

1. Requested Motion:

Meeting Date: Oct 17, 2011

Approve Resolution 11-20, granting a variance from LDC Section 30-153(b) (maximum sign area) and 30-154(c) (standards for monument signs) for the DiamondHead Resort located at 2000 Estero Blvd.

Why the action is necessary:

This action will allow the applicant to meet the required compliance deadline of December 31, 2011 as set forth in Section 30-56 of the Town of Fort Myers Beach Land Development Code.

What the action accomplishes:

2. Agenda:

- Consent
- Administrative
- Public Hearing

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other

4. Submitter of Information:

- Council
- Town Staff – Comm. Dev.
- Town Attorney

5. Background:

Neil Hopgood and Randy Kares (“Applicant”), with the authorization of the property owner, have requested a variance from LDC Sections 30-153(b) and 30-154(c) to allow a commercial identification sign on the subject property that exceeds the maximum permitted height and sign area.

The sign is a freestanding sign, but does not comply with the definition of “monument sign” which is defined in Section 30-2 as “*a free-standing sign with internal structural supports where the height from the ground to the highest point on the sign is less than the sign’s greatest horizontal dimension.*” The current sign would be considered a ‘pole sign’ which is defined in the ordinance as “*a freestanding sign supported by an exposed structure of poles or other supports where the height of the exposed sign supports extends more than eighteen (18) inches from the ground to the bottom of the sign.*” Pole signs are expressly prohibited. The applicant is proposing to remodel the existing sign to remove the open space area between the ground and the bottom of the sign so that it will no longer be considered a prohibited pole sign (for a site plan see **Exhibit D**).

It should be noted that the existing sign was approved and built prior to the September 1999 repeal of the former (Lee County) sign ordinance and adoption of a new sign ordinance, as well as subsequent amendments in 2003, 2005, 2008 and most recently in April of 2011 by ordinance 11-01.

The applicant originally applied for a Variance in 2008, but records show that the case was never scheduled for hearing. With turnover of Community Development Staff and the recent passage of Ordinance 11-01, the applicant requested hearing of the case.

The applicant is proposing to reduce the sign from its current height of 21’5” above the parking lot surface (see Exhibit B) to 10’7” (see Exhibit C) above the parking lot surface.

The LPA held a public hearing for the request at their September 13, 2011 meeting. Staff presented its case along with a recommendation for approval with conditions, and then the applicant presented his case. LPA had a question and answer period and discussion involving acceptable and appropriate conditions for approval. Member Cameron made a motion for approval including amending to include a triangular portion extending above the sign (see Exhibit E) and adding a condition (#5) requiring landscape material along the

base. The LPA voted 3-2 (Member Van Duzer was absent) to approve the request with conditions as recommended by Staff and amended by the LPA. LPA Chair Champ and Member Kay were the dissenting votes.

Please note that the meeting minutes from the September 13, 2011 LPA meeting are still in draft form at the time of packet assembly. They should be officially adopted at the October 11, 2011 LPA meeting.

Attachments:

- Draft Town Council resolution
- LPA resolution 2011-010
- Draft LPA minutes from the September 13, 2011 meeting
- LPA packet including staff report from the September 13, 2011 meeting

6. Alternative Action:

1. Deny the requested variance
2. Approved the requested variance

7. Management Recommendations:

Approve the requested variance as recommended by the LPA.

8. Recommended Approval:

| Town Manager | Town Attorney | Finance Director | Public Works Director | Community Development Director | Cultural Resources Director | Town Clerk |
|---|---------------|------------------|-----------------------|--|-----------------------------|------------|
|  | | | |  | | |

9. Council Action:

 Approved Denied Deferred Other

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 11-20
FMBVAR2008-0003 (DiamondHead Sign Variance)

WHEREAS, applicants Neil Hopgood and Randy Kares have requested a Variance from Section 30-153(b) and Section 30-154(c) of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0090A.001 and the legal description of the subject property is GULF BAY VIEW BLK A PB 8 PG 69 LOTS 1 THRU 11 +VACATED STREET OR 648/318; and

WHEREAS, the subject property is located at 2000 Estero Boulevard in the DOWNTOWN zoning district of the Official Zoning Map and the Pedestrian Commercial category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on September 13, 2011; and

WHEREAS, at its meeting of September 13, 2011 the LPA instructed Town staff to bring this application forward to Town Council without the necessity of having approved LPA minutes; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on October 17, 2011, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2011-07, the recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2011-010 and the standards for granting variances, the Town Council makes the following findings of fact, and reaches the following conclusions:

The LPA recommends that the Town Council **APPROVE/DENY** the applicant's request for a Variance from Section 30-153(b) and Section 30-154(c) of the LDC, with any approval subject to the following conditions:

RECOMMENDED CONDITIONS OF APPROVAL:

1. *Approval of this variance does not exempt the subject property from the LDC Section 30-55 permit requirements for signs.*
2. *The height of the sign, measured from the elevation of the existing grade of the elevated parking lot to the highest point on the sign must not exceed 8'6" except for the diamond shaped extension, provided the area of said extension shall not to exceed the dimensions shown in **Exhibit E**.*
3. *Construction and/or remodeling of the sign must comply with all applicable codes and regulations, including building codes and lighting standards.*
4. *If the principal building on the subject property is removed or replaced for any reason, this variance will expire and the sign allowed by this variance must be removed within 30 days of the issuance of the demolition permit for the principal building or within 30 days of the expiration of the federal, state, county, or local declaration of disaster, whichever condition(s) applies and whichever comes first. Placement of signage in conjunction with redevelopment must comply with all regulations in effect at the time of permitting.*
5. *Landscaping shall be installed and maintained around the base of the sign at a height so that no more than 18" of the monument base is visible .*

RECOMMENDED FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

- A. There **are/are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, **or** the request **is/is not** 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/are not** the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance granted **is/is not** 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/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/are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember _____ and seconded by Councilmember _____, and upon being put to a vote, the result was as follows:

Larry Kiker, Mayor AYE/NAY
Alan Mandel AYE/NAY
Joe Kosinski AYE/NAY

Bob Raymond, Vice Mayor AYE/NAY
Jo List AYE/NAY

DULY PASSED AND ADOPTED THIS _____ day of OCTOBER, 2011.

Town Council of the Town of Fort Myers Beach

By: _____
Larry Kiker, Mayor

Approved as to legal sufficiency:

By: _____
Fowler, White, Boggs
Town Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2011-010
FMBVAR2008-0003 (DiamondHead Sign)

WHEREAS, applicants Neil Hopgood and Randy Kares have requested a Variance from Section 30-153(b) and Section 30-154(c) of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0090A.001 and the legal description of the subject property is GULF BAY VIEW BLK A PB 8 PG 69 LOTS 1 THRU 11 +VACATED STREET OR 648/318; and

WHEREAS, the subject property is located at 2000 Estero Boulevard in the DOWNTOWN zoning category of the Official Zoning Map and the Pedestrian Commercial category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on September 13, 2011; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-87.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for a Variance from Section 30-153(b) and Section 30-154(c) of the LDC, with any approval subject to the following conditions:

RECOMMENDED CONDITIONS OF APPROVAL:

1. *Approval of this variance does not exempt the subject property from the LDC Section 30-55 permit requirements for signs.*
2. *The height of the sign, measured from the elevation of the existing grade of the elevated parking lot to the highest point on the sign must not exceed 8'6" except for the*

*diamond shaped extension, provided the area of said extension shall not to exceed the dimensions shown in **Exhibit E**.*

3. *Construction and/or remodeling of the sign must comply with all applicable codes and regulations, including building codes and lighting standards.*
 4. *If the principal building on the subject property is removed or replaced for any reason, this variance will expire and the sign allowed by this variance must be removed within 30 days of the issuance of the demolition permit for the principal building or within 30 days of the expiration of the federal, state, county, or local declaration of disaster, whichever condition(s) applies and whichever comes first. Placement of signage in conjunction with redevelopment must comply with all regulations in effect at the time of permitting.*
 5. *Landscape material shall be installed and maintained around the base of the sign in such a way as to comply with the 18" monument base provision in Section 30-154(c).*
-

RECOMMENDED FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

- A. There **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, **or** the request **is not** 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.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Cameron** and seconded by LPA Member **Zuba** and upon being put to a vote, the result was as follows:

| | | | |
|----------------------|-----|------------------------|--------|
| Joanne Shamp, Chair | NAY | Bill Van Duzer, Member | Absent |
| Rochelle Kay, Member | NAY | John Kakatsch, Member | AYE |
| Hank Zuba, Member | AYE | Tom Cameron, Member | AYE |

DULY PASSED AND ADOPTED THIS 13th day of SEPTEMBER, 2011.

Local Planning Agency of the Town of Fort Myers Beach

By: 
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: 
Fowler, White, Boggs
LPA Attorney

ATTEST:

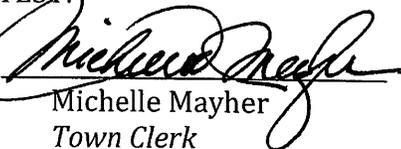
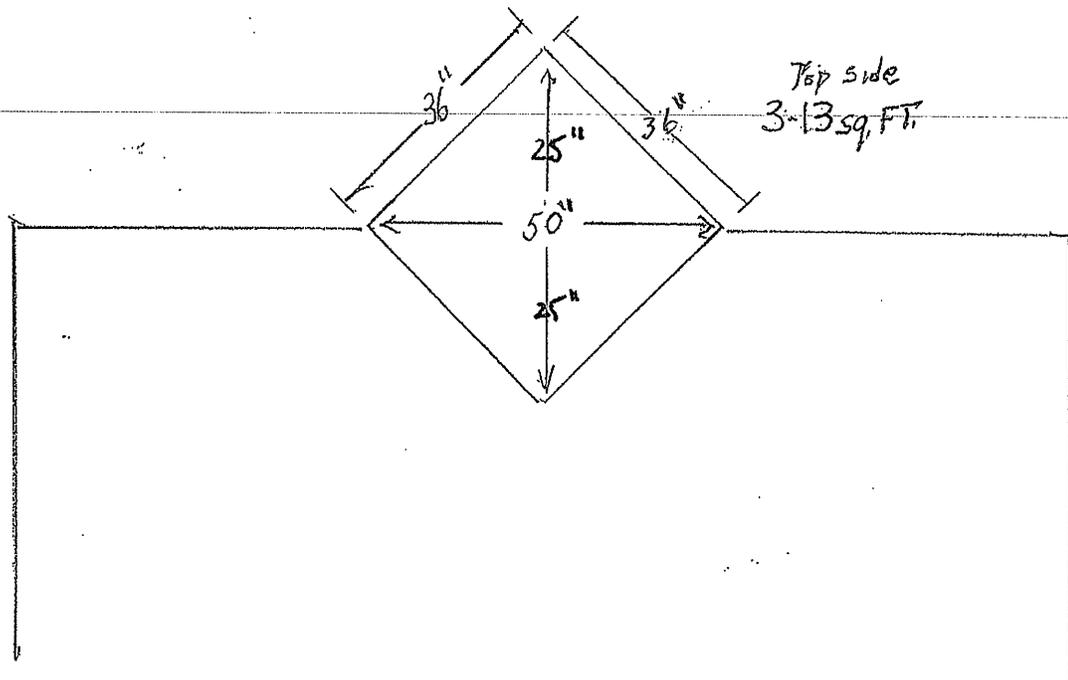
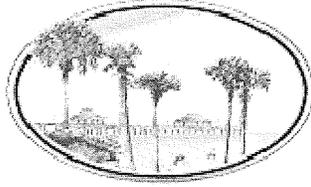
By: 
Michelle Mayher
Town Clerk

EXHIBIT (E)





MINUTES

**FORT MYERS BEACH
LOCAL PLANNING AGENCY
TOWN HALL – COUNCIL CHAMBERS
2523 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931
Special Meeting
September 13, 2011**

I. CALL TO ORDER

Meeting was called to order at 9:06 a.m. by Joanne Shamp; other members present:

Rochelle Kay
John Kakatsch
Bill Van Duzer – excused absence
Hank Zuba
Tom Cameron

LPA Attorney, Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director
Leslee Chapman, Zoning Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION – Rochelle Kay

A moment of silence was observed for the passing of Carleton Ryffel.

IV. MINUTES

A. Minutes of July 12, 2011

Ms. Kay noted the misspelling of Steve Strauss. Ms. Shamp added that Mr. Melsek's name remained misspelled, and she noted there were several instances where the motion maker and/or the second were omitted. Discussion ensued regarding errors, omissions, and inaccuracies in the Minutes of July 12, 2011; LPA Attorney Miller permitted the LPA to approve the section of the minutes pertaining to the

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Surf Club Special Exception, and the remaining sections of the Minutes would be reviewed and corrected by staff, and presented to the LPA again at their October meeting for approval.

Tina Mayfield Ekblad requested the following correction to the minutes for Surf Club Special Exception: *Mr. Ganim was spelled incorrectly; Mr. Cermak needs to be referenced on page 3 in the second to the last paragraph, it is confusing as to who made that statement, it should read Mr. Van Duzer then posed his question to the owner, Mr. Cermak he didn't think he should be held to different times when his neighbor across the street, etc....Mr. Cameron was the LPA member who made the motion.*

MOTION: Ms. Kay moved to accept only the portion of the July 12, 2011 minutes concerning the Surf Club Special Exception, and the remaining sections of the Minutes would be reviewed and corrected by staff, and presented to the LPA again at their October meeting for approval; second by Mr. Kakatsch.

VOTE: Motion passed 5-0.

V. PUBLIC HEARINGS

A. FMBSEZ2011-0001 – La Ola Special Exception for increased outdoor seating and live music.

Ms. Shamp opened the hearing and asked LPA Attorney Miller to swear in the witnesses.

Ms. Chapman, Zoning Coordinator, was sworn in and the Affidavit of Publication was entered into the record.

Ms. Shamp asked if any LPA member had ex-parte communication regarding FMBSEZ2011-0001; Mr. Kakatsch – none; Mr. Zuba – none; Ms. Kay – none; Mr. Cameron – none; Ms. Shamp – reported she conducted a site visit and had a short conversation with the applicant. Ms. Shamp stated the applicant offered the Town the opportunity to present their case first.

Ms. Chapman presented comments on behalf of the Town. She explained the applicant was seeking a special exception for property located at 1035 Estero Boulevard; a multi-tenant commercial building located in Times Square; and the special exception request was to amend conditions from a previous special exception (Town Resolution 04-14 which contained 8 conditions). The applicant was seeking to increase outdoor seating and offer live music. The zoning for the subject property is Downtown and the future land use is Pedestrian/Commercial. She noted the subject property was included in the Business Extension in Times Square Agreement which is a utilization of Town right-of-way (741 square feet the applicant was leasing from the Town). She reviewed the proposed site plan as submitted by the applicant. She pointed out there were some special considerations to consider for the applicant with regard to the limited size of the restaurant which does not allow indoor seating; Resolution 04-14 did

limit dining use at the site to 10 tables and 42 chairs; and limited all music to be pre-recorded. She noted there was a six foot utility easement runs the length of the property.

Ms. Chapman stated the applicant was seeking amendment to Resolution 04-14:

- Condition #3 - to expand the outdoor seating to 11 tables and 42 chairs, 6 high top tables, 14 stools, 3 moveable bars, and 11 stools for a total of 67 seats.
- Condition #7 – to allow live music in addition to pre-recorded music; and applicant has suggested hours of operation for the live music to be 3:00 p.m. to 9:00 p.m., 7-days per week.

She displayed photographs of the current conditions at the subject property. She noted supporting regulations fall under Chapter 34-88 in the Land Development Codes, and she reported staff found that there were no changing conditions on the subject property; and the change was appropriate. When determining if the changes were consistent with the goals, objectives, policies, and intent, staff found that outdoor seating was strongly encouraged in the Comprehensive Plan and the Land Development Code for the Downtown. She reported staff found the use appropriate for the location; noted that the reason why the applicant was seeking a special exception was because the request involved a previous special exception thereby requiring another public hearing. She pointed out that the subject property was located in a heavily used pedestrian area and was not directly adjacent to any sensitive environmental areas.

Ms. Chapman explained that due to the location of the property it was compatible with its existing use. She noted staff's concerns pertaining to the live music request since the Town had a street performer program, so she tried to research the background of when the Times Square area was changed to a pedestrian area. She was unable to find the reason why pre-recorded music was a requirement in that area. She mentioned that there were a few businesses that had Gulf frontage that did have live outdoor music; however, any of the businesses that were located on the leased Town right-of-way property were held to the pre-recorded music requirement.

Ms. Chapman stated staff recommended approval of FMBSEZ2011-0001 with the following conditions:

1. The expanded seating area cannot exceed current Fire & Life Safety Code.
2. No bars, tables, speakers, chairs, or any other items may extend into the utility easement without written consent from the public utility company.
3. Conditions 1, 2, 4, 5, 6, and 8 of Resolution 04-14 remain in effect.
4. Non-amplified live music only; for the hours of 3:00 p.m. to 9:00 p.m., 7-days per week; and must comply with applicable Town noise ordinances.
5. Upon approval by Town Council the applicant must amend their Business Extension in Times Square Agreement to reflect the new conditions and so that Public Works has an updated site plan.

Mr. Cameron questioned if the utility easement noted by staff was underground or overhead.

Ms. Chapman stated she would verify the status of the power line.

Director Fluegel believed it was for a buried underground line.

Ms. Kay asked if FP&L had been contacted.

Ms. Chapman responded in the negative.

Ms. Kay noted it appeared the applicant was asking for something that was already in existence.

Ms. Chapman responded in the affirmative, explaining there have been tables and chairs at the site prior to Town approval; however, to her knowledge live music has not taken place as yet.

Discussion ensued concerning pre-recorded music/live music; the inconsistency of the applicant's request since all the businesses leasing the Town right-of-way were held to the standard of pre-recorded music; the applicant's offer to limit live music to 3:00 p.m. to 9:00 p.m. 7-days per week; and the staff's recommended condition concerning live music.

Mr. Kakatsch – no questions.

Mr. Zuba questioned if payments were required by the Business Extension in Times Square Agreement.

Ms. Chapman responded in the affirmative; the rate is \$2.98 per square foot. She noted the applicant was not requesting any additional space to lease.

Director Fluegel mentioned that staff was reviewing the rate structure for all of the right-of-way lease agreements.

Mr. Zuba asked if pedestrian traffic would be impeded by the live music and/or the additional seating.

Ms. Chapman responded in negative with respect to the additional seating; however, staff was uncertain as to whether or not the live music would impact pedestrian traffic; therefore, staff had included in their condition the music be non-amplified.

Mr. Zuba inquired if the lease agreement would impact the redesign of Estero Boulevard.

Ms. Chapman responded in the negative.

Mr. Zuba asked if the applicant was required to provide insurance with respect to the leased Town right-of-way property.

Director Fluegel stated it was his belief when the annual renewal of the agreement occurred the lessee was required to submit proof of insurance naming the Town as additional insured.

Ms. Chapman noted the insurance requirements in the copy of the applicant's current lease agreement (Exhibit B).

Mr. Zuba noted his concern a comment in staff's analysis: "*potentially very real impacts from this potential change in policy*". He asked if this was referring only to the live music.

Ms. Chapman responded in the affirmative.

Director Fluegel discussed the concerns of amplified music because the street performers were not permitted to be amplified, and how this could impact the Times Square area in general. He suggested the LPA and Town Council may want to consider these policies in the future. He noted all of the applicant's interior space was for the kitchen, so he was entirely reliant on the outside on ways to enhance and make his business successful. He described the ways the applicant has enhanced and developed the outside area; the possible use of food cart and the current Town code's definition of a food cart; and FEMA constraints as it pertained to elevation in Times Square.

Ms. Shamp noted her site visit and concerns regarding the lease agreement, #11, "*all utility easements and rights-of-way must be kept clear at all times*", and suggested staff may need to re-write the business extension regulations for Times Square. She mentioned that the carts were a creative way of creating business space, but asked if the one near the fixed fence to the left crossed the right-of-way or was it moveable. She recommended the addition of 'all rights-of-way and easements should be kept clear at all times and any items placed there should be moveable'.

Director Fluegel noted he understood Ms. Shamp's concerns and explained that the majority of what was seen at the subject site was within the applicant's property line and the tables extend out into the Town's right-of-way per the extension agreement; however, there was a fine line then where the pedestrian right-of-way begins which must remain free and clear.

Discussion ensued concerning the use of moveable carts as it pertained to the rights-of-way; and items that may not extend in to the utility easement such as but not limited to bars, tables, and chairs.

Ms. Shamp mentioned her frustration with regard to the continual presentation of applications to the LPA that involved hours and conditions for music which were contrary to what the Town Council previously approved.

Discussion ensued regarding the hours of operation for music; and the public utility easement.

Mr. Thomas List, Applicant and Owner of La Ola, reported that the electrical was in the back of the subject property; he discussed how he operated some of his other businesses in Europe as it pertained to live music and he stated the music was "smooth" and it would not be a 'rock concert'; he requested the LPA give him the opportunity to demonstrate the non-amplified music and the Town could even test the decibel levels; and he indicated on the overhead screen where the live music would be positioned on the subject site.

Public comment was opened and then closed, without comments from the public.

Mr. List was recognized again, and he pointed out on the overhead screen that the items he indicated were all moveable, and the awnings were removable.

Mr. Zuba asked the Applicant if he had discussed the special exception request with any of his neighbors.

Mr. List stated he spoke with (*inaudible*) who had no comments, and with the owner of Pete's Time Out who told him it would be perfect if he could do something. He stated he spoke with Local Color and another neighbor both of whom had no objections. He explained his request for music at those particular times was because many people start to leave the beach between 4:00-5:00 p.m. and he hoped they would be able to catch the people to keep them on the beach longer; and he didn't want to keep the music playing too late at night because he did not want to disturb near-by residents.

Ms. Kay asked where did the applicant store the tables and chairs if there was a hurricane since there was no inside storage area.

Mr. List reported he rented two storage rooms at a facility over the bridge.

With no further comment from the applicant or staff, Ms. Shamp closed the public comment portion of the hearing and opened the meeting for LPA discussion.

Ms. Kay noted that most of her questions had already been asked and were answered; Mr. Kakatsch reported he was at the subject site twice, and it appeared the Applicant has done a good job, and he recommended approval; Ms. Shamp noted her concern regarding the music and recommend that the Town needed to establish an ordinance regarding music and noise; and she explained why she could not support live music on-site since codes did not permit it at this time.

Director Fluegel clarified that staff was recommending non-amplified live music.

Mr. Kakatsch asked how close was the nearest residential house or unit to the subject property.

Director Fluegel reported the nearest would probably be on Crescent, quite a distance away behind the 7-Eleven on North Estero Boulevard. He discussed the street performer program and noted they were not permitted to be amplified.

MOTION: Mr. Zuba moved to approve Resolution 2011-011 concerning La Ola Restaurant with the recommendations of staff, conditions of approval as outlined, and the recommended Findings and Conclusions;

- 1. Changing conditions do not exist that make the approval inappropriate;**
- 2. that the requested special exception as conditioned is consistent with the Comp Plan;**
- 3. the requested special exception as conditioned meets or exceeds performance and locational standards;**

4. **the requested special exception as conditioned will protect and conserve the environmentally critical areas;**
5. **the requested special exception as conditioned will be compatible with existing and planned uses and will not cause damage or hazard; and**
6. **the requested special exception as conditioned will be in compliance with general applicable zoning conditions.**

Second by Mr. Kakatsch.

Discussion was held concerning live music in the 'back bay area'.

VOTE: Motion passed 5-0.

The hearing on FMBSEZ2011-0001 was closed at 10:08 a.m.

Recessed at 10:08 a.m. – Reconvened at 10:15 a.m.

B. FMBVAR2008-0003 – Diamond Head Sign Variance

Ms. Shamp opened the hearing and asked LPA Attorney Miller to swear in the witnesses.

Ms. Chapman, Zoning Coordinator, was sworn in and the Affidavit of Publication was entered into the record.

Ms. Shamp asked if any LPA member had any ex-parte communication regarding FMBVAR2008-0003; Mr. Zuba – site visit; Mr. Kakatsch – site visit; Ms. Kay – none; Ms. Shamp – site visit; Mr. Cameron – none.

Ms. Chapman presented comments on behalf of the Town. She explained the application was for the Diamond Head Beach Resort and Spa and the requested variation was from the sign ordinance - Section 30-153 (b) and 30-154(c) of Chapter 30 of the land development code. She discussed some specific site conditions when reviewing the case: 1) at the time of development of the site Lee County required a subsurface drainage system at the site, so the property had to be raised approximately two feet which caused a grade change, and because of this the building code required a fence where the grade was changed; 2) the sign on the location was approved prior to 1999 and must come into compliance by the end of this year (she displayed a photograph of the existing sign and explained the current definition would consider this sign to be a pole sign which is prohibited); 3) and she reviewed how the current sign did not meet the requirements of Section 30-153(b) or 30-154(c). She discussed the applicant's request to modify the height of the sign; keep the existing sign face; and two businesses were located at this site. She stated that staff recommended that the finding of the elevation difference between the parking lot surface and the adjacent roadway was an exceptional condition and it justified a variance, and the conditions were not the result of actions created by the applicant. The variance, if granted, would be the minimum variance that would relief the burden for the applicant; and she noted this was where staff's recommendation differed slightly from the applicant's request – the height from the top of

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the fence should be the five feet. She stated staff recommended treating the top of the fence as ‘zero’ elevation; and to allow a sign that would measure five feet from the top of the fence; staff recommended that granting the variance would not be injurious to the neighborhood; she pointed out that the two foot grade change was unique to this situation; and she reported staff recommended approval of the variance with the following conditions:

1. The approval does not exempt the subject property, Diamond Head Beach Resort & Spa, from applying for and getting approved sign permits to modify their sign to what they have requested or what LPA recommends and what Council finds as the appropriate size;
2. the height of the sign measures from the elevation of the existing grade of the elevated parking lot to the highest point on the sign must not exceed eight feet six inches (8.6”);
3. construction or remodeling the sign must comply with all applicable codes, regulations, etc.; and
4. if the building on the subject property is removed or replaced, then this variance would expire within 30 days.

Mr. Zuba addressed the uniqueness of the subject property as it pertained to the grade the County had imposed.

Director Fluegel reviewed the density of the subject site and the requirement to store water on-site.

Mr. Zuba questioned if there was any foot candle power change with the new sign.

Ms. Chapman explained she was unsure, and that was why staff included the condition that they would have to get a face change permit and comply with building codes.

Mr. Kakatsch asked for clarification that the five feet started at the top of the fence.

Ms. Chapman responded in the affirmative.

Ms. Kay – no questions.

Mr. Cameron – no questions.

Ms. Shamp noted the sign and dimension depicted and the large white space; she questioned that no sign type was permitted on the base.

Ms. Chapman responded in the affirmative.

Ms. Shamp questioned vegetative requirements around the base for aesthetic purposes.

Ms. Chapman took note of this potential requirement, and stated the LPA could add that as a condition.

Discussion was held regarding signage, double-faced signs, and monument signs.

Mr. Neil Hopgood, Applicant and General Manager of Diamond Head Beach Resort & Spa, stated that the Diamond Resort had applied for a variance in 2008 and intends to fully comply with the Town's code for monument signs. He reviewed the hardship the business had experienced due to the grade/elevation. He mentioned they were trying to reduce cost by re-using the cap of the sign, and that they had obtained a permit to reface the sign in 2009. He stated they agreed with staff's recommendation of five feet above the sight-line of the fence; and requested a variance on height from grade and size of sign to use existing cap of current sign to alleviate the aesthetic clutter of 2-3 monument signs as well as the cost to complete.

Discussion was held concerning the height of the sign; the wording of the proposed sign; and Mr. Hopgood stated the sign's foot candle would not change, and that they had no problem with using bushes to improve the aesthetics at the white wall.

Public comment was opened and then closed, without comments from the public. With no further comment from the applicant or staff, Ms. Shamp closed the public comment portion of the hearing and opened the meeting for LPA discussion.

Discussion ensued regarding the white wall at the base of the sign; the sign ordinance; staff's recommendations; the uniqueness of the subject property; and the purpose of the sign.

MOTION: Mr. Cameron moved that the LPA recommend to the Town Council approval of the applicant's request for a variance from Sections 30-153(b) and 30-154(c) of the LDC with any approval subject to the following conditions:

- 1. Recommending conditions subject to the variance is not exempt the subject property from the LDC Section 30-55 permit requirements for signs;**
- 2. the height of the sign measured from the elevation of the existing grade of the elevated parking lot to the highest point of the sign must not exceed 8'6";**

Discussion was held regarding the height as requested by the Applicant.

LPA Attorney Miller suggested the Town obtain the square footage of the triangular portion, and then the height would be the 8'6" plus the triangular portion, so it could go up an additional two feet one inch.

Motion maker clarified #2 as follows: the height of the sign measured from the elevation of the existing grade of the elevated parking lot to the highest point of the sign must not exceed 8'6" plus the triangular portion (as stated by the LPA Attorney).

- 3. the remodeling of the sign must comply with all applicable codes and regulations including building codes and lighting standards;**
- 4. if the principal building on the subject property is removed or replaced, then the sign allowed by this variance would be removed within 30 days of the issuance of the demolition permit for the principal building, or within 30 days of the expiration of the federal, state, county, and local declaration of disaster, whichever conditions apply and whichever comes first; and**

5. placement of signage in conjunction with redevelopment must comply with all regulations in effect at the time of permitting.

Recommended Findings and Conclusion: in accordance with the regulations in LDC Section 34-84 and 34-87 regarding consideration of eligibility for a Variance the LPA recommends that the Town Council make the following Findings and Conclusions:

- **There are exceptions, extraordinary conditions or circumstances that are inherent to the property in question, or**
- **the request is not a *de minimis* variance;**
- **the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of 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 to the property in question;**
- **the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and**
- **the conditions or circumstances of the specific piece of property for which the variance is sought are not general or recurrent in nature as to make it more reasonable and practical to amend the regulation in question.**

Second by Mr. Zuba.

Ms. Shamp discussed the basis for not supporting the motion due to the extra two feet, one inch in height. She asked if the motion maker would add in wording about vegetation.

Mr. Cameron believed it would be in the Applicant's best interest to place some bushes around the white base.

Discussion ensued regarding the vegetation and the appearance of the monument sign base.

Director Fluegel noted a provision in the code and the LPA could require landscaping so that there was no more than 18 inches of exposed structure.

Motion maker amended the motion to include "landscaping to comply with code" as an addition to #3.

Second agreed.

Ms. Kay discussed her belief that approving the extra two feet, one inch was setting precedent and not in keeping with the sign ordinance.

Discussion ensued regarding the sign ordinance; the proposed sign dimensions; and proposed wording on the sign.

VOTE: 3-2; Ms. Kay and Ms. Shamp dissenting.

The hearing on FMBVAR2008-0003 was closed at 11:07 a.m.

Recessed at 11:08 a.m. – Reconvened at 11:13 a.m.

VI. ADMINISTRATIVE AGENDA

Ms. Shamp noted a change in the agenda – a new resolution, the Carlton Ryffel Resolution, would be discussed first and then the Consumption on Premises agenda item.

A. Carlton Ryffel Resolution

Ms. Shamp explained that she prepared the resolution in honor of Carlton Ryffel based on the LPA format in the procedure manual. She expressed the LPA's sorrow at the sudden passing of fellow LPA member, Carlton Ryffel. She noted that the LPA would like to honor Mr. Ryffel and his expertise he brought to the Board through this resolution.

Director Fluegel reported that Council also expressed their desire to honor Mr. Ryffel and to possibly do a joint memorialization of him. He reported that he also reached out to Lee County and a dear friend of Mr. Ryffel, Wayne Daltry. He reviewed some options the LPA may want to consider to honor Mr. Ryffel such as but not limited to a joint resolution from the LPA, Council, and possibly the BOCC, or a standalone resolution from the LPA; the Board could nominate Mr. Ryffel for the Mayor John Mulholland Stewardship Award; or a tree planting in a County Park or the Town's Bay Oaks. He recounted how Mr. Ryffel cared about the community and was instrumental as it pertained to the creation of the Town of Fort Myers Beach. He noted that Mr. Ryffel was a great personal friend and a mentor and advisor.

Discussion ensued as to an appropriate and fitting memorial for Mr. Ryffel; Mr. Zuba noted he favored the nomination for the Mulholland Award; Ms. Shamp agreed and noted Mr. Ryffel's very protective nature of the beach, how he was always cognizant of the environment, and noted that he also served with the County's LPA; Mr. Kakatsch suggested, in addition to the LPA's resolution, to do something at the north end of the beach, possibly at the turnaround area, since Mr. Ryffel live nearby and was very involved with that area, and wondered if they could name that after him; Mr. Cameron mentioned he heard there was a possibility the southern tip of the beach would be changed to *Mulholland Point* and the name change process involved some type of federal procedures, therefore he wanted to alert the LPA these additional steps might be required if they name the turnaround area after Mr. Ryffel; Ms. Shamp recounted how in conversations with Mr. Ryffel he had conveyed to her his desire for an American flag to be placed in Crescent Park and she discussed options such as but not limited to naming the pole, or raising the first flag in his honor and present it to Mr. Ryffel's family.

Director Fluegel stated staff would work on all of these ideas, the concept of a joint resolution with the BOCC, and added the LPA could prepare their own resolution as well.

MOTION: Mr. Cameron moved to direct staff to nominate Carlton Ryffel for the Mayor John

Mulholland Award and proceed with the nomination to be included in the next award cycle, and staff should work on the other efforts mentioned in concert with the nomination; seconded by Mr. Kakatsch.

Ms. Shamp noted for the record that the LPA was already working on a resolution and also honored Mr. Ryffel at the today's meeting.

VOTE: Motion passed 5-0.

B. Consumption on Premises Update

Director Fluegel reviewed the COP timeline as it pertained to alcohol consumption, sales, and service which showed the development of the County ordinances and approvals, and Town ordinances and adoption of the Town's Comprehensive Plan. He explained that how some Town approvals were site specific and had were done by special exception or special permit. He reported more details and information would be included in the final report and staff was working to complete it and at that point it would be forwarded for legal review/determination. He described the detail and amount of work involved with the report and noted it was staff's objective to present a final report to the LPA in October for discussion.

Discussion ensued and Ms. Shamp thanked the staff for their hard work on this item and requested as much lead time as possible to review the report prior to the meeting; Mr. Cameron discussed the number of COP in the EC Zoning Districts and permits for Top of the Mast; LPA Attorney Miller noted the daunting task of finding public records pre-incorporation, as well as with ABT and the County; Mr. Cameron discussed his desire to obtain an aerial view of the licensed premises where they are licensed to serve alcohol on the property and where the EC Zoning District line was at Top of the Mast; LPA Attorney Miller explained the legal differences between using a GIS map versus a survey; Director Fluegel reviewed highlights of the topics in the report that the LPA would be analyzing such as but not limited to boundary lines as it pertained to where alcohol could be served, and the lack of a regulatory framework and using special exceptions.

Ms. Shamp suggested staff give the LPA each section of the report as it becomes available.

Mr. Kakatsch requested staff research to determine consumption on the beach policy at Sanibel, Captiva, Bonita Springs, Vanderbilt Beach, Naples, and Marco Island.

Director Fluegel reported he had researched those areas and the problem was none of them had the same situation as Fort Myers Beach where you have a property bifurcated by two different zoning districts.

LPA Attorney Miller stated she pulled up Sanibel's open container law on her laptop and reported they prohibit an open container on *any public street or right-of-way including any bicycle path, any public parking lot, the public fishing pier, the public boat ramp facility*". She explained the Town's code says

“semi-public parking lot, public street, parkway, sidewalk, and beach”; however staff would research the other locations as requested by Mr. Kakatsch.

Ms. Shamp discussed the Town’s decision to create an environmentally critical zone and questioned the basis for the EC Zone.

Mr. Fluegel explained that based upon conversations and reviewing minutes, it appeared it was a way of cutting the density in half for every property fronting along the beach. He reviewed the type of information that would be included in the final report.

Ms. Shamp questioned if the LPA would receive information on the EC line at the north end of the beach.

LPA Attorney noted that there could be different standards for those properties since the State leases property to private entities.

Discussion ensued regarding State property, leasing State property, and public beaches; zoning districts/boundaries; the EC line; and how these might pertain to alcohol consumption.

Ms. Shamp noted the need to appoint a Vice Chair.

Mr. Kakatsch nominated Mr. Van Duzer.

Ms. Shamp explained why Mr. Van Duzer would probably turn down the nomination; she noted the appointment may be for only one meeting, since in October they would reorganize.

MOTION: Mr. Cameron nominated Mr. Zuba as the LPA Vice Chair; second by Mr. Kakatsch.

VOTE: 5-0.

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

VOTE: 5-0.

**ADJOURN AS LOCAL PLANNING AGENCY AND RECONVENE AS HISTORIC
PRESERVATION BOARD
12:03 P.M.**

Ms. Kay reported HAC held a meeting on July 26, 2011 where they discussed the Smith Cottage presentation; there would be another presentation at the Episcopal Church on September 29, 2011; a history of the church was well documented by the HAC; there was a discussion at the July meeting

Local Planning Agency
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regarding the plaques and it was decided to continue to use the same type of plaque; another discussion at the July meeting dealt with a list of properties of historic significance compiled by the HAC; also vista signs were discussed, Planning Coordinator Ekblad presented information on the signage, and it appeared the group favored to use the sloped-panel free standing signs. She questioned if the Council had included funding for the signs in the budget.

Director Fluegel reported at the preliminary budget meeting there was \$10,000 allocated for the Vista Sign Program, and possibly \$2,000 for the plaques.

Ms. Kay mentioned the expense and work involved for the vista signs. She stated at the July meeting there were questions concerning the Mound House such as but not limited to staffing, a new historian, the consolidation of Parks & Recreation and Cultural Resources, and a discussion was held on the purpose of the Newton House. She requested staff to research and confirm whether or not there were plans for a Mound House historian.

Discussion ensued regarding a historian for the Mound House.

VII. HISTORIC PRESERVATION

No items to report.

MOTION: Ms. Shamp moved to adjourn the HPB at 12:12 p.m. and reconvene as the LPA; second by Mr. Kakatsch.

VOTE: 5-0.

HISTORIC PRESERVATION BOARD ADJOURNED AND RECONVENED AS THE LOCAL PLANNING AGENCY 12:12 P.M.

VIII. LPA MEMBER ITEMS AND REPORTS

Mr. Cameron – no items or report.

Mr. Kakatsch – no items or report.

Mr. Zuba – no items or report.

Ms. Kay – requested clarification that the Town Clerk had contacted the Municipal Code Corporation concerning the cost to codify the Land Development Code since years ago the land development codes were not included in the codification.

Director Fluegel explained that the land development codes were not on Municode as the other Town ordinances were, and they now wanted to include them to make them more accessible.

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Discussion was held regarding search features of the code on Municode on the Internet.

Ms. Shamp asked who was in charge of maintenance on the north end where the planters were located.

Director Fluegel stated there was a maintenance contract in the works for that location.

Ms. Shamp noted a Joint Meeting of the LPA and Town Council had not occurred in quite some time, and she recommended having one schedule one as outlined in their procedural manual.

MOTION: Ms. Kay moved to direct staff to work to schedule a joint workshop with Town Council; second by Mr. Kakatsch.

Ms. Shamp suggested holding the meeting in November, and Mr. Kakatsch suggested placing the item on the LPA October agenda so that they may create and finalize an agenda for the Joint Meeting; and Ms. Shamp requested the LPA forward suggested topics for the Joint Meeting to Director Fluegel,

VOTE: Motion passed 5-0.

Ms. Kay discussed her concerns regarding the Downtown District as it related to parking problems such as the cost of parking and reduced parking as compared to the 'back bay' area.

Director Fluegel suggested a discussion on that topic as it related to Comprehensive Plan; he wondered if there was a way to incentivize parking; and raised the question of whether or not it should be a public initiative. He suggested after the COP was completed the LPA may want to discuss the topic in a workshop.

IX. LPA ATTORNEY ITEMS

No items to report.

X. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Director Fluegel reported he received information today from the Board of Realtors that the median prices for sales of single-family residents and condos are increasing, but the more significant was that overall For Sale inventory was down substantially. He explained how his department liked to track this information as it related to deferred maintenance issues; and he discussed the increase in building permits over 2009 and the Town's agreement structure with Lee County for permitting fees.

Mr. Kakatsch complimented the Town on the beautiful bridge and painting, and did they intend to power wash the posts under the bridge.

Director Fluegel stated he would investigate the matter.

Mr. Kakatsch discussed his view regarding the purchase of a Town Hall.

LPA Attorney Miller stated there would be a referendum question on the next Council agenda.

Mr. Kakatsch addressed the fence installed around the proposed Sea Farer's Mall parking area.

Director Fluegel gave a quick update; he noted the Town Manager and he met with County staff regarding the Sea Farer's and discussed the possibility of a parking lot. He noted the County's intent was for a surface parking lot. He reported Town staff recommended an amendment to that CPD zoning which would require a public hearing before the LPA and Town Council.

Discussion ensued concerning a traffic study for the subject property.

XI. LPA ACTION ITEM LIST REVIEW

- Surf Club to Council on September 26th or October 3rd
- Mr. Kakatsch would represent the LPA when the Surf Club appeared on the Council agenda; and staff would keep Mr. Kakatsch informed of the hearing date
- Holiday Inn sign – Staff noted the applicant withdrew and submitted a sign permit application that complies with the new code
- Add on two LPA Resolutions from today
- Discussion on the rights-of-way on Estero Boulevard; Director Fluegel explained that he would have to 'pull the reins' in on this due to the work being done on the COP
- IPMC – Fluegel
- EAR Update – LaRue update on 2 visioning sessions
- Post-disaster reconstruction/recovery – TBD; LPA Attorney Miller
- Beach raking – TBD
- PAL PWVL Ordinance – TBD
- Connecticut Street

XII. ITEMS FOR NEXT MONTH'S AGENDA

- COP
- IPMC
- Potential special exception and/or variance applications

XIII. PUBLIC COMMENT

No comment.

XIV. ADJOURNMENT

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

VOTE: Motion approved 5-0

Meeting adjourned at 12:35 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

- End of document.



Town of Fort Myers Beach

DEPARTMENT OF COMMUNITY DEVELOPMENT STAFF REPORT

TYPE OF CASE: Sign Variance
CASE NUMBER: FMBVAR2008-0003
LPA HEARING DATE: September 13, 2011
LPA HEARING TIME: 9:00 AM

I. APPLICATION SUMMARY

Applicant: Neil Hopgood, General Manager of DiamondHead Beach Resort
Randy Kares, Director of Development for SunStream Hotels and Resorts

Request: Relief from LDC 30-153(b) (maximum sign area) and 30-154(c) (standards for monument signs)

Subject property: GULF BAY VIEW BLK A PB 8
PG 69 LOTS 1 THRU 11 +
VACATED STREET OR 648/318

Physical Address: 2000 Estero Boulevard Fort Myers Beach, FL 33931

STRAP #: 19-46-24-W4-0090A.0010

FLU: Pedestrian Commercial

Zoning: DOWNTOWN

Current use(s): DiamondHead Beach Resort

Adjacent zoning and land uses:

| | |
|--------|---|
| North: | DiamondHead overflow parking 2001 LLC – Office Building DOWNTOWN Pedestrian Commercial |
| South: | Beach ENVIRONMENTALLY CRITICAL (EC) Recreation |
| East: | Estero Island Beach Club DOWNTOWN Pedestrian Commercial |
| West: | Surf Song Condos Single Family Homes (3) RESIDENTIAL MULTIFAMILY (RM) Boulevard |

II. BACKGROUND AND ANALYSIS

Background:

Neil Hopgood and Randy Kares (“Applicant”), with the authorization of the property owner, have requested a variance from LDC Sections 30-153(b) and 30-154(c) to allow a commercial identification sign on the subject property that exceeds the maximum permitted height and sign area.

The sign is a freestanding sign, but does not comply with the definition of “monument sign” which is defined in Section 30-2 as *“a free-standing sign with internal structural supports where the height from the ground to the highest point on the sign is less than the sign’s greatest horizontal dimension.”* The current sign would be a considered a ‘pole sign’ which is defined in the ordinance as *“a freestanding sign supported by an exposed structure of poles or other supports where the height of the exposed sign supports extends more than eighteen (18) inches from the ground to the bottom of the sign.”* Pole signs are expressly prohibited. The applicant is proposing to remodel the existing sign to remove the open space area between the ground and the bottom of the sign so that it will no longer be considered a prohibited pole sign (for a site plan see **Exhibit D**).

It should be noted that the existing sign was approved and built prior to the September 1999 repeal of the former (Lee County) sign ordinance and adoption of a new sign ordinance, as well as subsequent amendments in 2003, 2005, 2008 and most recently in April of 2011 by ordinance 11-01.

The applicant originally applied for a Variance in 2008 but records show that the case was never scheduled for hearing. With turnover of Community Development Staff and the recent passage of Ordinance 11-01, the applicant requested hearing of the case.

The applicant is proposing to reduce the sign from its current height of 21'5" above the parking lot surface (see **Exhibit B**) to 10'7" (see **Exhibit C**) above the parking lot surface.

Analysis:

The hotel structure on the subject property was built less than 15 years ago and can reasonably be expected to remain in place for several decades, barring a major disaster. When originally constructed, the parking area between Estero Boulevard and the hotel structure was elevated above the adjacent roadway to accommodate a required subsurface exfiltration stormwater management system. The approved design includes a retaining wall separating the parking lot from the sidewalk and roadway below. Because of the elevation change, a 42" fence was required by Lee County to ensure public safety. The wall and fence along the right-of-way, combined, extend 5'7" above the grade of Estero Boulevard.

The proposed changes to the sign would reduce the height of the existing sign, as depicted in **Exhibit B**, from 21'5" feet to 10'7" feet in height above the parking lot surface. The proposed sign, an approximate representation of which is shown in **Exhibit C**, is higher than the maximum permitted by Section 30-154(c) but does not meet the definition of a monument sign in 30-2.

The applicant indicates that two separate business entities exist at this location. Section 30-153(b) (1) states that *"for a parcel 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."* Section 30-153(b)(3) provides that the maximum sign area may be allocated among a combination of one or more monument signs, projecting signs, and/or wall signs. The two separate business entities are, therefore, entitled to thirty-two square feet of sign area each. The applicant is requesting a single sign with a total of 54 square feet of sign area to advertise both businesses rather than two separate signs of 32 square feet each.

Finally, the 42" fence that is required presents a real hardship to the applicant in meeting the requirements of Chapter 30. With 4" spacing between the rails of the fence, any sign erected to code height requirements behind the fence would be virtually invisible to passing traffic, both pedestrian and vehicular. Therefore Staff recommends that a sign extending 5 feet from the top of the fence to the top of the diamond (see **Exhibit C**) for a total height of 8'6" from the parking lot elevation would be a reasonable allowance.

Findings and Conclusions:

Using the five factors described in LDC Section 34-87(3), Staff recommends the following findings and conclusions:

1. *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.*

At the time of construction of the hotel, the parking lot was built with a finished elevation more than two feet above the adjacent roadway in order to accommodate a subsurface water management system. Because of the difference in elevation between the surface of the parking lot and the adjacent sidewalk and roadway, fences were placed atop the retaining wall for safety. Added together, the elevation difference at the retaining wall and the height of the fence exceed five feet (67") above the adjacent roadway. For this reason, a monument sign under LDC Chapter 30 meeting height, dimensional, and locational limitations would be virtually invisible to traffic, both pedestrian and vehicular, on Estero Boulevard. Staff recommends the finding that the elevation difference between the parking lot surface and the adjacent roadway **is** an exceptional condition and that **it does** justify the variance.

2. *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 parking lot and fences were constructed prior to the Town adopting any sign regulations. Staff recommends the finding that the conditions justifying the variance, a 42" code required fence installed to meet safety concerns from a 24" elevation change, **are not** the result of actions taken by the applicant after the adoption of the regulation in question.

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

A monument sign meeting the definition of LDC Section 30-2, dimensional and locational limitations of 30-154(c) and the area limitations of 30-153(b)(1) would be visible to traffic on Estero Boulevard only through the pickets of the existing fence or for a short distance from the entrance to the parking lot. Staff recommends the finding that the variance requested **is** the minimum variance that would relieve the applicant of an unreasonable burden caused by the application of these regulations under these unusual circumstances.

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

Modifying the existing sign would remedy a nonconforming pole sign bringing it closer to compliance with the dimensional limitations of LDC Sections 30-2, 30-153(b)(1) and 30-154(c) that apply to allowable monument signs. Because of the unusual circumstances of the raised parking lot and fence, a monument sign could not meet the dimensional and locational limitations without severely limiting visibility. Allowing the sign to be proportionately taller to make it visible above the existing fence appears to cause no detriment to the public welfare. Staff recommends the finding that granting the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.

5. *That 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.*

Few other locations are evident along Estero Boulevard where abrupt changes in grade abut the roadway. The elevation of the parking lot and the necessity of the fence are not general or recurrent. Staff recommends the finding that the circumstances of 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 or practical to amend the regulation.

III. RECOMMENDATION

Staff recommends **APPROVAL** of the requested variance subject to conditions, including the requisite findings and conclusions for granting a variance under LDC Section 34-87. Staff recommends that approval of the variance be subject to the following conditions:

1. Approval of this variance does not exempt the subject property from the LDC Section 30-55 permit requirements for signs.
2. The height of the sign, measured from the elevation of the existing grade of the elevated parking lot to the highest point on the sign must not exceed 8'6".
3. Construction and/or remodeling of the sign must comply with all applicable codes and regulations, including building codes and lighting standards.
4. If the principal building on the subject property is removed or replaced for any reason, this variance will expire and the sign allowed by this variance must be removed within 30 days of the issuance of the demolition permit for the principal building or within 30 days of the expiration of the federal, state, county, or local declaration of disaster, whichever condition(s) applies and

whichever comes first. Placement of signage in conjunction with redevelopment must comply with all regulations in effect at the time of permitting.

IV. CONCLUSION

Approval of the requested variance would relieve the burden caused by application of LDC Sections 30-153(b)(1) and 30-154(c) to the subject property, given the unusual and extraordinary conditions related to the elevation of the parking area and the surrounding fence. These conditions appear to be unique to the subject property. Staff submits that the burden on this property owner resulting from the dimensional limitations of LDC Section 30-154(c) is greater than the burden on other property owners given the unusual conditions on this particular piece of property. Staff recommends **APPROVAL** of the requested variance, as conditioned.

Exhibits:

- Exhibit A – Application and Supplement
- Exhibit B – Existing Sign with dimensions
- Exhibit C – Proposed Sign with dimensions

EXHIBITS

Exhibit B – Existing Sign

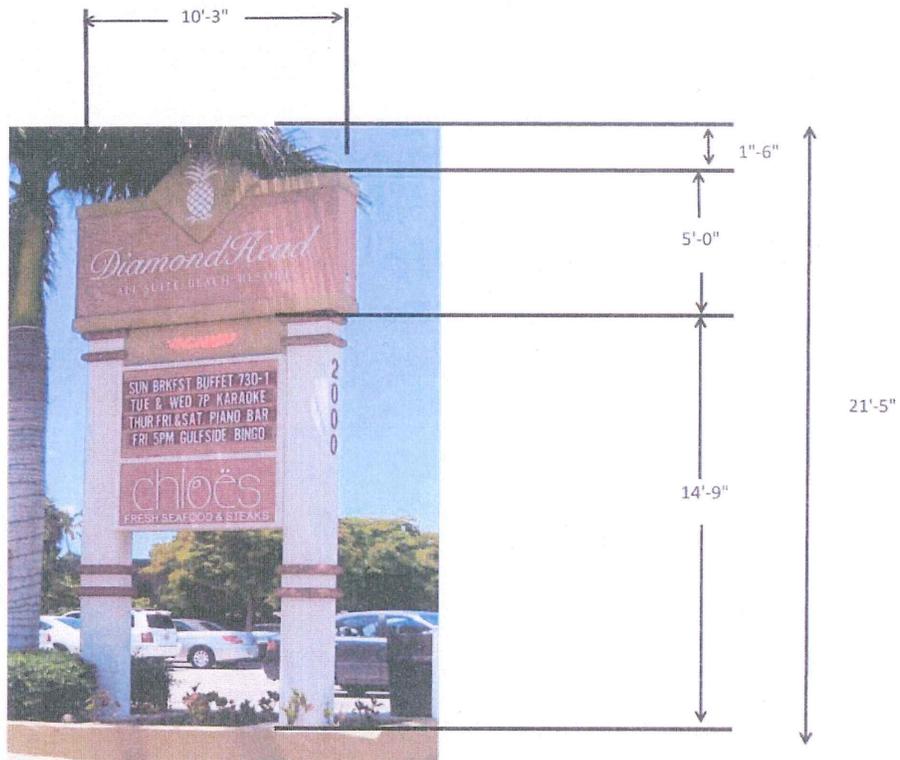
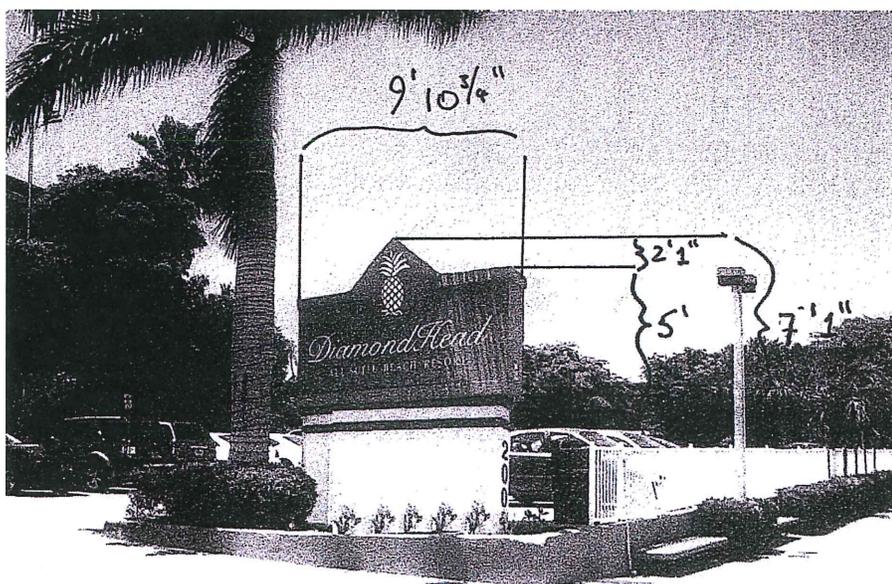
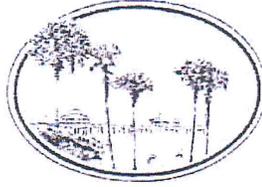


Exhibit C – Proposed Sign with dimensions





APPLICATION FOR PUBLIC HEARING FOR FORT MYERS BEACH

Applicant's Name: RANDY KARES

Project Name: DIAN AND IAN'S ISLAND BEACH RESORT

STRAP Number(s): 19-46-24-W4-0090A.0010

This is the first part of a two-part application. It requests general information required by the Town of Fort Myers Beach for any rezoning, special exception, appeal from an administrative action, or variance. The second part addresses additional information specific to the requested action. [34-201(b)]

STAFF USE ONLY

Case Number: _____ Date of Application: _____

Planner in charge: _____ Date found sufficient: _____

Public Hearing Dates: LPA: _____ Town Council: _____

Current Zoning: _____

Land Use Category: _____ Platted Overlay? _____ Yes _____ No

Comp Plan Density Range: _____

REQUEST FOR

- | | |
|--|---|
| <input type="checkbox"/> Special Exception | <input type="checkbox"/> Extension of Master Concept Plan |
| <input type="checkbox"/> Variance | <input type="checkbox"/> DRI - without rezoning |
| <input type="checkbox"/> Conventional Zoning | <input type="checkbox"/> DRI - with rezoning |
| <input type="checkbox"/> Planned Development | <input type="checkbox"/> Appeal of Administrative action |

FORT MYERS BEACH
COMMUNITY DEVELOPMENT
2523 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931
PHONE (239) 765-0202

Case Number: _____ Name: _____

PART 1 - NATURE OF REQUEST

Action Requested: [check applicable action(s)]

- Special Exception for: _____ (Attach Sup. PH - A)
- Variance for: SIGN _____ (Attach Sup. PH - B)
- Conventional Rezoning from: _____ to: _____ (Attach Sup. PH - C)
- Planned Development
- Rezoning from: _____ to: _____ (Attach Sup. PH - D)
- Extension of Master Concept Plan (Attach Sup. PH - E)
- Public Hearing for DRI
- No rezoning is required.
- Rezoning is required from: _____ to: _____ (Attach Sup. PH - D)
- Appeal of Administrative action (Attach Sup. PH - F)

PART 2 - CURRENT CLASSIFICATION OF PROPERTY

(Please check all appropriate items):

A. Land Use Category: (refer to the Comprehensive Plan Future Land Use Map)

- | | |
|---|--------------------------------------|
| <input type="checkbox"/> Low Density | <input type="checkbox"/> Marina |
| <input type="checkbox"/> Mixed Residential | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Boulevard | <input type="checkbox"/> Wetlands |
| <input checked="" type="checkbox"/> Pedestrian Commercial | <input type="checkbox"/> Tidal Water |

B. Platted Overlay? No Yes

C. Zoning Type (refer to the Zoning Map to determine current zoning)

- | | |
|--|--|
| <input type="checkbox"/> RS - Residential Single-family | <input type="checkbox"/> CM - Commercial Marina |
| <input type="checkbox"/> RC - Residential Conservation | <input type="checkbox"/> CO - Commercial Office |
| <input type="checkbox"/> RM - Residential Multifamily | <input type="checkbox"/> CB - Commercial Boulevard |
| <input type="checkbox"/> VILLAGE | <input type="checkbox"/> SANTINI |
| <input type="checkbox"/> SANTOS | <input type="checkbox"/> DOWNTOWN |
| <input type="checkbox"/> IN - Institutional | <input type="checkbox"/> RPD - Residential Planned Development |
| <input type="checkbox"/> CF - Community Facilities | <input type="checkbox"/> CPD - Commercial Planned Development |
| <input checked="" type="checkbox"/> CR - Commercial Resort | <input type="checkbox"/> EC - Environmentally Critical |
| <input type="checkbox"/> BB - Bay Beach | |

Case Number: _____ Name: _____

PART 3- WAIVERS

Waivers from Application Submission Requirements: Indicate the specific required submittal items that have been waived by the Director. Attach copies of the Directors approval(s) and label them as "Exhibit 3 - 1" [Section 34-202(a)]

| Section Number | Name of item |
|----------------|--------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

PART 4 - APPLICANT INFORMATION

A. Name of applicant: RANDY RADES
Address: Street : 6231 ESTERCO BLVD
City: FT MYERS BCH State: FL Zip: 33931
Phone: Area Code: 239 Number: 707-2233 Ext: _____
Fax: Area Code: 239 Number: 765-5755
E-mail address: DEVELOPMENT@SUNSTREAM.COM

B. Relationship of applicant to property (please check appropriate response below):

1. _____ Owner - (Please indicate form of ownership below)

- Individual OR husband and wife
- _____ Land trust
- _____ Corporation
- _____ Partnership
- _____ Association
- _____ Condominium, timeshare condo. or subdivision

2. Authorized representative. Submit authorization as "Exhibit 4 - 1" [34-202(b)(1)b.]

3. _____ Contract Purchaser/vendee. Submit authorization as "Exhibit 4 - 2" [34-202(b)(1)c.]

4. _____ Town Enter the date the action was authorized: _____

Case Number: _____ Name: _____

C. Agent authorized to receive all town or county - initiated correspondence regarding this application. [34-202(b)(1)b.]

Company Name: SUNSTREAM INC.
Contact Person: PANDY KAPAS
Address: Street : 6231 ESTERO BLVD
City: FT. MYERS BCI2 State: FL Zip: 33931
Phone: Area Code: 239 Number: 707-2233 Ext: _____
Fax: Area Code: 239 Number: 765-5755
E-mail address: DEVELOPMENT@SUNSTREAM.COM

PART 5 - OTHER AGENTS

List the names of other agents that the town or county may contact concerning this application. Use additional sheet if necessary and fasten to this page. [34-202(b)(1)b.]

A. Company Name: _____

Contact Person: _____

Address: Street : _____

City: _____ State: _____ Zip: _____

Phone: Area Code: _____ Number: _____ Ext: _____

Fax: Area Code: _____ Number: _____

E-mail address: _____

B. Company Name: _____

Contact Person: _____

Address: Street : _____

City: _____ State: _____ Zip: _____

Phone: Area Code: _____ Number: _____ Ext: _____

Fax: Area Code: _____ Number: _____

E-mail address: _____

Case Number: _____ Name: _____

C. Company Name: _____

Contact Person: _____

Address: Street : _____

City: _____ State: _____ Zip: _____

Phone: Area Code: _____ Number: _____ Ext: _____

Fax: Area Code: _____ Number: _____

E-mail address: _____

D. Company Name: _____

Contact Person: _____

Address: Street : _____

City: _____ State: _____ Zip: _____

Phone: Area Code: _____ Number: _____ Ext: _____

Fax: Area Code: _____ Number: _____

E-mail address: _____

PART 6 - PROPERTY OWNERSHIP

A. _____ Single owner (individual or husband & wife only) [34-201(a)(1)].

Name _____

Address: Street : _____

City: _____ State: _____ Zip: _____

Phone: Area Code: _____ Number: _____ Ext: _____

Fax: Area Code: _____ Number: _____

E-mail address: _____

B. Multiple owners (Corporation, partnership, trust, association) [34-201(a)(1)].

Disclosure Form is attached as "Exhibit 6 - 1." [34-201(b)2]

Property owners list is attached as "Exhibit 6 - 2." [34-202(a)(5) and 34-202(b)(1).a.]

Property owners map is attached as "Exhibit 6 - 3." [34-202(a)(5)]

Case Number: _____ Name: _____

PART 7 - PROPERTY INFORMATION

A. STRAP Number(s): 19-46-24-W4-0090A,0010

B. Location [34-202(a)(4)]:

Street Address: 2000 ESTERO BLVD. FT. MYERS ISRAEL, FL 34134

An area location map is attached as "Exhibit 7 - 1."

C. Directions to property: From the base of the sky-bridge on the island side continue in a _____ Southeasterly direction on Estero Boulevard six tenths of a mile to 2000 Estero Boulevard and _____ DiamondHead is located on the right hand side of the road.

D. Property Dimensions:

Area: 134,709 square feet or _____ acres

Width along roadway: 348.4 feet

Depth: 423 feet

E. Legal Description [34-02(a)(1)]:

Legal description (on 8 1/2" by 11" paper) is attached as "Exhibit 7 - 2."

_____ Electronic version of the legal description is attached.

F. Boundary Survey or certified sketch of description [34-202(a)(2)]:

_____ The property consists of one or more undivided platted lots in a subdivision recorded in the Official County Plat Books. A copy of the applicable plat book page is attached as "Exhibit 7 - 3."

The property is not platted OR consists of one or more divided platted lots in a subdivision recorded in the Official County Plat Books.

_____ A Certified sketch of description is attached as "Exhibit 7 - 4."

A Boundary survey is attached as "Exhibit 7 - 5."

G. Property Restrictions [34-202(b)(2)]:

1. There are no deed restrictions/covenants on this property that affect this request.

2. NA Restrictions/covenants are attached as "Exhibit 7 - 6."

3. NA A narrative explanation as to how the deed restrictions or covenants may affect this request is attached as "Exhibit 7 - 7."

H. Surrounding property owners:

1. A list of surrounding property owners is attached as "Exhibit 7 - 8." [34-202(a)(6)]

2. Two sets of mailing labels are attached as "Exhibit 7 - 9." [34-202(a)(6)]

3. A map of surrounding property owners is attached as "Exhibit 7 - 10." [34-202(a)(7)]

Case Number: _____ Name: _____

PART 8 - AFFIDAVIT A - 1
AFFIDAVIT FOR PUBLIC HEARING
APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Randy Kares, swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach and Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

[Handwritten Signature]
Signature

Randy Kares
(Type or printed name)

STATE OF FL

COUNTY OF LEE

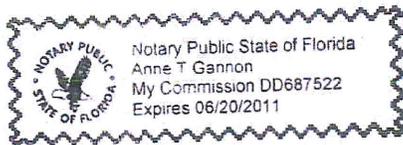
The foregoing instrument was sworn to (or affirmed) and subscribed before me this

MAY 27, 2008 by RANDY KARES who is personally
(date) (name of person providing oath or affirmation)

known to me or who has produced _____ as identification.
(type of identification)

Anne T. Gannon
Signature of person taking oath or affirmation

ANNE T. GANNON
Name typed, printed or stamped



PART 9 - SUBMITTAL REQUIREMENTS

If the application is for a rezoning, planned development, special exception or variance, please submit fourteen (14) copies of this application form and all applicable exhibits. If the request is to appeal an administrative action, please submit five (5) copies of this application form and all applicable exhibits.

| Copies Submitted | Exhibit Number | Exhibit Description |
|------------------|----------------|--|
| | | SUPPLEMENTAL FORMS (select applicable form) |
| | SUP A | Special Exception supplement |
| | SUP B | Variance supplement |
| | SUP C | Conventional rezoning |
| | SUP D | Planned Development Rezoning or DRI with Rezoning requested |
| | SUP E | Master Concept Plan Extension |
| | SUP F | Appeal of Administrative Decision. |
| | | Exhibits - All requests |
| | 3 - 1 | Approved Waivers [34-202(a)] |
| | 4 - 1 | Notarized Affidavit Authorizing the applicant. [34-202(b)(1)b.] |
| | 4 - 2 | Contract purchaser/vendee authorization (if applicable). [34-202(b)(1)c.] |
| | 6 - 1 | Ownership Interests (Disclosure Form) [34-202(b)(1)a.] |
| | 6 - 2 | Subject property owners list (if applicable) [34-202(a)(5)] |
| | 6 - 3 | Subject Property Owners map (if applicable) [34-202(a)(5)] |
| | 7 - 1 | Area Location Map on 8 by 11 paper. [34-202(a)(4)] |
| | 7 - 2 | Legal Description [34-202(a)(1)] |
| | 7 - 3 | Plat Book page (if applicable) [34-202(a)(1)] |
| | 7 - 4 | Certified sketch of description (if applicable) [34-202(a)(2)] |
| | 7 - 5 | Boundary Survey (if applicable) [34-202(a)(2)] |
| | 7 - 6 | Copy of Deed Restrictions\Covenants (if applicable) [34-202(b)(2)] |
| | 7 - 7 | Narrative addressing effect of Deed Restrictions [34-202(b)(2)] |
| | 7 - 8 | List of Surrounding Property Owners [34-202(a)(6)] |
| | 7 - 9 | Two sets of mailing labels [34-202(a)(6)] |
| | 7 - 10 | Map of Surrounding Property Owners [34-202(a)(7)] |
| | 8 - A1 | Applicants' affidavit - Individual owner or applicant (if applicable) [34-202(b)(1)b.] |
| | 8 - A2 | Applicants' affidavit - Corp., partnership, trustee, etc.(if applicable) [34-202(b)(1)b.] |
| | | Additional requirements for DRIs |
| | | TIS - Traffic impact statement [34-203(a)] |
| | | Notice of proposed change Substantial Deviations Form RPM-BSP- Proposed Change - 1 pursuant to Section 380.06(19) F.S. |
| | | DRI, AMDA, FQD Form RPM-BSP-ADA - 1. Application for Development Approval pursuant to Section 380.06 F.S. |
| | | Form RPM-BSP-Abandonment-DRI-1. Application for abandonment of a DRI. |

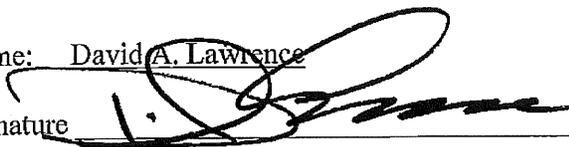
Exhibit 4-1

Letter of Authorization To The Town of Fort Myers Beach

The undersigned do hereby swear or affirm that they are the fee simple title holders and owners of record of property commonly known as DiamondHead Island Beach Resort, 2000 Estero Boulevard, Ft. Myers Beach, Florida, 33931.

The property described herein is the subject of an application for Public Hearing for Fort Myers Beach. We hereby designate Randy Kares, Director of Development for SunStream Inc. as the legal representative of the property and as such, this individual is authorized to legally bind all owners of the property in the course of seeking the approvals for variance to sign ordinance and to complete applications for public hearing and all associated and required supplements as necessary and required in the course of this action. This authority includes but is not limited to the hiring and authorizing of agents to assist in the preparation of applications, plans, surveys, and studies necessary to obtain sign ordinance variance through public hearing process. This representative will remain the only entity, other than owner(s) to authorize variance application activity on the property until such time as a new or amended authorization is delivered to the Town of Fort Myers Beach and/or Lee County.

Name: David A. Lawrence

Signature 

STATE OF FL

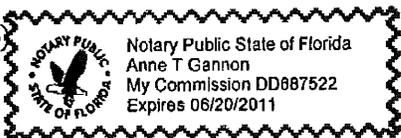
COUNTY OF LEE

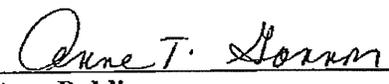
Sworn to (or affirmed) and subscribed before me this 17 day of APRIL, 2008, by

DAVE LAWRENCE

✓ who is personally known to me or who has produced as identification and who did (did not) take an oath.

(SEAL)




Notary Public

ANNE T. GANNON
(Name typed, printed or stamped)

(Continued on next page)

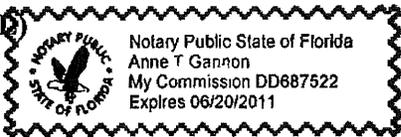
Name: R. J. Swanson

Signature [Handwritten Signature]

STATE OF FL
COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 17 day of APRIL, 2008, by
_____ who is personally known to me or who has produced
_____ as identification and who did (did not) take an oath.

(SEAL)



[Handwritten Signature]
Notary Public

ANNE T. GANNON
(Name typed, printed or stamped)

Name: P. W. Lawrence

Signature _____

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this ___ day of _____, 2008, by
_____ who is personally known to me or who has produced
_____ as identification and who did (did not) take an oath.

(SEAL)

[Handwritten Signature]

Notary Public

(Name typed, printed or stamped)

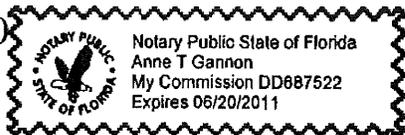
Name: R. M. Vogel

Signature [Handwritten Signature]

STATE OF FL
COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 23 day of APRIL, 2008 by
_____ who is personally known to me or who has produced
_____ as identification and who did (did not) take an oath.

(SEAL)



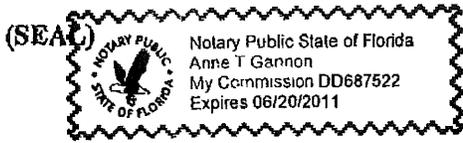
[Handwritten Signature]
Notary Public

ANNE T. GANNON
(Name typed, printed or stamped)

Name: D. W. Gustafson
Signature *D. W. Gustafson*

STATE OF FL
COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 17 day of APRIL, 2008, by _____ who is personally known to me or who has produced as identification and who did (did not) take an oath.



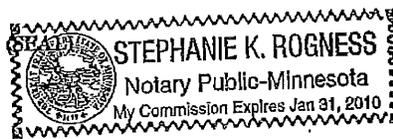
Anne T. Gannon
Notary Public
ANNE T. GANNON
(Name typed, printed or stamped)

Name: D. J. Fluegel
Signature *D. J. Fluegel*

STATE OF MINNESOTA
COUNTY OF DAKOTA

FLUEGEL LAW FIRM

Sworn to (or affirmed) and subscribed before me this 15th day of April, 2008, by Donald J. Fluegel who is personally known to me or who has produced as identification and who did (did not) take an oath.

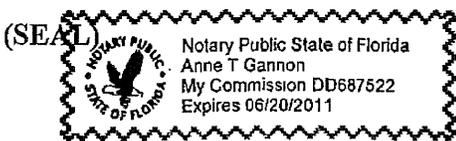


Stephanie K. Rogness
Notary Public
STEPHANIE K. ROGNESS
(Name typed, printed or stamped)

Name: P. W. Lawrence
Signature *P. W. Lawrence*

STATE OF FLORIDA
COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 23 day of APRIL, 2008, by _____ who is personally known to me or who has produced as identification and who did (did not) take an oath.



Anne T. Gannon
Notary Public
ANNE T. GANNON
(Name typed, printed or stamped)

EXHIBIT 6 - 1
DISCLOSURE OF INTEREST FORM FOR:

STRAP NO. 19-46-24-W4-0090A.0010 CASE NO. _____

1. If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

| Name and Address | Percentage of Ownership |
|------------------|-------------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

2. If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

| Name, Address, and Office | Percentage of Stock |
|---------------------------|---------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

3. If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

| Name and Address | Percentage of Interest |
|------------------|------------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

4. If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners with the percentage of ownership.

| Name and Address | Percentage of Ownership |
|------------------|-------------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Exhibit 6-1
DIAMONDHEAD ISLAND BEACH RESORT, LC
PARTNER'S SHARES

| <u>Stockholder</u> | <u>% Ownership</u> | <u>Address</u> |
|----------------------|--------------------|---|
| D. A. Lawrence | 25.000% | 6231 Estero Blvd., Ft. Myers Beach, FL 33931 |
| R. J. Swanson | 17.442% | 1125 S. Frontage Rd., Suite 4, Hastings, MN 55033 |
| P. W. Lawrence | 16.279% | 610 Main Street, Red Wing, MN 55066 |
| R. M. Vogel, Trustee | 16.279% | 3936 Tamiami Trail N., Suite B, Naples, FL 34103 |
| D. W. Gustafson | 13.372% | 225 Charleston Ct., Naples, FL 34110 |
| D. J. Fluegel | 11.628% | 2522 Old Bridge Lane, Hastings, MN 55033 |
| TOTAL | <u>100.000%</u> | |

Exhibit 6-2
DIAMONDHEAD ISLAND BEACH RESORT, LC
MULTIPLE OWNERS' LIST

| | |
|---------------------------|--|
| David A. Lawrence | 6231 Estero Blvd, Fort Myers Beach FL 33931 |
| Robert J. Swanson | 1125 So. Frontage Rd, Suite 4, Hastings MN 55033 |
| Paul W. Lawrence | 610 Main St. Red Wing MN 55066 |
| Richard M. Vogel, Trustee | 3936 Tamiami Trail N., Suite B, Naples FL 34103 |
| Donald W. Gustafson | 225 Charleston Ct. Naples FL 34110 |
| Donald J. Fluegel | 2522 Old Bridge Lane, Hastings MN 55033 |

Exhibit 6-3
DIAMONDHEAD ISLAND BEACH RESORT, LC
OWNER'S INTEREST

| <u>Stockholder</u> | <u>% Ownership</u> | <u>Address</u> |
|----------------------|--------------------|---|
| D. A. Lawrence | 25.000% | 6231 Estero Blvd., Ft. Myers Beach, FL 33931 |
| R. J. Swanson | 17.442% | 1125 S. Frontage Rd., Suite 4, Hastings, MN 55033 |
| P. W. Lawrence | 16.279% | 610 Main Street, Red Wing, MN 55066 |
| R. M. Vogel, Trustee | 16.279% | 3936 Tamiami Trail N., Suite B, Naples, FL 34103 |
| D. W. Gustafson | 13.372% | 225 Charleston Ct., Naples, FL 34110 |
| D. J. Fluegel | 11.628% | 2522 Old Bridge Lane, Hastings, MN 55033 |
| TOTAL | <u>100.000%</u> | |

Page 1 of 1

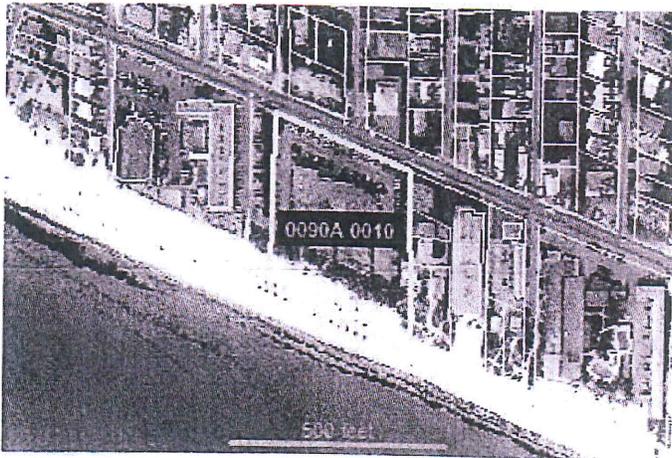


Exhibit 7-1
Area Location Map



Exhibit 7-2

Legal description

DiamondHead Island Beach Resort
2000 Estero Boulevard, Ft. Myers Beach, FL., 33931

Lots 1-11 "A" ACCORDING TO THE PLAT OF GULF-BAY-VIEW RECORDED IN
PLAT BOOK 8, PAGE 69 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA
AND THE VACATED STREET AS RECORDED IN ORRICAL RECORDS BOOK
648, PAGE 318

Diamond Head Resort surrounding properties owners list Exhibit 7-8

| Owner of Record | Address | Site Address |
|---|--|-------------------------|
| Estero Island Beach Club Condo: RAL Resort Prop Mgt | 11595 Kelly Rd, Ft. Myers FL 33908 | 1840 Estero Blvd., FMB |
| Virginia Dickson | 61 Miramar St, Ft. Myers Beach FL 33931 | 61 Miramar St., FMB |
| Claude Bowyer | 42 Avenue E, Ft. Myers Beach FL 33931 | 42 Avenue E, FMB |
| Paul & Karen Nelson | 142 Regatta Ct. Valparaiso, IN 46385 | 67 Miramar St., FMB |
| Edward & Diane Toadwine | 71 Miramar St, Ft. Myers Beach FL 33931 | 71 Miramar St., FMB |
| Jack & Hope Jordan | 123 N Baltimore St., Bremen, IN 46506 | 81 Miramar St., FMB |
| Duvalimited Inc | 2709 Estero Blvd, Ft. Myers Beach FL 33931 | 1750 Estero Blvd, FMB |
| Dennis & Connie Shirley | 1065 Bayside Ln., Minnetrista MN 55364 | 50-60 Avenue E, FMB |
| Jeffrey & Andrea Pankhurst | 54/64 Avenue E, Ft. Myers Beach FL 33931 | 54/64 Avenue E, FMB |
| Robert Graves & Mary Juve-Graves | 4985 Timber Trail, Minnetrista MN 55364 | 70 Avenue E, FMB |
| Four Diamond Investment Corp | 6249 Presidential Ct. Ste B, Ft. Myers FL 33919 | 80 Avenue E, FMB |
| Georgia Kay Shakti | PO Box 2715 Ft. Myers Beach FL 33932 | 1740 Estero Blvd, FMB |
| Beate Rotermund Inc. Henson Luke Realty Group | PO Box 2311 Bonita Springs FL 34133 | 1661 Estero Blvd, FMB |
| James Bidro | 1364 Chalon Ln. Ft. Myers FL 33919 | 1741 Estero Blvd., FMB |
| Robert & Billie Lacy | 123 Miramar St. Ft. Myers Beach FL 33931 | 123 Miramar St., FMB |
| Harold & Joye Taylor | 1711 Washington Ave., Vincennes IN 47591 | 127 Miramar St., FMB |
| Harold Smith | 147 Miramar St., Ft. Myers Beach FL 33931 | 147 Miramar St., FMB |
| Miramar LLC | 15911 Knightsbridge Ct., Ft. Myers FL 33908 | 124 Miramar St., FMB |
| John Larkin | 358 Cumberland Cove Rd., Monterey TN 38574 | 122 Miramar St., FMB |
| Rebecca Kratt | 120 Miramar St., Ft. Myers Beach FL 33931 | 120 Miramar St., FMB |
| James Cody | 116 Miramar St., Ft. Myers Beach FL 33931 | 116 Miramar St., FMB |
| Schlichte Family FL LP | 61 Mango St, Ft. Myers Beach FL 33931 | 1801 Estero Blvd, FMB |
| Evangelos Letsos | 201 Ohio Ave, Ft. Myers Beach FL 33931 | 1821 Estero Blvd., FMB |
| Evangelos Letsos Trust | 201 Ohio Ave, Ft. Myers Beach FL 33931 | 201 Ohio Ave., FMB |
| Lois Keates | 39 Mildred Dr. Ft. Myers FL 33901 | 205/07 Ohio Ave., FMB |
| Darrell & Lois Courter | 39 Mildred Dr. Ft. Myers FL 33901 | 213 Ohio Ave., FMB |
| Ronald & Kathy Kraus | 14250 Royal Harbour Ct. #414, Ft. Myers FL 33908 | 219 Ohio Ave., FMB |
| Caroline Peacock | 253 Ostego Dr., Ft. Myers Beach FL 33931 | 225 Ohio Ave., FMB |
| Joseph Posey | 26 Cherry Tree Ln., Kinnelon NJ 07405 | 224 Ohio Ave., FMB |
| Robert Roylance TR for Roylance Trust | 250 Smith Ln., Clarksville TN 37043 | 218 Ohio Ave., FMB |
| Peter & Anne Heerwagen | 210 Ohio Ave., Ft. Myers Beach FL 33931 | 210 Ohio Ave., FMB |
| John & Brenda Schnorbach | 204 Ohio Ave., Ft. Myers Beach FL 33931 | 204 Ohio Ave., FMB |
| Gulf Bay View | Ft. Myers Beach FL 33931 | HDR: Gulf Bay View, FMB |
| Thomas Marone | PO Box 61294 Ft. Myers FL 33906 | 200 Ohio Ave., FMB |
| Kelly Tierney & Derrick Hamm | 2142 North Taft St., Arlington VA 22201 | 1920 Bay View Dr., FMB |
| CMZ Investments LLC | 250 4th St. Lafayette IN 47901 | 1901 Estero Blvd., FMB |
| DiamondHead Bch Resort | 2000 Estero Blvd., Ft. Myers Beach FL 33931 | 1999 Estero Blvd., FMB |
| Lewis & Sophie Adams | PO Box 4061 Winchester KY 40392 | 1930 BayView Dr., FMB |
| David & Lloyd Hicks for Lloyd Hicks Trust | 16291 Crown Arbor Way, Ft. Myers FL 33908 | 1940 BayView Dr., FMB |
| David Hicks Tr for David Hicks Trust | 239 Curlew St., Ft. Myers Beach FL 33931 | 209 Virginia Ave., FMB |

Diamond Head Resort surrounding properties owners list Exhibit 7-8

| Owner of Record | Address | Site Address |
|--|---|------------------------|
| Michael & Rosanna Reilly | 211 Virginia Ave., Ft. Myers Beach FL 33931 | 211 Virginia Ave., FMB |
| James Alexander Tr. For James Alesander Trust | 18 Riverview Rd., Monmouth Beach NJ 07750 | 215 Virginia Ave., FMB |
| Chris & Karma Marino for Marino Trust | 12460 Teak Cir., Ft. Myers FL 33913 | 217 Virginia Ave., FMB |
| Kenneth Barker | 227 Virginia Ave., Ft. Myers Beach FL 33931 | 227 Virginia Ave., FMB |
| Terry & Barbara Hancock | 1927 Grove, Highland MI 48356 | 230 Virginia Ave., FMB |
| Cornelius & Eileen Sullivan | 224 Virginia Ave., Ft. Myers Beach FL 33931 | 224 Virginia Ave., FMB |
| Michael Leone | PO Box 6374 Ft. Myers FL 33911 | 218 Virginia Ave., FMB |
| Richard Casale | 214 Virginia Ave., Ft. Myers Beach FL 33931 | 214 Virginia Ave., FMB |
| Ronald & Mary Gottschalk for Ronald & Mary Gottschalk Trust | 168 West Spring St., Box 429, Port Austin MI 48467 | 210 Virginia Ave., FMB |
| James & Nancy Bartlet | 200 Virginia Ave., Ft. Myers Beach FL 33931 | 200 Virginia Ave., FMB |
| Stephanie Sharpe | 154 Virginia Ave., Ft. Myers Beach FL 33931 | 154 Virginia Ave., FMB |
| Bruce & Cheryl Kullberg | 134 Virginia Ave., Ft. Myers Beach FL 33931 | 134 Virginia Ave., FMB |
| 2001 Estero LLC | 400 Bayland Rd. Ft. Myers Beach FL 33931 | 2001 Estero Blvd., FMB |
| Charles Meador | 2085 Estero Blvd., Ft. Myers Beach FL 33931 | 2085 Estero Blvd., FMB |
| Robert Bigelow Tr for Robert Bigelow Trust | 6628 Magnolia Ln. Ft. Myers FL 33966 | 125 Pearl St., FMB |
| Richard Foxx Tr for Richard Foxx Trust | 129 Pearl St., Ft. Myers Beach FL 33931 | 129 Pearl St., FMB |
| Kenneth & Celia Erickson | 399 Snow Dr. Ft. Myers FL 33919 | 131 Pearl St., FMB |
| David Parilla | 1335 Santos Rd., Ft. Myers Beach FL 33931 | 137 Pearl St., FMB |
| Hy & Anita & Ronald & Cynthia Bershad | 5908 Three Iron Dr. #2204, Naples FL 34110 | 149 Pearl St., FMB |
| Richard & Miriam Oswalt | 159 Pearl St., Ft. Myers Beach FL 33931 | 159 Pearl St., FMB |
| Vicki Wever | 163 Pearl St., Ft. Myers Beach FL 33931 | 163 Pearl St., FMB |
| Fred & Helen Berger | 267 Carolina St. Ft. Myers Beach FL 33931 | 171 Pearl St., FMB |
| David & Connie Bechner | 1917 Back Creek Rd., Heltonville IN 47436 | 185 Pearl St., FMB |
| Lynn Fleming | 195 Pearl St., Ft. Myers Beach FL 33931 | 195 Pearl St., FMB |
| Steven & Janice Jackson | 304 Riva Ridge Rd., Richmond KY 40475 | 180 Pearl St., FMB |
| Vincent Jarvis | PO Box 6131 Ft. Myers Beach FL 33932 | 170 Pearl St., FMB |
| Dorothy Curtiss | 22 Gordon Ave., Shelton CT 06484 | 162 Pearl St., FMB |
| Edward & Marie Zenisky | 908 Amity Rd. Bethany CT 06524 | 160 Pearl St., FMB |
| James & Margaret Sztorc | 6949 Bear Ridge Rd., North Tonawanda NY 14120 | 150 Pearl St., FMB |
| Stephen & Amy Nease | 1601 Jackson St. #202, Ft. Myers FL 33901 | 110 Pearl St., FMB |
| Fred & Rhonda Palma Tr for Fred & Rhonda Palma Trust | 3400 Meyers Rd., Oak Brook IL 60523 | 2101 Estero Blvd., FMB |
| Alice Maugans & David Palmer | PO Box 2766 Ft. Myers Beach FL 33932 | 2141 Estero Blvd., FMB |
| John Surffus | PO Box 3053 Ft. Myers Beach FL 33932 | 2171 Estero Blvd., FMB |
| Deneane Maldonado | 121 Delmar Ave. Ft. Myers Beach FL 33931 | 121 Delmar Ave., FMB |
| Charles & Alise Flanjack | 1512 Braman Ave., Ft. Myers FL 33901 | 127 Delmar Ave., FMB |
| Eugene Howse | 131 Delmar Ave., Ft. Myers Beach FL 33931 | 131 Delmar Ave., FMB |
| Lorraine Albino-Hinckley TR for Lorraine Albino-Hinckley Trust | 135 Delmar Ave., Ft. Myers Beach FL 33931 | 135 Delmar Ave., FMB |
| Jack Miceli | 1429 SE Port Saint Lucie Blvd., Port Saint Lucie FL 34952 | 149 Delmar Ave., FMB |
| Michael Sooklaris | 160 Delmar Ave., Ft. Myers Beach FL 33931 | 160 Delmar Ave., FMB |
| James Alexander Tr for James Alexander Trust | 18 Riverview Rd., Monmouth Beach NJ 07750 | 150 Delmar Ave., FMB |

Diamond Head Resort surrounding properties owners list Exhibit 7-8

| Owner of Record | Address | Site Address |
|--|--|------------------------------|
| Jess & Roberta Bright | 146 Delmar Ave., Ft. Myers Beach FL 33931 | 146 Delmar Ave., FMB |
| F-Mar investments LLC | 1833 SE Avenue K Pl., Belle Glade FL 33430 | 138 Delmar Ave., FMB |
| William & Maria Perez | 16 NW 39th Ave., Cape Coral FL 33993 | 136 Delmar Ave., FMB |
| J. Cane Investments LLC | 1016 SE 4th St., Belle Glade FL 33430 | 130 Delmar Ave., FMB |
| Mark Leigh et al | 424 County Rd. 650 N., Sparland IL 61565 | 128 Delmar Ave., FMB |
| Lennada Brown Tr for Lennada Brown Trust | 16210 Larsen Ave. Gowen MI 49326 | 126 Delmar Ave., FMB |
| Curtis Hood & Michael VonPinsky | 48 Fairview Blvd., Ft. Myers Beach FL 33931 | 116 Delmar Ave., FMB |
| Curtis Hood & Michael VonPinsky | 48 Fairview Blvd., Ft. Myers Beach FL 33931 | 2201 Estero Blvd., FMB |
| Curtis Hood & Michael VonPinsky | 48 Fairview Blvd., Ft. Myers Beach FL 33931 | 2205 Estero Blvd., FMB |
| B&B Cash Grocery Stores Inc | PO Box 1808 #78, Tampa FL 33601 | 2211 Estero Blvd., FMB |
| Edward & Marjorie Bejune | 164 Miramar St., Ft. Myers Beach FL 33931 | 113/115 Fairweather Ln., FMB |
| Edward & Marjorie Bejune | 164 Miramar St., Ft. Myers Beach FL 33931 | 127/129 Fairweather Ln., FMB |
| Clive & Françoise Connor | 131 Fairweather Ln., Ft. Myers Beach FL 33931 | 131 Fairweather Ln., FMB |
| Walter & Sylvana Ziemba | 1256 Hanton Ave., Ft. Myers FL 33901 | 203/205 Fairweather Ln., FMB |
| John & Susan Rusch | 5429 Poplar Rd., Shawano WI 54166 | 209 Fairweather Ln., FMB |
| Thomas & Kay Tucker | 11 Evergreens Dr., Brookfield CT 06804 | 211 Fairweather Ln., FMB |
| Catherine Figgins | 134 Fairweather Ln., Ft. Myers Beach FL 33931 | 134 Fairweather Ln., FMB |
| Edward Gingras | 211 Larkspur Ln., Avon CO 81620 | 126 Fairweather Ln., FMB |
| Maurice O'Connell | 4880 Coquina Rd., Ft. Myers Beach FL 33931 | 120-124 Fairweather Ln., FMB |
| Kathryn Calzonetti & Donna Ayres | PO Box 524 Shasta CA 96087 | 118 Fairweather Ln., FMB |
| Gary Dye & Karen Plopper | 553 W31115 Old Village Rd., Mukwonago WI 53149 | 110 Fairweather Ln., FMB |
| Joan Delucas for Victor Delucas Trust | 18307 Deep Passage Ln., Ft. Myers Beach FL 33931 | 2301 Estero Blvd., FMB |
| Neptune Holdings LLC | 2310 Estero Blvd., Ft. Myers Beach FL 33931 | 2310 Estero Blvd., FMB |
| Polynesian Vacation Villas Assoc | 2096 Estero Blvd., Ft. Myers Beach FL 33931 | Common Element FMB |
| Stephan Dullard Tr for Delmar Dr. Trust | 1739 Elyse Ln. Naperville IL 60565 | 61 Delmar Ave., FMB |
| Gayle Baisch et al | 1443 Claret Ct., Ft. Myers FL 33919 | 63 Delmar Ave., FMB |
| Surf Song Condo Assoc | 2088 Estero Blvd., Ft. Myers Beach FL 33931 | Common Element FMB |
| Nancy Buice & David Hurd | 3437 Spinnaker Way, Acworth GA 30102 | 71 Pearl St., FMB |
| Tom Ronnkivist | 1470 Westwood Dr. Minnetrista MN 55364 | 51 Pearl St., FMB |
| Thomas & Jackie Murray | PO Box 1097, Carmel IN 46082 | 2096 Estero Blvd. #1, FMB |
| Robert Schmeling | 1621 SE 84th Ct., Vancouver WA 98664 | 2096 Estero Blvd. #2, FMB |
| John & Sallie Kegley | 10500 Hadley Rd., Cincinnati OH 42318 | 2096 Estero Blvd. #3, FMB |
| Robert Schmeling | 1621 SE 84th Ct., Vancouver WA 98664 | 2096 Estero Blvd. #4, FMB |
| Peter Grattan | 2096 Estero Blvd., #5, Fort Myers Beach FL 33931 | 2096 Estero Blvd. #5, FMB |
| Howard Johnson | 931 S Mears, Whitehall MI 49461 | 2096 Estero Blvd. #6, FMB |
| Jagdish Patel | 1455 Parkman Rd, Warren OH 44485 | 2096 Estero Blvd. #7, FMB |
| Scott & MaryBeth Ross | 373 Cuddy Ct., Naples FL 34103 | 2096 Estero Blvd. #8, FMB |
| Anthony Tombo | 2631 Lewis Seifert Rd., Hubbard OH 44425 | 2096 Estero Blvd. #9, FMB |
| Thomas & Jackie Murray | PO Box 1097, Carmel IN 46082 | 2096 Estero Blvd. #10, FMB |
| Daniel Strong | 3610 Baynard Dr., Punta Gorda FL 33950 | 2096 Estero Blvd. #11, FMB |

Diamond Head Resort surrounding properties owners list Exhibit 7-8

| Owner of Record | Address | Site Address |
|-----------------------------|---|-----------------------------|
| Daniel Strong | 3610 Baynard Dr., Punta Gorda FL 33950 | 2096 Estero Blvd. #12, FMB |
| Christian Loffreno | 2100 Estero Blvd., Fort Myers Beach FL 33931 | 2100 Estero Blvd. #13, FMB |
| Christian Loffreno | 2100 Estero Blvd., Fort Myers Beach FL 33931 | 2100 Estero Blvd. #14, FMB |
| Christian Loffreno | 2100 Estero Blvd., Fort Myers Beach FL 33931 | 2100 Estero Blvd. #15, FMB |
| Jeffrey and Melanie Bonham | 433 Arboretum Way, Oswego IL 60543 | 2088 Estero Blvd. #3-E, FMB |
| James Burgauer | 813 Hayes Ave., Libertyville, IL 60048 | 2088 Estero Blvd. #2-G, FMB |
| Richard and Jean Carney | 409 River Ave., Glendive, MT 59330 | 2088 Estero Blvd. #3-G, FMB |
| Pat and Ginny Connors | W 5086 Osprey Dr., New Lisbon WI 53950 | 2088 Estero Blvd. #4-C, FMB |
| Joan Copely | 2088 Estero Blvd. #2-F, Ft. Myers Beach FL 33931 | 2088 Estero Blvd. #2-F, FMB |
| Bob and Shirley Cox | 353 South Fork Dr., Crawfordsville IN 47933 | 2088 Estero Blvd. #4-F, FMB |
| Nicholas and Linda Dundee | 3354 SE 17th Place, Cape Coral FL 33904 | 2088 Estero Blvd. #3-F, FMB |
| Bob and Sue Ewbank | 30 Old Ottawa Rd., Danville IL 61834 | 2088 Estero Blvd. #5-A, FMB |
| Ed and Charlotte Fergus | 2088 Estero Blvd. #3-C, Ft. Myers Beach FL 33931 | 2088 Esterp Blvd. #3-C, FMB |
| Walter and Annis Hapkiewicz | 1528 Winchell Ct., E. Lansing MI 48823 | 2088 Estero Blvd. #4-A, FMB |
| Doug and Kathie Hovenden | 37 Pendleton Way, Bloomington IL 61704 | 2088 Estero Blvd. #2-A, FMB |
| John Jackson | 1400 North 100 East, Hartford City IN 47348 | 2088 Estero Blvd. #3-D, FMB |
| Sonny and Elai Johnson | 1402 B Plum Ct., Mt. Prospect IL 60056 | 2088 Estero Blvd. #2-E, FMB |
| Phyllis Johnson | 1014 17th Ave. SE, Forest Lake MN 55025 | 2088 Estero Blvd. #3-B, FMB |
| Roger and Kathy Johnson | 7900 Bailey Dr., Eden Prairie MN 55347 | 2088 Estero Blvd. #2-B, FMB |
| Kurt and Christine Kauffman | 12007 Wiltshire Pl., St. Louis MO 63131 | 2088 Estero Blvd. #2-C, FMB |
| Don and Sandy Knippel | 13450 Westview Dr., Palos Heights IL 60463 | 2088 Estero Blvd. #4-E, FMB |
| Bernard and Diane Mazur | W 221 S 7455 Carol Dr., Muskego WI 53150 | 2088 Estero Blvd. #4-G, FMB |
| Ray and Eva McGraw | 329 N Manor Dr., Willaimsport IN 47993 | 2088 Estero Blvd. #5-D, FMB |
| Mary Nelson | 1245 N Twyckenham Dr., South Bend IN 46617 | 2088 Estero Blvd. #5-F, FMB |
| John and Barbara Parrish | 225 New Thompson Lake Rd., Carbondale IL 62901 | 2088 Estero Blvd. #2-D, FMB |
| Jean Ravenscroft | 2088 Estero Blvd. #4-D, Fort Myers Beach FL 33931 | 2088 Estero Blvd. #4-D, FMB |
| Fran Resca | 2 Holly Ct., Rockland MA 02370 | 2088 Estero Blvd. #3-A, FMB |
| Stephen Scholtz | 124 Kingsway Crescent, Toronto ONT M8X2S2 Canada | 2088 Estero Blvd. #5-E, FMB |
| Charlotte Simonis | 1845 # 765 S, Wolcottville IN 46795 | 2088 Estero Blvd. #5-C, FMB |
| Max and Vera Snyder | 4089 Split Rail Ln., Fenton MI 48430 | 2088 Estero Blvd. #1-A, FMB |
| Larry and Joyce Stensrude | 8124 Channel View Rd. #208, Lake Shore MN 56468 | 2088 Estero Blvd. #5-G, FMB |
| Wen Jong Wu | 5698 Shaddelee Lane West, Fort Myers FL 33919+ | 2088 Estero Blvd. #5-B, FMB |
| Bob and Ginny Young | | |

Case Number: _____ Name: _____

PART 8 - AFFIDAVIT A - 1
AFFIDAVIT FOR PUBLIC HEARING
APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Randy Kares, swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach and Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

[Signature]
Signature

Randy Kares
(Type or printed name)

STATE OF FL
COUNTY OF LEE

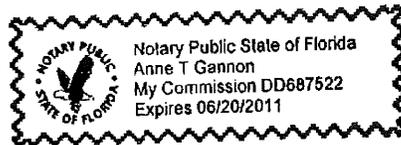
The foregoing instrument was sworn to (or affirmed) and subscribed before me this

MAY 27, 2008 by RANDY KARES who is personally
(date) (name of person providing oath or affirmation)

known to me or who has produced as identification.
(type of identification)

Anne T. Gannon
Signature of person taking oath or affirmation

ANNE T. GANNON
Name typed, printed or stamped



Town of Fort Myers Beach
Department of Community Development

Zoning Division

Supplement PH-B

Additional Required Information for a Variance Application Fort Myers Beach

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number: **FMBVAR2008-0003**
Project Name: **DiamondHead Beach Resort**
Authorized Applicant: **Neil Hopgood**
LeePA STRAP Number: **19-46-24-W4-0090A.0010**

Current Property Status:

Current Zoning: **CR Commercial Resort**
Future Land Use Map (FLUM) Category: **Pedestrian Commercial**
Comp Plan Density: Platted Overlay? ___ Yes ___ **X** No
6 Units per Acre

Variance is requested from:

LDC Section Number Title of Section or Subsection

Sec 30-154 (c) Standards for Monument signs, projecting signs and wall signs in commercial zoning districts.

(c) Monument sign may be elevated provided that the bottom of the sign is no more than eighteen (18) inches above the highest adjacent grade. The maximum height of a monument sign is five (5) feet.

Sec 30-153 (b) (1) Maximum sign area

- (1) 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**

Complete the narrative statements below for EACH variance requested.

Narrative Statements

Every application for a variance from the terms of this chapter must include the following narrative statements. Complete the following questions for each variance requested.

A. Section number from which variance is requested:

- a. **Sec 30-154 (c) Standards for monument signs, projecting signs, and wall signs in commercial zoning districts.**
- b. **Sec 30-153 (b) (1) Maximum sign area**

Specific regulation from which relief is sought:

Sec. 30-154 (c) Monument sign may be elevated provided that the bottom of the sign is no more than eighteen (18) inches above the highest adjacent grade. The maximum height of a monument sign is five (5) feet.

Sec 30-153 (b) (1) 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

B.

C. Reason why the variance is needed

Sec 30-154 (c) Standards for Monument signs, projecting signs and wall signs in commercial zoning districts.

Diamondhead is required by code, due to elevation change from the adjacent sidewalk, to have a fence installed at the perimeter of the elevated parking lot adjacent to Estero Boulevard. This fence is an aluminum picketed fence with the pickets spaced less than 4 inches on the center between the stanchions which are fastened to the support wall adjacent to the sidewalk at the Estero Boulevard. The fence is installed to keep pedestrians from falling off the upper elevation to the lower elevation at street level and to forecast to vehicular traffic a notice of the end of pavement/parking area in order to protect pedestrian traffic on the lower elevation sidewalk to Estero Boulevard.

Due to the issues above, we offer alternative (1) where we would install a sign to have the lowest readable part of the sign to be 1" above the top of the fence and the highest portion of the sign to be five (5) feet above the fence line so that all portions of the sign can be

viewed from the passengers in automobiles traveling from the north to south on Estero Boulevard.

This sign design requires additional square footage of the sign face below the readable portion of the sign face above the fence line to provide a structure to elevate the upper portion of the sign above the fence line.

In order to elevate the readable portion of the sign above the fence line, the sign face would be above the fence line and the lower face portion would be below the upper portion only serving as support and with no advertising or property identification on the lower portion. This additional sign face is being requested only as support for the property identification portion of the sign face and in order to avoid appearing like a non-conforming pole sign which is specifically prohibited.

Sec 30-153 (b) (1) Maximum sign area

We are requesting a variance on the maximum allowed sign face area of 32 sq. ft. due to financial hardship and due to two (2) business establishments occupying the property. The two business entities are DiamondHead Beach Resort LLC (65-0481300) and DiamondHead Restaurant and Lounge LLC (59-3530951).

We would like to use the existing top portion of the sign (please see visual picture attachment) in an effort to reduce the overall project expense associated with reconstructing a brand new sign in the size and style we have noted above. The dimensions of the existing sign face are 10 feet wide by 5 feet tall. The small peak of the sign that surrounds the pineapple logo is an additional 2 feet high, but we would ensure that this peak only has a height of 5 feet above the fence line in order to comply with the height variance above. We ask that, due to financial hardship, we be allowed to combine our allowance of two (2) – 32 sq. ft. signs into one smaller 54 sq ft sign.

D. Explain what effect, if any granting the variance would have on adjacent properties:

We do not see how granting the variance would have any affect on adjacent properties other than the beneficial ability to refer their property in reference to DiamondHead, which is now certainly a landmark for the beach.

E. Explain the nature of the hardship which is used to justify the request:

The sign described above would require a variance on the size of the sign face as a lower portion would be required to elevate the upper portion in which the upper portion is the only property identification portion of the sign face.

We initially proposed elevating the property identification portion of the sign face with decorative columns on either end but apparently this practice is defined as a pole sign which is non-conforming and prohibited.

Our goal is to have a sign that provides identification for the property but does not exceed the 5 foot height restriction over the top of the elevated parking lot fence so it is readable by passengers in vehicles traveling in both directions in the adjacent street.

In order to have the readable portion above the fence line we must elevate the readable portion by some means and in order to comply with the land development code this portion must not be by poles but must be additional sign face as a support.

In addition, and because we have two business establishments on the property, we would like to ensure that the aesthetics of the sign our conducive to the Town's guidelines. Instead of having two 32 sq. ft. signs in such close proximity, as well as the expense of constructing the two signs, we would like to alleviate this financial hardship by utilizing the upper half of the existing property sign, from the pineapple logo at the top to the words "Beach Resort and Spa" on the bottom. This portion of the sign would then be secured to a monument foundation, with a height restriction of five (5) feet above the top of the parking lot railing.

F. Explain how the property qualifies for the variance. Explanation should be directed, at a minimum, to the guidelines for decision making embodied in Section 34-87 [34-203 (e) (1) e.]

We feel that we have sufficient argument for approving this varainace based on the following and referencing Section 34-87 (3) (a) (b) (c) (d) and (e)

- (a) There are exceptional and extraordinary conditions or circumstances that are inherent to the property, and that the request is for a de-minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy. These exceptional and extraordinary conditions and circumstances are apparent in the variance in elevation for the property and the requirement of the perimeter fence specific to this property.
- (b) The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question but are code compliance conditions required by Lee County.
- (c) The variance requested is the minimum variance that will relieve this applicant of the unreasonable burden caused by the application of the regulation above in realation to establishing maximum heights for signs in reference to the request to install a 32 sq ft double faced sign in the location requested.
- (d) We are confident that the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare and in contrast will provide easily readable signage from a distance as to clearly identify the property thus, improving traffic conditions and reducing short-stops and turnarounds which could eventually result in worsened traffic conditions.
- (e) We feel that the conditions and circumstances on this specific property are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question and in contrast ar specific to this property and these conditions are not repeated at other properties in significant numbers to amend the regulation in question.

On an annual basis there are over 200,000 visiting various outlets in the resort and looking for the

DiamondHead Resort. When travelers are driving to the location the property location is confirmed by roadside signage. In order to maintain the best possible traffic flow in this area, we feel that this property signage should be adequate and easily viewable from a moderate distance in order to reduce short stops and turn-around in this already congested area.

VARIANCE REQUEST - SITE PLAN

Site Plan: All requests for a variance must include site plan showing:

- a. All existing and proposed structures on the site;
- b. All existing structures within 100 feet of the perimeter boundary of the site: and
- c. The proposed variance from the adopted standards

EXHIBITS

Exhibit B - Existing Sign

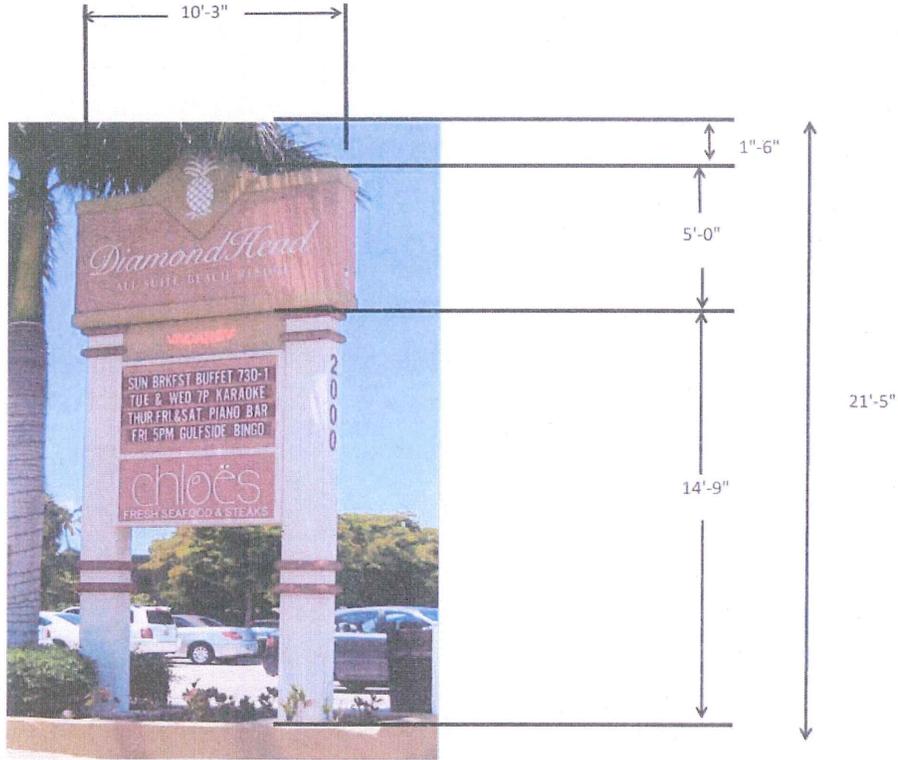


Exhibit C - Proposed Sign with dimensions

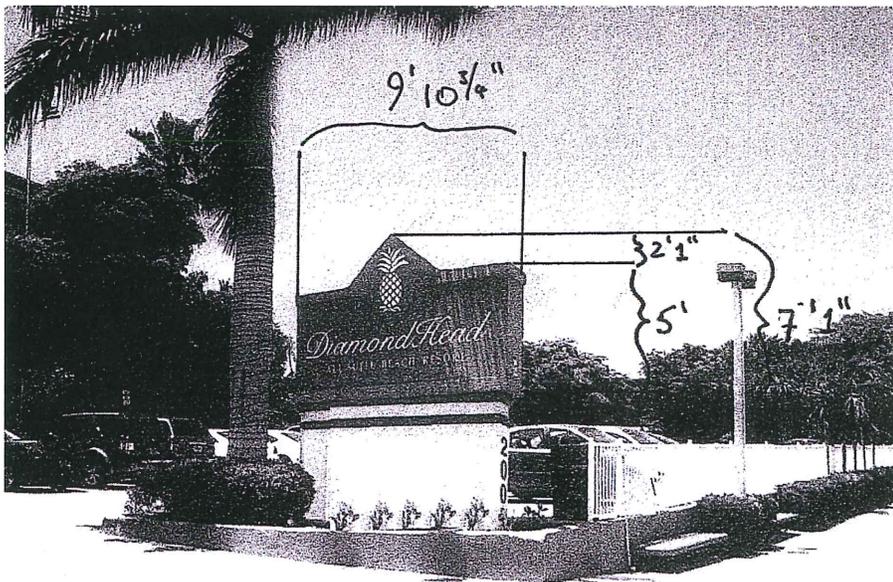


Exhibit D – Sign Location

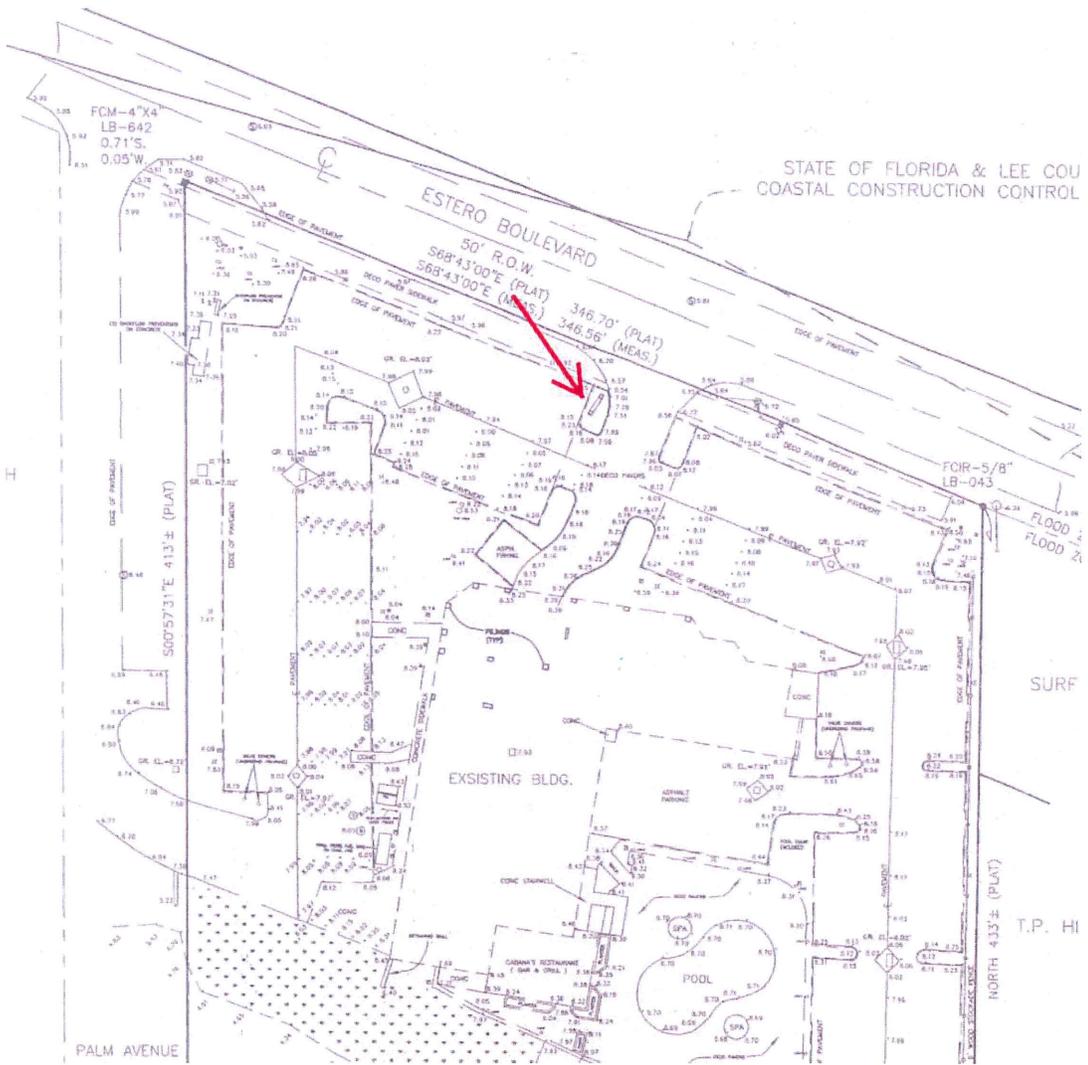


EXHIBIT (E)

