



# *Town of Fort Myers Beach*

## COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

**TYPE OF CASE:** Commercial Planned Development (Rezoning)

**CASE NUMBER:** DCI2020009

**CASE NAME:** Myerside CPD

**LPA  
HEARING DATE:** February 9, 2021

**TOWN COUNCIL  
HEARING DATE:** March 1, 2021 First Reading of Ordinance

**STAFF RECOMMENDATION:** Denial of request to rezone to Commercial Planned Development. The request is inconsistent with the Comprehensive Plan and Land Development Code.

**PREPARED/SUBMITTED BY:** Jason Green, AICP, CFM

### I. APPLICATION SUMMARY

Applicant/Agent: Myerside LLC / Beverly Grady, Roetzel and Andres

Request: To rezone 1+/- acre of land from RC to CPD with a mix of commercial uses as part of their Schedule of Uses, including Hotel, Resort, Multifamily, Single-family, Retail, Restaurant, and Consumption on Premises.

Physical Address: 2661-2668 Estero Blvd., 125 School St., 131-151 School St.

STRAP #: 194624W30020C.0230; -.0270; and -.0290

FLUM: Boulevard

Zoning: Residential Conservation

Current use(s): 2661-2668 Estero – Single-family (2) and a duplex; 125 School St. – Single-family; 131-151 School St – Bed and Breakfast (SEZ2015-0006, RES 16-09)

Adjacent zoning and land uses:

North: Bay Oaks Park, Fort Myers Beach Elementary School (Institutional)  
South: Estero Blvd, Multifamily, Office, and Resort (Residential Multifamily, CO, CR)  
East: School St. FMB Library, FMB United Methodist, (Institutional)  
West: Single-family residences, Bay Oaks Park (RC, Institutional)

**II. BACKGROUND** (Portions of this section are borrowed from FMB Staff Report for SEZ2016-0006 B&B):

The subject site is located at multiple addresses, 2661-2668 Estero, 125 School Street, and 131-151 School Street, at the intersection with Oak Street, School Street, and Estero Boulevard. The site is a combination of 12 lots platted as part of Winkler's subdivision in 1931 (Winkler's Subdivision, Block C, Lots 23-27 (2661-2668 Estero) Lot 28 (125 School Street) and Lots 29 – 34 (131-151 School Street). Each platted lot is approximately 25 feet in width and 150 feet in depth.

Based on information found on Lee County Property Assessor Field Cards, the six platted lots for 131-151 School Street appear to have been originally developed as three separate properties, each consisting of two of the platted lots, and each property having one structure. Property deeds show that the three individual properties came under common ownership by 1962 and have remained in common ownership since that time.

Prior Lee County zoning actions include Lee County Resolution Z-72-18 dated February 1, 1972 that granted a variance for an apartment under a duplex for personal home use on Lots 33 and 34. Additionally, ZVL2013-008 verified that the subject property consists of six platted lots.

Town records indicate that a rezoning to CPD was requested and denied by Town Council in 1996 (Res 96-31). The request was to build five multifamily dwelling units with commercial below. The original request was denied in February; while a revised and scaled down request was then denied in November 1996. The meeting minutes detail how the site was developed with multiple older structures that were in poor condition; while the applicant pointed out that the request did not include hotel uses and no access from School Street. The Town Council findings included the proposed commercial uses were not appropriate in the Boulevard Future Land Use Map category due to intrusion of a commercial use into a residential neighborhood.

The current property configuration resulted from the combination of three separate parcels in 2008 (STRAP #s 19-46-24-W3-0020C.0290, 19-46-24-W3-0020C.0310 and 19-46-24-W3-0020C.0330), and the addition of the remaining parcels comprising the the subject site, 2661-2668 Estero Blvd. and 125 School Street, in 2016 after the Town Council granted a special exception to allow a Bed and Breakfast use (only on the added parcels). According to the current Lee County Property Appraiser records, the 2661-2668

Estero Boulevard consists of two single-family dwelling units; and one single-family dwelling with an apartment.

The current application requests a rezoning from the RC zoning district to CPD. All CPD rezoning applications are required to have a master concept plan, which the applicant submitted, identifying proposed development and how development is consistent with the Town’s Comprehensive Plan and Land Development Code.

The applicant has provided a narrative with the original application in Supplemental PH-D documents (see attached) explaining how it believes the proposed rezoning and master concept plan are consistent with the Comprehensive Plan, Land Development Code (including LDC Sec 34-85), and the Town’s Design Guidelines. The original application requested 16 guest/hotel units developed over multiple phases. Since the original application, the applicant has responded to staff questions and review comments by submitting revised components of the request and the master concept plan. There have been two resubmittals containing modifications to the original application. The final submittal includes a request to allow 14 guest/hotel units over multiple phases; 600 sq. ft. of retail use, a restaurant, and rearranged building(s) to accommodate parking, stormwater, other site modifications, and a phasing plan.

In addition, the plan before the LPA includes an update to requested deviations (attachment 2). The applicant is requesting seven (7) deviations to various design and development criteria in the LDC. The deviations requested would allow the applicant to decrease landscape buffers, setbacks, and not comply with all design criteria, among others. Some of the deviations are to accommodate existing buildings with non-conforming setbacks, access location point separation, and parking space size.

Lots	Year Built	No. of Floors	No. of Dwelling Units	Sq. Footage of Unit
Lots 33 & 34	1969	Two stories	4 units	Base 812 Apt 1 772 Apt 2 784 Apt 3 754
Lots 31 & 32	1957	Two stories	2 units	Base 768 Apt 1 625
Lots 29 & 30	1958	One story	1 unit	504

**Analysis:**

**Comprehensive Plan Consistency:**

The subject property is located in Boulevard Future Land Use. The Boulevard category was developed to recognize existing commercial uses mixed amongst residential uses, but was also developed to protect neighborhoods from intrusion and expansion of commercial uses. “This category is not intended to allow commercial uses on all properties...” and goes on to describe what criteria the LPA must consider if an expansion of a commercial use is requested, as here.

*POLICY 4-B-5 “BOULEVARD”:* a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. **This category is not intended to allow commercial uses on all properties;** its mixed-use nature is intended to remain permanently. For new residential development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for legally existing dwelling units). **To obtain approval for new or expanded commercial activities, proposals**

***must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land in this category, and this percentage shall not exceed 70%.***

The application does not address how the project will contribute to the “public realm” other than the applicant’s presentation at the LPA meeting that the commercial uses will provide a positive to the public realm. The Comprehensive Plan Policy (along with subsequent policies) share a theme related to pedestrian connectivity and design that encourages use of bicycle/pedestrian facilities rather than automobile.

Policy 4-B-5 (see bold above) requires that new or expanded commercial uses shall complement adjoining uses. The applicant’s LPA presentation included identifying the Town’s park, the school property, adjacent church, and library as non-residential uses that support their request for commercial. The application did not address how the proposed use, hotel/lodging and the requested consumption on premise, complements the public nature of the park, school, library, and church.

Policy 4-B-5 also establishes density criteria. The Town has interpreted this Policy in a manner that six dwelling units per acre can translate up to 12 hotel units per acre pursuant to the multiplier allowed by the Comprehensive Plan and LDC unless the property is within the Platted Overlay. The subject property is located within the Platted Overlay; and as referenced in 4-B-5 above, the maximum density permitted is ten units per acre for legally existing dwelling units. The applicant has submitted an analysis of this policy, along with portions of SEZ 2016-0006 (Bed & Breakfast approval) staff report that it argues supports the concept that ten units per acre is allowed when calculating the multiplier for the conversion to hotel and lodging units.

Previous staff presentations of this policy appear not to have included an analysis of Policy 4-B-11 Platted Overlay, which states:

***PLATTED OVERLAY: This is not a separate category on the Future Land Use Map, but is applied in addition to one of the eight categories listed above. Allowable land uses are the same as in the underlying category, but the maximum residential density is 10 units per acre. This density level applies in the Pedestrian Commercial category only for affordable units consistent with the adopted redevelopment plan; in other categories it applies only to recognize existing dwelling units that were built legally but which would be non-conforming under a density cap of 6 units per acre.***

As stated in the Platted Overlay policy, these two policies are to be applied together, not separately. The last sentence is to recognize the ten units per acre maximum to avoid creating a non-conforming density for existing residential units. Prior to the Bed and Breakfast, there was approximately 10 or 11 units within 1 acre of land, which explains why the Overlay was adopted.

The applicant’s argument is that SEZ 2015-0006 contemplated this question. The staff report for SEZ 2015-0006 never provided an analysis of Policy 4-B-11 in conjunction with Policy 4-B-5, as it should have. The potential impacts are a misapplication of Policy 4-B-5 when approving the Bed and Breakfast use that results in more hotel lodging units than intended. The applicant is seeking an interpretation, and ultimately a zoning change, that will result in the conversion of the existing residential units to a

Hotel/Lodging use – not a Bed & Breakfast use. Generally, the intent of a Bed & Breakfast is to maintain the character of the surrounding residential area with limited impacts.

Policy 4-C-2 states that “the maximum intensity of allowable commercial development in any category may be controlled by height restrictions or by other provisions of this plan and the Land Development Code.” Staff previously found that the proposed special exception to allow a Bed & Breakfast does not increase the density or intensity within the approved area footprint. The current application clearly requests an increased intensity of commercial activity through the addition of retail and restaurant uses, as well as the conversion of single-family residential, duplex, and Bed and Breakfast units to **hotel lodging uses**. The Town Council reached the same conclusion and findings when the previous property owner requested to add commercial uses to this site in 1996 through the CPD rezoning process. Simply stated, this application requests hotel/lodging use that further intensifies the commercial development. Half of the property is approved for a Bed and Breakfast, but the remaining .5 acres is residential, including property with a limit of weekly rentals.

*Policy 4-C-2 COMMERCIAL INTENSITY: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the **Land Development Code will encourage more intense commercial uses only in the “Pedestrian Commercial” category.** The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the “Pedestrian Commercial” category as high as 2.5, and in other categories as high as 1.5,*

Policy 4-C-3 contains provision for locational requirement for commercial uses. For the Boulevard Future Land Use designation, the Policy states that mixed use development including commercial uses are permitted but the use must be sensitive to nearby residential areas and contribute to the public realm.

*COMMERCIAL LOCATIONS: When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the following principles shall apply:*

- i. No rezonings for commercial uses shall be allowed in the “Low Density” category.*
- ii. Where new or expanded commercial uses are encouraged, as in the “Pedestrian Commercial” category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category.*
- iii. In the “Mixed Residential” category, commercial uses are limited to lower-impact uses such as offices, motels, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. Landowners may seek commercial rezoning only through the planned development process.*
- iv. **In the “Boulevard” category, where mixed-use development including some commercial uses may be permissible, landowners may seek commercial rezoning only through the planned development process. Proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.***

- v. *The following principles shall be considered by the town when evaluating requests for new commercial uses:*
  - a. *Shopping and services for residents and overnight guests are strongly preferred over shopping and services that will attract additional day visitors during peak-season congestion.*
  - b. *Shopping and services that **contribute to the pedestrian character** of the town are strongly preferred over buildings designed primarily for vehicular access.*
  
- vi. *The neighborhood context of proposed commercial uses is of paramount importance. The sensitivity of a proposed commercial activity to nearby residential areas can be affected by:*
  - a. *the type of commercial activities (such as traffic to be generated, hours of operation, and noise);*
  - b. *its physical scale (such as the height, and bulk of proposed buildings); and*
  - c. *the orientation of buildings and parking.*

**Commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved.**

The proposed CPD does not address commercial intrusion into the surrounding residential area or provide techniques that mitigate those impacts. Policy 4-C-3 directs new commercial uses to contribute to the “public realm” and to “pedestrian character.” The proposed master concept plan does not provide for either of these requirements. Furthermore, approval of the requested deviations will allow multiple access points along School Street, elimination of otherwise required sidewalks and pedestrian connectivity along the western portion of School Street, a reduction to the required landscaping buffers along the at the perimeter of the property, while also deviating from required buffer depths to accommodate non-conforming setbacks of existing buildings.

Planned Development Considerations:

The Land Development Code includes a list of items that the LPA/Town Council must consider, if applicable, when reviewing approval of a requested planned development. These criteria are contained in LDC Section 34-85 and are reproduced and discussed below.

1. *Whether there exists an error or ambiguity which must be corrected.*

**Staff finds that there is no ambiguity which must be corrected, the site is zoned RC. The current uses include residential with a Bed and Breakfast approved via Special Exception. No correction is required.**

2. *Whether there exist changed or changing conditions which make approval of the request appropriate.*

**Conditions have not changed that make approval of the request appropriate. The Comprehensive Plan policies, as addressed earlier, are still applicable. No changes to the character of the neighborhood have occurred.**

3. *The impact of a proposed change on the intent of this chapter.*

**Staff finds the requested amendment is inconsistent with the intent of chapter 34 of the LDC. The master concept plan and deviations provide no mitigation for commercial intrusion. The Comprehensive Plan Policies discussed earlier direct expanded and new commercial development to be consistent with the Land Development Code. Existing conditions and requested deviations prohibit compliance.**

4. *The testimony of any applicant.*

**The LPA and Council will be able to hear from the applicant at the public hearings.**

5. *The recommendation of staff and of the local planning agency.*

**The staff recommendation is for denial due to lack of compliance with the Comprehensive Plan and Land Development Code.**

6. *The testimony of the public.*

**The public will have the opportunity to testify at the LPA AND TOWN Council public hearings.**

7. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*

**The request is not consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan. The intensification of commercial uses and intrusion into residential uses is contrary to the policies discussed earlier. Staff finds that the request is not consistent with Policy 4-B-5, 4-B-11, 4-C-2, and 4-C-3.**

8. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

**Staff finds the application is not consistent with Policy 4-C-3, including implementing the required performance standards identified within the Land Development Code.**

9. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

**Staff finds that urban services are available and adequate as the subject property is already served by potable water and sewer. Insufficient sidewalks exist to address an intensification of commercial uses and additional pedestrian traffic. Without improvements to pedestrian facilities, commercial development becomes auto-oriented. The roadway network currently serves an Elementary School and Town Park and vehicle travel directions are regularly modified to address peak traffic periods for the school.**

10. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

**The proposed master concept plan proposes development of parking and structures in locations of protected tree species. Environmental staff has identified at least two mature protected trees that will be negatively impacted.**

11. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

**The proposed uses are not compatible with the existing and planned uses. The Town Council made this finding for a similar request for commercial development in 1996. The application fails to identify how the proposed uses and proposed site plan are complementary to the adjacent uses, including the nearby school and Town park.**

12. *Whether the location of the request places 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.*

**Commercial development within an area designated for school traffic can create challenges with timing and accessibility, partially due to the changes in traffic flow on a regular basis. The proposed**

development includes maintaining and intensifying the use of driveways along School Street. Several of these driveways are intended to stack parking that will backout onto School Street. Typical school afternoon peak periods don't coincide with typical commercial development afternoon peak periods (4PM-6PM), but the Bay Oak Park peak periods do overlap with commercial development. Access from Estero Boulevard allows for primary accessibility away from School Street.

Additional consideration for planned development is specified in the Town's Land Development Code. LDC Section 34-216 specifies that "the recommendation made to the town council must be supported by the guidelines set forth in § 34-85" as well the findings must address whether the criteria found in this section can be addressed. These criteria are discussed below:

1. *The proposed use or mix of uses is appropriate at the subject location;*

**The proposed uses are not appropriate at the subject location based on the Town's Comprehensive Plan Policies previously discussed and incorporated herein. The location was also part of a previous application in 1996 commercial development subject to the same Goals, Objectives, and Policies as the current application. The intrusion of an expanded commercial use and the conversion of existing residential uses to hotel and lodging and/or commercial uses are not appropriate for this location that is a mix of residential and civic uses.**

2. *Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;*

**Staff finds that the proposed CPD, including the master concept plan, do not provide sufficient safeguards to the public interest. Items such as increased use and failure to improve unsafe access to School and Oak Street, lack of pedestrian facilities connecting a commercial development to adjacent facilities and uses, lack of landscaping and buffer mitigation efforts, and the various deviation requests to eliminate design requirements of the Land Development Code, individually and cumutaviley, do not safeguard the public interest.**

3. *All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;*

**Staff finds that the request is inconsistent with the Comprehensive Plan and Land Development Code. The development conditions proposed by the applicant do not resolve those inconsistencies.**

4. *The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development.*

**The request is not appropriately located, does not meet the criteria in the Comprehensive Plan, and does not contribute to the public realm, therefore, the request is not consistent with the Comprehensive Plan.**

### **III. STAFF RECOMMENDATION:**

Based on the criteria required for evaluation, staff finds the requested rezoning from RC to CPD with a master concept plan for hotel and lodging, retail, and restaurant with consumption of alcohol on premises, is not consistent with the Town's Comprehensive Plan and Land Development Code.

### **IV. LPA RECOMMENDATION:**

The Fort Myers Beach Local Planning Agency recommended approval with conditions with a 6-0 vote on February 9, 2021. The draft meeting minutes are included in the Council's agenda packet. The LPA



recommended conditions included to establish limits for consumption on premise, noise abatement, and to obtain historical recognition for the cottage structures.