

**RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 05-13**

WHEREAS, The Town of Fort Myers Beach in reference to the Mound House has requested to rezone 2.77 acres from Residential Single-family (RS) to Commercial Planned Development (CPD) with a deviation from buffer width requirement of Section 10-416(9)b of the Land Development Code (LDC), along Matanzas Pass; and

WHEREAS, the subject property is located at 451 Connecticut, Ft. Myers Beach, in S29-T46S-R24E, Lee County, FL, and the property's legal description is attached as Exhibit "A"; and,

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) and the LPA gave full consideration to the application and recommended that the Town Council approve the Applicant's request to rezone from RS to CPD with conditions; and,

WHEREAS a hearing was held and Town Council considered the following criteria, whenever applicable:

- a. Whether there exists an error or ambiguity which must be corrected.
- b. Whether there exist changed or changing conditions which make the request approval appropriate.
- c. The impact of a proposed change on the intent of LDC Chapter 34
- d. The testimony of any applicant.
- e. The recommendation of staff and of the LPA.
- f. The testimony of the public.
- g. 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.
- h. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- i. Whether urban services are, or will be, available and adequate to serve a proposed land use change.
- j. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

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

l. 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.

m. Whether the proposed use or mix of uses is appropriate at the subject location.

n. Whether sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations.

o. Whether all recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

p. Whether the proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "Mixed Residential" category.
2. Policies 4-B-5 and 4-C-3 on commercial uses in the "Boulevard" category".
3. Policy 4-C-4 on building heights taller than the standard height limit.
4. Policy 4-C-8 on density transfers.
5. Policy 4-E-1 on pre-disaster buildback
6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

WHEREAS Town Council finds that the requested zoning district complies with:

a. The Fort Myers Beach Comprehensive Plan.

b. Chapter 34, Zoning Districts, Design Standards, and Nonconformities

c. Any other applicable town ordinances or codes.

NOW THEREFORE BE IT RESOLVED THAT THE APPLICATION IS APPROVED to rezone from RS to CPD with a deviation from buffer width requirement of Section 10-416(9)b of the Land Development Code (LDC), along Matanzas Pass and subject to the following conditions:

1. The development of this project must be consistent with the 1 page Master Concept Plan entitled "Mound House," stamped received January 26, 2005, last revised 11/04, except as modified by the conditions below. This development must comply with all requirements of the Fort Myers Beach Land Development Code (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. All proposed events with on-premises consumption of alcoholic beverages must apply for and receive a permit for the service of alcoholic beverages in accordance with 34-2442, permits for special events.

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

a. Schedule of Use Groups and Uses:

Civic –Open

Recreation facility, public - limited to use of the structures indicated on the MCP and passive recreation appropriate to the existing level of development of the Mound House property

Day care center, child - limited to day camp type activities and no more children than can be safely accommodated in accordance with the occupancy level attributed by the Fire Marshal to the Mound House's largest room

Place of worship - limited to no more persons than can be safely accommodated in accordance with the occupancy level attributed by the Fire Marshal to the Mound House's largest room and with a temporary use permit issued by the Town

School - limited to no more persons than can be safely accommodated in accordance with the occupancy level attributed by the Fire Marshal to the Mound House's largest room

Theater - limited to areas inside the Mound House building to no more persons than can be safely accommodated in accordance with the occupancy level attributed by the Fire Marshall to the Mound House's largest room; and limited outside to the area forward (toward Matanzas Pass) of the Mound House and north of the northern side of the Mound House, and that it be only allowed in conjunction with an approved Special Event permit with amplification consistent with the Town of Fort Myers Beach Noise Control Ordinance (Ordinance 96-24).

Marine – Limited

Dock (for use by water taxi or water shuttle) - limited to use as a destination only

Retail – Open

Retail store, small - limited to 500 square feet of the floor area of the Mound house for retail operations appropriate to the operation of the Mound House as a Cultural Facility

Membership organization - limited to no more persons than can be safely accommodated in accordance with the occupancy level attributed by the Fire Marshal to the Mound House's largest room

Temporary Uses - only with the appropriate permit issued by the Town

On-premises consumption of alcoholic beverages - limited to beer and wine, limited to the interior of the Mound House building, only in conjunction with a permitted special event, limited to no more than two (2) hours, and no later than 9:00 PM

Office – Limited

Administrative office - limited to use by the staff and contracted agents of the Town and the Mound House

4. The Mound House property will be open to the public from 8:00 A.M. to one-half hour past Sunset and any extended hours approved in conjunction with a permitted Special Event and any other use consistent with the Management Plan.

5. The use of the property must be consistent with the operational and special events policy manual that the Cultural and Environmental Learning Center Advisory Board (CELCAB) will refer to the Town Council for approval and modifications from time to time.

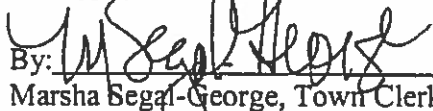
6. Members of Town staff and a committee of four (4) selected residents of the immediate area will be afforded an opportunity for one additional meeting no later than September 20, 2005 to address possible compromises to the remaining issues and a report from that meeting will be forwarded to work to negotiate appropriate provisions for management of the property to be included in the CELCAB for inclusion in the operational and special events policy manual that, when complete, will be forwarded to Town Council for consideration and adoptions.

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

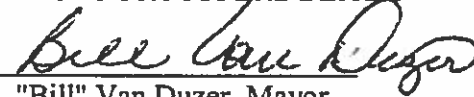
Ken Katcko	<u>Yes</u>
Don Massucco	<u>Yes</u>
Garr Reynolds	<u>No</u>
Howard Rynearson	<u>Yes</u>
W. H. "Bill" Van Duzer	<u>Yes</u>

APPLICATION DULY GRANTED this 16th day of May, 2005.

ATTEST:

By: 
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
W. H. "Bill" Van Duzer, Mayor

Approved as to form by:


Anne Dalton, Town Attorney