

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 07-19

WHEREAS, applicant Creciente Condominium Association (“Applicant”) has requested a Special Exception in the Environmentally Critical (EC) zoning district to permit the construction of a four (4) foot high fence on an existing wall on the subject property; and

WHEREAS, the subject property is located at 7150 Estero Blvd., Ft. Myers Beach, FL, in S03-T47S-R24E, Lee County, FL, with a legal description attached as Exhibit “A” and incorporated herein; and

WHEREAS, a public hearing was advertised and held before the Local Planning Agency (LPA) on April 24, 2007, at which time the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, the request of applicant and the testimony of all interested persons and recommended that the Town Council grant approval of applicant’s request, with the conditions as outlined with specificity in LPA Resolution Number 2007-09; and

WHEREAS, a public hearing was properly noticed and duly held on July 16, 2007, before the Town Council of the Town of Fort Myers Beach; and

WHEREAS, at such time, the Town Council gave full and complete consideration to the recommendations of the LPA, recommendations of staff, the documents in the file, the request of applicant and the testimony of all interested persons; and

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

The Town Council hereby grants **APPROVAL** of applicant’s request for a special exception to permit the construction of a 4 (four) foot fence on an existing wall on the subject property, subject to the following conditions.

**CONDITIONS OF APPROVAL:**

- A. Applicant must submit an application for local development order including the following items:
  - 1. The specific, intended location for the proposed fence.
  - 2. A stormwater drainage plan for stormwater and pool discharge in conjunction with the outfall at the existing wall in accordance with Town of Fort Myers Beach Land Development Code (LDC) Section 6-13. This plan must provide for applicant’s tie-in to the Town’s municipal stormwater system at the time the Town system is operational.
  - 3. A Sea Turtle Lighting Plan, the review and approval of which is required prior to approval of a local development order. Prior to issuance of a Certificate of Compliance (CC), the exterior lighting must be inspected after dark by the Town environmental staff for compliance issues.

4. Applicant must obtain or renew all applicable permits, as conditioned, including, but not limited to the Field Permit from the Florida Department of Environmental Protection, Number 8021065-LE, dated May 26, 2006 to construct a fence approximately 320 linear feet in length and 48 inches in height to match the existing fence. The fence is to run parallel with and connect to existing fences at the north and south property lines on the existing wall. The expiration date on the original permit was November 30, 2006. A copy of this permit is attached as Exhibit B and incorporated by reference.

**B.** Approval of the fence hereunder is limited to the existing seawall only.

### **RECOMMENDED FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of Sections 34-84 and 34-88 of the LDC regarding consideration of eligibility for a Special Exception, the Town Council makes the following findings and reaches the following conclusions:

1. There **exist** changed or changing conditions that make approval of this request, with the above-referenced conditions, appropriate.

The request for Special Exception is to permit extension of a four (4)-foot high aluminum rail fence within the Environmentally Critical (EC) zoning district. The fence would be installed on an existing wall located behind the Creciente Condominiums. There is currently a fence that runs along portions of the northern and southern extent of the Gulf side of the property. Approval of the request would permit connection of the existing fences which will provide additional privacy and security for the residents. As conditioned, the request is appropriate.

2. The requested special exception as conditioned:

a] **is** consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

Although the Town of Fort Myers Beach Comprehensive Plan (Plan) does not specifically address the Environmentally Critical zoning district, the Plan addresses the Recreation Future Land Use Map (FLUM) category. **Policy 4-B-8** prohibits permitting new residential development in this area (although several existing buildings were legally constructed partially within the area prior to the adoption of the Plan). The existing use as residential condominiums is consistent with the Mixed Residential future land use category as established in **Policy 4-B-4** of the Plan. LDC Section 34-652 establishes the EC zoning district to designate the Recreation and Wetlands FLUM categories as areas whose preservation is critical to the Town, and requires a Special Exception for accessory structures such as fences.

b] **meets or exceeds** all performance and locational standards set forth for the proposed use.

As conditioned, the Special Exception meets the performance standards set forth for the proposed use. The proposed conditions will ensure compliance with all standards and regulations for the proposed use.

c] **protects, conserves, or preserves** environmentally critical areas and natural resources

As conditioned, the Special Exception will conserve or preserve environmentally critical areas and natural resources. Prior to issuance of a development order, the request will be reviewed by the Town environmental staff to assure compliance with local regulations. A review, permit and approval is also required from the Florida Department of Environmental Protection (DEP) to ensure compliance with state regulations.

d] **will** be compatible with existing or planned uses

As conditioned, the Special Exception request to permit an aluminum fence within the EC zoning district will be compatible with existing or planned uses. The existing wall, a portion of the swimming pool and a section of the residential condominiums are non-conforming uses and structures existing within the EC zoning district. The proposed fence is requested to provide additional privacy and security for the residents of Creciente Condominiums.

e] **will not** cause damage, hazard, nuisance or other detriment to persons or property; and

As conditioned, the Special Exception request will not cause damage, hazard, nuisance or other detriment to persons or property. There are other accessory structures, such as fences, walkways, stairs, etc., in this area that are located within the EC zoning district.

f] **will** be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the LDC.

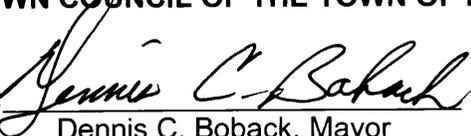
As conditioned, approval of the Special Exception to permit construction of an ornamental aluminum fence on an existing wall within the EC zoning district will comply with all general zoning provisions and supplemental regulations pertaining to the use set forth in the LDC. The LDC defines a fence as a accessory structure and the use of a fence for privacy and security is an accessory use which may be permitted within the EC zoning district by Special Exception.

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

Dennis C. Boback, Mayor	<u>AYE</u>
Larry Kiker, Vice Mayor	<u>AYE</u>
Herb Acken	<u>AYE</u>
Charles Meador, Jr.	<u>AYE</u>
William Shenko, Jr.	<u>AYE</u>

DULY PASSED AND ADOPTED THIS 16<sup>TH</sup> DAY OF JULY, 2007, BY THE

**TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH**

By:   
Dennis C. Boback, Mayor

Approved as to legal sufficiency:

ATTEST:

By:   
Anne Dalton, Esquire  
Town Attorney

By:   
Michelle D. Mayher, Town Clerk

**SEZ2006-00022**

**EXHIBIT A**

**A tract or parcel of land lying in Government Lot 2, Section 3, Township 47 South, Range 24 East, on Estero Island, which tract or parcel of land is described as follows:**

**From a concrete monument marking the intersection of the North line of the South 60 feet of Government Lot 1 of said Section 3, with the Westerly line of the right-of-way of a County Road conveyed by deed recorded in Deed Book 189 at pages 161 and 162 of the Public Records of Lee County, Florida, run Southeasterly along said right-of-way line for 400 feet to the Point of Beginning of the lands herein described;**

**From said Point of Beginning continue southeasterly along said right-of-way line for 400 feet;**

**Thence deflect right 94°02'30" and run Southwesterly for 644 feet more or less to the waters of the Gulf of Mexico;**

**Thence run Northerly 400 feet along said waters to an intersection with a line through the Point of Beginning marking an angle of 94°02'30" Southeast to Southwest with said right-of-way line;**

**Thence run Northeasterly along said line for 600 feet more or less to the Point of Beginning.**

**Being a strip of land 400 feet wide (measured along said County Road) and extending from said road to the waters of the Gulf of Mexico.**