# Fort Myers Beach Town Council

**Diamondhead Beach Resort**
**2000 Estero Blvd.**
**Fort Myers Beach, FL 33931**

**Agenda** **Monday, December 4, 2023** **9:00 AM**

## ORDER OF BUSINESS

**I. CALL TO ORDER**

**II. INVOCATION**

**III. PLEDGE OF ALLEGIANCE**

**IV. APPROVAL OF FINAL AGENDA**

**V. PUBLIC COMMENT**

**VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

A. Poinsettia Tree Donation
**Accept a donation from Jay and Mary Highley for the purchase of poinsettias for the Town's annual poinsettia tree in Times Square.**

**VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**

**VIII. APPROVAL OF MINUTES**

A. Town Council - November 20, 2023

**IX. CONSENT AGENDA**

A. Resolutions 23-172 through 23-176; Extending Local State of Emergency for Hurricane Ian
**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

B. Resolutions 23-177 through 23-181; Extending Local State of Emergency for Hurricane Idalia

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE**

C. Resolution 23-183; Amendment to Permissive Use License Agreement

**A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO PERMISSIVE USE LICENSE AGREEMENT BETWEEN THE TOWN AND THE FORT MYERS BEACH FIRE CONTROL DISTRICT FOR THE USE OF PROPERTY OWNED BY THE FORT MYERS BEACH FIRE CONTROL DISTRICT AS A LOCATION FOR A TEMPORARY TOWN HALL; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; AND PROVIDING AN EFFECTIVE DATE.**

D. Resolution 23-170; Approval of FDEM $5 Million, 0% Interest Loan for Certain Hurricane Ian Public Assistance Projects

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, APPROVING A LOAN AGREEMENT BETWEEN THE TOWN AND THE STATE OF FLORIDA, DIVISION OF EMERGENCY MANAGEMENT IN THE PRINCIPAL AMOUNT OF $5,000,000.00 TO FUND HURRICANE IAN RELATED REPAIRS AND RECOVERY FOR WHICH WE WILL BE RECEIVING PUBLIC ASSISTANCE; MAKING CERTAIN CERTIFICATIONS; AGREEING TO CERTAIN TERMS AND CONDITIONS; DESIGNATING OFFICIALS WITH AUTHORITY TO EXECUTE THE LOAN DOCUMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF THE LOAN DOCUMENTS ATTACHED AS EXHIBIT "A"; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE**

E. Resolution 23-167; Memorial Bench Program fees

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, AMENDING THE FISCAL YEAR 2023-2024 FEE SCHEDULE ADOPTED ON SEPTEMBER 25, 2023 TO ADJUST THE FEE FOR THE MEMORIAL BENCH PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE**

F. Resolution 23-171; Jacobs Project Management, Co.

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING APPROVAL OF AN AGREEMENT WITH JACOBS PROJECT MANAGEMENT, CO. AUTHORIZING THE TOWN MANAGER TO EXECUTE AN ADDENDUM TO THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

G. Municipal Elections

**Approve an Agreement with Lee County Supervisor of Elections office to conduct municipal elections for the Town of Fort Myers Beach.**

## X. PUBLIC HEARINGS

A. Ordinance 23-18; Post Disaster Buildback Amendment

**First Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 2, SECTION 34-3238 POST-DISASTER BUILDBACK; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on December 18, 2023 at 9:00 AM**

B. Resolution 23-152, VAR20230187 - 3580 Estero Blvd

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230187 TO ALLOW A GARAGE CLOSER TO THE ESTERO BOULEVARD STREET RIGHT-OF-WAY LINE THAN THE PRINCIPAL BUILDING AND TO ALLOW A GARAGE CLOSER TO THE SIDE PROPERTY LINE THAN THE MINIMUM SIDE SETBACK ON WATERFRONT LOTS FOR THE PROPERTY LOCATED AT 3580 ESTERO BLVD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

C. Resolution 23-149; SEZ20230189 Special Exception for Major Accessory Structures in the EC zoning district

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20230189 TO ALLOW RECONSTRUCTION OF A POOL, DECK AREAS, WALKWAYS, STEPS, FENCE AND TWO FOOT RINSE STATIONS, IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 7002 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.**

D. Resolution 23-154, 1249 Estero Variances for height, stories and parking
**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE VAR20230205 TO DECREASE THE NUMBER OF REQUIRED PARKING SPACES BY 37 SPACES, AND TO ALLOW FOR A THREE-STORY BUILDING WITH ENCLOSED SPACE ON THE GROUND FLOOR, AND TO ALLOW FOR A BUILDING HEIGHT OF 36 FEET ABOVE FLOOD ELEVATION, FOR THE PROPERTY AT 1249 ESTERO BLVD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE.**

E. Resolution 23-155; VAR 20230198 - 49/51 Pompano Street
**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230198 49/51 Pompano St; requesting a variance from LDC Section 34-638 Table 34-3 Dimensional Regulations in Conventional Zoning Districts for the street and rear setbacks in the RM zoning district; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

**XI. ADMINISTRATIVE AGENDA**

**XII. FINAL PUBLIC COMMENT**

**XIII. TOWN MANAGER'S ITEMS**

**XIV. TOWN ATTORNEY'S ITEMS**

A. Proposed Settlement Agreement

**XV. COUNCILMEMBERS ITEMS AND REPORTS**

**XVI. ADJOURNMENT**

**NOTE: THIS MEETING IS STREAMED LIVE ON FACEBOOK AND YOUTUBE.**

**IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.**

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

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.

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2023-1056**

1. **Requested Motion:**

**Meeting Date: December 4, 2023**

Accept a donation from Jay and Mary Highley for the purchase of poinsettias for the Town's annual poinsettia tree in Times Square.

**Why the action is necessary:**

**What the action accomplishes:**

2. **Agenda:**
LOCAL ACHIEVEMENTS AND RECOGNITIONS

3. **Requirement/Purpose:**
Other

4. **Submitter of Information:**

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5. **Background:**
Jay and Mary Highley have offered to donate the cost of the poinsettias for the holiday tree in Times Square for another year.

**Attachments:**

**Financial Impact:**
Accepts a donation of the total cost for poinsettias

6. **Alternative Action**

7. **Management Recommendations:**
Accept and approve the donation.

8. **Recommended Approval:**

| | |
|---|---|
| Jason Freeman, Public Works Director | Created/Initiated - 11/29/2023 |
| Jeff Hauge, Culture, Parks & Recreation Director | Approved - 11/29/2023 |
| Nancy Stuparich, Town Attorney | Approved - 11/29/2023 |
| Amy Baker, Town Clerk | Approved - 11/29/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/29/2023 |

# Fort Myers Beach Town Council

**Diamondhead Beach Resort**
**2000 Estero Blvd.**
**Fort Myers Beach, FL 33931**

**Minutes** **Monday, November 20, 2023** **9:00 AM**

## ORDER OF BUSINESS

### I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Veach and Council Member Woodson.

### II. INVOCATION

Town Clerk Baker.

### III. PLEDGE OF ALLEGIANCE

### IV. APPROVAL OF FINAL AGENDA

Council Member King moved to approve the final agenda; seconded by Council Member Veach.
The motion carried unanimously.

### V. PUBLIC COMMENT

Ken Dabin, Sanibel, said he wanted to purchase the lot on the beach side of Chris Plourde's property at 7944/7946 Estero Blvd. Mr. Plourde noted that the property had been one lot but was separated into two lots around 1987. Mr. Dabin stated that he wanted to build a structure but needed zoning changes. He explained there would be 30 parking spaces underneath the building and most could be for public parking. A helipad could be built if the building was tall enough and Mr. Plourde felt there were four good options for the beach. Mr. Dabin added that his buildings were built to withstand winds of 280 mph.
Annie Neaf, resident and yoga instructor, looked forward to conducting classes on the beach again. She noted that the 30% split in fees was high for her low-revenue classes.

### VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King individually recognized his colleagues on the council.
No items from other members.

## VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No items.

## VIII. REORGANIZATION OF COUNCIL

A. Reorganization of Town Council

**Selection of Mayor and Vice Mayor in accordance with the Town Charter.**

Vice Mayor Atterholt nominated Dan Allers as Mayor.
The motion carried unanimously.
Council Member Veach nominated Jim Atterholt as Vice Mayor.
The motion carried unanimously.

## IX. APPROVAL OF MINUTES

A. Town Council - November 6, 2023

Council Member King moved to approve the minutes; seconded by Council Member Veach.
The motion carried unanimously.

B. Management & Planning Session - November 9, 2023

Council Member King moved to approve the minutes; seconded by Council Member Veach.
The motion carried unanimously.

## X. CONSENT AGENDA

Mayor Allers moved to approve the consent agenda; seconded by Council Member Woodson.
The motion carried unanimously.

A. Resolution 23-169; Town Manager Authority

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, GRANTING AUTHORITY TO THE TOWN MANAGER TO SIGN FEDERAL CONTRACTS ON BEHALF OF THE TOWN IN ACCORANCE WITH THE APPLICABLE LAWS AND REGULATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.**

Council Member King moved to approve the resolution; seconded by Council Member Woodson.
The motion carried unanimously.

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B. Resolution 23-168; Old San Carlos Electrical Work

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION OF THE TOWN TAKEN IN OCTOBER 2023 REGARDING THE WAIVING OF THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND APPROVAL OF THE PROPOSALS RECEIVED FOR ELECTRIC RESTORATION WORK FOR OLD SAN CARLOS BOULEVARD STREET LIGHTING IN AN AMOUNT NOT TO EXCEED $56,500; AND PROVIDING FOR AN EFFECTIVE DATE.**

Council Member King moved to approve the resolution; seconded by Council Member Woodson.
The motion carried unanimously.

C. Beach Access Easement to Satisfy Ordinance 18-04, TPI-FMB Rezoning, a Commercial Planned Development.

**Accept a grant of easement of five (5) feet, as depicted in Exhibit A and provided for in the legal description, for an ADA-accessible beach access for public use and to satisfy conditions of approval in Ord 18-04, TPI-FMB Rezoning, a Commercial Planned Development.**

Council Member King moved to accept the grant; seconded by Council Member Woodson.
The motion carried unanimously.

D. 5th Street public sidewalk easement for portions of private property along the south side of 5th Street and as required by the conditions of approval in Ordinance 18-04.

**Accept a grant of easement of seven (7) feet, as depicted in Exhibit A and provided for in the legal description, for a sidewalk for public use and to satisfy conditions of approval in Ord 18-04, TPI-FMB Rezoning, a Commercial Planned Development.**

Council Member King moved to accept the grant; seconded by Council Member Woodson.
The motion carried unanimously.

E. Public Use Agreement for Stairways, Bridge, Elevators, and Restrooms along the north and south side of Estero Boulevard.

**Accept a Public Use Agreement, as depicted in Exhibit A and provided for in the legal description, to allow general public use of portions of private property such as stairways, bridge, elevators, and restrooms, as required by the condition of approval in Ordinance 18-04, TPI-FMB Rezoning, Commercial Planned Development.**

Council Member King moved to accept the agreement; seconded by Council Member Woodson.
The motion carried unanimously.

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F. Special Event: Poinsettia Tree

**Request to hold a holiday event around the Poinsettia Tree at Times Square on Friday, December 1, at 5:30 p.m. Might include a special surprise guest!**

Council Member King moved to approve the request; seconded by Council Member Woodson.
The motion carried unanimously.

G. Special Event: Christmas Services Rental of Bayside Park 12/23/2023 4pm - 5pm

**Request to hold a Christmas Service at Bayside Park, December 23, 2023**

Council Member King moved to approve the request; seconded by Council Member Woodson.
The motion carried unanimously.

H. Special Event: New Years Eve 5K

**Request to hold a New Years Eve 5K, December 31, 2023**

Council Member King moved to approve the request; seconded by Council Member Woodson.
The motion carried unanimously.

I. Surplus Items

**Declare listed items as surplus and authorize staff to dispose of these items utilizing a municipal government auction service.**

Council Member King moved to authorize; seconded by Council Member Woodson.
The motion carried unanimously.

J. Additional funds for remodel of Bay Oaks Recreation Center

**Approve and allocate additional funds not to exceed $4,812.60 for additional work on the Bay Oaks Recreation Center to put in an annunciator panel and replace restroom walls. This will be a change order for the Bay Oaks Recreation Center awarded to C.E. Gleeson Contractors.**

Council Member King moved to approve and allocate; seconded by Council Member Woodson.
The motion carried unanimously.

K. Change Order #3, Bay Oaks Recreation Center

**Approve and allocate funds not to exceed $39,995.00 for additional work on the Bay Oaks Recreation Center to replace tile, mold remediation and dry wall of the restrooms. This will be a change order for the Bay Oaks Recreation Center awarded to C.E. Gleeson Contractors.**

Council Member King moved to approve and allocate; seconded by Council Member Woodson.
The motion carried unanimously.

## XI. PUBLIC HEARINGS

A. Ordinance 23-16; Small Scale Map Amendment for 21471 Widgeon Terrace

**Second Reading and Public Hearing on Proposed Ordinance 23-16 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ADOPTED FUTURE LAND USE MAP DATED JANUARY 1, 1999, FOR A PORTION OF THE PROPERTY LOCATED AT 21471 WIDGEON TERRACE AND PART OF THE ADJACENT COMMON ELEMENT PROPERTY OF FLAMINGO HARBOR CONDOMINIUM, FORT MYERS BEACH; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY ANDPROVIDING FOR AN EFFECTIVE DATE. Open the second public hearing and adopt ordinance**

Mayor Allers read the title of the ordinance.

Community Development Senior Planner Jason Smalley reviewed the proposed ordinance and noted it would be sent to the state. Council Member Veach questioned why the property was wetlands in the 80s but not now. Senior Planner Smalley replied that the staff did not know, and approval of the amendment would be up to the state.

Attorney Sarah Spector from Roetzel & Andress represented the applicant and described the steps they took to get where they were.

No public comment.

Council Member King moved to approve the ordinance; seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

## XII. ADMINISTRATIVE AGENDA

A. Proposed 2024 Town Council Meeting Schedule

**Approve the monthly schedule for Town Council meetings for calendar year 2024**

Town Clerk Baker noted the proposed calendar was included in the packet for their approval. The M&P Session on February 8, 2024, was moved to February 15, 2024.

Council Member King moved to approve the calendar; seconded by Council Member Woodson.

The motion carried unanimously.

B. Resolution 23-159; Budget Amendment #2 - Fiscal Year End Adjustment

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING BUDGET AMENDMENT #2 TO THE TOWN GENERAL FUND; AND OTHER TOWN FUNDS PROVIDING AUTHORITY; EFFECTIVE DATE.**

Mayor Allers read the title of the resolution. Finance Director Joe Onzick utilized PowerPoint for his presentation. Slides displayed included FY23 Final Budget Adjustment; General Fund Expense Adjustments; Emergency Fund Revenue Adjustments; Emergency Fund Expense Adjustments; Bridge Loan & Capital Fund Adjustments; Capital Improvement Loan Fund Adjustments and Stormwater Fund & Water Fund Adjustments.

Council Member Woodson moved to approve the resolution; seconded by Council Member King.
The motion carried unanimously.

C. Resolution 23-138; Authorizing 6-Month Extension of Capital Improvement Loan Draw Down Period

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING CERTAIN AMENDMENTS TO LOAN DOCUMENTS RELATING TO A LOAN FROM FIRST FLORIDA INTEGRITY BANK, N/K/A FIRST FOUNDATION PUBLIC FINANCE, PREVIOUSLY MADE ON OR ABOUT NOVEMBER 18, 2020 FOR THE PURPOSE OF FINANCING THE REDEVELOPMENT OF CERTAIN TOWN-WIDE CAPITAL IMPROVEMENT PROJECTS, AS DESCRIBED THEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF SAID AMENDMENTS AS DESCRIBED HEREIN; PROVIDING FOR THE RIGHTS AND SECURITIES OF THE OWNER OF THE NOTE; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Allers read the title of the resolution. Director Onzick reviewed the Capital Improvement Loan Extension. Town Manager Hyatt listed projects that would be covered by the funds and Operations and Compliance Director Frankie Kropocek added drainage projects.

Council Member Veach moved to approve the resolution; seconded by Council Member Woodson.
The motion carried unanimously.

D. Athletic Contractual Programs

**AUTHORIZE THE TOWN MANAGER TO WAIVE THE 70/30 SPLIT FEES FOR ATHLETIC CONTRACTUAL PROGRAMS HELD AT BAY OAKS TEMPORARILY, UNTIL OCTOBER 31ST 2024**

Town Manager Hyatt stated that the staff recommended waiving fees for ten months.

Council Member Veach moved to waive the fees; seconded by Council Member Woodson.
The motion carried unanimously.

E. Resolution 23-158; ITB-23-18-UT; Tier 1 Water and Stormwater Improvements

**A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, PROVIDING FOR THE TENTATIVE AWARD OF A CONTRACT TO ANDREW SITEWORK LLC., FOR THE CONSTRUCTION OF THE TIER 1 SIDE STREETS WATER AND STORMWATER IMPROVEMENTS PROJECT – GROUPS A, B, C, AND D (BID NO. ITB-23-18-UT), PURSUANT TO THE FLORIDA STATE REVOLVING FUND LOAN PROGRAM, SUBJECT TO FDEP APPROVAL; AUTHORIZING EXECUTION OF THE CONTRACT DOCUMENTS BY THE TOWN MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

Mayor Allers read the title of the resolution. Utilities Manager Steve Matuska noted the project was being worked on before Ian and was funded by the state revolving fund. Eric Fey from Tetra-Tech utilized PowerPoint for his presentation. The first slide was Tier 1 Side Street Water and Stormwater Improvements; Central Side Street Location Map; South Side Street Location Map and Street Summary. Manager Matuska explained the nature of repairs in several areas. Mr. Fey stated the outfall improvements were a four-year, three-month project.

Ralph Andrew from Andrew Sitework stated that he could start promptly after the contract was approved. He explained that he would move the project forward as quickly as possible.

The presentation continued with a Summary of Previous Bid Proposals Received; Current Bid Proposals; Deductive Change Order for Clearing and Grubbing; Fiscal Impact and Recommendations. Mr. Andrew predicted that they would start the project in January.

Mark Brewer explained that additional grant money in the SRF (State Revolving Fund) program could result in principal forgiveness for portions of the project. He added that he did not have details yet, but the application deadline was January 1, 2024. Manager Matuska stated that the stormwater rates were insufficient, and a rate study would be ongoing for five years to spread out the cost.

Council Member King moved to approve the resolution; second by Mayor Allers.

The motion carried unanimously.

F. Resolution 23-157; ITB-20-08-UT; North Estero Phase 2, Parts 1 & 2 Water Main and Stormwater Improvements-Change Order 2

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING CHANGE ORDER NO. 2 TO THE AGREEMENT ITB-20-08-UT BETWEEN THE TOWN OF FORT MYERS BEACH AND MITCHELL & STARK CONSTRUCTION CO.; DECREASING THE CONTRACT AMOUNT BY $3,746,334.98; EXTENDING THE DATE FOR FINAL COMPLETION BY 727 DAYS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CHANGE ORDER; AND PROVIDING AN EFFECTIVE DATE**

Mayor Allers read the title of the resolution. Mr. Fey explained the change order starting with the North Estero Phase 2 Parts 1 & 2 -Water Main and Storm Improvements; Part 1 Location Map; Part 2 Location Map; Project Summary; Financial Status and Recommendations.

Council Member King moved to approve the resolution; seconded by Council Member Veach.
The motion carried unanimously.

G. Resolution 23-156; RFQ-13-02-PW Estero Blvd Water Main Improvements **A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING CHANGE ORDER NO. 2 TO AMENDMENT 10 OF THE DESIGN-BUILD AGREEMENT RFQ-13-02-PW BETWEEN THE TOWN OF FORT MYERS BEACH AND MITCHELL & STARK CONSTRUCTION CO.; DECREASING THE CONTRACT AMOUNT BY $2,954,436.07; EXTENDING THE DATE FOR FINAL COMPLETION BY 836 DAYS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CHANGE ORDER; AND PROVIDING AN EFFECTIVE DATE**

Mayor Allers read the title of the resolution. Mr. Fey explained the slide concerning Phase 4 Estero Blvd. Water Main Improvements; Location Map; Project Summary; Financial Status and Recommendations. Manager Matuska indicated the water and stormwater infrastructure was less than ten years old.

Council Member Veach moved to approve the resolution; seconded by Council Member Woodson.
The motion carried unanimously.

H. Resolution 23-161; STA #6, Beach Truck Haul Project

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AGREEMENT #6 OF CONTRACT RFQ-21-09-EN BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR ADDITIONAL DESIGN CONSTRUCTION PHASE SERVICES FOR THE ESTERO ISLAND BEACH TRUCK HAUL PROJECT, FOR A COST NOT TO EXCEED $135,540; AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Allers read the title of the resolution. Director Kropocek stated that this resolution was for the consultants.

Mayor Allers moved to approve the resolution; seconded by Council Member King.
The motion carried unanimously.

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I. Resolution 23-163; STA #7 Beach Truck Haul Project

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AGREEMENT #7 OF CONTRACT RFQ-21-09-EN BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR CONTINUING CONSTRUCTION PHASE SERVICES FOR THE ESTERO ISLAND BEACH TRUCK HAUL PROJECT, FOR A COST NOT TO EXCEED $47,810, AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Allers read the title of the resolution. Director Kropocek noted this was for the design phase of the project.

Council Member King moved to approve the resolution; seconded by Council Member Veach.
The motion carried unanimously.

J. Resolution 23-162; Beach Nourishment Project Bid Phase Services

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING SUPPLEMENTAL TASK AGREEMENT #8 OF CONTRACT RFQ-21-09-EN BETWEEN THE TOWN AND COASTAL ENGINEERING CONSULTANTS, INC. FOR BID PHASE AND PRE-CONSTRUCTION SERVICES FOR THE ESTERO ISLAND BEACH RENOURISHMENT PROJECT, FOR A COST NOT TO EXCEED $30,880, AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Allers read the title of the resolution. Director Kropocek indicated it was for dredging and could start at the beginning of the new year.

Council Member King moved to approve the resolution; seconded by Mayor Allers.
The motion carried unanimously.

## XIII. FINAL PUBLIC COMMENT

No public comment.

## XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt reported that the contract was executed with the Jacobs Group and their official start date was December 4, 2023. Three permit technicians, a building official, inspectors and plan reviewers will be brought in. The Town Hall trailers will be removed today and the agreement with the fire department was extended until December 31, 2023. The new trailers were coming in mid-December. The Bay Oaks rec center was being worked on and the grounds were being cleaned up. The new outdoor workout equipment should be installed within a couple of weeks. Renderings of the pool will be available to share soon. The street signs should go up soon and the handmade signs will be preserved at the Historical Society.

The county has not received the funding for the lighting project yet, but Town Manager Hyatt requested the contract so the town attorney can review it. Mayor

Allers stated that the priority was to install lighting in the Times Square area, then Estero Blvd. and the side streets last. FP&L (Florida Power & Light) estimated finishing the project would take a year. He suggested the information be added to the town's website. Town Manager Hyatt reported that the Lumen boxes were being removed.

Mayor Allers suggested that Tidal Basin attend an M&P to explain how its process works.

Discussions were being held regarding community policing. Vice Mayor Atterholt questioned whether the contract could include officers participating during rush hour to help mitigate traffic. He commented that directing traffic would not take away from their other responsibilities.

Mayor Allers indicated that the officers would not be on the island 24/7 and that it was important to manage expectations. Vice Mayor Atterholt thought they could triage and assist in one area without neglecting their other responsibilities.

## XV. TOWN ATTORNEY'S ITEMS

Vice Mayor Atterholt brought up an issue with a resident who had an owner/builder permit and was prevented from renting their property. Town Attorney Vose commented that it was a state statute and that she would contact the Attorney General for their opinion.

## XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King reported an opening on the Citizen Advisory Board with the MPO (Metropolitan Planning Organization). He will share the information with Communications Coordinator Jennifer Dexter to add to the town's website.

LeeTran stated that ridership decreased by 90% on Fort Myers Beach after the hurricane and they recovered about 30% since Ian compared to the same time in 2021. He suggested that some code changes be addressed sooner rather than later. Director Kropocek stated that he and Planner Propst were working on many changes to present after the first of the year.

Vice Mayor Atterholt confirmed that the EBIA (Estero Bay Improvement Association) beach access plans for the tiki hut will move forward. Director Kropacek will inform the EBIA.

Council Member Woodson noted that the LPA requested a joint meeting to discuss the three development agreement deviations. She questioned whether a date had been set. Town Clerk Baker had not been contacted about the schedule. Town Attorney Vose will forward the draft language she prepared. Council Member Woodson questioned when the Times Square area would be cleaned up. Director Kropocek will contact the property owners and inform them they must remove the debris by a specific date. If all the town's efforts fail, a lien would be put on the property. Town Attorney Vose described how the Special Magistrate's process could lead to a lien. A consensus was held to contact the offending property owners immediately.

Council Member Veach suggested that they pressure Lee County to put the crosswalk signs back up. He also suggested that the town install signs warning people of debris on the beach.

Mayor Allers asked the staff to contact Lee County regarding installing an illuminated crosswalk at Lenell Road. He requested that Director Kropocek look at the cost of CPD projects. Director Kropocek responded that he and Planner Propst had been working on a formulation to reduce the fees.

## XVII. ADJOURNMENT

Council Member King moved to adjourn; seconded by Council Member Woodson. The motion carried unanimously.

The meeting was adjourned at 11:45 a.m.

DRAFT

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1352**

1. **Requested Motion:**

**Meeting Date: December 4, 2023**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

Extending the local state of emergency provides the Town with the needed flexibility to respond to the catastrophic disaster caused by Hurricane Ian and maintains the Town's eligibility for federal and state reimbursement funding for the costs of recovery.

**What the action accomplishes:**

Extends the Town's Declarion of state of local emergency.

2. **Agenda:**
CONSENT AGENDA

3. **Requirement/Purpose:**
Resolution

4. **Submitter of Information:**

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5. **Background:**

Hurricane Ian has caused a catastrophic disaster in the Town, causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas. Approving and ratifying these Resolutions will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 22-34.

**Attachments:**

1. 23-172, Extending Declaration of Local Emergency Ian 12.5.23-12.11.23
2. 23-173, Extending Declaration of Local Emergency Ian 12.12.23-12.18.23
3. 23-174, Extending Declaration of Local Emergency Ian 12.19.23-12.25.23
4. 23-175, Extending Declaration of Local Emergency Ian 12.26.23-1.1.24
5. 23-176, Extending Declaration of Local Emergency Ian 1.2.24-1.8-24

**Financial Impact:**

6. **Alternative Action**

Not adopt resolutions and the end the Local State of Emergency for Fort Myers Beach

7. **Management Recommendations:**

8. **Recommended Approval:**

| | |
|---|---|
| Amy Baker, Town Clerk | Created/Initiated - 11/27/2023 |
| Nancy Stuparich, Town Attorney | Approved - 11/27/2023 |
| Amy Baker, Town Clerk | Approved - 11/27/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/27/2023 |

**RESOLUTION 23-172**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

**WHEREAS,** Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

**WHEREAS,** the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – "Emergency and Disaster Planning" of the Code of Ordinances, Town of Fort Myers Beach, Florida ("Code"), and is otherwise authorized to activate the Town's emergency plan; and

**WHEREAS,** the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

**WHEREAS,** as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

**WHEREAS,** Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 5th day of December 2023.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 4th day of December 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

_____
Dan Allers, Mayor

ATTEST:

_____
Amy Baker, Town Clerk

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

_____
Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 4th day of December 2023.

**RESOLUTION 23-173**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

**WHEREAS,** Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

**WHEREAS,** the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – "Emergency and Disaster Planning" of the Code of Ordinances, Town of Fort Myers Beach, Florida ("Code"), and is otherwise authorized to activate the Town's emergency plan; and

**WHEREAS,** the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

**WHEREAS,** as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

**WHEREAS,** Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 12th day of December 2023.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 4th day of December 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

_____
Dan Allers, Mayor

ATTEST:

_____
Amy Baker, Town Clerk

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

_____
Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 4th day of December 2023.

**RESOLUTION 23-174**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

**WHEREAS,** Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

**WHEREAS,** the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – "Emergency and Disaster Planning" of the Code of Ordinances, Town of Fort Myers Beach, Florida ("Code"), and is otherwise authorized to activate the Town's emergency plan; and

**WHEREAS,** the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

**WHEREAS,** as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

**WHEREAS,** Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 19th day of December 2023.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 4th day of December 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

_____
Dan Allers, Mayor

ATTEST:

_____
Amy Baker, Town Clerk

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

_____
Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 4th day of December 2023.

**RESOLUTION 23-175**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

**WHEREAS,** Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

**WHEREAS,** the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – "Emergency and Disaster Planning" of the Code of Ordinances, Town of Fort Myers Beach, Florida ("Code"), and is otherwise authorized to activate the Town's emergency plan; and

**WHEREAS,** the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

**WHEREAS,** as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

**WHEREAS,** Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 26th day of December 2023.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 4th day of December 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

_____
Dan Allers, Mayor

ATTEST:

_____
Amy Baker, Town Clerk

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

_____
Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 4th day of December 2023.

**RESOLUTION 23-176**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

**WHEREAS,** Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

**WHEREAS,** the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – "Emergency and Disaster Planning" of the Code of Ordinances, Town of Fort Myers Beach, Florida ("Code"), and is otherwise authorized to activate the Town's emergency plan; and

**WHEREAS,** the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

**WHEREAS,** as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

**WHEREAS,** Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 2nd day of January 2024.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

This Resolution was ADOPTED this 4th day of December 2023 upon the signature of the Mayor at 9:00 a.m.

TOWN OF FORT MYERS BEACH

_____
Dan Allers, Mayor

ATTEST:

_____
Amy Baker, Town Clerk

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

_____
Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 4th day of December 2023.

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1353**

1. **Requested Motion:**

**Meeting Date: December 4, 2023**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

**Why the action is necessary:**

**What the action accomplishes:**

2. **Agenda:**
CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

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5. **Background:**
Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 23-99.

**Attachments:**
1. 23-177, Extention of Local Emergency - Idalia 12.5.23-12.11.23
2. 23-178, Extention of Local Emergency - Idalia 12.12.23-12.1.23
3. 23-179, Extention of Local Emergency - Idalia 12.19.23-12.25.23
4. 23-180, Extention of Local Emergency - Idalia 12.26.23-1.1.24
5. 23-181, Extention of Local Emergency - Idalia 1.2.24-1.8.24

**Financial Impact:**

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

| | |
|---|---|
| Amy Baker, Town Clerk | Created/Initiated - 11/27/2023 |
| Nancy Stuparich, Town Attorney | Approved - 11/27/2023 |
| Amy Baker, Town Clerk | Approved - 11/27/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/27/2023 |

**RESOLUTION NUMBER 23-177**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE**

**WHEREAS,** Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

**WHEREAS,** Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

**WHEREAS,** a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

**WHEREAS,** the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

**THEREFORE,** under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

**SECTION 1. State of Local Emergency.** The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or

order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.

4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:

- Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
- Entering into contracts;
- Incurring obligations;
- Employment of permanent and temporary workers;
- Utilization of volunteer workers;
- Rental of equipment;
- Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
- Appropriation and expenditure of public funds

5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements" for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.

6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:

(a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

(b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

(c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

(d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.

(e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.

(f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.

(g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.

(h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.

(i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

(j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.

7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:

(a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.

(b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be

made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

**SECTION 2. Conflicts.** Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

**SECTION 3. Severability.** If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

**SECTION 4. Effective Date and Termination Date.** This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

**SECTION 5. Direction to Implement.** The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member King and seconded by council Member Veach, and upon being put to a vote, the result was as follows:

| | |
|---|---|
| Dan Allers, Mayor | Aye |
| Jim Atterholt, Vice Mayor | Aye |
| John R. King | Aye |
| Bill Veach | Aye |
| Karen Woodson | Aye |

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

_____

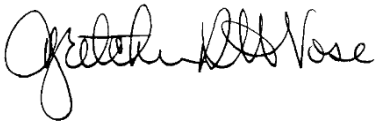
Dan Allers, Mayor

**ATTEST:**

_____

Amy Baker, Town Clerk

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



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Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 4th day of December 2023.

**RESOLUTION NUMBER 23-178**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE**

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2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or

order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.

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- Entering into contracts;
- Incurring obligations;
- Employment of permanent and temporary workers;
- Utilization of volunteer workers;
- Rental of equipment;
- Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
- Appropriation and expenditure of public funds

5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements" for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.

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(c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

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7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:

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8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be

made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

**SECTION 2. Conflicts.** Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

**SECTION 3. Severability.** If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

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**SECTION 5. Direction to Implement.** The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member King and seconded by council Member Veach, and upon being put to a vote, the result was as follows:

| | |
|---|---|
| Dan Allers, Mayor | Aye |
| Jim Atterholt, Vice Mayor | Aye |
| John R. King | Aye |
| Bill Veach | Aye |
| Karen Woodson | Aye |

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

_____

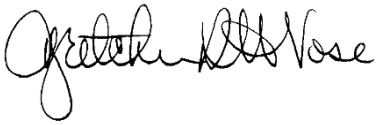
Dan Allers, Mayor

**ATTEST:**

_____

Amy Baker, Town Clerk

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



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Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 4th day of December 2023.

**RESOLUTION NUMBER 23-179**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE**

**WHEREAS,** Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

**WHEREAS,** Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

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| | |
|---|---|
| Dan Allers, Mayor | Aye |
| Jim Atterholt, Vice Mayor | Aye |
| John R. King | Aye |
| Bill Veach | Aye |
| Karen Woodson | Aye |

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

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Dan Allers, Mayor

**ATTEST:**

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Amy Baker, Town Clerk

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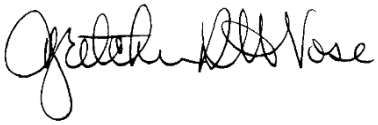

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Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 4th day of December 2023.

**RESOLUTION NUMBER 23-180**

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**THEREFORE,** under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

**SECTION 1. State of Local Emergency.** The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or

order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.

4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:

- Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
- Entering into contracts;
- Incurring obligations;
- Employment of permanent and temporary workers;
- Utilization of volunteer workers;
- Rental of equipment;
- Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
- Appropriation and expenditure of public funds

5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements" for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.

6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:

(a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

(b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

(c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

(d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.

(e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.

(f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.

(g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.

(h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.

(i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

(j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.

7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:

(a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.

(b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be

made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

**SECTION 2. Conflicts.** Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

**SECTION 3. Severability.** If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

**SECTION 4. Effective Date and Termination Date.** This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

**SECTION 5. Direction to Implement.** The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member King and seconded by council Member Veach, and upon being put to a vote, the result was as follows:

| | |
|---|---|
| Dan Allers, Mayor | Aye |
| Jim Atterholt, Vice Mayor | Aye |
| John R. King | Aye |
| Bill Veach | Aye |
| Karen Woodson | Aye |

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

_____

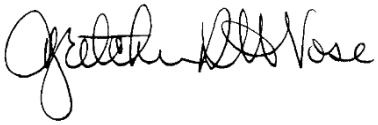
Dan Allers, Mayor

**ATTEST:**

_____

Amy Baker, Town Clerk

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



_____

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 4th day of December 2023.

**RESOLUTION NUMBER 23-181**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE**

**WHEREAS,** Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

**WHEREAS,** Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

**WHEREAS,** a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

**WHEREAS,** the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

**THEREFORE,** under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

**SECTION 1. State of Local Emergency.** The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or

order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.

4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:

- Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
- Entering into contracts;
- Incurring obligations;
- Employment of permanent and temporary workers;
- Utilization of volunteer workers;
- Rental of equipment;
- Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
- Appropriation and expenditure of public funds

5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements" for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.

6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:

(a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

(b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

(c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

(d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.

(e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.

(f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.

(g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.

(h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.

(i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.

(j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.

7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:

(a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.

(b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.

8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be

made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

**SECTION 2. Conflicts.** Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

**SECTION 3. Severability.** If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

**SECTION 4. Effective Date and Termination Date.** This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

**SECTION 5. Direction to Implement.** The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member King and seconded by council Member Veach, and upon being put to a vote, the result was as follows:

| | |
|---|---|
| Dan Allers, Mayor | Aye |
| Jim Atterholt, Vice Mayor | Aye |
| John R. King | Aye |
| Bill Veach | Aye |
| Karen Woodson | Aye |

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

_____

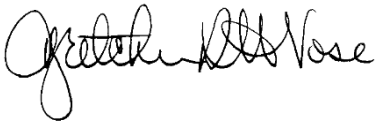
Dan Allers, Mayor

**ATTEST:**

_____

Amy Baker, Town Clerk

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



_____

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 4th day of December 2023.

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1360**

1. **Requested Motion:**

**Meeting Date: December 4, 2023**

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO PERMISSIVE USE LICENSE AGREEMENT BETWEEN THE TOWN AND THE FORT MYERS BEACH FIRE CONTROL DISTRICT FOR THE USE OF PROPERTY OWNED BY THE FORT MYERS BEACH FIRE CONTROL DISTRICT AS A LOCATION FOR A TEMPORARY TOWN HALL; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; AND PROVIDING AN EFFECTIVE DATE.

**Why the action is necessary:**

Additional time is necessary to allow for the delivery of new Town Hall facilities, and the clean up and vacation of fire district property.

**What the action accomplishes:**

It allows the Town to use the Fire District's property across the street from the damaged Town Hall as a location for a temporary Town Hall.

2. **Agenda:**
CONSENT AGENDA

3. **Requirement/Purpose:**
Resolution

4. **Submitter of Information:**

---

5. **Background:**

The Town entered into a Permissive Use License Agreement with the Fort Myers Beach Fire Control District for the use of the property located at 2545 Estero Blvd. on January 9, 2023 for the location of temporary Town Hall facilities. This amendment will extend the use of the property until January 31, 2024.

**Attachments:**

1. 23-183, Approving TFMB & FMBFCD Amendment to Permissive Use License Agreement
2. AMENDMENT TO PERMISSIVE USE LICENSE AGREEMENT
3. Permissive Use License Agreement - FMBFCD

**Financial Impact:**

6. **Alternative Action**

Do not approve the amendment

7. **Management Recommendations:**

Approve the amendment

8. **Recommended Approval:**

| | |
|---|---|
| Amy Baker, Town Clerk | Created/Initiated - 11/28/2023 |
| Nancy Stuparich, Town Attorney | Approved - 11/28/2023 |
| Amy Baker, Town Clerk | Approved - 11/29/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/29/2023 |

**RESOLUTION NUMBER 23-08**

**A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO PERMISSIVE USE LICENSE AGREEMENT BETWEEN THE TOWN AND THE FORT MYERS BEACH FIRE CONTROL DISTRICT FOR THE USE OF PROPERTY OWNED BY THE FORT MYERS BEACH FIRE CONTROL DISTRICT AS A LOCATION FOR A TEMPORARY TOWN HALL; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII, Section 2 of the State Constitution and Chapter 166 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 Council to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, the Town entered into a Permissive Use License Agreement with the Fort Myers Beach Fire Control District ("District") for the use of District property as a location for a temporary Town Hall because of the catastrophic damage caused by Hurricane Ian to the building in which Town Hall previously operated out of; and

**WHEREAS,** the Town Council deemed it to be in the best interests of the business owners, residents, and visitors of the Town to enter into the License Agreement with the District.

**WHEREAS,** the Town wishes to extend the expiration date of the agreement until January 31, 2024.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The foregoing whereas clauses are ratified and confirmed as being true and correct, are the legislative and administrative findings of the Town Council and made a specific part of this Resolution.

Section 2. The Amendment to Permissive Use License Agreement between the Town and District, a copy of which is attached as Exhibit "A" is approved. The Mayor is authorized to execute the Amendment to Permissive Use License Agreement on behalf of the Town, and the Town Manager is authorized to expend budgeted funds on behalf of the Town to implement the amendment.

Section 3. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

Dan Allers, Mayor
Jim Atterholt, Vice Mayor
John R. King, Councilmember
Bill Veach, Councilmember
Karen Woodson, Councilmember

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

_____
Dan Allers, Mayor

**ATTEST:**

_____
Amy Baker, Town Clerk

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

_____
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day December 2023.

141471267.1

**AMENDMENT TO PERMISSIVE USE LICENSE AGREEMENT**

THIS AMENDMENT TO PERMISSIVE USE LICENSE AGREEMENT is made and entered into this ___ day of _____, 2023, ("Amendment"), and is by and between Fort Myers Beach Fire Control District, an independent special district of Florida, whose mailing address is 100 Voorhis St, Fort Myers Beach, Florida 33931, hereinafter called "LICENSOR", and Town of Fort Myers Beach, a Florida municipal corporation, whose mailing address is 2525 Estero Blvd., Fort Myers Beach, Florida 33931, hereinafter called "TOWN", and amends that certain PERMISSIVE USE LICENSE AGREEMENT entered into on the 9th day of January, 2023 ("Agreement"); and

WHEREAS, LICENSOR is the owner of certain property in the Town of Fort Myers Beach, Lee County, Florida, located at 2545 and 2555 Estero Boulevard, Fort Myers Beach, Florida and being further identified as Strap #19-46-24-W3-00458.0000 and #19-46-24-W3-00458.0010 (collectively the "Parcel"); and

WHEREAS, TOWN is desirous of obtaining the continued permission to use, as provided in the Agreement, a portion of said Parcel of the LICENSOR for an additional two months; December 2023 and January 2024.

NOW, THEREFORE, in consideration of the covenants to be kept and performed by each of the parties hereto, and the sum of One Dollar ($1.00) cash in hand paid by the TOWN to the LICENSOR, receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. USE AND TERM - LICENSOR, subject to the conditions herein expressed, does hereby grant unto the TOWN, the continued privilege and license to use the area indicated in Exhibit "A" of the Agreement ("Site Area") for the continued placement and use of a temporary Town Hall for an additional two month period, beginning the 1st day of December, 2023 and ending the 31st day of January, 2024.

2. REMAINING TERMS – Other than the Term of the Agreement, which Term shall be extended for one additional month, all terms and conditions of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, the LICENSOR and TOWN have executed this Amendment to Agreement as of the date and year first above written.

| WITNESSES: | LICENSOR: |
|---|---|
| _____ | _____ |
| Signature | Scott Wirth, Fire Chief |
| _____ | |

Name

_____
Signature

_____
Name

TOWN:

_____
Dan Allers, Mayor

ATTEST:

_____
Amy Baker, Town Clerk

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

_____
Gretchen R.H. Vose, Town Attorney

PERMISSIVE USE LICENSE AGREEMENT

THIS LICENSE made and entered into this 9th day of January 2023 ("Agreement"), by and between Fort Myers Beach Fire Control District, an independent special district of Florida, whose mailing address is 100 Voorhis St, Fort Myers Beach, Florida 33931, hereinafter called "LICENSOR", and Town of Fort Myers Beach, a Florida municipal corporation, whose mailing address is 2525 Estero Blvd., Fort Myers Beach, Florida 33931, hereinafter called "TOWN", and

WHEREAS, LICENSOR is the owner of certain property in the Town of Fort Myers Beach, Lee County, Florida, located at 2545 and 2555 Estero Boulevard, Fort Myers Beach, Florida and being further identified as Strap #19-46-24-W3-00458.0000 and #19-46-24-W3-00458.0010 (collectively the "Parcel"); and

WHEREAS, TOWN is desirous of obtaining permission to use, as hereinafter provided, a portion of said Parcel of the LICENSOR.

NOW, THEREFORE, in consideration of the covenants to be kept and performed by each of the parties hereto, and the sum of One Dollar ($1.00) cash in hand paid by the TOWN to the LICENSOR, receipt of which is hereby acknowledged, and further consideration as herein provided, it is agreed as follows:

1. USE - LICENSOR, subject to the conditions herein expressed, does hereby grant unto the TOWN, the privilege and license to use the area indicated in Exhibit "A" of the above-described Parcel ("Site Area") for the placement and use of a temporary Town Hall.

2. TERM - This License will commence nun pro tunc as of November 1, 2022 and terminate on or before November 30, 2023, unless extended by mutual written agreement of the parties.

3. SITE AREA WORK – Town will be responsible for preparing the Site Area for use as a temporary Town Hall and will make sure that all such work complies with, and approved by, the appropriate regulatory agencies through the term of this Agreement. TOWN will be responsible to restore said Site Area to as good or better condition than that which existed prior to its use.

4. CONSIDERATION - TOWN will pay as consideration for this Agreement One $1.00) Dollar, net of any applicable tax, payable on or before the date of commencement of this Agreement, for said license and privilege.

5. RESTRICTION - The license and privilege granted TOWN under this AGREEMENT will be exercised only on the subject property of LICENSOR and upon no other property.

6. TERMINATION OF LICENSE - Either Party may, with or without cause, upon written notice, terminate this Agreement. Notice of termination must be given with no Less than ninety (90) days' prior written notice.

7. INDEMNIFICATION - TOWN agrees to indemnify and hold harmless LICENSOR, to the extent allowed under Section 768.28 of the Florida Statutes, as may be amended from time to time, from all claims, loss, damage, and expense, arising from the negligent acts or omissions

of TOWN, its officers, employees, and agents related to its performance under this Agreement. This provision does not constitute a waiver of the LICENSOR'S sovereign immunity under Section 768.28 of the Florida Statutes, as may be amended from time to time, or extend the TOWN'S liability beyond the limits established in Section 768.28 of the Florida Statutes, as may be amended from time to time. This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including attorney fees incurred in or in connection with any such claim or proceedings brought thereon and the defense thereof. The parties acknowledge that specific consideration has been given for this indemnification.

8. LIENS – TOWN will not incur any indebtedness giving right to a lien of any kind upon the LICENSOR'S interest in and to lands described herein. LICENSOR'S interest will not be subject to liens for improvements made by the TOWN on the lands described herein. In the event any liens are filed, due to improvements made by the TOWN, the TOWN will immediately discharge said lien by such manner as permitted by law.

9. ENJOYMENT - Nothing herein contained will be construed as limiting the LICENSOR from having the full use and enjoyment of its lands, save only as to the rights granted to the TOWN by the terms of this Agreement, and nothing herein contained will be construed or interpreted as granting anything to TOWN other than use of the property provided herein.

10. BREACH - In the event of any breach or non-performance of any of the covenants, agreements, terms, or conditions to be performed by TOWN, and said breach or non-performance continues for one day, LICENSOR has the right to declare this Agreement terminated and to re-enter the property and remove TOWN and its respective property therefrom, and TOWN agrees to peacefully vacate said property and pay all costs, including reasonable attorneys' fees, that may be incurred by LICENSOR in enforcing the covenants, agreements, terms and conditions of this License.

11. RIGHTS AND PROPERTY INTEREST - No rights or property interests are granted to or created in the TOWN by this Agreement except as otherwise provided herein. The granting of this Agreement is only as an accommodation to the TOWN.

12. ENTIRE AGREEMENT - It is understood and agreed that this Agreement sets forth all the covenants, agreements, terms, and conditions between the parties and that there are no other oral or written agreements between them.

13. AMENDMENT - It is further understood that no subsequent amendments, alterations, or additions to this Agreement will be binding upon the parties hereto unless reduced to writing and executed by said parties.

14. GOVERNING LAW - LICENSOR and TOWN agree that this Agreement will be governed by and construed under the laws of the State of Florida.

15. ASSIGNMENT - TOWN will not transfer or assign its interest or rights provided in this Agreement, nor attempt to grant any sub-license to any persons whom so-ever without the written

consent of the LICENSOR. The consent of the LICENSOR will be at the LICENSOR'S sole discretion.

16. NOTICE - All notices or request between the parties will be in writing and will be deemed to have been duly given or served by either personally delivered (deemed given same day), delivered via private local courier services (deemed given same day), sent via fed ex or other nationally recognized overnight delivery service (deemed given on the next business day after deposit with the service), or deposited in the United States Mail, Certified Mail, return receipt requested, postage prepaid (deemed given on the fourth business day after deposit in the mail) addressed as follows:

TO THE TOWN:

TOWN OF FORT MYERS BEACH
Attn: Town Manager
2525 Estero Blvd.
Fort Myers Beach, FL 33931
239-765-0202
townmanager@fmbgov.com

TO THE LICENSOR:

FORT MYERS BEACH FIRE CONTROL DISTRICT
Attn: Executive Assistant to Fire Chief Ron Martin
100 Voorhis St.
Fort Myers Beach, FL 33931
239-590-4200
rmartin@fmbfire.org

17. BINDING EFFECT -This Agreement and all its terms and conditions will extend to and be binding upon the parties hereto and upon their respective successors and assigns.

18. SEVERABILITY - The invalidation of any provision or clause in whole or in part by Judgment or court order will in no way affect any of the other provisions or clauses, which will remain in full force and effect.

19. CONDITION - It is understood between the parties hereto that the property has been inspected by the TOWN and that the property is being accepted in an "As Is" condition. TOWN acknowledges the lands being considered in this Agreement, as described in Section 1, are a portion of the land owned by the LICENSOR.

20. ENVIRONMENTAL - TOWN will not, and will ensure that others do not install, use, generate, store, locate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit, or dispose of Hazardous Substances in, upon, under, over or onto the Property. If the LICENSOR has reason to believe a Hazardous Substance has been discharged, spilt, or released on the Property by TOWN or its contractors or consultants, then the LICENSOR has the right, but

not the obligation, to require TOWN, at TOWN'S sole cost and expense, to perform an environmental audit by an environmental consultant satisfactory to the LICENSOR. Such an investigation will be commenced within ten (10) days after the LICENSOR'S request, and thereafter be diligently prosecuted to completion. TOWN will provide the LICENSOR with an electronic copy of the environmental audit immediately after it is completed.

21. RELATIONSHIP - Nothing contained in this Agreement will be deemed to constitute or be construed to create the relationship of principal and agent, partnership, joint venture, or any other relationship between the parties hereto, other than the relationship of TOWN/LICENSOR.

22. PREVAILING PARTY - The prevailing party in any litigation brought to enforce rights hereunder will be entitled to reimbursement of all reasonable costs and expenses, including, but not limited to, court costs, fees, and attorneys' fees at all judicial levels.

23. MISCELLANEOUS - The TOWN will be responsible for the payment for any trash removal that may be required arising from its use of the Property under this Agreement. The TOWN is responsible for obtaining any required federal, state, or local permits for activities to be conducted on the LICENSOR'S property.

IN WITNESS WHEREOF, the LICENSOR and TOWN have executed this Agreement as of the date and year first above written.

| WITNESSES: | LICENSOR: |
|---|---|
| Signature | Ron Martin, Fire Chief |
| Steve Poposki<br>Name | |
| Signature | |
| Amy Baker<br>Name | |

TOWN:

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

John R. Herin, Jr., Town Attorney

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1358**

1. **Requested Motion:**

**Meeting Date: December 4, 2023**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, APPROVING A LOAN AGREEMENT BETWEEN THE TOWN AND THE STATE OF FLORIDA, DIVISION OF EMERGENCY MANAGEMENT IN THE PRINCIPAL AMOUNT OF $5,000,000.00 TO FUND HURRICANE IAN RELATED REPAIRS AND RECOVERY FOR WHICH WE WILL BE RECEIVING PUBLIC ASSISTANCE; MAKING CERTAIN CERTIFICATIONS; AGREEING TO CERTAIN TERMS AND CONDITIONS; DESIGNATING OFFICIALS WITH AUTHORITY TO EXECUTE THE LOAN DOCUMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF THE LOAN DOCUMENTS ATTACHED AS EXHIBIT "A"; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

**Why the action is necessary:**

This action is necessary to provide the initial cash that is needed for the aforementioned list of Public Assistance projects that must first be expended before the Town can be reimbursed by FEMA for the same.

**What the action accomplishes:**

This loan alleviates the cash flow problem associated with reimbursement programs such as the FEMA Public Assistance programs in which the Town is required to first expend cash to fund the projects, and is then later reimbursed for the expenditure. This interest-free loan is being awarded by the Florida Division of Emergency Management to provide the initial funding for the following Public Assistance (FEMA) projects, and is to be repaid by reimbursements from FEMA for the same:

A&E services - Beach Access Repairs (PW 706988)
Restoration of Stormwater Swale Repair (PW 705376)
Assessment for an Island wide dredging (PW 704871)
Road Repairs (PW 714446)
Bay Oaks Recreation (PW 705378)
Road sign replacement (PW 706501)
Community Pool (PW 706510)
South Pump Station Repairs (PW 705382)
Estero Island Sea Wall and outfalls (PW 706946)
Stormwater System (PW 705376)
Mooring Field Repairs (PW 706971)
Time Square Repairs (PW 706985)
North Pump station (PW 706975)
Town Hall Replacement (PW 705370)
North Pump station repairs (PW 705379)
Town Hall Temporary Facility (PW 705374)
Pump Station Replacement (PW 706499)

| 2. **Agenda:** | 3. **Requirement/Purpose:** | 4. **Submitter of Information:** |
|---|---|---|
| CONSENT AGENDA | Resolution | Joe Onzick, Finance Director |

5. **Background:**

The Florida Division of Emergency Management awarded the Town of Fort Myers Beach a $5,000,000 million, interest-free loan to be used to fund Hurricane Ian related Public Assistance (FEMA) projects. The loan will be repaid from FEMA reimbursements.

**Attachments:**

1. 23-170, FDEM 0% Interest Loan Approval
2. FDEM 0% Loan Agreement

**Financial Impact:**

The FEMA public assistance programs in which the Town is participating is based on a reimbursement model according to which the Town must first expend the funds, and is then later reimbursed by FEMA for any such eligible expenditures. This loan will provide the cash required to be expended initially, and then the loan will be repaid by FEMA reimbursements.

6. **Alternative Action**

There is no loan option currently available that is better than this interest-free loan to be repaid from FEMA reimbursements. The Town may choose not to approve it.

7. **Management Recommendations:**

Staff recommends approval of this interest-free, $5 million loan agreement to alleviate the cash flow issues associated with reimbursement programs, as well as to maximize the amount of funding available for the Town's recovery projects.

8. **Recommended Approval:**

| | |
|---|---|
| Amy Baker, Town Clerk | Created/Initiated - 11/27/2023 |
| Amy Baker, Town Clerk | Approved - 11/27/2023 |
| Nancy Stuparich, Town Attorney | Approved - 11/27/2023 |
| Amy Baker, Town Clerk | Approved - 11/27/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/27/2023 |

**RESOLUTION NO. 23-170**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, APPROVING A LOAN AGREEMENT BETWEEN THE TOWN AND THE STATE OF FLORIDA, DIVISION OF EMERGENCY MANAGEMENT IN THE PRINCIPAL AMOUNT OF $5,000,000.00 TO FUND HURRICANE IAN RELATED REPAIRS AND RECOVERY FOR WHICH WE WILL BE RECEIVING PUBLIC ASSISTANCE; MAKING CERTAIN CERTIFICATIONS; AGREEING TO CERTAIN TERMS AND CONDITIONS; DESIGNATING OFFICIALS WITH AUTHORITY TO EXECUTE THE LOAN DOCUMENTS; AUTHORIZING THE EXECUTION AND DELIVERY OF THE LOAN DOCUMENTS ATTACHED AS EXHIBIT "A"; PROVIDING FOR SEVERABILITY AND 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 ("Town") 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**, on September 28, 2022, Hurricane Ian made landfall in Fort Myers Beach as a category four hurricane with 150-mph winds and a storm surge of approximately fifteen feet (15') causing catastrophic damage to the Town's beach, beach access facilities, public buildings, public communication systems, public drainage and utility systems, public streets and roads, and commercial and residential buildings and areas; and

**WHEREAS,** financial assistance from the State of Florida is going to be essential to rebuilding of the Town and to the Town's ability to provide essential services to its business owners, residents, and visitors; and

**WHEREAS,** the Town believes it is in the best interest for the health, safety and welfare of the Town's business owners, residents, and visitors to enter into the Loan Agreement with the State of Florida Division of Emergency Management attached as Exhibit "A" ("Loan Agreement").

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

Section 1. The above recitals are true and correct, and incorporated herein by this reference and adopted as the legislative and administrative findings of the Town Council; all exhibits referenced and attached are incorporated herein and made a specific part of this Resolution.

Section 2. This Resolution is adopted pursuant to the provisions of the Constitution of the State of Florida, Chapter 166, *Florida Statutes*, as amended and other applicable provisions of law.

Section 3. It is hereby ascertained, determined, and declared that:

(A) It is necessary and desirable for the benefit of its inhabitants and the continued preservation of the economic welfare, and the health, welfare, and safety of the Local Government and its inhabitants, to obtain a loan from the State of Florida Division of Emergency Management through the Hurricane Recovery Grant Program, subject to SB2500 (2300), Item 2676A in the amount of $5,000,000.00, to provide funds for hurricane repair and recovery related projects.

(B) It is necessary and desirable to provide for the execution and delivery of the Loan Documents to implement and deliver the Loan.

(C) The Local Government shall accept, subject to the terms and conditions of the Loan Documents, the Loan amount, for the purposes described above.

(D) The Loan amount shall bear no interest and shall be payable from the Public Assistance (PA) reimbursements to the Town for the project related eligible expenses, and any remaining balance is to be paid in accordance with a payment plan approved by the Department of Financial Services.

(E) The Local Government will maintain all unexpended Loan funds received from the Department in a bank account separate from its other operating or other special purpose accounts. The Local Government will not commingle the Loan funds with any other funds, projects, or programs. Any interest earned on unexpended Loan funds remain State funds.

(F) The Mayor, Vice Mayor, Town Clerk, Town Manager and Finance Director are hereby authorized to take such further actions and execute and deliver such further documents, certificates and agreements as are necessary to facilitate the purposes of this Resolution.

Section 4. *Limitation of Rights*. With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Loan Documents is intended or shall be construed to give to any person other than the Local Government and the Department any legal or equitable right, remedy, or claim under or with respect to this Resolution, the Loan funds, the Loan Documents, or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions, and provisions hereof being intended to be and being for the sole and exclusive benefit of the Local Government and the Department.

Section 5. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 6. This resolution shall take effect immediately upon its adoption.

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

| | |
|---|---|
| Dan Allers, Mayor | ___ |
| Jim Atterholt, Vice Mayor | ___ |
| John R. King, Council Member | ___ |
| Bill Veach, Council Member | ___ |
| Karen Woodson, Council Member | ___ |

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

_____
Dan Allers, Mayor

ATTEST:

_____
Amy Baker, Town Clerk

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

_____
Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of _____ 2023.

**Agreement Number:**

## AGREEMENT FOR 2023/2024 HURRICANE LEGISLATIVE APPROPRIATION PROGRAM

The following Agreement is entered into pursuant to the 2023 Specific Appropriation 2676A pursuant to which the Florida Legislature intends to provide resources to fund gaps in hurricane repairs and recovery to publicly owned facilities damaged in the hurricanes, infrastructure repairs, and loss of local and county revenues within counties designated in the Federal Emergency Management Agency (FEMA) disaster declarations for Hurricane Ian and/or Hurricane Nicole, based on legislative selection, subject to certain requirements.

| | |
|---|---|
| Recipient's name: | Fort Myers Beach, Town of |
| Recipient's unique entity identifier (UEI): | J87EFSEEQ884 |
| Recipients FIPS Number: | 071-24150-00 |
| State award project description: | Funding for local government entities in eligible counties impacted by Hurricane Ian and/or Hurricane Nicole for gaps in hurricane repairs and recovery, subject to the availability of funds which are allocated based on legislative selection. |
| Contact information for agreement parties: | Florida Division of Emergency Management<br>Bureau of Recovery<br>2555 Shumard Oak Blvd<br>Tallahassee, FL 32399-2100 |

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarter s in Tallahassee, Florida (hereinafter referred to as the "Division"), and Fort Myers Beach, Town of (hereinafter referred to as the "Recipient").

**THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING MANDATORY CERTIFICATIONS:**

A. The Recipient certifies that it is an eligible local government, independent special district, or school board, including a charter school, within a county designated in the FEMA disaster declarations for Hurricane Ian and/or Hurricane Nicole respectively.

B. The Recipient certifies that any funding requested is necessary to maintain services or

infrastructure essential to support health, safety, and welfare functions and to reimburse the local government, independent special district, school board, or charter school (Recipient) for unanticipated expenses related to recovering from Hurricane Ian or Nicole or for the loss of revenues related to the impact of Hurricane Ian or Nicole.

C. The Recipient certifies that insufficient state funds, federal funds, private funds, or insurance proceeds are available to meet the functions listed above.

D. The Recipient certifies that should sufficient funds subsequently become available to meet the needs of the original budget amendment, the Recipient agrees to reimburse the State of Florida Division of Emergency Management in the amount of such funds subsequently received.

E. The Recipient, by its decision to participate in this program, bears the ultimate responsibility for ensuring compliance with all applicable State and Federal laws, regulations, and policies, and bears the ultimate consequences of any adverse decisions rendered by the Division or any other State and Federal agencies with audit, regulatory, or enforcement authority;

F. This Agreement establishes the relationship between the Division and the Recipient to allow the Division to provide funds to the Recipient;

THEREFORE, the Division and the Recipient agree to the following:

**(1) <u>LAWS, RULES, REGULATIONS, AND POLICIES</u>**

A. As required by Section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Recipient is required to perform.

ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

iii. A provision specifying the financial consequences that apply if the Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.

vi. A provision specifying that any funds paid in excess of the amount to which the Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

B. In addition to the foregoing, the Recipient and the Division shall be governed by all applicable State and Federal laws, rules, and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

**(2) <u>CONTACT</u>**

A. In accordance with Section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Recipient. As part of his/her duties, the Grant Manager for the Division shall:

i. Monitor and document Recipient performance;

ii. Review and document all deliverables for which the Recipient requests payment; and

iii. Have the ability to send all notices reasonably provided for in this agreement, including but not limited to, the notices for default and termination.

B. The Division's Grant Manager for this Agreement is:

Amanda Lambert
2555 Shumard Oak Boulevard
Tallahassee, FL 32399
Telephone: 850-815-4425
Email: amanda.lambert@em.myflorida.com

C. The name and address of the representative of the Recipient responsible for the administration of this Agreement is:

_____
_____
_____
Telephone: _____
Email: _____

D. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

**(3) TERMS AND CONDITIONS**

This Agreement contains all the terms and conditions agreed upon by the parties. Eligibility to receive funding under this Agreement shall be determined utilizing the following categories:

A. Category 1: Public Assistance

This funding category is for a Recipient that has, or will have, a Public Assistance (PA) Project Worksheet (PW) on file. Funding for the following subcategories will be used as an advanced payment or a zero percent loan to get projects started and shall be repaid up to the amount of funds subsequently received:

i. Subcategory 1A: A PW that has a legislative member project that was introduced during the last legislative session and is associated to the work.

ii. Subcategory 1B: A PW that is ready to start work but requires funding to get started.

**(4) EXECUTION**

This Agreement may be executed in any number of counterparts, all or any of which may be taken as an original.

**(5) MODIFICATION**

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original Agreement.

**(6) SCOPE OF WORK**

The Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

**(7) PERIOD OF AGREEMENT/PERIOD OF PERFORMANCE**

This Agreement survives and remains in effect after termination for the herein referenced State

audit requirements and the referenced required records retention periods. Work may only be performed during the timeframes established and approved by the Division and/or FEMA for each Category of Work type. The Period of this Agreement extends until such time as all loaned funds have been returned to the State General Revenue Fund.

**(8) FUNDING**

A. Unless otherwise specified under Terms and Conditions, this is a lump sum loan Agreement subject to the availability of funds.

B. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an appropriation by the Legislature, and subject to any modification in accordance with either Chapter 216, Florida Statutes, or the Florida Constitution.

C. The Division will loan funds to the Recipient only for allowable costs to be incurred by the Recipient in the successful completion of each deliverable. The loan amount for each deliverable is outlined in Attachment A of this Agreement ("Budget and Scope of Work").

D. The Division's Grant Manager, as required by Section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the period of agreement and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Recipient.

E. For the purposes of this Agreement, the term "improper payment" means or includes:

   i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,

   ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

F. All funds shall be placed in an interest-bearing account and all unused loan funds and the interest shall be returned to the State's General Revenue Fund. The unused loan funds shall not be paid towards the original loan amount.

## (9) ADDED PROVISIONS FOR PUBLIC ASSITANCE FUNDING

A. If the Recipient is receiving Public Assistance (PA) funding, once the referenced PA project is obligated instead of payment being initiated traditionally, funds shall be drawn down from the SmartLink account and transferred back to the State General Revenue Fund via offset memo.

B. The funds and the interest shall be transferred back to the State's General Revenue Account.

C. In the event all PA projects tied to the loan have had the initial version obligated and the full amount of the loan has not been offset, the Recipient shall repay the balance to the Division in accordance with Paragraph (11) REPAYMENTS.

D. In the event the cumulative amount of the PA projects tied to the loan obligate at a lesser amount than the amount of the approved loan, the applicant may request loan forgiveness.

E. Loan forgiveness may only be requested following a determination memo or after the obligation of the final project's closeout version within the funding agreement and shall be requested within 90 days of whichever occurs last.

F. The Recipient shall abide by all Federal Regulations regulating PA projects.

## (10) RECORDS

A. As a condition of receiving state financial assistance, and as required by sections 20.055(6)(c) and 215.97(5)(b), Florida Statutes, the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Recipient's personnel for the purpose of interview and discussion related to such documents. For the purposes of this section, the term "Recipient" includes employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement.

B. The Recipient shall maintain all records related to this Agreement for the period of time specified in the appropriate retention schedule published by the Florida Department of State. Information regarding retention schedules can be obtained at: http://dos.myflorida.com/library-archives/records-management/general-records-schedules/.

C. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three, basic requirements: (1) all meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and, (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Recipient based upon the funds provided under this Agreement, the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Florida Statutes.

D. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

E. The Recipient shall maintain all records for the Recipient and for all subcontractors or

consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

**IF THE RECIPIENT/CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR AS TO THE RECIPIENT/CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-7671, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.**

**(11) REPAYMENTS**

A. Refunds or repayments of obligated funds, if any, may be paid to the Division through check or through a payment plan as approved by the Department of Financial Services. In accordance with Chapter 218, Florida Statutes, the Recipient has thirty (30) days to repay the funds from the issuance of the invoice from the Division.

B. All refunds or repayments due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management," and must include the invoice number and the applicable Disaster and Project number(s) that are the subject of the invoice, and be mailed directly to the following address:

Division of Emergency Management Cashier
Attention: Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

C. In accordance with Section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Recipient shall pay the Division a service fee of $15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

**(12) AUDITS**

A. In accounting for the receipt and expenditure of funds under this Agreement, the Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R.

§200.1, GAAP "has the meaning specified in accounting standards issued by the [Government Accounting Standards Board] GASB and the [Financial Accounting Standards Board] FASB."

B. When conducting an audit of the Recipient's performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.1, GAGAS, "also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."

C. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Division has notified the Recipient of such non-compliance.

D. The Recipient shall have all audits completed by an independent auditor, which is defined in Section 215.97(2)(i), Florida Statutes, as "an independent certified public accountant licensed under chapter 473." The independent auditor shall state that the audit complied with the applicable provisions noted above. The audits must be received by the Division no later than nine months from the end of the Recipient's fiscal year.

E. The Recipient shall send copies of reporting packages required under this paragraph directly to each of the following:

The Division of Emergency Management
DEMSingle_Audit@em.myflorida.com
OR
Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100
AND
The Auditor General
Room 401, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

**(13) REPORTS**

A. The Recipient shall provide the Division with quarterly reports and a close-out report for their traditional PA projects on their Ian or Nicole profiles in FLPA. These reports shall include the current status and progress by the Recipient in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

B. Reports for the LAPS program on funding agreement status, obligated PA funds, loan payments and offsets will be provided by the Divisions grants managers on a bi-weekly basis or as requested by management and the LAPS program manager.

**(14) MONITORING**

A. The Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are met, the Schedule of Deliverables and Scope of Work are accomplished within the specified time periods, and other performance goals are achieved. A review shall be done for each function or activity in Attachment A to this Agreement and reported in the quarterly report.

B. In addition to reviews of audits conducted in accordance with paragraph (10) AUDITS above, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, or other procedures. The Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Recipient is appropriate, the Recipient agrees to comply with any additional instructions provided by the Division to the Recipient regarding such audit. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Recipient throughout the period of agreement to ensure timely completion of all tasks.

**(15) LIABILITY**

Any Recipient which is a state agency or subdivision, as defined in Section 768.28, Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, Florida Statutes. Nothing herein

is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of this agreement.

**(16) DEFAULT**

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall, if the Division elects, terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (17) REMEDIES. However, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment:

A. If any warranty or representation made by the Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;
B. If material adverse changes occur in the financial condition of the Recipient at any time during the period of agreement, and the Recipient fails to cure this adverse change within thirty (30) days from the date written notice is sent by the Division.
C. If any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information;
D. If the Recipient has failed to perform and complete on time any of its obligations under this Agreement.

**(17) REMEDIES**

If an Event of Default occurs, then the Division shall, after thirty (30) calendar days provide written notice to the Recipient and upon the Recipient's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

A. Terminate this Agreement, provided that the Recipient is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (2) CONTACT herein;
B. Begin an appropriate legal or equitable action to enforce performance of this Agreement;
C. Withhold or suspend payment of all or any part of a request for payment;

D. Require that the Recipient reimburse to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

E. Exercise any corrective or remedial actions, to include but not be limited to:

   i. Request additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance;

   ii. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected;

   iii. Advise the Recipient to suspend, discontinue or refrain from incurring costs for any activities in question; or

   iv. Require the Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible.

F. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Recipient.

**(18) <u>CONTRACTS</u>**

If the Recipient contracts any of the work required under this Agreement, a copy of the unsigned contract must be forwarded to the Division for review and approval before it is executed by the Recipient. The Recipient agrees to include in the contract that (i) the contractor is bound by the terms of this Agreement, (ii) the contractor is bound by all applicable state and federal laws and regulations, and (iii) the contractor shall hold the Division and Recipient harmless against all claims of whatever nature arising out of the contractor's performance of work under this Agreement, to the extent allowed and required by law. The Recipient shall document in the quarterly report the contractor's progress in performing its work under this Agreement.

For each contract, the Recipient shall provide a written statement to the Division as to whether that contractor is a minority business enterprise, as defined in Section 288.703, Florida Statutes.

**(19) <u>ATTACHMENTS</u>**

A. All attachments to this Agreement are incorporated as if set out fully.

B. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

C. This Agreement has the following attachments:

Exhibit 1 – Funding Sources
Attachment A – Budget and Scope of Work
Attachment B – Program Statutes and Regulations
Attachment C – Warranties and Representations
Attachment D – Certification Regarding Debarment
Attachment E – Statement of Assurances
Attachment F – Foreign Country of Concern Affidavit – Personal Identifying Information Contract

**(20) PAYMENTS**

A. Any advance payment under this Agreement is subject to Section 216.181(16), Florida Statues. All advances are required to be held in an interest-bearing account.

B. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under paragraph 8 of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Recipient shall submit its closeout report within thirty (30) days of receiving notice from the Division.

**(21) MANDATED CONDITIONS**

A. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials is incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and within thirty (30) days written notice to the Recipient, cause the termination of this Agreement, will release of the Division from all its obligations to the Recipient, and may require mandatory reimbursement of the monies back to the Division or withholding of FEMA PA funds.

B. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any

provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

C. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

D. The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

E. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of $35,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

F. Any Recipient which is not a local government or state agency, and which receives funds under this Agreement from the state government, certifies, to the best of its knowledge and belief, that it and its principals:

    i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

    ii. Have not, within a five-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

    iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (21)(f)(ii) of this certification; and

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

v. If the Recipient is unable to certify to any of the statements in this certification, then the Recipient shall attach an explanation to this Agreement. In addition, the Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion" (Attachment D) for each intended subcontractor that Recipient plans to fund under this Agreement. The form must be received by the Division before the Recipient enters into a contract with any subcontractor.

G. All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

H. Any bills for travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes.

I. The Division reserves the right to unilaterally cancel this Agreement if the Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Recipient created or received under this Agreement.

J. If the Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

K. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

L. The Recipient is subject to Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) with respect to the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board. All of these meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Florida Statutes.

M. All expenditures of state financial assistance shall be in compliance with the laws, rules and regulations applicable to expenditures of State funds, including but not limited to, the Reference Guide for State Expenditures.

N. This Agreement may be charged only with allowable costs resulting from obligations incurred during the period of agreement.

O. Any balances of unobligated cash that have been advanced or paid that are not authorized to be retained for direct program costs in a subsequent period must be refunded to the State.

P. Section 287.05805, Florida Statutes, requires that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least 5 years from the date of purchase or the completion of the improvements or as further required by law.

Q. The Recipient may not contract with an entity that submitted a false certification as provided under section 287.135(5), Florida Statutes, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

R. The Recipient shall attest in Attachment F of this agreement, it is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern pursuant to Section 287.138, Florida Statutes.

**(22) <u>LOBBYING PROHIBITION</u>**

A. Section 216.347, Florida Statutes, prohibits “any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.”

B. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

## (23) COPYRIGHT, PATENT AND TRADEMARK

Except as provided below, any and all patent rights accruing under or in connection with the performance of this agreement are hereby reserved to the State of Florida. Any and all copyrights accruing under or in connection with the performance of this agreement are hereby transferred by the recipient to the State of Florida.

A. If the Recipient has a pre-existing patent or copyright, the Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless this Agreement provides otherwise.
B. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Recipient to the State of Florida.
C. Within thirty (30) days of execution of this Agreement, the Recipient shall disclose all intellectual properties relating to the performance of this Agreement that he or she knows or should know could give rise to a patent or copyright. The Recipient shall retain all rights and entitlements to any pre-existing intellectual property that is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (b), have the right to all patents and copyrights that accrue during performance of this Agreement.
D. If the Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Recipient shall become the sole property of the Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Recipient, under this Agreement, for Florida government purposes.

## (24) LEGAL AUTHORIZATION

The Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The

Recipient also certifies that the undersigned person has the authority to legally execute and bind Recipient to the terms of this Agreement.

**(25) ASSURANCES**

The Recipient shall comply with any Statement of Assurances incorporated as Attachment E.

**(26) TERMINATION**

This Agreement terminates upon the completion of all eligible work and payment of all eligible costs in accordance with the Public Assistance Program requirements. The Division reserves the right to remove any local government from the Legislative Appropriation Program if the Division has reason to believe that the local government is engaged in fraud, waste, abuse, or noncompliance with State and/or Federal laws. This Agreement shall otherwise terminate upon the exhaustion of legislatively appropriated funds. The Division and Recipient agree that all records will be maintained until the conclusion of any record retention period.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**RECIPIENT**

By: _____
(Signature)

Name: _____

Title: _____

Date: _____

**STATE OF FLORIDA, DIVISION OF EMERGENCY MANAGEMENT**

By: _____
Governor's Authorized Representative or
Alternate Governor's Authorized Representative

Date: _____

**EXHIBIT – 1**

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO SB 2500 (2023), ITEM 2676A

State Project-

State awarding agency **Florida Division of Emergency Management**

Amount of State Funding: **$350,000,000**

```
2676A  LUMP SUM
       HURRICANE RECOVERY GRANT PROGRAM
        FROM GENERAL REVENUE FUND  . . . . .      350,000,000
```

Funds in Specific Appropriation 2676A are provided for hurricane repair and recovery related to projects within counties designated in the Federal Emergency Management Agency disaster declarations for Hurricanes Ian and Nicole. The Executive Office of the Governor, Division of Emergency Management is authorized to request budget amendments up to $350,000,000 requesting release of funds pursuant to chapter 216, Florida Statutes, to provide resources to fund gaps in: mitigation of local and county revenue losses and operating deficits; infrastructure repair and replacement, including road, sewer, and water facilities; beach renourishment; and debris removal. The division is authorized to approve requests for resources by local governments, independent special districts, and school boards, including charter schools. A local government may submit a request for resources to administer infrastructure repair or beach renourishment grants within the jurisdiction of the local government, provided that the grant program requires matching funds by grantees of at least 50 percent of project costs. Requests for the release of funds shall include certification that includes, but is not limited to:

1. That funding requested by the local government, independent special district, and school board, including a charter school, is necessary to maintain services or infrastructure essential to support health, safety, and welfare functions, and to reimburse the local government, independent special district, school board, or charter school for unanticipated expenses related to responding to Hurricane Ian or Nicole or for the loss of revenues related to the impact of Hurricane Ian or Nicole.

2. That insufficient state funds, federal funds, private funds, or insurance proceeds are available and that should sufficient funds subsequently become available to meet the need of the original budget amendment, the local government or entity has agreed to reimburse the state in the amount of such funds subsequently received.

The division shall coordinate with other state agencies and the local government or entity to ensure there is no duplication of benefits between these funds and other funding sources such as insurance proceeds and any other federal or state programs, including Public Assistance requests to the Federal Emergency Management Agency and Community Development Block Grant Disaster Recovery grants. Requests approved by the division for funding that are for projects ineligible for any other funding sources, whether federal or state programs, may be provided as grants. Requests approved by the division for funding that are for projects that are eligible for other funding sources shall be provided as loans which shall be repaid up to the amount of funds subsequently received. Any funds reimbursed to the state shall be deposited in the General Revenue Fund.

## Attachment A

## Scope of Work

**The following Public Assistance program projects will be subject to potential offset following the initial lump-sum payment:**

704871 Assessment for an Island wide dredging
705370 Town Hall Replacement
705376 Restoration of Stormwater Swale Repair
705378 Bay Oaks Recreation
705379 North Pump station repairs
705382 South Pump Station Repairs
706499 Pump Station Replacement
706501 Road sign replacement
706510 Community Pool
706971 Mooring Field Repairs
706975 North Pump station
706985 Time Square Repairs
706988 A&E services - Beach Access Repairs
714446 Road Repairs

**Individual project Scopes of Work can be found in FloridaPA.org/Grants portal.**

## Attachment B

## Program Statutes and Regulations

| | |
|---|---|
| Section 215.422, Florida Statutes | Payments, warrants, and invoices; processing time limits; dispute limitation; agency or judicial branch compliance |
| Section 215.97, Florida Statutes | Florida Single Audit Act |
| Section 215.971, Florida Statutes | Agreements funded with federal and state assistance |
| Section 216.347, Florida Statutes | Disbursement of grant and aids appropriations for lobbying prohibited |
| Section 216.3475, Florida Statutes | Maximum rate of payment for services funded under General Appropriations Act or awarded on a noncompetitive basis |
| Section 287.056, Florida Statutes | Purchases from purchasing agreement and state term contract |
| Section 287.057, Florida Statutes | Procurement of commodities or contractual services |
| CFO MEMORANDUM NO. 04 (2005-06) | Compliance Requirements for Agreements |
| Section 553.844, Florida Statutes | Requirements for Roofs and Opening Protection |
| SB 2500 (2023), ITEM 2676A | Requirements for Hurricane Recovery Grant Program |

## Attachment C
## Warranties and Representations

Financial Management

Recipient's financial management system must include the following:

(1) Accurate, current and complete disclosure of the financial results of this project or program

(2) Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipient shall safeguard all assets and assure that they are used solely for authorized purposes.

(4) Comparison of expenditures with budget amounts for each Request For Payment. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to determine whether costs are allowed and reasonable under the provisions of the applicable OMB cost principles and the terms and conditions of this Agreement.

(6) Cost accounting records that are supported by backup documentation.

Competition

All procurement transactions shall be done in a manner to provide open and free competition. The Recipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure excellent contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Recipient, considering the price, quality and other factors. Solicitations shall clearly set

forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Recipient. Any and all bids or offers may be rejected when it is in the Recipient's interest to do so.

Codes of Conduct.

The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by public grant funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct shall provide for disciplinary actions to be applied for violations of the standards by officers, employees, or agents of the Recipient.

Business Hours

The Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from

_____

_____

Licensing and Permitting

All subcontractors or employees hired by the Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Recipient.

## Attachment D

## Certification Regarding
## Debarment, Suspension, Ineligibility
## And Voluntary Exclusion

**Subcontractor Covered Transactions**

(1) The prospective subcontractor, _____, of the Recipient certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

SUBCONTRACTOR:

_____

By: _____ _____

Signature Recipient's Name

_____ _____

Name and Title DEM Contract Number

_____ _____

Street Address Project Number

_____

City, State, Zip

_____

Date

## Attachment E

## Statement of Assurances

To the extent the following provisions apply to this Agreement, the Recipient certifies that:

(a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;

(b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;

(c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work be performed in connection with the program assisted under this Agreement. The Recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;

(d) All Recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Recipient. Any cost incurred after a notice of suspension or termination is received by the Recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;

(e) It will comply with:

i) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and

ii) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed workweek.

(f) It will comply with

(1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Recipient, this assurance shall obligate the Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

(2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;

(3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;

(g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;

(h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;

(i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;

(j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at
www.fema.gov/governmenta/grant/sfha_conditions.shtm

(k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;

(1) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR, Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-l, et seq.) by:

(1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR, Section 800.8) by the proposed activity; and

(2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.

(3) Abiding by the terms and conditions of the "Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)" which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(£), and implementing regulations in 36 CFR, Part 800.

(4) When any of the Recipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800.16 (l)(1), the Federal Emergency Management Agency (FEMA) may require the Recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards), the Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines) ( 48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the Standards, the Recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.

(5) The Recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the Guidelines and take into account the Advisory Council on Historic Preservation (Council) publication "Treatment of Archeological Properties". The Recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within fifteen (15) calendar days of receipt of the treatment plan, FEMA may direct the Recipient to implement the treatment plan. If either the Council or the SHPO object, Recipient shall not proceed with the project until the objection is resolved.

(6) The Recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. The Recipient acknowledges that FEMA may require the Recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Recipient further acknowledges that FEMA may require the Recipient to take all reasonable measures to

avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Recipient also acknowledges that FEMA will require, and the Recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

(7) The Recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHP A, the Recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.

(m) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;

(n) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(o) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

(p) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead-based paint in construction of rehabilitation or residential structures;

(q) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;

(r) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;

(s) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;

(t) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642;

(u) It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626

(v) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;

(w) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763;

(x) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270;

(y) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;

(z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;

(aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;

(bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;

(cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;

(dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;

(ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);

(ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;

(gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and

(hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.

(ii) With respect to demolition activities, it will:

(1) Create and make available documentation sufficient to demonstrate that the Recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.

(2) Return the property to its natural state as though no improvements had ever been contained thereon.

(3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.

(4) Provide documentation of the inspection results for each structure to indicate:

a. Safety Hazard Present
b. Health Hazards Present
c. Hazardous Materials Present

(5) Provide supervision over contractors or employees employed by the Recipient to remove asbestos and lead from demolished or otherwise applicable structures.

(6) Leave the demolished site clean, level and free of debris.

(7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.

(8) Obtain all required permits.

(9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.

(10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

(11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.

(12) Provide documentation of public notices for demolition activities.

**ATTACHMENT F**
**FOREIGN COUNTRY OF CONCERN AFFIDAVIT –**
**PERSONAL IDENTIFYING INFORMATION CONTRACT**

Section 287.138, Florida Statutes, prohibits a Florida "Governmental entity"[1] from entering into or extending contracts with any other entity whereby such a contract, or extension thereof, could grant the other entity access to an individual's personal identifying information if that entity is associated with a "Foreign Country of Concern."[2] Specifically, section 287.138(2), Florida Statutes, prohibits such contracts with any entity that is owned by the government of a Foreign Country of Concern, any entity in which the government of a Foreign Country of Concern has a "controlling interest,"[3] and any entity organized under the laws of or which has its principal place of business in a Foreign Country of Concern.

As the person authorized to sign on behalf of Recipient, I hereby attest that the company identified below in the section entitled "Recipient" is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern.

I understand that pursuant to section 287.138, Florida Statutes, I am submitting this affidavit under penalty of perjury.

Recipient Name: _____

Recipient FEIN: _____

Recipient's Authorized Representative Name and Title: _____

Address: _____

City:_____State:_____Zip: _____

Phone Number: _____

Email Address:_____

Certified By: _____
AUTHORIZED SIGNATURE

Print Name and Title: _____

Date: _____

[1] As defined in Section 287.138 (1)(d), Florida Statutes.
[2] As defined in Section 287.138 (1)(c), Florida Statutes.
[3] As defined in Section 287.138 (1)(a), Florida Statutes.

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1339**

1. **Requested Motion:**

**Meeting Date: December 4, 2023**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, AMENDING THE FISCAL YEAR 2023-2024 FEE SCHEDULE ADOPTED ON SEPTEMBER 25, 2023 TO ADJUST THE FEE FOR THE MEMORIAL BENCH PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE

**Why the action is necessary:**

It is necessary to amend the fee schedule in order to charge the previous price of the benches.

**What the action accomplishes:**

Establishes the updated fee for memorial benches within the fee schedule.

2. **Agenda:**
CONSENT AGENDA

3. **Requirement/Purpose:**
Resolution

4. **Submitter of Information:**
Joe Onzick, Finance Director

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5. **Background:**

The Town Council approved the Town-wide Fee Schedule for the current fiscal year in September 2023 with Resolution 23-115.

The Town has reinstated the Memorial Bench program and has received over 20 new applications for benches in addition to the replacement benches the Town already has on order. Town staff are recommending charging the applicants the same fee as previously charged in past years and would like to amend the Fee Schedule to reflect a $10 reduction from $575 +$4/letter inscription to $565+$4/letter inscription. This fee would still cover the costs related to purchasing and installing the benches, with an additional cost savings to applicants.

**Attachments:**

1. 23-167 Memorial Bench Fee Schedule Adjustment
2. 23-115, FY24 Final Fee Schedule

**Financial Impact:**

$10 fee reduction per bench

6. **Alternative Action**

The Town Council may make any changes to the fee schedule it wishes to make, while keeping in mind the general intent of the fees is to offset the cost of the associated services provided.

7. **Management Recommendations:**

Management recommends approval of the proposed changes in the fee schedule.

8. **Recommended Approval:**

| | |
|---|---|
| Jason Freeman, Public Works Director | Created/Initiated - 11/27/2023 |
| Joe Onzick, Finance Director | Approved - 11/27/2023 |
| Gretchen R.H. Vose, Town Attorney | Approved - 11/27/2023 |
| Amy Baker, Town Clerk | Approved - 11/28/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/28/2023 |

**RESOLUTION NUMBER 23-167**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE FISCAL YEAR 2023-2024 FEE SCHEDULE ADOPTED ON SEPTEMBER 25, 2023 TO ADJUST THE FEE FOR THE MEMORIAL BENCH PROGRAM; 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 empowers the Town Council to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS,** the Town of Fort Myers Beach has been receiving new applications for their Memorial Bench Program; and

**WHEREAS,** the Town is adjusting the fee for the Memorial Benches and reducing the base price $10 USD to match previous fee in past years from $575 to $565.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. This resolution adjusts the Memorial Bench fee on the Fee Schedule adopted on September 25, 2023

Section 3. This Resolution shall take effect immediately upon its adoption.

**THE FOREGOING RESOLUTION** was adopted by the Town Council upon motion by Council Member ____ and seconded by Council Member ____, and upon being put to a vote, the result was as follows:

| | |
|---|---|
| Dan Allers, Mayor | ___ |
| Jim Atterholt, Vice Mayor | ___ |
| John R. King, Council Member | ___ |
| Bill Veach, Council Member | ___ |
| Karen Woodson, Council Member | ___ |

ADOPTED this 4th day of December 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

_____
Dan Allers, Mayor

**ATTEST:**

_____
Amy Baker, Town Clerk

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

_____
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of December 2023.

**RESOLUTION NO. 23-115**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, ADOPTING THE FINAL FEE SCHEDULE FOR FISCAL YEAR 2023-2024 COMMENCING OCTOBER 1, 2023 AND ENDING ON SEPTEMBER 30, 2024; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS,** Article X of the Town Charter of the Town of Fort Myers Beach ("Town") 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,** the Town Council, on February 19, 2013, adopted Resolution 13-05 which approved a fee schedule for fees charges by the Town for various permits and services, said fees being based on the actual cost of providing services; and

**WHEREAS**, since the adoption of the fee schedule, the Town has reviewed, revised, and adopted a fee schedule for the various permits and services to be provided by the Town for the ensuing fiscal year; and

**WHEREAS,** the Town Council believes it is the best interest of the business owners, property owners and visitors to adopt the final fee schedule attached to this Resolution as Exhibit "A"; and

**WHEREAS**, the current allocation of the Short Term Rental Fee revenue between the Short Term Rental Program ($50 out of $300) and the Workforce Housing Program ($250 out of $300) is insufficient to cover the expense of the Short Term Rental Program; and

**WHEREAS**, changing the allocation method of the Short Term Rental Fee revenue to first apply it to the Short Term Rental program, and then apply to the Workforce Housing Program only that which remains after covering the full amount of the Short Term Rental Program expense; and

**WHEREAS**, following proper notice, on September 25, 2023 the Town Council held the required public hearing to consider any adjustments to the proposed millage rate adopted on September 11, 2023 and, following public input, adopted a final ad valorem millage rate and final budget and fee schedule for fiscal year 2023-2024.

**NOW THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The above recitals are true, correct, and incorporated herein by this reference.

Section 2. The Town Council does hereby adopt the Town of Fort Myers Beach Final Fee Schedule attached hereto and incorporated herein as Exhibit "A".

Section 3. The Town Council does hereby adopt the change in allocation of the Short Term Rental Fee revenue to first apply it to the Short Term Rental program, and then apply to the Workforce Housing Program only that which remains after covering the full amount of the Short Term Rental Program expense.

Section 4. This Resolution shall take effect upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Woodson and seconded by Council Member Veach, and upon being put to a vote, the result was as follows:

| | |
|---|---|
| Dan Allers, Mayor | Aye |
| Jim Atterholt, Vice Mayor | Aye |
| Bill Veach, Council Member | Aye |
| Karen Woodson, Council Member | Aye |
| John King, Council Member | Aye |

ADOPTED this 25th day of September 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Oct 3, 2023 14:23 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker
AMY BAKER (Oct 4, 2023 14:11 EDT)

Amy Baker, Town Clerk

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

Becky Vose
Becky Vose (Oct 4, 2023 12:34 EDT)

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 29th day of September 2023.

# FY2023-2024
# Town Wide Fee Schedules

# FY 2023-2024 TOWN WIDE FEE SCHEDULE

| | CURRENT FEE | PROPOSED FEE | NOTES |
|---|---|---|---|
| **ADMINISTRATIVE ACTIONS** | | | |
| Administrative COP | 1000 | | |
| Administrative Setback Variance | 750 | | |
| ABT Review (Alcoholic Beverages & Tobacco) | 50 | | |
| Wireless Communication Facility | 1500 | | |
| Single-Family Minimum Use Determinations (MUD) | 350 | | |
| Appeal | 1000 | | |
| Accessory Apartment Determination (AAD) | 350 | | |
| Base Flood Elevation Determination Letter (FED) BFE | 250 | | |
| DEP Setback Letter (DEP) (setbacks only - all other inquiries are ZVL or AI) | 250 | | |
| Zoning Verification Letter (ZVL) | 250 | | |
| Residential Zoning Requests | $25 for first 15 minutes of staff time; $10 for each additional 15 minute increments of staff time | | |
| Historical Review | 150 | | |
| Recognition Plaque | 50 | | |
| Administrative Interpretation (ADI) | $250 + $100 for each additional issue/question | | |
| Joint-use parking lot approvals | 300 | | |
| Certificate of Use - Commercial | 100 | | |
| Temporary Use Permit | 100 | | |
| Home Occupation Certificate | 25 | | |
| Sign Permit - Up to 2 signs & additional review after 2 charged at applicable review fees | $100 + building permit fees as applicable + $25.00 each additional | | |
| Temporary Sign Permit (i.e. business opening signs) | 50 | | |
| Garage Sale Permit | 10 | | |
| Administrative Relief | 500 | | |
| Pre-Application meetings (1st one No Charge) | $250 + hourly costs for time over 1hr | | |
| All Grant processing fees | 500 | | |
| PD Administrative Amendment | 1500 | | |
| Development Agreement-Original Agreement | 5000 | | |
| Advertising Costs - Additional | at cost + 10% | | |
| Development Agreement-Amendment | 2500 | | |
| Advertising Costs - Additional | at cost + 10% | | |
| **CODE ENFORCEMENT** | | | |
| Initial Inspection, Re-Inspection, Pre-Magistrate and Compliance per ½ hour | 50 | | |
| Mail fees | Actual Postage Cost | | |
| Recording Fees | 24 | | |
| Code Enforcement Citation Fee | Not to exceed $500 | | |
| Code Enforcement Irreparble/Irreversible Citation Fee | Not to exceed $5000 | | |
| **Compliance Agreement Fee** | **100** | | |
| Administravie Support 1 Hour | 30 | | |
| Fire Department Enforcement Fee | TBD | | |
| **Lien Search Fee** | **50** | | |
| **Special Magistrate Administrative Fee** | **250** | | |
| Simplifile Fee | Actual Cost to file electronically | | |
| **DEVELOPMENT ORDERS** | | | |
| Development Orders | 3000 | | |
| Development Order Amendment | 775 | | |
| **LIMITED DEVELOPMENT ORDERS** | | | |
| Type 1a: Cumulative addition or enlargement of an existing impervious area. | 500 | | |
| Reseal or Restripe | 350 | | |
| Type 2: Any out-of-door recreational facilities, provided the total cumulative additional impervious area does not exceed 8,000 sq. ft. | 350 | | |
| Type 3: Any one-time subdivision of land into 4 or less lots where zoning district regulations permit such subdivision. / Condo creation | $350 residential splits/$500 commercial splits | | |
| Type 4: Any single building accessory improvements thereto on a single non-conforming lot as defined in LDC Section 34-3271(b). | 500 | | |
| Type 5: Any improvements for public water access purposes in town-owned or town-maintained rights-of-way. | 350 | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

## FY 2023-2024 TOWN WIDE FEE SCHEDULE

| | CURRENT FEE | PROPOSED FEE | NOTES |
|---|---|---|---|
| **DEVELOPMENT ORDERS (Continued)** | | | |
| Type 6: Any development for fenced or screened outdoor storage as defined in Ch. 34. | 350 | | |
| Type 7: The installation of new utility lines in existing right-of-ways. | 1100 | | |
| Type 8: Any other improvement to land determined by the director to have insignificant impacts on public facilities. | 1100 | | |
| LDO Amendment | 50 | | |
| Resubmittal | 100 | | |
| **MOORING FIELD (plus all applicable taxes)** | | | |
| Daily Rate | 25 | | |
| Weekly Rate | 175 | | |
| Monthly Rate | 410 | | |
| Mooring Field Pump Out Paid Rented Mooring | 1 pump free/24 hr | | |
| Mooring Field Pump Out Non Mooring Field Rental per Pump Out | 5 | | |
| DOCKWA Credit Card Processing Fee 3.5% | 3.50% | | |
| Lost FOB | 25 | | |
| Late Fee | 5/day | | |
| Merchandise | Price as Marked | | |
| Mooring Field Parking Permit plus any applicable fees | $30/length of contract | | |
| **PARKING FEES** | | | |
| Annual Rate - Resident i.e. Estero Island Property Owner | 25 | | |
| Business Owner - Annual | 50 | | |
| Parking bags per bag | 6 | | |
| Parking Spot Per Hour (incl. Special Event) | 5 | | |
| Parking Decal Lost/Stolen/Replacement | 5 | | |
| Charging Stations | Level 2 - not to exceed $2/hr<br>Level 3 - not to exceed .60/min | | |
| Right of Way (ROW) per Resolution 18-20 | $100/spot 1st Calendar Yr; $50/spot per Calendar Yr if paid by Nov. 30th | | |
| **PARKS AND RECREATION ORDINANCE 97-5** | | | |
| Parks and Recreation Ordinance 97-5 Violations | Up to $500 | | |
| **PUBLIC HEARING** | | | |
| **500 ft Notification Fee** | **1.50/strap number/mailing recipient** | | |
| Rezoning (conventional) | $5800 + $250/Ac over 1 Acre | | |
| Special Exception | $3800/$3300 for amendment | | |
| Variance (residential) | 1800 | | |
| Additional Variance | 500 | | |
| Variance (non-residential) | 2800 | | |
| Additional Variance | 700 | | |
| Application for land development code text amendment* | 2800 | | |
| Per Added section | if actual charge | | |
| Comprehensive Plan FLUM amendment* | 5800 | | |
| Per Added acre | if actual charge | | |
| Per Additional acre | 1000 | | |
| Comprehensive Plan text amendment* | 5800 | | |
| Per Added policy | if actual charge | | |
| **COMPREHENSIVE PLAN SMALL SCALE AMENDMENT** | | | |
| Placement of Fill | 1000 | | |
| With drainage plan | 700 | | |
| Adjacent property owner notifications >50 | Cost + 10% | | |
| Administrative / Advertising Fee | Cost + 10% | | |
| Vacations (ROW and/or Plat) | 1000 | | |
| PD Amendment Minor (<1 acre total property area, Public Hearing) | 2000 | | |
| MCP Extension / Application (w/o rezoning) | 3000 | | |
| PD Reinstatement | 4000 | | |
| **Outside consultant fees associated withany application will be passed through to the applicant at 103% of rate billed to the Town by consultant* | | | |
| Hearings and Appeals going to Council | 1000 | | |
| PD Base Fee (up to one acre) | $8000 + $1000/additional acre | | |
| PD Amendment | 6500 | | |
| Deviations (residential) | 1-5: $1800/6+: additional $150/ea | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

## FY 2023-2024 TOWN WIDE FEE SCHEDULE

| | CURRENT FEE | PROPOSED FEE | NOTES |
|---|---|---|---|
| **PUBLIC HEARING (Continued)** | | | |
| Deviations (non-residential) | Outside consultant fees associated and required for any application will be passed through to the applicant at a rate determined by the Town Manager and billed to the Town by consultant | | |
| Continuance (case scheduled and advertised) | 500 | | |
| Deferrals | $250 after advert./NC before | | |
| Withdrawal | $250 after advert./NC before | | |
| Appeal to LPA | 150 | | |
| **PUBLIC WORKS** | | | |
| Labor/Maintance Cost (Grass cutting, lawn maintenance, special event tasks, etc.) | Actual Cost + $35/ea | | |
| Inspections/Review/Re-Inspection(s) | 50 | | |
| Memorial Benches | $575 (includes intallation) / must pay inscription cost @ $4/letter | | |
| **REGISTRATIONS AND YEARLY RENEWALS** | | | |
| Displays, Rentals and Permits | 150 | | |
| Contractor Registration / yearly renewal | 25 | | |
| Driveway re-inspection | 25 | | |
| **REVIEW FEES** | | | |
| Zoning Review | 100 | | |
| Floodplain Review | $100; $50 ea submittal after 2nd or $25 tradees, valuation & scope review | | |
| LOMR/LOMA Review | 500 | | |
| Environmental Review | 100 | | |
| Re-inspection Fee | 50 | | |
| FMB Review Fee | 25 | | |
| Public Works Review Fee | $70 + cost of subconsultant services | | |
| FMB Review -Resubmittal | $50 ea submittal after the 2nd resubmittal | | |
| Parking Lot Permit | Per Code | | |
| Parking Lot Yearly Inspection Fee | 50 | | |
| **RIGHT OF WAY PERMIT** | | | |
| Right of Way Permit | 50 | | |
| Business Extension/Sidewalk Café Policy per Resolution 18-46 | 12.50/Sq Ft | | |
| Daily Rental of Bay Side Park (non business extension) | 150/hr | | |
| Times Square Event Rentals | To Be Approved By Council Per Event | | |
| **SPECIAL EVENTS** | | | |
| Regular Special Event Permit | 50 | | |
| Late Fees < 30 days Regular / <45 days Council for a COMPLETED app | 50 | | |
| Special Event Permits going before Town Council | 100 | | |
| Farmers Markets | 100 + 10/day | | |
| Events With More Than 10 Days | Additional 10% per day | | |
| **Beach Access Rental for Group of 11 or more** | **350** | | |
| **Beach Access Rental for Group of 10 or less** | **150** | | |
| **STORMWATER REVIEW FEES** | | | |
| Stormwater Ordinance 15-08 | Per Ordinance | | |
| Administrative Fee | Per Ordinance | | |
| Stormwater Review, Inspection and Re-Inspection | 50 | | |
| NPDES Annual Inspection | 100 | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

# FY 2023-2024 TOWN WIDE FEE SCHEDULE

| | CURRENT FEE | PROPOSED FEE | NOTES |
|---|---|---|---|
| **STREET PERFORMERS** | | | |
| **Street Performers Permit Application & Background Check** | **150** | | **If check is received on or before September 30** |
| **Street Performers Permit Application & Background Check** | **300** | | **If check is received after September 30** |
| **TOWN CLERK** | | | |
| Miscellaneous Duplications (8.5x11, 8.4x14, 11x17) -single side | 0.15/pg | | |
| Miscellaneous Duplications (8.5x11, 8.4x14, 11x17) -dbl side | 0.20/pg | | |
| Certification of document & duplication audio | 1.00/DVD | | No advisory committee meetings |
| Extensive services beyond 30 minutes | Hourly Rate | | |
| Code of Ordinances/Land Development Code | Online | | May be purchased from Municode directly |
| Comprehensive Plan | Cost + 5% as limited by statue | | |
| **TOWN HALL RENTAL** | | | |
| Town Hall Meeting Room Rental - No Audio/Visual | $30/hr per staff/security | | |
| Town Hall Meeting Room Rental - Audio/Visual per hour | 150 | | |
| Town Hall Meeting Room Rental - Public Works Set Up/Clean Up Fee per day | 150 | | |
| **WATER** | | | |
| Per Rate Study | Resolution 17-33 Adopted 10-16-17 | | |
| Meters Purchase & Meters Testing | Actual Cost + 10% Administrative Fee | | |
| Credit Card Processing Fee | 3.50% | | |
| Utility Review Fee | $115 + Cost of Subconsultant Services | | |
| **OTHER** | | | |
| **Personal Watercraft Vendor License (PWVL)- Administration, License, Enforcement** | **375** | | **3% Annual Increase** |
| **Parasailing Vendor License (PLV) - Adminstration, License, Enforcement** | **375** | | **3% Annual Increase** |
| PWVL/PAL License Late Fee (After October 1) | 25 | | |
| Violation of PWVL/PAL License: 1st Violation | 150 | | |
| Violation of PWVL/PAL License: 2nd and 3rd Violation | 300 | | |
| Beach Raking Permit | $25/Property | | |
| Vehicle on the Beach Permit | $100/Vehicle | | |
| **Beach Furniture Vendor License 1st Year** | **120** | | **3% Annual Increase** |
| **Beach Furniture Vendor License Renewal** | **120** | | **3% Annual Increase** |
| Beach Furniture Vendor License Late Fee (After October 1) | 25 | | |
| Short Term Rental Application Fee | 300 | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

## FY 2023-2024 TOWN WIDE FEE SCHEDULE

| | WITHIN 30 DAYS | AFTER 30 DAYS | | NOTES |
|---|---|---|---|---|
| **PARKING FINES** | | | | |
| Meter Violation | 77 | 100 | | |
| Prohibited Violations | 77 | 100 | | |
| Handicap | 250 | | | |
| Immobilization Fee (officer $20.00, Kubota $15.00, boot $10.00) | 45 | | | |
| Towing Right to Provide Services permit | 30 | | | |
| Passport Fees | Actual cost paid by Customer | | | |
| | **WITHIN 30 DAYS** | **4-10 DAYS** | **AFTER 10 DAYS** | **NOTES** |
| **LITTERING FINES** | | | | |
| Littering | 50 | 250 | 500 | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

## FY 2023-2024 PARKS & RECREATION DEPARTMENT FEE SCHEDULES
## BAY OAKS RECREATION CENTER

| | CURRENT FEE | | PROPOSED FEE | | NOTES |
|---|---|---|---|---|---|
| **BAY OAKS RECREATION CAMPUS MEMBERSHIPS** | Resident | Non-Resident | Resident | Non-Resident | ESTIMATED REVENUE |
| Annual Membership - Individual | 60 | 120 | | | |
| 6 Month Membership - Individual | 40 | 75 | | | |
| Annual Membership - Family | 120 | 240 | | | |
| 6 Month Membership - Family | 80 | 150 | | | |
| Adult Day Pass - Non-Resident (13+ Years) | 7 | 10 | | | |
| Child Day Pass - Non-Resident (12 & under) | 4 | 7 | | | |
| Town of Fort Myers Beach Employee Membership (Full Time staff) | Same as Resident Fee | Same as Resident Fee | | | |
| **BAY OAKS RECREATION CAMPUS FACILITY RENTAL** | | | Non-Profit/Members | For-Profit/Non-Members | |
| Grounds (Dawn-2pm or 2pm-Dusk) (Grounds defined as passive areas not identified elsewhere within the Fee Schedule) ***Building rental may not conflict with After School or Camp Programs* | 350/hr or 500/day | 450/hr or 600/day | | | |
| Building and Grounds (Dawn-2pm or 2pm-Dusk) (Grounds defined as passive areas not identified elsewhere within the Fee Schedule) ***Building rental may not conflict with After School or Camp Programs* | 750/hr or 950/day | 750/hr or 950/day | | | |
| Banner fee (Annually - Banner can not be larger than 8' x 3') | 160 | 160 | | | |
| Rod Vayo Field or Wade Jenkins Field - 2 hour minimum | 75/hr | 125/hr | | | |
| Ballfield Lights Cost Per Hour | 50/hr | 75/hr | | | |
| Concession Stand Per Hour/Per Room (Contingent With Additional Rental) | 100/hr | 200/hr | | | |
| Meeting Room - 2 hour rental min - Free Parking | 50/hr | 100/hr | | | |
| Bay Oaks & Pool Store Items and Beverages & Snacks | 0 | Priced as Marked | | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

## FY 2023-2024 PARKS & RECREATION DEPARTMENT FEE SCHEDULES
## BAY OAKS RECREATION CENTER

| | CURRENT FEE | | PROPOSED FEE | | NOTES |
|---|---|---|---|---|---|
| **BAY OAKS RECREATION CAMPUS PROGRAMS** | Members/Residents | Non-Members | Members/Residents | Non-Members | |
| Sport Camps (3- 10 days) Football, Basketball, Baseball & Contractual - Member | No Charge | 10 | | | |
| Youth Sports - Soccer/Little League | No Charge | No Charge | | | |
| Youth - Club Rec - during school year - per semester | 125 | 175 | | | |
| Youth - Summer Camp - Per Week | 100 | 150 | | | |
| Youth - Fun Days - Per Day | 20 | 30 | | | |
| Late Pickup from Progams (after 6:01 pm) | 20/15 min past 6pm (accumulative) per household | 20/15 min past 6pm (accumulative) per household | | | |
| Teens/Tweens - Trips & Outings | 100% cost recovery | 100% cost recovery + $4 | | | |
| Adult Sports Teams, Leagues and Tournaments | 100% cost recovery | 100% cost recovery + $4 | | | |
| Pickle ball or Volleyball (day pass/membership required) | 5/person per session | 10/person per session | | | |
| Seniors - Trips, Outings, Events , Theater, Biking, Lunches, Kayaking, Potlucks | 100% cost recovery | 100% cost recovery + $8 | | | |
| Athletic Contractual Programs - Fees vary-set by instructor and staff | 70/30 split | 70/30 split | | | |
| BORC Special Events and Fundraisers | 50% cost recovery | 100% cost of recovery | | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

## FY 2023-2024 PARKS & RECREATION DEPARTMENT FEE SCHEDULES
## BAY OAKS POOL

| | CURRENT RATE | | PROPOSED FEE | | NOTES |
|---|---|---|---|---|---|
| **POOL DAILY FEES** | Resident | Non-Resident | Resident | Non-Resident | ESTIMATED REVENUE |
| **No child under 13 years of age admitted without and adult** | | | | | |
| Day Pass (13 and up) (children 2 and under are free) | 7 | 10 | | | |
| Child (24 months - 12 years old) | 4 | 7 | | | |
| **POOL MEMBERSHIPS** | | | | | |
| Annual - Individual (classes not included) | 120 | 225 | | | |
| 6 Month - Individual | 75 | 150 | | | |
| Annual - Family | 250 | 450 | | | |
| 6 Month - Family | 150 | 300 | | | |
| **POOL CLASSES** | | | | | |
| Aqua Aerobics & Aqua Yoga Class | 4 | 6 | | | |
| Open lap swimming Monday, Wednesdays, Fridays 9am-10am and Sundays 10am-12pm | $3/day | $5/day | | | |
| Pool Contractual Programs - Fees vary-set by instructor and staff | 70/30 Split | 70/30 Split | | | |
| Pool Swimming Lessons | 20/session | 30/session | | | |
| Community CPR/AED/First Aid; CPR/Lifeguarding/AED for Professional Rescuer/Water & Land Spinal; Professional Rescuer CPR/AED & First Aid | $75-$175 | $75-$175 | | | |
| Late Pickup from Progams | $10/15 min increment (accumulative) per household past 6pm | $10/15 min increment (accumulative) per household past 6pm | | | |
| **POOL RENTAL** | Member/Non-Profit | Non-Member | Member/Non-Profit | Non-Resident | |
| Party Packages | TBD | TBD | | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

# FY 2023-2024 MOUND HOUSE FEE SCHEDULE

| | MH MEMBER | ADULT NON-MEMBER | STUDENT - 13+ & ADULTS W/COLLEGE ID | CHILDREN 6-12 | CHILDREN 5 & UNDER | NOTES |
|---|---|---|---|---|---|---|
| **MUSEUM ADMISSION** | | | | | | |
| General Admission | Free | 15 | 8 | 5 | Free | |
| General Admission FMB Resident | Free | 7.50 | 4 | 2.50 | Free | |
| Free admission for retired or active military and their families on Veteran's Day | Free | Free | Free | Free | Free | |
| Free admission for Teachers, Mound House Members | Free | Free | Free | Free | Free | |
| Guided Museum Tours, Group Tours | Free | 20 | 13 | 10 | Free | |
| Educational Programs | Free | 20 | 13 | 10 | Free | |
| Summertime Family Rates (June - August) | TBD | TBD | TBD | TBD | Free | |
| **GROUP RATES** | | | | | | |
| Student Tours (FGCU) | N/A | 8 | N/A | N/A | N/A | |
| **STUDENT TOURS** | | | | | | |
| Students for each activity | $2/Child + material fee if applicable | $2/Child + material fee if applicable | $2/Child + material fee if applicable | $2/Child + material fee if applicable | Free | |
| *For every 10 children 1 free adult admission* | | | | | | |
| Students for each activity | N/A | N/A | 5/child + material fee if applicable | 5/Child + material fee if applicable | Free | |
| *For every 10 children 1 free adult admission* | | | | | | |
| Extra Adults with Student groups | Free | 5 | N/A | N/A | N/A | |
| Program Fee for additional activities | 2 | 2 | 2 | 2 | Free | |
| Material Fees | Actual Cost | Actual Cost | Actual Cost | Actual Cost | Actual Cost | |
| **KAYAK TOURS** | | | | | | |
| Kayak Tours Non Refundable Deposit if cancelled within 2 business days of the event Per Person | 10 | 15 | 15 | 15 | N/A | |
| Mangroves by Kayak Tour includes museum admission and free parking | 20 | 50 | 50 | N/A | N/A | |
| Family Fun Kayak Tours includes free admission and free parking | 15 | 30 | 30 | 30 | 30 | |
| Sunset Kayak Tour | 25 | 50 | 50 | N/A | N/A | |
| **SPECIALITY TOURS/EVENTS** | | | | | | |
| Speciality Tours - As Determined | Free | $5 + Museum Admission | $5 + Museum Admission | $5 + Museum Admission | N/A | |
| Boat Tours - Pure Florida Boat Tours | 15 | 20 | | | | |
| Multi Day Program (Joyful Living Retreat) | 150-200 | 150-200 | | | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

## FY 2023-2024 MOUND HOUSE FEE SCHEDULE

| | MH MEMBER/FMB RESIDENTS | NON-MEMBERS | NON-PROFIT/EDUC ORGANIZATIONS | NOTES |
|---|---|---|---|---|
| **MOUND HOUSE FACILITY RENTAL** | | | | |
| Wedding Ceremony Only (grounds not to exceed 150 people; free parking) | $350/hr | $400/hr | N/A | |
| Proposed: Orientation Room-Main Museum | $65 for 1st Hr/$45 additional Hr | $75 for 1st Hr/$50 additional Hr | $70 for 1st Hr/$45 additional Hr | |
| Proposed: After Hours Rental (after 5:30 pm or anytime Sunday per hour) | 100 | 150 | 125 | |
| Grounds (Observation Pier, Special Event Area, Back Patio/ Porch area) - Not to exceed 150 people; free parking | 350 Base Rate/hour | 400 Base Rate/hour | 375 Base Rate/hour | |
| | | | | |
| Individual | 35 | | | |
| Proposed: Dual plus NARM | 100 | | | |
| Family | 50 | | | |
| Extended Family | 100 | | | |
| Contributor | 200 | | | |
| Patron | 500 | | | |
| Benefactor | 1000 | | | |
| Corporate | 2500 | | | |
| Museum Store Items | Priced as Marked | | | |
| Gift Certificates | Priced as Marked | | | |
| Mound House Staff Speakers Fee | 100 | | | |
| Friends of the Mound House Membership | $10 extra per MH Membership | | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

## FY 2023-2024 NEWTON PARK FEE SCHEDULE

| | TOWN OF FMB RESIDENT | FOR-PROFIT or INDIVIDUAL | NON-PROFIT or EDUC ORGANIZATION |
|---|---|---|---|
| **NEWTON BEACH PARK RENTALS** ***(parking not included unless otherwise noted)*** | | | |
| Seven Seas Historic Cottage (parking not included) | $200/Hr | $250/hr for 1st 2 Hrs then $75 additional Hr | $200/hr for 1st 2 Hrs then $65 additional Hr |
| Extra staff site visits/ planning sessions Per Visit | 40 | 60 | 50 |
| Large 5 table - Chickee Hut only - up to 2 hours Parking Not Included | 15/hr | 25/hr | 20/hr |
| 2 table - Chickee Hut - up to 2 hours Parking Not Included | 10/hr | 15/hr | 10/hr |
| 3 Small round shade structures gulf side - up to 2 hours Parking Not Included | Removing | Removing | Removing |
| Newton Park - Cottage and Outside Tiki Huts; restrooms are open to the public | 800 | 1200 | 900 |
| After Sunset Fee (applies if rental extends past 8 PM not to exceed past 10pm) - no exterior rentals or lightling allowed during turtle nesting season. May through October | $150/Hr | $150/Hr | $150/Hr |
| Proposed: Short Term Instructors | TBD | N/A | N/A |
| **EDUCATIONAL PROGRAMS** | | | |
| Beachwalks | Free | | |
| Concessionaire | 70/30 | | |
| General Educational Programming | $5-$15 TBD | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

## FY 2023-2024 BUILDING PERMIT FEE SCHEDULE

| REF # | PERMIT | CURRENT FEE | PROPOSED FEE | NOTES |
|---|---|---|---|---|
| | **FIRE REVIEW OR FIRE INSPECTION FEE NOT INCLUDED AND WILL BE CHARGED SEPERATELY BY THE FIRE DEPARTMENT**<br><br>***** IMPACT FEES NOT INCLUDED *****<br><br>***** SOLID WASTE AND DCA/DBPR FEES NOT INCLUDED*****<br><br>**1/3 OF THE BUILDING PERMIT FEE WILL BE REFUNDED IF THE PERMIT IS NOT ISSUED WITHIN 3 WEEKS OF RECEIPT OF COMPLETED APPLICATION AND ALL ADDITIONAL INFORMATION REQUESTED BY REVIEWERS.** | | | |
| 1 | *COM – Commercial New Construction, Additions, Alterations, Modular, Foundation*<br>Includes:<br>Application Processing Fee<br>Commercial Building Plan Review & Inspection<br>Commercial Environmental Review<br>Commercial Flood Review<br>Commercial Stormwater Review<br>Commercial Zoning Review<br>Plumbing Review, Sub-Contractor Permit, & Plumbing Inspection<br>Electrical Review, Sub-Contractor Permit, & Electrical Inspection(s)<br>Mechanical Review, Sub-Contractor Permit, & Mechanical Inspection | .70 per sq. ft. + 35% of building permit for application and all review fees. Ex 5,000 sq. ft. project = $4,725.00 | | |
| 2 | *COM – Concrete Restoration*<br>Includes:<br>Application Processing Fee<br>Commercial Plan Review<br>Threshold Engineer Report Review<br>Inspection | 525 | | |
| 3 | *COM - Roof/ReRoof/Roofover*<br>Includes:<br>Application Processing Fee<br>Building Review<br>Flood Review<br>Inspection | 500 | | |
| 4 | *CONDO - Condo Residential Unit Remodel/Interior Flat Fee*<br>Includes:<br>Application Processing Fee<br>Building Review and Inspection<br>Flood Review<br>Electrical Review and Electrical Inspection<br>Mechanical Review and Mechanical Inspection<br>Plumbing Review and Plumbing Inspection | $930 for All Condo Remodel Projects | | |
| 5 | *CONDO - Carport/Garage Flat Fee*<br>Includes:<br>Application Processing Fee<br>Building Review and Inspection<br>Stormwater Review<br>Zoning Review<br>Electrical Review and Inspection | 700 | | |
| 6 | *DEMO - Commercial and Residential*<br>Includes:<br>Application Processing Fee<br>Building Plan Review<br>Environmental Review<br>Inspection | 475 | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

## FY 2023-2024 BUILDING PERMIT FEE SCHEDULE

| REF # | PERMIT | CURRENT FEE | PROPOSED FEE | NOTES |
|---|---|---|---|---|
| 7 | *DRV - All Driveways*<br>Includes:<br>Application Processing Fee<br>Environmental Review<br>Flood Review<br>Stormwater Review<br>Zoning Review<br>Inspection | 625 | | |
| 8 | *DSH - Dock, Walkway, Pier Platform, Boat Lift, Hoist, Davit Repair, Rip Rap, Seawall, Dredging, Piling, Boat Ramp*<br>Includes:<br>Application Processing Fee<br>Environmental Review<br>Zoning Review<br>Inspection | 400 | | |
| 9 | *DSH - Boathouse and Dock Permit (New Dock/New Boathouse)*<br>Includes:<br>Building Review and Inspection<br>Electrical Review and Inspection | Flat Fee $720 ($330 for boathouse with $390 dock fee) | | |
| 10 | *DSH - Boathouse, New or Repair (New Boathouse, Existing Dock)*<br>Includes:<br>Application Processing Fee<br>Building Review and Inspection<br>Environmental Review<br>Zoning Review<br>Electrical Review and Inspection | 475 | | |
| 11 | *FEN - Fence (All Fences, Pool Barriers, Retaining/Garden Wall)*<br>Includes:<br>Application Processing Fee<br>Building Plan Review and Inspection<br>Environmental Review<br>Flood Review | 475 | | |
| 12 | *POL - Pools (Above Ground, Below Ground, Spas)*<br>Includes:<br>Application Processing Fee<br>Building Review and Inspection<br>Environmental Review<br>Flood Review<br>Stormwater Review<br>Zoning Review | 850 | | |
| 13 | *RES - Interior Remodel (up to 50% of Structure Value)*<br>Includes:<br>Application Processing Fee<br>Building Review and Inspection<br>Flood Review<br>Electrical Review and Inspection<br>Mechanical Review and Inspection<br>Plumbing Review and Inspection | 800 | | |
| 14 | *RES - New One & Two Family Dwelling Construction, Remodel, Addition, Carport, Stand Alone Garage*<br>****** IMPACT FEES NOT INCLUDED ******<br>Includes:<br>Application Processing Fee<br>Building Plan Review and Inspection<br>Environmental Review<br>Flood Review<br>Stormwater Review<br>Zoning Review<br>Electrical Review and Electrical Inspection<br>Mechanical Review and Mechanical Inspection<br>Plumbing Review and Plumbing Inspection<br>Roof<br>Sewer Connection | Up to 1500 sqft = $1860<br>1501-2500 sqft = $2580<br>2501-3500 sqft = $3300<br>3501-4500 sqft = $4020<br>4501-5500 sqft = $4740<br>5501-6500 sqft = $5460<br>6501+ sqft = Commercial Calculation | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

## FY 2023-2024 BUILDING PERMIT FEE SCHEDULE

| REF # | PERMIT | CURRENT FEE | PROPOSED FEE | NOTES |
|---|---|---|---|---|
| 15 | *RES - Roof, Reroof, Roofover, Insulated Pan Roof*<br>Application Processing Fee<br>Flood Review<br>Inspection | 300 | | |
| 16 | *STRUC - Commercial or Residential Sheds, Decks, Screen Enclosure/Pool Enclosure, Dumpster Enclosure, Radio/TV Antenna, Freestanding Signs, Mobile Home/RV Setup*<br>Includes:<br>Application Processing Fee<br>Building Review and Inspection<br>Environmental Review<br>Flood Review<br>Stormwater Review<br>Zoning Review | 625 | | |
| 17 | *STRUC - Structure Move*<br>Includes:<br>Application Processing Fee<br>Building Review and Inspection<br>Environmental Review<br>Flood Review<br>Stormwater Review<br>Zoning Review<br>Electrical Review and Inspection<br>Mechanical Review and Inspection<br>Plumbing Review and Inspection | 900 | | |
| 18 | *TRADES - Over the Counter Electrical, Mechanical, Plumbing, Solar, Other Misc.(Flatwork, Interior Piping, Dumpster, Gas, Pavers, Fence Repair) Building Permits Not Stated.*<br>Includes:<br>Application Processing Fee<br>Any Necessary Reviews | 200 | | |
| 19 | *WIN - Windows (Commercial, Condos, Residential) up to 5 Windows, including Sliding Glass Doors*<br>Includes:<br>Application Processing Fee<br>Building Review and Inspection<br>Flood Review | 400 | | |
| 20 | *WIN - Windows (Commercial, Condos, Residential) over 5 Windows, including Sliding Glass Doors*<br>Includes:<br>Application Processing Fee<br>Building Review and Inspection<br>Flood Review | # Windows x $30/ea + 50<br>Ex 10 Windows = $350 | | |
| **MISCELLANEOUS FEES** | | | | |
| 21 | MISC - 1st Work Without Permit | 3x Building Permit Fee | | |
| 22 | MISC - 2nd Work Without Permit | 5x Buildin Permit Fee | | |
| 23 | MISC - Change of Contractor | 60 | | |
| 24 | MISC - Building Code Administrators and Inspectors Surcharge (Pursuant to Florida Statute) | Determined by Statue | | |
| 25 | MISC - Department of Business and Professional Regulation Surcharge (Pursuant to Florida Statute) | Determined by Statue | | |
| 26 | MISC - Inspection/Partial Pass (additional inspection requested by contractor) | 60 | | |
| 27 | MISC - Inspection/Re-inspection After Failed Inspection | 60 | | |
| 28 | MISC - Inspection/Lock-Out (Inspector did not have access to construction site and has to reschedule inspection) | 60 | | |
| 29 | MISC - Permit Extension 1st 3 Months | 120 | | |
| 30 | MISC - Permit Extension 2nd 3 Months | 180 | | |
| 31 | MISC - Plan Revision (after issuance of permit) | 60 | | |
| 32 | MISC - Recording Services | Actual Cost | | |
| 33 | MISC - Reissuance of Expired Permit: Commercial (not including Code Enforcement fees) | 600 | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

## FY 2023-2024 BUILDING PERMIT FEE SCHEDULE

| | PERMIT | CURRENT FEE | PROPOSED FEE | NOTES |
|---|---|---|---|---|
| | **MISCELLANEOUS FEES (Continued)** | | | |
| 34 | MISC - Reissuance of Expired Permit: Residential (not including Code Enforcement Fees) | 300 | | |
| 35 | MISC - Reissuance of Expired Permit: Trade (not including Code Enforcement Fee) | 120 | | |
| 36 | MISC - Resubmittal Fee after 1st resubmittal (if our reviewers request more information and the information provided by the permit holder does not fulfill request) | $60/Resubmittal | | |
| 37 | MISC - Generator Installation Permit | 540 | | |
| 38 | MISC - Temporary CO | 210 | | |

Adopted: September 25, 2023 - Resolution 23-115 Fee Schedule

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1354**

1. **Requested Motion:**

**Meeting Date: December 4, 2023**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING APPROVAL OF AN AGREEMENT WITH JACOBS PROJECT MANAGEMENT, CO. AUTHORIZING THE TOWN MANAGER TO EXECUTE AN ADDENDUM TO THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

Ratifies the contract with Jacobs Project Management, Co.

**What the action accomplishes:**

2. **Agenda:**
CONSENT AGENDA

3. **Requirement/Purpose:**
Resolution

4. **Submitter of Information:**

---

5. **Background:**

The Jacobs Project Management team will be supplementing staffing in the building department to expedite completion of building inspections.

**Attachments:**

1. 23-171, Jacobs Project Management w/Addendum
2. Jacobs Group Executed agreement
3. Jacobs Project Management Co. Addendum

**Financial Impact:**

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

| | |
|---|---|
| Amy Baker, Town Clerk | Created/Initiated - 11/28/2023 |
| Nancy Stuparich, Town Attorney | Approved - 11/28/2023 |
| Amy Baker, Town Clerk | Approved - 11/29/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/29/2023 |

**RESOLUTION NUMBER 23-171**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING APPROVAL OF AN AGREEMENT WITH JACOBS PROJECT MANAGEMENT, CO. AUTHORIZING THE TOWN MANAGER TO EXECUTE AN ADDENDUM TO THE AGREEMENT; 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,** the Town of Fort Myers Beach has been working diligently to review and approve incoming permits and maintain timely building inspections after Hurricane Ian; and

**WHEREAS,** it is in the best interest of the Town residents for the Town to contract with Jacobs Management Group, Co. to assist the Town with building inspection services, as needed.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH, AS FOLLOWS:**

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. This Resolution memorializes, ratifies, and approves the actions of the Town Manager to contract with Jacobs Management Group, Co., and authorizes the Town Manager to sign the related addendum.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

Dan Allers, Mayor
Jim Atterholt, Vice Mayor
John R. King, Councilmember
Bill Veach, Councilmember
Karen Woodson, Councilmember

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

_____
Dan Allers, Mayor

**ATTEST:**

_____
Amy Baker, Town Clerk

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

_____
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day December 2023.

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services (the "Agreement") is made and entered into this 27th day of October, 2023 (the "Effective Date") by and between Jacobs Project Management Co., a Delaware corporation ("Contractor"), whose address for formal notice is 6312 S. Fiddlers Green Circle, Suite 300N, Greenwood Village, CO 80111 and the Town of Fort Myers Beach, Florida ("Owner" or "Town"), whose address for formal notice is 2525 Estero Boulevard, Fort Myers Beach, FL 33931, who collectively shall be referred to as the "Parties."

The Parties agree to enter into this Agreement for certain services that Contractor is to perform for the benefit of Owner, subject to the terms and conditions set forth below:

### 1. SCOPE OF SERVICES

Contractor will perform building permit inspections on a Time and Materials basis commencing on the effective date consistent with the terms of this agreement. The Owner and Contractor will mutually agree to the date the scope of services set forth in Appendix A of this Agreement ("the Services") will be provided. Contractor shall perform the Services with the degree of skill and diligence normally employed by similarly situated personnel performing the same or similar services and within the design capacity and capability of Owner's facilities, when applicable.

### 2. TERM AND TERMINATION

2.1 The initial term of this Agreement shall be for a period of five (5) years, commencing on the Effective Date. Upon conclusion of the initial term, this Agreement shall renew on an annual basis, unless terminated by either party with ninety (90) days prior written notice.

2.2 This Agreement may have the end date revised by Contractor or Owner for either of the Parties' convenience on ninety (90) calendar days' written notice; or by either party for cause upon thirty (30) calendar days' written notice to the other party, if either party fails to substantially perform through no fault of the other and does not commence correction of such nonperformance within five (5) calendar days of written notice and diligently complete the correction thereafter. Upon early completion of this Agreement or termination, Contractor shall be paid for all authorized work performed up to the termination date.

### 3. COMPENSATION

Owner will compensate Contractor as set forth in Appendix B. Monthly invoices will be issued by Contractor for all work performed under this Agreement. Work performed under this Agreement may be performed using labor from affiliated companies of Contractor. Such labor will be billed to Owner under the same billing terms applicable to Contractor's employees.

### 4. INVOICES AND TERMS OF PAYMENT

4.1 Contractor will submit invoices on a monthly basis to Owner each month. Each invoice will be prepared on Contractor's standard form and supported by documentation according to Contractor's standard practice. No invoice shall be for an amount in excess of 1/12 of the total annual lump sum price, unless Contractor has provided additional services at the Town Manager's direction in writing. Additional services will be invoiced on a Time & Materials basis and denoted on a separate line item within a monthly invoice.

4.2 Invoices are due and payable on receipt. Interest at a rate of 1-1/2 percent per month, or the maximum permitted by law if less, will be charged on all past-due amounts starting thirty (30) calendar days after date of invoice receipt. Payments will first be credited to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested shall be withheld from payment, and the undisputed portion shall be paid. Interest shall accrue on any contested portion of the billing and shall be immediately payable if the contested billing is resolved in favor of Contractor. No interest will be due on any disputed portion of the billing if the dispute is ultimately mutually resolved.

4.3 If Owner fails to make payment in full within thirty (30) calendar days of the date due for any undisputed billing, Contractor may, after giving seven (7) calendar days' written notice to Owner, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, Contractor will have no liability to Owner for delays or damages caused by Owner because of such suspension.

## 5. OBLIGATIONS OF CONTRACTOR

5.1 Standard of Care

The standard of care applicable to Services is the degree of skill and diligence normally employed by those performing similar services at the time Services are performed. If Contractor delivers services, reports or documents based on information provided by others, Contractor does not warrant their accuracy, and is not responsible for any errors or omissions that have been incorporated into such documents by others. Owner's sole remedy for Contractor's breach of this standard of care is the re-performance of those Services directly related to such breach up to the limit of remedy set forth in this Agreement.

5.2 Contractor's Insurance

Contractor will maintain throughout this Agreement the following insurance:

a. Worker's compensation and employer's liability insurance as required by the state where the work is performed.

b. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with $1,000,000 combined single limits.

c. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of Contractor or of any of its employees,

agents, or subcontractors, with $1,000,000 per occurrence and in the aggregate.

d. Owner will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages identified above (except with respect to worker's compensation and employer's liability insurance).

5.3 Warranties and Completion

5.3.1 Contractor warrants that all materials and equipment furnished under this Agreement will be new, unless otherwise specified, of good quality and free from defective workmanship and materials. Warranties shall commence on the date of Completion as determined by Contractor.

5.3.2 If applicable, Contractor will pass through to Owner the warranty extended by the manufacturer for all products, equipment, systems or materials. There are no warranties that extend beyond the description on the face thereof.

5.3.3 All other warranties, express or implied, including any warranty of merchantability and any warranty of fitness for a particular purpose are expressly disclaimed.

5.3.4 CONTRACTOR MAKES NO WARRANTIES OR GUARANTEES ON THE SERVICES OR MATERIALS SUPPLIED BY CONTRACTORS. NO OTHER REPRESENTATION, GUARANTEE OR WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, IS INTENDED IN OR BY THIS AGREEMENT.

5.4 Independent Contractor; Subcontracts

5.4.1 Contractor represents that it is an independent contractor and will perform services as an independent contractor and not as an agent or employee of Owner.

5.4.2 Contractor may retain such other subconsultants or subcontractors as it may deem desirable for proper and timely performance of services. Contractor shall be responsible for the management of the subcontractors and subconsultants in the performance of their work.

5.4.3 The Services performed by Contractor under this Agreement shall be considered advisory only. Owner shall solely be responsible for the management and direction of its employees in following Contractor's advice and recommendations. No provision in this Agreement shall be construed to confer any managerial or supervisory authority on Contractor. Contractor shall have no responsibility in supervising, managing or directing Owner's employees and shall not be liable for the actions of Owner's employees in carrying out recommendations provided for by Contractor.

5.5 Access to Records

Contractor will maintain accounting records, in accordance with generally accepted accounting principles. Records relating to services will be available to Owner during Contractor's normal business hours for a period of one (1) year after Contractor's final invoice under this Agreement for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder, but excluding proprietary and confidential financial information. Only audit cost-reimbursable items will be subject to audit.

## 6. OBLIGATIONS OF OWNER

6.1 Owner-Furnished Data

Owner will provide to Contractor all data in Owner's possession, including copies of all applicable project requirements, design criteria or constraints, design and construction details or standards, previous reports, surveys, process descriptions, material balance sheets, process and instrumentation diagrams, permits issued by state, federal or local authorities relating to the operation of the project, and other information required or relating to Contractor's services on the project. Contractor will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by Owner. This is including, but not limited to, the installation of iWorQ or other program the Owner uses or may elect to use in the future for building permit review and inspection documentation on Contractor's devices for both training and scope delivery purposes.

6.2 Access to Facilities and Property

Owner will make its facilities accessible to Contractor as required for Contractor's performance of its services and will provide labor and safety equipment as required by Contractor for such access. Owner will perform, at no cost to Contractor, such tests of equipment, machinery, pipelines, and other components of Owner's facilities as may be required in connection with Contractor 's services.

6.3 OSHA Compliance

Owner shall have the sole responsibility for identifying and performing any current or future improvements which may be required at the Project to bring the facilities within OSHA compliance.

6.4 Operations Assistance and Services

Owner authorizes Contractor to operate, modify, inspect and otherwise physically manipulate equipment, furnishings, property and other elements associated with the Services. Owner authorizes Contractor to take such actions in these respects as Contractor considers necessary to meet the objectives of the work.

6.5 Advertisements, Permits, and Access

Unless otherwise agreed to in the Agreement, Owner will and has the sole responsibility for obtaining, renewing, arranging, and paying for all advertisements for bids; permits and licenses required by local, state, or federal authorities (including those required for the operation of the project); and land, easements, rights-of-way, and access necessary for Contractor's Services.

6.6 Timely Review

Owner will examine Contractor's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor,

accountant, auditor, bond and financial advisors, and other consultants as Owner deems appropriate; and render in writing decisions required by Owner in a timely manner.

6.7 Prompt Notice

Owner will give prompt written notice to Contractor whenever Owner observes or becomes aware of any development that affects the scope or timing of Contractor's Services, or of any defect in the work of Contractor. Owner will give Contractor prompt notice when it is unable to follow the directives and advice of Contractor in any way related to the Services or promptly upon discovery that the directives or advice of Contractor has not been followed in relation to the Services being performed.

6.8 Asbestos or Hazardous Substances

6.8.1. If asbestos or hazardous substances in any form are encountered or suspected while performing the Services, Contractor will stop its own work in the affected portions of the Project to permit testing and evaluation.

6.8.2. If asbestos is suspected, Contractor will, if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated.

6.8.3. If applicable, if hazardous substances other than asbestos are suspected, Contractor will, if requested, conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary remedial measures at an additional fee and contract terms to be negotiated.

6.8.4. Owner recognizes that Contractor assumes no risk and/or liability for a waste or hazardous waste site originated by other than Contractor.

6.9 Owner's Insurance

6.9.1. Owner will maintain property insurance on all facilities and property used by Contractor or associated in any way with the project.

6.9.2. Owner will provide for a waiver of subrogation as to all Owner-carried property damage insurance, in favor of Contractor, Contractor's officers, employees, affiliates, and subcontractors.

6.10. Litigation Assistance

The Services to be performed under this Agreement do not include costs of Contractor for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by Owner. All such Services required or requested of Contractor by Owner, except for suits or claims between the parties to this Agreement, will be reimbursed as mutually agreed.

6.11. Changes

Owner may request changes to the Services. If such changes affect Contractor's cost or time required for performance of the Services, an equitable adjustment will be made through an amendment to this Agreement. All requested changes will be made in writing and are subject to acceptance by Contractor.

## 7. GENERAL LEGAL PROVISIONS

7.1. Authorization to Proceed

Execution of this Agreement by Owner will be authorization for Contractor to proceed with the work, unless otherwise provided for in this Agreement.

7.2. Force Majeure

Contractor is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, governmental action, pandemics or other events beyond the control of Contractor. In any such event, Contractor's agreement price and schedule shall be equitably adjusted.

7.3. Fines and Civil Penalties

Contractor shall not be liable for any fines or civil penalties which may be imposed by a regulatory or enforcement agency for violations occurring on or after the commencement date of this Agreement, as a result of the failure to comply with the terms and conditions of any duly authorized permit, court order, administrative order, law, statute, or ordinance or that result from violations that occurred prior to the commencement date of this Agreement.

7.4. Limitation of Liability

Contractor's liability for Owner's damages, in the aggregate, shall not exceed the total compensation received by Contractor from Owner for services provided under this Agreement for the year of the Agreement in which the liability was incurred. Contractor's liability to Owner under this Agreement specifically excludes any and all indirect or consequential damages arising from the Work contemplated under this Agreement. Contractor shall not be liable for fines or civil penalties, which may be imposed by a regulatory agency, which are occasioned by the provision of services under this Agreement. The limitations of liability shall apply whether Contractor's liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause, except the limitations shall not apply to willful misconduct or gross negligence. Said limitations shall apply to Contractor's officers, affiliated corporations, employees, and subcontractors.

7.5. Indemnification

Subject to the provisions of Sec. 768.28, Fla. Stat., and to the maximum extent permitted by law, the Parties agree to defend, indemnify and hold each other harmless from liability for claims, damages, costs and attorneys' fees arising from property damage, injury or death to a person, including their employees, caused by the negligent acts or omissions or willful misconduct of the indemnifying Party or any other party for whom the indemnifying Party is legally liable. Neither Party must indemnify the other against liability or damages arising out of death or bodily injury to persons or damage to property to the extent caused by the negligence of the indemnified Party.

7.6. Consequential Damages

To the maximum extent permitted by law, Contractor and Contractor's affiliated corporations, officers, employees, and subcontractors shall not be liable for Owner's special, indirect, or consequential damages, whether such damages arise out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action. In order to protect Contractor against indirect liability or third-party proceedings, and subject to the provisions of Sec. 768.28, Fla. Stat., Owner will indemnify Contractor for any such damages.

7.7. Severability and Survival

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability, indemnities and other express representations shall survive termination of this Agreement.

7.8. No Conflict of Interest for Future Work

The scope of Services performed by Contractor under this Agreement does not preclude Contractor from proposing on or providing such services to Owner in the future. Information and knowledge gained by Contractor in providing services under this Agreement shall not constitute a conflict of interest in proposing on or providing full contract operations, full contract maintenance, or full contract utility management.

7.9. Jurisdiction

The law of the State where the scope of Services is being performed shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

7.10. Third Party Beneficiaries and Scope of Services

This Agreement gives no rights or benefits to anyone other than Owner and Contractor and has no third-party beneficiaries. The Work to be performed for Owner by Contractor is defined solely by this Agreement, and not by any other contract or agreement that may be associated with the Work.

7.11. Assignments

This is a bilateral Agreement for professional services. Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

7.12. Dispute Resolution

The parties will use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options.

7.13. Ownership of Work Products and Intellectual Property

All of the Work products of Contractor in executing this Project (including all the rights related to such Work Products) shall be the sole property of Contractor, subject to the rights of the Owner, as the case may be. All reports, data, information, documents, specifications, flow-charts, discoveries, know-how, inventions, processes, firmware, computer software, source and object code, and software documentation as well as any resulting intellectual property, including but not limited to, invention disclosures, provisional patent applications, regular patent applications, patents, trade secrets, proprietary information, copyrights, trademarks, service marks, domain names, trade dress, and moral rights developed during the course of, or as a result of, the Project shall be the sole property of Contractor, subject to the rights of the Owner, as the case may be.

7.14. Non-Solicitation of Contractor Employees

In the event that Owner recruits and procures the services of Contractor employees to provide a similar function for Owner, Owner shall pay to Contractor the sum of: (1) 100% of staff compensation for staff with annual salaries above $75,000 plus

reimbursement of Contractor costs associated with training for Contractor Employees and the cost of replacing the position within Contractor's organizational structure.

**8. PUBLIC RECORDS COMPLIANCE.**

Contractor agrees that, to the extent that it may "act on behalf" of the Town ("public agency") within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

(a) Keep and maintain public records required by the public agency to perform the service.

(b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

(d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

(e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL**
**2525 Estero Boulevard**
**Fort Myers Beach, FL 33931**
**AMY@FMBGOV.COM**

9. **Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the Contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

10. **Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

11. **Non-appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

12. **E-Verify Compliance.** Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

13. **Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that

Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars ($1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars ($1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

14. **Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement; and ii) waives any right to file any action, suits or proceedings in, or remove any action to, Federal Court.

15. **Attorneys' Fees and Costs.** Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fee and costs.

## 16. APPENDICES AND SIGNATURES

This Agreement, including its Appendices, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. The following Appendices and schedules are hereby made a part of this Agreement:

Appendix A—Scope of Services
Appendix B—Compensation

**IN WITNESS WHEREOF, the parties execute below:**

**Approved for Owner**

By: Andrew Hyatt

Name: Town Manager

Title: 10/27/23

Date

**Approved for Jacobs Project Management Co.**

By: JONATHAN A. MANTAY

Name: VICE PRESIDENT

Title: 10/27/2023

Date

## APPENDIX A – SCOPE OF SERVICES

### SCOPE OF SERVICES

The purpose of this scope is to authorize Contractor to provide Owner with staffing personnel to support building plan review and permitting requirements.

Services under this Agreement will be executed at the direction of Owner. While services may change or be modified by Owner, the general scope of services to be provided by Contractor includes the following scope items:

1. Contractor will provide the equivalent of four (4) full-time positions to provide Owner with Chief Building Official and three (3) permit technicians;
2. Contractor's Chief Building Official will be assigned to Owner full-time. This position will be responsible for fulfilling the role as defined in the job description section of this Appendix and will also be responsible for plans review and the delegation of plans review to that position within this scope;
3. The Plans Reviewer position will be utilized when needed and will be at the direction of the Chief Building Official and to be used after written notice has been provided by the Town Manager. This position will not be assigned to the project full-time as Contractor may utilize multiple employees to provide this service;
4. Contractor staff will provide services based upon a 40-hour work week.

### SERVICES TO BE PROVIDED

1. One Chief Building Official, and three permit technicians (as described below) will be provided on-site in Town Hall by Contractor for 40 hours per week (for a total of 160 person hours per week). Contractor may provide qualified substitutes for such positions when the assigned personnel are not in attendance at work due to vacation, illness, injury, or other cause.
2. Computers and software for permit entry and tracking will be provided by Owner.
3. Vehicles will be provided by Owner with such vehicles only being used for Town business.
4. Additional building permit plan review or building permit inspections, if specifically requested in writing by the Town Manager, will be provided at the rate of $127.00 per hour, and fees therefor will be invoiced separately.
5. The Town has an existing contract with a third-party firm to provide building inspection services.
6. As this Agreement does not create a relationship between Contractor's Chief Building Official and other third-party contractors responsible for building inspection services, Contractor's responsibilities as related to said third-party inspections are limited to only those as required by Chapter 553 of the Florida Statutes.
7. Contractor will reasonably rely upon the accuracy and completeness of the information/data provided by Owner and other third parties.
8. Barring any statutory requirements, Contractor is not responsible for the means and methods by which Owner personnel or third-party contractors complete or fail to complete their respective job duties.

## JOB DESCRIPTIONS

### Chief Building Official – Florida Licensed

The Chief Building Official manages and directs the programs and activities of the Building Division that includes permit processing and plan review functions to ensure compliance with adopted local and state codes, including the Florida Building, Florida Accessibility Code, and federal/state/local ordinances, standards, policies, and laws. The Chief Building Official manages a division that utilizes external plan reviewers when needed and third-party inspectors. It is the responsibility of the Chief Building Official to ensure submitted plans are efficiently processed, permitted, inspected, and ultimately brought into service of the Town.

- Performs and manages the review of all building permits for compliance with building codes, and all other state and local regulations.
- As required by Florida statute, coordinate, enforce and provide specialized assistance for inspection of all work authorized by permit on residential and non-residential facilities to assure conformity to approved plans and applicable ordinances, codes, laws and procedures.
- Determine completeness and accuracy of building permit applications and review for code and standards conformance.
- Authorize the issuance of Building Permits upon review by other Town departments, as applicable.
- Coordinate technical reviews and serve as the Building Department liaison to the Town and their third-party firms.
- Respond to field emergencies and coordinate appropriate response.
- Issue and authorize "Stop Work" orders and "Unsafe for Occupation" notices.
- Conduct pre-application and pre-construction meetings, as necessary.
- Review and approve proposed alternative materials and methods of construction.
- Regularly review computer database records to maintain an efficient flow of work to the Building Plan Reviewers (as applicable); ensure software systems are being used properly and to the best of their ability.
- Work with attorneys representing the Town and other staff on difficult code compliance and interpretations.
- Receive complaints and inquiries from the Town and citizens relative to construction conditions or activities in the community.
- Gather pertinent data, evaluate the facts of situations, and attempt to handle complaints and inquiries at first contact.
- Interpret and enforce the latest adopted Florida Building Codes, Florida Accessibility Code, and federal/state/local ordinances, standards, policies and laws.
- Knowledge of and ability to interpret Federal Emergency Management Agency (FEMA) and local flood regulations and ordinances.
- Represent the Town at building code conferences and informational meetings.
- Provide a seamless building and construction review process which provides quick turnaround and a clear approval process and forms (not including a policy analysis).

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Basic Qualifications

- Bachelor's degree in Engineering, Architecture, Construction Technology or related field, or a high school diploma or equivalent and 10 years of building, architecture or construction experience in lieu of the degree.
- Three (3) years of supervisory experience.
- Current Building Official License from the State of Florida.
- Experience in construction practices, the latest adopted Florida Building Codes and current national electric code.
- Possess a valid Florida driver's license with a clean driving record with no major infractions.

Preferred Qualifications

- Ten (10) years of experience in building inspection / plans review, engineering, architecture or construction.
- Experience with – electronic plan review and permitting software – CityWorks preferred
- Excellent communication skills to deal effectively with developers, architects, engineers, and other design professionals.

**Permit Technicians**

The Permit Technicians will provide advanced, responsible, customer service work. The employee is responsible for providing assistance and information to the general public. Knowledge in the areas of building plans review, permit issuance and planning and zoning is desired but not required. Work may vary in complexity and responsibility.

- Enters information from permit applications into permitting system to determine types of reviews necessary for the projects and to determine when projects are scheduled for review, status of projects, number of dates for review, cost of review, permit number and issue date.
- Follows the Town's "how to create a permit" process.
- Files plans for residential and commercial projects and enters appropriate data.
- Receives permit applications from customers, reviews and enters relevant data and forwards to plans reviewers.
- Verifies permits issued and compares with permit application.
- Verifies contractors' business license and insurance coverage.
- Answers all technical questions regarding requirements for submitting applications for all types of permits.
- Assists builders, contractors, and the general public in making applications for various permits and advises applicants of requirements.
- Answers questions pertaining to the progress of permits and advises applicants of data and submittals needed to have requirements met.

- Receives applications/plans and reviews items for completeness.
- Assures that permit applicants have obtained all pre-approvals, i.e., Solid Waste, Utilities, Driveway permits, etc.
- Reviews permit application forms for completeness and assures that submittals are attached.
- Determines and calculates various permit fees. Calculates and collects plan review fees.
- Processes all applications/plans and re-submittals that are received by electronically, in-person, and mail.
- Answers emails
- Answers phone calls
- Performs related work as required.

Education, Experience, Licensing
Requires any combination of education and experience equivalent to graduation from High School and two years of customer service experience.

Knowledge, Skills and Abilities
- Ability to deal with the general public in a prompt, professional, and courteous manner.
- Ability to perform basic mathematical skills in determining square footage, linear feet, etc.
- Ability to learn associated computer systems applicable to permitting, such as GIS, iWorq, etc.

**Plans Examiner** – services will be provided on a T&M basis with Town Manager approval
- Performs highly advanced technical review of residential and commercial construction documents for compliance with the Florida Building, Florida Accessibility Code, and federal/state/local ordinances, standards, policies, and laws.
- Completes permit reviews in a timely manner.
- Assists with inter/intra-department reviews prior to the issuance of permits.
- Engages in communications between the public, architects, engineers, contractor, Town staff and officials to explain codes and resolve code issues related to construction plans.
- Verifies code compliance of construction drawings prior to approval of drawings necessary for issuance of permits.
- Attends preconstruction and predevelopment meetings with contractors, developers, owners, architects, engineers and Town staff.
- Educates, trains, directs, and provides technical leadership or guidance to both design consultants and Town staff.
- Performs other duties as assigned, including cross training with the Building Official.

Basic Qualifications
- High school diploma or equivalent and ICC Plans Examiner Certification

- Minimum of four (4) years as a building inspector, contractor, or plans examiner that includes one (1) or more years performing commercial or educational plans review, or completion of one (1) year of training to perform advanced commercial examiner tasks.
- Knowledge of and ability to apply applicable standards of the Florida Building Code and Florida Accessibility Code.
- Experience reviewing construction, plumbing, electrical and mechanical plans with related regulations.
- Knowledge of the methods and practices involved in the construction of educational facilities and related standard testing methods.
- Ability to read and interpret complex building drawings and related documents to recognize code violations, solve problems and recommend solutions.
- Ability to communicate accurate and understandable construction design information relating to codes with architects, engineers, contractors, and school district staff.
- Ability to establish and maintain effective working relationships with contractors, builders, Town staff, city and county officials and the general public.

Preferred Qualifications

- State of Florida Commercial Plans Examiner licenses to review all plans associated with new residential and commercial construction and any manner of remodel or retrofit.
- Experience with the electronic plans software; iWorQ permitting software package and digital plan review platforms.
- Knowledge of and ability to interpret Federal Emergency Management Agency (FEMA) and local flood regulations and ordinances.

## APPENDIX B – COMPENSATION

Compensation by Owner to Contractor will be as follows:

1. Contractor shall provide the Services as described in Appendix A on an annual lump sum basis.

   **Year One** lump sum price is **$538,535** (Five Hundred Thirty-Eight Thousand Five Hundred Thirty-Five Dollars). INCORRECT ASSUMPTION FROM B. VOSE

2. The Parties agree that good faith negotiations resulting in mutual agreement on an annual lump sum adjustment is the preferred methodology.

3. In the event Contractor and Owner fail to agree thirty (30) days prior to the annual renewal date of this Agreement, the lump sum compensation amount will be adjusted according to the adjustment formula denoted below:

   **AF = [((ECI) x .70) + ((CPI) x .30)] + 1.0**

   AF - Adjustment Formula

   CPI = The twelve-month percent change (from June of the prior year to June of the current year) in the Consumer Price Index for All Urban Consumers, Not Seasonally Adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report Series Id: CUUR000SA0.

   ECI = The twelve-month percent change (from the second quarter of the prior year to the second quarter in the current year) in the Employment Cost Index for Total Compensation for Civilians Workers, Not Seasonally Adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the Detailed Report Series Id: CIU1010000000000A.

4. Upon each Agreement year renegotiation, Contractor shall continue to invoice Owner at the previous amount until the new Agreement year price is agreed upon or determined by the adjustment formula. Upon written agreement of the Parties as to the new Agreement year price, Contractor shall issue an invoice retroactively adjusting the previous lump sum price.

5. Additional permit reviews or other services provided under this Agreement shall be provided on a Time & Materials basis and invoiced monthly as the services may occur, but only if requested in writing by the Town Manager.

**TOWN OF FORT MYERS BEACH, FLORIDA**
**CONTRACT ADDENDUM – JACOBS PROJECT MANAGEMENT CO.**

**THIS CONTRACT ADDENDUM** is made and entered into this _____ day of , 2023, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the "Town", and Jacobs Project Management Co., as "Contractor", concerning that certain Agreement for Professional Services dated the 27th day of October, 2023 ("Agreement").

**WITNESSETH:C**

**WHEREAS,** Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors and required contract language has been recently amended by the Florida Legislature; and

**WHEREAS,** additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also added by virtue of this Addendum as well as removal of inapplicable terms; and

**WHEREAS,** approval of this Addendum is in the best interest of the Town to facilitate and expedite building inspection services to its residents and those who do business in the Town.

**NOW, THEREFORE,** in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

**1. Amendment.** This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

**2. E-Verify Compliance.** Paragraph 12 is amended for consistency current Florida law as follows: By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to City incurred as a result of the termination of this Agreement in accordance with this section. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or

subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

**3. Public Entities Crime or Convicted Vendor List**. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

**4. Data Management; Notice of Breach.** Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

**5. Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

**6. Additional Terms.** Notwithstanding any other provisions to the contrary, the parties further agree as follows:

A. Appendix B – Compensation, Paragraph 1 is revised to read as follows:

1. Contractor shall provide the Services ass described in Appendix A on an annual lump sum basis.

   Year One lump sum price is $538,535 (Five Hundred Thirty-Eight Thousand Five Hundred Thirty-Fie Dollars). ~~INCORRECT ASSUMPTION FROM B VOSE..~~

B. Paragraph 6.3 related to OSHA Compliance is deleted as not applicable.

C. Paragraph 7.13 is deleted in its entirety and the following sentence shall be included: Ownership of work products and intellectual property shall be determined in accordance with Florida law.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

**Contractor:**

_____

**Print Name:** _____

(Last Rev. 10/23)

**Title: _____**

**Company: _____**

**ATTEST:**

**Town of Fort Myers Beach**

_____
**Amy Baker, Town Clerk**

_____
**Andrew Hyatt, Town Manager**

**APPROVED AS TO FORM**

_____
**Gretchen R. H. "Becky" Vose, Town Attorney**

(Last Rev. 10/23)

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1364**

1. **Requested Motion:**

**Meeting Date: December 4, 2023**

Approve an Agreement with Lee County Supervisor of Elections office to conduct municipal elections for the Town of Fort Myers Beach.

**Why the action is necessary:**

Provides uninterrupted election services for the Town of Fort Myers Beach

**What the action accomplishes:**

Provides the Town with election services and support

2. **Agenda:**
CONSENT AGENDA

3. **Requirement/Purpose:**
Other

4. **Submitter of Information:**

---

5. **Background:**

Lee County Supervisory of Elections conducts elections for the Town per the Florida Election Code.

**Attachments:**

1. FMB Agreement for Election Services FORM 11132023 (AEK)

**Financial Impact:**

6. **Alternative Action**

Do not enter into an agreement with the Lee County SOE's office.

7. **Management Recommendations:**

Approve the Agreement

8. **Recommended Approval:**

| | |
|---|---|
| Amy Baker, Town Clerk | Created/Initiated - 11/29/2023 |
| Nancy Stuparich, Town Attorney | Approved - 11/29/2023 |
| Amy Baker, Town Clerk | Approved - 11/29/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/29/2023 |

# AGREEMENT

This Agreement is made this ____ day of _____, 2023, by and between the Town of Fort Myers Beach ("Municipality") and the Office of the Supervisor of Elections of Lee County, Florida, ("Supervisor").

## RECITALS:

**WHEREAS**, the Municipality is required to provide for the conduct of its elections;

**WHEREAS**, the Supervisor, as the lawfully elected constitutional officer of Lee County, Florida, is the official custodian of the registration books and has the exclusive control of matters pertaining to the registration of electors;

**WHEREAS**, the Supervisor is willing to conduct elections for the Municipality subject to the terms and conditions set forth in this Agreement; and

**WHEREAS**, the Municipality desires that the Supervisor conduct elections for the Municipality.

**NOW, THEREFORE**, for and in consideration of the mutual promises and benefits conferred herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties hereto, intending to be legally bound, covenant and agree as follows:

## PROVISIONS:

1. Recitals. The recitals contained in this Agreement are true and correct and are incorporated herein in their entirety.

2. Supervisor's Duties: Supervisor shall conduct such elections for Municipality as may be requested by Municipality including special, stand-alone, and/or regularly scheduled elections, on such dates as are mutually agreed upon by Municipality and Supervisor, all in accordance with the Florida Election Code, any applicable charter, and any applicable ordinances. The services to be provided by Supervisor include:

   2.1 Supervisor shall prepare ballots, including, as necessary, candidates, referenda, and instructions to voters.

   2.2 Supervisor shall provide, operate, and maintain voting and tabulation equipment necessary for Municipality elections.

   2.3 Supervisor shall provide such personnel as are necessary to: conduct Municipality elections, tabulate the vote and provide results to the Municipality.

2.4 Supervisor shall provide operating supplies necessary to conduct Municipality elections.

2.5 Supervisor shall perform all functions necessary to the distribution, processing and counting of mail ballots.

2.6 Supervisor shall provide adequate polling place facilities for each Municipality precinct.

2.7 Supervisor shall advise and assist the Canvassing Board as needed.

2.8 Supervisor is responsible for all statutorily required legal advertising, the cost of which shall be billed to the Municipality. Supervisor may provide for the publication medium of legal advertising as statutorily permitted by law. Supervisor will provide the Municipality with a copy of any legal advertisement or mailing that the Municipality must publish on its official website.

2.9 Supervisor must provide dual ballot languages (English and Spanish), and legal advertising statutorily required of the Supervisor per the Language Minority Provisions of Section 203 of the Voting Rights Act.

2.10 Unless the Municipality provides written notice to the contrary at least one hundred and eighty (180) days prior to the date of any special, stand-alone, or regularly scheduled elections, the Supervisor shall act as the Election Qualifying Officer. As such the Supervisor shall be responsible for:

2.10.1 Receipt and conditional review of all campaign finance reports in conformity with Florida law;

2.10.2 Maintaining the candidate list for each election;

2.10.3 Production and distribution of candidate packet materials;

2.10.4 Providing election related notary services to campaigns and candidates;

2.10.5 Petition processing and certification;

2.10.6 Post-election campaign finance reconciliation support;

2.10.7 Candidate qualifying instructions;

2.10.8 Preparing and scheduling of the election calendar; and

2.10.9 Determination of the candidate-qualifying period.

3. Municipality's Duties:

3.1 Municipality shall immediately notify, continually advise, and provide written copies of all provisions of law pertaining to elections within the Municipality, including, but not limited to, any charter, code of ordinances, special acts, and any additions or amendments thereto, as necessary for Supervisor to conduct Municipality's elections.

3.2 Municipality shall notify Supervisor in writing, and get Supervisor's consent thereto, at least one hundred twenty (120) days in advance of all election dates, and such notice shall include the qualifying periods applicable thereto.

3.3 Municipality shall conference with Supervisor at least one hundred twenty (120) days prior to the scheduled election and on, or before, that date, provide an up-to-date map clearly indicating official Municipality boundaries (ninety (90) days in the event of the death or removal of the Mayor or a Council member).

3.4 Municipality is responsible for legal advertising statutorily required of the Municipality and must provide for the publication medium as required by law.

3.5 Municipality shall reimburse Supervisor for all services, supplies, expenses and costs of whatever kind or nature incurred because of or in the conduct of the Municipality's special or stand-alone elections. It is not contemplated that elections held in conjunction with federal, state, or county elections would cause Municipality to reimburse Supervisor for expenses, except those for expenses solely related to Municipality's elections, including, but not limited to, candidate withdrawal notices to voters, translation, recount, and attorney's fees, which would not have otherwise been incurred by Supervisor.

3.6 To the extent permitted by Section 768.28, Florida Statutes, Municipality shall indemnify and hold Supervisor harmless from and against all claims, damages, injuries, litigation, actions or losses including reasonable attorney's fees and costs, arising out of or resulting from the acts of Supervisor in the performance of his lawful duties and the responsibilities under this Agreement, excepting any act or omission committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property.

3.7 Municipality shall name Supervisor as additional insured under the Municipality's property and casualty insurance policies, including but not limited to general liability, with respect to all activities of Supervisor relating to or arising out of the conduct of the Municipality's elections.

3.7.1 Subject to Supervisor's approval in any particular instance, which approval shall not be unreasonably withheld, Municipality Attorney, or designee, shall have authority to defend, negotiate and participate in any actions or claims for damages arising from the responsibilities of Supervisor under this agreement, or provide for defense of such actions or claims through its Risk Management Pool or other appropriate firm.

3.7.2 No settlement of such claims or actions shall be binding upon Municipality unless approved by the Municipality Council.

4. Expenses and Compensation: Upon completion of election services for any election, Supervisor shall provide an invoice to the Municipality detailing the costs incurred by Supervisor in conducting the election for Municipality. Reimbursement shall be made within thirty (30) days to Supervisor for such costs, including, but not limited to, the following: printing, labor, poll workers, rent, postage, transportation, forms, supplies, communication and use of tabulation equipment. Supervisor will provide such verification of expenses as is reasonably requested by Municipality.

5. Term: This Agreement shall become effective on the date of its execution by both parties and shall continue in effect for one (1) year from such date. The Agreement shall be automatically extended from year to year unless either party provides written notice of its intent to terminate at least six (6) months prior to the month in which a Municipality election is scheduled.

6. This Agreement is not cancellable during an election cycle.

7. The Municipality consents to all non-sample Ballot mailing advertisement by the Supervisor without the need for prior approval.

8. Any Sample Ballot mailing for stand-alone and/or special elections will only occur upon written request by Municipality to Supervisor.

9. Determinations regarding decision on whether to conduct early voting must be included in the Municipality's official resolution to conduct a stand-alone and/or special elections. The parties agree that failure to do so shall be construed as a decision not to provide early voting.

10. All costs for the enforcement of this Agreement, including reasonable attorney's fees, shall be paid by the losing party to the prevailing party.

11. Where used herein references to Municipality or Supervisor shall include the officers, agents, and employees of each.

12. This Agreement shall not be applicable to elections that are limited solely to freeholders.

13. In the event that any part of this Agreement is determined to be unenforceable by a court of competent jurisdiction, said determination shall not invalidate the remaining parts of this Agreement.

14. This Agreement shall become effective on the date first above written. This Agreement and any subsequent amendments thereto, shall be filed with the Clerk of the Circuit Court of Lee County, Florida.

Witnesses:

SUPERVISOR OF ELECTIONS

_____
1st Witness

By: _____
Print: _____

_____
Printed Name

_____
2nd Witness

_____
Printed Name

Witnesses:

TOWN OF FORT MYERS BEACH

_____
1st Witness

By: _____
Print: _____
Title: _____

_____
Printed Name

_____
2nd Witness

_____
Printed Name

Attest:

By: _____

_____
Town Clerk

Approved as to Form:

_____
_____ Esq.,
Vose Law Firm, LLP, Town Attorney

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1350**

1. **Requested Motion:**

**Meeting Date: December 4, 2023**

First Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 2, SECTION 34-3238 POST-DISASTER BUILDBACK; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on December 18, 2023 at 9:00 AM

**Why the action is necessary:**

Feedback will assist staff in making any desired changes and the ordinance requires two hearings.

**What the action accomplishes:**

This will assist staff in updating language and set the second hearing.

| 2. **Agenda:** | 3. **Requirement/Purpose:** | 4. **Submitter of Information:** |
|---|---|---|
| PUBLIC HEARINGS | Ordinance | Sarah Propst, Planning & Zoning |

5. **Background:**

Staff has been asked to provide some options to amend to the Post-Disaster Buildback policy. This policy is found in Section 34-3238 of the LDC and allows a property owner to redevelop a structure that exceeds current allowable density. The language allows the existing legal number of units to be rebuilt but the existing square footage may not increase, and the property must be brought into compliance with building and flood requirements if the damage exceeds 50% of the value of the property. Currently the code states: "For the purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking and similar common or non-air-conditioned space." This limitation decreases the amount of usable square footage for a rebuild of structures.

**Attachments:**

1. 23-18, Post Disaster Buildback - ns edits
2. 23-18 Business Impact Estimate - Ordinance 23-18 (Post Disaster Buildback) ns edits
3. Exhibit A - Proposed Language
4. Post Disaster Buildback memo
5. Exhibit B - Existing PDB

**Financial Impact:**

unknown

6. **Alternative Action**

Provide feedback on language and schedule a second hearing.

7. **Management Recommendations:**

Provide feedback on language and schedule a second hearing.

8. **Recommended Approval:**

| | |
|---|---|
| Kendra Rosa, Zoning Coordinator/Planner 1 | Created/Initiated - 11/28/2023 |
| Frankie Kropacek, Operations & Compliance Director | Approved - 11/28/2023 |
| Nancy Stuparich, Town Attorney | Approved - 11/28/2023 |
| Amy Baker, Town Clerk | Approved - 11/29/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/29/2023 |

**ORDINANCE NO. 23-18**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V, DIVISION 2, SECTION 34-3238 POST-DISASTER BUILDBACK; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND 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,** the Town recognizes that redevelopment of the Town, following Hurricane Ian requires evaluation, changes and updates to the Land Development Code; and

**WHEREAS,** a public hearing was held before the Local Planning Agency (LPA) on the 14th day of November, 2023, at which time the LPA gave full and complete consideration of the proposed ordinance, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA made a finding of consistency with the Ft. Myers Beach Comprehensive Plan and Land Development Code and thereafter voted 7-0, to recommend approval of the proposed ordinance amending Chapter 34, Article V, Division 2, Section 34-3238 Post-Disaster Buildback of the Land Development Code to the Town Council; and

**WHEREAS,** on the 4th day of December, 2023, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the proposed ordinance, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

**WHEREAS**, on the ___ day of _____, 2023, an advertisement of the public hearing for adoption of the proposed ordinance was published 10 days prior to the second reading of the proposed Ordinance, as required by Section 166.041, Florida Statutes; and

**WHEREAS**, a Business Impact Estimate was prepared and posted on the City's website on the ___ day of _____, 2023, as required by Section 166.041(4), Florida Statutes; and

**WHEREAS**, on the ___ day of _____, 2023, the Town Council held a public hearing and second reading of the proposed Ordinance; and

**WHEREAS**, the Town Council determined by a vote of ___ that adoption of the Ordinance is in the best interest of the health, safety and welfare of the public.

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

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

Section 2. Chapter 34, Article V, Division 2, Section 34-3238 Post-Disaster Buildback is hereby amended to read as found in attached Exhibit A – Amended Sec. 34-3238.

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

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

Section 5. 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, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

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

| | |
|---|---|
| Dan Allers, Mayor | ___ |
| Jim Atterholt, Vice Mayor | ___ |
| John R. King, Council Member | ___ |
| Bill Veach, Council Member | ___ |
| Karen Woodson, Council Member | ___ |

ADOPTED this ____ day of December 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

_____
Dan Allers, Mayor

**ATTEST:**

_____
Amy Baker, Town Clerk

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

_____
Vose Law Firm, LLP, Town Attorney

EXHIBITS
Exhibit A – Amended Sec. 34-3238

# Business Impact Estimate

Proposed ordinance's title/reference:
**Ordinance 23-18 Post Disaster Buildback Amendment**

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state law[1] for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
☐ The proposed ordinance relates to the issuance or refinancing of debt;
☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
☐ The proposed ordinance is an emergency ordinance;
☐ The ordinance relates to procurement; or
☒ The proposed ordinance is enacted to implement the following:
   a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
   b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
   c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
   d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town hereby publishes the following information:

1. Summary of the proposed ordinance, (e.g. statement of the public purpose serving the public health, safety, morals and welfare):
The proposed ordinance amends the existing Section 34-3238 which applies to buildings with 50% or more damage. The amendment will allow the structure to be rebuilt with the same number of legally existing, but nonconforming units and allow some additional square footage, beyond what the code previously allowed.

[1] See Section 166.041(4)(c), Florida Statutes.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, including the following, if any:
(a) An estimate of direct compliance costs that businesses may reasonably incur;
(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
(c) An estimate of the Town's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with Ordinance 23-18.

Ordinance 23-18 does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:
The Town estimates that a dozen private, for-profit businesses in the Town would potentially be impacted by Ordinance 23-18. The impact should be positive for the business.

4. Additional information the governing body deems useful (if any):
N/A

Sec. 34-3238. - Post-disaster buildback.

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings and that are damaged or destroyed by a ~~natural~~ disaster, including fire, tropical storms, floods, and hurricanes, shall be permitted to replace those buildings at up to their pre-disaster ~~existing~~ lawful density, intensity, and/or height in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan.

(1) *Less than 50 percent damage.* If the cost to repair the damaged building is less than 50 percent of the building's value and the repair is thus not a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:

a. The repairs may be made without bringing the building into full compliance with the requirements of this code for building size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations.

b. The repairs may not physically enlarge the building either laterally or vertically, with the following potential exception:

1. During the repair process, owners may wish to elevate lawfully existing dwelling units or guest units that do not comply with the floodplain regulations in ch. 6 of this code.

2. To encourage this elevation, the director may administratively modify setbacks, open space, buffer, or height requirements to the minimum extent that would accommodate rebuilding the units in conformance with ch. 6 of this LDC up to their existing interior square footage, as computed in accordance with subsections (2)d.1. or e.1 of this section.

3. However, if the combined cost to repair the damage and elevate the units exceeds 50 percent of the building's value, then all provisions of subsection (2) of this section will apply.

c. All repairs must comply with all current building, life safety, and accessibility codes.

(2) *More than 50 percent damage.* If the cost to repair or rebuild the damaged building is more than 50 percent of the building's value and is thus a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:

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

b. The building must meet the coastal construction requirements that apply to new structures and portions thereof, 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 that are damaged by more than 50 percent must be rebuilt landward of the 1978 coastal construction control line.

c. The building must comply with all current building, life safety, and accessibility codes.

d. *Residential buildings.* 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 the natural disaster.

1. ~~All dwelling units legally existing prior to the natural disaster 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. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned.~~

1. The total interior square footage above base flood elevation of the reconstructed building may not exceed the square footage of the total under roof square footage of the previous structure. The square footage under roof means the area within the

perimeter of the roof, multiplied by the number of stories that existed prior to the disaster, including stories below flood elevation.

2. At the owner's option, this same square footage can be used for fewer but larger dwelling units.

3. Also at the owner's option, the number of dwelling units and the square footage of the new building may be determined by this code's current regulations for new buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.

4. The number of bedrooms may not exceed the legally documented number of bedrooms in the dwelling unit immediately before the natural disaster. The number of full bathrooms may only be increased to equal the number of bedrooms in the structure.

5. Once additional square footage is added to the structure for post-disaster buildback, no additional below flood elevation square footage may be added for future disaster rebuilds.

e. *Hotels/motels.* A rebuilt hotel/motel may exceed the ~~intensity~~equivalency factor multiplier limits for new hotel/motel buildings ~~on vacant land~~, but cannot exceed the documented ~~number of lawful guest units~~ square footage within the building footprint immediately before the natural disaster.

~~1. All guest units lawfully existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt guest units does not exceed the interior square footage of the previous guest units. However, interior square footage in the new building may be increased by 30 square feet for each bathroom to reflect current code requirements for larger bathrooms, and any lawfully existing guest units that are smaller than the minimum sizes required by this code may be enlarged to meet the minimum size requirements. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned space.~~

~~2. At the owner's option, this same square footage can be used for fewer but larger guest units.~~

~~3. Also at the owner's option, the number of guest units and the square footage of the new building may be determined by this code's current regulations for new hotel/motel buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.~~

1. The total interior square footage above base flood elevation of the reconstructed building may not exceed the square footage of the total under roof square footage of the previous structure. The square footage under roof means the area within the perimeter of the roof, multiplied by the number of stories that existed prior to the disaster, including stories below flood elevation.

2. If the additional square footage gained does not provide adequate space to meet building or ADA codes, additional space may be allocated for that purpose.

3. The owner may choose to reduce the number of rooms or increase the number of rooms but may not create more guest unit space than defined in Sec.34-3238(2) e.1.

4. This section may not be used to increase the number of guest units in a hotel that previously had 49 rooms or less to more than 49 rooms.

f. *All buildings.* The new building must comply with all other zoning and development regulations except where compliance with such regulations would preclude reconstruction otherwise intended by Policy 4-D-1 of the comprehensive plan. Specifically:

1. If the lowest floor of the rebuilt building must be elevated higher than the damaged or destroyed building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount.
2. If a rebuilt building must be set back further from any property lines due to current requirements of this code, then the volume of the building so reduced can be rebuilt elsewhere on the site, including one or more extra stories on the building if in the opinion of the director there is no other suitable location to replace the volume.
3. If current open space, parking, landscaping or buffer regulations cannot be met, those requirements may be ~~waived~~ reduced through a written determination ~~administratively~~ by the director.

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

| | |
|---|---|
| **To:** | **Town Council** |
| **From:** | **Sarah Propst, Community Development** |
| **Date:** | **December 4, 2023** |
| **Re:** | **Post Disaster Buildback Policy Discussion** |

---

**BACKGROUND**

Staff has been asked to provide some options to amend to the Post-Disaster Buildback policy. This policy is found in Section 34-3238 of the LDC and allows a property owner to redevelop a structure that exceeds current allowable density. The language allows the existing legal number of units to be rebuilt but the existing square footage may not increase, and the property must be brought into compliance with building and flood requirements if the damage exceeds 50% of the value of the property. Currently the code states: "For the purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking and similar common or non-air-conditioned space." This limitation decreases the amount of usable square footage for a rebuild of structures.

There is also a pre-disaster buildback policy that has been used to redevelop properties that exceed density, to bring them in compliance with flood and building code, in advance of storm damage. This code also disallows increasing the square footage although applicants have gone through the required residential planned development process and received additional square footage, in the past.

The Pre and Post-Disaster Buildback policies are also contained within the comprehensive plan as Policy 4-D-1. The attached proposed language does not run counter to the language in Policy 4-D-1.

**TOWN COUNCIL DISCUSSION**

At the October 5th, Town Council Management and Planning Meeting, post disaster buildback was discussed. The Town Council encouraged staff to provide language that allows the square footage of the footprint, including space that was unenclosed, such as garage, lanai or storage areas. The change would essentially allow the same size building as previously existed, raised above the base flood elevation and would not limit the usable space to only previous interior

space. The proposed change would allow the same number of units, the same number of bedrooms and the same number of bathrooms, except that bathrooms could be increased to match the number of bedrooms.

**LPA DISCUSSION**

At the November 14th LPA hearing the LPA recommended several changes to the proposed language before you:

- Adding the following language to 34-3238(2)d: If the additional square footage gained does not provide adequate space to meet building or ADA codes, additional space may be allocated for that purpose.

- Removal of the limit of room numbers and bathrooms from the residential (2)d.

- The LPA voiced a desire for the Post Disaster Buildback to allow new structures with the same number of units without limitation on the allowable square footage, only meeting the bulk standards of the zoning district.

- Include further explanation for the square footage per the roofline measurement in the ordinance. **Staff has included this change already.**

- Prior to the meeting staff was approached by a condominium association asking if the language could be clarified to state that the number of bathrooms means full baths, not half baths. **Staff has included this change already.**

**LANGUAGE FOR DISCUSSION**

The language provided to you today allows all of the space within the previous roofline to be used toward unit space. This includes parking, storage, hallways and outdoor lanais that were covered by the roof. For residential structures, the number of rooms and units may not be increased but the square footage may be increased by using the additional space. For the purposed of hotels/motels the additional square footage may be used to create additional units but may not be used to increase over 49 rooms, if the hotel previously had fewer than 49 rooms.

This language encourages creative redesign to utilize space without increasing the size of the building a great deal. Some properties will get less of an increase in square footage, if, for instance there was no space below flood that was used for nonhabitable space. Does this go far enough

to provide additional square footage to post disaster buildback structures?

The language change also allows for the director to reduce open space, parking, landscaping and buffer requirements if a structure being rebuilt through post disaster buildback is unable to meet those requirements and requests a reduction.

Please provide feedback regarding the proposed language and please provide feedack regarding the LPA's recommendations.

**EXHIBITS**
Exhibit A – Proposed Post Disaster Buildback Language
Exhibit B – Existing Post Disaster Buildback Language

Sec. 34-3238. - Post-disaster buildback.

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings and that are damaged or destroyed by a natural disaster, including fire, tropical storms, and hurricanes, shall be permitted to replace those buildings at up to their existing lawful density, intensity, and/or height in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan.

(1) *Less than 50 percent damage.* If the cost to repair the damaged building is less than 50 percent of the building's value and the repair is thus not a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:

a. The repairs may be made without bringing the building into full compliance with the requirements of this code for building size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations.

b. The repairs may not physically enlarge the building either laterally or vertically, with the following potential exception:

1. During the repair process, owners may wish to elevate lawfully existing dwelling units or guest units that do not comply with the floodplain regulations in ch. 6 of this code.

2. To encourage this elevation, the director may administratively modify setbacks, open space, buffer, or height requirements to the minimum extent that would accommodate rebuilding the units in conformance with ch. 6 of this LDC up to their existing interior square footage, as computed in accordance with subsections (2)d.1. or e.1 of this section.

3. However, if the combined cost to repair the damage and elevate the units exceeds 50 percent of the building's value, then all provisions of subsection (2) of this section will apply.

c. All repairs must comply with all current building, life safety, and accessibility codes.

(2) *More than 50 percent damage.* If the cost to repair or rebuild the damaged building is more than 50 percent of the building's value and is thus a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:

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

b. The building must meet the coastal construction requirements that apply to new structures and portions thereof, 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 that are damaged by more than 50 percent must be rebuilt landward of the 1978 coastal construction control line.

c. The building must comply with all current building, life safety, and accessibility codes.

d. *Residential buildings.* 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 the natural disaster.

1. All dwelling units legally existing prior to the natural disaster 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. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned space.

2. At the owner's option, this same square footage can be used for fewer but larger dwelling units.

3. Also at the owner's option, the number of dwelling units and the square footage of the new building may be determined by this code's current regulations for new buildings on

the same site instead of using either the pre-disaster or post-disaster buildback regulations.

e. *Hotels/motels.* A rebuilt hotel/motel may exceed the intensity limits for new hotel/motel buildings on vacant land, but cannot exceed the documented number of lawful guest units in the building immediately before the natural disaster.

1. All guest units lawfully existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt guest units does not exceed the interior square footage of the previous guest units. However, interior square footage in the new building may be increased by 30 square feet for each bathroom to reflect current code requirements for larger bathrooms, and any lawfully existing guest units that are smaller than the minimum sizes required by this code may be enlarged to meet the minimum size requirements. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned space.

2. At the owner's option, this same square footage can be used for fewer but larger guest units.

3. Also at the owner's option, the number of guest units and the square footage of the new building may be determined by this code's current regulations for new hotel/motel buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.

f. *All buildings.* The new building must comply with all other zoning and development regulations except where compliance with such regulations would preclude reconstruction otherwise intended by Policy 4-D-1 of the comprehensive plan. Specifically:

1. If the lowest floor of the rebuilt building must be elevated higher than the damaged or destroyed building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount.

2. If a rebuilt building must be set back further from any property lines due to current requirements of this code, then the volume of the building so reduced can be rebuilt elsewhere on the site, including one or more extra stories on the building if in the opinion of the director there is no other suitable location to replace the volume.

3. If current open space or buffer regulations cannot be met, those requirements may be waived administratively by the director.

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1345**

1. **Requested Motion:**

**Meeting Date: December 4, 2023**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230187 TO ALLOW A GARAGE CLOSER TO THE ESTERO BOULEVARD STREET RIGHT-OF-WAY LINE THAN THE PRINCIPAL BUILDING AND TO ALLOW A GARAGE CLOSER TO THE SIDE PROPERTY LINE THAN THE MINIMUM SIDE SETBACK ON WATERFRONT LOTS FOR THE PROPERTY LOCATED AT 3580 ESTERO BLVD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

The Town Council decides variance requests.

**What the action accomplishes:**

Approval of the variance will allow the remaining garage to stay in the same location and a house may be built further from the road than the garage.

2. **Agenda:**
PUBLIC HEARINGS

3. **Requirement/Purpose:**
Resolution

4. **Submitter of Information:**

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5. **Background:**

Prior to Hurricane Ian, the property contained a single-family home with an attached garage. The house was destroyed by hurricane Ian and the remaining garage is structurally sound. The garage is located 25.1 feet from the Estero Boulevard right of way property line. The garage is also only 7.8 feet from the side property line. The current side setback requirement on a lot of this size, is 10 feet. The applicant wishes to keep the garage in its current location and construct a house that is further from Estero Boulevard than the garage.

**Attachments:**

1. 23-152, VAR20230187 3580 Estero Garage
2. 3580 Estero Blvd
3. Exhibit A Complete application
4. Exhibit B - TC Postcard

**Financial Impact:**

unknown

6. **Alternative Action**

Approve/ Approve with conditions

7. **Management Recommendations:**

Recommend denial of the variance request to allow the garage closer to the right of way than the principal structure. Recommend approval to allow the garage 1.2 feet closer to the side property line.

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator/Planner 1 Created/Initiated - 11/21/2023

| | |
|---|---|
| Frankie Kropacek, Operations & Compliance Director | Approved - 11/21/2023 |
| Gretchen R.H. Vose, Town Attorney | Approved - 11/21/2023 |
| Amy Baker, Town Clerk | Approved - 11/28/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/28/2023 |

**RESOLUTION NUMBER 23-152**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230187 TO ALLOW A GARAGE CLOSER TO THE ESTERO BOULEVARD STREET RIGHT-OF-WAY LINE THAN THE PRINCIPAL BUILDING AND TO ALLOW A GARAGE CLOSER TO THE SIDE PROPERTY LINE THAN THE MINIMUM SIDE SETBACK ON WATERFRONT LOTS FOR THE PROPERTY LOCATED AT 3580 ESTERO BLVD; PROVIDING FOR 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**, owners William David and Randa Majaj Veach Trust, are requesting a variance from LDC 34-1174(b) which prohibits location of accessory structures, including garages, closer to the street right-of-way line than the principal building; and

**WHEREAS**, owners are requesting a variance from LDC 34-1174(d)(1)(d) which requires accessory structures on waterfront lots to meet the same side setback as the principal building, to allow a setback 1.2 feet less than the 10 feet required by Table 34-3; and

**WHEREAS**, the STRAP number for the subject property is 29-46-24-W1-0010.0010; and

**WHEREAS**, the Property is located in the "Mixed Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Residential Conservation" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

**WHEREAS**, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on November 14, 2023, and at said 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 Section 34-87 of the LDC. The LPA voted 7-0 to recommend approval with conditions of the variance; and

**WHEREAS**, on December 4, 2023, the Town Council held a duly noticed 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 34-87 of the LDC; and

**WHEREAS**, the Town Council determined it is in the best interest of the Town to approve/ approve with conditions/ deny the request.

**NOW THEREFORE, BE IT RESOLVED 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/ did not meet its burden of proof that the requested Variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC and approving/ approving with conditions/ denying the Variance is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, interested parties and public, the Town Council APPROVES/ APPROVES WITH CONDITIONS/ DENIES the variance from LDC 34-1174(b) which prohibits location of accessory structures, including garages, closer to the street right-of-way line than the principal building in RC zoning district. The Town Council APPROVES/ APPROVES WITH CONDITIONS/ DENIES the variance from LDC 34-1174(d)(1)d. to allow an accessory structure (garage) 1.2 feet closer to the side property line than the principal structure setback of 10 feet.

Section 3. In approving/ approving with conditions/ denying the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-87 of the LDC:

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

B. The conditions justifying approval of the variance are/ are not the result of actions of the Applicant taken after the adoption of the regulation in question.

C. The variance is/ is not the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.

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

E. The conditions or circumstances on the Property are/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested variance, the following conditions of approval are imposed on the Applicant and the Property:

A. Approval of this variance 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.

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

| | |
|---|---|
| Dan Allers, Mayor | ___ |
| Jim Atterholt, Vice Mayor | ___ |
| John R. King | ___ |
| Bill Veach | ___ |
| Karen Woodson | ___ |

ADOPTED this __ day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

_____
Dan Allers, Mayor

**ATTEST:**

_____
Amy Baker, Town Clerk

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

_____
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of December 2023.

# Town of Fort Myers Beach

## COMMUNITY DEVELOPMENT DEPARTMENT
## STAFF REPORT

| | |
|---|---|
| **TYPE OF CASE:** | **Variance** |
| **CASE NUMBER:** | **VAR20230187** |
| **CASE NAME:** | **3580 Estero Blvd; requesting variance from LDC 34-1174(b) which prohibits location of accessory structures, including garages, closer to street right-of-way line than the principal building in RC zoning district. And variance from LDC 34-1174(d)(1)d. which requires accessory structures to meet the same side setback as the primary structure on waterfront lots.** |
| **TOWN COUNCIL HEARING DATE:** | **December 4, 2023** |
| **LPA HEARING DATE:** | **November 14, 2023** |
| **STAFF RECOMMENDATION:** | **DENIAL** |
| **PREPARED/ SUBMITTED BY:** | **Sarah Propst, AICP, PMP / Jason Green AICP, CFM** |

## I. APPLICATION SUMMARY

| | |
|---|---|
| Owner/Agent: | William David and Randa Majaj Veach Trust (Owner)/ Kara Stewart (Agent) |
| Request: | Variance from LDC 34-1174(b) which prohibits location of accessory uses, including garages, closer to street right-of-way line than the principal building in RS zoning district. To allow a home further from the right of way than the garage. Variance from LDC 34-1174(d)(1)d. which requires accessory structures to meet the same side setback as the primary structure on waterfront lots. This is a variance of 1.2 feet from the 10-foot side yard setback found in Table 34-3. |

| | |
|---|---|
| Subject property: | See attached site plan |
| Physical Address: | 3580 Estero Blvd |
| STRAP #: | 29-46-24-W1-0010.0010 |
| FLU: | Mixed Residential |
| Zoning: | Residential Conservation (RC) |

Adjacent zoning and land uses:

| | |
|---|---|
| North: | Residential Conservation (RC)<br>Mixed Residential |
| South: | Environmentally Critical (EC)<br>Recreation |
| East: | Residential Conservation (RC)<br>Mixed Residential |
| West: | Connecticut St. Beach Access |

## II. BACKGROUND AND ANALYSIS

Background:
William and Randa Veach, the owners of 3580 Estero Blvd, are requesting two variances from the Town's Land Development Code (LDC): 1) Section 34-1174(b) which prohibits location of accessory structures, including garages, closer to street right-of-way line than the principal building in RS zoning district. 2) Section 34-1174(d)(1)d. which requires that accessory structures on waterfront lots meet the same side setback as the primary structure.

Prior to Hurricane Ian, the property contained a single-family home with an attached garage. The house was destroyed by hurricane Ian and the remaining garage is structurally sound. The garage is located 25.1 feet from the Estero Boulevard right of way property line. The garage is also only 7.8 feet from the side property line. The current side setback requirement on a lot of this size, is 10 feet. The applicant wishes to keep the garage in its current location and construct a house that is further from Estero Boulevard than the garage.

Analysis:
The subject property is a corner lot 110 feet wide at the front and 66 feet wide at the rear, it is 150 feet deep, it is a conforming lot. Prior to Hurricane Ian, the property contained a single-family residence with an attached garage. The house was destroyed by Ian, the garage survived and has been deemed structurally sound. The garage is 25 feet from the Estero right of way and the applicant would like to build a new home, detached from the garage, further back on the property than the garage.

LDC 34-1174(b) states that accessory structures, including garages, shall not be closer to a street right-of-way line or street easement than the principal building. The Town's LDC requires a minimum 20-foot side street setback from Connecticut St. Between the existing garage and the required side street setback, there would be approximately 40 feet of width to construct a new home.

The applicant is also asking for a variance for the existing garage side yard setback of 7.8 feet. At the time of construction the required side yard setback was 7.5 feet. Per today's code and 34-1174(d)(1)d. the garage would be required to be 10 feet from the side yard property line, on this waterfront lot.

Neighborhood Compatibility:
The subject property is part of an existing residential neighborhood. Prior to hurricane Ian, few properties along Estero Blvd appear to have had accessory structures closer to the street right-of-way line than the residences. This year, the Town of Fort Myers Beach approved a request to allow a pool, closer to Tarpon Rd than the principal building (Resolution 23-20 for 8180 Lagoon Rd). Additionally, recently the LPA recommended approval for 5137 Estero Blvd to build a home further from the right of way than the garage that survived hurricane Ian.

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

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

   Regarding 34-1174(b): There are no exceptional or extraordinary conditions inherent to the property. The Applicant has the choice to construct the residence parallel with or closer to the street than the existing garage, which will be consistent with the requirements of Town's LDC. The side street setbacks from Connecticut St. is 20 feet, this would leave approximately 40 feet of buildable width for a home, although staff notes that the lot line does angle inward. The need for this variance is the result of a design choice.

Regarding 1174(d)(1)d.: There are exceptional conditions. The garage is existing and has survived the storm. It was built in compliance with the previous side setbacks and it would be difficult to move.

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

Regarding 34-1174(b): The conditions justifying the variance are the result of the actions of the Applicant. The large parcel has approximately 40 feet of width beside the garage, the applicant has opted to design a home that is behind the garage and not compliant with Section 34-1174(b) of the Town's LDC.

Regarding 1174(d)(1)d.: The conditions justifying the variance are not the result of the applicant's actions. The garage was built to comply with previous codes and the code has changed.

c. *That the variance granted **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.*

Regarding 34-1174(b): The need for this variance is a result of a design choice and is subjective in nature. No unreasonable burden is caused by the application of this regulation to the subject property.

Regarding 1174(d)(1)d.: The variance of 1.2 feet from the side yard setback is the minimum variance needed to relieve the applicant of a burden.

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

The granting of both variances will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The garage has been in the current location and placing the new single family residence further from the right of way will not be detrimental.

e. *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.*

The conditions or circumstances on this specific property for which variances are sought are not general in nature and do not warrant a code change.

## IV. RECOMMENDATION

Staff has reviewed the request for a variance *from LDC 3434-1174(b) which prohibits location of accessory structures, such as garages, closer to street right-of-way line than the principal building in the RC zoning district* and found that the variance request does not meet the requirements set-forth in sec. 34-87.

Staff has reviewed the request for a variance of 1.2 feet from *LDC 34-1174(d)(1)d. which requires accessory structures to meet the same side setback as the primary structure on waterfront lots. Per Table 34-3 the required setback is 10 feet.* Staff found that the variance request does meet the requirements set forth in Sec. 34-87

At the LPA hearing on November 14th the LPA unanimously recommended approval of the request with the conditions in this staff report.

Therefore, staff recommends **DENIAL** of the request to allow the existing garage closer to the street right of way line than the proposed single-family residence and **APPROVAL** of the request to allow the garage to be closer to the side property line than the code required 10 feet.

## IV. CONDITIONS FOR APPROVAL

If the LPA chooses to recommend approval for this variance, the town's staff will recommend the following conditions.

1) Approval of this variance 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.

## VI. EXHIBITS

Exhibit A - Complete Application Packet
Exhibit B - Postcards to Adjacent Property Owners

Exhibit A

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

This is a first part of 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 a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 3580 Estero Blvd

STRAP Number: 29-46-24-W1-00100.0010

Applicant: William Veach Phone: 307-286-4687

Contact Name: William Veach Phone: _____

Email: billyveach@gmail.com Fax: _____

Current Zoning District: RC

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: 6 du/acre Platted Overlay: ☐ YES ☑ NO

| ACTION REQUESTED | SUPPLEMENTAL FORM REQUIRED |
|---|---|
| ☐ Special Exception | PH-A |
| ☑ Variance | PH-B |
| ☐ Conventional Rezoning | PH-C |
| ☐ Planned Development ☐ Commercial ☐ Residential | PH-D |
| ☐ Master Concept Plan Extension | PH-E |
| ☐ Appeal of Administrative Action | PH-F |
| ☐ Vacation of Platted Right-of-way and Easement | PH-G |
| ☐ Other – cite LDC Section: _____ | attach on separate sheet |

## PART I – General Information

A. Applicant*: William Veach Phone: 307-286-4687

**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: 3580 Estero Blvd, FMB

Email: billyveach@gmail.com Fax: _____

Contact Name: Bill Veach Phone: 307-286-4687



Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

B. Relationship of Applicant to subject property:

- [x] 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: Kara Stewart Phone: 239-770-4198

Address: 13450 Electron Dr, FM

Email: stewart.karalyn@gmail.com Fax: _____

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: _____

## PART II – Nature of Request

Requested Action (each request requires a separate application)

- [ ] Special Exception
- [ ] Variance from LDC Section 34 - 1174 (b) & (d)
- [ ] 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: _____ Description: _____

_____

Code Section: _____ Description: _____

_____

Code Section: _____ Description: _____

_____

### PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: William David Veach & Randa Majaj Veacl Phone: 307-286-4687

Mailing Address: 3580 Estero Blvd, FMB, Fl

Email: billyveach@gmail.com Fax: _____

### AFFIDAVIT
### APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, William David Veach 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;

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.

_____ Wiliam David Veach
Signature Printed Name

**STATE OF _____ COUNTY OF _____**

The foregoing instrument was certified and subscribed before me by means of ____ physical

presence OR _____ online notarization, this _____day of _____, 20_____, by

_____, ____ who is personally known to me OR ___ who has produced

_____ as identification.

(SEAL) _____
Notary Public Signature

## PART V
### Property Ownership (Multiple Owners)

☐ 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 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V – Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

### DISCLOSURE OF OWNERSHIP INTEREST

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 |
|---|---|
| | |
| | |
| | |
| | |



Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

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

| 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 |
|---|---|
| | |
| | |
| | |
| | |

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 |
|---|---|
| | |
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| | |
| | |

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 |
|---|---|
| | |
| | |
| | |
| | |


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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 Printed Name

**AFFIDAVIT**

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

I, _____ (name), as _____ (title) of _____ (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 Town of Fort Myers Beach 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 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
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

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

_____ _____
Signature Title

_____ _____
Typed or Printed Name Date

**STATE OF _____ COUNTY OF _____**

The foregoing instrument was certified and subscribed before me by means of ___ physical presence OR ☐ online notarization, this _____day of _____, 20_____ , by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal _____
Notary Public Signature

### PART VI– Property Information

A. Legal Description:

STRAP: 29-46-24-W1-00100.0010

Property Address: 3580 Estero Blvd

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 6-1.

☑ Yes. Property identified in subdivision: Cases Subdivision

Book: 1 Page: 59 Unit: _____ Block: _____ Lot(s): 1

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 6-2.



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C. Property Dimensions:

Width (please provide an average width if irregular in shape) 88 feet

Depth (please provide an average width if irregular in shape) 153 (average) feet

Frontage on street: 110 feet. Frontage on waterbody: 66 feet

Total land area: 13504 ☐ acres ☑ square feet

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

Turn left over bridge

☑ Attach Area Location Map as Exhibit 6-3

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 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

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 6-6.

☑ Attach a map showing the surrounding property owners as Exhibit 6-7.

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

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

☐ Low Density
☑ Mixed Residential
☐ Boulevard
☐ Pedestrian Commercial
☐ Marina
☐ Recreation
☐ Wetlands
☐ Platted Overlay



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Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

### EXPLANATORY NOTES
***Please do not print, copy and submit these instructions***

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com .

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.

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. Exhibit 3-1

Explanatory Notes – Part IV

A. If the property owner is an individual or husband and wife, check the box and provide the information.



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Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Explanatory Notes – Part V

A. If there are multiple property owners exhibit 5-1, 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.
B. 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 Exhibit 5-2
C. 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 5-3.
D. 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 5-4.

Explanatory Notes – Part VI

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. Exhibit 6-1
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 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


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line. Exhibit 6-2

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). Exhibit 6-3
E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
G. 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 Exhibit 6-6. 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.
H. 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.
I. 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 IV & V

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


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Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

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.

Trustee

Signature

Wiliam David Veach

Printed Name

**STATE OF** FL **COUNTY OF** Lee

The foregoing instrument was certified and subscribed before me by means of ✓ physical presence OR ____ online notarization, this 12th day of Sept, 2023 by William D. Veach ☑ who is personally known to me OR ☐ who has produced

as identification.

Notary Public State of Florida
Kara Lyn Stewart
My Commission HH 356813
Expires 2/1/2027

Kara Lyn Stewart
Notary Public Signature

## PART V
### Property Ownership (Multiple Owners)

☐ 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 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V – Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

### DISCLOSURE OF OWNERSHIP INTEREST

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 |
|---|---|
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# SUPPLEMENT PH-B (2) 34-1174(d)(1)(d)
# SIDE YARD VARIANCE REQUEST

34-1174 (d)(1)(d)

SPECIFIC REGULATION:

Side Yard Setbacks:
For waterfront lots, the same distance as is required from any side property line for principal buildings in that zoning district (see § 34-638 of this chapter). RC zoning district for lots greater than 75' in width must meet 10' side yard setback.
Therefore requesting a reduction of 2'2.4" sideyard.

WHY THE VARIANCE IS NEEDED:

Definitions of lot width: For lots lawfully created prior to January 28, 1983, width of a lot shall be considered to be the average distance between straight lines connecting front and rear lot lines at each side of the lot, measured as straight lines between the foremost points of the side lot lines in front (where they intersect with the street line) and the rearmost points of the side lot lines in the rear.

On this property the width of the lot at the street is approximately 110' and in the rear the width of the lot is approximately 66', thus giving us an average 88' front lot line. This 88' front lot line requires a 10' side setback.

The structure is currently located 7'9.6" from the side property line. The LDC has recently been adjusted under ORD 23-02 (signed 2/23/23). Ord 23-02 requires principle structure setbacks on waterfront properties in the RC zoning districts to be 10'.
Side yard setbacks on waterfront properties must conform to the principle structure setbacks. Therefore a variance of 2'2.4" (at the narrowest point) on the side yard is required.

POSSIBLE EFFECT THE VARIANCE WOULD HAVE ON SURROUNDING PROPERTIES:

The request for the side yard variance will not have any negative effect on the surrounding properties, the structure exists and up until February 2/23/2023 was in compliance.

HARDSHIP:

To ask the owner to remove the remaining accessory structure would cause an unnecessary burden. The uniqueness of this request is simply the LDC has changed since the time the structure was constructed. The structure was originally attached to

the principle structure and has been removed by the hurricane. The structure remains in the same location originally permitted (however, will not be attached) and as the owner reconstructs their home they would like this structure to remain. This structure requires a location setback since it will now be between the street right of way and the new principle structure.

Case # _____ Date Received: _____

# 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:** 3580 Estero Blvd Detached structure |
| **Authorized Applicant:** William David Veach |
| **LeePA STRAP Number:** 29-46-24-W1-00100.0010 |
| |

| | | | |
|---|---|---|---|
| **Current Property Status:** Accessory structure remains house under permitting | | | |
| **Current Zoning:** RC | | | |
| **Future Land Use Map (FLUM) Category:** Mixed Residential | | | |
| **Comp Plan Density:** 6 du/acre | **Platted Overlay?** | ☐ **Yes** | ☑ **No** |

**Variance is requested from:**

| **LDC Section Number** | **Title of Section or Subsection** |
|---|---|
| 34-1174 (b) | Location and setbacks generally |
| 34-1174 (d)(1)(d) | Setbacks side and rear |
| | |
| | |
| | |
| | |

Complete the narrative statements below for EACH variance requested.

Case # _____ Date Received: _____

PART I

Narrative Statements

**Request for variance from** 34-1174 (b) **(LDC Section number)**

| **Explain the specific regulation contained in this section from which relief is sought:** |
|---|
| Setback from streets. No accessory use, building or structure shall be located |
| closer to a street right-of-way line or street easment than the principle structure. |
| |
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**Reasons for request**

| **Explain why the variance is needed:** |
|---|
| 34-1174 (b) |
| The structure in question survived Hurricane Ian as an accessory structure; |
| and when repaired will comply with flood vents and water resistant materials below |
| flood(The structure was Finaled in 2020 as a 2 car garage with storage space |
| above) The existing structure is 25' from street right of way. The owner is looking |
| to replace a single family further back from Estero Blvd. The property |
| is a corner lot facing Estero and Connecticut St., thus requiring an additional |
| 20' side/street yard depth of setback along Connecticut St. The lot also narrows |
| from the front to the rear by approx 20'. Additionally due to the property fronting |
| Estero Blvd., the owner is looking to increase the buffer between themselves |
| and the road, thus the replacement home will be located behind the remaining |
| accessory structure |

Case # _____ Date Received: _____

| **Explain the possible effect the variance, if granted, would have on surrounding properties:** |
|---|
| There will be no effect on the surrounding properties. The existing location of the |
| accessory structure places it 25' from the street ( which is the required setback) |
| and 7.9' to the side yard. When constructed the side yard setback was required |
| to be 7.5'. Subsequently there has been a change in side yard setback |
| requirements, Ord 23-02 which now requires this property to have a 10' |
| side yard setback. |
| When developing the single family the property will be required to provide a |
| new drainage plan which would alleviate any drainage issue. The location of the |
| remaining structure does not interfere with the visibility triangle. |
| |
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| **Explain the hardship (what is unique about the property) that justifies relief from the regulation:** |
|---|

| |
|---|
| The accessory structure in question remains today and is able to be repaired, |
| this structure was just finaled in 2020, it would create an unnecessary |
| burden on the owner to demolish it and start over. |
| The location of the remaining accessory structure places it within the property |
| street setback ,the desire is to locate the replacement principle structure further |
| back from Estero Blvd, thus creating a larger buffer, thus attempting to reduce |
| noise, trash, while increasing privacy and security. |
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Case # ______________________________ Date Received: ____________________

| Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87. |
|---|
| see attached addendum |
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PART 2
Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - iworq (talktomycity.com)

**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
- Fee in the amount of $1800.00 (residential)/Additional Variance $500.00
- Variance (non-residential) $2800.00/ Additional Variance $700.00

**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.

# DECISION MAKING CRITERIA LDC 34-87
## 34-1174 Location- Accessory in front of Principle Structure

1. Exceptional and extraordinary circumstances:

The development of the site is being done almost in reverse fashion. We have an accessory structure existing and are placing a replacement principle structure.

The desire to set the replacement structure further back from Estero than the remaining accessory structure will allow for an increased buffer (between principle structure and Estero Blvd) to assist with reduction in noise, street debris and provides for additional privacy/security while residing on Estero Blvd. The property length is such that the proposed location of the principle structure can be positioned further to the rear of the property (than the remaining accessory structure) which will lessen the burden of traffic, noise, and trash from Estero Blvd.

The remaining accessory structure is the result of Hurricane Ian removing the principle structure from the property. The location of the existing accessory structure which remains today is 25' from the front property line.

The property is a corner pie shaped lot (wider in front than rear) and thus has increased restrictions for the placement of a new principle structure.

Placing the new principle structure adjacent to the existing accessory structure would require the removal of the remaining landscaping and circular driveway. The circular driveway allows ease of ingress and egress from Estero Blvd.

The structure which remains today has been inspected by a structural engineer and has been determined to be able to remain.

2. The conditions justifying the variance are not the result of the applicant.

Hurricane Ian removed the principle structure. The owners have lived in this home since 2010, they are long time homesteaded residents of Fort Myers Beach. The decision to construct a new home on the lot allows the owner to remain on Fort Myers Beach.

Constructing the replacement principle structure in the location proposed will provide an offsetting of structures and may allow for additional view through to the Gulf. By placing the new principle structure where proposed we not only maintain the remaining landscaping and paver driveway but we will allow the owner an increased buffer between their home and Estero Blvd. The increased buffer offers the owner a reduction in street noise, and provides for additional privacy and security while residing along Estero Blvd.

3. Minimum variance needed by the applicant to relieve them from an unreasonable burden.

Allowing the accessory structure to remain so that it is closer to the street right of way than the replacement principle structure will eliminate the unreasonable burden of demolishing the structure.

The owner looked at placing the replacement home elsewhere on the property and with the constraints of the corner lot, entering/exiting Estero Blvd., the location of the remaining landscaping and driveway, taking into consideration the intent of Ord 22-01, it was

determined that the proposed location behind the remaining accessory structure would be the most appropriate location.

4. Granting this variance will not be injurious to the neighboring properties.

The issuance of this variance will not be injurious to the neighboring properties. The location of this accessory structure was in compliance with all setbacks at time of construction and has been in existence since 2020. The drainage will be required to comply with the LDC requirements and there is no visibility triangle issue with entering exiting Estero Blvd.

Allowing the principle structure to be located behind the accessory structure will enhance the overall street appearance by setting the replacement structure further back from Estero Blvd.

5. Are the conditions so common as to amend the LDC.

These conditions are unique and individual to this property since the structure was only constructed in 2020 and remains after Hurricane Ia and does not represent any prevailing issue on FMB

# DECISION MAKING CRITERIA LDC 34-87
## 34-1174 (d)(1)(d) Side yard setback

1. Exceptional and extraordinary circumstances:

The remaining accessory structure is the result of Hurricane Ian removing the principle structure from the property. The location of the existing accessory structure which remains today is 25' from the front property line and complies with principle structure setbacks. The sideyard setback is no longer in compliance as Ord 23-02 effective Feb 2023 changed the requirement for a side yard from 7.5' to 10'.

The structure which remains today has been inspected by a structural engineer and has been determined to be able to remain.

2. The conditions justifying the variance are not the result of the applicant.

Ordinance 23-02 effective February 2023 changed setbacks making this existing accessory structure no longer in compliance.

3. Minimum variance needed by the applicant to relieve them from an unreasonable burden.

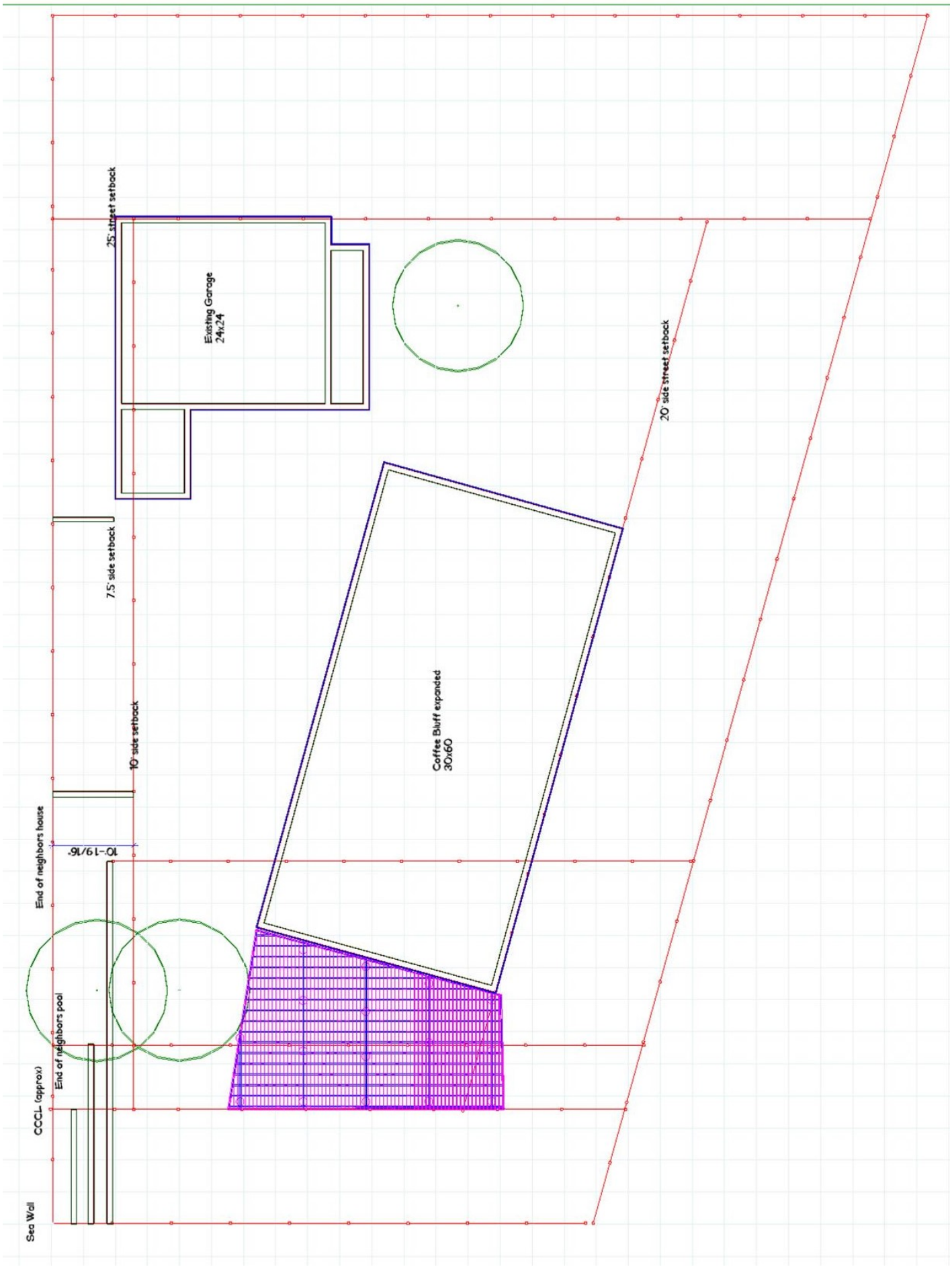
Allowing the accessory structure to remain in the current location eliminates the unreasonable burden of demolishing the structure. Demolishing the structure is the only alternative.

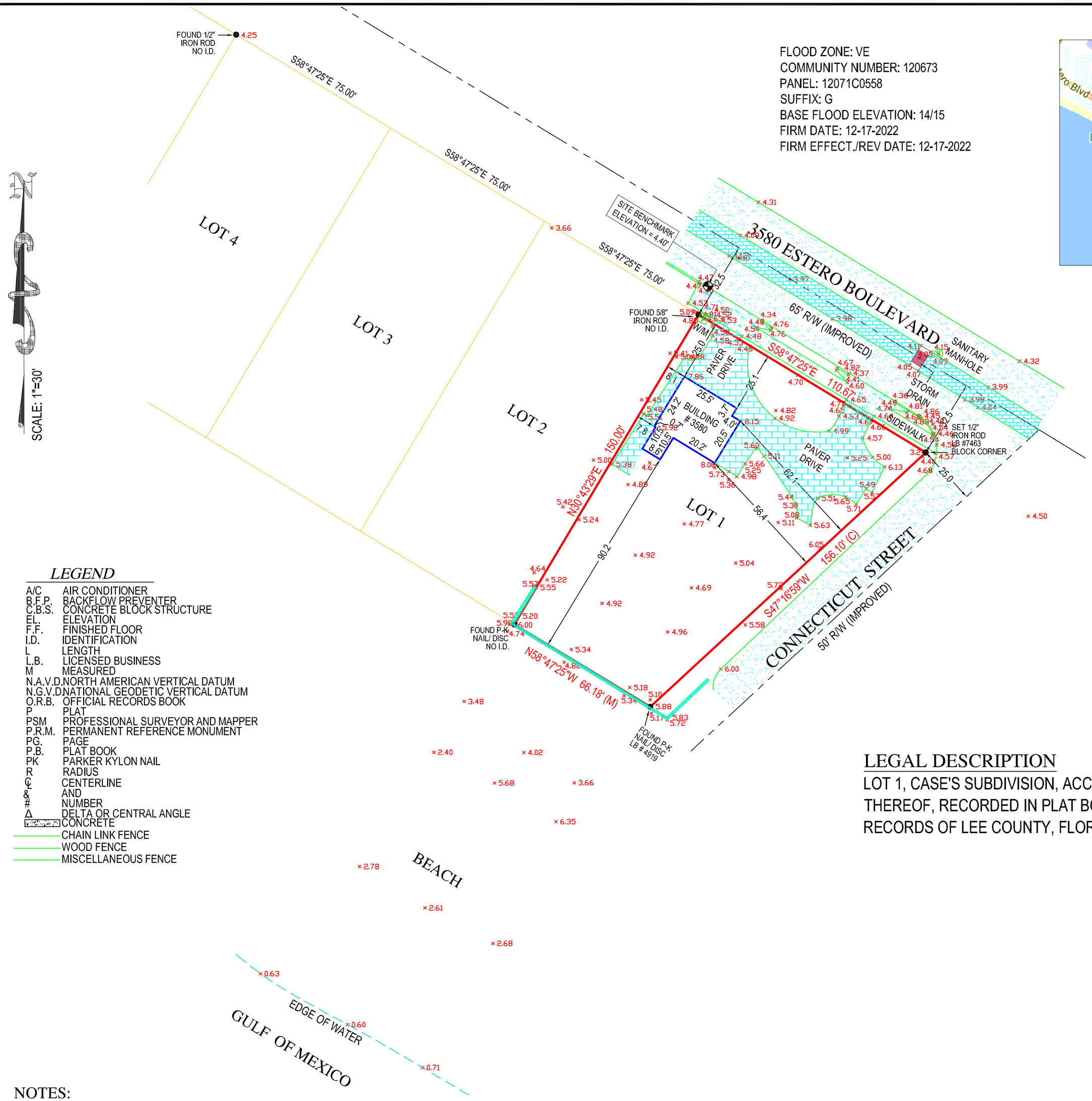
4. Granting this variance will not be injurious to the neighboring properties.

The issuance of this variance will not be injurious to the neighboring properties. The location of this accessory structure was in compliance with all setbacks at time of construction and has been in existence since 2020. Furthermore during construction of the replacement principle structure the site drainage will need to comply with the LDC, and there is no visibility triangle issue with entering exiting Estero Blvd.

5. Are the conditions so common as to amend the LDC.

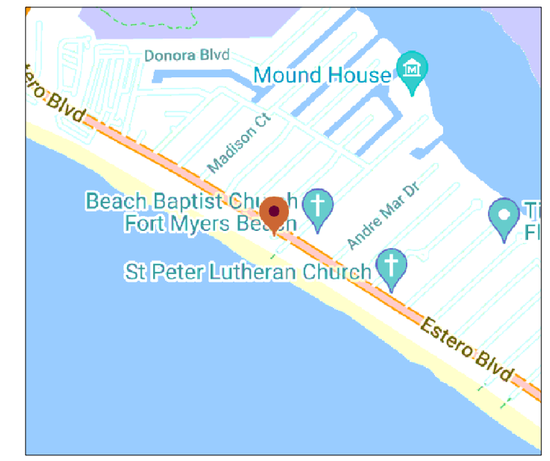
These conditions are unique and individual to this property since the structure was only constructed in 2020 and remains after Hurricane Ian therefore does not represent any prevailing issue on FMB


25' street setback
Existing Garage
24x24
20' side street setback
7.5' side setback
10' side setback
Coffee Bluff expanded
30x60
End of neighbors house
10'-1 9/16"
End of neighbors pool
CCCL (approx)
Sea Wall




FLOOD ZONE: VE
COMMUNITY NUMBER: 120673
PANEL: 12071C0558
SUFFIX: G
BASE FLOOD ELEVATION: 14/15
FIRM DATE: 12-17-2022
FIRM EFFECT./REV DATE: 12-17-2022

SCALE: 1"=30'




VICINITY MAP
NOT TO SCALE

## LEGEND

| | |
|---|---|
| A/C | AIR CONDITIONER |
| B.F.P. | BACKFLOW PREVENTER |
| C.B.S. | CONCRETE BLOCK STRUCTURE |
| EL. | ELEVATION |
| F.F. | FINISHED FLOOR |
| I.D. | IDENTIFICATION |
| L | LENGTH |
| L.B. | LICENSED BUSINESS |
| M | MEASURED |
| N.A.V.D. | NORTH AMERICAN VERTICAL DATUM |
| N.G.V.D. | NATIONAL GEODETIC VERTICAL DATUM |
| O.R.B. | OFFICIAL RECORDS BOOK |
| P | PLAT |
| PSM | PROFESSIONAL SURVEYOR AND MAPPER |
| P.R.M. | PERMANENT REFERENCE MONUMENT |
| PG. | PAGE |
| P.B. | PLAT BOOK |
| PK | PARKER KYLON NAIL |
| R | RADIUS |
| ℄ | CENTERLINE |
| & | AND |
| # | NUMBER |
| Δ | DELTA OR CENTRAL ANGLE |
| | CONCRETE |
| | CHAIN LINK FENCE |
| | WOOD FENCE |
| | MISCELLANEOUS FENCE |

ORIGINATION BENCHMARK
NATIONAL GEODETIC SURVEY
BENCHMARK "G245"
N.A.V.D. 88 ELEVATION = 4.97'

## LEGAL DESCRIPTION

LOT 1, CASE'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 1, PAGE 58, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

## NOTES:

1. LEGAL DESCRIPTION PROVIDE BY CLIENT
2. NO SEARCH OF THE PUBLIC RECORD FOR THE PURPOSE OF ABSTRACTING TITLE WAS PERFORMED BY THIS OFFICE
3. NO SUBSURFACE IMPROVEMENTS WERE LOCATED AS PART OF THIS SURVEY
4. ALL ANGLES OR BEARINGS AND DISTANCES SHOWN HEREON ARE BOTH RECORD AND MEASURED UNLESS OTHERWISE NOTED
5. SOME FEATURES MAY NOT BE AT SCALE IN ORDER TO SHOW DETAIL.
6. THE BEARINGS SHOWN HEREON ARE BASED UPON THE NORTH LINE, HAVING A BEARING OF S 58°47'25"E.

DATE OF FIELD WORK: 05-25-2023
DATE OF MAP: 06-12-2023

SURVEYORS CERTIFICATE:
I HEREBY CERTIFY THAT THIS BOUNDARY SURVEY IS A TRUE AND CORRECT REPRESENTATION OF A SURVEY PREPARED UNDER MY DIRECTION. NOT VALID WITHOUT A RAISED EMBOSSED SEAL AND SIGNATURE.

(SIGNED)
KENNETH J. OSBORNE
PROFESSIONAL SURVEYOR AND MAPPER #6415

BOUNDARY SURVEY & TOPOGRAPHY OF
3580 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931
PREPARED FOR:
IDYLL CONSTRUCTION, INC.

| Project | Sheet |
|---|---|
| C-588845 | 1 OF 1 |
| Date 05/25/2023 | |
| Scale 1"=30' | |

6250 N. MILITARY TRAIL
SUITE 102
WEST PALM BEACH, FL
33407
PHONE: 561.640.4800
FAX: 561.640.0576
LB #7463
COMPASS SURVEYING
WWW.COMPASSSURVEYING.NET

Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

## NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

**Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing which will take place at DiamondHead Beach Resort, 2000 Estero Boulevard, Fort Myers Beach, Florida, 33931.**

**TIME: 9 AM**
**DATE: December 4, 2023**
**CASE: VAR20230187**
**ADDRESS: 3580 Estero Blvd**
**APPLICANT: William Veach/ Kara Stewart**
**REQUEST: The applicant is requesting a variance from LDC 34-1174(b) which prohibits location of accessory structures, including garages, closer to street right-of-way line than the principal building in RC zoning district. And variance from LDC 34-1174(d)(1)(d) which requires accessory structures to meet the primary structure setback on waterfront lots.**

**TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM**

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Town Council** will review the application materials and hear testimony to make a **decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.

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Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1346**

1. **Requested Motion:**

**Meeting Date: December 4, 2023**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20230189 TO ALLOW RECONSTRUCTION OF A POOL, DECK AREAS, WALKWAYS, STEPS, FENCE AND TWO FOOT RINSE STATIONS, IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 7002 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

**Why the action is necessary:**

Major structures may be rebuilt within the EC zoning district with approval of a special exception.

**What the action accomplishes:**

Approval of the special exception will allow the pool, decks, walkways, steps and foot rinse stations to be rebuilt seaward of the CCCL.

| 2. **Agenda:** | 3. **Requirement/Purpose:** | 4. **Submitter of Information:** |
|---|---|---|
| PUBLIC HEARINGS | Resolution | Sarah Propst, Planning & Zoning |

---

5. **Background:**

The applicant is proposing the replacement/repair of a pool, paver decks, walkways, fence, stairs and two foot rinse stations, partially or fully within the Environmentally Critical (EC) zoning district. All of these features are part of the common element for the Island Reef Condominium and were in existence in the proposed locations, prior to Hurricane Ian. These structures are considered major accessory structures and can be replaced in the EC zoning district with approval of a special exception, per Section 34-652 (e) of the land development code. The EC zoning district starts at the 1978 Coastal Construction Control Line (CCCL) and extends seaward to the water.

**Attachments:**

1. 23-149, Island Reef Accessory in EC
2. Staff Report
3. Exhibit B Site Plan
4. Exhibit C SEZ Application Packet
5. Exhibit D Survey
6. Exhibit E TC Postcards

**Financial Impact:**

unknown

6. **Alternative Action**

Approve with conditions

7. **Management Recommendations:**

Recommend denial

8. **Recommended Approval:**

| | |
|---|---|
| Kendra Rosa, Zoning Coordinator/Planner 1 | Created/Initiated - 11/21/2023 |
| Frankie Kropacek, Operations & Compliance Director | Approved - 11/21/2023 |
| Gretchen R.H. Vose, Town Attorney | Approved - 11/21/2023 |
| Amy Baker, Town Clerk | Approved - 11/28/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/28/2023 |

**RESOLUTION NUMBER 23-149**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20230189 TO ALLOW RECONSTRUCTION OF A POOL, DECK AREAS, WALKWAYS, STEPS, FENCE AND TWO FOOT RINSE STATIONS, IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 7002 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND 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**, applicant Island Reef Condominium Association is requesting a special exception for the reconstruction of major accessory structures that were destroyed during hurricane Ian, including a pool, deck areas, steps to the beach, walkways, a fence, and two foot rinse stations in the Environmentally Critical zoning district; and

**WHEREAS**, the STRAP number for the subject property is 03-47-24-W1-02300.00CE

**WHEREAS**, the Property is located in the "Recreation" category of the Future Land Use Map of the Comprehensive Plan and the "Environmentally Critical" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

**WHEREAS**, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on November 14, 2023, and at said 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 Section 34-88 of the LDC. The LPA voted 7-0 to recommend **approval** of the special exception; and

**WHEREAS**, on December 4, 2023 the Town Council held a duly noticed 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 Section 34-88 of the LDC; and

**WHEREAS**, the Town Council determined it **is/is not** in the best interest of the Town to approve the request.

**NOW THEREFORE, BE IT RESOLVED 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/did not** meet its burden of proof that the requested Special Exception **does/does not** meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception is in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council **APPROVES/DENIES** the special exception for the use of permanent shared parking in the Downtown zoning district.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

A. Changed or changing conditions which make approval of the request appropriate.
B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
C. The request meets all performance and locational standards for the proposed use.
D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code; and

In accordance with the additional regulations and considerations found in Section 6-366 of the LDC:

A. Any repairs must comply with all relevant local and state floodplain regulations.
B. Repairs may not damage existing dunes or dune vegetation.
C. Repairs, other than those limited to emergency repairs to enclose a damaged structure, may not be completed during sea turtle nesting season.
D. A new special exception must be applied for each time the structure is repaired.

Section 4. If the Town Council approves/denies the requested special exception and the following conditions of approval are imposed on the Applicant and the Property:

A. Additional repairs to major structures in the EC zoning district will require a new special exception.

B. Approval of this special exception 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.

C. The applicant must apply for and receive all state and local permits required for the reconstruction of all proposed structures.

D. Any violation of the conditions of approval shall render the special exception null and void.

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

| | |
|---|---|
| Dan Allers, Mayor | ___ |
| Jim Atterholt, Vice Mayor | ___ |
| John R. King | ___ |
| Bill Veach | ___ |
| Karen Woodson | ___ |

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

_____
Dan Allers, Mayor

**ATTEST:**

_____
Amy Baker, Town Clerk

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

_____
Gretchen R. H. Vose, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of December 2023.

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

| | |
|---|---|
| **TYPE OF CASE:** | **Special Exception** |
| **CASE NUMBER:** | **SEZ20230189** |
| **CASE NAME:** | **Special Exception for the replacement/repair of a pool, pool deck, fence, stairs and walkway fully or partially in the EC zoning.** |
| **TOWN COUNCIL HEARING DATE:** | **December 4, 2023 at 9:00 AM** |
| **LPA HEARING DATE:** | **November 14, 2023 at 9:00 AM** |
| **STAFF RECOMMENDATION:** | **Deny Special Exception request** |
| **PREPARED/ SUBMITTED BY:** | **Sarah Propst AICP, PMP/ Jason Green AICP, CFM** |

## I. APPLICATION SUMMARY

| | |
|---|---|
| Applicant/Owner: | Island Reef Condominium Association |
| Requests: | To return the pool to pre-Ian condition; reinstallation of steps to beach; reinstallation of two, foot rinse stations; reinstallation of the fencing on the seawall, side property line and around the pool; reinstallation of walkways; reinstallation of the decks using pavers in lieu of concrete. |
| Physical Address: | 7002 Estero Blvd |
| STRAP #: | 03-47-24-W1-02300.00CE |
| FLU: | Recreation |
| Zoning: | Environmentally Critical |

Adjacent zoning and land uses:

| | |
|---|---|
| North: | Environmentally Critical (EC)/Recreation<br>Common Element of Sand Caper Condominium |
| South: | Environmentally Critical (EC)/Recreation<br>Common Element of Terra Mar Condominium |
| East: | Residential Multifamily (RM)/Mixed Residential<br>Common Element of Island Reef Club Condominium |
| West: | Environmentally Critical (EC)/Recreation<br>Beach |

## II. BACKGROUND AND ANALYSIS

Background:

The applicant is proposing the repair/replacement of a pool, paver decks, walkways, fence, stairs and two foot rinse stations, partially or fully within the Environmentally Critical (EC) zoning district. All of these features are part of the common element for the Island Reef Condominium and were in existence in the proposed locations, prior to Hurricane Ian.

These structures are considered major accessory structures and can be replaced in the EC zoning district with approval of a special exception, per Section 34-652 (e) of the land development code. The EC zoning district starts at the 1978 Coastal Construction Control Line (CCCL) and extends seaward to the water. The attached siteplan indicates the CCCL as the dashed line running through the back portion of the condominium building and through the pool.

Per a letter provided from the applicant's attorney, the pool, fence, and foot rinse stations were built in or around 1971. This would mean that they were built before the implementation of the 1978 CCCL.

With the reconstruction, the applicant will moved the pool equipment, which was previously within the EC, to the RM portion of the property. Additionally, the proposed foot rinse station located near the proposed steps will be above the seawall, not on the beach.

**Analysis:**

The condominium structure was built in 1971, per Lee Property Appraiser. Staff does not have a copy of the original development order to verify that the pool was built at the same time as the condominium, however it likely was part of the original design and therefore built prior to the creation of the 1978 CCCL.

The condominium has met the application criteria of providing notice to the condominium ownership of this special exception application and staff has received signed letters of acknowledgement from more than the code required 75% of owners.

The LDC was recently updated to allow major primary and accessory structures to be repaired in the EC zoning district with the approval of a special exception. Prior to the code change, only single-family residences could be repaired in the EC zoning district.

**Neighborhood Compatibility**:
A review of the aerials up and down the beach indicate that there are likely less than ten primary and accessory structure that extend over the 1978 CCCL. The aerials are not precise so that may be an over or under estimate of the number. These developments may request to repair the primary and accessory structure in the same location or may choose to move the structures landward of the CCCL.

**Findings and Conclusions:**
Section 6-366(b)(3) Regulations and Considerations
LDC Section 6-366 includes additional regulations and considerations for special exception approval of repairs in the EC zoning district:

a. *Any repairs must comply with all relevant local and state floodplain regulations.*

   The applicant has been coordinating with the Floodplain Administrator to ensure compliance.

b. *Repairs may not damage existing dunes or dune vegetation.*

   The repairs are proposed landward of the seawall. No dunes or native vegetation will be impacted.

c. *Repairs, other than those limited to emergency repairs to enclose a damaged structure may not be completed during sea turtle nesting season.*

   Sea turtle nesting season ended on October 31st .

d. *A new special exception must be applied for each time the structure is repaired.*

   This will be a condition of the special exception approval.

Special Exception Findings
LDC Sec. 34-88(b) sets forth the required findings and conclusions for the approval of a special exception:

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

   The pool and all facilities in the EC were destroyed or severely damaged during Ian. Construction seaward of the EC is likely to be damaged by storm surge in the future. Increasing storm surge potential makes approval of this request inappropriate.

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

   Policy 5-D-1 states: Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.

   This proposed redevelopment does not create any new development or change the location from what previously existed on the site. Therefore staff believes that this proposed request does not fall within the definition of development in the Town's code of ordinance:

   - The LDC defines *Development* as (1) A subdivision, as defined in this chapter; or (2) Any improvement to land, as defined in this chapter.
   - The LDC defines *Improvement* to land as any change to land or to any structure on the land, and shall include any movement or grading of land, except grading which is incidental to the removal of exotic vegetation and which is not prohibited by ch. 22 of this LDC; clearing of indigenous plant communities; and the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; provided, however, that any change to a building which does not involve a change in the building floor area shall not be deemed an improvement to land.

3) *Whether the request meets or exceeds all performance and locational standards for the proposed use.*

   The request will comply with local, state, and federal air, noise and water pollution standards. It will not adversely affect water quality and it will not create a nuisance to adjacent properties.

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

The request will maintain what was previously constructed on this property. It will not have an additional negative impact.

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

   There is no anticipated negative impact or injury to surrounding properties.

6) *Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.*

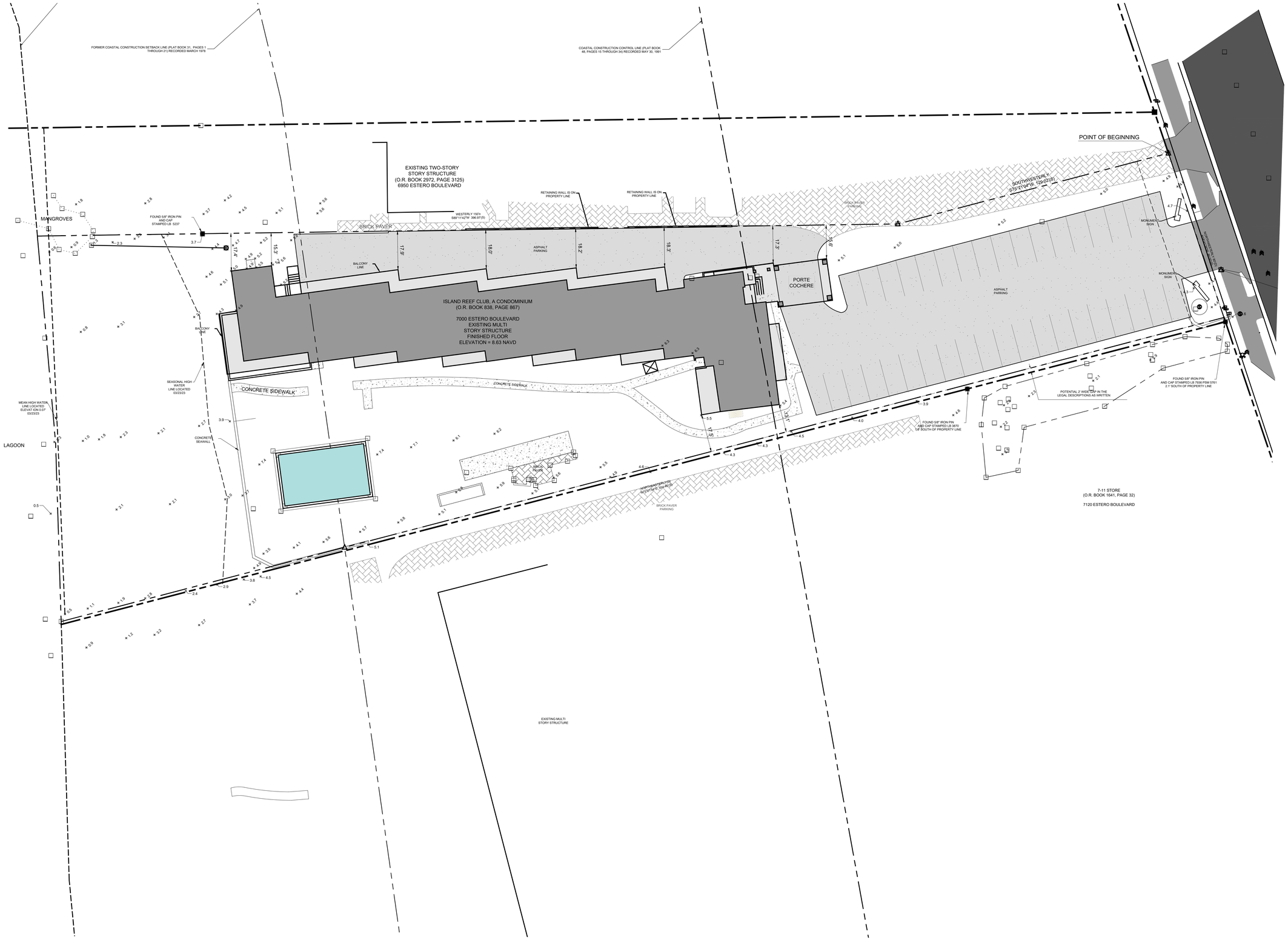
   The EC zoning district allows only passive, movable structures, no new major structures of any kind are allowed, other than dune walkovers through a special exception. Prior to the recent code change, only repairs to primary structures were permitted through a special exception. The recent code amendment allows replacement of major accessory structures also.

## III. RECOMMENDATION

Staff finds that the special exception for reconstruction of several major accessory structures in the EC zoning district is not in compliance with item Sec. 34-88(b)(1). Therefore, staff recommends **DENIAL** of SEZ20230189 for the reconstruction of a pool, deck areas, walkways, steps, fence and two foot rinse stations.

At the LPA hearing on November 14th, the LPA unanimously recommended approval of the request

Staff Report Exhibits:
A – Resolution 23-149
B – Site Layout Plan
C – SEZ Application Packet
D - Survey
E – Postcard to Adjacent Property Owners





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# Island Reef

7000 Estero Boulevard Fort Myers Beach

# DEP EXISTING CONDITIONS PLAN

▲1 Adj Fence, AC pads, Walk layout... YAC 07.12.23

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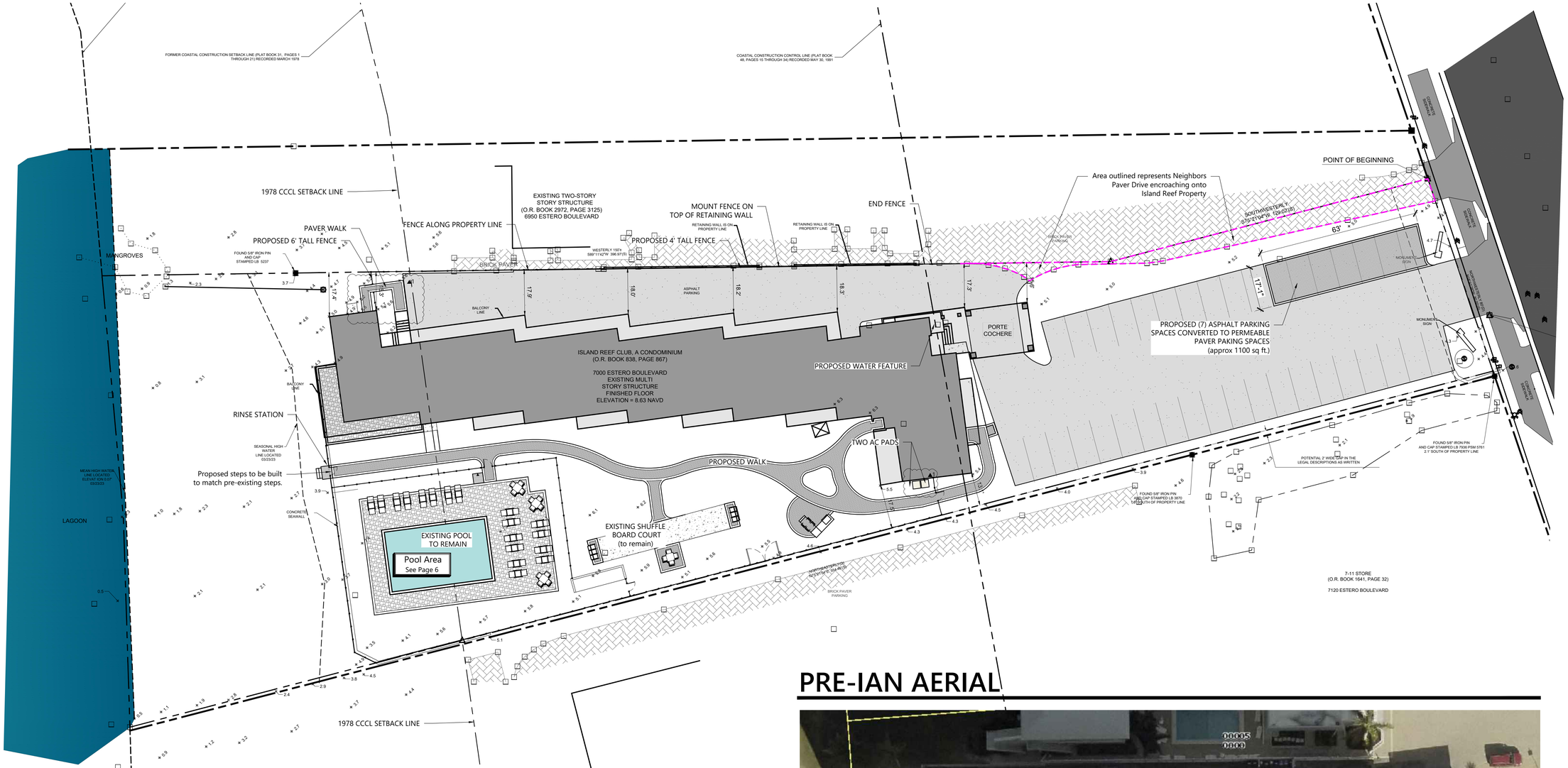
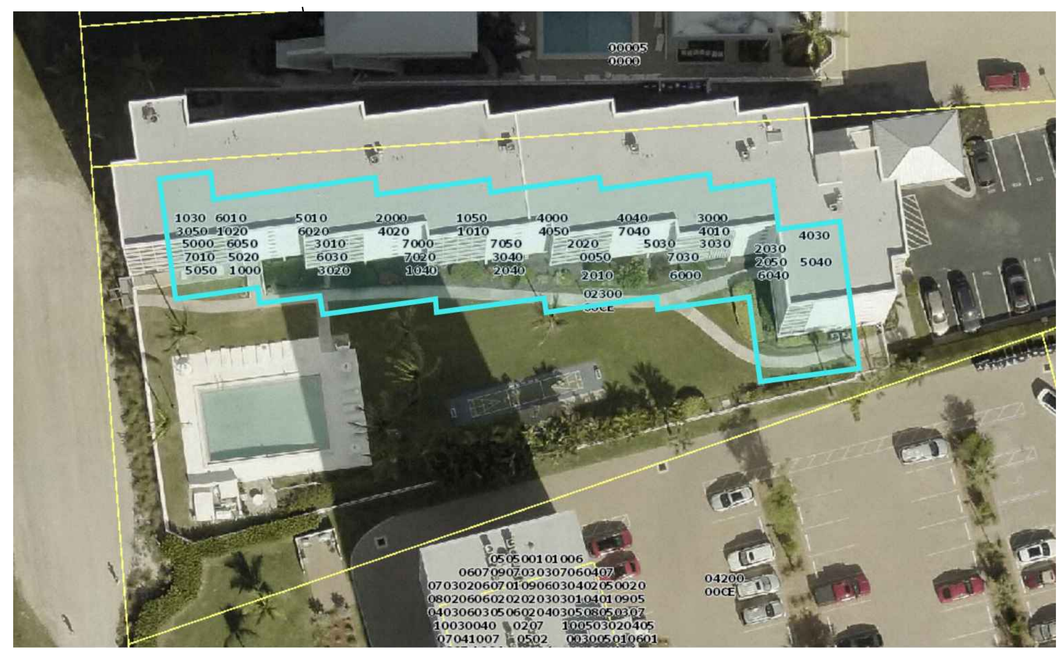



## PRE-IAN POOL COMMON AREA IMAGES

## PRE-IAN AERIAL

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# Island Reef

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## OVERALL SITE PLAN

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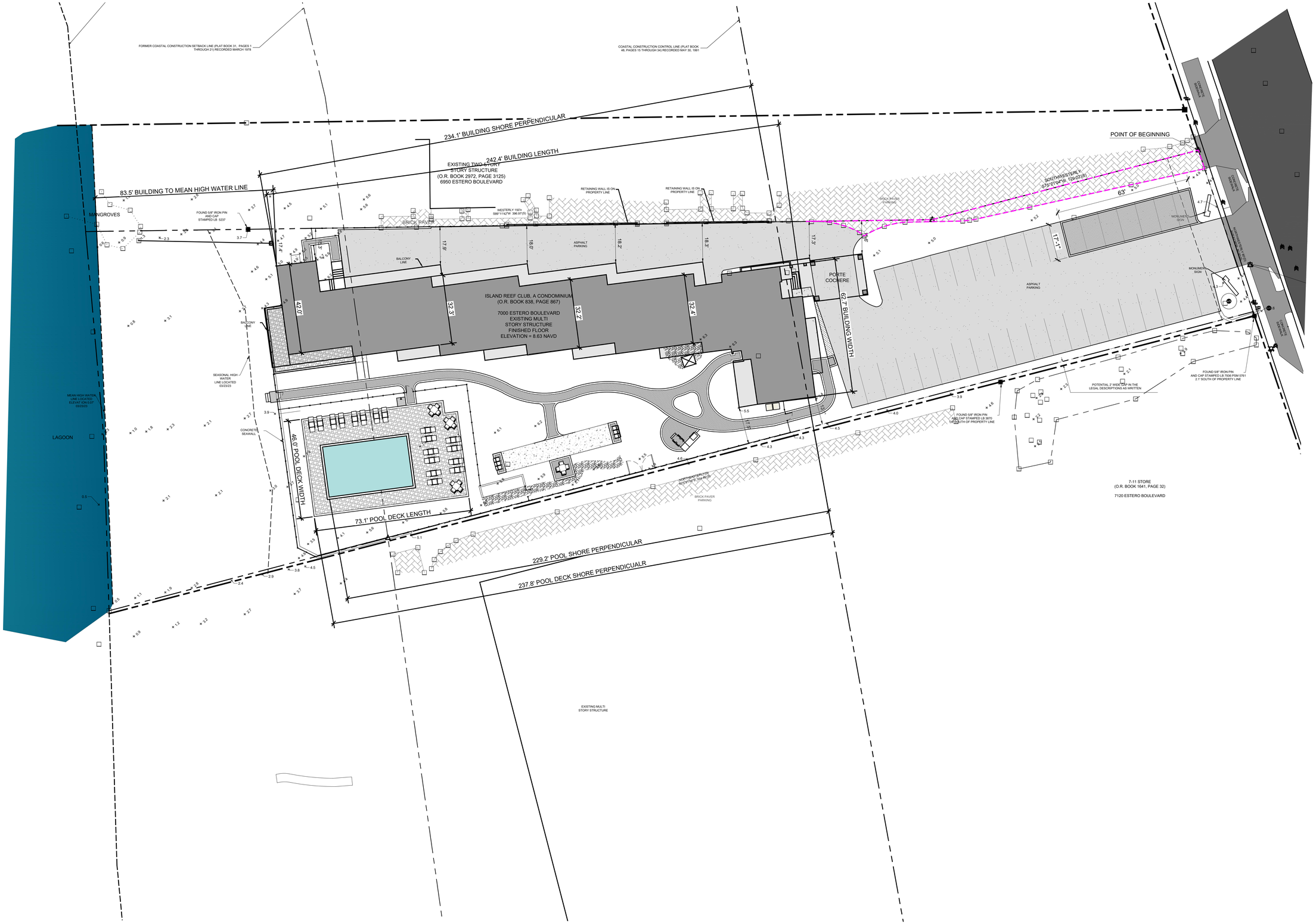



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## DEP CCCL SITE DIMENSION PLAN

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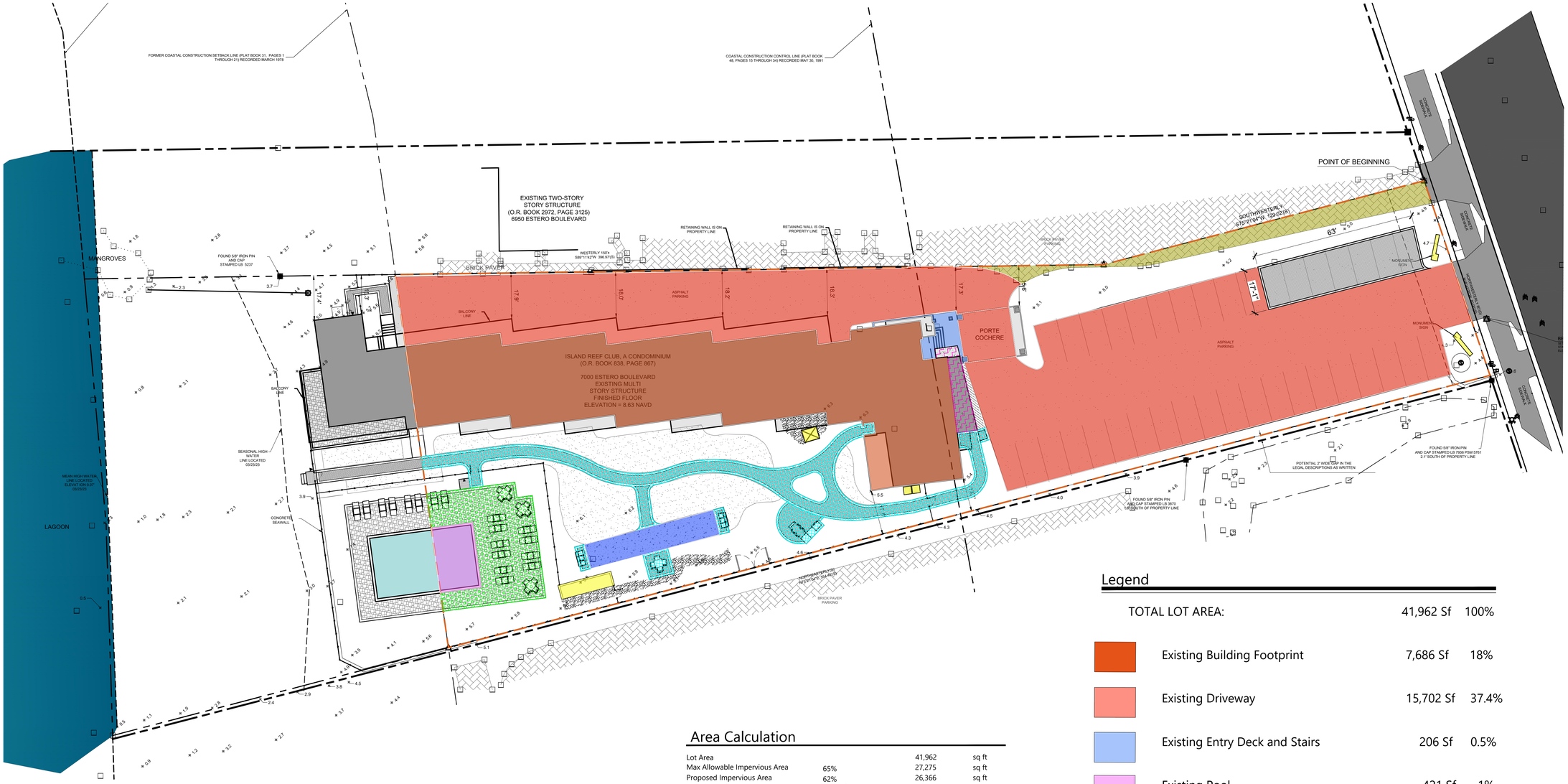


## Area Calculation

| | Impervious | Pervious | |
|---|---|---|---|
| Lot Area | | | 41,962 sq ft |
| Max Allowable Impervious Area | 65% | | 27,275 sq ft |
| Proposed Impervious Area | 62% | | 26,366 sq ft |
| Existing Building Footprint | 7686 | | sq. ft. |
| Existing Driveway | 15702 | | sq. ft. |
| Existing Entry Deck & Stairs | 206 | | sq. ft. |
| Existing Pool | 421 | | sq. ft. |
| Neighbor Driveway Convert to Gravel | | 959 | sq. ft. |
| Existing Shuffle Board | 509 | | sq. ft. |
| Utility Area | 201 | | sq. ft. |
| Ramp | 226 | | sq. ft. |
| Pool Deck | 1415 | | sq. ft. |
| Side Walk | | 3258 | sq. ft. |
| Open Space | | 11560 | sq. ft. |
| | | | sq ft. |
| Total | 26366 | 15777 | sq. ft. |

## Legend

| | | |
|---|---|---|
| TOTAL LOT AREA: | 41,962 Sf | 100% |
| Existing Building Footprint | 7,686 Sf | 18% |
| Existing Driveway | 15,702 Sf | 37.4% |
| Existing Entry Deck and Stairs | 206 Sf | 0.5% |
| Existing Pool | 421 Sf | 1% |
| Existing Neighbor Driveway (To be removed and replaced w/ Gravel) | 959 Sf | 2.3% |
| Existing Shuffle Board | 509 Sf | 1% |
| Utility Area | 201 Sf | 0.3% |
| Ramp | 226 Sf | 0.5% |
| Pool Deck (Stone Deck) | 1,415 Sf | 3.4% |
| Walk/ParkingConversion (Permeable Pavers) | 3,258 Sf | 7.7% |

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# Island Reef
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# LOT COVERAGE AREA

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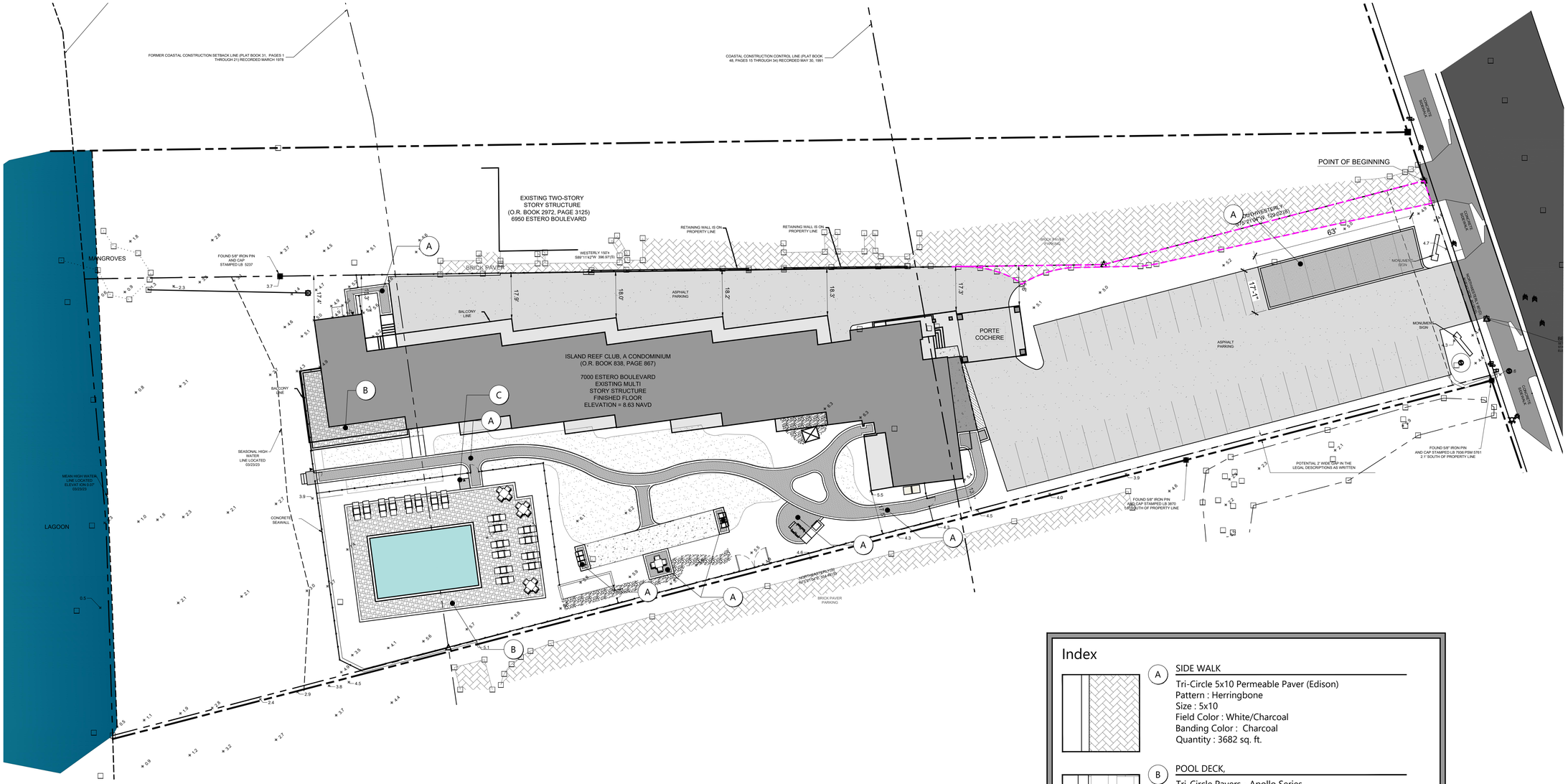
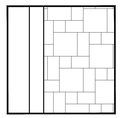


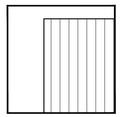

## Index



**A** SIDE WALK
Tri-Circle 5x10 Permeable Paver (Edison)
Pattern : Herringbone
Size : 5x10
Field Color : White/Charcoal
Banding Color : Charcoal
Quantity : 3682 sq. ft.



**B** POOL DECK,
Tri-Circle Pavers - Apollo Series
Pattern : Fench - 3 Peice
Size : 8x8, 8x16, 16x16
Banding Size : TBD
Field Color : White/Charcoal
Quantity : 2710 sq. ft.



**C** OUTDOOR SHOWER DECK
Trex Decking
Decking Size : 1x6"
Supporting Structure : PT Wood Framed with 57 Stone Drain Field
Quantity : 16 sq. ft. (contractor to verify)

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# MATERIAL SELECTION PLAN

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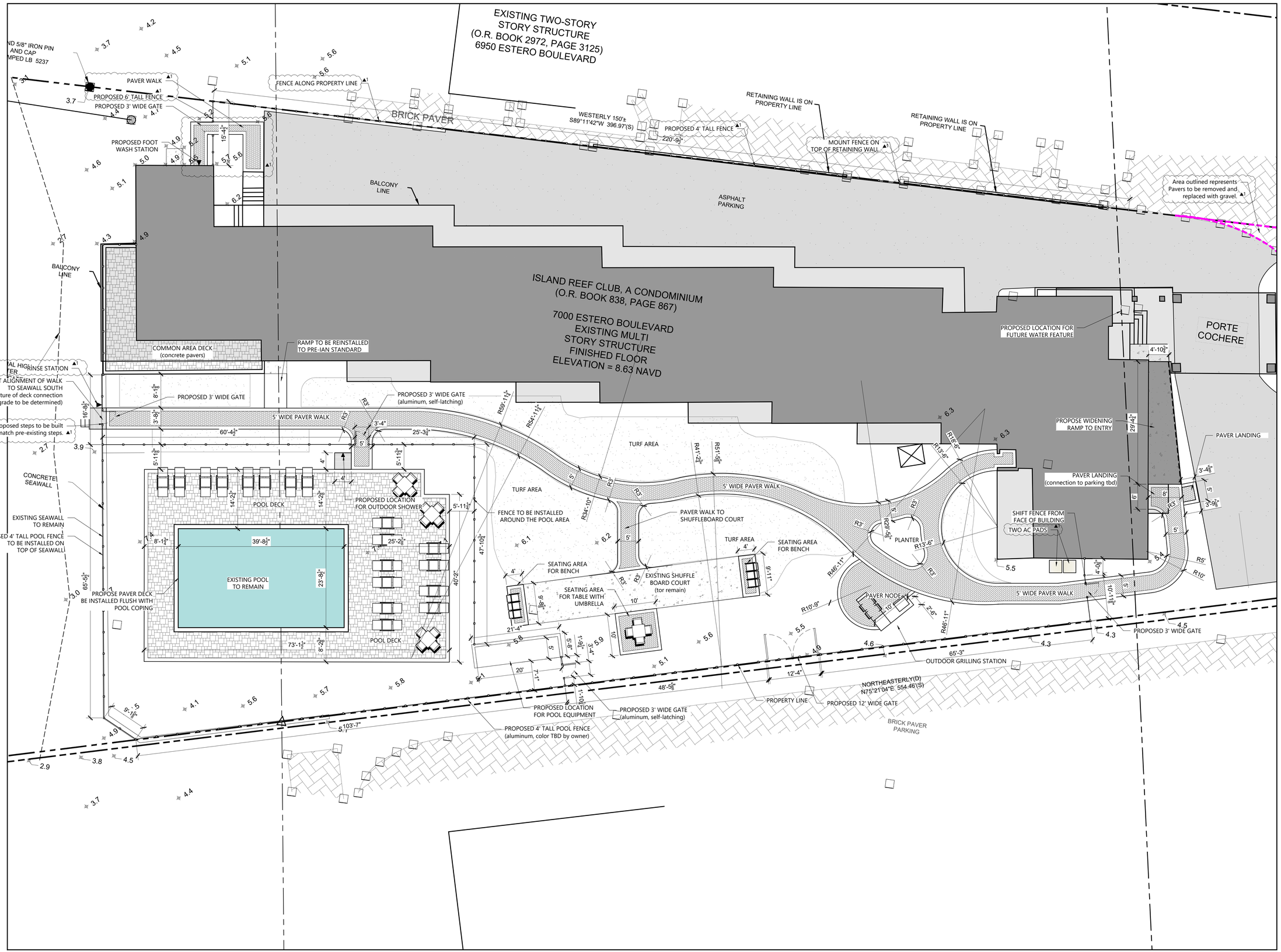



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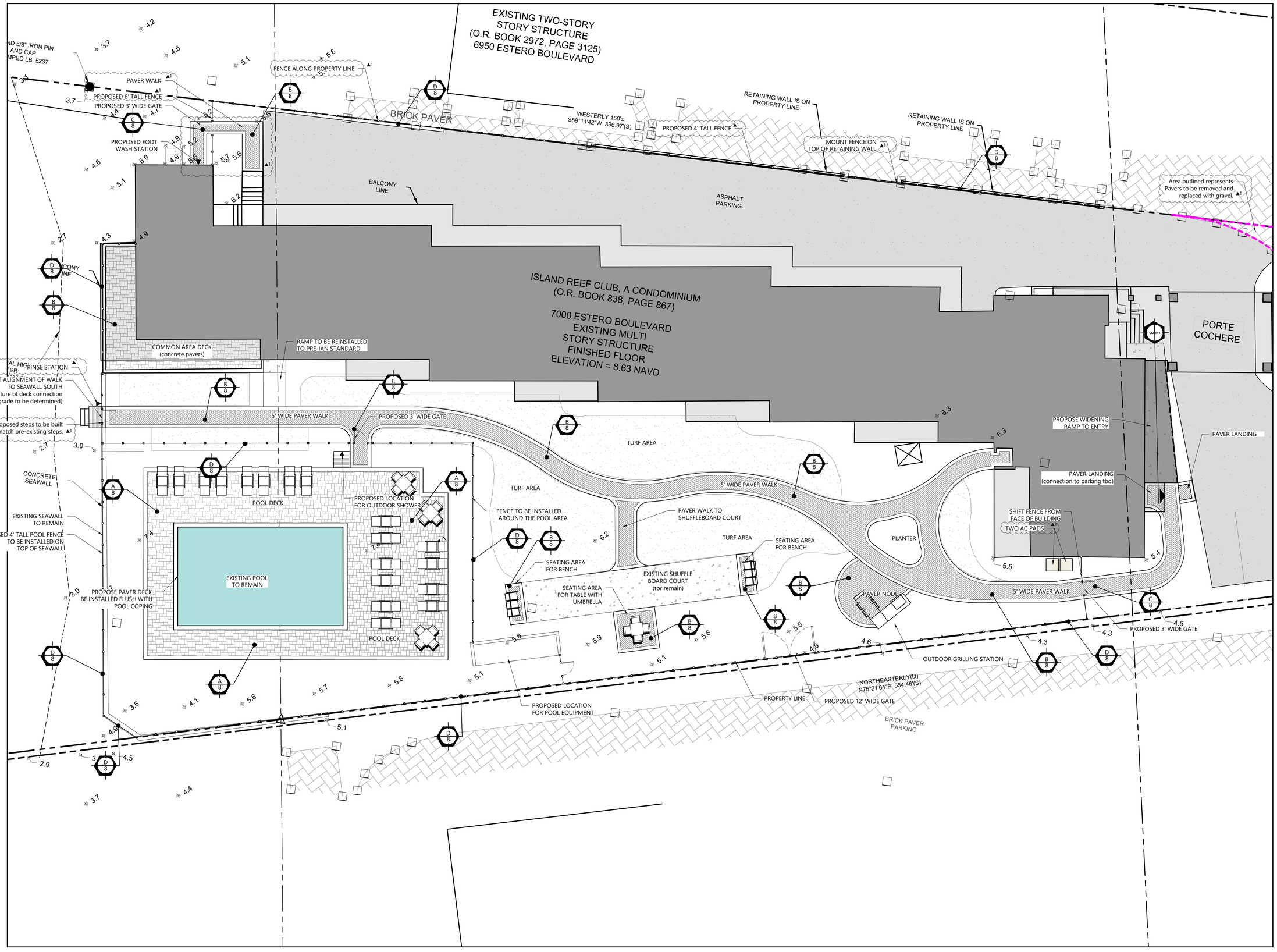



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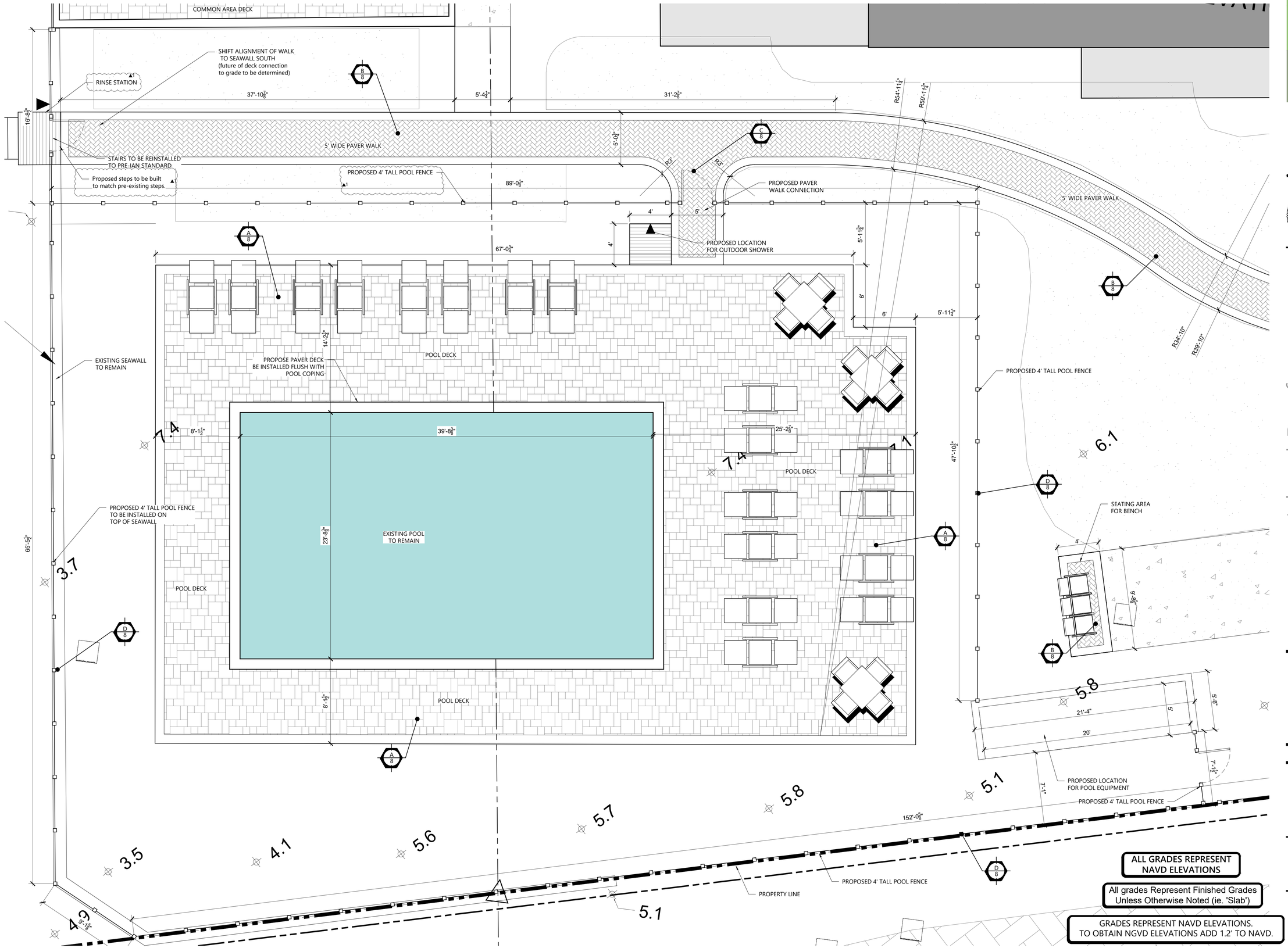


ALL GRADES REPRESENT NAVD ELEVATIONS

All grades Represent Finished Grades Unless Otherwise Noted (ie. 'Slab')

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## DEP POOL DECK ENLARGEMENT

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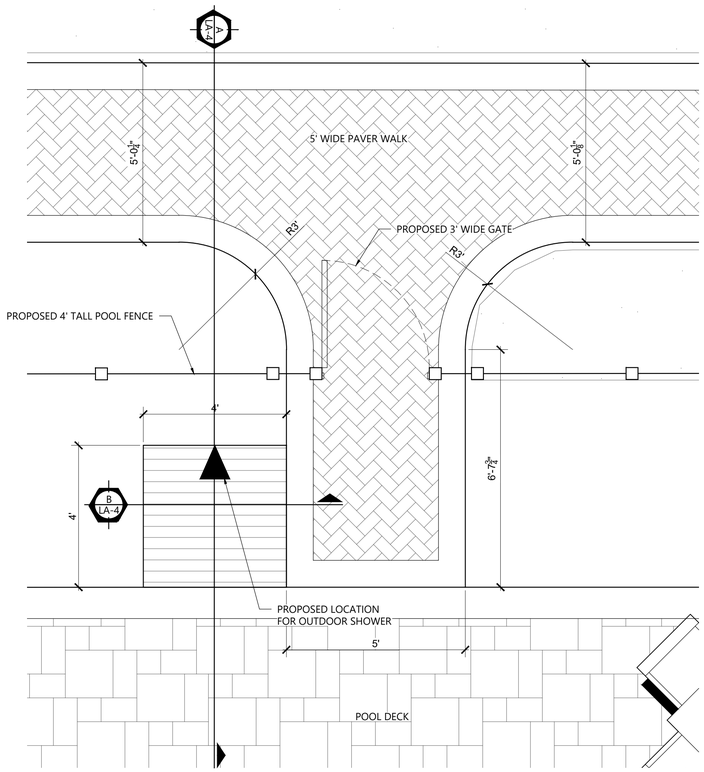
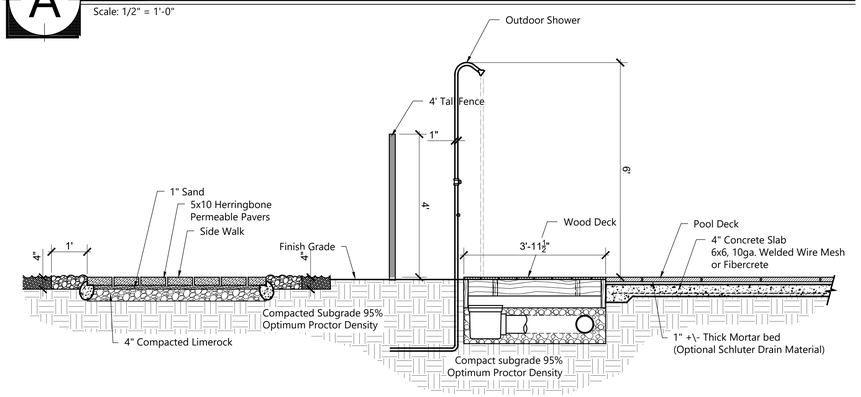
## Outdoor Shower Enlargement



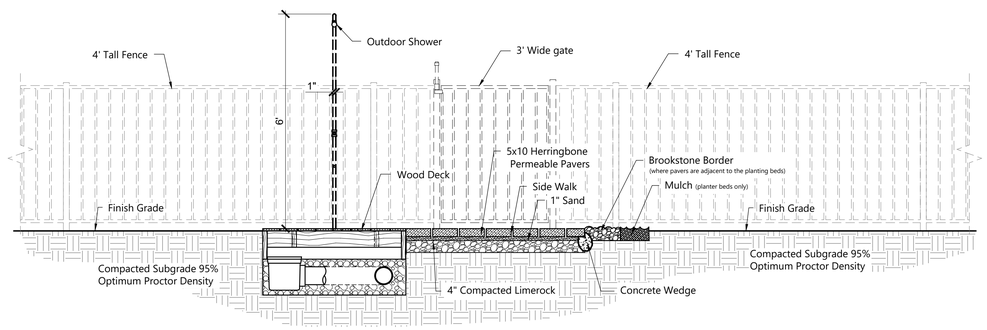

## A Outdoor Shower Section

Scale: 1/2" = 1'-0"




## B Outdoor Shower Elevation

Scale: 1/2" = 1'-0"

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# OUTDOOR SHOWER ENLARGEMENT PLAN

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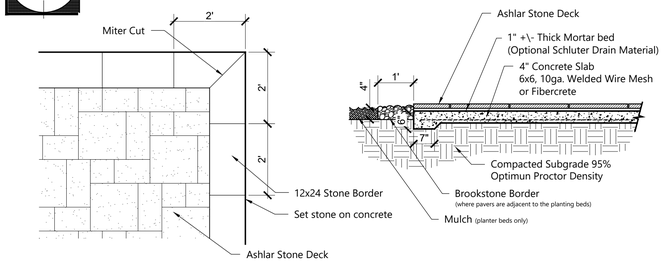
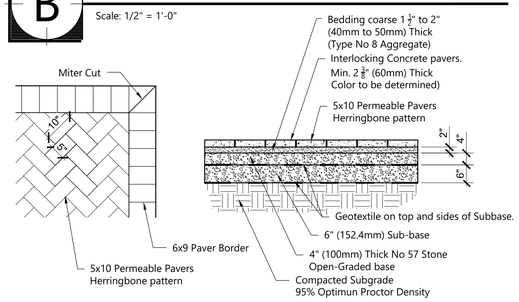
## A Stone Paver Detail

Scale: 1/2" = 1'-0"



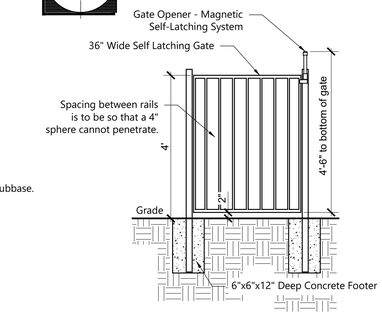

## B Permeable Paver Detail

Scale: 1/2" = 1'-0"




## C Pool Gate Detail

Scale: 1/2" = 1'-0"




## D Fence Detail

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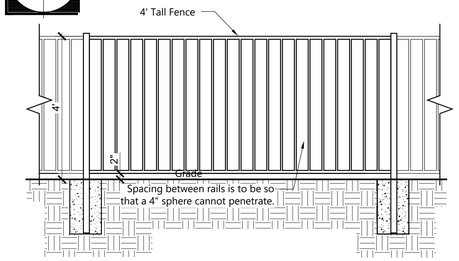
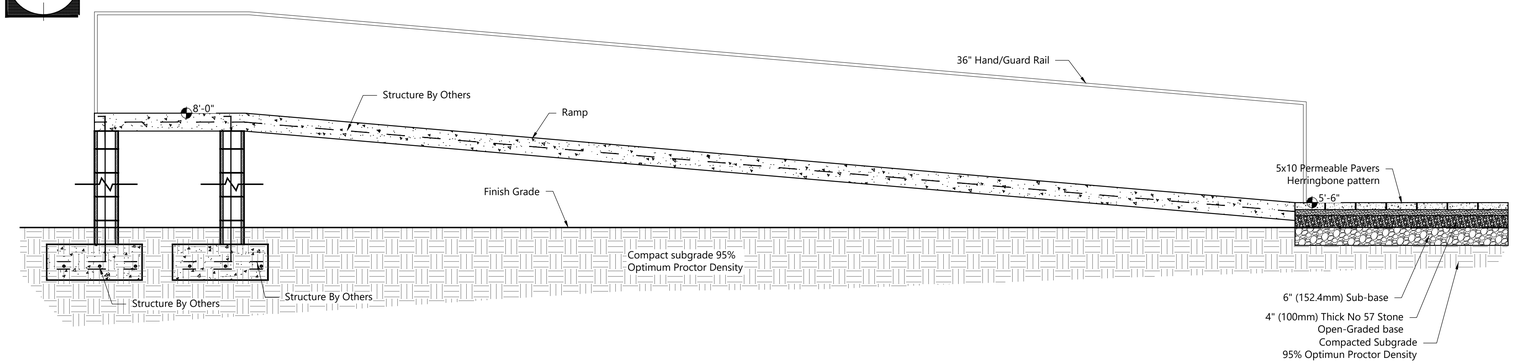


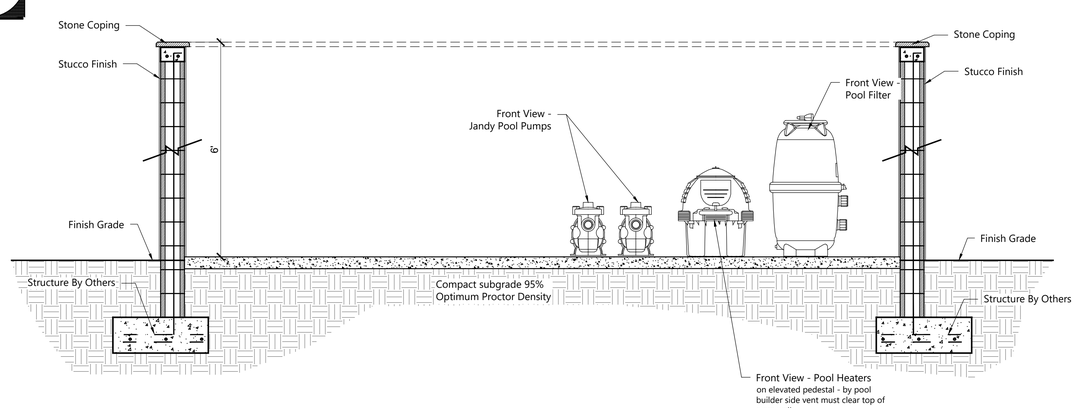

## E Ramp Section

Scale: 1/2" = 1'-0"




## F Pool Equipment Section

Scale: 1/2" = 1'-0"

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# Island Reef
7000 Estero Boulevard Fort Myers Beach

# HARDSCAPE DETAILS

▲1 Adj Fence, AC pads, Walk layout... YAC 07.12.23
Drawing Date: PM 06.12.23
Scale: As Noted
23-020
File Name: 23-020 - 0d.dwg

Architectural Information Provided By:
Company Name: ----
File Name: ----
Date: ----

Site Information Provided By:
Company Name: ----
File Name: ----
Date: ----

8

Contractor to confirm quantities and materials selections with owner before construction.
Contractor to verify property lines and setbacks before construction.
Contractor must have property lines staked and located,
and must verify plan dimensions and field conditions are consistent.
Any Inconsistencies w/ these plans need to be reported to ALD and the Owner.
Contractor shall verify that he has the most up to date plans, and that they have been approved and accepted by the Owner before commencing construction.

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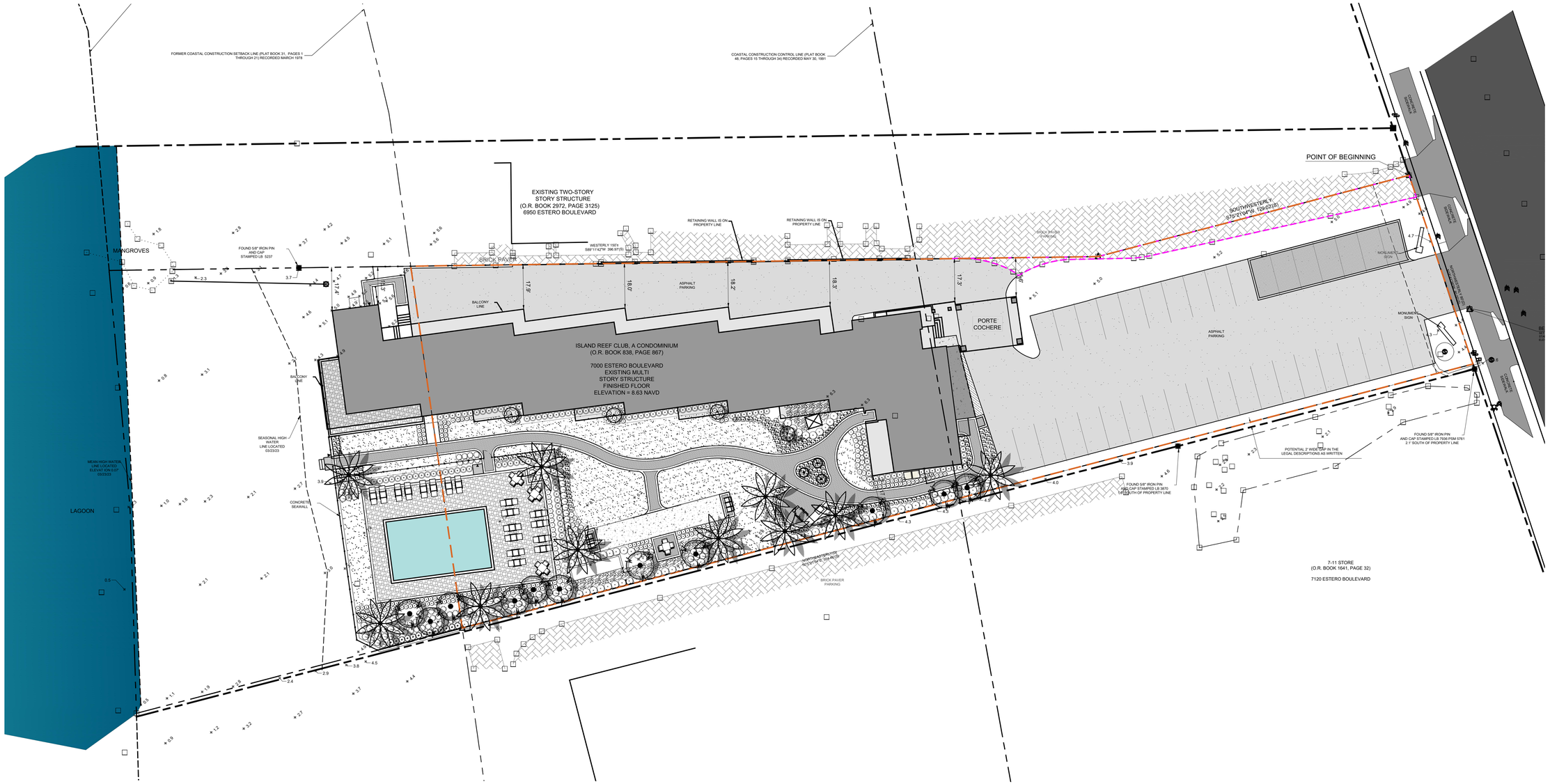



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# OVERALL SITE PLANTING PLAN

▲1 Adj Fence, AC pads, Walk layout... YAC 07.12.23
Drawing Date: PM 06.12.23

Scale: 1"=20'-0"

23-020

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File Name: 23-020 - 2.0.dwg

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File Name: ----
Date: ----

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Contractor to verify property lines and setbacks before construction.
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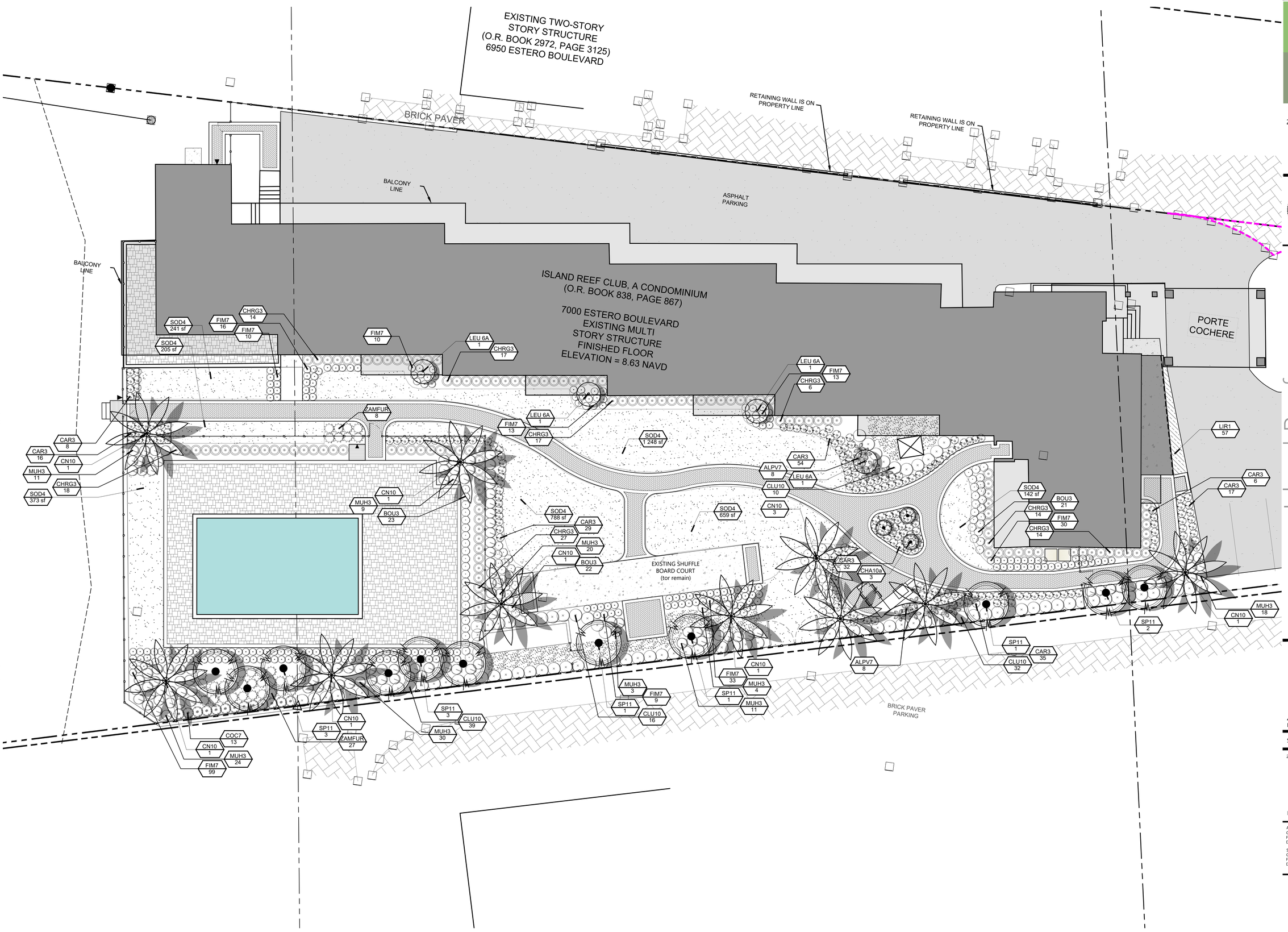



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# AMENITY PLANTING PLAN

▲1 Adj Fence, AC pads, Walk layout... YAC 07.12.23
Drawing Date: PM 06.12.23

Scale: 1" = 10'

23-020

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Contractor shall verify that he has the most up to date plans, and that they have been approved and accepted by the Owner before commencing construction.

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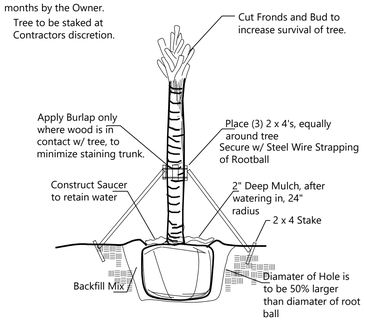
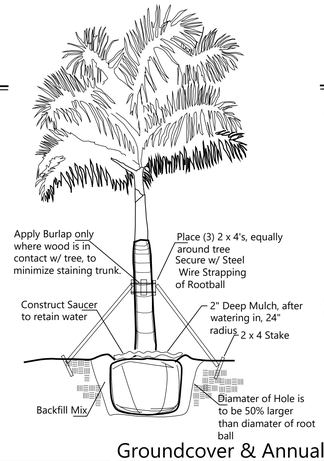
## Palm Tree Staking Detail

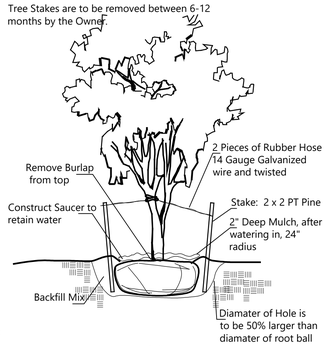
Tree Stakes are to be removed between 6-12 months by the Owner.
Tree to be staked at Contractors discretion.




## Tree Staking Detail

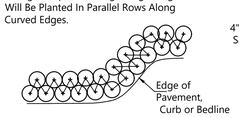
Tree Stakes are to be removed between 6-12 months by the Owner.




## Shrub & Groundcover Planting Detail

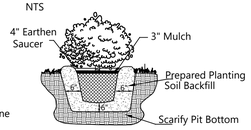
NTS

Note: All Shrubs And Groundcovers Shall Be Triangular Spaced Along Straight Edges And Will Be Planted In Parallel Rows Along Curved Edges.



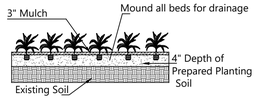

SHRUB DETAIL

NTS




## Groundcover & Annual Detail

NTS
NOTE: Annuals Are To Be Planted As Per Groundcover Detail Excluding Mulch.




## Notes

All Plants shall be Florida No.1
Contractor Shall be familiar w/ the Landscape code and shall comply with all of its applicable requirements. Contractor shall verify all quantities indicated at time of bid. Contractor shall provide unit prices at time of bid. All contractors working on the project shall be licensed and fully insured as required. Tree and palm staking shall be removed between 6 and 12 months after planting.

## Planting Specifications

QUALITY: All plants shall be Florida No.1 or better as given in Grades & Standards for Nursery Plants, Parts I and II, latest edition published by the Florida Department of Consumer Services.

RESEARCH : Contractor shall research plans and site to determine present location of utilities and obstructions before commencing work. Contractor shall ensure that before he commences work that all necessary permits have been obtained.

The contractor shall personally examine the project site and fully acquaint himself with all of the existing conditions in order that no misunderstanding may occur.

No Additional compensation will be granted, after bid has been let for any hardships the contractor may encounter in the performance of his duty. Any discrepencies or errors not addressed at the time of bid.

DRAWINGS : Drawings are part of thhis contract. Any discrepencies between the drawings and specifications shall be brought to the attention of the owner at time of bid.

SCOPE : Under this contract, the work consists of furnishing all labor, material, equipment, transportation, etc., to complete all landscaping work as shown on the Drawings, as included in the Plant List and as herein specified. Work shall include all construction and maintenance/watering of all planting areas of this Contract until accepted by the Owner.

The contractor shall be responsible for all planting/ maintenance of plants until acceptance by Owner. Contractor shall protect all existing structure, plants etc., from damage during the construction process.

All damage shall be repaired at the contractors expense

WARRANTY: All trees shall be warrantied for a period of 1 year. All shrubs and groundcovers shall be warrantied for a period of 90 days, and sod shall be warrantied for a period of 30 days. Warranty begins at time of acceptance. All warranties shall be provided to the owner.

REPLACEMENT: All plant replacements shall be done with the same size and species of plant that was specified.

SAMPLES: Samples of any landscape material may be required for approval on the site or as otherwise determined by the Owner. Upon approval of samples (i.e. mulch, planting soil, plant varieties, etc.) by the Owner, delivery of material may begin. Approved samples shall be stored on the site and protected until furnishing of materials is completed. Plant samples be planted in permanent positions, but labeled as samples.

SUBSTITUTIONS : Any substitutions made for any reason must be approved by the owner.

WATER : It is the contractors responsibility to obtain and adequately water the plants during the duration of the installation phase. All plants shall be freshly dug,healthy and be well branched, free form disease and insects.

CONTAINER GROWN MATERIAL : All container grown materials shall be healthy vigorous, well rooted plants, and established in the container so that the root mass will retain its shape and hold together when removed from the container.

PALMS : Only a minimum numer of fronds shall be removed from the crown of palm trees to facilitate moving and handling. Cabbage palm heads shall be tied with a burlap strip per the following procedure: The first (inside) row of fronds contiguous to bud shall be removed. The next 3-4 rows shall be tied to bud for support. The remaining (lower) fronds shall be removed. Tied fronds and bud tip shall not be clipped. Burlap strip shall be left in place until the tree is well established.

PALMS : Clear trunk (c.t.) shall be measured from the ground at time of installation to the point where the mature aged trunk joins the immature green portion of the tree. Caliper shall be measured at breast height. Overall height (OA) shall be measured from the ground at the time of installation to a point one-quarter the length of the unopened bud below the bud tip.

SHADE TREES : Height shall be measured from the gorund to the avg. height of canopy. Spread shall be measured to the average outer edge. Single trunk trees shall be free from low-crotches.

SHRUBS: Height shall be measured from the ground to the average point where mature plant growth stops. Spread shall be measured to the end of branching equally across the shrub mass. Measurements are not to include any terminal growth.

SOD: Sod shall be measured on the basis of square footage. Contractor shall be responsible for coverage of the square footage shown on the plans.

SOD: Time delivery so that sod will be placed within 24 hours after.

MULCH: Apply 3" Pine Straw mulch to all planting areas. Keep mulch from piling up along the base of the tree and shrubs. Mulch to be measured after compaction.

FINE GRADING
The landscape contractor shall be responsible for fine grading of the site. This means that the site shall be brought within 1" of final grade so that the landscape contractor will be able to perform final grading. All landscape areas, sod areas, are to be fine graded.

PLANT LAYOUT: All bed areas shall have planting laid out prior to planting.
The Landscape Architect shall review all layout prior to planting. If the bed and shrub layout is not inspected prior to planting, the Landscape Architect reserves the right to relocate the plants.

SOIL

Planting beds shall contain good soil, complete with organic sand mix. There shall be no construction debris, rock larger than 1" within bed areas. Soil shall be dark grey-brown in organic color and shall have good drainage characteristics.
Soil within planting beds shall not be compacted.
All compacted sub-base/ shell is to be removed from all landscape areas.

| BACKFILL/SOIL MIX | ANNUALS |
|---|---|
| 50% decomposed organic matter (muck) | 100% Potting Soil |
| 50% existing soil | |
| pH: 5.5 - 7.0 | |

FERTILIZER : Two fertilizers shall be used in all types of plantings except palms. Granular fertilizer shall be uniform in composition, dry and free flowing.
This fertilizer shall be 6-6-6 Nitrogen-Phosphorous-Potassium. Tablet Fertilizer (Agriform or equal) in 21 gr size, shall meet the following requirements: 20% Nitrogen, 10% Phosphorous, 10% Potassium.
The two fertilizers will be applied at the following rates:

| 1. PLANT SIZE | 6-6-6 "AGRIFORM" TABLET (21 GRAM) | |
|---|---|---|
| 1 gal. | 1/4 lb. | 1 |
| 3 gal. | 1/3 lb. | 2 |
| 7-15 gal. | 1/2 lb. | 4 |
| 1"-6" caliper | 2 lbs./1" cal. | 2/1" caliper |
| 6" and larger | 3 lbs./1" cal. | 2/1" caliper |

2. Magnesium sulfate or "Palm Special" will be applied to all palms at installation at a rate of 1/2 lb. per inch of trunk caliper.

PRUNING: Each plant shll be pruned to complement the natural character of the tree. All dead and brown fronds, leaves, branches shall be removed.

TREE GUYING AND BRACING : Firmly stake or guy all trees in accordance with the plans and planting details immediately after planting to prevent wind damage.

WEED CONTROL: All landscape areas shall be free of nut grass, torpedo grass, and other noxious weeds.

PLANT MAINTENANCE: Contractor shall maintain all plants until final acceptance by owner.

CLEAN-UP: Contractor shall clean site area every day. The site shall be devoid of all rubbish, landscape debris, containers.

## PLANT SCHEDULE

| PALMS | CODE | QTY | COMMON / BOTANICAL NAME | CONTAINER | CALIPER | SIZE | | REMARKS |
|---|---|---|---|---|---|---|---|---|
| | CHA10a | 3 | European Fan Palm / Chamaerops humilis | 10 gallon | Single Trunk | 4` x 3` oa | | |
| | CN10 | 10 | Maypan Coconut Palm / Cocos nucifera `Maypan` | 10` - 15` ct (27` - 32` oa), Field grown | | | | |
| | LEU 6A | 4 | Key Thatch Palm / Leucothrinax morrisii | 6`-8` oa, Single | | | | |
| | SP11 | 11 | Cabbage Palmetto / Sabal palmetto | 12` 15` 18` ct | 16-18" | | | |
| SHRUBS | CODE | QTY | COMMON / BOTANICAL NAME | CONTAINER | SPACING | SIZE | | REMARKS |
| | ALPV7 | 16 | Variegated Shell Ginger / Alpinia zerumbet `Variegata` | 7 Gallon 30" | | | | Remove Dead Leaves maintain 36" - 60" |
| | BOU3 | 91 | Bougainvillea / Bougainvillea spectabilis `Helen Johnson` | 3 gallon 16" | | | | |
| | CAR3 | 219 | Emerald Blanket Carissa / Carissa macrocarpa `Emerald Blanket` | 3 gallon 12" | | | | Maintain 6-8" ht |
| | CHRG3 | 128 | Green Cocoplum / Chrysobalanus icaco | 3 gallon 24" | | | | Maintain 48"-72"" |
| | CLU10 | 97 | Small-Leaf Clusia / Clusia guttifera | 10 gallon | | | | Maintain 36"-60" |
| | COC7 | 13 | Sea Grape / Coccoloba uvifera | 7 gal 36" | | | | Maintain 36"-60" |
| | FIM7 | 236 | Green Island Ficus / Ficus microcarpa `Green Island` | 7 gallon 18" x 18" | | | | |
| | MUH3 | 130 | Pink Muhly / Muhlenbergia capillaris | 3 gal 20" | | | | |
| | ZAMFUR | 35 | Cardboard Palm / Zamia furfuracea | 3 gallon 18" | | | | |
| GROUND COVERS | CODE | QTY | COMMON / BOTANICAL NAME | CONTAINER | SPACING | SIZE | SPACING | REMARKS |
| | LIR1 | 57 | Evergreen Giant Border Grass / Liriope muscari `Evergreen Giant` | 1 gallon 12" | | | 12" o.c. | Remove dead leaves |
| AGGREGATE | CODE | QTY | COMMON / BOTANICAL NAME | CONTAINER | SPACING | SIZE | SPACING | REMARKS |
| | SHELL | 393 sf | Crushed Shell / Aggregate Shell Shell | 3" Min depth, set on black filter fabric | | | | |
| SOD/SEED | CODE | QTY | COMMON / BOTANICAL NAME | CONTAINER | SPACING | SIZE | SPACING | REMARKS |
| | SOD4 | 3 912 sf | Empire Zoysia / Zoysia japonica `Empire` | sod | | | | Certify Disease and insect free |

### Notes

1. All Plants shall be Florida No. 1 or Better.
2. Landscape Contractor shall review plans and indicate any availability problems at time of bid. Landscape contractor shall be responsible bidding and installing all plantings as they are drawn on the plan, and shall verify the accuracy of the plant list vs the drawn plan, at the time of bid.
3. All plants indicated in zones, C or S, are susceptible to damage from cold temperatures.
4. Contractor shall maintain all plantings until acceptance by Owner.
5. All beds shall be weed free until acceptance by owner. Wherever weeds are present in turf beds or landscape beds, a round application to kill these weeds before sodding or planting shall be required.
6. All Trees and Palms shall be warranted for a period of 6 months. All Shrubs shall be warranted for a period of 90 days. All Sod shall be warranted for a period of 30 days. Warranty begins at time of acceptance of project.
7. All Sod shall be warranted for 30 days.
8. It is the landscape contractor's responsibility to coordinate w/ the Irrigation contractor to ensure adequate coverage exists.
9. Contractor shall install a Bio Barrier Fabric around all palms within 4' of pavement or planter walls, and all large canopy trees within 10' of a sidewalk.
10. Contractor shall be licensed and insured.
11. Contractor shall maintain site in a clean fashion and shall remove any waste that he creates.
12. Landscape Contractor shall have a pre-construction review of plans w/ Landscape Architect prior to ordering plant material, to verify plans are current, and that no changes are necessary. Contractor shall also schedule a walk thru to allow Landscape Architect to review flagging and placement of all plant material prior to installation. These above mentioned meetings are important to the quality control of the project. Landscape contractor understands that if work commences without these meetings, that the owner and Landscape Architect have the ability to make field changes to the plans at the Landscape Contractors expense.
13. General Contractor / Site contractor shall make certain that all soil for planting areas shall be of suitable landscape quality fill. Soil shall be comprised of a sandy base, and have good organic and good percolation qualities.
14. General Contractor / Site contractor shall make certain all limerock, and excessively compacted soils shall be removed from planting beds.
15. Landscape Contractor shall make certain that the site conditions meet to their satisfaction before installing plant material.
16. If Landscape contractor has any concerns over the survivability of plant materials, he must inform the owner immediately.
17. Contractor to confirm any pest (Deer, Rabbit, etc) issues prior to planting and provide appropriate solution to alleviate issue; ie, incorporate deterrents, or suggest alternate plant materials.

Contractor shall verify that he has the most up to date plans, and that they have been approved and accepted by the Owner before commencing construction.

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# Island Reef
7000 Estero Boulevard Fort Myers Beach

# PLANTING SCHEDULE & NOTES

▲1 Adj Fence, AC pads, Walk layout... YAC 07.12.23
Drawing Date: PM 06.12.23
Scale: N/S
23-020
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File Name: 23-020 - 2.0.dwg

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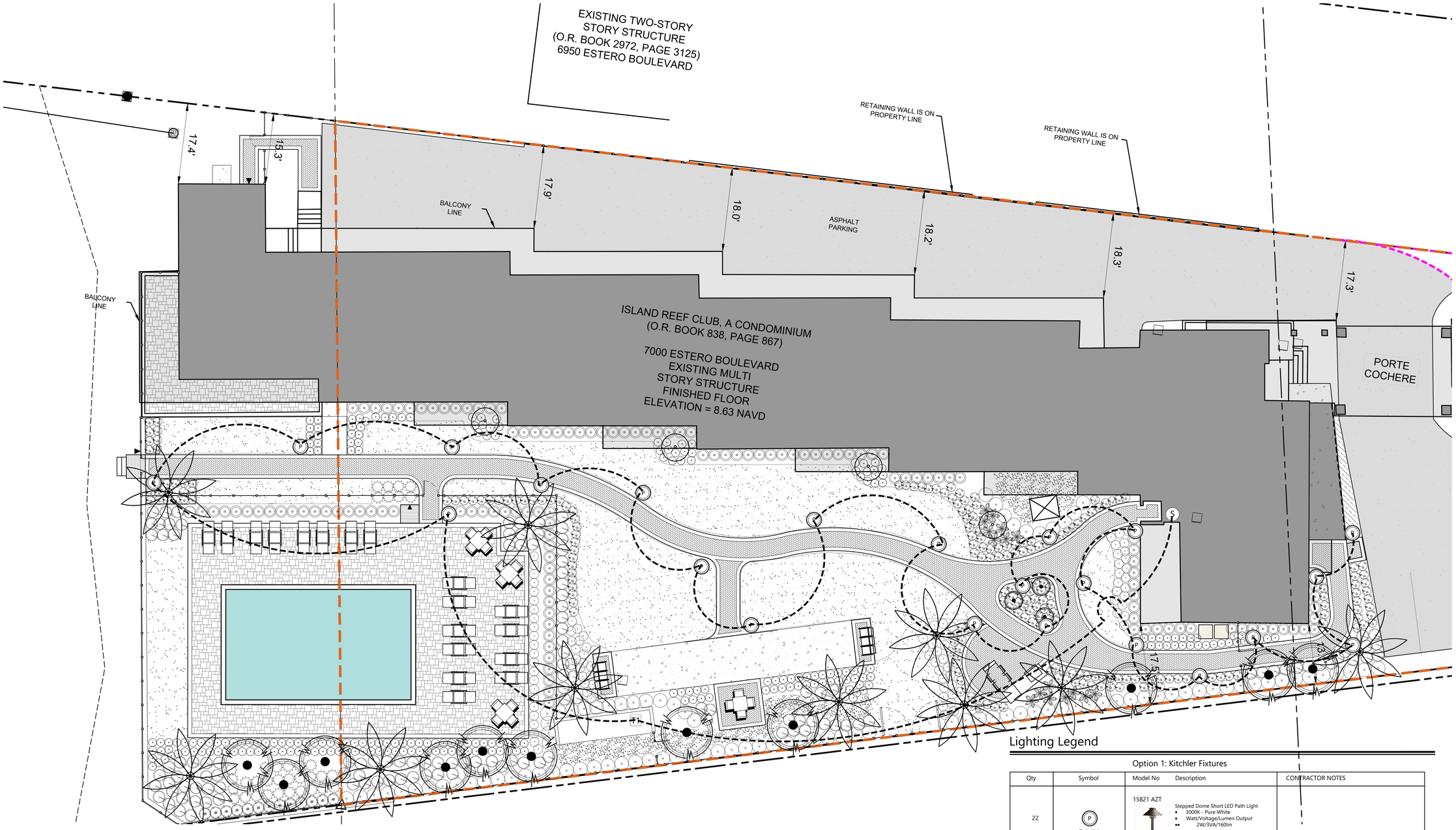


## Lighting Legend

### Option 1: Kitchler Fixtures

| Qty | Symbol | Model No | Description | CONTRACTOR NOTES |
|---|---|---|---|---|
| 22 | P Path Light | 15821 AZT | Stepped Dome Short LED Path Light<br>• 3000K - Pure White<br>• Watt/Voltage/Lumen Output<br>•• 2W/3VA/160lm | |
| 1 | T1 | | 900 Watts Transformer with S/S Multitap Capabilities | |
| 1 | S | | Light Switch. Location to be determined by owner | |
| | | | 12 volt wire | |
| | | | | |
| | | | | |

Notes:

All Wire to be 12 Ga. Connectors to be used. All lights to be controlled by Photocell On, Timer off System or from switches inside home.
Landscape lighting contractor to stake locations of proposed lights before installing. Locations to be confirmed by Landscape Architect.

- Provide option of placing wire in conduit
- Contractor to verify light control w/owner.
- All lighting to be installed as per manufacturer's specifications including recommended installation accessories.
- Contractor responsible for providing a complete operating lighting system.
- Owner to provide power outlet at all Transformer locations.

Contractor to verify property lines and setbacks before construction.
Contractor must have property lines staked and located,
and must verify plan dimensions and field conditions are consistent.
Any Inconsistencies w/ these plans need to be reported to ALD and the Owner.
Contractor shall verify that he has the most up to date plans, and that they have been approved and accepted by the Owner before commencing construction.

ARCHITECTURAL LAND DESIGN INCORPORATED
LANDSCAPE ARCHITECTURE
2780 S. Horseshoe Drive Suite 5
Naples, FL 34104
(239) 430-1661
Design@ALDinc.net
License LC26000259

Christian Andrea
Digitally signed by Christian Andrea RLA LA0001178
Date: 2023.08.04 16:42:30 -04'00'

Copyright Architectural Land Design ©

# Island Reef
7000 Estero Boulevard Fort Myers Beach

# LANDSCAPE LIGHTING PLAN

▲1 Adj Fence, AC pads, Walk layout... YAC 07.12.23
Drawing Date: PM 06.12.23

Scale: 1"=10'-0"

23-020

N

File Name: 23-020 - 2.0.dwg

Architectural Information Provided By:
Company Name: ----
File Name: ----
Date: ----

Site Information Provided By:
Company Name: ----
File Name: ----
Date: ----

12



L:\23-020 7000 Estero Bvld - Island Reef Condo\ALD-Dwgs\23-020 - 2.0.dwg, 8/4/2023 4:12:43 PM, phil
L:\23-020 7000 Estero Bvld - Island Reef Condo\ALD-Dwgs\23-020 - 2.0.dwg, Plotted on 07.26.2023 / 02:09 PM by Phil McHenry
Any deviations or inaccuracies need to be brought to the attention of the Owner immediately. * All base information has been provided by others; verification of setbacks, property lines, etc. need to be provided by others. * It is the Contractors responsibility to verify that he has the most current plan. * Contractor shall not scale from plan, use dimensions only. * These plans are the property of Architectural Land Design and may not be used or reproduced without authorization.
This Document contains information proprietary to ARCHITECTURAL LAND DESIGN and no part of this drawing shall be reproduced or disclosed to others or used for any purpose other than that for which it was furnished, without prior written permission from ARCHITECTURAL LAND DESIGN.

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

This is a first part of 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 a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 7000 / 7002 Estero Blvd Fort Myers Beach FL 33931

STRAP Number: 03-47-24-W1-02300.00CE

Applicant: Island Reef Association Phone: 239-444-1701

Contact Name: Paul Yearwood - HOA President Phone: 248-321-1001

Email: PEY6465@OUTLOOK.COM Fax: _____

Current Zoning District: RM

Future Land Use Map (FLUM) Category: _____

FLUM Density Range: _____ Platted Overlay: ☐ YES ☐ NO

| ACTION REQUESTED | SUPPLEMENTAL FORM REQUIRED |
|---|---|
| ☑ Special Exception | PH-A |
| ☐ Variance | PH-B |
| ☐ Conventional Rezoning | PH-C |
| ☐ Planned Development ☐ Commercial ☐ Residential | PH-D |
| ☐ Master Concept Plan Extension | PH-E |
| ☐ Appeal of Administrative Action | PH-F |
| ☐ Vacation of Platted Right-of-way and Easement | PH-G |
| ☐ Other – cite LDC Section: _____ | attach on separate sheet |

## PART I – General Information

A. Applicant*: Paul Yearwood - HOA President Phone: 248-321-1001

**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: 27499 Riverview Center Suite 229 Bonita Beach FL 34134

Email: dtaliaferro@detaliassociates.com Fax: 239-444-1701

Contact Name: Debi Taliaferro - Property Mgmt Phone: 239-470-4679

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

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

**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: BRUCE DEWEY Phone: 239-532-4552

Address: 7000 ESTERO BLVD #403 FORT MYERS BEACH, FL 33931

Email: BPDEWEY@GMAIL.COM Fax: _____

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

Name: YVONNE LAMBERT Phone: 262-442-3492

Address: 7000 ESTERO BLVD #204 FORT MYERS BEACH, FL 33931

Email: LAMBERTFOUR@YAHOO.COM Fax: _____

Name: BRENDA RYAN Phone: 416-786-2036

Address: 7000 ESTERO BLVD #100 FORT MYERS BEACH, FL 33931

Email: BRENDALEERYAN@HOTMAIL.COM Fax: _____

## PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☑ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ 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: _____



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# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

☐ 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: _____ Description: _____

_____

Code Section: _____ Description: _____

_____

Code Section: _____ Description: _____

_____

### PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

### AFFIDAVIT
### APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Paul Yearwood 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;

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

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.

Paul Yearwood
Signature

Paul Yearwood
Printed Name

**STATE OF** FL **COUNTY OF** Lee

The foregoing instrument was certified and subscribed before me by means of ✓ physical presence OR ____ online notarization, this 22 day of Sept, 2023, by _____, ☑ who is personally known to me OR ☐ who has produced _____ as identification.

Notary Public Signature

KRYSTAL SMITH
Notary Public - State of Florida
Commission # GG 965873
My Comm. Expires Mar 4, 2024
Bonded through National Notary Assn.

### PART V
### Property Ownership (Multiple Owners)

☑ 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 5-1
- ☑ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☑ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☑ Letter of Opinion - Exhibit 5-4

### DISCLOSURE OF OWNERSHIP INTEREST

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 |
|---|---|
| Each owner owns 2.3255% of the common area | |
| List of owners attached | |



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# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

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

| 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 |
|---|---|
| | |
| | |
| | |
| | |

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 |
|---|---|
| | |
| | |
| | |
| | |

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 |
|---|---|
| | |
| | |
| | |
| | |



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# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

Date of Contract: 09/22/23

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.

Paul Yearwood
Signature

Paul Yearwood
Printed Name

**AFFIDAVIT**

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

I, Paul Yearwood (name), as Board President (title) of Island Reef Condominium Associa (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 Town of Fort Myers Beach 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 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
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



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# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

Island Reef Condominium Association

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

Paul Yearwood

Signature

Board President

Title

Paul Yearwood

Typed or Printed Name

09/22/23

Date

**STATE OF** Florida **COUNTY OF** LEE

The foregoing instrument was certified and subscribed before me by means of ✓ physical presence OR ☐ online notarization, this 22 day of Sept, 2023, by _____, ☑ who is personally known to me OR ☐ who has produced _____ as identification.

KRYSTAL SMITH
Notary Public State of Florida
Commission # GG 965873
My Comm. Expires Mar 4, 2024
Bonded through National Notary Assn.

Notary Public Signature

### PART VI– Property Information

A. Legal Description:

STRAP: 03-47-24-W1-02300.00CE

Property Address: 7000 / 7002 Estero Blvd 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 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ 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 6-2.

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) pls see survey feet

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

Frontage on street: _____ feet. Frontage on waterbody: _____ feet

Total land area: _____ ☐ acres ☐ square feet

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

The property is 1.6 miles to the North of Big Carlos Pass

☑ Attach Area Location Map as Exhibit 6-3

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 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

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 6-6.

☐ Attach a map showing the surrounding property owners as Exhibit 6-7.

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

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

☐ Low Density
☑ Mixed Residential
☐ Boulevard
☐ Pedestrian Commercial
☐ Marina
☐ Recreation
☐ Wetlands
☐ Platted Overlay



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# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

### EXPLANATORY NOTES
***Please do not print, copy and submit these instructions***

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com .

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.

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. Exhibit 3-1

Explanatory Notes – Part IV

A. If the property owner is an individual or husband and wife, check the box and provide the information.



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Explanatory Notes – Part V

A. If there are multiple property owners exhibit 5-1, 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.
B. 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 Exhibit 5-2
C. 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 5-3.
D. 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 5-4.

Explanatory Notes – Part VI

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. Exhibit 6-1
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 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



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line. Exhibit 6-2

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). Exhibit 6-3
E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
G. 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 Exhibit 6-6. 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.
H. 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.
I. 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 IV & V

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



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Case# _____ Date Received: _____

# Town of Fort Myers Beach

## COMMUNITY DEVELOPMENT DEPARTMENT

### Supplement PH-A

### Additional Required Information for a Special Exception Application

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

| |
|---|
| **Project Name:** Island Reef Post Hurricane Ian Repairs |
| **Authorized Applicant:** Paul Yearwood - HOA President |
| **LEEPA STRAP Number(s):** 03-47-24-W1-02300.00CE |
| |

| |
|---|
| **Current Property Status:** |
| **Current Zoning:** RM |
| **Future Land Use Map (FLUM) Category:** |
| **Platted Overlay?** ☐ **yes** ☐ **no** **FLUM Density Range:** |

**Requested Action:**

| |
|---|
| ☑ Use of premises in the EC (Environmentally Critical) zoning district for: |
| Repair of our pool which is an accessory major structure |
| partially situated in the EC zone. Our pool has been used as an amenity for |
| owners and guests since 1971 and is protected by a seawall. |
| ☐ Use of premises in the _____zoning district for: |
| |
| |
| |



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Case# _____ Date Received: _____

PART I

Narrative Statements

A. **Request for:** (indicate the proposed use that requires a special exception)

| |
|---|
| Please see attachment... |
| |
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| |

B. **Reasons for request:** (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

| **The property qualifies for a Special Exception because:** |
|---|
| Please see attachment... |
| |
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| |



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| **Granting the requested Special Exception could impact surrounding properties as follows:** |
|---|
| Please see attachment... |
| |
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PART 2
Submittal Requirements

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

**Required Items**

- Public Hearing Request Form
- Supplemental form PH-A
- 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; all proposed structures and uses for the site; and any proposed fencing and screening.
- Fee in the amount of $3800.00/$3300.00 for an amendment

**For New Communication Towers:**

a. Lee County Application for Communication Tower
b. Shared-Use Plan Agreement

**For Consumption of Alcoholic Beverages (COP) license approval:**

a. Notarized authorization from the Property Owner to apply for permit
b. A statement indicating the type of establishment, the type of state license to be acquired, and the planned hours of operation. Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.
c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

**For transit terminals:**

The site plan must indicate the location of the bus stalls; commuter parking areas, if provided; taxi waiting stalls; circulation pattern for buses including the entrances and exits; and the location of any building(s) housing the terminal and waiting areas.

**For use of the EC zoning district:**

a. If the location of the request is in the portion of the EC zoning district between Estero Boulevard and the Gulf of Mexico, provide a survey meeting the requirements of Chapter 62B-33.0081 of the Florida Administrative Code, also including the precise location of the (1978) Coastal Construction Setback Line for Estero Island recorded in Plat Book 33, Page 3, of the Official Records of Lee County, Florida.
b. The site plan must indicate the precise location of the request on the subject property and any related details of the existing conditions or planned improvements to the subject property. For areas in the EC zoning district between Estero Boulevard and the Gulf of Mexico, the precise location of the request in relation to the (1978) Coastal Construction Setback Line must be shown on the site plan.

## Guide to Filing Supplement PH-A for Special Exceptions

**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.
**Authorized 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.
**Requested Action**: Indicate the nature of the request and include the current zoning of the property.

### Part 1 Narrative Statements:

**"Request for…"**
Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

**"The property qualifies for a special exception because…"**
Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

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

- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

**"Granting the requested special exception could impact surrounding properties as follows…"**
Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

## Submittal Requirements Check List and Filing Guide

✔ **A completed Public Hearing Application Form.**

**A completed Supplemental form PH-A.**

✔ **Site Plan**. The site plan should be to scale and should indicate the location of the request on the property. Existing buildings and other improvements (such as swimming pools, fences, decks, or parking lots) should also be shown on the site plan. The site plan should also indicate the existing uses on adjacent properties. Also include any additional relevant detail related to the specific request.

## Guide to Filing Supplement PH-A for Special Exceptions

**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.
**Authorized 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.
**Requested Action**: Indicate the nature of the request and include the current zoning of the property.

**Part 1 Narrative Statements: "Request for…"**

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

**"The property qualifies for a special exception because…"**

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
- Whether the request will be compatible with existing or planned uses ad not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

**"Granting the requested special exception could impact surrounding properties as follows…"**

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

**EXPLANATORY NOTES**

***Please do not print, copy and submit these instructions***

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com .

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.

**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. Exhibit 3-1

**Explanatory Notes – Part IV**

A. If the property owner is an individual or husband and wife, check the box and provide the information.

**Explanatory Notes – Part V**

A. If there are multiple property owners exhibit 5-1, 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.

B. 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 Exhibit 5-2

C. 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 5-3.

D. 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 5-4.

**Explanatory Notes – Part VI**

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. Exhibit 6-1

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 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. Exhibit 6-2

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). Exhibit 6-3

E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4

F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5

G. 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 Exhibit 6-6. 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.

H. 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.

I. 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 IV & V**

The applicant must have either of the affidavits in Part V & VI, notarized, signed and submit, as applicable.

**7000/7002 Estero Blvd Fort Myers Beach, FL 34228**

**Supplement PH-A**

Part 1

Narrative Statements

**Request for: (indicate proposed use that requires a Special Exception)**

Please accept this narrative as an overview of the request for special exception for the property located at 7000/7002 Estero Blvd to allow repairs in the EC zoning district. Specifically, Island Reef Condominium Association is requesting flexibility to repair and, if needed, replace our existing pool shell which is partially in the EC Zoning district.

Additionally, we are seeking permission to make like-for-like repairs to our stairs to the beach, perimeter fence to secure our property, pool deck in pavers, courtyard walkway in pavers, ramp, and 2 foot rinse stations. We have hired an experienced pool contractor, licensed landscape architect, and environmental engineer to guide us in these repairs.

The area of our property in the EC Zone has been used as an amenity space for our owners since 1971 and is protected by a seawall.

**Reason for Request:**

Our repair of a major accessory structure qualifies for Special Exception under the (anticipated) newly amended Ordinance 20-02. As a result, we are applying for Post-Hurricane Ian property repairs in the EC Zoning District as we are currently experiencing a “loss of use” of our entire pool courtyard. Moving our pool to the East of the CCCL would create an economic hardship for our owners. We are however proposing to move our pool equipment out of the EC Zone as shown in our landscape plan.

While our building survived, our property grounds in the EC Zone require like-for-like repairs. We hired a pool contractor, licensed landscape architect and environmental engineer (all from the immediate area) to ensure we are following Local and State policies and objectives.

**Granting the requested Special Exception could impact surrounding properties as follows:**

The proposed repairs will not negatively impact surrounding property owners as this is a like-for-like project. Our pool area and courtyard has been an amenity space since 1971.

Our like-for-like repairs positivity impact the neighboring properties by adding value to the area, improving the aesthetic compared to the current condition, and will ultimately bring back our owner group who will support local businesses such as: 7-11, Santini

Plaza, the Marina, and CVS. By allowing us to restore our property to a Pre-Hurricane Ian condition we are confident Island Reef would once again be fully occupied with eager supporters of the Fort Myers Beach local economy.

Thank you for your consideration.

Aloia, Roland, Lubell & Morgan, PLLC
2222 Second Street
Fort Myers, FL 33901

Phone: (239) 791-7950
Facsimile: (239) 791-7951
JMorgan@lawdefined.com

September 22, 2022

Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida, 33931

Re: **OPINION LETTER**
Island Reef Association, Incorporated/Town of Fort Myers Beach Municipal Ordinance 20-02 Special Exemption

To Whom It May Concern:

We serve as counsel to Island Reef Association, Incorporated, (hereinafter "Island Reef") in connection with their request for a special exemption from Fort Myers Beach Municipal Ordinance Section 20-02 ("the Ordinance"). It is Island Reef's position that the Ordinance does not permit Island Reef to repair their condominium complex's pool, surrounding fence and foot wash structures, as the Environmentally Critical (EC) Zoning Line runs through the complex's currently erected structures. Thus, they are requesting a Special Exemption to the Fort Myers Beach Municipal Ordinance Section 20-02 pursuant to the procedures afforded in Fort Myers Beach Municipal Ordinance Section 34-201(a)(1)(b).

This opinion letter has been prepared and is to be construed in accordance with the Fort Myers Beach Municipal Ordinance Section 34-201(a)(1)(b)(3), the Laws of the State of Florida, and the Laws of the United States in rendering the following opinions. We have made no assumptions other than those set forth by Island Reef.

In basing the opinions set forth in this opinion on "our knowledge", the words "our knowledge" signify that, in the course of our representation of Island Reef, no facts have come to our attention that would give us actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we have undertaken no investigation or verification of such matters. Further, the words "our knowledge" as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our firm who have been directly involved in representing Island Reef in any capacity, including but not limited to, in connection with the special exemption application.

1. For purposes of this Opinion Letter, we have examined Island Reef Association, Inc. By-Laws and Declaration of Condominium, the Ordinances of the Town of Fort Myers Beach, the Laws of the State of Florida, and the Laws of the United States.

2. We have assumed the authenticity of all documents pertaining to the application submitted to us for review and that such documents constitute a valid application for a Special Exemption of the Ordinance.

3. Subject to the qualifications set forth in subsequent portions of this opinion letter, it is our opinion that:

(a) Island Reef Association, Incorporated, is a corporation duly formed, validly existing and in good standing under the laws of the State of Florida (the "State").

(b) Island Reef has all requisite authority and legal rights to proceed unilaterally with repair work on the common areas of the Condominium as presently conducted, which includes the ability to file a Special Exemption regarding the Ordinance to obtain permitting for the repair of the Condominium's pool, surrounding fence and foot wash structures.

(c) Island Reef has placed at least seventy-five percent (75%) of all applicable Unit Owners on notice of this action/application. Further, though not required, Island Reef has received affirmative support for this action/application from over seventy-five percent (75%) of their applicable Unit Owners.

(d) The execution of this Special Exemption Application would not be prohibited by Fla. Stat. § 161.053. As the statute states,

> "This section does not apply … to structures existing or under construction before the establishment of the Coastal Construction Control Line if the structures are not materially altered except as provided in subsection (4)."

The existing pool, surrounding fence and foot wash structures were built in or around 1971 and therefore existed well before the implementation of the Coastal Construction Control Line in 1978.

(e) The Town of Fort Myers Beach Municipal Ordinance 20-02 states that the Coastal Construction Control Line depicted on the Future Land Use Map is also the landward edge of the Environmentally Critical zoning district. Thereby, pursuant to Fla. Stat § 161.053, Island Reef should be allowed repairs to existing structures, so long as the repairs do not materially alter the original design of the structure.

(f) The Ordinance also expressly allows for repairs to primary structures, in the EC zoning district, if the repairs do not exceed twenty-five percent (25%) of the value of the structure. The Ordinance does not specify what is a primary structure but does list pools and bathhouses under the definition of a major structure. Thereby, Island Reef should be allowed to repair the pool, surrounding fence and foot wash structures past the Coastal Construction Control Line, so long as they do not materially alter the original design of such structures.

(g) Even if such structures are classified as accessory structures under the Ordinance, in which no repairs in the EC Zoning District are allowed, the City should give a special exemption since the premises were built before the implementation of the Coastal Construction Control Line. If the town were to deny the exemption and force Island Reef to reconstruct the pool in a different area of the property such denial would cause Island Reef to incur significantly larger construction bills.

4. Island Reef has complied with all regulatory/ordinance requirements necessary to apply for a Special Exemption under the Fort Myers Beach Municipal Ordinance 20-02 and under Fort Myers Beach Municipal Ordinance 34-201(a)(1)(b); and that the Island Reef is authorized to repair the Condominium Complex common areas under the Island Reef Association By-laws and Declaration of Condominium.

We express no opinion in this letter as to any consent, approval, authorization or other action or filing necessary for future assertions by Island Reef.

We express no opinion as to the laws of any jurisdiction other than the laws of the State of Florida and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the State of Florida and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

5. This opinion is given solely for the use and benefit only of the Town of Fort Myers Beach and is limited in its use to reliance by the Town of Fort Myers Beach in the determination of the Special Exemption application and may not be relied upon by any other parties, furnished to any other party, quoted or otherwise used without the prior express written consent of the undersigned firm. This opinion is as of the date hereof and we disclaim any obligation to advise you of any change which hereafter may be brought to our attention.

Sincerely,

**ALOIA ROLAND LUBELL & MORGAN, PLLC**

Jack C. Morgan, III
For the Firm

JCM/jb

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

The relevant code sections are as follows.

Sec.34-201 (a) (1) (b) Where the property is a condominium...an application or petition may be initiated by both the condominium association and no less that 75 percent of the total number of condominium unit owners.
(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) cynthia ballantyne of unit number 400 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) cynthia ballantyne of unit number 400 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** cynthia ballantyne
cynthia ballantyne (Sep 20, 2023 08:12 EDT)

**Email:** ballantyneg@sbcglobal.net

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

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(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Randell Baremor/Rami Ghaffari of unit number 303 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Randell Baremor/Rami Ghaffari of unit number 303 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Randell Baremor

**Email:** rbaremor@gmail.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

The relevant code sections are as follows.

Sec.34-201 (a) (1) (b) Where the property is a condominium...an application or petition may be initiated by both the condominium association and no less that 75 percent of the total number of condominium unit owners.
(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detail & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Joel Brack of unit number # 701 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 9/20/23.

I (Owner/Owners Names) Phyllis Brack Trust of unit number # 701 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 9/20/23.

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

The relevant code sections are as follows.

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(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) John and Linda Burke of unit number 201 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) John and Linda Burke of unit number 201 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** John T Burke
John T Burke (Sep 20, 2023 08:41 EDT)

**Email:** jburke@burkeagency.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

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Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Chet chapin of unit number 205 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Chet chapin of unit number 205 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Chet chapin (Sep 20, 2023 16:54 EDT)

**Email:** chapin1966@hotmail.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

The relevant code sections are as follows.

Sec.34-201 (a) (1) (b) Where the property is a condominium...an application or petition may be initiated by both the condominium association and no less that 75 percent of the total number of condominium unit owners.
(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) JASC LLC / Steve & Paula Cook of unit number 101 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/19/23.

I (Owner/Owners Names) JASC LLC/ Steve & Paula Cook of unit number 101 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/19/23.

**Signature:** Steve Cook - Paula Cook
Steve Cook - Paula Cook (Sep 19, 2023 20:40 CDT)

**Email:** cookproperty@aol.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

The relevant code sections are as follows.

Sec.34-201 (a) (1) (b) Where the property is a condominium...an application or petition may be initiated by both the condominium association and no less that 75 percent of the total number of condominium unit owners.
(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Jeff cross of unit number 103 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Jeff cross of unit number 103 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Jeff cross (Sep 20, 2023 08:58 EDT)

**Email:** jhcross18@hotmail.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

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I (Owner/Owners Names) David A. Daniels/Linda J Daniels of unit number 402 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) David A. Daniels/Linda J Daniels of unit number 402 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** David A Daniels/Linda J Daniels
David A Daniels/Linda J Daniels (Sep 20, 2023 08:13 CDT)

**Email:** dvdnls@aol.com

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September 19, 2023
RE: Notice of Special Exception Application

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I (Owner/Owners Names) Maureen B Daw of unit number 605 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Maureen B Daw of unit number 605 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Maureen B Daw
Maureen B Daw (Sep 20, 2023 07:49 CDT)

**Email:** mbdaw711@aol.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

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I (Owner/Owners Names) DeMuth Trust of unit number 503 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/21/23.

I (Owner/Owners Names) N/a of unit number N/a hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/21/23.

**Signature:** DeMuth Trust - Richard DeMuth Trustee
DeMuth Trust - Richard DeMuth Trustee (Sep 21, 2023 12:43 CDT)

**Email:** DMJDEMUTH@HOTMAIL.COM

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

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I (Owner/Owners Names) Bruce & Pat Dewey (Estero Reef LLC) of unit number 403 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Bruce & Pat Dewey (Estero Reef LLC) of unit number 403 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Bruce Dewey
Bruce Dewey (Sep 20, 2023 12:06 EDT)

**Email:** bpdewey1@gmail.com

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September 19, 2023
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I (Owner/Owners Names) Stephen Diagostino of unit number 600 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Robert Jauch of unit number 600 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Stephen J Diagostino
Stephen J Diagostino (Sep 20, 2023 11:49 EDT)

**Email:** diagostino@comcast.net

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

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I (Owner/Owners Names) John Dugan of unit number 200 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/19/23.

I (Owner/Owners Names) John Dugan of unit number 200 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/19/23.

**Signature:** John H Dugan
John H Dugan (Sep 19, 2023 23:54 EDT)

**Email:** jdugan6715@gmail.com

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September 19, 2023
RE: Notice of Special Exception Application

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I (Owner/Owners Names) CzeslawGabrys of unit number 405 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Czeslaw Gabrys of unit number 405 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Czeslaw Gabrys
Czeslaw Gabrys (Sep 20, 2023 07:47 EDT)

**Email:** protemp60525@yahoo.com

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September 19, 2023
RE: Notice of Special Exception Application

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I (Owner/Owners Names) Stephen R. Good of unit number 401 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Suzanne L. Good of unit number 401 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Stephen R. Good
Stephen R. Good (Sep 20, 2023 08:47 EDT)

**Email:** stephen.good@mckenziecorp.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

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I (Owner/Owners Names) Keith & Lisa Heldt of unit number 304 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Keith & Lisa Heldt of unit number 304 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Keith & Lisa Heldt
Keith & Lisa Heldt (Sep 20, 2023 06:33 CDT)

**Email:** heldt15@gmail.com

To the Owners of Island Reef Condominiums
September 19, 2023
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I (Owner/Owners Names) Pete Heyd of unit number 501 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/21/23.

I (Owner/Owners Names) Peter Heyd of unit number 501 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/21/23.

**Signature:** Pete Heyd
Pete Heyd (Sep 21, 2023 06:46 EDT)

**Email:** dheyd@aol.com

To the Owners of Island Reef Condominiums
September 19, 2023
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I (Owner/Owners Names) Michael Hinterschied of unit number 602 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Alice Hinterschied of unit number 602 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Michael Hinterschied
Michael Hinterschied (Sep 20, 2023 08:34 EDT)

**Email:** michael@cabledepot.com

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September 19, 2023
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Sec.34-201 (a) (1) (b) Where the property is a condominium...an application or petition may be initiated by both the condominium association and no less that 75 percent of the total number of condominium unit owners.
(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Mark Hunter of unit number 102 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) NA of unit number 102 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Mark Hunter
Mark Hunter (Sep 20, 2023 07:22 EDT)

**Email:** jousterman9@hotmail.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

The relevant code sections are as follows.

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(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Robert Kane of unit number 601 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Candice Kane of unit number 601 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Robert Kane CandiceKane
Robert Kane CandiceKane (Sep 20, 2023 08:46 EDT)

**Email:** bkane62751@aol.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

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I (Owner/Owners Names) Yvonne Lambert of unit number 204 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/19/23.

I (Owner/Owners Names) Yvonne Lambert of unit number 204 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/19/23.

**Signature:** Yvonne Lambert (Sep 19, 2023 21:39 EDT)

**Email:** lambertfour@yahoo.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

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I (Owner/Owners Names) Alyce Lenertz of unit number 505 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Alyce Lenertz of unit number 505 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Alyce Lenertz
Alyce Lenertz (Sep 20, 2023 10:11 CDT)

**Email:** alycelenertz@hotmail.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

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I (Owner/Owners Names) Michael J. McGovern of unit number 603 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Rosalie McGovern of unit number 603 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Michael J. McGovern
Michael J. McGovern (Sep 20, 2023 09:38 EDT)

**Email:** mikemcgovern1@gmail.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

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I (Owner/Owners Names) Brian Middendorf of unit number 604 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/19/23.

I (Owner/Owners Names) Kristie Middendorf of unit number 604 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/19/23.

**Signature:** Brian Middendorf

**Email:** bmiddendorf@hiawathabank.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

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I (Owner/Owners Names) Frank Miesmer of unit number 700 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Sandra Miesmer of unit number 700 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** S. Miesmer
Sandra Miesmer (Sep 20, 2023 11:26 EDT)

**Email:** smiesmer@gmail.com

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September 19, 2023
RE: Notice of Special Exception Application

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Along with the application, we will have an attorney submit the required letter:
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I (Owner/Owners Names) Maria Montie of unit number 302 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Maria Montie of unit number 302 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Maria Montie
Maria Montie (Sep 20, 2023 08:10 EDT)

**Email:** mmontie@hotmail.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

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I (Owner/Owners Names) Margaret Eiluned Morgan of unit number 301 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Margaret Eiluned Morgan of unit number 301 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Margaret Eiluned Morgan
Margaret Eiluned Morgan (Sep 20, 2023 06:40 EDT)

**Email:** mcemorgan@msn.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

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I (Owner/Owners Names) LETITIA MUIRESAN of unit number 704 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated Sept 20, 2023 —

I (Owner/Owners Names) _____ of unit number _____ hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated _____.

To the Owners of Island Reef Condominiums
September 19, 2023
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I (Owner/Owners Names) Thomas nevers of unit number 09/24/2023 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Traci Cole of unit number 90/24/2023 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Thomas NEVERS (Sep 20, 2023 07:01 CDT)

**Email:** TRACI@COLEOIL.NET

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

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I (Owner/Owners Names) Rajaquette of unit number 203 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Rajaquette of unit number 203 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Richard Rajaquette (Sep 20, 2023 08:56 EDT)

**Email:** rjaquette@sbcglobal.net

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

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Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Susanne and Larry Rowe of unit number 300 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/19/23.

I (Owner/Owners Names) Susanne and Larry Rowe of unit number 300 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/19/23.

**Signature:** SMRowe
Susanne Rowe (Sep 19, 2023 21:59 EDT)

**Email:** moorman.rowe@gmail.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

The relevant code sections are as follows.

Sec.34-201 (a) (1) (b) Where the property is a condominium...an application or petition may be initiated by both the condominium association and no less that 75 percent of the total number of condominium unit owners.
(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Brenda and John Ryan of unit number 100 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/19/23.

I (Owner/Owners Names) Brenda and John Ryan of unit number 100 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/19/23.

**Signature:** brenda ryan (Sep 19, 2023 21:51 EDT)

**Email:** brendaleeryan@hotmail.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

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(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Thomas and Laraine Soltysiak of unit number 202 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Thomas and Laraine Soltysiak of unit number 202 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Thomas Soltysiak (Sep 20, 2023 07:23 EDT)

**Email:** tmsolty@gmail.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

The relevant code sections are as follows.

Sec.34-201 (a) (1) (b) Where the property is a condominium...an application or petition may be initiated by both the condominium association and no less that 75 percent of the total number of condominium unit owners.
(2) In order to verify ownership, the applicant shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number...as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants who shall verify the list and fact of notice by sworn affidavit.

Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Julie Steenberg of unit number 305 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Julie Steenberg of unit number 305 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Julie Steenberg (Sep 20, 2023 15:27 CDT)

**Email:** julessteenberg@gmail.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

The relevant code sections are as follows.

Sec.34-201 (a) (1) (b) Where the property is a condominium...an application or petition may be initiated by both the condominium association and no less that 75 percent of the total number of condominium unit owners.
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Along with the application, we will have an attorney submit the required letter:
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***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Susan truitt of unit number 105 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Timothy truitt of unit number 105 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Tim truitt (Sep 20, 2023 07:26 EDT)

**Email:** TRUITTSUSIE@GMAIL.COM

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

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Sec.34-201 (a) (1) (b) Where the property is a condominium...an application or petition may be initiated by both the condominium association and no less that 75 percent of the total number of condominium unit owners.
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***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Melanie Truitt of unit number 005 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Melanie Truitt of unit number 005 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Mel Truitt (Sep 20, 2023 07:13 EDT)

**Email:** meltruitt@gmail.com

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

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***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Sandra Walker of unit number 104 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Robert Terry Walker of unit number 104 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Sandra Walker and Robert Walker
Sandra Walker and Robert Walker (Sep 20, 2023 07:50 EDT)

**Email:** brokergpp@comcast.net

To the Owners of Island Reef Condominiums
September 19, 2023
RE: Notice of Special Exception Application

The Town of Fort Myers Beach requires our condominium association to apply for a Special Exception application in order to be permitted to do our repairs west of the Coastal Construction Control Line, which includes the pool, fence and the beach stairs. The onus is on the Island Reef board of directors to inform owners that this application is being submitted on your behalf. You are required to sign that you have been informed of this application and are in agreement with its submission. This application for Special Exception requires a public hearing. The town needs to see 75% acknowledgment from our owners to process the special exception application.

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Along with the application, we will have an attorney submit the required letter:
(3) So as to protect the legal rights of non-participation unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions or any federal or state law regulating condominiums...or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

***We need your acknowledgement that you have been informed of this application and are in agreement with its submission. Please sign below and return as soon as possible to Detali & Associates by "signing" and submitting this agreement.***

I (Owner/Owners Names) Paul Yearwood of unit number 500 hereby acknowledge that I/we have been informed by the applicants (Island Reef Condominium Association) for the Special Exception application that this application is being submitted on behalf of the unit owners of Island Reef Condominiums dated 09/20/23.

I (Owner/Owners Names) Paul Yearwood of unit number 500 hereby agree to the Special Exception application submitted by the Island Reef Condominium Association to the Town of Fort Myers Beach on my behalf dated 09/20/23.

**Signature:** Paul Yearwood
Paul Yearwood (Sep 20, 2023 11:36 EDT)

**Email:** PEY6465@OUTLOOK.COM

# ISLAND REEF ASSOCIATION INC



## OWNER SUMMARY AS OF 09/18/23

(H)=Owner (P)=Prev Owner (R)=Renter (V)=Developer (*)=No Owner

| ACCOUNT NUMBER | STREET ADDRESS | LOT/UNIT NUMBER | DATE SETTLED |
|---|---|---|---|
| 005 | 7000 ESTERO BLVD # 005<br>MELANIE K TRUITT (H) | 005 | |
| 100 | 7000 ESTERO BLVD # 100<br>JOHN & BRENDA RYAN (H)<br>PO BOX 222;<br>BRACERIDGE, ONTARIO P1L 1T6<br>CANADA | 100 | |
| 101 | 7000 ESTERO BLVD # 101<br>JASC PROPERTY, LLC (H)<br>6081 WILLOW BROOK DR;<br>ASBURY, IA 52002 | 101 | |
| 102 | 7000 ESTERO BLVD # 102<br>MARK HUNTER (H)<br>94820 DRIVE A;<br>LAWTON, MI 49065 | 102 | |
| 103 | 7000 ESTERO BLVD # 103<br>JEFFREY H. & DENISE L. CROSS (H)<br>2328 SHAWNEE BLVD;<br>SPRINGFIELD, OH 45504 | 103 | |
| 104 | 7000 ESTERO BLVD # 104<br>ROBERT T. & SANDRA J. WALKER (H) | 104 | |
| 105 | 7000 ESTERO BLVD # 105<br>SUSAN & TIMOTHY TRUITT (H)<br>4771 WAYCROSS ROAD;<br>FORT MYERS BEAC, FL 33931 | 105 | |
| 200 | 7000 ESTERO BLVD # 200<br>JOHN DUGAN (H)<br>4513 LAUDER LANE;<br>SKANEATELES, NY 13152 | 200 | |
| 201 | 7000 ESTERO BLVD # 201<br>JOHN & LINDA BURKE (H) | 201 | |

OWNER SUMMARY AS OF 09/18/23

(H)=Owner (P)=Prev Owner (R)=Renter (V)=Developer (*)=No Owner

| ACCOUNT NUMBER | STREET ADDRESS | LOT/UNIT NUMBER | DATE SETTLED |
|---|---|---|---|
| 201 | JOHN & LINDA BUBKE JR<br>7000 ESTERO BLVD # 201<br>12884 BAYOU CT;<br>WAYLAND, MI 49348 | 201 | |
| 202 | 7000 ESTERO BLVD # 202<br>THOMAS & LARAINE SOLTYSIAK (H)<br>15768 PROSPECT POINT DR.;<br>SPRING LAKE, MI 49456 | 202 | |
| 203 | 7000 ESTERO BLVD # 203<br>RICHARD JAQUETTE (H)<br>5479 BAYSHORE ROAD;<br>OREGON, OH 43616 | 203 | |
| 204 | 7000 ESTERO BLVD # 204<br>YVONNE MARIE LAMBERT (H)<br>749 NORTON STREET;<br>LONGBOAT KEY, FL 34228 | 204 | |
| 205 | 7000 ESTERO BLVD # 205<br>CHET & SHERRY CHAPIN (H)<br>1422 COPPER BEECH RUN;<br>FORT WAYNE, IN 46814 | 205 | |
| 300 | 7000 ESTERO BLVD # 300<br>LARRY R & SUSANNE M. ROWE (H)<br>8414 KILLEEN RUN;<br>FORT WAYNE, IN 46835 | 300 | |
| 301 | 7000 ESTERO BLVD # 301<br>MCE MORGAN, TRUSTEE (H) | 301 | |
| 302 | 7000 ESTERO BLVD # 302<br>GERALD & MARIA MONTIE (H) | 302 | |
| 303 | 7000 ESTERO BLVD # 303<br>RANDELL S BAREMOR (H)<br>11162 BOWELS AVE;<br>GARDEN GROVE, CA 92841 | 303 | |

## OWNER SUMMARY AS OF 09/18/23

(H)=Owner (P)=Prev Owner (R)=Renter (V)=Developer (*)=No Owner

| ACCOUNT NUMBER | STREET ADDRESS | LOT/UNIT NUMBER | DATE SETTLED |
|---|---|---|---|
| 304 | 7000 ESTERO BLVD # 304<br>KEITH R. & LISA C. HELDT (H)<br>24416 S. CENTER ROAD;<br>FRANKFORT, IL 60423 | 304 | 03/15/23 |
| 305 | 7000 ESTERO BLVD # 305<br>JULIE STEENBERG (H)<br>1545 ARBORETUM DR #114;<br>OSH KOSH, WI 54901 | 305 | |
| 400 | 7000 ESTERO BLVD # 400<br>GEORGE & CYNTHIA BALLANTYNE (H) | 400 | |
| 401 | 7000 ESTERO BLVD # 401<br>STEPHEN R. GOOD (H)<br>916 OLD HICKORY ROAD;<br>PITTSBURGH, PA 15243 | 401 | |
| 402 | 7000 ESTERO BLVD # 402<br>DAVID & LINDA DANIELS (H)<br>2554 HUEBNER RD;<br>OCONOMOWOC, WI 53066 | 402 | |
| 403 | 7000 ESTERO BLVD # 403<br>ESTERO REEF, LLC (H)<br>BRUCE DEWEY;<br>9506 TREETOP DR.<br>GALESBURG, MI 49053 | 403 | |
| 404 | 7000 ESTERO BLVD # 404<br>CHARLES & SIBYL TURNER (H)<br>12201 QUINCE VALLEY DR.;<br>NORTH PATOMAC, MD 20878-4723 | 404 | |
| 405 | 7000 ESTERO BLVD # 405<br>GABRYS CZESLAW (H)<br>3226 CERRITO CT;<br>NAPLES, FL 34109 | 405 | 10/29/21 |
| 500 | 7000 ESTERO BLVD # 500 | 500 | 04/30/21 |

**OWNER SUMMARY AS OF 09/18/23**

(H)=Owner (P)=Prev Owner (R)=Renter (V)=Developer (*)=No Owner

| ACCOUNT NUMBER | STREET ADDRESS | LOT/UNIT NUMBER | DATE SETTLED |
|---|---|---|---|
| 500 | 7000 ESTERO BLVD # 500<br>PAUL E. & CYNTHIA A. YEARWOOD (H)<br>2028 REGAN DR.;<br>ROCHESTER, MI 48309 | 500 | 04/30/21 |
| 501 | 7000 ESTERO BLVD # 501<br>DELORES & PETER HEYD (H) | 501 | |
| 502 | 7000 ESTERO BLVD # 502<br>SUSAN KRAJEWSKI TRUST (H)<br>14700 STONEHENGE DR;<br>RUSSELL, OH 44072 | 502 | |
| 503 | 7000 ESTERO BLVD # 503<br>DEMUTH TRUST (H) | 503 | |
| 504 | 7000 ESTERO BLVD # 504<br>PAUL & MARIA STONIKAS (H)<br>1809 71ST ST;<br>DARIEN, IL 60561-3536 | 504 | |
| 505 | 7000 ESTERO BLVD # 505<br>ALYCE LENERTZ (H)<br>1425 E 39TH ST APT 9;<br>DAVENPORT, IA 52807 | 505 | |
| 600 | 7000 ESTERO BLVD # 600<br>STEPHEN DIAGOSTINO (H)<br>8119 CONARROE RD;<br>INDIANAPOLIS, IN 46278 | 600 | |
| 601 | 7000 ESTERO BLVD # 601<br>ROBERT & CANDICE KANE (H)<br>268 BEATTIE AVE;<br>LOCKPORT, NY 14094 | 601 | |
| 602 | 7000 ESTERO BLVD # 602<br>MICHAEL & ALICE HINTERSCHIED (H)<br>361 CHASTAIN MANOR DR;<br>NORCROSS, GA 30071 | 602 | |

OWNER SUMMARY AS OF 09/18/23

(H)=Owner (P)=Prev Owner (R)=Renter (V)=Developer (*)=No Owner

| ACCOUNT NUMBER | STREET ADDRESS | LOT/UNIT NUMBER | DATE SETTLED |
|---|---|---|---|
| | NORCROSS, GA 30071 | | |
| 603 | 7000 ESTERO BLVD # 603<br>MICHAEL & ROSALIE MCGOVERN (H)<br>1630 QUEEN STREET EAST;<br>SUITE 604<br>TORONTO, ON M4L IG3 | 603 | |
| 604 | 7000 ESTERO BLVD # 604<br>BRIAN & KRISTIE MIDDENDORF (H)<br>6309 MICHAEL DR NE;<br>CEDAR RAPIIDS, IA 52411 | 604 | |
| 605 | 7000 ESTERO BLVD # 605<br>MAUREEN B DAW (H)<br>10207 SO. SAWYER;<br>EVERGREEN PARK, IL 60805 | 605 | |
| 700 | 7000 ESTERO BLVD # 700<br>FRANK & SANDRA MIESMER (H)<br>5389 OLD CASTLE ROAD;<br>TECUMSEH, ON N0R 1L0<br>CANADA, | 700 | |
| 701 | 7000 ESTERO BLVD # 701<br>JOHN & PHYLIS BRANHAM (H)<br>39235 HAWTHORNE DR;<br>AVON, OH 44011 | 701 | |
| 702 | 7000 ESTERO BLVD # 702<br>ALAN L SMITH (H) | 702 | |
| 703 | 7000 ESTERO BLVD # 703<br>THOMAS P. NEVERS (H)<br>PO BOX 103;<br>SLINGER, WI 53086 | 703 | 05/23/22 |
| 704 | 7000 ESTERO BLVD # 704<br>LETITIA MURESAN (H)<br>12345 PLACE ST. GERMAIN;<br>MONTREAL, QC H4J 2AS | 704 | |

OWNER SUMMARY AS OF 09/18/23

(H)=Owner (P)=Prev Owner (R)=Renter (V)=Developer (*)=No Owner

| ACCOUNT NUMBER | STREET ADDRESS | LOT/UNIT NUMBER | DATE SETTLED |
|---|---|---|---|
| 704 | 7000 ESTERO BLVD # 704<br>CANADA | 704 | |
| 705 | 7000 ESTERO BLVD # 705<br>LARRY & ANGELA GATTO (H) | 705 | |

Total Properties Listed: 43

**Special Exception Application Agents**

7000 Estero Blvd Fort Myers Beach 33931

*Additional Authorized Agents:*

Mark Hunter
7000 Estero Blvd #103 Fort Myers Beach FL 33931
Phone: 269-598-4911
Email: jousterman9@hotmail.com

John Burke
7000 Estero Blvd #201 Fort Myers Beach FL 33931
Phone: 616-291-1060
jburke@burkeagency.com

George Ballantyne
7000 Estero Blvd #400 Fort Myers Beach FL 33931
Phone: 574-309-2051
ballantyneg@sbcglobal.net

## GENERAL NOTES

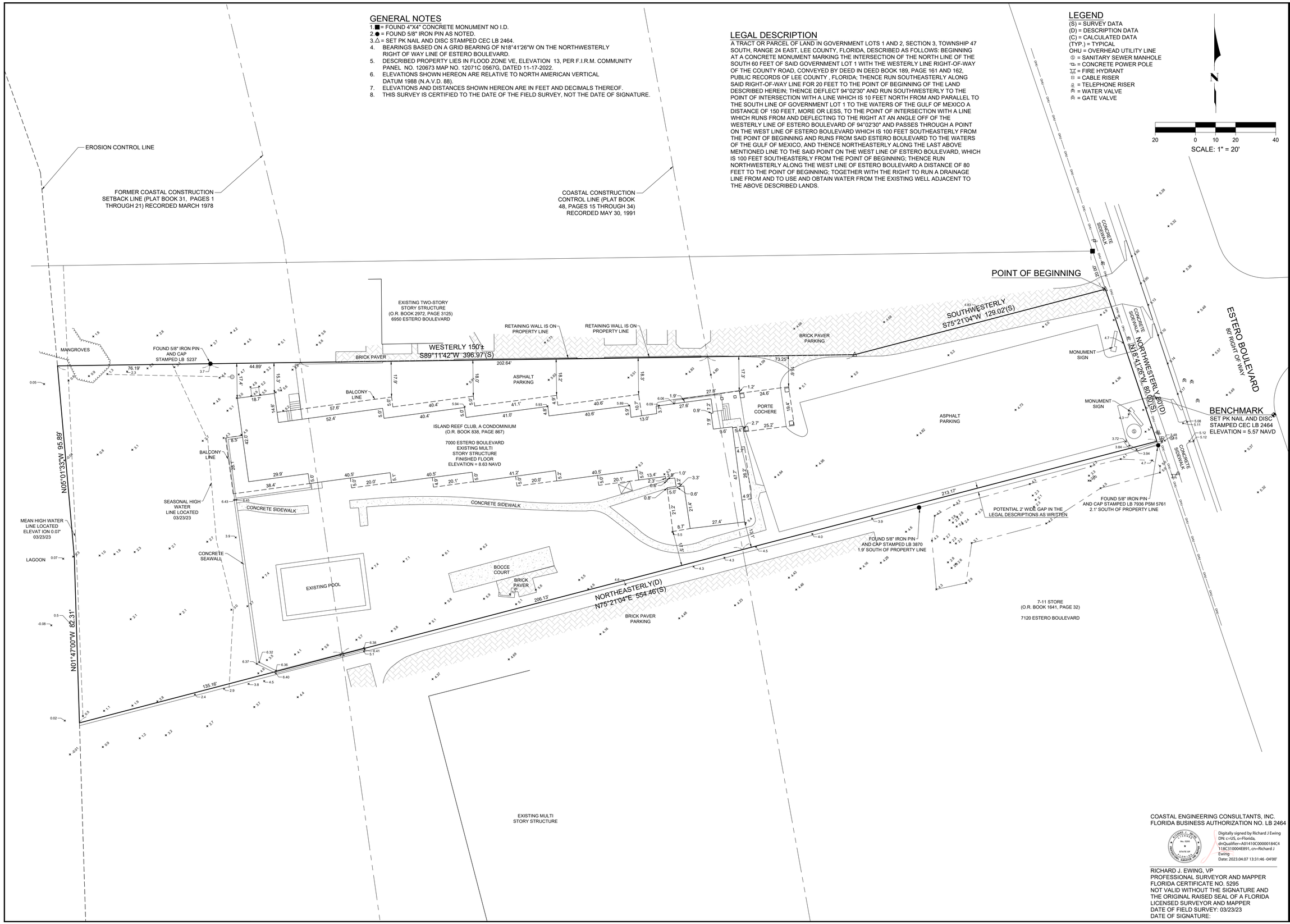
1. ■ = FOUND 4"X4" CONCRETE MONUMENT NO I.D.
2. ● = FOUND 5/8" IRON PIN AS NOTED.
3. △ = SET PK NAIL AND DISC STAMPED CEC LB 2464.
4. BEARINGS BASED ON A GRID BEARING OF N18°41'26"W ON THE NORTHWESTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD.
5. DESCRIBED PROPERTY LIES IN FLOOD ZONE VE, ELEVATION 13, PER F.I.R.M. COMMUNITY PANEL NO. 120673 MAP NO. 12071C 0567G, DATED 11-17-2022.
6. ELEVATIONS SHOWN HEREON ARE RELATIVE TO NORTH AMERICAN VERTICAL DATUM 1988 (N.A.V.D. 88).
7. ELEVATIONS AND DISTANCES SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
8. THIS SURVEY IS CERTIFIED TO THE DATE OF THE FIELD SURVEY, NOT THE DATE OF SIGNATURE.

## LEGAL DESCRIPTION

A TRACT OR PARCEL OF LAND IN GOVERNMENT LOTS 1 AND 2, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: BEGINNING AT A CONCRETE MONUMENT MARKING THE INTERSECTION OF THE NORTH LINE OF THE SOUTH 60 FEET OF SAID GOVERNMENT LOT 1 WITH THE WESTERLY LINE RIGHT-OF-WAY OF THE COUNTY ROAD, CONVEYED BY DEED IN DEED BOOK 189, PAGE 161 AND 162, PUBLIC RECORDS OF LEE COUNTY , FLORIDA; THENCE RUN SOUTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE FOR 20 FEET TO THE POINT OF BEGINNING OF THE LAND DESCRIBED HEREIN; THENCE DEFLECT 94°02'30" AND RUN SOUTHWESTERLY TO THE POINT OF INTERSECTION WITH A LINE WHICH IS 10 FEET NORTH FROM AND PARALLEL TO THE SOUTH LINE OF GOVERNMENT LOT 1 TO THE WATERS OF THE GULF OF MEXICO A DISTANCE OF 150 FEET, MORE OR LESS, TO THE POINT OF INTERSECTION WITH A LINE WHICH RUNS FROM AND DEFLECTING TO THE RIGHT AT AN ANGLE OFF OF THE WESTERLY LINE OF ESTERO BOULEVARD OF 94°02'30" AND PASSES THROUGH A POINT ON THE WEST LINE OF ESTERO BOULEVARD WHICH IS 100 FEET SOUTHEASTERLY FROM THE POINT OF BEGINNING AND RUNS FROM SAID ESTERO BOULEVARD TO THE WATERS OF THE GULF OF MEXICO, AND THENCE NORTHEASTERLY ALONG THE LAST ABOVE MENTIONED LINE TO THE SAID POINT ON THE WEST LINE OF ESTERO BOULEVARD, WHICH IS 100 FEET SOUTHEASTERLY FROM THE POINT OF BEGINNING; THENCE RUN NORTHWESTERLY ALONG THE WEST LINE OF ESTERO BOULEVARD A DISTANCE OF 80 FEET TO THE POINT OF BEGINNING; TOGETHER WITH THE RIGHT TO RUN A DRAINAGE LINE FROM AND TO USE AND OBTAIN WATER FROM THE EXISTING WELL ADJACENT TO THE ABOVE DESCRIBED LANDS.

## LEGEND

(S) = SURVEY DATA
(D) = DESCRIPTION DATA
(C) = CALCULATED DATA
(TYP.) = TYPICAL
OHU = OVERHEAD UTILITY LINE
Ⓢ = SANITARY SEWER MANHOLE
= CONCRETE POWER POLE
= FIRE HYDRANT
= CABLE RISER
= TELEPHONE RISER
= WATER VALVE
= GATE VALVE




COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464

Digitally signed by Richard J Ewing
DN: c=US, o=Florida, dnQualifier=A01410C0000184C4118C3100004E891, cn=Richard J Ewing
Date: 2023.04.07 13:31:46 -04'00'

RICHARD J. EWING, VP
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER
DATE OF FIELD SURVEY: 03/23/23
DATE OF SIGNATURE:

THIS DOCUMENT, AND THE CONCEPTS AND DESIGNS CONTAINED THEREIN, IS AN INSTRUMENT OF SERVICE, IS INTENDED ONLY FOR THE SPECIFIC PURPOSE AND CLIENT FOR WHICH IT WAS PREPARED, AND MAY NOT BE USED BY OTHERS OR FOR OTHER PROJECTS. REVISIONS OR MODIFICATIONS MAY BE MADE ONLY BY COASTAL ENGINEERING CONSULTANTS, INC. (CECI) OR ITS SUBSIDIARIES. WITHOUT LIABILITY TO CECI OR ITS SUBSIDIARIES.

| REV/SION DESCRIPTION | BY | DATE | NO. |
|---|---|---|---|
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|---|---|---|---|
| DATE: | 04/06/23 | SCALE: | 1" = 20' |
| DRAWN: | MMW | F.B. | LC698 |
| CHECKED: | RJE | PG. | 41 |
| SEC. | 3 | TWP. 47S | RNG. 24E |
| ACAD NO. | | 23.059 | |
| REF. NO. | | 23.059 | |

CLIENT: ISLAND REEF CLUB CONDOMINIUM

TITLE: BOUNDARY SURVEY
OF A TRACT OR PARCEL OF LAND IN GOVERNMENT LOTS 1 AND 2, SECTION 3, TOWNSHIP 47 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA

COASTAL AND MARINE ENGINEERING
ENVIRONMENTAL AND GEOLOGICAL SERVICES
LAND AND MARINE SURVEY AND MAPPING

PHONE: (239)643-2324
FAX: (239)643-1143
www.coastalengineering.com
E-Mail: info@cecilf.com

COASTAL ENGINEERING CONSULTANTS INC.
Serving Florida Since 1977
28421 BONITA CROSSINGS BOULEVARD
BONITA SPRINGS, FLORIDA 34135

SHEET 1 OF 1
FILE NO.: 23.059

Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

## NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

**Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing which will take place at DiamondHead Beach Resort, 2000 Estero Boulevard, Fort Myers Beach, Florida, 33931.**

**TIME: 9 AM**
**DATE: December 4, 2023**
**CASE: SEZ20230189**
**ADDRESS: 7002 Estero Blvd**
**APPLICANT: Island Reef Association**
**REQUEST: The applicant is requesting a Special Exception for the replacement of a pool, deck, fence, stairs, foot rinse stations, and walkway fully or partially in the EC zoning district.**

**TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM**

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Town Council** will review the application materials and hear testimony to make a **decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.

Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

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Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

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Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1347**

1. **Requested Motion:**

**Meeting Date: December 4, 2023**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE VAR20230205 TO DECREASE THE NUMBER OF REQUIRED PARKING SPACES BY 37 SPACES, AND TO ALLOW FOR A THREE-STORY BUILDING WITH ENCLOSED SPACE ON THE GROUND FLOOR, AND TO ALLOW FOR A BUILDING HEIGHT OF 36 FEET ABOVE FLOOD ELEVATION, FOR THE PROPERTY AT 1249 ESTERO BLVD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

The Town Council approves or denies variance requests.

**What the action accomplishes:**

Approval of the variances will allow the applicant to build a 3-story building that is 36 feet tall with an enclosure on the ground floor and to provide 37 fewer parking spaces than required by the LDC.

2. **Agenda:**
PUBLIC HEARINGS

3. **Requirement/Purpose:**
Resolution

4. **Submitter of Information:**
Sarah Propst, Planning & Zoning

---

5. **Background:**

Fowler Construction & Development, applicant on behalf of the owner for 1249 Estero Boulevard, is requesting three variances from the Town's Land Development Code (LDC). The requested variances are proposed as part of the buildback of The Whale Restaurant. The lot is a conforming, but oddly shaped lot, approximately .4 acres in size. Prior to Ian, the parcel contained a 2-story restaurant bar and a parking lot which provided 26 parking spaces, although not all of the spaces conformed to the Town's code. The applicant is requesting a variance to building height and number of stories in Sec. 34-675(b)(2), proposing to develop a 3-story building with enclosed space on the ground floor and 36 feet tall above flood elevation. The applicant is requesting a variance to Sec. 34-2020(d)(2)h.2. decrease the number of parking spaces by 37.

**Attachments:**

1. Resolution 23-154
2. Variance Staff Report TC
3. Exhibit A - Site Plan
4. Exhibit B - Application Packet
5. Exhibit C - TC postcards

**Financial Impact:**

unknown

6. **Alternative Action**

Approve variance requests

7. **Management Recommendations:**

Recommend denial of variance from Sec. 34-2020(d)(2)h.2. to decrease the number of parking

spaces from 54 to 17. Recommend approval of variance from Sec. 34-675(b)(2) to allow a three-story structure with enclosure on the ground level. Recommend denial of variance from Sec. 34-675(b)(2) to allow a building 6 feet taller than the 30 foot building height.

8. **Recommended Approval:**

| | |
|---|---|
| Kendra Rosa, Zoning Coordinator/Planner 1 | Created/Initiated - 11/21/2023 |
| Frankie Kropacek, Operations & Compliance Director | Approved - 11/21/2023 |
| Gretchen R.H. Vose, Town Attorney | Approved - 11/21/2023 |
| Amy Baker, Town Clerk | Approved - 11/27/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/27/2023 |

**RESOLUTION NUMBER 23-154**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE VAR20230205 TO DECREASE THE NUMBER OF REQUIRED PARKING SPACES BY 37 SPACES, AND TO ALLOW FOR A THREE-STORY BUILDING WITH ENCLOSED SPACE ON THE GROUND FLOOR, AND TO ALLOW FOR A BUILDING HEIGHT OF 36 FEET ABOVE FLOOD ELEVATION, FOR THE PROPERTY AT 1249 ESTERO BLVD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, 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**, applicant Fowler Construction & Development, on behalf of owner 1249 Estero Adventures LLC, is requesting a variance from LDC Section 34-2020(d)(2)h.2. to decrease the number of parking spaces by 37 for a restaurant with cocktail bar area from 54 spaces to 17 spaces, a variance per 34-675(b)(2) to allow a three-story building with enclosed space on the ground level and to allow a 36 foot tall building where 30 feet is the maximum allowed height; and

**WHEREAS**, the STRAP number for the subject property is 19-46-24-W4-0060H.0300; and

**WHEREAS**, the Property is located in the "Pedestrian Commercial" category of the Future Land Use Map of the Comprehensive Plan and the "Downtown" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

**WHEREAS**, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on November 14, 2023, and at said 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 Section 34-87 of the LDC. The LPA voted 6-0, with one member abstaining, to recommend approval of the variance; and

**WHEREAS**, on December 4, 2023 the Town Council held a duly noticed 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 34-87 of the LDC; and

**WHEREAS**, the Town Council determined it is in the best interest of the Town to approve/ approve with conditions/ deny the request.

**NOW THEREFORE, BE IT RESOLVED 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/ did not meet its burden of proof that the requested Variance do/ do not meet the requirements of the Town Comprehensive Plan and LDC, and approving/ approving with conditions/ denying the Variance is in the best interest of the Town to approve/ approve with conditions/ deny. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES/APPROVES WITH CONDITIONS/DENIES the variance from LDC Section 34-2020(d)(2)h.2, and a variance from Section 34-675(b)(2).

Section 3. In approving the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-87 of the LDC:

A. There are/ are not 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 approval of the variance are/ are not the result of actions of the Applicant taken after the adoption of the regulation in question.

C. The variance is/ is not the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.

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

E. The conditions or circumstances on the Property are/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested amendment, the following conditions of approval are imposed on the Applicant and the Property:

A. Approval of this variance 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.

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

| | |
|---|---|
| Dan Allers, Mayor | ___ |
| Jim Atterholt, Vice Mayor | ___ |
| John R. King | ___ |
| Bill Veach | ___ |
| Karen Woodson | ___ |

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

_____
Dan Allers, Mayor

**ATTEST:**

_____
Amy Baker, Town Clerk

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

_____
Gretchen R. H. Vose, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of December 2023.

# Town of Fort Myers Beach

## COMMUNITY DEVELOPMENT DEPARTMENT
## STAFF REPORT

| | |
|---|---|
| **TYPE OF CASE:** | **Variance** |
| **CASE NUMBER:** | **VAR20230205** |
| **CASE NAME:** | **1249 Estero Blvd; requesting a variance from LDC Section 34-2020(d)(2)h.2 for parking spaces and two variances from LDC Section 34-675(b)(2) which allows a structure in that area of the Downtown zoning district to be 30 feet tall (over flood elevation) and only allows a building to be three stories when the first floor is completely unenclosed.** |
| **TOWN COUNCIL HEARING DATE:** | **December 4, 2023** |
| **LPA HEARING DATE:** | **November 14, 2023** |
| **STAFF RECOMMENDATION:** | **a) DENY variance reduce the number of required parking spaces by 37 spaces;**<br>**b) APPROVE variance to allow two stories above flood with enclosed space on the ground floor;**<br>**c) DENY variance to allow structure height six feet over the code allowed 30 feet above base flood elevation.** |
| **PREPARED/ SUBMITTED BY:** | **Sarah Propst AICP, PMP** |

## I. APPLICATION SUMMARY

| | |
|---|---|
| Applicant/Owner: | Fowler Construction & Development (Applicant)/ 1249 Estero Adventures LLC (Owner) |
| Request: | A variance from LDC Section 34-2020(d)(2)h.2 to decrease the number of required parking spaces for restaurants with cocktail bar areas from 54 to 17. For a reduction of 37 spaces. The Applicant is also requesting relief from LDC Section 34-675(b)(2) which allows a structure in that part of the Downtown zoning district to be only 30 feet tall (over flood elevation) and only allows three stories when the first floor is completely unenclosed. A portion of the first floor will be enclosed and dry floodproofed. |
| Subject property: | See attached site plan |

Physical Address: 1249 Estero Boulevard

STRAP #: 19-46-24-W4-0060H.0300

FLU: Pedestrian Commercial

Zoning: Downtown

Adjacent zoning and land uses:

North: PEDESTRIAL COMMERCIAL & MIXED RESIDENTIAL
Downtown & Residential Conservation (RC)

SOUTH: PEDESTRIAN COMMERCIAL
Downtown

East: PEDESTRIAN COMMERCIAL
Downtown

West: PEDESTRIAN COMMERCIAL
Downtown

## II. BACKGROUND AND ANALYSIS

Background:

Fowler Construction & Development, applicant on behalf of the owner for 1249 Estero Boulevard, is requesting three variances from the Town's Land Development Code (LDC). The requested variances are proposed as part of the buildback of The Whale Restaurant. The lot is a conforming, but oddly shaped lot, approximately .4 acres in size. Prior to Ian, the parcel contained a 2-story restaurant bar and a parking lot which provided 26 parking spaces, although not all of the spaces conformed to the Town's code.

The applicant is proposing to develop a three-story structure, in approximately the same location. Staff is unable to determine the square footage of the previous structure, as the Lee Property Appraiser website doesn't show the previous building information.

Analysis:

The applicant has requested the following three variances:

1. A variance from LDC Section 34-2020(d)(2)h.2. to provide 37 fewer parking spaces than required by code. The land development code requires 8 parking spaces per thousand square feet of the entire restaurant, plus 5 spaces per 1000 square feet of bar space within the restaurant (bar space ends up with a total of 13 spaces per 1,000 square feet). These numbers are added together and reduced by 1/3 because it is in the Downtown zoning district. The applicant is also proposing a bike rack which decreases the parking space requirement by 1.
   Bldg Square footage = 9896 Parking Required for restaurant = 53
   Bar Square footage = 596 Parking Required for bar = 2
   Total Parking Required = 53 + 2 -1 = 54

This comes to a total of 54 required parking spaces. The Whale's proposed parking lot can provide a total of 17 spaces, as shown on the attached site plan.

2. Two variance from LDC Section 34-675(b)(2), which states: *For properties that front on the following streets, a maximum of 30 feet above base flood elevation and no taller than two stories, except that an elevated building without enclosed space on the first story may be three stories tall (but still limited to 30 feet above base flood elevation).* The streets listed, include the north side of Estero Boulevard east of Crescent Street.
   a. The building proposed is 3-stories tall and the kitchen area of the ground floor is enclosed and dry floodproofed. The front portion of the deck is open at ground level.
   b. The proposed building is greater than 30 feet tall, when measured from the flood elevation, plus one, to the midpoint between the eave and the ridge of the roof. The current design is approximately 34 feet tall. The variance request is to allow a 36-foot-tall structure.

<u>Neighborhood Compatibility:</u>
The Downtown district allows a reduction in parking to encourage the "park once" concept. This reduces the required parking for all properties in the downtown zoning district by 33%. The variance request is to decrease the parking requirements by an additional 2/3. Compared to surrounding businesses, this will be a large reduction to the parking provided.

The majority of surrounding businesses and homes that will be reconstructed, will be three stories tall (two stories over flood elevation). The Downtown zoning district allows the buildings on the south side of Estero Boulevard to be three stories (two stories over flood) and 40 feet tall, with no requirement to keep the ground floor open. The RC zoning district, in the neighborhood to the north of the proposed site, allows homes to be three stories (two stories over flood) and 30 feet tall.

<u>Findings and Conclusions:</u>
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.*

There are no exceptional or extraordinary conditions that are inherent to the property. The property is a an oddly shaped corner lot, with three street frontages- however the Downtown zoning district allows buildings to be built close to the right of way, so no additional setbacks are required on the street frontages. The request for a variance from Sec. 34-2020 **is not de minimis.** The request for a variance from Sec. 34-675(b)(2) for additional height **is not de minimis**. The request for a variance from Sec. 34-674(b)(2) for three stories with some portion of the ground floor enclosed **is de minimis** to construct a building similar to what is allowed in most surrounding parcels.

*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.*

The conditions justifying the variance are the result of the actions of the Applicant. The Applicant is opting to build a three-story restaurant, is enclosing a portion of the first floor and it will be taller than allowed by right. More square footage is being created and fewer parking spaces are possible on the site.

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 this property.*

The variance from 34-675(b)(2), to allow three stories **is the minimum variance** to relieve the applicant of a code that does not apply to the structures in the Downtown zoning district across the street from this site or from the residential uses to the rear of it.

The variance from 34-675(b)(2), to allow additional height is a design choice and **is not the minimum**.

The variance from 34-2020, to decrease the number of parking spaces would be less if the applicant were proposing a smaller restaurant. The request **is not the minimum**.

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

The granting of this variance **will not be** injurious to the neighborhood or otherwise detrimental to the public welfare but will impact the consistent setback distance from Estero Blvd.

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.*

The conditions or circumstances on this specific property, for which the subject variances are sought **are not** general in nature and do not warrant a code change.

## III. RECOMMENDATION

Town's Staff has reviewed the request for variances from LDC Section 34-2020(d)(2)h.2 to decrease the number of required parking spaces for restaurants with cocktail bar areas from 54 to 17. For a reduction of 37 spaces. The Applicant is also requesting relief from LDC Section 34-675(b)(2) which allows a structure in that part of the Downtown zoning district to be only 30 feet tall (over flood elevation) and only allows three stories when the first floor is completely unenclosed. A portion of the first floor will be enclosed and dry floodproofed. The Town's staff finds:

1. That the variance requested from Sec. 34-2020(d)(2)h.2. to provide 17 parking spaces, when the code requires 54 parking spaces, does not meet the requirements set forth in LDC Sec. 34-87.
2. That the variance requested from Sec. 34-675(b)(2) to allow a total of three stories (two stories over flood elevation) and allow a portion of the ground floor to be enclosed, does meet the requirements set forth in LDC Sec. 34-87.
3. That the variance requested from Sec. 34-675(b)(2) to allow a building height of 36 feet over flood elevation, when the code allows 30 feet over flood elevation, does not meet the code requirements set forth in LDC Sec. 34-87.

At the LPA hearing on November 14th, the LPA recommended approval of the variances with the addition of a condition.

LPA Condition of Approval: **Approval is contingent on identification of a plan to manage the parking deficiency at the Town Council hearing.**

At the time of agenda closing, the applicant had not yet provided a parking management plan. However, the applicant had been in touch with staff and is working towards development of a management plan.

Therefore, staff recommends the following for the requests contained in the variance application of VAR20230060: a) DENIAL of the variance to decrease the number of parking spaces from 54 to 17; b) APPROVAL of the variance to allow a total of three stories with a portion of the ground floor enclosed; d) DENIAL of the variance to allow a total height of 36 feet from one foot above flood elevation to the mean height of the roof between eave and peak.

**Attachments**

Exhibit A – Site Plan
Exhibit B – Application
Exhibit C – Post Cards

# PERMIT SET
# FOR
# THE WHALE BAR & RESTAURANT
# 1249 ESTERO BLVD.

## FORT MYERS BEACH, FLORIDA

NORTH

**OWNER**

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL, 33931

**ARCHITECT**

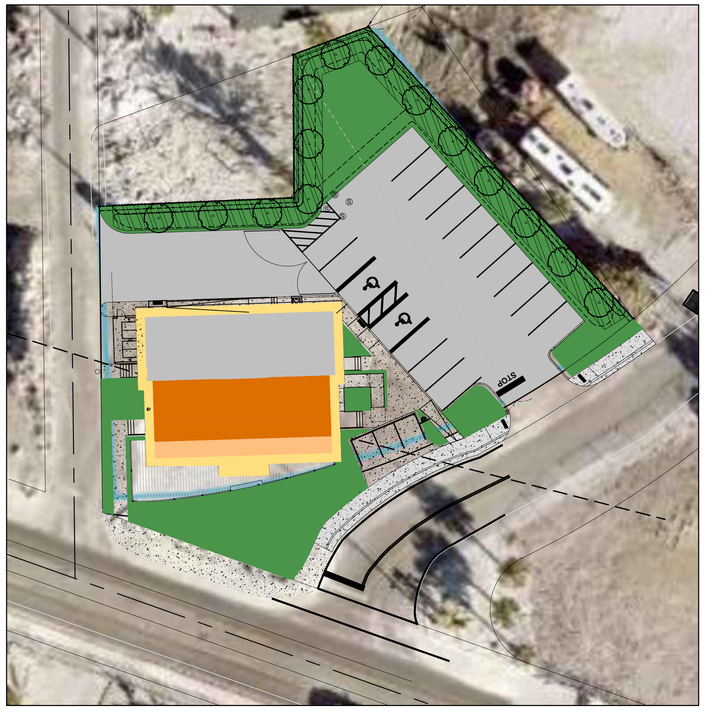
MSA MOORE & SPENCE ARCHITECTS, P.A.
12613 NEW BRITTANY BLVD.
FORT MYERS, FLORIDA 33907
(239) 278-3520

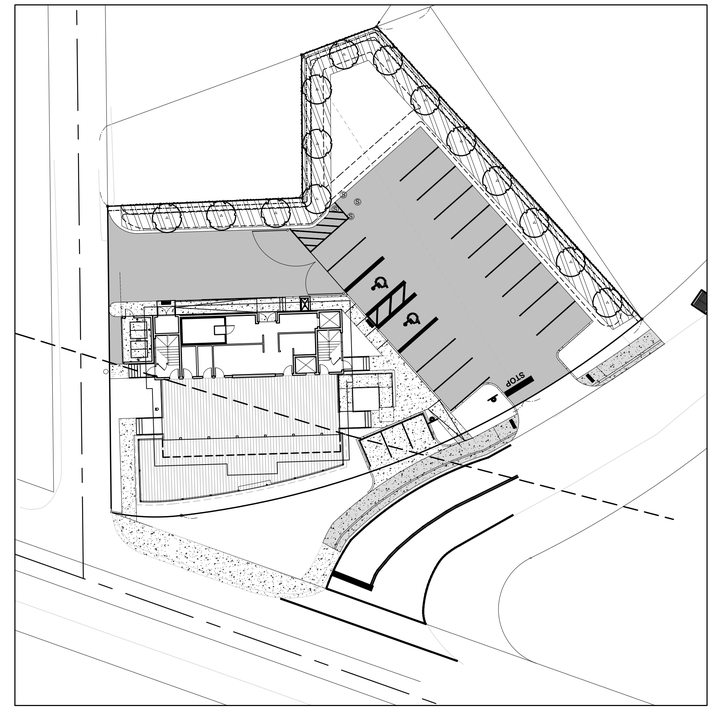
**CIVIL ENGINEER**

SPEATH ENGINEERING FL, LLC
1111 BRICKELL AVE 10TH FLOOR.
MIAMI, FL 33131
(305) 834-4213
CONTACT: MATTHEW S. SPEATH, PE
MSPEATH@SPEATHENGINEERING.COM

**CONSTRUCTION MANAGER**

FOWLER CONSTRUCTION AND DEVELOPMENT
10491 SIX MILE CYPRESS PARKWAY, SUITE 280
FORT MYERS, FL 33966
CONTACT: ROB FOWLER JR.
(239) 275-7000
ROBJR@FOWLERCOMPANY.COM




**CIVIL SHEET KEY**

CS-01 - COVER SHEET
CS-02 - EXISTING CONDITIONS
CS-03 - SITE PLAN
CS-04 - DETAILS
CS-05 - UTILITY PLAN
CS-06 - SWPPP

**3 WORKING DAYS**
**FOR THE LOCATION OF UNDERGROUND FACILITIES**
**BEFORE YOU DIG**
**CALL SUNSHINE STATE**
**ONE CALL OF FLORIDA**
**1-800-432-477**
**FOR THE LOCATION OF UNDERGROUND FACILITIES**

THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE OWNER OR ITS REPRESENTATIVE. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK, AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

PREPARED BY:
SPEATH ENGINEERING
1111 BRICKELL AVE. MIAMI, FL 33131

VERTICAL DATUM
ELEVATIONS SHOWN HEREIN ARE BASED ON THE (NGVD) 29 AND SAID ELEVATIONS ARE BASED ON BENCHMARKS RESEARCHED BY THE SURVEYOR

| REVISIONS | DATE | BY |
|---|---|---|
| 0. INITIAL SUB | 05/16/23 | TG |
| 1. CITY CMNTS | 10/17/23 | TG |

SPEATH ENGINEERING
SPEATH ENGINEERING FL, LLC - 1111 BRICKELL AVE, 10TH FL.
MIAMI, FL 33131 - PHONE: 305-834-4213

COVER SHEET
FOR
THE WHALE BAR & RESTAURANT
1249 ESTERO BLVD. FORT MYERS BEACH
LEE COUNTY, FLORIDA

MATTHEW S. SPEATH
LICENSE
No. 67675
STATE OF FLORIDA
PROFESSIONAL ENGINEER

10/17/2023

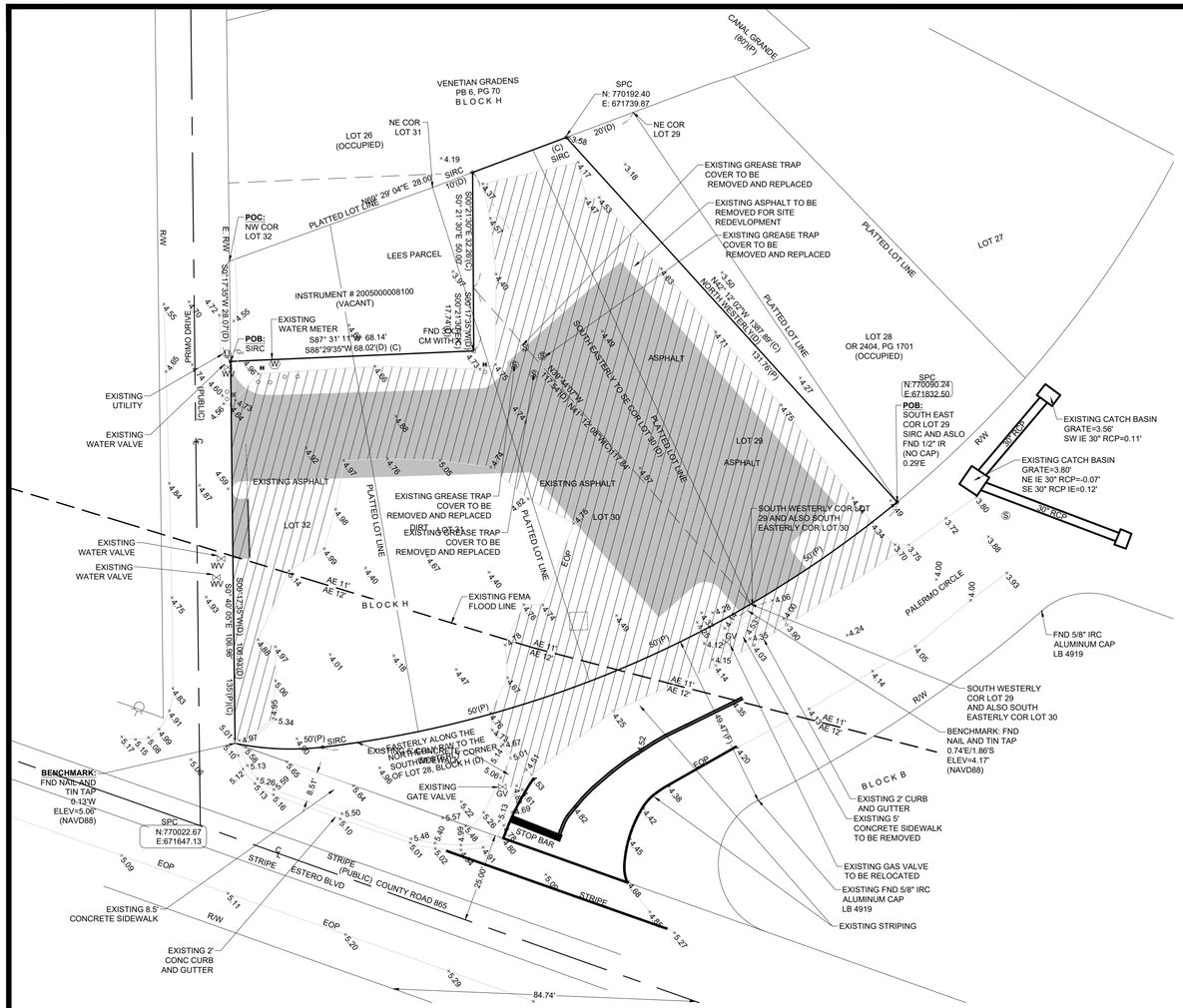
THIS ITEM HAS BEEN DIGITALLY SIGNED AND SEALED BY MATTHEW S. SPEATH, P.E. ON THE DATE ADJACENT TO THE SEAL. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES

*MATTHEW S. SPEATH P.E.*
*LIC. #67675*
*FBPE # 31292*

c=US, o=Speath Engineering FL LLC, dnQualifier=A01410C00000181A0FCE75A00026A6E, cn=Matthew Speath
2023.10.17 18:43:57 -04'00'

| | |
|---|---|
| DRAWN | TCG |
| CHECK | MSS |
| DATE | 10/17/23 |
| SCALE | N.T.S. |
| PROJ. NO. | F22-58 |

SHEET:
C1
1 OF 7



EXISTING AERIAL PHOTOGRAPH
SCALE: 1"=300'
FOLIO #: 10228167
STRAP #: 19-46-24-W4-0060H.0300

PROJECT LOCATION

DEMOLITION NOTES

1. ALL ITEMS TO BE PROTECTED SHALL BE PROTECTED THROUGH ALL THE PHASES OF CONSTRUCTION UNTIL FINAL ACCEPTANCE BY MIAMI-DADE COUNTY IS RECEIVED.
2. IN THE EVENT THE CONTRACTOR DISCOVERS ANY HAZARDOUS MATERIAL,THE REMOVAL OF WHICH IS NOT ADDRESSED IN PROJECT PLANS AND SPECIFICATIONS, THE CONTRACTOR SHALL IMMEDIATELY CEASE ALL WORK AND NOTIFY THE OWNER AND ENGINEER OF THE DISCOVERY OF SUCH MATERIALS.
3. PRIOR TO STARTING ANY DEMOLITION, CONTRACTOR IS RESPONSIBLE FOR/TO:

A. OBTAINING ALL REQUIRED PERMITS AND MAINTAINING THE SAME ON SITE FOR REVIEW BY THE ENGINEER AND OTHER PUBLIC AGENCIES HAVING JURISDICTION. NOTIFYING, AT A MINIMUM, THE MUNICIPAL ENGINEER, DESIGN ENGINEER, AND LOCAL DEPARTMENT OF PUBLIC WORKS, 72 HOURS PRIOR TO START OF WORK.
C. INSTALLING THE REQUIRED SOL EROSION AND SEDIMENT CONTROL MEASURES PRIOR TO SITE DISTURBANCE.
D. IN ACCORDANCE WITH STATE LAW, THE CONTRACTOR SHALL BE REQUIRED TO CALL SUNSHINE 811 FOR UTILITY MARK OUT IN ADVANCE OF ANY EXCAVATION.
E. LOCATING AND PROTECTING ALL UTILITIES AND SERVICES INCLUDING BUT NOT LIMITED TO GAS, WATER AND ELECTRIC, SANITARY AND STORM SEWER, TELEPHONE, CABLE, FIBER OPTIC CABLE, ETC. WITHIN AND ADJACENT TO THE LIMITS OF PROJECT ACTIVITIES. THE CONTRACTOR SHALL USE AND COMPLY WITH THE REQUIREMENTS OF THE APPLICABLE UTILITY NOTIFICATION SYSTEM TO LOCATE ALL THE UNDERGROUND UTILITIES.
F. PROTECTING AND MAINTAINING IN OPERATION ALL ACTIVE UTILITIES AND SYSTEMS THAT ARE NOT BEING REMOVED DURING ALL DEMOLITION ACTIVITIES.
G. ARRANGING FOR AND COORDINATING WITH THE APPLICABLE UTILITY SERVICE PROVIDER(S) FOR THE TEMPORARY OR PERMANENT TERMINATION OF SERVICE REQUIRED BY THE PROJECT PLANS AND SPECIFICATIONS. THE CONTRACTOR SHALL PROVIDE THE UTILITY ENGINEER AND OWNER WRITTEN NOTIFICATION THAT THE EXISTING UTILITIES AND SERVICES HAVE BEEN TERMINATED AND ABANDONED IN ACCORDANCE WITH JURISDICTIONAL AND UTILITY COMPANY REQUIREMENTS.
H. COORDINATION WITH UTILITY COMPANIES REGARDING WORKING "OFF-PEAK" HOURS OR ON WEEKENDS AS MAY BE REQUIRED TO MINIMIZE THE IMPACT ON THE AFFECTED PARTIES.

4. CONTRACTORS SHALL COORDINATE WITH AII UTILITY COMPANIES CONCERNING THE ABANDONMENT, RELOCATION AND/OR DEMOLITION OF UTILITIES PRIOR TO CONSTRUCTION. NO WORK IS TO BE PERFORMED ON LIVE LINES UNLESS APPROVED IN WRITING BY THE UTILITY IN ALL CASES. A REPRESENTATIVE FROM THE UTILITY SHALL BE PRESENT FOR NITIAL ABANDONMENT AND/OR LIVE CUTS. CONTRACTOR SHALL USE EXTREME CAUTION WHEN WORKING NEAR UTILITIES AND SHALL PROTECT THEM AT ALL TIMES.
5. RELOCATION SHALL INCLUDE ALL LABOR, EQUIPMENT, MATERIALS, HAULING, PERMITTING, FEES, AND COORDINATION WITH PUBLIC AND/OR PRIVATE UTILITY REQUIRED TO REMOVE, RELOCATE, AND INSTALL NEW ITEMS AS INDICATED ON THE PLANS.
6. THE CONTRACTOR IS FULLY AND COMPLETELY RESPONSIBLE FOR LOCATION, VERIFICATION, PROTECTION, STORAGE, MAINTENANCE, DEMOLITION, REMOVAL, RELOCATION OR ALTERATION OF ALL EXISTING SITE UTILITIES, SITE IMPROVEMENTS, STRUCTURES, OR CONSTRUCTION ELEMENTS AS REQUIRED TO COMPLETE THE WORK THAT ARE SHOWN ON THE PLANS AND OR THAT ARE OBSERVABLE IN THE FIELD, WHETHER CONSPICUOUSLY VISIBLE OR NOT. THE CONTRACTOR SHALL VISIT THE SITE AND BECOME THOROUGHLY FAMILIAR WITH ALL EXISTING IMPROVEMENTS, UTILITIES, AND SITE CONDITIONS PRIOR TO BIDDING AND CONSTRUCTION.
7. THE CONTRACTOR SHALL USE EXTREME CAUTION WHEN WORKING NEAR ANY EXISTING UNDERGROUND OR OVERHEAD UTILITIES.
8. CONTRACTOR SHALL COMPLY WITH ALL LOCAL STATE, AND FEDERAL REQUIREMENTS WITH ALL DEMOLITION ACTIVITIES. IF ADDITIONAL REQUIREMENTS ARE REQUIRED FOR HAZARDOUS WASTE REMOVAL INCLUDING BUT NOT LIMITED TO ASBESTOS, SEPTIC FIELDS, LEAD, PCB, TCP, OR OTHER WASTE OR CONTAINMENT, IT IS THE CONTRACTORS RESPONSIBILITY TO COMPLY WITH MANDATES PRIOR TO COMMENCEMENT OF CONSTRUCTION.
9. CONTRACTOR IS RESPONSIBLE FOR PROCUREMENT OF AII NECESSARY PERMITS.
10. DEMOLITION SHALL INCLUDE ALL LABOR, EQUIPMENT, MATERIALS, HAULING, PERMITTING, FEES, AND COORDINATION WITH PUBLIC AND/OR PRIVATE UTILITY REQUIRED TO REMOVE AND PROPERLY DISPOSE OF ANY ITEM NECESSARY TO PERFORM THE REQUIRED DEMOLITION AS INDICATED ON THE PLANS.
11. ABANDONMENT SHALL INCLUDE ALL LABOR, EQUIPMENT, MATERIALS, PERMITTING, FEES, AND COORDINATION WITH PUBLIC AND/OR PRIVATE UTILITY REQUIRED TO ADEQUATELY ABANDON ITEMS AS INDICATED ON THE PLANS.
12. THE CONTRACTOR SHALL COORDINATE ALL THE TREES AND LANDSCAPE REMOVAL WITH LANDSCAPE PLANS, ANY DISCREPANCY BETWEEN THIS DEMOLITION PLAN AND THE LANDSCAPE PLANS SHALL BE BROUGHT TO THE ATTENTION OF THE OWNER IMMEDIATELY.
13. THIS DEMOLITION PLAN IS FOR GRAPHICAL REFERENCE ONLY. ITEMS NOT DEPICTED ON THESE PLANS MAY BE REQUIRED TO BE PROTECTED, REMOVED, OR RELOCATED. THE CONTRACTOR IS RESPONSIBLE FOR FIELD VERIFYING THE LOCATIONS OF AII EXISTING STRUCTURES, UTILITIES, AND APPURTENANCES WITHIN THE LIMITS OF CONSTRUCTION. DEMOLITION INCLUDES BUT IS NOT LIMITED TO THE ITEMS SHOWN ON THIS PLAN.
14. SAWCUT DIMENSIONS SHOWN ARE APPROXIMATE. CONTRACTOR SHALL FIELD STAKE AND CONSULT ENGINEER TO VERIFY PRIOR TO CONSTRUCTION.
15. THE DEMOLITION PLAN IS INTENDED TO PROVIDE GENERAL INFORMATION REGARDING ITEMS TO BE DEMOLISHED AND/OR REMOVED. THE CONTRACTOR SHALL ALSO REVIEW THE OTHER SITE PLAN DRAWINGS AND INCLUDE IN DEMOLITION ACTIVITIES ALL INCIDENT AI WORK NECESSARY FOR THE CONSTRUCTION OF THE NEW SITE IMPROVEMENTS.
16. ALL DEMOLITION ACTIVITIES ARE TO SE PERFORMED IN ACCORDANCE WITH THE REQUIREMENTS OF THESE PLANS AND SPECIFICATIONS AND ALL APPLICABLE FEDERAL, STATE AND LOCAL REGULATIONS, ANY QUESTIONS CONCERNING THE ACCURACY OR INTENT OF THESE PLANS OR SPECIFICATIONS, CONCERNS REGARDING THE APPLICABLE SAFETY STANDARD, OR THE SAFETY OF THE CONTRACTOR OR THIRD PARTIES IN PERFORMING THE WORK OF THIS PROJECT SHALL BE RAISED WITH ENGINEER IN WRITING AND RESPONDED TO BY ENGINEER, IN WRITING, PRIOR TO THE INITIATION OF ANY SITE ACTIVITY.
17. THE CONTRACTOR SHALL PROVIDE ALL "MEANS AND METHODS" NECESSARY TO PREVENT MOVEMENT, SETTLEMENT, OR COLLAPSE OF EXISTING STRUCTURES, AND ANY OTHER IMPROVEMENTS THAT ARE REMAINING ON OR OFF SITE. THE CONTRACTOR IS RESPONSIBLE FOR ALL REPAIRS OF DAMAGE TO ALL ITEMS THAT ARE TO REMAIN. ALL REPAIRS SHALL USE NEW MATERIAL, THE REPAIRS SHALL RESTORE THE ITEM TO THE PRE-DEMOLITION CONDITION. SUCH REPAIRS SHALL BE PERFORMED AT THE CONTRACTOR'S SOLE EXPENSE.
18. THE CONTRACTOR SHALL NOT PERFORM ANY EARTH MOVEMENT ACTIVITIES, DEMOLITION OR REMOVAL OF FOUNDATION WALLS, FOOTINGS, OR OTHER MATERIALS WITHIN THE LIMITS OF DISTURBANCE UNLESS IT IS IN STRICT ACCORDANCE WITH THE PROJECT PLANS AND SPECIFICATIONS, AND/OR UNDER THE WRITTEN DIRECTION OF THE OWNER'S STRUCTURAL OR GEOTECHNICAL ENGINEER.
19. CONTRACTOR SHALL BACKFILL ALL EXCAVATION RESULTING FROM, OR INCIDENTAL TO, DEMOLITION ACTIVITIES. BACKFILL SHALL BE ACCOMPLISHED WITH APPROVED BACKFILL MATERIALS AND SHALL BE SUFFICIENTLY COMPACTED TO SUPPORT NEW IMPROVEMENTS AND IN COMPLIANCE WITH THE RECOMMENDATIONS IN THE GEOTECHNICAL REPORT. BACKFILLING SHALL OCCUR IMMEDIATELY AFTER DEMOLITION ACTIVITIES, AND SHALL BE DONE SO AS TO PREVENT WATER ENTERING THE EXCAVATION. FINISHED SURFACES SHALL BE GRADED TO PROMOTE POSITIVE DRAINAGE.
20. EXPLOSIVES SHALL NOT BE USED WITHOUT PRIOR WRITTEN CONSENT OF BOTH THE OWNER AND ALL APPLICABLE GOVERNMENT AUTHORITIES. ALL THE REQUIRED PERMITS AND EXPLOSIVE CONTROL MEASURES THAT ARE REQUIRED BY THE FEDERAL, STATE AND LOCAL GOVERNMENTS SHALL BE IN PLACE PRIOR TO STARTING AN EXPLOSIVE PROGRAM. THE CONTRACTOR IS ALSO RESPONSIBLE FOR ALL INSPECTION AND SEISMIC VIBRATION TESTING THAT IS REQUIRED TO MONITOR THE EFFECTS ON ALL LOCAL STRUCTURES.
21. CONTRACTOR SHALL PROVIDE TRAFFIC CONTROL AND GENERALLY ACCEPTED SAFE PRACTICES IN CONFORMANCE WITH THE CURRENT FHWA "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES" (MUTCD), AS WELL AS FEDERAL, STATE AND LOCAL REGULATIONS WHEN DEMOLITION RELATED ACTIVITIES IMPACT ROADWAYS OR ROADWAY RIGHT-OF-WAY.
22. CONTRACTOR SHALL CONDUCT DEMOLITION ACTIVITIES IN SUCH A MANNER TO ENSURE MINIMUM INTERFERENCE WITH ROADS. STREETS. SIDEWALKS. WALKWAYS, AND OTHER ADJACENT FACILITIES. STREET CLOSURE PERMITS MUST BE RECEIVED FROM THE APPROPRIATE GOVERNMENTAL AUTHORITY PRIOR TO THE COMMENCEMENT OF ANY ROAD OPENING OR DEMOLITION ACTIVITIES IN OR ADJACENT TO THE RIGHT-OF-WAY.
23. DEMOLITION ACTIVITIES AND EQUIPMENT SHALL NOT USE AREAS OUTSIDE THE DEFINED PROJECT LIMIT LINE, WITHOUT WRITTEN PERMISSION OF THE OWNER AND ALL GOVERNMENTAL AGENCIES HAVING JURISDICTION.
24. THE CONTRACTOR SHALL USE DUST CONTROL MEASURES TO LIMIT AIRBORNE DUST AND DIRT RISING AND SCATTERING IN THE AIR IN ACCORDANCE WITH FEDERAL,STATE, AND/OR LOCAL STANDARDS. AFTER THE DEMOLITION IS COMPLETE, ADJACENT STRUCTURES AND IMPROVEMENTS SHALL BE CLEANED OF ALL DUST AND DEBRIS CAUSED BY THE DEMOLITION OPERATIONS. THE CONTRACTOR IS RESPONSIBLE FOR RETURNING ALL ADJACENT AREAS TO THEIR "PRE-DEMOLITION" CONDITION.
25. CONTRACTOR IS RESPONSIBLE TO SAFEGUARD SITE AS NECESSARY TO PERFORM THE DEMOLITION IN SUCH A MANNER AS TO PREVENT THE ENTRY OF UNAUTHORIZED PERSONS AT ANY TIME.
26. CONTRACTOR IS RESPONSIBLE FOR SITE JOB SAFETY, WHICH SHALL INCLUDE BUT NOT LIMITED TO THE INSTALLATION AND MAINTENANCE OF BARRIERS, FENCING AND OTHER APPROPRIATE SAFETY ITEMS NECESSARY TO PROTECT THE PUBLIC FROM AREAS OF CONSTRUCTION AND CONSTRUCTION ACTIVITY.
27. DEBRIS SHALL NOT BE BURIED ON THE SUBJECT SITE. ALL DEMOLITION WASTES AND DEBRIS (SOLID WASTE) SHALL BE DISPOSED OF IN ACCORDANCE WITH ALL MUNICIPAL, COUNTY, STATE, AND FEDERAL LAWS AND APPLICABLE CODES. THE CONTRACTOR SHALL MAINTAIN RECORDS TO DEMONSTRATE PROPER DISPOSAL ACTIVITIES, TO BE PROVIDED TO THE OWNER UPON REQUEST.
28. CONTRACTOR SHALL NOT IMPACT ANY WETLANDS THROUGH CONSTRUCTION ACTIVITIES OR ANY OTHER MEANS OF DISTURBANCE .
29. THE FIRM OR ENGINEER OF RECORD IS NOT RESPONSIBLE FOR JOB SITE SAFETY OR SUPERVISION. CONTRACTOR IS TO PROCEED WITH THE DEMOLITION IN A SYSTEMATIC AND SAFE MANNER, FOLLOWING ALL THE OSHA REQUIREMENTS TO ENSURE PUBLIC AND CONTRACTOR SAFETY.
30. THIS DEMOLITION PLAN IS INTENDED TO IDENTIFY THOSE EXISTING ITEMS/CONDITIONS WHICH ARE TO BE REMOVED. IT IS NOT INTENDED TO PROVIDE DIRECTION AS TO THE MEANS AND METHODS TO BE USED TO ACCOMPLISH THAT WORK. ALL MEANS AND METHODS UTILIZED ARE TO BE IN STRICT ACCORDANCE WITH ALL STATE, FEDERAL, LOCAL, AND JURISDICTIONAL REQUIREMENTS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COMPLYING WITH ALL OSHA AND OTHER SAFETY PRECAUTIONS NECESSARY TO PROVIDE A SAFE WORK SITE

SUBSURFACE UTILITIES
THE UNDERGROUND UTILITIES SHOWN HEREON HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS, THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE OF ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDON. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN HEREON ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM THE INFORMATION AVAILABLE.

ENVIRONMENTAL NOTES
THE PLANS PREPARED DO NOT DEPICT ENVIRONMENTAL CONDITIONS OR A CERTIFICATION/WARRANTY REGARDING THE PRESENCE OR ABSENCE OF ENVIRONMENTALLY IMPACTED SITE CONDITIONS.

GRAPHIC SCALE
10 0 5 10 20 40
( IN FEET )
1" = 20 FEET

| REVISIONS | DATE | BY |
|---|---|---|
| 0. INITIAL SUB | 05/16/23 | TG |
| 1. CITY CMNTS | 10/17/23 | TG |
| | | |
| | | |
| | | |
| | | |

SPEATH ENGINEERING
SPEATH ENGINEERING FL, LLC - 111 BRICKELL AVE, 10TH FL
MIAMI, FL 33131 - PHONE: 305-834-4213

EXISTING CONDITIONS
FOR
THE WHALE BAR & RESTAURANT
1249 ESTERO BLVD. FORT MYERS BEACH
LEE COUNTY, FLORIDA

MATTHEW S. SPEATH LICENSE No. 67675 STATE OF FLORIDA PROFESSIONAL ENGINEER
10/17/2023
THIS ITEM HAS BEEN DIGITALLY SIGNED AND SEALED BY MATTHEW S. SPEATH, P.E. ON THE DATE ADJACENT TO THE SEAL. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES
MATTHEW S. SPEATH P.E.
LIC. #67675
FBPE # 31292

| | |
|---|---|
| DRAWN | TCG |
| CHECK | MSS |
| DATE | 10/17/23 |
| SCALE | 1" =20' |
| PROJ. NO. | F22-58 |

SHEET:
C2
2 OF 7

**SITE DATA:**

| | |
|---|---|
| ZONING: | DOWNTOWN, ZONING DISTRICT |
| COMMUNITY: | CITY OF FORT MYERS BEACH PLANNING COMMUNITY |
| PROPOSED USE: | RESTAURANT / BAR OUTDOOR DINING |
| ZONE: | AE EL. 11.0' / 12.0' (NAVD) |

**SITE INFORMATION :**

SITE INFORMATION BASED ON THE SURVEY PREPARED BY:
STEPHEN F. SHAWLESS II, P.S.M. HALEY WARD, ENGINEERING, ENVIORNMENTAL, SURVERYING
13041 McGREGOR BOULEVARD FORT MYERS, FLORIDA 33919
ENTITLED: "SURVEY PLAT OF PARCEL OF LAND LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, FORT MYERS BEACH, LEE COUNTY, FLORIDA", DATED 12/07/2022

FOLIO #: 10228167

STRAP#: 19-46-24-W4-0060H.0300

LEGAL DESCRIPTION:

INSTR.# 2022000200796 A PARCEL BEING IN LOTS 30,31 AND 32, BLOCK "H", VENETIAN GARDENS SUBDIVISION, AS RECORDED IN PLAT BOOK 6, PAGE 70, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
FROM THE NORTHWEST CORNER OF SAID LOT 32, RUN SOUTH 0 DEGREES 17'35" WEST, ALONG THE EASTERLY RIGHT-OF-WAY OF PRIMO DRIVE, 28.07 FEET TO THE POINT OF BEGINNING OF LANDS HEREIN DESCRIBED, FROM SAID POINT OF BEGINNING CONTINUE SOUTH 0 DEGREES 17'35" WEST, ALONG SAID EASTERLY RIGHT OF WAY OF PRIMO DRIVE 106.93 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY OF PALERMIO CIRCLE; THENCE ALONG SAID NORTHERLY RIGH-OF-WAY OF PALERMO CIRCLE IN AN EASTERLY DIRECTION TO THE SOUTHWESTERLY CORNER OF LOT 29, BLOCK H, SAID VENETIAN GARDENS SUBDIVISION, THENCE NORTH 39 DEGREES 44'07" WEST, 117.54 FEET TO A POINT ON THE LINE WHICH IS PARALLEL TO PRIMO DRIVE;THENCE SOUTH 0 DEGREES 17'35" WEST, 17.74 FEET; THENCE SOUTH 88 DEGREES 29'35" WEST, 68.02 FEET TO THE POINT OF BEGINNING. AND PART OF LOTS 29, 30 AND 31, BLOCK H, VENETIAN GARDENS SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN PLAT BOOK 6, PAGE 70, MORE FULLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF LOT 29, THENCE NORTHWESTERLY TO A POINT 20 FEET FROM THE NORTHEAST CORNER OF LOT 29 AN ON NORTH LINE OF SAID LOT; THENCE SOUTHWESTERLY ON SAID LINE 50 FEET TO A POINT WHICH IS 10 FEET WEST OF THE NORTHEAST CORNER OF LOT 31; THENCE SOUTHEASTERLY TO SOUTHEAST CORNER OF LOT 30, THENCE NORTHEASTERLY AND ALONG SAID LOT LINE TO POINT OF BEGINNING.
LESS AND EXCEPT THE PARCEL OF LAND DESCRIBED IN THAT CERTAIN DEED RECORDED IN OFFICIAL RECORD BOOK 4831, PAGE 1147, PUBLIC RECORDS OF LEE COUNTY FLORIDA.

SCOPE OF WORK:

REDEVELOPMENT OF FORMER RESTAURANT SITE, INCLUDING:
- PROPOSED RESTAURANT AND BAR STRUCTURE
- PAVED DRIVEWAY CONNECTION TO EXISTING ROAD WAY
- ALL RELATED SITE IMPROVEMENTS

DRAINAGE CALCULATIONS:

TOTAL BASIN AREA = .403 AC
TOTAL IMPERVIOUS AREA = .309 AC
TOTAL PERVIOUS AREAS = 0.094 AC
TOTAL DETENTION AREA = 0.062 AC

DETENTION REQUIRED (GREATER OF):
1. FIRST INCH OF RUNOFF FROM THE DEVELOPMENT PROJECT:
   = 1 IN * TOTAL BASIN AREA * (1FT/12IN)
   = 1 IN * .403 AC * (1FT/12IN)
   = 0.0336 AC-FT REQUIRED DETENTION STORAGE

2. COMPUTE 2.5 IN TIMES THE PERCENTAGE OF IMPERVIOUSNESS.
   % IMPERVIOUS = .309 AC / .403 AC * 100% = 76.7%
   = 2.5 IN * 0.767
   = 1.91 IN TO BE TREATED
   COMPUTE THE REQUIRED VOLUME FOR WATER QUALITY DETENTION
   = TO BE TREATED * TOTAL AC * (1/12)
   = 1.91 IN TO BE TREATED * .403 AC * (1/12) = .064
   =0.064 AC-FT REQUIRED DETENTION STORAGE

DRY DETENTION PROVIDED = 0.075 AC-FT

| FEMA FLOOD ZONE | ZONE AE |
|---|---|
| BASE FLOOD ELEVATION | 11.0' / 12.0' (NAVD) |
| CROWN OF ROAD ELEVATION | 3.88' - 5.09' |
| CROWN OF ROAD ELEVATION +1.5' | 6.59' |
| FIRM MAP NUMBER | 12071C0267G EFF. 11/17/2022 |
| COASTAL A-ZONE CONSTRUCT TO V-ZONE STANDARDS | |

**FAR CALCULATION:**

**TOTAL GROSS FLOOR AREA: 10,063 SF**
**TOTAL LOT AREA: 18,740 SF**
**FAR = 0.537**

SITE NOTES:

1. ALL CONSTRUCTION MATERIALS AND SPECIFICATIONS SHALL CONFORM WITH ALL CURRENT STANDARDS OF LEE COUNTY.
2. THE PROPOSED ENGINEERED FILL MATERIALS ARE TO BE PLACED IN LIFTS NOT EXCEEDING 8" LOOSE MEASURED THICKNESS IN UNCONFINED LIFTS OR 6" IN CONFINED AREAS; EACH LIFT IS TO BE COMPACTED AS FOLLOWS:
   A) SLAB ON GRADE: MINIMUM OF 95% MAXIMUM DENSITY BY ASTM D557
   B) FOOTING BEARING: MINIMUM OF 98% MAXIMUM DENSITY BY ASTM D557
2. ADEQUATE DRAINAGE SHALL BE PROVIDED, AND SURFACE RUN-OFF WATER SHALL BE DIVERTED TO A STORM CONVEYANCE OR OTHER APPROVED POINT OF COLLECTION IN ACCORDANCE WITH FLORIDA BUILDING CODE, LEE COUNTY, AND SOUTH FLORIDA WATER MANAGEMENT CODE ORDINANCES. ALL SITE DRAINAGE IS DESIGNED AND SHALL BE CONSTRUCTED IN SUCH A MANNER THAT RUN-OFF RATES, VOLUME AND POLLUTANT LOADS NOT EXCEEDING PREDEVELOPMENT CONDITIONS AND PREVENTING FLOODING OF ADJACENT PROPERTIES AND PUBLIC RIGHT-OF WAY.
3. ALL DISTURBED AREAS WITHIN LANDSCAPE/ SIDEWALK/ CURB AND GUTTER/ ROAD PAVEMENT SHALL BE RESTORED TO ITS ORIGINAL OR BETTER CONDITIONS.
4. ALL CONCRETE UTILIZED FOR SITE-RELATED FLATWORK CONSTRUCTION SHALL HAVE A MINIMUM COMPRESSIVE STRENGTH OF 3,000 PSI COMPRESSIVE STRENGTH AT 28 DAYS.
5. IF SURFACE CONSTRUCTION OCCURS WITHIN THE DRIP LINES OF EXISTING TREES, PROTECT TREES DURING CONSTRUCTION PER FDOT STANDARD PLANS INDEX 110-100. DO NOT PARK VEHICLES OR STAGE CONSTRUCTION WITHIN THE DRIP LINES OF EXISTING TREES WHERE CONSTRUCTION AFFECTS TREE ROOTS OR CANOPY.
6. NO ADVERSE IMPACTS TO SURFACE WATER OR GROUNDWATER ARE ANTICIPATED WITH THE PROPOSED USE OF THE SUBJECT PROPERTY.
7. WHERE PAVEMENT WILL BE INSTALLED IN THE TOWN R/W, THE PAVEMENT SHALL BE INSTALLED AS FDOT SP-12.5. LIME ROCK SHOULD NOT BE USED IN THE R/W IF THE BOTTOM OF THE BASE IS NOT 18" ABOVE THE SEASONAL HIGH GROUND WATER ELEVATION.

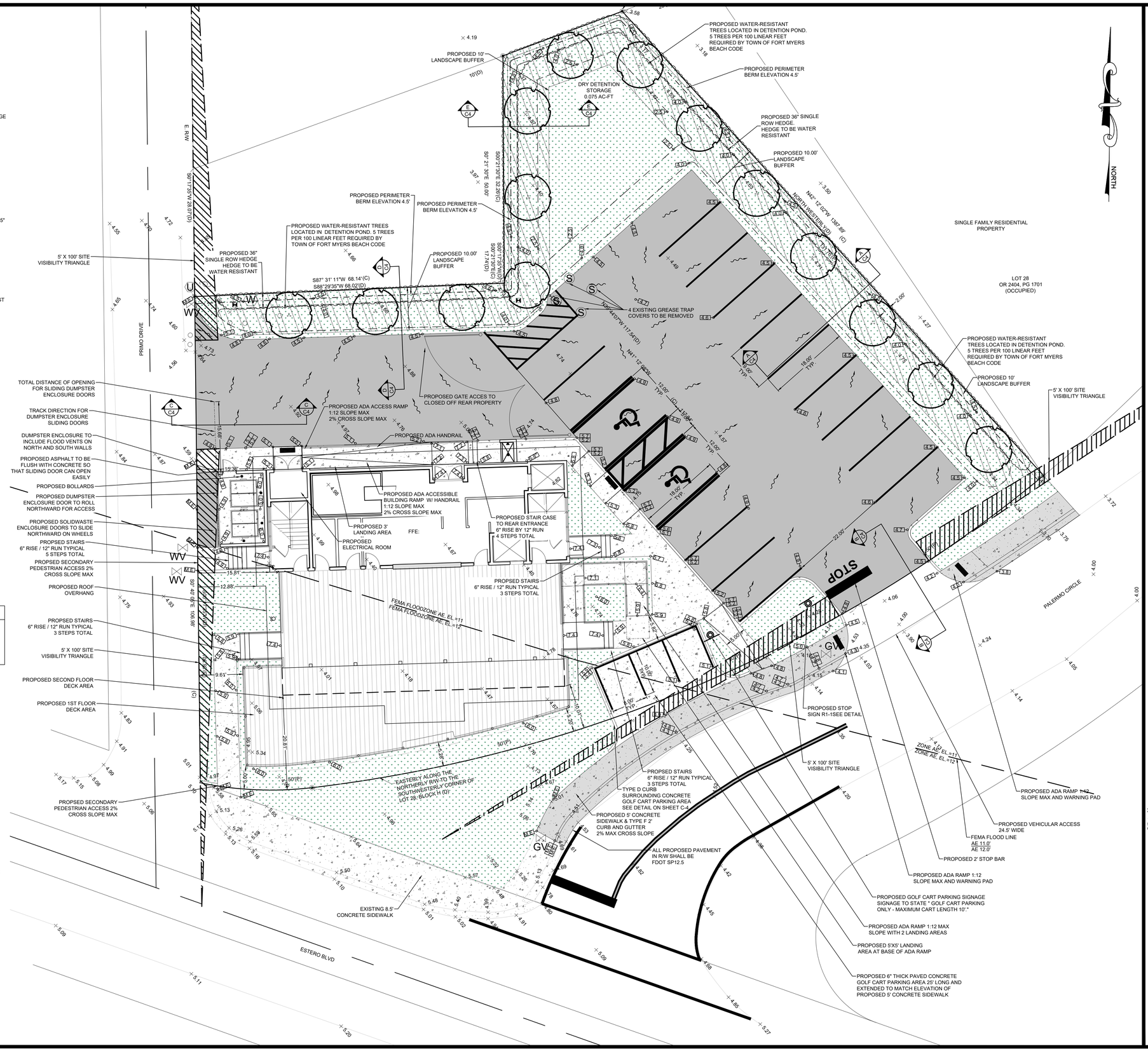
**LEGEND**

| | |
|---|---|
| 6.65 | EXISTING GRADE |
| 6.0 | PROPOSED GRADE |
| ~ | FLOW ARROW |

**GRAPHIC SCALE**

10 0 5 10 20 40

( IN FEET )
1" = 10 FEET




| REVISIONS | DATE | BY |
|---|---|---|
| 0. INITIAL SUB | 05/16/23 | TG |
| 1. CITY CMNTS | 10/17/23 | TG |
| | | |
| | | |
| | | |
| | | |


SPEATH ENGINEERING
SPEATH ENGINEERING FL, LLC - 111 BRICKELL AVE, 10TH FL
MIAMI, FL 3313 - PHONE: 305-834-4213


# SITE PLAN
FOR
# THE WHALE BAR & RESTAURANT
1249 ESTERO BLVD. FORT MYERS BEACH
LEE COUNTY, FLORIDA

MATTHEW S. SPEATH LICENSE No. 67675 STATE OF FLORIDA PROFESSIONAL ENGINEER
10/17/2023

THIS ITEM HAS BEEN DIGITALLY SIGNED AND SEALED BY MATTHEW S SPEATH, P.E. ON THE DATE ADJACENT TO THE SEAL. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES

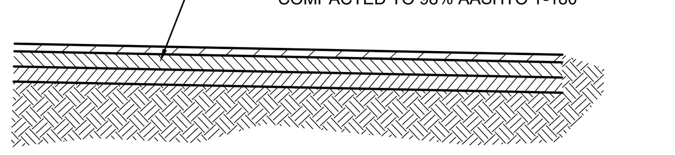
*MATTHEW S. SPEATH P.E.*
*LIC. #67675*

*FBPE # 31292*

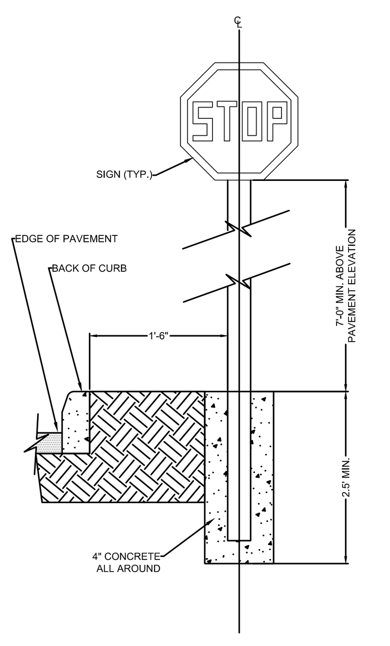
| | |
|---|---|
| DRAWN | TCC |
| CHECK | MSS |
| DATE | 10/17/23 |
| SCALE | 1" =10' |
| PROJ. NO. | F22-58 |

SHEET:
C3
3 OF 7

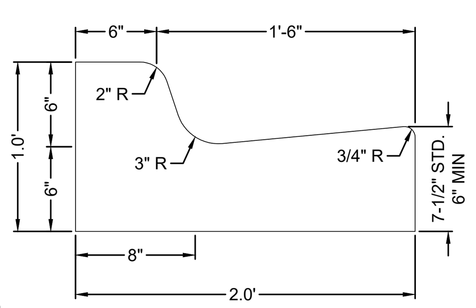
CONSTRUCT ALL NEW ASPHALT SURFACE OUTSIDE OF THE R.O.W. AS FOLLOWS:
1. 2" TYPE S-III ASPHALT CONCRETE
2. 8" OF BASE MATERIAL - LBR 100 COMPACTED TO 98% AASHTO T-180
3. 8" COMPACTED SUB-BASE - LBR 40 COMPACTED TO 98% AASHTO T-180



ASPHALT SECTION
NTS

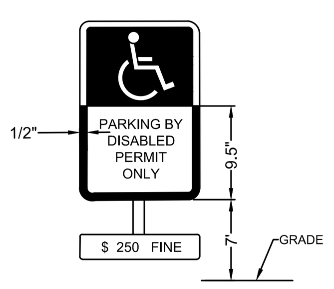



TYPICAL SIGN MOUNTING DETAIL




NOTE:
WHEN USED ON HIGH SIDE OF ROADWAYS, THE CROSS SLOPE OF THE GUTTER SHALL MATCH THE CROSS SLOPE OF THE ADJACENT PAVEMENT AND THE THICKNESS OF THE LIP SHALL BE 6", UNLESS OTHERWISE SHOWN ON PLANS.

TYPE "F" CURB DETAIL

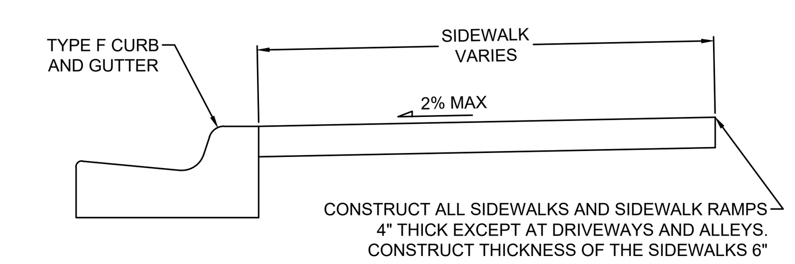



NOTES:

ALL LETTERS ARE 1" SERIES "C".

TOP PORTION OF SIGN SHALL HAVE A REFLECTORIZED BLUE BACKGROUND WITH WHITE REFLECTORIZED LEGEND & BORDER. BOTTOM PORTION OF SIGN SHALL HAVE A REFLECTORIZED WHITE BACKGROUND WITH BLACK OPAQUE LEGEND & BORDER.

TYPICAL HANDICAP SIGN
N.T.S.




PROPOSED SIDEWALK & CURB DETAIL

## TOWN OF FT. MYERS BEACH STANDARD DETAIL NO. 10.39a
ALUMINUM PEDISTRIAN GUARD RAIL

**NOTES**

PIPE RAILING & POSTS:
Structural Tube, Pipe and Bar shall be in accordance with ASTM B221 or ASTM B429, Alloy 6061-T6. End Rail 90° bends and corner bends with maximum 4'-0" post spacing, may be Alloy 6063-T6. Posts and End Rails shall be fabricated and installed plumb, ± 1° tolerance when measured at 3'-6" above the foundation. Corners and changes in tangential longitudinal alignment, may be made continuous with a 9" bend radius or terminated at adjoining sections with a standard end hoop when handrails are not required. For changes in tangential longitudinal alignment greater than 45°, posts shall be positioned at a maximum distance of 2'-0" each side of the corner and shall not be located at the corner apex. For curved longitudinal alignments the top and bottom rails and handrails shall be shop bent to match the alignment radius.

RAILING MEMBER DIMENSIONS TABLE

| MEMBER | DESIGNATION | OUTSIDE DIMENSION | WALL THICKNESS |
|---|---|---|---|
| Posts | 2" NPS (Sch. 40) | 2.375" | 0.154" |
| Rails | 2" NPS (Sch. 40) | 2.375" | 0.154" |
| Rail Joint/Splice Sleeves | 1½" NPS (Sch. 40) | 1.900" | 0.145" |
| Handrails Joint/Splice Sleeves | 1" NPS (Sch. 40) | 1.315" | 0.133" |
| Handrails | 1½" NPS (Sch. 40) | 1.900" | 0.145" |
| Handrail Support Bar | 1" Ø Round Bar | 1.000" | N/A |

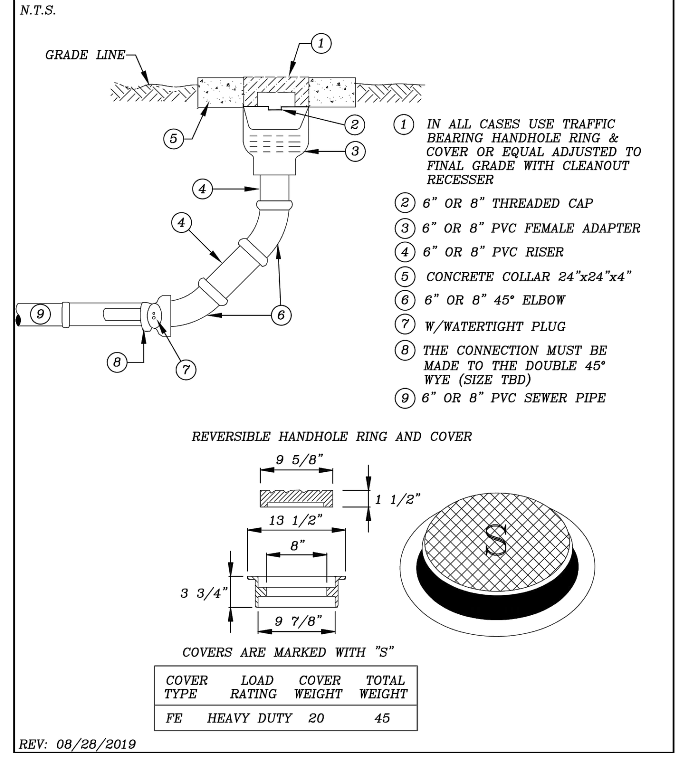
BASE PLATES:
Base Plates shall be in accordance with ASTM B209, Alloy 6061-T6.
SHIM PLATES:
Shim Plates shall be aluminum in accordance with ASTM B209, Alloy 6061 or 6063. Shim plates shall be used for foundation height adjustments greater than ⅛" and localized irregularities greater than ⅛". Field trim shim plates when necessary to match the contours of the foundation. Bevelled shim plates may be used in lieu of trimmed flat shim plates shown. Stacked shim plates must be bonded together with adhesive bonding material and limited to a maximum total thickness of ½", unless longer anchor bolts are provided for the exposed thread length.
COATINGS:
The aluminum railing shall be mill finish unless otherwise noted in the Contract Documents. All nuts, bolts and washers shall be hot-dip galvanized in accordance with Section 962 of the Specifications.
ANCHOR BOLTS:
Anchor bolts shall be in accordance with ASTM F1554 Grade 36. Headless anchor bolts for Adhesive Anchors shall be threaded full length. Cutting of reinforcing steel is permitted for drilled hole installation. All anchor bolts shall have single self-locking hex nuts. Tack welding of the nut to the anchor bolt may be used in lieu of self-locking nuts. All nuts shall be in accordance with ASTM A563 or ASTM A194. Flat Washers shall be in accordance with ASTM F436 and Plate Washers (for long slotted holes only), shall be in accordance with ASTM A36 or ASTM A709 Grade 36. After the nuts have been snug tightened, the anchor bolt threads shall be distorted to prevent removal of the nuts. Distorted threads and tack welds shall be coated with a galvanizing compound in accordance with the Specifications.
RESILIENT AND NEOPRENE PADS:
Resilient and Neoprene pads shall be in accordance with Specification Section 932, except that testing of the finished pads shall not be required. Neoprene pads shall be durometer hardness 60 or 70.
JOINTS:
All fixed joints are to be welded all around and ground smooth. Expansion Joints shall be spaced at a maximum of 30'-0". Field splices similar to the expansion joint detail may be approved by the Engineer to facilitate shipping and handling, but rails must be continuous across a minimum of two posts. Only use the Continuity Field Splice (Detail "E") to make the railing continuous for unforeseen field adjustments.
WELDING:
All welding shall be in accordance with the American Welding Society Structural Welding Code (Aluminum) ANSI/AWS D1.2 (current edition). Filler metal shall be either ER5183, ER5356 or ER5556. Nondestructive testing of welds is not required.
SHOP DRAWINGS:
Details addressing project specific geometry (line & grade) showing post and expansion joint locations must be submitted by the Contractor for the Engineer's approval prior to fabrication of the railing. Shop drawings shall be in accordance with the Specifications.
PAYMENT:
Guiderail shall be paid for under the contract unit price for Pipe Guiderail (Aluminum), LF (Item No. 515-1-2). Payment for the Guiderail will be plan quantity measured as the length along the center line of the top rail, and includes rails, posts, rail splice assembly, base plates, anchor bolts, nuts, washers, resilient or neoprene pads and all incidental materials and labor required to complete installation of the Guiderail.

FOR MORE INFORMATION REFER TO FDOT INDEX 870 (SHEETS 1-5).

DATE: 08/06/14 NOT TO SCALE

## STANDARD DETAIL NO. 6.40 LEE COUNTY UTILITIES
6" OR 8" SEWER CLEAN-OUT DETAIL

N.T.S.

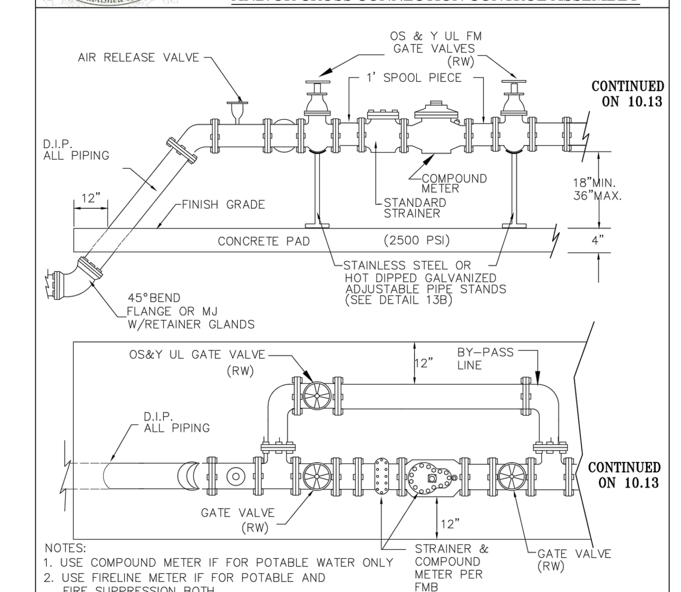



1. IN ALL CASES USE TRAFFIC BEARING HANDHOLE RING & COVER OR EQUAL ADJUSTED TO FINAL GRADE WITH CLEANOUT RECESSER
2. 6" OR 8" THREADED CAP
3. 6" OR 8" PVC FEMALE ADAPTER
4. 6" OR 8" PVC RISER
5. CONCRETE COLLAR 24"x24"x4"
6. 6" OR 8" 45° ELBOW
7. W/WATERTIGHT PLUG
8. THE CONNECTION MUST BE MADE TO THE DOUBLE 45° WYE (SIZE TBD)
9. 6" OR 8" PVC SEWER PIPE

| COVER TYPE | LOAD RATING | COVER WEIGHT | TOTAL WEIGHT |
|---|---|---|---|
| FE | HEAVY DUTY | 20 | 45 |

REV: 08/28/2019

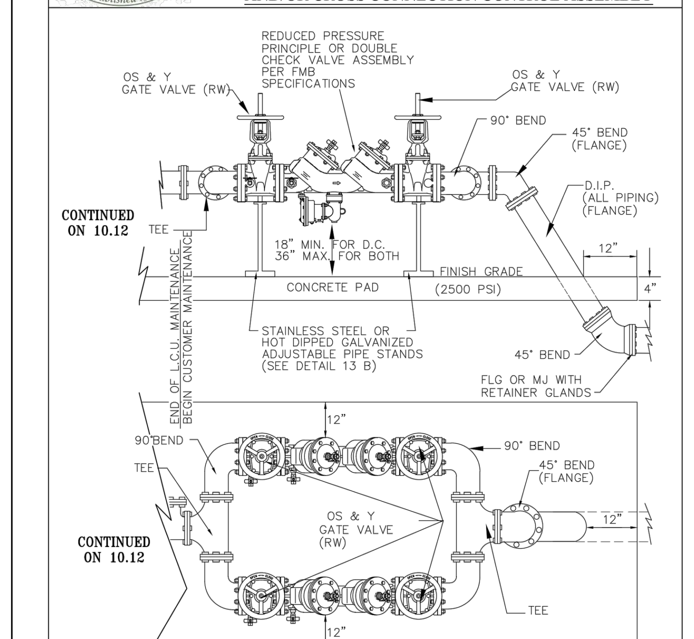
## TOWN OF FT. MYERS BEACH STANDARD DETAIL NO. 10.12
2 1/2" OR LARGER COMPOUND METER AND/OR CROSS CONNECTION CONTROL ASSEMBLY




NOTES:
1. USE COMPOUND METER IF FOR POTABLE WATER ONLY
2. USE FIRELINE METER IF FOR POTABLE AND FIRE SUPPRESSION BOTH
3. ALL PIPING BETWEEN THE BELOW GROUND 45° BENDS AND THROUGH THE ASSEMBLY SHALL BE DIP, PRESSURE CLASS 350 ABOVE GROUND DIP SHALL BE FLANGED

DATE: 08/06/14 NOT TO SCALE

## TOWN OF FT. MYERS BEACH STANDARD DETAIL NO. 10.13
2 1/2" OR LARGER COMPOUND METER AND/OR CROSS CONNECTION CONTROL ASSEMBLY

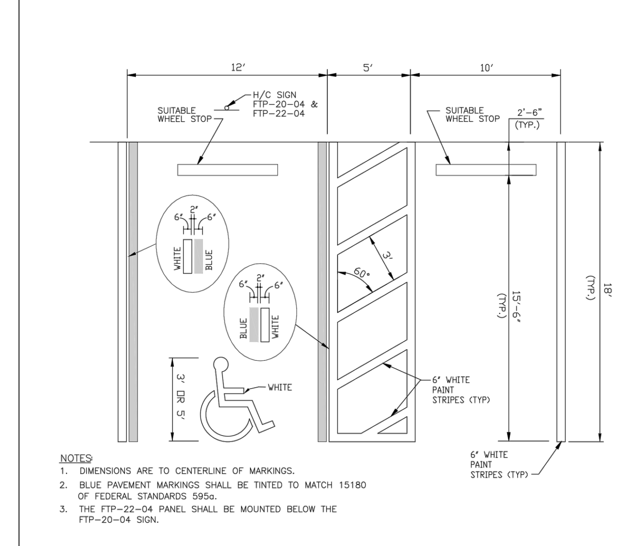



NOTE: IF UNINTERUPTED SERVICE IS NOT REQUIRED, A SINGLE BACKFLOW PREVENTION DEVICE MAY BE INSTALLED, AND TEES AND BENDS ELIMINATED.

DATE: 08/06/14 NOT TO SCALE

## TOWN OF FT. MYERS BEACH STANDARD DETAIL NO. 10.51
A.D.A. ACCESSIBLE / STANDARD PARKING DETAIL

TO BE ADA COMPLIANT
CHECK CURRENT ADA REGULATIONS TO ASSURE THAT ALL PEDESTRIAN AREAS MEET MINIMUM ADA REQUIREMENTS.

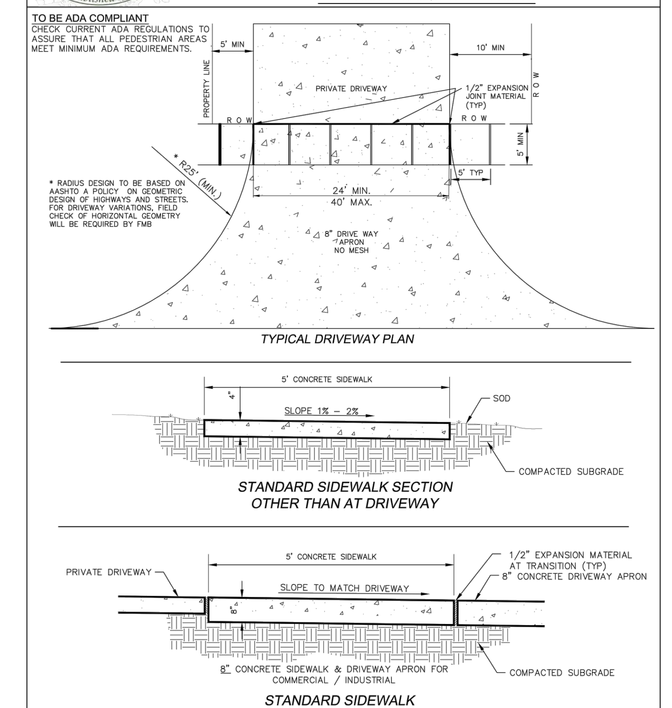



NOTES
1. DIMENSIONS ARE TO CENTERLINE OF MARKINGS.
2. BLUE PAVEMENT MARKINGS SHALL BE TINTED TO MATCH 15180 OF FEDERAL STANDARDS 595a.
3. THE FTP-22-04 PANEL SHALL BE MOUNTED BELOW THE FTP-20-04 SIGN.

DATE: 08/06/14 NOT TO SCALE

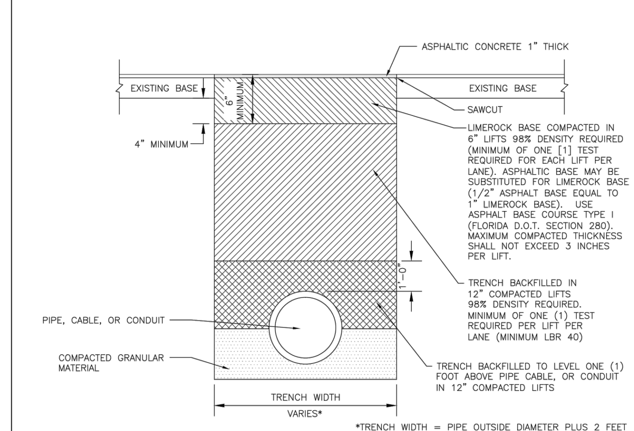
## TOWN OF FT. MYERS BEACH STANDARD DETAIL NO. 10.42
DRIVEWAY & SIDEWALK COMMERCIAL/INDUSTRIAL

TO BE ADA COMPLIANT
CHECK CURRENT ADA REGULATIONS TO ASSURE THAT ALL PEDESTRIAN AREAS MEET MINIMUM ADA REQUIREMENTS.




DATE: 08/06/14 NOT TO SCALE

## TOWN OF FT. MYERS BEACH STANDARD DETAIL NO. 10.4a
ROAD AND TRENCH RESTORATION FOR LOCAL ROADS




NOTES:
1. ALL MODIFIED PROCTOR AND DENSITY TESTS SHALL BE TAKEN BY A CERTIFIED LABORATORY.
2. ALL TESTS SHALL BE COMPLETED AND SHALL MEET MINIMUM DENSITY REQUIREMENTS PRIOR TO ADDITIONAL BACKFILLING.
3. RIGHT-OF-WAY PERMIT STIPULATIONS OVERRIDE THIS DETAIL WHERE TRENCH IS LOCATED WITHIN A COUNTY RIGHT-OF-WAY.

DATE: 08/06/14 NOT TO SCALE

## STANDARD DETAIL NO. 6.12 LEE COUNTY UTILITIES
RESTRAINED LENGTH SCHEDULE

N.T.S.

DUCTILE IRON PIPE

| PIPE SIZE (Inches) | MINIMUM RESTRAINED PIPE LENGTH (FEET) | | | | | |
|---|---|---|---|---|---|---|
| | HORIZONTAL BENDS | | | | DEAD END | HORIZONTAL TEE |
| | 90° | 45° | 22-1/2° | 11-1/4° | | |
| 4 | 17 | 7 | 4 | 2 | 29 | 6 |
| 6 | 23 | 10 | 5 | 2 | 40 | 17 |
| 8 | 29 | 12 | 6 | 3 | 53 | 29 |
| 10 | 35 | 14 | 7 | 4 | 63 | 38 |
| 12 | 41 | 17 | 8 | 4 | 74 | 49 |
| 16 | 51 | 21 | 11 | 5 | 94 | 68 |
| 24 | 69 | 29 | 14 | 7 | 131 | 105 |
| 30 | 81 | 34 | 17 | 8 | 156 | 129 |

PVC PIPE

| PIPE SIZE (Inches) | MINIMUM RESTRAINED PIPE LENGTH (FEET) | | | | | |
|---|---|---|---|---|---|---|
| | HORIZONTAL BENDS | | | | DEAD END | HORIZONTAL TEE |
| | 90° | 45° | 22-1/2° | 11-1/4° | | |
| 4 | 20 | 8 | 4 | 2 | 45 | 8 |
| 6 | 29 | 12 | 6 | 3 | 63 | 25 |
| 8 | 36 | 15 | 8 | 4 | 83 | 43 |
| 10 | 44 | 18 | 9 | 5 | 99 | 58 |
| 12 | 51 | 21 | 11 | 5 | 116 | 74 |
| 16 | 63 | 26 | 13 | 7 | 149 | 103 |
| 24 | 87 | 36 | 18 | 9 | 208 | 158 |
| 30 | 102 | 42 | 21 | 10 | 248 | 194 |

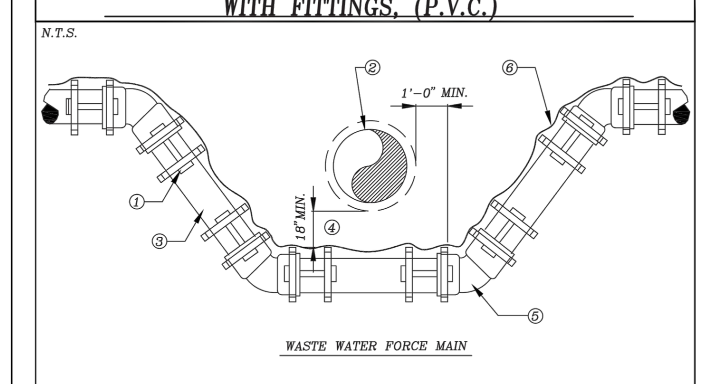
A COMPLETE JOINT RESTRAINING SCHEDULE FOR ALL ENCOUNTERED VERTICAL & HORIZONTAL BENDS, VERTICAL OFFSETS, TEES, AND DEAD ENDS SHALL BE THE RESPONSIBILITY OF THE DESIGN ENGINEER.

LENGTH FIGURES BASED ON FOLLOWING:
Pressure = 150 psi, FS = 1.5, trench type = 3, 30" cover on Bare pipe, Soil type = GP & SP

REV: 12/10/2015

## STANDARD DETAIL NO. 6.11 LEE COUNTY UTILITIES
WASTE WATER FORCE MAIN VERTICAL OFFSET WITH FITTINGS, (P.V.C.)

N.T.S.

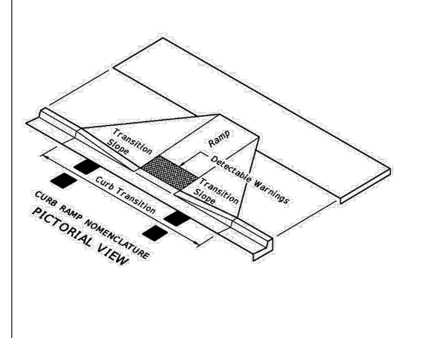



WASTE WATER FORCE MAIN

1. LCU APPROVED JOINT RESTRAINT FOR P.V.C., M.J. PIPE AND FITTINGS PLACED IN ACCORDANCE WITH JOINT RESTRAINT SCHEDULE. (SEE DETAIL 6.12)
2. CONFLICT PIPE
3. LCU APPROVED C-900 PVC DR 14
4. 18" MIN. UNLESS OTHERWISE APPROVED BY LCU
5. 45° MECHANICAL JOINT FITTING, TYPICAL
6. 12 GAUGE DOUBLE INSULATED COPPER WIRE (SEE LCU STANDARD DETAIL)

REV: 12/10/2015

## TOWN OF FT. MYERS BEACH STANDARD DETAIL NO. 10.40
DETECTABLE WARNING AND SIDEWALK CURB RAMPS




LEGEND
Detectable Warnings

GENERAL NOTES

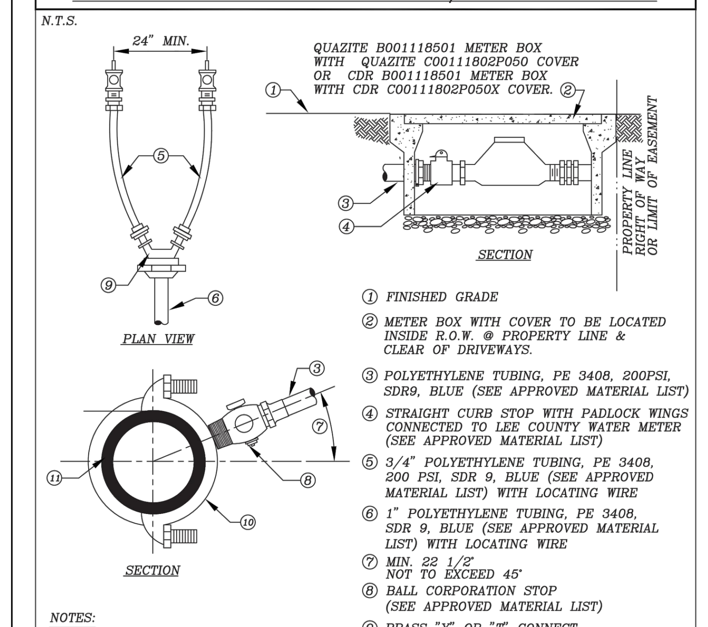
1. Sidewalk curb ramps shall be constructed at locations that will provide continuous unobstructed pedestrian circulation path to pedestrian areas, elements and facilities within the right of way and to accessible pedestrian routes on adjacent sites. Curbed facilities with sidewalks and those without sidewalks are to have curb ramps constructed for all intersections and turnouts with curbed returns. To accommodate curb ramps, partial curb returns are to extend to the limits prescribed in Index No. 515. Ramps constructed at locations without sidewalks are to have a landing constructed at the top of each ramp, see LANDINGS FOR CURB RAMPS WITHOUT SIDEWALKS.
2. When altering existing pedestrian facilities, where existing restricted conditions preclude the accommodation of a ramp slope of 1:12, a ramp slope between 1:12 and 1:10 is permitted for a rise of 6" maximum. Where compliance with the requirements for cross slope cannot be fully met, the minimum feasible cross slope shall be provided. Ramp slopes are not required to exceed 15' in length.
3. If sidewalk curb ramps are located where pedestrians must walk across the ramp, then provide transition slopes to the ramp; otherwise a sidewalk curb may be required.
4. All sidewalks, ramps, and landings with a cross slope of 0.02 shown in this Index are 0.02 maximum. All ramp slopes shown in this Index as 1:12 are 1:12 maximum. Landings shall have slopes less than or equal to 0.02 in any direction.
5. Grade breaks at the top and bottom of ramps shall be parallel to each other and perpendicular to the direction of the ramp slope.
6. Where a sidewalk curb ramp is constructed within existing curb, curb and gutter and/or sidewalk, the existing curb or curb and gutter shall be removed to the nearest joint beyond the curb transition or to the extent that no remaining section of curb or curb and gutter is less than 5' long. Existing sidewalks shall be removed to the nearest joint beyond the transition slope or to the extent that no remaining section of sidewalk is less than 5' long. For CONCRETE SIDEWALK details refer to Index 310.
7. Sidewalk curb ramp alpha-identifications are for reference purposes (plans, permits, etc.). Alpha-identifications CR-I and CR-J were intentionally omitted.
8. Detectable warnings shall extend the full width of the ramp and to a depth of 2'. Detectable warnings shall be constructed in accordance with Specification Section 527. For the layout of detectable warnings, refer to the TYPICAL PLACEMENT OF DETECTABLE WARNINGS details. Detectable warnings shall not be provided on transition slopes.
9. When detectable warnings are placed on a slope greater than 5%, domes shall be aligned with the centerline of the ramp; otherwise domes are not required to be aligned.
10. Detectable warnings shall be required on sidewalks at:
a. Intersecting roads,
b. Median Crossings greater than or equal to 6' in width,
c. Railroad Crossings,
d. Signalized driveways.
11. Detectable Warnings - Acceptance Criteria:
a. Color and texture shall be complete and uniform.
b. 90% of individual truncated domes shall be in accordance with the Americans with Disabilities Act Standards for Transportation Facilities, Section 705.
c. There shall be no more than 4 non-compliant domes in any one square foot.
d. Non-compliant domes shall not be adjacent to other non-compliant domes.
e. Surfaces shall not deviate more than 0.10" from a true plane.
12. Detectable warnings shall be installed no greater than 5' from the back of curb or edge of pavement.
13. Detectable warnings shall not be installed over grade breaks.

FOR MORE INFORMATION REFER TO FDOT INDEX 304 (SHEETS 1-7).

DATE: 08/06/14 NOT TO SCALE

## STANDARD DETAIL NO. 6.16 LEE COUNTY UTILITIES
WATER SERVICE INSTALLATION 5/8" THROUGH 1"

N.T.S.



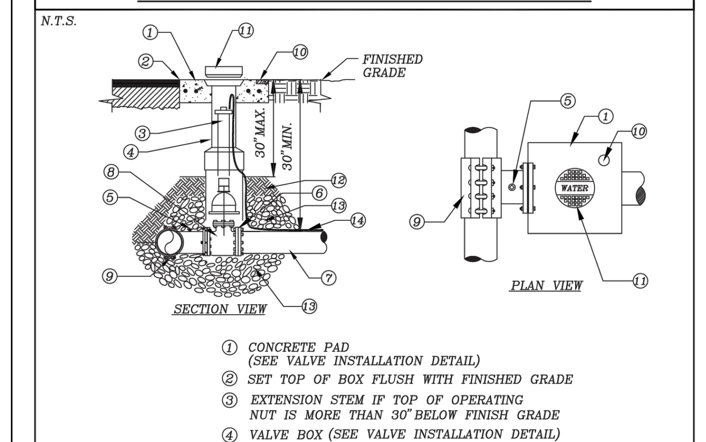

1. FINISHED GRADE
2. METER BOX WITH COVER TO BE LOCATED INSIDE R.O.W. @ PROPERTY LINE & CLEAR OF DRIVEWAYS.
3. POLYETHYLENE TUBING, PE 3408, 200PSI, SDR9, BLUE (SEE APPROVED MATERIAL LIST)
4. STRAIGHT CURB STOP WITH PADLOCK WINGS CONNECTED TO LEE COUNTY WATER METER (SEE APPROVED MATERIAL LIST)
5. 3/4" POLYETHYLENE TUBING, PE 3408, 200 PSI, SDR 9, BLUE (SEE APPROVED MATERIAL LIST) WITH LOCATING WIRE
6. 1" POLYETHYLENE TUBING, PE 3408, SDR 9, BLUE (SEE APPROVED MATERIAL LIST) WITH LOCATING WIRE
7. MIN. 22 1/2° NOT TO EXCEED 45°
8. BALL CORPORATION STOP (SEE APPROVED MATERIAL LIST)
9. BRASS "Y" OR "T" CONNECT (SEE APPROVED MATERIAL LIST)
10. DOUBLE STRAP SERVICE SADDLE PROVIDE SPRING LOADED TAPPING SADDLE WHEN TAPPING HDPE (SEE APPROVED MATERIAL LIST)
11. WATER MAIN

NOTES:
1. TUBING UNDER ROADWAY SHALL BE ENCASED IN 4" P.V.C. PIPE SCHEDULE 40 MINIMUM AND EXTEND 4 FEET BEYOND THE EDGES OF PAVEMENT OR BACK OF CURB.

REV: 12/10/2015

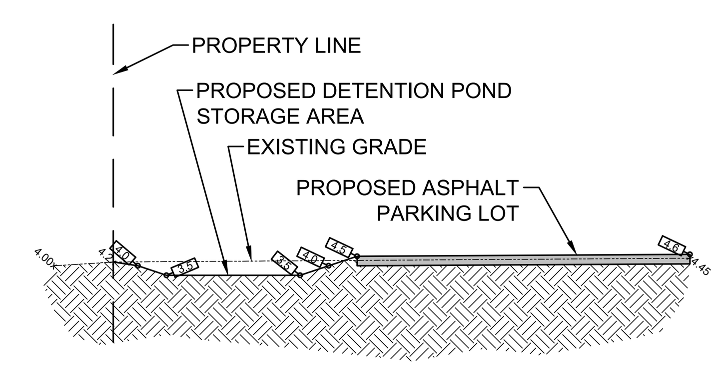
## STANDARD DETAIL NO. 6.1 LEE COUNTY UTILITIES
TAPPING SLEEVE AND VALVE

N.T.S.

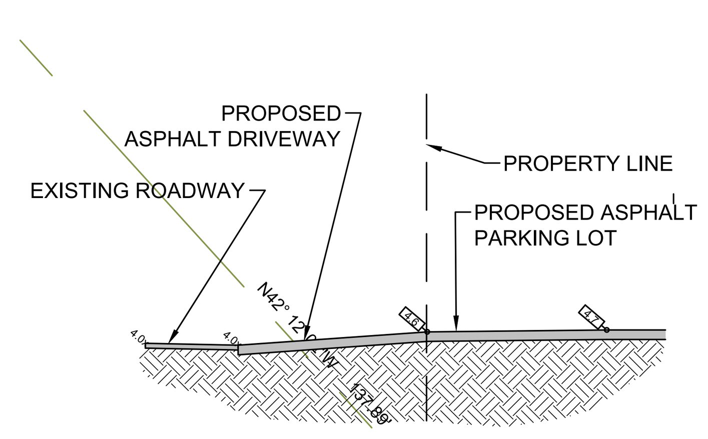



1. CONCRETE PAD (SEE VALVE INSTALLATION DETAIL)
2. SET TOP OF BOX FLUSH WITH FINISHED GRADE
3. EXTENSION STEM IF TOP OF OPERATING NUT IS MORE THAN 30" BELOW FINISH GRADE
4. VALVE BOX (SEE VALVE INSTALLATION DETAIL)
5. OUTLET FOR TESTING
6. MJ RESTRAINED
7. MAIN SIZE VARIES
8. TAPPING VALVE (SEE VALVE INSTALLATION DETAIL)
9. LCU APPROVED ALL STAINLESS STEEL PRESSURE RATED TAPPING SLEEVE. FOR SIZE ON SIZE TAPS A FLANGED TAPPING SLEEVE IS REQUIRED. SPRING LOADED TAPPING SLEEVE IS REQUIRED WHEN CONNECTING TO HDPE (SEE APPROVED MATERIAL LIST).
10. BRASS PLATE (SEE VALVE INSTALLATION DETAIL)
11. CAST IRON DROP COVER MARKED "WATER","SEWER", OR "REUSE"
12. COMPACTED SUITABLE EARTH BACKFILL
13. 3/4" GRANULAR MATERIAL #57 STONE
14. 12 GAUGE DOUBLE INSULATED COPPER LOCATING WIRE (SEE LCU STANDARD DETAIL)

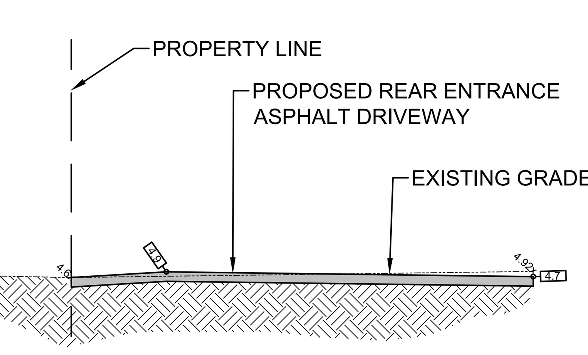
REV: 12/10/2015



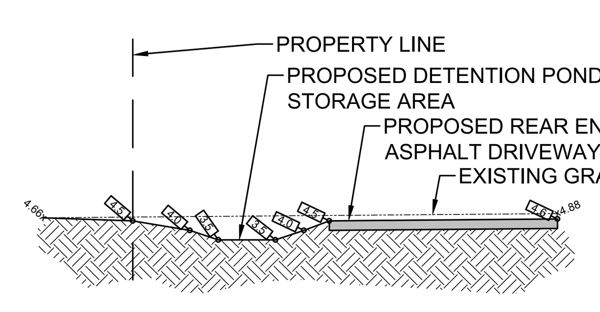

CROSS SECTION A-A



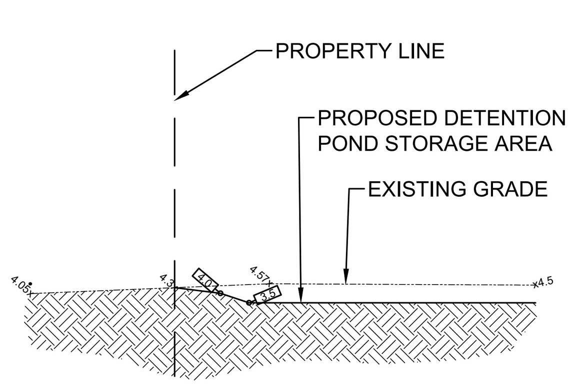

CROSS SECTION B-B



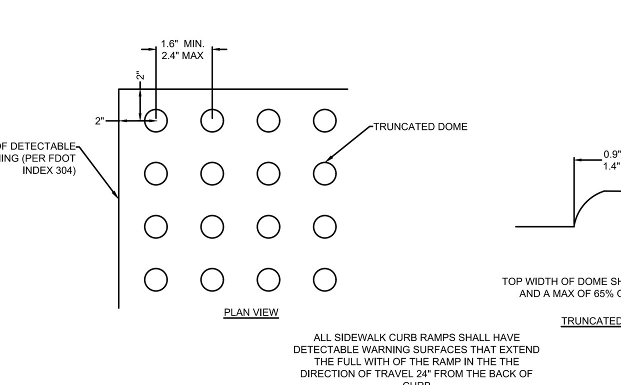

CROSS SECTION C-C




CROSS SECTION D-D

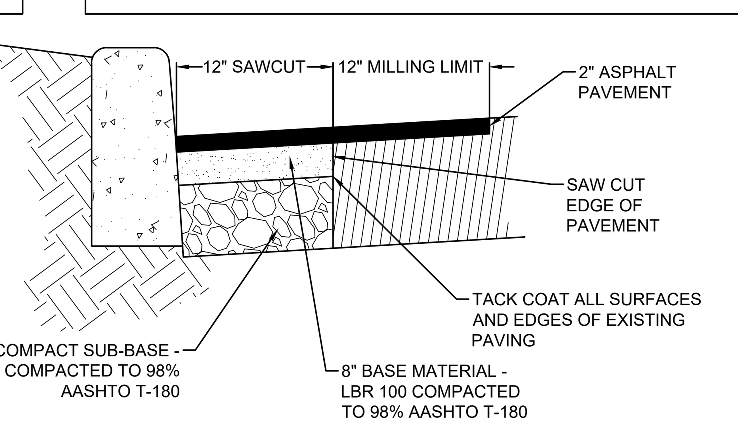



CROSS SECTION E-E




ALL SIDEWALK CURB RAMPS SHALL HAVE DETECTABLE WARNING SURFACES THAT EXTEND THE FULL WITH OF THE RAMP IN THE THE DIRECTION OF TRAVEL 24" FROM THE BACK OF CURB

DETECTABLE WARNING DETAIL
N.T.S.




SAWCUT AND PAVEMENT RESTORATION DETAIL

| REVISIONS | DATE | BY |
|---|---|---|
| 0. INITIAL SUB | 05/16/23 | TG |
| 1. CITY CMNTS | 10/17/23 | TG |


SPEATH ENGINEERING
SPEATH ENGINEERING FL, LLC - 1111 BRICKELL AVE, 10TH FL.
MIAMI, FL 33131 - PHONE: 305-834-4213


DETAILS
FOR
THE WHALE BAR & RESTAURANT
1249 ESTERO BLVD. FORT MYERS BEACH
LEE COUNTY, FLORIDA

MATTHEW S. SPEATH LICENSE No. 67675 STATE OF FLORIDA PROFESSIONAL ENGINEER

10/17/2023

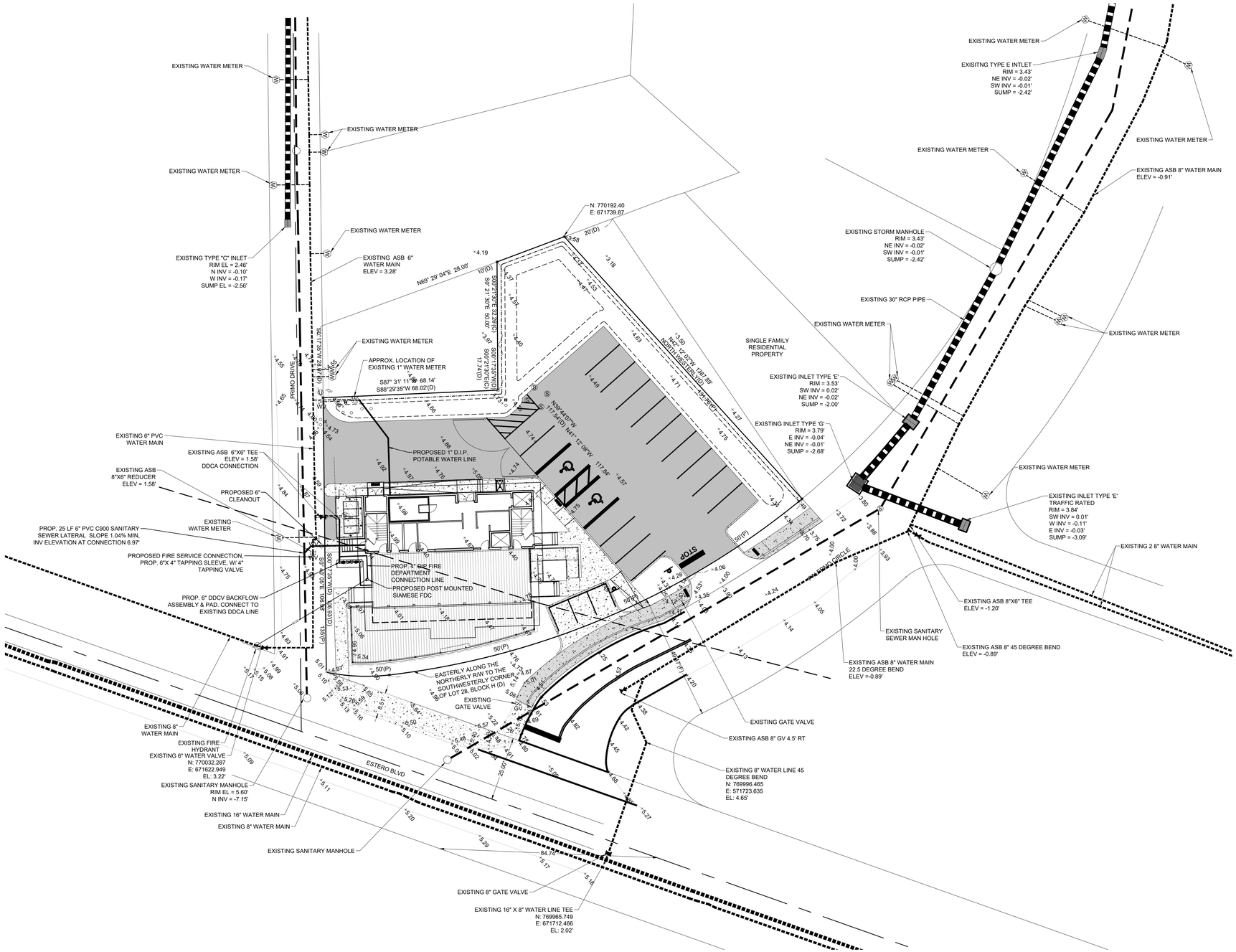
THIS ITEM HAS BEEN DIGITALLY SIGNED AND SEALED BY MATTHEW S. SPEATH, P.E. ON THE DATE ADJACENT TO THE SEAL. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES

MATTHEW S. SPEATH P.E.
LIC. #67675
FBPE # 31292

| | |
|---|---|
| DRAWN | TCG |
| CHECK | MSS |
| DATE | 10/17/23 |
| SCALE | N.T.S. |
| PROJ. NO. | F22-58 |

SHEET: C4

4 OF 7




UTILITY SCOPE OF WORK:

1. 1" POTABLE WATER SERVICE LINE CONNECTION TO EXISTING WATER METER EXTENDING OFF OF PRIMO DRIVE
2. 6" FIRE LINE WITH DDCA CONNECTED TO EXISTING 6" STUB THAT EXTENDS OFF OF PRIMO DRIVE.
3. PROPOSED 6' SANITARY SEWER LATERAL CONNECTED TO EXISTING 8" SEWER MAIN LOCATED IN PRIMO DRIVE.

UTILITY NOTES:

1. SEE SHEET CS-05 FOR UTILITY DETAILS.
2. SEE MEP PLANS FOR CONTINUATION OF UTILITIES INTO BUILDING.
3. CONTRACTOR SHALL FIELD VERIFY ALL EXISTING UTILITIES AND THEIR LOCATIONS AND ELEVATIONS PRIOR TO STARTING CONSTRUCTION AND ALERT ENGINEER TO ANY DISCREPANCIES, CONCERNS, OR CONFLICTS IMMEDIATELY.
4. THE CONTRACTOR SHALL CONTACT PUBLIC UTILITIES INSPECTIONS AT LEAST 72 HOURS PRIOR TO ANY CONSTRUCTION ACTIVITY.
   ALL WORK TO BE DONE IN STRICT ACCORDANCE WITH LOCAL GOVERNING CODES.
5. ALL NON-METALLIC PIPE WILL BE INSTALLED WITH 2 PAIR, 10 GAUGE, COPPER TRACE WIRE.
6. THE WET TAP SHALL BE CONSTRUCTED UNDER THE CITY'S SUPERVISION.
7. THE CONTRACTOR SHALL COORDINATE WITH THE CITY'S INSPECTOR AND UTILITY DEPARTMENT FOR ITEMS TO BE CONSTRUCTED AND/OR INSPECTED BY UTILITIES / PUBLIC WORKS.
8. ALL UTILITIES SHALL MAINTAIN AT LEAST 3 FEET OF COVER. DEFLECT WATER AND FORCE MAIN AS NECESSARY TO ACHIEVE MINIMUM REQUIREMENTS.
9. CONTRACTOR SHALL PROTECT ALL ITEMS OUTSIDE LIMITS OF CONSTRUCTION UNLESS OTHERWISE NOTED IN THE CONSTRUCTIONS PLANS OR SPECIFICATIONS.
10. WATER SUPPLY SHALL COMPLY NFPA- I, CHAPTER 18.3
11. DEWATERING, IF NECESSARY. SHALL COMPLY WITH ALL CITY AND STATE REQUIREMENTS. IF A PERMIT IS REQUIRED, IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO COORDINATE. CONTRACTOR SHALL COORDINATE MAINTENANCE OF TRAFFIC (MOT) PLAN WITH CITY OF MIAMI PRIOR TO CONSTRUCTION WITHIN THE RIGHT-OF-WAY.

GRAPHIC SCALE

10 0 5 10 20 40

( IN FEET )
1" = 20 FEET

| REVISIONS | DATE | BY |
|---|---|---|
| 0. INITIAL SUB | 05/16/23 | TG |
| 1. CITY CMNTS | 10/17/23 | TG |
| | | |
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SPEATH ENGINEERING
SPEATH ENGINEERING FL, LLC - 1111 BRICKELL AVE, 10TH FL
MIAMI, FL 33131 - PHONE: 305-834-8213

UTILITY PLAN
FOR
THE WHALE BAR & RESTAURANT
1249 ESTERO BLVD. FORT MYERS BEACH
LEE COUNTY, FLORIDA

MATTHEW S. SPEATH
LICENSE
No. 67675
STATE OF FLORIDA
PROFESSIONAL ENGINEER

10/17/2023

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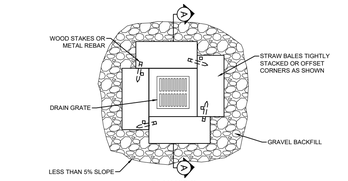
MATTHEW S. SPEATH P.E.
LIC. #67675

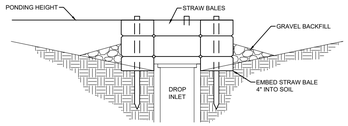
FBPE # 31292

| | |
|---|---|
| DRAWN | TCG |
| CHECK | MSS |
| DATE | 10/17/23 |
| SCALE | 1" =20' |
| PROJ. NO. | F22-58 |

SHEET:
C5
5 OF 7

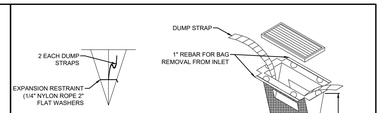



**PLAN VIEW**

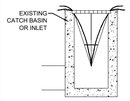



**SECTION A-A**

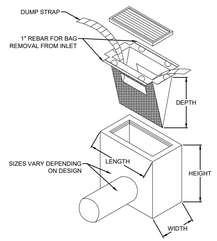
NOTE:
1. DROP INLET SEDIMENT BARRIERS ARE TO BE USED FOR SMALL, NEARLY LEVEL DRAINAGE AREAS. (LESS THAN 5%)
2. EMBED THE BALES 4" INTO THE SOIL AND OFFSET CORNERS OR PLACE BALES WITH ENDS TIGHTLY ABUTTING. GRAVEL BACKFILL WILL PREVENT EROSION OR FLOW AROUND THE BALES.
3. THE TOP OF THE STRUCTURE (PONDING HEIGHT) MUST BE WELL BELOW THE GROUND ELEVATION DOWNSLOPE TO PREVENT RUNOFF FROM BYPASSING THE INLET. EXCAVATION OF A BASIN ADJACENT TO THE DROP INLET OR A TEMPORARY DIKE ON THE DOWNSLOPE OF THE STRUCTURE MAY BE NECESSARY.

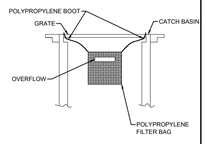



**BAG DETAIL**




**INSTALLATION DETAIL**

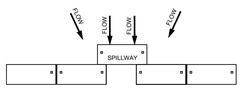


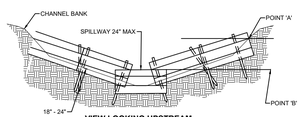

NOTE:

TEMPORARY INLET SEDIMENT FILTER TO BE INSTALLED ON ALL PAVED CATCH BASINS OR STORM INLETS. INLET FILTER TO BE SIMILAR TO "STREAMGUARD" AS MANUFACTURED BY STORMWATER SERVICES CORPORATION OR "SILTSACK" AS MANUFACTURED BY ATLANTIC CONSTRUCTION FABRICS, INC. CLEAN FILTER AS NEEDED.

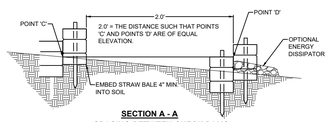
NOTE:
1. CONTRACTOR SHALL OBTAIN PERMISSION OF THE ENFORCING ROAD AGENCY BEFORE THIS TYPE OF CONTROL IS CONSTRUCTED IN THE ROAD RIGHT-OF-WAY.
2. CONTRACTOR SHALL KEEP CURBS & GUTTER INLET FILTERS (AFTER PAVING) IN PLACE UNTIL ALL AREAS CONTRIBUTING TO THEM ARE STABILIZED WITH VEGETATION.
3. CONTRACTOR SHALL PERFORM WEEKLY INSPECTION AND MAINTENANCE TO ENSURE THAT THE CURB & GUTTER INLET FILTER (AFTER PAVING) OPERATES EFFICIENTLY.




**PLAN**

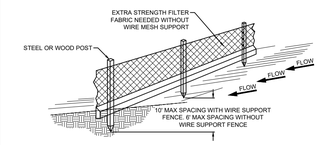


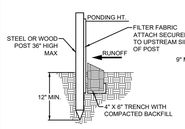

**VIEW LOOKING UPSTREAM**



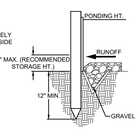

**SECTION A - A**
**SPACING BETWEEN CHECK DAMS**

NOTE:
1. EMBED BALES 4" INTO THE SOIL AND "KEY" BALES INTO THE CHANNEL BANKS.
2. POINT 'A' MUST BE HIGHER THAN POINT 'B' (SPILLWAY HEIGHT).
3. PLACE BALES PERPENDICULAR TO THE FLOW WITH ENDS TIGHTLY ABUTTING. USE STRAW, ROCKS, OR FILTER FABRIC TO FILL ANY GAPS AND TAMP BACKFILL MATERIAL TO PREVENT EROSION OR FLOW AROUND THE BALES.
4. SPILLWAY HEIGHT SHALL NOT EXCEED 24".
5. INSPECT AFTER EACH SIGNIFICANT STORM. MAINTAIN AND REPAIR PROMPTLY.



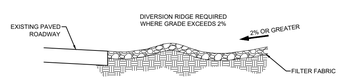




**STANDARD DETAIL**
TRENCH WITH NATIVE BACKFILL

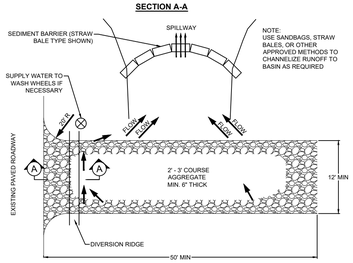



**ALTERNATE DETAIL**
TRENCH WITH GRAVEL

NOTE:
1. INSPECT AND REPAIR FENCE AFTER EACH STORM EVENT AND REMOVE SEDIMENT WHEN NECESSARY.
2. REMOVED SEDIMENT SHALL BE DEPOSITED TO AN AREA THAT WILL NOT CONTRIBUTE SEDIMENT OFF-SITE AND CAN BE PERMANENTLY STABILIZED.
3. SILT FENCE SHALL BE PLACED ON SLOPE CONTOURS TO MAXIMIZE PONDING EFFICIENCY.

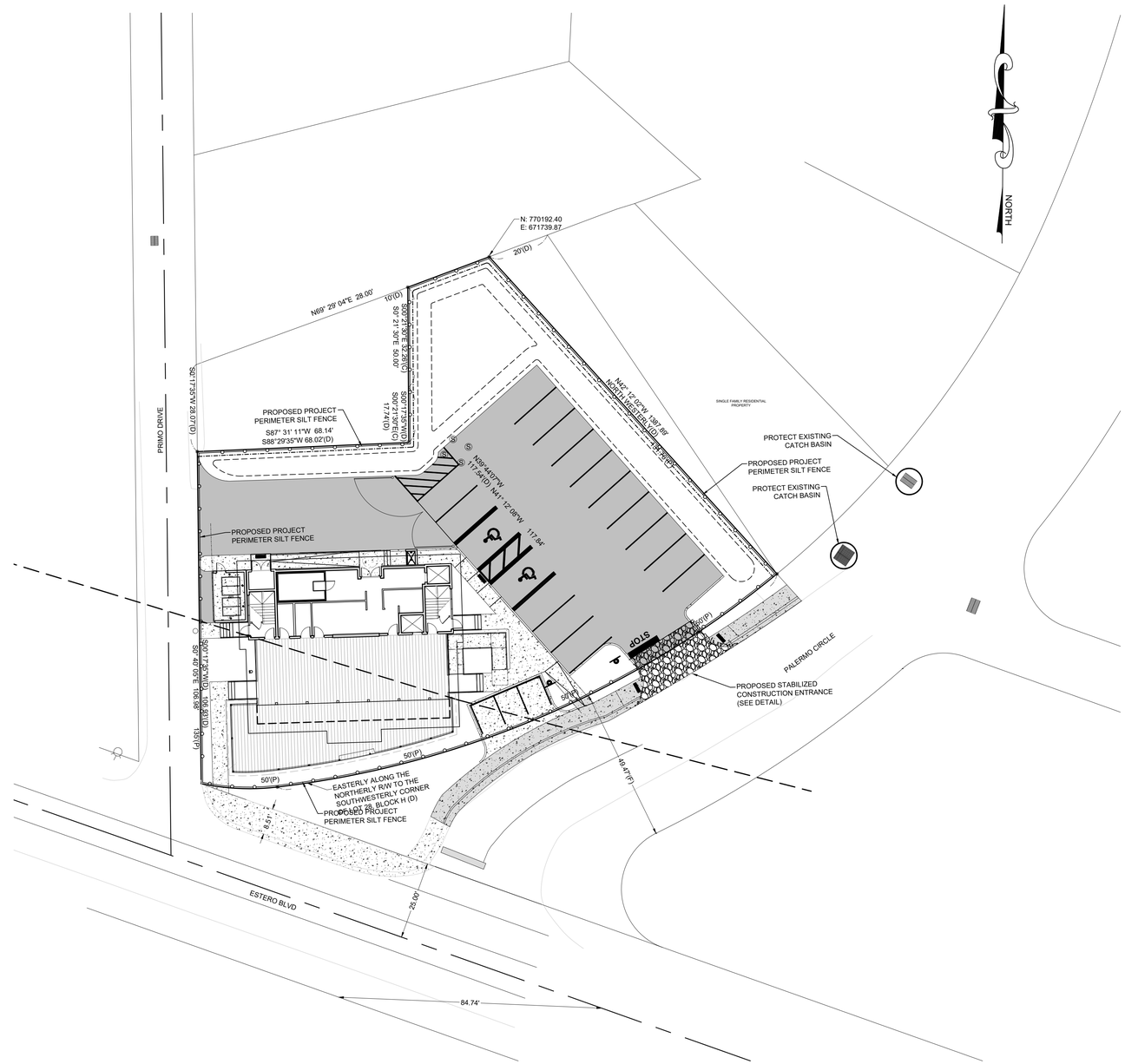



**SECTION A-A**




**PLAN VIEW**

NOTE:
1. THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION THAT WILL PREVENT TRACKING OR FLOWING OF SEDIMENT ONTO PUBLIC RIGHTS-OF-WAY. THIS MAY REQUIRE TOP DRESSING, REPAIR, AND/OR CLEANOUT OF ANY MEASURES USED TO TRAP SEDIMENT.
2. WHEN NECESSARY, WHEELS SHALL BE CLEANED PRIOR TO ENTRANCE ONTO PUBLIC RIGHT-OF-WAY.
3. WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABILIZED WITH CRUSHED STONE THAT DRAINS INTO AN APPROVED SEDIMENT TRAP OR SEDIMENT BASIN.




LEGEND

- PROPOSED FLOW LINE OF SWALE
- SILT FENCE / STAKED HAY BALES
- SOD
- ROCK
- FILTER FABRIC

**GRAPHIC SCALE**

10 0 5 10 20 40

( IN FEET )
1" = 20 FEET

EROSION AND SEDIMENT CONTROL NOTES:

1. CONTRACTOR SHALL TAKE APPROPRIATE MEASURES TO MINIMIZE RUN-OFF FROM THE PROJECT DURING CONSTRUCTION TO ADJACENT PROPERTIES AND STREET RIGHT-OF-WAYS BY INSTALLING A SILT FENCE
2. EXISTING CATCH BASINS IN STREET RIGHT-OF-WAYS WITHIN 50 FEET OF PROJECT LIMITS SHALL BE PROTECTED WITH BALED HAY BARRIERS. EXISTING CATCH BASINS NOTED SHALL BE CLEANED AFTER CONSTRUCTION OF PROJECT.
3. CONTRACTOR SHALL MAINTAIN ADJACENT STREETS AND SWALES IN A CLEAN AND DEBRIS-FREE CONDITION.

POLLUTION PREVENTION NOTES:

1. ALL PERVIOUS AREAS NOT SODDED SHALL BE SEEDED AND MULCHED AFTER CONSTRUCTION
2. NO CLEARING, FILLING, OR STAGING TO OCCUR OUTSIDE THE DESIGNATED LIMIT OF DEVELOPMENT AREA.

| REVISIONS | DATE | BY |
|---|---|---|
| 0. INITIAL SUB | 05/16/23 | TG |
| 1. CITY CMNTS | 10/17/23 | TG |


SPEATH ENGINEERING
SPEATH ENGINEERING FL, LLC - 111 BRICKELL AVE, 10TH FL
MIAMI, FL 33131 - PHONE: 305-834-0213


# SWPPP FOR THE WHALE BAR & RESTAURANT
1249 ESTERO BLVD. FORT MYERS BEACH
LEE COUNTY, FLORIDA

MATTHEW S. SPEATH LICENSE No. 67675 STATE OF FLORIDA PROFESSIONAL ENGINEER

10/17/2023

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MATTHEW S. SPEATH P.E.
LIC. #67675

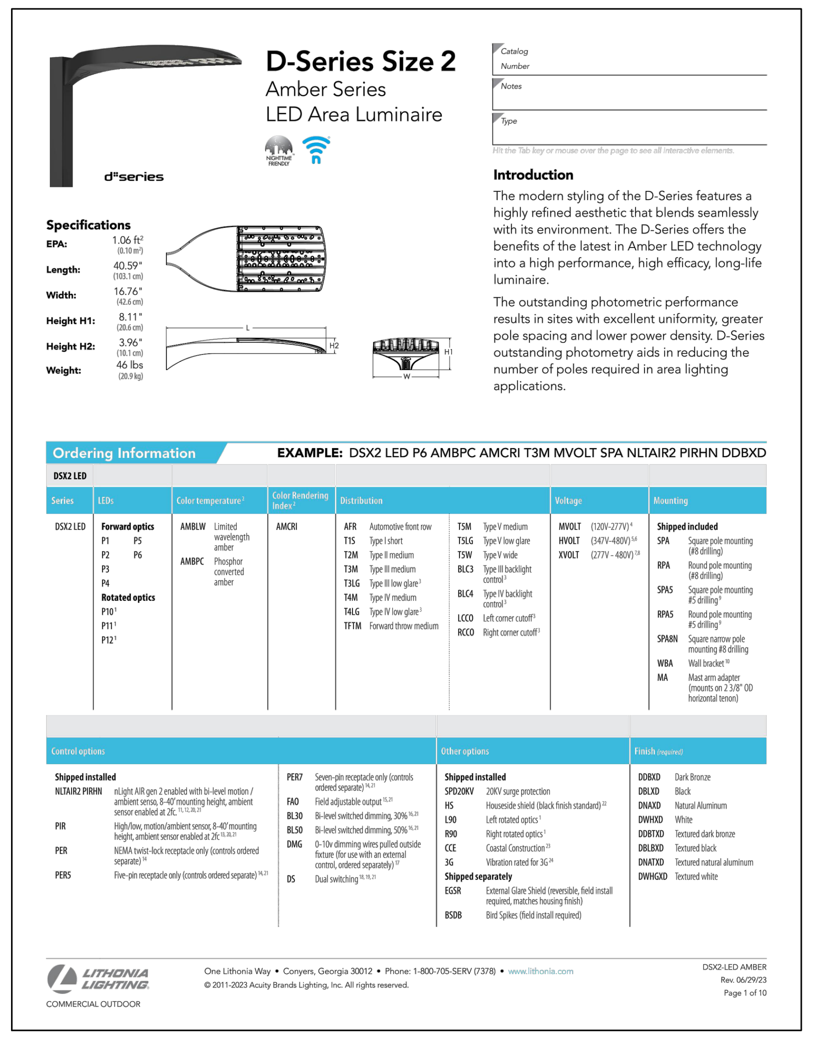
FBPE # 31292

| | |
|---|---|
| DRAWN | TCG |
| CHECK | MSS |
| DATE | 10/17/23 |
| SCALE | 1"=20' |
| PROJ. NO. | F22-58 |

SHEET:
C6
6 OF 7

| PUBLIC PARKING AREA DATA | | | |
|---|---|---|---|
| PROVIDED | PROVIDED | ALLOWABLE BY CODE | CODE COMPLIANT |
| INTIAL ACTUAL (FC) | 0.8 (MIN), 3.5 (MAX) | 0.8 (MIN) | YES |
| INTIAL UNIFORMITY AVERAGE | 2.26:1 | 4:1 | YES |

NOTE: CALCULATIONS ARE REFLECTIVE OF PUBLIC PARKING AREA DELINEATED ON PLAN ONLY.



## D-Series Size 2
Amber Series
LED Area Luminaire

Catalog Number
Notes
Type

Hit the Tab key or mouse over the page to see all interactive elements.

**Specifications**
EPA: 1.06 ft² (0.10 m²)
Length: 40.59" (103.1 cm)
Width: 16.76" (42.6 cm)
Height H1: 8.11" (20.6 cm)
Height H2: 3.96" (10.1 cm)
Weight: 46 lbs (20.9 kg)

**Introduction**
The modern styling of the D-Series features a highly refined aesthetic that blends seamlessly with its environment. The D-Series offers the benefits of the latest in Amber LED technology into a high performance, high efficacy, long-life luminaire.

The outstanding photometric performance results in sites with excellent uniformity, greater pole spacing and lower power density. D-Series outstanding photometry aids in reducing the number of poles required in area lighting applications.

**Ordering Information** EXAMPLE: DSX2 LED P6 AMBPC AMCRI T3M MVOLT SPA NLTAIR2 PIRHN DDBXD

| Series | LEDs | Color temperature | Color Rendering Index | Distribution | Voltage | Mounting |
|---|---|---|---|---|---|---|
| DSX2 LED | Forward optics: P1, P2, P3, P4, P5, P6; Rotated optics: P10, P11, P12 | AMBLW Limited wavelength amber; AMBPC Phosphor converted amber | AMCRI | AFR Automotive front row; T1S Type I short; T2M Type II medium; T3M Type III medium; T3LG Type III low glare; T4M Type IV medium; T4LG Type IV low glare; TFTM Forward throw medium; T5M Type V medium; T5LG Type V low glare; T5W Type V wide; BLC3 Type III backlight control; BLC4 Type IV backlight control; LCCO Left corner cutoff; RCCO Right corner cutoff | MVOLT (120V-277V); HVOLT (347V-480V); XVOLT (277V - 480V) | Shipped included: SPA Square pole mounting (#8 drilling); RPA Round pole mounting (#8 drilling); SPA5 Square pole mounting #5 drilling; RPA5 Round pole mounting #5 drilling; SPA8N Square narrow pole mounting #8 drilling; WBA Wall bracket; MA Mast arm adapter (mounts on 2 3/8" OD horizontal tenon) |

| Control options | Other options | Finish (required) |
|---|---|---|
| Shipped installed: NLTAIR2 PIRHN nLight AIR gen 2 enabled with bi-level motion / ambient senso, 8-40' mounting height, ambient sensor enabled at 2fc; PIR High/low, motion/ambient sensor, 8-40' mounting height, ambient sensor enabled at 2fc; PER NEMA twist-lock receptacle only (controls ordered separate); PER5 Five-pin receptacle only (controls ordered separate); PER7 Seven-pin receptacle only (controls ordered separate); FAO Field adjustable output; BL30 Bi-level switched dimming, 30%; BL50 Bi-level switched dimming, 50%; DMG 0-10v dimming wires pulled outside fixture (for use with an external control, ordered separately); DS Dual switching | Shipped installed: SPD20KV 20KV surge protection; HS Houseside shield (black finish standard); L90 Left rotated optics; R90 Right rotated optics; CCE Coastal Construction; 3G Vibration rated for 3G; Shipped separately: EGSR External Glare Shield (reversible, field install required, matches housing finish); BSDB Bird Spikes (field install required) | DDBXD Dark Bronze; DBLXD Black; DNAXD Natural Aluminum; DWHXD White; DDBTXD Textured dark bronze; DBLBXD Textured black; DNATXD Textured natural aluminum; DWHGXD Textured white |

LITHONIA LIGHTING COMMERCIAL OUTDOOR
One Lithonia Way • Conyers, Georgia 30012 • Phone: 1-800-705-SERV (7378) • www.lithonia.com
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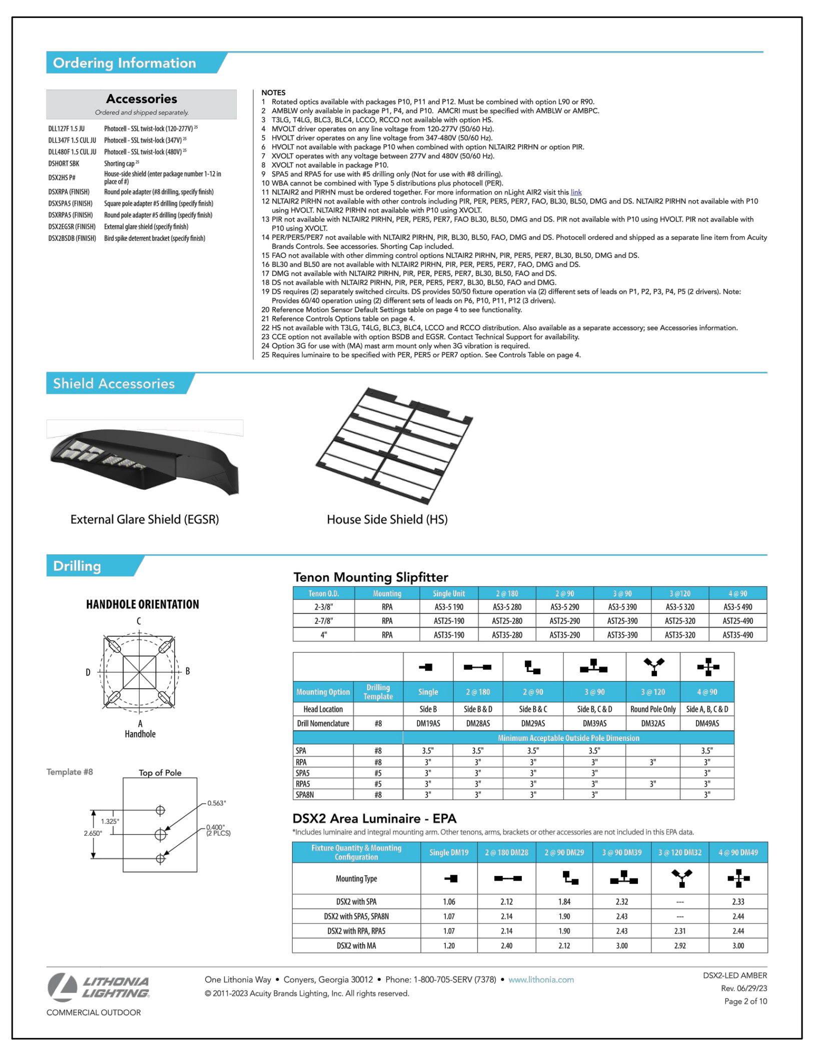
DSX2-LED AMBER Rev. 06/29/23 Page 1 of 10



**Ordering Information**

**Accessories** (Ordered and shipped separately.)
DLL127F 1.5 JU Photocell - SSL twist-lock (120-277V)
DLL347F 1.5 CUL JU Photocell - SSL twist-lock (347V)
DLL480F 1.5 CUL JU Photocell - SSL twist-lock (480V)
DSHORT SBK Shorting cap
DSX2HS P# House-side shield (enter package number 1-12 in place of #)
DSXRPA (FINISH) Round pole adapter (#8 drilling, specify finish)
DSXSPA5 (FINISH) Square pole adapter #5 drilling (specify finish)
DSXRPA5 (FINISH) Round pole adapter #5 drilling (specify finish)
DSX2EGSR (FINISH) External glare shield (specify finish)
DSX2BSDB (FINISH) Bird spike deterrent bracket (specify finish)

NOTES
1 Rotated optics available with packages P10, P11 and P12. Must be combined with option L90 or R90.
2 AMBLW only available in package P1, P4, and P10. AMCRI must be specified with AMBLW or AMBPC.
3 T3LG, T4LG, BLC3, BLC4, LCCO, RCCO not available with option HS.
4 MVOLT driver operates on any line voltage from 120-277V (50/60 Hz).
5 HVOLT driver operates on any line voltage from 347-480V (50/60 Hz).
6 HVOLT not available with package P10 when combined with option NLTAIR2 PIRHN or option PIR.
7 XVOLT operates with any voltage between 277V and 480V (50/60 Hz).
8 XVOLT not available in package P10.
9 SPA5 and RPA5 for use with #5 drilling only (Not for use with #8 drilling).
10 WBA cannot be combined with Type 5 distributions plus photocell (PER).
11 NLTAIR2 and PIRHN must be ordered together. For more information on nLight AIR2 visit this link
12 NLTAIR2 PIRHN not available with other controls including PIR, PER, PER5, PER7, FAO, BL30, BL50, DMG and DS. NLTAIR2 PIRHN not available with P10 using HVOLT. NLTAIR2 PIRHN not available with P10 using XVOLT.
13 PIR not available with NLTAIR2 PIRHN, PER, PER5, PER7, FAO BL30, BL50, DMG and DS. PIR not available with P10 using HVOLT. PIR not available with P10 using XVOLT.
14 PER/PER5/PER7 not available with NLTAIR2 PIRHN, PIR, BL30, BL50, FAO, DMG and DS. Photocell ordered and shipped as a separate line item from Acuity Brands Controls. See accessories. Shorting Cap included.
15 FAO not available with other dimming control options NLTAIR2 PIRHN, PIR, PER5, PER7, BL30, BL50, DMG and DS.
16 BL30 and BL50 are not available with NLTAIR2 PIRHN, PIR, PER, PER5, PER7, FAO, DMG and DS.
17 DMG not available with NLTAIR2 PIRHN, PIR, PER, PER5, PER7, BL30, BL50, FAO and DS.
18 DS not available with NLTAIR2 PIRHN, PIR, PER, PER5, PER7, BL30, BL50, FAO and DMG.
19 DS requires (2) separately switched circuits. DS provides 50/50 fixture operation via (2) different sets of leads on P1, P2, P3, P4, P5 (2 drivers). Note: Provides 60/40 operation using (2) different sets of leads on P6, P10, P11, P12 (3 drivers).
20 Reference Motion Sensor Default Settings table on page 4 to see functionality.
21 Reference Controls Options table on page 4.
22 HS not available with T3LG, T4LG, BLC3, BLC4, LCCO and RCCO distribution. Also available as a separate accessory; see Accessories information.
23 CCE option not available with option BSDB and EGSR. Contact Technical Support for availability.
24 Option 3G for use with (MA) mast arm mount only when 3G vibration is required.
25 Requires luminaire to be specified with PER, PER5 or PER7 option. See Controls Table on page 4.

**Shield Accessories**
External Glare Shield (EGSR)
House Side Shield (HS)

**Drilling**
HANDHOLE ORIENTATION
Handhole
Template #8 — Top of Pole — 1.325" — 2.650" — 0.563" — 0.400" (2 PLCS)

**Tenon Mounting Slipfitter**

| Tenon O.D. | Mounting | Single Unit | 2 @ 180 | 2 @ 90 | 3 @ 90 | 3 @ 120 | 4 @ 90 |
|---|---|---|---|---|---|---|---|
| 2-3/8" | RPA | AS3-5 190 | AS3-5 280 | AS3-5 290 | AS3-5 390 | AS3-5 320 | AS3-5 490 |
| 2-7/8" | RPA | AST25-190 | AST25-280 | AST25-290 | AST25-390 | AST25-320 | AST25-490 |
| 4" | RPA | AST35-190 | AST35-280 | AST35-290 | AST35-390 | AST35-320 | AST35-490 |

| Mounting Option | Drilling Template | Single | 2 @ 180 | 2 @ 90 | 3 @ 90 | 3 @ 120 | 4 @ 90 |
|---|---|---|---|---|---|---|---|
| Head Location | | Side B | Side B & D | Side B & C | Side B, C & D | Round Pole Only | Side A, B, C & D |
| Drill Nomenclature | #8 | DM19AS | DM28AS | DM29AS | DM39AS | DM32AS | DM49AS |
| Minimum Acceptable Outside Pole Dimension | | | | | | | |
| SPA | #8 | 3.5" | 3.5" | 3.5" | 3.5" | | 3.5" |
| RPA | #8 | 3" | 3" | 3" | 3" | 3" | 3" |
| SPA5 | #5 | 3" | 3" | 3" | 3" | | 3" |
| RPA5 | #5 | 3" | 3" | 3" | 3" | 3" | 3" |
| SPA8N | #8 | 3" | 3" | 3" | 3" | | 3" |

**DSX2 Area Luminaire - EPA**
*Includes luminaire and integral mounting arm. Other tenons, arms, brackets or other accessories are not included in this EPA data.

| Fixture Quantity & Mounting Configuration | Single DM19 | 2 @ 180 DM28 | 2 @ 90 DM29 | 3 @ 90 DM39 | 3 @ 120 DM32 | 4 @ 90 DM49 |
|---|---|---|---|---|---|---|
| DSX2 with SPA | 1.06 | 2.12 | 1.84 | 2.32 | --- | 2.33 |
| DSX2 with SPA5, SPA8N | 1.07 | 2.14 | 1.90 | 2.43 | --- | 2.44 |
| DSX2 with RPA, RPA5 | 1.07 | 2.14 | 1.90 | 2.43 | 2.31 | 2.44 |
| DSX2 with MA | 1.20 | 2.40 | 2.12 | 3.00 | 2.92 | 3.00 |

LITHONIA LIGHTING COMMERCIAL OUTDOOR
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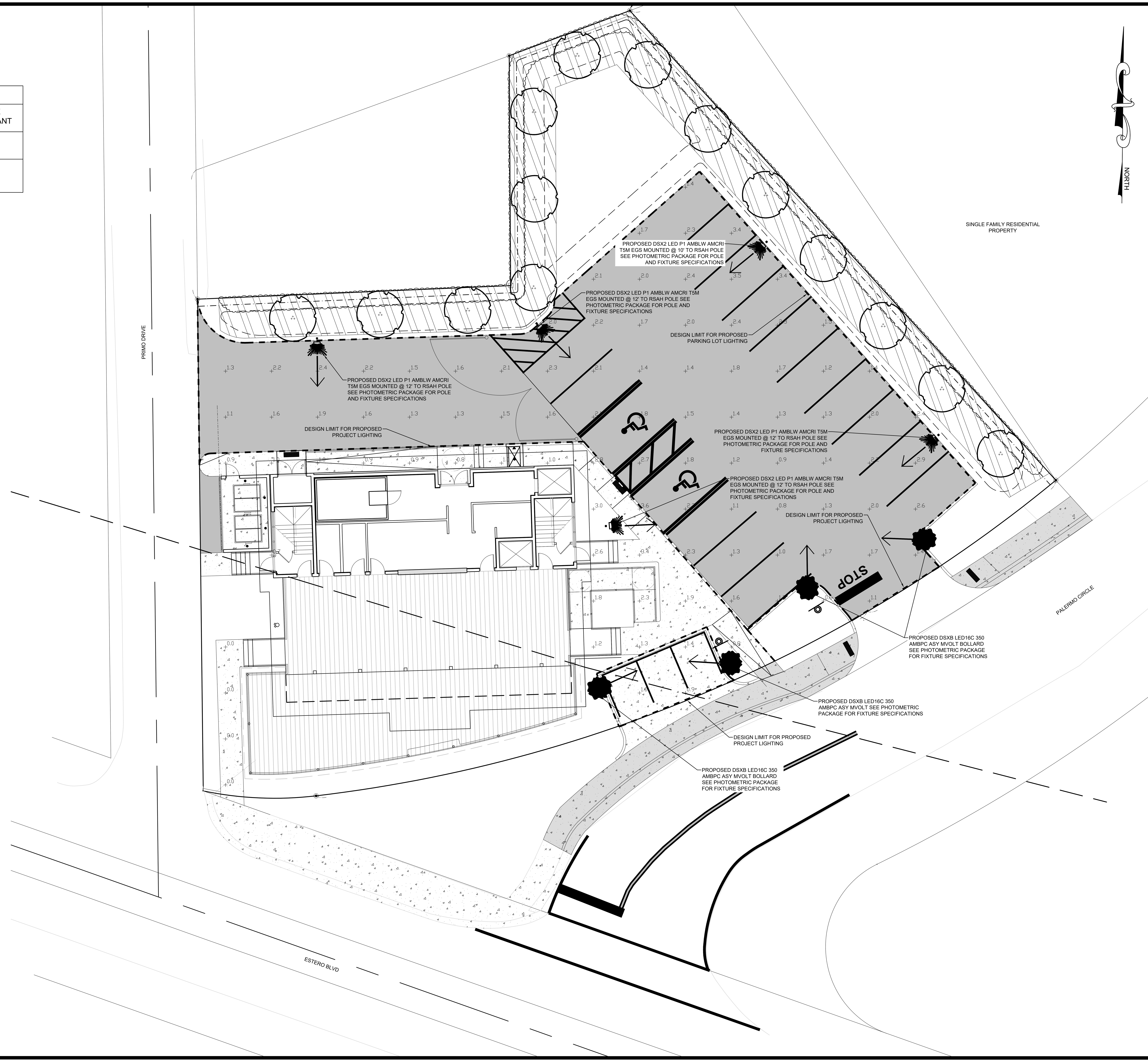
DSX2-LED AMBER Rev. 06/29/23 Page 2 of 10




GRAPHIC SCALE
10 0 5 10 20 40
( IN FEET )
1" = 10 FEET

| REVISIONS | DATE | BY |
|---|---|---|
| 0. INITIAL SUB | 05/16/23 | TG |
| 1. CITY CMNTS | 10/17/23 | TG |
| | | |
| | | |
| | | |
| | | |


SPEATH ENGINEERING
SPEATH ENGINEERING FL, LLC - 1111 BRICKELL AVE, 10TH FL.
MIAMI, FL 33131 - PHONE: 305-834-4213


# PHOTOMETRIC PLAN
FOR
THE WHALE BAR & RESTAURANT
1249 ESTERO BLVD. FORT MYERS BEACH
LEE COUNTY, FLORIDA

MATTHEW S. SPEATH LICENSE No. 67675 STATE OF FLORIDA PROFESSIONAL ENGINEER
10/17/2023

THIS ITEM HAS BEEN DIGITALLY SIGNED AND SEALED BY MATTHEW S. SPEATH, P.E. ON THE DATE ADJACENT TO THE SEAL. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES

MATTHEW S. SPEATH P.E.
LIC. #67675
FBPE # 31292

| | |
|---|---|
| DRAWN | TCG |
| CHECK | MSS |
| DATE | 10/17/23 |
| SCALE | 1"=10' |
| PROJ. NO. | F22-58 |

SHEET:
C7
7 OF 7

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

This is a first part of 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 a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 1249 Estero Blvd Ft Myers Beach, FL 33931

STRAP Number: 19-46-24-W4-0060H.0300

Applicant: Fowler Construction & Development Phone: 239-275-7000

Contact Name: Robert Fowler Phone: 239-275-7000

Email: robjr@fowlercompany.com Fax: _____

Current Zoning District: Downtown

Future Land Use Map (FLUM) Category: Pedestrian Commercial

FLUM Density Range: _____ Platted Overlay: ☐ YES ☐ NO

| ACTION REQUESTED | SUPPLEMENTAL FORM REQUIRED |
|---|---|
| ☐ Special Exception | PH-A |
| ☑ Variance | PH-B |
| ☐ Conventional Rezoning | PH-C |
| ☐ Planned Development ☐ Commercial ☐ Residential | PH-D |
| ☐ Master Concept Plan Extension | PH-E |
| ☐ Appeal of Administrative Action | PH-F |
| ☐ Vacation of Platted Right-of-way and Easement | PH-G |
| ☐ Other – cite LDC Section: _____ | attach on separate sheet |

### PART I – General Information

A. Applicant*: Fowler Construction & Development Phone: 239-275-7000

**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: 10491 6 Mile Cypress Pkwy Ste. 280 Ft Myers, FL 33966

Email: robjr@fowlercompany.com Fax: _____

Contact Name: Robert Fowler Phone: 239-275-7000



Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

B. Relationship of Applicant to subject property:

☐ Owner* ☐ Land Trust* ☐ Partnership*
☐ Corporation* ☐ Association* ☐ Condominium*
☐ Subdivision* ☐ Timeshare Condo* ☐ Contract Purchaser*
☒ Authorized Representative* ☒ Other* (please indicate) Construction Manager

**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: Erin Pomerantzeff Phone: 239-275-7000
Address: 10491 6 Mile Cypress Pkwy Ste. 280 Ft Myers, FL 33966
Email: erin@fowlercompany.com Fax: _____

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

Name: Cheryl Lemke Phone: 239-275-7000
Address: 10491 6 Mile Cypress Pkwy Ste. 280 Ft Myers, FL 33966
Email: cheryl@fowlercompany.com Fax: _____

Name: Matt Woods Phone: 239-603-3133
Address: 10491 6 Mile Cypress Pkwy Ste. 280 Ft Myers, FL 33966
Email: matt@fowlercompany.com Fax: _____

## PART II – Nature of Request

Requested Action (each request requires a separate application)

☐ Special Exception
☑ Variance from LDC Section 34 - 2020(d)(2)h.2
☐ 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: _____

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation ☐ Right-of-Way ☐ Easement

☑ Other. Please Explain: Parking Variance

### 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: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

### PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: 1249 ESTERO ADVENTURES LLC Phone: 614-361-1982

Mailing Address: 290 BAHIA VIA FORT MYERS BEACH FL 33931

Email: mike@ideal-investments.com Fax: n/a

### AFFIDAVIT
### APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Robert Fowler 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;


Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

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.

_____ Robert Fowler - Pres
Signature Printed Name

**STATE OF _____ COUNTY OF _____**

The foregoing instrument was certified and subscribed before me by means of ____ physical

presence OR _____ online notarization, this _____day of _____, 20_____, by

_____, ____ who is personally known to me OR ___ who has produced

_____ as identification.

(SEAL) _____
Notary Public Signature

## PART V
### Property Ownership (Multiple Owners)

☐ 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 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V – Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

### DISCLOSURE OF OWNERSHIP INTEREST

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 |
|---|---|
| | |
| | |
| | |
| | |



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

| 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 |
|---|---|
| | |
| | |
| | |
| | |

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 |
|---|---|
| Michael Miller- 290 Bahia Via Ft Myers, Beach FL 33931 | 100% |
| | |
| | |
| | |

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 |
|---|---|
| | |
| | |
| | |
| | |




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# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

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 Printed Name

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

I, Robert Fowler (name), as President (title) of Fowler Construction & Development (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 Town of Fort Myers Beach 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 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
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.


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1249 Estero Adventures LLC

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

Signature _____ Title _____

Michael Miller

Typed or Printed Name _____ Date _____

**STATE OF _____ COUNTY OF _____**

The foregoing instrument was certified and subscribed before me by means of ___ physical presence OR ☐ online notarization, this _____day of _____, 20_____ , by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

**PART VI– Property Information**

A. Legal Description:

STRAP: 19-46-24-W4-0060H.0300

Property Address: 1249 Estero Blvd Ft 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 6-1.

☑ Yes. Property identified in subdivision: Venetian Gardens

Book: 6 Page: 70 Unit: _____ Block: H Lot(s): 30,31,32

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 6-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) irregular 150 feet

Depth (please provide an average width if irregular in shape) irregular 150 feet

Frontage on street: <68' (Estero Blvd) feet. Frontage on waterbody: 0 feet

Total land area: 16580+/- ☐ acres ☑ square feet

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

From Sky Bridge take a left onto Estero Blvd turn left on Palermo Circle

☑ Attach Area Location Map as Exhibit 6-3

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 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

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 6-6.

☑ Attach a map showing the surrounding property owners as Exhibit 6-7.

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

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

☐ Low Density
☐ Mixed Residential
☐ Boulevard
☑ Pedestrian Commercial
☐ Marina
☐ Recreation
☐ Wetlands
☐ Platted Overlay



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Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

### EXPLANATORY NOTES
***Please do not print, copy and submit these instructions***

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com .

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.

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. Exhibit 3-1

Explanatory Notes – Part IV

A. If the property owner is an individual or husband and wife, check the box and provide the information.



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Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Explanatory Notes – Part V

A. If there are multiple property owners exhibit 5-1, 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.
B. 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 Exhibit 5-2
C. 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 5-3.
D. 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 5-4.

Explanatory Notes – Part VI

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. Exhibit 6-1
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 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


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line. Exhibit 6-2

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). Exhibit 6-3
E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
G. 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 Exhibit 6-6. 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.
H. 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.
I. 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 IV & V

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


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Case # _____ Date Received: _____

# 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 Whale Restaurant |
| **Authorized Applicant:** Robert Fowler - Fowler Construction |
| **LeePA STRAP Number:** 19-46-24-W4-0060H.0300 |
| |

| | | | |
|---|---|---|---|
| **Current Property Status:** open in tents as a Special Exception | | | |
| **Current Zoning:** Downtown District | | | |
| **Future Land Use Map (FLUM) Category:** Pedestrian Commercial | | | |
| **Comp Plan Density:** | **Platted Overlay?** | ☐ **Yes** | ☐ **No** |

**Variance is requested from:**

| **LDC Section Number** | **Title of Section or Subsection** |
|---|---|
| Sec. 34-676. - Circulation and parking. | |
| | |
| | |
| | |
| | |
| | |

Complete the narrative statements below for EACH variance requested.

Case # _____ Date Received: _____

PART I

Narrative Statements

**Request for variance from** Sec. 34-676. **(LDC Section number)**

| **Explain the specific regulation contained in this section from which relief is sought:** |
|---|
| |
| |
| |
| Required: 6,767sf / 1000 * 8 = 80.504 * .67 reduction = 36.271 spaces (37 spaces) - 1 bike rack = 36 spaces |
| |
| |
| |
| |
| |
| |
| |
| |

**Reasons for request**

| **Explain why the variance is needed:** |
|---|
| The Whale Restaurant operated for decades on this site prior to Hurricane Ian which completely destroyed the |
| building. The owners wish to reopen the iconic beach restaurant, but obviously in a new building on the site. |
| |
| Current FMB Code required parking = 36 spaces. Request to reduce to 18. (max possible) |
| |
| |
| |
| |
| |
| |
| |
| |

Case # _____ Date Received: _____

| Explain the possible effect the variance, if granted, would have on surrounding properties: |
|---|
| The requested parking Variance will improve conditions for the surrounding properties |
| by allowing the reconstruction of the property to current standards and code. |
| The new project includes compliant setbacks, buffers, vehicular and pedestrian access, and storm water management. |
| These are all drastic improvements over the pre-Ian conditions as none of these met current code. |
| The property use was and is complaint with Zoning and Future Land Use so there is no negative impact to surrounding properties. |
| The new project will be storm resistant (to current code) and therefore not a hazard to nearby properties. |
| Improved parking and site access will reduce traffic conflicts on Primo and Palermo (cars backing into streets etc). |
| |
| |
| |
| |
| |
| |
| |

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

| |
|---|
| The site shape is highly irregular making "normal" and code compliant parking |
| very challenging to layout. (see attached docs) |
| |
| The proposed site design maximizes code conforming parking spaces while |
| meeting other site development requirements. |
| |
| The proposed plan increases code complaint parking. |
| Prior to Hurricane Ian there were 18 total parking spaces - possibly 9 would be |
| currently code compliant. |
| |
| The project is consistent with Zoning and FLU and with nearby development. |
| |
| |
| |
| |

Case # _____ Date Received: _____

| **Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.** |
|---|
| Consideration 1: Meets the (5) required findings in Section (c) |
| Finding #1: |
| There ARE exceptional or extraordinary conditions that are inherent to the property in question. |
| - As noted previously, the site configuration is highly irregular. It was also impacted by past street realignment. |
| Finding #2: |
| The conditions justifying the variance ARE NOT the result of actions of the applicant taken after the adoption of the regulation in question. |
| Finding #3: |
| 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; |
| Finding #4: |
| The granting of the variance WILL NOT be injurious to the neighborhood or otherwise detrimental to the public welfare. |
| Finding #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. |
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| Consideration 2: Staff and LPA Recommendations |
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| LPA Review is pending at the time of this application. |
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| Consideration 3: Testimony from the Applicant - see attached |
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| Consideration 4: Testimony from the Public - see attached |
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PART 2
Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - iworq (talktomycity.com)

**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
- Fee in the amount of $1800.00 (residential)/Additional Variance $500.00
- Variance (non-residential) $2800.00/ Additional Variance $700.00

**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.

## Sec. 34-2020. - Required parking spaces.

(a) *New developments.* New residential and nonresidential uses must provide off-street parking spaces in single-purpose parking lots in accordance with the standards specified in this section, as modified by certain reductions as provided in the Downtown and Santini zoning districts (see division 5 of article III of this chapter).

(b) *Bicycle parking.* Commercial, multiple-family, and mixed-use buildings may eliminate one required parking space by providing and maintaining a bicycle rack able to hold four bicycles.

(c) --

(d) *Minimum parking standards.*

(2) *Commercial uses.*

h. *Restaurants.* With the exceptions noted below, the minimum parking requirements for restaurants is eight spaces per 1,000 square feet of total floor area plus any outdoor seating area.

1. *Accessory restaurant.* When a restaurant is located within the same building as the principal use, and is clearly provided primarily for the employees and customers of the principal use, no additional parking spaces are required.

2. *Bars and cocktail lounges.* If the restaurant contains a cocktail lounge or bar, the minimum requirement is eight spaces per 1,000 square feet of total floor area plus five additional spaces per 1,000 square feet of floor area used for the bar or cocktail lounge. If outdoor seating is provided, parking must also be provided for the area used for outdoor seating at these same rates.

## Sec. 34-676. - Circulation and parking.

(a) *Off-street parking reductions.* The Downtown district is planned as a "park-once" district, with preference given to pedestrian movement within the district. On-street parking will be provided by the town along Old San Carlos Boulevard and other public parking is available under the Sky Bridge. For these reasons, substantial reductions are allowed to the normal off-street parking requirements found in § 34-2020 of this chapter. The follow percentages shall be multiplied by the number of off-street parking spaces normally required by § 34-2020 of this chapter to determine the adjusted off-street parking requirements along various streets in the Downtown district:

(4) All other streets in the Downtown district, and all land on Crescent Street regardless of zoning district, multiply by 67 percent.

Case # _____ Date Received: _____

# 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 Whale Restaurant | |
| **Authorized Applicant:** Robert Fowler - Fowler Construction | |
| **LeePA STRAP Number:** 19-46-24-W4-0060H.0300 | |
| | |

| | | | |
|---|---|---|---|
| **Current Property Status:** open in tents as a Special Exception | | | |
| **Current Zoning:** Downtown District | | | |
| **Future Land Use Map (FLUM) Category:** Pedestrian Commercial | | | |
| **Comp Plan Density:** | **Platted Overlay?** | ☐ **Yes** | ☑ **No** |

**Variance is requested from:**

| **LDC Section Number** | **Title of Section or Subsection** |
|---|---|
| Sec. 34-2020(d)(2)h.2. - Required Parking Spaces | |
| | |
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Complete the narrative statements below for EACH variance requested.

Case # _____ Date Received: _____

PART I

Narrative Statements

**Request for variance from** Sec. 34-2020. **(LDC Section number)**

| **Explain the specific regulation contained in this section from which relief is sought:** |
|---|
| |
| |
| |
| Required: 9,300sf / 1000 * 8 = 74.4 * .67 reduction = 49.85 spaces (50 spaces) - 1 bike rack = 49 spaces |
| Add for bars: 596sf / 1000 * 5 = 2.98 *.67 reduction = 1.99 spaces (2 spaces) + 49 spaces = 51 spaces |
| |
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**Reasons for request**

| **Explain why the variance is needed:** |
|---|
| The Whale Restaurant operated for decades on this site prior to Hurricane Ian which completely destroyed the |
| building. The owners wish to reopen the iconic beach restaurant, but obviously in a new building on the site. |
| |
| Current FMB Code required parking = 51 spaces. Request to reduce to 18. (max possible) |
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Case # _____ Date Received: _____

| **Explain the possible effect the variance, if granted, would have on surrounding properties:** |
|---|
| The requested parking Variance will improve conditions for the surrounding properties |
| by allowing the reconstruction of the property to current standards and code. |
| The new project includes compliant setbacks, buffers, vehicular and pedestrian access, and storm water management. |
| These are all drastic improvements over the pre-Ian conditions as none of these met current code. |
| The property use was and is complaint with Zoning and Future Land Use so there is no negative impact to surrounding properties. |
| The new project will be storm resistant (to current code) and therefore not a hazard to nearby properties. |
| Improved parking and site access will reduce traffic conflicts on Primo and Palermo (cars backing into streets etc). |
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| **Explain the hardship (what is unique about the property) that justifies relief from the regulation:** |
|---|

| |
|---|
| The site shape is highly irregular making "normal" and code compliant parking |
| very challenging to layout. (see attached docs) |
| |
| The proposed site design maximizes code conforming parking spaces while |
| meeting other site development requirements. |
| |
| The proposed plan increases code complaint parking. |
| Prior to Hurricane Ian there were 18 total parking spaces - possibly 9 would be |
| currently code compliant. |
| |
| The project is consistent with Zoning and FLU and with nearby development. |
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Case # _____ Date Received: _____

| **Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.** |
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| Consideration 1: Meets the (5) required findings in Section (c) |
| Finding #1: |
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**Cover page**

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Case # _____ Date Received: _____

# Town of Fort Myers Beach

## COMMUNITY DEVELOPMENT DEPARTMENT

### Supplement PH-B

### Additional Required Information for a Variance Application

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| | |
|---|---|
| **Case Number:** | |
| **Project Name:** The Whale Restaurant | |
| **Authorized Applicant:** Robert Fowler - Fowler Construction | |
| **LeePA STRAP Number:** 19-46-24-W4-0060H.0300 | |
| | |

| | | | |
|---|---|---|---|
| **Current Property Status:** open in tents as a Special Exception | | | |
| **Current Zoning:** Downtown District | | | |
| **Future Land Use Map (FLUM) Category:** Pedestrian Commercial | | | |
| **Comp Plan Density:** | **Platted Overlay?** | ☐ **Yes** | ☑ **No** |

**Variance is requested from:**

| **LDC Section Number** | **Title of Section or Subsection** |
|---|---|
| Sec. 34-2020(d)(2)h.2. - Required Parking Spaces | |
| | |
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| | |

Complete the narrative statements below for EACH variance requested.

Case # _____ Date Received: _____

PART I

Narrative Statements

**Request for variance from** Sec. 34-2020. **(LDC Section number)**

| **Explain the specific regulation contained in this section from which relief is sought:** |
|---|
| |
| |
| |
| Required: 9,300sf / 1000 * 8 = 74.4 * .67 reduction = 49.85 spaces (50 spaces) - 1 bike rack = 49 spaces |
| Add for bars: 596sf / 1000 * 5 = 2.98 *.67 reduction = 1.99 spaces (2 spaces) + 49 spaces = 51 spaces |
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**Reasons for request**

| **Explain why the variance is needed:** |
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| The Whale Restaurant operated for decades on this site prior to Hurricane Ian which completely destroyed the |
| building. The owners wish to reopen the iconic beach restaurant, but obviously in a new building on the site. |
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| Current FMB Code required parking = 51 spaces. Request to reduce to 18. (max possible) |
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| **Explain the possible effect the variance, if granted, would have on surrounding properties:** |
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| The requested parking Variance will improve conditions for the surrounding properties |
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| **Explain the hardship (what is unique about the property) that justifies relief from the regulation:** |
|---|

| |
|---|
| The site shape is highly irregular making "normal" and code compliant parking |
| very challenging to layout. (see attached docs) |
| |
| The proposed site design maximizes code conforming parking spaces while |
| meeting other site development requirements. |
| |
| The proposed plan increases code complaint parking. |
| Prior to Hurricane Ian there were 18 total parking spaces - possibly 9 would be |
| currently code compliant. |
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| The project is consistent with Zoning and FLU and with nearby development. |
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Case # _____ Date Received: _____

| **Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.** |
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| Consideration 1: Meets the (5) required findings in Section (c) |
| Finding #1: |
| There ARE exceptional or extraordinary conditions that are inherent to the property in question. |
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PART 2
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**Cover page**

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Case # _____ Date Received: _____

# Town of Fort Myers Beach

## COMMUNITY DEVELOPMENT DEPARTMENT

### Supplement PH-B

### Additional Required Information for a Variance Application

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| **Case Number:** |
| **Project Name:** The Whale Restaurant |
| **Authorized Applicant:** Robert Fowler - Fowler Construction |
| **LeePA STRAP Number:** 19-46-24-W4-0060H.0300 |
| |

| | | | |
|---|---|---|---|
| **Current Property Status:** open in tents as a Special Exception | | | |
| **Current Zoning:** Downtown District | | | |
| **Future Land Use Map (FLUM) Category:** Pedestrian Commercial | | | |
| **Comp Plan Density:** | **Platted Overlay?** | ☐ **Yes** | ☐ **No** |

**Variance is requested from:**

| **LDC Section Number** | **Title of Section or Subsection** |
|---|---|
| Sec. 34-675. - Building size (b)Building height (2)For properties that front on ... | |
| d.North side of Estero Boulevard west of Old San Carlos Boulevard | |
| and east of Crescent Street; | |
| | |
| | |
| | |

Complete the narrative statements below for EACH variance requested.

Case # _____ Date Received: _____

# PART I
## Narrative Statements

**Request for variance from** Sec. 34-675. **(LDC Section number)**

| **Explain the specific regulation contained in this section from which relief is sought:** |
|---|
| For properties that front on the following streets,... a maximum of 30 feet above base flood elevation |
| and no taller than two stories, except that an elevated building without enclosed space |
| on the first story may be three stories tall (but still limited to 30 feet above base flood elevation): |
| |
| Application seeks relief to allow (2) stories over enclosed space and within the allowed |
| 30' above BFE while including FEMA compliant "enclosed" space below and |
| while meeting the intent and language of the Zoning and Future Land Use plans. |
| |
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**Reasons for request**

| **Explain why the variance is needed:** |
|---|
| The physical limitations of the unusually shaped site and the need to meet current land development codes |
| including pedestrian and vehicular access require the plan rebuild (2) stories above BFE with supporting |
| space below to achieve enough space to replace the previous restaurant use. |
| |
| The nature, intent, and language of the Pedestrian Commercial Future Land Use and Downtown Zoning Sec. 34-671 |
| promotes public use spaces on the street-level. "The purpose of the Downtown district is to create the desired |
| quality and character for the center of pedestrian-oriented commercial activities within the town." |
| |
| The proposed plan provides the street-level, pedestrian-oriented activities desired by the Town Code while |
| complying with FEMA requirements and supporting the overall restaurant operations. |
| |
| |

Case # _____ Date Received: _____

| **Explain the possible effect the variance, if granted, would have on surrounding properties:** |
|---|
| The requested Variance will improve conditions for the surrounding properties |
| by allowing the reconstruction of the property to current standards and code. |
| The new project includes compliant setbacks, buffers, vehicular and pedestrian access, and storm water management. |
| These are all drastic improvements over the pre-Ian conditions as none of these met current code. |
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| **Explain the hardship (what is unique about the property) that justifies relief from the regulation:** |
|---|

| |
|---|
| Without this Variance, the Property Owner will not be able to reestablish the |
| successful, pre-Hurricane Ian, properly Zoned business as is the stated desire |
| of Town leadership. |
| |
| The wording of the LDC Section is not clear as to the purpose of the restriction |
| on number of stories versus overall height. |
| This proposal meets land development code Height restrictions. |
| |
| The site shape is highly irregular making "normal" and code compliant |
| development impossible. (see attached docs) |
| The proposed plans meet all codes to the greatest extent possible. |
| |
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| |

Case # _____ Date Received: _____

| **Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.** |
|---|
| Consideration 1: Meets the (5) required findings in Section (c) |
| Finding #1: |
| There ARE exceptional or extraordinary conditions that are inherent to the property in question. |
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# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation ☐ Right-of-Way ☐ Easement

☑ Other. Please Explain: "Height" Variance - the request is NOT to add vertical height above the code restriction. The request is to allow (2) stories over an "enclosed" space within the overall height limit.

### 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: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

### PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: 1249 ESTERO ADVENTURES LLC Phone: 614-361-1982

Mailing Address: 290 BAHIA VIA FORT MYERS BEACH FL 33931

Email: mike@ideal-investments.com Fax: n/a

### AFFIDAVIT
### APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Robert Fowler 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;

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

This is a first part of 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 a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 1249 Estero Blvd Ft Myers Beach, FL 33931

STRAP Number: 19-46-24-W4-0060H.0300

Applicant: Fowler Construction & Development Phone: 239-275-7000

Contact Name: Robert Fowler Phone: 239-275-7000

Email: robjr@fowlercompany.com Fax: _____

Current Zoning District: Downtown

Future Land Use Map (FLUM) Category: Pedestrian Commercial

FLUM Density Range: _____ Platted Overlay: ☐ YES ☐ NO

| ACTION REQUESTED | SUPPLEMENTAL FORM REQUIRED |
|---|---|
| ☐ Special Exception | PH-A |
| ☑ Variance | PH-B |
| ☐ Conventional Rezoning | PH-C |
| ☐ Planned Development ☐ Commercial ☐ Residential | PH-D |
| ☐ Master Concept Plan Extension | PH-E |
| ☐ Appeal of Administrative Action | PH-F |
| ☐ Vacation of Platted Right-of-way and Easement | PH-G |
| ☐ Other – cite LDC Section: _____ | attach on separate sheet |

### PART I – General Information

A. Applicant*: Fowler Construction & Development Phone: 239-275-7000

**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: 10491 6 Mile Cypress Pkwy Ste. 280 Ft Myers, FL 33966

Email: robjr@fowlercompany.com Fax: _____

Contact Name: Robert Fowler Phone: 239-275-7000

B. Relationship of Applicant to subject property:

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

**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: Erin Pomerantzeff Phone: 239-275-7000

Address: 10491 6 Mile Cypress Pkwy Ste. 280 Ft Myers, FL 33966

Email: erin@fowlercompany.com Fax: _____

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

Name: Cheryl Lemke Phone: 239-275-7000

Address: 10491 6 Mile Cypress Pkwy Ste. 280 Ft Myers, FL 33966

Email: cheryl@fowlercompany.com Fax: _____

Name: Matt Woods Phone: 239-603-3133

Address: 10491 6 Mile Cypress Pkwy Ste. 280 Ft Myers, FL 33966

Email: matt@fowlercompany.com Fax: _____

## PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☑ Variance from LDC Section 34 - 675(b)(2)
- ☐ 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: _____

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

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.

_____ Robert Fowler - Pres
Signature Printed Name

**STATE OF** FL **COUNTY OF** LEE

The foregoing instrument was certified and subscribed before me by means of X physical presence OR ____ online notarization, this 5th day of October, 2023, by Robert Fowler, X who is personally known to me OR ☐ who has produced _____ as identification.

Cheryl Lemke
Notary Public Signature

Notary Public State of Florida
Cheryl Lemke
My Commission HH 107473
Expires 05/23/2025

**PART V**
**Property Ownership (Multiple Owners)**

☐ 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 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V – Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

**DISCLOSURE OF OWNERSHIP INTEREST**

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 |
|---|---|
| | |
| | |
| | |
| | |



Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

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

| 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 |
|---|---|
| | |
| | |
| | |
| | |

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 |
|---|---|
| Michael Miller- 290 Bahia Via Ft Myers, Beach FL 33931 | 100% |
| | |
| | |
| | |

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 |
|---|---|
| | |
| | |
| | |
| | |

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

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

_____ Printed Name

**AFFIDAVIT**

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

I, Robert Fowler (name), as President (title) of Fowler Construction & Development (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 Town of Fort Myers Beach 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 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
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

1249 Estero Adventures LLC

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

Signature

OWNER

Title

Michael Miller

Typed or Printed Name

10/5/23

Date

**STATE OF** FL **COUNTY OF** LEE

The foregoing instrument was certified and subscribed before me by means of X physical presence OR ☐ online notarization, this 5th day of October, 2023, by Michael Miller ☒ who is personally known to me OR ☐ who has produced _____ as identification.

Cheryl Lemke

Notary Public Signature

Seal

Notary Public State of Florida
Cheryl Lemke
My Commission HH 107473
Expires 05/23/2025

**PART VI– Property Information**

A. Legal Description:

STRAP: 19-46-24-W4-0060H.0300

Property Address: 1249 Estero Blvd Ft 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 6-1.

☑ Yes. Property identified in subdivision: Venetian Gardens

Book: 6 Page: 70 Unit: _____ Block: H Lot(s): 30,31,32

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 6-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) irregular 150 feet

Depth (please provide an average width if irregular in shape) irregular 150 feet

Frontage on street: <68' (Estero Blvd) feet. Frontage on waterbody: 0 feet

Total land area: 16580+/- ☐ acres ☑ square feet

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

From Sky Bridge take a left onto Estero Blvd turn left on Palermo Circle

☑ Attach Area Location Map as Exhibit 6-3

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 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

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 6-6.

☑ Attach a map showing the surrounding property owners as Exhibit 6-7.

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

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

☐ Low Density
☐ Mixed Residential
☐ Boulevard
☑ Pedestrian Commercial
☐ Marina
☐ Recreation
☐ Wetlands
☐ Platted Overlay




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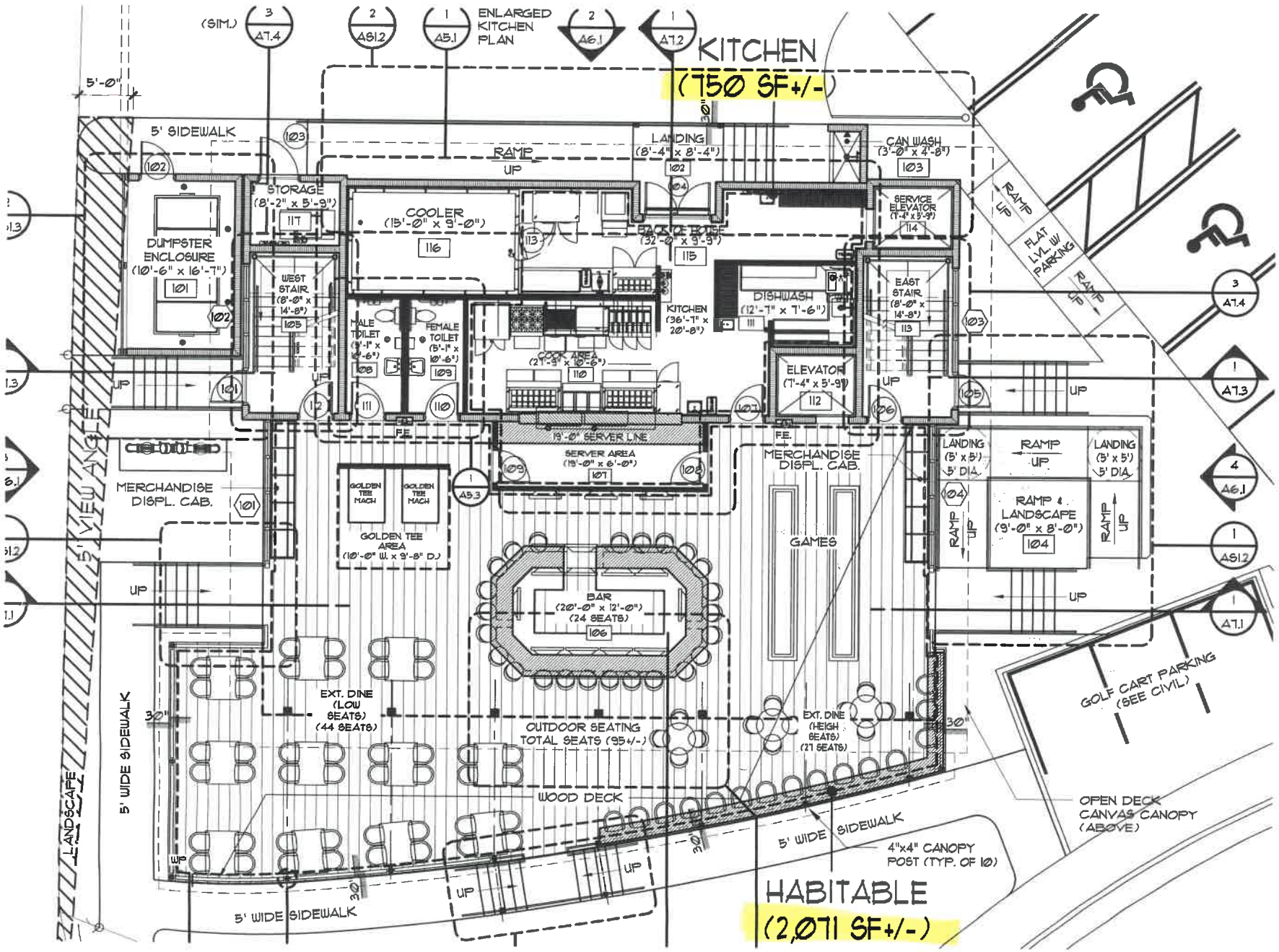
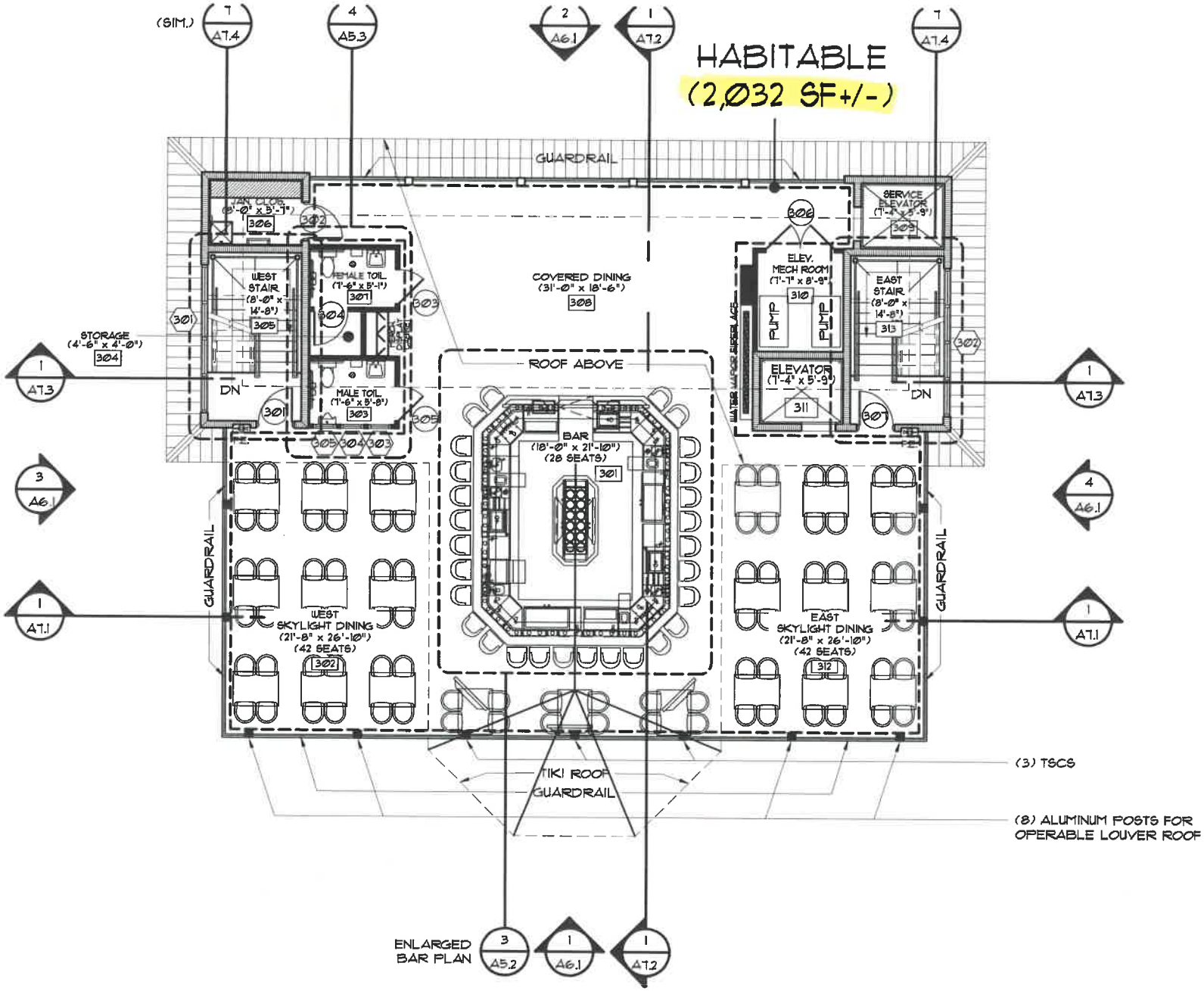
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

**WHALE RESTAURANT:**

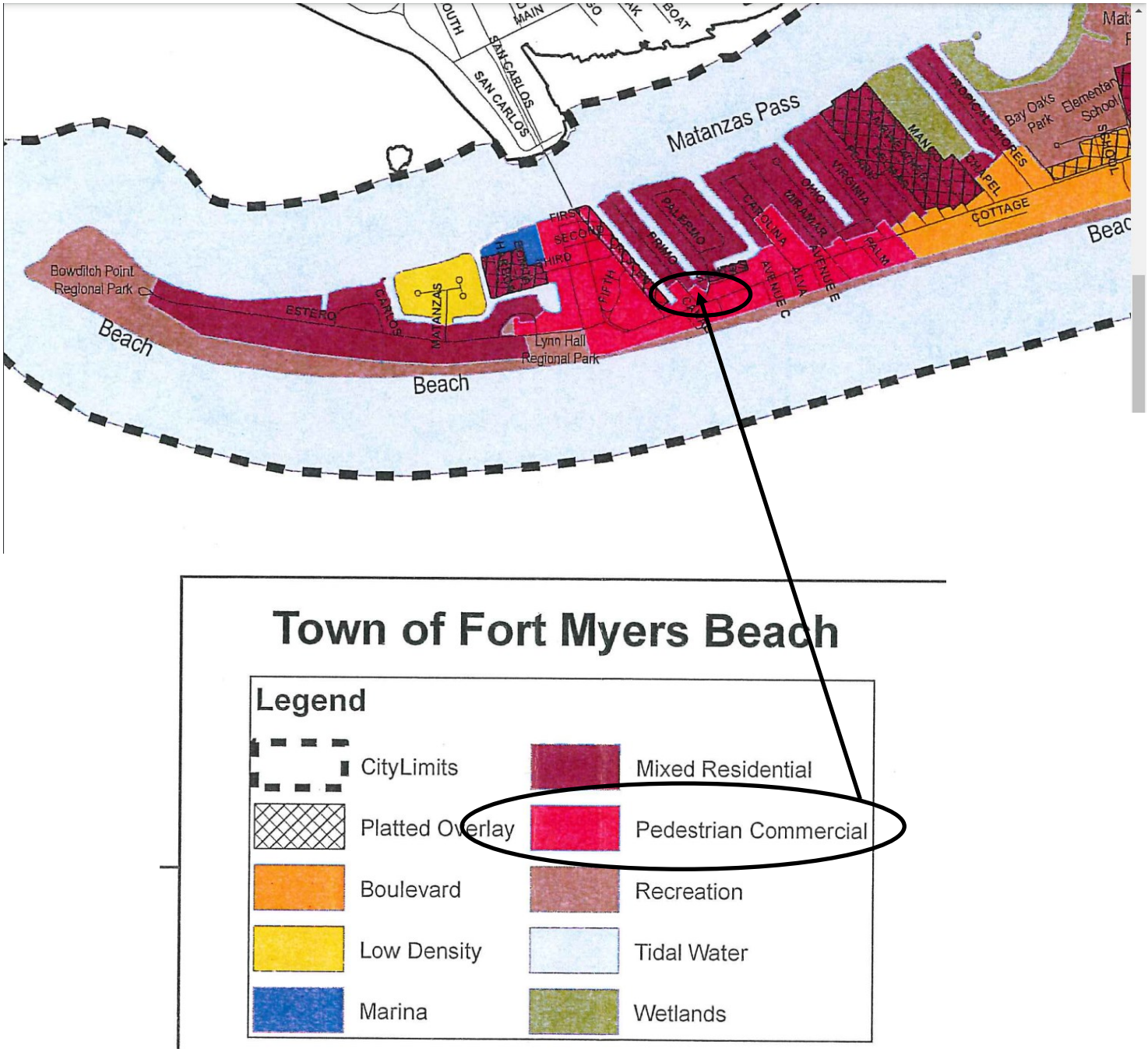
**EXHIBIT 6-7**

**MAP OF SURROUNDING PROPERTY OWNERS**

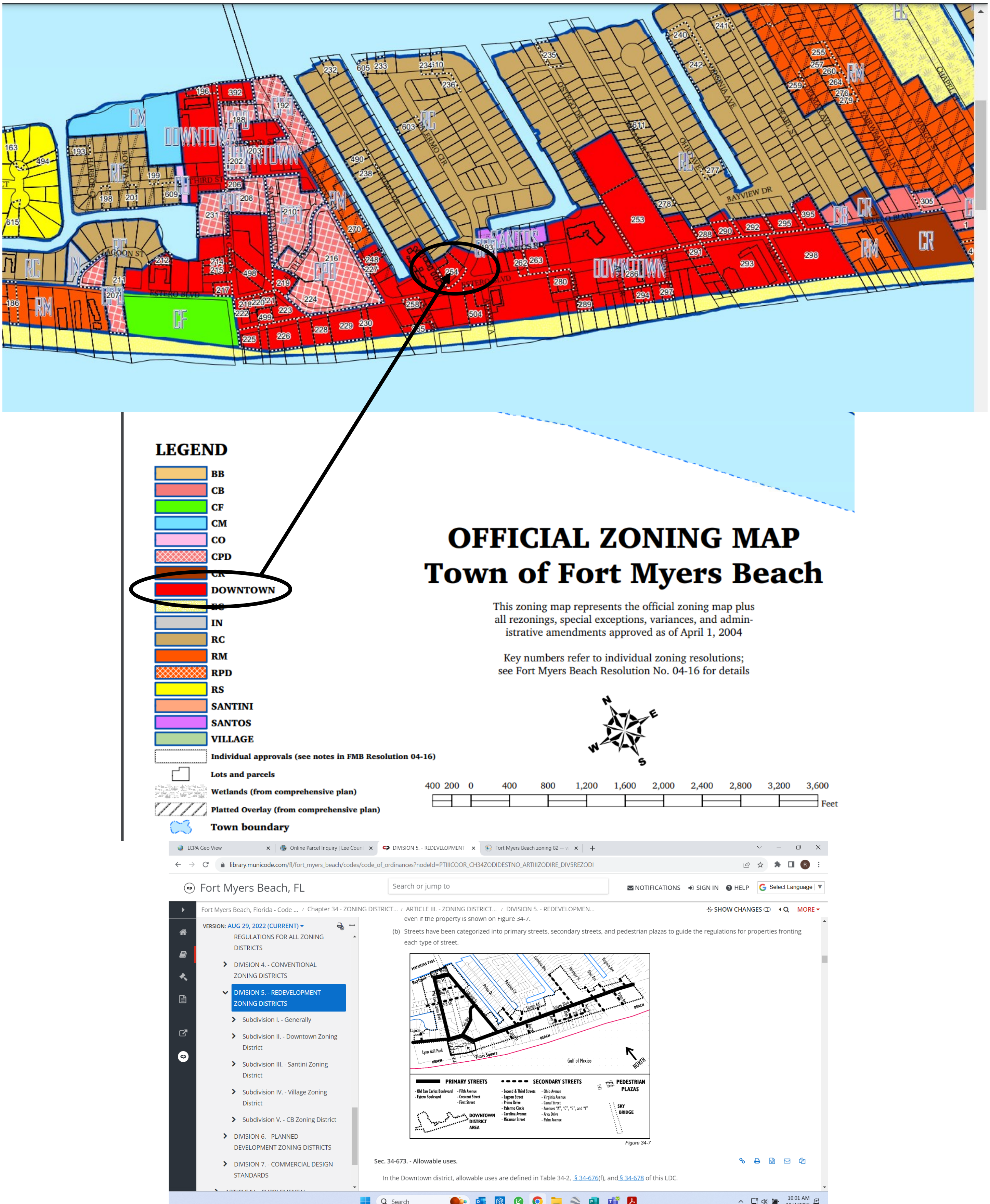

KITCHEN
(750 SF+/-)
HABITABLE
(2,071 SF+/-)
ENLARGED KITCHEN PLAN
5' SIDEWALK
RAMP UP
LANDING (8'-4" x 8'-4")
CAN WASH (3'-0" x 4'-8")
STORAGE (8'-2" x 5'-9")
COOLER (15'-0" x 9'-0")
BACK OF HOUSE (32'-0" x 9'-9")
SERVICE ELEVATOR (7'-4" x 5'-9")
DUMPSTER ENCLOSURE (10'-6" x 16'-7")
WEST STAIR (8'-0" x 14'-8")
MALE TOILET (5'-1" x 6'-6")
FEMALE TOILET (5'-1" x 10'-6")
KITCHEN (36'-7" x 20'-8")
DISHWASH (12'-7" x 7'-6")
EAST STAIR (8'-0" x 14'-8")
COOK AREA (21'-9" x 10'-0")
ELEVATOR (7'-4" x 5'-9")
FLAT LVL W/ PARKING
19'-0" SERVER LINE
SERVER AREA (19'-0" x 6'-0")
MERCHANDISE DISPL. CAB.
GOLDEN TEE MACH
GOLDEN TEE AREA (10'-0" W. x 9'-8" D.)
GAMES
LANDING (5' x 5') 5' DIA.
RAMP & LANDSCAPE (9'-0" x 8'-0")
BAR (20'-0" x 12'-0") (24 SEATS)
EXT. DINE (LOW SEATS) (44 SEATS)
OUTDOOR SEATING TOTAL SEATS (95+/-)
EXT. DINE (HEIGH SEATS) (27 SEATS)
WOOD DECK
5' WIDE SIDEWALK
LANDSCAPE
5' VIEW ANGLE
GOLF CART PARKING (SEE CIVIL)
OPEN DECK CANVAS CANOPY (ABOVE)
4"x4" CANOPY POST (TYP. OF 10)
UP
F.E.


HABITABLE
(2,032 SF+/-)
(SIM.)
7
A7.4
4
A5.3
2
A6.1
1
A7.2
GUARDRAIL
JAN CLOS.
(9'-0" x 3'-7")
306
302
WEST
STAIR
(8'-0" x
14'-8")
305
FEMALE TOIL.
(7'-6" x 5'-1")
307
304
303
COVERED DINING
(31'-0" x 18'-6")
308
306
SERVICE
ELEVATOR
(7'-4" x 5'-9")
309
ELEV.
MECH ROOM
(7'-7" x 8'-9")
310
PUMP
PUMP
EAST
STAIR
(8'-0" x
14'-8")
313
302
STORAGE
(4'-6" x 4'-0")
304
301
1
A7.3
DN
301
MALE TOIL.
(7'-6" x 5'-8")
303
305
304
303
ROOF ABOVE
BAR
(18'-0" x 21'-10")
(28 SEATS)
301
ELEVATOR
(7'-4" x 5'-9")
311
307
DN
1
A7.3
3
A6.1
4
A6.1
GUARDRAIL
GUARDRAIL
1
A7.1
WEST
SKYLIGHT DINING
(21'-8" x 26'-10")
(42 SEATS)
302
EAST
SKYLIGHT DINING
(21'-8" x 26'-10")
(42 SEATS)
312
1
A7.1
(3) TSCS
TIKI ROOF
GUARDRAIL
(8) ALUMINUM POSTS FOR
OPERABLE LOUVER ROOF
ENLARGED
BAR PLAN
3
A5.2
1
A6.1
1
A7.2

# Fort Myers Beach Future Land Use Map

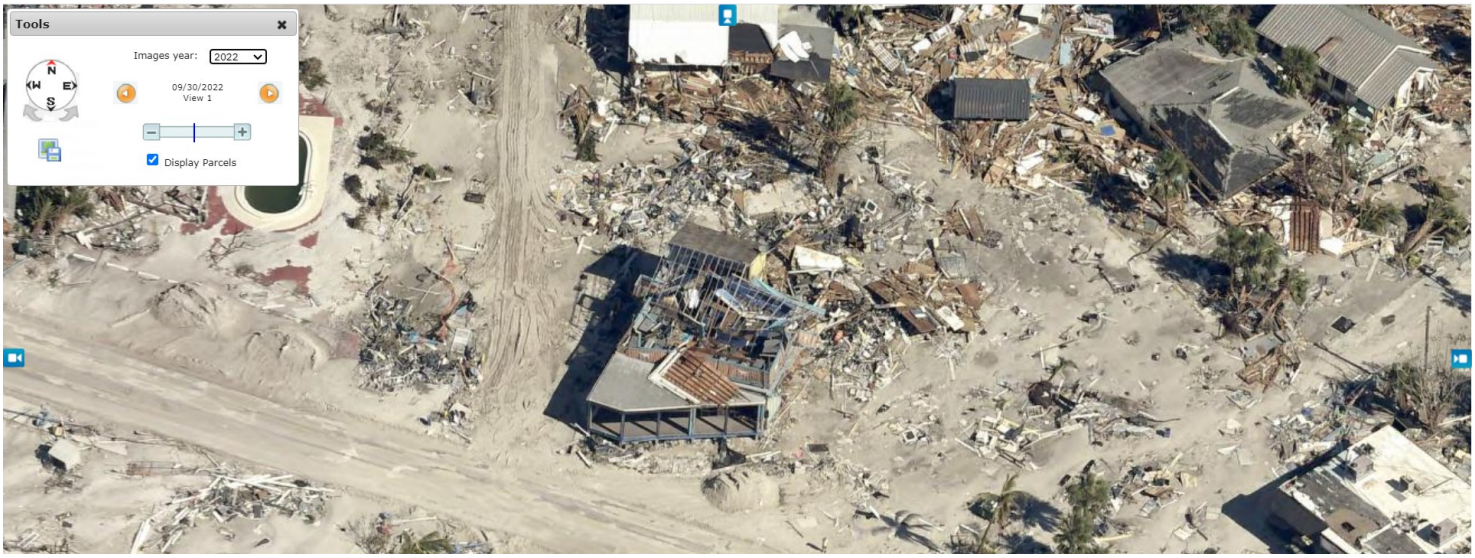


# Fort Myers Beach Zoning Map

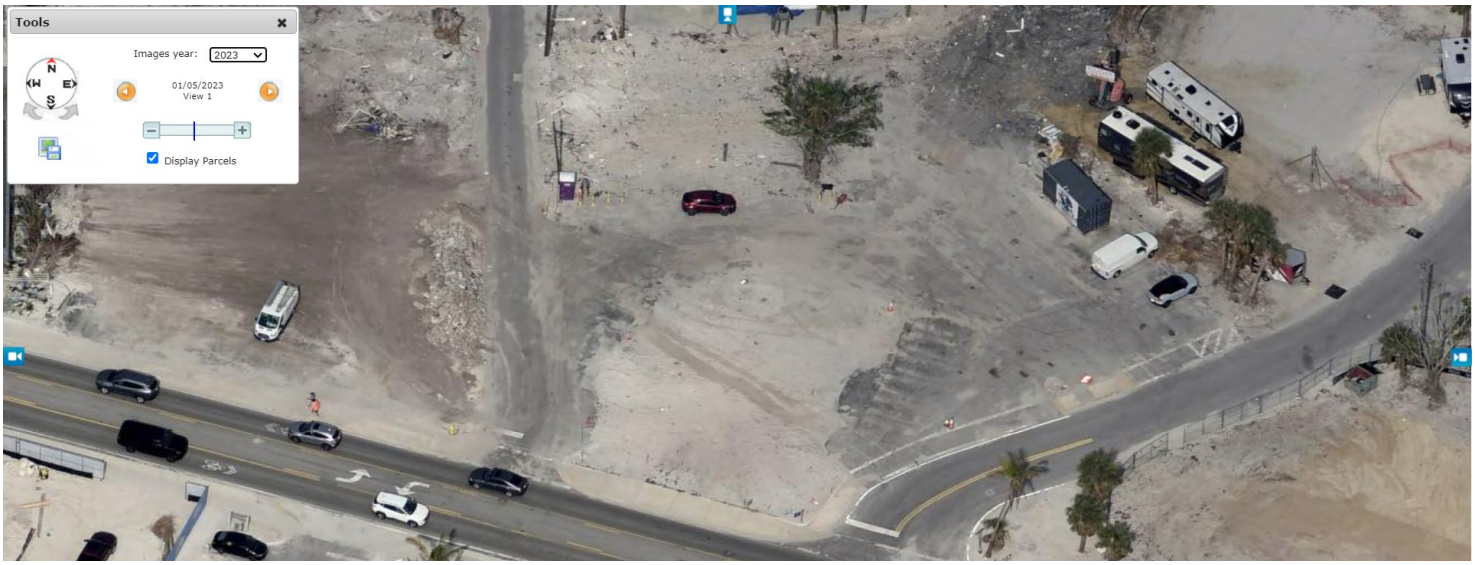


## 2021

## 2022—9




## 2023



# Exhibit 6-6

Lani Kai LP- 1330 Estero Blvd

Lani Kai LP- 1331 Estero Blvd

Lani Kai LP- 1345 Estero Blvd

KLC Surf LLC- 1365/1375 Estero Blvd

KLC Surf LLC- 1397 Estero Blvd

7-Eleven Inc.- 1301 Estero Blvd

Lani Kai LP- 1325 Estero Blvd

Right Choice Investments LLC- 1250 Estero Blvd

Our Beach Sand LLC- 1270 Estero Blvd

TPI- FMB LLC- 1180/1192 Estero Blvd

TPI-FMB Suites LLC- 1207 Estero Blvd

Ganim Properties LLC- 1240 Estero Blvd

Deep Dish Dough, LLC- 1167 Estero Blvd

Richard John W TR- 1161/1165 Estero Blvd

KWSH RE LLC- 120 Primo Dr

Kalidindi Rama USHA- 117 Palermo Circle

Lani Kai- 1401 Santos Rd

LKLB of Florida Inc- 1479 Estero Blvd

Parilla David R TR- 1321 Santos Rd

Charles R Connor & Gail D- 126 Palermo Circ

Richard Strick- 130 Palermo Circ

Raphael Gnirck- 581 Palermo Circ.

Relaax LLC- 588/590 Circ.

201 Palermo LLC- 205 Palermo Circ.

201 Palermo LLC- 201 Palermo Circ.

Billy Wayne Day- 155 Palermo Circ.

Thomas & Ann Lump- 145 Palermo Circ.

Steven Slomski- 139 Palermo Circ.

Robert Van Burgess- 125/127 Palermo Circ.

Arlington Green Homes LLC- 121 Palermo Circ.

Mary Beth Highley- 122 Primo Dr

Jay and Mary Highley- 124 Primo Dr

Seabird Residential LLC- 136 Primo Dr

140 Primo LLC- 140 Primo Dr

Sheila Neumann- 146 Primo Dr

Sandy Beach LLC- 150 Primo Dr

James and Lana Bailey- 162 Primo Dr

Riley Susan K TR- 170 Primo Dr

James and Jean Bischoff Trust- 141 Primo Dr

Griffis LLC- 143 Primo Dr

Thomas Patton- 153 Primo Dr

Robert Almeida- 163 Primo Dr

Susan Briody- 167 Primo Dr

Arthur James Townley- 171 Primo Dr

Arthur Townley- 191 Primo Dr

Richard John W TR- 1161/1165 Estero Blvd

Miller Conrad RE LLC- 108/116 Crescent St

Investments of FMB LLC- 118/112 Crescent St

Richard John W TR- 140 Crescent St

Richard John W TR- 150 Crescent St

Richard John W TR- 152 Crescent St

Clownfish Restaurant Holdings- 1154 Estero Blvd

TPI-FMB LLC- 1170 Estero Blvd

Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

## NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

**Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing which will take place at DiamondHead Beach Resort, 2000 Estero Boulevard, Fort Myers Beach, Florida, 33931.**

**TIME: 9 AM**
**DATE: December 4th, 2023**
**CASE: VAR20230205**
**ADDRESS: 1249 Estero Blvd**
**APPLICANT: Fowler Construction**
**REQUEST: The applicant is requesting a variance from LDC Section 34-2020(d)(2)h.2 for parking spaces and two variances from LDC Section 34-675(b)(2) which allows a structure in that area of the Downtown zoning district to be 30 feet tall (over flood elevation) and only allows a building to be three stories when the first floor is completely unenclosed.**

**TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM**

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Town Council** will review the application materials and hear testimony to make a **decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.

Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
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Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1349**

1. **Requested Motion:**

**Meeting Date: December 4, 2023**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230198 49/51 Pompano St; requesting a variance from LDC Section 34-638 Table 34-3 Dimensional Regulations in Conventional Zoning Districts for the street and rear setbacks in the RM zoning district; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

TheTown Council decided variance requests. Due to the unique shape of this lot, development of a generally standard home size would be extremely difficult. Variances to the front and rear are necessary to provide enough space to develop a usable structure that otherwise meets all relevant codes.

**What the action accomplishes:**

If approved,  the setback reductions will allow the applicant to build a home wide enough to accommodate a two-family residence as existed prior to the storm.

2. **Agenda:**
PUBLIC HEARINGS

3. **Requirement/Purpose:**
RESOLUTION

4. **Submitter of Information:**

---

5. **Background:**

The applicant for 49/51 Pompano Street, is requesting a variance from the Town's Land Development Code (LDC) Table 34-3 which requires a single-family/two-family home in the RM zoning district to provide a minimum street setback of 25 feet from the front property line and a minimum 20 feet from the rear property line. The applicant is requesting a variance of 17 feet, 6 inches for a front setback of 7 feet, 6 inches and a variance of 15 feet for a rear setback of 5 feet to build a new two-family home.

**Attachments:**

1. 23-155, 49-51 Pompano
2. Town Council Staff Report
3. 17039371-Public Hearing Application - 49-51 Pompano Street
4. 17039374-Variance Supplement PH-B (Table 34-2 - Dimensional Regulations in Conventional Zoning Districts (Street)
5. 17418381-A-02.1
6. 17418387-A-02.2 (1)
7. 17419144-Variance Supplement PH-B (Table 34-2 - Dimensional Regulations in Conventional Zoning Districts (Rear)

**Financial Impact:**

unknown

6. **Alternative Action**

Approve

7. **Management Recommendations:**

Recommend approval of VAR20230198 with conditions

8. **Recommended Approval:**

| | |
|---|---|
| Kendra Rosa, Zoning Coordinator/Planner 1 | Created/Initiated - 11/22/2023 |
| Frankie Kropacek, Operations & Compliance Director | Approved - 11/22/2023 |
| Gretchen R.H. Vose, Town Attorney | Approved - 11/22/2023 |
| Amy Baker, Town Clerk | Approved - 11/28/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/28/2023 |

**RESOLUTION 23-155**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VAR20230198, TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE REQUIRED STREET SETBACK BY 17-FEET 6-INCHES AND REAR SETBACK BY 15-FEET, IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 49/ 51 POMPANO STREET; 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**, applicant Carmela Kennelly is requesting two variances from LDC Table 34-3 which requires all lots in the RM zoning district to provide street setbacks of 25-feet, the applicant will be providing 7.5-feet setbacks, a difference of 17.5-feet.

**WHEREAS**, applicant Carmela Kennelly is requesting a variance from LDC Table 34-3 which requires all lots in the RM zoning district to provide rear setbacks of 20-feet, the applicant will be providing 5-feet setbacks, a difference of 15-feet.

**WHEREAS**, the STRAP number for the subject property is 30-46-24-W2-0020B.0230 and is known as Lot 23 Block B, Planning Book 8 Page 45 in the Winklers Subdivision; and

**WHEREAS**, the Property is located in the "Boulevard" category of the Future Land Use Map of the Comprehensive Plan and the "Residential Multi-Family" (RM) zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

**WHEREAS**, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on November 14, 2023, and at said 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 Section 34-87 of the LDC. The LPA voted 6-0-1 to recommend approval of the variance; and

**WHEREAS**, on December 04, 2023 the Town Council held a duly noticed 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 34-87 of the LDC; and

**WHEREAS**, the Town Council determined it is in the best interest of the Town to approve/ approve with conditions/ deny the request.

**NOW THEREFORE, BE IT RESOLVED 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/ did not meet its burden of proof that the requested Variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC and approving/ approving with conditions/ denying the Variance is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES/ APPROVES WITH CONDITIONS/ DENIES the variance from LDC 34-3 which requires all lots in the RM district to provide street setbacks of 25-feet and rear setbacks of 20-feet.

Section 3. In approving/ approving with conditions/ denying the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-87 of the LDC:

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

B. The conditions justifying approval of the variance are/ are not the result of actions of the Applicant taken after the adoption of the regulation in question.

C. The variance is/ is not the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.

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

E. The conditions or circumstances on the Property are/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested variance, the following conditions of approval are imposed on the Applicant and the Property:

A. Approval of this variance 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.

B. The applicant shall work with staff to ensure that any enclosed areas below Base Flood Elevation (BFE) are compliant with the Town's flood code. All vehicles must be placed on the site and not on the Town's Right of Way (ROW).

C. Any design/redesign of the driveway will require a separate review and must also adhere to The Town of Fort Myers Beach Residential Swale Driveway specifications.

D. The eaves may extend no closer than 40 inches to the property line.

E. The proposed structure must adhere to FDEP and local flood requirements.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Atterholt and seconded by Council Member King, and upon being put to a vote, the result was as follows:

| | |
|---|---|
| Dan Allers, Mayor | ___ |
| Jim Atterholt, Vice Mayor | ___ |
| John R. King | ___ |
| Bill Veach | ___ |
| Karen Woodson | ___ |

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

_____
Dan Allers, Mayor

**ATTEST:**

_____
Amy Baker, Town Clerk

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

_____

Gretchen R. H. Vose., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of December 2023.

# Town of Fort Myers Beach

## COMMUNITY DEVELOPMENT DEPARTMENT
## STAFF REPORT

| | |
|---|---|
| **TYPE OF CASE:** | **Variance** |
| **CASE NUMBER:** | **VAR20230198** |
| **CASE NAME:** | **49/51 Pompano St; requesting a variance from LDC Section 34-638 Table 34-3 Dimensional Regulations in Conventional Zoning Districts for the street and rear setbacks in the RM zoning district.** |
| **TOWN COUNCIL HEARING DATE:** | **December 4th, 2023, at 9 AM** |
| **STAFF RECOMMENDATION:** | **APPROVAL** |
| **PREPARED/ SUBMITTED BY:** | **Jason Smalley- Senior Planner** |

## I. APPLICATION SUMMARY

| | |
|---|---|
| Applicant/Owner: | Carmela Kennelly/LOV LLC |
| Request: | The applicant is requesting a variance of 17 feet, 6 inches from the street setback for a front setback of 7 feet, 6 inches and the applicant is also requesting a variance of 15 feet from the rear setback for a rear setback of 5 feet to build a new two-family residence. |
| Subject property: | See attached site plan |
| Physical Address: | 49/51 Pompano Street |
| STRAP #: | 30-46-24-W2-0020B.0230 |
| FLU: | Boulevard |
| Zoning: | Residential Multifamily (RM) |

Adjacent zoning and land uses:

| | |
|---|---|
| North: | COMMERCIAL RESORT (CR)<br>Motel |
| South: | ENVIRONMENTALLY CRITICAL (EC)<br>Gulf of Mexico |
| East: | RESIDENTIAL MULTIFAMILY (RM)<br>Multi-Family Residence/Condominium |
| West: | RESIDENTIAL MULTIFAMILY (RM)<br>Single-Family Residence/Two-Family |

## II. LPA OUTCOME

During the 11/14/23 meeting staff had stated that the applicant is utilizing the Post Disaster-Buildback policies of the Land Development Code. This is incorrect, the applicant is rebuilding the two dwelling units that existed on her lot before the storm, but the lot area and half of the right-of-way is sufficient to qualify for an additional unit by-right. The customer may proceed to the next reading for her variance requests and is not limited by the Post Disaster-Buildback language which requires that the area of the newly constructed home be no larger than the area which existed in her structure pre-storm. The condition of approval recommended by Local Planning Agency requiring that the request wait for the second reading of the Post Disaster-Buildback amendments is not necessary or relevant to the application.

The outcome of the LPA hearing was 6-0 with one member absent and a recommendation for approval with conditions forwarded to the Town Council.

## III. BACKGROUND AND ANALYSIS

Background:
Carmela Kennelly, the applicant for 49/51 Pompano Street, is requesting a variance from the Town's Land Development Code (LDC) Table 34-3 which requires a single-family/two-family home in the RM zoning district to provide a minimum street setback of 25 feet from the front property line and a minimum 20 feet from the rear property line. The applicant is requesting a variance of 17 feet, 6 inches for a front setback of 7 feet, 6 inches and a variance of 15 feet for a rear setback of 5 feet to build a new two-family home.

Analysis:
The purpose of the RM zoning district is to provide stable neighborhoods where single-family, two-family, and multifamily homes are the predominant land use. The subject property is on the Gulf of Mexico. The lot has a depth that varies from 31 to 85 feet, with a lot width of approximately 191 feet. The property previously had a two-family home, which was partially destroyed by Hurricane Ian.

The applicant is requesting a variance of 17 feet, 6 inches for a front setback of 7 feet, 6 inches where the property line curves in on Pompano Street and a variance of 15 feet for a rear setback of 5 feet to build a new two-family home.

Neighborhood Compatibility:
This scenario is unique in nature. There are no other properties similar in lot design in the neighborhood, which supported single family, two-family and multifamily residences consistent with the Town's LDC prior to Hurricane Ian.

During the DO process the Applicant may need to redesign the driveway to meet the Town's standards. The reduced front yard will likely result in guest parking extending to the public ROW. Staff has provided a potential condition for keeping first floor open for all personal and guest parking to discourage parking within the Town's right of way if the variance request is granted.

Additionally, staff is recommending a condition to ensure that the roof eave extends no closer than 40 inches to the rear property line, where the 5 foot setback is proposed.

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.*

   The subject property is located at the end of Pompano Street. The lot is extremely wide and shallow, the lot depth varies from 31 to 85 feet. The Applicant is proposing a house that does not meet the LDC setbacks, but due to unique design of the lot, the buildable area under existing codes does not allow for a reasonable layout for a residence. The request is a de minimis variance.

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.*

   The conditions justifying the variance are not the result of the actions of the Applicant. The applicant is opting to build a residence that is reasonable for the lot design.

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 this property.*

Due to the subdivision and the history of the lot. The property owner would not be able to reasonably design a residence without seeking variance(s).

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 is proposing to reduce the street setback, which might result in guest parking extending to the public ROW. Therefore, if approved, Town's staff recommends a condition to keep the first floor open for all personal and guest parking. It does not appear that the request will be injurious to neighbors, as long as the driveway concerns are addressed.

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.*

The conditions or circumstances on this specific property for which a variance is sought are not general in nature and do not warrant a code change.

## IV. RECOMMENDATION

Staff has reviewed the request for a variance of 17.5 feet from the required 25-foot street setback and a variance of 15 feet from the required 20-foot rear setback found in *LDC Table 34-3 for the RM zoning district* and found that the variance request does meet the requirements set forth in sec. 34-87, and the proposed residence is de minimus due to the layout of the lot.

Therefore, staff recommends **APPROVAL** of VAR20230198, a request for variance of 17.5 feet from the street setback and 15 feet from the rear setback.

## V. CONDITIONS FOR APPROVAL

If the Town's LPA recommended approval for the variance, town's staff recommends the following conditions of approval.

1) The applicant shall work with staff to ensure that any enclosed areas below Base Flood Elevation (BFE) are compliant with the Town's flood code. All vehicles must be placed on the site and not on the Town's Right of Way (ROW).

2) Any design/redesign of the driveway will require a separate review and must also adhere to The Town of Fort Myers Beach Residential Swale Driveway specifications.

3) The eaves may extend no closer than 40 inches to the property line.

4) The proposed structure must adhere to FDEP and local flood requirements.

5) Approval of this variance request 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.

## VI. EXHIBITS

A. Complete application
B. Proposed Site Plan
C. Site plan (Pre-Ian)

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

This is a first part of 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 a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 49/51 Pompano St, Fort Myers Beach, FL 34931

STRAP Number: 30-46-24-W2-0020B.0230

Applicant: LOV, LLC Phone: _____

Contact Name: Carmela Kennelly Phone: 520-250-0992

Email: carmelina.desiree@gmail.com Fax: _____

Current Zoning District: RM - Residential Multi-family

Future Land Use Map (FLUM) Category: Boulevard

FLUM Density Range: 6 DU/acre x 0.27 = 1.62 DU Platted Overlay: ☑ YES ☐ NO

| ACTION REQUESTED | SUPPLEMENTAL FORM REQUIRED |
|---|---|
| ☐ Special Exception | PH-A |
| ☑ Variance | PH-B |
| ☐ Conventional Rezoning | PH-C |
| ☐ Planned Development ☐ Commercial ☐ Residential | PH-D |
| ☐ Master Concept Plan Extension | PH-E |
| ☐ Appeal of Administrative Action | PH-F |
| ☐ Vacation of Platted Right-of-way and Easement | PH-G |
| ☐ Other – cite LDC Section: _____ | attach on separate sheet |

### PART I – General Information

A. Applicant*: LOV, LLC Phone: _____

**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: 5432 Broadmoor St, Alexandria VA 22315

Email: carmelina.desiree@gmail.com Fax: _____

Contact Name: Carmela Kennelly Phone: 520-250-0992



Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

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: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

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: _____

## PART II – Nature of Request

Requested Action (each request requires a separate application)

☐ Special Exception

☑ Variance from LDC Section _____ - _____

☐ 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: _____



Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

☐ 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: _____ Description: _____

_____

Code Section: _____ Description: _____

_____

Code Section: _____ Description: _____

_____

### PART IV – Property Ownership (Single Owner)

☑ Single Owner (individual or husband and wife)

Name: Carmela Kennelly Phone: 520-250-0992

Mailing Address: 5432 Broadmoor St, Alexandria VA 22315

Email: carmelina.desiree@gmail.com Fax: _____

### AFFIDAVIT
### APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Carmela Kennelly 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;

# COMMUNITY DEVELOPMENT DEPARTMENT
## APPLICATION for PUBLIC HEARING

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.

Carmela D. Kennelly
Signature

Carmela D. Kennelly
Printed Name

**STATE OF** Virginia **COUNTY OF** Stafford

The foregoing instrument was certified and subscribed before me by means of ✓ physical presence OR ____ online notarization, this 25th day of September, 2023, by Carmela D. Kennelly ☐ who is personally known to me OR ☐ who has produced _____ as identification.

(SEAL)

Stacia Embrey
Notary Public Signature

**PART V**
**Property Ownership (Multiple Owners)**

☐ 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 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V – Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

**DISCLOSURE OF OWNERSHIP INTEREST**

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 |
|---|---|
| | |
| | |
| | |
| | |



Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

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

| Name, Address and Office | Percentage of Stock |
|---|---|
| Carmela Kennelly | 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 |
|---|---|
| | |
| | |
| | |
| | |

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 |
|---|---|
| | |
| | |
| | |
| | |




Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

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 Printed Name

**AFFIDAVIT**

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

I, _____ (name), as _____ (title) of _____ (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 Town of Fort Myers Beach 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 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
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

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

_____ _____
Signature Title

_____ _____
Typed or Printed Name Date

**STATE OF _____ COUNTY OF _____**

The foregoing instrument was certified and subscribed before me by means of ___ physical presence OR ☐ online notarization, this _____day of _____, 20_____ , by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal _____
Notary Public Signature

### PART VI– Property Information

A. Legal Description:

STRAP: 30-46-24-W2-0020B.0230

Property Address: 49/51 Pompano St, Fort Myers Beach, FL 34931

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 6-1.

☑ Yes. Property identified in subdivision: Winklers

Book: 8 Page: 45 Unit: _____ Block: B Lot(s): 23

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 6-2.



Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 38'-9" feet

Depth (please provide an average width if irregular in shape) 191' feet

Frontage on street: 163'-2" feet. Frontage on waterbody: 37'-8 feet

Total land area: 8,332 ☐ acres ☑ square feet

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

Gulf-side property, about 5,800 feet South of the San Carlos Bridge

☑ Attach Area Location Map as Exhibit 6-3

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 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

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 6-6.

☑ Attach a map showing the surrounding property owners as Exhibit 6-7.

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

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

☐ Low Density
☐ Mixed Residential
☑ Boulevard
☐ Pedestrian Commercial
☐ Marina
☐ Recreation
☐ Wetlands
☐ Platted Overlay



Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Case # _____ Date Received: _____

# 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:** 49/51 Pompano St, Fort Myers Beach, FL 34931 | |
| **Authorized Applicant:** Carmela Kennelly | |
| **LeePA STRAP Number:** 30-46-24-W2-0020B.0230 | |
| | |

| | | |
|---|---|---|
| **Current Property Status:** Storm Damaged | | |
| **Current Zoning:** RM - Residential Multi-family | | |
| **Future Land Use Map (FLUM) Category:** Boulevard | | |
| **Comp Plan Density:** 6 DU/acre x 0.27 = **Platted Overlay?** | ✔ **Yes** | ☐ **No** |

**Variance is requested from:**

| **LDC Section Number** | **Title of Section or Subsection** |
|---|---|
| Table 34-3— Dimensional Regulations in Conventional Zoning Districts | |
| | |
| | |
| | |
| | |
| | |

Complete the narrative statements below for EACH variance requested.

Case # _____ Date Received: _____

PART I

Narrative Statements

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

| **Explain the specific regulation contained in this section from which relief is sought:** |
|---|
| Looking for relief in the street setback of 25' to 7'-6" |
| |
| |
| |
| |
| |
| |
| |
| |
| |
| |
| |

**Reasons for request**

| **Explain why the variance is needed:** |
|---|
| Average width of the lot is roughly 38'-9". 25' from the street is |
| detrimental to replacing the previous two single-family |
| homes that were taken by Hurricane Ian |
| |
| |
| |
| |
| |
| |
| |
| |
| |

| **Explain the possible effect the variance, if granted, would have on surrounding properties:** |
|---|
| This is a street setback. I do not foresee a direct effect to surrounding properties. |
| The existing homes, (before Ian), look to be in the same/similar location on the lot |
| as our proposed buildings |
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| **Explain the hardship (what is unique about the property) that justifies relief from the regulation:** |
|---|

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|---|
| Due to the long and narrow nature of the property, and current setbacks, |
| the options for redevelopment on this property are extremely limited without |
| relief, as current setbacks for this lot will not allow for two single-family buildings |
| as were previously on the property prior to the hurricane, and allowed per current |
| density calculations for this lot. |
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Case # _____ Date Received: _____

| **Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.** |
|---|
| 1. The current setbacks are extraordinary conditions that are inherent to the property. |
| 2. These extraordinary conditions are not the result of actions taken by the applicant, |
| in order for the applicant to rebuild we will need relief fro current setbacks. |
| 3.In our opinion, this is the minimum relief we need from the street setback. |
| 4. Granting the variance would not be injurious to the neighborhood, or otherwise |
| detrimental to the public welfare. |
| 5.The intended us of the property for which the variance is sought will be to rebuild |
| two single-family buildings extremely similar in nature to size and location as the |
| previous buildings that were taken bu Hurricane Ian. |
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PART 2
Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - iworq (talktomycity.com)

**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
- Fee in the amount of $1800.00 (residential)/Additional Variance $500.00
- Variance (non-residential) $2800.00/ Additional Variance $700.00

**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:

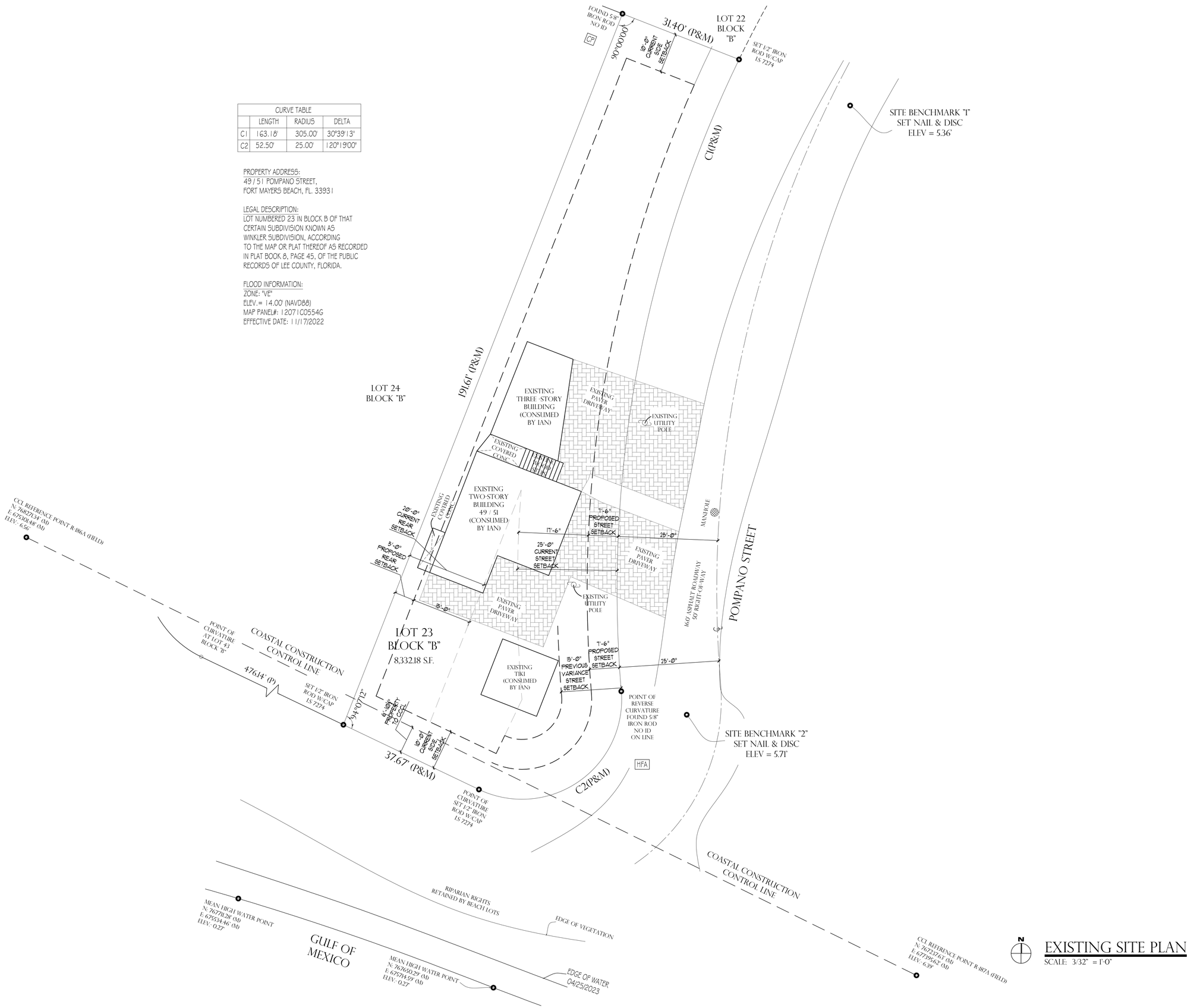
1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional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

| CURVE TABLE | | | |
|---|---|---|---|
| | LENGTH | RADIUS | DELTA |
| C1 | 163.18' | 305.00' | 30°39'13" |
| C2 | 52.50' | 25.00' | 120°19'00" |

PROPERTY ADDRESS:
49 / 51 POMPANO STREET,
FORT MAYERS BEACH, FL. 33931

LEGAL DESCRIPTION:
LOT NUMBERED 23 IN BLOCK B OF THAT CERTAIN SUBDIVISION KNOWN AS WINKLER SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 8, PAGE 45, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

FLOOD INFORMATION:
ZONE: "VE"
ELEV.= 14.00' (NAVD88)
MAP PANEL#: 12071C0554G
EFFECTIVE DATE: 11/17/2022




## EXISTING SITE PLAN
SCALE: 3/32" = 1'-0"

| REVISIONS | DATE |
|---|---|
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ALL IDEAS, DESIGNS, ARRANGEMENTS, AND PLANS INDICATED OR REPRESENTED BY THIS DRAWING ARE OWNED BY, AND THE PROPERTY OF THIS OFFICE, AND WERE CREATED, EVOLVED, AND DEVELOPED FOR USE ON AND IN CONNECTION WITH THE SPECIFIED PROJECT. NONE OF SUCH IDEAS, DESIGNS, ARRANGEMENTS OR PLANS SHALL BE USED BY, OR DISCLOSED TO, ANY PERSON OR ENTITY OTHER THAN THE OWNER OF THE PROJECT FOR WHICH THEY WERE PREPARED, PERMISSION FOR SUCH USE, DISCLOSURE AND CONSTRUCTIONS SHOWN BY THESE DRAWINGS, SHOP DRAWINGS, OR ALL DRAWINGS AND SPECIFICATIONS, MUST BE OBTAINED FROM AND A FEE PAID TO THIS OFFICE. RESPONSIBILITY FOR ALL DIMENSIONS AND CONDITIONS SHOWN BY THESE DRAWINGS, SHOP DRAWINGS, OR ALL DRAWINGS AND SPECIFICATIONS, IS THE RESPONSIBILITY OF THE APPROVING ENTITY PROCEEDING WITH FABRICATION ON ITEMS AS NOTED.

COFFMAN DESIGN GROUP


COFFMAN DESIGN GROUP, LLC

809 WALKERBILT RD.
SUITE #5 · UNIT #503
NAPLES, FL 34110

PH: 239.316.7294

LIC. # ID6067


A NEW RESIDENCE FOR:
# KENNELLY RESIDENCE
49/51 POMPANO STREET
FORT MYERS BEACH FLORIDA

# A.D.


ACREE DESIGN
*consulting llc*

*architecture*
*planning*
*interior design*

725 North A1A
Suite A108
Jupiter, FL 33477
(561)-517-2169 o
(314)-330-5115 c


SEAL :

A.O.R. : ROBERT ALLEN ACREE
LIC.NO. : FLORIDA AR92436

| | | |
|---|---|---|
| SCALE: | AS NOTED | |
| JOB NO. | #2023.02-03N | |
| DATE: | 09.22.23 | JC |
| SHEETS: | 2 of - | |

PRELIMINARY SET

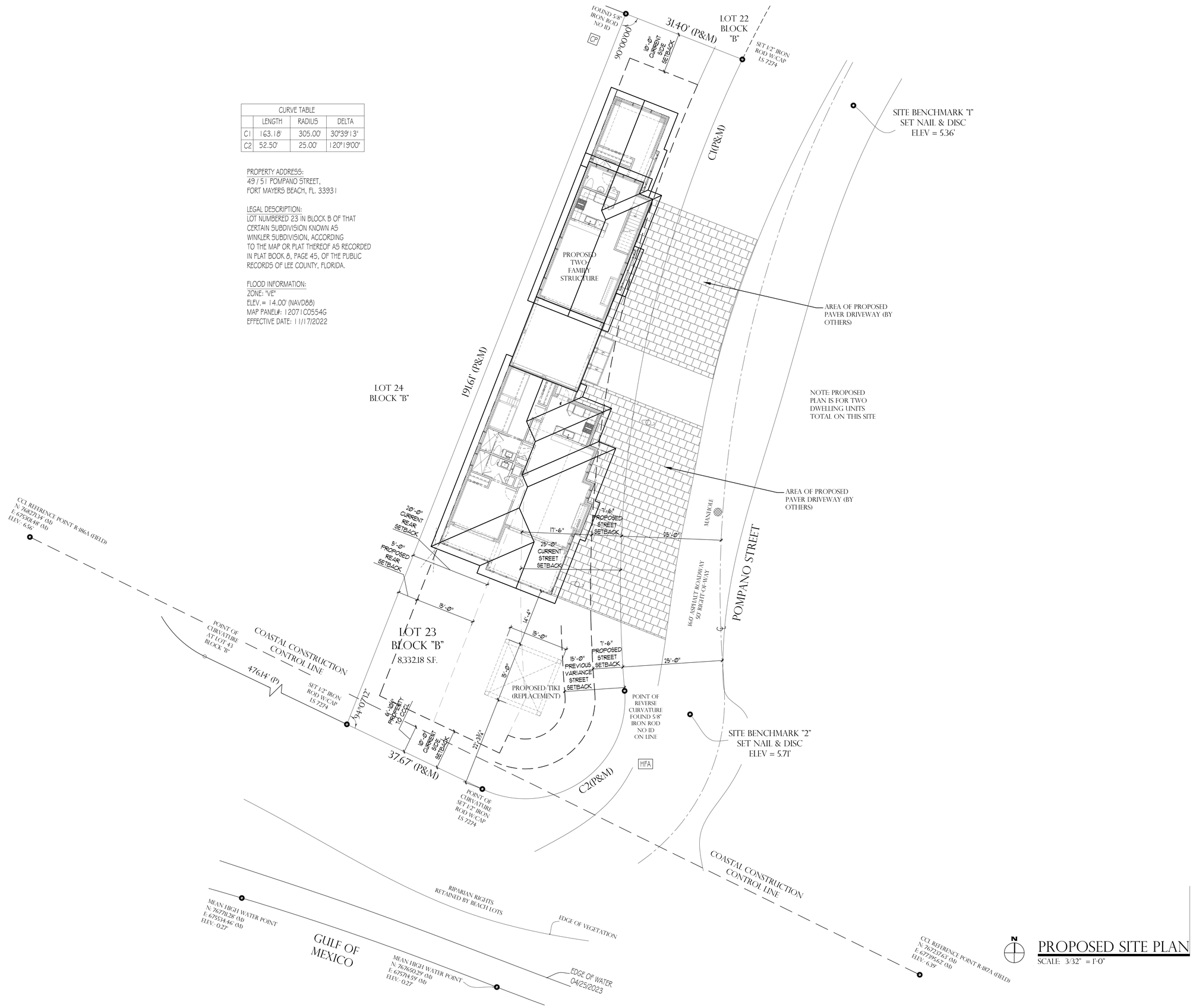
# A2.1

| CURVE TABLE | | | |
|---|---|---|---|
| | LENGTH | RADIUS | DELTA |
| C1 | 163.18' | 305.00' | 30°39'13" |
| C2 | 52.50' | 25.00' | 120°19'00" |

PROPERTY ADDRESS:
49 / 51 POMPANO STREET,
FORT MAYERS BEACH, FL. 33931

LEGAL DESCRIPTION:
LOT NUMBERED 23 IN BLOCK B OF THAT CERTAIN SUBDIVISION KNOWN AS WINKLER SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 8, PAGE 45, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

FLOOD INFORMATION:
ZONE: "VE"
ELEV.= 14.00' (NAVD88)
MAP PANEL#: 12071C0554G
EFFECTIVE DATE: 11/17/2022




## PROPOSED SITE PLAN

SCALE: 3/32" = 1'-0"

| REVISIONS | DATE |
|---|---|
| | |

ALL IDEAS, DESIGNS, ARRANGEMENTS, AND PLANS INDICATED OR REPRESENTED BY THIS DRAWING ARE OWNED BY, AND THE PROPERTY OF THIS OFFICE, AND WERE CREATED, EVOLVED, AND DEVELOPED FOR USE ON AND IN CONNECTION WITH THE SPECIFIED PROJECT. NONE OF SUCH IDEAS, DESIGNS, ARRANGEMENTS OR PLANS SHALL BE USED BY, OR DISCLOSED TO, ANY PERSON OR ENTITY OTHER THAN THE OWNER OF THE PROJECT FOR WHICH THEY WERE PREPARED AND PERMISSION, IF ON ALL, TANGIBLE AND CONDITIONS SHOWN BY THESE DRAWINGS, SHOP DRAWINGS, PRODUCT DATA, SAMPLES AND SIMILAR MATERIALS PROVIDED BY OTHERS, IS SUBJECT TO OWNER'S RIGHT OF APPROVAL BEFORE PROCEEDING WITH FABRICATION OR ITEM AS NOTED.

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809 WALKERBILT RD.
SUITE #5 · UNIT #503
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PH: 239.316.7294

LIC. # ID6067


A NEW RESIDENCE FOR:
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A.D.


ACREE DESIGN
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(314)-330-5115 c


SEAL :

A.O.R. : ROBERT ALLEN ACREE
LIC. NO. : FLORIDA AR92436

| | |
|---|---|
| SCALE: | AS NOTED |
| JOB NO. | #2023.02-03N |
| DATE: | 09.22.23 JC |
| SHEETS: | 2 of - |

PRELIMINARY SET

A2.2

Case # _____ Date Received: _____

# 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:** 49/51 Pompano St, Fort Myers Beach, FL 34931 | |
| **Authorized Applicant:** Carmela Kennelly | |
| **LeePA STRAP Number:** 30-46-24-W2-0020B.0230 | |
| | |

| | | |
|---|---|---|
| **Current Property Status:** Storm Damaged | | |
| **Current Zoning:** RM - Residential Multi-family | | |
| **Future Land Use Map (FLUM) Category:** Boulevard | | |
| **Comp Plan Density:** 6 DU/acre x 0.27 = **Platted Overlay?** | ☑ **Yes** | ☐ **No** |

**Variance is requested from:**

| **LDC Section Number** | **Title of Section or Subsection** |
|---|---|
| Table 34-3— Dimensional Regulations in Conventional Zoning Districts | |
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Complete the narrative statements below for EACH variance requested.

Case # _____ Date Received: _____

PART I

Narrative Statements

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

| **Explain the specific regulation contained in this section from which relief is sought:** |
|---|
| Looking for relief in the rear setback of 20' to 5' |
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**Reasons for request**

| **Explain why the variance is needed:** |
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| Average width of the lot is roughly 38'-9". 20' from the side yard (in combination with |
| the current 25' street setback) is detrimental to replacing the previous |
| two single-family homes that were taken by Hurricane Ian |
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Case # _____ Date Received: _____

| **Explain the possible effect the variance, if granted, would have on surrounding properties:** |
|---|
| This is a side setback. The proposed buildings will be closer to the residence |
| directly to the North of this property. However, according to the old survey |
| the existing homes (before Ian), look to be in the same/similar |
| location on the lot as our proposed buildings |
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| **Explain the hardship (what is unique about the property) that justifies relief from the regulation:** |
|---|

| |
|---|
| Due to the long and narrow nature of the property, and current setbacks, |
| the options for redevelopment on this property are extremely limited without |
| relief, as current setbacks for this lot will not allow for two single-family buildings |
| as were previously on the property prior to the hurricane, and allowed per current |
| density calculations for this lot. |
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Case # _____ Date Received: _____

| **Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.** |
|---|
| 1. The current setbacks are extraordinary conditions that are inherent to the property. |
| 2. These extraordinary conditions are not the result of actions taken by the applicant, |
| in order for the applicant to rebuild we will need relief from current setbacks. |
| 3.In our opinion, this is the minimum relief we need from the street setback. |
| 4. Granting the variance would not be injurious to the neighborhood, or otherwise |
| detrimental to the public welfare. |
| 5.The intended us of the property for which the variance is sought will be to rebuild |
| two single-family buildings extremely similar in nature to size and location as the |
| previous buildings that were taken bu Hurricane Ian. |
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PART 2
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All applications for a variance must be submitted electronically through our Iworq portal - iworq (talktomycity.com)

**Required Items**

- Public Hearing Request Form
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- 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
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**Guide to filing PH-B Additional Required Information for a Variance Application**

**Cover page**

**Case Number** will be inserted by Community Development staff.
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**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**

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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.

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: **2024-1355**

**Meeting Date: December 4, 2023**

1. **Requested Motion:**
Review and discuss the proposed Settlement Agreement

**Why the action is necessary:**
Mr. Persaud has submitted a proposed settlement agreement of code cases to the Town, and it should be discussed.

**What the action accomplishes:**
Discuss offer of settlement From Mr. Persaud

2. **Agenda:**
TOWN ATTORNEY'S ITEMS

3. **Requirement/Purpose:**
Other

4. **Submitter of Information:**

---

5. **Background:**

**Attachments:**
1. Proposed Settlement Agreement(20527901_2) (2)

**Financial Impact:**
Not known

6. **Alternative Action**
Do not consider proposed settle

7. **Management Recommendations:**
None

8. **Recommended Approval:**

| | |
|---|---|
| Amy Baker, Town Clerk | Created/Initiated - 11/28/2023 |
| Nancy Stuparich, Town Attorney | Approved - 11/29/2023 |
| Amy Baker, Town Clerk | Approved - 11/29/2023 |
| Andy Hyatt, Town Manager | Final Approval - 11/29/2023 |

# FORT MYERS BEACH CODE ENFORCEMENT SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** ("Agreement") is entered into this ____ day of _____, 2023, by and between, Persaud Properties FL Investments, LLC, a Florida limited liability company, ("Persaud") and the Town of Fort Myers Beach ("Town"), and collectively Persaud and Town are referred to herein as the "Parties."

## RECITALS

**WHEREAS**, Persaud is the current owner of certain parcels of real property located at 1028 Estero Boulevard (STRAP Number 24-46-23-W3-00017.0000) and 1046 Estero Boulevard (STRAP Number 24-46-23-W3-00016.0000) (collectively referred to herein as the "Sunset Beach Properties"); and

**WHEREAS**, all violations on the Sunset Beach Properties have been abated, and there are no existing violations on the Sunset Beach Properties; and

**WHEREAS**, Town filed seven (7) code enforcement liens against Persaud, as a result of Persaud's noncompliance with Fort Myers Beach Code on one or more of the Sunset Beach Properties, which can be summarized as follows and collectively referred to herein as the "Liens":

| | Case Number | Violation Address | Lien Recording Information |
|---|---|---|---|
| 1 | CE17-0659 | 1046 Estero Boulevard | 2019000067153 |
| 2 | CE17-0707 | 1046 Estero Boulevard | 2019000136816 |
| 3 | CE18-0234 | 1028 Estero Boulevard | 2019000067165 |
| 4 | CE18-0235 | 1046 Estero Boulevard | 2019000067117 |
| 5 | CE18-0446 | 1046 Estero Boulevard | 2020000038310 |
| 6 | CE20-0017 | 1046 Estero Boulevard | 2020000061959<br>2021000069005 |
| 7 | CE20-0018 | 1028 Estero Boulevard | 2020000061962<br>2021000098193 |

; and

**WHEREAS**, there are three (3) pending code enforcement cases for which a Code Enforcement Order has been issued but no lien has been recorded, as a result of Persaud's noncompliance with Fort Myers Beach Code on one or more of the Sunset Beach Properties, which can be summarized as follows and collectively referred to herein as the "Pending Fines":

| | Case Number | Violation Address | Order Recording Information |
|---|---|---|---|
| 1 | 20220462 | 1028 Estero Boulevard | 2022000239193 |

| | Case Number | Violation Address | Order Recording Information |
|---|---|---|---|
| 2 | 20220652 | 1046 Estero Boulevard | 2022000239107 |
| 3 | 20220655 | 1046 Estero Boulevard | 2022000239209 |

; and

**WHEREAS**, Persaud is the current owner of certain parcels of real property located at 3050 Estero Boulevard (STRAP Number 29-46-24-W1-01000.0020) and 3056 Estero Boulevard (STRAP Number 29-46-24-W1-01000.0010), all of which have since been submitted to the condominium form of ownership with common elements assigned STRAP Number 29-46-24-W1-01000.00CE (collectively referred to herein as the "Junkanoo Properties"); and

**WHEREAS**, the Parties entered into a settlement agreement relative to the state case filed in the Twentieth Judicial Circuit in and for Lee County, Florida, Case No. 17-CA-000219 relative to the Junkanoo Properties (the "Settlement Agreement"), the terms of which contemplate a penalty/fine, though neither Party is aware of any such fines being imposed (the "Proposed Fines"); and

**WHEREAS**, Persaud has been working diligently to comply with the terms of the Settlement Agreement but, at present, is unable to secure financing to fix the damage to the Junkanoo Properties caused by Hurricane Ian due to the Liens encumbering all properties owned by Persaud, including the Junkanoo Properties; and

**WHEREAS**, Persaud made a proposal of settlement in exchange for a release of the Liens, dismissal of the Pending Fines, and agreement not to impose any Proposed Fines to the extent such is an available remedy to the Town, and the Town has accepted the proposed settlement.

**NOW, THEREFORE,** in exchange for the mutual promises contained herein and other good and valuable consideration, the Parties hereby agree as follows:

1. **RECITALS**. The above recitals are true and correct and are incorporated herein by reference.

2. **SETTLEMENT AMOUNT.** Persaud agrees to pay the Town the sum of Two Hundred Thousand Dollars and 00/100 ($200,000.00) in full settlement of all outstanding code enforcement matters associated with the Sunset Beach Properties and the Junkanoo Properties and in exchange for a release of the Liens, dismissal of the Pending Fines, and agreement not to impose any Proposed Fines to the extent such is an available remedy to the Town, including but not limited to attorneys' fees and other costs incurred by the Town (the "Settlement Amount").

3. **PAYMENT AND RECORDATION OF SATISFACTION.** Persaud will deposit the Settlement Amount (Paragraph 2) in the Trust Account of the Vose Law Firm, 324 W. Morse Blvd, Winter Park, FL 32789, within thirty (30) days after the approval of this Agreement by the Town. Within fourteen (14) days after the Town's receipt of the Settlement Amount, the Town will

prepare and record a satisfaction and release as to all Lien, the Pending Fines, and the Proposed Fines in the Public Records of Lee County, Florida at the Town's sole cost and expense.

4. **WAIVER OF DEFENSES AND RELEASE OF THE TOWN.** Persaud has voluntarily dismissed the federal case filed in the United States District Court for the Middle District of Florida, Case No. 2:21-cv-384-JLB-NPM, together with the federal appeal filed in the United States Court of Appeals for the Eleventh Circuit, Case No. 23-10881. Persaud has voluntarily dismissed all claims arising out of the state cases filed in the Twentieth Judicial Circuit in and for Lee County, Florida, Case No. 17-CA-000219 and Case No. 17-CA-001026. Persaud has waived all causes of actions, damages, attorneys' fees, and litigation costs that arose, could have been brought, or could be brought as a result of the decision of the Second District Court of Appeals in *Persaud Properties FL Investments, LLC v. Town of Ft. Myers Beach*, 310 So. 3d 493 (2020), reh'g denied (Jan. 20, 2021) (the "Lawsuit"). Persaud will waive and not otherwise seek, and will release the Town from damages, attorneys' fees, and costs related to actions of the Town that could have been or were brought or may be brought in the future related to operative nucleus of facts in the cases specified in this Section 4.

5. **ACKNOWLEDGMENT BY TOWN AS TO SUNSET BEACH PROPERTIES.** The Town acknowledges that the Second District Court of Appeal, in the Lawsuit, held that Persaud is entitled to maintain the Sunset Beach Properties' status as a grandfathered nonconforming use. Accordingly, the Town agrees not to challenge Persaud's use of the Sunset Beach Properties in their entirety, including but not limited to Persaud's right to operate a business there and to accommodate the business's customers on the beach, as Persaud had done for many years prior to the disputes giving rise to the Lawsuit. The right to operate a business and accommodate the business's customers on the beach shall include the right to provide chairs for patrons of, and serve alcohol and food on, the Sunset Beach Properties in their entirety, together with any other properly licensed or permitted activity.

6. **ENTIRE AGREEMENT.** The Parties acknowledge that this Agreement constitutes the entire agreement between them regarding the settlement of their dispute and any prior statements, whether oral or written, are merged herein. This Agreement may not be modified or amended without a written instrument signed by the party against whom enforcement is sought.

7. **AUTHORITY.** The signatories to this Agreement are expressly authorized to resolve their dispute as set forth herein and by their signatures here represent and affirm their authority to execute this Agreement.

8. **GOVERNING LAW.** The law of the State of Florida shall apply to this Agreement. Any dispute regarding this Agreement shall be litigated exclusively in the state courts of Lee County. The parties expressly agree that no action between the parties may be filed in, or removed to, Federal Court, and consent to exclusive jurisdiction and venue in the Circuit Court in Lee County and waive any objections thereto.

**[Signatures on following pages.]**

**WHEREFORE,** this Agreement is entered into as of the date of last execution below.

Persaud Properties FL Investments, LLC

_____
Signature of Witness # 1

_____
By: _____, Manager

_____
Print or type name

_____
Signature of Witness #2

_____
Print or type name

**STATE OF FLORIDA**
**COUNTY OF LEE**

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023, by _____, Manager, of Persaud Properties FL Investments, LLC, who is personally known to me or who has produced _____ as identification.

[Notary Seal]

_____
Notary Public

_____
Name typed, printed or stamped
My Commission Expires: _____

**FORT MYERS BEACH, FLORIDA**

_____
DAN ALLERS, MAYOR

**STATE OF FLORIDA**
**COUNTY OF LEE**

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023, by Dan Allers, Mayor, Town of Fort Myers Beach, who is personally known to me or who has produced _____as identification.

[Notary Seal]

_____
Notary Public

_____
Name typed, printed or stamped
My Commission Expires: _____

20527901 _2