

RESOLUTION NUMBER 20-05

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA REGARDING APPLICATION SEZ 20200004, TO ALLOW A SHARED PARKING LOT AND VAR 20200001, VAR 20200002, VAR 20200005, VAR 20200006 AND VAR 20200007, FOR A VARIANCE TO THE EXTERIOR BUFFER, LANDSCAPING, AND SEPERATION DISTANCE BETWEEN ACCESS REQUIREMENTS OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE FOR THE PROPERTY LOCATED AT 1510 ESTERO BOULEVARD; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, applicant Amy and George Markovich (“Applicants”), owners of the property located at 1510 Estero Boulevard (“Property”), are requesting a Special Exception to allow a shared parking lot in the Downtown zoning district and variances from Section 10-416(c)(2)b, 10-416(d)(2) and 10-285(a) of the Town of Fort Myers Beach Land Development Code (“LDC”); and

WHEREAS, the STRAP number for the Property is 19-46-24-W4-0070C.0020 and the legal description of the Property is attached as *Exhibit A*; and

WHEREAS, the Property is located in the ‘Downtown’ zoning district of the Official Zoning Map and the ‘Pedestrian Commercial’ category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on February 11, 2020, at which the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-84 of the LDC; and

WHEREAS, on March 2, 2020 the Town Council held a duly advertised public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by LDC 34-87 and 34-88, and the Town Council determined it is in the best interest of the Town to approve the request.

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

Determination.

Based upon the recommendations, testimony, and evidence presented by the applicant, Town staff, and interested parties, the Town Council **APPROVES** the following:

- A. A variance from LDC Section 10-416(c)(2)b., which requires landscaped areas on the parking area perimeter or internal islands to equal or exceed a minimum of ten percent of the total paved surface area; to permit a parking island at the end of the

- center double-row of parking to terminate with a minimum five foot (5') wide parking island without curbing containing a maximum four foot (4') high fence.
- B. A variance from LDC Section 10-416(d)(2), which requires perimeter landscaping of parking areas to be a fifteen foot (15') wide Type C buffer consisting of five trees per 100 linear feet, 18 shrubs per 100 linear feet, and a six-foot solid wall abutting residential property (to the south); to permit a five foot (5') buffer with a hedge row of 18 shrubs per 100 linear feet and a maximum four foot (4') high opaque fence adjacent to the residential properties beach side.
 - C. A variance from LDC Section 10-416(d)(2), which requires perimeter landscaping of parking areas along a right-of-way, Estero Boulevard, to be a fifteen foot (15') wide Type D buffer consisting of five trees per 100 linear feet and a double, staggered row hedge; to permit a minimum ten foot (10') wide buffer meeting the Type D requirements for number of trees and shrubs adjacent to Estero Boulevard.
 - D. A variance from LDC Section 10-416(d)(2), which requires perimeter landscaping of parking areas along a right-of-way, Avenue C, to be a fifteen foot (15') wide Type D buffer consisting of five trees per 100 linear feet and a double, staggered row hedge; to permit a five foot (5') buffer with a hedge row of 18 shrubs per 100 linear adjacent to Avenue C.
 - E. A variance from LDC Section 10-285(a), Table 10-1, which requires 125 feet connection separations for accesses onto local roadways (Avenue C); to allow a 40-foot separation from Estero Boulevard edge of pavement to the parking lot exit edge of pavement (closest driveway to Estero Boulevard) and a 35-foot separation between parking lot access points edge of pavement onto Avenue C as depicted in the Master Concept Plan.

Recommended Findings and Conclusions:

In accordance with the requirements of Sections 34-84 and 34-87 of the LDC regarding consideration of eligibility for variances, the Town Council makes the following findings and reaches the following conclusions:

- A. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimus variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

In accordance with the requirements of Section 34-88 of the LDC regarding consideration of eligibility for a special exception, the Town Council makes the following findings and reaches the following conclusions:

- A. Whether there exist changed or changing conditions which make approval of the request appropriate. *Removal of the convenience store and fuel pumps have changed the site.*
- B. The testimony of any applicant. *The applicant was heard at the March 2, 2020 public hearing.*
- C. The recommendation of staff and of the local planning agency. *The LPA and staff recommend approval.*
- D. The testimony of the public. *The public has the opportunity to testify at the March 2, 2020 public hearing.*
- E. Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan. *The request is consistent with the Comprehensive Plan.*
- F. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use. *The request meets or exceeds all performance and locational standards.*
- G. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources. *The request will not impact environmentally critical areas.*
- H. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property. *The proposal will be compatible with adjacent existing and proposed uses.*
- I. Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter. *The requested use will be in compliance with zoning provisions and supplemental regulations.*

Conditions of Approval

1. Approval of this special exception does not exempt the subject property from any provisions of the LDC with the exception of the approved variances.
2. The property must apply for a limited development order (LDO) within 180 days of the approval of the special exception. The LDO must address a parking plan, stormwater retention/detention, access to the site, parking surface of the lot, and buffering.
3. Perimeter parking spaces must be delineated by placing a parking block three feet from the end of the parking space and centered between the sides of the space.
4. Signs must be in compliance with Chapter 30 of the LDC.
5. The operator of the parking lot will provide a trash receptacle and maintain the lot in a litter free manner. The operator will ensure that the trash receptacle is regularly emptied and hauled away by the franchised garbage hauler.

6. Four (4) native trees must be installed and be shown on the LDO.

7. Hours of operation are limited to 7:00 AM to 10:00 PM.

Effective Date.

This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Murphy and seconded by Council Member Hosafros, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED ON THIS 2nd DAY OF MARCH, 2020.

Anita Cereceda, Mayor aye
Rexann Hosafros aye
Joanne Shamp aye

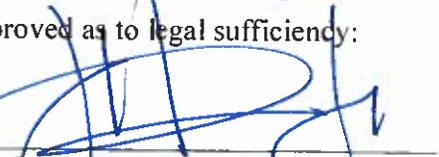
Ray Murphy, Vice Mayor aye
Bruce Butcher aye

ATTEST:

FORT MYERS BEACH TOWN COUNCIL

By: 
Michelle D. Mayher, Town Clerk

By: 
Anita T. Cereceda, Mayor

Approved as to legal sufficiency:
By: 
John R. Herin, Jr., Town Attorney

This resolution was filed in the Office of the Town Clerk on this 13th day of March 2020.

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EXECUTOR'S DEED

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THIS DEED, Made and entered into this 8th day of February, A.D., 1960 between M. THEODORE RANDELL, the duly constituted, appointed and acting Executor of the Estate of R. W. RANDELL, Deceased, in the County of Lee, State of Florida, as Party of the first part, and FRANCIS D. VALKENBURG and CHARLOTTE VALKENBURG, husband and wife, whose address is: 1231 W. 74th Place, Chicago 184, Ill. As Parties of the second part,

WITNESSETH, That R. W. RANDELL, late of Fort Myers, Lee County, Florida, deceased, by his Last Will dated the first day of June, 1948, appointed M. THEODORE RANDELL, Executor under said Will with power of sale of any property belonging to his estate, whether real, personal or mixed, to such person or persons, and on such terms and conditions as said M. THEODORE RANDELL may deem proper, without order or confirmation from any court; and

WHEREAS, the said testator died on the 15th day of January, A.D., 1950, without having altered or revoked his said Will, which was duly proved by the said Executor therein named, in the Probate Court of the County of Lee, State of Florida, on the 13th day of February, A.D., 1950, following, and

WHEREAS, said M. THEODORE RANDELL did thereafter duly qualify as Executor of said Estate, and that letters testamentary were duly issued on the 13th day of February, A.D., 1950.

NOW THEREFORE, in consideration of the foregoing and in further consideration of the sum of Ten Dollars and other good and valuable considerations, purchase money paid at and before the enrolling and delivery of this deed, receipt of which is hereby acknowledged, the Party of the first part has sold and conveyed and does hereby sell and convey unto the said FRANCIS D. VALKENBURG and CHARLOTTE VALKENBURG, their heirs and assigns, the following described property located in Lee County, Florida, to-wit:

Lots 16 and 17, in Block "B", in COTTAGE POINT SUBDIVISION according to the plat thereof, recorded in Plat Book 9 at Page 133 of the Public Records of Lee County, Florida, and according to the map or plat attached to that deed recorded in Deed Book 359 at Pages 222 and 223 of the Public Records of Lee County.