

1. Requested Motion:

Meeting Date: February 4, 2013

Motion to APPROVE/DENY the request for a variance (VAR2012-0006) 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 to permit an existing monument sign, located at the Beach Theater, with a backlit changeable message panel, thirty-seven (37) square feet of sign face area, and 7'10" in overall sign height.

Why the action is necessary:

Section 34-87 of the LDC provides that the Town Council shall hear and decide all requests for variances from the terms of the regulations or restrictions in the LDC.

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:

Case: VAR2012-0006 Beach Theater sign variance

Applicant William McMullan, authorized agent for the subject property owner, Fort Myers Beach Properties, LLC, is requesting a variance from sections 30-153(b)(1), 30-154(c) and 30-154(a) of Chapter 30 of the Land Development Code.

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 on site measures approximately 7'10" tall and approximately 37 square feet of sign face area.

The applicant wishes to keep the existing sign on the subject property as is – with no alterations or changes. The variance request therefore includes three sections: Section 30-153(b)(1) (total allowable sign area) to allow 37 square feet of sign area setback, Section 30-154(c) (standards for monument signs) to allow an 7'10" overall sign height, and Section 30-154(a) (internal illumination standards) to allow the existing backlit changeable message panel.

The LPA held a public hearing for the request at their January 8, 2013 meeting. Staff presented its case along with a recommendation of denial and the applicant presented its case for approval. LPA had a question and answer period, discussed 'minimum variance necessary' and any potential conditions for approval. Ultimately, the LPA voted 6-1 (LPA Chair Zuba was the dissenting vote) to recommend approval, adding one condition.

Attachments:

- Draft Town Council resolution, 13-03
- LPA resolution 2013-001
- DRAFT LPA minutes from the January 8, 2013 meeting
- LPA packet including staff report from the January 8, 2013 meeting

6. Alternative Action:

Approve the variance requests, with the condition recommended by the LPA (see LPA resolution 2013-001)

7. Management Recommendations:

Deny the variance requests as recommended by Staff

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
				<i>WAG</i>		

9. Council Action:

Approved Denied Deferred Other

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 13-03
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 number 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.

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on February 4, 2013, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2013-001, 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 34-87.

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 2013-001 and the standards for granting variances, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council APPROVES/DENIES 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 to permit an existing monument sign with a backlit changeable message panel, thirty-seven (37) square feet of sign face area, and 7'10" in overall sign height.

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

Bob Raymond, Mayor	AYE/NAY	Alan Mandel, Vice Mayor	AYE/NAY
Jo List	AYE/NAY	Joe Kosinski	AYE/NAY
Dan Andre	AYE/NAY		

DULY PASSED AND ADOPTED THIS **4th** day of **FEBRUARY, 2013**.

By: _____
Bob Raymond, 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 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 number 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** 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 subject to the following condition:

RECOMMENDED CONDITIONS OF APPROVAL:

1. *If the property ceases to be used as a movie theater, then this variance will expire.*

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

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

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

Local Planning Agency of the Town of Fort Myers Beach

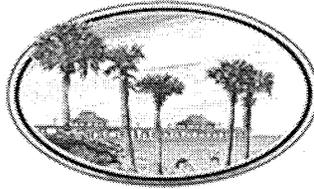
By: [Signature]
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: [Signature]
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk



FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
January 8, 2013

I. CALL TO ORDER

Meeting was called to order at 9:00 a.m. by Chair Zuba; other members present:

Al Durrett
John Kakatsch
Jane Plummer
Joanne Shamp
Alan Smith
James H. Steele
Hank Zuba

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

II. PLEDGE OF ALLEGIANCE – Harry Gottlieb

III. INVOCATION

IV. MINUTES

A. Minutes of December 11, 2012

Postponed until next meeting.

V. PUBLIC HEARINGS

A. VAR2012-0006 Beach Theater Sign Variance

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman presented comments for VAR2012-0006 Beach Theater Sign Variance on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the site and noted the location of the subject property was at 6425 Estero Boulevard. She pointed out that the request was for:

- A variance from Section 30-153(b)(1) requiring for a parcel of land containing one or two business establishments each separate business establishment shall be allowed a maximum of 32 square feet of sign area to allow 37 square feet of sign area.
- A variance from Section 30-154(c), which limits the height of a monument sign to be elevated no more than 18" above grade and 5' overall to allow an overall height of 7'10"
- A variance from Section 30-154(a) "...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 ...".

She stated the applicant was requesting to keep the existing sign 'as is' and she displayed photographs and a drawing of the existing sign and conditions. She discussed the supporting regulations, Section 34-87 and how they pertained to the variance request:

- Gives Town Council the authority to hear and decide all requests for variances from the terms and restrictions of the LDC.
- Council must consider: whether the facts support the five required 'findings'; staff report and LPA recommendation; testimony from applicant; and testimony from public.
- Section 34-87(3) – before granting any variance, the Town Council must find that all of the following exist:
 - Section 34-87(3)(a) - *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

She continued her presentation and noted:

- Staff research indicated that in Ordinance 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 findings 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.

- Section 34-87(3)(b) – *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.*
- The subject property was initially permitted in 1997, prior to the adoption of the Town’s original sign ordinance and Ordinance 11-01.
- Staff recommends that the conditions justifying the variance are not re result of the applicant taken after the adoption of the regulations in question.
 - Section 34-87(3)(c) – *That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.*
- The applicant has provided 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, nor does the applicant discuss justifications for needing relief from 30-154(a) or 30-153(b)(1). The applicant is requesting to keep the existing sign ‘as is’ without any modifications.
- Staff recommends that the variance request is not the minimum variance necessary to relieve an undue burden.
 - Section 34-87(3)(d) – *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*
- The 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 two 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.
 - Section 34-87(3)(e) – *That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general a nature as to make it more reasonable and practical to amend the regulation in question.*
- 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 Ordinance 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.

She concluded her presentation stating that staff recommended **denial** of all three of the requested variances because the property does not meet the requirements for granting a variance under LDC Section 34-87.

Mr. Steele questioned the difference between the sign at Diamond Head versus the Theater as it pertained to illuminated signage in the Code.

Community Development Director Fluegel noted the letters on the Diamond Head sign were illuminated and the Theater sign letters were not illuminated. He added that the Theater could have an illuminated sign if it met the illumination, height, and square footage requirements.

Zoning Coordinator Chapman explained that illuminated signs were permitted by the Town Code; however, properties must meet the commercial design standards and the only things that could be illuminated are the commercial message, the letters and/or symbols, and/or the address numbers.

Mr. Steele asked if staff had confirmed the drawing of the sign submitted by the applicant was identified as approximately 35 square feet.

Zoning Coordinator Chapman responded in the affirmative, and noted it was approximately 35-37 square feet.

Mr. Steele stated he measured the sign and it appeared to be 36 square feet.

Discussion was held concerning the deviation as it pertained to the square footage; that the majority of sign variances requested have been for height and not sign face; non-conforming signs that currently existed on Fort Myers Beach; sign height dimensions in the Code; and the code-required vegetation buffer at the current Theater sign.

LPA Attorney Miller explained Council's action regarding sign regulations as it pertained to lowering sign heights and amortizing all existing non-conforming signs. She discussed how due to the uniqueness of some properties the regulations might not be workable (i.e. Pierside).

Ms. Shamp questioned the dimensions of the current sign if the arch at the top was removed and the address numbers were relocated on the sign.

Ms. Steele stated it would reduce the height by 1'4".

Discussion ensued regarding the subject signage overall height; the code-required vegetation buffer for the sign; the 'institutional' classification of the church which meets on Sundays at the subject site; one commercial business use located at the subject property; dates related to the adoption of the sign ordinance(s) and signage compliance; consideration of the potential uniqueness of the subject property due to the use as a movie theater; and the findings of the Special Magistrate regarding the subject property and the instruction given to the applicant to file for a variance.

Zoning Coordinator Chapman recapped the status of the remaining non-conforming signs in the Town.

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

Bill McMullan, representing the applicant – Fort Myers Beach Properties, LLC Beach Theater, noted the footprint of the building began in 1997 and the building was completed in 1999. He reviewed the historical background of the subject building; and noted that at the time of construction the agreement was that they would have a low-profile sign and that there would be no other advertising on the sign. He displayed an aerial photograph of the subject property and pointed out that it was bordered on two sides by two streets with no other properties contiguous to them except for in the back of the property. He stated he would address Items #1, 3, 4, and 5 using the pictures displayed on the projection screen; and discussed the uniqueness of the subject property and signage as a movie theater, landscaping issues as it pertained to line-of-sight and signage, and sign dimensions as required by the Code, and the dimensions of the proposed sign variance. He explained the applicant would like to work with the Town staff to come up with a solution.

Mr. Durrett discussed his belief that the current sign seemed acceptable and suggested some of the bushes could be trimmed back. He noted the problem with reading the bottom three movies listed on the current sign when travelling from the north.

Mr. McMullan reported that the theater's business neighbors had told him they would be glad to appear at the hearing to testify in support of the theater. He explained that 'back-lit' illumination was really difficult for them to accomplish since they had to continually change copy on the sign each week.

Mr. Durrett recounted his experience with 'back-lit' signage.

Mr. McMullan noted that in the 13 years of operation that they were never cited for too much illumination with their signage as it pertained to turtle season requirements.

Mr. Nick Campo, applicant, clarified some of the historical background of the subject property. He claimed that the current sign had gone through a complete variance process at the time it was installed in 1999. He reported he has maintained the landscaping for 12 years as originally requested. He asked that he be allowed to keep the sign 'as is'.

Mr. Kakatsch suggested the LPA strongly recommend that the shrubbery be cut down on the north side.

Mr. Smith discussed his belief that making the subject sign any smaller could create a safety issue with traffic; and that there would most likely be a problem with 'back-lit' letters since the letters were changed every week.

Ms. Plummer noted that she would also be in favor of reducing the height of the hedge in front of the sign to the level of the base. She suggested that if the subject property was to be used for a purpose other than a theater then they would have to come into compliance.

Discussion ensued regarding the vegetative buffer.

LPA Attorney Miller noted there was no request in this variance application for a change to the buffer requirements.

Ms. Shamp pointed out the need to have valid justification for a recommendation to grant the variance. She asked if there was a signage system that would comply with what was required by Code and allow the face type to be changed weekly.

Mr. Campo stated he was unsure if there was, but he could research the matter.

Mr. McMullan reported the only thing they had seen were electronic sign which were against the Code.

Ms. Shamp discussed the landscaping, size of face type for safety purposes, and the possibility of recognizing the uniqueness of a movie theater as compared to other businesses as it pertained to changing copy.

Mr. Steele indicated a suggestion to the applicant on the projection screen – comments were inaudible. He stated he would support the variance request.

Chair Zuba questioned the timeline of the sign variance and the re-opening of the theater.

Mr. Campo explained that at the time they were re-opening the theater that someone from the Town did come in to inform him the sign was not in compliance; however, at that time he had so many other things on his mind with the re-opening that he did forget about the notice.

Discussion was held as to why movie theaters were removed from the Ordinance 11-01.

LPA Attorney Miller pointed out that staff has looked at resolutions, one from 1998 and 1999, dealing with the theater and neither of which indicated any type of a sign variance. She explained that if the theater had a variance granted for this type of dimensional aspect that it would arguably still be in effect. She discussed similarities between the subject variance and the Dolphin Inn sign variance as it pertained to the right-of-way setback which might justify some type of a height variation; and the possibility of using changing face type with an external light illuminating the sign.

Mr. Campo stated he would obtain a copy of the resolution he referred to regarding the variance he had already been granted.

Discussion continued regarding the sign height, buffer vegetation, and sign visibility from the road.

Ms. Plummer suggested sending the variance request back to staff, ask them to include the reduction in the shrubbery, and then have the request come back before the LPA.

LPA Attorney Miller suggested exploring the lighting issue and for Mr. Campo to submit the variance from 1999.

Public Comment opened.

Phillip Fleming, President of the Privateer Condominium, noted the condominium was located across the street from the movie theater. He stated that he was a resident there since 1992 when the subject site was a vacant lot. He reported that the condominium, as neighbors, was extremely pleased with how the theater turned out and they had no objection to the signage. He mentioned his business experience and advertising experience as it related to signage, and pointed out that a white sign with black lettering was the best for promotion and visibility. He discussed the size of sign lettering and address numbers as it related to vehicle speed and visibility, and safety issues.

Public Comment closed.

Discussion was held regarding Ms. Plummer's suggestion concerning if the subject property use as a theater was to change that it would have to come into compliance; and continuance of the variance request.

Zoning Coordinator Chapman explained that if the applicant wanted to request a continuance and include additional variance requests then the additional variances would have to be advertised.

Discussion was held concerning additional costs that would be incurred with amending the application and re-advertising the variance.

Community Development Director Fluegel explained how staff had to review a request according to the strictest interpretation of the Code, and any precedence set by Council. He discussed how there could be precedence for the height according to the rationale for the variance granted to the Dolphin Inn; and square footage could consider the uniqueness of a movie theater since there was four theaters within one theater; however, the Town's Code did not address movie theaters. He explained how the most problematic aspect was the lighting. He mentioned the landscaping could be handled as a separate request and the applicant could come back at any time. He reviewed the staff's urgency to get the signs in the Town into compliance; and reported that during the past year they started with 120 signs and now were down to about 5 signs that were not in compliance.

Discussion ensued regarding the vegetative buffer and issues not included in the current sign ordinance (i.e. signage on waterways).

Mr. Durrett stated he would like to make a motion that the LPA approve the variance.

LPA Attorney Miller pointed out that when sign variances have gone to Council in the past, they were looking to see that every potential alternative had been explored before they consider granting the variance. She noted her concern about the lighting, and if every reasonable alternative had been explored regarding the sign lighting.

Discussion ensued regarding the rationale for the sign face area; internal illumination; the continual changing face type; lettering size for safety reasons; and the precedent for the height requirement.

MOTION: Mr. Durrett moved that the LPA recommends that the Town Council approve 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 and include the Recommended Findings and Conclusions:

A. There **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is** for a de minimis variance 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.

And the approval subject to the condition that if the use as a theater then the variance expires; second by Mr. Smith.

Ms. Shamp asked if the justification should be noted.

LPA Attorney Miller responded in the affirmative. She indicated she understood the LPA's basis for recommending approval of the height was the setback issue similar to the Dolphin Inn; and the square footage was based upon the fact that there were four separate theaters each with different movies and it was impractical to fit all of it into 32 square feet.

Ms. Shamp explained the lighting was due to the uniqueness, changing of the type and an alternate system may not be financially feasible or preferable according in terms of turtle season regulations.

Zoning Coordinator Chapman suggested the LPA may want to consider an attachment to the resolution that was specific to the height and square footage since the applicant was seeking to keep the sign 'as is'.

LPA Attorney Miller pointed out the variance request was for 7'10".

VOTE: Motion approved; 6-1; Chair Zuba dissenting.

Chair Zuba closed the Public Hearing at 10:25 a.m.

Historic Preservation Board – no report.

VI. LPA MEMBER ITEMS AND REPORTS

Town of Fort Myers Beach – Local Planning Agency

January 8, 2013

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Mr. Steele – explained that after the last meeting, as it pertained to the two 4COP permits, he asked if staff could prepare a list of establishments that have liquor permits that would include information such as the type of permit, hours of operation, whether there was music, and any restrictions associated with the permit. He suggested a map also be included so they could see where the establishments were located.

Community Development Director Fluegel reported staff was currently working on the entertainment ordinance which would have a report similar to the COP in the EC, and there would be a map that would indicate all the establishments with COP and there would be some breakdown of the classifications (i.e. hours of operation, etc.). He stated he had target April to have a draft report of the work.

Ms. Shamp asked for a synopsis of what happened with the Lani Kai magistrate hearing.

LPA Attorney Miller reported the Lani Kai attorney challenged the constitutionality of the ordinance and the magistrate explained he did not challenge the constitutionality of town ordinances. She reviewed highlights of the magistrate hearing; reported the case was continued until next month, and that magistrate did find the two signs on the bay side were in violation. She added that Helmerich was found in violation and ordered to remove it by the end of February.

Ms. Plummer – no items or report.

Mr. Smith – no items or report.

Mr. Kakatsch – reported he attended the Town Council Meeting yesterday and that he was appointed to the Town's Public Safety Committee. Mr. Kakatsch noted the Town honored the *Privateer Lynx* tall ship at the Council Meeting. He described his visit to the tall ship and mentioned that he met the Chair of the Board who informed him that he was seeking to relocate the ship's home port from Newport Beach, California. He added that the Chair of the Board was interested in obtaining the support of the Town Council and the LPA to be able to dock the ship where it was presently located or at the north end of the beach where there was a pier with a 10' depth. He explained the Chair of the Board was looking for an answer rather quickly before the ship left on January 23rd. Mr. Kakatsch also discussed his belief that the LPA was being by-passed on many important issues that came before Council; and reviewed the action by Council concerning the study for the Coastal Management Plan, and vegetation on the beach. He expressed his frustration and his belief that the LPA should be more involved with more Town items.

Community Development Director Fluegel pointed out that there was a Joint Meeting of the Town Council and the LPA tomorrow. He mentioned that the LPA's scope of work was listed in the Land Development Code. He reviewed the LPA's role in upcoming the Comprehensive Plan update.

Mr. Durrett – no items or report.

Ms. Plummer concurred with Mr. Kakatsch's comments and noted her concern with the Palermo house and how it was approved.

Town of Fort Myers Beach – Local Planning Agency

January 8, 2013

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Community Development Director Fluegel reviewed how the house was under a single roof line and there was no variance required.

Discussion was held concerning permitted single-family homes, and potential conversions in the future,

Chair Zuba – reported he did some work on the concept of a sub-committee for the code enforcement issue of ‘rehab’.

LPA Attorney Miller stated she did not see any reason why the LPA could not establish a sub-committee. She pointed out the sub-committee would be subject to the Sunshine Law (i.e. notice of the meeting, minutes, etc.).

Ms. Shamp pointed out that the LPA had sub-committees in the past such as working on right-of-way issues. She expressed her agreement with Mr. Kakatsch that the LPA was underutilized as a ‘think-tank’ to support both staff and Council.

Chair Zuba suggested they discuss the matter with the Council at the Joint Meeting tomorrow. He mentioned he prepared a memo to the Council regarding Seafarer’s.

Ms. Steele asked if there was a Council Liaison for the LPA.

Discussion ensued and LPA Attorney Miller noted that ultimately the issues heard by the LPA came before the Town Council.

LPA ATTORNEY ITEMS

LPA Attorney Miller – no items or report.

VII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Community Development Director Fluegel – suggested that when the LPA discussed what work they wanted to perform that they keep in mind the LPA’s role. He noted after reading Chair Zuba’s memo on the sub-committee that the work described appeared to be more of a land development regulation task force. He addressed Chair Zuba’s comments on Seafarer’s and explained how the land use consultant would look at the situation, provide some technical expertise, and then at some point the process would pick-up on the LPA.

Discussion continued regarding the LPA’s involvement in other Town matters.

VIII. LPA ACTION ITEM LIST REVIEW

Ms. Shamp questioned if Moss Marine was intended to be on a continued LPA hearing.

Town of Fort Myers Beach – Local Planning Agency

January 8, 2013

Page 10 of 11

Zoning Coordinator Chapman reported that the LPA continued Moss Marine to the February meeting; and the variance case from today would move forward to Council.

Mr. Kakatsch questioned activity on Main Street just off the Island and how was the Town Council and the LPA viewing it as affecting Fort Myers Beach. He stated he would like to see that topic added onto tomorrow's Joint Meeting agenda.

Ms. Shamp questioned Section 34-121, Functions, Powers, Duties and Zoning Matters (#3), and if it pertained to the LPA's discussion today concerning the landscaping.

LPA Attorney Miller responded in the negative; and explained that allowing the applicant to not comply with the buffering was a separate variance.

IX. ITEMS FOR NEXT MONTH'S AGENDA

X. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XI. ADJOURNMENT

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

VOTE: Motion approved, 7-0.

Meeting adjourned at 11:00 a.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: 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

LEGAL DESCRIPTION

EXHIBIT A

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:

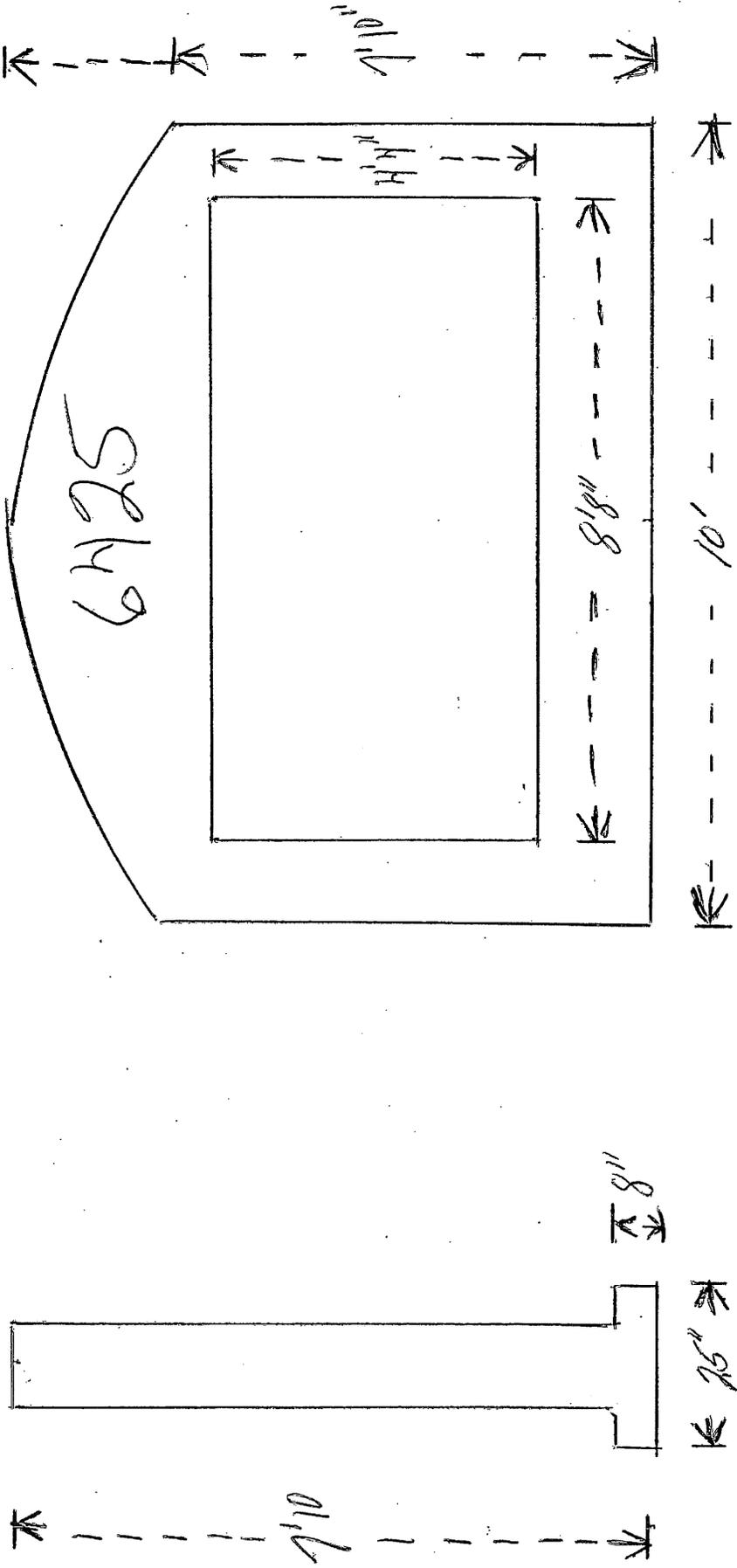
BEGINNING AT A POINT ON THE NORTHEASTERLY SIDE OF COUNTY ROAD RIGHT-OF-WAY CONVEYED BY DEED RECORDED IN DEED BOOK 193, PAGE 583, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, WHICH POINT IS 1,290 FEET SOUTHEASTERLY, AS MEASURED AT RIGHT ANGLES FROM THE SOUTHEASTERLY LINE OF BLOCK I, UNIT NO. 2, McPHIE PARK 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

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

Case # ML 2012-0001
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

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>33931</u>	
Phone:	<u>239 481-2132</u>		
Fax:			
E-mail address:	<u>INFO@FMATHCENTER.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>239-558-0321</u>		
Fax:			
E-mail address:	<u>bill@thompsonad.net</u>		

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

1-AD

Case # 1412 2018-0006
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

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>	

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?

Yes No

If yes:

Subdivision name: _____

Plat Book Number: _____ Page: _____ Unit: _____ Block: _____ Lot: _____

If no: NORTH & SOUTH PARCELS EXHIBITS ATTACHED

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. EXHIBIT ATTACHED

C. STRAP Number(s):

31-46-24-W4-0005-0000, 31-46-24-W4-0006-0010

D Property Dimensions:

Area: 303 x 170 x 120 x 306 x 181 x 116 square feet, 1.158 ± = 467 acres

Width along roadway: 303 feet Depth: 170 feet

E. Property Street Address:

6425 ESTERD Blvd, FT Myers, FL 33931

Handwritten notes:

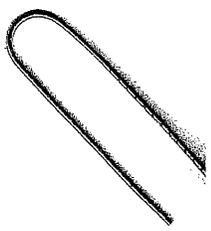
STRAP # have been combined & changed to 31-46-24-W4-0006-0000 lot 1-3

3-20

Per Call Lee County Property Appraiser

Case # VAR 2012-0006
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____



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)

Low Density Marina
 Mixed Residential Recreation
 Boulevard Wetlands
 Pedestrian Commercial 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)

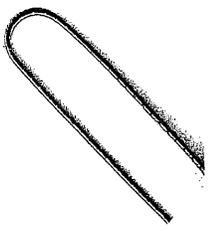
RS (Residential Single-family) CM (Commercial Marina)
 RC (Residential Conservation) CO (Commercial Office)
 RM (Residential Multifamily) CB (Commercial Boulevard)
 VILLAGE SANTINI
 SANTOS DOWNTOWN
 IN (Institutional) RPD (Residential Planned Dev.)
 CF (Community Facilities) CPD (Commercial Planned Dev.)
 CR (Commercial Resort) EC (Environmentally Critical)
 BB (Bay Beach)

N. 15-1 5-07

4-20

Case # 17ACR012-0006
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____



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)

- Low Density Marina
- Mixed Residential Recreation
- Boulevard Wetlands
- Pedestrian Commercial Tidal Water

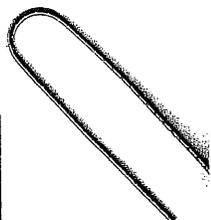
Is the property located within the "Platted Overlay" area on the Future Land Use Map? Yes No

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

- RS (Residential Single-family) CM (Commercial Marina)
- RC (Residential Conservation) CO (Commercial Office)
- RM (Residential Multifamily) CB (Commercial Boulevard)
- VILLAGE SANTINI
- SANTOS DOWNTOWN
- IN (Institutional) RPD (Residential Planned Dev.)
- CF (Community Facilities) CPD (Commercial Planned Dev.)
- CR (Commercial Resort) EC (Environmentally Critical)
- BB (Bay Beach)

N. 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.
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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) | |

N. 25-1 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

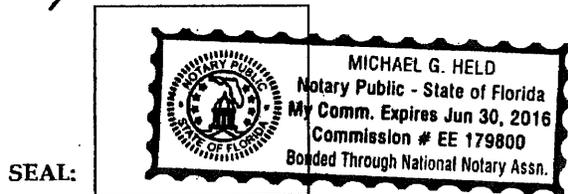
William J. McMillan
Typed or Printed Name

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 Driver License (type of identification) as identification.

[Signature]
Signature of person administering oath

MICHAEL G. HELD
Typed or Printed Name



7-20

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, Soren Lupu, as OWNER
of 1500 S. ... 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.

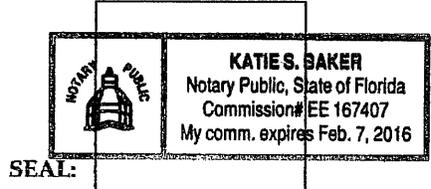
Soren Lupu X [Signature]
 Name of Entity (corporation, LLC, partnership, etc) Signature
Owner Soren Lupu
 Title of Signatory Typed or Printed Name

State of FLORIDA
County of COLLIER

The foregoing instrument was sworn to (or affirmed) and subscribed
before me this October 18, 2012 by Soren Lupu
Date Name of person under oath or affirmation

who is personally known to me or who has produced FLDL 1100790503450
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>NA</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

Case # 17ACR12-0006
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

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
NA	

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
NA	

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
NA	

10-20

11-20-10
Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

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

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 _____

Applicant

Printed or typed name of applicant

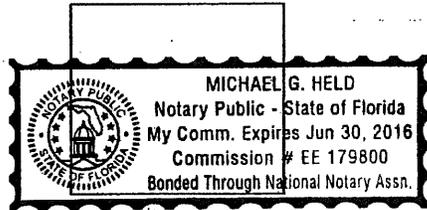
STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this 15 day of October, 2010, by William J. McMillan who is personally known to me or who has produced Drivers License as identification and who did (or did not) take an oath.

Signature of Notary

MICHAEL G. HELD
Typed or Printed Name of Notary

SEAL:

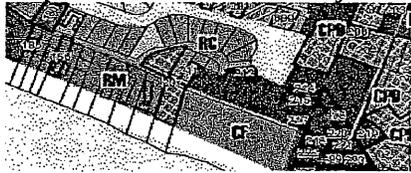


11-20

Case # 17-20
 Planner [Signature]

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>34-76-24-24-00045-0000</u> <u>34-76-24-24-00046-0000</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 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.

17-20

VAC 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

VAK 2012-0006

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.

14-20

3 of 6

UPAC 01/13/0006

Page 4 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

14-20-2016

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.

14-20

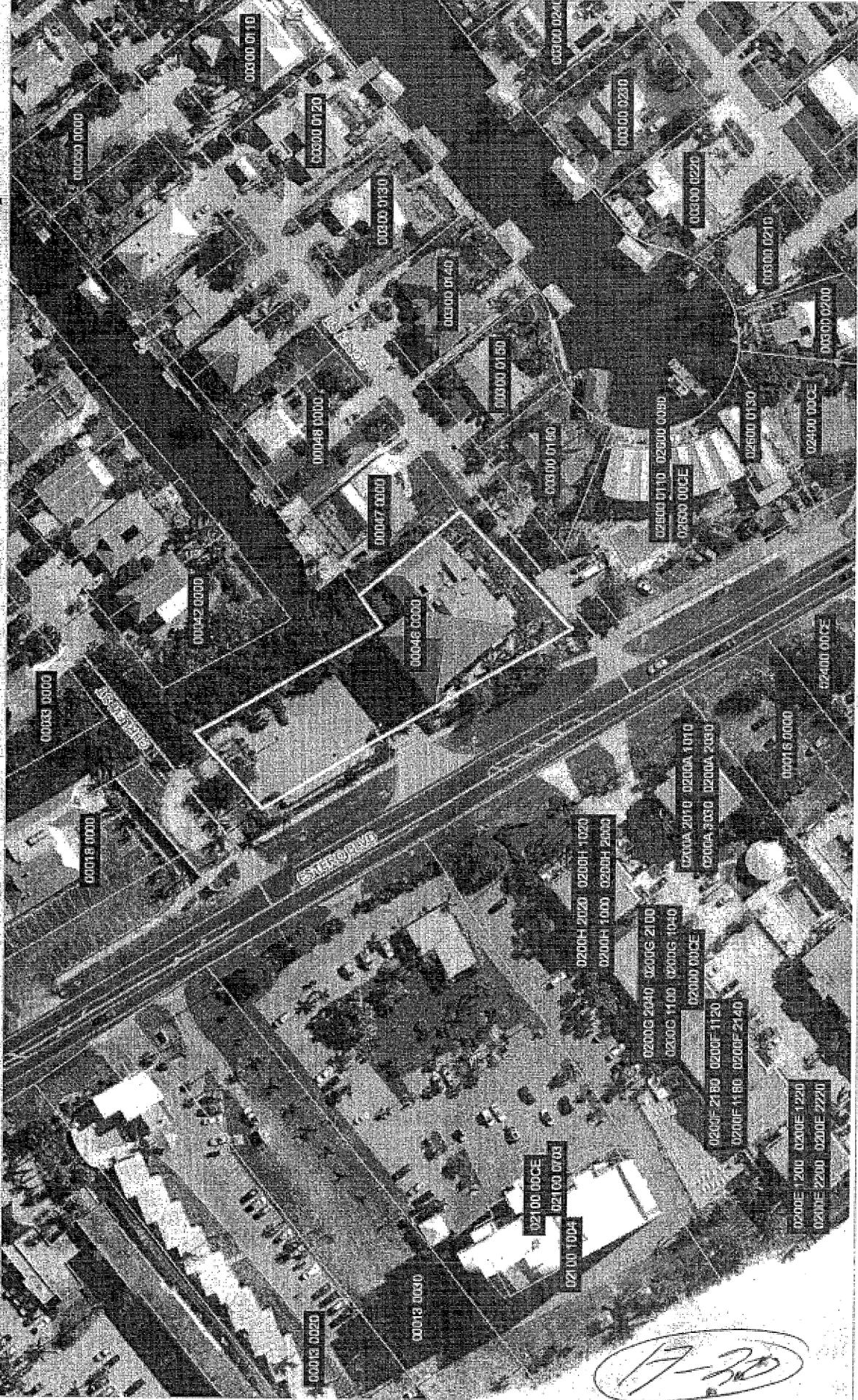
4 of 6 cont.

MAP 2012-1006

Lee County Property Line | LCPA Geo View | Free File Converter | Email Marketing Software | Marco Classifieds - Co...

pa.org/geoview/geoview.aspx?folioid=10231052

Marco Eagle Local | Collier County: Lib... | Marco Island Sun Tl...



Parcel Name	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

17-20



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

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

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