FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
MINUTES
Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
Tuesday, January 14, 2014

I. CALL TO ORDER

Meeting was called to order at 9:02 a.m. by Chair Zuba; other members present:

Chuck Bodenhafer
Al Durrett
John Kakatsch
Jane Plummer
Joanne Shamp
James Steele
Hank Zuba

LPA Attorney, Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director
Leslee Dulmer, Zoning Coordinator
Josh Overmyer, Planning Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES

A. Minutes of December 10, 2013

MOTION: Ms. Shamp moved to approve the Minutes for December 10, 2013; second by Mr. Bodenhafer.

Zoning Coordinator Dulmer reported she distributed the 'official form' (LPA Member Steele's abstention form) that was to be adopted and included with the December 10th minutes.

VOTE: Motion approved, 7-0.

V. PUBLIC HEARING

A. DCI2013-0002 Matanzas Inn CPD Amendment

Chair Zuba opened the Public Hearing.

Zoning Coordinator Dulmer reported staff requested a continuance of case DCI2012-0002 as the Applicant was unable to provide staff with the revised materials in time for staff review; and added that a date certain would be for the LPA to discuss, and she suggested a date certain in March. She explained the document submittal and advertising deadlines to the Town for LPA meetings.

MOTION: Vice Chair Shamp moved to approve staff's request for a continuance of DCI2013-0002, Matanzas Inn CPD Amendment, to the March 11, 2014 LPA meeting with document submittal to staff by January 28, 2014; second by Mr. Steele.

VOTE: Motion approved, 7-0.

Chair Zuba closed the Public Hearing.

B. Houseboat, LLC

Chair Zuba opened the Public Hearing.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – none; Mr. Kakatsch – site visit; Mr. Smith: - site visit; Chair Zuba – site visit; Mr. Steele – site visit; Ms. Plummer – site visit and conversation; Vice Chair Shamp – site visit and conversation; Mr. Bodenhafer – site visit.

LPA Attorney Miller swore in the witnesses.

1. REZ2013-0001
2. SEZ2013-0005
3. VAR2013-0006

Attorney Grady, representing the Applicant (Houseboat, LLC – John Richard), reviewed the rezoning request for four parcels located at 420, 430, 440 Old San Carlos Boulevard and 1010 Second Street from Commercial Planned Development to the Downtown Zoning District. She described the shape and size of the subject property; and original zoning designation and prior CPD amendments by Town Council. She noted the Matanzas CPD was not contiguous to the remainder of the CPD; and that the subject property was located in the heart of the downtown core and the remainder of the CPD was under separate ownership and legally/physically separated. She explained the changing condition that made the rezoning appropriate was that the Town did not have the downtown district available at the time the property was originally rezoned a CPD; that the request was consistent with the Comprehensive Plan and the intent of the LDC; that all urban services were currently available; that the rezoning would have no impact on critically environmentally areas or natural resources; and was consistent with the existing planned uses and surrounding uses. She recommended the resolution provided to the LPA for the rezoning should include the fact that the subject property was legally and physically separated. Attorney Grady utilized a PowerPoint presentation to review the special exceptions for a shared parking and one 'retail, large' south parcel (existing and future); and valet parking on the south parcel (Slide #3); and full parcel – permanent and shared parking (Slide #4). She reviewed the Applicant's request as it pertained to the Staff Variance and the Applicant's Variance as follows:

Staff Variance	Applicant Variance
Variance #1 – 34-676(b)	Variance #1 – Section 34-676(b), parking lot location, to permit off-street parking in the side yard as depicted on the site plan

Staff Variance	Applicant Variance
Variance #2 – Table 10-8 Variance #3 – 10-416(d) to 2.5' buffer Variance #4 - 10-416(d) from C-F buffer to fence Variance #5 – 34-676(b)(3) to 2.5' buffer	Variance #2 – Reduced buffer (includes all 3 code sections)
	Variance #3- A variance from LDC Section 10-416(c) internal Landscaping for parking lots to allow no internal landscape parking lot improvement

Staff Variance	Applicant Variance
Variance #6	Variance #4 – Section 34-2016(1) and (2) parking dimensions

Staff Variance	Applicant Variance
Variance #7 – 34-622(b) and 34-3131	Variance #5 – Section 34-622(b) and 34-3131 from visibility triangle for Second and Third Streets to allow reduced triangle as set forth in attached sketch (Exhibit 1 – Slide #13)

She reviewed the request under LDC 34-674(a) for an overhang of the building onto the right-of-way for a dimension of 12 feet. She explained that the Applicant accepted the conventional zoning; however, he did want the special exception for the parking and the retail.

Alexis Crespo of Waldrop Engineering representing the Applicant, reviewed the planning consistency of the subject application and how the requested variances, special exceptions, and rezoning would directly implement the intent for the Pedestrian-Commercial Future Land Use designation, as well as the Town's Downtown Zoning District, and specific regulations for the Old San Carlos Boulevard. She noted that the zoning request was a logical extension of the Downtown Zoning District; it was appropriate based on the surrounding zoning districts, land uses, infrastructure in place, and the property's location in the core of San Carlos Boulevard. She pointed out that the special exceptions for 'retail large and shared parking' were appropriate considering the Pedestrian-Commercial Land Use and the intent to cluster the intense-type uses into the downtown core. She reviewed how the proposed variances were suggested because it was Old San Carlos Boulevard with zero foot setbacks and unique design standards that could allow staff to view these variance requests in a different light than if proposed in a different location along the beach. She added that the Applicant would comply with the commercial design standards in place.

Vice Chair Shamp noted her concern for a sidewalk along Third Street; and she reported she liked the proposed buffer, but expressed her hope that they would be anchored in case of a wind storm. She questioned the 'permanent shared parking on Old San Carlos'.

Attorney Grady explained that the ultimate goal was to have the buildings along the entire front; and for continued development in the downtown area it would correlate with economic recovery.

Mr. John Richard, Applicant, noted the sidewalk was the Town right-of-way and he was "*all for it*".

Vice Chair Shamp questioned the parallel spots with the painted stripes.

Community Development Director Fluegel explained the primary use of the subject spaces was for a loading zone for the downtown businesses.

Vice Chair Shamp asked if the spaces would be removed and would a sidewalk be installed.

Community Development Director Fluegel explained there was probably space between the parking spaces and the subject property to install a sidewalk; however, he did not know the dimensions without a survey.

Mr. Richard expressed his view that the matter went beyond the scope of his application since the spaces were not his property but the Town's property.

Ms. Plummer asked if Mr. Richard intended to have the subject property look similar to what he did at Shipwreck.

Mr. Richard responded in the affirmative; and noted was his intention "*to make it look like a village*".

Mr. Durrett asked if the future building on the subject property was ground-level.

Mr. Richard responded in the affirmative.

Mr. Durrett asked FEMA regulations as it pertained to the future ground-level building.

Planning Coordinator Overmyer explained the subject property was in an "A Zone" for flood zone purposes, and commercial uses could be dry flood-proofed to one foot above the required base flood elevation.

Mr. Steele questioned the proposed height of the overhang above the sidewalk.

Mr. Richard explained it would be the same as the Shipwreck building.

Mr. Steele questioned the location of the property line.

Mr. Richard explained there was no right-of-way onto his property.

Chair Zuba questioned Attorney Grady for her suggested wording to include in the proposed resolution.

Attorney Grady requested the inclusion of the following in #2 of the Recommended Findings and Conclusions:

> "The ~~only~~ changed condition that exists which supports the applicant's request for rezoning is 1) the existence of the DOWNTOWN zoning district and 2) the subject property is no longer part of the ~~original~~ larger CPD."

Chair Zuba noted his support of the rezoning and several of the variances; however, indicated concern regarding the parking setback and the sidewalk issue.

Attorney Grady explained the request was not a setback variance.

Discussion ensued regarding parking at the subject site; future conditions of where the parking and building would be situated; proposed 2.5' buffering; and the parking space dimension variance.

Mr. Steele questioned the accuracy of the parking spaces, as depicted on Diagram 11, and as it pertained to 18 spaces on each side.

Mr. Richard explained Diagram 11 was a possibility; however, that would be determined at the time of redevelopment.

Mr. Steele explained that a dimension of eight feet for a parking space concerned him.

Mr. Richard explained that he owned the property and would "*do something to make it work*"; and that he was asking for some "*wiggle room*".

Discussion ensued regarding parking space dimensions; and the notation of a transformer on the subject property which impacted parking.

Mr. Durrett asked what was the '*park once emphasis*'.

Community Development Director Fluegel explained the concept of '*park once emphasis*' which was to have people find a parking spot; get out of their vehicles once on the island; and stay out of their vehicle for their stay (i.e. utilizing a bicycle, walking, etc.) to mitigate traffic impacts on Estero Boulevard.

Zoning Coordinator Dulmer read into the record an email she received from Doug Sperin-Smith on November 4, 2013:

> "*Good afternoon, I just saw the notices for the upcoming LPA and Council meetings and I would like to reaffirm my suggestion that the Town maintain a strong stance on maintaining some kind of buffers wherever possible; in particularly, the downtown core where there is a walking district. They really help the perception of the area and the Town. Thanks for your efforts, Doug.*"

She presented comments for Houseboat, LLC, REZ2013-0001, SEZ2013-0005, and VAR2013-0006, on behalf of the Town of Fort Myers Beach. She displayed a survey of the property location at 420, 430, 440 Old San Carlos Boulevard and 1010 Second Street and reviewed the property history:

- Originally part of the Matanzas CPD, approved by Lee County Z-95-074 (Exhibit B)
- Amended by Town Council in Resolution 99-05 (Exhibit C)
- Amended again by Resolution 03-35 (Exhibit D)
- Property sale in spring of 2013 created separate ownership within a single CPD
- New owner applied for rezoning (resulted in need for SEZ and VAR applications)

Zoning Coordinator Dulmer began her review of the Applicant's request by noting:

- November 12, 2013 LPA meeting – Applicant requested and was granted continuance to 1/14/14 meeting.
- Additional submittals – Submitted 12/16/13, included 1 additional special exception and 5 additional variance requests.

LPA Attorney Miller explained that when reviewing the publication one of the variance requests was not advertised (10-416(c) - internal buffering, Applicant's Variance #3), and that the LPA could exclude that variance today and did not necessitate continuing anything else.

Zoning Coordinator Dulmer continued the review of the Applicant's request:

- REZ2013-0001 – to rezone four parcels from Commercial Planned Development zoning to the Downtown Zoning District.
- SEZ2013-0005 – to include "retail store, large' as defined in LDC Chapter 34 as gross floor area larger than 5,000 square feet, as permitted use; *a request for a special exception to allow a parking lot, shared and permanent.*
- VAR2013-0006 – a variance request from 1) Section 34-676(b) parking lot location to permit off-street parking in the front and side yard as depicted on the site plan Exhibit E; 2) Table 10-8 from Type D buffer for Old San Carlos Boulevard and from Third Street to existing conditions;

3) *Section 10-416(d) requiring buffer between parking and right-of-way to allow zero buffer; 4) Section 10-416(d) requiring a type C/F buffer along rear property line to allow existing six foot fence along rear property line; 5) Section 34-677(b)(3) requiring a buffer between off-street parking and a ROW to allow zero buffer; 6) Section 34-2016(1) and (2) parking dimensions; 7) Section 34-622(b) and 34-3131 from visibility triangle for Second and Third Streets to allow reduced triangle as set forth in sketch.*

She reviewed the supporting regulations and request:

- REZ2013-0001 – to rezone four parcels from Commercial Planned Development zoning to the Downtown Zoning District.
    - Section 34-85 Rezonings
    - Section 34-85(2)a – staff does not find that any errors or ambiguity exist surrounding the subject property and its zoning category that require correction.
    - Section 34-85(2)b – The only changed condition that exists which supports the Applicant's request for rezoning is the existence of the Downtown Zoning District. At the time of the Matanzas CPD approval, the Town had not yet developed Town-specific zoning districts. Now that that the Downtown district exists and the property has changed ownership, the Applicant is requesting the rezoning.
    - Section 34-85(2)c – Staff does not anticipate that the proposed rezoning from CPD to Downtown will have any negative impact on the intent of Chapter 34.
    - Section 34-85(2)g – As discussed in the analysis section of this report the request is generally consistent with the goals, objectives, policies, and intent as well the densities, intensities, and general uses of Comprehensive Plan.
    - Section 34-85(2)h – The Applicant has not submitted a plan for redevelopment with this request for rezoning. They have indicated to staff no immediate intention to change current uses on the subject property, merely a desire to obtain Downtown zoning. However, the current schedule of uses as adopted by Resolution 03-35 grants the full complement of land uses as designated by Downtown zoning.
    - Section 34-85(2)i – Urban services including water, sewer, and electric are available at the subject property. Any redevelopment or increase in density at the subject property will necessitate a thorough stormwater management plan and review prior to any permit or use approvals.
    - Section 34-85(2)j – As existing commercially zoned and developed lots located in the downtown core area along Old San Carlos Boulevard, the subject property does not include any sensitive and/or environmentally critical lands. However, should these parcels be redeveloped with uses as permitted within the Downtown Zoning District all applicable environmental codes including but not limited to Sea Turtle lighting requirements as found in LDC Section 14-79 would have to be met.
    - Section 34-85(2)k – With its central location within the downtown core area, the subject property's proposed change from CPD to Downtown zoning is clearly compatible with existing and planned uses. Further, with the approval of Resolution 03-35, and as contained in the approved schedule of uses for the Matanzas CPD, the subject property had already been granted the same uses that are allowed in the Downtown zoning district. However, the Town does retain land and property development controls, including but not limited to Section 34-671; Downtown zoning district regulations, Section 34-677;

Commercial Design Standards, FEMA flood elevation and substantial improvement compliance, and other sections of the Land Development Code. Any redevelopment will be subject to reviews utilizing the applicable specific land use regulations.

- Section 34-85(2)l – As evidenced by recent requests for zoning changes, Town Council has determined that the appropriate time to study traffic impacts is at the time of redevelopment or development order. The Applicant has indicated there are no current plans for redevelopment. The continuation of existing uses, therefore, will not increase any traffic burden on local streets or other local service facilities. Staff does not anticipate the requested rezoning from CPD to Downtown would generate any additional capacity or need for the Lee County School District or the Town's Parks and Recreation Department. At the time of redevelopment; however, plans will be thoroughly reviewed for any impacts.

She reported that staff recommended approval of the request for a rezoning to the Downtown Zoning District; and noted that conditions were not permitted on a rezoning request. She continued her presentation with a review of the special exception request and noted the supporting regulations:

- SEZ2013-0005 – to include 'Retail Store, large' as defined in LDC Chapter 34 as gross floor area larger than 5,000 square feet as a permitted use. *A request for a special exception to allow a parking lot, shared and permanent.*
  - Section 34-88(2) Considerations – in reaching its decision Town Council shall consider the following whenever applicable:
    - Section 34-88(2)(a) – *Whether there exist changed or changing conditions [that] make approval of the request appropriate.*
    - Section 34-88(2)(e) – *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*
    - Section 34-88(2)(f) – *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*
    - Section 34-88(2)(g) – *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*
    - Section 34-88(2)(h) - *Whether the request would be compatible with existing or planned uses and not cause damage, hazard, nuisance or other detriment to persons or property.*
    - Section 34-88(2)(i) – *Whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.* .

She stated staff was generally supportive of the uses on the subject property and reviewed the options available to the LPA:

- Approve
- Approve with conditions
- Deny
- Continue to a future meeting with a date certain
- Noted that denial created existing non-conforming conditions

She continued her presentation with a review of the variance requests; stated that staff recommended approval with conditions for the location of the parking lot; and noted the supporting regulations:

- VAR2013-0006 – a variance request from:

- Section 34-676(b) parking lot location to permit off-street parking in the front and side yard as depicted on the site plan Exhibit E. (She noted approval would allow redevelopment with parking in the front or side yard; and reminded that variances run with the land.)
- Table 10-8 from a Type D buffer for Old San Carlos Boulevard and from Third Street to existing conditions. (She discussed buffering and asked the LPA to make it very clear as to what type of plantings would be required if the Applicant went with the alternative buffer as they presented; and requested the LPA went with the reduced size buffer and that they clarify the plant material to be used.)
- *Section 10-416(d) requiring buffer between parking and ROW to allow zero buffer.*
- *Section 10-416(d) requiring a type C/F buffer along rear property line to allow existing six foot fence along rear property line.*
- *Section 34-677(b)(3) requiring a buffer between off-street parking and a ROW to allow zero buffer.*
- *Section 34-2016(1) and (2) parking dimensions.* (She noted that staff was uncomfortable with the proposed parking dimensions similar to the questions asked by the LPA during their questions/answers earlier; and noted 8' was a narrow parking space.)
- *Section 34-622(b) and 34-3131 from visibility triangle for Second and Third Streets to allow reduced triangle as set forth in sketch.*

Discussion ensued concerning redevelopment and parking (rear and side); and potential conditions as it pertained to requiring rear parking at time of redevelopment.

LPA Attorney Miller noted her concern with respect to Section 34-87, Variances, and existing buildings, setback, height, similar variances, and the enforceability. She noted the code addressed a variance for an 'existing building' and questioned if the variance could be conditioned to expire with any redevelopment of the lot.

Zoning Coordinator Dulmer asked if the condition could be at the time of redevelopment all parking must be provided in the rear.

Discussion continued regarding redevelopment and parking (rear and side); and potential for conditions as it pertained to requiring rear parking at time of redevelopment.

LPA Attorney Miller explained there needed to be care with some of the variances; that the requests needed to meet the requirements of a variance; and the requests needed to meet the justification of the criteria; and if the criteria were not met, she recommended denial. She discussed review to determine if there was something unique about the subject property, and what was the justification for the variance.

Zoning Coordinator Dulmer read the five criteria that must be met by Council when considering a variance:

a. There **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

b. The conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulation in question.
c. The variance granted **is** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
d. The granting of the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
e. The conditions or circumstances on the specific piece of property for which the variance is sought **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

LPA Attorney Miller noted that if the property owner or a future buyer took the position that having the variance expired with redevelopment was not a valid condition then there could be a variance that runs with the land that could allow redevelopment.

Vice Chair Shamp questioned if staff agreed with the Applicant that the sidewalk along the subject property was part of the right-of-way and that the Town was using that as a loading zone area.

Community Development Director Fluegel explained the Town was not using it as a loading zone rather they were providing it for the business merchants in the downtown to use as a loading zone.

Zoning Coordinator Dulmer indicated that sidewalks, unless the property owner provided a sidewalk easement or was required to provide a sidewalk easement, they were generally provided within a jurisdiction's right-of-way.

Discussion continued regarding parking and redevelopment and potential variance conditions as it pertained to requiring rear parking at time of redevelopment; property ownership and the original Matanzas CPD as it related to parking; possible condition for buffering to include a landscape plan be submitted to staff for approval; and the requirements for a Type D buffer and consideration of a reduced buffer.

Zoning Coordinator Dulmer reviewed the buffer requirements for 'seasonal parking lots' (i.e. 36" minimum plant material or fence).

Chair Zuba asked if staff was in agreement with the requested 2.5' buffer.

Zoning Coordinator Dulmer stated staff recommended consistency of 5'.

Chair Zuba questioned staff's opinion regarding the visibility triangle.

Zoning Coordinator Dulmer replied that staff did not feel there was justification sufficient with the requirements set forth in Section 34-87 for staff to make a recommendation of approval for that request.

Attorney Grady explained that the Applicant requested the variance pertained to the definition of 'non-conforming' in the code (34-32(c)); and that no one was amending the code.

LPA Attorney Miller asked if Attorney Grady felt it was legal and valid to condition a variance that when the property was redeveloped that the variances essentially expired.

Attorney Grady explained that she had seen 'timing conditions' and saw them upheld; and how the condition had to have a rational nexus. She noted the Applicant had not asked for any relief from the 'build-to line'.

Community Development Director Fluegel made some general comments related to a photograph depicting landscape materials.

Mr. Richard reported the 'skim boards' were 41" tall.

Community Development Director Fluegel discussed the type of buffering used recently at two seasonal parking lots located in the Town.

Discussion ensued regarding a buffer that was purely fence without vegetation; and the proposed 2.5' buffer versus the 5' buffer.

Public Comment opened.

No speakers.

Public Comment closed.

Attorney Grady clarified that the variance requested for the parking within the front and side yards, as to the perimeter buffer, that it was three sections of the code that required the same thing and that the Applicant was offering the 2.5' buffer, as designed, which would be installed immediately. The variance for the internal parking of the landscapes which was left off could be addressed administratively, and suggested the LPA comment on it to give direction to staff. She explained the buffer of the fence was appropriate to the rear yard; and requested flexibility of the parking dimensions to allow the Applicant to maximize the parking. She recapped the request to the LPA was to grant the rezoning, the two special exceptions, and the variances.

Zoning Coordinator Dulmer asked the Applicant on Page 8 of the PowerPoint handout was it correct that Staff Variance #2, #3, #4, and #5 were all being rolled into Applicant Variance #2.

Attorney Grady responded in the affirmative; and noted that #2, #3, and #5 were the same thing.

MOTION: Vice Chair Shamp moved to recommend approval of REZ2013-0001, Houseboat, LLC Rezoning to rezone the subject property from CPD to the Downtown Zoning District with Recommended Findings and Conclusions:

a) Approve.
b) The ~~only~~ changed condition that exists which supports the applicant's request for rezoning is 1) the existence of the DOWNTOWN zoning district and 2)

the subject property is no longer part of the ~~original~~ larger CPD. At the time of the Matanzas CPD approval, the Town had not yet adopted Town-specific zoning districts. Now that the Downtown district exists and the property has changed ownership, the Applicant is requesting this rezoning. **Approve**

c) Approve.
d) Approve.
e) Approve.
f) Approve.
g) Approve.
h) Approve.
i) Approve.

SECOND: Mr. Bodenhafer.

VOTE: Motion approved, 7-0.

MOTION: Vice Chair Shamp moved to recommend approval of SEZ2013-0005, Houseboat, LLC Special Exception with the Recommend Conditions of Approval:

1. Redevelopment be based upon the Comprehensive Plan of the Town and would require parking to be moved to the rear if any redevelopment occurs on the property.

Recommended Findings and Conclusions:

1. Do exist.
2. Is consistent.
3. Meets or exceeds.
4. Will.
5. Will; will not.
6. Will.

SECOND: Mr. Bodenhafer.

VOTE: Motion approved, 7-0.

LPA Attorney Miller indicated the LPA could include the condition regarding the parking and redevelopment since the LPA was making a recommendation to Council; and she would continue her legal research on the matter before it came before Council.

MOTION: Vice Chair Shamp moved to recommend approval of Resolution 2013-17, VAR2013-0006, Houseboat, LLC Variance and approval of the requested variance from the following sections:

1. Section 34-676(b), parking lot location, to permit off-street parking in the side yard as depicted on the site plan *Exhibit E*.

2. Table 10-8 Type D buffer, Section 10-416(d) requiring a buffer between the parking lot and ROW, Section 34-677(b)(3) requiring a buffer between off street parking and a ROW to allow a 2.5' along Old San Carlos and Third Street.
3. Section 10-416(d) requiring a type C/F buffer along the rear property line to allow an existing six (6') foot fence along rear property line.
4. Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
45°	8.5' x 18'	10'	20'
60°	8.5' x 18'	12'	20'
75°	8.5' x 18'	15'	20'
90°	8.5' x 18'	18'	20'

5. Section 34-622 (b) and 34-3131 from visibility triangle for Second and Third Streets to allow reduced triangle as set forth in attached sketch; and
6. Section 10-416 that Administrative Variance might be permitted for relief from internal landscape requirements.

RECOMMENDED CONDITIONS OF APPROVAL:

1. The applicant shall install a 2.5' wide buffer with a minimum height of 41."
2. Parking lot would be existing legal non-conforming and at the time of redevelopment, the parking lot variance allowing a front and side lot must come into compliance and be located in the rear of the subject property.
3. The LPA grants approval for a building overhang extending up to 12' into the right-of-way.

RECOMMENDED FINDINGS AND CONCLUSIONS:

a. There **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
b. The conditions justifying the variance **are** the result of actions of the applicant taken after the adoption of the regulation in question.
c. The variance granted **is** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
d. The granting of the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
e. The conditions or circumstances on the specific piece of property for which the variance is sought **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

SECOND: Mr. Bodenhafer.

VOTE: Motion approved, 7-0.

Discussion was held concerning the parking lot space dimensions.

Chair Zuba closed the Public Hearing.

Recessed at approximately 11:08 a.m. – Reconvened at approximately 11:20 a.m.

C. Rusty's Shipwreck

Chair Zuba opened the Public Hearing.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – none; Mr. Kakatsch – site visit; Mr. Smith: - site visit; Chair Zuba – site visit; Mr. Steele – site visit; Ms. Plummer – site visit; Vice Chair Shamp – site visit and conversation with Mr. Richard to discuss buffers and definition of marina; Mr. Bodenhafer – site visit.

LPA Attorney Miller swore in the witnesses.

1. REZ2013-0002
2. SEZ2013-0006
3. VAR2013-0007

Attorney Grady, representing the Applicant (Rusty's Shipwreck – John Richard, Trustee), reviewed the rezoning request for parcels located at 237, 245, 309, 320, and 330 Old San Carlos Boulevard from Commercial Planned Development to the Downtown Zoning District. She described the shape and size of the subject property; and original zoning designation and prior CPD amendments by Town Council. She noted that much of the description of the Comprehensive Plan and land development code of the core was previously stated, and she requested that the LPA approve that she incorporate that information by reference. She outlined the request of rezoning from CPD to the Downtown zoning with a special exception (PowerPoint Presentation - Slide #3) for shared parking, for retail large, for the existing wholesale use, and valet parking (South Parcel, PowerPoint Presentation - Slide #4) for the subject two parcels. She reviewed the Applicant's request as it pertained to the Staff Variance and the Applicant's Variance as follows:

> **South Parcel** – Shared Parking & Retail Large; valet parking on south parcel; buffering; visibility triangle, parking dimension, internal landscaping.
>
> | Staff Variance | Applicant Variance |
> |---|---|
> | Variance #1 – 34-676(b) | Variance #1 – Section 34-676(b), parking front/side yard |
>
> | Staff Variance | Applicant Variance |
> |---|---|
> | Variance #2 – Table 10-8
Variance #4 – 34-676(b)(3)
Variance #5 – 10-416(d) | Variance #2 – Reduced buffer (included all 3 code sections) |
>
> From required Type D buffer to 2.5' buffer alongside lot lines immediately and along Old San Carlos in two years, if no building is constructed. (Attorney Grady filed, for the record, the same photograph as used in the prior case.)
>
> | Staff Variance | Applicant Variance |
> |---|---|
> | Variance #3 | Variance #3 – no interconnection (only for north parcel) |
>
> | Staff Variance | Applicant Variance |
> |---|---|
> | Variance #6 – 34-622(b) | Variance #5 – visibility triangle on Third Street |

and 34-3131

Staff Variance	Applicant Variance
Variance #7 – 34-2016(1) and (2)	Variance #4 – parking lot dimensions (same requested in previous case)

Staff Variance	Applicant Variance
Variance #8 – 10-416(c) and 34-3131	Variance #3 – internal landscaping variance

North Parcel - Shared Parking & Retail Large and wholesale use; internal buffer, parking lot dimension, angled dimension, internal landscaping.

Staff Variance	Applicant Variance
Variance #7 – 34-2016(1) and (2)	Variance #4 – parking lot dimensions

Staff Variance	Applicant Variance
Variance #8 – 10-416(c) and 34-3131	Variance #3 – internal landscaping variance

Attorney Grady noted the Applicant was also requesting an overhang (12' into the right-of-way) consistent with other development along San Carlos Boulevard.

Alexis Crespo of Waldrop Engineering representing the Applicant, reviewed the planning consistency of the subject application and how the requested variances, special exceptions, and rezoning would directly implement the intent for the Pedestrian-Commercial Future Land Use designation, as well as the Town's Downtown Zoning District. She noted the planning context was very similar to the Houseboat LLC. She indicated that the zoning request was a logical extension of the Downtown Zoning District; it was appropriate based on the surrounding zoning districts, land uses, infrastructure in place, and the property's location. She pointed out that the special exceptions for 'retail large and shared parking' were appropriate considering the Comp Plan and the intent to cluster the intense-type uses into the downtown core. She reviewed how the proposed variances were suggested because it was Old San Carlos Boulevard with zero foot setbacks and unique design standards that could allow staff to view these variance requests in a different light than if proposed in a different location along the beach. She added that the Applicant would be improving the existing conditions of the parking lot with the addition of the 2.5' buffer. She pointed out that the Applicant would comply with the commercial design standards in place.

Ms. Plummer questioned the current number of parking spaces on the subject property.

Mr. Richard, Applicant, stated he did not have an accurate count at this time; and estimated it could be between 75 and 100 and added that he far exceeded the parking requirements.

Discussion ensued regarding parking lots, amount of parking spaces, and proposed valet parking.

Vice Chair Shamp distributed the LDC definition of 'marina'; reported the subject property had docking ability for 16 slips; and noted her concerns that in the Downtown Zoning District a 'marina' was existing and that a marina definition included more than 'dockage'. She questioned if the LPA could make a finding that the subject property had a 16 space docking facility as compared to a marina. She pointed out that her concerns related to the location of the subject property and the surrounding environmental and residential areas.

Attorney Grady indicated that not all marinas had everything listed in the definition and that the subject property had been licensed to have boat rentals for approximately the past 10 years. She submitted a copy of the Occupational License for the boat rentals (2003 through current). She noted a 'pump-out' facility existed at the site and that the Applicant wanted to continue that use. She explained her understanding from communications with staff, based on aerials, authorization from the Town to rent boats/slips, and the pump-out service all demonstrated sufficient water-dependent use for the Town to recognize the use.

Mr. Richard reported that patrons pay to park in the slips and then walk around the area; and occasionally there would be a 'live aboard'; there were pump-out services available; and there were boat rentals.

Discussion was held concerning Joint Use Agreements for nearby parking lots and parking space requirements.

Zoning Coordinator Dulmer presented comments for Rusty's Shipwreck, REZ2013-0002, SEZ2013-0006, and VAR2013-0007, on behalf of the Town of Fort Myers Beach. She displayed a survey of the property location at 237, 245, 309, 320, and 330 Old San Carlos Boulevard (north and south parcels) and reviewed the property history and Applicant's request:

- Originally part of the Rusty's CPD, approved by Town Council in Resolution 01-03 (Exhibit B)
- Amended Administratively amended in 2002 by ADD2002-00089A to add a development phase to the Master Concept Plan (since been constructed)
- November 12, 2013 LPA meeting – Applicant requested and was granted continuance to 1/14/14 meeting.
- Additional submittals – Submitted 12/16/13, included 1 additional special exception and 6 additional variance requests.

She reviewed the staff recommendations as follows:

- REZ2013-0002 – staff recommended approval of the requested rezoning form Commercial Planned Development to Downtown.
- SEZ2013-0006 – staff recommended approval of the request to add "Retail Store, large, Wholesale" and "Parking lot, shared permanent" to the north parcel of the subject property and "Parking lot, shared permanent" and "Retail Store, large" to the south parcel of the subject property as approved special exception uses on the subject property.

She reviewed the variance request and Resolution 2013-020 with respect to renumbering the requested variances as follows:

1. Section 34-676(b) parking lot location, to permit off-street parking in the front and side yard as depicted on the site plan in *Exhibit E*
2. Table 10-8 Type D buffer, Section 34-677(b)(3) requiring a buffer between off street parking and a ROW, and Section 10-416(d) requiring buffer between parking and ROW to allow a 2.5' buffer with a 41" minimum height
3. Section 34-676(c) parking lot location, to allow no rear yard connection between subject property and adjacent property
4. A variance from Section 34-622 (b) and 34-3131 from visibility triangle to allow reduced visibility triangle for access to Third Street pursuant to sketch as a result of Town approval of SOB structure in right of way
5. A variance from Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
45°	8' x 18'	10'	20'
60°	8' x 18'	12'	20'
75°	8' x 18'	15'	20'
90°	8' x 18'	18'	20'

6. A variance from LDC Section 10-416 (c) internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2 (a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2 (d) no landscape every 10 space requirement; 2(e) no median required; 2(f) no interior landscape of sod and grass and 2 (g) no tree grates

She noted that staff's recommendation for the variance requests mirror their recommendations for the previous case; and recommended a 5' buffer; however, based upon the action taken in the previous case the staff would support a consistent buffer. She pointed out the key requests different from the previous case were #3 – staff in support of the request and recommended **approval**; the proposed parking dimensions (similar to the previous case) - staff recommended **denial** as proposed by the Applicant; and relief from Section 10-416 (c) – staff recommended **denial** due the supporting materials and rationale were not provided to staff for review.

Vice Chair Shamp questioned if all ingress/egress onto Old San Carlos Boulevard had been reduced as much as possible.

Zoning Coordinator Dulmer responded in the affirmative.

Discussion was held concerning a buffer along the back of the subject property by the dock and the administrative approval of a permit.

Zoning Coordinator Dulmer pointed out the Applicant was requesting the buffer between the parking and the right-of-way that they would install the 2.5' (41") buffer on the side lots and was requesting two years before they would have to install it along Old San Carlos Boulevard. She reported staff would like to see it all at the same time.

Attorney Grady reviewed the Applicant's request concerning the visibility triangle since she believed the request established a solid basis.

Zoning Coordinator Dulmer explained staff recommended denial on the visibility triangle based upon the information submitted; however, staff could now recommend approval based upon what was presented today.

Attorney Grady reviewed the justification of the Applicant's request concerning Variance #6, internal landscaping requirement since the parking lots were located in the rear of the sites and was different in the downtown core. She noted the imposition of spacing requirements on a small downtown parcel has a substantial impact on the ability to provide parking.

Chair Zuba questioned the basis for the Applicant's request in this case to install the 2.5' (41") buffer on the side lots with a waiting period of two years before they would have to install it along Old San Carlos Boulevard.

Mr. Richard explained the subject property would probably be the first site to be redeveloped.

Discussion ensued regarding the buffers.

Public Comment opened.

No speakers.

Public Comment closed.

Vice Chair Shamp questioned where, similar to the previous case, would the LPA address moving the parking with respect to redevelopment.

LPA Attorney Miller recommended placing the condition in the variance and the special exception approval.

MOTION: Vice Chair Shamp moved to recommend approval of Resolution 2013-018, REZ2013-0002, Rusty's with Recommended Findings and Conclusions:

a) Approve.
b) Approve
c) Approve.
d) Approve.
e) Approve.
f) Approve.
g) Approve.
h) Approve.
i) Approve.
j) Approve.
k) Approve.
l) Approve.

SECOND: Mr. Bodenhafer.

Vice Chair Shamp explained she was concerned about the 'marina' use; however, the Applicant produced enough information to make her more comfortable about it.

LPA Attorney noted the chart in the LDC pertaining to the marine uses and that the Applicant had not requested a special exception. She explained if the Applicant wanted to modify the existing conditions they would have to seek a special exception.

Discussion was held concerning a marina and a multi-slip docking facility.

Community Development Director Fluegel explained the subject property marina would be called '*existing only*' and would not permit an expansion of the number of slips or marina repair facilities or anything else within the marina definition.

Attorney Grady addressed a portion of the code as it pertained to the marina and '*existing only*'. *Existing only*....it describes a specific land use that is permitted only if that use lawfully existed on the same property on August 1, 1986. Such lawfully existing use shall have the same rights as a permitted use and may be expand or reconstructed on the same parcel in accordance with all applicable regulations.

Attorney Grady stated that staff had found the use at Shipwreck to be existing as of August 1, 1986.

Zoning Coordinator Dulmer noted "*new uses were only permitted by special exception*".

VOTE: Motion approved, 7-0.

MOTION: Vice Chair Shamp moved to recommend approval of SEZ2013-0006, Rusty's Shipwreck Special Exception with the Recommended Findings and Conclusions:

1. Do exist.
2. Is consistent.
3. Meets or exceeds.
4. Will.
5. Will; will not.
6. Will.

SECOND: Mr. Steele.

Vice Chair Shamp asked if at this time the LPA should mention the marina.

LPA Attorney Miller noted the existing code.

Discussion was held concerning the marina.

VOTE: Motion approved, 7-0.

MOTION: Vice Chair Shamp moved to recommend approval of Resolution 2013-020, VAR2013-0007, Rusty's Shipwreck Variance and approval of the requested variance from the following sections:

1. Section 34-676(b) parking lot location, to permit off-street parking in the front and side yard as depicted on the site plan in *Exhibit E*
2. Table 10-8 Type D buffer, Section 34-677(b)(3) requiring a buffer between off street parking and a ROW, and Section 10-416(d) requiring buffer between parking and ROW to allow a 2.5' buffer with a 41" minimum height
3. Section 34-676(c) parking lot location, to allow no rear yard connection between subject property and adjacent property
4. A variance from Section 34-622 (b) and 34-3131 from visibility triangle to allow reduced visibility triangle for access to Third Street pursuant to sketch as a result of Town approval of SOB structure in right of way
5. A variance from Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
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75°	8.5' x 18'	15'	20'
90°	8.5' x 18'	18'	20'

6. A variance from LDC Section 10-416 (c) internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2 (a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2 (d) no landscape every 10 space requirement; 2(e) no median required; 2(f) no interior landscape of sod and grass and 2 (g) no tree grates; and

RECOMMENDED CONDITIONS OF APPROVAL:

1. The applicant shall install a 2.5' wide buffer with a minimum height of 41inches.
2. Applicant may utilize the parking dimensions described in variance recommended approval #4 above, provided, however, at the time of redevelopment or the application of a building permit for the subject property, the parking space dimensions must come into compliance with all provisions of Section 34-2016.
3. At the time of redevelopment, the parking lot variance allowing a front and side lot will expire and the property must come into compliance and the parking lot must be located in the rear of the subject property
4. The LPA recommends approval of a building overhang extending up to 12' into the right-of-way.

RECOMMENDED FINDINGS AND CONCLUSIONS:

a. There **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

b. The conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulation in question.

c. The variance granted **is** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

d. The granting of the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.

e. The conditions or circumstances on the specific piece of property for which the variance is sought **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

SECOND: Mr. Bodenhafer.

VOTE: Motion approved, 7-0.

Chair Zuba closed the Public Hearing.

Recessed at approximately 12:20 p.m. – Reconvened at approximately 12:28 p.m.

D. Ordinance 14-XX – Historic Preservation

Vice Chair Shamp (Historic Preservation Board Chair) explained how they were attempting to make *de minimus* changes to the Land Development Code to allow the code to fit the historical preservation and the vision of the Comprehensive Plan. She noted there were approximately 17 word changes within the proposed ordinance and historic districts and levels historic recognition were added. She briefly reviewed the steps of the review/approval process by the LPA, Council, and Historic Preservation Board for the subject ordinance; and the proposed amendments to the historical preservation regulations in the Land Development Code such as but not limited to the Historic Districts.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Mr. Kakatsch moved to approve that the LPA recommended that the Town Council approve and adopt the proposed Town Ordinance 14-XX along with the proposed Findings of Fact and Conclusions of Law 1 through 5; second by Ms. Plummer.

VOTE: Motion approved, 7-0.

Vice Chair Shamp asked if she could present the matter to Town Council on behalf of the LPA.

Consensus approved Vice Chair Shamp's request to present the matter before Town Council on behalf of the LPA.

Discussion was held concerning the critical role between the HPB and HAC as they related to when historical structures were identified and designated.

E. Discussion on FEMA/Elevation Incentives

Community Development Director Fluegel gave a brief introduction on the FEMA/Elevation Incentives.

Planning Coordinator Overmyer distributed information from the Comprehensive Plan and LDC as it pertained to the Future Land Use Element and the Coastal Management Element. He noted that the Town's Comprehensive Plan update or Evaluation and Appraisal Report (EAR) was due to the State by August 1, 2016.

Vice Chair Shamp asked if the EAR was required.

Community Development Director Fluegel reported the law changed but what was in the Town's Comp Plan as far as the EAR process did not change; and noted that would be one of the issues to look at to determine if the Town wanted to change the EAR process.

Vice Chair Shamp questioned what were the type of limitations were in the EAR process.

Community Development Director Fluegel explained how the EAR process was an opportunity to do substantial overhauls of the Comp Plan.

Chair Zuba noted he would like to hear comments from staff regarding the 50% Rule; and outlined his questions such as but not limited to if the 50% Rule had been successful or unsuccessful.

Community Development Director Fluegel asked if the LPA wanted staff to proceed with breaking some things down into components (i.e. an overview on the 50% Rule) for presentation to the LPA.

Discussion was held concerning the 50% Rule; how the 50% Rule drives economic issues in real estate; ground-level homes on cement block as it pertained to increasing elevation; and the valuation method of a structure as it pertained to the 50% Rule.

Mr. Kakatsch was excused.

Discussion was held regarding the Community Rating System as it pertained to determining flood insurance rates; "free board" (requirement to build above the base flood elevation); and a community-bond issue type of approach for incentives (loan not a grant).

Vice Chair Shamp suggested the LPA start with a presentation on the introduction of the FEMA Regulations that related to the LPA discussion, the 50% Rule, and Hazard Mitigation; then pre-disaster build-back; then post-disaster; and then some discussion of disaster planning.

Discussion was held as to whether or not to hold separate meetings to discuss matters of the FEMA/Elevation Incentives.

Community Development Director Fluegel reported staff could conduct a workshop every other month and requested the LPA give staff the topics for the agenda.

Ms. Plummer was excused.

Discussion was held and staff expressed that they would prepare the matter for the LPA's first discussion at the March meeting.

Adjourn as LPA and reconvened as Historic Preservation Board – **Withdrawn from agenda**

Adjourn as Historic Preservation Board and reconvene as the LPA – **Withdrawn from agenda**

VI. LPA MEMBER ITEMS AND REPORTS

Vice Chair Shamp – questioned the status of a property that installed a green fence.

Zoning Coordinator Dulmer reported the subject property was approved for the development of seven single-family homes.

Mr. Durrett – no items or reports.

Mr. Bodenhafer – pointed out that at the last LPA meeting Mr. Kakatsch had made a motion that was approved to schedule a meeting the following week with the Town Manager and department heads; however, the meeting did not occur.

Community Development Director Fluegel reported Mr. Kakatsch reached out to him the following day and asked that we not have the meeting. He stated the LPA needed to rescind the motion or go ahead and schedule the meeting.

MOTION: Mr. Bodenhafer moved to continue the matter until the February LPA meeting; second by Mr. Steele.

VOTE: Motion approved, 5-0; Mr. Kakatsch and Ms. Plummer were excused.

Mr. Kakatsch – excused.

Ms. Plummer – excused.

Mr. Steele – no items or reports.

Chair Zuba – no items or reports.

VII. LPA ATTORNEY ITEMS

LPA Attorney Miller – no items or report.

VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Community Development Director Fluegel – no items or reports.

IX. LPA ACTION ITEM LIST REVIEW

No discussion.

X. ITEMS FOR NEXT MONTH'S AGENDA

No discussion.

XI. PUBLIC COMMENT

None.

XII. ADJOURNMENT

MOTION: Motion by Mr. Bodenhafer, seconded by Mr. Steele to adjourn.

VOTE: Motion approved, 5-0; Mr. Kakatsch and Ms. Plummer were excused.

Meeting adjourned at 1:15 p.m.

Adopted **FEBRUARY 11, 2014 WITH** changes.
Motion by: **Shamp**; Second by: **Kakatsch**
Vote: **7-0**

Signature

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