

ORDINANCE 25-02

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APROVING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY RESOLUTION 07-28 FOR PARCELS LOCATED AT 2500 AND 2510 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000, TO ADD PARCELS 2518 ESTERO BLVD. AND 2543 COTTAGE AVENUE, GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A IN 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, Empire Holding Corp. an Indiana Corporation as Trustee for Ann Trust, the owner, and The Neighborhood Company, as agents for the property located at 2500/2510/2518 Estero Blvd. & 2543 Cottage Ave., Ft Myers Beach, FL 33931, parcels generally identified as STRAP numbers 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000; 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A in the Town of Fort Myers Beach, filed applications to rezone the property from the CPD adopted in Resolution 07-28 (for 2500 and 2510 Estero Blvd.) to CPD with expanded boundaries (addition of 2518 Estero Blvd. and 2543 Cottage Avenue; and

WHEREAS, the addition of the additional parcels will result in a combination of four parcels located in the Boulevard 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, 2025; and

WHEREAS, at the January 9, 2025 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 Section 34-85 of the Town Land Development Code; and

WHEREAS, at the January 9, 2025 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**; and

WHEREAS, on March 3, 2025 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 LDC; 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 the Fort Myers News-Press more than 10 days prior to the Town Council on March 15, 2025; and

WHEREAS, at the April 7, 2025 public hearing, 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 is a copy of Resolution 07-28, which created the existing CPD zoning designation on the property; and

WHEREAS, Exhibit B demonstrates the expanded the CPC zoning boundaries, which shall govern future development; and

WHEREAS, the Town Council considered all relevant factors and made the following formal findings supported by evidence and testimony in the record before making its final decision on the requested rezoning of the additional parcels to a Commercial Planned Development zoning designation (see LDC 34-85 and 34-216):

- a. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.

- 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 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 25-02, which is, **consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve** 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 25-02 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** the requested application subject to any existing conditions in Resolution 07-28.

Section 3. Town Ordinance 25-02 is adopted and the schedule of uses and conditions of approval contained in Resolution 07-28, as shown in Exhibit A, for the Property's CPD as shown in the Expanded Boundary Map in Exhibit B, attached hereto and incorporated herein by this reference are 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 approved and adopted by the Town Council upon a motion by Mayor Allers and seconded by Council Member Safford, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this 7th day of April 2025.

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 (May 1, 2025 14:46 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker (May 1, 2025 15:17 EDT)

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 (May 1, 2025 14:52 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 1st day of May 2025.
Attachments:

- A –Resolution 07-28
- B – Expanded Boundary Map

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 07-28

WHEREAS, McHarris Planning and Design (Applicant) has requested the Town Council rezone an approximately .52+/- acres from Commercial Boulevard (CB) to Commercial Planned Development (CPD) to allow the development of commercial, offices and residential multi-family units at 2500 Estero Boulevard; and

WHEREAS, Applicant has proposed two (2) options to the Town of Fort Myers Beach for consideration in the aforesaid application; and

WHEREAS, Option "A" as presented by Applicant offers a maximum of 23,067 square feet, consisting of 9,952 square feet of commercial and office plus three (3) residential units with a total of 13,115 square feet in two (2) buildings, not to exceed a maximum building height of 40 feet above base flood elevation/3 stories; and

WHEREAS, Option "B" as presented by Applicant offers a maximum of 22,990 square feet that consists of 6,795 square feet of commercial and office and four (4) residential units with a total of 16,195 square feet in two (2) buildings not to exceed a height of 35 feet above base flood elevation/3 stories; and

WHEREAS, the subject property is located at 2500 Estero Blvd, Fort Myers Beach, FL 33931(follow Estero Blvd South to 2500), in S19-T46S-R24E, in Fort Myers Beach, Lee County, FL; and

WHEREAS, Applicant has indicated the property's current STRAP numbers are 19-46-24-W3-0120A.0100 and 19-46-24-W3-01302.0000 with the legal description set forth on Exhibit "A" which is attached hereto and hereby incorporated by reference; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on June 19, 2007, at which time the LPA recommended that the Town Council approve the Applicant's request, with three (3) members recommending Option A and three (3) members recommending Option B, with the approval subject to various conditions as set forth more fully in the LPA Resolution 2007-13; and

WHEREAS, the Town Council gave full and complete consideration to recommendations of staff, the LPA resolution, the documents in the file, and the testimony of all interested persons.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

The Town Council hereby **APPROVES Option A and DISAPPROVES Option B** to rezone the subject property from CB and RC to CPD, subject to the nine (9) conditions and one deviation set forth with specificity below.

A. CONDITIONS AND DEVIATIONS

A. CONDITIONS

1. The development of this project must be consistent with the six (6) page Master Concept Plan entitled "2500 Estero," stamped received October 6, 2006, except as modified by the conditions below. This development must comply with all requirements of the LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

The project is limited to a maximum of 23,067 square feet and a maximum of 3 dwelling units of 13,115 square feet

a. **Schedule of Uses**

Residential

Dwelling Unit:

Multi-family - maximum of 3 units

Live/work pursuant to LDC Section 34-1773 - maximum of 3 units

Lodging

Rental of any permitted dwelling unit to a single family for periods of one week or longer pursuant to Section LDC 34-2391 through 34-2410

Office

Administrative Offices

Retail

Retail Store, small (less than 5,000 square feet)

Civic

Essential Services

Daycare center, adult or child (by Administrative Approval)

Cultural Facilities (by Administrative Approval)

b. **Site Development Regulations**

Minimum Lot Size: 23,067.00± Square Feet or 0.52 ± acres

Minimum Lot Width: 160 feet along Estero Boulevard

Minimum Lot Depth: 150± feet along Chapel Street

Minimum Lot Width: 119± feet along Cottage Street

Minimum Setbacks:

Street: 5 feet (Estero Boulevard)

10 feet (Chapel Street)

10 feet (Cottage Street)

Side: 5 feet

Floor Area Ratio (FAR): 1.0

Maximum Height: 40 feet above base flood elevation /3 stories

3. At the time of Development Order, the applicant must provide the following buffers:

Along Chapel Street (the west property line), a 10 foot wide buffer with a minimum of 4 trees per 100 linear feet (6 trees) and a 3 foot high hedge planted in a double staggered row.

Along the east property line that extends from Estero Boulevard for a distance of 100± feet, a 5 foot wide buffer with a minimum of 4 trees per 100 linear feet (4 trees) and a 3 foot high hedge planted in a double staggered row.

Along the southeast property lines that depicts a 6 foot high wall, a 3 foot high hedge planted in a double staggered row to be planted on the outside of the wall.

Along Cottage Avenue,(the south property line), a 10 foot wide buffer with a minimum of 4 trees per 100 linear feet (4 trees) and a 3 foot high hedge planted in a double staggered row to be planted in between the driveways to the residential units.

4. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Fort Myers Beach Land Development Code ("LDC") may be required to obtain a local development order.
5. The local development order must be in compliance with LDC Section 14-71 through 14-79 regarding sea turtle lighting.
6. 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").
7. Development of this property must comply with all of the requirements of the LDC at the time of local development order approval, except as may be granted by deviations approved as part of this planned development.
8. Prior to local development order approval, the construction plans must indicate that pervious pavement and exfiltration will be incorporated throughout the project to maximize the overall stormwater management capacity.
9. Prior to local development order approval, the project developer will partner with the Town to coordinate survey, site preparation, and infrastructure improvements for the project with the Town's plans for work in the adjacent public rights-of-way.

B. DEVIATION

Deviation #1 is from Section 10-285 that requires driveways to be located at least 250 feet from the centerline of a local street such as Chapel Street, to allow a distance of 100 feet from Estero Boulevard. Chapel Street is a local

street that is maintained by Town of Fort Myers Beach. The previous development on the site used this driveway as an access point and the proposed development will continue to use this driveway. The applicant is unable to meet the 250 foot separation distance, therefore the Town Council **APPROVES** this application with a condition that the property owner voluntary donate a 5 foot easement along Estero Boulevard to the Town of Fort Myers Beach for roadway, utility, drainage and reasonably related purposes.

FINDINGS AND CONCLUSIONS

Based upon the presentations by Applicant, staff, and other interested parties at the hearing, and review of the application and the standards for planned development zoning approval, the Town Council makes the following findings and conclusions:

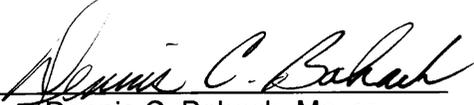
1. The requested rezoning to the Commercial Planned Development (CPD) zoning district, as conditioned **DOES** comply with:
 - a. The Plan;
 - b. LDC Chapter 34;
 - c. all other applicable Town ordinances and codes; and
 - d. the following additional requirements for planned development zoning requests:
 - i. Policies 4-B-5 and 4-C-3 on commercial and residential uses in the "Boulevard" future land use category; and
 - ii. Policy 4-C-5 on maximum residential densities for properties; and
 - iii. Policy 4-C-4 on maximum height limitations; and
 - iv. Policy 4-E-4 on flood proofing of commercial buildings.
2. The proposed use or mix of uses, as conditioned above, **IS** appropriate at the subject location.
3. Sufficient safeguards to the public interest **ARE** provided by the recommended conditions to the concept plan or by other applicable regulations.
4. All recommended conditions **ARE** reasonably related to the impacts on the public's interest created by or expected from the proposed development.
5. As to the requested deviation, as conditioned:
 - a. Each item **DOES** enhance the achievement of the objectives of the planned development; and
 - b. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare **WILL** be preserved and promoted; and
 - c. Each deviation **DOES** operate 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.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember Meador and seconded by Councilmember Shenko, and upon being put to a vote, the result was as follows:

Dennis C. Boback, Mayor	<u>aye</u>
Larry Kiker, Vice Mayor	<u>aye</u>
Herb Acken	<u>aye</u>
Charles Meador, Jr.	<u>aye</u>
William Shenko, Jr.	<u>aye</u>

DULY PASSED AND ADOPTED THIS 13TH DAY OF AUGUST, 2007, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Dennis C. Boback, Mayor

Approved as to legal sufficiency:

ATTEST:

By: 
Anne Dalton, Esquire
Town Attorney

By: 
Michelle D. Mayher, Town Clerk

2500 Estero Blvd. Property Location Map



March 8, 2024

Air Photos: 2023 Hi-Res (3 inch)

1:1,600

0 75 150 300 ft

0 20 40 80 m

H Hospital Locations S School Locations --- County Boundary US 41 US 41 □ Parcels Near
L Library Locations S School Locations **Major Roads Medium** Other Highways Other Highways
CCC_Parks CCC_Parks I-75 I - 75 Other Roads Other Roads

This map is NOT a legal land survey and should not be used or relied upon as such. No warranties, express or implied, are provided with the data, use, accuracy or interpretation.