Fort Myers Beach Local Planning Agency

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

Minutes **Tuesday, June 11, 2024** **9:00 AM**

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

Members present: Chair Cereceda, LPA Member Boan, LPA Member Dunlap, LPA Member Eckmann (participating virtually), LPA Member McLean, LPA Member Plummer and LPA Member Sudduth (participating virtually).
New member James Dunlap introduced himself.
LPA Member Plummer moved to approve LPA Members Eckmann and Sudduth participating virtually due to extraordinary circumstances, seconded by LPA Member Dunlap.
The motion carried unanimously.

II. INVOCATION

Chair Cereceda.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF MINUTES

A. Local Planning Agency - May 14, 2024
LPA Member McLean moved to approve the minutes, seconded by LPA Member Plummer.
The motion carried unanimously.

V. PUBLIC COMMENT

Mike Miller, resident, commented on London Bay bringing a boat up and down his canal to their proposed resort to eat, drink and shop. He indicated they were already promoting this at their other resorts. He suggested that they get a dock at Fish Tale Marina and acquire an open-air shuttle to transport their guests around town to eat and shop at local businesses rather than exclusively at London Bay's properties.

VI. PUBLIC HEARINGS

Town Attorney Stuparich explained the quasi-judicial procedures and the expedited variance process. Town Clerk Baker confirmed that all agenda items were property noticed and she swore in those providing testimony.

A. VAC20240030- 190 Estero Blvd

VAC20240030- 190 Estero Blvd

Chair Cereceda read the title of the resolution. Ex parte communications: Chair Cereceda and LPA members McLean and Plummer visited the site. There were no disclosures from other members. Town Attorney Stuparich noted numerous emails were received by LPA members and requested a list of who sent them. Town Clerk Baker listed Catherine Shotts, Mary Herman, Maura Fahey Alrich, Todd Zastro, Bob Basil, Christine Walters, Penny Aguire, Jean Sacone, Phyllis Scrogge, Marty McGinity, Paul Doring and Richard Rowe. The applicant stated that they did not read the emails.

Community Development Senior Planner Jason Smalley reviewed the background of the request as stated on the yellow sheet. Beach Access 42 was initially approved in 1985 and has been moved a couple of times over the years. The current view corridor on the property will be maintained if the resolution is approved. An agreement was made that the hours of operation for the beach access were from sunup to sundown. Town Attorney Stuparich stated that the agreement was a term of the proposed draft and subject to review.

LPA Member Plummer confirmed that there were no hours of operation for any of the other beach accesses. LPA Member Boan thought the hours of operation were vague. He noted LPA members just saw the language for the easement this morning and asked whether it was subject to approval. Town Attorney Stuparich verified that it was a draft and subject to approval.

Regarding hours of operation, they would have to trust that it would be appropriately monitored and enforced. A discussion was held regarding identifying the hours from dusk to dawn, fixed hours, from sunrise to sunset or one hour after sunset. LPA Member McLean confirmed that the county controls the beach access on the north end.

Attorney Sarah Spector from Roetzel & Andress represented the applicants. Slides in her presentation included an aerial of beach accesses 43, 42, 41 and proposed beach access 42. She described the previously proposed location of beach access 42 and noted objections, so it was changed.

Attorney Spector pointed out that the county agreed with the change and an agreement would be drafted. She stated the county required the hours of operation to be from dusk to dawn. The beach access will include restrooms. The county requested a revised legal description to extend the easement to the mean high water line rather than the Coastal Construction Control Line (CCCL). She will work with the town attorney to revise the agreement.
Attorney Spector noted the access was under the building. LPA Member Plummer saw an issue with the public going through their property and being unable to use the pool. LPA Member Boan questioned whether the applicant would post signs to indicate the access was available to the public. Attorney Spector replied affirmatively and then was told that the county was responsible for the signs. She stated she would contact the county to reinstall the signs. LPA Member McClean stated there were no signs of the other two accesses. Chair Cereceda indicated that the use and hours should be the same if it was a beach access like every other one on the beach.
Attorney Spector responded that they did not have an issue with that.
Bill Waichulis, applicant, explained that access 42 was evened out for safe wheelchair access. He wanted to combine access 43, but the neighbors opposed the proposal. He stated that accesses 41 and 43 were open to the public, although, historically, not many people used those accesses. He indicated that even though the county recommended the hours of operation, he had to prevent people from accessing the pool after hours for safety.
Public comment:
Melody King, resident, suggested that the applicant install a fence around the pool as Margaritaville did. She indicated that the town should announce that the Pink Shell beach access was available to the public. She supported the request.
Public comment closed.
LPA Member Eckmann questioned whether there was a legal definition of dusk to dawn. Attorney Spector was unaware. LPA Member Eckmann felt there should be definitive hours. Chair Cereceda noted that the applicant was not opposed to any hours the LPA prescribed. LPA Member Dunlap commented that the legal definition of dusk to dawn was twilight. LPA Member Eckmann wondered why the access was done before it was approved. Mr. Waichulis said he had to open the resort and keep everything safe. The county was okay with taking the access away and he was helping the town by keeping it.
Senior Planner Smalley noted that the easement relocation satisfied the intent of the comprehensive plan.
LPA Member Boan moved to approve the proposed variance with the condition that it be subject to attorney approval of the easement language and with the recommendation that the town council consider more definitive hours reflecting the maximum time the Pink Shell was open to the public and that the town council urge the county to provide three access signs, seconded by LPA Member Dunlap.
The motion carried 4-3 by roll call vote, with LPA members Sudduth, Plummer and McLean dissenting.

B. CB Zoning District Language Change

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 5, SUBDIVISION V. CB ZONING DISTRICT AND AMENDING ARTICLE III., DIVISION 2. TABLE 34-2 USE SUB-GROUPS PERMITTED IN EACH ZONING DISTRICT; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Senior Planner Smalley reviewed the reason for the proposed ordinance as stated in the yellow sheet. He pointed out that the allowance for redevelopment of the buildings in the CB zoning district was limited to two stories above flood if the lower area was enclosed. If the lower area was unenclosed, like certain areas downtown, a property owner would be eligible to build the second floor above the ground floor.

Chair Cereceda was concerned that density was not increased and that there was some public benefit to the changes. Senior Planner Smalley responded that the staff found it difficult to assess the validity of public benefits. He questioned whether the town wanted to perpetuate the use of just offices in that district or allow for a mix of uses that do not require a planned development (PD). He commented that the FAR (Floor Area Ratio) would not change and the proposed ordinance would only open up the schedule of uses allowed in that zone.

Public comment:

T.J. Gronwald, Vice President of Bay Village Condo Association, noted that initially, the area to be changed was from Gulf Street on the Gulf side south from the Ascension Church south, but those changes were not in Exhibit A and it would make the whole area bigger and intrude into their neighborhood across the street. He asked who would want a strip mall on Gulf Street or behind Gulf Street on Estero Blvd. and it would get rid of non-residential land use percentages and eliminate the summary of zoning issues on the future land map. He added that Santini Plaza was just down the street. He did not support more commercial use in that little section on the curve and requested that they stick to the current zone or tweak what was there.

Patrick Vanasse, resident, implored the LPA to move forward with changes to the CB district. He stated the zoning district and boundaries were not changing; the uses would just open up. He did not support increasing intensity by use and supported staff's recommended changes.

Cash Upton, resident, stated that before the hurricane, the only property not used in the area was the bank property. He discussed why the town incorporated and questioned why they would go back. He addressed the commercial vessel traveling down a residential canal and asked the LPA not to vote yes before more due diligence. He felt that London Bay was the only entity benefiting from the change.

Public comment closed.

Chair Cereceda questioned whether opening up uses in existing CB-zoned properties would create a spread of commercial expansion into neighborhoods. Senior Planner Smalley replied that many downtown uses would be imported into the transition areas and there was a risk that the neighborhood would change. He added there may be a compromise where the uses are expanded with limitations to force people to go through the PD process again. He explained the definition of a ring fence, which means to put an overlay around certain areas for liberalized uses. Chair Cereceda questioned neighborhood commercial use. Senior Planner Smalley replied that was what they were discussing today, and questioned whether neighborhoods wanted restaurants in their neighborhood. He indicated that the staff presented a wholesale change to the CB zone as requested by the town council. He asked what sort of uses could reasonably be allowed down there that have not been allowed before that would not exacerbate nuisances. Chair Cereceda commented that she was thinking of Sea Grape and not a restaurant in the neighborhood.

LPA Member Dunlap was looking for a balance between stimulating creativity with like-kind in areas where it previously existed but not stimulating activity where it did not exist before or became intrusive to the neighborhood. Senior Planner Smalley summarized that they wanted the staff to figure out if the CB zoning district could be fragmented into specific areas to have an allowed use and other areas that have a greater or lesser intensity. LPA Member McLean questioned the definition of neighborhood commercial use. LPA Member Plummer would like to open uses for those restricted but not allow them to go into neighborhoods.

Senior Planner Smalley indicated that they will attempt to refine the language and bring it back.

LPA Member Dunlap moved to table the discussion on the CB zoning district until the staff could come back with alternatives, seconded by LPA Member McLean.

The motion carried unanimously.

Chair Cereceda noted the definition of neighborhood commercial use means commercial use such as a small grocery or general or specialty stores that furnish convenience goods and services to meet the daily needs of the residents of the neighborhood.

C. DCI20240015; 1836 AND 1840 ESTERO BLVD

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A TOWN OF FORT MYERS BEACH ORDINANCE, AND APPROVING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT REZONING FOR THE PROPERTIES LOCATED AT 1836 AND 1840 ESTERO BLVD. (LESS THE AREA WITHIN THE ENVIRONMENTALLY CRITICAL ZONING DISTRICT), GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-03200.00CE AND 19-46-24-W4-03200.1010 FORT MYERS BEACH; PROVIDING FOR OTHER 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 ordinance. No ex parte communications were disclosed, except Chair Cereceda and LPA Member Plummer read social commentary regarding the building's height, massing and appearance.

Senior Planner Smalley reviewed the background of the request as stated on the yellow sheet.

Attorney Sarah Spector from Roetzel & Andress presented the case. Slides included team members, Request for Commercial Planned Development, Location and History & Existing Conditions.

Architect Fred Drovdlic continued the presentation with slides of The Past, Existing and Proposed Zoning, Master Concept Plan, North Elevation, East Elevation, Benefits of Increased Height, Deviations, LDC Compliance, Compliance & Consistency and Conclusion. Mr. Drovdlic stated that they agreed with the staff-recommended conditions and evaluation.

LPA Member Eckmann expressed concerns regarding the elevated mass right on Estero Blvd. He noted other proposals presented a more inventive architectural design to avoid the mass and he referred to DiamondHead, which was somewhat set back. He felt it might be an eyesore and wanted more creativity. LPA Member Sudduth agreed although he loved that they went from two buildings to one. LPA Member Plummer questioned the size of the units and the ceiling height.

Robert Huff, engineer, reviewed his experience.

LPA Member Plummer moved to qualify Mr. Huff as an expert in his field, seconded by LPA Member Boan.

The motion carried unanimously.

Mr. Huff replied that the ceiling height was the same or whatever the current code required. The size of the units was increased to comply with ADA requirements. Mr. Huff explained that they intended to create a signature property, not an eyesore.

LPA Member Boan commented that the setback on Estero was counterproductive to what the LPA had said about taller buildings. He suggested that low-growing plants be installed on Estero Blvd. LPA Member McLean had the same issues surrounding massing and the monolithic structure. Chair Cereceda discussed the design of the building and massing on Estero. She could not support the application as presented.

Mr. Huff stated the ceilings were 10 feet high and the units increased from 625 sq. ft. to 815 sq. ft. He agreed with the comments regarding the building design.

John Shaw, construction management, stated that they designed a three-story building, which would have taken up more space, but the town required this taller design because the view corridor was a major issue. He questioned what the town wanted. Senior Planner Smalley explained that the original design did not meet the view corridor requirements. Chair Cereceda questioned whether the choice was a three-story building with no view corridor or today's design. She suggested they ask to table it and return with a different design.

Public comment:

Dave Leigh, resident, said he would like to maintain the view corridor on Palm Ave. He agreed with LPA members Eckmann and Sudduth regarding DiamondHead's setback.

Cash Upton, resident, agreed the height was scary right on Estero Blvd. and did not think the old building blocked the views. He felt the three-story design fit the island better.

Public comment closed.

Chair Cereceda moved to continue the ordinance to a date certain of August 23, 2024, seconded by LPA Member Sudduth. The motion carried unanimously by roll call vote.

D. SEZ20240126-7400 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENY SPECIAL EXCEPTION SEZ20240126 TO ALLOW RECONSTRUCTION OF STORM DAMAGED INFRASTRUCTURE IN THE EC ZONING DISTRICT, INCLUDING: A PARTIAL PARKING LOT, A NEW ALUMINUM RAIL FENCE ALONG THE SEAWALL, AND NEW FENCE WITH GATE AROUND THE SOUTH GARDEN, FOR THE PROPERTY LOCATED AT 7400 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 Planner Eli Lee reviewed his experience as a planner with the town.

Chair Cereceda moved to accept Planner Lee as an expert in his field, seconded by LPA Member McLean.

The motion carried unanimously.

Planner Lee reviewed the background of the request as stated on the yellow sheet. He noted that staff determined that since the damaged portion of the parking lot existed before Ian, it was recommended for approval, but the seawall and fence were new and seaward of the CCCL, so staff recommended denial.
Myles LaGarde, with South Shore Construction, explained that the fence would be on the seawall, and both were new. Until the beach replenishment was done, they did not want people to walk across the seawall to get through the property. The applicant felt it was a safety issue so people did not fall on the riprap below. Planner Lee understood the fence was for safety, but the seawall was not a walkable surface and not required by the Florida building code. Mr. LaGarde explained that the south garden gate would be relocated to the side of the building and replanted with native plants. He explained why the parking lot was crucial and noted it was deeded to the owners. LPA Member Eckmann thought the fence was a good idea because people would walk on the seawall. LPA Member Dunlap pointed out that the applicant was doing the right thing. He explained why they moved the garden to the side.
LPA Member McLean thought the seawall fence was brilliant.
No public comment.

LPA Member Dunlap moved to approve the replacement of the partially damaged parking lot, seconded by LPA Member Boan.
The motion carried unanimously by roll call vote.
LPA Member Plummer moved to approve the seawall fence, seconded by LPA Member Eckmann.
The motion carried unanimously by roll call vote.
LPA Member Dunlap moved to approve the garden fence, seconded by LPA Member Plummer.
The motion carried 6-1 by roll call vote, with LPA Member Boan dissenting.

E. VAR20240071; 1250 Estero Blvd; "Cottage and Shuckers"

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS VAR20240071, FIVE (5) VARIANCES FROM LDC SECTIONS 34-674(a)(1)(b), 34-675(b)(3), 34-676(a)(4), 34-676(b) AND 34-676(d) REQUESTING RELIEF FROM BUILD-TO LINE MAXIMUM SETBACKS, INCREASED BUILDING HEIGHT, PARKING REDUCTIONS, RELIEF FROM PARKING LOCATION AND LOCATION OF SITE ACCESS IN THE DOWNTOWN ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 1250 ESTERO BLVD. (LESS ANY AREA WITHIN THE EC ZONING DISTRICT), GENERALLY KNOWN AS STRAP # 19-46-24-W4-0070F.0010 TO REDEVELOP A RESTAURANT/ BAR; AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the resolution. Ex parte communications: All LPA members met with The Neighborhood group except LPA members Dunlap and Eckmann.

Senior Planner Smalley reviewed the background of the request and the deviations as stated on the yellow sheet.

Patrick Vanasse, a planner with The Neighborhood Company, utilized PowerPoint for his presentation. Slides included a Presentation Overview, Background & Details, Property Location, Subject Site, Pre-Hurricane Ian and Post-Hurricane Ian, Proposed Redevelopment, Request, Variances Request, Renderings, Front Elevation, Rear Elevation, Ground Floor - Bar/Beach Level, Second Floor - Main Dining Level, Third Floor - Cottage Bar, Fourth Floor - Fire Equipment and Site Plan. He addressed the five criteria for approval. He requested to reserve a spot on the town council agenda for June 17, 2024.

Mr. Vanasse explained that roll-up shutters or glass garage doors would contain the entertainment noise on the third floor. The noise ordinance would be followed, and the sound would be directed toward the Gulf.

Public comment:

Mike Miller, resident, was 100% for The Cottage, but he was concerned regarding the noise. He described how he sound-proofed The Whale and did not want to be blamed for noise coming from The Cottage. He requested that they enclose the area.

Public comment closed.

Chair Cereceda moved to approve the variances including the findings and conditions of approval in the staff report, adding a condition that there be enclosures on the third floor to contain sound as much as possible and finding that this is consistent with the comprehensive plan, seconded by LPA Member Dunlap.

The motion carried unanimously by roll call vote.

F. DCI20240143, 1668 I Street

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A REQUEST TO REZONE THE PROPERTY LOCATED AT 1668 I STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0070B.0110 FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, WITH DEVIATIONS, FOR A BAR AND RESIDENCE; PROVIDING FOR OTHER 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 ordinance. Ex parte communications: LPA Member McLean - spoke to Albert Dambrose from Studio AD, LPA Member Boan - spoke to the applicant and Chair Cereceda read social media comments supporting the project. No disclosures by other members.

Senior Planner Smalley reviewed the background of the request as stated on the yellow sheet. He noted that the applicant gave up one of the recognized dwelling units upstairs and combined the two units into a larger single unit.

Jim Ink from Ink Engineering, LLC distributed documents.

His presentation included a list of Team Members, Request Statement, What This Request Would Do, Why Grant the Request, South Downtown, Future Land Use Plan, Current Survey, Master Site Plan, Property Regulations, Schedule of Uses, Deviation Request, Future Land Use Plan, The Neighborhood, Conditions, Request Statement and Rendering.
Public comment:
Cash Upton, resident, supported the request and noted what they asked for was reasonable and a great fit for the island.
Public comment closed.

LPA Member Boan moved to approve the ordinance with the conditions in the staff report, seconded by LPA Member McLean.
The motion carried 6-0 by roll call vote. LPA Member Eckmann dropped off the connection.

VII. ADMINISTRATIVE AGENDA

A. LPA Policies and Procedures

A review and update of the LPA Policies and Procedures

Town Attorney Stuparich indicated she received comments from LPA members Boan and McLean. Chair Cereceda commented that the document was overkill and wanted a streamlined version. LPA Member McLean indicated it was helpful for him to understand the procedures. LPA Member Boan felt it could be consolidated. The Table of Contents was reviewed, and some items were removed. LPA Member Dunlap discussed the amount of information in the LPA packet and suggested using addendums. Town Clerk Baker explained that all the information was on the portal and members could toggle between items and look at certain parts for projects. Town Attorney Stuparich explained why some information had to be on the record. LPA Member Dunlap suggested that all the boilerplate requirements be included as an addendum. Senior Planner Smalley commented that the boilerplate material was usually included at the end of materials, but he would be okay with putting those materials in an addendum. Town Attorney Stuparich will streamline the version. She stated that social media comments counted as ex parte communications.

VIII. LPA MEMBERS ITEMS/REPORTS

LPA Member Boan commented that the town hired a firm to do a study on impact fees, which could take up to a year to complete. He urged council members to create an approach so impact fees could be captured in the interim. He added that maybe the firm could be paid more to complete the study sooner.
LPA Member McLean asked the same question. Town Attorney Stuparich responded that she would see if they could come up with something.
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 items. The next meeting is June 25, 2024 at 9:00 a.m.

XII. ADJOURNMENT

LPA Member Dunlap moved to adjourn the meeting, seconded by LPA Member Boan. The motion carried unanimously.

Minutes adopted as presented, August 23, 2024; Motion by LPA Member Boan and seconded by LPA Member McLean. Passed 7-0.

Amy Baker, Town Clerk