

ORDINANCE 24-28
(Estero Island Beach Club)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA DENYING A REQUEST TO REZONE PROPERTY LOCATED AT 1836 AND 1840 ESTERO BLVD. (LESS THE AREA WITHIN THE ENVIRONMENTALLY CRITICAL ZONING DISTRICT), GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-03200.00CE AND 19-46-24-W4-03200.1010 FORT MYERS BEACH FROM DOWNTOWN DISTRICT TO COMMERCIAL PLANNED DEVELOPMENT; APPROVAL OF FIVE (5) DEVIATIONS FROM THE FORT MYERS BEACH CODE OF ORDINANCES, A SCHEDULE OF USES AND A MASTER CONCEPT PLAN; 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, Estero Island Beach Club Association, Inc., owner, and Fred Drovdlc, AICP with RVi Planning & Landscape Architecture, as agents for the owner (collectively "Applicant") of property generally located 1836 and 1840 Estero Blvd, Fort Myers Beach and identified as STRAP numbers 19-46-24-W4-03200.00CE and 19-46-24-W4-03200.1010 ("the Property"), filed an application to rezone the Property from Downtown zoning district to Commercial Planned Development, with an attached Master Concept Plan (MCP) in order to redevelop a timeshare condominium and associated facilities, on the Property's 1.92+/- acres more or less; and

WHEREAS, the Property is located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the applicant has indicated the subject property is under common control and Estero Island Beach Club Association serves as the managing entity listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on September 3, 2024, at which time 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 Section 34-85 of the Town of Fort Myers Beach Land Development Code ("LDC") and recommended approval by a 5 to 2 vote based on a finding that the approval is in compliance and consistent with the Town of Fort Myers Beach Comprehensive Plan and the LDC; and

WHEARAS, a Business Impact Estimate was prepared and timely published on the Town's website in anticipation of review by the Town Council on September 23, 2024; and

WHEREAS, on September 23, 2024 the Town Council approved a request from the applicant to continue the matter to a date certain of October 7, 2024; and

WHEREAS, the October 7, 2024 Town Council meeting was cancelled due to the threat of Hurricane Helene and the rezoning was re-scheduled for a first reading on October 15, 2024 then again rescheduled due to the threat of Hurricane Milton for first reading to October 21, 2024; and

WHEREAS, on October 21, 2024, the Town Council held the 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 LDC; and

WHEREAS, the Town Council thereafter determined that denial of the application was in the best interest of the health, safety and welfare of the residents of the Town of Fort Myers Beach for the reasons stated herein.

WHEREAS, following the October 21, 2024 public hearing, the applicant made a request for a rehearing on November 18, 2024 at which time no new testimony was heard by the Town Council and the Town Council provided further clarification that its denial on October 21, 2024 was without prejudice.

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 has determined that the Applicant did not satisfy its burden of proof that the requested rezoning in Ordinance No. 24-28 was consistent with and met 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 hereby **denies without prejudice** the requested rezoning for the following reason:

The significant increase in height should be the last resort, and the public benefit did not warrant the additional height, which was a design choice by the Applicant.

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 a vote of the Town Council following its rehearing on November 18, 2024.

The foregoing Ordinance, following its rehearing regarding clarification of the denial, was adopted by the Town Council upon a motion by Council Member Safford and seconded by Council Member Safford, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 18th day of November 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Dan Allers (Nov 22, 2024 13:41 EST)

Dan Allers, Mayor

ATTEST:


Amy Baker (Nov 22, 2024 12:44 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 Smith (Nov 29, 2024 18:55 EST)

Vose Law Firm, LLP, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 22nd day of November 2024.