

ORDINANCE 18-10

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO 0.31+/- ACRES OF THE CURRENT ZONING MAP FOR A PROPERTY LOCATED AT 764-768 ESTERO BOULEVARD FORT MYERS BEACH FROM RESIDENTIAL MULTIFAMILY (RM) ZONING DISTRICT TO RESIDENTIAL PLANNED DEVELOPMENT (RPD) WITH A MASTER CONCEPT PLAN FOR A THREE-UNIT MULTIFAMILY BUILDING AND SINGLE FAMILY DWELLING; WITH DEVIATIONS; CONTAINING .31+/- ACRES (RM) AND .52+/- ACRES (EC), GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00400.0050; PETITION DCI17-0002; PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, Robert and Dana Dullard (as Trustee), applicant filed application to rezone the property from the Residential Multifamily (RM) zoning district to CPD with Master Concept Plan (MCP), a schedule of uses, and deviations to the certain requirements of the Land Development Code, in order to develop a three-unit multifamily building and a single-family dwelling, on .31+/- acres more or less property and as described in Exhibit A, located at 764-768 Estero Boulevard in the Town of Fort Myers Beach; and

WHEREAS, the subject property is located in the Mixed Residential Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the subject property is under common control of the single owner, listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on March 13, 2018; and

WHEREAS, at the April 17, 2018 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, but based on discussions continued the hearing until May 8, 2018; where again, after discussions with the applicant continued the hearing until the next LPA hearing to allow the applicant to reconsider the request and which deviations they needed to complete a project; and

WHEREAS, at the May 24, 2018 public hearing the LPA again gave consideration to the applicants request and recommended denial by a 5-0 vote; and

WHEREAS, on June 18th, 2018 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents

in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, the Town Council set a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on August 7th, 2018; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, including the consideration and findings in the staff report pages 11-16, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, the Town Council find the proposed family compound, site plan, and conditions of approval create a unique project with sufficient public benefit and prevent over-building of density and intensity through the reduction of dwelling units; while reducing the chances of loss of life and property by requiring the development of elevated, safer structures prior to a natural disaster; and that implement the requirements of the local Floodplain Ordinance and the National Flood Insurance Program; AND

WHEREAS, the applicant and property owner verbally agreed to all conditions and deviations as they are written; and Town Council finds that project provides a unique benefit to the neighborhood by reducing the number of buildings and overall less square footage, no increase in FAR, and overall a reduction in impact as may otherwise occur if forced to not go through a pre-disaster buildback.

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

The Town Council votes to **APPROVE** the request to rezone the subject property to RPD with MCP, subject to the deviations and conditions set forth with specificity.

CONDITIONS

1. Development must be consistent with the master concept plan (MCP) titled "Dullard Residential Planned Development, Town of Fort Myers Beach" for case DCI2017-0002, dated July 24, 2017, date stamped received August 2, 2017, except as modified by conditions or deviations discussed herein. If changes to the MCP are subsequently pursued, appropriate approvals will be required.
2. The following limits apply to the project and uses:

Schedule of Uses:

Dwelling unit:

single-family (consisting of 1 single family residence)

multiple-family (consisting of 1 building with 3 living units)

Residential accessory uses
Public Beach Access Sign

Property Development Regulations:

Minimum Street Setback:	25 Feet
Side Setbacks:	
Single-family	7.5 Feet Eastern Property Line 13 Feet Western Property Line
Multi-family	7.5 Feet for Eastern Property Line 22 Feet for Western Property Line
Rear Setback:	20 Feet
Waterbody Setback (Gulf of Mexico)	50 Feet
Minimum Lot Area:	7,500 square feet
Minimum Lot Width:	67 Feet
Minimum Lot Depth:	100 Feet
Floor Area Ratio:	1.2
Maximum Stories:	4
Maximum Height ABFE:	35 Feet

3. Nothing in this rezoning, including any of the attached conditions, may be construed as a variance or deviation from the provisions of LDC Chapter 6, Article IV Floodplain regulations. Approval of this rezoning does not exempt the subject property from any provisions of the LDC with the exception of the approved deviations.
4. Approval of this rezoning does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting, except as specifically modified herein.
5. The development must comply with LDC Sec. 14-76 requirements for sea turtle conservation applicable to new development.
6. No structures or uses other than dune enhancement and walkover structures may be placed seaward of the 1978 Coastal Construction Control Line or within the EC zoning district. All proposed structures or uses shall ensure that any footer or other structural support below and above grade shall be constructed landward of the 1978 Coastal Construction Control Line and remain within the CPD boundary.
7. Stormwater runoff from the two proposed structures must be captured by gutters and downspouts and routed into the onsite stormwater management system. Stormwater management for the subject property must comply with all applicable requirements of the Land Development Code at the time of

development order approval and must provide for the capture and retention of all stormwater on the site. No more than 67% of the total lot area shall be covered with impervious surfaces, the development order must indicate the method used to maintain 1.6" rainfall on site and entirely within the RPD boundary.

8. The property must apply for a development order (DO) within 180 days of the approval of the rezoning. The DO must address a parking plan, stormwater retention/detention, access to the site, and buffering.
9. The viewshed located on the western portion of the property must be maintained in perpetuity. Existing native palm trees located on the western portion of the site will be relocated (those with 6 foot clear trunks) into the required Type B buffer area on the western property line. The landscape buffer along the Western property line shall be designed with consideration to the viewshed in the selection of plants and materials, height of vegetation, and alignment of sight angles.
10. A Public Beach Access Sign may be required near the connection of the recorded easement and Estero Boulevard. The sign shall not conflict with visibility triangles or other safety considerations. The property owner shall install and maintain Town approved signage if the easement is determined to be dedicated to the general public. If any public access easements are found to be dedicated on the subject property, then the property owner shall design and construct ADA accessible public access within the described easement and landscape buffering may be adjusted to accommodate such access, subject to maintaining the viewshed.
11. The subject property shall be used as a family compound and subject to the Town's definition of "family" in the Land Development Code.
12. No rental (short term or other) of any of the four units shall be permitted under any circumstances whatsoever.
13. The individual sale of the four dwelling units, shall not be permitted under any circumstances whatsoever.
14. The units and property shall not be platted or subdivided, in any fashion whatsoever.
15. The units and property ownership may only be transferred in its entirety.
16. As the applicant has provided sworn testimony to the Town of Fort Myers Beach that the subject property shall be used as a "family compound," a document shall be approved by the Town Manager and Town Attorney shall be recorded prior to the Town's issuance of a (Limited)Development Order ((L)DO)

and shall be recorded in the public records confirming and including language from conditions 11-16, and others as may be directed by Town Council on August 6, 2018.

17. Development of the individual units within the multifamily building shall not be considered a violation of the lock-off provisions of the Fort Myers Beach Land Development Code, unless the units are individually sold, subdivided, or apart of the creation of condominium.
18. Failure to comply with the conditions of approval by the applicant or subsequent property owner shall result in one or more of the following actions by the Town:
 - a. Public Hearings before the LPA and Town Council to return the property to its current zoning of Residential Multifamily (RM);
 - b. the demolition of any structure that does not comply with the RM zoning district.
19. Violations of these conditions will result in the property being subject to a five hundred dollar per day, per violation civil citation appealable to the Special Magistrate.

DEVIATIONS:

1. Deviation from Table 34-3 of the LDC, which allows for a maximum height of 30 feet/3 stories, to allow for a maximum height of 35 feet/4 stories.
2. Deviation from Section 34-3237(4) of the LDC, which requires total interior square footage of a rebuilt dwelling not to exceed the interior square footage of all existing dwelling units which is currently a total of 3,570 s.f., to allow for an increase of the total interior square footage to 9,250 s.f. for all proposed buildings. This deviation is only valid if the property and dwelling units are held under common ownership and per the conditions of approval.
3. Deviation from Table 34-3 of the LDC, which allows for a minimum side setback for a multifamily building of 20 feet, to allow for a minimum side setback on the eastern property line of 7.5 feet for the multifamily building.
4. Deviation from Section 10-416(d)(2) of the LDC, which requires a Type B Landscape buffer of 15 feet in width along the western property line between the multifamily building and the single family residences on the adjacent parcels to the west, to allow for a buffer of 5 feet in width containing the same number of trees as a Type B Buffer and a minimum of 15 shrubs per 100 linear feet.
5. Deviation from Table 10-1 of the LDC, which requires a spacing of 250 feet from centerline of driveways along a Major Street, to allow a driveway along the western property line.

CODIFICATION AND SCRIVENER'S ERRORS.

Upon second reading approval, the Town Council intends that this ordinance will not be made part of the Fort Myers Beach Code of Ordinances. Typographical errors that do not affect the intent can be corrected with the authorization of the Town Manager or designee, without the need for a public hearing. Only the specific deviations granted by the Town Council and associated plan sheets reflecting those approvals with or without conditions are so incorporated.

EFFECTIVE DATE.

This ordinance becomes effective immediately upon its adoption.

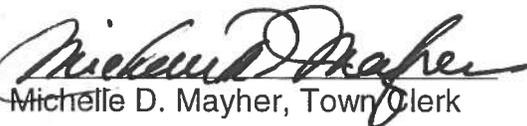
THE FOREGOING ORDINANCE was enacted by the Town Council upon a motion by Council Member Joanne Shamp and seconded by Council Member Tracey Gore and, upon being put to a vote, the result was as follows:

Tracey Gore, Mayor	YAY	Bruce Butcher	YAY
Anita Cereceda	NAY	Joanne Shamp, Vice Mayor	YAY
Dennis Boback	NAY		

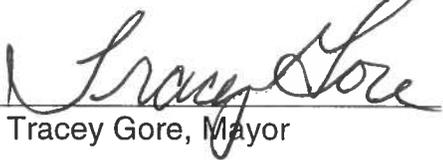
DULY PASSED AND ENACTED this 7th day of August, 2018.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 

Michelle D. Mayher, Town Clerk

By: 

Tracey Gore, Mayor

Approved as to form by:

By: 

Peterson Law Group, Town Attorney