

ORDINANCE 24-14

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING WITH CONDITIONS A REQUEST TO REZONE THE PROPERTY LOCATED AT 841 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-0050B.0010 FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR A CONVENIENCE STORE; 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 841 Estero Blvd., parcels generally identified as STRAP numbers 24-46-23-W3-0050B.0010 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 April 30, 2024; and

WHEREAS, at the April 30, 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 April 30, 2024 public hearing the LPA found that the request was consistent with the comprehensive plan and in compliance with the requirements of the LDC and voted to recommend approval with conditions of the rezoning by a 5-0 vote, with 1 member abstaining and 1 member absent; and

WHEREAS, on May 20, 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 advertised in The News-Press 10 days prior to the Town Council on June 3, 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, a Business Impact Estimate has been prepared and published on the Town’s website when the adoption hearing advertisement was published; and

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

WHEREAS, Exhibit B is the schedule of uses, conditions of approval, and approved deviations for this CPD, to be used during the permitting process; and

WHEREAS, the Town Council finds that this request to rezone the property from the Downtown Zoning District to CPD with MCP with the deviations to the Land Development Code (LDC) in order to develop a convenience store described below, is unique and does not establish a precedent for future deviation requests:

Deviation #1

Deviation from LDC Section 34-706(d) which requires that when properties are fronting on Estero Boulevard, existing driveway and parking spaces shall be relocated from Estero Boulevard to secondary streets, and new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property. The deviation would allow driveways to remain connecting to Estero Boulevard and Lagoon Street.

Deviation #2

Deviation from the driveway separation requirements of LDC Section 10-285 along Estero Boulevard and Lagoon Street. The deviation would allow driveway separations along Estero Boulevard to be a minimum of approximately 80 feet and a minimum of approximately 60 feet along Lagoon Street.

Deviation #3

Deviation from parking lot location requirements of LDC Section 34-706(a) to allow a parking lot to be located primarily fronting Estero Blvd.

Deviation #4

Relief from LDC Section 34-2020(d)(2)i.1. which requires a minimum of four spaces per 1,000 square feet of total floor area or 14 parking spaces for the proposed maximum 3,500 square feet of convenience store total floor area. The deviation would allow for a reduction in the minimum required parking spaces to 8 parking spaces.

Deviation #5

Relief from LDC Section 34-1744(b)(4)d, which requires that for sites where the location and configuration of existing structures and vehicle use areas prevent the placement of refuse containers outside the front yard, fences and/or walls erected for the sole purpose of providing reasonable screening of refuse containers located in a front yard may exceed 48 inches in height, but must not exceed six feet in height. The deviation would allow the refuse container screening (enclosure) to be a maximum of seven (7) feet, six (6) inches in height.

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 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 finds that this application to approve Ordinance 24-02 which is, consistent with the Town of Fort Myers Beach Comprehensive Plan and LDC; and

WHEREAS, with conditions and deviations contained herein, the Town Council finds this rezoning request to be in the best interest of the public's health, safety, and welfare.

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** 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** 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 **APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 24-14 is adopted and approved as provided in the schedule of uses and conditions of approval for the Property's CPD as set forth in Exhibit B as shown on the Master Concept Plan, both of which are attached hereto and incorporated herein by this reference.

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 Vice Mayor Atterholt and seconded by Council Member Woodson, and upon being put to a roll call vote, the result was as follows:

DULY PASSED AND ADOPTED on this 3rd day of June 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
Dan Allers (Jul 9, 2024 16:38 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

Becky Vose
Becky Vose (Jul 9, 2024 21:28 EDT)

Vose Law Firm, LLP, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 10th day of July 2024.

Attachments:

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

Exhibit B Schedule of Uses, Conditions, and List of Deviations

Schedule of Use

Retail store, small to include:

Convenience stores, no fuel pumps (open 24 hours/7 days)

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) All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131

List of Deviations

- 1) Relief from LDC Section 34-706(d) which requires that when properties are fronting on Estero Boulevard, existing driveway and parking spaces shall be relocated from Estero Boulevard to secondary streets, and new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property. The deviation would allow driveways connecting to Estero Boulevard and Lagoon Street.
- 2) Relief from the driveway separation requirements of LDC Section 10-285 along Estero Boulevard and Lagoon Street. The deviation would allow driveway separations along Estero Boulevard to be a minimum of approximately 80 feet and a minimum of approximately 60 feet along Lagoon Street.
- 3) Relief from parking lot location requirements of LDC Section 34-706(a) to allow a parking lot to be located primarily fronting Estero Blvd.
- 4) Relief from LDC Section 34-2020(d)(2)i.1. which requires a minimum of four spaces per 1,000 square feet of total floor area or 14 parking spaces for the proposed maximum 3,500 square feet of convenience store total floor area. The deviation would allow for a reduction in the minimum required parking spaces to 8 parking spaces.
- 5) Relief from LDC Section 34-1744(b)(4)d, which requires that for sites where the location and configuration of existing structures and vehicle use areas prevent the placement of refuse containers outside the front yard, fences and/or walls erected for the sole purpose of providing reasonable screening of refuse containers located in a front yard may exceed 48 inches in height but must not exceed six feet in height. The deviation would allow the refuse container screening (enclosure) to be a maximum of seven (7) feet , six (6) inches in height.