



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

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
Tuesday, April 8, 2014

I. CALL TO ORDER

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

Chuck Bodenhafer
Al Durrett
John Kakatsch
Jane Plummer
Joanne Shamp – excused.
James Steele
Hank Zuba – excused.

LPA Attorney, Marilyn Miller
Staff Present: Josh Overmyer, Planning Coordinator
Keith Laakkonen, Environmental Sciences Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION – Jane Plummer.

IV. MINUTES

- A. Minutes of February 11, 2014
- B. Minutes of March 11, 2014

MOTION: Mr. Kakatsch moved to approve the Minutes for February 11, 2014; second by Mr. Bodenhafer.

VOTE: Motion approved; 5-0 (Chair Zuba and Vice Chair Shamp were excused).

MOTION: Mr. Bodenhafer moved to approve the Minutes for March 11, 2014; second by Mr. Steele.

VOTE: Motion approved; 5-0 (Chair Zuba and Vice Chair Shamp were excused).

PUBLIC HEARING

A. VAR2013-0005 30 Gulf Beach Road (Rear Setback)

Ms. Plummer opened the Public Hearing.

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

LPA Attorney Miller swore in the witnesses.

LPA Attorney Miller noted the subject case came before the LPA a few months ago for a setback variance concerning the pool; however, she noted the other side of the house was being raised and would be non-conforming as to setback.

Mr. Dave Easterbrook, Contractor for the Applicant, stated when they began the project almost a year ago he knew there would be certain lot line limitations and met with the Town and the State to obtain permits and approvals. He noted the setback issue was 6.9' where it should be 20' and there had to be compliance with FEMA. He added the current elevation of the home was 14.1' and they were changing it to 21.4'; and it was not decreasing the amount of setback from the 6.9' (not increasing the envelope).

Ms. Plummer questioned the status of the air conditioning unit.

Mr. Easterbrook stated "*everything has to move up*".

Discussion ensued concerning potential locations for the air conditioning equipment; noise factors and the potential intrusion to the nearby condominium unit depending upon the location of the air conditioner(s); code allowed for air conditioning units to extend up to 3' in the rear setback.

Mr. Easterbrook explained that there are three existing dwelling units, and the ground floor unit will be removed due to the elevation project.

Planning Coordinator Overmyer presented comments for Variance 2013-0005, Setback Variance, at 30 Gulf Beach Road on behalf of the Town of Fort Myers Beach and noted this variance would be combined with the previous variance request for the pool and be taken to Council as one variance request. He displayed an aerial view of the property and indicated the location of the subject site. He reviewed the Applicant's request, the background of the property, and the existing conditions of the subject site:

- A variance from Section 34-3234(a)(1) to allow an existing dwelling to be elevated to meet the base flood elevation at the current rear setback of 6.9' where 20' was otherwise preferred.
- Gulf-front lot – orientation of residence towards the house; makes south side appear to be a side setback
- Surrounded on either side by multi-story condominium buildings
- Section 34-87(3) Findings – before granting any variance, the Town Council must find that all of the following exist:
 - Section 34-87(3)(a) - *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.* The alignment of the property along a dead-end road and the Gulf of Mexico causes some confusion as to which perimeters are front, rear, and sides. The Gulf is the most appealing view, which relegates the “rear” to the side of the building. The existing setback of 6.9' functions as a side setback, which was how the structure appears from the Gulf. Staff is of the opinion that rigid compliance is not necessary to protect the public in this instance.
 - Section 34-87(3)(b) – *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.* The structure was built prior to 1984 when Lee County joined the National Flood Insurance Program. The structure was built substantially lower than the current base flood elevation. The applicant is attempting to comply with the required flood elevation, but the existing setback will remain.
 - Section 34-87(3)(c) – *That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.* The applicant is using the existing pilings to elevate the house straight up to comply with the base flood elevation; therefore, the existing setback of 6.9' would remain which is the minimum variance necessary to elevate the house on the existing pilings.
 - Section 34-87(3)(d) – *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.* The rear setback of 6.9' has existed since 1976 and abuts a side yard for the Estero Beach Club East Condominium. The granting of the variance would not be injurious to the neighborhood or detrimental to the overall public welfare.
 - Section 34-87(3)(e) – *That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general a nature as to make it more reasonable and practical to amend the regulation in question.* The variance, as

requested, is not so general or recurrent in nature as to require an amendment to Chapter 34. As property owners recognize a need to elevate existing structure to the minimum required base flood elevation, rather than rebuild, it is likely that there are many existing Pre-FIRM structures with setbacks that do not comply with the required setbacks. The LDC should encourage property owners to comply with minimum necessary life safety measures in our codes, but the LDC Section 34-3234 requirement to come into compliance with setbacks acts as a disincentive.

He reported staff recommended **approval** of the requested variance from Section 34-3234(a)(1) to allow an existing dwelling to be elevated to meet the base flood elevation at the current rear setback of 6.9' where 20' was otherwise required subject to the following condition:

- The elevation of the existing structure shall be accomplished using the existing pilings and a 6.9' rear setback. If the structure is demolished or removed, this variance will be null and void. Any new structure must comply with the required setbacks at the time of redevelopment or must seek a new variance from the requirements of the LDC at that time.

Discussion was held concerning the existing pilings; maximum height for residential homes; land development code regulations; height measurement from the base flood elevation; and FEMA base flood elevation requirements for the subject property.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Mr. Bodenhafer moved to recommend approval of VAR2013-0005, Rear Setback Variance, for 30 Gulf Beach Road subject to the **Recommended Findings and Conclusions:**

- 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 under circumstances or conditions where rigid compliance is not essential to protect public policy.
- b. The conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulation in question.
- c. The variance granted **is** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- d. The granting of the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
- 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 as to make it more reasonable and practical to amend the regulation in question.

and the **Recommended Conditions:**

2. The elevation of the existing structure shall be accomplished using the existing pilings and a 6.9' rear setback. If the structure is demolished or removed, this variance will be null and void. Any new structure must comply with the required setbacks at the time of redevelopment or must seek a new variance from the requirements of the LDC at that time

SECOND: Mr. Kakatsch.

VOTE: Motion approved; 5-0 (Chair Zuba and Vice Chair Shamp were excused).

Public Hearing closed.

B. Ordinance 14-XX-PAL-PWVL Regulations

Ms. Plummer opened the Public Hearing.

LPA Attorney Miller reviewed how a few years ago there had been an issue with the parasail business at Crescent Beach Family Park being non-conforming and at that time there were some code amendments made which allowed the business to move to another location. She added there was also a group of parasail operators working with staff on other provisions in the ordinance that needed some modification. She reported there was a current business (jet skis) at Top 'O Mast who was about to lose his lease; currently there were 11 jet ski operators that were outstanding; and that the current code stated moving was not allowed unless there were 10 or fewer jet ski operators. She explained the urgency of the amendment and that there had been 11 jet ski operators since the regulations were adopted. She stated the subject jet ski operator would have to move to a conforming location. She reviewed her notes from the meeting she had with jet ski and parasail vendors:

- Concern regarding measurement of the 500' distance – clarified to be “*measured at the street*”; discussion was held concerning measurement (property line to property line).

Eric O’Gilvey stated he owned property that currently had licenses and noted there had been some concern by operators for measuring from property line to property line since many properties are irregularly shaped. He discussed his views on how to measure the 500' distance and suggested using a lateral line perpendicular to the water.

Discussion was held as to whether there would be some businesses that did not meet new measurement requirements; businesses on separate properties and 500' feet apart; safety issues pertaining to having too many jet skis within close proximity to each other; businesses that could become existing non-conforming; and measuring 500' from the property line.

LPA Attorney Miller continued to review her notes from the meeting she had with jet ski and parasail vendors:

- Jet ski vendors must list the parasail vendors who are allowed to pick-up at the jet ski location for pre-arranged fares.

Mr. Steele questioned liability issues for the Town.

LPA Attorney Miller stated, theoretically, the Town could become a defendant and by State law the operators were required to have insurance naming the Town as an additional insured.

LPA Attorney Miller continued to review her notes from the meeting she had with jet ski and parasail vendors:

- Jet ski vendors must list the parasail vendors who are allowed to pick-up at the jet ski location for pre-arranged fares - list of vendors (Page 2, Section 27-49(1)(e))
- Solicitation - no solicitation other than the land-based site (Page 2, Section 27-49(1)(f))

Mr. Bodenhafer noted Section 27-51(4)(a), Signs on the beach, needed clarification concerning “2 square”. He questioned the background of the current ordinance regarding 10 licenses; however, 11 existed.

Dean Kerkesner owner of Rebel Water Sports explained how regulation of the industry in Lee County began in 1996 by former Commissioner Judah, who arbitrarily picked 10 as the number, and at which time there were approximately 20 operators in the Town. Since the Town’s incorporation in 1997 the number has decreased to the existing 11.

Discussion was held concerning solicitation and advertising by the vendors.

Eric O’Gilvey discussed his views on solicitation and how it impacted businesses.

LPA Attorney Miller noted receipt of an email from Sharon Faircloth to staff requesting that instead of using the term ‘solicit’ to have verbiage to prevent vendors from selling tickets or collecting money for wave runner rentals anywhere up to other than the land-based site or the primary business website.

Eric O’Gilvey explained the basis for Ms. Faircloth’s recommendation and why it would be beneficial to the vendors.

LPA Attorney Miller expounded on Ms. Faircloth’s email related to ‘solicitation’.

Discussion ensued regarding solicitation of PAL and PWVL businesses by other businesses; the uniqueness of the PAL and PWVL businesses; a beach chair vendor promoting a certain PWVL/PAL business; Section 27-48(18) as it pertained to solicitation by other businesses; and complexities and issues of the certain PWVL/PAL business.

Environmental Sciences Coordinator Laakkonen explained how the Town was protective of this industry and how the regulations were vetted with the industry. He addressed his views on the cap placed on the number of licenses and noted the jet ski vendors would have the same rights and abilities as the parasail vendors.

LPA Attorney Miller reviewed the earlier discussion concerning measurement of the 500' distance. Environmental Sciences Coordinator Laakkonen reviewed how measurement was handled in the past; and noted the measurement would be to the property line on the address on the street front.

Ms. Plummer requested the code reflect that the measurement would be to the property line on the address on the street front.

Discussion was held concerning measurement of the 500' distance; and how to measure on an irregular shaped property.

Chris Webber discussed his views on the measurement of the 500' distance.

LPA Attorney Miller suggested consideration of language that would not be so hard and fast and use the measurement from the road or side property line.

Discussion was held concerning safety issues regarding the proximity of one jet ski business to another; measurements as it related to conforming and non-conforming businesses; and potentially measuring the 500' from the narrowest point on a property.

Chris Webber explained that he thought the meeting issue today was about allowing one business to move; and he did not realize that other code amendments were being proposed.

LPA Attorney Miller continued to review her notes from the meeting she had with jet ski and parasail vendors:

- Page 7, Section 27-51(5)(d) – added to address requests for rental of non-motorized watercraft.

Ms. Plummer addressed her concerns regarding Page 5, Section 27-50(5)(g) as it pertained to the added verbiage "*Parasail operators may not anchor within any 'no wake' zone*".

Environmental Sciences Coordinator Laakkonen concurred with Ms. Plummer's concerns; and recommended sticking the amendment.

Consensus was to strike Page 5, Section 27-50(5)(g), "*Parasail operators may not anchor within any 'no wake' zone*".

LPA Attorney Miller noted a change to Section 27-47, Means of enforcement, and that it added the code could be enforced by designated town code enforcement officers; Section 27-49(1) and (1)(c) changed ~~occupational license~~ to business tax receipt; and Section 27-52 (d)(1) changed the number of licenses from 40 to 11 PWVL licenses. She asked for direction concerning the 500' measurement from the narrowest point of the property.

Environmental Sciences Coordinator Laakkonen asked if the vendors were in concurrence with the 500' measurement from the narrowest width of the property.

Vendors in the audience were recognized as a group that appeared to nod in approval of the measurement to be from the narrowest width of the property.

Discussion continued regarding measurement of the 500' and businesses that do not extend onto Estero Boulevard; and the use of "platted lot line" for the measurement.

LPA Attorney Miller recommended the following *"500' as measured from the property line at the area where the property has the narrowest width"*.

Ms. Plummer questioned the number of flags permitted for the business on the beach.

Environmental Sciences Coordinator Laakkonen explained currently the only signs allowed were listed in Section 27-51(4) and that there were other sections of the code that did not allow signs in the EC Zoning District.

Discussion ensued regarding use and location of flags, country flags, and signs on the beach.

Environmental Sciences Coordinator Laakkonen suggested language such as "no portion of any flags may be seaward of the booth location".

Eric O'Gilvey expressed his views on the suggested wording and the location of the flags.

Discussion was held concerning flags that created pedestrian obstacles; and potential location for flags.

Attorney Davies, Roetzel & Andress, stated he was representing the owner of Rebel Water Sports. He spoke on the issue of the cap on the number of licenses; and noted he supported the cap provision for 11 licenses. He addressed the history of the number of parasail licenses; the history of the Town's regulation of parasail and jet ski licenses; and the benefits to the residents if the code amendments were approved. He urged the LPA approve the proposed amendments and forward them to Council with a recommendation for approval.

Dean Kerkesner owner of Rebel Water Sports reported he had been in business on the beach since 1994; discussed the history of his licenses and location of the licenses; and the urgency of the pending issue. He requested the LPA support the proposed code amendments.

Town Attorney Miller reviewed the proposed changes to the ordinance:

- Section 27-47, Means of enforcement – approved.
- Section 27-49(1) and (1)(c) – approved.
- Section 27-49(1)(e) – approved.

Discussion ensued regarding Section 27-49(1)(f) and possible amendments to the proposed language (i.e. change language to “Businesses are only permitted to solicit customers for PWVL or PAL at their licensed land-based location and this shall not prohibit internet sales or placement of brochures at businesses elsewhere).

Town Attorney Miller continued to review the proposed changes to the ordinance:

- All references changed from ~~occupational license~~ to business tax receipt
- Section 27-50(5) – approved.
- Section 27-50(5)(g) – strike proposed language.
- Section 27-51(1) – change to “businesses shall not be located within 500’ as measured from the property line at the point where the width of the property was the narrowest”
- Section 27-51(4) – correct typographical error (~~2-square~~ to 2 square feet); and **add** 4(c) to be “no portion of any flags, structures, signs or booth or equipment may extend or be located within 12’ of the wet sand”
- Section 27-51(6) – remove; no longer necessary.
- Section 27-51(5)(d) – strike ~~and PAL~~.
- Section 27-52 (d)(1) & 27-55(4) – number of licenses from ~~40~~ to 11 PWVL

LPA Attorney Miller reviewed the transferability of licenses.

Chris Webber discussed the importance of the urgency of the amendments as it related to a Rebel Water Sports.

Ms. Plummer questioned if the LPA could note to Council the request regarding the urgency of the amendment for the increased number of licenses.

LPA Attorney Miller stated staff would relay the concern to Council.

MOTION: Mr. Steele moved to recommend approval of Ordinance 14-XX-PAL-PWVL Regulations as amended verbally which the LPA all concurred to; second by Mr. Kakatsch.

VOTE: Motion approved; 5-0 (Chair Zuba and Vice Chair Shamp were excused).

Adjourn as LPA and reconvened as Historic Preservation Board – 10:45 a.m.

Planning Coordinator Overmyer reported the recommended changes to Chapter 22 would be going before Council for Introduction on May 5, 2014 with anticipated adoption on May 19, 2014.

Adjourn as Historic Preservation Board and reconvene as the LPA – 10:47 a.m.

V. LPA MEMBER ITEMS AND REPORTS

Mr. Bodenhafer – mentioned the migratory birds and nests the Environmental Sciences Coordinator had been checking earlier today.

Mr. Steele – questioned the status of a special meeting for the LPA.

Planning Coordinator Overmyer indicated he was working on scheduling the date for the special meeting.

Mr. Durrett – no items or report.

Mr. Kakatsch – complimented Planning Coordinator Overmyer on his work.

Mr. Bodenhafer complimented staff on working well with the PWVL and PAL group.

Ms. Plummer – reported the Mayor suggested a joint workshop between Council and the LPA and the Interim Town Manager as it related to the meeting the LPA had with the Department Heads; and she requested that meeting be scheduled.

Planning Coordinator Overmyer reported the Council had scheduled a meeting for May 1, 2014 to meet with the committee chairs or designee.

Ms. Plummer – noted a letter she received and questioned if ETrackIt was “being opened up a little bit more” as it pertained to layers of information.

LPA Attorney Miller reported there was discussion about ETrackIt at the Council meeting yesterday and the tracking program would be looked into and addressed.

Ms. Plummer – reported she spoke to some people about the Canal Street access and questioned some recent surveying work and ropes.

Planning Coordinator Overmyer explained the survey was to determine what areas were owned by the Town.

Ms. Plummer – questioned, if the subject property could be transformed into a passive park.

Planning Coordinator Overmyer reviewed the ownership of a private parcel of land in the subject area.

Discussion ensued regarding the intent of the surveying work.

Ms. Plummer – reported she received questions regarding the height of the house on Alva Drive.

Planning Coordinator Overmyer noted the subject property was located in the Downtown Zoning District which had different requirements than residential districts; and at the subject location the height maximum was 40' above the base flood elevation, with a limitation of three stories.

Discussion was held concerning alleged 'mega-mansion' plans submitted to the Town and review of the plans; submission of plans properly scaled in order to obtain a building permit; and the lack of survey requirements for residential permitting.

Consensus placed the topic of *survey requirements for residential permitting* to be placed on their agenda when they held the joint workshop with Council.

LPA Attorney Miller pointed out that the code (related to large residential principal structures) also did not include accessory structures, patios, driveways, and any type of maximum impervious lot coverage.

Discussion ensued regarding accessory structures, patios, driveways, and any type of maximum impervious lot coverage.

Vice Chair Champ – excused.

Chair Zuba – excused.

VI. LPA ATTORNEY ITEMS

LPA Attorney Miller – no items.

VII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Planning Coordinator Overmyer – announced the local APA Chapter was offering a land use forum on May 16th at Palmetto Pines Country Club in Cape Coral and reported if any of the LPA members wanted to attend that they should let him know.

VIII. LPA ACTION ITEM LIST REVIEW

None.

IX. ITEMS FOR NEXT MONTH'S AGENDA

None.

X. PUBLIC COMMENT

Public Comment opened.

John Kakatsch stated he was speaking as a private citizen and suggested the LPA become concerned and that the Council should come to a quick resolution regarding permitting issues on Palermo Circle. He was concerned about the legal fees for the Town and a possible judgment that could happen. He discussed his views on 'pressing needs' for the Town such as but not limited to storm sewers, water pipes, sidewalks, and curbs. He stressed his concerns regarding potential legal fees and how it could impact the Town and the residents. He recommended the LPA make a statement to Council recommending they solve the issue.

Public Comment closed.

XI. ADJOURNMENT

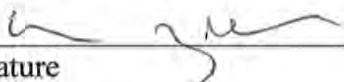
MOTION: Motion by Mr. Steele; seconded by Mr. Kakatsch to adjourn.

VOTE: Motion approved; 5-0 (Chair Zuba and Vice Chair Shamp were excused).

Meeting adjourned at 11:05 a.m.

Adopted May 13, 2014 ~~With~~/Without changes. Motion by Plummer, Second by Bodenhafer

Vote: 5-0



Signature

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