

1. Requested Motion:

Meeting Date: Nov. 5, 2012

To approved case # REZ2012-0001, a request to rezone 0.126+/- acres from Residential Multifamily (RM) to Commercial Boulevard (CB) for the property located at 110 Mango Street (AKA: Heavenly Biscuit).

Why the action is necessary:

To correct the error made during adoption of the Official Zoning Map in 2004.

2. Agenda:

- Consent
- Administrative
- Public Hearing

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other

4. Submitter of Information:

- Council
- Town Staff – Comm. Dev.
- Town Attorney

5. Background:

The subject property was zoned Commercial (C-1) under Lee County zoning regulations, when applicant purchased the property in 1988. The property has been in continuous use as a beauty parlor or a restaurant since the applicant bought the property. Town Council erroneously rezoned the property Residential Multifamily (RM) during Official Zoning Map adoption in 2004. A previous Town-initiated rezoning to correct the error was denied by Town Council in 2006, which led to a lawsuit and a settlement.

Requested CB rezoning would legitimize the existing use of the property as a restaurant and correct error made in 2004.

The LPA held a public hearing for the request at their September 11, 2012 meeting. Staff presented its case along with a recommendation for approval and the applicant explained the 8 year hardship that the inconsistent zoning caused them. LPA conducted a question and answer period and discussion before voting 6-0 (LPA Member Zuba absent) to approve the request.

Attachments:

- Draft Town Council Resolution 12-23
- LPA resolution 2012-014
- Signed LPA minutes from the September 11, 2012 meeting
- LPA packet including staff report from the September 11, 2012 meeting

6. Alternative Action:

1. Deny the requested rezoning

7. Management Recommendations:

Approve the requested rezoning to Commercial Boulevard in accordance with the recommendation of the LPA Resolution 2012-014.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. Council Action:

- Approved Denied Deferred Other

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 12-23
110 MANGO STREET REZONING

WHEREAS, Marylu Czulewicz, owner of the property located at 110 Mango Street, Fort Myers Beach, Florida has requested to rezone 0.126 acres from Residential Multifamily (RM) to Commercial Boulevard (CB); and

WHEREAS, the subject property is located in the Mixed Residential Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP for the property is 19-46-24-W3-0120D.0020 and the legal description for the property is Lot 2, Block D, Seagrape Subdivision, according to the plat thereof recorded in Plat Book 4 Page 17, of the Public Records of Lee County, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on September 11, 2012 at which time the LPA gave full and complete consideration to the rezoning requested by the Applicant, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on November 5, 2012, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2012-014, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2012-014 and the standards for granting planned development rezoning, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVES/DENIES** the request to rezone the subject property to the Commercial Boulevard (CB) zoning district.

FINDINGS AND CONCLUSIONS

Based upon the presentations by the Applicant, Staff, and other interested parties at the hearing, and a review of the application and standards for the conventional rezoning

approval, the Town Council makes the following findings and reached the following conclusions:

1. *Whether there exists an error or ambiguity which must be corrected.*
Staff finds that the rezoning from Commercial (C-1) to Residential Multifamily (RM) at the time of the Official Zoning Map adoption was an error that should be corrected.
APPROVE/DENY

2. *Whether there exist changed or changing conditions which make approval of the request appropriate.*
Staff finds that changed conditions exist, namely that the existing structure has been used for commercial uses since before the Official Zoning Map adoption and continues to be used for commercial purposes and approval of the request is therefore appropriate. **APPROVE/DENY**

3. *The impact of a proposed change on the intent of Chapter 34 of the Fort Myers Beach Land Development Code.*
Staff does not anticipate that the proposed rezoning from RM to CB will have any negative impact on the intent of Chapter 34. **APPROVE/DENY**

4. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*
As discussed in the analysis section of the Staff Report, the request is generally consistent with the goals, objectives, policies, and intent as well the densities, intensities and general uses of Comprehensive Plan. **APPROVE/DENY**

5. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*
The applicant has not submitted a plan for redevelopment with this request for rezoning. They have indicated to Staff no intention to change current uses on the subject property, merely a desire to return to a commercial zoning similar to the zoning category the subject property had prior to the Town's incorporation.
APPROVE/DENY

6. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*
Urban services, including water, sewer and electricity, are available at the subject property, and are currently in use by the existing commercial tenant. **APPROVE/DENY**

7. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The property was originally developed in the 1920s as a residential cottage, and the property does not include any sensitive and/or environmentally critical land. **APPROVE/DENY**

8. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

Due to the location of the subject property at the boundary between Mixed Residential and Boulevard Future Land Use categories, the existing restaurant use acts as a buffer between the more intense uses allowed in the Boulevard category and the mostly-residential, mixed uses that are allowed in Mixed Residential. **APPROVE/DENY**

9. *Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

Since the restaurant use already exists, the rezoning of the property from RM to CB will not have any impact on traffic generation. **APPROVE/DENY**

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

Bob Raymond, Mayor	AYE/NAY	Alan Mandel, Vice Mayor	AYE/NAY
Dan Andre, Councilmember	AYE/NAY	Jo List, Councilmember	AYE/NAY
Joe Kosinski Councilmember	AYE/NAY		

DULY PASSED AND ADOPTED THIS 5th day of NOVEMBER, 2012.

Town Council of the Town of Fort Myers Beach

By: _____
Bob Raymond, Mayor

Approved as to legal sufficiency:

ATTEST:

By: _____
Fowler White Boggs, P.A.
Town Attorney

By: _____
Michelle Mayher
Town Clerk

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2012-14
110 Mango Rezoning

WHEREAS, Marylu Czulewicz, owner of the property at 110 Mango Street, Fort Myers Beach, Florida has requested to rezone 0.126± acres from Residential Multifamily (RM) to Commercial Boulevard (CB); and

WHEREAS, the subject property is located in the Mixed Residential Future Land Use Category of the Comprehensive Plan of Fort Myers Beach; and

WHEREAS, the STRAP for the subject property is 19-46-24-W3-0120D.0020 and the legal description of the subject property is Lot 2, Block D, Seagrape Subdivision, according to the plat thereof recorded in Plat Book 4, Page 17 in the Public Records of Lee County Florida; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on September 11, 2012; and

WHEREAS, at the hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-85.

IT IS HEREBY 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 for a *Rezoning from Residential Multifamily (RM) to Commercial Boulevard (CB)*.

RECOMMENDED FINDINGS AND CONCLUSIONS:

1. *There exists an error or ambiguity which must be corrected.*
Staff finds that the rezoning from Commercial (C-1) to Residential Multifamily (RM) at the time of the Official Zoning Map adoption was an error that should be corrected. **APPROVE**
2. *There exist changed or changing conditions which make approval of the request appropriate.*
Staff finds that changed conditions exist, namely that the existing structure has been used for commercial uses since before the Official Zoning Map adoption and continues to be used for commercial purposes and approval of the request is therefore appropriate. **APPROVE**
3. *The impact of a proposed change on the intent of Chapter 34 of the Fort Myers Beach Land Development Code.*
Staff does not anticipate that the proposed rezoning from RM to CB will have any negative impact on the intent of Chapter 34. **APPROVE**

4. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*

As discussed in the Analysis of the Staff Report, the request is generally consistent with the goals, objectives, policies, and intent, as well as the densities, intensities, and general uses of the Comprehensive Plan. **APPROVE**

5. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

It is anticipated that the existing commercial (restaurant) use will continue for the foreseeable future. The applicant has indicated to staff that they merely desire a return to a commercial zoning similar to the zoning category the subject property had prior to the Town's incorporation. **APPROVE**

6. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

Urban services, including water, sewer and electricity, are available at the subject property, and are currently in use by the existing commercial tenant. **APPROVE**

7. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The property was originally developed in the 1920s as a residential cottage, and the property does not include any sensitive and/or environmentally critical land. **APPROVE**

8. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

Due to the location of the subject property at the boundary between Mixed Residential and Boulevard Future Land Use categories, the existing restaurant use acts as a buffer between the more intense uses allowed in the Boulevard category and the mostly-residential, mixed uses that are allowed in Mixed Residential. **APPROVE**

9. *Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

Since the restaurant use already exists, the rezoning of the property from RM to CB will not have any impact on traffic generation. **APPROVE**

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Andre** and seconded by LPA Member **Plummer**, and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair	AYE	Dan Andre, Member	AYE
Al Durrett, Member	AYE	John Kakatsch, Member	AYE
Jane Plummer, Member	AYE	Alan Smith, Member	AYE
Hank Zuba, Member	excused		

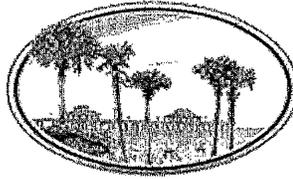
DULY PASSED AND ADOPTED THIS 11th day of September, 2012.

By: Joanne K. Shamp
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: Margaret M. Fowler By: Michelle Mayher
Fowler, White, Boggs Michelle Mayher, Town Clerk
LPA Attorney



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)**

Town Hall – Council Chambers

2523 Estero Boulevard

Fort Myers Beach, Florida

September 11, 2012

I. CALL TO ORDER

Meeting was called to order at 9:03 a.m. by Chair Shamp; other members present:

Dan Andre
Al Durrett
John Kakatsch
Jane Plummer
Joanne Shamp
Alan Smith
Hank Zuba - Excused

LPA Attorney, Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director
Leslee Chapman, Zoning Coordinator – Excused
Josh Overmyer, Planning Coordinator

II. PLEDGE OF ALLEGIANCE – Mr. Kakatsch

III. INVOCATION – Mr. Kakatsch

IV. MINUTES

A. Minutes of August 14, 2012

MOTION: Ms. Plummer moved to approve the August 14, 2012 minutes as presented; second by Mr. Andre.

Mr. Andre requested to correct the duplication of Mr. Owen's name on Page 10, second paragraph.

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VOTE: Motion approved 5-0; Mr. Kakatsch excused; Ms. Shamp abstained because she was not present at the August 14, 2012 meeting.

V. PUBLIC HEARING

A. REZ2012-0001, 110 Mango Street Rezoning

Chair Shamp opened the hearing at 9:06 a.m.

Planning Coordinator Overmyer entered the Affidavit of Publication into the record.

Chair Shamp asked the LPA Attorney to swear in the witnesses; and LPA Attorney Miller swore in the witnesses.

Planning Coordinator Overmyer presented comments for REZ2012-0001, 110 Mango Street Rezoning on behalf of the Town of Fort Myers Beach. He displayed an aerial photograph of the subject property and described the location of the site. He reported the request was for a conventional rezoning request which dated back to the Lee County zoning of C-1; and after incorporation of the Town the zoning was reclassified to Residential Multifamily (RM) which was determined by the Town in 2006 to be incorrect and an attempt to change the zoning failed. He explained the basis for staff's recommendation of the rezoning to Commercial Boulevard for the subject property; and noted that no conditions could be placed on the approval. He pointed out that the Applicant had requested a fee waiver since the zoning error was created by Town action; and that the subject site was an existing non-conforming commercial use and approval would bring the property into compliance with the use.

Mr. Kakatsch questioned if there was adequate parking.

Planning Coordinator Overmyer relayed that the site plan depicted 5-6 parking spaces; and according to the Land Development Code the property had sufficient parking for what the current use would require.

Mr. Andre queried as to why a previous Town Council would have rejected the request in 2006.

Community Development Director Fluegel offered an explanation of CPD and the CB zoning with respect to intensity of uses, and how that might have influenced the Council's decision at the time.

Mr. Kakatsch questioned if there was a way of having the Applicant make some aesthetic improvements to the site (i.e. paint, gravel, landscaping).

Community Development Director Fluegel explained that conditions could not be placed on the approval.

Discussion ensued regarding how to recommend aesthetic improvements for the site; and the need for improvements to the subject property.

Chair Shamp quizzed, with respect to a rezoning instead of a CPD, whether staff had considered extending the waiver of fees to the CPD.

Community Development Director Fluegel responded in the affirmative; and reviewed considerations discussed as it related to fees for a CPD, the existing circumstances, and the issue created by the Town at the time of incorporation.

Chair Shamp noted her concern regarding hours of operation and potential future impact to the community if the current hours were to change.

Community Development Director Fluegel reported his belief that no greater restrictions could be placed on the site, as a restaurant, than what was historically. He pointed out that the current owner did not have a COP license, nor could they obtain one without having to substantiate intensification.

Chair Shamp questioned if any buffering was required as it related to the Commercial Boulevard (CB) designation.

Community Development Director Fluegel stated staff could look at the CB standards; however, it was his belief that on the residential side it was adequate, but on the commercial side there was not a standard between the two sites.

Ed Czulewicz, spouse of Marylu Czulewicz – Applicant, reported he was representing his wife who was unable to attend the hearing due to illness. He offered a brief history on the zoning and use of the subject site by his wife; and stressed his wife had used the site as commercial since the purchase. He discussed the Applicant's desire to have the property appropriately zoned CB; he acknowledged the aesthetic work requested and reviewed his intention to make improvements (i.e. power wash siding, eradicate weeds/grass in the gravel, etc.).

Chair Shamp pointed out that if the change to CB was approved that the LPA could not condition the approval, and that the Code would identify what would need to be done to the subject property to comply with the zoning designation.

Ms. Plummer stated she was on the LPA in 2006 and was aware of the issues the subject property faced.

Public Comment opened.

No speakers.

Public Comment closed.

Chair Shamp asked if any LPA Member had ex-parte communication regarding this item. Mr. Kakatsch – site visit; Mr. Durrett –site visit; Chair Shamp – site visit; Ms. Plummer – site visit; Mr. Smith - site visit; Mr. Andre – site visit.

Community Development Director Fluegel discussed how the issue arose out of a code enforcement issue at another property, and how staff was working to correct prior mistakes.

MOTION: Mr. Andre moved that the LPA recommends approval of Resolution 2012-14, REZ2012-0001, 110 Mango Street with the recommended approvals – 1) approved; 2) approved; 3) approved; 4) approved; 5) approved; 6) approved; 7) approved; 8) approved; 9) approved; second by Ms. Plummer.

Chair Shamp discussed that it was her understanding that the normal process would be a CPD; however, at this point it appeared the Land Development Code protected the residential neighborhoods surrounding the site and that CB seemed to be the proper method to correct this problem.

VOTE: Motion approved; 6-0; Mr. Zuba – excused.

Chair Shamp closed the hearing at 9:40 a.m.

Recess at 9:40 a.m. – Reconvened at 9:45 a.m.

B. ORD 12-XX International Property Maintenance Code (IPMC)

Chair Shamp opened the hearing at 9:46 a.m.

Planning Coordinator Overmyer entered the Affidavit of Publication into the record.

LPA Attorney Miller read the title of Ordinance 12-XX:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REPEALING CHAPTER 6, ARTICLE I, DIVISION 1, "MAINTENANCE CODE," SECTIONS 6-1 THROUGH 6-15; ADOPTING THE 2009 EDITION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE, REGULATING AND GOVERNING THE CONDITIONS AND MAINTENANCE OF ALL PROPERTY, BUILDINGS AND STRUCTURES WITH SPECIFIC AMENDMENTS AS SET FORTH IN SECTION TWO OF THIS ORDINANCE; PROVIDING FOR SCOPE AND ADMINISTRATION; DEFINITIONS; GENERAL REQUIREMENTS; LIGHT, VENTILATION AND OCCUPANCY LIMITATIONS; PLUMBING FACILITIES AND FIXTURE REQUIREMENTS; MECHANICAL AND ELECTRICAL REQUIREMENTS; FIRE SAFETY REQUIREMENTS; REFERENCED STANDARDS; SAID PROVISIONS BEING ADOPTED TO ENSURE THAT STRUCTURES ARE SAFE, SANITARY AND FIT FOR OCCUPATION AND USE; PROVIDING FOR THE CONDEMNATION OF BUILDINGS AND STRUCTURES UNFIT FOR HUMAN OCCUPANCY

AND USE, AND THE DEMOLITION OF SUCH EXISTING STRUCTURES IN THE TOWN OF FORT MYERS BEACH; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

LPA Attorney Miller discussed the proposed ordinance and noted that the code enforcement process was governed by State Statute (Chapter 162) which could not vary, as well as matters dealing with 'right-of-entry' which could not conflict with Florida law. She reviewed how she prepared the proposed ordinance using State Statutes, the International Property Maintenance Code, and other sources. She suggested beginning with the evaluation of the proposed ordinance using the comments written by Chair Shamp.

Chair Shamp distributed copies of her "*Issues to address prior to adoption of International Property Maintenance Code, LPA Hearing Ord12-XX on September 11, 2012, Prepared by Joanne Shamp*" which listed her areas of concern, and copies of Section 6 of the Land Development Code. She explained that the discussion was basically about deleting Section 6 and substituting it with the proposed ordinance.

LPA Attorney Miller clarified the proposed ordinance would repeal Division 1, Maintenance Code, and that the rest of Chapter 6 would remain.

Chair Shamp reviewed the concerns she had discussed with the LPA Attorney and Community Development Director about the IPMC and the need to address issues that were unique to the Island.

Community Development Director Fluegel discussed his experience about how there were hurdles faced when trying to weave the IPMC into a town's existing code and that the IPMC was not 'one size fits all'.

Chair Shamp suggested the LPA review the section of the code distributed and the proposed ordinance in order to comment on the matter. She noted that if the hearing was continued, then each LPA member could individually speak with the LPA Attorney and/or Community Development Director regarding any concerns.

Discussion ensued regarding Article 1, Division:

- Definition of abandoned property; LPA Attorney Miller noted that was addressed in Florida State Statutes Chapter 705.
- Definition of trash; LPA Attorney Miller noted that in the LDC it was termed 'trash' and in the IPMC it was termed 'rubbish'.
- Nuisance grasses or weeds; covered in IPMC; beach vegetation to be discussed later.
- Exterior surfaces of buildings; covered in IPMC

Community Development Director Fluegel introduced the new Code Enforcement Officer, Robert Mercado.

Ken Miller, Building Safety Services Coordinator for the Town of Fort Myers Beach, reported he had many people who came to his office with complaints about the building code, and noted that the

building code did not cover property maintenance. He explained how the property maintenance code would allow him to address property maintenance issues if approved.

Discussion continued Article 1, Division 1:

- Exterior storage on vacant lots (Section 6-3);
- Public rights-of-way and sidewalks (Section 6-4b); LPA Attorney Miller discussed cross-reference; she hoped the landscaping was consistent, but it may be more appropriate to place in the landscaping.
- Inoperative vehicles on public property (Section 6-6); consideration of inoperative boats, jet skis and concerns related to these types of marine vehicles not anchored down during hurricane season; storage issues listed in Chapter 34.

Ms. Plummer stated her preference when doing a 'total re-vamp' that the LPA should receive documentation that included some type of highlighting or strikethrough in order to see the change/replacement better.

Discussion continued Article 1, Division 1:

- Noise reference to FMB Noise Ordinance (Section 6-7); LPA Attorney Miller explained that everything did not need to be referenced to Chapter 34 which might be a code violation.
- Required landscaping; LPA Attorney Miller noted that if the Town was going to cite a property they would be cited under the landscaping code.
- Larger address numbers required on setback buildings (Section 6-10b); discussion on what was reasonable current code or IPMC.
- In depth regulations for trash (Section 6-11); cross reference to LDC 34-1171 and 34-1744.
- Disposal of swimming pool water prohibiting disposal onto beach (Section 6-12); issue specific to Island.
- Stormwater drainage on beach (Section 6-13) and neighborhood flooding issues (Section 6-14); LPA Attorney cited Chapter 10, Article 3, Division 3 and noted it may be more appropriate to transfer some of the section.

Discussion was held concerning the handout received from Chair Shamp and the IPMC as follows:

- Chapter 2 – 202 Definitions: the following do not match LDC Sec. 34-2: (B) dwelling unit, easement, habitable space, premises, rooming house, and structure. LPA Attorney Miller explained that the definitions variation between Chapter 34 and the IPMC was not a legal issue but could be a practical issue. She discussed an example of what the dwelling unit should contain by the IPMC definition and how Chapter 34 addressed a dwelling unit from the perspective of density.

Mr. Miller explained how he addressed various situations through the Code and the IPMC.

Discussion ensued regarding the difference in definitions between Chapter 34 and the IPMC; definitions included in dwelling unit and rooming house; the IPMC to be used for maintenance purposes; IPMC requirements and how it could affect older residences (i.e. 1950s); right-of-entry issues as it related to

commercial and non-commercial uses, compliance with Florida law; and Section 17 regarding ventilation.

Mr. Andre pointed out that the IPMC would offer Mr. Miller another tool in addition to the Building Code to address certain issues.

Discussion continued concerning the handout received from Chair Shamp and the IPMC as follows:

- Chapter 3, General Requirements, 302.4, Weeds; does not address beachfront plantings taller than 12", and Ms. Shamp suggested including "*this term shall not include cultivated flowers, gardens and native beach vegetation such as sea oats*".
- Section 302.8, Motor Vehicles; did not address outdoor storage of boats, jet skis, etc.; discussion of the permissiveness of storage of motor homes, etc., restrictions on storage of same on vacant lots; preparation of property prior to a storm for both commercial and residential.
- Chapter 4, Section 402.2; Exterior lighting standards may conflict with seasonal sea turtle regulations.
- Section 404.4.1, Room Area
- Section 404.3, Ceiling Height; existing building code used; discussion regarding remodeling.
- Section 404.6, Efficiency Unit; not currently defined in Section 34.
- Chapter 5, Section 507, Storm Drainage; suggested Public Works review section for wording and potential reference to the Storm Water Management Plan. LPA Attorney Miller explained how she wanted to take from wording from existing Section 6, Division 1 and incorporate it into Division 10 which addressed how surface water management was regulated.

Chair Shamp asked if there were other outstanding issues or questions the LPA members wished to bring to staff's attention.

Ms. Plummer questioned the following Sections and discussion ensued:

- IPMC, Page 13, 304.18.1, Doors; deadbolt requirements on new construction and existing dwelling units, and rental units.
- Section 304.14, Screening; discussion regarding ventilation and screened openings for habitable rooms.
- Demolition; the ability to lien properties and to become superior to a mortgage; discussion of Page 5 of the proposed ordinance (Section 111.1) and the ability to appeal to Council; assessment procedures after a storm.

Discussion ensued regarding potentially continuing the matter to the October or November meeting in order for the LPA members to meet/discuss individually with the LPA Attorney and/or Community Development Director.

MOTION: Mr. Andre moved to continue of ORD 12-XX International Property Maintenance Code (IPMC) to the November 13, 2012 LPA meeting; second by Mr. Durrett.

VOTE: Motion approved; 6-0; Mr. Zuba – excused.

Chair Champ closed the Public Hearing at 11:01 a.m.

MOTION: Mr. Smith moved to adjourn the LPA and reconvene as the HPB; second by Mr. Kakatsch.

VOTE: Motion approved, 6-0; Mr. Zuba - excused.

**ADJOURN AS LPA AND RECONVENE AS HISTORIC PRESERVATION BOARD
11:02 A.M.**

Ms. Plummer reported there had not been a Historic Advisory Committee meeting held; and asked for suggestions regarding the creation of an agenda in order to discuss that there had not been a meeting and how to remedy the situation. She noted that health issues of some of the members were part of the problem with obtaining a quorum.

Discussion was held concerning the potential construction schedule for the Mound House; and if there were other pressing issues the HAC needed to address.

Ms. Plummer suggested waiting until January for an HAC meeting.

Mr. Kakatsch inquired if they needed to address the storm damage in the underground exhibit at the Mound House after Tropical Storm Debby.

LPA Attorney Miller reviewed LDC Chapter 22 as it pertained to the purpose of the HPB to preserve and protect historical and archeological sites and districts. She added that it appears that the HAC does not have a required minimum number of meetings per year.

Discussion ensued regarding the plaques for the Mound House and the vista signs; and placement of plaques during season to create interest.

Ms. Plummer requested Planning Coordinator Overmyer continue to work on scheduling a meeting for this month.

MOTION: Mr. Kakatsch moved to adjourn the HPB and reconvene as the LPA; second by Mr. Smith.

VOTE: Motion carried, 6-0; Mr. Zuba - excused.

**ADJOURN AS HISTORIC PRESERVATION BOARD AND RECONVENE AS LPA
AT 11:08 A.M.**

VI. LPA MEMBER ITEMS AND REPORTS

Mr. Durrett – reported he had two signs that were about 12-13 years old that had stickers on them from the County. He mentioned that he had the signs re-done, not changed, and he wanted to know how he and other businesses in the same position, could get new stickers for their permitted signs.

Community Development Director Fluegel explained the Town had eliminated the requirement for decals on the signs.

Discussion ensued regarding evidence to prove the signs were permitted; permits were not necessary when no change of copy; the Town's digital library of the permitted signs; and whether or not to utilize stickers on permitted signs.

Mr. Smith – no items or report.

Ms. Plummer – discussed her concerns regarding the buffering/vegetation at Chuck's Last Stop as it related to vehicular line of sight and the need to keep open a visual view corridor for vehicles, pedestrians, and bicycles.

Community Development Director Fluegel reported he had received a complaint yesterday regarding the same issue. He noted that the Town had not inspected the landscaping yet.

Ms. Plummer requested staff inspect the site now before it is finished. She also questioned the size of the water retention area.

Community Development Director Fluegel stated the property owner's engineer designed the water retention area.

Ms. Plummer prefaced her question stating she would approach the Marine Task Force, but wanted to know if there was anything in the Code that addressed derelict boats (not on Town moorings) that had no motor or came loose and then attached themselves to another dock. She recounted her recent personal experience with this type of situation and questioned liability issues.

Discussion was held concerning derelict boats; property rights and maritime law issues; and maritime jurisdiction.

Ms. Shamp – commented on vegetation on corners that obstructed the line of sight and questioned if the Public Safety Committee or Code Enforcement might investigate the matter.

Mr. Durrett stated the Public Safety Committee had not discussed that matter and he would bring up the problem at the next meeting.

LPA Attorney Miller noted that the Code did address landscaping plantings as it pertained to obstruction of vehicle visibility (10-416.7 on Page 49).

Discussion was held concerning vehicle visibility and Chuck's Last Stop.

Town of Fort Myers Beach – Local Planning Agency

September 11, 2012

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Mr. Kakatsch – questioned the status of the gray houses on Estero Boulevard.

Community Development Director Fluegel reported staff was optimistic that there was a potential buyer and the Town had spoken with the buyer about immediately demolishing the subject buildings after the purchase.

Mr. Andre – suggested a visit to Chuck’s Last Stop should be sooner than later because they were installing the irrigation now. He requested a new LDC book. He stated that in reflection of last month’s meeting he believed the LPA gave away too much on the signs regarding the height (Dolphin and Neptune), and the LPA should have stayed more in line with staff’s recommendation.

Community Development Director Fluegel reported those sign requests would be on the Council agenda on October 1st and 15th and that staff would stay with their recommendations.

Mr. Zuba – no items or report – excused.

Chair Shamp reminded the LPA members whose term was going to expire about reappointment that they may want to attend the meeting when the Council would address reappointments and appointments. She reminded staff about the LPA being listed on the Council’s Agenda Management and the information that was to be included in the LPA agenda packet. She asked if personal watercraft was still with the Marine Task Force.

LPA Attorney Miller stated it there was still a meeting to be scheduled on the personal watercraft.

Chair Shamp briefly reviewed the upcoming cases before Town Council and asked for an LPA representative to attend:

- Beach Shell (October 15th) – Mr. Smith
- Dolphin Inn (October 1st) – Mr. Kakatsch
- Neptune Inn (October 1st) – Mr. Kakatsch
- Matanzas Inn (October 15th) – Mr. Smith
- Seagrape MUD (October 15th) – Mr. Smith
- Moss Marine – continued to October

Mr. Durrett noted that it had been mentioned that marinas might fall under a different sign classification.

Community Development Director Fluegel explained that staff would integrate that into the presentation on Moss Marine.

VII. LPA ATTORNEY ITEMS

LPA Attorney Miller – no items or report.

VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Community Development Director Fluegel – no items or report.

IX. LPA ACTION ITEM LIST REVIEW

No comment.

X. ITEMS FOR NEXT MONTH'S AGENDA

Planning Coordinator Overmyer reported he received a re-submittal on the Lighthouse Sign Variance Ordinance which he hoped to have on the next LPA agenda.

Chair Shamp noted that the re-organization of the LPA (Chair and Vice Chair) would be on next month's agenda.

XI. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XII. ADJOURNMENT

MOTION: Motion by Mr. Kakatsch, seconded by Mr. Durrett to adjourn.

VOTE: Motion approved, 6-0; Mr. Zuba - excused.

Meeting adjourned at 11:47 a.m.

Adopted without changes. Motion by Ms. Plummer, seconded by Mr. Andre

Vote: 6-0


Signature

End of document.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Conventional Rezoning
CASE NUMBER: REZ2012-0001
LPA HEARING DATE: September 11, 2012
LPA HEARING TIME: 9:00 AM

I. APPLICATION SUMMARY

Applicant: Marylu Czulewicz
Request: Rezone 0.126 acres from Residential Multifamily (RM) to Commercial Boulevard (CB).
Subject property: Lot 2, Block D, of that certain subdivision known as Seagrape, according to the public records of Lee County, Florida, Plat Book 4, Page 17.
Physical Address: 110 Mango Street
STRAP #: 19-46-24-W3-0120D.0020
FLU: Mixed Residential (Platted Overlay)
Zoning: Residential Multifamily (RM)
Current use(s): Restaurant

Adjacent zoning and land uses:

North: RESIDENTIAL MULTIFAMILY (RM), single-family residence, Mixed Residential (Platted Overlay)
South: COMMERCIAL BOULEVARD (CB), Beach Connection retail store, Boulevard

East: INSTITUTIONAL, grass parking for Chapel by the Sea, Mixed Residential and Boulevard

West: Mango Street, then COMMERCIAL PLANNED DEVELOPMENT (CPD), parking lot, Mixed Residential and Boulevard

II. BACKGROUND AND ANALYSIS

Background:

The subject property was originally developed in 1927 as a 400 square foot residential cottage. The applicant purchased the subject property in December 1988, prior to the incorporation of the Town of Fort Myers Beach. When the applicant purchased the property, Lee County records indicate that the property was zoned Commercial (C-1). A search of older Lee County zoning records indicate that it was Business Use (BU-1) dating back to at least 1974. BU-1 was converted to C-1 in the mid-1970s. Commercial use of the property has been ongoing since before the adoption of the Town's Comprehensive Plan and the Official Zoning Map.

In 1997, the property owner applied to Lee County for a use permit for the "Mango Street Café" at 110 Mango, but that application was not completed and subsequently expired. In 2001, Lee County issued a use permit on behalf of the Town to the "Heavenly Biscuit" restaurant. The "Monkey Tree" restaurant received a use permit in 2004. The applicant indicates that she operated the property as a beauty salon "Shape Rattle & Roll" and later "MaryLu's Hair Salon" prior to 2001. These commercial uses were not obvious from an analysis of aerial photographs that were used in the development of the interim and official zoning maps, and therefore the property was included in the Mixed Residential category on the Future Land Use Map, and the Residential Multi-family district on the Zoning maps. The property owner did not object to these classifications during the legally noticed period for comment on the zoning maps.

In 2006, the Town's Department of Community Development applied for a Town-initiated rezoning of the property from RM to CB to return the property to its previous commercial zoning prior to the adoption of the Official Zoning Map in 2004. A copy of the Staff Report for FMBDCI2006-0001 is attached hereto as Exhibit D. The LPA heard the case on April 18, 2006 and unanimously recommended approval of the request (5-0, 2 members had excused absences) in LPA Resolution 2006-05, attached as Exhibit E. Town Council then heard the request on May 8, 2006 (minutes attached as Exhibit G) and voted unanimously (4-0, Councilmember Meador abstaining) to deny the requested rezoning in Resolution 06-03, attached as Exhibit F. The subject property owner then sued the Town for declaratory relief, substantive due process violation, and intentional discrimination in the Circuit Court of the Twentieth Judicial Court in and for Lee County, Florida, as Civil Action

06-CA-002298. The case was mediated and then settled, (settlement agreement attached as Exhibit H) with the town paying the plaintiff \$8,500 and agreeing to waive the application fee for a Commercial Planned Development (CPD), if said CPD was applied for within 6 months of the settlement on November 19, 2007. The applicant did not file the intended CPD rezoning request within 6 months, but has asked that the fee for the requested rezoning to Commercial Boulevard (CB) be waived instead (waiver request attached as Exhibit I). This fee waiver request is counter to the wording in the settlement, which said "if a complete application is not submitted within this timeframe, the Town's waiver of application fee(s) set forth in this paragraph 3(b) shall be null and void and of no effect." However, it should be noted that this request is substantially similar to the Town-initiated request of FMBDCI2006-0001 that was processed with no charge to the property owner.

Analysis:

As previously stated, the subject property was previously zoned Commercial (C-1) during the 1970s, 1980s and 1990s, and was changed to the existing Residential Multi-family (RM) during the adoption of the Official Zoning Map in 2004. The change was made based on assessment of aerial photography that erroneously indicated that the cottage-like structure was being used as residential, when, in fact, it had been home to commercial uses for several years prior to the adoption of the Official Zoning Map on May 17, 2004. The requested rezoning would reinstate commercial zoning on the property to legitimize the existing non-conforming commercial use of the property. The CB zoning district specifies that any future increase in commercial intensity would require a rezoning to CPD.

Comprehensive Plan **Policy 4-B-4** *"Mixed Residential" includes designated older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. The Mixed Residential category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for legally existing dwelling units). Commercial activities are limited to lower-impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in the Comprehensive Plan, and meet the design concepts of the plan and the Land Development Code. These qualities and overall consistency with the comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%.*

During the recent review of FMBDCI2012-0001, the applicant provided an updated calculation that 8.1% of the Mixed Residential category is currently being used for non-residential land uses. With the addition of the subject 0.126 acres to be added to the computation of non-residential land uses, there is still approximately 23 acres

remaining available for non-residential land uses in the Mixed Residential category before the 12% cap is reached.

Policy 4-C-3 iii. states that *in the “Mixed Residential” category, commercial uses are limited to lower-impact uses such as offices, motels, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in the comprehensive plan, and meet the design concepts of the plan and the Land Development Code. Landowners may seek commercial rezoning only through the planned development process.*

The net effect of a rezoning to Commercial Boulevard is only to legitimize the existing commercial use of the property. No expansion of use is permitted in CB, which LDC Sec. 34-701 states is to provide standards for existing commercial uses and certain other uses along those portions of Estero Boulevard where the “Boulevard” classification of the Fort Myers Beach Comprehensive Plan promotes a mixed-use development pattern. LDC Sec. 34-702(a) goes on to say that the regulations in this subdivision apply to the continued use of existing buildings and structures for allowable uses as defined in Sec. 34-703 on all properties zoned CB. The subject property is not located in the Boulevard FLUM category, but is adjacent to that category and is only 1 lot removed from Estero Boulevard. The existing commercial use of the property by “Heavenly Biscuit” is currently a non-conforming use in the RM district, which would be remedied by a rezoning to CB.

Findings and Conclusions:

In reaching its decision, LDC Sec. 34-85(2) states that Town Council should consider the following, whenever applicable:

- a. *Whether there exists an error or ambiguity which must be corrected.*

During the previous rezoning case (FMBDCI2006-0001), it was acknowledged that a mistake was made in down-zoning the property from Commercial (C-1) to Residential Multi-family (RM). The proposed rezoning would resolve that mistake.

- b. *Whether there exist changed or changing conditions which make approval of the request appropriate.*

While it is not a changed or changing condition, a commercial use has existed on the property for more than a decade, with Heavenly Biscuit being the current restaurant use on the property.

- c. *The impact of a proposed change on the intent of this chapter.*

There will be no impact to Chapter 34 of the LDC. The request is to legitimize and existing nonconforming use, and restore a limited commercial zoning

category to a property that was previously Commercial (C-1) under Lee County regulations, up until 2004.

- d. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*

As stated in the discussion above, the request is consistent with Comprehensive Plan Policies 4-B-4 and 4-C-3 iii.

- e. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The request meets or exceeds all performance and locational standards, except the connection separation standards of LDC Table 10-1. Approximately 118 feet is provided where 125 feet is required, but this is an existing access point that has been in place for decades.

- f. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

The restaurant is an existing use, therefore no additional urban services are needed to serve the proposed/existing use.

- g. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The request is to legitimize an existing use, and therefore will not affect environmentally critical areas and/or natural resources.

- 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 request is compatible with existing property uses and will not cause damage, hazard, nuisance or other detriment to persons or property.

- ~~i. *Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*~~

No additional impact will be created by legitimizing the existing nonconforming use of a restaurant on the subject property.

III. RECOMMENDATION

Staff concludes that the request is consistent with the goals, objectives, policies and intent, and with the densities, intensities and general uses set forth in the Fort Myers Beach Comprehensive Plan. The request is compatible with existing property uses and will not cause damage, hazard, nuisance or other detriment to persons or property. The proposed rezoning will bring the existing use into compliance with the requested zoning district and rectify the inconsistency with the prior zoning. Staff recommends **APPROVAL** of the requested fee waiver to rectify the zoning inconsistency caused by the Town at the time of the Official Zoning Map in 2004. Therefore, staff recommends **APPROVAL** of the requested rezoning from RM to CB.

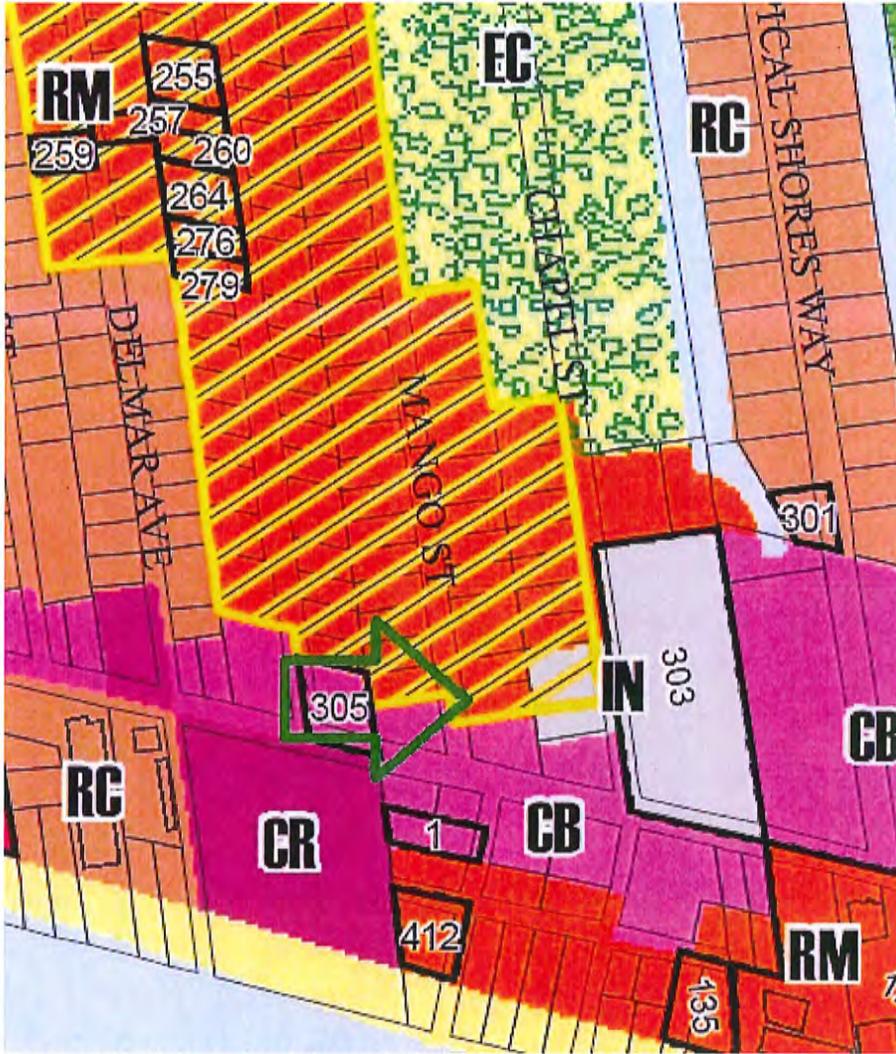
IV. CONCLUSION

Staff recommends **APPROVAL** of the request to rezone the subject property (0.126 acres) from Residential Multifamily (RM) to Commercial Boulevard (CB) to allow inclusion of a previously existing commercial use within an existing adjacent limited commercial zoning district.

Exhibits:

- A - Zoning Map
- B - Future Land Use Map
- C - Seagrape Subdivision Plat (Plat Book 4 Page 17)
- D - FMBDCI2006-0001 Staff Report
- E - LPA Resolution 2006-05
- F - Town Council Resolution 06-03
- G - Minutes of May 8th, 2006 Town Council meeting
- H - Settlement agreement
- I - Request for waiver of application fee and boundary survey

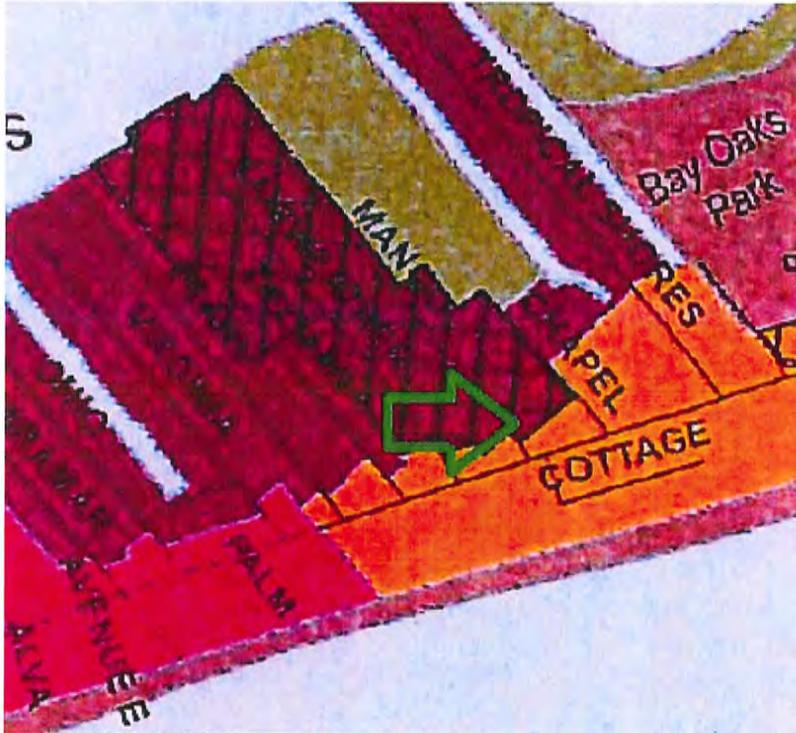
Exhibit A
Zoning Map



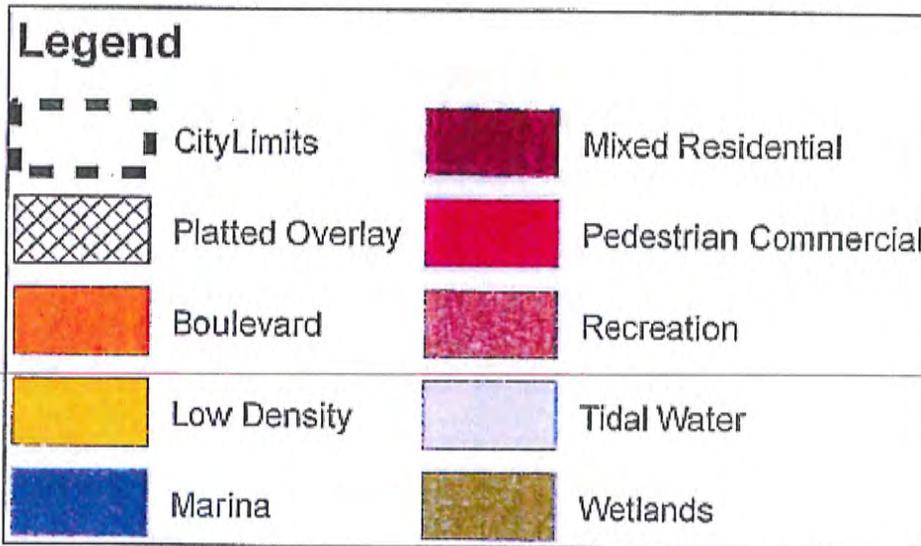
Orange indicates Residential Multifamily (RM)

Exhibit B

Future Land Use Map



Town of Fort Myers Beach



**TOWN OF FORT MYERS BEACH
COMMUNITY DEVELOPMENT
STAFF REPORT**

TYPE OF CASE: Rezoning
CASE NUMBER: FMB DCI 2006-0001
TOWN COUNCIL HEARING DATE: May 8, 2006

I. APPLICATION SUMMARY

- A. **APPLICANT:** Town of Fort Myers Beach
- B. **REQUEST:** Rezone 0.126 acres from Residential Multifamily (RM) to Commercial Boulevard (CB).
- C. **LOCATION/STRAP#:** 110 Mango Street, 19-46-24-W3-0120D.0020. 110 Mango is the first lot back from the corner lot at Mango Street and Estero Boulevard.
- D. **FUTURE LAND USE:** Mixed residential/platted overlay
- E. **CURRENT ZONING:** Residential Multifamily (RM)
- F. **CURRENT USE:** "The Monkey Tree" Restaurant
- G. **SURROUNDING ZONING AND LAND USE:**
North: Single- and multi-family residences in RM/mixed residential
East: Church and vacant lot in Institutional/boulevard
South: Commercial retailing and offices in CB/boulevard
West: Single-family and multifamily residences in RM/mixed residential
- H. **SIZE OF PROPERTY:** 0.126+ acres or 5500 square feet.

II. RECOMMENDATION

Approve the request for rezoning from RM to CB.

III. FINDINGS AND CONCLUSIONS

By analysis of the standards for approval of rezoning staff concludes as follows:

- A. The request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses set forth in the Fort Myers Beach Comprehensive Plan.

- B. The request is compatible with existing property uses and will not cause damage, hazard, nuisance, or other detriment to persons or property.
- C. Zoning 110 Mango as RM at the legislative adoption of the Official Zoning Map made the existing use nonconforming.

IV. **BACKGROUND INFORMATION AND ANALYSIS**

Synopsis

The Town seeks to rezone the subject property (0.26 acres) from Residential Multifamily (RM) to Commercial Boulevard (CB) to allow inclusion of a previously existing commercial use within an existing adjacent limited commercial zoning district.

Subject property

The subject property is Lot 2 of Block D of Seagrape subdivision (see attached subdivision plat), one lot back from Estero Boulevard on Mango Street. To the north on Mango Street and to the west on Fairweather Lane are multifamily and single-family residences. On Estero Boulevard to the south are retail and office commercial buildings. To the east are the Chapel by the Sea, then the Bank of America Building housing Town Hall, and then the Topps grocery. The subject property contains one cottage and a small outbuilding in the rear. Commercial use of the property has been ongoing from before the adoption of the Town's Comprehensive Plan and the Official Zoning Map. In 1997 the property owner applied to Lee County for a use permit for the "Mango Street Café" at 110 Mango, but that application was not completed and expired. In 2001 Lee County issued a use permit on behalf of the Town to the "Heavenly Biscuit" restaurant. The "Monkey Tree" restaurant received a use permit in 2004. The record from the Heavenly Biscuit permit indicates that the property was used as a beauty salon before 2001. These commercial uses were not obvious from analysis of aerial photographs used in the development of interim and official zoning maps and therefore the property was included in the neighboring Mixed Residential future land use on the Future Land Use Map and the Residential Multifamily district on the zoning maps. The property owner did not object to these classifications during the legally noticed period for comment on the zoning maps, so a zoning change is necessary to include the property in the neighboring Commercial Boulevard zoning district to assure continuance of the existing commercial use.

Comprehensive Plan considerations

Policy 4-C-3 of the Fort Myers Beach Comprehensive Plan limits commercial uses in the Mixed Residential future land use category to "lower impact uses such as offices, motels, and public uses" that will "be sensitive to nearby residential areas, complement any adjoining commercial uses, [and] contribute to the public realm". Subsequently the same policy dictates that "commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved." The Monkey Tree is a small restaurant in a

cottage a few feet from Estero Boulevard. The requested rezoning is not to permit a new development but to repair the inadvertent nonconformity of use created when the Official Zoning Map was adopted.

Policy 4-C-3 of the Comprehensive Plan states that “landowners may seek commercial rezoning only through the planned development process”, but this commercial rezoning is sought by the Town to adjust a nonconformity of the existing land use at the time when the current zoning districts were created. The Monkey Tree does not impose upon the residential nature of the surrounding neighborhood. Nearby are a multifamily residential building and a drive-up beach goods retail shop; across the street is a nonconforming retail use. Various other retail and office uses are on adjoining properties and on Estero Boulevard. Given the intensity of the existing permitted restaurant use at 110 Mango, and given the fact that once rezoned to Commercial Boulevard that use may continue to be limited by the regulations in LDC section 34-702, and any expansion will need approval through the Commercial Planned Development public hearing process, the existing use is consistent with the Mixed Residential future land use designation.

Conclusion

Rezoning 110 Mango from Residential Multifamily to Commercial Boulevard is consistent with the Mixed Residential future land use map category. The Commercial Boulevard standards do not permit increases in intensity through change or replacement of the existing commercial use, which is compatible with the characterizations of appropriate uses for the Mixed Residential category. The existing use will no longer be nonconforming, but will still be limited in the intensity and form to what is currently existing.

ATTACHMENTS: Exhibit 7-2 Legal Description
Exhibit 7-3 Seagrape Subdivision Plat
Localized section of Official Zoning Map (color)

Exhibit 7-2

Lot 2, Block D, of Seagrape Subdivision as recorded in Plat Book 4, Page 17, Lee
County, Florida.

STRAP #19-46-24-W3-0120D.0020

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2006-05

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

WHEREAS, the Town of Fort Myers Beach, Florida has initiated the rezoning of a parcel of property consisting of 0.13+/- acres or approximately 5,500+/- square feet, from Residential Multifamily (RM) to Commercial Boulevard (CB) to allow the inclusion of a previously existing commercial use within an existing adjacent limited commercial zoning district; and

WHEREAS, the subject property is located at 110 Mango Street, Fort Myers Beach, in Section 19, Township 46 South, Range 24 East, Lee County, Florida, said property being more particularly described as

LOT 2, BLOCK "D", SEAGRAPE SUBDIVISION, PLAT BOOK 4,
PAGE 17, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

WHEREAS, the Lee County Property Appraiser's Geographic Information System has indicated the subject property's current STRAP number is: 19-46-24-W3-0120D.0020; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on April 18, 2006, and,

WHEREAS, the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, 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:

That the LPA recommends that the Town Council APPROVE the Town-initiated rezoning of the subject property to Commercial Boulevard (CB).

FINDINGS AND CONCLUSIONS

Based upon the presentations by the staff and other interested parties at the hearing, and review of the application and the standards for approval of rezoning, the LPA makes the following findings and conclusions:

1. The requested rezoning complies with:
 - a. The Fort Myers Beach Comprehensive Plan;

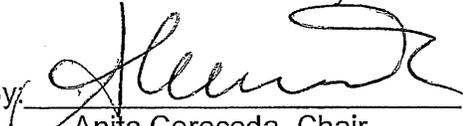
- b. LDC Chapter 34; and
 - c. all other applicable Town ordinances.
2. The proposed use or mix of uses is appropriate at the subject location.
 3. Sufficient safeguards to the public interest are provided by applicable regulations.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Jahe Plummer and seconded by LPA Member Bob Raymond, and upon being put to a vote, the result was as follows:

Anita Cereceda	absent
Jessica Titus	absent
Betty Simpson	yes
Bob Raymond	yes
Jodi Hester	yes
Bob Simon	yes
Jane Plummer	yes

DULY PASSED AND ADOPTED THIS 18th day of April, 2006.

LPA of the Town of Fort Myers Beach

By: 
Anita Cereceda, Chair

ATTEST:

By: 
Rachel Lambert, Town Clerk

Approved as to Legal Sufficiency:


Anne Dalton, Esquire
Town Attorney

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 06-03

WHEREAS, the Town of Fort Myers Beach, Florida initiated a rezoning of 0.13+/- acres or approximately 5,500+/- square feet, from Residential Multifamily (RM) to Commercial Boulevard (CB) to include a previously existing commercial use within an existing adjacent limited commercial zoning district; and

WHEREAS, the subject property is located at 110 Mango Street, Fort Myers Beach, Section 19, Township 46 South, Range 24 East, Lee County, Florida, being more particularly described as

LOT 2, BLOCK "D", SEAGRAPE SUBDIVISION, PLAT BOOK 4,
PAGE 17, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; and

WHEREAS, the Lee County Property Appraiser's Geographical Information System has indicated the property's current STRAP number is: 19-46-24-W3-0120D.0020; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on April 18, 2006, which recommended APPROVAL of the Town-initiated rezoning of the subject property from RM to CB; and

WHEREAS, a public hearing was legally advertised and duly held before the Town Council on May 8, 2006; and

WHEREAS, the Town Council gave full and complete consideration to the recommendations of the LPA, staff, 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:

FINDINGS AND CONCLUSIONS

Based upon the presentations and testimony by the applicant, staff and other interested parties at the public hearing, and review of the application, documents submitted at the hearing and the standards for approval of rezoning, the Town Council makes the following findings and reaches the following conclusions:

1. The requested rezoning does not comply with:
 - a. The Fort Myers Beach Comprehensive Plan;
 - b. LDC Chapter 34; and

c. All other applicable Town ordinances and codes.

Therefore the applicant's request is DENIED.

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

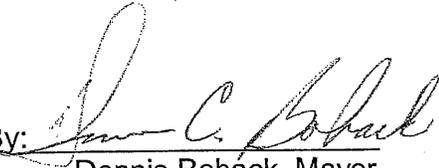
Dennis Boback, Mayor	AYE
Don Massucco, Vice Mayor	AYE
Charles Meador, Jr.	ABSTAIN
Garr Reynolds	AYE
William Shenko, Jr.	AYE

DULY PASSED AND ENACTED this 8th day of May, 2006.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
Rachel Lambert, Town Clerk

By: 
Dennis Boback, Mayor

Approved as to form by:


Anne Dalton, Town Attorney

**FORT MYERS BEACH
TOWN COUNCIL
Town Hall – Council Chambers
2523 Estero Boulevard
Ft. Myers Beach, FL 33931
May 8, 2006**

I. CALL TO ORDER

A Land Use Meeting of the Fort Myers Beach Town Council was called to order by Mayor Dennis Boback on Monday, May 8, 2006 at 3:00 PM.

Members Present: Mayor Dennis Boback, Vice Mayor Don Massucco, Councilman Garr Reynolds, Councilman Bill Shenko, Jr., Councilman Charles Meador, Jr.

Excused Absence: none

Town Staff Present: Town Manager Rachel Lambert, Public Works Director Jack Green, Community Development Director Jerry Murphy, Town Attorney Anne Dalton

II. PLEDGE OF ALLEGIANCE

All present stood for the recitation of the Pledge of Allegiance.

III. INVOCATION: Town Manager Rachel Lambert gave the invocation.

IV. PUBLIC COMMENT: To be heard at the time the agenda item is discussed.

Mayor Boback asked Public Works Director Jack Green to provide an update on the seawall at the foot of Old San Carlos near Snug Harbor. Mr. Green said that in response to the council's request for him to look at alternative solutions to that provided in his original memo, he obtained a new estimate from the contractor that is on-site working for Lee County. The plan proposes I-beam bracing in order to provide adequate support for the existing wall. The estimate is for \$65,700, rather than the \$210,000 original estimate. Mr. Green reported that he consulted local marine contractor Darrel Banks regarding the new proposal, and Mr. Banks concurred that the bracing should hold the seawall for about ten more years. Mr. Green also spoke with the Florida Department of Environmental Protection regarding the permitting of the project. The DEP indicated that they did not believe that the project will need a permit, since the situation is an emergency. They are still reviewing the plans.

Mayor Boback asked Mr. Green if he had spoken with the owners of Snug Harbor to see if they would be interested in doing some sort of joint project. Mr. Green said that he had not yet spoken with them. Councilman Meador stated that he would prefer that the contract be reviewed by Town Attorney

Anne Dalton before it is signed. Councilman Shenko expressed his appreciation for Mr. Green's hard work on this issue.

MOTION: Councilman Shenko moved that the council authorize spending on the seawall project not to exceed \$70,000 from contingent fund subject to the review of the contract by Mr. Green and Ms. Dalton. Councilman Reynolds seconded the motion.

Vice Mayor Massucco was curious about the difference between the original proposal and the new one regarding the amount and quality of the work to be done, and the length of time that the work would hold the seawall. Mr. Green explained that there is less work involved, and that the beams are of high quality. He stated that Mr. Banks advised him that the work would hold ten to fifteen years, and that he wanted to use that time to make a thorough assessment of the seawall's overall condition. Vice Mayor Massucco asked if Mr. Green had any information on the Snug Harbor section of the wall. Mr. Green reported that Mr. Banks looked at that section as well, and concurred that that section was also in need of repair.

Councilman Reynolds expressed his appreciation to Mr. Green for staying on top of the situation. He also clarified a misinterpretation that ran in the *Sandpaper*, saying that he suggested to Mr. Green that he work with Snug Harbor on the seawall repair. Councilman Reynolds said that instead he suggested that Mr. Green and Snug Harbor use the same contractor. Councilman Reynolds then disclosed his concerns that if the contractors are blowing air through the seawall's 36" casing to clear debris, the extra pressure and intrusion could undermine the entire street. Mr. Green said that he believes that particular aspect of the project is completed. Mr. Green also reported that there is evidence that the seawall may have been repaired at some point previously, and he wants to look into that further.

VOTE: Motion was carried unanimously.

**V. PUBLIC HEARING LAND USE CASE:
Big John's Boardwalk Eatery – DCI2005-00112**

Mayor Boback asked if any council members had any ex-parte communication with the property owners or other persons regarding this case. Councilman Meador reported that he is personal friends with the property owner, Joan DeLucas, and its proposed principal operator, John Cooker, and that he provided legal representation for the Ms. DeLucas in the past. He said that he no longer represents Ms. DeLucas, nor has he any pecuniary interest in the property. Councilman Shenko saw the property five years ago, but has not spoken to anyone about it since. Vice Mayor Massucco, Councilman Reynolds, and Mayor Boback visited the site, but spoke to no one.

Mayor Boback opened the public hearing. Those testifying were sworn in by Ms. Dalton.

Jim Caywell, a retired lawyer and Ms. DeLucas' husband, spoke on behalf of the property owner's attorney Matt Uhle. Mr. Caywell gave a history of the property and its owner. He explained that the building has always been divided into two parts holding two separate businesses located at 2301 and 2307 Estero Blvd. 2301 Estero Blvd. has been vacant since 1999, and the entire building has been vacant since 2003. The building and its interior suffered damage from Hurricane Charley in 2004. Ms. DeLucas and Mr. Cooker began renovations on the building with the intent of turning it into a restaurant. They then discovered that the property would have to be rezoned from Commercial Boulevard to Commercial Planned Development to permit the restaurant to operate. Ms. DeLucas applied for rezoning on November 29, 2005. On April 11, 2006, she presented her case to the LPA, which approved the rezoning.

Mr. Caywell expressed his opinion that the location and size of the building, as well as the surrounding neighborhood makes it undesirable as offices, as it was originally zoned. He also stated the concerns of adjacent property owners as he understood them: odors from the restaurant, new and visible propane tanks outside the building, and the view of the property from the back. Mr. Caywell explained that the property owner addressed neighbors' concerns about odor by directing the kitchen vents away from adjacent properties, and installing charcoal filters to remove odors and smoke. He noted that the use of propane tanks is necessary and that there could be a barrier constructed to obstruct the view of said tanks from passersby. With regard to the view of the back of the building, the business owners offered to pay for neighbors to plant palm trees to hide their view. The other option, as proposed by Mr. Caywell, was for an 8-foot high wooden barrier to be constructed around the back of the property.

Mr. Caywell opined that any change in use at this location would cause an increase in intensity of use, and require more parking spaces. However, he feels that it is unreasonable for the town to expect that the building be partially 'demolished' in order to comply with present setbacks and other requirements of the land development code. Mr. Caywell also reported that the LPA had a concern about the garbage that would be generated by the restaurant. He said that Mr. Cooker spoke with Onyx, and the company recommended three closed-lid trash bins in the back of the building that would be rolled to the front of the building for collection three times per week.

Michael Roeder, Director of Planning at Knott Consoer, testified next. Mr. Roeder observed that the Comprehensive Plan Policy 4C-3, and Land Development Code Section 34-702-D(1) both state that in order for a property to have a new or more intense use in the commercial category, it must be rezoned as Commercial Planned Development. Mr. Roeder pointed out that the lot was platted in 1925, and the building constructed in 1961, making it historic. He noted the desire of the town to preserve the pedestrian friendliness of Estero Blvd., and indicated that rebuilding according to present codes would mean the structure would have to be elevated; he did not see this elevation as being friendly to pedestrian traffic. Regarding town staff's

recommendation that the council deny the rezoning based on the restaurant being in a residential neighborhood, Mr. Roeder used a map to note that other businesses already exist in close proximity to 2301 and 2307 Estero Blvd. He specifically mentioned a convenience store, the Neptune Inn, and a fruit stand. Mr. Roeder claimed that the proposed restaurant would be better for the community if operated in the existing building than a new building built to the specifications of the town's Comprehensive Plan and Land Development Code. He told the council that there will be ten deviations needed in order to use the existing building.

- i. The allowance of 'back-out' parking on Estero Blvd.
- ii. A reduction in the number of required parking spaces from 29 to 10
- iii. Allowing the property owner to plant palms on the rear neighbor's property (with permission from that property owner) in order to waive the requirement of a two-foot wide landscaped buffer between properties
- iv. Waiving the requirement of a debuffer between parking and the sidewalk, as it would not be conducive to 'back-out' parking
- v. Allow the setback for the building from Estero Blvd. to remain at 49 feet, rather than the required 10-foot maximum setback
- vi. Allow the side setback to remain at 4.9 feet, rather than the required minimum side setback of 5 feet
- vii. Allow the setback on the north side to remain at 1.13 feet, rather than the required minimum setback of 5 feet
- viii. Allow the rear setback to be 2 feet, rather than the required minimum setback of 20 feet
- ix. As this is a corner building, Mr. Roeder asked that the council allow the building to remain at its present setback of 48.5 feet from the intersecting lines of right-of-way at the corner, rather than the required maximum setback of 20 feet
- x. Allow the building to keep its existing 16-foot blank wall, rather than comply with the design guidelines that set the maximum length of a blank wall on a façade facing the street to be 10 feet

Mr. Roeder noted that it would be a family restaurant and the hours of operation for the restaurant would not exceed 10:00 PM, and invited the council to attach restriction to the rezoning to address any of their concerns regarding hours of operation. He also noted that the restaurant would not be serving hard liquor, but would be serving beer and wine. There would also be no outside dining or entertainment. Lighting would be diverted from the residential neighborhood, and the sidewalk in front of the building would be marked to point out the pedestrian right-of-way. Mr. Roeder also discussed the landscaping of the property. He stated that Mr. Cooker would not allow employees to park in guest spaces, and he would hire only island residents to reduce the need for them to drive to work.

Mr. Cooker reiterated the discussion that he had with the property's neighbor about planting palm trees, and the meeting he had with Onyx regarding the trash.

Vice Mayor Massucco asked for clarification on the number and location of the parking spaces. Particularly, how the two end spaces could be safely utilized. Mr. Roeder explained that the LPA had the same concern, and that the property owner would be happy to use those areas for landscaping at the wish of the town. Mr. Cooker agreed that the two parking spaces in question are unconventional, and he felt that they might create confusion for motorists. Vice Mayor Massucco asked for clarification about the blank wall. Mr. Cooker confirmed that there would be a mural painted on that wall.

Councilman Shenko questioned whether or not the loading dock in the back could be removed in order to allow space for a buffer between the building and its rear neighbor. Mr. Roeder insisted that the loading dock is necessary for the operation of the restaurant.

Councilman Meador asked for clarification on the deviation needed for the parking spaces. He pointed out that the LPA recommendation allowed for 12 spaces, whereas the property owner is asking for the deviation to be 10 spaces.

Mr. Roeder noted that the applicant is not asking for any deviation from the town's sign regulations.

Mayor Boback noted that the property behind the building in question is currently for sale, and that the new property owner might not agree to the palms planted as a buffer on their property. He also asked how the applicant plans to keep the noise level down, and if there is a break room for employees planned. He expressed his concern about the back door being open, and employees breaking outside with the back door open. Mr. Cooker informed the council that the residence behind 2301 and 2307 Estero Blvd. is not for sale. He confirmed that he has a break room/office planned for inside the restaurant, and that he would work with the property owners behind him to keep the noise down. He intends to keep the back door closed during business hours, other than when deliveries arrive and trash is taken out. Mayor Boback asked for clarification on the number of front entrances for the building. Mr. Cooker confirmed that there are 2. Mr. Caywell offered to have the deliveries come in through the front door to reduce the traffic in the back of the building.

Councilman Shenko asked where the delivery and municipal waste trucks are going to park if they are working through the back door. Mr. Cooker said that the trucks would most likely park in either the front or on the side nearest Fairweather Lane. Mr. Shenko pointed out that there is only 1 foot of land owned by the applicant between the building and the property line.

Councilman Reynolds asked for clarification on the square footage of the building, specifically how many square feet would be used for the restaurant and how many for the pizzeria. Mr. Cooker said that the restaurant would be 'almost exactly 2,000 square feet' and the pizzeria would be 1,960 square feet. Councilman Reynolds then asked for clarification on the rear setback of the building. Mr. Roeder informed him that the building is set back 5 feet from the property line, and the loading dock is set back 2 feet.

Mayor Boback asked for testimony from Lee County staff. Nettie Richardson, Principal Planner with Lee County Division of Zoning representing Fort Myers Beach, pointed out that the Comprehensive Plan calls for the rear setback of the building to be 15 feet, and that the applicant has 2 feet. She also stated that the adjacent property owner cannot be forced to have the buffer on their property, and that it is the responsibility of the applicant to provide the buffer on their property. Ms. Richardson said that by having no buffer and increasing the intensity of use at this location, the applicant is not being sensitive to the nearby residential uses. Additionally, she expressed concern over the noise that would be generated from the operation of the restaurant, specifically from customers on the benches in the front, and kitchen noise emanating from the building's 2 back doors. Ms. Richardson was also concerned with the increased traffic to the business and lack of parking for it.

Ms. Richardson went on to point out that the applicant has not made any structural improvements to the building, meaning that they have made no effort to improve that area of the island. She was also concerned that there is no sidewalk in front of the business, and that is not conducive to any pedestrian clientele. Ms. Richardson reported that Lee County staff finds the application for rezoning inconsistent with the Comprehensive Plan. She expressed that a restaurant is an inappropriate use for the property in that neighborhood, and that staff recommends denial of the application.

Councilman Meador asked Ms. Richardson if she was at the LPA meeting when the case was discussed, and she responded that she was. Mr. Meador then asked her why the LPA wanted to approve the application. She reported that they said they were in favor of using the existing building, and that they wanted a pizzeria in their neighborhood.

Councilmen Shenko and Reynolds and Vice Mayor Massucco had no questions for Ms. Richardson.

Mayor Boback then asked for testimony from town staff. Jerry Murphy testified first after being sworn in by Ms. Dalton.

Mr. Murphy then asked if council had any questions for him.

Councilman Reynolds had no questions for Mr. Murphy.

Vice Mayor Massucco asked if the location were to be zoned properly, could they then issue a beer and wine license for the restaurant. Mr. Murphy said that the LPA recommended that no approval be given to consumption on premises without a separate hearing. Vice Mayor Massucco then asked for clarification from the applicant as to their intentions regarding alcohol. Mr. Roeder confirmed that the applicant seeks a beer and wine only license with no bar and no outside service, and they understand that they would have to come back before council in order to get approval.

Councilman Shenko asked about the possibility of delivery trucks, particularly beer trucks, using Fairweather Lane, and Mr. Murphy confirmed that it is a concern of staff.

Councilman Meador and Mayor Boback had no questions.

Mr. Murphy pointed out that there are only 8 viable spaces at 2301 and 2307 Estero Blvd. He also noted that the Commercial Boulevard Future Land Use seeks to preserve existing commercial uses, but require any intensification of use to be brought forward through the Commercial Planned Development Process. That process encourages a redevelopment of property, not a list of deviations and conditions to make an existing property compliant to current regulations.

Ms. Dalton clarified some of the conditions of the LPA.

Mayor Boback opened public comment:

- Tracy Moon, of 290 Pearl Street, offered his support for Mr. Cooker, and disclosed his concern about the safety of the sidewalks.
- Chris Loffreno, of 2100 Estero Blvd., expressed his support for the council's approval for the operation of a restaurant at 2301 and 2307 Estero Blvd. He also said that he has noticed exterior improvements to the building.
- Kevin Mulhearn, of 11230 Marblehead Manor Ct., Fort Myers, who owns several properties close to the applicant's, shared his support for the proposed restaurant. He felt that the restaurant would be family-oriented and a benefit for the community.
- Richard Reider, of 6041 Gulf Drive, was sworn in by Ms. Dalton. He stated that he is totally against the proposed location selling beer and wine.

Mayor Boback closed the public comment.

MOTION: Vice Mayor Massucco motioned that council approve the applicant's request given the deviations and conditions spelled out in the resolution. Councilman Meador seconded the motion.

Councilman Reynolds had no comment.

Councilman Shenko did not support the motion based on lack of parking and the deviation from the required rear setback.

Councilman Meador reiterated that the property had been granted deviations in the past. He suggested that Vice Mayor Massucco amend his motion regarding the buffer and the parking spaces.

AMENDED MOTION: Vice Mayor Massucco amended the motion to insist on an 8-foot wood fence as a buffer, not the existing chain-link fence. The property would also have 8 parking spaces, not 10 as noted on the resolution, and that trash pick-up would occur in the front of the building. Councilman Meador amended his second.

VOTE: Motioned failed 3-2, with Mayor Boback and Councilmen Shenko and Reynolds dissenting, and Vice Mayor Massucco and Councilmen Meador voting in favor.

MOTION: Councilman Shenko motioned to deny the application and that the Town Council of Fort Myers Beach incorporate the findings and conclusions of the Lee County Zoning Division Staff Report in its final order. Councilman Reynolds seconded the motion.

There was no discussion.

VOTE: Motion carried 3-2 with Mayor Boback and Councilmen Shenko and Reynolds voting in favor, and Vice Mayor Massucco and Councilmen Meador dissenting.

VI. TOWN MANAGER'S ITEMS:

Report of Lee County Clerk of Courts' Internal Auditing Department of Finance Procedures

Town Manager Rachel Lambert said that the Clerk of Courts was not prepared to present their findings at this time, but that they had additional information for the town to review. She suggested that a special meeting be called for a later date in order to go over the report.

Mayor Boback suggested a council workshop. There was some discussion of council schedules, and the workshop was scheduled for May 31, 2006 at 5:00 PM.

**VII. PUBLIC HEARING LAND USE CASE:
110 Mango Street – FMBDCI2006-00001**

Mayor Boback opened the public hearing. He asked if any members of council had any ex-parte communications with the property owner.

Councilman Meador lives at 112 Mango Street, and is opposed to the application, although he had no pecuniary interest in the case. He asked legal advice of Ms. Dalton.

Ms. Dalton pointed out that Councilman Meador might have a personal interest in the outcome of this matter, and advised him not to vote. Councilman Meador then 'disqualified' himself from the vote, noting that he still had the right to participate in the discussion. Councilman Reynolds shared his belief that he was not allowed to abstain from voting if he did not have a pecuniary interest in the case.

Councilman Shenko, Mayor Boback, Vice Mayor Massucco, nor Councilman Reynolds had no ex-parte communication regarding this case.

Ms. Dalton swore in the witnesses.

Frank Shockey, Planning Technician with the Town of Fort Myers Beach, testified on behalf of the applicant, the Town of Fort Myers Beach. Mr. Shockey explained that when the town adopted its Land Use maps, this property was zoned as Residential Multi-Family, as its commercial use was not apparent. As the property was and continues to be used for commercial activities, the applicant requests that it be rezoned as Commercial Boulevard.

Councilman Reynolds said that the business that currently operates at that location was never approved by council, and that the property does not fall within the town's zoning for Commercial Boulevard as it is the second lot from Estero Blvd.

Vice Mayor Massucco expressed that was his intention to go along with staff and LPA recommendations and approve the resolution.

Mr. Shockey responded to Councilman Reynolds' remarks by pointing out that Lee County permitted The Heavenly Biscuit at that location in 2001, and The Monkey Tree Restaurant in 2004. He explained that 2001 was prior to the adoption of the official zoning map.

Councilman Meador testified that he purchased the property adjacent to 110 Mango Street in 1982. He said that at that time there was no business at the property in question. When a new owner purchased the building, they obtained permission from Lee County to operate a beauty parlor there. It was later used as a residential rental, then as The Heavenly Biscuit restaurant in 2001, and now as The Monkey Tree Restaurant. Councilman Meador expressed his disagreement with the proposed rezoning.

Mayor Boback opened public comment.

Edward Shelovitz, the property owner, testified that the lot was purchased as commercial zoning. He only found out that the property was zoned residential when he went to sell it. He stated that he spoke with Bill Spikowski, and was told that "an error was made" in the zoning of 110 Mango Street.

Mr. Murphy stated that proper notification procedures were followed when the property was rezoned from commercial to residential use.

Mayor Boback closed the public comment.

MOTION: Councilman Reynolds motioned that the council "reject this application" as he did not believe that it meet the town's Comprehensive Plan.

AMENDED MOTION: Councilman Reynolds amended the motion to include that the application was rejected because it is not in compliance with the town's Comprehensive Plan, Chapter 34 of the Land Development Code, and "applicable town ordinances". Councilman Shenko seconded the motion.

Councilman Shenko asked Mr. Murphy how the rejection of the application would affect The Monkey Tree, which is the currently operating business at 110 Mango Street. Mr. Murphy said that it would continue to operate as "non-conforming" as long as the "operation was not discontinued", even if the property was sold to a new owner.

VOTE: Motion passed 4-0 with Councilman Meador abstaining.

VIII. COUNCIL MEMBER ITEMS AND REPORTS

Council Meador asked Ms. Lambert about the time and place of the town's first meeting with the Red Cross to discuss citizen volunteers for

disaster recovery. Ms. Lambert said that the workshop is scheduled for June 7th at 6:00 PM in Town Hall. Councilman Meador also expressed his intent to propose a meeting adjournment time for council meetings.

Councilman Shenko commented on the 'Guest Commentary' in *The News-Press* on May 4th, 2006, by Steve Boutell regarding beach re-nourishment. He pointed out that at the town's meeting with FEMA, council directly asked if the re-nourishment would lower flood insurance rates and was told "absolutely not". He said that this was contrary to what Mr. Boutell stated in the newspaper. Councilman Shenko then asked for a consensus of council that a letter be sent to the chairman of the county commission requesting that Mr. Boutell asked for clarification of his statements about flood insurance in writing from FEMA. Councilman Shenko then called for a report at the next council meeting from the town's community development staff regarding the state of Jimmy B's.

Vice Mayor Massucco reported that he attended the Visitor Convention Bureau breakfast and the TDC meeting.

Councilman Reynolds expressed his disappointment in one of the local newspapers for repeatedly making comments about council members. He suggested that if the situation is not resolved on its own, then council instruct Ms. Dalton to seek the opinion of the Attorney General. Councilman Reynolds asked that council reach an agreement with God's Table to allow them to operate their program. He called for island residents that are members of any of the churches involved with God's Table that have proposals to solve the conflict to contact the council.

Mayor Boback asked Mr. Murphy if there had been any code enforcement actions involving Jimmy B's. Mr. Murphy said that he would check with Julie Brown, Code Enforcement Officer, about the status of this issue.

Councilman Shenko reiterated his concern over the statements made by Mr. Boutell in *The News-Press*, as he felt there were misrepresentations in some of those statements. He asked that either the Mayor or Town Manager write a letter to the County Commissioner asking for clarification of those statements in writing from FEMA. Ms. Lambert offered to raise these questions to the County Commissioner, and council agreed.

IX. TOWN MANAGER'S ITEMS

Ms. Lambert had nothing to report.

X. TOWN ATTORNEY'S ITEMS

Ms. Dalton asked that the meeting with the attorneys for Chapel By the Sea, scheduled for Wednesday, May 10th, 2006, be put on the agenda for the next meeting for discussion purposes.

XI. PUBLIC COMMENT

Richard Ryder stated that there is an illegal triplex operating at 6021 Gulf Drive. He said that he reported the building repeatedly to the town and has not seen any action taken.

XII. ADJOURNMENT

MOTION: Councilman Meador made a motion to adjourn. Councilman Shenko seconded the motion.

VOTE: The motion passed unanimously.

Mayor Boback adjourned the meeting at 6:21 PM.

Respectfully submitted,

Nicole Olsen
Interim Transcribing Secretary

**SETTLEMENT AGREEMENT, COVENANT NOT TO SUE, AND
GENERAL RELEASE**

THIS SETTLEMENT AGREEMENT, COVENANT NOT TO SUE AND GENERAL RELEASE ("Agreement") is made and entered into by and between Marylu Czulewicz ("Czulewicz") and Town of Fort Myers Beach ("the Town") (collectively "the Parties").

WITNESSETH

WHEREAS, Czulewicz asserted various claims against the Town in the Complaint styled *Marylu Czulewicz v. Town of Fort Myers Beach*, originally filed in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida (Case No: 06-CA-002298), and subsequently removed to the United States District Court in the Middle District of Florida and is currently pending as Case No: 06-CV-576-FtM-99-dnf; (the "Litigation"); and

WHEREAS, the Parties desire to settle fully and finally all claims arising out of the Litigation and to resolve all disputes that currently exist between the Parties;

NOW, THEREFORE, in consideration of these premises and mutual promises, covenants and agreements stated herein, and other good and valuable consideration, Czulewicz and the Town agree as follows:

1. **Stipulation:** Czulewicz and the Town agree to execute and file a stipulation whereby the Litigation will be voluntarily dismissed with prejudice (the "Stipulation") within five (5) days of the execution of this Agreement.

2. **Consideration:**

(a) Upon the execution of this Agreement, the Town will pay to Czulewicz Eight Thousand Five Hundred Dollars and Zero Cents (\$8,500.00);

(b) The payments described in 2(a) above shall constitute a settlement of all of Czulewicz's claims for damages or compensation of any kind against the Town. The Town specifically denies having been the lawful cause of any claimed injury to Czulewicz.

3. **Application for Change to Commercial Planned Development Zoning:**

(a). Czulewicz has represented to the Town that she wishes to apply for a change to Commercial Planned Development (CPD) zoning for the property located at 110 Mango Street, Fort Myers Beach, Florida, which has the following legal description: LOT 2, BLOCK "D" SEAGRAPE SUBDIVISION, PLAT BOOK 4, PAGE 17, PUBLIC RECORDS OF LEE COUNTY, FLORIDA (the "Subject Property"). She has further represented that such application for CPD would be restricted to (i) uses currently permitted under the existing zoning; (ii) use of the property for the existing restaurant in its current configuration; and (iii) use of the property as a beauty salon. Czulewicz represents that this application will not seek additional or different uses from those delineated in this paragraph (3)(a) above and will not seek to increase

or expand upon the present configuration of the property located at 110 Mango Street, Fort Myers Beach, Florida in terms of size, area, location, number of restaurant seats, and parking, although Czulewicz may seek less intensive uses than those delineated herein if she chooses.

(b) The Town agrees to waive the application fee normally charged for an application for change to CPD zoning for the application described in paragraph 3(a) above. Such waiver includes: application fee, request for deviations, administrative costs, and the cost of notifications. Czulewicz shall be solely responsible for all other costs related to the application process (including but not limited to attorneys fees, other expert fees, preparation of required documents). The Town specifically denies any financial responsibility or obligation for such other costs.

(c) The Town's waiver of the application fees referenced in paragraph (3)(b) above is personal to Czulewicz and is not assignable whether for consideration or without consideration.

(d) The application for change to CPD zoning must be submitted by Czulewicz within six (6) months of the execution of this Agreement. If a complete application is not submitted within this timeframe, the Town's waiver of application fee(s) set forth in this paragraph 3(b) shall be null and void and of no effect; and

(e) Both parties acknowledge that Czulewicz's application for change to CPD zoning, as referenced in this Agreement, will follow the Town's normal quasi-judicial review process as set forth in the Town's Land Development Code. Nothing contained herein shall be construed by Czulewicz as an approval, overt or tacit, by the Town of any part of Czulewicz's application for change to CPD zoning.

4. **Each Party to Bear its Own Costs and Fees:** Each Party shall bear all attorney's fees and costs arising from its actions or the actions of its counsel in connection with the Litigation and all related matters. Czulewicz specifically waives any and all claim to attorney's fees with regard to the subject matter of the general release set forth in paragraph 5 below.

5. **General Release:** Czulewicz irrevocably and unconditionally releases, and discharges the Town from any and all claims, demands, damages, liens, losses, or causes of action of whatsoever kind and character, known or unknown, fixed or contingent, which Czulewicz may have, or claim to have, against the Town and any of its representatives or employees from the beginning of the world up through the date of the execution of this Agreement, including, but not limited to any claim for discrimination under any state, federal, city or county law, ordinance, rule or code, the common law, the laws of contract or torts, or any other claim for damages or specific performance.

6. **Non-Admission of Liability:** The Parties have entered into this Agreement in order to avoid the substantial costs, inconvenience, and uncertainties of litigation. The execution of this Agreement shall not constitute an admission by either of them of a violation of any federal, state or local statute, ordinance, rule, regulation or common law or that any claim of the other Party had any merit whatsoever.

7. **No Assignment:** Czulewicz warrants that she has not assigned, sold, subrogated, transferred or conveyed to anyone any causes of action, claims or demands that she now has or

ever had against the Town, and she hereby agrees to defend entirely at her own expense and to fully reimburse and forever hold harmless the Town from any and all causes of action, claims or demands that may be brought by anyone to whom Czulewicz has assigned, sold, subrogated, transferred or conveyed any causes of action, claims or demands, whether they are asserted by third-party complaint, cross-claim or otherwise, or whether they are asserted for indemnity, contribution or otherwise.

8. **Waiver of Term, Provision or Condition:** The waiver by either Party of a violation of any provision of this Agreement by any other Party shall not operate or be interpreted as a waiver of any later violation of that provision or any other provision.

9. **Binding Effect of Agreement:** The rights and obligations of the Parties under this Agreement shall inure to the benefit of and shall be binding upon their heirs, successors, and assigns, subject to the provisions of Paragraph 8 above.

10. **Modifications:** This Agreement may not be altered, amended, modified, or terminated except by a writing executed by the Parties and/or their authorized representatives.

11. **Voluntary Execution:** The Parties acknowledge that they have either been represented by legal counsel of their own choice or had the opportunity to be represented by legal counsel throughout all negotiations which preceded the execution of this Agreement, have signed this Agreement having had the benefit of the advice of such legal counsel or after being given the opportunity to seek advice of legal counsel, and knowingly and voluntarily, of their own free will without any duress, being fully informed and after due thought, accepted the terms of and signed this Agreement of their own free will.

12. **Drafting:** This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party who caused it to be drafted.

13. **Entire Agreement:** The Parties represent and acknowledge that in executing this Agreement, that she or it does not rely and has not relied upon any representation or statement made by any party or the agents, representatives or attorneys of any other party with regard to the subject matter, basis or effect of this Settlement Agreement and General Release or otherwise. The Parties agree that this written Agreement constitutes the entire agreement between them.

14. **Authorization:** Czulewicz and the Town each represent and warrant that the individuals executing this Agreement are authorized to do so.

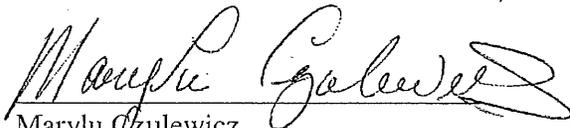
15. **Governing Law:** This Agreement is made and entered into in the State of Florida and shall be interpreted, construed, and enforced in accordance with the laws of the State of Florida and before the federal or state courts located in Florida.

16. **Severability:** To the extent that any provisions of this Settlement Agreement and General Release shall be deemed by any court to be unenforceable, such provision shall be deemed modified or omitted to the extent necessary to make the remaining provisions enforceable.

17. **Original Agreement:** This Agreement may be executed by the Parties in separate counterparts, each of which may be deemed to constitute an original.

18. **Breach of Agreement:** In the event it is necessary for any Party to retain the services of an attorney or to initiate legal proceedings to enforce the terms of this Agreement, the prevailing party or parties shall be entitled to recover from the non-prevailing party or parties, all costs of such enforcement, including reasonable attorney's fees and including trial and appellate proceedings.

IN WITNESS WHEREOF, and intending to be legally bound by the terms of this Agreement, the Parties have executed the foregoing SETTLEMENT AGREEMENT AND GENERAL RELEASE on the dates set forth below:


Marylu Czulewicz

11-19-07
Date

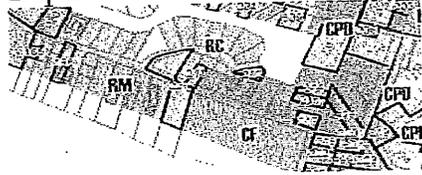
Town of Fort Myers Beach

By 

11-19-07
Date

Its Mayor

Town of Fort Myers Beach
Department of Community Development



Zoning Division

Application for Waiver of Submittal Requirements

Submit a request for waiver of submittal requirements prior to submitting an application for public hearing or administrative action. Requesting a waiver of submittal requirements simultaneously with an application may delay your application. The request and the director's response will become part of the application file.

Waiver is requested for items required for:

Public Hearing

- General Requirements
- DRI
- Planned Development
- Conventional Rezoning
- Special Exception
- Variance
- Appeal
- Other

Administrative Action

- General Requirements
- Planned Dev. Amendment
- Commercial Antenna
- Consumption on Premises
- Forced Relocation of a Business
- Interpretation of LDC
- Minimum Use Determination
- Setback Variance
- Other

Name of Project: 110 MANGO ST.

Applicant: MARYLU CZULAWICZ

LeePA STRAP Number(s): 19-46-24-W3-0120.D, 0020

Street address: 110 MANGO ST

Phone Number: 239 694 2149

E-mail: MARYFITT@EMBARQMAIL.COM

Specific requirements from which waiver is sought

Section Number	Requirement
JRO 34-20(A)(2)	(1) BOUNDARY SURVEY
	(2) WAIVER OF \$3000 FEE

Scope of project and reasons for request

Explain the nature of the project and give reasons why you think specific requirements are inapplicable or otherwise should be waived.

- (1) BOUNDARY HAS BEEN USED AS COMMERCIAL SINCE PURCHASED (1988)
(SEE INTRODUCTION LETTER) PAID FE
- (2) AS PER SETTLEMENT CPD REQUEST WAS SUBMITTED BUT APPARENTLY LOST BECAUSE OF (1) ORIGINAL ERROR BY FMB IN CHANGING ZONING FROM C1 TO RM
- (3) THE LOSS OF CPD APPLICATION
- (3) THE DESIRE OF FMB TO CORRECT THEIR ERROR

I hereby state that the information provided above is accurate to the best of my knowledge. I recognize that if my project changes from what is described above approval of this waiver request may no longer be valid.

CONTINUE
page
3

Signature Date
Director's Decision Approved Denied

Comments:

Maureen O'Neil
Signature Date 6-21-2012

Continuation of paper 2 of 2

Page (3)

By being the applicant to restore 110 Mango St. back to where it has always been (commercial)

Introduction

Good Morning;

My name is Marylu Czulewicz the owner of 110 Mango St. I believe a short history of 110 Mango St. property and the reason I am before you today is of utmost importance.

This little cottage was built in 1927. I believe it is one of the oldest or the oldest cottage in existence on Fort Myers Beach.

I purchased the property in 1988 as C-1 Commercial to open a small beauty salon. My life's plan was to open Shape Rattle & Roll and give my neighbors on Fort Myers Beach a place they could come to and receive superior service. I did this for a total of 18 years. Shape Rattle & Roll was in existence for 12 years, from 1989 to 2001. I decided to close Shape Rattle & Roll, which was now called Marylu's Hair Salon. In 2001 I leased the property to a small breakfast and lunch eatery called Heavenly Biscuit, which is still operating today. However, there was a 2 year interval being leased to the Monkey Tree, also an eatery.

As part of my life's plan, not only did I work the property for 12 years, there came a time when my life's plan became interrupted, something no one is quite prepared for, my dad and mom died within two years of each other. At the death of my mom I decided to leave Fort Myers Beach and reside in Buckingham, which is what I did. I leased 110 Mango St. to Heavenly Biscuit. I continued to work as a teacher, until 2008 when I was laid off and have not been able to find employment since then. I was forced to retire and receive Social Security. The income I receive from 110 Mango St. and a small Social Security income is my soul income. The next phase to my plan was to one day sell 110 Mango St. and use the assets received as my retirement nest egg. But, even if I do not sell Mango St. it shall continue to be my soul retirement income. Because of this egregious error of FMB the value of 110 Mango St. has dropped at least 60%.

There was a time when the Real Estate Market was very strong, and I thought if I was to sell 110 Mango St. I could pay off my home and maybe purchase a small place in Nashville TN where my Daughter and Son live. Within days on the market the Real Estate Broker called me to inform me that 110 Mango St. was not C-1 but Residential. After hearing that shocking news I called the Town of FMB for an explanation. Mr. Murphy the planning Director at that time informed me that 110 Mango St. was changed when they were doing the new master plan. Mr. Bill Stipkowski was hired by FMB to do the new master plan. When I called Mr S. he informed me that he had made an error. The property should never have been changed from C-1 to residential. Upon hearing this I notified Mr. Murphy of the error and asked him to resolve the problem by putting 110 Mango St. back where it was C-1. 110 Mango St. has always been C-1. I bought 110 Mango St. as Commercial in 1988. My dream and plan was to open a Beauty Salon in that very spot. I thought the location was great for what I wanted to do. And it proved to be just that. It was my suggestion that a stroke of a pen could correct the egregious error that was made by FMB. However, Mr. Murphy informed me that upon the advice of the legal counsel of the town of FMB that a CB conventional rezoning application would be required to go from RM to CB. The Town of FMB would be the applicant they would assume all responsibilities, costs as well, and in this way the property would be returned to C-1. The application was presented to the advisory board and was accepted unanimously. The next step was the common council of FMB and that is where the night mare began. The town council rejected the application unanimously with no cause given.

The president of the council was Mr. Bobeck who seemed confused at FMB being the applicant. He kept saying "shouldn't the land owner be the applicant?" It was obvious to me he was not prepared to give the case a just and fair hearing. Then Mr. Meader a council man also a next door neighbor of 110 Mango St. recluded himself from voting but, spoke negatively about 110 Mango St. anyway. His fellow councilman Mr. Shanko stated that he had lived on FMB for 14 years and always remembers 110 Mango St. as being used residentially exclusively. 110

Mango St. has always been C-1, before I purchased it and after I purchased it. I would hate to think that Mr. Shanko purposely lied to help his colleague Mr. Meader.

Because of this outrage which was unjust and unfair, and continues to this very day, I was forced to hire an attorney to correct this outrage. The former council took it upon themselves to put my life in their hands and in rejecting the application devalued 110 Mango St. by at least 60%. The legal process that ensued meant that I hire an attorney, FMB hire an attorney and this case was slated to go before a Federal judge. After I paid for a deposition in the tune of \$1000, I also was required to pay for mediation, another \$1000, this does not include attorney costs and fees. This legal hassling back and forth lasted for over a year. Upon the urging of my attorney, I accepted a settlement from FMB. This settlement paid the Attorney fees at best. One of the settlement terms was that I submit a CPD, just a "formability" so I was told by FMB legal counsel, to get the commercial zoning reestablished and was given 6 months to do this. Needless to say, I did this right away, just to put a finish to the egregious error that FMB had made, not to mention the sleepless nights and anxious moments that embraced fear, fear of having a good part of my retirement nest egg go out the window, because of a mistake others had made. I completed the paper work and brought it down to the beach with instructions to give the paper work to Mr. Murphy. I truly believed that this was the final step to put 110 Mango St. back to C-1.

Here is where the dance starts all over again. I am re submitting this rezoning application myself without the help of a consultant because I cannot afford a planning consultant at a cost of 4 or 5 thousand dollars. After all, who would know 110 Mango St. better than me after almost 3 decades? I am told also that the fee for this application is 10 thousand dollars and staff costs could be between 4 and 5 thousand dollars. All of which may be waived if the Town Council grants a continuation of the settlement. The last meeting with Walter and Leslee on May 9, 2012 at 11AM, I was informed that a conventional rezoning

would be \$5000, but this may be waived by the common council in terms of the original settlement.

It seems unfair and unjust if I would have to pay for this egregious error FMB made. The planning director Walter and his colleague Lesley have been extremely helpful and sympathetic to my plight.

I hope with this information you can see the position I was put into. Generally stated, there is nothing to be done to the building or tenant. There is no change at all. 110 Mango St. will remain the same as it has been since I bought it in 1988.

If you can put yourself in my place you would hope that this egregious error would be corrected this time around.

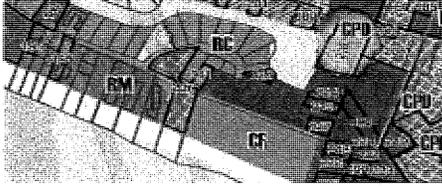
I would like to humbly thank you for your time and hope that all of you here today would agree that a terrible error was made and put 110 Mango St. back to C-1 where it has always been.

With my application for CB there several amendments:

- (1) Letter from Mr. Murphy
- (2) Stepkowski admitting that an error was made in terms of zone change that should not have happened
- (3) Application by FMB to correct the error
- (4) Enclosed is a copy of current CB application for your information

Kind Regards: Marylu Czulewicz

Town of Fort Myers Beach
Department of Community Development



Zoning Division

Supplement PH-C

**Additional Required Information for a
Conventional Rezoning Application**

This is the second part of a two-part application. This part requests specific information for a conventional rezoning. Include this form with the Request for Public Hearing form.

Case Number:
Project Name: 110 Mango Zoning Correction
Authorized Applicant: Marylu Czulewicz
LeePA STRAP Number: 19-46-24-W3-0120 D. 0020

Current Property Status: RESTURANT
Current Zoning: Rm
Future Land Use Map (FLUM) Category: Mixed Residential
Comp Plan Density: up to 10 units Platted Overlay? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No PER ACRE

Conventional rezoning:

From Rm (current zoning)
to CB (requested zoning)

Any additional simultaneous zoning actions can be requested using the same Application for Public Hearing form, but must include all parts of the required supplemental forms and documentation, and include the fees for each request.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Narrative Statements

Explain why the requested rezoning is necessary. Direct this statement toward the guidelines for decision-making in LDC Section 34-85

See Amendment

1A-1B-1C-1D-1E

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

LDC Section 34-85

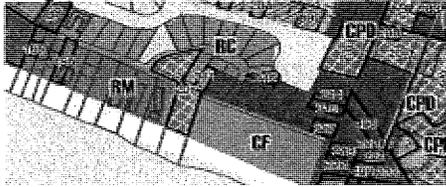
The guidelines for decision-making regarding a request for rezoning are as follows:

1. Whether there exists an error or ambiguity that must be corrected;
2. Whether there exist changed or changing conditions that make approval of the request appropriate;
3. The impact of the proposed change on the intent of LDC Chapter 34;
4. Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses set forth in the Fort Myers Beach Comprehensive Plan;
5. Whether the request meets all performance and locational standards for the proposed use;
6. Whether urban services are, or will be, available and adequate to serve a proposed land use change;
7. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources;
8. Whether the request will be compatible with existing or planned uses and will cause damage, hazard, nuisance, or other detriment to persons or property;
9. Whether the location of the request places an undue burden on existing transportation or other services and facilities, and will be served by streets with the capacity to carry traffic generated by the development.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
Department of Community Development



Zoning Division

Application for Public Hearing

This is the first part of a two-part application. This part requests general information required by the Town of Fort Myers Beach for any request for a public hearing. The second part will address additional information for the specific type of action requested.

Project Name:	110 Mango Zoning Correction
Authorized Applicant:	Marylu Czulewicz
LeePA STRAP Number(s):	19-46-24-W3-0120.D.0020

Current Property Status:	RFA RESTURANT / HEAVENLY BISQUET
Current Zoning:	RM
Future Land Use Map (FLUM) Category:	Mixed Residential
Platted Overlay? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no	FLUM Density Range: 10 units/acre

Action Requested	Additional Form Required
<input type="checkbox"/> Special Exception	Form PH-A
<input type="checkbox"/> Variance	Form PH-B
<input checked="" type="checkbox"/> Conventional Rezoning	Form PH-C
<input type="checkbox"/> Planned Development	Form PH-D
<input type="checkbox"/> Master Concept Plan Extension	Form PH-E
<input type="checkbox"/> Appeal of Administrative Action	Form PH-F
<input type="checkbox"/> Development of Regional Impact	Schedule Appointment
<input type="checkbox"/> Other (cite LDC section number: _____)	Attach Explanation

Town of Fort Myers Beach
Department of Community Development
2523 Estero Boulevard
Fort Myers Beach, FL 33931
(239) 765-0202

PART I – General Information

A. Applicant:

Name(s):	MaryLu Czulewicz		
Address: Street:	110 mango St		
City:	FMB	State:	FL Zip Code: 33931
Phone:	239-694-2149		
Fax:			
E-mail address:	maryfitt@embargmail.com		

B. Relationship of applicant to property (check appropriate response)

<input checked="" type="checkbox"/>	Owner (indicate form of ownership below)		
<input checked="" type="checkbox"/>	Individual (or husband/wife)	<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Land Trust	<input type="checkbox"/>	Association
<input type="checkbox"/>	Corporation	<input type="checkbox"/>	Condominium
<input type="checkbox"/>	Subdivision	<input type="checkbox"/>	Timeshare Condo
<input type="checkbox"/>	Authorized representative (attach authorization(s) as Exhibit AA-1)		
<input type="checkbox"/>	Contract Purchaser/vendee (attach authorization(s) as Exhibit AA-2)		
<input type="checkbox"/>	Town of Fort Myers Beach (Date of Authorization: _____)		

C. Agent authorized to receive all correspondence:

Name:			
Mailing address: Street:			
City:	State:	Zip Code:	
Contact Person:			
Phone:	Fax:		
E-mail address:			

D. Other agents:

Name(s):			
Mailing address: Street:			
City:	State:	Zip Code:	
Phone:	Fax:		
E-mail address:			

Use additional sheets if necessary, and attach to this page.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

PART II – Nature of Request

Requested Action (check applicable actions):

<input type="checkbox"/> Special Exception for:
<input type="checkbox"/> Variance for:
<input checked="" type="checkbox"/> Conventional Rezoning from Rm to: CB
<input type="checkbox"/> Planned Development
<input type="checkbox"/> Rezoning (or amendment) from _____ to: _____
<input type="checkbox"/> Extension/reinstatement of Master Concept Plan
<input type="checkbox"/> Public Hearing of DRI
<input type="checkbox"/> No rezoning required
<input type="checkbox"/> Rezoning from _____ to: _____
<input type="checkbox"/> Appeal of Administrative Action
<input type="checkbox"/> Other (explain):

PART III – Waivers

Waivers from application submittal requirements: Indicate any specific submittal items that have been waived by the Director for the request. Attach copies of the Director's approval(s) as Exhibit 3-1.

Code Section Number	Describe Item
PART V, B	BOUNDARY SURVEY *

PART IV – Property Ownership

<input checked="" type="checkbox"/> Single owner (individual or husband and wife)
Name: MaryLu Czulewicz
Address: Street: 4281 Orange River Loop Rd
City: Ft. Myers State: FL Zip Code: 33905
Phone: 239-694-2149 Fax: _____
E-mail Address: MarySitt@embargo@mail.com

<input type="checkbox"/> Multiple owners (including corporation, partnership, trust, association, condominium, timeshare condominium, or subdivision)
Attach Disclosure Form as Exhibit 4-1
Attach list of property owners as Exhibit 4-2
Attach map showing property owners' interests as Exhibit 4-3 if multiple parcels are involved
For condominiums, timeshare condominiums, and subdivisions, see instructions.

PART V – Property Information

A. Legal Description of Subject Property

Is the property entirely made up of one or more undivided platted lots officially recorded in the Plat Books of the Public Records of Lee County?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes:
Subdivision name: <u>Seagrape Subdivision</u>
Plat Book Number: <u>4</u> Page: <u>17</u> Unit: Block: <u>D</u> Lot: <u>2</u>
If no:
Attach a legible copy of the metes and bounds legal description, with accurate bearings and distances for every line, as Exhibit 5-1. The initial point in the description must be related to at least one established identifiable real property corner. Bearings must be referenced to a well-established and monumented line.

B. Boundary Survey

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code, as Exhibit 5-2. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida.
--

C. STRAP Number(s):

<u>19-46-24-W3-0120D, 0020</u>

D Property Dimensions:

Area: <u>5500</u> square feet, <u>0126</u> acres
Width along roadway: <u>50</u> feet Depth: <u>110</u> feet

E. Property Street Address:

<u>110 mango St.</u>

F. General Location of Property (from Sky Bridge or Big Carlos Pass Bridge):

*ESTERO BLVD SOUTHEAST 3/4 MILE, TURN LEFT ON
 MANGO ST. (NORTH) FIRST BLOCK ON RIGHT (1/2 MANGO)*

Attach Area Location Map as Exhibit 5-3

G. Property Restrictions (check applicable):

- There are no deed restrictions or covenants on this property that affect this request.
- Restrictions and/or covenants are attached as Exhibit 5-4
- A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

H. Surrounding property owners:

- Attach list of surrounding property owners (within 500 feet) as Exhibit 5-6
- Attach two sets of mailing labels as Exhibit 5-7
- Attach a map showing the surrounding property owners as Exhibit 5-8

I. Future Land Use Category: (see Comprehensive Plan Future Land Use Map)

- | | |
|--|--------------------------------------|
| <input type="checkbox"/> Low Density | <input type="checkbox"/> Marina |
| <input type="checkbox"/> Mixed Residential | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Boulevard | <input type="checkbox"/> Wetlands |
| <input type="checkbox"/> Pedestrian Commercial | <input type="checkbox"/> Tidal Water |
- Is the property located within the "Platted Overlay" area on the Future Land Use Map? Yes No

J. Zoning: (see official zoning map, as updated by subsequent actions)

- | | |
|--|---|
| <input type="checkbox"/> RS (Residential Single-family) | <input type="checkbox"/> CM (Commercial Marina) |
| <input type="checkbox"/> RC (Residential Conservation) | <input type="checkbox"/> CO (Commercial Office) |
| <input checked="" type="checkbox"/> RM (Residential Multifamily) | <input type="checkbox"/> CB (Commercial Boulevard) |
| <input type="checkbox"/> VILLAGE | <input type="checkbox"/> SANTINI |
| <input type="checkbox"/> SANTOS | <input type="checkbox"/> DOWNTOWN |
| <input type="checkbox"/> IN (Institutional) | <input type="checkbox"/> RPD (Residential Planned Dev.) |
| <input type="checkbox"/> CF (Community Facilities) | <input type="checkbox"/> CPD (Commercial Planned Dev.) |
| <input type="checkbox"/> CR (Commercial Resort) | <input type="checkbox"/> EC (Environmentally Critical) |
| <input type="checkbox"/> BB (Bay Beach) | |

F. General Location of Property (from Sky Bridge or Big Carlos Pass Bridge):

ESTERO SOUTHEAST 3/4 MILE. TURN LEFT ON MANGO ST. (NORTH) FIRST BUILDING ON RIGHT
Attach Area Location Map as Exhibit 5-3

G. Property Restrictions (check applicable):

<input checked="" type="checkbox"/> There are no deed restrictions or covenants on this property that affect this request.
<input type="checkbox"/> Restrictions and/or covenants are attached as Exhibit 5-4
<input type="checkbox"/> A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

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Attach two sets of mailing labels as Exhibit 5-7
Attach a map showing the surrounding property owners as Exhibit 5-8

I. Future Land Use Category: (see Comprehensive Plan Future Land Use Map)

<input type="checkbox"/> Low Density	<input type="checkbox"/> Marina
<input checked="" type="checkbox"/> Mixed Residential	<input type="checkbox"/> Recreation
<input type="checkbox"/> Boulevard	<input type="checkbox"/> Wetlands
<input type="checkbox"/> Pedestrian Commercial	<input type="checkbox"/> Tidal Water
Is the property located within the "Platted Overlay" area on the Future Land Use Map? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

J. Zoning: (see official zoning map, as updated by subsequent actions)

<input type="checkbox"/> RS (Residential Single-family)	<input type="checkbox"/> CM (Commercial Marina)
<input type="checkbox"/> RC (Residential Conservation)	<input type="checkbox"/> CO (Commercial Office)
<input checked="" type="checkbox"/> RM (Residential Multifamily)	<input type="checkbox"/> CB (Commercial Boulevard)
<input type="checkbox"/> VILLAGE	<input type="checkbox"/> SANTINI
<input type="checkbox"/> SANTOS	<input type="checkbox"/> DOWNTOWN
<input type="checkbox"/> IN (Institutional)	<input type="checkbox"/> RPD (Residential Planned Dev.)
<input type="checkbox"/> CF (Community Facilities)	<input type="checkbox"/> CPD (Commercial Planned Dev.)
<input type="checkbox"/> CR (Commercial Resort)	<input type="checkbox"/> EC (Environmentally Critical)
<input type="checkbox"/> BB (Bay Beach)	

PART VI – Affidavit

Application Signed by Individual Owner or Authorized Applicant

I, MARYLU CZULEWICZ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data, or other supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

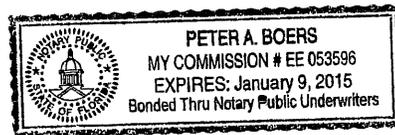
Marylu Czulewicz Marylu Czulewicz
 Signature Typed or Printed Name

State of FLORIDA
 County of LEE

The foregoing instrument was sworn to (or affirmed) and subscribed before me this 3/8/12 by MARY LU CZULEWICZ
(date) (name of person under oath or affirmation)
 who is personally known to me or produced FL. DL. LIC.
(type of identification)
 as identification.

[Signature] PETER A. BOERS
 Signature of person administering oath Typed or Printed Name

SEAL:



Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

**EXHIBIT 4-1
DISCLOSURE OF INTEREST FORM**

STRAP#

Attach additional sheets in the same format for each separate STRAP number in the application if multiple parcels with differing ownership are included.

1. If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address	Percentage
MARYLU CZULEWICZ	100%
4281 ORANGE RIVER LN RD.	
FT MYERS FLA. 33905	

2. If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address, and office	Percentage

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

3. If the property is in the name of a TRUSTEE, list the beneficiaries of the trust and the percentage of interest.

Name and Address	Percentage
MONICA ANN Czulewicz 1630 Ordway Pl Nashville TN 37206	50%
DANIEL E Czulewicz 2010 Brentridge Cir Antioch TN 37013-3743	50%

4. If the property is in the name of a GENERAL PARTNERSHIP or LIMITED PARTNERSHIP, list the names of the general and limited partners with the percentage of ownership.

Name and Address	Percentage

5. If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, regardless of whether a Corporation, Trustee, or Partnership is involved, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners, and their percentage of stock.

Name, Address, and Office (if applicable)	Percentage

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

6. If any contingency clause or contract terms involve additional parties, list all individuals, or officers if a corporation, partnership, or trust.

Name and Address

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application but prior to the date of final public hearing, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

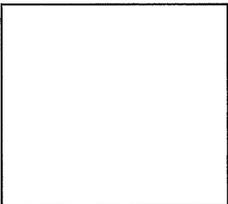
Signature *Mary Lu Czulewicz*
Applicant
MARY LU CZULEWICZ
Printed or typed name of applicant

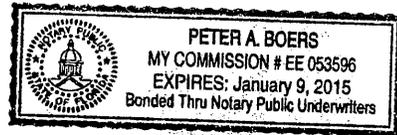
STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this 8th day of MARCH, 2012, by MARY LU CZULEWICZ, who is personally known to me or who has produced FLORIDA DL LIC. as identification and who did (or did not) take an oath.

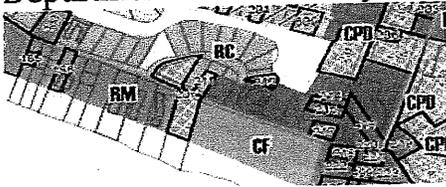
PAB
Signature of Notary

PETER A. BOERS
Typed or Printed Name of Notary

SEAL: 



Town of Fort Myers Beach
Department of Community Development



Zoning Division

Application for Waiver of Submittal Requirements

Submit a request for waiver of submittal requirements prior to submitting an application for public hearing or administrative action. Requesting a waiver of submittal requirements simultaneously with an application may delay your application. The request and the director's response will become part of the application file.

Waiver is requested for items required for:

Public Hearing

- General Requirements
- DRI
- Planned Development
- Conventional Rezoning
- Special Exception
- Variance
- Appeal
- Other

Administrative Action

- General Requirements
- Planned Dev. Amendment
- Commercial Antenna
- Consumption on Premises
- Forced Relocation of a Business
- Interpretation of LDC
- Minimum Use Determination
- Setback Variance
- Other

Name of Project: 110 MANGO ST.

Applicant: MARYLU CZULOWICZ

LeePA STRAP Number(s): 19-46-24-W3-0120.D, 0020

Street address: 110 MANGO ST

Phone Number: 239 694 2149

E-mail: MARYFIT@EMBARQMAIL.COM

Specific requirements from which waiver is sought

Section Number	Requirement
	(1) BOUNDARY SURVEY
	(2) WAIVER OF \$3000 FEE

Scope of project and reasons for request

Explain the nature of the project and give reasons why you think specific requirements are inapplicable or otherwise should be waived.

(1) BUILDING HAS BEEN USED AS COMMERCIAL SINCE PURCHASED (1988)
(SEE INTRODUCTION LETTER) PAID TE

(2) AS PER SETTLEMENT CPD REQUEST WAS SUBMITTED BUT APPARENTLY LOST BECAUSE OF (1) ORIGINAL ERROR BY FMB IN CHANGING ZONING FROM C1 TO RM

(2) THE LOSS OF CPD APPLICATION

(3) THE DESIRE OF FMB TO CORRECT THEIR ERROR

CONTINU.
page
3

I hereby state that the information provided above is accurate to the best of my knowledge. I recognize that if my project changes from what is described above approval of this waiver request may no longer be valid.

Signature Date
Director's Decision Approved Denied

Comments:

Maurya Gules
Signature Date
6-21-2012

By being the applicant to restore 110 Mango St. back to where it has always been (commercial)



SUPPLEMENT PH - C

ADDITIONAL REQUIRED INFORMATION FOR A CONVENTIONAL REZONING APPLICATION FORT MYERS BEACH

Case Number: FMB DCI 2006-0001
 Project Name: 110 Mango zoning correction
 Authorized agent: _____
 STRAP Number(s): 19-46-24-W3-0120D.0020

CURRENT STATUS OF PROPERTY

Current Zoning: Residential Multifamily
 Land Use Category: Mixed Residential Platted Overlay? Yes No
 Comprehensive Plan Density: up to 10 units per acre

REQUEST FOR: (respond to all applicable issues)

Rezoning:
 From: Residential Multifamily
 To: Commercial Boulevard

____ **Rezoning with variance:** indicate the type of variance being requested and complete Supplement form "PH - B" as well as this form.

Section Number	Description of requirement

____ **Rezoning with a Special Exception:** indicate the Special Exception and complete Supplement form "PH - A" as well as this form.

Section Number	Description of requirement

Case Number: FMBDCS 2006001 Name: 110 Mango

REASON(S) FOR REQUEST

Explain why the rezoning is needed. The statement must be directed, at a minimum, to the guidelines for decision-making embodied in sections 34-85(2). (see back of page 2). [34-203(c)]

In 2003 the Town Interior Zoning map included 110 Mango St. in an area rezoned from C1 commercial to R2 residential ~~conservation~~. This change was finalized when the interim map was adopted as the official map in 2004. Due to omissions on the part of the property owner and the town, inconsistency between the zoning change and the existing property use was not recognized and the zoning change made the property use non-conforming.

110 Mango has been a small business, usually a restaurant, since well before the 2003 rezoning. County records show that it was permitted as the "Mango Street Cafe" in 1997, the "Honey Biscuit" in 2001, and the "Monkey Tree" in 2004. The "Honey Biscuit" permit indicates that the property was used as a beauty salon at some point before 2001, also.

It is clear that 110 Mango has been a restaurant - a retail use - since before the rezoning. The zoning change to residential conservation was an error (S 34-85(2)(a)) that resulted in the changed condition (S 34-85(2)(b)) of making the retail use of the property non-conforming. The requested rezoning of the property will make the classification compatible with the preexisting use, in keeping with the zoning classification and existing uses of adjoining properties.

The Monkey Tree is a small restaurant located just off Estes Boulevard, with a design favorable to pedestrians and cyclists. It is the sort of commercial use described in policy 4-B-5 of the Comprehensive Plan regarding the character of "Boulevard" areas.

May 9, 2006

Time line

1989 purchased property as commercial 110 Mango St. FMB

Shape Rattle and Roll beauty salon

2001 – 2004 Heavenly Biscuit Restaurant

2004 – to present – Monkey Tree Restaurant

Names at meeting

Jerry Murphy: Planning and Zoning FMB
Assit: Frank Shockey

Mayor: Dennis Boback

Vice Mayor: Don Massucco

Council: Gare Reynalds

Bill Shenko

Charles Meador The attorney that lives next door to 110 Mango St.

Attorney: Ann Dalton

Town Manager: Racheal Lambert

All can be reached at 239- 765-0202

Bill Spikowski: 239-334-8866 Planning and Zoning hired consultant, He was the planner for the comprehensive plan for FMB. admitted making a mistake in November or December of 2005., but was not at the May 8th meeting. He also stated he was very familiar with the property. Said he would notify Jerry Murphy to take corrective action, which he did.

October 2005 I put the property up for sale, to my surprise I was told it was no longer commercial property. Contacted Bill Spikowski advising him of the property, he acknowledged the error and turned it over to Jerry Murphy for correction. Approximately around April 25th planning review board heard arguments and unanimously accepted the change requested by FMB planning and Zoning (from Res.

Back to commercial). May 8, 2006 application given to FMB town council and was rejected unanimously.

1. Council seemed totally uninformed on the 110 Mango St. situation
2. Councilman Meador excusing himself from voting and only reason stated was he lived next door to 110 Mango , he did however, speak in a negative, prejudicial manner and had a faulty recollection of the true facts.
3. Mayor Boback repeats over and over "why is FMB the applicant and not the Property owners?"
4. Councilman Reynolds stated before all facts and parties participated that he would vote against.
5. Councilman Meador stated on 2 occasions that he believed 110 Mango St was solely used residential. **Property has been used for the past 20 years as business only beauty parlor and 2 restaurants.**

The mayor asked "why did the FMB become the applicant for a zoning charge?" The reason was 110 Mango st. was incorrectly put in a block. Of Mango street residence that changed from residential to multi family residential. The fact that P & Z initiated the application for change is de facto proof that 110 mango was not intended to have zoning changed.

110 Mango was purchased as commercial and used as commercial. The owner receives the bulk of her income from 110 Mango St. Her intent was to keep commercial prop. And one day to sell and use the income as her retirement nest egg. Now the value of the prop. Has substantially been reduced. When lease is up in November 2006 she will not have income to live on.

The council received a unanimous vote from the FPA to return zoning to C. The council votes unanimously to deny the request of P & Z FMB. A councilman voiced his opposition to change and even went so far as abstain from voting. The why's were not answered by councilman.

I was amazed at the confusion of council
I am very concerned about the behavior of councilman Meador
Appeal, application by landowner for change in zoning.
Seeking legal council today. May 9, 2006.

Economic ramifications of this matter.

Always commercial

Was their intent to drive me form my property?

To understand my position of value as it relates to 110 Mango St.

Not a desirable purchase for a business owner. The long term effects of such a decision would affect my family in the next 10 to 15 years if not sooner.

This plan would only impact marylu czulewicz no matter how you look at it. Restoring the zoning or changing it will only impact Marylu Czulewicz.

1 B

In view of councilman Meador's behavior I tend to look at the council decision as possibly invalid or maybe even illegal.

Hope this will help you in your decision. Thank you for your concern in this matter. Hope to hear from you soon. I am waiting for the appeal papers from Jerry Murphy.

Sincerely

Marylu & Ed Czulewicz

1 C

**TOWN OF FORT MYERS BEACH
COMMUNITY DEVELOPMENT
STAFF REPORT**

TYPE OF CASE: Rezoning
CASE NUMBER: FMB DCI 2006-0001
TOWN COUNCIL HEARING DATE: May 8, 2006

I. APPLICATION SUMMARY

- A. **APPLICANT:** Town of Fort Myers Beach
- B. **REQUEST:** Rezone 0.126 acres from Residential Multifamily (RM) to Commercial Boulevard (CB).
- C. **LOCATION/STRAP#:** 110 Mango Street, 19-46-24-W3-0120D.0020. 110 Mango is the first lot back from the corner lot at Mango Street and Estero Boulevard.
- D. **FUTURE LAND USE:** Mixed residential/platted overlay
- E. **CURRENT ZONING:** Residential Multifamily (RM)
- F. **CURRENT USE:** "The Monkey Tree" Restaurant
- G. **SURROUNDING ZONING AND LAND USE:**
 North: Single- and multi-family residences in RM/mixed residential
 East: Church and vacant lot in Institutional/boulevard
 South: Commercial retailing and offices in CB/boulevard
 West: Single-family and multifamily residences in RM/mixed residential
- H. **SIZE OF PROPERTY:** 0.126+ acres or 5500 square feet.

II. RECOMMENDATION

Approve the request for rezoning from RM to CB.

III. FINDINGS AND CONCLUSIONS

By analysis of the standards for approval of rezoning staff concludes as follows:

- A. The request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses set forth in the Fort Myers Beach Comprehensive Plan.

1C

- B. The request is compatible with existing property uses and will not cause damage, hazard, nuisance, or other detriment to persons or property.
- C. Zoning 110 Mango as RM at the legislative adoption of the Official Zoning Map made the existing use nonconforming.

IV. BACKGROUND INFORMATION AND ANALYSIS

Synopsis

The Town seeks to rezone the subject property (0.126 acres) from Residential Multifamily (RM) to Commercial Boulevard (CB) to allow inclusion of a previously existing commercial use within an existing adjacent limited commercial zoning district.

Subject property

The subject property is Lot 2 of Block D of Seagrape subdivision (see attached subdivision plat), one lot back from Estero Boulevard on Mango Street. To the north on Mango Street and to the west on Fairweather Lane are multifamily and single-family residences. On Estero Boulevard to the south are retail and office commercial buildings. To the east are the Chapel by the Sea, then the Bank of America Building housing Town Hall, and then the Topps grocery. The subject property contains one cottage and a small outbuilding in the rear. Commercial use of the property has been ongoing from before the adoption of the Town's Comprehensive Plan and the Official Zoning Map. In 1997 the property owner applied to Lee County for a use permit for the "Mango Street Café" at 110 Mango, but that application was not completed and expired. In 2001 Lee County issued a use permit on behalf of the Town to the "Heavenly Biscuit" restaurant. The "Monkey Tree" restaurant received a use permit in 2004. The record from the Heavenly Biscuit permit indicates that the property was used as a beauty salon before 2001. These commercial uses were not obvious from analysis of aerial photographs used in the development of interim and official zoning maps and therefore the property was included in the neighboring Mixed Residential future land use on the Future Land Use Map and the Residential Multifamily district on the zoning maps. The property owner did not object to these classifications during the legally noticed period for comment on the zoning maps, so a zoning change is necessary to include the property in the neighboring Commercial Boulevard zoning district to assure continuance of the existing commercial use.

Comprehensive Plan considerations

Policy 4-C-3 of the Fort Myers Beach Comprehensive Plan limits commercial uses in the Mixed Residential future land use category to "lower impact uses such as offices, motels, and public uses" that will "be sensitive to nearby residential areas, complement any adjoining commercial uses, [and] contribute to the public realm". Subsequently the same policy dictates that "commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved." The Monkey Tree is a small restaurant in a

1 C

cottage a few feet from Estero Boulevard. The requested rezoning is not to permit a new development but to repair the inadvertent nonconformity of use created when the Official Zoning Map was adopted.

Policy 4-C-3 of the Comprehensive Plan states that “landowners may seek commercial rezoning only through the planned development process”, but this commercial rezoning is sought by the Town to adjust a nonconformity of the existing land use at the time when the current zoning districts were created. The Monkey Tree does not impose upon the residential nature of the surrounding neighborhood. Nearby are a multifamily residential building and a drive-up beach goods retail shop; across the street is a nonconforming retail use. Various other retail and office uses are on adjoining properties and on Estero Boulevard. Given the intensity of the existing permitted restaurant use at 110 Mango, and given the fact that once rezoned to Commercial Boulevard that use may continue to be limited by the regulations in LDC section 34-702, and any expansion will need approval through the Commercial Planned Development public hearing process, the existing use is consistent with the Mixed Residential future land use designation.

Conclusion

Rezoning 110 Mango from Residential Multifamily to Commercial Boulevard is consistent with the Mixed Residential future land use map category. The Commercial Boulevard standards do not permit increases in intensity through change or replacement of the existing commercial use, which is compatible with the characterizations of appropriate uses for the Mixed Residential category. The existing use will no longer be nonconforming, but will still be limited in the intensity and form to what is currently existing.

ATTACHMENTS: Exhibit 7-2 Legal Description
Exhibit 7-3 Seagrape Subdivision Plat
Localized section of Official Zoning Map (color)

1C

Exhibit 7-2

Lot 2, Block D, of Seagrape Subdivision as recorded in Plat Book 4, Page 17, Lee County, Florida.

STRAP #19-46-24-W3-0120D.0020

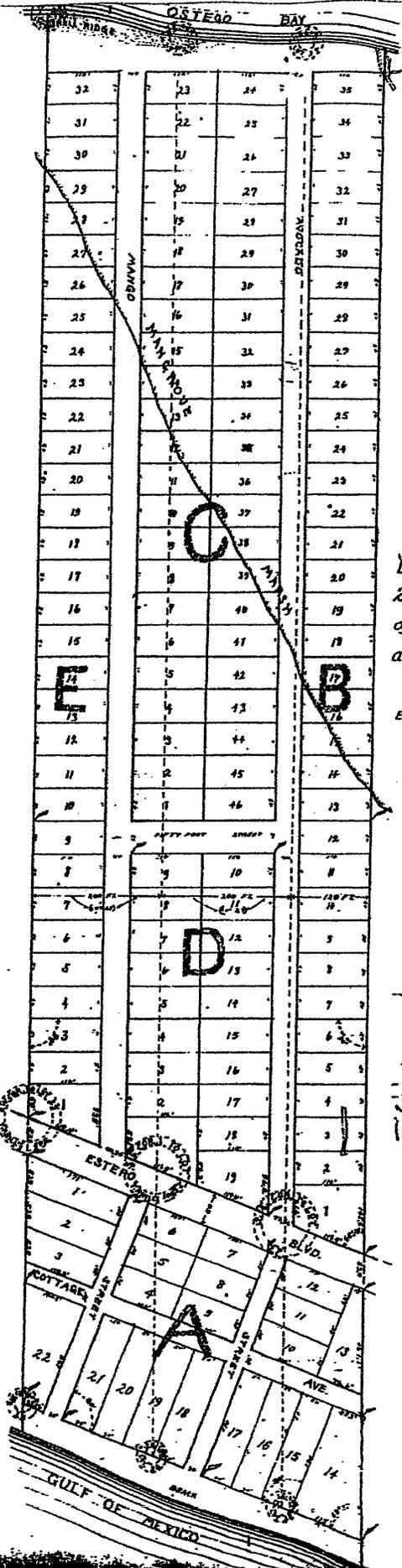
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Exhibit 7-3

Petition to Vacate
Description: or name change
Avocado Ave to Chapel St
Date for Approval: 05/21/52
CCMB: 11 Page: 429



SUBDIVIDED
UNDER
BY
H.R. DANFORTH, JR.



SEAGRAPE

Being a Subdivision of Lots 25-26-27
28 and the West 120 Feet of Lots 29 and 30
of T.P. Hill's Subdivision of Gov't. Lots 2-3
and 4 in Section 19 Tp. 46 S.-R. 24 E.

Estero Island

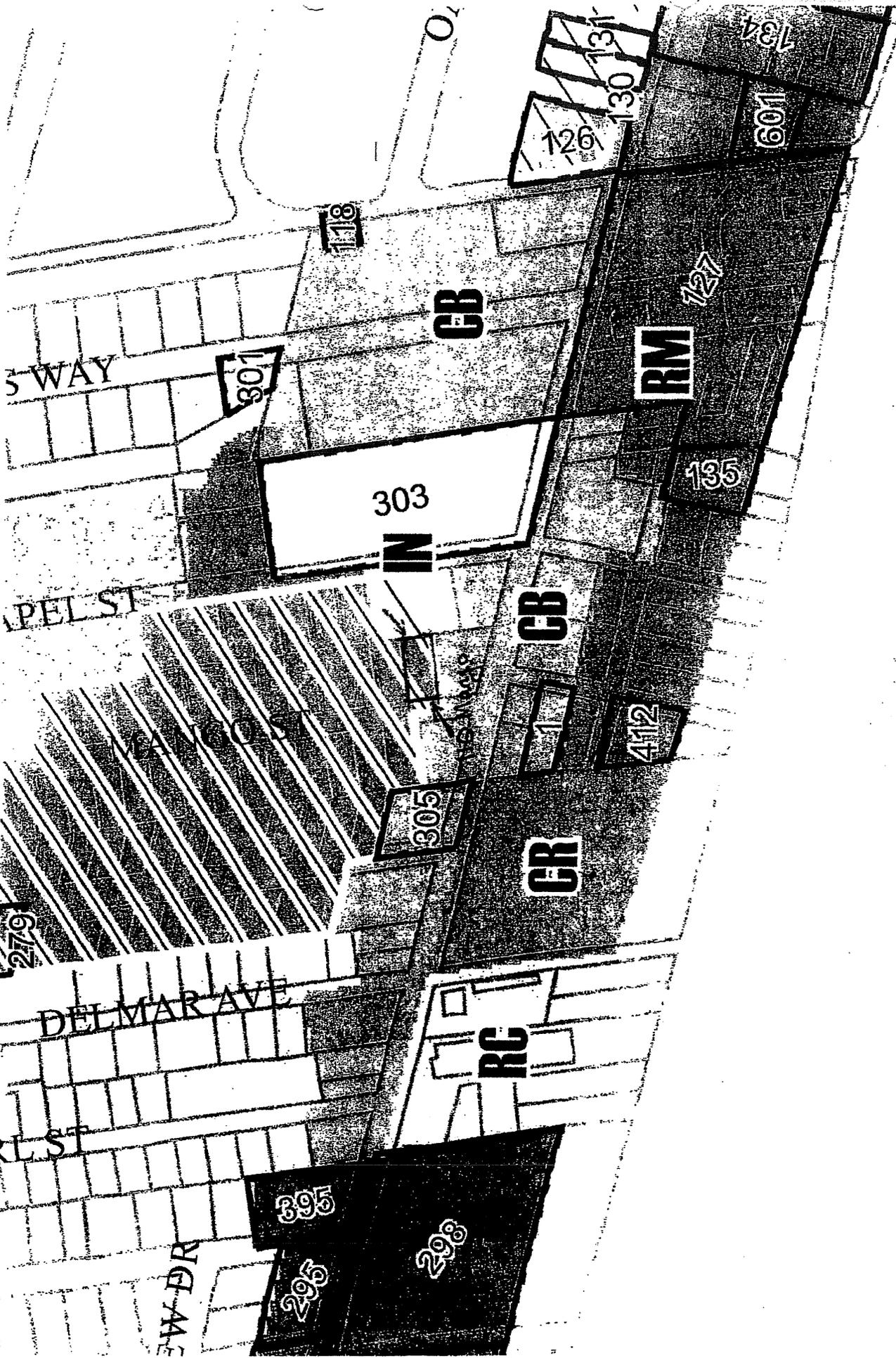
E.E. DAMKÖHLER AND C.S. FICKLAND; OWNERS

2 1/2 IN. IRON PIPE JOINTS - 1"

Petition to Vacate
Petition No: 84-13
Description: Vacation b/wm Block C&D
Date of Approval: 10/24/84
CCMB: 151 Page: 43

Handwritten:
Vacation of
Block C & D
CCMB: 151 4/85

1C



1 D

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2006-05

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

WHEREAS, the Town of Fort Myers Beach, Florida has initiated the rezoning of a parcel of property consisting of 0.13+/- acres or approximately 5,500+/- square feet, from Residential Multifamily (RM) to Commercial Boulevard (CB) to allow the inclusion of a previously existing commercial use within an existing adjacent limited commercial zoning district; and

WHEREAS, the subject property is located at 110 Mango Street, Fort Myers Beach, in Section 19, Township 46 South, Range 24 East, Lee County, Florida, said property being more particularly described as

LOT 2, BLOCK "D", SEAGRAPE SUBDIVISION, PLAT BOOK 4,
PAGE 17, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

WHEREAS, the Lee County Property Appraiser's Geographic Information System has indicated the subject property's current STRAP number is: 19-46-24-W3-0120D.0020; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on April 18, 2006, and,

WHEREAS, the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, 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:

That the LPA recommends that the Town Council APPROVE the Town-initiated rezoning of the subject property to Commercial Boulevard (CB).

FINDINGS AND CONCLUSIONS

Based upon the presentations by the staff and other interested parties at the hearing, and review of the application and the standards for approval of rezoning, the LPA makes the following findings and conclusions:

1. The requested rezoning complies with:
 - a. The Fort Myers Beach Comprehensive Plan;

10

- b. LDC Chapter 34; and
 - c. all other applicable Town ordinances.
2. The proposed use or mix of uses is appropriate at the subject location.
 3. Sufficient safeguards to the public interest are provided by applicable regulations.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Jane Plummer and seconded by LPA Member Bob Raymond, and upon being put to a vote, the result was as follows:

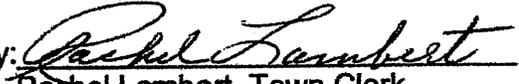
Anita Cereceda	absent
Jessica Titus	absent
Betty Simpson	yes
Bob Raymond	yes
Jodi Hester	yes
Bob Simon	yes
Jane Plummer	yes

DULY PASSED AND ADOPTED THIS 18th day of April, 2006.

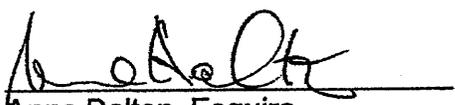
LPA of the Town of Fort Myers Beach

By: 
 Anita Cereceda, Chair

ATTEST:

By: 
 Rachel Lambert, Town Clerk

Approved as to Legal Sufficiency:


 Anne Dalton, Esquire
 Town Attorney

From: Jerry
Sent: Wednesday, February 15, 2006 4:28 PM
To: maryfitt@earthlink.com
Cc: adalton@daltonlegal.com; Bill Spikowski; Frank Shockey
Subject: 110 Mango Street

Ms. Czulewicz,

As we have discussed previously, the above referenced property was rezoned from C1 (Commercial) to RC (Residential Conservation) when the Town adopted the Interim Zoning Map in March of 2003. These were subsequently formalized by adoption of the Official Zoning Map in 2004. Despite the commercial use of the above referenced property during that time, no objections were raised to this change during the legally noticed period for comment and the change thus became final. Town staff and the Town's planning consultant, Bill Spikowski, recognize that this action made the commercial use of the property non-conforming, which was neither the purpose nor the intent of the Town. Further, if the issue had been raised during the public hearing process, the map surely would have been modified to reflect the property's commercial use.

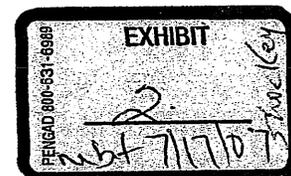
Since, however, the zoning map has been legally adopted by Town Council, the only process to address this situation is through a request and approval of a zoning change through the Town's public hearing process. As a courtesy to you, staff is processing a town-initiated zoning application on your behalf to change the zoning designation for Residential Conservation to Commercial Boulevard as provide in Section 34-201(a)(2) of the Land Development Code. This document is available through our website: www.fmbeach.org for your ready reference. While this process normally takes 6 months or longer, we will attempt to expedite this process--barring any unforeseen difficulties--to bring the request forward to the Local Planning Agency for review and a recommendation to Town Council in April, and to Town Council for a final decision in May.

While it is beyond the scope of my authority to tell you that the Town Council will approve the rezoning, I believe from a casual review of the facts at hand that the request is reasonable and approval is likely. I've assigned this project to Frank Shockey in my office and he will be coordinating with you as the application is prepared and moves forward. If you have a recent survey of the property, this would be most helpful to us in preparing the application and I would ask that you supply a copy to Mr. Shockey here at Town Hall.

I hope this email is helpful and look forward to the resolution of this situation in a manner that is acceptable to everyone involved.

Thank you,

Gerald Murphy, AICP
Community Development Director
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: (239) 765-0202
Facsimile: (239) 765-0909



1D + 1E

Gerald Murphy, AICP
Community Development Director
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: (239) 765-0202
Facsimile: (239) 765-0909

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 **Sent** [435]

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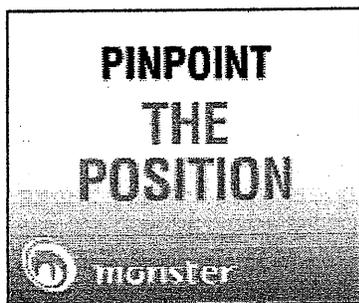
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From: Jerry <jerry@ci.fort-myers-beach.fl.us> [This is spam]

To: maryfitt@earthlink.com

Cc: adalton@daltonlegal.com, Bill Spikowski <bill@spikowski.com>, Frank St <frank@ci.fort-myers-beach.fl.us>

Subject: 110 Mango Street

Date: Feb 15, 2006 4:27 PM

Ms. Czulewicz,

As we have discussed previously, the above referenced property was rezoned (Commercial) to RC (Residential Conservation) when the Town adopted the Map in March of 2003. These were subsequently formalized by adoption of the Map in 2004. Despite the commercial use of the above referenced property no objections were raised to this change during the legally noticed period for change thus became final. Town staff and the Town's planning consultant, E recognize that this action made the commercial use of the property non-conf was neither the purpose nor the intent of the Town. Further, if the issue had during the public hearing process, the map surely would have been modified property's commercial use.

Since, however, the zoning map has been legally adopted by Town Council, to address this situation is through a request and approval of a zoning change Town's public hearing process. As a courtesy to you, staff is processing a zoning application on your behalf to change the zoning designation for Residential Conservation to Commercial Boulevard as provide in Section 34-201(a)(2) of Development Code. This document is available through our website: [www.f](#) your ready reference. While this process normally takes 6 months or longer, to expedite this process—barring any unforeseen difficulties—to bring the request the Local Planning Agency for review and a recommendation to Town Council Town Council for a final decision in May.

While it is beyond the scope of my authority to tell you that the Town Council rezoning, I believe from a casual review of the facts at hand that the request and approval is likely. I've assigned this project to Frank Shockey in my office coordinating with you as the application is prepared and moves forward. If your survey of the property, this would be most helpful to us in preparing the application would ask that you supply a copy to Mr. Shockey here at Town Hall.

I hope this email is helpful and look forward to the resolution of this situation is acceptable to everyone involved.

Thank you,

*Monica
FAX # 226 1546
1-615*

Sent Sunday To Monica + Mr. Murphy 2-21-06

Amendment

1E

Current Request

Narrative Statement

110 Mango St. has always been commercial zoning. FMB changed the zoning from C-1 to RM when creating FMB Comprehensive Plan. This was an egregious error by FMB.

Please review Amendment 1A, 1B, 1C, and 1D. Changing the zoning back to commercial has not been done.

My request is to put 110 Mango St. back to where it has always been.

Your humble land owner

Marylu Czulewicz

4281 Orange River Loop Rd

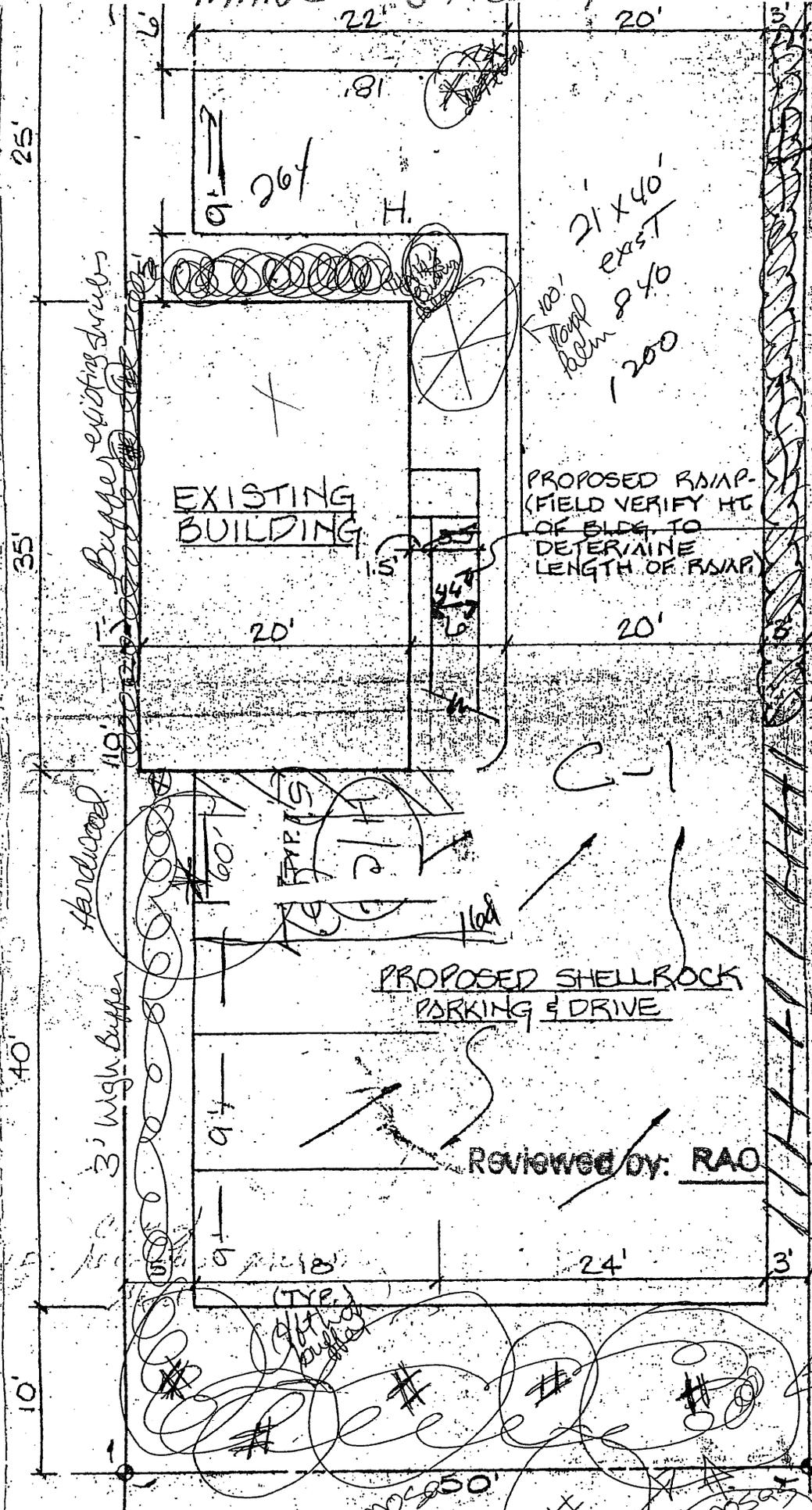
Fort Myers FL 33905

239 694 2149

maryfitt@embarqmail.com

110 MANGO ST.

MANGO STREET



W
↑

TO EXISTING CATCH BASIN

21x40' exist
100' Round Room 8'40' 1200'

PROPOSED RAMP
(FIELD VERIFY HT OF BLDG TO DETERMINE LENGTH OF RAMP)

1680
1200
264
8'40' exist
2304

STRAP #

R-M 2

C-1

PROPOSED SHELLROCK PARKING & DRIVE

Reviewed by: RAO

Division of Development
Limited Review Division
APPROVE
By [Signature] Date
For shell & improve
DO # LDO200
Review Type I
Zoning C-1
*Approval based on supplied by

Dept. of Develop
APPROV

For Type One for y

EI-a