

ORDINANCE 25-12

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING TO REZONE THE PROPERTY LOCATED AT 1154 ESTERO BOULEVARD, GENERALLY IDENTIFIED AS STRAP NUMBER 24-46-23-W3-00011.0000 IN FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED (CPD) TO ALLOW FOR 1) AN INCREASE IN FLOOR AREA RATIO FROM 1.2 TO 1.96; 2) DECREASE STREET SETBACK FROM 10 FEET TO 0 FEET; 3) DECREASE SIDE SETBACKS FROM 20 FEET TO 0 FEET; 4) A 100% REDUCTION IN PARKING REQUIREMENTS FROM 64 SPACES TO 0 SPACES; 5) INCREASED SIGNAGE FROM 32 SF TO 115 SF AND 6) CONDITIONS; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, Clownfish Restaurant Holdings, LLC the owner, and RVi Planning and Landscape Architecture, as agents for the property located at 1154 Estero Boulevard, Fort Myers Beach, FL 33931, parcels generally identified as STRAP number 24-46-23-W3-00011.0000 in the Town of Fort Myers Beach, filed an application to rezone the property from the Downtown zoning district to a CPD with a corresponding Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) for a restaurant and

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

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on May 13th, 2025, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 7 to 0 to recommend approval of the Commercial Planned Development (CPD) with deviations; and

WHEREAS, on June 2nd, 2025 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents

in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in the Fort Myers News-Press more than 10 days prior to the Town Council on June 16th, 2025; and

WHEREAS, at the June 16th, 2025 public hearing, the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

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

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

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

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

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

WHEREAS, the Town Council approved Resolution 10-15 and COP 2012-005 to allow for Consumption on Premises (COP) in outdoor seating areas seaward of the 1978 CCCL; and

WHEREAS, the Town Council finds that this request to rezone the property from Downtown zoning to CPD with Master Concept Plan with five deviations from the LDC in order to increase the size of a restaurant; and

WHEREAS, the requested deviations from the LDC include:

Deviation #1

Deviate from LDC §34-645 Table 34-2 for a STREET SETBACK that specifies in the CR zoning district no building or structure shall be placed closer than 10 feet (to Estero Boulevard); to allow a 0-foot street setback.

Deviation #2

Deviate from LDC §34-645 Table 34-2 for SIDE SETBACKS that specifies in the CR zoning district no building or structure on a water-front property shall be placed closer than 20 feet as a side setback; to allow a 0-foot side setback on the western

boundary and a 0-foot setback on the eastern boundary (abutting Margaritaville).

Deviation #3

Deviate from LDC §34-645 Table 34-2 for FLOOR AREA RATIO that specifies in the CR zoning district a maximum of 1.2; to allow a 1.96 floor area ratio.

Deviation #4

Deviate from LDC §34-2020(d)(2) (a) and (h) for restaurants requires a minimum parking of eight spaces per 1,000 square feet of total floor area plus any outdoor seating area. The proposed development requests to allow no required parking spaces, a reduction of 64 spaces or a 100% deviation.

Deviation #5

Deviate from LDC §30-5.(a)(1)a.1. - Permitted signs in Commercial Districts that permits a parcel of land containing one or two business establishments, each separate business establishment shall be allowed a maximum of 32 square feet of sign area; to allow five signs for the Salty Crab Bar and Grill with a combined sign area of 115 SF – a deviation of 83 SF (with the largest sign limited to 40.5 SF).

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

- a. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- b. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- c. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- e. Urban services are available and adequate to serve the proposed use.
- f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- i. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable

regulations.

- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

WHEREAS, the Town Council made the following formal findings before making final decisions on the eight requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216):

- a. Each item enhances the achievement of the objectives of the planned development; and
- b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and
- c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
- d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council finds that this Application to approve Ordinance 25-12 is **consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve with conditions** the Application.

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

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant **did** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance 25-12 and the conditions of approval for the commercial planned development zoning, **does** meet the requirements of the Town's Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVED WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 25-12 is adopted and the Conditions of Approval for the Property's CPD set forth in Exhibit A and the attached Master Concept Plan with renderings in Exhibit B, attached hereto and incorporated herein by this reference are approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

THE FOREGOING ORDINANCE was adopted by the Town Council upon a motion by Mayor Allers and seconded by Vice Mayor Atterholt, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this 16th day of June 2025.

Dan Allers, Mayor	<u>Aye</u>
Jim Atterholt, Vice Mayor	<u>Aye</u>
John R. King, Council Member	<u>Aye</u>
Scott Safford, Council Member	<u>Aye</u>
Karen Woodson, Council Member	<u>Aye</u>

FORT MYERS BEACH TOWN COUNCIL

Dan Allers

Dan Allers (Jun 23, 2025 12:48 EDT)

Dan Allers, Mayor

ATTEST:

Jason Freeman

Jason Freeman, Deputy Clerk/Legislative Liaison

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

N. Stuparich

N. Stuparich (Jun 23, 2025 13:18 EDT)

Vose Law Firm, LLP, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 25th day of June 2025.

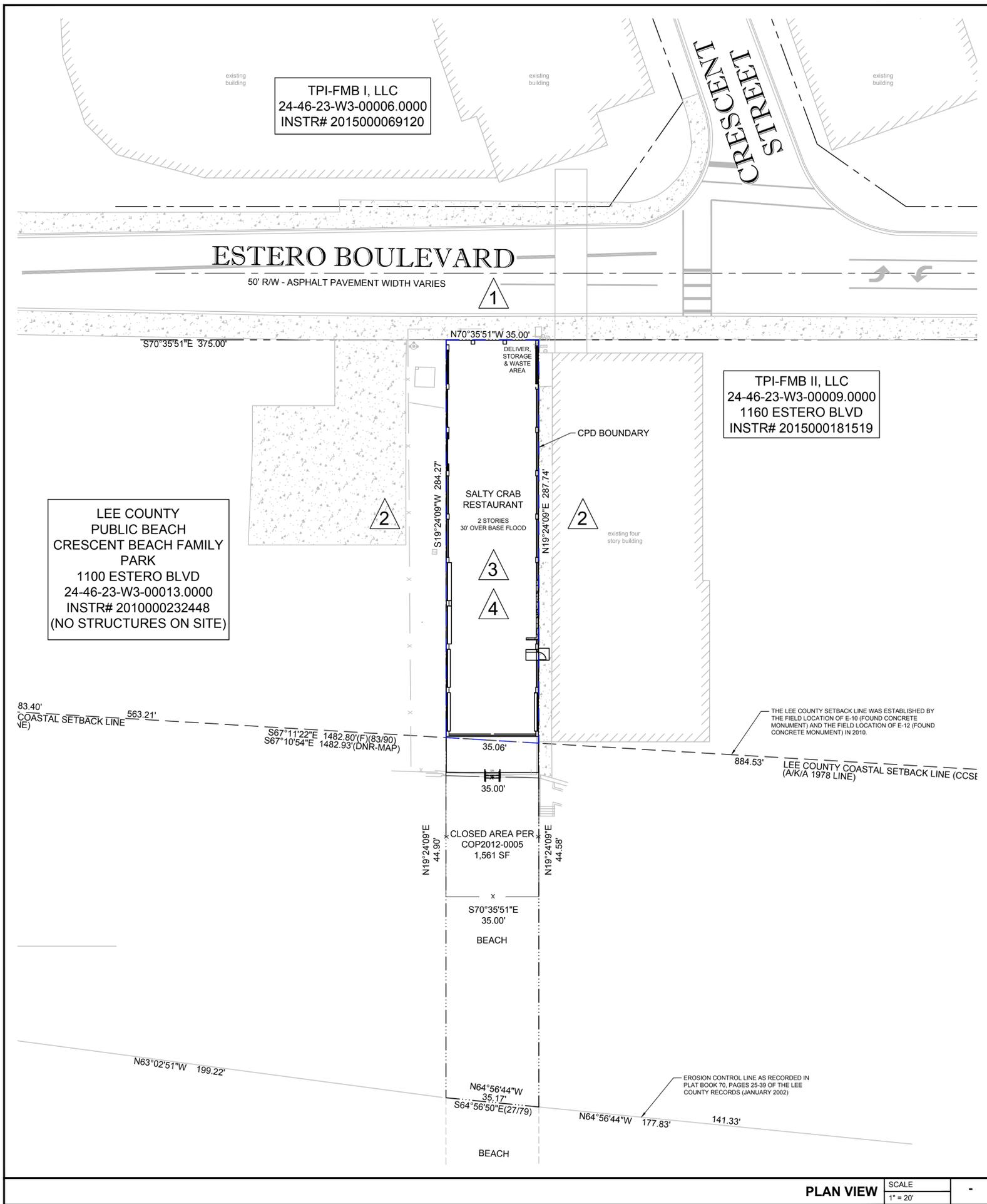
Exhibits:

A- Conditions of Approval

B - Master Concept Plan (MCP) with renderings and Schedule of Uses

Exhibit A: Conditions of Approval

1. A photometric plan must be provided with the Development Order application to determine compliance with turtle-friendly lighting restrictions in LDC Sec. 34-1834.
2. The applicant will provide cantilevered shade structure(s) from the Estero Boulevard façade to shade the public sidewalk that abuts the property.
3. Final architectural design must be generally consistent with renderings provided in addition to the Master Concept Plan.
4. Approval of this Ordinance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
5. The applicant must apply for and receive all state and local permits and approvals required for the reconstruction of all proposed structures.
6. At the time of local development order, the applicant will pursue a plan for large deliveries to be approved by the Town Manager or designee. The agreement must be finalized before the issuance of Certificate of Occupancy.
7. The applicant agrees to make a good faith effort to cooperate and fully explore participation, after the results of the study are complete, economic impacts/benefits are determined, and location and design plans are solidified, for a Wave Mitigation/Dissipation Wall.



ARCHITECT/ ENGINEER OF RECORD

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SALTY CRAB CPD
1154 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931

JOB NO. 230064

DATE: 04-14-25

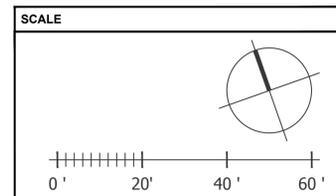
DRAWN BY: IEG

SCALE: 1" = 20'

SHEET TITLE:
MASTER CONCEPT
PLAN

SHEET NUMBER:

CP-1





SALTY CRAB CPD
CPD20240136



Beachside COMMUNITY GROUP





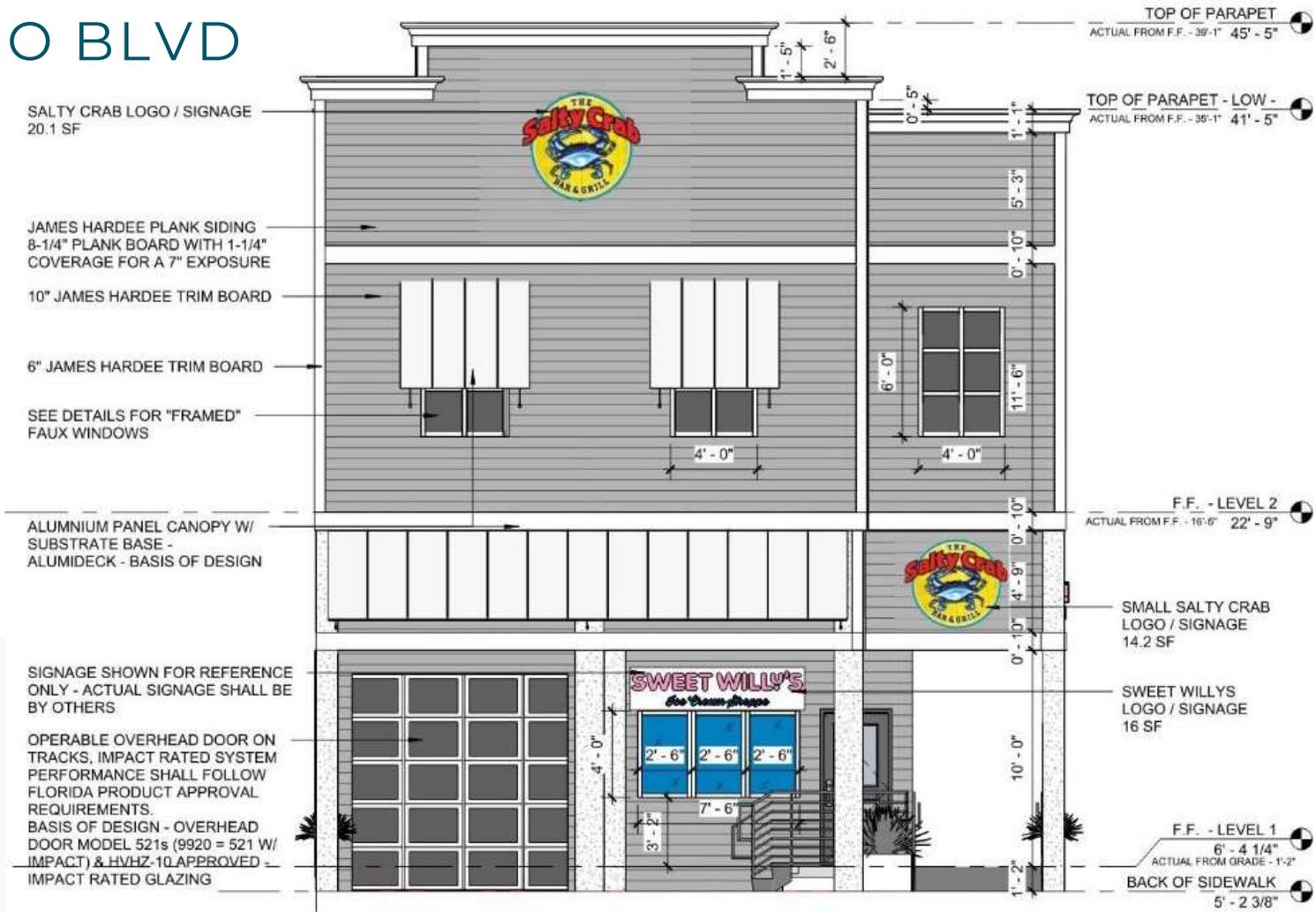
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Beachside COMMUNITY GROUP



ESTERO BLVD





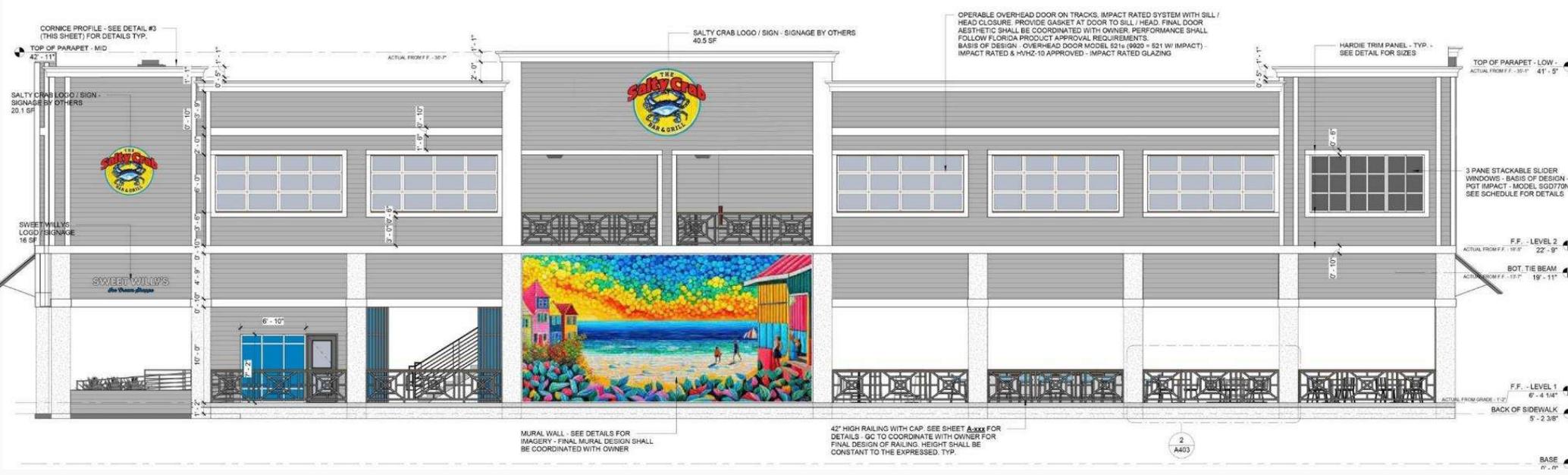
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Beachside COMMUNITY GROUP



CRESCENT PARK

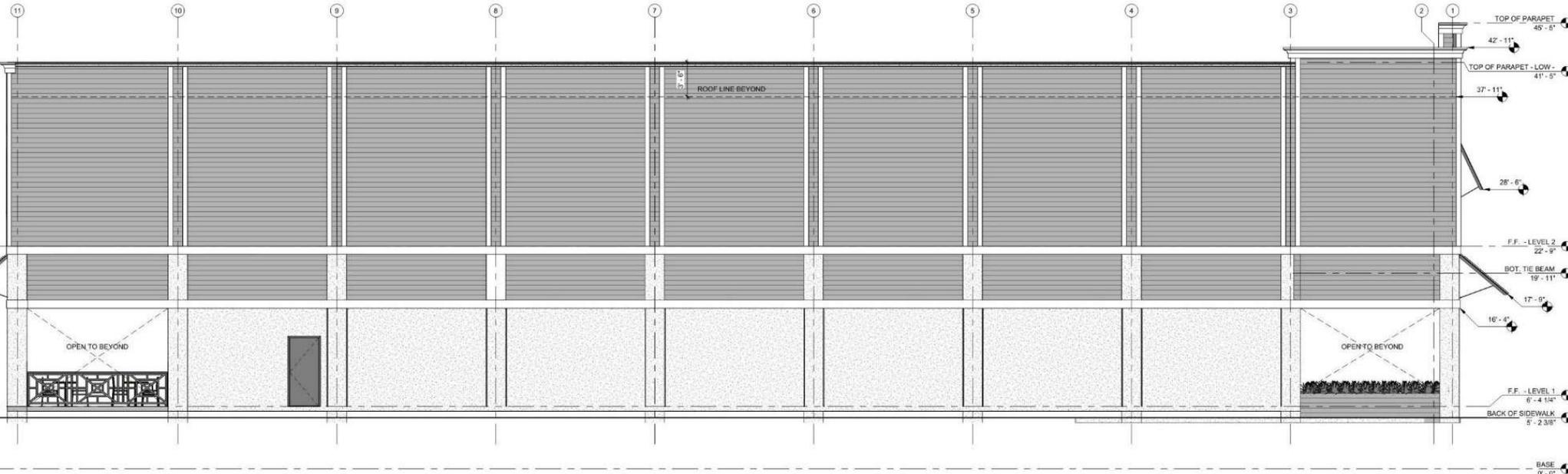




BEACH



ABUTTING MARGARITAVILLE



② EAST ELEVATION
3/16" = 1'-0"



SALTY CRAB CPD

Schedule of Uses

1. **SCHEDULE OF USES:** The approved schedule of uses for this CPD is limited to the following:

a. **RETAIL**

Principal:

- Bar or cocktail lounge
- Personal services
- Restaurant
- Retail store, small

Accessory:

- On-premises consumption of alcoholic beverages (per approval in COP2012-0005)
- ATM

b. **OFFICE**

Principal:

- Administrative offices

Accessory:

- Commercial accessory use