



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
MINUTES
Town Hall
2525 Estero Boulevard
Fort Myers Beach, Florida 33931
Tuesday, November 8, 2016**

I. CALL TO ORDER

Meeting was called to order at 9:00 a.m. by Vice Chair Shamp. Members present: Bruce Butcher, Dan Hendrickson, Suzanne Katt and Joanne Shamp.

Excused: Jane Plummer, Hank Zuba and Scott Safford.

Town Attorney: Dawn Lehnert

Staff: Matt Noble, Kara Stewart and Megan Will.

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES - October 11, 2016

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

VOTE: Motion approved; 4-0 with Ms. Plummer, Mr. Safford and Mr. Zuba excused.

V. VAC 16-0001 - 400 BAYLAND ROAD

Vacate an approximate 12 foot strip of land along the eastern edge of the Bayland Road right-of-way as depicted in Plat Book 9 Page 33 along east line of said plat (see Exhibit A).

Town Attorney Lehnert reviewed the affidavit and it was sufficient to move forward. Vice Chair Shamp requested ex parte communication. Mr. Hendrickson - site visit; Mr. Butcher - site visit; Ms. Katt - site visit and conversation with Judy Haataja; Vice Chair Shamp - site visit. Town Attorney Lehnert swore those in providing testimony.

Mr. Noble distributed additional materials received subsequent to the staff report being issued. The deeds revealed common ownership of both plats in the past. Staff did not support vacating waterfront property. Town Attorney Lehnert stated that the Town had a dedicated interest. Ms. Katt questioned

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whether Lee County intended to use the easement as an access to bring heavy equipment on barges down the road. Mr. Noble replied that there were no plans to do that.

Beverly Grady from Roetzel and Andress represented Judy Haataja. She reviewed the ownership history and she requested a small vacation of a portion of Bayland Rd. She distributed three exhibits including an aerial view from the property appraiser, a street layout map and a current survey. Ms. Grady described meetings and correspondence with the Town during the past six months. She stated that Ms. Haataja would grant the easement back if the Town requested. The vacation would provide close to a normal setback and provide protection for the property owner. Ms. Grady filed a letter from Carol J. Hornack, an adjacent neighbor, indicating that she had no objection to vacating the 12 foot portion of the right-of-way. Vice Chair Shamp entered the letter into the record. Ms. Grady stated that Ms. Haataja and her neighbor installed the seawall and she has always maintained the area within the 300 feet. Ms. Grady stated the lot was already on the water line with a meter. She requested that the LPA recommend approval to the Town Council.

Ms. Katt questioned why the request was submitted without a signed affidavit. Ms. Grady indicated that Ms. Haataja signed the affidavit and it would be filed. Ms. Katt discussed an opinion letter received (she assumed by a lawyer) and additional papers questioning why Ms. Haataja did not get a declaratory judgment on who owns the property. Ms. Grady responded that Ms. Haataja would have to spend a lot of money just to have staff deny the request to vacate the property, regardless of ownership. She provided the affidavit to Town in April and addressed the title issue but never heard back from staff. Mr. Noble indicated that Town Attorney Lehnert reviewed the ownership and encumbrance opinion and found it lacking. Mr. Noble forwarded the email to Ms. Haataja in October. Town Attorney Lehnert stated the primary issue in the case was not the ownership issue, it was whether or not it was appropriate to grant the vacation. She noted that there was a potential future use for that right-of-way. She added that vacations could not be conditioned.

Mr. Hendrickson posed a hypothetical question regarding ownership of the easement in relation to concerns about future stormwater emergency uses. Mr. Noble did not know the answer, but he was concerned about signing an easement before the future use of the property was established. He did not think it was a good idea to relinquish ownership of the property while public works projects were ongoing.

Mr. Butcher received clarification on the surveys. Discussion was held regarding property lines in the aerial view from the property appraiser's office versus the accurate survey. Mr. Butcher questioned whether Ms. Haataja would allow a kayak launch in the easement. Ms. Grady replied that Ms. Haataja would be willing to grant access for street purposes, such as drainage and a water line, but there was no dedication to the Town to put playground equipment or a park on the property. Ms. Grady stated that Ms. Haataja had concerns regarding Tourist Development Council (TDC) funds being used for tourist related activities in her residential neighborhood.

Vice Chair Shamp concurred with the applicant's concerns about the use of TDC funding for infrastructure, parks, etc. on dedicated roadways within neighborhoods. She questioned whether there was merit to continue the case. Town Attorney Lehnert suggested that they act on the request now. Discussion was held concerning the timeline and extent of the stormwater project. She reiterated that the request could be continued to a date certain or indefinitely and the applicant could request a continuation. Vice Chair Shamp did not recommend continuing the request, but she asked the applicant whether they considered the option. Ms. Grady responded that they considered it earlier, but they felt like they needed to address Council to provide a timeline on how they were going to address the side streets.

•Richard Cassidy, 390 Bayland Rd., questioned why the Town wanted the property. He found it hard to understand why her request was not granted.

•Judy Haataja commented on the history of the property and how she has maintained it over the years. She indicated that people fished in the area and they did not bother anyone. She expressed concerns regarding the Town building a park or a kayak launch.

Mr. Butcher felt the Town should maintain their right to the property.

Ms. Katt felt the application was premature. She would like to know what the Town intended to do with the property. The promise of a future easement concerned her and she was worried about setting a precedent.

Mr. Hendrickson appreciated and understood Ms. Haataja's request. He felt there had to be a discussion regarding developing public property and how to do that and protect residential neighborhoods. He agreed that the request seemed premature given what was going on in the Town.

Vice Chair Shamp had concerns regarding the Town establishing a policy within neighborhoods on property that was dedicated to street purposes and using them for parks or other purposes. She stated that it was not up to the LPA to opine on that issue, but they could opine on standards and procedures in the Land Development Code (LDC) with regard to retaining public property for public purpose. She noted the applicant would have to show how vacating the property would benefit the public. Vice Chair Shamp commented that not retaining the Town's right to the use of the public right-of-way might actually harm the public. She could not support the request.

MOTION: Mr. Butcher moved to deny the applicant on the basis that the Town may have a future use that is undetermined at this time; second by Ms. Katt.

VOTE: Motion approved; 4-0 with Ms. Plummer, Mr. Safford and Mr. Zuba excused.

VI. VAR16-0009 – 209/211 Ostego Drive

The applicant is seeking a variance from LDC Sec. 34-1744(b)(1) location and height of fences and walls to allow a 6 ft. tall fence between the street right-of-way and required street setback.

Vice Chair Shamp requested ex parte communication. Mr. Hendrickson - drive by; Mr. Butcher - drive by; Ms. Katt - site visits and conversations with Mike Ratliff; Vice Chair Shamp - site visit. Town Attorney Lehnert swore in those providing testimony. She verified the affidavit of publication of legal notice. Ms. Will stated that the neighborhood was noticed.

Megan Will, Community Development, reviewed the staff report. She indicated that a 6 ft. tall fence was on the property when the applicant purchased it, but it had to be torn down. The applicant wished to replace the fence. Ms. Will utilized a map to illustrate sight triangles on each side of the property. Staff recommended that the fence be replaced.

Mr. Butcher questioned the sight triangle on Carolina. Ms. Will clarified the area.

Ms. Katt pointed out a codification issue. Mr. Noble stated that he would obtain new code books.

Vice Chair Shamp clarified that the fence would be entirely outside of the easements. Ms. Will stated that there was nothing in code that precluded granting the request.

Mike Ratliff, 209/211 Ostego, stated the site plan was denied in September, 2015. He stated that his property was vandalized, homeless people were sleeping in his yard, trash was thrown in his yard and he had no privacy or security. He felt that he satisfied existing code with his request.

Ms. Katt commented that Mr. Ratliff was being polite while describing his situation. She was in favor of his request.

Mr. Ratliff felt that \$1,000 for the variance was out of line for the project. He stated that he wanted to improve his property, but there were roadblocks in the way. He felt policies should be created so people followed them instead of going around them. He thanked staff for being helpful.

Mr. Butcher questioned the type of fence and where it ended. Mr. Ratliff noted it would be a 6 ft. vinyl fence. He referenced exhibit D to indicate the fence went to the end of his property line.

Mr. Hendrickson questioned why he wanted a 6 ft. fence since his home was on stilts. Mr. Ratliff replied that a 42" fence would not prevent anyone from looking over the fence into his back yard.

Vice Chair Shamp stated that it was a unique situation. She questioned designating a front, two sides and a back. Ms. Will did not think there was a need to designate.

Town Attorney Lehnert read part of a letter against granting the variance.

Ms. Katt revealed that people used Mr. Ratliff's outdoor shower. She was in favor of the request and thought the process was too expensive.

Mr. Butcher supported the request.

Mr. Hendrickson was concerned about the visibility triangle and that a shorter fence would work. He was prepared to vote yes.

Vice Chair Shamp stated that the request met code for the visibility triangle and provided relief of privacy and security for the welfare of the applicant. She supported the request.

MOTION: Ms. Katt moved to approve the requested variance to allow a 6 ft. fence within the required street setbacks on the southern and western sides of the property, with staff's recommended conditions, findings and conclusions; second by Mr. Butcher.

VOTE: Motion approved; 4-0 with Ms. Plummer, Mr. Safford and Mr. Zuba excused.

VII. VAR16-0010 – 290 Donora Boulevard

The applicant is seeking two variances to allow construction of a 10' x 23' Florida room addition to an existing single-family residence. The first variance request is from LDC Sec. 34-634 Intensity and Building Coverage to allow a building coverage of 42.12% where a maximum of 40% is permitted. The second variance request is from LDC Sec. 34-638 Minimum Setbacks to allow a water body setback of 23 ft. where a minimum of 25 ft. is required.

Town Attorney Lehnert verified the affidavit of publication of legal notice and she swore in those providing testimony. Ms. Will stated that adjacent property owners were noticed. Vice Chair Shamp requested ex parte communication. Mr. Hendrickson - site visit; Ms. Katt - site visit and conversation with the owners; Mr. Butcher - site visit; Vice Chair Shamp - site visit.

Ms. Will reviewed the requests. She noted that the second request for the water body setback would be done administratively if it stood on its own. She stated the lot was the smallest among a grouping of non-confirming lots. She noted that the location of the proposed addition sat on an existing concrete slab and would not increase runoff. Staff found that the small amount of overage for the addition appeared to be reasonable and it met low density.

Mr. Hendrickson questioned including the garage in the 40% coverage. Ms. Will replied that lot coverage included anything with a roof.

Mr. Butcher clarified the structure layout and the 50% rule. Ms. Will noted the garage was not attached. Vice Chair Shamp questioned whether the concrete slab was permitted. Ms. Will did not have the information to answer the question. Mr. Noble revealed that if the slab was less than four inches thick, a permit was not needed.

Pete Oiderma thanked Ms. Will and her staff for guidance. He described the history of his property and indicated that the house was not built within the property lines. Adding the structure would create a buffer from the weather and add value to the property. He did not think the proposed addition would be a visual eyesore.

Mr. Butcher questioned the definition of Florida room. Mr. Oiderma replied the room did not have air conditioning or heat.

Ms. Will pointed out that the applicant had not drawn up plans and the construction value had not been established. Staff could not determine whether the proposed addition would fall within the 50% rule until they had a construction value.

Ms. Katt commented on the insulation properties with the proposed addition.

Ms. Will noted that exhibits were not attached with the application. A short recess was granted to gather the exhibits to include in the packets. She described the exhibits.

Ms. Katt supported the request.

Mr. Butcher had no problem with the application.

Mr. Hendrickson supported the request.

Vice Chair Shamp listed reasons why she supported the request.

MOTION: Mr. Butcher moved to approve the request based on the fact that it was a de minimus request for a modest addition to an existing home on a non-conforming lot, there was no increase in impervious surface, created a minimal increase in the percentage of allowable buildable coverage, no change in the setback nonconformity, overall consistent with the comp plan for low density residential use and did not create additional environmental impact in regard to stormwater drainage and it did not set precedence due to its uniqueness; second by Ms. Katt.

VOTE: Motion approved; 4-0 with Ms. Plummer, Mr. Safford and Mr. Zuba excused.

VIII. HISTORIC PRESERVATION BOARD MEETING

MOTION: Mr. Hendrickson moved to adjourn as LPA and reconvene as Historic Preservation Board; second by Mr. Butcher.

VOTE: Motion approved; 4-0 with Ms. Plummer, Mr. Safford and Mr. Zuba excused.

1. Reorganization - continued to the next agenda.

2. HDD16-0008 - 175 Sterling Ave. Historic Designation

Mr. Nobel stated he received an email from the Women's Club asking the Historic Preservation Board to hold off on any action on the request to designate 175 Sterling Ave as an historic designated structure until an internal board meeting was held to make a decision on whether or not they wanted this recognition.

MOTION: Ms. Katt moved to adjourn as Historic Preservation Board and reconvene as LPA; second by Mr. Butcher.

VOTE: Motion approved; 4-0 with Ms. Plummer, Mr. Safford and Mr. Zuba excused.

IX. LPA MEMBER ITEMS AND REPORTS

Mr. Butcher questioned the canceled joint meeting with Council. Vice Chair Shamp explained that they were going to discuss the 50% rule and related policies. Ms. Will noted that the meeting was tentatively scheduled for December 5, 2016. Mr. Butcher expressed concern that buyers should be made aware of the 50% rule and restrictions on rentals. Ms. Will described the FEMA disclosure. She indicated they were working with their CRS partners and Lee County to encourage the real estate industry to voluntarily disclose the flood plan. She described educational opportunities and stated the issue was being worked on. Mr. Butcher questioned whether the Town could create a resolution to require disclosure by real estate agents. Town Attorney Lehnert replied that she would have to research Florida Statutes. Mr. Butcher questioned real estate signs in the right-of-way. Ms. Stewart replied that if signs violated code, the realtors should be contacted. Vice Chair Shamp questioned the existence of a registration program for rentals. Ms. Will replied that 25 pre-existing, short-term rentals existed and they were required to register on a yearly basis.

Mr. Hendrickson was not notified that the joint meeting with Council had been canceled. Town Attorney Lehnert will verify his address with Town Clerk Mayher.

X. LPA ATTORNEY ITEMS - no items.

XI. COMMUNITY DEVELOPMENT ITEMS - no items.

XII. ITEMS FOR NEXT MONTH'S AGENDA - December 13, 2016

Vice Chair Shamp reviewed action items.

XIII. PUBLIC COMMENT - no public comment.

XIV. ADJOURNMENT

MOTION: Ms. Katt moved to adjourn the meeting; second by Mr. Butcher.

VOTE: Motion approved; 4-0 with Ms. Plummer, Mr. Safford and Mr. Zuba excused.

Meeting adjourned at 11:44 a.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

- End of document

Paul Zuba
LPA Chair
Dec 13, 2016