

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 12-10
CVS/Pharmacy CPD

WHEREAS, Holiday CVS, LLC, owner of property located at 7001 Estero Boulevard Fort Myers Beach, Florida has requested an amendment to Condition #2 of Resolution 97-35 for the existing Commercial Planned Development (CPD), formerly known as Eckerd's, to allow hours of operation from 7:00 AM to 12:00 Midnight; and

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

WHEREAS, the STRAP for the properties are 03-47-24-W1-00007.0000; and

WHEREAS, the legal description for the property is attached as **Exhibit A**; and

WHEREAS, the Town Council, on October 20, 1997, adopted Resolution 97-35 which rezoned the subject property from Tourist Commercial (CT) to Commercial Planned Development (CPD); and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on June 12, 2012 at which time the LPA gave full and complete consideration to the CPD amendment requested by the Applicant, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on August 6, 2012, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2012-007, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2012-007 and the standards for granting planned development rezoning, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVES** the applicant's request for an amendment to the existing CPD, formerly known as Eckerd's, to allow hours of operation to continue from 7:00 AM to 12:00 Midnight.

FINDINGS AND CONCLUSIONS

Based upon the presentations by the Applicant, staff, and other interested parties at the hearing, and a review of the application and standards for the planned development zoning approval, the Town Council makes the following findings and reaches the following conclusions:

1. *An error or ambiguity **does not** exist which must be corrected.*
There is no error or ambiguity to be corrected by the requested amendment to Condition #2 of Resolution 97-35.
2. *Changed or changing conditions **do** exist which make approval of the request appropriate.*
The major change that has taken place is that this is now an established business on Fort Myers Beach, operating as a pharmacy/drugstore since 1998. CVS/pharmacy has operated from this location since August 2004. Also, in 2005, the neighboring property to the east was purchase by the Fort Myers Beach Fire Control District, and Fire Station 33 was constructed on the adjacent parcel. Therefore, there is no long a potentially noise- or time-sensitive use adjacent to the subject property. Since the CVS/pharmacy began operating in August 2004, there have been no complaints about the expanded hours of operation.
3. *There **will not** be an impact from the proposed change on the intent of Chapter 34.*
The requested amendment to the CPD will not have an impact on the intent of LDC Chapter 34.
4. *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.*
Resolution 97-35 found the requested CPD zoning to be in compliance with the Comprehensive Plan. Further, the subject property is located in the Pedestrian Commercial Future Land Use category, the highest-intensity land use category on Fort Myers Beach.
5. *The request **meets or exceeds** all performance and locational standards set forth for the proposed use.*
Resolution 97-35 found the requested CPD zoning to be in compliance with all performance and locational standards
6. *Urban services **are** available and adequate to serve a proposed land use change.*
Urban services are available, as the subject property is already a customer of Beach Water, and roads and sidewalks are in place along both street frontages.
7. *The request **will** protect, conserve, or preserve environmentally critical areas and natural resources.*
Resolution 97-35 found that the requested CPD zoning protects, conserves and preserves environmentally critical areas and natural resources.
8. *The request **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance, or other detriment to persons or property.*
The requested hours of operation will be compatible with existing uses and will not cause damage, hazard, nuisance or other detriment to persons of nearby property. The CVS/pharmacy has operated at the subject location for more than 7 ½ years with the requested hours of operation, without so much as one complaint from a nearby property

owner. The complaint that led to the Code Enforcement case CE12-0050 allegedly came from a disgruntled employee, not an affected property owner nearby.

9. *The location of the request **will 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.*

The request will not place any burden on the transportation network or other facilities. In fact, the request may alleviate some burden on Estero Boulevard because customers will be able to access the CVS/pharmacy outside of the congested peak hours.

10. *For planned development rezonings, see § 34-216 for additional considerations (below):*

- a. The proposed mix of uses **is** appropriate at the subject location*
- b. Sufficient safeguards to the public interest **are** provided by the recommended special conditions to the concept plan or by other applicable regulations.*
- c. All recommended special conditions **are** reasonably related to the impacts on the public's interest created by or expected from the proposed development.*
- d. The proposed use meets all specific requirements of the comprehensive plan that **are** relevant to the requested planned development.*

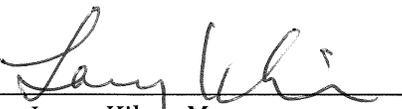
The request is appropriate at the subject location, does not negatively impact the public, and is consistent with the comprehensive plan.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember Kosinski and seconded by Councilmember List, and upon being put to a vote, the result was as follows:

Larry Kiker, Mayor	AYE	Bob Raymond, Vice Mayor	AYE
Alan Mandel, Councilmember	AYE	Jo List, Councilmember	AYE
Joe Kosinski Councilmember	AYE		

DULY PASSED AND ADOPTED THIS 6th day of AUGUST, 2012.

Town Council of the Town of Fort Myers Beach

By: 
Larry Kiker, Mayor

Approved as to legal sufficiency:

By: 
Fowler White Boggs, P.A.
Town Attorney

ATTEST:

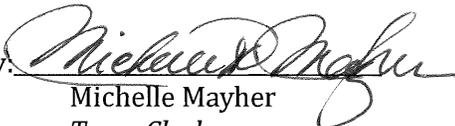
By: 
Michelle Mayher
Town Clerk

Exhibit A
Legal Description

A parcel of land in government lot 1, Section 3, Township 47 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the point of intersection of the Easterly right-of-way line of Estero Boulevard (S.R. No. 865, 80.00 feet wide) with the South line of said Government Lot 1; thence North 18°34'20" West for 63.00 feet to the Point of Beginning of the herein described parcel of land;

From said Point of Beginning; thence continue North 18°34'20" West for 209.51 feet; then North 89°11'00" East for 306.70 feet; thence South 00°49'00" East for 199.53 feet to an intersection with the Northerly right-of-way of Lenell Road (60.00 feet wide) as described in O.R. Book 849, Page 282 of the Public Records of Lee County, Florida; thence South 89°11'00" West along said right-of-way line for 242.81 feet to the Point of Beginning.