



**FORT MYERS BEACH  
LOCAL PLANNING AGENCY (LPA)  
MINUTES  
Town Hall  
2525 Estero Boulevard  
Fort Myers Beach, Florida 33931  
Tuesday, December 13, 2016**

**I. CALL TO ORDER**

Meeting was called to order at 9:00 a.m. by Chair Zuba. Members present: Bruce Butcher, Dan Hendrickson, Suzanne Katt, Jane Plummer, Scott Safford and Hank Zuba.

Town Attorney: Dawn Lehnert

Staff: Matt Noble

**II. PLEDGE OF ALLEGIANCE**

**III. INVOCATION**

**IV. MINUTES - November 8, 2016**

**MOTION:** Mr. Hendrickson moved to approve the minutes, second by Ms. Plummer.

**VOTE:** Motion approved; 6-0.

**V. DCI16-0001 – 2450 Estero Boulevard**

**Rezone subject site from the CB (Commercial Boulevard) district to CPD (Commercial Planned Development) in order to add restaurants as a permitted use on the site and to accommodate a 1,220 square foot restaurant.**

Town Attorney Lehnert swore in those providing testimony. Chair Zuba requested declaration of ex parte communication: Mr. Butcher - drive-by; Ms. Katt - site visit; Ms. Plummer - site visit; Mr. Hendrickson - site visit; Mr. Safford - site visit; Chair Zuba - site visit and conversation with Principal Planner Matt Noble.

Matt Uhle, Attorney, represented the applicant. He distributed photos of the site. He reviewed the staff report and had no issues with the recommendations. He reviewed the rationale behind the request. The applicant leased the property and obtained a certificate of use for a retail business and she thought her restaurant was covered under that certificate. She was found in violation of the code by the Special

Magistrate. He ruled that the property would have to be rezoned by January 10, 2017 or shut down. Mr. Uhle noted that the staff report included his analysis on each point. He indicated the seven deviations addressed existing conditions on the property. One deviation reduced 14 required parking spaces to 5 spaces. Mr. Uhle described additional areas for parking and noted there were probably a total of 12 or 13 spaces available.

Heather Reagan, owner of Mom's, noted that more bicycles parked in the lot than cars. She ordered an eight rack to accommodate her customers. She indicated that there were two empty lots on each side of the property, but her customers rarely parked in the one open lot.

**Public Comment:**

Tom Swanbeck, realtor, stated that parking for their office had never been an issue. Most of the agents did not live on the beach.

Principal Planner Noble noted that staff recommended denial of Deviation 7 and the applicant agreed to provide vegetation on the northern property lines as outlined in Condition 8. He reviewed the conditions in the staff report.

-Dave Tezak, resident, summarized a letter he distributed to the LPA. He discussed the zoning request, lack of parking, illegal parking, increase in patron traffic, and alleged deception by the applicant. He stated the restaurant would be better suited to the Downtown District.

-Ron Fleming, resident, disagreed with everything Mr. Tezak said. He stated that rezoning her restaurant was in the best interest for everyone. He urged the LPA to consider approving the request.

-Ron Reagan, brother-in-law of applicant, was a strong advocate of small businesses and he felt that it was a great opportunity for an existing business to provide opportunities for growth in the area.

LPA Member Butcher clarified that the vacant lot on Chapel St. was zoned Commercial Planned Development (CPD).

LPA Member Hendrickson read an email into the record from Jay and Katherine Light to Town Administrative Assistant Lois Poff:

[We're writing in strong support of the rezoning application of Heather Regan, aka Mom's, at the corner of Estero and Chapel. Places like Mom's reflect the very essence of Fort Myers Beach - beachy. As neighbors right down Chapel Street, we see no down side to this proposal. Anyone who has tasted her baked goods will agree with us. The only down side would be a refusal to allow her continued operation. Thanks for your consideration, Jay and Kathy Light.]

Ms. Plummer commented on small businesses and she was in favor of the request.

Mr. Hendrickson was concerned about parking and was not reassured by the current parking needs of the property. He was not sure how to address the parking.

Mr. Safford would like to see the parking more defined. He questioned changing the hours of operation to close at 9:00 p.m. off season. Mr. Uhle indicated that would not be a problem.

Chair Zuba questioned whether the restaurant was licensed to operate today. Mr. Uhle replied that it was not and he described the existing order by the Special Magistrate.

Chair Zuba questioned whether inspections had been performed. Ms. Reagan stated they had been inspected by the Fire Department and the DBPR. Mr. Noble confirmed that the restaurant passed all inspections. Chair Zuba questioned the egress and ingress for parking and he questioned whether traffic would be entering or exiting Estero. Mr. Noble replied that

there would be a driveway connection to Estero for on-site circulation and exit on Chapel Street. Chair Zuba felt it was precarious curb cut. Ms. Plummer indicated that she never had a problem getting in and out of that location in the past.

Chair Zuba questioned the timeline with the request. Mr. Uhle explained why the process took so long. Discussion was held concerning the vacant parking lot next door.

**MOTION:** Ms. Katt moved that they recommend approval of the zoning change from Commercial Boulevard to Commercial Planned Development in order to accommodate a 1,220 square foot restaurant with the conditions enumerated by staff and deviations 1-6 are approved and 7 was denied. They should also find that the change is consistent with the comprehensive plan; second by Ms. Plummer.

**VOTE:** Motion approved by 5-1 with Chair Zuba dissenting.

#### **VI. VAR16-0012 – 21421 Widgeon Terrace – Duffey Balcony Variance**

**The applicant is seeking a variance (VAR) to allow the further reduction of non-conforming water body and rear setbacks in order to allow the construction of a four foot cantilevered extension of a second floor balcony. The variance would reduce the current 18.5 ft. water body setback to 14.5 ft. and the current 15 ft. rear setback to 11 ft.**

Becky Duffey reviewed her request to add functional space on the upper level. She had approval from her neighbors and the association.

Chair Zuba requested ex parte communication: Ms. Katt - none; Mr. Butcher - none; Chair Zuba - site visit; Ms. Plummer - familiar with the property; Mr. Hendrickson - bike and boat visit; Mr. Stafford - familiar with the neighborhood.

Senior Planner Megan Will reviewed the variance request. Staff recommended denial of the request because it did not meet the required considerations and there were no exceptional circumstances as related to the property. She revealed that the property was purchased with the understanding of the established setbacks and it was not a minimum variance. She discussed setting a precedent.

Ms. Duffey did not understand how it would erode the water body setback because nothing was being constructed on the ground level.

Mr. Butcher clarified the view rights.

Ms. Plummer did not see how it would set a precedent because it was not affecting the water body and was not going into the ground. Ms. Will replied that previous variances are often cited for granting future variances.

Mr. Hendrickson clarified the non-conformity issue.

Ms. Will explained skewed property boundaries on LEEPA.

Town Attorney Lehnert discussed riparian rights.

Ms. Will stated that a variance for an elevated pool structure was granted for a home two doors down.

Ms. Plummer indicated it was a unique condominium community and they did not have a 25-foot water body setback. She felt if the condominium association approved the request, it should not have come in front of the LPA. Ms. Will noted that they were required to meet the LDC and there were setbacks. Ms. Plummer did not think the request was injurious to the neighborhood and she felt it was an extraordinary condition. She did not agree with the staff report based on the fact that it was a unique community.

Mr. Butcher clarified that the construction would occur on the ground.

Ms. Duffey explained that the pool cage would not go all the way to the ground. The lower level of the cage could be at the previous point.

Ms. Katt questioned whether any previous variance had been granted because improving a view had been considered an exceptional condition. Ms. Will and Mr. Noble replied in the negative.

Dave Osteg, resident, stated that the Duffeys were great neighbors and the [HOA]Board unanimously approved their request.

Fran Myers, resident, supported their request and she asked the LPA to consider approving the variance.

Ms. Plummer reiterated her support and thought it could be reworked.

Chair Zuba stated that it was more building than what should be there.

Ms. Katt had a difficult time trying to fit the reasons into the law. She did not think that improving the view was an exceptional condition. She did not support the request.

**MOTION:** Ms. Katt moved to recommend denial of the variance for 21421 Widgeon Terrace with a finding that it was inconsistent with the Comprehensive Plan and did not meet the criteria for approval as set forth in LDC 34-87; second by Chair Zuba.

**VOTE:** Motion approved; 5-1 with Ms. Plummer dissenting.

## **VII. LDC AMENDMENT VILLAGE ZONING DISTRICT SUBDIVISION IV - Sec. 34-694**

Town Attorney Lehnert indicated that the amendment was a result of past parking issues on Donora. As a result of setback changes made in 2005, the Red Coconut cannot continue to function. She explained why she recommended eliminating the 5-foot setback on the gulf side and revisit that issue after the county was done with Estero Blvd. improvements. Town Attorney Lehnert stated that she would like a determination of whether or not it was consistent with the Comp Plan and any recommendations to send forward to Council Members.

Principal Planner Noble found it to be consistent with the Comp Plan.

Ms. Plummer questioned what removing (3)f. would do to construction. Town Attorney Lehnert replied that it would make the County deal with Estero Blvd. and if a setback was required in the future, they could put one in. She described the maintained right-of-way. She recommended eliminating all of (3)f. or removing the last statement.

Chair Zuba commented if they eliminated (3)f., there would be no protection with regard to a setback and there would be no requirement to put in a sidewalk on that side. Town Attorney Lehnert indicated there was a 20-foot setback on Estero from the edge of the pavement but it had not been enforced. She stated that the 2005 regulations diminished what the Red Coconut was able to do.

Beverly Grady from Roetzel & Andress represented the Red Coconut. She felt that it was a quasi-judicial case. She noted the sole issue of the ordinance was setting a setback on property lines for a single community. She distributed a letter and exhibits that were entered in the record.

Chair Zuba noted it seemed that the Red Coconut was being given flexibility by reducing the paved right-of-way from 20 feet to 5 feet.

Ms. Grady stated that was an incorrect assessment because the change in 2005 took away the rights of Red Coconut. She reviewed the history of the Red Coconut included in the handout. There were no property setbacks in the March 2003 Ordinance. In 2005, setbacks were added, the Red Coconut was not noticed and the setbacks were not enforced. She noted that Red Coconut was not aware of the 2005 change until Code Enforcement issued citations over Labor Day. She requested that they eliminate (d)(3)f.

Chair Zuba did not have a problem with changing the setbacks in (1)c. or (2)e. He did have a problem eliminating (3)f. Ms. Plummer indicated that they should not be regulating Red Coconut's internal

space. Town Attorney Lehnert suggested keeping publicly maintained street in (1)c. and (2)e. She wants Red Coconut to be in the same space they were prior to the glitch ordinance in 2005. She suggested keeping the paved right-of-way on Donora in (3)f. if they opted not to eliminate the section entirely.

Ms. Katt questioned whether a trailer could back up to the sidewalk if the 5-foot setback was eliminated. Town Attorney Lehnert replied in the affirmative. Ms. Katt had safety concerns. Ms. Plummer noted that houses on Estero will have sidewalks that come right up to their door. She stated that they were not asking those houses to move in 5 feet.

Mr. Hendrickson did not think it was unreasonable to request a 5-foot setback. Mr. Safford favored the elimination of (3)f. Ms. Plummer agreed with the elimination of (3)f. Ms. Katt preferred leaving a 5-foot setback. Mr. Butcher questioned the County's jurisdiction. Town Attorney Lehnert replied that Estero was a County road and construction would change what that area looks like.

Fran Myers, Red Coconut, stated that the Interim Town Manager and the Director of Public Works measured parking spaces that went through RV property. She noted that the Red Coconut could not continue to be squeezed from each side. She stated that if the County decided to build 9-foot sidewalks, 5 feet from that right-of-way would remove her washer and dryer, restrooms and she would probably lose a row of parking. She asked the LPA to look at it carefully.

**MOTION:** Chair Zuba moved that it was consistent with the Comp Plan and revisions to (1)c. and (2)e. were supported, but there was no consensus on (3)f.; second by Ms. Katt.

**VOTE:** Motion approved; 6-0.

## **VIII. HISTORIC PRESERVATION BOARD MEETING**

### **1. Reorganization**

**MOTION:** Ms. Plummer moved to nominate Ms. Katt as Chair and Mr. Hendrickson as Vice Chair; second by Chair Zuba.

**VOTE:** Motion approved; 6-0.

### **2. LPA Vice Chair**

**MOTION:** Chair Zuba moved to nominate Mr. Butcher as Vice Chair of the LPA; second by Ms. Katt.

**VOTE:** Motion approved; 6-0.

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

Mr. Butcher complimented Ms. Will on her presentation to the joint LPA - Town Council meeting. He questioned the boundaries of the Little Estero Preserve. He indicated that the property line was not clear. Town Attorney Lehnert noted that the actual boundary had to be determined. A hearing with the DEP was scheduled for June and the boundary was one of the issues to be discussed.

Ms. Katt thanked Town Attorney Lehnert for the LDC book. She thanked Mr. Noble and Ms. Will for doing a good job on the applications presented. She would appreciate having a memo attached to ordinances to explain what staff needed.

Ms. Plummer thought the boat parade was a success.

Mr. Hendrickson questioned whether the LPA was directed to look at side setbacks. Ms. Will indicated that Council would discuss the issue at a work session in January before sending it to the LPA.

Chair Zuba honored Joanne Shamp for her work on the LPA and the Historic Preservation Board Meeting. Chair Zuba welcomed Scott Safford. Chair Zuba requested that the 50% rule and as-built surveys be added to the LPA agenda.

**X. LPA ATTORNEY ITEMS** - no items.

**XI. COMMUNITY DEVELOPMENT ITEMS**

Ms. Will revealed that she will be relocating and her last day will be January 6, 2017.

Mr. Noble questioned changing the order of the Pledge and Invocation on the agenda. Chair Zuba stated the order was fine as is. Mr. Noble revealed that the Chamber was not available for their January meeting. He suggested meeting at Newton.

**XII. ITEMS FOR NEXT MONTH'S AGENDA** - January 10, 2017

**XIII. PUBLIC COMMENT** - no public comment.

**XIV. ADJOURNMENT**

**MOTION:** Chair Zuba moved to adjourn the meeting; second by Mr. Butcher.

**VOTE:** Motion approved; 6-0.

Meeting adjourned at 11:44 a.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

- End of document

## ORDINANCE 16-08

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE CHAPTER 34 TO CREATE SUPPLEMENTAL REGULATIONS APPLICABLE TO RENTAL OF DESIGNATED SURPLUS PARKING SPACES; PROVIDING FOR A DEFINITION OF "SURPLUS PARKING SPACES"; REQUIREMENT TO OBTAIN A USE PERMIT TO ALLOW RENTAL OF DESIGNATED SURPLUS PARKING SPACES; PROVIDING FOR SEVERABILITY; CONFLICTS OF LAW; CODIFICATION, SCRIVENER'S ERRORS; AND AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council has the authority to enact and amend ordinances and regulations pursuant to the provisions of Laws of Florida Chapter 95-494, Florida Statutes chapters 163 and 166 and its Town Charter section 3.01; and

**WHEREAS**, on September 6, 2016 the Local Planning Agency reviewed the proposed provisions and found they were not inconsistent with the Town's Comprehensive Plan; and

**WHEREAS**, the Town Council held public hearings concerning the proposed ordinance on October 3, 2016 and \_\_\_\_\_; and

**WHEREAS**, the Town Council finds it is appropriate and in the best interest of the citizens and visitors of the Town of Fort Myers Beach to adopt this ordinance.

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

### **SECTION ONE:    AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 34**

Town of Fort Myers Beach Land Development Code chapter 34 is amended as set forth below with strike through indicating deleted text and underline indicating additional text.

## **CHAPTER 34**

### **ARTICLE IV. SUPPLEMENTAL REGULATIONS**

#### **DIVISION 26. - PARKING**

##### **Sec. 34-2011. Types of parking facilities.**

Parking facilities in the Town of Fort Myers Beach take a variety of forms, generally classified as follows:

- (1) *Single-purpose parking lots.* Single-purpose parking lots are designed to serve individual businesses, multiple-family buildings, mixed-use buildings, and multiple-occupancy complexes. Single-purpose parking lots are usually located on the same parcel as the use(s) they serve and may include parking spaces under a building or in a parking garage.
  - a. Most single-purpose parking lots are considered by this code to be accessory uses of land (§ 34-1171 ~~of this chapter~~) and thus can be built to serve any permitted principal use on the same parcel of land.
  - b. Some single-purpose parking lots serve two or more non-abutting parcels, as provided in § 34-2018 ~~of this chapter~~ for joint-use parking lots.
  - c. Designated Surplus parking spaces in some single-purpose parking lots may be rented to the general public ~~during peak periods~~, as provided in subsection 34-2019(a) ~~of this chapter~~.

(2)-(3) *No change.*

#### **Sec. 34-2012. Definitions.**

For purpose of this division only, certain words or phrases are defined as follows:

Surplus parking spaces means additional parking spaces above and beyond those spaces required by the Land Development Code to support specific land uses (see § 34-2020 for required parking spaces by land use) on a specific parcel of land. The surplus parking spaces must be part of already established parking spaces on the individual property.

*No change to the balance of this section.*

#### **Sec. 34-2017. - Parking lot surfaces.**

- (a) *No change.*
- (b) *Low turnover parking lots.* Due to the low volume of vehicle turnover in this type lot, alternative unpaved parking lot surfaces may parking lot can be provided for some or all of the required parking spaces for two or more unrelated businesses also be permitted provided that the areas are adequately drained and continuously maintained in a dust-free manner.

(1)-(4) *No change.*

(c) *Reduced surfacing standards.*

- (1) The director is authorized to permit portions of high turnover parking lots (including parking lot aisles), to meet the surfacing standards for low turnover parking lots (subsection §34-2017(b)(1),—above) when the reduced surfacing standard will be used in those portions of the parking lot expected to receive the lightest usage, such as overflow or employee parking areas.

- (2) This subsection ~~must~~ may not be construed ~~inconsistently in a manner~~ inconsistent with the Americans with Disabilities Act (ADA) of 1990.
- (d) *No change.*

**Sec. 34-2019. - Other use of parking lots.**

(a) Designated surplus Pparking spaces that are not in daily use and are located in parking lots having ten or more delineated parking spaces and meeting the other requirements of this division may be rented to the general public during peak periods provided that a use permit has been obtained. The use permit application must include:

- (1) A survey of the subject property;
- (2) An analysis of the required parking spaces utilizing § 34-2020 for required parking spaces by land use;
- (3) A parking plan that includes the total number of parking spaces, the number of required parking spaces to accommodate existing uses of the subject parcel, and the number of designated surplus parking spaces provided;
- (4) The parking plan must include the location of the designated surplus parking spaces and the methodology (such as parking block, signage, or pavement markings such as paint) of delineating the surplus parking spaces;
- (5) Any signage advertising designated surplus parking spaces must be in conformance with the requirements of chapter 30.

(b)-(c) *No change.*

**SECTION 2: SEVERABILITY.**

If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or for any reason whatsoever beheld invalid, then such provision will be null and void and will be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this ordinance.

**SECTION 3: CONFLICTS OF LAW.**

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

**SECTION 4: CODIFICATION AND SCRIVENER'S ERRORS.**

The Town Council intends that this ordinance will be made part of the Fort Myers beach Code of ordinances; and that sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the Town Manager or designee, without the need for a public hearing.

**SECTION 5: EFFECTIVE DATE.**

This ordinance becomes effective immediately upon its adoption.

**THE FOREGOING ORDINANCE** was enacted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_ and, upon being put to a vote, the result was as follows:

Dennis Boback	_____
Summer Stockton	_____
Tracey Gore	_____
Rexann Hosafros	_____
Anita Cereceda	_____

**DULY PASSED AND ENACTED** this \_\_\_\_ day of \_\_\_\_\_, 2016.

**ATTEST:**

**TOWN OF FORT MYERS BEACH**

By: \_\_\_\_\_  
Michelle Mayher, Town Clerk

By: \_\_\_\_\_  
Dennis C. Boback, Mayor

Approved as to form by:

By: \_\_\_\_\_  
Town Attorney