

ORDINANCE 21-02

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/DENYING AN AMENDMENT TO THE CURRENT ZONING MAP FOR THE PROPERTY LOCATED AT 131-151, 125 SCHOOL STREET AND 2661-2681 ESTERO BOULEVARD, FORT MYERS BEACH, CONTAINING 1+/- ACRES GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0020C.0230, 19-46-24-W3-0020C.0270, AND 19-46-24-W3-0020C.0290; FROM RESIDENTIAL CONSERVATION (RC) TO COMMERCIAL PLANNED DEVELOPMENT (CPD); APPROVING/DENYING A MASTER CONCEPT PLAN FOR HOTEL, RETAIL, AND RESTAURANT USES, INCLUDING CONSUMPTION OF ALCOHOL ON PREMISES AND APPROVING DEVIATIONS FROM THE LAND DEVELOPMENT CODE (“LDC”); PROVIDING FOR SCRIVENER’S ERRORS AND 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, Myerside LLC, owner and applicant (“Applicant”), filed an application to rezone the property generally located at 131-151 School Street, 125 School Street, and 2661-2681 Estero Boulevard – comprising 1 +/- acre of land (“Property”), from Residential Conservation (RC) to Commercial Planned Development (CPD) with a Master Concept Plan (MCP), a schedule of uses, and deviations to certain requirements of the Land Development Code (“LDC”), in order to develop a 14 unit hotel/resort with restaurant, retail, and consumption of alcohol on premises (“Application”); and

WHEREAS, the Property is located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach, and is under common control of the Applicant as listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on February 9, 2021, at which 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 the LPA voted 6-0 to recommend approval of the rezoning and MCP with conditions, and

WHEREAS, on March 1, 2021 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 set a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on April 5, 2021; 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, including the consideration and findings in the staff report, 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 finds the proposed rezoning and MCP and requested deviations are **consistent/not consistent** with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code and voted to **approve/approve with conditions/deny** 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/did** not meet its burden of proof that the requested rezoning **does/does not** meet the requirements of the Town Comprehensive Plan and LDC, and approving the rezoning of the Property from Residential Conservation (RC) zoning district to Commercial Planned Development (CPD) with a Master Concept Plan (MCP), a schedule of uses, and a deviation to certain requirements of the LDC **is/is not** in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVES/DENIES** the requested rezoning.

Section 3. In approving the rezoning of the Property, the following conditions of approval are imposed on the Applicant and the Property:

[Town Council to Develop]

Violations of these conditions of approval will result in a warning for the first offense, one hundred dollars for the second offense, and five hundred dollars per day/per violation for subsequent violations, appealable to the Code Enforcement Special Magistrate, and may result in the revocation of this rezoning.

Section 4. The following limits apply to the Property and its development or redevelopment:

Schedule of Allowable Uses:

[Town Council to Develop]

Property Development Regulations:

[Applicant to Provide Before 2nd Reading]

- Minimum Street Setback:
- Side Setbacks:
- Rear Setback:
- Minimum Lot Area:
- Minimum Lot Width:
- Minimum Lot Depth:
- Building Coverage:
- Maximum Stories:
- Maximum Height:

Section 5. The Applicant has requested the following deviation, which the Town Council **does/does** not grant:

[Applicant to Provide Before 2nd Reading]

Section 6. Nothing in this rezoning, including any of the attached conditions, constitute a variance or deviation from the provisions of Chapter 6, Article IV ‘Floodplain Regulations’ of the LDC. Approval of this rezoning does not exempt the subject property from any provisions of the LDC with the exception of any approved deviation contained herein.

Section 7. Whenever the requirements or provisions of this Ordinance are in 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 8. 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 9. Any typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 10. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember _____ and seconded by _____ and upon being put to a roll call vote, the result was as follows:

- Raymond P. Murphy, Mayor _____
- Rexann Hosafros, Vice Mayor _____
- Dan Allers, Council Member _____
- Jim Atterholt, Council Member _____
- Bill Veach, Council Member _____

ADOPTED this ____ day of _____, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

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

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this __ day of _____, 2021.