

ORDINANCE 20-07

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/DENYING THE REZONING OF THE PROPERTY LOCATED AT 200 PEARL STREET, FORT MYERS BEACH FROM RESIDENTIAL CONSERVATION (RC) ZONING DISTRICT TO RESIDENTIAL PLANNED DEVELOPMENT (RPD) WITH A MASTER CONCEPT PLAN FOR A TWO-FAMILY DWELLING UNIT WITH CONDITIONS AND A DEVIATION TO THE SQUARE FOOTAGE LIMITATION OF THE PRE-DISASTER BUILD BACK; PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, applicant, Barbara Salemi (Applicant), the owner of the property located at 200 Pearl Street in the Town of Fort Myers Beach (Property), filed application to rezone the Property from the Residential Conservation (RC) zoning district to Residential Planned Development (RPD) with a Master Concept Plan (MCP), a schedule of uses, and a deviation to certain requirements of the Land Development Code (LDC), in order to develop a two-unit building on a .128+/- acres of land; and

WHEREAS, the STRAP number for the Property is 19-46-24-W4-00412.0000, and the legal description of the Property is attached as Exhibit A; and

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

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on October 16, 2019, November 12, 2019 and February 11, 2020 (LPA Hearings) at which the LPA gave full and complete consideration of the request of the Applicant, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by the LDC and recommended approval of the rezoning with changes to the conditions and approval by a 5-0 vote; and

WHEREAS, on March 2, 2020 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 Section 34-85 of the LDC; and

WHEREAS, on second reading of the proposed Ordinance the Town Council held a legally noticed public hearing on March 13, 2020; 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, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, the Applicant agrees to all conditions of approval as set forth herein and therefore, own Council finds that rezoning the Property provides a unique benefit to the neighborhood by allowing for the redevelopment of the Property with a building that meets current

flood and building regulations, with a limitation on the allowable square footage, increased side setbacks, and agreement to not bring additional fill to the site.

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

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant ~~did~~**did** not meet its burden of proof that the requested rezoning **does/does not** meet the requirements of the Town Comprehensive Plan and LDC, and approving the rezoning of the Property from Residential Conservation (RC) zoning district to Residential Planned Development (RPD) with a Master Concept Plan (MCP), a schedule of uses, and a deviation to certain requirements of the LDC **is/is not** in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVES/DENIES** the requested rezoning.

Section 3. In approving the rezoning of the Property, the following conditions of approval are imposed on the Applicant and the Property:

1. Development must be consistent with the master concept plan (MCP) titled “200 Pearl Street Master Concept Plan” for case 20190046, plan revision date 10/07/19, except as modified by conditions or deviations discussed herein. All changes to the MCP shall comply with the LDC.
2. The following limits apply to the Property and its development or redevelopment:

Schedule of Allowable Uses:

Dwelling Units (limited to a maximum of two units)
Duplex or Two-Family Building
Entrance Gates
Essential Services
Fences and Walls
Recreational Facilities, Private, On-site
Residential Accessory Uses
Temporary Uses Permitted by right within the LDC

Property Development Regulations:

Minimum Street Setback:	25 Feet
Side Setbacks:	8 Feet
Rear Setback:	20 Feet
Minimum Lot Area:	.13 acres
Minimum Lot Width:	72.5 Feet
Minimum Lot Depth:	80.88 Feet
Building Coverage:	40%

Maximum Stories: 2 Stories Over Parking
Maximum Height: 25 Feet

3. Nothing in this rezoning, including any of the attached conditions, constitute a variance or deviation from the provisions of Chapter 6, Article IV “Floodplain Regulations’ of the LDC. Approval of this rezoning does not exempt the subject property from any provisions of the LDC with the exception of any approved deviation contained herein.
4. Approval of this rezoning does not give the Applicant a right to the issuance of local development order approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of development order approval and permitting, except as may be specifically modified herein.
5. No more than 60% of the Property shall be covered with impervious surfaces. This requirement replaces Section 6-14 “Neighborhood Flooding” of the LDC.
6. The placement of fill on the Property is prohibited, other than minor additions of topsoil for landscaping, and final grading may not redirect stormwater runoff to adjacent properties. This requirement replaces Section 6-14 “Neighborhood Flooding” of the LDC.
7. The maximum livable floor area is limited to 2,100 square feet.
8. The Applicant must apply for and obtain a building permit within two (2) years of the approval of this rezoning.
9. Existing native trees shall be preserved or replaced and all invasive species shall be removed. A minimum of three (3) trees shall be maintained on the Property.
10. ~~A maximum of one rental, per 30-day period, is permitted for either unit. Rental of property is limited to one dwelling unit during any one-month period, with a minimum stay of one week.~~
11. ~~The individual sale or subdivision of the dwelling units is prohibited. The Property shall not be subdivided or otherwise conveyed that creates one or more parcels of land that do not meet the site specific Minimum Lot Area, Width and Depth Property Development Regulations established herein.~~
12. Violations of these conditions of approval will result in a warning for the first offense, one hundred dollars for the second offense, and five hundred dollars per day/per violation for subsequent violations, appealable to the Code Enforcement Special Magistrate.

Section 4. The applicant has requested the following deviation, which the Town Council **does/does** not grant:

1. A deviation from Section 34-3237(4) of the LDC, which requires total interior square footage of a rebuilt dwelling unit not to exceed the interior square footage of the original dwelling unit, to allow for a maximum interior square footage of 1,400 square feet for each unit.

Section 5. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 6. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember ____ and seconded by Councilmember ____ and upon being put to a roll call vote, the result was as follows:

Anita Cereceda, Mayor	_____
Ray Murphy, Vice Mayor	_____
Joanne Shamp, Councilmember	_____
Rexann Hosafros, Councilmember	_____
Bruce Butcher, Councilmember	_____

ADOPTED this 13th day of March, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Anita T. Cereceda, Mayor

ATTEST:

Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of March 2020.

DELETED