

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 98- 7

WHEREAS, The Fort Myers Beach Movie Theater and Harvey B. Hoffman (applicant) have appealed an Administrative interpretation made by the Development Services Division, Department of Community Development regarding the denial of a Development Order for a movie theater.

WHEREAS, the subject property is located at 6345 & 6425 Estero Blvd., Fort Myers Beach; Florida:

WHEREAS, the applicant has indicated the property's current STRAP numbers are: 34-46-24-W4-00045.0000 and 34-46-24-W4-00046.0000; and

WHEREAS, a public hearing has legally advertised and held before the Local Planning Agency (LPA) on March 10, and, the LPA gave full and complete consideration to the recommendations of the Staff, the documents in the file, the exhibits numbered 1 through 10, petitions received, and the testimony of all interested persons.

WHEREAS a hearing was held and the council considered the following criteria, recommendations and testimony of the staff, testimony from the applicant and from the public.

NOW THEREFORE BE IT RESOLVED THAT:

IT IS THE FINDING of this council that this appeal is of a nature properly brought to the Council for decision and considering the intent of the ordinance being interpreted and the effect the ruling will have when applied generally, the Council in reviewing the Development Services Division Department of Community Development interpretation regarding the denial of a Development Order for a movie theater finds:

As to **Sec. 34-2015. Location and design generally.**

The location and design of all parking lots must embody the following provisions:

(1) Location. Except for parking lots specifically zoned CP or as provided for in section 34-2018, all required parking spaces must be provided on the same premises and within the same or similar type zoning district as the use they serve.

THE INTERPRETATION of the division regarding the denial of a Development Order for a movie theater is affirmed/ ~~modified/ reversed/~~

**As to Sec. 10-7. General requirements.**

(b) Development shall occur in the county in compliance with the comprehensive plan and all applicable county ordinances. No development order or permit shall be issued if the development order or permit results in a further reduction in the levels of service for the affected roads below the levels of service provided for in the comprehensive plan, unless appropriate mitigation is provided or the applicant otherwise complies with chapter 2, article II, relating to concurrency management. However, notwithstanding this limitation, in no event shall a developer be required by the operation of this chapter to mitigate impacts caused by earlier development. For purposes of applying this subsection, in the case of developments expected to add less than 300 vehicle trips during the peak hour to the adjacent road system, the developer shall be presumed conclusively to have mitigated the off-site impact on roads caused by the development if the developer pays whatever roads impact fees are required by applicable county roads impact fee ordinances. In all cases, the developer shall be responsible for the full cost of site-related improvements.

THE INTERPRETATION of the division regarding the denial of a Development Order for a movie theater is affirmed/ ~~modified~~/ ~~reversed~~.

**As to Sec. 10-251. Applicability.**

All lands proposed for development shall be suitable for the various purposes proposed in the request for approval. In addition to the standards contained in this chapter, the developer shall demonstrate to the satisfaction of the development review director that the proposed development is specifically adapted and designed for the uses anticipated, including lot configuration, access and internal circulation, and that the development will be consistent with the criteria prescribed in the standards set forth in goals 12, 13 and 14 of the comprehensive plan. The developer shall also demonstrate that the proposed development complies with all other provisions of the comprehensive plan, chapter 34, this chapter, and other laws, ordinances and regulations, as applicable.

THE INTERPRETATION of the division regarding the denial of a Development Order for a movie theater is affirmed/ ~~modified~~/ ~~reversed~~.

**As to Sec. 34-491. The Lee Plan.**

(a) The Lee Plan is the document adopted by the Lee County Board of County Commissioners in accordance with F.S. Ch. 163 to guide and regulate all land development activities within Lee County. All development orders ( including rezoning), as defined in F.S. § 163.3164(7) shall be consistent with the goals, objectives, polices and standards in the Lee Plan. Where there are apparent conflicts between the Lee Plan and any regulations in the chapter, the Lee Plan will prevail.

(b) The Lee Plan contains a future land use map which divides the county into future urban, non urban, and environmentally sensitive areas. All development must be

consistent with the future land use map, the definitions of the land use categories in the text of the plan, and the remainder of the text of the Lee Plan.

(c) This chapter includes a list of zoning districts. Some of these zoning districts permit uses, densities, or intensities that are not permitted in particular future land use map categories. Property may not be rezoned to a district that is inconsistent with the applicable future land use map category or with the remainder of the text of the Lee Plan.

THE INTERPRETATION of the division regarding the denial of a Development Order for a movie theater is affirmed/ ~~modified~~/ ~~reversed~~.

As to **POLICY 18.2.1:**

Within the Urban Community land use category the following restrictions to commercial development shall apply:

Commercial development shall not expand or intrude into residential neighborhoods.

All commercial rezoning shall be required to rezone to the Commercial Planned Development zoning category.

Residential density shall be limited to the existing base densities provided by the Lee Plan Future Land Use element, except as allowed by footnote 8 of Table 1, Summary of Residential Densities.

During 1992, the Community Redevelopment Agency, utilizing the C.R.A. Redevelopment Code, shall develop a zoning plan or plans for the district;

- a. To address non-conforming and incompatible land uses.
- b. To eliminate or correct outdated zoning classifications.
- c. To address traffic circulation and parking problems.
- d. To achieve economic revitalization through elimination of blight.
- e. To protect adjacent residential neighborhoods
- f. To provide for affordable housing.

Until that zoning plan is adopted, property which has existing commercial zoning can be developed or redeveloped consistent with that zoning and the Lee Plan.

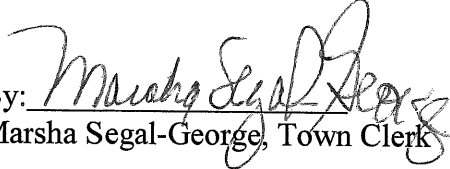
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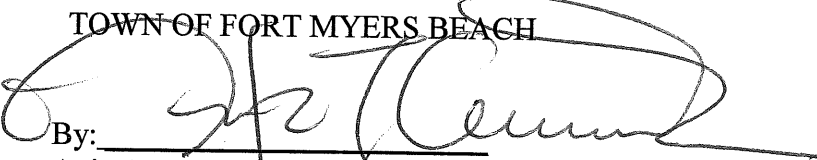
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

Anita T. Cereceda	<u>no</u>
Ted FitzSimons	<u>aye</u>
John Mulholland	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>no</u>


DULY ADOPTED this 6th day of April, 1998.

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