planner Propst reviewed the changes in Sec. 34-3273, Sec. 34-3274 and Sec. 34-268 as stated on the blue sheet. Amendments to Secs. 34-3273 and 3274 expanded the lots that were considered non-conforming but may be built on. Amendments to Sec. 34-268 include limitations on how much variance could be granted administratively. The language has been modified to allow for a second story above flood within the same sized footprint previously built. The fire official stated that the access roads should be 20 feet unobstructed; however, they understood that 20 feet might not be appropriate and the official voiced support for working with the town.

LPA Chair Cereceda stated that the LPA supported allowing owners to rebuild what had been on their lot, but they did not discuss allowing them to expand that use. The LPA felt that if owners wanted to add another story or expand their space, they would have to request a variance. The LPA did not think the owners should be immediately vested with that right.

Vice Mayor Atterholt questioned whether the rights in the proposed ordinance would transfer to a new owner. Planner Propst replied that it would not be affected by ownership. Vice Mayor Atterholt questioned whether the 25-foot setback was measured from the center of Estero Blvd. Planner Propst replied that all setbacks started at the property line.

Council Member Woodson questioned whether the proposed ordinance affected primarily one area. Planner Propst replied affirmatively but added that it would apply to any non-conforming lot. Council Member Woodson questioned the cost and length of the variance process. Planner Propst noted the price was previously \$1,300.00, but discussions about changing the process were ongoing.

Public comment:

John Elwood questioned how his client with a 40 x 65-foot lot would build a house.

Richard Durling, owner of Marvin Development Corp., explained his reasons for allowing a second story on small lots. He would like to see more flexibility to build back.

John Barrington, real estate developer, questioned combining 12 lots for a condominium three or four stories tall.

Kara Stewart supported allowing a second story administratively since there was no opposition.

Public comment closed.

Vice Mayor Atterholt questioned whether they were giving a special benefit to a small group of people or whether the situation was that unique. Planner Propst felt that they were granting this group something different than other groups, but it was based on a lot size issue of existing homes. She noted that by granting this, they were potentially increasing the likelihood of rebuilding a single-family residence rather than selling the lot. She added that the idea that someone would combine the lots to build a condominium would depend on the underlying zoning district.

Mayor Allers questioned the base flood elevation within the CCCL line, and planner Propst did not know. After a discussion regarding base flood elevation, she indicated that adding a story would not cause owners to be out of compliance with the zoning ordinance.

Council Member Veach commented that adding another floor created additional density. He felt that traffic would be worse, and he questioned where they stopped.

Council Member Woodson supported allowing a second floor so people would not sell their lots to a developer who wanted to build a condo.

Mayor Allers pointed out that whether they allowed a second floor or not, they could not predict whether the owners would sell their lots. He felt that Chair Cereceda made a good point that the owners would not have been able to build back what they had before Hurricane Ian. He stated there was an avenue for the owner to request a variance for a second floor.

Town Attorney Herin, Jr. pointed out that Sec. 34-3274 addressed minimum use determinations, not maximum use determinations.

Council Member Veach moved to pass Ordinance 23-03 as recommended by the LPA; second by Vice Mayor Atterholt.

Motion carried 4-1 by roll call vote with Council Member Woodson dissenting.

- D. Resolution 23-17;237 Old San Carlos, SEZ20220095 for a permanent shared parking lot and VAR20220094 variance from landscape, design and location requirements

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/DENYING SPECIAL EXCEPTION SEZ20220095 AND VARIANCE VAR20220094 TO ALLOW THE USE OF PERMANENT SHARE PARKING WITH DIMENSIONAL AND DESIGN VARIANCES FOR THE PROPERTY LOCATED AT 237 OLD SAN CARLOS BOULEVARD; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Ex parte communications: Vice Mayor Atterholt - previous conversation with the applicant; Council Member Woodson - conversation with the owner of the lot and Mayor Allers - drive by. No disclosures from other members. Town Attorney Herin, Jr. swore in those providing testimony.

Planner Propst noted that the applicant distributed a modified layout. She reviewed the request for a special exception and variances, as stated in the staff report. The LPA recommended approval of the special exception and variances with modifications. Staff felt the special exception request was appropriate if the location variance was granted. Staff recommended approval of variances 1, 2, 4, and 6 and recommended denial of variance 3. Staff recommended denial of variance 5; however, since the modified plan decreased the number of parking spaces, staff recommended approval of the parking space size if the lighting bollards could be moved towards the canal. Mayor Allers questioned whether the town had compact car requirements. Planner Propst replied negatively.

Sarah Spector of Roetzel & Andress represented the applicant. She stated that the modified parking plan showed 100 spaces and indicated there was an existing variance on the property that allowed what the applicant was asking for. She noted that she included a definition of compact spaces by another jurisdiction because the town did not define compact spaces. She referred to the pages in the distributed presentation. Page 2 described the property location; page 3 was the special exception variance allowed in 2014; page 4 contained a list of variances; page 5 displayed an overview of the site plan; page 6 was the downtown district; pages 7 and 8 set forth the pedestrian commercial designation and discussed redevelopment and page 9 removed buildings. She addressed the six variances and page 12 provided examples regarding the first landscape variance.

Greg Diserio, Registered Florida Landscape Architect with David M. Jones, Jr. & Associates Inc., displayed graphics of landscape plants to be installed in the parking lot.

Attorney Spector continued with the location variance and referred to Sec. 34-676(b) regarding off-street parking and commented that there was no building to park behind. She added there were no plans for redevelopment and there were no parking lots behind any of the buildings and no access points between 3rd Street and Estero Blvd., so parking interconnections were not needed.

She moved to page 18 regarding logistics and the variance for parking dimensions; page 19 displayed parking spaces in the location and only 29% of the spaces would be non-compliant; page 20 included the visibility triangle requirements; page 21 referred to Sec. 34-674 concerning building placement; page 22 addressed neighborhood compatibility; page 23 contemplated more parking in the area and page 24 comprised of staff recommendations or denials for variances with input from the LPA and concluded with a summary.

John Richard, applicant, stated that signs would be installed and he would participate in the parking app software. He intended to have an attendant and meters and explained the reason for exiting on 3rd St. Mr. Richard agreed to build the fence at any height the town requested.

Council Member Veach questioned Mr. Richard's long-term plans for the parking lot and noted that the area was a dead zone for pedestrians with nothing of interest. He mentioned that people complained that the road was very dark. Mr. Richard did not think it was a dead zone and commented that the street would be vibrant.

Council Member Woodson suggested signs could be installed near the Shipwreck store and liked the exit on 3rd St. She commented that the park-like parking lot could be an encouragement for other parking lots.

Mayor Allers agreed the landscape was nice and suggested incorporating parking for alternative vehicles and adding bike racks with water stations. LPA Chair Cereceda stated the LPA unanimously recommended approval and noted there was a lot of discussion regarding the variances. She supported the changes made between the LPA meeting and today and

hoped that Mr. Richard's plan encouraged other parking lot owners to meet his standards. She added that his plan made the existing variance better. No public comment.

Planner Propst pointed out that the parking space sizes facing the canal contained bollards that limited the depth; therefore, staff did not concur with the breakdown number of compliant parking spaces. It appeared that 42 spaces were 18' x 8.5' plus four ADA (Americans with Disabilities Act) spaces. She noted it would be difficult for larger vehicles to fit adequately. She added that the visibility triangle at the exit would have to come in 5 feet and out 100 feet from the exit.

Attorney Spector displayed the bollards in a graphic and stated the applicant would be happy to remove them.

Vice Mayor Atterholt moved to approve granting the special exception and all six variances; second by Council Member King.

Motion carried unanimously by roll call vote.

XI. ADMINISTRATIVE AGENDA

A. Resolution 23-16: Estero Island Emergency Berm

Approve Resolution 23-16 entitled: A Resolution of the Town Council of the Town of Fort Myers Beach, Florida, Accepting the Ranking of Grubbs Emergency Services, LLC ("Grubbs") as the Top Ranked Responsible and Responsive Bidder to ITB-23-08-CD "Estero Island Emergency Berm"; Approving an Agreement Between the Town and Grubbs for the Construction of the Estero Island Beach Emergency Berm; Authorizing the Execution of the Agreement and Expenditure of Budgeted, Emergency, and/or Grant Funds by the Town Manager; and Providing an Effective Date

Mayor Allers read the title of the resolution. Town Attorney Herin, Jr. stated that Bergeron withdrew their notice of intent to protest the bid.

Council Member Veach moved to approve Resolution 23-16; second by Council Member Woodson.

Motion carried unanimously.

XII. FINAL PUBLIC COMMENT

No public comment.

XIII. TOWN MANAGER'S ITEMS

Interim Town Manager Wilkins stated that they would review the Council's policy for selecting a Town Manager on March 9, 2023, at the Management and Planning session. He noted they were working on hiring a Utilities Manager and HR Manager and the Finance Director would be starting on March 13, 2023. The Town Hall commercial building appraisal was due back February 28, 2023. The compensation classification study was due on April 30, 2023. He was working on

modifying the HR employee manual and presenting an interim budget. FP&L (Florida Power & Light) was planning the Times Square project. The town received a \$1 million grant from DOT (Department of Transportation) to install pavers in Times Square, which would happen in July. Interim Town Manager Wilkins noted that he received new language regarding the easements for the emergency berm that did not allow public access but did allow for the construction and monitoring for the next 15 years. Environmental Project Manager Chadd Chustz indicated that information regarding the easements was on the website and emails and direct mail would be sent to people. He added that staff would set a deadline for easements to be signed. Town Attorney Herin, Jr. summarized the new language in the easements.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. stated the memo concerning pending lien foreclosures would be distributed later today. He indicated that there were no connections between the code lien of the Key Estero Shops property and the Sea Grape property. He commented that code enforcement would continue to enforce the town's rules and regulations. Owners who violated the property maintenance requirements would be cited for failing to maintain their property. Mayor Allers would like to direct the Town Attorney to draft a detailed process to inform residents of a deadline to remove debris. Council Member Veach suggested that people who could not remove debris due to insurance issues be required to fence off the area. Vice Mayor Atterholt suggested creating a process to require people to demonstrate efforts to remove debris to avoid potential fines.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King questioned whether La Ola would be cited and fined. Interim Town Manager Wilkins replied that conversations with FEMA and the DEM (Department of Emergency Management) were positive, and fines would be held. Council Member King questioned the schedule for cleaning the porta-potties in Times Square. Interim Town Manager Wilkins replied that they were supposed to be cleaned daily. Council Member King suggested that something on a permanent basis be researched that would plug into the sewer system. Interim Town Manager Wilkins replied he would investigate. Council Member King questioned whether the town was citing people who were parking on private properties. Town Attorney Herin, Jr. noted that the town could not cite or remove vehicles parked on private property.

Council Member Woodson questioned how many easements were signed. Project Manager Chustz replied that around 50 or 60 out of 384 signed, but he felt more would sign after reading the new language. Interim Town Manager Wilkins indicated that responses to the legal counsel RFP were due on March 15, 2023.

Council Member Veach brought up tents on land and questioned what constituted a trailer or RV versus a tent. Town Attorney Herin, Jr. stated that tents were prohibited except in designated camping areas per the code. Council Member Veach requested an expedited discussion regarding plans for Times Square.

Community Development Director Steve Poposki reported that the Lee County Property Appraisers' valuation was now acceptable to FEMA.

Staff would not require a second appraisal if the first appraisal was more than 35% of the original. Vice Mayor Atterholt thanked the Mayor, the Interim Town Manager, the Town Attorney and Community Development Director for their hard work over the past week. Discussion was held regarding what would happen if FEMA decided to change its mind regarding accepting the Lee County Property Appraisers' valuation in the future.

XVI. ADJOURNMENT

Council Member King moved to adjourn; second by Mayor Allers.
Motion carried unanimously.

The meeting was adjourned at 12:13 p.m.

Minutes adopted, March 6, 2023; Motion by Council Member King and seconded by Council Member Woodson. Passed 5-0.



Amy Baker, Town Clerk