

**RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 06-26**

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

WHEREAS, Michael J. VonPlinsky (Applicant) has requested the Town Council rezone an approximately 11,782 square-foot parcel from Commercial Boulevard (CB) and Residential Conservation (RC) to Commercial Planned Development (CPD) to allow the development of a mixed-use project named Shamrock Beach Resort; and

WHEREAS, the Shamrock Beach Resort CPD project proposes one (1) three (3) story building housing four (4) multiple-family dwelling units in two (2) habitable stories above base flood elevation and one dry-floodproofed story below base flood elevation containing a small retail store limited to a maximum of 2,700 square feet of commercial space (convenience food and beverage store), a maximum of 540 square feet of which may be used for the preparation and/or sale of food or beverages in a ready-to-consume state; and

WHEREAS, the subject property is located at 2201 Estero Blvd, Fort Myers Beach, in Section 19, Township 46 South, Range 24 East, Estero Island, Lee County, Florida; and

WHEREAS, Applicant has indicated the property's current STRAP numbers are: 19-46-24-WE-0100B.0010, 19-46-24-WE-0100B.0020, 19-46-24-WE-0100B.0030, and legally described as:

LOTS 1, 2, 3, AND 4, BLOCK "B", W.W. WATSON'S SUBDIVISION, PLAT  
BOOK 5, PAGE 67, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on September 26, 2006; at the conclusion of which the LPA recommended that the Town Council approve the Applicant's request to rezone the subject property from CB and RC to CPD, subject to the thirteen (13) conditions and three deviations set forth with specificity in the LPA Resolution 2006-13; and

WHEREAS, a public hearing was legally advertised and held before the Town Council of the Town of Fort Myers Beach on November 14, 2006, at which time the Town Council gave full and complete consideration to the recommendations of the Local Planning Agency, the documents in the file, and the testimony of all interested persons.

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

The Town Council hereby **APPROVES** the Applicant's request to rezone the subject property from CB and RC to CPD, subject to the thirteen (13) conditions and two (2) deviations set forth with specificity below.

**A. CONDITIONS**

1. The development of this project must be consistent with the 1-page Master Concept Plan (MCP) entitled "Shamrock Beach Resort," stamped received August 29, 2006 and revised August 28, 2006, except as modified by the conditions below. 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 as part of

this planned development. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.

A maximum of 2,700 square feet of commercial space (convenience food and beverage store) is permitted and a maximum of 540 square feet of which may be used for the preparation and/or sale of food or beverages in a ready-to-consume state.

2. The following limits apply to the project and uses:

a. Schedule of Uses

Dwelling units, multiple-family – maximum four (4) (as limited by Condition 3)  
Retail store, small (as limited by Condition 8)  
On-premises consumption of alcoholic beverages (as limited by Condition 9)

b. Site Development Regulations

Minimum Lot Width: 75 Feet (see Condition 7)  
Minimum Lot Depth: 100 Feet (see Condition 7)  
Minimum Lot Area: 11,782 Square Feet (see Condition 7)  
Floor Area Ratio: 1.0  
Minimum Open Space: 2,500 Square Feet (21-Percent)  
Maximum Height: 30 Feet above Base Flood Elevation  
Build-to/Setbacks:  
Street:  
Esteros Blvd: 5 Feet (build-to)  
Delmar Ave: 15 Feet  
Side:  
North: 15 Feet  
East: 5 Feet

3. Two of the proposed multiple-family dwelling units may not exceed 456 square feet in each unit.
4. Prior to local development order approval, the landscape plans must delineate a 15-foot wide buffer along the north property line to include an 8-foot high wall located no less than 12 feet from the northern property line with a double-row staggered continuous hedge of buttonwood (minimum 48-inch height at planting) and Sabal palms planted 10-foot on center, consisting of staggered heights with a minimum 10-foot clear trunk. The buttonwood must be allowed to grow to natural height.
5. Prior to local development order approval, the construction plans must indicate that pervious pavement will be used throughout the parking and dumpster areas.
6. Prior to local development order approval, the project developer will partner with the Town to coordinate survey, site preparation, and infrastructure improvements for the project with the Town's plans for work in the adjacent Esteros Boulevard and Delmar Avenue public rights-of-way.

7. At the time of local development order application, the project developer must provide adequate survey information for the Town to recombine the platted lots into one parcel described by accurate metes and bounds.
8. A maximum of 2,700 square feet of commercial space (convenience food and beverage store) is permitted and a maximum of 540 square feet of which may be used for the preparation and/or sale of food or beverages in a ready-to-consume state. The project must reserve a minimum of six (6) parking spaces designated for commercial use as well as two bike racks. One of the bike racks may be counted for a parking space which reduces the deviation for parking to three (3) spaces.
9. Consumption on Premises is approved in conjunction with a 2-COP alcoholic beverage license for indoor seating only. Hours of operation for consumption of premises are limited to Monday through Sunday 10 AM to 10 PM. No outdoor seating or outdoor entertainment is permitted.
10. No fuel pumps are permitted for this project.
11. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.
12. Approval of this zoning request does not give the Developer an undeniable right to receive local development order approval. Future development order approvals must satisfy the requirements of the Fort Myers Beach Comprehensive Plan.
13. Development of this property 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 planned development.
14. The access to the roof is for maintenance access and residential uses only, in accordance with the requirements of the LDC.

## **B. DEVIATIONS**

1. Deviation from LDC Section 34-2020(d)(2)i.1. which requires a minimum of four (4) parking spaces per 1,000 square feet of floor area for a convenience food and beverage store to allow a total of 7 parking spaces for the 2,700 square feet of commercial space which would normally require 11. The net reduction in required parking spaces is four (4). The Town Council **APPROVES** the requested deviation as conditioned.
2. Deviation from Section 34-705(b)(1) of the Town of Fort Myers Beach Land Development Code which permits a maximum building height of 30-feet above base flood elevation with a maximum of two (2) stories to allow a maximum building height of 30-feet above base flood elevation with a total of three (3) stories, including dry flood-proofed ground floor commercial uses. The Town Council **APPROVES** the requested deviation as conditioned.
3. Deviation from LDC Section 34-704(b) of the Town of Fort Myers Beach Land Development Code which requires a side yard setback of 5-feet to allow a 0-foot side setback for a dumpster enclosure. The Town Council **APPROVES** the requested deviation as conditioned.

4. Deviation from Section 34-2017(a) of the Town of Fort Myers Beach Land Development Code to allow a pervious surface for enhanced drainage in accordance with Condition No. 5, as agreed to by the applicant and included in the LPA resolution 2006-13, adopted September 26, 2006. The pervious surface may include, but not be limited to, porous turf blacks, cellular or modular porous paving system, clean (washed) angular gravel (FDOT # 57) with stabilization as provided in Section 34-1017(b)(1). The surface will be designed, placed and maintained in a manner to prevent the flow of sediment laden runoff from the lot and keep the surface dust-free at all times. The Town Council **APPROVES** the requested deviation as conditioned.

### **FINDINGS AND CONCLUSIONS**

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

1. The requested rezoning to the Commercial Planned Development (CPD) zoning district, as conditioned complies with:
  - a. The Plan;
  - b. LDC Chapter 34;
  - c. all other applicable Town ordinances and codes; and
  - d. the following additional requirements for planned development zoning requests:
    - (i) Policies 4-B-5 with regard to mixed uses in the "Boulevard" Future Land Use Map (FLUM) category;
    - (ii) Policy 4-B-12 with regard to mixed uses;
    - (iii) Policy 4-C-3 iv with regard to mixed-use development in the Boulevard FLUM category
    - (iv) Objective 4-E and Policy 4-E-1 for pre-disaster redevelopment.
2. The proposed use or mix of uses, as conditioned above, is appropriate at the subject location.
3. Sufficient safeguards to the public interest are provided by the recommended conditions to the concept plan or by other applicable regulations.
4. All recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
5. As to the requested deviations, as conditioned:
  - a. Each item enhances the achievement of the objectives of the planned development; and
  - b. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare will be preserved and promoted; and
  - c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and

- d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

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

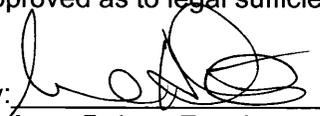
Dennis C. Boback, Mayor	<u>aye</u>
Don Massucco, Vice Mayor	<u>aye</u>
Charles Meador, Jr., Councilmember	<u>aye</u>
Garr Reynolds, Councilmember	<u>nay</u>
William Shenko, Jr., Councilmember	<u>aye</u>

DULY PASSED AND ADOPTED THIS 13th day of November, 2006.

**THE TOWN OF FORT MYERS BEACH**

By:   
Dennis C. Boback, Mayor

Approved as to legal sufficiency:

By:   
Anne Dalton, Esquire  
Town Attorney

ATTEST:

By:   
Michelle Mayer, Town Clerk