

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2008-22

A RESOLUTION OF THE LOCAL PLANNING AGENCY OF FORT MYERS BEACH, FLORIDA:

WHEREAS, First Central Investment Corporation, through its registered agent Lawrence A. Yax ("Applicant"), has requested to rezone 0.51 acres from Commercial Planned Development (CPD) to a new Commercial Planned Development (CPD) to alter the boundaries of the current Edison Beach House CPD zoning district, to allow further development of the subject property, and to allow deviations for additional height and intensity as depicted on its new Master Concept Plan.

WHEREAS, the subject property is located at 830 Estero Boulevard, Fort Myers Beach, Lee County, Florida; and

WHEREAS, the applicant's original zoning to CPD was approved by Town Resolution 97-14, and subsequently amended by Town Resolution 01-14; and

WHEREAS, the Applicant has indicated the property's current STRAP number is: 24-46-23-W3-00400.0010, with the legal description attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on June 3, 2008; and

WHEREAS, the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, and the testimony of all interested persons.

NOW, THEREFORE BE IT RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

The LPA recommends that the Town Council **APPROVE** the Applicant's request to rezone its CPD to a new CPD subject to the five (5) conditions and no deviations set forth with specificity below.

A. CONDITIONS

1. Development must be consistent with the one-page Master Concept Plan stamped "Received February 22, 2008" for case FMBDCI2007-0002, attached as Exhibit "B", except as modified by conditions below. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

a. Schedule of Uses

Residential:

Dwelling Unit, Caretaker (one unit, existing only)

- Residential Accessory Uses
 - Recreation facilities, private on-site
- Lodging:
 - Hotel/Motel (24 units, existing only)
- Office:
 - Administrative Office (accessory)
 - Home Occupation (no outside help)
- Civic:
 - Beach access
 - Essential services
 - Essential service equipment

b. Site Development Regulations

- Minimum Lot Width: **100± feet**
- Minimum Lot Depth: **324± feet**
- Minimum Lot Area: **0.51± acres** (not including beach)
- Maximum Floor Area Ratio: **Existing only** (approximately 0.75)
- Maximum Building Height: **35.7 feet** above base flood elevation as defined by LDC Section 34-631 (existing)
5 stories (existing)

- Setbacks:
 - Street: **100± feet**
 - Side: **9.7 feet** (existing)
 - Gulf of Mexico: **50 feet**

3. That portion of the subject property located seaward of the Coastal Construction Setback Line recorded in Plat Book 31 of the Public Records of Lee County, Florida, is zoned EC (Environmentally Critical) and is not hereby rezoned. No development within the EC zoning district is authorized by this rezoning.

4. Any point sources of effluent discharge from the subject property onto the beach must be eliminated immediately in accordance with LDC Section 6-13.

5. Approval of this zoning request does not give the developer an undeniable right to receive Local Development Order Approval in the form of a floodplain development permit or other permit. Development Order approvals must satisfy the requirements of the Fort Myers Beach Comprehensive Plan. Development of the subject property must comply with all requirements of the LDC at the time of Local Development Order Approval except such deviations as may be granted by approval of this planned development. Additional mitigation of traffic impacts may be required for Local Development Order Approval.

Deviations

1. The applicant has requested a deviation from LDC Section 34-3234(b)(3), which limits the enlargement and/or replacement of nonconforming buildings. The deviation would allow expansion of a building that is currently nonconforming with regard to the number of guest units permitted by the Fort

Myers Beach Comprehensive Plan, to allow an increase in the total interior square footage of the guest units and an increase in square footage of the caretaker's dwelling unit. The total increase in interior area would be 2,900 square feet. The LPA recommends **denial** of deviation #1.

2. The applicant has requested a deviation from LDC Section 34-3234(a)(3), which limits the enlargement of nonconforming buildings, to allow enlargement of a building that is currently nonconforming with regard to the height allowed by Comp Plan Policy 4-C-4, and LDC Section 34-953 and Table 34-3. The proposed enlargement would increase the height of the building by eleven (11) feet and would create an additional story of height for a total height of 45.7 feet and six (6) stories. The LPA recommends **denial** of deviation #2.

RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the presentations by the Applicant, staff, and other interested parties at the hearing, and review of the application and the standards for planned development zoning approval, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. The requested CPD zoning district, as conditioned, **is consistent with and complies** with all specific requirements, goals objectives, policies and intent and with the densities, intensities and general uses set forth in the Fort Myers Beach Comprehensive Plan, Land Development Code Chapter 34 and all other applicable town ordinances or codes that are relevant to the requested planned development;
2. There **is** an error or ambiguity which must be corrected;
3. There **exist** changed or changing conditions which make approval of the request, as conditioned, appropriate.
4. The proposed use or mix of uses, as conditioned, **is appropriate** at the subject location;
5. Sufficient safeguards to the public interest **are provided** by the conditions to the master concept plan or by other applicable regulations;
6. All conditions **are reasonably related** to the impacts on the public's interest created by or expected from the proposed development;
7. The proposed use or mix of uses, as conditioned, **meets** all performance and locational standards set forth for the proposed use.
8. Regarding the requested deviations (#1 and #2):
 - a. Each Deviation **does not enhance** the achievement of the objectives of the planned development;

- b. Through each Deviation the general intent of Land Development Code Chapter 34 to protect the public health, safety, and welfare **will not be** preserved and promoted;
- c. Each Deviation **does not operate** to the benefit, and **may operate** to the detriment, of the public interest; and
- d. Each Deviation is **inconsistent** with the Fort Myers Beach Comprehensive Plan.

The foregoing Resolution was adopted upon a motion by LPA Member Mandel and seconded by LPA Member Barnes. Upon being put to a vote, the result was as follows:

| | | | |
|----------------|------------|---------------|------------|
| Evie Barnes | <u>aye</u> | Rochelle Kay | <u>aye</u> |
| Alan Mandel | <u>aye</u> | Joanne Shamp | <u>aye</u> |
| Bill Van Duzer | <u>aye</u> | Dennis Weimer | <u>aye</u> |
| Joe Yerkes | <u>aye</u> | | |

DULY PASSED AND ADOPTED THIS 3rd day of June, 2008.

LPA of the Town of Fort Myers Beach

By: 
 Dennis Weimer, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: 
 Anne Dalton, Esquire
 LPA Attorney

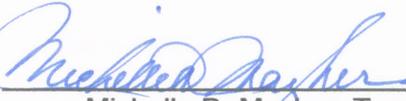
By: 
 Michelle D. Mayher, Town Clerk

Exhibit A
FMBDCI2007-0002

Legal Description

LOT 1, ISLAND SHORES UNIT 1 SUBDIVISION, AS RECORDED IN PLAT
BOOK 9, PAGE 24, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

