

1. **Requested Motion:** Approve Resolution 11-03, Reaffirm 04-04

Meeting Date: Apr 4 2011

Why the action is necessary: Resolution 04-04 was approved by Town Council on February 9, 2004 subject to the property owner's attorney approving the wording of the resolution. For unknown reasons, the attorney did not provide written approval of the resolution until October 28, 2009. Since Resolution 04-04 was never executed by the Mayor in 2004, it is necessary for this Council to reaffirm Resolution 04-04 to give it effect.

What the action accomplishes: Finalizes the rezoning of property located at 1321 Santos Road.

2. **Agenda:**

Consent
 Administrative

3. **Requirement/Purpose:**

Resolution
 Ordinance
 Other

4. **Submitter of Information:**

Council
 Town Staff
 Town Attorney

5. **Background:** Resolution 04-04 was approved by Town Council on February 9, 2004 subject to the property owner's attorney approving the wording of the resolution. For unknown reasons, the attorney did not provide written approval of the resolution until October 28, 2009. When the property owner questioned current staff about the status of the Resolution, a review of the file indicated that the attorney's approval letter was in the file, but the action was never formalized.

6. **Alternative Action:** Decline to reaffirm Resolution.

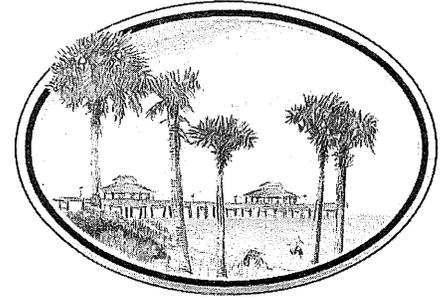
7. **Management Recommendations:** Approve the Resolution.

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



Town of Fort Myers Beach

Memorandum

To: **Town Council**
 Terry Stewart, Town Manager
 Walter Fluegel, Community Development Director

From: **Leslee Chapman, Zoning Coordinator**

Date: **March 28, 2011**

Re: **Blue Sheet 2011-032**

Blue Sheet 2011-032 and subsequent resolution, is to address an outstanding zoning case - Resolution 04-04.

In 2004, the Application came before the LPA and Town Council requesting to re-zone a 5,333+/- square foot lot from the SANTOS zoning district to a Residential Planned Development (RPD). The application also included a request to use the provision in Section 34-1803 to convert the existing 3 dwelling units into 8 bed & breakfast units, with one allocated permanently as a caretaker/owner's unit.

The LPA recommend to Town Council to deny the applicants request to rezone to an RPD and offered an alternative recommendation to approve a rezone to a CPD, Commercial Planned Development, rather than an RPD.

The 2004 Town Council found the application consistent with the Fort Myers Beach Comprehensive Plan, Chapter 34 of the Land Development Code and any and all other town ordinances and codes. They also found that the proposed conditions recommend in the Staff Report, and reflected in Resolution 04-04 were necessary for the protection of the health, safety, comfort, convenience and welfare of the general public.

The application was duly granted on February 9, 2004 subject to the applicant's attorney reviewing and approving the resolution. For unknown reasons, the applicant's attorney did not respond until October 28, 2009.

This case is not a public hearing, nor is it a new request. The application has not changed nor are there any new or modified conditions proposed that need to be considered. This is simply a means to formalize Resolution 04-04.

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 11-03

WHEREAS, the Town Council, on February 9, 2004 held a public hearing to consider a request by the owner of Property located at 1321 Santos Road, Fort Myers Beach, FL to rezone the property in the SANTOS zoning district to RPD (Residential Planned Development) with certain deviations to allow the conversion of three (3) dwelling units in an existing multiple-family building to eight (8) bed and breakfast guest units; and

WHEREAS, the minutes for the Town Council meeting of February 9, 2004, indicate that the Council voted unanimously to approve the requested rezoning in Town Council resolution 04-04, subject to the applicant's attorney reviewing and approving the resolution; and

WHEREAS, the attorney for the property owner provided the Town with a letter dated October 28, 2009 that states that the resolution, as prepared by Jerry Murphy, is consistent with the action taken by the Town Council in 2004; and

WHEREAS, since the members of the Town Council who voted to approve Resolution 04-04 are no longer members of the Town Council and Resolution 04-04 was not approved by the property owner's attorney until October 28, 2009, it is necessary to have the current Town Council reaffirm Resolution 04-04, as approved by the property owner's attorney.

NOW, THEREFORE, be it resolved by the Town Council of the Town of Fort Myers Beach, Florida, as follows:

Section 1. The Town Council hereby reaffirms and approves Town Council Resolution 04-04 that was conditionally approved by the Town Council on February 9, 2004. The letter from the property owner's attorney, dated October 28, 2008 and unsigned Resolution 04-04 is attached hereto and incorporated herein by reference as Exhibit "A."

Section 2. Effective Date. This Resolution shall take effect immediately upon its adoption by the Town Council.

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

Larry Kiker, Mayor
Joe Kosinski
Alan Mandel

Bob Raymond, Vice Mayor
Jo List

DULY PASSED AND ADOPTED THIS ____ DAY OF _____ 2011, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Larry Kiker, Mayor

By: _____
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: _____
Fowler White Boggs, Town Attorney

Knott, Consoer, Ebelini
Hart & Swett, P.A.
ATTORNEYS - AT - LAW

George H. Knott *+
George L. Consoer, Jr. **
Mark A. Ebelini
Thomas B. Hart
H. Andrew Swett
Aaron A. Haak++

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Madeline Ebelini

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Director of Zoning
and Land Use Planning

* Board Certified Civil Trial Lawyer
** Board Certified Real Estate Lawyer
+ Board Certified Business Litigation Lawyer
++ Board Certified Construction Lawyer

Muhle@knott-law.com

OCT 30 2009

October 28, 2009

Mr. Jack Green, Town Manager
Town of Fort Myers Beach
2523 Estero Blvd.
Fort Myers Beach, FL 33931

Re: Santos Bed and Breakfast Resolution

Dear Mr. Green:

Please be advised that we believe the attached resolution prepared by Jerry Murphy is consistent with the action taken by the Town Council in 2004.

Sincerely,

KNOTT, CONSOER, EBELINI,
HART & SWETT, P.A.



Matthew D. Uhle

MDU/zw

Enclosure

cc: Dave Parilla
Jerry Murphy
Anne Dalton, Esq.

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 04-04

WHEREAS, Matthew Uhle, Esq., agent for Sheila F. Watts (“Applicant”) initiated a request to rezone 5335± square feet in the SANTOS zoning district to RPD (Residential Planned Development) zoning district with certain deviations to allow the conversion of three (3) dwelling units in an existing multiple-family building to eight (8) bed & breakfast guest units—one (1) of which is limited to use as a caretaker/owner’s unit only—with conditions; and

WHEREAS, the subject property is located at 1321 Santos Road, Fort Myers Beach, Florida, and Applicant has indicated the subject property’s current STRAP number is: 19-46-24-W4-0060A.0370 and the subject property is legally described as:

LOT 37, BLOCK ‘A’, VENETIAN GARDENS SUBDIVISION, PLAT
BOOK 6, PAGE 70, PUBLIC RECORDS, LEE COUNTY, FLORIDA;
and

WHEREAS, the subject property is located in the “Mixed Residential” Future Land Use Map Category and the Platted Overlay of the Town of Fort Myer Beach Comprehensive Plan (Plan); and

WHEREAS, a duly noticed public hearing was held before the Local Planning Agency (LPA), at which time the LPA recommended that the Town Council deny the Applicant’s request for rezoning from SANTOS to RPD (Residential Planned Development), but in the alternative recommended approval of rezoning from SANTOS to CPD (Commercial Planned Development) with the conditions, deviations, findings, and conclusions on pages 2-4 of the Staff Report dated January 5, 2003 with certain appropriate corrections and additions; and

WHEREAS, a duly noticed public hearing was held before the Town Council, at which time Town Council considered the following criteria, as applicable:

- a. Whether there exists an error or ambiguity that must be corrected.
- b. Whether there exist changed or changing conditions that make approval of the recommended change, as conditioned, appropriate.
- c. The impact of a recommended change, as conditioned, on the intent of Land Development Code (LDC) Chapter 34.
- d. The testimony of Applicant.
- e. The recommendations of staff and of the LPA.

- f. The testimony of the public.
- g. Whether the recommended change, as conditioned, is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Plan.
- h. Whether the recommended change, as conditioned, meets or exceeds all performance and locational standards for the proposed use.
- i. Whether urban services are, or will be, available and adequate to serve the recommended change, as conditioned.
- j. Whether the recommended change, as conditioned, will protect, conserve, or preserve environmentally critical areas and natural resources.
- k. Whether the recommended change, as conditioned, will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- l. Whether the location of the recommended change, as conditioned, places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Findings. The Town Council finds that:

- I. the recommended planned development zoning district and deviations, as conditioned, comply with:
 - A. The Fort Myers Beach Comprehensive Plan.
 - B. Chapter 34, Zoning Districts, Design Standards, and Non-conformities
 - C. Any other applicable town ordinances or codes.
- II. The proposed use, as conditioned, meets all specific requirements of the comprehensive plan that are relevant to the requested planned development and the following criteria can be satisfied:
 - A. The proposed use or mix of uses, as conditioned, is appropriate at the subject location;
 - B. Sufficient safeguards to the public interest are provided by the recommended conditions to the concept plan or by other applicable regulations;

C. All recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

D. The proposed use, as conditioned, meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "Mixed Residential" category.
2. Policy 4-B-11 on densities within the Platted Overlay.
3. Policy 4-C-6 on motel densities .
4. Policy 4-C-11 on land-use alternatives in on Santos Road.
5. Policy 4-E-1 on pre-disaster buildback.
6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

WHEREAS, the Town Council at its February 9, 2004 public hearing believed it was important for and directed staff to formalize the alterations and corrections discussed at that hearing into the draft Resolution and forward same to Applicant for review and approval, and

WHEREAS, staff has completed this direction and Applicant has reviewed and approved the altered and corrected draft Resolution

NOW THEREFORE BE IT RESOLVED THAT THE APPLICATION IS APPROVED WITH MODIFICATION TO CPD ZONING DISTRICT RATHER THAN THE RPD ZONING DISTRICT REQUESTED IN THE APPLICATION AND SUBJECT TO THE FOLLOWING conditions and requirements that are necessary for the protection of the health, safety, comfort, convenience, and welfare of the general public, and that are reasonably related to the recommended change:

A. Conditions

1. The development of this project must be consistent with the two (2) page Master Concept Plan (MCP) entitled "SANTOS by the BEACH," stamped received MAR 24, 2004, and attached hereto as Exhibit "A", except as modified by the conditions herein. This development must comply with all requirements of the Town of Fort Myers Beach Land Development Code (LDC) at time of local development order approval, except as may be granted by deviation herein. If changes to the MCP are subsequently pursued, appropriate approvals are required.
2. The following limits apply to the project and uses:

a. Schedule of Uses

Bed & breakfast inn, limited to a maximum of eight (8) guest units, one (1) of which must be occupied by the owner or operator whenever guests are present (owner's quarters)

Residential accessory uses

Rental of any permitted guest unit, other than the owner's quarters for periods of one day or longer

b. **Site Development Regulations**

Same as for the CR (Commercial Resort) zoning district, except as modified by the conditions or deviations herein

3. Development or redevelopment of the subject property utilizing the buildback policies and provisions of the Plan or LDC for nonconformities is prohibited. Any subsequent development of the subject property must comply with all Plan and LDC requirements for new development on vacant land.
4. Prior to granting any additional development approvals for the subject property, the proposed elevations for all sides of the building must be acceptable to and approved by the Town's Director of Community Development.
5. Approval of this zoning request does not address mitigation of the vehicular or pedestrian traffic impacts of the project. Additional conditions consistent with the LDC may be required to obtain a local development order.
6. Approval of this rezoning does not give Applicant an undeniable right to receive local development order approval, which is required for development of this project.
7. This development must comply with all of the requirements of the LDC at the time of local development order approval, except as may be granted by deviations approved as part of this resolution.
8. Prior to the approval of any development order, the Applicant must submit a landscape plan complying with the requirements of LDC Chapter 10, as adopted by Ordinance 04-01.
9. Vehicles parking for this project are prohibited from extending or encroaching into the abutting rights-of-way.

B. **Deviations**

1. Deviation from LDC Section 10-413(b), requiring a minimum of 20 percent open space to allow open space as indicated on the MCP.

2. Deviation from LDC Section 10-414(a), requiring a buffer 15 feet wide with a wall eight (8) feet high along the property line common to any residential use to allow a vegetative buffer and fence as indicated on the MCP.
3. Deviation from LDC Section 10-415(b), requiring a landscaped area ten (10) feet wide with 12 shrubs per 100 linear feet along street rights-of-way, to allow the alternative landscape plan indicated on the MCP.
4. ~~Deviation from LDC Section 34-953 and Table 34-3, requiring (a) a minimum rear setback of 20 feet, and (b) a minimum lot size of 20,000 square feet, not less than 100 feet wide and not less than 100 feet deep, to allow (a) a rear setback of 10 feet, and (b) a minimum lot size of 5,335 square feet, and with width and depth dimensions not less than those of the subject property as indicated on the MCP and the officially recorded plat of the subject property.~~
5. Deviation for LDC Section 34-1803(c)(1), requiring the intensity of bed-and-breakfast inns must be calculated in the same manner as for hotel/motels except that inns with three (3) or fewer guest rooms per building are exempt from the requirement to use equivalency factors, to allow only the existing building on the subject property to be redeveloped as a bed-and breakfast inn with a maximum total of eight (8) guest units, one (1) of which is limited to use as a caretaker/owner's unit only.
6. Deviation from LDC Section 34-2015(6), requiring all parking lots to be designed to allow an exiting vehicle to leave the parking lot in a forward motion, to allow parking as indicated on the MCP. Approval of this deviation in no way allows any encroachment of parked vehicles into the abutting rights-of-way.

APPLICATION DULY GRANTED February 9, 2004.

The foregoing resolution was adopted by the Fort Myers Beach Town Council. Upon being put to a vote, the result was as follows:

Terry Cain	<u>aye</u>
Daniel Hughes	<u>aye</u>
Howard Rynearson	<u>aye</u>
Bill Thomas	<u>aye</u>
W. H. "Bill" Van Duzer	<u>aye</u>

The minutes of the Town Council meeting of February 9, 2004, which accurately set forth the above action by the Town Council of the Town of Fort Myers Beach, Florida are attached hereto as Exhibit "B" and hereby incorporated by reference.

SANTOS W

7003-0051

ZONED RC
EXISTING DUPLEX

ZONED DOWNTOWN
EXISTING TRIPLEX

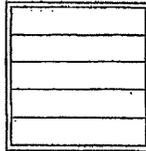
PALETTA
SANTOS

CONCEPT DRAWINGS FOR
SANTOS by the BEACH
SANTOS ROAD
FORT MYERS BEACH, FLORIDA 33941

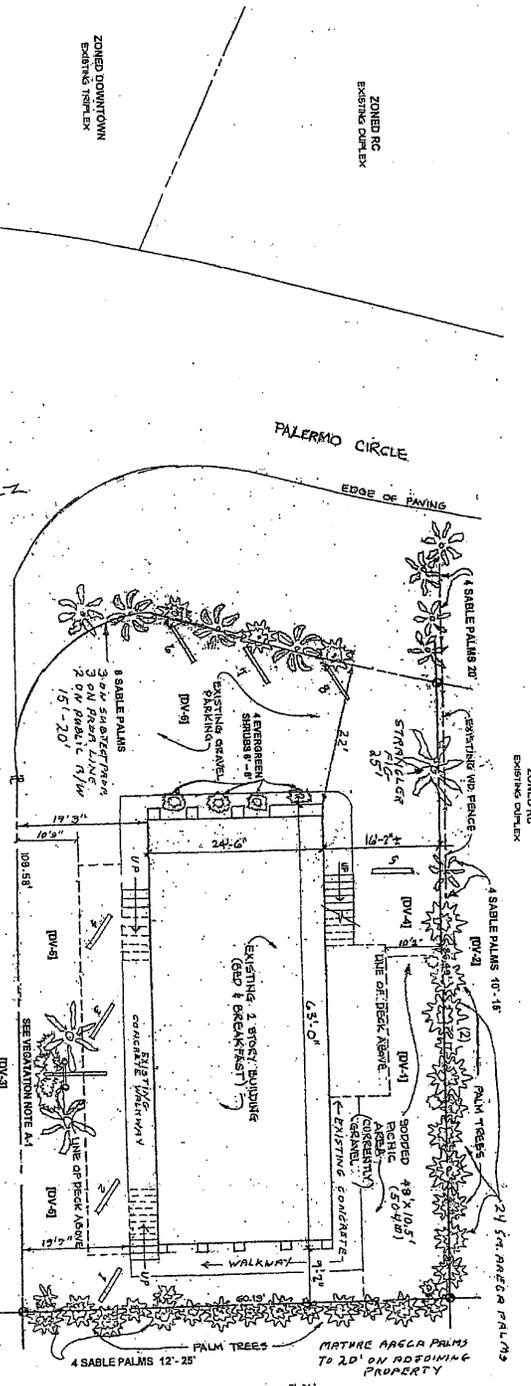
BOB ROCKWELL CONSTRUCTION
250 FIRBY THOMPSON ROAD
ALVA, FLORIDA 33420
PH: (239) 565-9225
FAX: (239) 675-9727

ARCHITECTURAL
SUPPORT SERVICES, INC.
3200 BLACKBURN CIRCLE
FORTA WORTH, FLORIDA 33662
PHONE: (407) 558-7054 FAX: (407) 558-7028

IT
LENDY
A.B.D.-AND-
145



SANTOS BED and BREAKFAST MASTER CONCEPT PLAN



ZONED DOWNTOWN
EXISTING DUPLEX

ZONED RC
EXISTING DUPLEX

REVISIONS

DATE: 11/1/04

APPROVED: [Signature]

DATE: 11/1/04

FOR THE FIRM: [Signature]

SCHEMATIC SITE PLAN

ZONED DOWNTOWN
EXISTING DUPLEX

ZONED RC
EXISTING DUPLEX

NOTES:

1. ALL DIMENSIONS ARE IN FEET AND INCHES.

2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

3. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

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10. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

SCHEMATIC OF USES:

1. RESIDENTIAL USES:

2. COMMERCIAL USES:

3. INDUSTRIAL USES:

4. OFFICE USES:

5. RETAIL USES:

6. FOOD AND BEVERAGE USES:

7. RECREATION USES:

8. CULTURAL USES:

9. PUBLIC USES:

10. OTHER USES:

SCHEMATIC OF DEVIATIONS:

1. DEVIATION FROM ZONING ORDINANCE:

2. DEVIATION FROM SUBDIVISION MAP:

3. DEVIATION FROM PLAT:

4. DEVIATION FROM DEED:

5. DEVIATION FROM CONTRACT:

6. DEVIATION FROM OTHER INSTRUMENTS:

7. DEVIATION FROM OTHER INSTRUMENTS:

8. DEVIATION FROM OTHER INSTRUMENTS:

9. DEVIATION FROM OTHER INSTRUMENTS:

10. DEVIATION FROM OTHER INSTRUMENTS:

RECEIVED

MAR 12 2004

TRINITY COURTES

003 0003-00051

APPROVED

[Signature]

DATE: 11/1/04

FOR THE FIRM:

[Signature]

DATE: 11/1/04

CONCEPT DRAWING FOR:

SANTOS by the BEACH

SANTOS ROAD

FORT MYERS BEACH, FLORIDA 33931

BOB ROCKWELL CONSTRUCTION

250 EASY THOMPSON ROAD

ALVA, FLORIDA 33920

PH (888) 565-1235

FAX (888) 875-2121

ZONED SANTOS

EXISTING DUPLEX

ARCHITECTURAL SUPPORT SERVICES, INC.

2503 BRADSHAW CIRCLE

PANTA WOODS, FLORIDA 33942

PHONE (888) 808-7724 FAX (888) 808-7724

Walter Fluegel

From: Miller, Marilyn [Marilyn.Miller@fowlerwhite.com]
Sent: Wednesday, February 23, 2011 3:11 PM
To: Walter Fluegel
Subject: 1321 Santos Bed and Breakfast
Attachments: Santos Bed and Breakfast.pdf

Walter:

I think I've found what we need to resolve this. Attached is a copy of an original letter, dated October 28, 2009 from Matt Uhle, the attorney who represented the applicant when the zoning was approved back in 2004. As we previously discussed, when the matter was heard by the Town Council on February 9, 2004, the motion was as follows:

Councilman Van Duzer moved the resolution, including the alterations to the Staff Report that were offered by Mr. Murphy today, and the corrections as discussed, to be forwarded to Mr. Uhle for review and approval, and upon such approval the resolution be adopted. Councilman Rynearson agreed, verifying that the use of right of way prohibition be a part of the corrections and alterations.

Under Discussion, it also states that the applicant will furnish a new Master Concept Plan and that Mr. Uhle agreed to re-order the Schedule of Deviations to reflect the numbering in the Staff Report. After the discussion, the motion was approved by unanimous vote.

The October 28, 2009 letter from Matt Uhle to Jack Green, Town Manager, states that the attached resolution is consistent with the action taken by the Town Council in 2004. I am of the opinion that all that is left is for the resolution, as approved by Mr. Uhle, to be confirmed by the current Council, since we can't really have it executed by the person who was Mayor back then because he is no longer the Mayor.

My recommendation is that, in order to properly document the action, we have the current Council adopt a resolution that essentially ratifies and confirms the action taken by the prior Council. I will draft that resolution which will include some whereas clauses stating the history and then merely states that the attached resolution 04-04 and the actions approved therein are ratified and confirmed.

Let me know what you think.



Marilyn W. Miller

2235 First Street
Fort Myers, Florida 33901
Direct: 239 985 4807
marilyn.miller@fowlerwhite.com

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