



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

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
Tuesday, April 9, 2013

I. CALL TO ORDER

Meeting was called to order at 9:05 a.m. by Chair Zuba; other members present:

Al Durrett
John Kakatsch
Jane Plummer
Joanne Shamp
Alan Smith
James H. Steele – excused.
Hank Zuba

LPA Attorney, Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director – ETA at 9:15 a.m.
Leslee Chapman, Zoning Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES

A. Minutes of March 12, 2013

MOTION: Ms. Shamp moved to approve the Minutes for March 12, 2013 as presented; second by Mr. Smith.

VOTE: Motion approved, 6-0.

The Local Planning Agency passed on good wishes to Zoning Coordinator Chapman on her upcoming nuptials.

V. PUBLIC HEARINGS

A. SEZ2013-0001, The Beached Whale

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman presented comments for SEZ2013-0001, Special Exception for the Beached Whale, on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the site and noted the location of the subject property was at 1249 Estero Boulevard. She reviewed the variance request for a special exception in the Downtown Zoning District to expand the area where outdoor consumption on premises was permitted to include 636± square feet of a proposed new deck at the front of the existing building on the subject property (Future Land Use – Pedestrian Commercial). She displayed renderings of the proposed site plan, existing back-out parking, proposed plan and elevation; and discussed the Applicant's request to remove six back-out parking spaces, relocate ADA parking spaces, a new outdoor deck with permanent roof cover, adjust operating hours for the deck area from 7:00 a.m. to 2:00 a.m., and offer acoustic music on the deck area from 11:00 a.m. to 10:00 p.m. (Monday through Friday). She noted there would be a roof extension over most of the proposed deck; there were no plans to extend the upper level deck; and that the request was for an extension for the ground-level deck. She utilized a PowerPoint presentation to review staff's analysis of the Application according to the supporting regulations:

- Section 34-88 Special Exceptions – Function: The Town Council shall hear and decide all applications for special exceptions permitted by the district use. *Considerations* - In reaching its decision, the Town Council shall consider the following whenever applicable:
 - Section 34-88(2)(a):
Whether there exist changed or changing conditions [that] make approval of the request appropriate.
As contemplated in the Comprehensive Plan, the Times Square/Downtown area has continued to emerge as a vibrant urban core for the Town, and as such, that area can support a more intense variety of uses that are appealing and attractive to residents and visitors alike. *The Applicant's request was consistent with this policy.*
With increasing congestion and traffic delays on Estero Boulevard, and the delay in Lee county making improvements to that right-of-way, the Comprehensive Plan encouraged any opportunity to remove traffic obstacles and improve traffic flow, and should be encouraged and supported. *The Applicant's request to remove six back-out parking spaces was consistent with this policy.*
 - Section 34-88(2)(e):
Whether the request was consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.

The subject property was located in what the Comprehensive Plan termed the Downtown Core. The Comprehensive Plan describes a vision for this area that “boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an ‘Old Estero Island’ character to the buildings”.

In both the Community Design Element and the Future Land Use Element, the Comp Plan described a vision for the Downtown Core/Times Square area as a ‘nucleus of commercial and tourist activities’ with pedestrian-oriented commercial uses that enhance the experience of both the resident and visitor. *The Applicant’s request was consistent with this vision.*

○ Section 34-88(2)(a):

Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

The very nature of this application indicated that the requested use of consumption on premises was not a use allowable by right on the subject property. It was however, a use permitted by special exception (Section 34-126(a)(2)).

The Applicant’s request was appropriate at this site due to the subject property’s location in the Downtown Core Area Outdoor Dining, both on private and on public property was encouraged by the Comp Plan and the Land Development Code. *Approval of the Applicant’s request, along with conditions requiring appropriate building permits, would ensure that all performance standards were met.*

○ Section 34-88(2)(g):

Whether the request would protect, conserve, or preserve environmentally critical areas and natural resources.

The Applicant’s request would have no negative effects on the environmentally critical areas and natural resources of Fort Myers Beach because the subject property was located in an established commercial district, landward of the Coastal Construction Line(s) and far from environmentally critical areas and sensitive natural resources. *Approval of the Applicant’s request should be conditioned to require that any outdoor lights met with the Sea Turtle lighting requirements.*

○ Section 34-88(2)(h):

Whether the request would be compatible with existing or planned uses and not cause damage, hazard, nuisance or other detriment to persons or property.

The subject property and the area immediately surrounding the site were within the Pedestrian Commercial Future Land Use category. The Comprehensive Plan’s vision for this area does not require that it be transformed from an intensively commercial area into a primarily residential district or any other use. *It possessed a vibrant mix of uses, and as such, staff felt the Applicant’s request was compatible and appropriate within its neighborhood.*

○ Section 34-88(2)(i):

Whether the requested use would be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

The consumption on premises of alcoholic beverages on the subject property would be required to comply with the applicable standards in the Fort Myers Beach LDC including,

but not limited to Section 34-1264. *Staff recommended finding that he requested use, as conditioned, is in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.*

She reported that staff recommended **approval with conditions** of the requested special exception in the Downtown Zoning District to expand the area where outdoor consumption on premises was permitted to include 636± square feet of proposed new deck at the front of the existing building on the subject property with the following conditions:

1. Consumption on premises is limited to the building located on the subject property at 1249 Estero Boulevard and both the existing upper, and proposed new lower outdoor decks depicted on the attached 'Exhibit C'.
2. Hours of operation for consumption on premises shall be limited to the hours of 7:00 a.m. to 2:00 a.m., daily for both inside the building and the outdoor deck area.
3. Acoustic music shall be limited to from 11:00 a.m. to 10:00 p.m., Monday through Friday.
4. Any proposed roof overhangs and/or projections must meet the Commercial Design Standards set forth in LDC Section 34-991 and specifically Section 34-995(3).
5. All work proposed to be done will require a Limited Review Development Order and any other permits determined to be necessary at the time of permitting.

She reported that prior to the Public Hearing she submitted to the LPA an additional exhibit, 'Exhibit E', which was a full survey of the subject property; and a copy of a letter from the adjacent property owner, Mr. Ganim, listing his concerns and objection to the special exception.

Ms. Shamp noted how the application should be reviewed with the public's safety in mind (i.e. traffic, pedestrian and bicycle safety, stormwater management, and noise). She questioned stormwater management as it related to underneath the deck.

Zoning Coordinator Chapman indicated 'Exhibit D' was a memo from the Public Works Director who recommended that stormwater management be dealt with under the proposed deck with a type of 'holding facility'. She added that issue would be reviewed and the required specifics would be addressed under the Limited Review Development Order process; and that the LPA could add a specific condition on stormwater management.

Ms. Shamp discussed the memo from the Public Works Director as it pertained to a handicapped parking space that must not extend into the right-of-way and comments concerning the overhang. She noted recent newspaper articles about a Lee County policy called 'complete streets', and expressed her concern that future changes to Estero Boulevard may not include sidewalks. She questioned what else would impact the ability for sidewalks/bicycle paths with respect to the right-of-way

Zoning Coordinator Chapman reported that staff would recommend at the time of the Limited Review DO that the handicapped space be moved so it was fully included within the subject property boundaries. She indicated that the LPA could add this to the conditions.

Ms. Shamp asked if the roof overhang was addressed in Condition #4.

Community Development Director Fluegel explained the LPA could comment on the overhang and make a recommendation.

Discussion ensued regarding the Non-Residential Design Standards concept of extending porches and balconies (i.e. Old San Carlos).

Ms. Shamp pointed out that the LPA was still awaiting a comprehensive noise policy for the Downtown, and questioned if there had been any direction from Town Council on this issue.

Community Development Director Fluegel reported a 'noise ordinance' would be on the Town Council agenda for a Work Session on April 15, 2013, and that the Town had hired a consultant to help develop the concept of an entertainment district that could be applicable or as an overlay to the Downtown Zoning District.

Discussion was held concerning noise issues, and hours of operation until 2:00 a.m.

Community Development Director Fluegel questioned Condition #3 regarding hours of acoustic music and whether 'as controlled by future noise ordinance' could be added to the condition.

LPA Attorney Miller noted there was probably also concern regarding 'crowd noise' until 2:00 a.m.; and if the LPA had concern about uses pertaining to the proximity to residential uses then it could be modified.

Discussion ensued regarding the hours and days of the week permitted for outdoor acoustic music as requested.

Ms. Plummer questioned if there was a recommendation by staff for a limitation to the number of outdoor seating.

Zoning Coordinator Chapman recounted a previous special exception application for La Ola, and how the seating configuration was defined which created the need for La Ola to come back with a special exception request costing \$4,000 every time the owner wanted to reconfigure the seating. She reported staff had moved away from seating limitations because it was effectively controlled by the Building Code and the Fire Marshall when performing their annual inspections and setting capacity loads.

LPA Attorney Miller stated the LPA could add a condition that "*seating shall comply with the Building Code and any Fire Department requirements*".

Community Development Director Fluegel explained that the Town did not know what the final right-of-way design plans for Estero Boulevard were; however, one thing the subject application accomplished was the elimination of the back-out parking onto Estero Boulevard which staff felt was very important and that they believed it contributed to the 'pedestrian-realm'.

Ms. Shamp questioned if there was a landscape buffer requirement on Estero Boulevard according to the code.

Zoning Coordinator Chapman responded in the negative. She noted an existing landscape bed on the presentation slide which would be removed for the deck; and how landscaping or plant containers could impact the line of sight for vehicles.

Mr. Durrett questioned #2 on Exhibit 'D' regarding storing water under a deck and how to clean it out.

Zoning Coordinator Chapman recounted a prior special exception request by the Surf Club which proposed a deck over the drainage area.

Community Development Director Fluegel discussed stormwater vaults and occasional maintenance requirements and costs.

Zoning Coordinator Chapman noted matters that would be addressed during the LDO process such as but not limited to stormwater issues.

Mr. Kakatsch noted his concern regarding the closeness of the deck to both Palermo Circle and Estero Boulevard and related safety issues. He explained where he would like to see some type of bollard placed.

Zoning Coordinator Chapman pointed out that the deck would be elevated which would reduce some of the pedestrian/car conflict but not necessarily car/structure conflict. She deferred the question to the Applicant's representative.

Community Development Director Fluegel pointed out the low speed at this section of Estero Boulevard.

Ms. Plummer asked if there would be any improvements required to the sidewalk as a condition.

Zoning Coordinator Chapman responded in the negative.

Ms. Plummer reported she would like to see that area to be a 'designated design safe area', and asked if there was five feet between the sidewalk and the deck.

Zoning Coordinator Chapman addressed Ms. Plummer's question by describing the site dimensions as indicated on the projected presentation slide (i.e. right-of-way line on Estero Boulevard and Palermo Circle and Primo Drive). She added that sidewalks were generally included on rights-of-way and not private property.

Ms. Plummer explained that she would not like to block the vehicular line-of-sight on the subject property, but would like to see some type of support that would prevent a car from impacting with the deck [as noted by Mr. Kakatsch].

Ms. Shamp noted in the Land Development Code there were certain setbacks from the right-of-way for structures, specifically for the purpose of line-of-sight and vision, and asked if the deck was constructed, would it go up to the right-of-way or what would be the setback from the right-of-way with regard to the line-of-sight when coming through the intersections.

Zoning Coordinator Chapman reported the deck was proposed to be built to the Palermo Circle right-of-way, not to the Primo Drive right-of-way. She noted the subject property was in a portion of the Downtown where *'built to'* was encouraged, so there were no setback requirements.

Discussion ensued concerning 'theory and practice conflict' as it related to Estero Boulevard and sidewalks; the tight dimensions of the subject property; and the Applicant's ability to build to the right-of-way without providing sidewalks.

Mr. Kakatsch approached the projector screen and indicated on the site rendering slide his suggestion regarding 'white markers on Estero Boulevard and yellow concrete or steel polls every two feet' to be installed on the property.

David Easterbrook, Easterbrook Consulting & Design and representing the Applicant, noted that the Applicant wanted to eliminate the back-out parking spaces due to the safety issues associated with back-out parking. He discussed his belief that the proposed deck would be very visible even though it would go up to the property line; and addressed the sidewalk issue and reviewed his belief that there were already 'white markings' on the ground in that area. He expressed his intention not to install bollards along the property. He reported the deck would be solidly built; the asphalt under the proposed deck would be removed; and that he did not want to create a 'retention pond' under the deck, but he intended to dig down about six inches for a percolating area with crushed shell or lime rock. He added there would be access to underneath the deck and that it would be the same elevation as the 'Beached Whale'. He stated that he understood the roof had to be moved and he would pull it back in from the right-of-way. He requested to be able to use the 'as-built' survey and explained he would bring everything in on the property line, but if he needed another survey afterwards he would be *"open to that"*.

Mr. Smith asked if the acoustic music would also be on Saturday and Sunday.

Mr. Easterbrook explained that the music at the Beached Whale would be inside on Saturday and Sunday; and that they wanted the opportunity to have a guitar player outside without amplification sitting in the corner facing the patrons on the other days.

Ms. Shamp questioned 'Exhibit B', Page 1, as it pertained to the proximity of the corner of the proposed deck to the property line in relation to the height of the deck, the stop sign on Palermo Circle, and vehicular line-of-sight.

Mr. Easterbrook pointed out there was an existing handicapped ramp that extended from the deck and a planter that was almost to the same point as the proposed deck.

Zoning Coordinator Chapman displayed an aerial map as a visual aid.

Mr. Easterbrook stated the Applicant had no problem with relocating the ADA parking space, and they might create a space for a palm tree or some plant.

Chair Zuba discussed his view that he would like to see a compromise on the sidewalk issue and his preference for some type of landscape buffering for both pedestrian and vehicle safety that would not impede the vehicular line-of-sight.

Mr. Easterbrook reported buffering was not included in their plan since there was not much room in the subject area.

Discussion ensued regarding buffering.

Chair Zuba requested Mr. Easterbrook to keep in mind some type of buffering when working with staff on the special exception.

Mr. Kakatsch discussed his support for even a three or four foot wide sidewalk along with bollards and shrubs so pedestrians would have some type of walkway otherwise he felt pedestrians would be pushed onto the street.

Mr. Easterbrook noted what was presently on the subject property and stated they would encroach less with the proposed plan.

Discussion ensued concerning pedestrian and vehicular safety; sidewalks on the Island; and an existing buffer on the front of the property.

Zoning Coordinator Chapman explained there was already a paved area in existence within the Estero Boulevard right-of-way that was being used as a sidewalk that was not reflected on the plans. She displayed an aerial view slide as a visual aid.

Mr. Easterbrook approached the projection screen and used the aerial view slide displayed to indicate the existing five foot buffer.

Chair Zuba explained that the existing five foot buffer was not defined enough at this time for the purpose of pedestrian safety.

Mr. Durrett recounted his experience in the past with a DRI for his business and the expense he incurred to install a turn lane on Estero Boulevard. He stated his belief that something needed to be done for a sidewalk.

LPA Attorney Miller interjected that the turn lane was required because his project was a DRI, and the matter at hand was a special exception.

Discussion was held regarding sidewalks and requirements for property owners.

LPA Attorney Miller stated that the County had control of the subject right-of-way. She noted that it appeared the majority of the deck was along Palermo Circle and not Estero Boulevard.

Discussion ensued concerning the subject site plan, survey, and the deck in relation to Palermo Circle.

Ms. Shamp reviewed 'Exhibit B', Page 2, with respect to the removal of the back-out parking which were included in the right-of-way, and how that would help to improve safety on Palermo Circle. She suggested painted white lines to delineate where the property ended and the location of the sidewalk. She explained her concern about the point of the deck approaching Estero Boulevard as it pertained to the vehicular line-of-sight; and suggested taking a slight curve that parallels the Boulevard instead.

Ms. Plummer discussed her views regarding the sidewalk and suggested yellow paint and white stripes that would delineate that 'no parking' on the subject space.

Community Development Director Fluegel reviewed staff's natural assumptions with the proposed special exception that the deck would come out to the limits of the existing asphalt and the existing asphalt would remain, but the indicated parking spaces would be gone. He noted that the concept of painting the area as applicable to all County road right-of-way standards and striping it as a 'no parking zone' was a good idea.

Mr. Easterbrook suggested painting 'pedestrian walkway' on the striped area; and reported he believed the Applicant would be amenable to that request; and questioned how it would be designed.

Community Development Director Fluegel pointed out that the 'no parking zone' could be a general concept but, the property owner would have to obtain a permit for right-of-way work from Lee County.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – site visit; Mr. Kakatsch – site visit; Mr. Smith: - site visit; spoke with manager; Chair Zuba – site visit; Ms. Plummer – site visit; Ms. Shamp – site visit; during site visit there was an employee who she spoke to concerning the dimensions of the proposed deck; Mr. Steele – not present.

Public Comment opened.

Larry Abramoff [sworn in by LPA Attorney] stated he owned a house at 126 Palermo Circle that was approximately 150 feet away from the subject property. He recounted his experience in serving on the Zoning Board of his former hometown and with owning a restaurant; and how he understood the position of both the LPA and the owner of the Beached Whale. He reported he was generally in favor of the special exception request; however, he noted his concerns regarding the loud amplified music inside the business until 2:00 a.m. which he could 'feel' vibrate through his house, and the current request to open up the front of the restaurant to the street side. He stated he would support the request if there could be a restriction placed on the inside music (i.e. inside music to be acoustic or amplified only until 10:00 p.m.).

Town of Fort Myers Beach – Local Planning Agency

April 9, 2013

Page 9 of 19

Peter Dolid [sworn in by LPA Attorney] stated he owned the property at 117 Palermo Circle which was next to the Beached Whale. He echoed the comments of Mr. Abramoff's comments. He asked how the business would get the food/drink in and out of the main building to the patrons on the deck, and how this might cause the door to be opened continually which would result in the music spilling out to the neighborhood. He noted his concerns with the current noise from people congregating in the parking area; how the deck would create even more noise for the neighborhood; and asked if someone could guard the parking lot at night to prevent rowdy people from congregating in the lot. He asked that no televisions be permitted on the deck; and noted the problem he currently experienced with having cars waiting in front of his property for a parking space and using his driveway to turn around.

Bonnie Carpenter, General Manager of the Beacon Motel, explained the motel was directly across the street from the Beached Whale and she was mainly concerned with the loud noise and music that came from the subject property. She stated when sitting in her office that the windows vibrated from the music coming out of the Beached Whale; and that she had lost customers due to the loudness and late hour allowed for the inside music. She noted her belief that if the special exception was approved that it would create even more loud music and confusion in the area, and that she opposed the special exception request.

Mr. Easterbrook explained there would be a large sliding glass door coming off the restaurant to the deck with an operable swing door; and how the one door would be open during the day and then work on a 'closer' (accordion pocket-style door) at night to minimize the noise.

Ms. Plummer asked if the sliding glass door was only for the servers or for patrons, too.

Mr. Easterbrook stated it would be for everyone to use.

Ms. Shamp expressed her belief that this would be an opportunity for the Beached Whale to install high quality doors that would address the noise issue.

Mr. Easterbrook stated the doors he intended to use were insulated and hurricane-proof.

Chair Zuba asked Mr. Easterbrook to address the comments regarding the noise level of the inside music until 2:00 a.m.

Mr. Easterbrook reported the inside music ended at 1:30 a.m.

Ms. Shamp asked if the music could be 'toned down a little' after 10:00 p.m.

Mr. Easterbrook explained that it was his understanding that the band tried to keep the sound level according to the code (no more than 90 decibels).

LPA Attorney Miller stated the receiving land use for residential was '7:00 a.m. to 10:00 p.m. and was 66 decibels' and '10:00 a.m. to 7:00 a.m. and was 55 decibels'.

Chair Zuba suggested a condition of approval to comply with what the Town Code provided in their noise ordinance.

Community Development Director Fluegel noted that the decibel levels as stated by the LPA Attorney was currently in the Code, and if the Town received a complaint they would enforce the decibel level.

Discussion was held concerning noise complaints and enforcement.

Ms. Shamp noted the recommended condition that '*acoustic music shall be limited to from 11:00 a.m. to 10:00 p.m.*' and suggested that it be specified as 'non-amplified acoustic music'.

Mr. Easterbrook confirmed that he understood the music would be 'unplugged'.

Chair Zuba recognized Mr. Abramoff.

Mr. Abramoff explained that approval of the special exception would give the Applicant additional seating which meant additional revenue, and the neighbors got additional noise. He requested a specific time limit be placed on the amplified music or on all music.

Public Comment closed.

Discussion ensued regarding the additional seating; a delineated sidewalk, 5-6 posts installed on the Estero Boulevard side of the sidewalk in addition to paint as discussed; closing the sliding door at 10:00 p.m.; and location of doors and access to restrooms.

Ms. Plummer questioned the status of the handicapped ramp.

Mr. Easterbrook stated handicapped access would be changed to a 'lift'.

Ms. Plummer questioned if the handicapped access was changed to a lift-style, would they also have to give access to the next level at the subject business.

Zoning Coordinator Chapman explained that would be an issue addressed at the time of building permit.

Discussion continued regarding the advantages of eliminating the front back-out parking spaces; delineating the existing five foot right-of-way as 'no parking' and for a pedestrian walkway; and inside the building noise issues and complaints from the neighbors.

Ms. Shamp discussed her recommendations as follows:

- Condition #3 - adding 'non-amplified' and 'daily' instead of Monday through Friday;
- Condition #2 - limiting the COP on the deck from 7:00 a.m. to 11:00 p.m.

- Add a Condition #6 – ‘no parking’ may be extended to the public right-of-way and the handicapped parking space must be moved so as not to extend into the public right-of-way;
- Add a Condition #7 – that the impervious or retention area under the proposed deck structure be created to capture stormwater;
- Add a Condition #8 – seating shall comply with Building Code and Fire Department regulations;
- Add a Condition #9 – Applicant shall apply for a permit from Lee County in an effort to paint and designate the ‘no parking’ area;
- Add a Condition #10 – no exterior television operation after 10:00 p.m.

Ms. Plummer suggested that Condition #3 could require all exterior sound that was provided should end at 10:00 p.m.

Chair Zuba asked if setting the outdoor alcohol consumption at 11:00 p.m. would set precedent.

Zoning Coordinator Chapman responded in the negative, and noted her experience with the Town that it had been set at a variety of times.

Discussion ensued regarding COP hours in proximity to residential.

LPA Attorney Miller pointed out her recommendation that the number of outdoor seating would comply with the Building Code and Fire Department Code; and that while the inside music was playing that the sliding door could not remain open and only be used for ingress/egress.

Chair Zuba noted his support of a designated pedestrian walkway and a ‘no parking’ zone, and a limitation on the hours as discussed.

MOTION: Ms. Shamp moved, regarding Resolution 2013-003 SEZ2013-0001, the Beach Whale, that the LPA recommends that the Town Council approve the Applicant’s request for a special exception in the Downtown Zoning District to expand the area where outdoor consumption on premises was permitted to include 636± square feet of a proposed new deck at the front of the existing building on the subject property subject to the following conditions:

1. Consumption on premises is limited to the building located on the subject property at 1249 Estero Boulevard and both the existing upper, and proposed new lower outdoor decks depicted on the attached ‘Exhibit C’.
2. Hours of operation for consumption on premises shall be limited to the hours of 7:00 a.m. to 2:00 a.m., daily for both inside the building and 7:00 a.m. to 11:00 p.m. for the outdoor deck area.
3. Non-amplified acoustic music and exterior television operation shall be limited to from 11:00 a.m. to 11:00 p.m., ~~Monday through Friday, daily.~~
4. Any proposed roof overhangs and/or projections must meet the Commercial Design Standards set forth in LDC Section 34-991 and specifically Section 34-995(3).

5. All work proposed to be done will require a Limited Review Development Order and any other permits determined to be necessary at the time of permitting.
6. 'No parking' may be extended to the public right-of-way and the handicapped parking space must be moved so as not to extend into the public right-of-way.
7. That an impervious or retention area under the proposed deck structure be created to capture stormwater.
8. Seating shall comply with Building Code and Fire Department regulations;
9. Applicant shall apply for a right-of-way permit from Lee County in an effort to paint and designate the 'no parking' area.
10. When the interior music was playing that the sliding doors shall remain closed except by use of serving staff or patrons for entering/exiting;

And the Recommended Findings and Conclusions:

1. Changed or changing conditions do exist that make the requested approval, as conditioned, appropriate.
2. The requested special exception, as conditioned, is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive 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 LDC Chapter 34.

SECOND: Mr. Kakatsch.

VOTE: Motion approved 6-0.

Public Hearing closed.

Recess at 10:46 a.m. – Reconvened at 10:55 a.m.

Adjourn as LPA and reconvene as Historic Preservation Board. – **No action taken.**

Adjourn as Historic Preservation Board and reconvene as the LPA. – **No action taken; remained in session as the LPA.**

Zoning Coordinator Chapman reviewed the proposed summer schedule for the LPA and noted traditionally the Town Council went on hiatus for the month of July. She reported there were some pending public hearing cases that staff was in the process of reviewing and requested the LPA to decide on a time for their hiatus.

Town of Fort Myers Beach – Local Planning Agency

April 9, 2013

Page 13 of 19

Discussion was held; Ms. Plummer requested an excused absence for June; and consensus agreed for the LPA hiatus to be for two months, July and August.

VI. LPA MEMBER ITEMS AND REPORTS

Ms. Plummer – reported she had been contacted by a few people during the last week regarding the length of time to obtain a permit. She asked if permitting closed down when the permit staff person was on vacation.

Community Development Director Fluegel responded in the negative; and explained when the permit staff person was out that the Town still processed the applications onto Lee County.

Discussion was held concerning a permit request for interior demolition work and the 50% Rule; permits reviewed by Lee County and the Town's permit process; and plan review and inspection services.

Ms. Plummer recounted a request to her to mention a property listed on the tax rolls as two units, zoned multi-family 19 units with two meters and the owner's attempt to acquire permit approval for window replacement.

Community Development Director Fluegel noted that the Lee County Property Appraiser did not have the ability to convey zoning rights within the Town.

Discussion was held concerning the two electrical meters on the subject property; a property owner or purchaser's due diligence to obtain documentation for zoning verification on a particular property; the inability to approve improvements for occupancy on an illegal property; research of Property Appraiser 'field cards'; and permitting requirements for window replacements.

Mr. Steele – excused.

Mr. Smith – reported a few months ago the LPA approved the IPMC and questioned if it was approved by Town Council.

LPA Attorney Miller responded in the affirmative.

Mr. Smith asked if someone was concerned about code issues at a particular property, how someone would report the matter.

Community Development Director Fluegel stated concerns should be reported to Code Enforcement; and added that staff was working to be proactive, and was currently looking at certain issues per the IPMC standards.

Ms. Plummer was excused at approximately 11:20 a.m.

Ms. Shamp – reported there was a reception planned for the Student Scholarship Art Association this Sunday from 3:00 to 5:00 p.m.; and the students’ art show would have their works exhibited from April 13-17th. She stated she had a request from a neighbor for the Public Safety Committee to look at resorts that span Estero Boulevard for crosswalks (i.e. a recent incident at 5580 Estero Boulevard). She noted the Citizens Emergency Response Team (CERT) had begun fund raising activities for their group due to reduced funding by FEMA; and that CERT volunteers have worked the first aid tents at events held for profit such as the Sand Bash. She questioned the status of the CERT volunteers as a ‘good Samaritan’ if they were receiving a donation from the event organizer.

LPA Attorney Miller read an excerpt from the Good Samaritan Act and noted her concern that the CERT volunteers were at a special event offering services when they were not properly licensed and no emergency had been declared.

Mr. Kakatsch – no report.

Mr. Durrett – no report.

Chair Zuba – discussed an article he read in The Economist about how a bridge authority tried to come up with solutions to limit traffic on an overused bridge between Portland, Oregon and Vancouver, Washington; and pointed out similarities between that situation and the Town’s bridge situation during season.

Community Development Director Fluegel suggested Chair Zuba pass along the magazine article to the Town Council.

Chair Zuba stated he prepared and distributed a 2-page report on the housing rehab assistance; and called attention to some options and information:

- The Town was not an ‘entitlement’ community to Community Development Block Grants but Lee County was; the Town did receive about \$40,000 in grant money through Lee County and the bulk of that funding was given to Bay Oaks.
- He asked that the LPA or the subcommittee participate in the decision process for the distribution of CDBG funds.
- The organization called Lee Builders Care would look at applications for assistance on the Island.

Mr. Kakatsch reported he submitted four different applications to Lee Builders Care; that they do a wonderful job; and the response time was usually about two months.

Zoning Coordinator Chapman noted there were people present who wanted to speak during Public Comment.

Consensus agreed to change the order of the Agenda.

VII. PUBLIC COMMENT

Public Comment opened.

Sally Page, President of the Shamron Beach Condo Association at 7650 Estero Boulevard, reported there had been a disturbing event at the south end of the Beach during the past week. She described the location of the condominium. She stated that last week the Town erected two eight foot high signs along the southern edge of Fort Myers Beach – “Welcome to Little Estero Island Critical Wildlife Area” and “Dogs Prohibited Beyond This Point”. She discussed the condo’s concerns about the signs; stated they were not contacted about the signs; and they do not know why they were installed. She claimed there were no nesting birds on the front of their private beach; and explained how they felt the signs were an eyesore, a form of pollution, and the signs would become a projectile during a storm. She reiterated that the condo does not know why the signs were installed, and why the condo had not been contacted. She requested guidance from the LPA about the signs and wanted to know what they had to do to have the signs removed.

Community Development Director Fluegel reported the Town’s Environmental Scientist and the State Wildlife Commission had posted signs in the critical wildlife habitat area which he understood that most of the subject area was State land. He explained it might be an issue of where the private property ended and where the State lands began, and that the signs were in the general habitat area of migratory nesting birds. He suggested Ms. Page make an appointment with the Town’s Environmental Scientist to discuss the matter.

Ms. Page reported that the condo’s deed indicated the property line went to the Gulf of Mexico; and that she had lived there since 1987 and this was the first time she noticed signs encroaching onto the beach, and it was her understanding that the signs were not temporary.

Community Development Director Fluegel discussed ‘temporary signs on an annual basis’ for migratory bird nesting season and permanent signs that would be placed in the State’s conservation easement.

LPA Attorney Miller noted that with respect to private property that even though a deed may show the property line going to the Gulf of Mexico, that anything seaward of mean high water was State land.

Paul Page, resident and property owner at 7650 Estero Boulevard, noted that when he first moved to the condo in 1987 that the subject critical wildlife area was a semi-submerged island that appeared at the lowest tide and then the land began to move out and joint that area. He discussed how the dimension and shape of the subject area had changed over the years; and noted his concern for the protection of the birds.

Public Comment closed.

Chair Zuba noted that it was his understanding that the signs were installed to help protect the birds.

Mr. Kakatsch stated he was well aware of what was at the condo site and what had changed over the years. He told of an incident that occurred years ago when two visitors to the beach and tennis resort decided to remove vegetation with chainsaws during the night in order to improve their room view; how the resort had been fined \$82,000 by the State; and how the vegetation removal had changed the complexion of the area all the way down to the Shamron Beach Condo.

Mr. Page stated he opposed any changes that would be made to natural vegetation; however, he was most upset with that someone introduced plantings into the Little Estero Island area across from his condo with the intent to hold the land.

Discussion was held concerning vegetative plantings by the State.

LPA Attorney Miller interjected that the Town had hired a coastal engineering firm that was doing some studying and modeling, and the firm would come back with recommendations for the Town.

Ms. Page reiterated that she felt it was wrong for the signs to be installed without informing the condominium board.

Community Development Director Fluegel asked if Ms. Page was representing a formal vote on the matter by the condominium board.

Ms. Page responded in the negative; and added there was a condominium board meeting next week and she would forward a formal action by her board to the Town.

VIII. LPA ATTORNEY ITEMS

LPA Attorney Miller – stated she read further into the Good Samaritan Act which said “*any person who acts or omissions not otherwise covered by this section and who participates in emergency response activities under the direction of or in the connection of community emergency response team*” was not liable for any damages. She indicated that there could be problems if a CERT volunteer was not acting during an official emergency response.

IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Zoning Coordinator Chapman reported the May agenda would include the Lani Kai sign variance.

Community Development Director Fluegel reported:

- Noise/entertainment ordinance was scheduled for the April 15th Council Work Session.
- Short-term rental ordinance was discussed at the Council Work Session on April 1st; and staff was working to respond to the questions asked by the public and the Council.

LPA Attorney Miller explained the preemption of the State statute as it pertained to short-term rentals.

Discussion was held concerning Council's discussion and direction of short-term rentals at their April 1st Work Session.

Mr. Kakatsch asked if Town staff was following the County as it related to Estero Boulevard improvements.

LPA Attorney Miller stated she was involved with the County as it related to Estero Boulevard.

Community Development Director Fluegel continued to report that:

- The beach raking ordinance was going back to a Council Work Session on April 15th.

Zoning Coordinator Chapman asked for a volunteer to represent the LPA at the May 6th Council meeting regarding the Moss Marine signs.

Discussion was held concerning LPA representation at the Council meeting; and Ms. Shamp and Mr. Kakatsch offered to attend the May 6th meeting.

Community Development Director Fluegel explained that the Town was beginning to transition into more of a redevelopment economy, and one of the side effects were a lot of transactions on older homes that needed clear and compelling evidence when determinations were required for ancillary permits.

Discussion was held about various processes such as but not limited to zoning verification process, administrative interpretation process, and the accessory apartment determination process.

Mr. Durrett asked if there were any planned enhancements to the Building Department.

Discussion was held concerning the length of the permit process; that there was no intention at this time to expand or enhance the Town's Building Department; and the Town's use of temporary help or consultants during peak times or for particular issues.

X. LPA ACTION ITEM LIST REVIEW

XI. ITEMS FOR NEXT MONTH'S AGENDA

None.

XII. ADJOURNMENT

MOTION: Motion by Mr. Durrett, seconded by Mr. Kakatsch to adjourn.

VOTE: Motion approved, 6-0.

Town of Fort Myers Beach – Local Planning Agency

April 9, 2013

Page 18 of 19

Meeting adjourned at 11:55 a.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

End of document.

DRAFT