

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 08-17

FMBADM2008-00001 111 GULFVIEW AVENUE: GONCHER

WHEREAS, Marianne Goncher is the owner of the subject property which is improved with one (1) building consisting of two (2) dwelling units on a single parcel of property with a street address of 111 Gulfview Avenue, Lee County, Florida and with a legal description set forth in Exhibit "A", which is hereby incorporated by reference; and

WHEREAS, Michael Roeder (hereafter "Appellant") is the authorized agent for Marianne Goncher, owner of the subject property, in this administrative appeal; and

WHEREAS, Appellant sought an interpretation of the Land Development Code of the Town of Fort Myers Beach (LDC) Sections 34-267 and 34-3238 that the owner of the subject property is entitled to develop the existing building on the subject property pursuant to Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan; and

WHEREAS, in response to Appellant's request, the Town issued FMBADD 2007-0008 on January 25, 2008, which stated that redevelopment of the subject property may proceed under the provisions of LDC Section 34-3238; that the rules provided in LDC 34-3238(2) apply because the damage exceeds 50% of the market value of the building prior to the damage occurring and because the cost to repair the building would also exceed 50% of the market value of the building prior to the damage occurring, thereby constituting substantial damages under Chapter 6 of the LDC; and that only one (1) building not exceeding two (2) dwelling units may be reconstructed on the subject property absent a minimum use determination from the LPA attorney or the LPA for each of the nonconforming platted lots; alternatively, the property owner could pursue approvals for redevelopment under the RPD (residential planned development) provisions of the LDC; and

WHEREAS, Appellant thereafter filed an appeal of this administrative determination (ADD2007-0008) pursuant to LDC Section 34-86, styled as Case Number FMBADM2008-00001 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 March 10, 2008, before the Town Council, at which time the Town Council heard the presentations of Appellant, presentations of Town staff, testimony from the public, and considered the documents in the file.

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 FMBADD2008-00001 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 post-disaster build-back provisions in LDC Section 34-3238 do not support the conclusion that the applicant requests that the Town Council reach and rather that LDC Section 34-3238 does not support replacement of one (1) building with two (2) units on one (1) lot with two (2) single units on two (2) lots.
2. The Town Council hereby **upholds** the administrative interpretation of Town Community Development Department and **denies** the requested appeal.

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      aye


Larry Kiker, Vice Mayor     aye  
Herb Acken                     aye  
Charles Meador, Jr.         aye  
William Shenko, Jr.         aye

DULY PASSED AND ENACTED this 10<sup>th</sup> day of March, 2008.

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**  
**FMBADM2008-0001**

Lots 29 and 30, Block C, HYDE PARK SUBDIVISION, as recorded in Plat Book 7, Page 20, Public Records of Lee County, Florida