

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 06-02

WHEREAS, Joan M. DeLucas ("Applicant") has requested to rezone 0.22+/- acres or approximately 9,739+/- square feet, from Commercial Boulevard (CB) to Commercial Planned Development (CPD) to allow the conversion of an existing 4,000 square foot office building into two (2) restaurants; and

WHEREAS, the subject property is located at 2301 Estero Boulevard, Fort Myers Beach, in Section 19, Township 46 South, Range 24 East, in Lee County, Florida; and

WHEREAS, Applicant has indicated the subject property's current STRAP number is: 19-46-24-W3-0110D.0010, and the legal description of the subject property is attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, a public hearing was properly noticed and held on April 11, 2006, before the Local Planning Agency (LPA), which recommended APPROVAL of the CPD with eleven (11) conditions and ten (10) deviations; and

WHEREAS, a public hearing was properly noticed and duly held on May 8, 2006, before the Town Council; and

WHEREAS, the Town Council gave full and complete consideration to the recommendations of the LPA, staff, the documents in the file, 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:

**SECTION 1. FINDINGS OF FACT AND CONCLUSIONS.**

Based upon the recommendations of the LPA, the presentations by Applicant, staff, and other interested parties at the public hearing, and review of the application and the standards for planned development zoning approval, the Town Council makes the following findings and reaches the following conclusions:

1. The requested rezoning, as conditioned pursuant to Section 2 below, does not comply with:
  - a. The Fort Myers Beach Comprehensive Plan;
  - b. LDC Chapter 34;
  - c. all other applicable Town ordinances and codes; and

- d. the following additional requirements for planned development zoning requests: Comprehensive Plan Policy 4-C-3.
2. The proposed use or mix of uses is not appropriate at the subject location.
3. Sufficient safeguards to the public interest are not provided by the recommended conditions to the master concept plan or by other applicable regulations.
4. Not all recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
5. As to the requested deviations, as conditioned pursuant to Section 2 below:
  - a. Each item does not enhance the achievement of the objectives of the planned development; and
  - b. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare will not be preserved and promoted; and
  - c. Each deviation does not operate to the benefit, but to the detriment, of the public interest; and
  - d. Each deviation is not consistent with the Fort Myers Beach Comprehensive Plan.

## **SECTION 2. DENIED CONDITIONS AND DEVIATIONS**

### **A. DENIED CONDITIONS**

1. The development of this project must be consistent with the one-page Master Concept Plan (MCP) entitled "Big John's Board Walk Eatery," stamped "Received Mar 22, 2006 Permit Counter", last revised March 22, 2006, except as modified by the conditions below. This development must comply with all requirements of the Land Development Code (LDC) at the time of Local Development Order approval except as may be granted by deviations as part of this planned development. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.
2. The following limits apply to the project and uses:

- a. **Schedule of Uses**

Lodging – Limited

Office – Limited

- Offices, general or medical
- Personal services

Retail – Limited

- Restaurant (limited to two (2) with a total maximum of 4000 square feet)

Civic – Open

**b. Planned Development Dimensional Regulations**

Dimensional regulations must comply with LDC Section 34-704 except where otherwise granted by deviations as part of this planned development

Maximum building height – 18 feet above grade and one story

Maximum F.A.R. – 0.37

3. A local development order is required prior to any use of the subject property in accordance with this planned development. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order
4. Approval of this zoning request does not give the Developer an undeniable right to receive local development order approval. Future development order approval must satisfy the requirements of the Fort Myers Beach Comprehensive Plan.
5. The schedule of uses of the subject property is hereby limited to provide that the hours of operation of any business on the subject property shall commence not earlier than 6 a.m. and terminate not later than 10 pm.
6. Any sidewalk(s) adjacent to the subject property shall be delineated with paint to facilitate pedestrian traffic.
7. All outside lighting to the rear of the subject property shall be low to the ground so that it is contained within the presently existing 8 foot fence.
8. Any COP shall require separate Town Council consideration and approval.

9. There shall be no outdoor entertainment at any time on the subject property.
10. There shall be no outdoor food service at any time on the subject property.
11. The existing planter at the front of the building shall remain in place and shall contain appropriate plants at all times. Applicant must amend the MCP prior to hearing before Town Council to show the location of the existing planter.

## **B. DENIED DEVIATIONS**

1. Deviation #1 from Section 34-2015(b) which requires that all parking lots be provided with sufficient maneuvering room so as to allow an exiting vehicle to leave the parking lot in a forward motion, to allow back-out parking for the existing building and parking spaces.
2. Deviation #2 from Section 34-2020(e)(2)h. which requires 29 spaces for the 3,600 square foot restaurant to allow for 12 spaces.
3. Deviation #3 from Section 10-416(d) Table 10-8 which requires an 8 foot solid fence at the rear of the commercial building, to allow for the existing chain link fence. The fence shall comply with all provisions of the Land Development Code regarding fences in the front yard, except for the existing height.
4. Deviation #4 from Section 10-416-(d)(2) Table 10-8 which requires a "D" buffer between the parking area and the right-of-way to allow no buffer.
5. Deviation #5 from Section 34-704(a) which requires building to set back no more than 10 feet from Estero Boulevard to allow a front setback of 50.1 feet for the existing building.
6. Deviation #6 from Section 34-704(b)(1)c. which requires a minimum side setback of 5 feet to allow a side setback of 0.49 feet on the south side.
7. Deviation #7 from Section 34-704(b)(1)a. which requires a minimum street setback of 10 feet to allow a street setback of 1.13 feet from Fairweather Lane. Applicant shall amend the Master Concept Plan prior to hearing before Town Council to show the 1.13-foot street setback from Fairweather Lane.

8. Deviation #8 from Section 34-704(b)(1)b. which requires a minimum rear setback of 20 feet to allow for a rear setback of 2 feet.
9. Deviation #9 from Section 34-995(d) which requires a corner building to be not more than 20 feet from the intersection of right-of-way lines to allow for a setback of 48.5 feet from the intersection of Estero Boulevard and Fairweather Lane.
10. Deviation #10 from Section 34-995(a)(3) that prohibits a principal façade facing a primary street to have blank walls greater than 10 feet in length to allow for one stretch of the front of the building to be a distance of 16 feet, because there is a mural painted within that space.

The foregoing resolution denying the proposed CPD zoning request was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

Dennis Boback, Mayor	Yes
Don Massucco, Vice Mayor	No
Charles Meador, Jr.	No
Garr Reynolds	Yes
William Shenko, Jr.	Yes

DULY PASSED AND ENACTED this 8th day of May, 2006.

ATTEST:

TOWN OF FORT MYERS BEACH

By:   
Michelle Mayher, Town Clerk

By:   
Dennis Boback, Mayor

Approved as to form by:

  
Anne Dalton, Town Attorney

**Legal Description**  
**EXHIBIT 7-2**

Lot 1, Block D, and Lot 2, Block D of the Beach Estates Subdivision as recorded in Plat Book 6, page 68, of the Public Records of Lee County, Florida, located in Section 19, Township 46 North, Range 24 East, being more particularly described as follows:  
Beginning at the concrete monument marking the northeast corner of Lot 2, Block D of said Beach Estates Subdivision,

Thence North 68°01'56" West, 100.00 feet along the northerly line of said Lots 1 and 2 of Block D to the northwest corner of said Lot 1 and the easterly right of way of Fairweather Lane, being 18 feet wide;

Thence, South 00°00'00" West, 100.97 feet along said easterly right of way to the northerly right of way of County Road 865 (Estero Boulevard), being 50 feet wide,

Thence, South 68°30'00" East, 99.68 feet along said northerly right of way to the east line of said Lot 2;

Thence, North 00°00'00" West, 100.10 feet along the east line of said Lot 2 to the Point of Beginning.

Parcel contains 9323.60 square feet, or 0.21 acres, more or less.

**Applicant's Legal Checked**

by Lgm 12/15/2005

DCI 2005-00112

**RECEIVED**

NOV 29 2005

COMMUNITY DEVELOPMENT

EXHIBIT A

