



MINUTES
FORT MYERS BEACH TOWN COUNCIL
Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

TOWN COUNCIL MEETING
3:00 PM

February 11, 2008

CALL TO ORDER

Mayor Boback called to order the meeting of the Town Council at 3:10 PM. Present was Mayor Boback, Vice Mayor Kiker, Councilmember Acken, Councilmember Shenko, Councilmember Meador, Town Manager David Sallee, Town Attorney Anne Dalton, Town Clerk Michelle Mayher, Parks Director Theresa Schober and Community Development Director Jerry Murphy.

PLEDGE OF ALLEGIANCE

All stood and recited the pledge of allegiance.

PUBLIC COMMENT:

Opened Public Comment:

Public Comment was heard:

- Mike Roeder asked Council to expedite the appeal regarding 111 Gulfview Drive.

Closed Public Comment

CONSENT AGENDA:

No Items

V. PUBLIC HEARINGS:

A. Shamron Beach Condominium Special Exception, Case Number FMBSEZ2007-00002

Mayor Boback opened the public hearing. Attorney Dalton swore in all those intending to testify. Councilmembers declared ex-parte communications; having none.

Erica Maynard with Hans Wilson and Associates, on behalf of the applicant. Council questioned the reference to the applicant agreeing to plant one gallon sea oats. Hans Wilson, present on behalf of the applicant, explained they have negotiated to agree to provide the sea oats in the spirit of compromise.

PUBLIC COMMENT:

Opened Public Comment:

None

Closed Public Comment

MOTION: Councilmember Meador moved to accept the staff report, LPA resolution and the balance of the materials as part of the record, and to approve resolution 08-06 approving the request and in connection there-with, delete condition 7 from the resolution and otherwise indicate approval. Vice Mayor Kiker seconded the motion.

VOTE: Motion passed 5-0.

B. Kahlua Club Spa Variance, Case Number FMBVAR2007-00001

Mayor Boback opened the public hearing. Attorney Dalton swore in all those intending to testify. Councilmembers declared ex-parte communications; having none.

Matt Uhle on behalf of the applicant, Kahlua Beach Club, requesting that Council follow the recommendation of the LPA and approve the variance for the spa.

Council questioned the manner of waste water disposal when the filters are cleaned. Paul (last name not clear) identified himself as an owner at Kahlua and as a member of the board. He indicated that the system will be all new, and will be in compliance with all permitting regulations.

Frank Shockey, Planning and Zoning Coordinator submitted the staff report as staff testimony.

PUBLIC COMMENT:

Opened Public Comment:

None

Closed Public Comment

MOTION: Councilmember Acken moved to approve the resolution as outlined, with conditions 1, 2, 3, and under number 1, ARE / IS; 2, ARE NOT; 3, IS; 4, WILL NOT; 5, ARE NOT. Councilmember Shenko seconded the motion.

Community Development Director Jerry Murphy pointed out that the resolution contained a scrivener's error in the strap number; the first two digits of the strap number should be 28, and not 34.

VOTE: Motion passed 5-0.

Recess: 3:52 PM

Reconvene 4:06 PM

C. Topps CPD, FMBDCI2007-00003

Mayor Boback opened the public hearing. Attorney Dalton swore in all those intending to testify. Councilmembers declared ex-parte communications; having none.

Joe McHarris, McHarris Planning and Design, on behalf of the applicant, presented an overview of the project. It is roughly two acres with a grocery store, liquor store, night club or lounge. The applicant intends to keep the grocery store, add retail and create a more coherent framing of the boulevard, locating parking to the rear of the buildings, limit curb cuts reducing the current two to one, provide shared parking, pedestrian and bicycle access, and a proposed water taxi access at the rear of the property.

The first requested deviation is for a reduction in the parking requirement. In order to keep Topps open during the remodel, Mr. McHarris intends to phase the project over eight phases whereby the parking levels will fluctuate. Parking as it exists today is 68 spaces. The required parking under the existing code is for 90 spaces. The project will not reach maximum efficiency until the end, as it is a remodeling project, not starting from scratch. Mr. McHarris outlined the remaining requested deviations; a reduction in the connection separation required by the LDC, an alteration from LDC Section 34-2015(1) to allow the inclusion of the 17 proposed spaces in the ROW of Tropical Shores Way, a request for an increase in maximum building height, a request to allow the reduction in the required 50% building frontage, and a deviation in the required computed density.

Council questioned the number of parking spaces that will be provided at the completion of the project, specifically what will be provided on property owned by the applicant, excluding the seventeen spaces on the Town's right of way. Considerable discussion of parking calculation charts resulted in the determination that 155 spaces are required, and the applicant will be providing 113 at the end of phase seven, excluding the seventeen spaces in the town's right of way.

Council asked that there be some provision for parking in the event that the project does not come to full completion.

Frank Shockey, Planning and Zoning Coordinator, testified on behalf of staff. The project is 2.15 acres Commercial Boulevard to be Commercial Planned Development, a mixed use complex. Staff recommends approval with conditions to be consistent with a master concept plan except as modified by conditions or deviations. Mr. Shockey outlined the deviations indicating staff's recommendation of approval of deviations 1, 2, 4 & 5, and denial of deviations 3 and 6.

Council inquired as to whether the Town could require a performance bond to ensure project completion. Staff indicated that that provision is in chapter ten of the land development code, and if it is the desire of council, that requirement can be put in the approval with more specificity.

PUBLIC COMMENT:

Opened Public Comment:

Public Comment was heard:

- Judy Stahl requested council to consider the impact on traffic, water and other demands.
- Pam Peter expressed a concern that this project will negatively affect traffic.
- Robert Petersen expressed a concern that this project will have a negative effect on traffic flow.
- Sandy Spitzer expressed her opinion that the project does not bode well for the community.
- Howard Hay expressed his concern that any project with this many deviation requests must be very carefully considered.
- Scott Schlarb is in favor of the project.
- John Warden spoke in strong support of this project.

Closed Public Comment

Dennis Weimer spoke as representative of the Local Planning Agency. The LPA's primary concerns evolve around parking areas, the frontage percent and the building height.

Recess 6:35 PM

Reconvene 6:54 PM

Council asked the applicant to consider the following when coming back in the continuance: If there's a drive-thru, strike it out; the parking lot is to be porous; consider the economics of weekly versus monthly with regard to the housing; consider performance bonds for phases. Council asked for a recommendation from staff regarding a fee to the developer if the 17 parking spaces change.

MOTION: Vice Mayor Kiker moved to continue this hearing to March 10, 2008 at 3:00 PM. Councilmember Meador seconded the motion.

VOTE: Motion passed 5-0.

D. Continuation of Second Public Hearing, Ordinance 07-04, Parcelization

ORDINANCE 07-04

AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES"; AMENDING SECTION 34-2 "DEFINITIONS"; AMENDING SECTION 34-621 "ALLOWABLE USES OF LAND DESCRIBED" INCLUDING AMENDMENTS TO TABLE 1 "LAND USES ASSIGNED TO USE GROUPS AND SUB-GROUPS"; AMENDING SECTION 34-636 "PARCELIZATION OR SUBDIVISION OF EXISTING BUILDINGS"; AMENDING SECTION 34-1801 "DEFINITIONS"; AMENDING SECTION 34-1806 "REPLACING A NONCONFORMING HOTEL/MOTEL"; AMENDING

SECTION 34-1807 “CONVERSIONS”; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

PUBLIC COMMENT:

Opened Public Comment:

Public Comment was heard:

- Matt Uhle spoke on behalf of his client, Jim Purtell, asking Council to create exemptions in all criteria for existing buildings.
- Tom Babcock spoke to Ordinance 07-04 having significant changes that the LPA have not discussed, and requested that this ordinance be returned to the LPA.

Closed Public Comment

MOTION: Councilmember Acken moved to send Ordinance 07-04 back to the LPA for further discussion. Vice Mayor Kiker seconded the motion.

VOTE: Motion failed 3-2, with Mayor Boback, Councilmember Shenko and Councilmember Meador dissenting.

MOTION: Councilmember Acken moved to table this item to review newly provided material. Vice Mayor Kiker seconded the motion.

VOTE: The motion failed 3-2, with Mayor Boback, Councilmember Shenko and Councilmember Meador dissenting.

MOTION: Councilmember Meador moved to adopt ordinance 07-04 with the addition of a new section three, which is in the material just presented to Council, which reads: “Anything in Chapter 34 of this Land Development Code, or elsewhere herein to the contrary notwithstanding, a change in the nature or form of the ownership of any property or properties, within any zoning or land use category, shall not in and of itself constitute parcelization of such property or properties or development thereof necessitating the approval thereof pursuant to the provisions of this Land Development Code. The provisions hereof shall supersede all provisions of this Land Development Code inconsistent herewith.” Councilmember Shenko seconded the motion.

MOTION: Councilmember Acken made a secondary motion to have this item removed from consideration. Vice Mayor Kiker seconded the motion.

Councilmember Meador indicated his intention is to have this language be in the Ordinance 07-04 as a section three; that this would be an overriding provision.

VOTE: Motion failed 4-1, with Mayor Boback, Vice Mayor Kiker, Councilmember Shenko and Councilmember Meador dissenting.

AMENDED: Councilmember Meador amended the motion to strike the words “or elsewhere” so as to read: “Anything in Chapter 34 of this Land Development Code notwithstanding a change in the nature or form of the ownership of any property or

properties, within any zoning or land use category, shall not in and of itself constitute parcelization of such property or properties or development thereof necessitating the approval thereof pursuant to the provisions of this Land Development Code. The provisions hereof shall supersede all provisions of Chapter 34 of this Land Development Code inconsistent herewith.” Councilmember Shenko amended the second.

Town Clerk Michelle Mayher called the roll:

Councilmember Meador	aye
Councilmember Shenko	aye
Mayor Boback	aye
Vice Mayor Kiker	aye
Councilmember Acken	aye

VOTE: Motion passed 5-0.

Recess 8:00 PM

Reconvene 8:05 PM

VI: ADMINISTRATIVE AGENDA:

A. Town Manager Selection:

Colin Baenziger, Colin Baenziger & Associates recapped for the council the process thus far for the recruitment of a town manager for Fort Myers Beach. Council cast ballots which were collected and read: William “Scott” Janke received four votes, Kenneth Fields and Jack Green received three votes.

PUBLIC COMMENT:

Opened Public Comment:

None

Closed Public Comment

MOTION: Councilmember Acken moved to offer the position of Town Manager to Mr. Scott Janke. Councilmember Meador seconded the motion.

VOTE: Motion passed 5-0.

MOTION: Mayor Boback moved to have contract negotiations with Mr. Janke be conducted by Vice Mayor Kiker. Councilmember Acken seconded the motion.

VOTE: Motion passed 5-0.

B. Open House Sign Direction

PUBLIC COMMENT:

Opened Public Comment:

Public Comment was heard:

- Tom Babcock, as representative of the LPA. The LPA held a public workshop in order to get input on this item, and outlined the points decided upon.

Closed Public Comment

Attorney Dalton indicated that the ordinance is being introduced before Town Council on February 19, 2008.

C. FEMA Maps Update

Town Manager David Sallee asked Council to direct staff to move forward with language to adopt the FIRM, or flood plain rate map panels into the LDC, allowing eligibility into the national flood insurance plan program.

MOTION: Councilmember Shenko moved to direct staff to move forward as requested. Vice Mayor Kiker seconded the motion.

VOTE: Motion passed 5-0.

VII: TOWN MANAGER'S ITEMS

Town Manager David Sallee indicated Council had received monthly financials, he outlined the orientation and reorganization for the council and that staff will be ready to do a workshop on the special assessments process; an umbrella home rule ordinance.

VIII. TOWN ATTORNEY'S ITEMS

No items.

IX. COUNCILMEMBERS ITEMS AND REPORTS

MOTION: Councilmember Meador made the motion that if documents are sufficient, that the appeal for the property at 111 Gulfview Drive be scheduled for the March 10, 2008 agenda. Councilmember Shenko seconded the motion.

VOTE: Motion passed 5-0.

Mayor Boback asked when the council will receive an update on the Newton Park, and staff indicated it would be at the March 3, 2008 meeting.

Vice Mayor Kiker asked to have the issue of the adopted Coastal Construction Control Line, which the Town adopted as a line of prohibition, be an item for discussion. Mr. Sallee indicated that would be on the agenda for the first meeting in March, March 3, 2008.

Vice Mayor Kiker asked to have an agenda item to discuss a policy regarding requiring applicants to plant dune vegetation. Staff indicated it will be scheduled for the land use meeting in April.

PUBLIC COMMENT:

Opened Public Comment:

Public Comment was heard:

- Tom Babcock spoke as a resident, referenced an article in the Bonita Banner regarding vegetation on the beach.

Closed Public Comment

ADJOURNMENT

The meeting adjourned at 9:32 PM

Adopted 3-03-08 With ~~Without~~ Changes Motion by Shenko/Acker
(Date)

Vote: 4-0


Michelle D. Mayher
Town Clerk

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