

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 13-03
VAR2012-0006 – The Beach Theater

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

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

WHEREAS, the subject property is located at 6425 Estero Boulevard, Fort Myers Beach, FL 33931 in the 'Commercial Boulevard' zoning category of the Official Zoning Map and the 'Mixed Residential' category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on January 8, 2013; and

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

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on February 4, 2013, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2013-001, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-87.

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

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2013-001 and the standards for granting variances, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVES** the applicant's request for a variance from Section 30-153 (b)(1), Section 30-154(a), and Section 30-154(c) of the Town of Fort Myers Beach Land Development Code to permit an existing monument sign with a backlit changeable message panel, thirty-seven (37) square feet of sign face area, and 7'10" in overall sign height.

CONDITIONS OF APPROVAL:

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

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

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

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

By: Alan Mandel
Alan Mandel, Acting Mayor

Approved as to legal sufficiency:
By: Maully W. Melis
Fowler, White, Boggs
Town Attorney

ATTEST:
By: Michelle Mayher
Michelle Mayher
Town Clerk

NORTHERLY PARCEL

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

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

CONTAINING 0.458 ACRES, MORE OR LESS.

AND

SOUTHERLY PARCEL

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

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

CONTAINING 0.467 ACRES, MORE OR LESS.

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