

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 97- 14

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA
APPROVING / ~~DENYING~~ THE REQUEST FOR REZONING.

WHEREAS, Pink Porpoise Inc., filed a request to rezone from Residential Multiple Family (RM-2) and Commercial (C-1) Districts to Commercial Planned Development (CPD) to permit a maximum of 24 hotel/motel units (Parcel A only), with buildings not to exceed 70 feet in height on Parcel A and 25 feet in height on Parcel B, on 0.91+/- total acres of land (Parcel A has 0.65+/- acre and Parcel B has 0.26 +/- acre); and,

WHEREAS, the subject property is located at 815 and 830 Estero Blvd., Fort Myers Beach, Florida and is described more particularly as:

LEGAL DESCRIPTION: In Section 24, Township 46 South, Range 23 East, Lee County, Florida:

Lot 1 of that certain SUBDIVISION known as ISLAND SHORES, Unit No. 1, according to the map or plat thereof on file and recorded in the Office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 9, Page 24, AND;

BEGINNING at the Southeast corner of Lot 9, Block B, of ISLAND SHORES. Unit No. 2, according to the map or plat thereof on file and recorded in the Office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 9, Page 25, same being the corner adjacent to Lot 8, and on Estero Boulevard;

THENCE run Northwesterly along the Southern boundary line of said Lot 9, a distance of 10 feet to the POINT OF BEGINNING of the lands herein described.;

THENCE run Northeasterly, parallel to the Easterly boundary line of said Lot 9, a distance of 160 feet more or less, to the Southerly boundary line of Lagoon Street, as dedicated in said plat of ISLAND SHORES Unit No. 2;

THENCE run Southwesterly along the Southerly boundary line of Lagoon Street to the Northern boundary line of Estero Boulevard, as dedicated in said plat of ISLAND SHORES Unit No. 2;

THENCE run Southeasterly along the Northern boundary line of Estero Boulevard a distance of 123.01 feet to the POINT OF BEGINNING of the lands herein described.

The above described property includes all of Lots 10, 11, 12 and the Northwesterly 15 feet of Lot 9, and portions of Lots 13 and 14, all in Block B of ISLAND SHORES Unit No. 2.

Subject to: easements, restrictions and reservations of record.

WHEREAS, the applicant has indicated the property's current STRAP numbers are: 24-46-23-04-00000.0010 and 24-46-23-05-0000B.0100; and,

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on March 18, 1997; and,

WHEREAS, the LPA gave full and complete consideration to the recommendations of the Staff, the documents in the file and the testimony of all interested persons.

WHEREAS, a public hearing was advertised and held on April 7, 1997, before the Fort Myers Beach Town Council who gave full and complete consideration to the recommendations of the staff and the Local Planning Agency, the documents on file with Lee County, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES / ~~DENIES~~ the request WITH/~~WITHOUT~~ conditions.

FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval / ~~denial~~ of the requested modification:

- a. There ~~exists~~ / does not exist an error or ambiguity which must be corrected.
- b. There exist / ~~do not exist~~ changed or changing conditions which make approval of the request appropriate.
- c. There is / ~~is not~~ an impact of a proposed change on the intent of the Land Use Code.
- d. The testimony of any applicant supports / ~~does not support~~ the change.
- e. The recommendation of staff supports / ~~does not support~~ the change.
- f. The testimony of the public supports / ~~does not support~~ the change.
- g. The request is / ~~is not~~ consistent with the goals, objectives, policies and intent of the Lee Plan.
- h. The request does / ~~does not~~ meet or exceed all performance and locational standards set forth for the proposed use.
- i. Urban services, as defined in the Lee Plan, will / ~~will not~~ be available and adequate to serve a proposed land use change, when proposing a change to a future urban area category.
- j. The request is / ~~is not~~ consistent with the densities, intensities and general uses set forth in the Lee Plan.
- k. The request will / ~~will not~~ protect, conserve or preserve environmentally critical areas and natural resources.
- l. The request will / ~~will not~~ be compatible with existing or planned uses and not cause damage, hazard, nuisance or other detriment to persons or property.
- m. The location of the request does not place / ~~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.
- n. The requested use will / ~~will not~~ be in compliance with all applicable general zoning provisions and supplemental regulations pertaining to the use, as set forth in the Land Use Code.
- o. The proposed change is / ~~is not~~ to rectify errors on the official zoning map.
- p. The proposed use or mix of uses is / ~~is not~~ appropriate at the subject location;
- q. Sufficient safeguards to the public interest are / ~~are not~~ provided by the recommended conditions to the concept plan or by other applicable regulations; and
- r. All recommended conditions are / ~~are not~~ reasonably related to the impacts on the public's interest created by or expected from the proposed development.

The applicant has / ~~has not~~ proved entitlement by demonstrating compliance with:

- a. The Lee Plan;
- b. The Land Use and Development Regulations; and
- c. Any other applicable town ordinances or codes.

That the Town Council approves / ~~does not approve~~ the Applicant's request for rezoning with the following conditions and deviations;

A. Conditions

1. The development and use of the subject property is to be in substantial compliance with the approved Master Concept Plan entitled "Estero Island Inn (Pink Porpoise Property)" (Job No. 493-0 1 -96, stamped received February 3, 1997) as prepared by Source, Inc., except as may be modified by the conditions herein.

2. Parcel A is limited to the development of 24 hotel/motel units and one caretaker residence. The average size in aggregate of these units will not exceed 550 square feet per unit. Parcel B has no floor area or intensity approved for development.

3. The following uses are permitted:

THE PRINCIPAL USE IS HOTEL/MOTEL EFFICIENCY WITH ALL OTHER USES AS ANCILLARY TO HOTEL/MOTEL EFFICIENCY USE

Parcel A

- Accessory Uses and Structures
- Administrative Offices
- Bed & Breakfast
- Caretaker's Residence
- Consumption on Premises (limited to in/^{guest}room bar only)
- Entrance Gate and Gatehouse
- Essential Services
- Fencer and Walls
- Food and Beverage Service, Limited
- Hotel/Motel (efficiency)
- Parking Lot: Accessory
- Recreational Facilities: Private
- Signs, in accordance with the Land Development Code
- Storage, indoor

Parcel B

- ~~Accessory Use and Structures~~
- ~~Administrative Offices~~
- ~~Entrance Gate and Gatehouse~~
- ~~Essential Services~~
- ~~Fences and Walls~~
- ~~Government Agency (including Town Hall)~~
- ~~Parking Lot: Accessory and Public~~
- ~~Parks, Groups I and II~~
- ~~Signs in accordance with Land Development Code~~

4. Development of the CPD will comply with the following Property Development Regulations:

Parcel A

- Minimum Lot Area and Dimensions: Area: 0.65 acre; Width: 100 feet; Depth: 360 feet
- Minimum Setbacks: Street: variable according to the functional classification of the street or road (Section 34-2191 et seq.); Side: 10.4 feet; Water Body: 50 feet.
- Maximum Lot Coverage: 40%
- Maximum Building Height: 70 feet.

Parcel B

Minimum Lot Area and Dimensions: Area: 0.26 acre; Width: existing (as depicted on the Master Concept Plan); Depth: existing (as depicted on the Master Concept Plan)

Minimum Setbacks: Street: variable according to the functional classification of the street or road (Section 34-2191 et seq.); Side: 0.9 feet (existing only); 10 feet (new construction).

Maximum Lot Coverage: 40%

Maximum Building Height: 25 feet

5. Prior to building permit approval and prior to site design approval, the developer must design Parcel "A" (as delineated on the Master Concept Plan) in such a way that sea turtles and their hatching will be protected from excessive artificial lighting and mechanical raking of the beaches. This design must at a minimum be in accordance with the standards and regulations as set forth in the Town Land Development Code (LDC) Chapter 14, Article I, Division 2. Wildlife and Habitat Protection. Sea Turtles.

6. All use of Parcel B must be discontinued and building removed prior to the approval of a certificate of occupancy for the hotel/motel use on Parcel A. Prior to any use of Parcel B, administrative approval will be processed as a minor administrative amendment in accordance with section 34-380, of the Land Use Code and may be granted by the Town Manager with the approval of the Town LPA and only upon a finding that public health, safety, and welfare will not be adversely affected.

7. This zoning approval does not address the mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions may be required at the time of local development order. This zoning approval must have a zero impact to the Town from FEMA.

8. Approval of this rezoning does not give the Developer the undeniable right to receive any local development order approval that exceeds the Year 2010 overlay use allocation, if such allocation exists, for the applicable district.

9. This development is to comply with Edison Beach House drawing as presented to the council and appropriate overlay guidelines as voluntarily agreed to by the applicant and with all of the requirements of the Town Codes of Fort Myers Beach at the time of local development order approval, except as may be granted by deviation as part of this planned development. The Town Manager is to approve the final design.

B. Deviations as to Parcel A

It is the finding that each item of the following enhances the achievement of the objectives of the planned development; and the general intent of the Land Use Code to protect the public health, safety and welfare will be preserved and promoted:

1. Deviation 1, requests relief from LDC Section 10414 (a) which requires a fifteen (15) foot wide vegetated buffer with an eight foot (8") high fence or wall for commercial projects next to residential developments to eliminate this requirement is hereby approved with condition that the number of plantings required in Section 10-414(a) be provided and that the buffer is a 10.4 foot vegetative buffer in accordance with the LDC requirements.

2. Deviation 2, requests relief from LDC Section 34-1802(5) which provides for a maximum of 550 square feet per unit for each efficiency hotel/motel unit to allow a maximum of 730 square feet with an average floor area not to exceed 550 square feet per unit is hereby approved with condition that the average size of all units in aggregate within this planned development do not exceed 550 square feet per unit.

3. Deviation 3, requests relief from LDC Sections 34-2174 and 34-2175 which require setbacks to be increased by one-half foot for every foot that the building height exceeds 35 feet in height, to allow the building heights and setbacks as proposed in the Property Development

Regulations (10.4 feet side setback in Parcel A) is hereby approved with the condition that the area surrounding the building remains clear to allow emergency personnel and equipment space for working access. Vegetative plantings (see deviation 1) may be clustered to avoid being within this clear area around the building.

4. Deviation 4, is approved to allow under Section 10-285 for the driveway access points to be designated as shown in the Master Concept Plan as a condition of approval of the foregoing deviations, the applicant shall receive administrative approval of a more specific development plan for each affected development area or parcel.

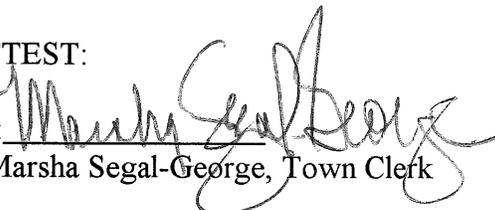
Applications for administrative approval will be processed as administrative amendments in accordance with section 34-380 of the Land Use Code and may be granted by the Town Manager only upon a finding that public health, safety, and welfare will not be adversely affected.

APPLICATION DULY APPROVED / ~~DENIED~~ this 7th Day of April, 1997.

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

Anita T. Cereceda	<u>aye</u>
Ted FitzSimons	<u>aye</u>
William (Rusty) Isler	<u>no</u>
Garr Reynolds	<u>no</u>
Ray Murphy	<u>aye</u>

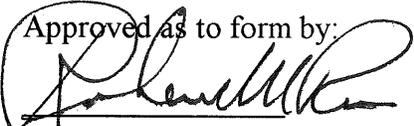
ATTEST:

By: 
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
Anita T. Cereceda, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney