

**RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2007-22**

**A RESOLUTION OF THE LOCAL PLANNING AGENCY OF FORT MYERS BEACH,
FLORIDA:**

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 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.

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

The LPA recommends that the Town Council **APPROVE** 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 modified during the course of the LPA hearing on this matter), with the specific legal description thereof to be provided prior to the Town Council hearing of this matter. 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 LPA recommends **APPROVAL** of 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 LPA recommends **APPROVAL** of 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 LPA recommends **APPROVAL** of 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 the minimum lot depth from 100 feet to 90.4 feet as shown on the MCP.

The LPA recommends **APPROVAL** of 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 LPA recommends **APPROVAL** of 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 LPA makes the following findings and conclusions:

1. The requested rezoning 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:

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 use(s) meet(s) 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
- d. 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 the 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 LPA upon a motion by LPA Member Dennie Weimer and seconded by LPA Member Alan Mandel, and upon being put to a vote, the result was as follows:

Thomas Babcock	<u>aye</u>	Evie Barnes	<u>absent</u>
Rochelle Kay	<u>aye</u>	Alan Mandel	<u>aye</u>
Bob Raymond	<u>aye</u>	Bob Simon	<u>aye</u>
Dennie Weimer	<u>aye</u>		

DULY PASSED AND ADOPTED THIS 16th day of October, 2007.

LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH

By: Thomas Babcock
Thomas Babcock, Chair

Approved as to legal sufficiency:

ATTEST:

By: Anne Dalton
Anne Dalton, Esquire
LPA Attorney

By: Michelle D. Mayher
Michelle D. Mayher, LPA Clerk