FORT MYERS BEACH
TOWN COUNCIL MEETING
MAY 12, 2003
LAND USE HEARING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The Land Use Hearing of May 12, 2003 was opened by Mayor Daniel Hughes on Monday, May 12, 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, John Hagan, Jerry Murphy and Pam Houck.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. PUBLIC COMMENT

IV. ADMINISTRATIVE AGENDA

Public Hearings:

A. CASE NUMBER: VAR2003-00002 Suter Setback Variance

1.) from the minimum side setback of 7.5 feet to allow a side setback of 5.5 feet to allow a portion of the staircase leading to the main living level to be built; and

2.) from the required 25 foot waterbody setback from Canal Grande to allow a waterbody setback of 7.5 feet to allow a single family residence to be built.

The subject property is located at 301 Palermo Circle (Estero Blvd. to Palermo Cr., toward Bay, left on vacated alley adjacent to 291 Palermo Cr.)

Mayor Hughes began by asking for ex parte communications from the Council. All Council members replied there were none.

Beverly Grady representing Sandy Suter came forward. The owner is requesting variances to render her lot buildable. She is the owner of Lot 12, Block C which is located on Palermo Circle. This lot was platted in one of the old plat books back in 1925 (Plat Book 6 - Page 20). It is a very unique shaped lot by being triangular. This lot is surrounded on two sides by water. She filed a copy of the plat for the record. The zoning map shows variances were granted two lots on one side and two lots on the other side. The third exhibit is the sketch, which further shows the uniqueness and shape. Exhibit B to the staff report shows the proposed structure. The side setback comes with full staff recommendation of approval.

Since the waterbody is on a bay and a canal, the applicant is requesting a setback from the 25-foot canal waterbody to permit the principal structure as located on the site plan. The deck would be 7.5 feet from the canal. The principal structure itself would be setback 15-feet for the air-conditioned portion of the house from the seawall. Greg Stewart, a professional planner, is present and she would like the Council to recognize him as an expert in land use planning. Greg will show the study he has completed to show why the request is compatible. This study supports the recommendation of approval from staff.

Greg Stewart came forward. He indicated the case is a variance specific to Land Development Code standards. The first is for the west stairwell and reducing the setback approximately 1.5 feet from 7-feet to 5.5 feet for the stairwell only. The second variance is the waterbody setback from the Canal Grande, specifically, a 10-foot reduction from the principal structure from 25-feet to 15-feet and when the

unroofed deck area is added this is a 7.5 foot setback. He is in complete agreement with the staff report with regard to this variance request. The two variances exceed existing or proposed code. He further indicated the staff report (page 5) states that the code required setbacks create a hardship because the building area would be too small to build a viable house. He agreed and added that the setback relief is necessary. Without this relief it is impossible to build a viable house.

He reviewed staff findings and conclusions. The dual 25-foot waterbody setbacks create a unique and exceptional, extraordinary condition to the property in question. The staff report indicates the variance request is a result of exceptional circumstances not created by the applicant. The lot is a lot of record since 1925. The owner has been paying taxes on the lot since 1978 and brought in utilities in 1984. This lot requires relief from the dual 25-foot waterbody setbacks. The variance is the minimum necessary. He provided an aerial photo to the Council which was derived from the Lee County Property Appraisers office. The variance will not be injurious to the neighborhood or create an incompatible single family home and views will not be impaired. He provided a graphic showing the neighborhood compatibility. The Suter resident with the variances will create a heated and cooled structure of approximately 2,246 square feet. This is very similar to Lot 11 (west adjoining lot) according to the Lee County Property Appraisers office.

Greg Stewart confirmed that he and the applicant agree with the staff findings and conclusions. The variance is unique, is not recurrent in nature, and runs with the property. The setbacks are reasonable and do not create a hardship. The variance is the minimal relief necessary to allow for a reasonable use of the property. He is available to answer questions.

Council member Van Duzer questioned the total square foot area of the lot? Greg Stewart replied approximately 7,200 square feet.

Sandy Suter came forward and provided packets to the Council. The first two pages are neighbors she has contacted personally who have no objection to this variance. In addition, she provided pictures 1 thru 7 and further explained them to the Council at the request of the Mayor.

Beverly Grady questioned Mrs. Suter if she took all pictures provided to the Town Council? Sandy Suter replied "yes." Beverly Grady asked how long she has owned the property? Sandy Suter replied that it was under contract 27 years and she closed on it 25 years ago.

Beverly Grady further reviewed the staff conditions. The first condition relates to the side setback. She is unclear, but feels what is being proposed is consistent with the Town rule. The second condition refers to the 7.5-foot waterbody limited to the elevated open deck, which cannot be enclosed as living space. She clarified there is the 15-foot setback, which is granted for the principal structure.

John Hagan came forward and indicated the staff is in agreement with the applicant's presentation given this morning. He felt they reviewed all circumstances required in order to grant a variance. He clarified the new changes with the code pertaining to the requirements for the lot of record. One requirement is that the side setback be 5-feet or 10% of the lot width. In measuring this lot, the applicant does meet the 10% (5.5 feet side setback), which eliminates the need for the variance. The waterbody setback is 7.5 feet to the deck and 15-feet to the principal structure. Staff is willing to add the language to condition 2 with regard to the 7.5 feet, which would be to the elevated deck and could not be enclosed. The 15-foot setback would be to the principal structure.

Council member Thomas verified the side setback of 5.5 is not a variance? John replied after speaking with Pam Houck and the changes to 34-3273 of the Town's code it states that side setbacks shall be 10% of lot width or 5 feet, whichever is greater. In essence, the applicant is only in need of one variance.

Vice Mayor Cain questioned Condition 3 and asked if the alleyway (ingress and egress) is not dedicated at this time? John Hagan replied this alleyway was vacated by the Board of County Commissioners on July 7, 1943. The old public records indicate the gentleman owned all the lots surrounding this alleyway. He petitioned to have the alley vacated and was granted. Since this time, the lots have been sold to different property owners and staff felt this was a good condition to have this alley rededicated as ingress/egress, so there would be no future problems with access.

Council member Rynearson expressed that it has been indicated this is the bare minimum to be granted. Could you not go to a 10-foot setback and grant enough space for a good size home? John Hagan replied that staff felt this was a reasonable setback and consistent with other properties in the area.

Council member Van Duzer questioned the square footage of the lot? John Hagan felt the 7,200 feet would be most likely encompass the measured area. He indicated his own calculations came out to a little over 8,000 square feet of actual land area. With the home being proposed, she will well under the 40% maximum lot coverage required.

Mayor Hughes opened this matter up for public hearing. He asked if anyone wished to address the

Council?

Diane Hamilton, 230 Primo Drive, came forward. She spoke against this variance at the last hearing and she is speaking against it again today. She has one picture showing the view from her home looking at Mrs. Suter's property. She commented on a statement made by Ms. Suter with regard to decks going out to the water. These decks do not and go to a boat dock that is enclosed. If a storm came through the properties being discussed would not be allowed where they presently sit. She disagrees with the fact that this will not have a bearing on their views. This will substantially hinder her view. She feels it is very important to consider the neighbors feelings. The long term effects of the beach should be considered. She is asking the variance be denied. What is the buildable square footage? She feels this should be brought up and addressed.

Mayor Hughes clarified even without the variance the home could be built 25-feet from the waterfront? Diane Hamilton replied this is fine, but nobody has been able to state the square footage. She does not want this type of variance to be set as a precedence for what could go on for the rest of the beach.

Flo Lozone, 270 Primo Drive, came forward. She lives across from Sandy Suter. She is speaking for the following people who have gone north or are working. The following people were present at the LPA meeting regarding this request: Ken and Judy Holler - 266 Primo Drive, Ed and Lorraine Fogerty - 271 Primo Drive, Jeff and Sharon Trantina - 280 Primo Drive, Keith and Wilma Beckett - 218 Primo Drive, Bob and Lynn Sylvester - 292 Primo Drive and Don Agelina - 260 Primo Drive. We are a Country governed by rules. The rule for setbacks is 25-feet. Why would one person even think the rules should be changed just for her. How do you decide who to change them for? The Councils decision is simple to enforce the rules and not change them for one person. This variance would greatly appreciate the value of her property and depreciate the value of all those she is speaking for including her own. We are not objecting to her building, but just build to the codes and setbacks that are now established to everyone. This request was turned down 5 to 2 by the LPA. Please do your job and the rules do not change for one person.

Mayor Hughes closed the public hearing.

Greg Stewart came forward and addressed Ms. Hamilton's photo. She lives on the north side of the canal. Any views being obstructed are due to sabal or cabbage palms on the adjoining property on the adjoining property on the north side of the canal not Mrs. Suter's variance. The body of water (bay view) is being maintained. Ms. Hamilton would like an obstructed view across the entire depth of Mrs. Suter's lot. Mrs. Suter has the right to develop her property and build a reasonable sized home. He stated before Mrs. Suter is intending to build a 3,200 square foot gross heated and cooled home. No views are being significantly impaired.

Mayor Hughes commented if you extend the deck out 7.5 feet on a line parallel with the northeasterly line of their building you would be getting closer than 7.5 feet at the top corner, because the seawall is curving in. Greg Stewart replied this particular graphic delineates the setbacks and is not a site plan. The 7.5 foot setback would be maintained throughout the entire site plan. John Hagan added that staff is in agreement. When the building permit is being submitted, they will check to be sure the deck meets the 7.5 feet all the way down.

Beverly Grady submitted into the record a picture which was in the County's file that is an overview of the neighborhood. This does show the lot on the corner, the neighborhood and construction which are in existence. Every code has a basis for a variance. This is a unique lot. It does meet the extraordinary conditions and all criteria. The staff and a professional land use planner have provided testimony that this request meets all the criteria and would make reasonable use of this lot. The property owner is relying on the Town to make reasonable use of this lot. She confirmed to the Mayor the language of the variance as drafted by the staff is the criterion. She respectfully requests that the Council listen to the evidence as presented today and grant the request to provide a reasonable home to this property.

MOTION: Made by Council member Bill Thomas and seconded by Council member Bill Van Duzer to approve the variance as in Paragraph B with conditions 2 & 3.

Discussion: Council member Van Duzer commented that this is a difficult matter, but this is a reasonable use for this property. He feels no more obstruction will take place than the obstruction, which presently exist with the vegetation. This may actually improve the review.

Mayor Hughes questioned if the property owner could fill in out to the lot line and build an additional seawall? John Hagan replied that he is unsure. Council member Van Duzer added that this cannot be done. The DEP and Army Core would need to be involved.

Mayor Hughes indicated this was a difficult case. He expressed that Council has rules, but they are difficult to apply in certain circumstances. This is why there is a provision for a variance. A variance means "to change the rules for a particular property" provided they meet the criteria as analyzed by staff and the applicant. He does feel the applicant meets the required findings of their Land Development Code. He realizes this will have a minimal effect on those neighbors who spoke today.

VOTE: Motion passes unanimously.

B. CASE NUMBER: VAR2002-00054 ELIZABETH CHOPP SCREEN ENCLOSURE

Variance from LDC Section 34-695 to reduce the side yard setback requirement from 7.5 feet to 4.4 feet to allow an existing slab to be enclosed (alternatively, Variance from Table 34-3 to reduce the side setback for a waterfront lot from 7 feet to 4.4 feet to allow an existing slab to be enclosed). The subject property is located at 3970 Estero Blvd. (go south on Estero Blvd.)

Mayor Hughes began by asking for ex parte communications. All Council members responded none.

Fred Winfield came forward to represent Elizabeth Chopp. A variance is being requested on the side line for a screen enclosure. When the home was originally built (1950's or 1960's) there was a concrete deck on the side of the house for front door access. When the deck was built, it was built to close to the sideline. He is unsure of the sideline requirements at that time. He wants to put a screen enclosure on the deck. The approval was received from the County. There are no objecting neighbors. This would effect nobody, except for those living in the home by giving them a screen enclosure for bugs.

Jerry Murphy from staff came forward. He expressed the survey is the best way to review this property. There are two existing elevated concrete decks attached to this existing single family residence. Both of these elevated decks are inside of the setback line and are nonconforming. The applicant seeks to enclose the one on the southeast portion of the property with a screen enclosure. Staff is recommending denial because they feel it is an expansion of the nonconformity into the setback area, which along waterbody lots was intended to preserve the view corridor as a visual access to the amenity of the gulf beaches. The LPA did not agree with staff and recommended this variance be approved. He pointed out several corrections to the Council.

Mayor Hughes opened up this matter for public hearing. No one came forward.

Council member Van Duzer expressed some confusion as to the location of the screen enclosure. Jerry Murphy replied the screen enclosure would extend from the rear building line toward the side. Three or four feet would be left open. He further explained the LPA discussed an option and it was dismissed to allow the applicant to enclose the area that they would not require the setback for. This would result in an unusual configuration, but would not require a variance.

Mayor Hughes questioned if there is construction that extends beyond the building line per the plat. Jerry Murphy confirmed this. Mayor Hughes further commented if a person came in and there is a building line on the plat, even though this building line is in effect a greater setback than what is required by the code, the building line code would or would not be enforced? Pam Houck replied that there were points in time that the County would have and would have not enforced it. She suspects this was built prior to and probably was not enforced. The enclosure the applicant is seeking would be landward of the building line.

Jerry Murphy commented if the Council is leaning toward approving this variance a condition could be placed that the screen enclosure would need to stay landward of the building line. This would reduce the required variance distance.

Attorney Dick Roosa added that the Council must find that the variance granted is the minimum variance that will allow for the reasonable use of the property. If you were to grant to 4.4 feet, this would not be the minimum variance.

Mayor Hughes closed the public hearing.

Fred Winfield confirmed the Council is correct with the location of the screen. The setback from where the screen enclosure will be is less than the 4.4 due to the angle of the house and deck. The further back toward the front of the house the distance increases. The stairs on the back of the house are a wooden deck and stairs. He built this and received the proper permits. He also received DEP approval. This structure was built approximately 2 years ago.

MOTION: Made by Council member Bill Van Duzer and seconded by Vice Mayor Terry Cain to approve this variance request. The applicant is to be allowed to add the screen enclosure on the 12.1 foot X 11.7 foot deck, which is to not extend past the existing building line as depicted on Dean Whittaker's survey plat (Exhibit A). To include the LPA's condition with regard to height. The height will be limited to the gutter height of the existing residence or 8-feet, whichever is less.

Discussion: Council member Van Duzer does feel there are exceptional and extraordinary conditions inherit to the property due to the way the building was originally set. This was not the actions of the application with regard to how it was set. He does feel this is a minimum variance to allow the screen structure, which is an open type structure. He does not feel this will be harmful to the neighborhood and feels this is a reasonable request.

VOTE: **Motion passes unanimously.**

C. CASE NUMBER: ADM2003-00003 Walter G. Eissler in ref. to Roof Top Deck

Appeal of rejection of Residential Building Permit #RES2002-05681 on the basis that a proposed roof top deck exceeds the three story height limitation set forth in Town of Fort Myers Beach Land Development Code (LDC) Section 34-631. Building Heights and Figure 34-1 Residential Building. The subject property is located at 5380 Palmetto St. (Estero Blvd. South to Dakota, Left on Dakota, Left on Palmetto)

Mayor Hughes began by asking for ex parte communications? Council member Van Duzer reported he has had several conversations with Mr. Eissler and has visited the property. He also had conversations with Dan Folke. No other ex parte communications from the remaining Council members was indicated.

Beverly Grady representing Mr. Eissler came forward. This is an administrative appeal. As the code is written today, the applicant feels they fully comply. Craig Myer is present who is a certified professional building designer. He has designed for a number of years on many barrier islands. His resume will be presented as an exhibit. He has prepared a composite exhibit. Their focus will be on Attachment B of the staff report. Attachment B is the code for the Town of Fort Myers Beach, which deals with height. She referred to Section 34-361, which establishes the measurement of building heights. Maximum building heights are measured in two ways as shown in Figure 34-1. She expressed that they are shorter as measured by Craig Myer at 23-feet. She read the definition of a "story." The questions raised by staff is if the deck is a fourth story. Their answer is no, looking at the Town's code. The deck being considered is not a story and is lower than 25-feet and is not in violation of the building heights. An exhibit was placed before Council showing the structure being discussed to show that what is being built does not reach the maximum height. A separate exemption from the height exists and she feels they do qualify for two of those, should this need to be pursued any further. A memo in the County files states if a roof is added to the deck and made into a tower it would be exempt from the regulation. If more height is added, they could become exempt by making this tower.

Beverly Grady went on to discuss when she looked through the code she looked to see how habitable space is treated. Decks were not included in the computation for floor-area-ratio. She looked at build back (post or pre). Under the code, you can replace interior square footage. Balconies and decks can be replaced with no limitation. The drawing under the code as worded and adopted, the structure as proposed with the deck as shown is consistent with the height regulation and is not a story and is lower than the 25-feet. The building is less than, by far, what one is permitted as matter of right to build. She introduced Mr. Myer.

Craig Myer came forward. It is his opinion this case should not be before the Council. Roof top

decks have been generally used throughout the area for years and years. They are still permitted in the rest of Lee County and Sanibel. The Land Development Code (34-1) does illustrate there are three stories showing a dimension of 12-foot to just give a relative up to the 25-foot based on a 1-foot floor system. The base flood has been elevated to 17.7 feet to allow for larger garage space below the house. The second floor is 9-foot and the third floor is 8.1 feet and the room adjoining this proposed deck has a ceiling height of 10.5 feet. The staff report indicates in the conclusion the deck is not a third story, but because it is accessed by a stairway it is considered habitable. He deals with codes frequently and has seen them change throughout the years. Zoning and building is two different entities. The zoning department should also take their definitions based on the building code. He read the definition of habitable space as written by the building code. Decks are not habitable space by this definition.

Mayor Hughes commented on the definition. What prevents a person from sleeping or barbequing on this deck? He felt they are trapped by their own definition, if this in fact is the definition they would like to use. Craig Myer replied that you could sleep or eat on this deck. He commented that closets, hall and screen enclosures are not considered living area. Decks are normally considered screen enclosures. Mayor Hughes does not feel this resolves the issue.

Craig Myer commented on a memo between Bill Spikowski and Pam Houck. If the deck had a roof on it could it be considered a tower and would it be allowed as an exception to the height limitation. Based on this information they could design this structure with a roof on it. The code also makes a provision for air-conditioning equipment to be located on a platform above the roof. The air conditioner is mounted on a platform along side of the house. If this were moved to the roof, this roof deck would be allowed for this as well. The spiral staircase would be allowed to service the mechanical equipment. He urges the reconsideration of the rejection of the structure. The code is not specific as not to permitting them.

Beverly Grady questioned if it is the professional opinion of Craig Myer that the subject deck is an architectural feature? Craig Myer replied that “yes” he believes it does.

Beverly Grady addressed the issue raised by Mayor Hughes. When you look at habitable and name the uses she feels this discusses space designed for it. She commented that she could sleep in an attic, but this does not make it habitable. In looking at the code and giving reasonable interpretation there is nothing present which precludes a deck at this height, which is shorter than the maximum permitted. There is nothing in this code that defines this deck as habitable space. She does feel this should be recognized as an architectural appurtenance and similar to what is on the list and should be exempt from the story limitation. She passed out a memo providing the analysis.

Council member Rynearson questioned if this is being considered a deck or observation tower? Beverly Grady replied that it could be either.

Vice Mayor Cain has concerns with the items to be placed on this deck, which will make it higher than the 25-feet allowed. She indicated furniture, vegetation and a way to keep out of the sun are typical items placed in this type of environment. Beverly Grady replied the code as actually adopted absolutely permits what has been presented today. If the Town does not want roof decks, this should be added in the code. This particular case is permitted by the code as adopted.

Pam Houck came forward and did express the Town Council has just experienced the same difficulty the staff had experienced while reviewing this permit. The code is not clear. When you look at the code, some very explicit illustrations are shown how buildings are to be designed. Exemptions are shown. In this case, the building is allowed to be 25-feet and the building meets this case. In this case, it is allowed to be three-stories with the first floor being parking level, second and third are livable areas. She feels the deck is a liveable area and exceeds the height limitation anticipated by the code. She has cited an attic as non-habitable. In zoning, the habitable definition as used in the building code is not used. Zoning goes beyond this definition. A deck at this height will invade the privacy of those who have complied with the code. She had an aerial photograph and pictures of the home. She distributed these to the Council.

In conclusion, Pam pointed out that staff’s opinion is that this does exceed the height limitations of the Town’s code. The applicant’s illustration is a perfect example, because it does not match the illustration in the code of the staff report.

Mayor Hughes reviewed that this case is based on whether this falls within one of the exceptions? Pam Houck replied that this is correct. Clearly, a deck is not one of those structures.

Dan Folke added that much discussion took place with regard to this request. He strongly disagrees with some of the information provided by applicant’s representative as stated. Dan indicated in the two years he has been working with the Town they have been very consistent with the architectural features above. They have been very consistent with access to the feature. Access and potential use of

the space has always been considered. If there is access and it is intended for the use and enjoyment of the inhabitant this could have an impact on a neighbor vs. an architectural feature, which has no accesses. He finds this to be a fourth story. He does receive many calls with regard to the height policy. Many people want to understand and he finds this needs additional help with regard to the interpretation.

Beverly Grady responded to the comments made by Pam Houck and Dan Folke. She hears Pam stating this is an area not addressed by the code. She did not see the information as stated by Dan in the code. If it is the desire of the Council to have the language as was stated by Dan an amendment to the code needs to take place. Presently, 250 square feet of area are permitted as an architectural feature. Much discussion has taken place which indicates a change for clarification must take place. She further concluded the applicant feels the home qualifies because it is shorter and does qualify for the architectural feature.

Council member Rynearson questioned if the railing is considered part of the construction or is it part of the roof line? Dan Folke replied this is a good question. It talks about non-habitable space inside the roof line. These are things inside, which you cannot see. He feels this is different, because it is not within the roof line and is visible and must have access. It is intended for the use of people and has not been addressed by the code. He considers the railing as part of the living area and is not allowed as a fourth story. The use makes this not permitted with the way the rules have been interpreted along with the potential impact to surrounding property owners.

Mayor Hughes asked if anyone wished to address the Council on this matter?

Carolyn Caney came forward. She is the builder who is building the home for Mr. Eissler. She is confused about the interpretation of the word habitable and when the interpretation of a fourth story changed in definition. Has this been the same or has it changed recently? Mayor Hughes replied that he does not believe this provision has changed recently.

Carolyn Caney replied that they were involved in a project less than 2 years ago where a roof top deck was built. It was accessible by stairs and was permitted by Lee County and Fort Myers Beach. She is unsure why this is no longer allowed. Dan Folke replied that this is being considered a fourth story, which was what was adopted on March 3, 2003.

Carolyn read the new code and was unsure how the definition changed. It seemed to state the same language.

Mayor Hughes closed the public hearing.

MOTION: Made by Council member Bill Van Duzer to override the staff's interpretation and develop some language to describe this type of structure for future construction on Fort Myers Beach.

VOTE: **Motion fails due to lack of second.**

Council member Rynearson feels there are some language issues with the code. He does not feel this could be passed. The ordinance needs to be reworked to stronger and better language. He agrees with Dan Folke.

Council member Thomas indicated the Town staff considers this a fourth floor. What does the County interpret this as? Pam Houck replied this would not be a story by this definition. When the code does not define it you then rely on the dictionaries definition. According, to Webster this is not a story.

Vice Mayor Cain feels interpretation will take place no matter how the language reads. According to the code it would qualify as another story because it does not fit within the roof line and is habitable. The architectural feature is also open to interpretation. She went by this home and indicated it is beautiful. She is unsure if she would include another deck as an architectural feature.

Mayor Hughes agrees with Vice Mayor Cain. This exceeds the height regulation. He does not have any trouble interpreting the exceptions to exclude this type of usage. He does feel this would set a serious precedent.

MOTION: Made by Vice Mayor Terry Cain and seconded by Council member Bill Thomas to uphold the staff's interpretation and adopt the resolution at the beginning of the packet by striking "did not follow."

Discussion: Beverly Grady came forward and expressed she did not understand the motion.

What code provision do they not meet? Mayor Hughes replied that they do not qualify as an exception to height regulations under section 34-631.

Beverly Grady wants to be clear what they do not meet without exceptions since they are not a fourth story? Mayor Hughes replied the height is determined by the ceiling of their third floor. They are above this ceiling.

Attorney Dick Roosa added there was an application for a permit filed to allow for this deck to be constructed. This application for permit was denied based on the Town's height limitation ordinance. The question before the Council was if this is proper. The resolution states this was appropriately denied and a finding of fact or conclusions of law is not needed for this particular issue.

Beverly Grady replied it is fair for a property owner to understand how the code is interpreted.

Council member Van Duzer would like to review the rejection notice prior to making a decision.

Further discussion took place with regard to the fourth floor meeting the height requirement. Mayor Hughes feels the staff report speaks for itself and requires no further explanation.

Craig Myer came forward and indicated the line he has drawn and indicated in yellow is the top of the ceiling. This is a sloped plate and is the top plat of the room adjoining this deck. The deck is below this line.

Council member Van Duzer will vote against the motion. He referred back the definitions of habitable space and non habitable space as defined by the building code. This covers the use of this deck. The deck as being proposed is a utility type deck. He does not feel the issue of cooking on this deck is relevant. He had built a home recently with this same type situation and was approved, permitted and constructed. He feels this should be allowed as long as it is not a living area. If it will not be allowed, the Council must change what is written and approved.

VOTE: **Motion passes 4 to 1. Council member Bill Van Duzer dissenting.**

Mayor Hughes asked staff to consider additional language and present back to the Council for referral to the LPA. Dan Folke will comply.

John Kakatsch, a neighbor of Mr. Eissler came forward. He owns property (4 buildings) around his place. He has no objection to what is being done there. On north Captiva in Lee County all homes he looked at to purchase have observation decks on the fourth level. North Captiva has done a wonderful job of selling this feature and he feels this should be reconsidered. He suggests the Council reconsider.

V. COUNCIL MEMBER ITEMS AND REPORTS

Council member Rynearson - Offshore has requested they discontinue the extension of premises for Saturday only. The Alliance has decided not to proceed due to the cost for the deputies.

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Van Duzer to discontinue the extension of premises for Saturday night only for the Offshore.

VOTE: **Motion passes unanimously.**

Vice Mayor Terry Cain - The Boy Scouts were out at Playworks on Saturday and Sunday with some putting in a 10-hour day. The work was more than anticipated. They will be there again this weekend,

so anyone who can attend, please lend a helping hand. This is a big project.

VI. TOWN MANAGER'S ITEMS
None.

VII. TOWN ATTORNEY'S ITEMS
None.

VIII. PUBLIC COMMENT
None.

IX. ADJOURNMENT
The meeting was adjourned at 11:55 a.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