

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 07-45

WHEREAS, Thomas and Robin Mizwa, the property owners, (Applicant) petitioned for a rezoning of 0.34+/- acres from Residential Multi-Family (RM) to Residential Planned Development (RPD) to enable recombination and resubdivision of the subject property into two (2) lots with each capable of containing a single family residence; and

WHEREAS, the subject property is located at 95 Mound Rd. and 21650 Widgeon Terrace, Fort Myers Beach, Florida, in S33-T46S-R24E, Lee County, Florida and the applicant has indicated the property's current STRAP numbers are 33-46-24-W3—0040H.0100 and 33-46-24-W3-0040H.006A and the legal description thereof is attached hereto Exhibit A and incorporated herein by reference; and

WHEREAS, a public hearing on this matter was legally advertised to be heard by the Local Planning Agency (LPA) on October 16, 2007 at which time the LPA recommended that the Town Council approve the Applicant's request, subject to the conditions and deviations set forth more fully in LPA Resolution 2007-22; and

WHEREAS, a public hearing was advertised and held before the Town Council on November 19<sup>th</sup> 2007, at which time the Town Council gave full and complete consideration to the recommendations of staff, the LPA resolution, the documents in the file, and the testimony of all interested persons.

IT IS HEREBY 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 RM to RPD, subject to the following conditions:

**A. CONDITIONS**

1. Development must be consistent with the one-page Master Concept Plan entitled "Mizwa Residence" for case FMBDCI2007-00006, stamped received August 14, 2007, except as specifically modified by conditions below. If changes to the Master Concept Plan (MCP) are subsequently pursued, appropriate approvals will be required.

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

Schedule of Uses

Principal:

- Dwelling unit, single family
- Dwelling unit, two-family
- Dwelling unit, multi-family
- Dwelling unit, live-work
- Rental of any permitted dwelling unit to a single family during any one-month period with a minimum stay of one week
- Rental of any permitted dwelling unit to a single family for periods of one week or longer

Accessory:

- Accessory apartment (provided density complies with the Comprehensive Plan)
- Family Day Care Home
- Home Occupation (no outside help)
- Home Occupation (with outside help)
- Residential Accessory Uses

Site Development Regulations

Minimum Lot width: 74.25 feet

Minimum Lot depth: 90.04 feet

Minimum Lot area: 7298 square feet

Maximum Floor Area Ratio: 1.2

Maximum Building Height (feet): 30 feet from base flood elevation

Maximum Building Height (stories): 3 stories (2 stories above parking, building access, or storage below elevated building)

Minimum setbacks:

Street: 20.6 feet (for existing building from Widgeon Terrace only)

Street: 25 feet (all other street setbacks)

Side: 7.5 feet

Rear: 20 feet

3. Any development or redevelopment of the subject property must comply with the Fort Myers Beach Comprehensive Plan, including Policy 4-B-4 regarding the Mixed Residential Future Land Use Map category.

4. If pursued, the recombination and resubdivision of the subject property must proceed according to all applicable requirements of Land Development Code Chapters 10 and 34 at the time application is made for lot split approval, except as specifically modified by deviations or conditions herein.

5. Two-family or multifamily dwelling units are only permitted in compliance with the density limit set by the Comprehensive Plan and only if the proposed resubdivision of the subject property is not pursued.

6. Prior to lot split approval the lowest floor of the existing building must be elevated, at minimum, to the base flood elevation. The lowest floor is the lowest floor of any enclosed space, not including an unfinished or flood-resistant enclosure used solely for parking, building access, or storage. The elevation of the lowest floor must be certified by a registered land surveyor or professional engineer as provided in LDC Section 6-444(c)(1).

7. Prior to lot split approval or other developmental approval, the property owner must convey to the Town an easement for public purposes across the northerly six (6) feet and the triangular portion of the subject property as set forth on the Master Concept Plan, as such was updated by applicant immediately prior to the Town Council hearing of November 19, 2007. The property owner must coordinate the design of drainage improvements to address the existing drainage situation. Approval of the lot split shall require the construction of these improvements prior to issuance of building permits.

## **B. Deviations**

To achieve the proposed development, the applicant had requested five (5) deviation(s):

1. The request for Deviation "A" to reduce the required street setback from 25 feet to 20.6 feet, as shown on the MCP. The Town Council **APPROVES** Deviation "A" to reduce the required street setback from 25 feet to 20.6 feet.
2. The request for Deviation "B" is to reduce the required side setback from 20 feet to 7.5 feet, as shown on the MCP. The Town Council **APPROVES** Deviation "B" to reduce the required side setback from 20 feet to 7.5 feet.
3. The request for Deviation "C" is to reduce the minimum lot area from 7500 square feet to 7298 square feet as shown on the MCP. The Town Council **APPROVES** Deviation "C" to reduce the minimum lot area from 7500 square feet to 7298 square feet.
4. The request for Deviation "D" is to reduce minimum lot depth from 100 feet to 90.4 feet as shown on the MCP. The Town Council **APPROVES** Deviation "D" to reduce the minimum lot depth from 100 feet to 90.04 feet.
5. The request for Deviation "E" is to reduce the minimum lot width from 75 feet to 74.25 feet as shown on the MCP. The Town Council **APPROVES** Deviation "E" to reduce the minimum lot width from 75 feet to 74.25 feet.

## **II. Recommended Findings and Conclusions:**

Based upon an analysis of the application and the standards for approval of planned development zoning approval, the Town Council makes the following findings and conclusions:

1. The requested rezoning zoning district, as conditioned, **COMPLIES** with:
  - a. The Plan;
  - b. LDC Chapter 34; and
  - c. all other applicable Town ordinances and codes.
2. The proposed use or mix of uses **IS** appropriate at the subject location.
3. Sufficient safeguards to the public interest **ARE** provided by the recommended conditions to the master concept plan and/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. The proposed uses **MEET** all specified requirements of the Plan that are relevant to the requested planned development, such as the following:

- a. Policies 4-B-4 regarding the Mixed Residential Future Land Use Map category;
  - b. Policy 5-B-3 regarding the avoidance of property damage through property improvements for hazard mitigation.
6. As to the requested Deviation "A":
- a. Deviation "A" **WILL** enhance the achievement of the objectives of the planned development.
  - b. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare **WILL** be preserved and promoted in Deviation "A"; and
  - c. Deviation "A" **WILL** operate to the benefit of the public interest; and
  - d. Deviation "A" **IS** consistent with the Fort Myers Beach Comprehensive Plan.
7. As to the requested Deviation "B":
- a. Deviation "B" **WILL** enhance 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 in Deviation "B"; and
  - c. Deviation "B" **WILL** operate to the benefit, or at least not to the detriment, of the public interest; and
  - d. Deviation "B" is consistent with the Fort Myers Beach Comprehensive Plan.
8. As to the requested Deviation "C":
- a. Deviation "C" **WILL** enhance 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 in Deviation "C"; and
  - c. Deviation "C" **WILL** operate to the benefit, or at least not to the detriment, of the public interest; and
  - e. Deviation "C" **IS** consistent with the Fort Myers Beach Comprehensive Plan.
9. As to the requested Deviation "D":

- a. Deviation "D" **WILL** enhance 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 in Deviation "D"; and
- c. Deviation "D" **WILL** operate to the benefit, or at least not to the detriment, of the public interest; and
- d. Deviation "D" **IS** consistent with the Fort Myers Beach Comprehensive Plan.

10. As to the requested Deviation "E":

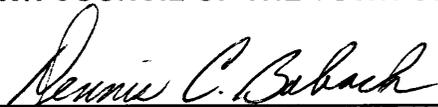
- a. Deviation "E" **WILL** enhance the achievement of the objectives of the planned development; and
- b. The general intent of LDC Chapter 34 to protect public health, safety, and welfare **WILL** be preserved and promoted in Deviation "E"; and
- c. Deviation "E" **WILL** operate to the benefit, or at least not to the detriment, of the public interest; and
- d. Deviation "E" **IS** consistent with the Fort Myers Beach Comprehensive Plan.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember Shenko and seconded by Councilmember Acken , 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>		
Dennis C. Boback, Mayor			

DULY PASSED AND ADOPTED THIS 19<sup>th</sup> DAY OF NOVEMBER, 2007, BY THE

**TOWN COUNCIL OF 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 D. Mayher, Town Clerk

## **Exhibit A**

**FMBDCI2007-00006**

### **Legal Description**

**A parcel of land consisting of Lot 10 and parts of Lots 8 and 9, Block H, McPhie Park Unit 2 Subdivision, according to the plat recorded in Plat Book 8, Page 59 of the Public Records of Lee County, Florida, being more particularly described as follows:**

**Beginning at the Southwest corner of said Lot 10; thence on an assumed bearing of N. 00°00'00" E. on the West line of said Lot 10 for 150.00 feet to the Northwest corner of said Lot 10; thence N. 90°00'00" E. on the north lines of said Lots 8, 9, and 10 for 148.24 feet to the westerly right-of-way line of Widgeon Terrace (60 feet wide) as described on the plat of Flamingo Bayou Subdivision, as recorded in Plat Book 33, Pages 6 and 7 of the Public Records of Lee County, Florida; thence S.51°40'30" W. on said westerly right-of-way line for 25.82 feet to the point of curvature of a curve, concave to the southeast, having a radius of 100.00 feet; thence continuing on said westerly right-of-way line, southwesterly on the arc of said curve for 90.19 feet through a central angle of 51°40'30"; thence continuing on said westerly right-of-way line, S.00°00'00" E. for 55.54 feet; thence N.90°00'00" W. for 90.00 feet to the Point of Beginning.**

**Description based on Land Survey dated September 25, 2003 (last revision 10/19/2005) by L. Larry Gardner, LS #4294 (Job #03-1094A).**



# MASTER CONCEPT PLAN - MIZWA RESIDENCE

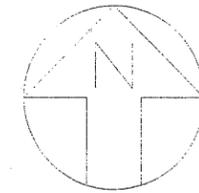
Town of Fort Myers Beach

EXHIBIT ( B )

PROPERTY ADDRESS:  
21650 WIDGEON TERRACE  
FORT MYERS BEACH, FLORIDA  
AND  
95 MOUND ROAD  
FORT MYERS BEACH, FLORIDA  
STRAP NUMBERS:  
33-46-24-W3-0040H.006A  
33-46-24-W3-0040H.0100

F M B DCI 2007 0 C 0 0 6

RECEIVED  
AUG 14 2007



SCALE 1 INCH = 30 FEET

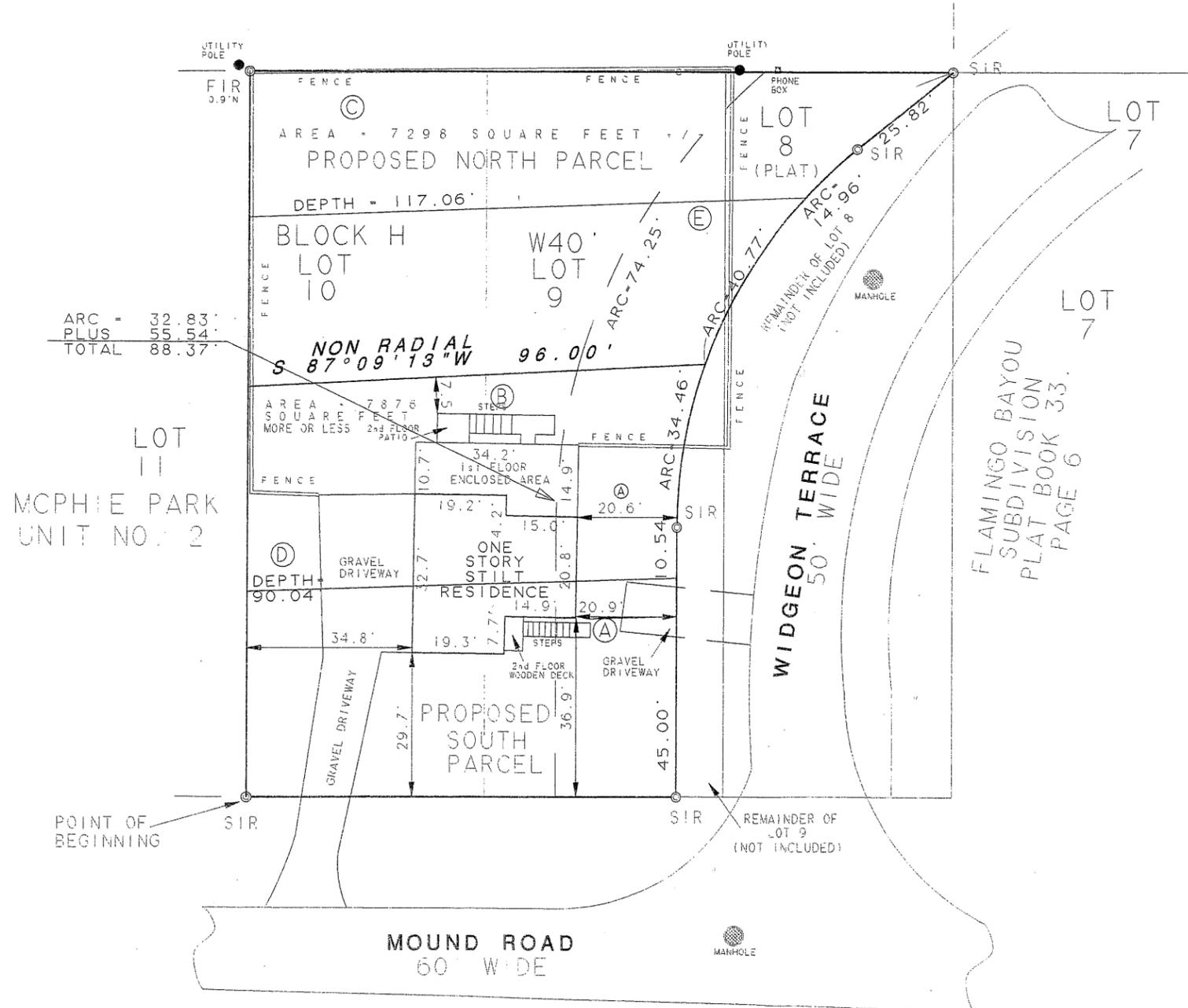


BY: .....  
LOT 1  
FLAMINGO BAYOU  
SUBDIVISION

## NOTES:

THE FOLLOWING NOTES ARE ADDED AT THE REQUEST OF THE OWNERS AND THEIR LEGAL REPRESENTATIVES. THEY ARE RESPONSIBLE FOR THE INFORMATION THEREIN:

- 1) CURRENT CLASSIFICATIONS:  
ZONING: RESIDENTIAL MULTIFAMILY (RM)  
FUTURE LAND USE: MIXED RESIDENTIAL
- 2) PROPOSED CLASSIFICATIONS:  
ZONING: RESIDENTIAL PLANNED DEVELOPMENT (RPD)  
FUTURE LAND USE: MIXED RESIDENTIAL
- 3) NUMBER OF UNITS: TWO (2) SINGLE-FAMILY DWELLING UNITS, TWO (2) TWO-FAMILY DWELLING UNITS, OR TWO (2) MULTIPLE-FAMILY DWELLING UNITS.
- 4) SCHEDULE OF USES:  
DWELLING UNIT, SINGLE-FAMILY  
DWELLING UNIT, TWO-FAMILY\*  
DWELLING UNIT, MULTIPLE-FAMILY\*  
DWELLING UNIT, LIVE/WORK  
RENTAL OF ANY PERMITTED DWELLING UNIT TO A SINGLE FAMILY DURING ANY ONE-MONTH PERIOD, WITH A MINIMUM STAY OF ONE WEEK  
RENTAL OF ANY PERMITTED DWELLING UNIT TO A SINGLE FAMILY FOR PERIODS OF ONE WEEK OR LONGER  
  
AS ACCESSORY USES:  
ACCESSORY APARTMENT (PROVIDED DENSITY COMPLIES WITH THE FORT MYERS BEACH COMPREHENSIVE PLAN)  
FAMILY DAY CARE HOME  
HOME OCCUPATION (NO OUTSIDE HELP)  
HOME OCCUPATION (WITH OUTSIDE HELP)  
RESIDENTIAL ACCESSORY USES
- 5) REQUESTED DEVIATIONS:  
(a) (A) DEPICTS A DEVIATION FROM LDC SECTION 34-638 AND TABLE 34-2. THIS WILL ALLOW FOR A STREET SETBACK DEVIATION FROM 25 FEET TO 20.6 FEET AND 20.9 FEET.  
(b) (B) DEPICTS A DEVIATION FROM LDC SECTION 34-638 AND TABLE 34-2. THIS WILL ALLOW FOR A SIDE YARD SETBACK DEVIATION FROM 20 FEET TO 7.5 FEET.  
(c) (C) DEPICTS A DEVIATION FROM LDC SECTION 34-637 AND TABLE 34-2. THIS WILL ALLOW FOR A MINIMUM LOT SIZE DEVIATION FROM 7,500 SQUARE FEET TO 7,298 SQUARE FEET  
(d) (D) DEPICTS A DEVIATION FROM LDC SECTION 34-637 AND TABLE 34-2. THIS WILL ALLOW FOR A MINIMUM LOT DEPTH DEVIATION FROM 100 FEET TO 90.04 FEET.  
(e) (E) DEPICTS A DEVIATION FROM LDC SECTION 34-637 AND TABLE 34-2. THIS WILL ALLOW FOR A MINIMUM LOT WIDTH DEVIATION FROM 75 FEET TO 74.25 FEET.
- 6) THE MASTER CONCEPT PLAN DEPICTS THE PROJECT'S GENERAL CONFIGURATION AND, AS SUCH, IS FOR CONCEPTUAL REVIEW AND ZONING PURPOSES. THE PLAN'S FINAL LAND USES, BUILDING FOOTPRINTS, SURFACE WATER MANAGEMENT SYSTEM, AND OTHER FUNCTIONAL ELEMENTS WILL BE DETERMINED AT THE TIME OF BUILDING PERMIT APPLICATION.
- 7) THE STRUCTURE LABELED "ONE STORY STILT RESIDENCE" WILL BE BROUGHT INTO CONFORMANCE WITH CURRENT FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) BASE FLOOD ELEVATION REGULATIONS FOLLOWING LOT SPLIT APPROVAL APPLICATION.



\*THE APPLICANT AND ANY SUCCESSORS IN INTEREST WILL ONLY PURSUE APPROVAL FOR TWO-FAMILY OR MULTIPLE-FAMILY DWELLING UNITS WHERE LOT SPLIT APPROVAL IS EITHER NOT SOUGHT OR SOUGHT AND NOT APPROVED. THE APPLICANT UNDERSTANDS THAT ANY REQUEST MUST COMPLY WITH THE DENSITY REQUIREMENTS OF THE FORT MYERS BEACH COMPREHENSIVE PLAN.

03-1094X