

Note from the Clerk's Office: The Local Planning Agency met on September 13, 2011. Chair Shamp opened the meeting; present with Chair Shamp was members Cameron, Kay, Zuba. Member Van Duzer had an excused absence.

The LPA proceeded to adopt the minutes from July 12, 2011 however expressed the need for further review, noting misspelled names, vague testimony and questionable recording of the Motions and Votes.

Because of the time-sensitive nature of the Surf Club Hearing portion of the minutes, the Agency and staff discussed corrections to the Surf Club Hearing portion of the July 12, 2011 meeting minutes only. Those corrections have been made to the segment provided below. Upon a motion by LPA Member Kay, Second by LPA member Kakatsch, and a unanimous 5-0 vote, the Surf Club public hearing portion of the July 12, 2011 LPA minutes were approved.

MINUTES

FORT MYERS BEACH

Local Planning Agency

Town Hall – Council Chambers

2523 Estero Boulevard

Fort Myers Beach, FL 33931

Tuesday, July 12, 2011

Mr. Van Duzer switched the order of the agenda to take public comment for someone who could not stay for the entire meeting.

I. PUBLIC COMMENT

Mr. Steven Strauss addressed the meeting and said he is a long time business owner and resident of the beach; he owns the Top O' Mast. Strauss said that the perception of the beach not too long ago was that it was undesirable. He said that changed over the last 10 years and allowing the expansion of COP on the beach would revert the beach to old time perceptions. He continued that he was offended by Mr. Fluegel's inference at the last meeting that his business and the Lani Kai might be "illegal" since he could find no paperwork to support their licenses. Mr. Strauss reported that he has those records, obtained from the state. He went on to support Lee Melsek's open comments and concern about the island. He pleaded with them to persuade the Council to "close this can of worms."

Mr. Kakatsch asked Mr. Strauss if he would be willing to give up his license rights as they are now if Council changed the law so that there was absolute prohibition. Mr. Strauss responded "absolutely not...that would be like you people giving up your pension." He added that if "you think that your gonna take it away from Mr. Conidaris or Mr. Strauss, don't even go that way...that would be a terrible, terrible mistake." Mr. Kakatsch asked if he would possible agree to just serving outside and Mr. Strauss cut him off, saying "absolutely not! I've done this for decades." Mr. Strauss commended the Lee County Sheriff's deputies and said Mike Scott is an asset because he "comes to the beach...he cares about the beach." He added that there is no way the sheriff's department could control all of those businesses as it's hard enough for them to handle 3.

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Mr. Kakatsch asked Mr. Strauss about the beach being a family beach. Strauss said that anyone who visits his business during the day will see families there even though his business is basically bar activity. He said that the Mayor should be lobbied to “put these worms back in the can,” and he opined that Councilwoman Jo List should excuse herself from making decisions about this issue because she works at the beach bistros. Mr. Strauss commented that he appreciated Mr. Zuba asking questions and wanting more information. Mr. Kakatsch asked how many police officers it takes on a weekend night to enforce limiting service to the downtown area and Mr. Strauss said that it takes more than 1, especially if there are other calls, although he praised the efforts of the police. He said that the individual business owners and employees must police their own areas, adding that his employees do that as part of their jobs.

II. PUBLIC HEARINGS

A. Surf Club Special Exception FMBSEZ2010-0005

Ms. Miller swore the witnesses in. Ms. Mayfield-Ekblad presented for the Town and gave a brief background of the property in the downtown district. She reported that the applicant is asking for a special exception to allow consumption of alcoholic beverages on premises “in a restaurant providing an outdoor seating area within 500 ft. of a dwelling unit under separate ownership.” The owner does have a 4 COP license and is currently serving alcohol within the building. The request is to allow consumption outside and there is a proposal for a wood deck and a paver area adjacent to the entrance. The applicant is also requesting that the hours of operation be from 9:00AM to 2:00AM.

Ms. Mayfield-Ekblad provided a plan for the LPA’s review and said that the applicant has proposed to install a hedge row for containment and there is just one entry point. She said that staff is recommending approval of the request, with the following conditions: the outdoor consumption must be confined to the wood deck and paver patio, the area is to be enclosed by a 3’ hedge and a 42” railing (as required by the LDC), and shrubs must be 24” high above the pavement, up to 36” within 6 mos. of planting, and be maintained at 36”. Staff is also recommending that sales, service and consumption be within the hours of 11:00AM and 10:00PM, due to the residential neighboring area, and that the applicant meet all other requirements in the Code. The previous approval of FMB2009-001 will remain in full force effect. Furthermore, staff’s recommendation includes that musical and/or other audible entertainment be prohibited before 11:00AM and after 9:00PM each day.

Ms. Mayfield-Ekblad read from a letter received by the Town from Mr. Ganim of CT who is the owner of the Beacon Motel. He objects to the approval of this application due to “noise will be generated late into the evening, disturbing the sleep of our motel guests.” He continued that his business has received many complaints, and loss of guests already about the “late night noise and music coming from both sides of the motel...”

Mr. Cameron noticed in the plans a request for a service bar outside on the deck and asked if this is just for wait staff or if the intention is for customer service. Mr. Easterbrook, consultant, spoke to respond and said that it would be a service station for staff and that it would not have seating for customers. Ms. Kay asked if customers could have “walk-up” service there and actually purchase drinks. Ms. Mayfield-Ekblad reminded that the LPA could specify the uses in their decisions to insure that this does not happen.

Ms. Kay wondered why they are stipulating hours when Council had already decided that everyone should have the same hours. Ms. Mayfield-Ekblad said it is only an option to include this in the wording and Mr. Kakatsch agreed that it should specifically be stated.

Mr. Easterbrook pointed out that this new plan has been reduced down from the first application with about 1000 sf and stated that they are not asking for anything more than what the Code allows. He said that the deck and patio area were planned to restrict patrons from taking their drinks off the property and to keep consumption enclosed as much as possible. Mr. Van Duzer asked if the applicant agreed with the suggested hours for service and Mr. Easterbrook replied that "what's good for one person...I think it should be across the board," implying that other establishments have different hours. Mr. Van Duzer then posed his question to the owner, Mr. Cermak, who said he didn't think he should be held to different times when his "neighbor across the street and on my left and my right are able to do it until 2:00AM." He added that he has no intention to have loud music or entertainment if they have service until 2:00AM.

Mr. Van Duzer asked if staff has rebuttal regarding the applicant's objection to the hours of service. Ms. Mayfield-Ekblad replied that the intent of the conditions is to "mitigate harm," as stated in the LDC. She admitted that she would have to look up the conditions granted to his neighbors but generally the bay side of Estero Blvd. has more limited hours than the gulf side. Furthermore, she continued that there is a residential neighborhood just down the canal from the business and asked that the LPA take that into consideration. She also clarified that the height of the handrail and hedge can both be 42" if desired. The last point was the secondary entry to the building and Ms. Mayfield-Ekblad said it would not be a problem but it needs to be decided at this meeting so the site plan can be revised.

Mr. Cameron asked if they could make the service hours the same as the neighbors but perhaps keep hours for entertainment shorter; he also asked if there is a plan in effect now to be sure the hedge row is maintained and growing as directed. Ms. Chapman advised that there are requirements in the LDC and then the Code Enforcement dept. would oversee enforcement.

Motion: Mr. Cameron moved to approve the application as conditioned herein by staff:

- 1. Area of subject property used for consumption must be confined entirely to the proposed wooden deck and patio shown in the site plan (attached); the area must be enclosed by a 36" hedge and a 42" railing, except for access points further delineating the outdoor consumption area from other areas of the subject property, to include a second entry in front of the paver area; applicant will submit revised exhibit;**
- 2. Sales, service and consumption of alcoholic beverages must not begin earlier than 9:00AM and must end no later than 2:00AM each day;**
- 3. Conditions in prior approvals, including the applicant's May 29, 2009 FMBCOP2009-0001 will remain in effect except where such conditions have been modified by this action;**
- 4. Music and other audible entertainment are prohibited before 11:00AM and after 9:00PM of each day in outdoor seating areas and must comply at all times with applicable noise ordinances;**
- 5. A landscaping plan is to be provided at the time of development order or permit.**

Recommended findings and conclusions (see attached):

1. **Changed or changing conditions exist to that make the requested approval as conditioned, appropriate;**
2. **The requested special exception as conditioned is consistent with goals, objectives, policies and intent of the FMB Comp Plan;**
3. **The requested special exception as conditioned meets or exceeds all performance and locational standards set forth for the proposed use;**
4. **The requested special exception as conditioned will protect, conserve or preserve environmentally critical areas and natural resources;**
5. **The requested special exception as conditioned will be compatible with existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property'**
6. **The requested special exception as conditioned will be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in Chapter 34.**

The forgoing resolution was adopted by the LPA upon the motion of LPA member Mr. Cameron.

Seconded by Ms. Kay;

Vote: Motion passed 4-0.

Respectfully Submitted:


Michelle Mayher, CMC
Town Clerk