



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

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
Tuesday, June 11, 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 - Excused
Joanne Shamp
Alan Smith
James H. Steele
Hank Zuba

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

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES

A. Minutes of April 9, 2013

MOTION: Vice Chair Shamp moved to approve the Minutes for April 9, 2013 as presented; second by Mr. Kakatsch.

VOTE: Motion approved, 6-0.

B. Minutes of May 14, 2013

MOTION: Vice Chair Shamp moved to approve the Minutes for May 14, 2013 as presented; second by Mr. Kakatsch.

Mr. Steele requested on Page 9 to change, “Mr. Steele indicated that since the LPA received the letter that it should receive ensure a response.

VOTE: Motion approved, 6-0.

V. **PUBLIC HEARINGS**

A. VAR2013-001, Lani Kai Sign Variance

Chair Zuba opened the Public Hearing at 9:10 a.m.

LPA Attorney Miller swore in the witnesses.

Attorney Burandt, representing the Applicant, reported he submitted a letter to Town staff as to why they were seeking the variance. He pointed out that the Lani Kai was constructed in the 1970s and at that time built four signs [2 monument signs at the 1400 Estero Boulevard address, 1 monument sign at the smaller hotel across the street, and 1 pole sign across the street in the parking lot which had advertised the Island View Restaurant]. He noted the Island View Restaurant sign had been permitted in approximately 2004. He reported the Lani Kai had eight ‘businesses within a business’ and 16 businesses that were operated under the Lani Kai Island Resort title. He indicated that he met many times with Town staff on the subject property concerning signage. He stated his client was prepared to file a lawsuit about the variance, if necessary. He stated the Lani Kai did remove two other monument signs and the pole sign in an effort to compromise with the Town. He reviewed the taxes paid by the Applicant (i.e. property tax, sales tax, payroll taxes, etc.); how the Applicant viewed signage as an important advertising tool to the business; and the significance of the Lani Kai to the community as it pertained to employment and taxes paid. Attorney Burandt noted the Applicant was entitled to 64 square feet of signage; and that an electrical box was in front of a sign when approached from the south, and there was an electrical box behind the sign [which the electric company installed when Times Square was redeveloped]. He explained his belief that the dispute appeared to be the height of the sign; and that once the Applicant knows the size of the sign that he intended to submit an application for a new sign. He stated he took exception to the finding in the Staff Report indicating the variance requested 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. He noted for the record that there were no people present to object to the variance request. He requested the variance be approved as requested.

Chair Zuba asked if any LPA Board 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 – excused; Ms. Shamp – site visit; Mr. Steele – two site visits.

Vice Chair Shamp asked if the Lani Kai had a CPD which included their sign package.

Community Development Director Fluegel stated the Lani Kai was not a CPD; and that they were a ‘Downtown Conventional Zoning’.

Vice Chair Shamp asked why the Applicant decided to remove the more southern sign from the pedestal on the beach side.

Attorney Burandt stated he believed it was more of a personal choice by the Applicant as it related to ‘visibility’. He pointed out the owner held a hotel license and reviewed the many governmental agencies that regulated the business and associated problems with the sign location.

Vice Chair Shamp questioned the notation of ‘*internally illuminated aluminum cabinet sign*’ written on ‘Exhibits F and G’.

Attorney Burandt reported that any modifications to the sign would have to go through the permitting process, and if an internally illuminated sign violated the ordinance then he suspected the permit would be denied. He pointed out that if the sign was moved backwards there was another electrical box and a fence that would obstruct the sign.

Mr. Smith questioned if the Applicant had submitted alternative sign heights of 9’7” and 8’6”.

Attorney Burandt responded in the affirmative; and clarified the existing sign was 11’ in height.

Mr. Smith questioned, if approved, would the Applicant install a new sign.

Attorney Burandt expressed his understanding that a new sign would be installed.

Mr. Kakatsch asked if the Applicant would consider planting a 3’ hedge in front of the sign if either height was approved.

Attorney Burandt stated his belief was that the Applicant intended to re-landscape after the new sign was installed. He noted that if the signs were removed, the wall would remain since it was a structure.

Vice Chair Shamp pointed out that on Page 7 of the Staff Report, “...*staff would recommend that the minimum variance necessary would be between 7’ and 7’6”*...” which was less than the Applicant’s request and less than the second exhibit.

Attorney Burandt reviewed the requested height versus the height recommendation by Town staff.

Discussion was held concerning the Town's signage code.

Zoning Coordinator Dulmer presented comments for VAR2013-0001, Sign Variance for the Lani Kai, 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 1400 Estero Boulevard in the Downtown Zoning District. She reviewed the application requested a variance from:

- Section 30-15(b) requiring monument signs to be setback a minimum of 3' from any public right-of-way to allow a setback of 1.7' from the Estero Boulevard right-of-way.
- Section 30-154(c) requiring a maximum height of 5', as measured from the crown of the road or adjacent grade, for a monument sign to allow a maximum height of 9'7" as measured from the adjacent grade.

She discussed highlights of the background of the request which included that the property was issued a Notice of Violation and went before the Special Magistrate on January 30, 2013; property owner complied with the ruling (removed additional non-compliant signs and applied for a variance for the remaining monument sign); and property owner applied for a Historically Significant/Landmark Sign 2007 which was denied by the LPA (2008-016) and Town Council (08-45). She pointed out the setback variance was for Section 30-154(b) requiring monument signs to be setback a minimum of 3' from any public right-of-way to allow a setback of 1.7' from the Estero Boulevard right-of-way. She displayed 'Exhibit I' depicting the existing conditions and recommended if the LPA approved the variance that a reference be made to this exhibit and site geometry. She stated staff had no real objections to the particular request regarding the setback, and noted the Neptune sign variance case where a setback variance had been granted. She reviewed the height variance request and displayed photographs of the existing conditions which also depicted some of the sign obstructions (i.e. FPL transformer, fire hydrant, backflow device, etc.). She displayed renderings of sign Option 1 [Applicant's preference] and Option 2. Zoning Coordinator Dulmer pointed out the two issues were the height and the setback, and no other requests for a variance from other sections of the sign code were included.

Community Development Director Fluegel reviewed the sign code as it pertained to illumination through the letters and not the background; and that the sign face submitted in the rendering was not permitted.

LPA Attorney Miller noted that external illumination was an option.

Zoning Coordinator Dulmer continued her presentation and displayed a rendering of the Applicant's 'Option 2' depicting the 8'6" height of the proposed sign with a 42" base. She briefly reviewed the supporting regulations pertaining to the sign:

- 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 minimus variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*
 - Staff found that the location of the FP&L transformer and the backflow device and the fully developed site configuration of the subject property are circumstances unique to the property and do obstruct compliance with the sign ordinance.

- Staff recommended the finding that there are exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property and that the variance, therefore, is 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 developed in the 1970s and the existing sign was in place prior to the adoption of the Town’s original sign ordinance and Ordinance 11-01.
 - Therefore, staff recommended that the conditions justifying the variance are not the result of actions 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 two options, one reducing the height from 11’7” to 9’7” and the other reducing the sign further to 8’6”. Staff finds that neither are the minimum variance necessary to clear the obstruction of the FP&L transformer and backflow device.
 - As to the setback request, the Applicant provided little justification other than a desire to utilize the existing sign base. Staff does not feel that these requests reflect the minimum variance necessary as required by this code.
 - Staff recommended that the variance requested was 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 current sign’s height is well above the 5’ maximum height allowed under the current code, and the two options offered by the Applicant do not meet the minimum variance necessary obligation. The setback request is minimal but the Applicant does not provide any strong justification for the need.
 - It was staff’s opinion that the Applicant has no provided an application reflecting the minimum variance necessary. There are obstacles in place on the subject property that could warrant granting a variance; however, the Applicant was asking for more than the minimum.
 - Staff, therefore, recommended that granting the variance (either Option 1 or Option 2) as requested by the Applicant 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.*
 - With the adoption of the amended sign ordinance, and the consequent amortization period for conformity, numerous locations on the Beach have pursued variance requests from the amended requirements. However, 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.

- Staff finds that the circumstances on the specific piece of property which the variance is sought are general in nature, and, therefore, do not demonstrate a verifiable hardship.

She reported staff recommended **approval** of a sign variance request from Section 30-154(b) requiring monument signs to be setback a minimum of 3' from any public right-of-way to allow a setback of 1.7' from the Estero Boulevard right-of-way; and staff recommended **denial** of a sign variance request from Section 30-154(c) requiring a maximum height of 5', as measured from the crown of the road or adjacent grade, for a monument sign to allow a maximum height of 9'7" as measured from the adjacent grade. She noted that staff offered an **alternative recommendation** for a sign height variance from Section 30-154(c); keeping the most similar previously approved variance requests in mind (VAR2011-0004 and VAR2011-0007), and recognizing the obstruction of the FP&L transformer equipment, staff would recommend that the minimum variance necessary would be between 7' and 7'6", not to exceed 7'6" in overall height as measured from crown of road or adjacent grade. Staff believed that this alternative recommendation reflected the true minimum variance necessary. She reported that the Town received a letter objecting the variance request dated May 10, 2013 from Mr. & Mrs. Zeigler:

"We are owners of a unit in the Batiki West Condo. We would like to oppose the variance asked for by the Lani Kai. We have watched as they have done other things 'not by the letter of the law' but according to how they want to do it. We feel strongly that the Lani Kai should be held to the same conditions that all the other owners on the beach have to abide by. They have had more than their share of 'exceptions'!"

Mr. Steele requested an updated Code book; and questioned if there was a width limitation for a monument sign the Code.

Zoning Coordinator Dulmer responded in the negative.

Mr. Steele reviewed his findings from his visit to the Beach Shell Inn and Pierview Hotel (VAR2011-0004 and VAR2011-0007) as it pertained to the sign heights and sign obstacles.

Zoning Coordinator Dulmer pointed out the monument sign height per Section 30 was measured from the crown of the road or adjacent grade, whichever was higher.

Discussion ensued regarding the sign height granted to the Beach Shell Inn and Pierview Hotel.

Vice Chair Shamp questioned the use of the northern sign base.

Zoning Coordinator Dulmer explained that staff reviewed what was submitted and could not prescribe the sign for which the Applicant should seek a variance.

Community Development Director Fluegel noted the south sign base had some vegetation interference which was beyond the Applicant's control.

Discussion was held concerning the requested sign dimensions; staff's comment that granting the approval would be *injurious* to the neighborhood; possible setting of precedent if approved as requested by the Applicant; and staff's challenge to find the minimum necessary variance.

Attorney Burandt reported the Applicant would prefer Option 1 (taller sign). He discussed the sign ordinance as it pertained to sign height for some temporary signs such as but not limited to special event signs, development signs, and new business signs. He explained his belief that it made sense to have a sign at the entrance at the north end to the Lani Kai for ingress/egress safety.

Public Comment opened.

No speakers.

Public Comment closed.

Discussion ensued regarding Option 1 and Option 2 dimensions; sign obstacles; setback variance; staff's recommended sign height; and a 3' hedge in front of the sign.

LPA Attorney Miller pointed out that the LPA was not limited to only what staff recommended and what the Applicant was seeking; and that the LPA could grant height dimensions within the 7' and 9'7".

Mr. Steele suggested consideration of a 9' sign height with 64 square feet of sign for commercial identification.

MOTION: Mr. Steele moved to permit a sign variance of 9' tall and the sign area not to exceed 64 square feet and include the setback of 1'7" and recommend the 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 to protect public safety by not obstructing access to public utilities and fire protection facilities.
- 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 requested **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 by Mr. Smith.

Mr. Kakatsch requested inclusion of a landscape buffer.

AMENDMENT: Motion maker and second agreed to include landscaping around the base where feasible.

VOTE: Motion approved, 4-2; Chair Zuba and Vice Chair Shamp dissenting.

Public Hearing closed.

Recessed at 10:15 a.m. – Reconvened at ? a.m.

VI. PUBLIC COMMENT

Chair Zuba requested to move the Public Comment, Agenda Item XI.

Public Comment opened.

Ms. Kemp, resident, stated she was opposed to comfort stations in any residential areas.

Public Comment closed.

B. Capital Improvement Plan Fiscal Year 2014

Community Development Director Fluegel stated that State Statute required the Town's LPA to make a determination on the proposed Capital Improvements Plan that it was consistent with the Comprehensive Plan. He noted the staff prepared the LPA Resolution and a Comp Plan Policy Analysis.

Discussion was held and Community Development Director Fluegel responded concerning the following items:

- A 'light duty vehicle' in the Utility Reserve and Debt Financing – part of Public Works vehicle replacement cycle.
- Stormwater Enterprise Fund – establishment of the stormwater enterprise fund, and the designation of an 'enterprise' fund.
- Resolution 2013-006, #2, Proposed 2013-14 CIP Consistency with the Comp Plan Policies and Objectives
 - Bay Oaks – Recreation Element, Objective 10-D: baseball backstop/batting cage fence repairs, equipment storage building, and restroom partitions; *requested to reference #10-D-3 specifically*
 - Mound House – acquisition; public dock for bay access; *requested to reference #13-H-1 and #13-H-4 specifically*
 - Newton Park – Recreation Element – seawall project, shade structure; *requested staff to determine if seawall project was maintenance or repair*
 - Stormwater Master Plan – no change
 - Multi-modal Improvements – no change

- Basin Based Project HMPG 1609 – no change
- North Estero Improvements – no change
- Road Resurfacing/Improvements – no change
- Times Square Paver Replacement – no change
- Beach Access Comfort Stations, Beach & Bay Access Improvements – the word ‘amenities’ does not appear in the Comp Plan; and Objectives 5-E, 6-H, 6-A-2 and 10G do not address restrooms or comfort stations
- Public Dock – Coastal Management Element – Objective 5-E-7 refers to dependent uses, but 10-E-4 was the better objective for a public dock; *requested to include 13-H-4*
- Water Utility – Conservation Element – noted Objective 6-1 concerned natural resources; *suggested the Objective should be 8-1; agreed to use Objective 6-1 and Goal 8B*
- Vehicle Replacement – no change
- Public Parking Improvements – switching out parking meters; Policy 7-A-2 appropriate

LPA Attorney Miller explained that the comfort stations in the County parks had been transferred to the County.

Vice Chair Champ questioned the budget funds for the Beach Access Comfort Stations.

LPA Attorney Miller noted she was unaware of a definitive plan for the Beach Access Comfort Stations.

Discussion ensued regarding the proposed Beach Access Comfort Stations; and if the stations were consistent with the Comp Plan as it related to water quality.

MOTION: Vice Chair Champ moved regarding Resolution 2013-006 now, therefore, be it resolved by the LPA of the Town of Fort Myers Beach, Florida as follows: 1) the LPA hereby recommends that the Town Council find that 13 of the 14 items on the attached proposed 2013-2014 CIP are consistent; 2) the LPA specifically finds the following items from the proposed 2013-2014 CIP are consistent with the referenced Town of Fort Myers Beach Comprehensive Plan policies and objectives except for Bay Oaks to be Objective 10-D-3, Mound House 13-H-1 and 13-H-4, Water Utility to add Goal 8-B, Public Dock 13-H-4, and remove Beach Access Comfort Stations, and add it to 3) that the LPA specifically finds the following item from the proposed 2013-2014 CIP as inconsistent – Beach Access Comfort Stations; second Mr. Steele.

VOTE: Motion approved, 6-0.

MOTION: Vice Chair Champ moved to adjourn as the LPA and reconvene as the Historic Preservation Board; second by Mr. Smith.

VOTE: Motion approved 6-0.

Adjourn as LPA and reconvene as Historic Preservation Board

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Ms. Shamp distributed information entitled 'Proposal for Updating Historic Preservation Process and Elements of LDC and Comp Plan' and noted the Ad Hoc Committee would be meeting for the first time tomorrow on this matter. She requested comment on the handout and reviewed her research and work on a historic preservation process. She noted that a process was needed for applying for a plaque, to assign plaques, and for a historic significance. She discussed the survey of structures on the island from 1986 and 1992 and qualified structures at that time; increased number of qualified structures since the last survey; Town regulations as it applied to the term 'designated'; other Comp Plan criteria for resources as it pertained to further surveys, establishment of historic districts, and plaques/awards; and cottage design noted in the Comp Plan. She suggested leaving the information in the Comp Plan for designated structures for the category called historic designation for high level structures (i.e. Mound House, etc.) and then establish four categories for historic importance that would not encumber property with land development code restrictions – 1) CH1, Historic Designation, 2) CH2, Historic Recognition, 3) CH3, Historic Significance, and 4) CH4, Historic Interest. She reviewed establishing four historic districts - 1) Early Bay Side Cottages (Primo Street to Pearl Street); 2) Core Historic Village (bay street area that included the Estero Island Historic Society, Matanzas Pass Preserve); 3) Core Beachfront Cottages in the 3000-4000 block range; and 4) South Beach Front Cottage District. She pointed out that 'wetlands' had archeological potential. She explained there would need to be a discussion to establish the application process, the elements of historic cottage design, and the plaque design. She requested the HPB review the information she distributed and be prepared to discuss the matter at their next meeting.

Discussion was held concerning the information distributed by Ms. Shamp.

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

VOTE: Motion approved 6-0.

Adjourn as Historic Preservation Board and reconvene as the LPA

VII. LPA ACTION ITEM LIST REVIEW

Chair Zuba requested to change the order of the Agenda to discuss the LPA Action Item List Review, Item IX.

Community Development Director Fluegel reported:

- Beach Raking – approved.
- Noise/Entertainment Ordinance – consultant working on the matter and would prepare a report.
- Floodplain Management – ordinance revisions had been with the State for review; comments have not been received back from the State yet; staff hoped to have revisions by August/September.
- Short-term Rentals – no change.

- FEMA Community Rating System – staff working to get overall community rating decreased.
- EAR – awaiting Land Use Consultant.
- Post-Disaster Reconstruction & Recovery – staff to investigate a grant program for funding of post-disaster recovery efforts.

LPA Attorney Miller reported she was working on the following items that would eventually come before the LPA:

- Revisions to the LDC regarding visitor information centers; and
- Outdoor displays

VIII. LPA MEMBER ITEMS AND REPORTS

Mr. Kakatsch – no report.

Mr. Durrett – no report.

Mr. Smith – no report.

Ms. Shamp – noted at the last meeting there were two representatives from Lee County who discussed multimodal and complete streets who she had challenged to come to the Beach for a bicycle ride. She reported Planning Coordinator Overmyer scheduled a bicycle ride from the Fire Station north to Times Square on July 13th for the Lee County Principal Planner, Traffic Planner, and the Program Director of the Florida Bicycle Association along with Council Member Andre and his wife.

Community Development Director Fluegel discussed Estero Boulevard as a heavily utilized multimodal facility (i.e. bicycles, cars, trolleys, pedestrians, etc.).

Mr. Steele – no report

Chair Zuba – no report.

Ms. Plummer – excused.

Zoning Coordinator Dulmer recognized **Shane Merritt** who was the Community Development Director Summer Intern.

Community Development Director Fluegel noted Council's hiatus in July and reported staff anticipated scheduling the Lani Kai for an August Council Meeting. He asked if there was a representative of the LPA to contact concerning attending the Council Meeting.

Mr. Kakatsch indicated he would attend the Council Meeting on behalf of the LPA.

IX. LPA ATTORNEY ITEMS

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LPA Attorney Miller – no items or report.

X. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

No discussion.

XI. ADJOURNMENT

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

VOTE: Motion approved, 6-0.

Meeting adjourned at 11:15 a.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

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