

1. Requested Motion:

Meeting Date: June 2, 2014

To introduce the Ordinance 14-04, PAL-PWVL Ordinance Amendments and set the public hearing date for June 16 at 6:00 P.M.

Why the action is necessary:

State law requires the title of an ordinance to be read at two separate meetings before adoption.

What the action accomplishes:

Permits an existing PWVL license holder to move his location to the adjacent property and adopts other amendments that were developed working with the affected vendors.

2. Agenda:

- Consent
- Administrative
- Public Hearing

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other Special Events Permit

4. Submitter of Information:

- Council
- Town Staff – Com. Dev.
- Town Attorney

5. Background:

On April 8, 2014, the LPA heard the proposed changes to the PAL-PWVL regulations and recommended approval, with some recommended changes. LPA minutes from that meeting are attached. On May 5, Town Council adopted some of the amendments recommended by LPA, but declined to adopt the remaining proposed amendments. Subsequent to that Council Meeting, it was determined that the affected PWVL license holder could not move to his desired location because of the current wording of the 500' business separation requirement. Staff has included two options for modifying the 500' separation requirement that will allow the affected PWVL vendor to move to his desired location. The LPA's previously recommended changes that were not adopted by Town Council are also included in the proposed Ordinance for your consideration.

Exhibits

- Tab a – Proposed Town Council Ordinance 14-04
- Tab b – April 8, 2014 LPA Minutes

6. Alternative Action:

Decline to introduce the ordinance

7. Management Recommendations:

Introduce the ordinance and set the public hearing date for Ordinance 14-03 for June 16, 2014.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Park & Recreation Director	Town Clerk
						

9. Council Action:

- Approved
- Denied
- Deferred
- Other

ORDINANCE 14-04

AN ORDINANCE AMENDING CHAPTER 27 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "PERSONAL WATERCRAFT AND PARASAILING;" AMENDING SECTION 27-47, "MEANS OF ENFORCEMENT" BY ADDING DESIGNATED TOWN CODE ENFORCEMENT OFFICERS AS PERSONS WHO CAN ENFORCE THE PROVISIONS OF THIS CHAPTER; AMENDING SECTION 27-49 BY ADDING PROVISIONS RELATING TO SOLICITING AND PICKING UP CUSTOMERS; AMENDING SECTION 27-50 BY ADDING PROVISIONS RELATING TO SOLICITATION OF CUSTOMERS; AMENDING SECTION 27-51 BY ADDING PROVISIONS RELATING TO HOW THE 500 FOOT SEPARATION BETWEEN BUSINESSES AND HOW THAT MINIMUM SEPARATION IS TO BE MEASURED; PROHIBITING CERTAIN STRUCTURES WITHIN TWELVE FEET (12') OF THE WET SAND; DELETING PROVISIONS RELATING TO REMOVAL OF NONCONFORMING STRUCTURES FROM THE BEACH; AND PROVIDING THAT PAL AND PWL BUSINESSES MAY ALSO RENT PADDLEBOARDS, KAYAKS AND OTHER NON-MOTORIZED WATERCRAFT; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. Section 27-47 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-47. Means of enforcement.

The provisions of this chapter shall be enforced by designated town code enforcement officers or members of all duly authorized law enforcement agencies within the town and through any enforcement mechanisms established by this code.

Section 2. Section 27-49 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-49. Regulations and locations for personal watercraft rentals.

Any business engaged in the rental, leasing, bailment for consideration, or otherwise providing transportation for remuneration, of personal watercraft for use by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

- (1) A business is required to obtain a ~~Lee County occupational license~~ business tax receipt which shall be issued to the personal watercraft operations office.
 - a. The operations office shall be located at a land-based site; and,
 - b. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses,

- or any residentially zoned land that must be traversed to gain beach access. That direct access will be used for all necessary business-related beach access that is customary in the course and operation of the personal watercraft business at the particular licensed land-based site; and,
- c. All business transactions such as the exchange of consideration or remuneration for the rental, leasing, bailment, or any other type of transaction between the commercial rental operator and customer shall occur on the land-based site for which the ~~occupational license~~ business tax receipt is issued; and,
 - d. The personal watercraft shall only be rented or operated on the littoral waters offshore of the land-based site for which the ~~occupational license~~ business tax receipt is issued until the personal watercraft travels beyond the 500 feet offshore slow speed limit.
 - e. The business must provide the town with a list of those PAL vendors who are permitted to pick up customers at the PWVL location, provided, however, that such activity may take place only for customers who have made a prior reservation and appointment for such pick up.

OPTION ONE (PREVIOUSLY RECOMMENDED BY LPA):

- f. PWVL businesses are prohibited from soliciting customers at any location other than their land-based site, provided, however that this prohibition shall not apply to the dissemination of brochures and web-based advertising by PWVL businesses.

OPTION TWO:

- f. PWVL and PAL businesses shall not utilize employees or agents to solicit customers within two hundred fifty feet (250') of any other PWVL or PAL business, provided, however that this restriction shall not apply to customer solicitations at a joint PWVL/PAL location by the businesses at that location.
- (2) A business must have and maintain a telephone and an operable marine radio at its land-based operations office.
 - (3) A business may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 years of age (see also F.S. § 327.54)). No person under the age of 14 may operate any personal watercraft.
 - (4) During the sea turtle nesting season (May 1 through October 31), personal watercraft may not be moved across the beach unless:
 - a. any state permits that may be required for this activity have been issued;
 - b. such movement begins only after 9:00 AM, or after completion of daily monitoring for turtle nesting activity by a FWCC-authorized marine turtle permit holder, whichever occurs first; and
 - c. the movement does not disturb any sea turtle or sea turtle nest (see also § 14-74(c)).
 - (5) Businesses may not allow their personal watercraft to be used above slow speed within 500 feet of swimmers, waders, or people floating in/on the water.
 - (6) Personal watercraft rental businesses shall have a motorized chase vessel with an operational marine radio in good running condition that meets all United States

Coast Guard safety requirements kept at the personal watercraft launching site during all hours of the business operation. The chase vessel may be a personal watercraft reserved for this purpose.

- (7) Each personal watercraft must be registered in the name of the business and have a Florida vessel registration number affixed thereon.
- (8) Identification markings shall be placed on each personal flotation device worn by operators of the personal watercraft which distinguishes the business from other businesses engaged in the rental of personal watercraft. Said marking shall also be located where the personal watercraft are launched. The identification marking, which will be assigned to the business by the town upon issuance of the PWVL, shall be not less than 9" by 5" in size and of a contrasting color to the personal flotation device.
- (9) Personal watercraft may be moored in the water during the operating hours of the business, or on the beach during operating hours in accordance with the following: Personal watercraft must be set back 12 feet landward from the edge of wet sand. Between the hours of 9:00 PM and 7:00 AM from May 1 until October 31, all personal watercraft and associated equipment, including but not limited to mooring lines, must be removed from the beach and placed behind the dune line.
 - a. If there is no dune line and the beach is wide, personal watercraft and associated equipment must be moved to a point that is at least 200 feet from the water line at all times.
 - b. If there is no dune line and the beach is less than 200 feet wide, personal watercraft and associated equipment must be moved to the adjacent permanent structure and landward of any seawall.

Where compliance with the foregoing provision would cause an undue hardship, the town manager may designate a different storage location after determining the minimum changes from the requirements of this subsection.

- (10) In order to adequately monitor the operation of the personal watercraft, one employee per five personal watercraft actually rented must be located so as to observe the operation of the vessel by the party renting the personal watercraft.
- (11) Fuel tanks may not be stored on the beach but may be stored at the business location provided all applicable federal, state, and local fire, safety, and environmental regulations are met.
- (12) Fueling of personal watercraft on the beach or in the water shall require a spillproof nozzle or other acceptable device designed for prevention of fuel overflow. Any spillage of fuel onto the beach or into the water is a violation of this code.
- (13) Except in locations which have permanent 500-foot markers, the personal watercraft vendor shall place temporary markers in the water not less than 500 feet seaward from the beach to which the personal watercraft are to be launched during each day of personal watercraft operations. All such markers shall be removed each day by the personal watercraft vendor no later than a half hour after sunset. The personal watercraft vendor must instruct each personal watercraft operator:
 - a. To travel at slow speed until past said markers;
 - b. To maintain a distance of not less than 500 feet from the shoreline while operating the personal watercraft;
 - c. To travel at slow speed when returning to the shore; and

- d. To not travel within environmentally sensitive areas (within the 1000-foot territorial limits of the town) except with an eco-tour operator or guide associated with a business with a valid PWVL permit.
- (14) Each operator shall provide a buoy lane consisting of 6 buoys, with a minimum width of 15 feet and a maximum of 75 feet.
- (15) Each PWVL (jet ski) operator is limited to 8 rentals per location plus one chase vehicle. When 6 or more rentals are in use, the chase vehicle must be manned and in the water. An operator may request a variance to allow additional rentals per location by using the standards and procedures in ch. 34.
- (16) *Safe handling instructions.*
- a. Each patron shall receive standardized rules provided by the operator translated in four languages. All owners, operators, PWVL license holders, and employees will obey the same standardized rules. Such rules are included in § 27-58.
- b. If the FWCC adopts safe handling instructions in accordance with F.S. § 327.39(6)(b), operators must comply with those regulations, which shall be deemed as equivalent to complying with the previous subsection, provided the state instructions are translated into the same four languages.
- (17) Operators must also comply with all other applicable boating and personal watercraft provisions of state law such as those found in F.S. § 327.39.
- (18) No person shall offer for rent, lease, or bailment for consideration, a personal watercraft within the Town of Fort Myers Beach except from a personal watercraft rental business which fully complies with the regulations set forth in this code and this chapter.
- (19) No person shall conduct any personal watercraft rental business within the Town of Fort Myers Beach except from a business holding a valid PWVL and which fully conforms to the terms of this chapter.
- (20) No person shall offer for rent, lease, or bailment for consideration a personal watercraft which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

Section 3. Section 27-50 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-50. Regulations and locations for parasail activities.

Any person engaged in parasail activities for consideration or remuneration by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

- (a) A person is required to obtain a ~~Lee County occupational license~~ business tax receipt which shall be issued to the parasailing activities operations office.
- (1) The operations office shall be located at a land-based site; and,
- (2) The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access; and,
- (3) All business transactions such as the exchange of consideration or remuneration or any other type of transaction between the PAL and customer shall occur on the

land-based site for which the occupational license business tax receipt is issued:
and,

- (4) A person must have and maintain a telephone and an operable marine radio at its land-based operations office.

OPTION ONE (PREVIOUSLY RECOMMENDED BY LPA):

- (5) PAL businesses are prohibited from soliciting customers at any PWVL location unless it is an authorized joint location, provided, however that this prohibition shall not apply to the dissemination of brochures and web-based advertising by PAL businesses.

OPTION TWO:

- (5) PAL businesses are prohibited from soliciting customers at any PWVL location unless it is an authorized joint location, provided, however that this prohibition shall not apply to customer solicitations at a joint PWVL/PAL location by the businesses at that location.

(b) No person shall offer a ride on a parasail within the Town of Fort Myers Beach except at a parasail activities site which fully complies with the regulations set forth in this code and this chapter.

(c) No person shall have a parasailing operation within the Town of Fort Myers Beach except from a business holding a valid PAL and which fully conforms to the terms of this chapter.

(d) No person shall use a vessel for parasailing activity which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

(e) Each parasailing vessel must be registered in the name of the business and have a Florida vessel registration number affixed thereon.

(f) Parasail operations must have a primary location at a site in conformance with this code or which otherwise specifically permits parasail activity. Parasail operators may pick up and return customers at other sites provided that the parasail operator has obtained written permission on a form provided by the town from the landowner where a PWVL has been issued. Written permission shall be kept on file at the PAL's primary location. In no event shall a parasail operator or his agents or employees solicit at the beach where they are picking up and returning customers.

(g) Parasail operators will pick up and drop off customers at the beach location pursuant to (2) above. This process will be accomplished through buoy lanes within the 500-foot zone consisting of 6 buoys, with a minimum width of 15 feet and a maximum of 75 feet. In a congested area, a parasail captain may avoid hazard by approaching to the right or left of the buoy lane.

(h) Operators must be at least 1,000 feet from shore when they inflate the chute or deflate the chute and while flying.

(i) Operators must limit the length of the line to 1,200 feet and may not fly the chute over or within 500 feet of the pier or within 1,000 feet of the beach. Further, all parasail and all operations must cease at sunset.

(j) Operators must also comply with all applicable boating and parasailing provisions of state law such as those found in F.S. § 327.37.

Section 4. Section 27-51 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 27-51. Additional rules applying to both PWVL and PAL businesses.

(a) Businesses holding a valid PWVL or PAL shall be situated together with their vessels where appropriate upon a site authorized by the remainder of this code plus the provisions of this chapter to have such business, ~~and shall not:~~

OPTION ONE:

~~(1b) Except for co-located PWVL and PAL businesses, no PWVL or PAL business shall be located within 500 feet, as measured from the property line at the point where the width of the property is the narrowest, of any other business of the same type, offering personal watercraft for rent or lease or parasailing activities, except for businesses that are co-located in accordance with § 27-54(e); or~~

OPTION TWO:

~~(1b) No PWVL or PAL business shall be located within 500 feet, as measured from the property line at the point where the width of the property is the narrowest, of any other business offering personal watercraft for rent or lease or parasailing activities, except for businesses that are co-located in accordance with § 27-54(e); or except that a PWVL may move to a location that is within 500 feet of a PAL but that PWVL will not have the right to pick up customers for any PAL.~~

~~(2c) No PWVL or PAL business may be located on any beach or land north of or beyond an imaginary line extending from the Sanibel Lighthouse and Bowditch Point on Estero Island; or inland of the Big Carlos Pass Bridge.~~

~~(bd) Businesses holding both a valid PWVL and a valid PAL may rent personal watercraft and operate a parasailing activity business from a single location provided the location meets all requirements for both licenses.~~

(e) Businesses holding a valid PWVL or PAL must meet the following requirements:

- (1) **Other boating regulations.** All businesses and their vessels are required to comply with the town's Vessel Control and Water Safety Ordinance (Ordinance 96-26 as amended) and with Florida Statutes Chapter 327.
 - (2) **Insurance.** A business must have and maintain comprehensive third-party liability insurance in accordance with § 27-56.
 - (3) **Structures on the beach.** During its regular business hours only, a business may place one free-standing structure on the beach at its land-based site to conduct business with the public.
 - a. This structure may be a table, podium, booth, or storage box.
 - b. The total horizontal dimension of this structure may not exceed a horizontal dimension of 4 feet by 6 feet, except for any awning, umbrella, or integral roof whose sole purpose is to provide shade.
 - c. This structure must be portable and never be left on the beach before or after regular business hours.
 - d. No portion of any flag, sign, booth, or equipment may extend to or be located within 12' of the wet sand.
 - (4) **Signs on the beach.** This structure may contain a maximum of three identification or promotional signs painted on or mounted flat against the structure, no one of which can exceed 8 square feet as measured in accordance with § 30-91.
 - a. Any rate charts or state-mandated informational signs smaller than 2 square each shall not be counted as part of the signage limitation above.
 - b. No signs or other advertising for the business are permitted on the beach other than the signage permitted on a table, podium, booth, or storage box.
 - (5) **Signs off the beach.** A business may also have one portable sandwich-board sign displayed at its land-based site during regular business hours if such signs are otherwise permitted by ch. 30 of this code at that site. However, any such sign:
 - a. must be placed indoors after business hours;
 - b. must not be illuminated; and
 - c. must not be placed on the beach at any time.
 - ~~(6) **Removing nonconforming structures from the beach.** Any legal nonconforming tables, podiums, booths, storage boxes, signs, or other structures on the beach as of September 24, 2001, may remain for up to twelve additional months but immediately thereafter must be removed or modified to be in conformance with this section.~~
- (f) Licensed PWVL businesses may also rent paddleboards, kayaks and other non-motorized watercraft from their land-based location.

Section 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 6. Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a vote, the result was as follows:

Anita Cereceda, Mayor
Alan Mandel
Summer Stockton

Dan Andre, Vice Mayor
Rexann Hosafros

DULY PASSED AND ADOPTED THIS ____ DAY OF _____ 2014, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Anita T. Cereceda, Mayor

By: _____
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: _____
BUCHANAN INGERSOLL & ROONEY
FOWLER WHITE BOGGS, Town Attorney



**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 ~~10~~ 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)(c) – 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 Champ 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 Shamp – 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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