

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 11-07

ROWE RPD

WHEREAS, Henrietta and Christopher Rowe, the owners of property located at 324 Estero Boulevard Fort Myers Beach, Florida have requested to rezone .43 acres from Residential Multifamily (RM) to Residential Planned Development (RPD) to approve a schedule of uses, and approve certain deviations from the requirements of the Land Development Code, all as indicated on the Master Concept Plan, which is attached hereto and incorporated herein by reference as Exhibit "D-2-1"; and

WHEREAS, the subject property is located in the both the Mixed Residential and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP for the property is 24-46-23-W1-00900.0010 and the legal description for the property is Lot 1, Gulfshore subdivision, according to the plat thereof recorded in Plat Book 9 Page 88, of the Public Records of Lee County, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on May 10, 2011; at which time the LPA gave full and complete consideration to the request of the Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85, and recommended denial of applicant's request as set forth in LPA Resolution No. 2011-05; and

WHEREAS, at its meeting of May 10, 2011, the LPA instructed Town staff to bring this application forward to Town Council without the necessity of having approved LPA minutes; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on June 6, 2011, at which time the Town Council gave full and complete consideration to the request of the Applicant, LPA Resolution No. 2011-05, the recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

The Town Council hereby APPROVES the request to rezone the subject property to a RPD zoning district with three (3) multi-family dwelling units and the approved schedule of uses which is attached hereto and incorporated herein by reference as Exhibit "D-2-3," subject to the conditions and deviations set forth with specificity below.

CONDITIONS OF APPROVAL

1. The proposed building and all proposed amenities must comply with all FEMA regulations in effect at the time of Development Order and all provisions found in LDC Chapter 34-3237, excluding the requested and approved deviations.

2. The mechanical cupola illustrated on applicant's Exhibit D-2-2, which is attached hereto and incorporated herein by reference, must remain non-habitable space and be relocated as close to Estero Boulevard as possible.
3. A sprinkler system shall be installed consistent with the building's intended use that will meet all Florida Fire codes and must be included in Development Order plans and installed at the time of construction.
4. Applicant must meet all applicable environmental requirements of the LDC, including but not limited to protection of dune vegetation and appropriate sea turtle lighting.
5. At the time of Development Order, applicant must adhere to best stormwater management practices and all applicable LDC sections pertaining to stormwater and drainage when addressing the on-site stormwater conditions.
6. Applicant must provide any and all required Florida Department of Environmental Protection approvals and permits at the time of Development Order.

APPROVED DEVIATIONS

Deviation #1

Deviation from Table 34-3 of the LDC, which allows for a maximum height of 30 feet/3 stories, to allow for a maximum height of 35 feet/4 stories and a maximum roof height of 58 feet exclusive of the cupola.

Deviation #2

Deviation from Section 34-3237(4) which requires total interior square footage of a rebuilt dwelling not to exceed the interior square footage of the original dwelling unit, to allow for an increase of interior square footage to permit the proposed 8,990 square foot structure.

FINDINGS AND CONCLUSIONS

Based upon the presentations by the Applicant, staff, and other interested parties at the hearing, and a review of the application and standards for the planned development zoning approval, the Town Council makes the following findings and reaches the following conclusions:

1. Whether there exists changed or changing conditions which make the approval of the request appropriate.

The area surrounding the subject property has changed over the past years, with the development of mid-rise and high-rise resort condominiums to the east and west. With resort units and condominiums on both sides of the subject property that range in height from 6 to 8 stories, the Town Council finds that an exception, pursuant to Section 34-631(b)(5) of the Land Development Code, to permit the proposed 35' building is more reasonable and compatible in terms of height than the existing single story stilt frame structure. Additionally, the Town Council hereby specifically finds that the Applicant presented competent evidence to establish that the proposed density of three dwelling units is the legally documented number of dwelling units as indicated on the Lee County Property Appraiser's field cards, which are attached hereto and incorporated herein as Exhibit D-2-4.

2. *The impact of a proposed change on the intent of Chapter 34.*

The proposed rezoning will implement the Town's pre-disaster buildback policy and allow for the appropriate infill redevelopment of the subject property. The provisions to accomplish the applicant's request can be found in Section 34-3237 of the LDC and Policy 4-E-1 as discussed in the analysis section of the Staff report. This is a request contemplated and even encouraged by the Comprehensive Plan and Land Development Code. The proposed redevelopment will result in the improved health, safety and welfare of the surrounding properties, as well as the subject property, by bringing the building into compliance with current FEMA flood elevation requirements. The proposed change is consistent with the intent of Chapter 34 of the LDC.

3. *Whether the request is consistent with the goals, objectives, policies and intent, and with the densities, intensities and general uses set forth in the Fort Myers Beach Comprehensive Plan.*

As discussed in the Staff analysis and in applicant's Exhibit D-1-C, which is attached hereto and incorporated herein by reference, the proposed RPD is consistent with the Comprehensive Plan, specifically the policies pertaining to the Mixed Residential future land use category and the pre-disaster buildback provisions. The residential uses and the legally documented three (3) dwelling units do not exceed the general densities and intensities set for the in both the Comprehensive Plan and the LDC. Additionally, this request will further the Town's goal of reducing flood insurance rates for residents by bringing another non-conforming unit into compliance with current FEMA standards.

4. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The proposed use is residential in nature and therefore is not required to comply with any performance or locational standards.

5. *Whether urban services are, or will be available and adequate to serve a proposed land use change.*

The proposed redevelopment at the subject property is infill in nature and as such, the current urban services available at the site will also be available when the project is complete.

6. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

In accordance with current Land Development Code regulations, no portion of the subject property that falls within the Environmentally Critical (EC) zoning district has been included in the RPD request thereby protecting, conserving and preserving these sensitive environmental lands. In addition, the applicant has entered into an agreement with the County to allow for beach renourishment on the property.

7. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance or other detriment to persons or property.*

The requested RPD is compatible with the surrounding properties. As an infill project, the subject property has the benefit of being designed to fit within its neighborhood context while still coming into compliance with the current FEMA regulations and improving the overall aesthetics of the area. The request, as proposed will not create any damage, hazard, nuisance or other detriments of persons or property.

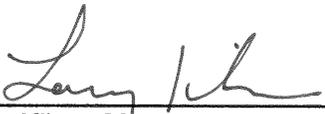
8. *Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

The Traffic Impact Statement requirement was waived by the Community Development Director in a memo dated April 13, 2011, which is included in Exhibit D-2-1. The effect of that waiver is a determination that the proposed development will have no net impact or burden on the transportation services of the Town.

Upon a motion made by Councilmember Kosinski and seconded by Councilmember Mandel, this Resolution was

DULY PASSED AND ADOPTED ON THIS 6TH DAY OF June, 2011.

Larry Kiker, Mayor	aye	Bob Raymond, Vice Mayor	nay
Alan Mandel	aye	Jo List	aye
Joe Kosinski	aye		

By: 
Larry Kiker, Mayor

ATTEST:
By: 
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: 
FOWLER WHITE BOGGS
Town Attorney

Rowe Residential Planned Development

Exhibit D-2-3 Schedule of Uses REVISED APRIL 18, 2011

Dwelling Units:

Multiple Family Building (limited to 3 dwelling units)

Short Term Rental Unit

Entrance Gates

Essential Services

Fences, Walls

Recreational Facilities, Private, On-Site

Residential Accessory Uses

Storage, Indoor

Temporary Uses

Rowe Residential Planned Development

Exhibit D-1-C: Comprehensive Plan Compliance Narrative

Christopher and Henrietta Rowe (Applicant) are requesting approval of a Residential Planned Development (RPD) rezoning to allow for the Pre-disaster Redevelopment of the subject property with a 3-unit condominium and residential accessory uses. The subject property consists of approximately 18,831 s.f. (to ECL), of which 6,500+/- s.f. is located within the Mixed Residential Future Land Use Category. The remainder of the property is seaward of the 1978 Coastal Construction Control Line (CCCL) and is designated within the Recreation Future Land Use Category.

Flanked on both sides by mid-rise and high-rise multi-family residential developments, the subject property currently contains one structure previously used for a multi-family triplex and presently being used as a single family rental. This proposed RPD is essentially an infill redevelopment proposal to make the existing inconsistent single-family use more compatible with the neighboring parcels and to enhance the quality of the area through redevelopment of an old structure. It is proposed for Pre-disaster Redevelopment as a 3-unit condominium under the Pre-disaster Buildback provisions of the Comprehensive Plan [Policy 4-E-1] and Land Development Code (LDC) [Section 34-3237(4)]. The property was historically developed with a triplex as evidenced by the 1978 Property Appraiser Card attached as Exhibit D-2-4. In order to cure the existing inconsistent single family use of the property and to make it more compatible with the surrounding multi-family uses, the Applicant is seeking approval to buildback to the pre-existing triplex use, effectively improving the overall appearance of the subject property, while adhering to the current coastal construction and floodplain regulations.

The following is an analysis of how the proposed RPD is consistent with goals, objectives and policies of the Town of Fort Myers Beach Comprehensive Plan (Plan).

Policy 4-B-2: Mixed Residential Future Land Use Category

The Mixed Residential (MR) Future Land Use Category is designated in areas with mixed housing types on smaller lots, newer high-rise buildings, mobile homes and RV parks. This Category is intended to ensure that Fort Myers Beach retains a variety of neighborhoods and housing types.

The proposed RPD is in direct compliance with this policy as the proposed multi-family use is located in a neighborhood characterized by a mixture of condominiums and hotels on the Gulfside and single-family residences on the Bayside. Therefore, the request for multi-family uses will uphold the desire for a diversity of housing types within the Town.

The proposed density for the property is 3 dwelling units, which complies with the historical density of the property when developed as a 3-unit triplex. The proposed density for the property will fall within the provisions of the pre-disaster buildback policy, 4-E-1 below, and is lower than the existing density of the surrounding properties which are developed at 18 du/acre (Pink Shell Resort PUD to the west and north) and approximately 40 du/acre (Pink Shell Beach Club Condominium Timeshares to the east).

Policy 4-B-8: Recreation Future Land Use Category

A portion of the Applicant's property is located seaward of the CCCL and is designated as Recreation on the Future Land Use Map. Per the attached MCP, this area is not proposed for residential uses and will remain undeveloped in compliance with this policy.

Policy 4-E-1: Pre-Disaster Buildback

This policy allows owners of developments exceeding the current density or height limits to replace the same use prior to a natural disaster via the planned development rezoning process.

Per the attached 1978 property appraiser card and as discussed in the pre-application meetings by the owners with former Planning Director Frank Shockey in 2010, and again recently on February 16, 2011, it has been determined that there is adequate data to support the redevelopment of the subject property with a 3-unit condominium under the pre-disaster buildback provision. The Applicant is proposing to buildback to the same density as previously existed when the property was a triplex, as demonstrated on the MCP.

In terms of height, the Applicant is seeking a deviation from the RM Zoning District's site development regulations to allow for a maximum height of 35 feet above base flood elevation with a total of four (4) stories, including first floor parking. Although more compatible with the surrounding buildings, this proposed height will still be lower than surrounding building heights and will not impact existing views of the Gulf of Mexico from adjacent properties. Specifically, Estero Beach Villas to the west is developed at 8 stories/65 feet above base flood elevation, and the Pink Shell Beach Club is 6 stories/46 feet above base flood elevation.

The Applicant is also requesting a deviation from the pre-disaster buildback regulations in Section 34-3237(4) of the LDC to allow for additional square footage that will allow the redeveloped structure to be more compatible with the neighboring development and buildings with which it must fit in and complement.

The proposed RPD meets the underlying intent of the pre-disaster buildback by ensuring compliance with the current coastal construction and floodplain regulations, which will result in a safer, more storm-resistant structure, thereby providing for greater safety of the surrounding structures in the event of a storm or other disaster. Additionally, the RPD will provide for the visual enhancement of the subject property, which enhances property values and benefits surrounding property owners and their viewsheds along Gulfshore Court and Estero Boulevard.

Policy 4-E-2: Coastal Setbacks

The proposed RPD is in compliance with the coastal setbacks policy, as all proposed structures will be located landward of the CCCL.