



## **Fort Myers Beach Local Planning Agency**

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

**Minutes**

**Tuesday, September 13,  
2022**

**9:00 AM**

### **ORDER OF BUSINESS**

#### **I. CALL TO ORDER**

Members present: Chair Jane Plummer, Anita Cereceda, Forrest Critser (late), Doug Eckmann, Scott Safford, Patrick Vanasse and Karen Woodson.

#### **II. INVOCATION**

LPA Member Cereceda.

#### **III. PLEDGE OF ALLEGIANCE**

#### **IV. APPROVAL OF MINUTES**

A. Draft minutes August 9, 2022

LPA Member Cereceda moved to approve the minutes; second by LPA Member Safford.

Motion passed 6-0 with LPA Member Critser absent.

#### **V. PUBLIC HEARINGS**

A. VAR 20220076 Variance to side yard setbacks for pool equipment  
**Approve/Approve with Conditions/Deny VAR20220076, 745 Matanzas Ct. The applicant is seeking a variance from LDC Sec. 34-638(d)(1)(g), current setbacks are 9-feet, applicant is requesting a variance of 5-feet to place pool equipment/ pad approximately 4-feet from the side property line.**

Ex parte communications: LPA Member Vanasse - drive by; LPA Member Cereceda - drive by, looked at property on Zillow and LEEPA, spoke to the owners and neighbors; LPA Member Woodson - drive by, talked to the owners and walked around the property; Chair Plummer - walked around the

property and spoke to the owners; LPA Member Safford - drive by; and LPA Member Eckmann - none. Town Attorney Herin, Jr. swore in those providing testimony. Planning and Zoning Senior Planner Jason Smalley noted the front dimension of the lot was half on their most recent variance of what the initial staff report was based on. The required setback for the pool equipment was 7.5 feet, not 9 feet. The requested minimum setback necessary was 3.5 feet. He explained that the applicants requested to leave the pool equipment where it was on the side. The equipment was 4.24 feet, according to the most recent survey. Senior Planner Smalley explained that the applicant submitted a proposed plan showing the pool equipment next to the air conditioner, but that plan was approved by building services without a review of setbacks. Chair Plummer questioned why the gas line was not allowed under the stairs. Senior Planner Smalley replied that he was not sure, and a building supervisor was not available.

LPA Member Cereceda noted that this was a variance request after the fact. Senior Planner Smalley explained that the north location was approved based on setbacks, but it was determined after the fact that the equipment was installed on the south side. Community Development Director Jason Green indicated that both sides made a mistake.

LPA Member Eckmann questioned whether the Hole Montes survey was the existing condition. Director Green replied affirmatively. Town Attorney Heirn, Jr. described the site plan review process. Senior Planner Smalley noted the pool was still under construction and a neighbor alerted the town of the location of the pool equipment. LPA Member Eckmann brought up installing a sound barrier to protect the neighbors.

Applicant Jeff Spiro and property owner Donna Payne presented their case. Mr. Spiro stated that the approved building plan they worked from showed the equipment on the right side of the house. He noted that the stairwell was the only ingress and egress of the house, so the mechanical equipment could not be located there in case of a fire. He added that he did not change the location of the equipment after the fact. Ms. Payne stated that the work was inspected and passed multiple times along the way.

Town Attorney Herin, Jr. requested a 10-minute break to investigate why the site plan approval and the building permit approval did not appear to match up. Town Attorney Herin, Jr. stated that the town's building official Mr. Stone noted that the pool equipment could be located under the stairway, but the power source could not. Town Attorney Herin, Jr. indicated that one egress was a code violation.

LPA Member Vanasse questioned when the power source decision was made and Mr. Spiro replied that the power source was picked during the selection process. Ms. Payne stated that the pool was complete when they were notified of the problem. She revealed that all seven of her units had only one entrance and exit. She added that the stairs were not there when she purchased the house.

Town Attorney Herin, Jr. explained that whoever was in charge of the project needed to ensure the site and building plans were consistent. Discussion was held regarding why the inspectors did not catch the equipment error during construction.

Public comment:

Doug Young, the adjourning neighbor and engineer, objected to the variance. He noted the site plan was in compliance with the setbacks, but the as-built was not. He stated that besides the noise, there was heat and noxious fumes from the gas heater. He indicated several possible configurations would meet the setback requirements. He emailed the owner on June 2 regarding the equipment's location and forwarded it to the town. At some point, the town issued a stop work order for five days. Mr. Young stated that the pool pad location impeded the drainage and now he had a pond in his side yard. He noted that the applicant could have chosen gas equipment with proper venting; it could have been installed on the north side closer to the pool or the equipment could be installed in a utility room or an alcove on the ground floor. He summarized that the planned installation was legal, but the actual installation was not and the owner and contractor should have known that the implemented configuration would violate the setbacks.

Public comment closed.

Town Attorney Herin, Jr. commented that the stormwater plan would have to be modified to comply with the code. Chair Plummer questioned at what stage of the project the stormwater plan was submitted. Director Green replied that it depended on the contractor and property owner, but it had to be done before completion. LPA Member Cereceda questioned when the stop work order was issued, whether the equipment was in place, and whether the property owner was allowed to continue under the order. Senior Planner Smalley noted the stop work order was for the equipment and they were allowed to continue filling the pool shell to keep it in the ground. The pad, piping and electrical were already complete at the time the stop work order was issued. LPA Member Vanasse questioned whether the equipment could have been placed somewhere else. Mr. Spiro replied negatively. Director Green indicated there was room for the equipment in the rear yard. LPA Member Cereceda questioned D. in the Findings and Conclusions regarding trees remaining around the stormwater retention area. Senior Planner Smalley responded that the applicant would have to redesign the stormwater design if the variance was approved. He added that the existing coconut palm trees would have to be retained or replaced outside of the stormwater area. LPA Member Cereceda pointed out that there was no room and Senior Planner Smalley noted that other buffers could be implemented.

Mr. Spiro stated that the stormwater plan was revised, they started work at the rear of the property and his engineer would ultimately adjust their plan as needed. LPA Member Vanasse could not get beyond the fact that the contractor knew that he needed a variance to encroach into the setback.

LPA Member

Cereceda agreed and added that the stormwater issue had a big impact. She reviewed the Findings and Conclusions and determined that most of them were not met. LPA Member Critser discussed the impact on the neighbor and he would deny the request. LPA Member Woodson initially thought the equipment could be addressed but that was before she was aware of the stormwater drainage issue.

LPA Member Cereceda moved to deny the variance request VAR20220076; second by LPA Member Vanasse.  
Motion passed 7-0.

## **VI. ADMINISTRATIVE AGENDA**

Chair Plummer welcomed new member Doug Eckmann. LPA Member Eckmann introduced himself and reviewed his experience. Chair Plummer requested to reorganize, but Director Green noted that reorganization typically took place in October. However, since there was no Vice Chair, the LPA could nominate one today.

Chair Plummer nominated LPA Member Cereceda as Vice Chair; second by LPA Member Vanasse.

Motion passed 7-0.

LPA Member Safford will give the HPAC (Historic Preservation Advisory Committee) documentation to Director Green. The HPAC will meet soon to organize.

## **VII. LPA MEMBERS ITEMS/REPORTS**

LPA Member Vanasse addressed the lack of detail in the budget at the last Council meeting and questioned whether the LPA needed to be on every Town Council agenda. It was determined that the LPA could report under Advisory Committee Reports. He questioned when the LPA would review the comp plan amendments. Director Green responded that several would come forward by the end of the year.

LPA Member Cereceda noted that she would not be in town from October 10-13 and questioned rescheduling. LPA Member Safford indicated he would not be in town from October 4-11. Director Green will check availability on October 18 or 19.

LPA Member Woodson questioned the vendor fee increases and Town Attorney Herin, Jr. responded that the fee schedule could be amended at any time.

No items from other members.

## **VIII. LPA ATTORNEY ITEMS/REPORTS**

Town Attorney Herin, Jr. discussed his legal responsibility to the LPA.

**IX. COMMUNITY DEVELOPMENT ITEMS/REPORTS**

Director Green stated that the request for 5155 Williams was withdrawn.

**X. ITEMS FOR NEXT MONTHS AGENDA**

The sign and vendor items, plus two complicated cases, will be on the agenda.

**XI. PUBLIC COMMENT**

No public comment.

**XII. ADJOURNMENT**

LPA Member Cereceda moved to adjourn; second by LPA Member Critser.  
Motion passed 7-0.

The meeting was adjourned at 11:00 a.m.

Minutes adopted as presented, December 6, 2022. Motion by LPA Member Cereceda and seconded by LPA Member Sudduth. Passed 7-0.



Amy Baker, Town Clerk