

## **ORDINANCE 22-06**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 12-07, AND AMENDING THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 2301, 2307 & 2311 ESTERO BLVD. AND 111 & 121 MANGO ST., FORT MYERS BEACH; AMENDING THE MASTER CONCEPT PLAN FOR THE RESTAURANT USE(S); PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND 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**, Tre and Amy, Inc. ("Applicant"), the owner of the property generally located at 2301, 2307 & 2311 Estero Blvd., and 111 and 121 Mango St. and identified by STRP numbers 19-46-24-W3-0110D.0010, 19-46-24-W3-0120E.0010, 19-46-24-W3-0120E.0020 and 19-46-24-W3-0120E.0030 - comprising .66 +/- acre of land ("Property"), filed an application to amend the Property's Commercial Planned Development ("CPD") to allow on-site brewing and consumption of beer; and

**WHEREAS**, the Property is 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 March 22, 2022, 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 CPD amendment with conditions, and

**WHEREAS**, on April 18, 2022 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 Fort Myers Beach Land Development Code ("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 18, 2022; 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 CPD amendment with conditions of approval are **consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve** 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 zoning amendment **does** meet the requirements of the Town Comprehensive Plan and LDC and approving the request to allow the use of on-site brewing and consumption of malt liquor with conditions **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 amendment to the CPD zoning of the Property.

Section 3. Town Resolution 12-07 is repealed and replaced by this Ordinance and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit "A," attached hereto and incorporated herein by this reference is 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 9. 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 10. 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 Veach and seconded by Vice Mayor Hosafros, and upon being put to a vote, the result was as follows:

**DULY PASSED AND ADOPTED** on this 2<sup>nd</sup> day of May 2022.

Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	recused
Bill Veach, Council Member	aye
Jim Atterholt, Council Member	aye

**TOWN OF FORT MYERS BEACH**

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Raymond P. Murphy, Mayor

**ATTEST:**

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Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

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John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this \_\_\_\_ day of May 2022.

Exhibits

Exhibit “A” Schedule of Uses and Conditions of Approval

Exhibit “B” Master Concept Plan

## EXHIBIT "A"

The Town Council APPROVES the applicant's request for an amendment to the existing CPD, formerly known as Big John's Board Walk Eatery, now known as CJT Properties LLC, to provide required parking on-site for the existing restaurant uses, stormwater management improvements, and landscape buffers, with such approval subject to the Schedule of Allowable Uses, & 11 conditions and 11 deviations set forth with specificity below.

### Schedule of Allowable Uses:

Residential – Open

Lodging – Limited

Office – Limited

- Offices, general or medical

- Personal services

Retail – Limited

- Restaurant (limited to two (2) with a total maximum area of 4000 square feet of indoor space with additional outdoor seating as indicated on the MCP)

- On-premises consumption of alcoholic beverages (limited to beer and wine served only in conjunction with meals) including approximately 1000 square feet of outdoor seating in conjunction with the proposed deck.

- On-site brewing of beer for consumption on premises.

Civic – Open

In approving the amendment to the CPD zoning of the Property, the following conditions of approval are imposed on the Applicant and the Property:

1. If the principal building on the subject property (2301 parcel) is removed or replaced for any reason, deviations 3, 4, 5, 6, and 7 will become null and void. Any new buildings replaced on the subject property must comply with required setbacks and any other regulations in effect at the time of permitting.
2. Any changes or fracturing of ownership of the four parcels within the subject property will require, at a minimum, an administrative amendment to the Master Concept Plan to reflect the change in ownership, which will include recorded unified control documentation.
3. The parking lot must be stabilized in accordance with the provisions in Section 34-2017 (b) of the LDC.
4. A local development order is required prior to any expansion of the existing restaurant or any use of the second restaurant bay in accordance with this planned development approval. Approval of this request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order, including payment of additional impact fees.

5. A Traffic Impact Study (TIS) is not warranted, and the Town Council hereby overrules the Director's decision to require a TIS. The Applicant has provided mitigation for traffic impacts by providing the following: additional on-site parking for tenants and customers, landscape buffers, bicycle racks, extension of the sidewalk along Estero Boulevard in front of the property, elimination of the back out parking in front of the existing building, a reduction in the outdoor dining area to 1,000 square feet, and provision of storm water management improvements. The current restaurant use has demonstrated that it is mainly a pedestrian and bicycle-oriented destination and, as a result, the traffic impacts may actually be less than would be expected from a traffic impact study.
6. Bicycle racks shall be provided for a minimum of 8 bicycles.
7. The hours of operation for business use are 6am to 12 midnight. The hours of operation for indoor restaurant uses are 7am to 12 midnight with outdoor seating area limited to between the hours of 7am and 10 pm, seven days a week.
8. ~~No outdoor entertainment is permitted.~~
8. No amplified music or entertainment is permitted outdoors.
9. All brewing activities shall be contained within the building.
10. No outdoor storage shall be allowed including the use of portable storage units, cargo containers and tractor trailers except as follows: spent grain may be placed outdoors for a period not to exceed 24 hours. Spent grain must be stored in fully enclosed containers that are screened from adjacent properties and Estero Blvd.
11. Must comply with guidelines set forth by the Florida Department of Alcoholic Beverages and Tobacco for the CMBP permit.

The following limits apply to the Property and its development

Council grants the following deviations:

Deviation #1

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a Type C/F buffer where proposed commercial uses abut single family residential uses, to allow for an eight (8) foot high solid stockade fence and 14-15 foot Type C buffers without a wall, as indicated on the MCP and landscape plan is APPROVED.

Deviation #2

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a 15 foot Type D buffer between parking areas and right-of-way, to allow for a 5 foot Type D buffer between parking areas and right-of-way is APPROVED.

Deviation #3

Deviation from the requirement of LDC Section 34-704(a), which requires buildings to be constructed between five (5) to ten (10) feet from Estero Boulevard, to allow a front setback of 46 feet to accommodate the existing building is APPROVED.

Deviation #4

Deviation from the requirements of LDC Section 34-707(b)(1)a, which requires a minimum 10 foot street setback to allow for a 2.39 foot street setback from Fairweather Lane to

accommodate the existing building is APPROVED.

Deviation #5

Deviation from the requirement of LDC Section 34-704(b)(1)b, which requires a minimum 20 foot rear setback, to allow for a two-foot rear setback to accommodate the existing building is APPROVED.

Deviation #6

Deviation from the requirement of LDC Section 34-995(a)(3), which prohibits a principal facade facing a primary street from having blank walls greater than 10 feet in length, to allow for one (1) section of the principal facade to be 16 feet in length is APPROVED.

Deviation #7

Deviation from the requirements of LDC Section 34-995(d), which requires corner buildings to be located no more than 20 feet from the intersection of right-of-way lines, to allow the existing corner building to be located a distance of 48.5 feet from the intersection of Estero Boulevard and Fairweather Lane is APPROVED.

Deviation #8

Deviation from LDC Section 34-2020(d)(2)h, which requires 8 parking spaces per 1,000 square feet of total floor area, including any outdoor seating area (for a total of 47 required parking spaces) to allow for a 30% reduction from the LDC requirement for a total of 34 provided spaces is APPROVED.

Deviation #9

Deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow for a crushed shell or limerock surface is APPROVED.

Deviation #10

Deviation from LDC Section 34-285 and Table 10-1, which requires 125 feet of connection separation along local roads, to allow for 96± feet of connection separation along Mango Street is APPROVED.

Deviation #11

Deviation from LDC Section 10-289(d) which requires an 8 foot wide sidewalk along the property's Estero Boulevard frontage, to allow for a 5 foot wide sidewalk is APPROVED.

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.