

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 14-06
REZ2013-0002 – Shipwreck Rezoning

WHEREAS, Beverly Grady, authorized agent for the owner of property located at 237, 245, 309, 320, and 330 Old San Carlos Boulevard Fort Myers Beach, Florida has requested to rezone two parcels from Commercial Planned Development zoning to the DOWNTOWN zoning district; and

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

WHEREAS, the STRAP numbers for the subject property are 24-46-23-W3-00203.0020 and 24-46-23-W3-0050A.0080 and the legal description is attached as *Exhibit A*; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on November 12, 2013; and

WHEREAS, at the November LPA hearing the applicant requested and was granted a continuance of case REZ2013-0001 to a date certain of the January 14, 2014 LPA meeting; and

WHEREAS, a public hearing was held before the LPA on January 14, 2014; and

WHEREAS, at the hearing 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 March 3, 2014, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2013-018, the recommendations 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:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2013-018 and the standards for granting rezonings, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVES/DENIES** the request to rezone the subject property from CPD to the DOWNTOWN zoning district.

FINDINGS AND CONCLUSIONS

Based upon the presentations by the Applicant, Staff, and other interested parties at the hearing, and a review of the application and standards for conventional rezoning approval, the Town Council reaches the following findings and conclusions:

- a. *Whether there exists an error or ambiguity which must be corrected.*
Staff does not find that any errors or ambiguity exist surrounding the subject property and its zoning category that require correction. **APPROVE/DENY**
- b. *Whether there exist changed or changing conditions which make approval of the request appropriate.*
The only changed condition that exists which supports the applicant's request for rezoning is the existence of the DOWNTOWN zoning district. At the time of the Rusty's CPD approval, the Town had not yet developed Town-specific zoning districts. Now that the DOWNTOWN district exists the applicant is requesting this rezoning. **APPROVE/DENY**
- c. *The impact of a proposed change on the intent of Chapter 34 of the Fort Myers Beach Land Development Code.*
Staff does not anticipate that the proposed rezoning from CPD to DOWNTOWN will have any negative impact on the intent of Chapter 34. **APPROVE/DENY**
- g. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*
As discussed in the analysis section of this report, the request is generally consistent with the goals, objectives, policies, and intent as well the densities, intensities and general uses of Comprehensive Plan. **APPROVE/DENY**
- h. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*
The applicant has not submitted a plan for redevelopment with this request for rezoning. They have indicated to Staff there is no immediate intention to redevelop any portion of the subject property, merely a desire to obtain DOWNTOWN zoning. The applicant is aware that by requesting this action they are losing all approvals to deviate from code requirements and any approval for density above and beyond code requirements. The Town retains land and property development controls, including but not limited to Section 34-671: DOWNTOWN zoning district regulations, Section 34-677: Commercial Design Standards; FEMA flood elevation and substantial improvement compliance, and other sections of the Land Development Code. Any redevelopment will be subject to reviews utilizing the applicable specific land use regulations. **APPROVE/DENY**
- i. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*
Urban services including water, sewer, and electric are available at the subject property. Any redevelopment or increase in density or intensity at the subject property will necessitate a thorough stormwater management plan and review prior to any permit or use approvals. **APPROVE/DENY**
- j. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*
As existing commercially zoned and developed lots located in the Downtown Core Area along Old San Carlos Boulevard, the subject property does not include any sensitive

and/or environmentally critical lands. However, should these parcels be redeveloped with uses as permitted within the DOWNTOWN zoning district, all applicable environmental codes including but not limited to Sea Turtle lighting requirement as found in LDC Section 14-79 must be met. **APPROVE/DENY**

- k. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

With its central location within the Downtown Core Area, the subject property's proposed change from CPD to DOWNTOWN zoning is clearly compatible with existing and planned uses. The Town does, however, retain land and property development controls, including but not limited to Section 34-671: DOWNTOWN zoning district regulations, Section 34-677: Commercial Design Standards; FEMA flood elevation and substantial improvement compliance, and other sections of the Land Development Code. Any redevelopment will be subject to reviews utilizing the applicable specific land use regulations. **APPROVE/DENY**

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

As evidenced by recent requests for zoning changes, Town Council has determined that the appropriate time to study traffic impacts is at the time of redevelopment or development order. The applicant has indicated there are no current plans for redevelopment. The continuation of existing uses, therefore, will not increase any traffic burden on local streets or other local services or facilities.

Staff does not anticipate the requested rezoning from CPD to DOWNTOWN will generate any additional capacity or need for the Lee County School District or the Town's Parks and Recreation Department. **APPROVE/DENY**

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

Alan Mandel, Mayor	AYE/NAY
Jo List	AYE/NAY
Dan Andre	AYE/NAY

Joe Kosinski, Vice Mayor	AYE/NAY
Bob Raymond	AYE/NAY

DULY PASSED AND ADOPTED THIS 3rd day of **MARCH, 2014**.

By: _____
Alan Mandel, Mayor

Approved as to legal sufficiency:

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

ATTEST:

By: _____
Michelle Mayher
Town Clerk

RESOLUTION OF THE LTOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 14-07
SEZ2013-0006 – Shipwreck Special Exception

WHEREAS, Beverly Grady, authorized agent for the owner of property located at 237, 245, 309, 320, and 330 Old San Carlos Boulevard Fort Myers Beach, Florida has requested a special exception to add 'Retail Store, large,' 'Wholesale,' and 'Parking lot, shared permanent' to the North parcel of the subject property and 'Parking lot, shared permanent' and 'Retail Store, large' to the South parcel of the subject property as permitted uses on the subject property; and

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

WHEREAS, the STRAP numbers for the subject property are 24-46-23-W3-00203.0020 and 24-46-23-W3-0050A.0080 and the legal description is attached as *Exhibit A*; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on November 12, 2013; and

WHEREAS, at the November LPA hearing the applicant requested and was granted a continuance of case SEZ2013-0006 to a date certain of the January 14, 2014 LPA meeting; and

WHEREAS, a public hearing was held before the LPA on January 14, 2014; and

WHEREAS, at the hearing 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 34-88;

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on March 3, 2014, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2013-019, the recommendations 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 34-88.

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

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2013-019 and the standards for granting special exceptions, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVES/DENIES** the request for a Special Exception to allow 'Retail Store, large,' 'Wholesale,' and 'Parking lot, shared permanent' for the North parcel of the subject property and 'Parking lot, shared permanent' and 'Retail Store, large' for the South parcel of the subject property as permitted uses.

FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding approval of special exceptions, the Town Council reaches the following findings and conclusions:

1. Changed or changing conditions **do/do not** exist that make the requested approval, as conditioned, appropriate;
2. The requested special exception, as conditioned, **is/is not** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan;
3. The requested special exception, as conditioned, **meets or exceeds/does not meet or exceed** all performance and locational standards set forth for the proposed use;
4. The requested special exception, as conditioned, **will/will not** protect, conserve, or preserve environmentally critical areas and natural resources;
5. The requested special exception, as conditioned, **will/will not** be compatible with existing or planned uses and **will/will not** cause damage, hazard, nuisance or other detriment to persons or property;
6. The requested special exception, as conditioned, **will/will not** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

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

Alan Mandel, Mayor AYE/NAY
Jo List AYE/NAY
Dan Andre AYE/NAY

Joe Kosinski, Vice Mayor AYE/NAY
Bob Raymond AYE/NAY

DULY PASSED AND ADOPTED THIS **3rd** day of **MARCH, 2014**.

By: _____
Alan Mandel, Mayor

Approved as to legal sufficiency:

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

ATTEST:

By: _____
Michelle Mayher
Town Clerk

RESOLUTION OF THE LOCAL PLANNING AGENCY
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 14-08
VAR2013-0007 – Shipwreck Variance

WHEREAS, Beverly Grady, authorized agent for the owner of property located at 237, 245, 309, 320, and 330 Old San Carlos Boulevard Fort Myers Beach, Florida has requested the following variances from the following LDC sections:

1. Section 34-676(b) parking lot location, to permit off-street parking in the front and side yards as depicted on the site plan in *Exhibit E*.
2. Table 10-8 Type D buffer, Section 34-677(b)(3) requiring a buffer between off street parking and a ROW, and Section 10-416(d) requiring buffer between parking and ROW to allow a 2.5' buffer with a 41" minimum height.
3. Section 34-676(c) parking lot location, to allow no rear yard connection between subject property and adjacent property.
4. A variance from Section 34-622 (b) and 34-3131, visibility triangle, to allow reduced visibility triangle for access to Third Street due to Town approval of SOB structure in right of way.
5. A variance from Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'
6. A variance from LDC Section 10-416 (c) internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2(a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2(d) no landscape every 10 space requirement; 2(e) no median required; 2(f) no interior landscape of sod and grass and 2(g) no tree grates; and

WHEREAS, the subject property is located in the Pedestrian Commercial 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 24-46-23-W3-00203.0020 and the legal description is attached as *Exhibit A*; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on November 12, 2013; and

WHEREAS, at the November LPA hearing the applicant requested and was granted a continuance of case VAR2013-0007 to a date certain of the January 14, 2014 LPA meeting; and

WHEREAS, a public hearing was held before the LPA on January 14, 2014; and

WHEREAS, at the hearing 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 34-87;

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on March 3, 2014, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2013-020, the recommendations 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 34-87.

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

The Town Council **APPROVES/DENIES** the requested variances from the following sections:

1. Section 34-676(b) parking lot location, to permit off-street parking in the front and side yards as depicted on the site plan in *Exhibit E*.
2. Table 10-8 Type D buffer, Section 34-677(b)(3) requiring a buffer between off street parking and a ROW, and Section 10-416(d) requiring buffer between parking and ROW to allow a 2.5' buffer with a 41" minimum height.
3. Section 34-676(c) parking lot location, to allow no rear yard connection between subject property and adjacent property.
4. A variance from Section 34-622 (b) and 34-3131, visibility triangle, to allow reduced visibility triangle for access to Third Street due to Town approval of SOB structure in right of way.
5. A variance from Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'
6. A variance from LDC Section 10-416 (c) internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2(a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2(d) no landscape every 10 space requirement; 2(e) no median required; 2(f) no interior landscape of sod and grass and 2(g) no tree grates.

CONDITIONS OF APPROVAL:

1. The applicant shall install a 2.5' wide buffer with a minimum height of 41 inches.
2. Applicant may utilize the parking dimensions described in variance request #4, however, at the time of redevelopment or the application of a building permit for the subject property, the parking space dimensions must come into compliance with all provisions of Section 34-2016.
3. At the time of redevelopment, the parking lot variance allowing a front and side parking lot must come into compliance and be relocated to the rear of the subject property
4. The LPA grants approval for a building overhang extending up to 12' into the right-of-way.

FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-87 regarding approval of variance requests, the Town Council reaches the following findings and conclusions:

- a. There **are/are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is/is not** for a de minimis variance

- under circumstances or conditions where rigid compliance is not essential to protect public policy.
- b. The conditions justifying the variance **are/are not** the result of actions of the applicant taken after the adoption of the regulation in question.
 - c. The variance granted **is/is not** 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/will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
 - e. The conditions or circumstances on the specific piece of property for which the variance is sought **are/are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

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

Alan Mandel, Mayor	AYE/NAY
Jo List	AYE/NAY
Dan Andre	AYE/NAY

Joe Kosinski, Vice Mayor	AYE/NAY
Bob Raymond	AYE/NAY

DULY PASSED AND ADOPTED THIS 3rd day of **MARCH, 2014**.

By: _____
Alan Mandel, Mayor

Approved as to legal sufficiency:

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

ATTEST:

By: _____
Michelle Mayher
Town Clerk