



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

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
June 12, 2012

I. CALL TO ORDER

Meeting was called to order at 9:01 a.m. by Joanne Shamp; other members present:

Dan Andre
Al Durrett
John Kakatsch
Jane Plummer (Excused)
Alan Smith
Hank Zuba

LPA Attorney, Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director
Leslee Chapman, Zoning Coordinator
Josh Overmyer, Planning Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION – Hank Zuba

IV. MINUTES

A. Minutes of April 10, 2012

MOTION: Mr. Zuba moved to approve the April 10, 2012 minutes; second by Mr. Smith.

Mr. Zuba noted a typographical error on Page 8, Paragraph 6.

VOTE: Motion passed 6-0. Ms. Plummer excused.

V. PUBLIC HEARING

A. REZ2011-0001 – Paine/Purtell Rezoning

Ms. Shamp opened the hearing at 9:04 a.m.

Zoning Coordinator Chapman entered the Affidavit of Publication into the record.

Ms. Shamp asked the LPA Attorney to swear in the witnesses; and LPA Attorney Miller swore in the witnesses.

Ms. Shamp asked if any LPA Member had ex-parte communication regarding this item. Mr. Kakatsch – none; Mr. Durrett – none; Ms. Shamp – site visit; Mr. Zuba – none; Mr. Smith: -site visit; Mr. Andre – site visit.

Ms. Alexis Crespo of Waldrop Engineering representing the applicant, Messrs. Paine and Purtell, noted they were unable to attend the meeting; however, Brady Paine was in attendance (Mr. Paine's son) and he could provide history regarding the property if necessary. She presented comments for REZ2011-0001 – Paine/Purtell Rezoning for a rezoning request of Residential Conservation to Downtown. She noted the subject property was currently located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan. She displayed an aerial location map of the subject property and discussed the frontage along the arterial roadway, and proximity to the Old Sand Carlos Boulevard, Estero Boulevard, and Times Square, pedestrian-commercial designation. She used a PowerPoint presentation to review the existing condition of the property; the existing uses of the surrounding properties; the subject property as it appeared on the Town of Fort Myers Beach Future Land Use Map (FLUM) and the land use designation for surrounding properties; and the existing zoning designation for the subject property and surrounding properties. She stated the applicant was requesting a logical extension of the Downtown Zoning District to include the subject property and she noted the subject property was the only property fronting on Estero Boulevard within the Lagoon Street block that did not have commercial use at the present time. She reviewed the slides that depicted the types of existing businesses and uses, residential properties, and vacant lots that surrounded or were nearby the subject property. She gave a historical synopsis of the zoning and land use designations and changes for the subject property since 1950. She noted the applicants were able to obtain a Future Land Use Map Amendment in 2010 for the subject property to Pedestrian-Commercial. Ms. Crespo reviewed other specifics of the applicant's zoning request; and noted the area of the town where the subject property was located had sufficient infrastructure to handle the rezoning and the applicant had acquired the appropriate letters to support the request (i.e. letter from Utility Department). She stated the applicant requested a TIS waiver that was approved by the Community Development Director; and discussed how the subject property was in a 'park-once' location. Ms. Crespo reviewed the rezoning request as it pertained to compatibility with the surrounding properties, and compliance with the Comprehensive Plan. She stated the Staff Report indicated the request was consistent with the Town's Growth Management Plan, that it implemented the 2010 Future Land Use Map Change to Pedestrian-Commercial, approved the TIS Waiver, and recommended approval of the rezoning. She indicated that the approval of the request would allow the property's zoning to comply with

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the underlying Residential Commercial Future Land Use Category and requested the LPA approve the rezoning request.

Mr. Smith asked if there was any feedback from the multi-family seasonal rental properties located on Lagoon Street.

Ms. Crespo stated from her conversations with the applicants it was her understanding from that they were supportive of the rezoning.

Mr. Zuba asked why there was no 'redevelopment plan' included in the rezoning request.

Ms. Crespo reported the applicants did not have an immediate redevelopment plan and were trying to regain the previous commercial uses that were allowed for the site at a C-1 designation which would allow for future redevelopment of the property. She noted there was not an 'end-user' at this time.

Mr. Zuba asked if the applicants were positioning the property for sale.

Ms. Crespo responded in the affirmative.

Mr. Zuba asked if there were any code violations on the existing properties.

Ms. Crespo stated that to the best of her knowledge there were none.

Zoning Coordinator Chapman stated she could research the matter.

Discussion was held concerning what was permissible under the current zoning.

Zoning Coordinator Chapman presented comments for REZ2011-0001 – Paine/Purtell Rezoning on behalf of the Town of Fort Myers Beach. She displayed an aerial view of the subject property and reviewed the application for a rezoning of the subject property located at 821 and 831 Estero Boulevard. She noted that the application was a conventional rezoning and described the difference between conventional zoning and a commercial planned development. She explained that the LPA must make a recommendation of approval or denial; and that the approvals could not be conditioned. She indicated the property location on the Future Land Use Map (FLUM) and gave a brief historical background of the property:

- Future Land Use
 - Lee County FLU: Urban Community
 - Town of Fort Myers Beach Adopted the Future Land Use Map in 1999; Mixed-Residential
 - Applicants applied for a Small Scale Map Amendment which was approved in 2010 by Ordinance 10-02 from Mixed Residential to Pedestrian Commercial

She discussed the property location on the Zoning Map and the property's zoning history:

- Zoning
 - Lee County Zoning C-1
 - Town of Fort Myers Beach adopted the Land Development Code by Ordinance 03-03
 - Town of Fort Myers Beach adopted the Official Zoning Map Resolution 04-16 which zoned the subject property Residential Conservation
 - Applicant has applied to rezone the subject property to Downtown which would allow for a variety of uses that would not require a Development Order

She pointed out considerations with respect to compatibility with surrounding properties; TIS waivers; and land use/zoning consistency. She noted the subject property was located within a six parcel loop that was enclosed by Estero Boulevard and Lagoon Street; and that rezoning the property to Downtown would shift the balance of land uses within the loop from a majority of residential parcels to a majority of commercial parcels. She reported that staff recommended approval of the requested rezoning from Residential Conservation to Downtown.

Mr. Kakatsch asked if the parking area adjacent to the property would remain a parking area and be tied into whatever might develop on the new property.

Ms. Chapman reported that property was a commercial parking lot and there was an opportunity for the two parcels in question, if they were redeveloped, to enter into a joint use agreement.

Discussion ensued regarding the possible development of the commercial parking lot; and challenges to the conventional zoning districts and buffering along the street.

Ms. Shamp questioned the types of uses that could be permitted.

Ms. Chapman stated that any change in use would still have to apply for a Certificate of Use; and noted if there were any proposed changes to the interior/exterior of the building that come up against the 50% Rule could be a limiting factor to redevelopment.

Ms. Shamp asked if the buildings were to be torn down and the rezoning was approved, what number of units would be allowed to be used without going through the CPD process (i.e. height and unit restrictions).

Ms. Chapman responded that it would be less than seven units; and they would have to go up in height due to FEMA (approximately 30 feet above base flood elevation).

Community Development Director Fluegel noted that the Commercial Design Standards would apply if the property was rebuilt; and discussed the applicability of the 50% Rule.

Mr. Zuba noted his concerns regarding buffering for the adjacent properties and increasing density.

Discussion ensued concerning buffering, increased density and intensity, FEMA standards, compatibility concerns, and the existing inconsistency between the future land use and the zoning.

Public Comment opened.

No speakers.

Public Comment closed.

Mr. Andre expressed his belief that it seemed like a logical transition to change the zoning back to what it was when the applicants purchased the subject property.

Mr. Smith agreed with Mr. Andre and pointed out this was an opportunity to correct an inconsistency between the land use and zoning.

Mr. Zuba discussed his opinion that he did not see the site as commercial given the elevation requirements.

Ms. Shamp explained how she believed the request was logical; however, she noted she still had concerns.

Mr. Durrett reported he was looking forward for future property improvements.

Mr. Kakatsch urged the property owners to improve the landscaping.

Ms. Shamp pointed out that Lagoon Street provided a geographic separation for the Downtown Zoning District.

MOTION: Mr. Durrett moved that the LPA recommends the Town Council approve the request to rezone the subject property to the Downtown Zoning District: 1) Approve; 2) Approve; 3) Approve; 4) Approve; 5) Approve; 6) Approve; 7) Approve; 8) Approve; and 9) Approve; Second by Mr. Smith.

VOTE: Motion passed, 5-1; Mr. Zuba dissenting; Ms. Plummer excused.

Ms. Shamp closed the hearing at 10:02 a.m.

Recess at 10:02 a.m. – Reconvened at 10:09 a.m.

Ms. Shamp reported the applicant was not present for the Sign Variance, Pierview Hotel, and asked if the LPA would consider changing the order of presentation.

MOTION: Mr. Zuba moved to move up the CVS CPD; second by Mr. Kakatsch.

VOTE: Motion approved, 6-0; Ms. Plummer was excused.

B. FMBDCI2012 -0002 CVS Pharmacy CPD Amendment

Ms. Shamp opened the hearing at 10:10 a.m.

Ms. Shamp asked the LPA Attorney to swear in the witnesses; and LPA Attorney Miller swore in the witnesses.

The Affidavit of Publication was entered into the record.

Ms. Shamp asked if any LPA Member had ex-parte communication regarding this item. Mr. Kakatsch – none; Mr. Durrett – none; Ms. Shamp – site visit; Mr. Zuba – none; Mr. Smith: - none; Mr. Andre – none.

Mr. Burt Saunders of the Gray-Robinson Law Firm, representing the applicant, noted the local Store Manager, Ed Cooney, was present to answer questions if needed. He stated the Town staff had recommended approval of the CPD in their Staff Report for the request to amend Condition #2 of Resolution FMB 97-35, which restricted the hours of operation from 8:00 a.m. to 9:00 p.m., to allow CVS to operate from 7:00 a.m. to midnight. He mentioned that the CVS store had been under the impression it could operate from 7:00 a.m. to midnight and had done so for the past eight years; however, a disgruntled employee had reported the error in hours of operation to the Town. He addressed highlights of the Staff Report that pointed out the CVS Pharmacy began operation of the store in 2004 which was formerly operated by Eckerd Drugs who had operated under the 7:00 a.m. to midnight schedule; the notification to the Town was by a disgruntled employee and not a nearby resident; and staff recommended approval.

Ms. Shamp questioned the hours for store deliveries.

Mr. Cooney was sworn in by the LPA Attorney. He reported most deliveries were from local vendors that occurred up until about 5:00 p.m.; however, rarely there were deliveries after that time, possibly a delivery around 6-7:00 p.m. from the CVS warehouse.

Discussion was held concerning conditions of the CPD with respect to hours of operation.

Mr. Smith stated he resided directly across the street from CVS and had no idea of the hours of operation because the store was well-run and quiet.

Josh Overmyer, Planning Coordinator for the Town of Fort Myers Beach, noted he had not been designated as an expert in land planning before the Town of Fort Myers Beach LPA. He requested the designation and the approval to present the amendment request to the Commercial Planned Development, CVS/Pharmacy CPD, DCI2012-0002.

MOTION: Mr. Smith moved to tender Mr. Overmyer as an expert in the area of land planning; second by Mr. Zuba.

VOTE: Motion approved, 6-0; Ms. Plummer was excused.

Mr. Overmyer displayed an aerial picture of the subject property located near Santini Plaza; and indicated the location of the subject property and surrounding properties. He described the subject property location on the zoning map and on the Future Land Use Map. He stated the applicant was requesting to amend Condition #2 of Resolution FMB 97-35, restriction on hours of operation from 8:00 a.m. to 9:00 p.m., to allow CVS to operate from 7:00 a.m. to midnight. He reviewed the property details which was formerly operated by Eckerd Drugs, CVS began operation at the site in 2004, the property was currently zoned Commercial Planned Development, and the Future Land Use was Pedestrian Commercial. He stated that staff recommended approval of the requested expansion of hours of operation since the hours had been in place since August 2004 with no complaints from neighboring property owners; and the expanded hours would allow additional hours of service to residents and visitors which would keep vehicular trips on the island.

Ms. Shamp questioned if the extended hours of operation were approved would the approval stay with the site if the use changed (i.e. CVS to a restaurant).

Community Development Director Fluegel explained the approval would go with the approved use as indicated on the Schedule of Uses. He added the hours could be conditioned to the specific use as a pharmacy.

Ms. Shamp noted the site was located in a heavily traveled pedestrian area and was traffic impact or pedestrian safety considered as it pertained to the extended hours.

Community Development Director Fluegel explained that the traffic/pedestrian safety were off-site concerns.

Mr. Durrett noted the subject property was located at one of the worst intersections on the island. He stated that on behalf of the Safety Task Force that if CVS had any creative ideas how to make it safer for pedestrians to cross that street he would like to discuss the matter further at a later date.

Mr. Kakatsch urged CVS to consider opening another store location in the downtown or on the north end of the island.

Mr. Overmyer noted the hours of operation for other businesses in the area of the subject property which included, but was not limited to, 7-Eleven open 24 hours a day, Truly Scrumptious open until 9:30 p.m., Castaway Bar until 2:00 a.m., Sand Bar until 1:00 p.m., Skye's until 11:00 p.m., South Beach Grille until 10:00 p.m., Fish House until 10:00 p.m. on Friday and Saturday night.

Public Comment opened.

No speakers.

Public Comment closed.

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Ms. Shamp noted the approval could be conditioned as long as the use was a pharmacy.

Discussion was held concerning conditioning approval as long as the use was a pharmacy.

Ms. Shamp recognized Mr. Saunders.

Mr. Saunders pointed out on Page 3 of the CPD, Item #3, *“all conditions herein apply to all uses allowed within this development; any change in use from a drug store/pharmacy with a drive-thru pharmacy to one of the other listed uses may only be permitted following an amendment to the Development Order”*.

LPA Attorney Miller noted that the Development Order does not necessarily come back before the LPA.

Discussion continued regarding “conditioning” the approval.

MOTION: Mr. Andre moved that the LPA recommend the Town Council approve the applicant’s request for an amendment to Condition #2 of Resolution FMB 97-35 to change the permitted hours of operation from the previously approved 8:00 a.m. to 9:00 p.m. to from 7:00 a.m. to 12:00 midnight: 1) Approve; 2) Approve; 3) Approve; 4) Approve; 5) Approve; 6) Approve; 7) Approve; 8) Approve; and 9) Approve; and 10) Approve; second by Mr. Zuba.

VOTE: Motion approved, 6-0; Ms. Plummer was excused.

Ms. Shamp questioned the status of the applicants for the Pierview Hotel & Suites Sign Variance.

Mr. Overmyer reported the applicant was not present; however, he would call the applicant.

Ms. Shamp noted at this point in the Agenda the LPA would normally adjourn and reconvene as the Historic Preservation Board; however, since Ms. Plummer was not present she did not feel there was any news to disseminate.

Mr. Kakatsch concurred with Ms. Shamp.

Consensus was to withdraw convening as the Historic Preservation Board.

VI. LPA MEMBER ITEMS AND REPORTS

Mr. Andre – no items or reports.

Mr. Smith – no items or reports.

Mr. Zuba – suggested bi-monthly instead of monthly meetings for the Historic Preservation Board; that the HPB item on the LPA Agenda be moved to the end of the meeting to avoid convening and reconvening; and suggested the LPA recommend to Town Council that the LPA be permitted to establish a sub-committee or task force regarding Seafarer’s that would be able to continue to meet with the consultant and staff.

Ms. Shamp stated she already spoke with Community Development staff about the LPA having a presentation regarding an economic district, zoning, and TIFs so that the LPA could be familiarized with what might happen in the Seafarer area.

Community Development Director Fluegel explained that the Town Council had instructed staff to prepare qualifications for to retain a land planning consultant to assist the Town Council with issues surrounding Seafarer’s and the Downtown as it pertained to the subject property.

LPA Attorney Miller noted that she was in the process of determining if there was an existing Community Redevelopment Area designation in the Town.

Community Development Director explained the difference between a Downtown Redevelopment Agency (DRA) and a Community Redevelopment Agency (CRA).

Ms. Shamp noted her agreement with Mr. Zuba’s suggestion that the LPA be an integral part of any work regarding the Seafarer’s. She suggested the LPA consider a motion that they designate an LPA member who would be their representative for any Seafarer’s issues and if there was a committee formed or a workshop held.

Discussion ensued regarding designating an LPA member as a representative for any Seafarer issues; consensus was to nominate an LPA member to represent the LPA on Seafarer issues.

NOMINATION: Mr. Andre nominated Mr. Zuba as the LPA representative; second by Mr. Kakatsch.

Mr. Zuba accepted the nomination.

VOTE: Motion approved, 6-0; Ms. Plummer was excused.

Ms. Shamp asked to craft a letter to Town Council to inform them of Mr. Zuba’s appointment to represent the LPA with matters concerning Seafarer’s as it pertained to Section 34-120.

MOTION: Mr. Zuba moved to approve that Ms. Shamp write a letter to Town Council regarding his appointment as LPA representative; second by Mr. Andre

VOTE: Motion approved, 6-0; Ms. Plummer was excused.

Ms. Shamp – no items or report.

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Mr. Durrett – gave a status report on the dredging of Big Carlos Pass and noted it was being done between Bonita Beach and Fort Myers Beach. He mentioned there would be a meeting in July on the topic where the DEP would be in attendance.

Mr. Kakatsch – questioned the status of the three units on Estero Boulevard in the 4400 Block across from Newton Park.

LPA Attorney Miller reported the subject property was in the middle of the demolition process; and the Town had served notice on the owner and the bank.

Mr. Overmyer reported that he had provided a copy of the previous zoning application to the property owner, which could possibly be used to submit a new rezoning application.

Discussion was held regarding the subject property; the intent to tear down the property; and a demolition permit.

Ms. Shamp pointed out that she believed the LPA was taking a hiatus in August, but stated she heard the Town Council was taking a hiatus in July.

Ms. Chapman stated the Town Council was taking a hiatus in July; and noted staff still had 4-5 sign ordinances to forward to the LPA.

Discussion ensued regarding whether to take hiatus in July or August.

MOTION: Mr. Smith moved to suspend the LPA meeting for July and resume the LPA meetings in August; second by Mr. Andre

VOTE: Motion approved, 6-0; Ms. Plummer was excused.

Ms. Shamp noted the LPA's regrets at missing the Mound House tour.

Mr. Overmyer stated staff could schedule another tour.

VII. LPA ATTORNEY ITEMS

LPA Attorney Miller – discussed “minimum use determination on property in the Seagrape subdivision” and stated she was working on what would be the equivalent of a staff report for the approximately 40 platted lots which had a majority of lots as wetlands.

VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Ms. Chapman reported the Community Development Director had asked her to inquire about the LPA's hiatus, which was already addressed.

C. FMBVAR2001-0006 – Pierview Hotel & Suites Sign Variance

Ms. Shamp opened the hearing at 11:10 a.m.

Ms. Shamp asked the LPA Attorney to swear in the witnesses; and LPA Attorney Miller swore in the witnesses.

The Affidavit of Publication was entered into the record.

Ms. Shamp asked if any LPA Member had ex-parte communication regarding this item. Mr. Kakatsch – none; Mr. Durrett – none; Ms. Shamp – site visit; Mr. Zuba – none; Mr. Smith: - site visit; Mr. Andre – site visit.

Josh Overmyer, Planning Coordinator for the Town of Fort Myers Beach, presented the request for the Pierview Hotel Sign Variance, FMBVAR2011-0006. He displayed and described slides depicting the location of the subject property and the surrounding properties. He reviewed the three variances requested:

- Variance from LDC Sec. 30-154(b) requirement of a 3' setback from any public right-of-way or roadway easement for a monument sign to permit the existing sign to be setback 12 inches from the right-of-way
- Variance from LDC Sec. 30-154(c) requirement that the bottom of elevated monument signs can be no more than 18 inches above the highest adjacent grade to permit the existing monument sign to be elevated 48 inches above the highest adjacent grade
- Variance from LDC Sec. 30-154(c) sign height maximum of 5' to permit the existing monument sign to be raised to 8' in height

He displayed photographs of the existing sign and the previous sign by the Ramada Inn in 2000. He discussed the supporting regulations Section 30-154(b) (location); Section 30-154(c) (height); Section 34-87; Section 34-87(3)(a); Section 34-87(3)(b); Section 34-87(3)(c); Section 34-87(3)(d); and Section 34-87(3)(e). He reported the applicant's requested variances were reasonable, given the location of the adjacent building to the north and the above-ground public and private utilities at the sign location. He recommended approval of the applicant's requested variances for overall sign height of 8', for the sign pedestal height of 48", and to decrease the setback from Estero Boulevard right-of-way to 1'.

Mr. Zuba questioned the concept of precedent and how would staff avoid it.

Ms. Chapman noted the Diamond Head sign variance that came before the LPA where they did consider precedent and other issues.

Discussion was held regarding the upcoming sign variances yet to come before the LPA that questioned signage issues such as physical obstructions and real on-site conditions; staff recommendations for minimal variances to address obstructions; consistency of the sign ordinance; measurements for a *de minimus* variance under circumstances or conditions on the subject property; and location of the utilities and the physical obstruction to the current sign.

Judy Coleman, Manager of the Pierview Inn, described the intention of the variance request as it related to raising only the bottom pedestal part of the current sign.

Mr. Andre questioned the allowable square footage of the sign.

Ms. Chapman stated the business was permitted to have a maximum of 32 square feet.

Discussion was held regarding problems with the square footage of the signage due to the location of the utilities.

Public Comment opened.

No speakers.

Public Comment closed.

Discussion ensued regarding the *de minimus* impact; location of the utility pipes/valves and public safety access; and the uniqueness of the location/situation.

Mr. Andre requested, in the future, staff obtain a drawing of the proposed signage be included with a sign variance application.

MOTION: Mr. Andre moved to recommend to Town Council that they approve the applicant's request for Variances from Section 30-153(b) and Section 30-154(c) of the LDC:

- A. There **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, **and** the request **is** for a de minimis variance.
- B. The conditions justifying the variance **are not** the result of actions of the applicant.
- C. The variance granted **is** the minimum variance.
- D. The granting of the variance **will not** be injurious to the neighborhood.
- E. The conditions or circumstances on the specific piece of property for which the variance is sought **are not** of so general or recurrent a nature.

Second by Mr. Zuba.

Discussion ensued regarding the wording of "A" in the motion.

Ms. Champ requested an amendment to include at the end of "A", '*to protect public safety by not obstructing access to the public utilities and fire protection facilities*'.

AMENDMENT: Motion Maker agreed to the suggested wording and noted that staff could specifically name the utilities and fire protection items; Second agreed.

VOTE: Motion approved, 5-1; Mr. Durrett dissenting; Ms. Plummer was excused.

Ms. Shamp closed the Public Hearing at 11:52 a.m.

IX. LPA ACTION ITEM LIST REVIEW

Ms. Shamp noted Chuck’s Last Stop was presented to Council; the COP was still in progress; and that Mr. Kakatsch, Mr. Smith, Mr. Durrett, and Ms. Shamp would be the LPA contacts when the three cases heard today would be presented to Council in August. She noted the LPA Attorney requested “Seagrape Subdivision” be added to the LPA’s work activity. She mentioned the Town Council had asked the LPA to review the post-disaster recovery ordinance

X. ITEMS FOR NEXT MONTH’S AGENDA

None.

XI. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XII. ADJOURNMENT

MOTION: Motion by Mr. Zuba, seconded by Ms. Smith to adjourn.

VOTE: Motion approved, 6-0.

Meeting adjourned at 11:57 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

End of document.