

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 07-25

FMBADM2007-00002 CHERYL MARTIN

WHEREAS, Bobbie Myers is the owner of the subject property which is improved with four (4) lawfully nonconforming dwelling units, with a street address of 5577 Estero Boulevard, Fort Myers Beach, Lee County, Florida and with a legal description set forth in Exhibit "A", which is hereby incorporated by reference; and

WHEREAS, Cheryl Martin (hereafter "Appellant") is the authorized agent for Bobbi Myers, owner, in this administrative appeal; and

WHEREAS, Appellant sought confirmation that the subject property complies with applicable Town zoning and development regulations by requesting a zoning verification letter ("ZVL") from Lee County, acting as agent for the Town of Fort Myers Beach; and

WHEREAS, .in response to Appellant's request, Lee County issued ZVL 2006-00167 which noted that Town Land Development Code (LDC) section 34-636(b) requires a development order and provides standards to be met in order for the parcelization or subdivision of the existing improvements to be permitted; and

WHEREAS, Appellant subsequently requested the Town provide an administrative interpretation of LDC section 34-636, specifically asking for a definition of "parcelization" and an example of parcelization; and

WHEREAS, in response to Appellant's request, the Town issued an administrative interpretation, FMBADD2006-00003, on January 26, 2007; and

WHEREAS, Appellant thereafter filed an appeal of this administrative determination pursuant to LDC Section 34-86, styled as Case Number FMBADM2007-00002 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 July 16, 2007, before the Town Council; and

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

SECTION 1. Jurisdictional Findings and Standard of Review. The Town Council makes the following Findings of Jurisdiction and has applied the following Standard of Review:

1. The Town Council has jurisdiction over this matter pursuant to LDC Section 34-86.
2. This administrative appeal is properly heard by the Town Council pursuant to LDC Section 34-86, in that FMBADD2007-00002 concerns an administrative action of the Community Development Department pursuant to LDC Section 34-265; there exists no order, resolution or

directive of the town council directing the Community Development Director to perform the above act under LDC Section 34-86((a)(1); there is no different appellate procedure for this action under LDC Section 34-86(a)(2); the appeal was timely filed pursuant to LDC Section 34-86(b); and there does not appear to be a circumvention of an established or required procedure by Appellant in bringing this appeal, pursuant to LDC Section 34-86(c).

3. There is no requirement of a hearing of this matter before the local planning agency, pursuant to LDC Section 34-86(d).
4. In reaching the findings of fact and conclusions set forth in Section 2 below, the Town Council makes the following findings pursuant to the criteria set forth in LDC Section 34-86 (2)(a) 1-3, as follows:
 - a. This appeal is of a nature properly brought for decision before this body;
 - b. The Town Council has properly considered the intent of the ordinance which is being interpreted in reaching its decisions herein; and
 - c. The Town Council has considered the effect the ruling will have when applied generally to the LDC.
5. In reaching its decision, the Town Council has considered staff recommendations, the testimony of the appellant, testimony of the general public, the documents in the file and any other issues which are pertinent and reasonable as required by LDC Section 34-86 (2)(a) and (2)(b).

SECTION 2. Finding of Fact and Conclusions. The Town Council makes the following Findings of Fact and reaches the following Conclusions:

1. The subject property as improved contains two (2) roofed enclosed areas attached by a roofed area that is open to the front and rear. The property contains four (4) dwelling units that appear to be lawfully nonconforming with regard to the density permitted by the Fort Myers Beach Comprehensive Plan.
2. The Town Council hereby **overrules** the administrative interpretation of Town Community Development Department and **grants** the requested appeal as follows: the Town Council finds that the proposed conversion to condominiums to be in compliance with LDC Section 34-636(b) inasmuch as the subject property is:
 - a) Grandfathered in as to density, in compliance with the requirements of LDC Section 34-636 (b)(1);
 - b) Grandfathered in as to floodplain requirements, in compliance with the requirements of LDC Section 34-636 (b)(2);
 - c) In compliance with the coastal construction requirements as set forth in LDC Section 34-636(b)(3), in that the structure(s) on the

subject property are landward of the 1978 coastal construction control line;

- d) In compliance with the requirement that individual dwelling units be separated by walls with not less than one-hour fire resistance, as set forth in LDC Section 34-636(b)(4); and
- e) In compliance with all other requirements of the Town Land Development Code, including but not limited to the requirements of Table 34-2 therein, as set forth in LDC Section 34-636(b)(5).

SECTION 3. Direction by the Town Council. The Town Council directs the Town Community Development Department to issue a zoning verification letter which is consistent with the directives of Town Council set forth in this Resolution.

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon a Motion by Councilmember Meador and Second by Councilmember Shenko. Upon being put to a vote, the result was as follows:

Dennis Boback, Mayor	<u>aye</u>
Larry Kiker, Vice Mayor	<u>aye</u>
Herb Acken	<u>aye</u>
Charles Meador, Jr.	<u>aye</u>
William Shenko, Jr.	<u>aye</u>

DULY PASSED AND ENACTED this 16th day of July, 2007.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
Michelle D. Mayher, Town Clerk

By: 
Dennis C. Boback, Mayor

Approved as to form by:



Anne Dalton, Town Attorney

Exhibit A

FMBADM2007-00002

Lots 23 and 24, Block 4, Gulf Heights Subdivision as recorded in Plat Book 6, Page 39,
Public Records of Lee County, Florida.