



Fort Myers Beach Local Planning Agency

**Diamondhead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Tuesday, May 9, 2023

9:00 AM

ORDER OF BUSINESS

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. Approval of the April 11, 2023 draft minutes
(The motion and second were not recorded.)

Motion carried unanimously.

V. PUBLIC COMMENT

No public comment.

- A. Side setback amendment

Community Development Planner Sarah Propst noted that the fire department raised the issue of fire flow and the fire hydrants had to be tested to ensure adequate flow. The building code does not allow overhangs to project closer than 40 inches to the property line and requires an additional fire rating for combustible eaves closer than five feet to the property line. This will require houses with a five-foot side setback to have different overhang regulations and requirements. Planner Propst was unsure whether the fire department conducted fire flow tests or whether the town was responsible for hiring someone.

Community Development Director & Building Official Steve Poposki stated

they were getting into dangerous territory by building houses too close together. He indicated that openings were prohibited, which meant no windows, no bedrooms and, ultimately, no house. A complete sprinkler system might also be required for the house and he described the fire separation distance. He recommended that the setbacks not be changed for public safety.

LPA Member Vanasse noted that many new communities had five-foot setbacks and questioned whether it was problematic. Director Poposki replied that it should be problematic due to the fire danger. LPA Member Vanasse noted that only the eaves would be affected.

Town Attorney Herin, Jr. explained that windows in homes were for egress in case of a fire and required by the current Florida Building Code for public safety. Director Poposki stated that a 7.5-foot setback was the safest and 5 feet was the minimum, but it would place extra burdens on the building staff. LPA Member Sudduth commented that they could require sprinklers with 5-foot setbacks and fire rate the eaves.

LPA Member Plummer questioned 5 feet being a dangerous fire hazard due to all the new communities with 5-foot setbacks.

Planner Propst provided suggestions in her report and one was to decrease the allowable encroachments, which would mean no overhangs over six inches. Another option would be a 6.5-foot side setback, which would allow the same overhang and some decks. She added that the new communities with 5-foot setbacks were usually built by one builder and they had pre-approved designs.

Public comments:

Samir Malviya and Tyler Knafelc from Homebound thanked the LPA. Mr. Malviya commented that a 6.5-foot setback would allow homeowners to build homes and he added their products were fire rated. Mr. Knafelc had experience with fires in CO and noted that a fire destroyed one community with 5-foot setbacks and wood siding. He stated that his company had five home plans designed to fit within 6.5 feet side setbacks.

Steve Hartsell thanked the LPA for discussing the side setbacks. He encouraged them to list all the requirements if they allowed a 5-foot side setback so property owners knew what they were getting into before spending a lot of money. He added that it would also help staff with their reviews and builders with their designs.

Public comment closed.

Chair Cereceda noted that 6.5-foot side setbacks would allow construction and get people back in their homes. Director Poposki supported the 6.5-foot side setbacks and Planner Propst agreed. Planner Propst added that the 6.5-foot side setback would apply to the width of the lot less than 50 feet. LPA Member Eckmann commented that the lots had to be qualified with the effective width and defined as perpendicular to the side lot. The 6.5-foot side setback would allow for a 32-foot wide building without triggering fire-rated walls.

LPA Member Eckmann moved to approve the presentation in the package, except change option A. to a minimum 6.6-foot side setback on lots with an effective width of fewer than 50 feet; second by LPA Member Boan. Motion carried unanimously.

VI. PUBLIC HEARINGS

A. Discussion regarding setbacks for houses in primarily nonresidential districts
Provide input regarding setbacks on residential uses in nonresidential districts.

Planner Propst reviewed the proposed changes to the downtown zoning district as stated on the yellow sheet.

LPA Member Vanasse was concerned about reducing existing setbacks. Planner Propst indicated they could apply the RS standard setbacks, which were over 80 feet was 10 feet, from 80-50 was 7.5 feet and less than 50 was 6.5 feet. LPA Member Vanasse stated they would take away from people who currently had 5 feet setbacks and he supported adding caveats for fire and building requirements. Chair Cereceda commented that they were talking about the properties in the downtown area. LPA Member Safford thought they were discussing 20-30 homes and he did not have a problem with 5-foot setbacks with caveats because the lots were tiny.

LPA Member Plummer agreed with allowing 5-foot setbacks due to the size of the lots. LPA Member Boan noted that a 5-foot setback was consistent with the philosophy of allowing people to build back what they had.

No public comment.

LPA Member Vanasse moved to forward the recommended changes by staff, except the minimum side setback should remain at 5 feet as in the current code and add a caveat to ensure the building code and fire rating performance are included; second by LPA Member Sudduth.

Motion carried unanimously.

B. Sec. 26-71 Dock and Boat Ramp amendments to address multifamily docks.
Provide input on proposed Dock and Boat Ramp ordinance section amendments

Planner Propst reviewed the background of the item as stated on the yellow sheet.

LPA Member Vanasse questioned whether there was a need to limit the number of slips to the number of units. Planner Propst asked whether he would be turning a residential property into a commercial property by allowing the use of the dock for the Coast Guard or another commercial entity. LPA Member Sudduth noted that one had to be a condo owner to purchase a slip at Bay Beach.

LPA Member Plummer questioned cul-de-sacs and side setbacks. She indicated some canals had issues with cul-de-sac parking for boats and docks and arranging vehicles to provide decent access. Planner Propst commented that most of those canals did not meet the setbacks and some

property owners drafted agreement letters with each other, which could cause problems down the road. She suggested meeting with property owners and dock builders to determine how to improve the situation. LPA Member Plummer thought it would be nice to include some language in the ordinance concerning an agreement letter between neighbors. LPA Member Sudduth supported talking to dock builders regarding the setbacks. Chair Cereceda noted the AAC (Anchorage Advisory Committee) was filled with boat owners and mentioned giving the information to them for their input. Planner Propst agreed. Chair Cereceda suggested they table the hearing until the AAC reviews the information.

Chair Cereceda moved to table item B. and remanded it to the AAC for their input; second by LPA Member Boan.
Motion carried unanimously.

C. Ord. 18-04 Commercial Planned Development Amendment to Conditions of

Approval for TPI-FMB (Margaritaville)

Approve/Approve with changes/Deny 1170, 1180/1192, 1204/1206 Estero Blvd -DCI 20230039 a request to amend Ordinance to modify conditions of approval

Chair Cereceda read the title. Ex parte communications: LPA Member Safford had a conversation with the applicant; LPA Member Vanasse had a discussion with the applicant and Chair Cereceda had a conversation with the applicant. No disclosures from other members. Town Attorney Herin, Jr. swore in those providing testimony.

Planner Propst stated that the attorney representing the applicants was Steve Hartsell from Pavese Law Firm. She reviewed the background of the request as stated on the yellow sheet.

Attorney Hartsell utilized PowerPoint for his presentation. Slides included: Amendment to Ordinance #18-04; Location Map; LDC Section 34-1(a); LDC Section 34-85(b); Ambiguity in Condition #14; TPI Proposed Changes to Condition #14; Clean Version of Revised Condition #14 and Condition #20 Edit.

Chair Cereceda verified that the first two sentences in a. under Condition #20 will remain in place.

The recording skipped to Tom Torgerson speaking about his grandkids and perpetuity. He commented that Ian had changed everything. He discussed losing the Bubble Room and noted that putting bathrooms 15 feet in the air was not in anyone's best interest. He was working with the town to rebuild at grade level but commented that codes could change. He said his request was about allowing flexibility to consider additions in the future and he did not think any other CPD had the same restrictions.

John Dammerman added that they had no intentions for those parcels and intended to use them as a beach club.

No public comment.

LPA Member Plummer agreed that no other CPD had the same restrictions and she did not think it was inappropriate to open that door.

LPA Member Vanasse felt that respecting due process was essential and supported removing the condition that restricted the applicants in perpetuity. Chair Cereceda stated that approving the CPD was a unique case and no other CPD had the same restrictions. She noted that the applicant would not have been able to build back after Ian with the restriction in place, which was not the intent. She supported the request.

LPA Member Plummer moved to forward the item to the Town Council with a recommendation of approval as submitted by the applicant's specific changes to the ordinance and the changes were consistent with the LDC (Land Development Code) and Comprehensive Code and furthers the intent of the original CPD; second by LPA Member Sudduth.
Motion carried unanimously by roll call vote.

D. Olde Seaport Place Amendment to the Master Concept Plan (Res 17-39) to

add seating and extend the consumption on premises

Approve/Approve with Conditions/Deny 645 Old San Carlos- DCI 20230008, requested amendment to Commercial Planned Development (Olde Seaport Place) to add seating and extend the consumption on premises boundaries.

Chair Cereceda read the title. No ex parte communication from any member. Town Attorney Herin, Jr. swore in those providing testimony.

Planner Propst reviewed the background of the request as stated on the yellow sheet. She noted there were no changes to the existing CPD conditions and no proposed changes to the allowed list of uses.

Jim Figuerado, applicant, explained that the covered walkway was critical to protecting customers when it rained. He wanted to increase the back bay area so people could enjoy the scenery. He noted they have ample parking. No public comment.

Chair Cereceda moved to approve the request with the conditions outlined in the staff report to modify the master concept plan, expand the consumption on premises areas and that the request was in compliance with the original plan development and relay to Town Council for approval; second by LPA Member Boan.

Motion carried unanimously by roll call vote.

VII. ADMINISTRATIVE AGENDA

Planner Propst stated that the Town Council was taking the month of July off and wondered whether the LPA was interested in taking the month off. LPA Member Sudduth was concerned regarding holding up the schedule and LPA Member Vanasse indicated there were items that needed to be resolved. Consensus was reached to meet in July. Chair Cereceda, LPA Member Sudduth and LPA Member Plummer will attend remotely. LPA Member Plummer suggested having a second meeting in June. Town Attorney Herin, Jr. stated that a physical quorum had to be present but rules allowed members to attend remotely if the LPA as a whole agreed. Discussion was held concerning potential meeting dates.

VIII. LPA MEMBERS ITEMS/REPORTS

LPA Member Vanasse encouraged people to attend the school district meeting later that evening. He requested an update on certain items. Planner Propst indicated the FAR issue would need a Town Council decision. LPA Member Vanasse felt that the LPA needed to make recommendations to the Town Council. Planner Propst will do some research and bring FAR back to the LPA. LPA Member Vanasse discussed measuring FAR and thought the confusion stemmed from calculating parking under a building as a story when almost no other community did the same. He felt correcting that would remove the confusion. Planner Propst questioned whether he wanted flexibility and a change or a flat change. Chair Cereceda stated they had to illustrate the ramifications of the change. What would the building look like if the FAR was calculated from the ground versus calculated above parking. Planner Propst remarked that height was measured from base flood elevation and FAR could measure below base flood elevation but did not count towards height. Planner Propst will put something together. The language regarding architectural embellishments was removed by ordinance from the code because the way height was measured changed. She explained the need for the change and noted architectural features were still allowed. LPA Member Vanasse suggested that the language be changed. Chair Cereceda stated that the issue was always about making the area non-habitable.

LPA Member Eckmann questioned whether they discussed encouraging a percentage of native plant landscaping on properties, but he was not interested in a landscape ordinance. LPA Member Vanasse supported residential guidelines and identifying Florida-friendly plants for property owners. Planner Propst will look into that and investigate the tree program.

LPA Member Safford questioned when the comprehensive plan changes would be presented. Planner Propst replied that Eddie Ng was out of the country and planned to return by the end of the month. She provided clarification on items to another consultant working with Mr. Ng. She noted the first public meetings would probably occur sometime in October. LPA Member Vanasse suggested that Planner Propst contact Commissioner Ruane from Resilient Lee regarding available funding for planning and public meetings.

Chair Cereceda felt providing relative background information for CPDs coming for revisions would be beneficial. She cautioned LPA members against making comments on social media concerning projects because they may eventually come before them.

IX. LPA ATTORNEY ITEMS/REPORTS

No items.

X. COMMUNITY DEVELOPMENT ITEMS/REPORTS

Covered elsewhere.

XI. ITEMS FOR NEXT MONTHS AGENDA

Several variances.

A. Confirm upcoming LPA meeting dates

No change.

XII. ADJOURNMENT

LPA Member Sudduth moved to adjourn; second by LPA Member Eckmann.
Motion carried unanimously.

The meeting was adjourned at 11:15 a.m.

Minutes adopted as presented, June 13, 2023. Motion by LPA Member Sudduth and seconded by LPA Member Plummer. Passed 7-0.

A handwritten signature in blue ink, appearing to read "Amy Baker".

Amy Baker, Town Clerk