



Fort Myers Beach Local Planning Agency

Bay Oaks Recreation Center
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes

Tuesday, February 13, 2024

9:00 AM

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

Members present: Chair Cereceda, LPA Member Boan, LPA Member Eckmann, LPA Member Plummer, LPA Member Safford, LPA Member Sudduth and LPA Member Vanasse.

II. INVOCATION

Chair Cereceda.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF MINUTES

- A. January 9, 2024 LPA minutes
LPA Member Boan moved to approve the minutes; seconded by LPA Member Sudduth.
The motion carried unanimously.

V. PUBLIC COMMENT

Grace Workman, resident, asked about putting five more stories on top of her house for single families due to inflation and insurance costs. She noted they would be for local residents only. She indicated that developers were asking for more density, and she wanted more too. She invited members to stop by for a drink to discuss options.

VI. PUBLIC HEARINGS

- A. **WITHDRAWN** SEZ20230302, COP for 450 Harbor Court
Staff request for a continuance to a date uncertain, SEZ20230302 for COP Rude Shrimp at 450 Harbor Court

- B. **WITHDRAWN** SEZ20230226, Ink Shell Resort beach and pool amenities in the EC zoning district.

Staff is requesting a continuance to a date uncertain, for SEZ20230226 for The Pink Shell Resort located at 275/322, 200, and the common element of 192 Estero Blvd.

- C. Ordinance 24-03; Flood Ordinance

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE IV OF CHAPTER 6 OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH TO 1) REQUIRE ALL MANUFACTURED HOMES INSTALLED OR REPLACED IN SPECIAL FLOOD HAZARD AREAS TO BE ELEVATED AT OR ABOVE AT LEAST THE BASE FLOOD ELEVATION PLUS 1 FOOT; 2) ADOPT THE NOVEMBER 17, 2022 FLOOD INSURANCE STUDY FOR LEE COUNTY FLORIDA AND INCORPORATED AREAS; 3) CHANGE TO SUBSTANTIAL IMPROVEMENT AND SUBSTANTIAL DAMAGE DETERMINATIONS; AND 4) AMEND THE DEFINITIONS OF MARKET VALUE AND SUBSTANTIAL DAMAGE, IN ORDER TO COMPLY WITH RECENT CHANGES TO THE COMMUNITY RATING SYSTEM NECESSARY TO RETAIN A CLASS 8, WHICH ASSIST THE TOWN IN MAINTAINING ITS CLASS 5 COMMUNITY RATING SYSTEM DESIGNATION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Chair Cereceda read the title of the ordinance. Flood Plain Manager Kristin Schumacher explained that the ordinance was to maintain the Class 5 community rating designation. She confirmed that the other section would be amended with input from the state after the ordinance was approved.

No public comment.

LPA Member Boan moved to approve the ordinance; seconded by LPA Member Sudduth.

The motion carried unanimously by roll call vote.

- D. Resolution 23-190; VAR20230162, 21391 Widgeon Terrace

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230162, TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE REQUIRED SIDE YARD SETBACK BY 2.18 FEET FROM THE REQUIRED 10 FEET AND TO DECREASE REQUIRED WATERBODY SETBACK BY 14.39 FEET FROM THE REQUIRED 25 FEET, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 21391 WIDGEON TERRACE; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE

Town Clerk Baker confirmed that the three variances were properly advertised. She swore in those providing testimony. Chair Cereceda read the title of the resolution. Ex parte communications: LPA Member Vanasse - toured the property and met with the neighbor about concerns and LPA Member Sudduth - discussions with the neighbor about concerns. No disclosures from other members.

Community Development Planner Sarah Propst reviewed the background of the request as stated on the yellow sheet. She noted that the staff required an additional condition to add landscaping to buffer the pool from the neighbor. The staff report was amended to include the elevated pool.

Attorney Robert Barrantt represented the applicants and described what they had gone through since 2021. He noted that the neighbor objected to seeing the pool and Attorney Barrantt commented that everyone could see their neighbor's pool now. The property owners were prepared to add the landscape and they tried to reach a resolution with the neighbor but were unsuccessful. He noted there was nowhere else to place the pool on the property and the owners moved the mechanical equipment under the house to mitigate the noise.

LPA Member Vanasse commented that the elevated pool blocked the views and the addition of the outdoor kitchen on the deck was not disclosed earlier. Attorney Barrantt suggested that the view was already obstructed by the house and LPA Member Vanasse disagreed. Slides were displayed and the view was discussed. Kelly Moore described pictures and stated that the outdoor area was there when the house was purchased.

Ms. Moore utilized PowerPoint for her presentation. Slides included an aerial view showing that 12 out of 14 homes have pools and facts about the neighborhood were listed, a timeline and two changes to setbacks, Ms.

Moore described creating an outdoor space, Hurricane Ian's destruction, a New survey, Pool Proposal, Request to add screen cage to the pool and the neighbor and rental agency's sudden concern despite not attending the LPA meeting. She stated they met with the neighbor three times and with staff last Saturday. They walked around the property and onto the neighbor's decks above the garage and commented that the pool would be even with the existing deck. No compromises were reached. She invited LPA Members to visit their home and stated they do not rent their home.

LPA Member Plummer noted that the setback was 7.5 when the property was purchased.

Public comment:

Attorney Sarah Spector from Roetzel & Andress represented the Himmelsteins, who owned the adjacent property. She distributed a presentation and stated the applicants did not meet three of the five criteria required. She said it was detrimental to the neighborhood and asked that the LPA deny the requests. She reviewed the definition of de minimus and included a picture of the property next to a survey and where the pool was proposed. She stated the cage would block the view even more. Alternative options were to put the pool on the south or east side of the home and install an at-ground pool without a pool cage or a shorter pool cage.

She noted their main concern was that the pool would take up the entire property and possibly compromise the drainage on the property and adjacent property. She added that emergency vehicles would not be able to turn around. She requested that the request be denied or that alternative options be considered.

Robert Himmelstein, resident, distributed documents and described the other raised pool in the neighborhood. He noted the property did not meet impervious surface calculations, the pool was too big and there were too many amenities in the area. He said they could add a smaller pool and invited Planner Propst to visit the property.

Jeff Walker managed the adjacent rental property and stated Mr. Himmelstein was in town once a month and would eventually be a full-time resident.

Judy Haataja, resident and business owner, was concerned about the setback and protecting the adjacent neighbor. She discussed elevated pools obstructing the view. She felt the variances should be denied or changed.

Larry Himmelstein, resident, commented about his son.

Dorothy Himmelstein, resident, commented about the town and her son. Public comment closed.

Attorney Burrendt noted the parent's comments were not relevant and he discussed the de minimus concern. He stated the town would not allow an inground pool and the pool was only 10 feet wide, not 20 feet. There were no other options for the pool location and this was as de minimus as it gets. He asked that the requests be approved and they were okay with the landscape requirements. LPA Member Sudduth questioned whether a 10-foot-tall pool cage was an option for the owners. Mr. Plaisted, applicant, referred to pages 25 & 26 regarding the landscaping and pool screen. He stated that his property did meet the impervious surface requirements.

LPA Member Vanasse questioned whether an elevated pool was considered an impervious surface. Planner Propst replied that the owners would be required to meet the impervious surface coverage. She clarified the dates that the setback rules changed. LPA Member Boan verified that the applicant could plant tall landscape without permission from the town. LPA Member Sudduth stated that all requirements would have to be met before a permit was issued. LPA Member Vanasse indicated that the plans for the outdoor kitchen were not included in the application packet and were material for de minimus. He referred to Attorney Spector's presentation and noted there would be a wall towards the water. He asked if the LPA was okay with that and discussed mischaracterizations of what was requested. LPA Member Plummer commented that the applicant had a right to privacy on his property and the cement blocks would be the same level as the deck. She was unsure the view was the issue and felt it was a de minimus request. LPA Member Sudduth lived at the property for five years and stated that the view from the forward deck would not be impeded because there was already a tall hedge where the pool would be. He said that he had a pool planned for the same area while he lived there. Chair Cereceda noted that they were only talking about a tiny portion of the neighbor's property and she supported the variance even though she did not like elevated pools. The pool would not

impact anyone in the neighborhood and the request was reasonable.

Chair Cereceda moved to approve the variances finding it consistent with the regulations of the LDC and Comp Plan with the condition of landscaping; seconded by LPA Member Plummer.

The motion carried 5-2 by roll call vote, with LPA Members Eckmann and Vanasse dissenting.

- E. Resolution 24-09; VAR20230288, 8069 Estero Blvd.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230288, REQUESTING A VARIANCE FROM LDC 34-638(D)(1)G. WHICH REQUIRES NEW AT-GRADE MECHANICAL EQUIPMENT TO NOT ENCROACH INTO A SIDE YARD SETBACK AND TO BE LOCATED ON THE SIDE OF THE PROPERTY WITH THE LARGER SETBACK, WHERE THERE ARE DIFFERING SIDE SETBACK WIDTHS, FOR THE PROPERTY LOCATED AT 8069 ESTERO BOULEVARD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the resolution. No ex parte communications. Planner Propst reviewed the background of the request as stated on the yellow sheet. LPA Member Plummer noted that placing the equipment under the stairs was a potential fire hazard. Planner Propst explained that the site plan showed the equipment in the correct location, but the installers put it on the wrong side of the house.

Valerie Blair, applicant, stated the pool was installed in 2022 and was not inspected before lan. She was not aware that the pool equipment was installed in the wrong location. The contractor agreed to move it, but the applicants would be charged. She read a letter from her neighbor who did not have a problem with the current location of the equipment.

No public comment.

LPA Member Vanasse moved to approve the variance; seconded by LPA Member Eckmann.

The motion carried unanimously by roll call.

- F. Resolution 24-20; VAR20230284, 65 Flamingo St

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230284, REQUESTING A VARIANCE FROM TABLE 34-3 PRINCIPAL STRUCTURE SETBACKS, TO DECREASE THE FRONT STREET SETBACK BY 10 FEET AND DECREASE THE REAR SETBACK BY 15 FEET AND DECREASE THE REAR STREET SETBACK BY 15 FEET, TO ALLOW A NEW SINGLE FAMILY HOME FOR THE PROPERTY AT 65 FLAMINGO STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the resolution. Ex parte communications: LPA Member Vanasse asked Mr. Ink a question before the hearing. No disclosures from other members.

Planner Propst corrected the staff report and the title of the resolution. She stated that the correct request was to reduce the front setback by five feet and there was an additional encroachment of a five-foot single-story porch on the front of the house. The house was only encroaching five feet. She reviewed the background of the request as stated on the yellow sheet. Two letters of objection were received by neighbors within 500 feet of the property. LPA Member Vanasse clarified that the setback was from 20 feet, not 25.

Jim Ink reviewed his experience and background as a professional engineer. Chair Cereceda moved to accept Mr. Ink's qualification as an expert in his field; seconded by LPA Member Plummer.

The motion carried unanimously.

Mr. Ink distributed copies of his PowerPoint presentation.

Albert Dambrose reviewed his experience and background in residential and commercial architecture.

LPA Member Plummer moved to accept Mr. Dambrose as an expert in his field; seconded by LPA Member Eckmann.

The motion carried unanimously.

Mr. Ink's presentation included the Design Team, Request Statement, 2033 Aerial Pre lan, 2023 Post lan, Survey, Base Plot Plans and Variance Criteria. He requested that the graphic with the buildable area be attached to the final ordinance.

Public comment:

John Otteson, resident, commented that the property was on a path and he felt the house would be intrusive. He stated that the property owner claimed a homestead exemption for at least nine years and the owner's property in Michigan was also homesteaded.

Public comment closed.

Mr. Dambrose stated that the total square footage under air was 1,601. Mr. Ink noted that the five-foot path or walkway referred to by Mr. Otteson would remain. LPA Member Plummer questioned whether the walkway was deeded and Mr. Dambrose did not know.

LPA Member Eckmann moved to approve the variance request with conditions in the staff report; seconded by LPA Member Plummer. The motion carried unanimously by roll call vote.

G. Land Development Code (LDC) / Comprehensive Plan (Comp Plan) Updates
Comp Plan Elements

Eddie Ng from The Corradino Group indicated that members were sent a packet for their review. He referred to the three elements in the chart and noted that the district maps changed based on feedback. He advised that the Comprehensive Plan (Comp Plan) be treated as a vision and loosened/tightened where needed. The Future Land Use Element was reviewed. A new resiliency policy was suggested on page 2. LPA Member Sudduth thought 12 months to implement the adjustments was too long, but Planner Propst commented that it was appropriate and should not be rushed. LPA Member Sudduth questioned whether they could change some regulations a little quicker.

Planner Propst replied that they had to look at the entire document. LPA Member Vanasse brought up the new mixed-use category and questioned whether the properties that fell under the previous mixed-residential category would be affected by taking out the commercial component. He asked whether they were losing the opportunity for commercial uses. Mr. Ng replied that they recommended a degree of separation. LPA Member Vanasse noted that they were not allowed to make more restrictive changes per the Senate bill. Planner Propst would double-check, but she thought everything was covered under mixed.

Planner Propst indicated that the area shown as a theater/arts mixed-use district was a Boulevard district and separate from the neighborhood.

LPA Member Plummer questioned why the mobile homes were removed but not the RVs. LPA Member Vanasse explained that mobile homes were permanent structures and RVs were not. Planner Propst questioned whether they wanted to allow new mobile homes. Mr. Ng replied that the state discouraged new mobile homes on barrier islands. LPA Member Vanasse noted that mobile home park exemptions were removed from the flood plain ordinance. He thought the flood plain ordinance said they could have a manufactured home, but it would have to be built to code requirements. He questioned whether it was more restrictive. Planner Propst asked whether they wanted to maintain mobile home parks if they could be removed without creating an issue. LPA Member Plummer mentioned that properties on Pearl St. would become more restrictive and the replacement cost much higher.

LPA Member Boan stated that if the flood plain code prohibited mobile home parks, the language should not be in the Comp Plan.

Mr. Ng explained why the district boundaries of Times Square changed. Regarding FAR, he recommended keeping the structure and changing the number as they saw fit and the result would create predictability for the homeowner.

Chair Cereceda indicated that the section was confusing and Mr. Ng responded that he would work with staff to create a map in addition to the text. Mr. Ng will email maps to Planner Propst. The discussion will be continued at a separate LPA meeting to be scheduled at the end of the month.

No public comment.

VII. ADMINISTRATIVE AGENDA

No items.

VIII. LPA MEMBERS ITEMS/REPORTS

LPA Member Plummer commented on A. and B. being continued again and asked why the Rude Shrimp was able to operate without a COP (Consumption on Premises) license. Planner Propst stated that the Rude Shrimp's application was insufficient. LPA Member Plummer noted that the town appeared to be allowing them to continue without permits. She questioned why the Pink Shell was continued. Planner Propst replied that they proposed moving their easement and there were difficulties with the process. LPA Member Plummer questioned two fixed structures on the property and Planner Propst will look into them.

LPA Member Vanasse requested a recap of where they were and where they were going for the next Comp Plan discussion.

LPA Member Sudduth commented that the stop light at the pedestrian walkover should be avoided.

LPA Member Eckmann suggested including a policy in the Comp Plan to encourage the use of native plants.

Chair Cereceda felt it was a disservice to the residents when continuances were continually requested. She said she did not know how the Rude Shrimp could continue without a permitted use. Residents trying to do something with their homes did not get the same leniency. She noted they were wasting everyone's time by delaying, which should stop.

Planner Propst requested that property owners check their addresses on the Property Appraiser's website because the town was getting a lot of mail returned. No items from other members.

IX. LPA ATTORNEY ITEMS/REPORTS

No items.

X. COMMUNITY DEVELOPMENT ITEMS/REPORTS

No items.

XI. ITEMS FOR NEXT MONTHS AGENDA

Several cases would be on the agenda.

XII. ADJOURNMENT

LPA Member Sudduth moved to adjourn; seconded by LPA Member Boan.
The motion carried unanimously.

The meeting was adjourned at 12:30 p.m.

Minutes adopted as presented, February 27, 2024; Motion by LPA Member Sudduth and seconded by Vice Chair Plummer. Passed 6-0.



Amy Baker, Town Clerk