



Fort Myers Beach Local Planning Agency

**Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931**

Minutes**Tuesday, April 9, 2024****9:00 AM**

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

Members present: Chair Cereceda, LPA Member Boan, LPA Member McLean, LPA Member Plummer, LPA Member Sudduth (virtually) and LPA Member Vanasse.

Excused: LPA Member Eckmann

LPA Member Plummer moved to permit LPA Member Sudduth to participate virtually due to extenuating circumstances, seconded by LPA Member Boan. The motion carried unanimously.

II. INVOCATION

Chair Cereceda.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF MINUTES

A. LPA - March 12, 2024

LPA Member Plummer moved to approve the minutes, seconded by LPA Member Boan.

The motion carried unanimously, with LPA Member Eckmann excused.

B. LPA Special Meeting - March 14, 2024

LPA Member Plummer moved to approve the minutes, seconded by LPA Member Boan.

The motion carried unanimously, with LPA Member Eckmann excused.

V. PUBLIC COMMENT

No public comment.

VI. PUBLIC HEARINGS

Town Attorney Stuparich explained the quasi-judicial procedures. Town Clerk Baker confirmed that the agenda items were properly noticed. LPA Member Sudduth revealed that he had a conflict of interest with item A. He will submit Form 8b to the town clerk and it will be attached to the minutes. Town Clerk Baker swore in those providing testimony.

A. SEZ20240024, 6614 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING / APPROVING WITH CONDITIONS / DENYING SPECIAL EXCEPTION SEZ20240024 TO ALLOW RECONSTRUCTION OF A WOODEN LANDSCAPE WALL IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 6614 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Chair Cereceda read the title of the resolution. No ex parte communications were disclosed.

Community Development Senior Planner Jason Smalley reviewed the background of the request as stated in the yellow sheet. Staff recommended approval with conditions.

Dave Nusbaum, President of Island Winds Condominiums, stated that board members were obligated to repair all common areas. He noted that the wall was destroyed by Ian and acted as a buffer between the raised property and the beach. A coastal engineering firm was hired and FDEP (Florida Department of Environmental Protection) issued a field permit on May 15, 2023. The town staff informed Mr. Nusbaum that they had to request a special exception to rebuild the wall.

No public comment.

LPA Member Vanasse moved to approve the request with the conditions as stated in the packet, seconded by LPA Member Plummer.

The motion carried unanimously by roll call vote, with LPA Member Sudduth recused and LPA Member Eckmann excused.

B. VAR20240050- 590 Carlos Cir

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20240050, REQUESTING TWO VARIANCES FROM LDC TABLE 34-3 A VARIANCE OF 16-FEET FROM THE REQUIRED 25-FOOT STREET SETBACK, AND A VARIANCE OF 5- FEET FROM THE REQUIRED 20-FOOT REAR SETBACK LOCATED AT 590 CARLOS CIR; 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 were disclosed.

Senior Planner Smalley read the background of the request as stated on the yellow sheet. The staff recommended approval with conditions.

LPA Member Plummer questioned the previous footprint of the home. Senior Planner Smalley replied that he did not receive that information.

Fred Drovdic, Architect, represented the applicant and noted that previous setbacks were 11 feet in the front, 7 feet in the rear and 5 feet on one side.

The presentation included an Introduction, Location Map, Pre-Ian Property Overview, Variance Requests, Site Plan and Variance Criteria.

Senior Planner Smalley noted that the 16-foot variance was to the edge of the deck.

No public comment.

LPA Member Vanasse moved to approve the requests with conditions, seconded by LPA Member McLean.

The motion carried unanimously by roll call vote, with LPA Member Eckmann excused.

C. Ordinance 24-08 Amending Downtown Building Stories

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 5, SECTIONS 34-675 BUILDING SIZE TO 1) CHANGE BUILDING HEIGHT FROM 2 STORIES TO 3 STORIES FOR PROPERTIES THAT FRONT ON TIMES SQUARE AND BAYFRONT PEDESTRIAN PLAZAS, THE NORTH SIDE OF FIRST STREET, THE SOUTH SIDE OF ESTERO BOULEVARD BETWEEN OLD SAN CARLOS BOULEVARD AND THE MAIN PEDESTRIAN CROSSING; AND 2) CHANGE BUILDING HEIGHT FROM 2 STORIES TO 3 STORIES FOR PROPERTIES THAT FRONT ON LAGOON STREET, CRESCENT STREET, FIRST, SECOND, THIRD AND FIFTH STREETS (EAST OF SKY BRIDGE ONLY); PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Chair Cereceda read the title of the ordinance.

Community Development Planner Sarah Propst reviewed the background of the ordinance as stated in the yellow sheet. Chair Cereceda questioned why stories were used instead of feet. LPA Member Vanasse agreed with doing away with stories, but after comments, it was decided to leave stories in.

Chair Cereceda moved to approve the ordinance, seconded by LPA Member McLean.

The motion carried unanimously by roll call vote, with LPA Member Eckmann excused.

- D. Moss Marina CPA20230152, 450 HARBOR COURT, 445 HARBOR COURT, 441 HARBOR COURT, 436 HARBOR COURT, 435 BONITA STREET, AND 438 BONITA STREET

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/ DENYING A COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT FOR PROPERTIES LOCATED AT 450 HARBOR COURT, 445 HARBOR COURT, 441 HARBOR COURT, 436 HARBOR COURT, 435 BONITA STREET, AND 438 BONITA STREET FORT MYERS BEACH FROM MARINA (3.53 ACRES) AND MIXED RESIDENTIAL (1.00 ACRE) TO PEDESTRIAN COMMERCIAL; CONTAINING 4.53 ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00027.0000, 24-46-23-W3-00026.0020, 24-46-23-W3-0030B.0200, 24-46-23-W3-0030B.0190, 24-46-23-W3-0030C.0060, 24-46-23-W3-0030C.0040, 24-46-23-W3-0030A.0110, PORTIONS OF HARBOR COURT AND BONITA STREET RIGHT-OF-WAY; PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

Chair Cereceda read the title of the ordinance.

Planner Propst reviewed the background of the request as stated on the yellow sheet. She indicated that the applicant applied for a CPD (Commercial Planned Development), which was not before them today. Several letters of objection were received and were in the packet. All LPA members disclosed ex parte communications with neighbors, owners, residents, familiarity with the property and previous presentations.

Attorney Jenna Persons-Mulika from Strayhorn, Persons-Mulika & Fisher represented the applicant and distributed a copy of the presentation.

She explained that the presentation did not include specific project details, but a question regarding the long-term redevelopment vision was presented. She added that the request was to change the future land use of seven parcels, not eight.

Slides included Request Statement and Team Members.

Applicant Ben Freeland noted they were discussing future land use and the town's vision. He described his background in the community and the different businesses he was involved with. He noted that he took over the business in 2020 and explained the benefits of opening access to the bay and future possibilities with a mixed-use designation. He brought up transportation options, additional parking opportunities and water taxis.

Engineer James Ink continued the presentation and noted that this was step one. Slides included Planning, Hurricane Ian, Planning with Existing and Proposed FLU Maps, Planning with Objectives, Planning with Policies, Planning and Additional Criteria, Engineering, Staff Report Commentary and Neighborhood Compatibility and Summary. Mr. Ink described expanding public access to the bayside and noted the plan was on the website. Attorney Persons-Mulika stated they could not legally present the CPD before requesting a future land use change.

LPA Member Plummer echoed Chair Cereceda's concerns about a clean slate and putting the cart before the horse without knowing what was to come. LPA Member Vanasse asked staff to explain whether the proper process was to amend the comp plan and then go to zoning for details. He noted that it was a common practice to have a future land use map that allowed for more capacity than what actually got built. The fact that there was more capacity on the future land use map was not a given that it would be developed. He referred to Old San Carlos Blvd. and asked whether they were close to meeting the 2.5 FAR (Floor Area Ratio) today. He thought they should look at things from an opportunity standpoint, not a fear standpoint. Chair Cereceda commented that she was not fearful but wanted a link between the map amendment and the Freeland family's CPD. Mr. Freeland stated that the CPD was not married to a future land use change. He wanted to be a part of the downtown district even if the CPD was denied because he had to rebuild the marina regardless. He felt they should not be linked.

Chair Cereceda summarized that he desired to be in pedestrian commercial to expand the property's uses. She suggested the idea of changing the future land use designation of the parcels because if the parcels were sold, the town would not be able to help craft what the picture would look like. Mr. Freeland asked whether she thought the bayfront property would be of value to the downtown and commercial pedestrian district regardless of who owned it.

Planner Propst felt this was the right process, but it would be nice to see all components together. She stated that the town council could look at the CPA and CPD simultaneously but could not approve the CPD before the CPA. LPA Member Vanasse questioned whether other jurisdictions had more capacity from the standpoint of maximum allowable intensity and density afforded through the future land use map than what was on the ground.

Planner Propst replied positively.

LPA Member Sudduth thought it made sense to have the capability for those parcels and the next stage had quite a bit of teeth. He felt they still had a limit with the future land use. LPA Member McLean struggled with the increase in FAR and questioned whether they were approaching 2.5 in FAR. Chair Cereceda stated they were only talking about the potential, not a CPD.

Public comment:

Chris Mosteiro, resident, commented that the neighbors adjacent to the property would be affected. Before Ian, the neighborhood was pleasant, but now, he feels like he is living in a marina. He described loud construction noises all day and the owners did not respond to his multiple emails. He read portions from the LDC (Land Development Code) regarding marina use and indicated this project could be a Trojan horse.

Katie Burkey, attorney with Becker-Poliakoff, represented Magnum FMB 1 LLC. Their property was 72 feet away from the property across the canal. Max Forgey, certified land planner, stated that the LPA did not have to approve this. He discussed compatibility and negatively impacting the neighborhood. He noted the applicant could do plenty under the current zoning and intensifying the use would be detrimental to the community. He

referred to the comprehensive plan while making his points and noted they could not call it pedestrian commercial because there were no pedestrian facilities. He commented that he found eight findings of fact and urged them to deny.

Tom Slaughter, urban planner from Cape Coral, stated that this project was Moss Marina's master plan and left out the subdivision. He suggested the LPA focus on the needs of the neighborhood.

John Samuelson, resident, questioned how Old San Carlos Blvd. could handle the increase in traffic because the project would change the island's demographics. He asked about ingress and egress and noted there was only one way in. He stated they were going from a boating community to a resort community. He did not think they would not have access to the bay with the project.

Leah Gregg, resident, questioned the use of three residential streets for all delivery trucks and stated that her street was less than 16 feet wide and most trucks were almost 9 feet. She described the amount of traffic from large trucks that would constantly go up and down the streets. They should not be allowed to use residential streets as their private delivery entrance. She noted it was a safety hazard and inconvenient and would ruin the neighborhood.

Rebecca Link, resident, thought the plans were beautiful, but she was petrified because they lived on a barrier island. She questioned their ROI (Return on Investment) and how much they would rely on the community. She commented that she did not want to live in the middle of Disneyland. She discussed how hard it was to get to the town because of the traffic and what it would become.

Bill Veach, resident, stated there was nothing small about the ramifications and this was only one of a dozen comparable properties. He said they needed to stick to the comp plan to rebuild the island safely without getting sued. He discussed the increase in uses compared to what they have versus what they want. He added that once the LPA granted the request, the town could not get it back. It had huge ramifications and would affect redevelopment forever. The neighborhood will see years of construction equipment and then a constant stream of delivery trucks. He questioned how FEMA would look at the town allowing additional densities in a flood hazard area with a two-lane road for evacuation.

Jean Guzzi, resident, was horrified with the project and thought it should not go through. She loved the marina but did not want a 400-unit development because the beach was already jammed. She asked that the LPA deny the request.

Public comment closed.

Attorney Persons-Mulika thanked the public for their feedback and noted they were addressing the CPD. She stated the staff was still reviewing the CPD and if the future land use is not changed, it will not move forward. She noted that the future land use change had to come first legally and could not be conditioned. She discussed the CPD process and noted there were numerous levels of review with protections. She asked for a favorable recommendation.

LPA Member Boan noted that the existing pedestrian commercial was added after the marina and was a more recent acquisition. He did not think it needed to be used to bootstrap the other request. He thought the LPA agreed that the marina designation was important and should be kept in the revised plan.

Chair Cereceda could not support the request because the whole incorporation and comp plan was about the people in the middle who live on the island. That neighborhood was one of the oldest on the island and she could not escape the commercial intrusion into residential neighborhoods because it was so important. She addressed maintaining the small-town character and protecting people from commercial intrusion.

LPA Member Sudduth clarified that the future land use could not be approved subject to the CPD. He noted that the town still had control over what was developed in the area. Chair Cereceda agreed but commented that the neighborhoods would be commercial at a high intensity and would destroy the neighborhood. LPA Member Plummer stated the marina took over seven more parcels and the project would intrude on the neighborhood. She felt it would create a precedent.

LPA Member Vanasse was concerned about finances and how quickly the town could redevelop. He stated that projects could be molded and adjusted with safeguards and saw an opportunity. He thought the application was complete, sufficient and demonstrated compliance with the requirements of the comp plan. He advocated for a comprehensive vision for the town. He supported the request.

LPA Member McLean respected the comp plan as it existed and he was not anti-development, but had to weigh the benefits to the neighborhood, residents and community as a whole. Chair Cereceda agreed that it was not just that neighborhood that would be affected. She felt it would be irresponsible to make a change that would impact a neighborhood without knowing how to be able to mitigate it or what it was going to be. LPA Member Vanasse said they had the opportunity to guide the project with rezoning.

LPA Member Plummer noted it was hard to go all in without seeing the whole picture.

LPA Member Vanasse moved to recommend approval for the petition, seconded by LPA Member Sudduth.

The motion was denied, 4-2, by roll call vote, with Chair Cereceda and LPA Members Plummer, McLean and Boan dissenting and LPA Member Eckmann excused.

Chair Cereceda moved to deny the request, finding that it was not in the public interest, seconded by LPA Member Plummer.

The motion carried, 4-2, by roll call vote, with LPA Members Vanasse and Sudduth dissenting and LPA Member Eckmann excused.

E. Comprehensive Plan Update

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING AMENDMENTS TO THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN FUTURE LAND USE, HOUSING, COMMUNITY DESIGN, COASTAL MANAGEMENT, CONSERVATION, HISTORIC PRESERVATION, INTERGOVERNMENTAL COORDINATION, AND CAPITAL IMPROVEMENT ELEMENTS, TO UPDATE DATA AND ANALYSIS AND THE GOALS, OBJECTIVES, AND POLICIES RELATED TO THE REQUIREMENTS OF CHAPTER 163, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE.

Planner Propst indicated that some of the items requested were not done, but she has since received them. She noted they received an email regarding Bowditch Park and commented that the town could encourage Lee County to add parking. LPA Member Boan suggested they consider keeping the language in the 1999 plan. LPA members McLean, Plummer, Sudduth and Vanasse agreed. LPA Member Vanasse indicated that FAR was not well-defined in certain districts and should be clarified. Planner Propst agreed that it made a lot of sense. She questioned whether there was an interest in allowing hotels or restaurants in neighborhoods. LPA Member Vanasse liked the opportunity to open it up on Estero Blvd. because neighborhood restaurants were appealing. Planner Propst commented that they were talking about adding mixed residential deep into neighborhoods. LPA Member Boan remarked that he did not support adding restaurants in neighborhoods, especially since many roads were dead ends.

Chair Cereceda read the title of the ordinance.

Public comment:

Jim Ink, resident, noticed that pedestrian commercial and boulevard did not list FARs. He agreed that all future land uses should have density and FAR. He thought bringing mixed-use and residential to the marina district was interesting.

Public comment closed.

Chair Cereceda moved to forward the updates for the comprehensive plan to the town council with the staff's recommendations, seconded by LPA Member Plummer.

The motion carried unanimously by roll call vote, with LPA Member Eckmann excused.

F. Ordinance 24-04, Emergency Temporary Uses

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND RESTATING ORDINANCE 23-05 TO PERMIT A TEMPORARY USES IN CERTAIN ZONING DISTRICTS IN RESPONSE TO, AND AS A PART OF THE TOWN'S RECOVERY EFFORTS FOLLOWING A NATURAL DISASTER OR OTHER EMERGENCY SITUATION: 1) BY A GOVERNMENTAL ENTITY FOR THE BENEFIT OF THE PUBLIC; 2) FOR RESIDENTIAL MANUFACTURED HOMES, MOBILE HOMES, MOTOR HOMES, RECREATIONAL VEHICLES OR OTHER TEMPORARY DWELLINGS FOR RESIDENTIAL PURPOSES; AND 3) FOR MOVEABLE COMMERCIAL STRUCTURES FOR THE DELIVERY AND SALE OF NEEDED GOODS AND SERVICES TO THE PUBLIC; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, SUNSETTING OF THIS ORDINANCE, AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the ordinance. LPA Member Vanasse discussed allowing food trucks to operate in empty lots temporarily but did not want to open it up for anybody anywhere. LPA members McLean and Sudduth agreed that the intent was to support vendors operating in the town before Ian and allowing anyone to operate a food truck would negate the original intent. Planner Propst suggested that they look at the commercial uses language on page 4. She stated that a process allowed a mobile vendor to set up in an area that did not have a restaurant on the property before Ian. Senior Planner Smalley confirmed that a site plan sketch with setbacks was required for commercial uses. LPA Member Plummer felt they should consider adding a miscellaneous category to give people an opportunity for those who were trying to get back to a brick-and-mortar building. It would be hard to rebuild with a mobile truck on the property. She supported the six-month review process. Town Attorney Stuparich stated the ordinance was written to go away after 18 months. She asked whether they wanted the ordinance in the code in case of another disaster. She did not think there was a downside to making it permanent. LPA Member McLean supported having something that allows clarity in the event of another disaster. He added that public, private and government partnerships were crucial. LPA Member Boan supported putting it into the code. After discussing the application, it was decided to change it to reflect a temporary emergency.

No public comment.

LPA Member Boan moved to approve the ordinance, seconded by LPA Member McLean.

The motion carried unanimously by roll call vote.

G. Ordinance 24-06, Draft Expedited Variance Review

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-232 “REQUIRED HEARINGS” OF DIVISION 5 “PUBLIC HEARINGS AND REVIEW” OF ARTICLE II “ZONING PROCEDURES” OF CHAPTER 34 “ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES” TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY (“LPA”) FOR VARIANCES AND EXTENSIONS, EXCEPT IF THE DECISION BY THE LPA IS NOT UNANIMOUS OR IF THE TOWN CLERK RECEIVES A REQUEST BY ANYONE FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL WITHIN 10 DAYS AFTER THE LPA DECISION; A PUBLIC HEARING BEFORE THE TOWN COUNCIL IS REQUIRED FOR VARIANCES OR EXTENSIONS IF THE DECISION BY THE LPA IS NOT UNANIMOUS OR IF ANYONE REQUESTS SUCH HEARING WITHIN 10 DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Chair Cereceda read the title of the ordinance. Town Attorney Stuparich explained the intent of the proposal and noted the town council requested adding extensions of permits. Town Attorney Stuparich clarified some of the language. She indicated that a paragraph informing residents they have 10 days to oppose would be added to the notices sent to residents. Senior Planner Smalley questioned whether everybody at the LPA accounted for anyone missing or recused. Town Attorney Stuparich suggested adding language specifying a quorum.

No public comment.

LPA Member Vanasse moved to approve the ordinance with Senior Planner Smalley's change about a quorum, seconded by LPA Member Plummer. The motion carried unanimously by roll call vote.

VII. ADMINISTRATIVE AGENDA

No items.

VIII. LPA MEMBERS ITEMS/REPORTS

LPA Member Plummer questioned when the sidewalks on Estero would be fixed. She requested an excused absence from the next meeting.

Chair Cereceda felt they needed to review the mobile vendor ordinances.

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 specific items.

XII. ADJOURNMENT

LPA Member Plummer moved to adjourn the meeting.

The meeting was adjourned at 1:07 p.m.

Minutes adopted as presented, April 30, 2024; Motion by LPA Member McLean and seconded by LPA Member Boan. Passed 6-0, Plummer excused.



Amy Baker, Town Clerk