

ORDINANCE 21-02

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING 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 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** with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code and voted to **approve with conditions** 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 **does** 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** 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** 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:

- a. The Applicant shall complete the redevelopment of the Property in phases as follows:
 - i. Phase 1 = Relocation of Building 2 within eight months of the issuance of a Development Order.
 - ii. Phase 2 = Construction of all required site improvements, including the parking lot, within one year of the issuance of a Development Order.
 - iii. Phase 3 = Redevelopment and opening of the restaurant within one and a half years of the issuance of a Development Order.
 - iv. Phase 4 = Redevelopment and opening of the retail store within two years of the issuance of a Development Order.
 - v. Phase 5 = The construction or relocation of Building 8.
- b. Phases 1 through 4 must be in sequential order; however, phase 5 may be implemented at any time after the issuance of a Development Order. The Applicant shall complete all phases of the MCP within five years of issuance of a Development Order.

- c. The Applicant shall submit a complete Development Order application for the MCP within one year of approval of this Ordinance.
- d. The Town shall not approve/issue any site or building permits until issuance of a Development Order for the implementation of the MCP, except for routine maintenance or repair, or in order to maintain compliance with the Town Code.
- e. The Applicant shall submit to the Town as part of the complete Development Order application a report by a professional Arborist identifying all trees on the Property, and the measurement of all trees scheduled for removal using the individual Diameter Breast Height (DBH) method. The Applicant shall replace all trees removed from the Property that qualify as protected within the LDC, with in-kind trees.
- f. The Applicant shall submit to the Town as part of the complete Development Order application a landscape plan prepared by a Florida licensed Landscape Architect, which shall include a statement to the viability of the selected vegetation within the approved buffers in the MCP. All landscape buffers shall comply with the LDC to the maximum extent practicable.
- g. Concurrent with the Town's approval of a Development Order, the Applicant shall re-plot the Property as one parcel.
- h. The Property, buildings, and units shall remain under unified control.
- i. All accessory structures shall be improved with required flood vents.
- j. All accessory structures shall be limited to the specific purpose, size, and location on the MCP.
- k. All new construction of replacement structures shall be limited to no more than a 20% increase of the existing footprint and square footage of the structures on the Property on the effective date of this Ordinance. The combination or consolidation of square footage is prohibited.
- l. Vehicular ingress to the Property shall be limited to one access point off Estero Boulevard, as approved by Lee County and the Applicant shall place signs and markings on the Property to that effect.
- m. Vehicular egress from the Property shall be limited to School Street, and the Applicant shall place signs and markings on the Property to that effect.
- n. No parking on Oak Street is permitted, unless subsequently approved by the Town.
- o. The MCP shall comply with all parking design standards, including stall length and width, drive aisle width, and all applicable ADA standards.
- p. The side yard is the western Property boundary and side setbacks apply for purposes of this MCP.
- q. No fill in excess of what is approved in an Environmental Resource Permit issued by the South Florida Water Management District shall be placed on the Property.
- r. All parking of stacked vehicles shall be assigned to specific units as shown on the MCP. Restaurant parking shall be identified on the MCP.
- t. The Applicant shall pay 33% of the cost of designing, permitting and construction of a Town approved standard sidewalk consistent with the Town's adopted engineering design manual standards along School Street connecting Estero Boulevard to Oak Street.

- u. The Applicant shall provide a landscape entryway adjacent to School Street, consistent with the Town's Comprehensive Plan vision for the School Street corridor, consisting of four (4) Royal Palms with a ten (10) foot clear trunk.
- v. The Development Order shall designate an area on the Property to allow the Town to install a public art feature onto the frontage of Estero Boulevard, subject to the Applicant's approval as to design and size.
- w. The Applicant shall limit amplified music to 3:00 pm to 10 pm, Monday through Friday, and 11:00 am to 10:00 pm, Saturday and Sunday.
- x. The Applicant shall limit the consumption of alcohol on the Property as follows:
 - i. Inside the restaurant and the outdoor dining area as shown on the MCP.
 - ii. Sales limited to 10 am to 10 pm and consumption on premises.
 - iii. Payment for alcohol inside the restaurant only.
 - iv. Public access to the restaurant is limited to the entrance along Estero Boulevard.
 - v. The Applicant shall install a landscape buffer delineating and surrounding the outdoor dining area.
- y. The on-site stormwater management system(s) shall function and operate as designed.
- z. Concurrent with the submission of a complete Development Order application, the Applicant shall provide photographic documentation of the architectural style of the existing structures on the Property. All renovations and future replacement of the existing structures on the Property shall require consistency with the identified architectural style. The Applicant shall record a restrictive covenant running with the land in a form acceptable to the Town Attorney, ensuring that all renovations and future replacement of the existing structures on the Property shall require consistency with the identified architectural style.

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

Schedule of Allowable Uses:*

- Hotel/Motel use, which shall mean the rental of any cottage for a stay of one night or longer (maximum of 14 rental units as shown on the MCP).
- Caretaker unit (not an additional unit).
- Accessory pool and sand volley ball court as shown on the MCP.
- Restaurant and personnel services as shown on the MCP.
- Consumption on Premises of beer and wine only (2COP).

* All uses limited to size and location shown on the MCP and conditions of approval herein, subject to any administrative amendments authorized by the LDC.

Property Development Regulations:

- A. General – Applies to Existing Principal and Accessory Structures and Replacement Principal and Accessory Structures.
 - Minimum Lot Area: 1 acre +/- (per survey provided by Applicant).

- Minimum Lot Width: 150 feet +/- (per survey provided by Applicant).
- Minimum Lot Depth: 300 feet +/- (per survey provided by Applicant).
- Building Coverage: Footprint of existing structures as shown on the MCP, plus up to a 20% increase for replacement principal structures.
- Maximum Stories: Three (two stories above base flood elevation).
- Maximum Height: Twenty-five feet (25') above base flood elevation.
- Minimum Building Separation: Fifteen feet (15').
- Maximum Floor Area Ratio: .45
- Maximum Impervious Surface Ratio: 50%

B. Existing Principal and Accessory Structures.

- Minimum Street Setback: As shown on the MCP.
- Minimum Side Setbacks: As shown on the MCP.
- Minimum Rear Setback: As shown on the MCP.

C. New or Replacement Principal and Accessory Structures.

- Minimum Street Setback: Ten feet (10').
- Minimum Side Setbacks: Fifteen feet (15').

Section 5. The Applicant has requested the following deviations, which the Town Council **does** grant:

DEVIATION #1: A deviation from LDC Section 34-2015 (5), which requires that “all parking lots must be provided with sufficient maneuvering room so as to allow an exiting vehicle to leave the parking lot in a forward motion...”, to allow exiting vehicles to leave parking spaces by backing onto School or Oak Streets only as depicted on MCP.

DEVIATION #2: A deviation from the driveway separation requirements of LDC Section 10-296 along Estero Boulevard to allow a driveway access to the subject property that is ±77' from the closest access point (driveway) to the north and ±77' to School Street.

DEVIATION #3: A deviation from LDC Section 10-416(d) Table 10-18, which requires a 15' Type C buffer when a commercial use abuts a residential use, to allow a 6' Type C buffer only where indicated on the MCP and limited to the west property line.

DEVIATION #4: A deviation from LDC Section 34-202(b)(5), which requires architectural elevations or a three-dimensional rendering, to approve the design of existing structures subject to Section 3 Conditions “y.” and “z.” regarding the design of any new or relocated structures.

DEVIATION #5: A deviation from LDC Section 34-1264(b)(1) to allow 2COP (beer and wine only) for the requested restaurant outdoor seating area within 500 feet of a place of worship, religious facility, dwelling unit, school (non-commercial), daycare center [child] or park, as depicted on the MCP.

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.