

**RESOLUTION NUMBER 20-08**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ A SPECIAL EXCEPTION TO ALLOW A SHARED PARKING LOT AND APPROVING/ VARIANCES TO THE DIMENSION AND DELINEATION OF PARKING STALL AND AISLE, EXTERIOR BUFFER, LANDSCAPING, AND REFUSE CONTAINER SCREENING REQUIREMENTS OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE FOR THE PROPERTY LOCATED AT 1046 ESTERO BOULEVARD; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, applicant Persaud Properties FL Investments LLC (Applicant), the owner of the property located at 1046 Estero Boulevard ("Property"), is requesting a Special Exception to allow a shared parking lot in the Downtown zoning district and variances from Section 34-2016 10-416(c)(2)b, 10-416(d)(2) and 10-257 of the Town of Fort Myers Beach Land Development Code ("LDC"); and

**WHEREAS**, the STRAP number for the Property is 24-46-23-W3-00016.0000 and the legal description of the Property is attached as *Exhibit A*; and

**WHEREAS**, the Property is located in the Downtown (D) and Environmentally Critical (EC) zoning districts of the Official Zoning Map and the Pedestrian Commercial category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida (Town); and

**WHEREAS**, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on February 11, 2020, at which the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-84 of the LDC; and

**WHEREAS**, on March 2, 2020 the Town Council held a legally noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Sections 34-87 and 34-88 of the LDC.

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

**Determination.**

Based upon the recommendations, testimony, and evidence presented by the applicant, Town staff, and interested parties, the Town Council **APPROVES** the following:

- A. A Variance from LDC Section 34-2016, which requires parking stall size for 90 degree angled parking to be 8.5 feet by 18 feet with 20 feet wide one-way aisle, to permit a parking stalls of size of 8 feet by 16 feet with 18 feet wide one way aisle.

- B. A variance from LDC Section 10-414., which required submittal of landscape and irrigation plans, to permit submission of plans for landscaping and irrigation as approved in this resolution.
- C. A variance from LDC Section 10-416, which requires landscaped areas on the parking area perimeter or internal islands to equal or exceed a minimum of ten percent of the total paved surface area and landscaping area along a right-of-way, Estero Boulevard, to be a fifteen foot (15') wide Type D buffer consisting of five trees per 100 linear feet and a double, staggered row hedge; to permit a minimum four (4) foot wide buffer meeting the Type D requirement for double hedges and three (3) native trees along Estero Boulevard and a maximum four foot (4') high retractable fence along seawall.
- D. A variance from LDC Section 10-257, which requires a refuse container to be shielded by landscaping or fencing along at least three sides, to permit the refuse container to be shielded by a fence at least two sides excluding the beach side.

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant **did/** meet its burden of proof that the requested Special Exception **and/** Variances **do/** meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception **and/** the Variances **are/** in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the applicant, Town staff, and interested parties, the Town Council **APPROVES/** the Special Exception **and/** Variances.

Section 3. In **approving/** the Special Exception **and/** Variances, the following findings and conclusions are made:

1. In accordance with the requirements of Section 34-88 of the LDC regarding the criteria for the granting of a Special Exception, the Town Council makes the following findings and reaches the following conclusions:
  - A. Whether there exist changed or changing conditions, which make approval of the request appropriate. *The continued use of the parking lot for decades **has/changed** the site.*
  - B. The testimony of the Applicant. *The Applicant was heard at the March 2, 2020 public hearing.*
  - C. The recommendation of staff and of the Local Planning Agency (LPA). *The LPA and staff recommend approval with conditions.*
  - D. The testimony of the public. *The public had the opportunity to testify at the March 2, 2020 public hearing.*

- E. Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan. *The request is/ consistent with the Comprehensive Plan.*
  - F. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use. *The request does/ meet or exceed all performance and locational standards.*
  - G. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources. *The request /will not impact environmentally critical areas.*
  - H. 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 proposal will/ be compatible with adjacent existing and proposed uses.*
  - I. Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter. *The requested use will/ be in compliance with zoning provisions and supplemental regulations*
2. In accordance with the requirements of Sections 34-84 and 34-87 of the LDC regarding the criteria for granting a variance, the Town Council makes the following findings and reaches the following conclusions:
- A. There **are/** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is/** for a de minimus variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
  - B. The conditions justifying the variance **/are not** the result of actions of the applicant taken after the adoption of the regulation in question.
  - C. The variance granted **is/** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
  - D. The granting of the variance **/will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
  - E. The conditions or circumstances on the Property for which the variances are sought **/are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. In approving the Special Exception herein, the following conditions of approval are imposed on the Applicant and the Property:

1. Approval of the Special Exception does not exempt the subject property from any provisions of the LDC with the exception of the approved variances.
2. The Applicant must apply for a limited development order (LDO) within 90 days of the approval of the special exception. The LDO must address a parking plan, stormwater retention/detention, access to the site, parking surface of the lot, buffering and signage/ markings.
3. The Applicant must apply for an electric permit for the existing garbage compactor within 30 days of approval of the Special Exception and shall be installed as per manufacturer's code. Screening shall be provided as approved by Town Council under this resolution, on two sides, facing Time Square and parking side excluding the beach side.
4. Total parking spaces shall not exceed 53 including 3 ADA parking spaces compliant with FBC Accessibility requirements.
5. Perimeter parking spaces along Crescent St must be delineated by placing a parking block three feet from the end of the parking space and centered between the sides of the space.
6. The invasive species 'Australian pine' shall be removed prior to any work begin on the Property.
7. Irregular parking stalls near the AC unit shall provide a sign post for 'compact car only'
8. Directional arrows must be marked on the Property. 'No Entry' sign must be placed at exit aisle.
9. All signs must be in compliance with Chapter 30 of the LDC.
10. The operator of the parking lot will provide a trash receptacle and maintain the lot in a litter free manner. The operator will ensure that the trash receptacle is regularly emptied and hauled away by the franchised garbage hauler.
11. A 4 feet wide buffer with double hedge along the street property line and a retractable fence along seawall shall be maintained on the property
12. Three (3) native trees must be installed along the Estero Boulevard side of the property.
13. Hours of operation are limited from 8:30 AM to 2:00 AM. Overnight parking is prohibited.
14. Violation of conditions of approval shall result in a \$500 per day/incident civil fine appealable to the Code Enforcement Special Magistrate.

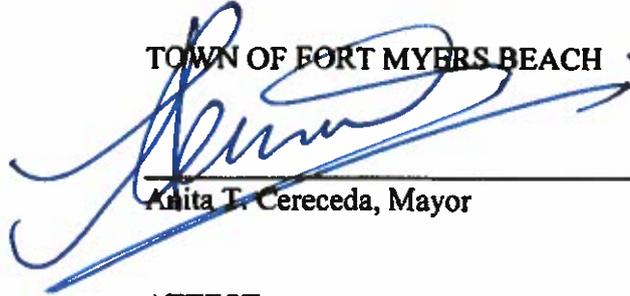
Section 5. This Resolution shall take effect immediately upon adoption.

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

Anita Cereceda, Mayor	Abstain
Ray Murphy, Vice Mayor	Aye
Joanne Shamp, Council Member	Aye
Rexann Hosafros Council Member	Nay
Bruce Butcher, Council Member	Aye

ADOPTED this 13<sup>nd</sup> day of March, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



Anita T. Cereceda, Mayor

ATTEST:



Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:



John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 9<sup>th</sup> day of April ~~March~~ 2020.



