



Town of Fort Myers Beach

LOCAL PLANNING AGENCY

Town Hall
2525 Estero Boulevard
Fort Myers Beach, Florida
33931

November 14, 2017

AGENDA

9:00 AM

- I. Call to Order
- II. Pledge of Allegiance
- III. Invocation
- IV. Minutes
 - A. Minutes of October 10, 2017

- V. Ordinance No. 17-17 - LDC Amendment to Ch 34, Sec 34-3051 Mobile Tourist Information Center
- VI. Ordinance No. 17-24 – Medical Marijuana Treatment Center Dispensing Facilities
- VII. VAR17-0003 - Requesting side yard variance from required 20' to 13' – 4360 Estero Blvd.
- VIII. VAR17-0004 – Requesting rear setbacks from 25 – 20 – 272 Miramar.
- IX. SEZ17-0002 & VAR17-0002 – Shared Parking in the Downtown Zoning- Paine Parking
- X. DCI17-0002 – Residential Multifamily - 1- SFR AND 1- 3 UNIT BLDG – Dullard Residence
- XI.

- XII. Historic Preservation Board meeting:
Adjourn as LPA and reconvene as Historic Preservation Board

Historic Plaque Applications:

HDD17-0003- 163 Miramar St
HDD17-0004 – 255 Albatross

Adjourn as Historic Preservation Board and reconvene as LPA

- XIII. Review LPA Policies and Procedures Manual
- XIV. LPA Member Items and Reports
- XV. LPA Attorney Items
- XVI. Community Development Items
- XVII. Items for next month's Agenda
- XVIII. Public Comment
- XIX. Adjournment

Next Meeting: December 12, 2017



For special accommodations, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202



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In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
MINUTES
Town Hall
2525 Estero Boulevard
Fort Myers Beach, Florida 33931
Tuesday, October 10, 2017**

I. CALL TO ORDER

Meeting was called to order at 9:00 a.m. by Chair Zuba. Members present: Megan Heil, Dan Hendrickson, Jane Plummer, Scott Safford, Lorrie Wolf and Hank Zuba.

Excused: Dan Hughes

Town Attorney: Town Attorney Peterson

Staff: Matt Noble

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. REORGANIZATION

MOTION: Ms. Plummer nominated Hank Zuba as Chair; second by Mr. Hendrickson.

VOTE: Motion approved; 6-0 with Mr. Hughes excused.

MOTION: Chair Zuba nominated Dan Hendrickson as Vice Chair; no second.

VOTE: Motion approved; 6-0 with Mr. Hughes excused.

V. MINUTES - August 8, 2017

Correction: Ms. Safford should be Mr. Safford under XII.

MOTION: Ms. Plummer moved to approve the minutes, second by Ms. Heil.

VOTE: Motion approved; 6-0 with Mr. Hughes excused.

VI. DCI17-0005 - Old Seaport Restaurant Planned Development Amendment

Town of Fort Myers Beach - Local Planning Agency

October 10, 2017

Page 1 of 5

Principle Planner Matt Noble reviewed the history of the request. He indicated that the applicant agreed to cease renting parking upon completion of the new restaurant. He suggested modifying a condition to include no shared parking of any kind shall be permitted on the subject's properties. He noted that the applicant provided revised parking calculations and a parking plan.

Chair Zuba requested ex parte communications. Ms. Wolf - none; Mr. Safford - none; Ms. Plummer - site visit; Mr. Hendrickson - site visit; Ms. Heil - site visit and Chair Zuba - site visit.

Town Attorney Peterson swore in those providing testimony.

Rob Fowler represented James Figuerado with Olde Seaport Place, Inc. The first issue was that the DEP approved shifting seating 32 feet to the right. The request shifted the COP with the seating. The second issue was the previously approved alternate scheduled uses for the San Carlos Blvd. restaurant and COP. Mr. Fowler stated that when they tried to get it administratively approved it was denied. He was told that it was denied because the restaurant was not discussed at the LPA meeting or Council meeting. Mr. Fowler stated it was not mentioned because the restaurant was not questioned. He reiterated that the restaurant would go in the exact footprint on the Master Concept Plan (MCP). He indicated that Town Manager Hernstadt previously stated that it should go to a public hearing for clarification. Mr. Fowler expressed his frustration with the entire process.

Mr. Figuerado reviewed his history in the Town. He discussed the two issues. He noted that they decided not to move forward with the open air shops and decided to open a restaurant instead. He explained the previous deal with Mr. Freeland.

Mr. Fowler addressed the letter regarding parking and stated that the challenges were from Marina Village. He noted that calculations for the outdoor seating had been provided. Mr. Figuerado was taking advantage of using the public parking as a permitted use but that use would stop once the restaurant was open. Mr. Fowler noted that the restaurant would be on grade with dry flood proofing.

Mr. Noble stated that it was on the schedule of uses but not depicted on the MCP.

Ms. Plummer noted that there was a reduction in square footage on both parcels and since it was on the schedule it should be a simple clarification of cleaning up the paperwork.

Ms. Wolf noticed that there was a dead end on the parking plan. Mr. Noble replied that the parking lot was altered to add a turnaround.

Chair Zuba questioned the language in conditions 4 and 8, and closing at 11:00 p.m. instead of 10:00 p.m.. Mr. Noble explained that conditions 4 & 8 were standard language and part of the 2015 approval, and that by closing the rollup doors the restaurant would be allowed to operate until 11:00 p.m. It did not apply to music or live entertainment. Mr. Fowler stated that the Butler Act had been authorized and all issues had been resolved by the settlement with the State of Florida. He explained that non-structural roof covering was an awning with poles.

MOTION: Ms. Plummer moved to approve the applicant's request to amend the already approved Master Concept Plan in parcels 1, 2, and 4 as requested, findings and conclusions that there exists a change in condition which makes approval of the request appropriate, the request is consistent with the goals and policies and intent of Fort Myers Beach Comprehensive Plan, that it meets or exceeds all performance and location standards set forth, that the request will protect and conserve critical areas on Fort Myers Beach, the request will be compatible with existing and planned uses, the request will be in compliance with applicable general zoning and with this approval will be conditions 1-16; second by Chair Zuba.

Mr. Noble suggested that the conditions be expanded to include the parking condition as discussed earlier. **He read the condition from the handout into the record.**

Ms. Plummer amended her motion to include condition 16 as stated. Chair Zuba amended his second.

VOTE: Motion approved; 6-0 with Mr. Hughes excused.

VII. SEZ17-0001 & VAR17-0005 - Mango Street Parking Lot

Mr. Noble indicated the parking lot had been utilized as a seasonal parking lot for years but the Town eliminated seasonal parking lots. The application was a result of the Town eliminating those parking lots and it included a series of variances.

Chair Zuba requested ex parte communications. All LPA members conducted a site visit.

Greg Stuart represented owner Ronald Yanke. Mr. Stuart utilized a PowerPoint presentation to review the request. Slides included Land Use and Zoning, The Request, The Special Exception bullets and The Variances Request. He stated that they met all the criteria.

Mr. Stuart indicated that they clarified what the Limited Development Order (LDO) had to include. He addressed the urgency with opening the lot.

Ms. Plummer recommended that the buffer be one foot high on the Estero Blvd. side for the visibility triangle. Mr. Noble stated that the project would have to meet the visibility standard.

Chair Zuba inquired whether they would consider adding bike racks. Mr. Stuart had not discussed bike racks.

Town Manager Hernstadt recommended setting 180 days for them to meet the conditions instead of leaving it open ended. If conditions are not met, then a \$500.00 per day penalty would be imposed.

David Walton ran the parking lot for years and the previous owner had the parking lot since the 1980s. He stated that he managed, cleaned, supervised and provided security for the parking lot. He noted that bicycles were parked next to him. He did not think that the 180 days would be a major problem, but it might be a minor problem with the trees along Mango St. If he could eliminate one tree, he could add a bicycle rack. He thanked everyone for considering his request.

Mr. Stuart added the 180 day requirement and he requested that the minutes requirement be waived to expedite opening the lot. Mr. Noble suggested rewriting condition 2 to reflect the 180 day requirement.

No public comment.

MOTION: Ms. Plummer moved to approve the applicant's request for special exception associated with the variance to construct a permanent parking lot consistent with section 34-2011 of the LDC to allow 29 parking spaces as depicted on the site plan and to include variances 1-5 and the recommendation findings and conclusions are consistent, it meets or exceeds and it will protect and will compatible and will be in compliance, approval of conditions 1-8 with the change to 2, 7 and 8 added on the letter presented today. The property is allowed to operate a commercial shared parking lot following Town Council approval based upon the condition that the property must submit an LDO within 180 days must have approval of the special exception or if not completed a \$500.00 fine. The LDO must address the parking plan, stormwater retention, access to the site, parking surface of the lot, buffer and ADA issues. Number 7 addressed hours of operation, added the ability to have six special exceptions for parking to accommodate events such as July 4 and New Year's Eve. Add 8 to state if the parking lot lighting is desired by the owner the lighting

plan would be submitted to the Town Council, no light poles may be installed, other ground mounted lighting may be used, a lighting plan must be administratively approved to install; second by Chair Zuba.

VOTE: Motion approved; 6-0 with Mr. Hughes excused.

VIII. HISTORIC PRESERVATION BOARD MEETING

MOTION: Chair Zuba moved to adjourn as LPA and reconvene as Historic Preservation Board; second by Mr. Safford.

VOTE: Motion approved; 6-0 with Mr. Hughes excused.

Mr. Hendrickson stated that he was appointed as Chair of the Historic Preservation Board. He recommended that Mr. Safford join the committee. Mr. Safford accepted.

HISTORIC PLAQUE APPLICATIONS:

HDD17-0001- 2563 Cottage Ave. - First Beach School

HDD17-0002 - 110 Mango St. - Heavenly Biscuit

MOTION: Ms. Heil moved to approve the applications for the First Beach School at 2563 Cottage Ave. and Heavenly Biscuit at 110 Mango St. for historic plaques; second by Ms. Wolf.

VOTE: Motion approved; 6-0 with Mr. Hughes excused.

MOTION: Chair Hendrickson moved to adjourn as Historic Preservation Board and reconvene as the LPA; second by Ms. Plummer.

VOTE: Motion approved; 6-0 with Mr. Hughes excused.

IX. REVIEW LPA POLICIES AND PROCEDURES MANUAL

Chair Zuba stated that the manual needed a complete rewrite. He tabled the review until staff could edit the document.

X. LPA MEMBER ITEMS AND REPORTS

Ms. Heil - questioned installing restroom facilities in parking lots for the public. Mr. Safford concurred with providing public services. LPA Member Plummer questioned why the Town did not support restrooms on beach accesses. Mr. Noble stated that it was a Council issue. Ms. Heil noted that hotels were issuing wrist bands to their guests to keep the public from using their facilities. Mr. Safford stated that allowing people to use restrooms at businesses was a liability issue.

Mr. Hendrickson asked whether anything can be done concerning bigger homes on properties? He questioned forming an ad hoc committee to explore the issue. Ms. Plummer discussed the cost to build and taking advantage of the setbacks. Chair Zuba suggested analyzing the scope of the issue and he offered to participate in an ad hoc committee. Ms. Plummer and Mr. Safford agreed to participate. Mr. Hendrickson suggested opening the committee to members of the public. Chair Zuba and Ms. Plummer agreed. Mr. Hendrickson will follow up.

Ms. Plummer questioned the whereabouts of Ms. Katt's plaque. Chair Zuba replied that he would have the letter signed next week. Mr. Safford thanked everyone involved with the Pirate Fest.

XI. LPA ATTORNEY ITEMS - no items

XII. COMMUNITY DEVELOPMENT ITEMS - no items

XIII. ITEMS FOR NEXT MONTH'S AGENDA

XIV. PUBLIC COMMENT

John Gucciardo spoke on behalf of TPI and Tom Torgerson. They were going back and forth with staff concerning the sufficiency letter. He offered to meet with LPA members individually to answer questions.

XV. ADJOURNMENT

MOTION: Mr. Hendrickson moved to adjourn the meeting; second by Ms. Wolf.

VOTE: Motion approved; 6-0 with Mr. Hughes excused.

Meeting adjourned at 11:06 a.m.

• End of document

Ordinance 17-17

ORDINANCE AMENDING CHAPTER 34 ARTICLE IV IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, DIVISION 37 SUBORDINATE AND TEMPORARY USES, SUBDIVISION II “TEMPORARY USES,” SECTION 34-3051 MOBILE TOURIST INFORMATION CENTERS, TO PROVIDE OPPORTUNITY FOR THE TOWN COUNCIL TO REVIEW AND APPROVE THE USE WITHIN TOWN RIGHT-OF-WAY.

WHEREAS, the Town Council (“the Council”) is the governing body in and for the Town of Fort Myers Beach, a municipal corporation in the State of Florida; and

WHEREAS, the purpose of this Ordinance is to amend the current regulations to provide opportunities for the Town Council to consider Mobile Tourist Information Centers within Town right-of-way;

WHEREAS, mobile tourist information centers are regulated by Chapter 34, Article IV, of the Land Development Code of the Town of Fort Myers Beach , and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

1. The proposed ordinance is in the best interests of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach.
2. The proposed ordinance will allow the Town Council to consider appropriate mobile tourist information centers within Town right-of-way.
3. The proposed ordinance will protect the Town’s interest in public right-of-way.
4. The Council hereby recommends the following revision(s) to the proposed ordinance:

Section I: Sec. 34-3051. – Mobile tourist information is amended as follows with added language underlined and redacted language as struck- through.

- (a) *Defined.* Mobile tourist information centers are located in a mobile vehicle, either self-propelled or otherwise readily moveable from place to place and without plumbing facilities. Mobile tourist information centers are intended to promote community businesses and organizations and are therefore limited to providing information without the sale or distribution of any product or service; provided, however, that such centers are permitted to sell tickets, and or assist in the procurement of reservations for local attractions, businesses and events. Mobile tourist information centers may not collect food or clothing or accept other donations.
- (b) *Type of approval.*
 - (1) ~~Administrative~~ By Town Council.
 - a. *Length of permit.* A permit to operate a ~~mobile~~ mobile tourist information center may be issued for a maximum of one year, and may be renewed annually. No more than two ~~mobile~~ mobile tourist information centers may be operating at one time.

- b. *Location.* Mobile tourist information centers may be located in:
 - 1. Existing parking lots on property zoned commercial. The mobile tourist information center must be ancillary to the principal use and the required number of parking spaces for the principal use must be maintained.
 - 2. If additionally promoting information, education, and reservations for town owned facilities, activities, and events, then one mobile tourist information center may be authorized by Town Council to be located on town owned property at the Times Square public plaza.
- c. *Permit requirements.* In addition to the requirements found in § 34-3050, organizations must provide a photograph of the mobile tourist information center and its dimensions and corresponding locations where the mobile tourist information center will be operating, daily hours of operation for a minimum of five days per week, and a site plan of the parking lot, drawn to scale with the location of existing parking spaces and the mobile tourist information center. Each mobile tourist information center is permitted one 24-square-foot identification sign, mounted on the mobile tourist information center, which should be shown in the required photograph. All signage and other variance requests for a mobile tourist information center must be approved by Town Council.
- d. *Review of permit.* The director will approve or deny the application, in part or whole, based on the mobile tourist information center's compatibility with surrounding uses. The mobile tourist information center must be maintained in good condition, consistent with the photograph submitted with the application.
- e. *Emergency evacuation.* Mobile tourist information centers must be removed from the town or placed within an approved off-site storage area within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center.

FIRST READING AND PUBLIC HEARING: November 6, 2017

SECOND READING AND PUBLIC HEARING: November 20, 2017

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a roll call vote, the result was as follows:

Dennis Boback, Mayor	Tracey Gore, Vice Mayor
Anita Cereceda, Council Member	Joanne Shamp, Council Member
Bruce Butcher, Council Member	

ADOPTED this ____ day of _____, 2017, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

By: _____

Dennis C. Boback, Mayor

ATTEST:

Michelle D. Mayher, Town Clerk

ORDINANCE NO. 17-24
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH,
FLORIDA AMENDING ARTICLE IV, DIVISION 12 OF THE TOWN
CODE OF ORDINANCES TO PROHIBIT MEDICAL MARIJUANA
TREATMENT CENTER DISPENSING FACILITIES WITHIN THE
BOUNDARIES OF THE CITY AS AUTHORIZED BY SECTION 381.986,
FLORIDA STATUTES; PROVIDING LEGISLATIVE FINDINGS;
PROVIDING FOR CODIFICATION, MORATORIUM CONTINGENCY;
SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Fort Myers Beach has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida; Chapters 163 & 166, Florida Statutes; and Section 381.986, Florida Statutes; and

WHEREAS, The Marijuana Policy Group has published a memorandum called “Municipal Dispensary Allocation: Florida,” which evaluated the market need for medical marijuana dispensing facilities and the harmful consequences and secondary effects of over-saturation of medical marijuana dispensing facilities within the market place; and

WHEREAS, The Marijuana Policy Group determined that Florida should have no more than one dispensing facility for each fifty-thousand residents and the optimal ratio is one dispensing facility per 67,222 residents, and the Town of Fort Myers Beach has a population (approximately 6,000) well below such ratios; and

WHEREAS, Section 381.986(11), Florida Statutes, authorizes a county or municipality to “ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality;” and

WHEREAS, Section 381.986(11) further provides that “[a] county or municipality that does not ban dispensing facilities under this subparagraph may not place specific limits, by ordinance, on the number of dispensing facilities that may locate within that county or municipality,” and that “[e]xcept as provided in paragraph (c), a county or municipality may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465”; and

WHEREAS, Section 381.986, Florida Statutes severely limits, through State preemption, the Town’s control over the zoning and permitting of medical marijuana dispensaries, thereby substantially restricting the Town’s ability to protect surrounding land uses for which dispensaries may not be compatible; and

WHEREAS, given, among other things, the potential negative secondary land use effects of medical marijuana dispensing facilities, The Marijuana Policy Group’s the analysis of optimal population ratios (residents per dispensing facility), and the statutory restrictions on local government authority to regulate number and location of dispensing facilities if not banned, there is a rational basis for the Town to exercise its authority under Section 381.986(11), Florida Statutes to ban dispensing facilities within the boundaries of the Town; and

WHEREAS, the Town finds that this Ordinance is in the interests of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA:

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance and adopted as legislative findings.

SECTION 2. Amendment of Town Code. Article IV, Division 12 of the Town of Fort Myers Beach Code is hereby amended to add the following new provisions:

Section 34-1554 Medical Marijuana.

Sec. 34-1554. – Medical Marijuana Treatment Center Dispensing Facilities.

(1) Prohibition. Medical Marijuana Treatment Center Dispensing Facilities are prohibited and shall not be located within the boundaries of the city. The Town shall not accept, process or approve any request or application for a development order, building permit or other approval associated with a proposed Medical Marijuana Treatment Center Dispensing Facility.

(2) Definition. For the purposes of this section, the term “Medical Marijuana Treatment Center Dispensing Facility” means any facility where medical marijuana or any product derived therefrom is dispensed at retail.

(3) Interpretation. This section and the terms used herein shall be interpreted in accordance with F.S. § 381.986 and Ch. 64-4 of the Florida Administrative Code. The intent of this section is to ban medical marijuana treatment center dispensing facilities from being located within the boundaries of the Town as authorized by F.S. § 381.986(11).

SECTION 3. Codification. This Ordinance shall be incorporated into the Town of Fort Myers Beach Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this Ordinance or the Town Code may be freely made.

SECTION 4. Moratorium Contingency. In the event Section 381.986, Florida Statutes, is amended or interpreted by a court of competent jurisdiction in a way as to eliminate or prevent the Town’s ability to ban or prohibit Marijuana Treatment Center Dispensing Facilities within the city limits, upon the effective date of such, an automatic one-year moratorium shall go into place on the acceptance, processing and approval of Marijuana Treatment Center Dispensing Facilities (including by way of acceptance, proceeding and approval of applications for development orders and permits) within the Town limits in order to give the Town time to evaluate changes in the applicable law, the Town’s ability to regulate such uses and activities and potentially enact local legislation regarding the same. Such one-year moratorium may be terminated early through resolution or ordinance of the Town Council.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of

the remaining portions of this Ordinance.

SECTION 6. Conflicts. In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

SECTION 7. Effective date. This Ordinance shall become effective immediately upon adoption by the Town Council of the Town of Fort Myers Beach, Florida.

FIRST READING AND PUBLIC HEARING: _____, 2017

SECOND READING AND PUBLIC HEARING: _____, 2017

ADOPTED this _____ day of _____, 2017, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

By: _____
Dennis C. Boback, Mayor

ATTEST:

Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM:
Peterson Law Group, Town Attorney

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2017-0012
VAR2017-0003 – Tiki on the Beach Hotel Enclosed Deck Variance

WHEREAS, applicant Greg Stuart, authorized agent for Kim Cook, Tiki on the Beach Real Estate LLC, is requesting a variance from Sec. 34-638 Minimum Setbacks Table 34-3 of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP number for the subject property is 24-46-24-W3-0080A.0010 and the legal description of the subject property is attached as *Exhibit A*; and

WHEREAS, the subject property, 4360 Estero Boulevard, Fort Myers Beach is located in the 'Commercial Resort' zoning district of the Official Zoning Map and the 'Mixed Residential' category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on November 14, 2017; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, 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 34-87.

IT IS HEREBY RESOLVED BY THE LPA 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 and the standards for granting variances, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for a variance from Sec. 34-638 Minimum Setbacks Table 34-3 of the Town of Fort Myers Beach Land Development Code subject to the following:

RECOMMENDED FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

- A. There **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is** for a de minimis variance

under circumstances or conditions where rigid compliance is not essential to protect public policy.

B. The conditions justifying the variance **are** the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance granted **is not** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

D. The granting of the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.

E. The conditions or circumstances on the specific piece of property for which the variance is sought **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

CONDITIONS OF APPROVAL:

1. If the adjacent six-foot fence and trees buffering between the subject property and 4330/4340 Estero is removed or comes into disrepair, then the owner of the subject property shall provide an in-kind replacement within 30-days.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member _____ and seconded by LPA Member _____, and upon being put to a vote, the result was as follows:

Hank Zuba, Chair	_____	Dan Hendrickson, Vice Chair	_____
Megan Heil	_____	Dan Hughes	_____
Jane Plummer	_____	Scott M. Safford	_____
Lorrie Wolf	_____		

DULY PASSED AND ADOPTED THIS **14th** day of **NOVEMBER, 2017**.

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: _____
Peterson, LPA Attorney

ATTEST:

By: _____
Michelle Mayher, Town Clerk



Town of Fort Myers Beach
**COMMUNITY DEVELOPMENT
DEPARTMENT
LPA STAFF REPORT**

TYPE OF CASE: Variance
CASE NUMBER: VAR17-0003
CASE NAME: 4360 Estero Blvd-Tiki on the Beach Hotel Enclosed Deck Variance
LPA HEARING DATE: November 14, 2017, 9 a.m.
Prepared / Submitted: Sara Propst / Jason Green
STAFF RECOMMENDATION: Approval

I. APPLICATION SUMMARY

Owner: Kim Cook, Tiki on the Beach Real Estate LLC
Applicant: Greg Stuart
Request: The applicant is seeking a variance from Sec. 34-638 and the Minimum Setbacks Table 34-3 for the Commercial Resort side yard waterfront lot setback on the northern side of the property. The request is for a variance of 8.2 ft. to decrease the required setback of 20 ft. to 11.8 ft. for an existing, attached laundry shed (7.4 ft. x 6.5 ft.) and the addition of a second story screened and roofed deck (8.3 ft. x 20 ft.), over the laundry shed.
Subject Property: See attached legal description and plat, Exhibit A
Physical Address: 4360 Estero Boulevard, Fort Myers Beach, FL
STRAP #: 29-46-24-W3-0080A.0010
FLU / Zoning: Mixed Residential / Commercial Resort (CR)
Current use(s): Hotel

Project Acreage: .3 acres

Adjacent zoning and land uses:

- North: RESIDENTIAL MULTIFAMILY (RM)
4330 and 4340 Estero Blvd, Single family residences directly adjacent to the proposed variance location. Both properties are buffered by a six-foot fence and trees. Both property owners have provided a letter of consent to the variance request.
- South: RESIDENTIAL MULTIFAMILY (RM)
4402 Estero Blvd, Cascades Condominiums are separated from the subject property by a beach access point.
- East: RESIDENTIAL CONSERVATION (RC)
4341, 4345, 4359, 4361 Estero Blvd, two duplex dwellings are separated from the subject property by Estero Blvd.
- West: WATERBODY – GULF OF MEXICO

II. BACKGROUND AND ANALYSIS

Background:

Tiki Beach Real Estate LLC, owner of the subject property, has requested a variance to the required Commercial Resort side yard waterfront lot setback on the northern side of the property. The request is to decrease the required setback of 20 ft. to 11.8 ft., for a variance of 8.2 ft., for an existing, attached laundry shed and the addition of a second story screened deck, over the laundry shed.

The Tiki on the Beach Hotel was constructed in 1952 and rebuilt in 1982. An attached laundry shed was constructed within the required side yard setback at an unknown date which was, according to the applicant, prior to the property being purchased by the current owner in May, 2007. The shed encroaches into the required setback 6.7 ft. The proposed screened and roofed deck is proposed to be constructed over the laundry shed and would encroach a maximum of 8.2 ft. into the required setback, leaving 11.8 ft. between the new deck and the property line, see Exhibit B. The proposed height of the screened deck is 15.75 ft., see Exhibit D.

The property is zoned CR which requires the following setbacks for waterfront lots: 10 ft. from street right-of-way, 20 ft. from side lot line , 20 ft. from rear property line, and 50 ft. from Gulf of Mexico. The property is approximately 13,500 square ft., 71 ft. wide and 180 ft. deep. The property is too narrow and does not have enough area to be zoned as CR according to the current code, which makes it nonconforming. The property has several nonconforming structures including a portion of the building where the addition is proposed, see Exhibit B.

The property is located water-ward of the Coastal Construction Control Line. The proposed project would require that a CCCL Administrative Permit be reviewed and issued by the DEP/Beaches Division office in Tallahassee. Also, any new exterior lighting will have to meet the FWC criteria for the protection of nesting sea turtles. The applicant has been made aware of this.

Analysis:

The proposed screened and roofed deck will encroach 8.2 ft. into the side yard and will be located over the existing laundry shed which currently encroaches 6.7 ft. into the side yard, for a setback of 13.3 ft. The screened deck will be constructed over a brick paved area, as shown on Exhibit B Site Plan. The construction of the deck still allows for a clear space of 11.8 ft. +/- between the proposed deck and the fence on the property line, for any emergency access.

The parcel is relatively narrow (71 ft.) and small (13,500 square ft.) for a CR zoned lot; current CR requirements are 100 ft. wide and require 20,000 square ft. of lot area. Several existing structures on the parcel are legally nonconforming. It does not appear that any other variances have been applied for or received for this property.

Comprehensive Plan Compatibility:

Staff found that the proposed development is consistent with the intent of the Town of Fort Myers Beach Comprehensive Plan. The requested variance is consistent with Policy 4-C-3 iii. the request is low impact, sensitive to the residential neighbors. The adjacent property owners have provided letters of support for the variance.

Neighborhood Compatibility:

The property closest to the requested variance is 4340 Estero Blvd and appears to have a nonconforming side yard setback. That structure is 5.1 ft. from the property line with the Tiki on the Beach Hotel, based on Exhibit A - Survey Plat, provided by the applicant. Many of the nearby structures built in the 1950s do not meet the current setback requirements.

The owners of both of the residential structures to the north of the subject property have provided letters of support for the request, Exhibit C.

Findings and Conclusions:

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance:

- a. *That there **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request **is**/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

Applicant Comments:

The variance request to reduce the standard by approximately 7-ft. is the minimum needed to implement a design that rests on staying near the 13-ft. laundry accessory facility's setback to the north property line. The design calls for an approximate 8-ft. wide by 20-ft. long second floor roofed deck. The 8-ft. standard is a standard deck width needed to accommodate outdoor furniture, movement and occupant circulation. The second floor deck does not run the entire length of the east hotel building (see the Tiki Beach Hotel Side Yard Variance Design Detail Exhibit D). It is the minimum needed. The public and north side rental properties are adequately protected by the existing buffer fence, trees and vegetation.

Staff Comments:

As noted in the Analysis section above, the parcel is narrow for this zoning district, 71 ft. The main structure was built in 1952, prior to the current code requirements and the laundry shed addition was built sometime prior to the property being purchased by the applicant in 2007. The main building is constructed approximately 20 ft. from the property line and the existing laundry facility, encroaches approximately 6.7 ft. into the side yard, for a setback of 13.3 ft.

The proposed screened deck will extend less than a foot beyond the existing shed and 13 feet beyond the length of the laundry shed, parallel to the building, to create a deck area 8.3 ft. deep and 20 ft. long. The applicant feels that this is a reasonable sized screened deck for a hotel accommodation, staff concurs

- b. *That the conditions justifying the variance **are**/are not the result of actions of the applicant taken after the adoption of the regulation in question.*

Applicant Comments:

The variance request is not the result of the actions of the applicant taken after the adoption of the side yard setback regulation. The existing east and west buildings were rebuilt in 1982, prior to the waterbody 20-ft. setback rule. Both do not conform to the 20-ft. side yard requirement. As noted for the east hotel building the closest portion of the building from the north property line is 13-ft. (the laundry facility). The exceptional setback condition has been used as the design parameter of the proposed second floor deck in that it encroaches less than a foot beyond the laundry facility. The variance request is justified as the result of these facts.

Staff Comments:

The existing, attached laundry shed which encroaches 6.7 ft. into the required side yard waterfront lot setback, was in existence prior to May 9, 2007, according to the applicant, when the current owner purchased the property.

The variance for the deck results from an action of the applicant, a deck is not a necessity but is a common amenity for many hotel rooms. The addition of

any size deck would require a variance because the building is currently built to the setback line. The proposed deck extends .9 feet beyond the existing laundry shed footprint.

- c. *That the variance granted is/is not the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

Applicant Comments:

The design calls for an approximate 8-ft. wide by 20-ft. long second floor roofed deck. The 8-ft. standard is a standard deck width needed to accommodate outdoor furniture, movement and user circulation. It is the minimum width needed. The second floor deck does not run the entire length of the east hotel building (see the Tiki Beach Hotel Side Yard Variance Design Detail Exhibit D). It is the minimum needed. The request does not further reduce the 20-ft. setback. The application of the 20-ft. setback will negate the construction of a typical and beach related out- door deck. Outdoor decks for beach hotels are very important to the leisure business model. Outdoor deck provide for occupant passive recreation and open space amenities. The denial of the variance and prohibition of the variance will present an unreasonable burden on the management, operation and economic viability of the Tiki Beach hotel in that the hotel will not be able to provide for a typical hotel unit amenity.

Staff Comments:

The proposed screened deck extends less than a ft. beyond the existing shed to create a deck area 8.3 ft. deep and 20 ft. long. The proposed deck is of a reasonable size to allow deck chairs. Staff concurs with the applicant that the size is not excessive for this use; however, nothing prohibits the applicant from designing the deck to be less than 8 ft.

- d. *That the granting of the variance will/will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The applicant provided the following explanation:

There are two adjoining properties may be effected by the requested variance. One is a flag lot, located at 4330 Estero Blvd. and is owned by the Henry and Charlene Nyeholt Trust. It is separated from the proposed second floor deck by approximately 72-ft., and is screened and buffered by a six ft. fence, trees and other plantings (see Photo Exhibit E). The second house is located at 4340 Estero Blvd. and is owned by Emmert Group Properties LLC. It is also separated from the proposed second floor deck by approximately 29-ft., and is screened and buffered by a six ft. fence, trees and other plantings. Please refer to the Neighbor Consent for Covered Deck Construction signed by Kim Emmert at 4340 Estero Blvd.; the letter states that the requested covered deck does not infringe on the subject property and that the owner does not object to the variance request. Given the nominal design character of a second floor enclosed deck, within the

context of a very moderate seven foot difference between the 20-ft. code requirement and what is being requested, it is not anticipated that there will be any impacts on the two properties located to the north of the subject property. The variance is not injurious or detrimental to south oriented properties due to the parking lot and beach access lane separation. The variance is not injurious or detrimental to east oriented properties to the east due to the separation caused by Estero Blvd. There are no properties to the west fronting area.

Staff Comments:

Both northern, adjacent property owners have signed letters of no objection to the proposed variance request, see Exhibit C. Currently there exists a buffer of a six-foot tall fence and vegetation along the northern property line. See Exhibit E, photographs showing the existing conditions.

Neighbors to the south and east should not be impacted by the variance.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought are **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

Applicant Comments:

The specific circumstances of the Tiki Beach Hotel, namely the narrow functional site width and the existing close proximity of the two buildings along the north property line are not general or reoccurring in nature as to make it more reasonable to change the code. A variance is required and is justified.

Staff Comments:

This condition is specific to this development. The lot is narrow for the use and the buildings were constructed prior to the current code requirements. The variance is not generally applicable to all properties zoned commercial resort.

III. RECOMMENDATION

Staff finds that the request: a) is due to exceptional circumstances, being that the property is particularly narrow, b) would have a minimal impact on adjacent properties, as they have stated in letters submitted with the application, Exhibit C, and c) that the existing nonconforming laundry shed was in existence when the current owner purchased the property.

Therefore, staff recommends that the LPA recommend approval of the variance from Div. 3 34-638 Min. Setbacks Table 34-3 to decrease the required 20 ft. waterfront lot side yard setback to 11.8 ft., for a variance of 8.2 ft. +/-, to accommodate the existing laundry shed and a proposed second story screened and roofed deck, subject to conditions.

CONDITIONS OF APPROVAL:

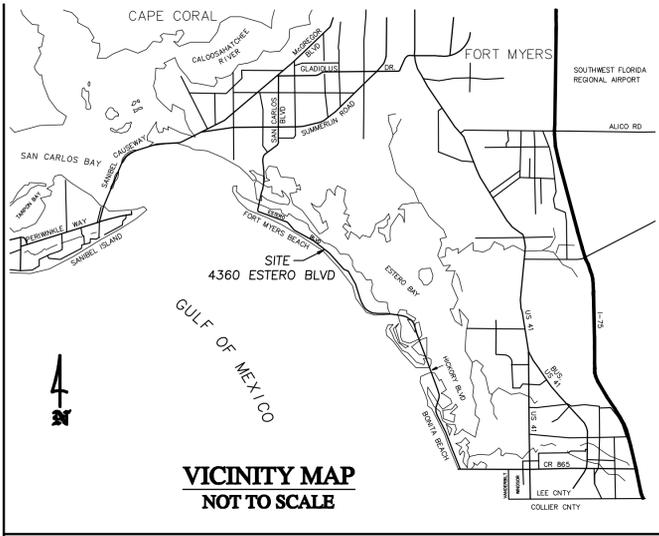
1. If the adjacent six-foot fence and trees buffering between the subject property and 4330/4340 Estero is removed or comes into disrepair, then the owner of the subject property shall provide an in-kind replacement within 30-days.

Staff Report Exhibits:

- A – Survey Plat
- B – Site Plan
- C – Letters of Consent from neighbors
- D – Variance Design Detail
- E – Photos of Existing Conditions
- F – Site Plan with Adjoining Properties
- G – Application and Supplement

SURVEY PLAT

OF
A PARCEL OF LAND
LYING IN
SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA



DESCRIPTION AS RECORDED IN INSTRUMENT #2007000158697:

THE EAST 1/2 OF BLOCK A, OF THAT CERTAIN SUBDIVISION KNOWN AS HYDE PARK, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF LEE COUNTY, FLORIDA, IN PLAT BOOK 7, PAGE 20, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM THE NORTHEASTERLY CORNER OF LOT 4, BLOCK A, HYDE PARK, (SAID CORNER BEING THE INTERSECTION OF THE SOUTHWESTERLY SIDE OF EUCALYPTUS AVENUE AND THE NORTHWESTERLY SIDE OF BAYVIEW AVENUE), AS SHOWN IN THE PLAT OF HYDE PARK; THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY SIDE OF BAYVIEW AVENUE, 180 FEET TO THE SOUTHEASTERLY CORNER OF LOT 1 OF SAID BLOCK A; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY SIDE OF LOTS 1 AND 2 OF SAID BLOCK A, 74.5 FEET; THENCE NORTHEASTERLY TO A POINT ON THE SOUTHWESTERLY SIDE OF EUCALYPTUS AVENUE WHICH IS 70.5 FEET NORTHWESTERLY OF THE POINT OF BEGINNING; THENCE SOUTHEASTERLY 70.5 FEET TO THE POINT OF BEGINNING.

NOTES:

SURVEY BASED ON THE DESCRIPTION SHOWN HEREON, THE RECORDED PLAT OF HYDE PARK (PLAT BOOK 7, PAGE 20), THE "EROSION CONTROL LINE" (PLAT BOOK 70, PAGE 25), THE "LEE COUNTY COASTAL CONSTRUCTION SET-BACK LINE", PREVIOUS SURVEYS PERFORMED BY THIS FIRM, SUBDIVISIONS ON THE NORTHEASTERLY SIDE OF ESTERO BOULEVARD AND FOUND MONUMENTATION.

BEARINGS ARE BASED ON STATE PLANE GRID-THE NORTH AMERICAN DATUM (NAD) OF 1983/1989 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE HOLDING MGS CONTROL POINT BOOB-2 TIED TO THE FLORIDA HIGH PRECISION GEODETIC NETWORK.

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

ELEVATIONS ARE BASED ON NAVD OF 1988 AND NGS BENCHMARK H-245.

PARCEL LIES IN FLOOD ZONE VE, BASE FLOOD ELEVATION OF 14', 16', 17' AND 20' (NAVD 1988). THIS INFORMATION TAKEN FROM FLOOD INSURANCE RATE MAP 12071C0558F, COMMUNITY NAME: TOWN OF FORT MYERS BEACH AND COMMUNITY NUMBER: 120673, EFFECTIVE DATE 8-28-2008.

THE F.E.M.A. FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED WITH ALL PERMITTING REGULATORY ENTITIES PRIOR TO COMMENCING ANY WORK OR APPLICATION DEPENDENT ON SAID FLOOD INFORMATION.

IRON RODS "SET" ARE 5/8" X 18" REBAR WITH YELLOW CAP BEARING CORPORATION NO. LB4919.

UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

WETLANDS, IF ANY, WERE NOT LOCATED. TREES, VEGETATION AND LANDSCAPING ARE NOT SHOWN.

THIS PLAT PREPARED AS A BOUNDARY SURVEY AND IS NOT INTENDED TO DELINEATE THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.

PARCEL CONTAINS 0.45 ACRES (19,467 SQUARE FEET), MORE OR LESS FROM ESTERO BOULEVARD RIGHT-OF-WAY TO THE EROSION CONTROL LINE.

PARCEL CONTAINS 0.29 ACRES (12,609 SQUARE FEET), MORE OR LESS FROM ESTERO BOULEVARD RIGHT-OF-WAY TO THE LEE COUNTY COASTAL CONSTRUCTION SETBACK LINE.

PARCEL CONTAINS 0.30 ACRES (12,992 SQUARE FEET), MORE OR LESS FROM ESTERO BOULEVARD RIGHT-OF-WAY TO THE REAR PLATTED LOT LINE AS MONUMENTED.

THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY.

THIS SITE LIES SEAWARD OF THE COASTAL CONSTRUCTION CONTROL LINE. ADDITIONAL PERMITTING AND DESIGN WORK IS REQUIRED.

PARCEL STRAP# 29-46-24-W3-008A.0010

PARCEL ADDRESS: 4360 ESTERO BLVD., FT. MYERS BEACH, FL. 33931

DATE OF LAST FIELD WORK: 08-02-17

*NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
BEAN, WHITAKER, LUTZ & KAREH, INC.

SCOTT C. WHITAKER, P.S.M., NO. LS4324
PROFESSIONAL SURVEYOR & MAPPER
STATE OF FLORIDA
- THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON.
- IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES.
- THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.

THE EAST 1/2 OF BLOCK A, HYDE PARK
4360 ESTERO BOULEVARD - "TIKI ON THE BEACH" MOTEL

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041-1 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-6910 (239) 481-1331

SR44369.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
8-02-17	44369	SCW/CKM	1"= 20'	1 OF 1	29-46-24

FILE: E1/2 BLOCK A, HYDE PARK (P.B. 7 PG. 20)

- LEGEND**
- ☐ = STORM MANHOLE
 - = BURIED CABLE MARKER
 - ⊕ = SIGNAL BOX
 - ⊖ = ELECTRIC BOX
 - ⊕ = CONCRETE LIGHT POLE
 - ⊖ = WOOD LIGHT POLE
 - ⊕ = CONCRETE POWER POLE
 - ⊖ = WOOD POWER POLE WITH SIGN
 - ⊕ = GUY WIRE
 - ⊖ = CATCH BASIN
 - ⊕ = IRRIGATION VALVE
 - ⊖ = WATER VALVE
 - ⊕ = SANITARY MANHOLE
 - ⊖ = TELEPHONE BOX
 - ⊕ = FIRE HYDRANT
 - ⊖ = GROUND LIGHT
 - ⊕ = CONCRETE SIGNAL POLE
 - ⊖ = CABLE TELEVISION BOX
 - ⊕ = TRANSFORMER
 - ⊖ = WOOD POST
 - ⊕ = WATER METER
 - ⊖ = OVERHEAD WIRES
 - ⊕ = EXISTING ELEVATION
 - ⊖ = PLASTIC FENCE
 - ⊕ = WOOD FENCE
- ABBREVIATIONS:**
- A/C = AIR CONDITIONER
 - P.B. = PLAT BOOK
 - I.R. = IRON ROD
 - I.R.C. = IRON ROD WITH CAP
 - CM = CONCRETE MONUMENT
 - CONC. = CONCRETE
 - E.O.P. = EDGE OF PAVEMENT
 - M. = MEASURED
 - FND. = FOUND
 - N/D = NAIL AND DISK
 - B.M. = BENCH MARK
 - P.O.C. = POINT OF COMMENCEMENT
 - P.O.B. = POINT OF BEGINNING
 - D.B. = DEED BOOK
 - O.R. = OFFICIAL RECORDS BOOK
 - PG. = PAGE
 - F = DERIVED FROM FIELD MEASUREMENTS
 - C = CALCULATED
 - CB = CATCH BASIN
 - MH = MANHOLE
 - PK = PARKER KALON
 - D = DEED
 - EL. = ELEVATION
 - C.P. = CONTROL POINT
 - NAVD = NORTH AMERICAN VERTICAL DATUM
 - DNR = DEPARTMENT OF NATURAL RESOURCES
 - MHW = MEAN HIGH WATER
 - PWAM = PUBLIC WATER ACCESS MONUMENT
 - ECL = EROSION CONTROL LINE
 - CE = COVERED ENTRY
 - PC = FENCE CORNER
 - VC = VALLEY CUTTER CURB

SITE PLAN FOR VARIANCE

OF THE EAST HALF OF BLOCK "A", HYDE PARK
 A SUBDIVISION RECORDED IN PLAT BOOK 7 AT PAGE 20,
 SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

DESCRIPTION AS RECORDED IN INSTRUMENT #2007000158697:
 THE EAST 1/2 OF BLOCK A, OF THAT CERTAIN SUBDIVISION KNOWN AS HYDE PARK, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF LEE COUNTY, FLORIDA, IN PLAT BOOK 7, PAGE 20, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 FROM THE NORTHEASTERLY CORNER OF LOT 4, BLOCK A, HYDE PARK, (SAID CORNER BEING THE INTERSECTION OF THE SOUTHWESTERLY SIDE OF EUCALYPTUS AVENUE AND THE NORTHWESTERLY SIDE OF BAYVIEW AVENUE), AS SHOWN IN THE PLAT OF HYDE PARK; THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY SIDE OF BAYVIEW AVENUE, 180 FEET TO THE SOUTHEASTERLY CORNER OF LOT 1 OF SAID BLOCK A; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY SIDE OF LOTS 1 AND 2 OF SAID BLOCK A, 74.5 FEET; THENCE NORTHEASTERLY TO A POINT ON THE SOUTHWESTERLY SIDE OF EUCALYPTUS AVENUE WHICH IS 70.5 FEET NORTHWESTERLY OF THE POINT OF BEGINNING; THENCE SOUTHEASTERLY 70.5 FEET TO THE POINT OF BEGINNING.

NOTES:
 SITE PLAN IS BASED ON THE DESCRIPTION SHOWN HEREON, THE RECORDED PLAT OF HYDE PARK (PLAT BOOK 7, PAGE 20), THE "EROSION CONTROL LINE" (PLAT BOOK 70, PAGE 25), THE "LEE COUNTY COASTAL CONSTRUCTION SET-BACK LINE" AND SURVEY BY THIS FIRM DATED 08-02-2017.

BEARINGS ARE BASED ON STATE PLANE GRID-THE NORTH AMERICAN DATUM (NAD) OF 1983/1990 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE HOLDING NGS CONTROL POINT BOOB-2 TIED TO THE FLORIDA HIGH PRECISION GEODETIC NETWORK.

ELEVATIONS ARE BASED ON NAVD OF 1988.

PARCEL LIES IN FLOOD ZONE VE, BASE FLOOD ELEVATION OF 14', 16', AND 17' (NAVD 1988). THIS INFORMATION TAKEN FROM FLOOD INSURANCE RATE MAP 12071C0558F, COMMUNITY NAME: TOWN OF FORT MYERS BEACH AND COMMUNITY NUMBER: 120673, EFFECTIVE DATE 8-28-2008.

THE F.E.M.A. FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED WITH ALL PERMITTING REGULATORY ENTITIES PRIOR TO COMMENCING ANY WORK OR APPLICATION DEPENDENT ON SAID FLOOD INFORMATION.

PARCEL CONTAINS 0.30 ACRES (12,992 SQUARE FEET), MORE OR LESS FROM ESTERO BOULEVARD RIGHT-OF-WAY TO THE REAR PLATTED LOT LINE.

THIS SITE LIES SEAWARD OF THE COASTAL CONSTRUCTION CONTROL LINE AND LANDWARD OF THE EROSION CONTROL LINE. LOCAL AND STATE OF FLORIDA PERMITTING IS REQUIRED.

PARCEL STRAP# 29-46-24-W3-0080A.0010
 PARCEL ADDRESS: 4360 ESTERO BLVD., FT. MYERS BEACH, FL. 33931

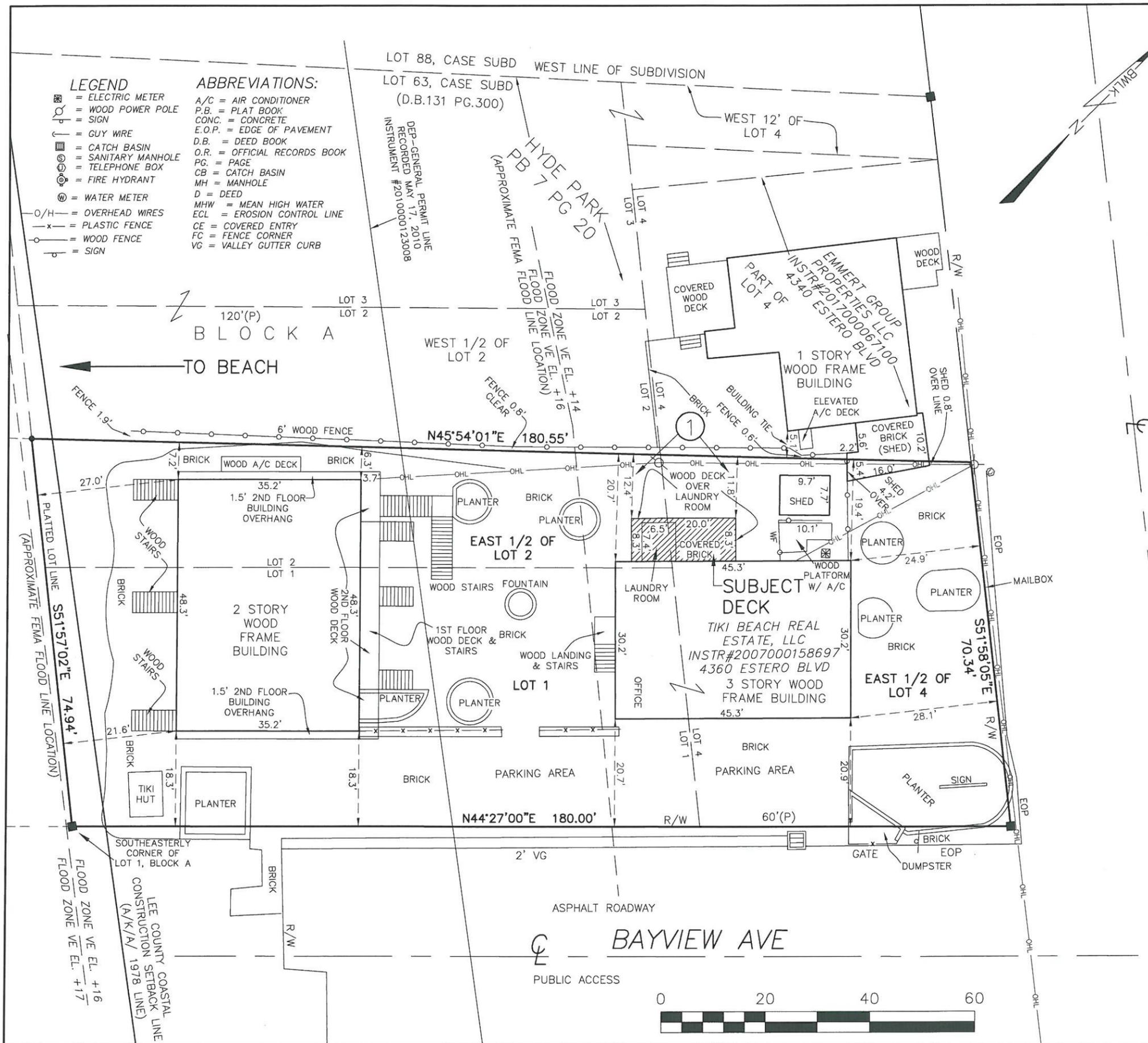
VARIANCE FROM THE CR ZONED 20-FT SIDE YARD WATERFRONT LOT SETBACK REQUIREMENT (DIV 3 34-638 MINIMUM SETBACKS TABLE 34-3) FOR A REDUCTION OF THE WATERFRONT LOT SIDE YARD SETBACK FOR A LAUNDRY SHED AND ROOFED DECK FROM 20 FEET TO A SIDE YARD SETBACK OF 11.5 FEET.

"EXHIBIT A" TIKI MOTEL- SITE PLAN

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
 CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
 13041-1 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

SP444369_VARIANCE.DWG					
DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
10-4-2017	44369	JLL	1"= 20'	1 OF 1	29-46-24

SITE PLAN/EAST 1/2 OF BLOCK "A", HYDE PARK, P.B. 7, PG. 20



Charlene Nyeholt

4330 Estero Blvd

Fort Myers Beach, FL. 33931

Ph-(239)-218-7690

Neighbor Consent for Covered Deck construction

I, the undersigned Charlene Nyeholt am the owner of the property located at:

4330 Estero Blvd

Fort Myers Beach, FL. 33931

I am hereby granting written permission to my neighbor Kim Cook, property owner of:

Tiki On The Beach, LLC.

4360 Estero Blvd

Fort Myers Beach, FL. 33931

for the purpose of constructing a Covered Deck between our properties. The covered Deck will not in any way infringe on my property or on the enjoyment thereof and I have no objection to the construction of the covered deck.

Charlene K Nyeholt

Printed Name

Charlene K. Nyeholt

Signature

Date 7-26-17

Emmert Realty
Kim Emmert O'Dell, Managing Broker
4340 Estero Blvd
Fort Myers Beach, FL. 33931

Neighbor Consent for Covered Deck construction

I, Kim Emmert O'Dell reside at:

4340 Estero Blvd
Fort Myers Beach, FL. 33931

and I am the adjoining property owner. I am granting written permission to my neighbor Kim Cook, property owner of:

Tiki On The Beach, LLC.
4360 Estero Blvd
Fort Myers Beach, FL. 33931

for the purpose of constructing a Covered Deck between our properties. The covered Deck does not in way infringe on my property or on the enjoyment thereof and I have no objection to the construction of the covered deck.

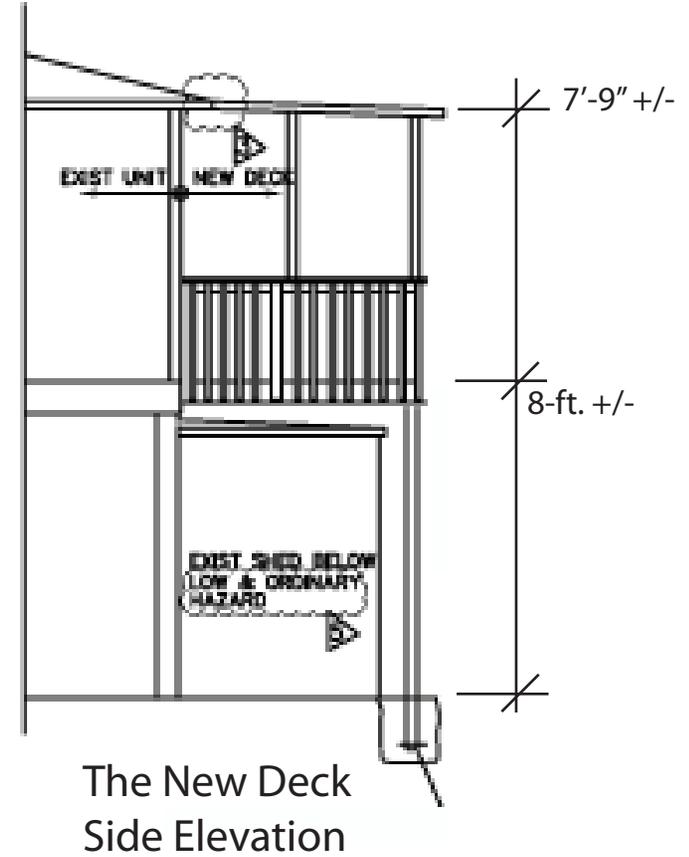
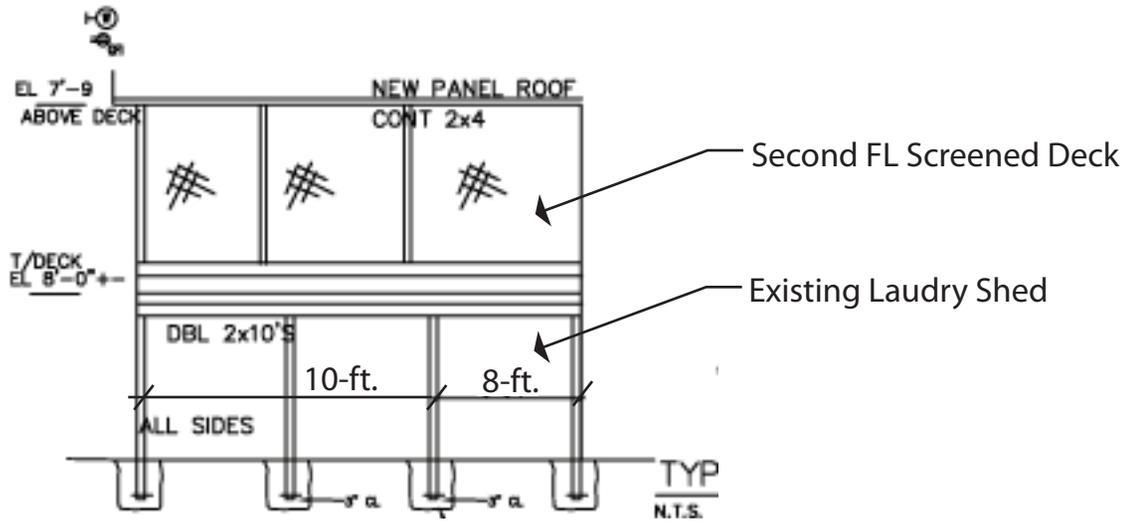
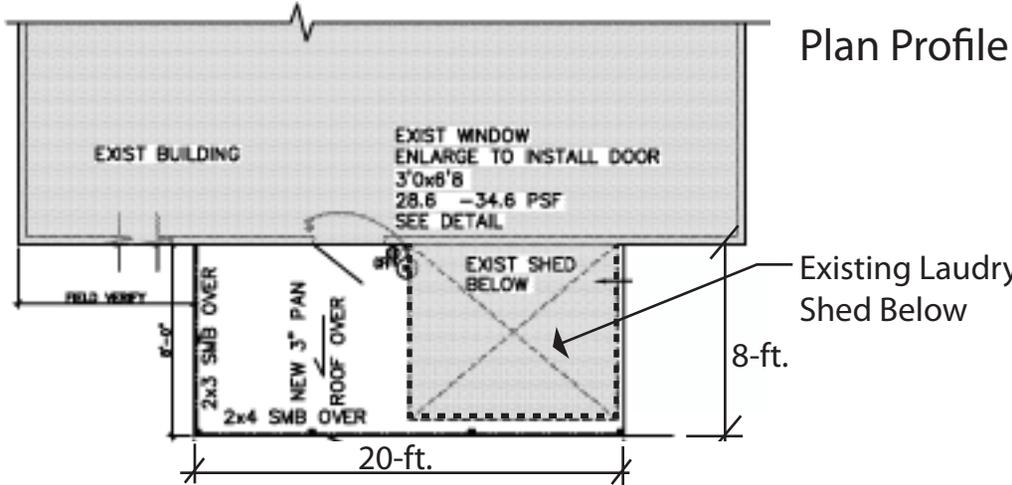
Kim Emmert O'Dell

Printed Name

Kim O'Dell

Signature

Date 6/7/17



The Tiki Beach Hotel Side Yard Variance Design Detail Exhibit 3 _ revised 10/23/17

Prepared for: Kim Cook

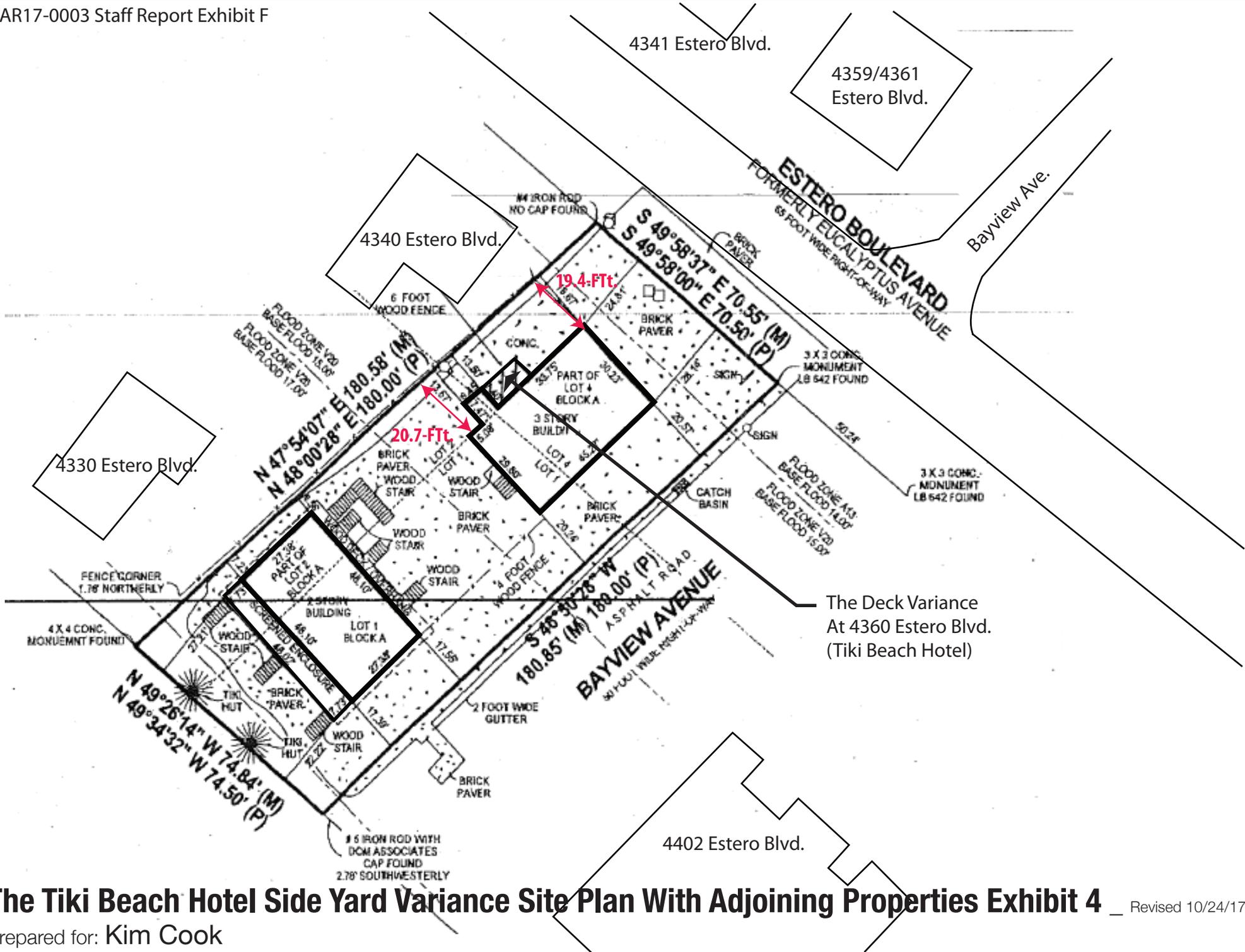


Note Property Line Screening Fence and Cabbage Palm Plantings



The Tiki Beach Hotel Side Yard Variance Photo Exhibit 2

Prepared for: Kim Cook



The Deck Variance At 4360 Estero Blvd. (Tiki Beach Hotel)

The Tiki Beach Hotel Side Yard Variance Site Plan With Adjoining Properties Exhibit 4

Revised 10/24/17

Prepared for: Kim Cook

OCT 27 2017

PROJECT NUMBER: VAR17-0003

DATE: RECEIVED BY



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

This is a two part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit *one ORIGINAL paper copy, fourteen (14) copies* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application. In addition to application fees, the applicant is required to pay for (2) sets of mailings to neighboring property owners within 500', and all advertising fees.

Site Address: 4360 Estero Blvd. Fort Myers Beach, FL 33931

STRAP Number: 29-46-24-w3-0080A.0010

Applicant: Tiki Beach Real Estate LLC Phone: 317 590 3349

Contact Name: Greg Stuart Phone: 239 677 6126

Email: Greg@stuarturbandesign.com Fax: NA

Current Zoning District: Commercial Resort

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: 4 DUS Platted Overlay: YES NO

ACTION REQUESTED

SUPPLEMENTAL FORM REQUIRED

- | | |
|---|--------------------------|
| <input type="checkbox"/> Special Exception | PH-A |
| <input checked="" type="checkbox"/> Variance | PH-B |
| <input type="checkbox"/> Conventional Rezoning | PH-C |
| <input type="checkbox"/> Planned Development <input type="checkbox"/> Commercial <input type="checkbox"/> Residential | PH-D |
| <input type="checkbox"/> Master Concept Plan Extension | PH-E |
| <input type="checkbox"/> Appeal of Administrative Action | PH-F |
| <input type="checkbox"/> Vacation of Platted Right-of-way and Easement | PH-G |
| <input type="checkbox"/> Other – cite LDC Section: _____ | attach on separate sheet |

PROJECT NUMBER:

DATE:

PART I - General Information

A. Applicant*: Kim Cook Phone: 317 590 3349

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: 6311 Stoner Drive Greenfield, IN 46140

Email: kimlcook@msn.com Fax: NA

Contact Name: Greg Stuart Phone: 239 677 6126

B. Relationship of Applicant to subject property:

- Owner*
- Land Trust*
- Partnership*
- Corporation*
- Association*
- Condominium*
- Subdivision*
- Timeshare Condo*
- Contract Purchaser*
- Authorized Representative*
- Other* (please indicate) _____

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Greg Stuart Phone: 239 677 6126

Address: 7910 Summerlin Lakes Drive Fort Myers, FL 33907

Email: Greg@stuarturbandesign.com Fax: NA

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PROJECT NUMBER:

DATE:

Name: _____

Phone: _____

Address: _____

Email: _____

Fax: _____

PART II - Nature of Request

Requested Action (each request requires a separate application)

- Special Exception
- Variance from LDC Section 34-638 - Table 34-3 Waterfront Side Yard
- Conventional Rezoning from _____ to _____
- Planned Development
 - Rezoning from _____ to Commercial PD Residential PD
 - Amendment. List the project number: _____
 - Extension/reinstatement of Master Concept Plan. List project number: _____
- Appeal of Administrative Action
- Vacation Right-of-Way Easement
- Other. Please Explain: _____

PART III - Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: None

Description: _____

Code Section: _____

Description: _____

Code Section: _____

PROJECT NUMBER:

DATE:

Description: _____

PART IV – Property Ownership

Single Owner (individual or husband and wife)

Name: Kim Cook, Pres. Tiki Beach Real Estate LLC

Phone: 317 590 3349

Mailing Address: 6311 Stoner Dr. Greenfield, IN 46140

Email: kimlcook@msn.com

Fax: NA

Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

Complete Disclosure of Interest Form (see below)

Attach list of property owners as Exhibit 4-1

Attach map showing property owners interests as Exhibit 4-2 (for multiple parcels)

For condominiums and timeshares see Explanatory Notes Part IV (Page 11)

DISCLOSURE OF OWNERSHIP INTEREST

STRAP: 29-46-24-w3-0080A.0010

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

PROJECT NUMBER:

DATE:

Name, Address and Office

Percentage of Stock

Kim Cook, Pres. Tiki Beach Real Estate LLC

100%

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

PROJECT NUMBER:

DATE:

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date of Contract:

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Kim Cook President

Signature

Kim Cook, Pres.

Printed Name

10/26/17

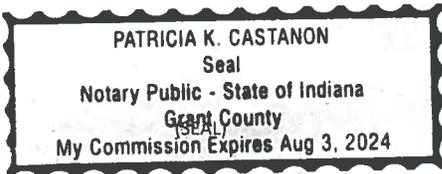
PROJECT NUMBER:

DATE:

STATE OF ~~FLORIDA~~
COUNTY OF ~~LEE~~

10N
HANCOCK

Subscribed and sworn to (or affirmed) before me this 26 day of October,
20 17, by Kim Cook.



Patricia K. Castanon
Notary Public Signature # 688797

PATRICIA K. CASTANON
Notary Printed Name

Personally Known or Produced Identification _____

Type of Identification Produced: in person My Commission Expires: 8/3/24

PART V – Property Information

A. Legal Description:

STRAP: 29-46-24-w3-0080A.0010

Property Address: 4360 Estero Blvd. FMB 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? No. Attach a legible copy of the legal description as Exhibit 5-1.

Yes. Property identified in subdivision: Hyde Park

Book: 7 Page: 20 Unit: _____ Block: East 1/2 A Lot(s): _____

B. Boundary Survey:

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 5-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 73 feet

PROJECT NUMBER:

DATE:

Depth (please provide an average width if irregular in shape) 180 feet

Frontage on street: 71 feet. Frontage on waterbody: 75 Gulf Mex. feet

Total land area: 13,500 +/- acres square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Approximately 2.25 miles south of the Sky Bridge on the Gulf side opposite
34-638 Table 34-3 Waterfront Lot Side Yard Setback

Attach Area Location Map as Exhibit 5-3

E. Property Restrictions (check applicable):

There are no deed restrictions and/or covenants on the subject property.

A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 5-4.

A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 5-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

Attach a list of surrounding property owners within 500 feet as Exhibit 5-6.

Attach a map showing the surrounding property owners as Exhibit 5-7.

Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

Low Density

Marina

Mixed Residential

Recreation

Boulevard

Wetlands

Pedestrian Commercial

Platted Overlay

H. Zoning (see official Zoning Map):

RS (Residential Single-family)

CF (Community Facilities)

RC (Residential Conservation)

IN (Institutional)

PROJECT NUMBER:

DATE:

- | | |
|--|--|
| <input type="checkbox"/> RM (Residential Multifamily) | <input type="checkbox"/> BB (Bay Beach) |
| <input type="checkbox"/> RPD (Residential Planned Development) | <input type="checkbox"/> EC (Environmentally Critical) |
| <input type="checkbox"/> CM (Commercial Marina) | <input type="checkbox"/> DOWNTOWN |
| <input type="checkbox"/> CO (Commercial Office) | <input type="checkbox"/> SANTOS |
| <input type="checkbox"/> CB (Commercial Boulevard) | <input type="checkbox"/> VILLAGE |
| <input checked="" type="checkbox"/> CR (Commercial Resort) | <input type="checkbox"/> SANTINI |
| <input type="checkbox"/> CPD (Commercial Planned Development) | |

PART VI

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Kim Cook, Pres. swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;

PROJECT NUMBER:

DATE:

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

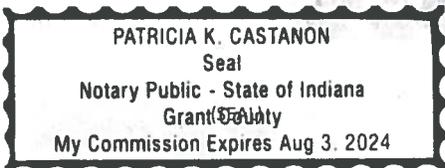
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Kim Cook President 10/26/17
Signature of owner or authorized agent Date

^{IN}
STATE OF ~~FLORIDA~~
COUNTY OF ~~LEE~~

Hancock

Subscribed and sworn to (or affirmed) before me this 26 day of October,
20 17, by Kim Cook.



Patricia K. Castanon
Notary Public Signature # 688797

PATRICIA K CASTANON
Notary Printed Name

Personally Known or Produced Identification _____

Type of Identification Produced: in person My Commission Expires: 8/3/24

PROJECT NUMBER:

DATE:

PART VII

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Kim Cook (name), as President (title) of Tiki Beach Real Estate LLC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the County in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Tiki Beach Real Estate LLC

Name of Entity (corporation, partnership, LLP, LLC, etc.)

Kim Cook President
Signature

President

Title

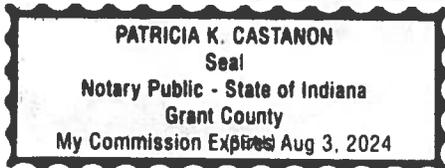
Kim Cook

Typed or Printed Name

10/26/17
Date

IN
STATE OF FLORIDA)
COUNTY OF LEE)

Subscribed and sworn to (or affirmed) before me this 26 day of October, 20 17, by Kim Cook, as (title) President on behalf of (company name) Tiki Beach Real Estate LLC.



Patricia K. Castanon #688797
Notary Public Signature

PATRICIA K. CASTANON

PROJECT NUMBER:

DATE:

Notary Printed Name

Personally Known or Produced Identification

Type of Identification Produced: in person My Commission Expires: 8/3/24

PROJECT NUMBER:

DATE:

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit *one ORIGINAL paper copy, eleven (11) copies and one (1) digital/electronic copy* of all required applications, supplemental information, exhibits and documents.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Any oversized site plans, drawings, pictures, and similar materials should be submitted in a legible reduced format (no more than 11"x17", broken up onto multiple sheets if necessary).

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying.

PROJECT NUMBER:

DATE:

Explanatory Notes – Part IV

- If the property owner is an individual or husband and wife, check the box and provide the information.
- If there are multiple property owners, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map.
- Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 4-3. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 4-4.

Explanatory Notes – Part V

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line.
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor

PROJECT NUMBER:

DATE:

is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc.) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy line.

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which).
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information.
- F. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius. This information can be acquired for a small fee by requesting a “variance report” from the Map Sales Office at the Lee County Property Appraiser’s Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- G. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan’s Future Land Use Map, and whether the property is located in the “platted overlay” on the map.
- H. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part VI & VII

The applicant must sign and submit either of the affidavits in Part IV & VII, as applicable.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:
Project Name: The Tiki Beach Hotel Side Yard Variance
Authorized Applicant: Kim Cook
LeePA STRAP Number: 29-46-24-w3-0080A.0010

Current Property Status: Hotel/Motel DOR Code 39 Commercial
Current Zoning: Commercial Resort (CR)
Future Land Use Map (FLUM) Category: Mixed Residential
Comp Plan Density: 4 DUS Platted Overlay? ___ Yes <input checked="" type="checkbox"/> No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

LDC Section Number	Title of Section or Subsection
34-638	Table 34-3 Waterfront Lot Side Yard Setback

Complete the narrative statements below for EACH variance requested.

PART I
Narrative Statements

Request for variance from 34-638 Table 34-3 (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:

The applicant seeks a variance from the CR Zoned 20-ft. side yard waterfront lot setback requirement Div. 3 34-638 Min. Setbacks Table 34-3 to accommodate a 13-ft. +/- side yard setback for an existing accessory laundry facility shed and new screened & roofed deck.

Reasons for request

Explain why the variance is needed:

See Attachment

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Explain the possible effect the variance, if granted, would have on surrounding properties:

See Attachment

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

See Attachment

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

See Attachment

PART 2 Submittal Requirements

All applications for a variance must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

“Variance is requested from...” Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.



STUART AND ASSOCIATES
Planning and Design Services

7910 Summerlin Lakes Drive
Fort Myers, FL 33907

C 239-677-6126
Greg@Stuarturbandesign.com

www.Stuarturbandesign.com

Supplement PH-B Additional Required Information For A Variance Application

The Tiki Beach Hotel Side Yard Variance Request _ Part 1 Narrative

The Variance Request:

The applicant seeks a variance from the CR zoned 20-ft. waterfront side yard lot setback requirement Div. 3 34-638 Min. Setbacks Table 34-3, to accommodate a 13-ft. +/- side yard setback for an existing accessory laundry facility shed and a new roofed deck. See The Tiki Beach Hotel Side Yard Variance Request Site Plan Exhibit 1, The Tiki Beach Hotel Side Yard Variance Design Detail Exhibit 3, and The Tiki Beach Hotel Side Yard Variance Site Plan with Adjoining Properties Exhibit 4.

Reasons For The Request:

The Tiki Beach Hotel, original constructed in 1952 and rebuilt in 1982, features an accessory laundry shed sited along the buildings north side of the east building (see the Sketch of Boundary Survey prepared by Sand Land Surveying and Mapping). The laundry shed is setback from the north property line by approximately 13.5-ft. The building itself is setback from the north property line by 19.6-ft. The reason for the request is to construct a second floor screened and roofed deck for the convenience and enjoyment of the hotel's guests. The limiting design setback parameter is the laundry shed. The second floor screened deck is 8-ft. wide by 18-ft. long.

Explain The Possible Effect The Variance, If Granted, Would Have on The Surrounding Properties:

There are two adjoining properties that may be effected by the requested variance. One is a flag lot, located at 4330 Estero Blvd. and is owned by the Henry and Charlene Nyeholt Trust. This 2 bed/1 bath 972 sq.ft. rental property was originally constructed in 1950. It is separated from the proposed second floor deck by approximately 72-ft., and is screened and buffered by a six foot fence, trees and other plantings. The second house is located at 4340 Estero Blvd. and is owned by Emmert Group Properties LLC. This 2 bed/2bath property consists of 1,018 sq.ft. and was originally built in 1950 and improved in 1990 and 1995. It is also separated from the proposed second floor deck by approximately 29-ft., and is screened and buffered by a six foot fence, trees and other plantings. Refer to the Tiki Beach Hotel Side Yard Variance Photo Exhibit 2 for north property line pictures of the screening fence, existing vegetation and cabbage palms trees. Given the nominal design character of a second floor 8-ft. * 18-ft. enclosed deck, within the context of a very moderate seven foot difference between the 20-ft. code requirement and what is being requested, it is not anticipated that there will be any impacts on the two properties located to the north of the subject property. Please refer to the Neighbor Consent For Covered Deck Construction signed by Kim Emmert at 4340 Estero Blvd.; the letter states that the requested covered deck does not infringe on the subject property and that the owner does not object to the variance request. The variance does not effect properties to the south due to the parking lot and beach access

lane separation. The variance does not effect properties to the east due to the separation caused by Estero Blvd. There are not properties to the west.

Explain The Hardship (what is unique about the property) That Justifies Relief From The Regulation:

The property is unique in that it functionally and spatially is very narrow and has historically, at its' most narrow point for the east building, been offset from the north property line by 13-ft. Specifically, as measured at the east hotel building's west facade, the property is 71.18-ft. Of that width, 28.4% of the total, equal to 20.24-ft., comprises the south side yard parking lot. Hence from a functionally perspective the site is has a unique and very limited net width of 50.94-ft. Given the narrow functional width of the site within the context of the east hotel building already being offset from the north property line by approximately 13-ft., the request to modify the required 20-ft. side yard setback to 13-ft. is justified by the site conditions.

Explain How The Property Qualifies For A Variance (decision-making guidelines 34-87).

- Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a de minimis variance under circumstances or conditions where rigid compliance is not necessary to protect public policy.

The variance request to reduce the standard by approximately 7-ft. is the minimum needed to implement a design that rests on respecting the 13-ft. laundry accessory facility's setback to the north property line. The design calls for an approximate 8-ft. wide by 18-ft. long second floor roofed deck. The 8-ft. standard is a standard deck width needed to accommodate outdoor furniture, movement and occupant circulation. The second floor deck does not run the entire length of the east hotel building (see the Tiki Beach Hotel Side Yard Variance Design Detail Exhibit 3). It is the minimum needed. The request does not further reduce the 20-ft. setback from the 13-ft. mark. The public and north side rental properties are adequately protected by the existing buffer fence, trees and vegetation.

- Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of the actions of the applicant taken after the adoption of the regulation in question.

The variance request is not the result of the actions of the applicant taken after the adoption of the side yard setback regulation. The existing east and west buildings were rebuilt in 1982, prior to the waterbody 20-ft. setback rule. Both do not conform to the 20-ft. side yard requirement. As noted for the east hotel building the closest portion of the building from the north property line is 13-ft. (the laundry facility). The exceptional setback condition has been used as the design parameter of the proposed second floor deck in that it does not further encroach into the 13-ft. setback. The variance request is justified as the result of these facts.

- Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question.

The design calls for an approximate 8-ft. wide by 18-ft. long second floor roofed deck. The 8-ft. standard is a standard deck width needed to accommodate outdoor furniture, movement and user circulation. It is the minimum width needed. The second floor deck does not run the entire length of the east hotel building (see the Tiki Beach Hotel Side Yard Variance Design Detail Exhibit 3). It is the minimum needed. The request does not further reduce the 20-ft. setback. The application of the 20-ft. setback will negate the construction of a typical and beach related outdoor deck. Outdoor decks for beach hotels are very important to the leisure business model. Outdoor deck provide for occupant passive recreation and open space amenities. The denial of the variance and prohibition of the variance will present an unreasonable burden on the manage-

ment, operation and economic viability of the Tiki Beach hotel in that the hotel will not be able to provide for a typical hotel unit amenity.

- Whether the granting of the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare.

There are two adjoining properties may be effected by the requested variance. One is a flag lot, located at 4330 Estero Blvd. and is owned by the Henry and Charlene Nyeholt Trust. It is separated from the proposed second floor deck by approximately 72-ft., and is screened and buffered by a six foot fence, trees and other plantings (see Photo Exhibit 2). The second house is located at 4340 Estero Blvd. and is owned by Emmert Group Properties LLC. It is also separated from the proposed second floor deck by approximately 29-ft., and is screened and buffered by a six foot fence, trees and other plantings. Please refer to the Neighbor Consent For Covered Deck Construction signed by Kim Emmert at 4340 Estero Blvd.; the letter states that the requested covered deck does not infringe on the subject property and that the owner does not object to the variance request. Given the nominal design character of a second floor enclosed deck, within the context of a very moderate seven foot difference between the 20-ft. code requirement and what is being requested, it is not anticipated that there will be any impacts on the two properties located to the north of the subject property. The variance is not injurious or detrimental to south oriented properties due to the parking lot and beach access lane separation. The variance is not injurious or detrimental to east oriented properties to the east due to the separation caused by Estero Blvd. There are no properties to the west fronting area.

- Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation is question.

The specific circumstances of the Tiki Beach Hotel, namely the narrow functional site width and the existing close proximity of the two buildings along the north property line are not general or reoccurring in nature as to make it more reasonable to change the code. A variance is required and is justified.

4340 Estero Blvd
Fort Myers Beach, FL. 33931

and I am the adjoining property owner. I am granting written permission to
Cook, property owner of:

Tiki On The Beach, LLC.
4360 Estero Blvd
Fort Myers Beach, FL. 33931

for the purpose of constructing a Covered Deck between our property and the property of Tiki On The Beach, LLC. This construction does not in any way infringe on my property or on the enjoyment thereof. The construction of the covered deck.

Kim Emmert O'Dell

Printed Name

Kim O'Dell

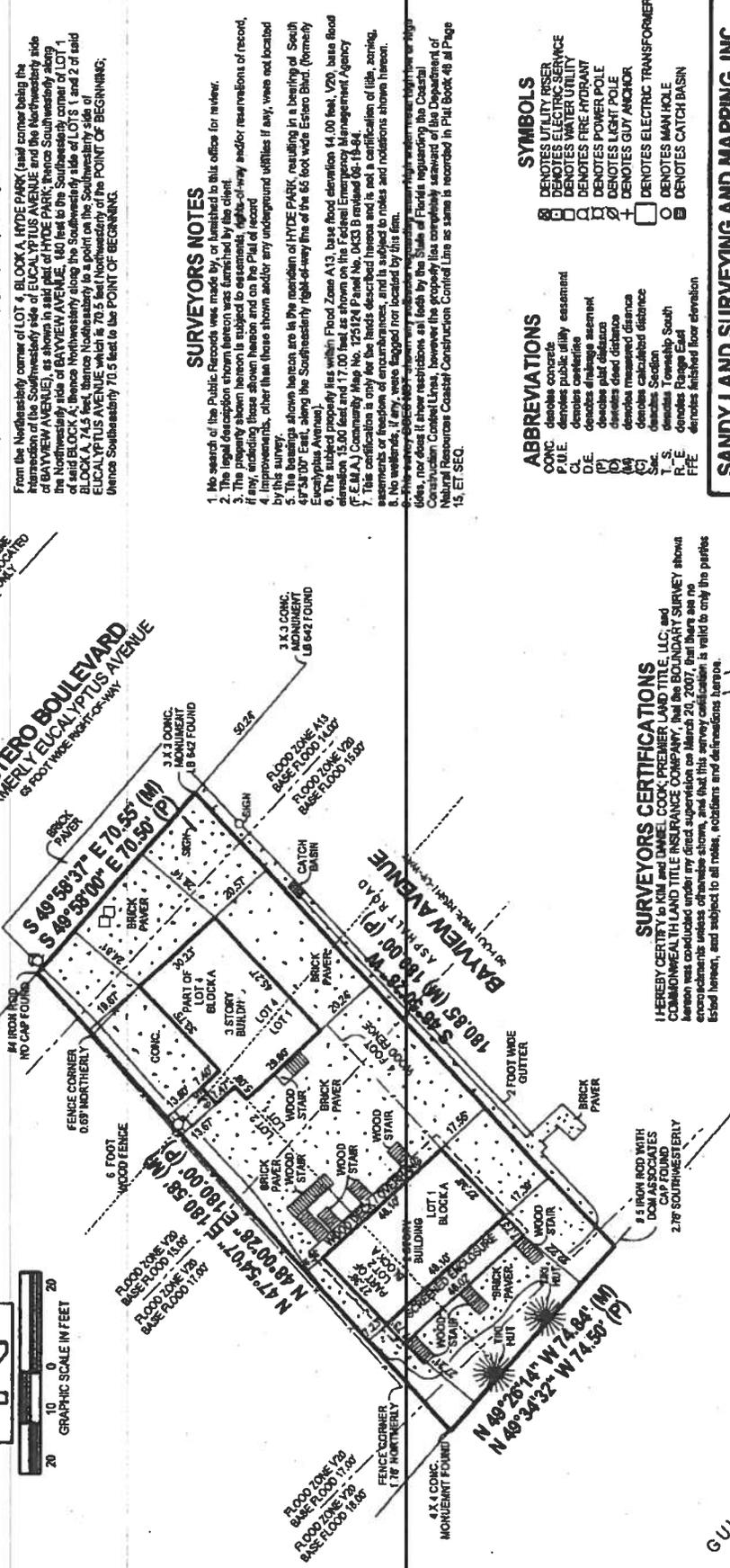
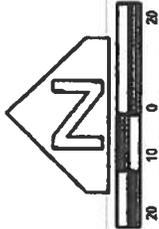
Signature

Date 6/12/17

SKETCH OF BOUNDARY SURVEY

DEPARTMENT OF NATURAL RESOURCES
 COUNTY OF PALM BEACH, FLORIDA
 PLAT BOOK 14 PAGE 19
 GRAPHIC REPRESENTATION ONLY

ESTERO BOULEVARD
 FORMERLY EUCALYPTUS AVENUE
 A FOOT WIDE RIGHT-OF-WAY



PROPERTY DESCRIPTION

THE EAST 1/2 OF BLOCK A, of that certain subdivision known as HYDE PARK, according to the Map or Plat (based on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 7, page 20, more particularly described as follows:

From the Northwest corner of LOT 4, BLOCK A, HYDE PARK (said corner being the intersection of the Southeast side of EUCALYPTUS AVENUE and the Northwest side of BAYVIEW AVENUE), as shown in said plat of HYDE PARK, thence Southwesterly along the Northwest side of BAYVIEW AVENUE, 140 feet to the Southeast corner of LOT 1 of said BLOCK A; thence Northwesterly along the Southeast side of LOTS 1, and 2 of said BLOCK A, 74.5 feet, thence Northwesterly to a point on the Southeast side of EUCALYPTUS AVENUE, which is 70.5 feet Northwesterly of the POINT OF BEGINNING; thence Southeastwly 70.5 feet to the POINT OF BEGINNING.

SURVEYORS NOTES

1. No search of the Public Records was made by, or furnished to this office for review.
2. The legal description shown hereon was furnished by the client.
3. The property shown hereon is subject to easements, rights-of-way and/or reservations of record, if any, attaching to the subject tract and on the Plat of record.
4. The survey, other than those shown and/or underground utilities if any, were not located by the surveyors, other than those shown and/or underground utilities if any, were not located by the surveyors.
5. The bearings shown hereon are in the meridian of HYDE PARK, resulting in a bearing of South 49° 58' 37" East, along the Southeast right-of-way line of the 65 foot wide Estero Blvd. (formerly Eucalyptus Avenue).
6. The subject property lies within Flood Zone A13, base flood elevation 14.00 feet, V20, base flood elevation 15.00 feet and 17.00 feet as shown on the Federal Emergency Management Agency (FEMA) Community Map No. 225124 Panel No. 0433 B revised 06-19-84.
7. This certification is only for the lands described hereon and is not a certification of title, zoning, easements or map of encumbrances, and is subject to risks and notations shown hereon.
8. No notations, if any, were tagged nor located by this firm.

606a, nor does it show restrictions, and both by the State of Florida, regarding the Coastal Construction Control Lines, however the property lies completely seaward of the Department of Natural Resources Coastal Construction Control Line as same is recorded in Plat Book 48 of Page 15, ET SEQ.

ABBREVIATIONS

- CONC denotes concrete
- P.U.E. denotes public utility easement
- CL denotes centerline
- D.E. denotes drainage easement
- (P) denotes plat distance
- (M) denotes measured distance
- (C) denotes calculated distance
- S.W. denotes Township South
- E. denotes Range East
- P.S. denotes Florida State
- FFE denotes finished floor elevation

SYMBOLS

- DENOTES UTILITY RISER
- DENOTES ELECTRIC SERVICE
- DENOTES WATER UTILITY
- DENOTES FIRE HYDRANT
- DENOTES POWER POLE
- DENOTES LIGHT POLE
- DENOTES GUY ANCHOR
- DENOTES ELECTRIC TRANSFORMER
- DENOTES MAN HOLE
- DENOTES CATCH BASIN

SURVEYORS CERTIFICATIONS

I HEREBY CERTIFY TO KIM and DANIEL COOK, PREMIER LAND TITLE, LLC, and COMMONWEALTH LAND TITLE INSURANCE COMPANY, that the BOUNDARY SURVEY shown hereon was conducted under my direct supervision on March 20, 2007, that there are no encumbrances unless otherwise shown, and that this survey certification is valid to only the parties listed hereon, and subject to all rules, regulations and definitions hereon.

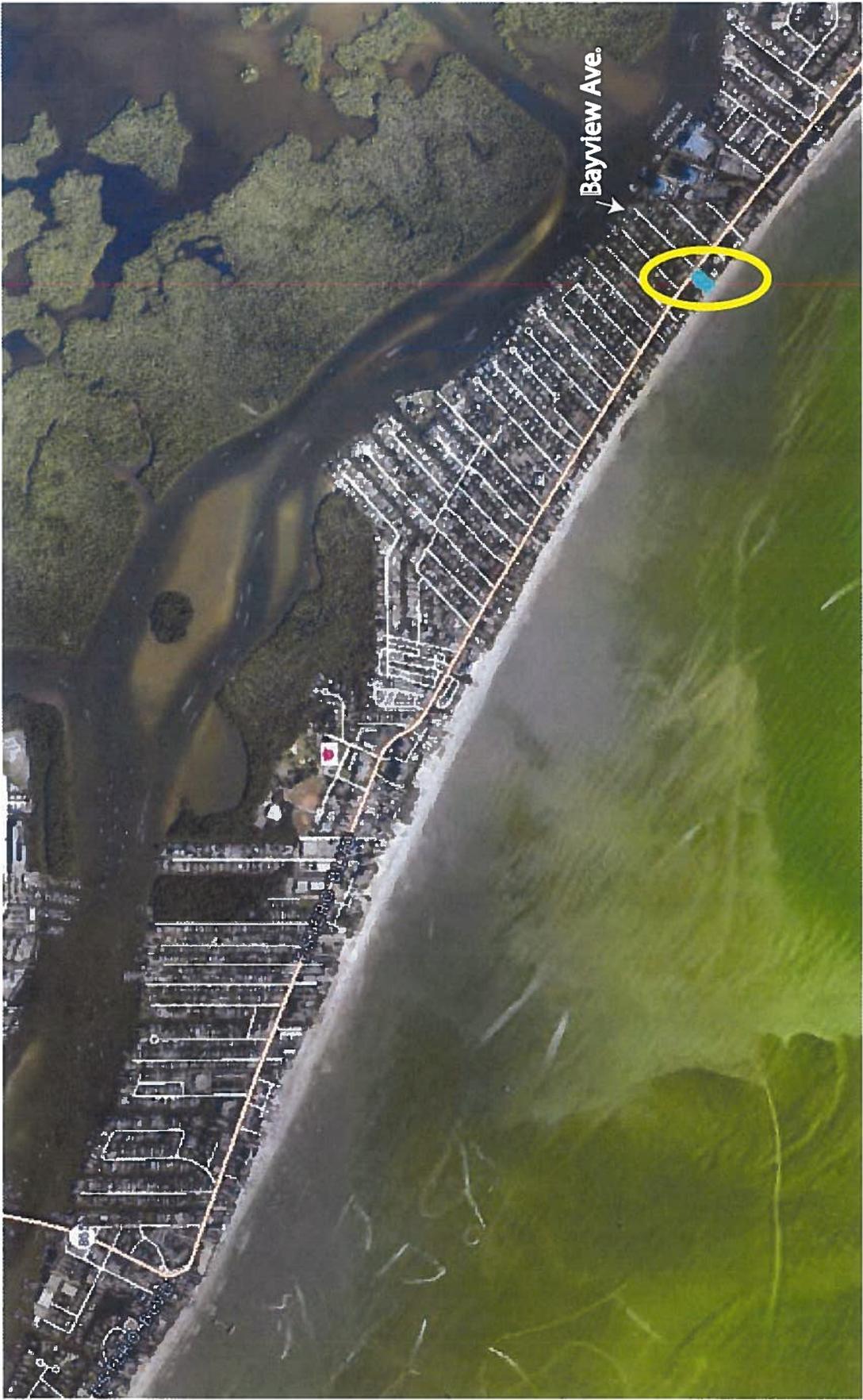
Date of Signature: 3/20/07
 This certification is not valid unless it is read with the enclosed plat and filed with the original surveyors signature.
 By: Steven K. Sandy, PLS
 Professional Land Surveyor No. 6222
 Licensed Business No. 0748

© copyright by Sandy Land Surveying and Mapping, Inc. 2007

GULF OF MEXICO

SANDY LAND SURVEYING AND MAPPING, INC.
 SURVEYING PLATTING MAPPING
 584 102ND AVENUE NORTH
 NAPLES FLORIDA, 34108
 TEL: (239) 597-1622 FAX: (239) 597-1035

FIELD A. SANDY	DRAWN C. SANDY	APPROVED S. SANDY	DATE 03-20-07
SHEET 1 OF 1	SCALE 1"=30'	SECTION 29, TWP 46 S., R. 24 E.	
FIELD BOOK 14 PAGE 19	BENCHMARK BOOK PAGE		DRAWING NO. 07-081



The Tiki Beach Hotel _ 4360 Estero Blvd.
 Strap # 29-46-24-W3-0080A-0010

The Tiki Beach Hotel Side Yard Variance Air Photo Location Map Ex. 5-3

Prepared for: Kim Cook

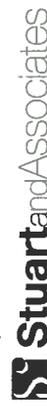


Note Property Line Screening Fence and Cabbage Palm Plantings



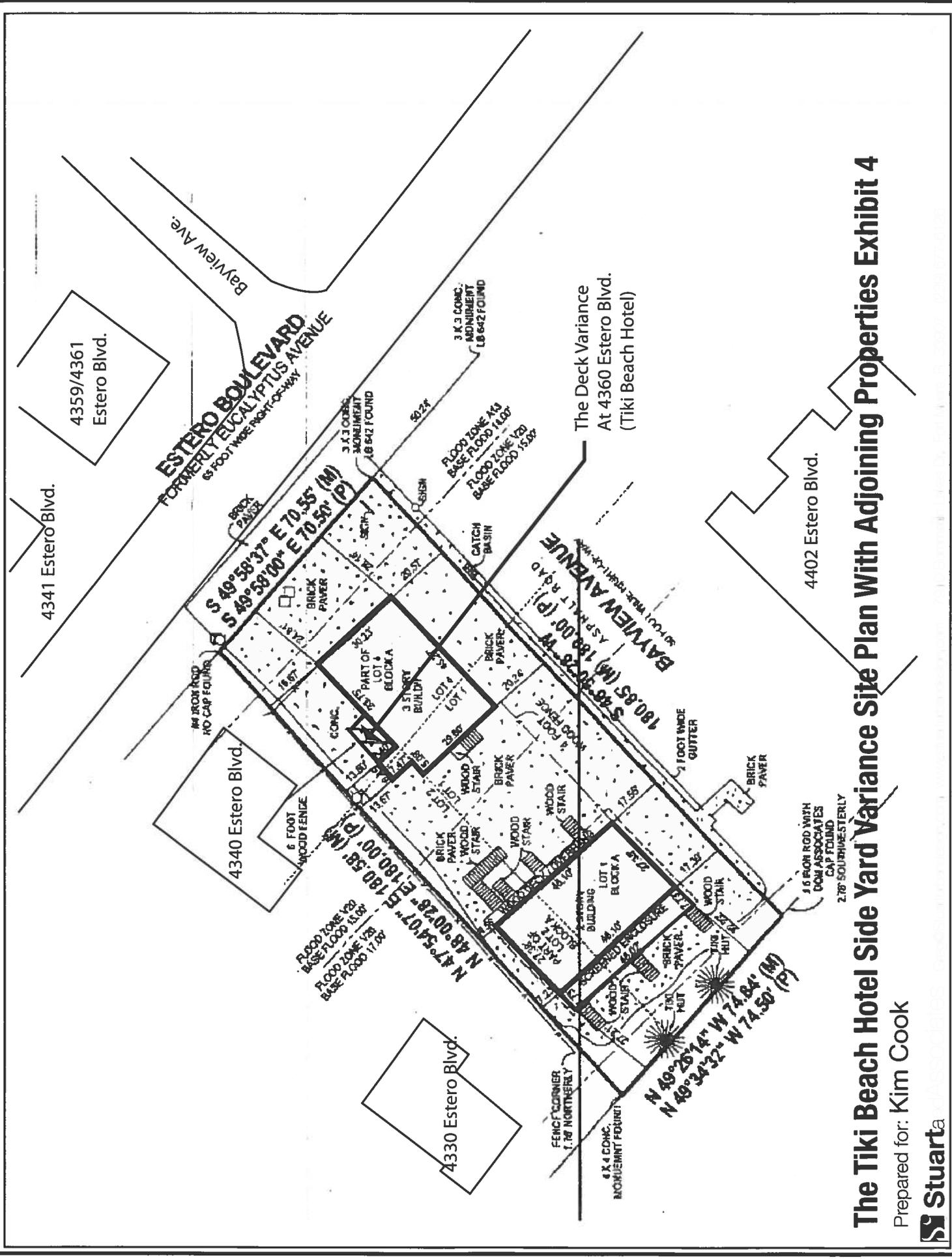
The Tiki Beach Hotel Side Yard Variance Photo Exhibit 2

Prepared for: Kim Cook



Greg@Stuarturbandesgn.com www.stuarturbandesgn.com

7910 Summerlin Lakes Dr. Fort Myers, FL 33907 (239) 677-6126



The Tiki Beach Hotel Side Yard Variance Site Plan With Adjoining Properties Exhibit 4

Prepared for: Kim Cook



RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2017-0013
VAR2017-0004 – Cronen Front Setback

WHEREAS, applicant Greg Stuart, authorized agent for Daniel Cronen, is requesting a variance from Sec. 34-638 Min. Setbacks Table 34-3 of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP number for the subject property is 19-46-24-w4-0080a.0270 and the legal description of the subject property is attached as *Exhibit A*; and

WHEREAS, the subject property, 272 Miramar Street, Fort Myers Beach is located in the 'Residential Conservation' zoning district of the Official Zoning Map and the 'Mixed Residential' category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on November 14, 2017; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, 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 34-87.

IT IS HEREBY RESOLVED BY THE LPA 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 and the standards for granting variances, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for a variance from Sec. 34-638 Min. Setbacks Table 34-3 of the Town of Fort Myers Beach Land Development Code subject to the following:

RECOMMENDED FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

- A. There **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is** for a de minimis variance

under circumstances or conditions where rigid compliance is not essential to protect public policy.

B. The conditions justifying the variance **are** the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance granted **is not** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

D. The granting of the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.

E. The conditions or circumstances on the specific piece of property for which the variance is sought **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member _____ and seconded by LPA Member _____, and upon being put to a vote, the result was as follows:

Hank Zuba, Chair	_____	Dan Hendrickson, Vice Chair	_____
Megan Heil	_____	Dan Hughes	_____
Jane Plummer	_____	Scott M. Safford	_____
Lorrie Wolf	_____		

DULY PASSED AND ADOPTED THIS **14th** day of **NOVEMBER, 2017**.

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: _____
Peterson, LPA Attorney

ATTEST:

By: _____
Michelle Mayher, Town Clerk



Town of Fort Myers Beach
**COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

TYPE OF CASE: Variance
CASE NUMBER: VAR17-0004
CASE NAME: 272 Miramar St – Cronen Front Setback
LPA
HEARING DATE: November 14, 2017
Proposed / Submitted: Sarah Propst / Jason Green
STAFF
RECOMMENDATION: Approve

I. APPLICATION SUMMARY

Applicant: Daniel Cronen

Request: The applicant is seeking a variance (VAR) from the RC zoning 25-ft. front yard lot setback requirement Div. 3 34-638 Min. Setbacks Table 34-3, to accommodate home remodeling and redevelopment. The request is to reduce the 25-ft. front setback by five feet and to allow a 20-ft. front setback.

Subject property: See attached legal description and survey, Exhibit A

Physical Address: 272 Miramar Street

STRAP #: 19-46-24-w4-0080a.0270

FLU / Zoning: Mixed Residential / Residential Conservation (RC)

Current use(s): Single-Family Residential

Adjacent zoning and land uses:

North: WATERBODY – SAN CARLOS BAY

South: RESIDENTIAL CONSERVATION (RC)
270 Miramar Street, single-family residence

East: RESIDENTIAL CONSERVATION (RC)
297 Ohio Avenue, single-family residence

West: RESIDENTIAL CONSERVATION (RC)
275 Miramar Street, single-family residence

II. BACKGROUND AND ANALYSIS

Background:

Daniel Cronen, owner of the subject property, has requested a variance of five feet to the required front yard setback from 25 ft. to 20 ft. to allow for the construction of a new residence. The applicant's plans, as shown on Exhibit B, reflect the proposed building envelope.

The .21 acre subject property is located on the east side of Miramar Street with a northern boundary defined by San Carlos Bay. The subject property is zoned RC, it meets all dimensional requirements of that zoning district and a single-family dwelling is an allowed use. The property is in the Mixed Residential land use category and meets the density requirements. The existing 955 sq. ft. +/-, two-story home was built in 1984 and acquired by the applicant in 2015.

The property is zoned RC. The dimensional regulations of the RC district require the following principal structure setbacks for waterfront lots: 25 feet from a street right of way; 7.5 feet from side property lines; 20 feet from the rear property line and 25 feet from a body of water. As shown on the Exhibit A, the existing home does not meet the waterbody setback, but meets all of the other required setbacks. The applicant's proposed redevelopment of the property, as shown on Exhibit B, would require a variance of five feet, for a reduced front setback from 25 ft. to 20 ft. The applicant has indicated that the garage, shown with a dashed line on Exhibit B, will meet the 25-ft. setback. Therefore, the variance only applies to the non-garage portion of the house as indicated in Exhibit B. The proposed development would meet all other required setbacks.

Analysis:

The subject parcel is larger than adjacent inland properties and is similar in size to nearby waterfront properties. It is significantly impacted by the long, curved waterfront. The front of the parcel is substantially wider than the rear of the property because of the curve of the seawall creating the northern property boundary. Additionally, the setback from the water is 25 ft. which creates a large swath where building construction is not permitted.

The parcel is at the end of Miramar Street, with a public boat ramp in front of it. The southern end of the residence, where the garage is to be located, will meet the 25 ft. front yard setback requirement, the portion of the house where the variance is being requested will have minimal impact on the right-of-way because it will be behind the boat ramp rip-rap.

The applicant has provided documentation that the proposed house, with the variance request granted, would not exceed the 40% building coverage limit for the RC zoning district. The applicant has also guaranteed that the impervious surface on the parcel, will not exceed the 67% impervious coverage as required by Ordinance 17-11.

Comprehensive Plan Compatibility:

Staff found that the reduction in the setback to construct a new home in an older subdivision without increasing density is substantially consistent with “POLICY 4-B-4 “MIXED RESIDENTIAL”: designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre...”

Neighborhood Compatibility:

In a review of aerial photography of the neighborhood staff found the homes on Miramar Street appear to meet the 25 ft. front yard setback. However, due to the skew of the parcel boundaries in the Lee County Property Appraiser’s maps, staff is unable to determine the actual setbacks of the homes in the neighborhood.

The applicant is proposing the front yard variance only on the northern portion of the house, keeping to the 25 ft. setback where the garage will be located. By meeting the required front setback closest to the southern property line, the adjacent neighbors will be less impacted by the variance.

Findings and Conclusions:

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance:

- a. *That there **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request **is**/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

Applicant Comments:

The exceptional condition inherent to the property is the subject property’s odd curvilinear configuration, it’s proportionally larger 25-ft. bay side water setback and it’s dual, side yard and rear year waterfront interface. The lots odd shaped geometry presents an exceptional condition that allows for a legal variance. The

lots odd configuration is constrained by a 25-ft. front yard setback standard. A five foot reduction in the front yard setback will serve to permit a viable and moderate contemporary footprint. Given the fact that the new remodeling and addition project will meet rear and side setbacks there will not be deleterious impacts to south and west adjoining property owners. The new 20-ft. front setback does not negatively impact the adjacent 275 Miramar Street in that the 275 Miramar home is setback from Miramar Street by 25-ft. and then an 18-ft. paved street section. The variance request to reduce the standard by 5-ft. is the minimum needed to implement a reasonable home improvement design and therefore is di minimus. The new home design will accommodate a 25-ft. side/rear waterbody setback, a 20-ft. rear setback and a 7.5-ft. west side yard setback.

Staff Comments:

The lot is significantly impacted by the long, curved waterfront. The front part of the lot is substantially wider than the rear of the property because of the curved waterfront, creating an unusual building envelope. Additionally, the setback from the water is 25 ft. which creates a large section of the lot where construction is not permitted.

The requested setback reduction is not de minimis, but a function of the desired home size. A small residence (955 square ft.) is currently constructed on the property which meets most setbacks, see Exhibit A. It is possible to construct a home smaller than what the applicant has proposed; however, the applicant has offered to set the garage area back the full 25 ft. from the front property. This would decrease the total requested variance and lower the impact on neighbors.

- b. *That the conditions justifying the variance **are**/are not the result of actions of the applicant taken after the adoption of the regulation in question.*

Applicant Comment:

The variance request is not the result of the actions of the applicant taken after the adoption of the side yard setback regulation. The exceptional setback condition is because of the uniquely odd shaped lot caused by the undulating shoreline. As noted, the trapezoid-like lot has a very large San Carlos Bay shoreline resulting in a large percentage of the site's perimeter boundary being required to have a 25-ft. setback.

Staff Comment:

Staff finds that conditions presented to justify the variance are the result of actions of the applicant. A small house currently exists on the parcel and meets most of the required setbacks, it encroaches a small amount into the waterfront setback, see Exhibit A. While the property has an odd configuration and a large area that is not developable because of the waterfront setback, the size of the proposed home is the primary reason for the variance request.

- c. *That the variance granted is/is not the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

Applicant Comment:

The five foot front setback reduction is the minimum width needed. The denial of the variance will present an unreasonable burden on the applicant's ability to build a viable single family home if forced to comply with the 25-ft. front yard and side yard setbacks. It is noted that FMB has typically granted front setback regulatory relief.

Staff Comment:

The applicant has requested a variance of five feet. While a lesser variance can be requested, the variance sought is less than the amount of lost developable area due to the water setback along the side of the property. The requested amount will relieve the burden caused by the unusual shape of the parcel. It should be noted that setback variances have been granted administratively for unusually shaped parcels and those with two street frontages, 25 ft. setbacks. Also, the applicant has offered to apply to variance to only the northern portion of the front of the house to limit the impact.

- d. *That the granting of the variance will/will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The applicant provided the following explanation:

There are two adjoining properties that may be effected by the requested variance. One is to the rear of the Cronen property, located at 297 Ohio Street and is owned by Bradfield and Lajeane Dobbs. This 3 bed/2 bath home consists of 1,872 sf along with 1,478 sf of screened and open porches (total living area at 3,350 sf). It is separated from the existing Cronen house by vegetation; it will be further screened and separated by a 6-ft. fence to be built as per FMB Code 34- 1744. The second house is located at 270 Miromar Street and is owned by Terry Wysong and Tomii Scott. This 3 bed/2bath property consists of 1,106 sq.ft. along with 298 sf of enclosed porches (total living area at 1,404 sf). It is not screened from the Cronen property; a new six foot fence will serve to separate the two properties. Refer to the Variance Request Rear Setback Impacts Exhibit. Given the nominal five foot reduction from the 25-ft. code requirement to the 20-ft. request, and that the 5-ft. setback reduction is along the Miromar Street front and not on the side or rear, the variance request will not have any impact on the two adjoining properties. There are no anticipated impacts to property across the street from the subject property (275 Miromar Street). The new 20-ft. front setback will not negatively impact the adjacent 275 Miromar Street in that the 275 Miromar home is setback from Miromar Street by 25-ft., and is further separated by an 18-ft. paved street section and then a 20-ft. front yard at 272 Miromar.

Staff Comments:

The applicant intends to utilize the five foot front yard variance only along the northern portion of the front of the house. The southern portion of the front of the house, the garage, will be built to the 25 ft. front setback, see Exhibit B. Locating the southern portion of the house at the 25 ft. front setback will decrease the impact on the adjacent neighbor at 270 Miramar Street. The northern portion of the house will be 20 ft. from the right-of-way and that part of the house will be in front of the boat ramp at the end of Miramar Street. and will have a limited impact on the house on the other side of the right-of-way, located at 275 Miramar Street.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought are/**are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

Applicant Comment:

The specific circumstances of the 272 Miramar Street site, namely the oddly shaped site with two 25-ft. setback requirements is not a general or reoccurring condition as to make it more reasonable to change the code. A minimum variance is required and is justified by the code.

Staff Comment:

Staff finds the conditions and circumstance of the subject property are not of a nature that requires an amendment to the regulation. All similarly zoned waterfront parcels must meet the same setbacks, but this particular parcel does have a longer, curved waterfront which creates a unique buildable area.

III. RECOMMENDATION

Staff finds that the subject parcel is irregularly shaped with constraining waterside setback applying to a larger area than other typical lots. The location of the proposed setback variance would have a limited impact on adjacent properties.

Therefore, staff recommends **Approval** of the variances from LDC Sec 34-638(b) and Table 34-3 to allow the non-garage portion of the proposed residence to extend five feet into the front setbacks of the subject property.

Staff Report Exhibits:

- A – Survey/Legal Description
- B – Layout
- C – Aerial View
- D – Application for Public Hearing
- E – Supplement for Public Hearing

MAP OF BOUNDARY AND LOCATION SURVEY OF A PORTION OF LOT 27, AND LOT 28 AND 29, BLOCK "A", MIRAMAR SUBDIVISION, LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, CITY OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

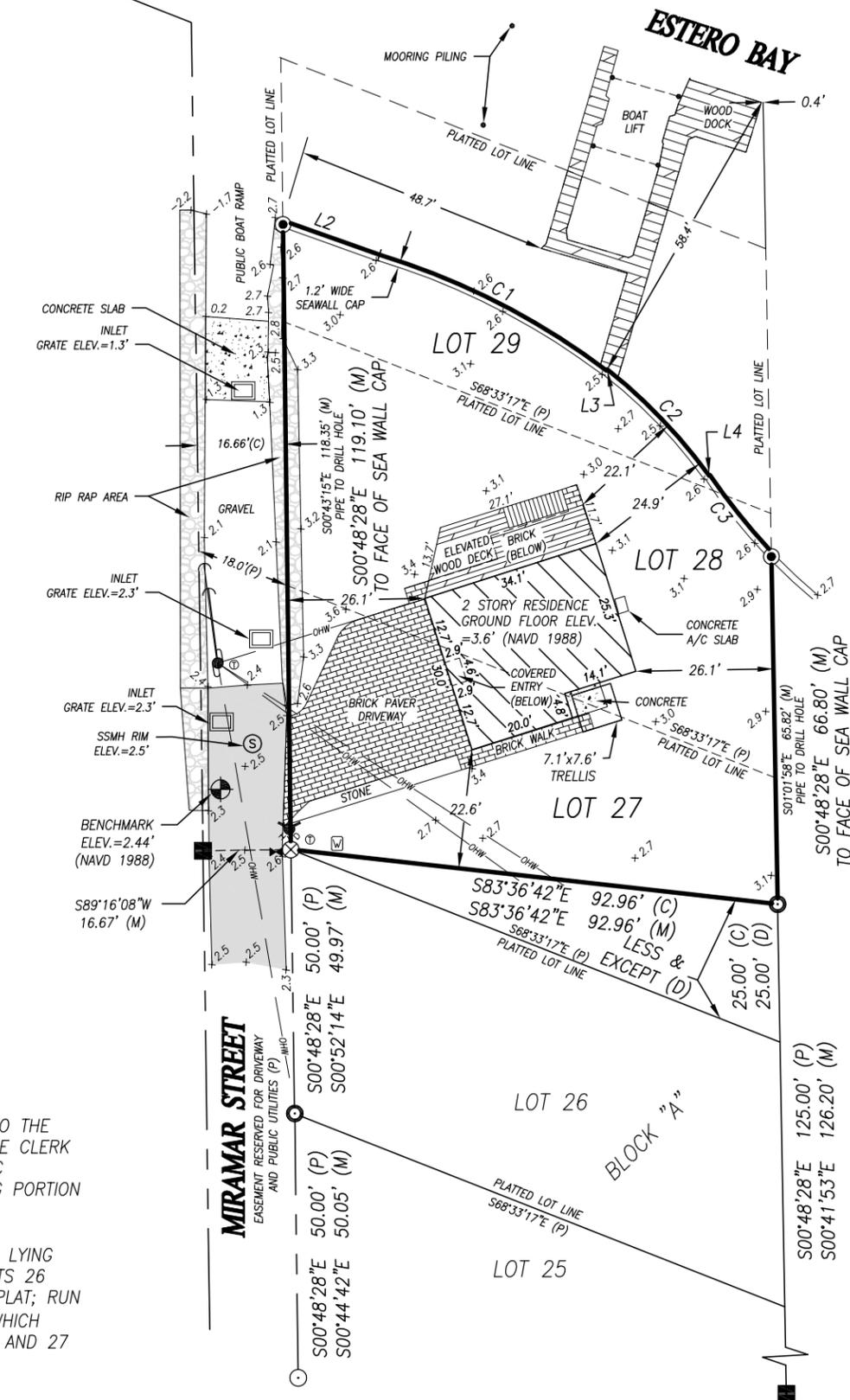
SURVEYOR'S NOTES

- BEARINGS SHOWN ARE STATE PLANE FLORIDA WEST ZONE (NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT) AND WERE OBTAINED FROM A RIGHT OF WAY CONTROL SURVEY FOR ESTERO BOULEVARD COUNTY ROAD 865, LEE COUNTY DEPARTMENT OF TRANSPORTATION. PROJECT NUMBER 39119, PREPARED BY BEAN, WHITAKER, LUTZ & KAREH, INC (LB 4919) DATED APRIL 21, 2010. THERE ARE NO BEARINGS SHOWN ON THE PLAT OF RECORD. ALL BEARINGS SHOWN HEREON AS PLAT, WERE TAKEN FROM SAID RIGHT OF WAY CONTROL SURVEY.
- NO UNDERGROUND IMPROVEMENTS OR FOUNDATIONS WERE LOCATED UNDER THE SCOPE OF THIS SURVEY.
- THIS PARCEL LIES IN FLOOD ZONE "AE" BASED ON FEMA F.I.R.M. PANEL 12071C0554F, DATED AUGUST 28, 2008. WITH A BASE FLOOD ELEVATION OF 10.0' (NAVD '88).
- BOUNDARY INFORMATION SHOWN HEREON IS BASED UPON THE RECORD PLAT AND LEGAL DESCRIPTION PROVIDED, NO SEARCH OF THE PUBLIC RECORD WAS PERFORMED BY THIS SURVEYOR. THERE MAY BE OTHER SETBACKS AND/OR EASEMENTS NOT KNOWN TO THIS SURVEYOR.
- THE STREET ADDRESS IS:
272 MIRAMAR STREET
FORT MYERS BEACH, FLORIDA 33931
- ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD '88). ELEVATIONS ARE BASED UPON TIES TO THE FLORIDA DEPARTMENT OF TRANSPORTATION AND LEE COUNTY REAL-TIME KINEMATIC (RTK) GLOBAL POSITIONING SYSTEM (GPS) CONTROL NETWORKS.
- PARCEL SURVEYED CONTAINS 0.21 ACRES, MORE OR LESS.

LEGAL DESCRIPTION

LOTS 27, 28 AND 29, BLOCK "A", MIRAMAR SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT, RECORDED IN PLAT BOOK 6, PAGE 31, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, LESS AND EXCEPT THE FOLLOWING PORTION OF LOT 27, TO WIT:

ALL THAT PART OF LOT 27, BLOCK "A" OF SAID MIRAMAR SUBDIVISION, LYING SOUTH OF A LINE DESCRIBED AS FOLLOWS: FROM THE CORNER OF LOTS 26 AND 27 ON THE EAST LINE OF MIRAMAR STREET AS SHOWN ON SAID PLAT; RUN SOUTHEASTERLY TO A POINT ON THE EAST LINE OF SAID BLOCK "A", WHICH POINT IS 25 FEET NORTH OF THE CORNER COMMON TO SAID LOTS 26 AND 27 ON SAID EAST LINE AND THE END OF THE DESCRIBED LINE.

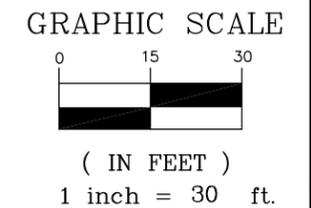


LEGEND

- = BENCHMARK, SET PK NAIL AND DISK - "LB 6896"
- = FOUND 5/8" REBAR - NO IDENTIFICATION
- = FOUND DRILL HOLE IN CONCRETE SEAWALL
- = FOUND 3/4" PIPE - NO IDENTIFICATION
- = FOUND 4" X 4" CONCRETE MONUMENT - "PWAM"
- = FOUND 3/4" PIPE - "LB 642"
- (C) = CALCULATED DATA
- (D) = LEGAL DESCRIPTION DATA
- (M) = FIELD MEASURED DATA
- (P) = RECORD PLAT DATA
- OHW = OVERHEAD WIRE
- +3.1 = SPOT ELEVATION, NAVD 1988
- = WOOD UTILITY POLE
- = GUY ANCHOR
- = FIRE HYDRANT
- = SANITARY SEWER MANHOLE - SSMH
- = CATCH BASIN WITH GRATE INLET
- = TELEPHONE PEDESTAL
- = WATER METER
- = WATER VALVE

LINE TABLE		
LINE	BEARING (M)	DISTANCE (M)
L1	S00°43'15"E	0.75'
L2	S70°32'39"E	19.44'
L3	N36°00'58"E	0.25'
L4	N55°48'55"E	0.21'
L5	S01°01'58"E	0.98'

CURVE TABLE					
CURVE	DELTA (M)	RADIUS (M)	ARC (M)	CHORD BEARING (M)	CHORD (M)
C1	19°51'35"	140.06'	48.55'	S63°03'54"E	48.30'
C2	15°34'44"	102.96'	27.99'	S43°50'49"E	27.91'
C3	9°42'07"	109.78'	18.59'	S38°45'57"E	18.57'



JOB NO. 17-014
SHEET NO. 1 OF 1

CERTIFIED TO:
DANIEL W. CRONEN, TRUSTEE FOR THE DANIEL W. CRONEN REVOCABLE TRUST
R.C. DESIGNS, INC.

DRAWN BY: EDK
CHECKED BY: DSD
FIELD BOOK: N/A

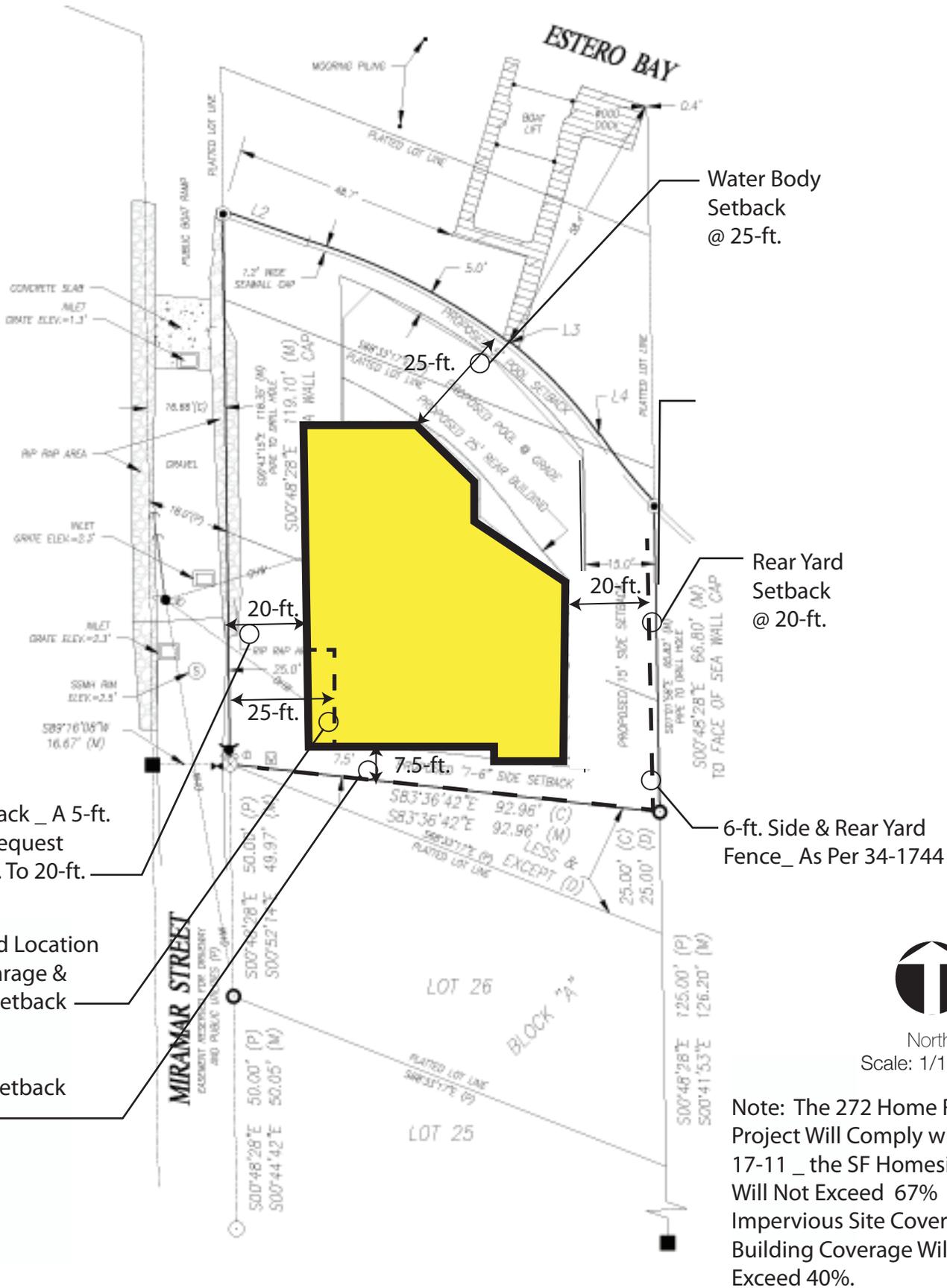
D&W DAGOSTINO & WOOD, INC.
Professional Surveying & Mapping
5415 Jagger Road Suite A Naples, FL 34109
Phone: (239) 352-6085 Website: www.dwsurvey.com

DRAWING SCALE: 1" = 30'
REVISION DATE:
REVISION BY:

COMPUTER FILE: 17014
DATE: 05/24/2017
SIGNATURE DATE: 05/30/17

DAVID S. DAGOSTINO, PSM
Professional Surveyor & Mapper Fla. License No. 5762

This map prepared by:
CERTIFICATE OF AUTHORIZATION NO. LB 8898
NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

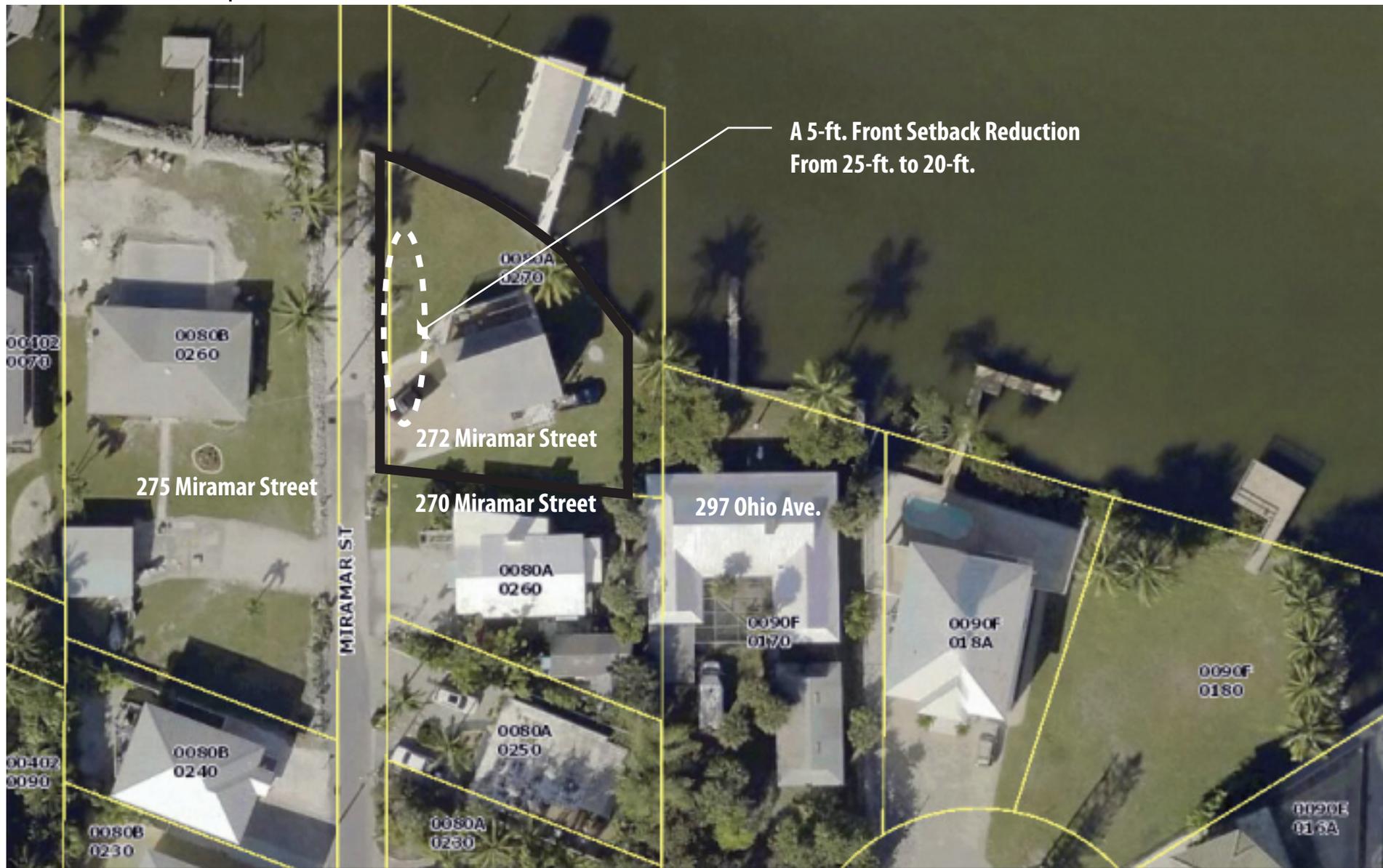


North
Scale: 1/16" = 1-ft.

Note: The 272 Home Remodel Project Will Comply with Ord. 17-11 _ the SF Homesite Will Not Exceed 67% Impervious Site Coverage and Building Coverage Will Not Exceed 40%.

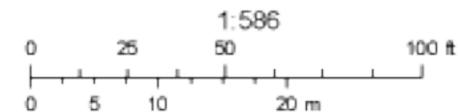
The 272 Miramar Street Variance Request Site Plan

Prepared for: Dan Cronen, Tr.
272 Miromar Street Fort Myers Beach, FL 33931



The Variance Request Air Photo

Prepared for: Dan Cronen, Tr.
272 Miramar Street Fort Myers Beach, FL 33931



PROJECT NUMBER: Var17-0004



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

This is a two part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit *one ORIGINAL paper copy, fourteen (14) copies* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application. In addition to application fees, the applicant is required to pay for (2) sets of mailings to neighboring property owners within 500', and all advertising fees.

Site Address: 272 Miramar Street Fort Myers Beach, FL 33931

STRAP Number: 19-46-24-W4-0080A.0270

Applicant: Daniel Cronen Phone: 612 396 7017

Contact Name: Greg Stuart Phone: 239 677 6126

Email: Greg@Stuarturbandesign.com Fax: _____

Current Zoning District: RC

Future Land Use Map (FLUM) Category: Mixed Res.

FLUM Density Range: 4 DUS per ac. Platted Overlay: YES NO

ACTION REQUESTED

SUPPLEMENTAL FORM REQUIRED

- | | |
|---|--------------------------|
| <input type="checkbox"/> Special Exception | PH-A |
| <input checked="" type="checkbox"/> Variance | PH-B |
| <input type="checkbox"/> Conventional Rezoning | PH-C |
| <input type="checkbox"/> Planned Development <input type="checkbox"/> Commercial <input type="checkbox"/> Residential | PH-D |
| <input type="checkbox"/> Master Concept Plan Extension | PH-E |
| <input type="checkbox"/> Appeal of Administrative Action | PH-F |
| <input type="checkbox"/> Vacation of Platted Right-of-way and Easement | PH-G |
| <input type="checkbox"/> Other – cite LDC Section: _____ | attach on separate sheet |

PROJECT NUMBER:

DATE:

PART I – General Information

A. Applicant*: Daniel Cronen Phone: 612 396 7017

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: 272 Miramar Street Fort Myers Beach, FL 33931

Email: Dancronen@hotmail.com Fax: NA

Contact Name: Greg Stuart Phone: 239 677 6126

B. Relationship of Applicant to subject property:

- Owner*
- Land Trust*
- Partnership*
- Corporation*
- Association*
- Condominium*
- Subdivision*
- Timeshare Condo*
- Contract Purchaser*
- Authorized Representative*
- Other* (please indicate) _____

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Greg Stuart Phone: 239 677 6126

Address: 7910 Summerlin Lakes Drive Fort Myers, FL 33993

Email: Greg@Stuarturbandesign.com Fax: NA

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PROJECT NUMBER:

DATE:

Name: _____

Phone: _____

Address: _____

Email: _____

Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- Special Exception
 - Variance from LDC Section 34-643 - Table 34-3 Rear Setback
 - Conventional Rezoning from _____ to _____
 - Planned Development
 - Rezoning from _____ to Commercial PD Residential PD
 - Amendment. List the project number: _____
 - Extension/reinstatement of Master Concept Plan. List project number: _____
 - Appeal of Administrative Action
 - Vacation Right-of-Way Easement
 - Other. Please Explain: _____
- _____
- _____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: None

Description: _____

Code Section: _____

Description: _____

Code Section: _____

PROJECT NUMBER:

DATE:

Description: _____

PART IV - Property Ownership

Single Owner (individual or husband and wife)

Name: Daniel Cronen, TR

Phone: 612 396 7017

Mailing Address: 272 Miramar Street Fort Myers Beach, FL 33931

Email: Dancronen@hotmail.com

Fax: NA

Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

Complete Disclosure of Interest Form (see below)

Attach list of property owners as Exhibit 4-1

Attach map showing property owners interests as Exhibit 4-2 (for multiple parcels)

For condominiums and timeshares see Explanatory Notes Part IV (Page 11)

DISCLOSURE OF OWNERSHIP INTEREST

STRAP: _____

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

PROJECT NUMBER:

DATE:

Name, Address and Office

Percentage of Stock

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

Daniel William Cronen 272 Miramar Street Fort Myers Beach, FL 33931

100%

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

PROJECT NUMBER:

DATE:

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office	Percentage of Stock

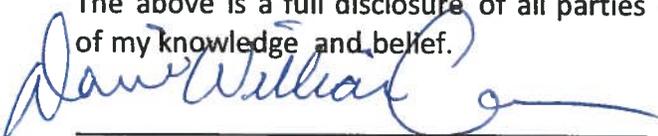
Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.



 Signature

DANIEL WILLIAM CRONEN

 Printed Name

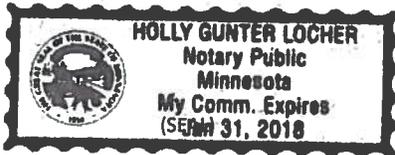
PROJECT NUMBER:

DATE:



STATE OF ~~FLORIDA~~ Minnesota
COUNTY OF ~~LEE~~ Dakota

Subscribed and sworn to (or affirmed) before me this 26th day of July
20 17, by Daniel Cronen.



Holly Locher
Notary Public Signature
Holly Locher
Notary Printed Name

Personally Known or Produced Identification _____

Type of Identification Produced: _____ My Commission Expires: 1/31/18

PART V - Property Information

A. Legal Description:

STRAP: 19-46-24-W4-0080A.0270

Property Address: 272 Miramar Street Fort Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? No. Attach a legible copy of the legal description as Exhibit 5-1.

Yes. Property identified in subdivision: Miramar Blk. A

Book: 6 Page: 31 Unit: _____ Block: _____ Lot(s): 27 28+29

B. Boundary Survey:

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 5-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 91-ft average feet

PROJECT NUMBER:

DATE:

Depth (please provide an average width if irregular in shape) 92 feet

Frontage on street: 118 feet. Frontage on waterbody: 114 feet

Total land area: 0.21 acres square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Approximately 0.4 miles south of the Sky Bridge/Estero Blvd. to Miramar Street,
then east to the end of Miramar Street on the right at Estero Bay.

Attach Area Location Map as Exhibit 5-3

E. Property Restrictions (check applicable):

There are no deed restrictions and/or covenants on the subject property.

A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 5-4.

A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 5-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

Attach a list of surrounding property owners within 500 feet as Exhibit 5-6.

Attach a map showing the surrounding property owners as Exhibit 5-7.

Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

Low Density

Marina

Mixed Residential

Recreation

Boulevard

Wetlands

Pedestrian Commercial

Platted Overlay

H. Zoning (see official Zoning Map):

RS (Residential Single-family)

CF (Community Facilities)

RC (Residential Conservation)

IN (Institutional)

PROJECT NUMBER:

DATE:



- | | |
|--|--|
| <input type="checkbox"/> RM (Residential Multifamily) | <input type="checkbox"/> BB (Bay Beach) |
| <input type="checkbox"/> RPD (Residential Planned Development) | <input type="checkbox"/> EC (Environmentally Critical) |
| <input type="checkbox"/> CM (Commercial Marina) | <input type="checkbox"/> DOWNTOWN |
| <input type="checkbox"/> CO (Commercial Office) | <input type="checkbox"/> SANTOS |
| <input type="checkbox"/> CB (Commercial Boulevard) | <input type="checkbox"/> VILLAGE |
| <input type="checkbox"/> CR (Commercial Resort) | <input type="checkbox"/> SANTINI |
| <input type="checkbox"/> CPD (Commercial Planned Development) | |

PART VI

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Daniel Cronen swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



PROJECT NUMBER:

DATE:

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

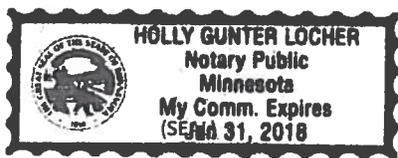
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

[Handwritten Signature]
Signature of owner or authorized agent

7/26/17
Date

STATE OF ~~FLORIDA~~ Minnesota
COUNTY OF ~~LEE~~ Dakota

Subscribed and sworn to (or affirmed) before me this 26th day of July
20 17, by Daniel Cronen.



[Handwritten Signature]
Notary Public Signature
Holly Locher
Notary Printed Name

Personally Known or Produced Identification

Type of Identification Produced: _____ My Commission Expires: 1/31/18



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:
Project Name:
Authorized Applicant:
LeePA STRAP Number:

Current Property Status:
Current Zoning:
Future Land Use Map (FLUM) Category:
Comp Plan Density: _____ Platted Overlay? <input type="checkbox"/> Yes <input type="checkbox"/> No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

LDC Section Number	Title of Section or Subsection

Complete the narrative statements below for EACH variance requested.

PART 2 Submittal Requirements

All applications for a variance must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

“Variance is requested from...” Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.



October 19, 2017 Revised Supplement PH-B Additional Required Information For A Variance

The 272 Miramar Street Rear Yard Variance Request _ Part 1 Narrative

The Variance Request:

The applicant seeks a variance from the RC zoned 25-ft. front yard lot setback requirement Div. 3 34-638 Min. Setbacks Table 34-3, to accommodate home remodeling and redevelopment. The request is to reduce the 25-ft. front setback and to allow a 20-ft. front setback.

Reasons For The Request:

The reasons for the variance request from 34-643 Table 34-3 Front Setback, from 25-ft. to 20-ft., is as follows. The lot is an oddly shaped, trapezoid-like parcel with a short rear yard property line tangent of 66.8-ft. and a very long San Carlos Bay water body interface for both the side and rear yard (114.78-ft.). The request is to permit a 20-ft. front yard setback for a comprehensive home remodeling and construction. The other setbacks will conform to code (25-ft. water body, 20-ft. rear yard and 7.5-ft. west side yard). Given the lots odd configuration with it's proportionally large conforming waterfront and rear yard 20-ft. setback area, the 25-ft. front yard setback is too constraining. By complying with the 25-ft. side yard setback to the east, that has a length of 114-ft., and complying with the 20-ft. setback to the south (with a 65-ft. length), out of the total property's boundary length of 393.54-ft., approximately 45% will be setback at or greater than 20-ft. The relaxation of the standard from 25-ft. to 20-ft. is moderate and di minimus. The moderate 5-ft. setback reduction is important to the new home construction project by allowing for an appropriate but not overly large building footprint that complies with the rear yard and side yard setbacks. Finally, the Applicant has examined the possibility of reducing the rear yard setback five feet, from 20-ft. to 15-ft. Based upon staff comments and preliminary finding of potential south adjoining neighbor impacts, a rear yard setback reduction is not feasible.

Explain The Possible Effect The Variance, If Granted, Would Have on The Surrounding Properties:

There are two adjoining properties that may be effected by the requested variance. One is to the rear of the Cronen property, located at 297 Ohio Street and is owned by Bradfield and Lajean Dobbs. This 3 bed/2 bath home consists of 1,872 sf along with 1,478 sf of screened and open porches (total living area at 3,350 sf). It is separated from the existing Cronen house by vegetation; it will be further screened and separated by a 6-ft. fence to be built as per FMB Code 34-1744. The second house is located at 270 Miromar Street and is owned by Terry Wysong and Tomii Scott. This 3 bed/2bath property consists of 1,106 sq.ft. along with 298 sf of enclosed porches (total living area at 1,404 sf). It is not screened currently from the Cronen property; a

new six foot fence will serve to separate the two properties. Refer to the Variance Request Rear Setback Impacts Exhibit. Given the nominal five foot reduction from the 25-ft. code requirement to the 20-ft. request, and that the 5-ft. setback reduction is along the Miromar Street front and not on the side or rear, the variance request will not have any impact on the two adjoining properties. There are no anticipated impacts to property across the street from the subject property (275 Miromar Street). The new 20-ft. front setback will not negatively impact the adjacent 275 Miromar Street in that the 275 Miromar home is setback from Miromar Street by 25-ft., and is further separated by an 18-ft. paved street section and then a 20-ft. front yard at 272 Miromar.

Explain The Hardship (what is unique about the property) That Justifies Relief From The Regulation:

The hardship is the subject property's odd and configuration with its proportionally larger 25-ft. bay side water setback and its dual, side yard and rear year waterfront interface. The lots odd configuration is further constrained by a 25-ft. front yard setback standard. A five foot reduction in the front yard setback will serve to permit a viable and moderate contemporary footprint. Given the fact that the new remodeling and addition project will meet rear and side setbacks there will not be deleterious impacts to south and west adjoining property owners. The new 20-ft. front setback does not negatively impact the adjacent 275 Miromar Street in that the 275 Miromar home is setback from Miromar Street by 25-ft. and then by an 18-ft. street paved section. The 25-ft. San Carlos Bay water body setback insures that there will be no adverse environmental and water body impacts. The 20-ft. variance is the minimum required to achieve a cost effective and efficient remodel and addition while not impacting any property owners enjoyment of view and property.

Explain How The Property Qualifies For A Variance (decision-making guidelines 34-87).

- Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a de minimis variance under circumstances or conditions where rigid compliance is not necessary to protect public policy.

The exceptional condition inherent to the property is the subject property's odd curvilinear configuration, its proportionally larger 25-ft. bay side water setback and its dual, side yard and rear year waterfront interface. The lots odd shaped geometry presents an exceptional condition that allows for a legal variance. The lots odd configuration is constrained by a 25-ft. front yard setback standard. A five foot reduction in the front yard setback will serve to permit a viable and moderate contemporary footprint. Given the fact that the new remodeling and addition project will meet rear and side setbacks there will not be deleterious impacts to south and west adjoining property owners. The new 20-ft. front setback does not negatively impact the adjacent 275 Miromar Street in that the 275 Miromar home is setback from Miromar Street by 25-ft. and then an 18-ft. paved street section. The variance request to reduce the standard by 5-ft. is the minimum needed to implement a reasonable home improvement design and therefore is di minimus. The new home design will accommodate a 25-ft. side/rear waterbody setback, a 20-ft. rear setback and a 7.5-ft. west side yard setback.

- Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of the actions of the applicant taken after the adoption of the regulation in question.

The variance request is not the result of the actions of the applicant taken after the adoption of the side yard setback regulation. The exceptional setback condition is because of the uniquely odd shaped lot caused by the undulating shoreline. As noted, the trapezoid-like lot has a very large San Carlos Bay shoreline resulting in a large percentage of the site's perimeter boundary being required to have a 25-ft. setback.

- Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question.

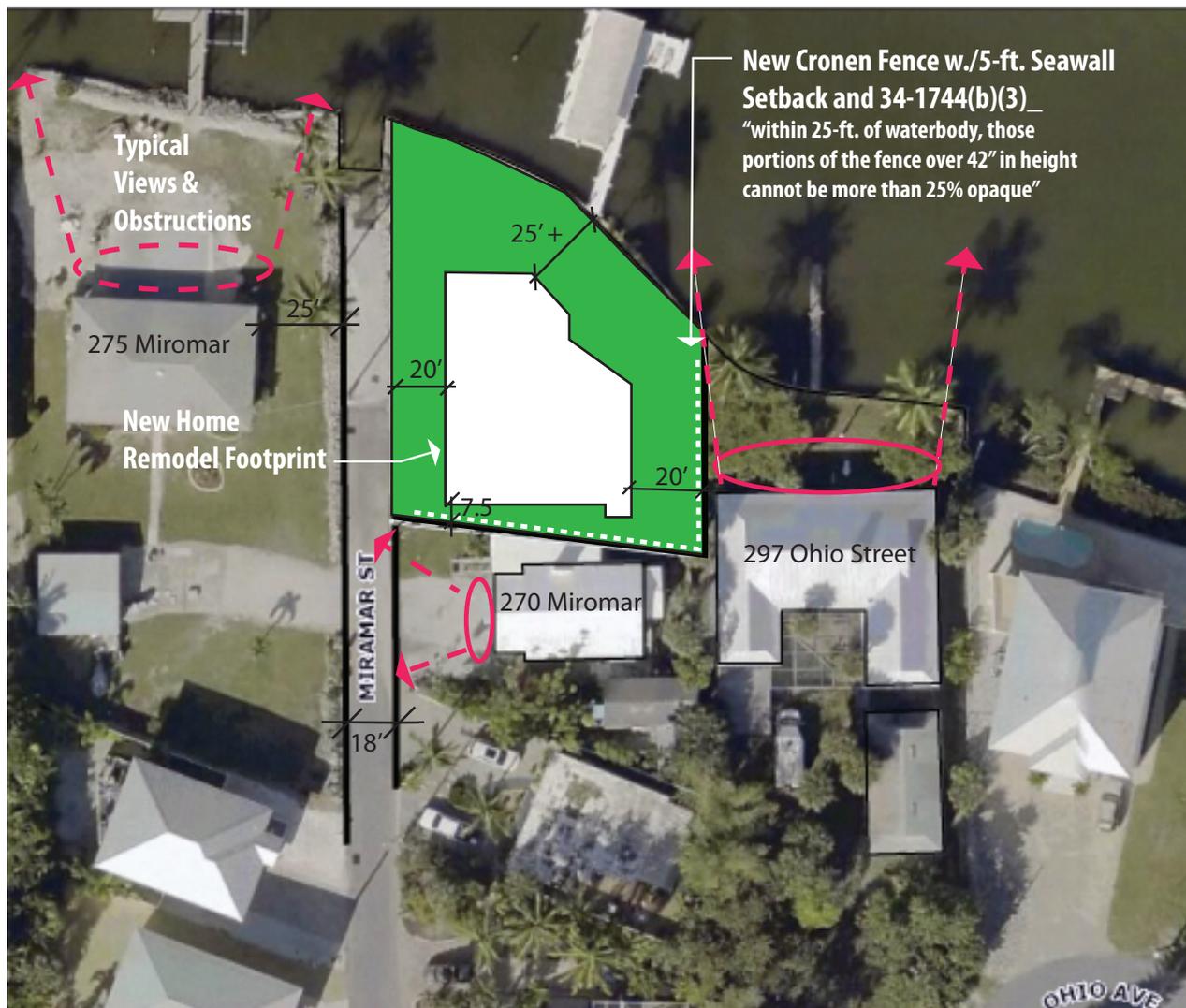
The five foot rear setback reduction is the minimum width needed. The denial of the variance will present an unreasonable burden on the applicants ability to build a viable single family home if forced to comply with the 25-ft. front yard and side yard setbacks. It is noted that FMB has typically granted front setback regulatory relief.

- Whether the granting of the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare.

There are two adjoining properties that may be effected by the requested variance. One is to the rear of the Cronen property, located at 297 Ohio Street and is owned by Bradfield and Lajeau Dobbs. This 3 bed/2 bath home consists of 1,872 sf along with 1,478 sf of screened and open porches (total living area at 3,350 sf). It is separated from the existing Cronen house by vegetation; it will be further screened and separated by a 6-ft. fence to be built as per FMB Code 34-1744. The second house is located at 270 Miromar Street and is owned by Terry Wysong and Tomii Scott. This 3 bed/2bath property consists of 1,106 sq.ft. along with 298 sf of enclosed porches (total living area at 1,404 sf). It is not screened from the Cronen property; a new six foot fence will serve to separate the two properties. Refer to the Variance Request Rear Setback Impacts Exhibit. Given the nominal five foot reduction from the 25-ft. code requirement to the 20-ft. request, and that the 5-ft. setback reduction is along the Miromar Street front and not on the side or rear, the variance request will not have any impact on the two adjoining properties. There are no anticipated impacts to property across the street from the subject property (275 Miromar Street). The new 20-ft. front setback will not negatively impact the adjacent 275 Miromar Street in that the 275 Miromar home is setback from Miromar Street by 25-ft., and is further separated by an 18-ft. paved street section and then a 20-ft. front yard at 272 Miromar.

- Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation is question.

The specific circumstances of the 272 Miramar Street site, namely the oddly shaped site with two 25-ft. setback requirements is not a general or reoccurring condition as to make it more reasonable to change the code. A minimum variance is required and is justified by the code.



New Cronen Fence w./5-ft. Seawall Setback and 34-1744(b)(3)
 "within 25-ft. of waterbody, those portions of the fence over 42" in height cannot be more than 25% opaque"



Existing June 17 272 Miromar Rear Yard



Existing June 17 Miramar Front Yard Setback w./Boat Ramp and Rip Rap Retaining Wall

The 25-ft. to 20-ft. Front Yard Variance Will Not Impact 275 Miramar Street Including Potential Front & Rear Yard Views Due To 43-ft. Separation & House Orientation

The 25-ft. to 20-ft. Front Yard Variance Will Not Impact 297 Ohio Street & 270 Miramar Street:
 * No Change In Required Setbacks;
 * Odd Shaped Shoreline Undulation;
 * Proposed Building Placement; &
 * Proposed New Fence and Existing Vegetation.

The Variance Request _ Front Setback Impacts Exhibit

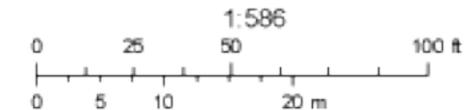
Prepared for: Dan Cronen, Tr.
 272 Miramar Street Fort Myers Beach, FL 33931



The 272 Miramar Variance Building Coverage Exhibit

Prepared for: Dan Cronen, Tr.
272 Miramar Street Fort Myers Beach, FL 33931

Site Parcel @ 0.21 ac./9,148 SF +/-
 Max. Building Coverage @ 40%
 Existing SF Home @ 955 SF +/- _ 10.4% Building Coverage
 Max Potential New Home w./Front Yard Setback Variance:
 * 3,522 SF (60.4-ft. x 58.3-ft.)/38.5% Building Coverage



**RESOLUTION NUMBER 2017-010 OF THE LOCAL PLANNING
AGENCY OF THE TOWN OF FORT MYERS BEACH FLORIDA
SEZ17 - 0002 & VAR17 - 0002 - PAINE PARKING LOT
PERMANENT SHARED PARKING LOT**

WHEREAS, Max Forgey, authorized agent for Fred & Nancy Paine are requesting a special exception and associated variances to construct a permanent shared parking lot consistent with Section 34-2011 of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP number for the subject property is 24-46-23-W3-0050B.0070 and the legal description of the subject property is attached as *Exhibit A*; and

WHEREAS, the subject property is located at 821 Estero Boulevard Fort Myers Beach, FL 33931, zoned Downtown on the Official Zoning Map and Pedestrian Commercial category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on November 14, 2017; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, 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 34-88.

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

1. **Determination.**

Based upon the recommendations, testimony, and evidence presented by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting variances, the LPA recommends approval of the following:

a. **Special Exception.** (SEZ17-0002)

The LPA recommends that the Town Council **APPROVE** the applicant's request for a special exception and associated variances to construct a permanent shared parking lot consistent with Section 34-2011 of the LDC to allow a 13 space shared parking lot as depicted on the site plan on the property described in attached Exhibit B.

b. **VariANCES.** (VAR17-0002)

- (1) Variance #1 from LDC section 10-416(d)(2) requirement from the right of way Type D buffer from 15 foot wide buffer consisting of 5 trees per 100 lineal feet and double staggered rows hedge and no wall to permit a 12 foot wide buffer consisting of 5 trees per 100 lineal feet and double staggered rows hedge and no wall adjacent to Lagoon Street is APPROVED.
- (2) Variance #2 from LDC section 10-416(d)(2) requirement from the Type C buffer from 15 foot wide buffer consisting of 5 trees per 100 lineal feet and double staggered rows hedge and wall to permit a 4 foot wide buffer with existing vegetation and no wall adjacent to 841 Lagoon Street is APPROVED.
- (3) Variance #3 from LDC section 10-416(d)(2) requirement from the right of way Type D buffer from 15 foot wide buffer consisting of 5 trees per 100 lineal feet and double staggered rows hedge and no wall to permit no buffer is APPROVED.
- (4) Variance #4 from 10-416(d)(2) requirement from the Type C buffer from 15 foot wide buffer consisting of 5 trees per 100 lineal feet and double staggered rows hedge and wall to permit a 6 foot wide buffer with 5 trees per 100 lineal feet and double staggered rows hedge and no wall adjacent to 831 Estero Boulevard is APPROVED.
- (5) Variance #5 the driveway separation requirement in LDC section 10-285 that connection separation centerline distance of a major street is 250 feet to permit approximately 70 feet and 90 feet for the exit and entrance centerline is APPROVED.

RECOMMENDED FINDINGS AND CONCLUSIONS:

a. Special Exception. In accordance with the requirements of LDC Section 34-88 for granting a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. There **exist** changed or changing conditions which make approval of the request appropriate.
2. The request **is consistent** with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.
3. The request **meets or exceeds** all performance and locational standards set forth for the proposed use.
4. The request **will** protect, conserve, or preserve environmentally critical areas and natural resources.

5. The request **will** be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

6. The requested use **will** be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in the Land Development Code including Chapter 34.

b. Variances. In accordance with LDC section 34-87, the LPA recommends that the Town Council finds the following:

- (1) That there **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- (2) That the conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulation in question.
- (3) That the variance granted **is** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.
- (4) That the granting of the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (5) That the conditions or circumstances on the specific piece of property for which the variance is sought **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

CONDITIONS OF APPROVAL

1. *Approval of this special exception does not exempt the subject property from any provisions of the LDC with the exception of the approved variances.*
2. *The property is allowed to operate a commercial shared parking lot following Town Council approval provided that the property must have a limited development order (LDO) within 60 days of the approval of this special exception or the property is subject to a five hundred dollar per day fine. Applicant can request additional 60 day extensions thru the Local Planning Agency and Town Council. The LDO must address a parking plan, stormwater retention/detention, access to the site, parking surface of the lot, buffering, and ADA issues.*

3. *Perimeter parking spaces must be delineated by placing a parking block three feet from the end of the parking space and centered between the sides of the space.*
4. *Signs must always be in compliance with Chapter 30 of the LDC.*
5. *The operator of the parking lot will provide a trash receptacle and maintain the lot in a litter free manner. The operator will ensure that the trash receptacle is appropriately placed and regularly emptied and hauled away by the franchised garbage hauler.*
6. *A lighting plan has not been approved. One must be submitted and approved by the Town Council prior to the installation of any site lighting for the parking lot. No lighting poles may be installed, only ground mounted lighting may be used on site.*
7. *The parking lot hours of operation are limited to 7:30 AM to 10:00 PM unless a special event permit (limited to 6 a year) is applied for and approved to accommodate parking for events such as 4th of July fireworks or New Year's Eve.*
8. *Violation of any of these conditions will result in the owner of the property being subject to a five hundred dollar per day fine, payable to the Town once the violation has been resolved and prior to any other development orders being issued for the site.*

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member #### and seconded by LPA Member ####, and upon being put to a vote, the result was as follows:

Hank Zuba, Chair	###	Suzie Katt, Vice Chair	###
Megan Heil, Member	###	Dan Hendrickson, Member	###
Jane Plummer, Member	###	Scott Safford, Member	###
Lorrie Wolf, Member	###		

DULY PASSED AND ADOPTED THIS 14th day of **NOVEMBER, 2017**.

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: _____
Jack Peterson
LPA Attorney

By: _____
Michelle Mayher
Town Clerk



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Special Exception (SEZ) & associated Variances (VAR)

CASE NUMBER: SEZ17-0002 & VAR17-0002

LPA HEARING DATE: November 14, 2017

LPA HEARING TIME: 9:00 AM

PREPARED BY/SUBMITTED BY: Matt Noble/Jason Green

STAFF RECOMMENDATION: **APPROVE SEZ & VARIANCES (5) with conditions**

I. APPLICATION SUMMARY

Applicant/Agent: Fred & Nancy Paine/Max Forgey

Request: Convert seasonal parking to year round Shared Parking Lot

Physical Address: 821 Estero Boulevard

STRAP #: 24-46-23-W3-0050B.0070

FLU/Zoning: Pedestrian Commercial/ Downtown

Current use(s): Two family residence and Vacant (previous Seasonal Parking Lot permit)

Adjacent zoning and land uses:

North: Lagoon Street, then RC (Residential Conservation), Mixed Residential FLUM, two family and single family residences

South: Estero Boulevard, CPD (Commercial Planned Development), Mixed Residential and then Recreation FLUM, Pink Porpoise Hotel

East: Downtown & RC (Residential Conservation), Boulevard FLUM, Keller Williams Real Estate Office

West: Mango Street then CB (Commercial Boulevard), Boulevard
FLUM, Multiple-family dwelling units

II. BACKGROUND AND ANALYSIS

Background:

The subject lot includes 2 platted lots, lots 7 and 8 as well as parts of lots 9, 13, and 14 of the Island Shores, unit 2, Block B, Plat Book 9, Page 25 (see Exhibit A). A copy of the Island Shores, Unit No. 2 plat has been included as Exhibit B. The subject site has been used as a Seasonal Parking lot in the past. A seasonal parking permit was issued for 2013 (see Exhibit D).

The owner of the property, Fred Paine, has applied for a special exception on May 2nd 2017, 2017, with a revised application submitted on August 7th, 2017 (See Exhibit H). The special exception application seeks to convert the seasonal parking to year round parking.

The applicant has provided a site plan for the proposed permanent shared parking lot labeled "821 Estero Blvd" (see Exhibit C). The site plan includes one access point to Estero Boulevard as well as a connection to the commercial parking lot that the owner operates to the west of the subject site. The proposal includes a central two way parking aisle and 13 parking spaces which include one handicap space.

Types of Parking Facilities

Parking is regulated by Division 26 of Chapter 34 of the Land Development Code (LDC). LDC Section 34-2011 sets out the types of parking facilities. The section delineates three types of facilities, single-purpose parking lots, shared parking lots, and on-street parking. The code specifies that single-purpose parking lots are designed to serve individual businesses, multiple-family buildings, mixed-use buildings, mixed-use buildings, and multiple-occupancy complexes. The subject parking lot does not qualify as a single-purpose parking lot. On-street parking, per the code, is provided by governmental entities, usually with parking meters. The subject parking lot does not qualify as on-street parking as it is an off street facility not provided by a governmental entity.

The code provides that shared parking lots are open to the public, generally for a fee, regardless of the destination of the person parking there. The code further provides that shared parking lots may be operated as a private business or by a government entity, and may include a surface parking lot and/or a parking garage. The subject parking lot is classified by the code as a shared parking lot and is operated as a private business with a surface parking lot. The subject parking lot has been operating as a seasonal shared parking lot. The operator charges a fee for persons to park within the parking lot.

The subject site is zoned "Downtown." The "Parking lot, shared permanent" use is permitted by special exception in the Downtown zoning category. The applicant, in staff's opinion, has filed the correct application to convert the seasonal use into a permanent share parking lot.

LDC Low Turnover Parking Lot

Staff notes that in the recent past (2013) the property has been used for seasonal parking. The parking lot is an unpaved gravel lot. The LDC defines (34-2012) the subject parking lot as a low turnover parking lot. The code definition of *Low turnover* is reproduced below:

Low turnover applies to parking where vehicles are parked for relatively long periods of time, such as employee parking during the day, uses such as beach parking or marina parking where customers typically leave their cars for periods of several hours or more, and overnight parking in residential developments.

Staff notes that the use qualifies as low turnover and these types of lots can be unpaved as specified in LDC Section 34-2017(b).

Special Exception Use

The LDC Chapter 34 defines the term special exception use as follows:

Use, special exception means a use or certain specified departures from the regulations of this chapter that may not be appropriate generally or without restriction throughout a zoning district, but which, when controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity, and may be permitted, in accordance with all applicable regulations.

As noted above, the shared parking lot is allowed provided a special exception is approved. The special exception process provides the opportunity to condition the requested use if the conditions are reasonably related to the impacts of the use that is the subject of the request.

ANALYSIS:

The site has been used as a parking lot since 2013 as verified by examining historic aerials on the Lee County Property Appraiser's website. The subject site also contains a residential structure that contains 2 living units. The site plan proposes to utilize the existing access point and driveway on Estero Boulevard. The application materials include a variety of letters of support. The application materials provide an analysis of the project's consistency with the Town's comprehensive plan which is discussed further below.

Comprehensive Plan Consistency:

The subject site is classified by the Town's comprehensive plan as "Pedestrian Commercial." The subject property was the subject of a small scale plan amendment to place the property in the Pedestrian Commercial category (see Exhibit F). The category descriptor policy is reproduced below:

POLICY 4-A-1 "PEDESTRIAN COMMERCIAL": *a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is 6 dwelling units per acre (except*

where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All "Marina" uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Non-residential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.

The year round parking lot will contribute to the pedestrian-oriented public realm by providing a place for island visitors to park and visit the beach or beach businesses. The lot will also support beach business by providing the opportunity for employee parking.

The parking lot is consistent with the intent of Goal 4 to keep Fort Myers Beach a healthy and vibrant "small town." The small size of the lot is consistent with Policy 4-A-1 direction to maintain "human scale." The proposed year round parking lot will contribute to the pedestrian-oriented public realm by providing a place for employees and island visitors to park and is thereby consistent with Policy 4-A-2. The parking lot has existed for a few years and the applicant has provided letters of support from several area residents. The proposed use is not a use that is intruding into a residential neighborhood and is thereby consistent with Policy 4-A-3. The parking lot is located to provide easy walking access to the beach and is thus consistent with Policy 4-A-4.

The parking lot is located in the Pedestrian Commercial future land use category. Policy 4-C-3 provides that new or expanded commercial uses are encouraged in this land use category.

Special Exception Considerations:

The Land Development Code includes a list of items that the Town Council must consider, if applicable, when reviewing approval of a requested special exception. These "Considerations" are contained in LDC Section 34-88 and are reproduced and discussed below.

- 1. Whether there exist changed or changing conditions which make approval of the request appropriate.*

The subject site has been used as a seasonal parking lot in the past. The applicant is desirous of using the parking lot year round. The site is in walking distance to Times Square/Lynn Hall Park as well as surrounding businesses and resorts. The Town recognizes the need for additional beach parking. The deletion of the seasonal parking provisions of the LDC and direction from Council that these uses should be converted into permanent shared parking lots are changed conditions that make approval of the request appropriate.

2. The testimony of any applicant; 3. The recommendation of staff and of the local planning agency; 4. The testimony of the public.

The Council will be able to hear from the applicant at the public hearing. The staff recommendation is contained in this staff report. The LPA recommendation will be obtained at the LPA public hearing. The public will have the opportunity to testify at the LPA public hearing as well as at the Town Council public hearing.

5. Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

The request is consistent with the intent and goals, objectives, and policies of the Fort Myers Beach Comprehensive Plan.

6. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

The proposed parking lot, as conditioned, meets all performance and locational standards for a parking lot and is consistent with other similar proposals.

7. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

The subject is cleared, contains no environmentally critical areas or natural resources to protect, conserve, or preserve. The property has been used as a seasonal parking lot in the recent past.

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

The request is compatible with existing and planned surrounding uses and will not cause damage, hazard, nuisance, or other detriment to persons or property. The owner of the subject property also owns the property to the west as well as other property on Lagoon Street. The neighborhood has coexisted with parking in the immediate area for many years.

9. Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The parking lot will be in compliance with the requirements, with the exception of approved variances, of LDC Division 26, Parking.

Requested Variances

The request also includes 5 variances from the Town's Land Development Code. These variances are related to buffers, access, and parking stall dimensions, and are discussed in detail below.

The first variance is from 10-416(d)(2) requirement from the right of way Type D buffer from 15 foot wide buffer consisting of 5 trees per 100 lineal feet and double staggered rows hedge and no wall to permit a 12 foot wide buffer consisting of 5 trees per 100 lineal feet and double staggered rows hedge and no wall adjacent to Lagoon Street.

The second variance is from 10-416(d)(2) requirement from the Type C buffer against the existing residence at 841 Lagoon Street from 15 foot wide buffer consisting of 5 trees per 100 lineal feet and double staggered rows hedge and wall to permit a 4 foot wide buffer with the existing vegetation and no wall adjacent to the residence at 841 Lagoon Street.

The third variance is from 10-416(d)(2) requirement from a Type D buffer from 15 foot wide buffer consisting of 5 trees per 100 lineal feet and double staggered rows hedge to permit no buffer.

The fourth variance is from 10-416(d)(2) requirement from the Type C buffer against the existing residence at 831 Estero Boulevard from 15 foot wide buffer consisting of 5 trees per 100 lineal feet and double staggered rows hedge and wall to permit a 6 foot wide buffer with 5 trees per 100 lineal feet and double staggered rows hedge and no wall adjacent to the residence at 831 Estero Boulevard.

The fifth variance is from the driveway separation requirement in 10-285 that connection separation centerline distance of a major street is 250 feet to permit approximately 70 feet and 90 feet for the exit and entrance centerline.

The application material contains a detailed discussion and analysis of LDC Section 34-87 consideration and required findings. The discussion touches on the relatively small size of the lot, the existing buffers on the site, that the existing structure buffers the parking lot from Estero Boulevard as the parking occurs behind the structure. Staff also notes that Council's decision to delete seasonal lot regulations is also a reason for the application.

Staff is generally in agreement with the applicant's analysis. The seasonal parking lot has coexisted with surrounding uses at this location for at least the last several years. The portion of the site used for parking is relatively small, being approximately 100 feet by 60 feet. Meeting code required buffers will use up substantial portions of the site impacting economic viability of the site for use as a parking lot. Staff is aware that the majority of the parking lots on the island do not provide the code required buffers. The relatively new parking lot on Crescent Street is a recent approval that also contained requested and ultimately approved variances concerning buffers (see Exhibit G).

Variance Findings:

1. *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

Concerning this finding the application provides the following discussion:

There are exceptional circumstances inherent to the property in question. It is a small, narrow lot with an existing house that has been used for many years as a commercial parking lot. This request is for a de minimis variance, for which rigid compliance would not protect public policy of public safety, would not result in improved aesthetics, and would severely limit the applicant's use of property.

Staff finds that there **are exceptional or extraordinary conditions or circumstances** that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

Staff believes that the direction from Council to transform the seasonal lots into permanent shared parking facilities is an exceptional or extraordinary condition or circumstance that is specific to this property. Staff notes that the surrounding uses have co-existed with the seasonal parking lot for several years at least since 2013. Staff only found a Use permit for a seasonal parking lot that covered a portion of 2013. The relatively small size of the lot and the desired use, a shared parking lot also contributes to these conditions.

2. *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.*

Concerning this finding the application provides the following discussion:

The conditions justifying the variance are not the result of actions that the applicant has taken after the adoption of the regulation in question. The subject property was used as a commercial parking lot before the applicant acquired the property.

Staff finds that the conditions justifying the variance **are not the result of actions of the applicant** taken after the adoption of the regulations in question. Staff acknowledges that this application is a result of Council direction to transform the seasonal parking lots into permanent shared parking facilities and this is not the result of the actions of the applicant.

3. *That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

Concerning this finding the application provides the following discussion:

The variance is the minimum variance that will relieve the applicant of an unreasonable burden caused by the enforcement of the regulation in question to the property. The parking plan illustrates a design which maximizes internal flow and number of parking spaces with an appropriate level of vegetative buffering along Lagoon St. and visual buffering along Estero Blvd.

Staff finds that the requested variances **are the minimum variances** that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to the property. Staff understands that there are limited design choices available to the applicant to accommodate a parking lot on the site given the size of the subject site. The ability to incorporate code compliant buffers is impossible to accommodate the desired number of parking stalls. Staff notes that the current lot does have existing landscaping and that this landscaping will be increased to meet code requirements in several locations which will help to soften the appearance of the parking lot. Staff acknowledges the general lack of beach parking and the need for additional beach parking. The existing access point has been in use and the size of the site and the existing onsite structure precludes the ability to meet connection separation standards.

4. *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

Concerning this finding the application provides the following discussion:

The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. It continues a longstanding use which is in harmony with neighboring uses, as demonstrated by the written testimony of neighbors attached to this application.

Staff finds that the granting of the variances will **not be injurious** to the neighborhood or otherwise detrimental to the public welfare. Approval will result in the installation of additional landscaping that meets the LDC's intent that landscape buffers be installed. The site has been used as a seasonal parking lot since at least since 2013. The project will essentially use the existing access point and driveway and the project's access point does not appear to have created any harm to the existing neighborhood and will not in the future.

5. *That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

Concerning this finding the application provides the following discussion:

The conditions on the specific piece of property for which the variance is sought are not of so general or recurrent in nature as to make it more reasonable and practical to amend the regulation in question. Because the Town of Fort Myers Beach is effectively built out, and because commercial parking lots such as this one are found throughout the island on lots that vary widely in dimension and in neighboring use, the regulation of commercial parking lots would not benefit from amending the Town's LDC to anticipate every possible condition. Accordingly, the variance process allows for common sense decision making.

Staff finds that the conditions or circumstances on the specific piece of property for which the variances are sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question. There were a limited number of seasonal parking lots that would potentially seek an approval to operate a permanent shared parking facility.

III. RECOMMENDATION

Staff recommends **APPROVAL** of the requested variances subject to conditions, including the considerations for approving a special exception under LDC Section 34-88 and the required findings of the 5 requested variances under LDC Section 34-87. Staff recommends approval of the special exception and proposed variances subject to the following conditions:

CONDITIONS OF APPROVAL:

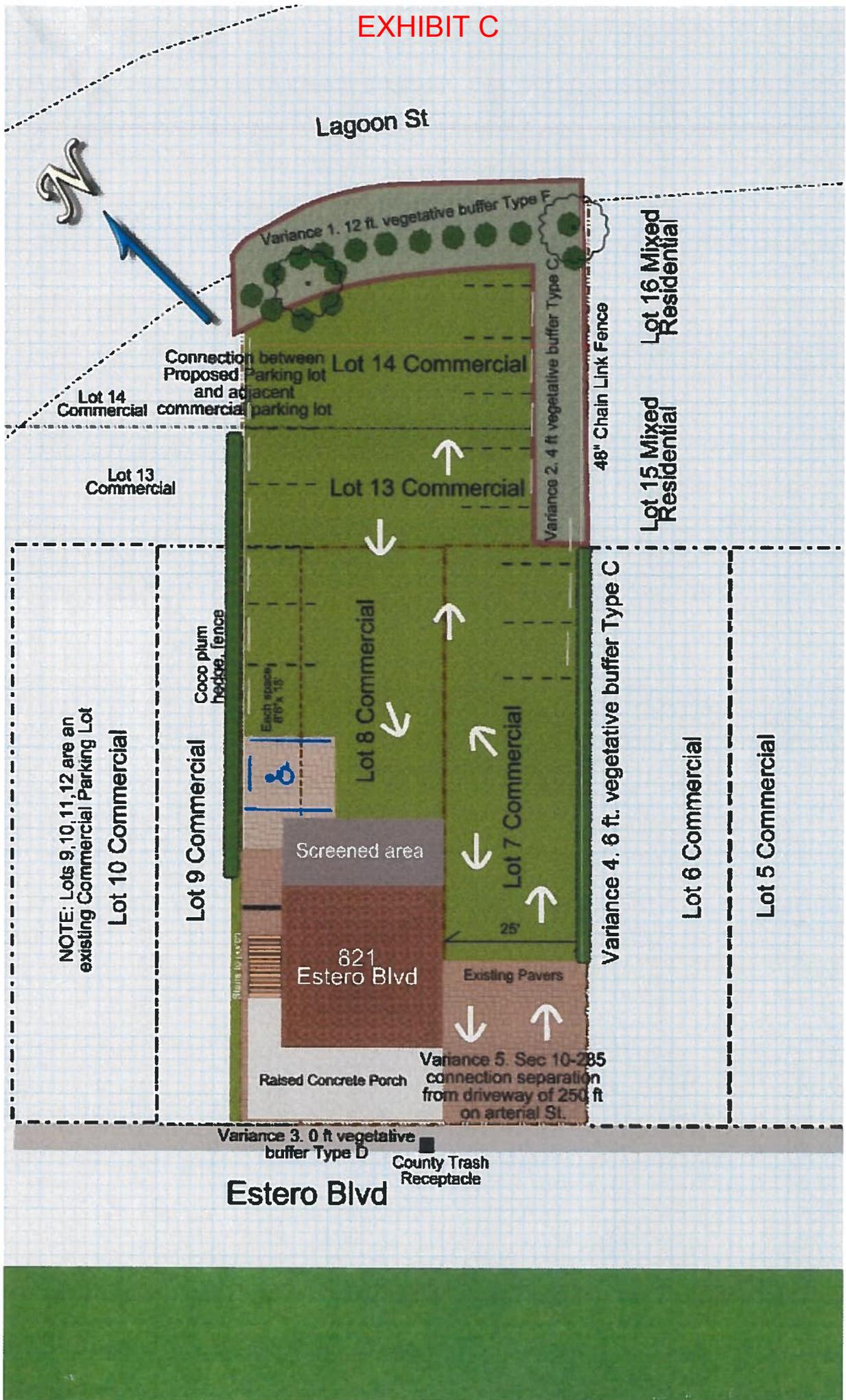
- 1. Approval of this special exception does not exempt the subject property from any provisions of the LDC with the exception of the approved variances.*
- 2. The property is allowed to operate a commercial shared parking lot following Town Council approval provided that the property must have a limited development order (LDO) within 60 days of the approval of this special exception or the property is subject to a five hundred dollar per day fine. Applicant can request additional 60 day extensions thru the Local Planning Agency and Town Council. The LDO must address a parking plan, stormwater retention/detention, access to the site, parking surface of the lot, buffering, and ADA issues.*
- 3. Perimeter parking spaces must be delineated by placing a parking block three feet from the end of the parking space and centered between the sides of the space.*
- 4. Signs must always be in compliance with Chapter 30 of the LDC.*
- 5. The operator of the parking lot will provide a trash receptacle and maintain the lot in a litter free manner. The operator will ensure that the trash receptacle is appropriately placed and regularly emptied and hauled away by the franchised garbage hauler.*
- 6. A lighting plan has not been approved. One must be submitted and approved by the Town Council prior to the installation of any site lighting for the parking lot. No lighting poles may be installed, only ground mounted lighting may be used on site.*
- 7. The parking lot hours of operation are limited to 7:30 AM to 10:00 PM unless a special event permit (limited to 6 a year) is applied for and approved to accommodate parking for events such as 4th of July fireworks or New Year's Eve.*

8. *Violation of any of these conditions will result in the owner of the property being subject to a five hundred dollar per day fine, payable to the Town once the violation has been resolved and prior to any other development orders being issued for the site.*

Staff Report Exhibits:

- A – Legal/Boundary Survey
- B – Unit No. 2, Island Shores Plat
- C – Site Plan
- D – Temporary Use Permit – TMP13-0014 Information
- E – 2013 Aerial
- F – Ordinance No. 10-02
- G – Resolution Number 16-03
- H – Application materials

EXHIBIT C



NOTE: Lots 9, 10, 11, 12 are an existing Commercial Parking Lot

Lot 10 Commercial

Lot 9 Commercial

Lot 8 Commercial

Lot 7 Commercial

821 Estero Blvd

Lot 14 Commercial

Lot 13 Commercial

Lot 16 Mixed Residential

Lot 15 Mixed Residential

Lot 6 Commercial

Lot 5 Commercial

Estero Blvd



Town of Fort Myers Beach

Community Development Department

2523 Estero Boulevard Fort Myers Beach, Florida 33931

(239) 765-0202

TEMPORARY USE PERMIT

Temporary Use Permit Number: TMP13-0014 Issued: 03/07/13

Business Name: 821 Seasonal Parking

Type of Business: Seasonal Parking Lot

Location Address: 821 Estero Boulevard
Fort Myers Beach FL 33931

Property Owner Contact: Brady Paine; 786-473-6742

STRAP Number: 24-46-23-W3-00500B.0070

Zoning District: DOWNTOWN

Approved Use and Conditions: VALID 03/07/13 to 07/15/13
Conditioned that four parking spots are reserved for the tenants of the rental
units of 821 Estero.

Expires: 7/15/13

Approved By: *Lexlee Chapman* Date: 03/07/13

Title: Zoning Coordinator

NOTE: The Town of Fort Myers Beach reserves the right to inspect the location listed above whenever the establishment is open to the general public.



Town of Fort Myers Beach

SEASONAL PARKING LOT PERMIT APPLICATION

Applicant: Brady Paine PERMIT: TMP 13-0014
 Address: 821 Estero Blvd.
 Phone Number: 786 473 6742 Email: Brady.Paine@gmail.com
 STRAP Number: 244623 w 30050 B0070
 Zoning: Commercial Lighting Installed: yes/no
 Address of seasonal lot: 821 Estero Blvd.
 Property Owner: Fred and Nancy Paine Phone: 786 473 6742
 Does the lot abut residentially zoned or used property: yes/no

ADDITIONAL INFORMATION

- A. A site plan drawn to scale that includes:
 - a. Lot dimensions
 - b. Location of access points
 - c. Internal circulation pattern
 - d. Parking stops indicating the end of each space
 - e. Aisles clearly delineated with temporary posts and ropes
 - f. Location of lighting if lot is to be used after sundown
- B. Lee County Business Tax Receipt
- C. A copy of public liability insurance, including property damage, with a minimum \$50/100,000 coverage
- D. If applicant is not the property owner, a notarized letter from the property owner giving the applicant permission to use the property for a temporary parking lot
- E. Hours of operation may not begin earlier than 7am or run later than 10pm
- F. As of November 15, 2010 a total of three consecutive or non-consecutive seasonal parking lot permits may be issued without requiring additional information.
- G. Fee of \$200.00

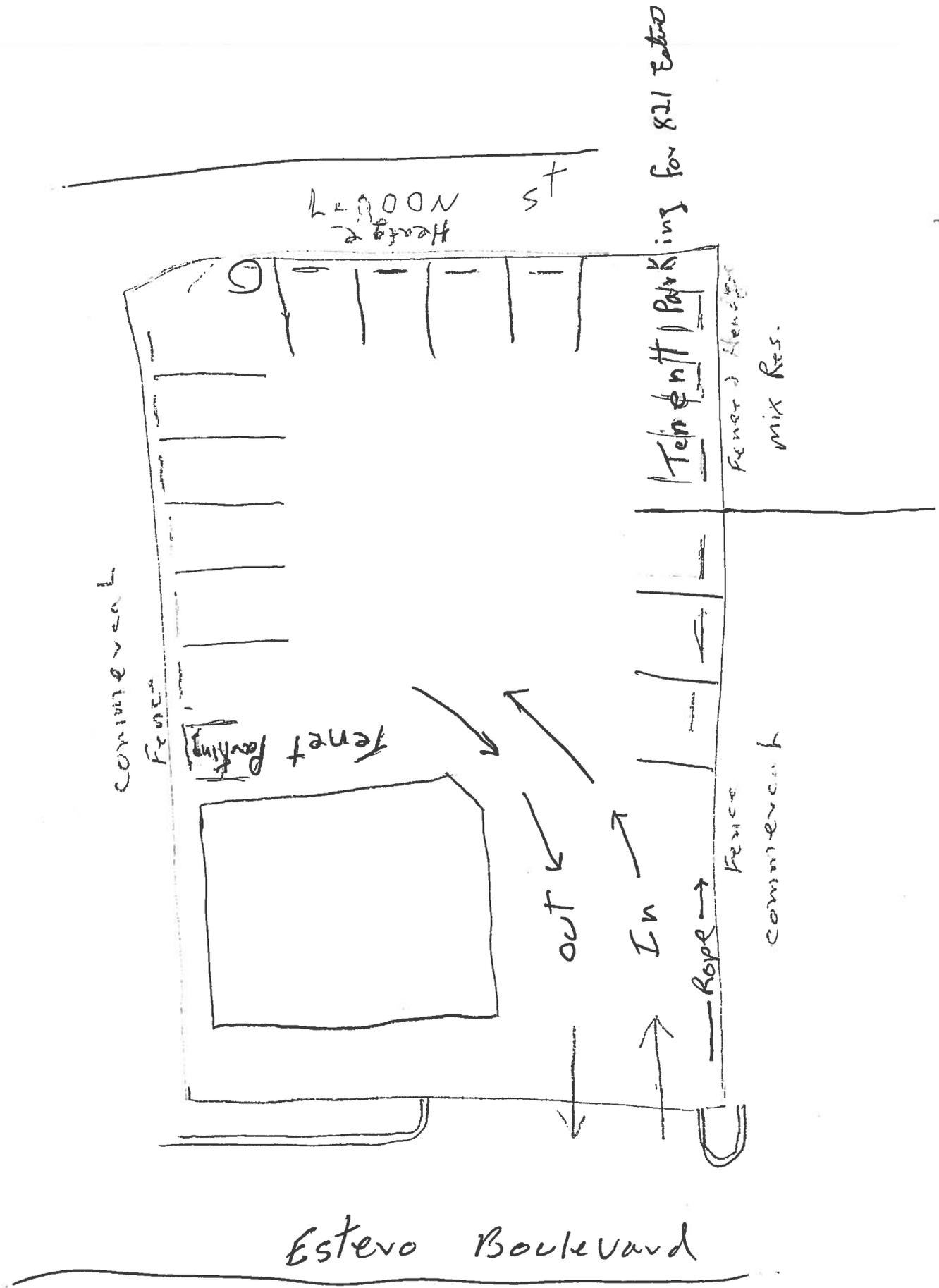
The undersigned applicant agrees to comply with the Town of Fort Myers Beach Land Development Code and any other applicable codes and certifies that to the best of his/her knowledge, the information submitted for the temporary permit is true and correct.

APPLICANT:  Date: 3/7/13

STAFF USE ONLY

Application Approved/Denied by: _____ Date: _____
 Fee: \$200 Paid: _____ Date: _____
 Inspector: _____ Date: _____
 Comments: _____

EXHIBIT D





Dwelling Declarations Page

ASI Insurance Corp
805 Executive Center Dr W Suite 300
St. Petersburg, FL 33702
For General Inquiries: (727) 374-2502



Named Insured:
Fred Paine And Nancy Paine
12 BELKNAP SHORES
Superior, WI 54880-

Total Policy Premium:	\$1,003
Policy Number:	6371-200-200
Agent:	
RTI Insurance / Ft Myers 6371 BUSINESS BLVD, STE 200 SARASOTA, FL 34240	
Agent Code:	411323
For Policy Service, Call:	(941)328-4487
E-Mail Address:	cmcgrath@rtiinsurance.com

Effective Date of This Transaction: 1/29/2013

Activity of This Transaction: Renewal

Residence Premises:
821 Estero Blvd,
Ft. Myers Beach, FL 33931

Policy Period: From: 01/29/2013 To: 01/29/2014
(At 12:01 AM Standard Time at the residence premises)

Plan Type: DP3

Coverage at the residence premises is provided only where a limit of liability is shown or a premium is stated.

Coverages and Limits of Liability

	Limit	Premium
A. Dwelling Coverage		
B. Other Structures	\$266,000	5399.80
C. Contents Coverage	\$3,320	Included
D. Loss of Use	\$30,000	776.40
L. Personal Liability - Each Occurrence / M. Medical Payments to Others - Each Person	\$26,600	Included
	\$300,000/5000	80.00

OTHER COVERAGES AND ENDORSEMENTS:
(Printed on the following page)

Deductibles:

HURRICANE:	N/A
ALL OTHER COVERED PERILS:	\$500
SINKHOLE LOSSES:	10% - \$26,600

Mortgages:

1st Mortgage:

2nd Mortgage:

EXHIBIT E

2013 Aerial

GeoView Map



October 12, 2017

- Countywide Zoning Jan 1
- H Hospital Locations
- H School Locations
- L Library Locations
- P School Locations
- P CCC_Parks

EXHIBIT F

ORDINANCE NO. 10-02

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH PROVIDING FOR A SMALL-SCALE AMENDMENT TO THE COMPREHENSIVE PLAN OF THE TOWN OF FORT MYERS BEACH TO RECLASSIFY CERTAIN PROPERTY FROM THE MIXED RESIDENTIAL CATEGORY TO THE PEDESTRIAN COMMERCIAL CATEGORY ON THE FUTURE LAND USE MAP; PROVIDING AUTHORITY; PROVIDING FOR CONFLICTS; SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Article VIII, Section 2 of the Constitution of the State of Florida and Chapters 166 and 163 of the 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 services, and exercise any power for municipal purposes except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter 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, Section 163.3187, Florida Statutes, provide that amendments to the Town of Fort Myers Beach Comprehensive Plan (Comp Plan) which are directly related to proposed small scale development activities may approved without regard to statutory limits on the frequency of consideration of amendments to such Comp Plan; and

WHEREAS, a small-scale development amendment may be adopted only under the conditions set forth in Section 163.3187, Florida Statutes and other provisions of State and local law; and

WHEREAS, James F. Purtell, Patrick Purtell, and Fred Paine have applied to the Town for an amendment to the Comp Plan Future Land Use Map (FLUM) to reclassify property located at 821 Estero Boulevard and 831 Estero Boulevard (the subject property) from the "Mixed Residential" FLUM category to the "Pedestrian Commercial" FLUM category, with the legal description, STRAP number and other relevant information regarding the subject property and proposed amendment to the FLUM being attached to this Ordinance as Exhibit A and hereby incorporated by reference; and

WHEREAS, in accordance with the requirement that the Town Local Planning Agency (LPA) is required to review all proposed amendments to the Comp Plan, the LPA on March 23, 2010, at a duly noticed meeting, conducted a hearing on this ordinance and provided the Town Council with its comments via LPA Resolution 2010-03 which was reviewed by the Town Council at hearing; and

WHEREAS, in accordance with the requirements of the Town Charter, the Land Development Code, the Comp Plan, and Florida statute, this ordinance was introduced before Town Council on April 5, 2010 and the Town Council conducted a duly noticed hearing on this ordinance on April 19, 2010, at which time the Town Council considered the documents in the file, the testimony of all interested persons, the application, the LPA resolution and all other relevant matters; and

EXHIBIT F

WHEREAS, the measures set forth in this Ordinance are necessary to provide for the protection of public health, safety and welfare of the citizens of the Town.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS. The above "whereas" clauses are incorporated herein as though fully set forth.

SECTION 2. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO WHETHER APPLICATION MEETS CRITERIA TO BE CONSIDERED FOR A SMALL-SCALE AMENDMENT. In accordance with the requirements of Section 163.187(c), Florida Statutes, the Town Council makes the following findings of fact:

- (1) the proposed amendment **DOES** involve a use of 10 acres or fewer;
- (2) the cumulative annual effect of the acreage of all small scale amendments **DOES NOT** exceed certain the statutory threshold of 80 acres;
- (3) the proposed amendment **DOES NOT** involve the same property granted a change within the previous 12 months;
- (4) the proposed amendment **DOES NOT** involve the same owner's property within 200 feet of a property granted a change within the previous 12 months;
- (5) the proposed amendment **DOES NOT** involve a text change to the goals, policies and objectives of the Town's Comprehensive Plan and **DOES** only involve a change to the FLUM;
- (6) the property **IS NOT** located in an "area of critical state concern";
- (7) any proposed residential use involved **DOES** have a density of 10 units or less per acre; and
- (8) Applicants' application **DOES** meet the statutory requirements to be considered for a small-scale amendment.

SECTION 3. FINDING OF FACT AND CONCLUSIONS OF LAW AS TO WHETHER THIS. The Town Council finds that the proposed FLUM amendment **IS** clearly in the best interest of the health, safety and welfare of the Town's residents, businesspersons and property owners and such change **IS** necessary to provide for orderly future growth of the community, for the following reasons:

The proposed amendment will likely have **POSITIVE** impact on affected traffic, utilities, other services, and future capital expenditures

SECTION 4. AMENDMENT OF COMPREHENSIVE PLAN FUTURE LAND USE MAP. The Council hereby **GRANTS** applicants' request to amend the Town Comprehensive Plan Future Land Use Map as set forth on Exhibit A.

SECTION 5. DIRECTION TO TOWN MANAGER. The Town Manager is hereby directed to send copies of the public notice for the Council hearing as well as a copy of the amendment as soon as possible following said hearing to the state land planning agency, the regional planning council and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan and shall otherwise comply in all respects to the requirements of

EXHIBIT F

Section 163.3187, Florida Statutes. Upon the Ordinance becoming effective as provided in Section 6 below, the Town Manager is directed to take all actions necessary to codify this amendment into the Comprehensive Plan Future Land Use Map.

SECTION 6. EFFECTIVE DATE. In accordance with the requirements of Section 163.3187, Florida Statutes, this ordinance shall become effective upon the expiration of 31 days after its adoption. However, if challenged within 30 days after adoption, this ordinance shall not become effective until the state land planning agency or the Administration Commission, respectively, issues a final order determining this Ordinance is in compliance.

SECTION 7. CONFLICTS. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive shall apply.

SECTION 8. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held as invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and shall in no way affect the validity of all other provisions of this ordinance.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Jo List and seconded by Councilmember Bob Raymond and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor	<u>aye</u>	Bob Raymond, Vice Mayor	<u>aye</u>
Tom Babcock	<u>aye</u>	Jo List	<u>aye</u>
Alan Mandel	<u>aye</u>		

DULY PASSED AND ENACTED this 19th day of April, 2010.

ATTEST:


Michelle D. Mayher Town Clerk

TOWN OF FORT MYERS BEACH

BY: 
Larry Kiker, Mayor

Approved as to legal form by:


Anne Dalton, Esquire
Town Attorney

EXHIBIT F

Ordinance 10-02

821 Estero Boulevard

Lots 7 and 8, and the East 10 feet of Lot 9, together with the land lying between the Northern boundary of the aforementioned lots and Lagoon Street, being that portion of Lots 13 and 14 lying between an extension of the Southeasterly line of Lot 7 to Lagoon Street and an extension of a line parallel to and 10 feet Northwesterly from the Southeasterly line of Lot 9, running from Estero Boulevard to Northerly line of said Lot 9, thence extended to Lagoon Street; all being in Block B, ISLAND SHORES UNIT 2 SUBDIVISION, as recorded in Plat Book 9, Page 25, Public Records of Lee County, Florida.

24-46-23-W3-0050B.0070



EXHIBIT F

Ordinance 10-02

831 Estero Boulevard

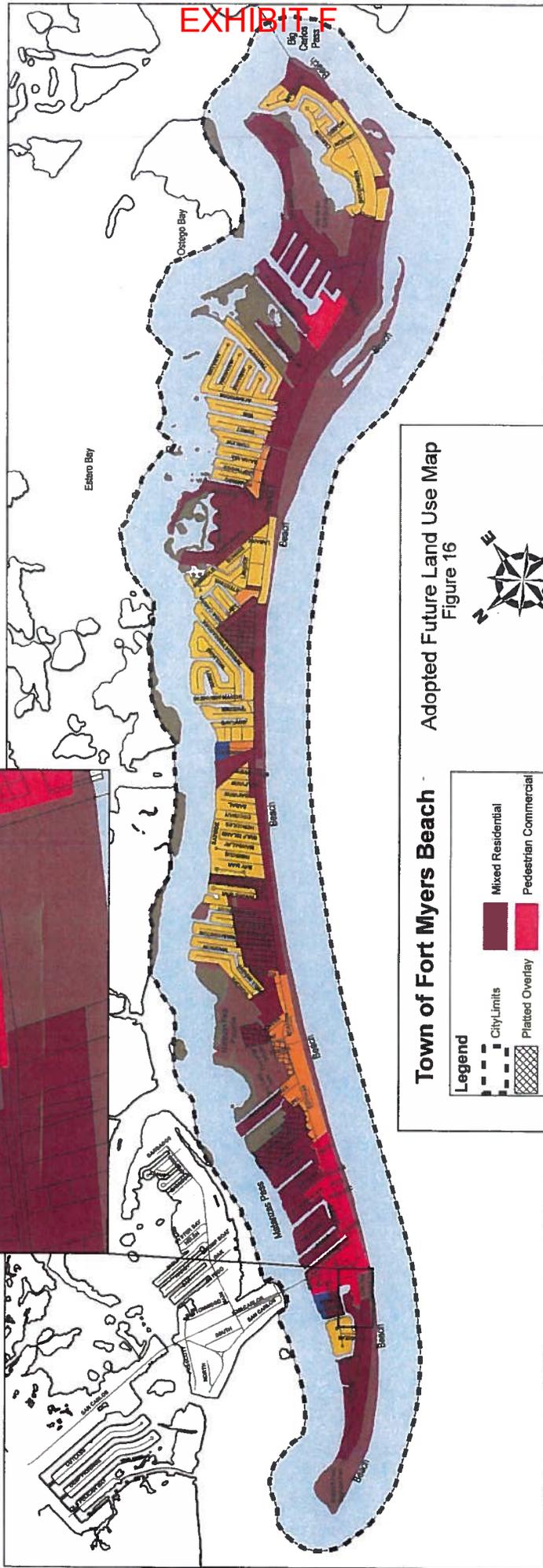
Lots 5 and 6, Block B, ISLAND SHORES UNIT 2 SUBDIVISION, as recorded in Plat Book 9, Page 25, Public Records of Lee County, Florida.

24-46-23-W3-0050B.0050





EXHIBIT F



Adopted Future Land Use Map
Figure 16

Town of Fort Myers Beach

- Legend**
- City Limits
 - Platted Overlay
 - Boulevard
 - Low Density
 - Marina
 - Mixed Residential
 - Pedestrian Commercial
 - Recreation
 - Tidal Water
 - Wetlands



January 1, 1999

As Amended Through May 20, 2010

Original Prepared by Robert J. Prewitt Associates
and Lee County Property Appraiser's Office
Updated and Maintained by Fort Myers Beach
Community Development Department

EXHIBIT G

RESOLUTION NUMBER 16-03

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA SEZ 2015-0004 Permanent Shared Parking Lot VAR 2015-0005 Site Related Variances For 140 and 150 Crescent Street

WHEREAS, Greg Stuart, authorized agent for John Richard, applicant and owner of the subject property, filed applications to obtain a special exception for a permanent shared parking lot (SEZ2015-0004) and permit variances from Land Development Code (LDC) s. 10-416, 34-1744 and Tables 10-8 and 10-9 to allow alternative buffering, fencing and landscaping in accordance with a plan approved by the Town (VAR2015-0005); and

WHEREAS, Applicant has indicated the STRAP numbers for the subject property are 19-46-24-W4-0150E.0060 and 19-46-24-W4-0150E.005B, and the subject property is legally described as indicated on attached Exhibit A; and

WHEREAS, the subject property is physically located at 140 and 150 Crescent Street, Fort Myers Beach, Florida, and within the Downtown zoning districts; and

WHEREAS, a duly advertised public hearing was held before the Local Planning Agency (LPA) on November 17, 2015; and

WHEREAS, the LPA recommended approval subject to certain conditions after full and complete consideration to the Applicant's request, recommendations of Town staff, documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) s. 34-84; and

WHEREAS, on February 16, 2016, the Town Council held a duly advertised public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by LDC s. 34-88; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve the request.

NOW THEREFORE, BE IT ORDAINED by the Town Council of the Town of Fort Myers Beach, Florida, as follows:

1. **Determination.**

Based upon the recommendations, testimony, and evidence presented by Town staff, LPA, and interested parties, the Town Council approves the following:

a. **Special Exception.** (SEZ2015-0004)

The special exception for a permanent shared parking lot to be located on the property described in attached Exhibit A is APPROVED, subject to the conditions set forth in this Resolution.

EXHIBIT G

b. Variances. (VAR2015-0005)

- (1) Variance #1 from LDC s. 10-416(d)(2), which requires a Type "D" Buffer, to allow a one foot wide buffer with a four foot high white picket fence along Crescent Street and a variance from LDC s. 10-416(d)(2), which requires a Type "C/F" Buffer, to allow a one foot wide buffer with a eight foot high solid wall along the northern property boundary is APPROVED.
- (2) Variance #2 from LDC s. 34-1744, which requires that any fence or wall located in a side or rear yard may not exceed six feet in height, to allow an 8-foot high solid wall within one foot of the northern property line is APPROVED.
- (3) Variance #3 from LDC s. 10-416(c)(2), which requires internal landscaping, to allow landscaping as shown on attached Exhibit B is APPROVED.
- (4) Variance #4 for LDC s. 10-416(d)(2), Tables 10-8 and 10-9, which require a Type "C" Buffer, to allow for no buffer along the site's west boundary is APPROVED.

2. Conditions.

- a. Approval of the special exception does not exempt the subject property from any provisions of the LDC. The development of the parking lot must be generally consistent with the site and landscaping plans attached as Exhibit B. The buffer at the time of installation must be a minimum of three feet in height and must be maintained at 4 feet in height.
- b. The property must be the subject to a limited development order (LDO) within two years of the approval of this special exception. The LDO must address a parking plan, stormwater retention/detention, access to the site, parking surface of the lot, buffering, walkways and ADA issues.
- c. Signage must be consistent with the requirements of LDC chapter 30.
- d. The operator of the parking will provide minimum of two trash receptacles. The operator will ensure that the receptacles are regularly emptied and trash hauled away by the franchised garbage hauler.
- e. The operator of the parking lot must install a fence along Crescent Street right-of-way. The fence must be a minimum of four feet in height and be installed prior to the parking lot improvements being finalized.
- f. The operator/owner of the parking lot will coordinate with Lee Tran to assure that there are no conflicts with their stop on Crescent Street in the vicinity of the project.
- g. The parking lot hours of operation are limited to 7 AM to 11 PM unless a special event permit (limited to 6 a year) is applied for and approved to accommodate parking for events in the Times Square area such as Fourth of July Fireworks or New Year's Eve.

EXHIBIT G

- h. No lighting poles may be installed, only ground mounted lighting may be used on site. A lighting plan must be administratively approved prior to the installation of any site lighting.
- i. Stops or bollards must be included in the buffer area along the canal to prevent cars from entering the canal.
- j. If possible, the site must include a center strip of landscaping.

3. Findings and Conclusions of Law.

- a. **Special Exception.** In accordance with LDC s. 34-88, the Town Council finds as follows:
 - (1) There are changed or changing conditions that make approval of the special exception request appropriate.
 - (2) The request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.
 - (3) The request meets or exceeds all performance and locational standards set forth for the proposed use.
 - (4) The request will have no negative effects on environmentally critical areas and natural resources.
 - (5) The request will be compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property.
 - (6) The requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.
- b. **Variations.** In accordance with LDC 34-87, the Town Council finds the following:
 - (1) There are exceptional or extraordinary conditions or circumstances that are inherent in the property in question, or the request is for a *de minimus* variance under the circumstances or conditions where ridged compliance is not essential to protect public policy.
 - (2) The conditions justifying the variance are not the result of actions of the applicant taken after adoption of the regulations in question.
 - (3) The variations granted are the minimum variations that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.
 - (4) The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

EXHIBIT G

- (5) The conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

THE FOREGOING RESOLUTION was adopted by the Town Council upon a motion by Council Member Mandel, seconded by Vice Mayor Andre and upon being put to a vote the results was as follows:

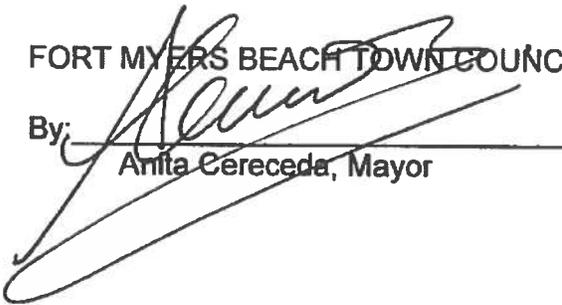
Anita Cereceda, Mayor	aye	Dan Andre, Vice Mayor	aye
Rexann Hosafros	aye	Alan Mandel	aye
Summer Stockton	aye		

DULY PASSED AND ADOPTED this 16th day of February, 2016.

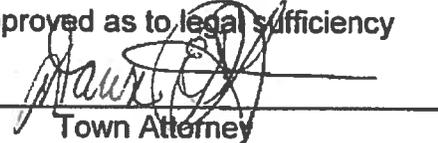
ATTEST:

By: 
Michelle Mayher, Town Clerk

FORT MYERS BEACH TOWN COUNCIL

By: 
Anita Cereceda, Mayor

Approved as to legal sufficiency


Town Attorney

Exhibits

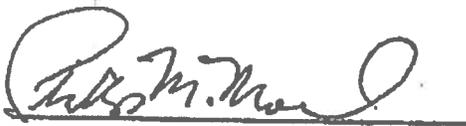
- A: Legal and sketch of entire parcel (attachment A to staff report)
- B: Site and Landscaping Plans

DESCRIPTION:

LOT 6, AND THE NORTHERLY 40 FEET OF LOT 5, BLOCK E, OF THAT CERTAIN SUBDIVISION KNOWN AS CRESCENT PARK ADDITION, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF LEE COUNTY, FLORIDA, IN PLAT BOOK 4, PAGE 46, LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA; TOGETHER WITH THAT CERTAIN STRIP OF LAND EXTENDING EAST FROM LOT 6 AND THE NORTHERLY 40.00 FEET OF LOT 5, BLOCK E, OF SAID CRESCENT PARK ADDITION, TO THE CANAL, SAID STRIP OF LAND LYING BETWEEN THE NORTH AND SOUTH LINES EXTENDED EAST OF SAID LOT 6, BLOCK E, AND THE NORTHERLY 40 FEET LOT 5, BLOCK E, TOGETHER WITH RIPARIAN RIGHTS UPON AND TO THE WATERS OF SAID CANAL SAID PARCEL OR PLOT OF LAND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER LOT 6, BLOCK "E" CRESCENT PARK ADDITION, AS RECORDED IN PLAT BOOK 4, PAGE 46, PUBLIC RECORDS OF LEE COUNTY, FLORIDA THENCE RUN N.89°14'50"E. TO THE WATERS EDGE FACE OF A CONCRETE SEAWALL AND CANAL RIGHT OF WAY FOR 33.71 FEET; THENCE RUN ALONG SAID WATERS EDGE FACE OF SEAWALL CANAL RIGHT OF WAY THE FOLLOWING BEARINGS AND DISTANCES: S.01°56'14"E. 39.49 FEET, S.01°21'12"W. 50.42 FEET; THENCE DEPARTING SAID WATERS RUN S.89°14'50"W. TO THE EASTERLY RIGHT OF WAY LINE CRESCENT STREET PER RIGHT OF WAY TAKING AS RECORDED IN OFFICIAL RECORDS BOOK 2370, PAGES 211 AND 215, CLERK OF THE CIRCUIT COURT, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR 124.07 FEET; THENCE RUN N.00°04'00"E. ALONG SAID EASTERLY RIGHT OF WAY LINE FOR 89.88 FEET; THENCE RUN N.89°14'50"E. TO THE NORTHEAST CORNER SAID LOT 6, BLOCK E FOR 90.12 FEET AND THE POINT OF BEGINNING.

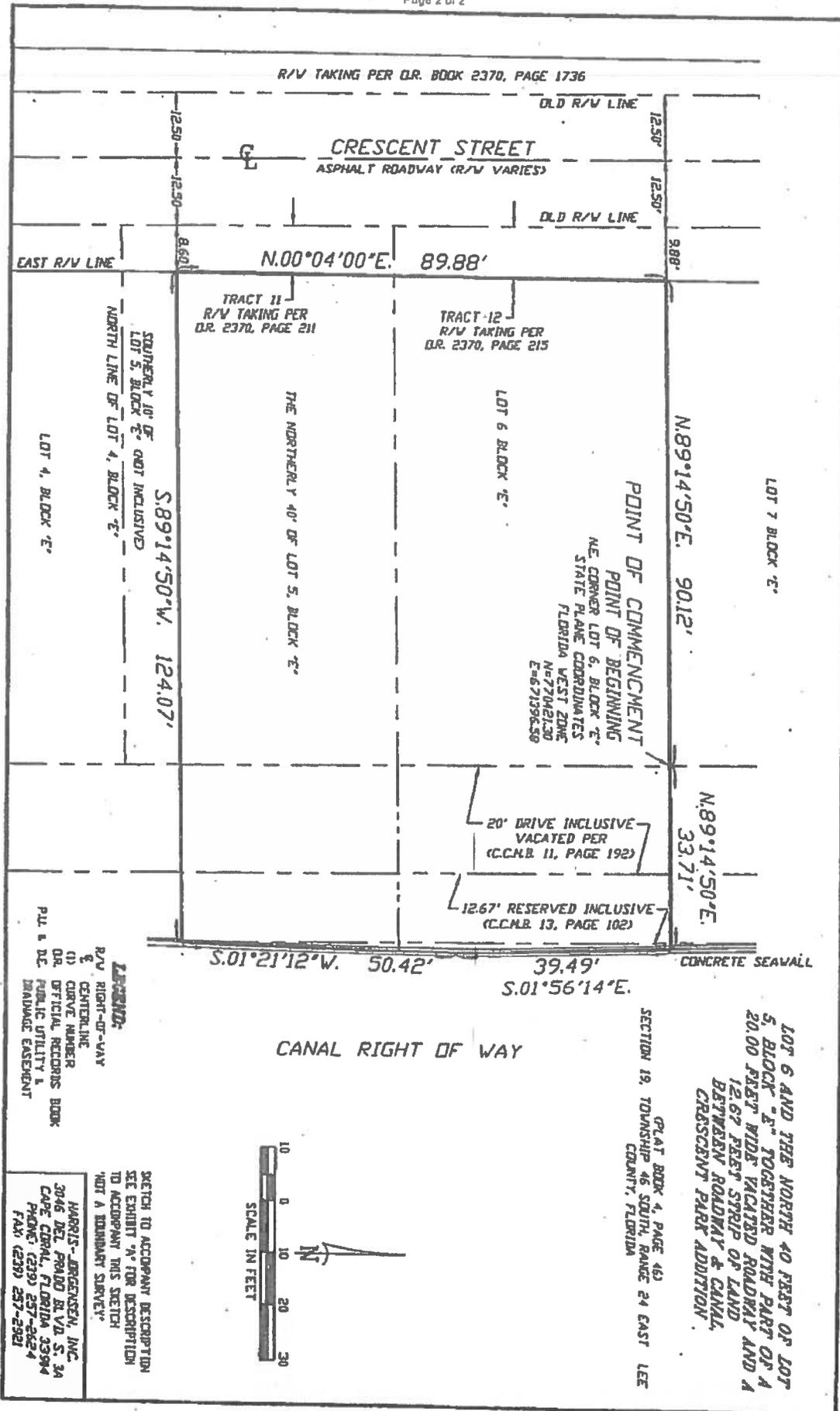
CONTAINING: 11,196.41 SQ. FT MORE OR LESS.



PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
#6515 - STATE OF FLORIDA
1/20/2016

EXHIBIT 'A'

HARRIS-JORGENSEN, INC.
3046 DEL PRADO BLVD. S. 3A
CAPE CORAL, FLORIDA 33904
PHONE: (239) 257-2624
FAX: (239) 257-2921



**RESOLUTION NUMBER 2017-014 OF THE LOCAL PLANNING
AGENCY OF THE TOWN OF FORT MYERS BEACH FLORIDA
DCI17 - 002 – Dullard RPD
Pre-Disaster Buildback Application**

WHEREAS, Charles Capps, authorized agent for Robert Dullard is requesting a rezoning of the subject site from Residential Multifamily (RM) to Residential Planned Development (RPD) with associated deviations to reconstruct 4 dwelling units (5 dwelling units exist onsite) consistent with Section 34-3237 of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP number for the subject property is 24-46-23-W3-00400.0050 and the legal description of the subject property is attached as *Exhibit A*; and

WHEREAS, the subject property is located at 764-768 Estero Boulevard Fort Myers Beach, FL 33931, zoned RM on the Official Zoning Map and Mixed Residential category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on November 14, 2017; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, 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 34-88.

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

The LPA recommends that the Town Council **DENY** the applicants request to rezone the subject site from Residential Multifamily (RM) to Residential Planned Development (RPD) with associated deviations.

RECOMMENDED FINDINGS AND CONCLUSIONS:

a. Rezoning. In accordance with the requirements of LDC Section 34-85 for granting a rezoning, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. The request **is inconsistent** with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan, specifically Policy 4-E-1.
2. There **does not exist** changed or changing conditions which make approval of the request appropriate.

3. The request **does not** meets or exceeds all performance and locational standards set forth for the proposed use.
4. The request **will** protect, conserve, or preserve environmentally critical areas and natural resources.
5. The request **will** be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
6. The requested use **will not** be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in the Land Development Code including Chapter 34.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member ##### and seconded by LPA Member #####, and upon being put to a vote, the result was as follows:

Hank Zuba, Chair	###	Dan Hughes, Vice Chair	###
Megan Heil, Member	###	Dan Hendrickson, Member	###
Jane Plummer, Member	###	Scott Safford, Member	###
Lorrie Wolf, Member	###		

DULY PASSED AND ADOPTED THIS 14th day of **NOVEMBER, 2017**.

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: _____
Jack Peterson
LPA Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Residential Planned Development (DCI)

CASE NUMBER: DCI17-0002

LPA HEARING DATE: November 14, 2017

LPA HEARING TIME: 9:00 AM

STAFF RECOMMENDATION: DENY THE REZONING.

I. APPLICATION SUMMARY

Applicant/Agent: Robert and Dana Dullard/Charles Capps

Request: Rezone the Residential Multifamily (RM) portion of the subject site to Residential Planned Development (RPD) to permit the redevelopment of a single family residence and a 3-unit multifamily residential building, residential accessory uses, and 6 deviations.

Subject property: See Exhibit A

Physical Address: 764-768 Estero Boulevard

STRAP #: 24-46-23-W3-00400.0050

FLU: Mixed Residential & Recreation

Zoning: Residential Multifamily (RM) & Environmentally Critical (EC)

Current use(s): two duplex two family buildings & one single family residence (total of 5 existing living units on the subject property)

Adjacent zoning and land uses:

North: Estero Boulevard, then RC (Residential Conservation), Mixed Residential FLUM, two family and single family residences

South: Gulf of Mexico, Tidal Water FLUM

East: RM (Residential Multifamily), Mixed Residential FLUM, Bel-Air Beach Club condos then Royal Beach Club condos

West: RM (Residential Multifamily), Mixed Residential FLUM, a two family residence, two single family residences, then the Bay to Beach Condos

II. BACKGROUND AND ANALYSIS

Background:

The subject property includes part of Lot 5 of Unit 1, Island Shores, recorded in Plat Book 9, Page 24 Clerk of the Circuit Court of Lee County. A copy of the Island Shores, Unit No. 1 plat and legal description has been included in the application materials (see Exhibit A). The subject site is currently developed with two (2) duplex two-family buildings and one single family residence. Thus the site is developed with 5 dwelling units. The applicant proposes to utilize the pre-disaster buildback provisions of the comprehensive plan and the Land Development Code (LDC) to redevelop the site with a single family residence and a three-unit multifamily residential building.

Policy 4-E-1 of the Town’s Comprehensive Plan sets forth the Pre-Disaster Buildback Policy for the Town. This policy is reproduced below:

POLICY 4-E-1 PRE-DISASTER BUILDBACK POLICY:

Owners of existing developments that exceed the current density or height limits may also be permitted to replace for the same use it at up to the existing lawful density and intensity (up to the original square footage) prior to a natural disaster. Landowners may request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such a request based on the conformance of the specific proposal with this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. The Town Council may approve additional enclosed square-footage only if an existing building is being elevated on property that allows commercial uses; dry-flood-proofed commercial space at ground level could be permitted in addition to the replacement of the pre-existing enclosed square footage.

The LDC also contains a section, Section 34-3237, specific to the pre-disaster buildback process. This section of the code is reproduced below:

Sec. 34-3237 Pre-disaster buildback

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings may seek permission from the town council to voluntarily replace those buildings at up to the existing lawful density or intensity and up to the

existing height in accordance with Policy 4-E-1 of the Fort Myers Beach Comprehensive Plan, as follows:

(1) The replacement building must meet the floodplain regulations for new buildings, as provided in article IV of ch.6 of this LDC.

(2) The replacement building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 of this LDC and in state regulations. Due to these requirements, habitable major structures and most minor structures must be rebuilt landward of the 1978 coastal construction control line.

(3) The replacement building must comply with all current building, life safety, and accessibility codes.

(4) The replacement building cannot exceed the lawful density and intensity of the existing building:

- a. As measured for residential buildings in § 34-3238(2)d. of this chapter;*
- b. As measured for hotel/motels in § 34-3238(2)e. of this chapter; or*
- c. As measured for all other buildings by the gross square footage.*

(5) Each specific pre-disaster buildback proposal must be proposed to the town council through the planned development rezoning process (see division 6 of article III of this chapter), along with any proposed deviations from this code.

(6) The Town council will approve, modify, or deny each such request based on its opinion of the degree of conformance of the specific proposal with the Fort Myers Beach Comprehensive Plan, specifically including the plan's land-use and community design policies, pedestrian orientation, and natural resource criteria.

(7) If the lowest floor of the rebuilt building must be elevated higher than the existing building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount. However, any pre-disaster buildback request for additional height beyond that increment must comply with Policy 4-C-4 of the comprehensive plan in the same manner as that policy would apply to an entirely new building on vacant land.

The owner of the property, Robert Dullard, has applied for a rezoning of the property on April 25th 2017, with a revised application submitted on August 2nd, 2017 (see Exhibit I). The rezoning accommodates the desired redevelopment of the subject property.

The applicant has provided a Master Concept Plan (MCP) for the proposed Residential Planned Development as well as a Conceptual Drainage Plan (see Exhibit B). The MCP includes one access point to Estero Boulevard that serves all of the proposed dwelling units. The MCP depicts an access aisle on the western side of the property and includes 9 parking

spaces which include one handicap space. The application also provides a proposed Property Development Regulations (see Exhibit C).

ANALYSIS:

The property owner is seeking the ability to redevelop the subject site through the pre-disaster buildback provisions of the Town’s Comprehensive Plan and Land Development Code (LDC) by utilizing the Residential Planned Development rezoning process. In this case, the applicant is proposing to buildback to a reduced density as exists on the site. As stated previously, 5 dwelling units currently exist on the site and the applicant is proposing to buildback 4 dwelling units, 3 units in a multifamily building and a single family dwelling unit.

Parking

Required parking spaces by use are contained in LDC section 34-2020. At worst case, each dwelling unit has 3 or more bedrooms so 1.5 spaces per unit or 6 spaces is required, the MCP depicts 9 spaces including one handicap space. Staff concludes that the project meets the code required amount of parking and in fact exceeds the required amount of parking.

Deviations

The applicant is proposing a total of 6 deviations to achieve the proposed development that is contained on the MCP. Concerning these deviations the application provides the following discussion summary discussion:

The Applicant is seeking a deviation from the RM Zoning District’s site development regulations to allow for the following:

- 1. A maximum height 35 feet above base flood elevation with three (3) habitable stories. This proposed height will be significantly lower than the building height of the condominium to the east and will not impact existing views of the Gulf of Mexico from adjacent properties.*

- 2. A side setback on the eastern property line on the multifamily building of 7.5 feet. The site plan has been designed for minimal impact on adjacent properties. The building for the Bel-Air Beach Club starts south of the proposed location of the multifamily building and the minimum setback is being maintained on the western property boundary which is currently single-family and multifamily residential property. All other setbacks meet the requirement for the building types proposed.*

- 3. The proposed Floor Area Ratio is exceeded by 409 square feet. The RM Zoning District provided for a Floor Area Ration (SIC) of 1.2 which translates to 16,374 square feet. We are requesting a total floor area of 16,783 square feet. Due to the elevation requirements for base flood elevation, much of the space under the single family residence is unusable other than for storage.*

- 4. A total of 9,520 feet of total interior square footage which is an increase from the total of 3,570 interior square footage that the existing development contains. The pre-*

disaster buildback regulations in Section 34-3237(4) of the LDC does not allow for additional square footage in the redeveloped structure.

5. *A buffer along the western property line adjacent to the multifamily feet of 5 feet with the same number of trees as required in a Type B buffer in accordance with section 10-416(d)(2) of the LDC and a minimum of 15 shrubs per 100 linear feet. No other landscape buffer is required for the proposed development.*

6. *Relocation of the existing driveway to the western property line to adjoin to the driveway of the adjacent parcels. Section 10-416(d)(2) of the LDC required a connection separation of 250 feet which is not possible on the subject property with a width of 67 feet. The proposed driveway connection increases the separation from the driveway to the east and reducing the total number of connections to Estero Blvd.*

The proposed RPD meets the underlying intent of the pre-disaster buildback by ensuring compliance with the current coastal construction and floodplain regulations, which will result in a safer, more storm-resistant structure. Additionally, the RPD will provide for the visual enhancement of the subject property, which benefits surrounding property owners and viewsheds and view corridors of Estero Boulevard.

The application provides a Schedule of Deviations and Justifications, Exhibit D-1-F. Staff will discuss the proposed deviations and the applicant's justifications in order below.

1. Deviation from Table 34-3 of the LDC, which allows for a maximum height of 30 feet/3 stories, to allow for a maximum height of 35 feet/4 stories.

The application provides the following justification:

The subject property is adjacent to a mid-rise building along the eastern property line. Specifically, Bel-Air Club to the east is developed at 5 stories above base flood elevation. Approval of the proposed deviation will allow for increased compatibility with the surrounding buildings and will not impact existing views of the Gulf of Mexico from adjacent properties. A viewshed is proposed along the western property boundary with a proposed boundary with a proposed greater than 40 foot distance between the multifamily building and the buildings to the east. The development will result in an enhanced built environment within the area. Approval of this deviation will not detrimentally impact public health, safety or welfare.

Staff agrees that approval of this deviation will not detrimentally impact public health, safety or welfare. This deviation is for a very minor increase in height being 5 feet. The deviation also allows an additional story. The proposed height is consistent with existing height in the immediate area of the subject site. Bel-Air Club to the east contains 6 stories. Bay to Beach to the west contains 5 stories. The Edgewater Inn property (781 Estero Blvd.) contains 3 stories. The property directly across Estero Boulevard (775 Estero Blvd.) is a two family structure with 2 stories. The additional story is really applicable to the proposed multifamily structure as evidenced by the submitted architectural elevations of the proposed structures.

Staff agrees that the additional height helps to maintain the proposed viewshed on the western side of the property and as such enhances the achievement of the objectives of the planned development and is a public benefit. Staff recommends approval of Deviation #1 if the LPA chooses to recommend approval of the requested rezoning.

2. Deviation from Section 34-3237(4) of the LDC, which requires total interior square footage of a rebuilt dwelling not to exceed the interior square footage of all existing dwelling units which is currently a total of 3,570 s.f., to allow for an increase of the total interior square footage to 9,250 s.f. for all proposed buildings.

The application provides the following justification:

The proposed RPD meets the underlying intent of the pre-disaster buildback by ensuring compliance with the current coastal construction and floodplain regulations, which will result in a safer, more storm-resistant structure, thereby providing for greater safety of the surrounding structures in the event of a storm or other disaster. Additionally, the RPD will provide for the visual enhancement of the subject property, which enhances property values and benefits surrounding property owners and their viewsheds along Estero Boulevard. As indicated above, the increased square footage required to achieve the total requested square footage will be compatible with surrounding developments and will not impact views of the Gulf of Mexico from adjacent properties. Therefore, the increased square footage will not result in an impact to public health, safety or welfare, and will allow for an overall enhancement to the area.

Staff agrees that the rebuilt structures will have to be consistent with current coastal construction and floodplain regulations. The Town staff has found this type of Deviation in the past to be inconsistent with the Town's Comprehensive Plan. For example, the Casa Bahia RPD requested to be allowed to increase the interior square footage by 485 square feet. Staff found this request to be inconsistent with the comprehensive plan.

Staff notes that the property immediately west of the subject site contains relatively small structures, but the area also contains very large structures even a relatively large resort, the Best Western. The proposed development is not out of character with the existing uses. Staff realizes that the request represents more than two and a half more square footage than currently exists, and this deviation request could be solely denied on that basis. The property is currently zoned Residential Multifamily (RM) and a building or buildings with this (9,250 square feet) or more interior square footage could be built on the property. The RM district permits all types of residential structures. Staff recommends **DENIAL** of Deviation #2. This issue is further discussed below under Comprehensive Plan Consistency.

3. Deviation from Table 34-3 of the LDC, which allows for a maximum Floor Area Ratio of 1.2 or a total of 16,374 square feet of covered area, to allow for a maximum Floor Area Ratio of 1.23 or a total of 16,783 square feet of covered area.

The application provides the following justification:

The deviation being requested is for approximately 400 square feet for a total of 16,783 square feet of gross floor area. The structures were designed with consideration with what is commercially feasible in the current market. On account of current engineering standards to construct a storm-resistant structure, a significant amount of the floor area coverage is within the first level which is only usable for garage space and storage. This minor deviation will not impact the surrounding properties and will result in a safer, more storm-resistant structure, thereby providing for greater safety of the surrounding structures in the event of a storm or other disaster. The RPD will provide for the visual enhancement of the subject property, which enhances property values and benefits surrounding property owners and will not detrimentally impact public health, safety or welfare.

Staff is aware that council in the past has approved this type of deviation. The Lighthouse Island Resort CPD is an example (see Exhibit D). Council approved a deviation (Deviation # 9) that allowed the FAR to be exceeded to accommodate under building parking. The request is for a modest increase in square footage of approximately 400 square feet. Staff recommends approval of Deviation #3 if the LPA chooses to recommend approval of the requested rezoning

4. Deviation from Table 34-3 of the LDC, which allows for a minimum side setback for a multifamily building of 20 feet, to allow for a minimum side setback on the eastern property line of 7.5 feet for the multifamily building.

The application provides the following justification:

The deviation being requested is for a minimum side setback on the eastern property line of 7.5 feet for the three unit multifamily building. All other setbacks meet the requirements for within the RM zoning district. Careful consideration was made in the designing the site plan to have the minimum impact on the surrounding properties. The proposed location of the three unit multifamily building is north of the Bel-Air Club timeshare condominium to the east and therefore will not have an impact on views from units within the Bel-Air Club to the Gulf of Mexico. Additionally, a public beach access and driveway are located on the western property line of the Bel-Air Club. A side setback of greater than 20 feet is being maintained for the multifamily building to the western property line where single family and two family buildings are currently located. This creates and maintains a view corridor to the Gulf of Mexico along the western property line of the proposed development. Therefore, the RPD will provide for the visual enhancement of the subject property, which enhances property values and benefits surrounding property owners and their viewsheds along Estero Boulevard.

Staff also notes that the proposed placement of the multifamily building is mainly opposite a part of the Bel-Air Club's parking lot and pool area which is located on the Estero Boulevard frontage. The deviation will help to create the proposed viewshed on the western portion of the subject property and as such enhances the achievement of the objectives of the planned development. This deviation furthers the public interest in creating viewsheds to the Gulf of

Mexico. Staff recommends approval of Deviation #4 if the LPA chooses to recommend approval of the requested rezoning.

5. Deviation from Section 10-416(d)(2) of the LDC, which requires a Type B Landscape buffer of 15 feet in width along the western property line between the multifamily building and the single family residences on the adjacent parcels to the west, to allow for a buffer of 5 feet in width containing the same number of trees as a Type B Buffer and a minimum of 15 shrubs per 100 linear feet.

The application provides the following justification:

This deviation being requested is for a reduction in the required Type B buffer on the western property line between the multifamily buildings and the single and two family residences to the west of the property from 15 feet to 5 feet and to allow for 15 shrubs per 100 linear feet in lieu of a hedge as defined in section 10-416(d)(2) of the LDC. No other buffers are required for the proposed development. Careful consideration was made in designing the site plan to have minimum impact on the surrounding properties. While a reduction of the buffer is being requesting (SIC) from 15 to 5 feet, the multifamily building is 25 feet from the western property line with only a proposed driveway between the edge of the buffer and the multifamily building and no vertical improvements. In addition, there is a driveway easement to the west of the property providing a distance from the multifamily building to the single and two family residences to the west of greater than 40 feet. The development will result in an enhanced built environment within the area. Approval of this deviation will not detrimentally impact public health, safety or welfare.

Staff notes that this deviation helps to achieve the proposed viewshed on the western portion of the property and as such enhances the achievement of the objectives of the planned development. Staff also notes that there are existing native palm trees on the western portion of the property that will have to be removed as part of the proposed development. Alternatively, staff is proposing a condition to relocate these trees (those with 6 foot clear trunks or more) into the required buffer. With the addition of this condition, staff recommends approval of Deviation #5 if the LPA chooses to recommend approval of the requested rezoning.

6. Deviation from Table 10-1 of the LDC, which requires a spacing of 250 feet from centerline of driveways along a Major Street, to allow a driveway along the western property line to connect to the driveway for the three parcels adjacent the western property boundary of the parcel.

The application provides the following justification:

The deviation being request (SIC) is to relocate the existing driveway on the property on the eastern property line to the western property line connecting to the driveway/access for the parcels to the west of the subject property. Consideration was given to enlarge the access/driveway for the parcels to the west and therefore removing a separate

access point for the subject property. The proposed driveway location will increase connection separate (SIC) from the driveway for the Bel-Air condominium to the east of the property. Section 10-285(c) of the LDC gives the director the authority to authorize lesser separation distance if joint access with the adjoining property can be provided to preserve or maximize driveway connection separation distances. The property is 67 feet wide and it would not be possible to create a connection separation in accordance with Table 10-1. The proposed development is a reduction of the density and the proposed driveway increases separation as compared to the existing development of the subject property. The development will result in an enhanced built environment within the area. Approval of this deviation shall have a beneficial impact on the impact (SIC) public health, safety and welfare.

Staff believes that allowing the access on the western portion of the property helps to achieve the proposed viewshed and as such enhances the achievement of the objectives of the planned development. Relocating the driveway to the western property line provides a larger setback to the proposed multifamily building from the existing single family dwelling unit located to the west of the subject property. Moving the access point also moves it away from a busier access point at the Bel-Air Club condos. Staff recommends approval of Deviation #6 if the LPA chooses to recommend approval of the requested rezoning.

The application materials provides an analysis of the project's consistency with the Town's comprehensive plan which is discussed further below.

Comprehensive Plan Consistency:

The subject site is classified by the Town's comprehensive plan as "Mixed Residential." The category descriptor policy is reproduced below:

Policy 4-B-4 "MIXED RESIDENTIAL": *designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for legally existing dwelling units). Commercial activities are limited to lower-impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%.*

Concerning the subject site's location in this category and the project's consistency with the Mixed Residential land use category, the application materials provide the following discussion:

This Category is intended to ensure that Fort Myers Beach retains a wide variety of neighborhoods and housing types.

The proposed RPD is in direct compliance with this policy as the proposed multi-family use is located in an area characterized by a mixture of condominiums, hotels and single-family residences. Therefore, the request for multi-family uses will uphold the desire for a diversity of housing types within the Town of Fort Myers Beach.

The proposed density for the property is four (4) dwelling units, which is a reduction from the property's current density of five (5) units. The proposed density for the property will fall under the provisions of the pre-disaster buildback policy and is compatible with the density of the surrounding properties.

Staff is generally in agreement with the applicant's analysis with the exception that the proposal is inconsistent with the provision of Policy 4-E-1, which is further discussed below.

The proposed density and height is compatible with surrounding uses. Immediately to the east is the Bel-Air Beach Club condos and time shares with multiple units and 6 floors. Immediately to the west a two family residence, two single family residences, then the Bay to Beach Condos. Bay to Beach has 14 units according to Lee County Property Appraiser's records and has 5 floors.

Policy 4-E-1:

This policy provides that "Owners of existing developments that exceed the current density or height limits may also be permitted to replace for the same use it at up to the existing lawful density and intensity (**up to the original square footage**) prior to a natural disaster". The application provides that the original interior square footage of all of the existing units is 3,570 square feet. The application proposes a redeveloped interior square footage of all of the proposed units of 9,250 square feet. This is inconsistent with the Policy's limitation of "**up to the original square footage**".

This Policy and requesting a Deviation to allow more interior square footage has been an issue in previous cases. This was an issue in a proposed pre-disaster redevelopment application for Casa Bahia (855 Lagoon St.) in which the applicant requested a deviation similar to the instant Deviation #2 to allow an additional 485 square feet. Staff found that this was inconsistent with Policy 4-E-1 (see Exhibit E). The case was ultimately approved by Council without this Deviation (Deviation #5 for DCI2003-00087). The redevelopment never occurred and the approval has now vacated.

The applicant has pointed out the Rowe RPD as justification that this type of deviation can be approved. On June 6, 2011, Town Council approved the RPD with a deviation, Deviation #2 that permits the proposed interior square footage to exceed that of the original dwelling unit (see Exhibit F). The staff report in this case recommended approval of the case and the requested Deviation to increase the interior square footage (see Exhibit G). The staff report incorrectly states that the intensity measure and parenthetical statement in Policy 4-E-1 "relates specifically to the expansion of square footage for Commercial Uses".

Comprehensive Plan Amendment 2008-04-Text, as adopted on August 17, 2009 clearly states that the intensity statement and the parenthetical statement apply to residential structures (see Exhibit H). Town Council heard a request to extend the time of the original Rowe RPD approval on October 6, 2014. Council remanded the issue back to the LPA to consider the original approval. No action has occurred on this case since that direction, this approval is now vacated.

Recreation Future Land Use Category:

The application notes that a portion of the property is located in the "Recreation" Future Land Use Category (Policy 4-B-8). Concerning this portion of the property, the application provides the following:

A portion of the Applicant's property is located seaward of the CCCL and is designated as Recreation on the Future Land Use Map. Per the attached MCP, this area is not proposed for residential uses and will remain undeveloped in compliance with this policy.

The Recreation category specifies that "No new residential development is permitted (although several existing buildings were legally constructed partially seaward of the 1978 control line)." The proposed residential structures are located landward of the 1978 Coastal Construction Control Line as depicted on the MCP.

The application notes that the proposal is consistent with Policy 4-E-2: Coastal Setbacks:

...the proposed RPD is in compliance with the coastal setbacks policy, as all proposed structures will be located landward of the CCCL.

Considerations & Findings

The application is for rezoning the property. LDC Section 34-85 includes a series of Considerations that town council shall consider in reaching its decision. Staff will discuss each of these Considerations below.

(1) *Whether there exists an error or ambiguity which must be corrected.*

Staff believes that there is no error or ambiguity which must be corrected.

(2) *Whether there exist changed or changing conditions which make approval of the request appropriate.*

Concerning this Consideration the application provides the following discussion:

The area surrounding the subject property has changed in past years, specifically through the development a (SIC) mid-rise resort condominium to the east. With timeshare uses on the east side of the subject property being 5 stories above base flood elevation, the proposed single family residence and multifamily building will be

compatible with this adjacent development. The property to the west and north is multifamily and single family buildings that contain similar density. In addition, the Applicant is proposing a setback and viewsheds down the western boundary to benefit the adjacent properties and pedestrians along Estero Boulevard. The proposed density will be compatible with surrounding developments and represents a reduction of the current density.

Staff agrees that the proposed residential uses are compatible with the surrounding existing uses and the proposal would result in a reduction of density for the subject site.

(3) *The impact of a proposed change on the intent of this chapter.*

Concerning this Consideration the application provides the following discussion:

The proposed rezoning will implement the Town's pre-disaster buildback policy and allow for the appropriate infill redevelopment of the subject property. The proposed change will result in improved viewsheds on Estero Boulevard, and surrounding properties, as well as compliance with present day floodplain and coastal construction regulations. Deviations are requested as part of the RPD process to implement the pre-disaster buildback redevelopment regulations. Deviations are requested as part of the RPD process to implement the pre-disaster buildback redevelopment program. The proposed change is consistent with and furthers the intent of Chapter 34.

Staff finds that the request is **inconsistent** with Policy 4-E-1, and as such the request is inconsistent with the intent of the pre-disaster buildback program as contained in the Land Development Code (LDC).

(4) *The testimony of any applicant.* (5) *The recommendation of staff and of the local planning agency.* (6) *The testimony of the public.*

These items will be obtained throughout the Public hearing process. This staff report contains the recommendation of staff.

(7) *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.*

Concerning this Consideration the application provides the following discussion:

Per Exhibit D-1-C attached, the proposed RPD is consistent with the Comprehensive Plan, specifically those policies pertaining to the Mixed Residential Future Land Use Category and Pre-Disaster Buildback. The Applicant is seeking development of a single family residence and a 3-unit multifamily building, which is consistent with and furthers the intent of the underlying Future Land Use Category. Additionally, the Applicant is seeking redevelopment of a reduced density that currently exists on the property. Please

refer to the attached narrative in Exhibit D-1-C for further explanation of the rezoning's consistency with the Comprehensive Plan.

Staff finds that the request is **inconsistent** with the Town's Comprehensive Plan, including Policy 4-E-1.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Concerning this Consideration the application provides the following discussion:

The proposed uses are residential in nature and do not have performance or locational standards as applicable to commercial or industrial uses. The proposed RPD is located in an area with appropriate levels of public infrastructure to support the development of a single family residence and a three unit multifamily building. Furthermore, Estero Boulevard on this west end of the island from Bowditch Park to Times Square has recently undergone a substantial improvement and widening to include sidewalks and new paving which supports the residential uses of this neighborhood.

Staff finds that the request meets or exceeds all performance and locational standards set forth for the proposed use provided that the requested deviations are approved. However, the proposal is **inconsistent** with Policy 4-E-1 of the Comprehensive Plan.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Staff finds that urban services are, or will be, available and adequate to serve the proposed land use change. The existing 5 units are currently served with urban services and the proposal will result in the elimination of 1 living unit.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

Concerning this Consideration the application provides the following discussion:

In compliance with the LDC, Environmentally Critical (EC) Zoning District lands are not included in the RPD request, will not be impacted by the proposed rezoning as demonstrated on the attached MCP.

Staff finds that the request will protect, conserve, or preserve environmentally critical areas and natural resources. The proposed development is located landward of the 1978 Coastal Construction Line and the proposal will conserve the existing dune vegetation. Project lighting will be consistent with turtle lighting requirements

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

Concerning this Consideration the application provides the following discussion:

The proposed RPD rezoning will result in increased compatibility with the surrounding timeshare condominium resorts, while improving the character and quality of the subject property. As indicated above, the property is adjacent to the east to a 6-story (5stories above base flood elevation) timeshare resort condominium. Similar density of single family and multifamily buildings exists to the west of the subject property. Adjacent to the north of the property is a single family residence across Estero Boulevard. Based on the intense nature of the surrounding uses and the minimal increase in height and reduction of density proposed, the RPD as proposed will be compatible with adjacent, existing uses and will not change the existing multifamily use.

Staff finds that the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property. The property is currently used for residential purposes and this will not change if the request is approved. Staff notes that there is a 3 story building, located at 781 Estero Boulevard, owned by Edgewater Inn LLC, on the north side of Estero Boulevard that contains 6 living units. The proposed uses, a single family dwelling unit, and a 3 unit multifamily building are consistent with other existing structures in the immediate vicinity of the subject site. The proposed heights of the proposed structures are consistent with the existing heights in the immediate vicinity of the subject site.

(12) 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.

Concerning this Consideration the application provides the following discussion:

It has been determined that the proposed rezoning will not negatively impact the existing transportation infrastructure due to the size of the property and will reduce from the current five units of density to four units of density. The property is currently serviced by Town of Fort Myers Beach potable water, Lee County Utilities wastewater and Florida Power and Light electric services. These services are available at the subject property to service the proposed development. Lee Tran, Florida Power and Light, Lee County Utilities and the Town of Fort Myers Beach have all been contacted regarding availability of services...

The applicant submitted a Traffic Impact Statement prepared by JMB Transportation Engineering, Inc. dated May 24, 2017. This report "Conclusions" are reproduced below:

The report concludes that the proposed redevelopment of 764 Estero Boulevard (referred to as Dullard RPD) within the City (SIC) of Fort Myers Beach will result in fewer total site-generated trips at project build-out. More specifically, the RPD proposes to raze five (5) existing residential units (i.e. 1 single-family and 4 multi-family) and then construct four (4) residential units (1 single-family and 3 multi-family). The proposed

land use will generate less daily trips than the existing land use. Therefore, it is concluded that the project's off-site transportation impacts will be less if the proposed RPD is approved.

Staff finds that the location of the request does 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.

LDC Section 34-216 specifies that "the recommendation made to the town council must be supported by the guidelines set forth in § 34-85" as well the findings must address whether the criteria found in this section can be addressed. These criteria are discussed below:

a. The proposed use or mix of uses is appropriate at the subject location;

Staff finds that the proposed uses are appropriate at the subject location. A single family unit and two 2 family living units have existed on the site since at least the 1950s. If approved, this will essentially be the same in the future with a single family home and a 3 unit multifamily building.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

Staff finds that the proposed conditions provide sufficient safeguards to the public interest if the LPA decides to recommend that the Town Council approve the applicant's request.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;

Staff believes that the recommended 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, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

These are not applicable as they address commercial uses and the request proposes residential uses. However, the proposal is **inconsistent** with Policy 4-E-1 of the Comprehensive Plan.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

These are not applicable as the subject site is located in the Mixed Residential category.

3. Policy 4-C-4 on building heights taller than the standard height limit.

This policy is reproduced below:

POLICY 4-C-4 BUILDING HEIGHTS: *The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the buildback situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza). In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than two stories. In each case, the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal.*

As stated in this policy the height of new buildings under most conditions is limited to two stories above flood elevation with exceptions of proposals pursuing the buildback processes. However, the proposal is **inconsistent** with Policy 4-E-1 of the Comprehensive Plan.

4. Policy 4-C-8 on density transfers.

This policy is not applicable to this request. The proposal actually reduces density on the subject site.

5. Policy 4-E-1 on pre-disaster buildback.

Staff finds that the proposal is **inconsistent** with this policy as previously discussed. The landowner has requested this option through the planned development rezoning process and there will be public hearings and the adjacent property owners have been notified. Staff finds that the proposal is **inconsistent** with the Town's Comprehensive Plan.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

The applicant has submitted a traffic impact analysis and staff concurs that the proposal will result in less impacts than the existing residential uses (5 living units reduced to 4 living units).

III. RECOMMENDATION

Staff recommends **DENIAL** of the requested RPD, and thereby **DENIAL** of the requested deviations. However, if the LPA decides to recommend that Town Council approve the requested RPD, staff recommends **DENIAL** of Deviation #2 as this Deviation request is inconsistent with Comprehensive Plan Policy 4-E-1. If the LPA recommends **APPROVAL** of the request with the exception of Deviation #2 and as conditioned, staff recommends the LPA make the following findings and conclusions:

1. The requested Residential Planned Development (RPD) zoning district, as conditioned, complies with:

- a. The Comprehensive Plan;
- b. LDC Chapter 34;
- c. All other applicable Town ordinances and codes; and
- d. The following additional requirements for planned development zoning requests:

The proposed use or mix of uses is appropriate at the subject location;

Sufficient safeguards to the public interest are provided by the recommended conditions to the concept plan or by other applicable regulations;

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

The proposed use(s) meet(s) all specified requirements of the Plan that are relevant to the requested planned development

- e. As to the requested deviations:
 - a. Each item enhances the achievement of the objectives of the planned development; and
 - b. The general intent of LDC Chapter 34 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.

Staff recommends the following Conditions of Approval if the LPA decides to recommend that Town Council approve the rezoning and proposed deviations subject to the following conditions:

CONDITIONS OF APPROVAL:

1. *The applicant must re-submit the master concept plan (MCP) titled "Dullard Residential Planned Development, Town of Fort Myers Beach" for case DCI17-0002, demonstrating that the*

total proposed interior square footage of the proposed living units does not exceed 3,570 square feet, except as modified by conditions or deviations discussed herein. If changes to the MCP are subsequently pursued, appropriate approvals will be required.

2. *The following limits apply to the project and uses:*

Schedule of Uses:

Dwelling unit:

single-family (consisting of 1 single family residence)

multiple-family (consisting of 1 building with 3 living units)

Residential accessory uses

Signs, in accordance with LDC chapter 30

Property Development Regulations:

Minimum Street Setback: 25 Feet

Side Setbacks:

Single-family

7.5 Feet

Multi-family

20 Feet for Eastern Property Line

7.5 Feet for Western Property Line

Rear Setback: 20 Feet

Waterbody Setback (Gulf of Mexico) 50 Feet

Minimum Lot Area: 7,500 square feet

Minimum Lot Width: 67 Feet

Minimum Lot Depth: 100 Feet

Floor Area Ratio: 1.23

Maximum Stories: 4

Maximum Height: 35 Feet

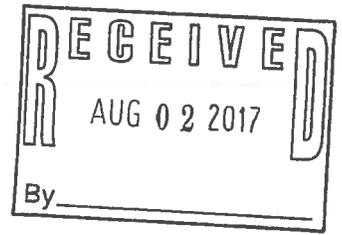
3. *Nothing in this rezoning, including any of the attached conditions, may be construed as a variance or deviation from the provisions of LDC Chapter 6, Article IV Floodplain regulations. Approval of this rezoning does not exempt the subject property from any provisions of the LDC with the exception of the approved deviations.*

4. *Approval of this rezoning does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting, except as specifically modified herein.*
5. *The development must comply with LDC Sec. 14-76 requirements for sea turtle conservation applicable to new development.*
6. *No primary structure or accessory structure may be placed seaward of the 1978 Coastal Construction Control Line.*
7. *Stormwater runoff from the two proposed structures must be captured by gutters and downspouts and routed into the onsite stormwater management system. Stormwater management for the subject property must comply with all applicable requirements of the Land Development Code at the time of development order approval and must provide for the capture and retention of all stormwater on the site. No more than 67% of the total lot area shall be covered with impervious surfaces, the development order must indicate the method used to maintain 1.6" rainfall on site.*
8. *The property must apply for a limited development order (LDO) within 180 days of the approval of the rezoning. The LDO must address a parking plan, stormwater retention/detention, access to the site, and buffering.*
9. *The viewshed located on the western portion of the property must be maintained in perpetuity.*
10. *Signs must always be in compliance with Chapter 30 of the LDC.*
11. *Existing native palm trees located on the western portion of the site will be relocated (those with 6 foot clear trunks) into the required Type B buffer area on the western property line.*
12. *Violations of these conditions will result in the property being subject to a five hundred dollar per day fine.*

Exhibits:

- A. – Legal Description, & Plat
- B. – Master Concept Plan
- C. – Property Development Regulations
- D. – Resolution 03-23 Lighthouse Island Resort
- E. - Application materials
- F. – Resolution 11-07 Rowe RPD
- G. – Staff Report DCI2011-0002 Rowe RPD
- H. – Comprehensive Plan Amendment 2008-04-TEXT
- I. – Application Materials

EXHIBIT A



**Exhibit 5-1
Legal Description and Plat**

EXHIBIT A

Exhibit 5-1 Legal Description and Plat

Part of Lot 5, Unit No. 1, Island Shores (being a subdivision of part of Government Lot 1, Section 24, Township 46 South, Range 23 East), according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 9 at Page 24, described as follows:

Beginning at a point on the Southwesterly side of Estero Boulevard at the common corner of Lots 4 and 5 of said Subdivision, thence Northwesterly along the Southwesterly side of said boulevard, 67.42 feet, thence Southwesterly parallel to the Southeasterly line of said Lot 5 to the waters of the Gulf of Mexico; thence Southeasterly along waters of said Gulf to the Southeasterly corner of said Lot 5; thence Northeasterly along the Southeasterly line of said Lot 5 to the Point of Beginning.

Also known as 764 Estero Boulevard, Fort Myers Beach, FL 33931

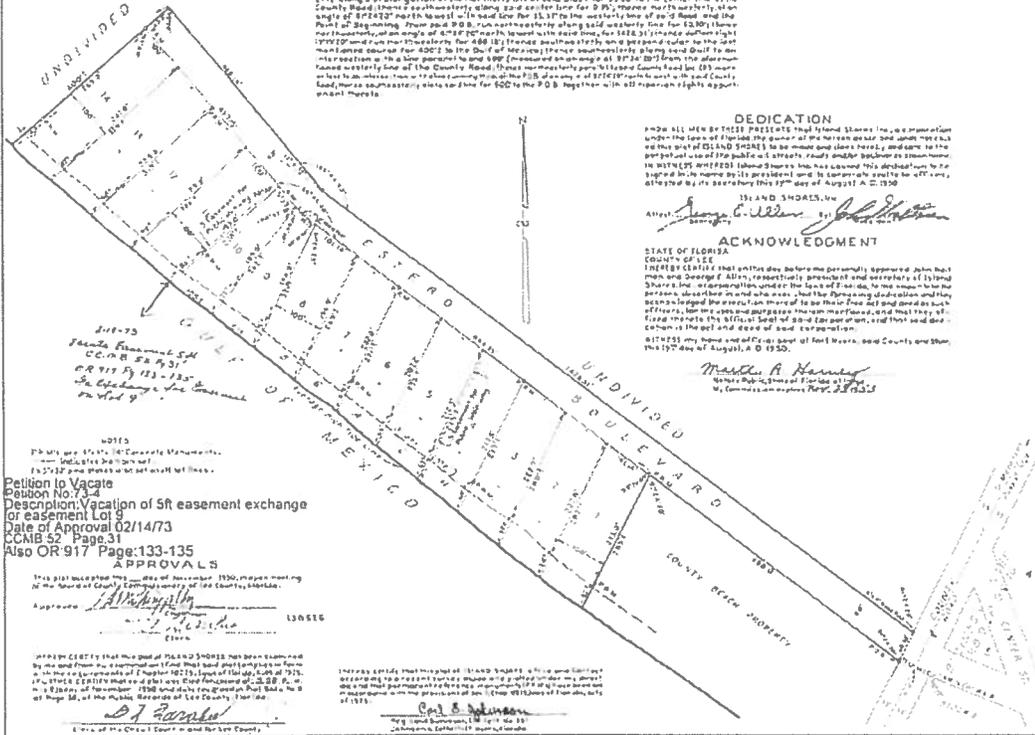
Lee County Strap Number 24-46-23-W3-00400.0050

(Plat on next page)

EXHIBIT A

UNIT NO. 1
ISLAND SHORES
A SUBDIVISION IN U.S. LOT 1, SECTION 24, T 46 S, R 23 E
ESTERO ISLAND, LEE COUNTY, FLORIDA
Scale: 1"=100' August 1950

DESCRIPTION
A tract or parcel of land in U.S. Lot 1, Section 24, T 46 S, R 23 E on Estero Island described as follows: From the northwesterly corner of Block 2 of Estero Center, a 6.666666' line extending to a corner or point recorded on Plat Book 9 at page 26, public records of Lee County, Florida, north 70 degrees 30' 00" west a distance of 100.000000' to the north corner of said Block 2; thence north 70 degrees 30' 00" west a distance of 100.000000' to the center line of the County Road (shown as easement) along said center line for 200.000000' thence north 70 degrees 30' 00" west a distance of 100.000000' to the center line of said Road; and the Point of Beginning. From said P.O.B. run northwesterly along said center line for 120.000000' thence north 70 degrees 30' 00" west a distance of 100.000000' to the center line of said Road; thence north 70 degrees 30' 00" west a distance of 100.000000' to the center line of said Road; and the Point of Beginning. From said P.O.B. run northwesterly along said center line for 120.000000' thence north 70 degrees 30' 00" west a distance of 100.000000' to the center line of said Road; thence north 70 degrees 30' 00" west a distance of 100.000000' to the center line of said Road; and the Point of Beginning. From said P.O.B. run northwesterly along said center line for 120.000000' thence north 70 degrees 30' 00" west a distance of 100.000000' to the center line of said Road; thence north 70 degrees 30' 00" west a distance of 100.000000' to the center line of said Road; and the Point of Beginning.



DEDICATION
I, GEORGE B. ALLEN, President of Island Shores, Inc., do hereby dedicate to the public use of the State of Florida the quarter of the north east 1/4 and west 1/4 of the plot of ISLAND SHORES to be shown and shown hereon, and to the purpose of the public use of streets, roads and highways shown hereon.
IN WITNESS WHEREOF, I have signed this dedication to be signed by my name on its printed and to be filed in the office of the Secretary of State this 17th day of August, A. D. 1950.

ISLAND SHORES, Inc.
Attest: George B. Allen, President

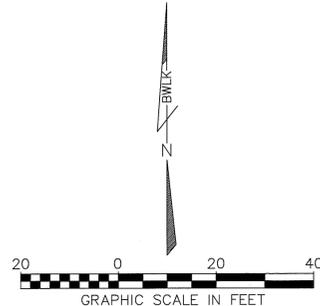
ACKNOWLEDGMENT
STATE OF FLORIDA
COUNTY OF LEE
I, MATHIAS R. HANNING, Clerk of the County, do hereby certify that on this day before me personally appeared John H. Allen and George B. Allen, respectively president and secretary of Island Shores, Inc., a corporation under the laws of Florida, to be known to me by the persons, described in and who executed the foregoing dedication and they acknowledged the execution thereof to be their free and voluntary act and deed, for the purposes and purposes therein expressed, and that they executed the same in full knowledge of the contents thereof and that they executed the same as the act and deed of said corporation.
Attest: My hand and official seal of Lee County, Florida, and this 17th day of August, A. D. 1950.

Matthew R. Hanning
Clerk of the County, Lee County, Florida

Petition to Vacate
Easement No. 13
Description: Vacation of 5ft easement exchange
for easement Lot 9
Date of Approval 02/14/73
CCMB 52 Page 31
Also OR 917 Page 133-135

APPROVALS
This plat was read and approved at a regular meeting of the Board of County Commissioners of Lee County, Florida, on the 13th day of August, 1950.
Approved: _____ 130515

ATTEST: I, MATHIAS R. HANNING, Clerk of the County, do hereby certify that on this day before me personally appeared _____ and _____, respectively president and secretary of Island Shores, Inc., a corporation under the laws of Florida, to be known to me by the persons, described in and who executed the foregoing dedication and they acknowledged the execution thereof to be their free and voluntary act and deed, for the purposes and purposes therein expressed, and that they executed the same in full knowledge of the contents thereof and that they executed the same as the act and deed of said corporation.
Attest: My hand and official seal of Lee County, Florida, and this 17th day of August, A. D. 1950.



- LEGEND:**
- EXISTING CONCRETE DRIVE (TO BE REMOVED)
 - PROPOSED BRICK PAVERS DRIVE
 - R.O.W. RIGHT-OF-WAY
 - E.O.P. EDGE OF PAVEMENT
 - TYP. TYPICAL
 - SP. PARKING SPACE
 - H.C. HANDICAP PARKING SPACE
 - LDC FORT MYERS BEACH LAND DEVELOPMENT CODE

SPECIAL NOTE:
THIS STYLE OF TEXT REPRESENTS EXISTING FEATURES
THIS STYLE OF TEXT REPRESENTS PROPOSED FEATURES

SCHEDULE OF DEVIATIONS (AS PROVIDED BY THE CLIENT'S ATTORNEY):

1. DEVIATION FROM TABLE 34-3 OF THE LDC, WHICH ALLOWS FOR A MAXIMUM HEIGHT OF 30 FEET/3 STORIES, TO ALLOW FOR A MAXIMUM HEIGHT OF 35 FEET/4 STORIES.

JUSTIFICATION: THE SUBJECT PROPERTY IS ADJACENT TO A MID-RISE BUILDING ALONG THE EASTERN PROPERTY LINE. SPECIFICALLY, BEL-AIR CLUB TO THE EAST IS DEVELOPED AT 5 STORIES ABOVE BASE FLOOD ELEVATION. APPROVAL OF THE PROPOSED DEVIATION WILL ALLOW FOR INCREASED COMPATIBILITY WITH THE SURROUNDING BUILDINGS AND WILL NOT IMPACT EXISTING VIEWS OF THE GULF OF MEXICO FROM ADJACENT PROPERTIES. A VIEWSHED IS PROPOSED ALONG THE WESTERN PROPERTY BOUNDARY WITH A PROPOSED GREATER THAN 40 FOOT DISTANCE BETWEEN THE MULTIFAMILY BUILDING AND THE BUILDINGS TO THE EAST. THE DEVELOPMENT WILL RESULT IN AN ENHANCED BUILT ENVIRONMENT WITHIN THE AREA. APPROVAL OF THIS DEVIATION WILL NOT DETRIMENTALLY IMPACT PUBLIC HEALTH, SAFETY OR WELFARE.
2. DEVIATION FROM SECTION 34-3237(4) OF THE LDC, WHICH REQUIRES TOTAL INTERIOR SQUARE FOOTAGE OF A REBUILT DWELLING NOT TO EXCEED THE INTERIOR SQUARE FOOTAGE OF ALL EXISTING DWELLING UNITS WHICH IS CURRENTLY A TOTAL OF 3,570 S.F., TO ALLOW FOR AN INCREASE OF THE TOTAL INTERIOR SQUARE FOOTAGE TO 9,250 S.F. FOR ALL PROPOSED BUILDINGS.

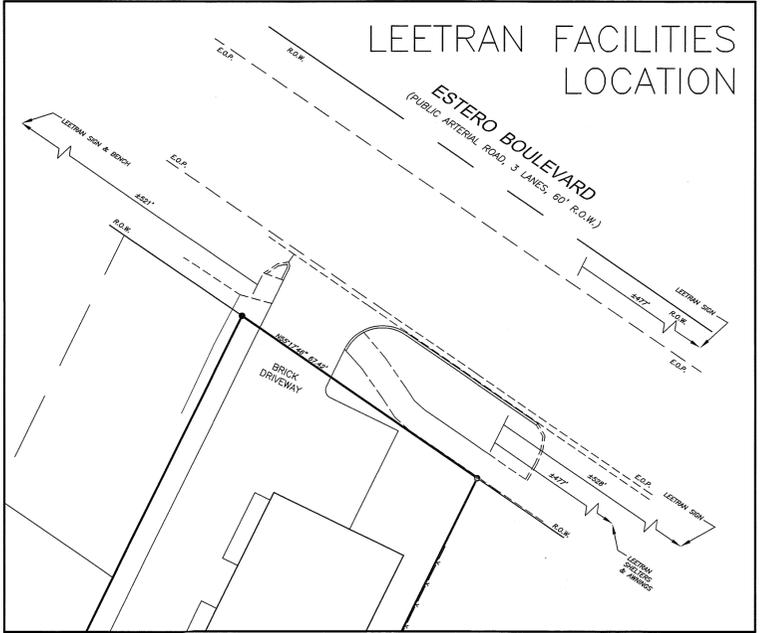
JUSTIFICATION: THE PROPOSED RPD MEETS THE UNDERLYING INTENT OF THE PRE-DISASTER BUILDBACK BY ENSURING COMPLIANCE WITH THE CURRENT COASTAL CONSTRUCTION AND FLOODPLAIN REGULATIONS, WHICH WILL RESULT IN A SAFER, MORE STORM-RESISTANT STRUCTURE, THEREBY PROVIDING FOR GREATER SAFETY OF THE SURROUNDING STRUCTURES IN THE EVENT OF A STORM OR OTHER DISASTER. ADDITIONALLY, THE RPD WILL PROVIDE FOR THE VISUAL ENHANCEMENT OF THE SUBJECT PROPERTY, WHICH ENHANCES PROPERTY VALUES AND BENEFITS SURROUNDING PROPERTY OWNERS AND THEIR VIEWSHEDS ALONG ESTERO BOULEVARD. AS INDICATED ABOVE, THE INCREASED SQUARE FOOTAGE REQUIRED TO ACHIEVE THE TOTAL REQUESTED SQUARE FOOTAGE WILL BE COMPATIBLE WITH SURROUNDING DEVELOPMENTS AND WILL NOT IMPACT VIEWS OF THE GULF OF MEXICO FROM ADJACENT PROPERTIES. THEREFORE, THE INCREASED SQUARE FOOTAGE WILL NOT RESULT IN AN IMPACT TO PUBLIC HEALTH, SAFETY OR WELFARE, AND WILL ALLOW FOR AN OVERALL ENHANCEMENT TO THE AREA.
3. DEVIATION FROM TABLE 34-3 OF THE LDC, WHICH ALLOWS FOR A MAXIMUM FLOOR AREA RATIO OF 1.2 OR A TOTAL OF 16,374 SQUARE FEET OF COVERED AREA, TO ALLOW FOR A MAXIMUM FLOOR AREA RATIO OF 1.23 OR A TOTAL OF 16,783 SQUARE FEET OF COVERED AREA.

JUSTIFICATION: THE DEVIATION BEING REQUESTED IS FOR APPROXIMATELY 400 SQUARE FEET FOR A TOTAL OF 16,783 SQUARE FEET OF GROSS FLOOR AREA. THE STRUCTURES WERE DESIGNED WITH CONSIDERATION WITH WHAT IS COMMERCIALY FEASIBLE IN THE CURRENT MARKET. ON ACCOUNT OF CURRENT ENGINEERING STANDARDS TO CONSTRUCT A STORM-RESISTANT STRUCTURE, A SIGNIFICANT AMOUNT OF THE FLOOR AREA COVERAGE IS WITHIN THE FIRST LEVEL WHICH IS ONLY USABLE FOR GARAGE SPACE AND STORAGE. THIS MINOR DEVIATION WILL NOT IMPACT THE SURROUNDING PROPERTIES AND WILL RESULT IN A SAFER, MORE STORM-RESISTANT STRUCTURE, THEREBY PROVIDING FOR GREATER SAFETY OF THE SURROUNDING STRUCTURES IN THE EVENT OF A STORM OR OTHER DISASTER. THE RPD WILL PROVIDE FOR THE VISUAL ENHANCEMENT OF THE SUBJECT PROPERTY, WHICH ENHANCES PROPERTY VALUES AND BENEFITS SURROUNDING PROPERTY OWNERS AND WILL NOT DETRIMENTALLY IMPACT PUBLIC HEALTH, SAFETY OR WELFARE.
4. DEVIATION FROM TABLE 34-3 OF THE LDC, WHICH ALLOWS FOR A MINIMUM SIDE SETBACK FOR A MULTIFAMILY BUILDING OF 20 FEET, TO ALLOW FOR A MINIMUM SIDE SETBACK ON THE EASTERN PROPERTY LINE OF 7.5 FEET FOR THE MULTIFAMILY BUILDING.

JUSTIFICATION: THE DEVIATION BEING REQUESTED IS FOR A MINIMUM SIDE SETBACK ON THE EASTERN PROPERTY LINE OF 7.5 FEET FOR THE THREE UNIT MULTIFAMILY BUILDING. ALL OTHER SETBACKS MEET THE REQUIREMENTS FOR WITHIN THE RM ZONING DISTRICT. CAREFUL CONSIDERATION WAS MADE IN THE DESIGNING THE SITE PLAN TO HAVE THE MINIMUM IMPACT ON THE SURROUNDING PROPERTIES. THE PROPOSED LOCATION OF THE THREE UNIT MULTIFAMILY BUILDING IS NORTH OF THE BEL-AIR CLUB TESHARE CONDOMINIUM TO THE EAST AND THEREFORE WILL NOT HAVE AN IMPACT ON VIEWS FROM UNITS WITHIN THE BEL-AIR CLUB TO THE GULF OF MEXICO. ADDITIONALLY, A PUBLIC BEACH ACCESS AND DRIVEWAY ARE LOCATED ON THE WESTERN PROPERTY LINE OF THE BEL-AIR CLUB. A SIDE SETBACK OF GREATER THAN 20 FEET IS BEING MAINTAINED FOR THE MULTIFAMILY BUILDING TO THE WESTERN PROPERTY LINE WHERE SINGLE FAMILY AND TWO FAMILY BUILDINGS ARE CURRENTLY LOCATED. THIS CREATES AND MAINTAINS A VIEW CORRIDOR TO THE GULF OF MEXICO ALONG THE WESTERN PROPERTY LINE OF THE PROPOSED DEVELOPMENT. THEREFORE, THE RPD WILL PROVIDE FOR THE VISUAL ENHANCEMENT OF THE SUBJECT PROPERTY, WHICH ENHANCES PROPERTY VALUES AND BENEFITS SURROUNDING PROPERTY OWNERS AND THEIR VIEWSHEDS ALONG ESTERO BOULEVARD.
5. DEVIATION FROM SECTION 10-416(d)(2) OF THE LDC, WHICH REQUIRES A TYPE "B" LANDSCAPE BUFFER OF 15 FEET IN WIDTH ALONG THE WESTERN PROPERTY LINE BETWEEN THE MULTIFAMILY BUILDING AND THE SINGLE FAMILY RESIDENCES ON THE ADJACENT PARCELS TO THE WEST, TO ALLOW FOR A BUFFER OF 5 FEET IN WIDTH CONTAINING THE SAME NUMBER OF TREES AS A TYPE B BUFFER AND A MINIMUM OF 15 SHRUBS PER 100 LINEAR FEET.

JUSTIFICATION: THE DEVIATION BEING REQUESTED IS FOR A REDUCTION IN THE REQUIRED TYPE B BUFFER ON THE WESTERN PROPERTY LINE BETWEEN THE MULTIFAMILY BUILDINGS AND THE SINGLE AND TWO FAMILY RESIDENCES TO THE WEST OF THE PROPERTY FROM 15 FEET TO 5 FEET AND TO ALLOW FOR 15 SHRUBS PER 100 LINEAR FEET IN LIEU OF A HEDGE AS DEFINED IN SECTION 10-416(d)(2) OF THE LDC. NO OTHER BUFFERS ARE REQUIRED FOR THE PROPOSED DEVELOPMENT. CAREFUL CONSIDERATION WAS MADE IN DESIGNING THE SITE PLAN TO HAVE MINIMUM IMPACT ON THE SURROUNDING PROPERTIES. WHILE A REDUCTION OF THE BUFFER IS BEING REQUESTED FROM 15 TO 5 FEET, THE MULTIFAMILY BUILDING IS 25 FEET FROM THE WESTERN PROPERTY LINE WITH ONLY A PROPOSED DRIVEWAY BETWEEN THE EDGE OF THE BUFFER AND THE MULTIFAMILY BUILDING AND NO VERTICAL IMPROVEMENTS. IN ADDITION, THERE IS A DRIVEWAY EASEMENT TO THE WEST OF THE PROPERTY PROVIDING A DISTANCE FROM THE MULTIFAMILY BUILDING TO THE SINGLE AND TWO FAMILY RESIDENCES TO THE WEST OF GREATER THAN 40 FEET. THE DEVELOPMENT WILL RESULT IN AN ENHANCED BUILT ENVIRONMENT WITHIN THE AREA. APPROVAL OF THIS DEVIATION WILL NOT DETRIMENTALLY IMPACT PUBLIC HEALTH, SAFETY OR WELFARE.
6. DEVIATION FROM TABLE 10-1 OF THE LDC, WHICH REQUIRES A SPACING OF 250 FEET FROM CENTERLINE OF DRIVEWAYS ALONG A MAJOR STREET, TO ALLOW A DRIVEWAY ALONG THE WESTERN PROPERTY LINE TO CONNECT TO THE DRIVEWAY FOR THE THREE PARCELS ADJACENT THE WESTERN PROPERTY BOUNDARY OF THE PARCEL.

JUSTIFICATION: THE DEVIATION BEING REQUEST IS TO RELOCATE THE EXISTING DRIVEWAY ON THE PROPERTY ON THE EASTERN PROPERTY LINE TO THE WESTERN PROPERTY LINE CONNECTING TO THE DRIVEWAY/ACCESS FOR THE PARCELS TO THE WEST OF THE SUBJECT PROPERTY. CONSIDERATION WAS GIVEN TO ENLARGE THE ACCESS/DRIVEWAY FOR THE PARCELS TO THE WEST AND THEREFORE REMOVING A SEPARATE ACCESS POINT FOR THE SUBJECT PROPERTY. THE PROPOSED DRIVEWAY LOCATION WILL INCREASE CONNECTION SEPARATE FROM THE DRIVEWAY FOR THE BEL-AIR CONDOMINIUM TO THE EAST OF THE PROPERTY. SECTION 10-285(c) OF THE LDC GIVES THE DIRECTOR THE AUTHORITY TO AUTHORIZE LESSER SEPARATION DISTANCE IF JOINT ACCESS WITH THE ADJOINING PROPERTY CAN BE PROVIDED TO PRESERVE OR MAXIMIZE DRIVEWAY CONNECTION SEPARATION DISTANCES. THE PROPERTY IS 67 FEET WIDE AND IT WOULD NOT BE POSSIBLE TO CREATE A CONNECTION SEPARATION IN ACCORDANCE WITH TABLE 10-1. THE PROPOSED DEVELOPMENT IS A REDUCTION OF THE DENSITY AND THE PROPOSED DRIVEWAY INCREASES SEPARATION AS COMPARED TO THE EXISTING DEVELOPMENT OF THE SUBJECT PROPERTY. THE DEVELOPMENT WILL RESULT IN AN ENHANCED BUILT ENVIRONMENT WITHIN THE AREA. APPROVAL OF THIS DEVIATION SHALL HAVE A BENEFICIAL IMPACT ON THE IMPACT PUBLIC HEALTH, SAFETY AND WELFARE.



PROPOSED PROPERTY DEVELOPMENT REGULATIONS:

MINIMUM LOT SIZE	= 0.52 ACRES TO EROSION CONTROL LINE
MINIMUM LOT WIDTH	= 66 FEET
MINIMUM LOT DEPTH	= 340 FEET TO EROSION CONTROL LINE

MINIMUM SETBACKS

STREET	= 25 FEET
SIDE	= 7.5 FEET
REAR	= 20 FEET
GULF OF MEXICO	= 50 FEET
MAXIMUM HEIGHT (4 STORIES)	= 35 FEET ABOVE BASE FLOOD ELEVATION OR THE 100 YEAR STORM, PER SECTION 34-631 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE
MAXIMUM FLOOR AREA RATIO	= 1.23
MAXIMUM BUILDING COVERAGE	= 40%

PARKING CALCULATIONS:

RESIDENTIAL USES: DWELLING UNITS WITH INDIVIDUAL DRIVEWAYS:

PER SECTION [34-2020.(d)(1)a.] OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, THE MINIMUM REQUIREMENT IS 2.0 PARKING SPACES PER UNIT.

PROPOSED NUMBER OF RESIDENTIAL UNITS (WITH INDIVIDUAL DRIVEWAY) = 1 UNIT

REQUIRED NUMBER OF PARKING SPACES = 1 UNIT X 2 = 2 PARKING SPACES

PROVIDED NUMBER OF PARKING SPACES = 4 PARKING SPACES

RESIDENTIAL USES: DWELLING UNITS WITH COMMON PARKING LOTS:

PER SECTION [34-2020.(d)(1)b.] OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, THE MINIMUM REQUIREMENT IS 1.5 PARKING SPACES PER UNIT.

PROPOSED NUMBER OF RESIDENTIAL UNITS = 3 UNITS

REQUIRED NUMBER OF PARKING SPACES = 3 UNITS X 1.5 = 4.5 PARKING SPACES

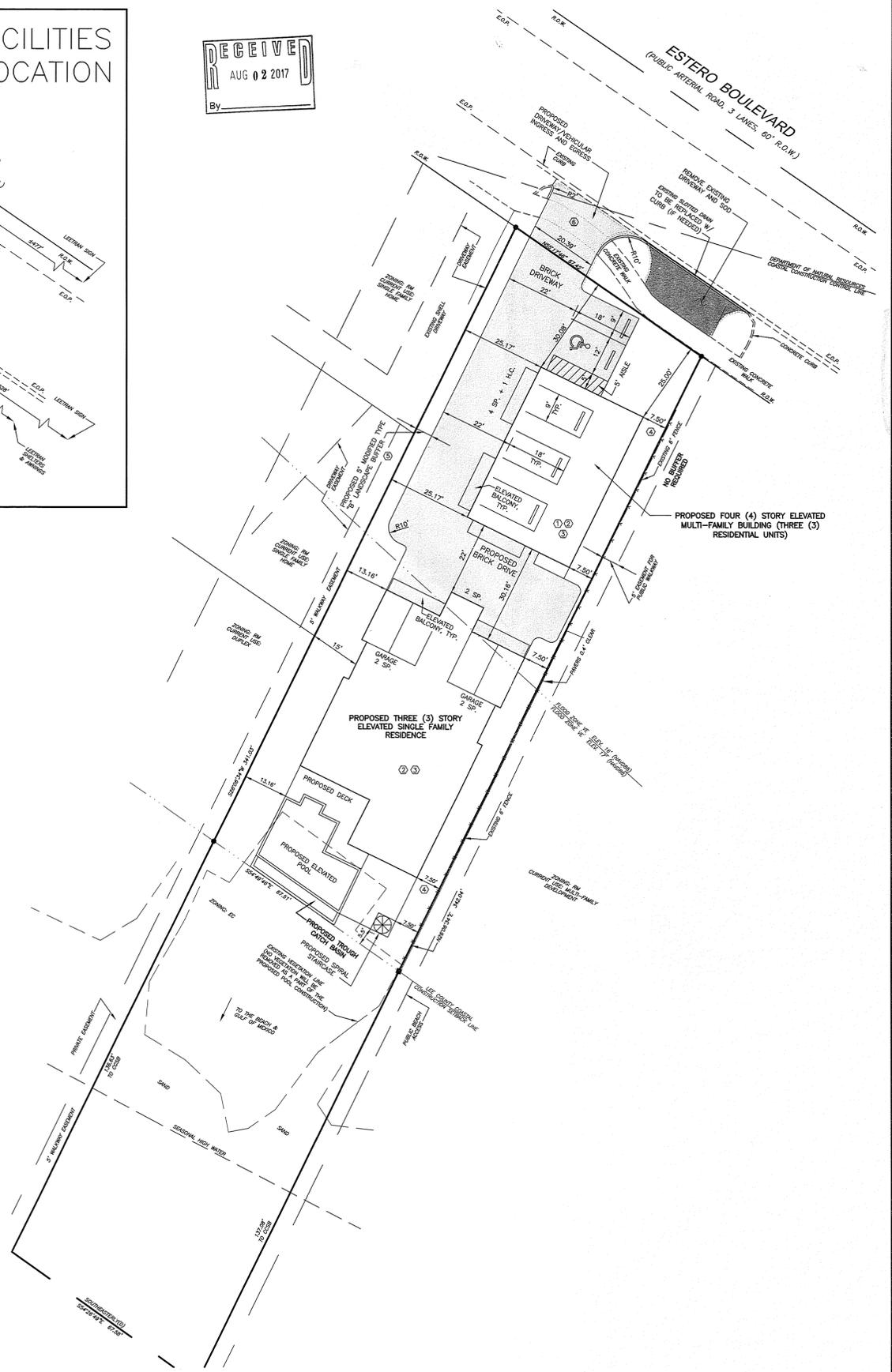
PROVIDED NUMBER OF PARKING SPACES = 5 PARKING SPACES

- SCHEDULE OF USES:**
- ACCESSORY USES AND STRUCTURES
 - DWELLING UNITS, CONVENTIONAL SINGLE FAMILY AND MULTIFAMILY
 - ESSENTIAL SERVICES
 - ESSENTIAL SERVICE FACILITIES - GROUP I ONLY
 - EXCAVATION, WATER RETENTION - NO BLASTING, REMOVAL OF EXCAVATED MATERIAL OFFSITE NOT PERMITTED
 - FENCES, WALLS, PER LDC SECTION 34-1771
 - HOME OCCUPATION, PER LDC SECTION 34-1741 ET SEQ. - NO OUTSIDE HELP
 - RESIDENTIAL ACCESSORY USES
 - SIGNS, IN ACCORDANCE WITH CHAPTER 30

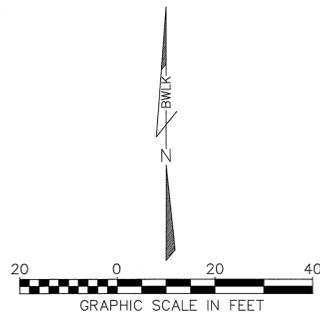
SITE DATA:

PARCEL SIZE	= 0.31 ACRES TO COASTAL SETBACK LINE
	= 0.52 ACRES TO EROSION CONTROL LINE
CURRENT ZONING	= RM-RESIDENTIAL MULTIFAMILY AND EC-ENVIRONMENTALLY CRITICAL
PROPOSED ZONING	= RPD - RESIDENTIAL PLANNED DEVELOPMENT
NUMBER OF PROPOSED LOTS	= 1
ALLOWABLE DENSITY	= 6 DU/AC
FUTURE LAND USE MAP	= MIXED RESIDENTIAL

SPECIAL DRAINAGE NOTE:
SEE SHEET C-2 FOR A CONCEPTUAL DRAINAGE PLAN (SHOWN SEPARATELY FOR CLARITY PURPOSES).



<p>BEAN, WHITAKER, LUTZ & KAREH, INC. CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS 13041 MCGREGOR BOULEVARD, SUITE 1, FORT MYERS, FL 33919 (239) 481-1331 AUTHORIZATION NUMBERS: EB4919 & EB4919</p> <p>DESIGNED BY: C. H. DOAN DRAFTING BY: C. H. DOAN DATE: JULY 3, 2017 PROJECT NUMBER: 43785(17-20)</p>	<p>APPROVED BY: A. R. KAREH SCALE: 1" = 20'</p>	<p>THE DULLARD REVOCABLE TRUST 764 ESTERO BOULEVARD FORT MYERS BEACH, FLORIDA 33951</p> <p>DULLARD RESIDENTIAL PLANNED DEVELOPMENT</p> <p>TOWN OF FORT MYERS BEACH SECTION 24, T 46 S., R 23 E., LEE COUNTY, FLORIDA</p>	<p>STATUS</p> <p>REVISIONS PER TOWN OF FORT MYERS BEACH COMMENTS - 07/24/2017</p> <p>DATE: JUL 24 2017</p> <p>AHMAD R. KAREH, P.E. FLORIDA LICENSE NO. 43324</p>
<p>MASTER CONCEPT PLAN (SITE PLAN)</p>		<p>SHEET C-1</p>	
<p>FILE: 24 - 46 - 23</p>			



SPECIAL NOTE:
THIS STYLE OF TEXT REPRESENTS EXISTING FEATURES
THIS STYLE OF TEXT REPRESENTS PROPOSED FEATURES

LEGEND:

- DIRECTION OF SURFACE FLOW
- PROPOSED INVERTED CROWN DRIVE
- PROPOSED TOE OF SLOPE (T.O.S.)
- R.O.W. RIGHT-OF-WAY
- E.O.P. EDGE OF PAVEMENT
- TYP. TYPICAL
- SP. PARKING SPACE
- H.C. HANDICAP PARKING SPACE
- 3.4 EXISTING ELEVATION

WATER QUALITY CALCULATIONS:

FOR THE FIRST INCH:
1.0 IN. TIMES THE TOTAL BASIN AREA:
$$\frac{1.0 \text{ IN.}}{\text{INCHES TO BE TREATED}} \times \frac{0.31 \text{ AC.}}{\text{BASIN AREA}} \times \frac{1 \text{ FT.}}{12 \text{ IN.}} = 0.026 \text{ AC.-FT.}$$

REQUIRED WET DETENTION = 0.026 AC.-FT.

FOR 2.5 IN. TIMES PERCENT IMPERVIOUS:

2.5 IN. TIMES THE PERCENT IMPERVIOUS:
SITE AREA: $0.31 \text{ AC.} - (0 + 0.11 \text{ AC.}) = 0.20 \text{ AC.}$
BASIN AREA LAKES ROOFS ** SITE AREA
IMPERVIOUS AREA: $\frac{0.20 \text{ AC.}}{\text{SITE AREA}} - \frac{0.10 \text{ AC.}}{\text{PERVIOUS AREA}} = \frac{0.10 \text{ AC.}}{\text{IMPERVIOUS AREA}}$
PERCENT IMPERVIOUS: $\frac{\text{IMPERVIOUS AREA (0.10 AC.)}}{\text{SITE AREA (0.20 AC.)}} \times 100\% = 50\%$
2.5 IN. X % IMPERVIOUS: $2.5 \text{ IN.} \times 50\% = 1.25 \text{ IN.}$
PERCENT IMPERVIOUS INCHES TO BE TREATED

INCHES TO BE TREATED TIMES AREA TO BE TREATED:
$$\frac{1.25 \text{ IN.}}{\text{INCHES TO BE TREATED}} \times \left(\frac{0.31}{\text{BASIN AREA}} - \frac{0}{\text{LAKES}} \right) \times \frac{1 \text{ FT.}}{12 \text{ IN.}} = 0.032 \text{ AC.-FT.}$$

REQUIRED WET DETENTION = 0.032 AC.-FT.

THE SUBJECT SITE WILL BE DESIGNED TO PROVIDE WATER QUALITY FOR 2.5 IN. TIMES PERCENT IMPERVIOUS:

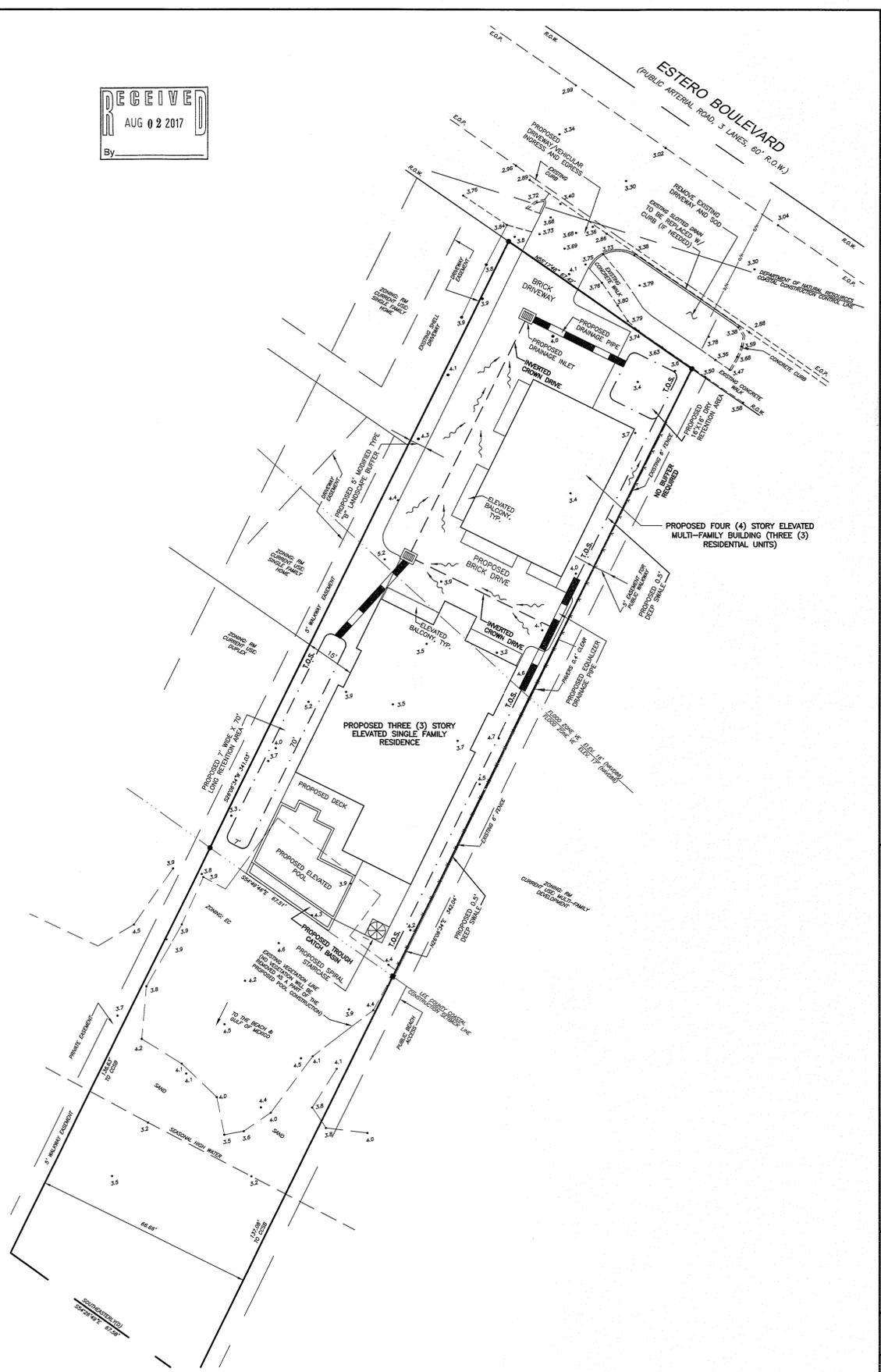
THE SYSTEM WILL UTILIZE DRY RETENTION:
REQUIRED DRY RETENTION = $0.50 \times \frac{0.032 \text{ AC.-FT.}}{\text{REQUIRED WET DETENTION}} = 0.016 \text{ AC.-FT. (3,703 C.F.)}$

PROVIDED DRY RETENTION = 0.024 AC.-FT. (1,060 C.F.)

TOTAL SITE AREA = 0.52 AC. (22,767 S.F.)
* BASIN AREA : FROM THE R.O.W. OF ESTERO BOULEVARD TO THE LEE COUNTY COASTAL CONSTRUCTION SET BACK LINE
** ROOFS AREA FOR BOTH BUILDINGS (4,769 S.F. = 0.11 AC.)
*** PERVIOUS AREA: ONLY WITHIN THE BASIN AREA

SPECIAL UTILITY NOTES:

- THE SUBJECT SITE IS CURRENTLY OCCUPIED WITH ALL UTILITY SERVICES BEING AVAILABLE AND PRESENT INCLUDING WATER AND SEWER SERVICES.
- DETAILED UTILITY PLAN WILL BE PROVIDED AS A PART OF THE DEVELOPMENT ORDER PROCESS.
- THERE IS A FIRE HYDRANT EXISTING ALONG THE FRONTAGE OF THE SUBJECT SITE. SEE BOUNDARY AND TOPOGRAPHIC SURVEY.
- LIST OF UTILITY PROVIDERS:
WATER: BEACH WATER, 2801 ESTERO BOULEVARD, UNIT 1, FORT MYERS BEACH, FLORIDA 33931, PHONE: 239-463-9914
SEWER: LEE COUNTY UTILITIES, 1500 MONROE STREET, FORT MYERS, FLORIDA 33901, PHONE: 239-533-8160
ELECTRIC: LEE COUNTY ELECTRIC COOPERATIVE, INC., 4980 BAYLINE DRIVE, NORTH FORT MYERS, FLORIDA 33917, PHONE: 239-656-2300
CABLE: COMCAST DIGITAL CABLE, 6320 BAU DRIVE, NORTH FORT MYERS, FLORIDA 33903, PHONE: 239-432-9277
TELEPHONE: CENTURYLINK, 5100 DANIELS PARKWAY, FORT MYERS, FLORIDA 33912, PHONE: 239-590-0440
FIRE: FORT MYERS BEACH FIRE CONTROL DISTRICT, 100 VOORHIS STREET, FORT MYERS BEACH, FLORIDA 33931, PHONE: 239-590-4200
REFUSE COLLECTION: VEOLIA ENVIRONMENTAL SERVICES, INC., 17101 PINE RIDGE ROAD, FORT MYERS BEACH, FL 33931, PHONE: 239-334-1224



AHMAD R. KAREH, P.E. FLORIDA LICENSE NO. 43324 DATE: JUL 24 2017		STATUS REVISIONS PER TOWN OF FORT MYERS BEACH COMMENTS - 07/24/2017
THE DULLARD REVOCABLE TRUST 784 ESTERO BOULEVARD FORT MYERS BEACH, FLORIDA 33931 DULLARD RESIDENTIAL PLANNED DEVELOPMENT TOWN OF FORT MYERS BEACH SECTION 24, T 46 S, R 23 E, LEE COUNTY, FLORIDA		
BEAN, WHITAKER, LUTZ & KAREH, INC. CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS 13041 MCGREGOR BOULEVARD, SUITE 1, FORT MYERS, FL 33919 (239) 491-1331 AUTHORIZATION NUMBERS: EB4919 & LB4919	DESIGNED BY: C. H. DOAN DRAWING BY: C. H. DOAN PROJECT NUMBER: 43785(17-20)	APPROVED BY: A. R. KAREH SCALE: 1" = 20' DATE: JULY 3, 2017
MASTER CONCEPT PLAN (CONCEPTUAL DRAINAGE PLAN)		
SHEET C-2		
FILE: 24 - 46 - 23		

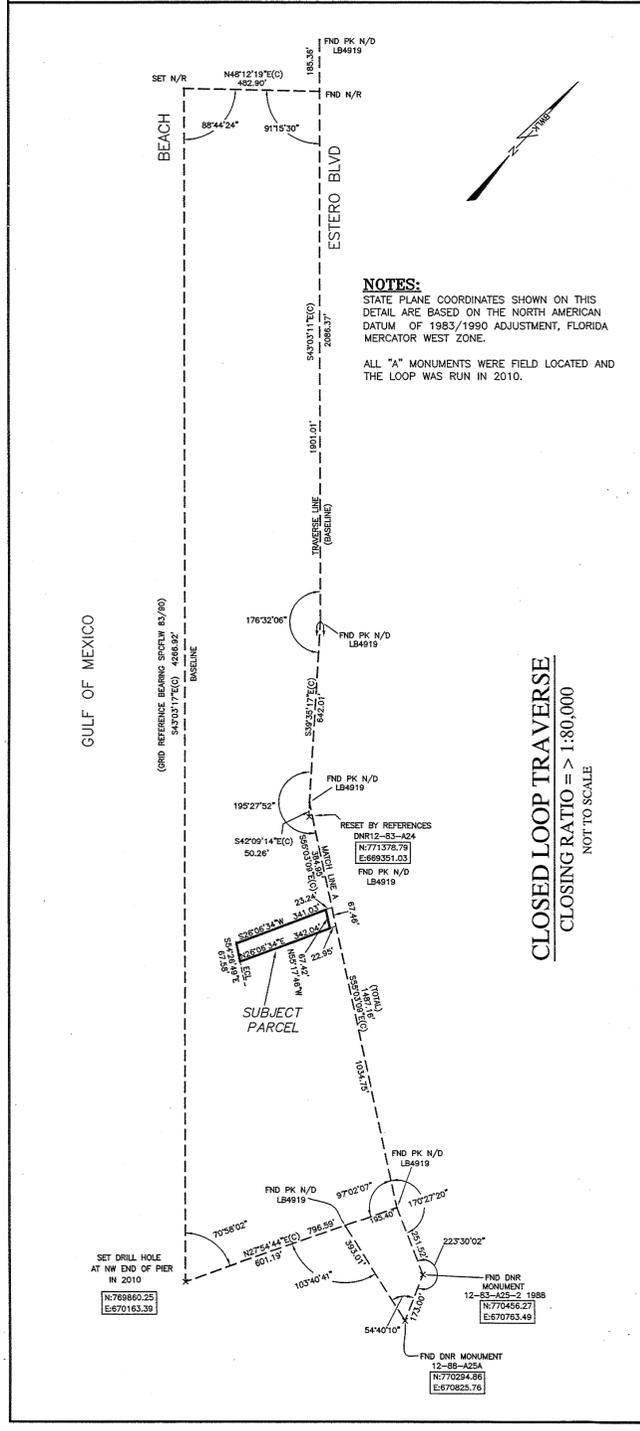
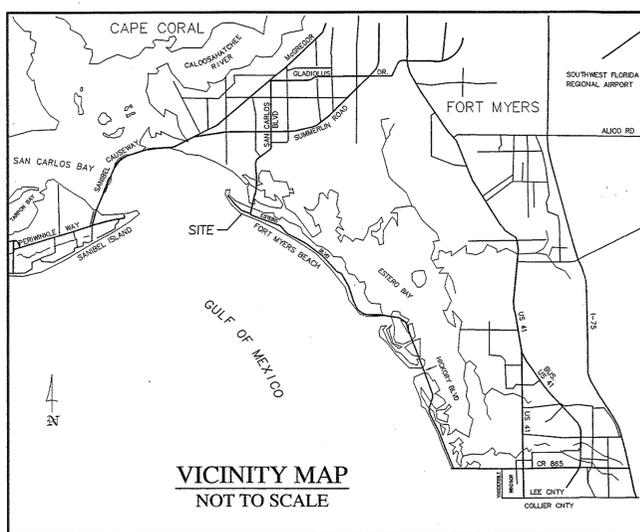
LOCATION: 2-ALL SURVEYING AND ENGINEERING FILES\PROJECTS\34300-4389M\43785(17-20) DULLARD RESIDENCE-MCP.dwg\CONCEPTUAL DRAINAGE

SURVEY PLAT

OF
PART OF LOT 5,
ISLAND SHORES, UNIT NO. 1
AS RECORDED IN PLAT BOOK 9, PAGE 24
LYING IN
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

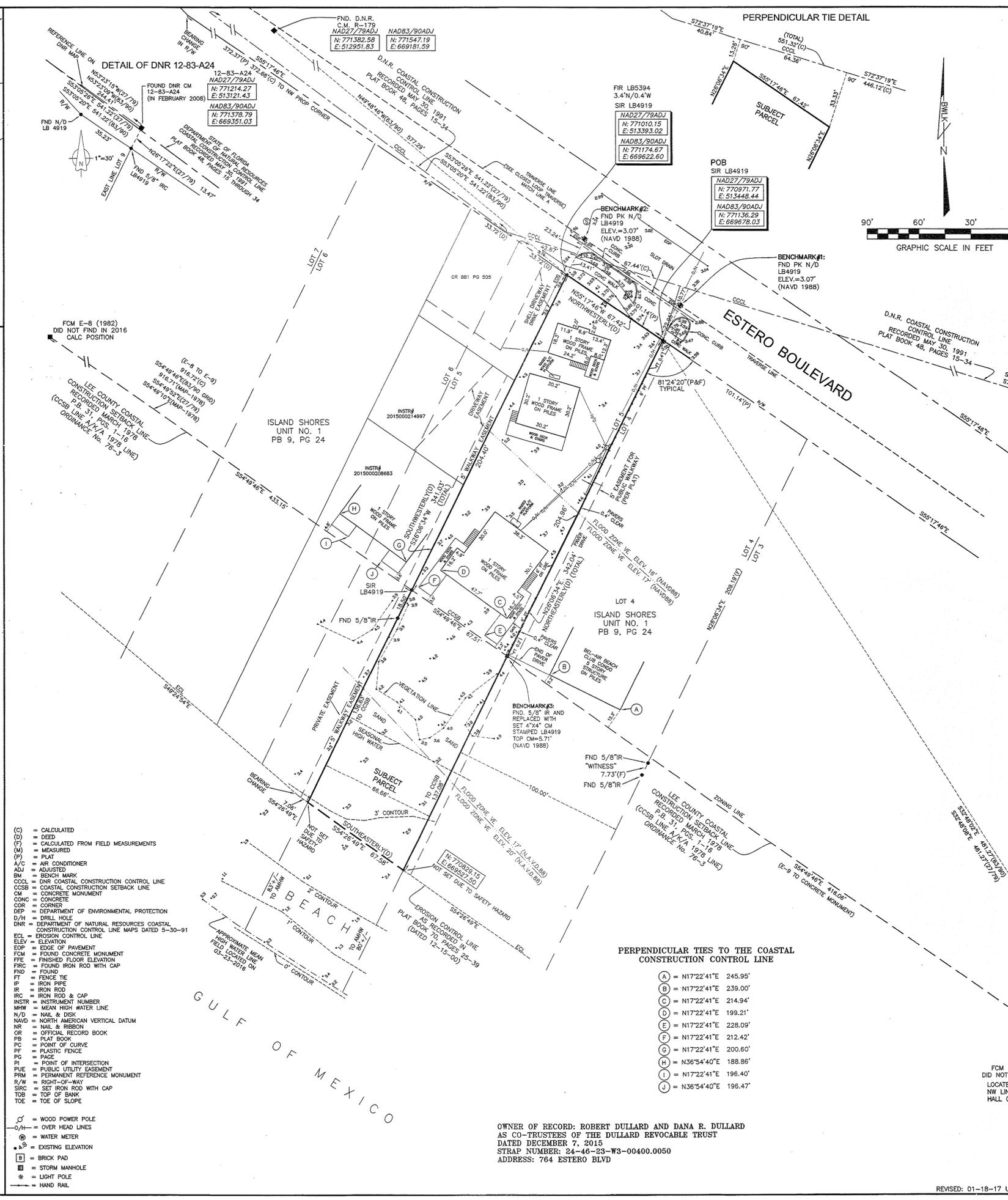
DESCRIPTION AS RECORDED IN INSTRUMENT #201600004491:

PART OF LOT 5, UNIT NO. 1, ISLAND SHORES (BEING A SUBDIVISION OF PART OF GOVERNMENT LOT 1, SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST), ACCORDING TO THE MAP OR PLAT THEREON ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF LEE COUNTY, FLORIDA, IN PLAT BOOK 9 AT PAGE 24, DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT ON THE SOUTHWESTERLY SIDE OF ESTERO BOULEVARD AT THE COMMON CORNER OF LOTS 4 AND 5 OF SAID SUBDIVISION, THENCE SOUTHWESTERLY ALONG THE SOUTHWESTERLY SIDE OF SAID BOULEVARD, 67.42 FEET, THENCE SOUTHWESTERLY PARALLEL TO THE SOUTHEASTERLY LINE OF SAID LOT 5 TO THE WATERS OF THE GULF OF MEXICO; THENCE SOUTHEASTERLY ALONG WATERS OF SAID GULF TO THE SOUTHEASTERLY CORNER OF SAID LOT 5; THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF SAID LOT 5 TO THE POINT OF BEGINNING.



NOTES:
STATE PLANE COORDINATES SHOWN ON THIS DETAIL ARE BASED ON THE NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE.
ALL "A" MONUMENTS WERE FIELD LOCATED AND THE LOOP WAS RUN IN 2010.

CLOSED LOOP TRAVERSE
CLOSING RATIO = > 1:80,000
NOT TO SCALE



NOTES:
SURVEY BASED ON SAID RECORDED PLAT, THE "LEE COUNTY COASTAL CONSTRUCTION SETBACK LINE", A SURVEY OF LYNN HALL MEMORIAL PARK AS PREPARED BY JOHNSON ENGINEERING, INC., DATED AUGUST 1988, HISTORICAL SURVEYS (IN THE FILES OF THIS FIRM) DATED 1982, THE GENERAL PERMIT LINE LEGAL DESCRIPTION PER CHAPTER 62B-34.150 FAC, THE EROSION CONTROL LINE MAPS, THE COASTAL CONSTRUCTION CONTROL LINE MAPS, THE DESCRIPTION SHOWN HEREON AND FOUND MONUMENTATION.
DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.
ELEVATIONS ARE BASED ON N.A.V.D. OF 1988 AND NGS BENCHMARK H-245.
STATE PLANE COORDINATES ARE BASED ON THE NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE AS SHOWN AND NOTED HEREON HOLDING NGS CONTROL POINT "BOOB-2". NOTATIONS REFERENCING 27/79 CO-ORDINATE DATUM ARE PER THE DNR COASTAL CONSTRUCTION CONTROL LINE MAPS.
BEARINGS ARE BASED ON THE NORTH AMERICAN DATUM (NAD) OF 1983/1990 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE HOLDING NGS CONTROL POINT BOOB-2 TIED TO THE FLORIDA HIGH PRECISION GEODETIC NETWORK.
PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS - OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN), OWNERSHIP FOR PARCEL 40-08 (TAKING PER O.R. 1215 PG. 1535 WAS NOT DETERMINED).
PARCEL LIES IN FLOOD ZONE VE, WITH BASE FLOOD ELEVATIONS OF +1', +1'7" AND +2'0" (NAVD 1988) AS SHOWN HEREON. THIS INFORMATION TAKEN FROM FLOOD INSURANCE RATE MAP 120710054F, EFFECTIVE DATE AND INDEX DATE BEING 8-28-08 AND LOMR CASE NO. 13-04-3849P WITH EFFECTIVE DATE OF 12-27-13. (COMMUNITY NAME: TOWN OF FORT MYERS BEACH AND COMMUNITY NUMBER 120673).
THE F.E.M.A. FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED WITH ALL PERMITTING REGULATORY ENTITIES PRIOR TO COMMENCING ANY WORK OR APPLICATION DEPENDENT ON SAID FLOOD INFORMATION.
IRON RODS "SET" ARE 5/8" X 18" REBAR WITH YELLOW CAP BEARING CORPORATION NO. LB4919.
UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.
WETLANDS, IF ANY, WERE NOT LOCATED.
ROOF OVERHANGS NOT SHOWN UNLESS NOTED OTHERWISE.
THIS PLAT PREPARED AS A BOUNDARY SURVEY.
THE LEE COUNTY COASTAL CONSTRUCTION SETBACK LINE AS SHOWN ON MAPS PREPARED FOR STATE OF FLORIDA DEPARTMENT OF NATURAL RESOURCES FILE NUMBER 617-0275 DATED MARCH 1978 IS RECORDED IN PLAT BOOK 31 AT PAGES 1-16.
PARCEL CONTAINS 0.52 ACRES (22,768 SQUARE FEET), MORE OR LESS TO THE EROSION CONTROL LINE.
PARCEL CONTAINS 0.51 ACRES (13,648 SQUARE FEET), MORE OR LESS TO THE COASTAL SETBACK LINE.
PARCEL LIES SEAWARD OF THE COASTAL CONSTRUCTION CONTROL LINE WHICH WILL REQUIRE ADDITIONAL PERMITTING.
THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY.
DATE OF LAST FIELD WORK: 01-18-2017.
THIS DRAWING ACCURATELY REFLECTS A FIELD SURVEY WHICH COMPLIES WITH THE REQUIREMENTS OF SECTION 62B-33.008(1), [62B-33.008(3)(F) AND 5J17 FLORIDA ADMINISTRATIVE CODE.

- (C) = CALCULATED
- (D) = DEED
- (M) = MEASURED FROM FIELD MEASUREMENTS
- (M) = MEASURED
- (P) = PLAT
- A/C = AIR CONDITIONER
- ADJ = ADJUSTED
- BM = BENCH MARK
- CCCL = DNR COASTAL CONSTRUCTION CONTROL LINE
- CCSB = COASTAL CONSTRUCTION SETBACK LINE
- CM = CONCRETE MONUMENT
- CONC = CONCRETE
- COR = CORNER
- DEP = DEPARTMENT OF ENVIRONMENTAL PROTECTION
- D/H = DRILL HOLE
- DNR = DEPARTMENT OF NATURAL RESOURCES COASTAL CONSTRUCTION CONTROL LINE MAPS DATED 5-30-91
- EOL = EROSION CONTROL LINE
- ELEV = ELEVATION
- EOP = EDGE OF PAVEMENT
- FCM = FOUND CONCRETE MONUMENT
- FEE = FINISHED FLOOR ELEVATION
- FRIC = FOUND IRON ROD WITH CAP
- FND = FOUND
- FT = FENCE TIE
- IP = IRON PIPE
- IR = IRON ROD
- IRC = IRON ROD & CAP
- INSTR = INSTRUMENT NUMBER
- MHW = MEAN HIGH WATER LINE
- N/D = NAIL & DISK
- NAVD = NORTH AMERICAN VERTICAL DATUM
- NR = NAIL & RIBBON
- OR = OFFICIAL RECORD BOOK
- PB = PLAT BOOK
- PC = POINT OF CURVE
- PF = PLASTIC FENCE
- PG = PAGE
- PI = POINT OF INTERSECTION
- PUE = PUBLIC UTILITY EASEMENT
- PRM = PERMANENT REFERENCE MONUMENT
- R/W = RIGHT-OF-WAY
- SIRC = SET IRON ROD WITH CAP
- TOB = TOP OF BANK
- TOE = TOE OF SLOPE
- W/P = WOOD POWER POLE
- OH = OVER HEAD LINES
- W = WATER METER
- LP = LIGHT POLE
- EX = EXISTING ELEVATION
- BR = BRICK PAD
- SM = STORM MANHOLE
- LF = LIGHT POLE
- HR = HAND RAIL

PERPENDICULAR TIES TO THE COASTAL CONSTRUCTION CONTROL LINE

A	= N17°22'41"E 245.95'
B	= N17°22'41"E 239.00'
C	= N17°22'41"E 214.94'
D	= N17°22'41"E 199.21'
E	= N17°22'41"E 228.09'
F	= N17°22'41"E 212.42'
G	= N17°22'41"E 200.60'
H	= N36°54'40"E 188.86'
I	= N17°22'41"E 196.40'
J	= N36°54'40"E 196.47'

OWNER OF RECORD: ROBERT DULLARD AND DANA R. DULLARD
AS CO-TRUSTEES OF THE DULLARD REVOCABLE TRUST
DATED DECEMBER 7, 2015
STRAP NUMBER: 24-46-23-W3-00400.0050
ADDRESS: 764 ESTERO BLVD

*NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
BEAN, WHITAKER, LUTZ & KAREH, INC.
SCOTT C. WHITAKER, P.S.M., NO. LS4324
PROFESSIONAL SURVEYOR & MAPPER
STATE OF FLORIDA
- THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON -
- IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES.
- THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.

DULLARD
BOUNDARY SURVEY-764 ESTERO BLVD

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)
CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS
13041-1 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

SR43765.DWG
DATE PROJECT NO. DRAWN BY SCALE SHEET FILE NO. (S-T-R)
03-23-16 43765 SCW 1"=30' 1 OF 1 24-46-23

REVISED: 01-18-17 UPDATE SURVEY
D.E.P. SURVEY, THE EASTERLY 67.42 FEET OF LOT 5, ISLAND SHORES, UNIT NO.1, PB 9, PG 24

Dullard Residential Planned Development

Exhibit D-1-G: Property Development Regulations

The Dullard Residential Planned Development will have the following property development regulations:

Minimum Street Setback: 25 Feet

Side Setback:

For Single Family Homes: 7.5 Feet

For Multifamily Buildings: 20 feet for Eastern Property Line Setback
7.5 feet for Western Property Line Setback

Rear Setback: 20 Feet

Waterbody Setback on Gulf of Mexico: 50 feet

Minimum Lot Area: 7,500 square feet

Minimum Lot Width: 67 Feet

Minimum Lot Depth: 100 Feet

Floor Area Ratio: 1.23

Maximum Building Coverage: Not Applicable (Floor Area Ratio Applies)

Maximum Stories: 4

Maximum Height: 35 Feet

EXHIBIT D

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RESOLUTION NUMBER 03-23

WHEREAS, Thomas F. Kolar, owner of Lighthouse Island Resort has requested to rezone from CPD (Commercial Planned Development) to CPD-Commercial Planned Development to add restaurant space of 4,300 square feet to the schedule of uses and to revise the Master Concept Plan; and,

WHEREAS, the subject property is located at 1051 5th Ave., Fort Myers Beach, and the applicant has indicated the property's current STRAP numbers are: 24-46-23-W3-000203.0010; 24-46-23-W3-00203.014A; 24-46-23-W3-00203.0090; 24-46-23-W3-00203.0190; 24-46-W3-00205.0060; and the legal description attached as Exhibit 'A':

WHEREAS, the LPA gave full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons and recommended that the Town Council APPROVE the Applicant's request for rezoning subject to the conditions and deviations incorporated herein by reference; and

WHEREAS a hearing was held and the 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 approval of the request appropriate.
- c. The impact of a proposed change on the intent of this chapter.
- d. The testimony of any applicant.
- e. The recommendation of staff and of the local planning agency.
- 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

EXHIBIT D

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.

NOW THEREFORE BE IT RESOLVED THAT THE 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.
- d. The proposed use or mix of uses is appropriate at the subject location;
- e. Sufficient safeguards to the public interest are provided by the recommended conditions to the concept plan or by other applicable regulations;
- f. All recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
- g. 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 rezonings 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.

THEREFORE THE APPLICATION IS APPROVED SUBJECT TO THE FOLLOWING conditions and requirements that are necessary for the protection of the health, safety, comfort, convenience and welfare of the general public and that are reasonably related to the request:

SEE ATTACHED CONDITIONS

EXHIBIT D

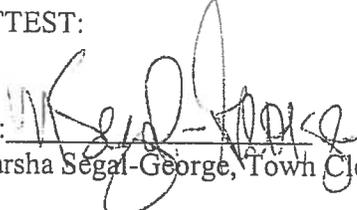
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

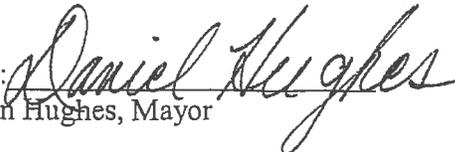
Howard Rynearson	Aye
Daniel Hughes	Aye
Bill Thomas	Nay
W. H. "Bill" Van Duzer	Aye
Terry Cain	Aye

APPLICATION DULY GRANTED this 30th day of June, 2003.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
 Marsha Segal-George, Town Clerk

By: 
 Dan Hughes, Mayor

Approved as to form by:


 Richard V.S. Roosa, Town Attorney

EXHIBIT D

DCI2003-00016 LIGHTHOUSE ISLAND RESORT CPD RESOLUTION NUMBER 03-23

CONDITIONS

1. The development of this project must be consistent with the five (5) page master concept plan entitled "Master Concept Plan (CPD) for Lighthouse Island Resort" stamped received August 20, 2003 last revised June 19, 2003 except as modified by the conditions below.
2. The following limits apply to the project and uses:
 - a. **Schedule of Uses**

All uses permitted by right in the Downtown zoning district with the following limitations:

 - Restaurant is limited to 4,300 square feet
 - Retail is limited to 5,000 square feet
 - Office is limited to 420 square feet
 - Hotel/Motel units limited to a maximum total of 72 guest units, which total includes the unit for the caretaker
 - b. **Site Development Regulations**

Building placement, size, design, and all other property development regulations shall be the same as for the CR (Commercial) zoning district unless approved as a deviations as part of the approved zoning resolution.
3. Maximum building height may not exceed 37 feet above minimum flood elevation. No additional building height is approved within this planned development.
4. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.
5. The final design of the building within this planned development must be approved by the Town Manager prior to the approval of any permits. The design must be in substantial compliance with the Town of Fort Myers Beach Comprehensive Plan, the Land Development Code, and all other applicable requirements.
6. The 5,000 square feet of retail uses are limited to the ground floor of the Phase 2 building as depicted on the approved Master Concept Plan. The ground floor will have to be dry flood proofed and must be constructed in compliance with Chapter 6 of the Land Development Code.

EXHIBIT D

7. At no time will the total number of Hotel/Motel units exceed 72 guest units.
8. The existing cottage on Third Street (adjacent to the Sky Bridge) must be demolished no later than five (5) years from the date of the approval of this zoning resolution--or earlier if the Town moves ahead with improvements to Third Street--as indicated in the letter from Beverly Grady, dated April 18, 2003, attached to the Staff Report dated March 18, 2003, as Exhibit "B".
9. Prior to approval of a development order, the correct sidewalk easement must be recorded in the Public Records of Lee County, Florida.
10. Prior to seeking building permits for development on this site, the developer must combine the existing platted lots into one lot of record as part of the local development order for this CPD project.
11. Prior to each local development order approval, the developer must provide a current tally of the square feet for each use approved in all previous local development orders.
12. The total square feet of existing and proposed buildings must not exceed 57,132 square feet of total building area for buildings used as hotel/motel guest units.
13. Any off-site parking, other than the existing approved 5 off-site parking spaces, must be addressed through an amendment to this CPD.
14. Any outdoor seating for the restaurant and any sign that will require a deviation must be addressed through an amendment to this CPD.
15. This development must comply with all requirements of the Lee County 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.
16. This CPD project must be constructed to build-out no later than December 31, 2020.

DEVIATIONS

Deviation 1 request relief from LDC Section 10-285(a) which requires a minimum connection separation of 125 feet along a local road (Crescent Street); to allow a connection separation of 83 feet from Fifth Avenue. This deviation is unchanged from the previously approved MCP and is **APPROVED**.

Deviation 2 requests relief from LDC Section 10-285(a) which requires a minimum connection separation of 125 feet along a local road (Crescent Street); to allow a connection separation of 115 feet from Third Street. This deviation is unchanged from the previously approved MCP and is **APPROVED**.

Deviation 3 requests relief from LDC Table 34-3 which requires a minimum building separation of one-half the sum of the height of the structures, or 20 feet, whichever is

EXHIBIT D

greater; to allow building separations of 19.1', 4.25', & 2.6'. This deviation is **APPROVED as depicted on the approved Master Concept Plan.**

Deviation 4 requests relief from LDC Table 34-3 which requires certain setbacks for structures, buildings, and pavement from the development perimeters; to allow the reduced setbacks of 7.4', 4.5', 3', 2.6', 1.5', 1.4', & 0' from the development perimeter as depicted on the Master Concept Plan. All of the setbacks, except for the 0' setback, were previously approved on the existing MCP for this project. This deviation is **APPROVED.**

Deviation 5 requests relief from LDC Table 34-3 which provides the property development regulations for the Fort Myers Beach Commercial Resort (CR) District; to allow street setbacks of 4.5', 2.0, and 0' feet along San Carlos Boulevard. All of the setbacks, except for the 0' setback, were previously approved on the existing MCP for this project. This deviation is **APPROVED.**

Deviation 6 requests relief from LDC Section 34-2016 which requires 90 degree parking spaces to be a minimum of 18' in length; to allow the 90 degree parking spaces to be 16' in length for the Phase 2 parking only. This deviation is **APPROVED as depicted on the approved Master Concept Plan and with the condition that these parking spaces will be removed at the time Phase 5 is constructed.**

Deviation 7 requests relief from LDC Section 34-2016(a) which requires parking aisles between parking spaces to be 22' in width to allow the parking aisles to be 20' in width for some areas for the Phase 2 parking only. This deviation is **APPROVED as depicted on the approved Master Concept Plan and with the condition that these parking aisles will be removed at the time Phase 5 is constructed.**

Deviation 8 request relief from LDC Section 10-285(a) which requires a minimum connection separation of 125 feet along a local road (Fifth Avenue); to allow a connection separation of 83 feet from two existing driveways. This deviation is **APPROVED.**

Deviation 9 requests relief from the F.A.R. requirements of LDC Section 34-953 and Table 34-3 to allow additional F.A.R. to exceed the total 66,852 square feet of residential and commercial uses to the extent necessary to develop on-site under building parking. This deviation is **APPROVED.**

10/23/03 THU 10:25 FAX

EXHIBIT A

DESCRIPTION: (Per Survey)

A tract or parcel of land lying in Blocks 3 and 5 and a portion of vacated Fourth Street and a portion of vacated Fifth Avenue, all lying in BUSINESS CENTER, as recorded in Plat Book 9, at Pages 9 and 10, Public Records of Lee County, Florida and also lying in Section 24, Township 46 South, Range 23 East, Fort Myers Beach, Lee County, Florida, described as follows:

Beginning at the Northeastly corner of Lot 16, Block 3 of the aforesaid Business Center thence run N.63°58'26"W, along the Southwesterly right-of-way line of Third Street (50 feet wide) for 137.00 feet; thence run S.26°01'34"W, for 95.00 feet; thence run N.63°58'26"W, for 28.00 feet to a point on the Northwesterly line of Lot 9 of the aforesaid Block 3 and the Southeastly right-of-way line of Estero Boulevard; thence run S.26°01'34"W, for 65.00 feet to the Southwesterly corner of said Lot 9, Block 3; thence continue S.26°01'34"W, for 286.05 feet to a point on the Northwesterly line of Lot 7 of the aforesaid Block 5; thence run N.67°37'17"E, along the North-easterly line of Lots 7, 8 and 9 of said Block 5 for 92.74 feet to the Northeastly corner of said Lot 9, Block 5; thence run S.22°22'43"E, along the Easterly line of said Lot 9 for 80.00 feet to the South-easterly corner of said Lot 9 and the Northwesterly right-of-way line of Fifth Avenue; thence run N.67°37'17"E, for 28.38 feet; thence run N.46°59'05"E, for 46.47 feet to a point of curvature; thence run Northeastly for 56.05 feet along the arc of a curve concave Northwestly, with a radius of 148.00 feet, a delta of 21°42'03", a chord bearing of N.36°08'05"E, and a chord distance of 55.72 feet to a point of reverse curvature; thence run Northeastly for 102.54 feet along the arc of a curve concave Southeastly, with a radius of 212.00 feet, a delta of 27°42'49", a chord bearing of N.39°08'22"E, and a chord distance of 101.55 feet to a point of non tangency; thence run N.57°31'39"E, along said non tangential line for 51.33 feet; thence run N.78°21'29"E, for 12.55 feet to a point on the Northeastly right-of-way line of the aforesaid Fourth Street; thence run S.63°58'26"E, along said Northeastly right-of-way line for 7.04 feet; thence run N.26°01'34"E, for 50.32 feet; thence run N.89°22'43"E, for 22.03 feet to the Westery right-of-way line of Crescent Street; thence run N.00°37'17"W, for 22.14 feet to a point on the Southwesterly line of Lot 17 of the aforesaid Block 3; Thence run N.63°58'26"W, along said Southwesterly line of Lot 17 for 78.22 feet to the Southeastly corner of the aforesaid Lot 16, Block 3; thence run N.26°01'34"E, for 80.00 feet to the point of beginning.

Said tract contains 72,861.7 square feet, more or less, or 1.672 acres, more or less.

Bearings are based on the Southwesterly line of Third Street, Block 3, Business Center as being N.63°58'26"W.

Surveyed and Certified by [Signature] 10/23/03

FT. MYERS BEACH, FLORIDA
ZONING DIVISION
REVISED STAFF REPORT

TYPE OF CASE: PLANNED DEVELOPMENT

CASE NUMBER: DCI2003-00087

FORT MYERS BEACH LPA DATE: June 8, 2004 (continued from 04/13/04)

TIME: 12:00 Noon

I. APPLICATION SUMMARY:

- A. Applicant: JKJ Developers, Inc. in ref. to Casa Bahia
- B. Request: Rezone 0.2 acres from Residential Conservation (RC) to Residential Planned Development (RPD) to construct four (4) multiple-family dwelling units as pre-disaster buildback with deviations from setback and driveway width requirements.
- C. Location: The subject property is located at 855 Lagoon St., Ft. Myers Beach, in S24-T46S-R23E, Lee County, FL.
- D. Future Land Use Plan Designation, Current Zoning and Use of Subject Property: Mixed Residential, Residential Conservation ("RC"), six (6) multi-family dwelling units.
- E. Surrounding Land Use:

<u>Existing Zoning & Land Use</u>	<u>Future Land Use Map</u>
North: RC, Single Family Residence	Mixed Residential
East: Water, Lagoon	Tidal Water
South: RC, Single Family Residence	Mixed Residential
West: Lagoon Street, then RC, Multiple-Family Building, three (3) dwelling units.	Mixed Residential

Note: The above Land Use information is based on the Lee County Property Appraiser's website, databases, and staff observations. The Property Appraiser's information indicates that the subject property is a multiple-family residence comprised of one unit. While this is clearly incorrect, based on the application and staff observation, the information about the adjacent properties taken from the Property Appraiser's information may be equally inaccurate.

F. Size of Property: 0.2± acres

II. RECOMMENDATION:

Staff recommend **DENIAL** of the Applicant's request to rezone from RC to RPD with certain deviations. Alternatively, if the Local Planning Agency recommends and Town Council moves **APPROVAL** of the RPD, staff recommend the following conditions:

A. Conditions

1. The development of this project must be consistent with the one (1) page Master Concept Plan ("MCP") entitled "MASTER CONCEPT PLAN CASA BAHIA," stamped RECEIVED MAY 18, 2004 COMMUNITY DEVELOPMENT (Exhibit "A"), last revised April 26 2004, except as modified by the recommended conditions and deviations below. The development of this project must also be consistent with the four (4) page set of floor plans and elevations attached thereto. 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 MCP are subsequently pursued, appropriate approvals will be necessary.
2. The following limits apply to the project and uses:

Schedule of Uses

Dwelling units: multiple-family, limited to four (4)
Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week (see LDC Section 34-2391 et seq. for rules and exceptions).

As Accessory Uses

Residential accessory uses
Home occupation (no outside help)
Dock (for sole use by occupants of principal use)

3. The existing tiki hut must be removed at time of demolition of the existing buildings.
4. Prior to receiving any building permits, the developer will install a transit stop acceptable to the Director of Community Development proximate to the southerly intersection of Lagoon Street and Estero Boulevard.
5. Any future conversion from residential dwelling units to hotel/motel or bed and breakfast guest units is strictly limited to an equivalency factor of 1.0.
6. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Fort Myers Beach LDC may be required to obtain a local development order.
7. Approval of this zoning request does not give the Developer an undeniable right to receive local development order approval. Future development order approvals must satisfy the requirements of the Fort Myers Beach Comprehensive Plan ("Plan").

8. No later than two weeks prior to the public hearing before Town Council, Applicant must revise the MCP to indicate all ground level parking spaces and revise the floor plans and elevations to reflect the reductions in interior square footage proposed by the revised MCP referenced in Condition 1.
- B. Deviations: Staff recommend **DENIAL** of the requested RPD, and thereby **DENIAL** of the requested deviations. However, if the LPA decides to recommend that Town Council **APPROVE** the requested RPD, staff recommend that the requested deviation be modified as follows.
1. Deviation from LDC Section 34-943 and Table 34-3, which require a 20-foot side setback for multiple-family buildings on waterfront lots in the RPD zoning district, to allow a side setback of 10 feet on the southerly and northwesterly sides.
 2. Deviation from LDC Section 34-943 and Table 34-3, which require a 25-foot waterbody setback on lots in the RPD zoning district, to allow a waterbody setback of 5.5 feet.
 3. Deviation from LDC Section 34-943 and Table 34-3, which require a 20-foot rear setback on lots in the RPD zoning district, to allow a rear setback of 5.5 feet.
 4. Deviation from LDC Section 34-2013, which requires a 20-foot minimum width at the property line for two-way entrances to parking lots, to allow a minimum width of 12 feet.

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of planned development zoning, staff recommend **DENIAL** of the requested RPD zoning district and MCP. However, if the LPA recommends **APPROVAL** of the subject request as modified by reduced deviations and as conditioned, staff recommend the LPA make the following findings and conclusions:

1. The requested Residential Planned Development (RPD) zoning district, as conditioned, complies with:
 - a. The Comprehensive Plan;
 - b. LDC Chapter 34;
 - c. all other applicable Town ordinances and codes; and
 - d. the following additional requirements for planned development zoning requests:
2. The proposed use or mix of uses is appropriate at the subject location.
3. Sufficient safeguards to the public interest are provided by the recommended conditions to the concept plan or by other applicable regulations.
4. All recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

5. The proposed use(s) meet(s) all specified requirements of the Plan that are relevant to the requested planned development, such as the following:
 - a. Policies 4-B-4 and 4-C-3 on commercial uses in the "Mixed Residential" future land use category.
 - b. Policy 4-B-11 on maximum residential densities for properties within the platted overlay.
 - c. Policy 4-C-11 for parcels bordering Palermo Circle and Santos Road.
 - d. Objective 4-D and Policy 4-D-1 for post-disaster redevelopment.
6. As to the requested deviations:
 - a. Each item enhances the achievement of the objectives of the planned development; and
 - b. The general intent of LDC Chapter 34 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.

III. **BACKGROUND INFORMATION AND ANALYSIS:**

Introduction/Synopsis. The subject property is an irregularly shaped platted lot at 855 Lagoon Street, in Unit No. 2 Island Shores Subdivision, **Exhibit "B"**, containing approximately 0.2 acres of developable land. It is currently located in the Mixed Residential Future Land Use category and zoned Residential Conservation ("RC"). The property is developed with two (2) existing residential buildings connected by an elevated wooden deck. See Exhibit "C". Applicant indicates that the buildings together contain a total of four (4) multiple-family dwelling units with at total of 2,675 interior square feet. See Attachment "B". It appears to staff from several visits to the site that there are actually six (6) units within the existing buildings.

Applicant, JKJ Developers, Inc., requests a zoning change from RC to Residential Planned Development ("RPD") to voluntarily replace the existing structures with a new residential multiple-family building containing four (4) multiple-family dwelling units. Applicant further requires four (4) deviations from the regulations of the Land Development Code ("LDC") to allow reduced side, rear, and waterbody setbacks, and to allow a reduced driveway width for two-way access to the parking lot. See Attachment "C" Staff recommend **DENIAL** of Applicant's request. If, however, the LPA recommends **APPROVAL** of the request, staff has recommended conditions in an effort to improve the project and best protect the public interest.

Master Concept Plan ("MCP"). The MCP, **Exhibit "A"**, proposes a multiple-family residential building, limited to four (4) multiple-family dwelling units, short term rental of the units, and residential accessory uses. The four units are proposed in two floors with two units per floor within a building footprint of 27.66 feet by 54.67 feet with 10-foot by 22.67-foot porches attached to the rear of the building for each unit. To construct the proposed building and porches within this proposed footprint requires deviations

from LDC regulations to reduce setbacks from both sides, the rear, and the waterbody. An additional deviation is requested to allow a reduced width for a two-way access drive to on-site parking.

As it is currently developed, the subject property is non-conforming for density and setbacks. LDC Section 34-632 provides the formulas for computing allowable density. Even utilizing the maximum allowances for existing subdivisions where lots are smaller than 15,000 square feet, see Exhibit "D", no more than two dwelling units are permissible here, except with Town Council approval for pre-disaster buildback as an RPD.

Request Analysis. LDC Section 34-3237 provides:

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings may seek permission from the town council to voluntarily replace those buildings at up to the existing lawful density or intensity and up to the existing height in accordance with Policy 4-E-1 of the [Plan], as follows:

* * * *

- (4) The replacement building cannot exceed the lawful density and intensity of the existing building:
 - a. as measured for residential buildings in Section 3238(2)d.

Emphasis added. LDC Section 34-3238(2)d. allows that a rebuilt residential building may "exceed the density limits for new buildings on vacant land, but cannot exceed the legally documented number of dwelling units in the building immediately before" replacement. Emphasis added. Subsection 1 provides that all dwelling units legally existing prior to replacement may be rebuilt provided the total interior square footage of the rebuilt dwelling units does not exceed the interior square footage of the previous dwelling units.

Staff's concern is that the number of units currently existing exceeds not only the maximum allowable under today's density standards, but also what would have been allowed under the County's rules prior to the Town's incorporation and as long ago as 1972. Zoning regulations adopted by Lee County in 1972 limited residential densities "between Estero Boulevard and the bay to fifteen units per acre of land. For the subject property this equates to a maximum of three (3) dwelling units. For more than three (3) dwelling units to be lawfully existing, they would have to have been constructed prior to the effective date of the 1972 ordinance. Lee County Ordinance No. 72-9, Sections 2 and 11 (providing an effective date of September 27, 1972). See Attachment "D". Applicant has been unable to produce documentation of the lawful permitting of four (4) dwelling units. The best available historical data from the Lee County Property Appraiser's Field Card records indicates that in 1973 an apartment was added to the frame duplex originally constructed on the property in 1958. This anecdotal evidence at best indicates three (3) lawfully existing dwelling units in 1973. See Exhibit "E".

Because Applicant has not been able to demonstrate the existence of four (4) lawful dwelling units, staff does not feel justified in recommending approval of--excess density aside--an otherwise acceptable zoning proposal.

Comprehensive Plan ("Plan") Considerations. The subject property is within the Mixed Residential Future Land Use Map ("FLUM") category. This FLUM category allows a maximum density for new construction of six dwelling units per acre (6 DU/AC). Applicant seeks to demolish an existing residential multiple-family building that is currently non-conforming for density and setbacks and, through the Town's pre-disaster buildback policies, construct a new multiple-family residential

building, with four (4) multiple-family dwelling units. Assuming the density calculus most advantageous to Applicant, this would result in an overall density of 11 dwelling units per acre for the site, or roughly double the density allowed in this area by the Plan.

Staff note that a portion of this neighborhood--including the subject property--is the subject of a pending Plan FLUM amendment. The amendment requests to change the FLUM category for this and adjacent properties from Mixed Residential to Pedestrian Commercial. Although this FLUM change would allow commercial zoning in this area with more extensive commercial uses than are currently allowed, the proposed Plan change will not increase the residential density allowable for the area.

The LDC's buildback provisions for non-conforming buildings, codified in Sections 34-3231, et seq., implement Plan Policy 4-E-1:

PRE-DISASTER BUILDBACK POLICY: Owners of existing developments that exceed the current density or height limits may also be permitted to replace it at up to the existing lawful density and intensity prior to a natural disaster. Landowners may request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such a request based on the conformance of the specific proposal with the comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria.

Emphasis added. Staff understands the requirement that such buildback requests be heard by Town Council through the planned development process seeks to ensure adequate public notice and an opportunity to be heard. Applicant's request--while arguably modest--is not unlike those other recent applications that have requested pre-disaster buildback approval through this process. While Applicant's request aims to meet the Plan's design policies, it also asks to legitimize existing non-conforming density and to vary from the required land development regulations for building setbacks. Policy 4-E-1 limits a buildback to the existing lawful density and the LDC implements this policy in Section 34-3237. To vary from this limitation by utilizing the planned development process would legitimize this number of units absent a clear showing of legal entitlement. While Applicant may have reasonable justification for certain setback deviations given the irregular shape of the platted lot, staff believe rebuilding the non-conforming density of the proposed development over that of the demonstrable lawful density is **INCONSISTENT** with the Plan. If the Town wishes to entertain this type of buildback, staff believe it is more appropriate to amend the Plan and LDC than grant approvals contradictory to this key Policy. Because Applicant has been unable to demonstrate that four units were lawfully permitted on the subject property, staff have recommended **DENIAL** of the request.

Neighborhood Compatibility. The Island Shores Neighborhood was platted in 1950 and includes all the lots on either side of Lagoon Street. Two-story elevated structures and structures with reduced setbacks--such as that proposed--are not uncommon in the neighborhood. The lot to the south of the subject property was split into two parcels years ago and a variance granted by Lee County in 1980 to eliminate the side and rear building setback requirement for the southerly half of that split lot.

Many of the lots are irregularly shaped or small (2,500 square feet or less). Years ago, several smaller lots were combined, while larger lots were split or further subdivided into smaller lots. Visual inspection indicates that buildings on lots other than the subject property may be non-conforming for setbacks but perhaps old enough to predate the advent of zoning on Fort Myers Beach.

While the proposed buildback seeks deviations from the required setbacks, it proposes an improvement over the existing setbacks of the current buildings. There is no request for additional height over what is currently allowed, and the buildback request will allow the new building to comply with current flood regulations. However, all adjacent properties appear to be developed currently at lower densities and would thus not be able to achieve the density of the subject property through similar application for buildback approval. Because staff have outstanding questions about the lawful nature of the non-conforming density of the subject property, staff cautions against approving a project with higher density than that of the neighboring properties.

Environmental Issues. Staff believe the permits issued to construct the tiki hut were issued in error. Such a structure could not be permitted in its current location today. If the LPA recommends the Town Council approve this request, staff recommend that the tiki hut be removed at the time of demolition of the existing buildings. See Condition 3.

Conclusion. Because this buildback request seeks to retain non-conforming density in absence of documentation of the lawful nature of that non-conformity, staff recommends **DENIAL** of the request. Staff, however, agrees with Applicant that rebuilding the existing non-conforming buildings to develop a project that meets the required flood elevation would be an improvement for the Town. Further, staff believes that the elevations Applicant has appended to the MCP, **Exhibit "A"**, page 5, indicate a desire to comport with the Town's design policies. For these reasons staff have recommended certain conditions to the LPA in the event the LPA seeks to **APPROVE** a RPD buildback for four (4) dwelling units on the subject property.

IV. LEGAL DESCRIPTION:

LOT 33, BLOCK "A", UNIT NO. 2 ISLAND SHORES SUBDIVISION, PLAT BOOK 9, PAGE 25, PUBLIC RECORDS, LEE COUNTY, FLORIDA.

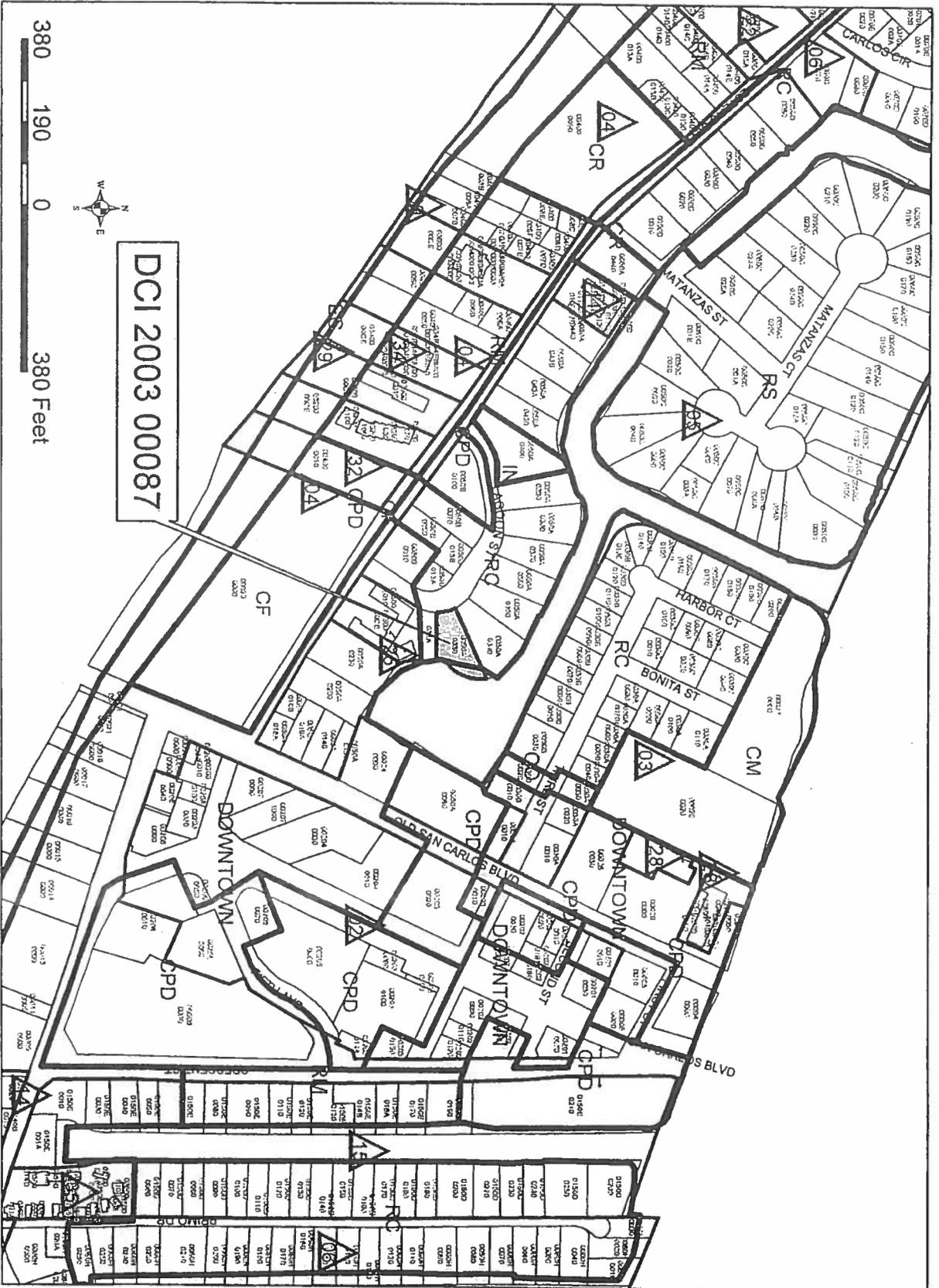
V. ATTACHMENTS:

- A. Map of surrounding zoning
- B. Applicant's calculation of existing interior square footage (2 pages)
- C. Applicant's Deviation Justification for Casa Bahia (2 pages)
- D. Lee County Ordinance No. 72-9 (as codified)

VI. EXHIBITS:

- A. Master Concept Plan (MCP) (Composite Exhibit--5 pages)
- B. Plat Book 9, Page 25 (Unit No. 2 Island Shores Subdivision plat)
- C. Applicant's Boundary and Topography Survey dated 10/28/03
- D. Subject property maximum allowable Lot Area for calculating density
- E. Property Appraiser's Field Card for 855 Lagoon Street

cc: Applicant
Town of Fort Myers Beach LPA
Zoning/DCI File



SURROUNDING ZONING

ATTACHMENT D

DIVISION 3. ESTERO AND SAN CARLOS ISLANDS

Sec. 8-154. Findings and declaration.

The board of county commissioners of Lee County hereby finds that Estero Island and San Carlos Island are unique in scenic beauty and geography, and in order to maintain this scenic beauty and for the purpose of promoting public health, safety and the general welfare of the community, find and declare that it is necessary that certain restrictions and regulations be adopted for Estero Island and San Carlos Island which increase the safety and security of the home life, business and industry of such islands and in order to preserve and create a more favorable environment to rear children, to stabilize and enhance property and civic values, to protect the rights of the public to have access to and use of that part of the shore which is in the public domain and to facilitate adequate provisions for increased safety of transportation and vehicular traffic, housing, light, air, water supply, sewerage, sanitation, density of population and other public requirements, and it is necessary to restrict population density on such islands, which are presently surrounded by unpolluted water. Such density requirements will lessen congestion, disorder and danger, which often inhere in unregulated developments, prevent overcrowding of land, undue concentration of population and pollution of adjoining bodies of water. (Ord. No. 72-9, § 1, 9-27-72)

Sec. 8-155. Limitation on number of living units per acre.

No building or group of buildings shall be erected or altered between the Gulf and Estero Boulevard (also known as State Road 865), so as to include more than thirty (30) motel or hotel rooms or efficiency apartments per acre of land or more than twenty-five (25) living units having one (1) or more bedrooms per acre of land. No buildings or group of buildings shall be erected or altered between Estero Boulevard (also known as State Road 865) and the bay, and all of San Carlos Island so as to include more than twenty (20) motel or hotel rooms or efficiency apartments per acre of land or more than fifteen (15) living units having one (1) or more bedrooms per acre of land. Where computation results in a remaining major fraction of a unit, an additional full unit shall be permitted. (Ord. No. 72-9, § 2, 9-27-72)

Sec. 8-156. Parking requirements.

Each use hereinafter set forth in this section shall be required to have, as a minimum, permanently maintained, off-street parking for passenger vehicles as follows:

- (1) Hotels, motels and efficiency apartments, at least one (1) parking space for each individual guest room or suite, plus one (1) such space for each six (6) employees, plus reasonable service area parking.
- (2) Restaurants, lounges, bars and nightclubs, at least one (1) parking space for each three (3) seats, chairs or stools plus one (1) such space for each six (6) employees. In the event any use provided for in subsection (1) of this section is combined in the same building with a use provided for in this subsection, then in computing the total number of parking spaces required, up to twenty (20) per cent of the spaces required for the subsection (1) use may be counted twice, once to satisfy the requirements for the subsection (1) use and once to satisfy the requirements for the uses set forth in this subsection.
- (3) Dwellings (single family, duplexes and multiple apartments), at least one and one-half (1-1/2) parking spaces for each living unit which has one (1) or more bedrooms.
- (4) Parking requirements for uses not covered by subsections (1) through (3) or provided for in the Lee County Zoning Regulations, shall be as approved by the county commission. (Ord. No. 72-9, § 3, 9-27-72)

Sec. 8-157. Height regulation.

The height of a structure shall not exceed thirty-five (35) feet above grade unless there shall be provided additional side yard setbacks in accordance with those provisions of section 8-158(4) of this division governing structures in excess of thirty-five (35) feet. (Ord. No. 72-9, § 4, 9-27-72)

Sec. 8-158. Setbacks.

All buildings and structures, except office buildings and retail stores, hereafter constructed, reconstructed or moved shall comply with the following minimum setback requirements and regulations related thereto:

- (1) Front setbacks from road rights-of-way shall be not less than twenty-five (25) feet and landscaped so that sight distances from driveways shall not be impaired and no parking allowed.
- (2) Setbacks from the bay or canal, or other body of water not specifically provided for shall be not less than twenty-five (25) feet (measured from mean high tide line where applicable).
- (3) Setbacks from the Gulf of Mexico shall be not less than fifty (50) feet shoreward of mean high tide.
- (4) Side yard setbacks shall be ten (10) per cent of the width of the property; provided, however, in no case shall the setbacks be less than twenty (20) feet from each side, nor shall the setbacks exceed forty (40) feet from each side except in the event that the structure exceeds thirty-five (35) feet in height, in which case the setbacks above established will be increased on each side line by an additional one-half foot of the yard setback for every foot of height over thirty-five (35) feet. Structure height resulting from parking storage being provided within the structure shall not be counted in computing the height of the building for the purpose of determining the setback required. Any parking storage in excess of two (2) stories shall be approved by the board of county commissioners. Notwithstanding the above, single-family residences and duplexes shall be exempt from the twenty-foot minimum side yard setback requirement as set forth hereinabove.
- (5) The required side yard setbacks may not be used for parking unless special permission is obtained from the board of county commissioners by reason of a particular unusual plan and in such event some plan with a reasonable amount of greenery should be adopted.
- (6) It is the intent of this division that flexibility in site design should be achieved by permitting a minimum setback of twenty (20) feet from a side lot line; provided, however, the portion of a particular side setback in excess of thirty (30) feet may be provided for by increasing the opposite side setback in the amount of such excess. (Ord. No. 72-9, § 5, 9-27-72; Ord. No. 76-6, § 1, 4-7-76)

Sec. 8-159. Buildings on the same property.

The distance between buildings on the same property shall be not less than thirty (30) feet plus an additional one-half foot for each foot of height of the taller of the two (2) buildings above forty-five (45) feet. (Ord. No. 72-9, § 6, 9-27-72)

Sec. 8-160. Lot areas and widths and building floor areas.

Minimum lot areas and widths and floor areas shall be the same as existing requirements of the Lee County Zoning Regulations. (Ord. No. 72-9, § 7, 9-27-72)

Sec. 8-161. Provisions supplementary.

It is the intent of the board of county commissioners that this division shall be complementary to the Lee County Zoning Regulations passed under virtue of Chapter 61-2405, Laws of Florida, and all other requirements of such regulations not covered by this division shall apply. In case of any mixed use of property, the more restrictive requirements shall apply. (Ord. No. 72-9, § 8, 9-27-72)

Sec. 8-162. Violations; civil remedies.

Violations of this division shall constitute a misdemeanor and shall be punishable as prescribed by law. The violation of any of the codes, regulations, restrictions and limitations promulgated under the provisions of this division may be restricted by injunction, including a mandatory injunction, and otherwise abated in any manner provided by law. (Ord. No. 72-9, § 10, 9-27-72)

EXHIBIT E

EXHIBIT E

STATE OF FLORIDA

QUEST AQUA LLOYD

FT. MYERS, FLORIDA 33901

495 LAGDON ST.

ISLAND SQUARE BLDG.

800 W. 9th Ave. Ft. Myers, FL 33901

1271 S. Hall, Brooksville, FL 34609

24-46-05-0000A-0330

DUCLY P VIOLA LLOYD
L/O VIOLA MARTIN
855 LAGDON ST
FT MYERS BEACH FL 33931

DUCLY P VIOLA LLOYD L/E
FT MYERS BCH FL 33931

12/23/75

NAME	DATE	AMOUNT	DESCRIPTION
QUEST AQUA LLOYD	12/23/75	197.8	...
QUEST AQUA LLOYD	12/23/75	208.0	...
QUEST AQUA LLOYD	12/23/75	180.9	...
QUEST AQUA LLOYD	12/23/75	181.5	...

12

EXHIBIT E

FT. MYERS BEACH, FLORIDA
ZONING DIVISION
STAFF REPORT

TYPE OF CASE: PLANNED DEVELOPMENT

CASE NUMBER: DCI2003-00087

FORT MYERS BEACH LPA DATE: April 13, 2004

TIME: 12:00 Noon

I. APPLICATION SUMMARY:

- A. Applicant: JKJ Developers, Inc. in ref. to Casa Bahia
- B. Request: Rezone 0.2 acres from Residential Conservation (RC) to Residential Planned Development (RPD) to build back four (4) multiple-family dwelling units with deviations from setback and driveway width requirements and to allow an increase in interior space.
- C. Location: The subject property is located at 855 Lagoon St., Ft. Myers Beach, in S24-T46S-R23E, Lee County, FL.
- D. Future Land Use Plan Designation, Current Zoning and Use of Subject Property: Mixed Residential, Residential Conservation ("RC"), two duplex buildings (four residential dwelling units, total)
- E. Surrounding Land Use:

<u>Existing Zoning & Land Use</u>	<i>Duplex</i>	<u>Future Land Use Map</u>
North: RC, Single Family Residence		Mixed Residential
East: Water, Lagoon		Tidal Water
South: RC, Single Family Residence		Mixed Residential
West: Lagoon Street, then RC, Multiple-Family Building, three (3) dwelling units.		Mixed Residential

Note: The above Land Use information is based on the Lee County Property Appraiser's website and databases, which indicate that the subject property is a single-family residence comprised of one unit. While this is clearly incorrect, based on the application, the information about the adjacent properties may be equally inaccurate. *DOR Code 08*

F. Size of Property: 0.2± acres

II. RECOMMENDATION:

Staff recommend **DENIAL** of the Applicant's request to rezone from RC to RPD with certain deviations. Alternatively, if the Local Planning Agency recommends and Town Council moves **APPROVAL** of the RPD, staff recommend the following conditions and deviations:

A. Conditions

1. The development of this project must be consistent with the five (5) page Master Concept Plan entitled "MASTER CONCEPT PLAN CASA BAHIA," stamped RECEIVED JAN 28 2004 ZONING COUNTER, last revised November 18, 2003, except as modified by the conditions below. This development must comply with all requirements of the Lee County 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. The following limits apply to the project and uses:

Schedule of Uses

Dwelling units: multiple-family, limited to four (4)

- ➔ Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week (see LDC Sec. 34-2391 et seq. for rules and exceptions).

As Accessory Uses

Residential accessory uses
 Home occupation (no outside help)
 Dock (for sole use by occupants of principal use)

Harold
Harold

3. The existing Tiki Hut must be removed at time of demolition of the existing buildings.
4. Prior to receiving any building permits, the developer will install a transit stop acceptable to the Director of Community Development at the northeast corner of the intersection of the southerly portion of Lagoon Street and Estero Boulevard.
5. Any future conversion from residential dwelling units to hotel/motel or bed and breakfast units is strictly limited to an equivalency factor of 1.0.
6. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Fort Myers Beach Land Development Code ("LDC") may be required to obtain a local development order.
7. Approval of this zoning request does not give the Developer an undeniable right to receive local development order approval. Future development order approvals must satisfy the requirements of the Fort Myers Beach Comprehensive Plan ("Plan").

prohibited

8. Development of this property must comply with all of the requirements of the LDC at the time of local development order approval, except as may be granted by deviations approved as part of this planned development.
 9. No later than two week prior to the public hearing before Town Council, Applicant must revise the MCP to indicate all ground level parking spaces.
- B. Deviations: Staff recommend **DENIAL** of the requested RPD, and thereby **DENIAL** of the requested deviations. However, if the LPA decides to recommend that Town Council **APPROVE** the requested RPD, staff recommend that the requested deviation be modified or denied as follows.
1. Deviation from LDC Section 34-943 and Table 34-3, which require a 20-foot side setback for multiple-family buildings on waterfront lots in the RPD zoning district, to allow a side setback of 5 feet on the southerly side and 11.5 feet on the northwesterly side.
 2. Deviation from LDC Section 34-943 and Table 34-3, which require a 25-foot waterbody setback on lots in the RPD zoning district, to allow a waterbody setback of 3 feet. Staff support a reduction of this deviation to eliminate the rear deck and increase the waterbody setback.
 3. Deviation from LDC Section 34-943 and Table 34-3, which require a 20-foot rear setback on lots in the RPD zoning district, to allow a rear setback of 3 feet. Staff support a reduction of this deviation to eliminate the rear deck and increase the rear setback.
 4. Deviation from LDC Section 34-2013, which requires a 20-foot minimum width at the property line for two-way entrances to parking lots, to allow a minimum width of 12 feet.
 5. Deviation from LDC Sections 34-3237(4)a. and 34-3238(2)d., which allow a rebuilt residential building to exceed the density limits for new buildings on vacant land provided the total interior square footage of the rebuilt dwelling units does not exceed the interior square footage of the previous dwelling units, to allow an additional 485 square feet of interior square footage for a total of 3,160 square feet of interior square feet in the proposed rebuilt residential building. Staff recommend **DENIAL** of this deviation.

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of planned development zoning approval, staff recommend **DENIAL** of the requested RPD zoning district and MCP. However, if the LPA recommends **APPROVAL** of the subject request as modified by reduced deviations and as conditioned, staff recommend the LPA make the following findings and conclusions:

1. The requested Residential Planned Development (RPD) zoning district, as conditioned complies with:

EXHIBIT E

- a. The Comprehensive Plan;
 - b. LDC Chapter 34;
 - c. all other applicable Town ordinances and codes; and
 - d. the following additional requirements for planned development zoning requests:
2. The proposed use or mix of uses is appropriate at the subject location.
 3. Sufficient safeguards to the public interest are provided by the recommended conditions to the concept plan or by other applicable regulations.
 4. All recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
 5. The proposed use(s) meet(s) all specified requirements of the Plan that are relevant to the requested planned development, such as the following:
 - a. Policies 4-B-4 and 4-C-3 on commercial uses in the "Mixed Residential" future land use category.
 - b. Policy 4-B-11 on maximum residential densities for properties within the platted overlay.
 - c. Policy 4-C-11 for parcels bordering Palermo Circle and Santos Road.
 - d. Objective 4-D and Policy 4-D-1 for post-disaster redevelopment.
 6. As to the requested deviations:
 - a. Each item enhances the achievement of the objectives of the planned development; and
 - b. The general intent of LDC Chapter 34 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.

III. BACKGROUND INFORMATION AND ANALYSIS:

Introduction/Synopsis. The subject property is an irregularly shaped platted lot in Unit No. 2 Island Shores Subdivision, **Exhibit B**, containing approximately 0.2 acres of developable land. It is currently located in the Mixed Residential Future Land Use category and zoned Residential Conservation ("RC"). The property is developed with two (2) existing residential buildings connected by an elevated wooden deck. See Exhibit C. Applicant indicates that the buildings together contain a total of four (4) residential dwelling units with at total of 2,675 interior square feet. See Attachment B.

EXHIBIT E

Applicant, JKJ Developers, Inc., requests a zoning change from RC to Residential Planned Development ("RPD") to voluntarily replace the existing structures with a new residential multiple-family building while retaining the existing density of four (4) dwelling units. Applicant further requests five (5) deviations from the regulations of the Land Development Code ("LDC") to allow the interior square footage to exceed what currently exists by 710 square feet, to allow reduced side, rear, and waterbody setbacks, and to allow a reduced driveway width for two-way access to the parking lot. See Attachment C Staff recommend **DENIAL** of Applicant's request. If, however, the LPA recommends **APPROVAL** of the request, staff has recommended reduced deviations and conditions to assure better protection of the public interest.

415#

Master Concept Plan ("MCP"). The MCP, **Exhibit A**, proposes a multiple-family residential building, limited to four (4) dwelling units, short term rental of the dwelling units, and residential accessory uses. The four units are proposed in two floors with two units per floor within a 27-foot by 62.67-foot building footprint. To construct the proposed building within the proposed footprint requires deviations from LDC regulations to reduce setbacks from both sides, the rear, and the waterbody. An additional deviation is requested to allow a reduced width for a two-way access drive to on-site parking. Finally, a deviation is requested to allow an increase in the interior space allowed under the pre-disaster buildback.

As it is currently developed, the subject property is non-conforming for density and setbacks. LDC Section 34-632 provides the formulas for computing allowable density. Even utilizing the maximum allowances for existing subdivisions where lots are smaller than 15,000 square feet, see Exhibit D, no more than two dwelling units are permissible here, except with Town Council approval for pre-disaster buildback as an RPD.

Staff believe that the request seeks to utilize four (4) of the five (5) deviations requested to increase the interior square footage of the proposed building over that which is existing and therefore the maximum allowed in a buildback scenario. Staff also believe that the rear setback deviation would not have to be reduced as much as requested if the proposed building and bayside deck were not being enlarged.

Applicant argues that the building code requires the construction of a larger building. See Attachment D. Staff reviewed Applicant's discussion of this position and drafted a response memorandum. **Exhibit E**. Staff concede that the building envelope allowed by the RPD development regulations, LDC Section 34-943 and Table 34-3, would result in an unusually shaped building envelope, See Exhibit F, but that two stories constructed to maximize that envelope could total 6,090 square feet of interior space--slightly less than double that being requested--and thus capable of accommodating the allowed buildback interior square footage (2,675 sq. ft.) without deviations. As discussed above, however, this is not Applicant's request.

Request Analysis. LDC Section 34-3237 provides:

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings may seek permission from the town council to voluntarily replace those buildings at up to the existing lawful density or intensity and up to the existing height in accordance with Policy 4-E-1 of the [Plan], as follows:

2125.28
4250.56

(4) The replacement building cannot exceed the lawful density and intensity of the existing building:

a. as measured for residential buildings in Section 3238(2)d.

cannot

3238(3)

Emphasis added. LDC Section 34-3238(2)d. allows a rebuilt residential building to "exceed the legally documented number of dwelling units in the building immediately before" replacement. Subsection 1 of this section provides that all dwelling units legally existing prior to replacement may be rebuilt provided the total interior square footage of the rebuilt dwelling units does not exceed the interior square footage of the previous dwelling units. Emphasis added.

Applicant's request seeks to deviate from these requirements to increase the existing interior square footage while retaining the existing non-conforming density. Staff believe that this request is contrary to the requirements of the LDC's implementation of the Comprehensive Plan. Staff also believe that Applicant's supposition that the additional deviations from required setbacks only serve to support this increased square footage.

Comprehensive Plan ("Plan") Considerations. The subject property is within the Mixed Residential Future Land Use Map ("FLUM") category. This FLUM category allows a maximum density for new construction of six dwelling units per acre (6 DU/AC). Applicant seeks to demolish an existing residential multiple-family building that is currently non-conforming for density and setbacks and, through the Town's pre-disaster buildback policies, construct a larger multiple-family residential building, but retaining all four (4) residential dwelling units. Assuming the density calculus most advantageous to Applicant, this would result in an overall density of 11 dwelling units per acre for the site, or roughly double the density allowed by the Plan.

Staff note that a portion of this neighborhood--including the subject property--is the subject of a pending Plan FLUM amendment. The amendment requests to change the FLUM category for this and adjacent properties from Mixed Residential to Pedestrian Commercial. Although this FLUM change would allow commercial zoning in this area with more extensive commercial uses than are currently allowed, the proposed Plan change will not affect the residential density allowable for the requested RPD.

The LDC's buildback provisions for non-conforming buildings, codified in Sections 34-3231, et seq., implement Plan Policy 4-E-1:

PRE-DISASTER BUILDBACK POLICY: Owners of existing developments that exceed the current density or height limits may also be permitted to replace it at up to the existing lawful density and intensity prior to a natural disaster. Landowners may request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such a request based on the conformance of the specific proposal with the comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria.

Emphasis added. Staff understands the requirement that such buildback requests be heard by Town Council through the planned development process seeks to ensure adequate public notice and opportunity to be heard. Applicant's request--while arguably modest--is not unlike those other recent applicants who have sought to request pre-disaster buildback through this process, with the addition of deviations to the LDC to increase either the density or intensity, or both. While Applicant's request to maintain the existing non-conforming density aims to meet the Plan's design policies, it also asks to vary from the required land development regulations

*canal
abandonment*

for building setbacks and the requirement not to exceed the existing square footage. Policy 4-E-1 limits a buildback to the existing intensity and the LDC implements this policy by measuring square footage. To vary from this limitation by requesting a planned development deviation is anathema to the intent of the Plan. While Applicant may have reasonable justification for certain setback deviations, Staff believes rebuilding the existing non-conforming density and increasing the intensity of the proposed development over that currently existing is **INCONSISTENT** with the Plan. If the Town wishes to entertain this type of buildback, staff believe it is more appropriate to amend the Plan and LDC than grant deviations contradictory to this key Policy.

Because Applicant has chosen to present a questionable argument that the additional square footage is required to satisfy the building code rather than reduce the proposed square footage to what is existing, staff has recommended **DENIAL** of the request. If, however, the LPA is inclined to recommend **APPROVAL** of the requested buildback, staff recommends that the deviation for additional square footage be **DENIED** and the deviations from certain setback requirements be minimized as previously discussed

Neighborhood Compatibility. The Island Shores Neighborhood was platted in 1950 and includes all the lots on either side of Lagoon Street. Two-story elevated structures and structures with reduced setbacks--such as that proposed--are not uncommon in the neighborhood. The lot to the south of the subject property was split into two parcels years ago and a variance granted by Lee County in 1980 to eliminate the side and rear building setback requirement for the southerly half of that split lot.

Many of the lots are irregularly shaped or small (2,500 square feet or less). Years ago, several smaller lots were combined, while larger lots were split or further subdivided into smaller lots. Visual inspection appears to indicate that buildings on lots other than the subject property may be non-conforming for setbacks but perhaps old enough to predate the advent of zoning on Fort Myers Beach.

While the proposed buildback seeks deviations from the required setbacks, it proposes an improvement over the existing building on the northwesterly side lot line, a slight increase in the non-conforming side setback on the south, and an additional increase in the rear/waterbody setback over the current buildings. There is no request for additional height over what is currently allowed, and the buildback request will allow the new building to comply with current flood regulations while retaining the current density with an arguably modest increase in interior space. However, all adjacent properties appear to be developed currently at lower densities and would thus not be able to achieve the density of the subject property through similar application for buildback approval.

*how
A*

Environmental Issues. Staff believe the permits issued to construct the Tiki hut were issued in error. Such a structure could not be permitted in its current location today. If the LPA recommends the Town Council approve this request, staff recommend that the Tiki hut be removed at the time of demolition of the existing buildings. See Condition 3.

Conclusion. Because this buildback request--like several other recent requests--seeks to retain existing non-conforming density and increase the intensity of the proposed project over that which is existing, staff recommends **DENIAL**. Staff, however, agrees with Applicant that rebuilding the existing non-conforming buildings to develop a project that meets the required flood elevation would be an improvement for the Town. Further, staff believes that the

EXHIBIT E

elevations Applicant has included in the MCP, **Exhibit A**, Page 5, indicate a desire to comport with the Town's design policies. For these reasons staff have indicated potential modifications to Applicant's requested deviations and recommended certain conditions to the LPA in the event the LPA seeks to **APPROVE** a RPD buildback for the subject property.

IV. LEGAL DESCRIPTION:

LOT 33, BLOCK "A", UNIT NO. 2 ISLAND SHORES SUBDIVISION, PLAT BOOK 9, PAGE 25, PUBLIC RECORDS, LEE COUNTY, FLORIDA.

V. ATTACHMENTS:

- A. Map of surrounding zoning
- B. Applicant's calculation of existing interior square footage (2 pages)
- C. Applicant's Deviation Justification for Casa Bahia (2 pages)
- D. March 3, 2004 letter from Timothy L. Stone to Bob Stewart, Building Official (3 pages)

VI. EXHIBITS:

- A. Master Concept Plan (MCP) (Composite Exhibit--5 pages)
- B. Plat Book 9, Page 25 (Unit No. 2 Island Shores Subdivision plat)
- C. Applicant's Boundary and Topography Survey dated 10/28/03 .
- D. Subject property maximum allowable Lot Area for calculating density
- E. March 16 Memorandum from Bob Stewart, Building Official, to Jerry Murphy, Zoning Division (with attachment--4 pages)
- F. Subject property buildable area with required setbacks

cc: Applicant
Town of Fort Myers Beach LPA
Zoning/DCI File

*Try again
at buildback
not at increasing
sq. footage*

EXHIBIT F

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 11-07

ROWE RPD

WHEREAS, Henrietta and Christopher Rowe, the owners of property located at 324 Estero Boulevard Fort Myers Beach, Florida have requested to rezone .43 acres from Residential Multifamily (RM) to Residential Planned Development (RPD) to approve a schedule of uses, and approve certain deviations from the requirements of the Land Development Code, all as indicated on the Master Concept Plan, which is attached hereto and incorporated herein by reference as Exhibit "D-2-1"; and

WHEREAS, the subject property is located in the both the Mixed Residential and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP for the property is 24-46-23-W1-00900.0010 and the legal description for the property is Lot 1, Gulfshore subdivision, according to the plat thereof recorded in Plat Book 9 Page 88, of the Public Records of Lee County, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on May 10, 2011; at which time the LPA gave full and complete consideration to the request of the Applicant, 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 recommended denial of applicant's request as set forth in LPA Resolution No. 2011-05; and

WHEREAS, at its meeting of May 10, 2011, the LPA instructed Town staff to bring this application forward to Town Council without the necessity of having approved LPA minutes; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on June 6, 2011, at which time the Town Council gave full and complete consideration to the request of the Applicant, LPA Resolution No. 2011-05, 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:

The Town Council hereby APPROVES the request to rezone the subject property to a RPD zoning district with three (3) multi-family dwelling units and the approved schedule of uses which is attached hereto and incorporated herein by reference as Exhibit "D-2-3," subject to the conditions and deviations set forth with specificity below.

CONDITIONS OF APPROVAL

1. The proposed building and all proposed amenities must comply with all FEMA regulations in effect at the time of Development Order and all provisions found in LDC Chapter 34-3237, excluding the requested and approved deviations.

EXHIBIT F

2. The mechanical cupola illustrated on applicant's Exhibit D-2-2, which is attached hereto and incorporated herein by reference, must remain non-habitable space and be relocated as close to Estero Boulevard as possible.
3. A sprinkler system shall be installed consistent with the building's intended use that will meet all Florida Fire codes and must be included in Development Order plans and installed at the time of construction.
4. Applicant must meet all applicable environmental requirements of the LDC, including but not limited to protection of dune vegetation and appropriate sea turtle lighting.
5. At the time of Development Order, applicant must adhere to best stormwater management practices and all applicable LDC sections pertaining to stormwater and drainage when addressing the on-site stormwater conditions.
6. Applicant must provide any and all required Florida Department of Environmental Protection approvals and permits at the time of Development Order.

APPROVED DEVIATIONS

Deviation #1

Deviation from Table 34-3 of the LDC, which allows for a maximum height of 30 feet/3 stories, to allow for a maximum height of 35 feet/4 stories and a maximum roof height of 58 feet exclusive of the cupola.

Deviation #2

Deviation from Section 34-3237(4) which requires total interior square footage of a rebuilt dwelling not to exceed the interior square footage of the original dwelling unit, to allow for an increase of interior square footage to permit the proposed 8,990 square foot structure.

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. *Whether there exists changed or changing conditions which make the approval of the request appropriate.*

The area surrounding the subject property has changed over the past years, with the development of mid-rise and high-rise resort condominiums to the east and west. With resort units and condominiums on both sides of the subject property that range in height from 6 to 8 stories, the Town Council finds that an exception, pursuant to Section 34-631(b)(5) of the Land Development Code, to permit the proposed 35' building is more reasonable and compatible in terms of height than the existing single story stilt frame structure. Additionally, the Town Council hereby specifically finds that the Applicant presented competent evidence to establish that the proposed density of three dwelling units is the legally documented number of dwelling units as indicated on the Lee County Property Appraiser's field cards, which are attached hereto and incorporated herein as Exhibit D-2-4.

EXHIBIT F

2. *The impact of a proposed change on the intent of Chapter 34.*

The proposed rezoning will implement the Town's pre-disaster buildback policy and allow for the appropriate infill redevelopment of the subject property. The provisions to accomplish the applicant's request can be found in Section 34-3237 of the LDC and Policy 4-E-1 as discussed in the analysis section of the Staff report. This is a request contemplated and even encouraged by the Comprehensive Plan and Land Development Code. The proposed redevelopment will result in the improved health, safety and welfare of the surrounding properties, as well as the subject property, by bringing the building into compliance with current FEMA flood elevation requirements. The proposed change is consistent with the intent of Chapter 34 of the LDC.

3. *Whether the request is consistent with the goals, objectives, policies and intent, and with the densities, intensities and general uses set forth in the Fort Myers Beach Comprehensive Plan.*

As discussed in the Staff analysis and in applicant's Exhibit D-1-C, which is attached hereto and incorporated herein by reference, the proposed RPD is consistent with the Comprehensive Plan, specifically the policies pertaining to the Mixed Residential future land use category and the pre-disaster buildback provisions. The residential uses and the legally documented three (3) dwelling units do not exceed the general densities and intensities set for the in both the Comprehensive Plan and the LDC. Additionally, this request will further the Town's goal of reducing flood insurance rates for residents by bringing another non-conforming unit into compliance with current FEMA standards.

4. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The proposed use is residential in nature and therefore is not required to comply with any performance or locational standards.

5. *Whether urban services are, or will be available and adequate to serve a proposed land use change.*

The proposed redevelopment at the subject property is infill in nature and as such, the current urban services available at the site will also be available when the project is complete.

6. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

In accordance with current Land Development Code regulations, no portion of the subject property that falls within the Environmentally Critical (EC) zoning district has been included in the RPD request thereby protecting, conserving and preserving these sensitive environmental lands. In addition, the applicant has entered into an agreement with the County to allow for beach renourishment on the property.

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

The requested RPD is compatible with the surrounding properties. As an infill project, the subject property has the benefit of being designed to fit within its neighborhood context while still coming into compliance with the current FEMA regulations and improving the overall aesthetics of the area. The request, as proposed will not create any damage, hazard, nuisance or other detriments of persons or property.

EXHIBIT F

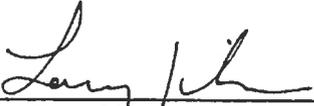
8. *Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

The Traffic Impact Statement requirement was waived by the Community Development Director in a memo dated April 13, 2011, which is included in Exhibit D-2-1. The effect of that waiver is a determination that the proposed development will have no net impact or burden on the transportation services of the Town.

Upon a motion made by Councilmember Kosinski and seconded by Councilmember Mandel, this Resolution was

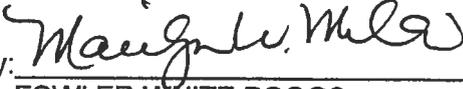
DULY PASSED AND ADOPTED ON THIS 6TH DAY OF June, 2011.

Larry Kiker, Mayor	aye	Bob Raymond, Vice Mayor	nay
Alan Mandel	aye	Jo List	aye
Joe Kosinski	aye		

By: 
Larry Kiker, Mayor

ATTEST:
By: 
Michelle D. Mayher, Town Clerk

Approved as to form and legal sufficiency:

By: 
FOWLER WHITE BOGGS
Town Attorney

Rowe Residential Planned Development

Exhibit D-2-3 Schedule of Uses
REVISED APRIL 18, 2011

Dwelling Units:

Multiple Family Building (limited to 3 dwelling units)

Short Term Rental Unit

Entrance Gates

Essential Services

Fences, Walls

Recreational Facilities, Private, On-Site

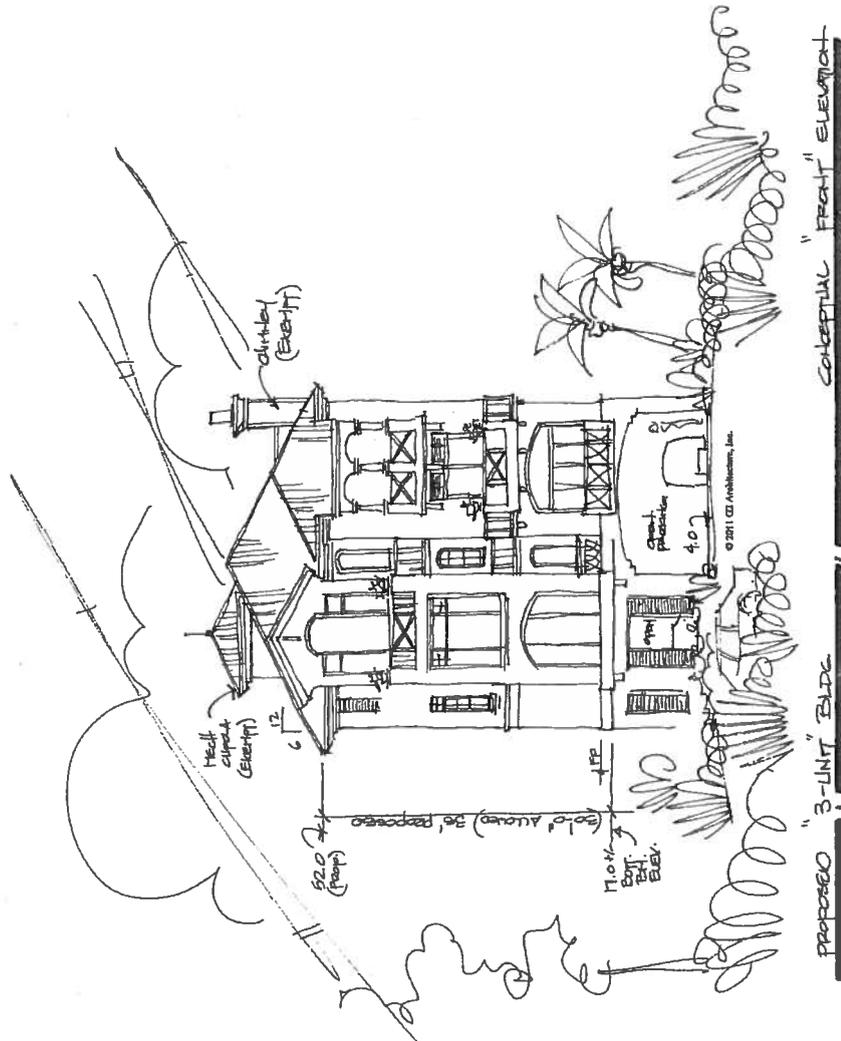
Residential Accessory Uses

Storage, Indoor

Temporary Uses

EXHIBIT F

EXHIBIT D-2-2 - CONCEPTUAL ARCHITECTURAL ELEVATION



PROPOSED "3-UNIT" BLDG. | 324 FESTERO BLVD. | CONCEPTUAL "FRONT" ELEVATION



Rowe Residential Planned Development

Exhibit D-1-C: Comprehensive Plan Compliance Narrative

Christopher and Henrietta Rowe (Applicant) are requesting approval of a Residential Planned Development (RPD) rezoning to allow for the Pre-disaster Redevelopment of the subject property with a 3-unit condominium and residential accessory uses. The subject property consists of approximately 18,831 s.f. (to ECL), of which 6,500+/- s.f. is located within the Mixed Residential Future Land Use Category. The remainder of the property is seaward of the 1978 Coastal Construction Control Line (CCCL) and is designated within the Recreation Future Land Use Category.

Flanked on both sides by mid-rise and high-rise multi-family residential developments, the subject property currently contains one structure previously used for a multi-family triplex and presently being used as a single family rental. This proposed RPD is essentially an infill redevelopment proposal to make the existing inconsistent single-family use more compatible with the neighboring parcels and to enhance the quality of the area through redevelopment of an old structure. It is proposed for Pre-disaster Redevelopment as a 3-unit condominium under the Pre-disaster Buildback provisions of the Comprehensive Plan [Policy 4-E-1] and Land Development Code (LDC) [Section 34-3237(4)]. The property was historically developed with a triplex as evidenced by the 1978 Property Appraiser Card attached as Exhibit D-2-4. In order to cure the existing inconsistent single family use of the property and to make it more compatible with the surrounding multi-family uses, the Applicant is seeking approval to buildback to the pre-existing triplex use, effectively improving the overall appearance of the subject property, while adhering to the current coastal construction and floodplain regulations.

The following is an analysis of how the proposed RPD is consistent with goals, objectives and policies of the Town of Fort Myers Beach Comprehensive Plan (Plan).

Policy 4-B-2: Mixed Residential Future Land Use Category

The Mixed Residential (MR) Future Land Use Category is designated in areas with mixed housing types on smaller lots, newer high-rise buildings, mobile homes and RV parks. This Category is intended to ensure that Fort Myers Beach retains a variety of neighborhoods and housing types.

The proposed RPD is in direct compliance with this policy as the proposed multi-family use is located in a neighborhood characterized by a mixture of condominiums and hotels on the Gulfside and single-family residences on the Bayside. Therefore, the request for multi-family uses will uphold the desire for a diversity of housing types within the Town.

The proposed density for the property is 3 dwelling units, which complies with the historical density of the property when developed as a 3-unit triplex. The proposed density for the property will fall within the provisions of the pre-disaster buildback policy, 4-E-1 below, and is lower than the existing density of the surrounding properties which are developed at 18 du/acre (Pink Shell Resort PUD to the west and north) and approximately 40 du/acre (Pink Shell Beach Club Condominium Timeshares to the east).

Policy 4-B-8: Recreation Future Land Use Category

A portion of the Applicant's property is located seaward of the CCCL and is designated as Recreation on the Future Land Use Map. Per the attached MCP, this area is not proposed for residential uses and will remain undeveloped in compliance with this policy.

Policy 4-E-1: Pre-Disaster Buildback

This policy allows owners of developments exceeding the current density or height limits to replace the same use prior to a natural disaster via the planned development rezoning process.

Per the attached 1978 property appraiser card and as discussed in the pre-application meetings by the owners with former Planning Director Frank Shockey in 2010, and again recently on February 16, 2011, it has been determined that there is adequate data to support the redevelopment of the subject property with a 3-unit condominium under the pre-disaster buildback provision. The Applicant is proposing to buildback to the same density as previously existed when the property was a triplex, as demonstrated on the MCP.

In terms of height, the Applicant is seeking a deviation from the RM Zoning District's site development regulations to allow for a maximum height of 35 feet above base flood elevation with a total of four (4) stories, including first floor parking. Although more compatible with the surrounding buildings, this proposed height will still be lower than surrounding building heights and will not impact existing views of the Gulf of Mexico from adjacent properties. Specifically, Estero Beach Villas to the west is developed at 8 stories/65 feet above base flood elevation, and the Pink Shell Beach Club is 6 stories/46 feet above base flood elevation.

The Applicant is also requesting a deviation from the pre-disaster buildback regulations in Section 34-3237(4) of the LDC to allow for additional square footage that will allow the redeveloped structure to be more compatible with the neighboring development and buildings with which it must fit in and complement.

The proposed RPD meets the underlying intent of the pre-disaster buildback by ensuring compliance with the current coastal construction and floodplain regulations, which will result in a safer, more storm-resistant structure, thereby providing for greater safety of the surrounding structures in the event of a storm or other disaster. Additionally, the RPD will provide for the visual enhancement of the subject property, which enhances property values and benefits surrounding property owners and their viewsheds along Gulfshore Court and Estero Boulevard.

Policy 4-E-2: Coastal Setbacks

The proposed RPD is in compliance with the coastal setbacks policy, as all proposed structures will be located landward of the CCCL.



Town of Fort Myers Beach
DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT

TYPE OF CASE: Planned Development Rezoning
CASE NUMBER: DCI2011-0002
LPA HEARING DATE: May 10, 2011
LPA HEARING TIME: 9:00 am

I. APPLICATION SUMMARY

Applicant: Christopher & Henrietta Rowe

Request: A rezoning of 324 Estero Boulevard from Residential Multifamily (RM) to Residential Planned Development (RPD) utilizing the pre-disaster buildback provision found in Section 34-3237 of the Fort Myers Beach Land Development Code.

Subject property: Gulf Shore
Plat Book 9, Page 88
Lot 1

Physical Address: 324 Estero Boulevard

STRAP #: 24-46-23-W-00900.0010

Parcel Size: .43 AC

FLU: Mixed Residential

Zoning: Residential Multifamily (RM)

Current use(s): Single Family Residential

EXHIBIT G

Adjacent zoning and land uses:

North:	Pink Shell Resort COMMERCIAL PLANNED DEVELOPMENT (CPD) Mixed Residential
South:	Beach ENVIRONMENTALLY CRITICAL (EC) Recreation
East:	Island Shore Condominium RESIDENTIAL MULTIFAMILY (RM) Mixed Residential
West:	Pink Shell Resort COMMERCIAL PLANNED DEVELOPMENT (CPD) Mixed Residential

II. BACKGROUND AND ANALYSIS

Consistency

Background:

The subject property is located at 324 Estero Boulevard on the north end of Estero Island. Christopher and Henrietta Rowe purchased the subject property in April 2010. The existing structure was constructed in 1963 per the Lee County Property Appraiser and, while it is a raised structure, with the recent change in flood regulations it is no longer in compliance with Federal Emergency Management Agency's (FEMA) base flood elevation for that location on the island.

The applicant proposes the redevelopment of the subject property by utilizing Residential Planned Development process and the pre-disaster buildback policy mentioned in Objective 4-3 and Policy 4-E-1 in the Town of Fort Myers Beach Comprehensive Plan and in Section 34-3237 of the Land Development Code (LDC).

The subject property is located in a VE (velocity) flood zone and will be required to elevate to a Base Flood Elevation of 17 feet. Currently, the subject property is elevated to a finished floor elevation of 11.3 feet (see applicant Exhibit 5-2, Boundary Survey), this request will result in an elevation of approximately 6 additional feet.

A new three story, three unit residential structure over parking will replace the existing stilt frame building. The redevelopment proposal meets the required front setback of 25 feet, the existing side setbacks of 5 feet, and does not develop any permanent structures seaward of the 1978 coastal construction line.

EXHIBIT G

Applicant Exhibit D-2-3 depicts the requested Schedule of Uses for the subject property. When approved by Town Council, the uses on this list will be the only permitted and allowable uses for the subject property.

Analysis:

The applicant proposes the redevelopment of the subject property by utilizing Residential Planned Development process and the pre-disaster buildback policy mentioned in Objective 4-3 and Policy 4-E-1 in the Town of Fort Myers Beach Comprehensive Plan and in Section 34-3237 of the Land Development Code (LDC).

The subject property is in the Mixed Residential future land use category and as such is only entitled to one residential unit. However, the applicant has demonstrated, with Lee County Property Appraiser field cards (see applicant Exhibit D-4-2), three historically documented units and is requesting to rebuild those units per the provisions found in Section 34-3237(4)(a).

The language in Objective 4-E reads *“Mitigate the potential effects of hurricanes by easing regulations that impede the strengthening of existing buildings, by encouraging the relocation of vulnerable structures and facilities, and by allowing the upgrading or replacement of grandfathered structures without first awaiting their destruction in a storm.* This language makes it very clear that residents and property owners that wish to mitigate the potential negative impacts of hurricane, storm and flood damage prior to their occurrence should be encouraged and assisted in the process by Town Staff. The applicant intends to redevelop their property in such a manner as to remain in compliance with the LDC, except where deviations are requested, while also improving the health, safety and welfare of the surrounding area by bringing the new structure up to current FEMA base flood elevation requirements.

In addition to Objective 4-E, Policy 4-E-1 goes on to provide further specific direction and considers the allowance of expansion of square footage, as is proposed in this request. *POLICY 4-E-1 PRE-DISASTER BUILDBACK POLICY: Owners of existing developments that exceed the current density or height limits may also be permitted to replace for the same use at up to the existing lawful density and intensity (up to the original square footage) prior to a natural disaster. Landowners may request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such a request based on the conformance of the specific proposal with this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. The Town Council may approve additional enclosed square-footage only if an existing building is being elevated on property that allows commercial uses; dry-flood- proofed commercial space at ground level could be permitted in addition to the replacement of the pre-existing enclosed square footage.*

While the provision in this policy relates specifically to the expansion of square footage for Commercial Uses, the policy should be viewed in the context of overall hazard mitigation and easing of regulatory barriers to bring compliance with FEMA

EXHIBIT G

standards. It should also be noted that recent changes in FEMA requirements have imposed additional barriers to reconstruction, which include, but are not limited to, items such as elevation of electrical systems, impact resistant windows and increased roofing standards, concrete support pilings, etc. These additional and costly measures can greatly increase the economic commitment required for reconstruction and thereby discourage redevelopment of non-conforming structures. The sum total of which results in increased National Flood Insurance Program rates for all of the Town's residents. Accordingly, in context of the policy language, it appears reasonable for the request to increase square footage under the pre-disaster buildback provision to be handled as a deviation through the requested RPD zoning process.

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of a planned development rezoning found in Section 34-85 and 34-216 of the LDC, Staff makes the following findings and conclusions:

1. *Whether there exists changed or changing conditions which make the approval of the request appropriate.*

The area surrounding the subject property has changed over the past years, with the development of mid-rise and high-rise resort condominiums to the east and west. With resort units and condominiums on both sides of the subject property that range in height from 6 to 8 stories, the proposed 35' building is more compatible in terms of height than the existing single-story stilt frame structure. Additionally, the proposed density of three units is the historically documented number of units shown on the Lee County Property Appraisers field cards (see the applicant Exhibit D-2-4).

2. *The impact of a proposed change on the intent of Chapter 34.*

The proposed rezoning will implement the Town's pre-disaster buildback policy and allow for the appropriate infill redevelopment of the subject property. The provisions to accomplish the applicant's request can be found in Section 34-3237 of the LDC and Policy 4-E-1 as discussed in the Staff analysis section. This is a request contemplated and even encouraged by the Comprehensive Plan and Land Development Code. The proposed redevelopment will result in improved health, safety and welfare of the surrounding properties, as well as the subject property, by bringing the building into compliance with current the FEMA flood elevation requirements. It is Staff's opinion that the proposed change is consistent with the intent of Chapter 34 of the LDC.

3. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities and general uses set forth in the Fort Myers Beach Comprehensive Plan.*

EXHIBIT G

As discussed in the Staff analysis and in applicant's Exhibit D-1-C, attached, the proposed RPD is consistent with the Comprehensive Plan, specifically the policies pertaining to the Mixed Residential future land use category and the pre-disaster buildback. The residential uses and the historically documented three units do not exceed the general densities and intensities set forth in both the Comprehensive Plan and LDC. Additionally, this request will further the Town's goal of reducing flood insurance rates for residents by bringing another non-conforming unit into compliance with current FEMA standards.

- 4. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The proposed use is residential in nature and therefore is not required to comply with any performance or locational standards.

- 5. Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

The proposed redevelopment at the subject property is infill in nature and as such the current urban services available at the site will also be available when the project is complete.

- 6. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

In accordance with current Land Development Code regulations, no portion of the subject property that falls within the Environmentally Critical (EC) zoning district has been included in the RPD request thereby protecting, conserving and preserving these sensitive environmental lands. It should also be noted that the applicant has entered into an agreement with the Town to allow for beach re-nourishment within the subject property.

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

It is Staff's opinion that the requested RPD is compatible with the surrounding properties. As an infill project, the subject property has the benefit of being designed to fit within its neighborhood context while still coming into compliance with the current FEMA regulations and improving the overall aesthetics of the area. The request, as proposed, will create no damage, hazard, nuisance or other detriments to persons or property.

- 8. Whether the location of the request 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.*

EXHIBIT G

The Community Development Director has waived the Traffic Impact Statement in a memo dated April 13, 2011, which is included as Exhibit A, thereby determining that the proposed development will have no net impact or burden on the transportation services of the Town.

9. *The deviations granted:*
- a. *Enhance the achievement of objectives of the planned development;*
 - b. *Preserve and promote the general intent of the LDC to protect the public health, safety and welfare; and*
 - c. *Operates to the benefit, or at least not to the detriment, of the public interest; and*
 - d. *Is consistent with the Fort Myers Beach Comprehensive Plan.*

The following deviations are proposed by the applicant:

Deviation #1

Deviation from Table 34-3 of the LDC, which allows for a maximum height of 30 feet/3 stories, to allow for a maximum height of 35 feet/4 stories.

For the applicant's justification of deviation #1 please see applicant Exhibit D-1-F.

Staff recommends approval of Deviation #1, as the request has no detrimental impact to the public interest and enhances the objective of the proposed planned development. Furthermore, the request is considered in Policy 4-C-4 where the Comprehensive Plan considers the allowance of additional height in situations where a property is surrounded by taller structures. The policy mentions, *"In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than two stories."* The policy is supportive of the request for a height deviation. Additionally, granting the increase in height is a way to amortize the economic burden associated with compliance with the current FEMA standards and thereby promoting the

EXHIBIT G

health, safety, and welfare of the entire island while reducing the flood insurance liability of non-conforming structures.

Deviation #2

Deviation from Section 34-3237(4) which requires total interior square footage of a rebuilt dwelling not to exceed the interior square footage of the original dwelling unit, to allow for an increase of interior square footage to permit the proposed 13,650 square foot condominium.

For the applicant's justification of deviation #2 please see applicant Exhibit D-1-F.

Staff recommends approval of Deviation #2, as the request has no detrimental impact to the public interest and enhances the objective of the proposed planned development. If Town Council is in support of the additional height requested in Deviation #1 and acknowledges upon review of the Lee County Property Appraisers field cards the documented and historic three units on the subject property, then also allowing the increase of square footage will have little to no perceived impact on the surrounding property owners. Furthermore, Policy 4-D-1 gives Council the ability to grant additional relief for property owners. Policy 4-D-1 states: *".....the Town may establish blanket reductions in non-vital development regulations (e.g. buffering, open space, side setbacks, etc.) to minimize the need for individual variances or compliance determinations prior to reconstruction."* The policy is supportive of the request for additional square footage. Additionally, granting the increase in square footage is a way to amortize the economic burden associated with compliance with the current FEMA standards and thereby promoting the health, safety, and welfare of the entire island while reducing the flood insurance liability of non-conforming structures.

III. RECOMMENDATION

With consideration of the current and existing conditions, Staff recommends **APPROVAL** of the requested rezoning from Residential Multifamily (RM) to Residential Planned Development (RPD). Limitations and conditions are for Town Council to determine at the time of Public Hearing, however should Town Council choose to approve the requested rezoning, Staff recommends the approval be subject to the following conditions:

1. The proposed building and all proposed amenities must comply with all FEMA regulations in effect at the time of Development Order and all provisions found in LDC Chapter 34-3237, excluding the requested and approved deviations.

EXHIBIT G

2. The mechanical cupola illustrated on applicant's Exhibit D-2-2 must remain non-habitable space.
3. A commercial grade sprinkler and alarm system(s) that meet all Florida fire codes must be included in Development Order plans and installed at the time of construction.
4. Applicant must meet all applicable environmental requirements of the LDC, including but not limited to protection of dune vegetation and appropriate sea turtle lighting.
5. At the time of Development Order, applicant must adhere to best stormwater management practices and all applicable LDC sections pertaining to stormwater and drainage when addressing the on-site stormwater conditions.
6. Applicant will provide any and all required Florida Department of Environmental Protection approvals and permits at the time of Development Order.

IV. CONCLUSION

Rezoning the property from Residential Multifamily to Residential Planned Development is consistent with Mixed Residential future land use as contemplated in the Fort Myers Beach Comprehensive Plan. This request would not adversely affect the surrounding properties and would allow the applicant the fullest use of the subject property.

If Town Council finds that the requested use is contrary to the public interest or the health, safety, comfort, convenience, and/or welfare of the citizens of the Town, or that the request is in conflict with the criteria of LDC Section 34-85 regarding Rezoning, Town Council should deny the request as provided in LDC Section 34-85(4). If Town Council chooses to approve the request, special conditions necessary to protect the health, safety, comfort, convenience, or welfare of the public may be attached if Council finds that such conditions are reasonably related to the requested rezoning. Staff has recommended conditions for the Town Council's convenience and consideration.

Staff recommends **APPROVAL** of the requested rezoning, as conditioned.

Exhibits:

Exhibit A – Traffic Impact Waiver memo

TOWN OF FORT MYERS BEACH — 2008 PROPOSED COMPREHENSIVE PLAN AMENDMENTS

Application #: 2008-04-TEXT

Description: Clarify Policy 4-E-1 to maintain the original intention of pre-disaster buildback and to provide additional incentives

[This amendment could either refer more explicitly to its intention to provide the same rights as for post-disaster buildback, or it could simply state that the physical size or interior square footage of a building may not be increased during the pre-disaster buildback process. It would also clarify that large condominium buildings cannot be substituted for existing hotels and motels in the guise of buildback; they could still replace older hotels or motels, but the new structures would have to meet today's more restrictive density cap. At the same time, the town could consider additional incentives for pre-disaster buildback beyond those already in the comprehensive plan]

Pages to be changed: Comprehensive Plan Pages 4-18–4-18a and 4-52 (proposed changes are attached)

Discussion in E/A Report From Pages 11– 14:

(adopted on Jan 16 '07):

“One of the important innovations of the comprehensive plan was the "pre-disaster buildback policy." Before 1999, owners of over-density buildings were allowed to rebuild their existing square-footage only if their buildings were destroyed by a natural disaster. A goal of the new plan was to allow the upgrading or replacement of these "grandfathered" structures without awaiting their destruction by natural causes (see Objective 4-E). Policy 4-E-1 was also added to the plan in 1999 to begin carrying out this goal:

“POLICY 4-E-1: PRE-DISASTER BUILDBACK POLICY: Owners of existing developments that exceed the current density or height limits may also be permitted to replace it at up to the existing lawful density and intensity prior to a natural disaster. Landowners may request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such a request based on the conformance of the specific proposal with this comprehensive plan, including its land use and design policies, pedestrian orientation, and natural resource criteria.

“Policy 4-E-1 does not define the word "intensity" in this policy nor does it go into detail about intensity as did the older "post-disaster buildback policy," which said that grandfathered buildings "...can be rebuilt to their legally documented actual use, density, intensity, size, and style...." During the past two years there has been extensive public discussion as to whether Policy 4-E-1 necessarily limits the reconstruction of over-density buildings to their current physical size.

“Perhaps the most authoritative reference in the planning field defines "intensity of use" as follows: "The number of dwelling units per acre for residential development and floor area ratio (FAR) for nonresidential development, such as commercial, office, and industrial." This definition is followed by this comment: "FAR

EXHIBIT I

may also be used for residential development or for mixed-use development. In residential projects, FAR may be useful in relating the size of the building to the lot area." In the buildback context, the lot area doesn't change, so this definition would measure intensity by the physical size of the building for nonresidential development and sometimes would also measure intensity the same way same for residential or mixed-use development.

"The town can of course use definitions of its own choosing. The Land Development Code now interprets the pre-disaster buildback policy in a manner similar to this reference book and in the same manner as the post-disaster buildback policy by not allowing over-density buildings to be further enlarged during the pre-disaster buildback process. The actual land development code language for the square footage for pre-disaster buildback is identical as for post-disaster buildback.

"The current evaluation of the Fort Myers Beach Comprehensive Plan allows the town a chance to reconsider its pre-disaster buildback policy. The current interpretations of the policy have been challenged as being unduly restrictive because of the "no enlargement" rule. If over-density buildings were allowed to be enlarged during the buildback process, it would be a considerable incentive for property owners to demolish existing buildings to take advantage of this size increase. The new buildings would meet most current codes even if the existing buildings did not. In some cases, the new buildings would be designed for and marketed to seasonal residents instead of year-round residents or tourists, which might even decrease impacts on public services such as roads/water/sewer and private services such as restaurants.

"Most public discussion on this subject has centered around the vagueness of the term "intensity" in Policy 4-E-1. Property owners have argued that their over-density buildings should be allowed to be demolished and enlarged, sometimes several times over, provided there are some measures of intensity which would be held constant or reduced.

"However, the policy issues are much broader than what the drafters of Policy 4-E-1 meant by the term "intensity." For instance:

“ ■ **GEOGRAPHICAL EFFECTS:** Discussions of intensity have centered mostly on water and sewer impacts and on road impacts. Although water and sewer impacts would be the same regardless of where a building is located, road impacts could differ greatly. For instance, a hotel that is isolated from commercial and recreational services would generate many more vehicular trips than the identical hotel within walking distance of those same services. In addition, some types of commercial development primarily serve those who are already on the island, actually reducing travel demand by eliminating some off-island vehicular trips.

“ ■ **SEASONAL EFFECTS:** Traffic congestion is extreme throughout the winter (and also during holidays, weekends, and special events). Replacing motels with housing for seasonal residents may reduce total yearly vehicular trips, but seasonal residents tend to use their dwelling during the periods of greatest congestion; their absence during non-peak periods does not aid in reducing actual congestion.

“ ■ **ECONOMIC EFFECTS:** The economy of Fort Myers Beach is based on tourism. Although tourism is sometimes overwhelming to permanent residents, tourism also provides benefits to residents, including

EXHIBIT I

investment opportunities, employment, recreational opportunities, and choices for dining and entertainment that are far beyond what would be available if they were serving the resident population alone. Many residents have chosen to make Fort Myers Beach their home for these very reasons. Eliminating hotels, motels, and condominiums or timeshares that are available for short stays could have effects on the local economy far greater than reductions in intensity as measured by, say, water or sewer consumption.

“These policies issues don't suggest that the town needs to change course on pre-disaster buildback. In fact, the original reason for the present course was to give property owners for the first time the same rights to rebuild at leisure that they would have had only after a natural disaster. Granting greater rights to rebuild had never been considered for either pre-disaster or post-disaster buildback, for the simple reason that owners of over-density buildings already had greater rights than all other property owners at Fort Myers Beach. Past over-building caused today's current strong development restrictions, which fall most heavily on owners of vacant or lightly-developed properties such as single-family homes. If Fort Myers Beach were able to accommodate additional development, it would hardly be fair for property owners who are burdened by today's restrictions to continue under those restrictions while other owners who already have over-density buildings are granted additional rights.

“Members of the public who attended the April 7, 2005, workshop were requested to give their opinion on how the town should treat the rebuilding of "over-density" buildings. Five choices were set forth with a request to select one choice. This was not a scientific survey or poll but does give some idea of community sentiment on this and other difficult questions. The written responses that evening were as follows:

Density Limitations for Buildback of Older Building: Should the Town...

- 19 *Encourage* rebuilding of over-density buildings (older buildings that exceed today's density limits) by allowing their replacements to be larger than the existing buildings?
- 30 *Allow* rebuilding of over-density buildings but do not allow them to become larger?
- 12 *Discourage* rebuilding of over-density buildings by requiring density and/or size to be reduced?
- 11 *Forbid* rebuilding of over-density buildings; all new buildings would have to meet the town's current density rules?
- 1 [no answer provided]

“In order to maintain the original intention of pre-disaster buildback, Policy 4-E-1 should be amended for clarity. This amendment could either refer more explicitly to its intention to provide the same rights as for post-disaster buildback, or it could simply state that the physical size or interior square footage of a building may not be increased during the pre-disaster buildback process.

“If the town wishes to provide incentives for pre-disaster buildback beyond those already established in the comprehensive plan, the following concepts could be explored:

“Additional Incentive #1: In areas designated "Pedestrian Commercial" on the future land use map, dry-floodproofed commercial space below elevated buildings could be considered a bonus that would be permitted in addition to replacing the previous building's interior square footage.

EXHIBIT I

“Additional Incentive #2: Instead of limiting pre-disaster buildback to the existing interior square footage, additional square footage could be permitted by the Town Council under certain conditions. For instance, up to a 5% increase over the existing square footage might be approved for each of the following:

- Rebuilding proposals that will operate as a hotel, motel, or resort.
- Replacement of hotel or motel rooms that are less than 400 square feet each.
- Rebuilding proposals that provide a fixed percentage of the project as public open space.
- Rebuilding proposals of exceptional architectural merit.
- Rebuilding proposals for commercial buildings that would dedicate the extra square footage to employee housing.
- Replacement of existing buildings of any type whose total size is less than one-half the floor-to-area ratio that would be allowed for a new building on that site.

Action by LPA: During a public hearing on May 20, 2008, the LPA on a 5–2 vote recommended that the Town Council approve these changes as proposed in this report:

- Changes to Page 4-18 (and 4-18a) of the narrative in the Future Land Use Element, but not including “Additional Incentive #2” on Page 4-18a
- Changes to Policies 4-E-1 of the Future Land Use Element, but not including subsection ii

The LPA’s recommended changes to the original proposal are indicated by ~~struck-through~~ text on the following pages. Joanne Shamp and Bill Van Duzer dissented from the motion. ~~The minutes of the public hearing are attached.~~

Action by Town Council: During a public hearing on November 17, 2008, the Town Council voted 3 to 2 to transmit a revised version of this amendment for state review, as shown on the following pages.

DCA Objection: None

DCA Recommendation: None

Response to DCA: N/A

Proposed Final Action: The Town Council should adopt the transmitted amendment, as described above, as part of Ordinance 09-03.

Final Action: The Town Council adopted this amendment on August 17, 2009, as part of Ordinance 09-03. (Text shown in red is new or has changed since the initial transmittal of this amendment in January 2009.)

EXHIBIT I

POST-DISASTER REDEVELOPMENT POLICIES

When a passing hurricane destroys part of a community, difficult rebuilding questions arise immediately. Landowners have spent thousands and sometimes millions of dollars in developing their property. Not allowing landowners to rebuild would place a great economic burden upon them. But allowing redevelopment in the same manner might expose it to destruction in the next big storm.

Current Build-Back Policy

The current comprehensive plan contains a “build-back” provision initiated by Lee County in 1989 that allows post-disaster reconstruction at existing density levels, but requires improved resistance to future storms. This provision has been popular among landowners at Fort Myers Beach because of the greatly reduced density levels that would otherwise apply after a major storm. However, it falls far short of a redevelopment plan that would ensure that the community would be improved in other ways during the inevitable rebuilding process.

If a disaster strikes, structures that comply with all current regulations could of course be rebuilt in exactly the same form. However, many buildings at Fort Myers Beach do not comply with current regulations, particularly the maximum density level of six dwelling units per acre. When one of these structures is damaged greater than 50% of its current value, the build-back policy allows it to be rebuilt, but instead of meeting *all* current regulations, the new building can include the original number of dwellings and square footage. But it must meet all current flood, structural, and coastal setback requirements. The lowest floor level must be elevated; land uses are severely limited on the ground level; and break-away walls may be required. (Height and setback requirements might even be waived if needed for the building to comply with the new flood and structural requirements.)

One problem with the build-back policy is its limitation to post-disaster situations (such as floods, wind damage, or fire). Federal and state policy has been shifting in recent years to pre-storm mitigation of known hazards, instead of waiting for disasters to occur (as discussed in the previous section). The current policy is as inflexible in this regard as the National Flood Insurance Program.

Other possibilities for improving the build-back program in the future include:

- Mandating improved building form during the rebuilding process (some examples might be maintaining view corridors to the Gulf of Mexico, or allowing some mixed uses in residential-only towers, or placing buildings nearer the street).
- Allowing density transfers during the rebuilding process if they meet some stated public purpose.
- Creating a registry of pertinent building details (such as exact heights and exact building footprint on the ground) so that permitting would be eased in a post-disaster situation;

Modified Build-Back Policy

This plan makes one immediate change in the build-back policy. Owners of existing buildings that exceed the current density or height limits would no longer be categorically forbidden from rebuilding; they will be offered an opportunity to replace the building for the same use at up to the existing density and intensity (up to the original square footage, as already provided for post-disaster build-back) without waiting for a natural disaster (see Policy 4-E-1). Owners would request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The Town of Fort Myers Beach would approve, modify, or deny this request based on the conformance of the specific proposal with this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria.

EXHIBIT I

The town could also provide additional incentives for “pre-disaster” build-back. For instance in areas designated “Pedestrian Commercial” on the future land use map, dry-floodproofed commercial space below elevated buildings could be considered a bonus that would be permitted in addition to replacing the previous building’s interior square footage. Policy 4-E-1 was modified in early 2009 to allow this additional incentive.

EXHIBIT I

ering, open space, side setbacks, etc.) to minimize the need for individual variances or compliance determinations prior to reconstruction. The Land Development Code may also establish procedures to document actual uses, densities, and intensities, and compliance with regulations in effect at the time of construction, through such means as photographs, diagrams, plans, affidavits, permits, appraisals, tax records, etc.

OBJECTIVE 4 -E HAZARD MITIGATION — Mitigate the potential effects of hurricanes by easing regulations that impede the strengthening of existing buildings, by encouraging the relocation of vulnerable structures and facilities, and by allowing the upgrading or replacement of grandfathered structures without first awaiting their destruction in a storm.

POLICY 4-E-1 PRE-DISASTER BUILDBACK POLICY: Owners of existing developments that exceed the current density or height limits may also be permitted to replace it for the same use at up to the existing lawful density and intensity (up to the original square footage) *prior to* a natural disaster. Landowners may request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such a request based on the conformance of the specific proposal with this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. The Town

POLICY 4-E-2

Council may approve additional enclosed square-footage only if an existing building is being elevated on property that allows commercial uses; dry-floodproofed commercial space at ground level could be permitted in addition to the replacement of the pre-existing enclosed square footage. **COASTAL SETBACKS:** To protect against future storm damage and to maintain healthy beaches, the Town of Fort Myers Beach wishes to see all buildings relocated landward of the 1978 Coastal Construction Control Line. This line has been used on the Future Land Use Map to delineate the edge of land-use categories allowing urban development. Some existing buildings lie partially seaward of this line; when these buildings are reconstructed (either before or after a natural disaster), they shall be rebuilt landward of this line. Exceptions to this rule may be permitted by the town only where it can be scientifically demonstrated that the 1978 line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. (Exceptions must also comply with all state laws and regulations regarding coastal construction.)

TOWN OF FORT MYERS BEACH — 2008 PROPOSED COMPREHENSIVE PLAN AMENDMENTS

Application #: 2008-04-TEXT

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EXHIBIT I

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EXHIBIT I

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EXHIBIT I

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DCA Recommendation: None

Response to DCA: N/A

Proposed Final Action: The Town Council should adopt the transmitted amendment, as described above, as part of Ordinance 09-03.

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POST-DISASTER REDEVELOPMENT POLICIES

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One problem with the build-back policy is its limitation to post-disaster situations (such as floods, wind damage, or fire). Federal and state policy has been shifting in recent years to pre-storm mitigation of known hazards, instead of waiting for disasters to occur (as discussed in the previous section). The current policy is as inflexible in this regard as the National Flood Insurance Program.

Other possibilities for improving the build-back program in the future include:

- Mandating improved building form during the rebuilding process (some examples might be maintaining view corridors to the Gulf of Mexico, or allowing some mixed uses in residential-only towers, or placing buildings nearer the street).
- Allowing density transfers during the rebuilding process if they meet some stated public purpose.
- Creating a registry of pertinent building details (such as exact heights and exact building footprint on the ground) so that permitting would be eased in a post-disaster situation;

Modified Build-Back Policy

This plan makes one immediate change in the build-back policy. Owners of existing buildings that exceed the current density or height limits would no longer be categorically forbidden from rebuilding; they will be offered an opportunity to replace the building for the same use at up to the existing density and intensity (up to the original square footage, as already provided for post-disaster build-back) without waiting for a natural disaster (see Policy 4-E-1). Owners would request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The Town of Fort Myers Beach would approve, modify, or deny this request based on the conformance of the specific proposal with this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria.

EXHIBIT I

The town could also provide additional incentives for “pre-disaster” build-back. For instance in areas designated “Pedestrian Commercial” on the future land use map, dry-floodproofed commercial space below elevated buildings could be considered a bonus that would be permitted in addition to replacing the previous building’s interior square footage. Policy 4-E-1 was modified in early 2009 to allow this additional incentive.

EXHIBIT I

ering, open space, side setbacks, etc.) to minimize the need for individual variances or compliance determinations prior to reconstruction. The Land Development Code may also establish procedures to document actual uses, densities, and intensities, and compliance with regulations in effect at the time of construction, through such means as photographs, diagrams, plans, affidavits, permits, appraisals, tax records, etc.

OBJECTIVE 4 -E HAZARD MITIGATION — Mitigate the potential effects of hurricanes by easing regulations that impede the strengthening of existing buildings, by encouraging the relocation of vulnerable structures and facilities, and by allowing the upgrading or replacement of grandfathered structures without first awaiting their destruction in a storm.

POLICY 4-E-1 PRE-DISASTER BUILDBACK POLICY: Owners of existing developments that exceed the current density or height limits may also be permitted to replace it for the same use at up to the existing lawful density and intensity (up to the original square footage) prior to a natural disaster. Landowners may request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such a request based on the conformance of the specific proposal with this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. The Town

POLICY 4-E-2

Council may approve additional enclosed square-footage only if an existing building is being elevated on property that allows commercial uses; dry-floodproofed commercial space at ground level could be permitted in addition to the replacement of the pre-existing enclosed square footage. **COASTAL SETBACKS:** To protect against future storm damage and to maintain healthy beaches, the Town of Fort Myers Beach wishes to see all buildings relocated landward of the 1978 Coastal Construction Control Line. This line has been used on the Future Land Use Map to delineate the edge of land-use categories allowing urban development. Some existing buildings lie partially seaward of this line; when these buildings are reconstructed (either before or after a natural disaster), they shall be rebuilt landward of this line. Exceptions to this rule may be permitted by the town only where it can be scientifically demonstrated that the 1978 line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. (Exceptions must also comply with all state laws and regulations regarding coastal construction.)

SEP 19 2017

RECEIVED BY

TOWN OF FORT MYERS BEACH HISTORIC PRESERVATION BOARD
HISTORIC PLAQUE AGREEMENT AND RELEASE

The undersigned person represents that he/she is the owner of the property with the following street address: 163 Miramar Street, Fort Myers Beach, Florida 33931, with a strap number of _____ (hereafter "Owner").

By signing below, Owner agrees to affix an historic plaque provided by the Town of Fort Myers Beach, a municipal corporation, on the structure located on the subject property, as follows: _____
(location and method of affixing). The Owner shall own the plaque. In the event of damage, loss or other casualty involving the sign, the Town may replace it, but shall not be obligated to do so.

The plaque shall contain the following language: _____

This permission is non-transferable to another structure or property. The owner, or any subsequent owner shall have the ability to terminate this Agreement without cause. In the event of such termination, the owner will remove the plaque and return it to the Town.

The undersigned waives any claim against the Town of Fort Myers Beach, its officers, agents representatives and employees arising from loss, injury or damage resulting from the subject matter of this Release and covenants not to bring any claim against the Town of Fort Myers Beach and its officers, agents representatives and/or employees related to the subject matter of this Release.

The undersigned has fully read, understood and agrees to every term in this Agreement.

9-17-17 DATE Tim-Jacquelyn Velazquez OWNER Timothy Velazquez PRINT NAME

163 Miramar st ADDRESS Ft Myers beach FL 33931 CITY, STATE, ZIP

(479) 216 0865 TELEPHONE 239 633 4471
Christie Jago WITNESS PRINT NAME Christie Jago

Kevin Jaso WITNESS PRINT NAME Kevin Jaso

APPLICATION FOR DETERMINATION OF CH2, CH3 OR CH4 CATEGORY OF HISTORIC IMPORTANCE
TOWN OF FORT MYERS BEACH, FLORIDA

The historic resources of the Town of Fort Myers Beach are preserved in accordance with its Comprehensive Plan and Land Development Code. Upon application, the Historic Preservation Board will evaluate the importance of structures/sites within the town's heritage and issue a determination of Category of Historic Importance (CHI) and assign historic plaques as follows:

CHI1 - Historic Designation: Assigned to historic and/or archaeological resources that meet the requirement standards for county, state and/or national registration. Subject to LDC Chapter 22, Article II, Division 3 and Division. **Must use CH1 petition form to apply.**

CHI2 - Historic Recognition: Assigned to resources that meet the highest criteria of importance to the cultural, religious, educational, commercial, and tourism historical development and/or archaeological resources of the town. Use this form to apply.

CHI3 - Historic Significance: Assigned to resources that on an individual basis do not constitute a significant site, but do contribute to the overall significance of a district. Use this form to apply.

CHI4 - Historic Interest: assigned to areas and vistas that offer insight into understanding the history of the town, the lifestyle of its inhabitants, the historic use of its natural resources and trends in its development. Use this form to apply.

CONTACT INFORMATION FOR APPLICANT

NAME OF APPLICANT: Tim + Jacquie Velazquez

APPLICANT MAILING ADDRESS: 163 Miramar St

APPLICANT PHONE NUMBER: 239-633-4479 479-216-0865

APPLICANT EMAIL ADDRESS: Dive mom 12 @ g o l . c o m

SIGNATURE: Tim + Jacquie Velazquez DATE SUBMITTED: 8/21/17

HISTORIC STRUCTURE, SITE OR RESOURCE

STREET ADDRESS OF SITE: 163 Miramar St

STRAP NUMBER: 19-46-24-W4-00808.0100

SUBDIVISION: Miramar Subdivision BLOCK NO: BPB6P63 LOT NO: 10

OWNERSHIP TYPE: Residential () Commercial () Church () School () Other (specify): _____

HISTORIC NAMES FOR SITE (if applicable): _____

FMB HISTORIC DISTRICT (if applicable): _____

LEE COUNTY HISTORIC SURVEY NUMBER (if applicable): _____

PHOTO OF STRUCTURE OR SITE: Attach 4 x 6 photo of structure in the box below.



AGE:
a. YEAR STRUCTURE WAS BUILT: 1958? ARCHITECT: _____ BUILDER: _____
b. CURRENT CONDITION (check one): () EXCELLENT () GOOD (X) FAIR () DETERIORATED
c. INTEGRITY OF STRUCTURE (check one or more): () UNALTERED/ORIGINAL (X) REMODELED in year(s) as the years went by
() RESTORED in year(s) _____ by _____

LOCATION/SETTING:
a. INTEGRITY OF SITE: (X) STRUCTURE IS ON ORIGINAL SITE () STRUCTURE MOVED in year _____ from _____
b. SETTING: () CANALFRONT () BEACHFRONT (X) OTHER (describe) Bay side

FUNCTION:
a. ORIGINAL USE: Residential PRESENT USE: Residential

ARCHITECTURAL STYLE/DESIGN:
a. () FRAME VERNACULAR (X) POST/PILING HOME () BUNGALOW (circle type number) type 1 type 2 type 3 type 4
() MISSION () MEDITERRANEAN REVIVAL () COMMERCIAL VERNACULAR () OTHER _____
b. NO. OF STORIES: 1 NO. OF PORCHES: 2

MATERIALS/WORKMANSHIP:
a. STRUCTURE: (X) WOOD FRAME () BLOCK () COMBINATION WOOD FRAME/BLOCK () OTHER _____
b. FOUNDATION: (X) PINE PILINGS (X) TREATED POSTS () SLAB () OTHER (describe) _____
c. EXTERIOR SIDING () VERTICAL/BOARD AND BATTEN () ASBESTOS SHINGLE () WOOD SHINGLE (X) HORIZONTAL SIDING
() STUCCO () OTHER _____
d. ROOF SHAPE: () FLAT (X) PITCH (state type) _____ MATERIAL: _____
.....# OF DORMERS: _____ () WIDOW'S WALK () CUPOLA
e. WINDOW TYPES (check all that apply): () JALOUSIE () GROUPED WINDOWS (X) DOUBLE HUNG () SLIDING DOORS () OTHER
ORIGINAL EXTERIOR DETAILS: _____ () RAIN BARREL/CISTERN
f. ORIGINAL INTERIOR DETAILS: (X) SLASH PINE FLOORS (X) PINE PANELING () HISTORIC FIXTURES () OTHER _____
CHIMNEY: NUMBER: _____ MATERIALS: _____ FIREPLACE LOCATIONS IN STRUCTURE: _____
g. ASSOCIATED WITH IMPORTANT PEOPLE OR EVENTS? () NO () YES (describe) unknown

ARCHAEOLOGICAL RESOURCE:
h. HAVE ARTIFACTS OR OTHER REMAINS BEEN FOUND ON THE SITE? (X) NO () YES (attach list/photos)
DO YOU HAVE REASON TO BELIEVE THERE ARE ARTIFACTS ON THE SITE? (X) NO () YES (explain)

FMSF ARCHAEOLOGICAL FORM COMPLETED? (X) NO () YES (please attach)

PHOTOGRAPHS, MAPS AND DESCRIPTIVE NARRATIVE:
Please attach pages to explain the history of the structure/site as you know it, including copies of photographs, maps or articles that relate to its importance in the history of our town. Originals will NOT be returned to the applicant.
NUMBER OF PAGES ATTACHED BY APPLICANT: _____ pages.
Applicant: Do not write below this line

HPB DETERMINATION OF CATEGORY OF HISTORIC IMPORTANCE
DETERMINATION OF CATEGORY OF HISTORIC IMPORTANCE LEVEL: () CHI1 () CHI2 () CHI3 () CHI4
DATE OF DETERMINATION: ____/____/_____
FMB HISTORIC DISTRICT (if applicable): () FMBHD1 () FMBHD2 () FMBHD3 () FMBHD4
IMPORTANT AT COUNTY LEVEL? () YES () NO () LIKELY () INSUFFICIENT INFO
ELIGIBLE FOR NATIONAL REGISTRY? () YES () NO () LIKELY () INSUFFICIENT INFO
SUMMARY OF IMPORTANCE: (limit to six lines)

ARE DETERMINATION HEARING MINUTES ATTACHED? () YES () NO (State reason): _____
SIGNATURE OF HPB/TOWN REP: _____ TITLE: _____

HISTORICAL STRUCTURE FORM
FLORIDA MASTER SITE FILE

Site 8LL1560
Recorder# 066

SITE NAME 163 MIRAMAR STREET
HISTORIC CONTEXTS WORLD WAR II AND AFTERMATH
NAT. REGISTER CATEGORY BUILDING
OTHER NAMES OR MSF NOS STRAP # 19-46-24-08-0000B-0100
COUNTY LEE OWNERSHIP TYPE PRIVATE-INDIVIDUAL
PROJECT NAME LEE COUNTY HISTORIC SITE SURVEY UPDATE DHR NO _____
LOCATION (Attach copy of USGS map, sketch-map of immediate area)
ADDRESS 163 MIRAMAR STREET CITY FORT MYERS BEACH
VICINITY OF / ROUTE TO WEST SIDE OF MIRAMAR STREET, NORTH OF
ESTERO BOULEVARD.
SUBDIVISION MIRAMAR BLOCK NO B LOT NO 10
PLAT OR OTHER MAP LEE COUNTY STRAP MAPS
TOWNSHIP 46S RANGE 24E SECTION 19 1/4 SW 1/4-1/4 NE
IRREGULAR SEC? y n LAND GRANT _____
USGS 7.5' MAP FT. MYERS 1958 (PR 1972)
UTM: ZONE 17 EASTING 405500 NORTHING 2925750
COORDINATES: LATITUDE D M S LONGITUDE D M S

HISTORY

ARCHITECT: UNKNOWN
BUILDER: UNKNOWN
CONST DATE 1950 CIRCA C RESTORATION DATE(S): _____
MODIFICATION DATE(S): _____
MOVE: DATE _____ ORIG LOCATION _____
ORIGINAL USE(S) PRIVATE RESIDENCE
PRESENT USE(S) PRIVATE RESIDENCE

DESCRIPTION

STYLE FRAME VERNACULAR
PLAN: EXTERIOR IRREGULAR
INTERIOR UNKNOWN
NO.: STORIES 1.0 OUTBLDGS 0 PORCHES 1 DORMERS 0
STRUCTURAL SYSTEM(S) WOOD FRAME
EXTERIOR FABRIC(S) DROP SIDING
FOUNDATION: TYPE PIERS MATLS UNKNOWN
INFILL WOOD PLANKS
PORCHES E/ENT PORCH/WD DECK+RAIL/E; S/SIDE PORCH/SCREENED/3 BAY/E
ROOF: TYPE X-GABLE, SHED SURFACING COMPOSITION SHINGLES
SECONDARY STRUCS. NONE
CHIMNEY:NO 0 MTLs _____ LOCNS _____
WINDOWS DHS, WOOD, 1/1; AWNING, METAL, 3 LIGHT

EXTERIOR NONE
CONDITION GOOD SURROUNDINGS RESIDENTIAL
NARRATIVE (general, interior, landscape, context; 3 lines only)
THIS MODEST FRAME VERNACULAR HOME HAS BEVELLED SIDING, WOOD FRAME
WINDOWS, AND ALTERATIONS WHICH INCLUDE A 1-CAR CARPORT AND
COMPOSITION ROOF SHINGLES.

ARCHAEOLOGICAL REMAINS AT THE SITE

FMSF ARCHAEOLOGICAL FORM COMPLETED? y X n (IF Y, ATTACH)
ARTIFACTS OR OTHER REMAINS NONE OBSERVED

RECORDER'S EVALUATION OF SITE
AREAS OF SIGNIFICANCE ARCHITECTURE

ELIGIBLE FOR NAT. REGISTER? y Xn likely, need info insf inf
SIGNIF. AS PART OF DISTRICT? y n Xlikely, need info insf inf
SIGNIFICANT AT LOCAL LEVEL? y n Xlikely, need info insf inf

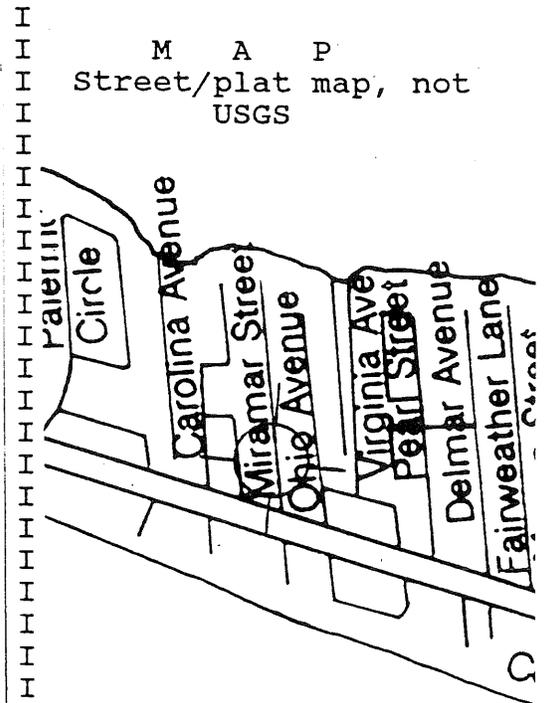
SUMMARY ON SIGNIFICANCE (Limit to three lines provided; see page 3)
DESPITE THE ALTERATIONS MADE TO THIS FRAME VERNACULAR HOUSE, MOST
OF ITS ORIGINAL EXTERIOR FABRIC REMAINS INTACT. IT WOULD LIKELY
CONTRIBUTE TO A HISTORIC DISTRICT.

* * *DHR USE ONLY* * * * * * * * * * * * * * * * * * *DHR USE ONLY * *
*
* DATE LISTED ON NR _____ *
* KEEPER DETERMINATION OF ELIG.(DATE): -YES _____ -NO _____ *
* SHPO EVALUATION OF ELIGIBILITY (DATE): -YES _____ -NO _____ *
* LOCAL DETERMINATION OF ELIG.(DATE): -YES _____ -NO _____ *
* OFFICE _____ *
* * *DHR USE ONLY* * * * * * * * * * * * * * * * * *DHR USE ONLY * *

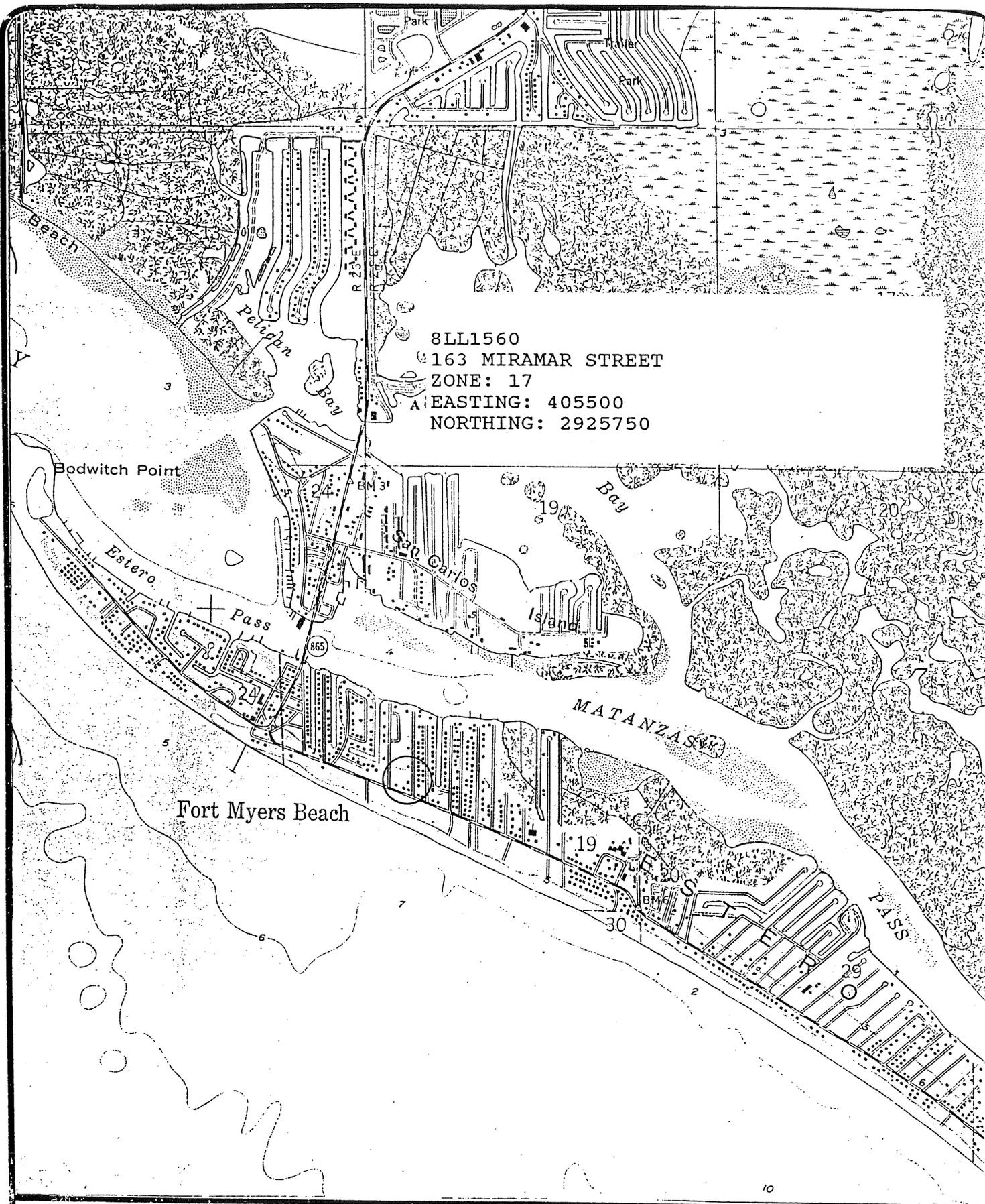
RECORDER INFORMATION: NAME LAURA M. WEANT/MICHAEL J. NICKERSON
DATE: 19920309 AFFILIATION PIPER ARCHAEOLOGY/JANUS RESEARCH

PHOTOGRAPHS (Attach a labeled print bigger than contact size)
LOCATION OF NEGATIVES PIPER ARCHAEOLOGY / JANUS RESEARCH
NEGATIVE NUMBERS LEE CO. ROLL 5, EXP. 33

P H O T O G R A P H



LOCATION MARKED



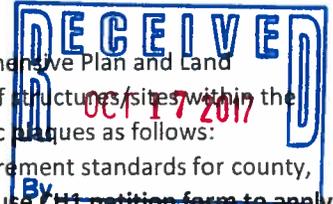
8LL1560
163 MIRAMAR STREET
ZONE: 17
EASTING: 405500
NORTHING: 2925750

Fort Myers Beach

Excerpt from the Fort Myers Beach
USGS Quad Map 7.5 Minute Series
Scale 1:24000

APPLICATION FOR DETERMINATION OF CH2, CH3 OR CH4 CATEGORY OF HISTORIC IMPORTANCE
TOWN OF FORT MYERS BEACH, FLORIDA

HDD 17-0004



The historic resources of the Town of Fort Myers Beach are preserved in accordance with its Comprehensive Plan and Land Development Code. Upon application, the Historic Preservation Board will evaluate the importance of structures/sites within the town's heritage and issue a determination of Category of Historic Importance (CHI) and assign historic plaques as follows:

CHI1 - Historic Designation: Assigned to historic and/or archaeological resources that meet the requirement standards for county, state and/or national registration. Subject to LDC Chapter 22, Article II, Division 3 and Division. Must use CHI petition form to apply.

CHI2 - Historic Recognition: Assigned to resources that meet the highest criteria of importance to the cultural, religious, educational, commercial, and tourism historical development and/or archaeological resources of the town. Use this form to apply.

CHI3 - Historic Significance: Assigned to resources that on an individual basis do not constitute a significant site, but do contribute to the overall significance of a district. Use this form to apply.

CHI4 - Historic Interest: assigned to areas and vistas that offer insight into understanding the history of the town, the lifestyle of its inhabitants, the historic use of its natural resources and trends in its development. Use this form to apply.

CONTACT INFORMATION FOR APPLICANT

NAME OF APPLICANT: Steven & Cynthia Duello
APPLICANT MAILING ADDRESS: 255 Albatross St, Ft Myers Beach, FL 33931
APPLICANT PHONE NUMBER: 314 374 7120
APPLICANT EMAIL ADDRESS: sduello@charter.net
SIGNATURE: Steven J Duello DATE SUBMITTED: 10 / 15 / 2017

HISTORIC STRUCTURE, SITE OR RESOURCE

STREET ADDRESS OF SITE: 255 Albatross Street, Ft Myers Beach, FL 33931
STRAP NUMBER: 34-46-24-W4-00200.0540
SUBDIVISION: Sandpiper Village BLOCK NO: 1 PB 9 PG 45 LOT NO: 54, 55 + PT LOT 56
OWNERSHIP TYPE: () Residential () Commercial () Church () School () Other (specify): _____
HISTORIC NAMES FOR SITE (if applicable): N/A
FMB HISTORIC DISTRICT (if applicable): N/A
LEE COUNTY HISTORIC SURVEY NUMBER (if applicable): N/A
PHOTO OF STRUCTURE OR SITE: Attach 4 x 6 photo of structure in the box below.



AGE:

- a. YEAR STRUCTURE WAS BUILT: 1966 ARCHITECT: Michigan Homes BUILDER: Michigan Homes/Michigan Construction
- b. CURRENT CONDITION (check one): EXCELLENT () GOOD () FAIR () DETERIORATED
- c. INTEGRITY OF STRUCTURE (check one or more): () UNALTERED/ORIGINAL REMODELED in year(s) 1983, 1984, 2017
() RESTORED in year(s) _____ by _____

LOCATION/SETTING:

- a. INTEGRITY OF SITE: STRUCTURE IS ON ORIGINAL SITE () STRUCTURE MOVED in year _____ from _____
- b. SETTING: CANALFRONT () BEACHFRONT () OTHER (describe) _____

FUNCTION:

- a. ORIGINAL USE: Residential PRESENT USE: Residential

ARCHITECTURAL STYLE/DESIGN:

- a. () FRAME VERNACULAR () POST/PILING HOME () BUNGALOW (circle type number) type 1 type 2 type 3 type 4
() MISSION () MEDITERRANEAN REVIVAL () COMMERCIAL VERNACULAR OTHER Custom "Hudson"
- b. NO. OF STORIES: 1 NO. OF PORCHES: 1

MATERIALS/WORKMANSHIP:

- a. STRUCTURE: () WOOD FRAME BLOCK () COMBINATION WOOD FRAME/BLOCK () OTHER _____
- b. FOUNDATION: () PINE PILINGS () TREATED POSTS SLAB () OTHER (describe) _____
- c. EXTERIOR SIDING () VERTICAL/BOARD AND BATTEN () ASBESTOS SHINGLE () WOOD SHINGLE () HORIZONTAL SIDING
 STUCCO () OTHER _____
- d. ROOF SHAPE: () FLAT () PITCH (state type) Gable or Hip MATERIAL: Concrete/Clay Tile
.....# OF DORMERS: N/A () WIDOW'S WALK () CUPOLA
- e. WINDOW TYPES (check all that apply): () JALOUSIE GROUPED WINDOWS () DOUBLE HUNG SLIDING DOORS () OTHER
ORIGINAL EXTERIOR DETAILS: _____ () RAIN BARREL/CISTERN
- f. ORIGINAL INTERIOR DETAILS: () SLASH PINE FLOORS () PINE PANELING () HISTORIC FIXTURES () OTHER N/A
CHIMNEY: NUMBER: 0 MATERIALS: _____ FIREPLACE LOCATIONS IN STRUCTURE: N/A
- g. ASSOCIATED WITH IMPORTANT PEOPLE OR EVENTS? NO () YES (describe) _____

ARCHAEOLOGICAL RESOURCE:

- h. HAVE ARTIFACTS OR OTHER REMAINS BEEN FOUND ON THE SITE? NO () YES (attach list/photos)
DO YOU HAVE REASON TO BELIEVE THERE ARE ARTIFACTS ON THE SITE? NO () YES (explain)

FMSF ARCHAEOLOGICAL FORM COMPLETED? NO () YES (please attach)

PHOTOGRAPHS, MAPS AND DESCRIPTIVE NARRATIVE:

Please attach pages to explain the history of the structure/site as you know it, including copies of photographs, maps or articles that relate to its importance in the history of our town. Originals will NOT be returned to the applicant.

NUMBER OF PAGES ATTACHED BY APPLICANT: _____ pages.

Applicant: Do not write below this line

HPB DETERMINATION OF CATEGORY OF HISTORIC IMPORTANCE

DETERMINATION OF CATEGORY OF HISTORIC IMPORTANCE LEVEL: () CHI1 () CHI2 () CHI3 () CHI4

DATE OF DETERMINATION: ___/___/___

FMB HISTORIC DISTRICT (if applicable): () FMBHD1 () FMBHD2 () FMBHD3 () FMBHD4

IMPORTANT AT COUNTY LEVEL? () YES () NO () LIKELY () INSUFFICIENT INFO

ELIGIBLE FOR NATIONAL REGISTRY? () YES () NO () LIKELY () INSUFFICIENT INFO

SUMMARY OF IMPORTANCE: (limit to six lines)

ARE DETERMINATION HEARING MINUTES ATTACHED? () YES () NO (State reason): _____

SIGNATURE OF HPB/TOWN REP: _____ TITLE: _____

TOWN OF FORT MYERS BEACH HISTORIC PRESERVATION BOARD
HISTORIC PLAQUE AGREEMENT AND RELEASE

The undersigned person represents that he/she is the owner of the property with the following street address: 255 Albatross St, Ft Myers Beach FL 33931, Fort Myers Beach, Florida 33931, with a strap number of 34-46-24- (hereafter "Owner").
W4-00200.0540

By signing below, Owner agrees to affix an historic plaque provided by the Town of Fort Myers Beach, a municipal corporation, on the structure located on the subject property, as follows: front wall, to the left of the garage (front porch area) (location and method of affixing). The Owner shall own the plaque. In the event of damage, loss or other casualty involving the sign, the Town may replace it, but shall not be obligated to do so.

The plaque shall contain the following language: 255 Albatross St,
built in 1966

This permission is non-transferable to another structure or property. The owner, or any subsequent owner shall have the ability to terminate this Agreement without cause. In the event of such termination, the owner will remove the plaque and return it to the Town.

The undersigned waives any claim against the Town of Fort Myers Beach, its officers, agents representatives and employees arising from loss, injury or damage resulting from the subject matter of this Release and covenants not to bring any claim against the Town of Fort Myers Beach and its officers, agents representatives and/or employees related to the subject matter of this Release.

The undersigned has fully read, understood and agrees to every term in this Agreement.

10/15/2017 Steven + Cynthia Duello Steven Duello Cynthia Duello
DATE OWNER PRINT NAME

255 Albatross St
ADDRESS

Ft Myers Beach, FL 33931
CITY, STATE, ZIP

(314) 374-7120
TELEPHONE

Sarah Duello
WITNESS PRINT NAME

Sarah Duello

Steven Duello
WITNESS PRINT NAME

SD

Steve Duello

255 Albatross St
Ft Myers Beach, FL
33931

314-374-7120

sduello@charter.net

TOWN OF
FORT MYERS BEACH

OCT 17 2017

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LPA ACTION LIST FOR: November 14, 2017

RESOLUTIONS AND RECOMMENDATIONS TO TOWN COUNCIL			
CONTINUED LPA HEARINGS			
HDD16-0008	Designation of Historic Structure	215 Sterling	Women's Club
FUTURE WORK ACTIVITIES			
DCI17-0001	TPI	1160 Estero Blvd	3rd Resub
VAR17-0004	Rear Setback	272 Miramar	Requested info
VAR17-0006	Setback for Garage	19 Sunview Blvd	Resubmittal
VAR17-0008	Pool Setbacks	3188 Shell Mound	Rec'd 9/22/17