

ORDINANCE 24-18

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING WITH CONDITIONS A REQUEST TO REZONE THE PROPERTY LOCATED AT 1668 I STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0070B.0110 FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, WITH DEVIATIONS, FOR A BAR AND RESIDENCE; 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, B & B Properties of Fort Myers, as owner, and Jim Ink, Ink Engineering Inc., as agent for the owner of property located at 1668 I Street, and generally identified as STRAP numbers 19-46-24-W4-0070B.0110 ("Subject Property") in the Town of Fort Myers Beach, filed an application to rezone the property from the Downtown Zoning District to Commercial Planned Development (CPD) with a Master Concept Plan (MCP) and a request for certain deviations to the Land Development Code (LDC) in order to develop a bar and residence; 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 June 11, 2024; and

WHEREAS, at the June 11, 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 June 11, 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 rezoning by a 6-0 vote; and

WHEREAS, on August 19, 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 legally noticed in the News Press 10 days prior to the Town Council’s meeting on September 9, 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 timely published on the Town’s website; and

WHEREAS, the Town Council finds approval of the request with requirements and conditions to be in the interest of the public’s health, safety, and welfare as well as in compliance with the comprehensive plan and the Land Development Code; 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 certain deviations to the Land Development Code (LDC) in order to develop a bar and residence, is a unique and individual application which does not set precedent for future development or rezoning applications. Approved deviations include:

Deviation #1

Request to deviate from 34-675(c)3 that states, Floor area ratio (FAR). Floor area ratios (see 34-633) of the chapter) shall not exceed: (3) 1.0 for all other properties in the Downtown District” to allow an FAR of 1.4 consistent with properties fronting Estero Blvd per 34-675(c)(2).

WHEREAS, the Town Council has 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 Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- c. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.

- e. Urban services are available and adequate to serve the proposed use.
- f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. 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.
- i. 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 one requested deviation 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** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **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** 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 CPD **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 AND REQUIREMENTS** as contained in the Master Concept Plan in Exhibit A and the schedule of uses, deviations, and conditions of approval for the Property's CPD set forth in Exhibit B, which shall be attached to and incorporated by this reference to approval of the Ordinance.

Section 3. 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 4. 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 5. 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 6. 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 Member Safford and seconded by Member Woodson, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this 9th day of September 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 (Nov 11, 2024 07:35 EST)

Dan Allers, Mayor

ATTEST:

Amy Baker
Amy Baker (Nov 14, 2024 10:11 EST)

Amy Baker, Town Clerk

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

Nancy Stuparich
Nancy Stuparich (Nov 11, 2024 20:45 EST)

Vose Law Firm, LLP, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 8th day of November 2024.

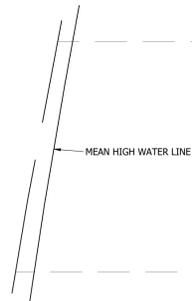
Attachments:

A – Master Concept Plan (MCP)

B – Schedule of Uses, Conditions of Approval and Deviation

PROPERTY DATA TABLE

USE	AREA(AC)	AREA (SF)	FAR 1.0 (SF) CURRENT LDC	FAR 1.4 (SF) REQUEST	OPEN SPACE REQ. BY USE	OPEN SPACE PROVIDED (SF)
PARCEL UPLAND	0.095	4,159	4,159	5,822	0%	2,792
PARCEL EC FLU	0.136	5,912	0	0	100%	5,912
TOTAL	0.23	10,071	4,159	5,822		8,704 (86%)



NO.	DATE	DESCRIPTION

MASTER CONCEPT PLAN
THE BEACH BAR
B&B PROPERTIES OF FORT MYERS
 1668 I STREET, FORT MYERS BEACH, FL 33931

THESE PLANS HAVE BEEN PREPARED BY THE ARCHITECT OR ENGINEER REGISTERED WITH THE STATE OF FLORIDA. NO OTHER PROFESSIONAL SEAL OR SIGNATURE IS REQUIRED FOR THESE PLANS TO BE USED FOR THE PURPOSES INTENDED.

James Irk, P.E.
 Florida Reg. No. 18616
 DATE: 05/2024

INK ENGINEERING INC.
 CONSULTING ENGINEERS • PLANNING
 405 WEST FIRST STREET
 FORT MYERS, FL 33901
 JINK@INKENGINEERINGINC.NET

PROJECT NO.	23002
PROJECT MANAGER	James Irk P.E.
DRAWN BY	BWM
DATE	05.2024
SCALE	1" = 10'
SHEET NO.	2
OF	2

BEACH BAR - CPD APPLICATION

Exhibit B

Schedule of Uses

- Dwelling unit, single-family
- Administrative Office
- Commercial Accessory Uses
- ATM
- On-Premises consumption of alcoholic beverages – existing conditions
- Bar or Cocktail Lounge – existing conditions
- Retail Store, Small – existing conditions

Deviation

Request to deviate from 34-675(c)3 that states, “Floor area ration (FAR). Floor area ratios (see 34-633) of the chapter) shall not exceed: (3) 1.0 for all other properties in the Downtown District” to allow an FAR of 1.4 consistent with properties fronting Estero Blvd per 34-675(c)(2).

Conditions

1. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
2. The proposed development must be substantially in compliance with the Master Concept Plan attached to the ordinance.
3. A Landscaping Plan and Photometric Plan must be approved prior to CO.
4. From BZA-88-339: The commercial use shall be limited to the retail sales of beach-oriented convenience items, including packaged food and beverage and beach recreational rentals; and
5. From BZA-88-339: Public access shall be limited to the beach on Gulf side of the business.
6. From 95-10-173: The Special Permit for consumption on premises in conjunction with outdoor seating is limited to the use in conjunction with the existing retail use. The use of a bar/service bar on this property is prohibited. However, this does not prohibit the sale of draft beer or wine which is poured from a large bottle, so long as it is consumed only in the designated locations. There will be no waiter or waitress service: the

customers must order their drinks from inside the premises and directly from the person who pours the drinks.

7. From 95-10-173: The location of the Special Permit for consumption on premises in conjunction with outdoor seating is limited to the outdoor deck area (approximately 10 feet by 40 feet as shown on Attachment B to the Staff report) which separates the retail use from the beach area, and on the first 50 feet of the beach which extends south from the deck area toward the water. The seating for both areas may not exceed 75 seats. The alcohol consumption portion of the beach area will be clearly marked.
8. From 95-10-173: Hours of operation for the outdoor seating area are limited to 10:00 a.m. to 10:00 p.m., daily.
9. From 95-10-173: Live entertainment is limited to the hours of 10 a.m. to 8 p.m., daily.
10. The conditions of Resolution No. BZA-88-339 and from Special Permit 95-10-173 will remain in full force and effect to the extent that they are not in conflict with this ordinance.