

**FORT MYERS BEACH
TOWN COUNCIL MEETING
DECEMBER 13, 2004
Town Hall-Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER: A land use meeting of the Fort Myers Beach Town Council was called to order on Monday, December 13, 2004 at 10:00 a.m. by Mayor Bill Thomas.

Members present at the meeting: Mayor Bill Thomas, Vice Mayor Garr Reynolds, Councilman Don Massucco, Councilman Howard Rynearson, Councilman Bill Van Duzer.

Excused absence from the meeting: None.

Staff present at the meeting: Town Manager Marsha Segal-George, Community Development Director Jerry Murphy, Town Attorney Richard Roosa

II. PLEDGE OF ALLEGIANCE: All those present assembled and recited the Pledge of Allegiance.

III. INVOCATION: The invocation was given by Mayor Thomas.

IV. PUBLIC COMMENT:

Elizabeth Spellberg of 5890 Estero Blvd. came forward and expressed concern regarding the speed of the permitting procedure with respect to some minor interior repairs she is making to her property. Ms. Spellberg advised that she has attempted to speak with Community Development Director but there have been communication problems. Mayor Thomas advised that this was not the proper time to open a dialog and suggested that her problem be discussed at the end of the meeting.

V. A. VARIANCE REQUEST OF JOSEPH J. FARRELL IN REF. TO 628 ESTERO BLVD.:

Mayor Thomas determined that there had been no ex parte communications by any of the Council members concerning this case. Councilman Massucco reported that he had visited the property but had had no conversations.

The applicant came forward. He advised that he and his wife Linda had purchased the subject property in July of 1988. In December 2002 and January 2003 he and some friends removed the existing pressure treated decking and railing which had become deteriorated. He replaced them with composite lumber decking and railing, incorrectly assuming at the time since he was not changing the size and shape of the deck that no permit was required. After receiving notice of code violation in June 2003 he immediately took steps to attempt to obtain a building permit and hired an architect to prepare drawings of the existing decks and an engineer to prepare updated surveys. He applied for a DEP permit which he received in October 2003. On December 22, 2003 he was notified of denial of the permit because of non-compliance with zoning requirements. During January and February he researched his options by visiting County zoning and Town Hall, where he met with Dan Folke.

He subsequently was referred to Nettie Richardson, who helped him with his zoning request. He appeared before the LPA. Mr. Farrell described the dimensions of his lot and explained how the lot was subdivided in 1976 and 1978, showing location and dimensions of the easements using a map which was provided to the Council in their packets. He further described the house and its accessory elements, as well as the easements. Mr. Farrell referred to and read letters of no objection received from his neighbors which he submitted to the zoning department.

In response to a question by Vice Mayor Reynolds concerning application of the Code, Mr. Farrell explained that what he replaced had been inexistence prior to creation of these shared

private easements ever since the house was built in 1958 and were shown on all applicable plans. Mr. Reynolds pointed out that Council has an obligation to follow the Code.

Councilman Massucco noted that there were 7 recommendations from Staff, of which #2 was stricken. Mr. Murphy explained that Mr. Massucco was referring to the LPA resolution, in which this condition was removed. Mr. Farrell added that he had agreed at the LPA hearing to comply with the remaining 6 recommendations.

1. LPA MINUTES OF FARRELL REQUEST FOR VARIANCE

2. STAFF REPORT:

Nettie Richardson, Principal Planner with the Lee County Division of Zoning came forward representing Staff on this variance request. She proceeded to give the Staff Report, explaining the reasons for recommending approval of this variance and the reasons why the LPA had voted to eliminate Condition #2.

Mr. Reynolds commented on the structure's non-compliance with the Land Development Code and said he did not concur with approval of this variance. Ms. Richardson agreed that if this were new construction, Staff would be recommending denial. However, she pointed out that there are unusual circumstances in that the house was built in 1958 when it was the only structure on the lot, and in 1976 when the lot was subdivided the easement was created with the structure and its appendages in place. Mr. Reynolds reiterated his position with respect to the encroachment and expressed concern with setting a precedent.

Councilman Rynearson pointed out for the record that when the applicant repaired the porch he did not go outside of the footprint that was already existing and that no code was violated at the time the house was built.

Councilman Van Duzer agreed and added that the error occurred when the property was subdivided and the easement created. He pointed out that the Code allows for variances with restrictions.

Public comment was opened at this time. There being none, public comment was closed.

3. TOWN RESOLUTION 04-39 – FARRELL VARIANCE

MOTION: Motion was made by Mr. Reynolds to reject this request. Motion failed for lack of a second.

MOTION: Motion was made by Mr. Rynearson and seconded by Mr. Van Duzer to approve the request and include the 6 conditions included in the LPA and Staff recommendation.

DISCUSSION: Mr. Massucco agreed with Mr. Reynolds' statement that Council should enforce the Code but noted that in such land use cases he considers it unfair to penalize a current property owner for mistakes made years ago.

VOTE: Motion passed by a vote of 4 – 1, Mr. Reynolds voting "no."

B. CAROUSEL FLUEDRA OUTCOME:

Mayor Thomas opened the meeting for public comment at this time.

John McGuirk of 6400 Estero Blvd. came forward representing the Sunset Condominium, adjacent to the subject property on the South. He recalled speaking about this subject when it was first proposed, at which time there were serious objections because the developer was requesting deviations from the Code. Subsequently, he was denied. He noted that the developer has come back with another request which he still believes is inconsistent with the Code but which may be more acceptable when it is presented. He noted some other objections, which he explained. They are specifically opposed to creation of dunes and planting of sea grass around the pool area.

There being no further public comment, Mayor Thomas closed the public comment and asked for ex parte communications. Mr. Van Duzer reported a conversation in Town Hall which

he described as minor and one-sided. None of the other Council members had any ex parte communication with respect to this case.

Beverly Grady came forward representing the applicants, Ed Oelschlager and his team. She noted that this is one of the first occurrences of a case being brought under the Florida Land Use Environmental Dispute Resolution Act, which is an opportunity for mediation and settling disagreements on land use issues. She explained that an impartial third party is selected by both the Town and the applicant, and described the procedures established by the State legislature in 1995. She advised that after Step 1 they were able to bring to Council a proposal that is consistent with the LDC and Comp Plan. She referred to a summary document prepared by Bob Mulhere which was handed out and added that the dune restoration is contained in the Code but can be withdrawn if the Town does not want it.

Consultant Bob Mulhere came forward and explained the points of his summary. He noted that the Code provides for conversion of guest units to residential dwelling units but does not give specific guidance.

There were several questions and discussion about the number of units and the square footage of the 12 units. Traffic and trip generation calculations also came under discussion. It was specifically noted that 4 units are permitted by right on the vacant parcel, and the number of units on the developed parcel are being reduced from 28 to 8.

Architect Robert Hall came forward and explained the design of the building with specifics concerning size and height.

Jerry Murphy came forward. He presented the Staff Report, describing the outcome of the mediation meeting. He noted that after the hurricane, areas of the beach where there were dunes experienced much less damage than those without dunes, supporting this requirement in the Code. Mr. Murphy explained that in the event of approval by Council, this case will be taken back to the LPA to establish specific details.

Mr. Reynolds asked Mr. Hall about the possibility that these larger units might be divided into smaller units in the future, saying that he has heard such rumors. Mr. Hall replied that this was not intended, and Ms. Grady added that this will be a condominium, so the documents will be recorded as public record and no unit could legally be divided. Mr. Murphy further responded to Mr. Reynolds by explaining how this could be monitored.

Mr. Massucco expressed some further concern about traffic and trip generation.

Mayor Thomas noted that rumors have no basis in his decisions.

Ms. Grady summarized the applicant's presentation and pointed out the issues that are consistent with the Plan and Code.

MOTION: Motion was made by Mr. Rynearson to send the case back to the LPA requesting that details be established. Mr. Roosa explained that it is his recommendation that this proposal be accepted, which would require the applicant to redesign the project within the approved parameters and submit that to the LPA and subsequently to Council. He pointed out that there are actually only 2 variances involved in the request and the square footage was put in the request even though it is consistent with the Code. He also called attention to the fact that by right the applicant could build 10 units on the property within 88,000 square feet with no easement or bus stop required, which would substantially eliminate the view corridor. Mr. Roosa further explained his reasons for recommending approval and the procedure if Council does not approve, including an eventual court case which could result in a judgment for compensation against the Town. Mr. Rynearson verified that his motion would be to approve the request conceptually. Motion failed for lack of a second.

MOTION: Motion was made by Mr. Reynolds to approve the request as presented, stating his reasons for changing his earlier position. Motion was seconded by Mr. Van Duzer.

DISCUSSION: Mr. Van Duzer recalled that he had been a member of the original LPA which established the Comprehensive Land Use Plan and also was involved with the Land Use Code both as a member of the LPA and Council. He pointed to some goals and objectives of the

Comp Plans which he said were spoken to in this project. He specifically mentioned a change from commercial to residential as an upgrade and pointed to other issues which he said would be positive improvements. He also recalled that one of his platforms when running for Council was private property rights and stated this is why he believes this project should be approved.

Mayor Thomas observed that by disapproving the project the first time, the developer and Town have negotiated a win-win situation. He referred to a project that was previously approved which he said is not very attractive and advocated caution in approving taller buildings, private property rights notwithstanding. He said he is supporting the request with deep reservations.

Mr. Massucco noted that the trend is to eliminate the smaller privately owned hotels and motels, which will change the character of the Island in time. He said that while he agrees with property rights, he is in favor of slowing down the commercial to residential trend if possible.

VOTE: Motion was passed by unanimous vote, 5-0.

VI. COUNCIL MEMBER ITEMS AND REPORTS:

Councilman Bill Van Duzer noted that the Town Manager had applied for the position of County Attorney and thanked Ms. Segal-George for withdrawing her name from consideration. He said the loss would be to the people of Lee County because of her high qualifications and said he hopes she will stay as Town Manager for a long time to come.

Vice Mayor Garr Reynolds referred to Charter Review which was addressed at the last meeting and requested to recall the recommendations for further review and discussion. He specifically referred to the original Charter's 3-year term for Council members. Mr. Roosa explained that there will be an ordinance presented to Council concerning the one item approved for referendum, which was the bridge toll issue. This ordinance will go through the public hearing process and once adopted will be set for referendum. In response to Mr. Reynolds' question, Mr. Roosa advised that Council had voted some time ago to amend the Charter to provide for 4-year terms for Council members. He advised that he had issued an opinion that Council did have the authority to make this change without a referendum but the case is in court. Mr. Reynolds explained that he wants to recall the item to determine whether Council was voting on a 3-year or 4-year term. It was his understanding last week that the vote was for a 3-year term. There was discussion about the appropriateness of Mr. Reynolds' request in view of the court case and how to address this procedurally. Mr. Reynolds asked that an ordinance be drafted so that the issue can be placed on the referendum.

Mr. Reynolds made complimentary reference to the Boat Parade. He reported receiving comments from some people who were disappointed that the parade did not go by their side of the Bay.

Councilman Dan Massucco requested to relinquish his time so that Ms. Spellberg could present her comments. He was advised that she would have the opportunity to do so under Item IX, Public Comment.

VII. TOWN MANAGER'S ITEMS: Mr. Murphy expressed appreciation for Ms. Spellberg's attendance during the entire meeting and noted that while it is not appropriate to enter into open discussion during the meeting, he wanted to respond to her earlier comments. He said that she owns 2 non-conforming properties which are also repetitive loss properties, and she has put in a request to make improvements that exceed the 50 percent threshold. He recalled that a FEMA audit resulted in changes to the LDC that were adopted in June which make the requirements more restrictive than before and called attention to the increased workload following the storms. Mr. Murphy gave assurance that he is attending to each request as expeditiously as possible and noted that repeated calls serve to slow down the process.

VIII. TOWN ATTORNEY'S ITEMS: No items.

IX. PUBLIC COMMENT:

Ms. Spellberg acknowledged Mr. Murphy's workload but stressed the urgency of completing her project, which she proceeded to describe. It was emphasized that all requests must go through the process.

X. ADJOURNMENT: Meeting was adjourned at 12:15 p.m.

Respectfully submitted,

Patricia L. Middlekauff
Transcribing Secretary