



**FORT MYERS BEACH  
LOCAL PLANNING AGENCY (LPA)**

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, Florida  
**January 8, 2013**

**I. CALL TO ORDER**

Meeting was called to order at 9:00 a.m. by Chair Zuba; other members present:

Al Durrett  
John Kakatsch  
Jane Plummer  
Joanne Shamp  
Alan Smith  
James H. Steele  
Hank Zuba

LPA Attorney, Marilyn Miller  
Staff Present: Walter Fluegel, Community Development Director  
Leslee Chapman, Zoning Coordinator  
Josh Overmyer, Planning Coordinator – Excused.

**II. PLEDGE OF ALLEGIANCE – Harry Gottlieb**

**III. INVOCATION**

**IV. MINUTES**

A. Minutes of December 11, 2012

Postponed until next meeting.

## V. PUBLIC HEARINGS

### A. VAR2012-0006 Beach Theater Sign Variance

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman presented comments for VAR2012-0006 Beach Theater Sign Variance on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the site and noted the location of the subject property was at 6425 Estero Boulevard. She pointed out that the request was for:

- A variance from Section 30-153(b)(1) requiring for a parcel of land containing one or two business establishments each separate business establishment shall be allowed a maximum of 32 square feet of sign area to allow 37 square feet of sign area.
- A variance from Section 30-154(c), which limits the height of a monument sign to be elevated no more than 18” above grade and 5’ overall to allow an overall height of 7’10”.
- A variance from Section 30-154(a) “...when internally lit signs are permitted for buildings that are not required to meet the commercial design standards, the sign face must be designed so that illumination occurs only on individual letters or symbols. An opaque background panel must be used so that the internal light only passes through the letters or symbols. This requirement also applies to all signs with changeable copy...”.

She stated the applicant was requesting to keep the existing sign ‘as is’ and she displayed photographs and a drawing of the existing sign and conditions. She discussed the supporting regulations, Section 34-87 and how they pertained to the variance request:

- Gives Town Council the authority to hear and decide all requests for variances from the terms and restrictions of the LDC.
- Council must consider: whether the facts support the five required ‘findings’; staff report and LPA recommendation; testimony from applicant; and testimony from public.
- Section 34-87(3) – before granting any variance, the Town Council must find that all of the following exist:
  - Section 34-87(3)(a) - *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

She continued her presentation and noted:

- Staff research indicated that in Ordinance 05-07 Town Council removed the extra signage allowance for theaters, and instead required them to comply with the same regulations applicable to all other commercial establishments.
- The applicant has proposed no other; and staff has found no other; exceptional or extraordinary conditions or circumstances that exist on the subject property.
- Staff recommends the findings that there are not exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property and that the variance is, therefore, not justified.

- Section 34-87(3)(b) – *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.*
- The subject property was initially permitted in 1997, prior to the adoption of the Town’s original sign ordinance and Ordinance 11-01.
- Staff recommends that the conditions justifying the variance are not re result of the applicant taken after the adoption of the regulations in question.
  - Section 34-87(3)(c) – *That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.*
- The applicant has provided no justification as to why the sign structure cannot be lowered to meet the height required by 30-154(c) or at least come closer to meeting that height, nor does the applicant discuss justifications for needing relief from 30-154(a) or 30-153(b)(1). The applicant is requesting to keep the existing sign ‘as is’ without any modifications.
- Staff recommends that the variance request is not the minimum variance necessary to relieve an undue burden.
  - Section 34-87(3)(d) – *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*
- The applicant is requesting relief from the sign height, illumination and area requirements of Chapter 30 of the LDC. The current sign’s height is well above the 5’ maximum height allowed under the current code, does not meet the internal illumination requirements and exceeds the area requirement by approximately two square feet.
- It is staff’s opinion that there is not a justifiable reason or hardship that exists on the subject property that would support the granting of a height, illumination, and area variance by Town Council.
- Staff, therefore, recommends that granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare by allowing the subject property relief from rules and regulations that all others must adhere to.
  - Section 34-87(3)(e) – *That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general a nature as to make it more reasonable and practical to amend the regulation in question.*
- By the very nature of the recent adoption of the sign ordinance Town Council has addressed the issue of signs (including height) and has made a decision to enact and enforce a uniform sign code. Furthermore, with the removal to the movie theater provision in Ordinance 05-07, Council has already determined that movie theaters must comply with the same requirements as all other commercial establishments.
- Staff finds that the circumstances on the specific piece of property for which the variance is sought are general in nature, and, therefore, do not demonstrate a verifiable hardship.

She concluded her presentation stating that staff recommended **denial** of all three of the requested variances because the property does not meet the requirements for granting a variance under LDC Section 34-87.

Mr. Steele questioned the difference between the sign at Diamond Head versus the Theater as it pertained to illuminated signage in the Code.

Community Development Director Fluegel noted the letters on the Diamond Head sign were illuminated and the Theater sign letters were not illuminated. He added that the Theater could have an illuminated sign if it met the illumination, height, and square footage requirements.

Zoning Coordinator Chapman explained that illuminated signs were permitted by the Town Code; however, properties must meet the commercial design standards and the only things that could be illuminated are the commercial message, the letters and/or symbols, and/or the address numbers.

Mr. Steele asked if staff had confirmed the drawing of the sign submitted by the applicant was identified as approximately 35 square feet.

Zoning Coordinator Chapman responded in the affirmative; and noted it was approximately 35-37 square feet.

Mr. Steele stated he measured the sign and it appeared to be 36 square feet.

Discussion was held concerning the deviation as it pertained to the square footage; that the majority of sign variances requested have been for height and not sign face; non-conforming signs that currently existed on Fort Myers Beach; sign height dimensions in the Code; and the code-required vegetation buffer at the current Theater sign.

LPA Attorney Miller explained Council's action regarding sign regulations as it pertained to lowering sign heights and amortizing all existing non-conforming signs. She discussed how due to the uniqueness of some properties the regulations might not be workable (i.e. Pierside).

Ms. Shamp questioned the dimensions of the current sign if the arch at the top was removed and the address numbers were relocated on the sign.

Ms. Steele stated it would reduce the height by 1'4".

Discussion ensued regarding the subject signage overall height; the code-required vegetation buffer for the sign; the 'institutional' classification of the church which meets on Sundays at the subject site; one commercial business use located at the subject property; dates related to the adoption of the sign ordinance(s) and signage compliance; consideration of the potential uniqueness of the subject property due to the use as a movie theater; and the findings of the Special Magistrate regarding the subject property and the instruction given to the applicant to file for a variance.

Zoning Coordinator Chapman recapped the status of the remaining non-conforming signs in the Town.

Chair Zuba asked if any LPA Member had ex-parte communication regarding this item. Mr. Durrett – site visit; Mr. Kakatsch – site visit; Mr. Smith: - site visit; Chair Zuba – site visit; Ms. Plummer – site visit; Ms. Shamp – site visit; Mr. Steele – site visit.

Bill McMullan, representing the applicant – Fort Myers Beach Properties, LLC Beach Theater, noted the footprint of the building began in 1997 and the building was completed in 1999. He reviewed the historical background of the subject building; and noted that at the time of construction the agreement was that they would have a low-profile sign and that there would be no other advertising on the sign. He displayed an aerial photograph of the subject property and pointed out that it was bordered on two sides by two streets with no other properties contiguous to them except for in the back of the property. He stated he would address Items #1, 3, 4, and 5 using the pictures displayed on the projection screen; and discussed the uniqueness of the subject property and signage as a movie theater, landscaping issues as it pertained to line-of-sight and signage, and sign dimensions as required by the Code, and the dimensions of the proposed sign variance. He explained the applicant would like to work with the Town staff to come up with a solution.

Mr. Durrett discussed his belief that the current sign seemed acceptable and suggested some of the bushes could be trimmed back. He noted the problem with reading the bottom three movies listed on the current sign when travelling from the north.

Mr. McMullan reported that the theater's business neighbors had told him they would be glad to appear at the hearing to testify in support of the theater. He explained that 'back-lit' illumination was really difficult for them to accomplish since they had to continually change copy on the sign each week.

Mr. Durrett recounted his experience with 'back-lit' signage.

Mr. McMullan noted that in the 13 years of operation that they were never cited for too much illumination with their signage as it pertained to turtle season requirements.

Mr. Nick Campo, applicant, clarified some of the historical background of the subject property. He claimed that the current sign had gone through a complete variance process at the time it was installed in 1999. He reported he has maintained the landscaping for 12 years as originally requested. He asked that he be allowed to keep the sign 'as is'.

Mr. Kakatsch suggested the LPA strongly recommend that the shrubbery be cut down on the north side.

Mr. Smith discussed his belief that making the subject sign any smaller could create a safety issue with traffic; and that there would most likely be a problem with 'back-lit' letters since the letters were changed every week.

Ms. Plummer noted that she would also be in favor of reducing the height of the hedge in front of the sign to the level of the base. She suggested that if the subject property was to be used for a purpose other than a theater then they would have to come into compliance.

Discussion ensued regarding the vegetative buffer.

LPA Attorney Miller noted there was no request in this variance application for a change to the buffer requirements.

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Ms. Shamp pointed out the need to have valid justification for a recommendation to grant the variance. She asked if there was a signage system that would comply with what was required by Code and allow the face type to be changed weekly.

Mr. Campo stated he was unsure if there was, but he could research the matter.

Mr. McMullan reported the only thing they had seen were electronic sign which were against the Code.

Ms. Shamp discussed the landscaping, size of face type for safety purposes, and the possibility of recognizing the uniqueness of a movie theater as compared to other businesses as it pertained to changing copy.

Mr. Steele indicated a suggestion to the applicant on the projection screen – comments were inaudible. He stated he would support the variance request.

Chair Zuba questioned the timeline of the sign variance and the re-opening of the theater.

Mr. Campo explained that at the time they were re-opening the theater that someone from the Town did come in to inform him the sign was not in compliance; however, at that time he had so many other things on his mind with the re-opening that he did forget about the notice.

Discussion was held as to why movie theaters were removed from the Ordinance 11-01.

LPA Attorney Miller pointed out that staff has looked at resolutions, one from 1998 and 1999, dealing with the theater and neither of which indicated any type of a sign variance. She explained that if the theater had a variance granted for this type of dimensional aspect that it would arguably still be in effect. She discussed similarities between the subject variance and the Dolphin Inn sign variance as it pertained to the right-of-way setback which might justify some type of a height variation; and the possibility of using changing face type with an external light illuminating the sign.

Mr. Campo stated he would obtain a copy of the resolution he referred to regarding the variance he had already been granted.

Discussion continued regarding the sign height, buffer vegetation, and sign visibility from the road.

Ms. Plummer suggested sending the variance request back to staff, ask them to include the reduction in the shrubbery, and then have the request come back before the LPA.

LPA Attorney Miller suggested exploring the lighting issue and for Mr. Campo to submit the variance from 1999.

Public Comment opened.

Phillip Fleming, President of the Privateer Condominium, noted the condominium was located across the street from the movie theater. He stated that he was a resident there since 1992 when the subject site was a vacant lot. He reported that the condominium, as neighbors, was extremely pleased with how the theater turned out and they had no objection to the signage. He mentioned his business experience and advertising experience as it related to signage, and pointed out that a white sign with black lettering was the best for promotion and visibility. He discussed the size of sign lettering and address numbers as it related to vehicle speed and visibility, and safety issues.

Public Comment closed.

Discussion was held regarding Ms. Plummer's suggestion concerning if the subject property use as a theater was to change that it would have to come into compliance; and continuance of the variance request.

Zoning Coordinator Chapman explained that if the applicant wanted to request a continuance and include additional variance requests then the additional variances would have to be advertised.

Discussion was held concerning additional costs that would be incurred with amending the application and re-advertising the variance.

Community Development Director Fluegel explained how staff had to review a request according to the strictest interpretation of the Code, and any precedence set by Council. He discussed how there could be precedence for the height according to the rationale for the variance granted to the Dolphin Inn; and square footage could consider the uniqueness of a movie theater since there was four theaters within one theater; however, the Town's Code did not address movie theaters. He explained how the most problematic aspect was the lighting. He mentioned the landscaping could be handled as a separate request and the applicant could come back at any time. He reviewed the staff's urgency to get the signs in the Town into compliance; and reported that during the past year they started with 120 signs and now were down to about 5 signs that were not in compliance.

Discussion ensued regarding the vegetative buffer and issues not included in the current sign ordinance (i.e. signage on waterways).

Mr. Durrett stated he would like to make a motion that the LPA approve the variance.

LPA Attorney Miller pointed out that when sign variances have gone to Council in the past, they were looking to see that every potential alternative had been explored before they consider granting the variance. She noted her concern about the lighting, and if every reasonable alternative had been explored regarding the sign lighting.

Discussion ensued regarding the rationale for the sign face area; internal illumination; the continual changing face type; lettering size for safety reasons; and the precedent for the height requirement.

**MOTION:** Mr. Durrett moved that the LPA recommends that the Town Council approve the applicant's request for a variance from Section 30-153(b)(1), Section 30-154(a), and Section 30-154(c) of the Town of Fort Myers Beach Land Development Code and include the 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.

And the approval subject to the condition that if the use as a theater then the variance expires; second by Mr. Smith.

Ms. Shamp asked if the justification should be noted.

LPA Attorney Miller responded in the affirmative. She indicated she understood the LPA's basis for recommending approval of the height was the setback issue similar to the Dolphin Inn; and the square footage was based upon the fact that there were four separate theaters each with different movies and it was impractical to fit all of it into 32 square feet.

Ms. Shamp explained the lighting was due to the uniqueness, changing of the type and an alternate system may not be financially feasible or preferable according in terms of turtle season regulations.

Zoning Coordinator Chapman suggested the LPA may want to consider an attachment to the resolution that was specific to the height and square footage since the applicant was seeking to keep the sign 'as is'.

LPA Attorney Miller pointed out the variance request was for 7'10".

**VOTE:** Motion approved; 6-1; Chair Zuba dissenting.

Chair Zuba closed the Public Hearing at 10:25 a.m.

Historic Preservation Board – no report.

## **VI. LPA MEMBER ITEMS AND REPORTS**

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Mr. Steele – explained that after the last meeting, as it pertained to the two 4COP permits, he asked if staff could prepare a list of establishments that have liquor permits that would include information such as the type of permit, hours of operation, whether there was music, and any restrictions associated with the permit. He suggested a map also be included so they could see where the establishments were located.

Community Development Director Fluegel reported staff was currently working on the entertainment ordinance which would have a report similar to the COP in the EC, and there would be a map that would indicate all the establishments with COP and there would be some breakdown of the classifications (i.e. hours of operation, etc.). He stated he had target April to have a draft report of the work.

Ms. Shamp asked for a synopsis of what happened with the Lani Kai magistrate hearing.

LPA Attorney Miller reported the Lani Kai attorney challenged the constitutionality of the ordinance and the magistrate explained he did not challenge the constitutionality of town ordinances. She reviewed highlights of the magistrate hearing; reported the case was continued until next month, and that magistrate did find the two signs on the bay side were in violation. She added that Helmerich was found in violation and ordered to remove it by the end of February.

Ms. Plummer – no items or report.

Mr. Smith – no items or report.

Mr. Kakatsch – reported he attended the Town Council Meeting yesterday and that he was appointed to the Town's Public Safety Committee. Mr. Kakatsch noted the Town honored the *Privateer Lynx* tall ship at the Council Meeting. He described his visit to the tall ship and mentioned that he met the Chair of the Board who informed him that he was seeking to relocate the ship's home port from Newport Beach, California. He added that the Chair of the Board was interested in obtaining the support of the Town Council and the LPA to be able to dock the ship where it was presently located or at the north end of the beach where there was a pier with a 10' depth. He explained the Chair of the Board was looking for an answer rather quickly before the ship left on January 23<sup>rd</sup>. Mr. Kakatsch also discussed his belief that the LPA was being by-passed on many important issues that came before Council; and reviewed the action by Council concerning the study for the Coastal Management Plan, and vegetation on the beach. He expressed his frustration and his belief that the LPA should be more involved with more Town items.

Community Development Director Fluegel pointed out that there was a Joint Meeting of the Town Council and the LPA tomorrow. He mentioned that the LPA's scope of work was listed in the Land Development Code. He reviewed the LPA's role in upcoming the Comprehensive Plan update.

Mr. Durrett – no items or report.

Ms. Plummer concurred with Mr. Kakatsch's comments and noted her concern with the Palermo house and how it was approved.

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Community Development Director Fluegel reviewed how the house was under a single roof line and there was no variance required.

Discussion was held concerning permitted single-family homes, and potential conversions in the future,

Chair Zuba – reported he did some work on the concept of a sub-committee for the code enforcement issue of ‘rehab’.

LPA Attorney Miller stated she did not see any reason why the LPA could not establish a sub-committee. She pointed out the sub-committee would be subject to the Sunshine Law (i.e. notice of the meeting, minutes, etc.).

Ms. Shamp pointed out that the LPA had sub-committees in the past such as working on right-of-way issues. She expressed her agreement with Mr. Kakatsch that the LPA was underutilized as a ‘think-tank’ to support both staff and Council.

Chair Zuba suggested they discuss the matter with the Council at the Joint Meeting tomorrow. He mentioned he prepared a memo to the Council regarding Seafarer’s.

Ms. Steele asked if there was a Council Liaison for the LPA.

Discussion ensued and LPA Attorney Miller noted that ultimately the issues heard by the LPA came before the Town Council.

#### **LPA ATTORNEY ITEMS**

LPA Attorney Miller – no items or report.

#### **VII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS**

Community Development Director Fluegel – suggested that when the LPA discussed what work they wanted to perform that they keep in mind the LPA’s role. He noted after reading Chair Zuba’s memo on the sub-committee that the work described appeared to be more of a land development regulation task force. He addressed Chair Zuba’s comments on Seafarer’s and explained how the land use consultant would look at the situation, provide some technical expertise, and then at some point the process would pick-up on the LPA.

Discussion continued regarding the LPA’s involvement in other Town matters.

#### **VIII. LPA ACTION ITEM LIST REVIEW**

Ms. Shamp questioned if Moss Marine was intended to be on a continued LPA hearing.

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Zoning Coordinator Chapman reported that the LPA continued Moss Marine to the February meeting; and the variance case from today would move forward to Council.

Mr. Kakatsch questioned activity on Main Street just off the Island and how was the Town Council and the LPA viewing it as affecting Fort Myers Beach. He stated he would like to see that topic added onto tomorrow's Joint Meeting agenda.

Ms. Shamp questioned Section 34-121, Functions, Powers, Duties and Zoning Matters (#3), and if it pertained to the LPA's discussion today concerning the landscaping.

LPA Attorney Miller responded in the negative; and explained that allowing the applicant to not comply with the buffering was a separate variance.

**IX. ITEMS FOR NEXT MONTH'S AGENDA**

**X. PUBLIC COMMENT**

Public Comment opened.

No speakers.

Public Comment closed.

**XI. ADJOURNMENT**

**MOTION:** Motion by Mr. Kakatsch, seconded by Ms. Plummer to adjourn.

**VOTE:** Motion approved, 7-0.

Meeting adjourned at 11:00 a.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

\_\_\_\_\_  
Signature

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