



Fort Myers Beach Local Planning Agency

Diamondhead Beach Resort

2000 Estero Boulevard
Fort Myers Beach, FL 33931

Agenda

Tuesday, August 12, 2025

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

II. INVOCATION

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

V. APPROVAL OF MINUTES

A. Local Planning Agency - June 10, 2025

VI. PUBLIC COMMENT

VII. PUBLIC HEARINGS

A. DCI 20250181, 138/140 Delmar Ave

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING AN APPLICATION TO REZONE PROPERTY LOCATED AT 138/140 DELMAR AVE, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W3-0100B.0150 FORT MYERS BEACH FROM RESIDENTIAL CONSERVATION TO RESIDENTIAL PLANNED DEVELOPMENT TO ALLOW CONSTRUCTION OF A TWO-STORY DUPLEX ABOVE FLOOD ELEVATION AND A DEVIATION FROM SECTION 34-638(D)(2) OF THE LAND DEVELOPMENT CODE TO ALLOW A PORCH AND STOOP TO ENCROACH 15-FEET INTO THE 25 FOOT STREET SETBACK WHERE A MAXIMUM ENCROACHMENT OF 10 FEET IS PERMITTED FOR ACCESSORY USES; PROVIDING FOR CLARIFICATION AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

B. SEZ20250149, 4750 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250149 TO ALLOW LIKE-TO-LIKE REPLACEMENT OF TWO TIKI HUTS, DECKING, FENCE, GRAVEL DRIVEWAY AND LANDSCAPING IN THE EC ZONING

DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT 4750 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

C. VAR20250170, 202 Crescent Street

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20250170, REQUESTING TWO VARIANCES FROM LDC TABLE 34-3 FOR THE PROPERTY LOCATED AT 202 CRESCENT STREET, GENERALLY REFERED TO AS STRAP NUMBER 19-46-24-W4-0150E.0090 IN FORT MYERS BEACH, TO VARY 7.1 FEET FROM REQUIRED 10 FOOT SIDE SETBACK AND TO VARY 15 FEET FROM THE REQUIRED 25 FOOT WATERBODY SETBACK TO ELEVATE THE EXISTING SINGLE-FAMILY RESIDENCE IN THE RM ZONING DISTRICT; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

D. VAR20250136, 211 Ostego Drive

A RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH FLORIDA RECOMMENDING APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20250136, REQUESTING: 1) VARIANCE FROM LDC SECTION 34-638(D)(6), WHICH REQUIRES ACCESSORY STRUCTURES ON CORNER LOTS TO PROVIDE A MINIMUM OF 15 FEET SIDE STREET SETBACK FOR CORNER LOTS WITH WIDTH FROM 50 FEET TO 75 FEET; AND 2)VARIANCE FROM LDC 34-1174(b) TO ALLOW AN ACCESSORY STRUCTURE INCLUDING POOL, CLOSER TO SIDE STREET RIGHT-OF-WAY LINE THAN THE PRINCIPAL BUILDING IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 211 OSTEGO DRIVE; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

E. VAR20250089, 21541 Widgeon Terrace

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20250089, REQUESTING A VARIANCE FROM LDC SECTION 34-638(3)d FOR THE PROPERTY LOCATED AT 21541 WIDGEON TERRACE GENERALLY REFERED TO AS STRAP NUMBER 34-46-24-W1-00001.0010 IN FORT MYERS BEACH, TO VARY UP TO 11.87 FEET FROM REQUIRED 25 FOOT WATER BODY SETBACK TO BUILD A NEW POOL AND SPA STRUCTURE IN THE RC ZONING DISTRICT; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

F. VAR20250075, 5236 Estero Blvd

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE APPLICATION 20250075 FOR THE PROPERTY LOCATED AT 5236 ESTERO BLVD., FORT MYERS BEACH (STRAP NUMBER 33-46-24-W1-00206.0280) FOR THE FOLLOWING 3 VARIANCES: 1) A VARIANCE OF 5 FEET TO ALLOW A FRONT SETBACK OF 20 FEET WHERE 25 FEET IS REQUIRED; 2) A VARIANCE OF 15.4% BUILDING COVERAGE TO ALLOW 55.4% BUILDING COVERAGE WHERE 40% ALLOWED; 3) A VARIANCE OF 6.3% IMPERVIOUS SURFACE AREA TO ALLOW 73.3% IMPERVIOUS SURFACE WHERE 67% IS THE MAXIMUM ALLOWED, FOR A SINGLE-FAMILY HOME; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

G. VAR20250146, 452 Estero Variance

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20250146, REQUESTING A VARIANCES FROM LDC SECTION 34 TABLE 34-3 FOR THE PROPERTY LOCATED AT 452 ESTERO BOULEVARD GENERALLY REFERED TO AS STRAP NUMBER 24-46-23-W1-0060D.025F IN FORT MYERS BEACH, TO VARY 15 FEET FROM REQUIRED 25 FOOT FRONT STREET SETBACK AND 12 FEET FROM THE REQUIRED REAR SETBACK TO BUILD A NEW SINGLE-FAMILY HOME IN THE RM ZONING DISTRICT; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

VIII. ADMINISTRATIVE AGENDA

IX. LPA MEMBERS ITEMS/REPORTS

X. LPA ATTORNEY ITEMS/REPORTS

XI. COMMUNITY DEVELOPMENT ITEMS/REPORTS

XII. ITEMS FOR NEXT MONTHS AGENDA

XIII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.

IF THE LOCAL PLANNING AGENCY UNANIMOUSLY APPROVES A REQUEST FOR A VARIANCE, EXTENSION OR SATISFACTION OF CONDITIONS, A REQUEST FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL MAY BE MADE BY ANYONE IF THE REQUEST IS RECEIVED BY THE TOWN CLERK WITHIN 10 BUSINESS DAYS OF THE LOCAL PLANNING AGENCY DECISION PURSUANT TO SEC. 34-232 OF THE LAND DEVELOPMENT CODE.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE LOCAL PLANNING AGENCY WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, HE OR SHE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED IN ACCORDANCE WITH FLORIDA STATUTE 286.0105.



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. 239-765-0202



Fort Myers Beach Local Planning Agency

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes

Tuesday, June 10, 2025

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members present: Chair Cereceda, LPA Member Boan, LPA Member Dunlap, LPA Member Eckmann, LPA Member McLean, LPA Member Plummer and LPA Member Sudduth.

II. INVOCATION

Chair Cereceda.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

The last public hearing will be moved to the first.

LPA Member Dunlap moved to approve the amended final agenda, seconded by LPA Member Sudduth.

The motion carried unanimously.

V. APPROVAL OF MINUTES

A. Local Planning Agency - May 13, 2025

On packet page 7, it should read, LPA Member McLean asked whether they could incorporate a bench close to the beach.

LPA Member McLean moved to approve the amended minutes, seconded by LPA Member Plummer.

The motion carried unanimously.

VI. PUBLIC COMMENT

No public comment.

VII. PUBLIC HEARINGS

Town Attorney Stuparich explained the quasi-judicial procedures and the expedited variance process. Deputy Clerk Freeman confirmed that all agenda items were properly noticed. He swore in those providing testimony.

A. SEZ20250046, 6425 Estero Blvd. (Beach Theater)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20250046 TO ALLOW 1) CONSUMPTION ON PREMISES (COP) OUTDOORS WITHIN 500 FEET OF DWELLING UNITS; 2) NEW OUTDOOR ENTERTAINMENT IN THE COMMERCIAL BOULEVARD (CB) ZONING DISTRICT; 3) NEW LIVE ENTERTAINMENT IN THE CB ZONING DISTRICT; AND 4) NEW OUTDOOR SEATING THAT IS OPEN AFTER SUNSET IN THE CB ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 6425 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBER 34-46-24-W4-00046.0000; AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the resolution. Ex parte communications: LPA Member McLean met with the Neighborhood Company, spoke to Patrick on the phone, is rebuilding his house in the neighborhood and received emails, LPA Members Boan and Plummer met with the Neighborhood Company and received emails, LPA Member Eckmann had a virtual meeting with Pat Vanasse, the applicant's representative and received an email from Christine Madden, LPA Member Dunlap met with the Neighborhood Company, met with Patrick Vanasse, received emails and lives in the neighborhood, Chair Cereceda knows the property well and received emails, LPA Member Sudduth met with the Neighborhood Company and reviewed the plans.

Community Development Principal Planner Judith Frankel noted the applicant's narrative was mistakenly not included in the agenda materials, but it was provided yesterday. She revealed there was an error in the future land use category regarding the special exception for the variance. The correct category is mixed residential and it is correct in the staff report and was reviewed correctly. The resolution will be corrected.

Principal Planner Frankel reviewed the background of the request as stated on the yellow sheet and highlighted the special exceptions. She noted that staff recommended approval of the first special exception request, denial of the second request, approval of the third request and approval of the fourth request.

Patrick Vanasse of the Neighborhood Company started the presentation with the Project Team, Requests, Property Location, Subject Site, Background & Request, Requests, Justifications of Requests, Special Exceptions Request, Variances Requested, Rendering, Ground Floor Layout, Second Floor Plans, Third Floor Surplus Space, Special Exceptions Requested, Findings & Conclusions and Conditions of Approval.

LPA Member Boan asked whether a fence would be installed around the lower level along Egret and Estero to prevent people from trying to leave with drinks. Mr. Vanasse replied that the preference was to use landscaping to control people, like a continuous thick hedge. He addressed the hours of operation of the music and noted that they would create buffering to mitigate the sound. They would consider the public's comments. Chair Cereceda commented that it was her primary concern and LPA Member Sudduth noted

that the neighborhood was quiet before lan.

Mr. Vanasse confirmed that TVs would probably be added to the lower level. LPA Member Sudduth asked whether there were any thoughts of doing two concepts upstairs, given the massive space. Mr. Vanasse replied that the applicant looked at many configurations, but felt that having two distinct restaurants in separate spaces made a lot more sense. Corey Yankee was their restaurant person and considered himself an expert. The LPA moved to consider him an expert in the restaurant business. Mr. Yanke explained why the casual restaurant was downstairs and the fine dining was upstairs. He did not think the project was a music venue, but an expectation of a restaurant. He clarified that they did not intend for someone to play music 12 hours a day. LPA Member Sudduth suggested wrapping the outdoor patio around the building. LPA Member Dunlap asked how they would manage and contain what was completely open through management or oversight. Mr. Yanke described having a trained full-time service with a lot of visibility. He noted that the crowd on the south end was quite different from Times Square. He added that the longevity of the business was essential and rowdy guests would not be tolerated.

Chair Cereceda mentioned having an expensive dinner upstairs on the deck while listening to people cheering for their teams downstairs. Mr. Yanke replied that most of the seating upstairs was inside. LPA Member Eckmann described a similar setup at Bayfront Bistro and noted that there was no conflict between the upstairs and downstairs areas. LPA Member McLean questioned the noise from the games downstairs and whether it would be restricted. LPA Member Plummer asked about music being too loud during meals. Mr. Yanke agreed they would not want to hear loud music from downstairs. Mr. Vanasse noted they would have a centralized integrated system with speakers everywhere. The building's configuration was limited due to the 50% rule.

Public comment:

Cherie Smith, resident, commented that the previous owners had meetings with the neighborhood and listened to their concerns. She stated that she received notice of the meeting a couple of days ago. She noted they did not want a party in the middle of their neighborhood and did not want people parking on the side streets. She lives halfway down Egret St. and heard the noise from Pinchers when it was located there. She will be affected by any entertainment. She added that they were unaware of the canal or the use of the dock. She noted the neighborhood would like to hear from the owners. Mr. Vanasse responded that the dock would not be accessible to the public. Public comment closed.

Chair Cereceda noted that LPA Member Eckmann had to leave.

Mr. Vanasse stated that the downstairs restaurant would not be marketed as a sports bar. He noted that Mr. Boge offered his cell phone number to the neighbors. He asked that the LPA offer them some flexibility to give them a chance to be successful.

Albert Dambrose, architect, reviewed the 50% rule and noted that he looked

into enclosing the ground floor with impact glass, but they wanted an open environment. He displayed a schematic design of his proposed changes to help block the sound. He described different quiet games they would offer customers.

LPA Member Dunlap congratulated them for listening and making compromises. He agreed with the comments about communicating with the residents. LPA Member McLean asked whether the mezzanine level could be utilized. Mr. Dambrose replied that the elevator stopped on the second floor. Storage and mechanical systems will be located in that space. LPA Member McLean applauded the owners for understanding the residents' needs and making changes to the project. He described a missed opportunity due to the lack of communication with the town and the neighborhood and noted it created a level of distrust. Mr. Dambrose responded that he understood his concerns regarding the noise and would advise his client accordingly.

Principal Planner Frankel suggested that the changes be added to their site plan on the Master Concept Plan before presenting to the town council. Mr. Dambrose agreed. LPA Member McLean wanted to restrict live entertainment hours and electronic noise from games. LPA Member Dunlap hoped that the LPA would be receptive to the owners if they needed to add some hours for entertainment. LPA Member Sudduth appreciated their effort, but was still struggling with it.

Principal Planner Frankel reviewed the conditions. The first condition regarding music was modified.

LPA Member Dunlap moved to approve special exception one, seconded by LPA Member Boan.

The motion carried unanimously by roll call vote, with LPA Member Eckmann excused.

LPA Member Dunlap moved to approve special exception two, seconded by LPA Member Plummer.

The motion carried unanimously by roll call vote, with LPA Member Eckmann excused.

LPA Member Dunlap moved to approve special exception three, subject to conditions of approval, seconded by Chair Cereceda.

The motion carried unanimously by roll call vote, with LPA Member Eckmann excused.

LPA Member Dunlap moved to approve special exception four, seconded by LPA Member Boan.

The motion carried unanimously by roll call vote, with LPA Member Eckmann excused.

B. VAR20250047, 6425 Estero Blvd. (Beach Theater)

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE APPLICATION VAR20250047 FOR THE PROPERTY AT 6425 ESTERO BLVD, GENERALLY IDENTIFIED AS STRAP NUMBER 34-46-24-

W4-00046.0000 IN FORT MYERS BEACH FOR A VARIANCE TO DECREASE THE NUMBER OF REQUIRED PARKING SPACES FROM 115 TO 33 PARKING SPACES AND A BICYCLE RACK FOR A RESTAURANT, COCKTAIL BAR AND ENTERTAINMENT AREA; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the resolution. Principal Planner Frankel noted that there was an error in the resolution and that it would be corrected to reflect the mixed-use residential future land use category. She reviewed the background of the request as stated on the yellow sheet. The staff recommended denial; however, if the LPA recommends approval, the conditions of approval are the same as those for the special exception.

Mr. Vanasse started the presentation with LDC Sec. 34-87 Guidelines for Variance Decision, Parking Information and Parking Solutions/Options. Mr. Vanasse noted that total seating was 272. LPA Member Sudduth would open the upstairs restaurant and determine whether parking was adequate before opening the downstairs. Regarding valet parking, he commented that the Dolphin Inn never had enough parking when it was in operation and Gulfview did not have a lot of parking either. Leasing the town hall parking would help with the number. LPA Member Dunlap suggested that they commit to valet parking up front. Mr. Vanasse addressed managing the parking with signage and buffering. Mr. Yankee indicated that valet parking had always been part of their plan, but he did not think a forced valet service would make sense for a Monday lunch. Chair Cereceda noted that no one mentioned the hours of valet parking, but having the commitment. LPA Member Boan asked what they would do if parking at the Dolphin Inn became unavailable and the restaurant's parking lot was full. Street parking had to be addressed. Mr. Vanasse agreed that valet parking at the Dolphin Inn was a temporary solution that would need to be addressed in the long term. He discussed towing people who decided to park illegally. He suggested employee parking offsite, valet parking and when the Dolphin Inn submits plans for their project, a long-term solution for parking for this project would be addressed. LPA Member McLean asked whether they would install signage. A recess was granted, allowing Mr. Vanasse to consult with the team to discuss solutions.

Mr. Vanasse indicated they were committed to employee parking offsite and valet parking up front. They were working with the town to provide town-approved no-parking signage. When the Dolphin Inn is ready to break ground, they will address parking and come back to the LPA with options before the Dolphin Inn breaks ground. LPA members agreed with the solutions and asked that they specify the Dolphin Inn at the beginning; if it was no longer available, they would come back with alternative solutions.

Town Attorney Stuparich suggested creating language that staff and the applicant are comfortable with today, to expedite the process. Principal Planner Frankel indicated that the applicant could file a formal agreement for a shared parking agreement. If the staff were not satisfied with the

agreement, they would come back to the LPA and the Dolphin Inn parking lot would not be used for commercial paid parking. A discussion was held regarding the difference between a lease agreement and a shared parking agreement and how each could encumber the owners.

LPA Member Boan moved to approve the resolution, with the applicant submitting an agreement in compliance with 3420 218c3 prior to the issuance of a development order dealing with shared parking, the applicant agrees that employees will park offsite and will work with the town to ensure that signage is installed on Curlew and Egret restricting parking in the right-of-way and approval of the variance itself, seconded by LPA Member Dunlap.

The motion carried unanimously by roll call vote, with LPA Member Eckmann excused.

Chair Cereceda stated that she did not call for public comment because there was no public in attendance.

C. CPD20250008; 7225 Estero Blvd. (Fishtale Marina)

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING AN AMENDMENT AND RESTATEMENT OF LEE COUNTY RESOLUTION Z-94-013 THAT REZONED PROPERTY TO COMMERCIAL PLANNED DEVELOPMENT TO ALLOW FOR A REVISION TO THE MASTER CONCEPT PLAN AND ONE (1) ADDITIONAL DEVIATION FOR SETBACKS FOR THE REDEVELOPMENT OF A COMMERCIAL MARINA FOR PROPERTY LOCATED AT 7225, 7291 AND 7295 ESTERO BLVD, GENERALLY IDENTIFIED AS STRAP NUMBERS 03-47-24-W1-00011.0010, 03-47-24-W1-00011.0020 AND 03-47-24-W1-00011.003B IN FORT MYERS BEACH; RESTATING PREVIOUSLY APPROVED CONDITIONS AND DEVIATIONS; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the ordinance. Ex parte communications: LPA Member Dunlap disclosed that his boat would be stored at the Fish Tale Marina for a short time and Chair Cereceda stated that her business was located in Santini Plaza and she was familiar with the Fish Tale property. No disclosures from other members.

Community Development Senior Planner Jason Smalley reviewed the background of the request as stated on the yellow sheet and proposed changes to the Master Concept Plan. LPA Member McLean clarified that the applicants were not intending to build a residential retail facility and could not do so by right. Planner Smalley noted that they would have to amend the Master Concept Plan and the CPD.

Town Attorney Stuparich stated that LPA Member Dunlap does not have a conflict of interest with the applicant's entity.

Brock Petrak, Civil Engineer with the Edgewater Group, reviewed his

qualifications and experience in engineering.

LPA Member Dunlap moved to acknowledge Mr. Petrak as an expert in his field, seconded by LPA Member Sudduth.

The motion carried unanimously.

Mr. Petrak introduced other members of his team from Edgewater Group. His presentation began with Existing Conditions, Master Plan, Proposed Improvements, Drystack Building #7, Boater Service Building, Boater Service and Drystack #7 and Key Project Elements. He commented that there was room for a water taxi to dock.

Grant Phelan from Phelan Family Brands was excited to move Pinchers to this location. He hoped to open within three to six months if the project is approved.

Mike Flanigan, Regional Manager for Equity Lifestyle Property, represented the marina. He noted they had no intention of selling the marina and were vested in the property. He stated they were financially able to start construction quickly and reviewed the timeframe for different buildings.

Public comment:

Justin Paulauskis, owner of Krow's Nest Charters, explained why he supported the project. He described a new water taxi service he hoped to base out of Fish Tale Marina that would serve the entire island.

Public comment closed.

LPA Member McLean moved to approve the ordinance with conditions, seconded by LPA Member Sudduth.

The motion carried unanimously by roll call vote.

VIII. ADMINISTRATIVE AGENDA

No items.

IX. LPA MEMBERS ITEMS/REPORTS

Chair Cereceda and LPA Member Sudduth requested to attend the joint session by Zoom. Members approved. Chair Cereceda asked if it would be possible to receive periodic updates on the status of commercial projects in the queue.

Principal Planner Frankel responded positively.

No items from other members.

X. LPA ATTORNEY ITEMS/REPORTS

No items.

XI. COMMUNITY DEVELOPMENT ITEMS/REPORTS

No items.

XII. ITEMS FOR NEXT MONTHS AGENDA (NO JULY MEETING)

No items.

XIII. ADJOURNMENT

LPA Member Dunlap moved to adjourn at 1:30 PM.

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2025-522**

1. Request:

Meeting Date: August 12, 2025

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING AN APPLICATION TO REZONE PROPERTY LOCATED AT 138/140 DELMAR AVE, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W3-0100B.0150 FORT MYERS BEACH FROM RESIDENTIAL CONSERVATION TO RESIDENTIAL PLANNED DEVELOPMENT TO ALLOW CONSTRUCTION OF A TWO-STORY DUPLEX ABOVE FLOOD ELEVATION AND A DEVIATION FROM SECTION 34-638(D)(2) OF THE LAND DEVELOPMENT CODE TO ALLOW A PORCH AND STOOP TO ENCROACH 15-FEET INTO THE 25 FOOT STREET SETBACK WHERE A MAXIMUM ENCROACHMENT OF 10 FEET IS PERMITTED FOR ACCESSORY USES; PROVIDING FOR CLARIFICATION AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

LPA makes recommendations for Town Council's consideration.

What the action accomplishes:

The Town Council will take into account the recommendations made by the LPA for DCI20250181, a request to rezone subject property from RC to RPD zoning district to allow the development of a two-story duplex above flood elevation with a Master Concept Plan and one deviation from LDC Section 34-638(d)(2)b to allow porch and stoop to encroach 15-feet into the required street setback, where a maximum encroachment of ten feet is permitted.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

5. Background:

Scott and Leslie Fier, the owner of 138/140 Delmar Ave, is requesting rezoning from Residential Conservation (RC) to Residential Planned Development (RPD) to allow development of a two-family residential structure with a Master Concept Plan and one (1) deviation. While the lot would not be eligible for multiple residential dwelling units based on the parcel size, the applicant has shown compelling evidence that there existed 2 dwelling units prior to the destruction caused by Hurricane Ian.

Based on Lee Property Appraiser (LEEPA) data, the pre-storm area of the structure was 884 sq. ft. and contained 2 dwelling units built in 1954. Based on arials available to staff it appears that the pre-storm structure would have compliant setbacks under today's code. The RC zoning district requires setbacks of:

Street setback: 25 feet

Side: 7.5 feet for 50 foot to 75 foot wide lots

Rear: 25-feet

Maximum Height: 30-feet above Design Flood Elevation (DFE; BFE+1' freeboard)

The lot in question has an area of 4,400 sq.ft. (0.10 ac) and is located within the Town's Residential Conservation zoning district. It is in the Mixed Residential Future Land Use which allows a density of six dwelling units per acre. The surrounding lots are all residential.

Attachments:

1. NS Ord 25-XX, RPD20250181 for 138-140 Delmar Ave

2. Exhibit A- Master Concept Plan
3. EXHIBIT B- Conditions of Approval, Schedule of Uses and Deviations
4. 138/140 Delmar Ave Staff Report
5. Exhibit C- survey
6. Exhibit D - Application
7. Exhibit E - waiver form

Financial Impact:

Unknown

6. Alternative Action

Approval/ Denial

7. Staff Recommendations:

Staff recommends **APPROVAL WITH CONDITIONS** of DCI20250181.

8. Recommended Approval:

Judith Frankel, Principal Planner

Date: July 28, 2025

Georgina Cid, Community Development Manager

Date: July 31, 2025

Frankie Kropacek, Community Development Director

Date: August 01, 2025

nancy stuparich, Town Attorney

Date: August 05, 2025



Amy Baker, Town Clerk

Date: August 05, 2025

ORDINANCE 25-xx

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/PROVING WITH CONDITIONS/DENYING AN APPLICATION TO REZONE PROPERTY LOCATED AT 138/140 DELMAR AVE, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W3-0100B.0150 FORT MYERS BEACH FROM RESIDENTIAL CONSERVATION TO RESIDENTIAL PLANNED DEVELOPMENT TO ALLOW CONSTRUCTION OF A TWO-STORY DUPLEX ABOVE FLOOD ELEVATION AND A DEVIATION FROM SECTION 34-638(D)(2) OF THE LAND DEVELOPMENT CODE TO ALLOW A PORCH AND STOOP TO ENCROACH 15-FEET INTO THE 25 FOOT STREET SETBACK WHERE A MAXIMUM ENCROACHMENT OF 10 FEET IS PERMITTED FOR ACCESSORY USES; PROVIDING FOR CLARIFICATION 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, Scott and Leslie Fier ("Applicant"), owners of the property generally located at 138/140 Delmar Ave, Fort Myers Beach, identified as Strap Number 19-46-24-W3-0100B.0150 Fort Myers Beach ("Property"), filed an application to rezone the properties from Residential Conservation (RC) to Residential Planned Development (RPD) inclusive of a corresponding Schedule of Uses and Master Concept Plan (MCP) and a setback deviation from the Land Development Code (LDC); and

WHEREAS, the requested setback deviation is from LDC Section 34-638(d)(2), which will allow a porch and stoop to encroach 15-feet into the required 25-foot street setback, where a maximum encroachment of ten feet is permitted for accessory uses; and

WHEREAS, the subject property is located in the Mixed Residential Future Land Use of the Comprehensive Plan of the Town of Fort Myers Beach, and is under common control of the owners as listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on August 12, 2025, at which time the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted **XXX** to **XXX** to recommend approval/approval with conditions/ denial of the rezoning request; and

WHEREAS, on September 11, 2025, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing was held on October 6, 2025. The public hearing was advertised in the Fort Myers News-Press on the ____ day of September 2025; and

WHEREAS, at the October 6, 2025 public hearing, the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

WHEREAS, the Town Council found the request to rezone the property from Residential Conservation to an RPD with a corresponding Schedule of Uses and MCP and one (1) deviation for a street setback with the Town’s Comprehensive Plan and Mixed Residential FLU; and

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezoning as required by Sections 34-85 and 34-216 of the Land Development Code:

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

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

WHEREAS, the Town Council made the following formal findings before making final decisions on the one requested deviation from "by-right" requirements as provided in Section 34-216 of the LDC:

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

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

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

Section 2. The Town Council finds the Applicant **did/did not** meet its burden of proof that the requested rezoning **does/does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties the Town Council **APPROVE/APPROVE WITH CONDITIONS/DENY** the requested rezoning.

Section 3. Town Ordinance 25-XX is approved and adopted inclusive of the MCP, Schedule of Uses and Conditions of approval as contained in Exhibits A and B.

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

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

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

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

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

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____

Scott Safford, Council Member _____
Karen Woodson, Council Member _____

ADOPTED this ____ day of _____ 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

ATTEST: **Town of Fort Myers Beach**

Amy Baker, Town Clerk **Dan Allers, Mayor**

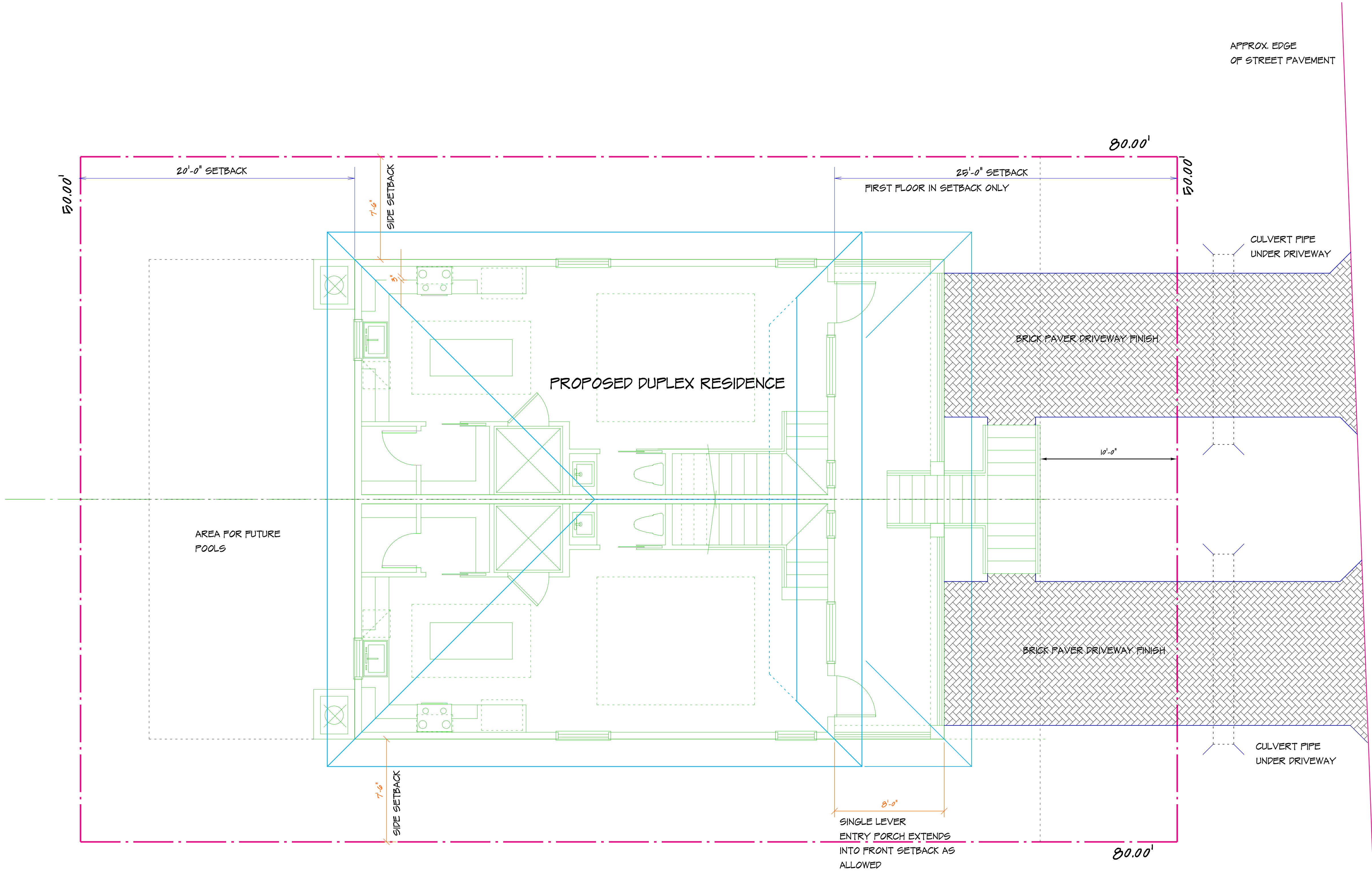
APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day _____ 2025.

Exhibits:

- Exhibit A: Master Concept Plan (MCP)
- Exhibit B: Conditions of Approval, Schedule of Uses and Deviations



DELMAR AVENUE

SITE PLAN FOR DESIGN AND LOCATION ONLY. OWNER TO PROVIDE ENGINEERED SURVEYS AND DRAINAGE PLANS AS REQUIRED FOR PERMITTING.

OWNER SHALL PROVIDE APPROVER TOWN LOT USE SURVEY AS REQUIRED.

SITE DESIGN PLAN

DEVELOPMENT CALCULATIONS

LOT AREA:.....4,000 SQ. FT.
40% AREA ALLOWABLE:.....1,600 SQ.FT.
TOTAL HOME AREA:.....1,505 SQ. FT.

FLOOD ZONE : AE-II

SCALE: 1/4" = 1'-0"

Revisions	

Job Number	
Date	12 - 12 - 24
Drawn By	J.C.
Checked By	
Drawing Scale	AS NOTED

STUDIO

one

DESIGN

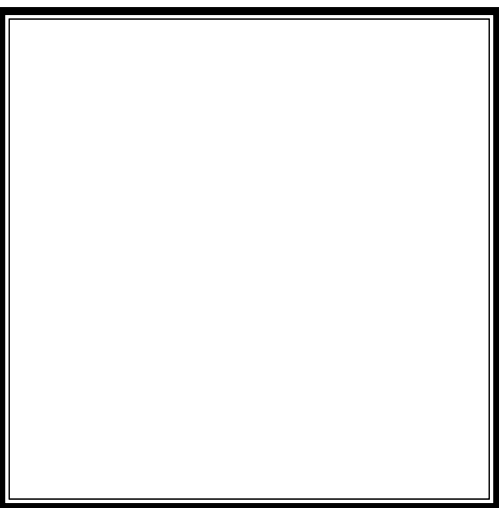
CAPE CORAL
FLORIDA
(239) 707-9365

PROJECT:

FIER RESIDENCE

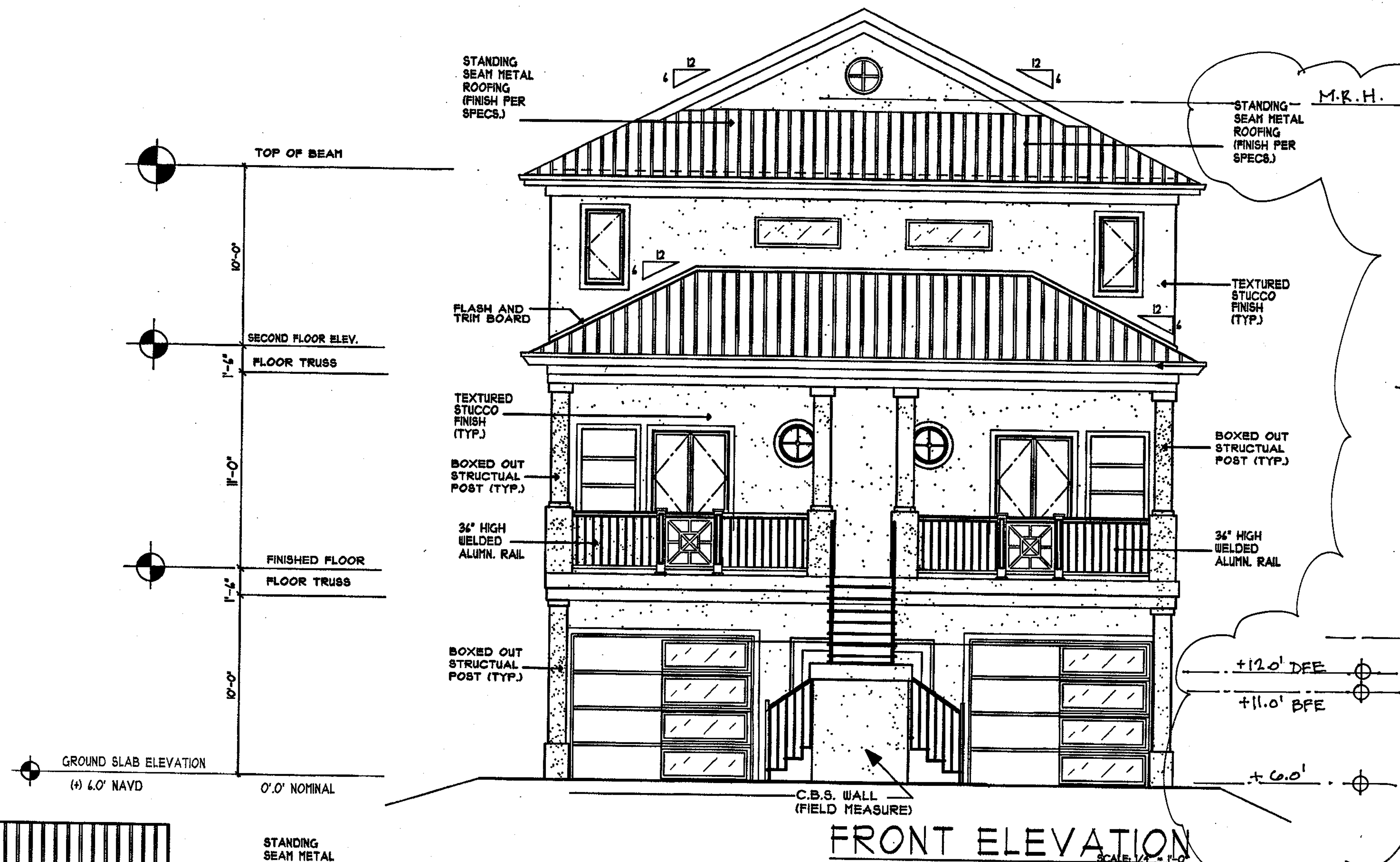
DELMAR AVENUE

FT. MYERS, BEACH FLORIDA

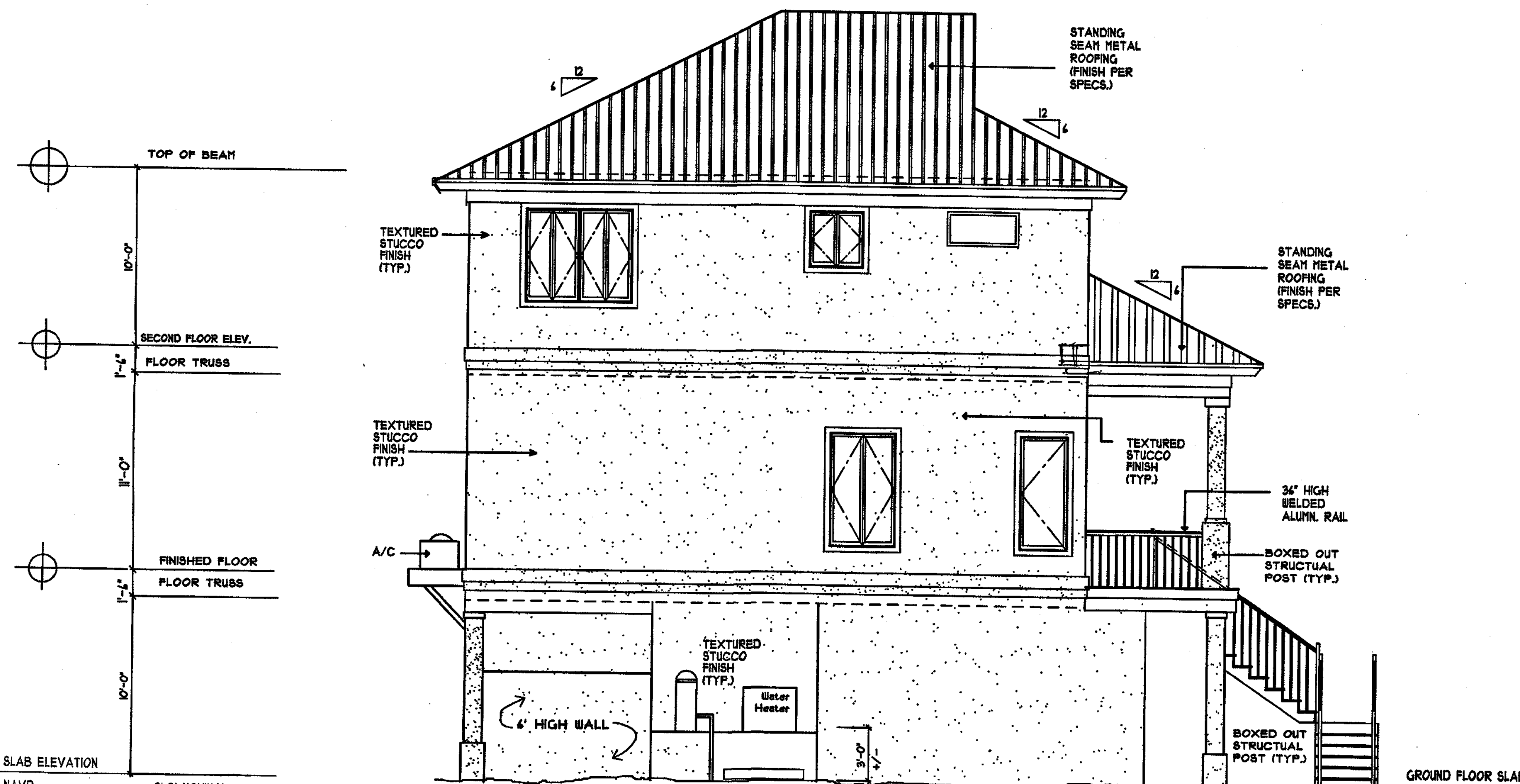


SHEET

SP - 1



FRONT ELEVATION
SCALE: 1/4" = 1'-0"



LEFT SIDE ELEVATION
SCALE: 1/4" = 1'-0"

Revisions

6-30-25

Job Number

Date 12-12-24

Drawn By JC

Checked By

Drawing Scale AS NOTED

STUDIO

one

DESIGN

CAPE CORAL
FLORIDA
(239) 707-9365

PROJECT:

FIER RESIDENCE
138 / 140 DELMAR AVENUE
FT. MYERS, BEACH FLORIDA

SHEET

A-14

Revisions	
1	6-30-25

Job Number	
Date	12-12-24
Drawn By	JG
Checked By	
Drawing Scale	AS NOTED

STUDIO

one

DESIGN

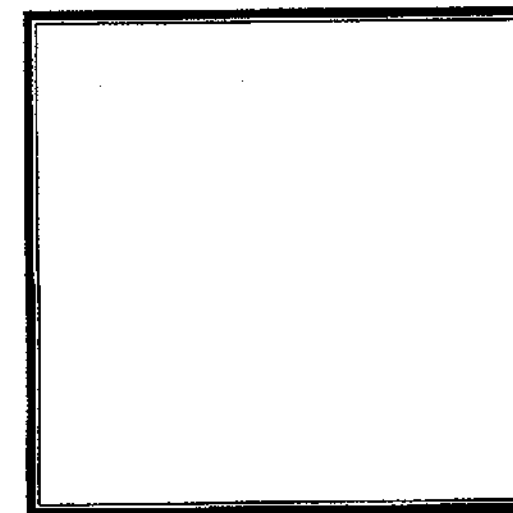
CAPE CORAL
FLORIDA
(239) 707-9365

PROJECT:

FIER RESIDENCE

138 / 140 DELMAR AVENUE

FT. MYERS, BEACH FLORIDA



SHEET

A - 14

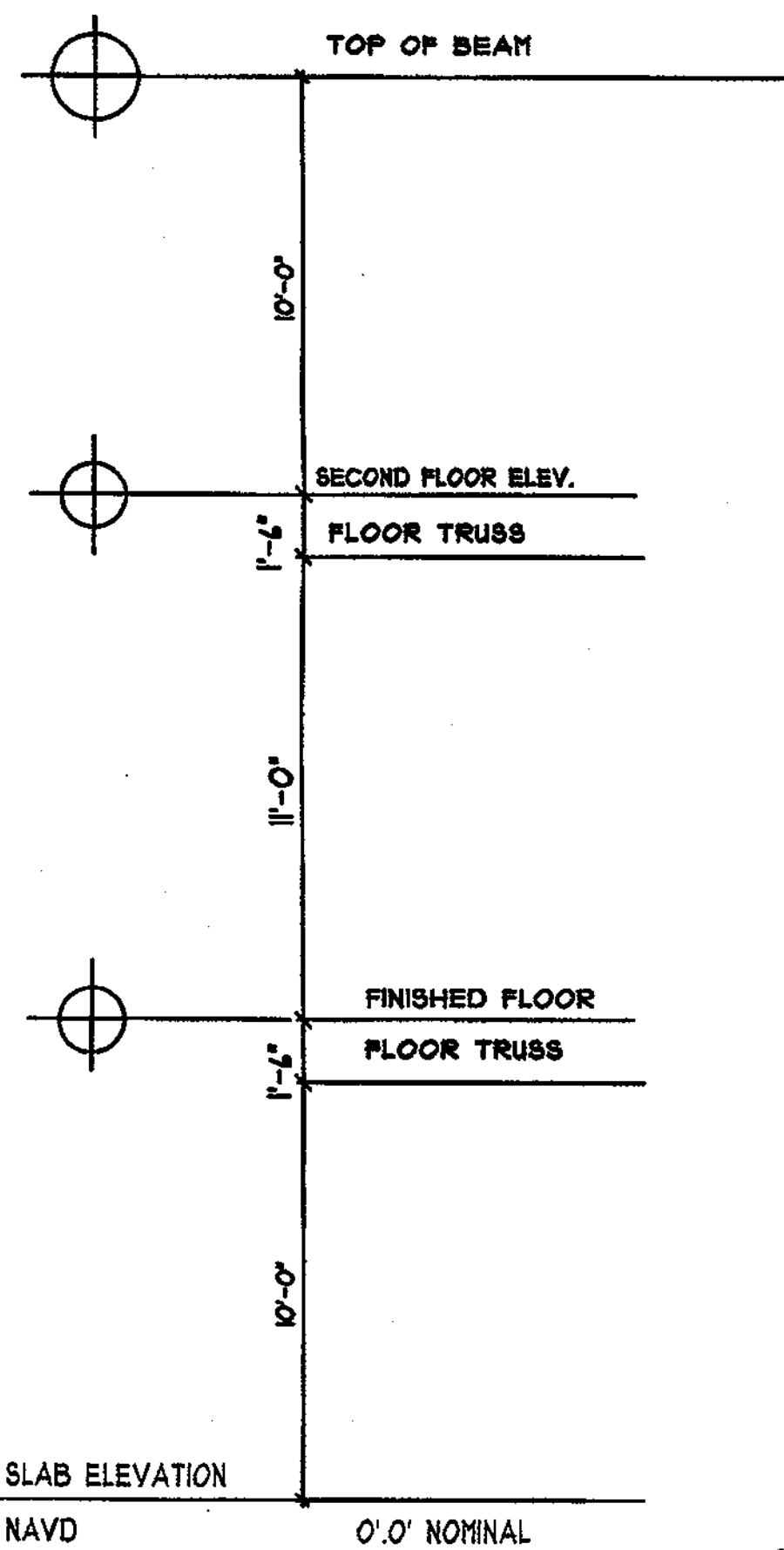
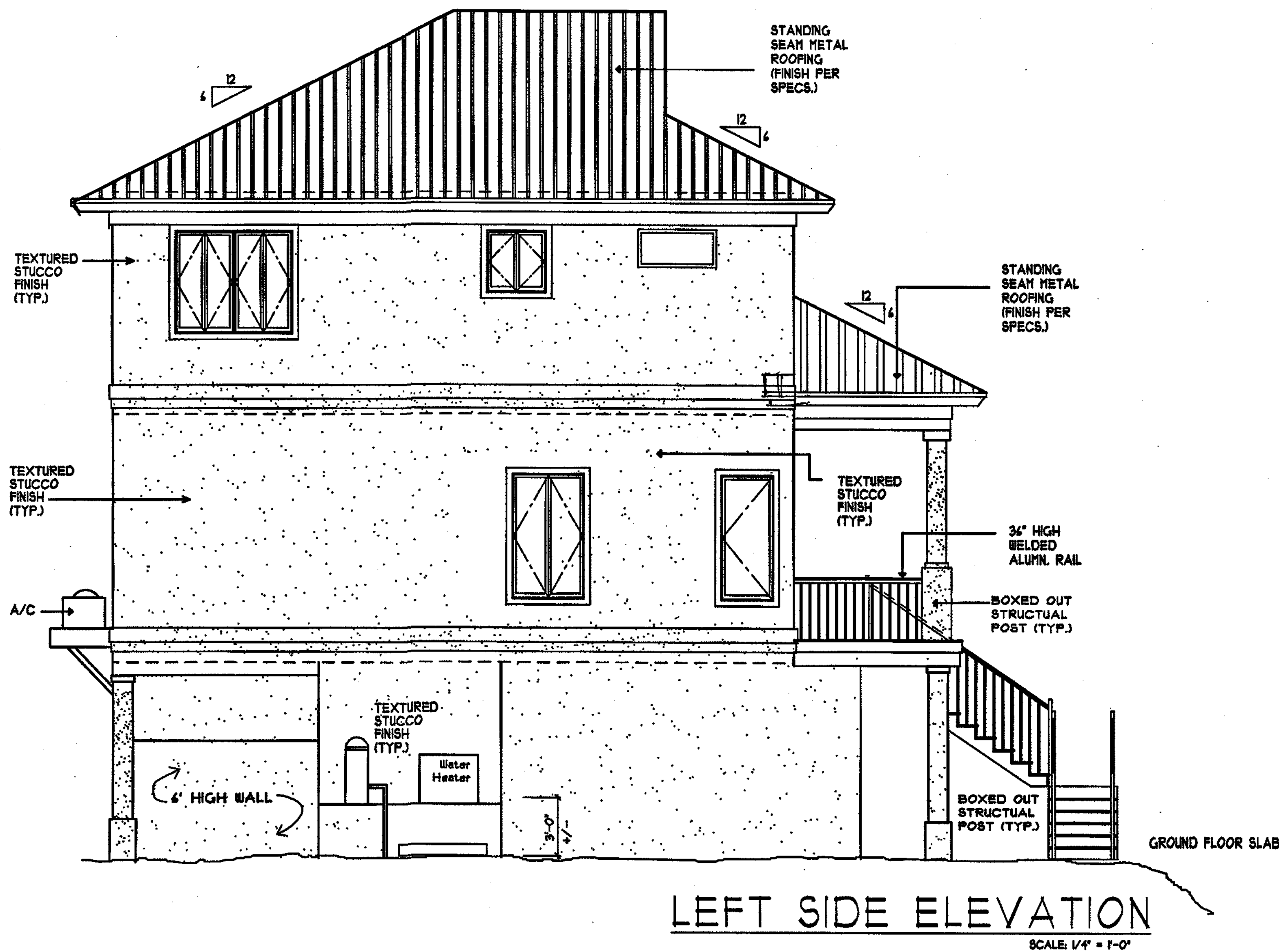
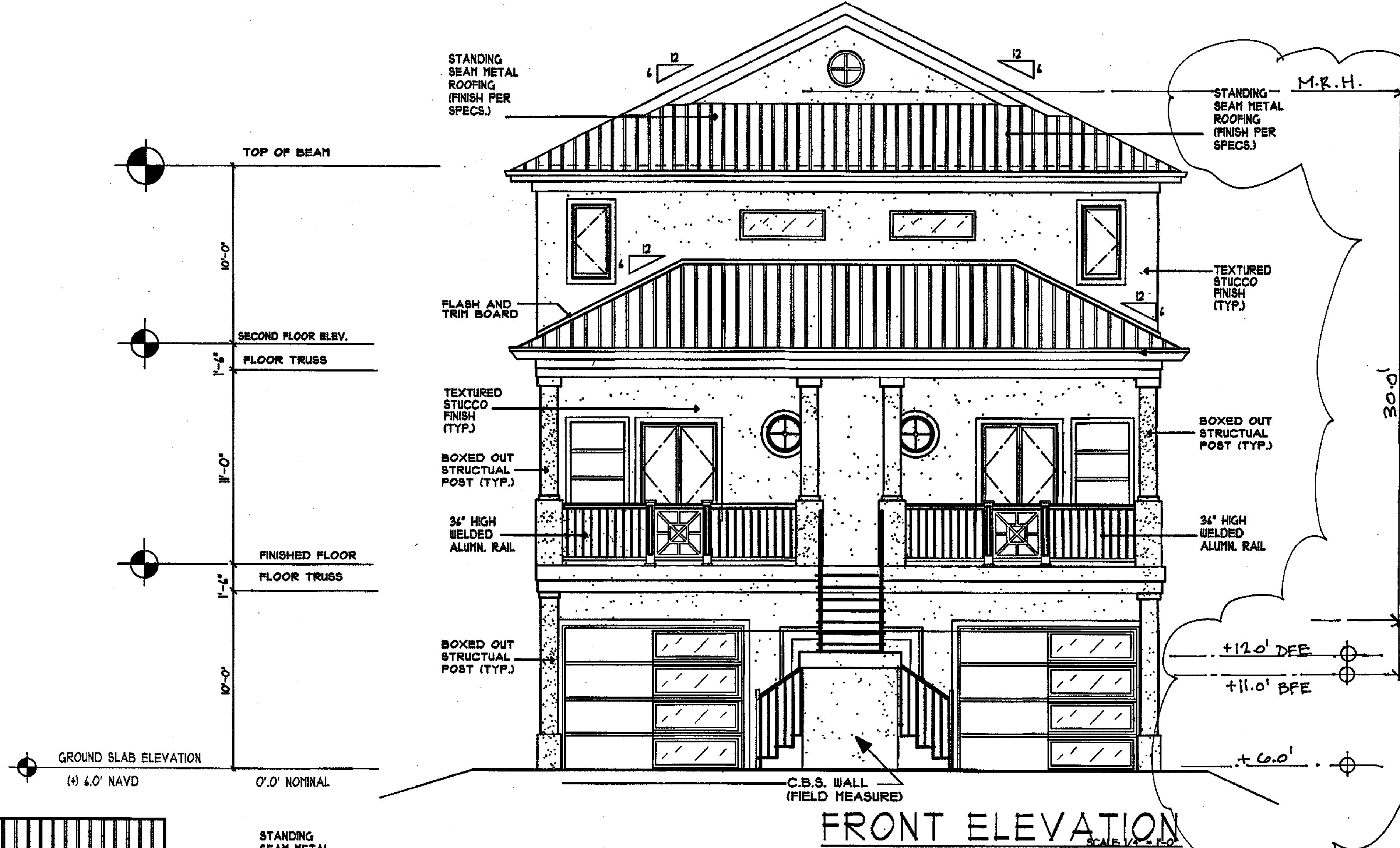


EXHIBIT B: CONDITIONS OF APPROVAL, SCHEDULE OF USES AND REQUESTED DEVIATIONS

B.1 Conditions of Approval

1. A site plan through the building permit process shall be required in lieu of a limited development order, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Failure to comply with any of the above-mentioned conditions of approval for the Rezoning request will render this approval null and void.

B.2 Schedule of Uses

Two-family or duplex

B.3 Deviation

1. Deviation from LDC Section 34-638(d)(2) b. to allow a porch and stoop to encroach 15-feet into the required street setback, where a maximum encroachment of ten feet is permitted.



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

TYPE OF CASE: Residential Planned Development

CASE NUMBER: DCI Rezoning 20250181

CASE NAME: 138/140 Delmar Ave, rezoning to Residential Planned Development (RPD) to allow a duplex with a front setback encroachment increase from 10 feet to 15 feet.

**LPA
HEARING DATE:** August 12, 2025

**STAFF
RECOMMENDATION:** Approval with conditions

**PREPARED/
SUBMITTED BY:** Jason Green, AICP

I. APPLICATION SUMMARY

Applicant/Owner: Scott and Leslie Fier

Request: Rezone the property at 138/140 Delmar Ave to a Residential Planned Development to allow the development of a two-story duplex above flood elevation and request one deviation from LDC Section 34-638(d)(2)b to allow porch and stoop to encroach 15-feet into the required street setback, where a maximum encroachment of ten feet is permitted.

Subject property: See Exhibit A

Physical Address: 138/140 Delmar Ave

STRAP #: 19-46-24-W3-0100B.0150

FLU: Mixed Residential

Zoning: Residential Conservation (RC)

Adjacent zoning and land uses:

North:	RESIDENTIAL CONSERVATION Single-Family Home
South:	RESIDENTIAL CONSERVATION Single-Family Home
East:	RESIDENTIAL, MULTI-FAMILY Single-Family Home
West:	RESIDENTIAL CONSERVATION Single-Family Home

II. BACKGROUND AND ANALYSIS

Scott and Leslie Fier, the owner of 138/140 Delmar Ave, is requesting rezoning from Residential Conservation (RC) to Residential Planned Development (RPD) to allow development of a two-family residential structure with a Master Concept Plan and one (1) deviation. While the lot would not be eligible for multiple residential dwelling units based on the parcel size, the applicant has shown compelling evidence that there existed 2 dwelling units prior to the destruction caused by Hurricane Ian.

Based on Lee Property Appraiser (LEEPA) data, the pre-storm area of the structure was 884 sq. ft. and contained 2 dwelling units built in 1954. Based on arials available to staff it appears that the pre-storm structure would have compliant setbacks under today's code. The RC zoning district requires setbacks of:

Street setback: 25 feet

Side: 7.5 feet for 50 foot to 75 foot wide lots

Rear: 25-feet

Maximum Height: 30-feet above Design Flood Elevation (DFE; BFE+1' freeboard)

The lot in question has an area of 4,400 sq.ft. (0.10 ac) and is located within the Town's Residential Conservation zoning district. It is in the Mixed Residential Future Land Use which allows a density of six dwelling units per acre. The surrounding lots are all residential.

Analysis:

The subject property is 55 feet wide and 80-foot deep, conforming lot in Residential Conservation zoning district. The purpose of the RC zoning district is to recognize certain older neighborhoods that had been zoned for duplex, multifamily, or mobile homes purposes prior to incorporation of the town. The site is located in the Mixed Residential land use designation on the Future Land Use (FLU) map. The Mixed Residential land use category

permits a maximum of 6 dwelling units per acre or 1 dwelling unit by right for the 4,400 square foot subject property.

The Town's Post Disaster Build Back policy, allows 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 disaster, including fire, tropical storms, floods, and hurricanes, shall be permitted to replace those buildings at up to their pre-disaster lawful density, intensity, and/or height in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan. The property supported a two family or duplex built in 1954 before Hurricane Ian. The duplex was destroyed during the storm and the applicant plans to build back the duplex with additional square footage using the Town's post disaster build back policy.

As per LDC Section 34-3238(2) d. of the post-disaster build back code, *A property owner wishing to exceed the square footage limitations contained within the post-disaster build back regulations, may be eligible to request additional square footage through a commercial planned development or a residential planned development.* The Applicant is therefore applying to rezone the subject property from RC zoning district to the Residential Planned Development (RPD) zoning district with a Master Concept Plan and 1 deviation, to allow construction of a two-family use with additional square footage for the property located at 138-140 Delmar Ave.

The requested deviation is as follows:

1. A request to allow a porch and stoop to encroach 15-feet into the required street setback, where a maximum encroachment of ten feet is permitted by LDC Section 34-638(d)(2)b.

Staff response: Staff anticipates no adverse impacts or incompatibilities resulting from the request considering the subject property has supported this use since 1954. The property is part of an old residential neighborhood where several nearby properties appear to be non-compliant with the Town's street setback requirement. The Applicant wants to maximize the buildable area and is proposing to build back a duplex, destroyed during hurricane Ian, with additional square footage. The proposed two-family structure is compliant with the Town's Street, side and rear setback requirements. The Applicant is proposing an 8 foot deep porch and stoop combination extending 15 feet into the required street setback, where a maximum encroachment of ten feet is permitted by LDC Section 34-638(d)(2)b.

Neighborhood Compatibility:

The subject property is located within an old single-family residential neighborhood zoned RC and has historically supported a two-family (duplex) use since 1954. The original structure was destroyed during the storm. The proposed redevelopment seeks to build back the duplex on the site with additional square footage, which is consistent with the historical use and character of the property.

Based on aerial imagery available from LEEPA, several nearby properties within the neighborhood exhibit non-conforming street setbacks. The request to allow a porch and stoop to encroach 15 feet into the required street setback aligns with this prevailing development pattern and maintains compatibility with the surrounding built environment.

IV. FINDINGS AND CONCLUSIONS

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning:

LDC Sec. 34-85 (b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

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

Staff response: No errors or ambiguities exist.

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

Staff response: The subject property has supported a two-family or a duplex on this location since 1954 which was destroyed during the storm. The Applicants plans to build back a two story duplex with additional square footage.

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

Staff response: No impact on the intent of this chapter will occur.

(4) The testimony of any applicant.

(5) The recommendation of staff and of the local planning agency.

(6) The testimony of the public.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Staff response: The request is consistent with the Town of Fort Myers Beach Comprehensive Plan Future Land Use designation of Mixed residential.

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

Staff response: The proposed development will be required to meet performance standards set forth in 34-2031 and 34-2032.

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

Staff response: The urban services exist in this location.

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

Staff response: The request will have no impact on designated environmentally critical areas and natural resources. The request does not include any revision to the environmentally critical areas and does not impact open space or preserves.

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

Staff response: The proposed density and intensity are compatible with surrounding uses.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Staff response: The subject property has supported a two-family or a duplex on this location since 1954 and is compatible with surrounding properties. No additional trips to/ from the property are anticipated.

(13) For planned development rezonings, see § 34-216 for additional considerations

LDC Sec. 34-85 (c) Findings: Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

Staff response: The proposed uses and requested deviations for the RPD comply with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed uses comply with this chapter.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with the town ordinances and codes.

(4) For planned development rezonings, see § 34-216 of this chapter for additional findings

LDC Sec. 34-216(b)(2) The recommendation made to the town council must be supported by the guidelines set forth in [§ 34-85](#) of this chapter. In addition, the findings must address whether the following criteria can be satisfied:

a. The proposed use or mix of uses is appropriate at the subject location;

Staff response: Prior to Hurricane Ian, the property supported a duplex built in 1954. The Applicant is now proposing to build back the duplex with higher square footage. Therefore, the proposed two-family or duplex use has been existing on site for several years and is appropriate for the subject location.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

Staff response: Sufficient safeguards are provided for the public interest through the requirements of the LDC.

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

Staff response: No special conditions are requested as part of this application.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

Staff response: Not applicable.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

Staff response: Not applicable.

3. Policy 4-C-4 on building heights taller than the standard height limit.

Staff response: No additional height is requested.

4. Policy 4-C-8 on density transfers.

Staff response: Not applicable.

5. Policy 4-E-1 on pre-disaster build back.

Staff response: Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

Staff response: There are no anticipated adverse traffic impacts .

V. RECOMMENDATION

Staff finds that the RPD amendment meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC. Staff recommends **APPROVAL WITH CONDITIONS** of DCI20250181.

VI. CONDITIONS OF APPROVAL

1. A site plan through the building permit process shall be required in lieu of a limited development order, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Failure to comply with any of the above-mentioned conditions of approval for the Rezoning request will render this approval null and void.

ATTACHMENTS

Exhibit A: Master Concept Plan (MCP)
Exhibit B: Conditions of Approval, Schedule of Uses and Deviations
Exhibit C: Survey
Exhibit D: Application packet
Exhibit E: Waiver form

This Survey has been prepared for:

**Scott Fier
and
Leslie Fier**

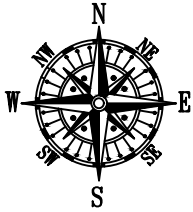


PROPERTY ADDRESS:

138 and 140 Delmar Avenue
Fort Myers Beach, FL 33931

On your behalf, and as a requirement for your transaction, this document has been coordinated with us by the firm shown below. Landtec Surveying, Inc. is a private firm and remains entirely responsible for this document's content.

DHR LAW
Real Estate Attorneys



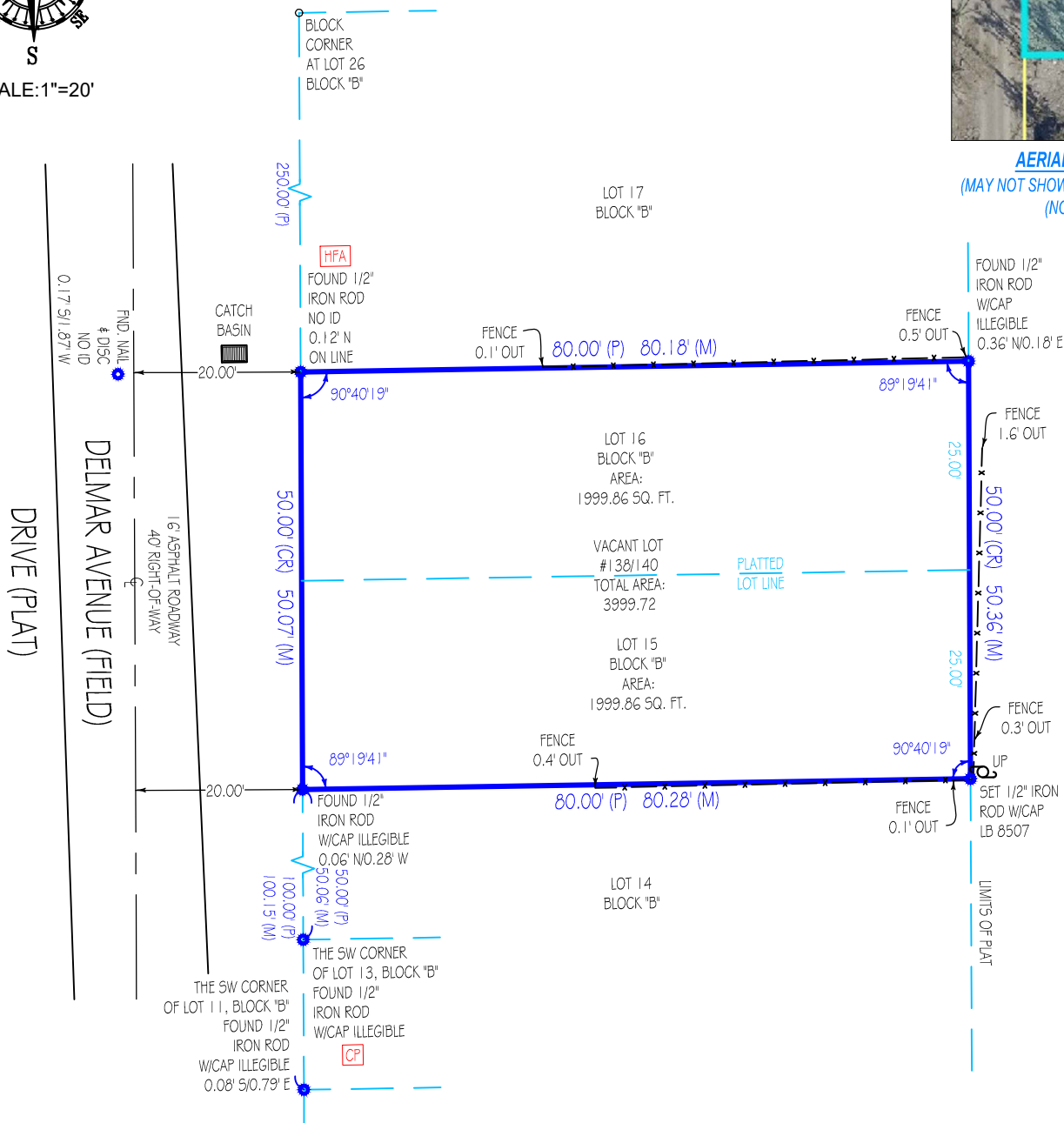
SCALE: 1"=20'

BEARING REFERENCE:

NONE. RECORD INFORMATION RELIANT UPON ANGULAR DATA ONLY.
ALL ANGULAR DATA SHOWN HEREON REFERENCED THERETO.



AERIAL PHOTOGRAPH
(MAY NOT SHOW LATEST IMPROVEMENTS)
(NOT-TO-SCALE)



"CP" = CONTROLLING POINT (POINT OF ROTATION) "HFA" = HELD FOR ALIGNMENT - ALL OTHER MONUMENTATION AND IMPROVEMENTS RELATIVE THERETO

Platted Easements, Notable or Adverse Conditions (unplatted easements also listed if provided by client): IF APPLICABLE, RECIPIENTS OF THIS SURVEY SHOULD REVIEW THE POSITION OF ANY FENCE LINES SHOWN HEREON AND THEIR RELATIONSHIP TO THE BOUNDARY LINE
- NO NOTABLE CONDITIONS FOUND.

This survey has been issued by the following
Landtec Surveying office:
700 West Hillsboro Boulevard, Suite 4-100
Deerfield Beach, FL 33441
Office: (561) 367-3587
Fax: (561) 465-3145
www.Landtecsurvey.com

Elevations, if shown:

Benchmark:

Benchmark Elev.:

Benchmark Datum:

Elevations on Drawing are in:

N.G.V.D.29 ☐ N.A.V.D.88 ☐

Revisions:

Job Nr: 196445-SW

Date of Field Work: 02/08/2024

Drawn by: A.K.



LICENSED BUSINESS No. 8507

TYPE OF SURVEY:

- ☒ BOUNDARY ☐ CONSTRUCTION ☐ CONDOMINIUM
☐ ALTA/NSPS ☐ TOPOGRAPHIC ☐ SPECIAL PURPOSE

PURPOSE OF SURVEY (SEE GENERAL NOTES BELOW):

Purchase/Refinance

LEGAL DESCRIPTION:

LOT (S) 15 AND 16, BLOCK B, W.W. WATSONS SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 5, PAGE(S) 67, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

PROPERTY ADDRESS:

138 AND 140 DELMAR AVENUE
FORT MYERS BEACH, FL 33931

INVOICE NUMBER: 196445-SW

DATE OF FIELD WORK: 02/08/2024

CLIENT FILE: 24-0030-CJH

CERTIFIED TO

DAVID H. ROSENBERG, P.L. DBA DHR LAW
CHICAGO TITLE INSURANCE COMPANY
LAKE MICHIGAN CREDIT UNION ISAOA/ATIMA
SCOTT FIER AND LESLIE FIER

FLOOD ZONE: AE

FLOOD MAP: 12071C

PANEL: 0554

SUFFIX: G

PANEL DATE: 11/17/2022

BASE FLOOD ELEVATION OR DEPTH: 11 NAVD 1988

COMMUNITY NUMBER: 120673

PLATTED EASEMENTS, NOTABLE OR ADVERSE CONDITIONS (UNPLATTED EASEMENTS ALSO LISTED IF PROVIDED BY CLIENT):

IF APPLICABLE, RECIPIENTS OF THIS SURVEY SHOULD REVIEW THE POSITION OF ANY FENCE LINES SHOWN HEREON AND THEIR RELATIONSHIP TO THE BOUNDARY LINE.

- NO NOTABLE CONDITIONS FOUND.

ABBREVIATION LEGEND (SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING):

A OR AL = ARC LENGTH
 C/O = CLEANOUT
 CA = CENTRAL ANGLE
 CATV = CABLE TV RISER
 CF = CALCULATED FROM FIELD
 CH = CHORD DISTANCE
 CONC = CONCRETE
 CR = CALCULATED FROM RECORD
 DE = DRAINAGE EASEMENT
 EL OR ELEV = ELEVATION
 EM = ELECTRIC METER
 F.F.E. = FINISHED FLOOR ELEV.
 FIR = FOUND IRON ROD
 FN = FOUND NAIL
 FND = FOUND
 G.F.F.E. = GARAGE FINISHED FLOOR ELEV.
 L = LEGAL DESCRIPTION
 M = MEASURED
 OHC = OVERHEAD CABLE
 P = PLAT
 PC = POINT OF CURVE
 PCC = POINT OF COMPOUND CURVATURE
 PH = POOL HEATER
 PI = POINT OF INTERSECTION
 PK = PARKER KAELOH
 POB = POINT OF BEGINNING
 POC = POINT OF COMMENCEMENT
 PRC = POINT OF REVERSE CURVATURE
 PT = POINT OF TANGENCY
 QTR = QUARTER
 R = RADIUS
 RNG = RANGE
 ROW = RIGHT OF WAY
 SEC = SECTION
 TR = TELEPHONE RISER
 TWP = TOWNSHIP
 UE = UTILITY EASEMENT
 UP = UTILITY POLE
 WM = WATER METER
 WV = WATER VALVE

SYMBOLS (SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING - NOT TO SCALE):

⚡ = UTILITY POLE Ⓜ = WELL
 ☆ = LIGHT POLE Ⓢ = CENTER LINE
 🚰 = CATCH BASIN 🚰 = PARTY WALL
 🚰 = FIRE HYDRANT 🚰 = AIR CONDITIONER
 🚰 = MANHOLE 🚰 = SEPTIC LID
 🚰 = WATER VALVE X = ELEV. SHOT
 ☒ = WATER METER 🚰 = SECTION CORNER

LINETYPES:

BOUNDARY ————
 BUILDING ————
 EASEMENT - - - - -
 CHAIN LINK FENCE — x — x —
 WOOD FENCE — // — // —
 PLASTIC FENCE — o — o —
 OVERHEAD CABLE — i — i —

GENERAL NOTES:

- THIS SURVEY IS BASED UPON RECORD INFORMATION PROVIDED BY CLIENT. NO SPECIFIC SEARCH OF THE PUBLIC RECORD HAS BEEN MADE BY THIS OFFICE UNLESS OTHERWISE NOTED.
- ANY FENCES SHOWN HEREON ARE ILLUSTRATIVE OF THEIR GENERAL POSITION ONLY. FENCE TIES SHOWN ARE TO GENERAL CENTERLINE OF FENCE. THIS OFFICE WILL NOT BE RESPONSIBLE FOR DAMAGES RESULTING FROM THE REMOVAL OF, OR CHANGES MADE TO, ANY FENCES UNLESS WE HAVE PROVIDED A SURVEY SPECIFICALLY LOCATING SAID FENCES FOR SUCH PURPOSES. DETERMINATION OF FENCE POSITIONS SHOULD BE BASED SOLELY ON THEIR PHYSICAL RELATIONSHIP TO THE MONUMENTED BOUNDARY LINES.
- GRAPHIC REPRESENTATIONS MAY HAVE BEEN EXAGGERATED TO MORE CLEARLY ILLUSTRATE MEASURED RELATIONSHIPS - DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALED POSITIONS.
- UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED EXCEPT AS SPECIFICALLY SHOWN.
- ELEVATIONS ARE BASED UPON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D. 1929) OR NORTH AMERICAN VERTICAL DATUM (N.A.V.D. 1988) AS SHOWN ON HEREON.
- ALL BOUNDARY AND CONTROL DIMENSIONS SHOWN ARE FIELD MEASURED AND CORRESPOND TO RECORD INFORMATION UNLESS SPECIFICALLY NOTED OTHERWISE.
- ANY CORNERS SHOWN AS "SET" HAVE EITHER BEEN SET ON THE DATE OF FIELD WORK, OR WILL BE SET WITHIN 2 BUSINESS WEEKS OF SAID DATE AND ARE IDENTIFIED WITH A CAP MARKED LB (LICENSED BUSINESS) #8507.

I HEREBY CERTIFY THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE AS OUTLINED IN CHAPTER 5J-17.051 & 5J-17.052 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, AND THAT THE ELECTRONIC SIGNATURE AND SEAL (IF AFFIXED) HEREON MEETS PROCEDURES AS SET FORTH IN CHAPTER 5J-17.062, PURSUANT TO SECTION 472.025, FLORIDA STATUTES.



Digitally signed
by Pablo Alvarez
Date: 2024.02.08
15:55:51 -06'00'

SIGNATURE

DATE: 02/08/2024

PABLO ALVAREZ - PROFESSIONAL SURVEYOR AND MAPPER FLORIDA REGISTRATION NO. 7274 (NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OR THE ELECTRONIC SEAL (IF AFFIXED) OF THE FLORIDA LICENSED SURVEYOR AND MAPPER SHOWN ABOVE)

PRINTING INSTRUCTIONS:

WHEN PRINTING THIS PDF IN ADOBE, SELECT "ACTUAL SIZE" TO ENSURE CORRECT SCALING. DO NOT USE "FIT".

LANDTEC
SURVEYING
and Lien

LICENSED BUSINESS No. 8507

SCOTT AND LESLIE FIER

PERSONAL STATEMENT (LDC 34-85)

138-140 DELMAR AVENUE, FORT MYERS BEACH,

Dear Lee County Appraisers, Town Council and City Planners

I am writing to respectfully and thoughtfully accept our request for application for the property located at 138-140 Delmar Avenue.

To provide some background to our proposal for consideration. We purchased the lot in February 2024 after spending several months working with Sarah Probst (prior City employee) and John Carsi (our architect) we received written confirmation we would be able to build a 2-story duplex structure with two bedrooms on each side, an elevator (for my wheelchair bound mother) and 3 stories high. With this validation we moved forward with purchasing the lot and engaging John to design it and The Property Medic to build it.

Based on that written confirmation, we sold our primary residence at 261 Delmar, which we loved, to build this duplex so we could live on one side and my mother on the other. My mother is a proud woman and will not live with her children, this solution was perfect for a legally blind, wheelchair bound woman. We never thought we would find the right place, on the beach, until this became available. The design and approval process has taken longer than expected and unfortunately had to move my mother from Amavida assisted living to Life Care Center of Estero skilled nursing facility after a fall until the house was done.

It has been a difficult transition as these facilities are woefully understaffed due to the immigration policies. I currently work full time and spend every other minute at the facility enhancing my mother's care. Without me spending the time I do she could spend hours being soiled and unchanged, alone with no options to be outside her room, or have a walk around the facility.

We are now several months behind schedule and no closer to meeting my mother's wishes to spend her final years at home. Every time I am there, she asks me how much longer. It is heartbreaking and I am confident no one would want that for their parents.

Fast forward. We submitted our permit application request back in March with the expectation that it would be a standard process to get a building permit, based on the commitment from Sarah Probst. This has not been the case. We were asked to submit another LDO application and advised this is all that is needed only to get a response back

that was since noted as incorrect and now needs to be submitted as a RPD (Residential Plan Development). We met with the Judith, Jason, Frankie and Kendra on June 30th and understand this is the path forward with their full support and would like to thank them for their efforts.

This has been extremely stressful with all the different requirements. Between the personal and emotional toll this has put on my family I am hopeful all the parties involved can see this for what it is. A desire to provide proper care for my mother and a house which she can call home in one and us in the other. We are Fort Myers Beach residents, not investors, and plan to stay until our final days.



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: 138-140 Delmar Avenue

STRAP Number: 19-46-24-W3-0100B.0150

Applicant: Scott and Leslie Fier

Phone: 630-549-5682/630-209-4994

Contact Name: Scott and Leslie Fier

Phone: 630-549-5682/630-209-4994

Email: lesliefier13@gmail.com scottfier21857@gmail.com

Fax: None

Current Zoning District: RC

Future Land Use Map (FLUM) Category: Mixed residential

FLUM Density Range: 10 units per acre

Platted Overlay:

☒ YES

☐ NO

ACTION REQUESTED

☐ Special Exception

☐ Variance

☐ Conventional Rezoning

☒ Planned Development ☐ Commercial ☒ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Scott and Leslie Fier

Phone: 630-549-5682/630-209-4994

**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: 18701 San Carlos Blvd, #26, Fort Myers Beach, FL 33931

Email: lesliefier13@gmail.com scottfier21857@gmail.com

Fax: None

Contact Name: Scott and Leslie Fier

Phone: 630-549-5682/630-209-4994



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

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: John Carsi Phone: 239-707-9365

Address: _____

Email: rangfan1@gmail.com Fax: None

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

Name: The Property Medic (Randy Stam) Phone: 239-770-1818

Address: 19050 San Carlos Blvd, Unit 3, Fort Myers Beach, FL 33931

Email: service@theproperty-medic.com Fax: None

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 RC 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: _____

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: Scott and Leslie Fier

Phone: 630-549-5682/630-209-4994

Mailing Address: 18701 San Carlos Blvd, #26, Fort Myers Beach, FL 33931

Email: lesliefier13@gmail.com/scottfier21857@gmail.com Fax: None

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Scott Fier 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.

Scott Fier
Signature

Scott Fier

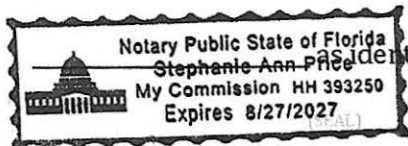
Printed Name

STATE OF Florida COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ☒ physical

presence OR ☐ online notarization, this 2nd day of July, 2025, by

Scott Fier ☒ who is personally known to me OR ☐ who has produced



as identification.

Stephanie Ann Price
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



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

_____	_____
_____	_____
_____	_____
_____	_____



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, _____ (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.



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

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: 19-46-24-W3-0100B.0150

Property Address: See legal description from survey document attached. 196445-SW Survey Package.pdf

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) 50 feet

Depth (please provide an average width if irregular in shape) 80 feet

Frontage on street: 50 feet Frontage on waterbody: 0 feet

Total land area: 4000 ☐ acres ☒ square feet

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

Times Square to Delmar Avenue

☐ 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

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-D

Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
\$2000.00 PD Amendment minor (< acre total property area)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

Project Name: 138-140 Delmar Avenue, Fort Myers Beach, FL 33931
Authorized Applicant: Scott and Leslie Fier
STRAP Number(s): 19-46-24-W3-0100B.0150

Current Property Status: Vacant
Current Zoning: RC
Future Land Use Map (FLUM) Category: Mixed Residential
Platted Overlay? ☐ yes, ☐ no FLUM Density Range:

Requested Action:

☐	DRI (with rezoning)
☐	Planned Development (also check below)
☒	Rezoning from: RC to: RPD
☐	Amendment to Master Concept Plan/attendant documentation

PART I Narrative Statements

A. Comprehensive Plan Amendments (check one)

☒	There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.
☐	The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect)

B. Phasing of Construction

☒	The development is to be constructed in a single phase.
☐	The development is to be constructed in phases as follows: (describe proposed phasing below)

C. Comprehensive Plan Compliance.

Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

We are proposing a duplex with each side being 3-stories, 2-bedroom, enclosed garage, elevator on each side. We understand from the meeting on 6.30.25 with the planning committee this complies with the Fort Myers Beach comprehensive plan.

D. Design Standards Compliance

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

This is not a commercial design.

E. Decision-making Compliance

Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

[illegible]

F. Schedule of deviations and written justification

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

LDC Sec. 34-638(2)b - requesting deviation of stairs in front to an additional 5
feet. The code as we understand it allows for 10-feet into the 25-foot setback. The
stairs as designed encroach 15-feet.
The reason for the request is each side will have an enclosed garage with a
door access which requires the stairs to remain in the center of the design plan.
Esthetically, and functionally, it is a better design to have them come straight
down over a side-to-side which would require us to eliminate the door access
at the bottom.
We are respectfully requesting this deviation for functional and esthetics design
which will allow for ground floor access via a door to the elevator required for
my mother, who is wheelchair bound, to access the building and upper floors.



For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

[illegible]

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

Public Hearing Request Form
Supplement Form PH-D
Master Concept Plan
Traffic Impact Statement
Architectural Elevations
Schedule of Uses
Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
\$2000.00 PD Amendment minor (< acre total property area)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

3/30/2021

Guide to Filing Supplement PH-D for Planned Developments

Amendments Applications for amendments to an approved Master Concept Plan or its attendant documentation will require as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in surrounding land uses that have occurred since the original application. Some amendments can be approved administratively as provided in LDC Section 34-219, but all other amendments must proceed through the public hearing process.

Through a pre-application meeting with Community Development staff, prospective applicants can determine whether proposed amendments will require a public hearing, and can request waivers from any submittal requirements that are not necessary to specify the changes requested.

All other planned developments All other applications must complete and submit the Request for Public Hearing and Supplement PH-D, along with all required documents. Refer also to the instructions for the Request for Public Hearing form.

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 whether the request is a DRI (Development of Regional Impact) that requires rezoning, a Planned Development, or an amendment to a Planned Development.

Part 1 Narrative Statements:

Comprehensive Plan Amendments

If Comprehensive Plan Amendments are pending that might affect the future use of the property, explain the amendments' possible effects.

Construction Phasing

If the project is to be constructed in multiple phases, describe the ordering and timing of the proposed phasing. In the absence of a phasing plan, phasing of development would be governed by the limitations of LDC Section 34-220.

Comprehensive Plan Compliance

Explain how the proposed development complies with the Fort Myers Beach Comprehensive Plan. Address the Future Land Use Map category or categories applicable to the subject property and any other relevant policies.

Design Standards Compliance

For properties and/or projects as described in LDC Section 34-992, explain how the proposed development will comply with the standards in LDC Sections 34-991 through 34-997.

Decision-making compliance

Explain how the proposed development will comply with the standards for decision-making in LDC Section 34-85.

Schedule of deviations and written justification

Identify the deviations from the requirements of the Land Development Code that are requested for the proposed development and justify them in relation to the guidance in LDC Section 34-932(b).

Administrative amendments

If the request is for an amendment to a planned development, indicate which of the requested changes could not be approved administratively as allowed by LDC Section 34-219.

Part 2 Submittal Requirements

Public Hearing Application Form. Applications for rezoning, including Planned Developments and Planned Development amendments for which public hearing is required, consist of the Public Hearing form and the supplemental form PH-D. Both parts of the application form must be completed and submitted.

Master Concept Plan. The master concept plan consists of maps, graphic illustrations, and written statements concerning the development. Space has

been provided on this form for many of the required narrative statements, though they can be attached on separate sheets. A master concept plan must include the following required information:

- a. The general size, configuration, and location of each development phase, and a description of the phasing of construction, unless the development is to be constructed in a single phase.
- b. The maximum height of any proposed buildings or structures, using the Land Development Code's method of measuring building height (see LDC Section 34-631).
- c. Proposed principal and accessory uses, identified using the terminology employed in the Land Development Code. Employ the groupings of uses in Tables 34-1 and 34-2 of the Land Development Code, or specify individual uses if necessary.
- d. The density and intensity of the proposed uses, in terms of dwelling units by type, or through conversion factors for hotel/motel units. Provide gross square footages for types of commercial uses, and maximum Floor-Area Ratio.
- e. The minimum width and composition of proposed buffers along the perimeter of the property. References to the types of buffers required by LDC chapter 10 are acceptable.
- f. The location of any environmentally sensitive land and water, based on standard environmental data capable of verification by Town staff. Developments larger than one acre in size may require a protected species survey under LDC Section 10-473.
- g. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development, with distances from other existing or planned rights-of-way or access points.
- h. Access and facilities for public transit, if applicable.
- i. The general location of stormwater management areas.
- j. The specific locations of requested deviations, including sample detail drawings illustrating their effects if applicable.
- k. The exact location of existing rights-of-way and easements, whether or not those easements are recorded.
- l. Proposed dedications, if any, including beach access, boat ramps, park or recreation areas, open space, or other easements.

Traffic Impact Statement. A traffic impact statement in the same format and to the same degree of detail required for development orders (LDC Section 10-286).

Architectural Elevations. Architectural elevations or three-dimensional renderings that show at minimum all building façades adjoining public streets. These drawings will serve for the sketch requirement of LDC Section 34-202(b)(5) as well. If aspects of the proposed design will not comply with the commercial design standards of LDC Sections 34-991 through 34-997 (if required), the applicant may request deviations from those standards.

Schedule of uses. A list of all proposed principal and accessory uses. Identify these uses by reference to the groups of uses in Tables 34-1 and 34-2 of the Land Development Code unless greater specificity is necessary. For amendments to planned developments that were approved under different regulations, the enumeration of uses in the schedule of uses supplied for the amendment must be specific enough to explain what uses were previously approved without future reference to prior regulations or approvals.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Submit a request for waiver of submittal requirements prior to submitting an application for public hearing or administrative action. Requesting a waiver of submittal requirements simultaneously with an application may delay your application. The request and the director's response will become part of the application file.

Waiver is requested for items required for:

Public Hearing

☐ General Requirements
☐ DRI
☒ Planned Development
☐ Conventional Rezoning
☐ Special Exception
☐ Variance
☐ Appeal
☐ Other

Administrative Action

☐ General Requirements
☐ Planned Dev. Amendment
☐ Commercial Antenna
☐ Consumption on Premises
☐ Forced Relocation of a Business
☐ Interpretation of LDC
☐ Minimum Use Determination
☐ Setback Variance
☐ Other

Name of Project: 134/140 Delmar Avenue Duplex
Applicant: Scott and Leslie Fier
Strap Number: 19-46-24-W3-0100B.0150
Street Address: 138-140 Delmar Avenue, Fort Myers Beach, FL 33931
Phone Number: (630)549-5682
Email: leslie.fier@fortive.com



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Specific requirements from which waiver is sought

Section Number	Requirement
10-286	Traffic Impact Statement (TIS)
34-212(4)e	Landscape Plan
34-212(4)i	Stormwater Management

Scope of project and reasons for request

Explain the nature of the project and give reasons why you think specific requirements are inapplicable or otherwise should be waived.

This RPD is for a two-family home. Any traffic impact will be very minor,
as the site previously contained a duplex. Landscape Plans are not typically
required for single-family and two-family developments. The applicant will
be required to provide a drainage plan with stormwater calculations and ground
cover materials at the time of permitting.

I hereby state that the information provided above is accurate to the best of my knowledge. I recognize that if my project changes from what is described above approval of this waiver request may no longer be valid.

Signature

Date

Director's Decision ☐ Approved ☐ Denied

Comments:

Frank Kropacsek

Signature

07/11/2025

Date

Revised 1/6/2017

Town of Fort Myers Beach
2525 Estero Blvd., Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Permits@FortMyersBeachFL.gov Fax: 239-765-0909

Page 2 of 2

SUBMIT

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2025-491**

1. Request:

Meeting Date: August 12, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250149 TO ALLOW LIKE-TO-LIKE REPLACEMENT OF TWO TIKI HUTS, DECKING, FENCE, GRAVEL DRIVEWAY AND LANDSCAPING IN THE EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT 4750 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

The LPA reviews the Special exception request and makes recommendations to the Town Council.

What the action accomplishes:

The recommendations of the LPA will be forwarded to the Town Council.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

5. Background:

The applicant is requesting a special exception to allow like-for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

Section 34-652(e) of the Town's LDC allows reconstruction of accessory structures like tiki huts, decking, fence, and driveway into the EC district only by special exception. Therefore, the Applicant is requesting a special exception to allow like- for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the EC zoning district.

Attachments:

1. NS Resolution 25-XX , SEZ 20250149 for 4750 Estero Blvd
2. SEZ20250149 4750 Estero Blvd- Staff report
3. Exhibit A Site Plan
4. Exhibit B List of Property owners
5. Exhibit C Completed Application and Survey

Financial Impact:

Unknown

6. Alternative Action

Deny Special exception for like-for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the Environmentally Critical zoning district.

7. Staff Recommendations:

Approval with conditions for special exception to allow like-for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the Environmentally Critical zoning district.

8. **Recommended Approval:**

Judith Frankel, Principal Planner

Date: July 28, 2025

Georgina Cid, Community Development Manager

Date: July 31, 2025

Frankie Kropacek, Community Development Director

Date: August 01, 2025

nancy stuparich, Town Attorney

Date: August 05, 2025



Amy Baker, Town Clerk

Date: August 05, 2025

RESOLUTION NUMBER 25-XX

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250149 TO ALLOW LIKE-TO-LIKE REPLACEMENT OF TWO TIKI HUTS, DECKING, FENCE, GRAVEL DRIVEWAY AND LANDSCAPING IN THE EC ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PROPERTY LOCATED AT 4750 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA; 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 Brian Campbell on behalf of the property owner, The Shores of Fort Myers Beach Condominium Association Inc, is requesting a special exception to allow like-for-like replacement of two tiki huts, decking, fence, gravel driveway and landscaping in the Environmentally Critical zoning district seaward of 1978 CCCL; and

WHEREAS, the STRAP number for the subject property is 28-46-24-W4-02500.00CE; and

WHEREAS, the Property is located in the “Medium Residential” and “Recreation” category of the Future Land Use Map of the Comprehensive Plan; and

WHEREAS, the Property is located in the “multi-family residential” 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 August 12, 2025, 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 and voted ___ to ___ to recommend approval/ approval with conditions/ denial of the special exception request; and

WHEREAS, on September 11, 2025 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 34-88 of the LDC; and

WHEREAS, the Town Council determined it is/ is not 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 Applicants did/ did not meet their 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/ is not in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicants, Town staff, and interested parties and public, the Town Council **APPROVES/APPROVES WITH CONDITIONS/DENIES** the special exception request to allow like-for-like replacement of two tiki huts, decking, fence, gravel driveway and landscaping in Environmentally Critical zoning district seaward of 1978 CCCL.

Section 3. In approving/ approving with conditions/ denying 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 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 Applicants and the Property:

- A. Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development 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 must obtain an approved lighting plan as outlined in LDC Sec. 34-1834.
- C. Each time the structure is repaired, the Applicant must request a new special exception approval and permit prior to beginning construction.
- D. Construction may not occur during sea turtle season.
- E. Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.

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, Council Member	_____
Karen Woodson, Council Member	_____
Scott Safford, Council Member	_____

ADOPTED this ____ day of September, 2025 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, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of September, 2025.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20250149

CASE NAME: Special Exception for like-to-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in EC zoning district, for the property located at 4750 Estero Blvd.

LPA

HEARING DATE: August 12, 2025

STAFF

RECOMMENDATION: Approval with conditions

**PREPARED/
SUBMITTED BY:** Sakshi Goel, LEED AP ND/ Jason Green, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: Brian Campbell/ The Shores of Fort Myers Beach Condominium Association, Inc.

Request: To allow like-for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the Environmentally Critical zoning district.

Subject property: See attached site plan

Physical Address: 4750 Estero Boulevard

STRAP #: 28-46-24-W4-02500.00CE

FLU: Medium Residential and Recreational

Zoning: Residential, Multifamily and Environmentally Critical

Adjacent zoning and land uses:

North:	COMMERCIAL PLANNED DEVELOPMENT retail- grocery store
South:	TIDAL WATERS
East:	RESIDENTIAL CONSERVATION AND RECREATIONAL Single family residential
West:	MEDIUM RESIDENTIAL AND RECREATIONAL Multifamily Residential and Environmentally Critical

II. BACKGROUND AND ANALYSIS

Background:

The applicant is requesting a special exception to allow like-for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

Section 34-652(e) of the Town's LDC allows reconstruction of accessory structures like tiki huts, decking, fence, and driveway into the EC district only by special exception. Therefore, the Applicant is requesting a special exception to allow like- for-like replacement of 2 tiki huts, decking, fence, gravel driveway and landscaping in the EC zoning district.

Analysis:

The purpose of the EC zoning district is to designate beaches and significant wetlands whose preservation is deemed critical to the Town of Fort Myers Beach through its comprehensive plan. The site's current multi-family residential use has been in place since 1982. The property has supported these tiki huts since 1982 and were destroyed during hurricane Ian in 2022. The Applicant is proposing the reconstruction of the 2 tiki huts, decking, fence, gravel driveway and landscaping which lie partially in the EC district and beyond the 1978 CCCL.

Neighborhood Compatibility:

The Shores of Fort Myers Beach Condo Association has been at this location with this layout since 1982. The proposed replacement of tiki huts, decking, fence, gravel driveway and landscaping are similar to pre-Ian conditions. Granting a special exception for the proposed replacement of the two tiki huts, decking, fence, gravel driveway and landscaping would not impact the character of the neighborhood.

Findings and Conclusions:

Special Exception Findings

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:

1. *Any repairs must comply with all relevant local and state floodplain regulations.*
The development will comply with local and state floodplain requirements.
2. *Repairs may not damage existing dunes or dune vegetation.*
The repairs are proposed in conjunctions with Environmental review to ensure that no dunes or native vegetation will be impacted. Any plantings proposed will be required to be Florida friendly, or otherwise acceptable to the Town and Florida DEP.
3. *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 begins May 1st and ends on October 31st. Construction will be completed outside of nesting season.
4. *A new special exception must be applied for each time the structure is repaired.*
This is included as one of the conditions for approval.

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 existing two tiki huts, decking, fence, gravel driveway and landscaping were damaged during Hurricane Ian.

- 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.

The proposed like-for-like replacement of two tiki huts, decking, fence, gravel driveway and landscaping 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 proposed reconstruction of the two tiki huts, decking, fence, gravel driveway and landscaping will all be completed in compliance with the Town's Land Development Code.

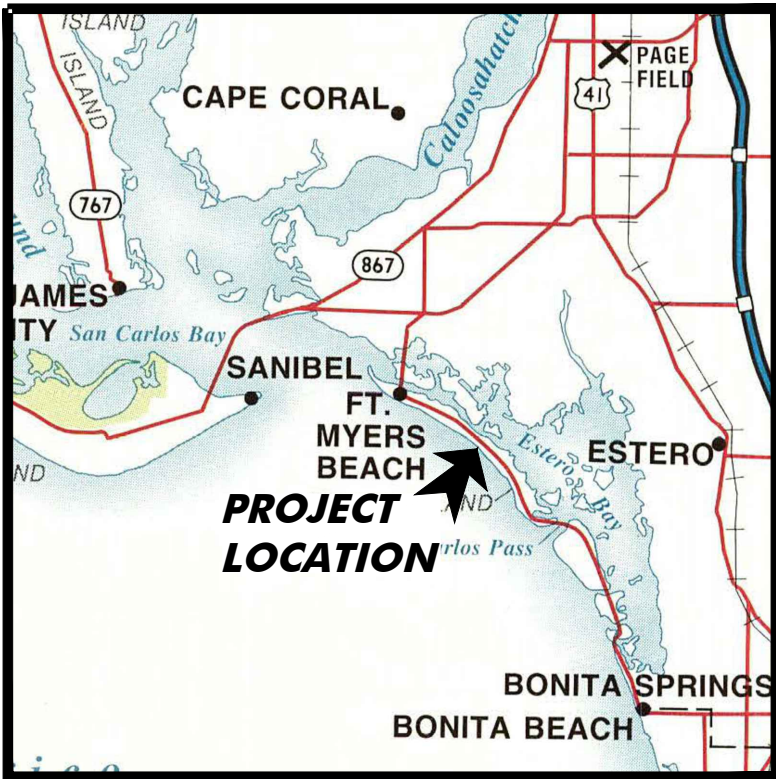
III. RECOMMENDATION

Staff finds that the special exception to replace two tiki huts, decking, fence, gravel driveway and landscaping in EC zoning district are in compliance with LDC Sec. 34-88(b). Therefore, staff recommends **approval with conditions** of SEZ20250149 for the like-to-like reconstruction of the existing two tiki huts, decking, fence, gravel driveway and landscaping.

If LPA recommends approval for the requests, staff recommends the following conditions of approval.

III. CONDITIONS OF APPROVAL

- 1) Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development 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.
- 2) The applicant must obtain an approved lighting plan as outlined in LDC Sec. 34-1834.
- 3) Each time the structure is repaired, the applicant must request a new special exception approval and permit prior to beginning construction.
- 4) Construction shall not occur during sea turtle season.
- 5) Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.

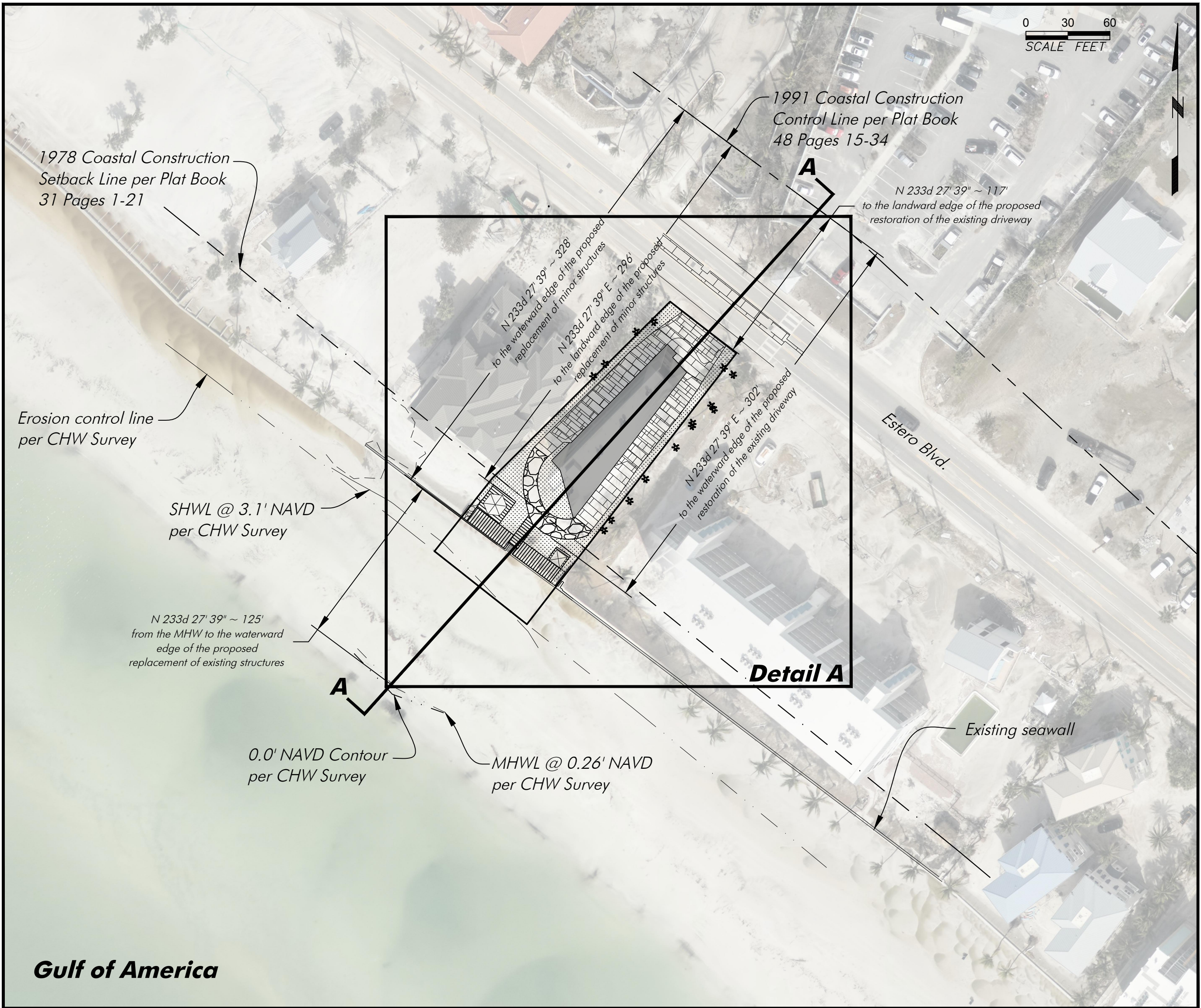


Vicinity Map
SCALE: 1" = 5 Miles



Location Map
SCALE: 1" = 250'

Notes: Property details per survey file Job 240448.01 completed by CHW an NV5 Company on 1-28-25. All elevations reference NAVD. Construction fences will surround the work area.



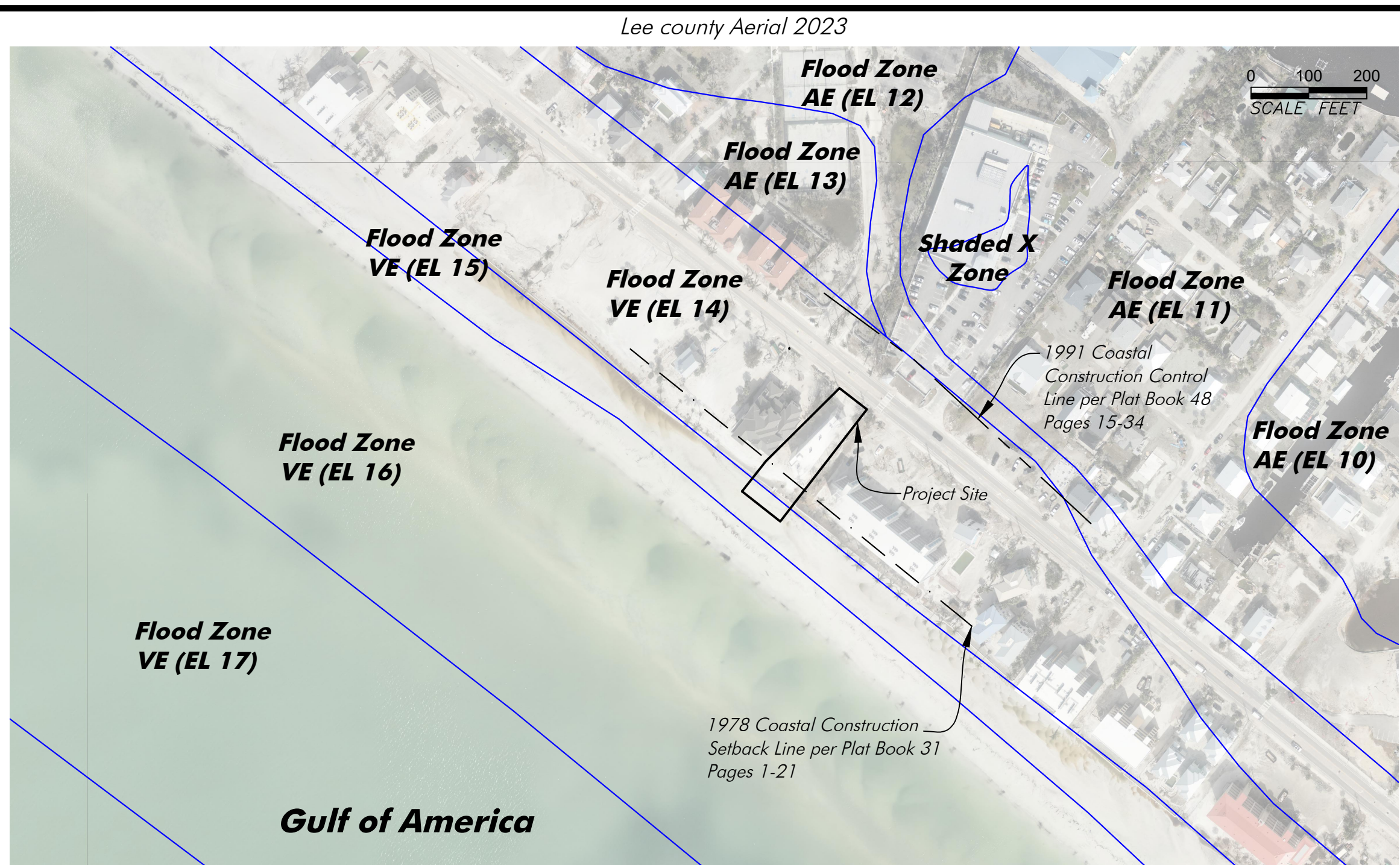
Gulf of America

Overall Site Dimension Plan
Scale 1" = 60'

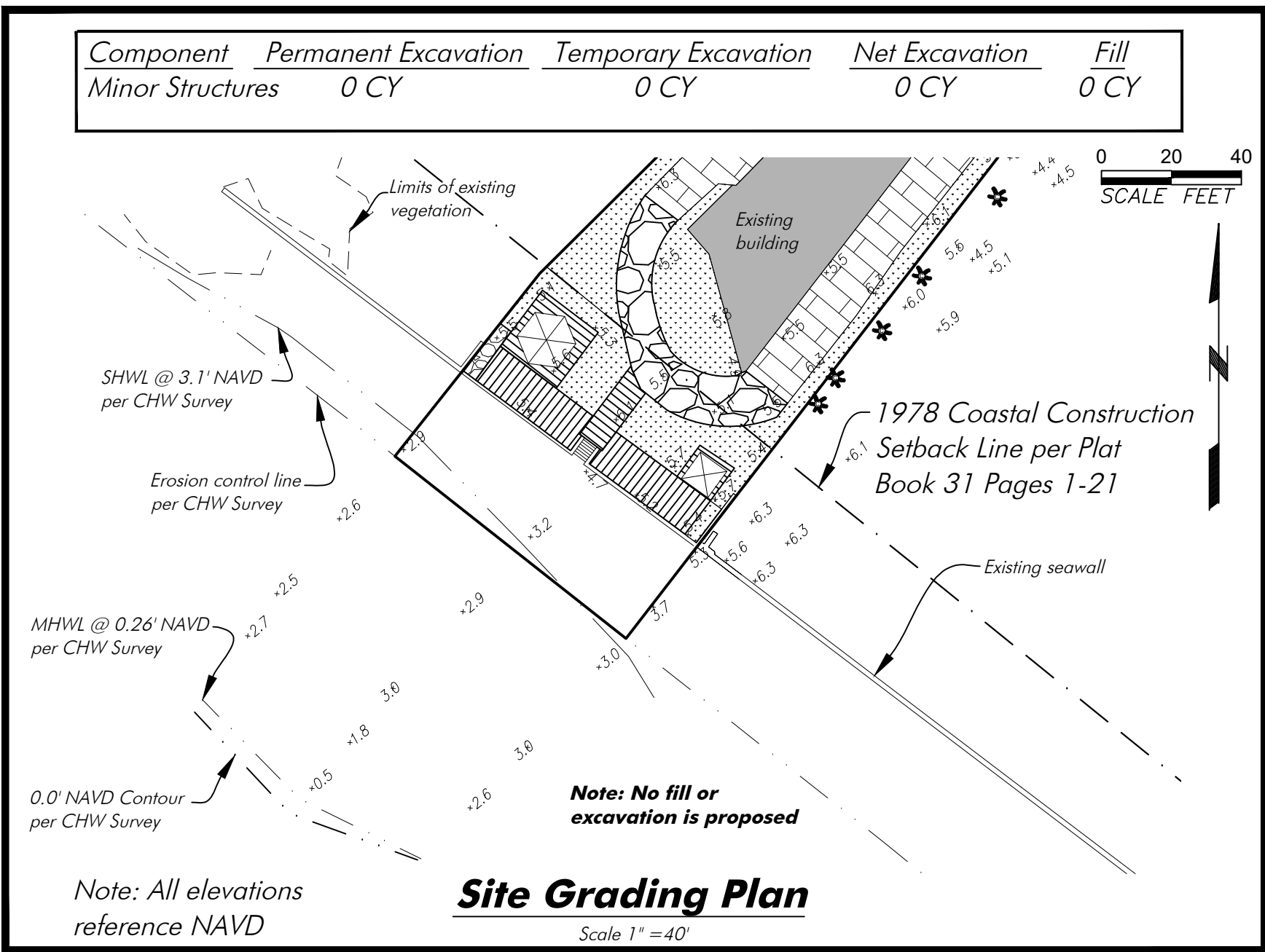


Detail A - Proposed Structures Dimension Plan
Scale 1" = 30'

Note: Proposed landscaping to consist of:
Evergreen Shrub (*Clusia guttifera*)
Green/Silver Buttonwood (*Conocarpus erectus*)
Railroad Vine (*Ipomoea pes-caprae*)
Sea Oats (*Uniola paniculata*)
Bitter Panicum (*Panicum amarum*)
Marsh Hay (*Spartina patens*)
Saw Palmetto (*Serenoa repens*)

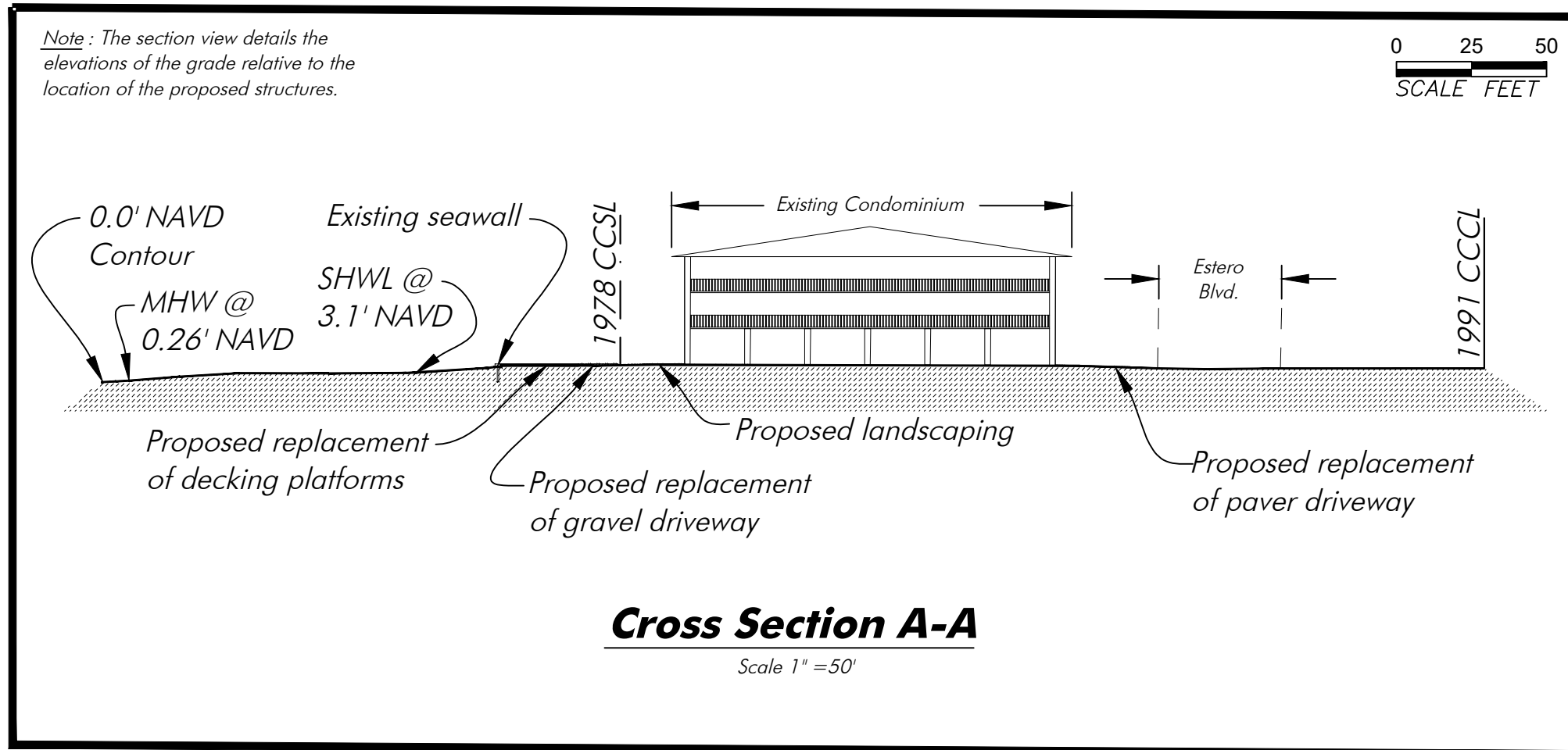


Overall Site Plan
Scale 1" = 200'



Note: All elevations reference NAVD

Site Grading Plan
Scale 1" = 40'



Cross Section A-A
Scale 1" = 50'



1938 Hill Avenue, Fort Myers, Florida 33901
Office: 239-334-6870 Fax: 239-334-7810
MARINE and ENVIRONMENTAL CONSULTANTS

**Shores of Fort Myers Beach
Condominium Association**
4750 Estero Blvd., Fort Myers Beach, Florida
STRAP: 28-46-24-W4-02500.00CE

DATE: 5-28-25
FILE: ShoresFmb1 Master
DRAFTER: JWA
DATUM: NAVD88
SCALE: 1" = Varies
SHEET: 1/1

**The Shores of Fort Myers Beach Condominium Association
Property Owner List**

STRAP	OWNER	PROPERTY ADDRESS	MAILING ADDRESS
28-46-24-W4-02500.1010	BML INVESTMENT GROUP LLC	4750 ESTERO BLVD #101, FORT MYERS BEACH FL 33931	5820 SW 93RD PL MIAMI FL 33173
28-46-24-W4-02500.1020	CAMPBELL BRIAN & NANCY	4750 ESTERO BLVD #102, FORT MYERS BEACH FL 33931	221 HILLBROOK DR SHEPHERDSVILLE KY 40165
28-46-24-W4-02500.1030	D & H GERMAN LAUNDRY SERVICE L	4750 ESTERO BLVD #103, FORT MYERS BEACH FL 33931	949 TAMIAMI TRL #208 PORT CHARLOTTE FL 33953
28-46-24-W4-02500.1040	BALDRIDGE KAREN ANN	4750 ESTERO BLVD #104, FORT MYERS BEACH FL 33931	108 RATHFARNUM DR WELDON SPRING MO 63304
28-46-24-W4-02500.2010	SOYKA JOANN M TR FOR JOHN Z + JOANN M SOYKA TRUST	4750 ESTERO BLVD #201, FORT MYERS BEACH FL 33931	6358 SAINT ANDREWS CIRCLE S FORT MYERS FL 33919
28-46-24-W4-02500.2020	SHELLEY MARY J	4750 ESTERO BLVD #202, FORT MYERS BEACH FL 33931	1211 S DUCHESNE DR SAINT CHARLES MO 63301
28-46-24-W4-02500.2030	CLUGH THOMAS ENTERPRISES LLC	4750 ESTERO BLVD #203, FORT MYERS BEACH FL 33931	1623 EAST 430 SOUTH LAFAYETTE IN 47909
28-46-24-W4-02500.2040	OSTENDORF DONALD T & OSTENDORF KAREN S TR FOR 4750 ESTERO BLVD 204 LAND TRUST	4750 ESTERO BLVD #204, FORT MYERS BEACH FL 33931	27530 RICHVIEW CT BONITA SPRINGS FL 34135

2025 FLORIDA NOT FOR PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# 761928

Entity Name: SHORES OF FORT MYERS BEACH CONDOMINIUM
ASSOCIATION, INC.

Current Principal Place of Business:

4750 ESTERO BLVD
FT MYERS BCH, FL 33931

Current Mailing Address:

221 HILLBROOK DRIVE
SHEPHERDSVILLE, KY 40165 US

FEI Number: 36-3653018

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

CAMPBELL, NANCY C
4750 ESTERO BLVD.
UNIT 102
FT MYERS BEACH , FL 33931 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: NANCY C. CAMPBELL

02/10/2025

Electronic Signature of Registered Agent

Date

Officer/Director Detail :

Title BOARD OF DIRECTOR

Name THOMAS, PHILIP

Address 1623 E. 430 SOUTH

City-State-Zip: LAFAYETTE IN 47909

Title BOARD OF DIRECTOR

Name CAMPBELL, BRIAN

Address 221 HILLBROOK DRIVE

City-State-Zip: SHEPHERDSVILLE KY 40165

Title BOARD OF DIRECTOR

Name SOYKA, JOANN

Address 6358 SAINT ANDREWS CIRCLE
SOUTH

City-State-Zip: FORT MYERS FL 33919

Title SECRETARY/TREASURER

Name CAMPBELL, NANCY

Address 221 HILLBROOK DRIVE

City-State-Zip: SHEPHERDSVILLE KY 40165

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 617, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: NANCY CAMPBELL

SEC/TREAS

02/10/2025

Electronic Signature of Signing Officer/Director Detail

Date

May 27, 2025

Town of Fort Myers Beach
c/o Fort Myers Beach Town Hall
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

**RE: The Shores of Fort Myers Beach Condominium Association, Inc.
4750 Estero Boulevard, Fort Myers Beach, Florida 33931 ("Property")**

Dear Sir/Madam,

In accordance with Sec. 34-201 of the Fort Myers Beach Town Ordinances, please accept this correspondence as The Shores of Fort Myers Beach Condominium Association, Inc. formal request for a special exception to replace and reconstruct the deck, chickee huts and landscaping that were destroyed by Hurricane Ian on the Association Property seaward of the 1978 coastal construction control line. A special exception is required in order for the Association to move forward with permitting and construction.

Attached hereto as **Exhibit "A"** is the site plan for the proposed construction and the relevant coastal construction lines.

Based upon my review of the governing documents of The Shores of Fort Myers Beach Condominium Association, Inc. and all other applicable relevant legal documents, I can attest that applying or petitioning for this special exception does not violate any applicable provisions within the documents, and to the best of my knowledge, any federal or state law. Approval by the Town of Fort Myers Beach would not violate any rights based upon the foregoing.

Pursuant to Sec. 34.88 of the Fort Myers Beach Town Ordinances it does not appear that anything within the request is contrary to the public interest and the health, safety, comfort, convenience, and welfare of the citizens of the town.

Sincerely,



Mark R. Wagner, Esq.

MRW/br

Enclosure

F:\LawOffice\Clients\Shores of Fort Myers Beach Condo Assoc\FMB Special Exception\Letter in Support fo Special Exception Request 05.23.25.docx

THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

BML INVESTMENT GROUP LLC
MARIA MOSQUERA
4750 ESTERO BLVD., UNIT 101
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.1010

Dear Maria:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

The scope of the proposed work includes:

- Replacement of the previously existing chickee huts, designed in collaboration with licensed contractors and representatives of the Seminole Tribe of Florida
- Landscaping enhancements to improve the overall appearance and functionality of the grounds
- Installation of new decking.

These improvements are intended to enhance the aesthetic value, safety, and usability of the property while maintaining the architectural integrity and community standards of our condominium.

As part of the permitting process, the Town of Fort Myers Beach requires documentation of approval from unit owners. Enclosed within this letter is a site plan outlining the proposed construction activities for your review.

Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

☒ **APPROVE**

☐ **DISAPPROVE**

Signature: _____



THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

BRIAN and NANCY CAMPBELL
4750 ESTERO BLVD., UNIT 102
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.1020

Dear Brian and Nancy:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

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Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

☒ **APPROVE**

☐ **DISAPPROVE**

Signature: Brian Campbell

THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

CLUGH THOMAS ENTERPRISES, LLC
PHILLIP and CHRIS THOMAS
4750 ESTERO BLVD., UNIT 203
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.2030

Dear Phil and Chris:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

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- Installation of new decking.

These improvements are intended to enhance the aesthetic value, safety, and usability of the property while maintaining the architectural integrity and community standards of our condominium.

As part of the permitting process, the Town of Fort Myers Beach requires documentation of approval from unit owners. Enclosed within this letter is a site plan outlining the proposed construction activities for your review.

Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

CLC **APPROVE**

____ **DISAPPROVE**

Signature:  Authenticity

05/21/25

THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

D&H GERMAN LAUNDRY SERVICE
4750 ESTERO BLVD., UNIT 103
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.1030

Dear Klaus and Grit:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

The scope of the proposed work includes:

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- Landscaping enhancements to improve the overall appearance and functionality of the grounds
- Installation of new decking.

These improvements are intended to enhance the aesthetic value, safety, and usability of the property while maintaining the architectural integrity and community standards of our condominium.

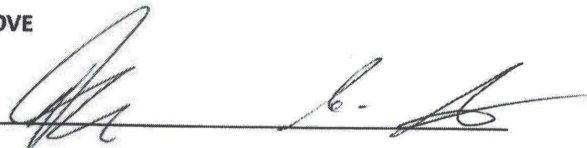
As part of the permitting process, the Town of Fort Myers Beach requires documentation of approval from unit owners. Enclosed within this letter is a site plan outlining the proposed construction activities for your review.

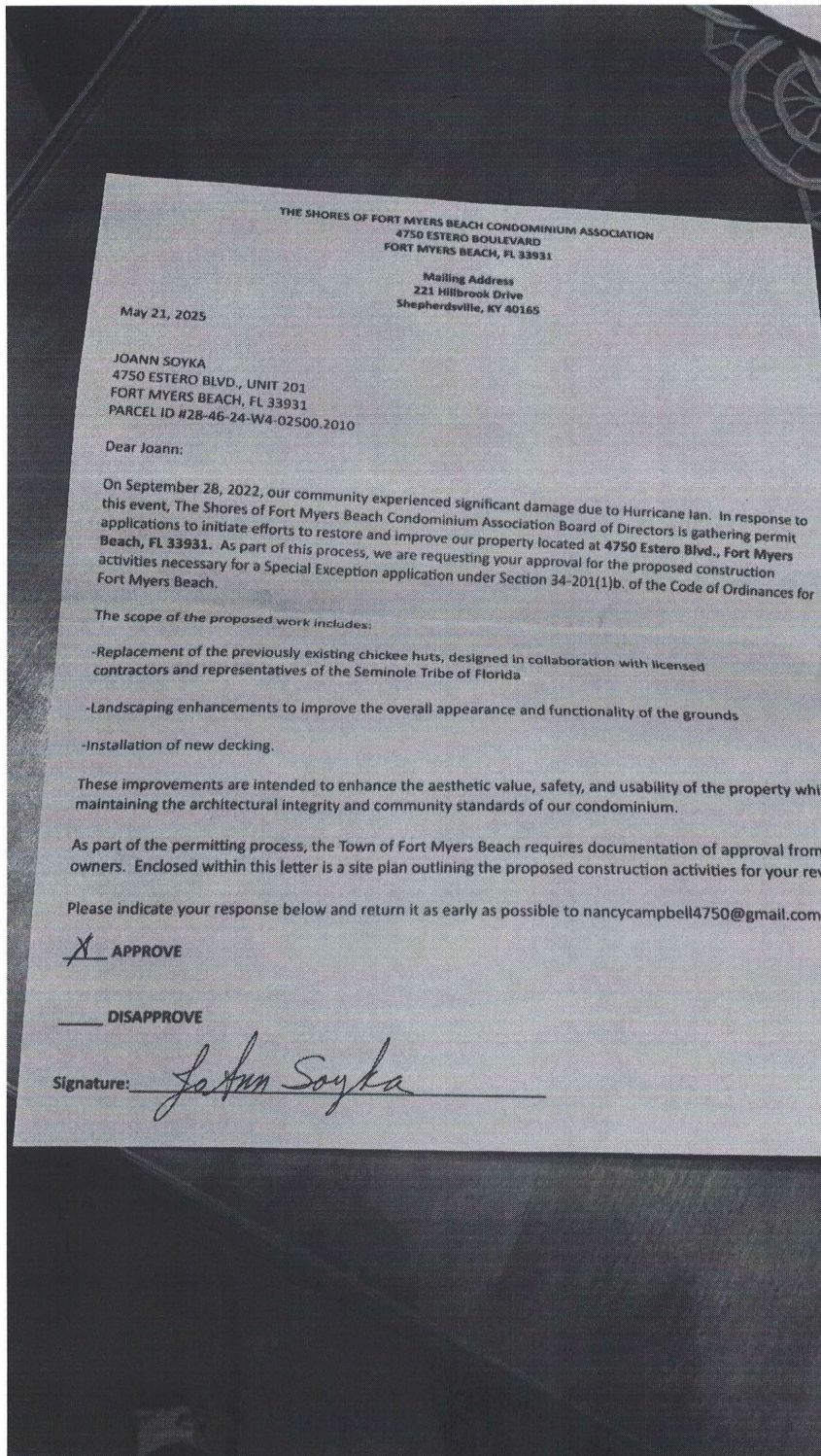
Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

☒ **APPROVE**

☐ **DISAPPROVE**

Signature: _____





THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

KAREN BALDRIDGE
4750 ESTERO BLVD., UNIT 104
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.1040

Dear Karen:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

The scope of the proposed work includes:

- Replacement of the previously existing chickee huts, designed in collaboration with licensed contractors and representatives of the Seminole Tribe of Florida
- Landscaping enhancements to improve the overall appearance and functionality of the grounds
- Installation of new decking.

These improvements are intended to enhance the aesthetic value, safety, and usability of the property while maintaining the architectural integrity and community standards of our condominium.

As part of the permitting process, the Town of Fort Myers Beach requires documentation of approval from unit owners. Enclosed within this letter is a site plan outlining the proposed construction activities for your review.

Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

☒ **APPROVE**

☐ **DISAPPROVE**

Signature: _____

Hans C. Baldrige 5/24/2025

THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

DON and KAREN OSTENDORF
4750 ESTERO BLVD., UNIT 204
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.2040

Dear Don and Karen:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

The scope of the proposed work includes:

- Replacement of the previously existing chickee huts, designed in collaboration with licensed contractors and representatives of the Seminole Tribe of Florida
- Landscaping enhancements to improve the overall appearance and functionality of the grounds
- Installation of new decking.

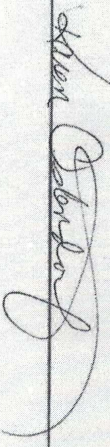
These improvements are intended to enhance the aesthetic value, safety, and usability of the property while maintaining the architectural integrity and community standards of our condominium.

As part of the permitting process, the Town of Fort Myers Beach requires documentation of approval from unit owners. Enclosed within this letter is a site plan outlining the proposed construction activities for your review.

Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

☒ **APPROVE**

☐ **DISAPPROVE**

Signature: 

THE SHORES OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

Mailing Address
221 Hillbrook Drive
Shepherdsville, KY 40165

May 21, 2025

RUSTY and MARY JANE SHELLEY
4750 ESTERO BLVD., UNIT 202
FORT MYERS BEACH, FL 33931
PARCEL ID #28-46-24-W4-02500.2020

Dear Rusty and Mary:

On September 28, 2022, our community experienced significant damage due to Hurricane Ian. In response to this event, The Shores of Fort Myers Beach Condominium Association Board of Directors is gathering permit applications to initiate efforts to restore and improve our property located at **4750 Estero Blvd., Fort Myers Beach, FL 33931**. As part of this process, we are requesting your approval for the proposed construction activities necessary for a Special Exception application under Section 34-201(1)b. of the Code of Ordinances for Fort Myers Beach.

The scope of the proposed work includes:

- Replacement of the previously existing chickee huts, designed in collaboration with licensed contractors and representatives of the Seminole Tribe of Florida
- Landscaping enhancements to improve the overall appearance and functionality of the grounds
- Installation of new decking.

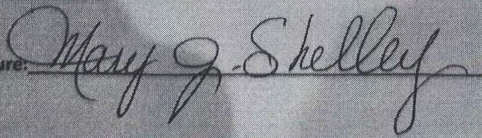
These improvements are intended to enhance the aesthetic value, safety, and usability of the property while maintaining the architectural integrity and community standards of our condominium.

As part of the permitting process, the Town of Fort Myers Beach requires documentation of approval from unit owners. Enclosed within this letter is a site plan outlining the proposed construction activities for your review.

Please indicate your response below and return it as early as possible to nancycampbell4750@gmail.com.

☒ APPROVE

☐ DISAPPROVE

Signature: 



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: 4750 Estero Blvd, Ft Myers Beach, FL 33931

STRAP Number: 28-46-24-W4-02500.00CE

Applicant: The Shores of Fort Myers Beach Condominium Association, Inc. Phone: 502-905-0902

Contact Name: Brian Campbell Phone: _____

Email: briancampbellky@aol.com Fax: _____

Current Zoning District: Residential Medium-Density (RM)

Future Land Use Map (FLUM) Category: Medium Residential

FLUM Density Range: 6-10 Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

☒ Special Exception

☐ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Brian Campbell Phone: 502-905-0902

**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: 221 Hillbrooke Drive, Shepherdsville, KY, 40165

Email: briancampbellky@aol.com Fax: _____

Contact Name: _____ Phone: 502-905-0902



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☒ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☒ Other* (please indicate) <u>Board of Director</u> | |

**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: Brian Campbell Phone: 502-905-0902
Address: 4750 Estero Blvd Unit 102, Ft Myers Beach, FL 33931
Email: briancampbellky@aol.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 _____ - _____
- ☐ 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: _____

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, _____ 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.

X Brian Campbell
Signature

Brian Campbell
Printed Name

STATE OF Kentucky COUNTY OF Ballard

The foregoing instrument was certified and subscribed before me by means of ☒ physical

presence OR ☐ online notarization, this 22nd day of May, 2025, by

Brian Campbell, ☒ who is personally known to me OR ☐ who has produced

_____ as identification.

(SEAL)

Nancy Campbell NSAL
Notary Public Signature KYNP 69182
EXPIRES 3-20-27

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
_____	_____
_____	_____
_____	_____
_____	_____



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
_____	_____
_____	_____
_____	_____
_____	_____



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, Brian Campbell (name), as Board of Director (title)
of Shores of Ft Myers Beach Condo Association, Inc. (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.



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

The Shores of Fort Myers Beach Condo Association, Inc.

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

Brian Campbell
Signature

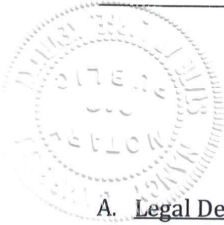
Board of Directors
Title

Brian Campbell
Typed or Printed Name

5-22-2025
Date

STATE OF Ky COUNTY OF Ballitt

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 22nd day of May, 2025, by Brian Campbell ☒ who is personally known to me OR ☐ who has produced _____ as identification.



Seal

Nancy Campbell NSAL
Notary Public Signature
KYNP69182
Expires 3-20-27

PART VI- Property Information

A. Legal Description:

STRAP: 28-46-24-W4-02500.00CE

Property Address: 4750 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: _____

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.

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Page 7 of 11



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 71.5 feet
Depth (please provide an average width if irregular in shape) 202.5 feet
Frontage on street: 59.9 feet. Frontage on waterbody: 82.9 feet
Total land area: 14,479 ☐ acres ☒ square feet

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

The subject property is located northwest of Big Carlos Pass Bridge, at 4750 Estero Blvd, Ft Myers Beach, FL 33931. Go over Big Carlos Pass Bridge and head north on Estero Blvd. In approximately 3.6 miles, the property will be on the gulf side. Refer to Exhibit 6-4.

☒ 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 | ☐ Marina |
| ☒ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



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.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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.



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: The Shores of Fort Myers Beach
Authorized Applicant: Brian Campbell
LEPA STRAP Number(s): 28-46-24-W4-02500.00CE

Current Property Status: Active
Current Zoning: Residential Medium-Density (RM)
Future Land Use Map (FLUM) Category: Medium Residential
Platted Overlay? ☐ yes ☒ no FLUM Density Range:

Requested Action:

☐	Use of premises in the EC (Environmentally Critical) zoning district for:
☒	Use of premises in the <u>RM</u> zoning district for:
The proposed impacts consist of the replacement of two (2) tiki huts and decking that were damaged by Hurricane Ian. The tiki huts and decking	
will be built within the previously existing footprint.	

PART I

Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

This request is for approval of a special exception to rebuild/replace two (2)
previously existing tiki huts and decking damaged by Hurricane Ian for the Shores
of Fort Myers Beach Condominium Association located at 4750 Estero Boulevard,
Fort Myers Beach, FL 33931 Lee County, Florida, Section 28, Township 46, Range
24 E. Due to the activities being located within a coastal special flood hazard area
and seaward of the 1978 Coastal Construction Control Line (CCCL), a special
exception to the Town of Fort Myers Beach LDC is required. There are no changes
in configuration, the proposed improvements are to be completed within the
previously existing footprint.

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:
The property qualifies for a special exception because the proposed
activities are consistent with the goals and objectives of the Fort Myers
Beach Comprehensive Plan, with the future land use map designating
this area a medium residential (RM). Granting this request will not effect
surrounding properties.

Granting the requested Special Exception could impact surrounding properties as follows: Granting this special exception request will benefit the integrity of the condo association and surrounding properties by enhancing the aesthetic value, safety, and usability of the property.

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 and 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 and 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

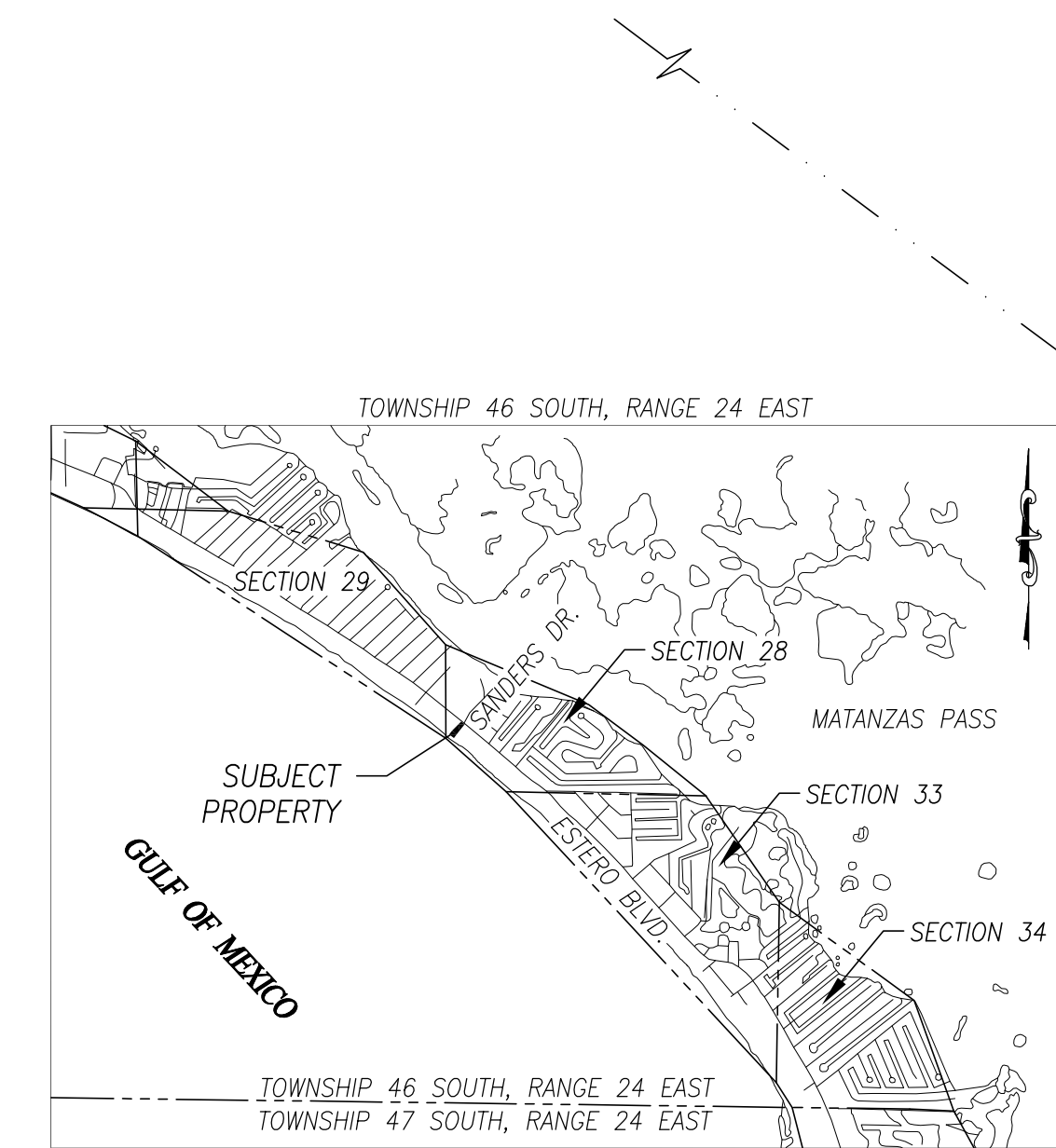
- corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make 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.

LEGEND

- ⊕ = BENCHMARK, SET PK NAIL AND DISK - "LB 6896"
- ⬆ = FOUND FLORIDA DEPARTMENT OF NATURAL RESOURCES (DNR) RANGE MONUMENT R 193 RESET 1982
- ⬆ = SET PK NAIL AND DISK - "CHW INC. LB 5075"
- = FOUND 5/8" REBAR - NO IDENTIFICATION
- = FOUND 1/2" REBAR - NO IDENTIFICATION
- = FOUND 3/4" PIPE - NO IDENTIFICATION
- ⬆ = SET 5/8" REBAR AND CAP - "CHW INC. LB 5075"
- = FOUND 4" X 4" CONCRETE MONUMENT WITH 1/4" REBAR
- = FOUND FLORIDA DEPARTMENT OF NATURAL RESOURCES CONCRETE MONUMENT
- (C) = CALCULATED DATA
- (D) = LEGAL DESCRIPTION DATA
- E = EASTING STATE PLANE COORDINATE (FLORIDA WEST ZONE)
- (M) = FIELD MEASURED DATA
- N = NORTHING STATE PLANE COORDINATE (FLORIDA WEST ZONE)
- (P) = RECORD PLAT DATA
- = SPOT ELEVATION, NAVD 1988
- ⬆ = WOOD UTILITY POLE
- ⬆ = CONCRETE UTILITY POLE
- ⬆ = GUY ANCHOR
- ⬆ = ELECTRIC BOX
- ⬆ = CABLE PEDESTAL
- ⬆ = WATER METER
- ⬆ = BACKFLOW PREVENTER
- ⬆ = WATER VALVE
- ⬆ = FIRE HYDRANT
- ⬆ = SANITARY SEWER MANHOLE
- ⬆ = SANITARY SEWER CLEAN-OUT
- ⬆ = CATCH BASIN WITH GRATE INLET
- ⬆ = COMBINATION UTILITY BOX
- ⬆ = COCONUT PALM



SURVEYOR'S NOTES

- BEARINGS AND COORDINATES SHOWN HEREON ARE GRID BEARINGS BASED UPON THE NORTH AMERICAN DATUM OF 1983, 2011 ADJUSTMENT (NAD83/NSRS 2011) FLORIDA WEST ZONE. DISTANCES SHOWN ARE GROUND DISTANCES MEASURED IN FEET. COORDINATES SHOWN ARE GRID COORDINATES DATUM BASED UPON DEPARTMENT OF NATURAL RESOURCES CONTROL MONUMENTS 12-83-A31 AND 12-83-A32 HAVING NAD83/90 GRID COORDINATES AS SHOWN.
- NO UNDERGROUND IMPROVEMENTS OR FOUNDATIONS WERE LOCATED UNDER THE SCOPE OF THIS SURVEY.
- THIS PARCEL LIES IN FLOOD ZONES AS SHOWN BASED ON FEMA FLOOD INSURANCE RATE MAP PANEL 120710D5666, DATED NOVEMBER 17, 2022. FLOOD ZONE LINES SHOWN HEREON WERE SCALED FROM THE INDICATED F.I.R.M. MAP PANEL.
- BOUNDARY INFORMATION SHOWN HEREON IS BASED UPON THE RECORD PLAT AND LEGAL DESCRIPTION, AND RIGHT-OF-WAY CONTROL SURVEY MAP OF ESTERO BOULEVARD, COUNTY ROAD 865 PREPARED BY BEAN, WHITAKER, LUTZ & KAREH, INC., DATED APRIL 16, 2010. NO SEARCH OF THE PUBLIC RECORD WAS MADE BY THIS SURVEYOR.
- THE STREET ADDRESS IS:
4750 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931
- ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988). ELEVATIONS ARE BASED UPON TIES TO THE FLORIDA DEPARTMENT OF TRANSPORTATION PERMANENT REFERENCE NETWORK REAL-TIME KINEMATIC (RTK) GLOBAL POSITIONING SYSTEM (GPS) CONTROL NETWORK.
- MEAN HIGH WATER ELEVATION 0.26', NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988), WAS DETERMINED BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION.
- THE 1991 COASTAL CONSTRUCTION CONTROL LINE SHOWN HEREON IS AS RECORDED IN PLAT BOOK 48, PAGES 15-34, AND FILED IN OFFICIAL RECORDS BOOK 2224, PAGES 1010 THROUGH 1041 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA ON MAY 30, 1991.
- THE 1978 COASTAL CONSTRUCTION SETBACK LINE SHOWN HEREON IS AS RECORDED BY ORDINANCE 76-3 RECORDED APRIL 17, 1978 IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.
- THIS TIDAL WATER SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES.
- PARCEL SURVEYED CONTAINS 0.421 ACRE (18,323 SQ. FT.), MORE OR LESS.

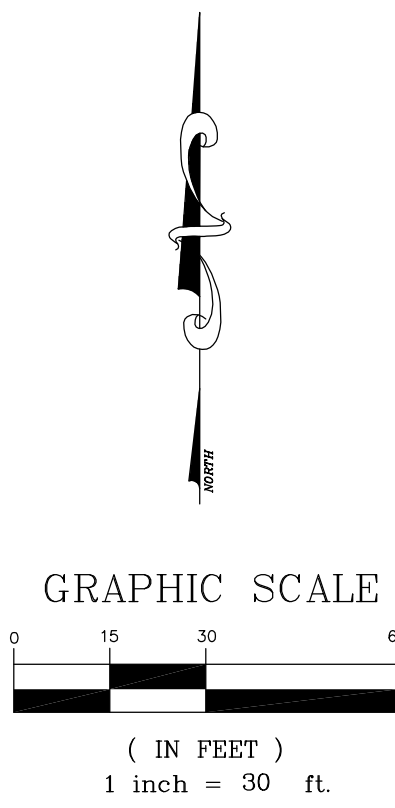
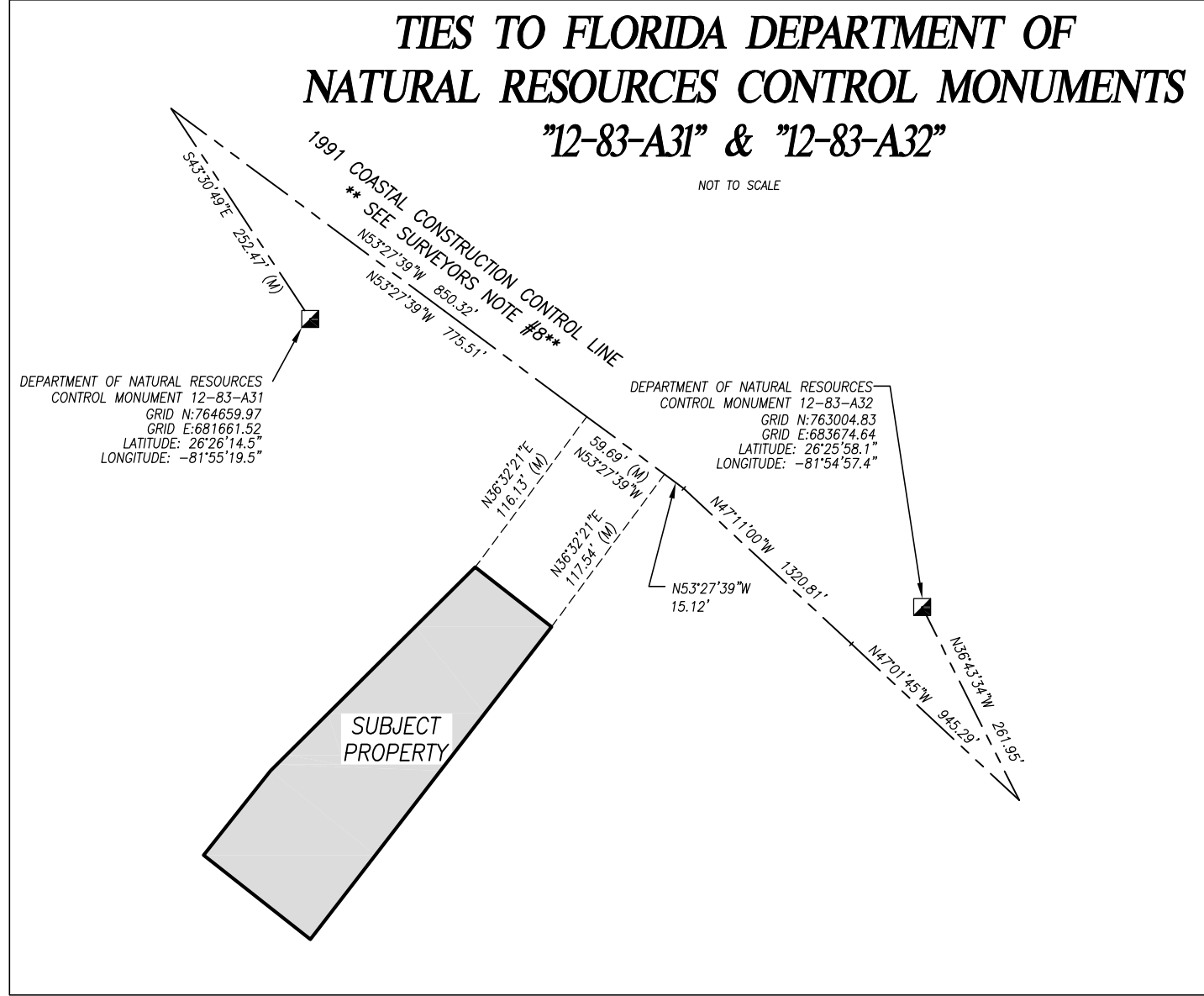
LEGAL DESCRIPTION

A PART OF LOT 1, BLOCK J, OF HYDE PARK SUBDIVISION, AS FILED AND RECORDED IN PLAT BOOK 7 AT PAGE 20, AND PART OF SECTION 28 AND 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST, ESTERO ISLAND, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 6, BLOCK J OF HYDE PARK, ACCORDING TO THE PLAT AS RECORDED IN PLAT BOOK 7, AT PAGE 20, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN SOUTHEASTERLY ALONG THE EXTENSION OF THE NORTHEASTERLY LINE OF SAID BLOCK J, HYDE PARK FOR 129.0 FEET TO THE POINT OF BEGINNING OF THE LANDS HEREIN DESCRIBED;

THENCE CONTINUE ON THE SAME COURSE FOR 60.11 FEET TO THE NORTHWESTERLY CORNER OF THE LANDS DEEDED IN DEED BOOK 274 AT PAGE 543 OF SAID PUBLIC RECORDS; THENCE SOUTHWESTERLY (S 37°46' W) FOR 226.0 FEET TO THE SOUTHWESTERLY CORNER OF THE LANDS DEEDED IN D.B. 274 AT PAGE 543; THENCE DEFLECT RIGHT 2'00" FROM THE PRECEDING COURSE AND RUN 32.7 FEET TO THE MEAN HIGH TIDE LINE OF THE GULF OF MEXICO; THENCE NORTHWESTERLY ALONG THE SAID MEAN HIGH TIDE LINE FOR 82.90 FEET TO A POINT THROUGH WHICH A LINE RUNNING AT RIGHT ANGLES TO THE SOUTHEASTERLY EXTENSION OF THE NORTHEASTERLY LINE OF BLOCK J WOULD PASS THROUGH A POINT ON THE SOUTH LINE OF LOT 1, BLOCK J, OF HYDE PARK SUBDIVISION 50 FEET SOUTHEASTERLY FROM THE WESTERLY CORNER OF SAID LOT 1, BLOCK J; THENCE NORTHEASTERLY AT RIGHT ANGLES TO SAID EXTENDED LINE FORM 79.70 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT 1, BLOCK J; THENCE DEFLECT 7'02" RIGHT AND RUN NORTHEASTERLY ALONG THE OCCUPIED LINE AS DEEDED IN DEED BOOK 166 AT PAGE 431 FOR 179.0 FEET TO THE POINT OF BEGINNING.

MAP OF BOUNDARY & TIDAL WATER SURVEY OF A PORTION OF LOTS 1, 2, 3 AND 6, BLOCK "J", HYDE PARK LYING IN SECTION 28, TOWNSHIP 46 SOUTH, RANGE 24 EAST, TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA



JOB NO.: 240448		SHEET NO.: 1 OF 1	
DRAWN BY: FA		CHECKED BY: TLR	
FIELD BOOK: 244/06		FIELD BOOK: 244/06	
12831 Westings Drive, Units 5-6 Fort Myers, FL 33905 www.chw-inc.com		est. 1981 FLORIDA CA-5075	
CHW INC.		A NWS COMPANY	
DRAWING SCALE: 1" = 30'		REVISION DATE:	
COMPUTER FILE: 240448		SIGNATURE DATE: 07/12/2024	
SURVEY DATE: 07/03/2024		SIGNATURE DATE: 07/12/2024	
This map prepared by: JAMES M. CONDON, PSM		Professional Surveyor & Mapper	
CERTIFICATE OF AUTHORIZATION NO. LB 5075		NOT VALID WITHOUT THE SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER	

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2025-505**

1. Request:

Meeting Date: August 12, 2025

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20250170, REQUESTING TWO VARIANCES FROM LDC TABLE 34-3 FOR THE PROPERTY LOCATED AT 202 CRESCENT STREET, GENERALLY REFERED TO AS STRAP NUMBER 19-46-24-W4-0150E.0090 IN FORT MYERS BEACH, TO VARY 7.1 FEET FROM REQUIRED 10 FOOT SIDE SETBACK AND TO VARY 15 FEET FROM THE REQUIRED 25 FOOT WATERBODY SETBACK TO ELEVATE THE EXISTING SINGLE-FAMILY RESIDENCE IN THE RM ZONING DISTRICT; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The LPA will make recommendations to the Town Council regarding the variance requests or approve the variance requests unanimously.

What the action accomplishes:

The LPA recommendation will be forwarded on to the Town Council or serve as final agency action if the requests are approved unanimously.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

5. Background:

John W. Richard, the owner of 202 Crescent St, is requesting a variance from the Town's Land Development Code (LDC) setback Table 34-3, which requires single-family home in the RM zoning district to provide a minimum of 25 feet waterbody setback and 10 feet side setback for lots greater than 75 feet in width on all waterfront parcels.

The subject property currently supports five single-family residences out of which three were previously elevated to meet flood requirements and fourth was recently granted an administrative variance. The subject single-family residence was built in 1952 with non-conforming side setback of 2.9 feet from the south property boundary and waterbody setback of 10 feet measured to the deck from the east property boundary. The Applicant is now requesting two variances from LDC Table 34-3 to allow elevation of the existing single-family residence in the same footprint to meet flood regulations and to maintain the existing nonconforming side and waterbody setbacks.

Attachments:

1. NS LPA Resolution 25-XX 202 Crescent Street
2. Exhibit A- Location map
3. Exhibit B- Survey or Site Plan
4. Exhibit C-Applicant's explanation
5. Staff report

Financial Impact:

Unknown

6. **Alternative Action**

Approval/ Denial

7. **Staff Recommendations:**

Approval with conditions

8. **Recommended Approval:**

Judith Frankel, Principal Planner

Date: July 28, 2025

Georgina Cid, Community Development Manager

Date: July 31, 2025

Frankie Kropacek, Community Development Director

Date: August 01, 2025

nancy stuparich, Town Attorney

Date: August 05, 2025



Amy Baker, Town Clerk

Date: August 05, 2025

LPA RESOLUTION 2025-XX

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20250170, REQUESTING TWO VARIANCES FROM LDC TABLE 34-3 FOR THE PROPERTY LOCATED AT 202 CRESCENT STREET, GENERALLY REFERED TO AS STRAP NUMBER 19-46-24-W4-0150E.0090 IN FORT MYERS BEACH, TO VARY 7.1 FEET FROM REQUIRED 10 FOOT SIDE SETBACK AND TO VARY 15 FEET FROM THE REQUIRED 25 FOOT WATERBODY SETBACK TO ELEVATE THE EXISTING SINGLE-FAMILY RESIDENCE IN THE RM ZONING DISTRICT; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, 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, John W. Richard (hereinafter "Applicant"), is the owner of real property located at 202 Crescent Street, Fort Myers Beach, Florida (hereinafter "subject property") and shown on Exhibit "A"; and

WHEREAS, the STRAP for the subject property is 19-46-24-W4-0150E.0090, and the legal description for the subject property is set forth on the survey in Exhibit "B"; and

WHEREAS, the subject property is within the Mixed Residential Future Land Use Map category according to the Town of Fort Myers Beach Comprehensive Plan; and

WHEREAS, the subject property is located in the Residential Multi-family (RM) zoning district; and

WHEREAS, the RM zoning district requires a minimum lot width of 75 feet and a minimum lot depth of 100 feet, with a total lot area of 7,500 square feet; and

WHEREAS, the subject property conforms to the minimum dimensional requirements of the RM zoning district, and is subject to the standard setbacks of Table 34-3 of the Land Development Code; and

WHEREAS, Table 34-3 of the Land Development Code requires a single-family home in the RM zoning district to provide a minimum 25 feet waterbody setback and 10 feet side setback for lots greater than 75 feet in width; and

WHEREAS, the Applicant proposes to vacate the ground floor level and construct a vertical addition above to meet FEMA flood requirements as explained in Exhibit "C". The proposed vertical addition will maintain the existing 10 feet waterbody setback from the deck to the east property boundary and 2.9-foot side setback from the south property boundary, see Exhibit "B"; and

WHEREAS, the Applicant requests two variances from LDC Table 34-3 to allow the construction of a vertical addition in the same footprint as the existing single-family dwelling and to maintain the nonconforming 10 feet waterbody setback from the east property boundary where otherwise a 25 feet waterbody setback is required and to maintain the existing nonconforming side setback of 2.9 feet from the south property boundary where otherwise a 10 feet side setback is required; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on August 12, 2025, 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; and

WHEREAS, in accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA makes the following findings and conclusions:

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

WHEREAS, eligible members of the LPA voted __ to__ by roll call vote to approve / approve with conditions / deny the requested variances with 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.
2. The variance shall only apply to the single-family home as shown on the provided site plan. Demolition or substantial damage to the residential structure shall render the variances to be null and void.
3. The variance is limited to the subject property as a lot of record consistent with the legal description described herein.
4. This variance applies to the vertical addition above an existing single-family structure in the subject property only. Any additional modification of the single-family dwelling or additional construction on subject property must comply with all applicable regulations or seek a new variance.
5. The variance applies to the modified setbacks of the south and east property boundaries as shown in "Exhibit B" only. No other portion of the single-family dwelling or accessory structure(s) may be extended into a required setback.

WHEREAS, Ordinance 24-06 amended Section 34-232(d) of the LDC to provide that:

(d) Owner-initiated requests for variances, or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, that are:

- 1) approved by a unanimous vote of the local planning agency members who are eligible to vote, and
- 2) not subject to a request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 business days after the date of the local planning agency decision, excluding holidays, only require one public hearing before the local planning agency, and the local planning agency decision is final agency action.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

1. The foregoing "WHEREAS" clauses are adopted herein by reference and constitute the findings and conclusions of the LPA.

2. VAR20250170, with the conditions contained herein, received / did not receive unanimous approval from eligible voting members of the LPA on August 12, 2025.

3. This Resolution shall constitute the equivalent of a development order and final agency action, subject to any request for an additional review by the Town Council filed with the Town Clerk within 10 business days of the LPA decision as authorized in Section 34-232(d) of the LDC.

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

Chair Anita Cereceda	_____
Vice-Chair Jane Plummer	_____
Member James Boan	_____
Member Douglas Eckmann	_____
Member Don Sudduth	_____
Member John McLean	_____
Member James Dunlap	_____

DULY PASSED AND ADOPTED THIS _____ day of August, 2025.

Local Planning Agency of the Town of
Fort Myers Beach

By: _____
Anita Cereceda, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: _____
Vose Law Firm, Town Attorney

By: _____
Amy Baker, Town Clerk

EXHIBIT A: Location Map
EXHIBIT B: Survey
EXHIBIT C: Applicant's explanation



Tools

Images year: 2025

02/06/2025

View 1

☒ Display Parcels

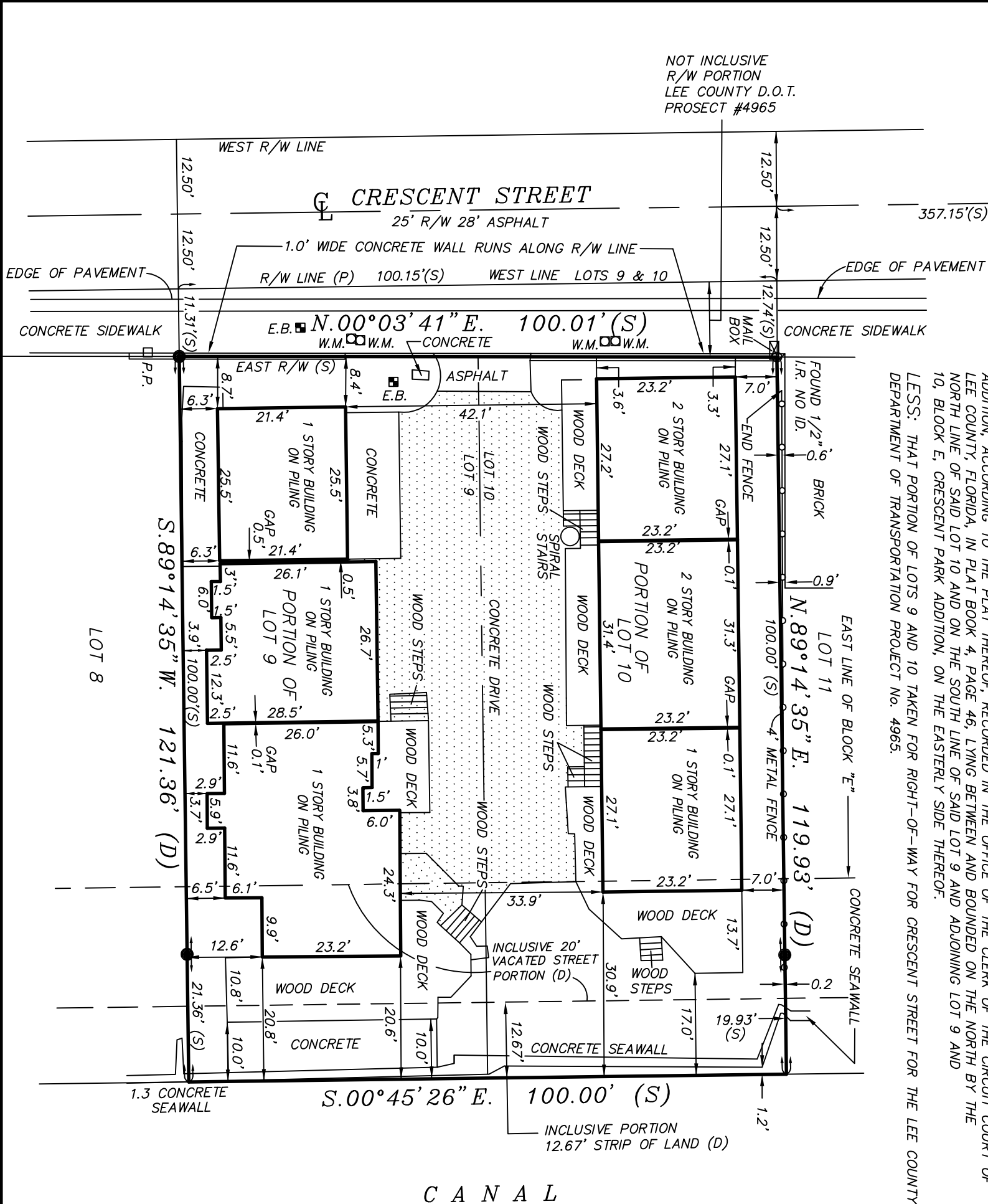
proposed structure
to elevate

DESCRIPTION:
LOT 9 AND 10, BLOCK E, OF CRESCENT PARK ADDITION, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF LEE COUNTY, FLORIDA, IN PLAT BOOK 4, PAGE 46.

ALSO: THAT CERTAIN STRIP OF LAND 12.67 FEET WIDE BETWEEN THE ROADWAY AND THE WEST SIDE OF THE CANAL LOCATED IN BLOCK E, OF CRESCENT PARK ADDITION, AND BETWEEN THE NORTH LINE OF LOT 10 EXTENDED TO THE CANAL AND THE SOUTH LINE OF LOT 9 EXTENDED TO THE CANAL OF SAID BLOCK E, CRESCENT PARK ADDITION, ACCORDING TO THE MAP OR PLAT OF SAME RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF LEE COUNTY, FLORIDA, IN PLAT BOOK 4, PAGE 46, SAID STRIP OF LAND BEING 12.67 FEET WIDE BY 100 FEET DEEP LYING EASTERLY FROM SAID LOTS 9 AND 10 AND BETWEEN THE ROADWAY AND CANAL.

ALSO: THAT CERTAIN VACATED AND CLOSED 20 FOOT STREET OR ROADWAY IN BLOCK E OF SAID CRESCENT PARK ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF LEE COUNTY, FLORIDA, IN PLAT BOOK 4, PAGE 46, LYING BETWEEN AND BOUNDED ON THE NORTH BY THE NORTH LINE OF SAID LOT 10 AND ON THE SOUTH LINE OF SAID LOT 9 AND ADJOINING LOT 9 AND 10, BLOCK E, CRESCENT PARK ADDITION, ON THE EASTERLY SIDE THEREOF.

LESS: THAT PORTION OF LOTS 9 AND 10 TAKEN FOR RIGHT-OF-WAY FOR CRESCENT STREET FOR THE LEE COUNTY DEPARTMENT OF TRANSPORTATION PROJECT No. 4965.



AS-BUILT SURVEY OF
PORTION LOTS 9 & 10,
BLOCK "E",
CRESCENT PARK ADDITION,
(PLAT BOOK 4, PAGE 46)
SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

- LEGEND:**
- SET 1 1/2" IRON ROD (CAP LB6921)
 - FOUND IRON ROD (I.R.)
 - CONCRETE MONUMENT (C.M.)
 - P.R.M. PERMANENT REFERENCE MONUMENT
 - P.U.E. PUBLIC UTILITY EASEMENT
 - D.E. DRAINAGE EASEMENT
 - P.C. POINT OF CURVATURE
 - O.R. OFFICIAL RECORDS BOOK
 - (S) AS PER SURVEY
 - (D) AS PER DEED
 - (P) AS PER PLAT
 - (1) CURVE NUMBER
 - (1) LINE NUMBER
 - R/W RIGHT-OF-WAY
 - E.B. CENTERLINE
 - D.O.T. DEPARTMENT OF TRANSPORTATION
 - RECLAIM WATER BOX
 - W.M. WATER METER
 - O/H OVERHEAD POWER
 - P.P. POWER POLE
 - G.A.&W. GUY ANCHOR & WIRE
 - T.S.B. TELEPHONE SERVICE BOX
 - N/D NAIL & DISK
 - N/T.T. NAIL & TIN TAB
 - ELEV. ELEVATION
 - B.M. BENCHMARK
 - A/C TYPICAL ELEVATION
 - W.S. AIR CONDITIONER
 - P.E. WATER SYSTEM
 - C.M.P. POOL EQUIPMENT
 - CONCRETE CORRUGATED METAL PIPE
 - DRAINAGE ARROW

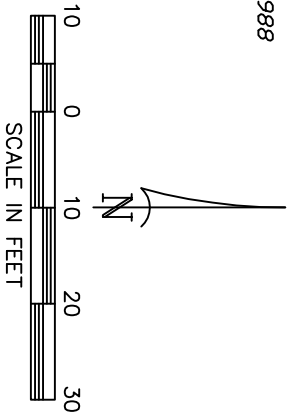
SURVEY NOTES:

1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE EAST RIGHT-OF-WAY LINE OF CRESCENT STREET, AS BEING N.00°03'41"E.
2. FIELD NOTES IN CRESCENT PARK ADDITION.
3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
5. THIS SURVEY DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD.
6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
7. THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 668.001-006, FS 668.50, FS 472.025, SJ-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.
8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
9. ISSUANCE OF THIS DRAWING, FROM THIS FIRM SHALL NOT RELIEVE THE BUILDER AND/OR CONTRACTORS OF THE RESPONSIBILITY TO REVIEW AND VERIFY ALL NOTES, DIMENSIONS, ELEVATIONS, AND ADHERENCE TO APPLICABLE BUILDING CODES PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION. BUILDER MAY NEED TO ADJUST ELEVATION AND/OR SETBACKS PRIOR TO CONSTRUCTION IF OTHER RESTRICTIONS EXIST OR APPLY.
10. THIS SURVEY IS INTENDED TO BE VIEWED AS AN 11X17, 20 SCALE DRAWING.

FLOOD ZONE: *AE* ELEVATION: 11.00' NAVD 1988

COMMUNITY NO.: 120673 PANEL NO.: 0554
SUFFIX --- G REVISION DATE: 11/17/2022
MAP NUMBER: 12071C0554G

THIS SURVEY IS CERTIFIED TO:
JOHN RICHARD



REVISED:	DESCRIPTION:	BY:	Philip M Mould, LS6515, State of Florida
			State of Florida
			PHILLIP M. MOULD
			PROFESSIONAL SURVEYOR AND MAPPER
			LS6515 - STATE OF FLORIDA
DATE OF LAST FIELD WORK:	5/12/25		
DRAWN:	CHECK:	SCALE	PROJ. #
RLB	PMM	1"=20'	CPA-E9
SURVEY DATE	FILE NO.	SHT.-1	
5/12/25	46-24-19	OF - 1	
FLORIDA CERTIFICATE OF AUTHORIZATION LB6921			HARRIS-JORGENSEN, LLC. 3048 DEL PRADO BLVD. S, SUITE 100 CAPE CORAL, FLORIDA 33904 PHONE: (239) 257-2624 FAX: (239) 257-2921

202 Crescent St....(BLDG 2) Elevate Home in Existing location

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

Extraordinary Conditions: Side and Waterbody Setbacks:

The home was constructed in 1952 prior to the building department, zoning and or comprehensive plan existed.

The home is existing on site and is sandwiched between other structures on site and cannot be relocated.

The side yard setback of 3.6' is existing and has been this way since constructed. The adjacent property owner to the west is the same as this owner. Because the side yard is less than 5' we are required to do a public hearing variance, otherwise an administrative variance may have applied.

The rear deck is existing and will be elevated with the home as well. The deck as well was constructed prior to permitting however was subsequently permitted when repair to seawall was done back in 2004 and at the time was permitted with a 5' setback to seawall. We are currently at a 10' setback. The previous storm removed a portion of the deck.

Result is not from any action taken by applicant:

Hurricane Ian and Milton caused minor damage to the structure, consequently the owner is looking to now elevate the home for compliance with FEMA. Additionally the owner is not looking to reduce the existing setbacks any further from what is existing. Simply maintain what they currently have.

Minimum Variance requested:

The side and rear yard variance for the home in it's existing location are the minimum variances required. Unfortunately with a side yard setback existing less than 5' a public hearing variance is required.

Granting the variance will not be injurious to the neighborhood:

The home has maintained this side yard setback since 1952, There are 5 buildings on site, 3 structures have been elevated previously with permits in 2000 and 2001. We have applied for an administrative variance for one of the remaining structures (BLDG 1). This will be the last home to be elevated.

July 14, 2025

Town of Fort Myers Beach
Community Development
2731 Oak St
Fort Myers Beach FL 33931

RE: VAR20250170 202 Crescent St

Dear Sakshi:

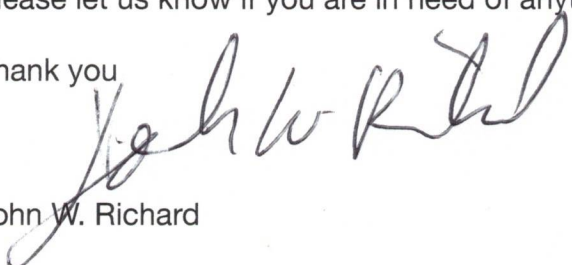
Please accept this letter as our confirmation that the variance being requested under VAR20250170 is for a 2'9" side yard setback pursuant to Survey dated 6/1/25 (as submitted). Therefore the side yard which currently exists will require a 7'3" reduction in setback when the home is elevated.

In addition to the side yard setback, the application includes a request to maintain the waterbody setback at 10'. When the home is elevated we will require a 15' reduction in waterbody setback.

The survey submitted with the application which is dated 6/1/25 is correctly reflecting the structure on the property.

Please let us know if you are in need of anything additional.

Thank you


John W. Richard



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20250170

CASE NAME: 202 Crescent St; requesting two variances from LDC Table 34-3, to vary 7.1 feet from required 10-foot side setback and to vary 15 feet from the required 25-foot waterbody setback to elevate the existing single-family residence in the RM zoning district.

LPA

HEARING DATE: August 12, 2025

STAFF

RECOMMENDATION: Approval with conditions

**PREPARED/
SUBMITTED BY:** Jason Green, AICP

I. APPLICATION SUMMARY

Applicant/Owner: John W. Richard

Request: Two variances from Table 34-3, to vary 7.1 feet from the required 10-foot side setback and to vary 15 feet from the required 25-foot waterbody setback in the RM zoned waterbody lot.

The request is to allow elevation of the existing single-family residence in the same footprint and to maintain the existing nonconforming side and waterbody setbacks.

Subject property: See attached site plan

Physical Address: 202 Crescent Street

STRAP #: 19-46-24-W4-0150E.0090

FLU: Mixed Residential

Zoning: Residential Multi-family (RM)

Adjacent zoning and land uses:

North:	MIXED RESIDENTIAL Single family residential
South:	MIXED RESIDENTIAL Single family residential
East:	Canal
West:	PEDESTRIAN COMMERCIAL Commercial Planned Development

II. BACKGROUND AND ANALYSIS

Background:

John W. Richard, the owner of 202 Crescent St, is requesting a variance from the Town's Land Development Code (LDC) setback Table 34-3, which requires single-family home in the RM zoning district to provide a minimum 25 feet waterbody setback and 10 feet side setback for lots greater than 75 feet in width on all waterfront parcels.

The subject property currently supports five single-family residences out of which three were previously elevated to meet flood requirements and fourth was recently granted an administrative variance. The subject single-family residence was built in 1952 with non-conforming side setback of 2.9 feet from the south property boundary and waterbody setback of 10 feet measured to the deck from the east property boundary. The Applicant is now requesting two variances from LDC Table 34-3 to allow elevation of the existing single-family residence in the same footprint to meet flood regulations and to maintain the existing nonconforming side and waterbody setbacks.

Analysis:

The purpose of the RM zoning district is to designate suitable locations for a wide variety of multifamily residences. A conforming lot in RM zoning is at least 75 feet wide and 100 feet deep or 7,500 sq. ft. of area. The subject property is 100 feet wide and 121 feet deep, conforming lot. Table 34-3 of the Land Development Code requires a single-family home in the RM zoning district to provide a minimum 25 feet waterbody setback and 10 feet side setback for lots greater than 75 feet in width.

The property currently supports five single-family residences out of which three were previously elevated to meet flood requirements and the fourth was recently granted an administrative variance for reduced setbacks to elevate the structure to meet the

flood regulations. The subject single-family residence was built in 1952 with non-conforming side setback of 2.9 feet from the south property boundary where a 10-foot-wide side setback is required for lots greater than 75-foot width and non-conforming waterbody setback of 10 feet measured to the deck from the east property boundary where otherwise a 25-foot waterbody setback is required from the canal.

As per LDC Section 34-268 (a)(1)a., the director is authorized to grant an administrative variance to modify the side and waterbody setbacks to permit the remodeling of or additions to existing structures that are nonconforming with regard to a specific setback so long as the remodeling or addition will not result in a further diminution of the setback. As per LDC Section 34-268 (b)(4), modified setbacks, through administrative setback variances, may not be less than five feet. As the existing non-conforming side-setback is less than 5 feet, the Applicant must apply for a full variance.

The Applicant is now requesting two variances from LDC Table 34-3 to allow elevation of the existing single-family residence in the same footprint to meet flood regulations and to maintain the nonconforming 10 feet waterbody setback from the east property boundary and the existing nonconforming side setback of 2.9 feet from the south property boundary.

Neighborhood Compatibility:

The subject property is part of an old single-family residential neighborhood where all single-family residences on the same property and few other properties in this neighborhood do not appear to comply with the Town's side setback requirements. Most of the single-family homes appear to comply with the Town's the waterbody setback requirements.

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.*

There are exceptional conditions inherent to the property. The subject single-family residence was built in 1952, with non-conforming side setback of 2.9 feet from the south property boundary where a 10-foot-wide side setback is required for lots greater than 75-foot width and non-conforming waterbody setback of 10 feet measured to the deck from the east property boundary where otherwise a 25-foot waterbody setback is required from the canal. The side setback regulations and the waterbody setback regulations were established several years after the construction of the house.

- 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.*

As mentioned earlier, the property supports a non-conforming single-family residence that was built several years before the 10-foot side setback and the 25-foot waterbody setback was required by LDC. The Applicant plans to elevate the existing house with non-conforming side and waterbody setbacks to meet the flood regulations.

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

The request is for a de minimis variance and granting this variance will allow the Applicant to elevate the existing single-family residence with non-conforming side and waterbody setback.

- 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.

- 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.

III. RECOMMENDATION

Staff has reviewed the request for two variances from LDC Table 34-3, *to vary 7.1 feet from required 10-foot side setback and to vary 15 feet from the required 25-foot waterbody setback to elevate the existing single-family residence in the RM zoning district* and find that the variances request does meet the requirements set-forth in sec. 34-87.

Therefore, staff recommends **APPROVAL WITH CONDITIONS** of VAR20250170, request to allow elevation of the existing single-family residence in the same footprint and to maintain the existing nonconforming side and waterbody setbacks.

IV. CONDITIONS

If approval of the request is granted, the following conditions should be considered for incorporation into the resolution of approval.

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.
2. The variance shall only apply to the single-family home as shown on the provided site plan. Demolition or substantial damage to the residential structure shall render the variances to be null and void.
3. The variance is limited to the subject property as a lot of record consistent with the legal description described herein.
4. This variance applies to the vertical addition above an existing single-family structure in the subject property only. Any additional modification of the single-family dwelling or additional construction on subject property must comply with all applicable regulations or seek a new variance.
5. The variance applies to the modified setbacks of the south and east property boundaries as shown in "Exhibit B" only. No other portion of the single-family dwelling or accessory structure(s) may be extended into a required setback.

V. EXHIBITS

EXHIBIT A: Location Map

EXHIBIT B: Survey

EXHIBIT C: Applicant's explanation

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2025-517**

1. Request:

Meeting Date: August 12, 2025

A RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH FLORIDA RECOMMENDING APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20250136, REQUESTING: 1) VARIANCE FROM LDC SECTION 34-638(D)(6), WHICH REQUIRES ACCESSORY STRUCTURES ON CORNER LOTS TO PROVIDE A MINIMUM OF 15 FEET SIDE STREET SETBACK FOR CORNER LOTS WITH WIDTH FROM 50 FEET TO 75 FEET; AND 2) VARIANCE FROM LDC 34-1174(b) TO ALLOW AN ACCESSORY STRUCTURE INCLUDING POOL, CLOSER TO SIDE STREET RIGHT-OF-WAY LINE THAN THE PRINCIPAL BUILDING IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 211 OSTEGO DRIVE; 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 LPA will make recommendations to the Town Council regarding the variance requests or approve the variance requests unanimously.

What the action accomplishes:

The LPA recommendation will be forwarded on to the Town Council or serve as final agency action if the requests are approved unanimously.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

5. Background:

Glenn Harris III, the owner of 211 Ostego Drive, is requesting a variance from LDC Section 34-638(d)(6) which requires a 15-foot-wide side street setback for corner lots with width from 50 feet to 75 feet and a variance from LDC 34-1174(b) which prohibits location of accessory structures including pools, closer to the side street right-of-way line than the principal building in the RC zoning district.

The subject property is 55 feet wide and 108 feet long, confirming lot in RC zoning district. It is a corner lot abutting Caroline street on east side and Ostego drive on the West and south side of the property. The property supports a single-family residence built in 1979. The Applicant is now requesting variances from LDC Section 34-638(d)(6) and LDC Section 34-1174(b) to allow the construction of a pool with a reduced side street setback of 10.7 feet situated closer to the side street right-of-way line or the east property boundary along Ostego Drive, than the principal building in the RC zoning district.

Attachments:

1. NS Res 25-xx, VAR20250136 with Variance Criteria
2. LPA staff report
3. Exhibit A- Site Plan
4. Exhibit B- Survey
5. Exhibit D- Application packet

Financial Impact:

Unknown

6. Alternative Action

Deny/ Approval

7. **Staff Recommendations:**

Approval with conditions

8. **Recommended Approval:**

Judith Frankel, Principal Planner

Date: July 28, 2025

Georgina Cid, Community Development Manager

Date: July 31, 2025

Frankie Kropacek, Community Development Director

Date: August 01, 2025

nancy stuparich, Town Attorney

Date: August 05, 2025



Amy Baker, Town Clerk

Date: August 05, 2025

RESOLUTION NUMBER 2025-XX

A RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH FLORIDA RECOMMENDING APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20250136, REQUESTING: 1) VARIANCE FROM LDC SECTION 34-638(D)(6), WHICH REQUIRES ACCESSORY STRUCTURES ON CORNER LOTS TO PROVIDE A MINIMUM OF 15 FEET SIDE STREET SETBACK FOR CORNER LOTS WITH WIDTH FROM 50 FEET TO 75 FEET; AND 2)VARIANCE FROM LDC 34-1174(b) TO ALLOW AN ACCESSORY STRUCTURE INCLUDING POOL, CLOSER TO SIDE STREET RIGHT-OF-WAY LINE THAN THE PRINCIPAL BUILDING IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 211 OSTEGO DRIVE; 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, Glenn Harris III on behalf of GH-3- RB CAPITAL, LLC, is the owner of the property located at 211 Ostego Drive, Fort Myers Beach ("the Property") and is requesting a variance from LDC Section 34-638(d)(6) to reduce the required 15 foot side street setback for corner lots with width from 50 feet to 75 feet and a variance from LDC 34-1174(b) to allow an accessory structure/accessory pool closer to the side street right of way line than the principal building in RC zoning district; and

WHEREAS, the STRAP number for the Property is 19-46-24-W4-00402.0030; 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 August 12, 2025, 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; and

WHEREAS, in accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance and based on competent and substantial

evidence in the record, the LPA makes the following findings and conclusions as set forth below and in Exhibit A:

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

B. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

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

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

WHEREAS, eligible members of the LPA voted ___ to___ by roll call vote to approve / approve with conditions / deny the requested variances with 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.
2. The variance shall only apply to the single-family home as shown on the provided site plan. Demolition or substantial damage to the residential structure shall render the variances to be null and void.
3. The proposed fence and hedge in the Right-Of-Way Easement along Ostego drive is subject to additional approval by the Town's Public Works department.

WHEREAS, Ordinance 24-06 amended Section 34-232(d) of the LDC to provide that:

(d) Owner-initiated requests for variances, or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, that are:

- 1) approved by a unanimous vote of the local planning agency members who are eligible to vote, and

2) not subject to a request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 business days after the date of the local planning agency decision, excluding holidays, only require one public hearing before the local planning agency, and the local planning agency decision is final agency action.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

- 1. The foregoing “WHEREAS” clauses are adopted herein by reference and constitute the findings and conclusions of the LPA.
- 2. VAR20250136, with the conditions contained herein, received / did not receive unanimous approval from eligible voting members of the LPA on August 12, 2025.
- 3. This Resolution shall constitute the equivalent of a development order and final agency action, subject to any request for an additional review by the Town Council filed with the Town Clerk within 10 business days of the LPA decision as authorized in Section 34-232(d) of the LDC.

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

Chair Anita Cereceda	_____
Vice-Chair Jane Plummer	_____
Member James Boan	_____
Member Douglas Eckmann	_____
Member Don Sudduth	_____
Member John McLean	_____
Member James Dunlap	_____

DULY PASSED AND ADOPTED THIS _____ day of August, 2025.

Local Planning Agency of the Town of
Fort Myers Beach

By: _____
Anita Cereceda, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: _____
Vose Law Firm, Town Attorney

By: _____
Amy Baker, Town Clerk

EXHIBIT A

Variance Criteria

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

1) Variance from LDC Section 34-638(d)(6), which requires accessory structures on corner lots to provide a minimum of 15 feet side street setback for corner lots with width from 50 feet to 75 feet,

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

The subject property is a corner lot abutting Caroline Street on the east side and Ostego Drive on the west and south side of the property. The property supports a single-family residence built in 1979 with 7.79 feet side setback from the North property line. If the applicant wants to expand or add any accessory structures including pool to the property, the new structure will need to encroach into the required side street setbacks and would therefore require a variance from LDC Section 34-638(d)(6) and LDC Section 34-1174(b).

- b. *That the conditions justifying the variance **are** the result of actions of the applicant taken after the adoption of the regulation in question.*

The property is an oddly shaped lot abutting streets on three sides. The property supports a single-family residence built in 1979, which is compliant with the requirements of the LDC. The Applicant is now requesting variances from LDC Section 34-638(d)(6) and LDC Section 34-1174(b) to allow construction of a pool with reduced side street setback, built closer to the east property boundary than the principal residence.

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

The request is for a de minimis variance and granting this variance will allow the Applicant to build a pool in the side street setback from the east property boundary along Ostego Drive.

- 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 the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

2) Variance from LDC 34-1174(b) to allow an accessory structure including pool, closer to side street right-of-way line than the principal building in the RC zoning district.

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

The subject property is a corner lot abutting Caroline Street on the east side and Ostego Drive on the west and south side of the property. The property supports a single-family residence built in 1979 with 7.79 feet side setback from the North property line. If the applicant wants to expand or add any accessory structures including pool to the property, the new structure will need to encroach into the required side street setbacks and would therefore require a variance from LDC Section 34-638(d)(6) and LDC Section 34-1174(b).

- b. *That the conditions justifying the variance **are** the result of actions of the applicant taken after the adoption of the regulation in question.*

The property is an oddly shaped lot abutting streets on three sides. The property supports a single-family residence built in 1979, which is compliant with the requirements of the LDC. The Applicant is now requesting variances from LDC Section 34-638(d)(6) and LDC Section 34-1174(b) to allow construction of a pool with reduced side street setback, built closer to the east property boundary than the principal residence.

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

The request is for a de minimis variance and granting this variance will allow the Applicant to build a pool in the side street setback from the east property boundary along Ostego Drive.

- 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 the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- 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.

- f. *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.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20250136

CASE NAME: 211 Ostego Drive;
1) Variance from LDC Section 34-638(d)(6), which requires accessory structures on corner lots to provide a minimum of 15 feet side street setback for corner lots with width from 50 feet to 75 feet, and
2) Variance from LDC 34-1174(b) to allow an accessory structure including pool, closer to side street right-of-way line than the principal building in the RC zoning district.

LPA

HEARING DATE: August 12, 2025

STAFF

RECOMMENDATION: Approval with conditions

**PREPARED/
SUBMITTED BY:** Sakshi Goel LEEP AP/ Jason Green, AICP

I. APPLICATION SUMMARY

Owner/Agent: GLENN HARRIS III FOR GH-3- RB CAPITAL, LLC(Owner)/ Shelly Lucas (Agent)

Request: The owner is requesting a variance from LDC Section 34-638(d)(6) to reduce the required 15 foot side street setback for corner lots with width from 50 feet to 75 feet and a variance from LDC 34-1174(b) to allow an accessory structure/accessory pool closer to the side street right of way line than the principal building in a RC zoning district.

Subject property: See attached site plan

Physical Address: 211 Ostego Drive

STRAP #: 19-46-24-W4-00402.0030
FLU: Mixed Residential
Zoning: Residential Conservation (RC)

Adjacent zoning and land uses:

North: Residential Conservation (RC)
Mixed Residential
South: Downtown
Pedestrian Commercial
East: Residential Conservation (RC)
Mixed Residential
West: Residential Conservation (RC)
Mixed Residential

II. BACKGROUND AND ANALYSIS

Background:

Glenn Harris III, the owner of 211 Ostego Drive, is requesting a variance from LDC Section 34-638(d)(6) which requires a 15 foot wide side street setback for corner lots with width from 50 feet to 75 feet and a variance from LDC 34-1174(b) which prohibits location of accessory structures including pools, closer to the side street right-of-way line than the principal building in the RC zoning district.

The subject property is 55 feet wide and 108 feet long, confirming lot in RC zoning district. It is a corner lot abutting Caroline Street on the East side and Ostego Drive on the West and south side of the property. The property supports a single-family residence built in 1979. The Applicant is now requesting variances from LDC Section 34-638(d)(6) and LDC Section 34-1174(b) to allow the construction of a pool with a reduced side street setback of 10.7 feet situated closer to the side street right-of-way line or the east property boundary along Ostego Drive, than the principal building in the RC zoning district.

Analysis:

The purpose of the RC zoning district is to recognize certain older neighborhoods that had been zoned for duplex, multifamily, or mobile homes purposes prior to incorporation of the town. A conforming lot in RC zoning is at least 45 feet wide and 80 feet deep or 4,000 sq. ft. of area. The subject property is 55 feet wide and 108 feet deep, conforming lot.

The property supports a single-family residence built in 1979 with 7.79 feet side setback from the North property line. It is a corner lot abutting Caroline Street on east side and Ostego drive on the West and south side of the property. As per LDC Section 34-638(d)(6) a minimum of 15-foot-wide side street setback is required for corner lots with width from 50 feet to 75 feet. As per LDC Section 34-1174(b), no accessory structures accessory structures, closer to the side street right-of-way line than the principal building in the RC zoning district.

The shape of the lot and the minimum setbacks in LDC make expansion or addition of any accessory structures difficult. The placement of the pool on the east side of the house with reduced side street setbacks is the only area on the lot in which the homeowner could construct a pool of a similar size to the ones observed in the surrounding neighborhood. The Applicant is therefore requesting a variance from LDC Section 34-638(d)(6) and LDC Section 34-1174(b) to allow construction of a pool with a reduced 10.7' side street setback and situated closer to the side street right-of-way line along Ostego drive than the principal building in the RC zoning district.

The Applicant is proposing a fence around the pool, where part of the fence is situated in the Town's utility easement and is subject to approval from the Town's Public Works department during the permitting process. No development is proposed above 24" within the visibility triangles.

Neighborhood Compatibility:

The subject property is part of an existing residential neighborhood where several properties including neighboring through lots and a similar corner lot appear to have accessory pool closer to the street right-of-way than the principal building.

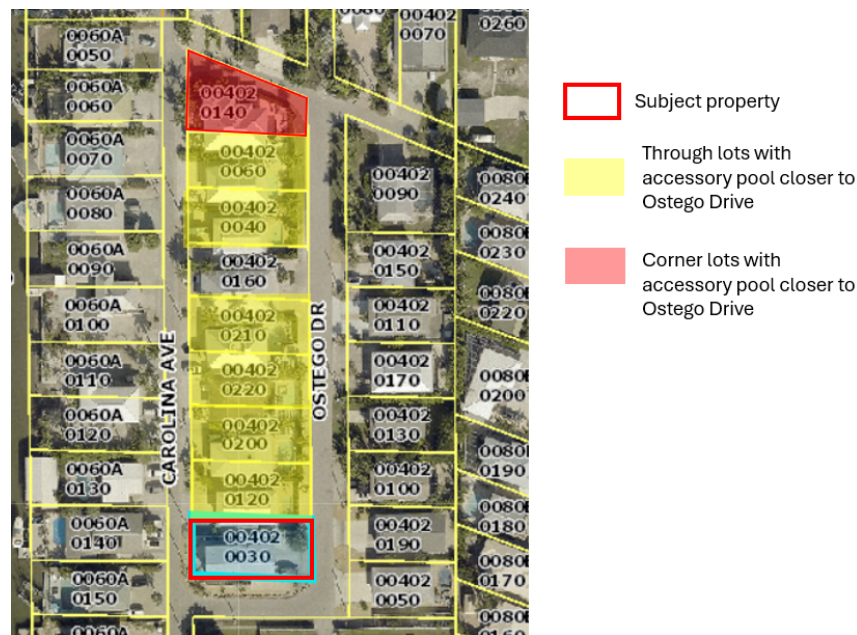


Image 1: Aerial image of the neighboring residential neighborhood.

Findings and Conclusions:

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

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

The subject property is a corner lot abutting Caroline Street on the east side and Ostego Drive on the west and south side of the property. The property supports a single-family residence built in 1979 with 7.79 feet side setback from the North property line. If the applicant wants to expand or add any accessory structures including pool to the property, the new structure will need to encroach into the required side street setbacks and would therefore require a variance from LDC Section 34-638(d)(6) and LDC Section 34-1174(b).

- b. *That the conditions justifying the variance **are** the result of actions of the applicant taken after the adoption of the regulation in question.*

The property is an oddly shaped lot abutting streets on three sides. The property supports a single-family residence built in 1979, which is compliant with the requirements of the LDC. The Applicant is now requesting variances from LDC Section 34-638(d)(6) and LDC Section 34-1174(b) to allow construction of a pool with reduced side street setback, built closer to the east property boundary than the principal residence.

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

The request is for a de minimis variance and granting this variance will allow the Applicant to build a pool in the side street setback from the east property boundary along Ostego Drive.

- 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 the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- 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 Section 34-638(d)(6) which requires a 15 foot wide side street setback for corner lots with width from 50 feet to 75 feet and a variance from LDC 34-1174(b) which prohibits location of accessory structures, such as pools, closer to the side street right-of-way line than the principal building in the RC zoning district* and found that the requested variances **do meet** the requirements set-forth in sec. 34-87.

Therefore, staff recommends **APPROVAL WITH CONDITIONS** of VAR20250136 to allow the construction of a pool with a reduced side street setback of 10.7 feet situated closer to the side street right-of-way line than the principal building in the RC zoning district.

If LPA were to approve the variance request, staff has recommended conditions of approval.

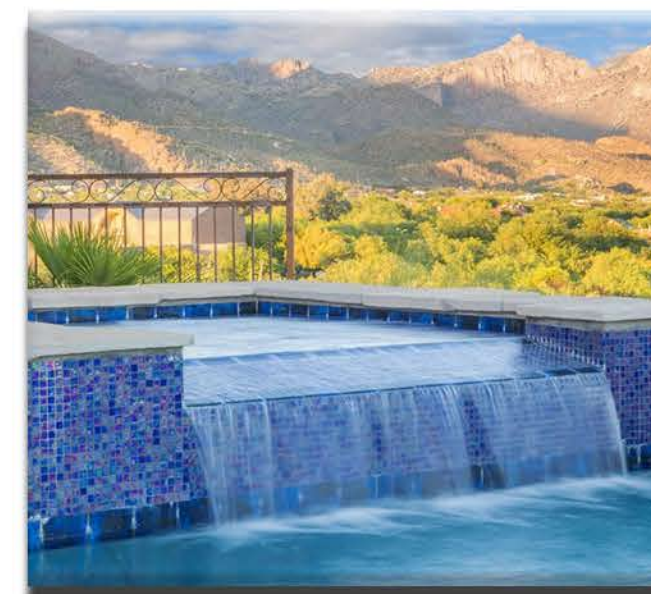
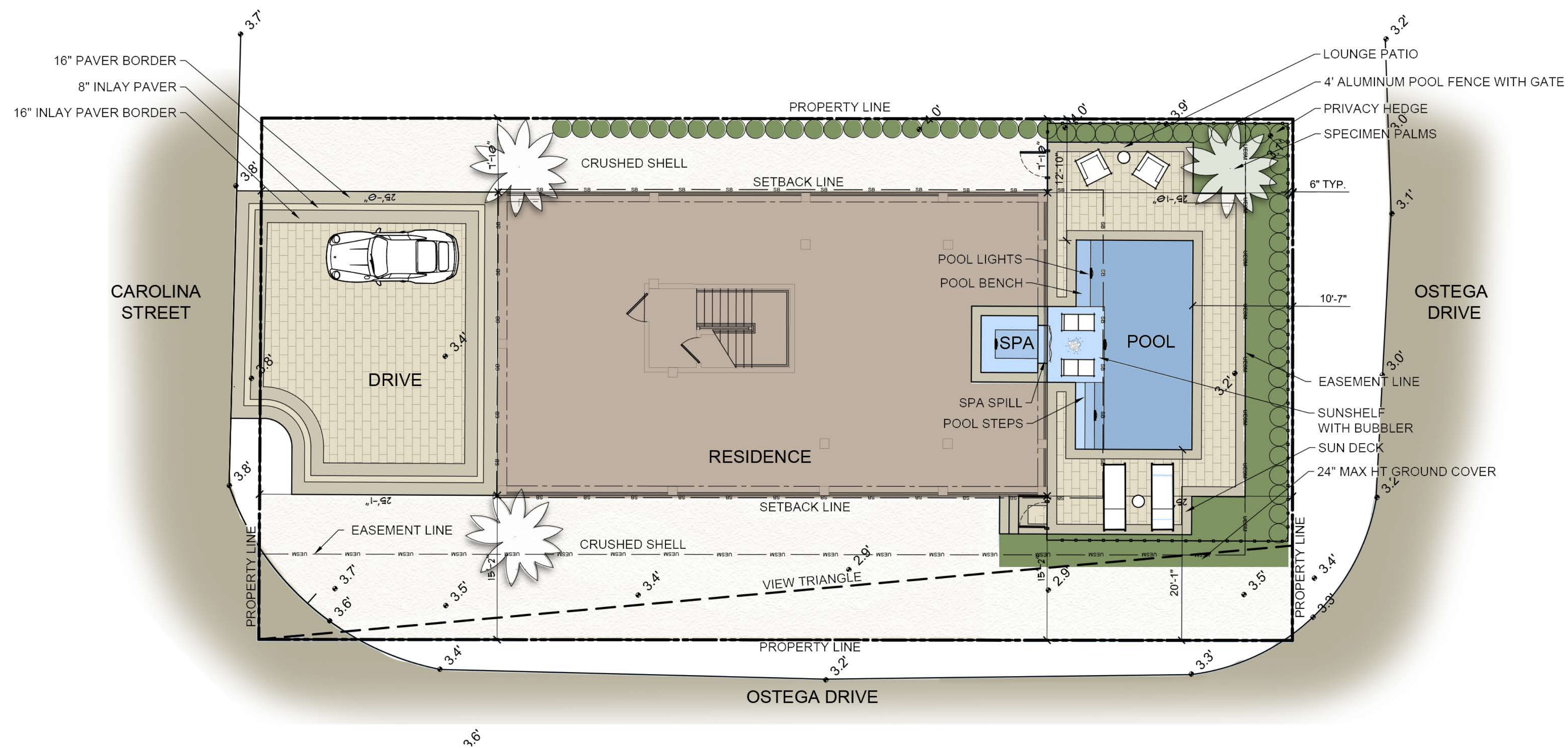
IV. CONDITIONS FOR APPROVAL

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.
- 2) The variance shall only apply to the single-family home as shown on the provided site plan. Demolition or substantial damage to the residential structure shall render the variances to be null and void.
- 3) The proposed fence and hedge in Right-Of-Way Easement along Ostego drive is subject to approval by the Town's Public Works department.

VI. EXHIBITS

Exhibit A - Site plan
Exhibit B- Survey
Exhibit C- Postcards to Adjacent Property Owners
Exhibit D- Complete Application Packet

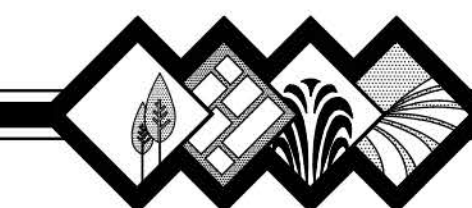


HARRIS RESIDENCE

SITE CONCEPT

PREPARED FOR: MR. AND MRS. HARRIS

211 OSTEGO DRIVE, FORT MYERS BEACH, FL 33937 MAY 29, 2025



OUTSIDE PRODUCTIONS
international
THE ART & SCIENCE OF OUTDOOR
LIVING

5844 TAVILLA CIRCLE SUITE 207 NAPLES FL 34110
P 239-390-1334, F 239-390-1336 Web: www.opdesign.net

This plan and design are the property of Outside Productions, Inc. Plans shall not be copied or reproduced without permission of Outside Productions, Inc.

Project Number: (126-23)

Scale: 1/4" = 1'-0"



NORTH

211 OSTEGO DRIVE
FORT MYERS BEACH,
LEE COUNTY, FL 33937
CLIENT:
MR. AND MRS. HARRIS

W. PATRICK TREFZ, ASLA
LANDSCAPE ARCHITECT #1481

This plan and design are the property of Outside Productions, Inc. Plans shall not be copied or reproduced without permission of Outside Productions, Inc.

REVISION DATE: 00-00-00

REV	DATE	DESCRIPTION
1	06-26-24	DRIVEWAY APRON REV.
2	05-20-25	REVISION PER OWNER
3	05-29-25	REVISION PER COMMENTS

0.00 DEPICTS PROPOSED GRADE

-5'
(0.00) DEPICTS PROPOSED POOL DEPTHS

DEPICTS EXISTING GRADE

DIRECTION OF DRAINAGE FLOW

1
LD1 CATCH BASIN W/ ATRIUM GRATE

2
LD1 12" CATCH BASIN W/ DK. GREEN GRATE

3
LD1 CHANNEL DRAIN

6" CORR. DRAIN PIPE

2, 3" SLEEVES

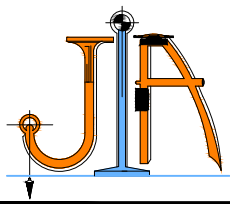
BASE DATA COLLECTED FROM MULTIPLE SOURCES,
CONTRACTOR TO VERIFY ALL EXISTING FIELD
CONDITIONS PRIOR TO ORDERING, FABRICATION
AND CONSTRUCTION.



LG1

NOTICE: ALL DRAWING DISCREPANCIES MUST BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT, AND LA APPROVED SHOP DRAWINGS MUST BE OBTAINED PRIOR TO ORDERING MATERIALS OR BEGINNING CONSTRUCTION.





JOHN IBARRA & ASSOC., INC.
Professional Land Surveyors & Mappers

WWW.IBARRALANDSURVEYORS.COM
777 N.W. 72nd AVENUE
SUITE 3025
MIAMI, FLORIDA 33126
PH: (305) 262-0400
FAX : (305) 262-0401

3725 DEL PRADO BLVD. S.
SUITE B
CAPE CORAL, FL 33904
PHONE : (239) 540-2660
FAX : (239) 540-2664

MAP OF AS-BUILT SURVEY (SETBACK SURVEY)

211 Ostego Drive, Fort Myers Beach, FLORIDA 33931



LOCATION MAP

SCALE = N.T.S.

LEGAL NOTES TO ACCOMPANY SKETCH OF SURVEY:

- THERE MAY BE EASEMENTS RECORDED IN THE PUBLIC RECORDS NOT SHOWN ON THIS SURVEY.
- EXAMINATIONS OF THE ABSTRACT OF TITLE WILL HAVE TO BE MADE TO DETERMINE RECORDED INSTRUMENTS, IF ANY, AFFECTING THE PROPERTY.
- THIS SURVEY IS SUBJECT TO DEDICATIONS, LIMITATIONS, RESTRICTIONS, RESERVATIONS OR EASEMENTS OF RECORD.
- LEGAL DESCRIPTIONS PROVIDED BY CLIENT OR ATTESTING TITLE COMPANY.
- BOUNDARY SURVEY MEANS A DRAWING AND/OR A GRAPHIC REPRESENTATION OF THE SURVEY WORK PERFORMED IN THE FIELD, COULD BE DRAWN AT A SHOWN SCALE AND/OR NOT TO SCALE; THE WALLS OR FENCES MAY BE EXAGGERATED FOR CLARITY PURPOSES.
- EASEMENTS AS SHOWN ARE PER PLAT BOOK, UNLESS DEPICTED OTHERWISE.
- THE TERM "ENCROACHMENT" MEANS VISIBLE AND ABOVE GROUND ENCROACHMENTS.
- ARCHITECTS SHALL VERIFY ZONING REGULATIONS, RESTRICTIONS, SETBACKS AND WILL BE RESPONSIBLE FOR SUBMITTING
- PLOT PLANS WITH CORRECT INFORMATION FOR "APPROVAL FOR AUTHORIZATION" TO THE PROPER AUTHORITIES IN NEW CONSTRUCTION.
- UNLESS OTHERWISE NOTED, THIS FIRM HAS NOT ATTEMPTED TO LOCATE FOOTING AND/OR FOUNDATIONS.
- FENCE OWNERSHIP NOT DETERMINED.
- THIS PLAN OF SURVEY, HAS BEEN PREPARED FOR THE EXCLUSIVE USE OF THE ENTITIES NAMED HEREON, THE CERTIFICATE
- DOES NOT EXTEND TO ANY UNNAMED PARTY.

FLOOD ZONE INFORMATION:

THE NFIP FLOOD MAPS HAVE DESIGNATED THE HEREIN DESCRIBED LAND TO BE SITUATED IN:
FLOOD ZONE: "AE"
BASE FLOOD ELEVATION: 11.0' FT
COMMUNITY: 120673
PANEL: 0554
SUFFIX: G
DATE OF FIRM: 11/17/2022

SURVEYOR'S NOTES:

- IF SHOWN, BEARINGS ARE REFERRED TO AN ASSUMED MERIDIAN, BY SAID PLAT IN THE DESCRIPTION OF THE PROPERTY, IF NOT, BEARINGS ARE THEN REFERRED TO COUNTY, TOWNSHIP MAPS.
- THE CLOSURE IN THE BOUNDARY SURVEY IS ABOVE 1:7500 FT.
- CERTIFICATE OF AUTHORIZATION LB # 7806.
- ALL ELEVATIONS SHOWN ARE REFERRED TO NORTH AMERICAN VERTICAL DATUM OF 1988; LEE COUNTY; NATIONAL GEODETIC SURVEY BENCHMARK DESIGNATION - 872 5351 E; LPID - DN3727; ELEVATION IS 6.76 FEET OF N.A.V.D. OF 1988.

SURVEYOR'S CERTIFICATION:

I HEREBY CERTIFY: THIS "AS-BUILT SURVEY (SETBACK SURVEY)" OF THE PROPERTY DESCRIBED HEREON, HAS RECENTLY BEEN SURVEYED AND DRAWN UNDER MY SUPERVISION, AND COMPLIES WITH THE STANDARDS OF PRACTICE AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE PURSUANT TO 472.027, FLORIDA STATUTES.

Digitally signed by CARLOS M IBARRA

Date: 2025.01.14 15:30:09 -05'00'

BY: CARLOS IBARRA (DATE)

PROFESSIONAL LAND SURVEYOR NO.: 6770 STATE OF FLORIDA
(NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER).

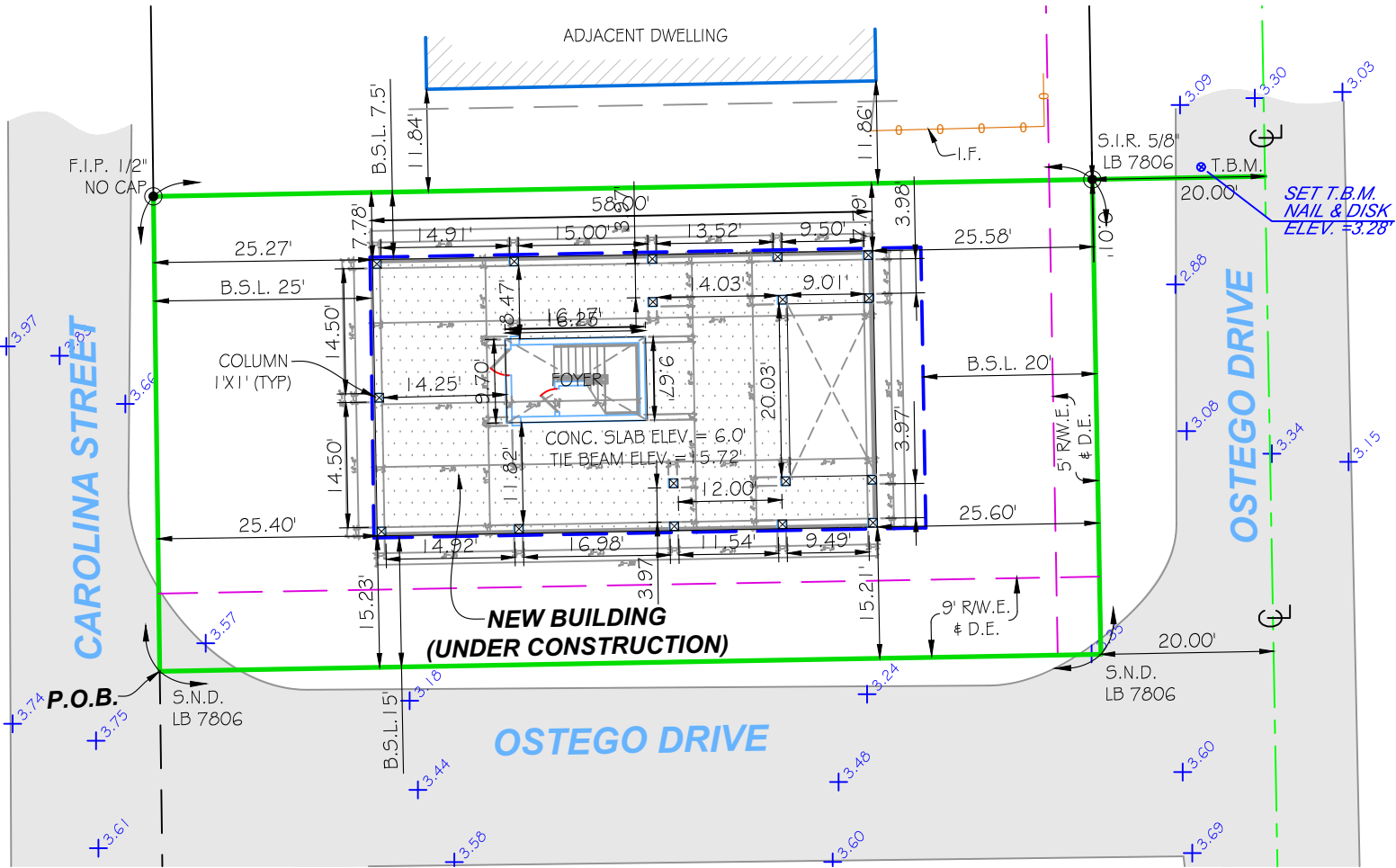
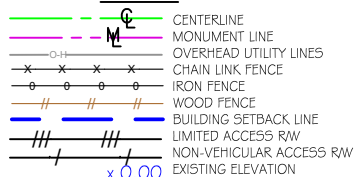
REVISED ON: _____
REVISED ON: _____

DRAWN BY:	IG	 Digitally signed by CARLOS M IBARRA Date: 2025.01.14 15:30:32 -05'00' LB 7806 SEAL
SURVEY DATE:	01/13/2025	
SURVEY NO:	24-001389-1	
SHEET:	1 OF 1	

ABBREVIATIONS

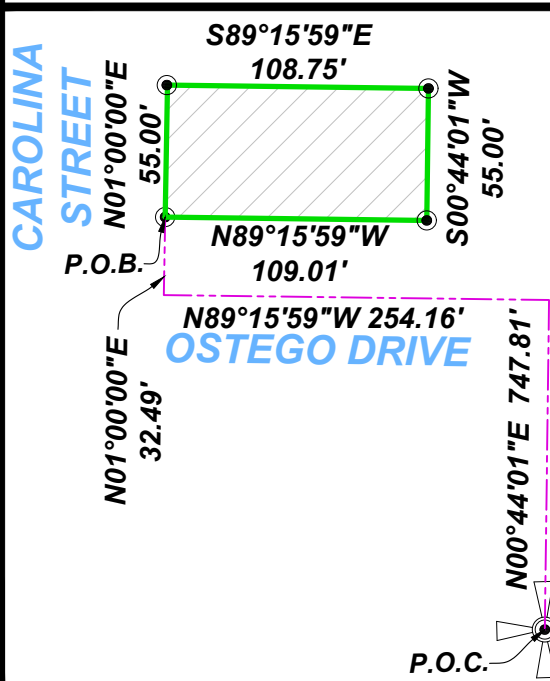
A ARC
A/C AIR CONDITIONER PAD
A.E. ANCHOR EASEMENT
A/R ALUMINUM ROOF
A/S ALUMINUM SHED
ASPH. ASPHALT
B.C. BLOCK CORNER
B.M. BENCHMARK
B.O.B. BASIS OF BEARINGS
B.S.L. BUILDING SETBACK LINE
(C) CALCULATED
C.B. CATCH BASIN
C.B.S. CONCRETE BLOCK STRUCTURE
CBW CONCRETE BLOCK WALL
CH. CHORD
CH.B. CHORD BEARING
CL. CLEAR
C.L.F. CHAIN LINK FENCE
C.M.E. CANAL MAINTENANCE EASEMENTS
CONC. CONCRETE
C.P. CONCRETE PORCH
C.S. CONCRETE SLAB
C.U.P. CONCRETE UTILITY POLE
C.W. CONCRETE WALK
D.E. DRAINAGE EASEMENT
D.M.E. DRAINAGE MAINTENANCE EASEMENTS
D.M.H. DRAINAGE MANHOLE
E. EAST
EB. ELECTRIC BOX
E.T.P. ELECTRIC TRANSFORMER PAD
EL. ELEVATION
ENCR. ENCROACHMENT
F.H. FIRE HYDRANT
F.I.P. FOUND IRON PIPE
F.I.R. FOUND IRON ROD
F.F.E. FINISHED FLOOR ELEVATION
F.N.D. FOUND NAIL & DISK
F.N. FOUND NAIL
I.C.V. IRRIGATION CONTROL VALVE
I.F. IRON FENCE
LB. LICENSE BUSINESS
L.P. LIGHT POLE
L.F.E. LOWEST FLOOR ELEVATION
L.M.E. LAKE MAINTENANCE EASEMENT
(M) MEASURED DISTANCE
MB. MAIL BOX
MH. MANHOLE
ML. MONUMENT LINE
N.A.P. NOT A PART OF
NGVD NATIONAL GEODETIC VERTICAL DATUM
NAVD NORTH AMERICAN VERTICAL DATUM
N.T.S. NOT TO SCALE
O.H.L. OVERHEAD UTILITY LINES
O.R.B. OFFICIAL RECORDS BOOK
OVH. OVERHANG
PVMT. PAVEMENT
PL. PLANTER
PL. PROPERTY LINE
P.C. POINT OF CURVE
P.T. POINT OF TANGENCY
P.O.C. POINT OF COMMENCEMENT
P.O.B. POINT OF BEGINNING
P.B. PLAT BOOK
PG. PAGE
PWY. PARKWAY
PRM. PERMANENT REFERENCE MONUMENT
P.L.S. PROFESSIONAL LAND SURVEYOR
(R) RECORDED DISTANCE
R.R. RAIL ROAD
RES. RESIDENCE
RW. RIGHT-OF-WAY
RGE. RANGE
SEC. SECTION
STY. STORY
SWK. SIDEWALK
S.I.P. SET IRON PIPE
S.P. SCREENED PORCH
T. TANGENT
TB. TELEPHONE BOOTH
T.S.B. TRAFFIC SIGNAL BOX
T.S.P. TRAFFIC SIGNAL POLE
TWP. TOWNSHIP
UTL. UTILITY
U.P. UTILITY POLE
W.M. WATER METER
W.V. WATER VALVE
W.F. WOOD FENCE
Δ DELTA

LEGEND



LEGAL SKETCH

SCALE = N.T.S.



CERTIFICATION:

ALAIR HOMES SANIBEL

LEGAL DESCRIPTION:

Lot 13, Block J, First Addition to Venetian Gardens Section 19, Township 46 South, Range 24 East, Lee County, Florida.

A tract or parcel of land lying in Lot 11 of T.P. Hills Subdivision according to the map or plat thereof as recorded in Plat Book 3, at page 54 of the Public Records of Lee County, Florida, being a part of Section 19, Township 46 South, Range 24 East, and further bounded and described as follows:
Starting at the concrete monument marking the intersection of the Northeasterly line of Estero Boulevard (50.00 feet wide) and the Westerly line of Miramar Subdivision, according to the plat or map thereof recorded in Plat Book 6 at page 31 of said Public Records; thence N 0°44'01\"/>



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: 211 OSTEGO DR FORT MYERS BEACH FL 33931

STRAP Number: 19-46-24-W4-00402.0030

Applicant: Glen Harris III Phone: 2397073642

Contact Name: Shelly Lucas Phone: 2393137609

Email: office.sanibel@alairhomes.com Fax: _____

Current Zoning District: RC

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: 1 Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

☐ Special Exception

☒ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Glen Harris III Phone: 239-313-7609

**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: 1700 Medical Ln Fort Myers, FL 33907

Email: office.sanibel@alairhomes.com Fax: _____

Contact Name: Shelly Lucas Phone: 239-313-7609



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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: Shelly Lucas Phone: 239-313-7609
Address: 1700 Medical Lane Fort Myers, FL 33907
Email: office.sanibel@alairhomes.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)
- ☐ 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: _____

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, _____ 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.

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



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

_____	_____
_____	_____
_____	_____
_____	_____



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, Glen Harris III (name), as PARTNER (title) of GH3-RB Capital, LLC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the 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.

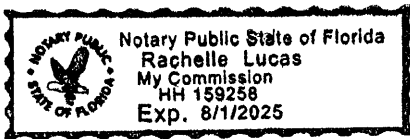


COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

GH3-RB Capital, LLC
Name of Entity (corporation, partnership, LLP, LLC, etc)
[Signature]
Signature
Partner
Title
Glen Harris III
Typed or Printed Name
5/7/2025
Date

STATE OF FL COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 7th day of May, 2025, by Glen Harris III ☒ who is personally known to me OR ☐ who has produced _____ as identification.



Rachelle Lucas
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 19-46-24-W4-00402.0030

Property Address: 211 OSTEGO DR 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: T.P. Hills

Book: 3 Page: 54 Unit: N/A Block: J Lot(s): 13

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) 55 feet
Depth (please provide an average width if irregular in shape) 109 feet
Frontage on street: 219 feet. Frontage on waterbody: 0 feet
Total land area: 6098 ☐ acres ☒ square feet

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

Located approximately .375 Miles SE of San Carlos Blvd Skybridge.
Take estero blvd SE to Carolina ave, North approximately 750 feet, On the right.

☒ 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 | ☐ Marina |
| ☒ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



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.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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.



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: 211 OSTEGO DR FORT MYERS BEACH , FL 33931
Authorized Applicant: Glen Harris III
LeePA STRAP Number: 19-46-24-W4-00402.0030

Current Property Status: Vacant Residential (CONSTRUCTION IN PROGRESS)	
Current Zoning: RC	
Future Land Use Map (FLUM) Category: Mixed Residential	
Comp Plan Density: 1 unit	Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
Sec. 34-1174b	Location and setbacks generally

Complete the narrative statements below for EACH variance requested.

PART I
Narrative Statements

Request for variance from Sec. 34-1174(b) (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:
Relief sought from setback of streets. "No accessory use, building or structure shall be located
closer to a street right-of-way line or street easement than the principal building"

Reasons for request

Explain why the variance is needed:
Variance is requested for construction of an in ground pool per the site/building plans
attached to this submittal.

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

Pool sight lines of all properties would be uniform and aligned along Ostego Ave.

There is an existing precedent set by the other homes on the street, 7 out of the 8 of which have a pool in the same location to include the other "end" lot.

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

The property sits between three streets that require setback conformance already. Variance is needed for the pool and pool deck structure per the attached plans, however, the uniformity of the pool and deck would be affected by these setbacks diminishing the matching street view aesthetic value.



respective pools. Due to the nature and location conditions of this property, this variance is not of concern to require or call for amending the regulation on FMB.

PART 2

Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://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.

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2025-518**

1. Request:

Meeting Date: August 12, 2025

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20250089, REQUESTING A VARIANCE FROM LDC SECTION 34-638(3)d FOR THE PROPERTY LOCATED AT 21541 WIDGEON TERRACE GENERALLY REFERED TO AS STRAP NUMBER 34-46-24-W1-00001.0010 IN FORT MYERS BEACH, TO VARY UP TO 11.87 FEET FROM REQUIRED 25 FOOT WATER BODY SETBACK TO BUILD A NEW POOL AND SPA STRUCTURE IN THE RC ZONING DISTRICT; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The LPA will make recommendations to the Town Council regarding the variance requests or approve the variance requests unanimously.

What the action accomplishes:

The LPA recommendation will be forwarded on to the Town Council or serve as final agency action id the requests are approved unanimously.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

5. Background:

LDC Sec.638(3)d requires that all buildings and structures be located at least 25 feet from the bay. The setback of 25-feet is measured from the mean high-water line (MHWL). The MHWL is shown on the site plan in Exhibit A. The Site plan demonstrates four setback points. The requested setback from the MHWL to the pool is proposed to be between 11.87 feet and 23.91 feet. Applicant has noted that a revised drainage plan will be provided with the permit submission if this variance request is approved.

Attachments:

1. NS LPA Resolution 25-XX 21541 Widgeon
2. Exhibit A Site Plan
3. 21541 Widgeon tr LPA STaff report
4. Application
5. Applicant's Narrative Statement
6. Retaining Wall diagram

Financial Impact:

Unknown

6. Alternative Action

Approve/Approve with Conditions

7. Staff Recommendations:

Denial

8. Recommended Approval:

Judith Frankel, Principal Planner

Date: July 28, 2025

Georgina Cid, Community Development Manager

Date: July 31, 2025

Frankie Kropacek, Community Development Director

Date: August 01, 2025

nancy stuparich, Town Attorney

Date: August 05, 2025



Amy Baker, Town Clerk

Date: August 05, 2025

LPA RESOLUTION 2025-XX

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20250089, REQUESTING A VARIANCE FROM LDC SECTION 34-638(3)d FOR THE PROPERTY LOCATED AT 21541 WIDGEON TERRACE GENERALLY REFERED TO AS STRAP NUMBER 34-46-24-W1-00001.0010 IN FORT MYERS BEACH, TO VARY UP TO 11.87 FEET FROM REQUIRED 25 FOOT WATER BODY SETBACK TO BUILD A NEW POOL AND SPA STRUCTURE IN THE RC ZONING DISTRICT; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, 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, Harden Custom Homes ("Applicant") on behalf of property owners Chad and Emily Rubner TR for the Emily Rubner Trust ("Owners"), of the property located at 21541 Widgeon Terrace (Property), are requesting a variance from LDC Sec. 34-638(3)d to reduce the required setback of 25 feet to 11.87 feet to accommodate a proposed pool and spa in the RC zoning district; and

WHEREAS, the STRAP number for the subject property is 34-46-24-W1-00001.0010; and

WHEREAS, the Property is located in the "Mixed Residential" Future Land Use Map of the Comprehensive Plan and the "Residential Conservation" zoning districts 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 August 12th, 2025, 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; and

WHEREAS, in accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA makes the following findings and conclusions:

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

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

B. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

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

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

WHEREAS, eligible members of the LPA voted ___ to ___ by roll call vote to approve / approve with conditions / deny the requested variances with 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.
2. The variance shall only apply to the single-family home as shown on the provided site plan. Demolition or substantial damage to the residential structure shall render the variances to be null and void.

WHEREAS, Ordinance 24-06 amended Section 34-232(d) of the LDC to provide that:

(d) Owner-initiated requests for variances, or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, that are:

- 1) approved by a unanimous vote of the local planning agency members who are eligible to vote, and
- 2) not subject to a request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 business days after the date of the local planning agency decision, excluding holidays, only require one public hearing before the local planning agency, and the local planning agency decision is final agency action.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

1. The foregoing “WHEREAS” clauses are adopted herein by reference and constitute the findings and conclusions of the LPA.

2. VAR20250089, with the conditions contained herein, received / did not receive unanimous approval from eligible voting members of the LPA on August 12th, 2025.

3. This Resolution shall constitute the equivalent of a development order and final agency action, subject to any request for an additional review by the Town Council filed with the Town Clerk within 10 business days of the LPA decision as authorized in Section 34-232(d) of the LDC.

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

Chair Anita Cereceda	_____
Vice-Chair Jane Plummer	_____
Member James Boan	_____
Member Douglas Eckmann	_____
Member Don Sudduth	_____
Member John McLean	_____
Member James Dunlap	_____

DULY PASSED AND ADOPTED THIS _____ day of August, 2025.

Local Planning Agency of the Town of
Fort Myers Beach

By: _____
Anita Cereceda, LPA Chair

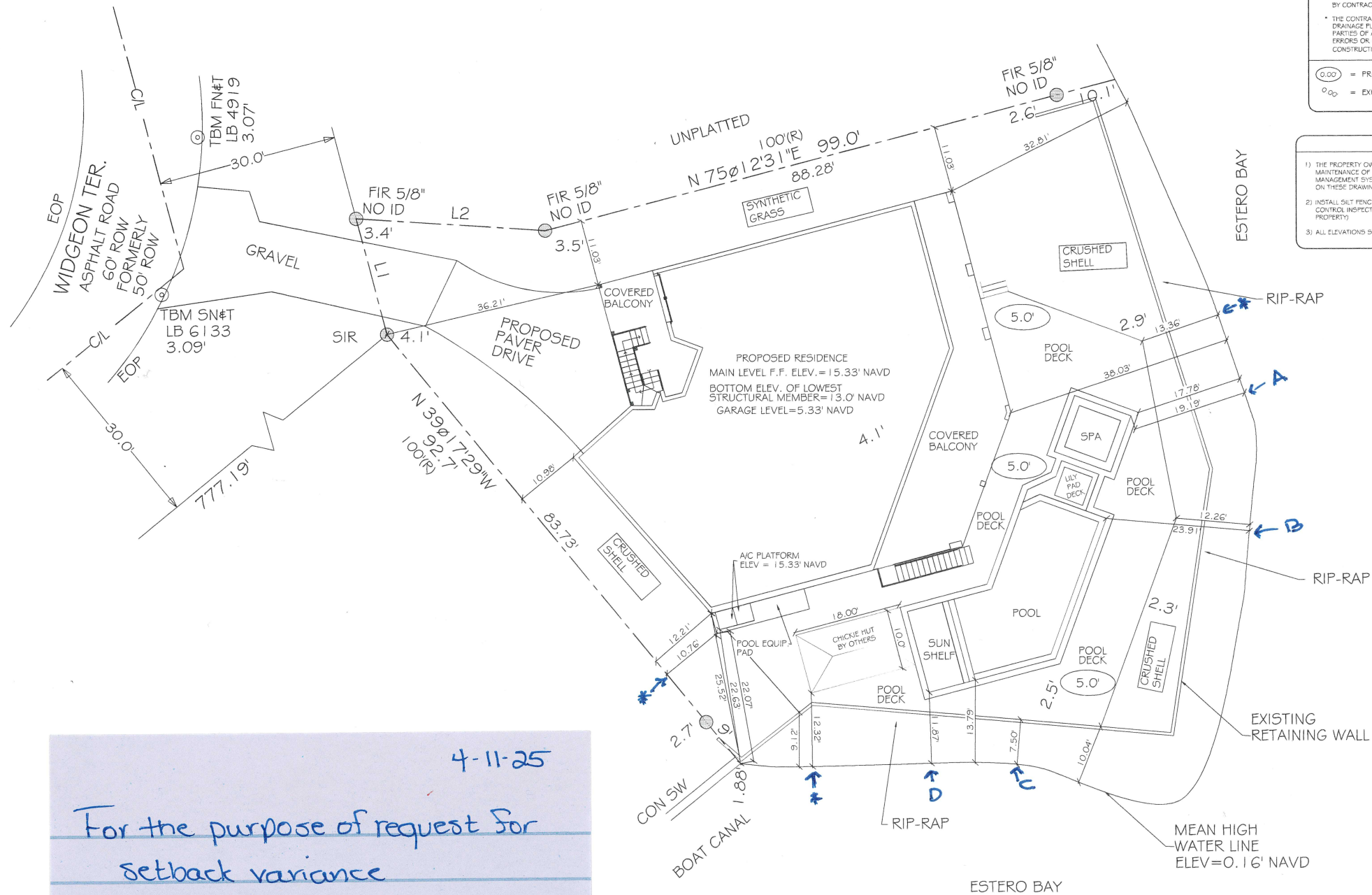
Approved as to legal sufficiency:

ATTEST:

By: _____
Vose Law Firm, Town Attorney

By: _____
Amy Baker, Town Clerk

EXHIBIT A: Site Plan



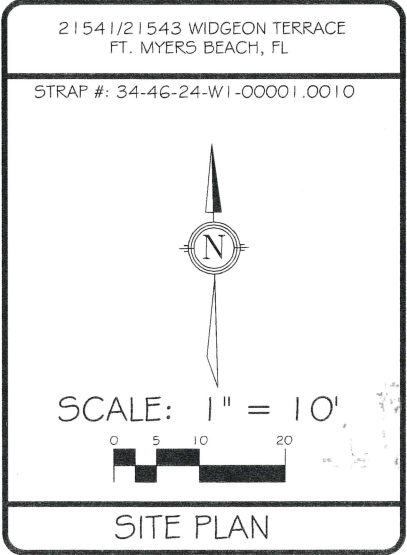
NOTES & LEGEND

- CONTRACTOR TO VERIFY FINISHED FLOOR ELEVATION AND DRIVE GRADE.
- THE OWNER/CONTRACTOR SHALL VERIFY SET-BACK DIMENSIONS AND FINISH FLOOR ELEVATION BEFORE PERMITTING AND CONSTRUCTION.
- INFORMATION USED IN THE PREPARATION OF THIS SITE PLAN OBTAINED FROM SURVEY SUPPLIED BY CONTRACTOR.
- THE CONTRACTOR SHALL REVIEW THIS DRAINAGE PLAN AND SHALL NOTIFY ALL PARTIES OF ANY DISCREPANCIES, ERRORS OR OMISSIONS PRIOR TO ANY CONSTRUCTION.

0.00' = PROPOSED ELEV. (NAVD)
 0.00' = EXISTING ELEV. (NAVD)

GENERAL NOTES

- THE PROPERTY OWNER IS RESPONSIBLE FOR PERPETUAL MAINTENANCE OF ALL FEATURES OF THE SURFACE WATER MANAGEMENT SYSTEM AS OUTLINED BY THE DESIGN ENGINEER ON THESE DRAWINGS.
- INSTALL SILT FENCE PER FLORIDA STORMWATER SEDIMENT CONTROL INSPECTOR'S MANUAL (TYP. @ PERIMETER OF PROPERTY)
- ALL ELEVATIONS SHOWN ON THIS PLAN ARE IN NAVD 1988.



F.I.R.M. ZONE DATA

F.I.R.M. ZONE	BASE FLOOD ELEV. (NAVD)	FIRM MAP
VE	12.0	FIRM 12071 C 0567G DATED: 11/17/2022

SITE AREA SUMMARY

IMPERVIOUS AREAS		
DESCRIPTION	AREA-SQ. FEET	PERCENTAGE
BUILDING FOOTPRINT UNDER ROOF	3,353	32.0%
PADS, DRIVES, POOL DECK	3,266	31.1%
TOTAL IMPERVIOUS AREA	6,619	63.1%
PERVIOUS AREAS		
GRASS & LANDSCAPE AREAS	3,872	36.9%
TOTAL PERVIOUS AREA	3,872	36.9%
TOTAL SITE AREA	10,491	100%

* TOTAL SITE AREA IS LANDWARD OF RIP-RAP

LOT COVERAGE CALCULATION

IMPERVIOUS AREAS		
DESCRIPTION	AREA-SQ. FEET	PERCENTAGE
BUILDING FOOTPRINT UNDER ROOF	3,353	32%-40% (C)
TOTAL SITE AREA	10,491	100%

REVISIONS	BY
7/22/24-CITY REVIEW COMMENTS	NW

"RUBNER RESIDENCE"

2154 1/2 WIDGEON TERRACE
FT. MYERS BEACH, FL

NCW Engineering, LLC
C.A. No. 31485
P.O. Box 152791
Cape Coral, FL 33915
(239) 209-1920
nathan@ncwengineering.com

NATHAN C. WUNDER
No. 77759
FLORIDA PROFESSIONAL ENGINEER

THIS ITEM HAS BEEN DIGITALLY SIGNED AND SEALED BY NATHAN C. WUNDER, P.E. REG. NO. 77759 USING A DIGITAL SIGNATURE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGN AUTHENTICATION CODE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

NATHAN C. WUNDER, P.E. REG. NO. 77759
Digitally signed by NATHAN C. WUNDER, P.E. Date: 2025.04.10 NO. 77759 10:53:51 -0400

DRAWN	NW
CHECKED	NW
DATE	4-9-25
SCALE	Noted
JOB NO.	31122
SHEET	1
OF	1 SHEETS

4-11-25

For the purpose of request for
setback variance

Proposed	Asking for
A = 19.9'	5.1'
B = 23.91'	1.09'
C = 13.79'	11.21'
D = 11.87'	13.13'

NOTE:
If approved, we will immediately submit a revised drainage and stormwater plan with the corresponding impervious area worksheet.
Thank you in advance for your consideration.
Harden Custom Homes Inc.



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

TYPE OF CASE: Variance

CASE NUMBER: VAR20250089

CASE NAME: 21541 Widgeon Terrace Variance

LPA

HEARING DATE: August 12th, 2025

STAFF
RECOMMENDATION: Denial

PREPARED/
SUBMITTED BY: Judith Frankel, Principal Planner

I. APPLICATION SUMMARY

Applicant/Owner: Harden Custom Homes (Catherine Leslie) on behalf of owners Chad and Emily Rubner TR for Emily Rubner Trust

Request(s): Applicant requests relief from LDC Sec. 34-638(3)d- Minimum Setbacks to reduce the required setback of 25 feet to 11.87 feet to accommodate a proposed pool and spa. LDC Sec.638(3)d requires that all buildings and structures be located at least 25 feet from the bay. The setback of 25-feet is measured from the mean high-water line (MHWL). The pool and spa are proposed to be set back between 19.9 feet and 11.87 feet.

Subject property: See attached site plan

Physical Address: 21541 Widgeon terrace

STRAP #: 34-46-24-W1-00001.0010

FLU: Mixed Residential

Zoning: Residential Conservation (RC)

Adjacent zoning and land uses:

North:	RESIDENTIAL CONSERVATION (RC) Mixed Residential
South:	RESIDENTIAL CONSERVATION (RC) Mixed Residential
East:	Canal Tidal Waters
West:	RESIDENTIAL CONSERVATION (RC) Mixed Residential

II. BACKGROUND AND ANALYSIS

The property owners, Mr. and Mrs. Rubner, have obtained a building permit for the construction of a new home at 21541 Widgeon Terrace. They have also obtained a permit to construct a retaining wall at the property to stabilize the property. They are now seeking to construct a pool and spa in the rear of the property between the home and the retaining wall. The property parcel is irregularly shaped which creates challenges for the construction of the pool and spa.

LDC Sec.638(3)d requires that all buildings and structures be located at least 25 feet from the bay. The setback of 25-feet is measured from the mean high-water line (MHWL). The MHWL is shown on the site plan in Exhibit A. The site plan demonstrates four setback points. The requested setback from the MHWL to the pool is proposed to be between 11.87 feet and 23.91 feet. The applicant has noted that a revised drainage plan will be provided with the building permit submission if this variance request is approved.

The requested reduced setback does not seem to impact the abutting properties due to the irregular shape and situation of the subject parcel. This property juts out into the canal which separates the pool area from the neighbors.

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 an irregular lot. However, a code compliant pool could be designed. A LDC compliant pool would push the pool close to the home and reduce its size. The request is not de minimis as a smaller pool that complies with the setback could be designed.

- 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 variances are the result of the applicant's design of the home. The desired size of the home reduced the outdoor space available for the pool and pool deck.

- 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 pool could be redesigned to either comply fully with the LDC or reduce the amount of variance from the 25-foot setback requirement. The implementation of the requirements would result in a reduced pool and spa size. The LPA should determine whether the current regulation is "unreasonable."

- 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 the variance for the up to 13.13 feet encroachment into the waterbody setback is unlikely to be injurious or otherwise detrimental to the public welfare. The parcel juts out into the water body and the pool encroachment does not abut the immediate neighbors.

- 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.

III. RECOMMENDATION

Staff have reviewed the request for a variance from LDC Sec.638(3)d which requires that all buildings and structures be located at least 25 feet from the bay as measured from the mean high water line (MHWL) and found that the variance request does meet the requirements set forth in sec. 34-87.

Therefore, staff recommends **DENIAL** of VAR20250089, a (1) variance of up to 13.13 feet from a waterbody setback for a waterbody setback of 11.87 feet to construct a new pool and spa.

IV. CONDITIONS FOR APPROVAL

If the Town's LPA recommends approval for the variance, the town's staff recommends the following conditions of approval.

- 1) Approval of these variances does not give the Applicant an undeniable right to permit approval. Development 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.
- 2) The property owner must ensure that they adhere to the neighborhood flooding ordinance (LDC Sec. 6-14) for drainage and 67% maximum impervious requirements.
- 3) The variance shall only apply to the pool and spa as shown on the site plan provided. Demolition or substantial damage to the structure shall render the variance to be null and void.

V. EXHIBITS

- A. Proposed site plan
- B. Survey
- C. Complete application



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: Rubner Variance
Authorized Applicant: Cathene (Cat) Leslie
LeePA STRAP Number: 34-46-24-W1-00001.0010

Current Property Status: Vacant w/ new retaining wall	
Current Zoning: RC-TFC	
Future Land Use Map (FLUM) Category: Mixed Residential	
Comp Plan Density: 10:1 per acre	Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

Chapter 34, Sec 638 - Minimum Setbacks - residential

Complete the narrative statements below for EACH variance requested.



Case # _____

Date Received: _____

PART I
Narrative Statements

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

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

Relief from minimum setbacks, specifically for proposed pool/spa
at southern seaward side of the lot to MHWL and then at the NE side
of the lot seaward to MHWL.

Reasons for request

Explain why the variance is needed:

SEE EXHIBIT 6-5

Severe irregular shaped lot to accommodate proposed pool/spa.



Case # _____

Date Received: _____

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

SEE EXHIBIT 6-5

This project will not impact any neighboring properties in esthetics, function, drainage nor pose any others hindrances, human or environmental.

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

This lot is a severely irregularly shaped and poses/posed many extraordinary design challenges and need minor relief from the LDC 34 - 638.



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.

When application was originally made for the pool permit 241125, Harden Custom Homes, and the civil engineer met in person with zoning and planning where the proposed site plan was reviewed and we were advised to apply for this variance as it posed no hindrances. We waited for the Retaining wall to be installed to revise the proposed site plan for up to date accuracy.



Case # _____

Date Received: _____

PART 2 Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://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.



Case # _____

Date Received: _____

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.



EXHIBIT 6-5

VI-E - NARRATIVE STATEMENT

Mr. & Mrs. Chad Rubner, purchased this land with the hopes of building their family dream vacation home. They have a very large family and the house that Harden Custom Homes, Inc., is currently permitted to build, #241113, has been specifically and carefully designed to accommodate the Rubner Family's needs, all while working with the FMB Zoning Dept. to ensure that the project is compliant with all LDCs, furthermore working through the challenges this extreme irregular shaped lot poses.

This property is in the process of having a retaining wall constructed, see permit number 242553, WB Williamson Bros., Inc.; this wall will be a land stabilizer while protecting the existing vegetation and the adjacent waterways from run off (Estero Bay and a boat canal). See EXHIBIT 2-1 and 2-2

Mark Harden has designed a unique and beautiful pool/spa package, that suits this house and its esthetics; see EXHIBIT 2-3; however; it requires us to request this Variance from LDC Section 34-638 as it refers to setbacks, mainly at the southern seaward side of the property and slightly seaward at the NE side of the lot.

Should the variance be awarded, this project will not impact any neighboring properties in esthetics, function, drainage nor pose any other hindrances, human or environmental. The proposed pool/spa project has been thoughtfully, carefully and compliantly designed taking into account any possible negative impacts on the surrounding areas; therefore; an engineered drainage plan will be carefully designed to ensure that there are no negative impacts on the surrounding natural/protected vegetation or waterways (Estero Bay and a boat canal). The existing drainage plan does not include the new existing wall, but after consultation and an in-person meeting with FMB Zoning Officials, the Civil Engineer of Record has stated the drainage can still be designed compliantly. The civil Engineer has not designed this at this time due to there not being an approved variance in place and this is billable work that would be for not. See EXHIBIT 2-4 – Current Drainage plan w/out the existing wall.

With careful consideration and thoughtfulness, we humbly request that this variance be awarded to accommodate the proposed pool/spa due to the nature of this extreme irregularly shaped lot.

We sincerely appreciate your consideration.



EXHIBIT 6-5

VI-E - NARRATIVE STATEMENT

Mr. & Mrs. Chad Rubner, purchased this land with the hopes of building their family dream vacation home. They have a very large family and the house that Harden Custom Homes, Inc., is currently permitted to build, #241113, has been specifically and carefully designed to accommodate the Rubner Family's needs, all while working with the FMB Zoning Dept. to ensure that the project is compliant with all LDCs, furthermore working through the challenges this extreme irregular shaped lot poses.

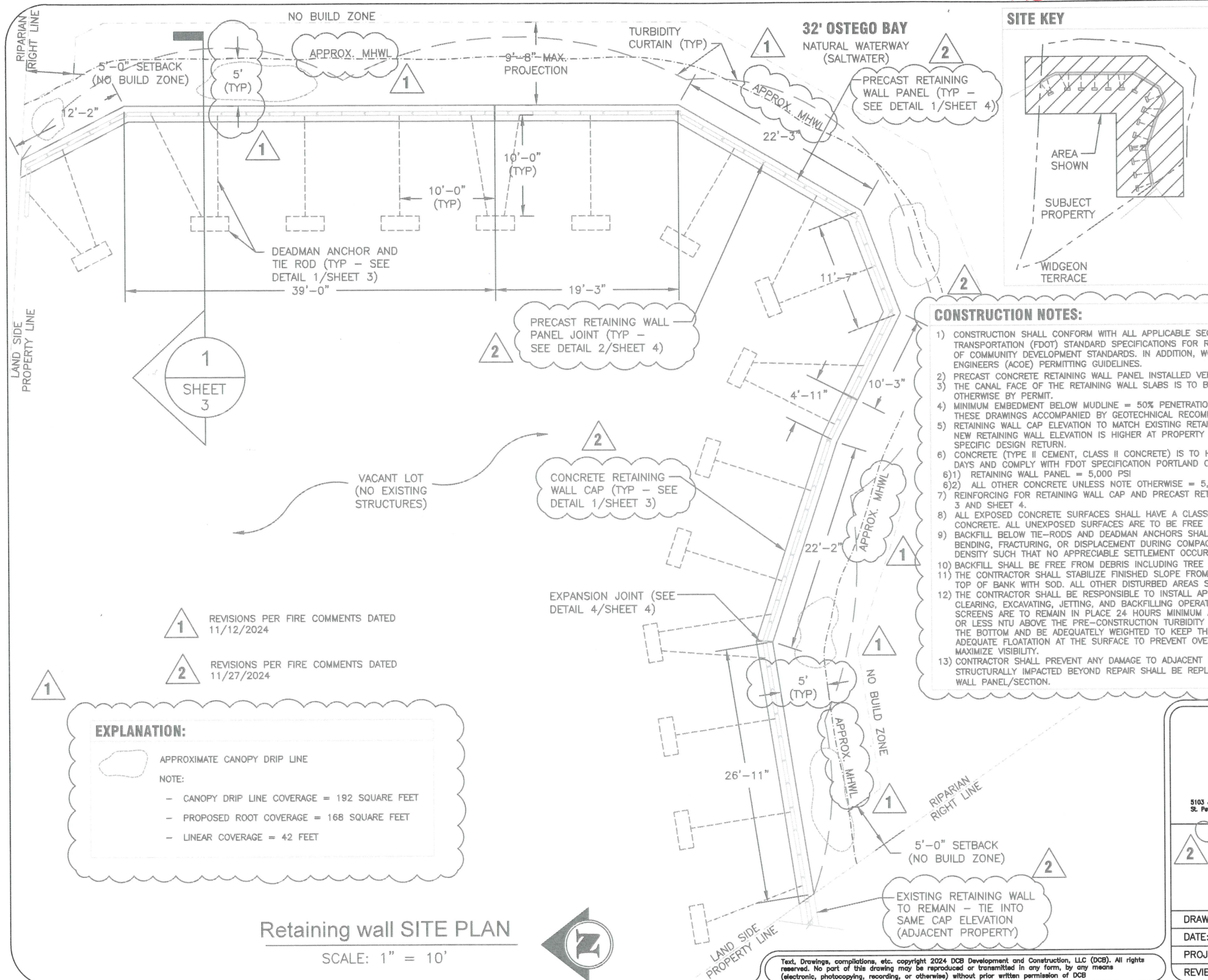
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Mark Harden has designed a unique and beautiful pool/spa package, that suits this house and its esthetics; see EXHIBIT 2-3; however; it requires us to request this Variance from LDC Section 34-638 as it refers to setbacks, mainly at the southern seaward side of the property and slightly seaward at the NE side of the lot.

Should the variance be awarded, this project will not impact any neighboring properties in esthetics, function, drainage nor pose any other hindrances, human or environmental. The proposed pool/spa project has been thoughtfully, carefully and compliantly designed taking into account any possible negative impacts on the surrounding areas; therefore; an engineered drainage plan will be carefully designed to ensure that there are no negative impacts on the surrounding natural/protected vegetation or waterways (Estero Bay and a boat canal). The existing drainage plan does not include the new existing wall, but after consultation and an in-person meeting with FMB Zoning Officials, the Civil Engineer of Record has stated the drainage can still be designed compliantly. The Civil Engineer has not designed this at this time due to there not being an approved variance in place and this is billable work that would be for not. See EXHIBIT 2-4 – Current Drainage plan w/out the existing wall.

With careful consideration and thoughtfulness, we humbly request that this variance be awarded to accommodate the proposed pool/spa due to the nature of this extreme irregularly shaped lot.

We sincerely appreciate your consideration.



- CONSTRUCTION NOTES:**
- CONSTRUCTION SHALL CONFORM WITH ALL APPLICABLE SECTIONS OF THE CURRENT FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION, AND CITY/COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT STANDARDS. IN ADDITION, WORK TO BE PERFORMED IN ACCORDANCE WITH ARMY CORPS OF ENGINEERS (ACOE) PERMITTING GUIDELINES.
 - PRECAST CONCRETE RETAINING WALL PANEL INSTALLED VERTICAL ALIGNMENT TOLERANCE = $\frac{1}{4}$ " PER FOOT
 - THE CANAL FACE OF THE RETAINING WALL SLABS IS TO BE PLACED ON THE PROPERTY LINE (+/- 6") UNLESS INSTRUCTED OTHERWISE BY PERMIT.
 - MINIMUM EMBEDMENT BELOW MUDLINE = 50% PENETRATION OF PANEL UNLESS ALTERNATE DESIGN PROVIDED FOR WITHIN THESE DRAWINGS ACCOMPANIED BY GEOTECHNICAL RECOMMENDATIONS.
 - RETAINING WALL CAP ELEVATION TO MATCH EXISTING RETAINING WALL CAP UNLESS NOTED OTHERWISE. IN CASES WHERE NEW RETAINING WALL ELEVATION IS HIGHER AT PROPERTY LINE, NEW RETAINING WALL ENDS SHALL BE LEVEL WITH A SITE SPECIFIC DESIGN RETURN.
 - CONCRETE (TYPE II CEMENT, CLASS II CONCRETE) IS TO HAVE THE FOLLOWING MINIMUM COMPRESSIVE STRENGTHS AT 28 DAYS AND COMPLY WITH FDOT SPECIFICATION PORTLAND CEMENT CONCRETE:
 - RETAINING WALL PANEL = 5,000 PSI
 - ALL OTHER CONCRETE UNLESS NOTE OTHERWISE = 5,000 PSI
 - REINFORCING FOR RETAINING WALL CAP AND PRECAST RETAINING WALL PANELS SHALL BE AS NOTED IN DETAILS ON SHEET 3 AND SHEET 4.
 - ALL EXPOSED CONCRETE SURFACES SHALL HAVE A CLASS 3 FINISH IN ACCORDANCE WITH FDOT SPECIFICATION FINISHING CONCRETE. ALL UNEXPOSED SURFACES ARE TO BE FREE OF HONEYCOMBING, SPAULING, AND MAJOR IMPERFECTIONS.
 - BACKFILL BELOW TIE-RODS AND DEADMAN ANCHORS SHALL BE HAND-COMPACTED TO PROVIDE FULL SUPPORT TO PREVENT BENDING, FRACTURING, OR DISPLACEMENT DURING COMPACTION EFFORTS. BACK-FILL IS TO BE COMPACTED TO A STABLE DENSITY SUCH THAT NO APPRECIABLE SETTLEMENT OCCURS AFTER COMPLETION OF CONSTRUCTION.
 - BACKFILL SHALL BE FREE FROM DEBRIS INCLUDING TREE ROOTS GREATER THAN $\frac{1}{2}$ " AND CONCRETE REMAINS.
 - THE CONTRACTOR SHALL STABILIZE FINISHED SLOPE FROM RETAINING WALL CAP TO A MINIMUM OF 32 INCHES PAST THE TOP OF BANK WITH SOD. ALL OTHER DISTURBED AREAS SHALL BE SEEDED AND MULCHED OR GRASSED.
 - THE CONTRACTOR SHALL BE RESPONSIBLE TO INSTALL APPROVED TURBIDITY SCREENS IN PLACE DURING ANY AND ALL CLEARING, EXCAVATING, JETTING, AND BACKFILLING OPERATIONS WHICH TOTALLY ENCLOSES THE CONSTRUCTION SITE. SCREENS ARE TO REMAIN IN PLACE 24 HOURS MINIMUM AFTER CONSTRUCTION CEASES OR UNTIL TURBIDITY LEVEL IS 20 OR LESS NTU ABOVE THE PRE-CONSTRUCTION TURBIDITY LEVEL. SCREENS MUST EXTEND FROM THE WATER SURFACES TO THE BOTTOM AND BE ADEQUATELY WEIGHTED TO KEEP THEM IN PLACE DURING ALL OPERATIONS. THERE SHALL BE ADEQUATE FLOATATION AT THE SURFACE TO PREVENT OVERFLOW. THIS FLOATATION MUST BE BRIGHTLY COLORED TO MAXIMIZE VISIBILITY.
 - CONTRACTOR SHALL PREVENT ANY DAMAGE TO ADJACENT RETAINING WALL AND CAP. ANY STRUCTURE VISIBLY OR STRUCTURALLY IMPACTED BEYOND REPAIR SHALL BE REPLACED AND/OR RE-POURED TO THE NEXT UNDAMAGED RETAINING WALL PANEL/SECTION.

DCB

DEVELOPMENT AND CONSULTING

5103 Jasmine Circle N. St. Petersburg, Florida 33714 STATE OF FLORIDA LICENSED PROFESSIONAL ENGINEER AND SPECIAL INSPECTOR 77762 P.E. 813.352.1807

PRECAST RETAINING WALL CONSTRUCTION DRAWINGS
RUBNER 21541 RESIDENCE

21541 WIDGEON TERRACE
 FORT MYERS BEACH, FLORIDA, 33931
 STRAP NO.: 34-46-24-W1-00001.0010

DRAWN BY: I.K.	SHEET No.
DATE: 11-12-2023	SHEET 2
PROJ. NO.: 22-168	
REVIEWED BY: D.C.B.	

Retaining wall SITE PLAN
 SCALE: 1" = 10'

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2025-520**

1. Request:

Meeting Date: August 12, 2025

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE APPLICATION 20250075 FOR THE PROPERTY LOCATED AT 5236 ESTERO BLVD., FORT MYERS BEACH (STRAP NUMBER 33-46-24-W1-00206.0280) FOR THE FOLLOWING 3 VARIANCES: 1) A VARIANCE OF 5 FEET TO ALLOW A FRONT SETBACK OF 20 FEET WHERE 25 FEET IS REQUIRED; 2) A VARIANCE OF 15.4% BUILDING COVERAGE TO ALLOW 55.4% BUILDING COVERAGE WHERE 40% ALLOWED; 3) A VARIANCE OF 6.3% IMPERVIOUS SURFACE AREA TO ALLOW 73.3% IMPERVIOUS SURFACE WHERE 67% IS THE MAXIMUM ALLOWED, FOR A SINGLE-FAMILY HOME; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The LPA provides recommendations of Variance applications.

What the action accomplishes:

The approval of the three requested variances will allow for the construction of a single-family home as designed in the proposed site plan.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

5. Background:

The Applicant is proposing to redevelop the site with a new resilient structure that is compliant with today's building codes and an attractive asset to the community. The proposed single-family residence will have a footprint of 1,778 SF, which includes a raised pool and pool deck.

The house will consist of three floors and 2,662 SF of habitable area. Prior to the storm, the single-family residence and accessory improvements on the property totaled about 1,210 SF and did not have a pool.

Attachments:

1. NS LPA Resolution 25-xx 3 VAR 5236 Estero
2. Exhibit A: Variance Review Criteria
3. Exhibit B: Site Plan
4. LPA Staff report
5. Survey
6. Applicant's Project Narrative
7. Minimum Use Determination
8. Application

Financial Impact:

Unknown

6. Alternative Action

Deny

7. Staff Recommendations:

Approval with conditions

8. **Recommended Approval:**

Judith Frankel, Principal Planner

Date: July 28, 2025

Georgina Cid, Community Development Manager

Date: July 31, 2025

Frankie Kropacek, Community Development Director

Date: August 01, 2025

nancy stuparich, Town Attorney

Date: August 05, 2025



Amy Baker, Town Clerk

Date: August 05, 2025

LPA RESOLUTION 25-xx

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE APPLICATION 20250075 FOR THE PROPERTY LOCATED AT 5236 ESTERO BLVD., FORT MYERS BEACH (STRAP NUMBER 33-46-24-W1-00206.0280) FOR THE FOLLOWING 3 VARIANCES: 1) A VARIANCE OF 20 FEET TO ALLOW A FRONT SETBACK OF 5 FEET WHERE 25 FEET IS REQUIRED; 2) A VARIANCE OF 15.4% BUILDING COVERAGE TO ALLOW 55.4% BUILDING COVERAGE WHERE 40% ALLOWED; 3) A VARIANCE OF 6.3% IMPERVIOUS SURFACE AREA TO ALLOW 73.3% IMPERVIOUS SURFACE WHERE 67% IS THE MAXIMUM ALLOWED, FOR A SINGLE-FAMILY HOME; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, The Neighborhood Company (Applicant) on behalf of owner Xheku LLC (Owner) is requesting the following 3 variances from the Land development Code (LDC) to construct a single-family home with a raised pool: 1) LDC Section 34-638(b)(1)(a) Building Setbacks for the RM zoning district to allow a 5-foot front street setback where a 25-foot setback is required; 2) LDC Section 34-644(b) Table 34-3 Building Coverage to allow a 55.4% building coverage where a 40% maximum building coverage is allowed; and 3) LDC Section 6-14 (a) Neighborhood Flooding to allow a maximum impervious lot are of 73.3% where 67% is the allowed maximum impervious surface.; and

WHEREAS, the STRAP number for the subject property is 33-46-24-W1-00206.0280; and

WHEREAS, the Property is located in the "Mixed Residential" Future Land Use of the Comprehensive Plan and the "Residential Multifamily" 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 August 12th, 2025, 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; and

WHEREAS, in accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA made findings and conclusions regarding each requested variance based on the following criteria, as further described in Exhibit A:

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

B. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

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

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

WHEREAS, eligible members of the LPA determined the proposed variances are consistent with the Fort Myers Beach Comprehensive Plan and voted ___ to ___ by roll call vote to approve the requested variances with the following conditions:

- 1) Approval of these 3 variances does not give the Applicant an undeniable right to permit approval. Development 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.
- 2) The property owner must ensure that they adhere to the portion of the neighborhood flooding ordinance (LDC Sec. 6-14) that requires the property to be able to maintain 1.6 inches of rainfall on site. Compliance will be reviewed at the time of permitting,
- 3) The variance shall only apply to the structure as shown on the site plan attached as Exhibit B. Demolition or substantial damage to the structure shall render the variance to be null and void.

WHEREAS, Ordinance 24-06 amended Section 34-232(d) of the LDC to provide that:

(d) Owner-initiated requests for variances, or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, that are:

- 1) approved by a unanimous vote of the local planning agency members who are eligible to vote, and

2) not subject to a request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 business days after the date of the local planning agency decision, excluding holidays, only require one public hearing before the local planning agency, and the local planning agency decision is final agency action.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

- 1. The foregoing “WHEREAS” clauses are adopted herein by reference and constitute the findings and conclusions of the LPA.
- 2. VAR20250075, with the conditions contained herein, received unanimous approval from eligible voting members of the LPA on _____, 2025.
- 3. This Resolution shall constitute the equivalent of a development order and final agency action, subject to any request for an additional review by the Town Council filed with the Town Clerk within 10 business days of the LPA decision as authorized in Section 34-232(d) of the LDC.

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

Chair Anita Cereceda	_____
Vice-Chair Jane Plummer	_____
Member James Boan	_____
Member Douglas Eckmann	_____
Member Don Sudduth	_____
Member John McLean	_____
Member James Dunlap	_____

DULY PASSED AND ADOPTED THIS _____ day of _____.

Local Planning Agency of the Town of
Fort Myers Beach

By: _____
Anita Cereceda, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: _____

By: _____

Vose Law Firm, Town Attorney

Amy Baker, Town Clerk

EXHIBIT A: Findings of Specific Variances

EXHIBIT B: Site Plan

Variance Criteria Review per LDC Sec. 34-87

Variance 1: 1) LDC Section 34-638(b)(1)(a) Building Setbacks for the RM zoning district to allow a 20-foot front street setback where a 25-foot setback is required

- 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.*

Hurricane Ian's destruction and the location of the 1978 CCCL on the subject property have created exceptional circumstances. The requested variance will allow for a 20' reduction from the required 25' front setback that represents a de minimis variance to allow for the reasonable reconstruction of a residence. The requested front setback of 5' will provide adequate separation to allow vehicular access to the residence through the adjacent 10' private road easement. The new construction is designed for two parking spaces below the residence to accommodate the required parking for the site.

- 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.*

Hurricane Ian and the size of the property do not result from the actions of the applicant. The 1978 CCCL, the 10' easement at the front of the site and the required front setback have limited the ability for the property to be developable in its entirety. The regulatory impediments have created a lot which is severely limited in developable area.

- 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 requested variance is the minimum variance to relieve the applicant of the burden caused by the application of the 25' front setback requirement.

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

The proposed variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. This variance will allow the redevelopment of a single-family residence on Fort Myers Beach which previously existed since 1952. It allows for a new, resilient structure which is FEMA compliant and landward of the 1978 CCCL.

- 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.*

No, the property's conditions, use and this request are unique to this site and are not so general or recurrent in nature as to mandate an amendment to the regulations in question. The variance process is adequate to address these circumstances and specific hardship.

Variance 2: LDC Section 34-644(b) Table 34-3 Building Coverage to allow a 55.4% building coverage where a 40% maximum building coverage is allowed

- 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.*

Hurricane Ian, the location of the 1978 CCCL and the limited development footprint resulting from regulations that were implemented subsequent to the original platting of the property, have created exceptional conditions and circumstances. Furthermore, the requested variance represents a de minimis departure from the established development

- 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 exceptional conditions and circumstances are not a result of the Applicant's actions. The size of the property has not been altered by the property owner, but the area allowed to be used in the 40% maximum building coverage calculation is limited through the establishment of the 1978 CCCL, the Future Land Use designations and the Land Development Code regulations which eliminates the ability to count property located within the "recreation" FLUM designation from the building coverage calculation. These regulations affect the ability to redevelop this property and severely limit the size of a structure that can be built under the 40% maximum building coverage.

- 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 is the minimum variance which allows an adequately sized single-family beach residence to be rebuilt while meeting modern construction methods and today's regulatory standards.

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

The proposed variance will not be injurious to the neighborhood or detrimental to the public welfare. The variance will allow for the construction of a single-family residence compatible with the neighborhood and surrounding properties. Furthermore, the project will include drainage improvements that are intended to

comply with the Town of Fort Myers Beach Code of Ordinances, specifically Sec. 6-14, ensuring no adverse impact on stormwater management on adjacent parcels.

- 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 property's conditions, use and regulatory impact from the 1978 CCCL are unique to this property. The conditions and circumstances are not so general or recurrent in nature as to mandate an amendment to the regulations in question. The variance process is adequate to address these circumstances and specific hardship.

Variance 3: LDC Section 6-14 (a) Neighborhood Flooding to allow a maximum impervious lot are of 73.3% where 67% is the allowed maximum impervious surface

- 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.*

Hurricane Ian, the location of the 1978 CCCL and the limited development footprint resulting from regulations that were implemented subsequent to the original platting of the property, have created exceptional conditions and circumstances. Furthermore, the requested variance represents a de minimis departure from the established development

- 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 exceptional conditions and circumstances are not a result of the Applicant's actions. The size of the property has not been altered by the property owner, but the area allowed to be used in the 40% maximum building coverage calculation is limited through the establishment of the 1978 CCCL, the Future Land Use designations and the Land Development Code regulations which eliminates the ability to count property located within the "recreation" FLUM designation from the building coverage calculation. These regulations affect the ability to redevelop this property and severely limit the size of a structure that can be built under the 40% maximum building coverage.

- a. *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 requested variance is for an increase of 6.3% (or 203 Sf) in the maximum impervious surface requirement. It is however important to remember that there are additional areas of pervious surface which are not allowed to be counted toward the overall calculation. The applicant has also included a stormwater

management plan which complies with current regulations. The requested variance is the minimum variance to relieve the applicant of the burden caused by the current regulations.

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

Any vehicular access easement is considered an impervious surface as the intent of the easement for vehicles to access abutting properties. This travel compacts the surface and greatly impedes water infiltration. The applicant has provided a Stormwater Management Plan that will be reviewed at the time of permitting. It is unlikely that the reduction will be injurious to the neighborhood or otherwise detrimental to the public welfare as the applicant will be required to demonstrate that the drainage system will “maintain a one-inch (interior lot) or 1.6 inch (waterfront lot) rainfall on-site”.

- c. *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 of the subject property and its redevelopment as a single-family residence are specific to this site and are the reason for the requested variance. As such, the circumstances are not so general or recurrent a nature as to warrant amendment of the current regulations.

**EXHIBIT DEPICTING
 SITE PLAN - BUILDABLE AREA**

1978 CCCL

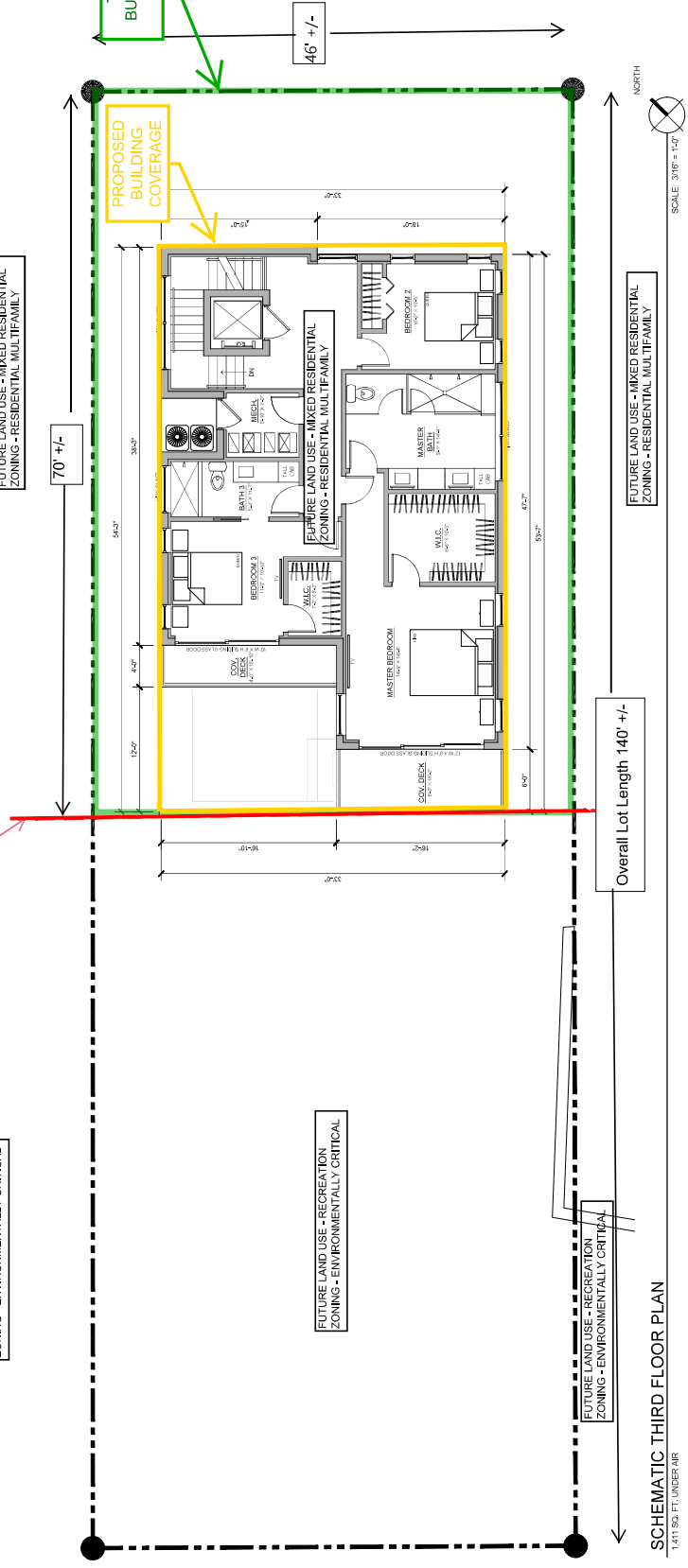
FUTURE LAND USE - RECREATION
 ZONING - ENVIRONMENTALLY CRITICAL

FUTURE LAND USE - MIXED RESIDENTIAL
 ZONING - RESIDENTIAL MULTIFAMILY

FUTURE LAND USE - RECREATION
 ZONING - ENVIRONMENTALLY CRITICAL

FUTURE LAND USE - RECREATION
 ZONING - ENVIRONMENTALLY CRITICAL

SCHEMATIC THIRD FLOOR PLAN
 1,411 SQ. FT. UNDER AIR

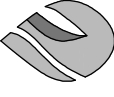


AREA ANALYSIS

FIRST FLOOR GARAGE/ENTRY FLOOR FOOTPRINT	1778 S.F.
SECOND FLOOR LIVING AREA (UNDER AIR)	1250 S.F.
THIRD FLOOR LIVING AREA (UNDER AIR)	1412 S.F.
SECOND FLOOR REAR OUTSIDE DECK (INC. POOL)	528 S.F.
THIRD FLOOR REAR OUTSIDE DECK	194 S.F.
TOTAL AREA (UNDER AIR)	2662 S.F.

BUILDING COVERAGE ANALYSIS

Total Buildable Area	= 3,212 S.F.
Building Coverage Allowed 40%	= 1,284.8 S.F.
Proposed Building Coverage	= 1,778 S.F.



GODDARD ENGINEERING, LLC
 7931 6th Ave. NE
 Naples, FL 34120
 PH: (239) 776-2608
 MGODDARDPE@GMAIL.COM



ON 07/09/25
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 VERIFIED ON ANY ELECTRONIC COPIES

STORMWATER MANAGEMENT PLAN

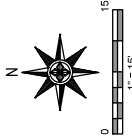
PRIVATE RESIDENCE

5236 ESTERO BLVD

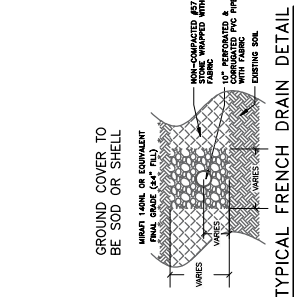
DATE: 7/09/25

REV.

REV.



JOB #: 25-187

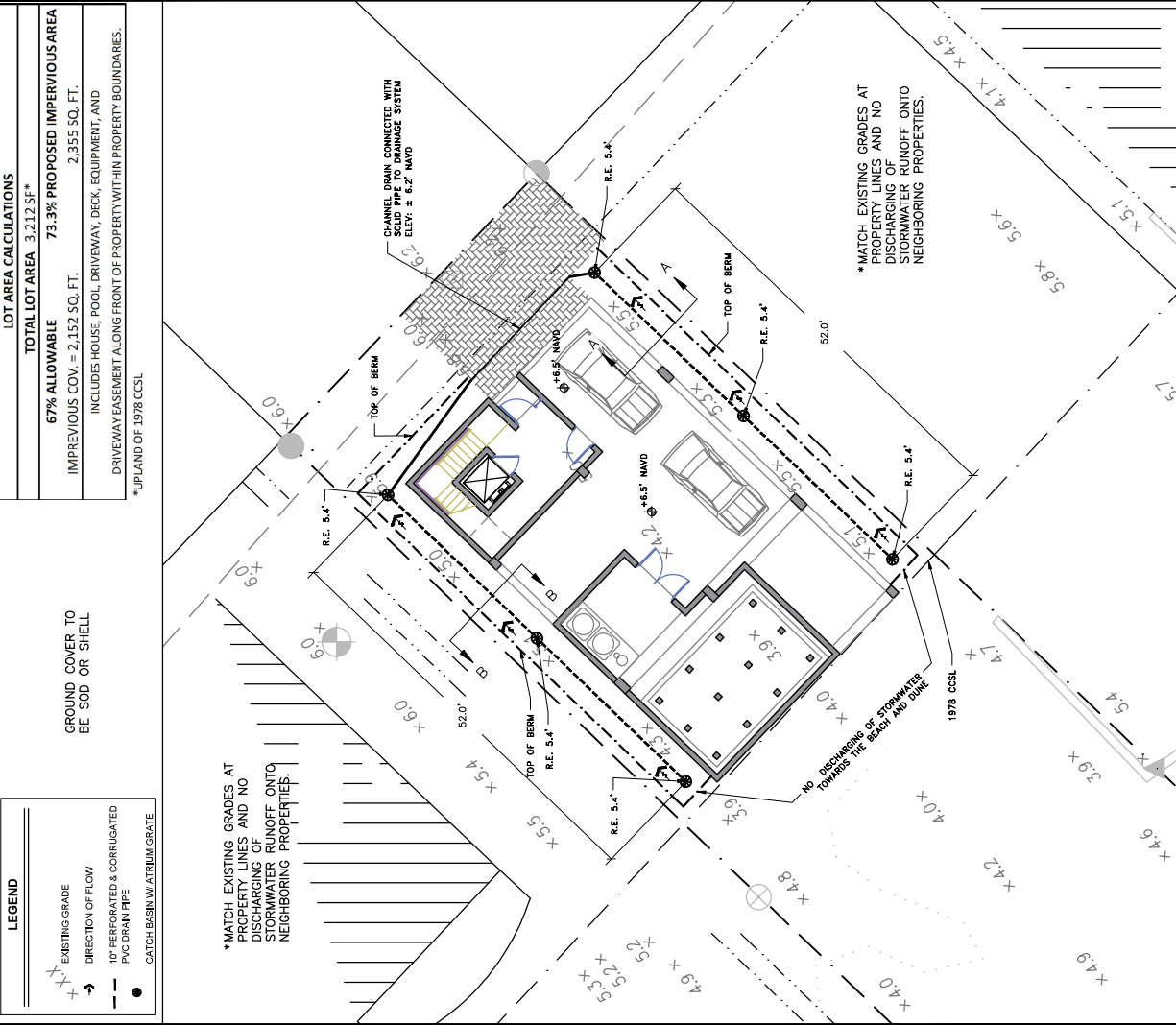


TYPICAL FRENCH DRAIN DETAIL

STORMWATER STORAGE CALCULATIONS	
1.6 INCH OVER ENTIRE SITE	
Total Lot Area Upland of 1978 CCL	3,212 sqft
REQUIRED STORAGE 1.6 INCH RUNOFF =	428 sqft
Pipe Data	
Pipe Diameter D	0.83 ft
No. of Pipes #	1.0
Pipe Length	104.0 ft
Pipe Area	0.5 sqft
Volume in Pipe	56.7 cf
Trench Data A	
Trench Width w	3.25 ft
Trench Height	3.00 ft
Trench Length l	52.0 ft
Trench Area	9.8 sqft
Trench Area Minus Pipe Area	9.2 sqft
Fillable Porosity f	0.4
Volume of Void Space Vs	191.5 cf
Trench Data B	
Trench Width w	3.25 ft
Trench Height	3.00 ft
Trench Length l	52.0 ft
Trench Area	9.8 sqft
Trench Area Minus Pipe Area	9.2 sqft
Fillable Porosity f	0.4
Volume of Void Space Vs	191.5 cf
French Drain Volume Provided	382.9 cf
Pipe	56.7 cf
French Drain	382.9 cf
Total Volume:	439.6 cf

NOTES:

- MATCH EXISTING GRADES AT PROPERTY LINES AND NO DISCHARGING OF STORMWATER RUNOFF INTO NEIGHBORING PROPERTIES.
- GRADE DRAINAGE TO FLOW INTO RETENTION AREAS. GRATES CAN BE PLACED ON DRIVEWAY TO IMPED FLOW AND CONNECT TO DRAINAGE PIPE.
- DOWNSPOUTS SHALL BE DIRECTED TO DRAINAGE SYSTEM.
- CONTRACTOR TO VERIFY SITE LAYOUT AND NOTIFY DESIGN PROFESSIONALS IF ANY INCONSISTENCIES OCCUR.
- GRADE AROUND THE BUILDING SHALL BE DIRECTED INTO RETENTION AREAS.
- THIS DRAINAGE PLAN IS BASED ON THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES SEC. 6-14.
- ELEVATIONS ARE IN NAVD88 FEET.
- THIS DRAINAGE PLAN SATISFIES TOWN OF FORT MYERS DRAINAGE CRITERIA.
- PERMIT REQUIRED FOR ANY RETENTION AREAS OR STRUCTURES OF DRIVEWAY LOCATED OUTSIDE PROPERTY BOUNDARY.
- SEPARATE ROW PERMIT SHALL BE SUBMITTED FOR PORTION OF DRIVEWAY LOCATED OUTSIDE PROPERTY BOUNDARY.
- CONTRACTOR TO CONTACT ENGINEER OR TOWN STAFF FOR INSPECTION PRIOR TO BACKFILLING TRENCH TO ENSURE PROPER INSTALLATION.
- PROPERTY SEAWARD OF 1991 CCCL PERMIT REQUIRED BEFORE INSTALLATION.





Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Variances

CASE NUMBER: VAR20250075

CASE NAME: 5236 Estero Blvd. Variances

LPA

HEARING DATE: August 12th, 2025

STAFF

RECOMMENDATION: Approval with conditions

PREPARED/

SUBMITTED BY: Judith Frankel, Principal Planner

I. APPLICATION SUMMARY

Applicant/Owner: The Neighborhood Company on behalf of owner Xheku LLC

Request(s): Applicant requests relief from 1) LDC Section 34-638(b)(1)(a) Building Setbacks for the RM zoning district to allow a 5-foot front street setback where a 25-foot setback is required; 2) LDC Section 34-644(b) Table 34-3 Building Coverage to allow a 55.4% building coverage where a 40% maximum building coverage is allowed; and 3) LDC Section 6-14 (a) Neighborhood Flooding to allow a maximum impervious lot area of 73.3% where 67% is the allowed maximum impervious surface.

Subject property: See attached site plan

Physical Address: 5236 Estero Boulevard

STRAP #: 33-46-24-W1-00206.0280

FLU: Mixed Residential

Zoning: RESIDENTIAL MULTIFAMILY(RM)

Adjacent zoning and land uses:

North:	RESIDENTIAL CONSERVATION (RC) Mixed Residential
South:	ENVIRONMENTAL CONSERVATION (EC) Recreation
East:	RESIDENTIAL MULTIFAMILY(RM) Mixed Residential
West:	COMMERCIAL RESORT (CR) Mixed Residential

II. BACKGROUND AND ANALYSIS

Background

The subject property encompasses ±0.149 acres (±6,472SF.), is located at 5236 Estero Blvd., Fort Myers, FL 33931 and is identified as STRAP # 33-46-24-W1-00206.0280. The property has a Future Land Use Designation of Mixed Residential and Recreation and falls within the Residential Multifamily (RM) and Environmentally Critical (EC) zoning districts. The property was originally developed in 1952 with a single-family home which was destroyed by Hurricane Ian.

The Applicant is proposing to redevelop the site with a new resilient structure that is compliant with today's building codes. The proposed single-family residence will have a footprint of 1,778 SF, which includes a raised pool and pool deck. The house will consist of three floors and 2,662 SF of habitable area. Prior to the storm, the single-family residence and accessory improvements on the property totaled about 1,210 SF and did not have a pool.

Analysis

The parcel does not meet the minimum dimensions and size of a lot in the RM zoning district. A Minimum Use Determination (MUD) was obtained for the property to allow the construction of a single-family home. The small non-conforming size is a condition of the property not caused by the applicant. Additionally, an access easement exists along the north side of the property that does not seem to provide access for or to the neighboring properties. Access easements are considered impervious surface as vehicle traffic compacts the surface even if the space is not paved. This is an additional constraint to the site not caused by the applicant.

Findings and Conclusions:

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance. The below is a review of these criteria for each of the three requested variances.

The applicant has provided their own responses to these criteria in the exhibit titled **Applicant's Project Narrative**.

Variance 1: LDC Section 34-638(b)(1)(a) Building Setbacks for the RM zoning district to allow a 5-foot front street setback where a 25-foot setback is required

- 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 location of the 1978 CCCL after the plating of the subject property reduced the buildable area for a single-family home. Hurricane Ian destroyed the original home that was constructed prior to the 1978 CCCL red. The requested variance will allow for a 20' reduction from the required 25' front setback that represents a de minimis variance to allow for the reasonable reconstruction of a residence that is about 54-feet deep and 33 feet wide. The requested front setback of 5' will provide adequate separation to allow vehicular access to the residence through the adjacent 10' private road easement. The new construction is designed for two parking spaces below the residence to accommodate the required parking for the site.

- 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.*

Hurricane Ian and the size of the property do not result from the actions of the applicant. The 1978 CCCL, the 10' easement at the front of the site and the required front setback have limited the ability for the property to be developable in its entirety. The regulatory impediments have created a lot which is severely limited in developable area.

- 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 requested variance is the minimum variance to relieve the applicant of the burden caused by the rigid application of the 25' front setback requirement.

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

The proposed variance is unlikely to be injurious to the neighborhood or otherwise detrimental to the public welfare. This variance will allow the redevelopment of a single-family residence on Fort Myers Beach which previously existed since 1952. It allows for a new, resilient structure which is FEMA compliant and landward of the 1978 CCCL. The adjacent easement will continue to allow for access.

- 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.*

No, the property's conditions, use and this request are unique to this site and are not so general or recurrent in nature as to mandate an amendment to the regulations in question. The variance process is adequate to address these circumstances and specific hardship.

Variance 2: LDC Section 34-644(b) Table 34-3 Building Coverage to allow a 55.4% building coverage where a 40% maximum building coverage is allowed

- 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.*

Hurricane Ian, the location of the 1978 CCCL and the limited development footprint resulting from regulations that were implemented after the original plating of the property, have created exceptional conditions and circumstances. Furthermore, the requested variance represents a de minimis departure from the established development

- 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 exceptional conditions and circumstances are not a result of the Applicant's actions. The size of the property has not been altered by the property owner, but the area allowed to be considered in the 40% maximum building coverage calculation is limited through the establishment of the 1978 CCCL, the Future Land Use designations and the Land Development Code regulations which eliminates the ability to count property located within the "recreation" FLUM designation from the building coverage calculation. These regulations affect the ability to redevelop this property and severely limit the size of a structure that can be built under the 40% maximum building coverage.

- 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 is the minimum variance which allows an typically sized single-family beach residence to be rebuilt while meeting modern construction methods and today's regulatory standards.

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

The proposed variance will not be injurious to the neighborhood or detrimental to the public welfare. The variance will allow for the construction of a single-family residence compatible with the neighborhood and surrounding properties. Furthermore, the project will include drainage improvements that are intended to comply with the Town of Fort Myers Beach Code of Ordinances, specifically Sec. 6-14, ensuring no adverse impact on stormwater management on adjacent parcels.

- 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 property's conditions, use and regulatory impact from the 1978 CCCL are unique to this property. The conditions and circumstances are not so general or recurrent in nature as to mandate an amendment to the regulations in question. The

variance process is adequate to address these circumstances and specific hardship.

Variance 3: LDC Section 6-14 (a) Neighborhood Flooding to allow a maximum impervious lot are of 73.3% where 67% is the allowed maximum impervious surface

- 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.*

Hurricane Ian, the location of the 1978 CCCL and the limited development footprint resulting from regulations that were implemented subsequent to the original platting of the property, have created exceptional conditions and circumstances. Furthermore, the requested variance represents a de minimis departure from the established development

- 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 exceptional conditions and circumstances are not a result of the Applicant's actions. The size of the property has not been altered by the property owner, but the area allowed to be used in the 40% maximum building coverage calculation is limited through the establishment of the 1978 CCCL, the Future Land Use designations and the Land Development Code regulations which eliminates the ability to count property located within the "recreation" FLUM designation from the building coverage calculation. These regulations affect the ability to redevelop this property and severely limit the size of a structure that can be built under the 40% maximum building coverage.

- a. 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 requested variance is for an increase of 6.3% (or 203 Sf) in the maximum impervious surface requirement. It is however important to remember that there are additional areas of pervious surface which are not allowed to be counted toward the overall calculation. The applicant has also included a stormwater management plan which complies with current regulations. The requested variance is the minimum variance to relieve the applicant of the burden caused by the current regulations.

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

Any vehicular access easement is considered an impervious surface as the intent of the easement for vehicles to access abutting properties. This travel compacts the surface and greatly impedes water infiltration. The applicant has provided a Stormwater Management Plan that will be reviewed at the time of permitting. It is unlikely that the reduction will be injurious to the neighborhood or otherwise detrimental to the public welfare as the applicant will be required to demonstrate that the drainage system will "maintain a one-inch (interior lot) or 1.6 inch (waterfront lot) rainfall on-site".

- c. *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 of the subject property and its redevelopment as a single-family residence are specific to this site and are the reason for the requested variance. As such, the circumstances are not so general or recurrent a nature as to warrant amendment of the current regulations.

III. RECOMMENDATION

Staff has reviewed the request for variances from 1) LDC Section 34-638(b)(1)(a) Building Setbacks for the RM zoning district to allow a 5-foot front street setback where a 25-foot setback is required; 2) LDC Section 34-644(b) Table 34-3 Building Coverage to allow a 55.4% building coverage where a 40% maximum building coverage is allowed; and 3) LDC Section 6-14 (a) Neighborhood Flooding to allow a maximum impervious lot are of 73.3% where 67% is the allowed maximum impervious surface and found that the variances requested do meet the requirements set forth in sec. 34-87.

This recommendation considers the existing conditions at the site that were not due to actions taken by the property owner and that the variances do not appear to create a negative impact on surrounding properties. Therefore, staff recommends **APPROVAL WITH CONDITIONS** of VAR20250075.

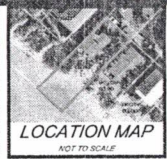
IV. CONDITIONS FOR APPROVAL

If the Town's LPA recommends approval for the variance, town's staff recommends the following conditions of approval.

- 1) Approval of these variances does not give the Applicant an undeniable right to permit approval. Development 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.
- 2) Property owner must ensure that they adhere to the portion of the neighborhood flooding ordinance (LDC Sec. 6-14) that requires the property to be able to maintain 1.6 inches of rainfall on site. This will be reviewed at permitting,
- 3) The variance shall only apply to the structure as shown on the provided site plan. Demolition or substantial damage to the structure shall render the variance to be null and void.

V. EXHIBITS

- A. Proposed site plan
- B. Applicant's Project Narrative
- C. Survey
- D. Complete application



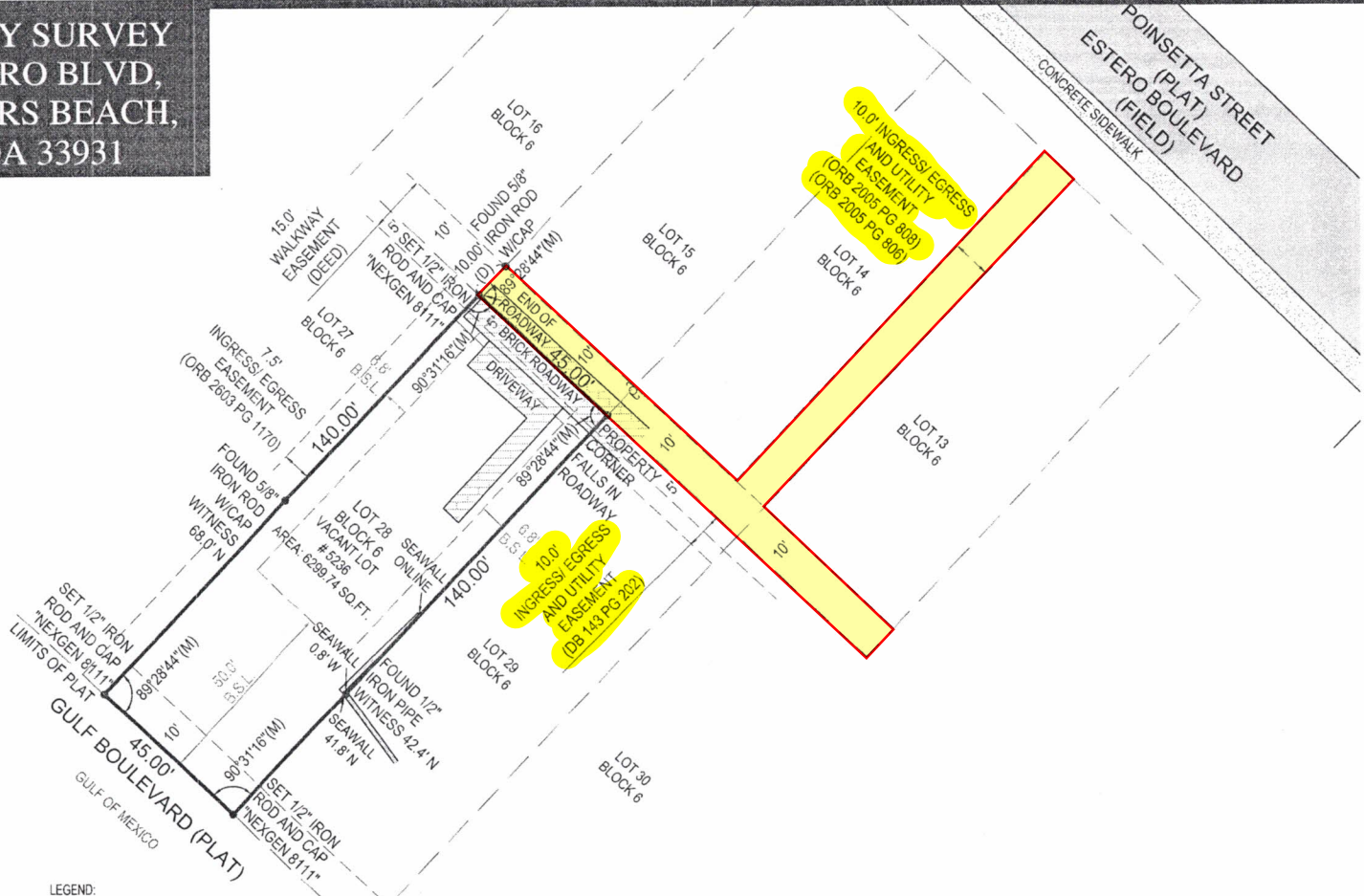
SCALE = 1" = 30'

BOUNDARY SURVEY 5236 ESTERO BLVD, FORT MYERS BEACH, FLORIDA 33931

LEGAL DESCRIPTION:
LOT 28, BLOCK 6, GULF HEIGHTS, A SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED AT PLAT BOOK 6, PAGE 33, IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

CERTIFIED TO:
XHEHU LLC, A FLORIDA LIMITED LIABILITY COMPANY
SUN NATIONAL TITLE COMPANY LLC
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
FLOOD ZONE:
1207103566G
ZONE: VE
ELEV: 14 FT
EFF: 11/17/2022

GENERAL NOTES:
1) THIS SURVEY IS BASED UPON RECORD INFORMATION BY CLIENT. NO SPECIFIC SEARCH OF THE PUBLIC RECORD HAS BEEN MADE BY THIS OFFICE UNLESS OTHERWISE NOTED.
2) IF THIS SURVEY HAS BEEN PREPARED FOR THE PURPOSES OF A MORTGAGE TRANSACTION, ITS SCOPE IS LIMITED TO THE DETERMINATION OF TITLE DEFICIENCIES. NO FUTURE CONSTRUCTION SHALL BE BASED UPON THIS SURVEY WITHOUT FIRST OBTAINING APPROVAL AND/OR UPDATES FROM NEXGEN SURVEYING, LLC. NEXGEN SURVEYING, LLC, ASSUMES NO RESPONSIBILITY FOR ERRORS RESULTING FROM FAILURE TO ADHERE TO THIS CLAUSE.
3) ANY FENCES SHOWN HEREON ARE ILLUSTRATIVE OF THEIR GENERAL POSITION ONLY. FENCE TIES SHOWN ARE TO GENERAL CENTERLINE OF FENCE. THIS OFFICE WILL NOT BE RESPONSIBLE FOR DAMAGES RESULTING SOLELY ON THEIR PHYSICAL RELATIONSHIP TO THE MONUMENTED BOUNDARY LINES.
4) GRAPHIC REPRESENTATIONS MAY HAVE BEEN EXAGGERATED TO MORE CLEARLY ILLUSTRATE MEASURED RELATIONSHIPS - DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALED POSITIONS.
5) UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED EXCEPT AS SPECIFICALLY SHOWN.
6) ELEVATIONS ARE BASED UPON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D. 1929) OR NORTH AMERICAN VERTICAL DATUM (N.A.V.D. 1988).
7) ALL BOUNDARY AND CONTROL DIMENSIONS SHOWN ARE FIELD MEASURED AND CORRESPOND TO RECORD INFORMATION UNLESS SPECIFICALLY NOTED OTHERWISE.
8) CORNERS SHOWN AS "SET" ARE 5/8" IRON RODS IDENTIFIED WITH A PLASTIC CAP MARKED LS (LICENSED SURVEYOR).



LEGEND:									
(SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING)									
AC-ACR. CONDITIONER	P.O.B.-POINT OF BEGINNING	D.E.-DRAINAGE EASEMENT	R-RADIUS (R)	P-PLAT	ELEV-ELEVATION	☆-LIGHT POLE	#-NUMBER	⊕-WELL	⊖-FENCE PLUS OR MINUS
WM-WATER METER	P.O.C.-POINT OF COMMENCEMENT	P.U.E.-PUBLIC UTILITY EASEMENT	O.R.B.-OFFICIAL RECORDS BOOK	E.O.W.-EDGE OF WATER	FF-FINISHED FLOOR		AS-ASPHALT	WV-WATER VALVE	⊕-POLE
AL-ARC LENGTH	P.B.-PLAT BOOK	L.A.E.-LIMITED ACCESS EASEMENT	SQ.FT.-SQUARE FEET	TOB-TOP OF BANK	LS-LICENSED SURVEYOR		CO-CONCRETE	CL-CENTER LINE	⊖-POLE
(C)-CALCULATED	PG-PAGE	L.M.E.-LAKE MAINTENANCE EASEMENT	AC-ACRES	O.H.L.-OVERHEAD LINE	L3-LICENSED BUSINESS		PA-PAVER/BRICK	CB-CATCH BASIN	⊖-POLE
(M)-MEASURED	U.E.-UTILITY EASEMENT	O.H.E.-OVERHEAD EASEMENT	DB-DEED BOOK(D)-DEED	C/O-CLEAN OUT	PSM-PROFESSIONAL SURVEYOR & MAPPER		W-WOOD	⊖-FIRE HYDRANT	⊖-POLE
								⊖-TOPOGRAPHIC ELEVATION	

- SURVEY NOTES:
- ROADWAY CROSSES THE BOUNDARY LINE ON NORTHERLY SIDE OF LOT AS SHOWN.
- SEAWALL CROSS THE BOUNDARY LINE ON EASTERLY SIDE OF LOT AS SHOWN.

FIELD DATE: 02/09/2023
DRAWN BY: KG
ORDER NO: 206178
REVISIONS:

1547 PROSPERITY FARMS ROAD,
WEST PALM BEACH, FL 33403
NEXGENSURVEYING.COM LB#8111
PHONE: 561.508.6272
FAX: 561.508.6309

NEXGEN
SURVEYING, LLC.

I HEREBY CERTIFY THAT THIS SURVEY MEETS OR EXCEEDS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PER CHAPTER 6J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY
CLYDE O. MCNEAL
PSM 2883
ON 4/28/2023



July 15, 2025

Town of Fort Myers Beach
Community Development Department
Attn.: Judith Frankel, Principal Planner
2525 Estero Blvd.
Fort Myers Beach, FL 33931

Via email: zoningpermits@fmbgov.com

**Subject: VAR20250075– Plan Resubmittal
5236 Estero Blvd., Fort Myers Beach
Strap # 33-46-24-W1-00206.0280**

Dear Judith:

Please accept resubmittal of the following documents per the your correspondence dated May 1, 2025:

1. Site Plan - Revised
2. Stormwater Management Plan
3. Revised Request Narrative
4. Schematic Design Plans
5. Declaration of Condominium for Turtle Walk of Fort Myers Beach
6. Right of Way (ROW) Control Survey Map Sheets PG 19

In reply to your review comments, we offer the following responses in bold:

Zoning Review: Judith Frankel

1. Buildable area (area landward of the 1978 CCCL) is noted as different SF on different plan sheets. The narrative sheet D3 says 3,220 SF and the Application file D1 lists 3,212 as the buildable area.

Please ensure consistency across all plans.

- a. A buildable area of 3,212 allows for a 40% building coverage of 1,284.8 SF

Response: Sheet D3 has been updated to reflect the buildable area of 3,212 SF.

- b. The building coverage appears to be 1,778 SF. A lot coverage variance must be requested. See Ord. 24-24 Dimensional Regs in Conv Zoning Dists VAR from Note 10 on Table 34-3.

Response: The enclosed narrative has been updated to include a variance request from the required Residential Multi-family zoning district lot coverage requirement of 40% from Note 10 on Table 34-3.

- c. Is the second level pool deck included in the building coverage? Any covered area must be included in the building coverage. The pool is covering the ground level and is attached to the house. Please state that on sheet D3.



Response: The second level pool deck is included in the building coverage. The proposed building coverage is based on the building footprint of 1,778 SF. This building footprint will result in building coverage of 55.4% which is 15.4% above the allowable 40% building coverage. Therefore, we have included a request for a variance from the lot coverage requirement, Ord. 24-24 Dimensional Regs in Conv Zoning district lot coverage requirement of 40% from Note 10 on Table 34-3. In support of this variance, we are also enclosing a Stormwater Management Plan designed by Goddard Engineering, LLC, dated July 9, 2025, showing the proposed impervious area which includes the house, pool, driveway, deck, equipment, and driveway easement along the front of the property within the property boundaries.

2. Variance request for front setback is appropriate, but easements are unclear.

- a. Is the driveway easement accessible to other properties? If so, the area must be considered paved. It seems that the main access easement is adjacent to the property and not on the property. Please clarify easement arrangements and use.

Response: The 10' Private Road and Utility Easement (O.R. Book 108 PG. 429) and 10' Ingress/Egress Easement (O.R. 2097 PG 3294), as depicted on the enclosed Right-of-way Control Survey Map Sheets (PG 19), run parallel to the south property line of Lot 15, situated on Lot 28, and terminate at the shared property line between Lot 27 and 28 (see enclosed ROW Control Survey). The Ingress/Egress Easement (O.R. 2097 PG 3294) provides access to Lot 28 & 29 from Estero Boulevard, crossing through Lots 14 and 13.

The established residence on Lot 27, identified as 5228 Estero Boulevard, is part of the Turtle Walk of Fort Myers Beach Condominium Association and gains access from the established condominium entrance located on Estero Boulevard. **As depicted in Exhibit "D" (page 65) of the enclosed Declaration of Condominium for Turtle Walk of Fort Myers Beach, Lot 27 contains Unit 1 and a Common Element, it does not show that access is obtained from the 10' Private Road & Utility Easement (O.R. Book 108 PG. 429) and 10' Ingress/Egress Easement (O.R. 2097 PG 3294).**

Therefore, the 10' easement, while it does extend across the northerly border of the subject property (Lot 28), it is not currently used nor is it planned as a future access point for the established Turtle Walk Condominium or Lot 27, per their Declaration of Condominium, Exhibit D.

3. Elevations were not provided so staff could not confirm compliance with height restrictions.

Response: The Residential Multi-family zoning district permits a maximum building height of 35', not to exceed 3 stories. The proposed building will be in compliance with the height restrictions as stated within the LDC and demonstrated at time of Development Order.

Please confirm that these plans complete the variance application package and that we are confirmed for the August LPA meeting. If staff have any further comments, please let us know as soon as possible and we will work diligently to resolve them so that we can stay on schedule for the August hearing date.



Sincerely,
The Neighborhood Company

Patrick Vanasse, AICP
President, Partner

cc: File: 24017.01.01

A SCHEMATIC DESIGN FOR:
THE HOBDAIR RESIDENCE

5236 ESTERO BLVD.
FORT MYERS BEACH, FL

CONSULTANT:

ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET

NOT FOR
CONSTRUCTION

DATE ISSUED: 13 FEB 2025

REVISIONS:

[illegible][illegible]

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--	--

SHEET

103

OF 3

**EXHIBIT DEPICTING
SITE PLAN - BUILDABLE AREA**

1978 CCCL

FUTURE LAND USE - RECREATION
ZONING - ENVIRONMENTALLY CRITICAL

FUTURE LAND USE - MIXED RESIDENTIAL
ZONING - RESIDENTIAL MULTIFAMILY

70' +/-

PROPOSED BUILDING COVERAGE

TOTAL
BUILDABLE
AREA

46' +/-

FUTURE LAND USE - RECREATION
ZONING - ENVIRONMENTALLY CRITICAL

FUTURE LAND USE - MIXED RESIDENTIAL
ZONING - RESIDENTIAL MULTIFAMILY

FUTURE LAND USE - RECREATION
ZONING - ENVIRONMENTALLY CRITICAL

Overall Lot Length 140' +/-

FUTURE LAND USE - MIXED RESIDENTIAL
ZONING - RESIDENTIAL MULTIFAMILY

NORTH

SCALE: 3/16" = 1'-0"

AREA ANALYSIS

FIRST FLOOR GARAGE/ENTRY FOYER FOOTPRINT	1778 S.F.
SECOND FLOOR LIVING AREA (UNDER AIR)	1250 S.F.
THIRD FLOOR LIVING AREA (UNDER AIR)	1412 S.F.
SECOND FLOOR REAR OUTSIDE DECK (INC. POOL)	528 S.F.
THIRD FLOOR REAR OUTSIDE DECK	164 S.F.
TOTAL AREA (UNDER AIR)	2662 S.F.

BUILDING COVERAGE ANALYSIS

Total Buildable Area	= 3,212 S.F.
Building Coverage Allowed 40%	= 1,284.8 S.F.
Proposed Building Coverage 55.4%	= 1,778 S.F.

SCHEMATIC THIRD FLOOR PLAN

1,411 SQ. FT. UNDER AIR

LEGEND

EXISTING GRADE

DIRECTION OF FLOW

10" PERFORATED & CORRUGATED PVC DRAIN PIPE

CATCH BASIN W/ ATRIUM GRATE

GROUND COVER TO BE SOD OR SHELL

LOT AREA CALCULATIONS	
TOTAL LOT AREA 3,212 SF*	
67% ALLOWABLE	73.3% PROPOSED IMPERVIOUS AREA
IMPERVIOUS COV. = 2,152 SQ. FT.	2,355 SQ. FT.
INCLUDES HOUSE, POOL, DRIVEWAY, DECK, EQUIPMENT, AND DRIVEWAY EASEMENT ALONG FRONT OF PROPERTY WITHIN PROPERTY BOUNDARIES.	
*UPLAND OF 1978 CCSL	

*MATCH EXISTING GRADES AT PROPERTY LINES AND NO DISCHARGING OF STORMWATER RUNOFF ONTO NEIGHBORING PROPERTIES.

CHANNEL DRAIN CONNECTED WITH SOLID PIPE TO DRAINAGE SYSTEM ELEV: ± 6.2' NAVD

1978 CCSL

*MATCH EXISTING GRADES AT PROPERTY LINES AND NO DISCHARGING OF STORMWATER RUNOFF ONTO NEIGHBORING PROPERTIES.

SECTION A-A
TYPICAL SIDE YARD SECTION (N.T.S.)

SECTION B-B
TYPICAL SIDE YARD SECTION (N.T.S.)

GROUND COVER TO BE SOD OR SHELL

TYPICAL FRENCH DRAIN DETAIL
N.T.S.

STORMWATER STORAGE CALCULATIONS	
1.6 INCH OVER ENTIRE SITE	
Total Lot Area Upland of 1978 CCSL=	3,212 sqft
REQUIRED STORAGE 1.6 INCH RUNOFF =	428 sqft
Pipe Data	
Pipe Diameter D	0.83 ft
No. of Pipes #	1.0
Pipe Length	104.0 ft
Pipe Area	0.5 sqft
Volume in Pipe	56.7 cf
Trench Data A	
Trench Width w	3.25 ft
Trench Height h	3.00 ft
Trench Length l	52.0 ft
Trench Area	9.8 sqft
Trench Area Minus Pipe Area	9.2 sqft
Fillable Porosity f	0.4
Volume of Void Space Vs	191.5 cf
Trench Data B	
Trench Width w	3.25 ft
Trench Height h	3.00 ft
Trench Length l	52.0 ft
Trench Area	9.8 sqft
Trench Area Minus Pipe Area	9.2 sqft
Fillable Porosity f	0.4
Volume of Void Space Vs	191.5 cf
French Drain Volume Provided	382.9 cf
Pipe	56.7 cf
French Drain	382.9 cf
Total Volume:	439.6 cf

NOTES:

- MATCH EXISTING GRADES AT PROPERTY LINES AND NO DISCHARGING OF STORMWATER RUNOFF ONTO NEIGHBORING PROPERTIES.
- GRADE DRIVEWAYS TO FLOW INTO RETENTION AREAS. GRATES CAN BE PLACED ON DRIVEWAY TO IMPEDE FLOW AND CONNECT TO DRAINAGE PIPE.
- DOWNSPOUTS SHALL BE DIRECTED TO DRAINAGE SYSTEM.
- CONTRACTOR TO VERIFY SITE LAYOUT AND NOTIFY DESIGN PROFESSIONALS IF ANY INCONSISTENCIES OCCUR.
- GRADE AROUND THE BUILDING SHALL BE DIRECTED INTO RETENTION AREAS.
- ELEVATIONS ARE IN NAVD88 FEET.
- THIS DRAINAGE PLAN IS BASED ON THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES SEC. 6-14.
- THIS DRAINAGE PLAN SATISFIES TOWN OF FORT MYERS DRAINAGE CRITERIA.
- PROPERTY DETAILS BASED ON STUDIO A.D. ARCHITECT SITE PLAN.
- SEPARATE ROW PERMIT SHALL BE SUBMITTED FOR PORTION OF DRIVEWAY LOCATED OUTSIDE PROPERTY BOUNDARY.
- CONTRACTOR TO CONTACT ENGINEER OR TOWN STAFF FOR INSPECTION PRIOR TO BACKFILLING TRENCH TO ENSURE PROPER INSTALLATION.
- PROPERTY SEAWARD OF 1991 CCCL. CCCL PERMIT REQUIRED BEFORE INSTALLATION.

GODDARD ENGINEERING, LLC

2931 6th Ave. NE

NAPLES, FL 34120

PH: (239) 776-2608

MGODDARDPE@GMAIL.COM

THIS ITEM HAS BEEN DIGITALLY SIGNED AND SEALED BY

ON 07/10/2025
PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SHA AUTHENTICATION CODE MUST BE VERIFIED ON ANY ELECTRONIC COPIES

5236 ESTERO BLVD
PRIVATE RESIDENCE
STORMWATER MANAGEMENT PLAN

DATE: 7/09/25

REV.

REV.

JOB #: 25-187

1

Page 191 of 377



**Hobdari Variance
5236 Estero Blvd.
Variance Request**

REQUEST NARRATIVE

REQUEST & BACKGROUND

The Neighborhood Company submits this variance application to allow the redevelopment of the single-family residence located on the subject property at 5236 Estero Blvd., Fort Myers Beach, FL, 33931. The enclosed application seeks relief from the following code sections:

1. LDC Section 34-638(b)(1)(a) Building Setbacks for the Residential Multifamily zoning district
2. LDC Section 34-644(b) Table 34-3 Building Coverage (Ord. 24-24 Dimensional Regs in Conv Zoning district lot coverage requirement of 40% from Note 10 on Table 34-3)
3. LDC Section 6-14 (a) Neighborhood Flooding (Maximum Impervious)

The subject property encompasses ± 0.149 acres ($\pm 6,472$ SF.), is located at 5236 Estero Blvd., Fort Myers, FL 33931 and is identified as STRAP # 33-46-24-W1-00206.0280. The property has a Future Land Use Designation of Mixed Residential and Recreation and falls within the Residential Multifamily (RM) and Environmentally Critical (EC) zoning districts. The property was originally developed in 1952 with a single-family home which was destroyed by Hurricane Ian.

Prior to the storm, the single-family residence and accessory improvements on the property totaled $\pm 1,210$ SF. The previous structure was older, non-conforming, and encroached onto Lot 27 and the 1978 CCCL. The Applicant is proposing to redevelop the site with a new state-of-the-art structure that will be resilient, compliant with today's building codes and an attractive asset to the community.



PROPERTY BOUNDARY



SUBJECT PROPERTY PRE- HURRICANE IAN



The original structure was constructed in 1952 before the Coastal Construction Control Line was established in 1978.



PROPOSED REDEVELOPMENT

The Applicant proposes to redevelop the subject property with a new single-family residence that will be FEMA compliant and will meet or exceed Florida Building Code requirements. However, due to the limited size of the property, the need to be constructed landward of the 1978 Coastal Construction Control Line (CCCL) and the inability to count the lot area seaward of the CCCL, the project will require three variances. These variances are discussed in greater detail below.

The proposed single-family residence will have a footprint of $\pm 1,778$ SF, consisting of three floors and $\pm 2,662$ SF under air. The ground floor will feature parking for two cars, pool equipment/storage and the home's entrance. This area will be hardened and resilient and will be designed to meet floodplain requirements. The second floor will contain the main living area, one bedroom, a covered deck, and an elevated pool. The third floor will consist of three bedrooms, two baths, and 164 SF of covered deck. The proposed structure's footprint will be slightly larger than the previous residence to accommodate modern construction methods, to meet today's standards associated with single-family residential room sizes and to include an elevated pool.

NARRATIVE STATEMENTS

The following information is provided to address the narrative statement requirement contained within the Supplement Form PH-B, Additional Required Information for a Variance Application. The directions contained and questions posed within the application are presented in bold and underlined format, with our responses below. Please forgive the redundancy found within these answers. Even though this is a unified project, the code requires that we address the same questions and all evaluation criteria for each variance requested. The three variances are depicted on the enclosed site plan.

Variance #1 Request

Request for variance from LDC Section 34-638(b)(1)(a) to allow for a 20' reduction of the required minimum 25' front street setback within the Residential Multifamily zoning district. Explain the specific regulation contained in this section from which relief is sought.

Fort Myers Beach's current Land Development Code Section 34-674(b)(1)(a) states that a 25' minimum front street setback is required for the residential multifamily zoning district as measured from the easement line rather than the property line. In 1978 the Coastal Construction Control Line was established for Fort Myers Beach. The CCCL was established to regulate activities and the location of structures in coastal



areas. Approximately 70' of the lot's depth of $\pm 140'$ is seaward of the CCCL, and there is a $\pm 10'$ right-of-way easement at the front to the property, thus restricting the developable area for the single-family residence which was destroyed by Hurricane Ian, see enclosed Sheet D1 of the enclosed Schematic Design Plans. Adhering to the minimum front street setback and constructing landward of the 1978 Coastal Construction Control Line, would severely limit the allowable development footprint. The proposed setback variance increases the developable area in order to allow a reasonable single-family home.

Reasons for request. Explain why the variance is needed:

This petition seeks a variance from **LDC Section 34-638(b)(1)(a)** due to the configuration of the property. The subject property is located at 5236 Estero Boulevard and was previously developed as a single-family residence prior to its destruction by Hurricane Ian. The property currently measures $\pm 46'$ wide and $\pm 140'$ deep. A variance is needed to allow the building to be placed on the lot with a 5' front street setback in order to have an average-sized residence landward of the 1978 Coastal Construction Control Line (CCCL).

The subject property was created in 1925 as a result of the subdivision of Lot 3 located in Section 33, Township 46 South, Range 24 East. This newly created subdivision would become known as the Gulf Heights subdivision. This newly created lot was dimensioned to be $\pm 46'$ wide and $\pm 140'$ deep. At that time, the developable area would have been $\pm 46'$ wide by $\pm 140'$ deep minus applicable setback. . Due to the current CCCL restrictions, the current depth of available property landward of the CCCL is $\pm 70'$. The original overall buildable lot area was $\pm 6,440$ square feet, which has now been reduced to $\pm 3,220$ SF. As a result of the 1978 CCCL and the current LDC regulations, a single-family structure would have a limited development footprint of only 33'(width) x 44'(depth) as depicted in the enclosed Exhibit – Buildable Area.

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

This variance, if granted, will not cause negative impacts to surrounding properties, and will allow the construction of a new single-family residence that will be compliant with FEMA regulations and will meet or exceed Florida Building Code requirements.

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

Regulatory impediments which restrict the lot's buildable area due to the 1978 CCCL and the required front setback have created the need for this variance. The property is $\pm 46'$ wide and extends $\pm 140'$ deep. The 1978 CCCL bisects the property and limits the usable depth and developable area of the property. LDC Section 34-638(b)(1)(a) which requires a 25' front setback further exacerbates the limited development footprint which will not support the construction of today's average-sized beachfront residence.



Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in 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;**

Hurricane Ian's destruction and the location of the 1978 CCCL on the subject property have created exceptional circumstances. The requested variance will allow for a 20' reduction from the required 25' front setback that represents a de minimis variance to allow for the reasonable reconstruction of an average-sized beachfront residence. The requested front setback of $\pm 5'$ will provide adequate separation to allow vehicular access to the residence through the adjacent $\pm 10'$ private road easement. The new construction is designed for two parking spaces below the residence to accommodate the required parking for the site.

- (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;**

The exceptional or extraordinary conditions justify the requested variance; Hurricane Ian and the size of the property do not result from the actions of the applicant. The destruction of the single-family residence was an "Act of God." The addition of regulations such as the 1978 CCCL, the 10' easement at the front of the site and the required front setback have limited the ability for the property to be developable in its entirety. The regulatory impediments have created a lot which is severely limited in developable area. If it were not for the reduction of the developable area, there would not be a need for this variance. The existing lot would provide sufficient area for a reasonable single-family beach residence to be reconstructed on the site. The applicant has carefully considered current regulations and designed a building and site to eliminate or alleviate pre-storm non-conformities while still being able to maintain the use of an average-sized beach residence on the subject property.

- (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;**

The requested variance is the minimum variance to relieve the applicant of the unreasonable burden caused by the application of the 25' front setback requirement. As mentioned above, the depth of the lot is not conducive to redeveloping the site with an average-sized beachfront residence.



(4) Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare; and

The proposed variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. This variance will allow the redevelopment of a single-family residence on Fort Myers Beach which previously existed since 1952. It allows for a new, resilient structure which is FEMA compliant and landward of the 1978 CCCL.

(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.

No, the property's conditions, use and this request are unique to this site and are not so general or recurrent in nature as to mandate an amendment to the regulations in question. The variance process is adequate to address these circumstances and specific hardship.

Variance #2 Request

Request for variance from LDC Section 34-644(b) Table 34-3 to provide relief from the required 40% Building Coverage limit for single-family residences within the Residential Multi-family Zoning.

Variance request #2 is for relief from Land Development Code Section 34-644(b) Table 34-3 which states that properties within the Residential Multifamily Zoning District shall be limited to a maximum building coverage limit of 40%. The building coverage calculation is based on LDC Section 34-634 which states that building coverage is the horizontal area of all principal and accessory buildings on a site divided by the site's lot area. the term "horizontal area" does not include any area occupied by unroofed structures such as driveways, sidewalks, patios, outside stairways, or open swimming pools, and does not include any area whose roof is screened rather than solid such as swimming pool enclosures. A site's lot area includes the gross square footage within the site's private property line, minus wetlands, canals, or other waterbodies, **and minus any land designated "recreation"** on the comprehensive plan's future land use map.

Reasons for request. Explain why the variance is needed:

This variance is requested to provide the ability to rebuild a single-family residence of appropriate size on existing beachfront property. The subject property was created in 1925 as a result of the subdivision of Lot 3 located in Section 33, Township 46 South, Range 25 East. The resulting subdivision is known as the Gulf Heights Subdivision with the subject property being identified as Lot 28 and measuring $\pm 140'$ deep and $\pm 46'$ wide for a total of 0.149 acre or 6,472 square feet, more or less. To redevelop the property to today's standards after the destruction caused by Hurricane Ian, the site is limited to maximum building coverage



of 40% or 1,284.8 square feet. The current regulations do not allow the portion of the property designated as "recreation" to be included in the building coverage calculation. This eliminates 3,260 square feet of the property from the Building Coverage calculation and severely limits the maximum building footprint allowed on the subject property. The proposed building footprint includes the house, above ground pool, deck, and equipment. The proposed building footprint is 1,778 square feet and will result in a building coverage of 55.4%. If the full lot, including the land with the FLUM designated of "recreation" were able to be considered the building coverage would only be 27.4%.

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

The requested variance to eliminate the need to adhere to a building coverage maximum of 40% will not be noticeable since the resulting home will be consistent with other beach homes within this neighborhood and throughout Fort Myers Beach. As shown on the enclosed Stormwater Management Plan, prepared by Goddard Engineering LLC, the site's stormwater/drainage plan satisfies the Town's drainage criteria, and the approval of this variance will not have adverse effects on surrounding properties.

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

The unprecedented hurricane which destroyed the single-family residence that existed on the property, the regulatory impediments placed on the property through the implementation of the 1978 CCCL, the Fort Myers Beach Comprehensive Plan and the Land Development Code have severely limited the development footprint allowed on the property and impose a significant hardship that would impede redevelopment of the site if not for this variance. The imposition of the maximum building coverage within the RM zoning district and the exclusion of any land designated "recreation" on the comprehensive plan's future land use map creates a hardship which is unique to the property. The building coverage limitation, CCCL line and Recreation designation severely impede the ability to meet the 40 % limitation. The applicant has enlisted Goddard Engineering LLC to design a drainage plan to demonstrate the method used to maintain a 1.6-inch rainfall on-site when more than 500 square feet of impervious surface is proposed per the Town of Fort Myers Beach Codes of Ordinances Sec. 6-14.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in 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;

As explained above, Hurricane Ian, the location of the 1978 CCCL and the limited development footprint resulting from regulations that were implemented subsequent to the original platting of the property, have created exceptional conditions and circumstances. Furthermore, the requested variance represents a de minimis departure from the established development regulations and will not be deleterious to adjacent properties or the surrounding neighborhood.

(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;

The exceptional conditions and circumstances are not a result of the Applicant's actions. The size of the property has not been altered by the property owner, but the area allowed to be used in the 40% maximum building coverage calculation is limited through the establishment of the 1978 CCCL, the Future Land Use designations and the Land Development Code regulations which eliminates the ability to count property located within the "recreation" FLUM designation from the building coverage calculation. These regulations affect the ability to redevelop this property and severely limit the size of a structure that can be built under the 40% maximum building coverage.

(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;

Yes, the variance is the minimum variance which allows an adequately sized single-family beach residence to be rebuilt while meeting modern construction methods and today's regulatory standards.

(4) Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare; and

The proposed variance will not be injurious to the neighborhood or detrimental to the public welfare. The variance will allow for the construction of a resilient, adequately sized single-family residence compatible with the neighborhood and surrounding properties. Furthermore, the project will include drainage improvements that comply with the Town of Fort Myers Beach Code of Ordinances, specifically Sec. 6-14, ensuring no adverse impact on stormwater management on adjacent parcels.

(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.

The property's conditions, use and regulatory impact from the 1978 CCCL are unique to this property. The conditions and circumstances are not so general or recurrent in nature as to mandate



an amendment to the regulations in question. The variance process is adequate to address these circumstances and specific hardship.

Variance #3 Request

Request for variance from LDC Section 6-14(a) to provide relief from the requirement that no more than 67% of the total lot area within a residential zoning district shall be covered with impervious surfaces.

This variance request #3 is for relief from Land Development Code Section 6-14(a) to allow a proposed impervious coverage of 2,355 Sq. Ft. or 73.3% rather than the required 67%.

Reasons for request. Explain why the variance is needed:

Impervious surface by definition means “land areas that have a surface or compacted material this is resistant to infiltration by water and impedes or restricts percolation of surface water into the soil. Impervious surfaces include, but are not limited to, most conventionally surfaced streets, roofs, roof extensions, sidewalks, patios, driveways, parking lots, oiled, graveled, graded, or compacted surfaces, porches, sidewalks, parking areas and athletic courts, swimming pools, and semi-impervious areas, such as compacted clay.” The proposed impervious surface for this site includes the 10’ driveway easement area which runs parallel to the northerly property line, as depicted on the enclosed survey and stormwater management plan and Sheet D1 of the enclosed Schematic Design Plans. This area of the property will contain pavers as shown on the stormwater management plan for access to the underbuilding parking and front entry way of the residence. The remaining area of the easement will remain open. Although this portion of the property will remain open and is not intended for access onto Lot 27 as shown through Exhibit “D” (page 65) of the enclosed Declaration of Condominium for Turtle Walk of Fort Myers Beach, it cannot be counted as pervious area. The property also contains 3,260 Sq. Ft. within the “Recreation” FLUM designation which cannot be counted in the pervious calculation even though no buildings are able to be constructed within this area. Therefore, the inability to calculate the Recreation designated area and 150’ of unused easement area, places an undue burden on the property and requires this variance. It should be noted that the Recreation and unused easement areas **are indeed pervious** and if not for the Town’s restrictions on how pervious/impervious areas are calculated, the property would far exceed the minimum pervious area requirement.

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

As shown in the enclosed Stormwater Management Plan, prepared by Goddard Engineering, LLC, the site drainage satisfies the Town of Fort Myers Drainage Criteria. The plan demonstrates the method used to maintain a 1.6-inch rainfall on-site when more than 500 square feet of impervious surface is developed and protects surrounding properties from being impacted by the development of the subject property. The granting of this variance will not be detrimental to the adjacent properties and meets the intent of the LDC



regulation.

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

Hurricane Ian caused catastrophic damage to the previously existing structure that necessitates the proposed redevelopment of the property. Over half of the property area is not allowed to be counted toward the pervious/impervious calculations due to its Future Land Use designation and an existing easement. The property contains 3,260 Sq. Ft. within the Recreation FLU designation and a 10' access easement along the front of the property. The limits placed through current regulations, which took effect after the original lot was created, place an undue burden in the redevelopment of the property.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in 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;**

The extraordinary condition which are inherent to the property in question is that the original structure was destroyed by Hurricane Ian which was an "Act of God" and that the current regulations which were not in place with the original lot was created have placed rigid conditions that do not allow for the reconstruction of a reasonably sized structure. The proposed stormwater management plan demonstrates that the intent of the current regulations can be met onsite and will not be injurious to the neighboring properties or the public.

- (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;**

Hurricane Ian was an "Act of God" and the regulations which have been enacted since the property was originally subdivided are not the result of actions of the applicant. The applicant has employed professionals to assist them in creating a plan that meets the intent of the regulations to support the approval of the requested variance.

- (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;**

The requested variance is only for an increase of 6.3% in the maximum impervious surface requirement. It is however important to remember that there are additional areas of pervious surface which are not allowed to be counted toward the overall calculation. The applicant has also



included a stormwater management plan which complies with current regulations. The requested variance is the minimum variance to relieve the applicant of the burden caused by the current regulations.

(4) Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare; and

The granting of the variance as demonstrated through the enclosed Stormwater Management Plan will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The development of the property will meet with the intent of current regulations.

(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.

The conditions of the subject property and its redevelopment as a single-family residence are specific to this site and are the reason for the requested variance. As such, the circumstances are not so general or recurrent a nature as to warrant amendment of the current regulations.

A SCHEMATIC DESIGN FOR:
THE HOBDAIR RESIDENCE

5236 ESTERO BLVD.
FORT MYERS BEACH, FL

CONSULTANT:

ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET

NOT FOR
CONSTRUCTION

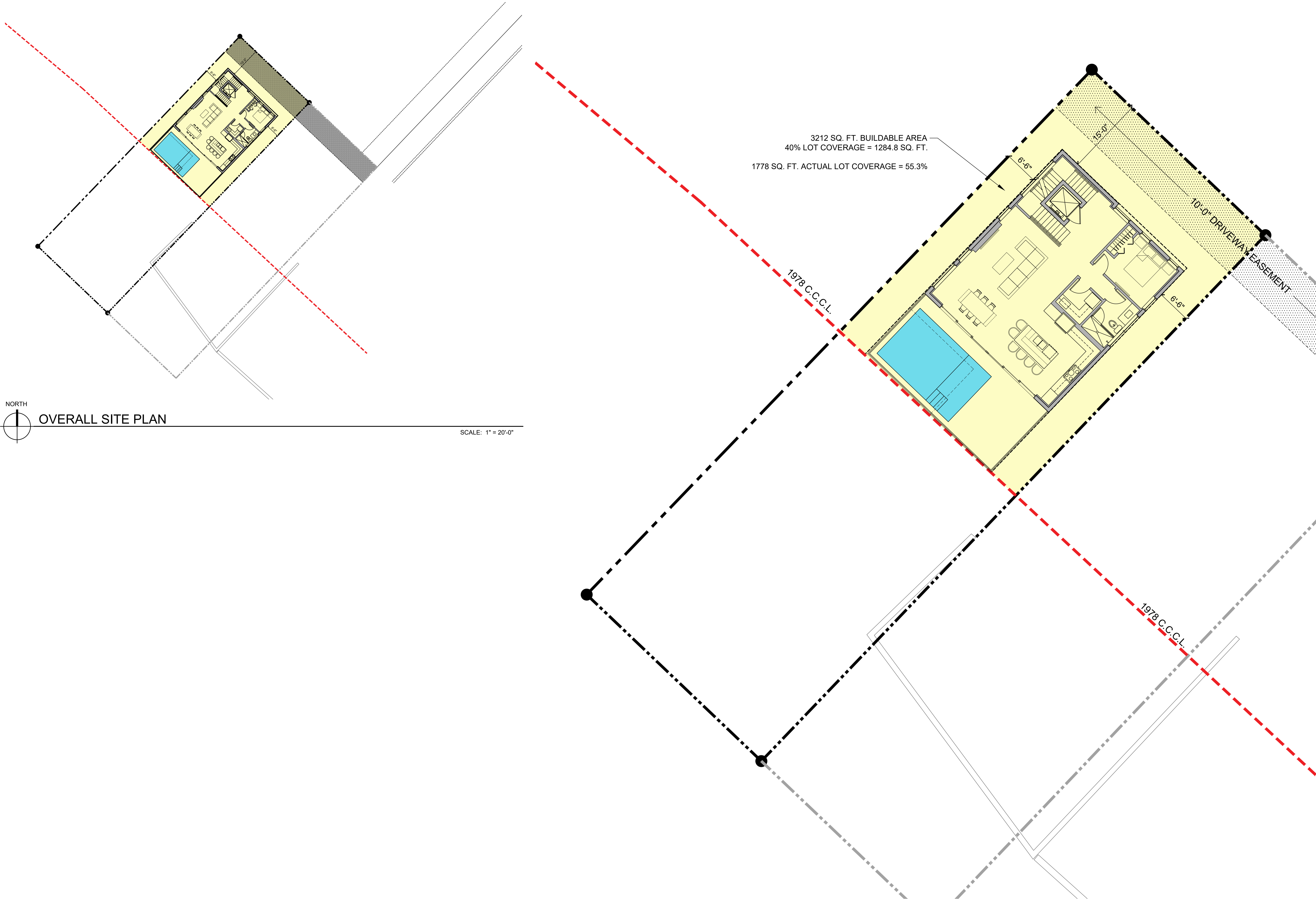
DATE ISSUED: 13 FEB 2025

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OF 3

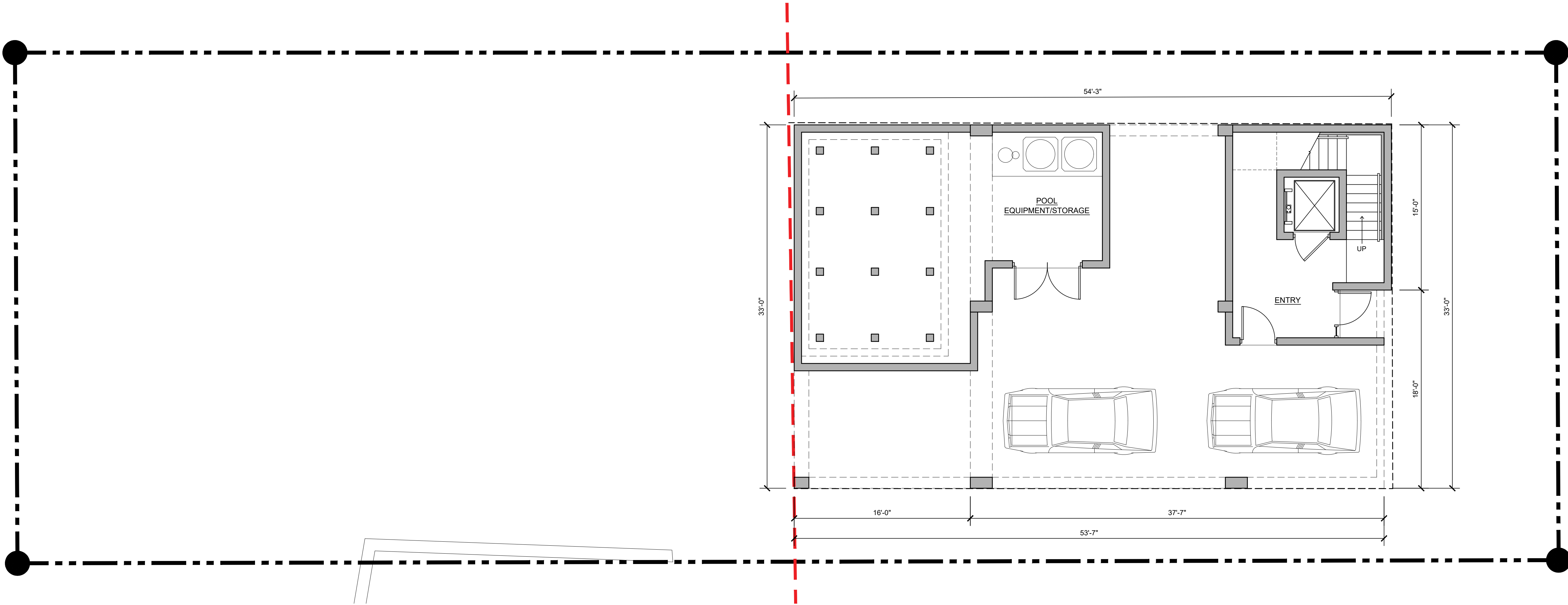


NORTH
OVERALL SITE PLAN

SCALE: 1" = 20'-0"

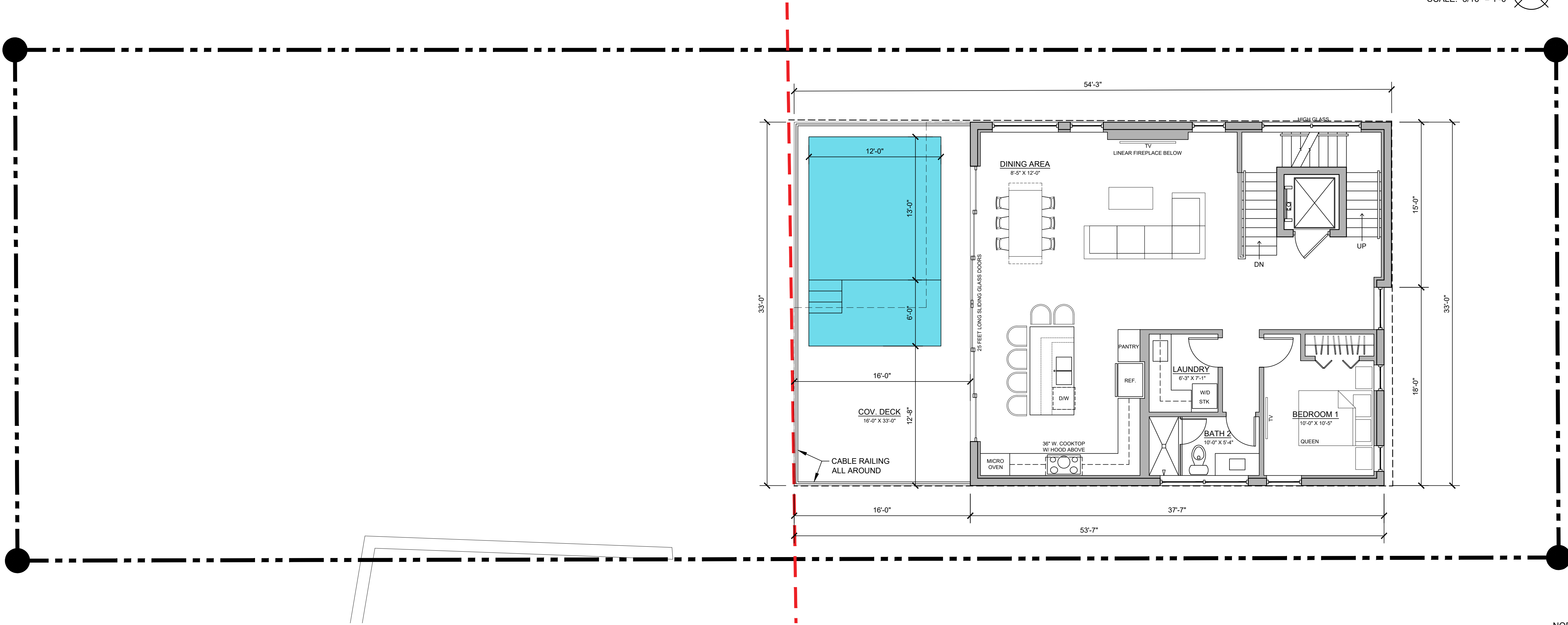
NORTH
ENLARGED SCHEMATIC SITE PLAN
SECOND FLOOR PLAN SHOWN

SCALE: 1/8" = 1'-0"



SCHEMATIC GROUND FLOOR PLAN

NORTH
SCALE: 3/16" = 1'-0"



SCHEMATIC SECOND FLOOR PLAN

1,250 SQ. FT. UNDER AIR

NORTH
SCALE: 3/16" = 1'-0"

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A SCHEMATIC DESIGN FOR:
THE HOBDARI RESIDENCE
5236 ESTERO BLVD.
FORT MYERS BEACH, FL

CONSULTANT:

ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET
NOT FOR
CONSTRUCTION

DATE ISSUED: 13 FEB 2025

REVISIONS:

SHEET

D2

OF 3

A SCHEMATIC DESIGN FOR:
THE HOBDAIR RESIDENCE

CONSULTANT:

ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET

NOT FOR
CONSTRUCTION

DATE ISSUED: 13 FEB 2025

REVISIONS:

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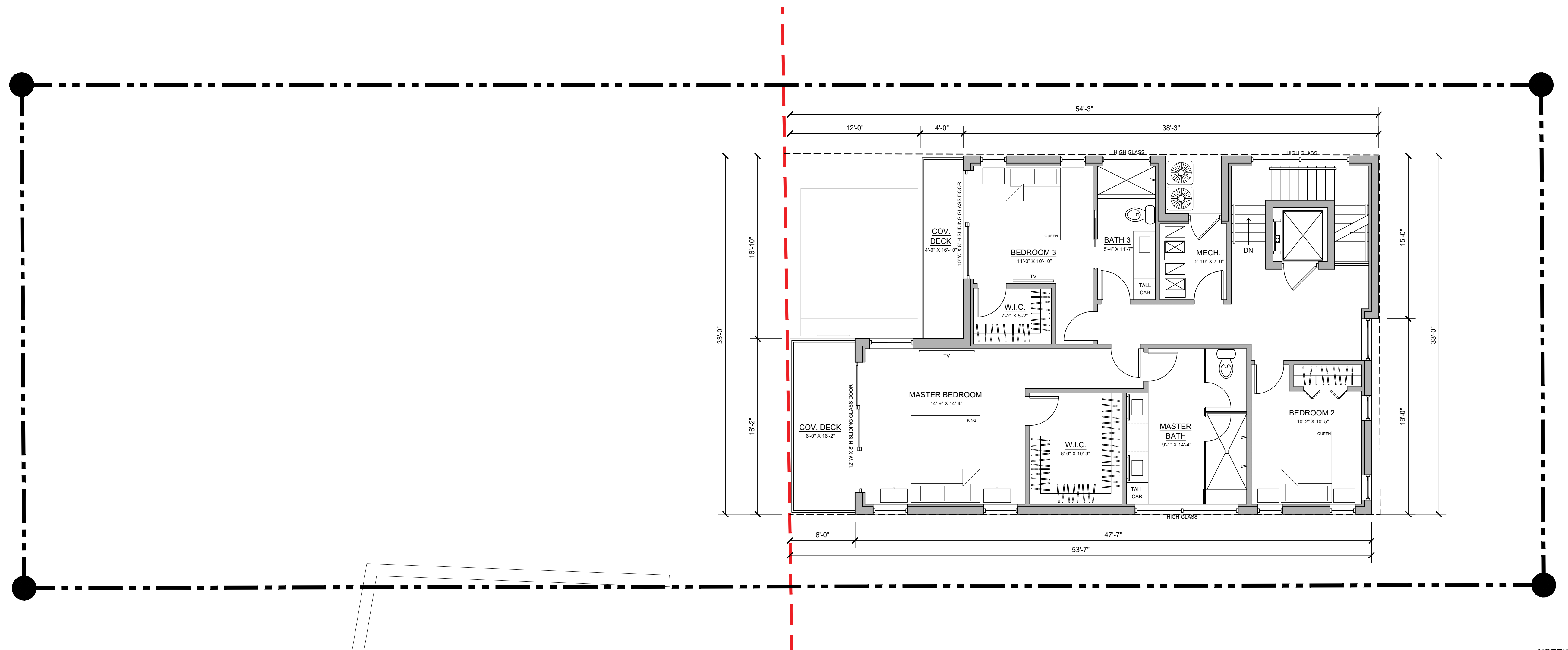
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SCHEMATIC THIRD FLOOR PLAN

1,411 SQ. FT. UNDER AIR

SCALE: 3/16" = 1'-0"

NORTH

AREA ANALYSIS

FIRST FLOOR GARAGE/ENTRY FOYER FOOTPRINT _____ 1778 S.F.
SECOND FLOOR LIVING AREA (UNDER AIR) _____ 1250 S.F.
THIRD FLOOR LIVING AREA (UNDER AIR) _____ 1420 S.F.

SECOND FLOOR REAR OUTSIDE DECK (INC. POOL) _____ 528 S.F.
THIRD FLOOR REAR OUTSIDE DECK _____ 164 S.F.

TOTAL AREA (UNDER AIR) _____ 2662 S.F.

THIS INSTRUMENT PREPARED BY:
Sean M. Ellis, Esquire
Roetzel & Andress LPA
2320 First Street, Suite 1000
Fort Myers, Florida 33901-2904

**DECLARATION OF CONDOMINIUM
FOR
TURTLE WALK OF FORT MYERS BEACH, A CONDOMINIUM**

Section 1:	Introduction and Submission
Section 2:	Definitions
Section 3:	Description of Condominium
Section 4:	Recreational Facilities
Section 5:	Restraint on Separation and Partition of Common Elements
Section 6:	Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights
Section 7:	Amendments
Section 8:	Maintenance and Repairs
Section 9:	Additions, Alterations or Improvements by the Association
Section 10:	Additions, Alterations or Improvements by Unit Owner
Section 11:	Additions, Alterations or Improvements by Developer
Section 12:	Operation of the Condominium by the Association; Powers and Duties
Section 13:	Determination of Assessments
Section 14:	Collection of Assessments
Section 15:	Insurance
Section 16:	Reconstruction or Repair After Fire or Other Casualty
Section 17:	Condemnation
Section 18:	Occupancy and Use Restrictions
Section 19:	Leasing of Units
Section 20:	Compliance and Default
Section 21:	Termination of Condominium
Section 22:	Additional Rights of Mortgagees and Others
Section 23:	Disclaimer of Warranties
Section 24:	Mediation and Arbitration
Section 27:	Additional Provisions

DECLARATION OF CONDOMINIUM

FOR

TURTLE WALK OF FORT MYERS BEACH, A CONDOMINIUM

This Declaration of Condominium of TURTLE WALK OF FORT MYERS BEACH, A CONDOMINIUM is made January 6, 2015, to be effective upon recording, by WINDOVER 5200 ESTERO, LLC, a Florida limited liability company (hereinafter, together with its successors and assigns, referred to as "Developer").

1. Introduction and Submission.

A. The Land. The Developer owns the fee title to certain land located in Lee County, Florida, as more particularly described on Exhibit "A" and depicted on the boundary survey contained in Exhibit "D" attached hereto (the "Land").

B. Submission Statement. The Developer hereby submits the Land legally described on Exhibit "A" attached hereto, together with all improvements from time to time erected or to be installed thereon, to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date of this Declaration, subject to the reservations, easements and restrictions contained herein, but excluding therefrom, however, all public utility installations, cable television lines, and other similar equipment, if any, owned by the utilities furnishing services to the Condominium. This Declaration is not effective until it is recorded in the Public Records of Lee County, Florida.

C. Property Subject to Certain Restrictions and Easements. The Condominium Property (as defined hereinafter) is subject to the covenants, conditions, restrictions and reserved rights of the Developer contained in this Declaration and such other easements, covenants, conditions and restrictions as shown on the Condominium Plat, as contained in any future amendments to this Declaration, as declared by the Developer pursuant to reserved rights contained herein, or as otherwise shown in the Public Records of Lee County, Florida.

D. Name. The name by which this condominium is to be identified is TURTLE WALK OF FORT MYERS BEACH, A CONDOMINIUM (the "Condominium").

E. The Florida Condominium Act. The Florida Condominium Act (defined below), as amended from time to time, is incorporated herein by reference and made a part hereof.

2. Definitions.

For purposes of this Declaration and the exhibits attached hereto, the following terms shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning or a specific limited meaning is intended:

A. The Condominium Act or Act means the Florida Condominium Act (Chapter 718, Florida Statutes), as amended from time to time.

B. Articles or Articles of Incorporation means the Articles of Incorporation of the Association, as amended from time to time. The original Articles of Incorporation are attached hereto as Exhibit "B".

C. Assessment means a share of the funds required for the payment of Common Expenses as provided in this Declaration and which from time to time is assessed against a Unit.

D. Association means TURTLE WALK OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit, the entity responsible for the operation of the Condominium.

E. Association Property means the property, real and personal, in which title or ownership is vested in, or which is dedicated on a recorded plat or leased to, the Association for the use and benefit of its members.

F. Board of Directors or Board means the Board of Directors of the Association.

G. Bylaws mean the Bylaws of the Association, as amended from time to time. The original Bylaws are attached hereto as Exhibit "C".

H. Capital Improvement Assessment means an assessment levied against the Unit Owners as provided in Section 13.B. herein.

I. Common Elements mean and include the portions of the Condominium Property which are not included within the Units including, without limitation, any seawall, those portions of the storm water management system, if any, located on the Condominium Property, including dedicated tracts, drainage area maintenance or drainage easements, and corresponding infrastructure, tracts for right-of-way or access easements and corresponding roads and streets located on the Condominium Property, if any, utility easements or tracts for corresponding sewer and potable water, and all easements serving the Condominium Property.

J. Common Expenses mean all expenses incurred by the Association to accomplish its duties as contemplated by this Declaration and the Act, which shall be assessed or imposed against Units in the Condominium by the Association as authorized by this Declaration or the Act. If approved by the Board of Directors, Common Expenses shall include the cost of communications services as defined in Chapter 202, Florida Statutes, information services, or internet services obtained pursuant to a bulk contract. For all purposes of this Declaration, Common Expenses shall also include all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended.

K. Common Surplus means the excess of all receipts of the Association collected on behalf of the Condominium, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over and above the amount of Common Expenses.

L. Condominium Parcel means a Unit, together with the undivided share in the Common Elements which is appurtenant to said Unit.

M. Condominium Plat or Condominium Plot Plan means the condominium drawings required by Section 718.104 of the Act and attached hereto as Exhibit "D".

N. Condominium Property means those portions of the Land and improvements thereon, and personal property and leaseholds, which have been submitted to condominium ownership under this Declaration, subject to the limitations thereof and exclusions therefrom.

O. County means Lee County, Florida.

P. Declaration means this instrument, as it may be amended from time to time.

Q. Developer means WINDOVER 5200 ESTERO, LLC, a Florida limited liability company, and its successors and such of its assigns as to which its rights hereunder are assigned by written instrument recorded in the public records of the County. Such assignment may be made on an exclusive or non-exclusive basis and may be an assignment of all or only portions of the rights of Developer hereunder; provided, however, that no such assignment shall make any assignee the Developer for purposes hereof unless such assignment specifically states that it is the parties' intent that such assignee becomes the Developer.

R. Family or Single Family means one (1) natural person (as opposed to an artificial entity); or a group of two (2) or more natural persons living together, each of whom is related to each of the others by blood, marriage, legal custody or adoption; or not more than two (2) persons not so related, who reside together as a single housekeeping unit, along with their children, if any.

S. Guest means any person who is not the Unit Owner or a lessee or a member of the Unit Owner's or lessee's family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the Unit Owner or other legally permitted Occupant, without payment of consideration.

T. Institutional First Mortgagee means a bank, savings and loan association, insurance company, credit union, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHA) or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units.

U. Limited Common Elements mean those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units and as shown on the Condominium Plat or otherwise specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

V. Occupy when used in connection with a Unit, means the act of staying overnight in a Unit. Occupant is a person who occupies a Unit.

W. Special Assessment means any assessment levied against Unit Owners other than Capital Improvement Assessments and the Assessment required by the annually adopted budget of the Condominium.

X. Unit or Condominium Unit is that portion of the Condominium Property which is subject to exclusive ownership, as further defined herein, and as delineated in the Condominium Plat. The term Unit is often used synonymously herein with Condominium Parcel when meaning the sum total of an Owner's ownership interest in the Condominium.

Y. Unit Owner or Owner means the record owner of legal title to a Condominium Parcel.

3. Description of Condominium.

A. Identification of Units. Each Unit is identified by separate numerical designation with reference to the building number as shown on the Condominium Plat and the typical floor plans contained in Exhibit "D" attached hereto. There shall pass with each Unit as appurtenances thereto (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be the exclusive Limited Common Elements for such Unit; (c) an exclusive

easement for the use of the airspace occupied by the Unit as it lawfully exists at any particular time and as the Unit may be lawfully altered or reconstructed from time to time, provided that the easement in airspace which is vacated from the unit shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration or the Act.

B. Unit Boundaries.

(a) Each Unit shall consist of all the improvements located within and upon (but excluding the Land itself) the respective portions of Condominium Property legally described as follows:

Unit 1: See Exhibit "D" attached hereto.

Unit 2: See Exhibit "D" attached hereto.

Unit 3: See Exhibit "D" attached hereto.

Unit 4: See Exhibit "D" attached hereto.

Unit 5: See Exhibit "D" attached hereto.

Unit 6: See Exhibit "D" attached hereto.

Unit 7: See Exhibit "D" attached hereto.

(b) Garages or Carports. Each garage or covered parking area serving a Unit is located within the Unit boundaries described above and is deemed a part of such Unit.

(c) Pools and Pool Decks. Each pool, spa, and pool deck and patio areas serving a Unit are located within the Unit boundaries described above and are deemed as part of the Unit.

(d) Overhangs; Balconies. If a wall or roof surface overhangs or part of a Unit encroaches onto the Common Elements, the overhanging or encroaching specific portion of such Unit shall be a part of the Unit.

(e) Utility Lines. Any utility lines which are located within a Unit and which may provide service to more than one Unit shall be considered to be Common Elements, notwithstanding their physical location being within the Unit's boundaries.

C. Timeshare Estates. Timeshare estates or interests shall not be created with respect to any Units in the Condominium.

D. Limited Common Elements.

(a) Definition of Certain Limited Common Elements. To the extent applicable and subject to the provisions of this Declaration, each Unit may have, as Limited Common Elements appurtenant thereto, such portions of the Common Elements as are defined herein and/or shown on the Condominium Plat, including, but not limited to, the following:

(i) any area labeled as a Limited Common Element on the Condominium Plat and contiguous to a Unit or identified as being appurtenant to a Unit;

(ii) the driveway and walkways (paver sidewalks) which exclusively serve a Unit;

(iii) the structure(s) located on or adjacent to the exterior of the building on which is located any air-conditioning equipment serving the Unit, to extent not located within the Unit boundary as described in Section 3.B;

(iv) the mailbox which exclusively serves a Unit; and

(v) any fenced-in landscape area exclusively serving a Unit and depicted on the Condominium Plat, together with the fence serving the Unit.

E. Easements. The following easements are hereby created (in addition to any easements created under the Act and any other provisions of this Declaration):

(a) There shall be an easement of support in every portion of a Unit which contributes to the support of any building or Common Elements of the Condominium or the other Units within the same building.

(b) An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in the event the Unit vacates such air space.

(c) Non-exclusive easements are hereby reserved unto the Developer and also granted to the respective utility providers under, through and over the Condominium Property as may be required from time to time for the construction, use and maintenance of all utilities (whether public or private), cable television, communications and security systems, and other services which may serve the Condominium; provided, however, that these easements shall not permanently interfere with the residential use of the Units. A non-exclusive easement is also reserved unto the Developer and granted to the County over and across the Common Elements for the purpose of providing drainage and for the installation, operation, use and maintenance of drainage facilities; provided, however, that the Association shall be responsible for the continuous maintenance of the easements and rights-of-way of the drainage system located on the Condominium Property, if required by the local governing authority. This obligation shall run with the land as do other provisions of the Declaration, and any Unit Owner may enforce this covenant and will be entitled to costs and fees which result from such enforcement. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other service or drainage facilities or the use of these easements.

(d) If (a) any portion of the Common Elements encroaches upon any Unit, (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements, or (c) any encroachment shall hereafter occur as a result of (i) construction of the improvements, (ii) settling or shifting of the improvements, (iii) any alteration or repair to the Common Elements made by or with the consent of the Association or Developer, as appropriate, or (iv) any repair or restoration of the improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements; then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.

(e) A non-exclusive easement in favor of each Unit Owner and resident and their guests and invitees shall exist for pedestrian traffic over, through and across sidewalks, streets, paths,

walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as from time to time may be paved and intended for such purposes and which are not designated as Limited Common Elements for the exclusive use of a particular Unit. None of the easements specified in this subparagraph shall be encumbered by any leasehold or lien other than those on the Condominium Parcels, unless such lien is subordinate to the rights of Unit Owners and the Association with respect to such easements.

(f) The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all action necessary or convenient for the purpose of completing the construction thereof (including, but not limited to, any proposed phase), or any part thereof, or any improvements or Units located or to be located thereon (including, but not limited to, any proposed phase), and for repair, replacement and maintenance purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so.

(g) For as long as there are any unsold Units, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements for model units and sales, management and construction offices, to show model Units and the Common Elements to prospective purchasers and tenants of Units within the overall Condominium, and to erect on the Condominium Property signs and other promotional material to advertise Units for sale or lease.

(h) Easements over, under, across, and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to the Units and the Common Elements.

(i) All easements described or shown on the Condominium Plat or created under the Act, including without limitation public utility and drainage easements over the Land for drainage and provision of utilities to the Units.

(j) Until such time as the Developer completes and sells all of the Units in the Condominium, the Developer reserves the right to prohibit access to any portion of the Land, the Common Elements of the Condominium Property or uncompleted Units to any of the occupants of the Condominium, and to utilize various portions of the Common Elements or the Units in connection with such construction and development; provided, however, that no such actions by the Developer shall deny a Unit Owner the right of access to his Unit or the Common Elements or Limited Common Elements that provide such access. No Unit Owner or his guests or invitees shall in any way interfere or hamper the Developer, its employees, successors or assigns, in connection with such construction. Thereafter, during such time as the Developer, its successors or assigns, owns any Units and is carrying on any business in connection therewith, including the selling, renting or leasing of such Units, the Unit Owners, their guests and invitees, shall in no way interfere with such activities or prevent access to such Units by the Developer, its employees or its successors or assigns.

A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of services contemplated or the use of the easements created under this Section. The Association and its authorized agents shall have the irrevocable right of access to each Unit during reasonable hours, when necessary, to maintain, repair or replace those items and areas contemplated herein for which the Association is responsible, and to remove any improvements interfering with or impairing such facilities or easements herein reserved pursuant to the Declaration or as necessary to prevent damage to the Common Elements or to a Unit or Units.

Wherever in this Section or elsewhere in this Declaration an easement is granted or reserved to any party, such easement shall also benefit such party's successors, grantees, assigns, agents, employees, licensees, invitees and guests. Unless specifically stated otherwise, all easements referred to herein shall be non-exclusive easements.

F. Special Easements and Rights to Grant Easements.

(a) Developer hereby reserves unto itself and its successors and its assigns, and grants to the Association with the power to assign, non-exclusive easements over, under and through the Condominium Property for the construction, maintenance and operation of electric, gas and other utility systems, cable television, security systems, communications service and other easements pertaining to the construction, maintenance and operation of such equipment, conduits, pipes, lines and similar installations servicing the Condominium Property or other property, with the power to relocate any such existing easements in any portion of the Condominium Property and/or Association Property, provided that such easements or the relocation of easements will not prevent or unreasonably interfere with the reasonable use of the Units for residential purposes.

(b) Developer hereby reserves unto itself and its successors and its assigns, and grants to the Association the power to assign, non-exclusive easements over, under, upon and through the Condominium Property for the purposes of access to, constructing or maintaining improvements upon, providing utility services to or across, or providing drainage to or from the Condominium Property, any other property which may become part of the Condominium Property pursuant to this Declaration, or any other property adjacent to the Condominium Property, provided that any such easement shall not interfere with the reasonable use of the Units for residential purposes.

(c) Developer hereby reserves unto itself and its successors and its assigns nonexclusive easements over, upon, and through the Condominium Property for vehicular and/or pedestrian traffic by the Developer, its designees, successors, assigns, licensees, lessees, invitees and guests, within the Condominium Property, provided that any such easement shall not interfere with the reasonable use of the Units for residential purposes.

G. Parking Area Flooding. EACH UNIT OWNER ACKNOWLEDGES AND AGREES THE PARKING AREAS AND/OR LIMITED COMMON ELEMENT DRIVEWAYS MAY BE LOCATED BELOW THE FEDERAL FLOOD PLANE AND, ACCORDINGLY, IN THE EVENT OF FLOODING, VEHICLES AND/OR PERSONAL PROPERTY STORED THEREIN ARE SUSCEPTIBLE TO WATER DAMAGE. ADDITIONALLY, INSURANCE RATES, BOTH FOR THE CONDOMINIUM ASSOCIATION IN INSURING THE COMMON ELEMENTS AND FOR UNIT OWNERS, MAY BE HIGHER THAN IF THE SUBJECT AREAS WERE ABOVE THE FEDERAL FLOOD PLANE. BY ACQUIRING TITLE TO, OR TAKING POSSESSION OF, A UNIT, OR ACCEPTING THE ASSIGNMENT OF A LIMITED COMMON ELEMENT PARKING AREA, EACH UNIT OWNER, FOR HIMSELF, HIS FAMILY MEMBERS AND HIS LESSEES, GUESTS AND INVITEES, HEREBY EXPRESSLY ASSUMES ALL RISKS TO VEHICLES AND/OR OTHER PERSONAL PROPERTY AND AGREES TO HOLD DEVELOPER AND THE CONDOMINIUM ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM ANY FLOODING IN THE PARKING AREAS.

H. Incidental Damage. Any damage to any Unit caused by, or as a result of, the negligent carrying out of the maintenance responsibilities of the Association or a Unit Owner, shall be repaired promptly by the Association as a Common Expense, or the Unit Owner, as the case may be.

I. Intentional Damage. Any damage to any part of the Common Elements caused by, or as the result of, any intentional act of a Unit Owner, the Unit Owner's family, agents, contractors, invitees, licensees or tenants, or by such Unit Owner in carrying out his maintenance responsibilities, if any, shall be repaired promptly at the expense of such Unit Owner.

4. Recreational Facilities.

The Developer has not committed to construct any recreational facilities as a part of the Condominium; provided, however, that nothing contained herein shall prohibit Developer from constructing such recreational facilities within the Condominium Property as shall be determined by the Developer. In the event the Developer elects to construct any recreational facilities on the Condominium Property, such recreational facilities shall be Condominium and shall be Common Elements. The costs of maintenance, repair, replacement, operation and all other costs associated with such recreational facilities shall be Common Expenses.

5. Restraint on Separation and Partition of Common Elements.

The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated from such Unit and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, cannot be conveyed or encumbered, except together with such Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

6. Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights.

A. Ownership Shares. The undivided share in the Common Elements and Common Surplus appurtenant to each Unit, as well as the undivided share of the Common Expenses to be paid with respect to each Unit, shall be a fraction, the numerator of which is one (1), and the denominator of which is seven (7).

B. Voting. Each Unit Owner shall be a member of the Association. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the Bylaws and Articles of Incorporation of the Association. The total number of votes shall at all times be equal to the number of Units submitted to the condominium form of ownership under this Declaration and amendments hereto. Membership in the Association shall automatically terminate upon the termination of ownership of a Condominium Parcel in this Condominium, and the subsequent owner(s) taking title shall automatically become entitled to membership.

7. Amendments.

A. Amendment by Unit Owners. Except as otherwise provided in this Declaration, the Condominium Act or the exhibits attached hereto, this Declaration (including the Condominium drawings constituting Exhibits hereto) may be amended by affirmative vote of the Owners of not less than a majority of the Units present at an Association meeting duly called for such purpose at which a quorum is attained; provided, however, that (1) no amendment to this Declaration shall be made which affects any of the rights and privileges provided to the Developer as defined herein without the written consent of such Developer, and (2) no amendment may change the configuration or size of a Unit in any material

fashion without the written consent of the affected Unit Owner(s). All amendments under this Section shall be recorded and certified as required by the Act.

B. Amendment by Developer.

(a) Amendment to Condominium Plans and Declaration. The Developer reserves the right to make whatever changes it may deem necessary or appropriate to the Condominium drawings recorded herewith and this Declaration until transition of control of the Association by the Developer to Unit Owners other than the Developer. The amendment reflecting such changes need only be executed by the Developer; provided, however, that no such amendment unilaterally approved by the Developer shall materially alter or modify the appurtenances to the Unit, or change the proportion or percentage by which the Unit Owner shares the Common Expenses and owns the Common Surplus, unless such amendment is also approved by such Unit Owner, all record owner(s) of all liens on the Unit(s) and at least a majority of the total voting interests of the Association.

(b) Special Amendment. Developer reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends the Declaration and any provision herein (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Units; and (iii) to bring this Declaration into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make or consent to a Special Amendment on behalf of each Unit Owner and the Association. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Developer to make, execute and record Special Amendments. The right and power to make Special Amendments hereunder shall terminate either on such date when Developer has sold all Units and has transferred control of the Condominium to the Association.

(c) Unilateral Amendments by Developer. This Declaration and all exhibits hereto, where applicable, may be amended unilaterally by the Developer for the purposes set forth and pursuant to Section 718.110(5), Florida Statutes; and for purposes of correcting clerical or scrivener's errors.

C. Amendment Pertaining to Storm Water Management System. Notwithstanding any provisions to the contrary contained herein, any amendment which will affect the storm water management system, including the management portion of the Common Elements, serving the Condominium must have the prior written approval of the South Florida Water Management District ("SFWMD") in order to be effective and binding if there is a SFWMD Permit in place affecting the Condominium Property. If there is no such SFWMD Permit affecting the Condominium Property then this Section 7.C. shall not apply.

D. Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the public records of the County.

E. Limitations. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer without the consent of said Developer in each instance. The provisions of this paragraph may not be amended in any manner without the consent of the Developer.

8. Maintenance and Repairs.

Responsibility for the maintenance, repair and replacement of the Condominium Property is as follows:

A. Common Elements.

(a) Except as otherwise provided in this Declaration, the Association shall manage, maintain, repair and replace, as part of the Common Expenses, all of the Common Elements as defined herein, including, but not limited to, the following:

(i) all water and waste water lines and piping, electric and other utility lines and systems serving the Common Elements or more than one (1) Unit exclusively;

(ii) all structures within the Condominium that are Common Elements and not part of the Units, with the exception of Limited Common Elements which are the responsibility of the Unit Owners as set forth in Section 8.C. below.

(iii) all Common Element landscaping, lawn and grass areas and irrigation systems within the Condominium Property with the exception of Limited Common Elements which are the responsibility of the Unit Owners as set forth in Section 8.C below;

(iv) any Common Element walkways which are not Limited Common Elements whose responsibility for maintenance has been assigned to the Unit Owners hereunder;

(v) any Common Element landscaping islands or entry features within the Condominium; and

(vi) all roads and streets within the Condominium Property.

B. Units. The maintenance, repair and replacement of all portions of the Units except for utilities or infrastructure serving multiple Units or the Common Elements, both the Unit interior and the Unit exterior, shall be the responsibility of the Unit Owners, including but not limited to the following:

(a) all exterior doors, including garage doors and all portions of the garage door opener and related apparatus, windows, screens and frames of any permitted improvement, which surfaces shall be maintained in such manner as to preserve a uniform appearance among the Units of the Condominium;

(b) interior finishes, built-in shelves, cabinets, counters, storage areas, appliances and mechanical, ventilating, heating and air conditioning equipment contained within or serving the Unit; and

(c) all electrical, plumbing, telephone and television fixtures, apparatuses, equipment, outlets, switches, wires, pipes and conduits exclusively serving the Unit, including the Unit's individual service panel or meter;

- (d) all structural portions of the Unit, all interior doors, load-bearing walls, non-load-bearing walls, and partitions, and insulation;
- (e) the pool and spa and all appurtenant equipment;
- (f) all balconies, lanais and decks and all portions thereof;
- (g) all exterior surfaces of the Unit, including paint, stucco, siding, gutters and exterior doors surfaces, and all aspects of the roofs and roofing systems including insulation;
- (h) all entryway stairs and landings, including railings;
- (i) all light and electrical fixtures attached to the exterior walls of the Unit, and each Unit Owner shall be responsible for replacing the necessary light bulbs for said light fixture(s) by the same color and bulb wattage as originally installed or as otherwise determined and permitted by the Board, in accordance with the conditions and restrictions of the Town of Fort Myers Beach, as the same may be amended from time to time;
- (j) any and all hurricane shutters which are attached to the exterior of the Unit;
- (k) the foundation and footings of the Unit;
- (l) all drainage around the perimeter of the Units; and
- (m) all other maintenance or repair of or replacements involving a Unit as contemplated and authorized hereunder.

Notwithstanding the provisions of this Section 8.B., all exterior painting and all architectural or structural modification to the Unit must be approved in writing by the Board, or a committee designated by the Board and headed by an officer of the Association, or as otherwise provided by rules and regulations promulgated by the Association, prior to the commencement of such work so as to maintain the character and to preserve the aesthetic and architectural qualities of the Condominium.

The Association shall not be responsible for the maintenance, replacement and repair of any portion of the Units, with the exception of any utility lines located in a Unit which serve more than one Unit in the Condominium and are considered Common Elements under the terms of this Declaration; if any.

C. Maintenance of Limited Common Elements. Except as set forth otherwise herein, the Limited Common Elements shall be maintained, repaired and replaced by the Association as part of the Common Expenses of the Condominium; provided, however, that:

- (a) Each Unit Owner shall maintain the fenced-in rear landscape areas and the fence assigned for the exclusive use of the Unit.
- (b) Each Unit Owner shall maintain the paver driveway and walkways which are permanently assigned for the exclusive use of the Unit Owner in accordance with the rules and regulations of the Association and as follows:
 - (i) each Unit Owner shall keep the driveways free from oil or related automobile stains and promptly clean any such stains or spots;

(ii) each Unit Owner shall promptly replace any cracked or damaged pavers with matching pavers, or, if matching pavers are not available with a replacement paver of like kind and quality;

(iii) If determined by a majority of Unit Owners and the Association in order to be cost effective and maintain the aesthetic quality and appearance of the Condominium, the Association may contract in bulk for the repair or replacement of Limited Common Element pavers simultaneously and the cost thereof shall be a Common Expense.

(c) Each Unit Owner shall be solely responsible for the maintenance, repair, and replacement of all air-conditioning equipment and all wiring and piping related thereto which serve the Unit and which are constructed on the Limited Common Elements or, as may be applicable, the Common Elements (for purposes of reference herein, the Unit Owner shall be the owner of all such air conditioning equipment and all wiring and piping related thereto regardless of such equipment, wiring and piping being located outside of the physical boundaries of the Unit).

Each Unit Owner must keep his Unit and the improvements thereon in good order, condition and repair, and must perform promptly all maintenance and repair work within his Unit which, if omitted, would adversely affect the Condominium, the other Unit Owners of the Association and its Members. The Unit Owner shall be responsible for any damages caused by a failure to so maintain his Unit. In the event a Unit Owner fails to adequately maintain, as determined by the Board, those items for which such Unit Owner is responsible, said Unit Owner shall adequately maintain said items after notice from the Association within a reasonable time after such notice, if a Unit Owner fails to adequately maintain said items, the Association shall have such rights and remedies as provided by Section 20 of this Declaration.

E. Disclaimer, Waiver, and Release of Claims Regarding Mold and Mildew.

Mold and other microbials occur naturally in almost all indoor environments. Mold spores may also enter a condominium through open doorways, windows or a variety of other sources. The Unit Owner acknowledges that the Condominium is located in a hot, humid climate ("Florida Environment"), which is conducive to the growth of mold and other microbials. Mold and other microbials may be present during or after construction in the indoor air and/or on the interior surfaces of the Unit, including, but not limited to, wall cavities, windows, and/or on the exterior surfaces of the Unit or any part thereof. Construction materials are often provided by suppliers and distributors with surface mold and microbials and such are typically not subsequently treated or removed. The Unit Owner understands and acknowledges that, except as otherwise specifically provided by the Condominium Act, Developer makes no warranty or representation of any kind, express or implied, warranty of habitability, merchantability, fitness for a particular purpose, or good workmanship as to building materials and/or construction means and methods with regard to indoor air quality or the presence or absence of mold and/or other microbials and any chemical or toxin secreted, in proximity to the Unit, or regarding the effectiveness of an architectural or engineering fixture or design for reducing the presence or growth of mold and/or other microbials, the responsibility for the prevention of these items being that of the Unit Owner through proper inspection and maintenance of the Unit.

Further, each Unit Owner acknowledges that the growth of mold and other microbials are generally the result of excess moisture in a Unit. Unit Owners shall be solely responsible to remove visible moisture accumulation, repair leaks, and prevent and eliminate excess humidity in their respect Unit immediately upon discovery thereof, whether from the Unit or from neighboring Units or through the Common Elements, and each Unit Owner shall perform periodic inspections of plumbing, drain and condensate lines, air handlers and ducts within their Unit or applicable Limited Common Elements in order to prevent the spread of water, prevent leaks and avoid the growth or accumulation of mold or other

microbial contamination in the Unit or in the Common Elements. Each Unit Owner shall promptly undertake all repairs and remediation in order to repair such leaks, water penetration or excess humidity and to remediate any mold or microbial contamination, in accordance with applicable laws, statutes, regulations and ordinances and with nationally accepted remediation standards. Additionally, each Unit Owner shall prevent the accumulation of other contaminants, including but not limited to carbon dioxide, volatile organic compounds, formaldehyde and other chemicals or gases in their Unit or spreading from their Unit that are or might be injurious to human health. Unit Owners shall not use any biocides or chemicals in their Unit for removal of any contamination that are not EPA-registered for that particular purpose or which could be harmful to occupants of their Unit or other Units.

What the Unit Owner Can Do. The Unit Owner can take positive steps to reduce and/or eliminate the occurrence of mold growth in and around the Unit and thereby minimize the possibility of adverse effects that may be caused by mold. The following suggestions have been compiled from the recommendations of the U.S. Environmental Protection Agency, the Consumer Product Safety Commission, the American Lung Association, and the National Association of Home Builders, among others but they are not meant to be all-inclusive.

- (i) Before bringing items into the Unit, check for signs of mold. Potted plants (roots and soil), furnishings, stored clothing and bedding material as well as many other household goods could already contain mold which can then be spread to other areas of the Unit.
- (ii) Regular vacuuming and cleaning will help reduce mold levels.
- (iii) Keep the humidity in the Unit low. Ventilate kitchens and bathrooms by opening the windows, by using exhaust fans, and/or by running air conditioning equipment to remove excess moisture in the air and to facilitate evaporation of water from wet surfaces.
- (iv) Raise the temperature in areas where moisture condenses on surfaces, and open doors between rooms to increase air circulation in the Unit including doors to closets.
- (v) Have major appliances (e.g. furnaces, heat pumps, central air conditioners, ventilation systems, and humidifiers) inspected, cleaned and serviced regularly by a qualified professional.
- (vi) Clean and dry refrigerator, air-conditioner and dehumidifier drip pans and filters regularly and be certain that refrigerator and freezer doors seal properly.
- (vii) Inspect for condensation and leaks in and around the Unit on a regular basis. Look for discolorations or wet spots. Take notice of musty odors and any visible signs of mold.
- (viii) Fix leaky plumbing and leaks in the exterior and interior surfaces of the Unit and all other sources of moisture problems immediately.
- (ix) Promptly clean up spills, condensation and other sources of moisture. Thoroughly dry wet surfaces and materials. Do not let water pool or stand in the Unit. Promptly replace materials that cannot be thoroughly dried such as drywall or insulation.
- (x) Do not let water pool or stand. If standing or excessive water is found, remove or seek professional help to remove it.

(xi) Perform routine visual inspections. Respond promptly upon seeing signs of moisture or mold. Thoroughly clean the affected area with a mild solution of bleach after first testing to determine if the affected material or surface is color safe. After cleaning, dry the affected surfaces completely. Porous materials such as fabric, upholstery or carpet should be discarded. Should the mold growth be severe, qualified trained professionals may be needed to assist in the remediation effort.

(xii) Regularly maintain the Unit. For example, regularly caulk the windows, faucets, drains, tub and showers.

(xiii) Do not run air conditioning with doors and windows left open.

(xiv) Do not turn off air conditioning during vacations and absences.

The Association shall not be responsible for the prevention of mold and/or other microbials or any damages, including, but not limited to any special or consequential damages, property damages, personal injury, loss of income, emotional distress, death, loss of use, loss of income, diminution or loss of value of the Unit, economic damages, and adverse health effects relating to, arising from or caused by mold and/or mildew accumulation regardless of the cause of said mold/or mildew. EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN (INCLUDING WITHOUT LIMITATION, ANY PERMITTED TENANT AND OCCUPANT) OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL CLAIMS, OBLIGATIONS, DEMANDS, DAMAGES, CAUSES OF ACTION, LIABILITIES, LOSSES AND EXPENSES, WHETHER NOW KNOWN OR HEREAFTER KNOWN, FORESEEN OR UNFORESEEN, THAT UNIT OWNER HAS, OR MAY HAVE IN THE FUTURE, IN LAW OR IN EQUITY ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH INDOOR AIR QUALITY, MOISTURE, OR THE GROWTH, RELEASE, DISCHARGE, DISPERSAL OR PRESENCE OF MOLD AND/OR OTHER MICROBIALS OR ANY CHEMICAL OR TOXIN SECRETED THEREFROM. THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF THE DEVELOPER AND ITS AFFILIATES, WHICH SHALL BE FULLY PROTECTED HEREBY.

9. Additions, Alterations or Improvements by the Association.

The protection, maintenance, repair, insurance and replacement of the Common Elements and Association Property is the responsibility of the Association and the cost is a Common Expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the Common Elements or real property owned by the Association costing in the aggregate more than \$20,000.00 in any calendar year without prior approval of at least a majority of the Voting Interests. However, if work reasonably necessary to protect, maintain, repair, replace or insure the Common Elements or Association Property or to comply with any local, state or federal law or regulation also constitutes a material alteration or substantial addition to the Common Elements, no prior Unit Owner approval is required. Any alteration or additions to the Common Elements or real property owned by the Association, both material and non-material in nature, costing in the aggregate less than \$20,000.00 in any calendar year may be made by the Board of Directors without the approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements shall be a "Capital Improvement Assessment" of the Unit Owners as provided in Section 13.B. hereof. For purposes of this Section, "aggregate in any calendar year" shall include the total debt incurred in that

year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is made beyond that year.

10. Additions, Alterations or Improvements by Unit Owner.

A. To the Common Elements. The cost of the foregoing shall be assessed as Common Expenses unless otherwise provided herein. No Unit Owner shall make, or allow to be made, any addition, alteration or improvement of any manner (specifically including, but not limited to, satellite dishes, antennas and the like), to or on any Common Element or Limited Common Element without the prior written consent of the Association.

B. Open Space. All open space areas contained within the Common Elements shall be preserved and developed solely as open space areas by the Developer, the Association or the Unit Owners in a manner detailed or contemplated herein or on the Condominium Plat. Neither the Association, the Developer nor the Unit Owners, without an appropriate amendment, if applicable, to the development approvals issued by the County or the Town of Fort Myers Beach, may utilize such areas for purposes other than as landscaped open spaces.

C. To the Units. Except as otherwise reserved by the Developer, no Unit Owner shall make any alteration or improvement to such Unit Owner's Unit except in accordance with this Section 10.C. A Unit Owner may make alterations and improvements to a Unit so long as such alterations or improvements do not violate the terms of this Declaration, and are in compliance with all applicable building codes and laws. A Unit Owner may not expand, enlarge or relocate the boundaries of such Owner's Unit. Exterior alterations which are visible to other Unit Owners and other alterations or improvements to a Unit which are not discussed in this Declaration may be made only if prior approval in writing is obtained from the Board or a committee designated by the Board in accordance with the Bylaws. As a condition to approval, the Board may require the Unit Owner to submit plans and specifications and a time frame for the alterations or improvements. The Board may refuse to approve alterations or improvements based on, among other things, aesthetic considerations.

D. Indemnification by Unit Owner. A Unit Owner making or causing to be made any additions, alterations or improvements to the Unit or the Limited Common Elements as contemplated herein agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association without a recorded covenant to run with the Unit.

11. Additions, Alterations or Improvements by Developer.

The foregoing restrictions of Section 10 shall not apply to Developer-owned Units. The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it, to the proposed or already constructed Units and the Limited Common Elements appurtenant thereto. Such work shall include, without limitation (i) the removal of walls, floors, ceilings and other structural portions of the Unit; (ii) changes to the layout or number of rooms in any Developer-owned Units; and (iii) changes to the size and/or number of Developer-owned Units by subdividing or combining separate Developer-owned Units or otherwise. Any amendments to this Declaration or the Condominium Plat required by actions taken pursuant to this Section may be effected by the Developer alone without the consent of any other person;

provided, however, if any such amendment shall materially alter or modify the appurtenances to the non-Developer owned Units, or change the proportion or percentage by which a Unit Owner shares the Common Expenses and owns the Common Surplus, the execution of the amendment to the Declaration effecting such change must be joined in by the affected Unit Owner(s) and all record owners of liens on the affected Unit. The provisions of this Section may not be added to, amended or deleted unless by, or with the prior written consent of, the Developer.

12. Operation of the Condominium by the Association; Powers and Duties.

A. **Powers and Duties.** The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the Bylaws and Articles of Incorporation, as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation, the following:

(a) The irrevocable right to have access to any portion of each Unit and its Limited Common Elements from time to time upon notice and during reasonable hours as may be necessary for the maintenance, repair or replacement of such portions thereof as required by this Declaration or the Act, or at any time and by force, if necessary, for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units.

(b) The power to make and collect Assessments and other related expenses authorized under the Act and this Declaration against Unit Owners, to lease, maintain, repair and replace the Common Elements, and to grant, modify or cancel easements pertaining to the Common Elements.

(c) The duty to maintain accounting records, according to generally accepted accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.

(d) The power to contract for the management and maintenance of the Condominium Property and to authorize a duly licensed management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and regulations, and perform the maintenance, repair and replacement required of the Association with such funds as shall be made available by the Association for such purposes. The Association shall also have the power to join with other condominium associations and entities in contracting for the maintenance and repair of the several condominium properties and other type properties, and may contract for or may join with other condominium or other associations in contracting for the management of the several condominium properties and other type properties.

(e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in real and personal property owned by the Association, if any, including, without limitation, the right to receive assessments. Common Elements shall not be used as security for any obligations.

(f) The power to adopt and amend rules and regulations concerning the operation and use of the Condominium Property.

(g) The power to acquire, lease, mortgage, and convey real and personal property and to grant, modify and cancel easements regarding such property, provided that such action may be done only (i) upon the approval of a majority of the Board of Directors, and (ii) upon a finding by the

Board that such action is for the benefit of the members of the Association. The requirements of Section 9 pertaining to the Unit Owners' approval of costs in excess of the threshold amount stated therein (including the provision as to the debt incurred) shall also apply to this provision dealing with acquisition of property; provided, however, that the acquisition of a Unit as a result of a foreclosure of the lien for Assessments shall be exempt from these requirements.

(h) The power to enter into bulk service contracts on behalf of all Units in the Condominium, and the same shall be a Common Expense.

(i) The power to acquire or enter into agreements acquiring leaseholds, memberships or other possessory or use interests in lands or facilities for recreational purposes.

(j) All of the powers which a corporation not-for-profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation and Bylaws, Chapter 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act or the documents of the Condominium.

B. Conflict. In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration or the exhibits attached hereto, this Declaration shall take precedence over the Articles of Incorporation, Bylaws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the Bylaws and applicable rules and regulations; and the Bylaws shall take precedence over applicable rules and regulations, all as amended from time to time. Notwithstanding anything in this Declaration or its exhibits to the contrary, the Association shall at all times be the entity having ultimate authority over the Condominium, consistent with the Act.

C. Limitation of Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners, regardless of whether or not the same shall have been approved by the Association pursuant to the provisions hereof.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER BE A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM PROPERTY, INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

(a) IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE CONDOMINIUM PROPERTY HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM PROPERTY AND THE VALUE THEREOF;

(b) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, LEE COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES; AND

(c) ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.

AS USED IN THIS SECTION, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF THE DEVELOPER AND ITS AFFILIATES, WHICH SHALL BE FULLY PROTECTED HEREBY.

D. Restraint Against Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

E. Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.

F. Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors, is specifically required in this Declaration, the Articles of Incorporation or Bylaws of the Association, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate, and the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

G. Binding Effect of Condominium Documents. Every Unit Owner, whether having acquired such ownership by gift, conveyance or transfer by operation of law, or otherwise, shall be bound by the Articles of Incorporation, Bylaws and this Declaration. Membership in the Association shall automatically terminate upon the termination of ownership of a Condominium Parcel in this

Condominium, and the subsequent owner(s) taking title shall automatically become entitled to membership, subject to the written approval of the Association.

13. Determination of Assessments.

A. General Assessment. The Board of Directors shall from time to time, and at least annually, prepare and adopt a budget for the Condominium, determine the amount payable by the Unit Owners to meet the Common Expenses of the Condominium, and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the Bylaws ("General Assessment"). The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the General Assessment payable by each of them as determined by the Board of Directors. The Budget for Common Expenses shall include the reserves required by law or determined appropriate by the Board, the costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or Bylaws of the Association, applicable rules and regulations or by the Association. Any adopted Budget of Common Expenses shall be subject to change by the Board of Directors, and the amount of the General Assessment shall be changed in accordance with such revised Budget for Common Expenses to cover actual expenses at any time. In the event the Board fails to adopt an annual budget for any given fiscal year then the General Assessment shall continue in the amount reflected in the prior year's budget until such time as a budget is adopted.

B. Special and Capital Improvement Assessments. In addition to General Assessments, the Board of Directors may levy Special Assessments and Capital Improvement Assessments upon the following terms and conditions:

(a) Special Assessments shall mean or refer to amounts levied against each Owner and his Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.

(b) Capital Improvement Assessments shall mean and refer to amounts levied against each Owner and his Unit, representing a portion of the costs incurred by the Association for the acquisition, installation or construction (as distinguished from maintenance, repairs and replacement) of any capital improvements located or to be located within the Common Elements.

(c) Special Assessments and Capital Improvement Assessments may be levied by the Board of Directors and shall be payable in lump sums or installments, in the discretion of the Board; provided that if such Special Assessments, in the aggregate in any year, exceed \$25,000.00, the Board must obtain approval of a majority of the voting interests represented at a meeting at which a quorum is attained.

14. Collection of Assessments.

The General Assessments, Special Assessments and Capital Improvement Assessments (collectively, the "Assessments") shall be collected as follows:

A. Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a judicial sale or by deed in lieu of foreclosure, shall be liable for all Assessments coming due while he is the Unit Owner. Additionally, a Unit Owner shall be jointly and severally liable with the previous owner for all unpaid Assessments that came due up to the time of the conveyance, without prejudice to any right such Unit Owner may have to recover from the previous owner the amounts paid by such Unit Owner. The liability for Assessments may not be avoided by waiver of the use or enjoyment of

any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

B. Application of Payments; Failure to Pay; Interest.

(a) Assessments and installments on Assessments not paid within ten (10) days from the date when they are due shall bear interest at the rate established from time to time by the Board of Directors from due date until paid (provided, however, that no such rate shall exceed the maximum allowed by law). In the event the Board has not established such rate, the interest rate shall be eighteen percent (18%) per annum or the maximum amount allowed by law, whichever is less. Each delinquent payment shall be subject to an administrative late fee in an amount not to exceed Twenty-Five and No/100 Dollars (\$25.00). Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued as provided above, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection as aforesaid and then to the delinquent and any accelerated Assessment. The foregoing application of funds received shall be applicable despite any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

(b) If a Unit Owner is delinquent for more than ninety (90) days in paying any monetary obligation due to the Association, the Association may suspend the Unit Owner's right to use common elements, common facilities, or any other Association property until the monetary obligation is paid, except for limited common elements intended to be used only by that Unit, common elements that must be used to access the Unit, utility services provided to the Unit, parking spaces or elevators. Any such suspension must be imposed at a properly noticed Board meeting, and after the imposition of such suspension, the Association must notify the Unit Owner and, if applicable, the Unit's occupant, licensee, or invitee by mail or hand delivery.

(c) The Association may also suspend the voting rights of a member due to non-payment of any monetary obligation due to the Association which is more than ninety (90) days delinquent. The suspension ends upon full payment of all obligations currently due or overdue the Association.

(d) If the unit is occupied by a tenant and the Unit Owner is delinquent in paying any monetary obligation due to the Association, the Association may make a written demand that the tenant pay the future monetary obligations related to the condominium unit to the Association, and the tenant must make such payment. The demand is continuing in nature and, upon demand, the tenant must pay the monetary obligations to the Association until the Association releases the tenant or the tenant discontinues tenancy in the unit. The Association must mail written notice to the Unit Owner of the Association's demand that the tenant make payments to the Association. The Association shall, upon request, provide the tenant with written receipts for payments made. A tenant who acts in good faith in response to a written demand from an Association is immune from any claim from the Unit Owner.

(i) If the tenant prepaid rent to the Unit Owner before receiving the demand from the Association and provides written evidence of paying the rent to the Association within fourteen (14) days after receiving the demand, the tenant shall receive credit for the prepaid rent for the applicable period and must make any subsequent rental payments to the Association to be credited against the monetary obligations of the Unit Owner to the Association.

(ii) The tenant is not liable for increases in the amount of the monetary obligations due unless the tenant was notified in writing of the increase at least ten (10) days before the date the rent is due. The liability of the tenant may not exceed the amount due from

the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the Unit Owner in the amount of moneys paid to the Association under this section.

(iii) The Association may issue notices under Section 83.56 and may sue for eviction under Sections 83.59-83.625 as if the Association were a landlord under Part II of Chapter 83 if the tenant fails to pay a required payment to the Association. However, the Association is not otherwise considered a landlord under Chapter 83 and specifically has no duties under Section 83.51.

(iv) The tenant does not, by virtue of payment of monetary obligations to the Association, have any of the rights of a Unit Owner to vote in any election or to examine the books and records of the Association.

(v) A court may supersede the effect of this sub-section by appointing a receiver.

C. Acceleration. If any special assessment or installation of a regular assessment as to a Unit becomes more than thirty (30) days past due, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Unit's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney's fees and costs as provided by law, and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent Owner a notice of the exercise, which notice shall be sent by certified or registered mail to the Owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116 of the Condominium Act, or may be sent separately.

D. Liens. The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. Except as otherwise provided by Section 718.116 F.S., the lien is effective from and shall relate back to the recording of the original Declaration of Condominium. The Claim of Lien must state the description of the condominium parcel, the name of the record Owner, the amount due, the name and address of the Association, and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments which are due and which may accrue after the Claim of Lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney's fees incurred by the Association incident to the collection process. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

E. Priority of Lien. The Association's lien for unpaid assessments shall be subordinate and inferior to the lien of a recorded first mortgage, but only to the least extent required by the Condominium Act, as amended from time to time. The Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise expressly provided by law. Any lease of a Unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed

F. Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

G. Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent, the expenses of such receiver to be paid by the party which does not prevail in the foreclosure action.

H. First Mortgagee. In the event an First Mortgagee shall obtain title to a Unit by foreclosure, or by deed in lieu of foreclosure, such First Mortgagee, its successors and assigns, shall be liable for prior Assessments or other related expenses authorized under the Act to the maximum extent provided by the Act, as the same may be amended from time to time. This provision shall not apply unless the first mortgage joined the Association as a Defendant in the foreclosure action. If, due to the applicable provisions of the Act, any unpaid share of the Assessments or other related expenses authorized under the Act are not required to be paid, then such unpaid share or other related expenses authorized under the Act shall be deemed to be a Common Expense collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns. No acquirer of title to a condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership

I. Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. The Association or its authorized agent may impose a reasonable fee in connection with issuing the certificate. The Association or its authorized agent shall not be required to provide a prospective purchaser or lienholder with information about the Condominium or the Association other than information or documents required by the Condominium Act to be made available or disclosed. The Association or its authorized agent may impose a reasonable fee to a prospective purchaser, lienholder, or the Owner for its time in providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than information required by law. The Association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy".

J. Installments. General Assessments shall be collected monthly or quarterly, in advance, as determined from time to time by the Board of Directors. Initially, General Assessments will be collected monthly.

15. Insurance.

Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:

A. Insurance Trustee. The Board of Directors shall have the option, in its sole discretion, of appointing an Insurance Trustee hereunder. If the Board of Directors fails or elects not to appoint such Trustee, the Board of Directors will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.

B. Purchase, Custody and Payment.

(a) Purchase. All insurance policies purchased by the Association shall be issued by an insurance company authorized to do business in Florida meeting all criteria established by the Board or the Act and any rules promulgated thereunder.

(b) Named Insured. Under all insurance policies purchased by the Association, the named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.

(c) Custody of Policies and Payment of Proceeds. All insurance policies purchased by the Association shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed) or Association, and such policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed) or Association.

(d) Copies to Mortgagees. One (1) copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

(e) Exceptions from Association Responsibility; Unit Owner's Personal Coverage. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon any property lying within the boundaries of their Unit (including without limitation the structure comprising the Unit, the walls, roofing systems, pool, spa, pool deck, and the personal property and fixtures contained therein), or for their personal liability and living expense or for any other risks not otherwise insured in accordance herewith.

Unit Owners may be required to purchase flood insurance for their respective Units if such insurance is required by their mortgagees. The Association may, but is not required to, obtain flood insurance any other improvements constructed on the Condominium Property.

The Unit Owner shall be responsible for insuring, without limitation, all portions of their Unit, interior and exterior, and also in accordance with the Act any and all floor coverings, wall coverings and ceiling coverings; electrical fixtures, appliances, air conditioning or heating equipment; water heaters and water filters; built in cabinets and counter tops; window treatments, including curtains, drapes, blinds and hardware; replacements for any of the above listed property; and air conditioning compressors that serve only the Unit Owner's Unit no matter where located.

It shall be the obligation of the individual Unit Owner to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association. The individual Unit Owner shall further have the right to obtain, purchase and pay for secondary coverage for all items, whether described herein as common Elements, Limited Common Elements, or portions of the Unit, which the Association is responsible for the primary coverage of pursuant to the terms of this Declaration.

C. Coverage Responsibilities of Association. The Association shall use its best efforts to obtain and maintain adequate insurance covering the following:

(a) Casualty. Insurance covering loss or damage to the Common Elements and all other portions of the Condominium Property which the Association is responsible to maintain under the terms of this Declaration, and all items for which the Association is required under applicable provisions of the Act to insure against loss or damage by fire and against loss or damage by risks now or hereafter embraced by standard extended coverage, and vandalism and malicious mischief endorsements (collectively, the "Insured Property"). Such policies may contain reasonable deductible provisions as determined by the Board of Directors, which reasonable deductibles shall be considered a Common Expense. Such coverage shall afford protection against such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa, if such endorsement is obtainable.

(c) Worker's Compensation. Worker's Compensation Insurance and other mandatory insurance, when applicable.

(d) Fidelity Insurance. Fidelity Insurance or bonding as required by the Act, covering all persons who control or disburse Association funds, such insurance to be in the amount required by Law or more if determined by the Board.

(e) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.

(f) Other Insurance. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies, including, without limitation, those policies of insurance obtained by an individual Unit Owner, shall waive the insurer's right to: (i) subrogation against the Association, its officers, members of the Board, the Developer, any management firm and its respective employees and agents, and against the Unit Owners individually and as a group; (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk; and (iii) avoid liability for a loss that is caused by an act of the Board of Directors, a member of the Board of Directors, any management firm or its respective employees and agents, one (1) or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of the management firm or the individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

Every casualty insurance policy obtained by the Association shall have the agreed amount and inflation guard endorsement unless the Board finds such endorsement is unobtainable or economically infeasible.

D. Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the

named insureds. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may wish to obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.

E. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for a management firm employee may be paid by the management firm pursuant to a Management Agreement. Premiums may be financed in such manner as the Board of Directors deems appropriate.

F. Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the management firm, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering losses to the Insured Property shall be paid to the Association or Insurance Trustee, which Insurance Trustee may be designated by the Board of Directors and which, if so appointed, may be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

(a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit; provided, however, that prior to any distributions to the Unit Owners, such proceeds shall first be distributed in accordance with the provisions of this Section.

(b) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

G. Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

(a) Expenses of the Trustee. All expenses of the Insurance Trustee shall be paid first or provision shall be made therefor.

(b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to each Unit Owner, by check made payable jointly to such Unit Owner and its respective mortgagee(s).

(c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided herein, and distributed to each Unit Owner by check made payable jointly to such Unit Owner and its respective mortgagee(s). If there is no mortgage on the Unit, all distributions shall be made directly to the Unit Owner.

(d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

H. Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

16. Reconstruction or Repair After Fire or Other Casualty.

A. Determination to Reconstruct or Repair. Subject to the immediately following subsection, in the event of damage to or destruction of the Insured Property as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property, and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. If the Insurance Trustee has not been appointed, then the Board of Directors shall act as if it were the Insurance Trustee hereunder.

If seventy-five percent (75%) or more of the Insured Property is substantially damaged or destroyed and if eighty percent (80%) of the total voting interests duly and promptly resolve not to proceed with the repair or restoration thereof, the Insured Property shall not be repaired and the net proceeds of insurance resulting from such damage or destruction shall be distributed to each Unit Owner, by check made payable to such Unit Owner and its respective mortgagee(s).

Whenever in this Section the words "promptly repair" are used, it shall (except in the case of a disaster of regional impact) mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if appointed) notifies the Board of Directors that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Insurance Trustee (if appointed) notifies the Board of Directors that such proceeds of insurance are insufficient to pay the estimated costs of such work. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired. In the case of a disaster of regional impact, "promptly repair" shall mean in a reasonable amount of time based on the circumstances as determined by the Board of Directors.

B. Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original improvements and the then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors and the then applicable building and other codes.

C. Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(a) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than or equal to \$500,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors.

(b) Association – Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$500,000.00, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (a) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

(c) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance shall be distributed to each Unit Owner, by check made payable jointly to such Unit Owner and its respective mortgagee(s) or, at the direction of the Board, such balance may be considered Common Surplus.

(d) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor to determine whether a disbursement is to be made from the construction fund, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

D. Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or the estimated costs of reconstruction and/or repair are not within, or covered by, the reasonable deductible provisions of the Association's policies, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements.

E. Responsibility of Unit Owners. If damage occurs to the Units, the maintenance and responsibility of which lies solely upon the respective Unit Owners, then each Unit Owner shall be solely responsible for all necessary reconstruction and repair to its respective Unit, which reconstruction and repair shall be effected promptly and in accordance with guidelines established by the Board of Directors. Each Unit Owner shall have the absolute responsibility of applying insurance proceeds, arising as a result of flood, fire or other casualty damage to the Unit, to the repair and/or reconstruction of such Unit; provided, however, that no Unit Owner shall have the responsibility of applying insurance proceeds to the repair and/or reconstruction of the respective Units if the Condominium is terminated in accordance with the provisions of Section 21 herein.

F. Benefit of Mortgagees. Certain provisions in this Section are for the benefit of mortgagees of Units and may be enforced by any of them.

17. Condemnation.

Any condemnation of any portion(s) of the Condominium Property shall be governed by the following provisions:

A. Deposit of Certain Condemnation Awards with Insurance Trustee. Condemnation awards pertaining to the taking of Common Elements shall be paid over by each Unit Owner to the Insurance Trustee, if appointed, or to the Board of Directors, for use as noted hereinafter in this Section.

In the event the Unit Owner fails to turn over such award as required, the defaulting Unit Owner shall be charged the maximum interest which does not constitute usury under Florida law until such amount is fully paid and may be treated and collected as an assessment.

Condemnation awards pertaining to the condemnation of Units shall not be the property of the Association.

B. Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for in Section 16 herein for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.

C. Disbursement of Fund. If the Condominium is terminated following a condemnation, the proceeds of the awards pertaining to the condemnation of Common Elements will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of any such awards shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 17 specifically provided.

D. Condemnation of Common Elements. Awards for the taking of portions of the Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, however, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed, after adjustments to these shares effected pursuant hereto by reason of the taking, to each Unit Owner by check made payable jointly to such Unit Owner and its respective mortgagee(s).

E. Condemnation of a Unit. If there is a taking of a Unit, the respective Unit Owner shall not be required to utilize any portion of the condemnation award with regard to reconstruction of the Unit. Following such taking of a Unit and the recording of a deed to the condemning authority, (1) the affected Unit Owner shall no longer have an ownership interest in the Unit or an undivided ownership interest in the Common Elements, and (2) such Unit Owner shall no longer be responsible for the payment of Common Expenses.

The following changes shall be made in the Condominium following a taking as described in this Section 17:

(a) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, use by all of the Unit Owners in the manner approved by the Board of Directors.

(b) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners. This distribution shall be determined in accordance with the formula contained in Section 6 herein.

(c) Assessments. In the event the Association does not have the funds necessary to alter the remaining portion of the condemned Unit for use as a part of the Common Elements, the additional funds for such purposes shall be raised by Assessments against all of the remaining Unit Owners after the changes in the Condominium affected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

F. Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all members of the Board of Directors.

18. Occupancy and Use Restrictions.

In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

A. Occupancy. Each Unit shall be used as a single family residence only in accordance with all applicable local ordinances of Lee County and the Town of Fort Myers Beach, except as may be otherwise herein expressly provided. The provisions of this subsection shall not be applicable to Units used by the Developer for model Units, guest accommodations, sales or other offices or management services.

B. Nuisances. No nuisances (as reasonably determined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants. No activity specifically permitted by this Declaration shall be deemed a nuisance.

C. No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or Bylaws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section. No activity specifically permitted by this Declaration shall be deemed a violation of this Section.

D. Rules and Regulations. All Unit Owners, their guests, tenants and invitees, shall abide by the Rules and Regulations of the Condominium, as amended by the Board from time to time.

19. Leasing of Units.

Units may be sold or made subject to mortgages without restrictions, but leases thereof shall be subject to the provisions of this Section.

A. No lease or rental of a Unit may be for a period of less than thirty (30) days. No Unit Owner may lease or rent his Unit if he is delinquent in the payment of any Assessments. The Association

shall have the right to require that a substantially uniform form of lease or sub-lease be used by all Unit Owners intending to rent or lease and to provide such form as a Common Expense of the Condominium. Entire Units only may be rented, and no individual rooms may be rented. There shall not be any subleasing of any Unit, but any impermissible sub-leasing or sub-renting of a Unit Owner's interest shall be subject to the same limitations as are applicable to the leasing or renting thereof.

B. A tenant of a Unit shall have all of the use rights in the Association Property and Common Elements otherwise readily available for use generally by Unit Owners, and the Unit Owner of the leased Unit shall not have such rights, except as a guest. This shall not, however, interfere with access rights of a Unit Owner as landlord pursuant to applicable law. Each Unit Owner shall be responsible to ensure that all tenants and occupants of the Unit comply with all of the terms and conditions of this Declaration.

C. The liability of the Unit Owner under these covenants shall continue, notwithstanding the fact that he may have leased, rented or sub-let said interest as provided herein. Every purchaser, tenant or lessee shall take title to his Unit subject to this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association, as well as the provisions of the Act.

D. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.

20. Compliance and Default.

Each Unit Owner and every occupant of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

A. Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.

B. Compliance. In the event a Unit Owner or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the Bylaws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines and to sue in a court of law for damages.

C. Fines. The Association may levy reasonable fines against a Unit Owner for the failure of the Unit Owner or his occupant, licensee or invitee to comply with any provision of this Declaration, the Bylaws of the Association, or reasonable rules and regulations imposed by the Board of Directors from time to time. No fine will become a lien against a Unit. No fine shall exceed one hundred dollars (\$100.00) per violation, or the maximum amount allowed by Section 718.303(3), Florida Statutes whichever is greater. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for a hearing, provided that no such fine shall in the aggregate exceed

one thousand dollars (\$1,000.00), or the maximum amount allowed by Section 718.303(3), Florida Statutes, whichever is greater. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the Unit Owner and, if applicable, his licensee or invitee. The hearing shall be held before a committee of other Unit Owners who are neither Board members nor persons residing in a Board member's household. If the committee does not agree with the fine, the fine shall not be levied. The above procedural requirements for fines do not apply to unoccupied Units.

D. Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the Articles or Bylaws of the Association, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees and costs).

E. No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the Articles or Bylaws of the Association, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.

F. Association's Rights Cumulative. All rights, remedies, and privileges granted to the Association or Unit Owners pursuant to this Declaration or any of the Condominium Documents shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies, or privileges shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising any other or additional rights, remedies, or privileges.

G. Maintenance Responsibilities. All Unit Owners and other beneficiaries of the dedicated property and corresponding infrastructure, including the storm water management system, shall have the legal right to enforce the maintenance covenants contained herein against the responsible entity.

21. Termination of Condominium.

The Condominium or portion thereof may be terminated in accordance with the procedures set forth in the Act, and the following:

A. Agreement. The Condominium or a portion thereof may be terminated at any time by a plan of termination approved by the lesser of the lowest percentage of Voting Interests necessary to amend this Declaration or as otherwise provided in this Declaration for approval of termination when:

(a) The total estimated cost of construction or repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all Units in the condominium after completion of the construction or repairs; or

(b) It becomes impossible to operate or reconstruct this Condominium to its prior physical configuration because of land use laws or regulations.

B. Approval. Except as provided above in Section 18.1, the condominium form of ownership of the property may be terminated pursuant to a plan of termination or partial termination approved by seventy percent (70%) of the Voting Interests of this Condominium. The approval of a plan of termination by the holder of a recorded mortgage lien is not required unless the plan of termination will result in less than the full satisfaction of the mortgage lien affecting the condominium parcel. If such mortgagee approval is required and not given, a holder of a recorded mortgage lien who objects to the

plan of termination may contest the plan as provided below. At the time of sale, the lien shall be transferred to the proportionate share of the proceeds assigned to the condominium parcel in the plan of termination or as subsequently modified by the court.

C. Very Substantial Damage. If the Condominium, as a result of common casualty, be substantially damaged to the extent described in Section 16 (A), and it not be decided as therein provided that it will be reconstructed or repaired, the condominium form of ownership will thereby terminate without agreement.

D. Title vested in termination trustee. Upon termination, title to the Condominium Property shall automatically vest in the termination trustee when the plan is recorded or at a later date specified in the plan. The Unit Owners thereafter become the beneficiaries of the proceeds realized from the plan of termination. The termination trustee may deal with the Condominium Property or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the Condominium Property. The trustee, on behalf of the Unit Owners, may contract for the sale of real property, but the contract is not binding on the Unit Owners until the plan is approved.

E. Notice. Notice of the proposed termination, and notice that a plan of termination has been recorded shall be provided in accordance with the Act.

F. New Condominium. The termination of this Condominium does not bar the filing of a declaration of condominium or an amended and restated declaration of condominium affecting all or any portion of the same property.

G. Provisions Survive Termination. The provisions contained in this Section 21 shall be deemed covenants running with the land, and shall survive the termination of the Condominium for a period long enough to accomplish all the purposes stated herein.

22. Additional Rights of Mortgagees and Others.

The following provisions are intended for the benefit of each holder of a first mortgage upon a Unit, and, to the extent that any other provisions of this Declaration conflict with the following provisions, if at all, the following provisions shall control:

A. Upon request in writing, the Association shall furnish, within thirty (30) days of such request, to each Institutional First Mortgagee of a Unit and any holder, insurer or guarantor of a first mortgage a written notice of any default by the Unit Owner of such Unit in the performance of such Unit Owner's obligations under this Declaration that has not been cured.

B. Upon request in writing, each Institutional First Mortgagee of a Unit and any holder, insurer or guarantor of a first mortgage on a Unit shall have the following rights:

(a) to examine current copies of this Declaration, the Bylaws, rules and regulations and the books, records and financial statements of the Association during normal business hours;

(b) to receive, without any charge and within a reasonable time after such request, the annual financial report which is prepared and distributed by the Association to the Unit Owners at the end of its fiscal year;

(c) to receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;

(d) to receive written notice of any decision by the Unit Owners to make a material amendment to the Declaration, Bylaws or Articles of Incorporation of the Association;

(e) to receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(f) to receive written notice of any action which would require the consent of a specified number of Institutional First Mortgagees.

C. No provision of this Declaration or the Articles of Incorporation or any similar instrument pertaining to the Condominium Property or the Units therein shall be deemed to give a Unit Owner or any other party priority over any rights of the Institutional First Mortgagees of Units pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units, and/or the Common Elements, or any portion thereof or interest therein. In such event, the holder of any first mortgage on a Unit shall be entitled, upon specific written request, to timely written notice of any such loss.

D. If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder, insurer or guarantor of any first mortgage on a Unit will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition and no provisions of any document will entitle a Unit Owner or other party to priority over such holder with respect to the distribution to such Unit Owner of the proceeds of any award or settlement.

E. Any holder of a first mortgage on a Unit who receives a written request to approve additions or amendments and fails to deliver or mail to the requesting party a negative response within sixty (60) days shall be deemed to have approved such request.

F. As required by Section 718.110, Florida Statutes, any mortgagee consent required under this Declaration shall not be unreasonably withheld.

23. Disclaimer of Warranties.

DEVELOPER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO DESIGN, CONSTRUCTION, FURNISHING AND EQUIPPING OF THE CONDOMINIUM PROPERTY, EXCEPT ONLY THOSE SPECIFICALLY REQUIRED IN SECTION 718.203 OF THE ACT. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

ALL UNIT OWNERS, BY VIRTUE OF THEIR ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY), SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.

24. Mediation and Arbitration.

All issues or disputes which are recognized by the Act or by administrative rules promulgated under the Act as being appropriate or required for mediation or arbitration shall be resolved through such alternative resolution procedures instead of civil litigation.

25. Additional Provisions.

A. Notices. All notices to the Association required or desired hereunder or under the Bylaws of the Association shall be sent by first class mail to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the address of such Unit Owner appearing in the Association's records at the time the notice is transmitted. Where a Unit is owned by more than one (1) person, the Association shall provide notice, for meetings and all other purposes, to that one (1) address which the Developer initially identifies for that purpose and thereafter as one (1) or more of the Owners of the Unit shall so advise the Association in writing, or if no address is given or the Owners of the Unit do not agree, to the address provided in the deed of record.

All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time in writing to the Association.

All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received or five (5) business days after proper mailing, whichever shall first occur.

B. Interpretation. The Board of Directors shall be responsible for interpreting the provisions hereof and of any of the exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel to the Association, or the legal counsel having drafted this Declaration, that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

C. Binding Effect of Section 718.303, Florida Statutes. The provisions of Section 718.303, Florida Statutes, shall be in full force and effect and are incorporated herein.

D. Right of Developer to Add Recreational Facilities. If the Developer elects to construct, add to or expand recreational facilities or any other portion of the Common Elements, Developer shall pay all the expenses relating to the construction or the providing of such addition or expansion and shall record an amendment to this Declaration describing such property in accordance with the provisions of this Declaration. The amendment shall be executed with the formalities of a deed and recorded in the public records of the County. No approval or action of the Association, Unit Owners or mortgagees shall be necessary for adding such additional recreational facilities. All costs of maintenance, repair and replacement relating to the addition or expansion of the recreational facilities shall be a common expense of the Association.

E. Right of Developer to Convey Property to the Association. The Developer hereby reserves the right to convey to the Association any portion(s) of the real property contiguous to the Condominium Property free and clear of liens and encumbrances, including, but not limited to, wetlands or other parcels more suitable to become Association Property rather than Common Elements of the Condominium. All costs and expenses associated with such Association Property shall be Common Expenses. The Association shall be required to accept any such conveyance from Developer.

F. Exhibits. There are hereby incorporated in this Declaration all materials contained in the exhibits annexed hereto. In the event of any conflicting provisions between the exhibits and this Declaration, the provisions of this Declaration shall control.

G. Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a Vice President may be substituted therefor, and, wherever the signature of the Secretary of the Association is required hereunder, the signature of an Assistant Secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two (2) separate capacities.

H. Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

I. Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.

J. Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and Bylaws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.

K. Gender; Plurality. For convenience and ease of reference, the third person singular impersonal form of pronoun "it" or "his" has been used herein without regard to the proper grammatical person or gender of the party being referred to. All such references shall be deemed to include the singular or plural person and the masculine, feminine or neuter gender, as required by the context.

L. Captions. The captions herein and in the exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES AND NOTARIES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

Witnesses:

Kristen M Poulin
Print Name: KRISTEN M. POULIN

Bruno Aguiar
Print Name: Bruno Aguiar

Kristen M Poulin
Print Name: KRISTEN M. POULIN

Bruno Aguiar
Print Name: Bruno Aguiar

WINDOVER 5200 ESTERO, LLC, a Florida limited liability company

By: Christopher D Koepf
Printed Name: CHRISTOPHER D KOEPLIN
Its: Manager

AND

By: Lee R. Dellicher
Printed Name: LEE R. DELLICHER
Its: Manager

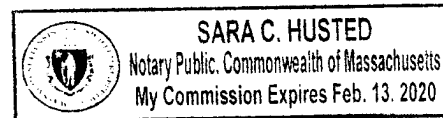
STATE OF Massachusetts
COUNTY OF Essex

The foregoing instrument was acknowledged before me this 6 day of January, 2015, by Christopher D. Koepf, as Manager of WINDOVER 5200 ESTERO, LLC, a Florida limited liability company, who [X] is personally known to me, OR [] produced a _____ drivers' license as identification, and who acknowledged before me that he executed the same as his free and voluntary act for the uses and purposes therein set forth.

NOTARY RUBBER STAMP SEAL
OR EMBOSSED SEAL

Sara C. Husted
Notary Public
Print Name: Sara C. Husted

STATE OF Massachusetts
COUNTY OF Essex



The foregoing instrument was acknowledged before me this 6 day of January, 2015, by Lee R. Dellicher, as Manager of WINDOVER 5200 ESTERO, LLC, a Florida limited liability company, who is personally known to me, OR who produced a _____ drivers' license as identification, and who acknowledged before me that he executed the same as his free and voluntary act for the uses and purposes therein set forth.

NOTARY RUBBER STAMP SEAL
OR EMBOSSED SEAL



Maryann Bronner
Notary Public
Print Name: Maryann Bronner

EXHIBIT A



Bean, Whitaker, Lutz & Kareh, Inc.

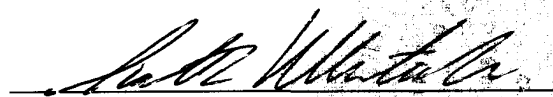
13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

**Description of a Parcel of Land
Lying in
Section 33, Township 46 South, Range 24 East
Town of Fort Myers Beach, Estero Island, Lee County, Florida
(Overall Description)**

All of Lots 16, 17, 18, 19, 19A, 19B, 20, 21, 22, 23, 24, 25, 26 and 27 of Block 6, Gulf Heights, a subdivision recorded in Plat Book 6 at Page 39, together with that vacated 8' strip of land as recorded in Instrument No. 2013000146046, all of the Public Records of Lee County, Florida.

Bean, Whitaker, Lutz & Kareh, Inc. (LB4919)

Date: July 9, 2013



Scott C. Whitaker, P.S.M. 4324
(Professional Surveyor and Mapper-State of Florida)

35459_DESC_OVERALL2

PRINCIPALS:

SCOTT C. WHITAKER, PSM, PRESIDENT

JOSEPH L. LUTZ, PSM

AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

JAMES A. HESSLER, PSM

CHRISTEN N. ALPEN, PSM

MUNIR R. SULEH, PE, M.S.E.E.

EXHIBIT B

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**ARTICLES OF INCORPORATION
OF
TURTLE WALK OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION, INC.
A FLORIDA NON-PROFIT CORPORATION**

PREAMBLE

Pursuant to Chapters 617 and 718, Florida Statutes, the undersigned, as Incorporator, hereby creates these Articles of Incorporation for the purposes set forth below. The Association is being formed to administer the Turtle Walk of Fort Myers Beach, a Condominium, and to perform, among other things, the duties and exercise the powers pursuant to the Declaration thereof. All of the definitions contained in the Declaration and the Bylaws shall apply to these Articles.

ARTICLE I**Name and Principal Office**

The name of the corporation is Turtle Walk of Fort Myers Beach Condominium Association, Inc., a Florida Not-for-Profit corporation (hereinafter referred to as the Association); and the street address of the initial principal office of the Association is 13 Elm Street, Manchester, Massachusetts. The principal office may be changed from time to time by the Board of Directors.

ARTICLE II**Purpose**

The purposes for which the Association is organized are as follows:

1. To operate as a corporation not-for-profit pursuant to Chapters 617 and 718 of the Florida Statutes.
2. To administer, enforce and carry out the terms and provisions of the Declaration, as the same may be amended from time to time.
3. To promote the health, welfare, and comfort of the Association members and residents of the Condominium, as authorized by the Declaration, by these Articles, and by the Bylaws.

ARTICLE III**Powers**

The Association shall have the following powers:

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1. All of the common law and statutory powers of a corporation not-for-profit under the laws of Florida which are not in conflict with the terms of these Articles, including, but not limited to, all of the powers of a corporation under Chapters 617 and 718, Florida Statute.

2. To enter into, make, establish and enforce, rules, regulations, bylaws, covenants, restrictions and agreements to carry out the purposes of the Association.

3. To make and collect Assessments against members of the Association to defray the costs, expenses, reserves and losses incurred or to be incurred by the Association; and to use the proceeds thereof in the exercise of the Association's powers and duties; and to enforce such levy of assessments through a lien and the foreclosure thereof or by other action pursuant to the Declaration.

4. To own, purchase, sell, mortgage, lease, administer, manage, operate, maintain, improve, repair and/or replace real and personal property, including units within the Condominium, for such purposes as the Association may determine.

5. To hold funds for the exclusive benefit of the members of the Association as set forth in these Articles and as provided in the Declaration and the Bylaws.

6. To purchase insurance for the protection of the Association, its property, officers, directors and members, and such other parties as the Association may determine to be in the best interests of the Association.

7. To operate, maintain, repair, and improve all common elements, and such other portions of the Condominium as may be determined by the Board from time to time.

8. To exercise architectural control over all buildings, structures and improvements to be placed or constructed upon any portion of the Condominium pursuant to the Declaration.

9. To provide, purchase, acquire, replace, improve, maintain and/or repair such buildings, structures, street lights and other structures, landscaping, paving and equipment, both real and personal, related to the health and social welfare of the members of the Association and the owners and residents of the Condominium as the Board in its discretion determines necessary or appropriate.

10. To employ personnel necessary to perform the obligations, services and duties required of or to be performed by the Association and/or to contract with others for the performance of such obligations, services and/or duties.

11. To acquire or enter into agreements acquiring leaseholds, memberships or other possessory or use interests in lands or facilities and to pay the rental, membership fees, operational, replacement and other expenses as common expenses.

12. To sue and be sued.

13. All other powers necessary to effectuate the purposes for which the Association is organized.

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ARTICLE IV

Members

1. Members. The owner of any unit in the Condominium shall be a member of the Association. Such membership shall be initially established upon the recording of these Articles and the Declaration among the Public Records of Lee County, Florida.

2. Transfer of Membership. Transfer of membership in the Association shall be established by the recording in the Public Records of Lee County, Florida of a deed or other instrument establishing a transfer of record title to any unit for which membership has already been established as hereinabove provided, the owner(s) designated by such instrument of conveyance thereby becoming a member, and the prior owner's membership thereby being terminated. In the event of death of a member, his membership shall be automatically transferred to his heirs or successors in interest. Notwithstanding the foregoing, the Association shall not be obligated to recognize such a transfer of membership until such time as the Association receives a true copy of the deed or other instrument establishing the transfer of ownership of the unit, and it shall be the responsibility and obligation of the former and new member to provide such true copy of said instrument to the Association.

3. Assignment. The share of a member in the funds and assets of the Association may not be assigned, hypothecated or transferred in any manner except as an appurtenance to the unit associated with the membership of the member, nor may a membership be separately assigned, hypothecated or transferred in any manner except as an appurtenance to such unit.

4. Members Voting Rights. The total number of members' votes shall be equal to the total number of units within the Condominium from time to time. On all matters upon which the membership shall be entitled to vote, there shall be one (1) vote for each unit. Each member shall have the number of votes equal to the number of units within the Condominium owned by the member at the time of such vote.

5. Members Meetings. The Bylaws shall provide for an annual meeting of the members of the Association and may make provision for special meetings of the members.

ARTICLE V

Directors

1. Number of Directors. The affairs of the Association shall be managed by a Board consisting of not less than three (3) directors.

2. Election of Directors. The directors of the Association shall be elected by the members in accordance with the Bylaws, except that so long as the Developer owns any units in the Condominium, the Developer shall be entitled to designate member and/or non-member directors to the maximum extent permitted by the Florida Condominium Act.

3. Powers and Duties. All of the duties and powers of the Association existing under the Florida Statutes, the Declaration, these Articles and the Bylaws shall be exercised exclusively by the Board, its agents, contractors or employees, subject to approval by the

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members only when expressly required by the Declaration, these Articles, the Bylaws, and Chapters 617 or 718, Florida Statutes.

4. Removal and Vacancies. Directors may be removed and vacancies on the Board shall be filled in the manner provided by the Bylaws and Chapter 718, Florida Statutes; however, any director appointed by the Developer may only be removed by the Developer, and any vacancy on the Board shall be filled by the Developer if, at the time such vacancy is to be filled, the number of remaining directors appointed by the Developer is less than the maximum number of directors which may, at that time, be appointed by the Developer as set forth above.

5. Initial Directors. The names of the members of the first Board of Directors are as follows:

Steven B. Dodge
Chris Koeplin
Lee R. Dellicker

ARTICLE VI Officers

The officers of the Association shall be a President, Vice President, Secretary, Treasurer and such other officers as the Board may from time to time create. The officers shall serve at the pleasure of the Board, and the Bylaws may provide for the removal from office of officers, for the filling vacancies, and for the duties of the officers.

ARTICLE VII Indemnification

1. The Association shall indemnify any person who was or is a party or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interest of the Association; and, with respect to any criminal action or proceeding, if such person had no reasonable cause to believe his conduct was unlawful; except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been liable for gross negligence or willful misfeasance or malfeasance in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he did not reasonably believe to be in,

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or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that such person had no reasonable cause to believe that his conduct was unlawful.

2. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by such person in connection therewith.

3. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Association as authorized in this Article.

4. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of members or otherwise; and as to action taken in an official capacity while holding office, shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

5. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

ARTICLE VIII

Bylaws

The first Bylaws shall be adopted by the Developer or initial Board, and may be altered, amended or rescinded in the manner provided by the Bylaws.

ARTICLE IX

Amendments

Amendments to these Articles shall be proposed and adopted in the following manner:

1. A majority of the Board shall adopt, on its own accord or on the request of not less than ten percent (10%) of the total voting interests, a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be the annual or a special meeting.

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2. Written notice setting forth the proposed amendment or a summary of the changes to be affected thereby shall be given to each member entitled to vote thereon within the time and in the manner provided in the Bylaws for the giving of notice of meetings of members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

3. At such meeting, a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of not less than a majority of the total voting interest of the Association.

4. Any number of amendments may be submitted to the members and voted upon by them at any one meeting.

5. If all of the Directors and a majority of all of the members eligible to vote sign a written statement manifesting their intention that an amendment to these Articles be adopted, then the amendment shall thereby be adopted as though the above requirements have been satisfied.

6. In addition to the above, so long as Developer controls the Association, Developer shall be entitled to unilaterally amend these Articles and the Bylaws, and no amendment to the Articles or the Bylaws shall be effective without the written consent of Developer. Furthermore, no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, Developer, unless Developer joins in the execution of the amendment.

7. Upon the approval of an amendment to these Articles, Articles of Amendment shall be executed and delivered to the Department of State as provided by law, and a copy of said amendment shall be recorded in the Public Records of the county in which the Condominium is located.

ARTICLE X

Term

The Association shall have perpetual existence, unless sooner terminated as set forth in the Declaration. In the event the Association is terminated as provided in the Declaration, the storm water management system and related dedicated property and corresponding infrastructure will be conveyed or dedicated to a similar nonprofit organization or entity to assure continued maintenance and operation.

ARTICLE XI

Incorporator

The name and street address of the Incorporator is:

Sean M. Ellis, Esquire
Roetzel & Andress
2320 First Street, Suite 1000
Fort Myers, Florida 33901-2904

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ARTICLE XII

Initial Registered Office Address and Name of Initial Registered Agent

The street address of the initial registered office of the Association is 2320 First Street, Suite 1000, Fort Myers, Florida 33901-2904. The initial registered agent of the Association at that address is R & A Agents, Inc., Attn: Sean M. Ellis.

ARTICLE XIII

Dissolution

The Association may be dissolved upon termination of the Condominium as provided in the Declaration.

IN WITNESS WHEREOF, the undersigned Incorporator has executed these Articles this 2nd day of January, 2015.

Robin O'Brien
Print Name: ROBIN O'BRIEN

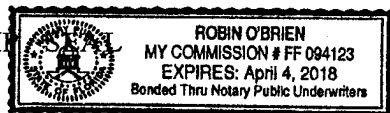
Sean M. Ellis
Sean M. Ellis

Stephanie Harris
Print Name: Stephanie Harris

STATE OF FLORIDA)
) §:
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 2nd day of January, 2015, by SEAN M. ELLIS, who is personally known to me.

NOTARY STAMP



Robin O'Brien
Notary Public

I am familiar with and understand the duties of a registered agent under the laws of Florida, and hereby acknowledge and accept the assignment of registered agent for this corporation.

R & A Agents, Inc.

Sean M. Ellis
Sean M. Ellis, Asst. Secretary



I certify from the records of this office that TURTLE WALK OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on January 2, 2015, effective January 2, 2015.

The document number of this corporation is N15000000073.

I further certify that said corporation has paid all fees due this office through December 31, 2015, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code, 615A00000108-010515-N15000000073-1/1, noted below.

Authentication Code: 615A00000108-010515-N15000000073-1/1

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Fifth day of January, 2015



Ken Detzner
Ken Detzner
Secretary of State

EXHIBIT C**BYLAWS****OF****TURTLE WALK OF FORT MYERS BEACH CONDOMINIUM ASSOCIATION, INC.****ARTICLE I: IDENTITY**

Turtle Walk of Fort Myers Beach Condominium Association, Inc., a Florida non-profit corporation (the "Association") is a corporation organized and existing pursuant to the laws of the State of Florida for purposes of operating and administering a Condominium located in Lee County, Florida (the "Condominium").

Section 1. Principal Office. The principal office of the Association shall be at 13 Elm Street, Manchester, Massachusetts 01944, or at such other place as may be subsequently designated by the Board of Directors of the Association.

Section 2. Definitions. Unless the context otherwise requires, all terms in these Bylaws shall have the same meaning as are attributed to them in the Articles and Declaration.

ARTICLE II: MEMBERSHIP AND VOTING PROVISIONS

Section 1. Membership in the Association. Membership in the Association shall be limited to owners of Units in the Condominium. Transfer of Unit ownership, either voluntary or by operation of law, shall terminate membership of the former Owner in the Association, and said membership shall become vested in the transferee, subject to the Association's approval. If Unit ownership is vested in more than one person, then all of the persons so owning said Unit shall be members eligible to hold office, attend meetings, and enjoy the other rights and responsibilities of membership, but, as hereinafter indicated, the vote of a Unit shall be cast by the voting member. If Unit ownership is vested in a corporation, said corporation shall designate an individual as its voting member.

Any application for the transfer of membership, or for a conveyance of an interest in, or to encumber or lease a Condominium Parcel, where the approval of the Board of Directors of the Association is required by the Declaration of Condominium, shall be accompanied by an application fee in an amount to be set by the Board.

Section 2. Voting.

(a) There shall be one (1) vote per Unit. The owner(s) of each Condominium Unit shall be entitled to one vote for each Unit owned. If a condominium Unit owner owns more than one Unit, he shall be entitled to one (1) vote for each Unit owned. The vote of a Unit shall not be divisible.

(b) A majority of the members who are present in person or by proxy pursuant to applicable Florida law and are entitled to vote under Section 5 of this Article at a meeting at which a quorum is present shall decide any question upon which the members are entitled to vote, unless the Declaration of Condominium, Articles of Incorporation, Bylaws, or agreement entered into by the Association provides otherwise, in which event the voting percentage required in said documents shall control.

Section 3. Quorum. The presence in person, or by limited or general proxy pursuant to applicable Florida law, of a majority of the members entitled to vote under Section 5 hereof shall constitute a quorum.

EXHIBIT C

Section 4. Proxies. Votes may be cast in person or may be cast by limited or general proxy in certain circumstances in accordance with applicable Florida law. All proxies shall be in writing and signed by the person entitled to vote for that Unit and shall be filed with the secretary prior to the meeting in which they are to be used. Proxies shall be valid only for the particular meeting designated therein, and lawful adjournments thereof. A faxed, photocopy, electronically scanned copy, or equivalent reproduction of the original proxy is a sufficient proxy. Holders of proxies need not be members.

Section 5. Designation of Voting Member. If a Unit is owned by one person, such person's right to vote shall be established by the recorded title to the Unit. If a Unit is owned by a corporation, partnership, trust, limited liability company, or other entity, the individual entitled to cast the vote of the Unit for the corporation, partnership, trust, limited liability company, or other entity may be designated in a certificate for this purpose, and filed with the secretary of the Association. The person designated in such certificate as entitled to cast the vote for a Unit shall be known as the "voting member". If such a certificate is not filed with the secretary of the Association, the vote of the Unit concerned shall be cast by any officer, director, partner, member or manager authorized to take such action on behalf of the entity as the case may be. Unless the certificate shall otherwise provide, such certificate shall be valid until revoked or until superseded by a subsequent certificate, or until a change in the ownership of the Unit concerned. If a Unit is owned by more than one person, the following three provisions apply:

- (a) They may, but they shall not be required to, designate a voting member by Certificate.
- (b) If they do not designate a voting member, and if all or some are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting.
- (c) Where they do not designate a voting member, and only one is present at a meeting, the person present may cast the Unit vote, just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

ARTICLE III: MEETING OF THE MEMBERSHIP

Section 1. Place. All meetings of the Association membership shall be held at such place and at such time as shall be designated by and stated in the notice of the meeting.

Section 2. Notice of Meetings; Waiver of Notice. Notice of all members' meetings must state the time, date, and place of the meeting, and include an agenda for the meeting. The notice of meeting must be mailed to each member at the address which appears on the books of the Association (which shall be the address last furnished to the Association by the Owner), or may be furnished by hand-delivery, or by electronic transmission in the manner set forth in Section 617.0141, Florida Statutes, to the extent that a member has consented to receive notices by electronic transmission and has not revoked such consent. Any such consent to receiving electronic transmissions shall be deemed revoked if: the Association is unable to deliver by electronic transmission two consecutive notices given by the Association in accordance with such consent; and such inability becomes known to the Secretary, Assistant Secretary or other authorized person responsible for the giving of notice. However, the inadvertent failure to treat such inability as a revocation does not invalidate any meeting or other action. Notice of a meeting called to recall a member or members of the Board of Directors pursuant to Section 718.112(2)(j) of the Condominium Act shall not be given by electronic transmission. The member is responsible for providing the Association with notice of any change of mailing address, facsimile number or electronic mail address. To the extent that a member has provided the Association with a facsimile number or electronic mail address and consented to receive notices by electronic transmission, such information shall be considered an "official record" until the member has revoked his consent. However, the

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Association is not liable for an erroneous disclosure of an electronic mail address or facsimile number. The notice of meeting must be mailed, hand-delivered, or electronically transmitted at least fourteen (14) days before the meeting. An affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. If ownership of a Unit is transferred after notice has been mailed, no separate notice to the new Owner is required. Attendance at any meeting by a member constitutes waiver of notice by that member unless the member objects to the lack of notice at the beginning of the meeting. A member may waive notice of any meeting at any time, but only by written waiver.

Annual Meeting; Special Notice Requirements. The annual meeting for the purpose of electing directors and transacting any other business authorized to be transacted by the members shall be held once in each calendar year at such time and on such date in each calendar year as the Board of Directors shall determine from time to time. The annual meeting shall be held within forty-five (45) miles of the Condominium Property. At the annual meeting, the members shall elect, by plurality vote, a Board of Directors and shall transact such other business as may have been stated in the notice of said meeting. Notice of the annual meeting shall be posted in a conspicuous location on the Condominium Property in accordance with Board rule for at least fourteen (14) continuous days prior to the annual meeting.

Section 3. Special Meeting. Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the president, and shall be called by the president or secretary at the request in writing of a majority of the Board of Directors or upon request in writing of voting members representing at least one-third (1/3) of the total voting interests, which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the matters stated in the notice thereof.

Section 4. Waiver and Consent. Any approval by Unit Owners called for by the Condominium Act, the Declaration of Condominium or these Bylaws shall be made at a duly noticed meeting of Unit Owners and shall be subject to all requirements of the Condominium Act or the Declaration of Condominium relating to Unit Owner decision making, except that Unit Owners may take action by written agreement, without meetings, on any matters for which the vote of members at a meeting is required or permitted by any provision of these Bylaws, the Articles, the Declaration or Florida law, if approved by Members representing at least the minimum number of votes in the Association necessary to authorize such action at a meeting, if all Members entitled to vote were present and voted. Such approval shall be evidenced by one or more written consents specifically authorizing the proposed action, dated and signed by Members holding the requisite votes. The Association need not give prior notice before soliciting such consent; however, the Association must send written consent forms to all Members for action authorized pursuant to this section to be valid. Members shall sign, date, and deliver such consents to the Association within ninety (90) days after the Association's receipt of the earliest dated consent. The Association's Secretary shall file (or cause to be filed) such consents with the Association's official records and the consents shall have the same force and effect as a vote of the Members at a meeting. After receiving authorization for any action by written consent, the Association shall give (or cause to be given) written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

Section 5. Adjourned Meeting. If any meeting of members cannot be organized because a quorum of voting members is not present, either in person or by proxy, the meeting may be adjourned from time to time until a quorum is present.

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ARTICLE IV: DIRECTORS

Section 1. Developer's Right to Appoint Directors. The Developer shall be entitled to elect member and/or non-member directors to the maximum extent permitted by Florida law.

Section 2. Transfer of Association Control. When Unit Owners other than the Developer own fifteen percent (15%) or more of the Units in the Condominium that will ultimately be operated by the Association, the Unit Owners other than the Developer shall be entitled to elect at least one-third of the members of the Board. Unit Owners other than the Developer are entitled to elect at least a majority of the members of the Board:

(a) Three (3) years after fifty percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers;

(b) Three (3) months after ninety percent (90%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers;

(c) When all the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business;

(d) When some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business;

(e) When the Developer files a petition seeking protection in bankruptcy;

(f) When a receiver for the Developer is appointed by a circuit court and is not discharged within thirty (30) days of such appointment, unless the court determines within thirty (30) days after appointment of the receiver that transfer of control would be detrimental to the Association or its Members; or

(g) Seven (7) years after recordation of the Declaration in the Public Records of the County.

The Developer is entitled to elect at least one (1) member of the board as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Units in the Condominium. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned Units in the same manner as any other Unit Owner except for purposes of reacquiring control of the Association or selecting the majority members of the Board.

Section 3. Membership. The affairs of the Association shall be managed by a board of three (3) directors.

Section 4. Qualifications. Directors need not be members. Co-owners of a unit may not serve as board members at the same time, unless they own more than one (1) Unit or unless there are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy. A person who has been suspended or removed by the Division under Chapter 718, or who is delinquent in the payment of any fee, fine or special or regular Assessment as provided in Chapter 718, is not eligible for Board membership. A Director who is more than ninety (90) days delinquent in the payment of regular Assessments or any monetary obligation due the Association shall be deemed to have abandoned the office, creating a vacancy to be filled according to law. A person who has been convicted of a felony in this State or in a United States District or Territorial Court, or who has been convicted of any offense in another

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jurisdiction that would be considered a felony if committed in this State, is not eligible for Board membership unless such felon's civil rights have been restored for a period of no less than at least five (5) years as of the date on which such person seeks election to the Board.

Section 5. Election of Directors by Members. At the annual meeting, if an election is necessary, nominations may be made from the floor, or otherwise the director(s) shall be elected by a show of hands, by written ballot and/or by limited or general proxy. Pursuant to Section 718.112(2)(d)9., Florida Statutes, this provision is intended to opt out of the statutory election process set forth in Section 718.112 Florida Statutes.

Section 6. Term of Office. All directors elected by the members shall serve one (1) year terms, except that any director filling a vacancy shall only serve for the remainder of the term of the director whose vacancy is being filled.

Section 7. Organizational Meeting. The newly elected Board shall meet for the purposes of organization, the election of officers, and the transaction of other business immediately after their election without further notice.

Section 8. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors, provided that such meetings shall be held no less frequently than quarterly.

Section 9. Special Meetings. Special meetings of the Board may be called by any director, or by the president, at any time.

Section 10. Notice of Meetings. Notice of all Board and committee meetings must be posted in a conspicuous place in the Condominium at least forty-eight (48) hours in advance of a meeting except in an emergency. Notwithstanding, written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use will be considered shall be mailed or delivered to the unit owners and posted conspicuously on the Condominium property not less than fourteen (14) days prior to the meeting. Evidence of compliance with the notice requirements shall be made by an affidavit of the person providing the notice and filed among the official records of the Association. Notice of each meeting of the Board shall be given by the secretary, or by any other officer or director, which notice shall state the day, place, hour and identification of agenda items to be considered at the meeting. Notices of Board meetings may be given by electronic transmission (to those members who have so consented) in lieu of mail or hand-delivery, when the latter two methods are otherwise required pursuant to the Condominium Act. Notice of such meeting shall be delivered to each director either personally or by telephone or by e-mail at least forty-eight (48) hours before the time at which such meeting is to be held, or by first-class mail, postage prepaid, addressed to such director at his residence or usual place of business, at least five (5) days before the day on which such meeting is to be held. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a director states, at the beginning of the meeting, an objection to the transaction of any business because the meeting is not lawfully called or convened.

Section 11. Quorum and Manner of Acting. A majority of the directors shall constitute a quorum for the transaction of any business at a meeting of the Board. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number of directors is required by statute, the Declaration, the Articles, or these Bylaws. A director may join by written concurrence in any action taken at a meeting of the Board, but such concurrence may not be used for the purposes of creating a quorum.

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Section 12. Action Upon Written Consent Without a Meeting. Unless otherwise prohibited by Florida Law, action of the Board may be taken without a meeting upon the written consent signed by all members of the Board. Any such action without a meeting shall be effective on the date the last Board member signs the consent or on such date as is specified in the consent. Any such action by written consent shall have the same effect as a vote taken at a meeting of the Board.

Section 13. Adjourned Meetings. A majority of the directors present at a meeting, whether or not a quorum exists, may adjourn any meeting of the Board to another place and time. Notice of any such adjourned meeting shall be given to the directors who are not present at the time of the adjournment and, unless the time and place of the adjourned meetings are announced at the time of the adjournment, to the other directors, and as otherwise noticed in accordance with Section 9 above. At any adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

Section 14. Presiding Officer. The presiding officer of the Board meetings shall be the president of the Association. In the absence of the presiding officer, the directors shall designate one of their members to preside.

Section 15. Order of Business. The order of business at a Board meeting may be:

- (i) Calling of roll;
- (ii) Proof of due notice of meeting;
- (iii) Reading and disposal of any unapproved minutes;
- (iv) Reports of officers and committees;
- (v) Election of officers.

The Board may change any agenda to accommodate any meeting circumstances.

Section 16. Open Meetings. All meetings of the Board shall be open to all members except for: (i) meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege, or (ii) Board meetings held for the purpose of discussing personnel matters.

Section 17. Committee Meetings. Except for a meeting of a committee of the Board to take final action on behalf of the Board or make recommendations to the Board regarding the Association budget, meetings of committees of the Board are not subject to the provisions of this article, including, but not limited to, the provisions pertaining to notice, open meetings, and recording of meetings.

Section 18. Recording. Any member may tape record or videotape Board meetings, subject to reasonable rules of the Board.

ARTICLE V: OFFICERS

Section 1. Elective Officers. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors and shall serve without compensation. One person may not hold more than one of the aforementioned offices, except one person may be both Secretary and Treasurer. The President and Vice President shall be

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members of the Board of Directors. Notwithstanding the foregoing, the restriction as to one person holding only one of the aforementioned offices or the President and Vice President being members of the Board of Directors shall not apply until control of the Association shall be transferred to the Unit Owners other than the Developer.

Section 2. Election. The officers of the Association shall be elected annually by the Board of Directors. Officers may be elected by secret ballot pursuant to applicable Florida law.

Section 3. Term. The officers of the Association shall hold office until their successors are chosen and qualified. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors; provided, however, that no officer shall be removed except by the affirmative vote for removal by a majority of the whole Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 4. The President. The President shall be the chief executive officer of the Association. The President shall have executive powers and general supervision over the affairs of the Association and other officers.

Section 5. The Vice President. The Vice President shall perform all of the duties of the President in the President's absence and such other duties as may be required of him from time to time by the Board of Directors of the Association.

Section 6. The Secretary. The Secretary shall issue notices of all Board of Directors meetings and all meetings of the Unit Owners; shall attend and keep the minutes of same; shall have charge of all of the Association's books, records and papers, including roster of members and mortgagees, except those kept by the Treasurer.

Section 7. The Treasurer.

(a) The Treasurer shall have custody of the Association's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name of and to the credit of the Association in such depositories as may be designated from time to time by the Board of Directors. The books shall reflect an account for each Unit in the Condominium which shall designate the name and current mailing address of the Unit Owner, the amount of each assessment, the dates and amounts in which the assessment came due, the amount paid upon the account and the balance due.

(b) The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with these Bylaws, making proper vouchers for such disbursements, and shall render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all of transactions and of the financial condition of the Association.

(c) The Treasurer shall collect the assessments and shall promptly report the status of collections and of all delinquencies to the Board of Directors and, when requested, to the Developer or other entity designated by the Board of Directors.

(d) The Treasurer shall give status reports to potential transferees on which reports the transferees may rely.

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Section 8. Proviso. Notwithstanding any provisions to the contrary in these Bylaws, the Association shall maintain separate accounting records for this Association, shall keep such records according to general accepted accounting practices, shall open such records for inspection by Unit Owners of this Condominium or their authorized representatives at reasonable times and shall supply written summaries of such records at least annually to the Unit Owners of this Condominium or their authorized representatives. In the event the Board of Directors designates a management firm to operate the Condominium on behalf of the Association, said management firm shall be required to follow the aforesaid provisions.

ARTICLE VI: FINANCES AND ASSESSMENTS

Section 1. Depositories. The funds of the Association shall be deposited in such banks and depositories as may be determined by the Board of Directors from time to time upon resolutions approved by the Board of Directors; and shall be withdrawn only upon checks and demands for money signed by such officer or officers of the Association as may be designated by the Board of Directors. Obligations of the Association shall be signed by the President or Vice President of the Association; provided, however, that the provisions of any Management Agreement entered into by the Association and a management firm designated by the Association to operate the Condominium relative to the subject matter in this Section 1 shall supersede the provisions hereof. The foregoing is further subject to the applicable provisions of the Declaration of Condominium.

Section 2. Fidelity Bonds or Insurance. The Treasurer and all officers who are authorized to sign checks, and all officers and employees of the Association who control or disburse funds of the Association, and any contractor handling or responsible for Association funds, shall be bonded. The amount of the bond shall be determined by the Board of Directors, but in no event shall it be less than the minimum amount required under Florida law.

Section 3. Fiscal Year. The fiscal year of the Association shall be the calendar year, unless changed by the Board.

Section 4. Determination of Assessments.

(a) The Board of Directors of the Association shall fix and determine from time to time the sum or sums necessary and adequate for the Common Expenses of the Condominium. Common Expenses shall include expenses for the operation, maintenance, repair or replacement of the Common Elements and the Limited Common Elements, costs of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, including fire insurance and extended coverage, obligations of the Association pursuant to the Declaration of Condominium, water and sewer and any other expenses designated as common expenses from time to time by the Board of Directors of the Association, or under the provisions of the Declaration of Condominium or Florida law. In addition to the statutory reserves the Board may establish one or more "contingency funds" for contingencies and operating expenses for the Condominium and for the Association. The purpose of these contingency funds is to provide financial stability and to avoid the need for Special Assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget as a line item in the operating portion of the budget. The Board of Directors is specifically empowered, on behalf of the Association, to make and collect Assessments and to lease, maintain, repair and replace the Common Elements and Limited Common Elements of the Condominium; provided, however, the Association shall not charge any fee against a Unit Owner for the use of Common Elements or Association Property unless such use is the subject of a lease between the Association and the Unit Owner. Funds for the payment of Common Expenses shall be assessed against the Unit Owners in the proportions or percentages of sharing common expenses as provided in the Declaration of Condominium and exhibits attached thereto. Said

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Assessments shall be payable quarterly in advance and shall be due on the first day of each quarter in advance unless otherwise ordered by the Board of Directors. Special Assessments, should such be required by the Board of Directors, shall be levied in the same manner as herein before provided for regular assessments and shall be payable in the manner determined by the Board of Directors.

(b) If the Association contracts for pest control within Units or communications services as defined in Chapter 202, Florida Statutes, information services, or internet services in bulk for the entire Condominium, the cost of such services shall be a Common Expense.

(c) An annual budget and level of Assessment for Common Expenses sufficient to fund such budget shall be proposed and adopted by the Board of Directors in accordance with the Florida Condominium Act. The Board shall hand deliver or mail, or cause to be mailed, to each Unit Owner a notice of the Board of Directors meeting at which the budget will be considered not less than fourteen (14) days prior to said meeting. Such notice shall include a copy of the proposed annual budget and Assessment as well as the time and place for the meeting which shall be open to the Unit Owners. If the Association shall fail for any reason to adopt a budget and authorize an Assessment prior to the beginning of the new fiscal year, the budget and Assessment for the previous year shall continue in effect until changed by the Association.

(d) All Assessments shall be payable to the Association, even if collected under the provisions of a Management Agreement.

Section 5. Application of Payments and Commingling of Funds. Reserve and operating funds collected by the Association, or by an Association designated management firm as long as a Management Agreement shall be in effect, may be commingled in a single fund for purposes of investment as permitted by the Condominium Act. All decisions to commingle funds must be made by the Board of Directors. All Assessment payments collected shall be applied (1) pursuant to the applicable provisions of the Declaration of Condominium, or (2) as provided by a Management Agreement as long as the Management Agreement remains in effect, or thereafter, as the Board of Directors determines in its sole discretion. All funds shall be maintained in a separate account in the name of the Association. A management firm shall maintain separate accounting records for each condominium it manages pursuant to the provisions of such Management Agreement and the Florida Condominium Act.

Section 6. Acceleration of Assessment Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon any assessment, the Association may accelerate the monthly installment for the remainder of the fiscal year upon notice thereof to the Unit Owner and, thereupon, the unpaid installments of the assessment together with the monthly assessments for the remainder of the fiscal year shall become due upon the date of recording a claim of lien in the public records. The acceleration of installments may be repeated at the end of each fiscal year thereafter if at the end of such period there remains any sums due and unpaid.

ARTICLE VII: FINANCIAL STATEMENTS

Section 1. Financial Statement or Report. Subject to the requirements of the Act, within ninety (90) days after the end of the fiscal year, the Association shall prepare and complete, or cause to be prepared and completed by a third party, a report of cash receipts and expenditures for the preceding fiscal year. Within twenty-one (21) days after the financial report is completed or received from the third party, the Association shall mail or hand deliver to each Owner a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the Owner, without charge, upon receipt of a written request from the Owner. The Association may prepare, in lieu of the report of cash receipt and expenditures, compiled, reviewed or audited financial statements without a meeting of or approval by the

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Unit Owners. Such vote must occur prior to the end of the fiscal year and may be effective for the subsequent fiscal year, although the financial report may not be waived for more than three (3) years.

ARTICLE VIII: COMPLIANCE AND DEFAULT

Section 1. Violations. In the event of a violation by a Unit Owner of any of the provisions of the Declaration of Condominium, these Bylaws, or the applicable portions of the Condominium Act, the Association, by direction of its Board of Directors, may notify the Unit Owner by written notice of said breach, transmitted by mail or delivered in person. The Association shall have any or all of the following elections:

- (a) An action at law to recover for its damages on behalf of the Association or on behalf of the other Unit Owners;
- (b) An action in equity to enforce performance on the part of the Unit Owner;
- (c) An action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief; or
- (d) Mandatory Non-Binding Arbitration. Notwithstanding anything to the contrary herein, in the event of any "dispute", as defined in Section 718.1255 Florida Statutes, between an Owner and the Association, the parties must submit the dispute to mandatory non-binding arbitration under the rules of the Division prior to filing suit in Lee County over the disputed matters.

Failure on the part of the Association to maintain such action at law or in equity within thirty (30) days from the date of a written request, signed by a Unit Owner, sent to the Board of Directors, shall authorize any Unit Owner to bring an action in equity or suit at law on account of the violation in the manner provided for in the Condominium Act.

Section 2. Fines.

(a) In addition to the remedies as identified in Section 1 above, the Association may levy a fine not to exceed the maximum amount allowed by Chapter 718, Florida Statutes, against any Unit owner, resident, guest or invitee, for failure to abide by any provisions of the Declaration, these Bylaws or the rules of the Association. No fine will become a lien against a Unit. A fine may be levied for each day of a continuing violation, with a single notice and an opportunity for a hearing, provided that no such fine shall exceed the maximum aggregate amount allowed under Chapter 718, Florida Statutes.

(b) No fine may be levied except after giving reasonable notice and an opportunity for a hearing to the owner, resident, guest or invitee. Reasonable notice shall include a statement as to the provisions of the Declaration, these Bylaws or the rules of the Association which have allegedly been violated; and a short and plain statement of the matters asserted by the Association, and a statement providing opportunity for a hearing.

If the opportunity for a hearing is accepted pursuant to the above, a hearing shall be held before a committee of other unit owners. At the sole discretion of the Board of Directors, this committee may be either a standing committee appointed by the Board of Directors for the purpose of addressing all fine situations, or a committee appointed by the Board of Directors for the particular hearing. At such hearing, the party against whom the fine may be levied shall have the opportunity to respond to, to present evidence relating to, and to provide written and oral argument on all issues involved, and shall have an

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opportunity to review, challenge and respond to any material considered by the committee. If a majority of the committee does not agree with the fine, the fine may not be levied.

(c) **Exceptions to Hearing Notice Requirements.** The notice and hearing requirements of this Section 2 do not apply to the imposition of suspensions or fines against a Unit Owner or Occupant because of failing to pay any amounts due the Association. If such a fine or suspension is imposed, the Association must levy the fine or impose a reasonable suspension at a properly noticed Board meeting, and after the imposition of such fine or suspension, the Association must notify the Unit Owner and, if applicable, the Unit's Occupant, licensee or invitee by mail or hand delivery.

Section 3. Negligence or Carelessness of Unit Owner. Any Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Nothing herein contained, however, shall be construed so as to modify any waiver by the insurance company of rights of subrogation.

Section 4. Costs and Attorneys' Fees. In any proceeding brought by the Association pursuant to these Bylaws, the Association, if it is the prevailing party, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the court, including appellate fees.

Section 5. No Waiver of Rights. The failure of the Association or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or Unit Owner to enforce such right, provision, covenant or condition in the future.

Section 6. Election of Remedies. All rights, remedies and privileges granted to the Association or Unit Owners pursuant to any terms, provisions, covenants or conditions of the Condominium documents shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such other party by the Condominium documents, or at law or in equity.

ARTICLE IX: AMENDMENTS TO THESE BYLAWS

These Bylaws may be altered, amended or added to at any duly called meeting of the Unit Owners at which a quorum has been established, provided:

- (a) Notice of the meeting shall contain a statement of the proposed amendment.
- (b) The amendment shall be approved upon the affirmative vote of a majority of the voting interests.
- (c) Said amendment shall be recorded and certified as required by the Condominium Act.
- (d) No amendment to these Bylaws shall be made which affects any of the rights and privileges provided to the Developer in the Condominium documents without the written consent of the Developer.

EXHIBIT C**ARTICLE X: INDEMNIFICATION**

The Association shall indemnify every director and every officer, his heirs, executors and administrators, against all loss, cost and expense reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of the Association, including reasonable counsel fees, except as to matters wherein he shall be finally adjudged in such action, suit or proceeding to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

ARTICLE XI: LIABILITY SURVIVES TERMINATION OF MEMBERSHIP

The termination of membership in the Association shall not relieve or release any such former owner or member from any liability or obligations incurred under or in any way connected with the Association during the period of such ownership and membership, or impair any rights or remedies which the Association may have against such former owner and member arising out of or in any way connected with such ownership and membership, and the covenants and obligations incident thereto.

ARTICLE XII: LIMITATION OF LIABILITY

Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage by a latent condition in the Condominium Property, nor for injury or damage caused by the elements or by other owners or persons.

ARTICLE XIII: PARLIAMENTARY RULES

Roberts' Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Florida Condominium Act, the Declaration of Condominium, or these Bylaws, unless the Board shall decide otherwise to accommodate the circumstances.

ARTICLE XIV: RULES AND REGULATIONS

In addition to the rules and regulations set forth in the Declaration of Condominium, the rules and regulations adopted and amended by the Board from time to time shall govern the use of the Units, Common Elements, Limited Common Elements, and any other Condominium Property, and also the conduct of all residents thereof. The Unit Owners shall, at all times, obey said rules and regulations and shall use their best efforts to see that they are faithfully observed by their families, guests, invitees, servants, lessees and persons over whom they exercise control and supervision. In the event of any conflict between the rules and regulations adopted from time to time and the Condominium documents or the Florida Condominium Act, the latter shall prevail.

ARTICLE XV: ARBITRATION

As required by the Florida Condominium Act, all issues or disputes which are recognized by the Florida Condominium Act or by administrative rules promulgated under the Florida Condominium Act as being required for mediation or arbitration shall be resolved through such alternative resolution procedures instead of civil litigation.

EXHIBIT C**ARTICLE XVI: EMERGENCY POWERS**

The following shall apply to the extent not viewed to be in conflict with the Florida Condominium Act:

Section 1. In anticipation of or during any emergency defined in Section 6 below, the Board of Directors of the Association may:

(a) Name as assistant officers persons who are not Board members, which assistant officers shall have the same authority as the executive officers to whom they are assistant, during the period of the emergency, to accommodate the incapacity of any officer of the Association; and

(b) Relocate the principal office or designate alternative principal offices or authorize the officers to do so.

Section 2. During any emergency defined in Section 6 below:

(a) Notice of a meeting of the Board of Directors need be given only to those Directors whom it is practicable to reach and may be given in any practical manner, including by publication and radio; and

(b) The Director or Directors in attendance at a meeting shall constitute a quorum.

Section 3. Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association binds the Association and shall have the presumption of being reasonable and necessary.

Section 4. An officer, director, or employee of the Association acting in accordance with these emergency provisions is only liable for willful misconduct.

Section 5. These emergency provisions shall supersede any inconsistent or contrary provisions of the Bylaws for the period of the emergency.

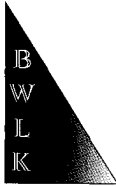
Section 6. An emergency exists for purposes of this Article if a quorum of the Association's Directors cannot readily be assembled because of some catastrophic event.

ARTICLE XVII: CERTIFICATE OF COMPLIANCE

A Certificate of Compliance from a licensed electrical contractor or electrician may be accepted by the Board as evidence of Compliance of the Condominium Units to the applicable fire and safety codes.

ARTICLE XVIII: CONFLICT

If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Condominium or Articles of Incorporation, the provisions of the Declaration and of the Articles of Incorporation shall prevail over the provisions of these Bylaws.



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

Surveyor's Certification for

Turtle Walk of Fort Myers Beach, a Condominium
Section 33, Township 46 South, Range 24 East
Town of Fort Myers Beach, Lee County, Florida

I, Scott C. Whitaker, Professional Surveyor and Mapper, hereby certify that the construction of the improvements for Units 1, 2, 3, 4, 5, 6, and 7 of Turtle Walk of Fort Myers Beach, a Condominium as shown on the attached Exhibit "D" dated 01/14/15 is substantially complete so that these materials, together with the provisions of the Declaration of Condominium describing the condominium property as relates to survey matters only, is an accurate representation of the location and dimensions of the improvements and so that the identification, location and dimensions of the common elements, limited common elements and of each unit can be determined from these materials and that all planned improvements, including but not limited to landscaping, utility services and access to the unit and common element facilities serving the building in which the units to be conveyed are located have been substantially completed.

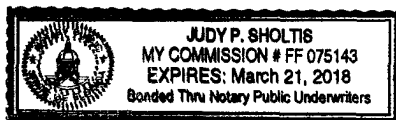
Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

Scott C. Whitaker, P.S.M. 4324
Professional Surveyor and Mapper
State of Florida

STATE OF FLORIDA
COUNTY OF LEE

BEFORE ME, the undersigned officer, personally appears Scott C. Whitaker of Bean, Whitaker, Lutz & Kareh, Inc., personally known to me and who did not take an oath, and who is known to me to be the person described in and who executed the foregoing instrument, and acknowledged to me and before me that he executed said instrument in the capacity and for the purposes therein expressed this 14th day of January, 2015.

SEAL



Notary Public Judy P. Sholtis

35459_CONDO CERT

PRINCIPALS:

SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

JAMES A. HESSLER, PSM
CHRISTEN A. MOORE, PSM
ROBERT L. CARMELIA, PSM
STEPHEN F. SHAWLES II, PSM
MUNIR R. SULEH, PE, MSEE

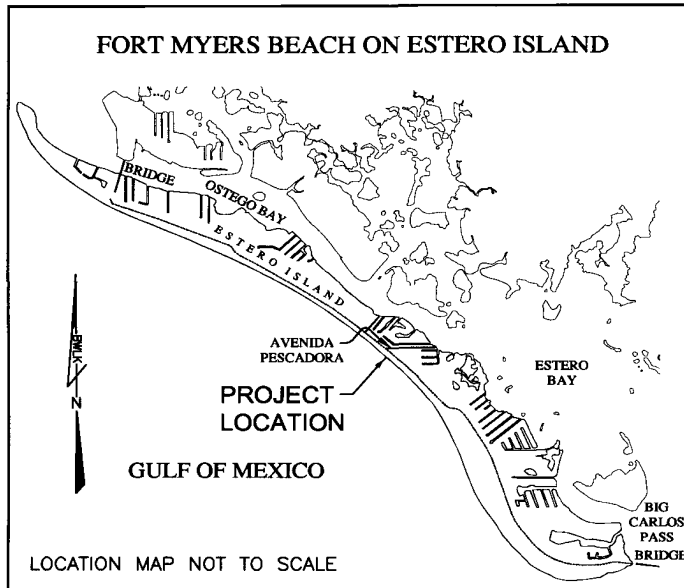
**EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
A CONDOMINIUM**
LYING IN
SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE

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3B	PLOT PLAN
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4	SKETCH OF UNIT BOUNDARIES / ADDRESSES
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36	UNIT 7-GROUND FLOOR PLAN/BUILDING DIMENSIONS
37	UNIT 7-FIRST FLOOR PLAN/BUILDING DIMENSIONS
38	UNIT 7-SECOND FLOOR PLAN/BUILDING DIMENSIONS
39	UNIT 7-VERTICAL BOUNDARIES

**DESCRIPTION:**

ALL OF LOTS 16, 17, 18, 19, 19A, 19B, 20, 21, 22, 23, 24, 25, 26 AND 27 OF BLOCK 6, GULF HEIGHTS, A SUBDIVISION RECORDED IN PLAT BOOK 6 AT PAGE 39, TOGETHER WITH THAT VACATED 8' STRIP OF LAND AS RECORDED IN INSTRUMENT NO. 2013000146046, ALL OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

GENERAL NOTES:

ALL USES ARE RESIDENTIAL.

ROOF OVERHANGS, DECORATIVE WALLS, SEWER, WATER, ELECTRIC LINES AND SERVICE BOXES ARE NOT SHOWN. ROOF OVERHANGS ARE CONSIDERED PART OF THE UNIT. (REFER TO DECLARATION)

THE DEVELOPER RESERVES THE RIGHT TO GRANT EASEMENTS FOR INGRESS/EGRESS, DRAINAGE, UTILITIES, RECREATIONAL PURPOSES AND OTHER ITEMS ADDRESSED IN THE DECLARATION OF CONDOMINIUM.

THESE DRAWINGS ARE PREPARED AS SURVEYOR'S EXHIBITS TO THE DECLARATION OF CONDOMINIUM FOR "TURTLE WALK OF FORT MYERS BEACH, A CONDOMINIUM". THIS CONDOMINIUM IS SUBJECT TO THE PROVISIONS SET FORTH IN SAID DECLARATION. REFER TO THE DECLARATION OF CONDOMINIUM FOR DEFINITIONS PERTAINING TO EASEMENTS, COMMON ELEMENTS, LIMITED COMMON ELEMENTS AND UNIT BOUNDARIES.

ALL UNITS ARE COMPLETE.

CERTIFICATION FOR BOUNDARY SURVEY:

*NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

BEAN, WHITAKER, LUTZ & KAREH, INC.

SCOTT C. WHITAKER, P.S.M., NO. 154324
PROFESSIONAL SURVEYOR & MAPPER
STATE OF FLORIDA

- THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.
- THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON.
- IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES.

COVER SHEET

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

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DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1"= N.A.	1 OF 39	33-46-24

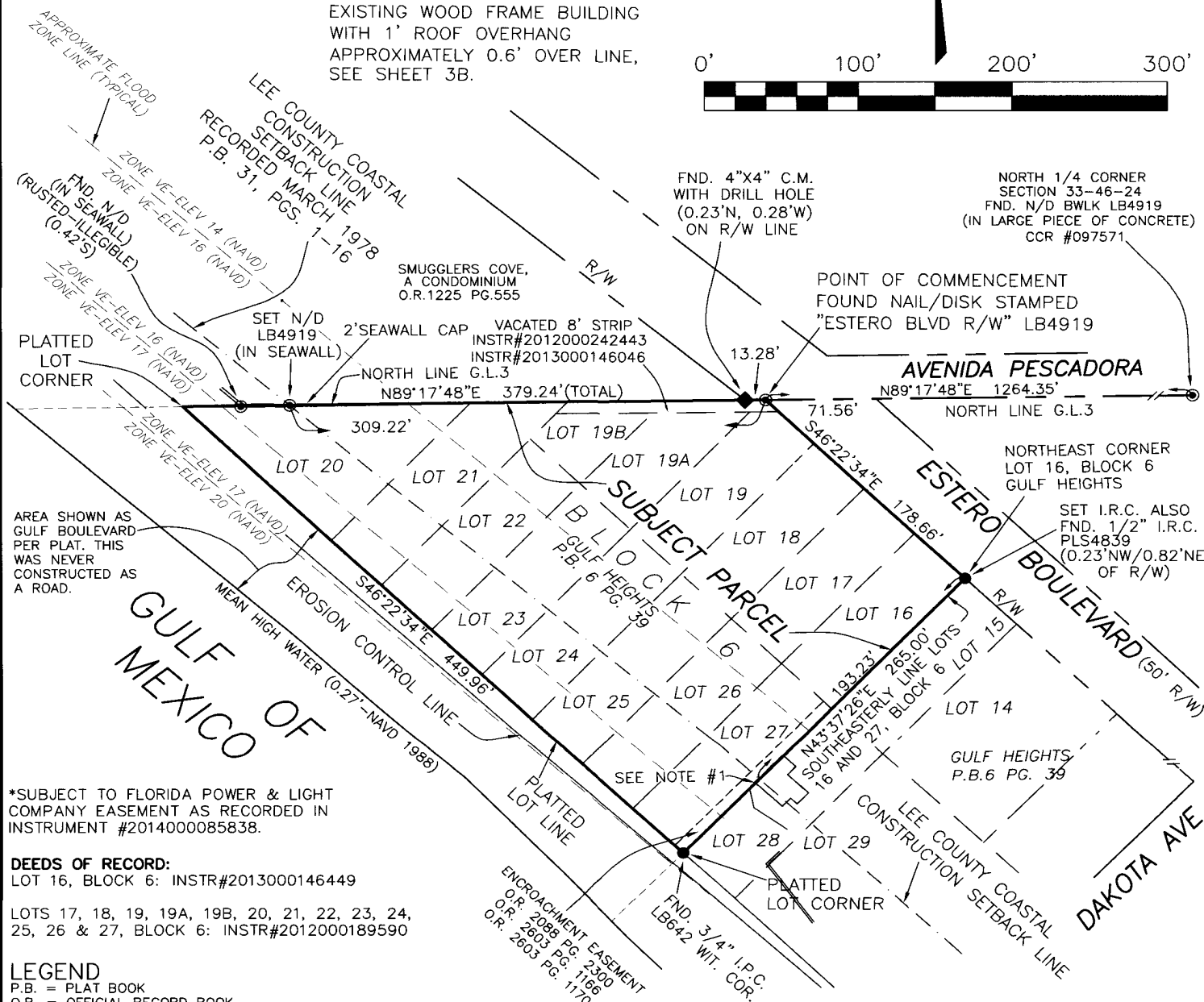
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TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK PAGE

NOTE #1:

EXISTING WOOD FRAME BUILDING
WITH 1' ROOF OVERHANG
APPROXIMATELY 0.6' OVER LINE,
SEE SHEET 3B.



*SUBJECT TO FLORIDA POWER & LIGHT COMPANY EASEMENT AS RECORDED IN INSTRUMENT #2014000085838.

DEEDS OF RECORD:

LOT 16, BLOCK 6: INSTR#2013000146449

LOTS 17, 18, 19, 19A, 19B, 20, 21, 22, 23, 24, 25, 26 & 27, BLOCK 6: INSTR#2012000189590

LEGEND

P.B. = PLAT BOOK
O.R. = OFFICIAL RECORD BOOK
PG. = PAGE
PGS. = PAGES
FND. = FOUND
I.P.C. = IRON PIPE & CAP
I.R.C. = IRON ROD & CAP
C.M. = CONCRETE MONUMENT
INSTR. = INSTRUMENT
N/D = NAIL & DISK
R/W = RIGHT-OF-WAY
G.L. = GOVERNMENT LOT
WIT. COR. = WITNESS CORNER
ELEV. = ELEVATION
NAVD = NORTH AMERICAN VERTICAL DATUM OF 1988
CCR = CERTIFIED CORNER RECORD

*SEE SURVEY NOTES
ON SHEET 2B

BOUNDARY SURVEY

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

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DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = 100'	2A OF 39	33-46-24

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CONDOMINIUM PLAT BOOK

PAGE

SURVEY NOTES:

SURVEY BASED ON THE DESCRIPTION SHOWN HEREON AS SUPPLIED BY CLIENT AND RECORDED IN INSTRUMENT NO.2012000189590, THE PLAT OF GULF HEIGHTS, THE VACATION APPROVAL OF THE 8' STRIP OF LAND AS NOTED HEREON, THE RECORDED PLAT OF GULF HEIGHTS (PLAT BOOK 6, PAGE 39), THE "COASTAL CONSTRUCTION CONTROL LINE" (PLAT BOOK 48, PAGES 15 THROUGH 34), THE "EROSION CONTROL LINE" (PLAT BOOK 70, PAGE 25), THE "LEE COUNTY COASTAL CONTROL SET-BACK LINE", TITLE POLICY BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY (NUMBER OF6-4059853) WITH EFFECTIVE DATE AUGUST 30, 2012, PREVIOUS SURVEYS DONE BY THIS FIRM AND FOUND MONUMENTATION.

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

ELEVATIONS ARE BASED ON N.A.V.D. OF 1988 AND NGS BENCHMARK G-245.

STATE PLANE COORDINATES ARE BASED ON THE NORTH AMERICAN DATUM OF 1927/1979 ADJUSTMENT AND THE NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE AS SHOWN AND NOTED HEREON HOLDING NGS CONTROL POINT "BOOB2".

BEARINGS ARE BASED ON THE NORTH AMERICAN DATUM (NAD) OF 1983/1990 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE HOLDING A LINE FROM MONUMENT 12-83-A31 TO MONUMENT 12-83-A32 AS BEARING S50°34'19"E AND NOTED AS (C).

THE EASEMENTS SHOWN HEREON WERE BASED ON TITLE COMMITMENT NO. 18-2012-2054 WITH EFFECTIVE DATE BEING AUGUST 30, 2012, AND EASEMENTS PREPARED BY THIS FIRM AT THE REQUEST OF THE CLIENT.

PARCEL LIES IN FLOOD ZONE VE, BASE FLOOD ELEVATION OF 14', 16', 17' AND 20'. THIS INFORMATION TAKEN FROM FLOOD INSURANCE RATE MAP 12071C0566F, COMMUNITY NAME: TOWN OF FORT MYERS BEACH AND COMMUNITY NUMBER: 120673, EFFECTIVE AND INDEX DATE 8-28-2008.

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

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

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

ROOF OVERHANGS NOT SHOWN UNLESS NOTED OTHERWISE.

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

THE MEAN HIGH WATER ELEVATION OF 0.27' WAS EXTENDED FROM DEP TIDE INTERPOLATION POINT IDENTIFICATION 100229 AND IS SHOWN FOR REFERENCE ONLY.

THE LEE COUNTY COASTAL CONSTRUCTION SETBACK LINE AS SHOWN ON MAPS PREPARED FOR STATE OF FLORIDA DEPARTMENT OF NATURAL RESOURCES FILE NUMBER 617-0275 DATED MARCH 1978 IS RECORDED IN PLAT BOOK 31 AT PAGES 1-16.

PARCEL CONTAINS 2.07 ACRES (90,104 SQUARE FEET), MORE OR LESS FROM ESTERO BOULEVARD RIGHT-OF-WAY TO THE EROSION CONTROL LINE. PARCEL CONTAINS 1.91 ACRES (83,292 SQUARE FEET), MORE OR LESS FROM ESTERO BOULEVARD RIGHT-OF-WAY TO THE PLATTED LOT LINE. PARCEL CONTAINS 1.32 ACRES (57,611 SQUARE FEET), MORE OR LESS FROM ESTERO BOULEVARD RIGHT-OF-WAY TO THE LEE COUNTY COASTAL CONSTRUCTION SETBACK LINE (1978 LINE). THE 8' STRIP (CONTAINING 1,091 SQUARE FEET) HAS BEEN VACATED AND IS INCLUDED IN THE AREA CALCULATIONS.

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

STRAP NO. 33-46-24-W1-00206.0160 (5210-5230 ESTERO BLVD)

OWNERSHIP SEAWARD OF THE PLATTED LOTS WAS NOT DETERMINED.

DATE OF INITIAL BOUNDARY SURVEY: 4-30-13.

DATE OF LAST FIELD WORK: 1-14-15.

SURVEY NOTES

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

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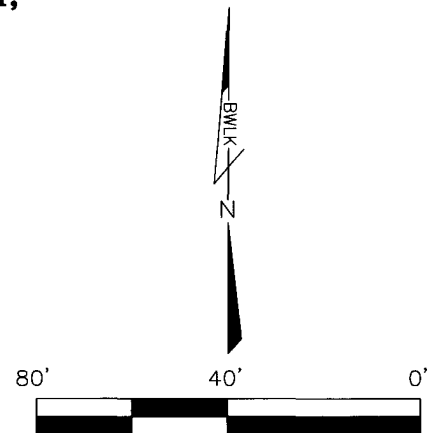
DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SCW	1" = N.A.	2B OF 39	33-46-24

**EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
A CONDOMINIUM**

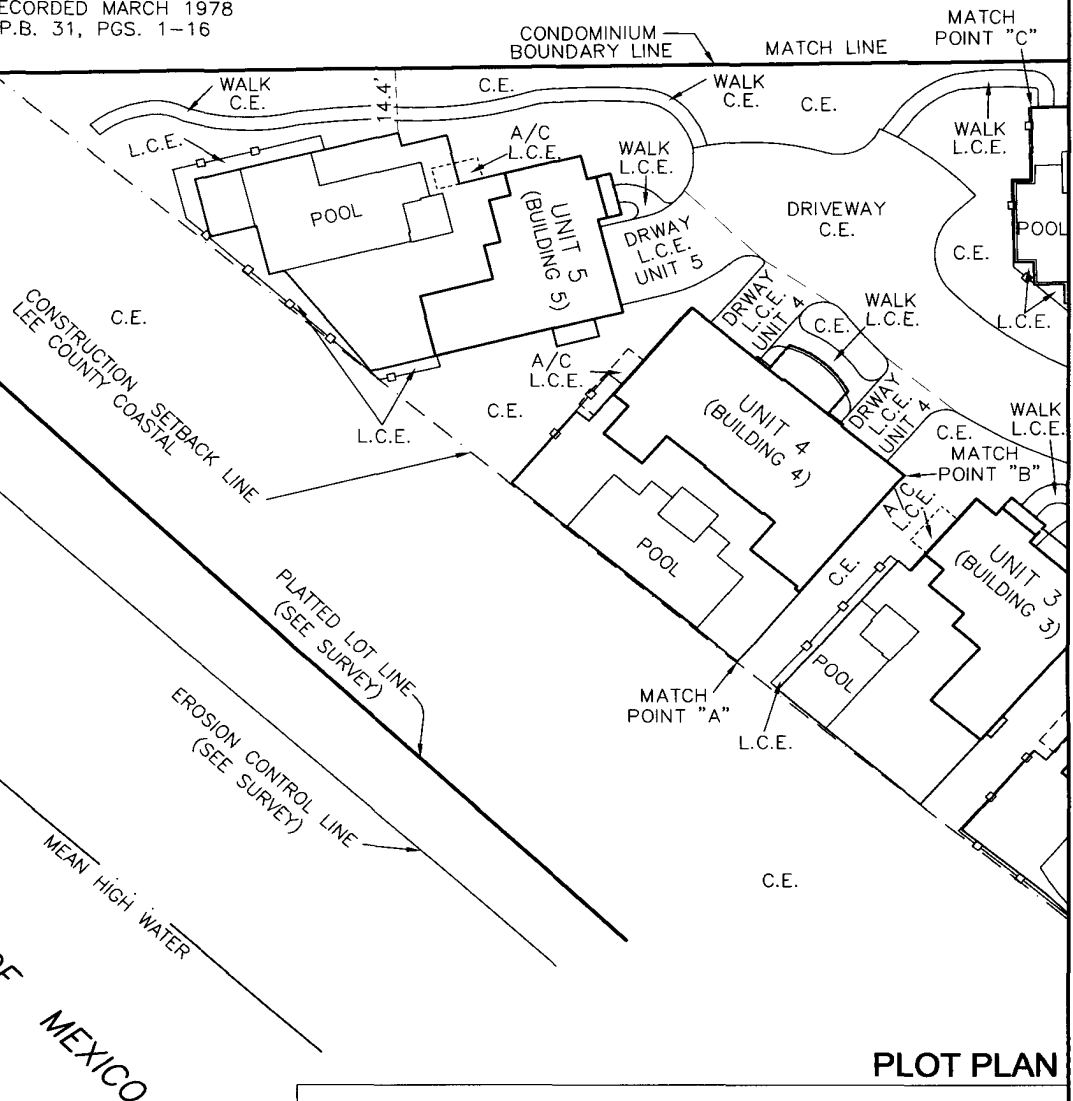
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TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE



LEE COUNTY COASTAL
CONSTRUCTION SETBACK LINE
RECORDED MARCH 1978
P.B. 31, PGS. 1-16

**PLOT PLAN****LEGEND**

C.E. = COMMON ELEMENT
L.C.E. = LIMITED COMMON ELEMENT
E.O.P. = EDGE OF PAVEMENT
R/W = RIGHT-OF-WAY
DRWAY = DRIVEWAY
LS = LANDSCAPING
A/C = AIR CONDITIONER

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

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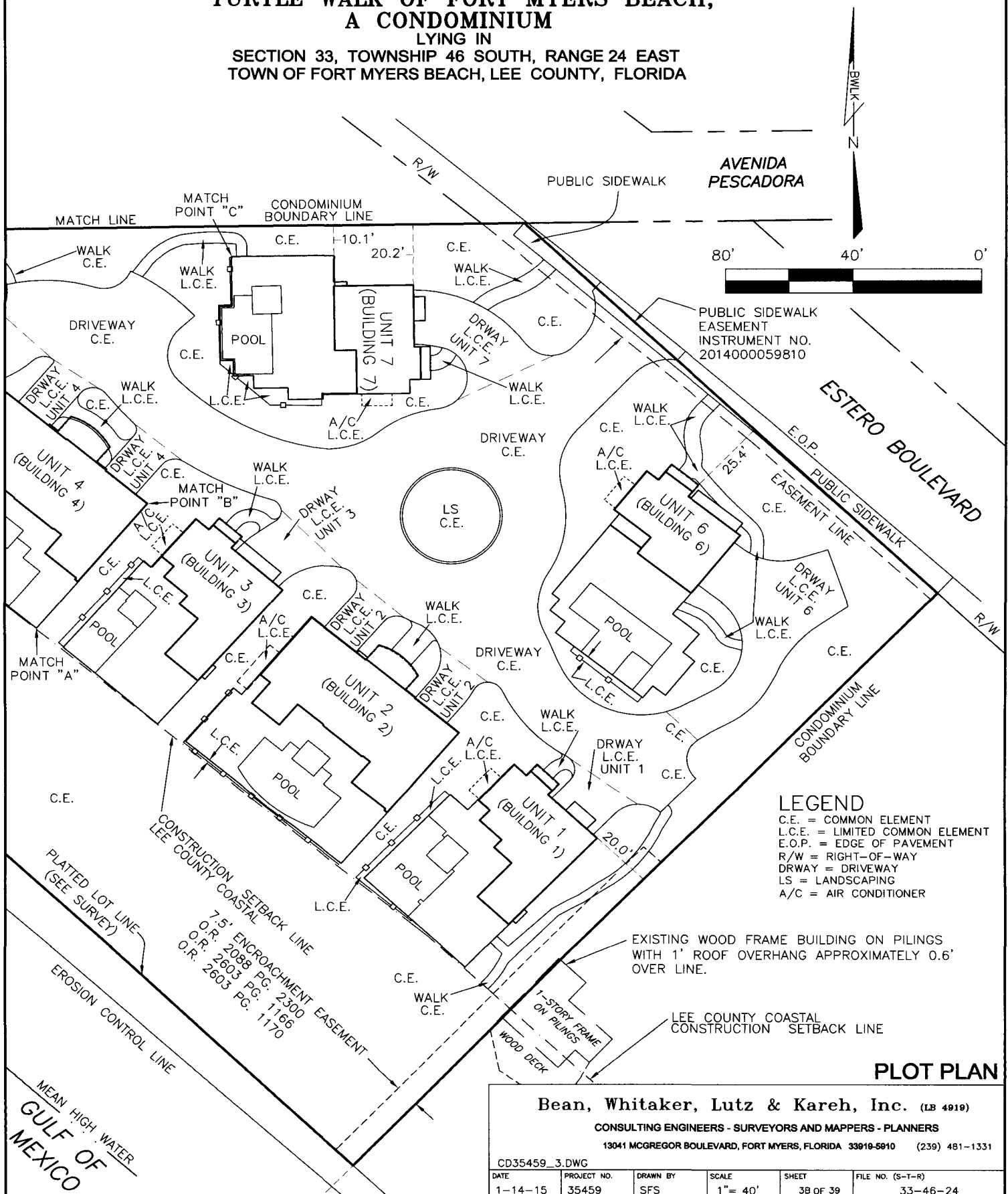
DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = 40'	3A OF 39	33-46-24

EXHIBIT "D" TO CONDOMINIUM DECLARATION OF TURTLE WALK OF FORT MYERS BEACH, A CONDOMINIUM

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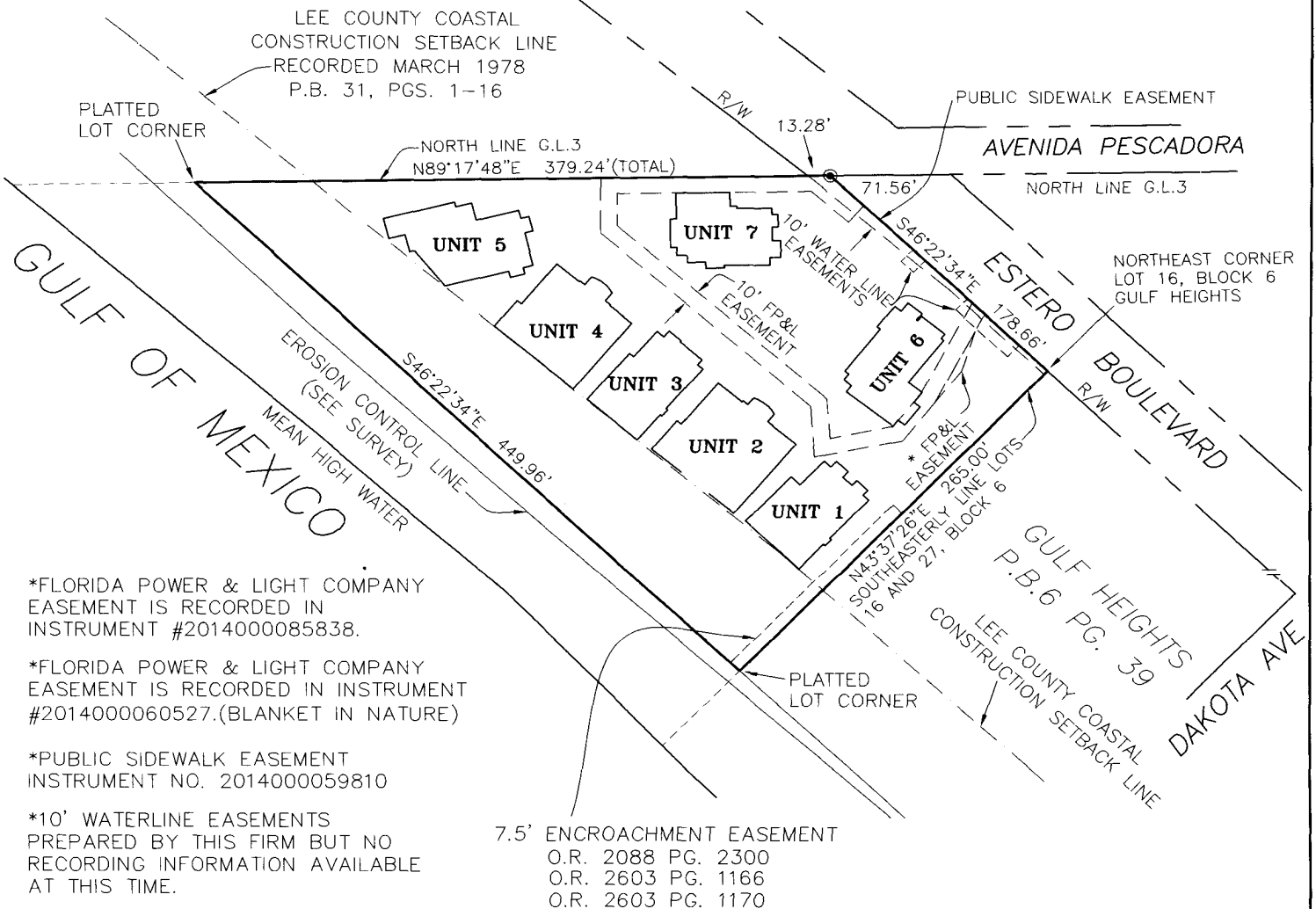
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CONDOMINIUM PLAT BOOK

PAGE

LEGEND

POB = POINT OF BEGINNING
R/W = RIGHT OF WAY
P.B. = PLAT BOOK
PGS. = PAGES
G.L. = GOVERNMENT LOT
FP&L = FLORIDA POWER AND LIGHT COMPANY

**EASEMENTS**

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

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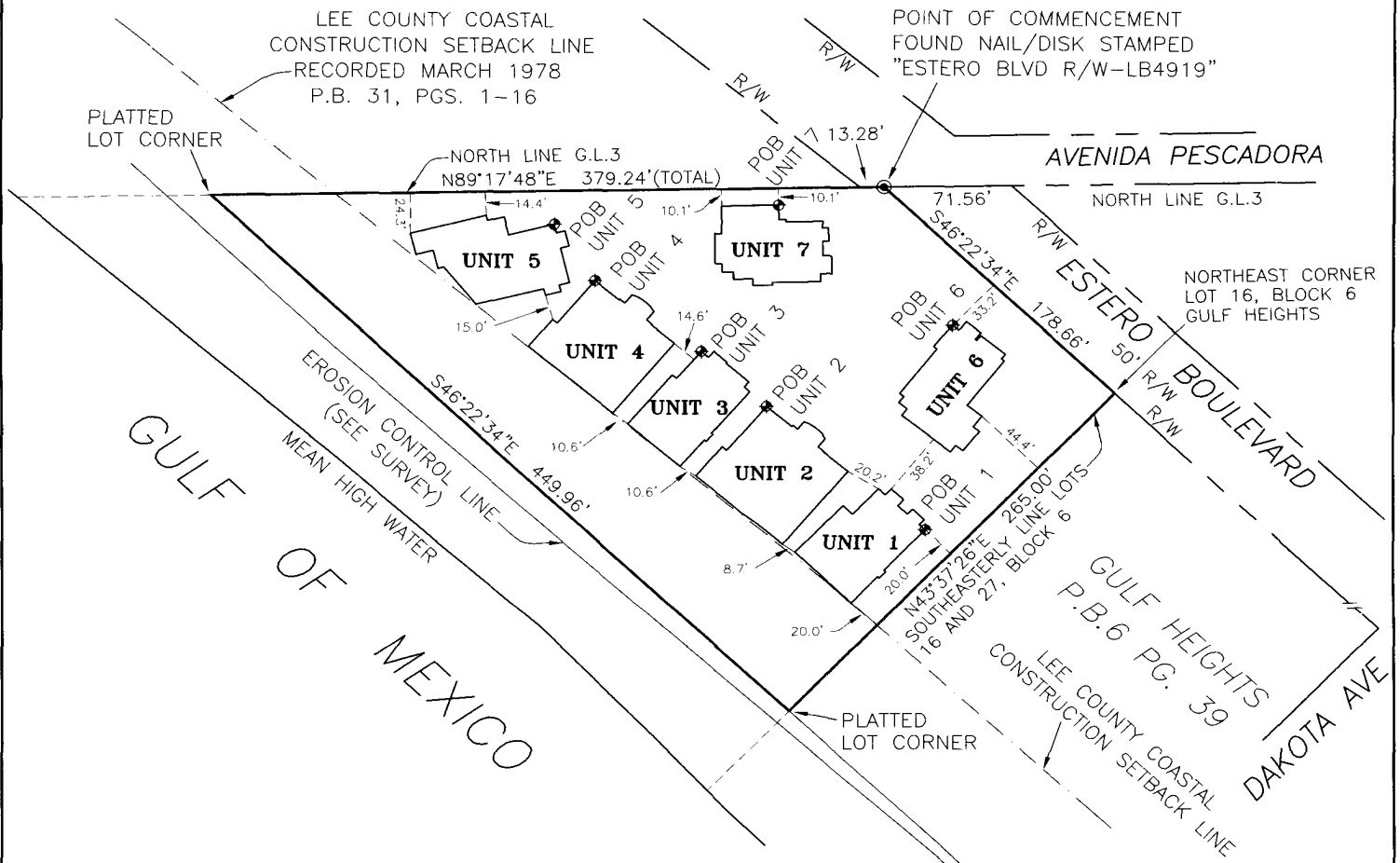
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CONDOMINIUM PLAT BOOK

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ADDRESSES:

UNIT 1) 5228 ESTERO BOULEVARD, FORT MYERS, FLORIDA 33931
 UNIT 2) 5224 ESTERO BOULEVARD, FORT MYERS, FLORIDA 33931
 UNIT 3) 5220 ESTERO BOULEVARD, FORT MYERS, FLORIDA 33931
 UNIT 4) 5218 ESTERO BOULEVARD, FORT MYERS, FLORIDA 33931
 UNIT 5) 5214 ESTERO BOULEVARD, FORT MYERS, FLORIDA 33931
 UNIT 6) 5230 ESTERO BOULEVARD, FORT MYERS, FLORIDA 33931
 UNIT 7) 5210 ESTERO BOULEVARD, FORT MYERS, FLORIDA 33931

**SKETCH OF UNIT BOUNDARIES****LEGEND**

POB = POINT OF BEGINNING
 R/W = RIGHT OF WAY
 P.B. = PLAT BOOK
 PGS. = PAGES
 G.L. = GOVERNMENT LOT

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

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1-14-15	35459	SFS	1" = 100'	4 OF 39	33-46-24

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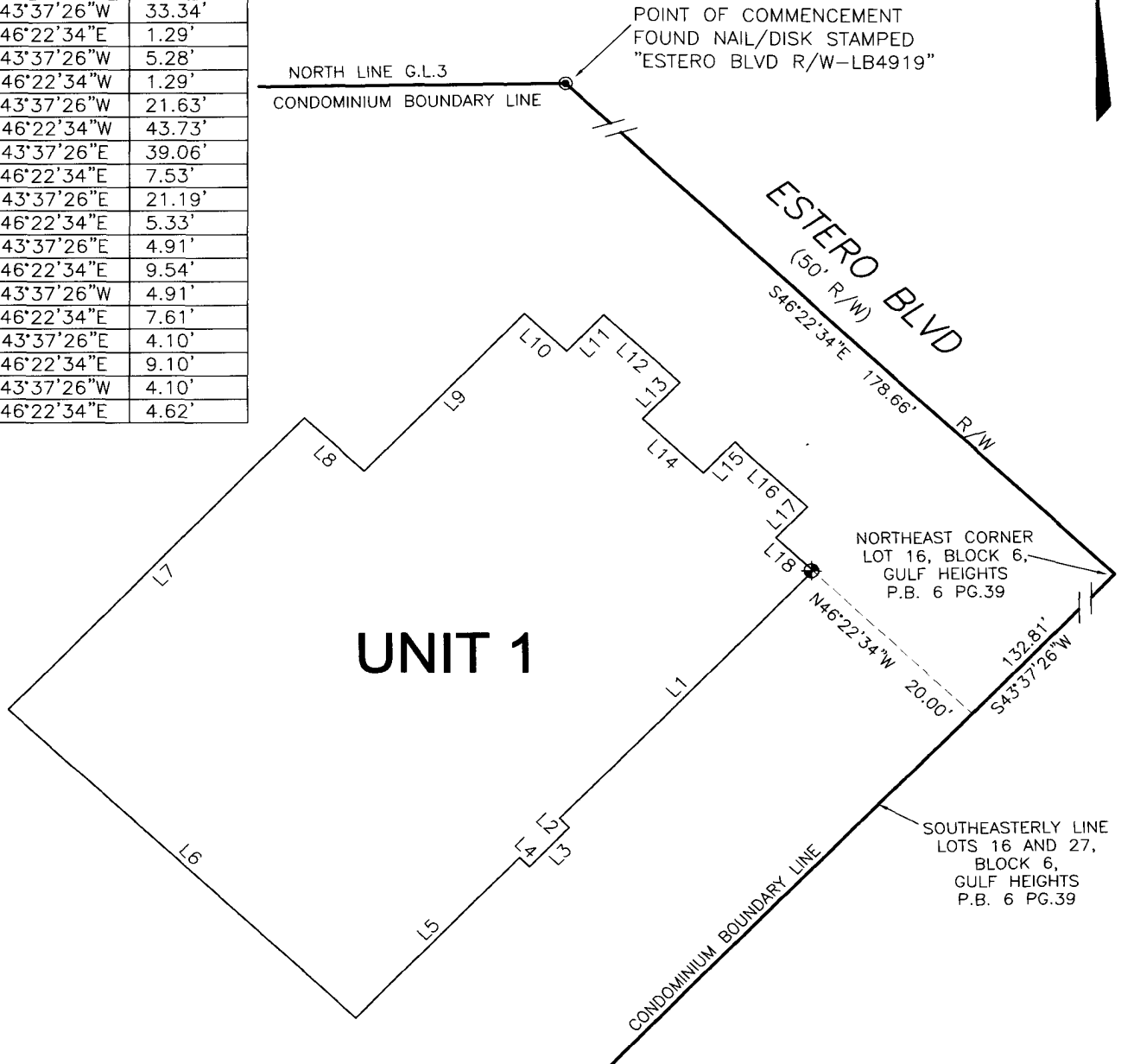
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TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE



LINE	BEARING	DISTANCE
L1	S43°37'26"W	33.34'
L2	S46°22'34"E	1.29'
L3	S43°37'26"W	5.28'
L4	N46°22'34"W	1.29'
L5	S43°37'26"W	21.63'
L6	N46°22'34"W	43.73'
L7	N43°37'26"E	39.06'
L8	S46°22'34"E	7.53'
L9	N43°37'26"E	21.19'
L10	S46°22'34"E	5.33'
L11	N43°37'26"E	4.91'
L12	S46°22'34"E	9.54'
L13	S43°37'26"W	4.91'
L14	S46°22'34"E	7.61'
L15	N43°37'26"E	4.10'
L16	S46°22'34"E	9.10'
L17	S43°37'26"W	4.10'
L18	S46°22'34"E	4.62'



LEGEND

POB = POINT OF BEGINNING
POC = POINT OF COMMENCEMENT
R/W = RIGHT OF WAY
P.B. = PLAT BOOK
PG. = PAGE
G.L. = GOVERNMENT LOT
⊕ = POINT OF BEGINNING

BOUNDARY OF UNIT 1

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

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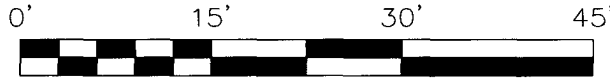
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1-14-15	35459	SFS	1" = 15'	5 OF 39	33-46-24

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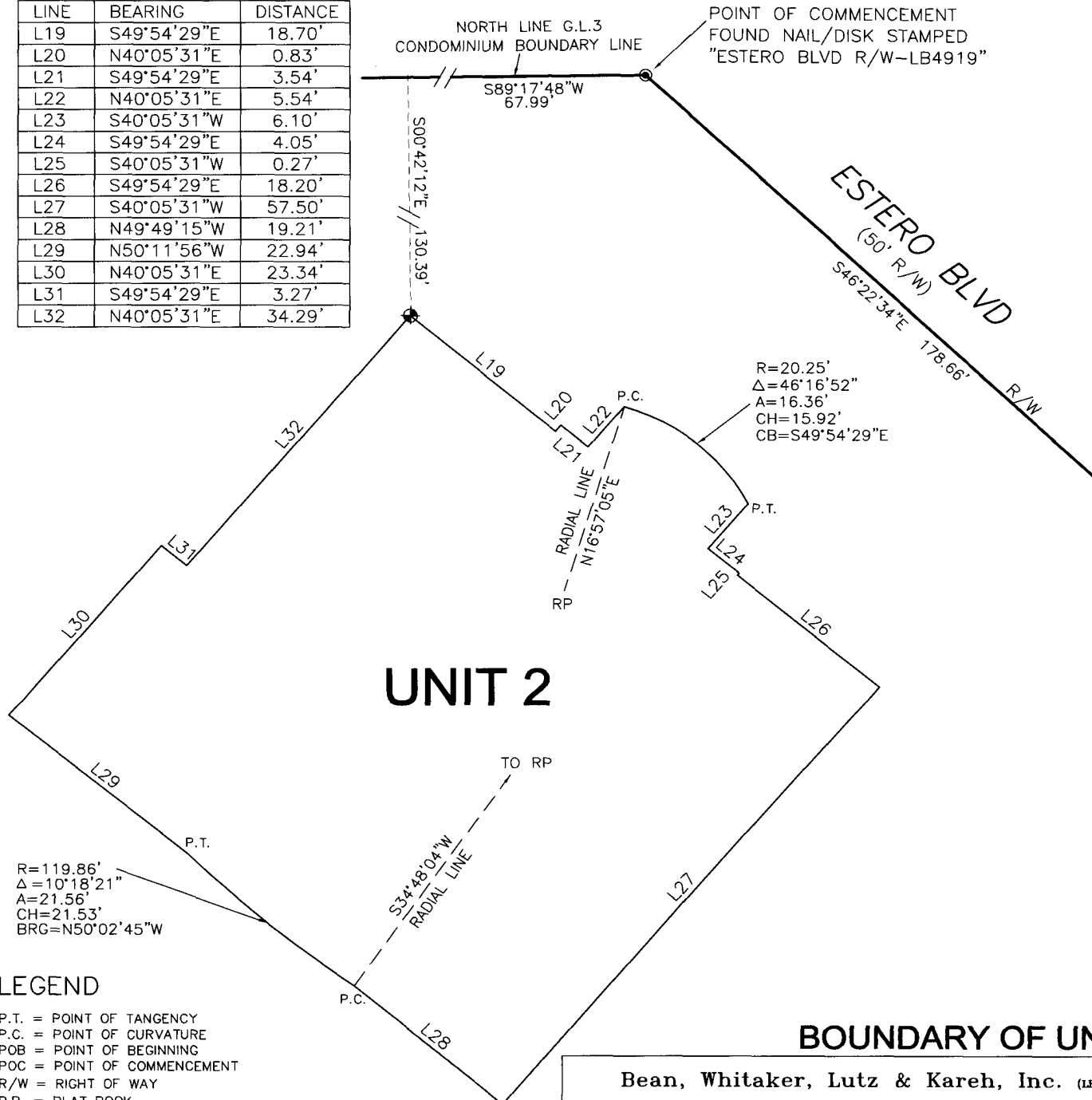
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CONDOMINIUM PLAT BOOK

PAGE



LINE	BEARING	DISTANCE
L19	S49°54'29"E	18.70'
L20	N40°05'31"E	0.83'
L21	S49°54'29"E	3.54'
L22	N40°05'31"E	5.54'
L23	S40°05'31"W	6.10'
L24	S49°54'29"E	4.05'
L25	S40°05'31"W	0.27'
L26	S49°54'29"E	18.20'
L27	S40°05'31"W	57.50'
L28	N49°49'15"W	19.21'
L29	N50°11'56"W	22.94'
L30	N40°05'31"E	23.34'
L31	S49°54'29"E	3.27'
L32	N40°05'31"E	34.29'



LEGEND

P.T. = POINT OF TANGENCY
P.C. = POINT OF CURVATURE
POB = POINT OF BEGINNING
POC = POINT OF COMMENCEMENT
R/W = RIGHT OF WAY
P.B. = PLAT BOOK
PG. = PAGE
G.L. = GOVERNMENT LOT
RP = RADIUS POINT
● = POINT OF BEGINNING

BOUNDARY OF UNIT 2

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

CD35459_5-11.DWG

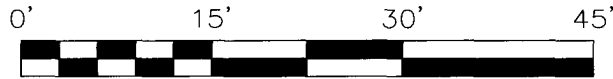
DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = 15'	5 OF 39	33-46-24

**EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
A CONDOMINIUM**

LYING IN
SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE



LINE	BEARING	DISTANCE
L34	S48°57'17"E	5.40'
L35	N41°02'43"E	4.90'
L36	S48°57'17"E	9.43'
L37	S41°02'43"W	0.91'
L38	S48°57'17"E	17.13'
L39	S41°02'43"W	4.06'
L40	S48°57'17"E	4.20'
L41	S41°02'43"W	33.27'
L42	S48°57'17"E	1.34'
L43	S41°02'43"W	5.29'
L44	N48°57'17"W	1.34'
L45	S41°02'43"W	21.09'
L46	N48°57'17"W	39.30'
L47	N41°02'43"E	38.38'
L48	S48°57'17"E	3.14'
L49	N41°02'43"E	21.34'

NORTH LINE G.L.3
CONDOMINIUM BOUNDARY LINE

POINT OF COMMENCEMENT
FOUND NAIL/DISK STAMPED
"ESTERO BLVD R/W-LB4919"

S89°17'48"W
104.06'

S00°42'12"E
97.31'

ESTERO BLVD
(50' R/W)
S46°22'34"E 178.66' R/W

UNIT 3

BOUNDARY OF UNIT 3

LEGEND

POB = POINT OF BEGINNING
POC = POINT OF COMMENCEMENT
R/W = RIGHT OF WAY
P.B. = PLAT BOOK
PG. = PAGE
G.L. = GOVERNMENT LOT

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

CD35459_5-11.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = 15'	7 OF 39	33-46-24

= POINT OF BEGINNING

**EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
A CONDOMINIUM**

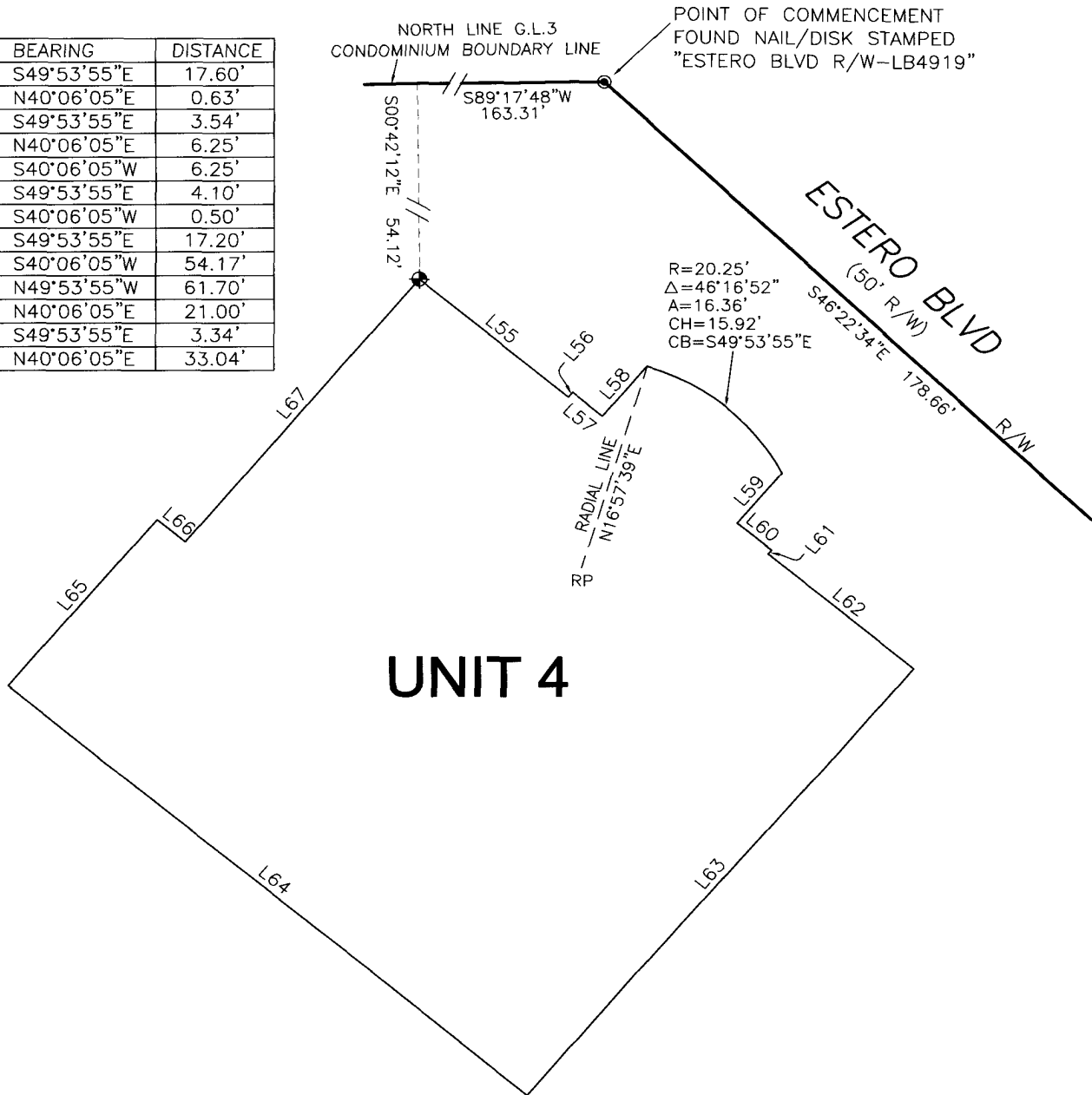
LYING IN
SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE



LINE	BEARING	DISTANCE
L55	S49°53'55"E	17.60'
L56	N40°06'05"E	0.63'
L57	S49°53'55"E	3.54'
L58	N40°06'05"E	6.25'
L59	S40°06'05"W	6.25'
L60	S49°53'55"E	4.10'
L61	S40°06'05"W	0.50'
L62	S49°53'55"E	17.20'
L63	S40°06'05"W	54.17'
L64	N49°53'55"W	61.70'
L65	N40°06'05"E	21.00'
L66	S49°53'55"E	3.34'
L67	N40°06'05"E	33.04'



UNIT 4

LEGEND

POB = POINT OF BEGINNING
 POC = POINT OF COMMENCEMENT
 R/W = RIGHT OF WAY
 P.B. = PLAT BOOK
 PG. = PAGE
 G.L. = GOVERNMENT LOT
 RP = RADIUS POINT
 ⊙ = POINT OF BEGINNING

BOUNDARY OF UNIT 4

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

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CD35459_5-11.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = 15'	8 OF 39	33-46-24

EXHIBIT "D" TO CONDOMINIUM DECLARATION OF TURTLE WALK OF FORT MYERS BEACH, A CONDOMINIUM

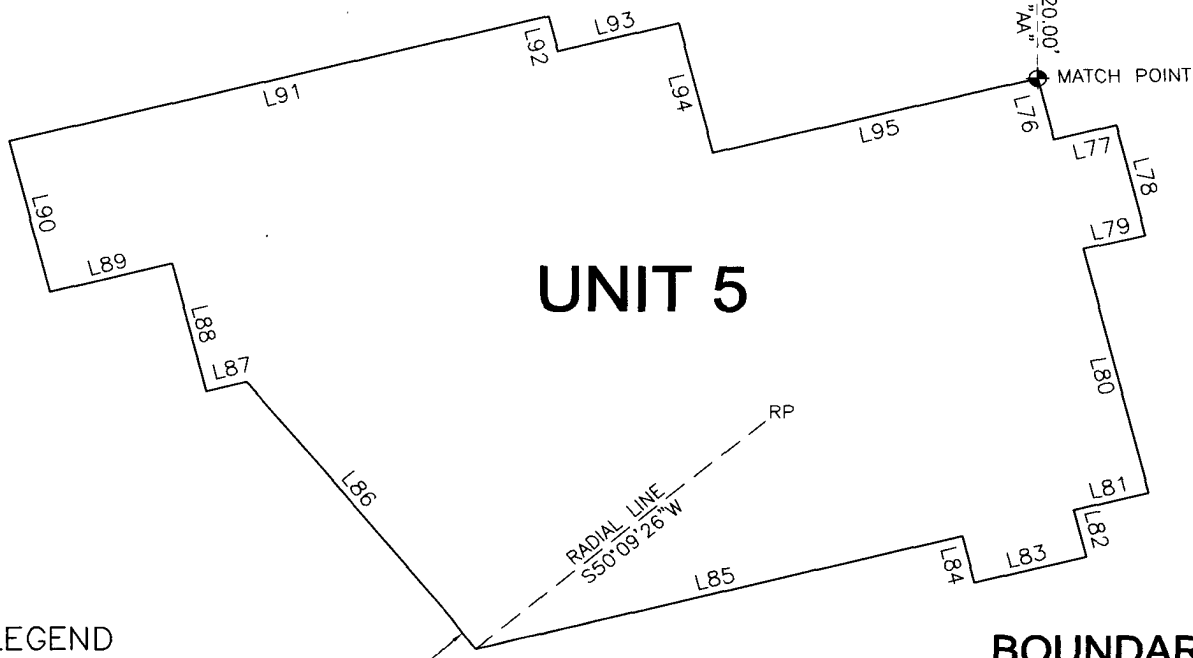
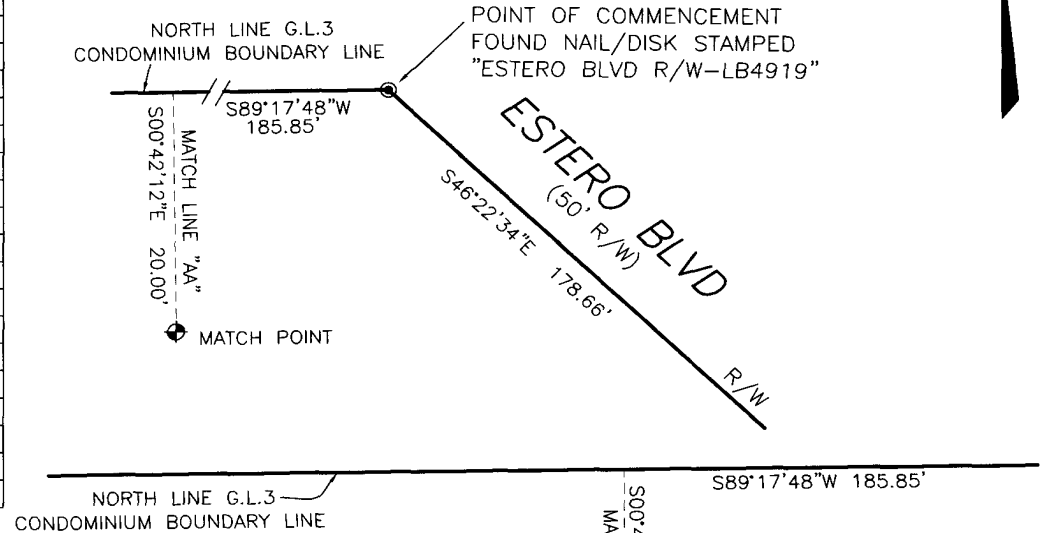
LYING IN
SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE



LINE	BEARING	DISTANCE
L76	S13°51'28"E	5.30'
L77	N76°08'32"E	5.04'
L78	S13°51'28"E	9.46'
L79	S76°08'32"W	5.00'
L80	S13°51'28"E	21.33'
L81	S76°08'32"W	6.02'
L82	S13°51'28"E	4.00'
L83	S76°08'32"W	9.00'
L84	N13°51'28"W	4.00'
L85	S76°08'32"W	39.40'
L86	N39°16'31"W	25.37'
L87	S76°08'32"W	3.32'
L88	N13°51'28"W	11.18'
L89	S76°08'32"W	9.96'
L90	N13°51'28"W	13.09'
L91	N76°08'32"E	43.75'
L92	S13°51'28"E	3.00'
L93	N76°08'32"E	9.80'
L94	S13°51'28"E	11.20'
L95	N76°08'32"E	26.30'



LEGEND

POB = POINT OF BEGINNING
POC = POINT OF COMMENCEMENT
R/W = RIGHT OF WAY
P.B. = PLAT BOOK
PG. = PAGE
G.L. = GOVERNMENT LOT
RP = RADIUS POINT
⊕ = POINT OF BEGINNING

R=29.67'
Δ=06°30'53"
A=3.37'
CH=3.37'
CB=N36°35'07"W

BOUNDARY OF UNIT 5

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

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DATE
1-14-15

PROJECT NO.
35459

DRAWN BY
SFS

SCALE
1" = 15'

SHEET
9 OF 39

FILE NO. (S-T-R)
33-46-24

**EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
A CONDOMINIUM**

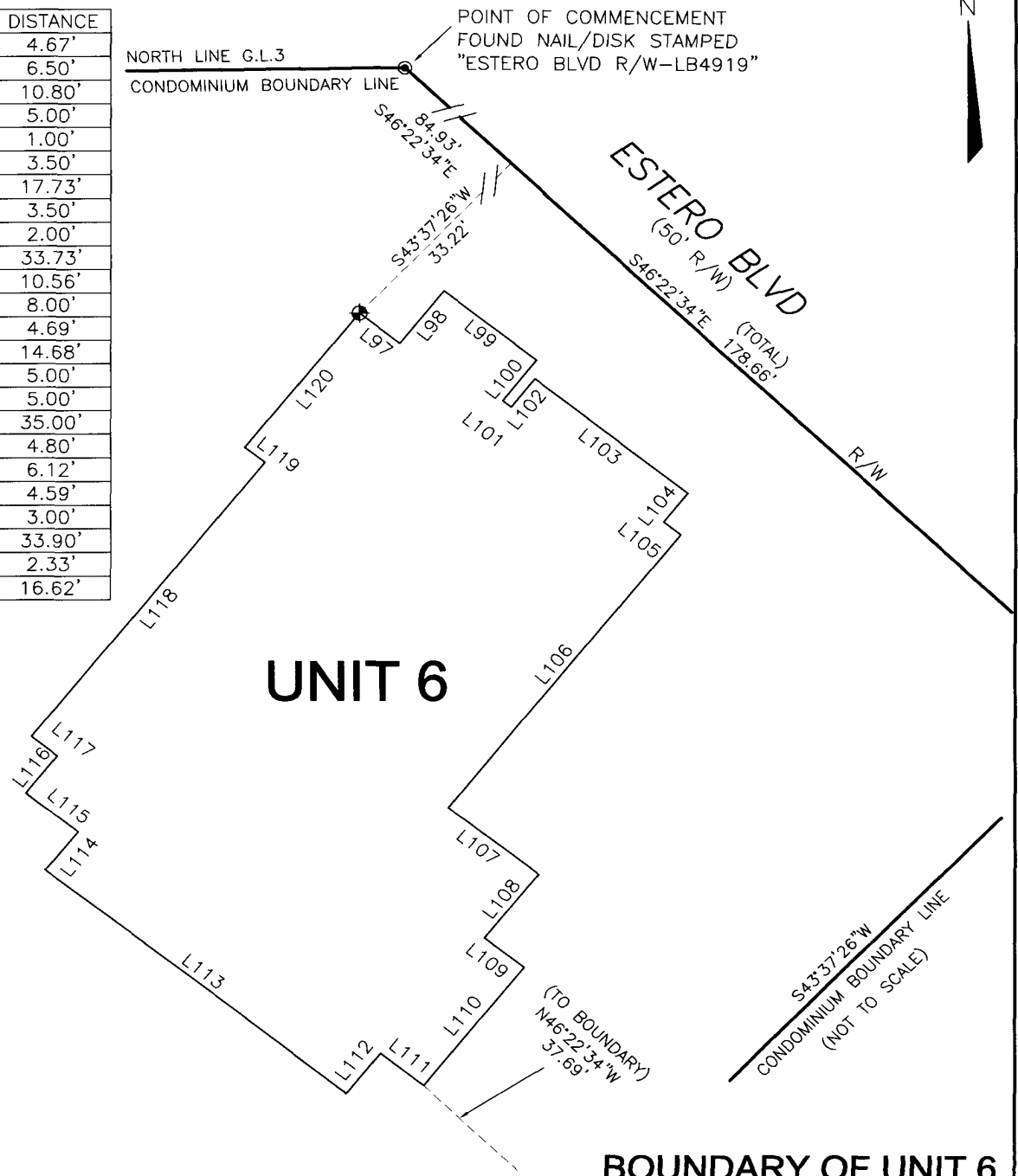
LYING IN
SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE



LINE	BEARING	DISTANCE
L97	S51°22'34"E	4.67'
L98	N38°37'26"E	6.50'
L99	S51°22'34"E	10.80'
L100	S38°37'26"W	5.00'
L101	S51°22'34"E	1.00'
L102	N38°37'26"E	3.50'
L103	S51°22'34"E	17.73'
L104	S38°37'26"W	3.50'
L105	S51°22'34"E	2.00'
L106	S38°37'26"W	33.73'
L107	S51°22'34"E	10.56'
L108	S38°37'26"W	8.00'
L109	S51°22'34"E	4.69'
L110	S38°37'26"W	14.68'
L111	N51°22'34"W	5.00'
L112	S38°37'26"W	5.00'
L113	N51°22'34"W	35.00'
L114	N38°37'26"E	4.80'
L115	N51°22'34"W	6.12'
L116	N38°37'26"E	4.59'
L117	N51°22'34"W	3.00'
L118	N38°37'26"E	33.90'
L119	N51°22'34"W	2.33'
L120	N38°37'26"E	16.62'

**LEGEND**

POB = POINT OF BEGINNING
POC = POINT OF COMMENCEMENT
R/W = RIGHT OF WAY
P.B. = PLAT BOOK
PG. = PAGE
G.L. = GOVERNMENT LOT
RP = RADIUS POINT
⊕ = POINT OF BEGINNING

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

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DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = 15'	10 OF 39	33-46-24

EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
 A CONDOMINIUM

LYING IN
 SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

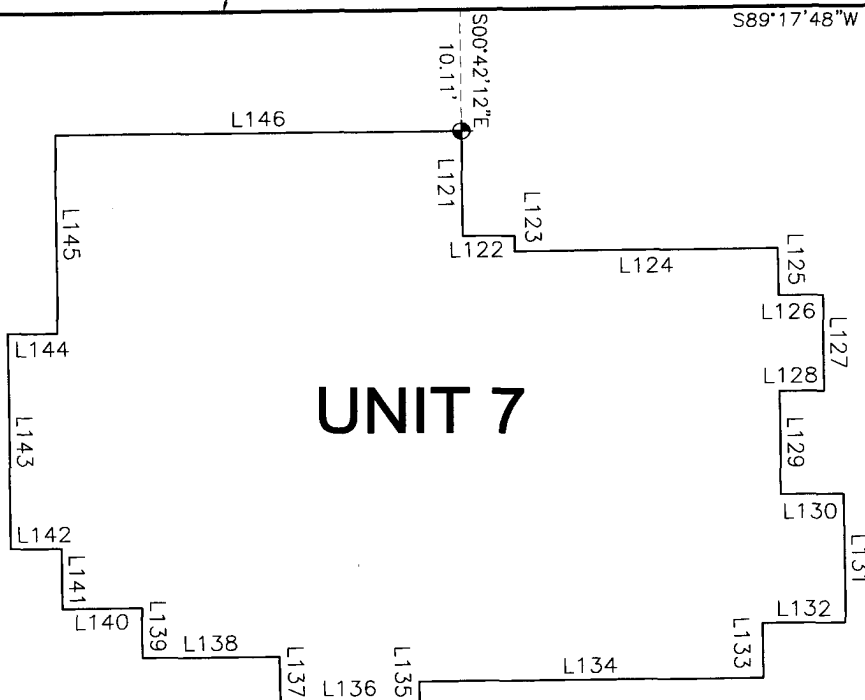
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NORTH LINE G.L.3
 CONDOMINIUM BOUNDARY LINE

ESTERO BLVD
 (50' R/W)
 S46°22'34"E 178.66'

POINT OF COMMENCEMENT
 FOUND NAIL/DISK STAMPED
 "ESTERO BLVD R/W-LB4919"



LINE	BEARING	DISTANCE
L121	S00°42'12"E	8.80'
L122	N89°17'48"E	4.10'
L123	S00°42'12"E	1.30'
L124	N89°17'48"E	20.70'
L125	S00°42'12"E	3.95'
L126	N89°17'48"E	3.50'
L127	S00°42'12"E	8.00'
L128	S89°17'48"W	3.50'
L129	S00°42'12"E	8.68'
L130	N89°17'48"E	4.95'
L131	S00°42'12"E	10.82'
L132	S89°17'48"W	6.50'
L133	S00°42'12"E	4.60'
L134	S89°17'48"W	27.10'
L135	S00°42'12"E	1.70'
L136	S89°17'48"W	11.00'
L137	N00°42'12"W	3.90'
L138	S89°17'48"W	10.80'
L139	N00°42'12"W	4.20'
L140	S89°17'48"W	6.30'
L141	N00°42'12"W	5.10'
L142	S89°17'48"W	4.00'
L143	N00°42'12"W	18.05'
L144	N89°17'48"E	3.90'
L145	N00°42'12"W	16.60'
L146	N89°17'48"E	32.05'

LEGEND

POB = POINT OF BEGINNING
 POC = POINT OF COMMENCEMENT
 R/W = RIGHT OF WAY
 P.B. = PLAT BOOK
 PG. = PAGE
 G.L. = GOVERNMENT LOT
 RP = RADIUS POINT
 = POINT OF BEGINNING

BOUNDARY OF UNIT 7

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

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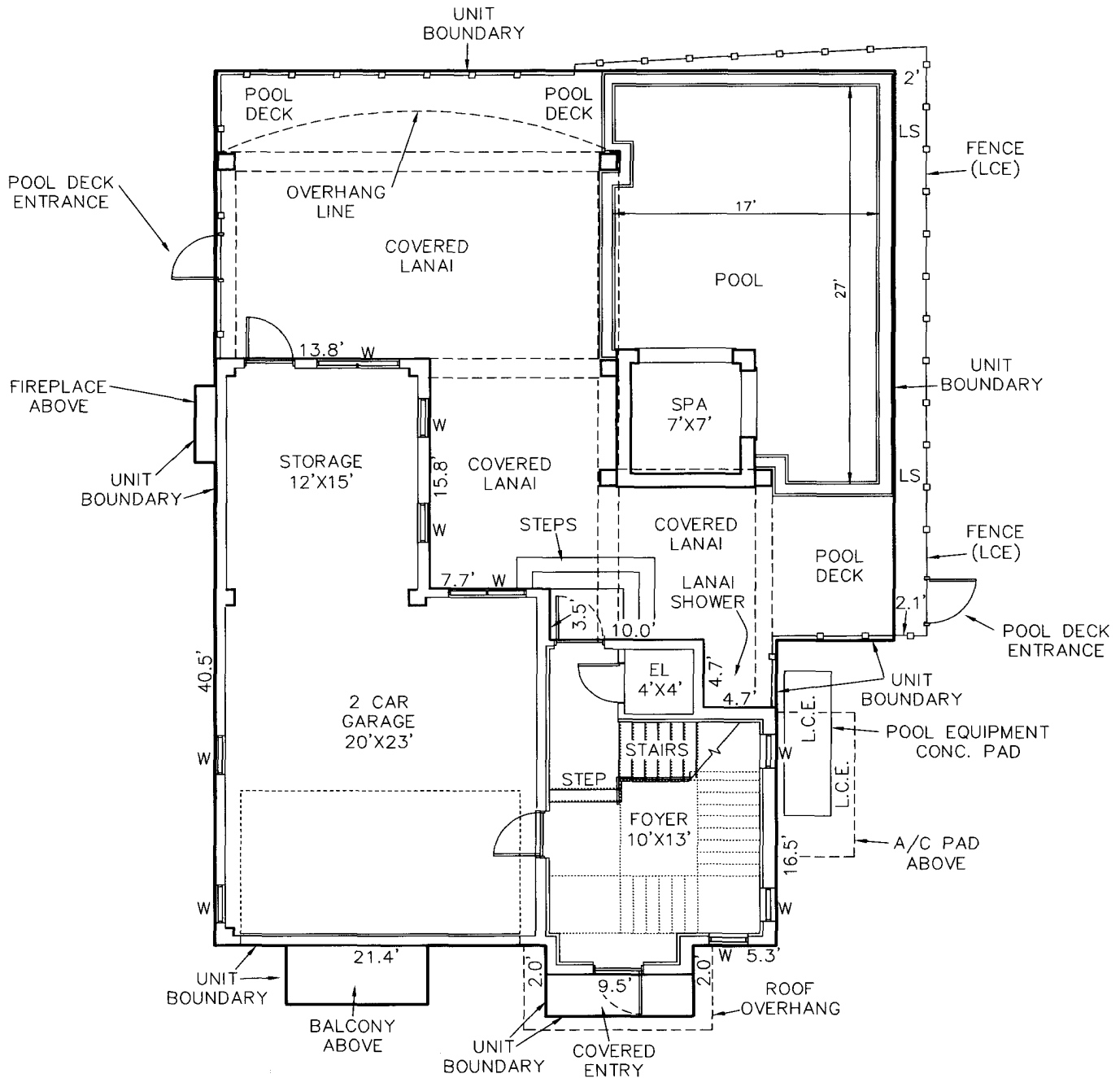
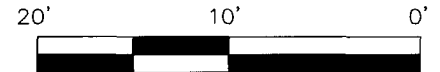
DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = SFS	11 OF 39	33-46-24

EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
 A CONDOMINIUM

LYING IN
 SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE

**LEGEND**

EL = ELEVATOR
 CL = CLOSET
 A/C = AIR CONDITIONER
 W = WINDOW
 LS = LANDSCAPING
 L.C.E. = LIMITED COMMON ELEMENT
 CONC. = CONCRETE

UNIT 1 - GROUND FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

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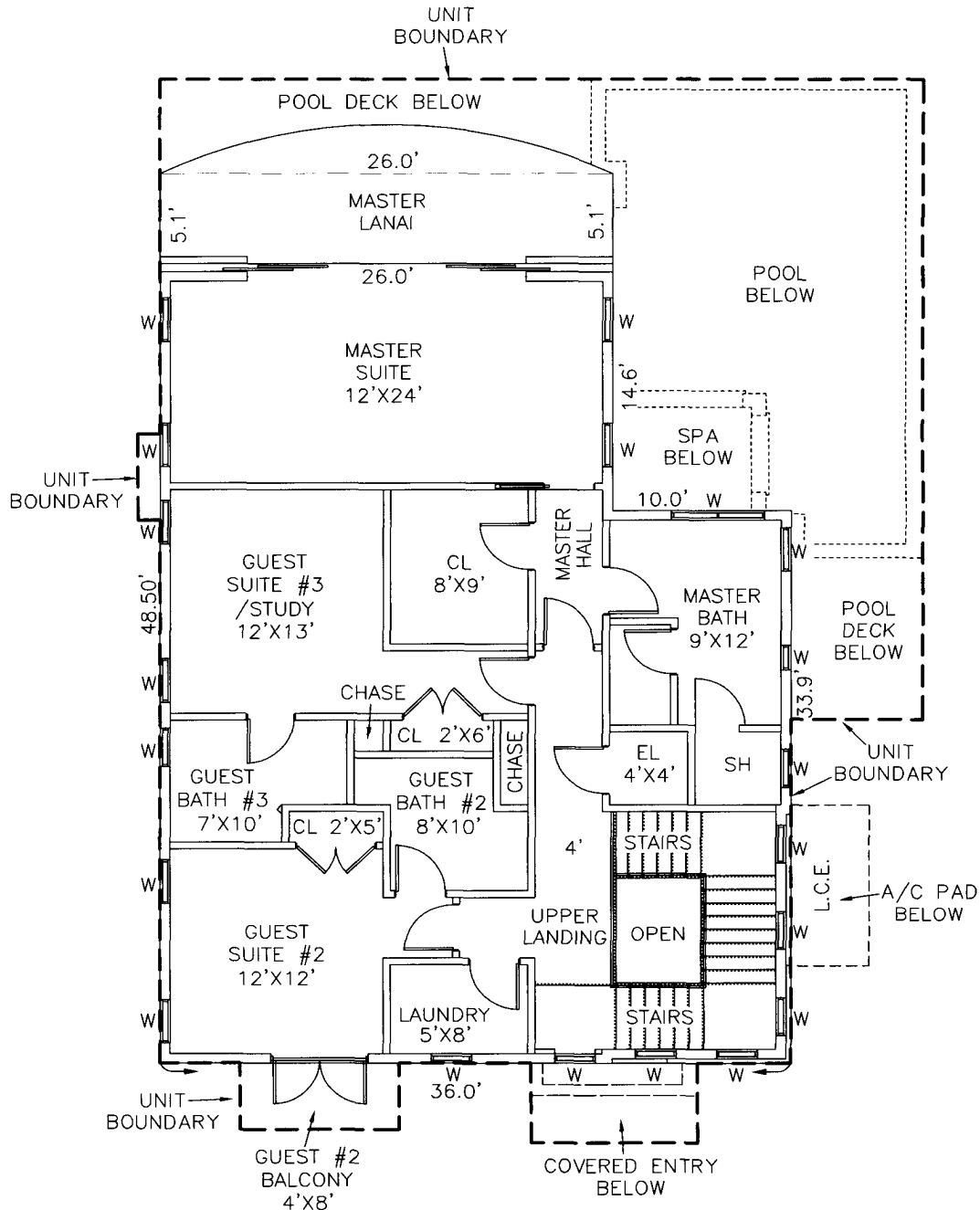
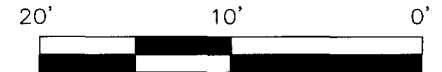
DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = 10'	12 OF 39	33-46-24

EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
A CONDOMINIUM

LYING IN
 SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE

**LEGEND**

EL = ELEVATOR
 CL = CLOSET
 A/C = AIR CONDITIONER
 W = WINDOW
 SH = SHOWER

UNIT 1 - SECOND FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

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DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = 10'	14 OF 39	33-46-24

EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
A CONDOMINIUM

LYING IN
 SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE



UNIT 1 - VERTICAL BOUNDARIES

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DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = NTS	15 OF 39	33-46-24

LEGEND

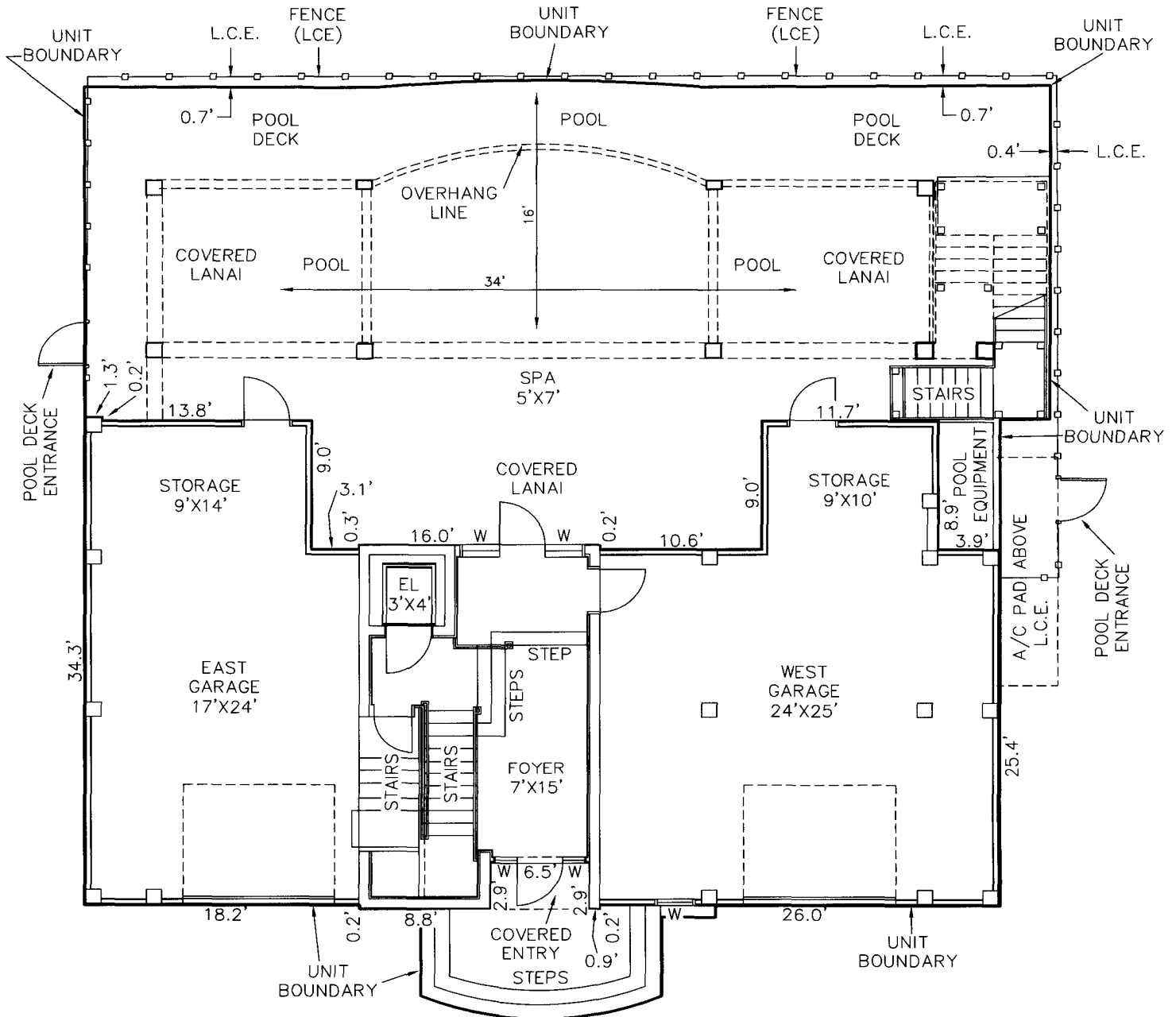
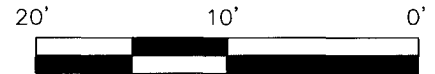
N.A.V.D. = NORTH AMERICAN VERTICAL DATUM
 FIN. = FINISH

EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
A CONDOMINIUM

LYING IN
 SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE

**LEGEND**

EL = ELEVATOR
 CL = CLOSET
 A/C = AIR CONDITIONER
 W = WINDOW
 LS = LANDSCAPING
 L.C.E. = LIMITED COMMON ELEMENT
 CONC. = CONCRETE

UNIT 2 - GROUND FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

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DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
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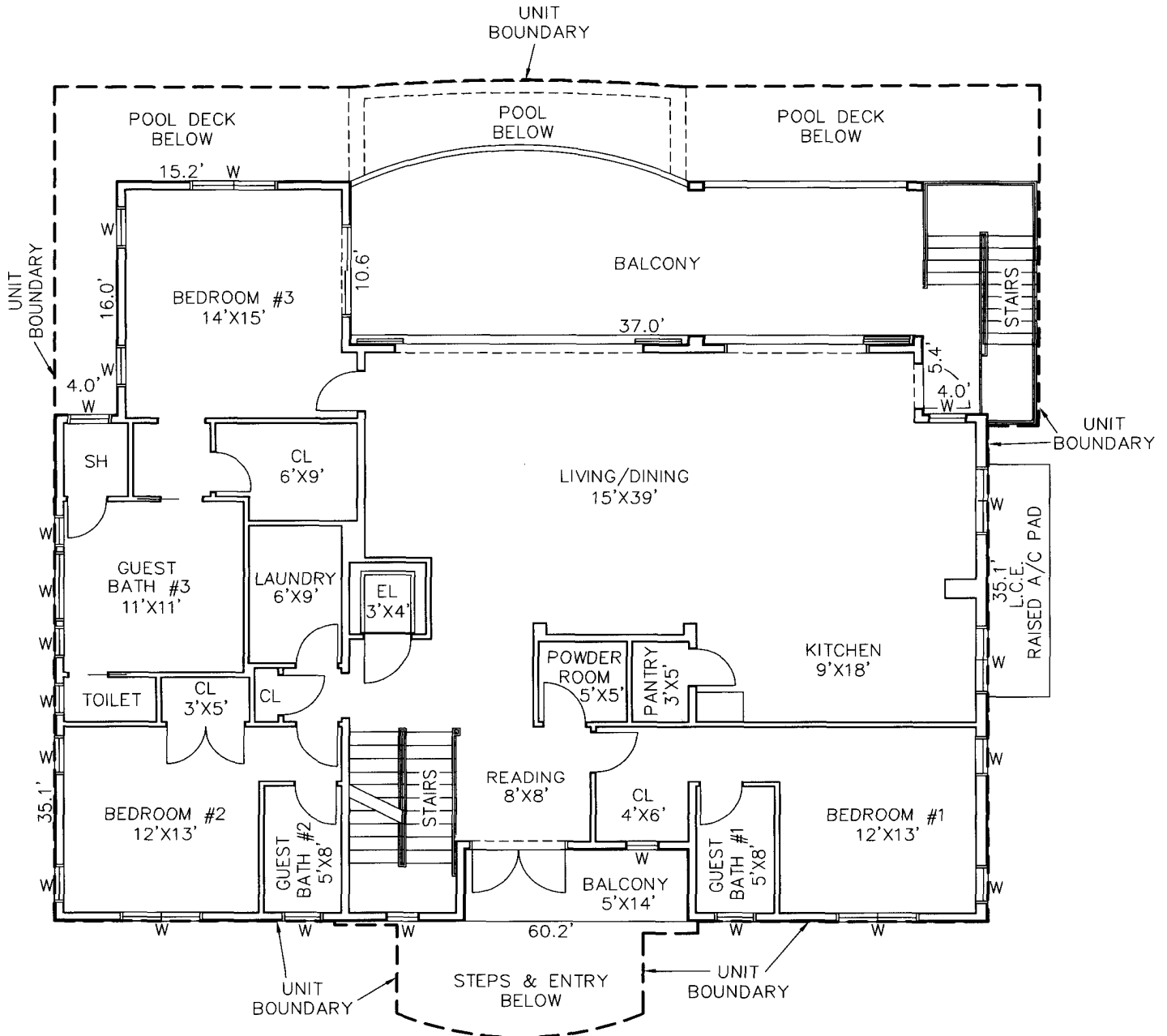
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TURTLE WALK OF FORT MYERS BEACH,
A CONDOMINIUM

LYING IN
 SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE

20' 10' 0'

**LEGEND**

EL = ELEVATOR
 CL = CLOSET
 A/C = AIR CONDITIONER
 W = WINDOW
 SH = SHOWER

UNIT 2 - FIRST FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

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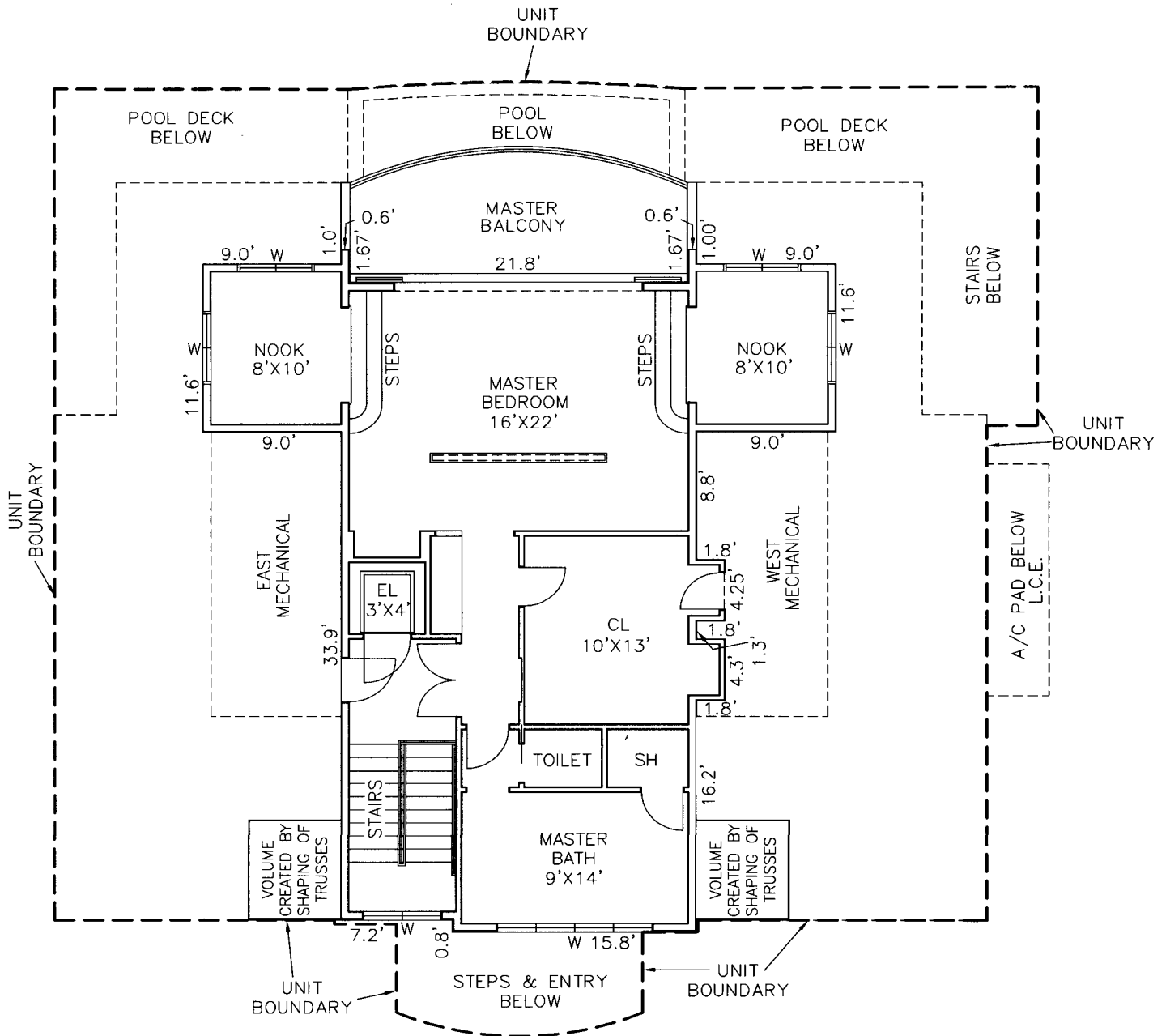
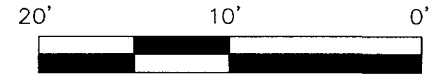
DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = 10'	17 OF 39	33-46-24

EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
 A CONDOMINIUM

LYING IN
 SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE

**LEGEND**

EL = ELEVATOR
 CL = CLOSET
 A/C = AIR CONDITIONER
 W = WINDOW
 SH = SHOWER

UNIT 2 - SECOND FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

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CD35459_12.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = 10'	18 OF 39	33-46-24

EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
A CONDOMINIUM

CONDOMINIUM PLAT BOOK

PAGE

LYING IN
 SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

NOTE
 ROOF OVERHANGS ARE
 PART OF THE UNIT
 (REFER TO
 DECLARATION)



FRONT ELEVATION

UNIT 2 - VERTICAL BOUNDARIES

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

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CD35459_15.DWG

LEGEND

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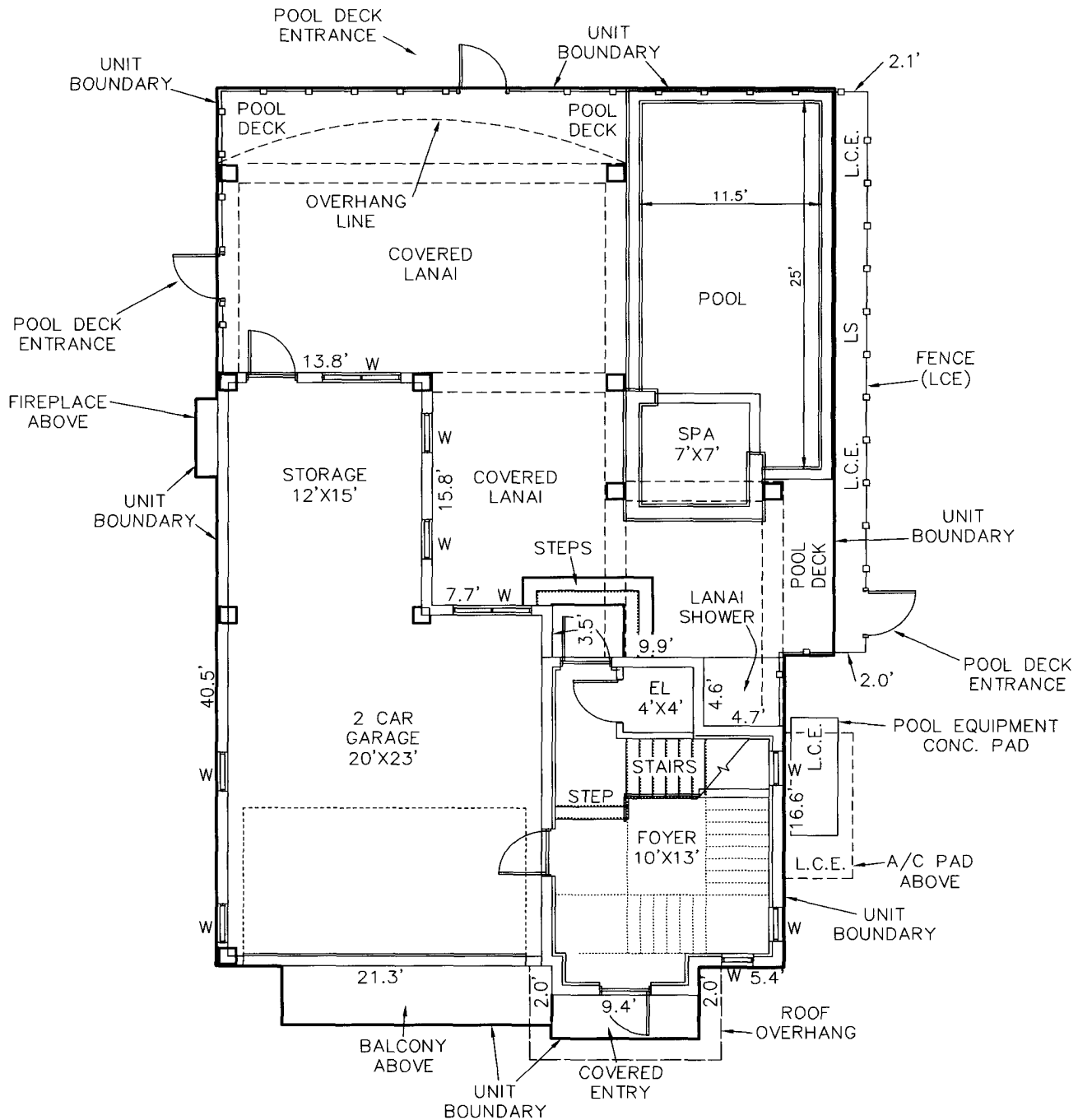
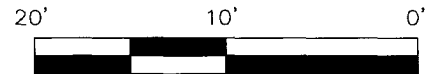
DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = NTS	_19_OF_39	33-46-24

EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
 A CONDOMINIUM

LYING IN
 SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

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EL = ELEVATOR
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 LS = LANDSCAPING
 L.C.E. = LIMITED COMMON ELEMENT
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UNIT 3 - GROUND FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

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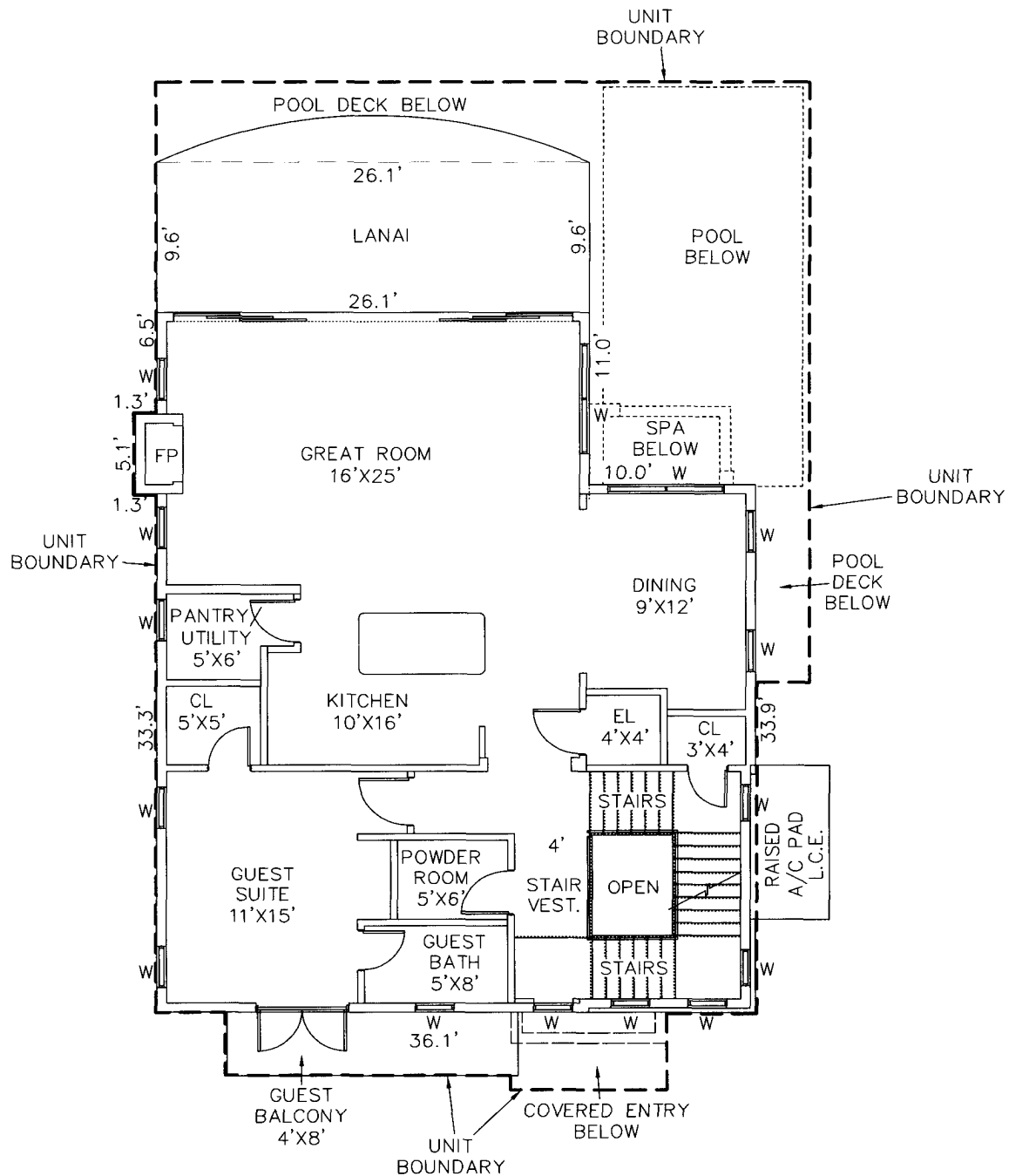
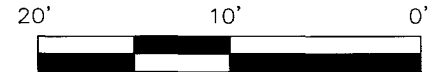
DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = 10'	20 OF 39	33-46-24

EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
A CONDOMINIUM

LYING IN
 SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

CONDOMINIUM PLAT BOOK

PAGE



UNIT 3 - FIRST FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

CD35459_12.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = 10'	21 OF 39	33-46-24

LEGEND

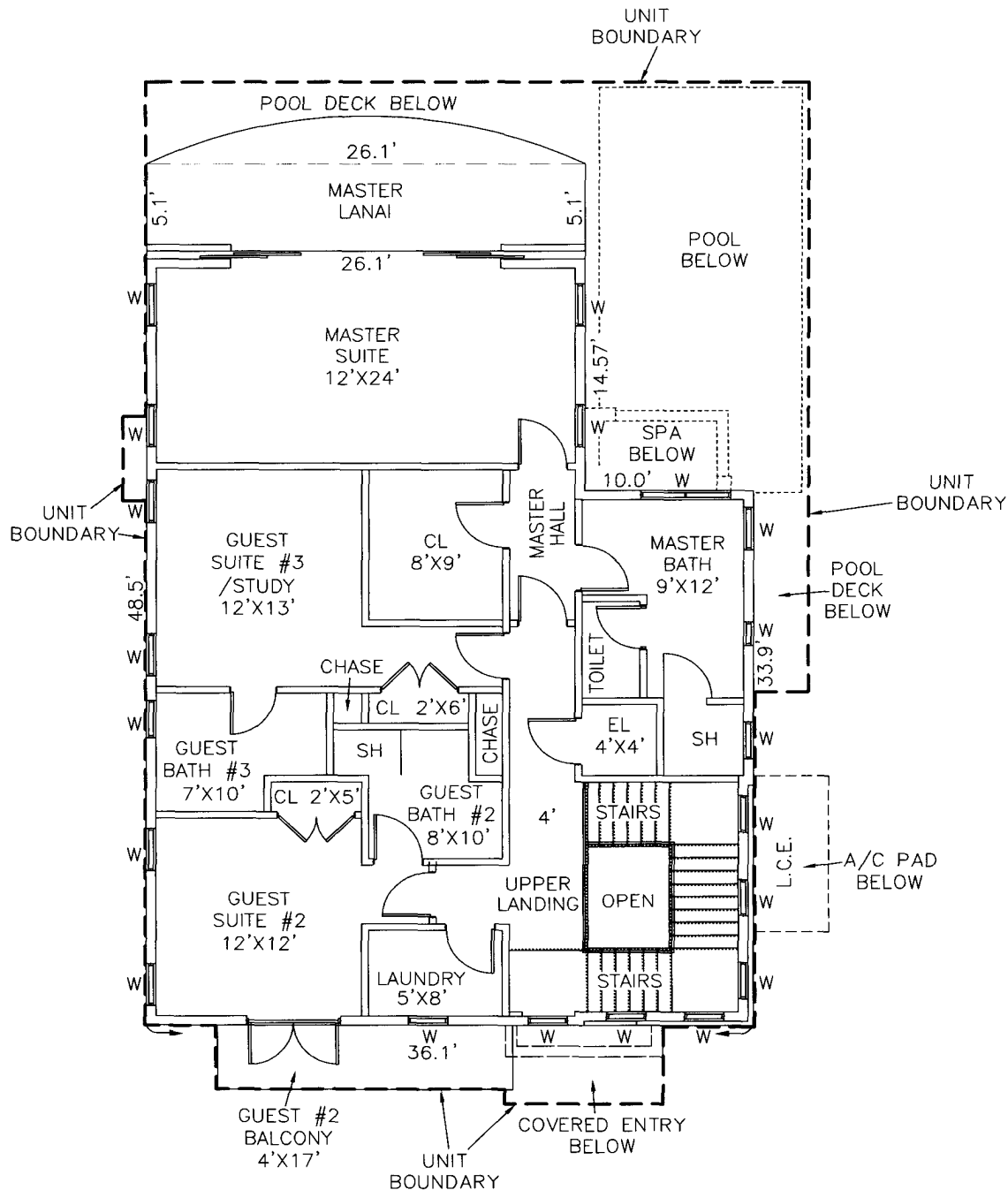
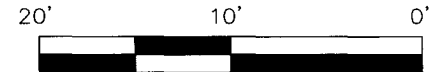
EL = ELEVATOR
 CL = CLOSET
 A/C = AIR CONDITIONER
 W = WINDOW
 FP = FIREPLACE
 VEST. = VESTIBULE

EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
 A CONDOMINIUM

LYING IN
 SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
 TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

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UNIT 3 - SECOND FLOOR PLAN / BUILDING DIMENSIONS

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DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-14-15	35459	SFS	1" = 10'	22 OF 39	33-46-24

LEGEND

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UNIT 3 - VERTICAL BOUNDARIES

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

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DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
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LEGEND

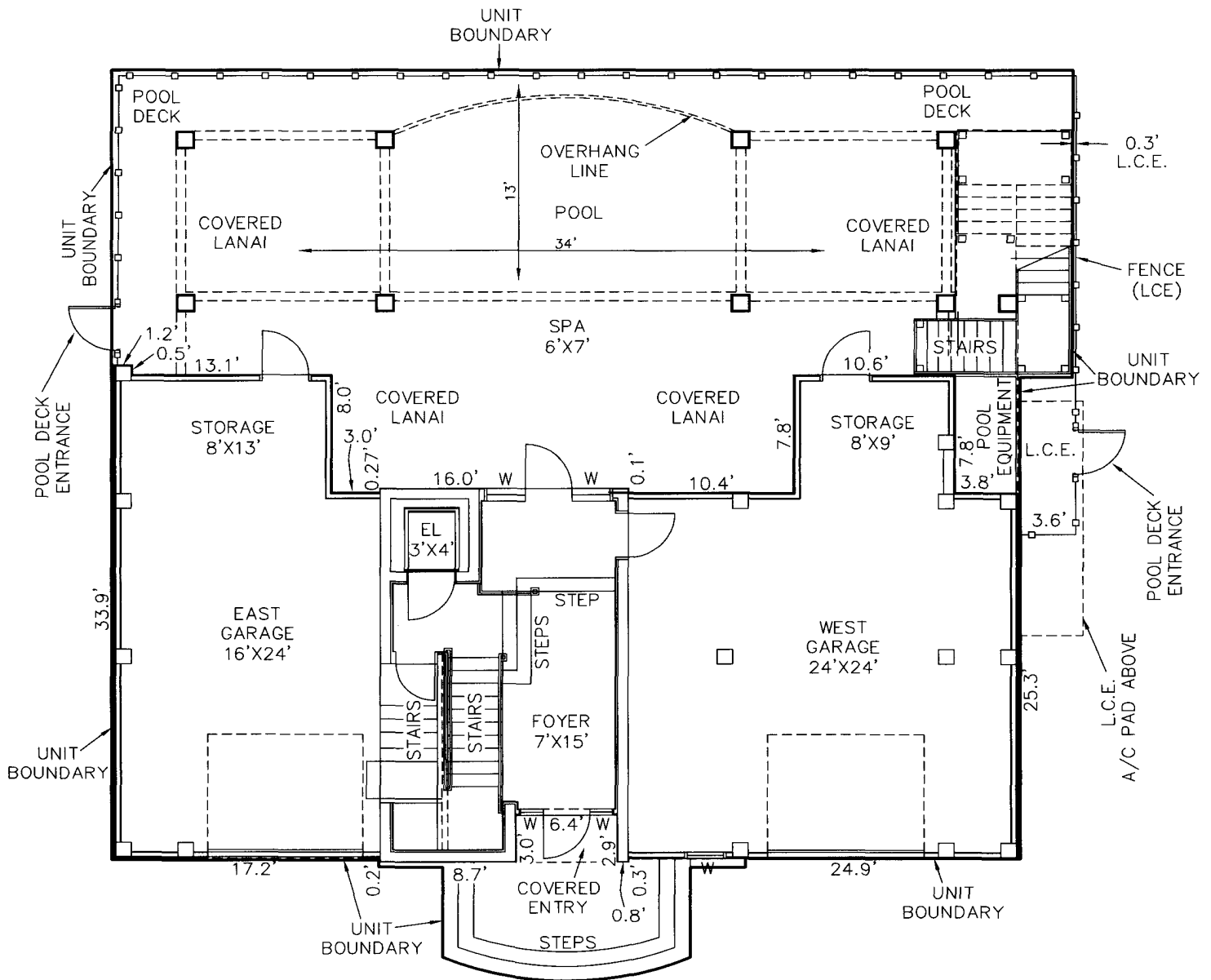
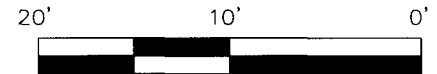
N.A.V.D. = NORTH AMERICAN VERTICAL DATUM
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CONDOMINIUM PLAT BOOK

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**LEGEND**

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 W = WINDOW
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 L.C.E. = LIMITED COMMON ELEMENT

UNIT 4 - GROUND FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

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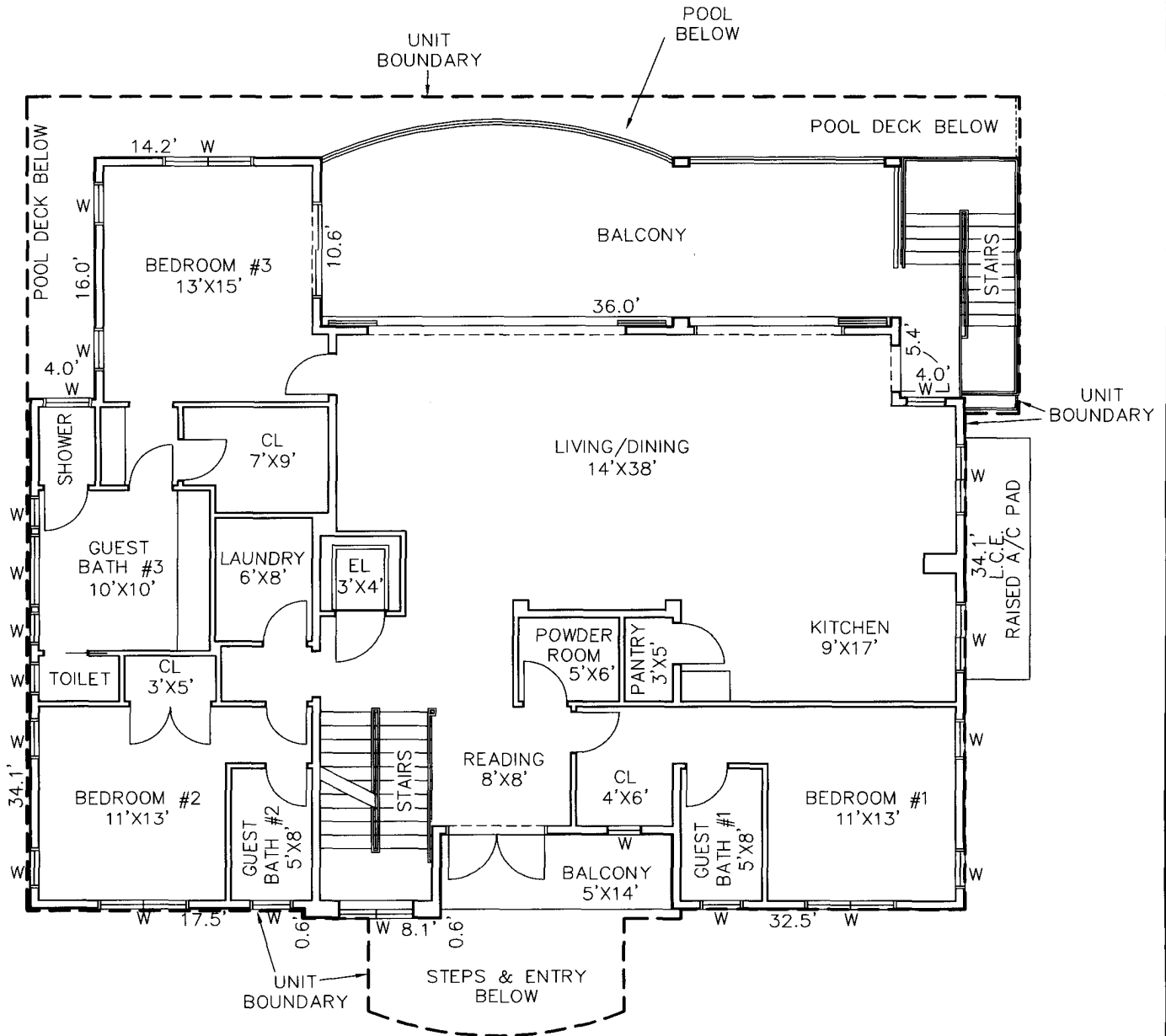
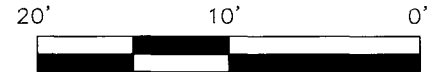
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EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
A CONDOMINIUM

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 SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST
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CONDOMINIUM PLAT BOOK

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UNIT 4 - FIRST FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

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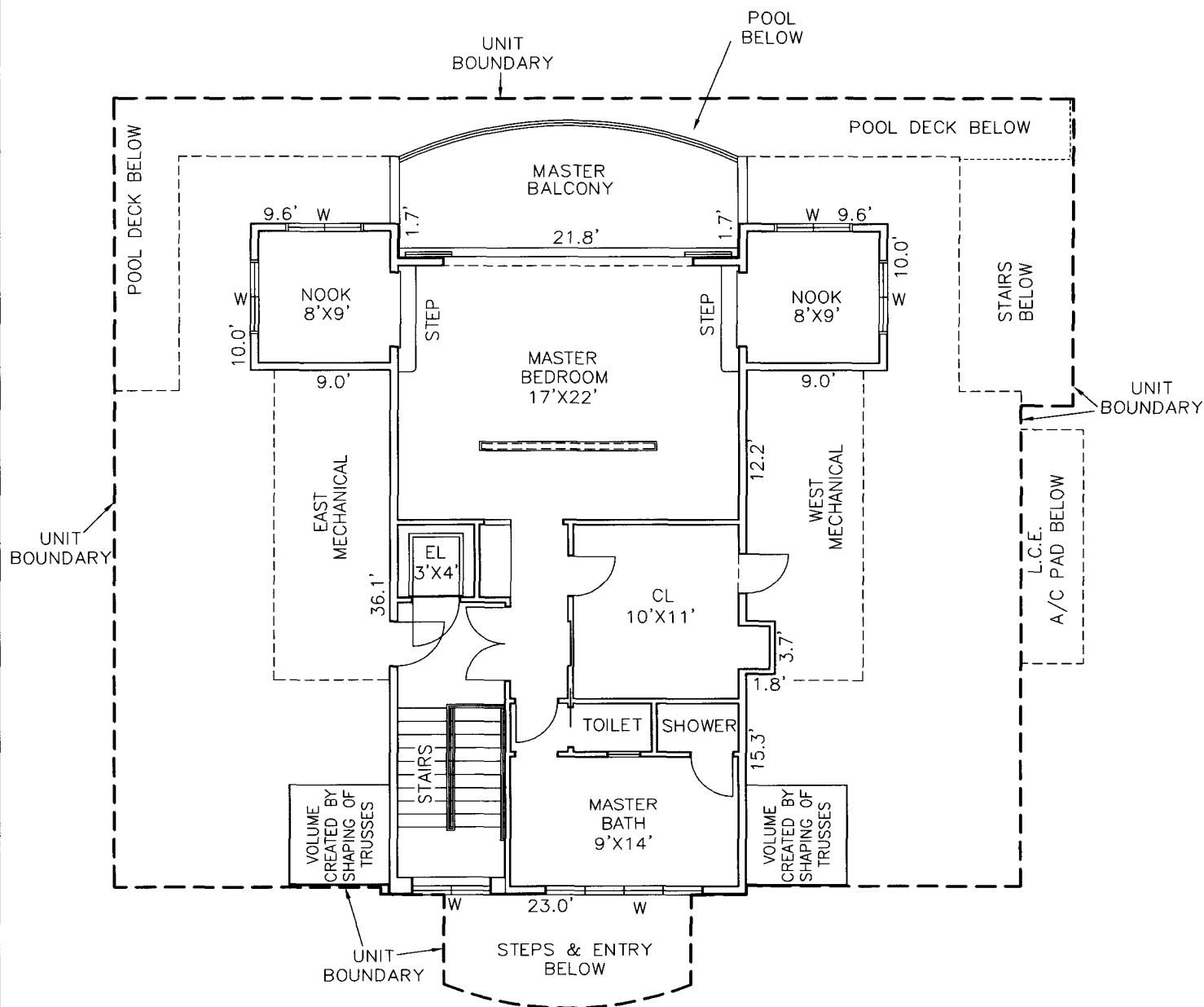
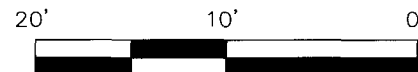
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CONDOMINIUM PLAT BOOK

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UNIT 4 - SECOND FLOOR PLAN / BUILDING DIMENSIONS

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EXHIBIT "D" TO CONDOMINIUM DECLARATION OF
TURTLE WALK OF FORT MYERS BEACH,
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CONDOMINIUM PLAT BOOK

PAGE

NOTE
 ROOF OVERHANGS ARE
 PART OF THE UNIT
 (REFER TO
 DECLARATION)

+51.8' (N.A.V.D.)
 ROOF HEIGHT

+45.0' (N.A.V.D.)
 ROOF HEIGHT

+32.6' (N.A.V.D.)
 2ND FIN. FLOOR

*SEE NOTE
 ABOVE*

+21.4' (N.A.V.D.)
 1ST FIN. FLOOR

+7.3' (N.A.V.D.)
 GROUND FLOOR



FRONT ELEVATION

UNIT 4 - VERTICAL BOUNDARIES

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

CD35459_15.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
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LEGEND

N.A.V.D. = NORTH AMERICAN VERTICAL DATUM
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EXHIBIT "D" TO CONDOMINIUM DECLARATION OF TURTLE WALK OF FORT MYERS BEACH, A CONDOMINIUM

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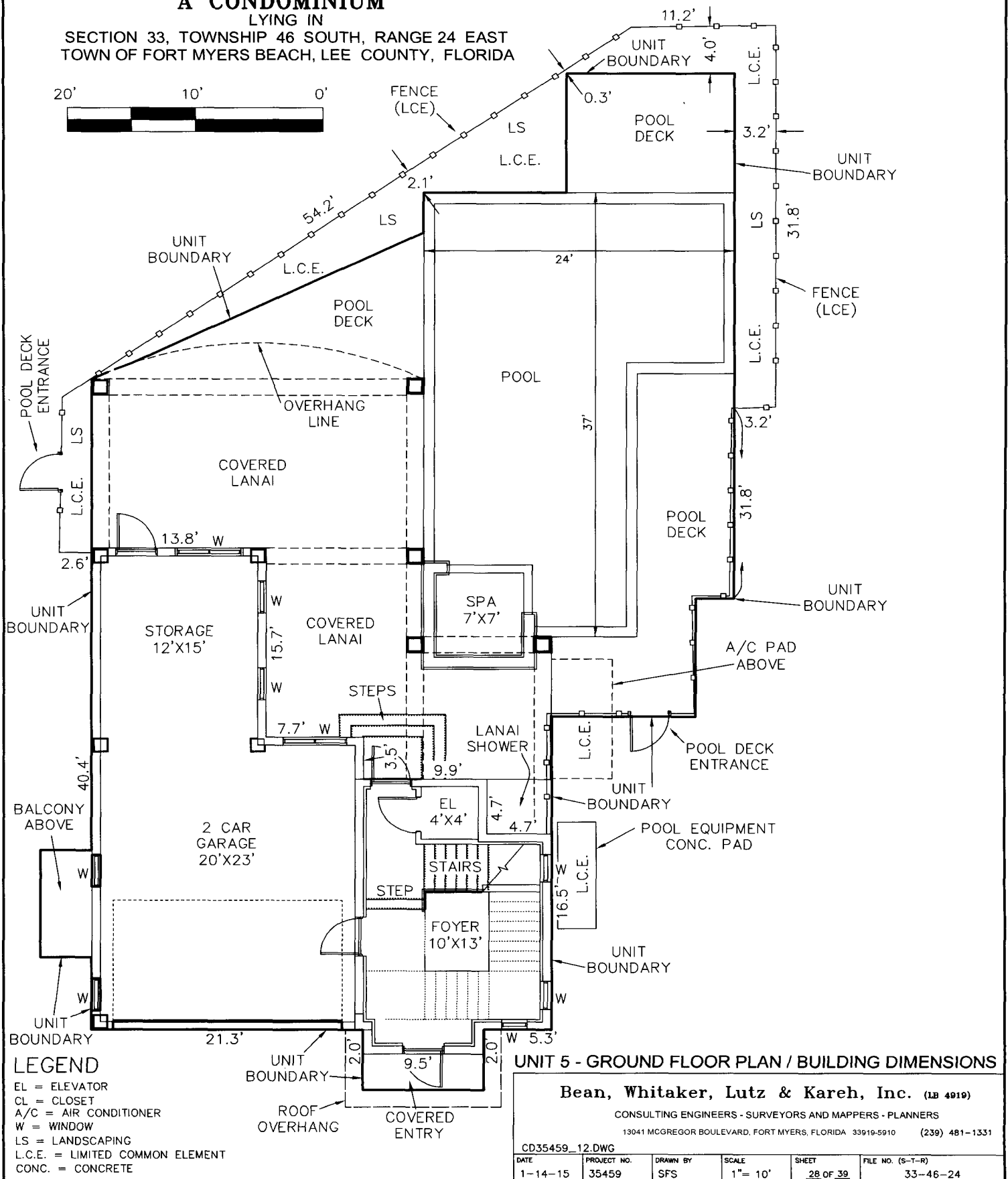
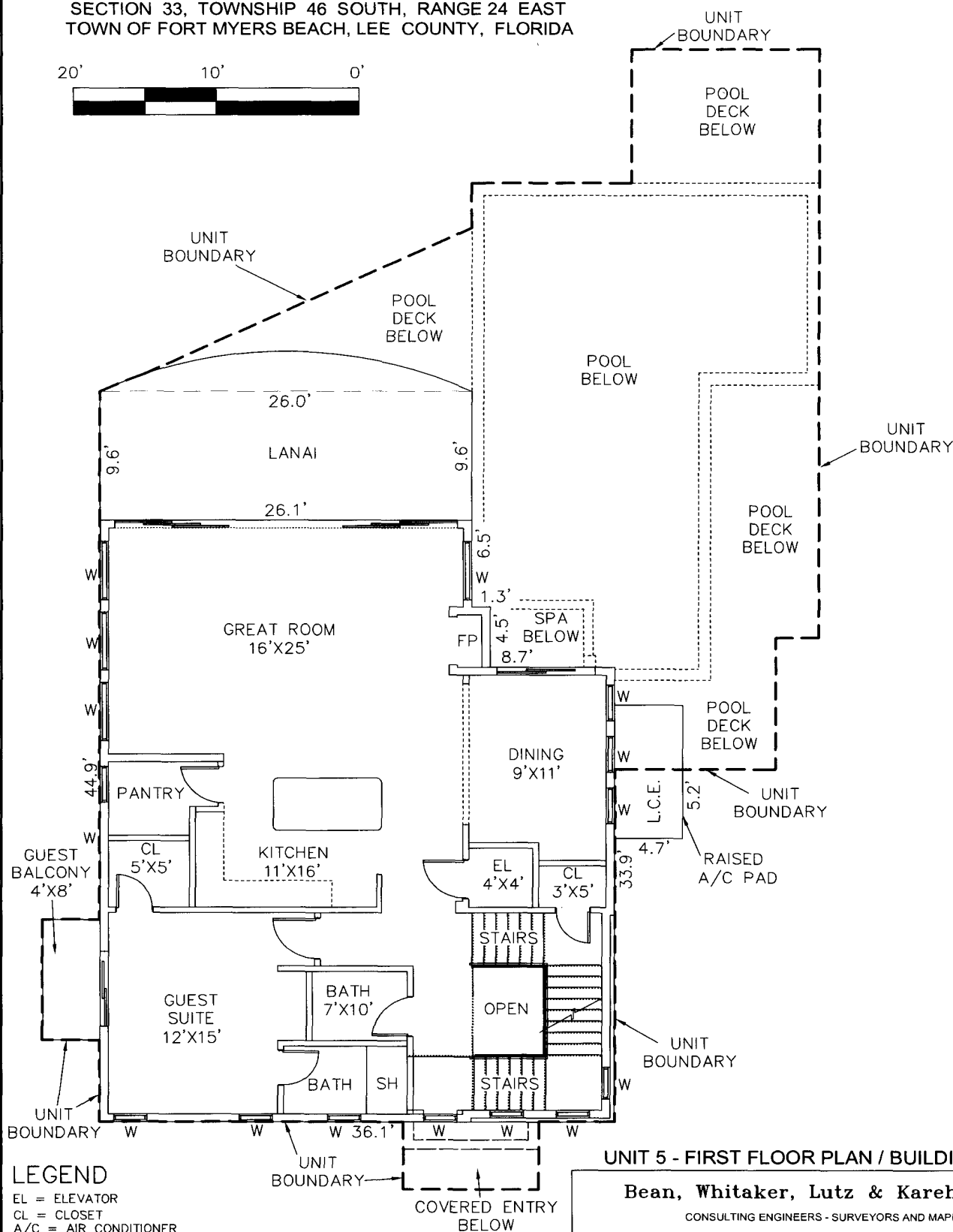
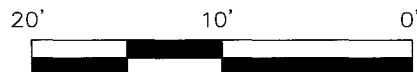


EXHIBIT "D" TO CONDOMINIUM DECLARATION OF TURTLE WALK OF FORT MYERS BEACH, A CONDOMINIUM

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TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA



UNIT 5 - FIRST FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

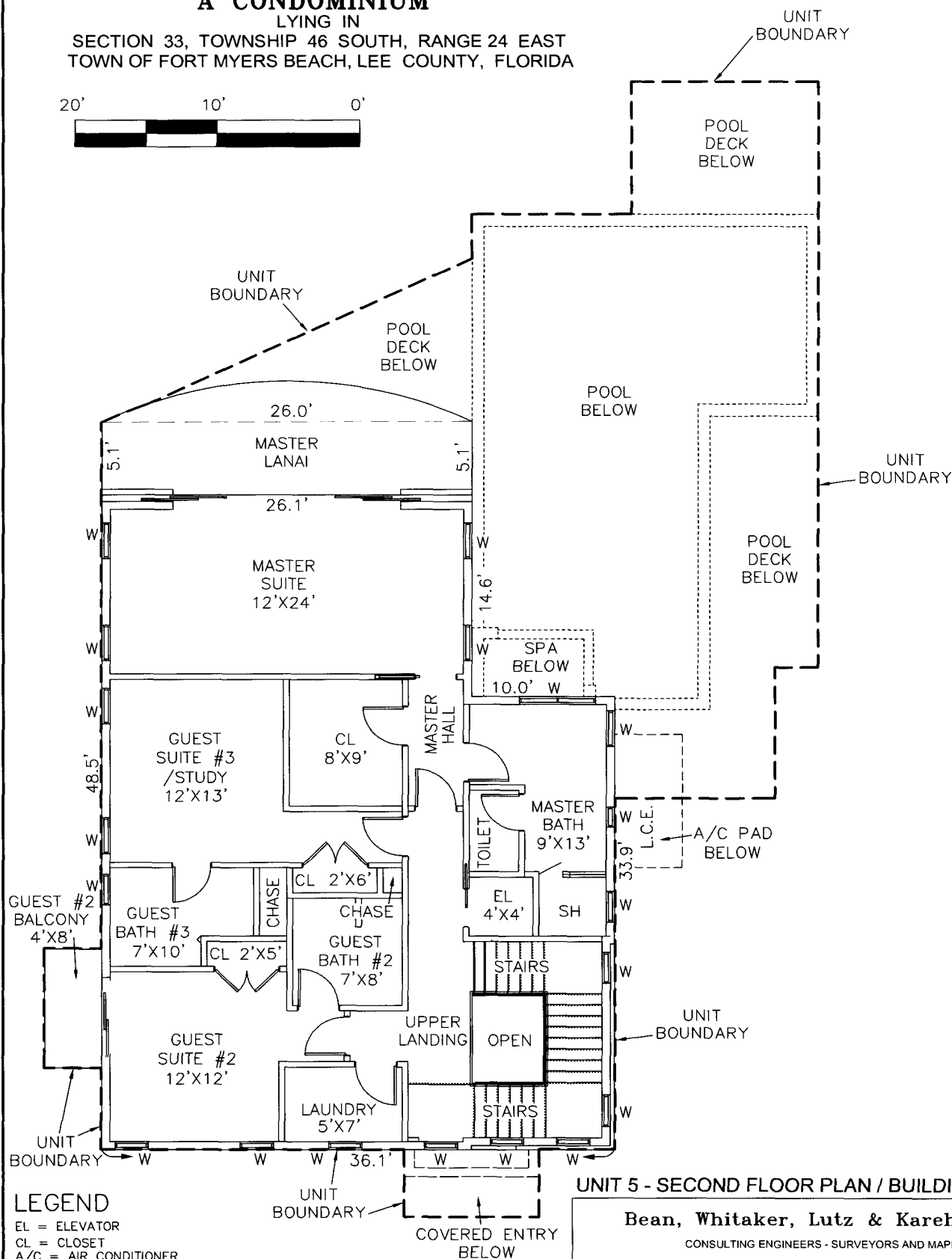
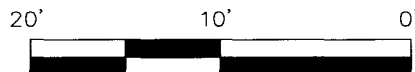
13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

CD35459_12.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
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EXHIBIT "D" TO CONDOMINIUM DECLARATION OF TURTLE WALK OF FORT MYERS BEACH, A CONDOMINIUM

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TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA



UNIT 5 - SECOND FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

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UNIT 5 - VERTICAL BOUNDARIES

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

CD35459_15.DWG

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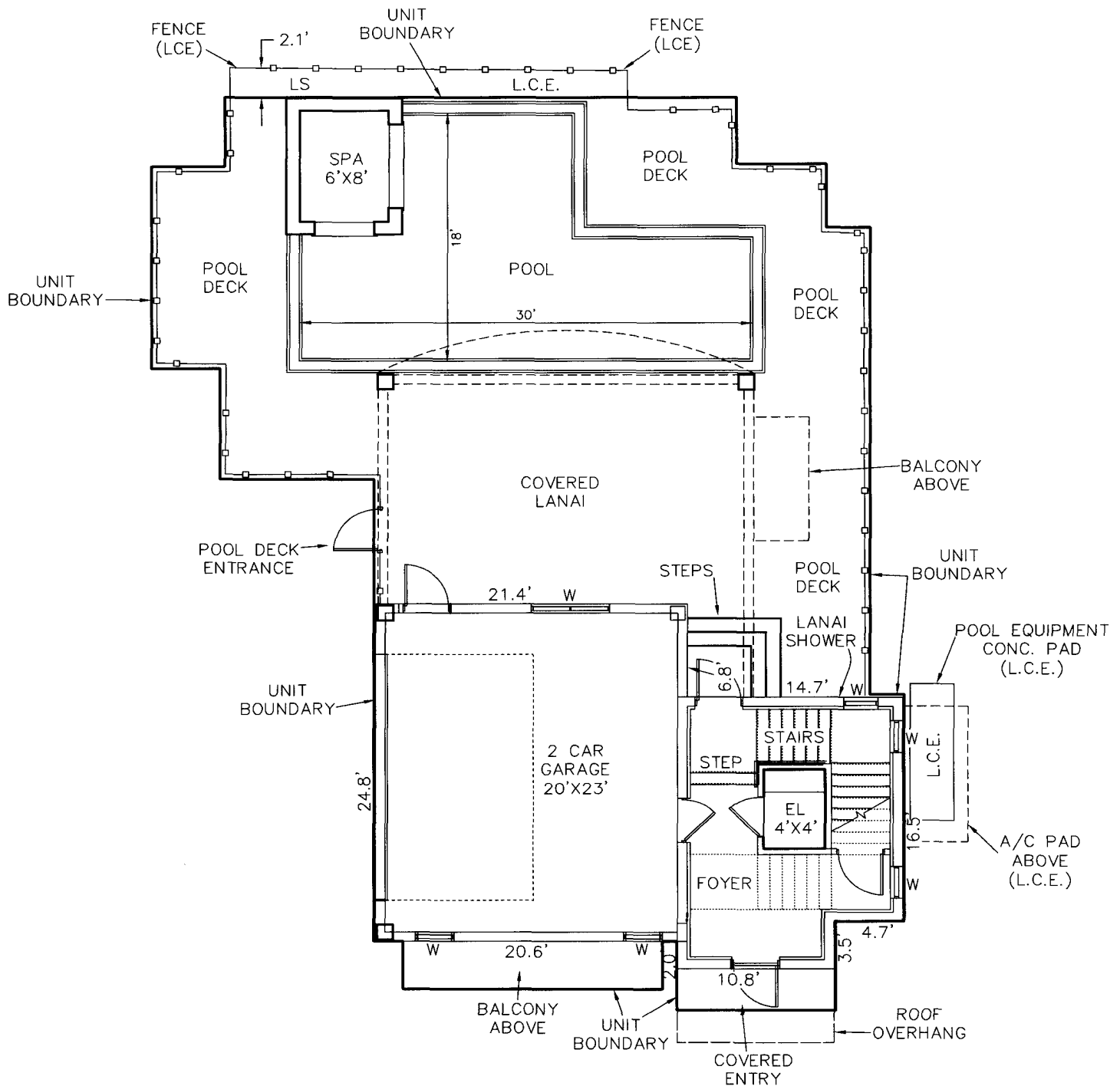
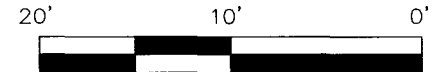
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UNIT 6 - GROUND FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

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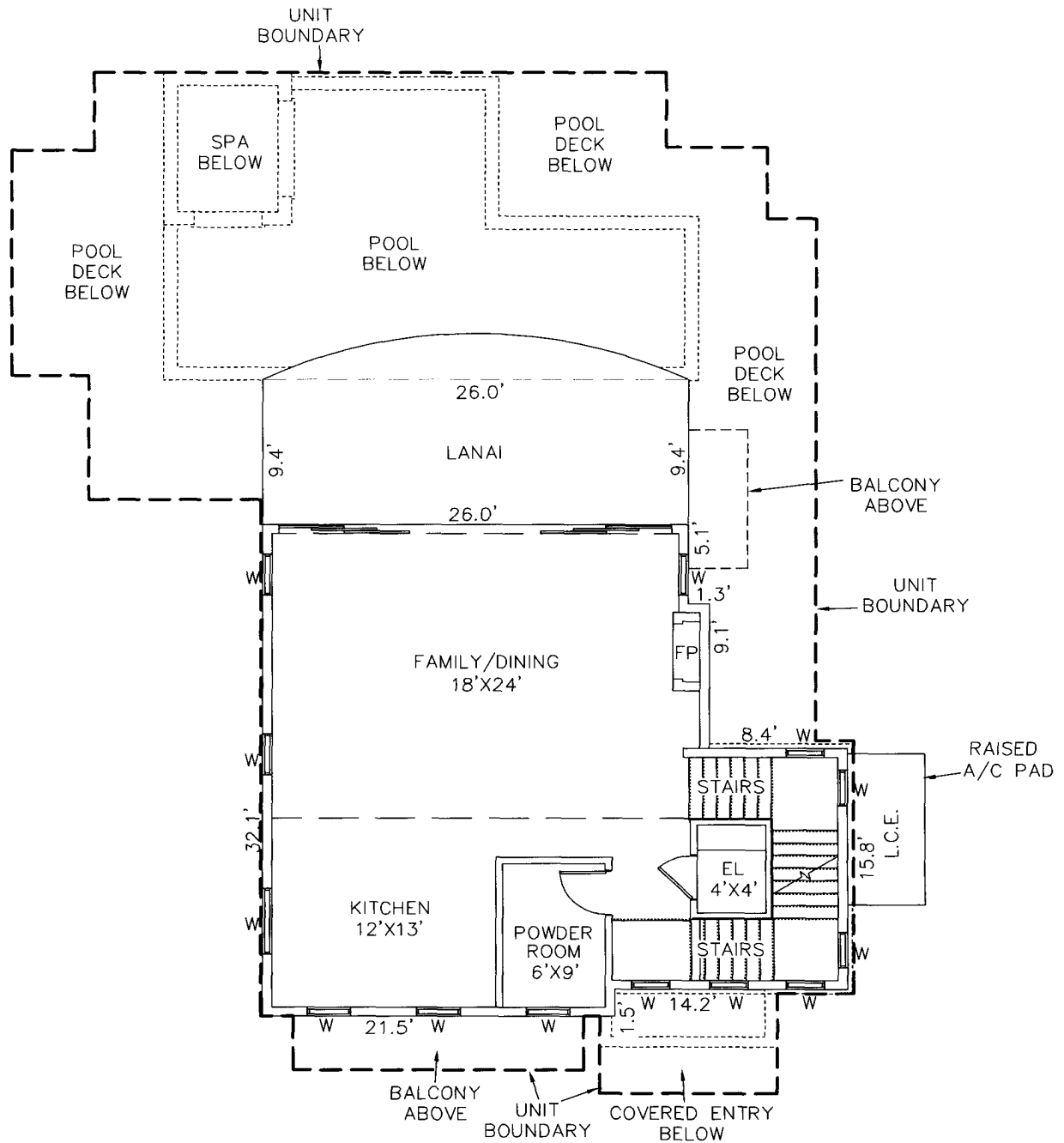
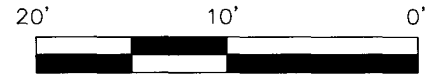
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CONDOMINIUM PLAT BOOK

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UNIT 6 - FIRST FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

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(239) 481-1331

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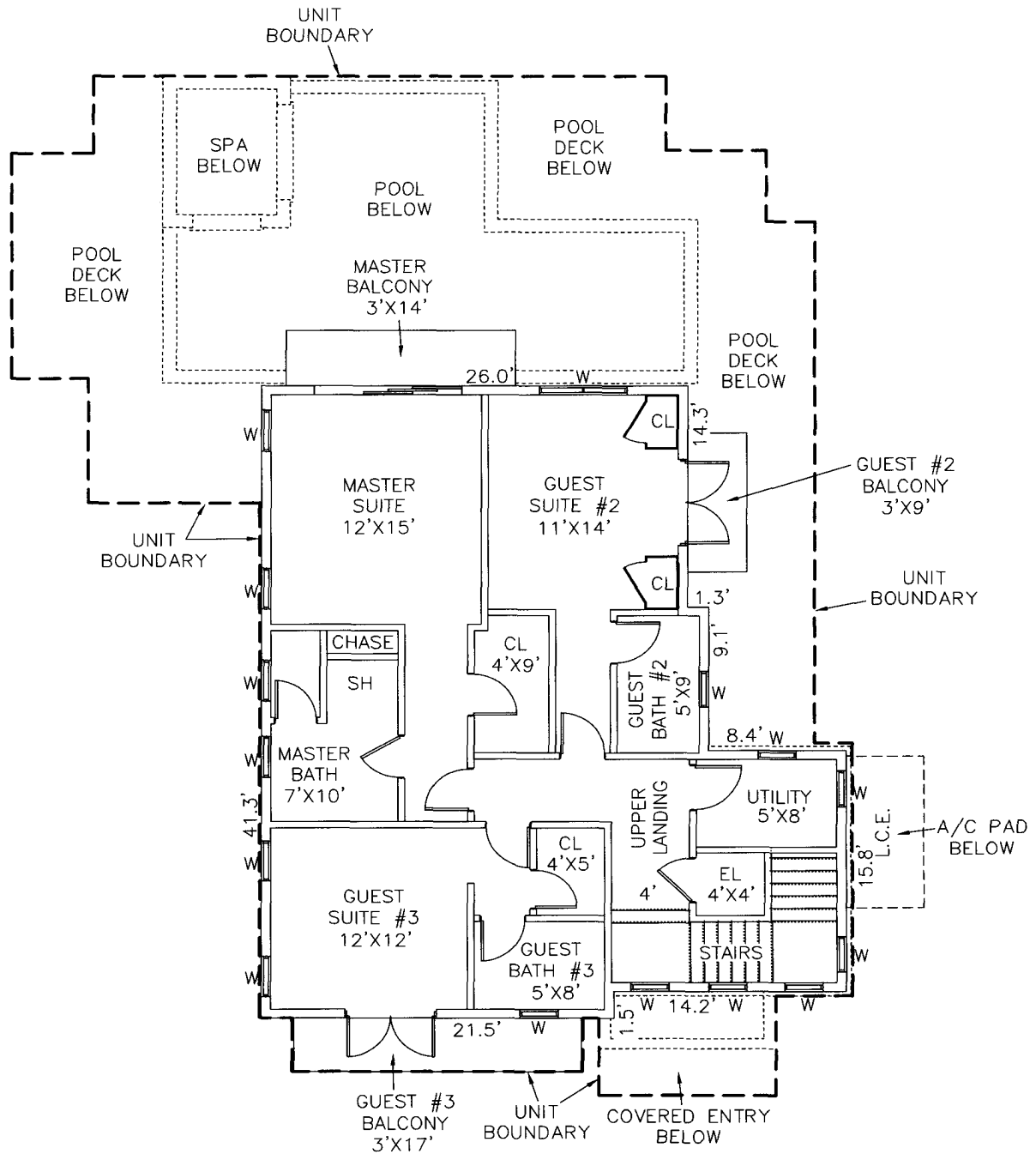
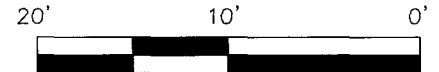
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UNIT 6 - SECOND FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

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DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
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FRONT ELEVATION

UNIT 6 - VERTICAL BOUNDARIES

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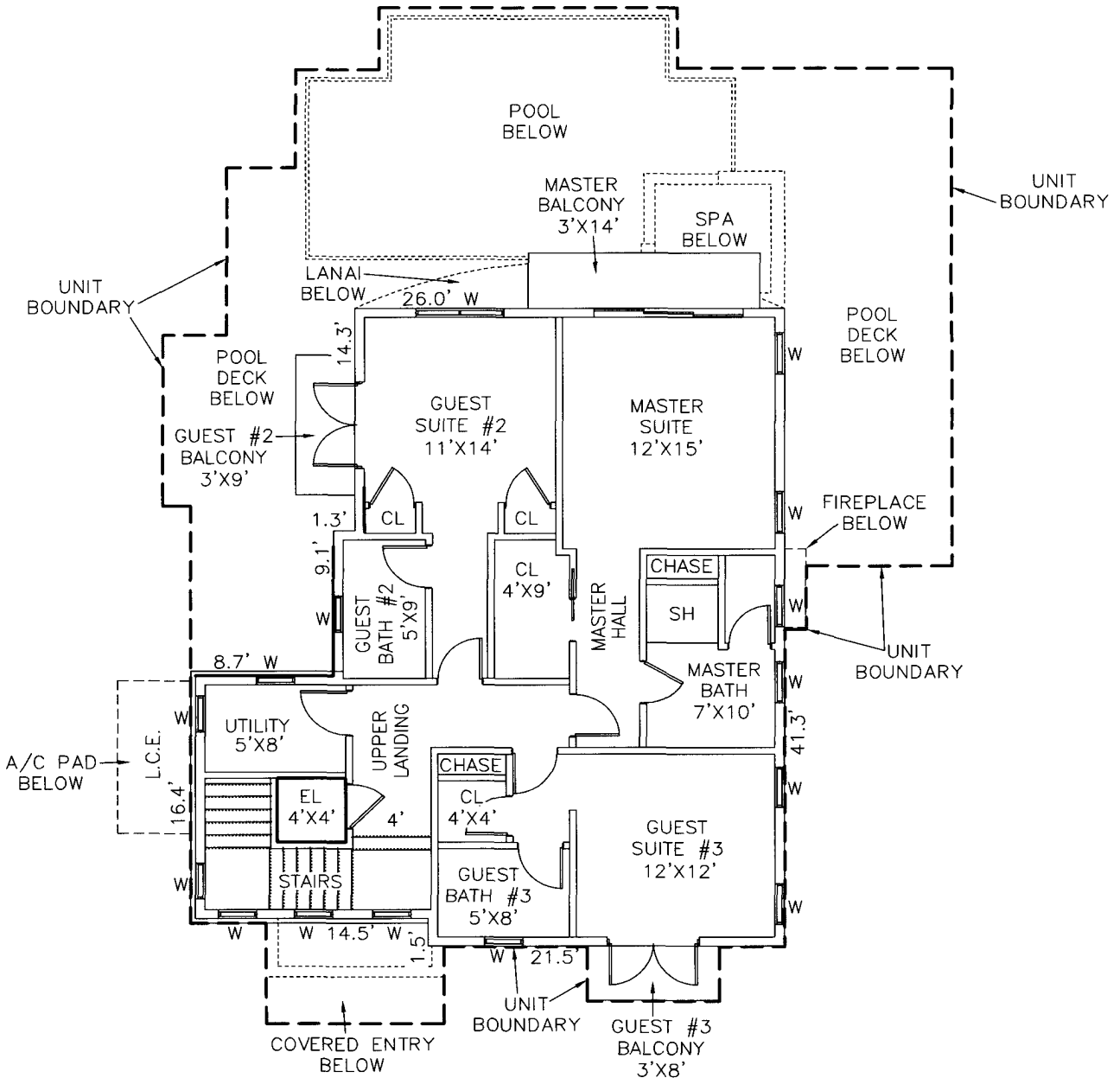
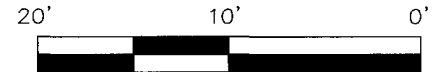
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CONDOMINIUM PLAT BOOK

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UNIT 7 - SECOND FLOOR PLAN / BUILDING DIMENSIONS

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

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CD35459_12.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
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A CONDOMINIUM

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FRONT ELEVATION

UNIT 7 - VERTICAL BOUNDARIES

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

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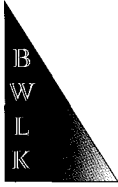
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1-14-15	35459	SFS	1" = NTS	39 OF 39	33-46-24

LEGEND

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EXHIBIT D – Unit Boundary Descriptions
See Section 3.B of the Declaration



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – frnoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

Description of a Parcel of Land
Lying in
Section 33, Township 46 South, Range 24 East
Town of Fort Myers Beach, Estero Island, Lee County, Florida
(Unit 1)

A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Estero Island being part of Block 6, as shown on the plat of Gulf Heights, a subdivision recorded in Plat Book 6 at Page 39, Public Records of Lee County, Florida, and further described as follows:

Commencing at a found nail and disk stamped "Estero Blvd R/W-LB4919" marking the intersection of the north line of Government Lot 3 of Section 33, Township 46 South, Range 24 East with the southwesterly right-of-way line of Estero Boulevard (50 feet wide); thence S46°22'34"E along said southwesterly right-of-way line of Estero Boulevard for 178.66 feet to the northeast corner of Lot 16, Block 6 of said Gulf Heights Subdivision; thence S43°37'26"W along the southeasterly line of said Lot 16 and the southeasterly line of Lot 27, Block 6, of said subdivision for 132.81 feet; thence N46°22'34"W, departing said lot line, for 20.00 feet to the Point of Beginning; thence S43°37'26"W for 33.34 feet; thence S46°22'34"E for 1.29 feet; thence S43°37'26"W for 5.28 feet; thence N46°22'34"W for 1.29 feet; thence S43°37'26"W for 21.63 feet; thence N46°22'34"W for 43.73 feet; thence N43°37'26"E for 39.06 feet; thence S46°22'34"E for 7.53 feet; thence N43°37'26"E for 21.19 feet; thence S46°22'34"E for 5.33 feet; thence N43°37'26"E for 4.91 feet; thence S46°22'34"E for 9.54 feet; thence S43°37'26"W for 4.91 feet; thence S46°22'34"E for 7.61 feet; thence N43°37'26"E for 4.10 feet; thence S46°22'34"E for 9.10 feet; thence S43°37'26"W for 4.10 feet; thence S46°22'34"E for 4.62 feet to the Point of Beginning.

Containing 2,566 square feet, more or less.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone NAD 1983 (1990 Adjustment) with the southwesterly line of Estero Boulevard as bearing S46°22'34"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB4919)


Scott C. Whitaker, P.S.M. 74324

35459_TURTLE WALK_UNIT 1

PRINCIPALS:

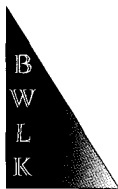
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

JAMES A. HESSLER, PSM
CHRISTEN A. MOORE, PSM
ROBERT L. CARMELIA, PSM
STEPHEN F. SHAWLES II, PSM
MUNIR R. SULEH, PE, MSEE



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

Description of a Parcel of Land

Lying in

Section 33, Township 46 South, Range 24 East
Town of Fort Myers Beach, Estero Island, Lee County, Florida
(Unit 2)

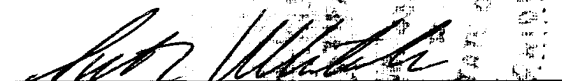
A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Estero Island being part of Block 6, as shown on the plat of Gulf Heights, a subdivision recorded in Plat Book 6 at Page 39, Public Records of Lee County, Florida, and further described as follows:

Commencing at a found nail and disk stamped "Estero Blvd R/W-LB4919" marking the intersection of the north line of Government Lot 3 of Section 33, Township 46 South, Range 24 East with the southwesterly right-of-way line of Estero Boulevard (50 feet wide); thence S89°17'48"W along the north line of said Government Lot 3 for 67.99 feet; thence S00°42'12"E for 130.39 feet to the Point of Beginning; thence S49°54'29"E for 18.70 feet; thence N40°05'31"E for 0.83 feet; thence S49°54'29"E for 3.54 feet; thence N40°05'31"E for 5.54 feet to an intersection with a curve concave to the southwest having a radius of 20.25 feet and to which point a radial line bears N16°57'05"E; thence southeasterly along said curve to the right through a central angle of 46°16'52" for 16.36 feet (chord bearing S49°54'29"E) to the end of said curve; thence S40°05'31"W for 6.10 feet; thence S49°54'29"E for 4.05 feet; thence S40°05'31"W for 0.27 feet; thence S49°54'29"E for 18.20 feet; thence S40°05'31"W for 57.50 feet; thence N49°49'15"W for 19.21 feet; feet to an intersection with a curve concave to the northeast having a radius of 119.86 feet and to which point a radial line bears S34°48'04"W; thence northwesterly along said curve to the right through a central angle of 10°18'21" for 21.56 feet (chord bearing N50°02'45"W) to the end of said curve; thence N50°11'56"W for 22.94 feet; thence N40°05'31"E for 23.34 feet; thence S49°54'29"E for 3.27 feet; thence N40°05'31"E for 34.29 feet to the Point of Beginning.

Containing 3,681 square feet, more or less.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone NAD 1983 (1990 Adjustment) with the southwesterly line of Estero Boulevard as bearing S46°22'34"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB4919)


Scott C. Whitaker, P.S.M. #324

35459_TURTLE WALK_UNIT 2

PRINCIPALS:

SCOTT C. WHITAKER, PSM, PRESIDENT

JOSEPH L. LUTZ, PSM

AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

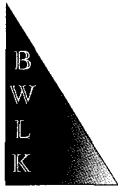
JAMES A. HESSLER, PSM

CHRISTEN A. MOORE, PSM

ROBERT L. CARMELIA, PSM

STEPHEN F. SHAWLES II, PSM

MUNIR R. SULEH, PE, MSCE



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmoffice@bwik.net
(Ph) 239-481-1331 (Fax) 239-481-1073

Description of a Parcel of Land

Lying in

Section 33, Township 46 South, Range 24 East
Town of Fort Myers Beach, Estero Island, Lee County, Florida
(Unit 3)

A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Estero Island being part of Block 6, as shown on the plat of Gulf Heights, a subdivision recorded in Plat Book 6 at Page 39, Public Records of Lee County, Florida, and further described as follows:

Commencing at a found nail and disk stamped "Estero Blvd R/W-LB4919" marking the intersection of the north line of Government Lot 3 of Section 33, Township 46 South, Range 24 East with the southwesterly right-of-way line of Estero Boulevard (50 feet wide); thence S89°17'48"W along the north line of said Government Lot 3 for 104.06 feet; thence S00°42'12"E for 97.31 feet to the Point of Beginning; thence S48°57'17"E for 5.40 feet; thence N41°02'43"E for 4.90 feet; thence S48°57'17"E for 9.43 feet; thence S41°02'43"W for 0.91 feet; thence S48°57'17"E for 17.13 feet; thence S41°02'43"W for 4.06 feet; thence S48°57'17"E for 4.20 feet; thence S41°02'43"W for 33.27 feet; thence S48°57'17"E for 1.34 feet; thence S41°02'43"W for 5.29 feet; thence N48°57'17"W for 1.34 feet; thence S41°02'43"W for 21.09 feet; thence N48°57'17"W for 39.30 feet; thence N41°02'43"E for 38.38 feet; thence S48°57'17"E for 3.14 feet; thence N41°02'43"E for 21.34 feet to the Point of Beginning.

Containing 2,401 square feet, more or less.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone NAD 1983 (1990 Adjustment) with the southwesterly line of Estero Boulevard as bearing S46°22'34"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB4919)


Scott C. Whitaker, P.S.M. 4324

35459_TURTLE WALK_UNIT 3

PRINCIPALS:

SCOTT C. WHITAKER, PSM, PRESIDENT

JOSEPH L. LUTZ, PSM

AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

JAMES A. HESSLER, PSM

CHRISTEN A. MOORE, PSM

ROBERT L. CARMELIA, PSM

STEPHEN F. SHAWLES II, PSM

MUNIR R. SULEH, PE, MSCE



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

Description of a Parcel of Land

Lying in

Section 33, Township 46 South, Range 24 East
Town of Fort Myers Beach, Estero Island, Lee County, Florida
(Unit 4)

A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Estero Island being part of Block 6, as shown on the plat of Gulf Heights, a subdivision recorded in Plat Book 6 at Page 39, Public Records of Lee County, Florida, and further described as follows:

Commencing at a found nail and disk stamped "Estero Blvd R/W-LB4919" marking the intersection of the north line of Government Lot 3 of Section 33, Township 46 South, Range 24 East with the southwesterly right-of-way line of Estero Boulevard (50 feet wide); thence S89°17'48"W along the north line of said Government Lot 3 for 163.31 feet; thence S00°42'12"E for 54.12 feet to the Point of Beginning; thence S49°53'55"E for 17.60 feet; thence N40°06'05"E for 0.63 feet; thence S49°53'55"E for 3.54 feet; thence N40°06'05"E for 6.25 feet to an intersection with a curve concave to the southwest having a radius of 20.25 feet and to which point a radial line bears N16°57'39"E; thence southeasterly along said curve to the right through a central angle of 46°16'52" for 16.36 feet (chord bearing S49°53'55"E) to the end of said curve; thence S40°06'05"W for 6.25 feet; thence S49°53'55"E for 4.10 feet; thence S40°06'05"W for 0.50 feet; thence S49°53'55"E for 17.20 feet; thence S40°06'05"W for 54.17 feet; thence N49°53'55"W for 61.70 feet; thence N40°06'05"E for 21.00 feet; thence S49°53'55"E for 3.34 feet; thence N40°06'05"E for 33.04 feet to the Point of Beginning.

Containing 3,358 square feet, more or less.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone NAD 1983 (1990 Adjustment) with the southwesterly line of Estero Boulevard as bearing S46°22'34"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB4919)


Scott C. Whitaker, P.S.M. 4324

35459_TURTLE WALK_UNIT 4

PRINCIPALS:

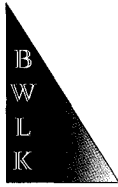
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

JAMES A. HESSLER, PSM
CHRISTEN A. MOORE, PSM
ROBERT L. CARMELIA, PSM
STEPHEN F. SHAWLES II, PSM
MUNIR R. SULEH, PE, MSCE



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

Description of a Parcel of Land

Lying in

Section 33, Township 46 South, Range 24 East
Town of Fort Myers Beach, Estero Island, Lee County, Florida
(Unit 5)

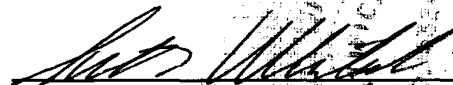
A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Estero Island being part of Block 6, as shown on the plat of Gulf Heights, a subdivision recorded in Plat Book 6 at Page 39, Public Records of Lee County, Florida, and further described as follows:

Commencing at a found nail and disk stamped "Estero Blvd R/W-LB4919" marking the intersection of the north line of Government Lot 3 of Section 33, Township 46 South, Range 24 East with the southwesterly right-of-way line of Estero Boulevard (50 feet wide); thence S89°17'48"W along the north line of said Government Lot 3 for 185.85 feet; thence S00°42'12"E for 20.00 feet to the Point of Beginning; thence S13°51'28"E for 5.30 feet; thence N76°08'32"E for 5.04 feet; thence S13°51'28"E for 9.46 feet; thence S76°08'32"W for 5.00 feet; thence S13°51'28"E for 21.33 feet; thence S76°08'32"W for 6.02 feet; thence S13°51'28"E for 4.00 feet; thence S76°08'32"W for 9.00 feet; thence N13°51'28"W for 4.00 feet; thence S76°08'32"W for 39.40 feet to an intersection with a curve concave to the northeast having a radius of 29.67 feet and to which point a radial line bears S50°09'26"W; thence northwesterly along said curve to the right through a central angle of 06°30'53" for 3.37 feet (chord bearing N36°35'07"W) to the end of said curve; thence N39°16'31"W for 25.37 feet; thence S76°08'32"W for 3.32 feet; thence N13°51'28"W for 11.18 feet; thence S76°08'32"W for 9.96 feet; thence N13°51'28"W for 13.09 feet; thence N76°08'32"E for 43.75 feet; thence S13°51'28"E for 3.00 feet; thence N76°08'32"E for 9.80 feet; thence S13°51'28"E for 11.20 feet; thence N76°08'32"E for 26.30 feet to the Point of Beginning.

Containing 3,080 square feet, more or less.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone NAD 1983 (1990 Adjustment) with the southwesterly line of Estero Boulevard as bearing S46°22'34"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB4919)


Scott C. Whitaker, P.S.M. 4324

35459_TURTLE WALK_UNIT 5

PRINCIPALS:

SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

JAMES A. HESSLER, PSM
CHRISTEN A. MOORE, PSM
ROBERT L. CARMELIA, PSM
STEPHEN F. SHAWLES II, PSM
MUNIR R. SULEH, PE, MSCE



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

Description of a Parcel of Land

Lying in

Section 33, Township 46 South, Range 24 East
Town of Fort Myers Beach, Estero Island, Lee County, Florida
(Unit 6)

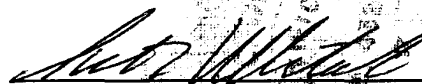
A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Estero Island being part of Block 6, as shown on the plat of Gulf Heights, a subdivision recorded in Plat Book 6 at Page 39, Public Records of Lee County, Florida, and further described as follows:

Commencing at a found nail and disk stamped "Estero Blvd R/W-LB4919" marking the intersection of the north line of Government Lot 3 of Section 33, Township 46 South, Range 24 East with the southwesterly right-of-way line of Estero Boulevard (50 feet wide); thence S46°22'34"E along said southwesterly right-of-way line of Estero Boulevard for 84.93 feet; thence S43°37'26"W, departing said right-of-way line for 33.22 feet to the Point of Beginning; thence S51°22'34"E for 4.67 feet; thence N38°37'26"E for 6.50 feet; thence S51°22'34"E for 10.80 feet; thence S38°37'26"W for 5.00 feet; thence S51°22'34"E for 1.00 feet; thence N38°37'26"E for 3.50 feet; thence S51°22'34"E for 17.73 feet; thence S38°37'26"W for 3.50 feet; thence S51°22'34"E for 2.00 feet; thence S38°37'26"W for 33.73 feet; thence S51°22'34"E for 10.56 feet; thence S38°37'26"W for 8.00 feet; thence S51°22'34"E for 4.69 feet; thence S38°37'26"W for 14.68 feet; thence N51°22'34"W for 5.00 feet; thence S38°37'26"W for 5.00 feet; thence N51°22'34"W for 35.00 feet; thence N38°37'26"E for 4.80 feet; thence N51°22'34"W for 6.12 feet; thence N38°37'26"E for 4.59 feet; thence N51°22'34"W for 3.00 feet; thence N38°37'26"E for 33.90 feet; thence N51°22'34"W for 2.33 feet; thence N38°37'26"E for 16.62 feet to the Point of Beginning.

Containing 2,533 square feet, more or less.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone NAD 1983 (1990 Adjustment) with the southwesterly line of Estero Boulevard as bearing S46°22'34"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB4919)


Scott C. Whitaker, P.S.M. 4324

35459_TURTLE WALK_UNIT 6

PRINCIPALS:

SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

JAMES A. HESSLER, PSM
CHRISTEN A. MOORE, PSM
ROBERT L. CARMELIA, PSM
STEPHEN F. SHAWLES II, PSM
MUNIR R. SULEH, PE, MSEE



Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email – fmoffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073

Description of a Parcel of Land Lying in Section 33, Township 46 South, Range 24 East Town of Fort Myers Beach, Estero Island, Lee County, Florida (Unit 7)

A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Estero Island being part of Block 6, as shown on the plat of Gulf Heights, a subdivision recorded in Plat Book 6 at Page 39, Public Records of Lee County, Florida, and further described as follows:

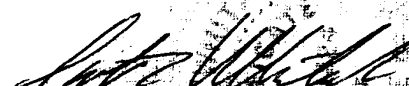
Commencing at a found nail and disk stamped "Estero Blvd R/W-LB4919" marking the intersection of the north line of Government Lot 3 of Section 33, Township 46 South, Range 24 East with the southwesterly right-of-way line of Estero Boulevard (50 feet wide); thence S89°17'48"W along the north line of said Government Lot 3 for 59.75 feet; thence S00°42'12"E for 10.11 feet to the Point of Beginning; thence S00°42'12"E for 8.80 feet; thence N89°17'48"E for 4.10 feet; thence S00°42'12"E for 1.30 feet; thence N89°17'48"E for 20.70 feet; thence S00°42'12"E for 3.95 feet; thence N89°17'48"E for 3.50 feet; thence S00°42'12"E for 8.00 feet; thence S89°17'48"W for 3.50 feet; thence S00°42'12"E for 8.68 feet; thence N89°17'48"E for 4.95 feet; thence S00°42'12"E for 10.82 feet; thence S89°17'48"W for 6.50 feet; thence S00°42'12"E for 4.60 feet; thence S89°17'48"W for 27.10 feet; thence S00°42'12"E for 1.70 feet; thence S89°17'48"W for 11.00 feet; thence N00°42'12"W for 3.90 feet; thence S89°17'48"W for 10.80 feet; thence N00°42'12"W for 4.20 feet; thence S89°17'48"W for 6.30 feet; thence N00°42'12"W for 5.10 feet; thence S89°17'48"W for 4.00 feet; thence N00°42'12"W for 18.05 feet; thence N89°17'48"E for 3.90 feet; thence N00°42'12"W for 16.60 feet; thence N89°17'48"E for 32.05 feet to the Point of Beginning.

Containing 2,477 square feet, more or less.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone NAD 1983 (1990 Adjustment) with the southwesterly line of Estero Boulevard as bearing S46°22'34"E.

Bean, Whitaker, Lutz & Kareh, Inc. (LB4919)

35459_TURTLE WALK_UNIT 7


Scott C. Whitaker, P.S.M. 4324

PRINCIPALS:

SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

JAMES A. HESSLER, PSM
CHRISTEN A. MOORE, PSM
ROBERT L. CARMELIA, PSM
STEPHEN F. SHAWLES II, PSM
MUNIR R. SULEH, PE, MSCE



June 11, 2024

Xheku LLC
525 Ridge Rd
Naples, FL 34108

Address: 5236 Estero Blvd, Fort Myers Beach 33931 Strap #: 334624W1002060280

Subject: MUD 20240150

Dear Applicant,

At your request, I have reviewed the application for a Minimum Use Determination ("MUD") for the property at 5236 Estero Blvd. The property is legally described in Exhibit A, below. Based upon the information provided by the applicant and reviewed by staff, it does appear that the property meets the requirements of Section 34-3274 of the Fort Myers Beach Land Development Code ("LDC"). Staff determined the following findings:

1. The Lot Existed Prior to 1996: Lee County Plat records show the property was in existence prior to 1996.
2. The Lot has Direct Access to an Existing Road: The property is located at 5236 Estero Blvd and is accessible via a non-exclusive access easement.
3. The Lot has Access to Utilities: Potable water and sanitary sewer are available at the subject property.
4. The Lot is Located in a Future Land Use Category ("FLUM") and Zoning District that Permits Construction of a Single-family Dwelling: The property is located at 5236 Estero Blvd. The FLUM category is Mixed Residential, and the current zoning is Residential Multifamily (RM), both of which allow the construction of a single-family dwelling.

Any determination of the presence of wetlands or other protected species may render the property subject to additional review, including but not limited to, State and Federal regulations. In accordance with Section 34-3274 of the LDC, a single-family residence may be constructed on the lot located at 5236 Estero Blvd, subject to compliance with all other requirements of the Comprehensive Plan, LDC, and the Florida Building Code.

THIS ADMINISTRATIVE DETERMINATION IS NOT A BUILDING PERMIT.

APPEAL PROCEDURES: This determination may be appealed to the Fort Myers Beach Town Council by filing with the Town Clerk a written request within 15 days after issuance stating reasons for disagreement. The Town Council appeal review only allows consideration of information submitted during the process and is limited only as to whether standards in the LDC and the Comprehensive Plan have been applied to the facts of the case. The Town Council cannot consider new or additional evidence at any appeal hearing. Appeals must be filed with the Town Clerk, 2525 Estero Blvd, Fort Myers Beach, Florida 33931.

Sincerely,

Sarah Brown
Planner



Exhibit A

Lot 28, Block 6, Gulf Heights, a subdivision according to the plat thereof recorded at Plat Book 6, Page 39, in the Public Records of Lee County, Florida.

Together with an easement addressing encroachment of the dwelling situated on the above described parcel, upon abutting real estate (being Lot 27, Block 6 of said subdivision), as more particularly described in Easement recorded in Official Records Book 2088, Page 2300 and Addendum to Easement Agreement recorded in in Official Records Book 2603, Page 1170, Public Records of Lee County, Florida.

Together with a non-exclusive access easement for ingress and egress and dedication of private road over and across the North 10 feet of Lots 29, 30, and the West 10 feet of Lot 13, Block 6, Gulf Heights, a subdivision, according to the plat thereof recorded in Plat Book 6, Page 39, and as set forth in Miscellaneous Book 19, Page 535, Public Records of Lee County Florida to reach Estero Boulevard, f/k/a Poinsetta Street and a non-exclusive access easement for ingress and egress recorded in Official Records Book 2005, Page 806, and Official Records Book 2005, Page 808, over the Southerly 10 feet of Lot 14, Block 6, Gulf Heights, a subdivision, according to the plat thereof recorded in Plat Book 6, Page 39, lying adjacent and parallel with driveway and walkway easement impressed upon the Northwesternly 10 feet of said Lot 13.



March 11, 2025

Town of Fort Myers Beach
Community Development Department
2525 Estero Blvd.
Ft Myers Beach, FL 33931

Subject: 5236 Estero Boulevard Variance – *Submittal #1*

Intake Team:

The Neighborhood Company is pleased to submit a Variance Application for the subject property located at 5236 Estero Boulevard, Ft Myers Beach, FL 33931. The proposed request is for two (2) variances to allow the redevelopment of the single-family residence. The variance seeks relief from the following code sections:

LDC Section 34-638(b)(1)(a) Building Setbacks
LDC Section 34-633 F.A.R.

Please find attached the following items consistent with application submittal checklist:

1. Application Filing Fee (\$1,800-residential + \$500(1) additional = \$2,300 total)
2. Application for Public Hearing
 - a. Disclosure of Ownership & Affidavit of Authorization
 - b. Letter of Authorization
 - c. Legal Description
 - d. Boundary Survey (Exhibit 6-2)
 - e. Area Location Map; (Exhibit 6-3)
 - f. Surrounding Property Owners List (Exhibit 6-6)
 - g. Surrounding Property Owners Map (Exhibit 6-7)
 - h. Surrounding Property Owners Mailing Labels
3. Supplement PH-B for a Variance
 - a. Request Narrative
 - b. Site Plan – Buildable Area Exhibit



c. Schematic Design Plans

We look forward to your review and are available to answer questions related to this application.

Sincerely,

The Neighborhood Company

A handwritten signature in blue ink, appearing to read 'P. Vanasse', is placed above the printed name.

Patrick Vanasse, AICP
President, Partner

Attachments: Application Submittal Requirements (listed above)

cc: Studio AD Architect
File: 24010.01.01



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: 5236 Estero Boulevard, Fort Myers Beach

STRAP Number: 33-46-24-W1-00206.0280

Applicant: XHEKU LLC Phone: _____

Contact Name: Lindita & Ariel Hobdari Phone: _____

Email: lhobdari@yahoo.com Fax: _____

Current Zoning District: Residential Multi-family (RM) & Environmental Critical (EC)

Future Land Use Map (FLUM) Category: Mixed Residential & Recreation

FLUM Density Range: 6 DU/acre & N/A Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

☐ Special Exception

☒ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: XHEKU 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: 5236 Estero Blvd. Fort Myers Beach, FL 33931

Email: lhobdari@yahoo.com Fax: _____

Contact Name: Lindita & Ariel Hobdari Phone: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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: Patrick Vanasse, The Neighborhood Company Phone: 239-398-2016

Address: 5618 Whispering Willow Way, Fort Myers, FL 33908

Email: PV@theneighborhood.company Fax: _____

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

Name: Studio A.D. Architect, Albert D'Ambrose Phone: 239-292-4098

Address: 6202 Presidential Ct., Suite D, Fort Myers, FL 33919

Email: apd@studioad.net Fax: N/A

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section 34 - 638(b)(1)(a) & 34-634
- ☐ 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: _____
- _____
- _____

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, _____ 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.

Lindita Hobolani
Signature

Lindita Hobolani
Printed Name

STATE OF FL COUNTY OF Collier

The foregoing instrument was certified and subscribed before me by means of ☒ physical

presence OR ☐ online notarization, this 12 day of July, 2024, by

Lindita Hobolani ☐ who is personally known to me OR ☒ who has produced

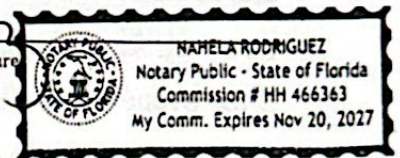
FL DL as identification.

(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

Lindita Hobolani

50%

Ariel Hobolani

50%



COMMUNITY DEVELOPMENT DEPARTMENT

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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

XHEKU LLC

Lindita Hobolani

50%

Arrel Hobolani

50%

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

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

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COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

Date of Contract: 07/20/2015

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

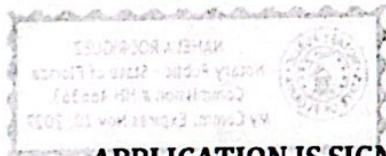
Name Ariel Hobdari Address 525 Ridge Drive
Naples FL 34108

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.

Ariel Hobdari
Signature

Ariel Hobdari
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, Lindita Hobdari (name), as Manager (title)
of XHEKU LLC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the 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.

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Page 6 of 11



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

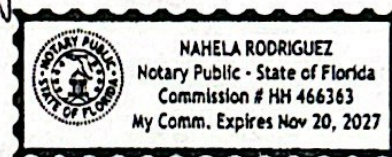
Xheku LLC
Name of Entity (corporation, partnership, LLP, LLC, etc)
Lindita Hobdari
Signature
Lindita Hobdari
Typed or Printed Name
M.D. Monoger
Title
07/12/2024
Date

STATE OF FL COUNTY OF Collier

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 12 day of July 2024, by Lindita Hobdari ☐ who is personally known to me OR ☒ who has produced FL DL as identification.

Seal

NAHELA RODRIGUEZ
Notary Public Signature



PART VI- Property Information

A. Legal Description:

STRAP: 33-46-24-W1-00206.0280

Property Address: 5236 Estero Boulevard, Fort Myers Beach, FL

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: Gulf Heights

Book: 6 Page: 39 Unit: _____ Block: 6 Lot(s): 28

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) 46' feet

Depth (please provide an average width if irregular in shape) 140' feet

Frontage on street: 46' feet. Frontage on waterbody: 46' feet

Total land area: 0.149 ☒ acres ☐ square feet

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

South on Estero Boulevard approximately 2.5 miles from the Sky 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

☐ Marina

☐ Mixed Residential

☐ Recreation

☒ Boulevard

☐ Wetlands

☐ Pedestrian Commercial

☐ Platted Overlay



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.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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.



THE NEIGHBORHOOD
COMPANY

I Lindita Hobdari, as authorized member of XHEKU LLC owner of property located at 5236 Estero Blvd., Fort Myers Beach, FL, identified by STRAP Numbers 33-46-4-W1-00206-0280, hereby authorizes The Neighborhood Company regarding the above-referenced property to serve as agent for the Town of Ft Myers Beach Planned Development Rezone Application.

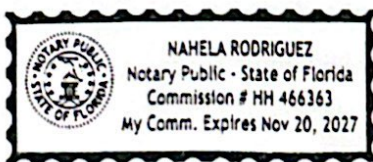
XHEKU LLC

By: Lindita Hobdari
Print Name: Lindita Hobdari
Title: M.D. Manager

STATE OF FL
CITY OF Naples

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 12 day of July, 2024 by Lindita Hobdari, as owner of XHEKU LLC, on behalf of the company(s), who ☐ is personally known to me OR ☐ has produced a(n) driver's license as identification.

(NOTARY STAMP)



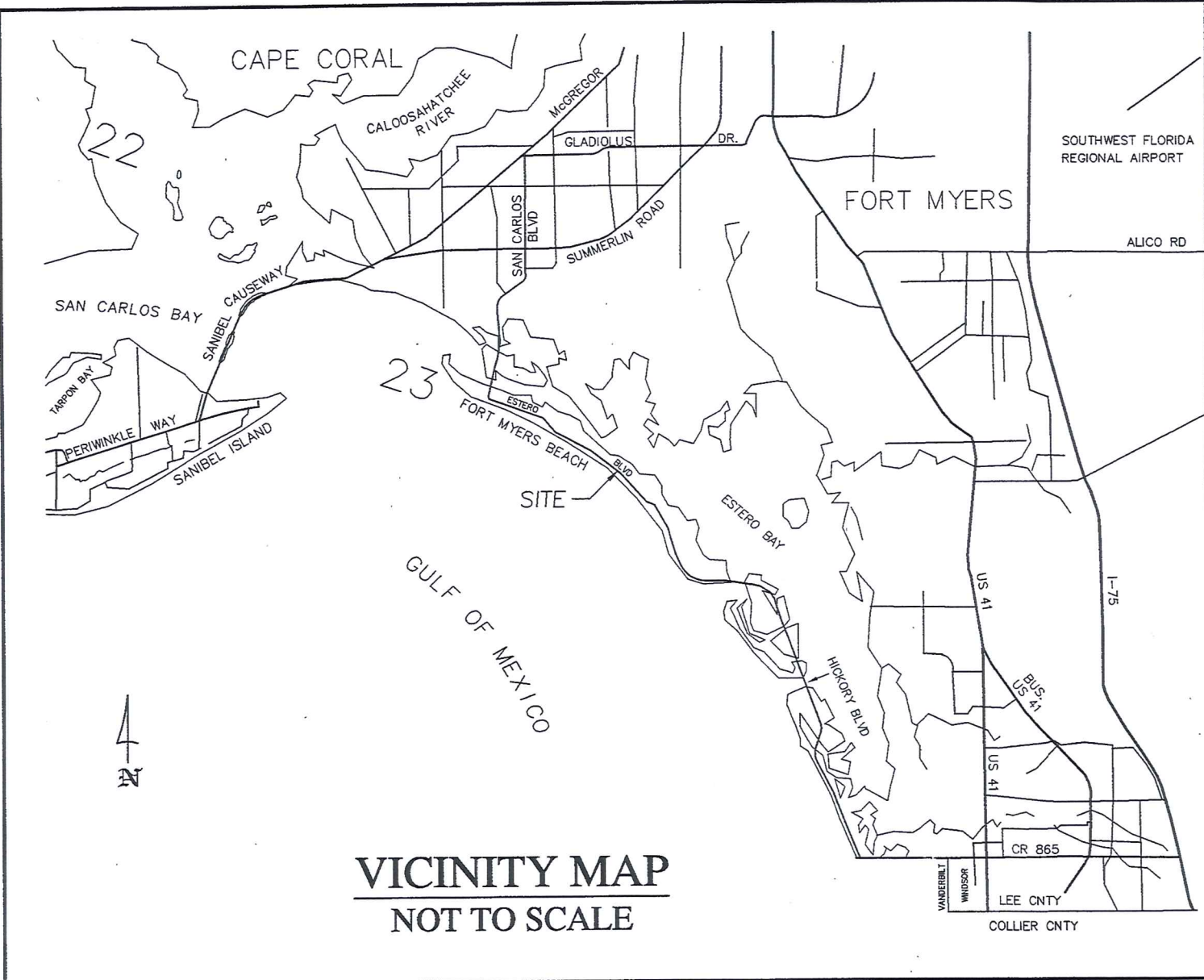
Nahela Rodriguez
Notary Public, State of FL
Print Name: NAHELA RODRIGUEZ
My Commission Expires: 11/20/2027



**5236 Estero Boulevard
Variance Request**

EXHIBIT 6-1: STRAP # & LEGAL DESCRIPTION

- STRAP #: 33-46-24-W1-00206.0280
- DESCRIPTION:
 - LOT 28, BLOCK 6, GULF HEIGHTS AS RECORDED IN PLAT BOOK 6, PAGE 39, SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST, TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA



SURVEY PLAT

OF
LOT 28, BLOCK 6
GULF HEIGHTS
AS RECORDED IN PLAT BOOK 6, PAGE 39
SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

NOTES:

SURVEY BASED ON SAID RECORDED PLAT. THE "EROSION CONTROL LINE" (PLAT BOOK 70, PAGE 25), THE "LEE COUNTY COASTAL CONSTRUCTION SETBACK LINE", PREVIOUS SURVEYS DONE BY THIS FIRM, RIGHT-OF-WAY CONTROL SURVEY MAPS OF ESTERO BOULEVARD (PREPARED BY THIS FIRM) DATED APRIL 16, 2010 AND FOUND MONUMENTATION.

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

ELEVATIONS ARE BASED ON N.A.V.D. OF 1988 AND NGS BENCHMARK H-245.

STATE PLANE COORDINATES ARE BASED ON THE NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE AS SHOWN AND NOTED HEREON HOLDING NGS CONTROL POINT "BOOB-2".

BEARINGS ARE BASED ON THE NORTH AMERICAN DATUM (NAD) OF 1983/1990 ADJUSTMENT OR 1927/1979 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE HOLDING NGS CONTROL POINT BOOB-2 TIED TO THE FLORIDA HIGH PRECISION GEODETIC NETWORK.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS—OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

PARCEL LIES IN FLOOD ZONE VE, BASE FLOOD ELEVATION OF 14'16", 17, AND 20'(N.A.V.D. 1988) AS SHOWN HEREON. THIS INFORMATION TAKEN FROM FLOOD INSURANCE RATE MAP 12071C0568F, COMMUNITY NAME: TOWN OF FORT MYERS BEACH AND COMMUNITY NUMBER: 120673, EFFECTIVE AND INDEX DATE 8-28-2008.

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

IRON RODS "SET" ARE 5/8" X 18" REBAR WITH YELLOW CAP BEARING CORPORATION NO. LB8267.

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

WETLANDS, IF ANY, WERE NOT LOCATED.

ROOF OVERHANGS NOT SHOWN UNLESS NOTED OTHERWISE.

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

THE MEAN HIGH WATER ELEVATION OF 0.27' (1988 DATUM) WAS EXTENDED FROM DEP TIDE INTERPOLATION POINT IDENTIFICATION 100229 AND IS SHOWN FOR REFERENCE ONLY.

THE LEE COUNTY COASTAL CONSTRUCTION SETBACK LINE AS SHOWN ON MAPS PREPARED FOR STATE OF FLORIDA DEPARTMENT OF NATURAL RESOURCES FILE NUMBER 617-0275 DATED MARCH 1978 IS RECORDED IN PLAT BOOK 31 AT PAGES 1-16.

PARCEL CONTAINS:
0.14 ACRES (6,300 SQUARE FEET) AS PLATTED AT 45°X140'
0.15 ACRES (6,455 SQUARE FEET) AS SURVEYED TO PLATTED LOT LINES
0.07 ACRES (3,122 SQUARE FEET) AS SURVEYED TO CCSB LINE

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

THIS SITE LIES SEAWARD OF THE COASTAL CONSTRUCTION CONTROL LINE (1991 LINE). THE DEP GENERAL PERMIT LINE IS SHOWN IN AN APPROXIMATE LOCATION.

STRAP NUMBER: 33-46-24-W1-00206.0280
ADDRESS: 5236 ESTERO BLVD, FORT MYERS, FL 33931

DATE OF LAST FIELD WORK: 12-12-2018.

SPECIAL NOTE:

RECENT TITLE RESEARCH SHOULD BE PROVIDED TO SHOW CURRENT STATUS OF EASEMENTS ACROSS THIS SITE. THE EASEMENTS SHOWN WERE OBTAINED FROM THIS FIRMS FILES. THEY MAY NOT BE COMPLETE OR CURRENT.

*NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

FOR THE FIRM

SCOTT D. WHITAKER, P.E., NO. 154324
PROFESSIONAL SURVEYOR & MAPPER
STATE OF FLORIDA
— THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON.
— IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES.
— THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.

LOT 28, BLOCK 6, GULF HEIGHTS

BWLK **CESinc**
A Division of
Engineers • Environmental Scientists • Surveyors
13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919 PH (239) 481-1331

SR45370.DWG	DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
	12-12-18	45370	BTB	1" = 20'	1 OF 1	33-46-24

LOT 28, BLOCK 6, GULF HEIGHTS (P.B. 6 PG. 39)

TOWNSHIP 46 SOUTH, RANGE 24 EAST

SECTION 28

SECTION 33

ESTERO ROAD

ESTERO BAY

GULF OF MEXICO

SUBJECT PROPERTY

SECTION 34

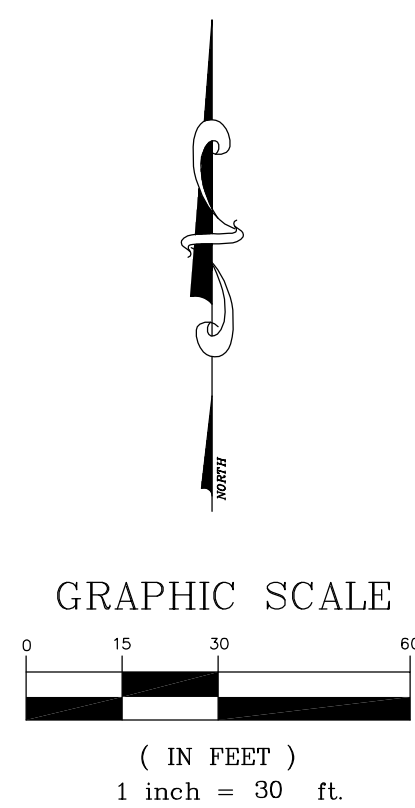
TOWNSHIP 46 SOUTH RANGE 24 EAST

TOWNSHIP 47 SOUTH RANGE 24 EAST

SECTION 35

LOCATION MAP

NOT TO SCALE



- ▲ = FOUND FLORIDA DEPARTMENT OF NATURAL RESOURCES BRASS DISK
- ▲ = BENCHMARK, SET PK NAIL AND DISK - "CHW LB 5075" UNLESS OTHERWISE NOTED
- = SET 5/8" REBAR AND CAP - "CHW LB 5075"
- ▲ = FOUND PK NAIL AND DISK - "ASAP LB 8355"
- ⊗ = FOUND 5/8" REBAR AND CAP - "WITNESS CORNER LB 4919"
- = FOUND 5/8" REBAR - NO IDENTIFICATION
- = FOUND 5/8" REBAR AND CAP - "LB 642"
- = FOUND 4" X 4" CONCRETE MONUMENT
- (C) = CALCULATED DATA
- (M) = FIELD MEASURED DATA
- (P) = RECORD PLAT DATA
- (R) = RIGHT-OF-WAY CONTROL SURVEY MAP
- OF ESTERO BOULEVARD COUNTY ROAD 865, SHEET 19
- PREPARED BY: DEAN WHITMORE, LUTZ & KAREN, INC. (LB 4919)
- M.B. = MISCELLANEOUS BOOK
- D.B. = DEED BOOK
- O.R. = OFFICIAL RECORDS
- ± = SPOT ELEVATION, NAVD 1988
- ① = WATER METER
- ② = WATER VALVE
- = CONCRETE UTILITY POLE
- = SANITARY SEWER CLEAN-OUT
- = SANITARY SEWER MANHOLE
- ③ = STORM SEWER MANHOLE
- ④ = CATCH BASIN WITH GRATE INLET
- ⑤ = ELECTRIC BOX
- ← = GUY ANCHOR
- ⑥ = WOOD UTILITY POLE
- ⑦ = TELEPHONE PEDESTAL
- ⑧ = HAND HOLE
- ⑨ = COCONUT PALM

[illegible]

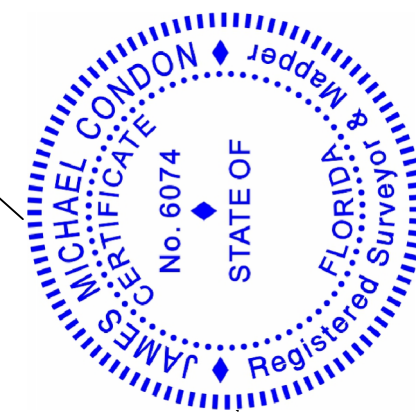
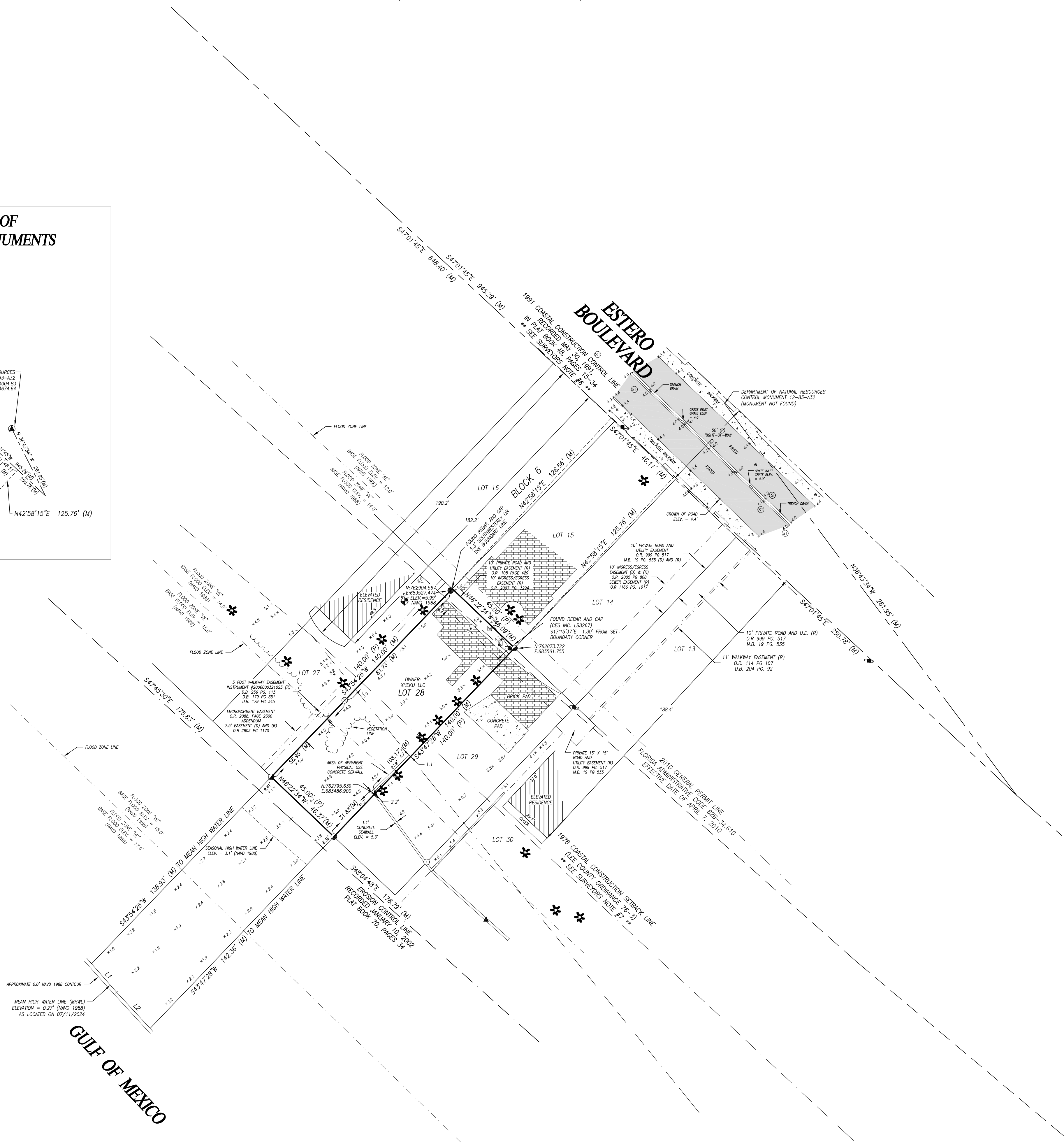
LINE TABLE		
LINE	BEARING (M)	DISTANCE (M)
L1	S41°22'10"E	20.26'
L2	S42°47'05"E	26.52'

1. BEARINGS SHOWN HEREON ARE GRID BEARINGS BASED UPON THE NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT (NAD83/90) FLORIDA WEST ZONE. DISTANCES SHOWN ARE GROUND DISTANCES MEASURED IN FEET. COORDINATES SHOWN ARE GRID COORDINATES. DATUM BASED UPON DEPARTMENT OF NATURAL RESOURCES CONTROL MONUMENTS 12-83-A31 AND 12-83-A32 HAVING NAD83/90 GRID COORDINATES AS SHOWN.
2. NO UNDERGROUND IMPROVEMENTS OR FOUNDATIONS WERE LOCATED UNDER THE SCOPE OF THIS SURVEY.
3. ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988). ELEVATIONS ARE BASED UPON TIES TO THE FLORIDA DEPARTMENT OF TRANSPORTATION PERMANENT REFERENCE NETWORK REAL-TIME KINEMATIC (RTK) GLOBAL POSITIONING SYSTEM (GPS) CONTROL NETWORK.
4. THIS PARCEL LIES IN FLOOD ZONES AS SHOWN BASED ON FEMA FLOOD INSURANCE RATE MAP PANEL 12071C0566Q, DATED NOVEMBER 17, 2022. FLOOD ZONE LINES SHOWN HEREON WERE SCALED FROM THE INDICATED F.I.R.M. MAP PANEL.
5. BOUNDARY INFORMATION SHOWN HEREON IS BASED UPON THE RECORD PLAT RIGHT-OF-WAY CONTROL SURVEY MAP OF ESTERO BOULEVARD COUNTY ROAD 86, SHEET 20 AND LEGAL DESCRIPTION PROVIDED. NO SEARCH OF THE PUBLIC RECORD WAS PERFORMED BY THIS SURVEYOR. THERE MAY BE OTHER SETBACKS AND/OR EASEMENTS NOT KNOWN TO THIS SURVEYOR.
6. THE 1991 COASTAL CONSTRUCTION CONTROL LINE SHOWN HEREON IS AS RECORDED IN PLAT BOOK 48, PAGES 15 THROUGH 34, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.
7. THE 1978 COASTAL CONSTRUCTION SETBACK LINE SHOWN HEREON IS AS SHOWN ON EXHIBIT "A" OF LEE COUNTY ORDINANCE 76-3, AS RECORDED ON FEBRUARY 19, 1976, IN THE PUBLIC RECORDS OF LEE COUNTY.
8. THE STREET ADDRESS IS:
5236 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931
9. THIS PARCEL CONTAINS 0.149 ACRE OR .6472 SQ. FT., MORE OR LESS.
10. MEAN HIGH WATER ELEVATION OF 0.27' (NAVD 1988) IS BASED ON A DETERMINATION BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION BY AN EXTENSION OF TIDE INTERPOLATION POINT NUMBER 100229.
11. THIS TIDAL WATER SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES.

LOT 28, BLOCK 6, GULF HEIGHTS, A SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED AT PLAT BOOK 6, PAGE 39, IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

TOGETHER WITH AN EASEMENT ADDRESSING ENCRUMPTION OF THE DWELLING SITUATED ON THE ABOVE DESCRIBED PARCEL, UPON ABUTTING REAL ESTATE (BEING LOT 27, BLOCK 6 OF SAID SUBDIVISION), AS MORE PARTICULARLY DESCRIBED IN EASEMENT RECORDED IN OFFICIAL RECORD BOOK 2088, PAGE 2300 AND ADDENDUM TO EASEMENT AGREEMENT RECORDED IN OFFICIAL RECORDS BOOK 2603, PAGE 1170, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

TOGETHER WITH A NON-EXCLUSIVE ACROSS EASEMENT FOR INGRESS AND EGRESS AND DEDICATION OF PRIVATE ROAD AND ACROSS THE NORTH 10 FEET OF LOTS 29, 30, AND THE WEST 10 FEET OF LOT 13, BLOCK 6, GULF HEIGHTS, A SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, PAGE 39, AND AS SET FORTH IN WILMINGTON, BOOK 19, PAGE 100, PUBLIC RECORDS OF LEE COUNTY, FLORIDA TO REACH ESTERO BOULEVARD, 5/4 ACROSS A SUBSETA STREET AND A NON-EXCLUSIVE ACROSS EASEMENT FOR INGRESS AND EGRESS RECORDED IN OFFICIAL RECORDS BOOK 2005, PAGE 806, AND OFFICIAL RECORDS BOOK 2006, PAGE 808, OVER THE SOUTHERLY 10 FEET OF LOT 14, BLOCK 6, GULF HEIGHTS, A SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, PAGE 39, LYING ADJACENT TO AND PARALLEL WITH DRIVEWAY AND WALKWAY EASEMENT IMPRESSED UPON NORTHWESTERLY 10 FEET OF SAID LOT 13, BLOCK 6, GULF HEIGHTS, A SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, PAGE 39, AND AS SET FORTH IN WILMINGTON, BOOK 19, PAGE 100, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.



CERTIFIED TO:
XHEKU LLC

ntlinks Drive, Units 5-6
Fort Myers FL 33913
(239) 352-6085
www.chw-inc.com

CH2X
AN NIVIS COMPANY

COMPUTER FILE: 24-0388	DRAWING SCALE: 1" = 30'
SURVEY DATE: 07/11/2024	REVISION DATE:
SIGNATURE DATE: 09/24/2024	REvised BY:

JAMES M. CONDON, PSM
James M. Condon
Professional Surveyor & Mapper Fla. License No. 6074

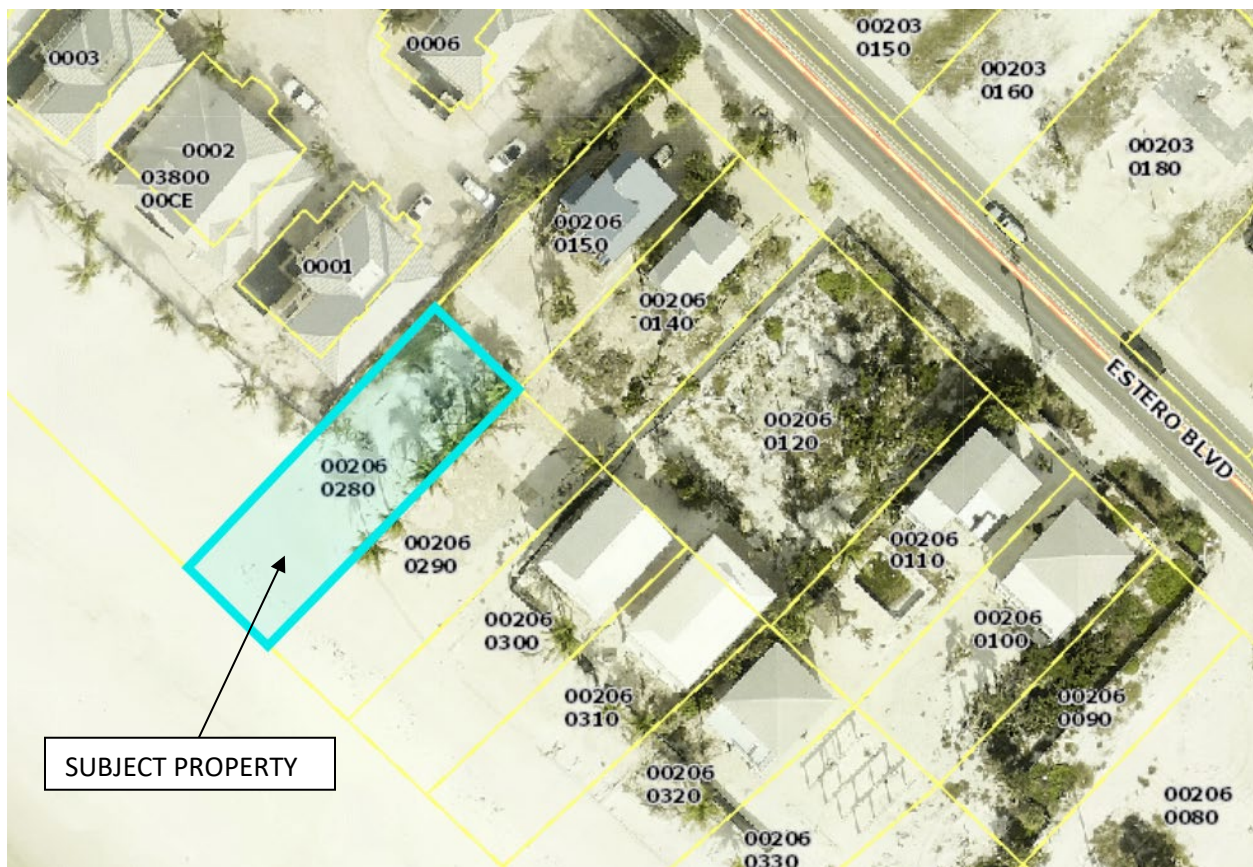
This map prepared by:
 CERTIFICATE OF AUTHORIZATION NO. LB 5075
 NOT VALID WITHOUT THE SIGNATURE
 AND SEAL OF A FLORIDA
 LICENSED SURVEYOR AND MAPPER



THE NEIGHBORHOOD COMPANY

**5236 Estero Boulevard
Variance Request**

AREA LOCATION MAP



SUBJECT PROPERTY

List Size: 114

OwnerName	MailAddress	MailCity	MailState	MailZip	MailCountry
XHEKU LLC	525 RIDGE DR	NAPLES	FL	34108	
PG INVESTMENTS LLC	44345 PREMIER PLZ STE 120	ASHBURN	VA	20147	
DOU SHUI YING TR	27700 KINGS KEW	BONITA SPRINGS	FL	34134	
SEBASTIAN NANCY E +	8801 STONEBROOK LN	COLUMBIA	MD	21046	
MAES THOMAS ALBERT &	5177 ESTERO BLVD	FORT MYERS BEACH	FL	33931	
FARRIS MAUREEN	5195 ESTERO BLVD	FORT MYERS BEACH	FL	33931	
BETTY M CORNELL TRUST	130 WINDOVER TURN	LANCASTER	PA	17601	
DONOVAN CHRISTOPHER R SR +	8 VINLAND DR	SOUTH DENNIS	MA	02660	
ROBERT L SOWINSKI TRUST +	13675 PARK CIRCLE NORTH	ELM GROVE	WI	53122	
FUCHS JANET M TR	5225 AVENIDA PESCADORA	FORT MYERS BEACH	FL	33931	
CRONE K R +	2165 ITABASHI WAY #55	BURLINGTON	ON	L7M 0A2	CANADA
HOLIDAY HEIGHTS HOMEOWNERS ASS	WILLIAMS DR	FORT MYERS BEACH	FL	33931	
SMUGGLERS COVE CONDO ASSOCIATION	5100 ESTERO BLVD	FORT MYERS BEACH	FL	33931	
EISSLER WALTER G III TR	9956 ST MORITZ DRIVE	MIROMAR LAKES	FL	33913	
BURDETTE BETSY LEE & BILL	4931 SHADY RIVER LN	FORT MYERS	FL	33905	
TOBECKN LLC	566 STATE ST	RACINE	WI	53402	
BURDETTE BILL & BETSY L	4931 SHADY RIVER LN	FORT MYERS	FL	33905	
BURDETTE BILL & BETSY	4931 SHADY RIVER LN	FORT MYERS	FL	33905	
TUCKER ALAN B & HERTA TR	28 TAFT RD	PORTSMOUTH	NH	03801	
WALKER LARRY O & HOLLY L	18075 SHADBROOK ST	NORTHVILLE	MI	48168	
TESKE JUSTIN T & JESSICA L	5331 CONGO CT	CAPE CORAL	FL	33904	
FLORIDA VACATION RENTALS LLC	4717 RIVERVIEW BLVD	BRADENTON	FL	34209	
MCCARTY HAROLD & DORIS D	1052 ANDOVER FOREST DR	LEXINGTON	KY	40509	
HESTER BENJAMIN I TR	7263 STATE ROUTE 134	MARTINSVILLE	OH	45146	
SERENDIPITY FMB LLC	38 BLAIRMoor CT	GROSSE POINTE SHORES	MI	48236	
FLIP PROPERTIES GROUP LLC	4200 CANTERA DR STE 208	WARRENVILLE	IL	60555	
JANSSEN INVESTMENTS INC	9321 178TH ST W	LAKEVILLE	MN	55044	
ICEHOUSE VACATION RENTALS LLC	27028 CASCADE CT	OLMSTED FALLS	OH	44138	
DEVARONA EDWARD & LINDA +	1180 NW 185TH TER	PEMBROKE PINES	FL	33029	
ZIEGLER PAUL T &	3598 HEMPSTEAD ST	SAINT CHARLES	MO	63301	
CRANE WILLIAM G & KATHRYN L	727 W WEYMOUTH RD	VINELAND	NJ	08360	
AIZHU REAL ESTATE AND ART LLC	3312 AUGUSTA LN	ONALASKA	WI	54650	
MAPLE GROVE 89TH PROPERTY LLC	7211 WINNETKA AVE N	BROOKLYN PARK	MN	55428	
SUGAR BEACH ESTATES LP	3410 S SERVICE RD STE G5	BURLINGTON	ON	L7N 3T2	CANADA
SUGAR BEACH ESTATES LP	3410 S SERVICE RD STE G5	BURLINGTON	ON	L7N 3T2	CANADA
SUGAR SHACK US	3410 S SERVICE RD STE G5	BURLINGTON	ON	L7N 3T2	CANADA
ROIG ALDIS TR	1113 TANGIER ST	CORAL GABLES	FL	33134	
DOERING PAUL K L/E	318 4TH ST NE	MASSILLON	OH	44646	
WEITZ BEN-ZION BRADLEY &	643 PALM DR	HALLANDALE BEACH	FL	33009	
MELLOW YELLOW BEACH LP	3410 S SERVICE RD STE G5	BURLINGTON	ON	L7N 3T2	CANADA
PINK FLAMINGO	3410 S SERVICE RD STE G5	BURLINGTON	ON	L7N 3T2	CANADA
SUGAR BEACH ESTATES LP	3410 S SERVICE ROAD STE 201	BURLINGTON	ON	L7N 3T2	CANADA
SUGAR BEACH ESTATES US LP	3410 S SERVICE RD STE 201	BURLINGTON	ON	L7N 3T2	CANADA
SUGAR BEACH ESTATES LP	3410 S SERVICE RD STE G5	BURLINGTON	ON	L7N 3T2	CANADA
SCHLEESE JOACHIM E TR	82 DERBY CT	NEWMARKET	ON	L3Y 5Z9	CANADA
BAHAMA BEACH CLUB CONDO ASSOC INC	5370 ESTERO BLVD	FORT MYERS BEACH	FL	33931	
TURTLE WALK OF FORT MYERS BEAC					
RODEN BRADLEY D & MARY KAY	121 N 59TH ST	SUPERIOR	WI	54880	
MORGAN WALTER J JR L/E	2685 STAR AVE	NILES	MI	49120	
GARCIA DANIEL & HELEN	5237 SOUTH NEWCASTLE	CHICAGO	IL	60638	
LOWELL REBECA & VICTOR	10321 SW 82ND CT	MIAMI	FL	33156	
SCHLETZ STEVE F & REBECCA J	1848 SUMMIT LN	MENDOTA HEIGHTS	MN	55118	

WEIDIG BRETT T &	11030 EDEN PARK DR	CHARDON	OH	44024
L + R LLC, ROBERTS PAULSON	5868 N PINE LAKE RD	DULUTH	MN	55811
DAYUS SHERYL	12942 RIVERSIDE DR E	TECUMSEH	ON	N8N 1A8 CANADA
BRECHA DIANE +	87 JOHN CT	DANVILLE	IN	46122
FILIAK DONALD G & ELAINE TR	12250 WOODCREST	TAYLOR	MI	48180
PENA PERALTA YAZMIN &	1599 EASTLAKE WAY	WESTON	FL	33326
LIBERATORE MANAGEMENT GROUP II	3984 BURKE PKWY	BLASDELL	NY	14219
DIEMER CHARLES A & JUDY A	128 KING EIDER CT	DAYTONA BEACH	FL	32119
WHAT ME WORRY LLC	5950 N NAVARRE AVE	CHICAGO	IL	60631
D & S INVESTMENTS	4890 SOUTH HWY 45	OSHKOSH	WI	54902
SCHNABEL GAIL E TR	4216 DEER RUN CT	MAUMEE	OH	43537
ESSMRS LLC	4640 DUCKHORN LN	LAFAYETTE	IN	47909
PAYNE THOMAS E & JANE B	33 MOUNTAINEER DR	MURPHY	NC	28906
SJG CONDO LLC	3927 STATE ROUTE 4	HUDSON FALLS	NY	12839
HAHN ARTHUR A	9708 UTICA RD S	BLOOMINGTON	MN	55437
AHEARN ELISE M	19 MAYAPPLE RD	WILTON	CT	06897
BRUEWER GERTRUD A	2139 CLIFF RD	NORTH BEND	OH	45052
ORANGE VIKING LLC	4948 RUSTIC OAKS CIR	NAPLES	FL	34105
WALLRAB WILLIAM F TR	2920 KNOLLCREST DR	BURLINGTON	WI	53105
AGNON HOLDING LLC	6755 WILLOW LAKE CIR	FORT MYERS	FL	33966
MOST STEVE	3900 GALT OCEAN DR APT 1602	FORT LAUDERDALE	FL	33308
OSUCHOWSKI LAURIE TR	7 SERENITY LN	MEREDITH	NH	03253
YOUNG LYNDIA TR	9284 TRIESTE DR	FORT MYERS	FL	33913
GAIL E SCHNABEL TRUST +	4216 DEER RUN CT	MAUMEE	OH	43537
RTTB PROPERTIES LLC	1013 SW 167TH AVE	PEMBROKE PINES	FL	33027
LAM THI THU HANG +	3308 PACIFIC DR	NAPLES	FL	34119
ROBISON WILLIAM L	10555 WEST BERRY DR	LITTLETON	CO	80127
SMUGGLERS COVE 5B5 LLC	8135 CHERRY LAUREL DR	LIBERTY TOWNSHIP	OH	45044
HUGHES FLORIDA PROPERTY TRUST	19815 GOVERNORS HWY STE#11	FLOSSMOOR	IL	60422
MASSOUD MICHELE TR	6652 MAPLE LAKES	WEST BLOOMFIELD	MI	48322
AHEARN FRANCIS E TR & ELISE AHEARN	19 MAYAPPLE RD	WILTON	CT	06897
MANDOLINI LORRAINE V TR	6597 NICHOLAS BLVD # 1101	NAPLES	FL	34108
SACCO CARMINE	4591 BAY BEACH LN #191	FORT MYERS BEACH	FL	33931
COAN JOSEPH TR	135 BEAUCHAMP DR	SAUNDERSTOWN	RI	02874
HEHR JOSEPH T & JOY S L/E	116 OAKLEY MEADOW LANE	TIFFIN	OH	44883
RICHARD D MASON TRUST +	1 LAKEVIEW TER BLVD	WACONIA	MN	55387
MOST STEPHEN	3900 GALT OCEAN DR APT 1602	FORT LAUDERDALE	FL	33308
HELMS CHARLES KYLE &	11 SHAMROCK DR	CLARKSVILLE	AR	72830
BARRETT JOY J	5 ELLIOT STREET	NASHUA	NH	03064
RYAN TIMOTHY H +	4200 CANTERA DR STE 208	WARRENVILLE	IL	60555
STASZAK RONALD JAMES JR	38567 THORNWOOD DR	HARRISON TOWNSHIP	MI	48045
JONES CYNTHIA J	4624 W DAVID ALAN CT	BLOOMINGTON	IN	47404
LEDEA PHILIP A & ZOILA M	5370 ESTERO BLVD #6	FORT MYERS BEACH	FL	33931
BOLINE 1150E LLC	8825 FLINT WAY	PARK CITY	UT	84098
FBF REALTY TRUST	6442 OAK COVE CT	ORANGEVALE	CA	95662
MATTHEWS DONALD G & VELMA J	222 RIVERFRONT ST	OAKMONT	PA	15139
MATTHEWS DONALD G & VELMA J	222 RIVERFRONT ST	OAKMONT	PA	15139
VAN DOREN JOHN & HEIDI	1888 EL PASO AVE	CLOVIS	CA	93611
CORMIER MICHEL ANDRE &	6341 YORK ST	HALIFAX	NS	B3H 2K6 CANADA
TOMLINSON PETER &	310 GLEN MANOR DR W	TORONTO	ON	M4E 2X7 CANADA
HART WILLIAM A & KAREN S	249 CEDAR HILL DR	WAVERLY	OH	45690
BEACH BUDDIES LLC	10384 GARDENER AVE	SPARTA	WI	54656
JACOBS ROBERT A &	377 ARTHUR AVE	HOLLAND	MI	49424
SEACHRIST LORRAINE	8031 CORNING RD	ZIONSVILLE	PA	18092

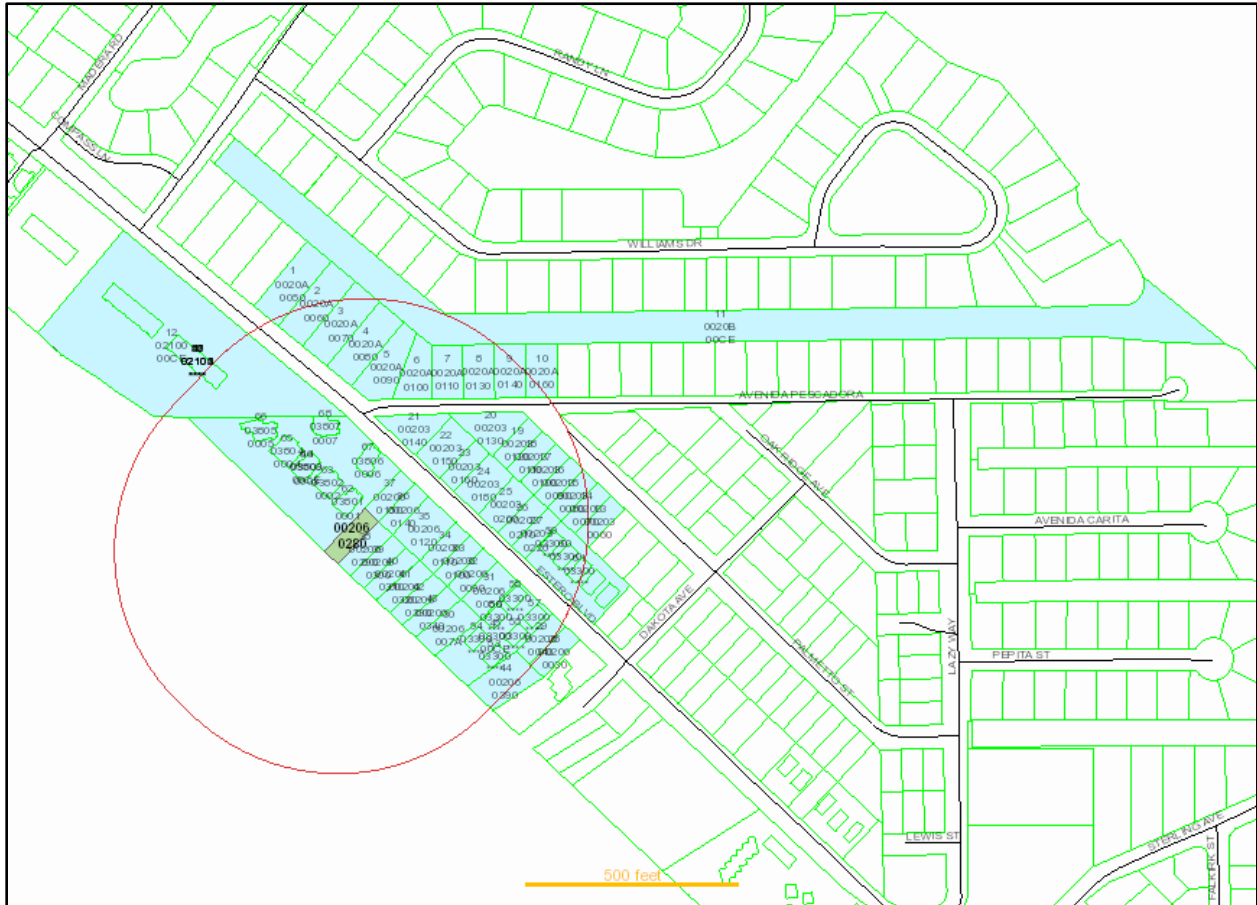
COMPAGNER TERRY L & LORI A	663 MARLYN DR	ZEELAND	MI	49464
TREGUNNO DARLENE	12511 VITTORIA WAY	FORT MYERS	FL	33912
GARY L DAVIS TRUST +	1000 TIMBERLINE DR	TRENTON	IL	62293
SZUBA SUSAN MCCRAITH TR	7255 NORTON AVE	CLINTON	NY	13323
HUFFMASTER KIMBER L TR	9755 PINE KNOB ROAD	CLARKSTON	MI	48348
WEBER ROBERT F JR &	5748 NICKLAUS DR	FORT COLLINS	CO	80528
ELLIOTT KEVIN A TR	PO BOX 188	WEST BRANCH	MI	48661
KISTER NANCY F TR	1444 MORTON DR	ASHTABULA	OH	44004



THE NEIGHBORHOOD COMPANY

**5236 Estero Boulevard
Variance Request**

SURROUNDING PROPERTY OWNERS MAP



PG INVESTMENTS LLC
44345 PREMIER PLZ STE 120
ASHBURN VA 20147

DOU SHUI YING TR
27700 KINGS KEW
BONITA SPRINGS FL 34134

SEBASTIAN NANCY E +
8801 STONEBROOK LN
COLUMBIA MD 21046

MAES THOMAS ALBERT &
5177 ESTERO BLVD
FORT MYERS BEACH FL 33931

FARRIS MAUREEN
5195 ESTERO BLVD
FORT MYERS BEACH FL 33931

BETTY M CORNELL TRUST
130 WINDOVER TURN
LANCASTER PA 17601

DONOVAN CHRISTOPHER R SR +
8 VINLAND DR
SOUTH DENNIS MA 02660

ROBERT L SOWINSKI TRUST +
13675 PARK CIRCLE NORTH
ELM GROVE WI 53122

FUCHS JANET M TR
5225 AVENIDA PESCADORA
FORT MYERS BEACH FL 33931

CRONE K R +
2165 ITABASHI WAY #55
BURLINGTON ON L7M 0A2
CANADA

HOLIDAY HEIGHTS HOMEOWNERS ASS
WILLIAMS DR
FORT MYERS BEACH FL 33931

SMUGGLERS COVE CONDO
ASSOCIATION
5100 ESTERO BLVD
FORT MYERS BEACH FL 33931

EISSLER WALTER G III TR
9956 ST MORITZ DRIVE
MIROMAR LAKES FL 33913

BURDETTE BETSY LEE & BILL
4931 SHADY RIVER LN
FORT MYERS FL 33905

TOBECKN LLC
566 STATE ST
RACINE WI 53402

BURDETTE BILL & BETSY L
4931 SHADY RIVER LN
FORT MYERS FL 33905

BURDETTE BILL & BETSY
4931 SHADY RIVER LN
FORT MYERS FL 33905

TUCKER ALAN B & HERTA TR
28 TAFT RD
PORTSMOUTH NH 03801

WALKER LARRY O & HOLLY L
18075 SHADBROOK ST
NORTHVILLE MI 48168

TESKE JUSTIN T & JESSICA L
5331 CONGO CT
CAPE CORAL FL 33904

FLORIDA VACATION RENTALS LLC
4717 RIVERVIEW BLVD
BRADENTON FL 34209

MCCARTY HAROLD & DORIS D
1052 ANDOVER FOREST DR
LEXINGTON KY 40509

HESTER BENJAMIN I TR
7263 STATE ROUTE 134
MARTINSVILLE OH 45146

SERENDIPITY FMB LLC
38 BLAIRMoor CT
GROSSE POINTE SHORES MI 48236

FLIP PROPERTIES GROUP LLC
4200 CANTERA DR STE 208
WARRENVILLE IL 60555

JANSSEN INVESTMENTS INC
9321 178TH ST W
LAKEVILLE MN 55044

ICEHOUSE VACATION RENTALS LLC
27028 CASCADE CT
OLMSTED FALLS OH 44138

DEVARONA EDWARD & LINDA +
1180 NW 185TH TER
PEMBROKE PINES FL 33029

ZIEGLER PAUL T &
3598 HEMPSTEAD ST
SAINT CHARLES MO 63301

CRANE WILLIAM G & KATHRYN L
727 W WEYMOUTH RD
VINELAND NJ 08360

AIZHU REAL ESTATE AND ART LLC
3312 AUGUSTA LN
ONALASKA WI 54650

MAPLE GROVE 89TH PROPERTY LLC
7211 WINNETKA AVE N
BROOKLYN PARK MN 55428

SUGAR BEACH ESTATES LP
3410 S SERVICE RD STE G5
BURLINGTON ON L7N 3T2
CANADA

SUGAR BEACH ESTATES LP
3410 S SERVICE RD STE G5
BURLINGTON ON L7N 3T2
CANADA

SUGAR SHACK US
3410 S SERVICE RD STE G5
BURLINGTON ON L7N 3T2
CANADA

ROIG ALDIS TR
1113 TANGIER ST
CORAL GABLES FL 33134

DOERING PAUL K L/E
318 4TH ST NE
MASSILLON OH 44646

WEITZ BEN-ZION BRADLEY &
643 PALM DR
HALLANDALE BEACH FL 33009

MELLOW YELLOW BEACH LP
3410 S SERVICE RD STE G5
BURLINGTON ON L7N 3T2
CANADA

PINK FLAMINGO
3410 S SERVICE RD STE G5
BURLINGTON ON L7N 3T2
CANADA

SUGAR BEACH ESTATES LP
3410 S SERVICE ROAD STE 201
BURLINGTON ON L7N 3T2
CANADA

SUGAR BEACH ESTATES US LP
3410 S SERVICE RD STE 201
BURLINGTON ON L7N 3T2
CANADA

SUGAR BEACH ESTATES LP
3410 S SERVICE RD STE G5
BURLINGTON ON L7N 3T2
CANADA

SCHLEESE JOACHIM E TR
82 DERBY CT
NEWMARKET ON L3Y 5Z9
CANADA

BAHAMA BEACH CLUB CONDO
ASSOC INC
5370 ESTERO BLVD
FORT MYERS BEACH FL 33931

TURTLE WALK OF FORT MYERS BEAC

RODEN BRADLEY D & MARY KAY
121 N 59TH ST
SUPERIOR WI 54880

MORGAN WALTER J JR L/E
2685 STAR AVE
NILES MI 49120

GARCIA DANIEL & HELEN
5237 SOUTH NEWCASTLE
CHICAGO IL 60638

LOWELL REBECA & VICTOR
10321 SW 82ND CT
MIAMI FL 33156

SCHLETZ STEVE F & REBECCA J
1848 SUMMIT LN
MENDOTA HEIGHTS MN 55118

WEIDIG BRETT T &
11030 EDEN PARK DR
CHARDON OH 44024

L + R LLC
ROBERT PAULSON
5868 N PINE LAKE RD
DULUTH MN 55811

DAYUS SHERYL
12942 RIVERSIDE DR E
TECUMSEH ON N8N 1A8
CANADA

BRECHA DIANE +
87 JOHN CT
DANVILLE IN 46122

FILIAK DONALD G & ELAINE TR
12250 WOODCREST
TAYLOR MI 48180

PENA PERALTA YAZMIN &
1599 EASTLAKE WAY
WESTON FL 33326

LIBERATORE MANAGEMENT GROUP II
3984 BURKE PKWY
BLASDELL NY 14219

DIEMER CHARLES A & JUDY A
128 KING EIDER CT
DAYTONA BEACH FL 32119

WHAT ME WORRY LLC
5950 N NAVARRE AVE
CHICAGO IL 60631

D & S INVESTMENTS
4890 SOUTH HWY 45
OSHKOSH WI 54902

SCHNABEL GAIL E TR
4216 DEER RUN CT
MAUMEE OH 43537

ESSMRS LLC
4640 DUCKHORN LN
LAFAYETTE IN 47909

PAYNE THOMAS E & JANE B
33 MOUNTAINEER DR
MURPHY NC 28906

SJG CONDO LLC
3927 STATE ROUTE 4
HUDSON FALLS NY 12839

HAHN ARTHUR A
9708 UTICA RD S
BLOOMINGTON MN 55437

AHEARN ELISE M
19 MAYAPPLE RD
WILTON CT 06897

BRUEWER GERTRUD A
2139 CLIFF RD
NORTH BEND OH 45052

ORANGE VIKING LLC
4948 RUSTIC OAKS CIR
NAPLES FL 34105

WALLRAB WILLIAM F TR
2920 KNOLLCREST DR
BURLINGTON WI 53105

AGNON HOLDING LLC
6755 WILLOW LAKE CIR
FORT MYERS FL 33966

MOST STEVE
3900 GALT OCEAN DR APT 1602
FORT LAUDERDALE FL 33308

OSUCHOWSKI LAURIE TR
7 SERENITY LN
MEREDITH NH 03253

YOUNG LYNDA TR
9284 TRIESTE DR
FORT MYERS FL 33913

GAIL E SCHNABEL TRUST +
4216 DEER RUN CT
MAUMEE OH 43537

RTTB PROPERTIES LLC
1013 SW 167TH AVE
PEMBROKE PINES FL 33027

LAM THI THU HANG +
3308 PACIFIC DR
NAPLES FL 34119

ROBISON WILLIAM L
10555 WEST BERRY DR
LITTLETON CO 80127

SMUGGLERS COVE 5B5 LLC
8135 CHERRY LAUREL DR
LIBERTY TOWNSHIP OH 45044

HUGHES FLORIDA PROPERTY TRUST
19815 GOVERNORS HWY STE#11
FLOSSMOOR IL 60422

MASSOUD MICHELE TR
6652 MAPLE LAKES
WEST BLOOMFIELD MI 48322

AHEARN FRANCIS E TR
ELISE AHEARN
19 MAYAPPLE RD
WILTON CT 06897

MANDOLINI LORRAINE V TR
6597 NICHOLAS BLVD # 1101
NAPLES FL 34108

SACCO CARMINE
4591 BAY BEACH LN #191
FORT MYERS BEACH FL 33931

COAN JOSEPH TR
135 BEAUCHAMP DR
SAUNDERSTOWN RI 02874

HEHR JOSEPH T & JOY S L/E
116 OAKLEY MEADOW LANE
TIFFIN OH 44883

RICHARD D MASON TRUST +
1 LAKEVIEW TER BLVD
WACONIA MN 55387

MOST STEPHEN
3900 GALT OCEAN DR APT 1602
FORT LAUDERDALE FL 33308

HELMS CHARLES KYLE &
11 SHAMROCK DR
CLARKSVILLE AR 72830

BARRETT JOY J
5 ELLIOT STREET
NASHUA NH 03064

RYAN TIMOTHY H +
4200 CANTERA DR STE 208
WARRENVILLE IL 60555

STASZAK RONALD JAMES JR
38567 THORNWOOD DR
HARRISON TOWNSHIP MI 48045

JONES CYNTHIA J
4624 W DAVID ALAN CT
BLOOMINGTON IN 47404

LEDEA PHILIP A & ZOILA M
5370 ESTERO BLVD #6
FORT MYERS BEACH FL 33931

BOLINE 1150E LLC
8825 FLINT WAY
PARK CITY UT 84098

FBF REALTY TRUST
6442 OAK COVE CT
ORANGEVALE CA 95662

MATTHEWS DONALD G & VELMA J
222 RIVERFRONT ST
OAKMONT PA 15139

MATTHEWS DONALD G & VELMA J
222 RIVERFRONT ST
OAKMONT PA 15139

VAN DOREN JOHN & HEIDI
1888 EL PASO AVE
CLOVIS CA 93611

CORMIER MICHEL ANDRE &
6341 YORK ST
HALIFAX NS B3H 2K6
CANADA

TOMLINSON PETER &
310 GLEN MANOR DR W
TORONTO ON M4E 2X7
CANADA

HART WILLIAM A & KAREN S
249 CEDAR HILL DR
WAVERLY OH 45690

BEACH BUDDIES LLC
10384 GARDENER AVE
SPARTA WI 54656

JACOBS ROBERT A &
377 ARTHUR AVE
HOLLAND MI 49424

SEACHRIST LORRAINE
8031 CORNING RD
ZIONSVILLE PA 18092

COMPAGNER TERRY L & LORI A
663 MARLYN DR
ZEELAND MI 49464

TREGUNNO DARLENE
12511 VITTORIA WAY
FORT MYERS FL 33912

GARY L DAVIS TRUST +
1000 TIMBERLINE DR
TRENTON IL 62293

SZUBA SUSAN MCCRAITH TR
7255 NORTON AVE
CLINTON NY 13323

HUFFMASTER KIMBER L TR
9755 PINE KNOB ROAD
CLARKSTON MI 48348

WEBER ROBERT F JR &
5748 NICKLAUS DR
FORT COLLINS CO 80528

ELLIOTT KEVIN A TR
PO BOX 188
WEST BRANCH MI 48661

KISTER NANCY F TR
1444 MORTON DR
ASHTABULA OH 44004



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: 5236 Estero Boulevard, Fort Myers Beach, 33931
Authorized Applicant: XHEKU LLC
LeePA STRAP Number: 33-46-24-W1-00206.0280

Current Property Status: Vacant
Current Zoning: Residential Multi-family (RM) & Environmental Critical (EC)
Future Land Use Map (FLUM) Category: Mixed Residential & Recreation
Comp Plan Density: 6 DU/acre & N/A Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
LDC Section 34-638(b)(1)(a)	Building Setbacks for RM Zoning District
LDC Section 34-634	Building Coverage

Complete the narrative statements below for EACH variance requested.



Case # _____ Date Received: _____

PART I
Narrative Statements

Request for variance from 34-638(b)(1)(a) & 34-633 (LDC Section number)

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

Reasons for request

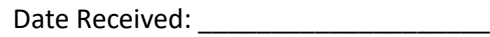
Explain why the variance is needed:
SEE ENCLOSED NARRATIVE

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

SEE ENCLOSED NARRATIVE

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

SEE ENCLOSED NARRATIVE



SEE ENCLOSED NARRATIVE

PART 2

Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://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

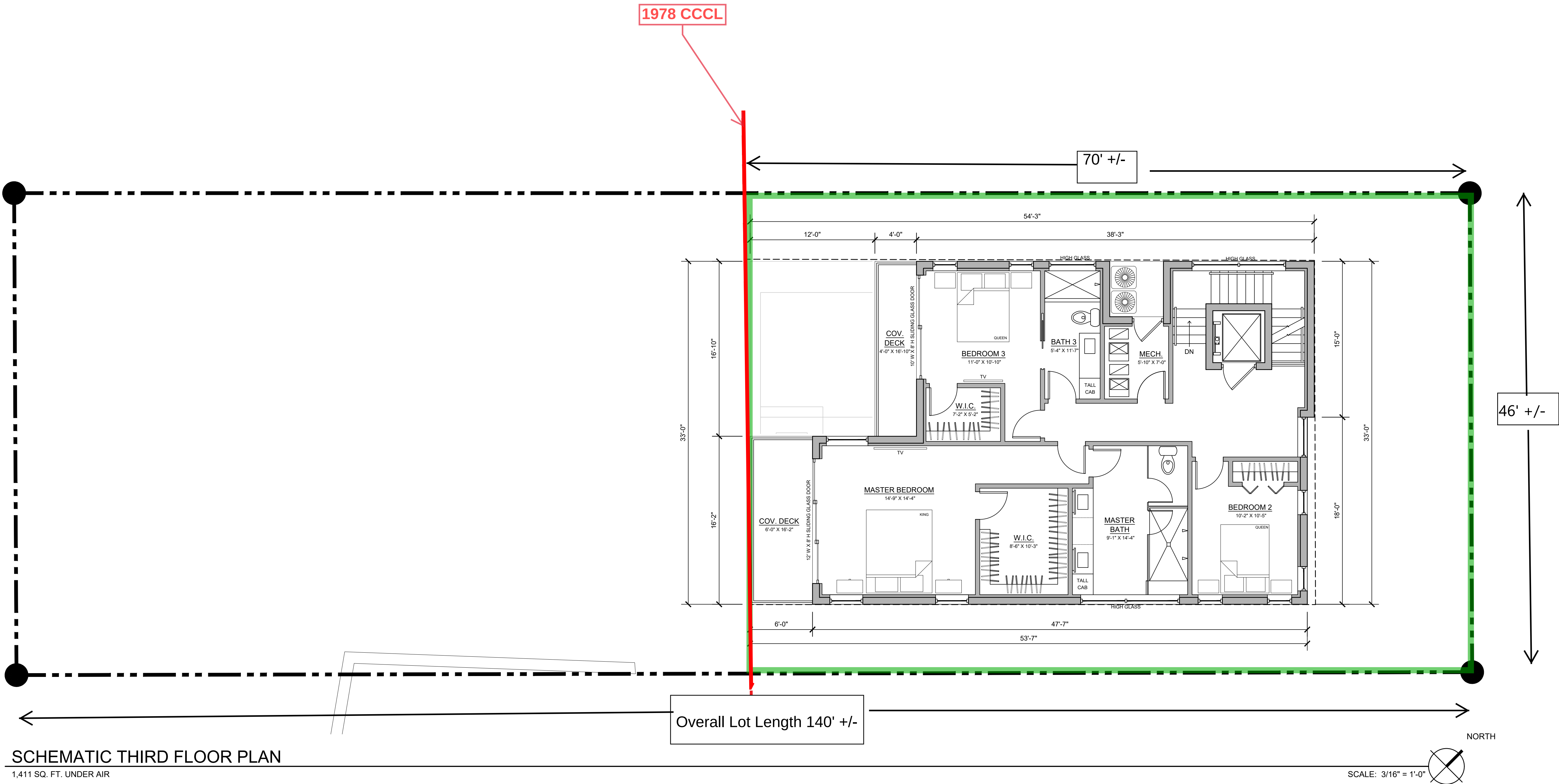
The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

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.

EXHIBIT DEPICTING
SITE PLAN - BUILDABLE AREA



A SCHEMATIC DESIGN FOR:
THE HOBDAIR RESIDENCE

5236 ESTERO BLVD.
FORT MYERS BEACH, FL

CONSULTANT:

ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET

NOT FOR
CONSTRUCTION

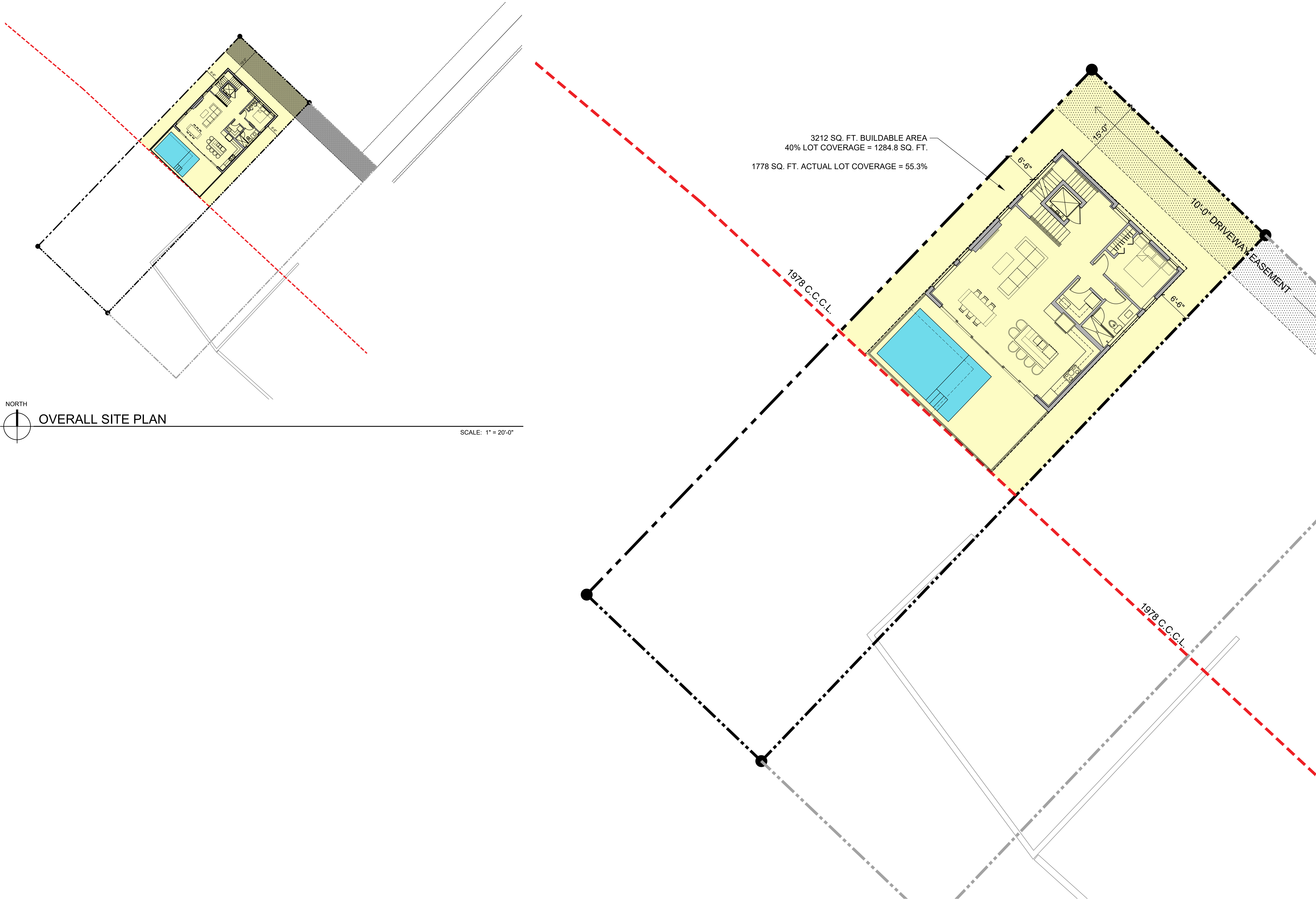
DATE ISSUED: 13 FEB 2025

REVISIONS:

SHEET

D1

OF 3

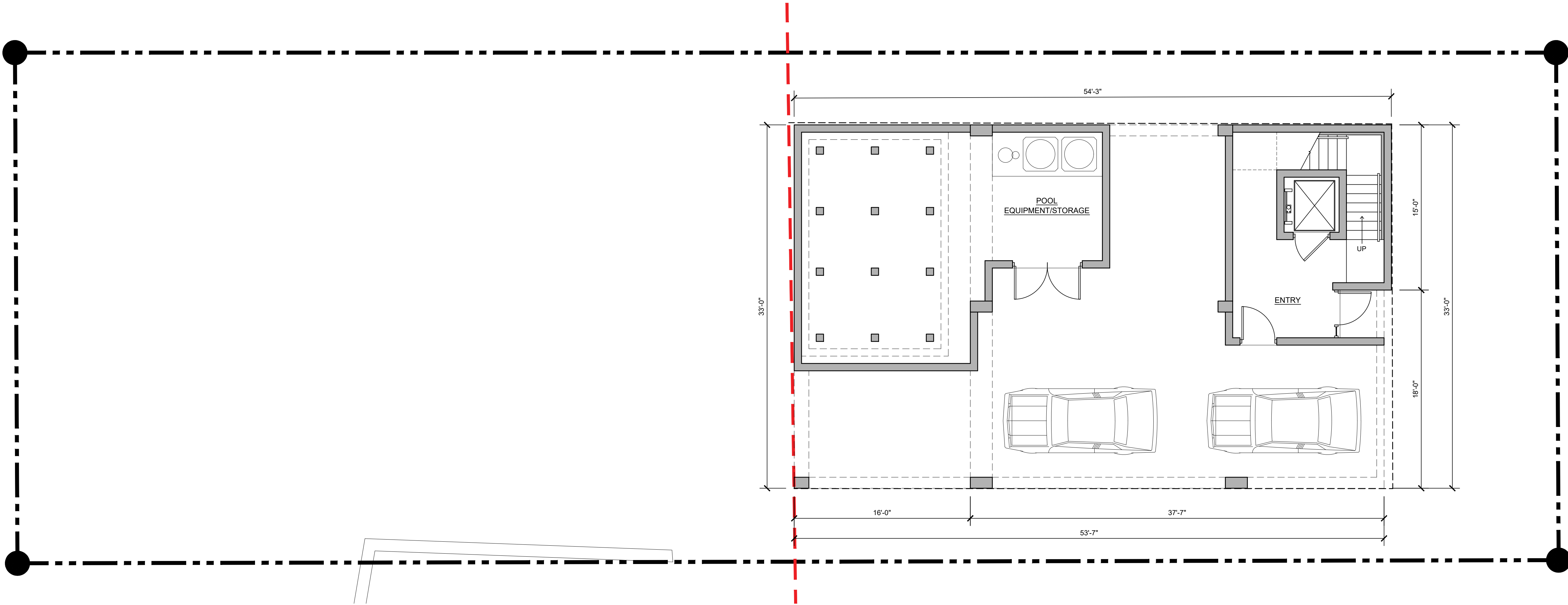


NORTH
OVERALL SITE PLAN

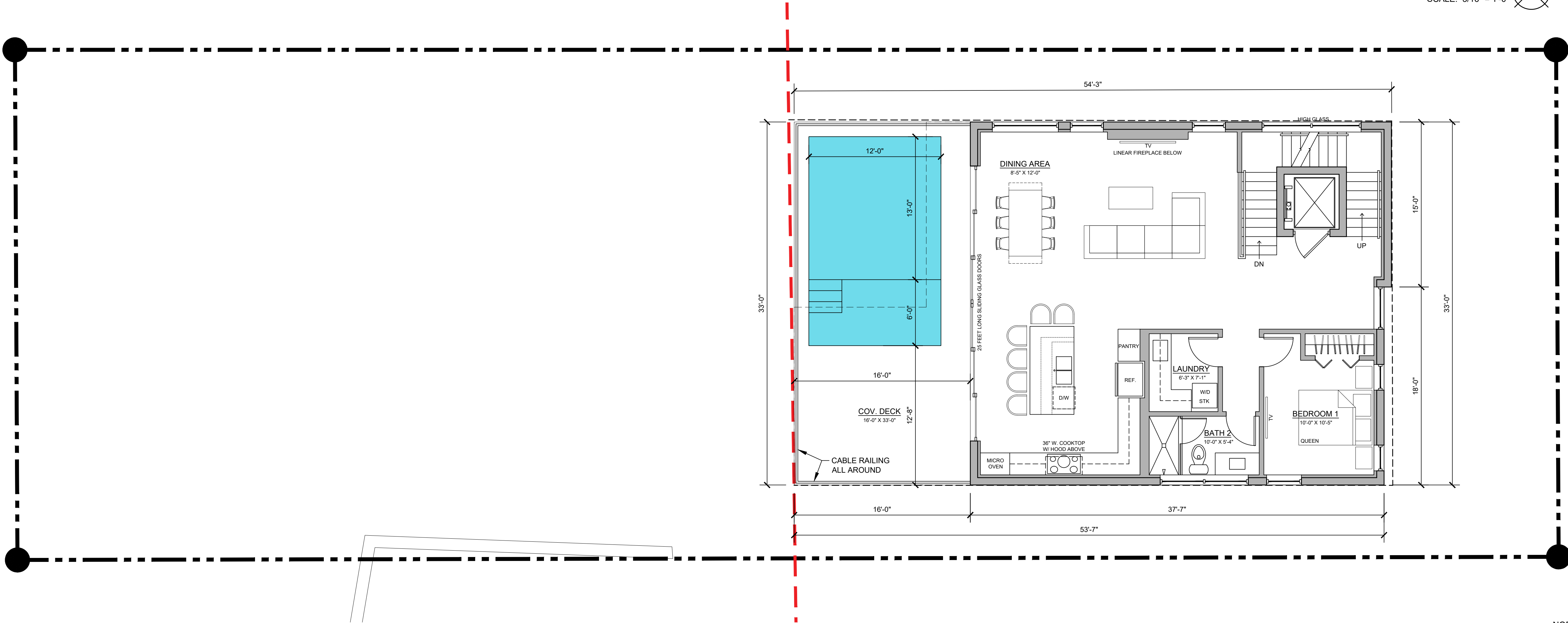
SCALE: 1" = 20'-0"

NORTH
ENLARGED SCHEMATIC SITE PLAN
SECOND FLOOR PLAN SHOWN

SCALE: 1/8" = 1'-0"



SCHEMATIC GROUND FLOOR PLAN



SCHEMATIC SECOND FLOOR PLAN

1,250 SQ. FT. UNDER AIR

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A SCHEMATIC DESIGN FOR:
THE HOBDAIR RESIDENCE

CONSULTANT:

ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET

NOT FOR
CONSTRUCTION

DATE ISSUED: 13 FEB 2025

REVISIONS:

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[illegible]

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QUEST

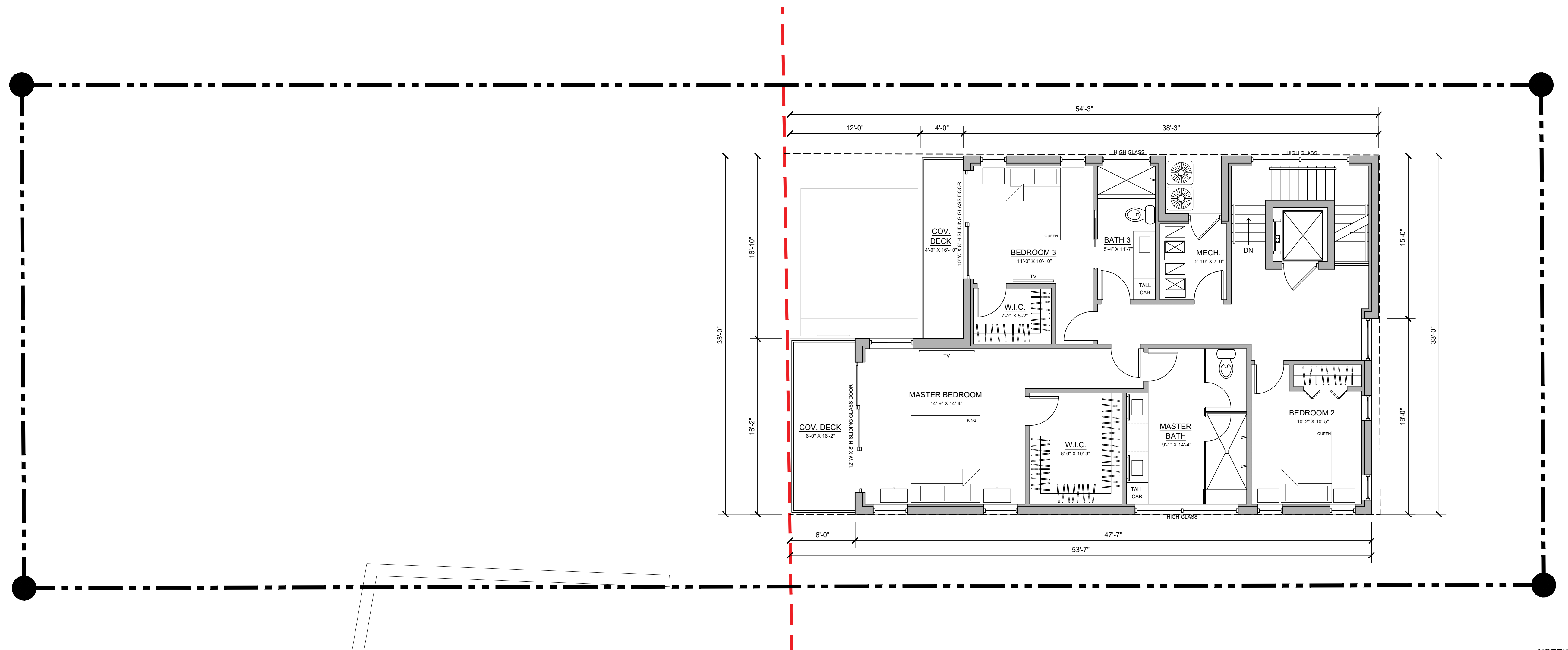
SHEET 1

52

103

19

25



SCHEMATIC THIRD FLOOR PLAN

1,411 SQ. FT. UNDER AIR

NORTH

SCALE: $\frac{3}{16}'' = 1'-0''$

AREA ANALYSIS

FIRST FLOOR GARAGE/ENTRY FOYER FOOTPRINT _____ 1778 S.F.
SECOND FLOOR LIVING AREA (UNDER AIR) _____ 1250 S.F.
THIRD FLOOR LIVING AREA (UNDER AIR) _____ 1420 S.F.

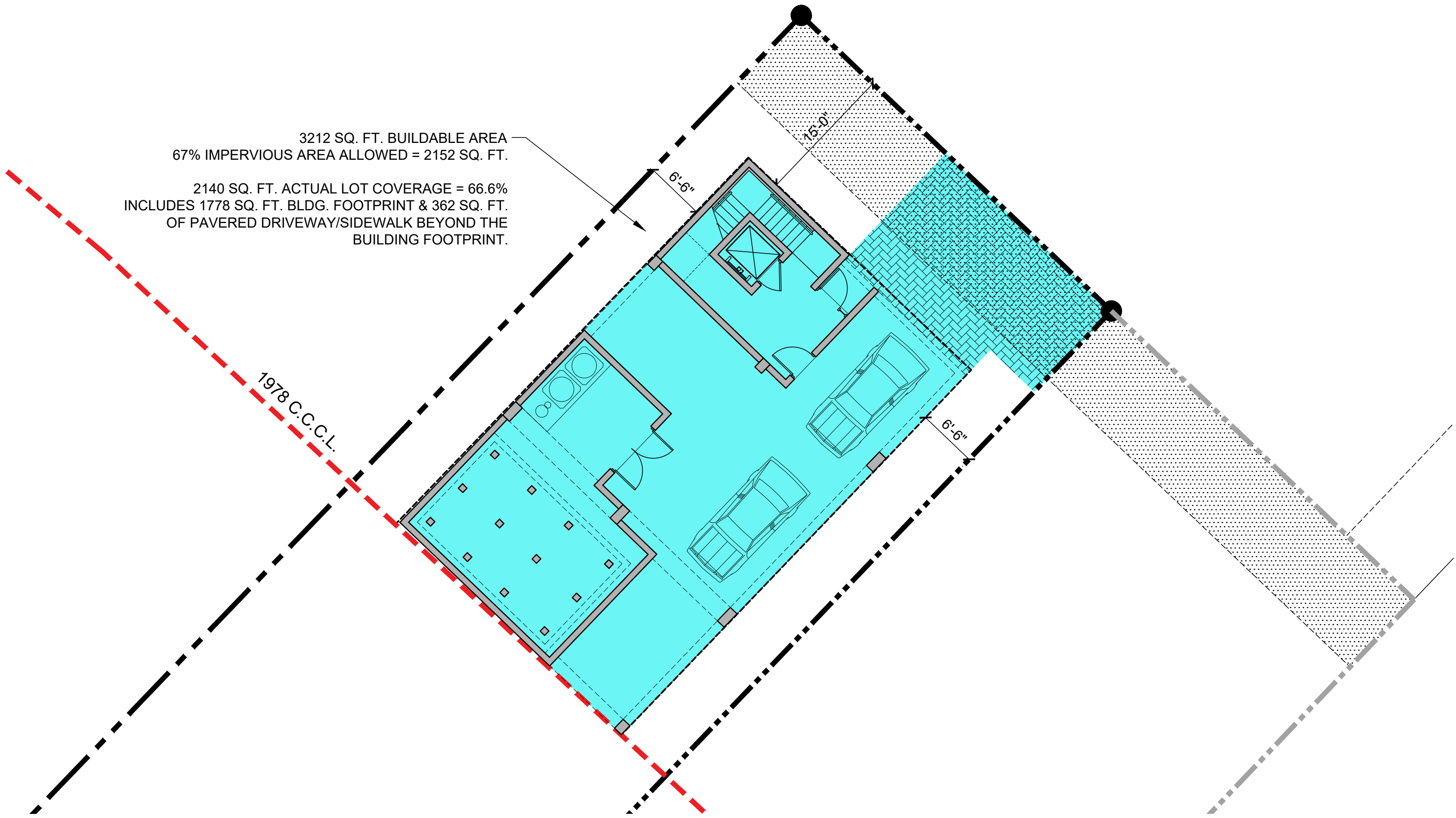
SECOND FLOOR REAR OUTSIDE DECK (INC. POOL) _____ 528 S.F.
THIRD FLOOR REAR OUTSIDE DECK _____ 164 S.F.

TOTAL AREA (UNDER AIR) _____ 2662 S.F.

3212 SQ. FT. BUILDABLE AREA
67% IMPERVIOUS AREA ALLOWED = 2152 SQ. FT.

2140 SQ. FT. ACTUAL LOT COVERAGE = 66.6%
INCLUDES 1778 SQ. FT. BLDG. FOOTPRINT & 362 SQ. FT.
OF PAVED DRIVEWAY/SIDEWALK BEYOND THE
BUILDING FOOTPRINT.

1978 C.C.C.L.



**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2025-521**

1. Request:

Meeting Date: August 12, 2025

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/APPROVING WITH CONDITIONS/DENYING VARIANCE 20250146, REQUESTING A VARIANCES FROM LDC SECTION 34 TABLE 34-3 FOR THE PROPERTY LOCATED AT 452 ESTERO BOULEVARD GENERALLY REFERED TO AS STRAP NUMBER 24-46-23-W1-0060D.025F IN FORT MYERS BEACH, TO VARY 15 FEET FROM REQUIRED 25 FOOT FRONT STREET SETBACK AND 12 FEET FROM THE REQUIRED REAR SETBACK TO BUILD A NEW SINGLE-FAMILY HOME IN THE RM ZONING DISTRICT; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The LPA will make recommendations to the Town Council regarding the variance requests or approve the variance requests unanimously.

What the action accomplishes:

The LPA recommendation will be forwarded on to the Town Council or serve as final agency action id the requests are approved unanimously.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

5. Background:

Applicant requests relief from LDC Section 34 Table 34-3 for setback requirements in the RM zoning district resulting in a 10-foot setback from the front property line where a 25-foot setback is required and a 8-foot setback to the rear property line where a 20-foot setback is required.

Attachments:

1. NS LPA Resolution 25-XX 452 Estero (3)
2. Exhibit A: Site Plan
3. LPA Staff report
4. Survey
5. Elevations
6. Application
7. Applicant's Narrative

Financial Impact:

Unknown

6. Alternative Action

Approve/Deny

7. Staff Recommendations:

Approval with conditions

8. Recommended Approval:

Judith Frankel, Principal Planner

Date: July 28, 2025

Georgina Cid, Community Development Manager

Date: July 31, 2025

Frankie Kropacek, Community Development Director

Date: August 01, 2025

nancy stuparich, Town Attorney

Date: August 05, 2025



Amy Baker, Town Clerk

Date: August 05, 2025

LPA RESOLUTION 2025-XX

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/PROVING WITH CONDITIONSDENYING VARIANCE 20250146, REQUESTING A VARIANCE FROM LDC SECTION 34 TABLE 34-3 - FOR THE PROPERTY LOCATED AT 452 ESTERO BOULEVARD GENERALLY REFERED TO AS STRAP NUMBER 24-46-23-W1-0060D.025F IN FORT MYERS BEACH, TO VARY 15 FEET FROM REQUIRED 25 FOOT FRONT STREET SETBACK AND 12 FEET FROM THE REQUIRED REAR SETBACK TO BUILD A NEW SINGLE-FAMILY HOME IN THE RM ZONING DISTRICT; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, 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, Kara Stewart ("Applicant") on behalf of the owners LAPFAM Investments #2-452 ("Owner") of the property located at 452 Estero Boulevard (Property), are requesting a variance from LDC Section 34 Table 34-3 for setback requirements in the RM zoning district resulting in a 10-foot setback from the front property line where a 25-foot setback is required and a 8-foot setback to the rear property line where a 20-foot setback is required; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W1-0060D.025F; and

WHEREAS, the Property is located in the "Mixed Residential" Future Land Use Map of the Comprehensive Plan and the "Residential Multifamily" zoning districts 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 August 12th, 2025, 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; and

WHEREAS, in accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA makes the following findings and conclusions:

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

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

B. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

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

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

WHEREAS, eligible members of the LPA voted ___ to ___ by roll call vote to approve / approve with conditions / deny the requested variances with the following conditions:

1. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development 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.
2. Property owner must ensure that they adhere to the neighborhood flooding ordinance (LDC Sec. 6-14) for drainage and 67% maximum impervious requirements.
3. The variance shall only apply to the structure as shown on the site plan identified in Exhibit A. Demolition or substantial damage to the structure shall render the variance to be null and void.

WHEREAS, Ordinance 24-06 amended Section 34-232(d) of the LDC to provide that:

(d) Owner-initiated requests for variances, or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, that are:

- 1) approved by a unanimous vote of the local planning agency members who are eligible to vote, and
- 2) not subject to a request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 business days after the date of the local planning agency decision, excluding holidays, only require one public hearing before the local planning agency, and the local planning agency decision is final agency action.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

1. The foregoing “WHEREAS” clauses are adopted herein by reference and constitute the findings and conclusions of the LPA.

2. VAR20250146, with the conditions contained herein, received / did not receive unanimous approval from eligible voting members of the LPA on August 12th, 2025.

3. This Resolution shall constitute the equivalent of a development order and final agency action, subject to any request for an additional review by the Town Council filed with the Town Clerk within 10 business days of the LPA decision as authorized in Section 34-232(d) of the LDC.

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

Chair Anita Cereceda	_____
Vice-Chair Jane Plummer	_____
Member James Boan	_____
Member Douglas Eckmann	_____
Member Don Sudduth	_____
Member John McLean	_____
Member James Dunlap	_____

DULY PASSED AND ADOPTED THIS _____ day of August, 2025.

Local Planning Agency of the Town of
Fort Myers Beach

By: _____
Anita Cereceda, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: _____
Vose Law Firm, Town Attorney

By: _____
Amy Baker, Town Clerk

EXHIBIT A: Site Plan



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20250146

CASE NAME: 452 Estero Blvd. Variance

LPA

HEARING DATE: August 12th, 2025

STAFF

RECOMMENDATION: Approval with conditions

**PREPARED/
SUBMITTED BY:** Judith Frankel, Principal Planner

I. APPLICATION SUMMARY

Applicant/Owner: Kara Stewart on behalf of owners LAPFAM Investments #2-452

Request(s): Applicant requests relief from LDC Section 34 Table 34-3 for setback requirements in the RM zoning district resulting in a 10-foot setback from the front property line where a 25-foot setback is required and an 8-foot setback to the rear property line where a 20-foot setback is required.

Subject property: See attached site plan

Physical Address: 452 Estero Blvd.

STRAP #: 24-46-23-W1-0060D.025F

FLU: Mixed Residential

Zoning: Residential Multifamily (RM)

Adjacent zoning and land uses:

North: Residential Multifamily (RM)

	Mixed Residential
South:	Residential Multifamily (RM) Mixed Residential
East:	Residential Multifamily (RM) Mixed Residential
West:	Residential Multifamily (RM) Mixed Residential

II. BACKGROUND AND ANALYSIS

The property owner seeks to construct a three-story home on a non-conforming lot at 452 Estero Boulevard. The previous home, destroyed during Hurricane Ian, was a one-story structure with 2 bedrooms according to the Lee County Property Appraiser. The footprint of the proposed structure is larger than the previous home by approximately 318 SF. A portion of the increase is to accommodate the access stairs and elevator. The proposed structure is not eligible for the post-disaster build back policy due to the desired increased size.

Analysis

The subject property is 50-feet deep and 65-feet width. A home built to the required front and rear setbacks would result in a 5-foot-wide home, which is not feasible. A variance is necessary in this case to accommodate a single-family home. The requested setback relief results in a 32-foot wide home. The applicant is not requesting a variance for building coverage, as the house is designed to comply with the maximum 40% allowed building coverage.

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.*

Exceptional conditions are present at the site due to the size of the lot. The subject property is 65-feet wide by 50-feet deep, which includes an access easement. This configuration would only allow a 5-foot-wide home. The required elevation for homes seaward of the 1991 CCCL necessitates a lengthy staircase and an elevator for access. These design components further restrict the options for LDC compliance. Because of these conditions the property is limited in the overall site development area available to construct a single family home.

The request variance allows for a 32-foot wide home which is a de minimis request. Rigid compliance is not essential to protect public policy in this case.

- 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 destruction of the prior home and the size of the lot were not the result of actions taken by the applicant.

- 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 requested variance is the minimum variance necessary to relieve the applicant of the unreasonable burden restricting the width of a single-family home.

- 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 is unlikely to be injurious to the neighborhood as the abutting property owner may also require similar variances.

- 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.

III. RECOMMENDATION

Staff has reviewed the request for a variance from LDC Sec. 34 Table 34-3 which requires that all structures in the RM zoning district have a 25-foot front street setback and a 20 foot rear setback and found that the variance request does meet the requirements set forth in sec. 34-87.

Therefore, staff recommend **APPROVAL WITH CONDITIONS** of VAR20250146, a variance of 15-feet from the required front street setback and 12-feet from the required rear setback resulting in a front setback of 10 feet and a rear setback of 8 feet to construct a 32 foot wide single-family home.

IV. CONDITIONS FOR APPROVAL

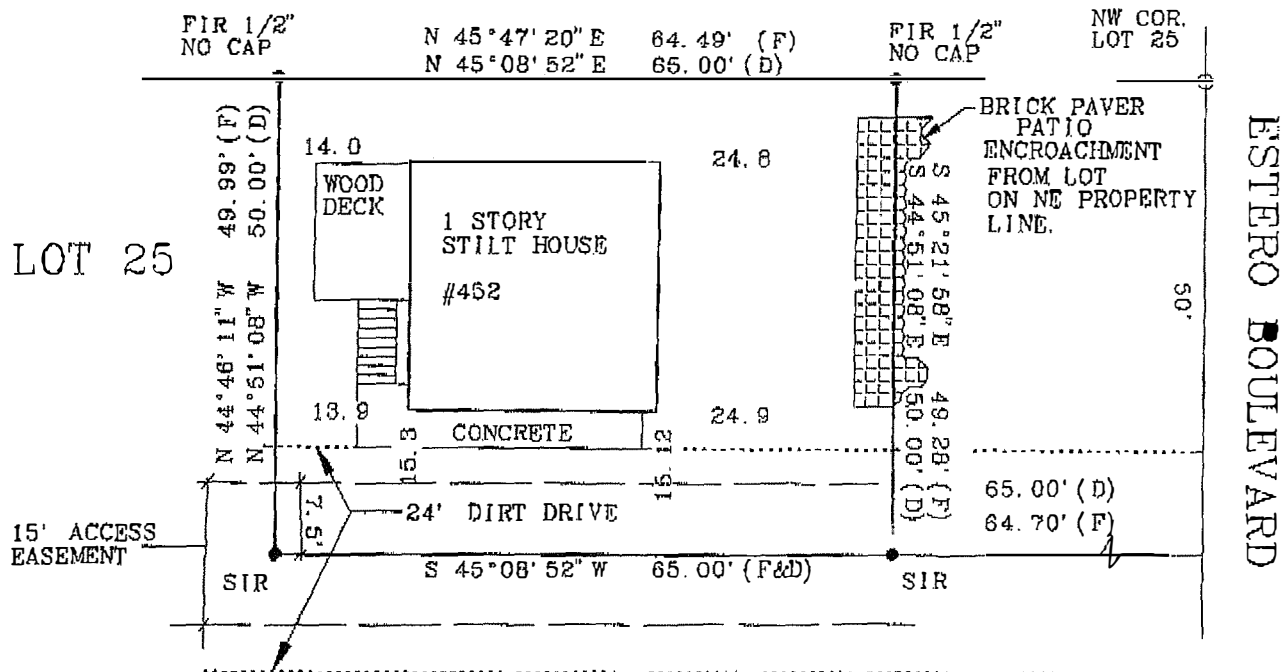
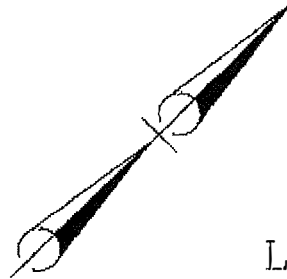
If the Town's LPA recommends approval for the variance, the town's staff recommends the following conditions of approval.

- 1) Approval of this variance does not give the Applicant an undeniable right to permit approval. Development 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.
- 2) The property owner must ensure that they adhere to the neighborhood flooding ordinance (LDC Sec. 6-14) for drainage and 67% maximum impervious requirements.
- 3) The variance shall only apply to the structure as shown on the provided site plan. Demolition or substantial damage to the structure shall render the variance to be null and void.

V. EXHIBITS

- A. Survey
- B. Proposed site plan
- C. Elevations
- D. Applicant's Narrative
- E. Complete application

452 Estero



CERTIFIED TO:

LAS INVESTMENTS, L. L. C.

LARRY A. ECHOLS, P. A.

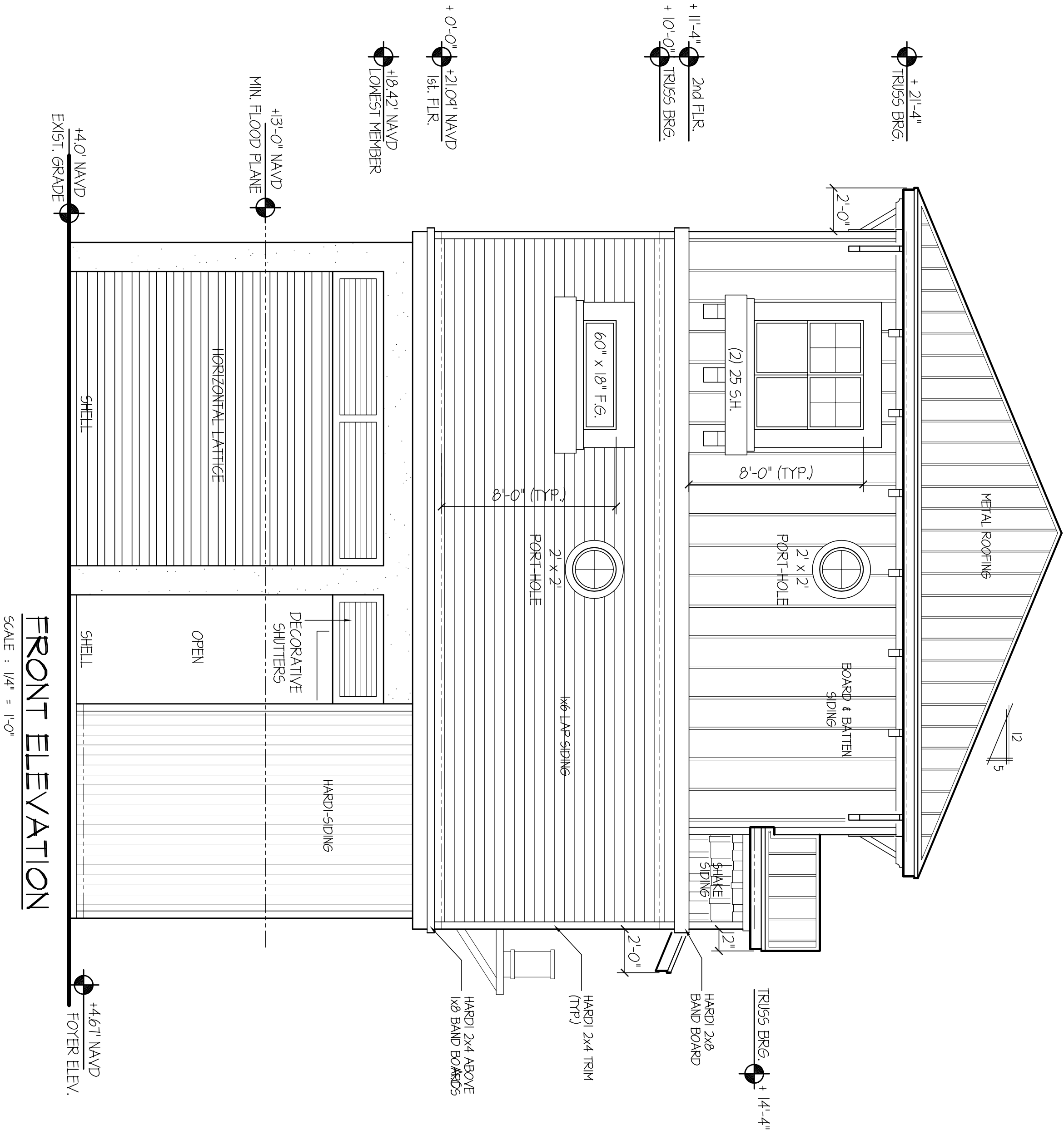
COMMONWEALTH LAND TITLE INSURANCE CO.

BOUNDARY SURVEY

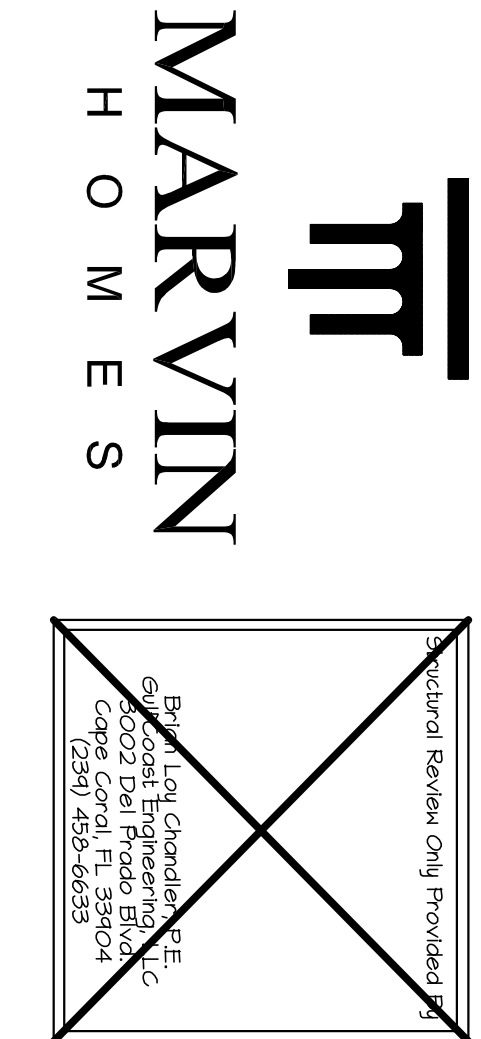
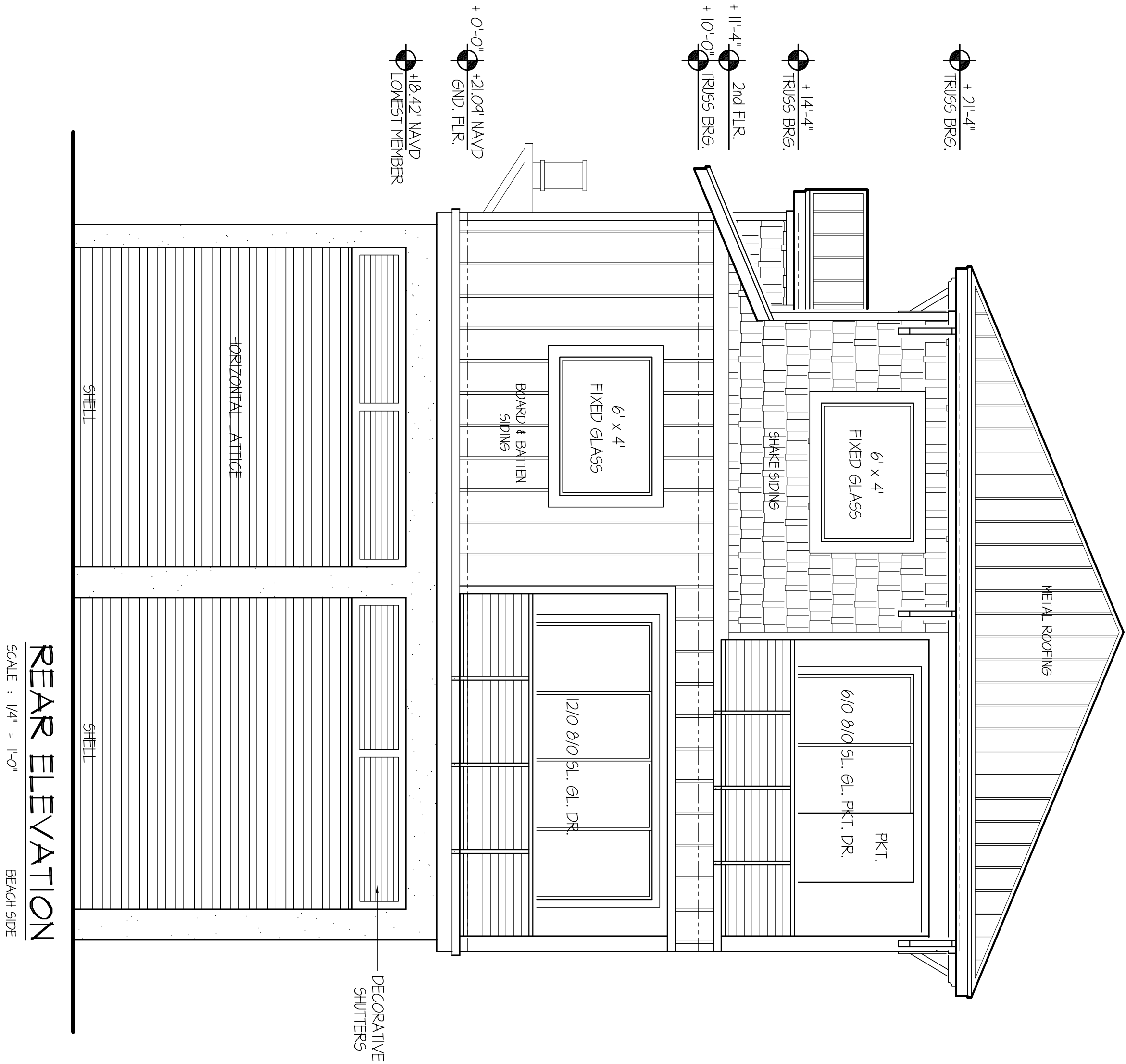
Beginning at the Northwestern corner of Lot 25, UNIT NO. 3, ISLAND SHORES SUBDIVISION, according to the map or plat thereof record in Plat Book 9, Page 27, Public Records of Lee County, Florida, as same is located on the Southerly boundary line of Estero Boulevard, thence run Southeasterly along the Southern boundary line of Estero Boulevard a distance of 50 feet; thence run Southwesterly, parallel to the Western boundary line of said Lot 25 a distance of 65 feet to the point of beginning; thence continue along the same course for 85 feet; thence Northwesterly, parallel with the Southern boundary line of Estero Boulevard 50 feet to the Northwestern line of Lot 25; thence along the same course Northeasterly 55 feet; thence Southeasterly and parallel with the Southern course of Estero Boulevard for 50 feet to the point of beginning. Together with all rights in easement agreement recorded in Misc. Book 36, Page 285, necessary to the use and occupancy of such property. (Simp. No. 24-46-23-W1-0080D.025F, having address at 452 Estero Boulevard, Fort Myers Beach, Florida).

4 ft
over

This is what will be seen from Estero Blvd looking towards Gulf ; on site plan denoted as right side setback



This is what will be seen from Gulf looking back towards Estero ; on site plan denoted as left side setback



452 ESTERO

OF 5 9	DWN. BY : S. A. M. CHK. BY : DATE : MAY 16, 2025 JOB NO. : 241217	REVISIONS	EXTERIOR ELEVATIONS	A RESIDENCE FOR : MARVIN HOMES MARVIN DEVELOPMENT CORPORATION 1250 COLLEGE PARKWAY, SUITE #1 FORT MYERS, FL. 33907 TEL. No. (239) 433-1112 FAX. No. (239) 433-3885 CBCA24035	IF ANY ERRORS OR OMISSIONS EXIST IN THESE DRAWINGS OR SPECIFICATIONS THE CONTRACTOR AND / OR OWNER SHALL, WITHIN 10 DAYS AFTER RECEIPT OF THESE DRAWINGS, AND PRIOR TO CONSTRUCTION NOTIFY SOUTH FLORIDA DRAFTING, INC. IN WRITING OF SAID ERRORS OR OMISSIONS OR BE HELD WHOLLY RESPONSIBLE FOR THE RESULTS AND COSTS OF RECTIFYING THE SAME. SOUTH FLORIDA DRAFTING, INC. DOES NOT ASSUME ANY RESPONSIBILITY FOR SUPERVISION OF CONSTRUCTION. CONTRACTOR AND SUB-CONTRACTORS ARE TO STRICTLY ADHERE TO ALL STANDARD BUILDING CODES INCLUDING ALL AMENDMENTS BY LOCAL BUILDING DEPARTMENTS. SOUTH FLORIDA DRAFTING, INC. IS NOT RESPONSIBLE FOR ANY ENGINEERING OR ARCHITECTURAL CERTIFICATIONS THAT MAY BE REQUIRED.	8498 Beacon Blvd. Fort Myers, FL. 33907-3005 PHONE (239) 561-8632	SOUTH FLORIDA DRAFTING



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: 452 Estero Blvd
Authorized Applicant: Kara Stewart
LeePA STRAP Number: 24-46-23-W1-0060D.025F

Current Property Status: Vacant	
Current Zoning: RM	
Future Land Use Map (FLUM) Category: Mixed Residential	
Comp Plan Density: 6du/acre	Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
34-638 (b)(1) (a) table 34-3	Setbacks - Rear and Front

Complete the narrative statements below for EACH variance requested.

PART I
Narrative Statements

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

Explain the specific regulation contained in this section from which relief is sought:
Setbacks are established on Table 34-3 . The required rear setback
in the RM district is 20' The proposed home is located at 8' to the rear
property line. Thus requiring a 12' reduction in rear setback.
The required front setback in the RM district is 25'. The proposed home is
located 10' to the property line. Thus requiring a 15' reduction in front setback.

Reasons for request

Explain why the variance is needed: SEE EXHIBIT "C"
The reductions in both front and rear setback are a result of the dimension
of the exisiting lot. The lot is 65' wide and only 50' deep. It is impossible to
construct a home within the required front 25' setback and rear 20' setback.
The home doesn't comply with the cottage lot administrative approval as the
replacement home will be 2 stories above flood with a minimally
enclosed area at grade for access.

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

The property is sandwiched amongst other similar sized lots, those will require setback adjustments as well. There would be no effect on surrounding properties.

The house to the west has already received setback variances allowing the home to be constructed 8' from the rear property line; this rear property line will abut with our requested 8' setback.

Thus we are creating a consistent appearance for the neighborhood.

Allowing the rear setback reduction to 8' also allows the a/c to encroach in the rear yard (which is abutting an area of the adjacent home which has minimal windows), unlike locating the a/c in the side yard which would be in the direct view from the property to the south.

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

The size and configuration of the lot make it very difficult to construct a home. The buildable area only allows for a 5' wide home, which is impossible. The proposed front, rear and a/c encroachment are a result of the configuration of the lot.



SEE ATTACHED DOCUMENT

PART 2

Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://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.

452 Estero Blvd

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

1. ***Extraordinary Conditions: Front and Rear Setbacks***

Property is 65' wide by 50' deep, which includes an access easement. This configuration would only allow a 5' wide home.

The increase in elevation for being seaward of the 1991 CCCL has required a lengthy staircase (anticipate approx 18' height) experience has shown a structure that high also needs an elevator for access. These design components further restrict the options for design compliance.

As a consequence of these conditions the property is limited in the overall site development area available to construct a single family.

2. ***Result is not from any action taken by applicant:***

Hurricane Ian destroyed the home the owner is simply looking to construct a replacement within the confines of the property and all associated limitations. The required flood elevation contributes to the need for a home of this size, the contractor has identified that when the elevation is this great, having an elevator is a necessity and thus requires an enclosed area below flood for access, taking away from the truly use able space for living area.

3. ***Minimum Variance requested:*** the request for a front and rear setback variance are the minimum variances needed. The depth of the property makes it impossible to construct a single family without relief. The footprint of the structure is slightly larger than the previous by approx 318sf, of which 196sf are being used for the elevator and staircase due to the increase in elevation requirement.

4. ***Granting the variance will not be injurious to the neighborhood:*** The reduction in front and rear setbacks will be consistently required throughout this neighborhood

5. ***The request is not so broad in nature to require a code change:*** This request is unique to this property due to the configuration of the lot, and 1991 CCCL for height. Hence does not require a code change