

ORDINANCE 25-14

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING WITH CONDITIONS AN AMENDMENT AND RESTATEMENT OF LEE COUNTY RESOLUTION Z-94-013 THAT REZONED PROPERTY TO COMMERCIAL PLANNED DEVELOPMENT TO ALLOW FOR A REVISION TO THE MASTER CONCEPT PLAN AND ONE (1) ADDITIONAL DEVIATION FOR SETBACKS FOR THE REDEVELOPMENT OF A COMMERCIAL MARINA FOR PROPERTY LOCATED AT 7225, 7291 AND 7295 ESTERO BLVD, GENERALLY IDENTIFIED AS STRAP NUMBERS 03-47-24-W1-00011.0010, 03-47-24-W1-00011.0020 AND 03-47-24-W1-00011.003B IN FORT MYERS BEACH; RESTATING PREVIOUSLY APPROVED CONDITIONS AND DEVIATIONS; PROVIDING FOR OTHER 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, MHC Fish Tale, LLC., the owner, and Edgewater Group, as agents for the property located at 7225, 7291 Estero Boulevard, Ft Myers Beach, FL 33931, parcels generally identified as STRAP numbers 03-47-24-W1-00011.0010, 03-47-24-W1-00011.0020 and 03-47-24-W1-00011.003B in the Town of Fort Myers Beach, filed an application to amend the Master Concept Plan (MCP) adopted in Resolution Z-94-013, which rezoned the property to Commercial Planned Development with deviations, to allow for the redevelopment of a commercial marina; and

WHEREAS, the property is a combination of three parcels located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on June 10, 2025, at which time 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 vote 6 to 0 to recommend approval with conditions to the request and found it consistent with the Comprehensive Plan, and

WHEREAS, on August 4, 2025 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 voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in the Fort Myers News-Press more than 10 days prior to the Town Council on August 18, 2025; and

WHEREAS, at the August 18, 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 resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

WHEREAS, a Business Impact Estimate has been prepared and is published on the Town’s website; and

WHEREAS, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

WHEREAS, Exhibit A provides the conditions of approval to be used during the permitting process; and

WHEREAS, Exhibit B provides a revision to the Master Concept Plan and the schedule of uses for this CPD to be used during the permitting process; and

WHEREAS, a deviation is needed from Section 34-638 (f), of the Land Development Code (“LDC”) regarding the minimum building setback to allow a setback of 0 feet for structures adjacent to the submerged land lease basin and a 20-foot setback for the portion of the site adjacent to the state-owned canal; and

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested amendment to a Commercial Planned Development (See LDC 34-85 and 34-216):

- a. The rezoning, as amended and restated, 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, as amended and restated, 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, as amended and restated, 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, as amended and restated, would protect, conserve, or preserve environmentally critical areas and natural resources.

- g. The rezoning, as amended and restated, would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. The rezoning, as amended and restated, 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, as amended and restated, and 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.
- l. 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 eight requested deviations from "by-right" requirements of the Land Development Code (See LDC Section 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.

NOW, THEREFORE, IT IS HEREBY 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 finds that the amendment and restatement of CPD zoning with deviations as provided herein is **consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and **APPROVES WITH CONDITIONS** the requested application.

Section 3. Ordinance 25-14 is adopted and approved to amend and restate Resolution 94-013 as provided in the Conditions of Approval for the Property's CPD as set forth in Exhibit A, the revised Master Concept Plan in Exhibit B and the Schedule of Uses in Exhibit C, all of which are 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 Vice Mayor Atterholt, and upon being put to a roll call vote, the result was as follows:

DULY PASSED AND ADOPTED on this 18th day of August 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 (Oct 27, 2025 11:34:43 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker (Oct 28, 2025 12:04:32 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:

[Signature]

[Signature]

Vose Law Firm, LLP, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 10/28/2025.

Exhibits:

- A- Conditions of Approval
- B - Master Concept Plan (MCP)
- C – Schedule of Uses

Exhibit A: Conditions of Approval

Exhibit A: Conditions of Approval

Continuation of Existing approvals from CPD 1994 MCP (Resolution Z-94-013) as amended from Resolution Z-88-268

- a. Minimum building setback approximately 0-feet for structures adjacent to the submerged land leased basin, and 20-feet for structures adjacent to the state-owned canal.
- b. Minimum setback for parking or interval roads or drives in the southwest corner of the property (as shown on MCP) is the width of Type C buffer with a wall constructed between the property and the Santa Maria Condominiums.
- c. The proposed dry storage building is limited to 55 feet in height and shall be constructed to withstand winds of 140 mph; all other uses are limited to 35 feet in height.
- d. A 5-foot-wide buffer with Type D plantings shall be provided at location along marina accessory use as shown on the Master Concept Plan to match the existing.
- e. A 5-foot-wide buffer with Type D plantings shall be provided at location along marina accessory use as shown on the Master Concept Plan
- f. An intertidal, littoral shelf of minimum 5 foot wide between the existing seawall and the docks shall be created. Please refer to Resolution Z-94-013, conditions #6.
- g. Residential development within shall comply with the buffers given on MCP with Type B buffer along the local street easement south of Villa Santini Plaza.
- h. Dry storage building is limited to 55 feet in height and all other uses are limited to 35 feet in height above grade level.
- i. No more than 30,000 sq. ft. of retail development on the subject property out of which the entire CPD is limited to a maximum of 20,000 sq. ft. of commercial building floor area.
- j. The project shall comply with the density requirements of the Lee Plan. If only the area known as "Phase II" mentioned on the 1988 & 1994 ordinances (2+ acres) is redeveloped for residential uses (2+ acres x 6 maximum allowable density), the site is limited to twelve dwelling units at six units per acre. Residential uses are permitted only in conjunction with at least 50,000 square feet of commercial or industrial uses.
- k. A 10-foot-wide pedestrian easement between the Santa Maria Condominium and the boat docks owned by Santa Maria.
- l. The owner/developer shall post manatee awareness and idle speed /no wake signs along the canals from the subject property to Ostego Bay.
- m. The owner/ developer shall post "no parking-fire lane" signs along the length of the access road that runs between the subject property and Villa Santini Plaza. The applicant and the owner of Villa Santini Plaza shall construct three-sided barriers around the dumpsters located in the access road for the purpose of keeping the dumpsters flush against the buildings and out of the fire lane.
- n. Open space shall be provided in accordance with the Master Concept Plan with exceptions as given under resolution.
- o. Any change of the marina use would require a public hearing as per Policy 98.2.1.
- p. Parking shall be in accordance with the Lee County regulations, with the exception of marina parking (Deviation (12) of Resolution Z-88-268). The MCP increases the existing number of parking spaces from 145 to 155 with no increase in boat density.

- q. If the property is subdivided for commercial uses, there shall be compliance with the property development regulations of the CC zoning district (Zon Ord Table 450.A, LDC Section 34-843). The property development regulations of the RM-6 zoning district shall be complied with for multi-family or townhouse development (Zon Ord Table 422.B, LDC Section 34-715). Subdividing shall be in compliance with the Development Standards Regulations.
- r. New commercial development shall not exceed 35 feet above current flood elevation except for the proposed dry boat storage per Development Order 5-21-89). The proposed dry storage building is limited to 55 feet in height.
- s. If residential development occurs, the buildings shall not exceed 35 feet above grade, except as provided for in Zoning Ord Section 202.18.A.4 Land Development Code Section 34- 2174.
- t. Open space shall be provided in accordance with the Master Concept Plan, with one exception: open space which is located within a road right-of-way or road easement may not be used for credit towards Fish Tale Marina's open space requirement.
- u. This zoning approval does not indicate that the project's traffic impacts have been mitigated. Additional conditions may be required at the time of issuance of a local Development Order per the Development Standards Regulations or other Town of Fort Myers Beach regulations.
- v. The existing development (miniature golf course and ancillary restaurant) shall comply with the following conditions:
 - i. All exterior lighting on the property shall be low intensity and directed away from the adjacent residential uses.
 - ii. Structures shall be limited to a maximum of 15 feet above current flood elevation except for one lighthouse-like structure which shall be a maximum of 25 feet above finished grade.
 - iii. The miniature golf course and ancillary restaurant (including outdoor seating) shall be operated only between the hours of 10:00 A.M. and 10:00 P.M. from May 1st through October 31st of each year and between the hours of 10:00 A.M. and 11:00 P.M. from November 1st through April 30th of each year. If the miniature golf course is abandoned, the restaurant shall be allowed as permitted in Condition 22.
 - w. The owner/developer shall ensure twenty percent of total wetslips are useable for sailboats. These slips may be used for other vessels as demand requires.
 - x. The following setbacks shall apply:
 - i. Setback A: from State-owned canal: 20 ft.
 - ii. Setback B: from Submerged Land Leased Basin: 0 ft.
 - y. The owner/developer shall provide and maintain at the cost of \$2,750.00 per year dry, covered storage for one boat and provide one outdoor storage space for the use of the Town of Fort Myers Beach.
 - z. The proposed buildings on the site plan, identified as a marina accessory use building in Development Order 5-21-89, shall be used for marina uses.
 - aa. Square Footage of Uses and Slip #s shall comply with Table provided in Exhibit C of this ordinance
 - bb. The applicant shall work in good faith with the Town in the design and implementation of future water ferry/ taxi stops on their property.

Exhibit C: Schedule of Uses as defined in Resolution number Z-94-013

- Administrative Offices
- ATM – Automated Teller Machine
- Retail
 - Bait and Tackle Shop
 - Boat Parts Store
 - Boat Sales
 - Food Store
 - Gift and Souvenir Shop
 - Hobbie, Toy, Game Shop
 - Special retail shops
- Bank and Financial Establishment
- Bar or Cocktail Lounge
- Business Office
- Business Services
- Clubs – including membership organizations
- Consumption on Premises – as associated with a restaurant
 - Including COP for Outdoor Seating in conjunction with a restaurant
- Day Care Center (child or adult)
- Marina and Marina accessory uses
 - Docking and Mooring facilities
 - Water Ferry/ Taxi Stop
 - Dry Boat Storage
 - Sale of Fuel and Lubricants
 - Live Aboards
 - Sanitary Facilities
 - Restrooms and showers for transient persons
 - Pump out facilities for onboard sanitation
 - Wastewater holding pretreatment or treatment
- Drive-Thru Facility – only in conjunction with a bank
- Drug Store or Pharmacy
- Dwelling Units – in compliance with zoned density
 - Townhouse
 - Multi-family Building
- Entrance Gates and Gatehouses
- Essential Services
- Food and Beverage Service
- Hotel/Motel
 - Efficiency Motel permitted
 - Convention of transient Hotel/motel prohibited
- Insurance Company
- Laundromat

- Laundry or Dry-cleaning
- Personal Services
- Pet Services
- Recreation, Commercial
 - Excludes waterslides
- Rental or Leasing Establishments
- Restaurants, standard
- Schools, commercial
- Signs – in accordance with LDC regulations
- Storage
 - Indoor – limited to boats and associated equipment, but not including commercial mini-warehouses or garages
 - Open
- Temporary Uses – limited to construction trailer and construction equipment
- Transportation Services
- Vehicle and Equipment Dealers

The 1992 Master Concept Plan with a 20,000 SF Commercial strip mall is replaced with the following structures:

Bldg #	Total SF	Boat Storage (SF)	Retail (SF)	Office (SF)	Service (SF)	Restaurant (SF)
1	9,100	9,100	-	-	-	-
2	8,680	8,680	-	-	-	-
3	11,800	11,800	-	-	-	-
4	26,500	26,500	-	-	-	-
5	3,500	3,500	-	-	-	-
6	3,040	3,040	-	-	-	-
7	5,400	5,400	-	-	-	-
8	2,000	-	800	1,200	-	-
9	2,500	-	-	900	1,600	-
10	2,600	-	1,600	1,000	-	-
11	5,900	-	2,200	-	3,700	-
12	8,300	-	300	-	-	8,000
Total SF per usage		68,020	4,900	3,100	5,300	8,000

- Building 4 is not to exceed 27,000 SF
- Building 7 is not to exceed 6,000SF

The proposed development is not to exceed the quantity of boats listed below:

EXISTING WETSLIP MIX				
Dock	Slip Style	Slip Length (ft)	Slip Count	
Seasonal Slips				
A	Broadside	30	7	
	Slip	30	16	
	Slip	40	2	
	Slip	50	1	
Dock A Total:			26	
B	Slip	30	12	
	Dock B Total:			12
C	Broadside	30	1	
	Broadside	40	16	
	Slip	30	8	
	Slip	40	12	
Dock C Total:			37	
D	Slip	20	8	
	Slip	30	8	
	Slip	40	1	
	Dry Dock	40	3	
Dock D Total:			20	
Total Marina Slips				95
Transient Slips				
Dock D Broadside			3	
Queueing Slips			18	
Fuel Dock Slips			4	
Total Slips				120

PROPOSED WETSLIP MIX				
Dock	Slip Style	Slip Length (ft)	Slip Count	
Seasonal Slips				
A	Slip	30	8	
	Slip	40	11	
Dock A Total:			19	
B	Slip	40	10	
	Dock B Total:			10
C	Broadside	30	1	
	Slip	40	9	
Dock C Total:			10	
D	Broadside	30	1	
	Broadside	40	17	
	Slip	40	20	
Dock D Total:			38	
Total Marina Slips				77
Transient Slips				
Dock A Broadside			4	
Queueing Slips			16	
Fuel Dock Slips			2	
Total Slips				99

EXISTING DRYSTACK SLIP MIX				
Building	Level	Slip Size (ft)	Slip Count	Total Slip Count
1	1	25	22	66
	2	25	22	
	3	30	22	
2	1	25	22	66
	2	25	22	
	3	20	22	
3	1	25	28	84
	2	25	28	
	3	20	28	
4	1	25	36	60
	2	30	24	
5	1	30	9	27
	2	30	9	
	3	30	9	
6	1	35	6	18
	2	35	6	
	3	35	6	
Drystack Subtotal				321
Existing Wetslip Plan				120
Total Slips:				441

Proposed Drystack Slip Mix				
Building	Level	Slip Size (ft)	Slip Count	Total Slip Count
1, 2, 3 footprint	1	35	39	134
	2	35	39	
	3	30	39	
	4	30	17	
4	1	45	24	120
	2	40	24	
	3	30	36	
	4	30	36	
5	1	30	9	27
	2	30	9	
	3	30	9	
6	1	35	6	18
	2	35	6	
	3	35	6	
7	1	45	12	36
	2	40	12	
	3	30	12	
Drystack Subtotal				335
Proposed Wetslip Plan				99
Total Slips:				434