



Fort Myers Beach Local Planning Agency

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

Minutes

Tuesday, June 27, 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 June 13, 2023 draft minutes
No recording.
- B. Voting conflict form
No recording.

V. PUBLIC COMMENT

Tom Torgerson, resident and business owner, discussed rebuilding Fort Myers Beach after Ian and following the comp plan (Comprehensive Plan) and LDC

(Land Development Code). He noted that raising FAR to base flood elevation would help small, medium and large developments and help with parking issues. Steve Johnson, resident, discussed the culture of granting variances to almost everyone who requests them, which will increase the density and intensity on the beach. He felt that increasing the FAR circumvented the current comp plan and LDC without community involvement. He wanted to ensure that all entities wanting to build back have a straightforward footprint. He thanked members for their service.

Nancy Stuparich from the Vose Law Firm introduced herself and noted that the Vose Law Firm was the new firm representing the Town. LPA members introduced

themselves to Attorney Stuparich.

VI. PUBLIC HEARINGS

- A. 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'

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'

Attorney Stuparich swore in those providing testimony for all hearings. Ex parte communications: LPA Member Sudduth - email; LPA Member Vanasse

- spoke with the applicant on the property and phone conversation; LPA Member Eckmann - email; LPA Member Plummer - site visit and two phone calls; LPA Member Boan - email; LPA Member Safford - site visit with the applicant, email, texts and phone calls and Chair Cereceda - spoke to the applicant and received several emails.

Community Development Planner Sarah Propst reviewed the background of the variance request as stated on the yellow sheet. She noted that staff recommended approval and clarified the sizes of the lots in the subdivision. LPA Member Vanasse did not think the application was right and would deny the request. He explained why it was inconsistent with the comp plan and stated it did not meet density requirements. Planner Propst addressed his concerns. LPA Member Vanasse noted that they would be creating two nonconforming lots where they had one, so they would be exacerbating the issue. Planner Propst revealed that all three lots were owned by the same family and 13 feet was taken from lot eight and granted to lot seven to build a wider house. She was told that an easement might have existed at one point, but she did not find records to indicate that. The post-disaster build-back would allow the applicant to rebuild two units on the property. Planner Propst stated they would not be creating a precedence because there were two existing units and additional density would not be created. She noted the two units were not internally accessible and the applicant could not expand the footprint beyond what they had per the post-disaster build-back.

LPA Member Sudduth commented that one lot would be nonconforming and asked whether there was a hardship.

LPA Member Eckmann appreciated the side setbacks but wondered whether the applicants would request side setback variances so the applicant could build a more normal-shaped house. Planner Propst responded that conditions could include requiring the applicant to meet side setbacks and all other LDC requirements.

Lonne Letteri, applicant and business owner, provided packets for members and reviewed the history of his property. He described the exhibits in the

packet of information. He stated that the property was more than 80% concrete and flooding was a problem after rainstorms. He bought the property with six bedrooms and five bathrooms and that is what he was trying to get back. He included emails of support from neighbors. Mr. Letteri described exhibit 2A and noted a graphic designer prepared the rendering. He reviewed the homes built by the Affinity Group and noted his plans gave the neighbors more space. He discussed other options and why they were not as feasible. He indicated he was okay with the conditions mentioned by LPA Member Eckmann.

Chair Cereceda indicated that the applicant could build back what they had by conforming to the rules. She cautioned Mr. Letteri that support from his neighbors was not relevant to his presentation nor part of the criteria.

LPA Member Vanasse stated that the post-disaster build-back allowed an increase in hallways and bathrooms for ADA accessibility rules. He noted he had to follow the code and criteria and wished staff or the applicant could present a solution that would meet the code allowances. Mr. Letteri responded that he was trying to follow LDC 34-642 to provide stable neighborhoods for single-family detached homes in an RS zone.

LPA Member Vanasse questioned why the applicant could not build two units back on one lot. He addressed subdivisions, density and consistency.

Planner Propst questioned whether the RS zoning district allowed two units on a single-family lot since the intent of the zoning district was one single-family home on a single-family lot. LPA Member Eckmann questioned whether the applicant could build the depicted houses on the existing lot without subdividing. LPA Member Plummer felt that granting the variance would make them less nonconforming than they were now if the applicant built back with the pre-disaster build-back. She noted that the staff recommended approval. LPA Sudduth pointed out that the applicant could make one of the lots 53 feet so it would conform to the RS district and make the other lot 39 feet, which would be a nonconforming lot that a 24-foot house would fit with the setbacks. Technically, he could have one conforming lot and there would be a variance for the nonconforming lot. LPA Member Vanasse liked the option but did not think the application submitted was correct. LPA Member Boan questioned density and minimum square footage. Planner Propst did not believe the applicant was creating a non-conformity with density.

LPA Member Vanasse commented there was no variance for a minimum lot area and they had to meet all standards for subdivisions. Planner Propst responded that they were not asking for a variance from the subdivision section but from the specific requirements for the lot size. LPA Member Vanasse addressed complying with specific code sections, including minimum use determination. Chair Cereceda noted their motion could be to deny with suggestions to Council. LPA Member Plummer pointed out that putting one lot into conformity would bring the neighborhood up to the standards and better than what they had.

No public comment.

LPA Member Sudduth moved to approve the request with the following

conditions: one lot conforms to the 53-foot width and the other lot will be 39.5 feet, conditions for square footage, setbacks for each structure and impervious surfaces be compliant with code and the criteria for the variance; second by LPA Member Plummer.

The motion failed 4-3 due to failure to satisfy the criteria.

Chair Cereceda stated that a motion to continue until August would allow the applicant to correct their application, or the applicant could take the denial to the Council with his changes.

LPA Member Vanasse moved to reconsider; second by Chair Cereceda.

Chair Cereceda felt the applicant could accomplish what he needed by taking the LPA vote to Council. LPA Member Safford agreed that the application was not correct.

Motion to reconsider passed.

Mr. Letteri did not want to continue the matter.

LPA Member Sudduth moved to approve the variance as requested under LDC Table 34-3 with conditions that they meet setbacks, impervious surface and density and it satisfied the LDC criteria; second by LPA Member Boan. Motion approved 4-3 with Chair Cereceda and LPA Members Eckmann and Vanasse dissenting.

- B. 432/434 Harbor Court, Relief from LDC Table 34-3 for rear setback Approve/ Approve with Conditions/Deny **variance request VAR20230078 for the property located at 432/434 Harbor Court.** The applicant/property owner is requesting **a variance of 5 feet from the rear setback.**

Ex parte communications: LPA Member Plummer - drive by; Chair Cereceda - drive by and LPA Member Safford - spoke to Samir Malviya and knew the property. No disclosures from other members.

Planner Propst reviewed the request.

Chair Cereceda noted that staff recommended denial of the request because it was a design choice and could be made smaller.

Samir Malviya, applicant, distributed information to members. Drew Whiting from Homebound participated via phone and described a map and survey of the property.

LPA Member Boan questioned whether Mr. Malviya would request variances for each model if the footprint did not meet the town's criteria. Mr. Malviya replied that their floor plans were designed to fit on a standard lot on the beach. By changing the floor plan by a few feet, the homeowners would incur significant costs for structural engineering. LPA Member Sudduth questioned whether they had a model 30 feet deep. Mr. Malviya replied negatively, stating that the minimum conforming lot size on the beach was 80 feet. LPA Member Boan noted that Mr. Malviya was creating his hardship by not reducing the size of his floor plans. LPA Member Eckmann clarified that the structure was 35' x 30' with two stories.

Mr. Whiting discussed why he requested variances on some properties but not others.

No public comment.

LPA Member Plummer felt that reducing two units to one was a benefit. She noted that the surrounding lots were vacant and if the request was approved, those property owners may decide to request variances too. LPA Member Safford agreed that those lots were a challenge and reducing density was a big plus. LPA Member Vanasse reviewed the criteria and noted a 30-foot house was not a standard home. He suggested that the town look at subdivisions with substandard lots and adjust the setbacks in those areas. Chair Cereceda pointed out that it would be recurring for the entire neighborhood. LPA Member Vanasse responded that each lot would be slightly different, which made them unique. LPA Member Plummer agreed it would be a recurring request in the neighborhood. LPA Member Eckmann commented that it was a two-story home with over 2,000 square feet. Chair Cereceda did not think the request met criteria number five because it would be recurring. LPA Member Sudduth agreed that property owners faced a hardship regarding custom homes. LPA Member Vanasse mentioned that if the applicant did not ask for more footage, they could get administratively approved with lesser setbacks. He felt they were penalizing the applicant for asking for more square footage when they were willing to provide greater setbacks.

LPA Member Vanasse moved to approve the requested variance with the finding that it meets the variance criteria; second by LPA Member Sudduth. Motion carried unanimously by roll call vote.

C. 405 Harbor Court, Relief from LDC Table 34-3 for front street setback and waterbody setback

Approve/Approve with Conditions/Deny **variance request VAR20230062 for the property located at 405 HARBOR COURT. The applicant is requesting a variance of 17 feet for the street setback, and a variance of 4 inches from the water body setback.**

Ex parte communications: LPA Member Vanasse - spoke to Mr. Malviya; LPA Member Plummer - drive by; Chair Cereceda - drive by and LPA Member Safford - spoke to Mr. Malviya and is familiar with the lot. No disclosures from other members.

Planner Propst reviewed the request and noted that the applicant would not request a four-inch variance from the water body setback. She clarified that the cul-de-sac cutout was not paved, but utilities used the area and drainage was installed.

Mr. Malviya distributed a packet of information. Mr. Whiting described the street, property and neighborhood. He stated that due to the recessed property line, they could only fit a 35-foot wide by 33-foot-deep home on the lot. The house will remain greater than 25 feet set back from the applied property line. Mr. Whiting noted parking would be open below and one parking space was provided within the lot line.

No public comment.

LPA Member Plummer had difficulty acknowledging the cul-de-sac since it was not used as a cul-de-sac. LPA Member Vanasse suggested rotating the house to minimize the variance.

Chair Cereceda moved to deny the request because it did not meet LDC Sec. 34-87 criteria, specifically number 1 and number 5; second by LPA Member Boan.

LPA Member Vanasse felt there was enough leeway to say it was a different lot with different conditions regarding a recurring nature.

Motion failed 2-5, with LPA members Safford, Plummer, Eckmann, Vanasse and Sudduth dissenting.

LPA Member Safford moved to approve the variance request and found that based on the lot configuration and the cul-de-sac, the variance met the criteria for approval with the conditions set forth by staff on page 115 concerning open parking, relocation of the driveway, encroachment to the street setback is limited to the front staircase and all other LDC requirements shall be met; second by LPA Member Sudduth.

Motion passed 5-2 with LPA Member Boan and Chair Cereceda dissenting.

D. 810 Third St; requesting a variance for the street setback in the RC zoning district

Approve/Approve with Conditions/Deny variance request for VAR20230063 for the property located at 810 Third St. The applicant is requesting a variance of 14 feet, 11 inches from the street setback for a front setback of 10 feet, 1 inch to build a new single family.

Mr. Malviya, applicant, distributed a packet of information.

Community Development Senior Planner Jason Smalley reviewed the request. He noted that staff recommended denial because the applicant could select a different design that fits the lot.

Mr. Whiting, Homebound, stated that the cul-de-sac extended deeper into the lot, making for a 35-foot wide by 31.5 feet buildable depth at the most constrained portion. One parking space was available in front of the house and two were available below the footprint of the house.

No public comment.

LPA Member Eckmann moved to approve the request subject to the conditions of approval recommended by staff; second by LPA Member Safford.

Motion carried 5-2, with LPA Member Boan and Chair Cereceda dissenting.

E. 800 Third St; requesting a variance from the street, side and rear setbacks in the RC zoning district.

Approve/Approve with Conditions/Deny variance request VAR20230061 for the property located at 800 Third St. The applicant is requesting a variance of 2 feet, 6 inches from the street setback for a front setback of 22 feet, 6 inches, another variance of 2 feet, 6 inches from the side setback for a

side setback of 5 feet and an additional variance of 7 feet, 6 inches from the rear setback for a rear setback of 17 feet, 6 inches to build a new single family home.

Senior Planner Smalley reviewed the requested variances and noted that the staff was concerned regarding the proposed parking plan.

Mr. Malviya, applicant, distributed information.

Mr. Whiting, Homebound, noted the footprint was constrained with a depth of 81 feet for the lot itself due to the cul-de-sac. Reducing the front setback would maximize the house's depth and range from 23.5 to 35.3 inches from the water's edge. He explained the reasons for the requests and described how he would adjust the parking if needed.

LPA Member Boan questioned the size of the two parking spaces. Senior Planner Smalley did not have the measurements, but it seemed to be 10 to 12 feet and would accommodate most sedans, but not a larger vehicle. LPA Member Vanasse asked for an explanation of the survey and lot. Planner Propst replied that there were several of those and was unsure how they were created. LPA Member Eckmann felt the lot was so unique that it needed a custom home and parking was an issue.

No public comment.

LPA Member Eckmann moved to deny the requests due to the side setbacks; second by Chair Cereceda.

Motion failed 4-3, with LPA Members Safford, Plummer, Vanasse and Sudduth dissenting.

LPA Member Sudduth moved to approve the requests with conditions of approval set forth by staff; second by LPA Member Safford.

Motion carried 4-3 with LPA Members Eckmann, Boan and Chair Cereceda dissenting.

F. 4601 Estero Boulevard; construction of pool closer to street than the principal building in RC zoning district

Approve/Approve with Conditions/Deny **variance request VAR20220027 for the property located at 4601 Estero Blvd. The request is for a variance from LDC 34-1174(b), to allow construction of a pool in the front yard of the single-family residence in the RC zoning district.**

Planner Propst reviewed the variance request. No ex parte communications. Tony Vuksinic, applicant, noted that staff recommended denial because he could install a pool of 180 square feet in the backyard. He requested a 322-square-foot pool due to his wife's medical condition and the number of people using the pool. LPA Member Boan questioned whether the applicant had heard from his neighbors. Mr. Vuksinic replied negatively and Chair Cereceda gave him an email to read. Mr. Vuksinic responded to the email. No public comment.

LPA Member Sudduth stated the pool was within the street setbacks, but he knew what it was like to live on a rental street with people in the pool at 4:00

a.m. LPA Member Safford felt the pool in the front would be less intrusive to the neighborhood than in the rear. He did not support parking in the rear as a condition. LPA Member Vanasse noted that pools in the front yards were only on the Gulf side of Estero Blvd. and the applicant knew what he was buying when he purchased the property. LPA Member Sudduth questioned whether there was room for a fence and Planner Propst replied affirmatively and added it could not be taller than four feet. Senior Planner Smalley explained that the parking was an issue earlier due to people parking in the front right-of-way, although no parking complaints were logged. LPA Member Plummer agreed that the pool was less intrusive in the front and she felt it met the criteria.

LPA Member Plummer moved to approve the request with the four conditions in the staff report on packet page 223, except the Type B buffer will be a maximum of six feet tall between the pool and Estero Blvd.; second by LPA Member Sudduth.

Motion carried unanimously.

G. Floor Area Ratio Calculation Discussion

Provide input to the way Floor Area Ratio is calculated

Planner Propst clarified that the Floor Area Ratio (FAR) does not increase the height of the building and only applies to commercial zoning districts. She distributed the presentation and noted the discussion was about whether they should include the lower level and what FAR looks like. She displayed examples of setbacks within a commercial zoning district or a CPD (Commercial Planned Development). She read the code section to address whether they count parking below or not. Currently, FAR includes all under-building parking or interior-building parking. Lee County and the City of Fort Myers do not count FAR and Collier County does not include parking in FAR. The next slide included a downtown zoning example. (Recording skipped.) Planner Propst noted the parking area could be excluded from the FAR count, or they could exclude parking below when the first living level was built three feet above base flood elevation.

LPA Member Vanasse discussed what a CPD allowed and noted there was a lot of leeway. He felt that property owners who did not want to go through the CPD process would get some relief if parking below were not included. It would be calculated if a business used the bottom floor and dry floodproofed it. Chair Cereceda questioned where a base flood elevation started on beachfront property. LPA Member Eckmann replied that the base flood elevation in the V zone on the Gulf side was 22 feet. Senior Planner Smalley agreed that 19.5 feet was common and varied by two feet in any direction. He remarked they were the DEP (Department of Environmental Protection) heights, not the flood map heights.

LPA Member Sudduth supported removing parking from FAR if it would allow people to move forward without a CPD or variances. LPA Member Vanasse supported not calculating parking under the building. He mentioned that the conflicts between the allowed height, number of stories and FAR should be

corrected. Chair Cereceda suggested reaching out to Bill Spikowski regarding the inconsistency. LPA Member Safford pointed out the discrepancy between height and the number of floors. Chair Cereceda summarized that a consensus was reached not to count parking below flood elevation. Planner Propst questioned whether a higher FAR should be allowed for proposed activity nodes. Chair Cereceda stated that the LPA needed to discuss a comprehensive post-land redevelopment plan for the whole island, not just specific areas.

VII. ADMINISTRATIVE AGENDA

No items.

VIII. LPA MEMBERS ITEMS/REPORTS

LPA Member Safford noted that Let's Go FMB was meeting tomorrow between 1-3 p.m. and invited people to join one of their committees.

LPA Member Plummer brought up lot splits and questioned how structures were built on non-conforming lots without going through the LPA. Senior Planner Smalley addressed her question.

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

No July meeting.

XII. ADJOURNMENT

Chair Cereceda adjourned the meeting at 2:03 p.m.

Minutes adopted as presented, August 8, 2023. Passed 7-0.



Amy Baker, Town Clerk