

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 01-26

WHEREAS, Boykin Hotel Properties, L.P. in reference to Captiva Useppa Property has filed a request to rezone from RM-2 to Mixed Planned Development (MPD) to permit a maximum of 43 hotel/time share units, accessory uses and limited consumption on premises, not to exceed 72 feet in height above base flood elevation on 1.84 total acres of land; and,

WHEREAS, this request was amended to request a maximum of 43 hotel units, accessory uses and 12,000, square feet of commercial uses (transferred from the bayside) with consumption on the premises, not to exceed 83 feet in height above base flood elevation; and,

WHEREAS, the subject property is located in Section 24, Township 46 South, Range 23 East, Lee County, Florida, at 275 Estero Blvd., Fort Myers Beach, Florida, and the applicant has indicated the property's current STRAP number is: 24-46-23-W1-00700.0350; and,

WHEREAS, a public hearing was held before the Local Planning Agency who found:

1. The Applicant has proven entitlement to the rezoning by demonstrating compliance with the Town's Comprehensive Plan, the Land Development Code and other applicable codes and regulations.
2. The requested zoning does meet or exceed all performance and locational standards set forth for the potential uses allowed by the request and is consistent with the densities, intensities and general uses set forth in the comprehensive Plane. Further the deviations sought do enhance the objectives of the planned development.

WHEREAS a hearing was held and the council considered the following criteria, whenever applicable:

- a. Whether there exist changed or changing conditions that make approval of the request appropriate.
- b. The testimony of any applicant.
- c. The recommendation of staff.
- d. The testimony of the public.
- e. Whether the request is consistent with the goals, objectives, policies and intent of the Town Plan.
- f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- g. Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.
- h. Whether the request will be compatible with existing or planned uses.
- i. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.

- j. Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

NOW THEREFORE BE IT RESOLVED THAT THE APPLICATION IS APPROVED SUBJECT TO THE FOLLOWING conditions and requirements that are necessary for the protection of the health, safety, comfort, convenience and welfare of the general public and that are reasonably related to the request:

Conditions of Approval

1. The development of this project must be consistent with the one page Master Concept Plan entitled "Pink Shell MPD", last revised 7/30/01 and stamped "Received Permit Counter August 9, 2001", except as modified by the conditions below.
  2. a. Schedule of Uses
    - Accessory Uses and Structures
      - Conference/Meeting Rooms
      - Guest Services
      - Administrative Office
      - Consumption on Premises (see Condition 10)
      - Essential Services
      - Food and Beverage Service, limited
      - Hotel
      - Parking – Accessory
      - Resort
      - Restaurant Groups II & III
        - Deli
      - Signs in accordance with LDC Chapter 30
      - Specialty Retail Group I
    - b. Maximum Uses
      - 43 Hotel Units
  - Accessory Commercial Hotel Uses
    - 1,300 SF Administrative/Offices
    - 6,000 SF Restaurant/Deli/Retail
    - 2,500 SF Guest Services
    - 2,200 Conference/Meeting/Limited Food & Beverage Service
- In no case will the total commercial use exceed **12,000 SF**
3. A maximum of 43 hotel units are approved, to be constructed within 7 stories over one ground floor of parking only. The first floor is dedicated to the approved commercial uses. Floors 2-7 will accommodate the hotel units only. The total

square footage of the 43 hotel units will not exceed 28,219 square feet of air conditioned living area.

4. This development must comply with all requirements of the Town of Fort Myers Beach LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.
5. Prior to the issuance of a local development order the Pink Shell CPD located on the bayside parcel, amended in Fort Myers Beach Resolution 00-07/07A, must be amended to remove 12,000 SF of commercial uses. The only commercial uses which will remain in the approved schedule are the accessory parking and uses related to the operation of the boat slips and dockage. The building housing the existing commercial uses shall be removed promptly following occupancy. The Master Concept Plan for the bayside CPD must be amended to be consistent with the development plan adopted in Condition #1.
6. Prior to issuance of a local development order the applicant will record an approved document in the Lee County Official Records which grants a 6 foot wide beach access easement to the public, and preserves a 36' foot wide view corridor as depicted on the approved Master Concept Plan. Parking is allowed within the 36' as depicted on the Master Concept Plan, but no structures or facilities may be constructed within the 36' corridor (the spa as shown on the MCP received August 9, 2001 would not be permitted at that location). The document will contain language which ensures the view corridor will be maintained in perpetuity.
7. The corridor will be landscaped with low lying vegetation along the pathway and trees to help define the corridor, but do not obscure the pedestrian view along the pathway. A sign will be placed along Estero Boulevard which identifies the path as "Public Beach Access".
8. Landscaping along Estero Boulevard will mimic the design of the landscaped area required for the Pink Shell PUD by meandering into the right-of-way. The buffer will contain no less than 5 trees and 14 shrubs per 100 linear feet. Shrubs located in the landscaped area, between the parking lot and Estero Boulevard will be maintained at a height of no less than 36 inches. Plant materials used will be indigenous native vegetation.
9. The accessory commercial uses, restaurant, deli, and retail services, are to be clearly provided for the guests and staff of the Pink Shell Resort only. Exterior signage advertising these services to the general public is prohibited.
10. Consumption on Premises is limited to in-room self service wet bars, the outside pool deck area, the accessory hotel restaurant and limited food and beverage service. The consumption on premises is for the guests of the Pink Shell Resort and is permitted in

conjunction with accessory hotel uses only. Consumption on premises in conjunction with outdoor seating is allowed between the hours of 11:00 a.m. and 10:00 p.m. Live music entertainment is prohibited in any outdoor area including the pool and outdoor seating, but recorded music is allowed between the hours of 11:00 a.m. and 10:00 p.m.

11. A dune restoration plan must be approved by the Lee County Division of Planning/Environmental Sciences staff prior to local development order approval and will be subject to the following conditions:
  - a. Location of the restoration area will be generally as shown on the MCP.
  - b. Plant species will consist of a mix of sea oats, beach panic grass, railroad vine and beach sunflower in lines planted at 1.5 feet on center
  - c. To allow the plants to become established, the vegetation will be temporarily fenced with ropes and bollards or a similar fencing. Orange construction fence is prohibited.
  - d. No more than one winding pathway will be permitted to provide beach access. The pathway will be delineated with ropes or bollards.
  - e. The beach vegetation project will be coordinated with and integrated with the Town's beach restoration project.
  - f. The dune plan must identify the general location of a storage area behind the dune line for beach furniture and rental equipment (personal watercraft, chairs etc...) as required by the Town's Beach and Dune Ordinance 00-10.

#### Deviations

1. Deviation from LDC Section 34-940 which requires Mixed Use Planned Developments to have at least 300 or more dwelling units and either 100,000 square feet of commercial floor area or be located on a parcel of 10 or more acres, to allow the requested intensities.
2. Deviation from LDC Section 34-935e(4) which requires buildings be separated a distance of one-half the sum of the building heights, to allow separation of 36 feet instead of 82 feet, and to allow a separation 44 feet instead of 59 feet.
3. Deviation from LDC Section 34-802 which allows a maximum hotel unit size of 550 square feet to allow units with a maximum of 750 square feet and 1300 square feet. At least 14 of the 43 units are limited to a maximum of 750 SF. In no case will the total area of the 43 units exceed 28,219 SF.

4. Deviation from LDC Section 34-2175 which states buildings may not exceed 25 feet in height above base flood elevation to allow a building 83 feet in height above base flood elevation. No more than 7 floors over one ground floor of parking only will be developed.
5. Deviation from Land Development Code 34-2017(a) which requires parking lot aisles and spaces have a paved, dust free, all weather surface, to allow an unpaved surface (no parking stripes or bumpers) on the parking lots with the following conditions:
  1. The alternative parking surface must be a stabilized surface of clean (washed) angular gravel or other similar porous material over a well-drained base. The surface will be continually maintained in a dust free manner. Stabilization may be accomplished by turf blocks or proprietary cellular or modular porous paving systems installed in accordance with manufacturer's specifications.
  2. The disabled parking spaces must be provided with a smooth surface without gaps or holes which would create a danger to the user.
  3. Parking stripes will not be required on the alternative surface, however, parking bumpers must be used to identify the required number of parking spaces.

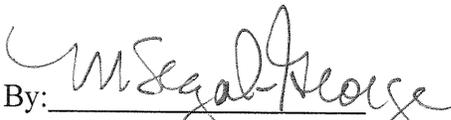
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

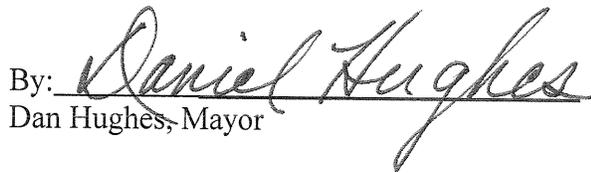
Dan Hughes	aye
Garr Reynolds	aye
Ray Murphy	aye
Terry Cain	aye
Howard Rynearson	nay

APPLICATION DULY GRANTED/DENIED this 27th day of August, 2001.

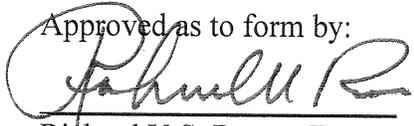
ATTEST:

TOWN OF FORT MYERS BEACH

By:   
Marsha Segal-George, Town Clerk

By:   
Dan Hughes, Mayor

Approved as to form by:

  
Richard V.S. Roosa, Town Attorney