

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 97- 35

WHEREAS, First Union National Bank of Florida, the property owner petitioned for a rezoning from Tourist Commercial (CT) to Commercial Planned Development (CPD) to permit the development of a commercial building with a maximum of 11,200 square feet of gross floor area which will not exceed 35 feet in height on 54,822 +/- total square feet of land. The intent of this request is to allow for the future development of a pharmacy/drugstore on the subject property.

WHEREAS, the subject property is located at 7001 Estero Blvd., Fort Myers Beach, Florida, and is described more particularly as:

LEGAL DESCRIPTION:

A parcel of land in Government Lot 1, Section 03, Township 47 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the point of intersection of the Easterly right-of-way line of Estero Boulevard (SR No. 865) with the South line of said Government Lot 1; THENCE N 18degrees34'20"W for 63.00 feet to the POINT OF BEGINNING of the herein described parcel of land; THENCE continue N18degrees34'20"W for 209.51 feet; THENCE N89degrees 11'00"E for 487.70 Feet; THENCE S00degrees49'00"E for 199.53 feet to an intersection with the Northerly right-of-way line of Lenell Road as described in Official Record Book 849, Page 282 of the Public Records of Lee County, Florida; THENCE S89degrees 11'00"W along said right-of-way line far 423.81 feet to the POINT OF BEGINNING.

LESS AND EXCEPT: A parcel of land in Government Lot 1, Section 03, Township 47 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commencing at the point of intersection of the Easterly right-of-way line of Estero Boulevard (SR No. 865. 80 feet wide) with the South line of said Government Lot 1; THENCE N18degrees34'20"W for 63.00 feet to an intersection with the Northerly right-of-way line of Lenell Road (60 feet wide) as described in Official Record Book 849, Page 182 of the Public Records of Lee County, Florida; THENCE N89degrees 11'00"E along said Northerly right-of-way line for 242.98 feet to the POINT OF BEGINNING of the parcel herein described; THENCE N00degrees49'00"W, 199.53 feet; THENCE N89degrees 11'00"E, 181.00 feet; THENCE S00degrees49'00"E, 199.53 feet; THENCE S89degrees11'00"W, 181.00 feet to the POINT OF BEGINNING.

WHEREAS a hearing was held on the 7th day of July, 1997, and the council considered the following criteria, whenever applicable:

- a. Whether there exist changed or changing conditions that make approval of the request appropriate.
- b. The testimony of any applicant.
- c. The recommendation of staff.
- d. The testimony of the public.
- e. Whether the request is consistent with the goals, objectives, policies and intent of the Lee Plan.
- f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- g. Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.
- h. Whether the request will be compatible with existing or planned uses.
- i. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
- j. Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter; and,

WHEREAS the Town Council approved the application 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 request:

SCHEDULE OF DEVIATIONS

1. Deviation from the requirement that a vegetative buffer of no less than 15 ft. in width, containing a 8 Ft. fence, wall or berm, be provided adjacent to all residential uses (Section 10-414. (a) - Land Development Code) to allow the 15 Ft, enhanced vegetative buffer with no fence, wall or berm.

2. Deviation from the requirement that a 10 Ft. landscape strip be provided adjacent to all street rights-of-way (Section 10-415.(b)(1) - Land Development Code) to allow the elimination of the required landscape strip.

3. Deviation from the requirement that all building and structures be set back from an adjacent street easement or right-of-way (Section 34-2192. (a) Land Development Code) to allow a setback of 20.2 Ft. along Estero Boulevard and 4.5 Ft. along Lenell Road.

4. Deviation from the requirement that all structures, buildings and pavement be set back from the development perimeter a distance of 15 Ft. (Section 34-935. (b) Land Development Code ) to allow a 5 Ft. pavement setback along the easterly property line.

5. Deviation from the requirement to provide stacking for 5 vehicles per service lane (Section 34-2020. (2)h 3ii - Land Development Code) to allow stacking for 4 vehicles per service lane.

6. Deviation to request relief from requirements of the Land Development Codes for the Town of Fort Myers Beach to allow the development of this parcel in accordance with the vision of the "draft" Community Design Element ( dated May 12, 1997) for the "Highrise/Resort Area and Villa Santini"

#### CONDITIONS

1. The development of this project must be in accordance with the one-page Master Concept plan entitled "Master Concept Plan Estero Blvd./Lenell Road CPD" prepared by Keene Engineering, Incorporated, except as modified below. This approval does not alleviate the need to comply with all state and town development regulations, except as specifically modified by this approval. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.

2. Development on this site may not exceed 11,200 square feet of floor area. Uses allowed within this planned development may only operate between the hours of 8:00 A.M. and 9:00 P.M. daily.

3. The following is the approved Schedule of Uses within this planned development. All conditions herein apply to all uses allowed within this development. Any change in use from a "DRUGSTORE/PHARMACY" with DRIVE-THROUGH FACILITY to one of the other listed uses may only be permitted following the approval of an amended development order.

ADMINISTRATIVE OFFICES; ATM; AUTO PARTS STORE (No Installation Service); BAIT AND TACKLE SHOP; BANKS AND FINANCIAL ESTABLISHMENTS, Group I; BUSINESS SERVICES, Group I; CLOTHING STORE, GENERAL; CLUBS: Fraternal and Private; DRIVE-THROUGH FACILITY (only in conjunction with a DRUGSTORE/PHARMACY use); ESSENTIAL SERVICES  
ESSENTIAL SERVICE FACILITIES, Group I; EXCAVATION Water Retention; FOOD STORES.

Group I; LAUNDROMAT; LIBRARY; MEDICAL OFFICE; PAINT, GLASS, AND WALLPAPER; PARKING LOT: Accessory, Commercial, Garage, Public Parking, Temporary; PARKS: Public or Private Groups I and II; PERSONAL SERVICES, Groups I, II and III; PHARMACY; PLACE OF WORSHIP; RECREATION, COMMERCIAL, Group I; RENTAL OR LEASING ESTABLISHMENTS, Group I; REPAIR SHOPS, Group I; RESTAURANTS, Group I and II; SIGNS, in accordance with LDC Chapter 30; SPECIALTY RETAIL SHOP, Groups I and II; STORAGE, Indoor and STUDIOS

4. Development of the CPD must comply with the following Property Development Regulations:

Minimum Lot Area and Dimensions:

Corner lot: 20,000 square feet

Interior lot: 20,000 square feet

Lot Width: 100 feet

Lot Depth: 100 feet

Minimum Setbacks:

Street: Consistent with Master Concept Plan

Side yard: 25 feet

Rear yard: 25 feet

Water Body: 25 feet

Maximum height (feet): 35 feet

Maximum lot coverage: (percent of total lot area): 40%

Minimum open space: 20%

5. The site plan must be revised to provide a minimum pavement setback of 15 feet from northern property line.

6. The site plan must depict a minimum 5 foot setback for all pavement from the eastern property line.

7. Prior to the approval of a local development order, the developer must demonstrate compliance with all regulations for storm water management and provide a copy of all approvals from local, regional, and state for the proposed storm water management plans.

8. Display windows shall be provided along the front 50+ feet of the building fronting on Lenell Road.

9. The proposed dumpster location must be fenced with a minimum 8 foot opaque fence or wall so that the dumpster is not visible from any adjoining property.

10. Design of the building must be in substantial compliance with the draft Fort Myers Beach Plan (Community Design Element, dated 5/12/97). The Town Manager is to approve the final design.

11. This rezoning approval does not address the mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions may be required at the time of local Development Order.

12. This rezoning approval does not give the Developer an undeniable right to receive any local Development Order approval that exceeds the Year 2010 Overlay use allocation, if such allocation exists, for the applicable district.

13. Except as granted by deviation herein, this development must comply with all land development code requirements of the Town of Fort Myers Beach in effect at the time of local Development Order approval.
14. The parking spaces on the West side of the building shall be allowed to remain until such time as four (4) or more on-street parking spaces are provided by Lee County or the Town of Fort Myers Beach along the front of the building on Estero Boulevard. Subsequently, if the on-street parking spaces are removed, for whatever reason, then the owner or lessee of the subject parcel may replace the four (4) off-street parking spaces along the West side of the building in their original location.
15. The southern access point to the subject property located on Estero Boulevard shall be removed in the event that the four (4) off-street parking spaces along the West side of the building are removed. If the four (4) off-street parking spaces are later re-established in their original location then the southern access point to the subject property on Estero Boulevard may be re-opened.
16. Prior to approval of a local development order, a landscape plan must be submitted that preserves the 24 inch (") strangler fig on the west side of the subject property. Notes must be included on the plans that this tree will be protected by barricades throughout construction.
17. The site plan must be revised to provide a minimum 15 foot wide buffer along the northern property line which must be maintained in perpetuity. This must be an enhanced buffer in accordance with the following. The required vegetative plantings must include eight (8) trees per 100 lineal feet and a continuous planting of shrubs along this property line. Trees must be no less than 10 feet in height with a canopy of no less than 3 to 4 feet in width. Shrubs must be a minimum of 36 inches in height at planting. In areas where vehicular sight distance is required, shrubs within the line of sight may not restrict vision. Visibility through this buffer must not be less than 25 percent when viewed at right angle from the buffer. Additionally, between the parking area and the drive-thru window, within the area described as a "planter" a continuous row of shrubs (36 inches in height when planted) and four trees per 100 lineal feet (size when planted must be 6 feet in height and no less than one inch in diameter at three feet above the ground and a minimum canopy width of 2 feet) must be planted and maintained in perpetuity.
18. Final design approval by the Town Manager will include final design approval of signs.
19. Display windows as proposed along the Lenell side will also be used along the Estero Boulevard side.
20. Pedestrian walkways will be added on the north side for the convenience of neighboring condominium residents.
21. Parking in the right-of-way on Lenell will be changed to angled parking, and striping will be added to Lenell Road.
22. The service area in the back of the building must be screened as much as possible.

WHEREAS the applicant, based upon new evidence, requested a rehearing and the Town Council approved the rehearing; and,

WHEREAS a rehearing was held on the 20th day of October, 1997, and the council considered the foregoing criteria, where applicable:

NOW THEREFORE BE IT RESOLVED THAT THE APPLICATION IS APPROVED SUBJECT TO THE FOLLOWING CHANGES:

1. The architectural plans will be substantially the same as presented to the Town Council as Applicant's Exhibit D, E, and F, copies of which are on file at Town Hall. The Town Manager will no longer be required to approve the architectural plans.
2. The north-side sidewalks and pass-throughs shown on the Master Concept Plan III which was presented to the Town Council as Applicant's Exhibit A and B, copies of which are on file at Town Hall, will be required only if the directors of the Estero Cove Condominium should decide that they want them.
3. Lenell Road shall be improved by the applicant to include striping and a third lane.
4. Changes as shown in Exhibit A, attached.

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

Anita T. Cereceda	<u>nay</u>
Ted FitzSimons	<u>nay</u>
William (Rusty) Isler	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

APPLICATION DULY GRANTED this 20th day of October, 1997.

ATTEST:

TOWN OF FORT MYERS BEACH

By: Marsha Segal-George  
Marsha Segal-George, Town Clerk

By: Anita T. Cereceda  
Anita T. Cereceda, Mayor

Approved as to form by:

Richard V.S. Roosa  
Richard V.S. Roosa, Town Attorney

Exhibit A

1. Deviation Numbers 2 through 6 are deleted in their entirety.
2. The following deviations are approved:
  - a. A deviation from Section 34-935(b)(1)b of the Land Development Code which requires a pavement and structural set-back from adjacent uses of 15 feet to allow a minimum set-back of 9.8 feet as depicted on the Master Concept Plan.
  - b. A deviation from Section 10-413(e)(2)d of the Land Development Code which limits pedestrian ways to a maximum of 25% of total open space and Section 10-414(g)(2) which limits the maximum impervious surface within a buffer to 20% of its width, to allow a maximum of 35% for both of these requirements, as depicted on the Master Concept Plan.
3. Conditions 5, 6, 14, 15, 17, 18 and 21 are deleted in their entirety.
4. The following conditions are incorporated into this Approval:
  - a. Visibility through the buffer to the north must not be less than 25% when viewed at right angle from the buffer.
  - b. Since the landscaping berm is depicted to cross over the northern property line, a written agreement between the owner of this property and the Estero Cove Condominium Association (residential development to the north) must be provided as part of, and prior to, the approval of a local development order for this project. In the event that the applicant is unable to or fails to enter into a written agreement with the Estero Cove Condominium Association, then an alternative landscape plan shall be proposed by the applicant and approved by the Town Manager prior to the approval of a local development order for this project.
  - c. In areas where vehicular sight distance is required, shrubs within the line of sight may not restrict vision.
5. Condition 16 is revised to read as follows:

Prior to approval of a local development order, a landscape plan must be submitted that preserves the 24" Laurel Oak on the south side of the subject property. Notes must be included on the plans that this tree will be protected by barricades throughout construction.