

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 14-14  
DCI2014-0001 – Publix CPD Amendment

WHEREAS, Gary Resnick, authorized agent for Publix Super Market, Inc., owner of property located at 4791 Estero Boulevard, Fort Myers Beach, Florida has requested an amendment to the Schedule of Uses for the Publix CPD to allow outdoor display of merchandise and to allow a temporary sign for use during emergencies; and

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

WHEREAS, the STRAP number for the subject property is 28-46-24-W4-00001.0040 and the legal description is provided as follows:

*A parcel of land located in the Southwest Quarter (SW1/4) of Section 28, Township 46 South, Range 24 East, Lee County, Florida, more particularly described as follows:*

*Begin at the Westerlymost corner of Lot 6, Block A, Holiday Shores Subdivision, as recorded in Plat Book 9 at Page 33 of the Public Records of Lee County, Florida, also being a point on the Northeasterly right-of-way line of Estero Boulevard (SR865) 32.5 feet from the centerline of Estero Boulevard; Thence run N49°57'33"W along said Northeasterly right-of-way line for a distance of 195.10 feet; Thence run N20°45'47" for a distance of 596.34 feet; Thence run S51°46'07"W for a distance of 374.01 feet to a point on the Northwesterly line of said Holiday Shores Subdivision; Thence run S38°13'53"W along the Northwesterly line of said Holiday Shores Subdivision for a distance of 575.00 feet to the Point of Beginning; and*

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on May 13, 2014, regarding the requested amendment; and

WHEREAS, the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-85;

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on June 2, 2014, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2014-008, the recommendation of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

The Town Council **APPROVES** the requested amendment to the schedule of uses to allow outdoor display of merchandise and to allow a temporary sign for use during emergencies, subject to the following condition:

1. Outdoor display of merchandise is limited to the covered area at the entrance to the supermarket.

## **FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-85 regarding approval of variance requests, the Town Council reaches the following findings and conclusions:

1. *Whether there exists an error or ambiguity which must be corrected.*

There is no ambiguity which must be corrected, but the Schedule of Uses should be amended to allow outdoor display where a typical supermarket provides outdoor displays at their entrance. **APPROVE**

2. *Whether there exist changed or changing conditions that make approval of the request appropriate.*

The changed condition occurred in 2013 when Code Enforcement conducted a "sweep" of outdoor displays within the Town as part of the Outdoor Display Working Group process to change the provisions for outdoor displays in the Downtown zoning district. It was determined that Outdoor Display is a separate use that needed to be allowed in the zoning district to be permitted on the property. **APPROVE**

3. *The impact of a proposed change on the intent of LDC Chapter 34.*

The requested amendment to the CPD will not have an impact on the intent of LDC Chapter 34. **APPROVE**

4. *Whether the request is consistent with the goals, objectives, policies and intent, and with the densities, intensities, and general uses set forth in the Fort Myers Beach Comprehensive Plan.*

Resolution 98-11 found the requested CPD zoning to be in compliance with the Comprehensive Plan. Further, the subject property is located in the Boulevard Future Land Use category, a land use category that allows commercial activities on Fort Myers Beach. **APPROVE**

5. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

Resolution 98-11 found the requested CPD zoning to be in compliance with all performance and locational standards. **APPROVE**

6. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

Urban services are available, as the subject property is already a customer of Beach Water, and roads and sidewalks are in place along Estero Boulevard. **APPROVE**

7. *Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.*

Resolution 98-11 found the requested CPD zoning to protect, conserve and preserve environmentally critical areas and natural resources. **APPROVE**

8. *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 requested amendment would allow outdoor display to resume, where it had previously occurred, and to allow a temporary sign to alert customers to special hours of operation. Neither request will cause damage, hazard, nuisance, or other detriment to persons or property. **APPROVE**

9. *Whether the location of the request places an undue burden upon existing transportation and other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

The request will not place any burden on the transportation network or other facilities. **APPROVE**

10. *For planned development rezonings, see § 34-216 for additional considerations (below):*

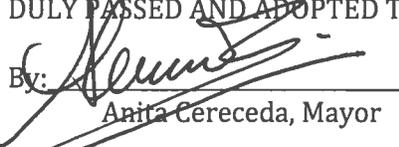
- a. *The proposed mix of uses is appropriate at the subject location.*
- b. *Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations.*
- c. *All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.*
- d. *The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development.*

The request is appropriate at the subject location, does not negatively impact the public, and is consistent with the comprehensive plan. **APPROVE**

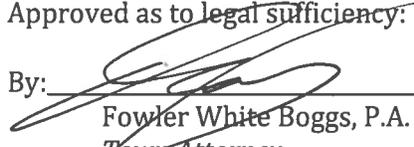
The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Andre and seconded by Council Member Mandel, and upon being put to a vote, the result was as follows:

|                       |     |                       |     |
|-----------------------|-----|-----------------------|-----|
| Anita Cereceda, Mayor | AYE | Dan Andre, Vice Mayor | AYE |
| Rexann Hosafros       | AYE | Alan Mandel           | AYE |
| Summer Stockton       | AYE |                       |     |

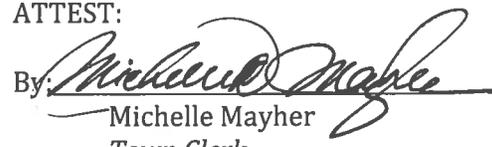
DULY PASSED AND ADOPTED THIS 2nd day of JUNE, 2014.

By:   
Anita Cereceda, Mayor

Approved as to legal sufficiency:

By:   
Fowler White Boggs, P.A.  
Town Attorney

ATTEST:

By:   
Michelle Mayher  
Town Clerk