FORT MYERS BEACH
TOWN COUNCIL MEETING
APRIL 14, 2003
LAND USE HEARING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The Land Use Hearing of April 14, 2003 was opened by Mayor Daniel Hughes on Monday, April 14, 2003, at 9:00 a.m..

Council members present at the meeting: Mayor Daniel Hughes, Vice Mayor Terry Cain, Howard Rynearson - Council member, Bill Van Duzer - Council member and Council member Bill Thomas.

Excused absence from meeting: None.

Staff present at meeting: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Damon Grant, Attorney Dick Roosa, Dan Folke, Bill Spikowski, Kirk Crane, Jerry Murphy and Pam Houck.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. PUBLIC COMMENT

Al Valhorn, 6895 Estero Blvd., came forward to speak with regard to the Council reorganization. Any remarks made are not intended or implied to disparaging to any Council members. All are commented and dedicated to Council's role and collectively he feels a fine job is being done for Fort Myers Beach. However, he is present to implore the Council to re-elect Dan Hughes to continue as the Mayor of the beach. His leadership, incisive study of the issues and unique ability to bring to endless issues to closure are self evident. The role of the Mayor in the early years was conceived as being dominantly that of a ceremonial role. Over the years, since this Town has matured, it has become a great deal more than a ceremonial role. A rotation of Council members for the role of Mayor has been discussed. This may work for the County Commissioners, but he does not feel it is favorable for this Town. The idea of rotation is not valid or appropriate for their Town organization. He urged the reappointment of Dan Hughes as Mayor.

IV. ADMINISTRATIVE AGENDA

A. Council Re-organization

Mayor Hughes expressed that he appreciated the comments for Mr. Vanhorn.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Van Duzer to keep Daniel Hughes as Mayor and Terry Cain as Vice Mayor.

Discussion: Council member Bill Van Duzer commented that this is a difficult issue. He does not feel any additional controversy is needed. Excellent leadership has been received from Terry Dan. He complimented both officials for an excellent job. He asked them to keep doing a good job and added that they were needed.

VOTE: Motion passes unanimously.

B. Public Hearings:

1. Jeanne Sanders VAR2002-00014

Rehearing of Variances in the Multiple-Family Residential (RM-2) district for the following for additions to an existing single-family residence:

a.) from a 20-foot minimum street setback to allow a 4-foot street setback (easement) on parcel number 33-46-24-W1-00206.0310 (5266 Estero Boulevard), per Land Development Code (LDC) Sections 34-715 and 34-2192 (a); and

b.) from a 20-foot minimum rear yard setback to allow a 6-foot rear yard (west) setback, on parcel number 33-46-24-W1-00206.0310 (5266 Estero Blvd), per Land Development Code (LDC) Section 34-715. The subject property is located at 5266 Estero Blvd. The applicant indicates the STRAP number is 33-46-24-W1-00206.0310.

Mayor Hughes began by asking for ex parte communications? Mayor Hughes indicated he had none. Council member Bill Thomas, Council member Howard Rynearson and Vice Mayor Cain also had none. Council member Van Duzer had to refrain from voting on this issue. He was retained by the Sanders prior to being elected to this position. He has completed the appropriate paperwork.

Steve Roberts from 5540 Road Island Place, Fort Myers Beach, came forward. The one remaining issue is the setback on the northeast side of the lot. The applicant is requesting and agreeing with staff recommendation on a setback of 15 feet. He referred to attachment "K," which is the same as attachment "B" but with additional information. The new drawing shows the various setbacks that could be possible along with the amount of square footage to be added to the footprint. At 15-feet it adds 145 square feet to the footprint. By rebuilding this building and covering this footprint, they would be eliminating the encroachment to the side on the normal setback of the new building. The deck would also be pulled off the Coastal setback line. Benefits are received both ways in adopting this setback.

Council member Rynearson asked if he read somewhere the easement is registered? Steve replied there is an easement and there is title insurance on it.

Mayor Hughes expressed at the last hearing where the setbacks were approved and are now seeking modification, the question of access was raised. From the legal description there was no access.

Steve Roberts replied the access was described in the last set of papers submitted along with the title insurance. This paperwork is not contained in this group, because this is not a question part of this request.

Mayor Hughes referred to Exhibit "A" and Attachment "D." Attachment "D" has lot 13. There is a 10-foot non-exclusive easement for walk and driveway purposes along the westerly side of lot 13. This takes you back to lot 30, but does not abut lot 31. Lot 31 has another easement for walkway and driveway purposes. He indicated there is no connection between those two easements. This was raised at the last hearing. He has reviewed this with Deputy Town Manager Gucciardo who concurs with this. The surveyor also indicated no access.

Steve Roberts indicated the above issue was not part of what he felt was to be addressed today, and he felt the issue was settled by title insurance. He does not have all this information before him today. Mayor Hughes referred to the application for request for continuance.

John G. Burns from 5256 Estero Blvd., came forward. He and his wife own the green house north of the Sanders' property. He came here this morning to advise this body that he and his wife have no objection to the proposed setback. A 4-foot setback would result in a gain of space going toward to the Sander's home to the south of over 3-feet. This would make the distance between the proposed Sander's home just about the same as the neighbor to the north. The symmetry is just about perfect. He can't image anyone having any objections. He referred to the easement to the rear of the home by the air conditioner and are fairly certain their property is legally burdened by this easement. He would happy to cooperate in receiving this documentation.

Mayor Hughes questioned Mr. Burns if he would be willing to grant a 10-foot easement along the northeasterly side? Mr. Burns replied that he would be willing to grant this easement. He clarified he is the owner of record for lot 30.

Ben Sanders came forward and indicated he owns this property along with his wife. He is looking to build a reasonable home comparable with the rest of the neighborhood. His family cannot come and visit, due to having a handicap son-in-law. He must have a home with an elevator. He cannot add an elevator to the existing property.

Kirk Crane, Planner with the Zoning Division of the Lee County Community Development Department came forward. He is the staff planner on this application. The existing residence faces the gulf of Mexico and is back from Estero Blvd.. There is a question of access to the property. Physically as shown

on Exhibit "D" you would drive back from Estero along the 10-foot walkway/driveway easement along the edge of lot 13 and along the sand driveway at the rear of lot 30 onto the subject property. This driveway ends and does not connect any further to the south. Access is gained through other means from Estero Blvd.. Staff felt since the home does face the gulf of Mexico and he is requesting setbacks from the street setback, which is the 10-foot walkway along the northwest of the property, the setbacks should be the same as it would be for the rear of a residence. Staff felt the 20-feet which is the required minimum setback in the RM-2 zoning district would be the appropriate setback. Based on the information submitted by the applicant, staff has re-examined this condition and questioned if the additional 145 square feet of area are appropriate for this particular lot with a 15-foot setback on the northeast property as opposed to the 20-feet which is in the current resolution approved by Council. How does this fit in with the other residences and is it appropriate? The answer to this question is that the requested 15-feet would line up with the rear of the other residences. It would allow enough area for him to still gain access across the rear of lot 30. Staff is willing to recommend approval of the modification of condition #2 to indicate the northeast property line should be 15-feet rather than 20-feet. All other conditions remain as approved.

Mayor Hughes questioned if it would be appropriate to add a condition that prior to the issuance of the development order an easement of record be shown in place along the northeasterly line of lot 30? Attorney Dick Roosa indicated in order to get a permit you must show access to your property. He felt this is a requirement.

Pam Houck replied that she would feel more comfortable with the condition in place. Attorney Roosa is correct, but this puts an extra notice to the person reviewing.

Kirk Crane added that the residence was built in 1948, which was long prior to zoning and probably before an easement was established.

Mayor Hughes opened the public hearing. No one came forward. The public hearing was closed.

Attorney Dick Roosa indicated the resolution before the Council is the one adopted October 14, 2002. The same resolution would be modified to reflect this change.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to modify resolution 02-37 to change paragraph 2, page 2, by changing 20-feet to 15-feet.

VOTE: **Motion passes 4 to 0. Council member Bill Van Duzer abstaining.**

2. John Richard in ref. to Shipwreck (fka Rusty's)

Appeal of staff's denial of an administrative amendment to the Master concept Plan (MCP). The subject property is located at 237, 239, 245, & 309 Old San Carlos. (take San Carlos Blvd. to FMB, turn right onto Fifth Ave., then turn right onto Old San Carlos Blvd.) The applicant indicates the STRAP numbers are: 24-46-23-W3-0050A.0030 & 24-46-23-W3-0050A.0080.

Mayor Hughes began by asking for ex parte communications? Mayor Hughes received a call from John Richard. Council member Rynearson indicated he also had a call from John Richard and spoke with Bob Rockwell. Vice Mayor Cain has had conversations with John Richard and Bob Rockwell. Council member Van Duzer has talked with Bob Rockwell. Council member Bill Thomas has had no communications.

Beverly Grady, Roetzel & Andress, came forward representing John Richard in this request for an administrative appeal to the Council. This is an administrative amendment requested to the Master Concept Plan for Shipwreck, which was formerly known as Rusty's to add a minor Phase I-A. The Town Council had approved the rezoning for the property, which is on both sides of Old San Carlos on January 22, 2001 pursuant to resolution 01-03. This is a request for a minor phasing addition to Parcel A, which is common and typical for this type of administrative amendment. Since the adopting of the new code on March 3, 2003, they are proceeding under 34-219, which sets forth the criteria for an administrative amendment and a hearing before the Town Council to grant.

Beverly indicated there are two changes being requested. Before the Town Council is the approved Master Concept Plan and proposed amendment. The addition is the 1,200 square feet, which does not change the approved square footage or the uses and is within the footprint of the approved commercial building on parcel A that is seen on the approved plan. The second change is to put a new front on the length of parcel A, not just the 1,200 but the new front on the existing portion, and the 1,200 square feet. The architectural elevation is present to show the new front to be placed. These elevations were

submitted with the application. Redevelopment is the most complicated form of development. Sometimes changes do need to be made. This is one additional step to add the 1,200 square feet and one step to have the new front, which is consistent with the commercial design guidelines. The criteria under the new code would consider if there is any increase in height, density or intensity. If you look at resolution 01-03, there is no increase in density, square footage and they would be building within the footprint approved by this Council. Is there an additional land use? No, the land uses and list of uses are in this resolution and there is no change. A variance or deviation from this code cannot be granted this way. At the time the CPD was approved there was no architectural elevation adopted by the Council. The elevation seen today has been designed to be consistent with the commercial guidelines as adopted. The Town should always have the ability to approve architecture and fronts, which are consistent with the guidelines recently adopted. The Town Council did adopt a process where changes could be reviewed to see if they were sufficiently minor and could be approved by the Town Council. This is a four-phase project and was never intended to be built all at once. This provides an improvement to this side of the street and will be consistent with the guidelines. This does show Old San Carlos being redeveloped by the private sector, which is in the end a partnership with the Town's Streetscape and improvements made. The new construction is on one side and this on the other, which is an asset to the Town.

Beverly indicated the applicant was disappointed by the staff recommendation just read. This did not go into any detail. The applicant disagrees there is any increase in intensity. A statement made in the staff report indicates the appearance is being changed. She expressed this is correct, but when it is changed in compliance with the Town's regulations it is a positive matter. She added there was a comment made that there is no opportunity for public comment. She does not understand this comment, because when this code was adopted the Town Council required the applicant to submit the labels for the surrounding people. This has been completed and the opportunity for people to come and participate at this hearing could have taken place. This is a very small change, is positive and within the framework of the original approval. She introduced Joe McHarris, who can discuss the architecture of the design and how this is consistent. She then requested the approval of the Town Council granting this minor amendment for the 1,200 square feet and architecture.

Joe McHarris, McHarris Planning and Design, came forward. He reminded everyone he is not responsible for the original building. He has been asked to do refurbishment through the drawing. The original building is a road side commercial building and not a pedestrian building. The proposed refurbishment is more consistent with the architectural regulations and design the Town is looking for on Old San Carlos. He indicated everything seen on the drawing will be real. These are all the elements the Old San Carlos design guidelines ask for. The actual design will turn the corner and be holistic in its elements. He indicated their intent was to be very cognizant of the design guidelines for the overlay district. He spent sometime pointing out different areas on the drawing to answer various questions of Council pertaining to this drawing.

Mayor Hughes asked for his client's time table? Joe McHarris replied as soon John Richard feels comfortable the plan can move forward. He has been asked to do preliminary sections. Time frame is as fast as it can be permitted, if he should get approved.

Jerry Murphy of staff questioned what this building will look like for the rear or sides? How this facade is going to relate, once you get beyond the elevation? Joe McHarris indicated this was a good question. He pointed out that a particular building will cover the side, so a side will not be seen. The extra detailing will wrap around the building. The back view will remain as is, which is typically a commercial building until John Richard moves to the next phases. The next phases will involve hotels, which will have sliders and balconies.

Mayor Hughes questioned if there is another section this Council should be looking at with regard to a provision for an appeal from a ruling by the director. What is the basis for appeal? Beverly Grady replied Section 34-219. This was provided to the Town Council for review.

Beverly Grady reviewed when looking at the decision denying the application it cites the use of this alley way, which was to be used up until the fourth phase. Circumstances have changed since the Streetscape was completed and the alley way is no longer usable. This is also a change circumstance to make productive use and add this as part of the addition. A condition was offered to this approval which would tie that the architectural elevations would be installed at the same time as the connection of the 1,200 square feet. This will assure both are added at the same time.

Jerry Murphy questioned if Phase I, as approved, been accomplished? Have any of the approved phases been accomplished? Beverly Grady replied that Phase II has a development order, which is a

major expense and expenditure of time. Phase II is on the east side of Old San Carlos and is Parcel B.

Jerry Murphy questioned if Phase III and Phase IV are new buildings that will replace the existing buildings on the south side of Old San Carlos? Beverly Grady replied that this is correct.

Jerry Murphy questioned if there is to be three years for each phase or six years? Beverly Grady replied the request for approval to permit up to six years for each phase. No additional time is being requested for Phase I-A. If Phase I-A is approved, it will happen immediately.

Some confusions took place between the phases. Mayor Hughes reviewed Phase I (parcel a) is a two-story building, Phase II is a two-story building, Phase III is a four-story building and Phase IV is a three-story building. Beverly Grady added that Phase I with the two-story building is also a pool with a caretaker's unit over the café.

Jerry Murphy on behalf of staff for community development came forward. The Land Development Code was amended, since the first time this case was before the Council. It is no different in allowing this board to consider an appeal, but the criteria have changed somewhat. Initially, it was the opinion of staff what is being proposed is a substantial change from the previously approved Master Concept Plan and should not be considered by this board in an appeal. The correct process would be to go forward and do an amendment with a public hearing rather than the abbreviated process that is allowed through the appeal. Staff has tried to highlight items they noticed to be substantial changes. If this board decides it is not substantial change, a number of conditions will be suggested if the Council recommends approval.

Jerry Murphy expressed there is an opportunity for public comment today for people who were notified by the mailout. This was the only notification given. A sign was not posted and there was no hearing before the LPA. You also do not have the benefits of the LPA's consideration and recommendation. The amendment before Council deviates from the original plan of development. That plan of development would have provided redevelopment of the properties along Old San Carlos prior to consolidating the facades. What was approved provided two separate buildings. Phase I-A would connect these two buildings, which are the existing motel building and the existing retail building and allow them to go completely through without the building separation line where the alley is now. This allows for an extensive amount of connected retail floor on the building as it is. There is no requirement the new connecting building (1,200 square feet) be dry flood proofed. There was no facade approved in the original master concept plan and commercial planned development approval. Staff likes the facade as proposed and feels it will look very good face on. This is continuing to extend what is presently there now without moving forward into redevelopment of new buildings along Old San Carlos. The approved footprint is two new buildings separated by a building wall. The new building would not be within this approved footprint, but would mitigate between where there would be a wall, if it was developed as approved, and connect those buildings. Staff believes the changes are substantial enough to warrant the need for public comment and did not feel comfortable approving this administratively. He reserved sometime for conditions to be reviewed should the Council decide to approve.

Council member Van Duzer reviewed the area to be built is included in the master concept plan. These would still be attached? Jerry Murphy replied that this is correct.

Council member Van Duzer asked Jerry Murphy if he could agree the shaded area on the master amendment is included in the area as shown on the master concept plan? Jerry Murphy replied it is included within the area shown for Phase III and Phase IV, but it does not separate Phase III and Phase IV. It allows the existing buildings to be joined with an addition of 1,200 square feet.

Council member Rynearson asked what the difference is? Jerry Murphy replied the difference as staff sees it is the square footage of retail space that is on the first floor would be separated under the way it was approved. Under what is being asked for now it would not be separated. Under the original approval those new buildings would be dry flood proofed. This addition and remodeling does not need to be dry flood proofed, because it does not meet the requirements for the threshold change.

Mayor Hughes questioned the elimination of the alley and would this bring in the phrase "a decrease in open space?" Jerry Murphy replied that he did not believe so. He did not feel the alley way was considered to be open space as it was approved. This would bring in the elimination of this alley way prior to the construction of Phases III and IV.

Beverly Grady expressed that the advertising had the notice published and posed. The letters were sent to surrounding property owners within 500 feet. There is also a zoning sign, which she saw posted in the window on Saturday. She does not understand the County's concern with separate buildings. The design criteria show as if these are separate buildings. It is irrelevant where the foundation structural wall is between them and whether it shifts or moves. She indicated for redevelopment in the Town these types of

adjustments should be done without paying a $4,000.00 and a six to eight month hearing. Flexibility should exist within the framework of the approval. What has been submitted is positive for the Town. They request the Council grants the request with the condition as offered.

John Richard came forward and expressed that this is a function of economics. A condition this is the last remodel can be made. Any questions?

Mayor Hughes opened the public hearing? No one came forward. Public hearing was closed.

Council member Van Duzer would like to see this project move forward. Changes were made in the Land Development Code to make it easier for people to come forward with minor changes. He does not like the resolution as written. He believes what the applicant is asking for is in the best interest of the Town. The structure is included in his master concept plan and complies with the design elements the Town wants. He supports the new Phase 1-A and would like to see them move forward as rapidly as possible.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to approve the administrative amendment to the Master Concept Plan.

Discussion: Council member Rynearson expressed that much work has been done on Old San Carlos and it looks great. He feels it they do not work with the developers trying to put these buildings together they would be making a big mistake. He does not feel the rules should be bent, but he does feel they should work together in every way they can.

VOTE: **Motion passes unanimously.**

Jerry Murphy came forward. He expressed that Council has repealed the director's decision to not approve this administratively. Council could direct the County to approve this administratively and could get together with the applicant and work out the conditions and come forward with an administrative approval. Conditions could also be attached today, which would be in effect be a board's approval to the amendment. Staff would want to carry forward all of the conditions of the previous approval. Phase 1-A and all new construction must be dry flood proofed. Development of the project must be consistent with the elevation drawings. Within one year of this approval, construction to accomplish all facades represented on the elevations must commence and proceed to completion with diligence. The applicant will work with staff to assure that phase 1-A is consistent with the approved Master Concept Plan to the extent that changes and modifications today have not altered it. Phase 1-A refers to a Parcel I and Parcel II in the Master Concept Plan as approved and refers to a Parcel A and Parcel B. All doors shown on the elevation are to remain open and accessible to the public during hours of operation. The applicants condition, which discusses the architectural elevations prepared and submitted as Exhibit 1, must be installed at the same time.

Council member Van Duzer questioned if the applicant has any concerns with the conditions? Beverly Grady responded all conditions are acceptable, except the second condition on dry flood proofing a remodeling. This is not required and is part of the existing structure.

Council member Van Duzer is unsure if the applicant can alleviate dry flood proofing and this meets the code than why should they be more restrictive.

Jerry Murphy replied when the master concept plan was approved, what was contemplated was new construction. By granting this change they will not be moving forward toward the new construction. The issue of flooding was raised at the last hearing by some neighbors. This is one of the reasons staff did not feel comfortable making this approval administratively.

Council member Rynearson responded this is a facade. When new construction is completed, the dry proofing will need to take place. Laws are in place and he feels they should abide by this.

Jerry Murphy added the 1,200 feet are not a facade and is an addition of floor area that would not have to be dry flood proofed in absence of a condition requiring it.

Mayor Hughes pointed out that this was an over cite when the original master concept plan was approved. Would this be a standard condition now? Jerry Murphy replied it would be unnecessary as a condition, because with new buildings you would receive dry flood proofing automatically.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to approve all conditions as presented by staff with the

exception of the dry flood proofing. **(Motion amended)** Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to include "any new construction shall comply with applicable code provisions."

Discussion: Mayor Hughes suggested a general statement stating "any new construction shall comply with applicable code provisions."

Council member Van Duzer agreed.

Attorney Dick Roosa suggested the matter be directed back to the administrator to approve the change subject to the conditions as identified with the exception of the flood proofing.

Council member Van Duzer is not in agreement with the suggestion of the Town attorney.

Jerry Murphy indicated one advantage that may be gained by putting it back on staff will allow them to work out the details with the new phase.

Council member Van Duzer does not agree. He feels they are trying to control something that does not need to be controlled. The changes proposed are still within the boundary of the master concept plan that was approved with this project.

Dan Folke indicated it is fine to move forward today. As the administrator they need to understand the future phases and how 1-A impacts III and IV.

Vice Mayor Cain would like to know the process now for the following phases.

Jerry Murphy indicated he has no answer. These details would need to be addressed with the applicant. This is the reason he asked for direction to approve administratively with the conditions as adopted.

Bob Rockwell came forward. This setup is in phases. He does not want to see the hands of the applicant tied from moving farther forward, if he desires.

Council member Thomas feels they are moving forward too quickly. He feels they must pay more attention to the staff recommendations. He does not favor waiving the conditions of staff. He does not support the waiving of the condition on dry flood proofing.

Attorney Dick Roosa added the Council's decision is final and the decision today will become the Development Order. He proposed the Council establish the guidelines, which is the same motion, but direct back to the staff for them to work through the technicalities to make this a more workable plan.

Jerry Murphy added that the original application was an application for administrative approval. This decision was then appealed to this board and the Council is hearing this today. Procedurally, it is proper to direct staff that they were incorrect and approve this administratively with the guidance as provided. Go back and take the original application and issue an administrative approval according to this direction. This keeps it clean and keeps the package manageable for staff and administrative.

MOTION: **(Amended)** Made by Mayor Daniel Hughes and seconded by Council member Bill Thomas to provide the motion on the floor be directed back to the staff to issue

administrative approval subject to the conditions set forth in the principal motion as outlined by Council member Van Duzer. This matter should be treated in an expeditious manner.

Discussion: Vice Mayor Cain asked for the time frame? Jerry Murphy replied this will handled within a matter of days.

VOTE: (Amended) Motion passes 3 to 2.

VOTE: Motion passes unanimously.

3. Diamondhead Island Beach Resort, L.C. in ref. to Diamondhead Parking Special Exception in the Downtown zoning district for shared permanent parking lot Amend Commercial Planned Development (CPD) for Diamondhead Beach Resort to add Employee Parking as a permanent use.
The subject property is located at 1999 Estero Blvd. (Corner of Estero Blvd. and Virginia Ave.) The applicant indicates the STRAP number is: 19-46-24-W4-0090B.0020

Mayor Hughes began by asking for ex parte communications? None were heard.

Beverly Grady came forward and expressed this is a request for a special exception in the downtown district for shared parking. This property has an approval as a commercial planned development for Phase I as the parking lot. Phase II had proof of commercial, but did not match anything coming through the design and Land Development Code. They worked with staff and during the Land Development Code revised a special exception, so it would work for such a parking lot. The parking as provided is not required parking for the operation of Diamondhead, but is being a good steward and coming forward and providing for when it is needed additional parking to be available. The actual parking has a Development Order and has been constructed and is completed and finished. At times there is additional parking needed. This is why they determined to go forward and have it approved as a permanent use. The parking has been found appropriate by the Town Council when originally approved at this location. The regulations have provided the opportunity to request a special exception. They appeared before the Local Planning Agency and the LPA made a recommendation.

Beverly Grady reviewed the conditions as set forth by the LPA. The applicant is in agreement that this parking is limited to employees and overflow parking for guests. If Condition II is adopted, a pedestrian way to access the sidewalk will need to be provided. Vehicular access to this property is via Virginia Ave. and the alley, no driveways on Estero Blvd.. Currently the access way is no driveway on Estero and has been limited to the alley. The applicant is satisfied to leave it this way. The fourth condition was taken from the prior approval and permits the alternative surface is to be kept in a dust free manner.

Since before the LPA the General Manager of Sunstream and one of the owners met with staff to discuss an addition along the front. She referred to two pictures. Since this time the fence has been painted. The owner on the opposite side was contacted and did not want their fence painted. Visually a railing type fence has been added to tie them together. She indicated it is positive to have the special exception to be sure the parking is provided, even though it is beyond the required parking. The applicant believes they have met all the criteria for the special exception, but want to be sure it is a permanent use that will function with the hotel.

Council member Bill Thomas clarified it would be acceptable to enter the parking lot from just the alley and not Virginia? Beverly Grady replied that this is correct.

Vice Mayor Cain questioned how the pedestrians parked in the parking lot will cross the street? Beverly Grady replied that Condition II will require an access way directly out to the sidewalk. This will be provided.

Council member Rynearson commented the closer you can get the pedestrians to the crosswalk the better of they will be for safety sake.

Jerry Murphy on behalf of Community Development came forward. He indicated they are for the most part in agreement with the applicant on this matter. He talked about the break in the fence and felt the intention was to be sure they would not need to go the entire length to get to the sidewalk, in keeping with the Town's plan for increasing linkages. If it is the will of the Council to enclose this entirely, staff has no

objections. Condition V tries to further the requirements of Comprehensive Plan Policy 1A1, which is that all developments along Estero Blvd. increase the appearance of Estero Blvd.. Initially, when this recommendation was written a five-year limitation was added for the use of property as parking. Parking was not the highest and best use for Estero Blvd. under the Comp. Plan. When the Land Development Code was adopted, it did provide for a special exception for shared parking in this zoning district. He recommends that Condition III be changed to read "vehicular access to this property is via the platted alley. No driveways are allowed directly to Estero Blvd."

Mayor Hughes questioned the elimination of Condition II by the LPA. Jerry Murphy added the LPA felt if the applicant was willing to do the landscape betterment plan, including the fence, it was not a concern with them the time frame the property is used as a parking lot be limited. The applicant requested a permanent use in their initial application. Staff would now be in favor of deleting Condition II, due to the increased measures taken by the applicant to improve the surrounding parking lot area.

Jerry Murphy confirmed if the Council goes for an approval the Council should take the direction of the LPA conditions with the only exception of deleting Virginia Ave. and the addition to Condition V about painting and maintaining the fence in the rear.

Council member Rynearson suggested adding no break in the fence? Jerry Murphy replied if no break is being considered, he felt that Condition II should be reconsidered. Council member Rynearson is concerned people will not use the crosswalk.

Mayor Hughes opened this matter to the public? No one came forward. Public hearing was closed.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Howard Rynearson for approval of the applicant's request with conditions as requested by the LPA with the following: Condition II to read "the development must provide pedestrian ways or paths. The pedestrian ways or paths must be designed and constructed to direct the pedestrians to the nearest crosswalk. Also, to include Exhibit I and the Site Plan. Condition III for vehicular access to the property to be via the platted alley. Condition V to include painting and maintenance of the fence. Conditions I, IV and VI should remain as they stand.

VOTE: **Motion passes unanimously.**

4. Shirley Wurster in ref. to Seaview Cottage Deck VAR2002-00050

A variance from LDC Section 34-1575 (a) to allow replacement deck to extend seaward of the Coastal Construction Control Line.

The subject property is located at 2916 Seaview St. (San Carlos to Seaview turn right to the end, last house) The applicant indicates the STRAP number is: 30-46-24-W2-003M0.0010

Mayor Hughes began for asking for ex parte communications? None were heard.

Shirley Wurster from 2916 Seaview came forward. She has owned the property for five-years. She is a widow. A deck was built out over the Coastal Construction Control Line and she was unaware. She dearly loves Fort Myers Beach and would never do anything to harm the beach or her fellow neighbors. She does all her business on the beach. Her immediate neighbors to the west are three elderly gentleman (The Pell's). They have a very old beach cottage with a deck and she got the idea she would like to have a deck on her little beach cottage. She called uptown to try and find out if you needed to have a permit to put a deck up. She was transferred around several times and spoke to someone she believes at the Building Department. This person should not have answered her question. This young lady stated if the structure does not have a roof over it you do not need to have a permit. This is not true. At that time she did not have the money to build the deck. After several months she attempted to find a contractor. She finally choose Geoff VanVolken. No written agreement was received. She told him to build the deck just like the Pell's next door. The Pell's is not to code, but she felt it was grandfathered in due to the amount of time it has been there. She gave $2500.00 down and left for her home up north in Michigan for the summer. She received a letter that VanVolken had been cited for building a deck without a permit. She tried calling him and he indicated a permit could be received after the fact. When she returned in the fall, she had to pay the $100.00 for Geoff. The deck was finished as far as safety is concerned. After the fine was paid, he was putting in for the after the fact permit. This went on for sometime. She continued questioning Geoff with regard to the permit and he told her not to worry he had spoken with Dave Crabtree on this matter.

Shirley added that she had three separate incidences happen to her such as damage to her car from Gabrielle, tornado hit home in Michigan ($61,000.00 damage) and two separate letters here from fire and windstorm coverage stating they would no longer insure her home because it was built in 1950. She asked Geoff to bring her property up to date and this took all of last winter. Geoff finally told her the permit department would do nothing until a variance was received, because the deck had been built over the Coastal Construction Control Line. Prior to this she did call the DEP and talked with Jim Martinello who granted a DEP permit. Geoff explained the variance to her and explained the cost would be $500.00, whether it is allowed or not allowed and would not be returned. She then learned the cost was actually $700.00. She left for Michigan without deciding. She realized when she got home she had no other choice. She sent a check to Geoff for $700.00 and made it out to him directly. Geoff did not answer his phone all summer long. In October, when she returned she finally contacted Geoff. Geoff had not cashed the check and returned it to her in the original envelope.

Mayor Hughes indicated the unfortunate dealing with Geoff VanVolken is not relevant to the case today. He asked her to address the variance itself and why she feels she is entitled to a variance.

Shirley Wurster commented that she received a letter, which indicated the deck would be injurious to the neighborhood or otherwise detrimental to the public welfare. She does not feel this is true. Her little old deck is not injurious to the neighborhood. She has heard from the beach walkers how nice the deck looks. The neighbors are in favor of this deck. She is hoping the Council will allow her to keep the deck as built now and finish it. She has a new young man to complete the work.

Vice Mayor Cain referred to the letter from DEP. She questioned Ms. Wurster is she responded within the two weeks as noted? Shirley Wurster replied she did and paid them $300.00. She received their permit.

Shirley was discouraged by the Planning Department. Any case before the LPA or Town Council should be treated individually of its merit or lack thereof. She feels a visit to the site would have been appropriate.

Jerry Murphy from staff came forward. Staff recommends denial. This is a constructed deck, which is seaward of the Coastal Construction Control Line. He referenced the boundary survey that follows the staff report. On the northwest, the deck extends 5.7 feet beyond the Coastal Construction Control Line. On the southeast is 3.9 feet. This is the portion of the deck in violation of the Land Development Code. Ms. Wurster does have a permit from DEP, but their standards are not the same as the Town's. He has received no opposition to this variance.

Mayor Hughes asked for public input? None was heard. The public hearing was closed.

Council member Van Duzer commented on a case at the south end of the beach many years back. He was opposed, but DEP did approve.

Dan Folke added that he did remember the case. This was for a deck also, but there were a lot of differences in the two cases. There have been approvals of variances over the line.

Mayor Hughes asked if this can legally be granted? Pam Houck replied that the specific code is not part of the Comp. Plan. The Comp. Plan designates all the areas seaward of this line as recreation land use category. There is an extra layer of prohibition of what can or cannot be beyond this line. The recreation category would not allow dwelling units.

Attorney Dick Roosa added in order for the Council to have the authority to grant the variance they must make the five findings in the resolution. Once these findings are made, the Council is authorized to grant the variance.

Shirley Wurster commented her deck is to be used for recreation. Her beach has not changed in the last five years.

Attorney Dick Roosa suggested addressing the five criteria. Council member Van Duzer has reviewed them and cannot find a way to make them fit.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Van Duzer to reluctantly take staff's recommendation for denial.

VOTE: **Motion passes unanimously.**

V. PUBLIC COMMENT

None.

**Prior to adjournment Mayor Hughes addressed a few housekeeping items with the Council. He commented on a letter from the Pilot Club with regard to a grant and a letter is being requested of the Mayor. Also, support of the application for the Old San Carlos Alliance with regard to the TDC monies. He commented on a certified copy of a Bonita Springs resolution opposing a senate house bill preempting local governments from using their lawful zoning powers. He asked the Council if staff should prepare a resolution.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Bill Thomas to direct staff to prepare a resolution.

VOTE: **Motion passes unanimously.**

Mayor Hughes added that a request from Ray Murphy was received declaring May, 2003 as Florida States Parks Month. Town Manager Segal-George will fit this onto the agenda.

Vice Mayor Cain reminded everyone the awarding of the John Mulholland Stewardship Award will take place at 5:30 p.m. on April 21st.

VI. ADJOURNMENT

The meeting was adjourned at 12:00 p.m..

If a person decides to appeal a decision made by the Council in any matter considered at this meeting/hearing, such people may need to ensure that verbatim record of the proceeding is made, to include the testimony and evidence upon which any such appeal is to be based.

Respectfully Submitted,

Shannon Miller
Transcribing Secretary