



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

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, Florida  
**Tuesday, February 11, 2014**

**I. CALL TO ORDER**

Meeting was called to order at 9:03 a.m. by Chair Zuba; other members present:

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

LPA Attorney, Marilyn Miller  
Staff Present: Walter Fluegel, Community Development Director  
Leslee Dulmer, Zoning Coordinator

**II. PLEDGE OF ALLEGIANCE**

**III. INVOCATION**

**IV. MINUTES**

A. Minutes of January 14, 2014

**MOTION:** Vice Chair Shamp moved to approve the Minutes for January 14, 2014; second by Mr. Kakatsch.

Vice Chair Shamp noted a letter received from Attorney Grady and discussed the following regarding the January 14, 2014 LPA Meeting Minutes:

- Pages 12 (motion at the bottom of the page) – the wording applied to the front and side yard; and the Resolution as presented had only stated side yard.

Vice Chair Shamp clarified it was her intention to include both ‘front and side’ yard in the motion.

Discussion was held concerning the motion, wording, and intent [1/14/14 Minutes – Page 12].

Vice Chair Shamp noted the following correction on Page 12 of the January 14<sup>th</sup> Minutes:

- Vice Chair Shamp moved to recommend approval of Resolution 2013-17, VAR2013-0006, Houseboat, LLC Variance and approval of the requested variance from the following sections:
  1. Section 34-676(b), parking lot location, to permit off-street parking in the **front and** side yard as depicted on the site plan *Exhibit E*.

LPA Attorney Miller questioned that the motion[1/14/14 Minutes – Page 12] on the subject Resolution had not included the side yard.

Vice Chair Shamp responded in the affirmative; and clarified that it the LPA’s intention was to “*allow everything that is existing there to stay; to give the special exception*”.

LPA Attorney Miller recommended Vice Chair Shamp make a motion to clarify the Resolution; that her motion intended to include the side yard; and to do so after Approval of the Minutes.

Vice Chair Shamp questioned a letter received from Attorney Grady as it pertained to the subject property marina being designated as ‘*existing only*’ [Page 19 of the January 14<sup>th</sup> Minutes].

LPA Attorney Miller noted the subject minutes reflected that she had explained “...if the Applicant wanted to modify the existing conditions they would have to seek a special exception.”

Vice Chair Shamp requested Community Development Director Fluegel to address his comments as noted on Page 19 of the January 14<sup>th</sup> Minutes.

Community Development Director Fluegel reviewed the applicable portion of the Minutes:

- Community Development Director Fluegel explained the subject property marina would be called ‘*existing only*’ and would not permit an expansion of the number of slips or marina repair facilities or anything else within the marina definition.

He added that would become a legal question (i.e. could they expand the number of slips or could they expand the uses within that definition).

Discussion ensued regarding the subject parcel (i.e. limitations in size, surrounding residential, etc.).

LPA Attorney Miller explained that the Applicant was not asking for any approval of the marina.

Chair Zuba reviewed the intention of the LPA was:

- Not to go further than ‘existing only’; any expansion would require a special exception.

LPA Attorney Miller pointed out that may become an issue, if and when the Applicant tried to expand. She explained that even though the subject section of the Minutes of January 14<sup>th</sup> indicated Attorney Grady’s comments were inaudible, she recalled comments by Attorney Grady pertaining to the LDC.

**AMENDMENT:** Vice Chair Shamp moved to correct the minutes of January 14, 2014, Page 19, to include the comments made by Attorney Grady according to her letter of February 4, 2014(*Attached*); second by Mr. Kakatsch.

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

**MOTION:** Vice Chair Shamp clarified on Page 12 of the January 14<sup>th</sup> Minutes, Resolution 2013-17, VAR2013- 0006, Houseboat, LLC Variance, that the off-street parking was permitted in the **front and side yard**; second by Mr. Bodenhafer.

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

## **PUBLIC HEARING**

### **A. VAR2013-0005 Setback Variance for In-Ground Pool**

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

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

Zoning Coordinator Dulmer presented comments for Variance 2013-0005, Setback Variance, at 30 Gulf Beach Road on behalf of the Town of Fort Myers Beach. She displayed an aerial view of the property and indicated the location of the subject site. She reviewed the Applicant’s request, the background of the property, and the existing conditions of the subject site:

- A variance from LDC Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street right-of-way line than the primary structure with a 5’ street setback.
- Gulf-front lot

- Located at the end of a paved portion of Gulf Beach Road
- Surrounded on either side multi-story condo buildings
- Pools along Gulf Beach Road (Resolution 03-04; 3830 Estero Boulevard ZB-84-118)

She noted the supporting regulations pertaining to the Applicant's request:

- Section 34-87 – gives Town Council the authority to hear and decide all requests for variances from the terms and restrictions of the LDC; Council must consider whether the fact support the five required findings, staff report and LPA recommendations, testimony from the Applicant, and testimony from the public.
- 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 subject property is located at the terminus of the paved portion of Gulf Beach Road and is non-conforming with respect to the rear setback and limited space available in the side yard. These development constraints mean that the area shown on Exhibit B is the only remaining space available for the proposed pool and could be considered a unique condition inherent to the subject property. The proposed pool location will have little to no impact on the surrounding property owners. Staff, therefore, 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 conditions are not the result of actions of the applicant taken after the adoption of the regulation in question, because the existing structure was built in 1976 prior to the incorporation of the Town of Fort Myers Beach and the adoption of LDC Section 34-1174(b), the regulation in question, in 2004.
  - 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.* Staff agrees with the applicant and recommends that the minimum variance necessary is to allow the in-ground pool to be located closer to the street than the existing building and allowing a 5' setback for the swimming pool from the front property line.
  - 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 granting of the variance would not be injurious to the neighborhood or detrimental to the overall public welfare. If granted, as recommended by staff, the variance will allow the property owner reasonable use of the subject property.
  - 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.

She reported staff recommended approval with conditions of the variance request from LDC Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street right-of-way line than the primary structure with a 5' street setback, subject to the following condition: 1) The location of the pool shall be as shown on the attached Exhibit B [site plan where pool area is indicated in red].

Ms. Plummer questioned that the subject pool was to be an in-ground pool and not higher than 42”.

Zoning Coordinator Dulmer responded in the affirmative.

Discussion was held concerning in-ground and above-ground pools.

Ms. Plummer asked if there was any indication that the pool would not be higher than 42” above-ground.

Discussion ensued regarding setbacks for other pools on Gulf Beach Road; and potential for reconfiguration of the pool as it pertained to parking on the subject property.

Zoning Coordinator Dulmer noted it was staff’s opinion that the proposed location would have very little impact on the surrounding neighborhood given the consideration that the site was at the end of a street; that the paved portion stopped before the pool area; and the subject property was a non-parking beach access point.

Mr. Whitley, Contractor for the Applicant, stated he was present and prepared to answer any questions.

Ms. Plummer asked Mr. Whitley to confirm that the top of the pool would not be higher than 42”.

Mr. Whitley responded in the affirmative.

Mr. Steele questioned the height and composition of the fence surrounding the pool.

Mr. Whitley stated it was his belief that the fence would be 42” in height (for child safety); and indicated the pool contractor would have the fence specifications.

Zoning Coordinator Dulmer reported fences for pools were required to be 48”; and added a chain-link fence was not permitted in a front yard.

Mr. Steele indicated his concern if the fence was to be a 48” solid that could restrict view.

Mr. Whitley pointed out that the nearby condominium fence extended out further [seaward] than the proposed subject location.

Zoning Coordinator Dulmer explained that since the subject property was located seaward of the 1991 Coastal Construction Control Line that DEP and State approval was required; and a Letter of Local Consistency was required from the local municipality indicating no rules would be violated.

Public Comment opened.

Robert Johnson, owner of condominium at 2650 Estero Boulevard, noted his concern regarding the “vagueness of the drawings” showing the pool and how it would be constructed, and the proposed fencing. He described a constant problem his condominium experienced with regard to people coming off the beach utilizing their pool. He asked if the subject property was a single-family residence.

Zoning Coordinator Dulmer reported the subject property had two units.

Mr. Johnson questioned how the use of the pool would be controlled by the two units; and if the proposed pool might impact the sea turtles and the beach itself.

Discussion was held concerning the dimensions of the proposed pool and the location of the parking on the subject property.

Howard Hay, owner of Unit #1 at 2580 Estero Boulevard, indicated the location of his condo unit on the overhead projection screen as it related to the subject property. He noted his concerns regarding security issues for the proposed pool and added he would prefer a “see-through” fence.

Ken Turner, owner of Unit #102 at 2650 Estero Boulevard, indicated there were many residents from his condominium present in the audience. He noted his concern regarding the requested variance for the subject property and how granting the variance may cause noise issues for the condominium residents. He mentioned the condominium residents had concerns about any potential structural height increase to the subject property.

Birdie Murphy, resident at 2650 Estero Boulevard, concurred with Mr. Turner’s comments; and noted her concerns regarding the variance request and the fact that no specifications for the pool were submitted. She questioned the location of the proposed pool in relation to the walkway.

Zoning Coordinator Dulmer explained that the pool contractor would be required to submit drawings and plans for the pool; and there would be additional technical drawings submitted to the Town that would be held to all the standards of the LDC and any conditions of approval. She added that she did not have an exact measurement as it related to the location of the pool to the walkway.

Chair Zuba explained the issue before the LPA was the issue of the setback.

Jean Johnson asked if the proposed pool would go into the sea grass area where the turtles nested.

Zoning Coordinator Dulmer responded in the negative.

Public Comment closed.

Ms. Plummer explained how the LPA would review the variance request as it related to the standards for granting the variance for a setback.

Vice Chair Shamp noted the State's specific regulations as it pertained to 'high-velocity zone' pools; and indicated her concern regarding setbacks.

Discussion was held regarding the intent of a 25' setback from a main street/boulevard (i.e. safety, aesthetics, etc.); and Gulf Beach Road and location of the right-of-way.

Chair Zuba recognized Mr. Johnson in the audience.

Mr. Johnson displayed and commented on a drawing depicting the location of the pool which was helpful.

Vice Chair Shamp discussed her view on requesting the proposed pool shape to be changed to more of a rectangular shape which would be more "*de minimis*".

Discussion ensued regarding the irregular shape of the proposed pool.

- MOTION:** Mr. Bodenhafer moved to recommend approval of VAR2013-0005, 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:**
1. The location of the pool shall be as shown on the attached Exhibit B.
  2. The pool shall not exceed 42" in height.

**SECOND:** Ms. Plummer.

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

Public Hearing closed.

Adjourn as LPA and reconvened as Historic Preservation Board – Withdrawn.

Adjourn as Historic Preservation Board and reconvene as the LPA – Withdrawn.

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

Mr. Kakatsch – no items or reports.

Mr. Steele – no items or reports.

Vice Chair Shamp – requested an excused absence from the April LPA Meeting. She questioned the status of the Historic Preservation ordinance.

Discussion was held.

Community Development Director Fluegel reported the Historic Preservation ordinance would be placed on a Council agenda in May.

Vice Chair Shamp questioned seeing survey stakes for beach access near the Flamingo area.

LPA Attorney Miller explained there had been funding from the TDC regarding improvements to beach accesses and Public Works Director Lewis would have that information.

Discussion ensued concerning beach access surveys.

Mr. Durrett – no items or reports.

Mr. Bodenhafer – pointed out that at the December LPA meeting a motion was approved to schedule a meeting the following week with the Town Manager and department heads; however, the meeting did not occur.

Community Development Director Fluegel reported Mr. Kakatsch reached out to him and asked to rescind his motion and not have the meeting. He stated the LPA needed to rescind the motion or go ahead and schedule the meeting.

Mr. Kakatsch noted the recent Town Manager position change; and added that he would be meeting with the new Town Manager and at that time he would determine if Town Manager Stilwell was interested in pursuing such a meeting.

Discussion was held concerning the meeting with the Town Manager.

Mr. Kakatsch explained he would like to pursue the original motion and have the meeting with the Town Manager at a special LPA Meeting.

Community Development Director Fluegel stated he would move forward with scheduling the meeting.

Ms. Plummer – discussed her concern regarding the new stormwater management improvements as it pertained to the lack of some type of preventive measure (i.e. flap at the seawall) that would keep water from coming back onto her property and flood the street if a full moon and a high tide hit on the same night. She also discussed problems she was encountering with the generator used for the improvement project (i.e. noise, fumes, discharge, etc.). She questioned if a ‘stop work order’ had been issued for 301 Palermo for the pool deck structure

Community Development Director Fluegel responded in the negative; and noted subject structure was lawfully permitted for a pool deck structure and was structurally independent.

Discussion was held concerning whether the subject structure was attached to or detached from the principal structure.

Mr. Kakatsch discussed concerns regarding the water table on Fairweather Lane as it related to the stormwater management improvements.

Mr. Durrett told of his experience with constructing his pool as it related to DEP and Town regulations concerning the water table and disposal of the ground water in the pool during construction. He suggested dewatering regulations should be discussed with Environmental Sciences Coordinator Laakkonen.

LPA Attorney Miller stated she would discuss the matter with Environmental Sciences Coordinator Laakkonen and Public Works Director Lewis.

Mr. Kakatsch asked LPA Attorney Miller to find out if where water was pumped out in front of buildings if it would impact the foundation.

Chair Zuba – requested an excused absence from the March LPA Meeting; and possibly from the April Meeting, too.

Discussion was held concerning which LPA Members would be attending the March and April Meetings.

## **VI. LPA ATTORNEY ITEMS**

LPA Attorney Miller – noted there was a meeting on Thursday for the group reviewing the outdoor display matter.

## **VII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS**

Community Development Director Fluegel – clarified his earlier statement regarding in-ground versus above-ground pools.

Discussion was held concerning in-ground versus above-ground pools and enclosures.

## **VIII. LPA ACTION ITEM LIST REVIEW**

No discussion.

## **IX. ITEMS FOR NEXT MONTH'S AGENDA**

No discussion.

## **X. PUBLIC COMMENT**

Public Comment opened.

Summer Stockton, resident, discussed her reading and interpretation of the codes as it pertained to a 'breezeway'.

LPA Attorney Miller noted the section of the code which addressed 'breezeway'.

Interim Town Manager Stilwell addressed the LPA Members and expressed his pleasure to be able to work with them.

Mr. Kakatsch expressed his thoughts on the Estero Boulevard Improvement Project to Interim Town Manager Stilwell.

Interim Town Manager Stilwell pointed out there were issues with the rights-of-way on Estero Boulevard.

Public Comment closed.

## **XI. ADJOURNMENT**

**MOTION:** Motion by Vice Chair Shamp, seconded by Mr. Durrett to adjourn.

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

Meeting adjourned at 10:40 p.m.

Adopted April 8, 2014. Without changes. Motion by Kakatsch, Second by Bodenhafer

Vote: 5-0, Zuba and Shamp excused

Jane B. Blumner  
Signature

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