

ORDINANCE 23-06

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 18-11, AND AMENDING THE SCHEDULE OF USES FOR THE RESIDENTIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 6240 AND 6230 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, Carousel Beach Redevelopment LLC ("Applicant"), the owner of the property generally located at 6230 & 6240 Estero Blvd. and identified by STRAP numbers 33-46-24-W3-00013.0020 & 33-46-24-W3-00013.0030 ("Property"), filed an application to amend the Property's Residential Planned Development ("RPD") to allow rooftop shade structures to extend no more than 10 feet above the allowed roof height of 45 feet above base flood elevation; 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 RPD amendment with conditions, and

WHEREAS, on March 6, 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 20, 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 RPD 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 accessory rooftop shade structures and an additional 10 feet of height above the allowed 45 feet above base flood elevation. 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 RPD zoning of the Property.

Section 3. Town Ordinance 18-11 is repealed and replaced by this Ordinance and the schedule of uses, deviations and conditions of approval for the Property's RPD 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 Veach and seconded by Council Member King, and upon being put to a roll call vote, the result was as follows:

DULY PASSED AND ADOPTED on this 20th day of March 2022.

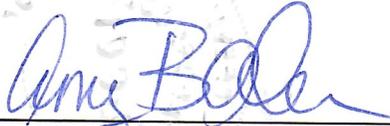
Dan Allers, Mayor	<u>Aye</u>
Jim Atterholt, Vice Mayor	<u>Aye</u>
John R King, Council Member	<u>Aye</u>
Bill Veach, Council Member	<u>Aye</u>
Karen Woodson, Council Member	<u>Aye</u>

TOWN OF FORT MYERS BEACH



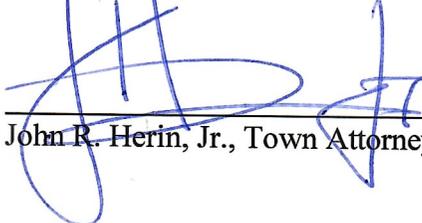
Dan Allers, Mayor

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 Conditions, Uses and Deviations
- Exhibit B Master Concept Plan

This Ordinance was filed in the Office of the Town Clerk on this 4 day of April 2023.

EXHIBIT A

Schedule of Conditions, Uses and Deviations

CONDITIONS

1. The development of the project must be substantially consistent with Master Concept Plan (MCP) entitled Carousel Inn RPO Master Concept Plan received as part of the "response to insufficiency letter," which is dated March 29, 2018. The development must comply with all current requirements of the Ft. Myers Beach Land Development Code (LDC) at time of local development order approval, except as may be granted by deviation or condition as part of this residential planned development and MCP. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.
2. All conditions and approvals included with this MCP approval replace any previous approvals, including, but not limited to, all conditions and MCP or exhibits related to Resolution 05-10 and Ordinance 18-11.
3. The MCP boundary shall include the area designated for dune restoration, but remain zoned EC. The Schedule of Uses does not apply to the EC and dune restoration area. The following provisions apply to the dune restoration area:
 - a. A dune walkover for both the public access area and the owner's access may be required as part of the final dune restoration plan and are permitted as part of the MCP approval. Final design and location approval will be given by the Community Development Director based on compliance with local regulations. The proposed dune restoration detail provided in the MCP is not of sufficient detail to be approved at this time.
 - b. Any dune walkovers shall be designed to be compatible with each other and the project. Prior to issuance of any temporary or Certificate of Completion or Occupancy for the project, the dune restoration and walkover(s) must be constructed.
 - c. Plant quantities must be calculated on minimum 1-gallon container size plants, 3-foot on center. Plant quantities may be adjusted when larger container size plants are used.
 - d. All plants shall be installed and maintained consistent with the Town's code and best management practices for dune restoration, including temporary irrigation.

4. The following uses apply to this project:

Schedule of Uses

Residential

Principal:

Dwelling units: multi-family, limited to twelve (12)(Phase 1 maximum 4 units, Phase 2 maximum 8 units)

Storage Shed <100 sq. ft.

Recreation Facility, Private on -site

Accessory (for occupants and guests only):

Garages (under building) Gazebos
Patios
Pools (2)
Pool Deck(S)
Cabana
Screen Enclosure (balconies) Fence
Walls
Dumpster Enclosure
Tot lot

Decking on rooftop and unenclosed rooftop shade structures

Lodging

Rental of any permitted dwelling unit to a single family for periods of one week or longer

Office

Administrative Office (to support the Association)
Home Occupation (no outside help)

Civic

Public Beach Access
Essential Services
Hidden Path
Essential Service Equipment

5. Prior to commencement of Phase 2, the property owner will combine the property into one lot of record in accordance with LDC Section 10-217 and record the requisite deed.
6. Prior to issuance of a local development order for the project, the property owner will execute and record the appropriate legal instrument creating the five (5) foot wide perpetual pedestrian beach access easement in a form acceptable to the Town Attorney, and as indicated on the MCP. The easement shall be recorded prior to Town approval of a temporary certificate of occupancy. The ultimate design of the beach access will be agreed upon by the Community Development Director and the property owner prior to or during the development order review process. Improvements will be consistent with all applicable ADA requirements. The beach access shall contain flags and public access signage and be numbered, a bollard rope shall be placed at the beach access along the Outrigger property line.
7. The storage shed shall be limited to a disposable structure, built with flood resilient materials, unfinished inside, and less than 100 square feet, to be used for storage only.
8. If the project and/or phases are not completed within the timeframes established ins. 34-220 (2) a and b, then the Town reserves its right to complete a rezoning to an appropriate district.
9. Approval of this zoning request does not give the Developer an undeniable right to receive local development order approval. Future development order approvals must satisfy the requirements of the Fort Myers Beach Comprehensive Plan ("Plan") and Land Development Code. Where deviations and conditions do not address specific issues, any local development order shall address requirements in place at the time of submittal.

10. Any violation of the RPD conditions of approval or deviations on the part of the applicant shall constitute an appealable to special magistrate \$500 per day per incident civil violation.
11. Prior to filing a development order for phase 2, the applicant will confirm with Lee County whether subject property is appropriate location for transportation stop structure. If appropriate, the development order shall include a transit stop structure. If County plans do not include a transit stop, this condition is null and void.
12. All development must be consistent with the Master Concept Plan (MCP) titled "Carousel Inn" and marked with a revision date of June 18, 2018, attached as Exhibit A.
13. The Applicant must provide a floor plan for the layout of the roof for Town review that is in compliance with the approved MCP of Fort Myers Beach's LDC.
14. An exterior lighting plan that meets the lighting standards found in Chapter 34, Article IV Supplemental Regulations, Technical Standards for Lighting, must be submitted to the Town of Fort Myers Beach and approved. All lighting shall be sea turtle compliant and consistent with all local, state, and federal requirements.

DEVIATIONS

Rezoning to an RPD requires that the building placement, size, design, and all other property development regulations shall be the same as for the RM zoning district, unless the zoning resolution specifies otherwise. The MCP applied to this property includes one deviation, which was previously approved with Resolution 05-10 and the applicant has revised the MCP and requested a deviation to that approved deviation.

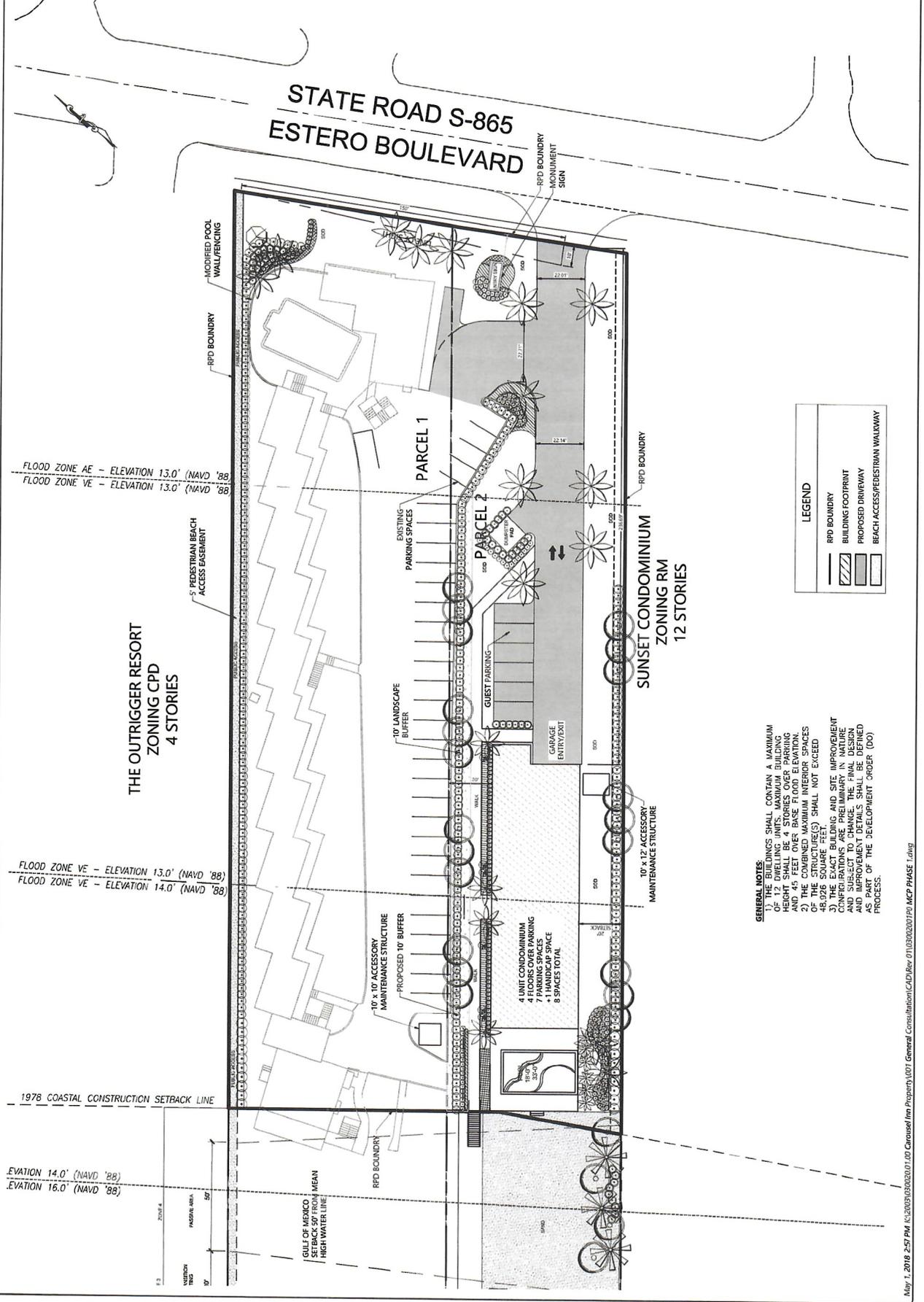
1. Deviation from Table 34-3, which limits stories to three and height to 30 feet, and from previously approved deviation (Res 05-10) to limit stories to four and height to 45 feet above base flood elevation; to allow a limitation of five stories and 45 feet in height above base flood elevation. Unenclosed, uninhabitable shade structures on the rooftop are permitted no more than 10 additional feet above the 45 feet primary structure height.

NO.	DATE	BY	DESCRIPTION
1	01/20/18	MM	ISSUED FOR PERMITS
2	01/20/18	MM	ISSUED FOR PERMITS
3	01/20/18	MM	ISSUED FOR PERMITS
4	01/20/18	MM	ISSUED FOR PERMITS
5	01/20/18	MM	ISSUED FOR PERMITS
6	01/20/18	MM	ISSUED FOR PERMITS
7	01/20/18	MM	ISSUED FOR PERMITS
8	01/20/18	MM	ISSUED FOR PERMITS
9	01/20/18	MM	ISSUED FOR PERMITS
10	01/20/18	MM	ISSUED FOR PERMITS

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 Office: (239) 597-0578
 www.consult-rwa.com

6240 HOLDINGS, LLC
 CAROUSEL
 MASTER CONCEPT PLAN
 PHASE 1 (INTERIM)

DATE	01/20/18
BY	MM
DESCRIPTION	ISSUED FOR PERMITS
SCALE	AS SHOWN
PROJECT	CAROUSEL
CLIENT	6240 HOLDINGS, LLC
TITLE	MASTER CONCEPT PLAN PHASE 1 (INTERIM)



LEGEND

[Symbol]	RPD BOUNDARY
[Symbol]	BUILDING FOOTPRINT
[Symbol]	PROPOSED DRIVEWAY
[Symbol]	BEACH ACCESS/PEDESTRIAN WALKWAY

GENERAL NOTES

- 1) THE BUILDINGS SHALL CONTAIN A MAXIMUM OF 12 DWELLING UNITS. MAXIMUM BUILDING HEIGHT SHALL BE 4 STORIES OVER PARKING LEVEL. PEDESTRIAN BASE FLOOD ELEVATION SHALL BE 13.0' (NAVD '88).
- 2) THE PERMISSIBLE MAXIMUM SQUARE FEET OF THE STRUCTURE(S) SHALL NOT EXCEED 48,926 SQUARE FEET.
- 3) THE EXACT BUILDING AND SITE IMPROVEMENT CONSTRUCTION SHALL BE PRELIMINARY IN NATURE AND IMPROVEMENT DETAILS SHALL BE DEFINED AS PART OF THE DEVELOPMENT ORDER (DO) PROCESS.

