



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
MINUTES
Town Hall
2525 Estero Boulevard
Fort Myers Beach, Florida 33931
Tuesday, July 19, 2016**

I. CALL TO ORDER

Meeting was called to order at 9:00 a.m. by Chair Zuba. Members present: Bruce Butcher, Al Durrett, Dan Hendrickson, Suzanne Katt, Jane Plummer, Joanne Shamp and Hank Zuba.

Town Attorney: Dawn Lehnert

Staff: Matt Noble and Megan Will.

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES - June 14, 2016

MOTION: Ms. Shamp moved to approve the minutes, second by Ms. Plummer.

VOTE: Motion passed 7-0

MOTION: Ms. Shamp moved to adopt a resolution recognizing Jim Steele as read by Chair Zuba; second by Chair Zuba.

VOTE: Motion passed 7-0.

V. VAR16-0003 - Wilfredo Rodriguez, 215 Nature View Court

The applicant is seeking three variances (VAR) to develop a swimming pool in the front yard at 215 Nature View Court. The first is from LDC section 34-1174(b) which provides that no accessory use, building or structure shall be located closer to a street right-of-way line or street easement than the principal building to allow the development of a pool, as depicted on the site plan, in the front yard. The second is from LDC section 34-1744 which states that any fence or wall located in a front yard shall not exceed 42 inches in height to allow a 48 inch high fence in the front yard. The third requested variance

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is from LDC section 34-3131 which requires that on corner lots no obstruction will be planted or erected within the visibility triangle to allow the improvements as depicted on the proposed site plan.

Matt Noble, Principal Planner for the Town, stated that the second story deck made it difficult to build the pool in the backyard and there was not enough room on the sides.

Chair Zuba requested ex parte communication. Mr. Butcher - site visit; Ms. Katt - site visit; Ms. Shamp - site visit and spoke to staff; Chair Zuba - site visit and spoke to staff; Mr. Durrett - site visit; Ms. Plummer - site visit; and Mr. Hendrickson - site visit.

Mr. Butcher questioned why pools were not allowed in the front of the houses. Mr. Noble replied that it was typical for accessory structures to be located behind the principle structure. Ms. Plummer requested clarification of the property lines on the drawing. Ms. Shamp commented that the applicant could build a pool in the backyard, but the deck and staircase would have to be rearranged. Mr. Noble agreed. Ms. Shamp expressed concerns regarding the visibility triangle and the right of way. She discussed eliminating one of the variances by having the applicant put the pool closer to his structure rather than as far away into the corner of the property. Mr. Noble confirmed that both decks pre-existed the purchase in 2015.

Mr. Rodriguez noted that he would make adjustments in order to get the variances approved. He stated that there was 36 feet from the actual property line to the pavement. He indicated that he could not remove the deck due to a door on the second floor. He described the size of the pool, fencing and a buffer of native trees and plants.

Ms. Katt questioned whether the applicant lived on the property. Mr. Rodriguez stated that he would move to the property in the near future. Chair Zuba questioned the rental agreements and concerns of overcrowding. Mr. Rodriguez remarked that he had corrected the situation and all rentals were on a seven day minimum. He clarified that he rented the unit as one dwelling.

Ms. Shamp questioned the distance from the rear deck to the 6 foot setback line. Mr. Rodriguez replied that the distance was less than 10 feet. Ms. Shamp stated that he could build a smaller deck and put the pool in the back yard. Mr. Noble calculated that it was about 15 feet from the edge of the deck to the property line.

- Marty Weit, property owner across the street, discussed the noise factor and felt the pool in the front yard would be too much.
- Donald Baker spoke on behalf of his daughter who lives on Nature View Court. He indicated that the covenant for the development did not allow fences in front yards. He asked that the LPA not approve the variance for a fence, which would eliminate the pool in the front yard.
- Ron Coveleski, owner across the street, questioned the visibility triangle. He noted that the deck in front of the house provided access to the top unit. He discussed setbacks and setting a precedent for pools in front yards. He provided documents to enter into the record.
- Tauna Yerkes represented her parents who live on Nature View Court. She stated they were opposed to the pool in the front yard because of the noise level. She pointed out that the community pool was less than a block away.
- Annette Dwyer, Nature View resident, was concerned with school bus access and the fact that the neighborhood was also the entrance to the Matanzas Preserve. She did not think it was appropriate to put the pool in the front yard.

Mr. Noble revealed that staff was not aware of the covenant for the neighborhood.

Ms. Katt stated that code was clear as to where pools were to be placed. She was concerned that the applicant did not come out and say that the unit was currently being used as a rental and the neighbors did not support the application.

Ms. Shamp read conclusions from the staff report. She indicated that the applicant did not meet the conditions to grant the variances.

Mr. Durrett agreed that the pool should be in the back yard and the decks reconfigured.

Ms. Plummer believed that the applicant met the majority of the criteria as far as hardship. She felt that the finding regarding being injurious to neighbors was an issue. The corner lot was an unusual layout and it would not be a view corridor issue. She indicated that the school did not have an issue with the application. She questioned giving the applicant more time to see if he could pull back and lose one of the variances.

Mr. Butcher stated that the hardship was more on the neighbors than tearing down the deck. He agreed that the visibility triangle was probably not an issue with the setback.

Chair Zuba commented that the proximity to the school was an outstanding characteristic of that intersection. Although the school did not object, he felt that safety should be a consideration. He felt that it would be injurious in terms of precedence and the noise level. He did not support the application.

MOTION: Ms. Shamp moved that the LPA deny the requested variance 16-0003 with the following findings and conclusions: the request was not de minimus under the circumstances or conditions where rigid compliance **is** essential to protect the public; the conditions justifying the variance are potentially the result of the applicant in making the choice to not to remove the deck to provide room for the pool; the variance requested would not be a minimum variance to relieve the applicant of unreasonable burden; granting the variance would be injurious to the neighborhood or otherwise detrimental to public welfare; and that the conditions or circumstances on the piece of property for which the variances are sought are general or recurrent enough in nature that it would create a precedent or a situation where they would have to amend regulations; second by Mr. Durrett.

VOTE: Motion passed 6-1 with Ms. Plummer dissenting.

VI. LDC AMENDMENT - FLOODPLAIN REGULATIONS

Amendments to Chapter 6, Article IV to coordinate the Town's floodplain regulations with the latest version of the Florida Building Code (FBC) (effective 2015) in accordance with guidance provided by the Florida Department of Emergency Management.

Megan Will, Senior Planner for the Town, utilized a Power Point presentation to discuss Floodplain Regulations and the Florida Building Code. Slides included partnerships, the Florida Building Code, changing regulations, the model ordinance, state model code, specific flood zones, local standards, higher regulatory standards, community rating system (CRS), repetitive loss, clarification of market value and the process.

Ms. Katt asked that the issue be continued for a month so they could absorb the material. Ms. Shamp questioned whether the model ordinance was meant to be changed specifically for communities and if her intent was to remove some language. Ms. Will replied that the language came from the state and

there was very little room for additional modifications. She stated that whatever was in the document was required. Ms. Will explained that maintaining higher regulatory standards positively affected the CRS. She indicated that the state requested compliance as soon as possible and the Town was currently out of step with the FBC because the local floodplain language was not coordinated with the FBC. She remarked that if additional changes were made to the document, it would have to go back to the state for review. Discussion was held regarding the 50% rule and the CRS rating. Ms. Plummer compared assessed values of three different, comparable properties to illustrate the differences in value.

Town Attorney Lehnert cautioned against making changes to the document that the state would not accept. Ms. Will stated that she contacted the CRS coordinator regarding the implication to the CRS if they changed the rule to one year instead of five. She noted that a meeting was scheduled with the realtors to review the 50% rule and to obtain feedback.

Ms. Shamp questioned whether the document was compliant with the post-disaster section in the comp plan. Ms. Will stated that the language before them did not substantially change any of the language previously adopted in 2013. Ms. Plummer requested to postpone the decision and review Sanibel's plan. Ms. Will explained that Sanibel's CRS rating of five was due to a number of reasons; not just their ordinance.

Ms. Shamp questioned what delaying the document would do to the Town. Ms. Will discussed how the discrepancies would affect reconstruction in the event of a weather event.

- Lauri Albion, General Manager of the Red Coconut, commented that as a result of the changes in 2013, parked trailers were no longer allowed to be tied down or have a screened room.

Ms. Will indicated that there were specific regulations for Red Coconut.

- John Gucciardo gave a historical perspective on why Sanibel's CRS rating was a five while the Town's was a seven. He discussed moving forward with the document.

MOTION: Chair Zuba made a motion to move the document forward to Council with the finding that it was consistent with the comp plan and urged Council to work with the LPA in the future to evaluate changes that might be made in the immediate future consistent with other communities, better the rating and make the 50% rule more efficient or ways to eliminate it and add it to the next Town Council LPA meeting to discuss it; second by Mr. Durrett.

VOTE: Motion approved; 5-2 with Ms. Katt and Ms. Plummer dissenting.

VII. EAR - REVIEW STATUTORY CHANGES TO THE COMMUNITY PLANNING ACT AND PROPOSED LETTER TO DEO

Chair Zuba suggested postponing the discussion. Mr. Noble discussed changes and provisions made over the years.

MOTION: Ms. Shamp moved to continue the discussion to the next LPA meeting; second by Chair Zuba.

VOTE: Motion passed 7-0.

MOTION: Chair Zuba moved to adjourn as LPA and reconvene as Historic Preservation Board; second by Mr. Durrett.

VOTE: Motion passed 7-0.

Chair Shamp reviewed the application for HDD16-0005 - The Sea Gypsy Inn at 1698 Estero Blvd., category Historic Importance #2. She commented that the building was the first Beach library and the first public library in Lee County.

MOTION: Mr. Zuba moved to approve the application for determination of category of Historic Importance level 2 for the structure at 1698 Estero Blvd.; second by Ms. Katt.

VOTE: Motion passed 7-0.

MOTION: Ms. Plummer moved to adjourn as Historic Preservation Board and reconvene as LPA; second by Mr. Butcher.

VOTE: Motion passed 7-0.

VIII. LPA MEMBER ITEMS AND REPORTS

Ms. Plummer noted that sea grass was filling in under the fishing pier and she questioned whether something could be done.

Ms. Shamp updated the action list.

IX. LPA ATTORNEY ITEMS - no items.

X. COMMUNITY DEVELOPMENT ITEMS - no items.

XI. ITEMS FOR NEXT MONTH'S AGENDA - next meeting will be September 13, 2016.

XII. PUBLIC COMMENT - no public comment.

XIII. ADJOURNMENT

MOTION: Mr. Butcher moved to adjourn the meeting; second by Ms. Shamp.

VOTE: Motion passed 7-0.

Meeting adjourned at 11:34 a.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

- End of document