

**ORDINANCE 24-05**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 3051 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 29-46-24-W1-0120C.0100 FORT MYERS BEACH; PROVIDING FOR 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**, Southland Corporation and The Neighborhood Company, owner and agents for the property owner, located at Estero Blvd., parcels generally identified as STRAP numbers 29-46-24-W1-0120C.0100 in the Town of Fort Myers Beach, filed applications to rezone the property from the Downtown Zoning District to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop a convenience store ; and

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

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on January 9, 2024; and

**WHEREAS**, at the February 27, 2024 public hearing 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, as required by Town Land Development Code (LDC) sec. 34-85; and

**WHEREAS**, at the February 27, 2024 public hearing the LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions of the variance by a 6-0 vote with one member abstaining; and

**WHEREAS**, on March 18, 2024 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 Fort Myers Beach Land Development Code (LDC) Section 34-85; and

**WHEREAS**, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in an appropriate publication 10 days prior to the Town Council on April 1, 2024; 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, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

**WHEREAS**, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

**WHEREAS**, a Business Impact Estimate has been prepared and published on the Town’s website; and

**WHEREAS**, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

**WHEREAS**, Exhibit A provides the approved property development regulations, the schedule of uses and conditions of approval for this CPD to be used during the permitting process; and

**WHEREAS**, Exhibit B is the approved Master Concept Plan (MCP), which future development should be substantially in compliance with; and

**WHEREAS**, the Town Council finds that this request to rezone the property from the Downtown Zoning District to CPD with MCP with certain deviations to the Land Development Code (LDC) in order to develop a convenience store, is a unique and individual application which does not set precedent for future development or rezoning applications.

**Deviation #1**

Deviation from LDC Section 10-285 for driveway separation requirements along Estero Boulevard and Voorhis Street. The deviation would allow driveway separation to be a minimum of 97.7 feet along Estero Blvd from Voorhis St., and a minimum of 73 feet from the Estero Boulevard/Voorhis Street intersection to the most southern driveway on Voorhis Street

**Deviation #2**

Deviation from LDC Section 10-416 (d)(3) Table 10-9 for the minimum width requirement of 15 feet for a type “C” buffer to allow a minimum width of 3 feet for a portion of the required buffer along the northeastern boundary.

**Deviation #3**

Deviation from LDC Section 34-704(a) which requires build-to lines for Estero Boulevard to be established at five to ten feet from front property lines. The deviation would allow for a build-to line of five to ninety feet for Estero Boulevard.

**Deviation #4**

Deviation from LDC Section 34-706(d) which requires properties that front on Estero Boulevard

and have access to a secondary street, to take access from the secondary street, except when the requirement would prohibit reasonable access. The deviation allows driveway access to remain as existing from Estero Boulevard and Voorhis Street.

**Deviation #5**

Deviation from LDC Section 34-704(b)(1)(a) which requires minimum street setbacks for streets other than Estero Boulevard to be ten feet. The deviation would allow a minimum of a zero (0) foot setback from Voorhis Street.

**Deviation #6**

Deviation from LDC Section 34-1744(b)(4)(d) which requires screening of refuse containers to not exceed six feet height. The deviation would allow the refuse container screening (enclosure) to be a maximum of seven feet six inches (7' 6") in height.

**Findings for the rezoning:**

**WHEREAS**, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezone to a Commercial Planned Development (see LDC 34-85 and 34-216):

- a. Minor ambiguities were resolved through the deviation process.
- b. The previous development on the subject property was destroyed by Ian and adoption of the rezoning with deviations ameliorates longstanding design issues on the site due to the lot's odd shape and orientation.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.
- h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- j. The rezoning would 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.
- k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.

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

**WHEREAS**, the Town Council made the following formal findings before making final decisions on the eight requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216):

- a. Each item enhances the achievement of the objectives of the planned development; and
- b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and
- c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
- d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

**WHEREAS**, the Town Council finds that this application to approve Ordinance 24-02 which is, **consistent/ not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **deny/ approve/ approve with conditions** the Application.

**NOW, THEREFORE, IT IS HEREBY 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/did not** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance no. 24-05 and the conditions of approval for the commercial planned development zoning, **does/ does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **DENY/ APPROVE/ APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 24-05 is adopted 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 6. 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 7. 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 Council Member King and seconded by Vice Mayor Atterholt, and upon being put to a roll call vote, the result was as follows:

**DULY PASSED AND ADOPTED** on this 1<sup>st</sup> day of April 2024.

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

**FORT MYERS BEACH TOWN COUNCIL**



\_\_\_\_\_  
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:**



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Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 17 day of April 2024.

Attachments:

- A – Conditions of Approval and Schedule of Uses
- B – Master Concept Plan (MCP)

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## **Exhibit A: CONDITIONS OF APPROVAL & SCHEDULE OF USE**

### Conditions of Approval

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of DCI20230194 with the attached conditions:

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Landscaping on adjacent properties must be protected during construction or replaced at the expense of the Southland Corporation.
4. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131

### Schedule of Use

Convenience store with gas pumps

