

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2013-001
VAR2012-0006 – The Beach Theater

WHEREAS, applicant William McMullan authorized agent for Fort Myers Beach Properties, LLC, is requesting a variance from Section 30-153 (b)(1), Section 30-154(a), and Section 30-154(c) of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP numbers for the subject property is 34-46-24-W4-00046.0000 and the legal description of the subject property is attached as *Exhibit A*; and

WHEREAS, the subject property is located at 6425 Estero Boulevard, Fort Myers Beach, FL 33931 in the 'Commercial Boulevard' zoning category of the Official Zoning Map and the 'Mixed Residential' 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 January 8, 2013; 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 variances, 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/DENY** the applicant's request for a variance from Section 30-153 (b)(1), Section 30-154(a), and Section 30-154(c) of the Town of Fort Myers Beach Land Development Code.

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, and 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 LPA upon a motion by LPA Member _____ and seconded by LPA Member _____, and upon being put to a vote, the result was as follows:

Hank Zuba, Chair	AYE/NAY	Joanne Shamp, Vice Chair	AYE/NAY
Al Durrett, Member	AYE/NAY	John Kakatsch, Member	AYE/NAY
Jane Plummer, Member	AYE/NAY	Alan Smith, Member	AYE/NAY
Jim Steele	AYE/NAY		

DULY PASSED AND ADOPTED THIS **8th** day of **JANUARY, 2013**.

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: _____
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk



Town of Fort Myers Beach
DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT

TYPE OF CASE: Sign Variance
CASE NUMBER: VAR2012-0006
LPA HEARING DATE: January 8, 2013
LPA HEARING TIME: 9:00 AM

I. APPLICATION SUMMARY

Applicant: William McMullan
Fort Myers Beach Properties, LLC
Beach Theater

Request: A variance from Section 30-153 (b)(1), Section 30-154(a),
Section 30-154(c)

Subject property: See *Exhibit A*

Physical Address: 6425 Estero Boulevard Fort Myers Beach, FL 33931

STRAP #: 34-46-24-W4-00046.0000

FLU: Mixed Residential

Zoning: Commercial Boulevard (CB)

Current use(s): Motion Picture Theater including a restaurant with a
2COP alcohol license

Adjacent use, zoning and future land uses:

North: Charlie's Boathouse Grill
Commercial Boulevard (CB)
Mixed Residential

South: Dolphin Inn

Commercial Resort (CR)
Mixed Residential

East: Residential
Residential Single Family (RS)
Low Density

West: Sunset Condo
Residential Multifamily (RM)
Mixed Residential

Privateer
Residential Multifamily (RM)
Mixed Residential

II. BACKGROUND AND ANALYSIS

Background:

William McMullan, agent for Fort Myers Beach Properties, LLC has applied for a variance and relief from Section 30-153(b)(1), Section 30-154(a), and 30-154(c) of Chapter 30 – Signs of the Town of Fort Myers Beach Land Development Code, for the property located at 6425 Estero Boulevard and known as the Beach Theater.

The subject property measures approximately .70± acres in size and contains an elevated building, currently in use as a movie theater with a restaurant and a 2COP alcohol license, and the parking required for that use. The existing sign (see *Exhibit B*) on site measures approximately 7’10” tall and approximately 37 square feet of sign face area.

On April 18, 2011 Town Council adopted amendments to the sign ordinance (11-01) which became effective immediately upon adoption. The amendments included an amortization provision requiring that all non-conforming signs come into compliance by December 31, 2011.

The Beach Theater was issued a notice of violation and appeared before the Special Magistrate on July 19, 2012. The Special Magistrate found the property to be in violation and gave the subject property 90 days to abate the violation. Mr. McMullan applied for a variance from provisions of Ordinance 11-01 on October 15, 2012, ten (10) months after the compliance deadline of December 31, 2011.

Analysis:

The applicant is requesting relief from three sections of Chapter 30: the maximum sign face area found in Section 30-153(b)(1), internal illumination requirements found in Section 30-154(a) and height requirements for monument signs found in Section 30-145(c).

The existing sign on the subject property (see *Exhibit B*) measures 7'10' in height and includes an illuminated changeable message panel that displays the daily movie schedule. The applicant is requesting to keep this existing monument sign (with no changes or modifications to height, size, illumination or location) stating that maintaining the existing sign, as a unique and singular use of a movie theater, poses no detriment to the Town or surrounding property owners and to replace the sign would be an unreasonable burden on the property owner.

The application is brief and includes minimal supporting details. The applicant states that the rationale for the variance is that it is necessary "to maintain the unique characters that are representative of a movie theater business. Without a traditional theater sign presence, the visibility of the theater weekly movie schedules would be detrimentally affected and would cause a negative impact on the theater and surrounding businesses." The applicant maintains that a sign meeting the requirements of Chapter 30 would cause traffic and safety concerns as well as be difficult for their clientele to see when approaching the subject property by car.

The applicant is therefore requesting a sign variance to maintain their existing sign.

Monument signs are governed by Section 30-154(c) which states as follows:

Section 30-154(c) *Monument signs 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.*

Internal illumination for monument signs is regulated by Section 30-154(a) which states as follows:

Section 30-154(a) *Buildings that are required to meet the commercial design standards in §34-991-1010 cannot install internally lit box signs (see Figure 30-1). When internally lit signs are permitted for buildings that are not required to meet the commercial design standards, the sign face must be designed so that illumination occurs only on individual letters or symbols. An opaque background panel must be used so that the internal light only passes through the letters or symbols. This requirement also applies to all signs with changeable copy. See Figure 30-2 for an example of illuminated letters on an internally lit sign face.*

Section 30-153(b) establishes the sign face maximum area per commercial establishment per parcel and reads as follows:

Section 30-153(b) *Commercial uses in commercial zoning districts. All signs located in commercial zoning districts, except for those signs identified as*

exempt signs in 30-6 and temporary signs in 30-141, shall comply with the following sign area limitations.

(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 area.

(2) For a parcel of land containing three (3) or more business establishments, each establishment shall be allowed a maximum of sixteen (16) square feet sign area. An additional thirty-two (32) square feet of sign area may be utilized to identify the commercial development.

(3) The maximum sign area provided herein may be allocated among a combination of one (1) or more monument signs, projecting signs, and/or wall signs.

The subject property, with one business, is therefore entitled to no more than 32 square feet of sign area to advertise the Beach Theater. This sign area can be allocated among a variety of different types of signs, provided that the total sign area does not exceed 32 square feet.

Exhibit B is a diagram of the existing sign located on the subject property. As indicated on the diagram, the sign measures 7'10" tall. The applicant claims that a smaller sign would reduce visibility and be detrimental to the business operations. However, upon review of the sign, the changeable message board panel does not reach to the top of the sign (the actual measurement was not provided to Staff) and therefore the sign structure itself could in fact be modified and reduced in height - possibly even complying with the 5' requirement - without effecting the message panel at all.

As to the internal illumination request, the code section is clear: illumination may only occur on the letters or symbols. The applicant has not provided a specific rationale as to why the sign cannot meet this requirement other than that to replace the sign would be an unreasonable burden on the property owner. Financial burden as has been discussed in previous applications, while a real consideration for the applicant, is not a rationale that Staff can consider when reviewing a variance application.

At approximately 37 square feet, the changeable copy area on the sign is larger than the 32 maximum allowed by 30-153(b)(1). The applicant states that as a movie theater, and the only one on the island, the use on the subject property is unique and as such should therefore be exempt from the maximum sign face requirement.

The applicant states that in the previous sign ordinance there was a section entitled 'Movie Theater Signage' and that in the adoption of Ordinance 11-01 this section was inadvertently omitted. Staff research has shown that the original sign ordinance, Ord. 99-01, did not include any provisions that were specific to movie theater signs. In Ord. 99-11, a section was added for movie theaters and allowed a

sign of up to 80 square feet. Ord. 03-06 further amended this provision for movie theater signs, reducing them to 64 square feet. Ordinance 05-07 completely removed the movie theater sign section and subsequent Ordinances 08-03 and 11-01 do not include any provisions specific to movie theater signs. Staff does not agree that the movie theater section was 'inadvertently omitted' and by the adoption of Ordinance 05-07, Town Council intended that movie theaters meet the same signage requirements of all other commercial establishments.

Findings and Conclusions:

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

- a. *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy;*

Staff does recognize that the Beach Theater, as a use, is unique to the Town because it is the only theater on the island. However, Staff research indicates that in Ord. 05-07 Town Council removed the extra signage allowance for theaters, and instead required them to comply with the same regulations applicable to all other commercial establishments. The applicant has proposed no other, and Staff has found no other, exceptional or extraordinary conditions or circumstances that exist on the subject property.

Staff recommends the finding that there **are not** exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property and that the variance is, therefore **not** justified.

- b. *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.*

The subject property was initially permitted in 1997, prior to the adoption of the Town's original sign ordinance and Ord. 11-01.

Therefore Staff recommends that the conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulations in question.

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

The applicant has provided no justification as to why the sign structure cannot be lowered to meet the height required by 30-154(c) or at least come closer to meeting that height. The applicant is requesting to keep the existing sign as is without any modifications and Staff does not feel that the request is the minimum variance necessary as required by this code.

Staff recommends that the variance requested **is not** the minimum variance necessary to relieve an undue burden.

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

The applicant is requesting relief from the sign height, illumination and area requirements of Chapter 30 of the LDC. The current sign's height is well above the 5' maximum height allowed under the current code, does not meet the internal illumination requirements and exceeds the area requirement by approximately 2 square feet.

It is Staff's opinion that there is not a justifiable reason or hardship that exists on the subject property that would support the granting of a height, illumination and area variance by Town Council. Staff therefore recommends that granting the variance **would** be injurious to the neighborhood or otherwise detrimental to the public welfare by allowing the subject property relief from rules and regulations that all others must adhere to.

- e. 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.*

With the adoption of the amended sign ordinance, and the consequent amortization period for conformity, numerous locations on the Beach have pursued variance requests from the amended requirements. However, by the very nature of the recent adoption of the sign ordinance Town Council has addressed the issue of signs (including height) and has made a decision to enact and enforce a uniform sign code. Furthermore, with the removal to the movie theater provision in Ord. 05-07, Council has already determined that movie theaters must comply with the same requirements as all other commercial establishments.

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

III. RECOMMENDATION

Staff recommends **DENIAL** of the requested height variance (Section 30-154(c)), illumination variance (Section 30-154(a)) and maximum sign area variance (Section 30-153(b)(1)) based upon the requisite findings and conclusions for granting a variance under LDC Section 34-87.

IV. CONCLUSION

Staff is of the opinion that the applicant has not demonstrated a justifiable or valid reason for Town Council to approve the requested variances from Chapter 30 of the LDC.

Staff therefore recommends **DENIAL** of the requested height variance (Section 30-154(c)), illumination variance (Section 30-154(a)) and maximum sign area variance (Section 30-153(b)(1)).

Exhibits:

- A – Legal Description
- B – Existing Sign Elevation
- C – Photographs of the existing sign

NORTHERLY PARCEL

LOTS 1,2 AND 3 OF BLOCK D, SANTINI CROSS UNRECORDED PLAT, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF BLOCK I, McPHIE PARK, UNIT NO. 2 AS PER PLAT THEREOF ON THE AND RECORDED IN PLAT BOOK 8 AT PAGE 59, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTHEASTERLY AT RIGHT ANGLES TO THE SOUTHEASTERLY BOUNDARY LINE OF SAID BLOCK I A DISTANCE OF 590 FEET; THENCE NORTHEASTERLY AT RIGHT ANGLE TO THE LAST MENTIONED COURSE IN THE EASTERLY BOUNDARY LINE OF ESTERO BOULEVARD; THENCE RUN SOUTHEASTERLY ALONG SAID EASTERLY BOUNDARY LINE OF SAID BOULEVARD A DISTANCE OF 404.16 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ON THE SAME COURSE A DISTANCE OF 165.26 FEET; THENCE RUN NORTHEASTERLY AT RIGHT ANGLES TO THE LAST MENTIONED COURSE A DISTANCE OF 115 FEET TO THE WESTERLY BOUNDARY LINE OF THE EXISTING CANAL; THENCE RUN NORTHWESTERLY ALONG SAID WESTERLY BOUNDARY OF SAID CANAL A DISTANCE OF 181.87 FEET TO THE SOUTHEASTERLY BOUNDARY LINE OF A DEDICATED STREET, THENCE RUN SOUTHWESTERLY ALONG SAID SOUTHEASTERLY BOUNDARY LINE OF SAID STREET A DISTANCE OF 116.19 FEET TO THE POINT OF BEGINNING; BEING IN SECTION 34, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA.

CONTAINING 0.458 ACRES, MORE OR LESS.

AND

SOUTHERLY PARCEL

A PARCEL OF LAND LYING IN GOVERNMENT LOT 1 OF SECTION 34, TOWNSHIP 46 SOUTH, RANGE 24 EAST, DESCRIBED AS FOLLOWS:

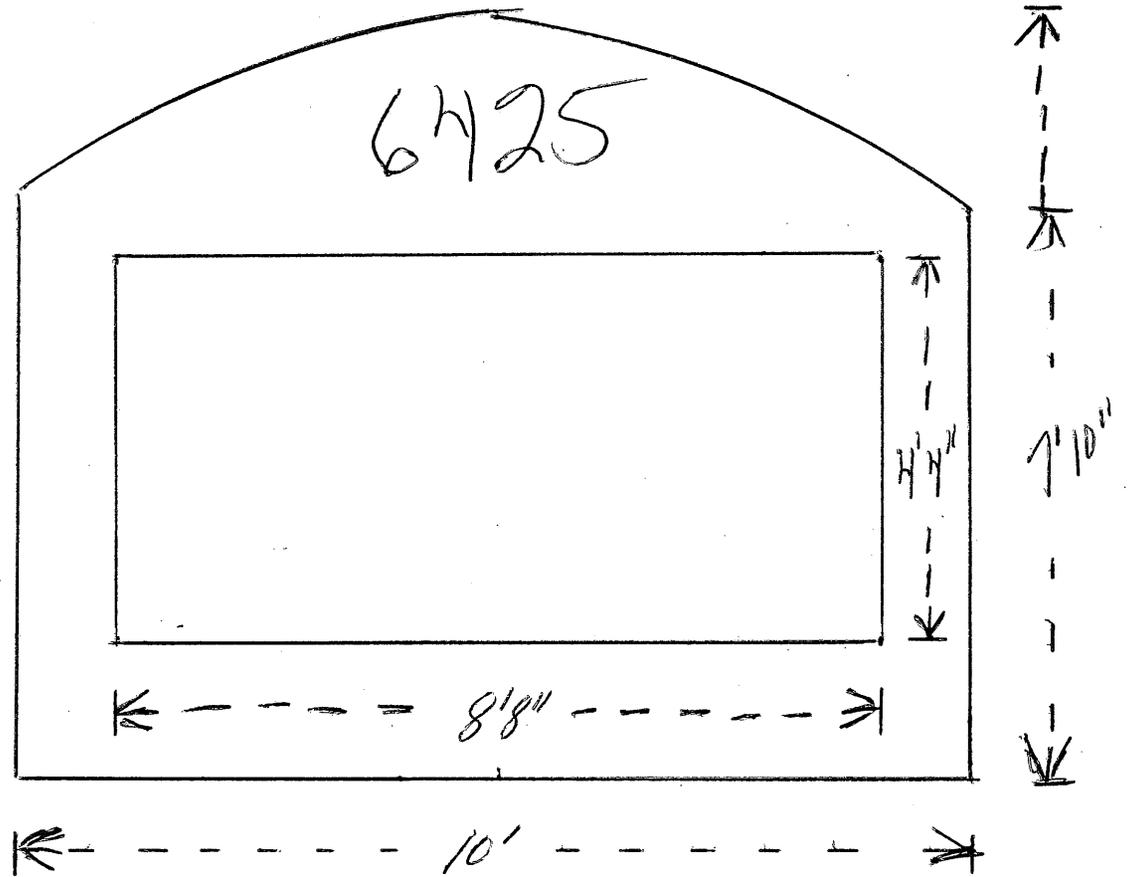
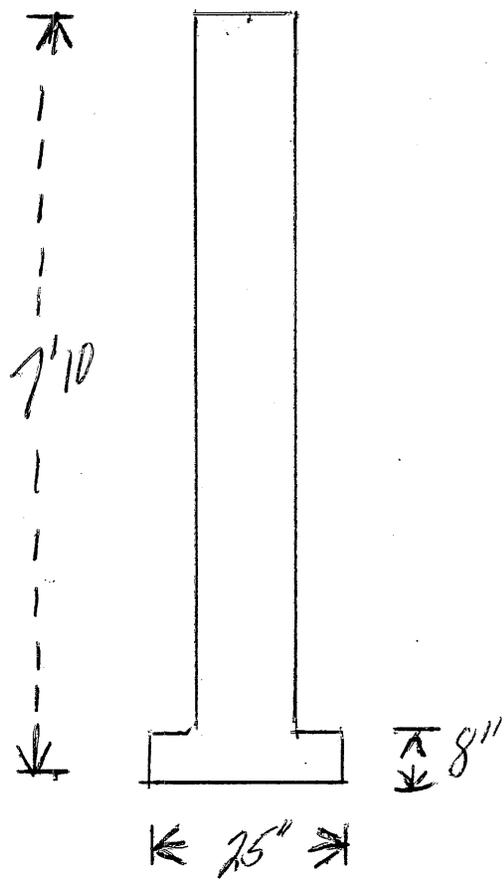
BEGINNING AT A POINT ON THE NORTHEASTERLY SIDE OF COUNTY ROAD RIGHT-OF-WAY CONVEYED BY DEED RECORDED IN DEED BOOK 193, PAGE 583, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, WHICH POINT IS 1,290 FEET SOUTHEASTERLY, AS MEASURED AT RIGHT ANGLES FROM THE SOUTHEASTERLY LINE OF BLOCK I, UNIT NO. 2, McPHIE PARK ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 8, PAGE 59, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; RUN NORTHERLY ALONG SAID COUNTY ROAD FOR 137.86 FEET; THENCE RUN NORTHEASTERLY PERPENDICULAR TO SAID ROAD FOR 115 FEET TO THE SOUTHERNMOST CORNER OF THAT CERTAIN BOAT CANAL DESCRIBED IN PARAGRAPH 2(B) OF THAT CERTAIN DEED RECORDED IN DEED BOOK 200 AT PAGE 194, PUBLIC RECORDS OF LEE COUNTY, THENCE RUN NORTHEASTERLY ALONG SAID CANAL FOR 36.53 FEET; THENCE RUN SOUTHEASTERLY PERPENDICULAR TO SAID CANAL FOR 120 FEET TO THAT CERTAIN STREET DEDICATED TO THE PUBLIC USE AS DESCRIBED IN PARAGRAPH 1(C) OF THE ABOVE MENTIONED DEED; THENCE RUN SOUTHWESTERLY ALONG THE NORTHWESTERLY SIDE OF SAID STREET FOR 170.05 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.467 ACRES, MORE OR LESS.

SUBJECT TO STATE OWNERSHIP OF SOVEREIGNTY SUBMERGED LANDS, FLORIDA COASTAL MAPPING ACT OF 1974, CHAPTER 177, PART II, F.S.

FORT MYERS BEACH THEATER 6425

EXHIBIT B



6425

BEACH THEATER

GREAT	MOVIES	GREAT	FOOD	
ARGO		6	9	R
ARBITRAGE		6	9	R
TAKEN 2		6	9	PG-13
LOOPER		6	9	R

SPEED
LIMIT
35

6425

BEACH THEATER

GREAT	MOVIES	GREAT	FOOD	
ARGO		6	9	R
ARBITRAGE		6	9	R
TAKEN 2		6	9	PG-13
LOOPER		6	9	R

SPEED
LIMIT
35

6425

BEACH THEATER

GREAT MOVIES GREAT FOOD

ARGO	6	9	R
ARBITRAGE	6	9	R
TAKEN 2	6	9	PG-13
LOOPER	6	9	R

PART I - General Information

A. Applicant:

Name(s):	<u>SORIN J. LUPU</u>		
Address: Street:	<u>6530 ESTERD BLVD.</u>		
City:	State:	Zip Code:	
<u>FT MYERS BEACH</u>	<u>FL</u>	<u>33909</u>	
Phone:	<u>239 481-2132</u>		
Fax:			
E-mail address:	<u>INFO@FMBTHERESTATE.COM</u>		

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

<input checked="" type="checkbox"/>	Owner (indicate form of ownership below)	
<input type="checkbox"/>	Individual (or husband/wife)	<input type="checkbox"/> Partnership
<input type="checkbox"/>	Land Trust	<input type="checkbox"/> Association
<input checked="" type="checkbox"/>	Corporation	<input type="checkbox"/> Condominium
<input type="checkbox"/>	Subdivision	<input type="checkbox"/> Timeshare Condo
<input checked="" type="checkbox"/>	Authorized representative (attach authorization(s) as Exhibit AA-1)	
<input type="checkbox"/>	Contract Purchaser/vendee (attach authorization(s) as Exhibit AA-2)	
<input type="checkbox"/>	Town of Fort Myers Beach (Date of Authorization: _____)	

C. Agent authorized to receive all correspondence:

Name:	<u>ELLEN A. KEARNEY</u>		
Mailing address: Street:	<u>P.O. Box 60014</u>		
City:	State:	Zip Code:	
<u>FT MYERS BEACH</u>	<u>FL</u>	<u>33906</u>	
Contact Person:	<u>SAME</u>		
Phone:	<u>239-481-2132</u>		
Fax:			
E-mail address:	<u>ELLEN.KEARNEY@YAHOO.COM</u>		

D. Other agents:

Name(s):	<u>William McMillan</u>		
Mailing address: Street:	<u>P.O. Box 222</u>		
City:	State:	Zip Code:	
<u>FT MYERS BEACH</u>	<u>FL</u>	<u>33932</u>	
Phone:	<u>239-588-0521</u>		
Fax:			
E-mail address:	<u>Bill@TheNewsFeed.NET</u>		

Use additional sheets if necessary, and attach to this page.

1-20

PART II – Nature of Request

Requested Action (check applicable actions):

<input type="checkbox"/>	Special Exception for:
<input checked="" type="checkbox"/>	Variance for: <u>NON-CONFORMING SIGN</u>
<input type="checkbox"/>	Conventional Rezoning from _____ to: _____
<input type="checkbox"/>	Planned Development
<input type="checkbox"/>	Rezoning (or amendment) from _____ to: _____
<input type="checkbox"/>	Extension/reinstatement of Master Concept Plan
<input type="checkbox"/>	Public Hearing of DRI
<input type="checkbox"/>	No rezoning required
<input type="checkbox"/>	Rezoning from _____ to: _____
<input type="checkbox"/>	Appeal of Administrative Action
<input type="checkbox"/>	Other (explain):

PART III – Waivers

Waivers from application submittal requirements: Indicate any specific submittal items that have been waived by the Director for the request. Attach copies of the Director’s approval(s) as Exhibit 3-1.

Code Section Number	Describe Item
<u>NA</u>	<u>NA</u>

PART IV – Property Ownership

<input type="checkbox"/>	Single owner (individual or husband and wife)			
Name:				
Address:		Street:		
		City: <u>NA</u>		State: _____ Zip Code: _____
Phone:		Fax:		
E-mail Address:				

2-30

<input type="checkbox"/> Multiple owners (including corporation, partnership, trust, association, condominium, timeshare condominium, or subdivision)
Attach Disclosure Form as Exhibit 4-1
Attach list of property owners as Exhibit 4-2
Attach map showing property owners' interests as Exhibit 4-3 if multiple parcels are involved
For condominiums, timeshare condominiums, and subdivisions, see instructions.

PART V - Property Information

A. Legal Description of Subject Property

Is the property entirely made up of one or more undivided platted lots officially recorded in the Plat Books of the Public Records of Lee County?
<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes:
Subdivision name:
Plat Book Number: Page: Unit: Block: Lot:
If no: <u>NORTH AND SOUTH PARCELS EXHIBITS ATTACHED</u>
Attach a legible copy of the metes and bounds legal description, with accurate bearings and distances for every line, as Exhibit 5-1. The initial point in the description must be related to at least one established identifiable real property corner. Bearings must be referenced to a well-established and monumented line.

B. Boundary Survey

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code, as Exhibit 5-2. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. <u>EXHIBIT ATTACHED</u>

C. STRAP Number(s):

<u>31-16-24-W4-0005-0000 31-16-24-W4-0006-0010</u>

D. Property Dimensions:

Area: <u>303 x 170 x 170 x 36 x 181 x 116</u> square feet = <u>1584 x 167</u> acres
Width along roadway: <u>303</u> feet Depth: <u>170</u> feet

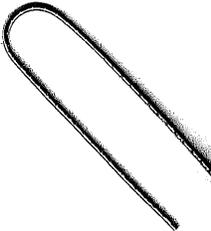
E. Property Street Address:

<u>6425 ESTERO Blvd, FT MYERS FL 33931</u>

STRAP # have been combined & changed to 31-16-24-W4-0006-0000 lot 1-3

3-20

*PER CASE) Lee County
Property Appraiser*



F. General Location of Property (from Sky Bridge or Big Carlos Pass Bridge):

<i>One North of Big Carlos Pass</i> <i>miles.</i>
Attach Area Location Map as Exhibit 5-3 <i>Attached</i>

G. Property Restrictions (check applicable):

<input checked="" type="checkbox"/> There are no deed restrictions or covenants on this property that affect this request.
<input type="checkbox"/> Restrictions and/or covenants are attached as Exhibit 5-4
<input type="checkbox"/> A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

H. Surrounding property owners:

Attach list of surrounding property owners (within 500 feet) as Exhibit 5-6
Attach two sets of mailing labels as Exhibit 5-7
Attach a map showing the surrounding property owners as Exhibit 5-8

I. Future Land Use Category: (see Comprehensive Plan Future Land Use Map)

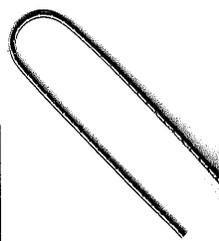
<input type="checkbox"/> Low Density	<input type="checkbox"/> Marina
<input type="checkbox"/> Mixed Residential	<input type="checkbox"/> Recreation
<input type="checkbox"/> Boulevard	<input type="checkbox"/> Wetlands
<input type="checkbox"/> Pedestrian Commercial	<input type="checkbox"/> Tidal Water
Is the property located within the "Platted Overlay" area on the Future Land Use Map? <input type="checkbox"/> Yes <input type="checkbox"/> No	

J. Zoning: (see official zoning map, as updated by subsequent actions)

<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 Dev.)
<input type="checkbox"/> CF (Community Facilities)	<input type="checkbox"/> CPD (Commercial Planned Dev.)
<input type="checkbox"/> CR (Commercial Resort)	<input type="checkbox"/> EC (Environmentally Critical)
<input type="checkbox"/> BB (Bay Beach)	

N. 15-1 5-07

4-20



F. General Location of Property (from Sky Bridge or Big Carlos Pass Bridge):

<i>ONE NORTH OF BIG CARLOS PASS</i> <i>MILES.</i>
Attach Area Location Map as Exhibit 5-3 <i>Attached</i>

G. Property Restrictions (check applicable):

<input checked="" type="checkbox"/> There are no deed restrictions or covenants on this property that affect this request.
<input type="checkbox"/> Restrictions and/or covenants are attached as Exhibit 5-4
<input type="checkbox"/> A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

H. Surrounding property owners:

Attach list of surrounding property owners (within 500 feet) as Exhibit 5-6
Attach two sets of mailing labels as Exhibit 5-7
Attach a map showing the surrounding property owners as Exhibit 5-8

I. Future Land Use Category: (see Comprehensive Plan Future Land Use Map)

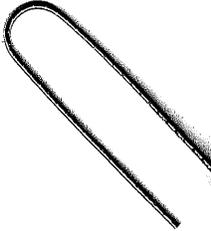
<input type="checkbox"/> Low Density	<input type="checkbox"/> Marina
<input type="checkbox"/> Mixed Residential	<input type="checkbox"/> Recreation
<input type="checkbox"/> Boulevard	<input type="checkbox"/> Wetlands
<input type="checkbox"/> Pedestrian Commercial	<input type="checkbox"/> Tidal Water
Is the property located within the "Platted Overlay" area on the Future Land Use Map? <input type="checkbox"/> Yes <input type="checkbox"/> No	

J. Zoning: (see official zoning map, as updated by subsequent actions)

<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 Dev.)
<input type="checkbox"/> CF (Community Facilities)	<input type="checkbox"/> CPD (Commercial Planned Dev.)
<input type="checkbox"/> CR (Commercial Resort)	<input type="checkbox"/> EC (Environmentally Critical)
<input type="checkbox"/> BB (Bay Beach)	

No 15-1 5-07

5-20



F. General Location of Property (from Sky Bridge or Big Carlos Pass Bridge):

ONE NORTH OF BIG CARLOS PASS MILES.

Attach Area Location Map as Exhibit 5-3 ATTACHED

G. Property Restrictions (check applicable):

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

Restrictions and/or covenants are attached as Exhibit 5-4

A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

H. Surrounding property owners:

Attach list of surrounding property owners (within 500 feet) as Exhibit 5-6

Attach two sets of mailing labels as Exhibit 5-7

Attach a map showing the surrounding property owners as Exhibit 5-8

I. Future Land Use Category: (see 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 type="checkbox"/> Pedestrian Commercial	<input type="checkbox"/> Tidal Water

Is the property located within the "Platted Overlay" area on the Future Land Use Map? Yes No

J. Zoning: (see official zoning map, as updated by subsequent actions)

<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 Dev.)
<input type="checkbox"/> CF (Community Facilities)	<input type="checkbox"/> CPD (Commercial Planned Dev.)
<input type="checkbox"/> CR (Commercial Resort)	<input type="checkbox"/> EC (Environmentally Critical)
<input type="checkbox"/> BB (Bay Beach)	

NO 15-1 5-07

11-20

PART VI – Affidavit

Application Signed by Individual Owner or Authorized Applicant

William J. McMillan 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 supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

[Signature]
Signature

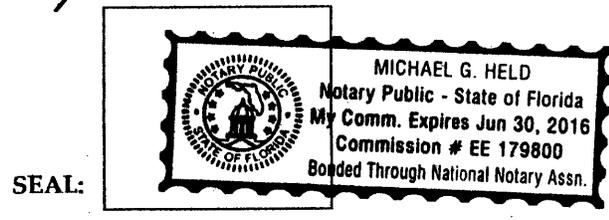
William J. McMillan
Typed or Printed Name

State of Florida
County of Collier

The foregoing instrument was sworn to (or affirmed) and subscribed before me this 07/15/2013 By William J. McMillan (date) (name of person under oath or affirmation) who is personally known to me or produced Drivers License (type of identification) as identification.

[Signature]
Signature of person administering oath

MICHAEL G. HELD
Typed or Printed Name



7-20

Case #
Planner

UAE 2012-0006

Date Received
Date of Sufficiency/Completeness

UAE 2012-0006

PART VI - Affidavit

**Application Signed by a Corporation, Limited Liability Company (LLC),
Limited Company (LC), Partnership, Limited Partnership, or Trustee**

See attached explanatory notes for instructions

I, Sophia Lupu, as OWNER
of BEAR TRAILS 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 supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

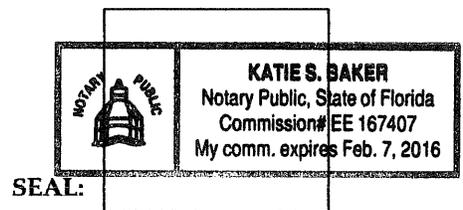
Sophia Lupu X [Signature]
 Name of Entity (corporation, LLC, partnership, etc) Signature
OWNER Sophia Lupu
 Title of Signatory Typed or Printed Name

State of FLORIDA
County of COLLIER

The foregoing instrument was sworn to (or affirmed) and subscribed
before me this October 18, 2012 by Sophia Lupu

who is personally known to me or who has produced FLDL 1100790503450
as identification. Type of identification

X [Signature] Katie S. Baker
 Signature of person administering oath Typed or Printed Name



8-20

**EXHIBIT 4-1
DISCLOSURE OF INTEREST FORM**

STRAP#

Attach additional sheets in the same format for each separate STRAP number in the application if multiple parcels with differing ownership are included.

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
<i>WA</i>	

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
<i>SORIN LUPU</i>	<i>100%</i>

9-20

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

Name and Address	Percentage
N/A	

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
N/A	

5. If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, regardless of whether a Corporation, Trustee, or Partnership is involved, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners, and their percentage of stock.

Name, Address, and Office (if applicable)	Percentage
N/A	

10-20

6. If any contingency clause or contract terms involve additional parties, list all individuals, or officers if a corporation, partnership, or trust.

Name and Address

NA

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application but prior to the date of final public hearing, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Signature

[Handwritten Signature]
Applicant
William J. McMillan
Printed or typed name of applicant *Authorized Agent*

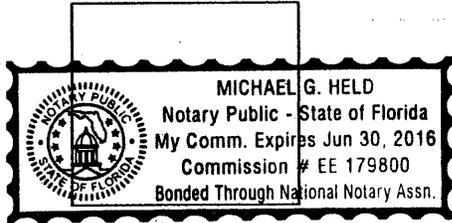
STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this 15 day of October, 2012 by William McMillan who is personally known to me or who has produced Driver's License as identification and who did (or did not) take an oath.

[Handwritten Signature]
Signature of Notary

MICHAEL G. HELD
Typed or Printed Name of Notary

SEAL:

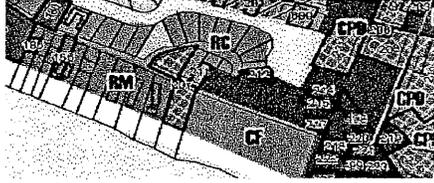


11-20

Case # 12-30
 Planner _____

Date Received _____
 Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
 Department of Community Development



Zoning Division

Supplement PH-B

**Additional Required Information for a
 Variance Application**

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:	
Project Name:	
Authorized Applicant:	
LeePA STRAP Number: <u>34-16-24-24-0045-0000</u> <u>34-16-24-24-0046-0010</u>	
Current Property Status:	
Current Zoning:	
Future Land Use Map (FLUM) Category:	
Comp Plan Density:	Platted Overlay? <input type="checkbox"/> Yes <input type="checkbox"/> No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

<u>Town of Ft Myers Beach</u>	<u>ORDINANCE # 11-01</u>
<u>amending CHAPTER 30, Signs in the Town</u>	
<u>of Ft Myers Beach Land Development Code</u>	

Complete the narrative statements below for EACH variance requested.

12-30

VAR 2012-0006

Page 2 of 6

PART I NARRATIVE STATEMENTS

Request for variance.

Page 2 of 6

Explain the specific regulation contained in this section which relief is sought.

Response: Ordinance #11-01, amending Chapter 30, Signs in The Town of Fort Myers Beach Land Development Code.

Explain why the variance is needed.

The requested variance is necessary to maintain the unique characters that are representative of a movie theater business. Without a traditional theater sign presence, the visibility of the theater and weekly movie schedules would be detrimentally affected and would cause a negative impact on the theater and surrounding businesses. A smaller sign or a relocated sign, i.e. on the building would represent traffic and safety concerns for clientele searching for the theater and it's identification.

13-20

2 of 6

VAC 2017-0006

Page 3 of 6

Explain the possible effect the variance, if granted, would have on surrounding properties.

There are NO negative or damaging impacts on surrounding properties. In fact, just the opposite is the case. A unique one-of-a-kind movie theater benefits and enhances the community and serves to compliment the other businesses in the neighborhood and the Island.

There are NO line-of-sight issues as the present sign is located in the middle of the property, with approximately 150' north and south visibility which adjoins two parallel streets.

The existing building and sign provide a homogeneous blend to the community and enhance the existing business environment.

Page 3 of 6

Explain the hardship (what is unique about the property) that justifies relief from the regulation.

The existing signance is characteristic yet small and quite simply provides a service for a traditional movie theater. A smaller or more distant sign would exacerbate traffic and safety issues as clientele would have a more difficult time locating the movie theater.

1/17/20

3 of 6

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision making in LDC Section 34-87.

1. Exceptional or extraordinary conditions and/or circumstances where rigid compliance is not necessary to protect public policy.

Answer: Rigid compliance is NOT necessary to protect public policy. The Fort Myers Beach Theater is a unique one-of-a-kind theater experience. The existing sign has no line-of-sight issues as it is located in the middle of the property with 150' distance north and south abutting adjoining parallel streets and does not obstruct any property views. Diminishing the size of the sign would have an injurious impact on the theater and surrounding businesses.

2. Exceptional or extraordinary conditions—result of applicants actions after adoption of the ordinance.

Answer: The applicant did not cause any exceptional or extraordinary circumstances subsequent to the adoption of the ordinance.

3. Is requested variance the minimum variance to relieve applicant from unreasonable burden.

Answer: The requested variance, specifically to retain the existing sign, represents the minimum variance without an unreasonable burden on the applicant. HOWEVER, if the exemption for display of street address is not allowed, the sign variance requested lower the requested variance by one foot in height.

4. Would granting the variance be injurious to the neighborhood or detrimental to public safety.

Answer: The requested variance would have no negative or injurious impact on the neighborhood and public safety would be optimal as clientele will continue to have visibility of the theater identification and show times. All of the property owners/businesses are supportive of our request. Many have expressed concern that without a variance it could affect negatively on their business as the neighboring businesses work together to complement each other.

15-20

4 of 6

VAR 2012-0016

4 of 6 continued

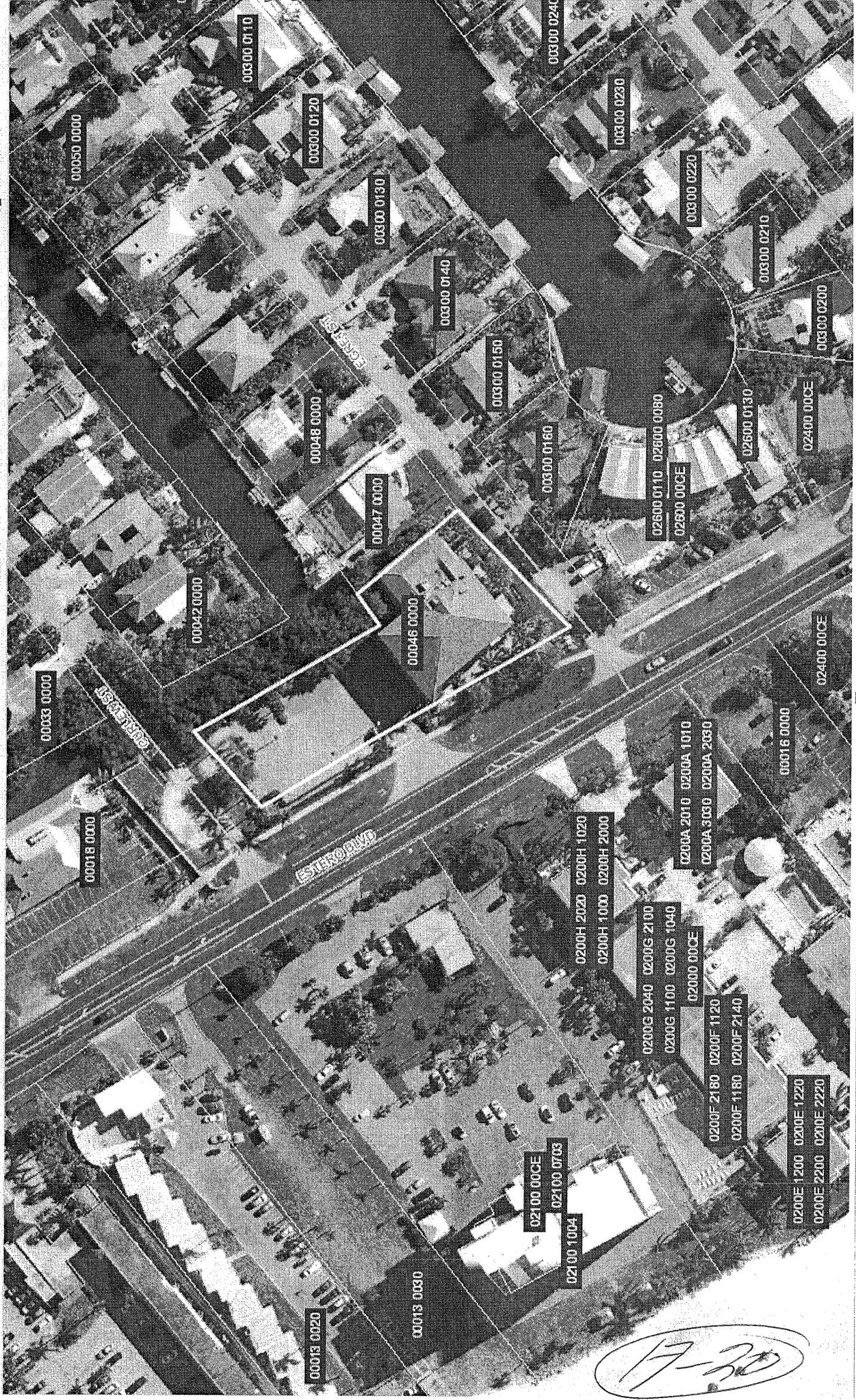
5. Are conditions or circumstances so general or recurrent to make it more reasonable to amend the regulation.

Answer: The previous ordinance recognized the unique characteristics a movie theater brings to the community. The previous ordinance had a separate section titled Movie Theater Signage. When the ordinance was presented to the council for adoption and went through public hearings with the revised additions and deletions (strike-outs) the section on Movie Theater signage was inadvertently omitted. Otherwise the section on Movie Theater signage would have been included with the appropriate changes, additions and/or deletions.

14-30

4056 cont.

MAP 2012-1006

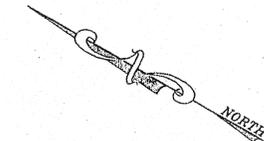


17-20

Site Address	Last Trans. Date	Last Trans. Amt	Just Value	Taxable Value
MYERS BEACH PROPERTIES 6425 ESTERO BLVD, FORT MYERS BEACH	5-2011	\$1,400,000	\$1,339,739	\$1,339,739

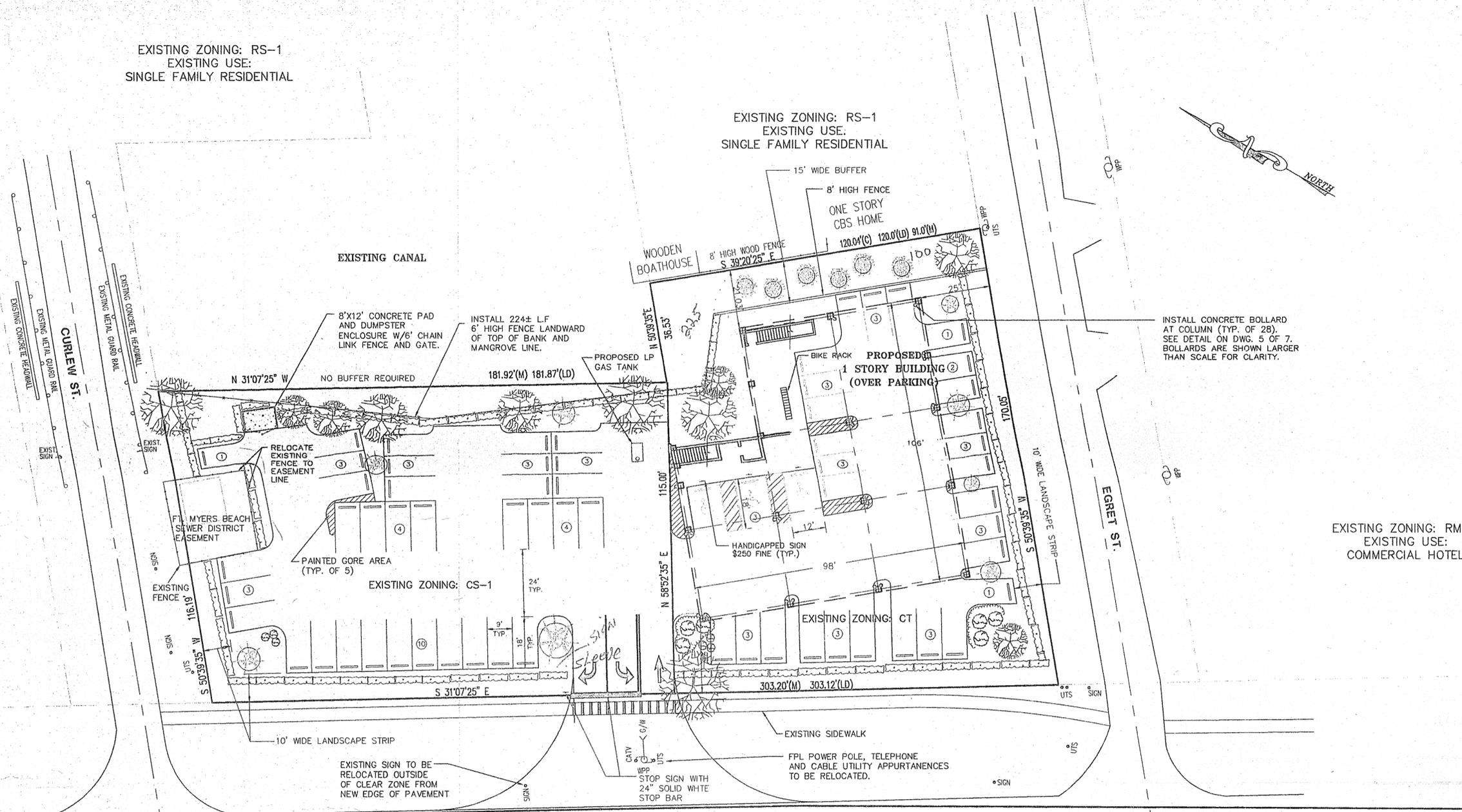
EXISTING ZONING: RS-1
EXISTING USE:
SINGLE FAMILY RESIDENTIAL

EXISTING ZONING: RS-1
EXISTING USE:
SINGLE FAMILY RESIDENTIAL



EXISTING ZONING: C-1A
EXISTING USE:
COMMERCIAL RESTAURANT

EXISTING ZONING: RM-2
EXISTING USE:
COMMERCIAL HOTEL



ESTERO BOULEVARD COUNTY ROAD 865 (100' R/W)

REFER TO DRAWING 7 ESTERO BOULEVARD IMPROVEMENTS PLAN FOR TURN LANE DETAILS

EXISTING ZONING: RM-2
EXISTING USE:
MULTIPLE FAMILY

7/20/99

LEGEND

- GENERAL TREE
- INTERIOR TREE
- SHRUBS
- BUFFER TREE

OWNER/DEVELOPER

MR. BUD HOFFMAN
OLDE DUTCH BUILDERS, INC.
SUITE 112
2500 TAMAMI TRAIL NORTH
NAPLES, FLORIDA 34103

Revision	Date	Description	By
5	4/99	CONSTRUCTION REVIEW	CDS
4	1/99	PARKING REVISIONS	CDS
3	10/98	PER SPECIAL MASTER	CDS
2	10/97	PER SFVMD COMMENTS	CDS
1	6/97	PER LEE COUNTY COMMENTS	CDS

PRINTED

JUL 20 1999

Q. GRADY MINOR & ASSOCIATES, P.A.
CIVIL ENGINEERS - LAND SURVEYORS

DESIGNED BY: CDS

DRAWN BY: GS

APPROVED: CDS

JOB CODE: HOFF

SCALE: 1" = 20'

Q. GRADY MINOR AND ASSOCIATES, P.A.

CIVIL ENGINEERS □ LAND SURVEYORS □ PLANNERS
3800 VIA DEL REY
BONITA SPRINGS, FLORIDA 34134
PHONE : (941) 947-1144 FAX : (941) 947-0376

FORT MYERS BEACH MOVIE THEATER

SITE AND LANDSCAPING PLAN

DATE: MARCH 1997	FILE NAME: HOFFSIT2	DRAWING NUMBER 3 of 7
---------------------	------------------------	-----------------------

6425

BEACH THEATER

GREAT MOVIES	GREAT	FOOD
ARGO	6 9	R
ARBITRAGE	6 9	R
TAKEN 2	6 9	PG-13
LOOPER	6 9	R

SPEED
LIMIT
35

6425

BEACH THEATER

GREAT	MOVIES	GREAT	FOOD	
ARGO		6	9	R
ARBITRAGE		6	9	R
TAKEN 2		6	9	PG-13
LOOPER		6	9	R

SPEED
LIMIT
35

6425

BEACH THEATER

GREAT MOVIES GREAT FOOD

ARGO		6	9	R
ARBITRAGE		6	9	R
TAKEN 2		6	9	PG-13
LOOPER		6	9	R