



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

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, Florida  
**Tuesday, August 13, 2013**

**I. CALL TO ORDER**

Meeting was called to order at 9:03 a.m. by Chair Zuba; other members present:

Al Durrett  
John Kakatsch – excused at 11:30 a.m.  
Jane Plummer  
Joanne Shamp – excused at 11:30 a.m.  
Alan Smith  
James Steele – excused.  
Hank Zuba

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

**II. PLEDGE OF ALLEGIANCE**

**III. INVOCATION**

**IV. MINUTES**

A. Minutes of June 11, 2013

Ms. Shamp noted that the time for the LPA reconvened was unknown (Page 8).

Discussion was held; and consensus approved that the Minutes on Page 8 should reflect the LPA reconvened at “approximately 10:30 a.m.”.

**MOTION:** Mr. Kakatsch moved to approve the Minutes for June 11, 2013 as amended; second by Ms. Shamp.

**VOTE:** Motion approved, 6-0; Mr. Steele excused.

## **V. WORKSHOP**

### **A. Joint Workshop with the Outdoor Display Small Group**

**Retail Merchants Working Group** members present: Beverly Grady, Mitch Krohn, John Richard, Bud Nocera, and Council Member Andre.

Zoning Coordinator Dulmer reviewed how last tourist season the Town's Code Enforcement conducted a sweep of outdoor displays which resulted in community meetings with some of the retail merchants; and then the creation of a smaller group of 5-6 individuals who had been working with Town staff to craft possible amendments to the pertinent Land Development Code (outdoor display in the Downtown District section). She explained that Town staff wanted to present to the LPA, in a workshop format, the changes to the ordinance being proposed by the Retail Merchants Working Group:

- Outdoor display may not be subleased to a separate business/tenant/etc.
- Expressed a desire to adopt the definitions and changes as provided by Beverly Grady in regards to outdoor space, under engineered roof that can be secured at night (examples: Teeki Hut and Ocean Jewels)
- Restrict outdoor displays to private property only.
- All merchandise displayed outdoor must be moved and stored inside at the close of business every day (except for the Teeki Hut example).
- No limits on number or type of displays.
- No kiosk carts.
- All outdoor displays must be on a porch – no displays on patios, concrete, ground level.
- Annual permit is required – fee to be determined.
- No vending or displaying of any food items.
- Point of sale must be indoors.
- No changes to the allowances to tables and chairs for restaurants.

She explained how Town Staff wanted to see an open discussion between the LPA, staff, and the Retail Merchants Working Group, and ultimately a motion from the LPA on the matter. She suggested opening the discussion on the proposed changes.

LPA Attorney Miller noted a proposed ordinance would still need to be drafted and that staff was seeking some basic ideas on which direction the LPA felt staff should take on the matter.

Community Development Director Fluegel pointed out that after staff received input from the LPA today, then staff would continue to meet a few more times with the Retail Merchants Working Group and then begin to draft an ordinance.

Discussion with questions and answers ensued regarding the changes to the ordinance being proposed by the Retail Merchants Working Group (RMWG):

- Outdoor display may not be subleased to a separate business/tenant/etc.
  - DCD Director Fluegel noted the RMWG were fairly unanimous on this issue. Discussed the need for stronger language in the Code to address kiosks and the matter of possible unfair competitive advantage as it related to kiosks; location of existing and prior kiosks; and composition of the members of the RMWG.

Council Member Andre gave a brief history on the RMWG and how he was associated with this group's cause.

John Richard, member of the RMWG noted that the group was working with staff on the issue.

Mitch Krohn, member of the RMWG and owner of the Teeki Hut, offered a brief history of his business and mentioned that he hoped they could all come to a resolution on outdoor displays.

Beverly Grady, Attorney with Roetzel and Andress, noted she was assisting Mr. Krohn, had attended most of the RMWG meetings, and worked on some of the language for the proposed changes to the Code.

Zoning Coordinator Dulmer reported that Julie Schwab and Jacki Lyszak were also on the RMWG; however, they were unable to attend today's meeting but were satisfied with the information included in the memo.

Vice Chair Shamp discussed how she supported the concept wholeheartedly, and liked the 'funky' nature of the Town.

Community Development Director Fluegel reviewed the difficulties with enforcing the ordinance, and how the RMWG worked to eliminate the ambiguities in the ordinance.

Mr. Durrett questioned limitations on outdoor display outside of the Downtown District.

Community Development Director Fluegel noted there were stricter limitations on outdoor displays outside of the Downtown District.

Discussion was held concerning outdoor displays in a commercial shopping center (not in the Downtown District); recurring special events (i.e. farmers' market); and the Santini District and ensuring the proposed ordinance addressed the Santini District as it pertained to special/recurring events and outdoor displays.

Zoning Coordinator Dulmer suggested opening up any outdoor displays for commercially zoned properties.

Discussion ensued regarding outdoor displays in commercial zones outside of the Downtown District; examples of existing outdoor displays outside of the Downtown District (i.e. Publix); subleased kiosks in the Downtown District; and consideration for a separate category for the three designated shopping centers in the Town.

Chair Zuba noted two points from the discussion – 1) the purpose of the kiosk cannot be competitive with the store(s); and 2) it would have to be approved by the tenants in the shopping center.

Zoning Coordinator Dulmer acknowledged that tiers of rules for certain locations could be discussed; however, she noted that a situation should not be created where writing code amendments were allowing mobile vending.

Discussion was held regarding kiosks in a shopping center; restriction of outdoor displays to private property only; and outdoor displays under a covered porch.

Vice Chair Champ noted the proposed changes submitted by the RMWG was self-regulating, showed an intent by the vendors to have the Town look nice, would help businesses succeed and be fair to competition; and help to keep the Town's rights-of-way clear.

Ms. Plummer questioned if properties without a deck would be able to have an outdoor display.

Zoning Coordinator Dulmer responded in the negative; and reviewed differences between the current code and the proposed changes (i.e. definition of porches and patios). She reviewed the 'forgiving' nature of the definition of a *patio*; and the removal of *patio* and how it would restrict the areas for an outdoor display and better define them.

Discussion was held concerning businesses that could be impacted by the removal of the word '*patio*'.

Zoning Coordinator Dulmer stated she would obtain information for Ms. Plummer regarding the number of businesses that could be impacted by the removal of '*patio*'.

Discussion with questions and answers continued regarding the changes to the ordinance being proposed by the Retail Merchants Working Group (RMWG):

- No limits on number or type of displays.
  - It was noted that "*all merchandise displayed outdoor must be moved and stored inside at the close of business every day*" was a 'self-limiting' proposal; that business had different sized porches; and the Fire Department would insure the ingress/egress was not blocked.
- No kiosk carts.

- Kiosks would have to be put into the primary business each night.
- Restrict outdoor displays to private property only.
  - Review of what could be the dimensions of a patio (i.e. where does it start and stop); how this would encourage people to invest in their buildings; staff to work on creating an overlay or a provision for “*any shopping centers over a total gross square footage of 25,000 square feet*”; more research required on ‘mobile vending’; and consideration for outdoor displays only on private property and not in the public right-of-way.
- Expressed a desire to adopt the definitions and changes as provided by Beverly Grady in regards to outdoor space, under engineered roof that can be secured at night
  - Attorney Grady reported Exhibit B was recognizing that those properties in the Downtown District (primarily in the Times Square area) were making a substantial investment in able to design an addition that was under a common roof for the conventional portion of the building and in the additional area that would be added that they would meet the design standards and they would be able to close it for security. It would have the requirement that in case of a hurricane the items would need to be removed to the inside of the conventional building.
  - Staff to investigate FAR regarding decks.

Community Development Director Fluegel thanked the LPA for the discussion, comments, and suggestions. He requested Mr. Durrett attend the next RMWG meeting.

Discussion was held concerning the appointment of Mr. Durrett by the LPA to represent the LPA at the RMWG meetings.

**MOTION:** Ms. Shamp moved to appoint Mr. Durrett as the LPA representative at the Retail Merchants Working Group meetings; second by Mr. Smith.

**VOTE:** Motion approved 6-0; Mr. Steele excused.

Council Member Andre noted the importance of scheduling the next RMWG meeting quickly.

Ms. Plummer questioned if the proposed changes to the ordinance would be for the entire Town or only the Downtown District.

Community Development Director Fluegel reported the changes would be for Section 34-3004, Outdoor Display of Merchandise for Sale or Rent, and would be used for areas outside of the Downtown District. He added at some point that section would reference back to the Downtown District language.

Zoning Coordinator Dulmer asked for a show of hands from the LPA to determine how many members would be in favor of opening the outdoor display, same set of rules, for any commercially zoned property regardless of whether or not it was in the Downtown District.

Chair Zuba, Mr. Kakatsch, and Ms. Plummer each raised their hand.

Discussion was held concerning outdoor displays at commercially zoned properties.

**Recessed at 10:05 a.m. – Reconvened at approximately 10:17 a.m.**

## **VI. PUBLIC HEARINGS**

### **A. DCI2012-0003 Lighthouse Resort CPD Amendment**

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Beverly Grady, Attorney with Roetzel and Andress representing the Applicant, presented comments for the CPD Amendment request and noted the following:

- Subject property was a 1.72 acre parcel in the heart of downtown Fort Myers Beach.
- Subject property has been in the ‘Roessler and Kolar’ Family for decades.
- She reviewed historical photo(s) and the background of the subject property; Exhibit ‘C’ in the Staff Report; and how the location of the Sky Bridge had gone through the resort and had impacted the location of the Lighthouse Resort’s office and signage.
- Applicant (Mr. Kolar) remembered his grandfather had been promised a left turn from the Sky Bridge onto Fifth Street; however, the Applicant was not requesting that turn. The resort was surrounded by a public street on all four sides with no direct access into the resort for check-in.
- Displayed and discussed the Master Concept Plan for the subject property.

She commented that the Staff Report was all inclusive and had detailed information regarding the application and that the staff supported the height and location; therefore, she was focusing on the size of the sign. She discussed Exhibit ‘G’ and the depiction of each sign proposed by the Applicant’s sign professional. She reported the sign code in effect in 1999 when the subject property was rezoned a CPD provided for signage on each street; and when the most recent sign code was adopted the Applicant appeared before Council to request language where commercial parcels on two streets would be recognized for additional signage. She added that the Council recognized the subject property was in a unique position being a commercial resort surrounded by four streets without direct access to the main arterial road; and that due to their uniqueness they advised the Applicant to proceed with a public hearing for their request. Attorney Grady pointed out that staff had provided photographs indicating the location of each sign, and reviewed sign details on the visual aid displayed in the Chambers. She stated the Applicant was willing to remove the 18 square feet sign on the main Lighthouse sign; and noted the Lighthouse had acquired two separate businesses (Offshore Inn and a hair salon) which no longer existed. She mentioned the Applicant had one sign on Third Street, Crescent Street, and on Fifth Street. She requested approval of Exhibit ‘G’ signs A, B, C, D, and E with the elimination of 18 square feet on the main Lighthouse sign.

Chair Zuba asked if the Applicant had appeared before the Magistrate on the signage.

Attorney Grady responded in the negative. She reported the Applicant did not receive a Notice of Hearing, so the Magistrate might have spoken with the Code Enforcement officer. She repeated the Applicant did not receive a Notice and they have filed a challenge under the Dispute Resolution Statute.

Vice Chair Shamp asked if the Applicant had gone through the hearing process with the LPA and HPB in an attempt to have the tall lighthouse sign designated as a historic resource. She offered a copy of LPA Resolution 2008-19 to be placed into the record. She reported the Resolution indicated that the historic sign designation request was turned down.

Attorney Grady stated she did not handle the historic sign designation application; that she was aware under the 2011 Sign Code that there were different opportunities to request relief; and one relief would be to request an application for a historic sign; however, it was her understanding there was insufficient information. She noted that today's case was not a request under that provision in the Sign Code, and that it was a request for a deviation in the CPD.

Vice Chair Shamp explained the basis for her questions was due to Exhibit '55 Supplemental Narrative Response to Deviation Criteria' as it pertained to Sign #1.

Attorney Grady explained how the staff had asked if the Applicant was making a request for a historic sign designation and that her response had been in the negative.

Tom Kolar, Applicant, explained that the Lighthouse sign was there because the Sky Bridge was so tall and described problems the site has encountered pertaining to signage and site identification/location for customers.

Planning Coordinator Overmyer presented comments for DCI2012-0003 Lighthouse Resort CPD Amendment (Sign Deviations) on behalf of the Town of Fort Myers Beach. He displayed an aerial photograph of the site noting the location of the subject property which had four street frontages. He noted the existing zoning was CPD and the property was situated in the Pedestrian Commercial Future Land Use Category. He displayed and discussed a historic photograph prior to the Matanzas Pass Bridge of the subject property. He reviewed the Applicant's request to amend the Lighthouse Resort CPD to add deviations from Land Development Code Chapter 30 "Signs" including: numbered beginning from 10, due to nine previous deviations for the Lighthouse Resort CPD. He reviewed the deviations requested:

- Deviation #10 – Relief from LDC Section 30-153(b)(1) allotment of 32 square feet of signage for each of two businesses, for a total of 64 square feet; to allow 126 square feet for the Lighthouse Island Resort and 41.25 square feet for the Tiki Bar, for a total of 167.25 square feet of signage.
- Deviation #11 – Relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign; to allow 25' 6" for the Lighthouse "Sign D".
- Deviation #12 – Relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign and 18" for the sign base; to allow the bottom of the sign at 4.1' and an overall height of 10.4' for "Sign A" on Third Street.

- Deviation #13 – Relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign and 18” for the sign base; to allow the bottom of the sign at 4.1’ and an overall height of 9.7’ for “Sign B” on Crescent Street.
- Deviation #14 – Relief from LDC Section 30-154(c) which allows a maximum height of 5 feet for a monument sign and 18” for the sign base; to allow the bottom of the sign at 4.1’ and an overall height of 9.7’ for “Sign C” on Fifth Street.
- Deviation #15 - Relief from LDC Section 30-154(b) which requires a minimum 3’ setback from any public right-of-way; to allow a 0’ setback for “Sign A” located on Third Street.
- Deviation #16 – Relief from LDC Section 30-154(c) which requires a minimum 3’ setback from any public right-of-way; to allow “Sign B” to remain located entirely within the right-of-way at the intersection of Crescent Street and Fifth Street.

He described the property details:

- 1.673 Acres
- 1051 Fifth Street; 1041, 1049 and 1067 Fourth Street; 1030 Third Street
- Lighthouse Resort and Tiki Bar
- Current Zoning – Commercial Planned Development (CPD)
- Future Land Use – Pedestrian Commercial

He reported staff recommended approval of the requested Deviations #11-16, but recommended denial of Deviation #10 for 167.25 square feet of overall signage; and alternatively, staff recommended approval of 88.8 square feet for Lighthouse Island Resort and 41.25 square feet for Tiki Bar, for a total of 130.05 square feet. He added that staff recommended an alternative for Deviation #10 to allow the existing Lighthouse “Sign D” to remain, as well as a “Tiki Bar” sign located in the parking lot under one of the hotel buildings; and signs on Third, Crescent, and Fifth Streets would decrease from 4’ x 6.1’ in size to 3’ x 4’ (a reduction of 12 square feet per sign).

Mr. Smith questioned the basis for including the “Tiki Bar” sign since it appeared to almost be an ‘inside’ sign.

Planning Coordinator Overmyer explained how the sign could be seen from the right-of-way.

Mr. Kakatsch strongly urged the LPA consider a positive result for a unique piece of property that was difficult to identify and sign for people new to the Beach.

Vice Chair Shamp requested Planning Coordinator Overmyer to re-display certain photographs in order to question sections of the Code. Discussion was held regarding the photographs re-displayed on the overhead screen.

Planning Coordinator Overmyer pointed out that the Applicant was seeking a CPD Amendment for sign deviations and was not being held to variance standards.

Ms. Shamp asked if there was a major difference between the two request types, and LPA Attorney Miller stated “*Under the current codes, yes.*” She explained that the purpose of the CPD was to provide for more flexibility without necessarily having to meet the technical requirements of a variance.

Discussion continued concerning the photographs re-displayed (Sign “A”) and the use of posts for the base of the signage in question.

Ms. Plummer asked if the Applicant was willing to shorten the posts (Sign “A”) to be flush with the top of the sign face.

Planning Coordinator Overmyer turned to the Applicant in the audience regarding the question; and reported the Applicant’s response was in the affirmative.

Discussion continued concerning the photographs re-displayed; and the parking setback for the subject property on Third Street.

Planning Coordinator Overmyer reported the subject property had a previous deviation in Resolution 03-23, Exhibit “F”, for 7.4’, 4.5’, 3’, 2.6’, 1.5’, 1.4’, and 0’ from the development perimeter as depicted on the Master Concept Plan.

Mr. Kolar, Applicant, reported that the sign displayed in the photograph was located at the property line, and in the future when they construct a new building, the sign would go away; and when he eventually constructed a new building in the front that the lighthouse sign would be removed. He stated the setback in question was a 0’ setback.

Discussion was held concerning rights-of-way areas on the subject property and future roadwork; whether or not deviations were listed in the proposed resolution.

LPA Attorney Miller reported any deviations approved should be included in the proposed resolution.

Planning Coordinator Overmyer reviewed how Code Enforcement staff provided a Notice of Violation to someone in the front office at the Lighthouse and property was posted. He added that the Code Enforcement officer reported he provided the Notice of Hearing in the same manner.

Ms. Plummer recounted her personal experience with Code Enforcement posting a Notice of Violation.

Discussion was held concerning the Applicant’s request regarding signage.

Attorney Grady reiterated that the Petitioner had not received a Notice of Hearing from the Town.

Discussion was held concerning the information noted by Attorney Grady regarding the Notice of Hearing.

Discussion was held regarding the proposed sign deviations requested by the Applicant; sign dimensions recommended by staff; and proposed conditions for approval.

Public Comment opened.

No speakers.

Public Comment closed.

**MOTION:** Mr. Kakatsch moved to approve the applicant's request.

LPA Attorney Miller pointed out that the Applicant was willing to make some adjustments: 1) remove 18' square feet from the large monument sign; and 2) cutting off the posts so that they are flush with the top of the other signs which meant that the maximum height of the other signs would be 8.1'.

Planning Coordinator Overmyer reviewed the amended language: a deviation from LDC Section 30-153(b)(1) to allow 149.25 square feet; deviation #3, 4, and #5 at the height of each should be 8.1'.

**SECOND:** Mr. Smith.

**VOTE:** Motion approved 4-2; Chair Zuba and Vice Chair Shamp dissenting; Mr. Steele excused.

Public Hearing closed.

**Recessed at approximately 11:30 a.m. – Reconvened at 11:40 a.m.**

Vice Chair Shamp and Mr. Kakatsch were excused.

B. VAR2013-0002 Pointe South Setback Variance

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Dulmer noted there were some 'housekeeping' issues:

1. Typo in the proposed resolution – correct number of the Resolution 2013-007.
2. Community Development Intern, Shane Marit, assisted with the case and would present the case.

Community Development Intern Marit presented comments for VAR2013-0002 Pointe South Setback Variance on behalf of the Town of Fort Myers Beach. He displayed an aerial photograph of the site and noted the location of the subject property. He reviewed the Applicant's request:

- Relief from Section 34-638(b) requiring a 20' minimum side setback in the residential multi-family zoning district.
- Specifically requested a 12' side setback where a 20' side setback was otherwise required.

He gave an overview of the background of the subject property:

- Property was developed in 1976

- Zoned under Lee County as Multiple Family Hotel and Motel District (RU-3) which stated “Accessory buildings in all zones shall not be closer than five feet to the side or rear property line”;
- Accessory structure (barbeque hut) and pool area constructed 10’ within the side setback; Florida Department of Health Section 64E-9.008(7.1) stated: “No food or beverages in pool or on pool wet deck”;
- Subject property was now zoned as residential multi-family (RM) and Environmentally Critical (EC).

He reviewed the existing conditions of the subject property as depicted in “Site Plan Exhibit B”, Exhibit “C”. He explained the proposed accessory structure was a Chickee Hut that was 18’ x 20’ with a setback of 12’ from the side property line. He noted the supporting regulations pertaining to the Applicant’s request:

- Section 34-87 – 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 fact support the five required findings, staff report and LPA recommendations, testimony from the Applicant, and testimony from the public.
- Section 34-87(3) Findings – 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.* While the lack of space on a property is not as exceptional or extraordinary circumstances inherent to any property, the side setback in this case does represent a relative hardship to the subject property because the applicant has stated there is no other feasible location for the proposed structure near the existing barbeque hut. The proposed location is landward of the 1978 CCCL. The subject property also has to meet the Department of Health requirements, which prohibits eating or drinking in the pool area. 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 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 conditions are not the result of actions of the applicant taken after the adoption of the regulation in question, as the condo was constructed in 1976, well before the adoption of the LDC Section 34-638(b). The principal building was built in accordance with the Lee County Zoning Regulations and the side setback regulation for accessory structures has changed from 5’ to 20’.
  - 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 variance requested is the minimum variance that will relieve the setback burden. The applicant stats the proposed pad of 18’ x 20’ is necessary for the structure to be functional. If the applicant was to construct an accessory structure built to current setback requirement in the proposed location, the structure would only

extend 8' deep. This would limit the functionality of the structure as an effective eating area. Staff recommended that the variance requested was 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 granting of the variance would not be injurious to the neighborhood or detrimental to the overall public welfare. If granted, the variance may actually be an improvement to public welfare and safety due to the deterrence of residents and their guests eating in the pool area, which is not allowed by Health Department ordinances. Staff recommended that granting the variance as requested by the applicant would not 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.* The 20' side setback in question is not a recurring issue and can usually be complied with on most RM properties. Most RM properties do not have the unique existing circumstances as the subject property, such as the lack of space and feasible locations and the existing non-conforming structures within the setback. Staff found that the circumstances on the specific piece of property for which the variance was sought are not general in nature, and demonstrated a verifiable hardship.

He reported that staff recommended approval with conditions of a setback variance request from Section 34-638(b) to allow a 12' side setback for the construction of an accessory structure where a 20' setback was otherwise required, subject to the following conditions:

1. That the request be limited to the 18' x 20' accessory structure as shown on the applicant's site plan attached as Exhibit B.
2. A Type B vegetative buffer as defined in LDC Section 10-416(3) is implemented and continuous from the existing pool area to the existing grill area.

Zoning Coordinator Dulmer reported staff received 2-3 phone calls with questions about the subject request and that none voiced objections. She added that the proposed accessory structure would not encroach any further into the side setback; and approval would not increase the level of non-conformity.

Homer Odum for Pointe South noted the weekly rentals and how the Health Department was getting stricter as to where patrons were eating. He reported he met with representatives from Smugglers Cove regarding the location of the proposed accessory structure and assured them that the proposed structure would blend in with the landscaping.

Discussion was held concerning the proposed Chickee Hut structure.

Public Comment opened.

No speakers.

Public Comment closed.

Ex-parte communication discussed.

**MOTION:** Mr. Smith moved to approve VAR2013-0002 Pointe South Setback Variance with conditions as recommended by staff; second by Mr. Durrett.

LPA Attorney Miller noted that the motion should include the Recommended Findings and Conclusions.

Motion maker reviewed the Recommended Findings and Conclusions:

- 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.
- Conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.
- The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation.
- Granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- 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.

**VOTE:** Motion approved, 4-0; Vice Chair Shamp, Mr. Kakatsch and Mr. Steele excused.

Public Hearing closed.

### C. ORD 13-06

Planning Coordinator Overmyer reported staff recommended repeal and replacement of the existing flood regulations in Section 6-401 through 6-474 of the LDC. He added the request was due to the model ordinance was provided by the State's Floodplain Management Office and developed in conjunction with the Florida Building Code Commission to help Florida communities adopt regulations that coordinate with the flood provisions that were now found in the 2010 Florida Building Code. He reported that any higher regulatory codes need to be adopted as technical amendments to the Florida Building Code.

Discussion ensued regarding the proposed ordinance; the recommended repeal and replacement of the existing flood regulations in Section 6-401 through 6-474 of the LDC; flood insurance rates and the Biggert-Waters National Flood Insurance Reform Act of 2012; repetitive loss structures and substantial damage; and the Hazard Mitigation Grant Program; Appraisals from a MAI-certified appraiser; and updating Floodplain Regulations.

**MOTION:** Mr. Durrett moved to recommend approval of the Ordinance 13-06; second by Mr. Smith.

**VOTE:** Motion approved, 4-0; Vice Chair Champ, Mr. Kakatsch and Mr. Steele excused.

### **Historic Preservation Board – Withdrawn**

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

Mr. Durrett – no report.

Mr. Smith – no report.

Chair Zuba – **??? 46:40???**

Zoning Coordinator Dulmer reported the term of three LPA members expired in October (Mr. Smith, Mr. Kakatsch, and Ms. Plummer). She noted that if the members were interested in reappointment that they should submit a letter of intent to the Town Council through the Town Clerk by September 1, 2013.

Ms. Plummer – discussed her views regarding the Town’s Code Enforcement process for posting a Notice of Violation on property.

Mr. Kakatsch – no report – excused earlier.

Vice Chair Champ – no report – excused earlier.

Mr. Steele – no report – excused.

#### **VIII. LPA ATTORNEY ITEMS**

LPA Attorney Miller – no items or report.

#### **IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS**

Community Development Director Fluegel reported **??51:28??**

Zoning Coordinator Dulmer reported there was an evening Town Council Meeting schedule on August 19<sup>th</sup> and the Lani Kai sign variance would be on the agenda.

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

No discussion.

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

No discussion.

**XII. PUBLIC COMMENT**

None.

**XIII. ADJOURNMENT**

**MOTION:** Motion by Mr. Durrett, seconded by Mr. Smith to adjourn.

**VOTE:** Motion approved, 4-0; Vice Chair Champ, Mr. Kakatsch and Mr. Steele excused.

Meeting adjourned at 12:35 p.m.

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

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

\_\_\_\_\_  
Signature

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DRAFT