



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Sign Variance (VAR)

CASE NUMBER: VAR2014-0002

LPA HEARING DATE: April 14, 2015

LPA HEARING TIME: 9:00 AM

STAFF RECOMMENDATION: APPROVE (as conditioned)

I. APPLICATION SUMMARY

Applicant/Agent: Lani Kai LP/Robert B. Burandt, Esq.

Request: This request involves 4 signs located on 3 separate parcels. The applicant is seeking a variance from the sign illumination requirement from LDC section 30-154(a) to allow internally illuminated signs with black out letters for all 4 signs. The applicant is seeking a variance from the right-of-way setback requirements of LDC section 30-93(b) & section 30-154(b) which requires a setback of a minimum 3 feet to permit a minimum setback of 1.5 feet for all 4 signs. The applicant also seeks a variance from sign base height requirement of LDC section 30-154(c) which provides that monument signs may be elevated provided that the bottom of the sign is no more than eighteen (18) inches above the highest adjacent grade to permit a base height of 3 feet on the parcels located on the bay side of Estero Boulevard and a base height of 3 feet 5 inches on the 2 signs located on the Lani Kai site (1400 Estero Boulevard). In addition, the applicant seeks a variance to LDC section 30-154(c) which limits the height of monument signs to five (5) feet to allow the two signs on the Lani Kai property (1400 Estero Blvd) to a maximum height of eleven (11) feet seven (7) inches and seven feet for the two Bay side signs (1331, and 1479 Estero Boulevard). In addition, the applicant is seeking a variance from the maximum sign area requirements of LDC Section 30-153(b)(2) which limits the sign area to 16 square feet for each business establishment and

an additional 32 square feet to identify the commercial development to allow an additional 32 square feet of signage (from 272 square feet to 304 square feet).

Physical Address: 1325, 1331, 1345, 1400, and 1479 Estero Boulevard

STRAP #: 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

FLU: Pedestrian Commercial

Zoning: Downtown

Current use(s): Hotel resort & parking lot

Adjacent zoning and land uses:

North: Downtown, Pedestrian Commercial FLUM, 7 Eleven, Crescent Shore Condos multi-family residents),

South: Downtown, Pedestrian Commercial FLUM, single family residents (1480 I St. & 71 Avenue C) and the Batiki West Condos

East: Matanzas Pass, TIDAL WATER FLUM

West: EC (Environmentally Critical), Recreation and Tidal Water FLUM, Beach and Gulf of Mexico

II. BACKGROUND AND ANALYSIS

Background:

Lani Kai, LP (the applicant) has applied for a several variances specific to signage to their facilities located along Estero Boulevard. The applicant is seeking relief from several sections of Chapter 30 – Signs, of the Town of Fort Myers Beach Land Development Code (LDC). The applicant is seeking variances from the illumination requirements of Section 30-154(a). The applicant is seeking variances from the right-of-way setback requirements of Sections 30-93(b) and 30-154(b). The applicant is seeking variances from the sign base requirements of Section 30-154(c). The applicant is also seeking variances from the sign height requirements of Section 30-154(c).

The subject property is comprised of three distinct parcels. The first parcel contains the Lani Kai resort on the Gulf side of Estero Boulevard at 1400 Estero Boulevard. The resort occupies a 2.7 acre parcel that fronts on the Gulf of Mexico. Two signs historically existed

on this parcel, a northern sign, and a southern sign, and are the subject of the variances requested. The applicant is proposing a sign height of eleven feet seven inches.

The second parcel contains the Bayview hotel units located at 1479 Estero Boulevard. The hotel occupies a .66 acre parcel on the bayside of Estero Boulevard. A "V" monument sign historically existed on this site. The applicant intends to remove the existing "V" base and install a single monument sign with a proposed height of 7 feet.

The third parcel contains a parking lot located at 1325, 1331, and 1345 Estero Boulevard. The parcel is a .42 acre site that is fully developed with a paved parking lot. The applicant intends to remove the old poles that formerly housed a sign. Staff has worked with the applicant to locate the replacement sign in the northwest corner of the lot.

The application materials provide the following concerning the development history of the site:

...the Lani Kai was built in the 70's and at that time, property owners were allowed to construct buildings and/or parking lots at or very near Estero Blvd. Because of that, signs on the North end of the Island had to be elevated so that parties could see the signs over the parked cars and buildings.

Previous Variance:

On April 18, 2011 Town Council adopted amendments to the sign ordinance (11-01) which became effective immediately upon adoption. The amendment included an amortization provision requiring that all non-conforming signs come into compliance by December 31, 2011. The subject site was not brought into compliance.

A notice of violation (CE12-0440) was issued for the signs at 1400 Estero Boulevard on (9/28/2012), and failing to comply within the specified time frame, a notice of hearing. At the special magistrate hearing on January 30, 2013 the case was continued for 120 days. The applicant submitted a variance application for the signs located at the 1400 Estero Boulevard property (VAR2013-02). Through the code enforcement process, the applicant removed the monument sign at the southern end of the 1400 Estero Boulevard property. At the June 6, 2013 LPA meeting, the LPA heard the applicant's request to for a variance to retain the remaining sign at the northern end of the 1400 Estero Boulevard property. The LPA recommended approval of the request to Town Council. The case was heard by the Town Council on August 19, 2013. Council approved the requested variance in Resolution 13-14.

Resolution 13-14 permitted a sign on the northern end of the property with a right-of-way setback of 1 foot 7 inches and a sign height of 9 feet 7 inches so long as the width of the sign structure does not exceed 8 feet 2 inches and landscaping is installed around the sign base wherever possible.

In March 2014 the sign on the northern end of 1400 Estero Boulevard remained in its pre-variance application state and a new notice of violation (CE14-0098) was issued on March 14, 2014.

On April 28, 2014 the applicant submitted a new variance application, VAR2014-0002, including the sign at 1400 Estero Boulevard that was the subject of the previous variance request (VAR13-02) and adding signs located at the southern end of 1400 Estero Boulevard and the applicant's properties at 1331 and 1479 Estero Blvd. This variance request is the subject of this staff report.

Previous Sign Variance Requests by Other Properties

Staff is aware that the issue of obstructed visibility has been cited in several previous cases where applicants were seeking additional height for the sign bases and overall sign height. For example, the Beach Shell Inn, VAR2011-0004, cited the location of the existing pool heater and exhaust, existing fence (required to surround the pool heater) and the location of the required parking spaces located along Estero Boulevard as well as off-site constraints like existing utility poles, street signs, transit benches and way-finding devices. The applicant in this case maintained that a 5 foot tall monument sign would not be visible around and among these obstacles. Council approved this request in Resolution #12-22.

The Dolphin Inn case, VAR2012-0002, is another example. In this case the applicant provided that "in order for our signs to be visible, we must elevate it over the height of the vehicles in the lot." Council, in Resolution #12-19, approved zero foot setback as well as an overall sign height of 9 feet with a sign base of 2 feet 10 inches in height.

Staff has attached a variety of sign Resolutions that have been approved since the sign code was adopted in 2011. These include: Beach Shell Inn; DiamondHead; Dolphin Inn; Pierview Hotel; Neptune Inn; The Beach Theater, and Lani Kai. The applicant has also cited the Lighthouse Resort CPD approval. Council in Resolution 13-24 approved a deviation (#11) to allow a 25 foot 6 inch sign height.

Analysis:

The applicant is requesting relief from various sections of Chapter 30 of the LDC that regulates signs for four monument signs. The application materials provide a narrative that attempts "to explain exactly what signs the Lani Kai had and what the Lani Kai would like to replace them with." This narrative provides that four monuments signs existed and were removed as well as a substantial amount of painted signs on the building was also removed. Concerning the northern sign at 1400 Estero Boulevard, the narrative provided this discussion:

The First Sign is located at 1400 Estero on the North End of the property. The applicant is requesting replacement of previous sign, 11' -7" by 8' 2'(sic)...Applicant will use the existing base. Reason for Height adjust is because the North Side of the sign is obstructed by an FPC Electrical Box and water pipes. Also when cars park on either side of the sign you cannot see the sign. Requesting a variance on the set back to 1.5 feet from right of way. The applicant intends to use the existing base.

Staff notes that utilizing the existing base, and the fact that the sign needs to be elevated to be visible due to adjacent obstructions has led the applicant to seek a variance from the sign base height restrictions contained in Section 30-154(c). Adjacent obstructions include the dumpster enclosure for the Crescent Shores condo building as well as the previously mentioned Electrical Service Boxes and water standards. Section 30-154(C) limits the base of the sign to a height of 18 inches above the highest adjacent grade. Staff finds that the requested variances for this sign are appropriate given the specific site constraints and limitations.

Concerning the second sign located at 1400 Estero Boulevard, the applicant provides the following discussion:

The Second Sign is located on the South Side of 1400 Estero Blvd although the South Side does not have the electric box or water pipes, but cars parking on either side of the sign obstruct the sign, so the applicant is requesting the same size and type of sign on the South end of the parking as well as a 1.5 foot setback, utilizing the existing monument base.

Staff notes that there is a driveway into the Lani Kai parking lot on the north side of this sign site. Vehicles using this driveway can obstruct the visibility of the sign and during peak periods the Lani Kai shuts this driveway and utilizes this area for additional parking that can also obstruct the visibility of the sign. To the south of this sign site is a single family dwelling unit and driveway. Vehicles parked in this driveway could obstruct the visibility of the sign. Staff finds that the requested variances for this sign are appropriate given the specific site constraints and limitations.

Concerning the third sign, the applicant provides the following discussion:

The Third Sign is located at 1479 Estero Blvd; originally the applicant had a "V" shaped sign here...the applicant removed the sign but not the base because of parking, the applicant is requesting that he be allowed to use old cement base and construct a new V -sign similar to what he had before (3 foot base 4' foot sign on top of that), which is internally illuminated aluminum and metal with acrylic faces. In the alternative applicant request replacing with a 3 base and 4 foot sign, a viewable from both sides two sided internally illuminated, aluminum and metal with acrylic faces to be located at the same spot.

The location of the third sign has several objects that obstruct visibility to the north. There is landscaping and a fence associated with Norm's Parking Lot as well as a power pole that limits visibility. The applicant has agreed to remove the old "V" sign base. The proposed sign area is also limited in size and has several components that limit the location of the sign. These include electric boxes and the power pole. Staff finds that the requested variances for this sign are appropriate given the specific site constraints and limitations.

Concerning the final sign subject to this request, the applicant has provided the following discussion:

The Fourth Sign is located at 1331 Estero Blvd, the old sign was in the middle of the parking lot...this sign was evaluated (sic) to be scene over parked vehicles. The old pole sign was approximately 30' feet in the air. Applicant request a new sign with a base height of six feet and a four foot by eight foot sign on top of that...All signs are internally illuminated aluminum and metal signs with acrylic faces, and black out letters

Staff has worked with the applicant to relocate the proposed sign location to the northwest corner of parcel and to lower the sign height to a maximum height of 7 feet.

The Lani Kai Resort is located just south of Times Square in a congested area of the beach. There is substantial pedestrian and vehicular traffic in front of the subject parcels. Staff is aware that there is a substantial body of research that establishes that illuminated, on premise commercial signs assist the traveling public in wayfinding and situational awareness. Staff believes that the proposed sign illumination provides the desired visibility. Staff recommends that the variance addressing the sign illumination be approved.

Findings and Conclusions:

Regarding the required findings and conclusions, the applicant has provided the following discussion:

- (A) As to 1400 & 1479 There (sic) are Exceptional or extraordinary conditions and circumstances that are inherent to the property in question. First of all the Hotels at both locations were designed to have signs out front near the Street so that persons could locate the Hotels without stopping in the middle of the road. The signs were designed with the size and the locations of the structures so that they would be easily notice and the Hotel would be immediately recognized. At the both hotel Locations there are visible obstructions that would prevent the signs from being scene if they were required to comply with the ordinance and there are no other options for placing these signs on the property. Their request is a de minimis variance they are simple requesting to go back to what they had, which was the original approved design. Across the street at the small hotel they are actually asking for less than what they had as well as the parking lot across the street, but again they need the variance for height and location in order for the signs to be visible to the public,*
- (B) The conditions justifying the variance are not the result of the actions of the applicant; the applicant had previously approved signs but took them down in compliance with code enforcement.*
- (C) The variance granted is the minimum variance, once again the signs at 1400 are similar to what was previously approved and constructed pursuant to the original*

design of the buildings. The signs at the hotel across the street and in the parking lot are actually smaller in size than was previously there and are necessary to protect the public, because they not only need to be scene (sic) but they need to be recognized.

(D) The granting of the variance will not be injurious to the neighborhood or detrimental to the public welfare, again the signs at the 1400 location will replace what was previously their (sic) and no one has been injured by the prev. signs. The signs across the street are smaller and all signs will be new up graded signs, constructed according to current codes.

(E) The conditions or circumstance on this specific piece of property are unique to this property and new construction would take into consideration the current code and there it is not reasonable or practical to amend the regulation in question.

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 circumstances around the proposed signs warrant approval of the requested variances. Both signs located at 1400 Estero Boulevard have visual obstructions such as the electrical box, neighboring property dumpster enclosure or utility standard at the northern sign or the driveway at the southern sign that often has vehicles parked in it. Staff agrees that taller signs are required to provide visibility given these visual obstructions. Staff also notes that the requested sign heights existed at these locations for approximately 30 years according to the applicant.

The parking lot sign is proposed to be relocated out of the parking lot to the northwest corner of the parking lot. There is a relatively open sand area in this location that can accommodate the proposed sign. This area is located between the right-of-way and the paved parking lot. This area is approximately 11 feet wide, and with a setback of 1.5 feet to the right-of-way can accommodate the proposed sign. The south west corner of the lot also contains a sand area. This area was ruled out as a possible sign location as the "Yo! Taco" building is built close to the right-of-way and would effectively block views of the sign from vehicles traveling north on Estero Boulevard.

The northwest corner of the parking lot is adjacent to the Seven Eleven Store. The adjacent area is used to access the store's dumpster area as well as providing an area for delivery trucks to park when providing service to the store. This area is frequently used by the Sheriff's Office as well as taxi cab providers to park vehicles.

After considering various sign types, the code, sign locations, setbacks, staff believes the requested variances are the minimum variances to relieve the unreasonable burden caused by the application of Chapter 30 of the LDC.

These circumstances are unique to the subject property. Staff therefore recommends a finding that there **are** exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property and that **it does** justify the variances requested.

- 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 signs were in existence for more than 30 years. The applicant does not control the use of adjacent properties such as the dumpster enclosure at the Crescent Shore Condo building, the location of Yo! Taco, or the landscaping on Norm's Beach Parking Lot. Staff therefore finds 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.*

The requested variances are the minimum needed to provide visibility at the 4 proposed sign locations. The proposed signs provide a unique function as way finding signs for the noncontiguous resort property. Signs meeting the requirements of Land Development Code would not be clearly visible to the motoring public given the various obstructions located along Estero Boulevard. With this in mind, staff believes that the requested variances reflect the minimum variances necessary for the sign, taking into consideration the subject property's location, function, and the orientation of the signs. Staff believes that the requested variance **is** the minimum variance necessary to relieve the unreasonable burden caused by the application of Chapter 30 of the LDC.

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

The applicant provides that the subject signs were in existence for 30 years, is not obtrusive to adjoining property, and does not interfere with traffic. Allowing the additional sign area and height appears to cause no detriment to the public welfare. Allowing signs to be proportionately bigger (base plus the sign face) allows it to be visible given the unique circumstances at each of the proposed sign sites. Larger signs existed on the subject site and appear to have caused no detriment to the public welfare over the 30 plus years that they had been in existence. Therefore, Staff finds that granting the variance **would not** be injurious to the neighborhood or otherwise detrimental to the public welfare.

- 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 new requirements. The circumstances presented by this request are unique to the Lani Kai property. Staff recommends the finding that the circumstances of the specific pieces of property for which the variances are sought **are not** of so general or recurrent a nature as to make it more reasonable or practical to amend the regulation.

III. RECOMMENDATION

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

CONDITIONS OF APPROVAL:

1. *Approval of this variance does not exempt the subject property from any other provisions of LDC Chapter 30.*
2. *The Parking Lot Sign (for 1325, 1331, 1345 Estero Boulevard) must be located in the northwest corner of the parcel. The base of the sign must not exceed 3 feet in height, the width of the sign must not exceed 8 feet in width, and the overall height of the sign must not exceed 7 feet in height.*
3. *The Bayview old "V" sign base (1479 Estero Boulevard) must be removed. A monument type sign, with two sign faces may be utilized. The base of the sign must not exceed 3 feet in height, the width of the sign must not exceed 8 feet in width, and the overall height of the sign must not exceed 7 feet in height.*
4. *The Lani Kai resort (1400 Estero Boulevard) signs must not exceed 8 feet 2 inches in width and 11 feet 7 inches in height.*
5. *The maximum total square footage of signs on the Lani Kai properties is limited to 304 square feet.*
6. *If the resort use ceases on the subject property for any reason, this variance will expire and the signs allowed by this variance must be removed within 30 days of termination of the resort use or a new variance must be obtained.*

IV. CONCLUSION

Approval of the requested variance will relieve the burden caused by application of Chapter 30 of the Land Development Code. The subject parcels are fully developed and present unique circumstances for the placement of the proposed signs. Visibility of the proposed sign locations presents challenges such as obstructions from adjacent uses. Staff recommends APPROVAL of the requested variance as conditioned.

Exhibits:

A - Application materials

B - Various agent email correspondence