

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2009-15

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

WHEREAS, The Town of Fort Myers Beach ("Applicant") has initiated an application to rezone 0.79± acres from the RC (Residential Conservation) zoning district to a CPD (Commercial Planned Development) zoning district, to approve a schedule of uses for the adaptive reuse of an existing historic site, and to approve certain deviations from the requirements of the Land Development Code (LDC), all as indicated on the approved Master Concept Plan; and

WHEREAS, the subject property is located at 4600, 4610, and 4650 Estero Boulevard, in the "Recreation" Future Land Use Map (FLUM) category of the Comprehensive Plan of the Town of Fort Myers Beach, Lee County, Florida; and

WHEREAS, the Applicant has indicated the property's current STRAP numbers are: 29-46-24-W3-0080H.0030, 29-46-24-W3-0080H.0050, and 29-46-24-W3-0080H.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 July 14, 2009; 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 the subject property to a CPD zoning district subject to the seven (7) conditions and three (3) deviations set forth with specificity below.

A. CONDITIONS

1. Development must be consistent with the one-page Master Concept Plan stamped "Received April 7, 2009" for case FMBDCI2009-0001, attached as **Exhibit "B"**. The Master Concept Plan must be updated to reflect the final decision of Town Council prior to execution of the resolution approving this rezoning. 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

Principal:
Beach Access

Park, neighborhood
Recreation facility, public
Cultural facility
Membership organization
Recreation facility, commercial

Accessory:

Essential services
Essential services equipment
Hidden path
Day care center, adult (see condition #5 below)
Day care center, child (see condition #5 below)
Dwelling unit, caretaker
Place of worship (see condition #6 below)
School (see condition #6 below)
Theatre (see condition #6 below)
Temporary uses
On-premises consumption of alcoholic beverages (see condition #7 below)
Retail store, small
Administrative office

b. Site Development Regulations

Minimum Lot Width:	195± feet
Minimum Lot Depth:	180± feet
Minimum Lot Area:	34,667± square feet
Maximum Building Height:	2 stories , including space below base flood elevation as a story 25 feet
Maximum Floor Area Ratio:	0.8
Setbacks:	
Estero Boulevard:	15 feet
Strandview Avenue:	10 feet
Northeasterly lot line:	9.4 feet (existing building only) 10 feet (all other structures)
Gulf of Mexico:	50 feet from Mean High Water Line

3. Approval of this rezoning does not authorize any activity that would violate any deed restriction or any contractual obligation regarding the subject property.

4. Land lying seaward of the Coastal Construction Setback Line recorded in Plat Book 31, Pages 1 through 21, Public Records of Lee County, Florida, is not rezoned by this resolution and remains zoned EC (Environmentally Critical).

5. The uses *day care center, adult* and *day care center, child* are included as accessory uses to clarify that groups of adults and/or groups of children may spend periods of time during day and evening hours, not extending to overnight stays, on the park grounds or in the buildings, whether gratis or for a fee.

6. The uses *place of worship, school, and theater* are included as accessory uses to clarify that the park grounds and buildings may occasionally host religious, educational,

and/or cultural activities, regardless of whether the property is made available to an outside organization or entity gratis or for a fee, or the activities are organized by the Town gratis or for a fee.

7. On-premises consumption of alcoholic beverages is limited to temporary permits issued in accordance with LDC Section 34-1264(d), except that the number of such permits issued per year shall not be limited to twelve (12), or to a membership organization/ club in accordance with LDC Section 34-1264(a)(1)c. Any on-premises consumption of alcoholic beverages must comply with all applicable provisions of state law and agency rules, as well as Town Ordinance 97-5.

8. The findings of fact set forth in the Staff Report annotated "Final SR" and provided to the LPA on the date of this hearing are hereby incorporated by reference as though fully set forth herein, with the exception that the two references to "gazebo" (on page 5 of 14 and page 6 of 14) shall be modified to read "educational platform".

B. DEVIATIONS

1. Deviation from LDC Section 34-953 to allow the requested CPD zoning district to substitute the site development regulations provided in condition #2, above, for the applicable the regulations of the CR or CB zoning district.

2. Deviation from LDC Section 10-285 requiring connection separation between connections to a local street of 125 feet, to allow minimum separations of 76 feet for a connection to Strandview Avenue and 70 feet for a connection to an unnamed accessway, as indicated on the Master Concept Plan.

3. Deviation from LDC Sections 10-291 and 10-296 to allow the development to use the existing 20-foot shell accessway adjoining the northeasterly lot line, as indicated on the Master Concept Plan.

C. 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:

Several Comprehensive Plan policies specifically refer to the Newton Property. **Policy 10-D-3** expresses the intent to "purchase the Newton estate to serve as an oasis park with interpretive and rest facilities". **Policy 10-F-3** expresses the intent to "operate [the Newton Property] as a small community park". These policies support the overall goals, expressed in Goals **10-D** and **10-F**, of

increasing the level of access to recreation facilities and heightening appreciation of the Town's recent history and cultural life. As a part of the small public park, the proposed uses are consistent with the general uses set forth for the Recreation FLUM category in **Policy 4-B-8** and for public facilities in **Policy 4-B-13**.

Approval of the rezoning to CPD, as requested and as conditioned, will limit the use of the subject property to a group of uses consistent with the Recreation FLUM category and public facilities as detailed in Comprehensive Plan **Policy 4-B-8** and **Policy 4-B-13**. The use of the subject property for a public park and historic site was specifically planned in **Policy 10-D-3** and **Policy 10-F-3**. Accessory uses will be required to comply with general provisions of LDC Chapter 34, and site development will comply with LDC Chapters 10 and 34 except where granted deviations. Staff recommends the finding that the requested zoning district **complies with** the Fort Myers Beach Comprehensive Plan, LDC Chapter 34, and any other applicable Town ordinances or codes.

2. There **is not** an error or ambiguity that must be corrected:

No error or ambiguity is evident. The Town acquired the subject property, which formerly constituted a private residence, and now proposes to use the former residential property as a recreational area that is also the site of an historic building.

3. There **exist** changed or changing conditions that make approval of the request, as conditioned, appropriate.

The Town has acquired the subject property and formulated its plans to renovate the historic building and improve the site to complete the conversion from a residential property to a small park. This changed condition makes approval of the request appropriate.

4. The proposed use or mix of uses, as conditioned, **is appropriate** at the subject location;

The public park and historic site were specifically planned in Comprehensive Plan **Policy 10-D-3** and **Policy 10-F-3**. Accessory educational, religious, and cultural uses are appropriately allowed in a public park if conditioned to ensure that they do not expand commercially to intrude upon neighboring residential uses. The recommended conditions would prevent such expansion. Staff recommends the finding that the proposed use or mix of uses **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;

Recommended conditions protect the public from the expansion of accessory uses of the park and historic site. Other applicable state regulations apply to the subject property through deed restrictions and protect the wider public interest for which the subject property was acquired. Staff recommends the finding that

sufficient safeguards to the public interest **are provided** by the recommended special conditions 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;

The recommended conditions specify the applicable master concept plan, provide property development regulations, clarify that environmentally critical areas are not being rezoned for development, and prevent the expansion of accessory uses in ways that could be detrimental to neighbors and the public in general.

7. The proposed use or mix of uses, as conditioned, **meets** all performance and locational standards set forth for the proposed use.

Specific performance and locational standards do not apply to most of the proposed uses. The location of the parking area is addressed by deviation #1. Required landscaped buffer areas will be provided between the parking area and rights-of-way. The on-premises consumption of alcoholic beverages will be limited in such a way as to comply with locational standards and will be required to comply with state law.

8. Regarding the requested deviations (#1, #2, and #3):

- a. Each Deviation **does enhance** the achievement of the objectives of the planned development;

Deviation #1 allows property development regulations appropriate to a park and existing historic site rather than form-based regulations designed for new development of commercial or mixed-use buildings. Strandview Avenue and the unnamed 20-foot accessway are existing facilities. Deviation #2 to allow connections to Strandview Avenue and the accessway that do not meet the minimum separation requirements will allow access to the property without creating new connections to Estero Boulevard. Further intensification of development adjoining Strandview Avenue and the accessway is not allowed. Deviation #3 from the accessway construction standards will allow continuing use of the park and historic site and maintain the existing shell accessway.

- b. Through each Deviation the general intent of Land Development Code Chapter 34 to protect the public health, safety, and welfare **will be preserved and promoted**;

Deviation #1 allows property development regulations appropriate to a park and historic site. Deviation #2 allows the property to have connections to existing local streets and reduces the number of connections to Estero Boulevard. Deviation #3 will allow the existing accessway to continue as a permeable shell surface rather than pavement, and will allow existing utility equipment to remain in place, rather than being relocated.

- c. Each Deviation **does operate** to the benefit, and **does not operate** to the detriment, of the public interest; and

Deviation #1 allows appropriate property development regulations instead of requiring the historic building to be relocated to meet a build-to line. Deviation #2 reduces the number of connections to Estero Boulevard by using the existing Strandview Avenue and accessway connections. Deviation #3 prevents unnecessary relocation of utility equipment and allows the accessway to continue as a permeable surface rather than a source of stormwater runoff.

- d. Each Deviation is **consistent** with the Fort Myers Beach Comprehensive Plan.

Comprehensive Plan **Policy 10-D-3** and **Policy 10-F-3** specifically plan the use of the subject property for a park and interpretive site. Redeveloping the property in accordance with form-based property development regulations would not be consistent with these policies, whereas the recommended property development regulations provided in condition #2 and allowed by deviation #1 would be consistent with these policies. **Policy 7-H-10** states the intent to reduce and consolidate connections to Estero Boulevard, which is achieved by deviation #2. The comprehensive plan does not specifically address accessway construction standards.

The LPA recommends that Deviation #1 be **APPROVED**.

The LPA recommends that Deviation #2 be **APPROVED**.

The LPA recommends that Deviation #3 be **APPROVED**.

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

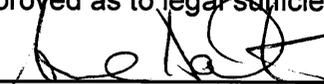
Rochelle Kay	<u>nay</u>	Alan Mandel	<u>aye</u>
Carleton Ryffel	<u>aye</u>	Joanne Shamp	<u>nay</u>
Bill Van Duzer	<u>aye</u>	Dennis Weimer	<u>aye</u>

DULY PASSED AND ADOPTED THIS 14th day of July, 2009.

LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH

By: 
Dennis Weimer, LPA Chair

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

FMBDCI2009-0001

Exhibit A

Lots 1, 2, 3, 4, 5, and 6, Block H, HYDE PARK SUBDIVISION, as recorded in Plat Book 7, Page 20, Public Records of Lee County, Florida



DAVID M. JONES JR. AND ASSOCIATES, INC.
 LANDSCAPE ARCHITECTS
 2215 KENNEDY BOULEVARD
 FORT MYERS BEACH, FLORIDA 33931-4454
 (239) 337-5525
 LC 000003

PROJECT NO. 10223
 DATE: 08/11/11
 SCALE: AS SHOWN



LANDSCAPE ARCHITECTURAL PLAN FOR
 NEWTON BEACH PARK
 FORT MYERS BEACH, FLORIDA
 ZONING EXHIBIT

PROJECT NO. 28200/65
 DATE: 2/18/09
 SHEET NUMBER: CONCEPT PLAN
 SHEET NAME: MCP

- SCHEDULE OF DEVIATIONS**
1. **DEVIATION 1:** Deviation from Section 22.05(1), Generalized Design Standards, which requires that the equipment be constructed to the minimum 24" R.F.P. to apply to the stamp building, scheduled to occur on the site. The existing site is located on the east side of the road designated as a historical resource, thereby exceeding the minimum. Over the equipment, a concrete slab is to be constructed, which is to be placed on the existing foundation from the building, which is to be constructed to the minimum of 12" R.F.P. to apply to the slab.
 2. **DEVIATION 2:** Deviation from Section 22.05(1)(a), Generalized Design Standards, which requires that the building be constructed to the minimum of 12" R.F.P. to apply to the slab. The existing site is located on the east side of the road designated as a historical resource, thereby exceeding the minimum. Over the equipment, a concrete slab is to be constructed, which is to be placed on the existing foundation from the building, which is to be constructed to the minimum of 12" R.F.P. to apply to the slab.
 3. **DEVIATION 3:** Deviation from Section 22.05(1)(b), Generalized Design Standards, which requires that the building be constructed to the minimum of 12" R.F.P. to apply to the slab. The existing site is located on the east side of the road designated as a historical resource, thereby exceeding the minimum. Over the equipment, a concrete slab is to be constructed, which is to be placed on the existing foundation from the building, which is to be constructed to the minimum of 12" R.F.P. to apply to the slab.
 4. **DEVIATION 4:** Deviation from Section 22.05(1)(c), Generalized Design Standards, which requires that the building be constructed to the minimum of 12" R.F.P. to apply to the slab. The existing site is located on the east side of the road designated as a historical resource, thereby exceeding the minimum. Over the equipment, a concrete slab is to be constructed, which is to be placed on the existing foundation from the building, which is to be constructed to the minimum of 12" R.F.P. to apply to the slab.
 5. **DEVIATION 5:** Deviation from Section 22.05(1)(d), Generalized Design Standards, which requires that the building be constructed to the minimum of 12" R.F.P. to apply to the slab. The existing site is located on the east side of the road designated as a historical resource, thereby exceeding the minimum. Over the equipment, a concrete slab is to be constructed, which is to be placed on the existing foundation from the building, which is to be constructed to the minimum of 12" R.F.P. to apply to the slab.

GENERAL NOTES:

1. ALL NOTES ARE TO BE READ IN CONJUNCTION WITH THE ZONING ORDINANCE.
2. THE ZONING ORDINANCE IS THE GOVERNING DOCUMENT FOR THIS PROJECT.
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DEVIATION NOTES:

1. DEVIATION 1: The existing site is located on the east side of the road designated as a historical resource, thereby exceeding the minimum. Over the equipment, a concrete slab is to be constructed, which is to be placed on the existing foundation from the building, which is to be constructed to the minimum of 12" R.F.P. to apply to the slab.
2. DEVIATION 2: The existing site is located on the east side of the road designated as a historical resource, thereby exceeding the minimum. Over the equipment, a concrete slab is to be constructed, which is to be placed on the existing foundation from the building, which is to be constructed to the minimum of 12" R.F.P. to apply to the slab.
3. DEVIATION 3: The existing site is located on the east side of the road designated as a historical resource, thereby exceeding the minimum. Over the equipment, a concrete slab is to be constructed, which is to be placed on the existing foundation from the building, which is to be constructed to the minimum of 12" R.F.P. to apply to the slab.
4. DEVIATION 4: The existing site is located on the east side of the road designated as a historical resource, thereby exceeding the minimum. Over the equipment, a concrete slab is to be constructed, which is to be placed on the existing foundation from the building, which is to be constructed to the minimum of 12" R.F.P. to apply to the slab.
5. DEVIATION 5: The existing site is located on the east side of the road designated as a historical resource, thereby exceeding the minimum. Over the equipment, a concrete slab is to be constructed, which is to be placed on the existing foundation from the building, which is to be constructed to the minimum of 12" R.F.P. to apply to the slab.

LANDSCAPE NOTES:

1. ALL PLANTING IS TO BE INSTALLED IN ACCORDANCE WITH THE ZONING ORDINANCE.
2. ALL PLANTING IS TO BE INSTALLED IN ACCORDANCE WITH THE ZONING ORDINANCE.
3. ALL PLANTING IS TO BE INSTALLED IN ACCORDANCE WITH THE ZONING ORDINANCE.
4. ALL PLANTING IS TO BE INSTALLED IN ACCORDANCE WITH THE ZONING ORDINANCE.
5. ALL PLANTING IS TO BE INSTALLED IN ACCORDANCE WITH THE ZONING ORDINANCE.

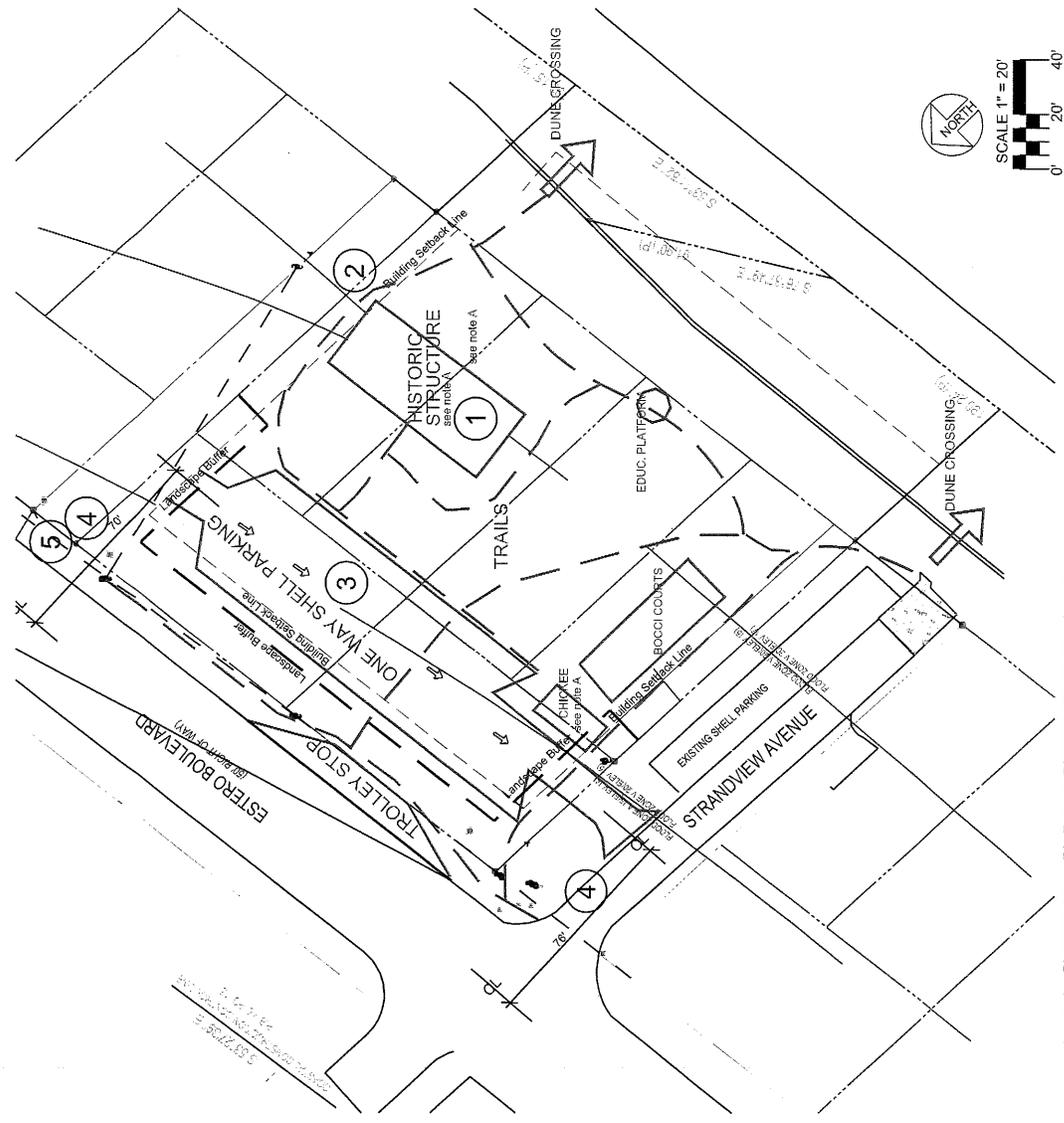
PARKING:

1. ALL PARKING IS TO BE INSTALLED IN ACCORDANCE WITH THE ZONING ORDINANCE.
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3. ALL PARKING IS TO BE INSTALLED IN ACCORDANCE WITH THE ZONING ORDINANCE.
4. ALL PARKING IS TO BE INSTALLED IN ACCORDANCE WITH THE ZONING ORDINANCE.
5. ALL PARKING IS TO BE INSTALLED IN ACCORDANCE WITH THE ZONING ORDINANCE.

SCHEDULE OF USES:

USE	PRINCIPAL USE	ACCESSORY USE
Civic		
Beach access		X
Park, neighborhood		X
Recreation on facility, public		X
Cultural facility		X
Community services		X
Hidden path		X
Day care center, adult or child		X
Dwell unit, caretaker		X
P area of worship		X
School		X
Theatre		X
Retail		
Retail with organization		X
Recreation on facility, commercial		X
Temporary uses		X
On premises consumption of alcoholic beverages		X
Retail, small		X
Office		
Administrative office		X

NOTE: A - Possible outdoor retail use (necessary) locations.



SCALE 1" = 20'
 DRAWING MAY HAVE BEEN REDUCED
 IN REPRODUCTION

MASTER CONCEPT PLAN