

**ORDINANCE 23-04**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 13-23, AND AMENDING THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 200 AND 275 ESTERO BLVD., FORT MYERS BEACH; PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend. or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, JABO LLC ("Applicant"), the owner of the property generally located at 200 & 275 Estero Blvd. and identified by STRAP numbers 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0340 & 24-46-23-W1-00700.037A ("Property"), filed an application to amend the Property's Commercial Planned Development ("CPD") to allow live aboard vessels at the existing docking facility; and

**WHEREAS**, the Property is in the Mixed Residential and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach, and is under common control of the Applicant as listed in the public records of Lee County Property Appraiser; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on January 18, 2023, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 6-0 to recommend approval of the CPD amendment with conditions, and

**WHEREAS**, on February 21, 2023 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 Fort Myers Beach Land Development Code ("LDC"); and

**WHEREAS**, the Town Council set a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on March 6, 2023; 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, including the consideration and findings in the staff report, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

**WHEREAS**, the Town Council finds the proposed CPD amendment with conditions of approval are consistent with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to approve the Application with conditions.

**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 meet its burden of proof that the requested zoning amendment does meet the requirements of the Town Comprehensive Plan and LDC and approving the request to allow the use of live-aboard vessels with conditions is 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 the requested amendment to the CPD zoning of the Property.

Section 3. Town Resolution 13-23 is repealed and replaced by this Ordinance and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A, attached hereto and incorporated herein by this reference is approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 9. 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.

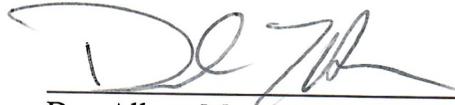
Section 10. This Ordinance will take effect immediately upon adoption by the Town Council.

**THE FOREGOING ORDINANCE** was adopted by the Town Council upon a motion by Council Member Atterholt and seconded by Council Member Allers, and upon being put to a vote, the result was as follows:

**DULY PASSED AND ADOPTED** on this 6<sup>th</sup> day of March 2023.

Dan Allers, Mayor	<u>Aye</u>
Jim Atterholt, Vice Mayor	<u>Aye</u>
John R King, Council Member	<u>Aye</u>
Bill Veach, Council Member	<u>Aye</u>
Karen Woodson, Council Member	<u>Aye</u>

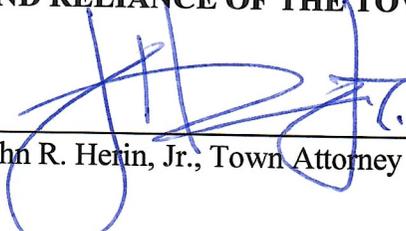
**TOWN OF FORT MYERS BEACH**

  
\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, 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

Exhibits

Exhibit A Schedule of Uses and Conditions of Approval

The Town Council APPROVES the applicant's request for an amendment to the existing Pink Shell CPD. Approval is subject to the Schedule of Allowable Uses and seven (7) Conditions of Approval, set forth with specificity below. Underline indicates language added during this amendment to the CPD, strikethrough indicates language removed during this amendment to the CPD.

Schedule of Allowable Uses

**Residential**

Principal:

- Dwelling unit, single-family (one existing cottage only)
- Dwelling unit, two family (one existing cottage only)
- Dwelling unit, multi-family (92 existing units in White Sands Villas only)
- Group Quarters (See condition 6 Resolution 10-05<sup>1</sup>)

Accessory:

- Residential accessory uses

**Lodging**

Principal:

- Hotel/motel (43 existing guest units in Captiva Villas only)
- Rental of any permitted dwelling unit for periods of one day or longer
- Resort
- Timeshare Units

Accessory:

Resort accessory uses, including:

- Parking
- Rental of beach furniture and cabanas
- Boat rental
- Charter and tour boats
- Personal watercraft operations office
- Parasailing operations office
- Sailing office
- Docks for use by water taxi or water shuttle (See condition 7 Resolution 10-06<sup>2</sup>)
- Meeting space
- Kids camp and crafts
- Signs
- Business center

Subordinate commercial uses

**Office**

Principal:

NONE

Accessory:

- Administrative Office
- Home occupation (no outside help) Commercial accessory use

## **Retail**

### **Principal:**

Recreational facilities - commercial. in conjunction with a membership  
Subordinate commercial uses including restaurant, personal services, retail store  
(small)

### **Accessory:**

ATM

On-premises and package sale for off-premises consumption of alcoholic  
beverage

## **Marine**

### **Principal:**

NONE

### **Accessory:**

Dock (for lease to non-occupants of the principal use)

Dock (for use by resort occupants)

Live aboard vessel mooring slips (in compliance with submerged land lease)

## **Civic**

### **Principal:**

Beach or bay access

Essential services

Essential service equipment

Park, neighborhood

<sup>1</sup> Resolution 10-05, Condition 6. *Any lawfully existing dwelling unit, guest unit, or timeshare unit within the subject property may be used as group quarters for employee housing without regard for occupancy time limitations applicable to guests as set forth in LDC Section 34-1801(b)(4). Occupancy of group quarters is limited solely to bona fide employees of the Pink Shell Resort, including the businesses lawfully operating on the subject property in compliance with this zoning resolution and all other applicable regulations. Under no circumstances may occupancy of any dwelling unit, guest unit, or timeshare unit exceed the lawful occupancy established by applicable building, fire, and life-safety codes. If no building, fire, or life-safety code provisions are more restrictive, the number of occupants of any individual living unit used for group quarters must not exceed four adults, or one family, whichever is larger. The term "family" is defined in LDC Section 34-2, as may be amended from time to time.*

<sup>2</sup> Resolution 10-06, Condition 7. *Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41) boat slips currently are allowed by the state submerged land lease. Use of submerged land must comply with all applicable local, state, and federal regulations. ~~No live-aboard uses are permitted.~~ Cruise ships are prohibited as provided by LDC Sections 34-620(f). Dock structures located upon leased submerged lands adjacent to the subject property have existed since prior to the adoption of the Fort Myers Beach Comprehensive Plan and its Future Land Use Map. This amendment shall not be interpreted as a finding as to consistency or inconsistency of these docks, and/or their uses, the Mixed Residential*

*Future Land Use Map category or any other provision of the Fort Myers Beach Comprehensive Plan. Any expansion of the uses of leased submerged lands adjacent to the subject property, including increase to the number of boat slips, and/or the number and/or size of charger boats and/or tour boats, will require an amendment to this planned development and it's MCP through the public hearing process for zoning actions.*

Conditions of Approval: In approving the amendment to the CPD zoning of the Property, the following conditions of approval are imposed on the Applicant and the Property.

1. The terms and conditions of all previous resolutions shall continue in full force except as expressly altered by this amendment.
2. All development must be consistent with the Master Concept Plan (MCP) titled "Pink Shell CPD Gulf Side" or "Pink Shell CPD Bay Side" and marked with a revision date of August 27, 2013 attached as Exhibit A.
3. The approved schedule of uses are limited to those detailed on this document, ~~the attached Exhibit A F.~~
4. (Condition 7 of Resolution 10-06, amended as follows) Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41) boat slips currently are allowed by the state submerged land lease. Use of submerged land must comply with all applicable local, state, and federal regulations. ~~No live-aboard uses are permitted.~~ Cruise ships are prohibited as provided by LDC Section 34-620(f). Dock structures located upon leased submerged lands adjacent to the subject property have existed since prior to the adoption of the Fort Myers Beach Comprehensive Plan and its Future Land Use Map. This amendment shall not be interpreted as a finding as to consistency or inconsistency of these docks, and/or their uses, with the Mixed Residential Future Land Use Map category or any other provision of the Fort Myers Beach Comprehensive Plan. Any expansion to the uses of leased submerged lands adjacent to the subject property, including increase to the number of boat slips, and/or the number and/or size of charter boats and/or tour boats, will require an amendment to this planned development and its MCP through the public hearing process for zoning actions.
5. Slip numbers 1, 2, 3 and 4 may not be used as live-aboard vessel mooring slips as long as 309 Estero Blvd is under separate ownership from JABO LLC.
6. The applicant must coordinate the clarification of the existing CPD ownership, addresses and parcel IDs, conditions and deviations to clarify which properties are included and which are excluded from the regulations created by the multiple ordinances bearing the Pink Shell Resort name, starting with Z-82-170. The applicant shall create a new master ordinance that contains all approved uses for each property that has been included in Pink Shell rezonings and amendments, clarifying any properties that have been withdrawn from the CPD.
7. All boats, docked at the Pink Shell marina, must be removed upon issuance of a hurricane warning for the Town of Ft. Myers Beach.