



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

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, Florida  
**December 11, 2012**

**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  
Alan Smith  
James H. Steele  
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**

Chair Zuba recognized the new LPA Member, Mr. Steele.

Mr. Steele introduced himself and offered a brief biography that highlighted his past work experience.

**IV. MINUTES**

A. Minutes of November 13, 2012

**MOTION:** Mr. Kakatsch moved to approve the November 13, 2012 minutes as presented; second by Ms. Plummer.

Ms. Shamp requested on Page 3, to change ~~Mr.~~ Plummer to Ms. Plummer; and Page 5, it should read the 'principle building'.

**VOTE:** Motion approved 7-0.

## **V. PUBLIC HEARINGS**

### A. SEZ2012-0002 La Ola

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman presented comments for SEZ2012-0002 La Ola on behalf of the Town of Fort Myers Beach. She noted the location of the subject property was at 1035 Estero Boulevard; and noted this is a special exception request in the Downtown zoning district to change the alcohol license type from a 2-COP to a 4-COP, to amend the hours of operation (8am-12 midnight), and the hours approved for live music (3pm-9pm). She mentioned the supporting regulations were in Chapter 34-88, and explained the case was fairly straight-forward, and that staff recommended approval since the requests were consistent with previous approvals recommended by both Council and the LPA. She reported that staff was recommending with the approval and conditions that they would be wrapped up with just the one resolution for all the conditions of approval. She reviewed the 8 conditions recommended by staff (insert exact written conditions:

1. The applicant must obtain a yearly lease agreement with the Town of Fort Myers Beach to allow the placement of tables and chairs within the Times Square area.
2. Legible signs will be clearly posted for the areas not approved for on-premise consumption stating "Alcoholic Beverages are Prohibited Beyond this Point."
3. Lighting on the outdoor seating areas will be shuttered and shielded from the surrounding properties.
4. The hours for operation will be from 7am to 2am, 7 days a week.
5. The applicant and property owners must comply with the provisions of Land Development Code Sections 14-71 through 14-79 relating to the protection of Sea Turtles.
6. The outdoor seating area cannot exceed current building, fire and life safety codes for number of tables and chairs and will be re-evaluated on an annual basis for compliance.
7. No bars, tables, chairs, speakers or any other item may extend into the utility easement without written consent from the public utility(ies) entitled to utilize that easement.
8. Live music is permitted only between the hours of 1:00 pm and 11:00pm, 7 days a week and must comply at all times with applicable Town noise ordinances.

Discussion was held regarding the formula used by the Building Official to calculate the number of permitted outdoor seating; how and if the formula was utilized to calculate seating for other businesses

Town of Fort Myers Beach – Local Planning Agency

December 11, 2012

Page 2 of 13

in the Times Square area; and hours of operation for other businesses in the Times Square area and consistency with the hours noted in the Town's alcohol consumption ordinance.

Ms. Plummer noted her concerns regarding the proposed late night hours of operation for the subject business and how it could relate to safety and security issues for the other area businesses.

Zoning Coordinator Chapman indicated that the LPA could recommend a change to the hours of operation. She noted that staff was attempting to be consistent with the hours of operation with other businesses in that downtown core.

Ms. Shamp reviewed the hours of operation and lease agreements for similar businesses in the Times Square area versus the Old San Carlos area. She noted her reservations concerning the hours of operation suggested (until 2:00 a.m.) which differed from the hours listed in the lease agreement with the Town (midnight); and questioned the ability for outdoor live music in the Times Square area.

Zoning Coordinator Chapman reported the applicant had been approved for live outdoor music last year (Resolution 11-21).

Ms. Shamp stated it was her understanding that with a 4-COP that food was not a requirement.

Zoning Coordinator Chapman responded in the affirmative; however, she explained it was within the LPA's ability to recommend through the zoning process to include food sales at 51%.

Discussion ensued regarding food sale requirements for establishments selling alcohol.

LPA Attorney Miller reviewed the zoning requirements for a 'bar or cocktail lounge'.

Community Development Director Fluegel noted the code definition of a 'restaurant'. He discussed the 'SRX rider' of the 4-COP license, and the 'SRX rider' limitations and audit requirements by ABT.

Discussion was held regarding the ability for the LPA to require some level of food sales with alcohol sales; hours of operation listed on the Town's lease agreement forms; the hours of operation requested by the applicant and those approved by Resolution 11-21; and the structure, marketability, and Town approval requirements for a 'straight 4-COP' licenses.

Mr. Steele noted his belief that 4-COP licenses allowed package/carry out liquor sales.

Zoning Coordinator Chapman responded in the affirmative; and noted the next case on the agenda would deal with the same type of special exception license issue. She added that the Mermaid had the same type of license.

Mr. Steele questioned if there were any parking restrictions for the subject business.

Zoning Coordinator Chapman explained that all the businesses that front Times Square had a waiver on parking per land development code.

Community Development Director Fluegel interjected that it was his understanding the applicant had not requested package liquor sales in their application.

LPA Attorney Miller suggested a condition regarding package liquor sales could be a condition of approval.

Discussion was held concerning existing 4-COP licensed businesses in Fort Myers Beach; the potential availability of 4-COP licenses in the future; the concept of increase fees for the Town's lease agreement for 4-COP licensed establishments; the transferability or ability to sell a 4-COP license; and how the special exception and conditions run with the property.

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

Thomas List, owner of La Ola, reviewed the highlights of his request such as but not limited to the hours of operation (February to end of May extended hours); hours of entertainment (one hour longer in summer months); purpose of purchasing a 4-COP license as an investment; how he had trained his staff regarding liquor sales and has contacts ready with taxis if needed for a customer.

Ms. Shamp questioned the Applicant's opinion if a condition required food sales during all hours of operation.

Mr. List responded in the negative; and noted they serve food during all hours of operation.

Ms. Shamp questioned the Applicant's opinion if a condition required no package sales for off-premise consumption.

Mr. List responded in the negative; and added he did not want to be a liquor store.

Ms. Shamp questioned the Applicant's opinion if a condition stated the hours would be until 2:00 a.m. if the Town re-negotiated the Times Square leases for the hours of operation for other businesses to be until 2:00 a.m.

Mr. List responded that he would not have a problem with that as a condition.

Ms. Plummer asked how many people were at La Ola right now between 11:00 p.m. and midnight.

Mr. List responded none.

Discussion was held concerning seasonal peak late night hours; and food service during all hours of operation.

Mr. Smith questioned how the hours listed on the Town's lease agreement (6:00 a.m. to midnight) could be amended.

Community Development Director Fluegel explained that if the special exception was approved with longer hours the Applicant's lease would be amended accordingly.

Zoning Coordinator Chapman reviewed how this was the second time the LPA had seen the Applicant in two years because his applications came through the special exception process and the purpose of such applications as it pertained to his business operation.

Public Comment opened.

No speakers.

Public Comment closed.

Ms. Shamp stated she would be willing to make a motion that would consist of a few changes to the recommended conditions and a change to condition #4 which would be:

- The hours of operation will be consistent with the Permit Agreement for Extension of Business Operation restaurant.
- Addition of condition #9 – no sale of package alcoholic beverages for off-premises consumption.
- Addition of condition #10 – sale of food shall be provided during all hours of operation until one hour before closing.

Discussion was held regarding hours of operation until 2:00 a.m. and the Town's lease agreement.

LPA Attorney Miller explained that there could be conditions for the special exception and how the Town ordinance addressed serving alcoholic beverages until 2:00 a.m. She noted the lease agreement addressed only when they served within the Town's right-of-way.

Ms. Shamp questioned conditions regarding the Town's ordinance and the lease agreement for hours of operation; the possibility of future changes to the hours of operation in the Town's lease agreement form; and how the Applicant might avoid another special exception application cost if changes were made.

LPA Attorney Miller suggested not conditioning the subject approval as it pertained to the hours of operation if they did not want to require the Applicant to come in with another special exception application in the future. She explained the only reason the LPA would consider conditioning the approval was if they thought it should be before 2:00 a.m.

Discussion ensued regarding the hours of operation condition and the Town's lease agreement.

LPA Attorney Miller suggested the LPA should make a motion based upon where the business was located.

Discussion continued regarding the hours of operation condition and the Town's lease agreement.

Community Development Director Fluegel reviewed the circumstances surrounding the Town's lease agreement. He discussed aspects of staff's current work on an entertainment ordinance similar to the way they approached the COP ordinance.

Discussion continued regarding whether the hours of operation should end at midnight versus 2:00 a.m.

**MOTION:** Ms. Shamp moved to recommend that Town Council approve Resolution 2012-018 SEZ2012-0002, La Ola Restaurant, for the applicant's special exception with the conditions:

1. The applicant must obtain a yearly lease agreement with the Town of Fort Myers Beach to allow the placement of tables and chairs within the Times Square area.
2. Legible signs will be clearly posted for the areas not approved for on-premise consumption stating "Alcoholic Beverages are Prohibited Beyond this Point."
3. Lighting on the outdoor seating areas will be shuttered and shielded from the surrounding properties.
4. The hours of operation will be from 7:00 a.m. to 12:00 midnight, 7-days a week.
5. The applicant and property owners must comply with the provisions of Land Development Code Sections 14-71 through 14-79 relating to the protection of Sea Turtles.
6. The outdoor seating area cannot exceed current building, fire and life safety codes for number of tables and chairs and will be re-evaluated on an annual basis for compliance.
7. No bars, tables, chairs, speakers or any other item may extend into the utility easement without written consent from the public utility(ies) entitled to utilize that easement.
8. Live music is permitted only between the hours of 1:00 pm and 11:00pm, 7 days a week and must comply at all times with applicable Town noise ordinances.
9. No sale of package alcoholic beverages for off-premises consumption.
10. Sale of food shall be provided during all hours of operation until one hour before closing.

**SECOND:** None.

**MOTION AMENDMENT:** Motion maker amended the motion to remain the same except with a change to condition #4 to change the "*hours of operation from 7:00 a.m. to 2:00 a.m., 7-days per week*".

**SECOND:** Mr. Smith.

Town of Fort Myers Beach – Local Planning Agency

December 11, 2012

Page 6 of 13

**VOTE:** Motion approved; 5-2, with Ms. Shamp and Mr. Kakatsch dissenting.

Vice Chair Zuba closed the Public Hearing.

B. SEZ2012-0003 Pete's Time Out

Chair Zuba opened the Public Hearing.

Ms. Shamp noted that she did not verbalize the Recommended Findings and Conclusions during the last hearing. She indicated to Zoning Coordinator Chapman that she wanted the Recommended Findings and Conclusions as written by staff to be included in the approval.

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman presented comments for SEZ2012-0003 Pete's Time Out on behalf of the Town of Fort Myers Beach. She noted the location of the subject property was at 1005 Estero Boulevard; and noted this is a special exception request in the Downtown zoning district to change the alcohol license type from a 2-COP to a 4-COP, to amend the hours of operation (7:00 am to 2:00 am). She mentioned the supporting regulations were in Chapter 34-88, and that staff recommended approval. She pointed out that the difference with the subject application from the previous special exception was that they did not have an existing special exception. She stated the subject business was already in possession of the 4-COP license; had administrative approval for the indoor use of the license; and submitted the special exception application for the outdoor exterior patio seating use. She reported that staff was recommending approval with no conditions. She informed the LPA they could consider conditions of approval for the subject property.

Discussion ensued regarding potential conditions of approval; prior approvals and existing conditions for businesses in the Times Square area; the idea of consistency for conditions of approval and business operations for businesses in the Times Square area; consistency and appropriateness of certain conditions on all businesses such as but not limited to the sea turtle lighting, building code with respect to the number of tables and chairs) ; and how some conditions were already listed in the Town's code were reiterated in conditions of approval.

Mr. Durrett suggested the Times Square Business Alliance meet, discuss, and bring to the Town their suggestions for business operations (i.e. hours).

Discussion ensued regarding the Times Square area and concentrating certain types of use in one area; the past administrative approval of the interior 4-COP at the subject business; and the potential for extended hours of operation for the trolley service or a taxi stand in the Entertainment District.

John Lallo, owner of Pete's Time Out, noted that the accurate name for the Times Square businesses was the Times Square Merchant and Event Association. He mentioned other Times Square businesses with 4-COP licenses that were his neighbors in Times Square. He explained that he had to purchase the

4-COP due to the lack of 150 seats under roof which meant that he did not qualify for the State standards of the SRX. He stated that Pete's Time Out was one of the oldest, non-change of use businesses on the beach. He reviewed how the hours of operation of 2:00 a.m. were for consistency with the law; and reported it was not his intention to stay open after midnight except when special occasions occur such as but not limited to New Year's Eve. He requested approval until 2:00 a.m. He discussed outdoor music in the leased area; and he intended to have music on the porch which would be directed to the street in accordance with code (not in the leased area). He reviewed his opposition to consideration for the fees for leased space from the Town to be increased just because he has a 4-COP license. He noted that his establishment did serve breakfast prior to 7:00 a.m. and did not want to be limited on his hours of operation. He stated the state law limited sale of alcohol from 7:00 a.m. to 2:00 a.m. and that he would not serve alcohol outside of the state regulated hours but would operate prior to 7:00 a.m. for breakfast.

Discussion was held regarding hours of operation versus hours of alcohol sales.

Mr. Lallo recounted historical information regarding Fort Myers Beach regarding outdoor tables and rules and regulations for the Times Square area. He encouraged staff to allow himself and the Times Square Merchant and Event Association assist them with writing any rules and regulations pertaining to their area.

Ms. Plummer asked if the Applicant would be agreeable to the conditions set forth in the previous case with the exception of hours of operation for serving food.

Mr. Lallo requested the LPA not set any limitation on the hours of operation since they were already limited on the hours of alcohol sale/serve by state law.

Ms. Plummer asked if the Applicant would be agreeable to the other conditions (i.e. no sale of alcohol for off-site consumption).

Mr. Lallo noted that he did not intend to sell package liquor; however, by limiting him they were devaluing the license.

Discussion was held concerning package liquor sales at Pete's Time Out; and outdoor entertainment.

Zoning Coordinator Chapman explained that condition #7 from the previous case would not apply to the subject application.

LPA Attorney Miller pointed out that if the condition was to allow the business to open up at 6:00 a.m. for breakfast to include language that "*no alcohol shall be served except during the hours of 7:00 a.m. and 2:00 a.m.*".

Public Comment opened.

No speakers.

Public Comment closed.

Ms. Plummer discussed her views on the differences between businesses in the Times Square area such as but not limited to the differences between La Ola and Pete's Time Out as it pertained to potential conditions.

Ms. Shamp discussed her views on the similarities for certain conditions for businesses in the Times Square area such as but not limited to turtle season restrictions, signage, and compliance with the land development code regulations. She reviewed her resistance to making 4-COP licensed establishments into package liquor businesses.

Discussion was held concerning conditions of approval and rules set by code or statute.

Zoning Coordinator Chapman suggested if a motion was made for approval, when addressing the hours of operation to include wording to 'extend the hours of consumption on-premise' so that it would not affect hours of operation.

LPA Attorney Miller reported state law was unclear about signage and the LPA may want to include language regarding legible signs to be clearly posted for areas not approved for on-premise consumption.

Discussion ensued regarding hours of operation for the subject business.

**MOTION:** Ms. Plummer moved to recommend that Town Council approve Resolution 2012-020 SEZ2012-0003, Pete's Time Out, with the following recommendations for approval:

1. Hours for alcohol consumption to be 7:00 a.m. to 2:00 a.m.

The Recommended Findings and Conclusions:

1. do
2. is consistent
3. meets or exceeds
4. will protect
5. will be compatible, will not cause damage, hazard
6. will be compliant

**SECOND:** Mr. Durrett.

Ms. Shamp noted her desire to have the limitations regarding package liquor sales included as a condition.

Mr. Smith noted his agreement with Ms. Shamp concerning package liquor sales.

Discussion was held concerning a restriction on package liquor sales.

Mr. Lallo suggested a condition that the subject premises must always be a restaurant; and stressed he was not going to open a package liquor store.

Discussion was held concerning a condition to address package liquor sales.

**AMENDMENT:** Motion maker amended the motion to have a condition #2 to be “*that principle use of the premises shall be restaurant, incident package sales are permitted*”; second agreed.

**VOTE:** Motion approved; 6-1, with Ms. Shamp dissenting.

Vice Chair Zuba closed the Public Hearing.

Recess at 11:03 a.m. – Reconvened at 11:15a.m.

*No recording starting at 11:15a.m.; the following portion of the minutes are taken from staff notes.*

LPA Attorney Miller reminded Chair Zuba the question of ex-parte communication was not asked during the last case.

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

C. VAR2012-0005 192 Pearl Street

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Planning Coordinator Overmyer gave an introduction of the case, a description of the location and the surrounding properties, and went through the Findings and Conclusions for a variance. Mr. Overmyer stated that staff recommended approval with two conditions: 1) that the approval is limited to the construction of a foyer in accordance with the applicant's site plan; and, 2) that the variance would become null and void if the building was ever removed from the site for any reason.

Mr. Durrett asked Mr. Overmyer if the property was being renovated in accordance with the 50% Rule.

Planning Coordinator Overmyer responded in the affirmative; and note a building permit had been issued for a covered porch, new windows and doors, and new siding, and that those improvements came in under 50% of the value of the structure.

Ms. Plummer pointed out that part of the justification for approval of this variance was that it lowered the density on the subject property from two units to one.

Planning Coordinator Overmyer confirmed that the number of living units was decreasing, but that the Land Development Code calculated density only on the number of "dwelling units" and the accessory apartment was actually deemed a "living unit," not a "dwelling unit."

Chair Zuba asked for any ex-parte communication, and the majority of members indicated they made drive-by site visits.

Mr. Robert Moore, applicant, presented a picture of the exterior of the existing house, and a sketch of the proposed finished product. He explained that he initially applied for the permit for the new siding, doors, windows, and the covered porch, expecting that the permit would be issued quickly and the initial construction would be done before the variance was completed and approved. He stated that the covered porch was permitted by the Land Development Code to extend up to 10 feet into the 25 foot setback, so it would be only 15 feet from the right-of-way.

Mr. Moore explained that the foyer was needed because of the layout of the existing home. Currently there were two doors at the front entrance; one into the accessory apartment on the ground level, and the second leading to a stairway and into the dwelling unit above. He stated that there was no way to re-configure the existing space to allow access into both the upper and lower units while remaining under the 50% rule's provisions, so he requested the variance to allow the foyer to extend into the front setback.

Ms. Plummer asked if the permit had been submitted as a single-family residence.

Mr. Moore responded in the affirmative.

Mr. Zuba asked if there was any public input on this case.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Mr. Kakatsch moved to recommend approval of the requested variance, along with staff's two conditions; second by Ms. Shamp.

Ms. Plummer asked if a condition should be added to require the variance to be limited to a single-family dwelling.

**AMENDMENT:** Motion maker amended the motion and second agreed.

**VOTE:** Motion approved; 7-0.

Chair Zuba closed the Public Hearing.

## **VI. LPA MEMBER ITEMS AND REPORTS**

Mr. Steele asked Mr. Fluegel about any obligation he has as an LPA member as he travels around the Town, especially with respect to any code violations he may encounter.

LPA Attorney Miller indicated that he was not obligated in any way.

Community Development Director Fluegel explained that the Town's Code Enforcement process relied mostly upon complaints from residents.

Mr. Steele stated that he drives around the island a couple times a week and finds issues that Code Enforcement staff seemed not notice. He asked how many people were in Code Enforcement.

Community Development Director Fluegel responded that there were two Code Enforcement officers.

Ms. Shamp pointed out that the proposed items on the agenda for the joint LPA/Town Council meeting should include the Post-Disaster Ordinance, which had been the top priority in the past. She noted her desire to have a uniform regulation to address an entertainment district on the Action Item List. She requested a copy of Council's Agenda Management List to be included in the LPA agenda packet. She reviewed an article in the Naples Daily News about the conversion of Fifth Avenue to become more 'family-friendly'.

Ms. Plummer mentioned that renovation projects similar to the variance required several expensive upfront costs such as but not limited to an up-to-date survey, an up-to-date appraisal, if you do not agree with the Property Appraiser's assessed value, on top of the variance application fee of \$1,000. She wondered if there was a way to bring those costs down.

Mr. Kakatsch asked if there was a way to incentivize the improvement of property maintenance and upgrades.

Discussion was held and suggestions were discussed which included but were not limited to deferred maintenance programs, economic incentives, and waiving the application fees for the type of variance heard today.

Mr. Durrett added that perhaps property taxes could be lowered for a few years following the improvement.

LPA Attorney Miller indicated that the lowered property taxes would be difficult given Florida statutes; but, suggested there could be a "facade grant" program established to provide incentive for property

owners to make desired improvements to blighted properties. She pointed out that the majority of property taxes were school taxes.

Discussion was held concerning FEMA requirements as it pertained to rebuilding, compliance, and the 50% Rule; and the Community Rating System as it pertained to insurance rates.

Chair Zuba requested the work being accomplished by Planning Coordinator Overmyer regarding the Community Rating System should be placed on a future agenda as a discussion topic.

**VII. LPA ATTORNEY ITEMS**

LPA Attorney Miller – no items or report.

**VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS**

Community Development Director Fluegel – reported the three resolutions would come before Council next week.

**IX. LPA ACTION ITEM LIST REVIEW**

**X. ITEMS FOR NEXT MONTH'S AGENDA**

**XI. PUBLIC COMMENT**

Public Comment opened.

No speakers.

Public Comment closed.

**XII. ADJOURNMENT**

**MOTION:** Motion by Mr. Kakatsch, seconded by Mr. Smith to adjourn.

**VOTE:** Motion approved, 7-0.

Meeting adjourned at 12:02 p.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

\_\_\_\_\_  
Signature

Town of Fort Myers Beach – Local Planning Agency

December 11, 2012

Page 13 of 13