RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH, FLORIDA RESOLUTION NUMBER 2008-21

A RESOLUTION OF THE LOCAL PLANNING AGENCY OF FORT MYERS BEACH, FLORIDA:

WHEREAS, Michael E. Roeder, AICP, authorized agent for the Marianne L. Goncher, trustee of the Marianne L. Goncher 2000 Trust, owner of the subject property, (Applicant) petitioned for a rezoning of 0.29+/- acres from Residential Single Family (RS) to Residential Planned Development (RPD) to enable re-subdivison of a parcel developed with one principal building so as to create two (2) single-family lots, with deviations to allow reductions in the minimum lot dimensions and lot area. Redevelopment of up to two dwelling units on the subject property will otherwise comply with the requirements of LDC Section 34-3238 regarding post-disaster buildback.

WHEREAS, the subject property is located at 111 Gulfview Avenue, Fort Myers Beach, Florida, and the applicant has indicated the property's current STRAP number is 29-46-24-W3-0080C.0290. The legal description of the subject property is Lots 29 and 30, Block C, Hyde Park Subdivision, Plat Book 7, P.20,Public Records of Lee County, Florida; and

WHEREAS, a public hearing on this matter was legally advertised to be heard by the Local Planning Agency (LPA) on June 3, 2008 at which time the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, the request of applicant and the testimony of all interested persons.

NOW, THEREFORE BE IT RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

The LPA recommends that the Town Council **APPROVE** the Applicant's request to rezone the subject property from RS to RPD, subject to the following conditions and one (1) deviation:

A. CONDITIONS

1. Development must be consistent with the one-page Master Concept Plan entitled "RPD for Marianne Goncher" for case FMBDCI2008-0001, stamped received April 1, 2008, except as specifically modified by conditions below. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be required.

2. The following limits apply to the project and uses:

Schedule of Uses

Residential:
Restricted (as provided in LDC Table 34-1)
Lodging:
Restricted (as provided in LDC Table 34-1)
Office:
Restricted (as provided in LDC Table 34-1)

Retail:

NONE

Marine:

NONE

Civic:

Restricted (as provided in LDC Table 34-1)

The subject property qualifies for replacement of no more than two (2) dwelling units under Policy 4-D-1 of the Comprehensive Plan.

Site Development Regulations

(As provided for the RS (Residential Single-family) zoning district except as specifically modified herein)

Minimum Lot width: **50± feet**
Minimum Lot depth: **125± feet**
Minimum Lot area: **6209± square feet**
Maximum Building Height (feet): **25 feet** above base flood elevation
Maximum Building Height (stories): **3 stories** (2 stories above parking, building access, or storage below elevated building)
Minimum setbacks:
Street: **25 feet**
Side: **7.5 feet**
Rear: **20 feet**
Exceptions to all setbacks as provided in LDC Section 34-638 and LDC Sections 34-1171 through 34-1176.

3. The existing building on the subject property has been declared substantially damaged. No later than 30 days from the adoption of this resolution the property owner must have received a demolition permit, and must diligently pursue demolition of the existing building thereafter.

4. Resubdivision of the subject property must proceed according to all applicable requirements of Land Development Code Chapters 10 and 34 at the time application is made for lot split approval, except as specifically modified by deviations or conditions herein.

5. Prior to the resubdivision of the subject property, the existing residential structure must be removed.

6. The interior square footage of the two dwelling units reconstructed on the subject property pursuant to LDC Section 34-3238 is limited to a total of 4113 square feet allocated in any way between the two allowable units.

7. The provisions of LDC Sections 2-312(a)(1), 2-312(a)(3), 2-312(a)(5), and 2-312(a)(6) regarding impact fee exemptions do not apply to the redevelopment approved herein. The net increase in the impact fee for redevelopment of two single-family residences over the impact fee applicable to two dwelling units in a multiple-family building shall apply at the time of building permitting, as provided in LDC Section 2-306(e).

8. Upon the issuance of any certificate of occupancy for any single-family residence on any 6209-square-foot lot within the subject property, that building shall be deemed nonconforming with regard to the residential density allowed under Comp Plan **Policy 4-B-3** as provided in LDC Section 34-3234(b)(3), up to the maximum allowable interior area provided in Condition 6, above. Upon approval of the proposed resubdivision and issuance of certificates of occupancy for both of the proposed single-family residences, approval of this planned development shall not authorize any development not otherwise allowed by the Land Development Code. Any subsequent redevelopment must comply with all applicable provisions of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at that time.

B. DEVIATION #1

To achieve the proposed development, the applicant has requested to deviate from LDC Section 34-943 and Table 34-3 to allow the RPD zoning district to utilize the property development regulations for the RS (Residential Single-family) zoning district with the following modifications: minimum lot width reduced from **75 feet** to **50± feet**; minimum lot area reduced from **7500 square feet** to **6209± square feet**.

The LPA recommends **APPROVAL** of Deviation #1.

II. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based upon an analysis of the application and the standards for approval of residential planned development zoning approval, the LPA recommends the following findings and conclusions:

A. RECOMMENDED FINDINGS (LDC Section 34-85)

1. There **does** exist an error or ambiguity [that] must be corrected.

*The interaction of **Policy 4-B-3** (regarding the Low Density FLUM) and **Policy 4-D-1** (regarding Post-Disaster Buildback) is at least somewhat ambiguous in this situation. **Policy 4-D-1** and the portions of the LDC that implement it (primarily LDC Section 34-3238) suggest that in a buildback situation the replacement building should be limited to the same use and the same style of building, but **Policy 4-B-3** emphasizes that the Low Density FLUM applies to neighborhoods with an established low density character, primarily containing single-family homes.*

2. There **does** exist changed or changing conditions [that] make approval of the request appropriate.

Hurricane Charley substantially damaged the existing building on the subject property in 2004. Up to the two lawfully existing dwelling units could be rebuilt on the subject property with or without approval of the current request. Of the 18 lots on either side of Gulfview Avenue to the bay side of Estero Boulevard that were platted with 50-foot widths, 15 were developed with one structure on each 50-foot-wide lot. The subject property and the property at 114 Gulfview Avenue, across the street, were each developed with a single structure centrally located on two combined 50-foot-wide lots. The property at 118 Gulfview Avenue consists of a 50-foot-wide

platted lot combined with a triangular platted lot of less than 4000 square feet. Given the fact that 15 of the 18 similar 50-foot-wide platted lots on the street are already developed with single-family homes, approval of the request would not create an anomaly in this neighborhood.

3. The proposed change **effectuates** the intent of LDC Chapter 34.

*According to LDC Section 34-642, the purpose of the RS zoning district is to provide stable neighborhoods where single-family detached homes are the predominant land use. According to LDC Section 34-941, the intent of an RPD zoning district is to allow a landowner to submit a specific proposal for a land development that is primarily residential in character and that complies with the Fort Myers Beach comprehensive plan, but which does not meet the specific requirements of a conventional or redevelopment zoning district. Up to two (2) dwelling units can be replaced on the subject property under Comp Plan **Policy 4-D-1**. Rezoning from RS to RPD would accord with the intent of the RPD zoning district expressed in LDC Section 34-941, and the requested deviation from minimum lot dimensions and area is within the scope of deviations allowable under LDC Section 34-932(b).*

4. The proposed change **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.

***Policy 4-B-3**, regarding the Low Density FLUM category, allows a maximum residential density of 4 units per acre. The subject property contains approximately 12,418 square feet and the lots after resubdivision would contain 6,209 square feet each. Neither lot would meet the 0.25-acre (10,890 square-foot) minimum to construct a single dwelling unit. However, **Policy 4-D-1** allows up to the same lawfully existing number of dwelling units (2 units) to be rebuilt on the subject property following substantial damage by a disaster. One two-family building on the subject property would be less consistent with the single-family character of the Low Density FLUM, but two single-family buildings and their accessory uses on the resubdivided subject property would arguably represent an increase in the intensity of the residential use even though the interior floor area of each unit would be limited to a portion of the total currently existing.*

5. The proposed change **does** meet or exceed all performance and locational standards set forth for the proposed use.

The master concept plan shows that the subject property cannot be resubdivided into conforming lots in the RS zoning district. Deviation #1 would address this problem in the context of the request to rezone. No other deviations from setbacks, building heights, or other regulations are requested. Staff has recommended in condition #2 above that the property development regulations for the RS zoning district apply to this RPD except for the requested deviation. All performance and locational standards will be required to be met through the development and building permit processes.

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

The subject property is already connected to the existing urban services in the area. Through the development and building permit processes the project will be required to pay its share of any anticipated upgrades to such services proportionate to its increased intensity through the assessment of impact fees applicable to single-family residences.

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

Redevelopment of the site will be required through the development and building permit processes to comply will all current regulations protecting environmentally critical areas and natural resources. Approval of the request will not affect these requirements.

8. The request **will be** compatible with existing or planned uses and **will not** cause damage, hazard, nuisance, or other detriment to persons or property.

Nearby properties are developed primarily with single-family residences, although a multi-family building is located across the street from the subject property. The additional buildings would be compatible with the placement of existing single-family homes on the original platted lots in the neighborhood. No damage, hazard, nuisance, or other detriment to persons or property can be anticipated.

9. The location of the request **does not** place 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.

The request involves no net increase in the residential density on the subject property. Measured according to the concurrency management system of LDC Chapter 2, Article II, and according to the impact fee calculations of LDC Chapter 2, Article IV, two single-family residences will increase impacts and will require the payment of additional impact fees. As conditioned, the additional development will be required to contribute to the provision of utility, transportation, and other services through the development order and/or building permit process.

B. RECOMMENDED CONCLUSIONS

1. The requested zoning district **complies** with the Fort Myers Beach Comprehensive Plan, Land Development Code Chapter 34, and all other applicable town ordinances or codes;

2. The proposed use or mix of uses **is appropriate** at the subject location;

3. Sufficient safeguards to the public interest **are provided** by the special conditions to the master concept plan or by other applicable regulations;

4. All recommended special conditions **are reasonably related** to the impacts on the public's interest created by or expected from the proposed development;

5. The proposed use **does meet** all specific requirements of the Comprehensive Plan that are relevant to the requested planned development, including Policy 4-B-3

regarding the Low Density Future Land Use Map category and Policy 4-D-1 regarding Post-Disaster Buildback; and

6. Regarding the requested deviation #1:

   a. Deviation #1 shown on the Master Concept Plan **does enhance** the achievement of the objectives of the planned development;

   b. Through Deviation #1 the general intent of Land Development Code Chapter 34 to protect the public health, safety, and welfare **will be** preserved and promoted;

   c. Deviation #1 **does operate** to the benefit, or at least not to the detriment, of the public interest; and

   d. Deviation #1 **is consistent** with the Fort Myers Beach Comprehensive Plan.

The foregoing Resolution was adopted upon a motion by LPA Member Shamp and seconded by LPA Member Yerkes. Upon being put to a vote, the result was as follows:

Evie Barnes aye	Rochelle Kay aye
Alan Mandel aye	Joanne Shamp aye
Bill Van Duzer aye	Dennis Weimer aye
Joe Yerkes aye	

DULY PASSED AND ADOPTED THIS 3rd day of June, 2008.

LPA of the Town of Fort Myers Beach

By: _____
Dennis Weimer, LPA Chair

Approved as to legal sufficiency:

By: _____
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: _____
Michelle D. Mayher, Town Clerk