

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 15-01
DCI2014-0005 – Olde Seaport CPD

WHEREAS, Rob Fowler, Sr., registered agent for Barrier Island Management, LLC, owner of property located at 441/445 & 645 Old San Carlos Boulevard, Fort Myers Beach Florida has requested a rezoning of 1.46± acres plus a portion of a submerged land lease to Commercial Planned Development (CPD) for outdoor seating, retail and a marine educational facility; and

WHEREAS, the subject property is located in the Pedestrian Commercial and Tidal Water Future Land Use Categories of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the applicant has indicated that the STRAPs for the subject property are 24-46-23-W3-00026.0030 and 24-46-23-W3-00026.0000 and is legally described in the Exhibit A; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on November 14, 2014; and

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

IT IS HEREBY RESOLVED BY THE 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 and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council APPROVE the applicant's request for a rezoning to allow outdoor seating, retail and a marine educational facility in the Olde Seaport CPD, subject to the following conditions:

Conditions

1. Development must be consistent with the master concept plan (MCP) titled "Olde Seaport of Fort Myers Beach" (Exhibit D) for case DCI2014-0005, last revised 9-30-14, except as modified by conditions or deviations discussed herein. In accordance with LDC Section 34216(b)(5), the MCP must be updated to reflect the deviations and conditions approved by Town Council. If changes to the MCP are subsequently pursued, appropriate approvals will be required.
2. The following limits apply to the project and uses:

Schedule of Uses

Parcel #1 (645 Old San Carlos):
Consumption on Premises

Parking Lot, shared permanent
Personal Services
Restaurant
Retail store, small

Parcel #2 (submerged land lease):
Boat slips
Cultural Facility/Exhibit area
Docks
Marina
Theater/Exhibit area

Parcel #3 (441/445 Old San Carlos):
Parking Lot, shared permanent

Parcel #4 (Butler Act property):
Open seating (in conjunction with Parcel #1 restaurant)
Consumption on Premises

Accessory uses on all parcels:
Bay access
Essential Services
Essential Services equipment

3. Nothing in this rezoning, including any of the attached conditions, may be construed as a variance from the provisions of LDC Chapter 6, Article IV Floodplain regulations.

4. Approval of this rezoning does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting, except as specifically modified herein.

5. The development must comply with LDC Sec. 14-76 requirements for sea turtle conservation applicable to new development.

6. No structure may be placed in or over, and no work may occur in, any navigable water of the United States unless properly authorized by the United States Army Corps of Engineers or its designee.

7. No stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be constructed or altered on the subject property, including submerged lands and riparian leased areas, without property permit or exemption, and unless in compliance with all conditions of such permit or exemption, from the South Florida Water Management District or Florida Department of Environmental Protection, as applicable. Stormwater management for the subject property must comply with all applicable requirements of the Land Development Code at the time of development order approval and must provide for the capture and retention of all stormwater on the site.

8. Approval of this rezoning does not address the compliance or noncompliance of proposed building elevations with the commercial design standards included in LDC Chapter 34, Article III, Division 7. Development of the subject property must meet the commercial design standards effective at the time of local development order approval.

9. Docks for use by occupants of principal uses on the subject property, docks for lease to non-occupants of principal uses on the subject property, and docks for use by water taxi or water shuttle are limited to the areas within the existing submerged land leases and submerged land described in Exhibit A. These docks are and must remain accessory to the principal use(s) of the subject property. The number of slips within the area of a submerged land lease may not exceed the number authorized by that lease without proper approval. Construction of additional or replacement docks must comply with all applicable requirements of the LDC and all applicable state and federal regulations at the time of permitting. No live-aboard units are allowed.

10. Hours of operation for the Full Belly Deli and hours of operation for Consumption on Premises in conjunction with outdoor seating on the dock shall be from 7:30AM-10:00PM. Live entertainment permitted only inside the building on the dock, limited to non-amplified, acoustical music.

11. No deliveries shall be permitted between 9:00PM and 7:00AM.

12. Commercial garbage collection must be provided six days a week (excluding Sundays).

13. Parking lot must be reconfigured to allow vehicular traffic flow without dead-ends.

RECOMMENDED FINDINGS AND CONCLUSIONS:

1. Whether there exists an error or ambiguity which must be corrected.

There is no ambiguity which must be corrected.

2. Whether there exist changed or changing conditions that make approval of the request appropriate.

The changed condition occurred in 2013 when Barrier Islands Management LLC purchased the property. The new owner does not intend to build the large parking garage, retail stores, nor hotel that was approved in 2009.

3. The impact of a proposed change on the intent of LDC Chapter 34.

The requested CPD would zone a non-upland property for commercial uses, and would provide for open air retail spaces along the Old San Carlos frontage of the parking lot on Parcel #1.

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.

The upland portion of the subject property is located in the Pedestrian Commercial Future Land Use category, the highest intensity mixed-use land use category on Fort Myers Beach, while the submerged lands are Tidal Water, and are intended to provide for water-dependent uses of land. The application is consistent with those intents.

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

The planned restaurant and retail uses are consistent with the Pedestrian Commercial FLUM category, and the water-related uses of docking, educational information about the Tall Ships and other environmental and wildlife exhibits, and space for Sheriff, Marine Patrol or harbor master are consistent with the Tidal Water FLUM category.

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

Urban services are available, and roads and sidewalks are in place along Old San Carlos Boulevard.

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

The applicant will rehabilitate or replace the existing rundown dock/pier to provide areas for enjoyment of the waterfront.

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.

The requested amendment would allow additional restaurants, retail and water-related activity on the property. The request will not cause damage, hazard, nuisance, or other detriment to persons or property, and is less intense than the existing development approved in Resolution 09-10.

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

The request will not place any burden on the transportation network or other facilities, as it is less intensive than the current development approvals in the Snug Harbor CPD.

10. For planned development rezonings, see § 34-216 for additional considerations (below):

1. The proposed mix of uses is appropriate at the subject location.

2. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations.

3. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

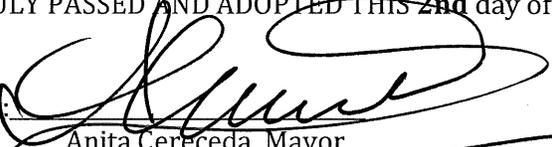
4. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development.

The request is appropriate at the subject location, does not negatively impact the public, and is consistent with the comprehensive plan.

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

Anita Cereceda, Mayor	AYE	Dan Andre, Vice Mayor	AYE
Rexann Hosafros	NAY	Alan Mandel	AYE
Summer Stockton	AYE		

DULY PASSED AND ADOPTED THIS ~~2nd~~ day of **February, 2015**.

By: 

Anita Cereceda, Mayor

Approved as to legal sufficiency:

By: 

Gray, Robinson P.A.
Town Attorney

ATTEST:

By: 

Michelle Mayher
Town Clerk

Exhibit A
Legal Description
DCI2014-0005
Olde Seaport CPD

North parcel (Parcel #1)

A parcel of land lying in Section 24, Township 46 South, Range 23 East, Estero Island, Lee County, Florida, said parcel being further bounded and described as follows:

Commencing at a concrete monument on the northwesterly right-of-way line of San Carlos Boulevard (30.00 feet from the centerline) being the same monument that is shown three feet southeast of the most southeasterly corner of Matanzas View Subdivision as recorded in Plat Book 9, Page 40, Public Records of Lee County, Florida; thence N. 25°00'00" E. on said right-of-way line for 125.00 feet to the **Point of Beginning**; thence N. 65°00'00" W. for 119.3 feet; thence N. 25°00'00" E. for 84.60 feet; thence N. 65°00'00" W. for 25.07 feet; thence N. 25°00'00" E. for 75.40 feet; thence N. 65°00'00" W. for 36.00 feet; thence S. 25°00'00" W. for 13.50 feet; thence N. 65°00'00" W. for 19.60 feet to the easterly line of a parcel described in Official Record Book 439, Page 55; thence N. 25°00'00" E. on said easterly line for 46.50 feet; thence S. 65°00'00" E. for 21.66 feet to the westerly line of a parcel described in Official Record Book 1637, Page 1411, for Marina Village at Snug Harbor, a Condominium; thence S. 25°00'00" W. on said westerly line for 6.00 feet; thence S. 65°00'00" E. on the southerly line of said parcel for 147.32 feet; thence N. 25°00'00" E. on the southeasterly line of said parcel for 70.52 feet; thence N. 65°00'00" W. on the northeasterly line of said parcel for 113.77 feet; thence N. 16°09'15" E. for 39.02 feet to the waters of Matanzas Pass at a concrete seawall; thence S. 70°33'16" E. along said waters at said seawall for 151.50 feet to the northwesterly right-of-way line of said San Carlos Boulevard; thence S. 25°00'00" W. on said right-of-way line for 310.74 feet to the **Point of Beginning**.

AND

South parcel (Parcel #3)

Beginning at a concrete monument in the northwesterly right-of-way line of San Carlos Boulevard, 30 feet from the center thereof and being the same monument that is shown three feet east of from the most easterly corner of Lot 1, Block A, Matanzas View Subdivision, as recorded in Plat Book 9, Page 40, Public Records of Lee County, Florida; thence N. 65° W. for 200 feet; thence N. 25° E. parallel to San Carlos Boulevard for 125 feet; thence S. 65° E. for 200 feet to the westerly line of San Carlos Boulevard; thence S. 25° W. for 125 feet to the **Point of Beginning**.

Butler Act parcel (Parcel #4)

A submerged tract or parcel of land lying in Matanzas Pass, situated in Section 24, Township 46 South, Range 23 East, Lee County, Florida, said tract or parcel being more particularly described as follows:

Commencing at the northwesterly corner of Block 1, Business Center Subdivision, as recorded in Plat Book 9, Page 10, Public Records of Lee County, Florida; thence N. 25°00'00" E. on the easterly right-of-way line of San Carlos Boulevard for 125.00 feet to the centerline of First Street (a right-of-way 63 feet wide); as shown on the plat of said subdivision; thence N. 65°00'00" W. for 33 feet to the centerline of said San Carlos Boulevard; thence continue N. 65°00'00" W. for 30 feet to the westerly right-of-way line of said San Carlos Boulevard; thence N. 25°00'00" E. for 112.75 feet to a drill hole marking the intersection of the waters edge of a concrete seawall with the westerly right-of-way line of said San Carlos Boulevard; thence N. 70°33'16" W. along the waters edge of said seawall for 139.81 feet to the **Point of Beginning**; thence N. 70°23'47" W. for 10.32 feet; thence N. 17°50'44" E. for 31.08 feet; thence N. 69°26'24" W. for 1.75 feet; thence N. 17°44'02" E. for 5.19 feet; thence N. 72°15'58" W. for 30.03 feet; thence N. 09°32'17" E. for 1.33 feet; thence N. 68°30'55" W. for 31.85 feet; thence N. 17°44'02" E. for 10.60 feet; thence N. 72°15'58" W. for 21.45 feet; thence N. 21°32'25" E. for 10.02 feet; thence S. 72°15'57" E. for 46.02 feet; thence S. 68°27'45" E. for 20.78 feet; thence S. 72°58'17" E. for 61.54 feet; thence S. 17°44'02" W. for 23.38 feet; thence N. 72°15'58" W. for 33.50 feet; thence S. 17°44'02" W. for 36.69 feet to the **Point of Beginning**.

Older Seaport Of Fort Myers Beach
 Parking Calculations - revised 9/30/2014

Building/Description	Unit	QTY.	Calculated Parking	Gross Total	Downtown Reduction	Required	Provided
Existing "Nervous Nellie's" - Food Service	SF	6500	8 per 1000 SF	52	0.5	26	26
Existing "Nervous Nellie's" - Bar Area	SF	1000	5 per 1000 SF	5	0.5	3	3
Charter Boat	per boat	7	3 per boat	21	0.5	11	11
"Full Belly Deli"/Outdoor Seating	SF	2729	8 per 1000 sf	22	0.5	11	11
"Lobster Pot"/Outdoor & Covered Seating	SF	3547	8 per 1000 sf	28	0.5	14	14
Retail ("Open Air Shops")	SF	4020	3 per 1000 sf	12	0.5	6	6
Public User/"History House"	SF	1,140	2 per 1000 sf	2	0.5	1	1
Boat Slips	per slip	22	0.5 per slip	11	0.5	6	6
TOTAL REQUIRED SPACES				77		77	77

The actual number of existing spaces is 129 so there is more than adequate parking