

**ORDINANCE 25-07**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A REZONING OF PROPERTY LOCATED AT 1011 THIRD STREET, FORT MYERS BEACH, FLORIDA (STRAP NUMBER 24-46-23-W3-00202.0060) FROM DOWNTOWN TO RESIDENTIAL PLANNED DEVELOPMENT (RPD) WITH THREE DEVIATIONS: 1) REQUEST TO APPLY PROPERTY DEVELOPMENT REGULATIONS FOR THE DOWNTOWN ZONING DISTRICT, RATHER THAN THE RESIDENTIAL MULTI-FAMILY STANDARDS IN SEC. 34-943 REQUIRING USE OF THE RM DEVELOPMENT REGULATIONS; 2) ELIMINATION OF THE REQUIRED 5-FOOT SIDE YARD SETBACKS TO ALLOW FOR A 0-FOOT SIDE-YARD SETBACK ON THE EASTERN PROPERTY LINE; AND 3) REQUESTING AN INCREASE IN THE FLOOR AREA RATIO (FAR) OF 0.7, FOR A FAR OF 1.7 FAR WHERE AN FAR OF 1.0 IS ALLOWED IN SEC. 34-675(C)(3); PROVIDING FOR 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**, Matthew Noble (“Applicant”), on behalf of Merschman I LLC., owners of the property generally located at 1011 Third Street, Fort Myers Beach and bearing Strap Number 24-46-23-W3-00202.0060 (the “Property”), filed an application to rezone the Property from Downtown to Residential Planned Development (“RPD”) in accordance with a proposed Schedule of Uses and Master Concept Plan (MCP) and deviations from Sections 34-943 (“Building placement, size, design and other property development regulations”), 34-674 (b)(1)(b) (“Building Placement”) and 34-675(c)(3) (“Building Size”) of the Land Development Code (LDC); and

**WHEREAS**, Exhibits A and B to this Ordinance contain a copy of the Master Concept Plan and Schedule of Uses for this RPD; 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 is under common control of the owner as listed in the public records of Lee County Property Appraiser; and

**WHEREAS**, the requested deviations from the LDC include:

Deviation #1: A deviation is requested from LDC Section 34-943 to permit the use of the land use regulations applicable to the Downtown Zoning District found in Sec. 34-674 – Building placement standards and LDC Section 34-675 – Building size, except for the requested deviation to the side-yard setback as modified through these deviations that are discussed below. The Applicant has submitted Property Development Regulations (PDRs) specific to this planned

development based on the Downtown regulation standards found in sec. 34-674 and 34-675.

Deviation #2: A deviation from LDC sec. 34-674(b)(1)(b). for the eastern side setback from 5 feet to 0 feet.

Deviation #3: A deviation from sec. 34-675(c)(3) Floor area ratio (FAR) of 1.0 to permit a FAR of 1.70. The project as designed and presented represents a FAR of 1.61.

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on April 8<sup>th</sup>, 2025 and 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, and found the requested rezoning with deviations to be consistent with the Fort Myers Beach Comprehensive Plan and Land Development Code; and

**WHEREAS**, the LPA voted 6 to 0 with one member not present, to recommend approval of the request to rezone the Property from Downtown to RPD with deviations, and

**WHEREAS**, on the 8th day of May 2025 the Town Council held a first reading of the proposed Ordinance to rezone the Property with deviations, and gave full and complete consideration of the Applicant's request, the LPA's recommendation, including their finding of consistency with the Comprehensive Plan, staff's recommendation, 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 the 15<sup>th</sup> day of May 2025, which was noticed in the Fort Myers News-Press more than 10 days prior to the public hearing on the 9<sup>th</sup> day of May 2025; and

**WHEREAS**, at the \_\_\_\_\_ 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 paid all fees associated with notice, advertisement, and consulting services required by the Town related to this rezoning request; and

**WHEREAS**, the Town Council finds that this request to rezone the property from Downtown to an RPD with a corresponding Schedule of Uses and Master Concept Plan (MCP) with three (3) deviations to the LDC in order to develop a two-family home is consistent with the Comprehensive Plan; and

**WHEREAS**, a Business Impact Estimate has been prepared and was published on the Town's website on the 5<sup>th</sup> day of May 2025; and

**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. 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.
- j. 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 three 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 25-07 which is, **consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve** the Application.

**NOW, THEREFORE, BE IT 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 requested rezoning request **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.

Section 3. Town Ordinance 25-07 is adopted and the schedule of uses and conditions of approval for the Property's RPD set forth in Exhibit A and the attached Master Concept Plan 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 adopted by the Town Council upon a motion by Council Member King and seconded by Council Member Safford, and upon being put to a roll call vote, the result was as follows:

**DULY PASSED AND ADOPTED** on this 19<sup>th</sup> day of May 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 (Jun 6, 2025 15:18 EDT)

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

*Amy Baker*  
Amy Baker (Jun 16, 2025 09:10 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 W. Sparich*  
Nancy W. Sparich (Jun 8, 2025 21:13 EDT)

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 9<sup>th</sup> day of June 2025.

Exhibits:

- A- Schedule of Uses
- B- Master Concept Plan (MCP)

## **Schedule of Uses**

Dwelling unit:

Two-family

## **Property Development Regulations**

Built-to lines are 0 to five feet for Third Street.

Building frontage shall be at least 35 percent of the lot frontage.

Minimum rear setbacks are 25 feet from rear property lines.

Minimum side setbacks are five feet from side property lines, except they may be 0 feet adjacent to the parking lot under the Sky Bridge.

Building height shall be limited to 30 feet above base flood elevation plus 1 additional foot and no taller than three stories.

Floor area ratio (FAR) shall not exceed 1.7.



# 25-07, REQ20240275, 1011 Third St Final for signatures

Final Audit Report

2025-06-16

Created:	2025-06-06
By:	Amy Baker (AMY@FMBGOV.COM)
Status:	Signed
Transaction ID:	CBJCHBCAABAAJwH7xvVABgLzI4Ck2MZGCCwx4o8Vgaro

## "25-07, REQ20240275, 1011 Third St Final for signatures" History

-  Document created by Amy Baker (AMY@FMBGOV.COM)  
2025-06-06 - 6:13:38 PM GMT
-  Document emailed to Dan Allers (allersd@fmbgov.com) for signature  
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-  Document emailed to Nancy Stuparich (nstuparich@voselaw.com) for signature  
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-  Document emailed to Amy Baker (AMY@FMBGOV.COM) for signature  
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-  Email viewed by Dan Allers (allersd@fmbgov.com)  
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-  Document e-signed by Dan Allers (allersd@fmbgov.com)  
Signature Date: 2025-06-06 - 7:18:02 PM GMT - Time Source: server
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-  Document e-signed by Nancy Stuparich (nstuparich@voselaw.com)  
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✔ Agreement completed.

2025-06-16 - 1:10:11 PM GMT