

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 09-24
NEWTON PARK COMMERCIAL PLANNED DEVELOPMENT

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN 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, at which time the LPA recommended approval of the application as set forth with specificity in LPA Resolution 2009-15; and

WHEREAS, a public hearing was legally advertised and held before the Town Council on August 17, 2009, at which time the Town Council gave full and complete consideration to the recommendations of staff, the documents in the file, the recommendations of the LPA and the testimony of all interested persons.

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

The Town Council **APPROVES** 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 September 14, 2009" for case FMBDCI2009-0001, attached as **Exhibit "B"**, as updated to reflect the final decision of Town Council prior to execution of this resolution. 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
- Rental of Beach Furniture
- Boat Rentals limited to non-motorized craft up to sixteen feet

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.

B. DEVIATIONS

1. Deviation #1 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 **IS APPROVED**.

2. Deviation #2 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 **IS APPROVED**.

3. Deviation #3 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 **IS APPROVED**.

C. FINDINGS AND CONCLUSIONS

The Town Council makes the following findings and reaches 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.*

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. These conditions would prevent such expansion.*

5. Sufficient safeguards to the public interest **are provided** by the conditions to the master concept plan or by other applicable regulations;

The specified 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.

6. All conditions **are reasonably related** to the impacts on the public's interest created by or expected from the proposed development;

These 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 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.*

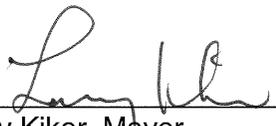
The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember Babcock and seconded by Councilmember List and upon being put to a vote, the result was as follows:

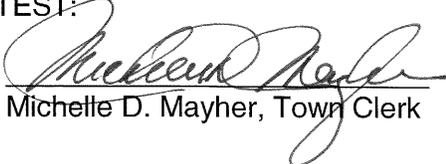
Larry Kiker, Mayor aye
Tom Babcock aye
Bob Raymond absent

Herb Acken, Vice Mayor aye
Jo List aye

DULY PASSED AND ADOPTED THIS 17TH DAY OF AUGUST, 2009, BY THE

TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Larry Kiker, Mayor

ATTEST:
By: 
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire, Town Attorney

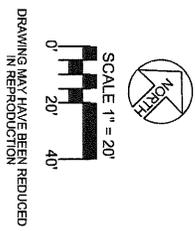
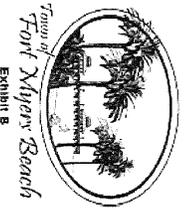
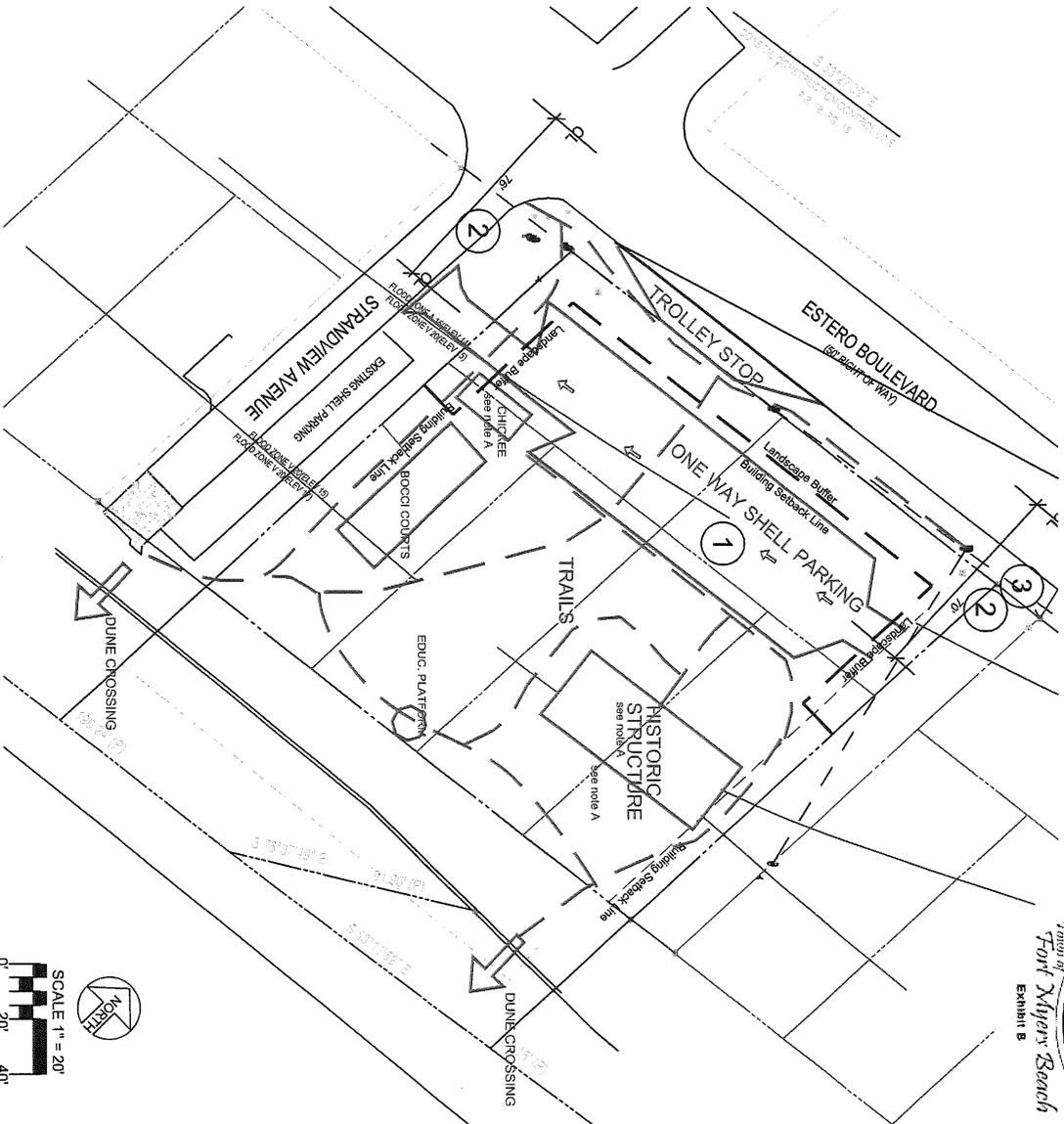
FMBDCI2009-0001

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

RECEIVED
 By Frank Shockey at 2:37 pm, Sep 14, 2009

MASTER CONCEPT PLAN



- ①
- ②
- ③

SCHEDULE OF DEVIATIONS

DEVIATION 1: Proposed new Section 16.14.03(b) allows the proposed 120' zoning district to be used for development in the existing 120' zoning district. The zoning district is currently 120' zoning district. The zoning district is currently 120' zoning district. The zoning district is currently 120' zoning district.

DEVIATION 2: Location from LDC Section 16.14.03(b) requires the proposed development to be located in the 120' zoning district. The zoning district is currently 120' zoning district. The zoning district is currently 120' zoning district.

DEVIATION 3: Location from LDC Section 16.14.03(b) requires the proposed development to be located in the 120' zoning district. The zoning district is currently 120' zoning district. The zoning district is currently 120' zoning district.

DEVIATION 4: Location from LDC Section 16.14.03(b) requires the proposed development to be located in the 120' zoning district. The zoning district is currently 120' zoning district. The zoning district is currently 120' zoning district.

DEVIATION 5: Location from LDC Section 16.14.03(b) requires the proposed development to be located in the 120' zoning district. The zoning district is currently 120' zoning district. The zoning district is currently 120' zoning district.

DEVIATION 6: Location from LDC Section 16.14.03(b) requires the proposed development to be located in the 120' zoning district. The zoning district is currently 120' zoning district. The zoning district is currently 120' zoning district.

SCHEDULE OF USES

USE	PRINCIPAL	ACCESSORY
RESIDENTIAL SINGLE-FAMILY	X	
RESIDENTIAL TWO-FAMILY	X	
RESIDENTIAL THREE-FAMILY	X	
RESIDENTIAL FOUR-FAMILY	X	
RESIDENTIAL FIVE-FAMILY	X	
RESIDENTIAL SIX-FAMILY	X	
RESIDENTIAL SEVEN-FAMILY	X	
RESIDENTIAL EIGHT-FAMILY	X	
RESIDENTIAL NINE-FAMILY	X	
RESIDENTIAL TEN-FAMILY	X	
RESIDENTIAL ELEVEN-FAMILY	X	
RESIDENTIAL TWELVE-FAMILY	X	
RESIDENTIAL THIRTEEN-FAMILY	X	
RESIDENTIAL FOURTEEN-FAMILY	X	
RESIDENTIAL FIFTEEN-FAMILY	X	
RESIDENTIAL SIXTEEN-FAMILY	X	
RESIDENTIAL SEVENTEEN-FAMILY	X	
RESIDENTIAL EIGHTEEN-FAMILY	X	
RESIDENTIAL NINETEEN-FAMILY	X	
RESIDENTIAL TWENTY-FAMILY	X	
RESIDENTIAL TWENTY-ONE-FAMILY	X	
RESIDENTIAL TWENTY-TWO-FAMILY	X	
RESIDENTIAL TWENTY-THREE-FAMILY	X	
RESIDENTIAL TWENTY-FOUR-FAMILY	X	
RESIDENTIAL TWENTY-FIVE-FAMILY	X	
RESIDENTIAL TWENTY-SIX-FAMILY	X	
RESIDENTIAL TWENTY-SEVEN-FAMILY	X	
RESIDENTIAL TWENTY-EIGHT-FAMILY	X	
RESIDENTIAL TWENTY-NINE-FAMILY	X	
RESIDENTIAL THIRTY-FAMILY	X	
RESIDENTIAL THIRTY-ONE-FAMILY	X	
RESIDENTIAL THIRTY-TWO-FAMILY	X	
RESIDENTIAL THIRTY-THREE-FAMILY	X	
RESIDENTIAL THIRTY-FOUR-FAMILY	X	
RESIDENTIAL THIRTY-FIVE-FAMILY	X	
RESIDENTIAL THIRTY-SIX-FAMILY	X	
RESIDENTIAL THIRTY-SEVEN-FAMILY	X	
RESIDENTIAL THIRTY-EIGHT-FAMILY	X	
RESIDENTIAL THIRTY-NINE-FAMILY	X	
RESIDENTIAL FORTY-FAMILY	X	
RESIDENTIAL FORTY-ONE-FAMILY	X	
RESIDENTIAL FORTY-TWO-FAMILY	X	
RESIDENTIAL FORTY-THREE-FAMILY	X	
RESIDENTIAL FORTY-FOUR-FAMILY	X	
RESIDENTIAL FORTY-FIVE-FAMILY	X	
RESIDENTIAL FORTY-SIX-FAMILY	X	
RESIDENTIAL FORTY-SEVEN-FAMILY	X	
RESIDENTIAL FORTY-EIGHT-FAMILY	X	
RESIDENTIAL FORTY-NINE-FAMILY	X	
RESIDENTIAL FIFTY-FAMILY	X	

DAVID M. JONES JR. AND ASSOCIATES, INC.
 LANDSCAPE ARCHITECTS AND PLANNERS
 2221 LASEROR BOULEVARD FORT MYERS, FLORIDA 33901
 (239) 337-5525 FAX (239) 337-4484
 LC 0000663

PROJECT NO. 12028
 TITLE: NEWTON BEACH PARK ZONING EXHIBIT
 DESIGNED BY: [Name]
 CHECKED BY: [Name]

DATE: 03/20/09
 PROJECT NO.: 28/006/5

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

APPROVED: [Signature]
 DATE: 03/20/09