



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
MINUTES**

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida 33931
Tuesday, September 9, 2014

I. CALL TO ORDER

Meeting was called to order at 9:00 a.m. by Chair Zuba; other members present:

Al Durrett, John Kakatsch, Jane Plummer, Joanne Shamp, and Hank Zuba.

Excused: Chuck Bodenhafer and James Steele.

LPA Attorney: Derek Rooney

Staff Present: Josh Overmyer, Planning Coordinator and Belinda Smith, Permit Coordinator.

II. PLEDGE OF ALLEGIANCE

III. INVOCATION - Chair Zuba

IV. MINUTES - August 12, 2014

MOTION: Ms. Shamp moved to approve the minutes as amended; second by Mr. Durrett.

Page 5, 6th paragraph, the sentence should read: "Vice Chair Shamp stated she opposed the original application in May 2011 as it related to increased intensity and density, but that the Town Council had passed it and, at this time, she did not see anything in Section 34-220 that the Applicants did not meet."

Page 7, 4th paragraph, add the sentence: "The 8' x 16' dimension was the size approved by the Tropical Shores Condominium Association."

Page 11, the sentence should read: "Ms. Shamp reported the proposed Chapter 22 amendments would come back to the HPA HPB to correct an error..."

VOTE: Motion approved; 5-0.

V. PUBLIC HEARING

A. VAR2013-0009 - Tundo Variance (Continued)

LPA Attorney Rooney asked members to declare ex-parte communications for all the hearings. Mr. Kakatsch - site visit for Pearl and Dakota; Vice Chair Shamp - site visit for everything except the continuance; Chair Zuba - site visit for Dakota; Mr. Durrett - site visit for Dakota and Pearl; Ms. Plummer - site visits for all.

LPA Attorney Rooney swore in the witnesses.

David Easterbrook of Easterbrook Consulting represented Ken and Sonia Tundo. He distributed a handout to members and he requested to build a 10' x 20' deck off an existing bedroom.

Vice Chair Shamp requested a letter of approval from Tropical Shores Condominium Association for the 10' x 20' dimension. Mr. Easterbrook replied he would search his records for written approval from Tropical Shores and present documentation to LPA.

Permit Coordinator Smith reviewed the Applicant's request, the background of the property, and the existing conditions. She stated that staff recommended approval.

Chair Zuba questioned Permit Coordinator Smith if she was concerned about precedence. Permit Coordinator Smith replied that due to the uniqueness of the case, she was not concerned.

Planning Coordinator Overmyer pointed out the individual who opposed the deck would speak in person at the Town Council meeting. The person who wrote the letter was an officer of the board and was speaking on behalf of the board.

Vice Chair Shamp commented that the proposed deck was not tremendously intrusive and felt the setting was unique. She was concerned about complaints and the fact that the letter from Tropical Shores approved an 8' x 16' deck, not 10' x 20'.

Ms. Plummer questioned if LPA could approve the 8' x 16' deck and then reconsider the 10' x 20' dimension if approved by Tropical Shores Condominium Association. Town Attorney Rooney replied LPA could recommend to Council to approve the deck on the condition that approval is received from Tropical Shores for the revised 10' x 20' deck.

Planning Coordinator Overmyer revealed the Applicant owned two of the four units at Tropical Shores.

MOTION: Vice Chair Champ moved to find that the applicant has met the five criteria required for granting the variance; they are exceptional conditions and not precedence setting; with the condition that recommends a letter be presented from Tropical Shores Condominium Association approving the 10' x 20' design compared to the 8' x 16'; upon receipt of letter, LPA would recommend; second by Mr. Durrett.

VOTE: Motion approved; 5-0.

B. VAR2014-0001 - Schmid Dock Variance

Dan Stovall, General Manager of Honc Dock Boat Lifts, distributed and discussed information concerning the existing dock at 721 Matanzas Court. Mr. Stovall requested a variance that would widen the walkway to the dock and the dock deck for wheelchair accessibility. Mr. Stovall discussed the non-conforming portion of the dock and stated he would not increase the width of the walkway or the size of the sitting area. He stated they were adding legal elements to the existing size and shape of the structure.

Ms. Plummer questioned why the Applicant didn't repair the original structure instead of tearing it down. Mr. Stovall replied the Applicant wanted a three-foot finger pier with a boathouse roof. He stated the Town did not approve adding to the old dock, so a conforming dock was rebuilt.

Vice Chair Champ questioned sign-off by the neighbor and environmental impacts. Mr. Stovall responded the neighbor was not available to sign a waiver and the structure would not negatively impact the environment.

Mr. Kakatsch stated that four feet was adequate for a wheelchair.

Planning Coordinator Overmyer stated the dock was in conformance with the land development code. He reviewed that the property was zoned RS, new home built under permit BLD13-0089, a new sea wall was constructed on the property, a new boathouse was constructed on the property, a dock permit was denied based on issues with adding a finger pier and boathouse to the non-conforming dock, and the existing dock and shoreline permit was denied due to the width of the access walkway and size of the terminal platform.

Planning Coordinator Overmyer referred to Land Development Code Section 26-71, subsection C-1 and D-2: the variance would allow the Applicant to reconstruct the access walkway to 7'4"; rebuild the 295 square foot terminal platform; and allow the replacement of the terminal platform at a setback of 7'8" from the northern property owner's property line. He concluded there were no exceptional or extraordinary conditions or circumstances inherent to the property in question and the request was not a *de minimus* variance. For those reasons, staff recommended denial of requested variance.

Vice Chair Champ questioned if setting a precedent against the code that is general in nature would be injurious to the neighbors or general public. Planning Coordinator Overmyer replied the existing location was not a new hardship on the neighbor.

Ms. Plummer stated that it would become injurious to the neighbor.

Robert Pritt, an attorney with Roetzel & Andress, represented Norma and Thomas Cameron, who live next door to the Applicant. Mr. Pritt indicated his clients oppose the application for variance and agreed with staff's recommendation to deny the request. Mr. Pritt discussed the history of the property. He noted he was not aware of a waiver. Mr. Pritt reviewed reasons why the variance should be denied.

Chair Zuba asked Mr. Pritt if the State or DEP had any precedence over local decisions. Mr. Pritt replied the state statute says that granting a state permit did not mean that a local permit would have to be granted. Discussion was held concerning applying for a state and local permits.

Mr. Durrett requested clarification from Mr. Pritt concerning the complaint. Mr. Pritt replied the problem was general overdevelopment of the property.

Mr. Durrett questioned whether LPA could request the dock be smaller than 7'. Town Attorney Rooney noted the variance was also for the terminal platform and indicated the Land Development Code may need to be revised.

Vice Chair Shamp did not see justification to approve the variance and she referenced Section 26-71, C-5 of the Land Development Code. Chair Zuba agreed with Vice Chair Shamp. Ms. Plummer did not see justification for approval.

MOTION: Ms. Plummer moved to deny the request based on the fact that there are not exceptional or extraordinary conditions; the conditions are the result of the Applicant; the variance granted is not *de minimus*; would injure the neighbor; and they are so general that others would want to make the same changes; second by Vice Chair Shamp.

VOTE: Motion approved; 5-0.

C. VAR2014-0003 - King Variance

Jay Ursoleo, Ursoleo Construction, represented Sue and Lance King on the variance for their deck. Mr. Ursoleo described the request to move the deck forward, square it off, and move the stairs forward. He stated the change would not change the side setbacks and would not adversely affect neighbors or vegetation.

Vice Chair Shamp requested clarification on the coastal construction line, creating a safe platform, and obtaining a field permit from the DEP.

Permit Coordinator Smith reviewed the request to allow a variance in the RM zoning district from LDC Table 34-3 to allow an existing legal non-conforming deck to be enlarged while not increasing the encroachment into the required setback. Permit Coordinator Smith noted the deck needed to be rebuilt or repaired and was very small. Permit Coordinator Smith revealed the neighbor, Garr Reynolds, had no objection to the application. Permit Coordinator Smith stated that she approved the application.

Mr. Reynolds remarked that he did not see anything wrong with the application. Mr. Reynolds expressed his concern about overdeveloping the Island.

MOTION: Vice Chair Shamp moved that the LPA of the Town of Fort Myers Beach approve the applicant's request based on the testimony and materials provided at the hearing; that the applicant has met all the recommended findings and conclusions; and is supported by LDC Section 34-87; second by Mr. Kakatsch.

Mr. Kakatsch suggested the porch be supported by larger poles. Mr. Ursoleo stated it would be built stronger and plans were on file with the Town.

VOTE: Motion approved; 5-0.

D. VAR2014-0004 - Neaf Variance

Steve Nease, general contractor and owner of the lot across the street, represented the owners. He stated the application was to elevate the home to the required flood elevation. Mr. Nease reviewed the application and indicated there was no more encroachment than what existed.

Vice Chair Shamp requested clarification of the depth of the deck facing Pearl St. Mr. Nease replied the deck would be 8' with an overhang.

Permit Coordinator Smith reviewed the request for a variance in the RC zoning district from LDC Table 34-3 to allow existing front and rear setback encroachments to remain to facilitate raising existing structure per FEMA floodplain requirements and addition of a rear deck and a front deck what will not increase existing encroachment. Permit Coordinator Smith noticed an addition to the small deck at the back of the house. In light of previous *de minimus* discussions, she did not feel this was a minimum deck or entryway and was not required to make the house functional. Permit Coordinator Smith recommended denial.

Chair Zuba felt this was a unique situation in terms of elevation and FEMA codes. He stated this may be a small incentive to encourage more elevation of homes if more square footage was allowed. Permit Coordinator Smith replied she was more inclined to be in favor of something that would encourage raising the property.

Vice Chair Shamp reviewed the blueprints and felt it was a unique situation.

Chair Zuba encouraged homeowners to consider elevation and to move in the direction of compliance with regard to FEMA.

MOTION: Mr. Durrett moved to recommend approval after hearing consideration of the evidence; finding the applicant has met the five criteria for granting the variance consistent with the drawings; second by Mr. Kakatsch.

VOTE: Motion approved; 5-0.

E. LDC Chapter 22, Historic Preservation Amendments

Vice Chair Shamp discussed striking the word "significant" from the Code. She stated levels of importance and eligibility of designation were created so Section 22-75, Categories of Historic Importance, could be inserted to the LDC. Vice Chair Shamp explained that CHI-1 Category of Historic Designation would be the only category subject to the Land Development Code. She reviewed CHI-2 for cultural, religious, educational, commercial, and tourism development; CHI-3 for historic significance; and CHI-4 for historic interest.

Discussion was held concerning levels of categories.

MOTION: Chair Zuba moved to endorse Chapter 22; second by Mr. Kakatsch.

VOTE: Motion approved; 5-0.

F. Ordinance 14-xx, Permitting Survey Requirements

Ken Miller, Building Safety Services Coordinator, reviewed the ordinance. Mr. Miller compared a site plan to a boundary survey with related costs. He discussed discrepancies between surveys. Mr. Miller stated he would recommend a site survey, a footer survey, and an as-built survey. He remarked that this ordinance would protect the Town against disputed surveys.

Discussion was held regarding the height of structures and enforcement. Town Attorney Rooney stated that it would be helpful if the Town had the ability to identify properties that had violated the terms of construction based on approved plans.

Mr. Durrett asked Mr. Miller his opinion. Mr. Miller replied that he felt a certain level of documentation should be required. Discussion was held concerning liability and insurance.

Vice Chair Shamp remarked that surveys were already required for permits. Mr. Miller replied that it was a site plan requirement, not a survey. She required clarification of survey terms. Planning Coordinator Overmyer supplied the language based on the Town's requirement.

Vice Chair Shamp questioned whether surveys showed right-of-ways. Mr. Miller replied in the affirmative. She questioned the costs affiliated with the surveys and wondered if there were problems with the inspection process.

Discussion was held regarding the coastal construction line.

Town Attorney Rooney recommended a height determination before the roof goes up and accepting existing surveys that showed existing structures when applying for additions.

Ms. Plummer discussed comingled lots. Planning Coordinator Overmyer stated that he would look into the issue.

Vice Chair Shamp questioned mean high water in the Code. Town Attorney Rooney replied that DEP typically deals with mean high water.

Discussion was held concerning what Mr. Miller could require versus what he could request per Code. Town Attorney Rooney suggested that in the absence of a requirement, staff may request that the action be required.

Discussion was held regarding the different categories.

MOTION: Vice Chair Shamp moved for a continuance to a date certain of October 14, 2014; second by Mr. Kakatsch.

VOTE: Motion approved; 5-0.

Adjourn as LPA and reconvene as Historic Preservation Board - 10:42 a.m.

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

VOTE: Motion approved; 5-0.

VI. LPA MEMBER ITEMS AND REORTS

Ms. Plummer - no items or reports.

Mr. Durrett - discussed lighting on the Beach and FP&L. He felt that a special taxing district would have to be created in order for the Town to provide their own lighting, especially in crosswalks. Discussion was held concerning a special lighting district and presenting the issue to the LPA for consideration.

MOTION: Vice Chair Shamp moved to recommend that Town Council look at developing a uniform plan for lighting along Estero Blvd. to address safety issues, aesthetics, and sea turtles; second by Mr. Durrett.

VOTE: Motion approved; 5-0.

Mr. Kakatsch - commended Town Staff concerning Estero Blvd. and the side streets. He also requested that the roads be paved after being dug up. Planning Coordinator Overmyer indicated that Mr. Baker stated that the road was repaved if more than 30% of the road was torn up, otherwise a patch was used.

Vice Chair Shamp - discussed unmarked right-of-ways and design changes.

Chair Zuba - no items.

VII. LPA ATTORNEY ITEMS

No items

VIII. COMMUNITY DEVELOPMENT ITEMS

No items.

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IX. LPA ACTION ITEM LIST REVIEW

Vice Chair Shamp verified the list and indicated that she would not be in attendance at the next meeting. Chair Zuba stated that he would attend in her absence.

X. ITEMS FOR NEXT MONTH'S AGENDA

No items.

XI. PUBLIC COMMENT

No public comment.

XII. ADJOURNMENT

MOTION: Vice Chair Shamp moved to adjourn the meeting; second by Ms. Plummer.

VOTE: Motion approved; 5-0.

Meeting adjourned at 11:40 a.m.

Adopted October 14, 2014 ~~With~~/Without changes. Motion by Shamp, second by Kakatsch.

Vote: 6-0, Durrett excused

Signature



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