

Design Standards

I. Introduction

Architectural control keeps a community attractive for the enjoyment of residents and for the protection of property values. While property values are generally not an issue for waterfront or coastal landowners, maintaining access to the water and keeping the area attractive are important. Design standards are the most common way to maintain architectural control.

II. What are Design Standards?

Design Standards are guidelines regarding the aesthetics and architectural appearance of a building or improvement to property; the standards govern the alteration, construction, demolition, or relocation of a building or improvement.¹ This includes building and site design elements such as exterior modifications and additions, accessory buildings, fences, walls, landscaping, architectural styles, building materials, colors, right-of-way, easements, setbacks, scale, density and maintenance of character. Appearance codes were the earliest type of architectural design review ordinances that contained a set of standards the design review board must apply.² Design standards often incorporate graphic or photographic materials to illustrate designs

The range of topics addressed in design standards is broad, almost limitless. In the context of waterfront property, setback regulation, scale and maintenance of waterfront character are critical design elements. Design standards should be compiled in a single document as the guidelines for the design review committee.

Standards are usually developed by the local government, area citizens, property owners and developers in a cooperative effort.³ The standards serve two primary purposes: first, they assist the landowner, both in designing the proposed building or improvement and in determining how to apply for approval; second, they provide principles for consistent decisions by design review committees.⁴ The ultimate goal is to achieve a specific character in a designated area.⁵

III. Legal Issues

¹ A GLOSSARY OF ZONING, DEVELOPMENT AND PLANNING TERMS (Michael Davidson & Fay Dolnick, Eds.)

² DANIEL R. MANDELKER, *LAND USE LAW*, §11.24 *Architectural Design Review* (5th Ed. 2003).

³ See Stanley D. Abrams, *The Use of Design Guidelines to Renew and Create an Urban Environment*, in ALI-ABA COURSE OF STUDY MATERIALS, Land and Use Institute Planning, Regulation, Litigation, Eminent Domain, and Compensation, Vol. 1, August 1997.

⁴ See Jo Anne P. Stubblefield, *Architectural Control and Design Guidelines*, in ALI-ABA COURSE OF STUDY MATERIALS, Drafting Documents for Condominiums, Planned Communities, and New Urbanism Developments, Vol. 2, January 2003.

⁵ Abrams, *supra* note 3.

Local governments' lawmaking authority is limited to the general police powers of protecting the health and welfare of the community. Regulations must be fair and reasonable in content and must further a legitimate governmental interest; this is known as substantive due process. Thus, when considering architectural design standards, sign regulations, and historic preservation, courts must determine if the elements provide substantive due process. Fundamentally, courts must determine whether aesthetic regulation is a proper exercise of the police power under the due process clause of the Fifth and Fourteenth amendments to the Constitution.⁶

A majority of courts now hold that aesthetics alone is a legitimate government purpose, without any linkage to a derivative public purpose, such as property values or tourism.⁷ Like aesthetic regulations, specific architectural design ordinances have been upheld as valid exercises of police power.⁸ Recognizing aesthetics considerations, without other linkages, as an independent basis for regulation the substantive due process question of whether authority exists for local governments to enact design standards, but courts must still determine whether aesthetic controls properly advance aesthetic purposes as applied in specific instances. Thus, courts stress the validity of an aesthetic regulation if it is reasonable under the circumstances it is applied.⁹

IV. Best Policy Practices

The City of Ft. Myers, Florida provides comprehensive design standards for waterfront properties in its Code of Ordinances. Division 5, Waterfront Development Districts, sets the policy of the city to protect and preserve the special attributes of the waterfront.¹⁰ The division establishes the minimum setbacks for the districts; it requires that a variance to the setback incorporate a public access easement along the waterfront to preserve and view or enhance the aesthetics of the area.¹¹ The division also establishes that no building, parking, solid fence shall be permitted in order to preserve the unobstructed

⁶ U.S. CONST. Amend. 5. The Fifth Amendment states, in pertinent part: "No person shall be... deprived of life, liberty, or property, without due process of law..." The Fourteenth Amendment states that "No state shall . . . deprive any person of life, liberty, or property, without due process of law." The Fifth Amendment applies to actions of the federal government and the Fourteenth Amendment applies to actions of state governments.

⁷ MANDELKER, *supra* note 2, §11.01 *Aesthetics, Sign Regulation and Historic Preservation*; ARDEN H. RATHKOPF & DAREN A. RATHKOPF, RATHKOPF'S THE LAW OF ZONING AND PLANNING, VOL. 2, §16.5 *Modern-period doctrine: aesthetics alone* (2005); For an example of the modern view in Florida, see *City of Lake Wales v. Lamar Adv. Ass'n*, 414 So. 2d 1030 (Fla. 1982) (holding that regulation of outdoor advertising for aesthetic purposes alone was a valid exercise of police power).

⁸ See *Georgia Manufactured Housing Ass'n, Inc. v. Spalding County, Ga.*, 148 F. 3d 1304 (11th Cir. 1998) (upholding the constitutionality of a requirement that manufactured housing be built with 4:12 roof pitch in certain residential zoning districts).

⁹ RATHKOPF, *supra* note 7, §16.6 *Limitations on aesthetic regulation – Limiting the scope of regulation to preserving a specific visual context*.

¹⁰ See *City of Ft. Myers, Florida, Code of Ordinances, Division 5, §25-111*.

¹¹ See §25-112. Waterfront setback.

view of the waterfront.¹² The most important section of the division with regard to development of waterfront property provides, among other things, that all waterfront development and redevelopment requires a ten foot riverwalk easement along the rear property line (river's edge) to preserve public access to the river.¹³ The City also maintains its right to enforce any additional requirements, stipulations from settlement agreements, or other binding agreements between the city and the waterfront property owners.¹⁴

The City of Tampa, Florida has an excellent example of design guidelines for commercial waterfront areas. Article XVIII, Central Business District of the City of Tampa's Code of Ordinances, provides that it is the purpose of the downtown waterfront district to ensure public access to and along the water's edge and to create a pedestrian-oriented waterfront environment.¹⁵ The regulations require a twenty-three foot wide setback from the water's edge; construction of riverwalks to the dimensions specified in the ordinance; and maintenance of the riverwalks.¹⁶ Variances are granted on a very limited basis and are based on factors specified in the ordinance.¹⁷

¹² See §25-114. Side yards.

¹³ See §25-115. Riverwalk/public access.

¹⁴ *Id.*

¹⁵ See §27-441. Development design regulations.

¹⁶ *Id.*

¹⁷ *Id.*