



Fort Myers Beach Local Planning Agency

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

Minutes

Tuesday, June 13, 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 May 9, 2023 draft minutes
LPA Member Sudduth moved to approve the minutes; second by LPA Member Plummer.
Motion carried unanimously.

V. PUBLIC COMMENT

No public comment.

VI. PUBLIC HEARINGS

Town Attorney Herin, Jr. swore in those providing testimony for all hearings.

- A. 106 Hibiscus Drive, variance from LDC Section 34-638(a)(4) Minimum Setbacks, Corner Lot Setbacks and LDC Table 34-3 for front street setback and side setback

Approve/Approve with Conditions/Deny variance request VAR20230060 for the following variances: a) make Hibiscus Drive frontage the front street and Estero Boulevard the side street; b) to switch side and rear setbacks; c) to reduce Hibiscus Dr setback from 25 feet to 15 feet 10 inches; and d) to reduce the side setback from 7.5 feet to 5.5 feet. The

property is located at 106 HIBISCUS DRIVE.

Ex parte communications: LPA Member Safford recused himself because the property was in his wife's trust; LPA Members Vanasse and Plummer - spoke to owner Jackie Liszak and Chair Cereceda visited the property. Community Development Senior Planner Smalley reviewed the requested variances and noted staff recommended denial of the variance to treat Hibiscus as the front because the code called for Estero Blvd. to be designated as the front. LPA Member Plummer noted the address and driveway were on Hibiscus and the lot was an odd design. She was willing to look at the house with Hibiscus in the front.

Samir Malvia and Drew Whiting (via telephone) with Homebound distributed the presentation. He received letters of support from several neighbors. Mr. Whiting discussed the information in the presentation. He described the current corner lot setbacks and the property in Exhibit A; Exhibit B; Exhibit C; Exhibit D and Exhibit E showed the proposed house's footprint.

LPA Member Plummer referred to Exhibit C and noted the footprint was almost the same as what existed. LPA Member Vanasse pointed out that the corner of the proposed house was close to 25 feet. Mr. Whiting agreed they were likely over 25 at the corner closest to Hibiscus. He described the two decks and noted the one-story deck could overlap more but the two-story deck could not encroach on the front setback. He referred to Sec. 34-6-38 (d)(2) regarding encroachments.

Public comment:

Jackie Liszak, owner, stated she was trying to build back the family home under the new restrictions. She noted they would maintain the front to make it look like the front of a home. She commented that there were a few other lots like hers on Estero Blvd.

Richard Calienes, resident, supported the request and his lot was one of the odd-shaped ones. He has two front yards now after the code change in March and was not allowed to build a pool. He felt a 25-foot setback was too much.

Public comment closed.

LPA Member Vanasse agreed with Mr. Calienes concerning the 25-foot setback.

LPA Member Plummer discussed having to build a custom home on the odd lots, which would make rebuilding unaffordable for a lot of residents.

LPA Member Vanasse thought that it was a hardship for the owners since they did not have a buildable lot under today's setbacks. LPA Member Plummer agreed.

(LPA Member Boan left the meeting and indicated he was in favor of granting the variances.)

LPA Member Vanasse moved that pursuant to the LPA review of the application, the code and the criteria for granting variances, the findings met the criteria and the LPA recommended approval for the requested variances; second by LPA Member Eckmann.

Motion carried unanimously with LPA Member Safford recused.

- B. 718 Estero Blvd, variance from LDC Table 34-3 for front street setback and side setback requirements..

Approve/Approve with Conditions/Deny variance request VAR20230055 seeking a variance from LDC Table 34-3, which requires a single-family home in RM zoning district to provide a minimum 25-foot street setback and a minimum 7.5-foot side setback. The property is located at 718 Estero Blvd.

No ex parte communications. Senior Planner Jason Smalley reviewed the variance request and noted he did not receive emails opposing or supporting the request. LPA Member Vanasse pointed out that the variance was unnecessary because the applicant could build up to the CCCL (Coastal Construction Control Line) for a larger residence.

The applicant, Robert James Holland, Jr., introduced himself and described his experience as an architect. His presentation utilized PowerPoint and was distributed. Slides include 718 Estero Blvd. pre-lan; Previous and Proposed Floor Plans; Previous and Proposed Site Plans; Current Survey and Overlay on Survey; History of FMB LDC; Current FMB LDC; Some Math; Recent Parallelogram Proposal and Coverage/FAR. LPA Member Vanasse indicated a variance was not required for lot coverage and suggested he could skip that part of the presentation. Planner Smalley responded that the applicant did not plan to go over the 40% coverage. The presentation continued with De Minimis Variance and Some Code. Mr. Holland did not understand why the survey showed an 80' x 50' lot since the property went to the water line. He noted he would reexamine the footprint and modify the dimensions if needed.

Slides continued with Some More Code and Some More Math. Chair Cereceda questioned why the applicant could not use the post-disaster build-back instead of requesting a variance. Senior Planner Smalley replied that the post-disaster build-back was pegged to the square footage before the hurricane. The post-disaster build-back did not cover the expansion of the square footage. LPA Member Vanasse referred to page 75 of the packet to explain how the deck design could be changed to avoid one of the variances. Chair Cereceda noted that Mr. Holland could modify his presentation to include the design change before going to the Council. LPA Member Vanasse suggested a second design change, which would leave a 5-foot side setback variance. He indicated that the request could be approved administratively.

LPA Member Eckmann thought the design looked great, but he would rather see the house closer to the street than the beach. He was okay with the request for a variance on Estero Blvd. and questioned allowing room for the fire department. Mr. Holland thought the fire separation distance was satisfactory, but he would happily work with the town. LPA Member Eckmann supported a minimum side setback of 5.5 feet. Mr. Holland explained how the elevator shaft made it challenging.

Public comment:

Fire Official Jennifer Campbell clarified that the easement would not be encroached on the west side. Town Attorney Herin, Jr. reiterated that they had to discuss the application before them. He stated that the Florida Building Code had to be followed before any structure could be built. Public comment closed.

LPA Member Vanasse moved to support both variances and recommended approval and found that it was consistent with the comprehensive plan and met the variance criteria; second by LPA Member Boan. Motion carried unanimously by roll call vote.

- C. SEZ20230052 1249 Estero Blvd- Amend condition of approval to allow for outdoor music.

Approve/ Approve with Conditions/ Deny Special Exception Request SEZ 20230052 for the property located at 1249 Estero Blvd., The applicant is requesting an amendment to their existing Special Exception "Conditions of Approval" #3 which disallows live music of any kind. The applicant would like this restriction removed.

Greg von Krumreig, applicant and co-owner, reviewed his request. Ex parte communications: LPA Member Vanasse met with the applicant regarding future plans and Chair Cereceda and LPA Member Plummer spoke to John Richard. Mr. von Krumreig noted that he wanted to adhere to the standard noise ordinance guidelines pertaining to decibel levels.

Planner Smalley noted that the applicant requested to continue alcohol sales on-site and play live music. LPA Member Vanasse indicated the Whale was allowed to sell alcohol under temporary permission. Once the temporary use was lifted, an application for a new building would have to be submitted.

Town Attorney Herin, Jr. noted that the LPA could modify the conditions in the existing special exception to mitigate the impact of live music on the surrounding area. LPA Member Vanasse and Chair Cereceda would support the request if it ran with the temporary permit. The approval would be temporary and only run until the temporary use process was revoked or the applicant built a new structure. Town Attorney Herin, Jr. commented that staff could include the limitation as a condition.

Senior Planner Smalley added that he received three letters of objection. Public comment:

Bob Burgess, resident, stated that something done in 2013 could not be bypassed. He noted sound traveled farther and quicker in salt water. He explained why the decibel level did not work and commented that one needed to use common sense. He indicated that the owners knew they could not have outdoor entertainment. He added that live music was prohibited on the back bay until the 1990s. He read that property owners and renters were legally entitled to quiet enjoyment of their property and the Whale could legally be sued for lack of revenue if the renters refused to pay rent. He did not support the request.

Tom Lump, resident and neighbor, indicated that the 1993 ruling was why the restaurant was not allowed to put music on the outer deck. He stated there

were hundreds of complaints regarding the music. Mr. Lump made hundreds of calls to the Sheriff's Dept. because of the constant noise. Although he has installed hurricane windows, he still hears music inside his house today. He advised the LPA to read the 1993 ruling in their packet.

Mike Miller, co-owner of the Whale, described how they fixed up the place before Ian. He stated they would submit plans soon and anticipated they would need to request variances. He wanted to entertain people outdoors until they could rebuild the restaurant and added they would check decibel levels. He planned to eliminate drum sets.

Jay Highley, resident, loved and supported the Whale; however, he would like the music toned down and turned off at a decent hour.

Karen Slonski, resident, stated the music was very loud and the karaoke was worse. She agreed with a temporary use but not long-term.

Tim Newman, resident, stated that the band that played last Friday sounded like thunder from inside his house. He noted he was 300 feet from the property. He supported the temporary use and asked that it be limited in the summer.

Public comment closed.

Mr. von Krumreig thanked the commenters and said he wanted to be a good neighbor. He encouraged residents to call or text him about issues. He added that the owners planned to soundproof the second floor of the new building for bands. He confirmed what they were doing now pertained to the temporary use. Chair Cereceda did not support the use of amplified music at that location. Mr. von Krumreig wanted to ensure everyone was comfortable and happy. Mr. von Krumreig thought the temporary permit would be in effect for six months.

Town Attorney Herin, Jr. stated that special exceptions could be amended but there were specific criteria. The applicant must demonstrate that they met the criteria on page 99 of the packet.

LPA Member Eckmann remarked that he could support non-amplified music. LPA Member Vanasse questioned whether the special exception could be amended temporarily and wondered whether requesting a temporary use permit would be better. Town Attorney Herin, Jr. stated the special exception ran with the land and was part of the public record. He thought they could approve the request to modify the special exception to allow and condition it temporarily if the applicant meets all nine criteria.

LPA Member Sudduth moved to amend the special exception as requested by the applicant and in consideration of meeting the nine criteria with the following conditions: the amendment is temporary for 90 days, the amendment limits music to acoustic, non-amplified, no drum instrument, the hour ends at 9:00 p.m. and the LPA will review it in 90 days at no cost to the applicant; second by Chair Cereceda.

LPA Member Safford felt amplified music should be allowed for 120 days. He thought they should give the owners a chance to be good neighbors. He

noted the neighbors said they would be okay if it were temporary. LPA Member Plummer felt the 90-day period was too short and suggested 6 months. LPA Member Sudduth explained why he set 90 days and agreed with a review in 90 days. Chair Cereceda questioned whether the applicants could return in 90 days to request an extension without incurring fees. Senior Planner Smalley deferred to the Town Attorney and added that the staff report would not change much in 90 days. LPA Member Sudduth questioned whether he could recommend that the LPA would review it in 90 days at no cost to the applicant. Town Attorney Herin, Jr. replied affirmatively. LPA Member Sudduth amended his motion and Chair Cereceda seconded it. LPA Member Eckmann thought it would be easier if the applicant specified what they would do to meet the conditions instead of their intent and aspiration to be good neighbors. LPA Member Vanasse noted the LPA were not experts and questioned what conditions the applicants were willing to meet. He supported a little amplification. LPA Member Boan agreed that it would be better to hear from the applicants. Chair Cereceda thought it was a mess and questioned the ramifications.

Motion was denied, 5-2, with LPA Member Sudduth and Chair Cereceda voting affirmatively.

Discussion was held regarding allowing a conversation with the applicants concerning conditions and potential conditions to add.

LPA Member Plummer moved to allow the special exception to have live music temporarily with the conditions of no drums, the manager to be given a decibel meter to keep track of what was happening and a chart to monitor and show what they were doing, the hours will be until 7:00 p.m. on weekdays and 9:00 p.m. on weekends and consumption allowed during hours of operation; second by LPA Member Vanasse.

LPA Member Eckmann did not think the LPA was knowledgeable enough to add conditions. Town Attorney Herin, Jr. noted the time period had to be defined.

LPA Member Plummer agreed to amend her motion to a time period of six months, change the hours to 6:30 p.m. during the week and non-amplified music was allowed after 6:30 p.m. She withdrew the decibel meter requirement.

LPA Member Plummer moved to approve the amending of the special exception with the following conditions: temporary to either the time construction begins or six months, no drums in the bands, alcohol was allowed during the hours of operation, music could play until 6:30 p.m. on weekdays with non-amplified music after 6:30 p.m., and 9:00 p.m. on holidays and the weekend; second by LPA Member Safford. Motion carried 6-1, with Chair Cereceda dissenting.

- D. requesting relief/variance from LDC Table 34-3 which requires that lots in the

RS zoning district have minimum dimensions of 75'x100'

Approve/ Approve with Conditions/ Deny Variance Request VAR 20230057 for the property located at 4830 Coral Rd requesting relief/variance from LDC Table 34-3 which requires that lots in the RS zoning district have minimum dimensions of 75'x100'

Senior Planner Smalley reviewed the variance request to split the property into two lots. He clarified the difference in lot sizes in the staff report.

Ex parte communications: LPA Member Plummer had a conversation with the owners. No disclosures from other members. Senior Planner Smalley indicated that the staff recommended approval based on the fact that the comprehensive plan gave them an idea of what the neighborhoods were intended to be developed as.

LPA Member Sudduth confirmed that the LPA was only being asked to allow the lot to be split. Senior Planner Smalley noted the property had a duplex on the lot and the applicant could rebuild a duplex if the town could verify the number of dwelling units. A separate building would not be allowed, but a second dwelling unit in a single-family home would be. LPA Member Vanasse brought up a provision regarding combining two lots into a large single lot, building a house that straddles the boundary and not being allowed to change back to two lots. Town Attorney Herin, Jr. thought that once two non-conforming lots were combined to create one conforming lot, they could not be converted back. He noted he would look into the code. LPA Member Plummer stated that the provision had been ignored over the years and should be fixed. LPA Member Vanasse noted that they would be creating two non-conforming lots by splitting them. Senior Planner Smalley commented that the two lots would have to be 75' wide x 100' feet deep to meet the code, which was not possible with this property.

Lonne Letteri, applicant, distributed and discussed a handout. He included a survey of the layout and noted about 90% of the property was impervious. He indicated the structures were two single-family houses with separate meters and provided pictures. He described the property when he purchased it and said he wanted to match the footprint of the neighborhood. Renderings of what they wanted to do were in the packet, along with an aerial view to show approximate setbacks. He provided letters of approval from most of the neighbors and included comparable properties. He planned to build a second structure on a separate lot for his mother and mother-in-law.

LPA Member Vanasse questioned whether he explored building the property with two units on one lot. He replied affirmatively but noted it would still be a multi-family situation in a residential neighborhood. He did not think they would utilize a large structure with an apartment and felt his plan would be better for the neighborhood. LPA Member Plummer noted the property was portioned off before he bought it and appreciated the comparables for reference. She felt the clause should be removed since it had not been observed.

LPA Member Vanasse wanted to approve the request but could not see how without changing the code. He listed why it did not meet the code and was

surprised that the staff recommended approval. Mr. Letteri stated that this was his primary residence. Chair Cereceda noted the rules said he could not, but she wanted to determine whether there was a way he could. She suggested tabling it to their next meeting so the applicant and staff could work on a solution. LPA Members Eckmann, Vanasse and Plummer agreed. No public comment.

Chair Cereceda moved to table the case until June 27, 2023, and directed staff to work with the applicant to hopefully achieve his goals; second by LPA Member Plummer.

Motion carried unanimously.

VII. ADMINISTRATIVE AGENDA

No items.

VIII. LPA MEMBERS ITEMS/REPORTS

LPA Member Plummer noticed that FEMA was taking out palm trees and leaving the Australian Pines. Town Attorney Herin, Jr. referred her to the Town Manager for details. LPA Member Plummer questioned the demolition of the beach school. Chair Cereceda replied that the historic building would remain. LPA Member Vanasse stated that the beach elementary school would be renovated, but the school probably would not open by the fall. He discussed the need for the community to stay involved and get enrollment up. There was a good turnout for the Resilient Lee workshop and he felt the community had to be vocal concerning the town's needs.

Chair Cereceda apologized for being snappy about the sound issue concerning the Whale. She asked whether anyone had changed their minds regarding the discussion about the comp plan and the basic concepts of the town at the March 9, 2023 meeting. LPA Member Eckmann felt the same as he did in March.

No items from other members.

IX. LPA ATTORNEY ITEMS/REPORTS

Town Attorney Herin, Jr. stated that this might be his last LPA meeting and that serving them was his privilege and honor. He wished everyone nothing but the best. If the Council decided to retain him, he would see them on June 27, 2023. Chair Cereceda appreciated Town Attorney Herin, Jr. and noted he was always available. She was sorry if the Council took another direction and cited his institutional knowledge. She wished him well and appreciated his efforts if it was his last meeting. Town Attorney Herin, Jr. appreciated members of the LPA, wished everyone good luck with the rebuild, and stated it was a pleasure working with everyone.

X. COMMUNITY DEVELOPMENT ITEMS/REPORTS

No items.

XI. ITEMS FOR NEXT MONTHS AGENDA

Chair Cereceda stated the meeting would be long and requested 30 minutes for lunch. She brought up incomplete applications and thanked Senior Planner Smalley and the staff for their hard work. LPA Member Vanasse agreed and said

it was not the LPA's job to find solutions for applicants.

XII. ADJOURNMENT

LPA Member Safford moved to adjourn. Motion carried unanimously.

The meeting was adjourned at 2:05 p.m.

Minutes adopted as presented, June 27, 2023. Passed 7-0.

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

Amy Baker, Town Clerk