

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: 2013-076

1. Requested Motion:

Meeting Date: Aug. 19, 2013

Motion to **APPROVE/DENY** the applicant's request for a variance from Section 30-154(b) of the LDC to allow a right-of way setback of 1.7' as depicted on *Exhibit H*;

Motion to **APPROVE/DENY** the applicant's request for a variance from Section 30-154(c) of the LDC to allow a sign height of 9' as measured from adjacent grade or crown of road whichever is higher subject to the condition proposed by LPA and contained in the draft Resolution 13-14.

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: VAR2013-0001 Lani Kai Sign Variance

Robert Burandt, authorized agent for the Lani Kai, LP, is requesting a variance from Section 30-154(b) of the LDC to allow a right-of way setback of 1.7' as depicted on *Exhibit H*; and a variance from Section 30-154(c) of the LDC to allow a sign height of 9' as measured from adjacent grade or crown of road whichever is higher for the sign located on the subject property at 1400 Estero Boulevard.

The LPA held a public hearing on the request at their June 11, 2013 meeting. Staff presented its case along with a recommendation for approval of the setback request and a denial for the applicant's height request; both Option 1, which was request for a total height of 9'7", and Option 2, which was a request for total height of 8'6". Staff offered an alternative height allowance of 7' or 7'6" as the minimum variance necessary. LPA had a question and answer period with the applicant, heard public comment, and asked questions of Staff. Ultimately, the LPA voted 4-2 (Member Plummer had an excused absence) to recommend approval of the setback variance as requested, and recommended approval of a height of 9' subject to one (1) condition which required providing landscaping and shrubs around the base of the sign.

Attachments:

- Tab A - Draft Council Resolution 13-14
- Tab B - LPA Resolution 2013-005
- Tab C - Draft LPA minutes from the June 11, 2013 (anticipated adoption at the August 13 LPA meeting)
- Tab D - Staff Report
- Tab E - Insufficiency Response dated March 22, 2013

- Tab F - Insufficiency Letter dated February 21, 2013
- Tab G - Application

6. Alternative Action:

- APPROVE the LPA recommended height of 9'

7. Management Recommendations:

- APPROVE the requested setback variance to allow the 1.7' right-of-way setback
- APPROVE the Staff recommended minimum height variance to allow 7' or 7'6"

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. Council Action:

Approved Denied Deferred Other

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 13-14
VAR2013-001 – Lani Kai Sign Variance

WHEREAS, applicant Robert Burandt, Esq, authorized agent for Lani Kai, LP, is requesting a variance from Section 30-154(b), and Section 30-154(c) of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP number for the subject property is 19-46-24-W4-0070D.0020 and the legal description of the subject property is attached as *Exhibit A*; and

WHEREAS, the subject property is located at 1400 Estero Boulevard, Fort Myers Beach, FL 33931 in the 'DOWNTOWN' zoning category of the Official Zoning Map and the 'Pedestrian Commercial' category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on May 14, 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 August 19, 2013, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2013-005, 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 2013-005 and the standards for granting variances, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVE/DENY** the applicant's request for a variance from Section 30-154(b) of the LDC to allow a right-of way setback of 1.7' as depicted on *Exhibit I*;

The Town Council **APPROVE/DENY** the applicant's request for a variance from Section 30-154(c) of the LDC to allow a sign height of 9' as measured from adjacent grade or crown of road whichever is higher subject to the following condition;

RECOMMENDED CONDITION OF APPROVAL:

- 1. Landscaping shall be installed around the sign base wherever possible.

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

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

DULY PASSED AND ADOPTED THIS **19th** day of **AUGUST, 2013**.

By: _____
Alan Mandel, Mayor

Approved as to legal sufficiency:

ATTEST:

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

By: _____
Michelle Mayher
Town Clerk

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2013-005
VAR2013-001 – Lani Kai Sign Variance

WHEREAS, applicant Robert Burandt, Esq, authorized agent for Lani Kai, LP, is requesting a variance from Section 30-154(b), and Section 30-154(c) of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP number for the subject property is 19-46-24-W4-0070D.0020 and the legal description of the subject property is attached as *Exhibit A*; and

WHEREAS, the subject property is located at 1400 Estero Boulevard, Fort Myers Beach, FL 33931 in the 'DOWNTOWN' zoning category of the Official Zoning Map and the 'Pedestrian Commercial' category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on May 14, 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 30-154(b) of the LDC to allow a right-of way setback of 1.7' as depicted on *Exhibit I*;

The LPA recommends that the Town Council **APPROVE** the applicant's request for a variance from Section 30-154(c) of the LDC to allow a sign height of 9' as measured from adjacent grade or crown of road whichever is higher subject to the following condition;

RECOMMENDED CONDITION OF APPROVAL:

1. Landscaping shall be installed around the sign base wherever possible.

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:

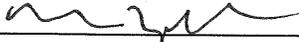
- A. There **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying 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 **Steele** and seconded by LPA Member **Smith**, and upon being put to a vote, the result was as follows:

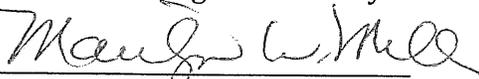
Hank Zuba, Chair	NAY	Joanne Shamp, Vice Chair	NAY
Al Durrett, Member	AYE	John Kakatsch, Member	AYE
Jane Plummer, Member	excused	Alan Smith, Member	AYE
Jim Steele, Member	AYE		

DULY PASSED AND ADOPTED THIS **11th** day of **JUNE, 2013**.

Local Planning Agency of the Town of Fort Myers Beach

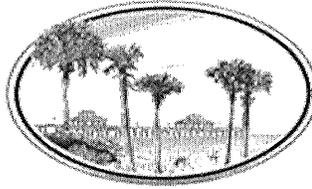
By: 
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

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

ATTEST:

By: 
Michelle Mayher
Town Clerk



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

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
Tuesday, June 11, 2013

I. CALL TO ORDER

Meeting was called to order at 9:07 a.m. by Chair Zuba; other members present:

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

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

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES

A. Minutes of April 9, 2013

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

VOTE: Motion approved, 6-0.

B. Minutes of May 14, 2013

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

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

VOTE: Motion approved, 6-0.

V. **PUBLIC HEARINGS**

A. VAR2013-001, Lani Kai Sign Variance

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

LPA Attorney Miller swore in the witnesses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Discussion was held concerning the Town's signage code.

Zoning Coordinator Dulmer presented comments for VAR2013-0001, Sign Variance for the Lani Kai, on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the site and noted the location of the subject property was at 1400 Estero Boulevard in the Downtown Zoning District. She reviewed the application requested a variance from:

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

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

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

LPA Attorney Miller noted that external illumination was an option.

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

- Section 34-87(3)(a) – *that there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimus variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*
 - Staff found that the location of the FP&L transformer and the backflow device and the fully developed site configuration of the subject property are circumstances unique to the property and do obstruct compliance with the sign ordinance.

- Staff recommended the finding that there are exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property and that the variance, therefore, is justified.
- Section 34-87(3)(b) – *that the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.*
 - The subject property was initially developed in the 1970s and the existing sign was in place prior to the adoption of the Town’s original sign ordinance and Ordinance 11-01.
 - Therefore, staff recommended that the conditions justifying the variance are not the result of actions of the Applicant taken after the adoption of the regulations in question.
- Section 34-87(3)(c) – *That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.*
 - The Applicant has provided two options, one reducing the height from 11’7” to 9’7” and the other reducing the sign further to 8’6”. Staff finds that neither are the minimum variance necessary to clear the obstruction of the FP&L transformer and backflow device.
 - As to the setback request, the Applicant provided little justification other than a desire to utilize the existing sign base. Staff does not feel that these requests reflect the minimum variance necessary as required by this code.
 - Staff recommended that the variance requested was not the minimum variance necessary to relieve an undue burden.
- Section 34-87(3)(d) – *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*
 - The current sign’s height is well above the 5’ maximum height allowed under the current code, and the two options offered by the Applicant do not meet the minimum variance necessary obligation. The setback request is minimal but the Applicant does not provide any strong justification for the need.
 - It was staff’s opinion that the Applicant has no provided an application reflecting the minimum variance necessary. There are obstacles in place on the subject property that could warrant granting a variance; however, the Applicant was asking for more than the minimum.
 - Staff, therefore, recommended that granting the variance (either Option 1 or Option 2) as requested by the Applicant would be injurious to the neighborhood or otherwise detrimental to the public welfare by allowing the subject property relief from rules and regulations that all others must adhere to.
- Section 34-87(3)(e) – *That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general a nature as to make it more reasonable and practical to amend the regulation in question.*
 - With the adoption of the amended sign ordinance, and the consequent amortization period for conformity, numerous locations on the Beach have pursued variance requests from the amended requirements. However, by the very nature of the recent adoption of the sign ordinance, Town Council has addressed the issue of signs (including height) and has made a decision to enact and enforce a uniform sign code.

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

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

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

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

Zoning Coordinator Dulmer responded in the negative.

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

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

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

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

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

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

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

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

Public Comment opened.

No speakers.

Public Comment closed.

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

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

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

MOTION: Mr. Steele moved to permit a sign variance of 9' tall and the sign area not to exceed 64 square feet and include the setback of 1'7" and recommend the Findings and Conclusions:

- A. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, **and** the request **is** for a *de minimis* variance to protect public safety by not obstructing access to public utilities and fire protection facilities.
- B. The conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance requested **is** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- D. The granting of the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the specific piece of property for which the variance is sought **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question;
second by Mr. Smith.

Mr. Kakatsch requested inclusion of a landscape buffer.

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

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

Public Hearing closed.

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

VI. PUBLIC COMMENT

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

Public Comment opened.

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

Public Comment closed.

B. Capital Improvement Plan Fiscal Year 2014

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

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

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

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

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

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

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

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

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

VOTE: Motion approved, 6-0.

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

VOTE: Motion approved 6-0.

Adjourn as LPA and reconvene as Historic Preservation Board

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

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

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

VOTE: Motion approved 6-0.

Adjourn as Historic Preservation Board and reconvene as the LPA

VII. LPA ACTION ITEM LIST REVIEW

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

Community Development Director Fluegel reported:

- Beach Raking – approved.
- Noise/Entertainment Ordinance – consultant working on the matter and would prepare a report.
- Floodplain Management – ordinance revisions had been with the State for review; comments have not been received back from the State yet; staff hoped to have revisions by August/September.

- Short-term Rentals – no change.
- FEMA Community Rating System – staff working to get overall community rating decreased.
- EAR – awaiting Land Use Consultant.
- Post-Disaster Reconstruction & Recovery – staff to investigate a grant program for funding of post-disaster recovery efforts.

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

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

VIII. LPA MEMBER ITEMS AND REPORTS

Mr. Kakatsch – no report.

Mr. Durrett – no report.

Mr. Smith – no report.

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

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

Mr. Steele – no report

Chair Zuba – no report.

Ms. Plummer – excused.

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

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

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

IX. LPA ATTORNEY ITEMS

LPA Attorney Miller – no items or report.

X. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

No discussion.

XI. ADJOURNMENT

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

VOTE: Motion approved, 6-0.

Meeting adjourned at 11:15 a.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

End of document.

DRAFT



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Sign Variance
CASE NUMBER: VAR2013-0001
LPA HEARING DATE: May 14, 2013
LPA HEARING TIME: 9:00 AM

I. APPLICATION SUMMARY

Applicant: Robert Burandt, Esq
Authorized Agent for Lani Kai, LP

Request: A sign variance from:

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

Subject property: See *Exhibit A*

Physical Address: 1400 Estero Boulevard
Fort Myers Beach, Florida 33931

STRAP #: 19-46-24-W4-0070D.0020

FLU: Pedestrian Commercial

Zoning: DOWNTOWN

Current use(s): Lani Kai Island Resort

Adjacent zoning and land uses:

North:	Yo! Taco (Restaurant) DOWNTOWN Pedestrian Commercial
	Coastie's (Restaurant) DOWNTOWN Pedestrian Commercial
South:	Gulf of Mexico Environmentally Critical (EC) Recreation FLU
East:	Seasonal Parking Lot DOWNTOWN Pedestrian Commercial
	Residential DOWNTOWN Pedestrian Commercial
	Wicked Wings (Restaurant) DOWNTOWN Pedestrian Commercial
West:	Commercial DOWNTOWN Pedestrian Commercial

II. BACKGROUND AND ANALYSIS

Background:

Robert Burandt, agent for Lani Kai, LP, has applied for a variance and relief from Section 30-154(b) and Section 30-154(c) of Chapter 30 – Signs of the Town of Fort Myers Beach Land Development Code, for the property located at 1400 Estero Boulevard and commonly known as the Lani Kai Island Resort.

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 subject property was issued a notice of violation, and failing to comply within the specified time frame, a notice of hearing. They went before the special magistrate on January 30, 2013 who continued the case 120 days. Mr. Burandt applied for the sign variance immediately following the special magistrate hearing on January 30, 2013.

The subject property measures approximately 2.75± acres in size and contains a mixed use building with hotel units, commercial units and various beach and resort activities. Prior to the adoption of Ord. 11-01, the subject property had two existing monument signs that exceeded height and square footage requirements. Through the code enforcement process, the applicant has removed one of the monument signs, see *Exhibit B* (applicant photos 3&4), and has elected to submit this application for a variance to retain the remaining sign at its present location, see *Exhibit C* (applicant photos 1&2).

It should be noted that in 2007 the applicant submitted for consideration a request for designation as Historically Significant or Landmark Sign for the signs and the subject property and two other parcels. The LPA heard the case at their May 6 2008 meeting and in LPA Resolution 2008016 denied the request. (See *Exhibit D*) The applicant appealed the decision to Town Council, and at the January 15, 2009 in Resolution 08-45 upheld the LPA's decision to deny the request. (See *Exhibit E*).

Analysis:

The applicant is requesting relief from two sections of Chapter 30: the setback requirements for monument signs found in 30-154(b) and the maximum height for a monument sign found in 30-154(c).

The existing monument sign on the subject property is located on the north end of the property very close to the property line. It measures 11'7" in overall height, see *Exhibit H*, and its setback approximately 1.7' from the right-of-way line, see *Exhibit I*. The applicant is requesting to retain the existing 1.7' right-of-way setback in order to utilize the existing concrete base and they have proposed two options for reducing the overall height of the monument sign.

The application is brief and while it does provide some supporting material, the applicant often utilizes details that are irrelevant to the case and/or cannot be considered in determining justification for a variance, i.e the amount of taxes paid by the Lani Kai, the variance process does not use financial considerations a means for determining a hardship, or the size of the subject property, the sign code sets a universal size for all monument signs regardless of the size of the subject property.

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, as a resort with multiple additional businesses, is therefore entitled to the provisions described in (2) above: each business a maximum of 16 square feet and an additional 32 square feet to identify the commercial development. In previous reviews of new signs applications for multiple occupancy properties, Staff and the Town Attorney determined that the 32 square feet for commercial identification could be per street frontage. Therefore arguably the subject property is entitled to 64 square feet to identify the commercial development, in this case the Lani Kai Island Resort.

In the insufficiency response, dated March 22, 2013, the applicant identifies that complying with the height requirement of 5' is complicated by existence of the Florida Power & Light (FPL) transfer box. This is the most compelling detail of the application.

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.*

The applicant's Option 1, and their preferred option as indicated in verbal conversations with Staff, is attached as *Exhibit F*. This option would reduce the overall height from 11'7" to 9'7" and would have approximately 48 square feet of sign area.

Option 2, as provided by the applicant, is attached as *Exhibit G*. This option would further reduce the height from 11'7" to 8'6" and would have approximately 60 square feet of sign area.

Exhibit H provides the dimensions of existing sign base at 3'6". *Exhibit I* shows the height conflict and obstruction from the FPL transformer as well as a backflow

device and fire hydrant. In previous sign variance requests Town Council has recognized objects such as these and justifiable obstructions and has granted variance relief to those applicants. The two most similar cases would be Beach Shell Inn (VAR2011-0004) and the Pierview Hotel (VAR2011-0006). Both of those properties had physical obstructions and Council did grant height relief. The method used by Council was to clarify the height of the obstruction, then utilize that height as the new increased base height. Then the applicant was granted anywhere from 42" to 48" additional inches above that new base for the sign area to provide the minimum variance necessary.

Therefore by using the method already established by Town Council in previous sign variance cases, the base height as provided by the applicant for the sign on the subject property is 42". Staff's recommendation for the sign height above that base would be another 42" for an overall height of 84" or 7' as measured from adjacent grade.

With regard to the request for a setback variance from 3' to 1.7' Staff finds that the justification for the height, i.e the transformer and backflow obstructions are also relevant to the setback discussion.

Setbacks for monument signs are detailed in Section 30-154(b) which states as follows:

***Section 30-154(b) Location.** Monument signs must be set back at least three (3) feet from any public right-of-way or roadway easement, provided, however, that monument signs may be located in a lawfully developed landscape median strip that is within a public or private right-of-way or easement where the holder(s) of the right-of-way or easement have consented to the location of the monument sign in such a right-of-way or easement.*

Town Council in their consideration of case VAR2012-0001, sign variance from Neptune Inn, granted a 0' setback variance to help the applicant clear physical obstructions.

It is important to note that one element remains unclear in the applicant's narrative. And that is if they propose to refurbish the existing sign or completely re-face the sign. This is a concern of Staff as the existing sign is backlit which does not comply with the internal illumination requirements detailed in Section 30-154(a). Any illumination on the sign, whether existing or proposed, must comply with this section.

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 finds that the location of the FPL transformer and the backflow device and the fully developed site configuration of the subject property are circumstances unique to the property and obstruct compliance with the sign ordinance.

Staff recommends the finding that there **are** exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property and that the variance is, therefore **is** 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 developed in the 1970s and the existing sign was in place 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 two options for compliance, one reducing the height from 11'7" to 9'7" the other reducing the further to 8'6". Staff finds that neither are the minimum variance necessary to clear the obstruction of the FPL transformer and backflow device.

As to the setback request, the applicant provided little justification other than a desire to utilize the existing sign base. Staff does not feel that these requests reflect the minimum variance necessary as required by this code.

Staff 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 setback and sign height requirements of Chapter 30 of the LDC. The current sign's height is well

above the 5' maximum height allowed under the current code, and the two options offered by the applicant do not meet the minimum variance necessary obligation. The setback request is minimal but the applicant does not provide any strong justification for the need.

It is Staff's opinion that the applicant has not provided Town Council an applicant reflecting the minimum variance necessary. There are obstacles in place on the subject property that could warrant granting of a variance however, the applicant is asking for more than the minimum.

Staff therefore recommends that granting the variance as requested by the applicant **would** be injurious to the neighborhood or otherwise detrimental to the public welfare by allowing the subject property relief from rules and regulations that all others must adhere to.

- 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.

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 **APPROVAL** of a sign variance request from Section 30-154(b) requiring monument signs to be setback a minimum of 3' from any public right-of-way to allow a setback of 1.7' from the Estero Boulevard right-of-way.

Staff recommends **DENIAL** of a sign variance request from Section 30-154(c) requiring a maximum height of 5,' as measured from the crown of road or adjacent grade, for a monument sign to allow a maximum height of 9'7" as measured from the adjacent grade.

Staff offers an alternative recommendation for a sign height variance from Section 30-154(c). Keeping the most similar previously approved variance requests in mind (VAR2011-0004 and VAR2011-0007), and recognizing the obstruction of the FPL transformer equipment, Staff would recommend that the minimum variance necessary would be between 7' and 7'6", not to exceed 7'6" in overall height as

measured from crown of road or adjacent grade. Staff believes that this alternative recommendation reflects the true minimum variance necessary.

IV. CONCLUSION

Staff recommends **APPROVAL** of a sign variance request from Section 30-154(b) requiring monument signs to be setback a minimum of 3' from any public right-of-way to allow a setback of 1.7' from the Estero Boulevard right-of-way.

However, Staff is of the opinion that the applicant has not provided the minimum variance necessary for the sign height request therefore:

Staff recommends **DENIAL** of a sign variance request from Section 30-154(c) requiring a maximum height of 5,' as measured from the crown of road or adjacent grade, for a monument signs to allow a maximum height of 9'7" as measured from the adjacent grade.

Exhibits:

- A – Legal Description
- B – Removed monument sign
- C – Existing monument sign
- D – LPA Resolution 2008-016
- E – Town Council Resolution 08-45
- F- Applicant Option 1
- G- Applicant Option 2
- H- Measurements of existing monument sign
- I- Survey of existing sign setback dimensions

EXHIBIT A

EXHIBIT A to Deed

1. **1345 Estero Blvd, Fort Myers Beach, FL 33931**
19-46-24-W4-0060B.0130

Lot 13, Block B, VENETIAN GARDENS, according to the map or plat thereof as recorded in Plat Book 6, Page 70, Public Records of Lee County, Florida.

2. **1331 Estero Blvd, Fort Myers Beach, FL 33931**
19-46-24-W4-0060B.0140

Lot 14, Block B, VENETIAN GARDENS, according to the map or plat thereof as recorded in Plat Book 6, Page 70, Public Records of Lee County, Florida.

3. **1325 Estero Blvd, Fort Myers Beach, FL 33931**
19-46-24-W4-0060B.0150

Lot 15, Block B, VENETIAN GARDENS, according to the map or plat thereof as recorded in Plat Book 6, Page 70, Public Records of Lee County, Florida.

4. **1400 Estero Blvd, Fort Myers Beach, FL 33931**
19-46-24-W4-0070D.0020

That parcel of land lying in Block "D" and "E" of Crescent Beach Subdivision, as per map or plat thereof recorded in Plat Book 4 at page 45, Public Records of Lee County, Florida, described as follows: Lots 2, 3, 6, 7, 8 and 9 of Block "D"; and Lots 1, 4, 5, 8, 9, 10 and 11 of Block "E"; and all of Lot 7 less the Westerly 16 feet thereof in Block "E"; and also the Easterly 30 feet of Lots 2, 3 and 6, and all of the Southerly 15 feet of Lot 6, all in Block "E"; also the vacated street and alley formerly known as Avenue B lying between Blocks "D" and "E" and running from Estero Boulevard to the Gulf of Mexico; also that certain alleyway lying between Lots 5 and 6 on the North and Lots 7, 8, 9, 10 and 11 on the South in said Block "E"; also the vacated alleyway between Lot 6 on the North and Lots 7, 8 and Westerly one-half of Lot 9 on the South in said Block "D".

END

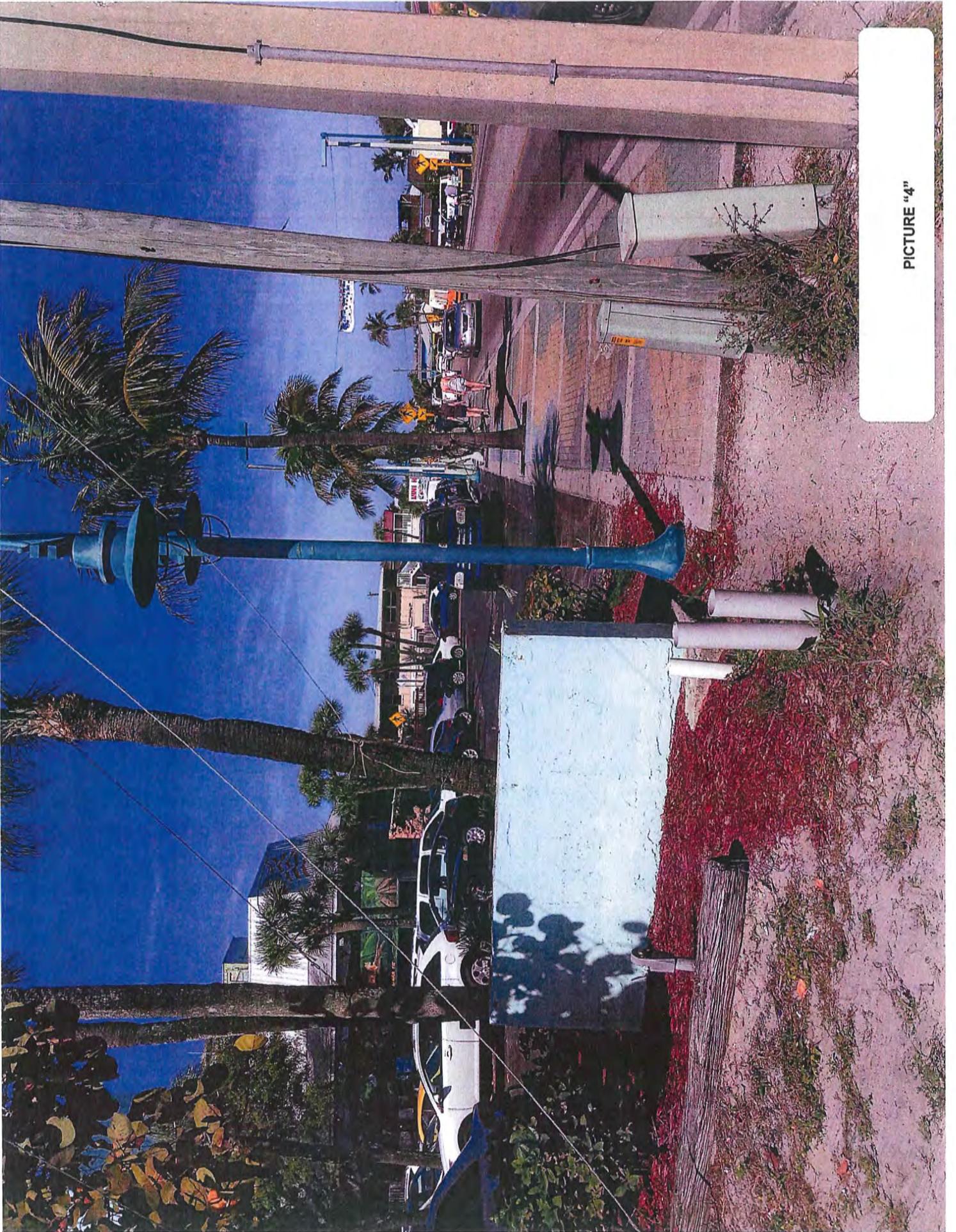
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EXHIBIT B



REMOVE

PICTURE "3"

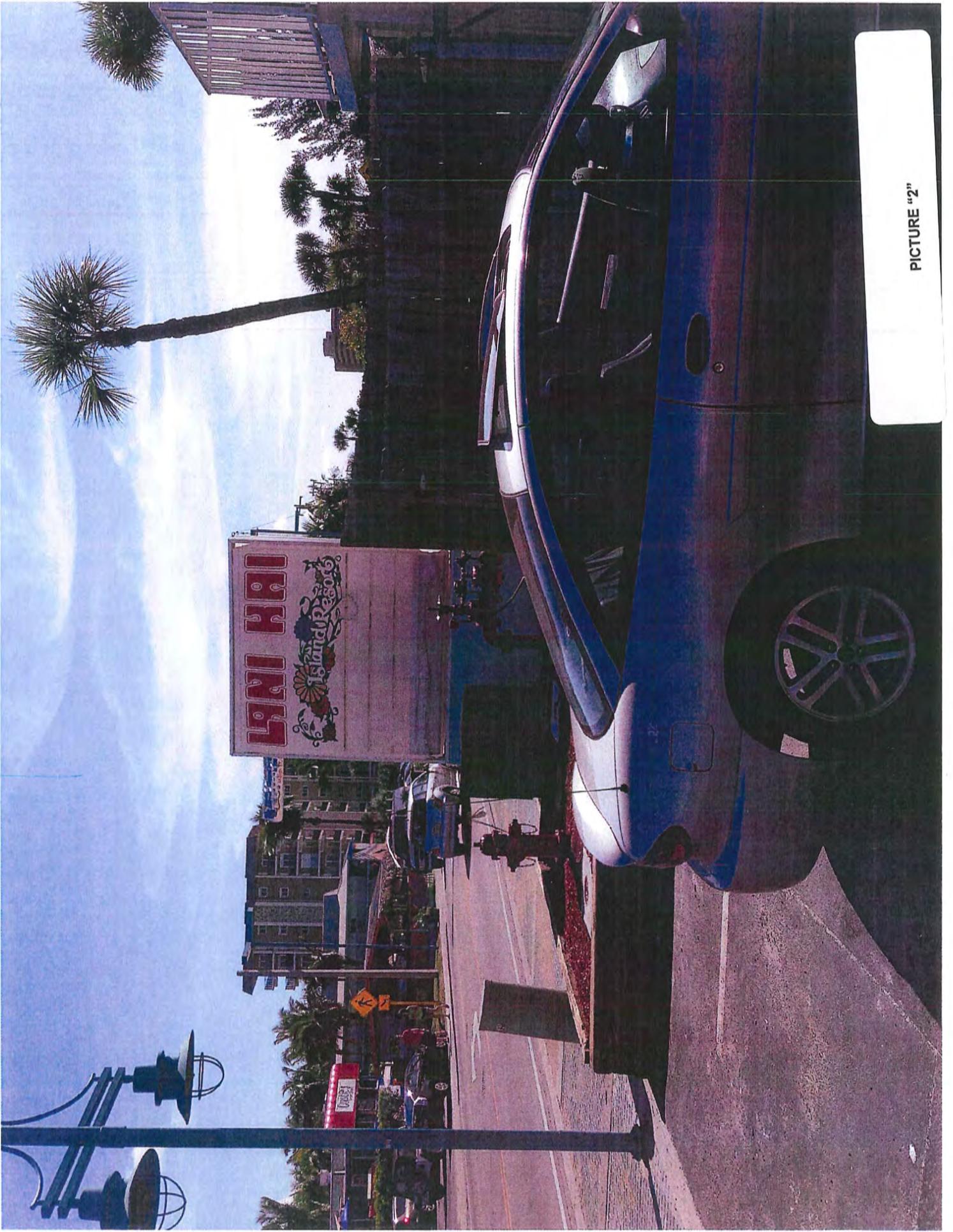


PICTURE "4"



EXHIBIT C

PICTURE "1"



PICTURE "2"

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2008-16

WHEREAS, Robert and Grace Conidaris, the property owners ("applicant"), filed a Petition for Designation of Historically Significant or Landmark Sign for the following sign: **Lani Kai**, pursuant to Section 30-56(b) of the Town of Fort Myers Beach Land Development Code (LDC) and Chapter 13 of the Town of Fort Myers Beach Comprehensive Plan (Comp Plan); and

WHEREAS, the subject property is located at 1400 Estero Boulevard, Fort Myers Beach, Lee County, Florida and has a current STRAP number of 19-46-24-W4-00700.0020; and

WHEREAS, a public hearing for this matter was legally advertised and held before the Town of Fort Myers Beach Local Planning Agency (LPA) on May 6, 2008; and

WHEREAS, at such hearing, the LPA gave full and complete consideration to the request of applicant, the documents in the file, the standards set forth in Chapter 13 of the Comp Plan and Section 30-56(b) of the LDC and the testimony of all interested persons.

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

The LPA determines that the sign **IS NOT** a landmark or an object of significance in history, architecture, archaeology, engineering or culture that may be related to a specific setting or environment for the reasons set forth below. Accordingly, the LPA **DOES NOT** designate the Lani Kai sign as a **landmark or historically significant sign**, pursuant to LDC Section 30-56(b) and Chapter 13 of the Comp Plan.

FINDINGS AND CONCLUSIONS

1. The sign:

- a) **IS NOT** associated with events that significantly contributed to the broad patterns of Estero Island's history, or
- b) **IS NOT** associated with the lives of persons significant in Estero Island's past, or
- c) **DOES NOT** embody the distinctive characteristics of a type, period, or method of construction and **DOES NOT** possess high artistic values or represents a significant and distinguishable entity whose components may lack individual distinction; or
- d) On an individual basis, the sign does not constitute a significant site, **AND DOES NOT** contribute to the overall significance of a district.

e) The LPA makes the following findings of fact in support of the conclusions reached in this subparagraph 1: Applicant has failed to submit sufficient documentation to support that the sign met the criteria above.

2. The sign **DOES NOT** meet sufficient integrity criteria to designate the sign as a either a landmark or historically significant sign. It:

- a) **DOES NOT** possess integrity of location; and
- b) **DOES NOT** possess integrity of design; and
- c) **DOES NOT** possess integrity of setting; and
- d) **DOES NOT** possess integrity of materials; and
- e) **DOES NOT** possess integrity of workmanship; and
- f) **DOES NOT** possess integrity of feeling; and
- g) **DOES NOT** possess integrity of association.

The LPA makes the following findings of fact in support of the conclusions reached in this subparagraph 2: Applicant has failed to submit sufficient documentation to support that the sign met the criteria above.

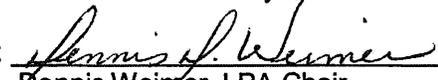
The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Kay and seconded by LPA Member Van Duzer and upon being put to a vote, the result was as follows:

Dennis Weimer, Chair aye
Evie Barnes aye
Joanne Shamp aye
Joe Yerkes aye

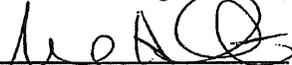
Alan Mandel, Vice Chair absent
Rochelle Kay aye
Van Duzer aye

DULY PASSED AND ADOPTED THIS 6th day of May, 2008.

LPA of the Town of Fort Myers Beach

By: 
Dennis Weimer, LPA Chair

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: 
Michelle Mayher, Town Clerk

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 08-45

WHEREAS, Robert G Conidaris, the property owner, by and through Robert B. Burandt, Esquire, Agent ("Appellant"), filed a Petition for Designation of Historically Significant or Landmark Sign before the Town of Fort Myers Beach Local Planning Agency (LPA), for four signs located on the LANI KAI property (hereafter collectively referred to as "the signs"), pursuant to Section 30-56(b) of the Town of Fort Myers Beach Land Development Code (LDC) and Chapter 13 of the Town of Fort Myers Beach Comprehensive Plan (Comp Plan); and

WHEREAS, the signs are located on multiple subject properties, as follows 1325, 1331, 1345 Estero Boulevard (Islandview Restaurant sign); 1400 Estero Boulevard (Lani Kai (2 signs)); and 1479 Estero Boulevard (Lani Kai Bayside). The current STRAP numbers are as follows: 19-46-24-W4-0060B.0130, 19-46-24-W4-0060B.0140, 19-46-24-W4-0060B.0150, 19-46-24-W4-0070D.0020, and 19-46-24-W4-0060B.0070; and

WHEREAS, a public hearing for this matter was legally advertised and held before the Town of Fort Myers Beach Local Planning Agency (LPA) on May 6, 2008, at which time the LPA did not designate the Lani Kai signs as landmark or historically significant signs, for the reasons set forth in LPA Resolution 2008-16; and

WHEREAS, the Appellant filed an appeal of the LPA action pursuant to case number ADM2008-0002, which appeal was heard by Town Council at a hearing properly noticed and scheduled for October 20, 2008, at which time the hearing was continued to January 15, 2009; and

WHEREAS, at the hearings on October 20, 2008 and January 15, 2009, the Town Council gave full and complete consideration to the request of Appellant, the documents in the file, the standards set forth in Chapter 13 of the Comp Plan and Sections 30-56(b) and 34-86 of the LDC, any other relevant Town ordinances or regulations, LPA Resolution 2008-16, other documents from the LPA and the testimony of the appellant and all interested persons as required by LDC Section 34-86(2)(b).

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

FINDINGS AND CONCLUSIONS

SECTION 1. APPELLATE JURISDICTION OF TOWN COUNCIL

The Town Council finds that it DOES have jurisdiction to hear this appeal, for the following reason(s):

- a. The applicant HAS filed its appeal within the thirty (30) day period required by LDC Section 34-86(1)(b); and
- b. The appellant has alleged that the LPA has committed an error in the determination set forth in LPA Resolution 2008-16, and Town Council DOES

- have jurisdiction pursuant to LDC Section 34-86 (1) to review this matter;
and
- c. Accordingly, the Town Council **HAS** the authority to reverse, affirm, or modify the decision of the LPA, as set forth in LDC Section 34-86(3).

SECTION 2. REVIEW OF PROCEDURES FOLLOWED BY THE LOCAL PLANNING AGENCY

The Town Council finds that the LPA **DID** follow the proper procedures for consideration of Applicant's request, in that

- a. The LPA **DID** have jurisdiction under Section 30-56(b)(3) to conduct a hearing on the nomination request from Applicant; and
- b. the LPA hearing **WAS** properly noticed and conducted in accordance with standard quasi-judicial process followed by the Town Local Planning Agency; and
- c. the LPA **DID** utilize the appropriate standards from the LDC and Comp Plan in reviewing the application.

SECTION 3. CRITERIA FOR CONSIDERATION BY TOWN COUNCIL IN APPEALS

As required by Section 34-86(2)(a), the Town Council considered the following criteria, as well as any other issues which were pertinent and reasonable, in reaching the conclusion(s) set forth below:

- a. whether the appeal is of a nature properly brought for decision, or whether there is an established procedure for handling the request other than through the appeal process; and
The Town Council finds that this appeal is of a nature properly brought before it for decision, for the reasons outlined in Section 1 above.
- b. the intent of the ordinance being applied or interpreted; and
- c. the effect the ruling will have when applied generally to the LDC.

SECTION 4. COUNCIL DETERMINATION AND CONCLUSION

- a. The Town Council determines that the LPA **DID** properly apply the standards set forth in Chapter 13 of the Plan and LDC Section 30-56(b) to the facts presented in Appellant's request for designation of historic/landmark status to the Signs.
- b. For all of the above reasons, the Town Council concludes that the Signs **ARE NOT** landmark or object(s) of significance in history, architecture, archaeology, engineering or culture that may be related to a specific setting or environment.

THE TOWN COUNCIL hereby **AFFIRMS** the determination by the Local Planning Agency in the LPA Resolution 2008-16 on this 15TH day of January, 2009.

DULY ADOPTED THIS 15TH DAY OF JANUARY, 2009.

The foregoing Resolution was adopted upon a motion by Council Member Babcock and seconded by Council Member List. Upon being put to a vote, the result was as follows:

Herb Acken	<u> nay </u>	Tom Babcock	<u> aye </u>
Larry Kiker	<u> aye </u>	Jo List	<u> aye </u>
Bob Raymond	<u> aye </u>		

Town Council of the Town of Fort Myers Beach

BY: 
Larry Kiker, Mayor

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
Town Attorney

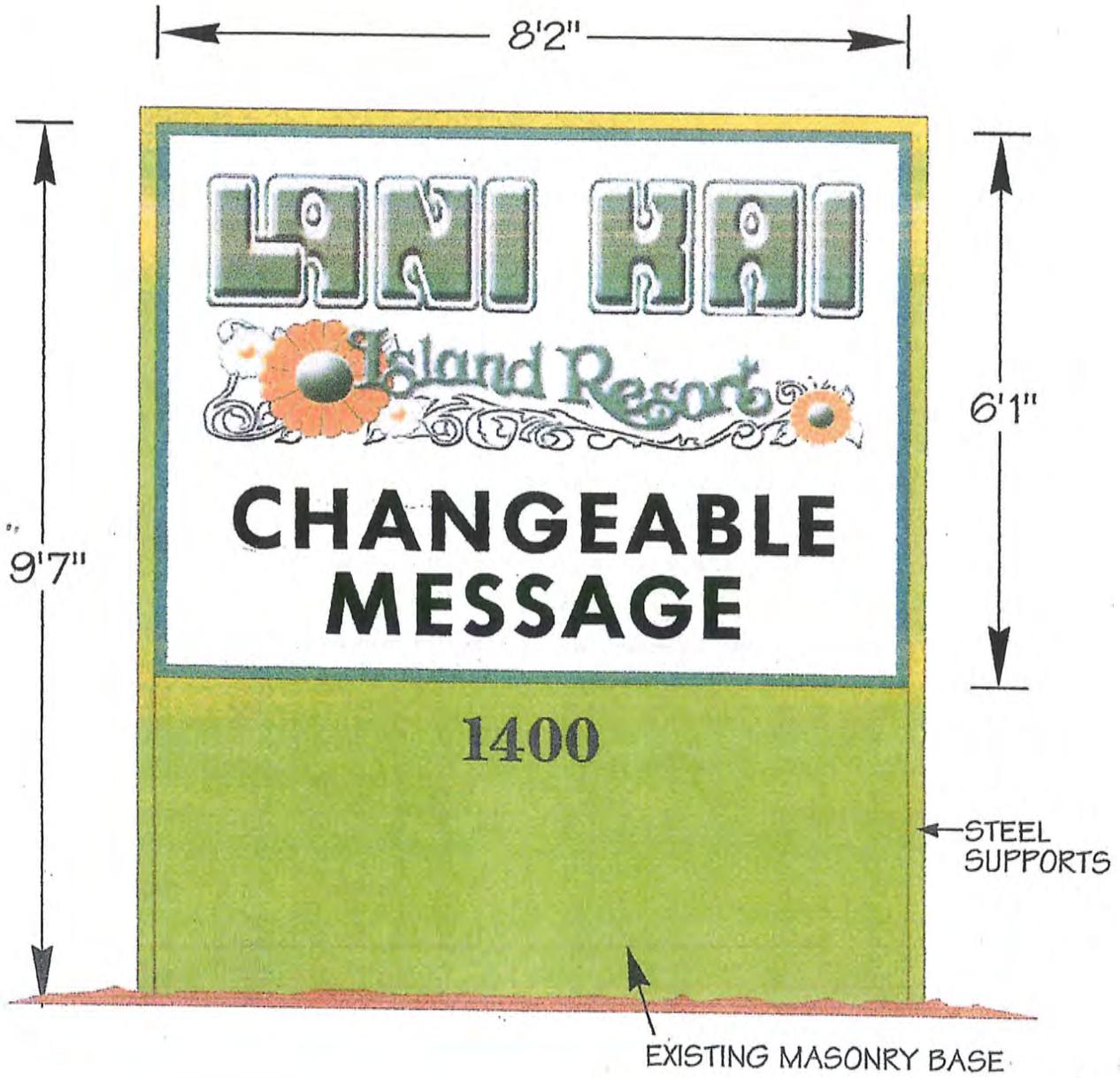
ATTEST:

By: 
Michelle D. Mayher, Town Clerk

1400 ESTERO BLVD.
FT. MYERS BEACH, FL

EXHIBIT F

RENOVATION OF
NORTH SIGN
1



INTERNALLY ILLUMINATED ALUMINUM CABINET SIGN
WITH ACRYLIC FACES.
DOUBLE FACED.

(A)

	DATE	12-17-12
	DRAWN BY	BILL RIDDLE

OPTION # 1

OPTION #2

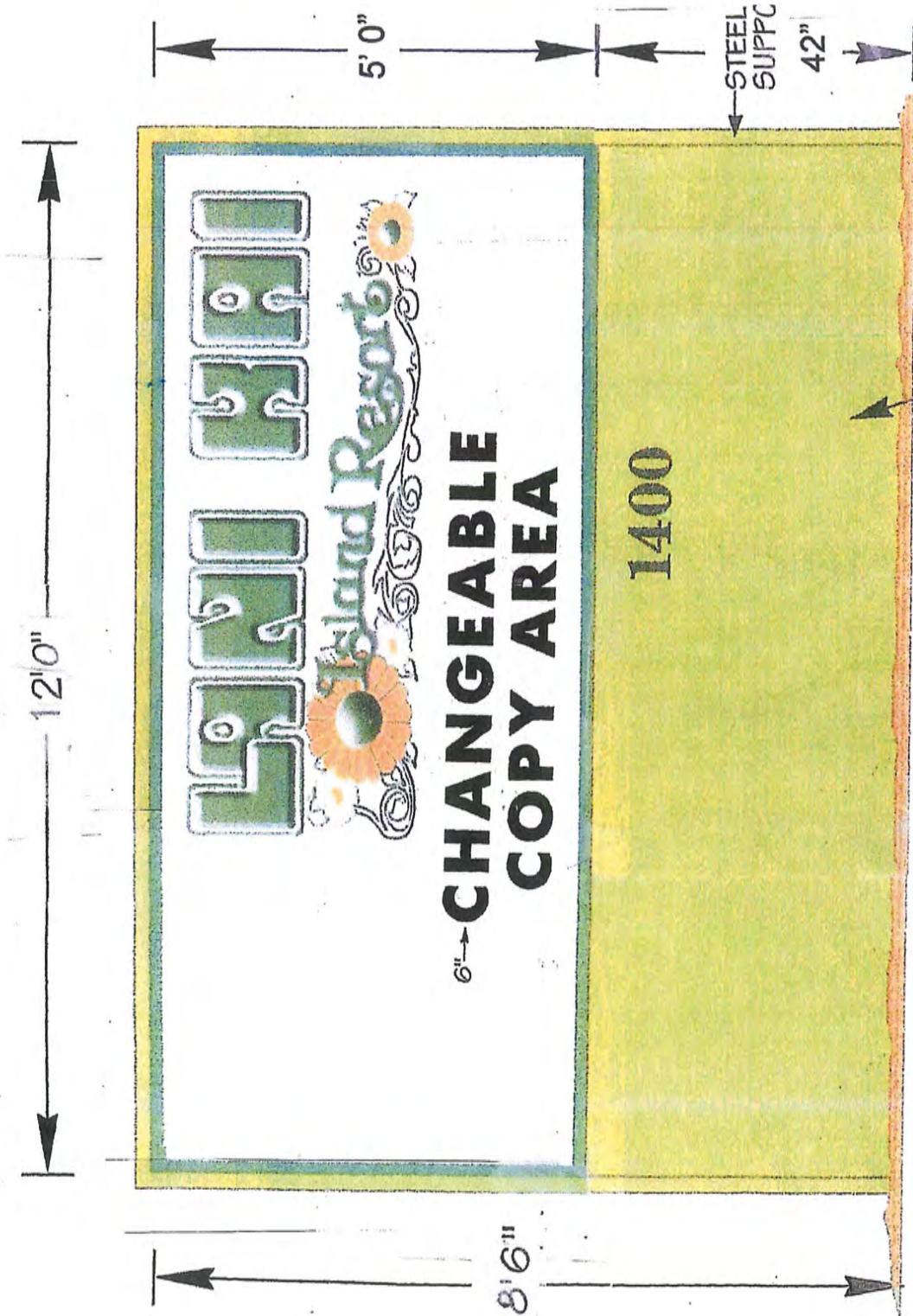


EXHIBIT G

EXISTING MASONRY BASE

(B)

	DATE	12-17-12
	DRAWN BY	BILL RIDDLE

INTERNALLY ILLUMINATED ALUMINUM CABINET SIGN
 WITH ACRYLIC FACES.
 DOUBLE FACED.

**RENOVATION OF
 NORTH SIGN**

1400 ESTERO BLVD.
 FT. MYERS BEACH, FL

OPTION #2

EXHIBIT H

8' - 2"



8' - 1"

3' - 6"

11' - 7"

EXISTING

NORTH SIGN

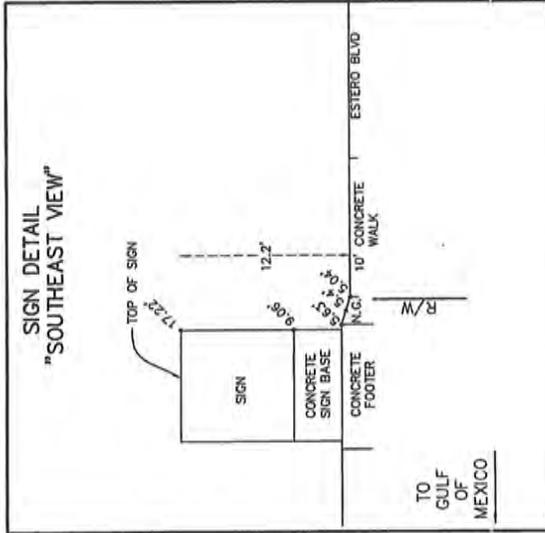
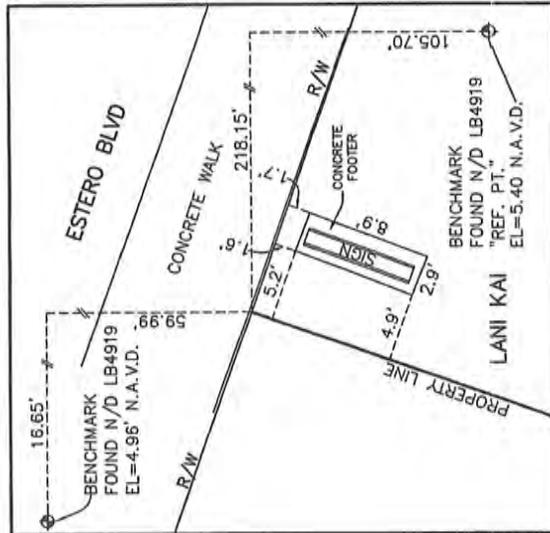


SPECIFIC PURPOSE SURVEY

OF
A PARCEL OF LAND
LYING IN

SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
FORT MYERS BEACH, LEE COUNTY, FLORIDA

EXHIBIT I



NOTES:
SURVEY BASED ON THE R/W MAPS FOR ESTERO BLVD PREVIOUSLY PREPARED BY THIS FIRM.
ELEVATIONS ARE BASED ON N.A.V.D. 1988 AND NGS BENCHMARK AD1327.

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.
PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS— OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

ALL UTILITIES AND IMPROVEMENTS ARE NOT SHOWN.

THIS PLAT PREPARED AS AN EXHIBIT BEING A SPECIFIC PURPOSE SURVEY TO SHOW THE LOCATION AND ELEVATION OF THE EXISTING SIGN ALONG THE RIGHT-OF-WAY LINE OF ESTERO BLVD AND THE WESTERLY PROPERTY LINE OF LANI KAI.

STRAP NO: 19-46-24-W4-00700.0020

ADDRESS: 1400 ESTERO BLVD, FORT MYERS BEACH, FL 33931

DATE OF LAST FIELD WORK: 1-8-13.

*NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL FOAMED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

BEAN, WHITAKER, LUTZ & KAREH, INC.
SCOTT C. WHITAKER, P.S.M., NO. LS4324
PROFESSIONAL SURVEYOR & MAPPER
STATE OF FLORIDA

- THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON.
- IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES.
- THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.

SIGN LOCATION AT LANI KAI

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33914-5919 (239) 481-1331

SR42160.DWG	DRAWN BY S.PIERCE	SCALE 1" = 10'	SHEET 1 OF 1
DATE 1-8-13	PROJECT NO. 42160	FILE NO. (S-1-4)	19-46-24

- LEGEND**
- E.O.P. = EDGE OF PAVEMENT
 - CONC = CONCRETE
 - R/W = RIGHT OF WAY
 - N.G.S. = NATIONAL GEODETIC SURVEY
 - N.A.V.D. = NORTH AMERICAN VERTICAL DATUM
 - N.G. = NATURAL GROUND
 - N/D = NAIL AND DISC

Burandt, Adamski & Feichthaler, P.L.

Attorneys and Counselors at Law

1714 Cape Coral Parkway East
Cape Coral, Florida 33904

Telephone: (239) 542-4733
Facsimile: (239) 542-9203

robert@capecoralattorney.com

Service E-mail: burandtlaw@capecoralattorney.com

Robert B. Burandt
Robert C. Adamski
Eric Feichthaler

March 22, 2013

Leslee Chapman
Zoning Coordinator
Town of Fort Myers Beach
2523 Estero Blvd.
Fort Myers, FL 33931

RE: VAR2013-0001 – LANI KAI SIGN VARIANCE

Dear Ms. Chapman:

In compliance with your letter and our meeting, I offer the following Amendments to the Community Development Department Application. Please supplement the former Page 3 of 13 with the new Page 3 of 13 of the Application and 2 of 6 of the Supplement PH-B.

The Lani Kai Island Resort was built in the 1970's and as part of the resort they had four (4) signs permitted. The first sign, which is the subject of this variance request, is located on the North side of the entrance to the property. (*See Pictures #1 & 2*). The other sign, which was a mirror of this sign was located on the South end of the property (*See Pictures #3*) and has been removed at the Town's request. (*See Picture #4*). Another monument sign was located across the street at 1479 Estero Blvd., Fort Myers Beach, Florida 33931 (*See Pictures #5*) and was removed at the Town's request. (*See Pictures #6*). A third sign was located across the street at 1331 Estero Blvd., Fort Myers Beach, Florida 33931 (*See Pictures #7*) from the sign requesting a variance and has been removed at the Town's request, which is used for over-flow parking. (*See Pictures #8*). The variance is being requested based on the fact that these signs were legally permitted and erected and three of the four signs have been removed at the request of the Town of Fort Myers Beach. The Lani Kai Island Resort has been there for over thirty (30) years and relied on these signs as its main source of advertising.

First of all, the placement of sign one is complicated by the fact that it sits on the boundary line of two properties. The sign in question is partially obstructed by motor vehicles that park on the adjacent property and without the increase in height would be almost totally obstructed by the

Florida Power & Light electrical boxes, which the Lani Kai Island Resort gratuitously allowed Florida Power & Light to place there when the Time Square redevelopment was developed. As you can see by the photographs, a five (5') foot sign would barely get the sign over the power boxes. The other part of the presentation is that the Lani Kai Island Resort employs over 100 employees and in 2012 paid:

- **\$108,307.17 in Tourist Tax last year;**
- **\$125,905.35 in Property Taxes;**
- **\$4,023.09 in Tangible Taxes;**
- **\$407,479.39 in Sales Tax; and**
- **\$1,826,117.28 in Payroll Taxes.**

Unfortunately, the Ordinance does not take any of that into consideration or the size of the establishment as compared to an adjacent piece of property that may be 50 x 100 sq. ft.

In order for a sign to be effective it has to be proportionate to the building and in this case, a smaller sign would be disproportionate to the building and a driver's eyes would be drawn to the building as opposed to the sign when passing by.

In addition, there is no other reasonable location for the sign to move it to the other end of the property where the sign has already been removed, but that creates several additional problems with visibility and obstruction. To move it to the middle of the parking lot also creates several additional problems, parking on Fort Myers Beach is at a premium and to move the sign in the middle of the parking lot: 1) would create a hazard for people trying to utilize the cross-walk which is located immediately in front of the Lani Kai; and 2) would also eliminate several parking spaces, which are government mandated by the State of Florida based on the size of the hotel, the number of restaurants and other establishments.

With respect to the set back from 3' feet to 1.5" feet, this is required to allow the sign to be visible to oncoming traffic and in order to utilize the base that is currently there. Once again, this particular monument sign has been previously consented to by Lee County, the public entity that owns the right-of-way therefore, pursuant to Section 30-154(b) it should be allowed to stay.

Therefore, the applicant would argue that there are exceptional extraordinary conditions or circumstances that are inherent to the property in question and that this request is for de minimis variance under circumstances or conditions where compliance is not essential to protect the public property. The exceptional extraordinary conditions are the size of the Lani Kai, the fact that there are visible obstructions leading up to both ends of the property and the fact that cars park on both sides of the sign and the signs had been previously approved by the County mandates, approved with this variance. Keeping in mind this sign was previously permitted by Lee County, this is a de minimis request, in that it only serves to allow the Lani Kai a 100 room hotel with multiple restaurants and shops to advertise relative to the size of the structure and the businesses located within.

The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question; once again, these signs were properly permitted by both the Town and the County. These signs were made non-conforming by the passage of the "Sign

Ordinance”.

This variance is a minimum variance that will partially relieve the applicant of any unreasonable burden caused by the application of the regulation in question to his property. Once again, keep in mind that these signs have been properly permitted and were conforming signs until becoming non-conforming signs at the passage of the Town’s “Sign Ordinance”. This sign will not be injurious to the neighborhood or the otherwise detrimental to the public welfare. This sign has been there for over thirty years, and is not a new sign and will not have any new impact on the neighborhood, and since the sign has been there for over thirty years and there has never been an accident or injury as a result of the placement of the sign, the sign certainly would not be detrimental to the public welfare. The conditions or circumstance of this specific piece of property which the variance sought are specific to this property and not necessarily of a nature which would require amending the regulation or “Sign Ordinance” in question.

Very truly yours,



Robert B. Burandt
RBB;pdk

cc: Walter Fluegel

PART II – Nature of Request

Requested Action (each request requires a separate application)

- Special Exception
- Variance from LDC Section 30 - 154(c) max height & 30-154(b) set back requirement
- Conventional Rezoning from _____ to _____
- Planned Development
 - Rezoning from _____ to Commercial PD Residential PD
 - Amendment. List the project number: _____
 - Extension/reinstatement of Master Concept Plan. List project number: _____
- Appeal of Administrative Action
- Vacation Right-of-Way Easement
- Other. Please Explain: _____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

- Code Section: _____ Description: _____

- Code Section: _____ Description: _____

- Code Section: _____ Description: _____

PART IV – Property Ownership

- Single Owner (individual or husband and wife)
 - Name: LANI KAI, LP Phone: (239) 363-3111
 - Mailing Address: 1400 Estero Blvd., Fort Myers Beach, FL 33931
 - Email: robert@capecoralattorney.com Fax: (239) 542-9203

Case # _____
 Planner _____

Date Received _____
 Date of Sufficiency/Completeness _____

PART I

Narrative Statements

30-154(c) - 30-154(b)

Request for variance from _____ (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:
Max Height Sign not to exceed 5'-0" - Section- 30-154 sets the standards for monument signs. Section 30-154(c) states that the maximum height of a monument sign is 5" from the highest adjacent grade. In this case, the Applicant is making a request for a variance from a maximum height of 5" to a maximum height of 9' 7" or in the alternative, 8' 6" from the adjacent grade. The second request the applicant is making is the variance from Section 30-154, which requires the base of the sign to be at least 3' from any public right of way. The applicant is requesting a variance of that 3' to 1.5'.

Reasons for request

Explain why the variance is needed:	SEE ATTACHED NARRATIVE
Amend existing sign on existing foundation	
Above existing FPL transformer 3'-6" high	
Existing sign 12' high	
(A) Lower to 9'-7" a 4'-7" Var. (55")	
or Option: (B) Lower to 8'-6" a 3'-6" Var. (42") (Same as existing basis).	
Sign Arisa	
Existing 64 sf	
(A) 49 sf	
or Option: (B) 60 sf	
Set back front 3' to 1'-5" (SW 15 Survey)	



PICTURE "1"

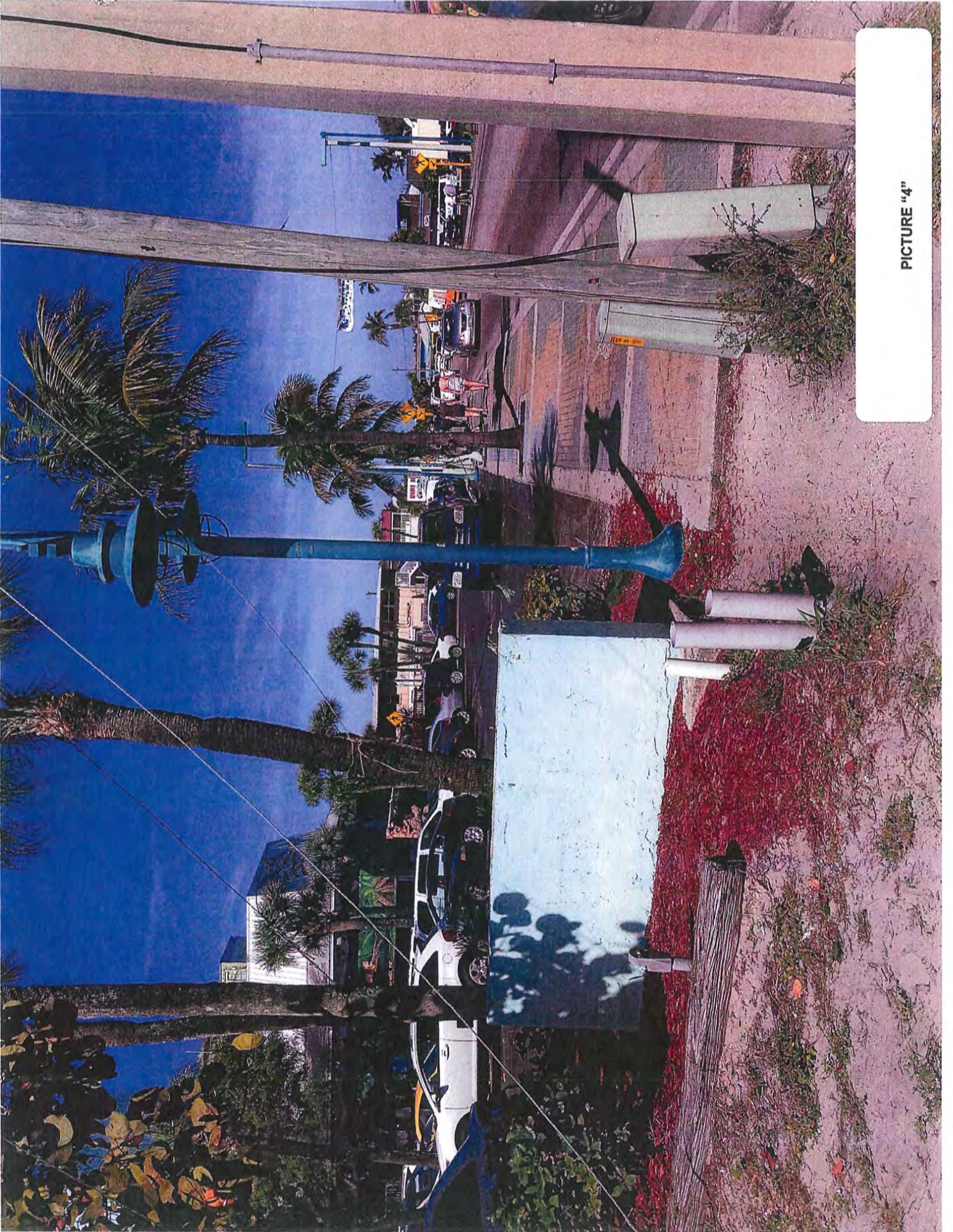


PICTURE "2"

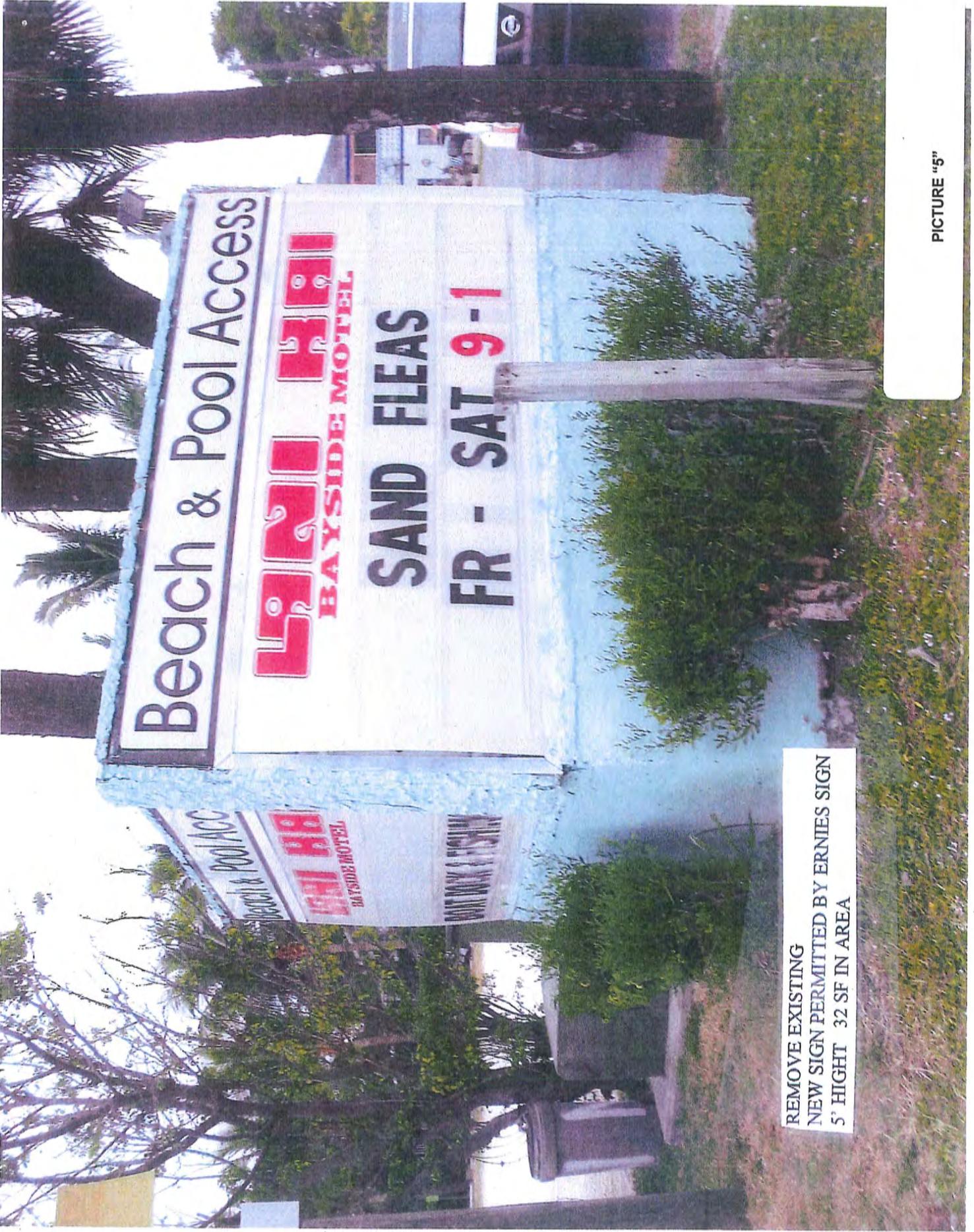


REMOVE

PICTURE "3"



PICTURE "4"



Beach & Pool Access

LANI HANI
BAYSIDE MOTEL

SAND FLEAS

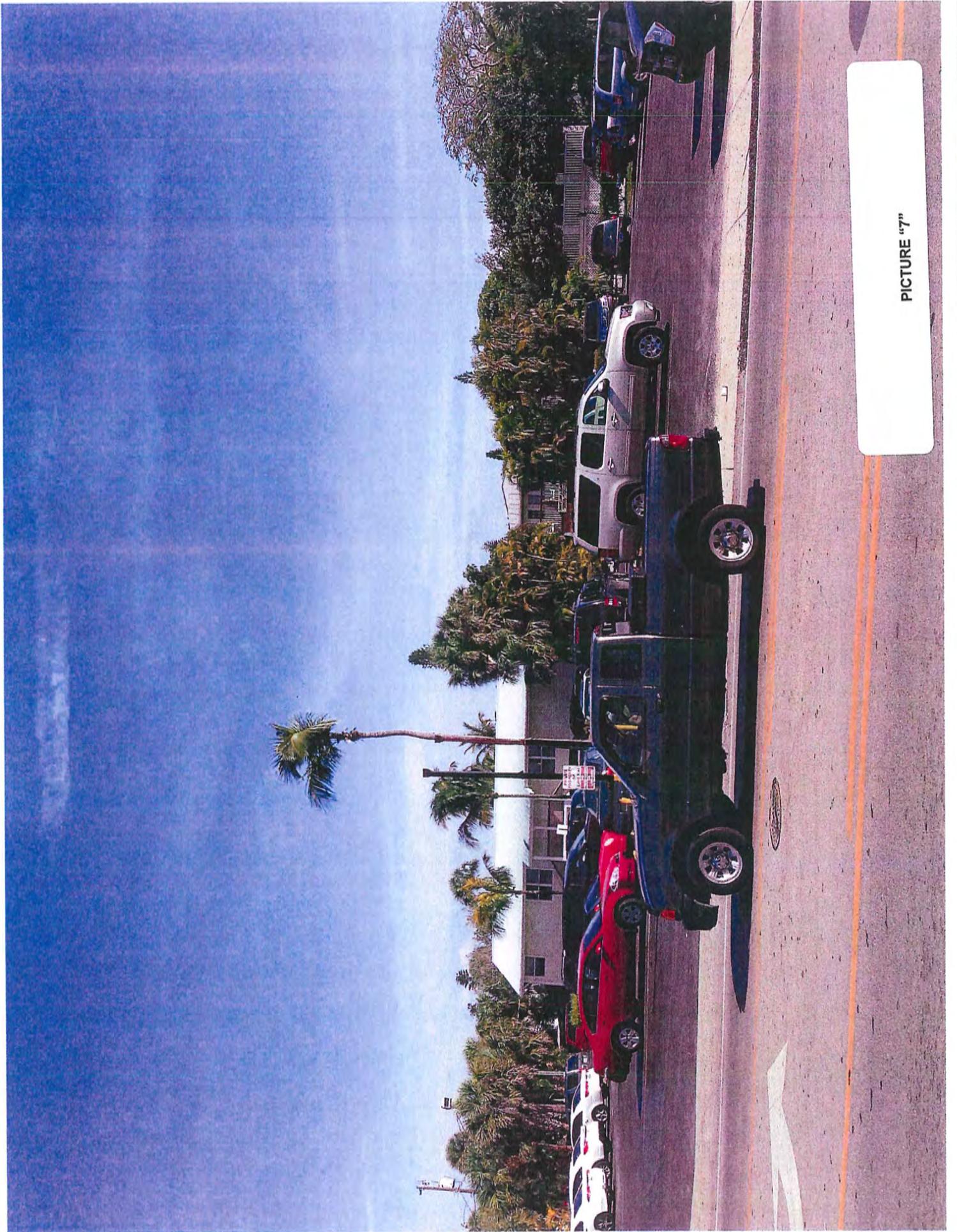
FR - SAT 9-1

REMOVE EXISTING
NEW SIGN PERMITTED BY ERNIES SIGN
5' HIGHT 32 SF IN AREA

PICTURE "5"



PICTURE "6"



PICTURE "7"



Island View

RESTAURANT

FLORIDA'S FINEST

BREAKFAST SPECIALS

PRIVATE PARTYS

SUNSET WEDDINGS

239 463 3111

ISLAND VIEW PARKING SIGN
LOWER TO MAX 5' - 0" HEIGHT
NEW SIGN OR SIZE TO MAX 32SF IN AREA
NEW SIGN PERMITTED BY ERNIE'S SIGNS

PICTURE "8"



Town of Fort Myers Beach

Community Development
2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0591

February 21, 2013

Robert B. Burandt, Esq.
1714 Cape Coral Parkway East
Cape Coral, FL 33904

Re: VAR2013-0001 – Lani Kai Sign Variance

Dear: Mr. Burandt,

The Community Development Department has reviewed the information provided for the above zoning application. The Town of Fort Myers Beach Land Development Code (LDC) required additional information for the application to be found sufficient. Please respond to each requirement not satisfied by the submitted application on the attached sufficiency checklists.

If you do not provide the requested supplements, corrections and fees within 60 calendar days of this letter, the LDC requires that this application be considered withdrawn. As reminder, at the January 30, 2013 Code Hearing the Special Magistrate continued the active code case (CE12-0440) dealing with the non-compliant sign for 120 days.

Please feel free to contact me if you have any questions or require further clarification.

Sincerely,

Leslee Chapman
Zoning Coordinator
Town of Fort Myers Beach
Community Development

Town of Fort Myers Beach

Community Development
2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0591

ZONING REVIEW – Leslee Chapman

The application and drawings submitted for the referenced project have been reviewed in accordance with the LDC, Florida Statutes as well as other applicable codes and ordinances as adopted by the Town of Fort Myers Beach. Your application requires the following additional information:

Application for Public Hearing

PART II – Nature of Request

Requested action lists a request for a variance from LDC Section 30-154(c), however upon review of the balance of the application, it appears that the variance request also includes a setback request.

Please amend the application and provide a specific list of the exact Chapter 30 section(s) from which the variance is being requested.

Supplement PH-B

Additional Required Information for a Variance Application

Variance is requested from: _____ LDC Section Number and Title of Section or Subsection.

Please provide a specific list of the exact Chapter 30 section(s) from which the variance is being requested.

PART 1 – Narrative Statements

Request for variance from _____ LDC Section Number. Explain the specific regulation contained in this section from which relief is sought.

Please provide a specific list of the exact Chapter 30 section(s) from which the variance is being requested.

Reasons for request. Explain why the variance is needed.

Please provide a detailed narrative account as to why the variance is needed; please direct the explanation to include a discussion as to why the subject property cannot come into compliance with all the requirements of Chapter 30 of the LDC.

Explain the hardship (what is unique about the property or the unreasonable burden compliance with Chapter would create on the subject property) that justifies relief from the regulations.

Please provide a detailed narrative account as to why the variance is needed. Please consider using any additional methods, i.e. maps, drawings, site plans, etc to help justify the request.

Town of Fort Myers Beach

Community Development

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0591

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision making compliance in LDC Section 34-87(3).

Please provide a detailed narrative account as to how and why the subject property qualifies for a variance. Please provide a detailed response to the five points within subsection 3 of LDC Section 34-87. For your convenience Section 34-87(3) is provided in its entirety below:

(3) **Findings.** Before granting any variance, the town council must find that all of the following exist:

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

Please make the corrections and resubmit with the necessary information so we can process your application. Please note that these comments represent only those of the reviewer signing below. Other comments may be forthcoming, and a re-submittal shall not occur until all reviewer comments are addressed.

Leslee Chapman
Zoning Coordinator
239-765-0202 ext 105

ORIGINAL



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

This is a two part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit *one ORIGINAL paper copy, eleven (11) copies and one digital/electronic copy* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application.

PROJECT NUMBER: VAR2013-0001 DATE: 1/30/13

Site Address: 1400 Estero Blvd, Fort Myers Beach, Florida 33931

STRAP Number: 19-46-24-W4-0070D.0020

Applicant: LANI KAI ISLAND RESORT Phone: (239) 463-3111

Contact Name: Robert B. Burandt, Esq. Phone: (239) 542-4733

Email: robert@capecoralattorney.com Fax: (239) 542-9203

Current Zoning District: Downtown

Future Land Use Map (FLUM) Category: N/A

FLUM Density Range: N/A Platted Overlay: YES NO

ACTION REQUESTED

SUPPLEMENTAL FORM REQUIRED

- | | |
|---|--------------------------|
| <input type="checkbox"/> Special Exception | PH-A |
| <input checked="" type="checkbox"/> Variance | x PH-B |
| <input type="checkbox"/> Conventional Rezoning | PH-C |
| <input type="checkbox"/> Planned Development <input type="checkbox"/> Commercial <input type="checkbox"/> Residential | PH-D |
| <input type="checkbox"/> Master Concept Plan Extension | PH-E |
| <input type="checkbox"/> Appeal of Administrative Action | PH-F |
| <input type="checkbox"/> Vacation of Platted Right-of-way and Easement | PH-G |
| <input type="checkbox"/> Other - cite LDC Section: _____ | attach on separate sheet |

PART I - General Information

A. **Applicant***: LANI KAI, LP c/o Robert B. Burandt Phone: (239) 463-3111

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: 1400 Estero Blvd., Fort Myers Beach, FL 33931

Email: robert@capecoralattorney.com Fax: (239) 542-9203

Contact Name: Robert Burandt, Esq. Phone: (239) 542-4733

B. **Relationship of Applicant to subject property:**

- | | | |
|--|---|--|
| <input type="checkbox"/> Owner* | <input type="checkbox"/> Land Trust* | <input type="checkbox"/> Partnership* |
| <input type="checkbox"/> Corporation* | <input type="checkbox"/> Association* | <input type="checkbox"/> Condominium* |
| <input type="checkbox"/> Subdivision* | <input type="checkbox"/> Timeshare Condo* | <input type="checkbox"/> Contract Purchaser* |
| <input checked="" type="checkbox"/> Authorized Representative* | <input type="checkbox"/> Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. **Authorized Agent(s).** Please list the name of Agent authorized to receive correspondence Agents

Name: Robert B. Burandt, Esq. Phone: (239) 542-4733

Address: 1714 Cape Coral Parkway East, Cape Coral, FL 33904

Email: robert@capecoralattorney.com Fax: (239) 542-9203

D. **Other Agent(s).** Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PART II - Nature of Request

Requested Action (each request requires a separate application)

- Special Exception
- Variance from LDC Section 30 - 154(c) max height
- Conventional Rezoning from _____ to _____
- Planned Development
 - Rezoning from _____ to Commercial PD Residential PD
 - Amendment. List the project number: _____
 - Extension/reinstatement of Master Concept Plan. List project number: _____
- Appeal of Administrative Action
- Vacation Right-of-Way Easement
- Other. Please Explain: _____

PART III - Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

- Code Section: _____ Description: _____

- Code Section: _____ Description: _____

- Code Section: _____ Description: _____

PART IV - Property Ownership

- Single Owner (individual or husband and wife)
 - Name: LANI KAI, LP Phone: (239) 363-3111
 - Mailing Address: 1400 Estero Blvd., Fort Myers Beach, FL 33931
 - Email: robert@capecoralattorney.com Fax: (239) 542-9203

Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- Complete Disclosure of Interest Form (see below)
- Attach list of property owners as Exhibit 4-1
- Attach map showing property owners interests as Exhibit 4-2 (for multiple parcels)
- For condominiums and timeshares see Explanatory Notes Part IV (Page 11)

DISCLOSURE OF OWNERSHIP INTEREST

STRAP: _____

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 Ownership
ROBERT CONIDARIS	100%
1400 ESTERO BLVD.	
FORT MYERS BEACH, FL 33931	
_____	_____
_____	_____
_____	_____

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

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

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

Name and Address	Percentage of Interest
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address	Percentage of Ownership
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

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

Date of Contract: _____

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

Name	Address

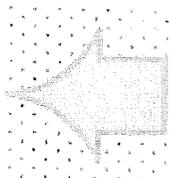
For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

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

[Signature]
Signature

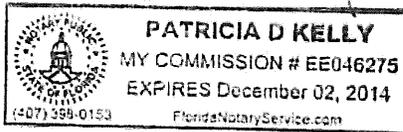
ROBERT CONIDARIS
Printed Name

STATE OF FLORIDA)
COUNTY OF LEE)



The foregoing instrument was sworn to (or affirmed) and subscribed before me on 1-25-13 (date) by ROBERT CONIDARIS (name of person providing oath or affirmation), who is personally known to me or who has produced _____ (type of identification) as identification.

(SEAL)



[Signature]
Signature
Patricia D. Kelly
Printed Name

10/12/2012

Town of Fort Myers Beach
2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0591

Page 6 of 13

PART V - Property Information

A. Legal Description:

STRAP: 19-46-24-W4-0070D.0020

Property Address: 1400 Estero Blvd, Fort Myers Beach, Florida 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? No. Attach a legible copy of the legal description as Exhibit 5-1.

Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. 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. Attach and label as Exhibit 5-2. (Survey of front NE corner only-per Dir. Fluegel-ok)

C. Property Dimensions:

Width (please provide an average width if irregular in shape) _____ feet

Depth (please provide an average width if irregular in shape) _____ feet

Frontage on street: _____ feet. Frontage on waterbody: _____ feet

Total land area: _____ acres square feet

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

3/4 mile South of Sky Bridges, West Side of Estero Blvd.

Attach Area Location Map as Exhibit 5-3

E. Property Restrictions (check applicable):

There are no deed restrictions and/or covenants on the subject property.

A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 5-4.

A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 5-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- Attach a list of surrounding property owners within 500 feet as Exhibit 5-6.
- Attach a map showing the surrounding property owners as Exhibit 5-7.
- Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

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

H. Zoning (see official Zoning Map):

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

PART VII

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, ROBERT CONIDARIS (name), as OWNER (title) of LANI KAI, LP (company), 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 County in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

LANI KAI, LP
Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

ROBERT CONIDARIS
Typed or Printed Name

Title

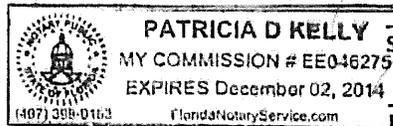
Date

1-25-13

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was sworn to (or affirmed) and subscribed before me on 1/25/13 (date) by ROBERT CONIDARIS (name of person providing oath or affirmation), who is personally known to me or who has produced _____ (type of identification) as identification.

(SEAL)



Patricia D. Kelly
Signature
Patricia D. Kelly
Printed Name

AC# 6471237

STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF HOTELS AND RESTAURANTS

SEQ# 112101900023

DATE	BATCH NUMBER	LICENSE NBR.	NAME OF THE STATE	NAME OF THE BUSINESS	STATUS
10/19/2012	120178064	MOT4601872	FLORIDA	MOTEL	NON-

The MOTEL (2002)
Named below IS LICENSED
Under the provisions of Chapter
Expiration date: DEC 1, 2013

TRANSFERABLE

LANI KAI ISLAND RESORT INC
LANI KAI ISLAND RESORT
1400 ESTERO BOULEVARD
FORT MYERS BEACH FL 33931

RICK SCOTT
GOVERNOR

KEN LAWSON
SECRETARY

DISPLAY AS REQUIRED BY LAW





8' - 2"

8' - 1"

3' - 6"

11' - 7"

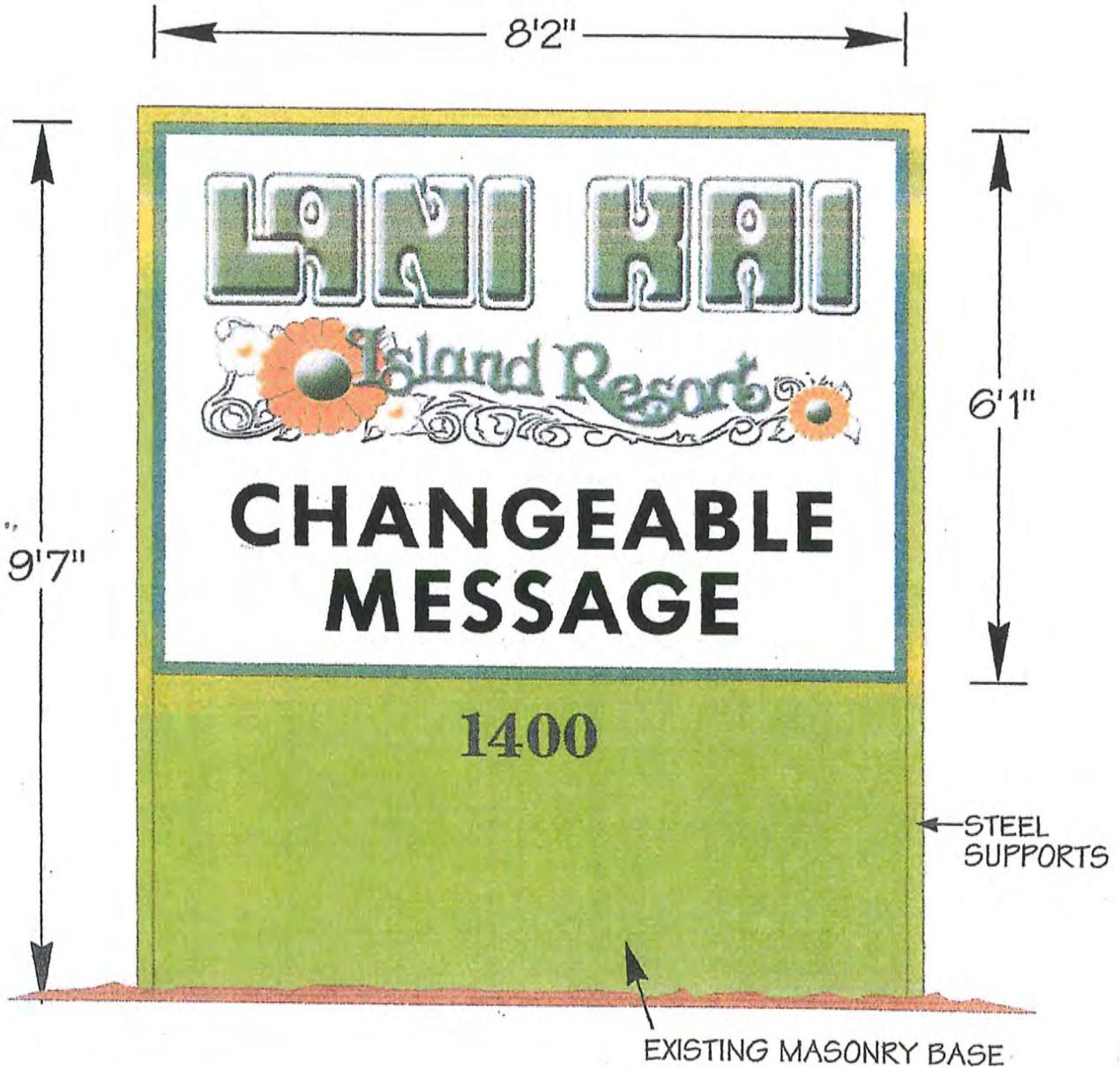
EXISTING

NORTH SIGN

1400 ESTERO BLVD.
FT. MYERS BEACH, FL

RENOVATION OF
NORTH SIGN

1



INTERNALLY ILLUMINATED ALUMINUM CABINET SIGN
WITH ACRYLIC FACES.
DOUBLE FACED.

(A)

	DATE	12-17-12
	DRAWN BY	BILL RIDDLE

OPTION # 1

OPTION # 2



(B)

	DATE	12-17-12
	DRAWN BY	BILL RIDDLE

INTERNALLY ILLUMINATED ALUMINUM CABINET SIGN
WITH ACRYLIC FACES.
DOUBLE FACED.

**RENOVATION OF
NORTH SIGN**

1400 ESTERO BLVD.
FT. MYERS BEACH, FL

OPTION # 2

Correct
12/19/2011

This instrument prepared by:
ROBERT C. ADAMSKI, ESQUIRE
1714 Cape Coral Parkway
Cape Coral, Florida 33904
Tel: (239) 542-4733
Doc Stamps: \$.70
Record: 18.50
Total: \$19.20

(Space Above This Line for Recording Data)

WARRANTY DEED

This Indenture made this 19 day of December, 2011, between **ROBERT G. CONIDARIS, a single man, "GRANTOR"**, and **LANI KAI, LP, A Florida limited partnership, "GRANTEE"**, whose address is **c/o Robert G. Conidaris, 1400 Estero Boulevard, Fort Myers Beach, Florida 33931.**

WITNESSETH,

That said Grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars, to her or him in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to said Grantee, her or his heirs and assigns, forever, the following described land located in the County of Lee, State of Florida, to wit:

All Grantor's interest in the real estate described on Exhibit A to this deed.

And said grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whosoever.

This is a deed of convenience prepared without title examination.

This is a deed conveying assets from an individual to a limited partnership solely owned by the grantor and is exempt from documentary stamp tax.

TO HAVE AND TO HOLD the Property in fee simple upon the trusts and for the uses and purposes described in this Deed and in the trust agreement referred to above (hereafter the "Trust Agreement").

The terms "Grantor," "Grantee," "Trustee" and "Beneficiaries" are used for singular and plural, as the context requires.

IN WITNESS WHEREOF, Grantor has hereto set grantor's hand and seal this day and year first written above.

[Handwritten Signature]
#1 Witness Signature

[Handwritten Name]
Print Witness #1 Name

[Handwritten Signature]
#2 Witness Signature

[Handwritten Name]
Print Witness #2 Name

[Handwritten Signature]
ROBERT G. CONIDARIS

STATE OF FLORIDA
COUNTY OF LEE

THE FOREGOING instrument was acknowledged before me this 19 day of December, 2011, by **ROBERT G. CONIDARIS**, who is (are) personally known to me or who has (have) produced _____ as identification and who did not take an oath.

(Seal)

NOTARY PUBLIC-STATE OF FLORIDA
Robert C. Adamski
Commission # DD903392
Expires: SEP. 20, 2013
BONDED THRU ATLANTIC BONDING CO., INC.

[Handwritten Signature]
NOTARY PUBLIC

EXHIBIT A to Deed

1. **1345 Estero Blvd, Fort Myers Beach, FL 33931**
19-46-24-W4-0060B.0130

Lot 13, Block B, VENETIAN GARDENS, according to the map or plat thereof as recorded in Plat Book 6, Page 70, Public Records of Lee County, Florida.

2. **1331 Estero Blvd, Fort Myers Beach, FL 33931**
19-46-24-W4-0060B.0140

Lot 14, Block B, VENETIAN GARDENS, according to the map or plat thereof as recorded in Plat Book 6, Page 70, Public Records of Lee County, Florida.

3. **1325 Estero Blvd, Fort Myers Beach, FL 33931**
19-46-24-W4-0060B.0150

Lot 15, Block B, VENETIAN GARDENS, according to the map or plat thereof as recorded in Plat Book 6, Page 70, Public Records of Lee County, Florida.

4. **1400 Estero Blvd, Fort Myers Beach, FL 33931**
19-46-24-W4-0070D.0020

That parcel of land lying in Block "D" and "E" of Crescent Beach Subdivision, as per map or plat thereof recorded in Plat Book 4 at page 45, Public Records of Lee County, Florida, described as follows: Lots 2, 3, 6, 7, 8 and 9 of Block "D"; and Lots 1, 4, 5, 8, 9, 10 and 11 of Block "E"; and all of Lot 7 less the Westerly 16 feet thereof in Block "E"; and also the Easterly 30 feet of Lots 2, 3 and 6, and all of the Southerly 15 feet of Lot 6, all in Block "E"; also the vacated street and alley formerly known as Avenue B lying between Blocks "D" and "E" and running from Estero Boulevard to the Gulf of Mexico; also that certain alleyway lying between Lots 5 and 6 on the North and Lots 7, 8, 9, 10 and 11 on the South in said Block "E"; also the vacated alleyway between Lot 6 on the North and Lots 7, 8 and Westerly one-half of Lot 9 on the South in said Block "D".

END

\\Server\adamski shared\Conidaris\Deed - RC trust RC's Trust.wpd

VARIANCE REPORT

1/2/2013

Subject Parcels: 1 Affected Parcels: 140 Buffer Distance: 500 ft



19-46-24-W4-0070D.0020

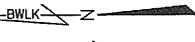


2002/01/08
12:02:33

SPECIFIC PURPOSE SURVEY

OF
A PARCEL OF LAND
LYING IN

SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
FORT MYERS BEACH, LEE COUNTY, FLORIDA



NOTES:
SURVEY BASED ON THE R/W MAPS FOR ESTERO BLVD PREVIOUSLY PREPARED BY THIS FIRM.
ELEVATIONS ARE BASED ON N.A.V.D. 1988 AND NGS BENCHMARK AD1327.

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-- OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

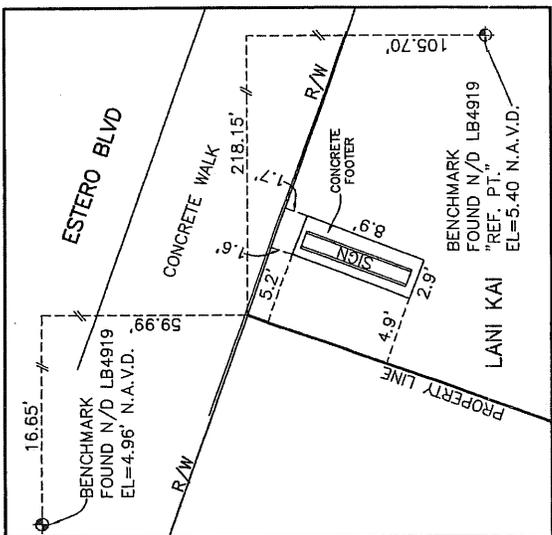
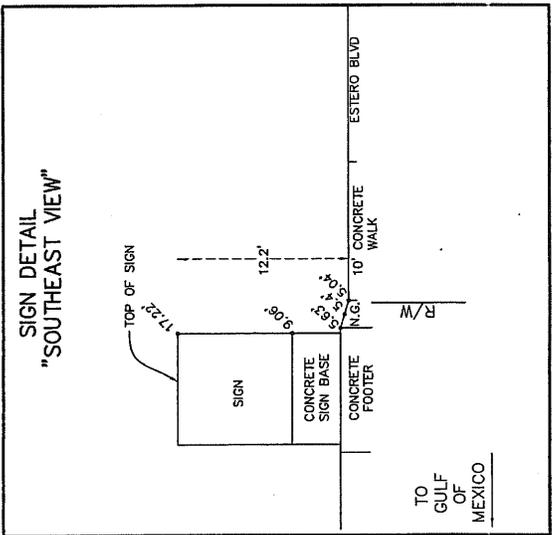
ALL UTILITIES AND IMPROVEMENTS ARE NOT SHOWN.

THIS PLAT PREPARED AS AN EXHIBIT BEING A SPECIFIC PURPOSE SURVEY TO SHOW THE LOCATION AND ELEVATION OF THE EXISTING SIGN ALONG THE RIGHT-OF-WAY LINE OF ESTERO BLVD AND THE WESTERLY PROPERTY LINE OF LANI KAI.

STRAP NO: 19-46-24-W4--0070D.0020

ADDRESS: 1400 ESTERO BLVD, FORT MYERS BEACH, FL 33931

DATE OF LAST FIELD WORK: 1-8-13.



*NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

BEAN, WHITAKER, LUTZ & KAREH, INC.
13941 MCGREGOR BLVD., FORT MYERS, FLORIDA 33919-5510
PROFESSIONAL SURVEYOR & MAPPER
STATE OF FLORIDA

- THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON.
- THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF SURVEY OR FREEDOM OF ENCUMBRANCES.
- ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.

SIGN LOCATION AT LANI KAI

Bean, Whitaker, Lutz & Kareh, Inc. (DB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13941 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5510 (239) 461-1331

PROJECT NO.	DATE	DRAWN BY	SCALE	SHEET	FILE NO.
SR42160.DWG	1-8-13	S. PIERCE	1" = 10'	1 OF 1	19-46-24

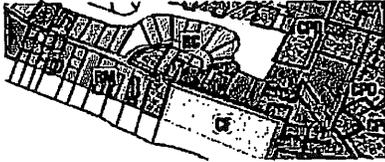
LEGEND

- E.O.P. = EDGE OF PAVEMENT
- CONC = CONCRETE
- R/W = RIGHT OF WAY
- N.G.S. = NATIONAL GEODETIC SURVEY
- N.A.V.D. = NORTH AMERICAN VERTICAL DATUM
- N/D = NATURAL GROUND
- N/D = NAIL AND DISC

Case # _____
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: VAR VAR2013-0001
Project Name: LANI KAI ISLAND RESORT - MONUMENT SIGN HEIGHT
Authorized Applicant: ROBERT B. BURANDT, ESQ.
LeePA STRAP Number: 19-46-24-W4-0070D.0020

Current Property Status: MOTEL/HOTEL
Current Zoning: DOWNTOWN
Future Land Use Map (FLUM) Category: N/A
Comp Plan Density: N/A Platted Overlay? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
30-154(c)	(Var from) Max Height Signs (A) 9'-7"
or Option 2:	(Var from) Max Height Signs (B) 8'-6"
	(Var from) Front set Back (A) & (B) 3' to 1'-5"

Complete the narrative statements below for EACH variance requested.

