



Fort Myers Beach Local Planning Agency

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

Minutes

Tuesday, November 12, 2024

9:00 AM

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

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

LPA Member McLean moved to allow LPA Member Sudduth to participate virtually due to unforeseen circumstances. No second.
The motion carried unanimously.

II. INVOCATION

Chair Cereceda.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

LPA Member Dunlap moved to approve the final agenda, seconded by LPA Member Boan.
The motion carried unanimously.

V. APPROVAL OF MINUTES

A. Local Planning Agency - October 22, 2024

LPA Member Boan moved to approve the amended minutes, seconded by LPA Member Dunlap.
The motion carried unanimously.

B. Special Local Planning Agency - October 29, 2024

Chair Cereceda moved to approve the minutes, seconded by LPA Member Dunlap.
The motion passed unanimously.

C. LPA Chair and Vice Chair

LPA Member Boan nominated Anita Cereceda as Chair, seconded by LPA Member McLean.

The motion carried unanimously.

LPA Member Boan nominated Jane Plummer as Vice Chair, seconded by LPA Member McLean.

The motion carried unanimously.

VI. PUBLIC COMMENT

No public comment.

VII. PUBLIC HEARINGS

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

A. Kahlua Beach Club Special Exception

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20240194 TO ALLOW RESTORATION OF A POOL, POOL DECK, TWO (2) CHICKEE HUTS, SHUFFLEBOARD AREA AND FENCE IN THE EC ZONING DISTRICT AS AUTHORIZED BY SECTION 6-366 OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE FOR PROPERTY LOCATED AT 4950 AND 4952 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 Principal Planner Judith Frankel reviewed the background of the request as stated on the yellow sheet.

James Ink of Ink Engineering Inc. represented the applicant. Mr. Ink utilized PowerPoint for his presentation. Slides included Team Members, What This Request Would do, Why Grant the Request, Area Plan, Future Land Use Plan, Master Site Plan, Pre-lan Conditions and Proposed, Conditions and Request Statement. Mr. Ink estimated that the timeline was five to six months.

Principal Planner Frankel reviewed the findings and conclusion for approval in Sec. 34-88 (b) of the Land Development Code (LDC). Staff recommended approval with conditions as noted in the staff report.

No public comment.

LPA Member Plummer moved to approve the resolution with conditions listed in the packet, seconded by LPA Member Boan.

The motion carried unanimously.

B. DCI 20230090, Pink Shell Resort CPD

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR 6.02 ACRES OF THE PROPERTY LOCATED AT 275/322 ESTERO, 200 ESTERO, 192 ESTERO COMMON ELEMENT ONLY, 142 ESTERO, 171-191 ESTERO, 251-281 ESTERO, AND 309 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W1-0070D.028A, 24-46-23-W1-00700.0340, 24-46-23-W1-00700.0290, 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0320 , 24-46-23-W1-03700.00CE, & 24-46-23-W1-04100.00CE IN FORT MYERS BEACH, TO ALLOW EXPANSION OF AN EXISTING BEACH RESORT TO INCLUDE A NEW 40 UNIT RESORT HOTEL, 4 ADDITIONAL HOTEL UNITS IN THE WHITE SANDS BUILDING, AND A DUPLEX; 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. All LPA members disclosed receipt of emails and LPA Member McLean met with the owners. Town Clerk Baker stated that the emails were provided to the applicant. The applicant confirmed receipt of the agenda and backup materials.

Town Attorney Stuparich described an intervenor as typically a neighbor or adjacent property owner. She recommended that the LPA allow them to participate in the proceeding. The baseline criteria are someone who lives next door, the risk of making a mistake or abundance of caution criteria and the probative value as far as how much the affected party will add to the conversation and the decision-making process.

Attorney Richard DeWitt explained that he represented a neighboring property and felt they met the criteria. He stated that his presentation was brief.

Attorney Amy Thibaut explained why she objected to the intervenor process. She stated that the LDC did not have a process for intervenors and provided examples from court cases. She asked that the intervenor status be denied; however, she did not object to a presentation.

LPA Member Dunlap confirmed that the LDC was not clear regarding an intervenor. Town Attorney Stuparich indicated there was a body of law that may not be codified in the town's code, but it was applicable because it was the law. LPA Member Boan preferred to allow the intervenor a say. LPA Member McLean favored increased transparency and LPA Members Sudduth and Plummer agreed. LPA Member Plummer added that they received notice and did have standing. The majority of the LPA favored a 10- minute time limit and allowing them intervenor status.

LPA Member Plummer moved to afford Mr. DeWitt and Mr. Katim intervenor status, seconded by LPA Member Boan.

The motion carried 5-1, with Chair Cereceda dissenting.

Robert Boykin from the Pink Shell described his experience in hotel development and management.

LPA Member Dunlap moved to accept Mr. Boykin as an expert in his field, seconded by LPA Member Plummer. The motion carried unanimously.

Jeff Katims, certified planner, reviewed his experience in planning.

LPA Member Boan moved to accept Mr. Katims as an expert in his field, seconded by LPA Member McLean.

The motion carried unanimously.

Community Development Planner Sarah Propst reviewed the background of the request as stated in the yellow sheet. She noted there was a change from the agenda packet. The applicant now proposed that half of the spa be removed and two units placed in half of that spot. She described the equivalency factor as a result of their changes. She read the five deviations proposed by the applicant. She noted an error in the request and the CR zoning allowed a maximum height of 30, not 40, which resulted in a deviation to add 30 feet above the allowed 30 feet for a total of a 60-foot height above base flood elevation and six stories.

Attorney Amy Thibaut from Roetzel & Andress read their request. Architect Fred Drovdic utilized PowerPoint for his presentation. Slides included Location and History & Existing Conditions. Robert Boykin continued the presentation with his developer profile, Pink Shell Development Through the Years, Stewardship and Community Support as a Value, Pink Shell Development-Tax Benefit and Awards and Recognition. Architect Drovdic continued with Zoning, Future Land Use, The Existing Build Environment on the Gulfside, Master Concept Plan, Development Locations, Density Transfer Exhibit, Density, Floor Area Ratio and Intensity, Density Summary, Stories and Height and Neighborhood Compatibility.

Architect Michael Sheeley continued the presentation with building renderings and Building Cross Section. Bill Waichulis continued with Public Benefits, Conceptual LA Plan for Estero Blvd. and Boardwalk and Good Neighbor/Steward to Town. Architect Drovdic walked through the Deviations with a Deviations Exhibit, Duplex Setbacks, Hotel/Condo Setbacks, LDC Compliance, Compliance & Consistency and Path for Approval. Attorney Thibaut summarized the request.

Planner Propst stated that the equivalency factor request was a complicated issue and she would have to check the numbers. She did not think the liveboards were counted towards the density. She noted that staff recommended denial based on the density equivalency at the time the staff report was written. Planner Propst indicated that she would need to evaluate the numbers before submitting a recommendation. She clarified that there was no density transfer from the existing open parking lot.

Attorney DeWitt questioned whether the new deviation should have been noticed. Town Attorney Stuparich replied that individual deviations did not have to be published. Attorney DeWitt noted that the staff recommended denial and Mr. Drovdic admitted that they did not have the density.

Mr. Katims did not see any mention of a deviation from the density equivalent factor in the staff report and thought it was just added today. He did not believe it was analyzed or proper and should have been part of the application. He stated it was not allowed because the maximum equivalency factor in the comprehensive plan was three. An equivalency factor of three gave them about 105 units and they already had 195. He referred to Division 19 in the LDC, which stated that the applicant could exceed the equivalency factor based on an analysis of the criteria, but it cannot exceed the allowable intensity of the comprehensive plan. He summarized that the request was not made properly because it was a last-minute addition and they were not entitled to be granted a deviation for 239 units because it exceeded the maximum intensity in the comprehensive plan (the recording skipped over his third explanation).

Planner Propst noted that intensity in the LDC referred to FAR (floor area ratio), density was dwelling units and the intensity of the equivalency factor was FAR. She acknowledged that the official request for the equivalency factor was relatively new and was not in the agenda packet. The information came in after the applicant received the staff report. LPA Member Boan commented that it was difficult for everyone to receive information at the last minute, especially since the packet had already been reviewed.

Public comment:

Cassius Upton commented on the bayside density and felt they were trying to recoup the density they gave away by building a hotel on the new lot they purchased.

Cathy Scholz, resident, reviewed the 2000 hearing to consider the variance made by Pink Shell to amend its bayside CPD. She read a portion of the minutes from Attorney Beverly Grady's presentation. She stated that Pink Shell should be held to their past commitments.

Richard Outersluys expressed concerns about allowing deviations to create a building that was never planned. He noted the building took up the entire lot and would eliminate any view of the bay. He stated Pink Shell did not lease the parking spots for Vacation Villas; they were officially deeded easement. He recommended that Pink Shell Resorts, Vacation Villas and the town create a way to get an easement on Bowditch Park for Vacation Villas to park.

Patrick Vanasse, resident, explained why he thought the applicants had the right to ask for the equivalency factor and noted there was precedent with previous projects.

Public comment closed.

Attorney Thibaut requested a continuation to December 3, 2024, at 9:00 a.m.

LPA Member Dunlap moved for a continuance to December 3, 2024, at 9:00 a.m., seconded by LPA Member Plummer.

The motion carried unanimously.

C. Neptune Inn CPD, 2310 & 2316/2320 Estero Blvd, Ordinance 24-XX

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2310 ESTERO BLVD AND 2316/2320 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE AND 19-46-24-W3-0110A.0010 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. LPA Member Boan left the meeting. All LPA members disclosed conversations with The Neighborhood Group and the applicants. LPA Member Dunlap also referred a contractor to the owners; however, he did not receive a special benefit due to the referral. LPA members McLean and Plummer added they were familiar with the property.

Planner Propst reviewed the request as stated on the yellow sheet.

Noel Davies of Davies Duke PLLC began the presentation with Introductions - Project Team and Presentation Overview. Adam Valente explained why they purchased the property. He stated that the building was still there because their lender was concerned about demolishing the building without knowing the future of it. He added that the lender should approve demolishing the building within a couple of weeks and the goal was to remove the building during the first quarter of 2025. LPA Member Dunlap explained why the lenders held off on demolitions. Chair Cereceda discussed the property's poor condition and noted it was insulting to the community.

Patrick Vanasse from The Neighborhood Group continued with Background - Moving Forward and Key Points. Ken Gallander from The Neighborhood Group continued with the Request, Neptune Location Map, Discussion & Analysis, Master Concept Plan and the Concept Parking Plan.

Chris Meyers requested to be qualified as an expert in architecture and described his experience. The recording skipped to a slide of Concept View from the Gulf of Mexico, Concept View Northwest, Aerial Concept View Northwest, Concept View Along Delmar Access & View Corridor, Concept View Eastside View Corridor, Concept View Toward Gulf of Mexico, Concept View from Southwest and the Concept View from South/Gulf of Mexico.

Mr. Gallander continued with a rendering of the zoned and overall height, Discussion & Analysis of Density/Intensity, Transportation & Parking, Parking, Traffic/Parking Mitigation, Findings & Conclusion and Deviations. Mr. Vanasse concluded with Public Benefits/Special Benefits, Proposed Conditions/Commitments, Economic Impacts, Hotel Room Update and Findings & Conclusion.

Public comment:

Susan Bonfigli, resident, supported the project design and commented that the applicant listened to the neighbors. She voiced her concerns to them regarding the noise and the public using the restrooms. She suggested adding more greenery to the east corridor and greenery to the straight path. Henry Schlichte, resident, stated that the applicant took his concerns to heart, but his house is 10 feet from their building. He hoped there was a plan to keep the noise down. His wife asked for the use of their amenities for their family in perpetuity.

Ron Fleming, resident, stated that he was treated disrespectfully because the structure was still there. He saw things he liked but wanted them to stick with the plan. They were the worst neighbors he had ever had. He would like a condition added that the project could not start until the lot was cleared and it had to be secure in the meantime.

Public comment closed.

Planner Propst explained why staff asked the applicant to measure their height slightly differently. The primary reason for denial was the height because they were not directly adjacent to other tall buildings and the multiplier was a big ask.

LPA Member Sudduth felt that the height was a reasonable request, but his biggest issue was doubling the number of units.

Mr. Vanasse confirmed that they could handle the public using the restrooms. He addressed the configuration of the 16 parking spaces.

LPA Member Dunlap thought the height was reasonable and he was in favor of the project.

Chair Cereceda stated containing the noise was extremely important. She questioned how they would handle the noise. Mr. Vanasse agreed to create limitations to contain the sound.

LPA Member Plummer described the dangerous state of their property. She did not think there was enough parking for the project. Mr. Vanasse replied that they paid an expert to determine the parking. None of the other LPA members were concerned about the parking.

LPA Member Dunlap moved to approve the ordinance with conditions that memorialize items on pages 43-48 and 18-26 of the presentation and address the outdoor entertainment, seconded by LPA Member Sudduth. The motion carried unanimously by roll call vote with LPA Members Boan and Eckmann excused.

VIII. ADMINISTRATIVE AGENDA

A. LPA Guidelines

Announcement of upcoming review of guidelines in the LPA manual at the December 2024 LPA meeting with proposed changes for discussion.

Town Attorney Stuparich suggested adding language about voting, intervenors, continuances, agenda distribution deadlines and considering a stop time. LPA Member Sudduth left the meeting.

Discussion was held regarding limiting the time of applicant presentations and the length of the LPA meetings.

Town Attorney Stuparich explained that a School Board member was included in zoning and other changes because they were an ex-officio member of the LPA.

IX. LPA MEMBERS ITEMS/REPORTS

No items.

X. LPA ATTORNEY ITEMS/REPORTS

No items.

XI. COMMUNITY DEVELOPMENT ITEMS/REPORTS

A. Summary of Public Benefits

Chair Cereceda did not intend for the ideas to be specific only to a development agreement or CPD. She thought they would become definitions. LPA members agreed.

XII. ITEMS FOR NEXT MONTHS AGENDA


A special meeting will be held on December 3, 2024. Items coming up were the Pink Shell, the Arches CPD, Lani Kai paid parking lot, the Estero Beach Club and special exception items.

XIII. ADJOURNMENT

LPA Member Dunlap moved to adjourn. Second by LPA Member McLean.
The motion carried unanimously.

The meeting was adjourned at 2:41 p.m.

Minutes adopted as presented, December 3, 2024; Motion by LPA Member Dunlap and seconded by LPA Member Boan. Passed 6-0.



Amy Baker, Town Clerk