

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 05-42

WHEREAS, Sea Breeze Properties of SW Florida, LLC (hereafter "Appellant") is owner of one (1) platted lot, with a street address of 71 Mango Street, Fort Myers Beach, Lee County, Florida and legally described as

LOT 3, BLOCK "A", SEAGRAPE SUBDIVISION, PLAT BOOK 4, PAGE
17, OFFICIAL RECORDS OF LEE COUNTY.

WHEREAS, Appellant requested an administrative determination from the Town of Fort Myers Beach as to whether a proposed condominium development on the subject property was in compliance with applicable zoning requirements as determined by the Town of Fort Myers Beach, Florida, in conformity to the requirements of Section 718.616, Florida Statutes; and

WHEREAS, in response to Appellant's request, the Town Community Development Director found that the subject property is located in the Mixed Residential Future Land Use Map (FLUM) category, is currently zoned RM (Residential multifamily), and contains two (2) buildings on one non-conforming platted lot, with one building containing four (4) accessory apartments and the other building containing one (1) residential dwelling unit with an accessory apartment; and

WHEREAS, based upon this finding, the Town Community Development Director determined that the Land Development Code ("LDC") did not allow conversion of the subject property to the condominium development that Appellant had proposed; and

WHEREAS, Appellant thereafter filed an appeal of this administrative determination, styled as Case Number ADM 2005-00004 for a public hearing before Town Council of the Town of Fort Myers Beach, Lee County, Florida; and

WHEREAS, the public hearing was properly noticed and duly held on June 13, 2005, before the Town Council; and

WHEREAS, during the course of this public hearing the Appellant and Town Council mutually agreed to resolve all issues pending in Case Number ADM 2005-00004, as set forth below.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. Finding of Fact and Conclusions. The Town Council makes the following Findings of Fact and Conclusions:

1. The subject property must never be subdivided (commonly referenced as a "lot split");
2. The subject property contains a total of four (4) legal units, comprised of two (2) buildings, each with one (1) two-family dwelling unit;

3. The two (2) other existing units—one (1) on the ground floor of each of the two (2) buildings—may be utilized for rental or other residential purposes by Appellant, their successors, and assigns for no longer than 24 months from the date of this Resolution, subject to the earliest of the following events: pre-disaster buildback, post-disaster buildback, other redevelopment of the property, or the expiration of the twenty-four (24) month period, whereupon said ground floor units must be modified so that they can not be used as habitable space.
4. Appellant, their successors, and assigns may rebuild the additional interior square footage within the two (2) existing illegal units referenced in paragraph 3, above, through the pre-disaster or post-disaster buildback procedures provided in the LDC, with the resulting total maximum of 3000 square feet of habitable interior space on the entire property, comprised of 1500 square feet total maximum interior space in each of two buildings.
5. The conditions set forth above must be memorialized in the Declaration of Condominium upon conversion of the subject property to condominiums, to be reviewed by, and acceptable as to form by, the Town Director of Community Development. A copy of this Resolution must be referenced as an Exhibit to the Condominium documents and recorded in the Official Records as part of the Condominium documents. Any amendments to the Condominium documents necessary to effectuate the provisions of this Resolution must be submitted to the Town Community Development Director for review and determination of compliance with the provisions of this decision prior to any memorialization. Once the necessary amendments are confirmed by staff, the amendments must be recorded by applicant in the Official Records of Lee County, Florida. Any subsequent amendments to the Condominium documents must be consistent with these conditions and provided to the Director of Community Development. A non-amendable provision to this effect must be memorialized in the Condominium documents in advance of recording in the Official Records.
6. The effect the ruling will have when applied generally to the LDC is uniquely distinguishable because the LDC has been amended during the pendency of this appeal to eliminate any ambiguity as to further parcelization of the subject property or other similarly situated properties in the Town. The aforesaid LDC amendment does not apply to Case # ADM 2005-00004, as its effective date was subsequent to the date of this hearing.

SECTION 2. Determination by the Town Council. The Town Council finds that, as modified by the conditions above, the proposed condominium development on the subject property is in compliance with applicable zoning requirements as determined by the Town of Fort Myers Beach, Florida, in conformity with the requirements set forth in Section 718.616(4), Florida Statutes, to wit:

- A. The Fort Myers Beach Comprehensive Plan; and
- B. Chapter 34, Zoning Districts, Design Standards, and Nonconformities; and
- C. Any other applicable town ordinances or codes.

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

Ken Katcko	Aye
Don Massucco	Aye
Garr Reynolds	No
Howard Rynearson	Aye
W. H. "Bill" Van Duzer	Aye

APPEAL DULY GRANTED this 13th day of June, 2005.

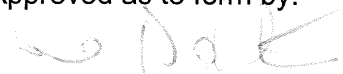
ATTEST:

By: 
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
W. H. "Bill" Van Duzer, Mayor

Approved as to form by:


Anne Dalton, Town Attorney