

1. Requested Motion:

Approve Resolution 09-35 ordering the demolition of the Newton Cottage

Meeting Date:

November 16, 2009

Why the action is necessary:

This action follows prior Town Council direction and conforms to the requirements contained in the Special Certificate of Appropriateness for demolition issued by the Town Historic Preservation Board on July 14, 2009.

What the action accomplishes:

2. Agenda:

Consent
 Administrative

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff
 Town Attorney

5. Background:

The Town is the owner of the property known locally as Newton Park. This property contains a structure known as the Cottage, which had received Town designation as an historic resource on March 16, 2004. The Town Council applied for a special certificate of appropriateness for demolition or other relief in November, 2008. The Town Historic Preservation Board denied the demolition request on March 10, 2009. The Town applied in June, 2009, for approval of another special certificate of appropriateness for demolition for this structure, which application was granted by the HPB on July 14, 2009. Order of a governmental authority is required by the Town Land Development Code prior to the actual demolition. This resolution accomplishes that requirement.

Attachments: Town Resolution 2009-35; HPB Resolution 2009-14.

6. Alternative Action:

Give different policy direction to the Town staff and Town attorney.

7. Management Recommendations:

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources 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 09-35

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA:

WHEREAS, the Town of Fort Myers Beach (“applicant”) is the owner of the structure called the Cottage on the Newton Park Property, with a physical address of 4610 Estero Boulevard, Fort Myers Beach, Lee County, Florida 33931 and a STRAP Number of 29-46-24-W3-0080H.0030 and with a legal description as set forth on Exhibit A, which is hereby incorporated by reference (the “subject property”); and

WHEREAS, the Town Historic Preservation Board designated the Cottage as an historic resource on March 16, 2004 in HPB Resolution FMBHD 2004-02, pursuant to LDC Chapter 22, Article II, Division 3; and

WHEREAS, the Town Department of Community Development received an application in November, 2008, from the owner’s representative for a special certificate of appropriateness (SCA #1) requesting demolition of the Cottage or other relief; and

WHEREAS, a public hearing on SCA #1 was legally advertised and held before the HPB on March 10, 2009; and

WHEREAS, at such hearing, the HPB gave full and complete consideration to the application for a special certificate of appropriateness for demolition of the structure on the subject property, recommendations of staff, the documents in the file, and the testimony of all interested persons and did not approve, and therefore refused to grant, the issuance of a special certificate of appropriateness for demolition of the subject property, as set forth in detail in HPB Resolution 2009-06; and

WHEREAS, the Town Department of Community Development received an application in June, 2009, from the owner’s representative for a special certificate of appropriateness (SCA#2) for demolition of the Cottage; and

WHEREAS, a public hearing on SCA#2 was legally advertised and held before the Historic Preservation Board of the Town of Fort Myers Beach, Florida on July 14, 2009; and

WHEREAS, at such hearing, the HPB gave full and complete consideration to the application for a special certificate of appropriateness for demolition of the structure on the subject property, recommendations of staff, the documents in the file, and the testimony of all interested persons; and

WHEREAS, the HPB approved the issuance of a special certificate of appropriateness for demolition of the Cottage, with four (4) conditions as set forth with specificity in HPB Resolution 2009-14, which is attached hereto as Exhibit B and hereby incorporated by reference (the “HPB Resolution”); and

WHEREAS, applicant has submitted all documentation required by the Florida Department of State, Division of Historical Resources (DHR) and the Florida

Communities Trust (FCT) with regard to the subject matter of this Town Resolution and both the DHR and the FCT have approved the demolition contemplated by the HPB Resolution, as set forth in their documents which are attached hereto as Exhibit C and hereby incorporated by reference, thereby fulfilling the requirements of the first and second conditions of the HPB Resolution; and

WHEREAS, the Town Council acknowledges that the Demolition Order set forth in this Resolution does not abrogate any provision of any agreement affecting the subject property, and only authorizes the proposed demolition to the extent that demolition of a designated historic resource is regulated by LDC Chapter 22, thereby fulfilling the requirements of the third condition of the HPB Resolution; and

WHEREAS, Section 22-104(a) of the Town Land Development Code states that demolition of a designated historic resource may only occur pursuant to an order of a governmental body or board or an order of a court of competent jurisdiction and pursuant to approval of an application by the owner for a special certificate of appropriateness for demolition; and

WHEREAS, the Town Council, sitting as the appropriate governmental body and having considered HPB Resolution 2009-14 approving the application of the owner for a special certificate of appropriateness for demolition as required by Section 22-104(a) of the Town Land Development Code, the HPB minutes, and all documents in the file, and the input of all interested persons, has entered into the following determination, thereby fulfilling the requirements of the fourth condition of the HPB Resolution.

NOW, THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

The Town Council **APPROVES** and therefore **ORDERS** the demolition of the structure known as the Cottage on the subject property, pursuant to the requirements of HPB Resolution 2009-14, and directs staff to issue the necessary demolition permit in accordance with the requirements of Florida law and Town ordinance.

UPON MOTION BY _____ AND SECOND BY _____, THE ABOVE RESOLUTION WAS DULY PASSED AND ADOPTED ON THIS _____ DAY OF NOVEMBER, 2009.

Larry Kiker, Mayor
Tom Babcock, Councilmember
Bob Raymond, Councilmember

Herb Acken, Vice Mayor
Jo List, Councilmember

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Michelle Mayher, Town Clerk

By: _____
Larry Kiker, Mayor

Approved as to legal form by:

By: _____
Anne Dalton, Town Attorney

RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER HPB 2009-14
THE COTTAGE: NEWTON PARK PROPERTY

A RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF FORT MYERS BEACH, FLORIDA:

WHEREAS, the Local Planning Agency of the Town of Fort Myers Beach, Florida, serves as the historic preservation board for the Town of Fort Myers Beach ("HPB") pursuant to Chapter 22, Article II, Division 2, Section 22-71 and Chapter 30, Section 30-56(b) of the Land Development Code ("LDC") of the Town of Fort Myers Beach; and

WHEREAS, the HPB is vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological, and architectural resources in the Town, pursuant to LDC Section 22-71; and

WHEREAS, the HPB has the power and duty to designate eligible historic resources; evaluate the significance and eligibility of historic resources for designation pursuant to Chapter 22 of the LDC; approve, deny or approve with conditions applications for special certificates of appropriateness applicable to historic resources designated pursuant to Chapter 22; and to record and maintain records of the actions and decisions of the HPB, pursuant to Section 22-74 of the LDC; and

WHEREAS, Section 22-103(a)(1) of the LDC requires the HPB to issue a special certificate of appropriateness prior to initiation of any work involving alteration, demolition, relocation, reconstruction, excavation or new construction which will result in a change to the original appearance of a designated historic resource; and

WHEREAS, the Town of Fort Myers Beach ("applicant") is the owner of the structure called the Cottage on the Newton Park Property, with a physical address of 4610 Estero Boulevard, Fort Myers Beach, Lee County, Florida 33931 and a STRAP Number of 29-46-24-W3-0080H.0030 and with a legal description as set forth on Exhibit A, which is hereby incorporated by reference (the "subject property"); and

WHEREAS, the Town Historic Preservation Board designated the Cottage as an historic resource on March 16, 2004 in HPB Resolution FMBHD 2004-02, pursuant to LDC Chapter 22, Article II, Division 3; and

WHEREAS, the Town Department of Community Development received an application in November, 2008, from the owner's representative for a special certificate of appropriateness (SCA #1) requesting demolition of the Cottage or other relief; and

WHEREAS, a public hearing on SCA #1 was legally advertised and held before the HPB on March 10, 2009, at which time the HPB did not approve, and therefore refused to grant, the issuance of a special certificate of appropriateness for demolition of the subject property, as set forth in detail in HPB Resolution 2009-06; and

WHEREAS, the Town Department of Community Development received an application in June, 2009, from the owner's representative for a special certificate of appropriateness (SCA#2) for demolition of the Cottage; and

WHEREAS, a public hearing on SCA#2 was legally advertised and held before the Historic Preservation Board of the Town of Fort Myers Beach, Florida on July 14, 2009; and

WHEREAS, at such hearing, the HPB gave full and complete consideration to the application for a special certificate of appropriateness, recommendations of staff, the documents in the file, and the testimony of all interested persons.

NOW, THEREFORE BE IT RESOLVED BY THE HISTORIC PRESERVATION BOARD OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

The HPB **APPROVES** the issuance of a special certificate of appropriateness for demolition of the subject property, subject to the conditions set forth below:

1. The Applicant must submit all documentation required by the Florida Department of State Division of Historical Resources (DHR) per the letter dated September 3, 2008 (**Exhibit B**), and any other documentation that may subsequently be required by DHR to Florida Communities Trust and/or DHR, as may be required by such agencies; and
2. Prior to issuance of a demolition permit, the Applicant must provide evidence from DHR and Florida Communities Trust to Town staff that the requirements set forth in condition #1 above and all other requirements imposed by the State of Florida have been satisfied.
3. This certificate of appropriateness does not abrogate any provision of any agreement affecting the subject property, and only authorizes the proposed demolition to the extent that demolition of a designated historic resource is regulated by LDC Chapter 22.
4. This approval does not constitute the issuance of an order of demolition as provided for in LDC Section 22-104(a). Such order may only be issued by a governmental body or board or a court of competent jurisdiction, at which time the demolition permit may be issued.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the presentations by Applicant, staff, and other interested parties at the hearing, and review of the application and the standards for issuance of a special certificate of approval, the HPB makes the following findings and conclusions:

1. The HPB finds that the building or structure **IS NOT** of such interest or quality that it would reasonably meet national, state, or local criteria for additional designation as a historic or architectural landmark, pursuant to the requirements of LDC Section 22-104(d).

*The report prepared by a licensed architect and supplied by the applicant suggests that the structure's integrity in the area of architectural significance has been compromised, partly due to its relocation in the 1940s. A letter from the Director of the State of Florida Division of Historic Resources to the Florida Communities Trust, which oversees the compliance with deed restrictions on the property, stated that "because of extensive alterations [...] it is our opinion that this residence is not eligible for listing in the National Register of Historic Places." (See **Exhibit B**). It appears that the building is not of such quality that it would meet national criteria for designation. There is no additional local designation beyond that conferred by this Board in 2004.*

2. The HPB finds that the building or structure **IS** of such design, craftsmanship, or material that it could be reproduced only with great difficulty or expense, pursuant to the requirements of LDC Section 22-104(d).

Similar materials, though not fashionable at present, could be used to construct a new building on the site or elsewhere in compliance with all applicable codes. Design of a new building on the site or elsewhere would be required to meet all applicable codes, but could otherwise be similar.

3. The HPB finds that the building or structure **IS NOT** one of the last remaining examples of its kind in the neighborhood, the town, the county, or the region, pursuant to the requirements of LDC Section 22-104(d).

Many other extant structures were first placed on Estero Island in the 1940s and 1950s. Some of those structures were relocated from their original sites. Actual documentation of building relocation and construction, particularly prior to the 1960s, is rare. The coquina fireplace within the Cottage is unusual, but other extant structures on Estero Island have fireplaces.

4. The HPB finds that the building or structure **DOES NOT** contribute significantly to the historic character of a designated historic district, pursuant to the requirements of LDC Section 22-104(d).

No historic districts have been designated within the Town of Fort Myers Beach.

5. The HPB finds that retention of the building or structure **WOULD** promote the general welfare of the town by providing an opportunity for the study of local history or prehistory, architecture, and design, or by developing an understanding of the importance and value of a particular culture and heritage, pursuant to the requirements of LDC Section 22-104(d).

Proper documentation of the structure's characteristics prior to demolition, in accordance with the recommended conditions, could provide an opportunity for the study of local history and architecture similar to what would be available if the structure were rehabilitated. Understanding of the importance and value of the Town's heritage will be fostered by the rehabilitation and adaptive reuse of the Seven Seas building.

6. The HPB finds that there **ARE** definite plans for reuse of the property if the proposed demolition is carried out, pursuant to the requirements of LDC Section 22-104(d). The effect of those plans on the character of the surrounding area **WOULD BE AS FOLLOWS:**

The property is planned to be reused as a community park, which will include the grounds surrounding the restored Seven Seas building. Although the Seven Seas building was never present on its respective site at a time when the Cottage was not on its adjacent site, the Newton family did not own the Cottage site until 1972. Other nearby structures, such as the building at 4700 Estero Boulevard that was owned for many years by the Grace family, were present before and during the time the Seven Seas building was occupied by the Newton family and those structures are not required to be preserved for that sole reason, or for any reason.

7. The HPB finds that demolition of the designated building or structure **HAS NOT** been ordered by the appropriate agency due to unsafe conditions, pursuant to the requirements of LDC Section 22-104(d).

There has been no order of demolition of the subject property for any reason.

8. The HPB finds that the criteria for issuance of a certificate of appropriateness (regular or special) pursuant to the requirements of LDC Section 22-101(b) **HAVE** been met by this application, to the extent that such criteria may apply.

9. The HPB accepts the staff report with attachments as additional findings of fact to support its decision herein.

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

Dennis Weimer aye Rochelle Kay aye
Alan Mandel aye Joanne Shamp aye
Bill Van Duzer aye Carleton Ryffel aye

DULY PASSED AND ADOPTED THIS 14th day of July, 2009.

HPB of the Town of Fort Myers Beach

By: Joanne K. Shamp
Joanne Shamp, HPB Chair

Approved as to legal sufficiency:

By: [Signature]
Anne Dalton, Esquire
LPA/HPB Attorney

ATTEST:

By: [Signature]
Michelle D. Mayher, Town Clerk