



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

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
February 12, 2013

I. CALL TO ORDER

Meeting was called to order at 9:07 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

II. PLEDGE OF ALLEGIANCE

III. INVOCATION – Hank Zuba

IV. MINUTES

- A. Minutes of December 11, 2012
- B. Minutes of January 8, 2013

MOTION: Ms. Shamp moved to approve the minutes for December 11, 2012 and January 8, 2013 as presented.

Mr. Steele requested a change to the minutes of December 11, 2013 on Page 12, to remove “~~Mr. Steele stated that he drives around the island a couple times a week and finds issues that Code Enforcement staff seemed not notice~~”.

Motion maker agreed to the change requested by Mr. Steele.

SECOND: Mr. Smith.

VOTE: Motion approved 7-0.

MOTION: Ms. Shamp moved to adjourn as the LPA and reconvene as the Historic Preservation Board; second by Mr. Steele.

VOTE: Motion approved 7-0.

Adjourn as LPA and reconvene as Historic Preservation Board.

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

Zoning Coordinator Chapman noted the subject variance was continued from the last hearing to a date certain of today.

LPA Attorney Miller swore in the witnesses.

A. HDD2012-0001 “The Big M” Roof Sign

Zoning Coordinator Chapman presented comments for the “Big M” roof sign, Historically Significant Sign, HDD2012-0001, on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the subject site and noted the location of the subject property was at 450 Harbor Court. She reviewed the request for a designation of the roof sign as a historically significant sign per Section 30-57(b)2 – *Whether the sign provides significant evidence of the history of the product, business or service represented.* She briefly discussed the highlights of the LPA meetings in August and October as it pertained to the variance request. She reported that the applicant had not provided staff with any new data or material that would justify the granting of a historical designation for the roof sign. She added that staff could only evaluate the application based upon the information provided by the applicant. She explained that with no new material to review and analyze, staff was recommending denial of the applicant’s request for designation as a historically significant sign.

Chair Plummer asked if there was a challenge to the claim that the sign was there since the 1960s.

Zoning Coordinator Chapman stated that staff had nothing to look at or no back-up material.

Town of Fort Myers Beach – Local Planning Agency

February 4, 2013

Page 2 of 13

Mr. Kakatsch stated he had been coming to Fort Myers Beach since 1968 and he did recall the sign.

Mr. Zuba asked for a definition of a sign.

Zoning Coordinator Chapman read the definition of 'sign' from the Land Development Code, Chapter 30.

Mr. Zuba questioned if Zoning Coordinator Chapman considered the letter 'M' on the roof as a commercial advertisement.

Zoning Coordinator Chapman responded in the affirmative. She reviewed the five sections within Section 30-57 that the Board should consider when making a decision:

1. Whether the sign was associated with historic persons, events, or locations.
2. Whether the sign provides significant evidence of the history of a product, business or service represented.
3. Whether the sign was characteristic of a specific historic period.
4. Whether the sign was an outstanding example of the art of sign making through its craftsmanship, use of materials and/or design.
5. Whether the sign the sign was a local landmark that was popularly recognized as a focal point in the community.

Chair Plummer asked if the request had to meet only one of the criteria or all.

Zoning Coordinator Chapman explained it was her understanding they had to meet one, but the more they met the stronger the case.

Emily McDaniel, General Manager at Moss Marine, reported the earliest photograph they could find that showed the roof sign was 1983; and explained that most of her information came from her grandfather who had purchased the building 30 years ago, and from her speaking with local residents. She reviewed how the subject building had the 'M' on the roof due to the shape of the storage barn, which was a big 'M', and how the locals began calling the marina the big 'M'. She reported the Moss family painted the letter on the roof, and that the 'M' had nothing to do with the casino boat.

Discussion was held concerning the significance of the 'M' on the roof to residents and visitors; repainting of the 'M' approximately 15 years ago; the cost to paint the 'M' and the cost to remove the sign; attempts to obtain photographs of the subject building's roof; the five sections in Section 30-57 pertaining to historical designation; and the number of weekly passengers on the 'Big M' casino boat.

Mr. Steele questioned if the request was denied, would the applicant have to remove the sign within a specified amount of time (i.e. 60 days).

Zoning Coordinator Chapman pointed out that if the LPA denied the request it still had to go before Town Council who would make the final decision.

Town of Fort Myers Beach – Local Planning Agency

February 4, 2013

Page 3 of 13

Community Development Director Fluegel reported that if Council denied the request then the case would go through the code enforcement process.

Mr. Kakatsch explained that when he flew into Page Field many years ago, his father used the 'M' as a landmark.

Discussion ensued regarding the 'M' as an aerial landmark and as a landmark coming over the bridge; historical significance of the subject sign; and in general the sign compliance in the Town as of today and any outstanding cases.

Mr. Zuba asked if approval of the request would create a potential for precedent.

Zoning Coordinator Chapman responded in the negative.

Mr. Smith explained how he felt the subject sign met at least three of the evaluation criteria and that he supported the request.

Mr. Durrett asked if approved, would the sign have to remain forever.

Zoning Coordinator Chapman stated they could re-paint the sign, remove the sign, but it could not be increased or decreased in size. She noted language in Section 30-57(e) and 30-56 that pertained to damage or destruction of the sign and how to replace the sign.

Discussion ensued regarding the shape of the building as it related to the shape of an 'M'.

Mr. Smith reviewed his belief that the request met Criteria #1, #2, #3, and #5.

Zoning Coordinator Chapman noted that the evidence presented for the historical designation was mostly verbal and not written which could be considered precedent when other historic sign requests come forward.

Public Comment opened.

No speakers.

Public Comment closed.

Zoning Coordinator Chapman pointed out that the proposed resolution was slightly different than the usual resolutions from the LPA.

Ms. Shamp discussed her concern regarding the lack of evidence to substantiate the historic designation.

Discussion was held regarding marina signage; the Matanzas Inn signage; and lack of evidence or materials to substantiate the historical designation of the subject request.

Community Development Director Fluegel reviewed the work completed by the Town during the past year in order to have businesses obtain compliance with the sign ordinance. He explained that if there was going to be a continuance, that it was his inclination to go ahead and issue a notice of violation so the matter could go before the Magistrate and get a fine running in the event there was a denial.

Zoning Coordinator Chapman reported that if there was a decision for a continuance to the March meeting that she requested all packet material, any evidence, or any hard copy evidence be submitted to staff no later than February 22nd or at the very latest February 25th.

Chair Plummer asked if the applicant wanted to take advantage of this opportunity to gather more information.

Emily McDaniel responded in the affirmative.

Mr. Kakatsch stated he would be able to supply Ms. McDaniel with a letter indicating his father used the 'M' as a landmark when they flew into Fort Myers.

MOTION: Ms. Shamp moved that the HPB hearing, HDD2012-0001, the Big 'M' roof sign be continued to the date certain of the HPB Meeting of March 12, 2013 and that the applicant would be required to have all materials in by the end of business day on February 25, 2013; second by Chair Plummer.

VOTE: Motion approved 7-0.

Chair Plummer closed the Public Hearing at 9:55 a.m.

MOTION: Ms. Shamp moved to adjourn as Historic Preservation Board and reconvene as the LPA; second by Mr. Zuba.

VOTE: Motion approved 7-0.

Adjourn as Historic Preservation Board and reconvene as the LPA.

V. PUBLIC HEARINGS

Community Development Director Fluegel reviewed how the burden of proof was always on the applicant and it was not staff's obligation to make the applicant's case. He noted it was staff's responsibility to review the application and information submitted by the applicant.

LPA Attorney Miller echoed Community Development Director Fluegel's comments and pointed out the technical legal requirements for granting a variance.

Town of Fort Myers Beach – Local Planning Agency

February 4, 2013

Page 5 of 13

A. VAR2011-0007 Moss Marine

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman presented comments for VAR2011-0007 Moss Marine 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 450 Harbor Court. She reviewed the variance request was from Section 30-153(b)(1) which states: *For a parcel of land containing one (1) or two (2) business establishments, each separate business establishment shall be allowed a maximum of thirty-two (32) square feet of sign area to allow the existing sign area to remain.* She reported the subject case came before the LPA in August at which time the applicant indicated the desire to apply for a historically significant sign status for the roof sign; and staff requested a continuance in order to obtain additional information, and the LPA and the applicant agreed. The variance request was again granted a continuance in October to February 12, 2013. She noted the subject property has two registered businesses (entitled to 64 square feet) – Moss Marine and the Big ‘M’ Casino; and that the original request had a site plan that indicated a couple of signs, and site visits by staff indicated additional signs and signage beyond those identified by the applicant. She reported that staff had submitted a spreadsheet listing the signage; however, there was a no way of knowing where the signage was located on the property, which were directional signs, and which were necessary by insurance. Zoning Coordinator Chapman reported that staff had not received any additional information from the applicant since the October LPA meeting; and that staff was recommending denial of the applicant’s request to retain the existing signage on the subject property.

Ms. Plummer asked if the 408 square footage of existing wall signs included signs such as those required by the insurance company and gas company.

Zoning Coordinator Chapman responded in the affirmative.

Ms. Plummer questioned if signage was moved to the windows would that still be considered signage.

Zoning Coordinator Chapman explained that the sign code stated there could be signs placed on the inside of the window/glass surface provided they do not exceed 30% of the window area. If they do not exceed 30% of the window area then they were exempt from the sign area overall total.

Ms. Shamp questioned if the sign ordinance allowed for required signs (i.e. fuel and insurance purposes).

Zoning Coordinator Chapman explained there were a few categories such as directional signs and incidental signs but they were limited.

Ms. Shamp asked if the applicant had provided any information regarding required signage (i.e. insurance).

Zoning Coordinator Chapman responded in the negative.

Community Development Director Fluegel addressed the 'Shell' gas sign dimensions (5'X5') and the price board (3'X4') but there was no height listed so a variance was needed for the height.

Ms. Shamp asked if painting directional information such as 'no parking' on the pavement was included in the square footage of the signage.

Zoning Coordinator Chapman responded in the negative. She pointed out that some of the directional signs also included the Big 'M' logo which then became commercial signage.

LPA Attorney Miller noted Section 30-6(6), *governmental signs for control of traffic and other regulatory purposes, street signs, danger signs, signs of public service which are erected by or on the order of a public official in the performance of his public duty*; and explained how if the Town had received evidence from the applicant indicating their insurance company required the signage then that would not be counted.

Ms. Shamp asked what would occur between the staff and the applicant regarding the current signs on the property if the variance was denied today.

Zoning Coordinator Chapman reported the case would be moved forward to Town Council for a final decision along with the LPA's recommendation of denial.

LPA Attorney Miller noted that whatever information was presented to the LPA would be presented to Town Council. She mentioned one options regarding the variance could be a continuance.

Chair Zuba asked if staff had requested information concerning insurance requirements from the applicant.

Zoning Coordinator Chapman responded in the affirmative; and described staff's interaction with the applicant. She noted that the applicant did attempt to submit information after the meeting packet deadline; however, staff could not accept it at that time since it was after the January deadline for today's meeting.

Discussion was held concerning the lack of documentation staff received from the applicant.

Mr. Steele asked for a review of which documentation/information in the meeting packet was submitted by staff and by the applicant.

Zoning Coordinator Chapman acknowledged the following information was submitted by the applicant:

- Application for Public Hearing

Town of Fort Myers Beach – Local Planning Agency

February 4, 2013

Page 7 of 13

- Exhibit A
- Exhibit B
- Exhibit C
- Exhibit H – but the actual breakdown of the spreadsheet to the photographs was prepared by staff.

Discussion ensued regarding the approximately 408 square feet of existing sign area; and how or if the applicant could label a directional sign without identifying the casino boat.

Emily McDaniel, General Manager at Moss Marine, reported she was unaware of the cut-off date for submitting information to the Town. She described the difference between Big 'M' and marina parking signage; and discussed her account of a walk-thru site visit with staff as it pertained to identifying signage. She reviewed the current signage and noted her insurance agent failed to give her the information concerning required signs. She noted there was approximately 46,200 square feet of building sides and the site consisted of three acres.

Ms. Plummer asked if the applicant had someone directing vehicles who were customers of the casino boat.

Ms. McDaniel responded in the affirmative; and explained how vehicles approached the casino boat parking through access points other than Harbor Court.

Ms. Plummer asked if the applicant had figured out which signs could be removed and placed on the window, and would the signs be 30% or less of the glass face.

Ms. McDaniel responded in the affirmative; and explained that she tried to eliminate any signage that she could change or was unnecessary. She indicated it was difficult to differentiate the two businesses on three acres with three entrances and the waterway.

Discussion ensued regarding Exhibit I.

LPA Attorney Miller reviewed shot #24, page 4, entitled 'marina parking' on Exhibit H. She expressed her belief that they would fall under 'instructional signs' and would be exempt (Section 30-6(8) Instructional Signs or Symbols). She noted the larger issues were shot #13 of the painted Big 'M', and shot #28 Moss Marine. She pointed out there were legal requirements which needed to be met in order to obtain a variance for a non-conforming sign. She stated it was her opinion that the parking signs were permissible at every parking space as long as they did not exceed four square feet because they were instructional signs.

Discussion ensued regarding directional signs; commercial signage; sign size; the lack of information provided by the applicant; and compliance and variances granted for other businesses on the Island in accordance with the sign code.

LPA Attorney Miller recounted a variance that was granted due to the setback from Estero Boulevard; and pointed out the need for justification when submitting a variance application.

Community Development Director Fluegel explained that staff could probably work out the directional signage with the applicant. He suggested the LPA could deny all the signs except for shot #28, and then grant the variance for only for that sign which would then compel the applicant to come back to the Town and work with staff on the remaining signs.

Discussion ensued regarding the dimensions of the sign depicted in shot #28 and the distance from the water; shot #15; shot #13; shot #28; directional signs; insurance-required signs; sign square footage for each of the two separate businesses located on the subject property; and the general lack of information submitted in order for the LPA to make a decision.

Ms. McDaniel explained her confusion as to why she was unable to determine if she was seeking a variance for just the commercial signs and/or the directional signs.

Mr. Steele asked if the applicant had read the sign code.

Ms. McDaniel stated she read the sign code.

Zoning Coordinator Chapman noted the applicant now had a better understanding of what the LPA was looking for and suggested a continuance as was done with the previous case.

Ms. Plummer suggested the applicant hire a 'sign person' who understands the sign ordinance; and gave a brief overview of what the applicant should prepare to submit to the Town.

Mr. Smith commended staff for the preparation of Exhibit I, and offered suggestions to the applicant for the type of information she needed to submit.

Mr. Kakatsch asked if there was the possibility that the applicant had three businesses on the subject property – the Big 'M', the marina, and the ship store.

Community Development Director Fluegel noted the marina umbrella was so all inclusive that it was hard to break it out as a separate business.

Zoning Coordinator Chapman indicated there were two tax identification numbers from the Lee County Tax Collector.

MOTION: Ms. Shamp moved that the LPA hearing, VAR2011-0007, Moss Marine Sign Variance application be continued to the date certain of the LPA Meeting of March 12, 2013 and that the applicant would be required to have all materials submitted to staff by the end of business day on February 25, 2013; second by Mr. Steele.

VOTE: Motion approved 7-0.

Town of Fort Myers Beach – Local Planning Agency

February 4, 2013

Page 9 of 13

Recess at 10:47 a.m. – Reconvened at 11:00 a.m.

VI. LPA MEMBER ITEMS AND REPORTS

Mr. Durrett – no report.

Mr. Steele – questioned if there was a way to send a message to applicants that they needed to be prepared.

Community Development Director Fluegel noted his frustration at times and appreciated the LPA's patience.

Mr. Smith – noted the Beach Shell Inn had installed an attractive new sign, and that the Dolphin Inn sign was down.

Ms. Plummer – no report.

Mr. Kakatsch – no report.

Ms. Shamp – thanked the staff for the work they performed for the applicant which was beyond what was required of staff; and for the great work they had done with helping all the businesses come into compliance with the sign ordinance.

Chair Zuba – echoed Ms. Shamp's comments. He suggested the organization of an Ad Hoc Sub-Committee to examine the needs and obstacles to the existing housing on the Beach and the particular need for rehabilitation. He asked for an advertising date of next Tuesday or Thursday for a sub-committee meeting.

Community Development Director Fluegel stated that next Tuesday there was a Council meeting in the morning and evening, but he would check to see if the room was available for Thursday.

Chair Zuba suggested the meeting begin at 10:00 a.m. and run approximately 1.5 hours. He stated that Mr. Kakatsch and himself would be meeting and invited any other LPA member who was interested to attend.

Discussion was held concerning the proposed ad hoc meeting; and Community Development Director Fluegel indicated staff would handle advertising and coordinating the meeting.

VII. LPA ATTORNEY ITEMS

A. Post Disaster Recovery Ordinance Timeline

LPA Attorney Miller reported she provided the LPA with a copy of the draft ordinance that had been prepared by the prior Town Attorney which appeared to be a 'model' ordinance that was put out by the Town of Fort Myers Beach – Local Planning Agency

February 4, 2013

Page 10 of 13

American Planning Association. She noted that some of the items were already addressed in another ordinance that dealt with people authorized to declare a disaster.

Planning Coordinator Overmyer explained the Stafford Act was the public law that allowed the President to make a federal disaster declaration.

LPA Attorney Miller pointed out that she also included in the agenda packet what was adopted by Lee County in 2007 concerning post-disaster recovery, and she included an ordinance from the Town of Longboat Key. She stated she was not in favor of just adopting the model code that was prepared by the prior Town Attorney, and that she would rather take a careful look at it.

Community Development Director Fluegel explained he would like to receive the collective input from the LPA as to the issues, concerns, and what they felt was applicable to the Town; and the importance of keeping a lean post-disaster process. He asked that the LPA members send him and Planning Coordinator Overmyer their input; and then they would schedule a date for a workshop to discuss the matter.

Ms. Shamp explained how she visualized the post-disaster issue in five parts:

1. Emergency response – what happens during the storm and after the storm
2. Immediately after clean-up – plowing, cleaning up the roads, etc.
3. Recovery repairs – immediately after repair to mitigate damage (i.e. roof tarps)
4. Redevelopment – redevelopment according to code, definition of building value, repetitive loss, moratoriums, window of opportunity, ad hoc committee – mitigation initiatives
5. Education Program for the Public

She noted in the Longboat Key ordinance they addressed rebuilding non-conforming structures in the event of involuntary destruction.

LPA Attorney Miller explained how they could view the codes of other municipalities using ‘Municode’ online.

Community Development Director Fluegel requested feedback from the LPA on what they felt worked and did not work for the Town. He noted the influence of FEMA as it pertained to post-disaster recovery; and pointed out that the Evaluation and Appraisal Report (EAR) was due in August 2016.

Ms. Shamp asked if it was possible for Planning Coordinator Overmyer to prepare a list of things that would not be allowed by FEMA as it pertained to post-disaster recovery.

Planning Coordinator Overmyer acknowledged the request.

Chair Zuba requested information on the Hazard Mitigation Grants offered by FEMA.

Discussion was held concerning the on-going work by staff on the Community Rating System.

Chair Zuba requested staff keep the LPA apprised at each meeting on what was happening with the work being done on the Community Rating System.

Discussion ensued regarding giving feedback to staff on the information included in the packet on post-disaster recovery; and the clean-up and post disaster strategies of the Lee County ordinance.

VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Community Development Director Fluegel – explained how compliance with the sign ordinance was winding down. He reported some issues that the LPA would hear about in the coming weeks were:

- Staff was working on 25 draft Notices of Violation for outdoor display for businesses with no outdoor display permit or are in excess of the area permitted.
- Staff was hearing from the community was that the Town was looking ‘rough’.
- Staff was seeing issues with banners and excess signage.
- Staff had engaged a planning firm from the east coast to initiate the downtown visioning effort and to work with the Town Council on matters such as but not limited to the preliminary scope of assessing and evaluating all the existing documents/studies, consideration for a community redevelopment agency for the downtown, and the Seafarer’s property

Discussion was held concerning the Seafarer’s property and past references to potential redevelopment of the subject site.

LPA Attorney Miller informed the LPA that several weeks ago she received a telephone call from one of the Assistant County Attorneys who asked her if the Beach was still interested in the Seafarer’s site, and she informed the Assistant County Attorney that the discussions were financially prohibitive. She also reported that the Assistant County Attorney indicated there was no clear BOCC direction to proceed with making the site into a parking lot; and that the process had begun by a planning company who was told to stop.

Discussion ensued regarding the Seafarer’s property; and a community redevelopment agency that existed pre-incorporation of the Town, and whether or not it was still in existence after the incorporation of the Town.

IX. LPA ACTION ITEM LIST REVIEW

Community Development Director Fluegel noted ordinances in the works included but were not limited to PWVL, a glitch sign ordinance, and beach raking. He noted that the LPA had previously approved the beach raking ordinance and that he anticipated a workshop with Council on the matter.

Planning Coordinator Overmyer reported some of the other ordinances staff was working on was the flood plain management ordinance and an entertainment/noise ordinance.

Discussion was held regarding a Council Work Session in April to discuss the entertainment/noise ordinance with a focus on historic approvals.

Ms. Shamp questioned the deadline for COP expansion by administrative approval.

Community Development Director Fluegel stated the deadline was March 4, 2013.

Zoning Coordinator Chapman reported the Town had issued two COP expansions by administrative approval (Nemo's and the Cottage) and she anticipated one more would be issued this week (Wicked Wings), and three more were in the process (Holiday Inn, Diamond Head, and Junkanoo).

X. ITEMS FOR NEXT MONTH'S AGENDA

None.

XI. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XII. ADJOURNMENT

MOTION: Motion by Ms. Shamp, seconded by Mr. Smith to adjourn.

VOTE: Motion approved, 7-0.

Meeting adjourned at 11:37 a.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

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