

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 98-11

WHEREAS, James & Deborah Figuerado, represented by Stephen Roth, in reference to Publix Supermarket, filed a request to rezone from Multiple-Family (RM-2) to Commercial Planned Development (CPD) to permit the development of a grocery store /supermarket with a maximum of 30,00 square feet of gross floor area with a maximum height from finished floor to main building parapet of 19 feet 7 inches; and

WHEREAS, the subject property is located at 4765 Estero Blvd., Fort Myers Beach, Florida, and is described more particularly as:

LEGAL DESCRIPTION: In Section 28, Township 46 South, Range 24 East, Lee County, Florida:

A parcel of land located in the Southwest Quarter of Section 28, Township 46 South, Range 24 East, Lee County, Florida, more particularly described as follows:  
BEGIN at the Westerly most corner of Lot 6, Block "A" of HOLIDAY SHORES SUBDIVISION as recorded in Plat Book 9 at Page 33 of the Public Records of Lee County Florida, also being a point on the Northeasterly right-of-way line of Estero Boulevard 325 feet from the centerline of Estero Blvd; THENCE run N49degrees45'47"E for a distance of 596.34 feet; THENCE run S51degrees46'07"E for a distance of 374.01 feet to a point on the Northwesterly line of said HOLIDAY SHORES SUBDIVISION; THENCE run S38degrees13'53"W along the Northwesterly line of said HOLIDAY SHORES SUBDIVISION for a distance of 575.00 feet to the POINT OF BEGINNING  
Containing 3.736 acres, more or less.

WHEREAS, the applicant has indicated the property's current STRAP number is: 28-46-24-W4-0000 1.0030; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency on April 14, 1998 at which full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons, and after which the Agency recommended denial; and

WHEREAS a hearing was held 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 Chapter 34 of the L. D. C..

NOW THEREFORE BE IT RESOLVED THAT THE APPLICATION IS APPROVED/~~DENIED~~ 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:

SEE ATTACHED

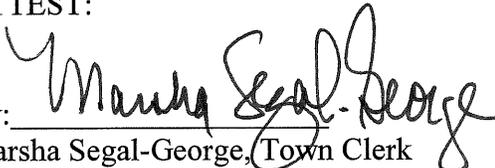
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

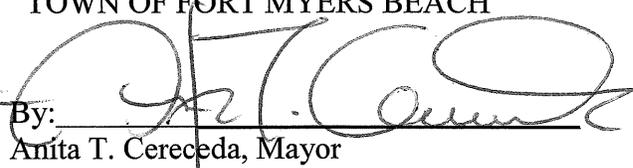
Anita T. Cereceda	<u>aye</u>
Ted FitzSimons	<u>absent</u>
John Mulholland	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

APPLICATION DULY GRANTED/~~DENIED~~ this 5<sup>th</sup> day of May, 1998.

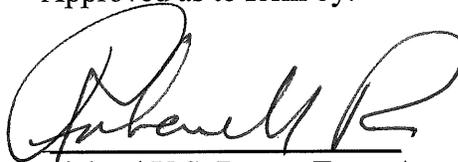
ATTEST:

TOWN OF FORT MYERS BEACH

By:   
 Marsha Segal-George, Town Clerk

By:   
 Anita T. Cereceda, Mayor

Approved as to form by:

  
 Richard V.S. Roosa, Town Attorney

Publix CPD  
CONDITIONS OF APPROVAL

1. The development and use of the subject property must be in substantial compliance with the approved Master Concept Plan entitled "Conceptual Site Plan, Scheme"2"(last revised 3/3/98, stamped received March 4, 1998) as prepared by Sverdrup Architecture, except that there will be no pedestrian walkway to Coquina and Coral Streets, and except as modified by the conditions herein. Unless specifically approved as part of this rezoning, development must comply with all applicable local development regulations.
2. A maximum of 28,000 square feet is allowed within this planned development.
3. Exhibit "A" will be the permitted uses within this planned development.
4. Development of the CPD will comply with the following Property Development Regulations:

Minimum Lot Area and Dimensions: Specific parcel as depicted on the approved Master Concept Plan. No parcel split or land division has been approved.

Minimum Setbacks:

Street: variable according to the functional classification of the street or road (Section 34-2191 et seq.)

Side: 15 feet

Rear: 50 feet

Maximum Building Height: 24 feet (Tower: 43')

5. The truck loading dock and trash (dumpster) area(s) must be covered by a roof to screen the view and deflect the noise of this area from the adjacent residential condominiums to the north (Ocean Harbor).
6. Air conditioning, cooling, or refrigeration units may be placed on the roof of the building. All such units must be covered with a roof to screen their view and baffled to deflect their noise from the adjacent residential condominiums.
7. The hours of operation of this store are limited from 8:00 AM to 10:00 PM daily. Delivery of goods is also limited to

these same hours. No delivery trucks are allowed onsite except during these hours.

8. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic requirements. Additional conditions may be required to obtain a local development order, consistent with local development regulations. These conditions include a southbound left turn lane and, if necessary, a northbound turn lane, and any expansion or potential redesign of the intersection of the access to the subject property with Estero Boulevard.
9. An enhanced buffer along the southern property line (adjacent to the Holiday Shores subdivision) must be provided. This buffer must consist of a berm and landscaping that is no less than eight feet in height. Within one year of occupancy, visibility through any buffer installed pursuant to this section must be opaque when viewed at right angles.
10. The architectural design will be as submitted on 5/5/98.
11. Any exterior lighting must be shielded to prohibit any light from shining onto adjacent parcels.

#### Deviation

Deviation from LDC 34-2013 to allow driveway aisle along south side of site serving parking spaces for the supermarket to also act as an accessway to the marina and restaurant.

If this deviation is approved, in order to reduce the potential impact to the public it is recommended that these parking areas be utilized by employees so that the high turn-over parking areas are located nearest the store and minimizing impact on traffic entering or leaving the marina.

## EXHIBIT A

### Approved Schedule of Uses

ESSENTIAL SERVICES

ESSENTIAL SERVICE FACILITIES, Group I

FOOD STORE, GROUP I only (supermarket)

PARKING LOT: Accessory

SIGNS, in accordance with the Land Development Code